




 DEVELOPMENT ASSESSMENT REPORT	
<b>Application No.</b>	DA/2022/0192
<b>Address</b>	14C Jane Street BALMAIN NSW 2041
<b>Proposal</b>	Alterations and additions to convert existing building into dual occupancy, new swimming pool, external works, new garage off Fawcett Street.
<b>Date of Lodgement</b>	24 March 2022
<b>Applicant</b>	Mr Stephen J James
<b>Owner</b>	Mrs Penelope H James; Mr Stephen J James
<b>Number of Submissions</b>	Initial: 23
<b>Value of works</b>	\$1,905,000.00
<b>Reason for determination at Planning Panel</b>	Number of submissions
<b>Main Issues</b>	Heritage
<b>Recommendation</b>	Refusal
<b>Attachment A</b>	Reasons for refusal
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Section 4.6 Exception to Development Standards (FSR & landscaped area)
<b>Attachment D</b>	Statement of Heritage Significance
<b>Attachment E</b>	Conditions in the event of approval
	
<b>LOCALITY MAP</b>	
Subject Site 	Objectors 
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 alterations and additions to convert an existing building into dual occupancy, construction of a new swimming pool, external works, new garage off Fawcett Street at 14C Jane Street, Balmain. The application was notified to surrounding properties and 23 submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Adverse impact on the heritage item;
- Inconsistent with the desired future character;
- Poor private open space and solar access amenity for the proposal;
- Visual privacy impacts to residences proposed and adjoining properties; and
- Loss of on street car parking.

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

## 2. Proposal

The proposal seeks consent for alterations and additions to convert the existing building into dual occupancy, construction of a new swimming pool, external work and a new garage off Fawcett Street. The Jane Street dwelling (residence 1) seeks to utilise the western portion of the main building on the mezzanine and ground floor as well as the whole first floor and the lower ground gym area. Whilst the Fawcett Street dwelling (residence 2) seeks to utilise the eastern portion of the mezzanine and ground floor as well as the whole lower ground floor, workshop, garage and swimming pool area. Specifically, the works proposed are as follows:

- Lower Ground Floor
  - Demolition of the rear wall to accommodate a new driveway crossing;
  - Installation of a car turntable within the rear garden area;
  - Conversion of the existing studio into a workshop, bathroom, garage and stairs to the lower ground garden area; and
  - Construction of a new entry area and stairs to lower ground garden area within the Fawcett Street setback.
- Lower ground garden:
  - Construction of new pool area within the Fawcett Street setback;
  - Existing stairs to lower ground floor area to be reconfigured;
  - Construction of an external spiral staircase at the south-eastern corner of the existing main building to connect to ground floor rear balcony; and
  - New door entrance at the eastern elevation of the existing main building.
- Lower Ground west:
  - Reconfiguration of the floor to accommodate a family room, bathroom/laundry and modified staircase; and
  - Remove door at southern elevation and replace with new window.
- Ground floor:
  - New wall to bisect the existing floor and split the existing building into two dwellings;
  - Reconfiguration of the western portion of the main dwelling to accommodate a bedroom, ensuite, bathroom and new stairs; and
  - Reconfiguration of the eastern portion of the main building to accommodate a bathroom and study nook;

- Installation of a privacy screen on the northern elevation of the existing rear balcony; and
  - Installation of new 1.65 obscure glass fence.
- Mezzanine floor:
  - New wall to bisect the existing floor and split the existing building into two dwellings;
  - Reconfiguration of the western portion of the main building to accommodate a bedroom, ensuite and stairs; and
  - Reconfiguration of the eastern portion of the main building to accommodate bedroom, WIR and ensuite.
- First floor:
  - Reconfiguration of the floor to accommodate kitchen, bathroom, two bedrooms and ensuite;
  - Installation of a privacy screen on the northern elevation of the existing rear balcony;
  - Installation of new windows at the rear elevation.
- Roof:
  - Installation of four skylights on the northern roof pane; and
  - Installation of PV panels on the northern roof pane.

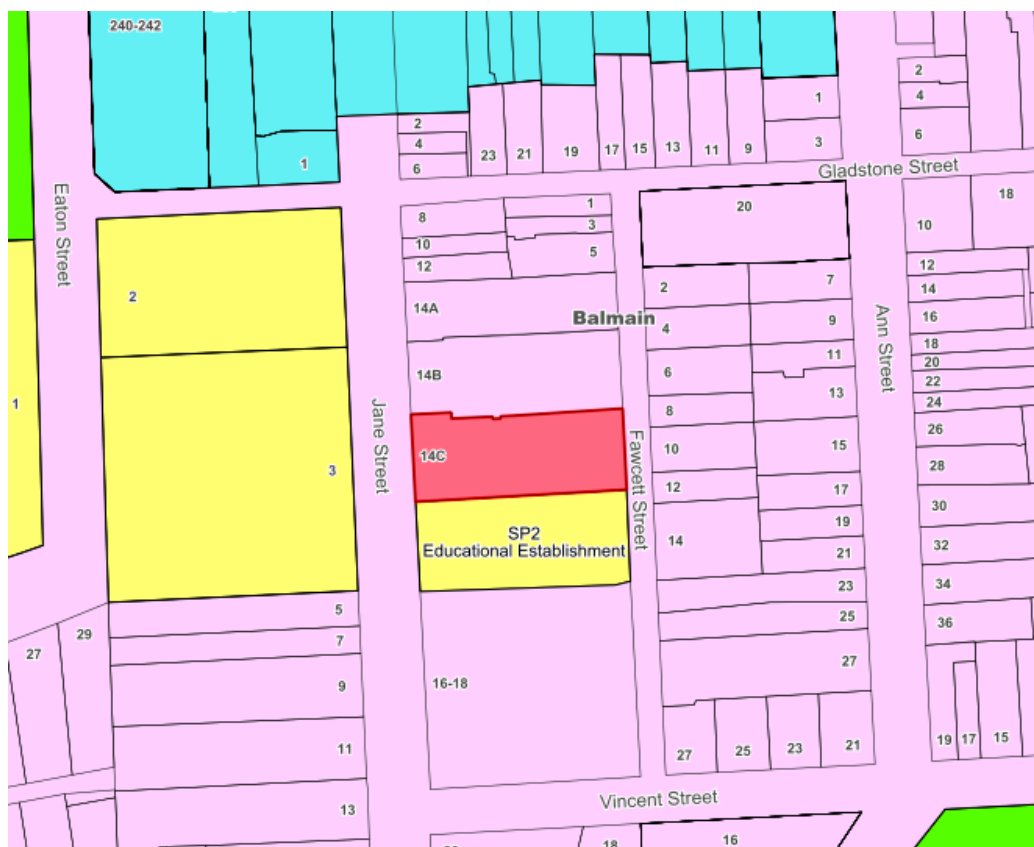
### 3. Site Description

The subject site is located on the eastern side of Jane Street, between Gladstone Street and Vincent Street. The site consists of a single allotment and is rectilinear in shape with a total area of 676.2sqm.

The site has a primary frontage to Jane Street of 17.25m and a secondary frontage of approximately 16m to Fawcett Street. The subject site supports a three storey dwelling, paved driveway with hard stand area to accommodate two vehicles accessible via Jane Street, ancillary gym located beneath the driveway/hardstand area, pond and detached studio within the south western corner of the site. Pedestrian access is also available via Fawcett Street.

The site presently accommodates a brick and tile Convent complex which has been converted into three dwellings, one being the subject property. The adjoining properties consist of school building adjoining the southern boundary and two dwellings, being part of the original subdivision of the Convent, to the north. Directly to the east, on Fawcett Street, are dwelling houses whilst opposite the subject land to the west on Jane Street is the heritage listed St Augustine Church.

The subject site is a heritage item (Victorian Gothic Convent Building) and is located within a conservation area.



Subject site highlighted in red

## 4. Background

### 4(a) Site history

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

#### Subject Site

Application	Proposal	Decision & Date
D/2001/770	Alterations and additions to existing buildings to create three separate dwellings. (14A-14C Jane Street, Balmain)	Approved, 12/02/2002
M/2002/265	Modification to development consent D/2001/770 for adaptive reuse of convent for residential use, including alterations and additions and construction of underground parking for 3 vehicles. Modification for addition of skylights and internal reconfiguration and alteration. (14A-14C Jane Street, Balmain)	Approved, 10/10/2002
M/2003/61	Alterations and additions to existing buildings to create three separate dwellings. (14A-14C Jane Street, Balmain)	Approved, 18/06/2003
D/2010/453	Alterations and additions to existing dwelling including swimming pool, landscaping, garage, front fence, porch, external stairs and lift.	Approved, 12/04/2011
M/2013/227	S96 Modification to D/2010/453 that approved alterations and additions to existing dwelling including swimming pool, landscaping, garage,	Approved, 136/04/2014



Application	Proposal	Decision & Date
	front fence, porch, external stairs and lift. Modification involves internal and external changes including the replacement of rear retaining wall and tree removal.	
BC/2022/0024	Building Certificate - Retrospective approval of a below ground studio erected without the proper consent in 2015.	Approved, 19/07/2022

### Surrounding properties

14A Jane Street

Application	Proposal	Decision & Date
M/2002/231	Alterations and additions to existing buildings to create three separate dwellings. with regards to 14A external balcony submission of correct plans	Approved, 13/11/2022
D/2012/285	Alteration and additions to an existing dwelling including on site parking. Application relies on SEPP 1 objections for Floor Space Ratio.	Approved, 26/07/2018

### 4(b) Application history

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

Date	Discussion / Letter / Additional Information
4/08/2022	Request for additional information sent to the applicant requesting design changes to address the outstanding heritage matters, inadequate private open space for residence 1, visual privacy impacts from the external staircase and rear balconies, development standard calculation clarification and the deletion of new vehicular crossing and associated carparking.
5/09/2022	Revised architectural drawings, response to the submissions, Clause 4.6 to vary FSR and landscaping, HIS addendum and traffic response provided by the applicant.

## 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 (EPA Act 1979)*.

### 5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*

The following provides further discussion of the relevant issues:

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

Chapter 4 Remediation of land

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

*“(a) it has considered whether the land is contaminated, and  
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and  
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.”*

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

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

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

A BASIX Certificate was submitted with the application and will be referenced in any consent granted.

*5(a)(iii) Local Environmental Plans*

*Inner West Local Environmental Plan 2022*

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

Section 4.15(1)(a)(i) of the *EPA 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 24 March 2022, on this date, the draft *IWLEP 2020* was a draft EPI, which had been publicly exhibited and was considered imminent and certain.

The draft EPI contained the following amended provisions:

- Changes to the aims of the plan;
- Changes to the objectives of the zone; and
- Changes to the land use table permissibility

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

- The proposal is contrary to Clause 1.2(2)(b) - Aims of Plan – as the proposal does not protect and conserve the environmental and cultural heritage and significant local character;
- The proposal is inconsistent, or it has not been demonstrated that it is consistent, with the following objectives of the R1 Zone:
  - *To provide residential development that maintains the character of built and natural features in the surrounding area.*
- The proposal is inconsistent within the land use table in that dual occupancy development are a prohibited land use.

### *Leichhardt Local Environmental 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 2.7 - Demolition
- Section 4.3A - Landscaped areas for residential accommodation in Zone R1
- Section 4.4 – Floor Space Ratio
- Section 4.5 - Calculation of floor space ratio and site area
- Section 4.6 - Exceptions to development standards
- Section 5.10 - Heritage Conservation
- Section 6.1 - Acid Sulfate Soils
- Section 6.2 - Earthworks
- Section 6.4 - Stormwater management

#### Section 1.2 Aims of the Plan

Due to the concerns raised elsewhere in this report with respect to the adverse heritage impacts and incompatibility with the existing pattern of development, the proposal does not comply, nor has demonstrated compliance, with the following provisions of Clause 1.2(2) of the LLEP 2013:

- *(c) to identify, protect, conserve and enhance the environmental and cultural heritage of Leichhardt,*
- *(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,*
- *(m) to ensure that development provides high quality landscaped areas in residential developments,*
- *(o) to prevent undesirable incremental change, including demolition, that reduces the heritage significance of places, conservation areas and heritage items,*

#### Section 2.3 Land Use Table and Zone Objectives

The site is zoned LR1 under the *LLEP 2011*. The *LLEP 2013* defines the development as:

*“Dual occupancy means a dual occupancy (attached) or a dual occupancy (detached).”*

The development is permitted with consent within the land use table. However, the development is inconsistent with the following objectives of the LR1 zone:

- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.*

The proposal is incompatible with the existing built form, and is contrary to the established subdivision pattern and the proposal would be an anomaly having an adverse impact on the heritage item.

#### Section 4 Principal Development Standards

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

Standard	Proposal	non compliance	Complies
<b>Floor Space Ratio</b> Maximum permissible: 0.7:1 or 473.34sqm	0.96:1 or 651.3sqm (Council calculation)	177.9sqm or 37.6%	No
<b>Landscape Area</b> Minimum permissible: 20% or 135.3sqm	18.9% or 127sqm	8.3sqm or 6%	No
<b>Site Coverage</b> Maximum permissible: 60% or 405.72sqm	53% or 358.1sqm	N/A	Yes

#### Section 4.6 Exceptions to Development Standards

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

- Section 4.3A - Landscaped areas for residential accommodation in Zone R1

The applicant seeks a variation to the Floor Space Ratio development standard under Section 4.3A of the *Leichhardt Local Environmental Plan 2013* by 6% (8.3sqm).

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

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Section 4.6 of the *Leichhardt Local Environmental Plan 2013* below.

A written request has been submitted to Council in accordance with Section 4.6(4)(a)(i) of the *Leichhardt Local Environmental Plan 2013* justifying the proposed contravention of the development standard which is summarised as follows:

- *The proposal retains the existing ratio of built form to landscape area that will enable significant new tree planting and the enjoyment of residents*
- *The net reduction in Landscaped Area (as defined in the LEP) is driven by the introduction of a swimming pool and the garage that will sit below the lawn area at the*

*south of the site. Irrespective, the landscaping of the site will enable an improvement of mature tree planting and significance landscape for the enjoyment of residents.*

- *The landscaped area will still enable and improve landscape corridors between adjoining properties. The proposal will include landscaped buffers on both side boundaries, as well as retention of significant existing trees.*
- *The conversion of a single large dwelling into two high-quality dwellings with minimal intervention to existing fabric also supports ecologically sustainable development through delivering new homes through existing infrastructure to assist with city and place planning*
- *The proposed development does not increase site density*

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

It is considered the development is in the public interest because it is consistent with the relevant objectives of the LR1, in accordance with Section 4.6(4)(a)(ii) of the *Leichhardt Local Environmental Plan 2013*. The relevant objective of the R1 Low Density Residential Zone is as follows:

- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*

Comment: The proposal seeks to maintain adequate soft permeable landscaping on site consistent with the pattern of development.

It is considered the development is in the public interest because it is consistent with the objectives of the Landscape Area development standard, in accordance with Section 4.6(4)(a)(ii) of the *Leichhardt Local Environmental Plan 2013* for the following reasons:

- *(a) to provide landscaped areas that are suitable for substantial tree planting and for the use and enjoyment of residents,*
- *(b) to maintain and encourage a landscaped corridor between adjoining properties,*
- *(c) to ensure that development promotes the desired future character of the neighbourhood,*
- *(d) to encourage ecologically sustainable development by maximising the retention and absorption of surface drainage water on site and by minimising obstruction to the underground flow of water,*
- *(e) to control site density,*
- *(f) to limit building footprints to ensure that adequate provision is made for landscaped areas and private open space.*

Comment: The proposal does not seek to expand the built form on the site thus maintaining an appropriate landscape corridor within the immediate context of the site. In addition, adequate landscaping is to be maintained on site to accommodate additional tree planting in the future.

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

The proposal thereby accords with the objective in Section 4.6(1)(b) and requirements of Section 4.6(3)(b) of the *Leichhardt Local Environmental Plan 2013*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from Landscaped Area and it is recommended the Section 4.6 exception be granted.

- **Section 4.4 – Floor Space Ratio**

The applicant seeks a variation to the Floor Space Ratio development standard under Section 4.4 of the Leichhardt Local Environmental Plan 2013 by 37.6% or 177.9sqm (Council calculation). It should be noted that the Clause 4.6 provided by the applicant has excluded the garage floor area from the GFA calculation incorrectly, as such the application will not result in a net reduction in GFA but rather remain the same as existing.

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

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Section 4.6 of the *Leichhardt Local Environmental Plan 2013* below.

A written request has been submitted to Council in accordance with Section 4.6(4)(a)(i) of the *Leichhardt Local Environmental Plan 2013* justifying the proposed contravention of the development standard which is summarised as follows:

- *The development is consistent with the Council's controls relating to existing and future character, particularly as they relate to the heritage conservation area and the site-specific controls relating to the Jane Street precinct*
- *It seeks very minimal external changes to the existing listed building and internal changes are only proposed where they are not to impact on existing significant material and form*
- *The conversion of the single dwelling into two dwellings will make no changes to the existing building bulk, form or scale and the proposal represents a net reduction in GFA compared to the existing dwelling*
- *The proposal will continue to maintain the existing balance between landscaped areas and the built form. No external changes are proposed to the built form that would change this balance, noting that the proposed garage is proposed beneath the existing yard and will therefore not take away from the landscaped appearance of the dwelling(s) despite not technically meeting the definition of 'landscaped area'.*
- *The floorspace in excess of the control already exists on site (and is proposed to be reduced), therefore the exceedance of the numerical control does not create any additional landscape impacts to the site*

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

It is considered the development is in the public interest because it is consistent with the relevant objectives of the LR1, in accordance with Section 4.6(4)(a)(ii) of the *Leichhardt Local Environmental Plan 2013*. The relevant objective of the R1 Low Density Residential Zone is as follows:

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

- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*

Comment: The proposal does not seek to introduce additional GFA to the existing subject site and as such is able to remain consistent with the objectives of the zone.

It is considered the development is in the public interest because it is consistent with the objectives of the Floor Space Ratio development standard, in accordance with Section 4.6(4)(a)(ii) of the *Leichhardt Local Environmental Plan 2013* for the following reasons:

- (a) *to ensure that residential accommodation—*
  - (i) *is compatible with the desired future character of the area in relation to building bulk, form and scale, and*
  - (ii) *provides a suitable balance between landscaped areas and the built form, and*
  - (iii) *minimises the impact of the bulk and scale of buildings*

Comment: The proposal does not seek to increase the existing bulk on the site by way of additional floor area, as such the proposal will maintain a suitable balance between the landscaped areas and the built form on the subject site and surrounding context.

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

The proposal thereby accords with the objective in Section 4.6(1)(b) and requirements of Section 4.6(3)(b) of the *Leichhardt Local Environmental Plan 2013*. For the reasons outlined above, there are sufficient planning grounds to justify the departure Floor Space Ratio and it is recommended the Section 4.6 exception be granted.

#### Section 5.10 Heritage Conservation

The subject property at 14C Jane Street, Balmain, is listed as a heritage item; Former convent and fence, including interiors, in Schedule 5 of the *Leichhardt LEP 2013* (I249). An assessment of the proposal against the heritage provisions of the *LLEP 2013*, and *LDCP 2013*, has been carried out by Council’s Heritage Advisor and their comments are outlined elsewhere in this report.

In summary, the proposed internal and external alterations to the existing main building to facilitate the dual occupancy proposed does not respect and conserve the existing heritage item including but not limited to the internal spaces, materials, finishes and building form.

As such, the proposal will result in a development that is detrimental to the heritage item and contrary to the provisions and objectives of Clause 5.10 Objectives 1(a) and (b) of the *LLEP 2013*, which seek to conserve the heritage significance of HCAs, including fabric, settings and views.

#### 5(b) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of *Leichhardt Development Control Plan 2013*.

<b>LDCP2013</b>	<b>Compliance</b>
<b>Part C</b>	
C1.0 General Provisions	Yes



<b>LDCP2013</b>	<b>Compliance</b>
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	No – see discussion
C1.8 Contamination	Yes
C1.11 Parking	No – see discussion
C1.12 Landscaping	Yes
<b>Part C: Place – Section 2 Urban Character</b>	
C.2.2.2.3: Gladstone Park Distinctive Neighbourhood	No – see discussion
C2.2.2.3(a) Jane Street Sub Area	No – see discussion
<b>Part C: Place – Section 3 – Residential Provisions</b>	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	Yes
C3.3 Elevation and Materials	Yes
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
C3.11 Visual Privacy	No – see discussion
C3.12 Acoustic Privacy	Yes
<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	
	N/A
<b>Part D: Energy</b>	
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
<b>Part E: Water</b>	
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
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.2.2 Managing Stormwater within the Site	Yes

C1.3 Alterations and additions; C1.4 Heritage Conservation Areas and Heritage Items & C2.2.2.3(a) Jane Street Sub Area

Council's heritage officer has assessed the amended proposal and has provided the following comments regarding the proposal:

- *It is proposed to divide the existing spaces both vertically and horizontally to create the 2 separate dwellings. Control C16 of Part C2.2.2.3(a) of the LDCP 2013 requires that principal internal spaces be conserved and any partitioning or mezzanine floors added in light weight and reversible materials and methods of construction, the proposed vertical division of the existing dwelling does not demonstrate the requirements of this control;*

- *The removal or alteration to the original building fabric to accommodate the proposed skylights, window and door openings is not supported as they are visible from the public domain and/or seek to remove the original fabric of the building;*
- *The skylights are not supported as they will result in the removal of the original roof form, original internal timber ceiling lining and may impact on the original timber and steel trusses which will impact on the significance of the item;*
- *The proposed opening enlargements at the eastern elevation of the first floor to accommodate W01 and W02 as well as altered window headers have not been designed in accordance with the recommended management of a heritage item. The proposal cannot be supported unless it can be demonstrated the original openings and window headers are being reinstated. Original building fabric must not be removed as will impact on the significance of the item. Likewise, the partial infill of the doorway to accommodate a window to bedroom 2 on the lower ground level can only be supported where it is demonstrated this opening was originally a window and not a doorway.*
- *Control C4 of Part C2.2.2.3(a) of the LDCP 2013 encourages restoration and conservation of the historic fabric of the former Convent with any new development being complementary.*
- *Limited information has been provided regarding the original layout of the south wing. The HIS and addendum provided do not include sufficient information including the sources within these reports regarding the historical layout of the building.*

Given the above, the development is considered to have adverse impact to the heritage item as well as the desired future character sub-area. As such the proposal would be inconsistent with objective O1 and control C10 in Part 1.3; objective O1 and controls C3b and C6 in Part C1.4; and objective O1 and controls C4 and C16 in Part 2.2.2.3(a) of the LDCP.

