

 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2022/0573
Address	23 Gordon Street ROZELLE NSW 2039
Proposal	Demolition of existing dwelling house, construction of two semi-detached dwellings with swimming pools, and associated works, including Torrens title subdivision into two lots
Date of Lodgement	04 August 2022
Applicant	Mr Raymond Panetta
Owner	Mr Julien J Mattar Mrs Amelia Mattar
Number of Submissions	Initial: 1
Value of works	\$810,000.00
Reason for determination at Planning Panel	Section 4.6 variation exceeds 10% - Minimum lot size
Main Issues	Lot size, solar access
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Section 4.6 Exception to Development Standards
	
LOCALITY MAP	
Subject Site 	Objectors 
Notified Area 	Supporters 
 N	

1. Executive Summary

This report is an assessment of the application submitted to Council for demolition of an existing dwelling house, construction of two semi-detached dwellings with swimming pools, and associated works, including Torrens title subdivision into two lots at 23 Gordon Street Rozelle.

The application was notified to surrounding properties and one (1) submission was received in response to the initial notification.

The main issues that have arisen from the application include:

- Departure from minimum lot size development standard
- Overshadowing

The subdivision and form, scale and design of the proposed development is considered to be compatible with the streetscape and neighbourhood and the amenity impacts of the proposal are considered to be acceptable. Further, the non-compliances are deemed to be acceptable given site context, including lot orientation and existing adjoining development, and therefore the application is recommended for approval.

2. Proposal

The proposal includes the demolition of the existing dwelling house at the site and the construction of a pair of semi-detached dwellings on separate Torrens title lots. The subdivision will result in two (2) lots being 168.67sqm and 170.48sqm respectively.

Each semi-detached dwelling provides for four (4) bedrooms, two (2) bathrooms, one (1) powder room, kitchen, living area, covered alfresco area and pool.

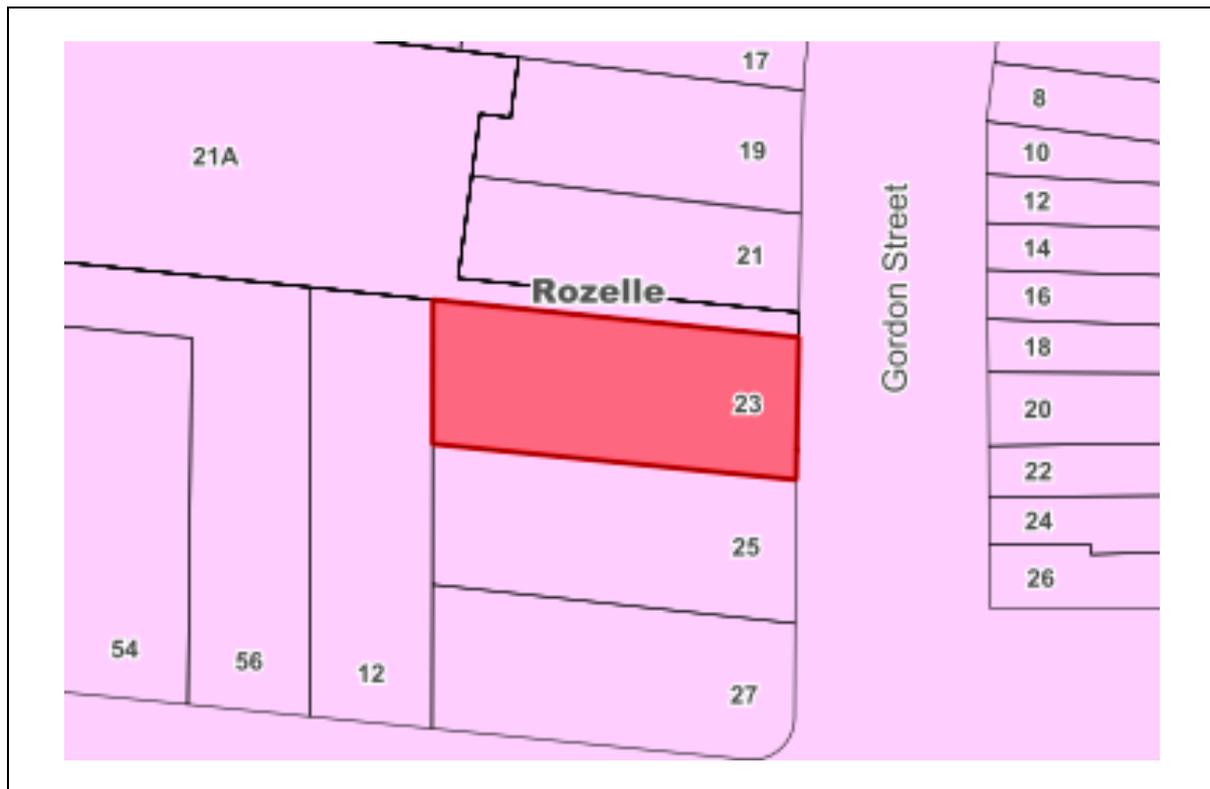
3. Site Description

The subject site is located on the western side of Gordon Street, between Alfred Street and Quirk Street. The site consists of one allotment and is generally rectangular in shape with a total area of 339.1 sqm.

The site has a frontage to Gordon Street of 11.6 metres.

The site supports an existing two (2) bedroom dwelling with side car access. The adjoining property at No. 21 Gordon Street, located to the north of the subject site, supports a two-storey dwelling. A right-of-way separates the subject site and No. 21 Gordon Street which provides access to the townhouse development at No. 21A Gordon Street. No. 25 Gordon Street located to the south supports a single-storey dwelling with detached laundry and storage structure at the rear.

There is no significant vegetation at the site. A Bottlebrush tree is located at the street frontage on Council land and a large Silky Oak located to the west in the rear yard of No. 58 Alfred Street.



Zoning Map

4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Decision & Date
PDA/2020/0405	Pre-development application meeting for demolition of existing dwelling, Torrens title subdivision into two lots and erect two new semi-detached dwellings on each lot	Advice Issued – 01/12/2020
BC/2016/49	Constructed driveway and carspace in accordance with DA – no Construction Certificate was lodged.	Approved – 03/08/2016
D/2015/271	New vehicle crossing, driveway and carspace	Approved - 16/06/2015
D/2014/28	Alterations and additions to existing dwelling and associated works, including new front fence.	Approved - 14/07/2014
T/2013/409	Removal of three (3) trees within the site.	Approved - 22/01/2014

Surrounding properties

Application	Proposal	Decision Date	&
BC/2014/81	Unauthorised works relating to the existing rear deck and pergola at No. 25 Gordon Street.	Approved 05/11/2014	–
CDCP/2014/123	Complying development certificate for ground floor alterations and additions to existing semi-detached cottage at No. 21 Gordon Street.	Approved 19/09/2014	–
DA/103/1986	Strata subdivision of 6 townhouses at No. 21A Gordon Street.	Approved 25/06/1986	–
DA/382/1983	Erect 6 new townhouses at No. 21A Gordon Street.	Approved 07/02/1984	-

4(b) Application history

Not applicable

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*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *Leichhardt Local Environmental Plan 2013*

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 for each of the semi-detached dwellings and will be referenced in any consent granted.

5(a)(iii) State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 Infrastructure

Development likely to affect an electricity transmission or distribution network

The proposed development meets the criteria for referral to the electricity supply authority within Section 2.48 of *SEPP (Transport and Infrastructure) 2021* and has been referred for comment for 21 days.

Ausgrid provided a response raising no objection to the development application.

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

Chapter 2 – Vegetation in non-rural areas

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

The application seeks the removal of vegetation from within the site. The application was referred to Council's Tree Management Officer whose comments are provided below:

Two (2) Lily Pilly trees shown on the proposed plans and applicants Tree Protection Plan have recently been removed. These trees were approved for removal through TREE/2022/0155.

There is one (1) Callistemon viminalis (Bottlebrush) located outside the site on Council land. A large Grevillea robusta (Silky Oak) has also been noted adjacent to the western boundary within 58 Alfred Street. The trees were noted in good healthy condition and provide a positive contribution to the amenity and canopy cover of the immediate area.

The plans indicate works are proposed within their Tree Protection Zone which has been calculated in accordance with the Australian Standards AS4970 'Protection of trees on development sites' as being between 2 metres to 6 metres (radius from tree trunk). This includes landscape upgrades within the front yard and installation of a new swimming pool in the rear yard.

Therefore, to ensure the trees are not adversely impacted during the works, tree sensitive construction methods will need to be implemented. This includes hand excavations within their TPZs to be supervised by a Project Arborist to ensure tree roots greater than 40mm in diameter are not removed without prior advice from the arborist. This has been detailed in the conditions which are recommended for inclusion into the DA.

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

Chapter 10 Sydney Harbour Catchment

The site is not located within the foreshores and waterways area, a Strategic Foreshore site or listed as an item of environmental heritage under the SEPP, and as such, only the aims of the plan are applicable. The proposal is consistent with these aims.

5(a)(v) Local Environmental Plan

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 4 August 2022, and on this date, the *IWLEP 2022* was a draft EPI, which had been publicly exhibited and was considered imminent and certain.

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

Leichhardt Local Environmental Plan 2013 (LLEP 2013)

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

- Section 1.2 - Aims of the Plan
- Section 2.3 - Zone objectives and Land Use Table
- Section 2.6 - Subdivision
- Section 2.7 - Demolition
- Section 4.1 - Minimum subdivision lot size
- 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 6.1 - Acid Sulfate Soils
- Section 6.2 - Earthworks
- Section 6.4 - Stormwater management
- Section 6.8 - Development in areas subject to aircraft noise

Section 2.3 Land Use Table and Zone Objectives

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

“semi-detached dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling.”

The development is permitted with consent within the land use table. The development is consistent with the objectives of the LR1 zone.

Section 4 Principal Development Standards

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

Standard	Proposal	Non compliance	Complies
Minimum subdivision lot size <i>Minimum permissible: 200 sqm</i>	Lot A: 168.67sqm	31.33sqm or 15.67%	No
	Lot B: 170.48sqm	29.52sqm or 14.76%	No
Floor Space Ratio <i>Maximum permissible: 0.8:1 or 134.94sqm (Lot A)/136.38sqm (Lot B)</i>	Lot A: 0.78:1 or 132.37sqm	N/A	Yes
	Lot B: 0.78:1 or 132.37sqm	N/A	Yes
Landscape Area <i>Minimum required: 15% or 25.3sqm (Lot A)/25.57sqm (Lot B)</i>	Lot A: 16.66% or 28.1sqm	N/A	Yes
	Lot B: 16.54% or 28.2sqm	N/A	Yes
Site Coverage <i>Maximum permissible: 60% or 101.2sqm (Lot A)/102.3sqm (Lot B)</i>	Lot A: 53.32% or 89.94sqm	N/A	Yes
	Lot B: 52.76% or 89.94sqm	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:

- Section 4.1 - Minimum subdivision lot size

The applicant seeks a variation to the minimum lot size development standard under Section 4.1 *Minimum subdivision lot size* of the *LLEP 2013* by 31.33sqm or 15.67% for Lot A and 29.52sqm or 14.76% for Lot B.

