





 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2021/1227
Address	10 River Street BIRCHGROVE
Proposal	Three storey alterations and additions to existing dwelling and associated works.
Date of Lodgement	10 December 2021
Applicant	As Architecture
Owner	Taohua Property One Pty Ltd
Number of Submissions	Initial: 10 After Renotification: 6
Value of works	\$510,630.00
Reason for determination at Planning Panel	Number of unique submissions exceeds Officer delegations
Main Issues	height, bulk and scale, overshadowing and privacy impacts; impacts on existing vegetation
Recommendation	Refusal
Attachment A	Draft conditions of consent
Attachment B	Plans of proposed development
Attachment C	Statement of Heritage Significance of Heritage Conservation Area
	
LOCALITY MAP	
Subject Site 	Objectors   N
Notified Area 	Supporters 
Note: Due to scale of map, not all objectors could be shown.	

1. Executive Summary

This report is an assessment of the application submitted to Council for three storey alterations and additions to an existing dwelling-house and associated works at 10 River Street Birchgrove.

The application was notified to surrounding properties and 10 submissions were received in response to the initial notification, and 6 submissions were received in response to renotification of the application.

The main issues that have arisen from the application include:

- DCP Variation – BLZ & Side Setbacks
- DCP Variation – Visual Privacy
- DCP Variation – Solar Access
- Impacts on trees
- Matters raised in submissions

The non-compliances have not been satisfactorily resolved by the amended plans under assessment, and therefore the application is recommended for refusal.

2. Proposal

The originally proposed development comprised alterations and additions to the existing dwelling including the installation of new vehicular entry and garage from River Street, rear extension of existing dwelling to all three existing levels, internal reconfiguring including renovation and rear yard landscaping.

The amended proposal includes the following amendments:

- Removal of garage, vehicle crossing and driveway;
- Front façade remains intact;
- Removal of the access stairs to the rear from the balcony;
- Reduced the balcony off bedroom to a Juliet Balcony with only 1.2m in depth and 2m in width, a privacy screen of the entire length of the side boundary elevation of 1.65m above finished floor level;
- Increased rear setback of proposed level 2 from 7667mm to 8587mm to align at least 0.5m behind the predominant building elevation of the adjoining property No.12 River Street

The amended proposal was renotified and is the subject of this report.

3. Site Description

The subject site is located on the south-eastern side of River Street, between Nos. 8 and 12 River Street. The site area is approximately 115.1sqm with a primary frontage to River Street and secondary frontage to Parramatta River.

An existing dwelling is located on the site.

Surrounding land uses are predominantly three storey dwelling houses.

The subject site is not listed as a heritage item however the property is located within a conservation area. The property is identified as a foreshore inundation lot.

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

- Trees 1 & 2 *Corymbia citriodora* (Lemon Scented Gum) were found at the rear setback of the property.
- Tree 3 *Corymbia citriodora* (Lemon Scented Gum) was found at the rear setback of the neighbouring property.



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

Date	Application No	Application Details	Outcome
19/06/2018	PREDA/2018/114	Alterations and additions to residential dwelling.	Advice Issued
14/01/2019	D/2018/442	Three level alterations and additions to existing dwelling-house.	Approved
12/04/2019	CC/2019/87	Three level alterations and additions to existing dwelling-house.	Approved

4(b) Application history

Date	Discussion
10/12/2021	Application lodged.
21/12/2021 to 27/01/2022	Application notified.
23/03/2022	<p>Council issued a request for additional information, including:</p> <ul style="list-style-type: none"> • The proposal must be amended to ensure there are no proposed structures that are located outside the boundaries of the subject site; • A Preliminary Site Contamination Investigation must be undertaken and submitted to Council. • Reconfigure the design by retaining the street level floor plan (principal building form) ‘as is’ in its entirety while focusing on changes to the rear secondary wing, which is less significant; • Conserve, restore and protect the front elevation and its fabric; • If excavation to the site is proposed, an Aboriginal Heritage Impact Assessment is to be provided; • A Structural Engineers report to be prepared to confirm: number, location and dimensions of proposed structural posts; • A Construction Management Plan (CMP) to be prepared. • Amended Stormwater Plan prepared in liaison with the Consulting Arborist to confirm excavation is not required for the proposed discharge line located parallel to the boundary and within the SRZ of Trees 1 & 2, • An amended Arboricultural Impact Assessment Report must include detail and specific recommendations and methodologies to mitigate the impact on trees to be retained and a Tree Protection Plan and • Amended Landscape plan to be prepared by a qualified Landscape Architect/Landscape Designer. The plan should be prepared in liaison with the Consulting Arborist and should show existing and proposed trees and structures to be maintained and/or demolished. Please note no changing levels within TPZ will be supported; • The rear alignment on the rear elevations on all levels is to be amended to not extend beyond the rear alignment on Bedroom 2; • To provide an accurate assessment in this regard, the sizes of the balconies of the property at 8 River Street should be clearly shown

	<p>on the proposed drawings and the sizes of balconies to be amended to be of similar size of balconies to 8 River Street at each level;</p> <ul style="list-style-type: none"> • Updated shadow diagrams; and • The applicant should conduct their own research or whether the proposal will satisfy the requirements of Sydney Water
<p>May 2022</p>	<p>Applicant provided amended plans in response to Council’s Request for Additional Information Letter. The amended plans consisted of the following changes:</p> <ul style="list-style-type: none"> • Removal of garage, vehicle crossing and driveway; • Front façade remains intact; • Removal of the access stairs to the rear from the balcony; • Reduced the balcony off bedroom to a Juliet Balcony with only 1.2m in depth and 2m in width, a privacy screen of the entire length of the side boundary elevation of 1.65m above finished floor level; • Increased rear setback of proposed level 2 from 7667mm to 8587mm to align at least 0.5m behind the predominant building elevation of the adjoining property No.12 River Street • Balcony is of open structure; • Additional shadow diagram provided; • New landscape plan prepared by landscape architect; • Party wall consent; • Preliminary site contamination investigation; • Structural engineer report; • Preliminary construction management plan; • Amended stormwater plan; and • Sydney water pegout report plan • Additional excavation
<p>19/07/2022 to 02/08/2022</p>	<p>Renotification period.</p>

Amended plans were received during the assessment of the application. Renotification was required in accordance with the Community Engagement Framework as the amended plans have the potential to result in increased amenity impacts on adjoining properties as a result of additional excavation. The amended plans are the subject of this report.

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *Leichhardt Local Environmental Plan 2013*
- *Inner West Local Environmental Plan 2022*

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 response to Council's Request for Further Information Letter, the applicant submitted a Preliminary Site Contamination Investigation which concludes:

“That contamination in soils at accessible areas of the site is unlikely or minimal...the land is considered suitable for the proposed development from a contamination perspective”.

The application was referred to the Council's Health Advisor who raised no objections to the proposal, subject to the imposition of standard conditions.

In consideration of Section 4.16 (2), the applicant has provided a preliminary investigation which indicates that the subject site is suitable for the proposed use.

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

A BASIX Certificate has been submitted.

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

Chapter 2 Vegetation in non-rural areas

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

The application does not propose any tree removal however the proposed works will have implications on the subject site's existing vegetation. This is discussed in detail under Part C1.14 *Tree Management* of this report.

Overall, the proposal is considered unacceptable with regard to the SEPP and Inner West Council's Tree Management DCP due to the lack of information provided and unacceptable implications on the subject site's existing landscaping and trees.

Chapter 10 Sydney Harbour Catchment

The SEPP provides planning principles, development controls and matters for consideration, which apply to the development proposal.

An assessment has been made of the relevant matters set out in Division 2 *Matters for Consideration*. It is considered that the carrying out of the proposed development is generally consistent with the relevant matters for consideration of the Plan and would not have an adverse effect on environmental heritage, the visual environment, the natural environment or any open space and recreation facilities.

The waterway adjoining the site is zoned W6 Scenic Waters: Active Use. The proposed works are positioned above mean high water mark (MHW), and therefore, do not involve any works within a designated zoned area of *SREP 2005*.

The proposed works fall within the definition of land-based development. Pursuant to Section 10(4), Council is the consent authority for these works.

The following comments are provided pursuant to the relevant sections of the Plan:

Section 10.14 – Zoning objectives (Zone No W6)

Comment: The proposal is considered to be consistent with the zone objectives, noting that the proposed development is permissible with consent and that no structures over water are proposed as part of the subject application. The proposal will not damage or impair natural features or aquatic habitats. Notwithstanding, for reasons discussed elsewhere in this report, the proposal is recommended for refusal.

Section 10.19 - Biodiversity, ecology and environment protection

Comment: The proposal is consistent with this clause as it will not impact on terrestrial or aquatic species, adequate sediment controls and drainage systems which could be readily

conditioned in the event of an approval. Notwithstanding, for reasons discussed elsewhere in this report, the proposal is recommended for refusal.

Section 10.20 - Public access to, and use of foreshores and waterways

Comment: The subject site is in private ownership and no public access is currently available or proposed via this site to the foreshore or waterways. The proposed works will not impact on any public access to or along the foreshore in this locality.

Section 10.21 - Maintenance of a working harbour

Comment: The subject site is zoned, and used, for residential purposes. The proposal will not impact on the preservation of the working harbour as the site or adjoining lands are not presently used for any maritime activities.

Section 10.22 - Interrelationship of waterway and foreshore uses

Comment: The proposed development will not result in any adverse impacts on the waterway, other uses, including water dependent land uses and the development proposed will not be adversely impacted by rising sea levels or changing flood patterns.

Section 10.23 - Foreshore and waterways scenic quality

Comment: Despite concerns raised in this report regarding pattern of development and height, bulk and scale and impacts on adjoining properties, Council's Heritage Advisor has reviewed the proposal and raised no objections to the proposal with respect to its impacts on the scenic quality of the Parramatta River.

Section 10.24 – Maintenance, protection and enhancement of views

Comment: As discussed later in this report, the proposal will not result in any undue adverse view loss implications.

Section 10.51 – Objectives

Comment: As outlined in detail elsewhere in this report, the proposed development will have acceptable impacts on the Heritage Conservation Area. Notwithstanding, for reasons discussed elsewhere in this report, the proposal is recommended for refusal.

Section 10.54 & 10.55 - Protection of places of potential heritage significance

Comment: Consideration has been given to the impact of the development on the Conservation Area and nearby Heritage Items and the proposal is acceptable in this regard. Notwithstanding, for reasons discussed elsewhere in this report, the proposal is recommended for refusal.

In summary, the proposal raises no issues that will be contrary to the provisions of the SEPP.

5(a)(iv) Local Environmental Plans

Leichhardt Local Environment Plan 2013 (LLEP 2013)

The application was assessed against the following relevant sections of *the Leichhardt Local Environmental Plan 2013*:

- Section 1.2 - Aims of the Plan
- Section 2.3 - Zone objectives and Land Use Table
- Section 2.5 - Additional permitted uses for land
- Section 2.7 - Demolition
- Section 4.3A - Landscaped areas for residential accommodation in Zone R1
- Section 4.4 – Floor Space Ratio
- Section 4.6 - Exceptions to development standards
- Section 5.4 - Controls relating to miscellaneous permissible uses
- Section 5.7 - Development below mean high water mark
- Section 5.10 - Heritage Conservation
- Section 5.21 - Flood Planning
- Section 6.1 - Acid Sulfate Soils
- Section 6.2 - Earthworks
- Section 6.4 - Stormwater management
- Section 6.5 - Limited development on foreshore area
- Section 6.6 - Development on foreshore must ensure access

Clause 1.2 -Aims of the plan

Due to concerns raised in this report, including in relation to pattern of development and amenity impacts, the proposal has not adequately demonstrated that it is a satisfactory response to the following Aims of the Plan under this clause:

- b. to minimise land use conflict and the negative impact of urban development on the natural, social, economic, physical and historical environment,*
- e. to protect and enhance the amenity, vitality and viability of Leichhardt for existing and future residents, and people who work in and visit Leichhardt,*
- f. to maintain and enhance Leichhardt's urban environment,*
- i. to ensure that development is compatible with the character, style, orientation and pattern of surrounding buildings, streetscape, works and landscaping and the desired future character of the area.*

Section 2.3 Land Use Table and Zone Objectives

The site is zoned LR1 under the *Leichhardt LEP 2013*. The *Leichhardt LEP 2013* defines the development as:

“Dwelling house means a building containing only one dwelling.”

The development is permitted with consent within the land use table.

As the proposal is not considered to be a satisfactory response to the existing pattern of development to the south-west, and is not deemed to result in acceptable amenity outcomes and impacts the site and adjoining sites, the proposal is not considered to be acceptable with regard to the following relevant objectives of the R1 - General Residential Zone:

- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

As a result, the proposal is recommended for refusal.

Section 4 Principal Development Standards

The following table provides an assessment of the application against the development standards applicable to the site pursuant to Clauses 4.3A and 4.4 of the *Leichhardt LEP 2013*:

Standard	Proposal	Non compliance	Complies
Floor Space Ratio <i>Maximum permissible: 1:1 or 115.1sqm</i>	0.98:1 or 112.4sqm	N/A	Yes
Landscape Area <i>Minimum permissible: 15% or 17.265sqm</i>	31.36% or 36.1sqm	N/A	Yes
Site Coverage <i>Maximum permissible: 60% or 69.06sqm</i>	47.09% or 54.2sqm	N/A	Yes

Clause 5.10 – Heritage Conservation

As discussed in more detail in Section 5(d) of the report, Council's Heritage Advisor has raised no objections to the proposal in terms of its impacts on the Heritage Conservation Area and considers that the proposal is satisfactory with regard to the provisions and objectives of this part of the *Leichhardt LEP 2013*, subject to the imposition of conditions.

[Inner West Local Environmental Plan 2022](#)

The *Inner West Local Environment Plan 2022 (IWLEP 2022)* was gazetted on the 12 August 2022. As per Section 1.8A – Savings provisions, of this Plan, as the subject application was lodged 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 Section 4.15(1)(a)(ii) also requires consideration of any EPI that has been subject to public consultation. The subject application was lodged on 16/12/2021, on this date, the *IWLEP 2022* was a draft EPI, which had been publicly exhibited and was considered imminent and certain.

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

5(c) Draft Environmental Planning Instruments

No Draft Environmental Planning Instruments are applicable to this application.

5(d) Development Control Plans

The application has been assessed against the following relevant Development Control Plans:

- Leichhardt Development Control Plan 2013; and
- Sydney Harbour Foreshores Area Development Control Plan 2005

[Leichhardt Development Control Plan 2013](#)

The following provides a summary of the relevant provisions of Leichhardt Development Control Plan 2013.

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	Yes
B3.1 Social Impact Assessment	Yes
B3.2 Events and Activities in the Public Domain (Special Events)	Yes
Part C	
C1.0 General Provisions	No – see discussion
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	No – see discussion
C1.4 Heritage Conservation Areas and Heritage Items	Yes
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	N/A
C1.12 Landscaping	No – see discussion
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	No – see discussion
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	N/A
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	Yes
C1.20 Foreshore Land	Yes
C1.21 Green Roofs and Green Living Walls	N/A

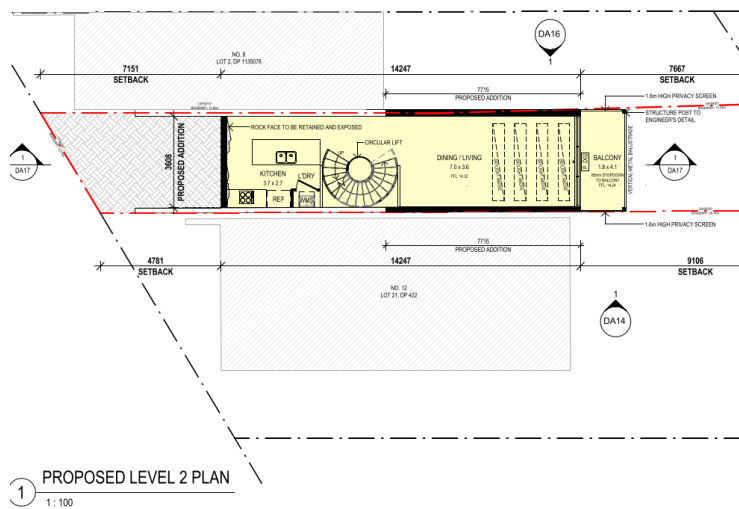
Part C: Place – Section 2 Urban Character	
C2.2.2.6 – Birchgrove Distinctive Neighbourhood	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	No – see discussion
C3.2 Site Layout and Building Design	No – see discussion
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	No – see discussion
C3.9 Solar Access	No – see discussion
C3.10 Views	Yes– see discussion
C3.11 Visual Privacy	No – see discussion
C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	N/A
D2.5 Mixed Use Development	N/A
Part E: Water	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	Yes
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	Yes
E1.1.5 Foreshore Risk Management Report	Yes, subject to conditions
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	Yes
E1.2.4 Stormwater Treatment	N/A
E1.2.5 Water Disposal	N/A
E1.2.6 Building in the vicinity of a Public Drainage System	Yes
E1.2.7 Wastewater Management	N/A
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	Yes
E1.3.2 Foreshore Risk Management	Yes

The following provides discussion of the relevant issues:

C1.0– General Provisions

The proposed additions at the rear are not a satisfactory response to the pattern of development considerations and do not adequately accommodate the needs of adjacent and nearby properties and will have detrimental overshadowing, height, bulk and scale and privacy implications on adjoining neighbours.

The proposed development will extend a significant distance beyond the existing rear alignments of No. 6 and No. 8 River Street (approximately 7.7 metres beyond the rear alignment of No. 8 River Street).



Refer to extract below from page 5 of the Statement of Environment Effects that accompanies this application which shows the surrounding pattern of development:

3.0 EXISTING CONDITION



Figure 3: Image of subject site viewed from Parramatta River. (Source: International Realty-Double Bay)

The proposed development is not considered to be consistent with the existing pattern of development at the rear and will result in significant bulk and scale impacts when viewed from the rear private open space of No's 6 and No 8 River Street. Therefore, the proposal is recommended for refusal as it is not consistent with the following objectives under this part:

O4 Amenable: places and spaces provide and support reasonable amenity, including solar access, privacy in areas of private open space, visual and acoustic privacy, access to views and clean air.

