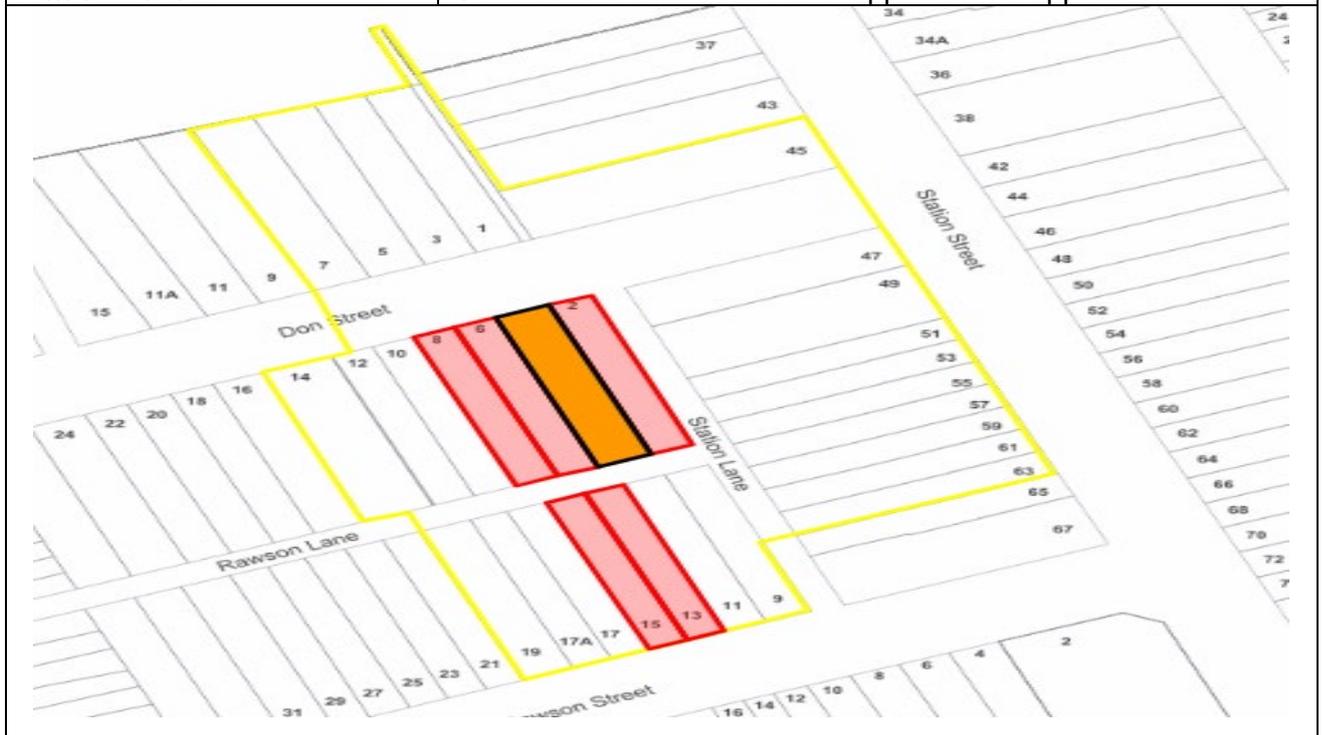


INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2022/0242
Address	4 Don Street NEWTOWN NSW 2042
Proposal	To demolish part of the premises and carry out ground, first and second floor alterations and additions to a dwelling house
Date of Lodgement	06 April 2022
Applicant	Mr Jack W Elliott
Owner	Mr Jack W Elliott & Mrs Caitlin E Elliott
Number of Submissions	Initial: 6
Value of works	\$250,000.00
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%
Main Issues	Inadequate information; variation to height of buildings development standard; streetscape and heritage impact; amenity impacts to adjoining properties; stormwater management; tree management and site suitability
Recommendation	Refusal
Attachment A	Reasons for refusal
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards
Attachment D	Statement of Heritage Significance
Attachment E	Conditions of consent if Panel approves the application



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council “*To demolish part of the premises and carry out ground, first and second floor alterations and additions to a dwelling house*” at 4 Don Street, Newtown.

The application was notified to surrounding properties and 6 submissions were received in response.

The main issues that have arisen from the application include:

- Inadequate and inaccurate information
- Breach with Height of buildings development standard
- Adverse amenity impacts (visual bulk and scale, visual and acoustic privacy, solar access)
- Adverse impact on Heritage Conservation Area and unsatisfactory response to desired future character controls
- Inadequate Stormwater Management
- Inadequate tree planting

The non-compliances are not acceptable and, therefore, the application is recommended for refusal.

2. Proposal

Lower Ground Floor

- Extension of the footprint, both rearward and laterally,
- Removal of original walls and infilling of the side light well,
- Addition of a bow-front glazed bay and doors addressing the rear garden, and
- Addition of a full width roller door to the rear lane.

Ground Floor

- Lateral extension to match addition on lower ground level,
- Addition of a bow-front glazed bay,
- Addition of rear facing balcony,
- Addition of an en-suite bathroom to front parlour/drawing room, and
- Addition of a new circular spiral stair, arriving from the lower ground floor.

First Floor

- Addition of an en-suite bathroom to benefit the main bedroom (Bed 1) by taking space from the second bedroom, and
- Addition of a balcony along western boundary accessed from bedrooms 2 and 3 through new openings.

Attic/Roof

- Addition of attic room that is accessed by extending the main stair upwards, and
- Addition of solar panels.

3. Site Description

The subject site is located on the southern side of Don Street, between Station Lane and Reiby Street, Newtown. The site consists of 1 allotment and is generally rectangular in shape with a total area of 186sqm and is legally described as Lot 2 in DP 12296311.

The site has a frontage to Don Street of 6.085 metres and a frontage of 6.055 metres to Rawson Lane at the rear.

The site supports a three-storey terrace house that presents as two storeys to Don Street. The adjoining properties support single, two and three storey dwelling houses.

The property is located within a heritage conservation area and within the ANEF 20-25 contour.



Zoning Map

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

No recent relevant applications

Surrounding properties

Application	Proposal	Date & Decision
DA201500074	To subdivide the property so that the boundary aligns with the party wall of the existing dwelling houses (2 Don Street)	25/03/2015 Approved
DA201600493	To remove trees and create a car space at the rear with laneway access (8 Don Street)	20/02/2017 Approved

4(b) Application history

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

Date	Discussion / Letter / Additional Information
6/4/2022	Application lodged
01/07/2022	<p>Council wrote to the applicant raising the following issues:</p> <ul style="list-style-type: none"> • Inaccurate and inadequate architectural plans and supporting documentation submitted, noting that, <i>inter alia</i>, the following was not provided: <ul style="list-style-type: none"> ○ Demolition plan ○ Plans, elevations and sections accurately depicting existing building elements and proposed works ○ Plans showing levels across the entire site and of the laneway at the rear ○ Indication of existing and proposed areas of private open space and pervious/landscaped areas ○ Areas, dimensions and materials of proposed on-site parking space/s ○ Adequate shadow diagrams ○ Depiction of proposed cut and fill ○ A schedule of finishes, materials and colours • Height of building development standard breach • Proposed attic encroaching over property boundary • Inadequate information regarding party wall • Impact of excavation on neighbouring buildings • Impact on contributory item and HCA • Private and open pervious space • Stormwater Management

	<ul style="list-style-type: none"> • Visual and acoustic privacy impacts • Visual bulk and scale impacts to adjoining sites • Impact on neighbouring trees <p>In addition, Council forwarded the submission received to the applicant.</p>
<p>05/07/2022</p>	<p>Council officers met with the applicant's architect to discuss the aforementioned issues, advising/recommending in addition to the matters outlined in Council's letter, <i>inter alia</i>:</p> <ul style="list-style-type: none"> • Lodged plans and information inadequate. • Adequate architectural plans and supporting documentation in accordance with DA Documentation Requirements required to allow for a comprehensive assessment of application. • To delete the attic addition. • That a square or rectangular bay window in the same location as the proposed circular bay window may be supportable, contingent on reasonable scale and traditional dimensions and design. • A ground floor addition similar to the existing may be supportable, contingent on: <ul style="list-style-type: none"> ○ Increasing the western side boundary setback to, at least, 900mm, to provide adequate separation for stormwater management and air circulation and to minimise visual bulk and scale ○ To delete windows to front elevation of any addition to the rear ○ Reducing height along shared boundary with No. 6 Don Street to a minimum ○ Providing party wall consent or a structural engineer's certificate outlining that the party wall is not relied upon for vertical or lateral support, ○ Structural and geotechnical engineer's reports submitted addressing proposed excavation and impacts on neighbouring sites. • Any new roof at the rear to be a simple skillion or flat roof. • To delete the proposed balconies and new openings serving balconies. • Amending the dimensions of W04 to match the dimensions of window W03. • Reduction of large expanses of glass to rear. <p>It is noted that Council did not receive amended plans or any update from the applicant or architect prior to 16/08/2022</p>

16/08/2022 – 22/08/2022	<ul style="list-style-type: none"> • Council called the applicant’s architect who advised that they would contact Council shortly with an update. • The applicant contacted Council via email advising Council that they would need to change architects and requested more time to respond to the issues raised by Council. • Council advised that no additional time could be provided and recommended to withdraw the application. • The applicant advised Council that they would not withdraw the application.
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5. Assessment

In accordance with Section 23(1) of the Environmental Planning and Assessment Regulation 2021,

- A development application may be made by—*
- (a) the owner of the land to which the development application relates, or*
 - (b) another person, with the consent of the owner of the land.*

The proposed development includes works on and adjacent to the party wall shared with No. 2 Don Street. In addition, the proposed attic addition encroaches over the subject site’s boundary onto No. 2 Don Street. As outlined above, party wall consent from the owner/s of No. 2 Don Street has not been provided when lodging the application and the submitted plans are not accompanied by a structural engineer’s certificate outlining that the party wall is not relied upon for vertical or lateral support. In addition, no consent for the proposed encroachments has been submitted.

As such, the proposed development does not have the consent of all the owners of the land to which the development application relates, i.e., the owners of No. 4 and No. 2 Don Street. Therefore, the application cannot be approved as it has not been made in accordance with the requirements of this section.

Notwithstanding, 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*

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.

The application does not involve category 1 remediation under *SEPP (Resilience and Hazards) 2021*.

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

A BASIX Certificate was submitted with the application and is satisfactory.

5(a)(iii) 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 5.10 - Heritage Conservation
- Clause 6.1 - Earthworks
- Clause 6.5 - Development in areas subject to aircraft noise

a. *Clause 2.1 – Aims of the Plan*

Due to the concerns raised elsewhere in this report with respect to the development standard breach, adverse streetscape and heritage impacts and incompatibility with the existing pattern of development and unsatisfactory off-site amenity outcomes, the proposal does not comply, or has not demonstrated compliance, with the following provisions of Clause 1.2(2) of the *MLEP 2011*:

- (g) to identify and conserve the environmental and cultural heritage of Marrickville.
- (h) to promote a high standard of design in the private and public domain.

b. *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”

Whilst the development is permitted with consent within the land use table, and the proposal is generally consistent with the objectives of the zone as it provides for the housing needs of the community within a low density residential environment, the application is recommended for refusal.

c. *Clause 2.7 – Demolition*

Clause 2.7 of the *MLEP 2011* states that the demolition of a building or work may be carried out only with development consent. The application seeks consent for demolition works. Whilst Council’s standard conditions relating to demolition could be included in any consent granted, it is noted that, given the inadequate and inaccurate plans submitted, the extent of demolition proposed is unclear.

d. *Clause 4.3 – Height of buildings and Clause 4.4 - Floor space ratio*

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

Standard	Proposal	Non-compliance	Complies
Height of Building Maximum permissible: 9.5m	11.7m	2.2m or 23.16%	No
Floor Space Ratio Maximum permissible: 1:1 or 186sqm	1:1 or 184.7sqm	N/A	Yes

e. *Clause 4.5 - Calculation of floor space ratio and site area*

The floor space ratio and site area have been determined and calculated in accordance with this clause.

f. *Clause 4.6 – Exceptions to Development Standards*

As outlined above, the proposal results in a breach of the height of buildings development standard of the *MLEP 2011*:

The applicant seeks a variation to the height of buildings development standard under Clause 4.6 of the *MLEP 2011* by 23.16% (2.2 metres).

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 *MLEP 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 proposal is consistent with the objectives of the zone and height of buildings development standard,
- The maximum prescribed height is not appropriate in this instance,
- The proposed height is consistent with existing site conditions and context,
- *“The proposal will not result in any unreasonable loss of solar access or outlook from the public domain or adjoining buildings”*,
- *“The proposed height reflects the built form and intensity of use that can be expected in this area”*,
- Strict compliance with this development standard, given that floor area would need to be relocated, would result in additional bulk and scale,
- The proposal has minimal impacts on surrounding properties,
- The proposal is compatible with the existing building and the heritage conservation area,
- *“the proposal provides for a larger dwelling which is not common in the area and adds to the diversity of housing available within the locality”*,
- The variation *“is a minor matter and not uncommon”*, and
- There will be a public benefit in allowing the proposed “variation as a better planning outcome will be achieved”.

It is considered that the applicant’s written rationale has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, or that there are sufficient environmental planning grounds to justify contravening the development standard.

The relevant objective of the R2 Low Density Residential Zone is as follows:

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

The objectives of the Height of buildings development standard are as follows:

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

Whilst, as outlined previously, it is considered that the development is consistent with the objectives of the R2 zone, the development is not in the public interest because it is not consistent with the objectives of the Height of buildings development standard, in accordance with Clause 4.6(4)(a)(ii) of the *MLEP 2011* for the following reasons:

- The development breaches the prescribes maximum height of buildings,
- As outlined in detail elsewhere in this report, the proposed development is inconsistent with the desired future character of the neighbourhood, which requires that, *inter alia*:
 - Contributory buildings are protected,
 - Alterations to contributory buildings are sympathetic, and
 - Development shall be consistent with Part 8.3 of the MDCP 2011.
- As outlined in detail elsewhere in this report, the development does not retain, or it has not been demonstrated that it retains, satisfactory exposure to the sky and sunlight.

The proposal, therefore, does not accord with the objective of Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the *MLEP 2011* and for the reasons outlined above, the Clause 4.6 exception request is not supported.

g. *Clause 5.10 – Heritage Conservation*

The subject site is located within the Enmore-Newtown Heritage Conservation Area (HCA) - HCA12 in Schedule 5 of the *MLEP 2011*. The Statement of Significance for this HCA is in Attachment D.

An assessment of the proposal against the heritage provisions of the *MLEP 2011*, and MDCP 2011, has been carried out by Council's Heritage Advisor and their comments are outlined elsewhere in this report.

In summary, the design, building alignments, roof form, elevational treatment and materials and finishes are inconsistent with the established pattern and character of development along Don Street and in the area.

As such, the proposal will result in a development that is detrimental to the HCA and contrary to the provisions and objectives of Clause 5.10 Objectives 1(a) and (b) of the *MLEP 2011*, which seek to conserve the heritage significance of HCAs, including fabric, settings and views.

h. *Clause 6.2 – Earthworks*

Excavation at the rear and along the side boundaries is proposed to accommodate the proposed alterations and additions on the lower ground floor.

Pursuant to Clause 6.2(1)(a), earthworks must "...not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land".

As outlined elsewhere in this report, Council requested a geotechnical and structural engineer's report to address concerns raised by Council and submissions that the proposed earthworks may have adverse impacts on neighbouring properties. Given that the applicant has not submitted the requested reports, it has not been demonstrated that the proposal is consistent with the objective within Clause 6.2(1)(a) and, therefore, the application is recommended for refusal.

i. *Clause 6.5 - Development in areas subject to aircraft noise*

The subject site is located within the ANEF 20-25 contour.

Subject to standard conditions, which have been included in Attachment E, the proposal is capable of satisfying, and complying with this clause and relevant provisions within Part 2.6 of the MDCP 2011 respectively.

Notwithstanding, the application is recommended for refusal.

5(b) Inner West Local Environmental Plan 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 06 April 2022. On this date, the IWLEP was a draft EPI, which had been publicly exhibited and was considered imminent and certain.

The draft EPI contained the following amended provisions:

- Changes to the objectives of the Aims of Plan
- Changes to the objectives of zone

The development is considered unacceptable having regard to the provisions of the Draft EPI for the following reasons:

- The proposal is contrary to Draft Clause 1.2(2)(h) - Aims of Plan – as the proposal does not protect and conserve the environmental and cultural heritage and significant local character,

- The proposal is contrary to Draft Clause 1.2(2)(j) - Aims of Plan – as the proposal does not protect and enhance the amenity of Inner West for existing and future residents,
- The proposal is inconsistent, or it has not been demonstrated that it is consistent, with the following Draft objectives of the R2 Zone:
 - To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
 - To provide landscaped areas for the use and enjoyment of existing and future residents.
 - To protect and enhance the amenity of existing and future residents and the neighbourhood.

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 (MDCP 2011).

Part of MDCP 2011	Compliance
Part 2.1 – Urban Design	No – see discussion
Part 2.3 – Site and Context Analysis	No – see discussion
Part 2.5 – Equity of Access and Mobility	N/A
Part 2.6 – Acoustic and Visual Privacy	No – see discussion
Part 2.7 – Solar Access and Overshadowing	No – see discussion
Part 2.8 – Social Impact	N/A
Part 2.9 – Community Safety	Yes
Part 2.10 – Parking	No – see discussion
Part 2.11 – Fencing	Yes
Part 2.12 – Signs and Advertising	N/A
Part 2.13 – Biodiversity	N/A
Part 2.14 – Unique Environmental Features	N/A
Part 2.16 – Energy Efficiency	N/A
Part 2.17 – Water Sensitive Urban Design	N/A
Part 2.18 – Landscaping and Open Space	No – see discussion
Part 2.20 – Tree Management	No – see discussion
Part 2.21 – Site Facilities and Waste Management	No – see discussion
Part 2.24 – Contaminated Land	Yes
Part 2.25 – Stormwater Management	No – see discussion
Part 3 – Subdivision	N/A
Part 4.1 – Low Density Residential Development	No – see discussion
Part 4.2 – Multi Dwelling Housing and Residential Flat Buildings	N/A
Part 4.3 – Boarding Houses	N/A
Part 5 – Commercial and Mixed Use Development	N/A
Part 6 – Industrial Development	N/A
Part 8 – Heritage	No – see discussion
Part 9 – Strategic Context	No – see discussion

The following provides discussion of the relevant issues:

a. Part 2.1 – Urban Design

Given the issues outlined elsewhere in this report, the proposal is inconsistent with the relevant Principles of this part as follows:

- Principle 9, as the proposed development results in a form that does not preserve and enhance, and which adversely impacts, the distinctive character of the Don Street streetscape,
- Principle 11, as the proposal does not respect the heritage values of the site and surrounds, which is demonstrated throughout this report.