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 *LLEP 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:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standards;
- The development meets the objectives of the standard to be varied (minimum subdivision lot size) and objectives of the R1 General Residential zoning of the land;
- The proposed development is in the public interest;
- The breach does not raise any matter of State or Regional Significance; and
- The development submitted aligns with the predominantly residential nature of the neighbourhood.

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

It is considered the development is in the public interest because it is consistent with the objectives of the R1 General Residential zone, in accordance with Section 4.6(4)(a)(ii) of the *LLEP 2013* for the following reasons:

- *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.*

The proposal is considered to be consistent with the zone objectives as it:

- Provides a density of development which is commensurate with the character of the area.
- Is compatible with the character and style of surrounding buildings and the mixed architectural styles and varied built form in the streetscape and area.
- The proposal will be compatible with the existing and desired future character of the area in relation to building bulk, form and scale.
- Minimises amenity impacts to adjoining properties.

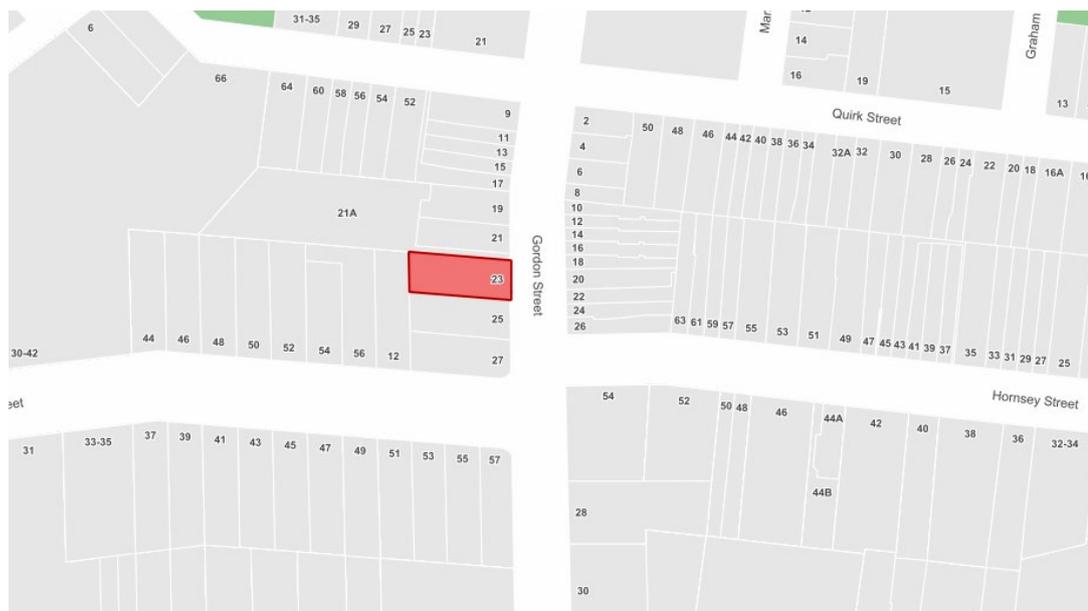
It is considered the development is in the public interest because it is consistent with the objectives of the Minimum lot size development standard, in accordance with Section 4.6(4)(a)(ii) of the *LLEP 2013* as set out below:

The relevant objective of the development standards are:

- *(a) to ensure that lot sizes are able to accommodate development that is consistent with relevant development controls,*
- *(b) to ensure that lot sizes are capable of supporting a range of development types*

It is considered the development is in the public interest because it is consistent with the objectives of the R1 zone and the minimum lot size development standard, in accordance with Clause 4.6(4)(a)(ii) of the *LLEP 2013* for the following reasons:

- The proposal will result in a development that is consistent with the housing needs of the community, creating lot sizes of sufficient area and dimension to accommodate residential development and a residential dwelling that is compatible with, or capable of being compatible with, the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas;
- The proposed subdivision will not result in any undue adverse impacts on the amenity of the subject dwelling on the site or any undue adverse amenity impacts on adjoining properties; and
- The proposed subdivision will result in lots at No. 23 Gordon Street that are considered to be consistent with the widths, sizes and shapes and pattern of neighbouring lots along Gordon Street and nearby Hornsey and Quirk Streets, which include a number of lots between approximately 4-9 metres in width and under 200sqm in area, and that are rectangular and generally rectangular in shape as proposed under this application – also see *Subdivision* assessment later in this report.



Subdivision pattern of Gordon Street and surrounds

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 the minimum lot size development standard and it is recommended the Section 4.6 exception be granted.

5(c) Draft Environmental Planning Instruments

Draft IWLEP 2020 has been addressed previously.

5(d) Development Control Plans

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

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	N/A
B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
Part C	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and additions	N/A
C1.4 Heritage Conservation Areas and Heritage Items	N/A
C1.5 Corner Sites	N/A

C1.6 Subdivision	No – see discussion
C1.7 Site Facilities	Yes
C1.8 Contamination	N/A
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	N/A
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes – see discussion
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	N/A
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	N/A
Part C: Place – Section 2 Urban Character	
C2.2.5.2 Easton Park Distinctive Neighbourhood	Yes
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	Yes
C3.2 Site Layout and Building Design	No – see discussion
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	No – see discussion
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes - see discussion
C3.9 Solar Access	Yes and No – see discussion
C3.10 Views	N/A
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A
Part C: Place – Section 4 – Non-Residential Provisions	
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	N/A

D2.5 Mixed Use Development	N/A
Part E: Water	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	Yes
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	N/A
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	Yes
E1.2.4 Stormwater Treatment	Yes
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	Yes
E1.2.7 Wastewater Management	Yes
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	N/A
E1.3.2 Foreshore Risk Management	N/A
Part F: Food	
N/A	
Part G: Site Specific Controls	
N/A	

The following provides discussion of the relevant issues:

C1.6 Subdivision

This section of the LDCP 2013 outlines the objectives and controls for the subdivision of any parcel of land.

The proposed subdivision of the site results in two lots with site areas of 168.67sqm for Lot A and 170.48sqm for Lot B. As such, the proposed lots will not comply with the minimum lot size requirements which states that the minimum lot size for dwellings is 200sqm.

The following highlights lots under 200sqm on Gordon Street and surrounding streets:

Address	Lot Size (approx.)	Address	Lot Size (approx.)
Gordon Street		Hornsey Street	
2 Gordon Street	136sqm	37 Hornsey Street	139.3sqm
4 Gordon Street	131.2sqm	39 Hornsey Street	170.5sqm
6 Gordon Street	128.2sqm	41 Hornsey Street	136.1sqm
8 Gordon Street	83.5sqm	43 Hornsey Street	189.2sqm
10 Gordon Street	117.3sqm	45 Hornsey Street	154.3sqm
11 Gordon Street	112.9sqm	47 Hornsey Street	169.7sqm
12 Gordon Street	121sqm	57 Hornsey Street	165.2sqm
13 Gordon Street	111.7sqm	59 Hornsey Street	155.9sqm
14 Gordon Street	127.2sqm	61 Hornsey Street	165.8sqm
15 Gordon Street	116sqm	63 Hornsey Street	163sqm
16 Gordon Street	136.1sqm		

17 Gordon Street	168.8sqm	
18 Gordon Street	117.2sqm	
20 Gordon Street	172sqm	
22 Gordon Street	141.2sqm	
24 Gordon Street	126.9sqm	
26 Gordon Street	151.7sqm	
Quirk Street		
18 Quirk Street	122.7sqm	
20 Quirk Street	122sqm	
24 Quirk Street	114.4sqm	
26 Quirk Street	129.2sqm	
32 Quirk Street	185.8sqm	
32A Quirk Street	160.1sqm	
32B Quirk Street	161.1sqm	
34 Quirk Street	97.8sqm	
36 Quirk Street	139.8sqm	
38 Quirk Street	121.2sqm	
40 Quirk Street	135.1sqm	
42 Quirk Street	104.9sqm	
44 Quirk Street	120.5sqm	

It is considered that the proposed subdivision when compared with other lots on the subject and neighbouring streets will not result in adverse impacts on the streetscape or surrounding properties and that the proposal generally complies with the objectives of this part due to the following reasons:

- Despite the non-compliance of the minimum lot size requirement, the proposal will comply with the Site Coverage, Floor Space Ratio and Landscaped area development standards and allows for a residential development that is consistent with the applicable objectives and controls within Leichhardt DCP 2013;
- As demonstrated above the proposed resultant lot sizes at No. 23 Gordon Street of 168.67sqm for Lot A and 170.48sqm for Lot B are consistent with the surrounding prevailing subdivision pattern and pattern of development; and
- The proposed subdivision will provide adequate amenity to the proposed dwelling houses at No. 23 Gordon Street.

C1.14 Tree Management

The application was referred to Council's Urban Forest team for comment. It was identified that works are proposed within the Tree Protection Zone of a tree within Council land at the street frontage and a tree to the rear on the neighbouring site at No. 58 Alfred Street. Subsequently, tree protection conditions have been recommended to ensure the mitigation of any impacts to relevant trees.

Additionally, to meet the canopy target provisions of this part of the DCP for the R1 General Residential zone, a condition is included in the recommendation requiring the planting of a medium sized tree (75L) on each lot.

C3.2 Site Layout and Building Design

Building Location Zone

The proposal entails the provision of two (2) new semi-detached dwellings at the site resulting in the establishment of a new Building Location Zone at ground and first floor on the site.

The setbacks of the adjoining properties from the rear property boundary are 10.8m and 6.7m at ground level. As such, the proposal with a rear setback of 10.1m to the northern semi and 9.65m to the southern semi at ground floor complies with the control.

The adjoining neighbour at No. 25 is a single storey dwelling. As such, the proposal is establishing a first floor building location zone which provides a rear setback of 10.1m to the northern semi and 9.5m to the southern semi. An assessment against the tests under Control C6 of this part for the establishment of a new BLZ is provided below.

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

Comment: As discussed later in the report, the development is acceptable with regard to solar access, privacy considerations, and will not result in any undue adverse view loss implications.

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

Comment: The development is appropriately sited and is an acceptable response to the streetscape and desired future character controls. The scale of the proposal is not inconsistent with the developments in the locality and is not out of character with the existing pattern of development in the vicinity of the site

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

Comment: The development will comply with Private Open Space (POS) controls prescribed in Part C3.8 of the DCP, and POS will comply with applicable landscaping controls, will not unduly impact on neighbour's privacy and will benefit from adequate levels of solar access.

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

Comment: There is no significant vegetation on the site. Notwithstanding, the proposal will provide a compliant landscaped area on the site.

- *The height of the development has been kept to a minimum to minimise visual bulk and scale, as viewed from adjoining properties, in particular when viewed from the Private Open Space of adjoining properties.*

Comment: As is discussed further under the assessment against Part C3.9 *Solar Access* of the LDCP 2013, the proposed maximum building height provides an appropriate transition between the existing development to the north and south whilst also working with the topography along Gordon Street which slopes from north to south. The proposal provides a built form with a maximum height of 7.6m as viewed from Gordon Street at the worst point.

This is considered an acceptable and sympathetic outcome with regard to the two-storey nature of the proposed development. The submitted Gordon Street elevation effectively demonstrates how the proposed height ensures cohesion with adjoining properties.

Given the above, the first floor BLZ to be established on the site is satisfactory as it will meet the objectives of the control.

Side Setbacks

The proposal results in variations to the side setback control as demonstrated in the table below.