O6 Compatible: places and spaces contain or respond to the essential elements that make up the character of the surrounding area and the desired future character. Building heights, setbacks, landscaping and architectural style respond to the desired future character. Development within Heritage Conservation Areas or to Heritage Items must be responsive to the heritage significance of the item and locality.

C1.3 Alterations and additions

The amended proposal is of an excessive height, bulk and scale which will be incompatible with the surrounding development along River Street to the south-west when viewed from the Parramatta River frontage. Overall, the proposed works are not subordinate to the existing dwelling and are of a scale that is incompatible with adjoining development. Therefore, the proposal in its current form is considered to be contrary to the following objectives:

- c. makes a positive contribution to the desired future character of the streetscape and any heritage values associated with it;*
- d. is compatible with neighbourhood character, including prevailing site layout;*
- e. protects existing residential amenity, including the retention of adequate private open space and ensuring adequate sunlight, natural ventilation and privacy to the existing dwelling and surrounding dwellings;*

C1.4 Heritage Conservation Areas and Heritage Items

Heritage Listing

The subject site is not listed as a heritage item under *Leichhardt LEP 2013*. There are no listed heritage items in close proximity that would be adversely affected by the proposal. However, the site is located in a Heritage Conservation Area and the existing dwelling is a contributory item to the 'Iron Cove Heritage Conservation Area' (C6).

Heritage Significance

The subject site is occupied by a terrace presenting as single storey to the streetscape part of a group of consistent similarly detailed terraces that are contributory to the Heritage Conservation Area.

The amended plans were referred to Council's Heritage Specialist who raised no objections to the proposal and provided the following commentary:

Heritage Comments

I have reviewed drawings by ASA Studio dated 4 May 2022. The proposed works have been reviewed with consideration of the Leichhardt Local Environmental Plan 2013 & Development Control Plan 2013.

The amount of excavation has been considerably reduced to new footings for new structural posts.

Changes to the front do not aim to restore the front verandah as recommended in the previous referral; this is quite a disappointment; however it is a great improvement from the previously proposed front garage.

Overall, the alterations and additions can be supported on heritage grounds, subject to conditions.

The proposal is generally acceptable as it complies with relevant controls and policies.

Having regard to the above, the proposal generally complies with the heritage provisions identified in LDCP 2013. Council's Heritage Specialist has indicated that the proposal is acceptable subject to the imposition of conditions which relate to unexpected finds in relation to Aboriginal Heritage which may be encountered during construction.

C1.12 Landscaping and C1.14 Tree Management

The amended plans and the requested additional information was referred to the Council's Urban Forest Advisor who objected to the proposed development and provided the following commentary:

“Assessment of amended plans and additional information undertaken on 09/08/2022.

Stormwater plan has been amended with discharge point/headwall located outside the SRZ of the trees. It is supported.

Amended CMP has not included detailed information of machinery required for proposed works at rear, i.e. how will machinery access to the site, and all other construction works. If a piling rig is needed for the construction of the posts, the plan should have specified dimension of the machine and minimum clearance required to allow works. Additionally, this is not consistent with the AS-Protection of trees on development sites as waste storage must be installed outside of SRZ and as far as possible from the trees. The CMP cannot be supported in its current form.

Final Architectural plans do not show staircase into the garden. This will likely be done on the northern side of the dwelling house and may be included on the plans for a realistic assessment of proposal.

Structural Engineers report with posts detailed information has not been prepared.

Amended Landscape Plan shows existing deck to be replaced with a new turf area located west of the trees. This will likely require a retaining wall to level the area, however no changing levels within TPZ will be supported. This has not been resolved.

Amended AIA has not been prepared to address above mentioned issues, especially access to heavy machinery and impact by piling rig and impact by new turf area.

Proposal cannot be supported with information provided.”

In light of the above, Council's Urban Forest Advisor does not support the proposed landscaping works due to the lack of information provided and potential impacts to the existing trees. As such the proposal fails to satisfy C1.12 and C1.14 of MLDCP 2013 and is not supported.

C1.20 – Foreshore Land

The subject site is located within Foreshore land, and the proposal is considered to incompatible with the general pattern of development when viewed from the water, particularly with respect to properties to south-west, and therefore, is considered to be inconsistent with the following objectives under this part:

O1 Development shall:

c. be set within a landscape setting and be compatible with surrounding landscapes and streetscapes;

C3.1 Residential General Provisions

Due to the amenity and pattern of development concerns raised elsewhere in this report, the proposal has not adequately demonstrated that it is a satisfactory response to the following objectives and controls of this part:

- *O3 To ensure that alterations, additions to residential buildings and new residential development are compatible with the established setting and character of the suburb and neighbourhood and compatible with the desired future character and heritage significance of the place and its setting.*
- *O4 - To ensure that all residential development is compatible with the scale, form, siting and materials of existing adjacent buildings*
- *O7 - To ensure that the amenity, including solar access and visual privacy, of the development and adjacent properties is not adversely impacted.*
- *C1 - Residential development is not to have an adverse effect on:*
 - *a. the amenity, setting or cultural significance of the place, including the portion of the existing building to be retained*
- *C2 - Additions to an existing building are generally:*
 - *e. of a scale, proportion (including proportion of doors and openings) and material which is compatible with the existing building.*

For this and other reasons, the proposal is recommended for refusal.

C3.2 Site Layout and Building Design

The proposal does not comply with the Building Location Zone (BLZ) and Side Boundary Setback controls of this part, which is not supported. See below for a detailed assessment of these non-compliances:

Building Location Zone

The BLZ is the part of the subject site where it can be reasonably expected that a building can be located and is determined by having regard to only the main building on the adjacent properties. Whilst the proposed entry level, level 1 and level 2 is located behind the rear building line of No. 12 River Street, the proposed BLZ substantially breaches the average BLZ as established by No. 8 and 12 River Street. Pursuant to Control C6 of this part, in order to gain support for the proposed entry level, level 1 and level 2 BLZ, various requirements need to be met, which are discussed below:

- Amenity to adjacent properties (i.e. sunlight, privacy, views) is protected and compliance with the solar access controls of this Development Control Plan is achieved.

Comment: As outlined later in this report, the proposal has not demonstrated compliance with Council's solar access and privacy controls, and for this, and as such is unsupportable.

- The proposed development will be compatible with the existing streetscape, desired future character and scale of surrounding development.

Comment: As outlined elsewhere in this report, the proposed development will be of excessive bulk and scale when viewed from the secondary frontage (fronting Parramatta River); and thus, the proposal will be incompatible with the surrounding development.

- The proposal is compatible in terms of size, dimensions privacy and solar access of private open space, outdoor recreation and landscaping.

Comment: As discussed throughout this report, the proposal will generate unacceptable amenity impacts on adjoining properties including overshadowing, visual privacy and bulk and scale when viewed from the neighbour's private open space and from the public domain when viewed from Parramatta River. As a result of these adverse amenity implications on adjoining properties, the proposal cannot be supported.

- Retention of existing significant vegetation and opportunities for new significant vegetation is maximised.

Comment: As stated elsewhere in this report, the proposal was referred to the Council's Urban Forest Specialist who does not support the proposal due to the potential impacts on existing vegetation.

- The height of the development has been kept to a minimum to minimise visual bulk and scale, as viewed from adjoining properties, in particular when viewed from the private open space of adjoining properties.

Comment: Due to a combination of:

- The BLZ breach and extension of the addition substantially beyond the rear alignments of adjoining properties to the south-west;
- The proposed floor-to-ceiling heights;
- The elevation of the additions and lack of adequate stepping with the rear topography, resulting in a three-plus storey scale at the rear; and
- The lack of any setback from the southern boundary,

The overall height, bulk and scale of the development will result in intrusive adverse bulk and scale impacts when viewed from the rear of adjoining properties, particularly when viewed from the rear of No. 8 River Street where concern is raised that the additions will have overbearing impacts on the amenity of this site.

As a result, the proposed entry level, level 1 and level 2 BLZs are not supported as it has not been demonstrated that all of the requirements of Control C6 are satisfied.

Side Setbacks

The proposed wall heights along the north-eastern and south-western side boundaries, given the sloping nature of the site, vary between 5.5 and 9.9 metres. The following table outlines compliance with the prescribed side boundary setbacks, which are determined based on the graph within control C7.

Elevation	Wall height (m)	Required Setback (m)	Proposed Setback (m)	Complies (Y / N)
North-East	5.5-10.8	1.6-4.6	Nil	N
South-West	5.8-10.8	1.7-4.6	Nil	N

As depicted in the table above, the proposed additions to the rear do not comply with the prescribed side boundary setbacks to either side boundary. Pursuant to Control C8 of this part, in order to gain support for the proposed variations, various requirements need to be met. These are discussed below:

- The development is consistent with relevant Building Typology Statements as outlined within Appendix B – Building Typologies of the Leichhardt DCP 2013 and complies with streetscape and desired future character controls.

Comment: For reasons discussed elsewhere in this report, the proposal is not consistent with desired future character controls, especially when viewed from the secondary frontage (rear of the dwelling – fronting Parramatta River).

- The pattern of development within the streetscape is not compromised.

Comment: Whilst the proposed side boundary setbacks are not inconsistent with side boundary setbacks of other development in the vicinity, the wall heights are higher than existing and at adjoining terraces in the row in which it forms a part and is considered to be out of character with the predominant pattern of development in the vicinity of the site.

- The bulk and scale of development is minimised by reduced floor to ceiling heights.

Comment: The proposed floor to ceiling heights are as follows:

- Entry Level – 2.7m
- Level 2 – 2.7m
- Level 1 – 2.7m

Whilst the proposed floor to ceiling heights are generally acceptable for the proposed use of the rooms, the overall height, bulk and scale has not been minimised and is considered to result in adverse amenity impacts, including intrusive visual impacts, to neighbouring properties.

- The proposal is acceptable with respect to applicable amenity controls, e.g. solar access, privacy and access to views.

Comment: Unsatisfactory. Impacts on the amenity, including bulk and scale, solar access and privacy, of adjacent properties have not been demonstrated to be compliant with Council controls.

- The proposal does not unduly obstruct adjoining properties for maintenance purposes.

Comment: The existing dwelling is already built to the boundaries and the proposal does cause further impacts to the adjoining dwellings in this regard.

Given the above, the proposal is not considered to be a satisfactory response to the side setback controls prescribed in this part of the DCP.

For this and other reasons, the application is recommended for refusal.

C3.9 Solar Access

The subject and adjoining sites are oriented south-east north-west. As such, the following controls apply with regard to solar access to adjoining sites:

- *C12 Where the surrounding allotments are orientated east/west, main living room glazing must maintain a minimum of two hours solar access between 9am and 3pm during the winter solstice.*
- *C15 Where surrounding dwellings currently receive less than the required amount of solar access to the main living room between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted*
- *C18 - Where surrounding dwellings have east/west facing private open space, ensure solar access is retained for two and a half hours between 9am and 3pm to 50% of the total area (adjacent to living room) during the winter solstice.*
- *C19 Where surrounding dwellings currently receive less than the required amount of solar access to their private open space between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted*

In this regard, the following is noted:

Main living room glazing

The submitted shadow diagrams in plan indicate that shadows will be cast onto the rear elevation of the adjoining site - No. 8 River Street. Given that there is no side glazing on both side elevations of No. 8 River Street, the rear facing glazing is the neighbour's only source of sunlight into their main living room. The proposal will overshadow this area from 9am to 2pm during the winter solstice. Therefore, it has not been demonstrated that the proposal complies with Controls C12 and C15 of this part of the Leichhardt DCP 2013.

Private Open Space (POS)

The submitted shadow diagrams in plan indicate that shadows will cast into the rear private open space of Nos. 6 and 8 River Street.

Given that the property boundaries and building outlines of No. 6 River Street have not been shown on the submitted shadow diagrams, a comprehensive assessment could not be conducted of this property to determine compliance with applicable solar access controls. Further, the proposal will cast additional overshadowing into the private open space of No. 8 River Street from 9am to 2pm during mid-winter. As a result, the proposal will not receive the required solar access in mid-winter as prescribed in Controls C18 and C19 of the DCP.

Given that the proposed additions would result in additional overshadowing of neighbouring private open space, it appears that the proposed development would not comply with applicable controls. Given that the bulk and scale of the proposal will result in non-compliance with C12, C17 and C18 of this part of the Leichhardt DCP 2013 and insufficient information, i.e., inadequate shadow diagrams, have been submitted to allow for a comprehensive assessment against the controls of the Leichhardt DCP 2013 and the Planning Principle regarding sunlight established in *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 for a variation with solar access controls, refusal of the application is recommended.

In light of the above, given that the proposal does not comply, the proposal is not considered to satisfy the following objectives of this part and refusal of the application is recommended:

- O1 - Development shall:
 - a. provide adequate sunlight to main living room and private open space;
 - b. provide daylight to all habitable rooms;
 - c. provide a high level of amenity;
 - d. protect residential amenity for adjoining development;
 - e. increase energy efficiency; and
 - f. minimise the degree of overshadowing to neighbouring properties.

C3.8 Private Open Space

The proposed private open space is located on ground level and has an area of 41sqm and exceeds the minimum dimension of 3m. However, the proposed private open space does not have a direct connection to the principal indoor living areas of the dwelling. Therefore, the proposal breaches C1 (c) of this part of the Leichhardt DCP 2013.

C1 Private open space should be: c. is connected directly to the principal indoor living areas; and

C3.10 Views

Submissions were received regarding surrounding neighbour's concerns of view loss of Parramatta River when viewed from their front and / or rear facing balcony areas.

Council has considered the relevant steps in the assessment of reasonable view sharing. The images below indicate the existing views available from Nos. 1, 4, 6, 8 and 12 River Street's rear and / or front facing balcony areas. Figures 1 to 4 were taken by the owner of No. 1 River Street and Figures 5 and 6 were taken by the owner of No. 12 River Street.

Figure 1 - Existing views from No. 1 River Street from their front facing balcony (taken right up against the balcony railing)



Figure 2 - Existing views from No. 1 River Street from their front facing balcony (taken right up against the balcony railing)



Figure 3 - Existing views from No. 1 River Street from their front facing balcony (taken right up against the balcony railing)



Figure 4 - Existing views from No. 1 River Street from their front facing balcony (taken right up against the balcony railing)



Figure 5 – Existing views from No. 12 River Street from their rear facing balcony, red drawing indicates the extent of proposed additions (taken less than 1m from the balcony railing)



Figure 6 – Red drawing indicates the extent of proposed additions which will impact Nos. 4, 6 and 8 River Street's views of Parramatta River (taken less than 1m from the balcony railing of No. 12 River Street).



Council considers the *Tenacity* Planning Principle steps in its assessment of reasonable view sharing:

- e. *“What views will be affected? In this Plan, a reference to views is a reference to water views and views of significant landmarks (e.g. Sydney Harbour, Sydney Harbour Bridge, ANZAC Bridge and the City skyline including features such as Centre Point Tower). Such views are more highly valued than district views or views without significant landmarks.*
- f. *How are the views obtained and assessed? Views from private dwellings considered in development assessment are those available horizontally to an observer standing 1m from a window or balcony edge (less if the balcony is 1m or less in depth).*
- g. *Where is the view enjoyed from? Views enjoyed from the main living room and entertainment areas are highly valued. Generally it is difficult to protect views from across side boundaries. It is also generally difficult to protect views from other areas within a residential building particularly if views are also available from the main living room and*

entertainment areas in the building concerned. Public views are highly valued and will be assessed with the observer standing at an appropriate point in a public place.

- h. Is the proposal reasonable? A proposal that complies with all development standards (e.g. building height, floor space ratio) and planning controls (e.g. building setbacks, roof pitch etc) is more reasonable than one that breaches them.”*

The Land and Environment Court accepts that the attribution to the values of views is subjective and has published planning principles to help established a more structured approach in assessing the impact of development in terms of view loss.

The first step requires the assessment of views which the proposal will affect and establishes a value system for assessing different kinds of views. It suggests that:

- Water views are valued more highly than land views;
- Iconic views (eg. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons.
- Whole views are valued more highly than partial views (eg. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured).

Comment: As shown in the images above, the existing views from Nos. 1, 4, 6, 8 and 12 River Street's rear and / or front facing balcony areas are in relation to the Parramatta River in which the water views are considered to be significant. Furthermore, a portion of views of Parramatta River on the left-hand side of Figure 5 (see above) (northern direction) will be lost as a result of the proposal. Similarly, views enjoyed from the west by the rear adjoining balconies of Nos. 4, 6 and 8 River Street will be lost as a result of the proposal. However, water views of the remainder of the Parramatta River on the right-hand side of Figure 5, as well as the entirety of views visible from No. 1 River Street's front facing balcony (see Figures 1 to 4 above) and northern water views enjoyed by Nos. 4, 6 and 8 River Street will be retained which are considered as highly valued as a whole in contrast to a portion of the water view on the left-hand side of Figure 5 and the northern portion views enjoyed from Nos. 4, 6 and 8 River Street.

The second step is to consider how reasonable it is to expect to retain the views by considering from what part of the property the views are obtained **and how**. It acknowledges the following:

- Protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries.
- Views enjoyed from a standing or sitting position is also relevant as many people who have a view from sitting position consider that they have lost the view if they have to stand up to see it. *Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

Comment: The affected views are obtained from the front balcony of No. 1 River Street and from the rear facing balcony areas of Nos. 4, 6, 8 and 12 River Street. The views in question from No. 1 River Street are directly south-east and over the subject site's as well as adjoining sites (Nos. 12, 8 and 6 River Street) roof forms. Further, the views currently enjoyed from No. 12 River Street's rear facing balcony are towards the northern boundary of the site at the rear of the property. In addition, the views in question from Nos. 4, 6 and 8 River Street's rear facing balcony areas are towards the western boundary of the site's rear boundaries. The owners of Nos. 1 and 12 River Street submitted photos of the views currently enjoyed from

the front facing balcony of No. 1 River Street and the rear-facing balcony of No. 12 River Street (see above for images).