#### C1.11 Parking

The application has been referred to Council's Development Engineer for comment. The new vehicular crossing and associated car parking at Fawcett Street will result in the loss of on street parking which is already in high demand. Given this, the proposal would be inconsistent with objective O8 in Part C1.11 of the LDCP 2013.

#### C3.8 Private Open Space & C3.9 Solar Access

The provisions contained with Part C3.8 of the LDCP 2013 detail the design requirements regarding the location of the private open space area (POS) for development. The amended proposal seeks to locate the POS for 'residence 1' within the side setback of the subject site, which is contrary to the pattern of development and the applicable provisions under this part. Furthermore, whilst the proposal satisfies the numerical area requirements under this part, this nominated POS area does not receive adequate solar access contrary to the requirements of Objective O1 d of Part C3.8 Private Open Space and Objective O1, Control C2 and C4 of Part C3.9 Solar Access of the LDCP 2013.

#### C3.11 Visual Privacy

The proposed external spiral staircase at the south-eastern corner of the existing main building to connect to ground floor rear balcony is an intrusive building element that will likely result in adverse visual privacy impacts to the adjoining properties, vice versa to each dwelling proposed. In addition, the amended proposal nominates the rear balconies on the ground and first floor as private open spaces area for residence 2 and 1 respectively. The intensification of the existing building to be utilised as two dwellings will exacerbate visual privacy impacts to the adjoining properties as there will be a higher concentration of primary living areas located above the ground level facing the rear of the site. The amended proposal seeks to include privacy screens at the northern elevation of each balcony, however this indirectly contributes

to unnecessary visual bulk impacts at the rear and an unsympathetic building element that detracts from the significance of the heritage item. The proposal in its current form is contrary to Objective O1 of Part 3.11 Visual Privacy of the LDCP 2013.

### 5(c) The Likely Impacts

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

- The proposed development has an adverse impact on the heritage item;
- The proposed development will have an adverse impact on the parking demand within Fawcett Street;
- It has not been demonstrated that adequate areas of private open space and solar access are provided.
- The proposed development would result in adverse visual privacy to each respective residence and adjoining properties.

### 5(d) 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 and the proposal is an overdevelopment of the site.

### 5(e) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties. 23 submissions were received in response to the initial notification. The following issues raised in submissions have been discussed in this report:

- Loss of off street parking along Fawcett Street – See section 5(b)
- Loss of the original heritage fabric – see section 5(b)
- Visual privacy impacts - see section 5(b)
- Overdevelopment of the site – see section 5(a)

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

Issue: Impacts of noise during construction

Comment: If an approval was recommended for the application suitable conditions would be imposed requiring construction to be limited to standard hours throughout the day to limit disturbance to neighbouring development.

Issue: Increased traffic and impacts to pedestrian/child safety's

Comment: A garage to a single residential dwelling is unlikely to result in a significant traffic generation that it could impose a risk to pedestrian safety at Fawcett Street. Notwithstanding the proposal does remove the availability of on street parking in Fawcett Street which is not supported as outlined in this report.

Issue: Amenity impacts to 14 Fawcett

Comment: it is unlikely that the proposal will result in additional visual bulk to the subject site

Issue: Tree removal

Comment: The application was referred to Council's tree officer for comment, no objections were raised subject to recommended conditions on any consent issued.

Issue: Proximity of the pool to the boundary and impact to neighbouring tree

Comment: The pool is suitably setback from the side and rear boundaries so as not to result in adverse amenity impacts to the adjoining property. If an approval was recommended for the application suitable conditions would be imposed requiring new works on the subject site to not impact the root zone of any adjoining trees.

Issue: Non-compliance with BCA standards

Comment: A comprehensive BCA assessment of the proposal would form part of the Construction Certificate, however the proposal is not supported for other reasons as outlined in this report.

## 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.

- Development engineering
- Heritage
- Urban forest

## 7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions would be payable for the proposal. The carrying out of the proposal would result in an increased demand for public amenities and public services within the area.

## 8. Conclusion

The proposal generally does not comply 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 properties and the streetscape 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.

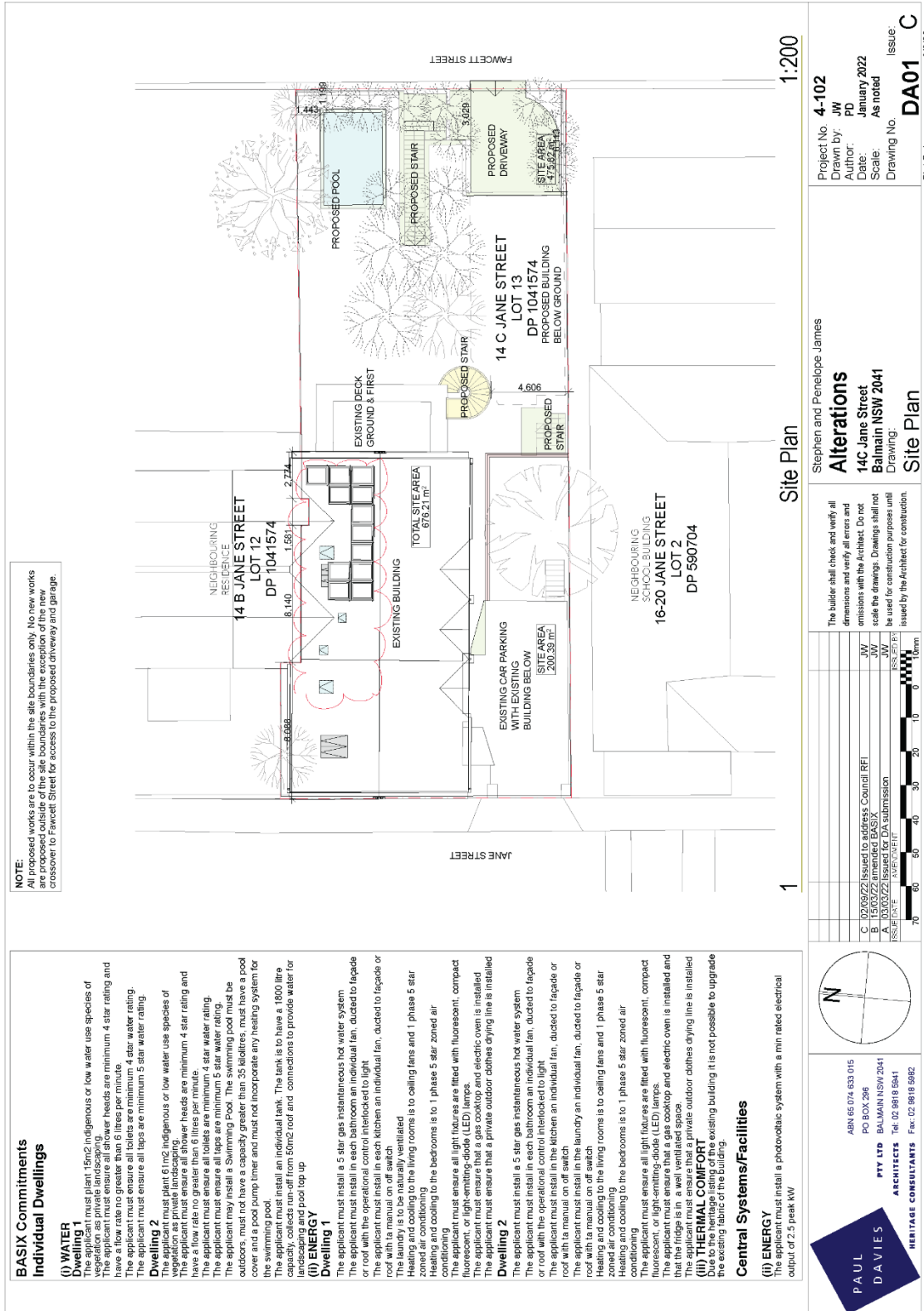
## 9. Recommendation

- A. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, refuse Development Application No. DA/2022/0192 for Alterations and additions to convert existing building into dual occupancy, new swimming pool, external works, new garage off Fawcett Street. at 14C Jane Street, BALMAIN for the following reasons as outlined in Attachment A.

## Attachment A – Reasons of refusal

1. The proposed development is inconsistent with and has not demonstrated compliance with Leichhardt Local Environmental Plan 2013, pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, including:
  - a. Clause 1.2(2)(c)(l)(m)(o) - Aims of Plan.
  - b. Clause 5.10(1)(a)(b) - Heritage conservation.
2. The proposed development is inconsistent with and has not demonstrated compliance with Draft Inner West Local Environmental Plan 2020, pursuant to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979, including:
  - a. Draft Clause 1.2(2)(b) - Aims of Plan.
  - b. Draft Clause 2.3 - Zone objectives and Land Use Table.
3. The proposed development is inconsistent with and has not demonstrated compliance with the Leichhardt Development Control Plan 2013, pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, including:
  - a. Part C1.3 Alterations and additions
  - b. Part C1.4 Heritage Conservation Areas and Heritage Items
  - c. Part C1.11 Parking
  - d. Part C.2.2.2.3: Gladstone Park Distinctive Neighbourhood
  - e. Part C2.2.2.3(a) Jane Street Sub Area
  - f. Part C3.8 Private Open Space
  - g. Part C3.9 Solar Access
  - h. Part C3.11 Visual Privacy
4. The proposed development will result in adverse impacts on the built environment in the locality pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
5. The proposal has not demonstrated that the site is suitable for the development pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
6. The proposal has not demonstrated it is in the public interest pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

Attachment B – Plans of proposed development



**NOTE:**  
All proposed works are to occur within the site boundaries only. No new works are proposed outside of the site boundaries with the exception of the new crossover to Fawcett Street for access to the proposed driveway and garage.

**BASIX Commitments**  
**Individual Dwellings**

**(i) WATER**  
**Dwelling 1**  
The applicant must plant 15m<sup>2</sup> indigenous or low water use species of vegetation as private landscaping. The applicant must ensure all water heads are minimum 4 star rating and have a flow rate no greater than 6 litres per minute.  
The applicant must ensure all toilets are minimum 4 star water rating.  
The applicant must ensure all taps are minimum 5 star water rating.

**Dwelling 2**  
The applicant must plant 61m<sup>2</sup> indigenous or low water use species of vegetation as private landscaping. The applicant must ensure all water heads are minimum 4 star rating and have a flow rate no greater than 6 litres per minute.  
The applicant must ensure all toilets are minimum 4 star water rating.  
The applicant must ensure all taps are minimum 5 star water rating.  
The applicant may install a Swimming Pool. The swimming pool must be outdoors, must not have a capacity greater than 35 kilolitres, must have a pool cover and a pool pump timer and must not incorporate any heating system for the swimming pool.  
The applicant must install an individual tank. The tank is to have a 1600 litre capacity and a 1500 litre hot water tank. The tank is to have a 50m<sup>2</sup> roof and connections to provide water for landscaping and pool top up.

**(ii) ENERGY**  
**Dwelling 1**  
The applicant must install a 5 star gas instantaneous hot water system.  
The applicant must install in each bathroom an individual fan, ducted to facade or roof with the operational control interlocked to light.  
The applicant must install in each kitchen an individual fan, ducted to facade or roof with its manual on off switch.  
The laundry is to be naturally ventilated.  
Heating and cooling to the living rooms is to ceiling fans and 1 phase 5 star zoned air conditioning.  
Heating and cooling to the bedrooms is to 1 phase 5 star zoned air conditioning.  
The applicant must ensure all light fixtures are fitted with fluorescent, compact fluorescent, or light-emitting-diode (LED) lamps.  
The applicant must ensure that a gas cooktop and electric oven is installed.  
The applicant must ensure that a private outdoor clothes drying line is installed.

**Dwelling 2**  
The applicant must install a 5 star gas instantaneous hot water system.  
The applicant must install in each bathroom an individual fan, ducted to facade or roof with its manual on off switch.  
The applicant must install in the kitchen an individual fan, ducted to facade or roof with its manual on off switch.  
The applicant must install in the laundry an individual fan, ducted to facade or roof with its manual on off switch.  
Heating and cooling to the living rooms is to ceiling fans and 1 phase 5 star zoned air conditioning.  
Heating and cooling to the bedrooms is to 1 phase 5 star zoned air conditioning.  
The applicant must ensure all light fixtures are fitted with fluorescent, compact fluorescent, or light-emitting-diode (LED) lamps.  
The applicant must ensure that a gas cooktop and electric oven is installed and that the fridge is in a well ventilated space.  
The applicant must ensure that private outdoor clothes drying line is installed.

**(iii) THERMAL COMFORT**  
The applicant must ensure that the existing building is not possible to upgrade the existing fabric of the building.

**Central Systems/Facilities**

**(i) ENERGY**  
The applicant must install a photovoltaic system with a min rated electrical output of 2.5 peak kW

**Alterations**  
14C Jane Street  
Balmain NSW 2041  
Drawing: DA01

**Site Plan**

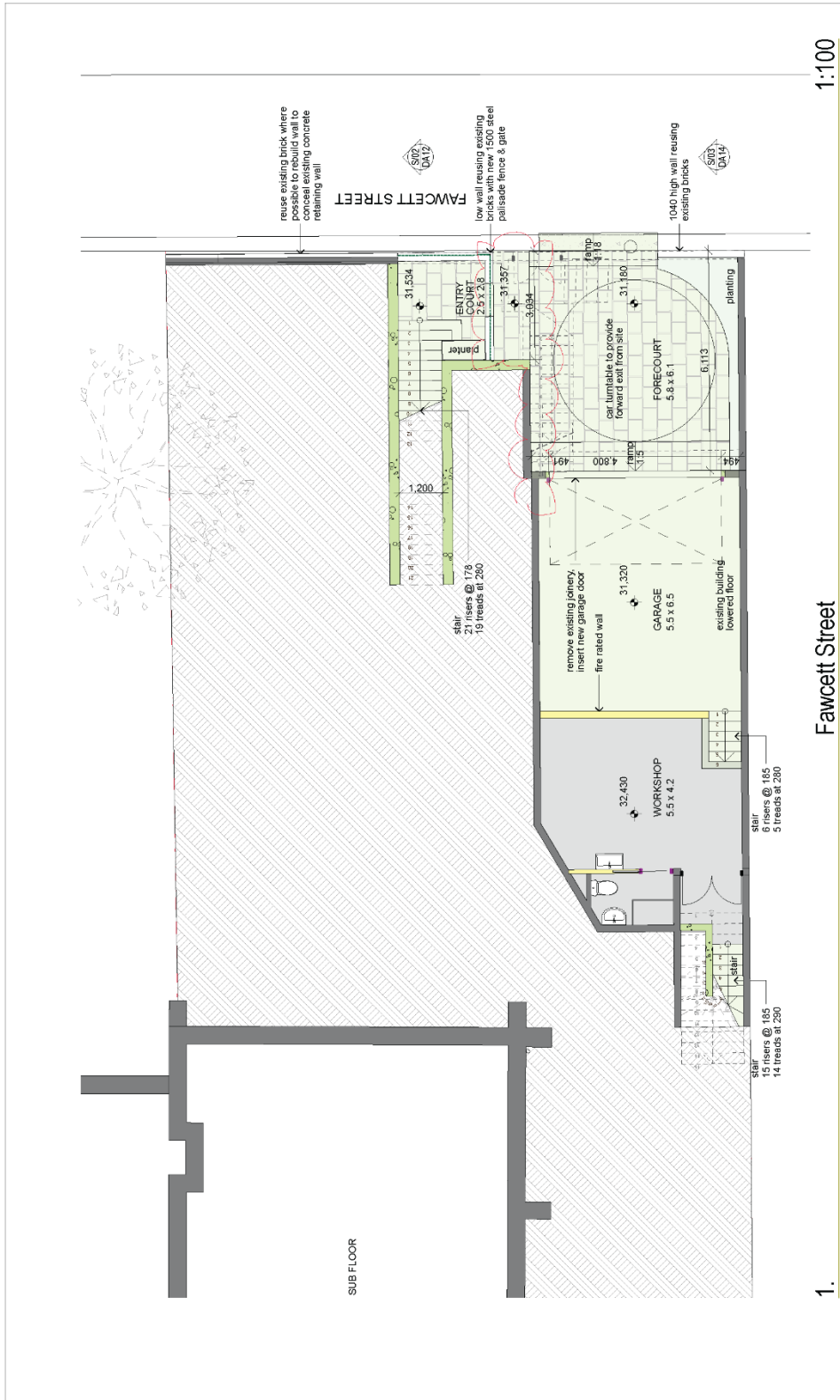
Stephen and Penelope James

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Drawn by: JW  
Author: PD  
Date: January 2022  
Scale: As noted  
Drawing No: DA01  
Issue: C  
Plot Date: 3/9/22

The builder shall check and verify all dimensions and verify all areas and scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.

C 02/09/22 Issued to address Council RFI  
B 15/03/22 amended BASIX  
JW  
15/03/22 DP Submission  
NSW DP 1041574  
15/03/22

ABN 65 074 833 015  
PO BOX 298  
BALMAIN NSW 2041  
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ARCHITECTS  
PAUL DAVIES  
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Fax: 02 9819 9892



Project No. **4-102**  
 Drawn by: JW  
 Author: PD  
 Date: January 2022  
 Scale: As noted  
 Drawing No. **DA04**  
 Issue: **B**  
 Plot Date: 3/9/22

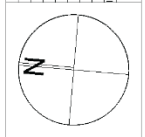
Stephen and Penelope James  
**Alterations**  
**14C Jane Street**  
**Balmain NSW 2041**  
 Drawing: **Fawcett St Level**

The builder shall check and verify all dimensions and verify all errors and omissions with the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.

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 PTY LTD  
 ARCHITECTS  
 BALMAIN NSW 2041  
 PO BOX 298  
 AEN 66 074 633 015  
 Tel: 02 9818 5841  
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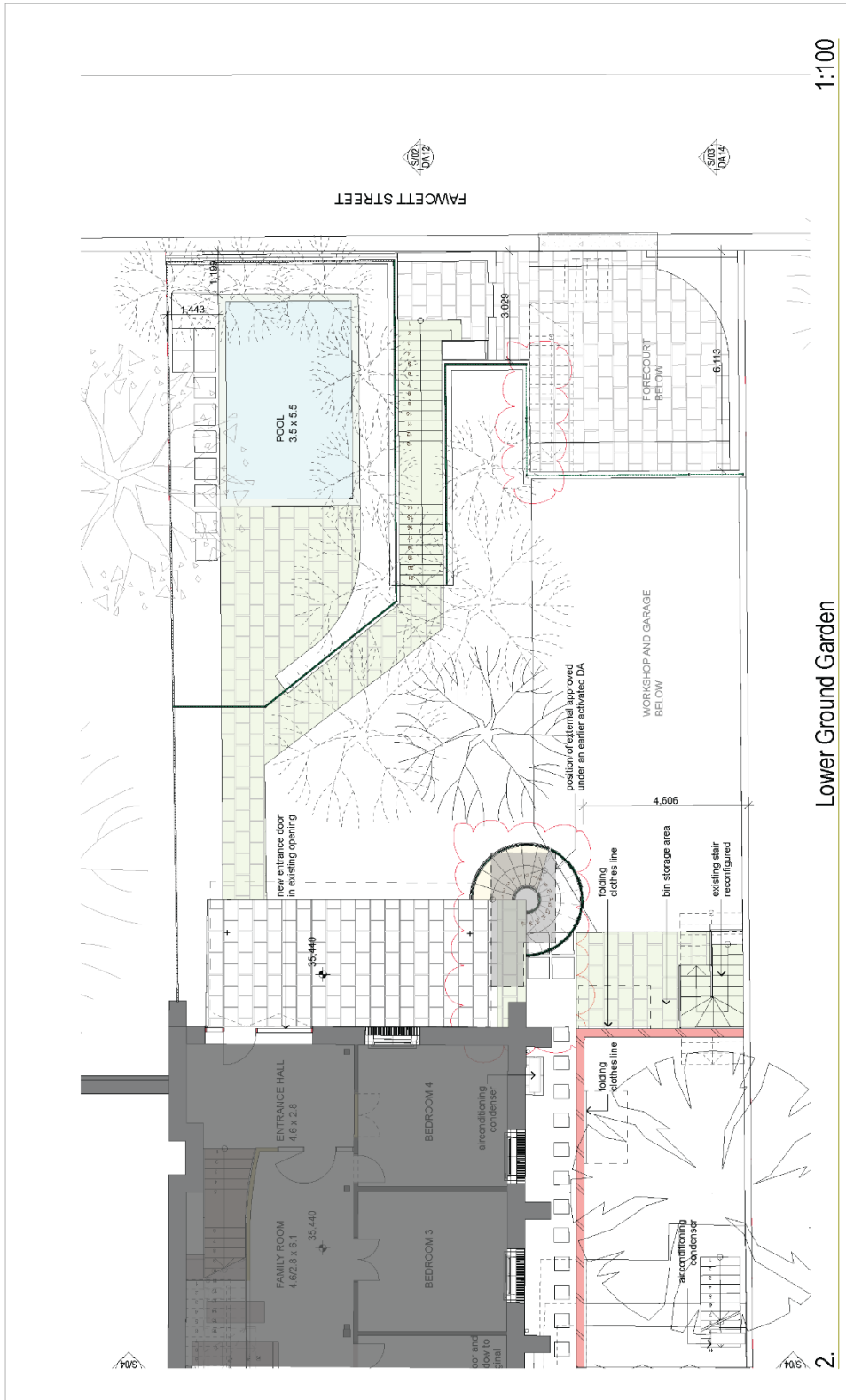
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 BSS (F) (R)  
 BSS (F) (R)

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 HERITAGE CONSULTANTS  
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 ARCHITECTS  
 BALMAIN NSW 2041  
 PO BOX 298  
 AEN 66 074 633 015  
 Tel: 02 9818 5841  
 Fax: 02 9818 5892





1:100

**Lower Ground Garden**

**PAUL DAVIES ARCHITECTS**  
 ABN 66 074 633 015  
 PO BOX 298  
 BALMAIN NSW 2041  
 Tel: 02 9818 8641  
 Fax: 02 9818 5692