Wall (ie elevation and ground / first)_	Height (m)	Required Setback (m)	Proposed Setback (m)
North (ground)	2.5-2.9	0-0.05	0.5
North (first)	5-5.6	1.27-1.6	0.5-0.9
South (ground)	3.4-3.7	0.35-0.52	0.515
South (first)	6-6.4	1.85-2.08	0.54-0.9

To gain support for this variation, certain tests pursuant to Control C8 of this part need to be satisfied. These tests are assessed below:

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

Comment: The proposal is in a location that is appropriate having regard to the provisions set in the Building Typologies and will comply with streetscape and desired future character controls.

- *The pattern of development is not adversely compromised.*

Comment: The side wall setbacks and heights of the proposed works will not be out of character with the existing pattern of development on the site, in the street and / or wider area.

- *The bulk and scale of the development has been minimised and is acceptable.*

Comment: The proposal is satisfactory with respect to bulk and scale in terms of building location zone, floor space ratio and building envelope.

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

Comment: As will be discussed later in the report, the development is acceptable with regard to solar access and privacy considerations and will not result in any undue adverse view loss implications.

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

Comment: The proposal will not obstruct any adjoining walls for maintenance purposes.

In light of the above, the proposal is considered to satisfy the above tests, and as such, the side wall heights and setbacks are supported in this instance.

Building Envelope

The proposal generally complies with the building envelope applicable to the site. It is noted that the proposed dormer windows sited at the street elevation penetrate the envelope which is considered acceptable in accordance with Control C16 of Part C3.2 of the LDGP 2013 as the resultant design is compatible with the street.

C3.4 Dormer Windows

The proposal seeks to provide two (2) dormer windows at the front elevation to Gordon Street, providing one (1) dormer to each side of the semi-detached dwelling. The proposed dormers demonstrate general compliance with the controls contained with Part C3.4 of the Leichhardt DCP 2013 with the exception of Control C8 which prescribes the following:

C8 Dormer windows must not have a total width of more than 25% of the width of the roof.

Notwithstanding the departure to the control above, the proposed dormer windows are considered to be an appropriate design outcome reflective of other building styles in the locality with a similar façade articulation including those at Nos. 37 and 43 Hornsey Street. The proposed dormers do not compromise the unity of any rows or groups of dwellings and are considered to positively contribute to the streetscape.

C3.8 Private Open Space

The proposal provides Private Open Space for each lot as detailed in the table below:

Allotment	POS Area (sqm)	Minimum Dimension (m)
Lot A	20.35	3.7
Lot B	16.9	3.1

The proposal therefore satisfies the requirements for private open space on each lot for either side of the semi-detached dwelling.

C3.9 Solar Access

New Dwellings

As the proposal includes the construction of new dwellings, C4 (Private Open Space) and C9 (Main Living room) of the DCP are applicable. The proposal satisfies these controls as follows:

- C4 – The proposal achieves solar access to private open space of both semi-detached dwellings between 12pm and 2pm. Despite not meeting the required 3 hours under the DCP, this is considered an appropriate solution noting the orientation of the lots and the size of the Torrens Title lots on which the semi-detached dwellings are to be located.
- C9 – Given the orientation of the proposal, the location of the main living areas to the rear of the site face west, resulting in living rooms receiving direct solar access in the afternoon hours. This has been demonstrated from 12:10pm onwards and is considered an adequate solution given the site’s orientation and the proposal’s design which ensures both semi-detached dwellings address the primary street frontage at Gordon Street.

Minimise impact to neighbouring properties – Living areas

Given the site’s generally east-west orientation, potential solar access impacts to adjoining living room glazing are limited to the property to the south at No. 25 Gordon Street.

There are no existing windows to No. 25 Gordon Street along the shared boundary it has with the subject site, noting No. 25s northern wall is provided with a nil setback. Living room glazing for No. 25 is provided at the western elevation of the dwelling. The submitted elevational shadow diagrams demonstrate that this glazing to the living room currently receives some form of solar access between 1pm and 3pm. Therefore, the proposed development will not hinder solar access to the living room glazing at the western elevation noting the existing lack of solar access.

Minimise impact to neighbouring properties – Private open space

The control seeks to minimise overshadowing to neighbouring properties based on the orientation of the private open space with solar access to 50% of the total area for 2.5 hours where adjacent to a living room.

The submitted shadow diagrams indicate that the private open space at 25 Gordon Street which is 70.4sqm in size will receive solar access as outlined below post development:

Time	Existing %	Proposed %
9am	5.4	0
10am	17.18	11.27
11am	29.24	29.16
12 noon	39.31	39.31
1pm	38.26	38.26
2pm	30.62	30.62
3pm	9.68	9.68

As the proposed development does not comply with the controls, consideration of the objectives of the control have found as follows:

- Reasonableness: The proposed overshadowing is reasonable with consideration to the development at No. 25 Gordon Street. It is noted that No 25 provides a 2.7m high boundary wall along the boundary it shares with the subject site for 25.9m of the length of the boundary. This wall and associated structures therefore significantly contribute to the existing overshadowing of private open space on the neighbouring site at No. 25 noting their siting along the northern boundary. It is therefore considered that the minor additional shadows at 9am and 10am to adjoining private open space resulting from the redevelopment of No. 23 Gordon Street are acceptable.
- Site orientation: The site and surrounds are orientated east-west. This is generally unfavourable in terms of solar access, however, the proposal is generally modest in nature in terms of dwelling size given the site constraints and adequately minimises solar access impacts.
- Relative levels: Satisfactory noting the proposal seeks to demolish an existing single storey dwelling to construct a pair of two storey semi-detached dwellings. Notwithstanding, despite increasing development on the site from single storey to two storey, the maximum ridge level is only increased by 1.25m. The proposal also provides for an appropriate transition from Nos. 21 to 25 in terms of stepping down in height to coincide with the topography of the street which falls from north to south.
- Designed to minimise impact: The proposal presents a gable roof form at the street frontage which runs parallel to Gordon Street. Behind this gable roof, a lower gable roof form running perpendicular to the front roof form for each semi-detached dwelling is provided to minimise bulk and scale when viewed from the adjoining properties rear yards, as well as overshadowing impacts.

In addition, despite their poor orientation, the adjoining rear yards will still receive / maintain some solar access at various times of the day in mid-winter. It is considered that the proposed works in this application, are considered appropriate in bulk, scale and the overshadowing impacts onto the adjoining rear yards of the neighbouring property at No. 25 Gordon Street in midwinter is not considered unreasonable. On the basis of the above, the proposal is considered to be satisfactory with respect to its solar access impacts on the adjoining site.

- Reasonably available alternative design solutions: It is considered that the proposed design is an acceptable solution for the redevelopment of the site noting the general compliance demonstrated with the DCP. As discussed above, a significant area of the shadows result from existing structures along the northern boundary of No. 25 Gordon Street and as such, the siting and design of the proposal is appropriate in reducing any further impacts.

5(e) The Likely Impacts

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

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

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

5(g) Any submissions

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

One (1) submission was received in response to the initial notification.

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

Issue: Shadow diagrams show the sundeck area of 25 Gordon Street completely unaffected while the taller structures appear now shadowed.

Comment: The shadow diagrams demonstrate that predominantly, existing shadows overshadow part of the sundeck area with some minor additional shadows being cast over the roof of this area. It is also anticipated that additional shadows would now be cast on taller structures noting the ridge height increase of 1.25m. It is therefore concluded that shadow diagrams are accurate and relevant impacts are acceptable in this instance for reasons previously discussed 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 not contrary to the public interest.

6 Referrals

6(a) Internal

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

- Development Engineering
- Urban Forest

6(b) External

The application was referred to the following external bodies and issues raised in those referrals have been discussed in section 5 above.

- Ausgrid

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$37,475.62, would be required for the

development under the Contributions Plan. A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

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

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

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

9. Recommendation

- A. The applicant has made a written request pursuant to Section 4.6 of the *Leichhardt Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the Minimum lot size development standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2022/0573 for demolition of the existing dwelling house, construction of two semi-detached dwellings with swimming pools, and associated works, including Torrens title subdivision into two lots at 23 Gordon Street, Rozelle, subject to the conditions listed in Attachment A..

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
Sheet no. DA 01 Issue H	Site Analysis	30.06.22	Studio Panetta
Sheet no. DA 02 Issue H	Site Plan	30.06.22	Studio Panetta
Sheet no. DA 03 Issue H	Floor Plans - Existing	30.06.22	Studio Panetta
Sheet no. DA 04 Issue H	Elevations - Existing	30.06.22	Studio Panetta
Sheet no. DA 05 Issue H	Elevations - Existing	30.06.22	Studio Panetta
Sheet no. DA 06 Issue H	Elevations - Existing	30.06.22	Studio Panetta
Sheet no. DA 07 Issue H	Floor Plans - Proposed	30.06.22	Studio Panetta
Sheet no. DA 08 Issue H	Floor Plans - Proposed	30.06.22	Studio Panetta
Sheet no. DA 09 Issue H	Concept Stormwater Drainage Plan	30.06.22	Studio Panetta
Sheet no. DA10 Issue H	Elevations - Proposed	30.06.22	Studio Panetta
Sheet no. DA11 Issue H	Elevations - Proposed	30.06.22	Studio Panetta
Sheet no. DA12 Issue H	Elevations - Proposed	30.06.22	Studio Panetta

Sheet no. DA13 Issue H	Sections - Proposed	30.06.22	Studio Panetta
Sheet no. DA14 Issue H	Sections - Proposed	30.06.22	Studio Panetta
Sheet no. DA15 Issue H	Sections Proposed	30.06.22	Studio Panetta
Sheet no. DA16 Issue H	Sections Proposed	30.06.22	Studio Panetta
Sheet no. DA17 Issue H	Landscape Plan & Pool Details	30.06.22	Studio Panetta
Sheet no. DA18 Issue H	Soil & Water Management Plan	30.06.22	Studio Panetta
Sheet no. DA20 Issue H	Perspectives	30.06.22	Studio Panetta
Sheet no. DA21 Issue H	Materials and Finishes	30.06.22	Studio Panetta
Sheet no. DA22 Issue H	Subdivision Plan	30.06.22	Studio Panetta
L-01 Rev B	Landscape Plan	09/07/21	Space Landscape Designs
1188407S_02	BASIX Certificate - Lot A	24 June 2022	RCO Engineering
1188407S_02	BASIX Certificate - Lot B	24 June 2022	RCO Engineering
	Site Waste Minimisation and Management Plan	17/03/2022	Raymond Panetta
	Concept Stormwater Plan	23-03-2021	RCO Engineering
	Stormwater Specifications	23-03-2021	RCO Engineering
	Rainwater Tank Specifications	23-03-2021	RCO Engineering
	Tree Protection Plan	29 June 2021	Margot Blues Consulting Arborist

As amended by the conditions of consent.

FEES

2. Security Deposit - Custom

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

Security Deposit:	\$8,100.00
Inspection Fee:	\$350.00

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

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

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

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

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

3. Long Service Levy

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

4. Section 7.11 (Former Section 94) Contribution

Prior to the issue of a Construction Certificate works written evidence must be provided to the Certifying Authority that a monetary contribution of **\$37,475.62** 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 (“CP”) has been paid to the Council.

The above contribution is the contribution applicable as at 20 January 2023.