The third step is to assess the extent of the impact and should consider that the impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). Whilst the impact may be assessed quantitatively it is more useful to assess the view loss qualitatively as:

- Negligible
- Minor
- Moderate
- Severe
- Devastating

Comment: The existing Parramatta River views are enjoyed and obtained from the rear balcony areas of Nos. 4, 6, 8 and 12 River Street which are obtainable across the northern and western boundaries (across the side boundaries of numerous properties); and from the front facing balcony of No. 1 River Street which are obtainable across the south-eastern boundary (across the top of numerous roof forms). The view loss caused by the proposal is related to the rear additions at No. 10 River Street, which will obstruct views from the rear balcony areas of Nos. 4, 6, 8 and 12 River Street. The extent of view loss as a result from No. 10 River Street's development proposal is shown in Figures 5 and 6 which was provided by the owner of No. 12 River Street (see above for details).

Figures 5 and 6 illustrate that the proposed additions at No. 10 River Street (in red) will result in a minor proportion of the Parramatta River views to be lost towards the northern boundary at No. 12 River Street and towards the western boundary at Nos. 4, 6 and 8 River Street. However, the proposed additions seek to retain the majority of water views of Parramatta River at the rear of Nos. 4, 6, 8 and 12 River Street.

Based on the provided images, it will be likely that only a partial view of the water views will be obstructed by the proposed development, and the majority of the views will not be affected by the development; but notwithstanding this, even if there were more significant view loss, it will be still acceptable because of the following reasons:

- The views in question are obtainable across side and numerous other side boundaries which are difficult to protect; and
- The proposal complies with the Site Coverage, Floor Space Ratio and Landscaped Area Development Standards.

In light of the above, the portion of the water views which will be lost as a result of this proposal is considered to be minor in nature and difficult to protect since this view is obtained across side and numerous other side boundaries. Even though this view will be lost as a result of the proposed works, the adjoining properties at Nos. 4, 6, 8 and 12 River Street will still maintain views of Parramatta River. Therefore, majority of existing view corridors have been protected and retained as part of this proposal; and thus, satisfies the objectives and controls contained under Part C3.10 Views of the Leichhardt DCP 2013.

Moreover, the views in question at No. 1 River Street will not be impacted as the proposed rear roof form will be located 590mm under the front roof form; and thus, the proposed roof form will not unduly obstruct the existing views enjoyed from the front facing balcony of No. 1 River Street.

The potential view loss is acceptable when assessed against the controls and objectives of Part C3.10 of the Leichhardt DCP 2013 and against the Tenacity Planning Principles.

The fourth and final step is to assess the reasonableness of the proposal that is causing the impact and the following factors should be considered:

- A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.
- *With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable”*

Comment: The proposal complies with the Floor Space Ratio, Site Coverage and Landscaped Area Development Standards; however, the proposal does not comply with the Side Setback Control Graph, solar access, bulk and scale, BLZ and visual privacy controls. Even though the proposed view loss implications are minor and are acceptable in this instance, the proposal is recommended for refusal due to the unacceptable and insupportable amenity implications the proposal will have on adjoining neighbours and the character of the secondary ‘street’ frontage.

Therefore, it is considered that the proposal responds appropriately to the principle of view sharing and will not result in any unreasonable view loss.

C3.11 Visual Privacy

The proposed window on the north-eastern elevation of the dwelling will overlook No. 12 River Street’s boundary wall.

Similarly, the rear facing windows on the north-western elevation of the dwelling (W01, W02, D02, D03 and D04) overlook the subject site’s private open space and Parramatta River; and therefore, there will be no visual privacy implications on adjoining properties or the subject site.

The proposed rear facing balcony on level 1 of the dwelling is of a length and depth that is compatible with C9 of this part of the Leichhardt DCP 2013. However, the proposed rear facing balcony on level 2 of the dwelling measures 1.8 x 3.9m, resulting in a substantial breach of C9 of this part of the Leichhardt DCP. The balcony services the primary living areas of the dwelling (dining / living) and thus, the proposed balcony areas will be used as the site’s private open space and will be a highly trafficable area which will contribute to unsupportable visual privacy impacts which include overlooking opportunities into Nos. 8 and 12 River Street’s private open space. Furthermore, the size of the balcony is not compatible with adjoining balcony areas (e.g. No. 8 River Street’s level 2 balcony measures 1.2 x 3.8m) which will impact the dwelling’s compatibility with surrounding development and the character of the existing dwelling, and unnecessarily adds to the excessive bulk and scale of the proposal at the rear.

In light of the above, the level 1 balcony resulting in a breach of C9 of this part of the Leichhardt DCP 2013 results in unacceptable visual privacy impacts on adjoining properties. As a result, and in addition to other amenity implications derived from this development, the proposal is recommended for refusal.

C3.12 Acoustic Privacy

The proposed main living room is at level 2 which is one level below the street level. While the proposed living room is not at the ground floor, it should be noted that both the adjoining properties at 8 and 12 River Street have a living area at the same level, and therefore, the proposed living room will not be adjacent to any bedroom windows and is not anticipated to result in any undue adverse acoustic privacy impacts.

[Sydney Harbour Foreshores Area Development Control Plan 2005](#)

As discussed in more detail in earlier sections of the report, the proposal is of a height, form and scale that is considered to incompatible with the adjoining properties to the south-west when viewed from the water, and therefore, the proposal is considered to be inconsistent with the following control under 5.4 Built Form of the *DCP FOR SREP (SYDNEY HARBOUR CATCHMENT) 2005*:

- *where buildings would be of a contrasting scale or design to existing buildings, care will be needed to ensure that this contrast would enhance the setting.*

5(e) 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:

Bulk and scale impacts to adjoining property

The proposed form and scale will have adverse height, bulk and scale impacts when viewed from the private open space of No. 8 River Street.

Adverse Amenity impacts to adjoining properties

The proposed development will result in adverse overshadowing impacts to No. 8 River Street and adverse visual privacy impacts to adjoining properties.

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

It is considered that the proposal will have an adverse impact on the adjoining properties and therefore it is considered that the site is unsuitable to accommodate the proposed development.

5(g) Any submissions

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

Ten (10) submissions were received in response to the initial notification, and six (6) submissions were received in response to renotification of the application.

Issues raised as follows have been discussed in this report:

- Impacts of height, setbacks, bulk, scale and extent of additions
- Demolition of the original front façade and streetscape impacts
- Poor design

- Overshadowing
- Impacts of car and garage design
- Structural impacts and impacts to established trees
- View loss
- Compliance with Floor Space Ratio, site coverage and landscaping controls
- Visual and acoustic privacy impacts generated from the size of the balconies and the proposal in general

The issues raised in the submissions received are discussed below:

Concern	Comment
Demolition / Garage / Parking	The initial application proposed to demolish a portion of the front façade to accommodate a garage with an 85mm stepdown and stacker doors. The initial proposal was referred to the Council’s Heritage Specialist who did not support the proposed demolition works and recommended that the amended plans retain the front façade. As a result, the amended plans have demonstrated that the front façade has been retained, and the proposed garage has been deleted as part of the amended design. Therefore, the amended proposal will not result in a loss of on-street parking and as stated earlier in this report, the amended proposal is supported by the Council’s Heritage Specialist..
Bulk and Scale	The bulk and scale is excessive, intrusive and unacceptable - refer to Part <i>C3.2 Site Layout and Building Design</i> of this report for a detailed assessment.
Internal Staircase	The proposal was referred to the Council’s Heritage Specialist who raised no objections to the circular design of the internal staircase.
Solar Access	The proposal has not demonstrated compliance with Council’s Solar Access controls. Refer to Part <i>C3.9 Solar Access</i> of this report for a detailed assessment.
View Loss	The proposal will not unreasonably impinge in existing view corridors - refer to Part <i>C3.10 Views</i> of this report for a detailed assessment.
Privacy	The proposal is considered to be unsatisfactory on privacy grounds in its current form - refer to Part <i>C3.11 Visual Privacy</i> and <i>C3.12 Acoustic Privacy</i> of this report for a detailed assessment.
Air Circulation	The existing dwelling is already built to the boundaries and the proposal will not have any undue adverse impacts on air circulation

Encroachment of Property Boundaries	The existing side walls of the dwelling are located on the property boundary; however, the existing boundary fence does encroach the property boundary as assessed under Part C1.17 <i>Minor Architectural Details</i> of this report. Furthermore, the proposed side setbacks are located within the property boundaries; however, the nil setback may contribute to fire hazards and maintenance issues for adjoining neighbours.
Lack of Information Provided	An amended arborist report was not provided and therefore the potential impact to vegetation is unsatisfactory and is one of the reasons for refusal, while an amended heritage report was not provided, the amended proposal which deleted the proposed garage from the proposal is satisfactory with regard to heritage subject to conditions but the application is recommended for refusal for other reasons outlined elsewhere in the report.
Development Standards	Refer to <i>Part 4 – Principal Development Standards</i> of this report for a detailed assessment.
Gum Trees	As stated earlier in this report, Council’s Urban Forest Advisor does not support the proposal due to the inadequate information provided regarding the protection of the gum trees. As a result, the proposal is recommended for refusal.
Roof Form & Design	As stated earlier in this report, the amended proposal was referred to the Council’s Heritage Specialist who raised no objections to the proposed design, roof form and / or skylights. Notwithstanding, the proposal is recommended for refusal.
Construction & Structural	<p>Conditions regarding construction work could be readily conditioned in the event of an approval, however, the proposal is recommended for refusal.</p> <p>Furthermore, the proposal was referred to the Council’s Development Engineer who raised no objections regarding the structural integrity of the proposal.</p>
Sydney Water Assets	As stated earlier in this report, a Request for Further Information Letter was issued requesting that the applicant conduct their own research or whether the proposal will satisfy the requirements of Sydney Water. As a result, a Sydney Water Pegout report was submitted indicating the presence of a Sewer Main on-site. The proposed works do not cover the main. It is noted that if the application was approved, the development will require separate approval from Sydney Water.

5(h) The Public Interest

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

The proposal is 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.

Referrals	Summary of Response
Development Engineer	Satisfactory, subject to conditions.
Heritage	Refer to Part C1.4 <i>Heritage Conservation Areas and Heritage Items</i> of this report for further details. Acceptable
Urban Forest	Unsatisfactory, the proposal is not supported by the Council’s Urban Forest Advisor. Refer to Part C1.14 <i>Tree Management</i> of this report for further details.
Health	Satisfactory, subject to conditions.

6(b) External

The application was not required to be referred to any external bodies.

7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies are 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. In the event of the application being approved, a condition requiring that contribution to be paid would be required to be imposed on any consent granted.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Leichhardt Local Environmental Plan 2013* and *Leichhardt Development Control Plan 2013*.

The development would result in significant impacts on the amenity of the adjoining premises/properties and is not a satisfactory response to the general pattern of development to the south-west of the site, and is not considered to be in the public interest.

The application is considered 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/2021/1227 for three storey alterations and additions to the existing dwelling and associated works. at 10 River Street BIRCHGROVE for the following reasons:

1. The proposal is an unsatisfactory response to the pattern of development and desired future character considerations and will result in adverse amenity impacts and outcomes on the site and adjoining properties in terms of private open space connection, height, bulk and scale, and overshadowing and privacy, contrary to the following Aims of the Plan prescribed in Clause 1.2 of the *Leichhardt Local Environmental Plan 2013*:
 - b) to minimise land use conflict and the negative impact of urban development on the natural, social, economic, physical and historical environment,*
 - e) to protect and enhance the amenity, vitality and viability of Leichhardt for existing and future residents, and people who work in and visit Leichhardt,*
 - f) to maintain and enhance Leichhardt's urban environment,*
 - l) to ensure that development is compatible with the character, style, orientation and pattern of surrounding buildings, streetscape, works and landscaping and the desired future character of the area.*

2. The proposal is unsatisfactory in terms of form, height and scale, will be inconsistent with the pattern of surrounding development in the street, and does not result in satisfactory or acceptable amenity outcomes and impacts on the site or adjoining sites, contrary to the following Objectives of the R1 – General Residential Zone contained in the *Leichhardt Local Environmental Plan 2013*:
 - To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
 - To protect and enhance the amenity of existing and future residents and the neighbourhood.

3. The proposal results in an unsatisfactory pattern of development, adverse amenity outcomes and impacts on the site and adjoining sites, and does not comply with the following controls of the *Leichhardt Local Environmental Plan 2013* and *Leichhardt Development Control Plan 2013*, pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*:
 - Part C1.0 of the *Leichhardt Development Control Plan 2013 – General Provisions*.
 - Part C1.3 of the *Leichhardt Development Control Plan 2013 - Alterations and Additions*.
 - Part C1.12 of the *Leichhardt Development Control Plan 2013 – Landscaping*.

- Part C1.14 of the Leichhardt Development Control Plan 2013 – Tree Management.
 - Part C1.20 – Foreshore Land.
 - Part C3.1 of the Leichhardt Development Control Plan 2013 – Residential General Provisions.
 - Part C3.2 of the Leichhardt Development Control Plan 2013 – Site Layout and Building Design.
 - Part C3.8 of the Leichhardt Development Control Plan 2013 – Private Open Space.
 - Part C3.9 of the Leichhardt Development Control Plan 2013 – Solar Access.
 - Part C3.11 of the Leichhardt Development Control Plan 2013 – Visual Privacy.
 - Part 5.4 of Sydney Harbour Foreshores Development Control Plan 2005.
4. The proposal would result in adverse environmental impacts on the built environment in the locality pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
 5. The proposal is not considered suitable on the site pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
 6. The proposal is not considered to be in the public interest pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

Attachment A – Draft conditions of consent should Panel approve 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
Drawing No. DA01, Issue No. H	SITE PLAN/ SITE ANALYSIS PLAN	30/06/2022	ASA Studio
Drawing No. DA02, Issue No. H	EXISTING ENTRY LEVEL PLAN	30/06/2022	ASA Studio
Drawing No. DA03, Issue No. H	EXISTING LEVEL 2 PLAN	30/06/2022	ASA Studio
Drawing No. DA04, Issue No. H	EXISTING LEVEL 1 PLAN	30/06/2022	ASA Studio
Drawing No. DA05, Issue No. H	EXISTING ROOF PLAN	30/06/2022	ASA Studio
Drawing No. DA06, Issue No. H	PROPOSED ENTRY LEVEL PLAN	30/06/2022	ASA Studio
Drawing No. DA07, Issue No. H	PROPOSED LEVEL 2 PLAN	30/06/2022	ASA Studio
Drawing No. DA08, Issue No. H	PROPOSED LEVEL 1 PLAN	30/06/2022	ASA Studio

Drawing No. DA09, Issue No. H	PROPOSED ROOF PLAN	30/06/2022	ASA Studio
Drawing No. DA10, Issue No. H	ELEVATIONS	30/06/2022	ASA Studio
Drawing No. DA11, Issue No. H	ELEVATION	30/06/2022	ASA Studio
Drawing No. DA12, Issue No. H	ELEVATION	30/06/2022	ASA Studio
Drawing No. DA13, Issue No. H	ELEVATION	30/06/2022	ASA Studio
Drawing No. DA14, Issue No. H	ELEVATION	30/06/2022	ASA Studio
Drawing No. DA15, Issue No. H	ELEVATION	30/06/2022	ASA Studio
Drawing No. DA16, Issue No. H	ELEVATION	30/06/2022	ASA Studio
Drawing No. DA17, Issue No. H	SECTION	30/06/2022	ASA Studio
Drawing No. DA18, Issue No. H	VISUAL PRIVACY CONTROL	30/06/2022	ASA Studio
Drawing No. DA19, Issue No. H	RIVER STREET STREETScape	30/06/2022	ASA Studio

Drawing No. DA20, Issue No. H	PERSPECTIVES	30/06/2022	ASA Studio
Drawing No. DA21, Issue No. H	SCHEDULE OF MATERIAL & FINISHES	30/06/2022	ASA Studio
Drawing No. 211127 C1.00, revision (4)	GENERAL NOTES AND DRAWING SCHEDULE	10/05/2022	FLY ENGINEERING
Drawing No. 211127 C2.00, revision (4)	LEVEL 1 AND 2 STORMWARER DRAINAGE PLAN	10/05/2022	FLY ENGINEERING
Drawing No. 211127 C3.00, revision (4)	ENTRY LEVEL AND ROOF STORMWARER PLAN	10/05/2022	FLY ENGINEERING
A426570_02	BASIX Certificate	02 September 2021	AS ARCHITECTURE PTY LTD

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:	\$5,600.00
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Inspection Fee:	\$350.00
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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 *Former Leichhardt Local Government Area Section 7.12 Development Contributions Plan 2020*.

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*:

\$5106.30

*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. Boundary Alignment Levels

Alignment levels for the site at all pedestrian and vehicular access locations must match the existing back of footpath levels at the boundary.

6. Hazardous Materials Survey

Prior to any demolition or the issue of a Construction Certificate (whichever occurs first), the Certifying Authority must provide a hazardous materials survey to Council. The survey shall be prepared by a suitably qualified Occupational Hygienist and is to incorporate appropriate hazardous material removal and disposal methods in accordance with the requirements of SafeWork NSW.

A copy of any SafeWork NSW approval documents is to be included as part of the documentation.

7. 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.

8. 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.

9. Standard Street Tree Protection

Prior to the commencement of any work, the Certifying Authority must be provided with details of the methods of protection of all street trees adjacent to the site during demolition and construction.

10. Works Outside the Property Boundary

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

11. Tree Protection

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

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

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

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

The trees identified below are to be retained and protected in accordance with the approved Tree Protection Plan throughout the development :

Tree No.	Botanical/Common Name	Location
1	<i>Corymbia citriodora</i> (Lemon-scented Gum)	Rear of the site
2	<i>Corymbia citriodora</i> (Lemon-scented Gum)	Rear of the site

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

- a. Green for trees to be retained;
- b. Red for trees to be removed;
- c. Blue for trees to be pruned; and
- d. Yellow for trees to be transplanted.

NOTE: Reference should be made to the Arboricultural Impact Assessment Report prepared by Alexis Anderson and dated October 2021 for tree numbering and locations

12. Project Arborist

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

PRIOR TO ANY DEMOLITION

13. 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.

14. 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 8 and 12 River 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.

15. 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.

16. 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**17. 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.