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 BALMAIN NSW 2041  
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 Fax: 02 9818 5692

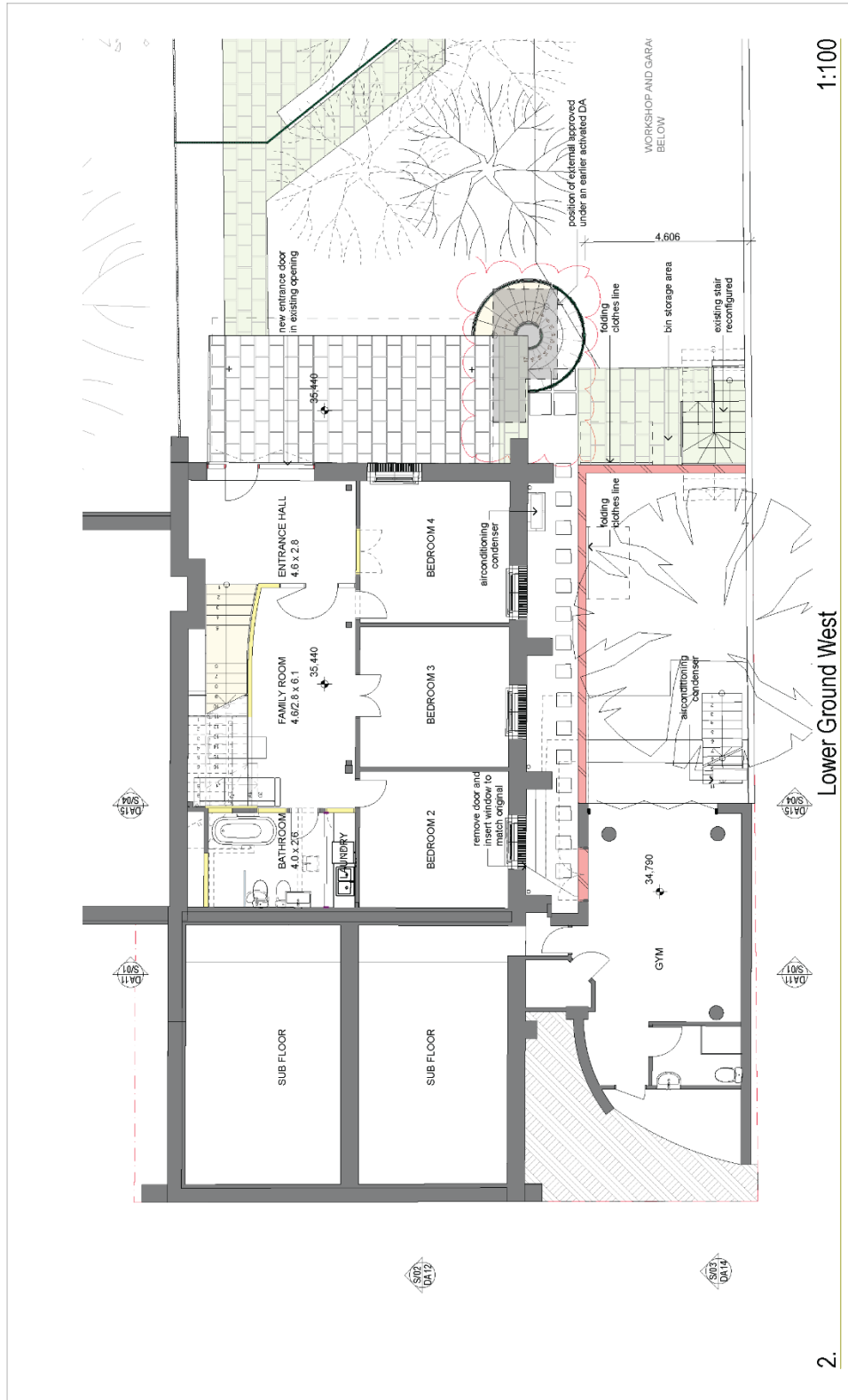
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**Alterations**  
 14C Jane Street  
 Balmain NSW 2041  
 Drawing: **DA05 B**

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 Author: PD  
 Date: January 2022  
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 Plot Date: 3/9/22

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2.

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 J.W. ARCHITECTS  
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 NSW STATE ARCHITECT

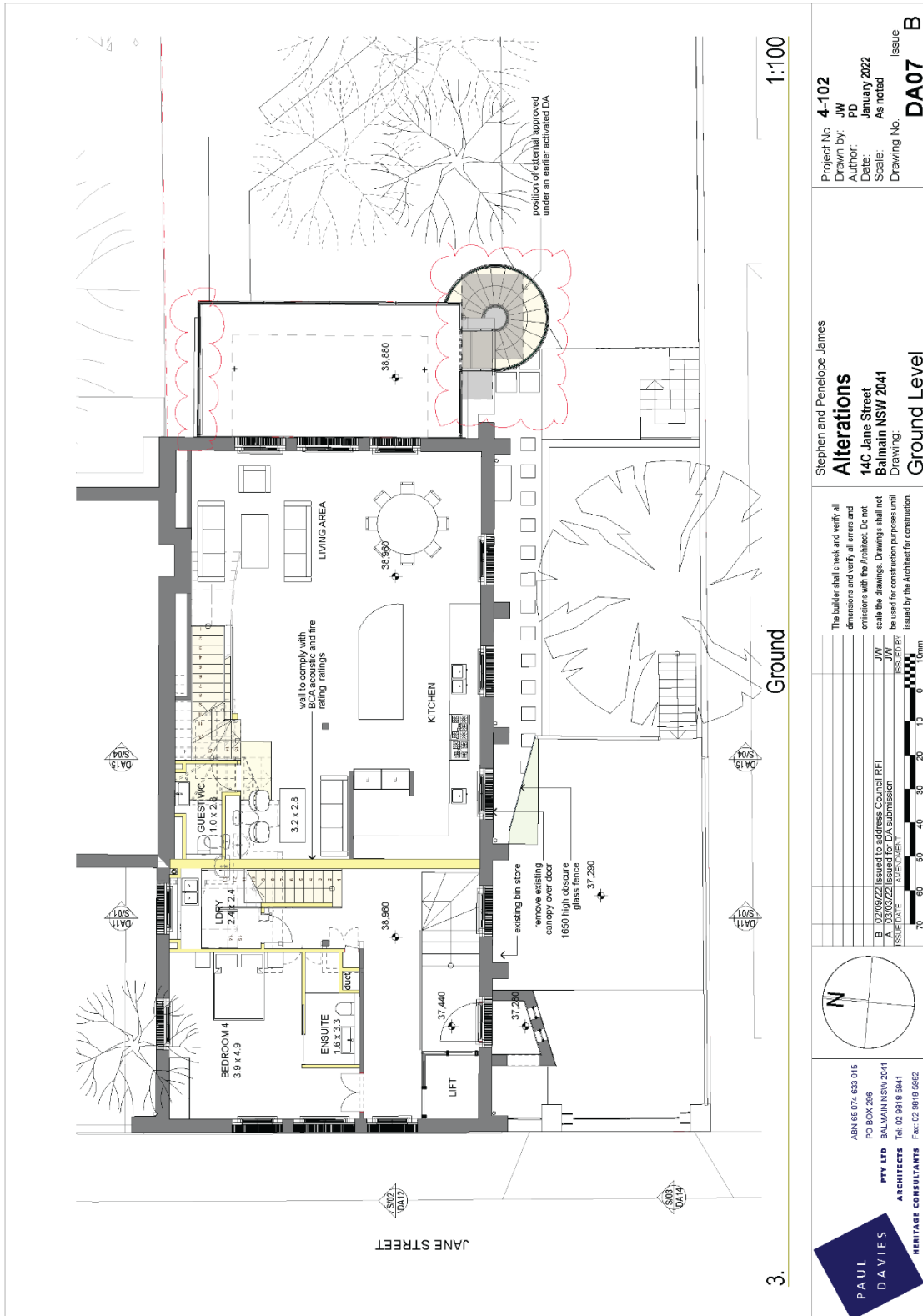
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Stephen and Penelope James  
**Alterations**  
 14C Jane Street  
 Balmain NSW 2041  
 Drawing:

**Lower Ground Building**

Project No: **4-102**  
 Drawn by: JW  
 Author: PD  
 Date: January 2022  
 Scale: As noted  
 Drawing No. DA06  
 Issue: B

Plot Date: 3/9/22

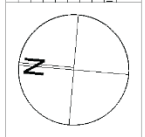


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 Date: January 2022  
 Scale: As noted  
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 Issue: B  
 Plot Date: 3/9/22

Stephen and Penelope James  
**Alterations**  
 14C Jane Street  
 Balmalm NSW 2041  
 Drawing:  
**Ground Level**

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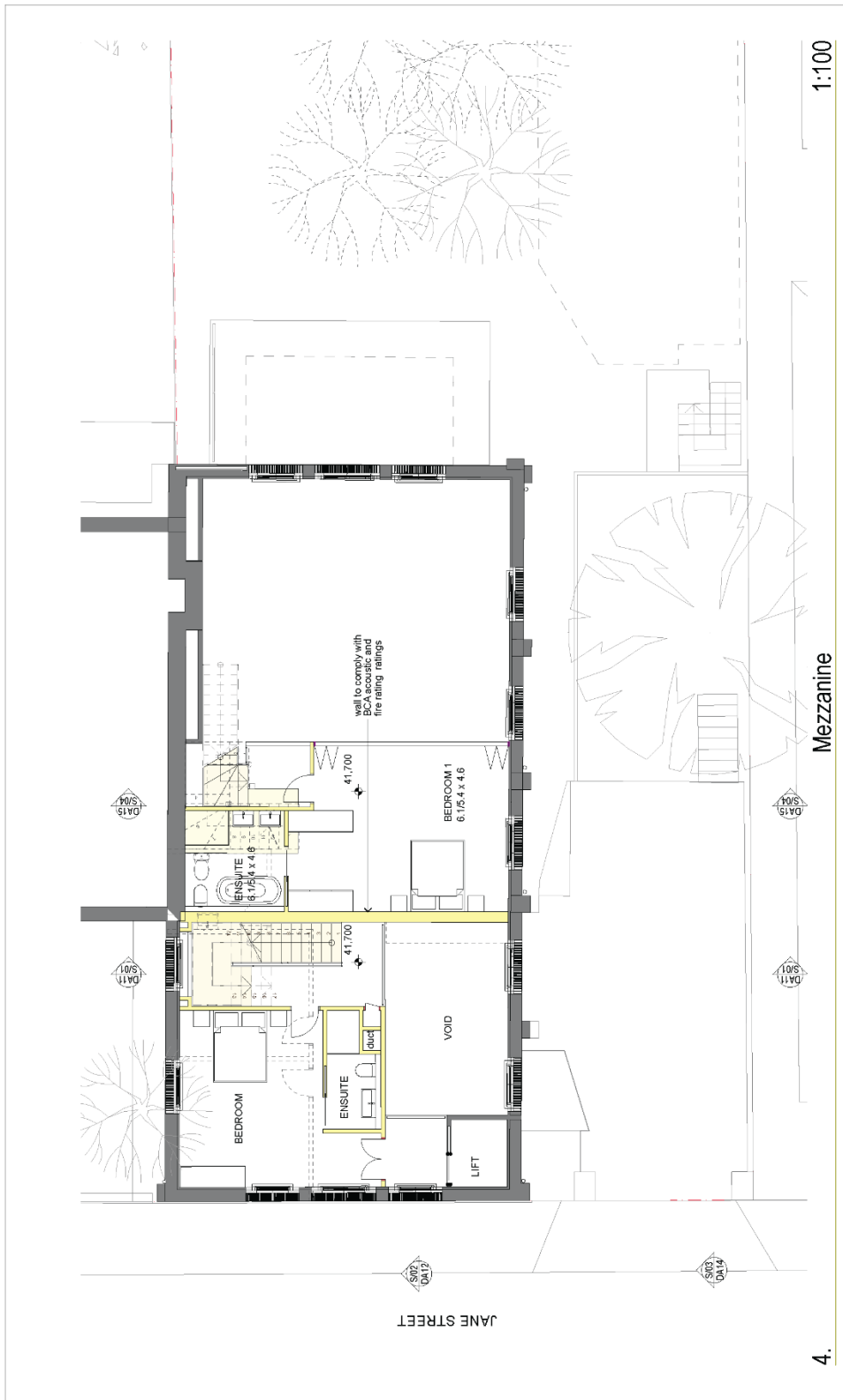
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02/09/22	ISSUED TO ADDRESS RFI
02/09/22	ISSUED TO ADDRESS RFI
02/09/22	ISSUED TO ADDRESS RFI



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4.

Mezzanine

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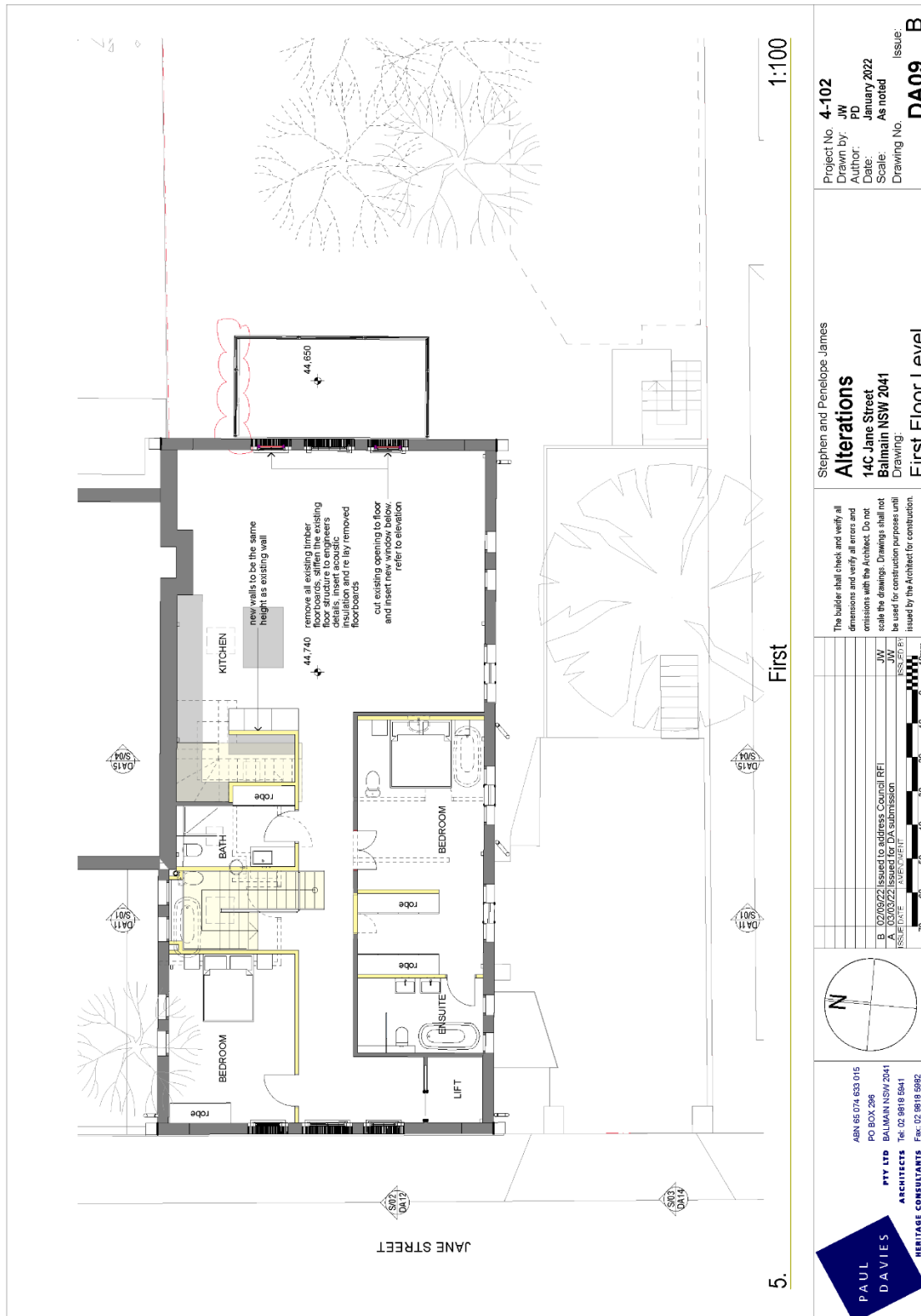
Stephen and Penelope James  
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14C Jane Street  
Balmain NSW 2041  
Drawing:  
**Mezzanine Level**

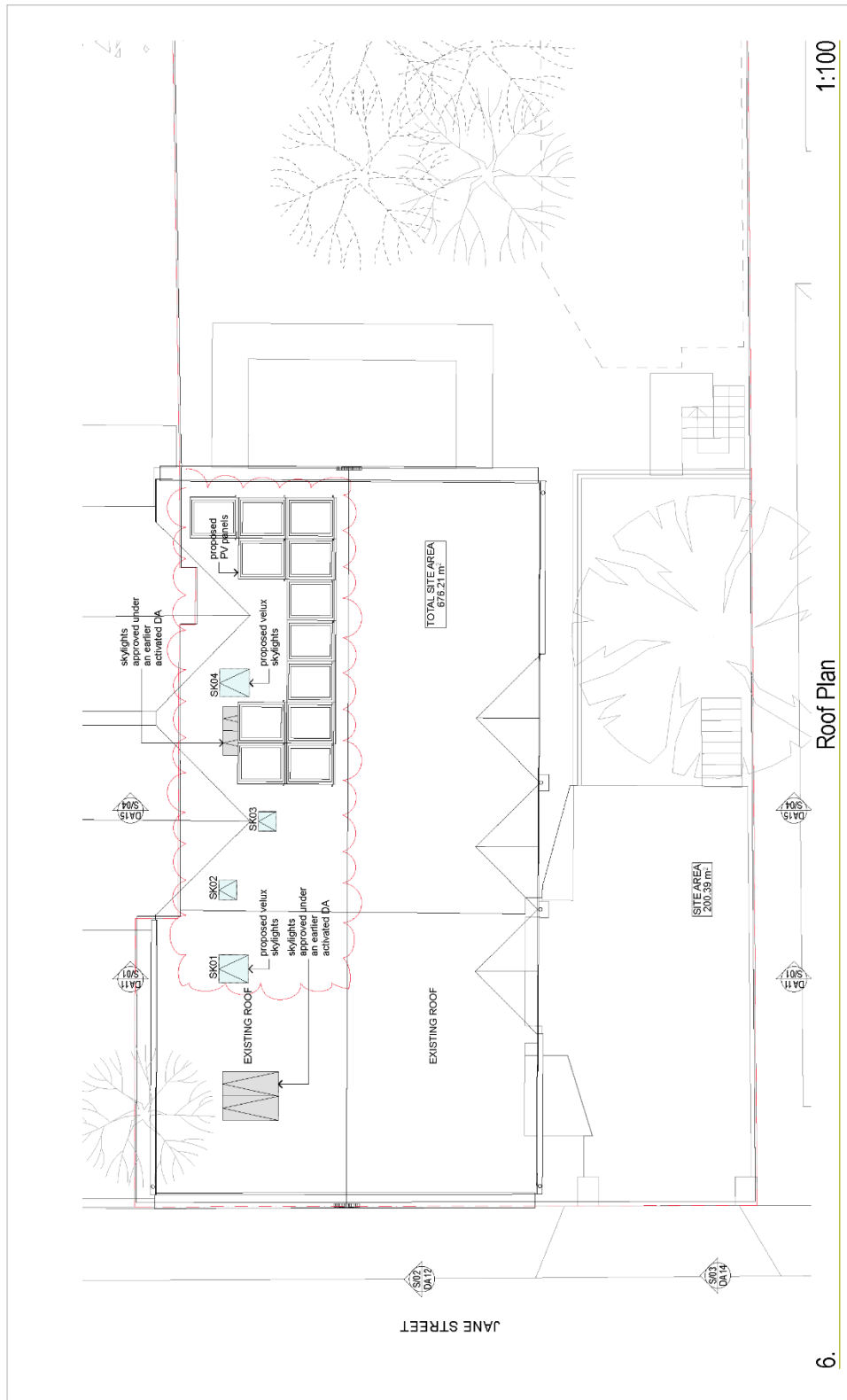
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Author: PD  
Date: January 2022  
Scale: As noted  
Drawing No. Issue:  
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Plot Date: 3/9/22

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Version: 1, Version Date: 04/11/2022