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 \$
Open Space and Recreation	\$32,339
Community Facilities and Services	\$4,943
Payment in Lieu of Adequate Parking	\$159.49
Bicycle Works	\$34.13
TOTAL	\$37,475.62

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

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

Payment methods:

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

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

GENERAL CONDITIONS

5. 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) :

Tree No.	Botanical/Common Name	Location
1	Callistemon viminalis	Street tree
4	Grevillea robusta	Adjacent western boundary - within 58 Alfred St

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

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

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. 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.

9. Waste Management Plan

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

10. 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.

11. 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.

12. Verification of Levels and Location

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

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. Advising Neighbours Prior to Excavation

At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

16. Construction Fencing

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

PRIOR TO CONSTRUCTION CERTIFICATE**17. Dilapidation Report – Pre-Development – Minor**

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

18. Stormwater Drainage System – Minor Developments (OSD is required)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention and/or on site retention/ re-use facilities (OSR/OSD), certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a. The stormwater drainage concept plan on Drawing No. H.01.1 prepared by RCO ENGINEERING and dated 21 July 2022, must be amended to comply with the following;
- b. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any rainwater tank(s), by gravity to the kerb and gutter of a public road/directly to Council's piped drainage system via the OSD/OSR tanks as necessary; Minor roof and paved areas at the rear of the property that cannot reasonably be drained by gravity to the street may be drained to an on-site dispersal system such as an absorption system or otherwise, subject to the roof areas being drained via a suitably sized rainwater tank, no nuisance or concentration of flows to other properties and the feasibility and design of the on-site dispersal system being certified by a suitably qualified and experienced practising Civil and/or Geotechnical Engineer;
- c. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage;
- e. 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;
- f. The plans, including supporting calculations, must demonstrate that the post development flows for the 100 year ARI storm are restricted to the pre development flows for the 5 year ARI storm event in accordance with Section E1.2.3 (C2 and C3) of Council's DCP2013 and the maximum allowable discharge to Council's street gutter limited to 15 litres/second (100year ARI);
- g. OSD may be reduced or replaced by on site retention (OSR) for rainwater reuse in accordance with the relevant DCP that applies to the land. Where this is pursued, the proposed on-site retention (OSR) tanks must be connected to a pump system for

internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks where the collected water is to be used to supply water inside the dwelling, such as for toilet flushing or laundry use;

- h. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows from the contributing catchment to the OSD/OSR tanks;
- i. Where a combined OSD/OSR is provided, only roof water is permitted to be connected to the storage tank. The overflow from the OSD/OSR must be connected by gravity to the kerb and gutter of a public road;
- j. Drainage pipes must be laid at a minimum grade of 1 %. Pipes attached to the wall of the building must be shown on plan and elevation;
- k. The surface level of grated pits at the rear of the sites below the top water level in the OSD/OSR is not permitted. The grated pit must be replaced with an absorption system in accordance with item (b).
- l. Approval of Council's Tree Assessment Officer must be obtained for the proposed location of the OSD/OSR tanks;
- m. Details of the 100-year ARI overflow route in case of failure/blockage of the drainage system must be provided;
- n. A minimum 150 mm step up shall be provided between all external finished surfaces and adjacent internal floor areas;
- o. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands;
- p. Details of external catchments currently draining to the site must be included on the plans. Existing natural overland flows from external catchments may not be blocked or diverted, but must be captured and catered for within the proposed site drainage system. Where necessary an inter-allotment drainage system must be incorporated into the design;
- q. No nuisance or concentration of flows to other properties;
- r. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- s. 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;
- t. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- u. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- v. 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;

- w. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;
- x. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- y. 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; and
- z. No impact to street tree(s).

19. Changes to Levels

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans incorporating the following amendments:

- a. A 150 mm step up must be provided between the finished surface level of the external area and the finished floor level of the internal room.

20. Sydney Water – Tap In

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

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

21. Fibre-ready Facilities

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with evidence that arrangements have been made for:

- a. The installation of fibre-ready facilities to all individual lots and/or premises the development so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose.
- b. The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises the development demonstrated through an agreement with a carrier.

DURING DEMOLITION AND CONSTRUCTION

22. 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
4	Prior to commencement of works	<ul style="list-style-type: none"> • Inspection and sign off installation of tree protection measures.
	During Works	<ul style="list-style-type: none"> • Supervise all site preparation and demolition works within the TPZ; • Supervise all works inside or above the TPZ; • Supervise all excavation, trenching works, landscaping works and tree/planting replenishment within the TPZ; • Supervise all tree work.

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

23. Limited Root Pruning

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

Tree No.	Botanical/Common Name	Radius in metres
4	Grevillea robusta	6 metres

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

24. Construction Hours – Class 1 and 10

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

25. Survey Prior to Footings

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

PRIOR TO OCCUPATION CERTIFICATE

26. Public Domain Works

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

- a. The redundant vehicular crossing to the site must be removed and replaced by kerb and gutter and footpath. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb must also be in stone; and
- b. Other works subject to the *Roads Act 1993* approval.

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

27. 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.

28. 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.

29. Works as Executed – Site Stormwater Drainage System

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a suitably qualified 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) that:

- a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and
- b. Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSD/OSR system commissioned and stormwater quality improvement device(s) and any pump(s) installed in accordance with the approved design and relevant Australian Standards have been submitted to Council. The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped Construction Certificate plans.

30. Operation and Management Plan

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an Operation and Management Plan has been prepared and implemented for the on-site detention and/or on-site retention/re-use facilities and stormwater quality improvement device(s) and pump(s). The Plan must set out the following at a minimum:

- a. The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners; and
- b. The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

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. A minimum of 1x 75 litre size tree, which will attain a minimum mature height of eight (8) metres, must be planted in a suitable location within each new allotment at a minimum of 1.5 metres from any boundary or structure (including swimming pools) and allowing for future tree growth. The tree is to conform to AS2303—*Tree stock for landscape*. Trees listed as exempt species from 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 replacement trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species (up to 3 occurrences). If the trees are found dead before they reach a height where they are protected by Council's Tree Management Controls, they must be replaced with the same species.

32. 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.

33. Torrens Title Subdivision to Occur before Occupation

Prior to the issue of an Occupation Certificate for any dwelling on the site, the certifying authority is to be provided with evidence that the subdivision that forms part of this consent has been registered with the NSW Land Registry Services.

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. Release of Subdivision Certificate

Prior to the release of a Subdivision Certificate, the Certifying Authority must be provided with a copy of the Final Occupation Certificate.

36. Torrens Title Subdivision

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

ON-GOING**37. Operation and Management Plan**

The Operation and Management Plan for the on-site detention and/or on-site retention/re-use, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

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.

Public Domain and Vehicular Crossings

The replacement of the redundant vehicular crossing to the site by kerb and gutter and footpath works are required to be constructed by your contractor. You or your contractor must complete an application for *Design of Public Domain Works – Step 1* form and *Construction of Vehicle Crossing and Public Domain Works – Step 2* form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, before commencement of works.

You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. 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 at no cost to Council

Any damage caused during construction to Council assets on the road reserve or on Council or Crown land must be repaired at no cost to Council.

Any driveway crossovers or other works within the road reserve must be provided at no cost to Council.

No consent is given or implied for any Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, eaves, awnings, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever, including when open.

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.

Disability Discrimination Access to Premises Code

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

National Construction Code (Building Code of Australia)

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

Notification of commencement of works

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

- a. In the case of work for which a principal contractor is required to be appointed:
 - i. The name and licence number of the principal contractor; and
 - ii. The name of the insurer by which the work is insured under Part 6 of that Act.

- b. In the case of work to be done by an owner-builder:
 - i. The name of the owner-builder; and
 - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

Dividing Fences Act

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

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.

Lead-based Paint

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

Dial before you dig

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

Useful Contacts

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

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

Asbestos Removal

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m² of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

Removal of friable asbestos material must only be undertaken by a contractor that holds a current Class A Friable Asbestos Removal Licence.

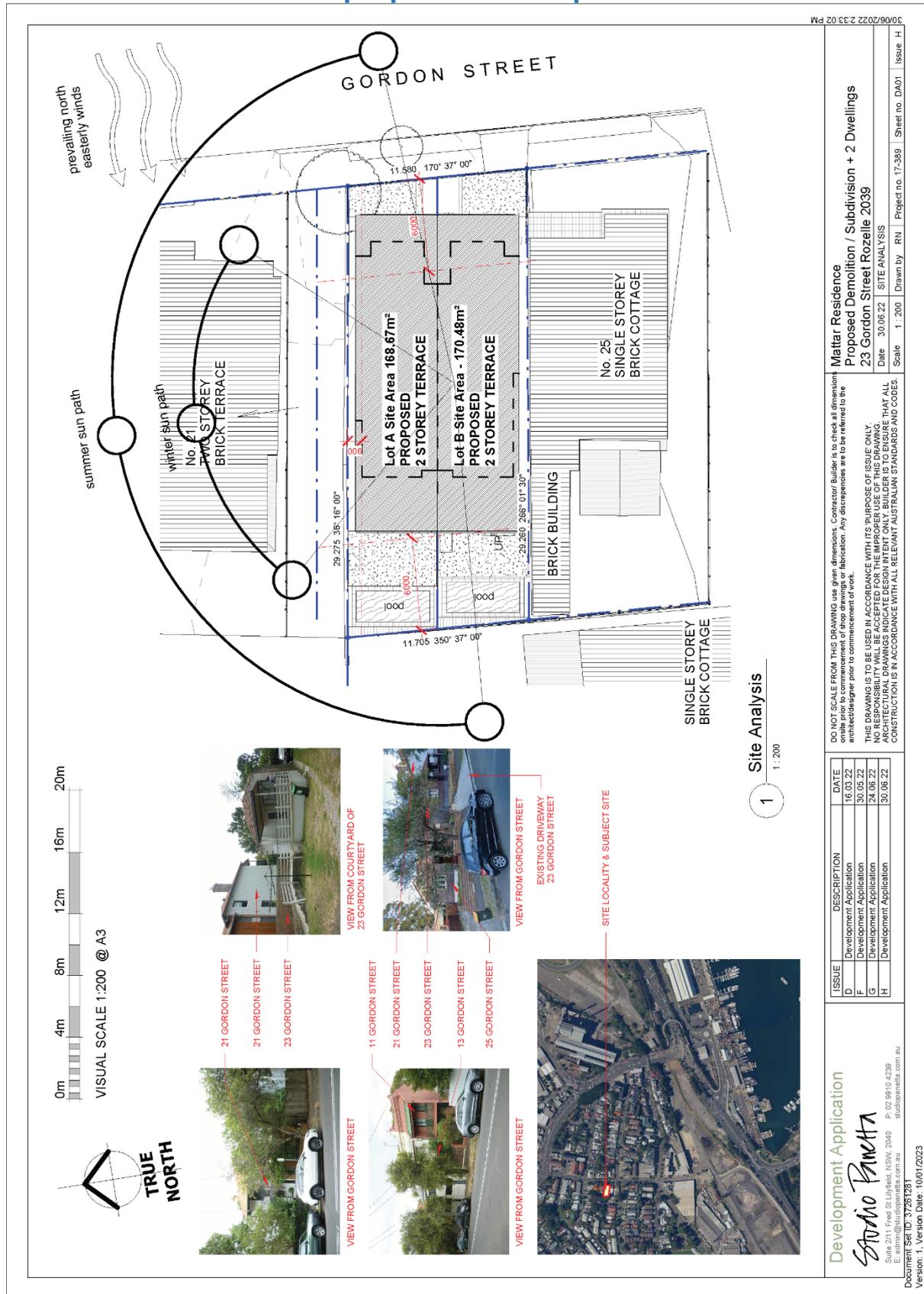
Demolition sites that involve the removal of asbestos must display a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent visible position on the site to the satisfaction of Council's officers. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos has been removed from the site to an approved waste facility.