18. 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. The Stormwater Drainage Concept plans on Drawing No. 211127 C2.00 and C3.00, revision (4) prepared by FLY ENGINEERING and dated 10/5/2022, must be amended to comply with the following;
- b. 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 Parramatta River in accordance with the RMS requirementd;
- c. 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;
 - d. Pipe and channel drainage systems must be designed to cater for the twenty (20) year Average Recurrence Interval (ARI) storm in the case of low and medium residential developments, the twenty (20) year ARI Storm in the case of high-density residential development and commercial and/or industrial developments and the fifty (50) year ARI Storm in the case of heavy industry. In all cases, the major event surface flow paths must be designed to cater for the one hundred (100) year ARI Storm;
 - e. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage;
 - f. 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;
 - g. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas;
 - h. No nuisance or concentration of flows to other properties;
 - i. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
 - j. 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;
 - k. An inspection opening or stormwater pit must be installed inside the property, adjacent to the rear boundary, for all stormwater outlets;
 - l. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site; and
 - m. No impact to street tree(s).

19. 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.

20. 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

21. Construction Methods to Minimise Impact on Trees

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with details certified by a suitably qualified Arborist demonstrating that the footings of the approved piers utilise tree sensitive construction techniques (such as isolated pier or pier and beam construction) within the specified radius of the trunk/s of the following tree/s:

Tree No.	Botanical/Common Name	Radius in metres
1	<i>Corymbia citriodora</i> (Lemon-scented Gum)	As per the approved Impact Assessment
2	<i>Corymbia citriodora</i> (Lemon-scented Gum)	As per the approved Impact Assessment
3	<i>Corymbia citriodora</i> (Lemon-scented Gum)	As per the approved Impact Assessment

Prior to the issue of a Construction Certificate, the Certifying Authority must verify that no proposed underground services are located beneath the canopy of any prescribed tree/s located on the subject site and adjoining sites (including trees located within the public domain).

22. Paving/Decking Within the Vicinity of Trees

Prior to the issue of the Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating that the pavement works/decking/turfing within the specified radius of the trunk(s) of the following tree/s are constructed/installed in a way so as to ensure that existing moisture infiltration and gaseous exchange are maintained or improved. When preparing an area for paving/turfing with the specified radius, the soil surface must not be skimmed or excavated. The new surface and subgrade must be established at grade.

Tree No.	Botanical/Common Name	Radius in Metres
1	<i>Corymbia citriodora</i> (Lemon-scented Gum)	As per the approved Impact Assessment

2	<i>Corymbia citriodora</i> (Lemon-scented Gum)	As per the approved Impact Assessment
3	<i>Corymbia citriodora</i> (Lemon-scented Gum)	As per the approved Impact Assessment

DURING DEMOLITION AND CONSTRUCTION

23. Aboriginal Heritage – Unexpected Finds

If unexpected archaeological deposits or Aboriginal objects are found during the works covered by this approval, work must cease in the affected area(s) and Heritage NSW must be notified. Additional assessment and approval pursuant to the *National Parks and Wildlife Act 1974* may be required prior to works continuing in the affected area(s) based on the nature of the discovery. Council’s Aboriginal Programs Supervisor is also to be notified.

24. Contamination – New Evidence

Any new information revealed during demolition, remediation or construction works that have the potential to alter previous conclusions about site contamination must be immediately notified to the Council and the Certifying Authority.

25. 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.

26. 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.

27. Inspections by Project Arborist

The trees to be retained must be inspected, monitored and treated by the Project Arborist during and after completion of development works to ensure their long-term survival. Regular inspections and documentation from the Project Arborist to the Certifying Authority are required at the following times or phases of work:

Tree No./ Botanical/ Common Name/ Location	Time of Inspection	Key stage/ Hold point
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<p><i>Corymbia citriodora</i> (Lemon-scented Gum) x3 Note trees one and two are located on the subject site, tree 3 is located at the rear of 8 River Street</p>	<p>In accordance with a Tree Protection Plan and section 4 of AS4970—<i>Protection of trees on development sites</i>.</p>
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Recommendations to ensure the tree/s long term survival must be carried out immediately upon receipt of the report.

28. Limited Root Pruning

No tree roots of 30mm or greater in diameter located within the specified radius of the trunk/s of the following tree/s must be severed or injured in the process of any works during the construction period:

Tree No.	Botanical/Common Name	Radius in metres
1	<i>Corymbia citriodora</i> (Lemon-scented Gum)	As per the approved Impact Assessment
2	<i>Corymbia citriodora</i> (Lemon-scented Gum)	As per the approved Impact Assessment
3	<i>Corymbia citriodora</i> (Lemon-scented Gum)	As per the approved Impact Assessment

All excavation within the specified radius of the trunk(s) of the above tree(s) being hand dug hand tools only to a depth of one (1) metre under direct supervision of the Project Arborist and then by mechanical means as agreed by the Project Arborist. If tree roots less than 30mm diameter are required to be severed for the purposes of constructing the approved works, they must be cut cleanly using a sharp and *fit for purpose tool*. The pruning must be undertaken by a practicing Arborist.

29. Tree Protection Zone

To protect the following tree/s, no work must commence until its/their Protection Zone is fenced off at the specified radius from the trunk/s to prevent any activities, storage or the disposal of materials within the fenced area in accordance with the Tree Protection Plan. The fence/s (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
1	<i>Corymbia citriodora</i> (Lemon-scented Gum)	As per the approved Impact Assessment

2	<i>Corymbia citriodora</i> (Lemon-scented Gum)	As per the approved Impact Assessment
3	<i>Corymbia citriodora</i> (Lemon-scented Gum)	As per the approved Impact Assessment

30. Tree Protection

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

Tree No.	Botanical/Common Name/Location
1	<i>Corymbia citriodora</i> (Lemon-scented Gum) located at the rear of the subject site
2	<i>Corymbia citriodora</i> (Lemon-scented Gum) located at the rear of the subject site
3	<i>Corymbia citriodora</i> (Lemon-scented Gum) located at the rear of 8 River Street

PRIOR TO OCCUPATION CERTIFICATE

31. 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.

32. 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.

33. Contamination – Disposal of Soil

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a validation report confirming that all off site disposal of soil has been classified, removed and disposed of in accordance with the NSW DECC Waste Classification Guidelines, Part 1: Classifying Waste (EPA 2014), Protection of the Environment Operations (Waste) Regulation 2014 and the *Protection of the Environmental Operations Act 1997*.

34. Project Arborist Certification

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

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.

Skeletal Remains

If any Aboriginal objects or bones suspected of being human are found during construction works, work must cease, no further disturbance of the site must occur, the NSW Police and the Heritage NSW Environment Line on 131 555 must be notified as soon as practicable and details of the objects or remains and their location are to be provided. The skeletal remains are to be managed in accordance with the Office of Environment & Heritage Skeletal Remains: Guidelines for Management of Human Skeletal Remains. These guidelines can be ordered by completing the Publications Order Form available at: <https://www.environment.nsw.gov.au/resources/heritagebranch/heritage/publicationsorderform.pdf>

Prescribed Conditions

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

Notification of commencement of works

At least 7 days before any demolition work commences:

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

Storage of Materials on public property

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

Toilet Facilities

The following facilities must be provided on the site:

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

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

Infrastructure

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

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

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

- g. Development Application for subdivision if consent for subdivision is not granted by this consent.

Disability Discrimination Access to Premises Code

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

National Construction Code (Building Code of Australia)

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

Notification of commencement of works

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

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

Dividing Fences Act

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

Permits from Council under Other Acts

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

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

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

Noise

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

Amenity Impacts General

The use of the premises must not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of plant and equipment must not give rise to the transmission of a vibration nuisance or damage other premises.

Construction of Vehicular Crossing

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

Lead-based Paint

Buildings built or painted prior to the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe. Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving the removal of lead based paints. Precautions should therefore be taken if painted surfaces

are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned prior to occupation of the room or building.

Dial before you dig

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

Useful Contacts

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

NSW Office of Environment and Heritage	131 555	www.environment.nsw.gov.au
Sydney Water	13 20 92	www.sydneywater.com.au
Waste Service - Environmental Solutions	SITA 1300 651 116	www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)		www.waterrating.gov.au
WorkCover Authority of NSW	13 10 50	www.workcover.nsw.gov.au

Enquiries relating to work safety and asbestos removal and disposal.

Street Numbering

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

Attachment B – Plans of proposed development

LEICHHARDT COUNCIL LEP & DCP 2013 - COMPLIANCE TABLE

DCP PART C - SECTION 1 & 3
 SUMMARY OF KEY CONTROLS
 SITE AREA: 115.1m² SITE FRONTAGE: 4.62m

DETAILS	CONTROL	PROPOSED	COMPLIANCE
SECTION C1.3	Single storey scale to the street; a) maintain the relative importance, in scale and detailing of the main (front) part of the building; b) protect streetscape character; c) retain the architectural character and detailing of corner terraces; d) retain the rhythm of roofs and chimneys on the skyline; and e) maintain the integrity of common roof ridgelines and parapet lines when viewed from the street.	Keep existing	Yes
LEP	Max. Floor Space Ratio: 1.0:1	1.0:1	Yes

ASA STUDIO

AS21004

(02) 8855 9438
 LEVEL 5, 7 EDEN PARK DRIVE, MACQUARIE PARK (NSW 2113)

DEVELOPMENT APPLICATION
10 RIVER STREET, BIRCHGROVE

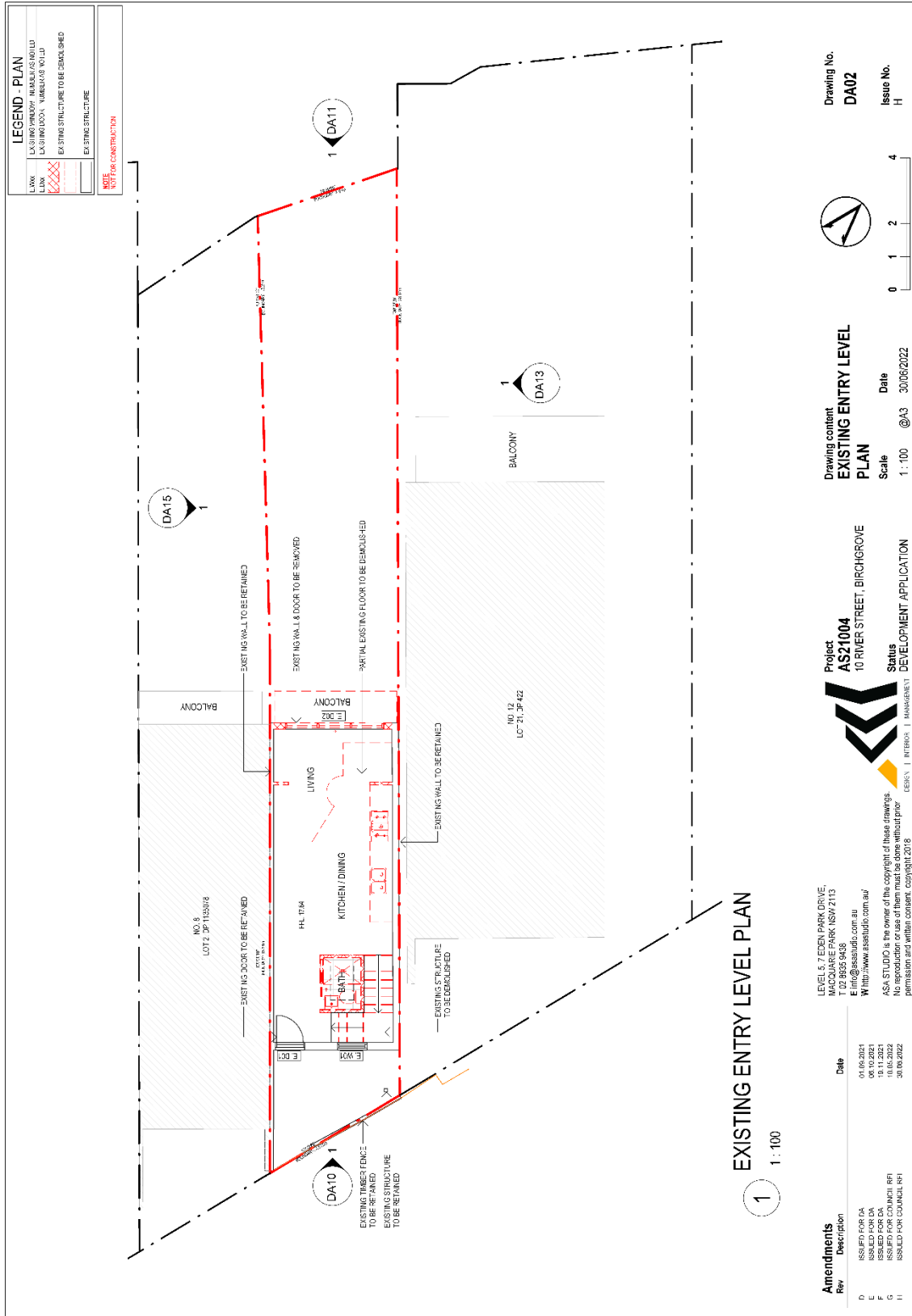
DRAWING SCHEDULE	
DA00	COVER PAGE
DA01	SITE PLAN / SITE ANALYSIS PLAN
DA02	EXISTING ENTRY LEVEL PLAN
DA03	EXISTING LEVEL 2 PLAN
DA04	EXISTING LEVEL 1 PLAN
DA05	EXISTING ROOF PLAN
DA06	PROPOSED ENTRY LEVEL PLAN
DA07	PROPOSED LEVEL 2 PLAN
DA08	PROPOSED LEVEL 1 PLAN
DA09	PROPOSED ROOF PLAN
DA10	ELEVATIONS
DA11	ELEVATION
DA12	ELEVATION

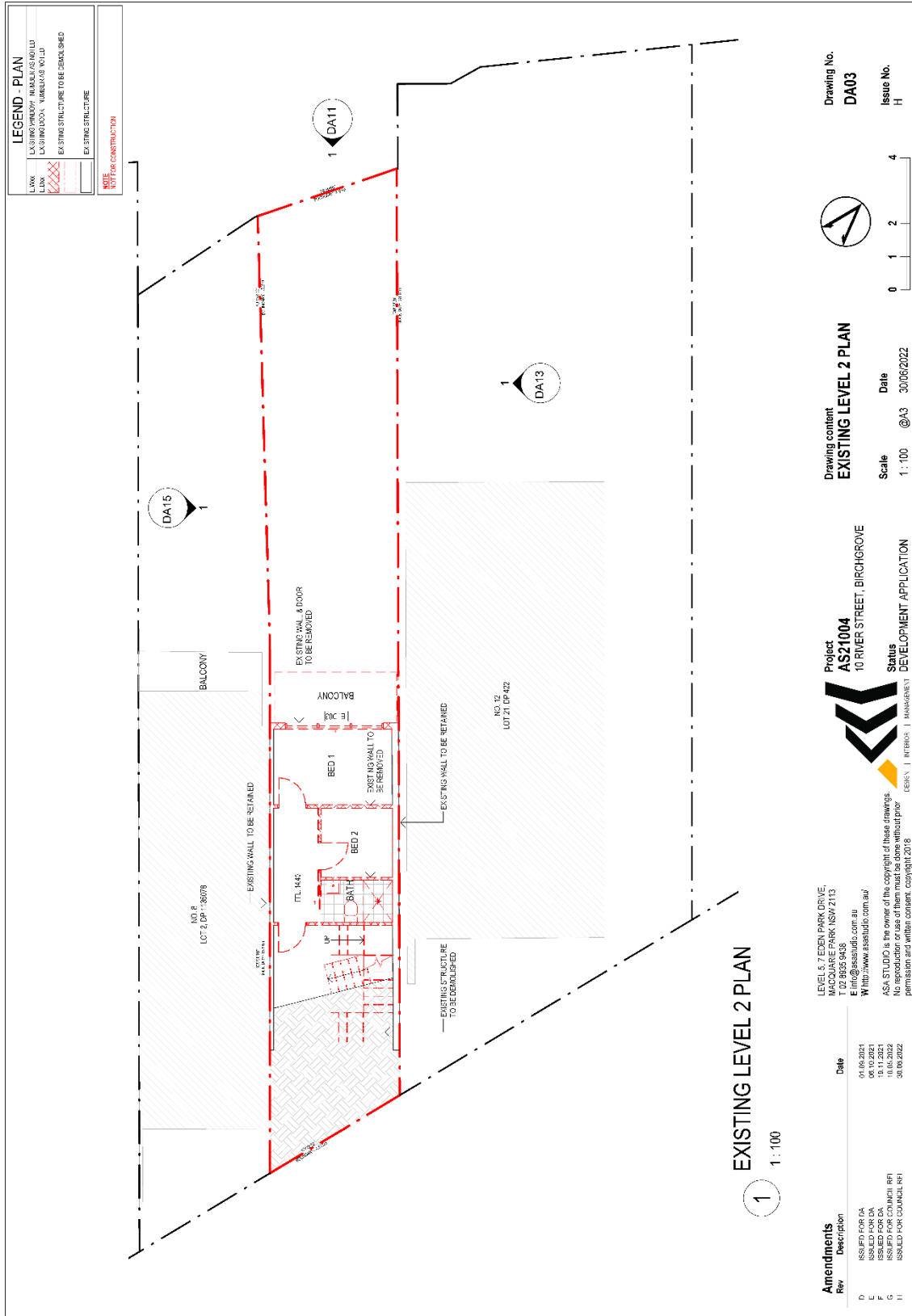
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DA15	ELEVATION
DA16	ELEVATION
DA17	SECTION
DA18	VISUAL PRIVACY CONTROL
DA19	RIVER STREET STREETScape
DA20	PERSPECTIVES
DA21	SCHEDULE OF MATERIAL & FINISHES
DA22	GFA CALCULATION
DA23	LANDSCAPE & SITE COVERAGE CALCULATION
DA24	NOTIFICATION PLAN
DA25	CONSTRUCTION MANAGEMENT PLAN