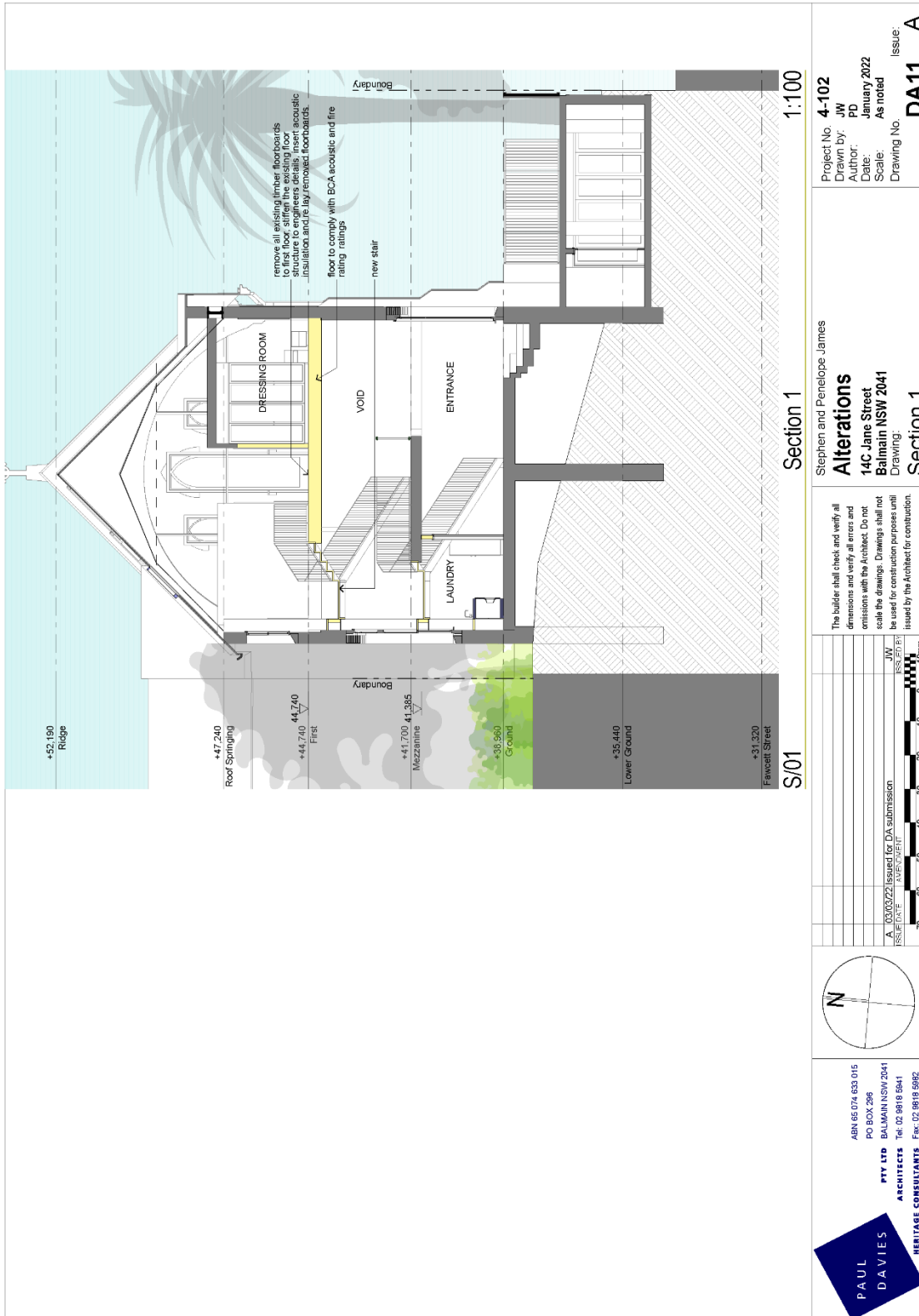
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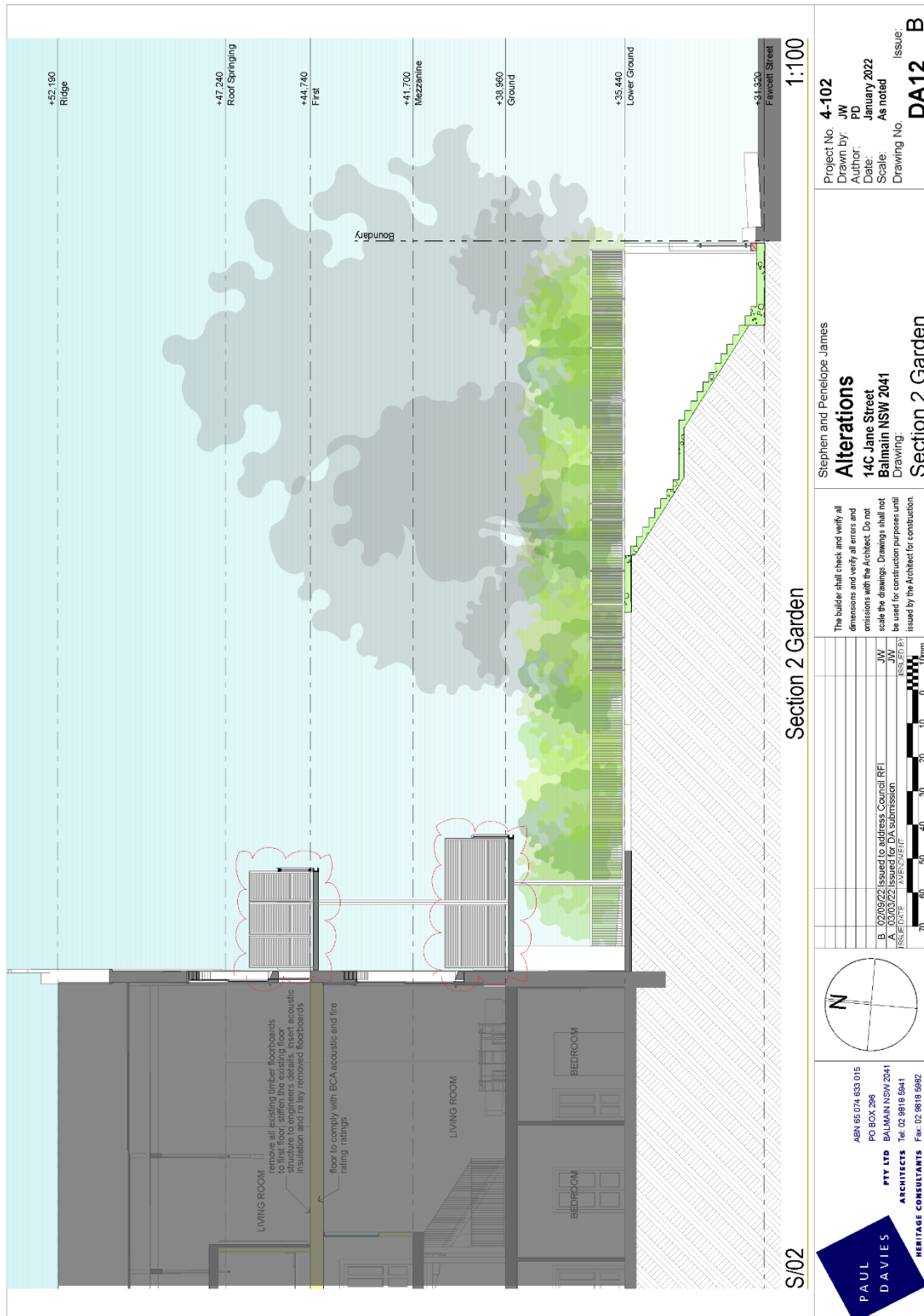
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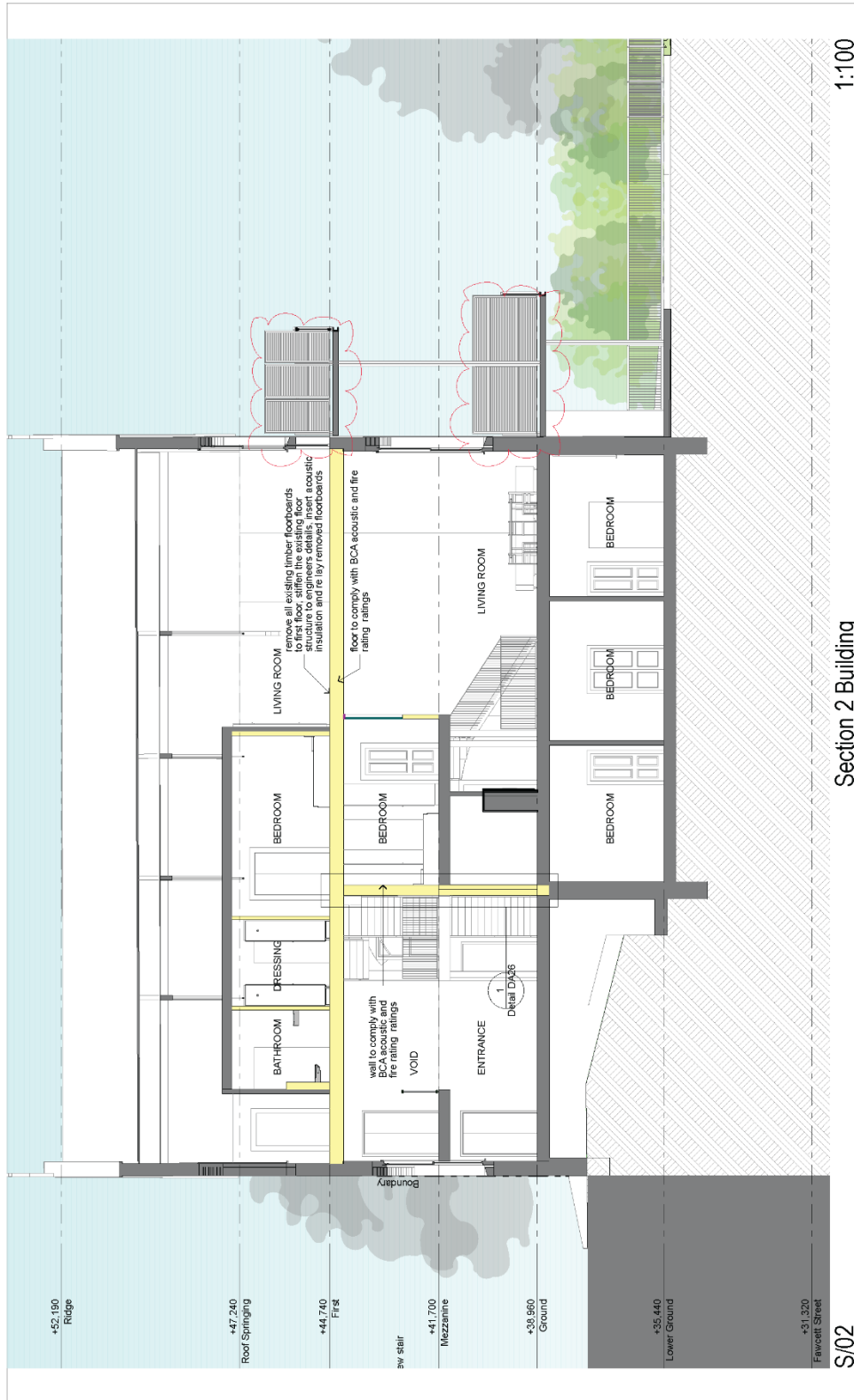
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	<p>Heritage Consultants Pty Ltd PO Box 298 Balmain NSW 2041 Tel: 02 9818 8841 Fax: 02 9818 8892</p>	<p>The builder shall check and verify all dimensions and verify all errors and omissions with the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.</p>	<p>Scale: 1:100 10mm</p>

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Version: 1, Version Date: 04/11/2022







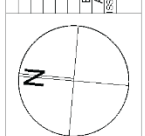


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 Drawn by: JW  
 Author: PD  
 Date: January 2022  
 Scale: As noted  
 Drawing No. DA13  
 Issue: B  
 Plot Date: 3/9/22

Stephen and Penelope James  
**Alterations**  
 14C Jane Street  
 BALMAIN NSW 2041  
 Drawing: Section 2 Building

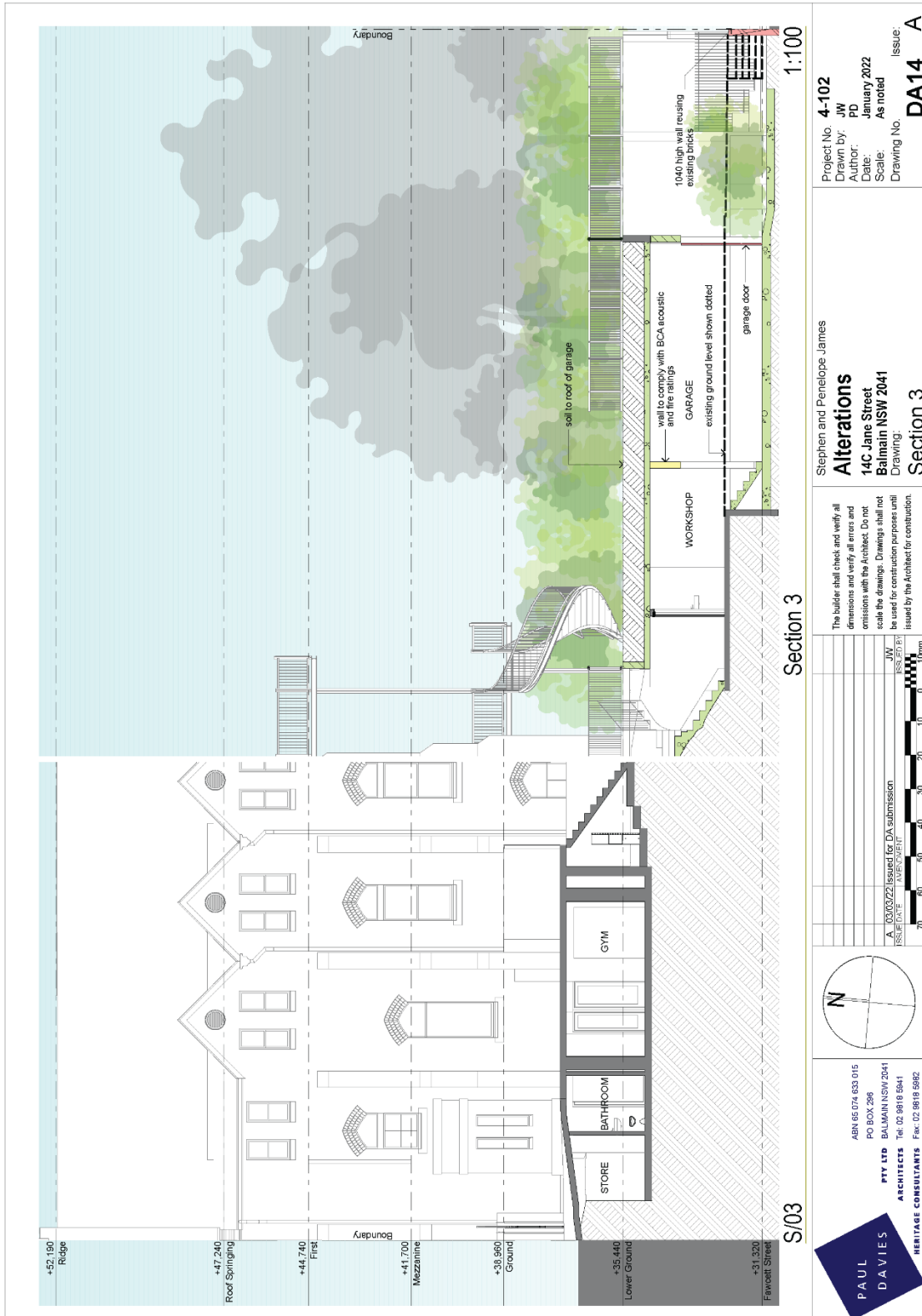
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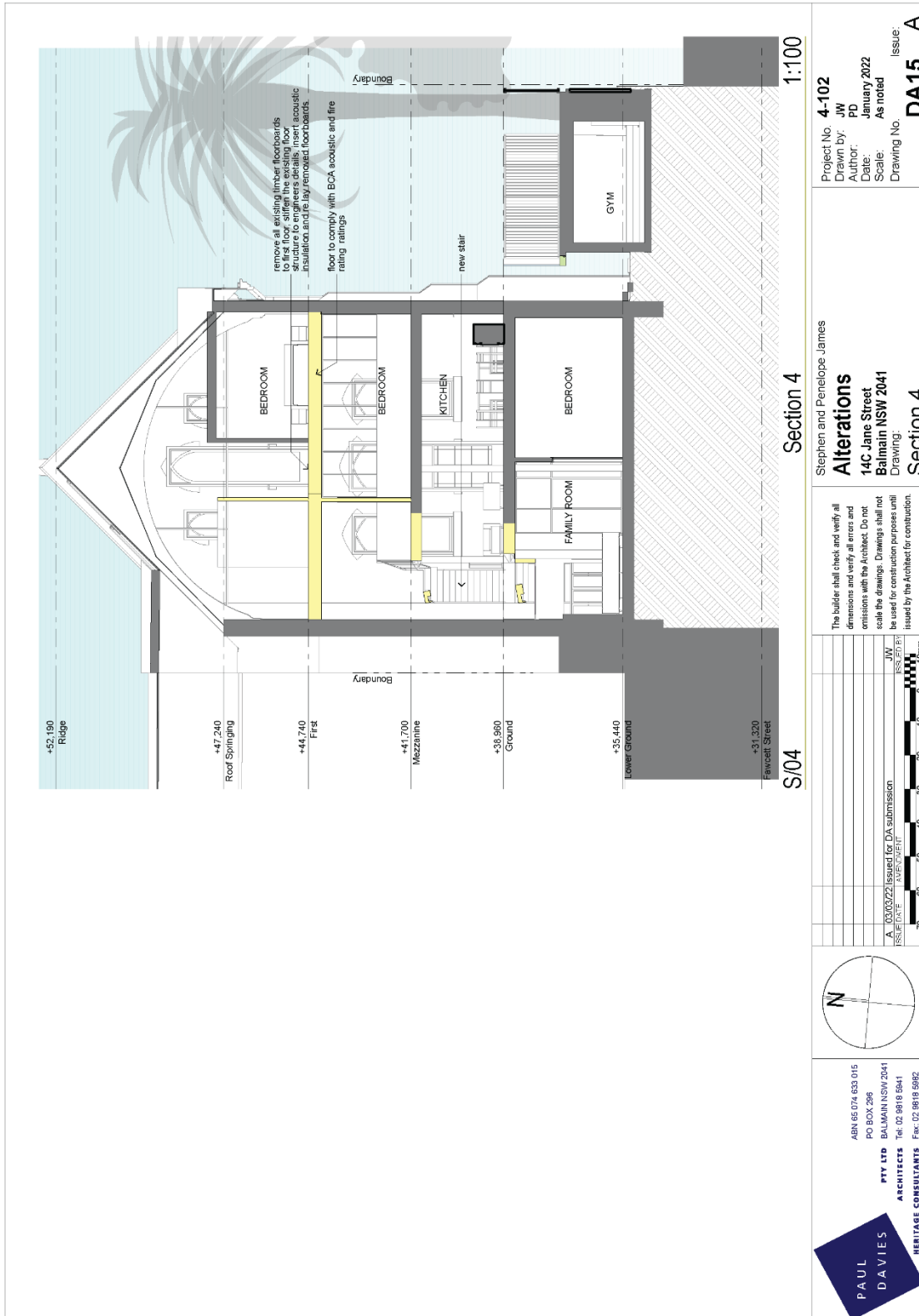
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**PAUL DAVIES ARCHITECTS**  
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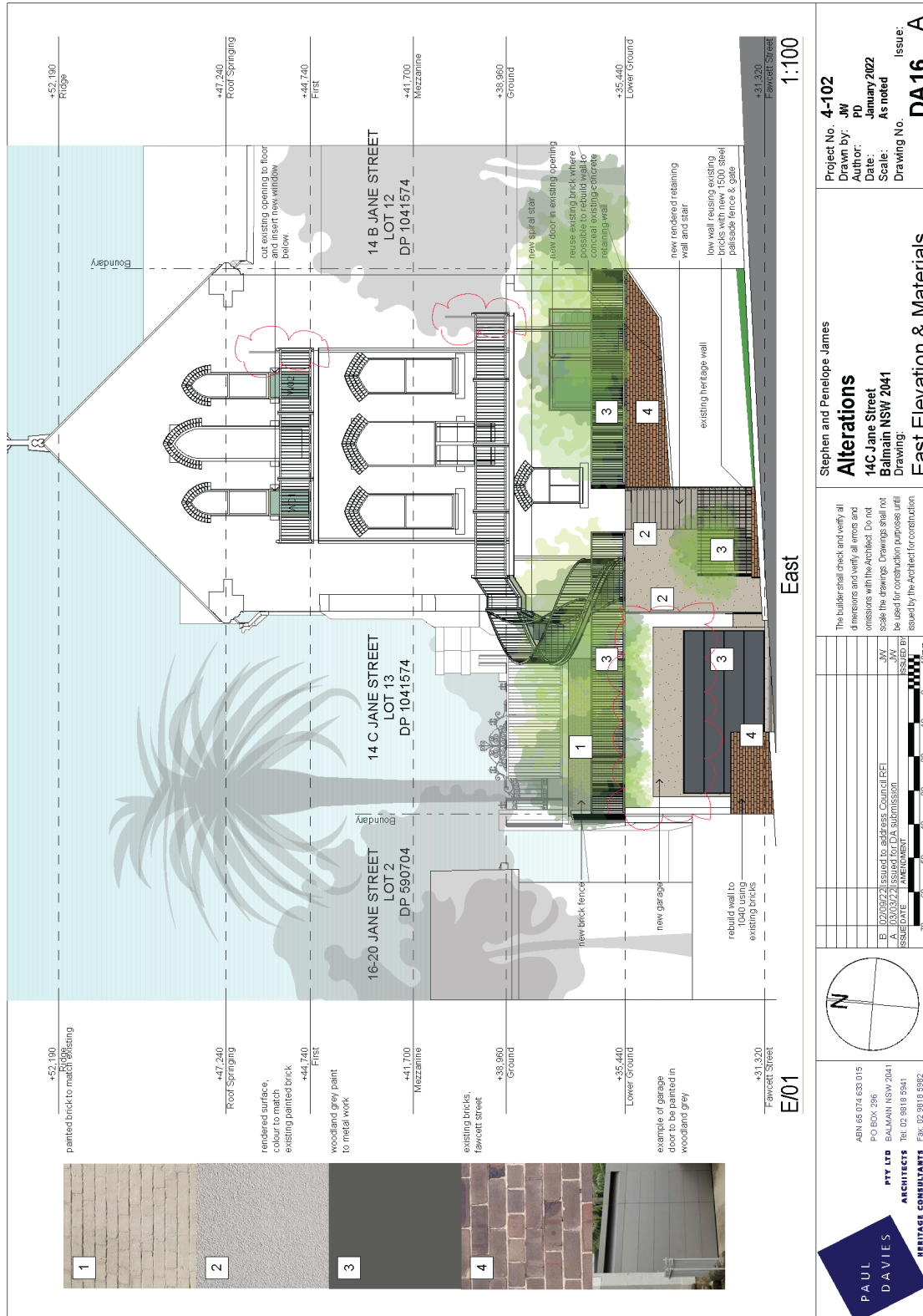