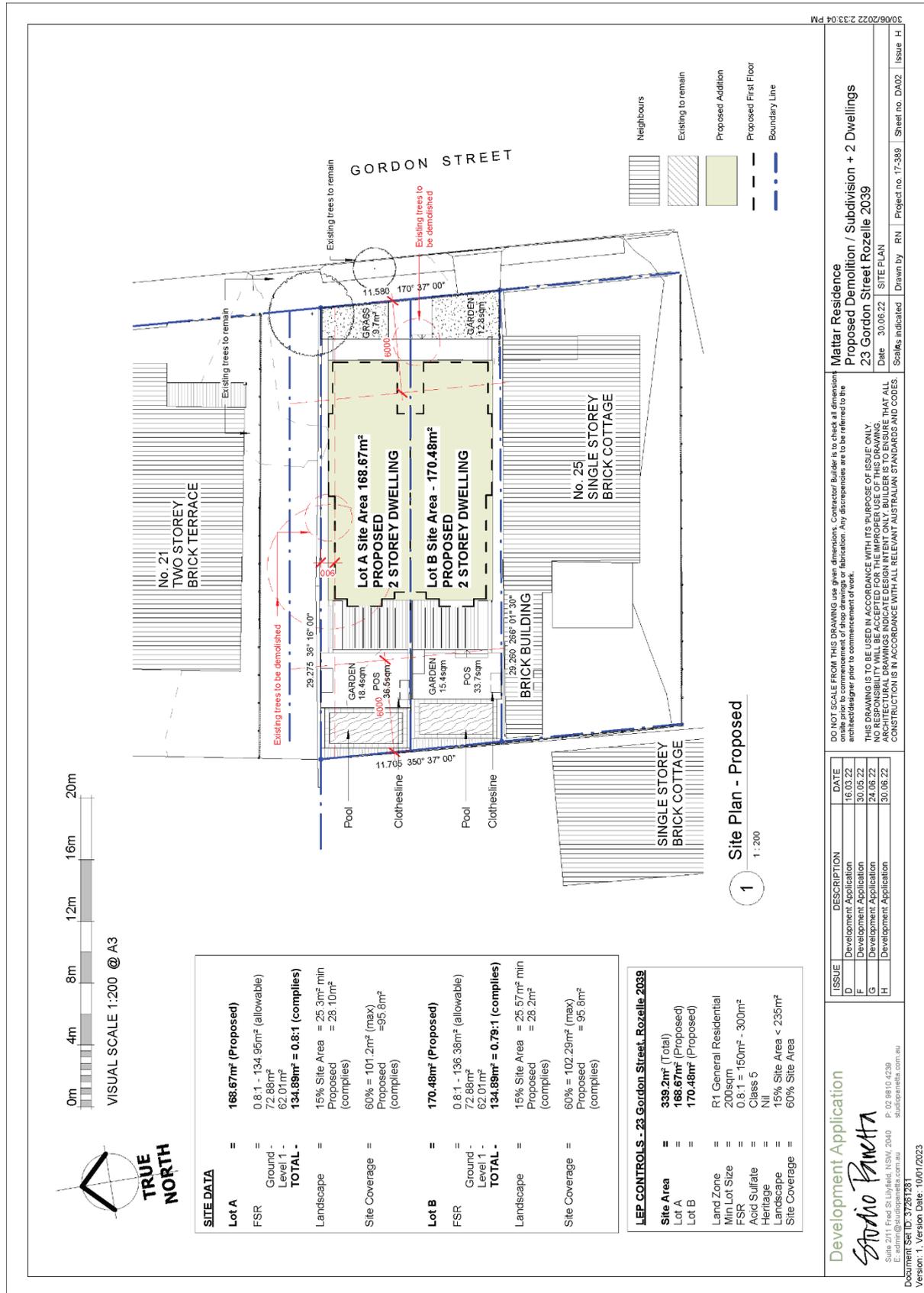
All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2014. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

Street Numbering

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

Attachment B – Plans of proposed development





DO NOT SCALE FROM THIS DRAWING. Use given dimensions. Contractor/Builder is to check all dimensions onsite prior to commencement of site works or fabrication. Any discrepancies are to be referred to the architect/designer prior to commencement of work.

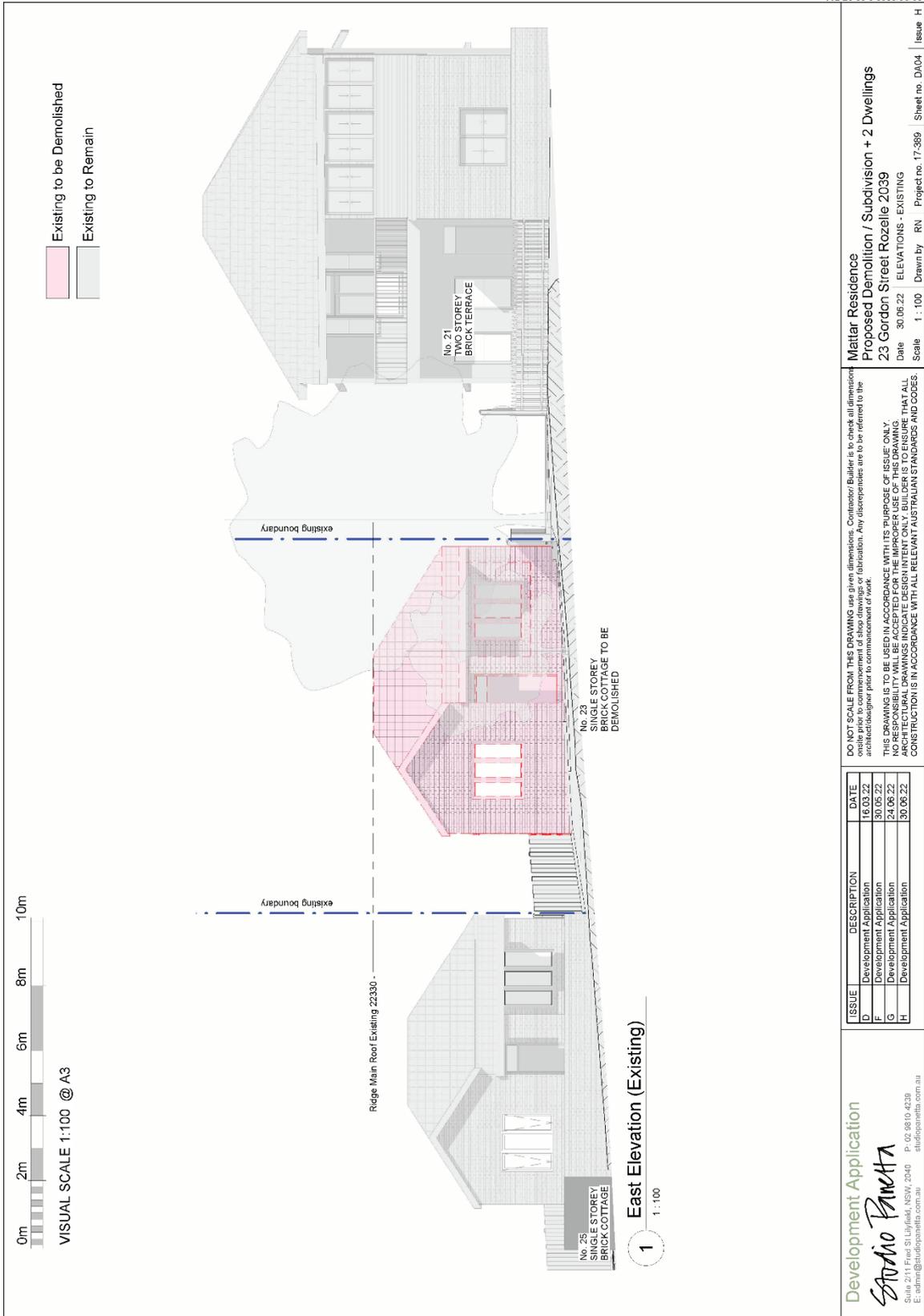
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Mattar Residence
Proposed Demolition / Subdivision + 2 Dwellings
23 Gordon Street Rozelle 2039
 Date: 30.06.22 | SITE PLAN
 Scales indicated | Drawn by: RN | Project no: 17-380 | Sheet no: DA02 | Issue: H

ISSUE	DESCRIPTION	DATE
D	Development Application	16.03.22
F	Development Application	30.06.22
G	Development Application	24.06.22
H	Development Application	30.06.22

Development Application
Studio Panetta
 Suite 2/11 Fred St Lilyfield, NSW, 2040 P: 02 9810 4239
 E: admin@studiopanetta.com.au studiopanetta.com.au