Accordingly, the proposed development does not satisfy C1 of this Part and is inconsistent with O1 as the development does not achieve high quality urban design.

b. Part 2.1 – Site and context analysis

Pursuant to C1,

A site and context analysis must be submitted for all new development excluding internal alterations and minor external alterations and additions.

The proposed external alterations and additions are considered to be major. As such, a site and context analysis was required for the application.

A site and context analysis in accordance with the provisions of this part has not been submitted and the architectural plans submitted and the submitted architectural plans also do not contain the information required. As such, application is inconsistent with the provisions of this part.

c. Part 2.6 – Acoustic and Visual Privacy

Inter alia, the following controls apply:

- *C2(ii) Decks, balconies and verandas alongside boundaries and noisy walking surfaces or elevated side passages must be avoided where they face a residential building.*
- *C3(ii) Elevated external decks for dwelling houses must generally be less than 10m² in area and have a depth not greater than 1.5 metres so as to minimise privacy and noise impacts to surrounding dwellings.*
- *C3(iii) First floor windows and balconies of a building that adjoins a residential property must be located so as to face the front or rear of the building.*
- *C3(v) Where the visual privacy of adjacent residential properties is likely to be significantly affected from windows or balconies (by way of overlooking into the windows of habitable areas and private open spaces), one or more of the following measures must be applied:*
 - a. Fixed screens of a reasonable density (minimum 75% block out) to a minimum height of 1.6 metres from finished floor level must be fitted to balconies in a position suitable to alleviate loss of privacy;*

- b. *Windows must have minimum sill height of 1.6 metres above finished floor level or fixed opaque glazing to any part of a window less than 1.6 metres above finished floor level; and*
- c. *Screen planting or planter boxes in appropriate positions may supplement the above two provisions in maintaining privacy of adjoining premises.*

No new windows are proposed to the eastern elevation. The proposed window (W04) to the western elevation is not aligned with windows on the adjoining site.

The circular bay window to the rear, on the lower ground floor, would not result in undue visual privacy impacts as boundary fencing would provide adequate screening. However, the circular bay window, balcony and glass door serving it, on ground (middle) floor, which serve living areas, provide unobstructed 180-degree views and direct sightlines into neighbouring private open space and windows. As such, this part of the proposal is inconsistent with C3(iii) and C3(v) and not supported. In addition, the large opening and balcony on this level, given living areas are located on it, are considered to have the potential for undue acoustic privacy impacts to surrounding sites.

The balcony along the western side boundary on the first floor faces the adjoining dwelling house at No. 6 Don Street, which has windows directly opposite. As such, it is considered that this balcony, and doors proposed to access it, would result in undue visual and acoustic privacy impacts to this property. In addition, the balcony would allow direct sightlines into other surrounding properties. As such, this part of the proposal is inconsistent with C2(ii) and C3(v) and not supported.

Whilst the proposed windows to the attic are considered reasonable, as these face the rear and are reasonably set back from windows and private open space at surrounding properties, as outlined previously, the attic addition is not supported.

Given the above, the proposal is considered to be inconsistent with the following objectives of this part:

- *O1 To ensure new development and alterations and additions to existing buildings provide adequate visual and acoustic privacy for the residents and users of surrounding buildings.*
- *O2 To design and orientate new residential development and alterations and additions to existing residential buildings in such a way to ensure adequate acoustic and visual privacy for occupants.*
- *O3 To ensure new development does not unreasonably impact on the amenity of residential and other sensitive land uses by way of noise or vibration.*

d. Part 2.7 – Solar Access and Overshadowing

C1 of this part, *inter alia*, outlines,

Shadow diagrams must show the effect in plan and elevation view of existing and proposed overshadowing for June 21 at hourly intervals between 9.00am and 3.00pm. Shadow diagrams at only 9.00am, 12.00 noon and 3.00pm may be acceptable where it can be clearly demonstrated that any shadowing of a window, landscaped area or private open space of an adjoining building will receive solar access in accordance with Council requirements.

The applicant only submitted a perspective solar access/overshadowing analysis, which is not in accordance with C1 and inadequate to enable a satisfactory assessment of the impacts of overshadowing on adjoining properties. In addition, the provided solar access analysis does not allow for an assessment against controls concerned with solar access to the subject site (C8).

Given the above, it cannot be determined whether the proposal is consistent with the following objectives of this part:

- O1 To promote energy efficiency in the design, construction and use of buildings.
- O2 To encourage the use of passive solar design.
- O3 To protect solar access enjoyed by neighbours.

e. Part 2.10 – Parking

Pursuant to C1, dwelling houses are required to provide one (1) car space.

The submitted plans do not depict on-site parking; however, the proposed alterations include replacement of the existing swing gates with a colour bond roll-up door at the rear lane and in the submitted Statement of Environmental Effects, the applicant outlines that “The proposal maintains the 2 informal car spaces that presently exist”.

Council has no record of approval for on-site parking at the subject site and there is no existing vehicular crossing at the rear. As such, a new vehicular crossing would need to be constructed off the rear laneway to provide access to on-site parking.

Given that the submitted plans do not provide sufficient detail with regard to on-site parking, it cannot be determined whether the proposal is consistent with the controls of this part. As such, it has not been demonstrated that the proposal is consistent with the following objectives of this part:

- *O4 To ensure parking provision and design is compatible with the particular development proposed.*
- *O7 To ensure all parking facilities are safe, functional and accessible to all through compliance with design standards.*

f. Part 2.18 – Landscaping and Open Space

Control C12 prescribes that

Private open space

- The greater of 45m² or 20% of the total site area with no dimension being less than 3 metres, must be private open space.*
- A minimum 50% of private open space must be pervious.*

The submitted plans do not adequately depict areas of private open space (POS) and pervious open space, noting that areas proposed for on-site parking, which cannot be included when calculating these areas, have not been depicted.

As such, it has not been demonstrated that the proposal complies with C12 and, given the lack of sufficient information submitted, it has not been demonstrated that the proposal is consistent with the following objectives of this part:

- *O1 To promote site landscaping that conforms and complements the character of the individual building and the character of the area.*
- *O3 To provide dwellings with outdoor recreation space.*
- *O4 To minimise the extent of hard paved areas and facilitate rainwater infiltration.*
- *O5 To improve the appearance, amenity and energy efficiency of development through integrated landscape design.*

g. Part 2.20 – Tree Management

Council's Arborist has assessed the proposal and raised no objections, subject to a canopy tree being planted, which could be readily conditioned.

However, Council advised the applicant that, contingent on works required, including paving, to accommodate the two on-site car spaces, trees on neighbouring properties may be impacted. Given that amended plans were not submitted, it cannot be satisfactorily determined whether the proposal would adequately protect these trees.

As such, it has not been demonstrated that the proposal is consistent with the following objective of this part:

- *O3 To protect trees within and adjacent to development sites and to ensure that all new development provides an opportunity for existing and new trees to grow.*

h. Part 2.21 – Site Facilities and Waste Management

The applicant did not submit a recycling and waste management for the proposed works, which is contrary to C1 of Part 2.21.2.2.

As such, it cannot be determined whether the proposal is consistent with the following objective of this part:

- *O5 To achieve waste reduction, waste separation and resource recovery in the demolition, design, construction and operation of buildings and land use activities*

i. Part 2.25 – Stormwater Management

Currently, there is an overland flow path along the western side boundary of the subject site. Given the proposed nil side setback along this boundary, the proposal would block this overland flow path and, as such, has the potential to create additional runoff/nuisance flows onto the neighbouring property at No. 6 Don Street.

As such, it has not been demonstrated that the proposal is consistent with the following objective of this part:

- *O1 To protect the urban environment from the effects of otherwise uncontrolled surface stormwater flows resulting from infrequent (and lesser) storm events.*

j. Part 4.1 – Low Density Residential Development

Part 4.1.4 Good urban design practice

Given the issues outlined in this report, the proposed development is inconsistent with the following relevant provisions of this Part:

2. *Ensure new development maintains the established setback and enhances the streetscape character of the locality;*
3. *Ensure the scale of development is appropriate for the site;*
4. *Ensure the development is designed and uses materials and finishes which complement the locality;*
9. *Plan for acoustic and visual privacy protection; and*

Part 4.1.5 Streetscape and design

Given the issues outlined elsewhere in this report, the proposed development is inconsistent with the following relevant provisions of this Part:

- O8 – As the proposed development, specifically the attic addition and curved roofs will be visible from the public domain and, given the siting, height, and overall massing, it is considered that the proposal will detract from the identifiable uniformity of the streetscape characteristics.

Part 4.1.6.1 Floor space ratio and height

Control C7 of this part outlines that

Maximum permissible...height for any development must be consistent with the height...standards prescribed on the Height of Buildings (HOB)...Maps of MLEP 2011.

As outlined elsewhere in this report, the proposal does not comply with the height of building development standard.

Whilst the proposal complies with the floor space ratio development standard, the proposal is contrary to C8 of this part for the following reasons:

- The proposal results in adverse visual and acoustic privacy impacts and it has not been demonstrated that the proposal will not result in adverse solar access impacts,
- The proposal results in adverse bulk and scale impacts to the streetscape,
- The proposed building setbacks result in adverse amenity impacts and block the existing overland flow path,
- It has not been demonstrated that the proposal provides adequate pervious areas and landscaping, and
- The proposal results in adverse visual impacts to adjoining sites.

As such, the proposal is inconsistent with the following objectives of this part:

- O10 *To ensure development is of a scale and form that enhances the character and quality of streetscapes.*

- *O12 To ensure development allows adequate provision to be made on site for infiltration of stormwater and deep soil tree planting, landscaping and areas of private open space for outdoor recreation.*

Part 4.1.6.2 Building Setbacks

The subject site has a width of less than 8 metres. As such, the minimum required side setbacks are considered on merit. As outlined in C10(ii):

Visual impact, solar access to adjoining dwellings and street context determine ultimate setback.

The proposed additions at the rear have a nil setback along the shared boundary with No. 6 Don Street and a maximum height of approximately 6.3 metres.

Currently, the two storey rear wing of the subject dwelling is set back by approximately 2.7 metres from this boundary and the central, one storey, portion of the dwelling house on the adjoining site, No. 6 Don Street, is set back by approximately 800mm from this boundary. The light well at No. 6 Don Street includes a number of windows and doors, which provides daylight and solar access to a number of rooms, including living areas. In addition, the existing side boundary setbacks between these two properties allow for adequate air circulation.

As outlined elsewhere in this report, it has not been demonstrated that the proposal maintains acceptable levels of solar access. Given its height and nil setback to the western boundary, it is considered that the proposed development results in unreasonable and adverse visual bulk and scale impacts to No. 6 Don Street and the proposal adversely impacts air circulation between these two properties.

Given the above, the proposal is considered to be contrary to the following objective of this part:

- *O13 To ensure adequate separation between buildings for visual and acoustic privacy, solar access and air circulation.*

Part 4.1.6.3 Site Coverage

The subject site has an area of 186sqm. As such, site coverage is assessed on merit (C13). The proposed development is considered inconsistent with O16 as it has not been demonstrated, and it cannot be determined, whether the proposed development provides adequate provision for outdoor recreation, deep soil tree planting, other landscaping, off-street car parking, and stormwater management.

k. Part 8 – Heritage

Council's heritage advisor has assessed the proposal and provided, *inter alia*, the following comments.

- *No. 4 Don Street is not individually heritage listed but is a dwelling in a Heritage Conservation Area, the Enmore-Newtown HCA (HCA12). The dwelling is one half of a pair of semi-detached dwellings, with No. 2, and mirror-reverse planned about a central party wall. The dwelling and its attached partner are also located within the immediate vicinity of the Heritage Item i173, being terrace housing which extends across Nos. 51-*

67 Station Street and present their rear elevations to Station Lane, immediately across the lane from the subject pair of dwellings.

- Nos. 2 and 4 Don Street are a pair of semi-detached Victorian Italianate style terraces, of two storeys set upon a basement level made possible by the fall to the rear of their site. Symmetrically planned around a party wall, No.2 presents its side elevation to Station Lane, and No. 4 to its neighbour No. 6. Both properties have rear lane access from Rawson Lane – from which laneways both houses are visible and appreciable.
- As demonstrated in the Statement of Significance on pages 85-86 of the MDCP 2011, the dwellings reflect the core period of the HCA's consolidation and each is considered a contributory dwelling in the Area. They also are part of the housing collection within the HCA, and as such are distinctive in their immediate setting.
- In assessing any such proposal for development within a HCA, Council must consider whether or not there would be any adverse impact upon the significance of the HCA – pursuant to Cl.5.10 of the LEP.
- HCA 12 is examined in detail in Part 8.2.14 of Council's MDCP2011 (pages 81-84). Parts 8.2.14.1, the Statement of Significance for the Area, together with Parts 8.2.14.2 and 8.2.14.5 set out the essential parameters for considering changes to properties within the HCA, and making sure they contribute positively to it.
- Having examined the plans I would make the following comments and suggestions regarding the proposed works:
 - It is not possible to reach any other conclusion but that this proposal would diminish the contribution that the subject dwelling makes to the HCA, and by the impact of the changes proposed to it, the HCA would be adversely impacted.
 - The proposal is therefore, not supported in heritage terms.
 - The extent of demolition proposed for the dwelling is inconsistent with its location in a HCA, and with all the planning objectives and controls set out in Council's DCP to assist development compatible with the Area's articulated and detailed significance. Little of the building's existing envelope, spaces and fabric would be left undisturbed by this proposal, which would entail the removal of spaces, structure, external and internal envelope and finishes, including significant component elements of such a dwelling.
 - The corroborative character of Nos. 2 and 4 Don Street would be extinguished, by the unsympathetic, inconsistent changes proposed for No. 4. In particular, the significant form of the dwelling will be obscured and diminished by proposed works formulated without regard to the guidance of the DCP.
 - It is appreciated that this dwelling is not a heritage item, but it is considered a contributory item and should be treated as such.
 - Accordingly, the analysis and conclusions of the HIS supporting the application are not concurred with.
 - The attic level proposal relies upon a Clause 4.6 objection to the controls with which it does not comply, most obviously height. However, the proposed addition is also in trouble considered against the consistent, consolidated planning measures for this locality, directed at conservation of its heritage. With all respect, the proposed additional level must profoundly fail the tests of reasonability and public interest.
- The proposal could not be supported in heritage terms. A revised strategy for the upgrade of this dwelling with regard to its heritage interest, heritage values and importance in its context is eminently capable of preparation.

Given the above, the development is considered to have adverse impact to the heritage conservation area and would not be consistent with the objectives and controls contained within Part 8.3 of MDCP 2011.

1. Part 9 – Strategic Context

The subject site is located within the Camdenville (Precinct 14). Given the issues outlined in this report, the proposal is inconsistent with relevant provisions of this part as follows:

- The proposed development does not protect and preserve the contributory building on the site and the proposed alterations and additions are unsympathetic to the existing building, streetscape and HCA.
- The proposed development does not protect the identified values of the Enmore-Newtown Heritage Conservation Area.

5(d) The Likely Impacts

The assessment of the Development Application demonstrates that the proposal will have an adverse impact on the locality in the following way:

- The proposed development has an adverse impact on the contributory item within the Heritage Conservation Area and Streetscape.
- The proposed development would result in adverse visual and acoustic privacy and adverse visual bulk impacts on surrounding properties.
- It has not been demonstrated that the proposal would maintain an acceptable level of solar access to the subject and adjoining sites.
- It has not been demonstrated that the proposal would adequately manage stormwater.
- It has not been demonstrated that the proposal will protect neighbouring buildings and trees.
- It has not been demonstrated that adequate areas of open space and landscaping are provided.

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

It is considered that the proposal will have an adverse impact on the adjoining properties, the streetscape and heritage conservation area. Therefore, it is considered that the site is unsuitable to accommodate the proposed development.

5(f) Any submissions

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

6 submissions were received in response to the initial notification.

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

- Missing and incorrect information
- Daylight and solar access
- Visual bulk impacts to surrounding sites
- Visual and acoustic privacy impacts

- Impacts of excavation on existing walls and footings at neighbouring properties
- Parking
- Landscaping and impact on trees
- Party wall

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

Issue: Loss of outlook to sky from No. 6 Don Street

Comment: Whilst such view/outlook is not protected, as outlined elsewhere in this report, the proposed development is considered to result in undue visual bulk and scale impacts and the loss of this outlook is a direct result of the unreasonable scale and side setback along the western boundary.

Issue: Proposal was not discussed with neighbours prior to lodging DA

Comment: There is no requirement for applicants to discuss a proposed development with neighbours prior to lodging a DA.

Issue: Light pollution for adjoining properties

Comment: Given the large areas of glazing and balconies on the upper levels, especially on the middle level that serves living areas, it is considered that the proposed development has the potential for undue light pollution. The size of the openings and balconies could be amended via conditions to minimise this impact; however, the application is recommended for refusal.

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 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.

- Heritage
- Development Engineer
- Urban Forest

6(b) External

N/A

7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies would be payable for the proposal.

The carrying out of the proposed development would result in an increased demand for public amenities and public services within the area. A condition requiring that contribution to be paid should be imposed on any consent granted.

8. Conclusion

The proposal generally does not comply with the aims, objectives and design parameters contained in *Marrickville Local Environmental Plan 2011* and *Marrickville Development Control Plan 2011*.

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

The application is unsupportable, and, in view of the circumstances, refusal of the application is recommended.

9. Recommendation

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*, refuse Development Application No. DA/2022/0242 *“To demolish part of the premises and carry out ground, first and second floor alterations and additions to a dwelling house at 4 Don Street, Newtown for the reasons outlined in this report and Attachment A.*

Attachment A – Reasons for Refusal

1. The proposed development is inconsistent with and has not demonstrated compliance with *Marrickville Local Environmental Plan 2011*, pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, including:
 - a. Clause 1.2(2)(g) - Aims of Plan.
 - b. Clause 4.3 - Height of buildings.
 - c. Clause 5.10(1)(a) and (b) - Heritage conservation.
 - d. Clause 6.2(1)(a) - Earthworks
2. The submitted 4.6 variation does not provide sufficient environmental planning grounds to justify the variation and is not considered in the public interest, being inconsistent with the objectives 1(a), 1(b), and 1(c) of clause 4.3 within the *MLEP 2011*.
3. The proposed development is inconsistent with and has not demonstrated compliance with Draft Inner West Local Environmental Plan 2020, pursuant to Section 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979*, including:
 - a. Draft Clause 1.2(2)(h) - Aims of Plan.
 - b. Draft Clause 1.2(2)(j) - Aims of Plan.
 - c. Draft Clause 2.3 - Zone objectives and Land Use Table.
4. The proposed development is inconsistent with and has not demonstrated compliance with the Marrickville Development Control Plan 2011, pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, including:
 - a. Part 2.1 Urban Design.
 - b. Part 2.3 Site and context analysis
 - c. Part 2.6 Acoustic and Visual Privacy
 - d. Part 2.7 Solar Access and Overshadowing
 - e. Part 2.10 Parking
 - f. Part 2.18 Landscaping and Open Space
 - g. Part 2.20 Tree Management
 - h. Part 2.21 Site Facilities and Waste Management
 - i. Part 2.25 Stormwater Management
 - j. Part 4.1 Low Density Residential Development
 - k. Part 8 Heritage
 - l. Part 9 Strategic Context
5. The proposed development will result in adverse impacts on the built environment in the locality pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.