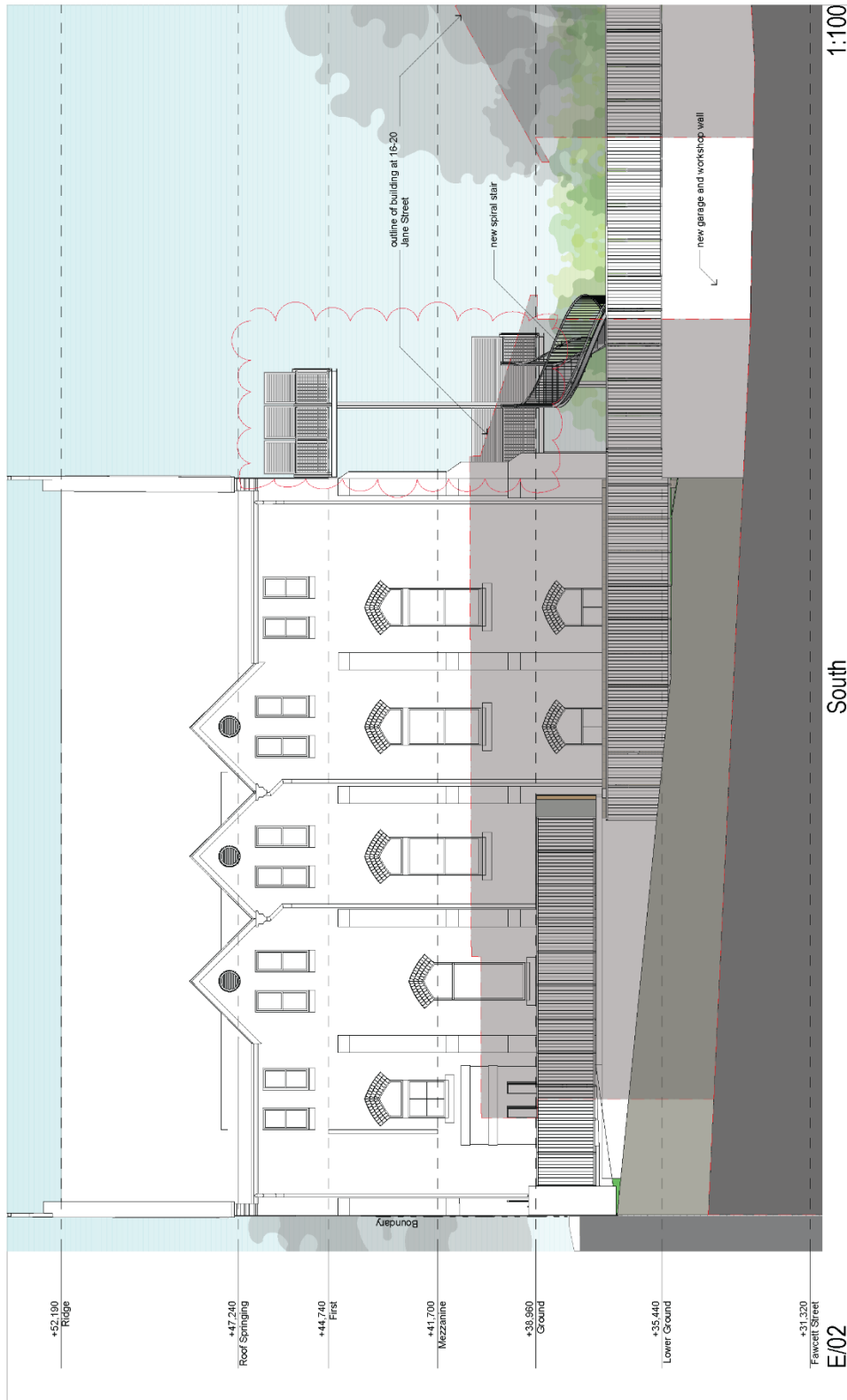
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South  
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Stephen and Penelope James  
**Alterations**  
14C Jane Street  
Balmain NSW 2041  
Drawing:  
**South Elevation**

Project No. **4-102**  
Drawn by: JW  
Author: PD  
Date:  
Scale:  
Drawing No. **DA17**  
Issue: **B**  
Plot Date: 3/9/22

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BALMAIN NSW 2041  
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HERITAGE CONSULTANTS Fax: 02 9818 6892

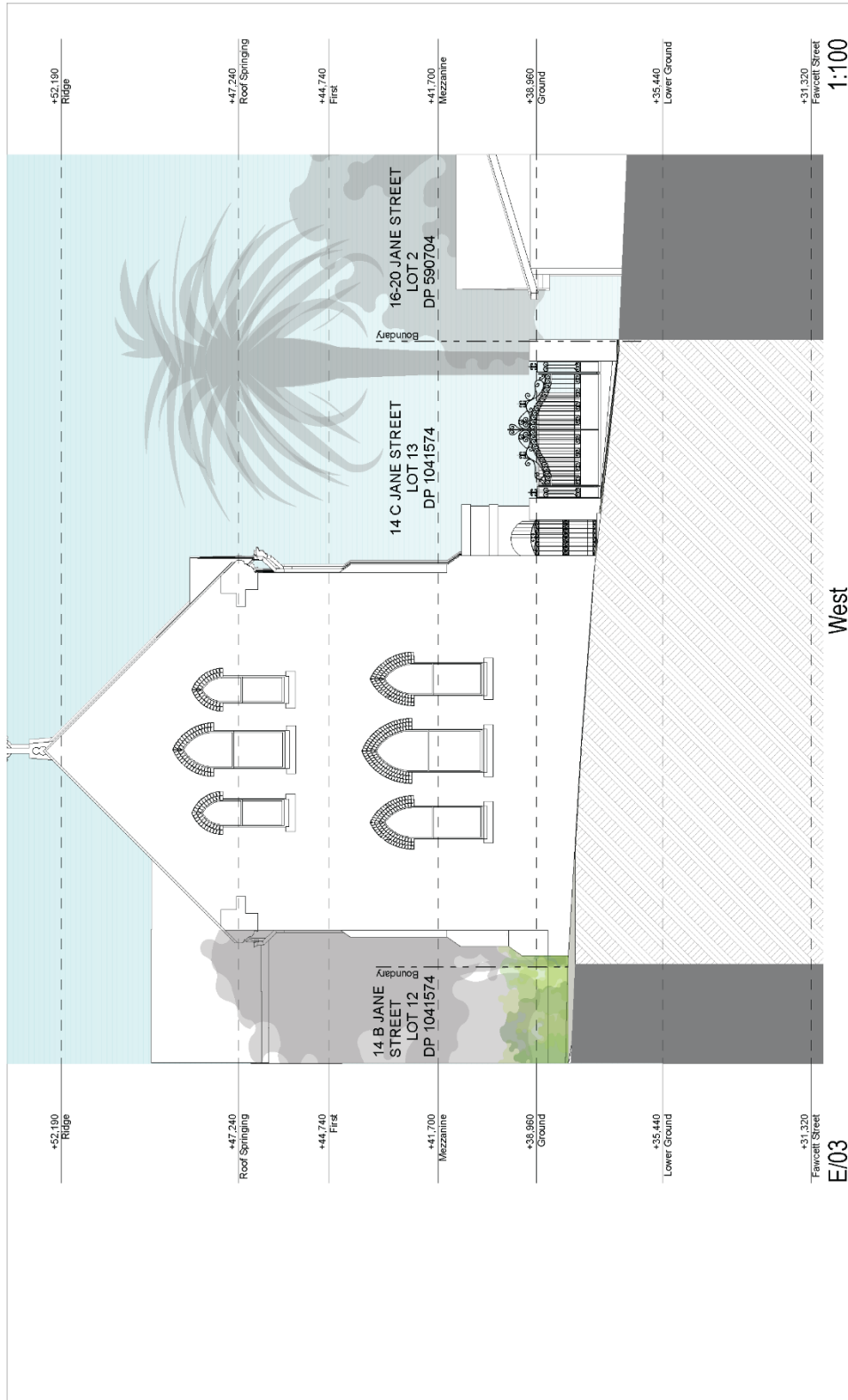
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Tel: 02 9818 8841  
Fax: 02 9818 5892

Stephen and Penelope James  
**Alterations**  
14C Jane Street  
Balmain NSW 2041  
Drawing:  
**West Elevation**

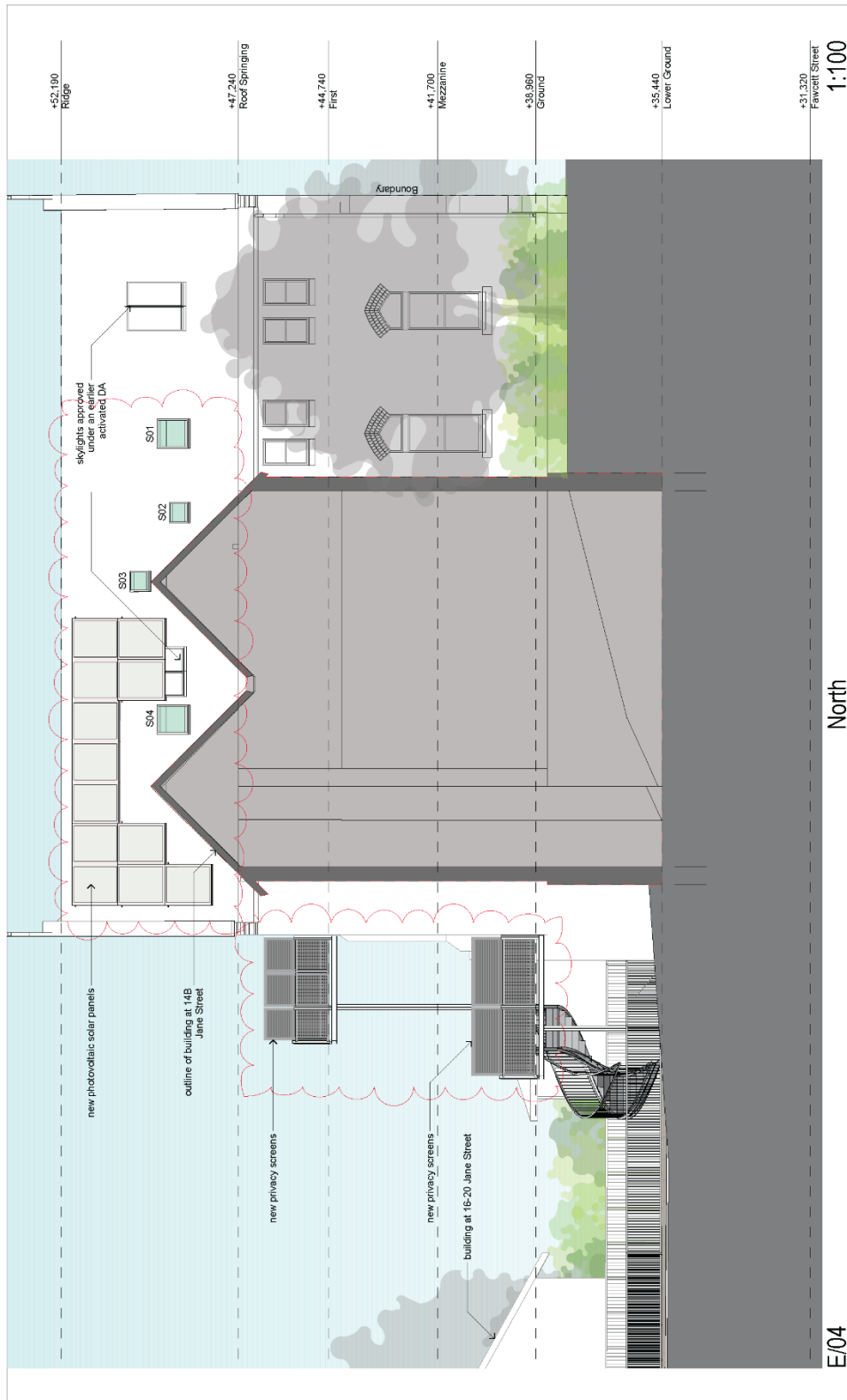
The builder shall check and verify all dimensions and verify all errors and omissions with the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.

A 03/05/22 (Scale for DA submission)  
ISSUE DATE APPROVED

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Project No: **4-102**  
Drawn by: JW  
Author: PD  
Date: January 2022  
Scale: As noted  
Drawing No. Issue:  
**DA18 A**  
Plot Date: 3/9/22






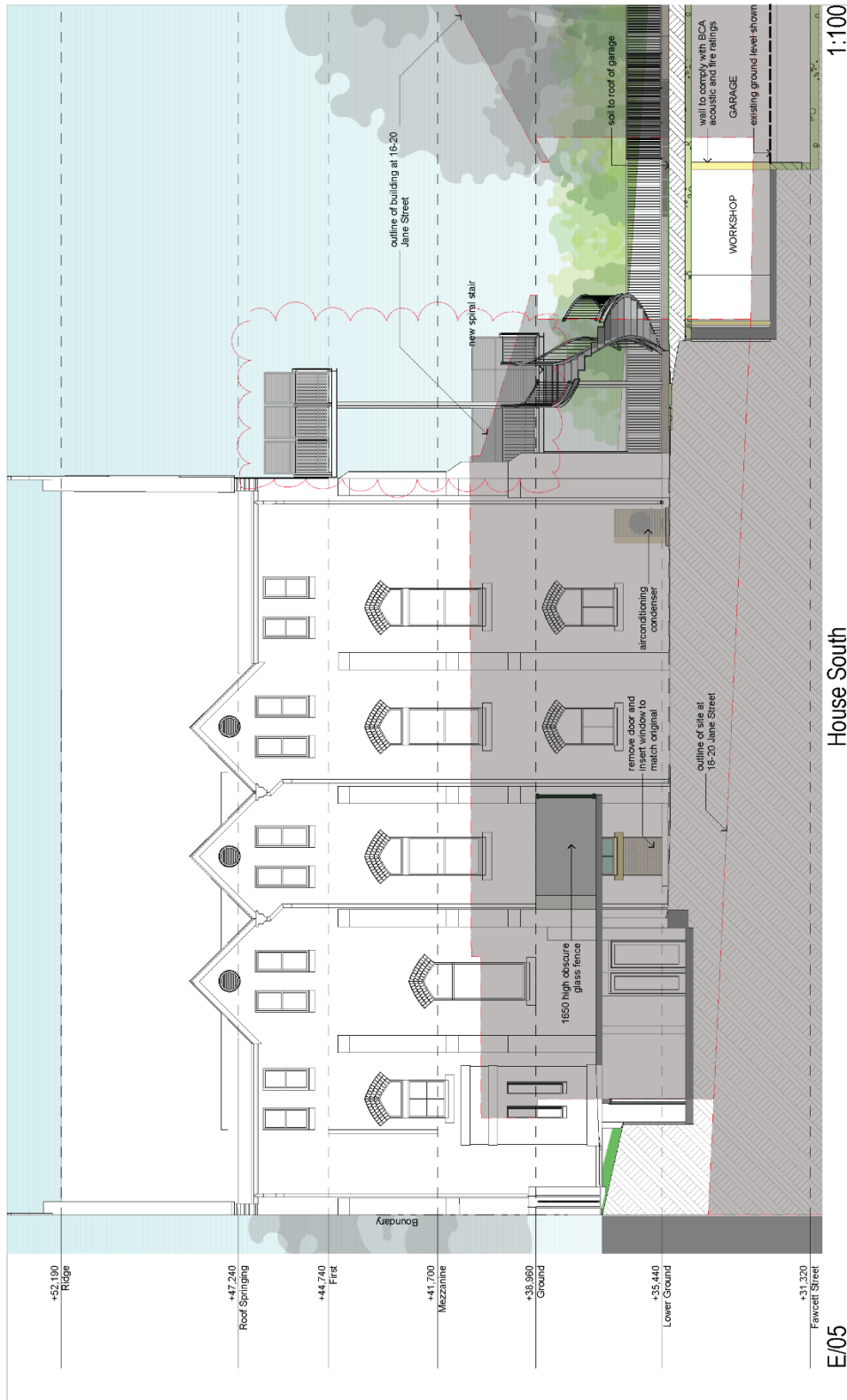


E/04

North

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 <p>HERITAGE CONSULTANTS</p> <p>ABN 66 074 633 015 PO BOX 298 BALMAIN NSW 2041 PTY LTD ARCHITECTS Tel: 02 9818 8641 Fax: 02 9818 5692</p>		<p>The builder shall check and verify all dimensions and verify all errors and omissions with the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.</p>	<p>Stephen and Penelope James <b>Alterations</b> 14C Jane Street Balmain NSW 2041 Drawing:</p>	<p>Project No: <b>4-102</b></p> <p>Drawn by: JW</p> <p>Author: PD</p> <p>Date: January 2022</p> <p>Scale: As noted</p> <p>Drawing No. <b>DA19 B</b></p> <p>Issue: <b>3/9/22</b></p> <p>Plot Date:</p>
				<p>B 02/05/22 Issued to address Council RFI 14C JANE STREET BALMAIN NSW 2041 RFS DATE: 02/05/22 RFS TIME: 10:00 AM</p> 



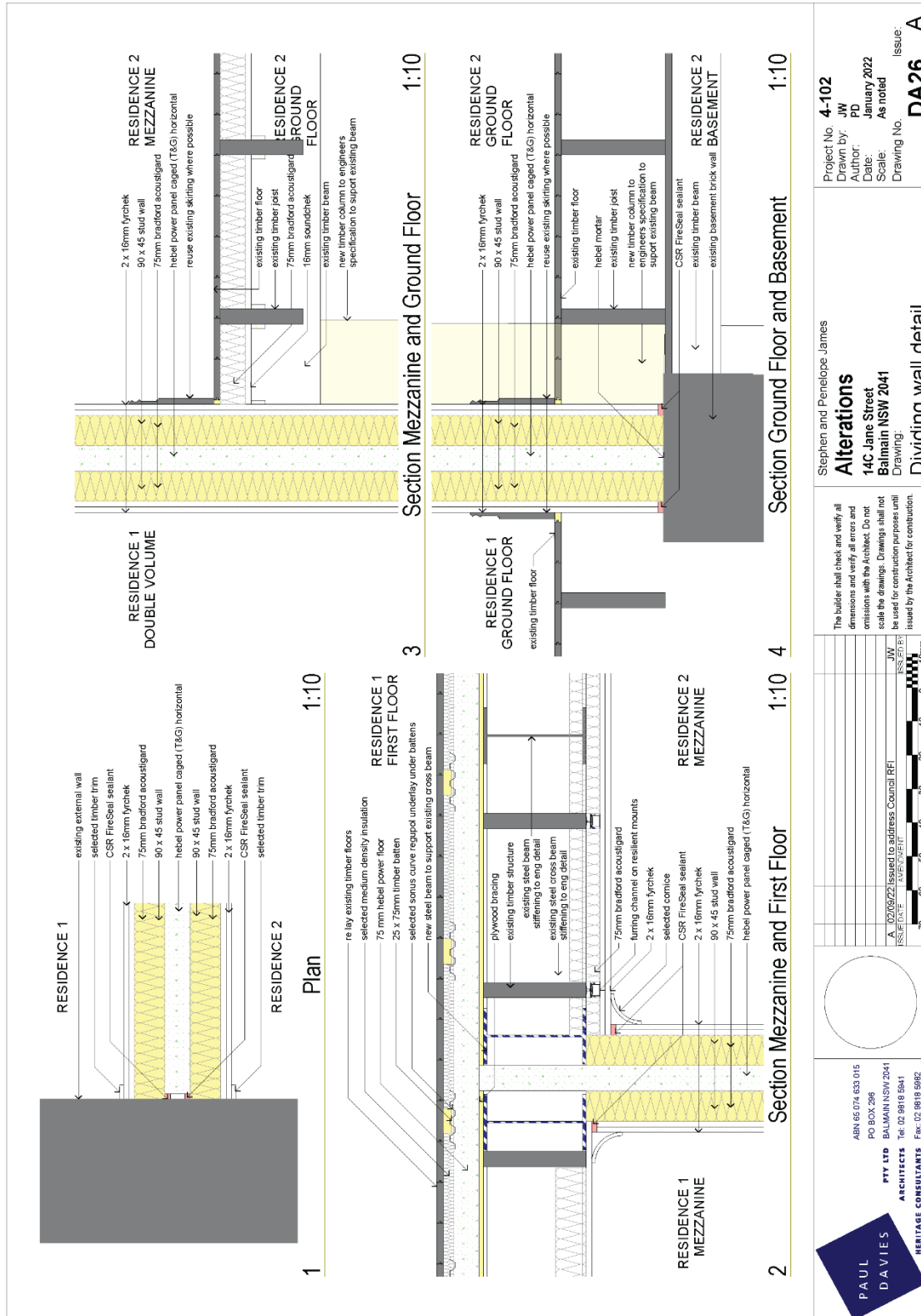
House South

E/05

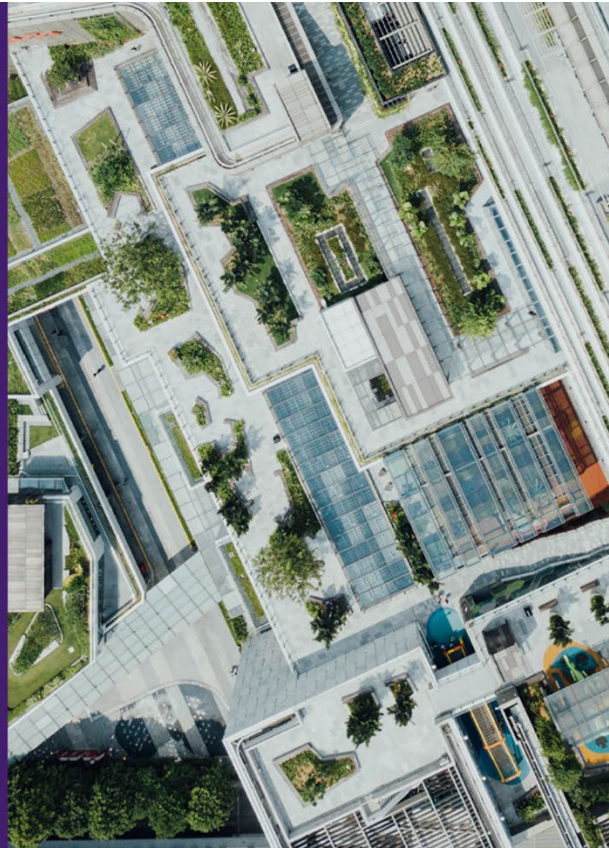
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<p><b>PAUL DAVIES ARCHITECTS</b> HERITAGE CONSULTANTS</p> <p>AEN 66 074 633 015 PO BOX 298 BALMAIN NSW 2041 PTY LTD ARCHITECTS Tel: 02 9818 8641 Fax: 02 9818 6982</p>	<p>North Arrow</p>	<p>The builder shall check and verify all dimensions and verify all errors and omissions with the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.</p>	<p>Stephen and Penelope James <b>Alterations</b> 14C Jane Street Balmain NSW 2041 Drawing: <b>DA20 B</b></p>	<p>Project No: <b>4-102</b> Drawn by: JW Author: PD Date: January 2022 Scale: As noted Drawing No. Issue: <b>DA20 B</b> Plot Date: 3/9/22</p>

Document Set ID: 37027278  
Version: 1, Version Date: 04/11/2022



**Attachment C- Section 4.6 Exception to Development Standards  
(FSR & Landscaped Area)**



**14C Jane Street,  
Balmain NSW 2041**  
Revised Clause 4.6 Variation Request  
– FSR

**On behalf of the Landowner**

**September 2022**

The Planning Studio acknowledges the traditional custodians of the lands + waters of Australia, particularly the Gadigal People on whose traditional lands our office is located, and pay our respects to Elders past, present + emerging. We deeply respect the enduring Connection to Country + culture of Aboriginal and Torres Strait Islander peoples and are committed to walk alongside, listen + learn with community as we plan for equitable, sustainable, generous, and connected places. Always was, Always will be.