Document SR ID: 37261281
 Version: 1, Version Date: 10/01/2023



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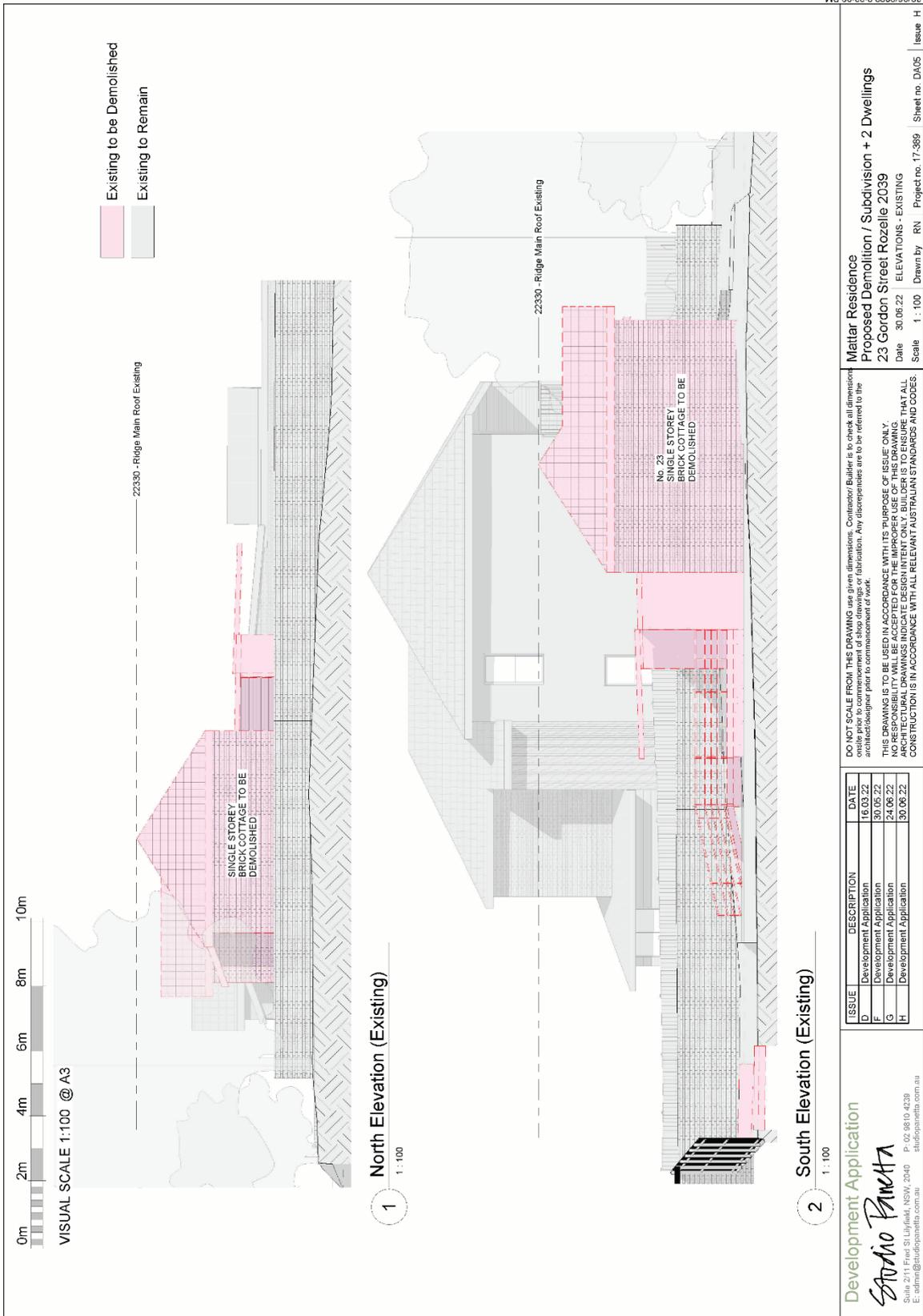
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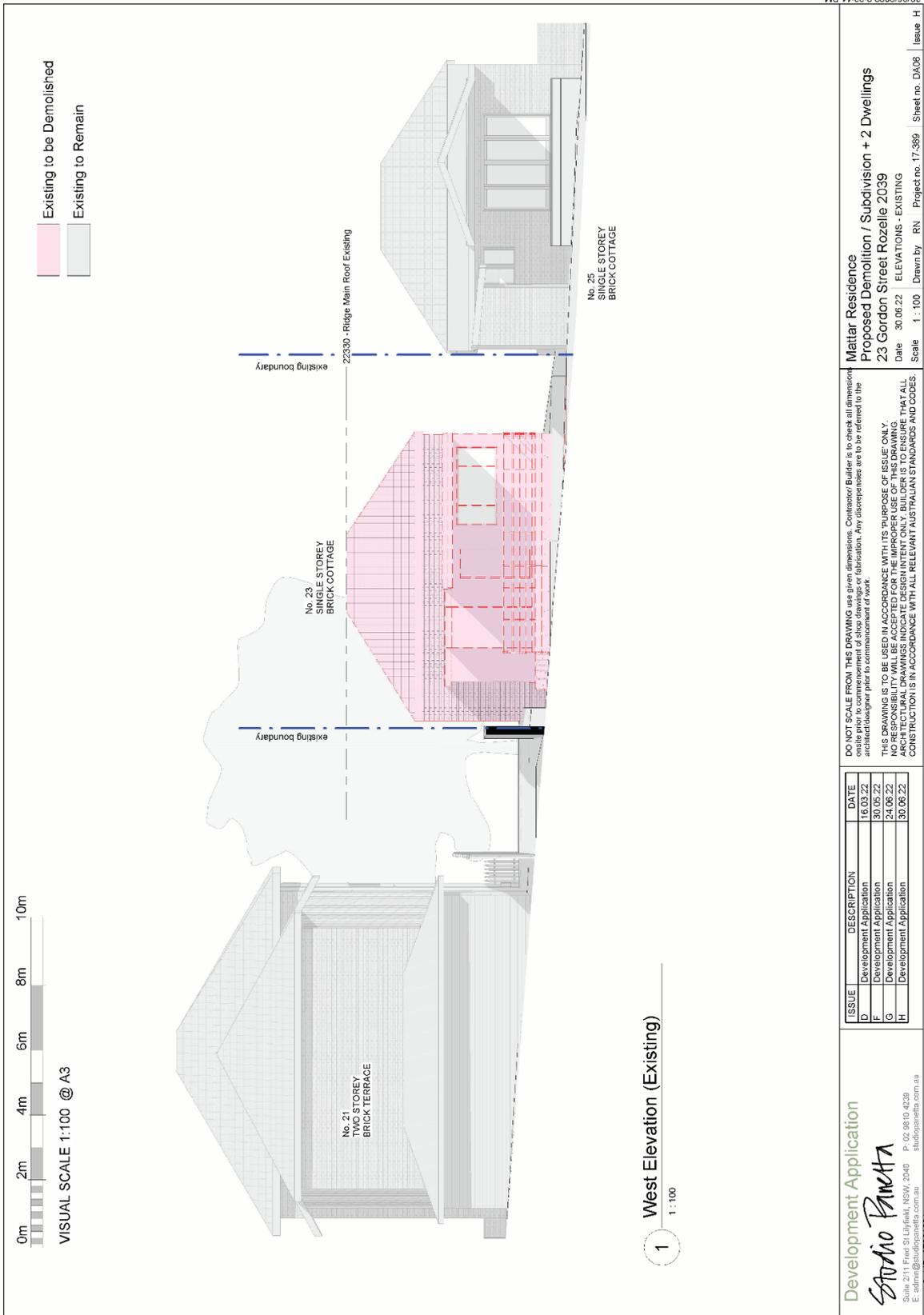
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Mattar Residence
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23 Gordon Street Rozelle 2039
Date: 30.06.22 ELEVATIONS - EXISTING
Scale: 1:100 Drawn by: RN Project no: 17-389 Sheet no: DA04 Issue: H





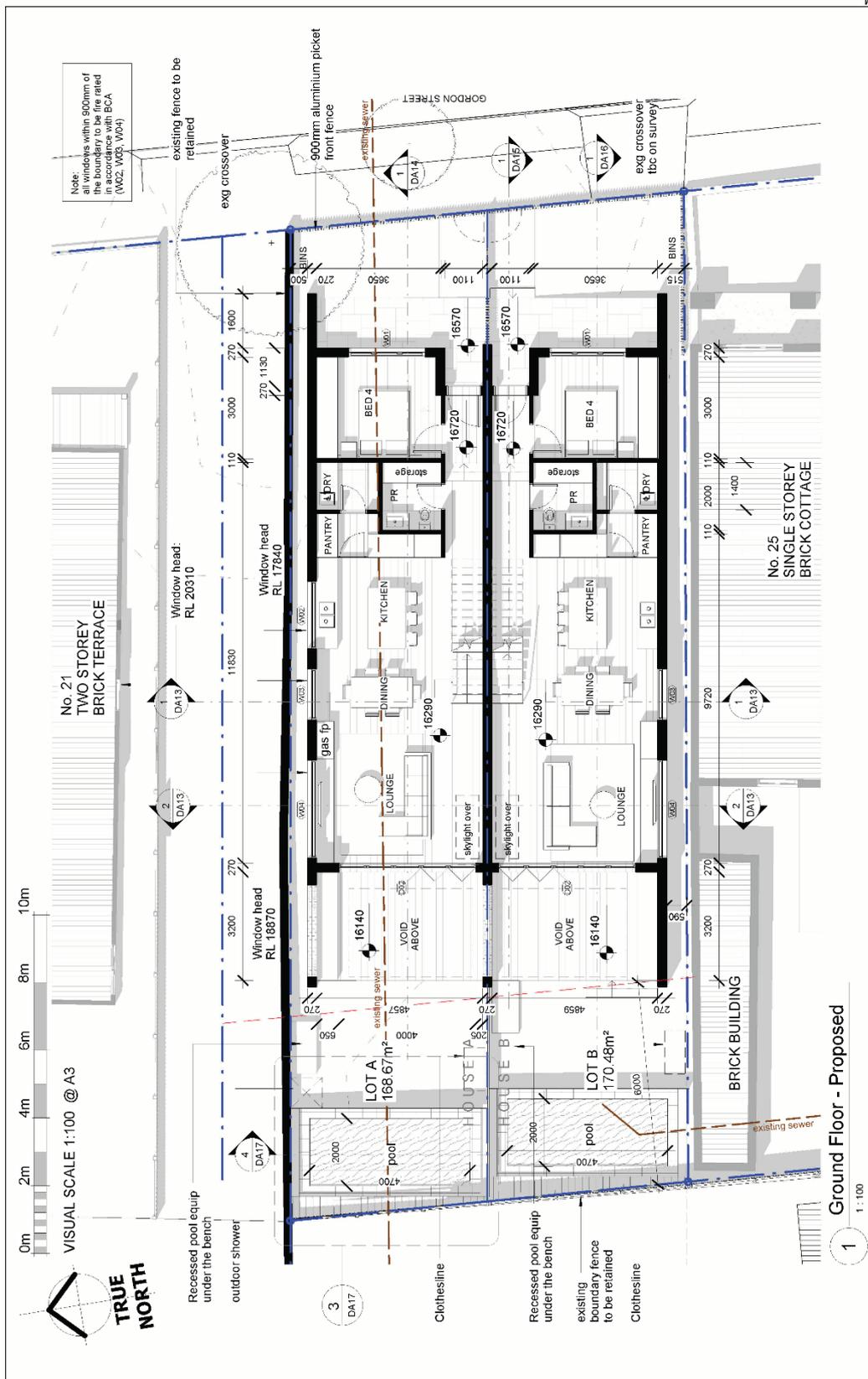
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Mattar Residence
Proposed Demolition / Subdivision + 2 Dwellings
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 Date 30.06.22 ELEVATIONS - EXISTING
 Scale 1 : 100 Drawn by RN Project no. 17-389 Sheet no. DA08 Issue H