LOCATION PLAN

NTS





Drawing No. **DA03**
Issue No. **H**

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Date **30/06/2022**

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10 RIVER STREET, BIRCHGROVE
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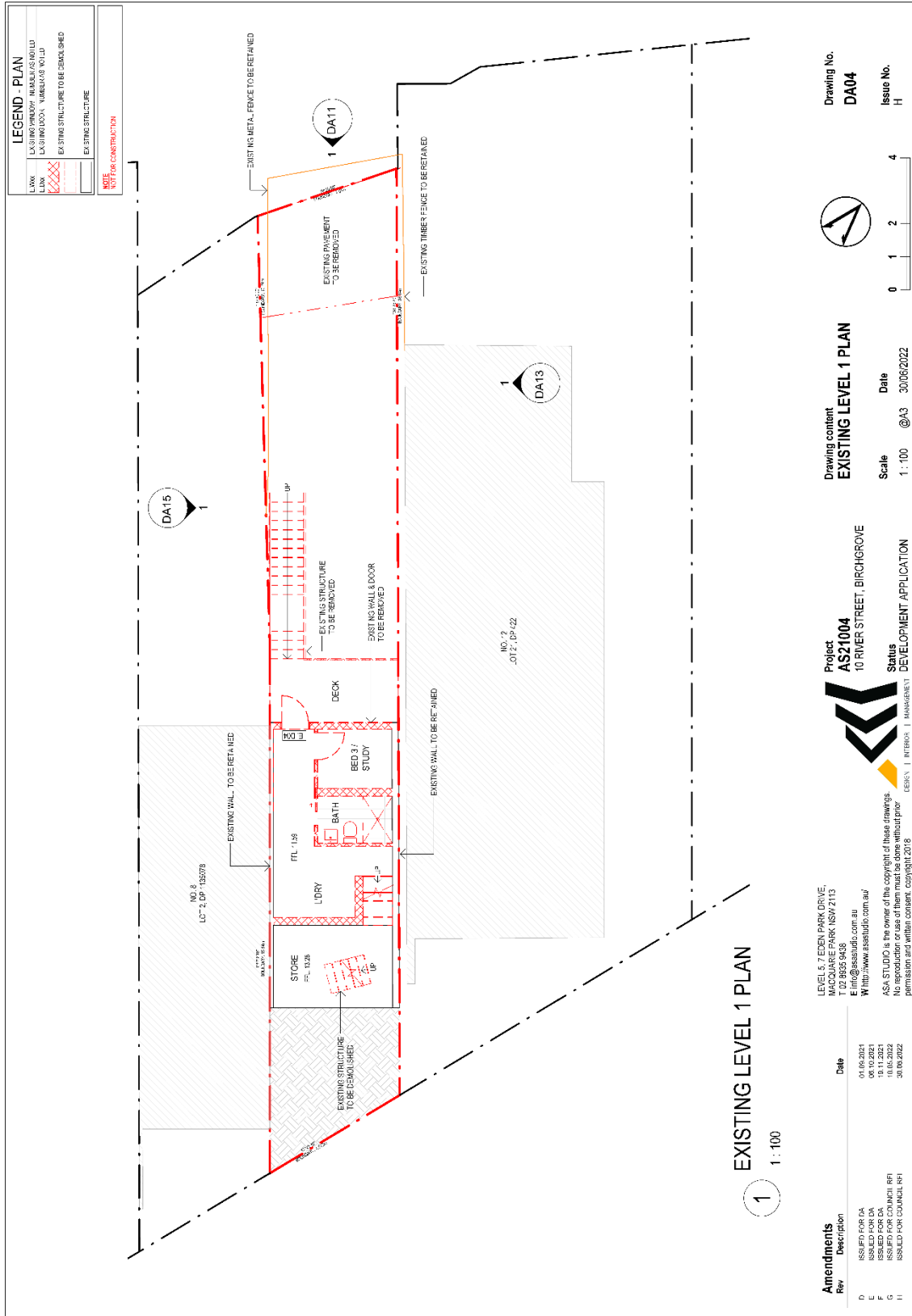
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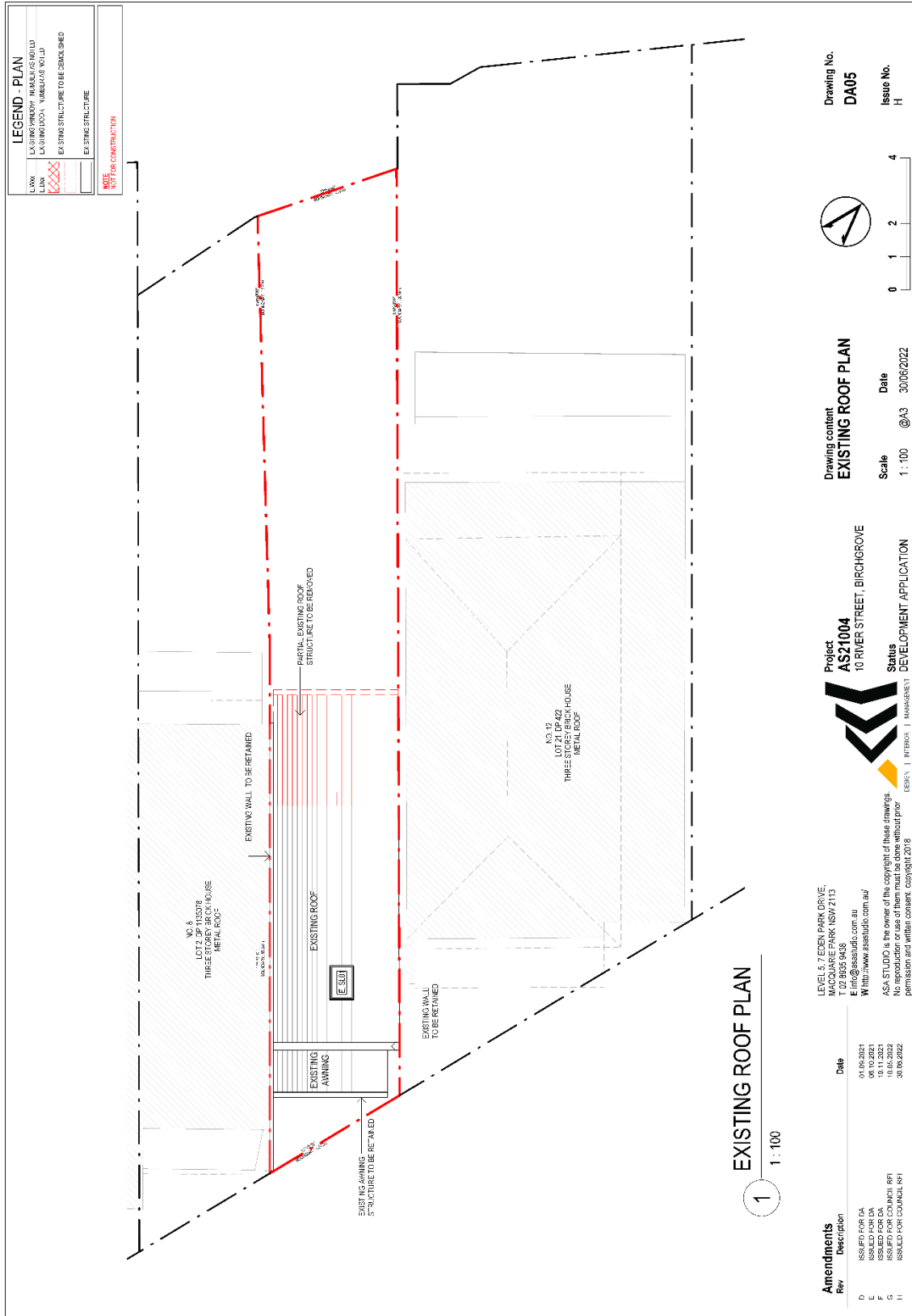
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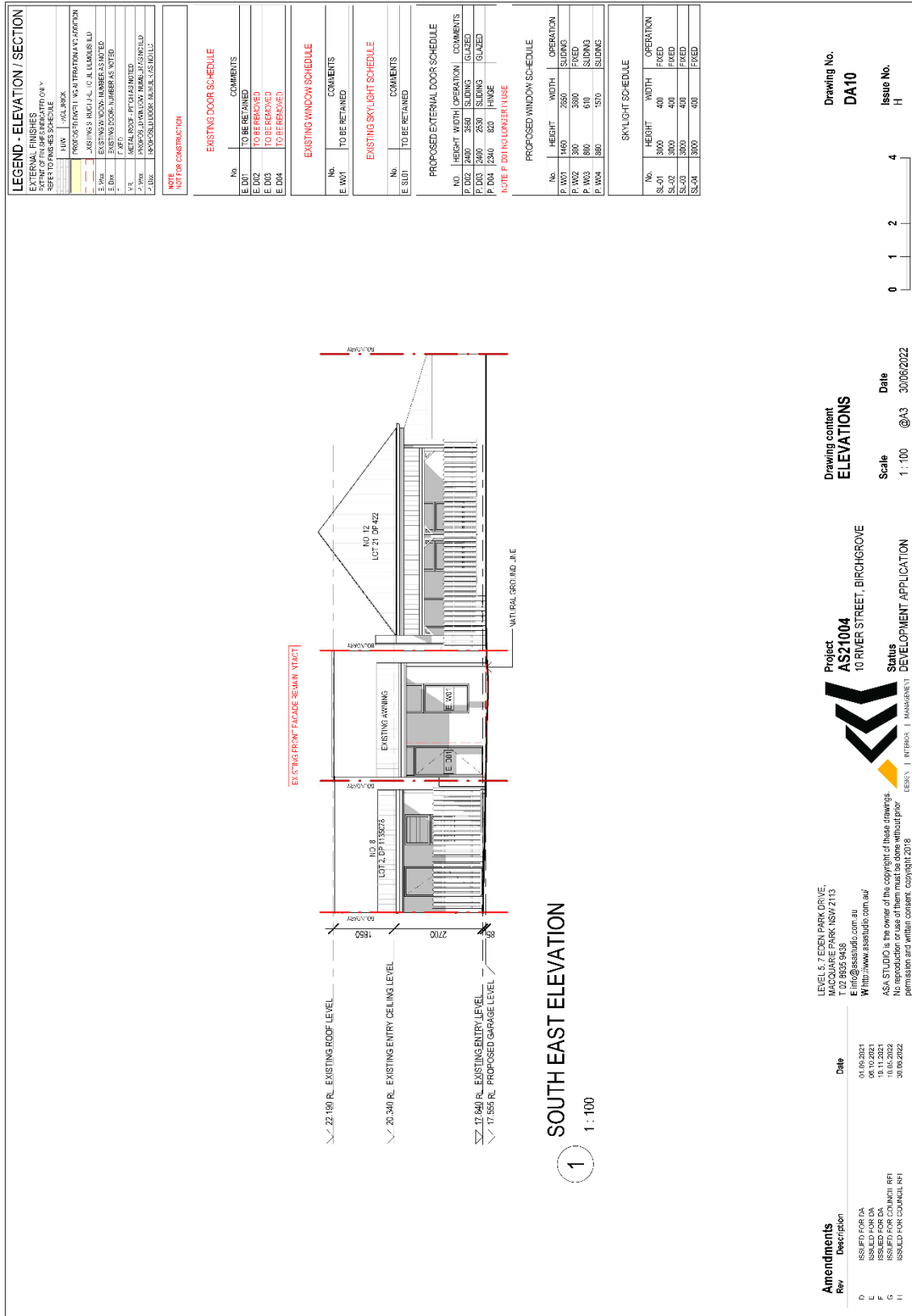
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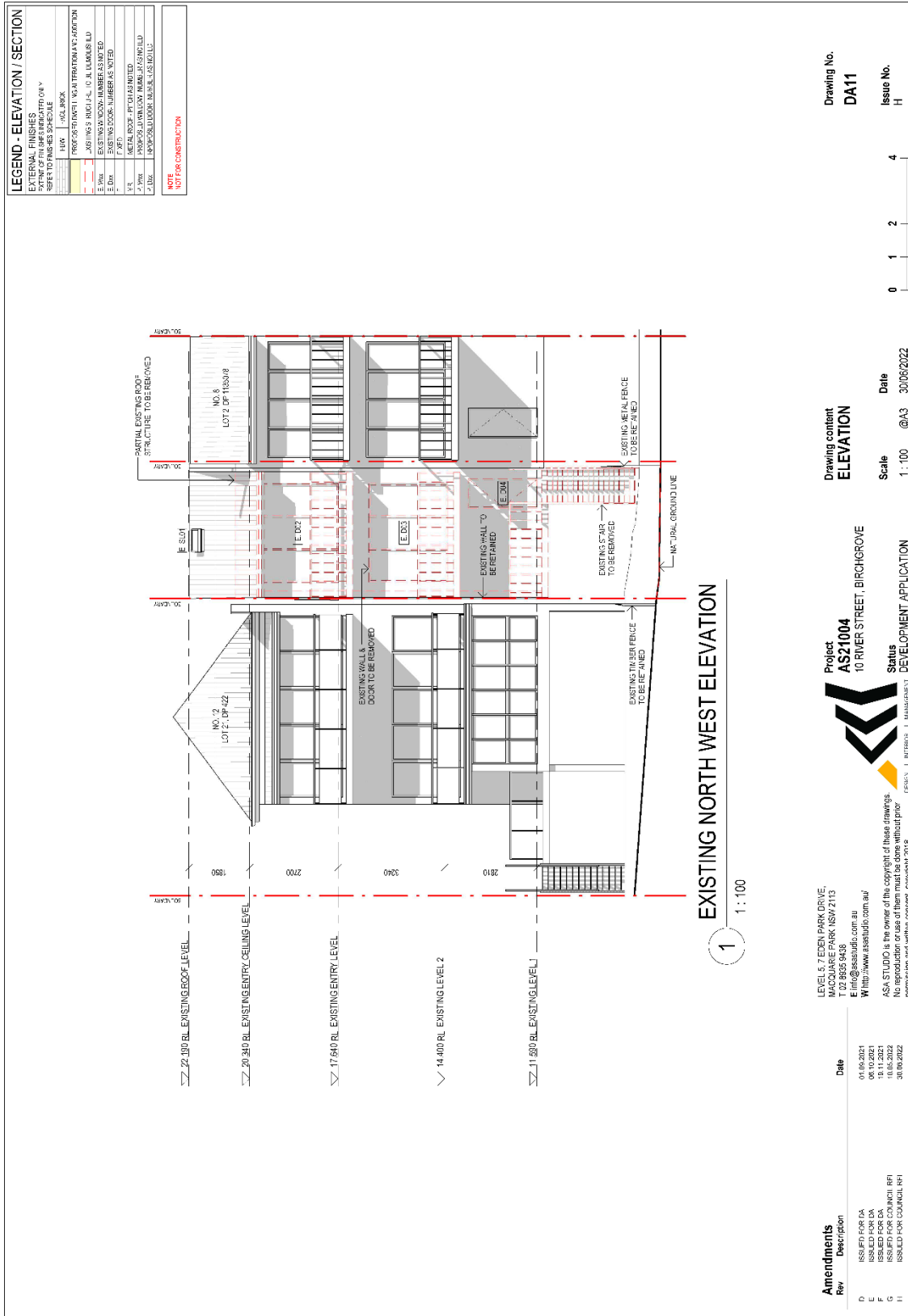
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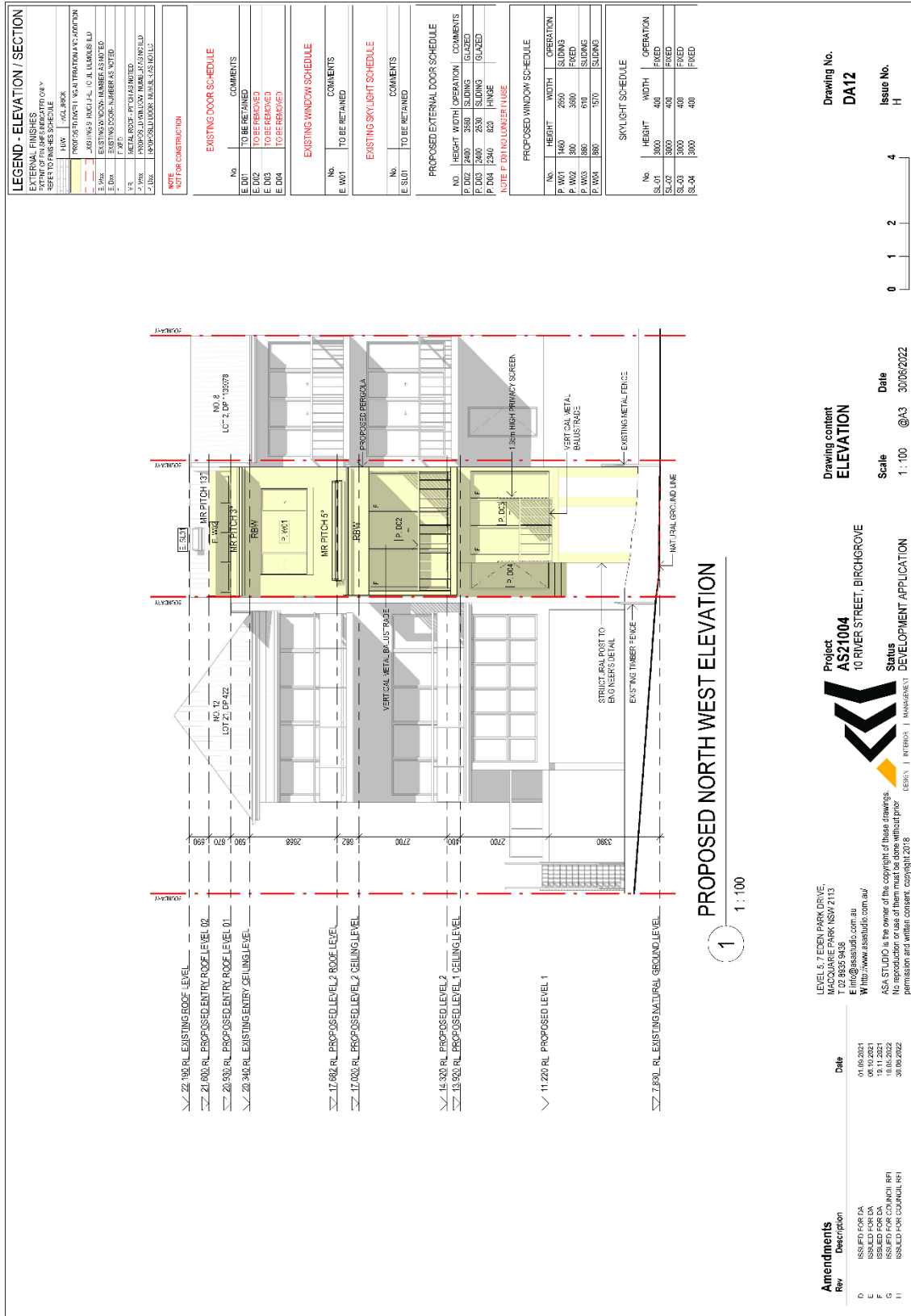
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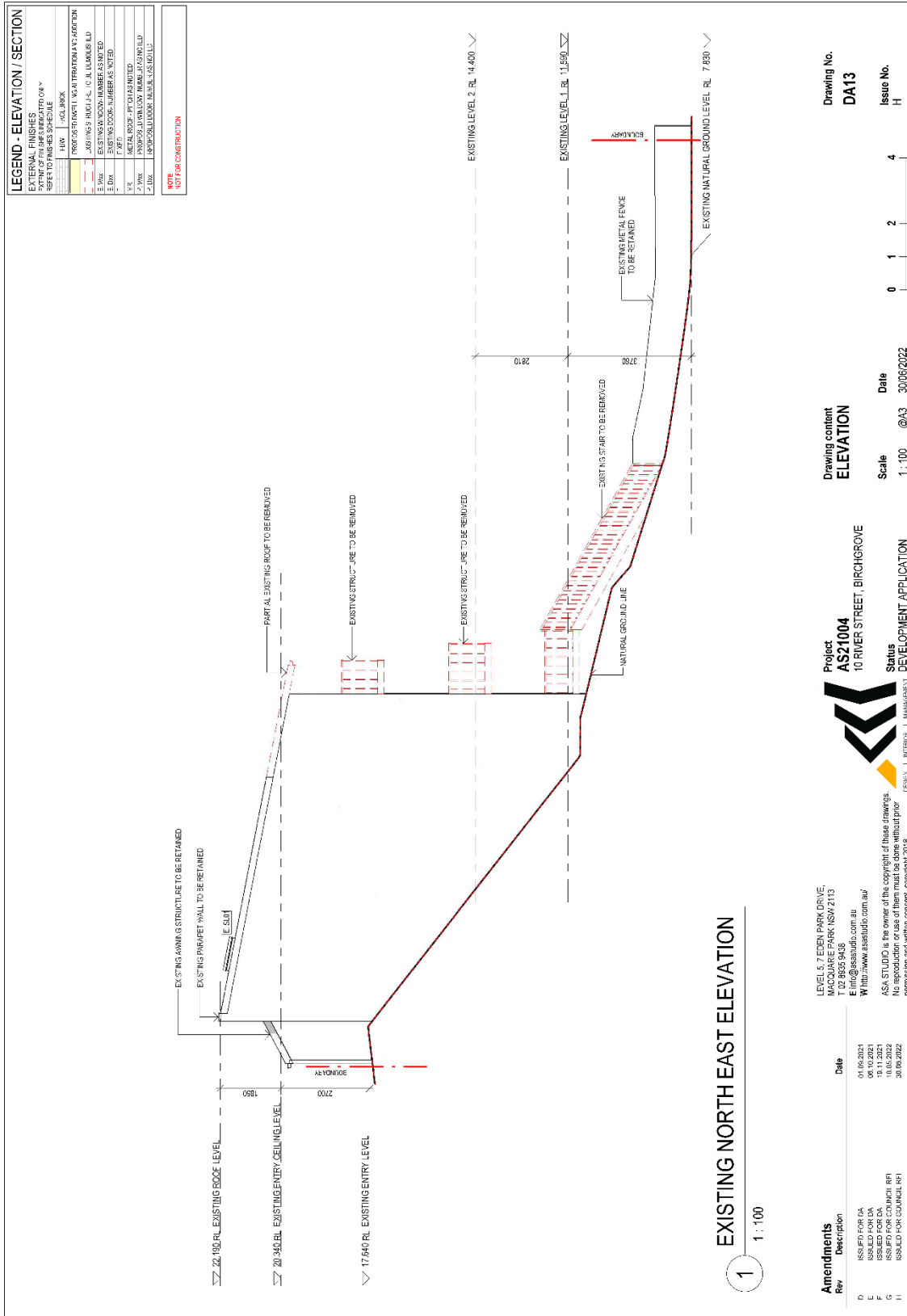