6. The proposal has not demonstrated that the site is suitable for the development pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
7. The proposal has not demonstrated it is in the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*.
8. The architectural plans and supporting documentation lodged are not in accordance with the approved form and Councils DA lodgement requirements pursuant to Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979*.

9. The proposed development does not have party wall consent and consent for proposed encroachments of the owners of No. 2 Don Street. As such, owner's consent to which the development application relates has not been provided/obtained pursuant to Section 23(1) of the *Environmental Planning and Assessment Regulation 2021* and Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979* No 203.



① DON STREET VIEW

DWG NUMBER 01-51
DATE 06.25.2021

EXISTING 3D STREET VIEW
SCALE: 1:4000
A

4 Don Street
NOT FOR CONSTRUCTION
Caitlin Fitzsimmons & Jack Elliott
PRE-DESIGN

219 St. Johns Rd.
Forest Lodge 2027
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Version: 1, Version Date: 06/06/2022



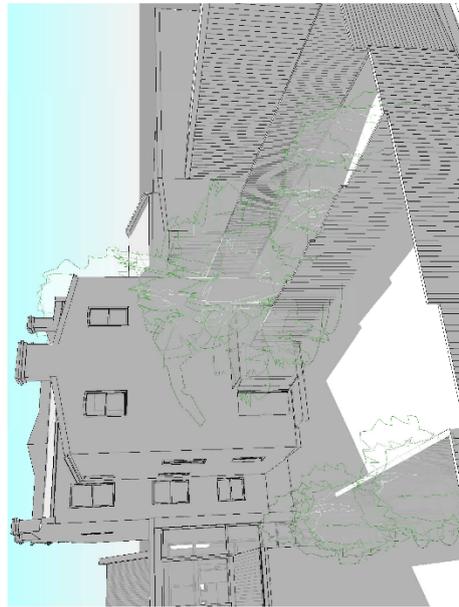
2 NORTHWEST VIEW



4 SOUTHWEST VIEW



1 NORTHEAST VIEW



3 SOUTHEAST VIEW

DWG NUMBER 01-52
DATE 06.25.2021

SCALE: 1:100
A

EXISTING 3D VIEWS

DRAWING

4 Don Street

NOT FOR CONSTRUCTION

PRE-DESIGN

Caitlin Fitzsimmons & Jack Elliott

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SITE AREA: 186 m²

DWG NUMBER 04-00
DATE 06.25.2021
SCALE 1:200

DRAWING EXISTING SITE PLAN
SCALE: 1:200
A

4 Don Street
NOT FOR CONSTRUCTION
Caitlin Fitzsimmons & Jack Elliott
PRE-DESIGN

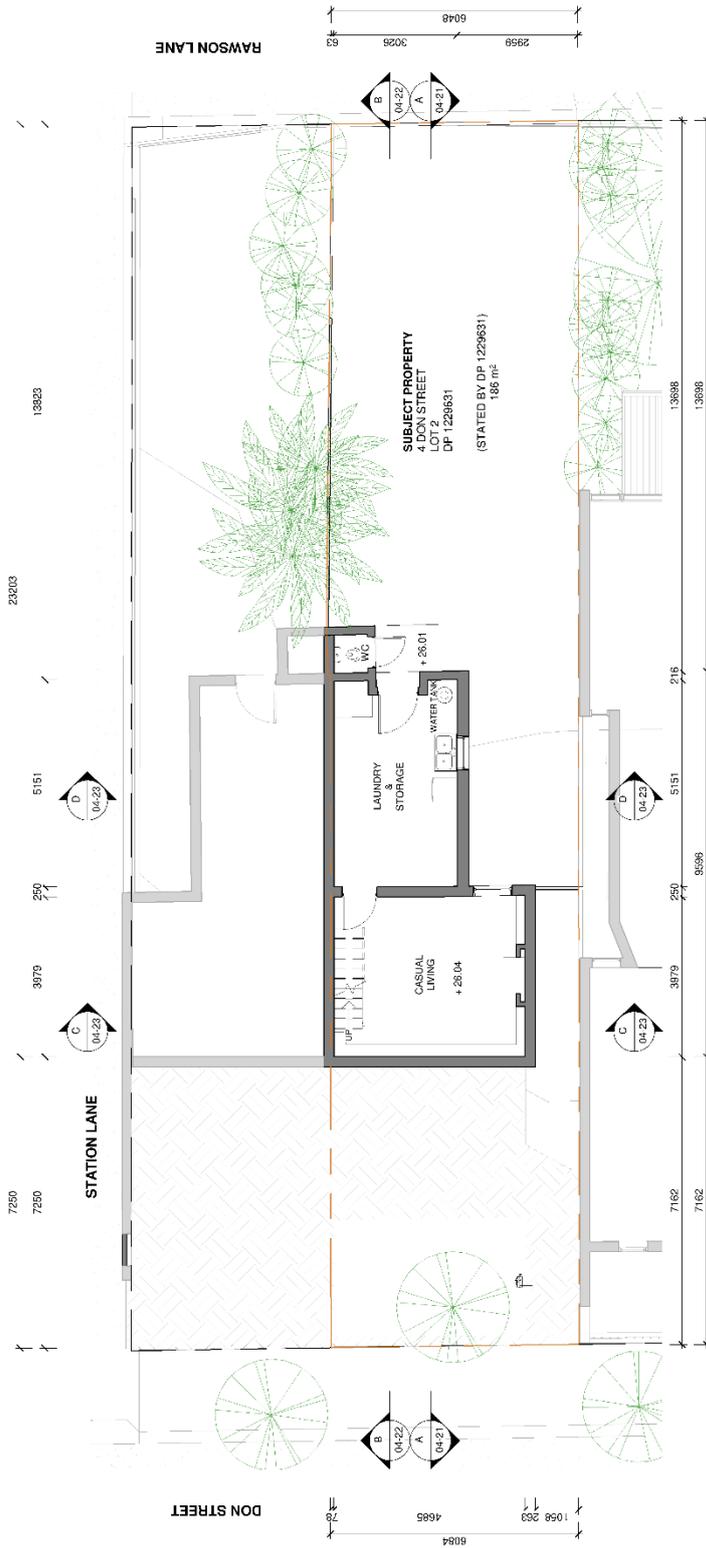


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Version: 1, Version Date: 06/06/2022



DWG NUMBER 04-01
DATE 06.25.2021
SCALE 1:100

EXISTING LOWER GROUND FLOOR

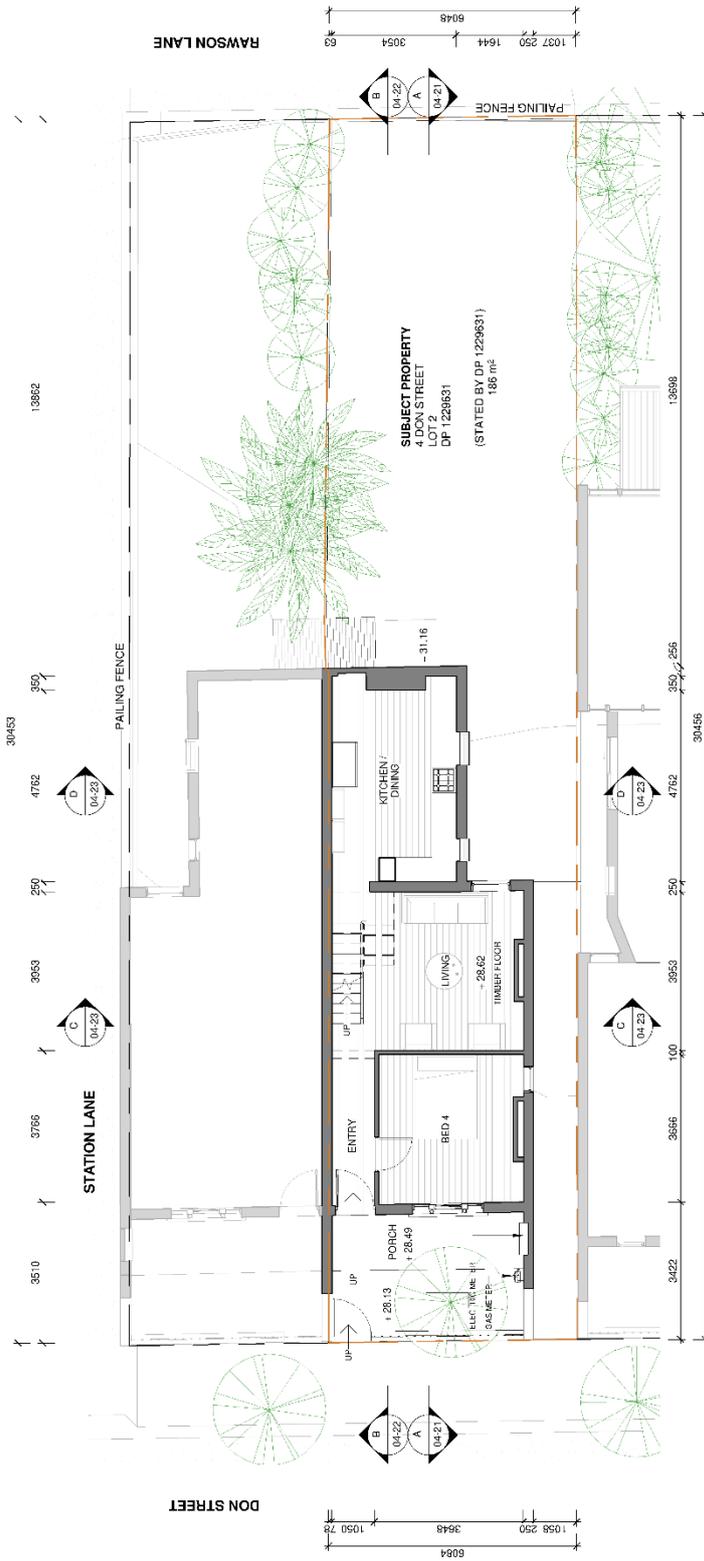
4 Don Street
NOT FOR CONSTRUCTION
DRAWING
Caitlin Fitzsimmons & Jack Elliott
PRE-DESIGN

219 St. Johns Rd.
Forest Lodge 2027
Caitlin Fitzsimmons & Jack Elliott
Class 12/4 (C)

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Version: 1, Version Date: 06/06/2022



DWG NUMBER 04-02
 DATE 06.25.2021
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EXISTING GROUND FLOOR
 DRAWING
 PRE-DESIGN

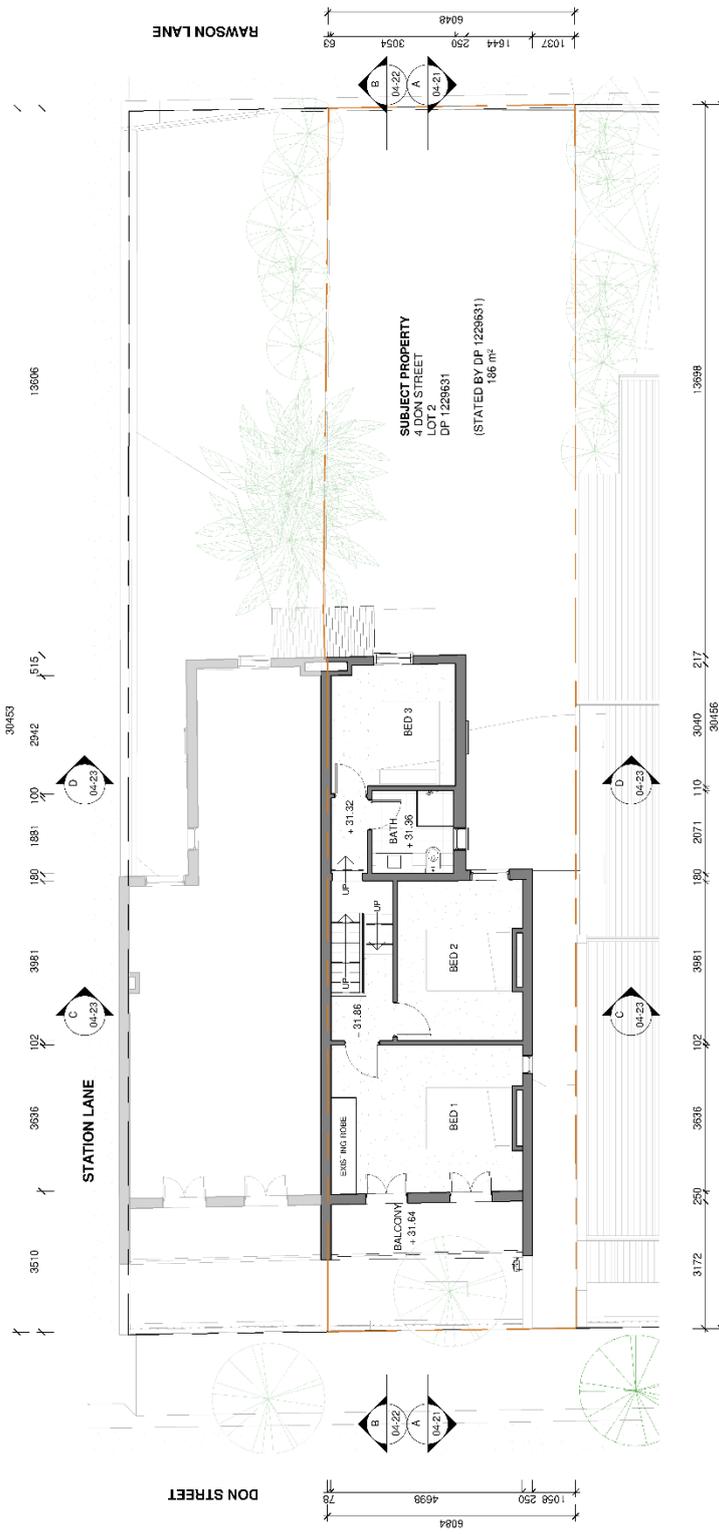
4 Don Street
 NOT FOR CONSTRUCTION
 Caitlin Fitzsimmons & Jack Elliott



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SUBJECT PROPERTY
 4 DON STREET
 DP 1228631
 (STATED BY DP 1228631)
 186 m²

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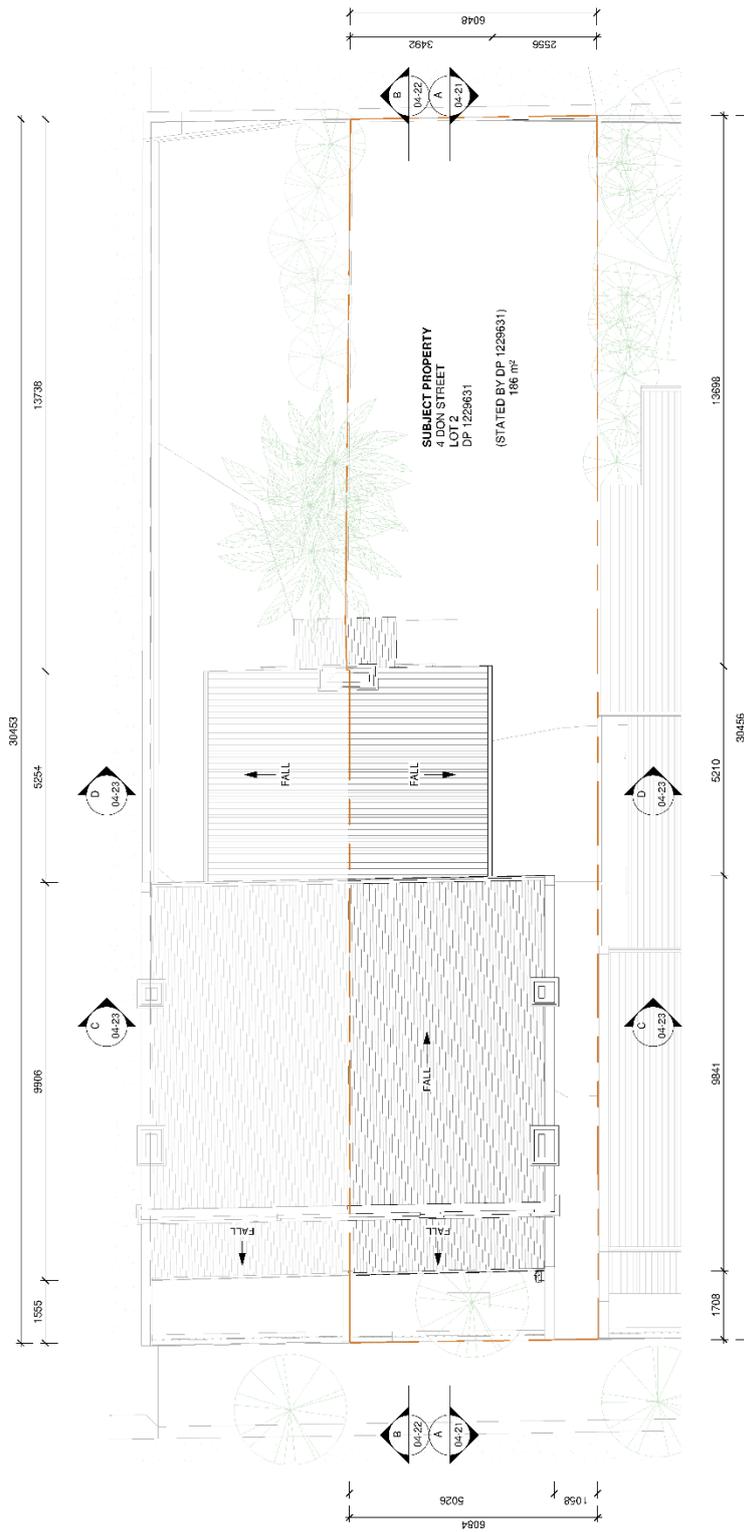
219 St. Johns Rd.
 Forest Lodge 2072
 NSW 1585
 Charles Stubb (2/4) (C)