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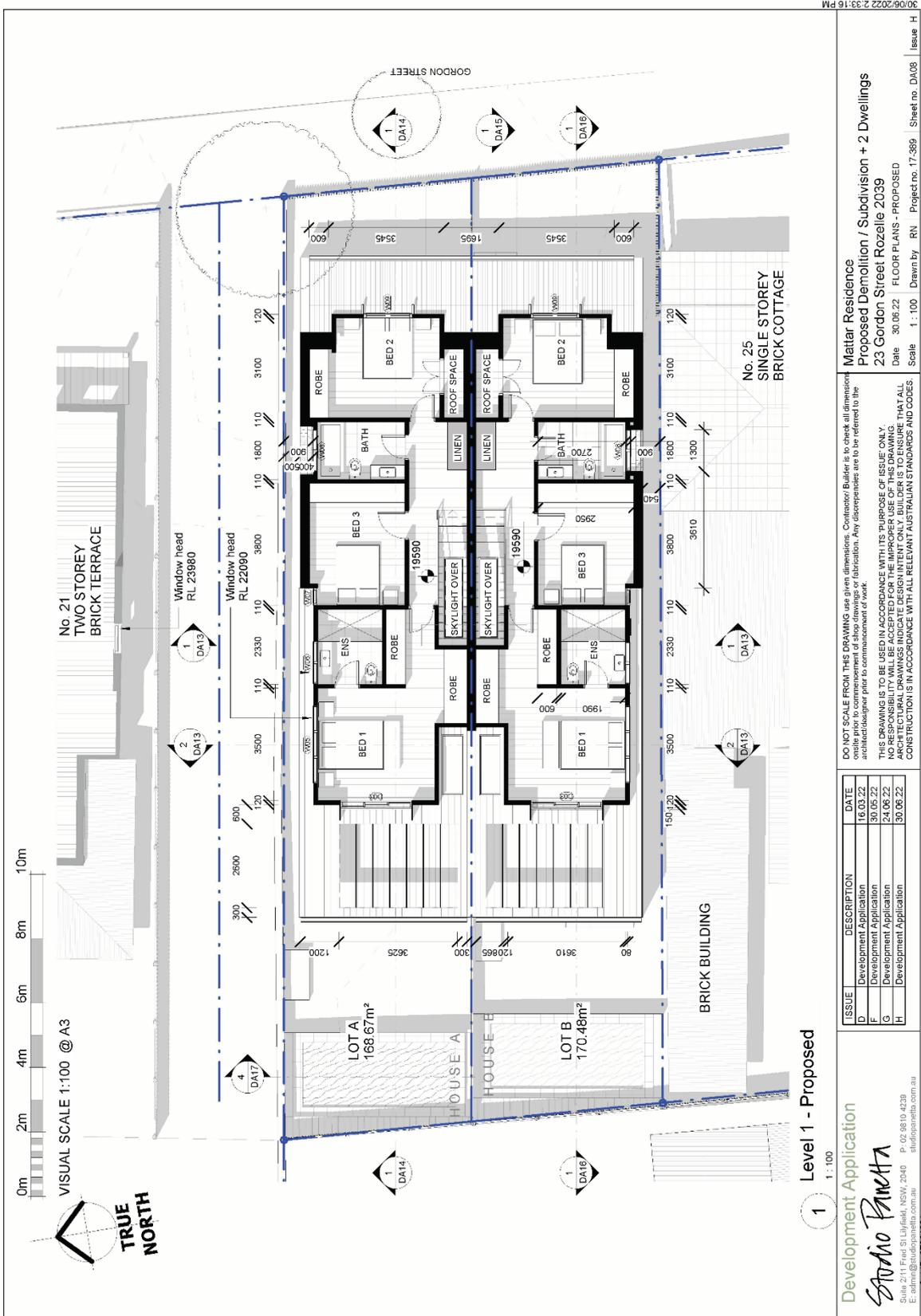
Ground Floor - Proposed
1:100

No. 21 TWO STOREY BRICK TERRACE

No. 25 SINGLE STOREY BRICK COTTAGE

Mattar Residence
 Proposed Demolition / Subdivision / 2 Dwellings
 23 Gordon Street Rozelle 2039
 Date 30.06.22 FLOOR PLANS - PROPOSED
 Scale 1:100 Drawn by RN Project no. 17-389 Sheet no. DA07 Issue H

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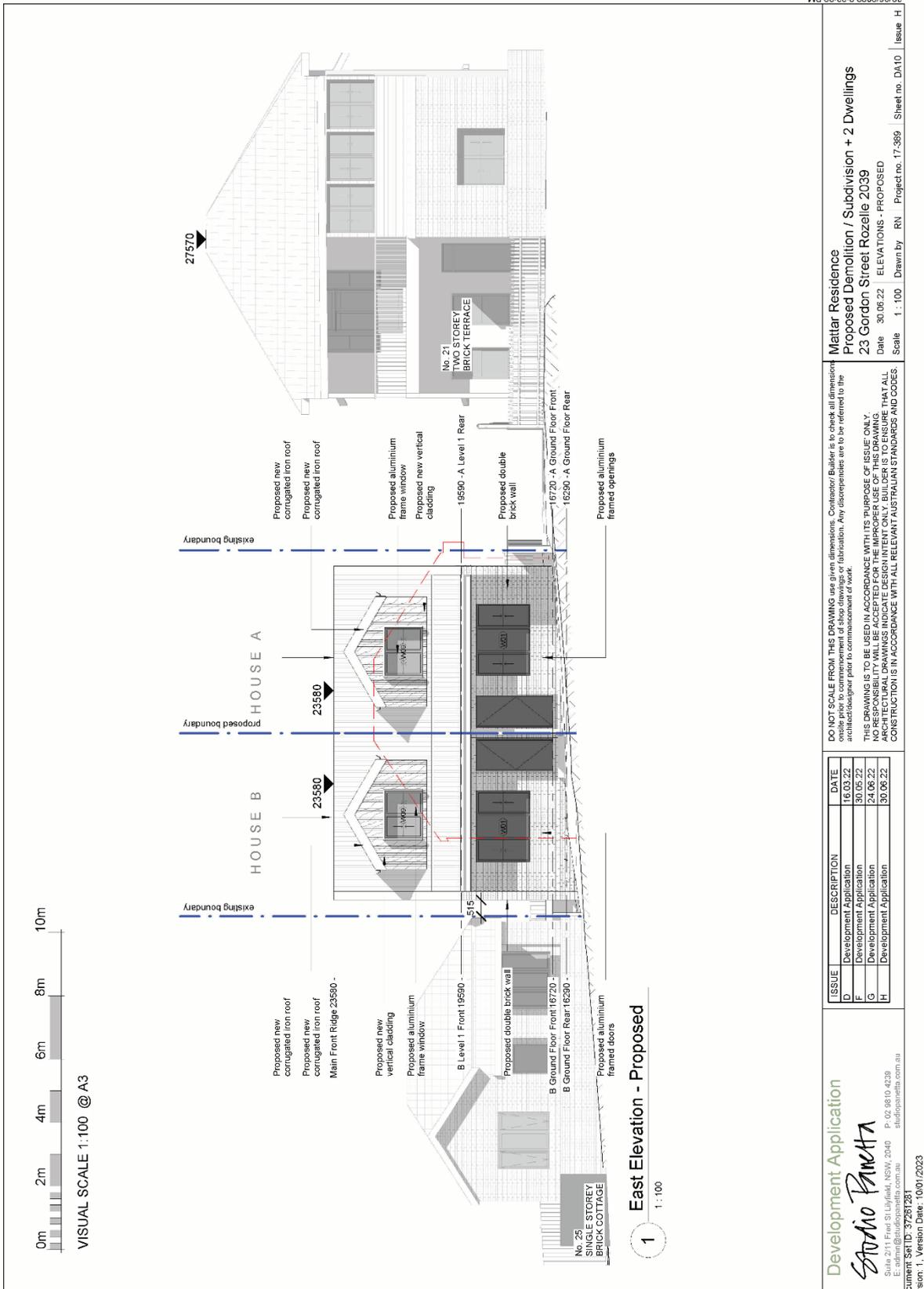
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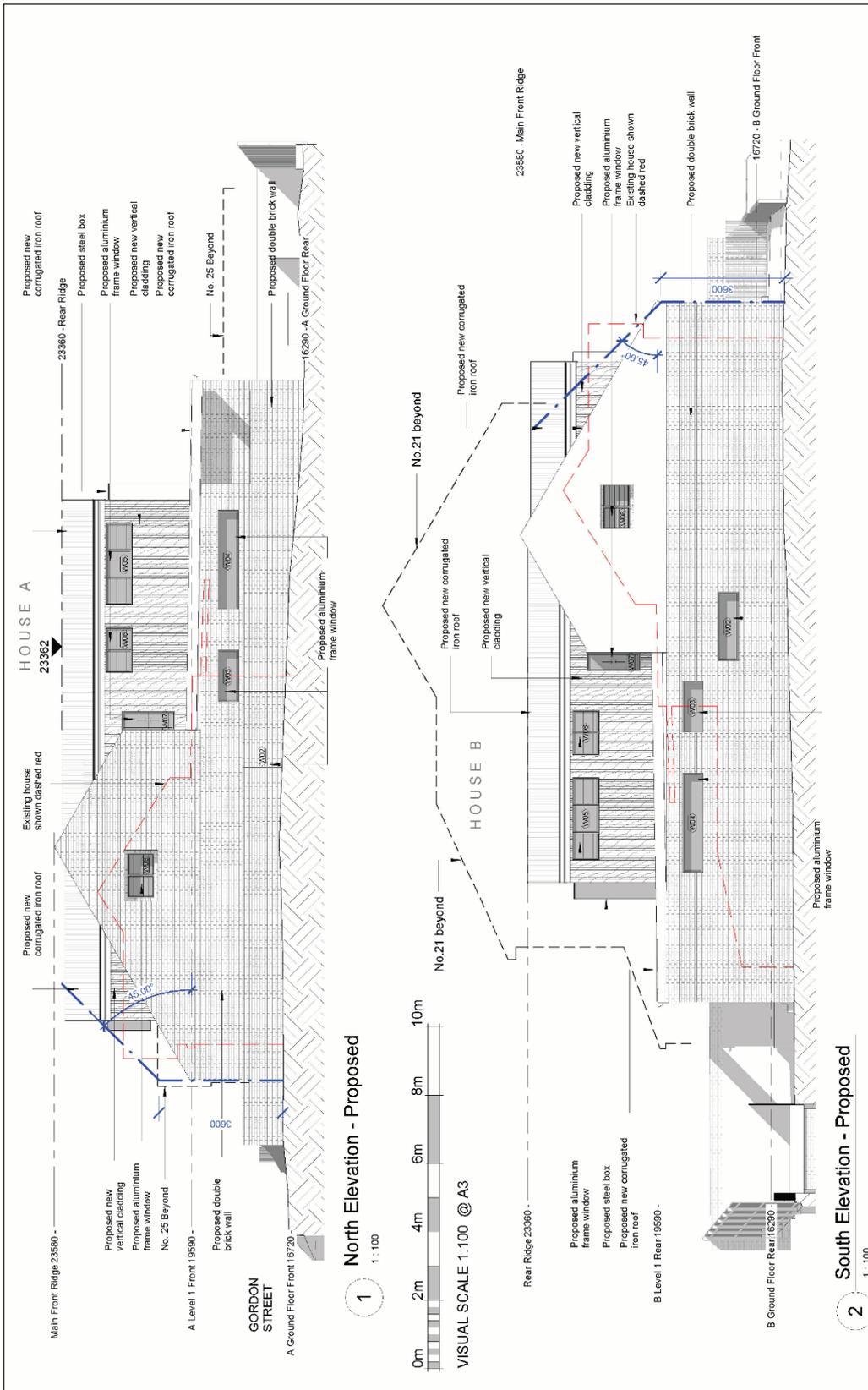
Mattar Residence
 Proposed Demolition / Subdivision + 2 Dwellings
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 Date: 30.06.22 FLOOR PLANS - PROPOSED
 Scale: 1:100 Drawn by: RN Project no: 17-389 Sheet no: DA/08 Issue: H

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Scale 1 : 100 Drawn by RN Project no. 17-389 Sheet no. DA11 Issue H