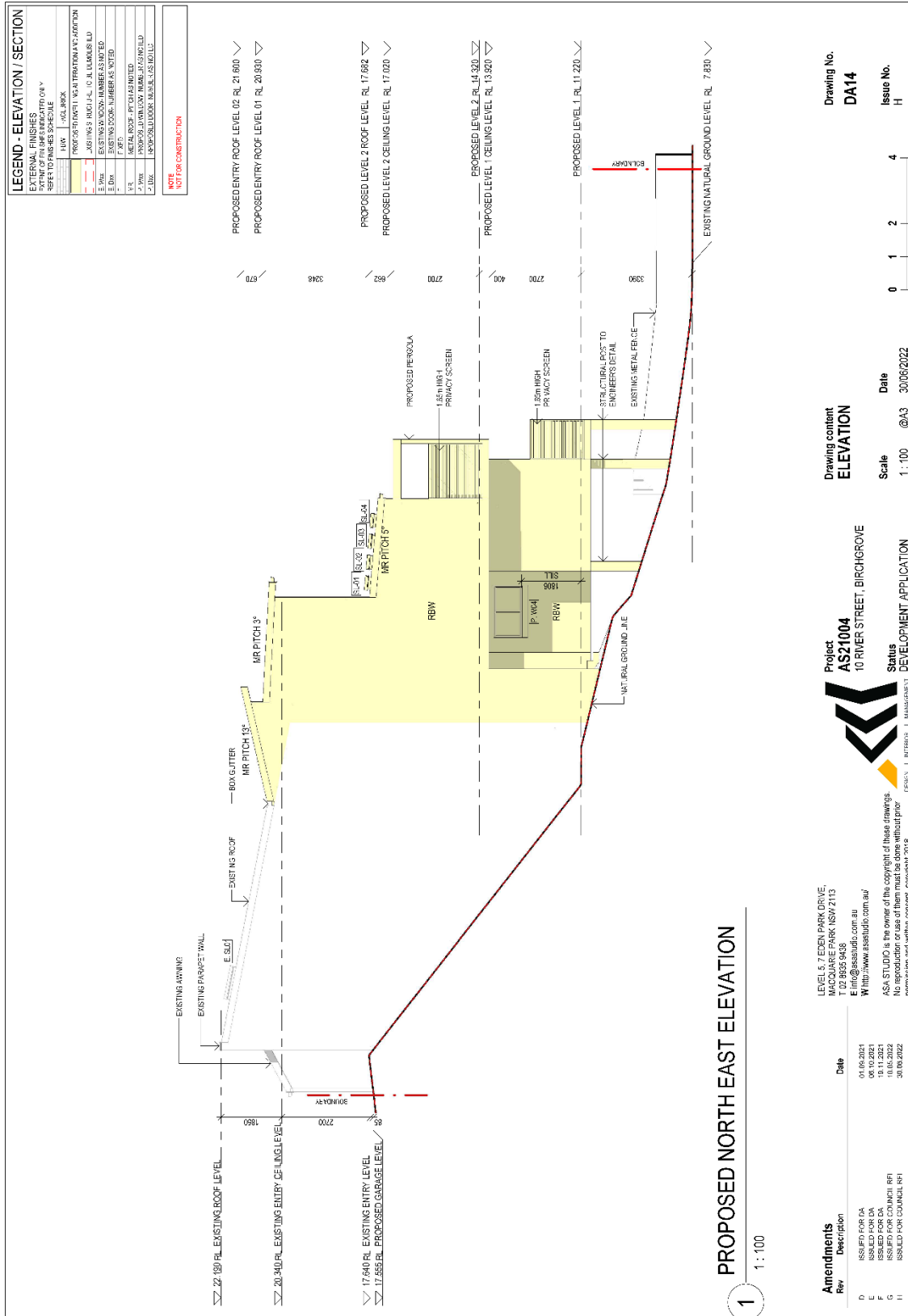












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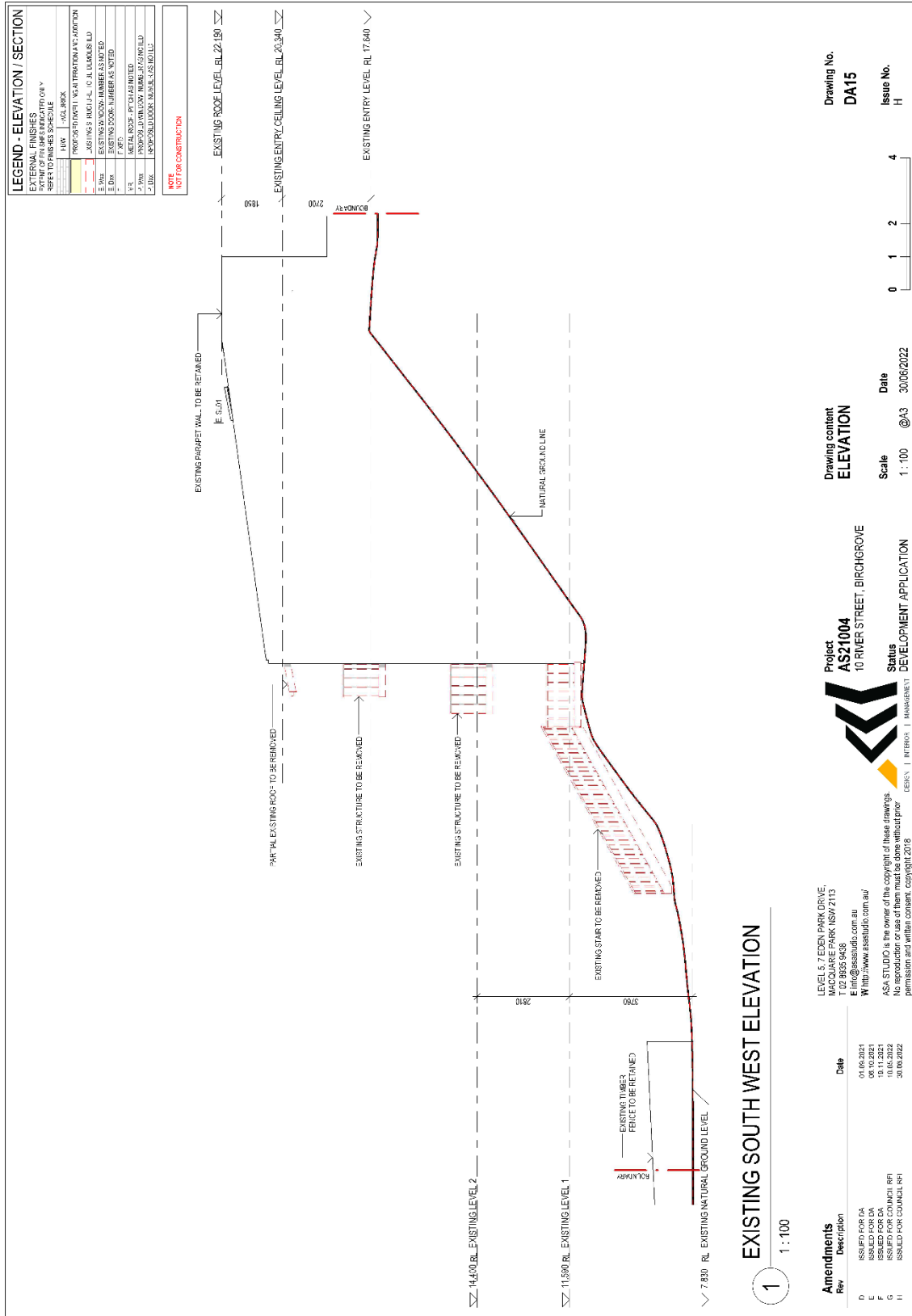
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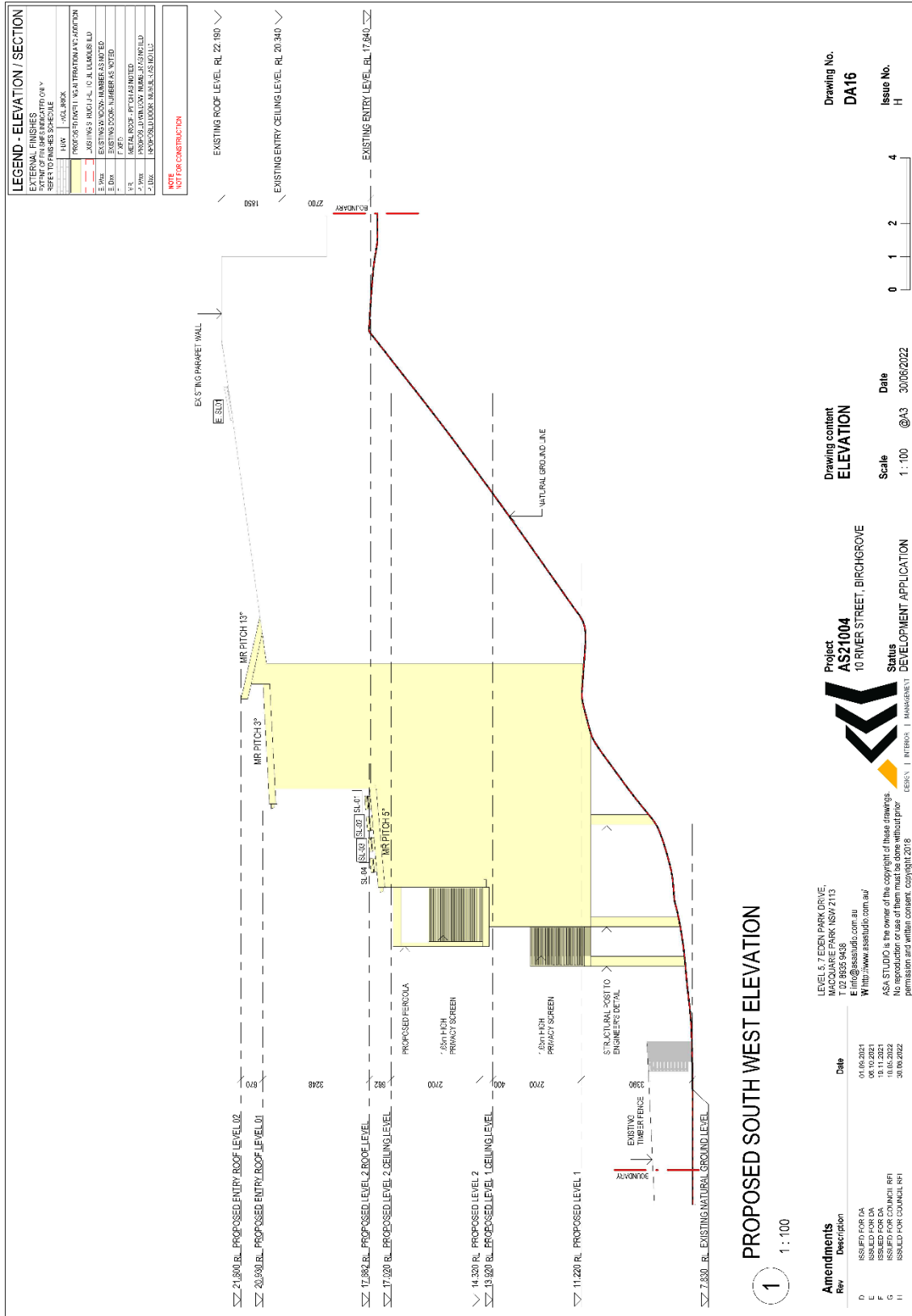
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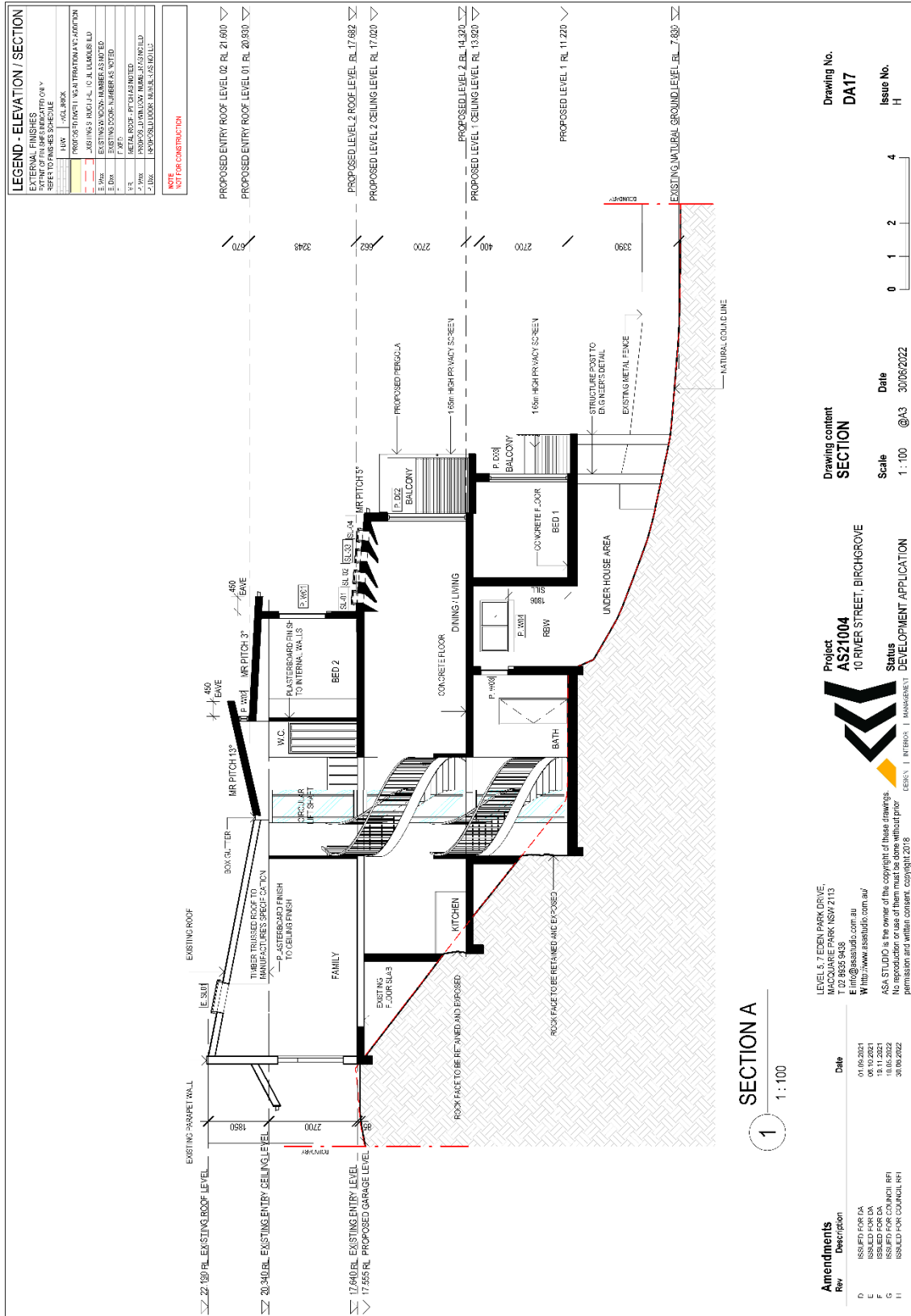
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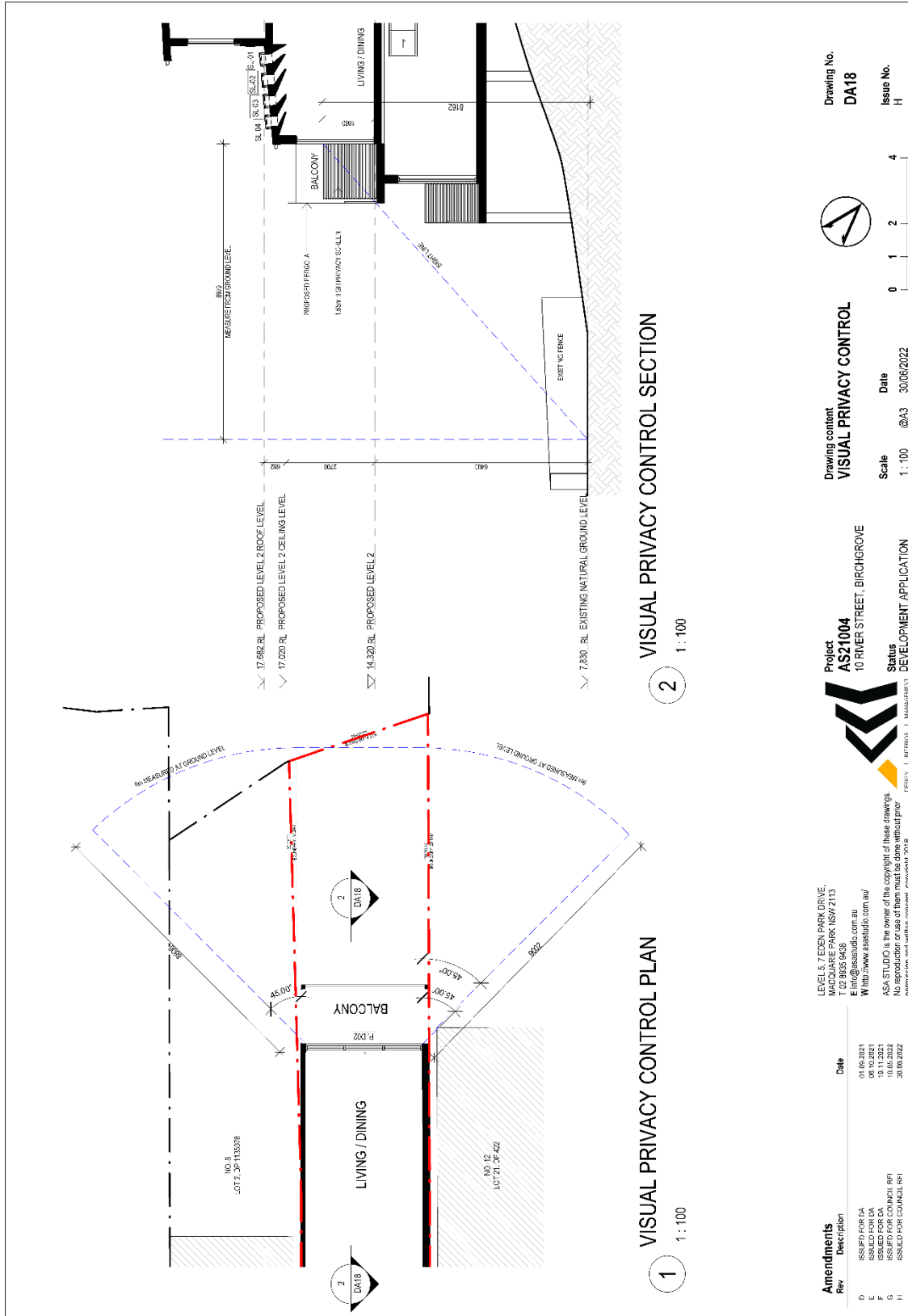
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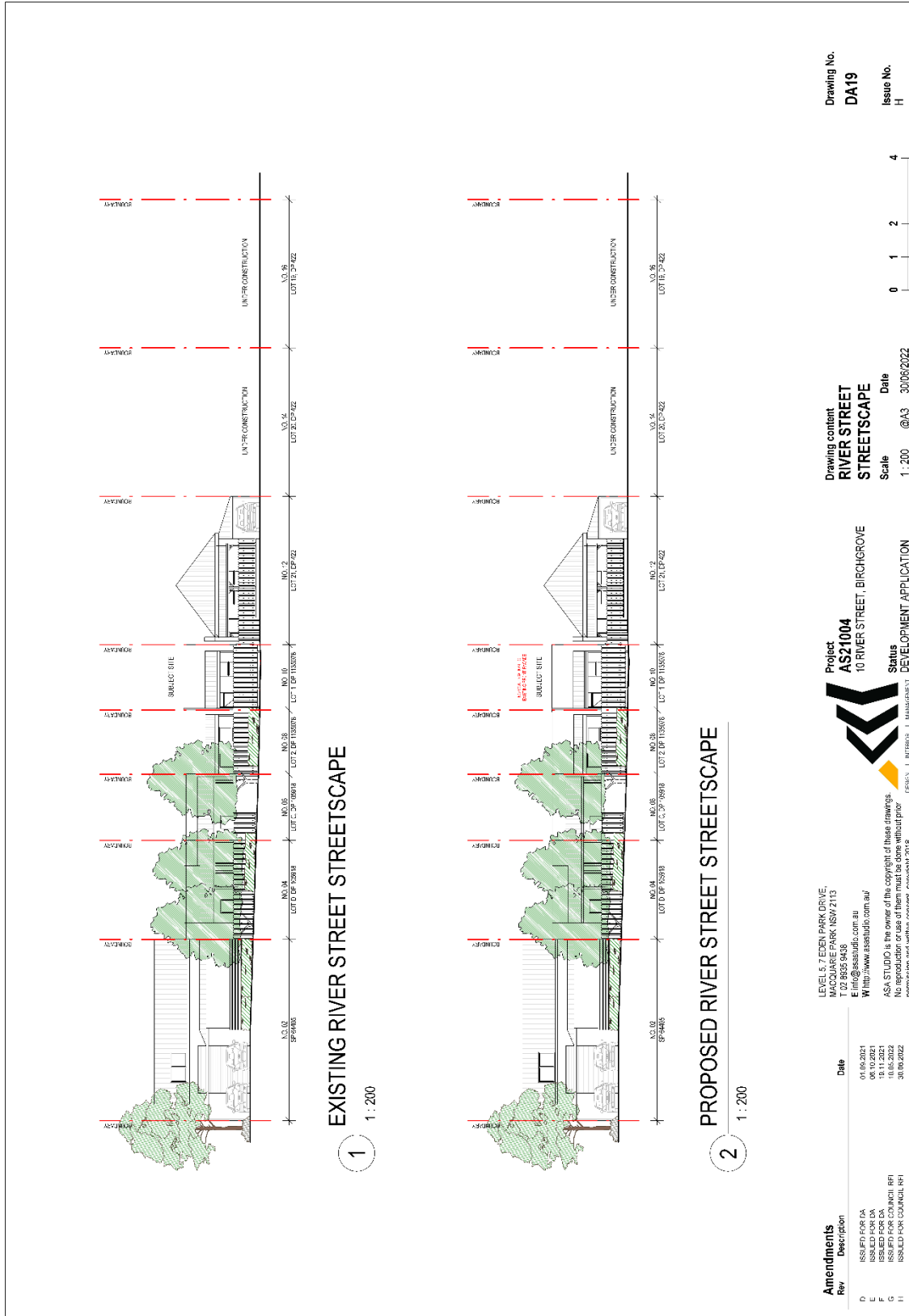
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 Issue No. **H**