EXISTING FIRST FLOOR

4 Don Street
 NOT FOR CONSTRUCTION
 PRELIMINARY
 Caitlin Fitzsimmons & Jack Elliott
 PRE-DESIGN

DRAWING
 NUMBER
 DATE
 SCALE

04-03
 06.25.2021
 1:100



DWG NUMBER 04-04
DATE 06.25.2021
SCALE 1:100

EXISTING ROOF PLAN
DRAWING
PROJECT A

4 Don Street
NOT FOR CONSTRUCTION
Caitlin Fitzsimmons & Jack Elliott
PRE-DESIGN



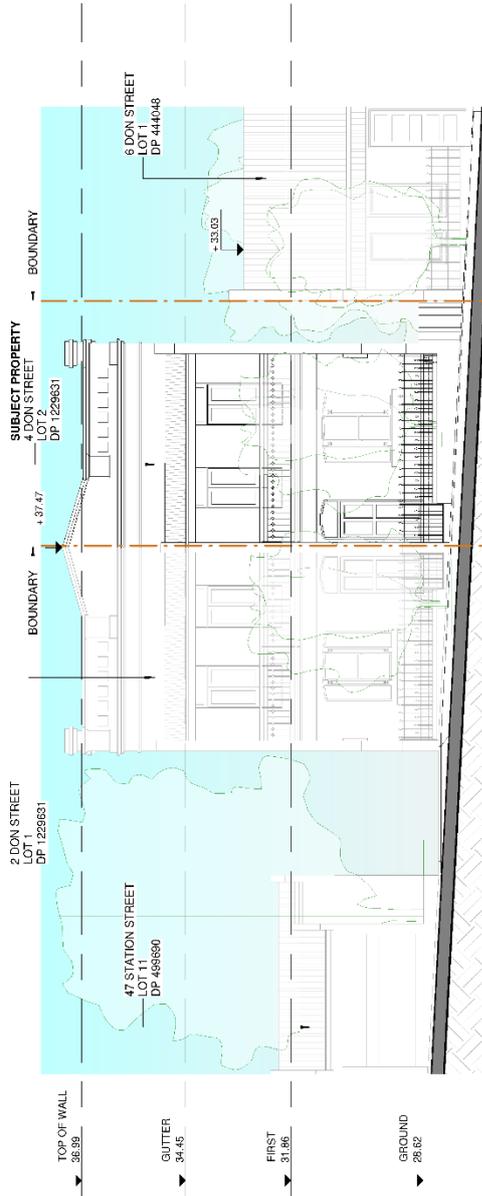
219 St. Johns Rd.
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Version: 1, Version Date: 06/06/2022



1 DON STREET ELEVATION
1:100



2 RAWSON LANE ELEVATION
1:100

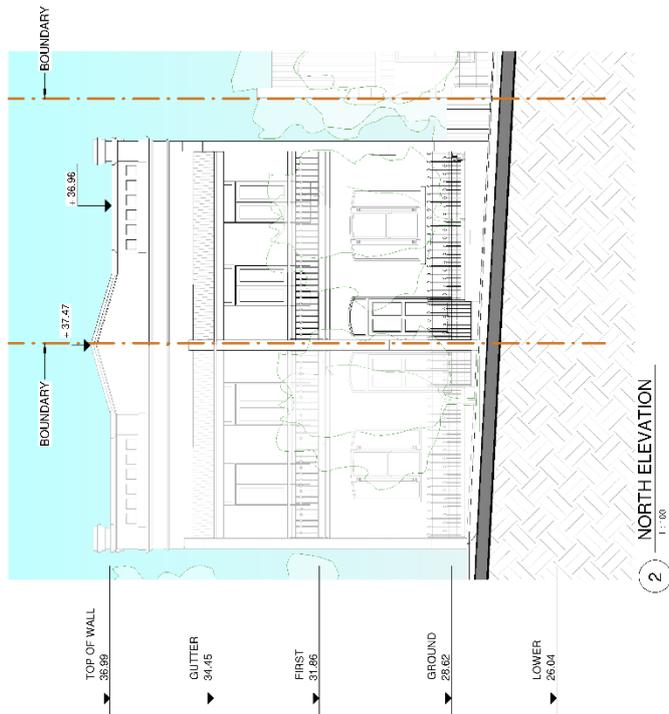
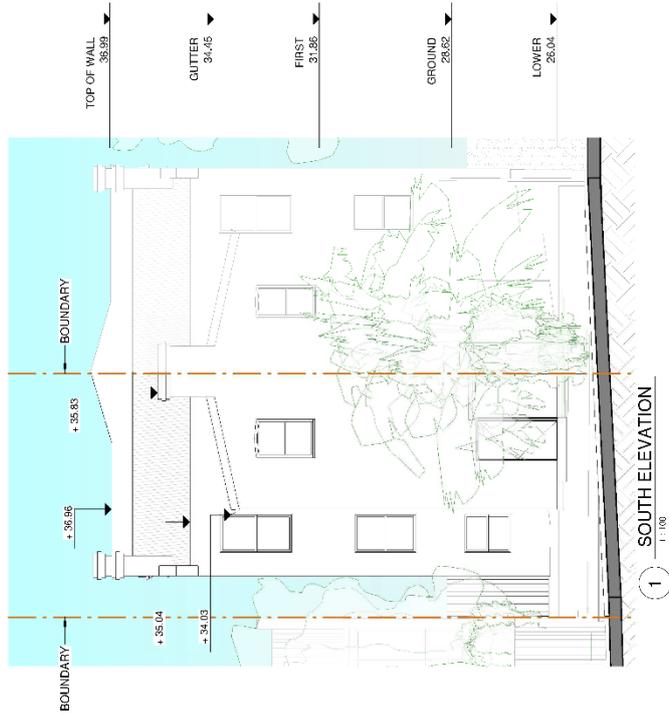

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 Forest Lodge 2072
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 Australia
 (C)

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4 Don Street
 NOT FOR CONSTRUCTION
 DRAWING NUMBER: PRE-DESIGN
 DESIGNER: Caitlin Fitzsimmons & Jack Elliott
 SCALE: A

DWG NUMBER: 04-11
 DATE: 06.25.2021
 SCALE: 1:100



DWG NUMBER 04-12
DATE 06.25.2021
SCALE 1:100

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DRAWING
DATE 06.25.2021
SCALE 1:100

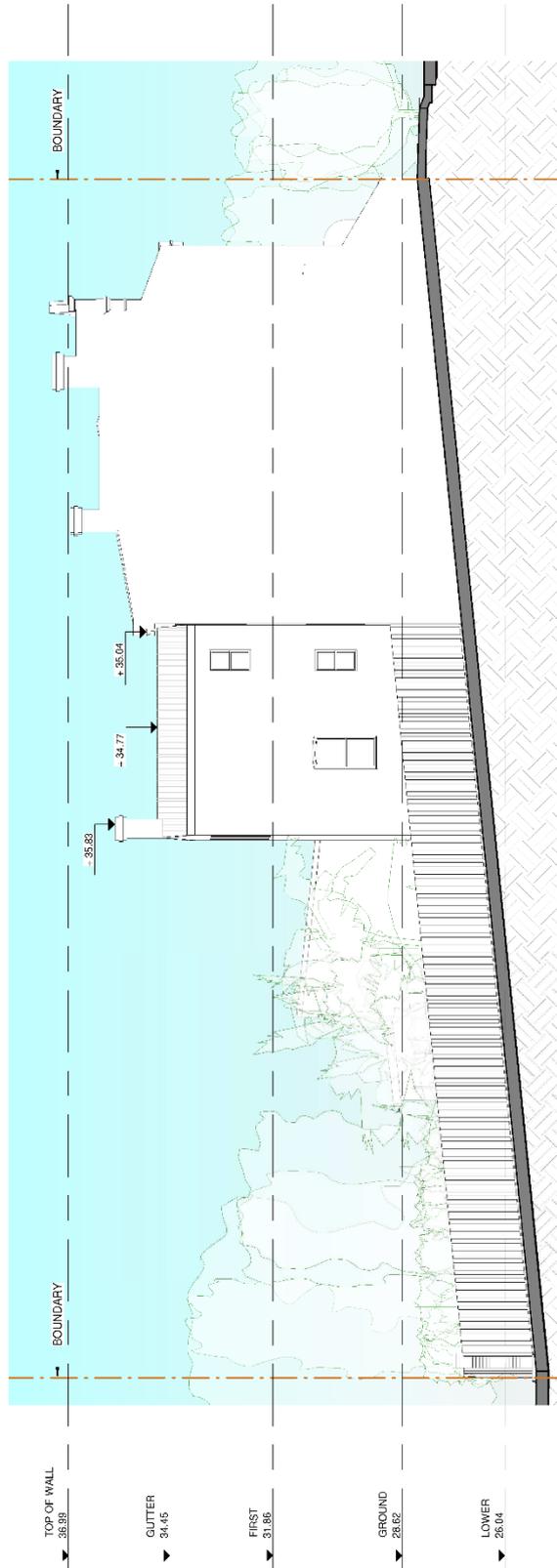
4 Don Street
NOT FOR CONSTRUCTION
Caitlin Fitzsimmons & Jack Elliott
PRE-DESIGN

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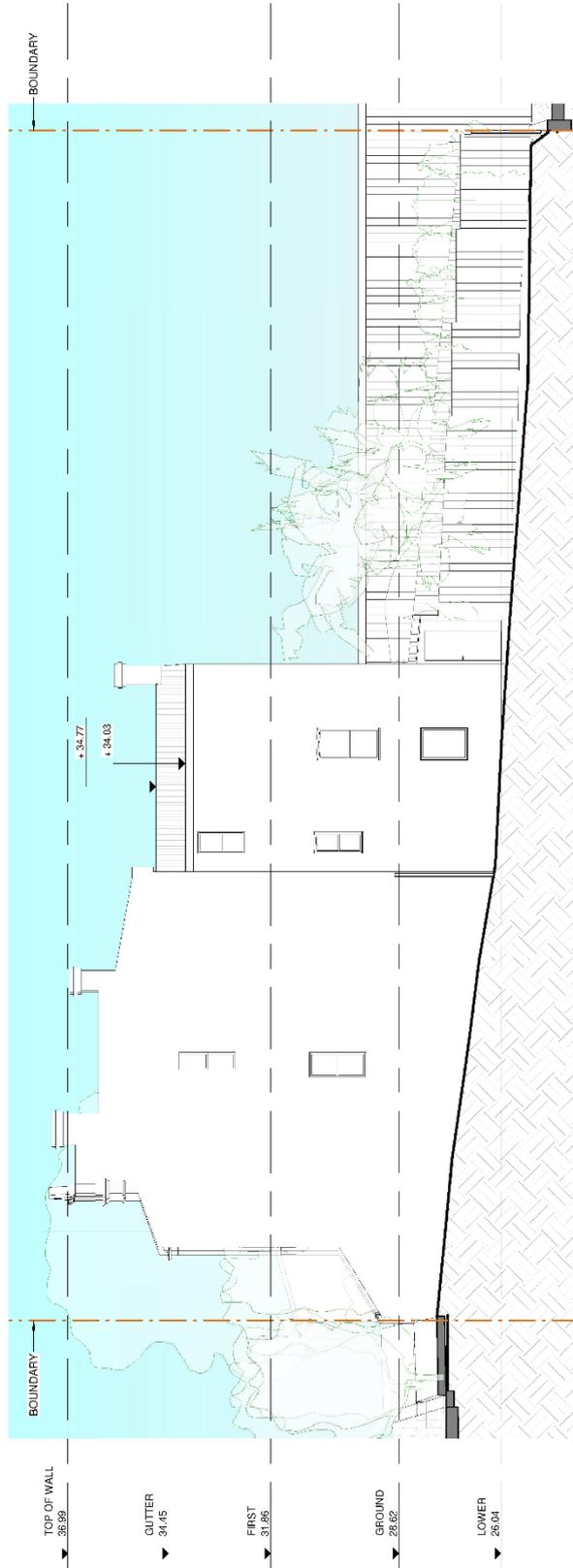
219 St. Johns Rd.
Forest Lodge 2027
New South Wales
AUSTRALIA
Client: Steele 12/4 (C)

4 Don Street
NOT FOR CONSTRUCTION
Caitlin Fitzsimmons & Jack Elliott

DRAWING
PROJECT: 45788
A
PRE-DESIGN

DWG NUMBER 04-13
DATE 06.25.2021
SCALE 1:100

Document Set ID: 35837448
Version: 1, Version Date: 06/06/2022



DWG NUMBER 04-14
DATE 06.25.2021
SCALE 1:100

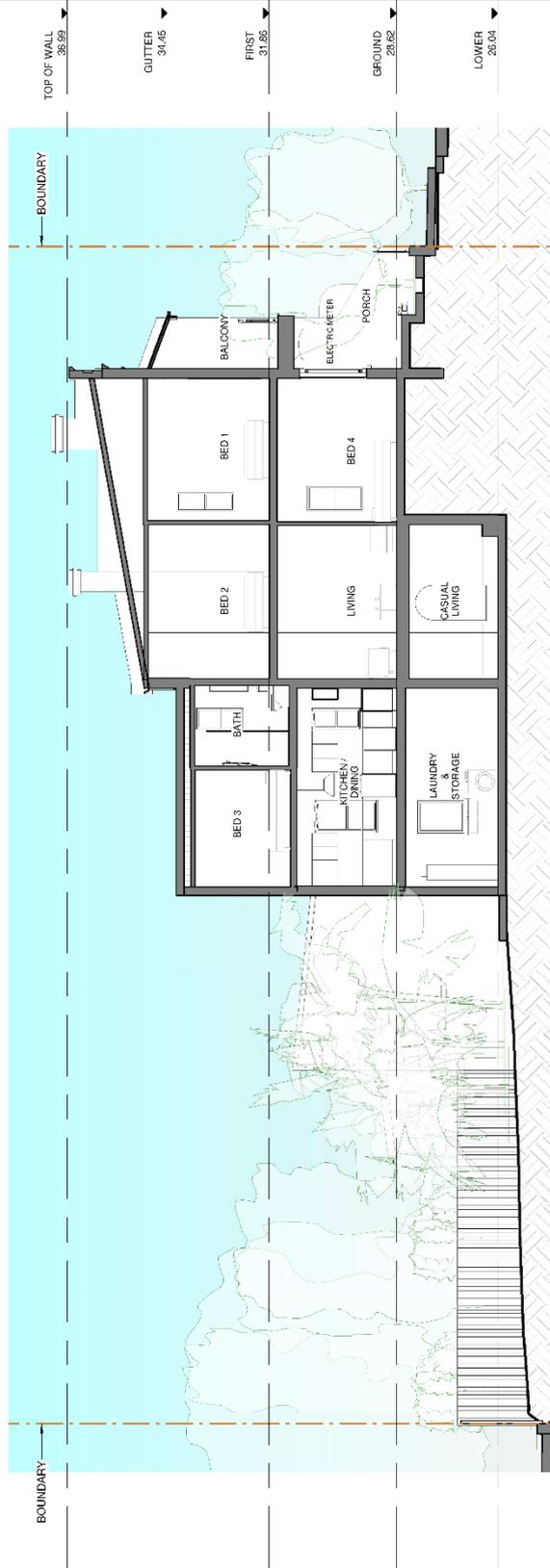
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SCALE - 1/4" = 1'-0"

DRAWING PRE - DESIGN
PROJECT 4 Don Street
NOT FOR CONSTRUCTION
Caitlin Fitzsimmons & Jack Elliott

219 St. Johns Rd.
Forest Lodge 2027
New South Wales
AUSTRALIA
ABN 48 513 807 510

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Document Set ID: 35837448
Version: 1, Version Date: 06/06/2022



DWG NUMBER 04-21

DATE 06.25.2021

SCALE 1:100

EXISTING SECTION A

DRAWING

4 Don Street

NOT FOR CONSTRUCTION

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PRE-DESIGN

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Version: 1, Version Date: 06/06/2022



DWG NUMBER 04-22
DATE 06.25.2021
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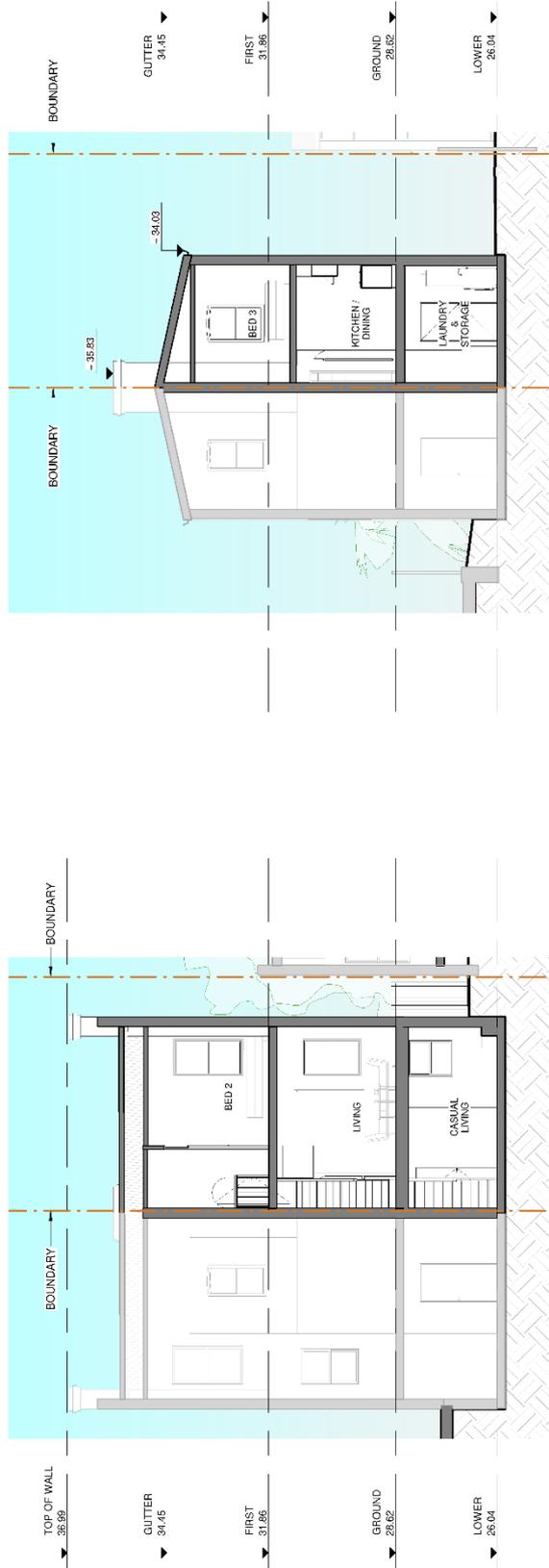
4 Don Street
NOT FOR CONSTRUCTION
Caitlin Fitzsimmons & Jack Elliott
DRAWING PRE-DESIGN