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## 1 Introduction

This Clause 4.6 Variation Request relates to the Development Application (DA) for 14C Jane Street Balmain (subject site), which proposes the conversion of the existing dwelling into two generous residences, including:

- Conversion of the existing single dwelling into two generous residences, each with four bedrooms;
- Jane Street residence (residence 1) will consist of:
  - Continuation of the existing driveway car parking off Jane Street for 2 parking spaces;
  - A lower ground gym area utilising existing building;
  - A four-bedroom dwelling utilising the western wings of the ground and mezzanine level and, the whole first floor; and
  - A 30.88m<sup>2</sup> landscaped area along the southern boundary of the site.
- Fawcett Street residence (residence 2) will consist of:
  - A new proposed driveway with garage for two parking spaces and workshop off Fawcett Street;
  - A four-bedroom dwelling utilising the lower ground level and the eastern wings of the ground and mezzanine level; and
  - A large, landscaped area of 96.86m<sup>2</sup>, plus additional garden areas including a new swimming pool and landscaping above the garage;
- Rearranging of internal walls so the two residences can function;
- Addition of a new fire rated wall, which will divide the eastern and western parts of the ground and mezzanine levels; and
- New stairs will be built between the different levels in each newly formed residence.

The Clause 4.6 Variation Request seeks to vary one development standard within the Leichhardt Local Environmental Plan 2013 (LLEP2013):

- Clause 4.4 – Floor Space Ratio

This Clause 4.6 Variation Request demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, and that the justification is well founded. The variation allows for a development that represents the orderly and economic use of the land in a manner which is appropriate when considering the site's context and existing building, and as such, is justified on environmental planning grounds.

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliances, the proposed development:

- Achieves the objectives of the development standard in Clause 4.4 of LLEP 2013, despite the non-compliance with the numerical standard in Clause 4.4;
- Achieves the objectives of the R1 General Residential zone under LLEP2013;





- Will deliver a development that is appropriate for its context, despite the numerical breach to development standard 4.4, and therefore has sufficient environmental planning grounds to permit the variation; and
- Is in the public interest.

As a result, the DA may be approved as proposed in accordance with the flexibility afforded under Clause 4.6 of the LLEP 2013.

## 2 Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the LLEP 2013 aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development. Specifically, the objectives of this clause are:

- To provide flexibility in the application of a development standard; and
- To achieve better outcomes for and from development.

Clause 4.6 enables a variation to the relevant development standards in the LLEP2013 for Clause 4.4 (Floor Space Ratio) – which ordinarily permits a maximum FSR on the subject site of 0.7:1.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has provided a written request that has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has provided a written request that has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- That the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority's satisfaction as to those matters must be informed by the objectives of Clause 4.6, which are:

- providing flexibility in the application of the relevant control; and
- to achieve better outcomes for and from development.

Clause 4.6 of the LLEP 2013 reads as follows:

### Clause 4.6 Exceptions to development standards

1. *The objectives of this clause are as follows:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
2. *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by*



this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

3. Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
  - (a) that compliance with the development standard is *unreasonable or unnecessary in the circumstances of the case*, and
  - (b) that there are *sufficient environmental planning grounds to justify contravening the development standard*.
4. Development consent must not be granted for development that contravenes a development standard unless:
  - (a) the consent authority is satisfied that:
    - (i) the applicant's written request has adequately **addressed** the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be *in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*, and
  - (b) the concurrence of the Secretary has been obtained.
5. In deciding whether to grant concurrence, the Secretary must consider:
  - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

### 3 The development standard to be varied

This Clause 4.6 Variation has been prepared as a written request seeking to justify the variation to the following development standard in the LLEP2013:

- Clause 4.4 (Floor Space Ratio) – which ordinarily permits a maximum FSR on the subject site of 0.7:1.





### 3.1 Clause 4.4 – Floor Space Ratio

The proposal exceeds the maximum FSR permitted on site of 0.7:1 under the LLEP2013.

Clause 4.4 states:

#### 4.4 Floor Space Ratio

1. The objectives of this clause are as follows —
  - a. to ensure that residential accommodation—
    - i. is compatible with the desired future character of the area in relation to building bulk, form and scale, and
    - ii. provides a suitable balance between landscaped areas and the built form, and
    - iii. minimises the impact of the bulk and scale of buildings,
  - b. to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale.
2. The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The Figure below represents the FSR permitted under the FSR Map, which is ordinarily 0.5:1.

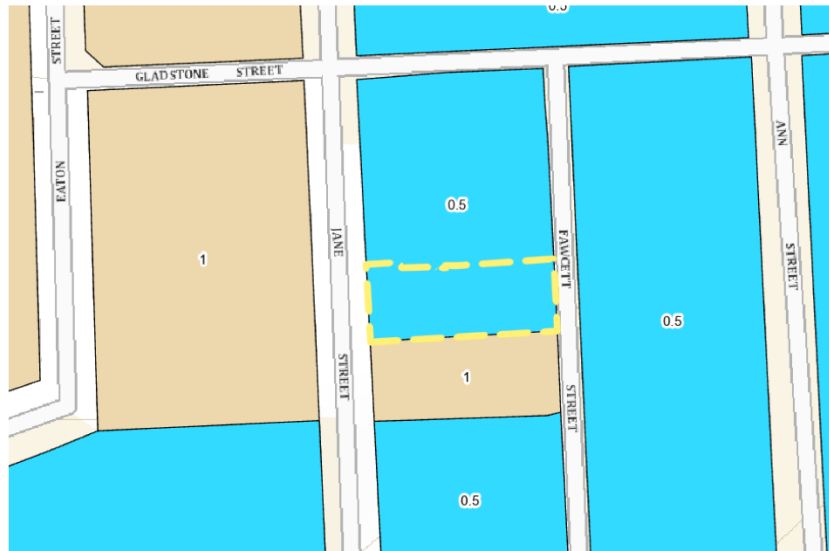


Figure 1: FSR Control for subject site (NSW Planning Portal)

However, under Clause 4.42B(b)(iv), the site is permitted an FSR of 0.7:1 as the site area is greater than 450m<sup>2</sup>.

## 4 Extent of Variation to the Development Standard

The subject application proposes a FSR of 0.91:1 (616m<sup>2</sup>), which constitutes a variation of 0.21:1 or 30% to the control.



However, it should be noted that the subject proposal results in a reduction in floor space on the site, which currently has a FSR of 0.98:1 or 664.59m<sup>2</sup> and represents a 40% variation to the control.

## 5 Objectives of the Standard

The objectives of the Standard are as follows:

- a. *to ensure that residential accommodation—*
  - i. *is compatible with the desired future character of the area in relation to building bulk, form and scale, and*
  - ii. *provides a suitable balance between landscaped areas and the built form, and*
  - iii. *minimises the impact of the bulk and scale of buildings,*
- b. *to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale.*

## 6 Objectives of the Zone

The objectives of the R1 General Residential zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To improve opportunities to work from home.*
- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To provide landscaped areas for the use and enjoyment of existing and future residents.*
- *To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.*
- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

## 7 Assessment

### 7.1 Clause 4.6(3)(a) – Is Compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

1. Compliance with the FSR standard is unreasonable and unnecessary as the objectives of the FSR development standard are achieved notwithstanding non-compliance with the numerical standard (Wehbe 1# test):
  - i. As detailed in *Williams v Ku-ring-gai Municipal Council* [2017] NSWLEC 1098, *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [44]–[48], a number of



approaches could be used to establish that compliance with a development standard is unreasonable or unnecessary.

- ii. Furthermore, Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 [42]-[51] outlined five common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable and unnecessary which are summarised below:

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

*Test 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

*Test 3. The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

*Test 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or*

*Test 5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

- iii. These five ways to demonstrate that compliance is unreasonable or unnecessary are not exhaustive, and it may be sufficient to establish only one way.
- iv. With respect to the subject application, we consider that the proposed development meets the requirements of Wehbe Test 1 and therefore compliance with the development standard is unreasonable and unnecessary when considered holistically with the development outcome being sought.

#### 7.1.1 7.1.1 Wehbe Test 1 – Objectives of the Standard are achieved

2. Objective (a)(i) to ensure that residential accommodation— is compatible with the desired future character of the area in relation to building bulk, form and scale, and
  - i. The subject proposal seeks to convert the existing heritage-listed, single dwelling, being part of the former convent, into two residential dwellings in a manner that is minor and complimentary, and encourages restoration and conservation of the heritage fabric.
  - ii. The development is consistent with the Council's controls relating to existing and future character, particularly as they relate to the heritage conservation area and the site-specific controls relating to the Jane Street precinct.
  - iii. It seeks very minimal external changes to the existing listed building and internal changes are only proposed where they are not to impact on existing significant material and form.
  - iv. The conversion of the single dwelling into two dwellings will make no changes to the existing building bulk, form or scale and the proposal represents a net reduction in GFA compared to the existing dwelling.



3. Objective (a)(ii) to ensure that residential accommodation— provides a suitable balance between landscaped areas and the built form.
  - i. The proposal will continue to maintain the existing balance between landscaped areas and the built form. No external changes are proposed to the built form that would change this balance, noting that the proposed garage is proposed beneath the existing yard and will therefore not take away from the landscaped appearance of the dwelling(s) despite not technically meeting the definition of 'landscaped area'.
  - ii. The floorspace in excess of the control already exists on site (and is proposed to be reduced), therefore the exceedance of the numerical control does not create any additional landscape impacts to the site.
  - iii. The redevelopment of the site will enhance the landscaping on site by providing for additional mature tree planting and a range of soft and hard landscaped areas.
4. Objective (a)(iii) to ensure that residential accommodation— minimises the impact of the bulk and scale of buildings.
  - i. As noted earlier, the proposal will not create any additional impact in terms of the bulk and scale of the buildings. The variation to the FSR control is a result of the existing, former convent building, already exceeding the FSR control.
  - ii. The proposal will result in a net reduction of floor space on the site and will not contribute any additional bulk or scale to the development.
5. Objective (b) to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale.
  - i. This objective is not applicable to the subject proposal.

## 7.2 Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

1. As discussed above, Pain J held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a Clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate other environmental planning grounds that justify contravening the development standard, preferably grounds that are specific to the site. Pain J also held that in order for a Clause 4.6 variation to be accepted, seeking to justify the contravention is insufficient - the consent authority must be satisfied that Clause 4.6(3)(a) and (b) have been properly addressed.
2. On appeal, Leeming JA in *Four2Five vs Ashfield Council* NSWCA 248 acknowledged Pain J's approach, but did not necessarily endorse it, instead re- stating Pain J and saying:

*"matters of consistency with objectives of development standards remain relevant, but not exclusively so."*



This approach was further reinforced by Commissioner O'Neill's determination of the subsequent Initial Action Class 1 appeal (LEC 2019 1097), where she stated that "the environmental planning grounds relied upon must be sufficient to justify contravening the development standard and the focus is on the aspect of the development that contravenes the development standard, not the development as a whole (Initial Action [24]). Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (Initial Action [24])..."

*I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by his Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act)."*

3. There are sufficient environmental planning grounds to justify contravening the development standards for the following reasons:
  - i. The subject site forms the southern wing of the former Convent of the Immaculate Conception (known as No. 14C) and sits atop the highest point on the Balmain peninsula. The building as a whole is significant but arguably the Blacket section of the building is the most significant in terms of design and detail. This does not diminish the significance of the whole building which has an important streetscape and visual form and detail in the precinct.
  - ii. The building's original use was as a convent, which, when designed in the 1800s, had different design drivers to those that are considered in a contemporary floor space ratio control. This has resulted in a current dwelling that has significantly more floorspace (664.59m<sup>2</sup>) than the 473m<sup>2</sup> permitted under the current FSR control of 0.7:1. The current dwelling has an existing FSR of 0.98:1, largely driven by a number of existing lower-ground and mezzanine spaces such as the gymnasium, workshop and studio, which are both early design elements or have been incorporated into the dwelling over a number of years.
  - iii. The subject proposal seeks to consolidate and improve on the quality of these existing spaces, whilst also enabling a complimentary and sympathetic design that will enhance the internal and external important heritage features. The design results in a net reduction of floorspace to 616m<sup>2</sup> or FSR of 0.91:1.

Accordingly, the particular circumstances of the proposal seeking to conserve and enhance an existing heritage item already exceeding the FSR control creates sufficient environmental planning grounds to justify contravening the development standard. This is particularly relevant given the proposal results in a net reduction of floor space on the site and will not result in any additional bulk or scale associated with the building.



7.3 Clause 4.6 (4)(a)(i) – The consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3)

1. As demonstrated above, the proposed development has satisfied the matters required to be demonstrated in Clause 4.6(3) by providing a written request that demonstrates:
  - i. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
  - ii. There are sufficient environmental planning grounds to justify contravening the development standard.
2. In accordance with the findings of Commissioner Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the Consent Authority under Clause 4.6(4)(a)(i) must only be satisfied that the request adequately addresses the matters in Clause 4.6(3).

7.4 Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

1. The proposed development is in the public interest as it is consistent with the objectives of the development standard. The objectives of the development standard are addressed below under the relevant headings:
2. *The objectives of the particular standard*
  - i. It has been demonstrated elsewhere in this report that the development achieves the objectives of Clause 4.4 within the LLEP2013 notwithstanding the non-compliance with the standard.
3. *The objectives for development within the zone in which the development is proposed to be carried out.*
  - i. The site falls within the R1 General Residential zone. As outlined below the proposed development is in the public interest because it is consistent with the objectives of the zone as detailed below.
  - ii. *To provide for the housing needs of the community.*

The proposal will deliver two high-quality residential dwellings, while also conserving an existing heritage item.
  - iii. *To provide for a variety of housing types and densities.*

The development will deliver two 4-bedroom dwellings on the site, in an area that often is unable to achieve these types of dwellings given the historical subdivision pattern of the conservation area.
  - iv. *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*



This objective is not relevant to the proposal.

- v. *To improve opportunities to work from home.*

By converting a single dwelling into two, generous, four-bedroom dwellings, the proposal will enable a variety of workspaces and layouts that would support residents working from home.

- vi. *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*

The proposed dwellings have been carefully designed to have minimal impact on the existing heritage significance of the former Convent and conserve key heritage features of the building, including its relationship to other important buildings in the Jane Street precinct controls.

- vii. *To provide landscaped areas for the use and enjoyment of existing and future residents.*

Both dwellings will deliver generous landscaped areas that are compatible with the heritage significance of the building and reflect the landscape character of that period.

- viii. *To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.*

No subdivision of the lot is proposed.

- ix. *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

The proposal will create no additional negative amenity impacts on surrounding residents and will provide an improved heritage and residential amenity outcome for the existing and future residents of the subject site.

4. For all of the above reasons, the proposal is considered in the public interest as it is consistent with the objectives of the development standard and the R1 General Residential zone.

## 8 Any matters of significance for state or regional environmental planning

The proposed development will not impact on any matters of significance for state or regional environmental planning.

## 9 Secretary's concurrence

The Planning Circular PS 18-003, issued on 21 February 2018 (Planning Circular), outlines that all consent authorities may assume the Secretary's concurrence under clause 4.6 of the Standard Instrument (Local Environmental Plans) Order 2006 (with some exceptions). The LLEP is a standard instrument LEP and accordingly, the relevant consent authority may



assume the Secretary's concurrence in relation to clause 4.6 (5). This assumed concurrence notice takes effect immediately and applies to pending development applications.

## 10 No public benefit in maintaining the development standard

There is no public benefit in maintaining the development standards, due to the reasons outlined in Section 7 above.

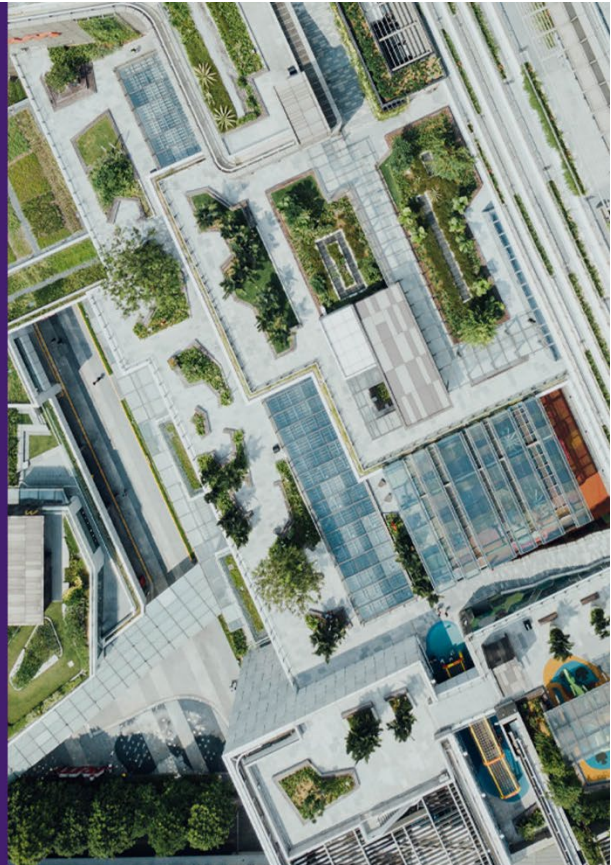
## 11 Conclusion

This written request is for a variation to the FSR development standard, under Clause 4.6 of the LLEP 2013. It justifies the contravention to the development standards by demonstrating that compliance is unreasonable and unnecessary in the circumstances of the case because the proposal:

- Achieves the objectives of the development standard;
- Achieves the objectives of the R1 General Residential zone under LLEP 2013;
- Will deliver a development that is appropriate for its context despite the breach to the FSR development standard, and therefore has sufficient environmental planning grounds to permit the variation. This is partly due to the modification of an existing building constructed with a greater FSR than permitted under the current controls; and
- Therefore, is in the public interest.







## 14C Jane Street, Balmain NSW 2041

Clause 4.6 Variation Request –  
Landscaped Area for residential  
accommodation in Zone R1

**On behalf of the Landowner**

**September 2022**

The Planning Studio acknowledges the traditional custodians of the lands + waters of Australia, particularly the Gadigal People on whose traditional lands our office is located, and pay our respects to Elders past, present + emerging. We deeply respect the enduring Connection to Country + culture of Aboriginal and Torres Strait Islander peoples and are committed to walk alongside, listen + learn with community as we plan for equitable, sustainable, generous, and connected places. Always was, Always will be.

Document Set ID: 37027277  
Version: 1, Version Date: 04/11/2022

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## 1 Introduction

This Clause 4.6 Variation Request relates to the Development Application (DA) for 14C Jane Street Balmain (subject site), which proposes the conversion of the existing dwelling into two generous residences, including:

- Conversion of the existing single dwelling into two generous residences, each with four bedrooms;
- Jane Street residence (residence 1) will consist of:
  - Continuation of the existing driveway car parking off Jane Street for 2 parking spaces;
  - A lower ground gym area utilising existing building;
  - A four-bedroom dwelling utilising the western wings of the ground and mezzanine level and, the whole first floor; and
  - A 30.88m<sup>2</sup> landscaped area along the southern boundary of the site.
- Fawcett Street residence (residence 2) will consist of:
  - A new proposed driveway with garage for two parking spaces and workshop off Fawcett Street;
  - A four-bedroom dwelling utilising the lower ground level and the eastern wings of the ground and mezzanine level; and
  - A large landscaped area of 96.86m<sup>2</sup>, plus additional garden areas including a new swimming pool and landscaping above the garage;
- Rearranging of internal walls so the two residences can function;
- Addition of a new fire rated wall, which will divide the eastern and western parts of the ground and mezzanine levels; and
- New stairs will be built between the different levels in each newly formed residence.

The Clause 4.6 Variation Request seeks to vary one development standard within the Leichhardt Local Environmental Plan 2013 (LLEP2013):

- Clause 4.3A – Landscaped areas for residential accommodation in Zone R1

This Clause 4.6 Variation Request demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, and that the justification is well founded. The variation allows for a development that represents the orderly and economic use of the land in a manner which is appropriate when considering the site's context and existing building, and as such, is justified on environmental planning grounds.

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliances, the proposed development:

- Achieves the objectives of the development standard in Clause 4.3A of LLEP 2013, despite the non-compliance with the numerical standard in Clause 4.3A;
- Achieves the objectives of the R1 General Residential zone under LLEP2013;



- Will deliver a development that is appropriate for its context, despite the numerical breach to development standard 4.3A, and therefore has sufficient environmental planning grounds to permit the variation; and
- Is in the public interest.

As a result, the DA may be approved as proposed in accordance with the flexibility afforded under Clause 4.6 of the LLEP 2013.

## 2 Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the LLEP 2013 aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development. Specifically, the objectives of this clause are:

- To provide flexibility in the application of a development standard; and
- To achieve better outcomes for and from development.

Clause 4.6 enables a variation to the relevant development standards in the LLEP2013 for Clause 4.3A (Landscaped areas for residential accommodation in Zone R1) – which ordinarily requires a minimum landscaped area comprising 15% of site area where lot size is 235m<sup>2</sup> or less, or 20% of site area otherwise under 4.3A(3)(a).

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has provided a written request that has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has provided a written request that has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- That the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority's satisfaction as to those matters must be informed by the objectives of Clause 4.6, which are:

- providing flexibility in the application of the relevant control; and
- to achieve better outcomes for and from development.