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 Date: 30/06/2022

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 1 : 100

2
 VISUAL PRIVACY CONTROL SECTION
 1 : 100

3
 VISUAL PRIVACY CONTROL SECTION
 1 : 100



Amendments	Date
Rev Description	
D ISSUED FOR PA	01/06/2021
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Drawing content
 RIVER STREET
 STREETScape

Scale 1:200 **Date** 30/06/2022

Drawing No. DA19 **Issue No.** H

INCORPORATION TO EXISTING FRONT FACADE

FRONT PERSPECTIVE VIEW

1

Constitution

Resolution requirements

Any additional requirements for terms of approval (conditions, placards, walls, and landscaping) associated with this application must be included in the application. The applicant must provide a copy of the resolution to the Council for its consideration. The applicant must provide a copy of the resolution to the Council for its consideration. The applicant must provide a copy of the resolution to the Council for its consideration.

Construction

Construction must be in accordance with the relevant standards and specifications. The applicant must provide a copy of the construction requirements to the Council for its consideration. The applicant must provide a copy of the construction requirements to the Council for its consideration. The applicant must provide a copy of the construction requirements to the Council for its consideration.

Quality requirements

The applicant must provide a copy of the quality requirements to the Council for its consideration. The applicant must provide a copy of the quality requirements to the Council for its consideration. The applicant must provide a copy of the quality requirements to the Council for its consideration.

Windows and glazed doors

The applicant must provide a copy of the window and glazed door requirements to the Council for its consideration. The applicant must provide a copy of the window and glazed door requirements to the Council for its consideration. The applicant must provide a copy of the window and glazed door requirements to the Council for its consideration.

Windows and glazed doors glazing requirements

Window type	Glazing type	Minimum glazing area (%)	Maximum glazing area (%)
Fixed	Low-E double glazing	50	100
Fixed	Low-E triple glazing	50	100
Fixed	Low-E double glazing with external shading device	50	100
Fixed	Low-E triple glazing with external shading device	50	100
Fixed	Low-E double glazing with external shading device and solar control film	50	100
Fixed	Low-E triple glazing with external shading device and solar control film	50	100
Fixed	Low-E double glazing with external shading device and solar control film and external shading device	50	100
Fixed	Low-E triple glazing with external shading device and solar control film and external shading device	50	100
Fixed	Low-E double glazing with external shading device and solar control film and external shading device and external shading device	50	100
Fixed	Low-E triple glazing with external shading device and solar control film and external shading device and external shading device	50	100

Quality requirements

The applicant must provide a copy of the quality requirements to the Council for its consideration. The applicant must provide a copy of the quality requirements to the Council for its consideration. The applicant must provide a copy of the quality requirements to the Council for its consideration.

Amendments

Rev	Description	Date
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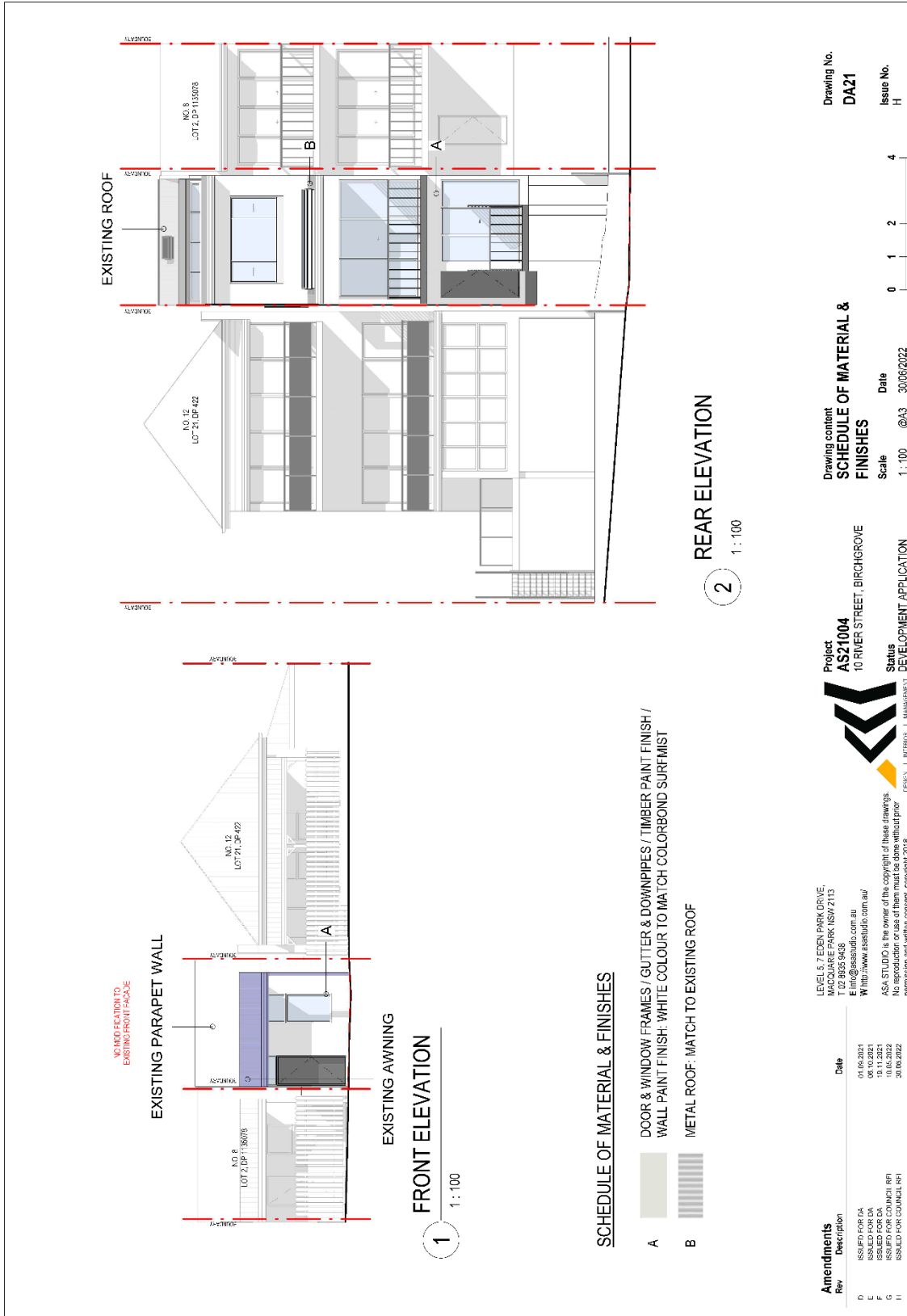
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Drawing No.
DA20