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SECTION C
1:100

SECTION D
1:100



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4 Don Street
NOT FOR CONSTRUCTION
Caitlin Fitzsimmons & Jack Elliott
PRE-DESIGN

DWG NUMBER 04-23
DATE 06.25.2021
SCALE A
DATE 1:100

Document Set ID: 35837448
Version: 1, Version Date: 06/06/2022

GFA TOTAL
 LOWER GROUND FLOOR - GFA
 GROUND FLOOR - GFA
 FIRST FLOOR - GFA
 ATTIC - GFA

57,36m²
 68,78m²
 48,35m²
 9,19m²
 184,70m²

PRIVATE OPEN SPACE
 LANDSCAPE

39,42m²
 168,99m²

SITE AREA
 PROPOSED GFA
 PERMISSIBLE FSR
 PROPOSED FSR
 LANDSCAPE AREA
 LANDSCAPE PERCENTAGE

185,79m²
 184,70m²
 1:1 or 185,79m²
 0,99:1
 108,92m²
 59% of Site Area



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219 St Johns Rd
 Forest Lodge 2027
 New South Wales
 (C)



4 Don Street
 NOT FOR CONSTRUCTION
 Caitlin Fitzsimmons & Jack Elliott

DRAWING
 PROPOSED SITE PLAN
 SCHEMATIC DESIGN

DWG NUMBER 02-01
 DATE 28.02.2022
 SCALE 1:200



DWG NUMBER 02-01a
DATE 1.2.200

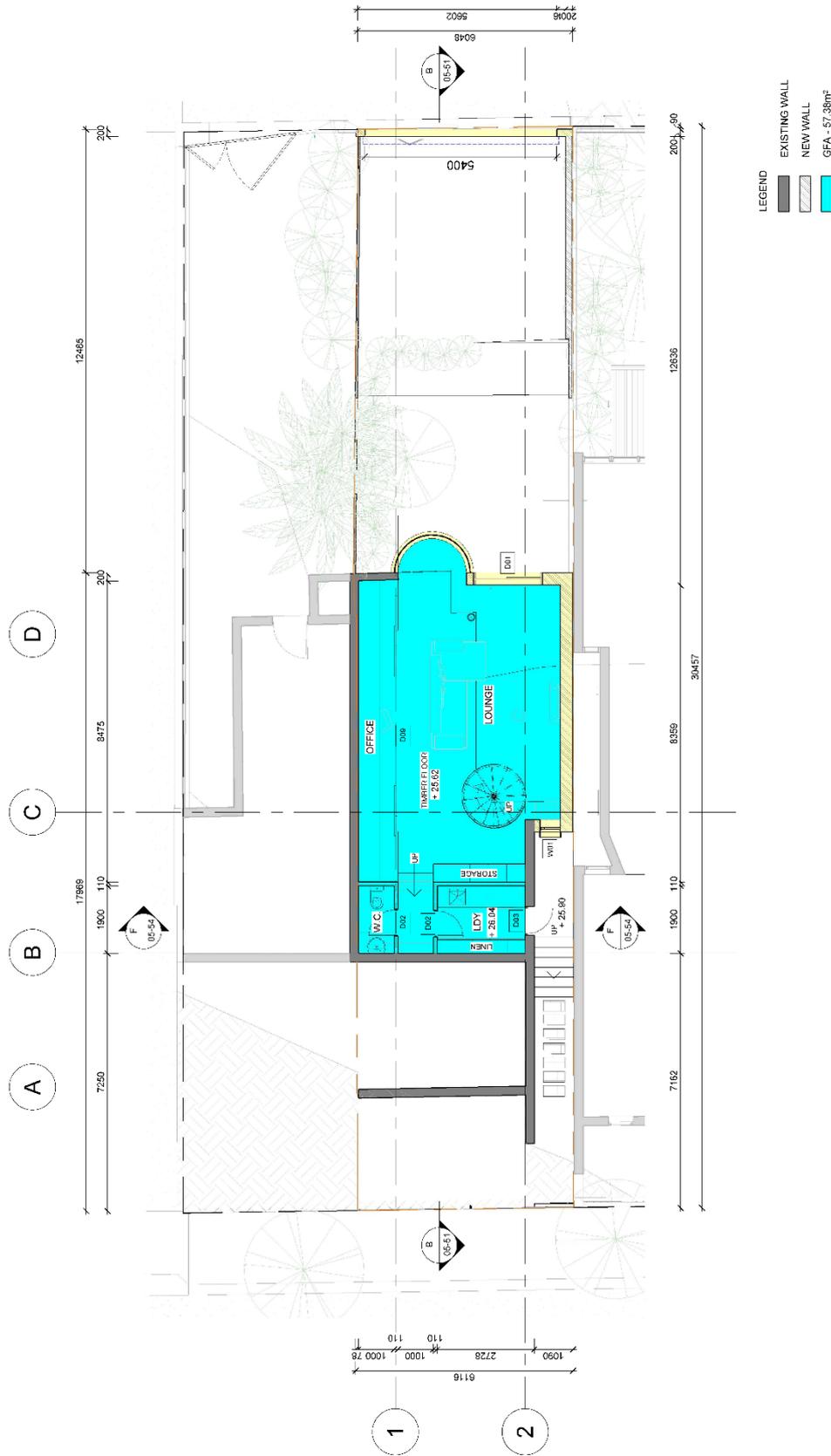
PROPOSED SITE PLAN (Areas)

4 Don Street
NOT FOR CONSTRUCTION
Caitlin Fitzsimmons & Jack Elliott

219 St. Johns Rd.
Forest Lodge 2027
New South Wales
Olive Street 7474 (C)

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Document Set ID: 358339483
Version: 1, Version Date: 06/08/2022




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 ABN: 43819 007 318

219 St. John's Rd.
 Forest Lodge, 2027
 New South Wales
 Ovals State 7474 (C)

4 Don Street
 NOT FOR CONSTRUCTION
 Caitlin Fitzsimmons & Jack Elliott
 SCHEMATIC DESIGN

DRAWING
 FLOOR PLAN - LOWER GROUND FLOOR
 DWG NUMBER 05-03
 DATE 28.02.2022 1:100
 VERSION J

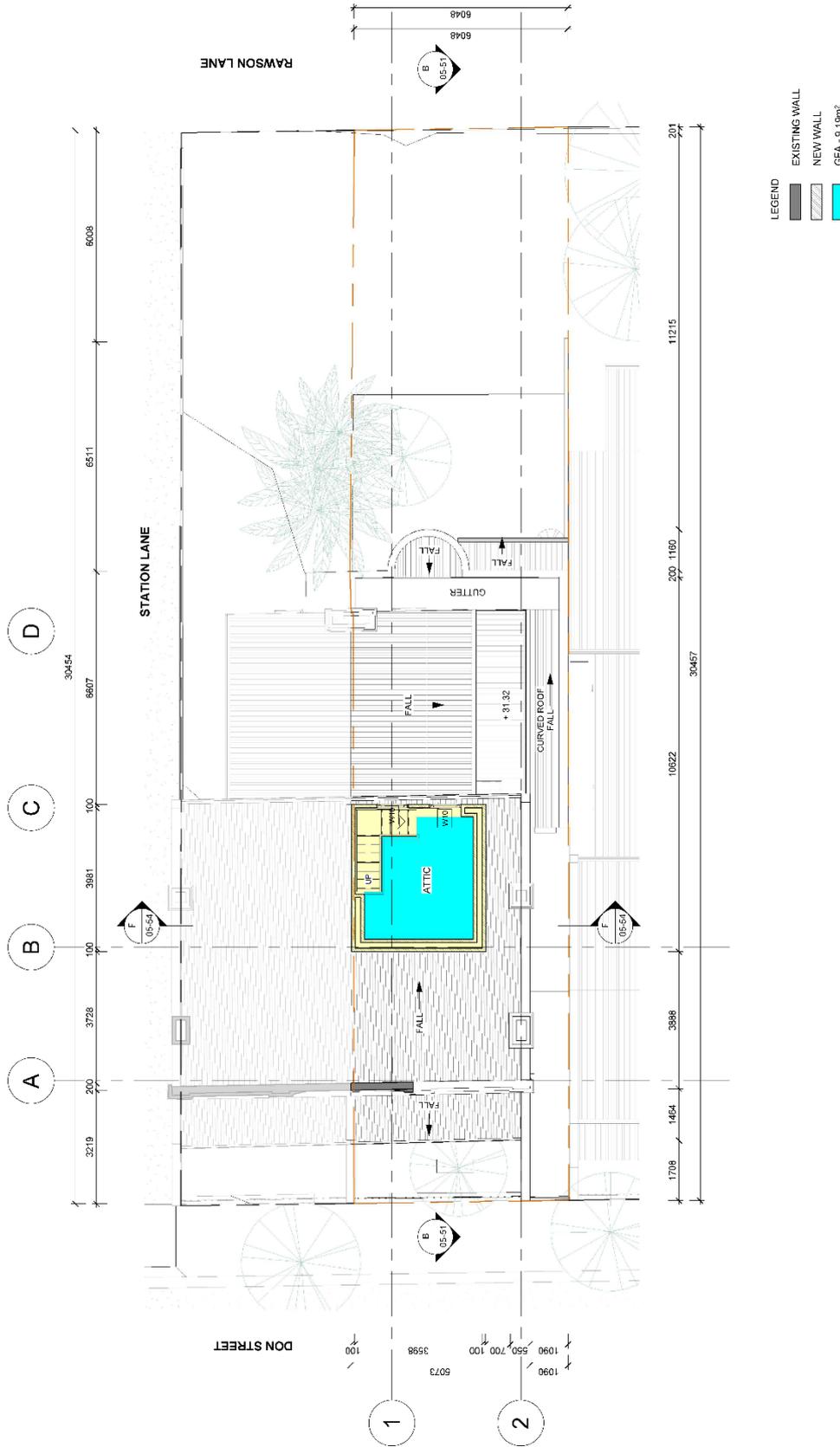


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 info@steeleassociates.com.au
 www.steeleassociates.com.au
 A/N: 438 19 807 318

4 Don Street
 DRAWING
 FLOOR PLAN - FIRST FLOOR
 NOT FOR CONSTRUCTION
 Schematic Design

Caillin Fitzsimmons & Jack Elliott
 ARCHITECTS
 219 St Johns Rd,
 Forest Lodge, 2027
 New South Wales
 Ovale Street 7474 (C)

Version: 1, Version Date: 06/08/2022
 DWG NUMBER: 05-05
 DATE: 28.02.2022
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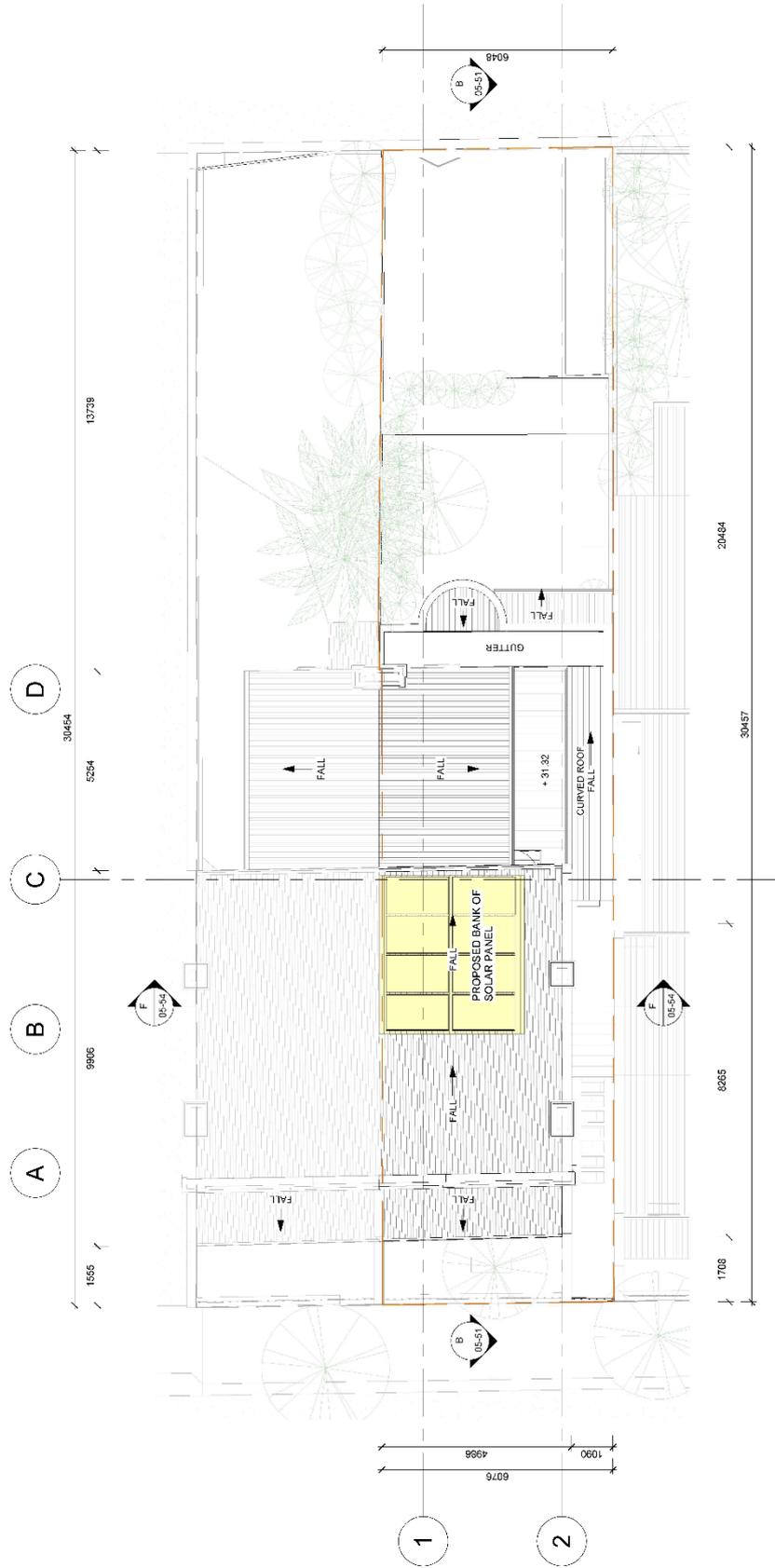



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219 St. Johns Rd.
 Forest Lodge, 2027
 New South Wales
 Sydney, Australia
 NSW 1585
 (C)

4 Don Street
 NOT FOR CONSTRUCTION
 Cailin Fitzsimmons & Jack Elliott
 SCHEMATIC DESIGN
 DRAWING
 FLOOR PLAN - ATTIC FLOOR
 DWG NUMBER 05-06
 DATE 28.02.2022
 SCALE 1:100