Clause 4.6 of the LLEP 2013 reads as follows:

### Clause 4.6 Exceptions to development standards

1. *The objectives of this clause are as follows:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*



2. Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
3. Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
  - (a) that compliance with the development standard is *unreasonable or unnecessary in the circumstances of the case*, and
  - (b) that there are *sufficient environmental planning grounds to justify contravening the development standard*.
4. Development consent must not be granted for development that contravenes a development standard unless:
  - (a) the consent authority is satisfied that:
    - (i) the applicant's written request has adequately **addressed** the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be *in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*, and
  - (b) the concurrence of the Secretary has been obtained.
5. In deciding whether to grant concurrence, the Secretary must consider:
  - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

### 3 The development standard to be varied

This Clause 4.6 Variation has been prepared as a written request seeking to justify the variation to the following development standard in the LLEP2013:

- Clause 4.3A(3)(a) (Landscaped areas for residential accommodation in Zone R1), which requires:
  - (i) if the lot size is 235m<sup>2</sup> or less—15% of the site area, or
  - (ii) otherwise—20% of the site area.

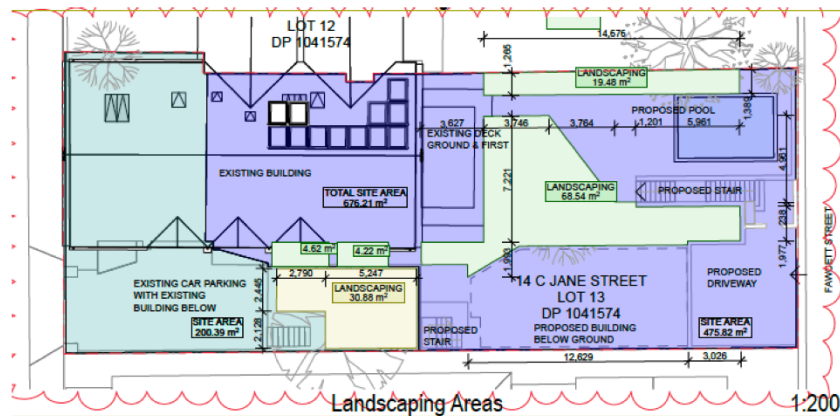
Subclause 4 then states:

- (a) the site area must be calculated in the way set out in clause 4.5, and
- (b) the following areas must not be included as landscaped areas—



- (i) a landscaped area with a length or width of less than 1m,
  - (ii) a landscaped area located more than 500mm above ground level (existing), and
- (c) a deck, balcony or similar structure, whether enclosed or unenclosed, must not be included in calculating the site coverage if—
- (i) the underside of the deck, balcony or structure is at least 2.4m above ground level (existing), and the area below the structure is able to be landscaped or used for recreational purposes, or
  - (ii) the finished floor level is 500mm or less above ground level (existing).

The Figure below outlines the proposed landscaped area calculations for both future dwellings – as well as the combined landscaped area of the one lot.



LANDSCAPING	EXISTING	PROPOSED		
		RESIDENCE 1	RESIDENCE 2	TOTAL
SITE AREA	676.20m <sup>2</sup>	200,39m <sup>2</sup>	475,82m <sup>2</sup>	676.20m <sup>2</sup>
LANDSCAPING	247.49m <sup>2</sup>	30.88m <sup>2</sup>	96.86m <sup>2</sup>	127.74m <sup>2</sup>
PERCENTAGE	36.6%	15.4%	20.3%	18.9%

Figure 1: Landscaped Area and site calculations (Paul Davies Architects)

As shown on the calculations, the landscaped areas for each of the two future dwellings complies with Clause 4.3A(3)(a). However, as the site is currently under one lot and subdivision is not currently proposed, the calculation must also be undertaken against the existing lot. The landscaped area for the single lot comprises 18.9% of the site area, which is less than the 20% required by the Clause.





## 4 Extent of Variation to the Development Standard

20% of the site area of 676.2m<sup>2</sup> equals 135.24m<sup>2</sup>. The development proposes 127.74m<sup>2</sup> of landscaping, which constitutes a 5.5% variation to the development standard.

## 5 Objectives of the Standard

The objectives of the Standard are as follows:

- (a) *to provide landscaped areas for substantial tree planting and for the use and enjoyment of residents,*
- (b) *to maintain and encourage a landscaped corridor between adjoining properties,*
- (c) *to ensure that development promotes the desired character of the neighbourhood,*
- (d) *to encourage ecologically sustainable development,*
- (e) *to control site density,*
- (f) *to provide for landscaped areas and private open space.*

## 6 Objectives of the Zone

The objectives of the R1 General Residential zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To improve opportunities to work from home.*
- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To provide landscaped areas for the use and enjoyment of existing and future residents.*
- *To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.*
- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*





## 7 Assessment

### 7.1 Clause 4.6(3)(a) – Is Compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

1. Compliance with the standard is unreasonable and unnecessary as the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard (Wehbe 1# test):

- i. As detailed in *Williams v Ku-ring-gai Municipal Council* [2017] NSWLEC 1098, *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [44]-[48], a number of approaches could be used to establish that compliance with a development standard is unreasonable or unnecessary.
- ii. Furthermore, Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 [42]-[51] outlined five common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable and unnecessary which are summarised below:

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

*Test 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

*Test 3. The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

*Test 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or*

*Test 5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

- iii. These five ways to demonstrate that compliance is unreasonable or unnecessary are not exhaustive, and it may be sufficient to establish only one way.
- iv. With respect to the subject application, we consider that the proposed development meets the requirements of Wehbe Test 1 and therefore compliance with the development standard is unreasonable and unnecessary when considered holistically with the development outcome being sought.

#### 7.1.1 7.1.1 Wehbe Test 1 – Objectives of the Standard are achieved

2. Objective (a) to provide landscaped areas for substantial tree planting and for the use and enjoyment of residents.

- i. The subject proposal seeks to convert the existing heritage-listed, single dwelling, being part of the former convent, into two residential dwellings in a



manner that is minor and complimentary, and encourages restoration and conservation of the heritage fabric.

- ii. The conversion of the single dwelling into two dwellings will make no changes to the existing building bulk, form or scale and the proposal represents a net reduction in GFA compared to the existing dwelling.
- iii. In addition, it retains the existing ratio of built form to landscape area that will enable significant new tree planting and the enjoyment of residents. Refer to the Figures below for the detailed Landscape Plan. The net reduction in Landscaped Area (as defined in the LEP) is driven by the introduction of a swimming pool and the garage that will sit below the lawn area at the south of the site. Irrespective, the landscaping of the site will enable an improvement of mature tree planting and significance landscape for the enjoyment of residents.

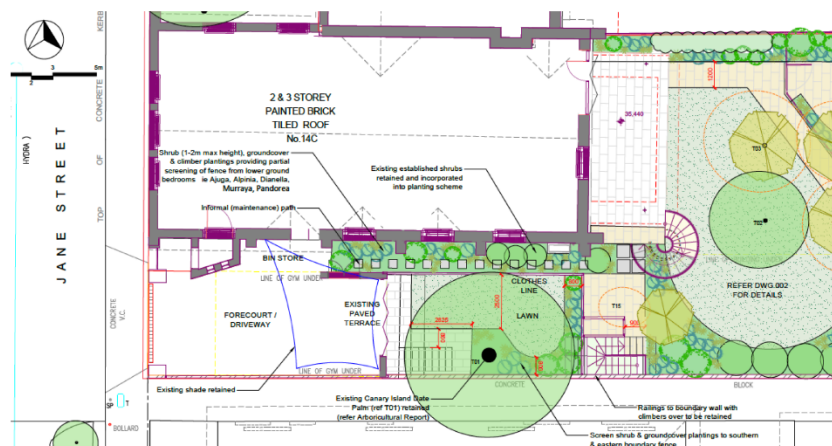


Figure 2: Landscape Plan - West (Hazelwood landscape architecture)



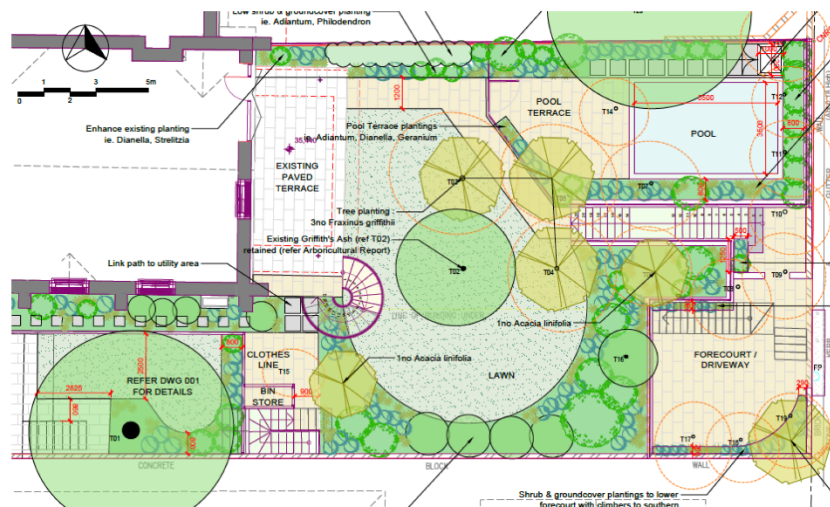


Figure 3: Landscape Plan - East (Hazelwood landscape architecture)

3. Objective (b) to maintain and encourage a landscaped corridor between adjoining properties.
  - i. The variation of 7.5m<sup>2</sup> from the landscaped area minimum will still enable and improve landscape corridors between adjoining properties. The proposal will include landscaped buffers on both side boundaries, as well as retention of significant existing trees.
4. Objective (c) to ensure that development promotes the desired character of the neighbourhood.
  - i. The subject proposal seeks to convert the existing heritage-listed, single dwelling, being part of the former convent, into two residential dwellings in a manner that is minor and complimentary, and encourages restoration and conservation of the heritage fabric, including the site's landscaping.
  - ii. The development is consistent with the Council's controls relating to existing and future character, particularly as they relate to the heritage conservation area and the site-specific controls relating to the Jane Street precinct.
  - iii. It seeks very minimal external changes to the existing listed building and internal changes are only proposed where they are not to impact on existing significant material and form. Additionally, the design of the landscape is intended to complement and better align with the landscape architectural intent of the building within its context so as to support its character.
  - iv. The variation of 7.5m<sup>2</sup> will not prevent the development from promoting the desired character of the neighbourhood.



5. Objective (d) to encourage ecologically sustainable development.
  - i. The proposed development, and careful landscape plan will encourage ecologically sustainable development by providing high-quality new landscape elements that will support and encourage native fauna.
  - ii. The conversion of a single large dwelling into two high-quality dwellings with minimal intervention to existing fabric also supports ecologically sustainable development through delivering new homes through existing infrastructure to assist with city and place planning.
6. Objective (e) to control site density.
  - i. The proposal results in a net reduction of FSR on the subject site.
  - ii. Whilst it does increase the number of dwellings on site, it does so in a manner that reduces floor space and creates no perceptible external changes.
  - iii. Accordingly, the proposed development does not increase site density in a manner that reduces built upon area compared to non-built upon area. It seeks to utilise an existing built form in a more efficient manner that also will deliver two individual future dwellings that comply with the landscaped area control – despite the current site having a slight variance.
7. Objective (f) to provide for landscaped areas and private open space.
  - i. As shown in Figure 1 – both new individual dwellings will have landscaped areas and private open space areas that comply with the provision of 4.3A(3)(a). The variation is under the currently larger site area.
  - ii. Each dwelling and the development as a whole will provide generous landscaped areas that are functional for the residents and provide a variety of options.

## 7.2 Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

1. As discussed above, Pain J held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a Clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate other environmental planning grounds that justify contravening the development standard, preferably grounds that are specific to the site. Pain J also held that in order for a Clause 4.6 variation to be accepted, seeking to justify the contravention is insufficient - the consent authority must be satisfied that Clause 4.6(3)(a) and (b) have been properly addressed.
2. On appeal, Leeming JA in *Four2Five vs Ashfield Council* NSWCA 248 acknowledged Pain J's approach, but did not necessarily endorse it, instead re- stating Pain J and saying:

*"matters of consistency with objectives of development standards remain relevant, but not exclusively so."*

This approach was further reinforced by Commissioner O'Neill's determination of the subsequent Initial Action Class 1 appeal (LEC 2019 1097), where she stated that "the



*environmental planning grounds relied upon must be sufficient to justify contravening the development standard and the focus is on the aspect of the development that contravenes the development standard, not the development as a whole (Initial Action [24]). Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (Initial Action [24])...*

*I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by his Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act)."*

3. There are sufficient environmental planning grounds to justify contravening the development standards for the following reasons:
  - i. The subject site forms the southern wing of the former Convent of the Immaculate Conception (known as No. 14C) and sits atop the highest point on the Balmain peninsula. The building as a whole is significant but arguably the Blacket section of the building is the most significant in terms of design and detail. This does not diminish the significance of the whole building which has an important streetscape and visual form and detail in the precinct.
  - ii. The building's original use was as a convent, which, when designed in the 1800s, had different design drivers to those that are considered in contemporary landscaping controls. Whilst each individual proposed dwelling will have a landscaped area ratio compliant with 4.3A(3)(a), the overall proposal falls just 7.5m<sup>2</sup> short of a compliant outcome. It is noted, however, that the proposal complies with 4.3A(3)(b) for site coverage, which is to be read as a partner to the subject control.
  - iii. Whilst the proposal reduces the existing landscaped area on site as defined by the LEP, it does so in a manner that does not increase the bulk or extent of built form on the site. Rather, the new swimming pool and landscaping over the garage areas are excluded from the formal calculation, despite continuing to provide a largely landscaping/ private open space function.

Accordingly, the particular circumstances of the proposal seeking to conserve and enhance an existing heritage item, including new landscaping that complements the development's heritage creates sufficient environmental planning grounds to justify contravening the development standard. This is particularly relevant given the proposal results in a net reduction of floor space on the site and will not result in any additional bulk or scale associated with the building.



7.3 Clause 4.6 (4)(a)(i) – The consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3)

1. As demonstrated above, the proposed development has satisfied the matters required to be demonstrated in Clause 4.6(3) by providing a written request that demonstrates:
  - i. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
  - ii. There are sufficient environmental planning grounds to justify contravening the development standard.
2. In accordance with the findings of Commissioner Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the Consent Authority under Clause 4.6(4)(a)(i) must only be satisfied that the request adequately addresses the matters in Clause 4.6(3).

7.4 Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

1. The proposed development is in the public interest as it is consistent with the objectives of the development standard. The objectives of the development standard are addressed below under the relevant headings:
2. *The objectives of the particular standard*
  - i. It has been demonstrated elsewhere in this report that the development achieves the objectives of Clause 4.3A within the LLEP2013 notwithstanding the non-compliance with the standard.
3. *The objectives for development within the zone in which the development is proposed to be carried out.*
  - i. The site falls within the R1 General Residential zone. As outlined below the proposed development is in the public interest because it is consistent with the objectives of the zone as detailed below.
  - ii. *To provide for the housing needs of the community.*

The proposal will deliver two high-quality residential dwellings, while also conserving an existing heritage item.
  - iii. *To provide for a variety of housing types and densities.*

The development will deliver two 4-bedroom dwellings on the site, in an area that often is unable to achieve these types of dwellings given the historical subdivision pattern of the conservation area.





- iv. *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*  
This objective is not relevant to the proposal.
  - v. *To improve opportunities to work from home.*  
By converting a single dwelling into two, generous, four-bedroom dwellings, the proposal will enable a variety of workspaces and layouts that would support residents working from home.
  - vi. *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*  
The proposed dwellings and associated landscaped areas have been carefully designed to have minimal impact on the existing heritage significance of the former Convent and conserve key heritage features of the building, including its relationship to other important buildings in the Jane Street precinct controls.
  - vii. *To provide landscaped areas for the use and enjoyment of existing and future residents.*  
Both dwellings will deliver generous landscaped areas that are compatible with the heritage significance of the building and reflect the landscape character of that period.
  - viii. *To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.*  
No subdivision of the lot is proposed.
  - ix. *To protect and enhance the amenity of existing and future residents and the neighbourhood.*  
The proposal will create no additional negative amenity impacts on surrounding residents and will provide an improved heritage and residential amenity outcome for the existing and future residents of the subject site.
4. For all of the above reasons, the proposal is considered in the public interest as it is consistent with the objectives of the development standard and the R1 General Residential zone.

## 8 Any matters of significance for state or regional environmental planning

The proposed development will not impact on any matters of significance for state or regional environmental planning.

## 9 Secretary's concurrence

The Planning Circular PS 18-003, issued on 21 February 2018 (Planning Circular), outlines that all consent authorities may assume the Secretary's concurrence under clause 4.6 of the





Standard Instrument (Local Environmental Plans) Order 2006 (with some exceptions). The LLEP is a standard instrument LEP and accordingly, the relevant consent authority may assume the Secretary's concurrence in relation to clause 4.6 (5). This assumed concurrence notice takes effect immediately and applies to pending development applications.

## 10 No public benefit in maintaining the development standard

There is no public benefit in maintaining the development standards, due to the reasons outlined in Section 7 above.

## 11 Conclusion

This written request is for a variation to the FSR development standard, under Clause 4.6 of the LLEP 2013. It justifies the contravention to the development standards by demonstrating that compliance is unreasonable and unnecessary in the circumstances of the case because the proposal:

- Achieves the objectives of the development standard;
- Achieves the objectives of the R1 General Residential zone under LLEP 2013;
- Will deliver a development that is appropriate for its context despite the breach to the FSR development standard, and therefore has sufficient environmental planning grounds to permit the variation. This is partly due to the modification of an existing building constructed with a greater FSR than permitted under the current controls; and
- Therefore, is in the public interest.



Attachment D – Statement of Heritage Significance

**Item Details**

**Name**  
Former convent and fence, including interiors  
**SHR/LEP/S170**  
Former convent and fence, including interiors  
**Address**  
14A, 14B & 14C Jane Street BALMAIN NSW 2041  
**Local Govt Area**  
Inner West  
**Local Aboriginal Land Council**  
Unknown  
**Item Type**  
Built  
**Group/Collection**  
Residential buildings (private)  
**Category**  
Other - Residential Buildings (private)

**All Addresses**

Addresses										Records Retrieved: 2
Street No	Street Name	Suburb/Town/Postcode	Local Govt. Area	LALC	Parish	County	Electorate	Address Type		
14A, 14B & 14C	Jane Street	BALMAIN/NSW/2041	Inner West	Unknown			Unknown	Primary Address		
14A, 14B and 14C	Jane Street	BALMAIN/NSW/2041	Inner West	Unknown			Unknown	Primary Address		

**Significance**

**Statement Of Significance**

Document Set ID: 37027276  
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Nos. 14A, 14B & 14C Jane Street are of high local historic, aesthetic and social significance as part of an early subdivision and Victorian development in the area. The building is the finest early Gothic building in Balmain and forms part of the landmark St Augustine's group on the rise to Gladstone Park, visible from the east and north-east. Originally designed by Edmund Blacket in the Victorian Free Gothic style. The first section of the convent including the north and central wing was built in 1876 and the south wing was built in 1896.

Note: This inventory sheet is not intended to be a definitive study of the heritage item; therefore information may not be accurate and complete. The information should be regarded as a general guide. Further research is always recommended as part of the preparation of development proposals for heritage items

**Criteria a)**

**Historical Significance**

The site and building are of local historic significance as part of an early subdivision and Victorian development in Balmain. The building is significant as a purpose built Catholic Convent constructed in Balmain. Subsequent additions and changes of use reflect the growth and development of Catholic community, changing requirements of the building owners and general changes in the local area.

**Criteria b)**

**Historical Association Significance**

The site is associated with a number of local land speculators and owners. It is associated with the Catholic Church, Jesuits, Sisters of the Good Samaritan and St Augustine's Church and original School (now the Father John Therry Catholic Primary School).

**Criteria c)**

**Aesthetic/Technical Significance**

The building is of local aesthetic significance as a good and largely intact Victorian Free Gothic style constructed in 1876-1896. Despite some alterations and additions at the rear, the building retains its original and early form and character including gothic details, roof form and chimneys and front portico. The building is constructed to the street frontage and with the adjacent St Augustine buildings makes a positive contribution to the Jane Street streetscape.

**Criteria d)**

**Social/Cultural Significance**

The building is of high local social significance as a former Convent associated with the local Catholic Primary School and Church and former school and training centre associated with a number of user groups.

**Criteria f)**

**Rarity**

The building is a purpose built former Catholic Convent that is unique in the Balmain area.

**Criteria g)**

**Representative**

The building is a representative example of a Victorian Free Gothic building. It is one of a number of buildings designed by Edmund Blacket.

**Integrity/Intactness**

High

**Owners**

Organisation	Stakeholder Category	Date Ownership Updated
	No Results Found	

Records Retrieved: 0

**Description**

**Designer**

Edmund Blacket

**Builder/Maker**

**Physical Description**

No. 14A, 14B and 14C is a U shaped in plan landmark building built on the elevated Jane Street site. All walls are brick except the front centre porch. The high front one-storey north wing and the central two storey block were the first sections to be erected. The central block has a steep pitched concrete tile narrow-eaved hipped roof with the ridge parallel to the street. Large chimneys with mouldings stand above the roof.

**Updated**

The north wing has a street-facing parapeted gable with square stone coping on a moulded stone and a large traceried window under a Gothic arch with a label mould at the top part of the arch. In the south wall of the north wing are two undecorated pointed arch windows with sills and string course similar to the front windows of that wing.

The street-facing parapeted gable of the two-storey south wing is finished similarly to the north wing. The upper storey is lit by three undecorated lancet windows, with the central one wider and taller. The lower level has three similar windows of larger proportions. Two pairs of small double hung windows are set in the northern upper wall of the south wing. The lower level also has two tall openings crowned with low-rise arches. One has a doorway with transom light following the curve of the arch.; the other has a double hung window with transom light to match its neighbour.

The central block has a dentiled cornice under the eaves which continues on the north wing but not on the south. Tall segmented-headed windows have segmental top sashes but the sills are plain and unbracketed. Two arch recesses of the same proportions complete the upper storey window assembly. Lower windows are the same type and a single arched recess ends the row.