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E ISSUED FOR PA	16/05/2022	
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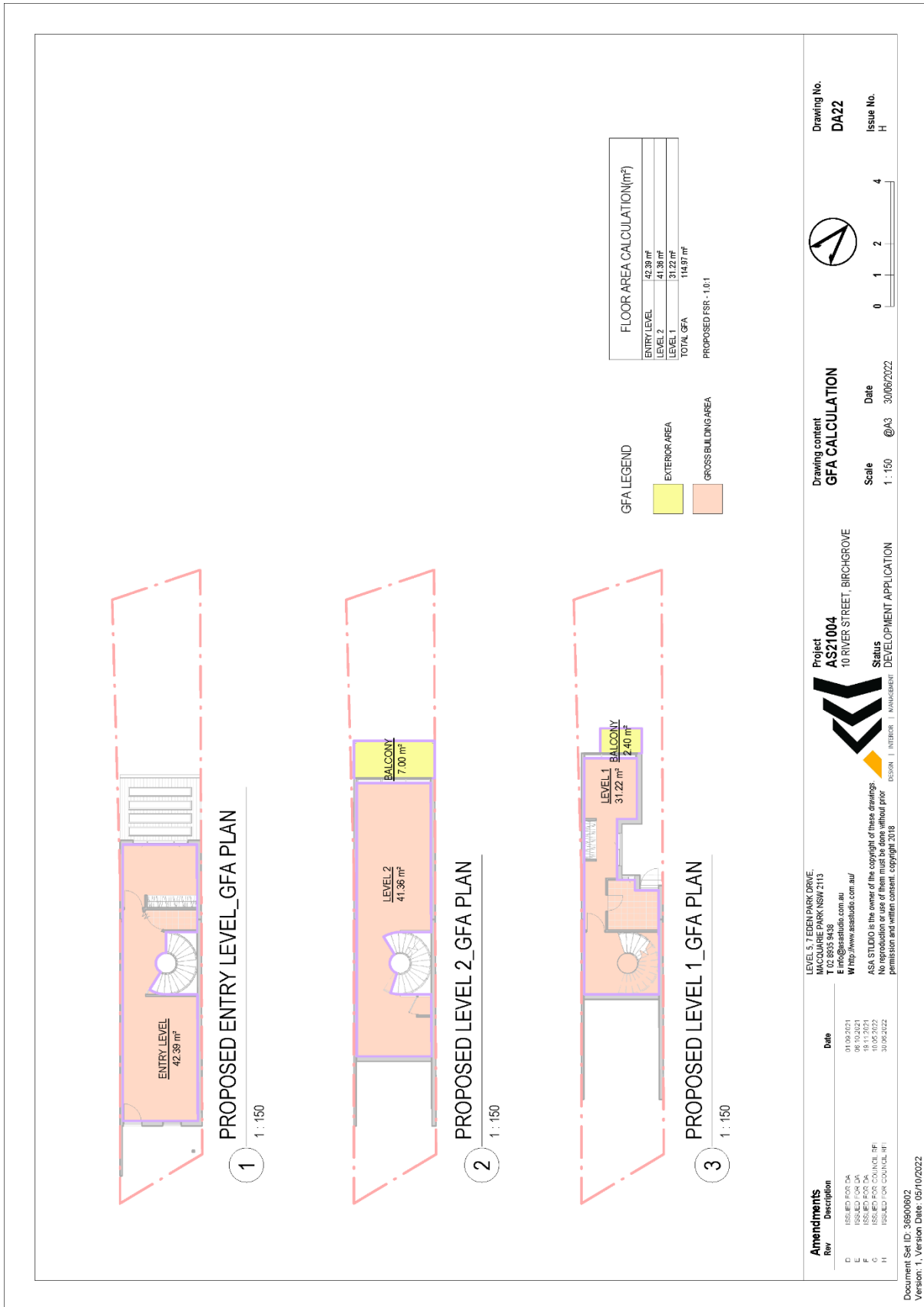
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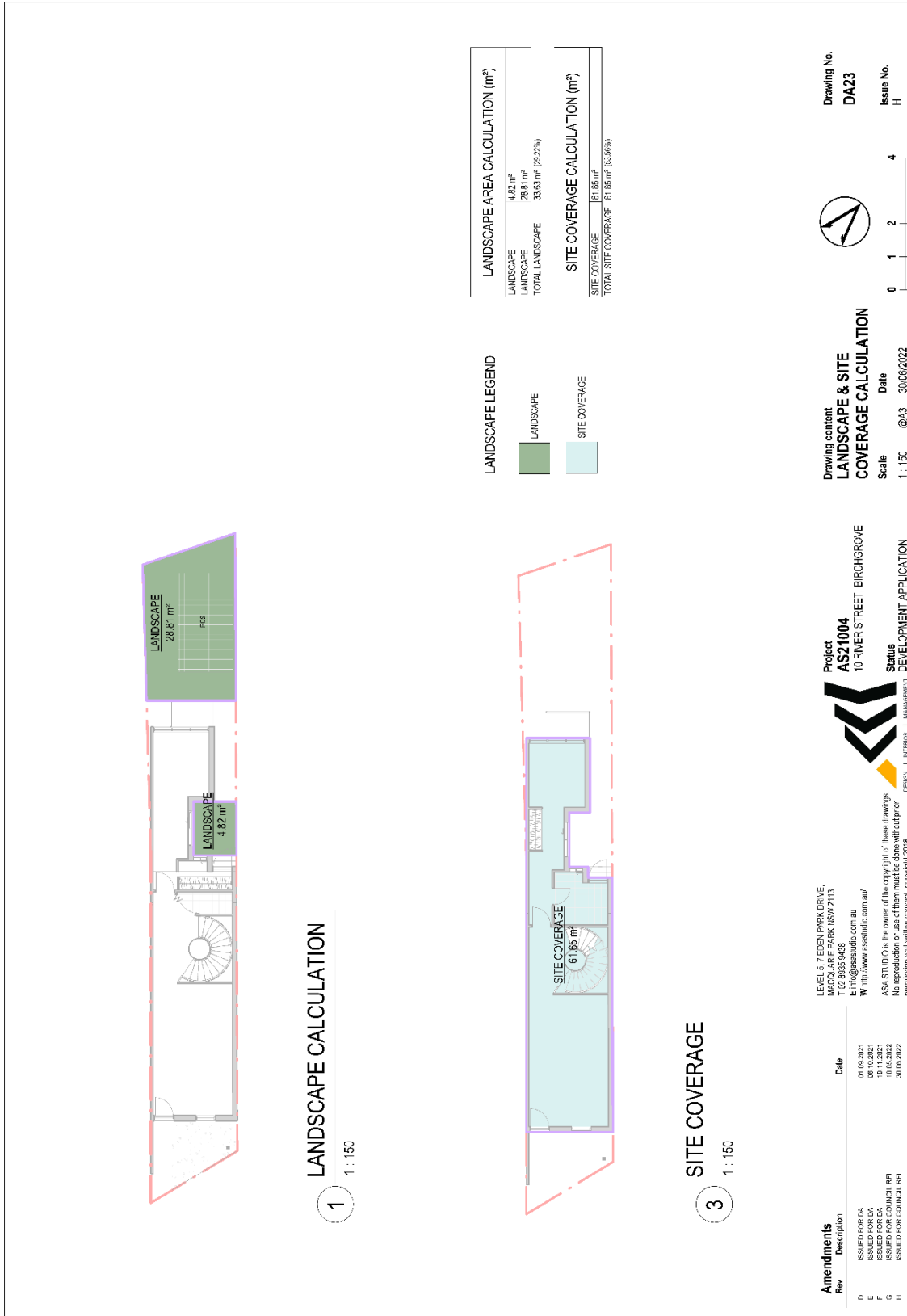
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Rev Description Date

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Drawing content
LANDSCAPE & SITE
COVERAGE CALCULATION

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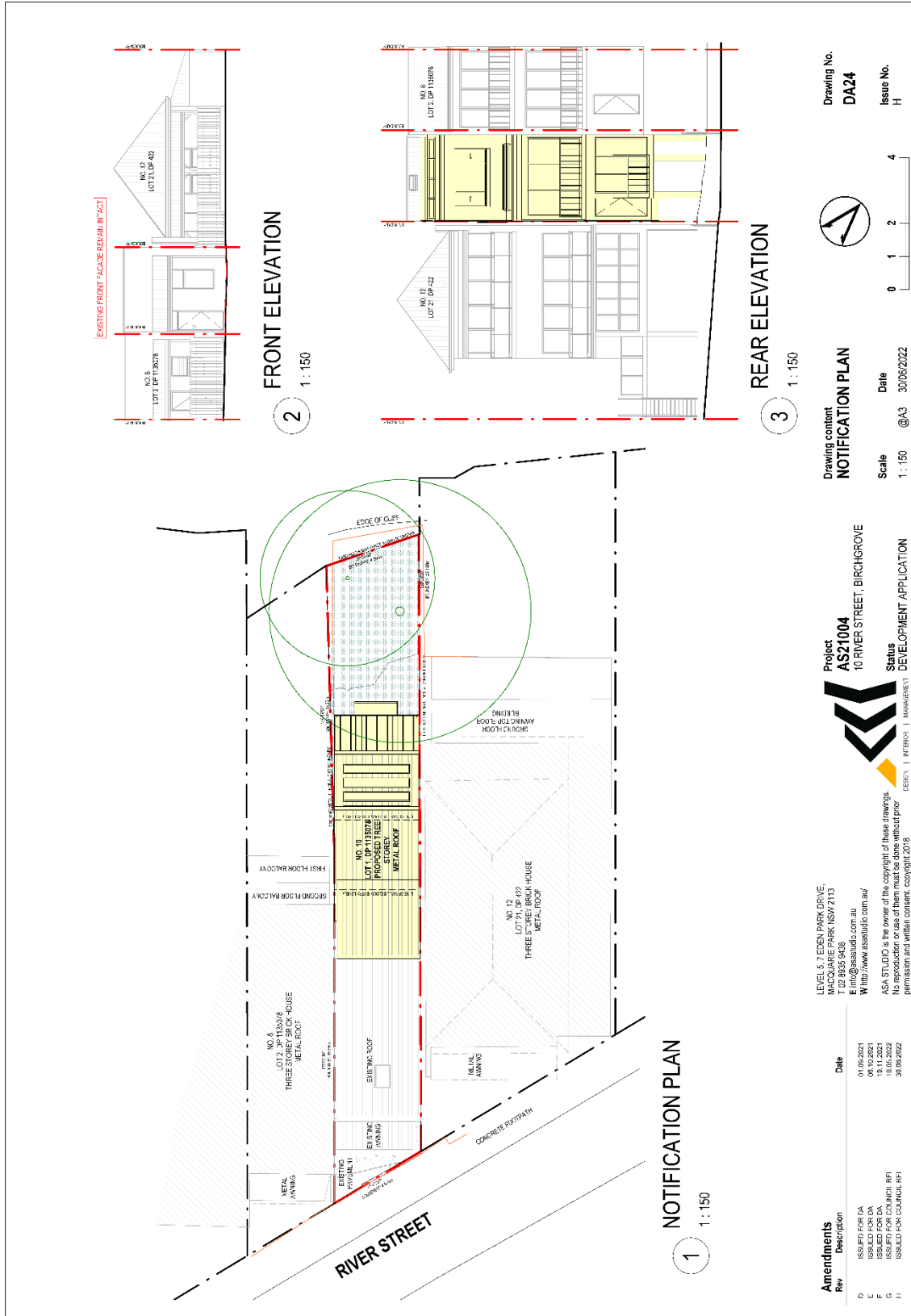
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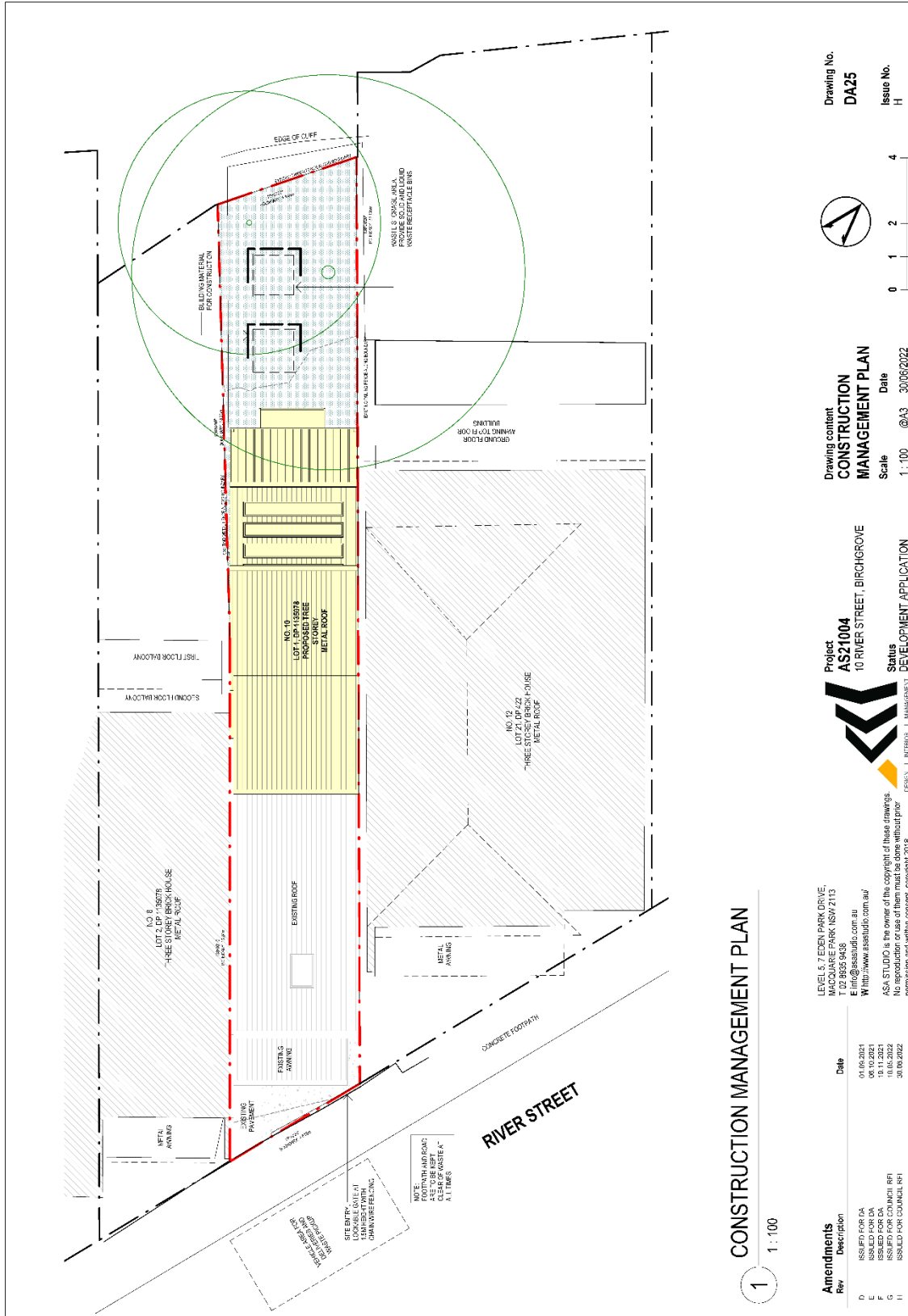
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DA23

Issue No.
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CELESA | INTERIOR | MARKETING

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Version: 1, Version Date: 05/10/2022





Attachment C – Statement of Heritage Significance of Heritage Conservation Area

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Area 13 Iron Cove Conservation Area

Landform

A northwest facing shoreline area, running from Victoria Road along the back of the Darling Street commercial zone and the Darling Street ridge to Rowntree Street and Cove Street. There are some relatively steep shoreline areas providing views to the Parramatta River, and a central flat plateau area around Turner Street.

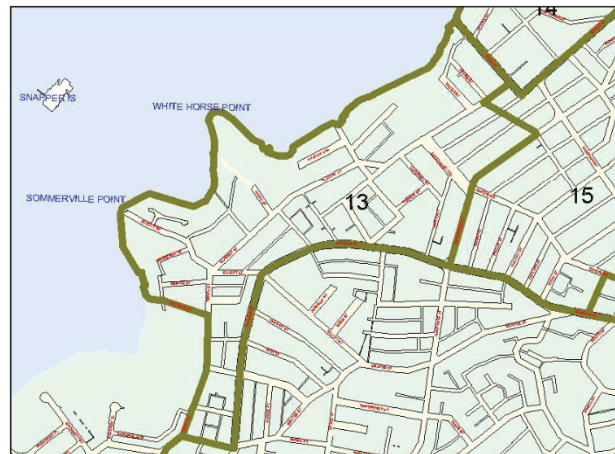


Figure 13.1 Iron Cove Conservation Area Map.

History

When sales of John Gilchrist's Balmain grant of 550 acres were resumed in 1852, Surveyor Charles Langley subdivided the remaining acres into 46 (later 47) sections. He used existing routes such as Darling Street and Birchgrove Road, and other contour-hugging tracks, such as Terry Street/Glassop Street to delineate the parcels. The sections were purchased over the next thirty years by wealthy investors, local speculators and builders.

A group of busy speculators, William Paling, FH Reuss, Alfred Hancock, John Booth, George Weston, Owen Evans and others bought up the tract of land that stretched along the waterfront from Cove Street to just beyond Bayville Street, and broadly bounded by Birchgrove Road and Glassop Street. These same speculators were also involved in land from Darling Street down to Rozelle Bay, including much of the very densely developed area now known as The Valley. The remainder of the area was bought up in a similar fashion and subdivision of the Iron Cove area stretched over twenty-four years from 1853 to 1877. By 1891 the streets that laced this precinct were largely built up. Some steep parcels of land, because of their deep water frontages, were taken up initially for small water-based industries, which expanded over the twentieth century.

A large area of Housing Commission flats was constructed near the waterfront in the early postwar years.

Godden Mackay Logan

Sources

Information provided by Max Solling.

Significant Characteristics

- Contour hugging main access roads.
- Many irregular, narrow and wide minor roads.
- Stone steps providing public pedestrian access.
- Trees and street tree planting particularly noticeable along Glassop and Cove Streets and Macquarie Terrace.
- Elkington Park – mature trees, palm trees and Edwardian plantings.
- Irregular-shaped sections of subdivisions.
- Narrow allotments, with groups of allotments of uniform width.
- Buildings set back from the street alignment.
- Groups of shops along Darling Street with parapets and awnings.
- Corner shop buildings and other former commercial buildings.
- Garden space small, but a noticeable characteristic.
- Variety of housing:
 - terrace and semi-detached housing with groups of uniform development; and
 - some free-standing housing and Victorian villas.
- Landmarks: the Birchgrove Public School and the Elkington Park (with the Dawn Fraser Swimming Pool) are noticeable places within the area and visible from the harbour.
- Building materials vary:
 - plastered brick (generally pre-1890) and pockets of face brick (generally post-1890);
 - some timber cottages; and
 - occasional stone cottage or villa.
- Roofs of terracotta tiles, slate and iron.
- Fences – low or transparent fences: some iron palisade fences remain; early twentieth-century low brick fences contemporary with house.
- Sandstone kerbs and gutters, mostly uninterrupted by vehicular access.

Statement of Significance or Why the Area is Important

- One of a number of conservation areas that collectively illustrate the nature of Sydney's early suburbs and Leichhardt's suburban growth particularly between 1871 and 1891, with pockets of infill up to the end of the 1930s (ie prior to World War II). This area is important for

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illustrating development particularly from 1870s-1910s, and this forms the major element of its identity, with later pockets of infill prior to World War II (ie pre-1939).

- Through the route of its main access roads, demonstrates the subdivision sections, closely related to the landform, drawn up by Surveyor Langley for the sale of Gilchrist's Balmain grant after 1852.
- Illustrates through its irregular small street layout, and varied allotment width and length (within a limited range), the many different groups of speculators and subdividers involved in the development of the area.
- Through the materials of its outer masonry walls, demonstrates the rapid advances in brick making in the Sydney area over the period 1870s-1910s.
- Through its now rare weatherboard buildings it continues to demonstrate the nature of that major construction material in the fabric of early Sydney suburbs.

Management of Heritage Values

Generally

This is a conservation area. Little change can be expected other than modest additions and discrete alterations. Buildings which do not contribute to the heritage significance of the area may be replaced with sympathetically designed infill.

Retain

- existing width and alignment of the streets: avoid chicanes which cut diagonally across the carriageways.
- All remaining sandstone kerbs and gutters, uninterrupted by access driveways.
- All pre-1939 buildings and structures, especially weatherboard buildings.
- All original plaster finishes to external walls (as a rough rule of thumb this will mostly apply to pre-1890s buildings). Reconstruct where necessary.
- All original unplastered face brick external walls (usually applies to post-1890s buildings).
- All original external architectural detail, and encourage replacement of lost elements, but only where evidence is available.
- Any remaining original iron palisade or low brick fences.
- All street planting schemes and park planting; reinstate individual trees where they have been lost.
- Green front garden space.

Avoid

- Demolition of any pre-1939 building, especially timber buildings.

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- Removal of any plaster or decorative plaster to external walls, except where it is to remove more recent plaster/paint on face brick walls.
- Plastering and/or painting of original face brick walls.
- Removal of original architectural details.
- Second-storey additions to an original single-storey building, other than in a separated pavilion form.
- Alteration to the original roof form over the main part of any building.
- Additional architectural detail for which there is no evidence in the photographic record or on the building itself.
- Inappropriate fences such as high brick fences/walls, new iron palisades on high brick bases.
- Interruption of the kerb and gutter line for vehicular access.
- Development that encroaches upon the setting of important buildings/parks.