Version: 1, Version Date: 06/03/2022



DWG NUMBER 05-07
DATE 28.02.2022
SCALE 1:100

DRAWING FLOOR PLAN - ROOF
REVISIONS J
SCHEMATIC DESIGN

4 Don Street
NOT FOR CONSTRUCTION
Caitlin Fitzsimmons & Jack Elliott

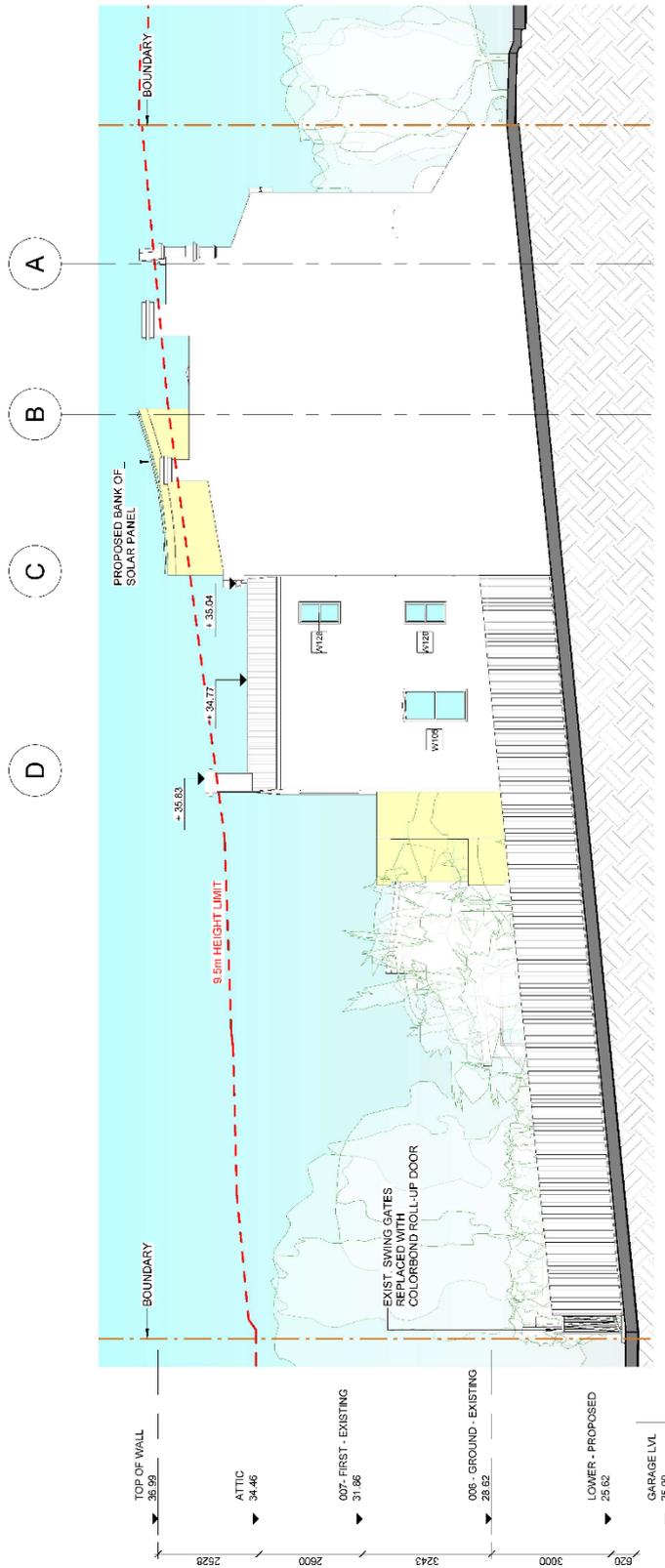


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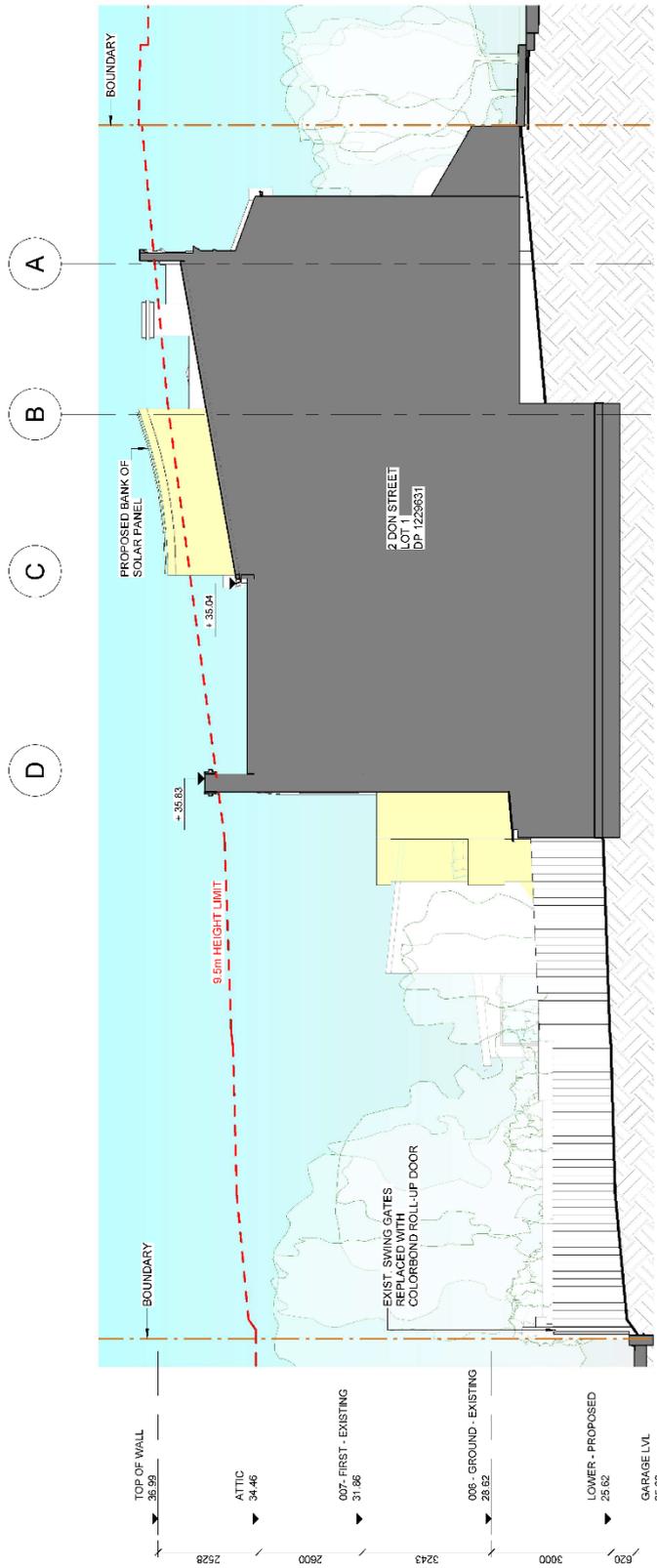
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DATE 28.02.2022
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Version: 1, Version Date: 06/08/2022

Caillin Fitzsimmons & Jack Elliott

PROPOSED EAST ELEVATION ALONG STATION LANE
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REV MAX 06/03/20



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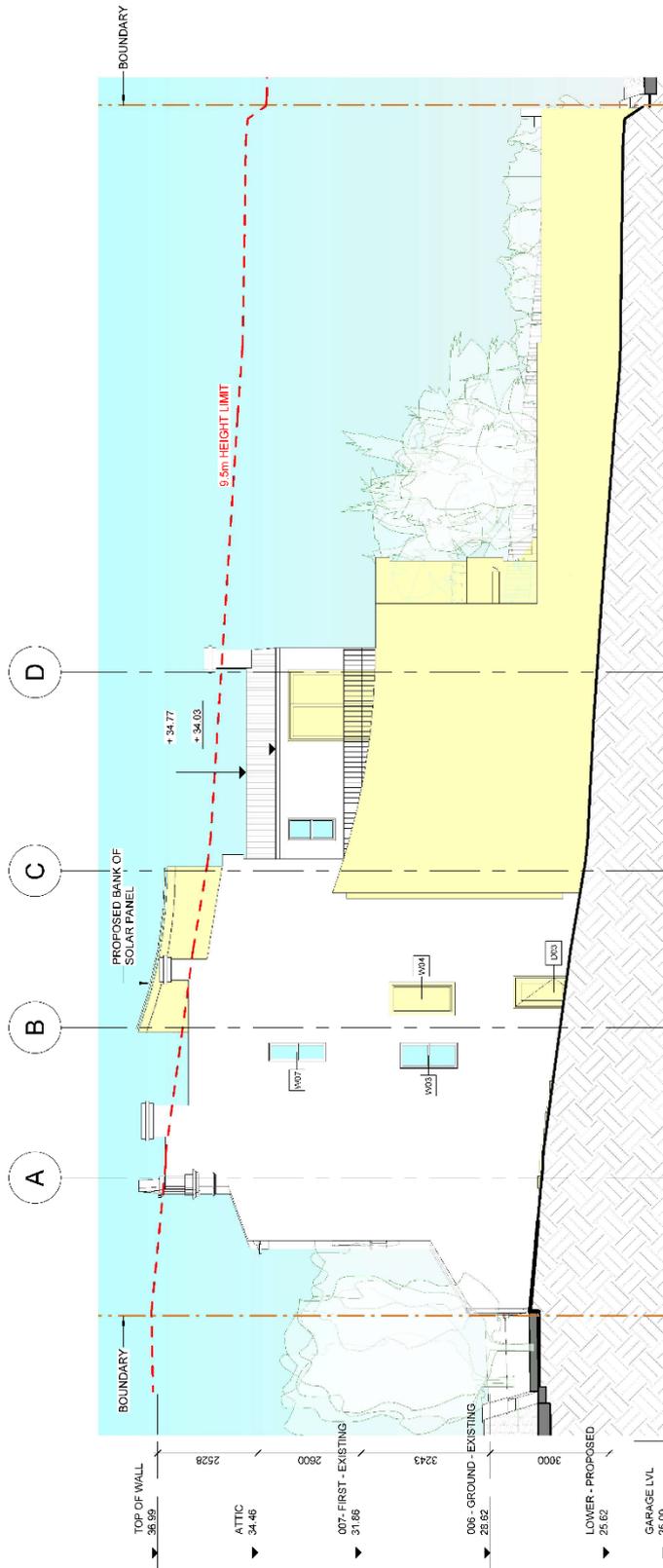
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SCHEMATIC DESIGN

DRAWING
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REV NO. 02/2022
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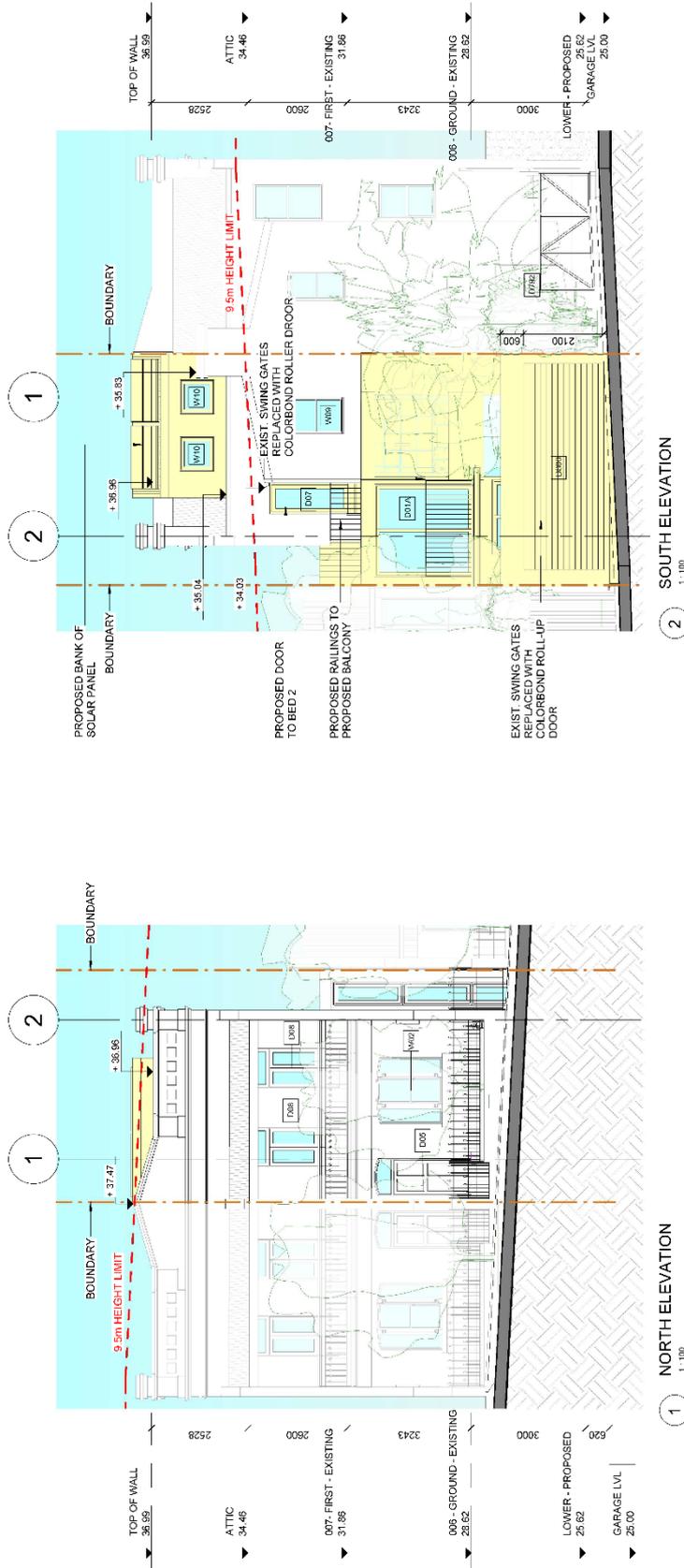
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Olive Street 7474 (C)

4 Don Street
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Caitlin Fitzsimmons & Jack Elliott

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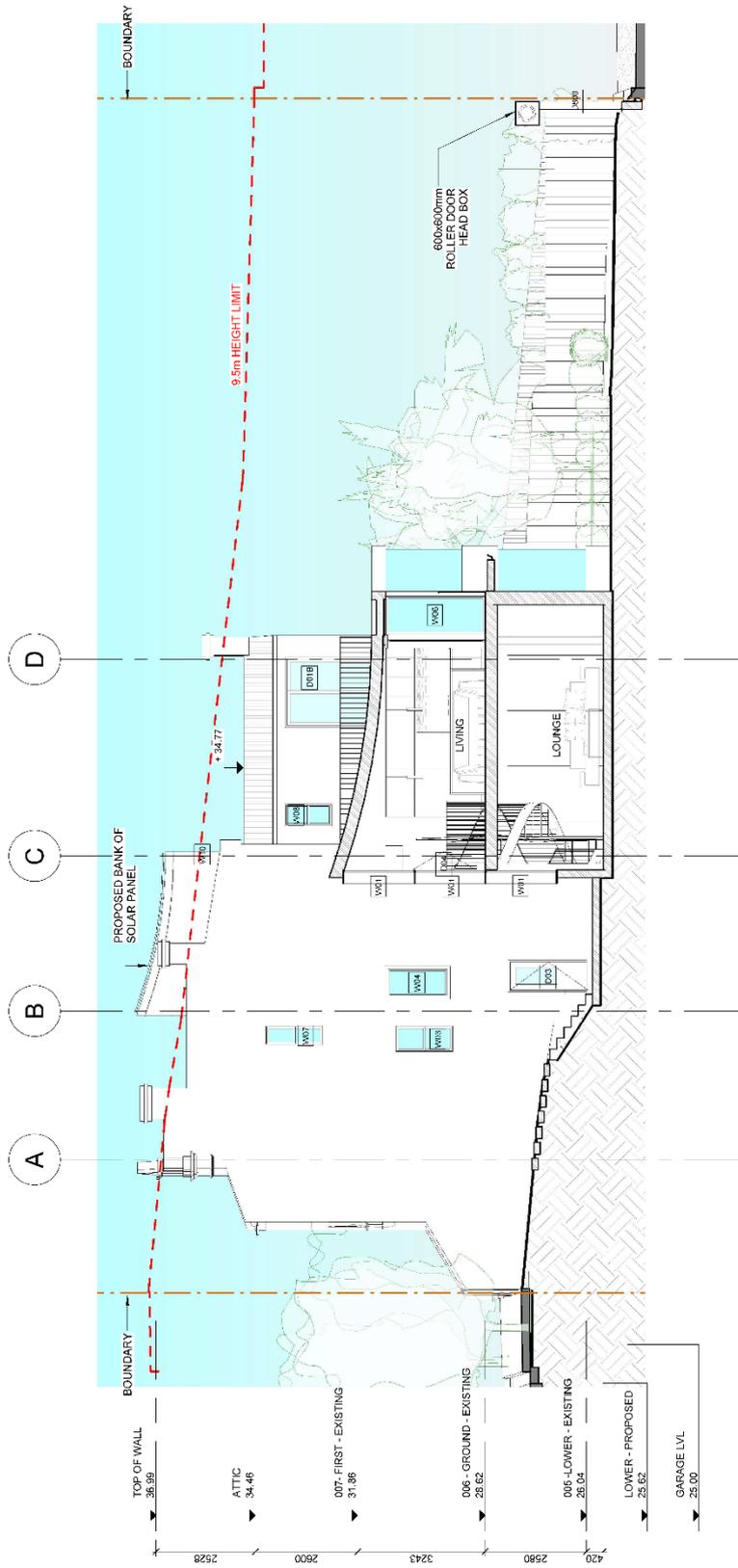
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4 Don Street
PROPOSED NORTH & SOUTH
ELEVATION
DRAWING
NOT FOR CONSTRUCTION
SCHEMATIC DESIGN
Caitlin Fitzsimmons & Jack Elliott

DWG NUMBER **05-43**
DATE 28.02.2022
SCALE 1:100




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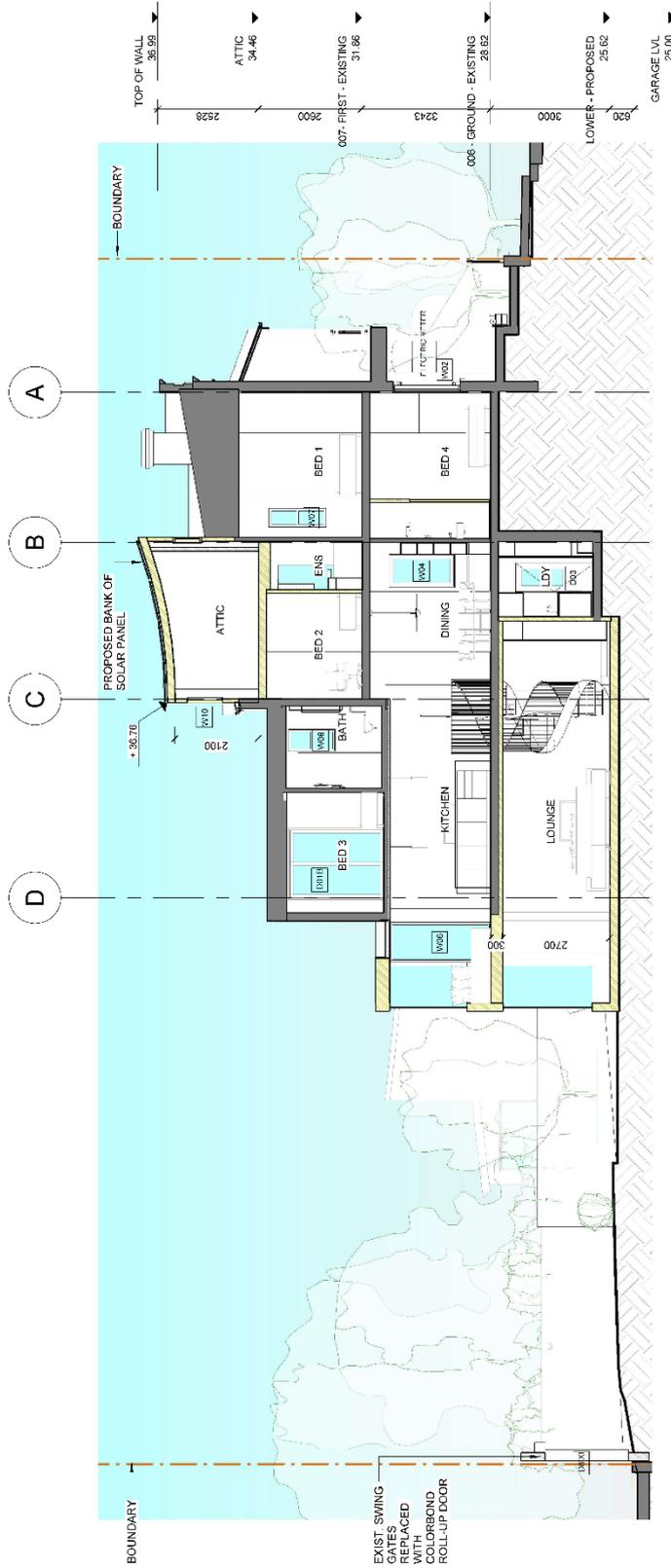
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 NOT FOR CONSTRUCTION
 Caitlin Fitzsimmons & Jack Elliott