The stuccoed porch has a moulded parapet with decorative trefoils below with a moulded string course. 45 degree buttresses focus attention on the Gothic entrance arch with its moulded/archivolt, imposts and medieval shafts. On either side of the entry there are pointed arch niches with label moulds. The main doorway has a low-rise pointed arch under which is a large geometric-patterned transom light of the same curve. The keystone has the date "1876" inscribed on it. The former convent is Victorian Free Gothic in style.

The north and southern wings are constructed to the Jane Street frontage with iron palisade gate and stone pierced fence extending between. The fence encloses a small garden area with ornamental plantings and hedge and path extending tiled and slate steps and central entry porch. A high metal and timber gate extends along the northern end of the Jane Street frontage with metal grille gate and large gates located at the southern end.

Updated 09/28/2010

**Physical Condition**  
Excellent

**Modifications And Dates**

- 1991-1993 - alterations and additions (91/550)
- 2002 - S96 modification (M/2002/231) for alts and adds to existing buildings to create three separate dwellings
- 2003 - S96 modification (M/2002/265)
- 2013 - Alts and adds to existing dwelling (D/2012/285)

**Further Comments**

A high brick and stone fence extends along the eastern site (Fawcett Street) boundary. The fence incorporates a double garage opening and access to a basement car park. An elevated deck has also been added to the rear of the building.

**Current Use**  
Residential

**Former Use**  
Convent, School, novitiate and training centre.

**Listings**

		Records Retrieved: 1	
Heritage Listing	Listing Title	Listing Number	Gazette Date
Local Environmental Plan	Leichhardt Local Environmental Plan 2013	1249	12/23/2013 12:00:00 AM
			Gazette Page

**Procedures/Exemptions**

		Records Retrieved: 0	
Section of Act	Description	Title	Comments
		Action Date	Outcome
No Results Found			

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## History

### Historical Notes or Provenance

### Updated

Surgeon William Balmain was granted 550 acres and most of the area now encompassing Balmain in 1800. In 1801 the entire grant was transferred to fellow surgeon John Gilchrist. Gilchrist never actually lived in NSW and advertised the land for sale in 1823. However, the sale was not a success. He gave power of attorney to his Sydney-based agent and merchant, Frank Parbury, who commissioned Surveyor John Armstrong to subdivide part of the land. In 1836 22, 2-4 acres lots mostly about Balmain East were auctioned for sale by Parbury on behalf of the absentee landowner, Gilchrist.

Four lots containing about 38 acres were sold by Gilchrist at the second major sale of the Balmain Estate in August 1837. Included in this land was a 33 foot wide road, later named Adolphus Street. Robert Blake, Sheriff of NSW, purchased Lot 1, the area roughly to the east of Adolphus Street to Cameron's Cove. The remaining 30 acres, Lots 2-4 were purchased by Thomas Hyndes. Hyndes mortgaged Lots 2-4 in early 1840 to John Terry Hughes who in the same year mortgaged it to Adolphus William Young. Young subsequently acquired the land, subdivided and began to sell the various allotments in the late 1840s.

The Sisters of the Good Samaritan first came to Sydney in 1857 and to Balmain in 1864 when five nuns came to take charge of the school attached to St Augustine's Church. The first convent was in Father Terry's old presbytery, a long, single storey cottage with verandah crammed up against the south eastern corner of the old St Augustines Church (both now demolished). The sisters' dormitory was located on the other side of the original Church, on the first storey of the St Augustine's School (also demolished when the new Church was constructed in 1906). They subsequently vacated the dormitory and moved into a comfortable home in Thames Street.

Father Terry, St Augustine's parish priest (1856-64) purchased Lots 47-48 from Young and Manning in 1862. He left the land to the Jesuit order which gave it to the nuns for a new convent in 1868. Trustees were appointed to establish the convent in December 1875.

Architect Edmund Blacket designed the convent but his impressive scheme incorporating polychromatic brickwork and tower was never constructed. In April 1876 Blacket called tenders for the construction of a smaller building of brick on a stone base to be constructed on Lots 47-48 with all "unnecessary ornament" to be discarded.

The foundation stone of the first section of the convent dedicated to the Immaculate Conception of Our Lady was laid in March 1876 by Archbishop Polding. In April 1877 the Convent of the Immaculate Conception was opened as a boarding school.

Mary Jane Adamson, Catherine Mary Woodbury and Margaret Mary Byrne, on behalf of the Sisters of the Good Samaritan purchased Lots 46A and 46B of Young's subdivision located to the south of the convent. This land had been acquired by Sydney merchant, Robert Gray in 1860 and 1861. Gray sold to Mrs Mary Punch, wife of Captain John Greenway Punch in 1874 and the couple lived at No. 7 Fawcett Street from this time. The nuns purchased the land from the Captain following the death of Mrs Punch in 1889. In February 1890 the convent gained a new southern wing containing a school hall and dormitory which was completed in 1896.

After 1901 the Mother House of the Sisters of the Good Samaritan moved from Pitt Street to St Scholastica's in Glebe. Boarders and day pupils were diverted to Glebe and it was decided to close the convent in Balmain. In about 1912 the boarding school became the Convent Domestic Training School of the Immaculate Conception and accommodated girls formerly housed at Manly. The School was converted to an industrial school where girls produced garments for the clergy and also supplied articles for city shops. The industrial school was wound down during World War 1 and after 1924 accommodated novices, following the burning down of the novitiate in Randwick. The novices remained there until 1928 when the Sisters of the Good Samaritan returned. The sisters had been living at "Bayview House" (No. 7 Fawcett Street) and "Atraville". The convent has since closed and became the Aboriginal Cultural and Training Centre and in 1992 it became the House of Learning and Music. Since that time the site has been divided into three lots and buildings converted into three separate dwellings.

Historic Themes

Records Retrieved: 9

National Theme	State Theme	Local Theme
8. Culture	Religion	Growth of Balmain
6. Educating	Education	Growth of Balmain
4. Settlement	Accommodation	Growth of Balmain
Developing cultural institutions and ways of life	Sport	Growth of Balmain
Developing cultural institutions and ways of life	Sport	Growth of Balmain
Educating	Ethnic influences	Growth of Balmain
Educating	Ethnic influences	Growth of Balmain
Building settlements, towns and cities	Agriculture	Growth of Balmain
Building settlements, towns and cities	Agriculture	Growth of Balmain

Recommended Management

Management Summary

It is recommended that:

- the existing scale and character of the building and elements including painted brick faces, face brick details, roof form and chimneys, central entry portico and associated details, central stone and palisade fence and existing pattern of openings should be retained and conserved;
- no new openings should be made in the front façades;
- the facades and timberwork should continue to be painted in appropriate colours. It isn't considered necessary to remove the paint finish from brick facades, however, existing face stone elements including the front fence and brick detailing should remain unpainted;
- any further additions should be restricted to the rear of the building and site and ensure that the original scale and form and Gothic details of the building as presents Jane Street and St Augustus group is retained and remains prominent.

Management

Records Retrieved: 0

Management Category	Management Name	Date Updated
	No Results Found	

Report/Study

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Records Retrieved: 6

Report/Study Name	Report/Study Code	Report/Study Type	Report/Study Year	Organisation	Author
Leichhardt Municipality Heritage Study			1990		McDonald McPhee P/L
Leichhardt Municipality Heritage Study			1990		McDonald McPhee P/L
Leichhardt Municipality Heritage Study			1990		McDonald McPhee Pty Ltd (Craig Burton, Wendy Thorp)
Leichhardt Municipality Heritage Study			1990		McDonald McPhee Pty Ltd (Craig Burton, Wendy Thorp)
Leichhardt Municipality Heritage Study			1990		McDonald McPhee Pty Ltd (Craig Burton, Wendy Thorp)
Leichhardt Municipality Heritage Study			1990		McDonald McPhee Pty Ltd (Craig Burton, Wendy Thorp)

**Reference & Internet Links**

Records Retrieved: 2

Type	Author	Year	Title	Link
Written	Max Solling and Peter Reynolds		1997 Leichhardt: On the Margins of the City	
Written	Max Solling and Peter Reynolds		1997 Leichhardt: On the Margins of the City	

**Data Source**

The information for this entry comes from the following source:

**Data Source** Local Government  
**Record Owner** Inner West Council  
**Heritage Item ID** 1940264

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## Attachment E – Conditions in the event of approval

### 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
DA 01, Rev C	Site Plan	2/09/2022	Paul Davies
DA 04, Rev B	Fawcett Street Level	2/09/2022	Paul Davies
DA 05, Rev B	Lower Ground Garden	2/09/2022	Paul Davies
DA 06, rev B	Lower ground West	2/09/022	Paul Davies
DA07, Rev B	Ground Level	2/09/2022	Paul Davies
DA 08, Rev A	Mezzanine Level	3/03/2022	Paul Davies
DA09, Rev B	First Floor Level	2/09/2022	Paul Davies
DA10, Rev B	Roof Plan	2/09/2022	Paul Davies
DA11, Rev A	Section 1	3/03/2022	Paul Davies
DA12, Rev B	Section 2 Garden	2/09/2022	Paul Davies
DA13, Rev B	Section 2 Building	2/09/2022	Paul Davies
DA14, Rev A	Section 3	3/03/2022	Paul Davies
DA15, Rev A	Section 4	3/03/2022	Paul Davies
DA16, Rev A	East Elevation & Materials	2/09/2022	Paul Davies

DA17, Rev B	South Elevation	2/09/2022	Paul Davies
DA18, Rev A	West Elevation	3/03/2022	Paul Davies
DA19, Rev B	North Elevation	2/09/2022	Paul Davies
DA20, Rev B	House South Elevation	2/09/2022	Paul Davies
DA26, Rev A	Dividing Wall Detail	2/09/2022	Paul Davies6702
A446702	BASIX Certificate	24/01/2022	Paul Davies 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.

<b>Security Deposit:</b>	Min \$2,254.00
<b>Inspection Fee:</b>	\$241.50

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

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

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

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

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

**3. Section 7.11 (Former Section 94) Contribution**

Prior to the issue of a Construction Certificate/ issue of a Subdivision Certificate/ before commencing works written evidence must be provided to the Certifying Authority that a monetary contribution of \$19,806.39 in accordance with Developer Contributions Plan No.1 – Open Space and Recreation; 'Developer Contributions Plan No.2 – Community Facilities and Services (2005); and Leichhardt Developer Contributions Plan – Transport and Access has been paid to the Council.

The above contribution is the contribution applicable as at 2 November 2022.

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

Local Infrastructure Type:	Contribution \$
Community Facilities and Services	\$2,614.82
Open Space and Recreation	\$17,108.69
Local Area Traffic Management	\$68.27
Bicycle Works	\$14.61
<b>TOTAL</b>	<b>\$19,806.39</b>

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

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

Payment methods:

The required contribution must be paid either *by BPAY (to a maximum of \$500,000); unendorsed bank cheque (from an Australian Bank only); EFTPOS (Debit only); credit card (Note: A 1% credit card transaction fee applies to all credit card transactions); cash (to a maximum of \$10,000)*. It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions. **Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.**

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

#### 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. Tree Protection

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

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

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

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

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

T1 – *Phoenix canariensis* (Canary Island Date Palm)

T2 – *Fraxinus griffithii* (Evergreen Ash)

T 16 – *Waterhousia floribunda* (Weeping Lilly Pilly)

T 20 – *Lagerstroemia indica* (Crepe Myrtle)

T 21 – *Acer plamatum* (Japanese Maple)

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;

**NOTE:** Reference should be made to the *Arboricultural Impact Assessment Report* prepared by Arterra dated 1/2/2022 for tree numbering and locations.

**7. Project Arborist**

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

**8. Works to Trees**

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

Tree/location	Approved works
T 3-7 – <i>Fraxinus griffithii</i> (Evergreen Ash)	Removal
T 8-13 and 17-19 – <i>Waterhousia floribunda</i> (Weeping Lilly Pilly)	
T14 – <i>Syzygium paniculatum</i> (Magenta Cherry)	
T 15 – <i>Liquidambar styraciflua</i> (Liquidambar)	



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

#### **9. Noise Levels and Enclosure of Pool/spa Pumping Units**

Noise levels associated with the operation of the pool/spa pumping units must not exceed the background noise level (L90) by more than 5dBA above the ambient background within habitable rooms of adjoining properties. Pool plant and equipment must be enclosed in a sound absorbing enclosure or installed within a building so as not to create an offensive noise as defined under the *Protection of the Environment Operations Act 1997* and *Protection of the Environment Operations (Noise Control) Regulation 2008*.

Domestic pool pumps and filters must not be audible in nearby dwellings between 8:00pm to 7:00am Monday to Saturday and 8:00pm to 8:00am Sundays and Public Holidays.

#### **10. 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 (RVMP) in accordance with the relevant Development Control Plan.

#### **11. 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.

#### **12. 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.

#### **13. Works Outside the Property Boundary**

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

#### **PRIOR TO ANY DEMOLITION**

**14. 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.

**15. Dilapidation Report**

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining property at 14B Jane Street, Balmain 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.

**16. 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.

**17. 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**

**18. 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.

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

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

- a. Stormwater runoff from all roof and pervious areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any rainwater tank(s), by gravity to the kerb and gutter of a public road;
- b. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- c. Pipe and channel drainage systems must be designed to cater for the twenty (20) year Average Recurrence Interval (ARI) storm 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;
- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage;
- e. To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, must be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Council's DCP. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled;
- f. The design plans must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;
- g. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas;
- h. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands;
- i. No nuisance or concentration of flows to other properties;
- j. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- k. 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;

- l. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- m. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- n. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0 mm and a maximum section height and width of 100 mm or sewer grade uPVC pipe with a maximum diameter of 100 mm;
- o. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;
- p. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- q. No impact to street tree(s);
- r. Stormwater drainage must be located such that any waters leaving the pool must drain to pervious areas prior to potentially draining to the site stormwater drainage system.

#### **20. Party Walls**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Structural Certificate from a practising structural engineer which verifies that the structural integrity of the existing "Party Walls" are adequate to accept the additional loads imposed thereon by the proposal. A copy of the Structural Certificate must be provided to all owners of the party wall.

#### **21. Structural Certificate for retained elements of the building**

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

#### **22. Sydney Water – Tap In**

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

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

### **23. Parking Facilities - Domestic**

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

- a. The garage slab or driveway must rise within the property to be 170mm above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004;
- b. A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors;
- c. Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements;
- d. The garage/carport/parking space must have minimum clear internal dimensions of 3000mm X 6000 mm (length x width). The dimensions must be exclusive of obstructions such as walls, doors and columns, except where they do not encroach inside the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004;
- e. Where the drop adjacent to the end of the parking module(s) exceeds 600mm, structural barriers must be provided. Where the drop is between 150-600mm, wheel stops must be provided. These physical controls must be installed in accordance with the requirements of Section 2.4.5 of AS/NZS2890.1-2004. The design of structural barriers must be certified by a suitably qualified Civil Engineer with Chartered Engineer of Institution of Engineers Australia (CPEng) or Registered Professional Engineer of Professionals Australia (RPEng) qualifications;
- f. A plan of the proposed access and adjacent laneway, drawn at a 1:100 scale, demonstrating that vehicle manoeuvrability for entry and exit to the parking space complies with swept paths from AS/NZS 2890.1:2004. The plan must include any existing on-street parking spaces;
- g. The maximum gradients within the parking module must not exceed 1 in 20 (5%), measured parallel to the angle of parking and 1 in 16 (6.25%), measured in any other direction in accordance with the requirements of Section 2.4.6 of AS/NZS 2890.1-2004;
- h. The parking space must be set back from the property boundary by a minimum of 1000mm to [improve sight distance to pedestrians and/or accommodate a transition between the parking space and the boundary]; and

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

**DURING DEMOLITION AND CONSTRUCTION**

**24. Tree Protection**

To protect the following trees, ground, trunk and branch protection must be installed prior to any works commencing in accordance with the approved *Tree Protection Plan* (Dwg T-02) prepared by Arterra and dated 1/2/2022:

T1 – *Phoenix canariensis* (Canary Island Date Palm)

T2 – *Fraxinus griffithii* (Evergreen Ash)

T 16 – *Waterhousia floribunda* (Weeping Lilly Pilly)

T 20 – *Lagerstroemia indica* (Crepe Myrtle)

T 21 – *Acer plamatum* (Japanese Maple)

**25. 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
T1 – <i>Phoenix canariensis</i> (Canary Island Date Palm) T2 – <i>Fraxinus griffithii</i> (Evergreen Ash)	Prior to commencement of works	<ul style="list-style-type: none"> <li>• Inspection and sign off installation of tree protection measures.</li> </ul>

<p>T 16 – <i>Waterhousia floribunda</i> (Weeping Lilly Pilly)</p> <p>T 20 – <i>Lagerstroemia indica</i> (Crepe Myrtle)</p> <p>T 21 – <i>Acer plamatum</i> (Japanese Maple)</p>	<p>During Works</p>	<ul style="list-style-type: none"> <li>• Supervise all site preparation and demolition works within the TPZ;</li> <li>• Supervise all works inside or above the TPZ;</li> <li>• Supervise all excavation, trenching works, landscaping works and tree/planting replenishment within the TPZ;</li> <li>• Supervise all tree work.</li> </ul>
	<p>And -</p> <ul style="list-style-type: none"> <li>• In accordance with the tree protection specifications (Dwg T-03) and Part 3.0 of the AIA and approved Tree Protection Plan (Dwg T-02) in Appendix 4 of the Arboricultural Impact Assessment (AIA) prepared by Arterra and dated 1/2/2022.</li> </ul>	

Recommendations to ensure the tree/s long term survival must be carried out immediately upon receipt of the report.

**26. Canopy and Root Pruning**

Canopy pruning of the following trees which is necessary must be undertaken by, or directly supervised by, the Project Arborist in accordance with clause 3.9 of the Arboricultural Impact Assessment report prepared by Arterra and dated 1/2/2022.

T1 – *Phoenix canariensis* (Canary Island Date Palm)



T2 – *Fraxinus griffithii* (Evergreen Ash)

T 16 – *Waterhousia floribunda* (Weeping Lilly Pilly)

T 20 – *Lagerstroemia indica* (Crepe Myrtle)

T 21 – *Acer plamatum* (Japanese Maple)

#### **27. 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.

#### **28. Survey Prior to Footings**

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

### **PRIOR TO OCCUPATION CERTIFICATE**

#### **29. 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.

#### **30. 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.

#### **31. Certification of Tree Planting**

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

A minimum of 3 x 75 litre size canopy trees, which will attain a minimum mature height of seven (7) metres and a minimum mature canopy spread of five (5) metres, have been planted in suitable locations within the property at a minimum of 1.5 metres from any boundary or structure and allowing for future tree growth. The trees are to conform to AS2303—*Tree stock for landscape use*. Trees listed in the Trees Minor Works list in Council's Tree Management Controls, Palms, fruit trees and species recognised to have a short life span will not be accepted as suitable replacements.

If the trees are found dead or dying before they reach a height where they are protected by Council's Tree Management Controls, they must be replaced in accordance with this condition.

### **32. Subdivision**

Prior to the issue of a subdivision certificate a strata plan for the subject site must be registered in accordance with survey plans to be submitted to and approved by the Principal Certifier. Such plans to be submitted together with the required fee for the approval of the final plan under the Strata Schemes (Freehold Development) Act 1973, with the strata lots to accurately reflect the approved plans.

### **33. 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.

## **PRIOR TO SUBDIVISION CERTIFICATE**

### **34. Separate Drainage Systems**

Prior to the issue of a Subdivision Certificate, the Principal Certifier must be provided with a plan detailing that separate drainage systems must be provided to drain each proposed lot.

### **35. Civil Engineer Verification**

Prior to the issue of a Subdivision Certificate, the Principal Certifier must be provided with written verification from a suitably experienced / Chartered/Registered Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng), stating that all stormwater drainage and related work has been and constructed in accordance with the approved plans.

**36. Subdivision**

Prior to the issue of a Subdivision Certificate, the Certifying Authority must verify that the physical works within this consent have been constructed.

**37. Section 73 Certificate**

Prior to the issue of a Subdivision Certificate, the Certifying Authority must be provided with the Section 73 Certificate. A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation.

**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.

**Arborists standards**

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

**Tree Protection Works**

All tree protection for the site must be undertaken in accordance with Council's *Development Fact Sheet—Trees on Development Sites* and AS4970—*Protection of trees on development sites*.

**Tree Pruning or Removal (including root pruning/mapping)**

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

**Prescribed Conditions**

This consent is subject to the prescribed conditions of consent within Sections 69-86 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.

**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.

#### **Swimming Pools**

Applicants are advised of the following requirements under the *Swimming Pools Act 1992*:

- a. The owner of the premises is required to register the swimming pool on the NSW State Government's Swimming Pool Register. Evidence of registration should be provided to the Certifying Authority.
- b. Access to the pool/spa is restricted by a child resistant barrier in accordance with the regulations prescribed in the. The pool must not be filled with water or be allowed to collect stormwater until the child resistant barrier is installed. The barrier is to conform to the requirements of Australian Standard AS 1926:2012.
- c. A high level overflow pipe has been provided from the back of the skimmer box to the filter backwash line discharging to the sewer. This line must not directly vent the receiving Sydney Water sewer. Evidence from the installer, indicating compliance with this condition must be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.
- d. Permanently fixed water depth markers are to be clearly and prominently displayed on the internal surface above the water line at the deep and shallow ends on in-ground pools / spas and on the outside of aboveground pools / spas.
- e. A durable cardiopulmonary resuscitation information poster sign authorised by the Life Saving Association is to be displayed in the pool / spa area in accordance with Clause 10 of the *Swimming Pool Regulation 2008*.
- f. Access to the swimming pool/spa must be restricted by fencing or other measures as required by the *Swimming Pools Act 1992* at all times.

All drainage, including any overland waters associated with the pool/spa, must be pipe-drained via the filter to the nearest sewer system in accordance with the requirements of Council & Sydney Water. No drainage, including overflow from the pool or spa must enter Council's stormwater system.

#### **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 <a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a>
Department of Fair Trading	13 32 20 <a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a> Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 <a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441 <a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Food Authority	1300 552 406 <a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>
NSW Government	<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diySAFE.nsw.gov.au">www.diySAFE.nsw.gov.au</a>

Information on asbestos and safe work practices.

NSW Office of Environment and Heritage 131 555  
[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

Sydney Water 13 20 92  
[www.sydneywater.com.au](http://www.sydneywater.com.au)

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

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

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

Enquiries relating to work safety and asbestos removal and disposal.

**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.