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 28.02.2022 1:100

DWG NUMBER 05-50
 DATE 28.02.2022 1:100

Version: 1, Version Date: 06/08/2022



- LEGEND
- EXISTING WALL
 - NEW WALL
 - GFA

DWG NUMBER 05-51
DATE 28.02.2022 1:100

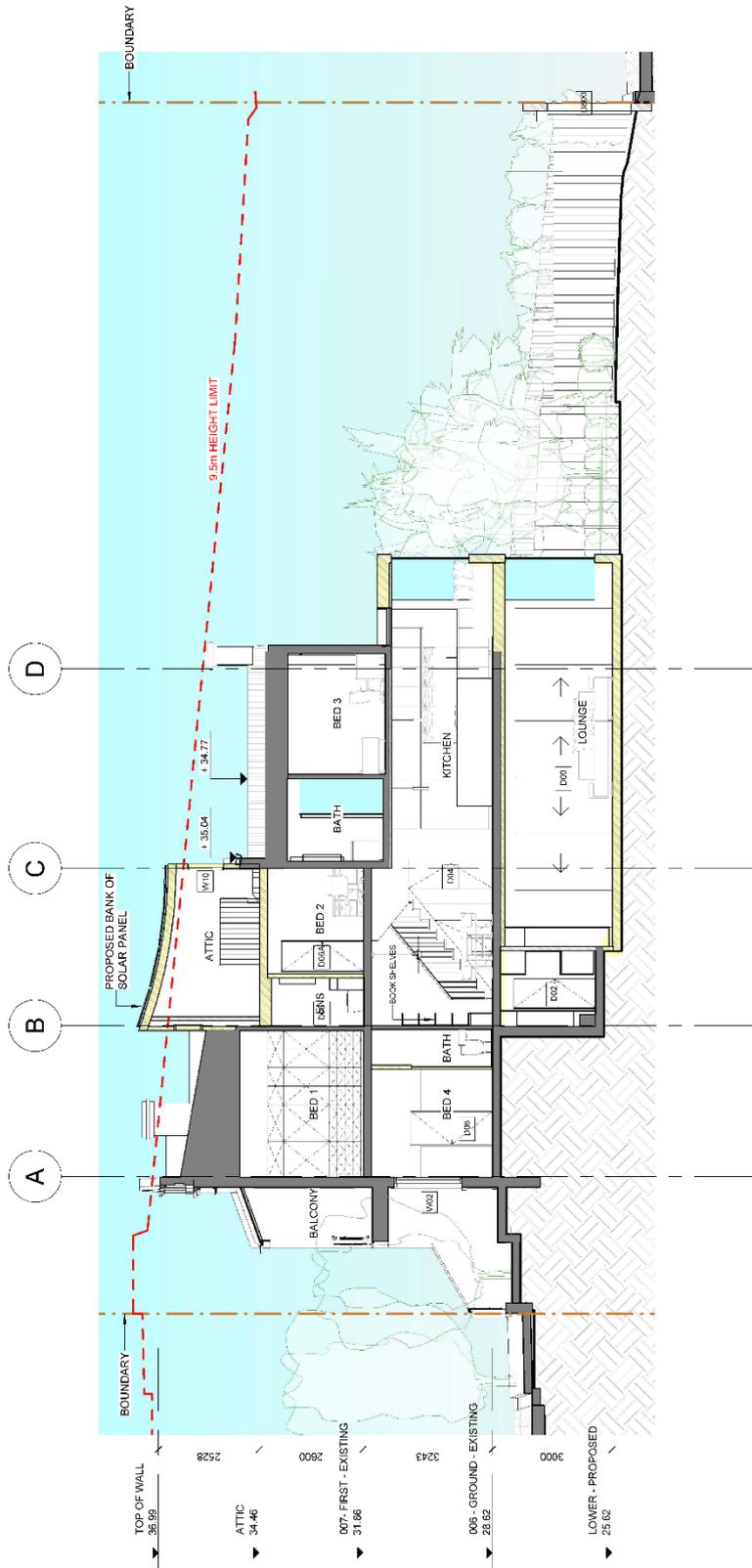
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NOT FOR CONSTRUCTION
Schematic Design
Caitlin Fitzsimmons & Jack Elliott

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Version: 1, Version Date: 06/08/2022



LEGEND
 EXISTING WALL
 NEW WALL
 GFA

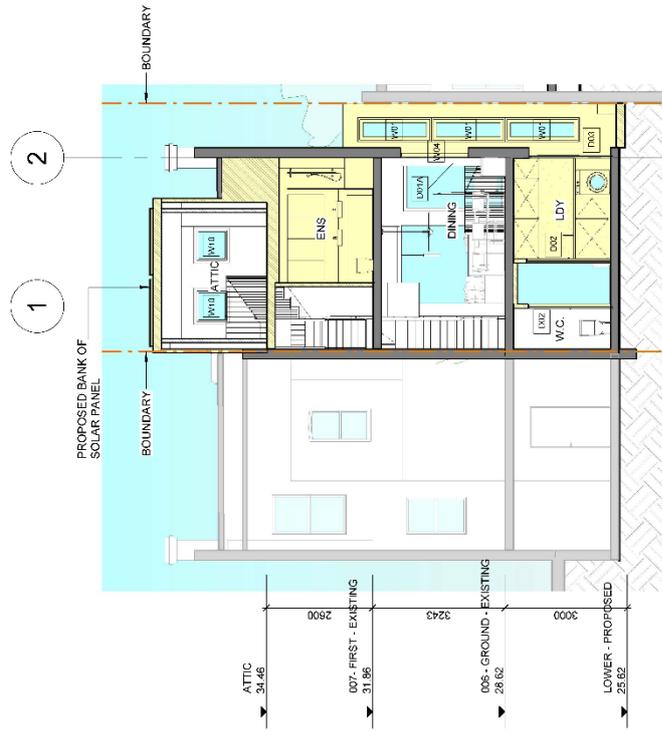
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 NOT FOR CONSTRUCTION
 Caitlin Fitzsimmons & Jack Elliott
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F SECTION F
1:100

LEGEND
 EXISTING WALL
 NEW WALL
 GFA -

DWG NUMBER 05-54
 DATE 28.02.2022
 SCALE 1:100

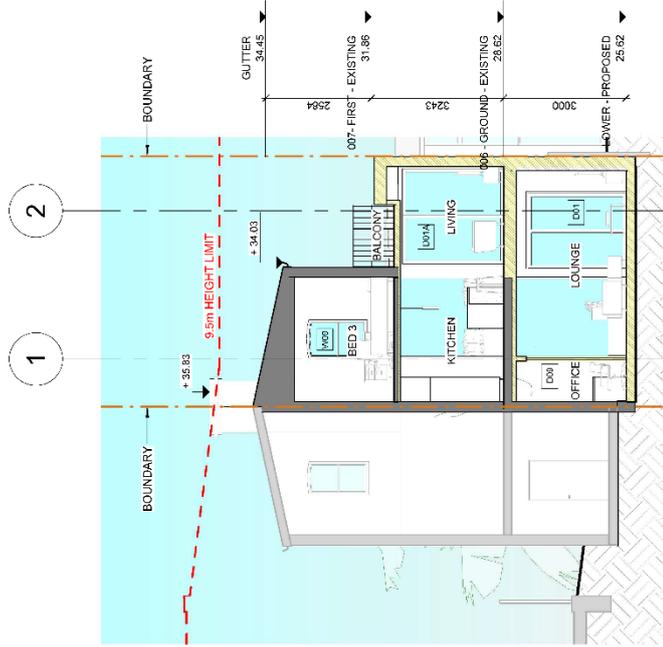
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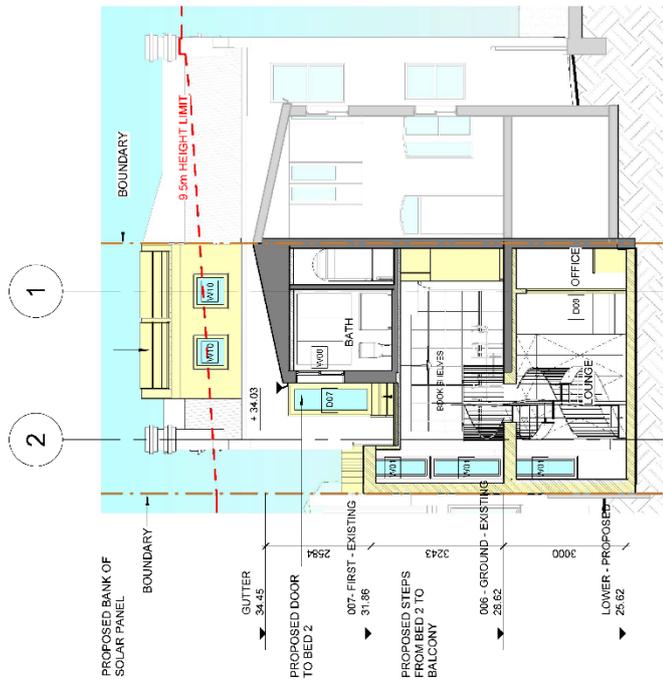
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 A/N: 438 19 007 318

Document Set ID: 358339483
 Version: 1, Version Date: 06/03/2022



SECTION H
1:100

- LEGEND
- EXISTING WALL
 - NEW WALL
 - GFA -



SECTION G
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4 Don Street
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Caitlin Fitzsimmons & Jack Elliott
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SECTION G & H
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05-55
DATE
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SECTION I
1:100

SECTION J
1:100

- LEGEND
- EXISTING WALL
 - NEW WALL
 - GFA

4 Don Street
NOT FOR CONSTRUCTION
Caitlin Fitzsimmons & Jack Elliott

DRAWING SECTION I & J
SCHEMATIC DESIGN

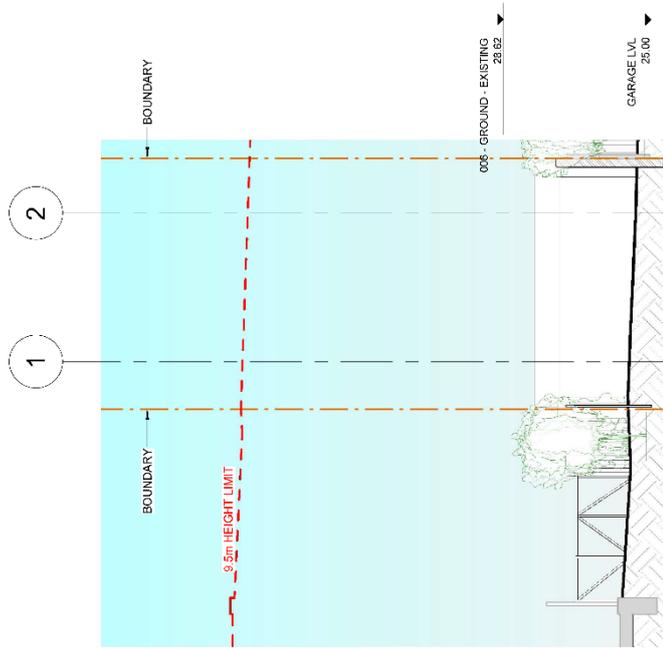
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DATE 28.02.2022
SCALE 1:100

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(K) SECTION G
1:100



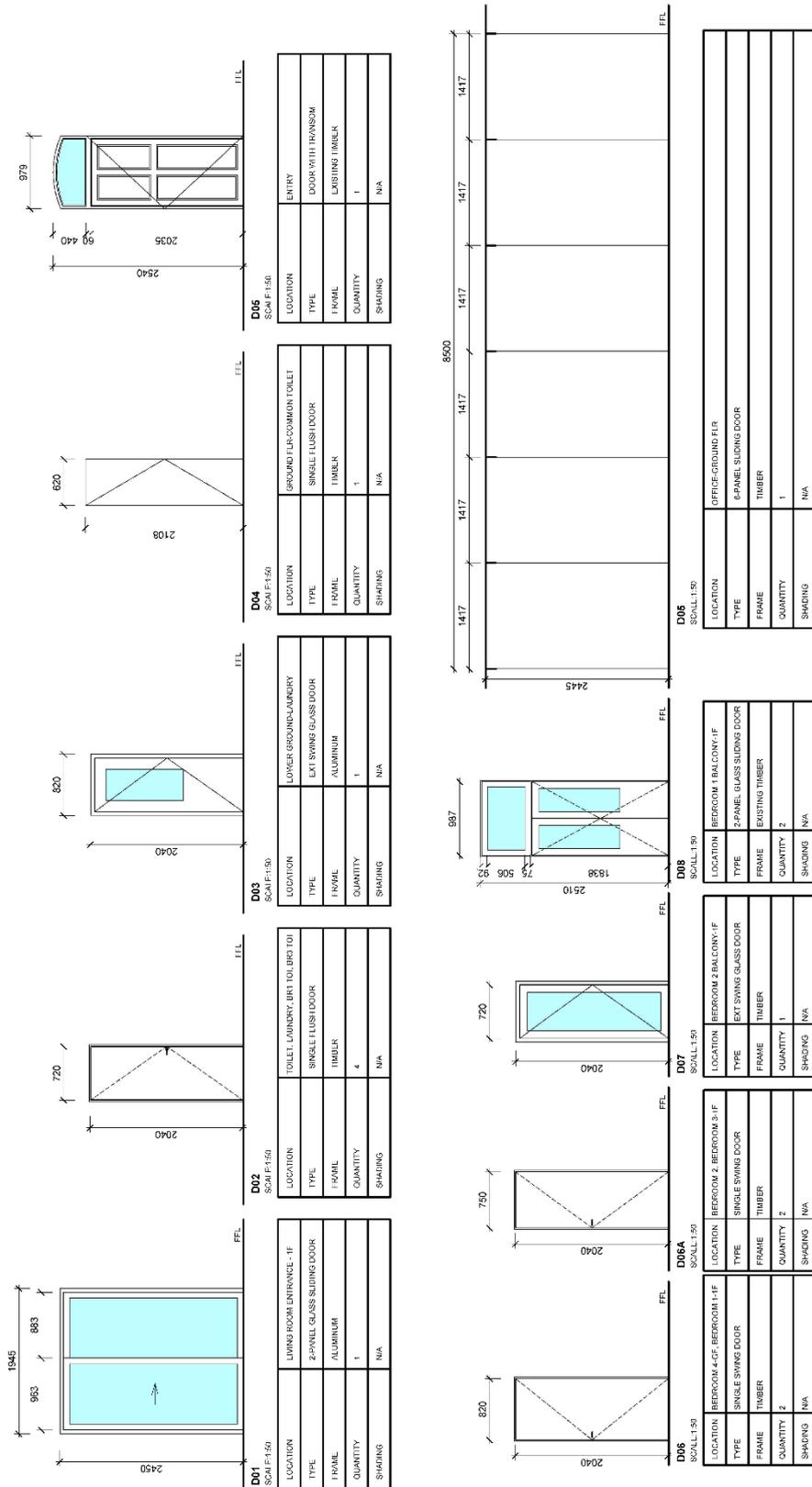
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4 Don Street
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SECTION K
SCHEMATIC DESIGN

DWG NUMBER 05-57
DATE 28.02.2022
SCALE 1:100

Document Set ID: 358339463
Version: 1, Version Date: 06/03/2022



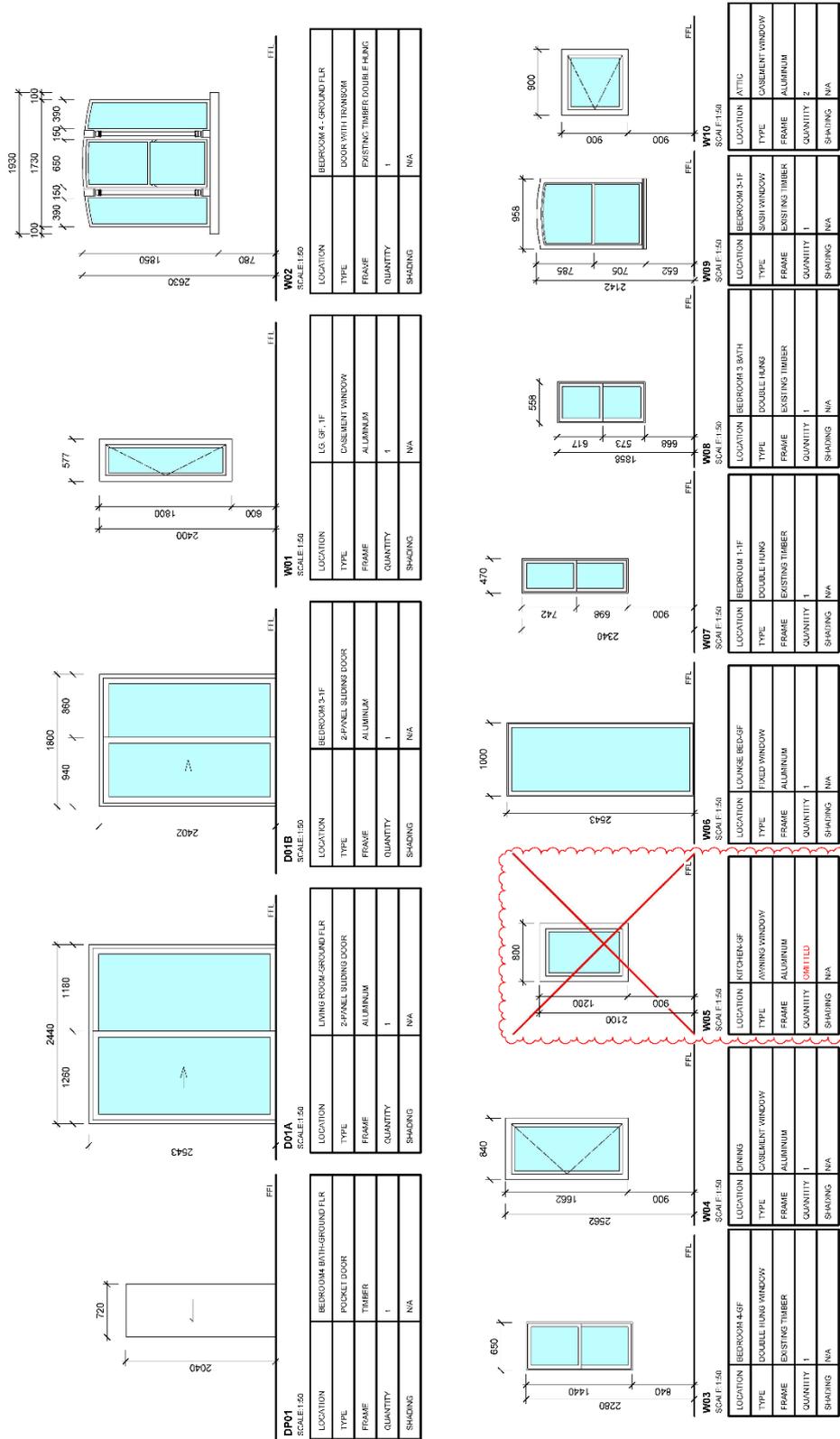
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NOT FOR CONSTRUCTION
DRAWING
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DWG NUMBER 07-00
DATE 28.02.2022
1:50

219 St Johns Rd.
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New South Wales
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WINDOW SCHEDULE
1:50

4 Don Street DRAWING DOOR & WINDOW SCHEDULE DWG NUMBER 07-01
 NOT FOR CONSTRUCTION
 Caitlin Fitzsimmons & Jack Elliott ARCHITECTURE
 219 St. John's Rd. Forest Lodge 2027
 info@steelassociates.com.au www.steelassociates.com.au
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 ABN: 438 19 007 318
 Version: 1, Version Date: 06/03/2022
 DATE 26.02.2022 1:30



2 NORTHEAST VIEW - 21 JUNE 10.00 HRS.



4 NORTHEAST VIEW - 21 JUNE 12.00 HRS.



1 NORTHEAST VIEW - 21 JUNE 09.00 HRS.



3 NORTHEAST VIEW - 21 JUNE 11.00 HRS.



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4 Don Street
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DRAWING
S.S. SUMMER EXISTING
SCHEMATIC DESIGN
J
REV. NO. 48/2020

DWG NUMBER 13-01
DATE 28.02.2022

Document Set ID: 358339463
Version: 1, Version Date: 06/08/2022



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1 NORTHEAST VIEW - 21 JUNE 13.00 HRS.



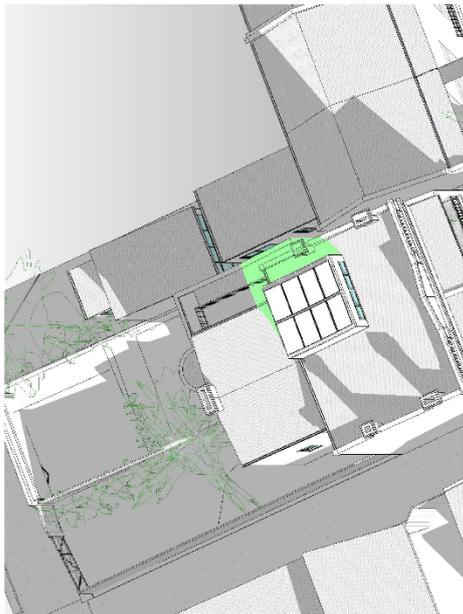
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2 NORTHEAST VIEW - 21 JUNE 10 00 HRS.



4 NORTHEAST VIEW - 21 JUNE 12 00 HRS.



1 NORTHEAST VIEW - 21 JUNE 09 00 HRS.



3 NORTHEAST VIEW - 21 JUNE 11 00 HRS.



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4 Don Street
DRAWING
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S.S. SUMMER PROPOSED
SCHEMATIC DESIGN
REV. NO. 487.000
J

DWG NUMBER 13-03
DATE 28.02.2022
SCALE 1:100

Document Set ID: 358339463
Version: 1, Version Date: 06/08/2022



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2 NORTHEAST VIEW - 21 JUNE 14.00 HRS.



3 NORTHEAST VIEW - 21 JUNE 15.00 HRS.

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Version: 1, Version Date: 06/08/2022

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REV MAX 48/2020
J

DWG NUMBER 13-04
DATE 28.02.2022
SCALE 1:100

Attachment C- Clause 4.6 Exception to Development Standards



REQUEST TO BREACH HEIGHT CONTROL PURSUANT TO CLAUSE 4.6 OF MARRICKVILLE LEP 2011 IN RELATION TO – 4 DON STREET NEWTOWN

March 2022

Clause 4.3 of the LEP and the relevant map indicates that the site is subject to a 9.5m height control. The proposal achieves a maximum height of around 10.59m. This is a maximum of 1.09m above the permitted height.

In the circumstances a request to breach the control must be submitted in accordance with Clause 4.6 of the LEP.

The relevant parts of Clause 4.6 of Marrickville LEP 2011 are:

(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:*

1



- (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.

The purpose of this written request is to satisfy (3)(a) and (b) above and to demonstrate that (4)(a)(ii) and 5(a) and (b) can be satisfied. In preparing this request, regard has been had to the document: "Varying development standards: A Guide (August 2011)" prepared by the NSW Department of Planning & Infrastructure and relevant Land Environment Court judgements including the recent judgements of *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245, by Chief Judge Preston CJ in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118 and *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 and *Rebel MH Neutral Bay Pty Ltd v North Sydney Council*.

Clause (3)(a) - whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Whilst it was prepared in relation SEPP 1, the Land and Environment Court judgment *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007), is referred to in the Four2Five judgment and remains relevant to the consideration of concept of compliance being unreasonable or unnecessary. The DP&I Guide referred to above outlines the following 5 part test used in *Wehbe*:

1. the objectives of the standard are achieved notwithstanding noncompliance with the standard;
2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. the underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

In regard to the issue here, it is considered that Test 1 is applicable.

Test 1

The proposal achieves the objectives of the height control as noted and commented upon below:

- (a) to establish the maximum height of buildings,



Comment – this objective relates to the establishing heights that are generally appropriate based on site location. As height controls apply to larger areas, they are not always appropriate to apply in every circumstance. The purpose of Cl4.6 is to allow a breach in such circumstances.

(b) to ensure building height is consistent with the desired future character of an area,

Comment – The existing environment includes terraces of up to 3-4 storeys, many of which are likely to breach the height control. The proposed additions are similar to the existing building height and attic additions are found in the locality. Therefore the proposed height is consistent with the existing site conditions and context.

(c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,

Comment – The proposal will not result in any unreasonable loss of solar access or outlook from the public domain or adjoining buildings as detailed in the submitted plans.

(d) to nominate heights that will provide an appropriate transition in built form and land use intensity.

Comment – the subject height control is not a transitional height but rather a height that applies to this part of the R2 Low Density Zone. The proposed height reflects the built form and intensity of use that can be expected in this area.

Having regard to the above, the proposal is consistent with the relevant objectives of the building height control.

In view of the above, having regard to Test 1 of *Wehbe*, enforcing compliance with the height standard in the circumstances is considered to be unreasonable and unnecessary.

Clause (3)(b) – whether there are sufficient environmental planning grounds to justify contravening the development standard

Compliance would result in poorer planning outcomes

As noted above the proposal has been specifically designed to provide a superior planning outcome, consistent with the objective of Clause 4.6 to “*achieve better outcomes for and from development by allowing flexibility in particular circumstances*”. Strict compliance with the controls would result in the need to relocate floor space to a location where the impacts could be greater. By using a roof structure (which is comparable in height to elements of the existing building) the additional bulk and scale is minimised and has minimal impact.

Lack of impact

As detailed in the SEE, the proposal has very minimal impact on surrounding properties and the level of impact arising from the non-compliance is negligible. The proposal is also compatible with the heritage values of the existing building and the heritage conservation area generally, as detailed in the submitted Heritage Assessment.



As determined in *Randwick City Council v Micaul Holdings Pty Ltd*, lack of impact is a sufficient ground for allowing a breach of a development standard pursuant to Clause 4.6.

In view of the above it is considered that there are sufficient environmental planning grounds, specifically related to the subject site, that warrant contravention of the height standard.

Clause (4)(a)(ii) – whether 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

As noted above the proposal will be consistent with the objectives of the height standard. In relation to the objectives of the subject R2 zoning the following comments are made:

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

Comment – the proposal provides for a larger dwelling which is not common in the area and adds to the diversity of housing available within the locality.

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

Comment - NA

In view of the above, the proposal meets the objectives of the R2 zone.

Clause 5(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning

No, the variation of the height standard is a minor matter and not uncommon. It does not raise any issues at a regional or state level.

Clause 5 (b) the public benefit of maintaining the development standard

For the reasons outlined above there is no public benefit in maintaining the standard. In fact, there will be public benefits in allowing a variation as a better planning outcome will be achieved.

**Conclusion**

Having regard to the above it is considered that this written request satisfies the requirements of Clause 4.6 and that the consent authority can be satisfied that the proposal also meets the other requirements of Clause 4.6. The proposed contravention of the standard will meet the objectives of Clause 4.6 as it achieves *“better outcomes for and from development by allowing flexibility in particular circumstances”*.

It is considered that the proposal represents a high quality planning outcome for the site.

Brett Brown, Ingham Planning Pty Ltd

March 2022

Attachment D – Statement of Heritage Significance



8.2.14 Enmore-Newtown Heritage Conservation Area – HCA 12

Section 8.2.14 of the DCP applies to the Enmore-Newtown Heritage Conservation Area (HCA 12) (Figure 1).

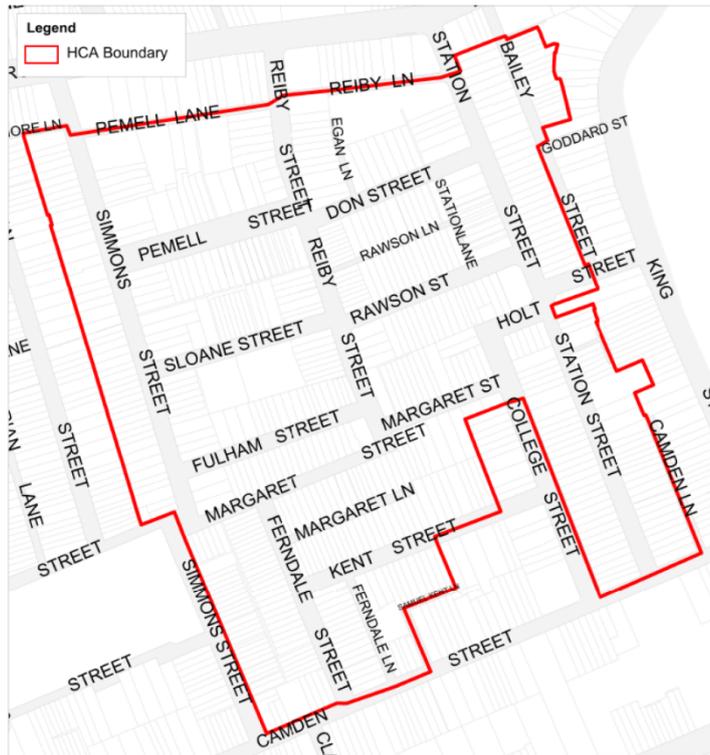


Figure 1: Enmore-Newtown Heritage Conservation Area – HCA 12

8.2.14.1 Statement of heritage significance

The Enmore-Newtown Heritage Conservation Area is historically significant for its streetscapes which demonstrate the pattern and growth of the terrace house typology in Sydney during the mid to late 19th century.

The HCA demonstrates a range of building types and forms available to the Victorian worker, including the detached cottage, semi-detached pair and terrace house. It represents the principal characteristics of the development of the Marrickville LGA from an early estate to a suburban cultural landscape and contains high quality streetscapes and public domain elements representative of civic management and improvement programs including small parks, sandstone kerbing and guttering and street tree planting of the late 20th century.

Early land grants were of 30 acres and were made to emancipists and small settlers, a significant contrast to the large holdings of the estates north of Enmore and Stanmore Roads. Their value for speculative purposes is shown through their rapid re-

PART 8: HERITAGE

subdivision and amalgamation into a series of estates with substantial houses that exploited the good views to the south, and then re-subdivision into smaller parcels that formed the basis of today's street alignments. Major development within the HCA commenced with the arrival of the rail line in the mid 1850s and continued through successive releases of land over the next 50 years, with the final subdivision made in 1902. The prevailing form of development was the terrace house, and the stylistic development of the type during the second half of the 19th century can be seen in the style and form of the groups within the HCA. Federation period terraces represent the culmination of the medium density typology, superseded by the rise of suburbia in the 20th century.

The area is historically significant for its association with Mary Reiby an early land owner who built a villa at the north-eastern corner bounded by Enmore Road, Station Street, Holt Street and Reiby Street. It was subdivided after her death, and the house survived until 1966 when it was demolished by Sydney City Council to erect the high-rise development on the site today.

The area demonstrates many important variations upon the typology of the modest terrace house, including single and two storey versions and some very early examples of the genre built under a single hipped roof span, and the most utilitarian design of the type. The HCA is socially significant for the prominent location of community facilities at the northern end of the area close to Enmore Road including Reiby Hall, the Masonic Temple and Hall, and the former church at 60 Reiby Street (now in community use).

8.2.14.2 Summary of core heritage values and elements

- i. The area is characterised by mid to late Victorian terraces and cottages on narrow lots.
- ii. Good groups, runs and sets of terraces and detached cottages include unusual variations and details rare in the Marrickville LGA, including Station Street, Bailey Street, Simmons Street and Sloane Street.
- iii. The HCA provides valuable evidence of the range of building types and forms available to the Victorian worker, including the detached cottage, semi-detached pair and terrace house.
- iv. The HCA demonstrates the pattern of development in the Enmore-Newtown area including the evolution of the terrace typology. The Federation period terraces represent the culmination of the typology which was superseded by the rise of suburbia in the 20th century.
- v. The historic pattern of successive re-subdivision of land has resulted in a maze-like street pattern, with internal views tightly described by the street walls and terminating vistas. Streetscapes are narrow and the density of development establishes a tightly described street wall, which creates a sense of intimacy and privacy within the area.
- vi. The HCA demonstrates socio-topographical distribution of housing with many larger terraces on higher parts and the surrounding lower areas dominated by modest, single storey terraces.
- vii. The high urban density, narrow streets and frequency of attached dwellings creates an intimate streetscape quality.
- viii. Setbacks from the street alignment are minimal but consistent within building groups and visual catchments.
- ix. Residential character is demonstrated through diversity of architectural styles within the single and two storey 19th century and Federation period terrace housing typologies.

Attachment E – Conditions of consent if Panel approves the application

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
05-03 Rev J	FLOOR PLAN - LOWER GROUND FLOOR	28/02/2022	Steele Associates
05-04 Rev J	FLOOR PLAN - GROUND FLOOR	28/02/2022	Steele Associates
05-05 Rev J	FLOOR PLAN - FIRST FLOOR	28/02/2022	Steele Associates
05-06 Rev J	FLOOR PLAN - ATTIC FLOOR	28/02/2022	Steele Associates
05-07 Rev J	FLOOR PLAN - ROOF	28/02/2022	Steele Associates
05-40 Rev J	PROPOSED EAST ELEVATION ALONG STATION LANE	28/02/2022	Steele Associates
05-41 Rev J	PROPOSED EAST ELEVATION	28/02/2022	Steele Associates
05-42 Rev J	PROPOSED WEST ELEVATION	28/02/2022	Steele Associates
05-43 Rev J	PROPOSED NORTH & SOUTH ELEVATION	28/02/2022	Steele Associates
05-50 Rev J	SECTION A	28/02/2022	Steele Associates
05-51 Rev J	SECTION B	28/02/2022	Steele Associates

05-52 Rev J	SECTION C	28/02/2022	Steele Associates
05-54 Rev J	SECTION F	28/02/2022	Steele Associates
05-55 Rev J	SECTION G & H	28/02/2022	Steele Associates
05-56 Rev J	SECTION I & J	28/02/2022	Steele Associates
05-57 Rev J	SECTION G	28/02/2022	Steele Associates
A451753	BASIX	23/03/2022	Gradwell Consulting

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:	\$3000.00
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. Section 7.12 (formerly section 94A) Development Contribution Payments

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that a monetary contribution to the Inner West Council has been paid, towards the provision of infrastructure, required to address increased demand for local services generated by additional development within the Local Government Area (LGA). This condition is imposed in accordance with Section 7.12 of the *Environmental Planning and Assessment Act 1979* and in accordance with *Marrickville Section 94/94A Contributions Plan 2014*.

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

Payment amount*:

\$2,500.00

*Indexing of the Section 7.12 contribution payment:

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

Payment methods:

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

Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.

4. Long Service Levy

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

GENERAL CONDITIONS

5. Tree Protection

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

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

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

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

6. Waste Management Plan

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

7. Erosion and Sediment Control

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

8. 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.

9. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION**10. Hoardings**

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

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

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

11. Dilapidation Report

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining properties at No. 2 and No. 6 Don Street to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake

the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

12. Advising 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.

13. Construction Fencing

Prior to the commencement of any works (including demolition), the site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property.

PRIOR TO CONSTRUCTION CERTIFICATE

14. Dilapidation Report – Pre-Development – Minor

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

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

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

- a. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any rainwater tank(s), by gravity to the kerb and gutter of a public road;
- b. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- c. Pipe and channel drainage systems must be designed to cater for the twenty (20) year Average Recurrence Interval (ARI) storm. The major event surface flow paths must be designed to cater for the one hundred (100) year ARI Storm;
- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than to drain downpipes to the rainwater tank(s);

- 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. As there is no overland flow path available from the Don Street frontage to the rear lane frontage, the design of the sag pit and piped drainage system is to meet the following criteria:
 - Capture and convey the 100 year Average Recurrence Interval from the contributing catchment assuming 80% blockage of the inlet and 50% blockage of the pipe
 - The maximum water level over the sag pit shall not be less than 150mm below the floor level or damp course of the building
 - The design shall make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands
- a. 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;
- b. No nuisance or concentration of flows to other properties;
- c. 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;
- d. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- e. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- f. 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;
- g. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings; and
- h. No impact to street tree(s).

16. Public Domain Works – Prior to Construction Certificate

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a public domain works design, prepared by a qualified practising Civil Engineer and evidence

that the works on the Road Reserve have been approved by Council under Section 138 of the *Roads Act 1993* incorporating the following requirements:

- a. The construction of a light duty vehicular crossing to the vehicular access location. All works must be completed prior to the issue of an Occupation Certificate.

17. Alignment Levels – Rear Lane

The level at the boundary shall match the invert level of the adjacent gutter plus 110mm at both sides of the vehicle entry. Amended plans shall be submitted to and approved by Council before the issue of the Construction Certificate.

The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004.

Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements.

18. Parking Facilities - Domestic

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

- a. A minimum of 2200mm headroom must be provided throughout the access and parking facilities.
- b. A plan of the proposed access and adjacent laneway, drawn at a 1:100 scale, demonstrating that vehicle manoeuvrability for entry and exit to the parking space complies with swept paths from AS/NZS 2890.1:2004. The plan must include any existing on-street parking spaces; and
- c. The external form and height of the approved structures must not be altered from the approved plans.

19. Party Walls

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

20. 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.

21. 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

22. 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

23. Tree Protection Zone

To protect the following tree, no work must commence until its Protection Zone is fenced off (within the subject site) 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 fences (including existing boundary fencing) must be maintained intact until the completion of all demolition/building work on site.

Tree No.	Botanical/Common Name	Radius in metres
-	<i>Schizolobium parahyba</i> - Brazilian Fern Tree - at rear of adjacent site at 2 Don Street	5 m

24. Construction Hours – Class 1 and 10

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5.00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.

25. Survey Prior to Footings

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

PRIOR TO OCCUPATION CERTIFICATE**26. 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.

27. 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.

28. Public Domain Works

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

- a. Light duty concrete vehicle crossing at the vehicular access location; and
- b. Other works subject to the *Roads Act 1993* approval.

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

29. Light Duty Vehicle Crossing

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

30. 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 1 x 45 litre size tree, which will attain a minimum mature height of eight (8) metres, has been planted in a suitable location within the property at a minimum of 1.5 metres from any boundary and 2.2 metres from a dwelling or garage wall and allowing for future tree growth. The tree is to conform to AS2303—*Tree stock for landscape use*. Trees nominated on the Trees Minor Works list in the Council's Tree Management Controls, palms, fruit trees and species recognised to have a short life span will not be accepted as suitable replacements.

Ongoing - If the tree is found dead or dying before it reaches dimensions where it is protected by Council's Tree Management Controls, it must be replaced in accordance with this condition.

31. Aircraft Noise –Alterations and Additions

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

ADVISORY NOTES**Permits**

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in

accordance with Section 68 (Approvals) of the *Local Government Act 1993* and/or Section 138 of the *Roads Act 1993*. Permits are required for the following activities:

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

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

Insurances

Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

Prescribed Conditions

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