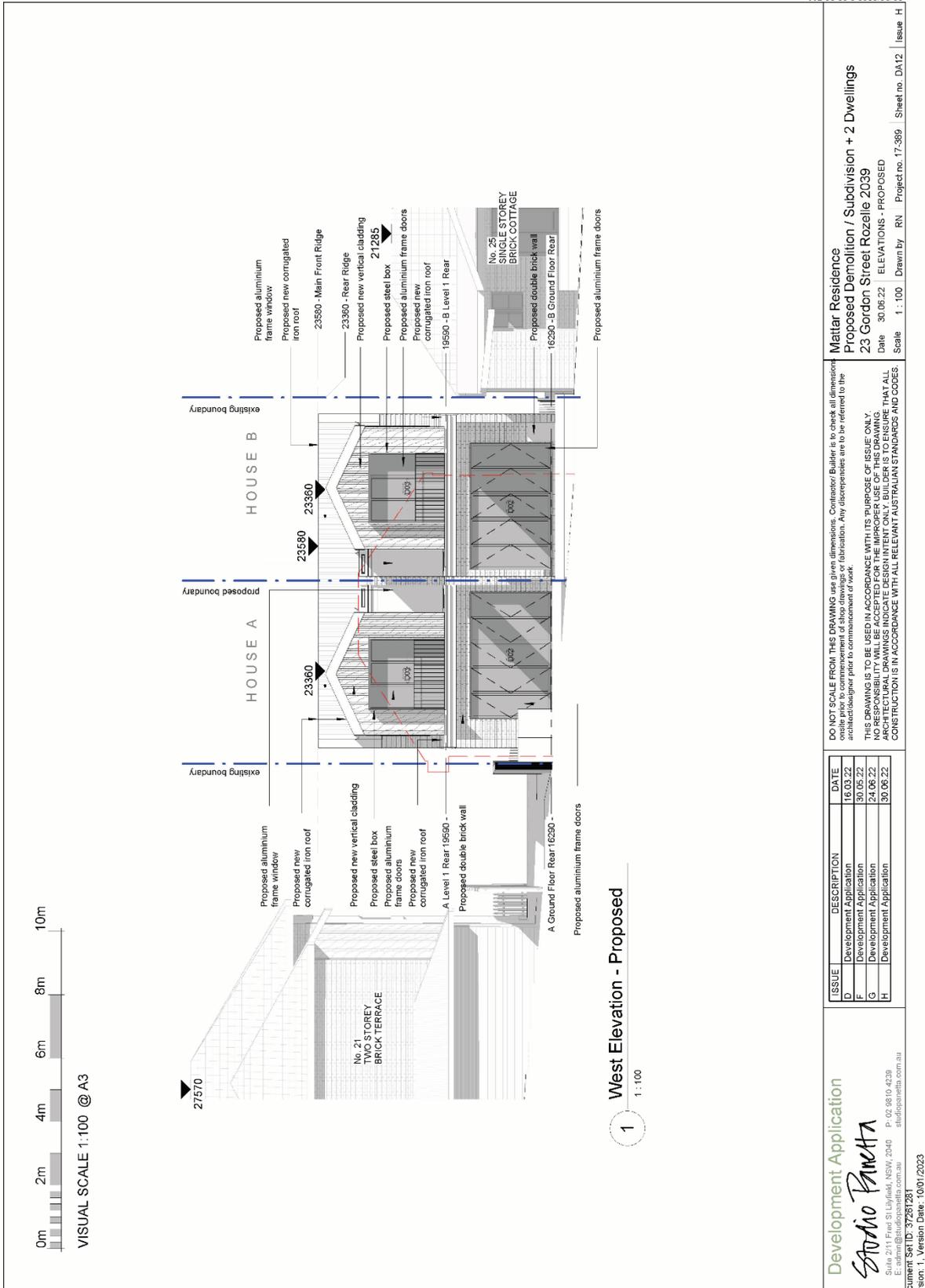
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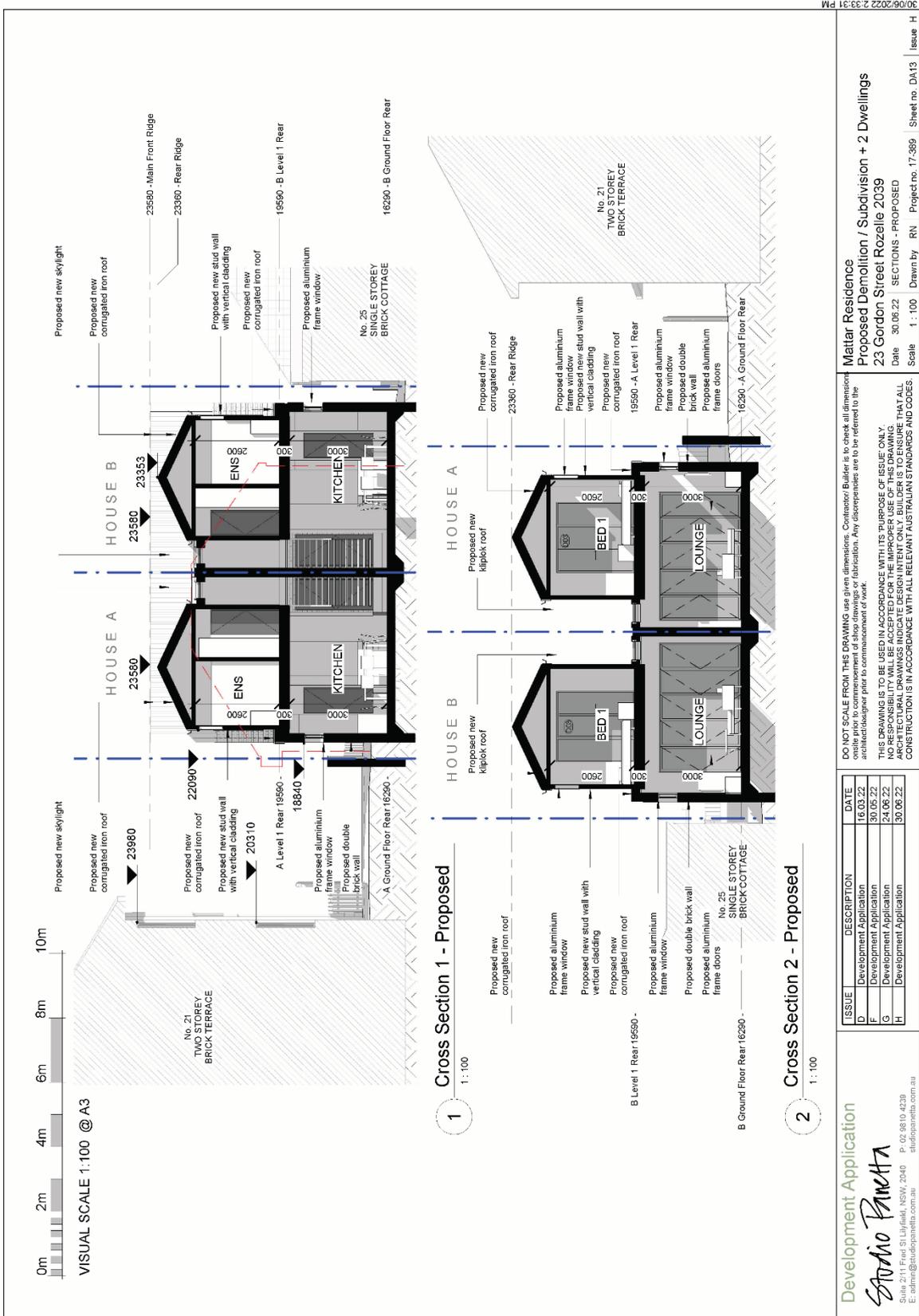
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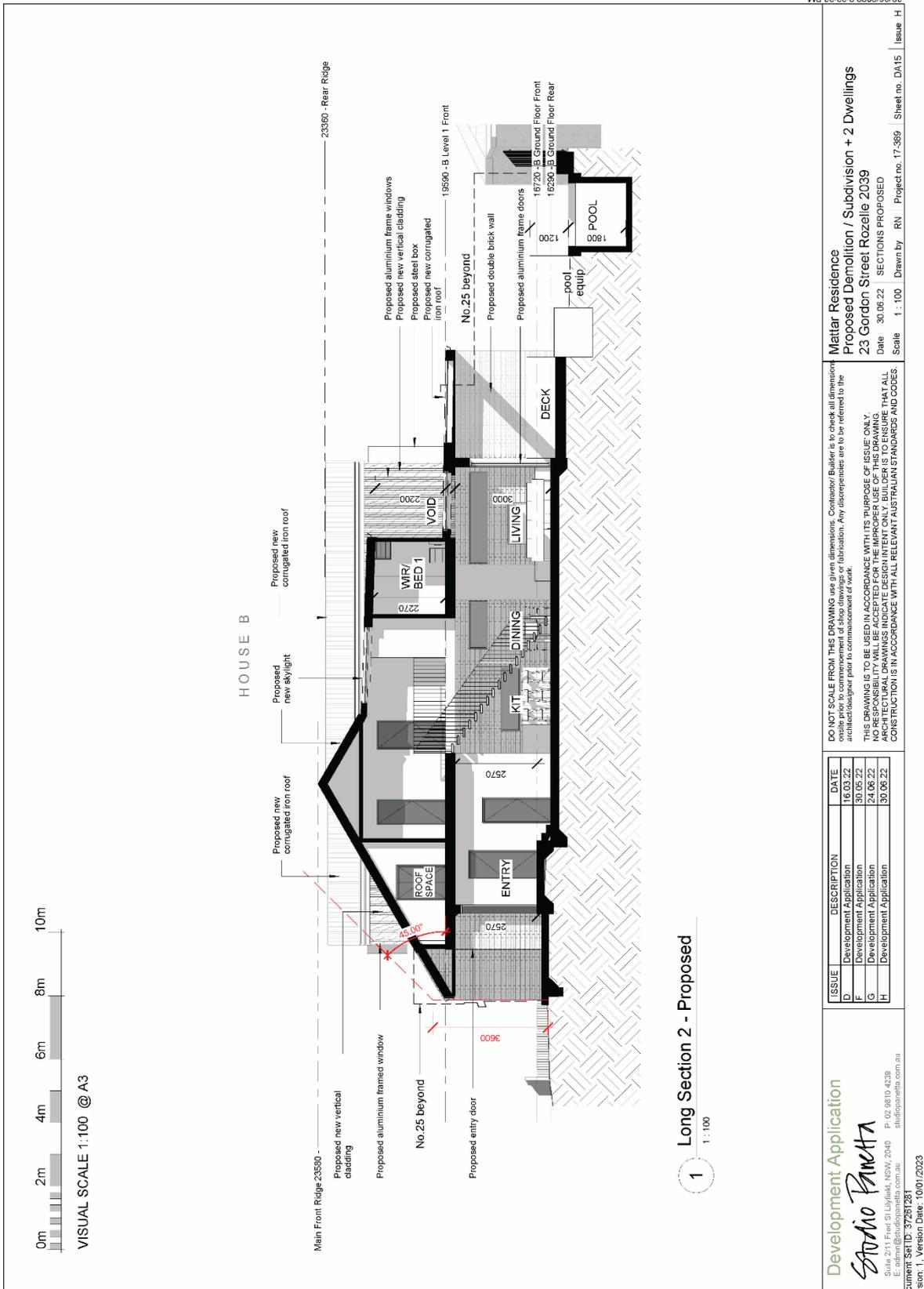
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 Scale 1 : 100 Drawn by RN Project no. 17.389 Sheet no. DA12 Issue H

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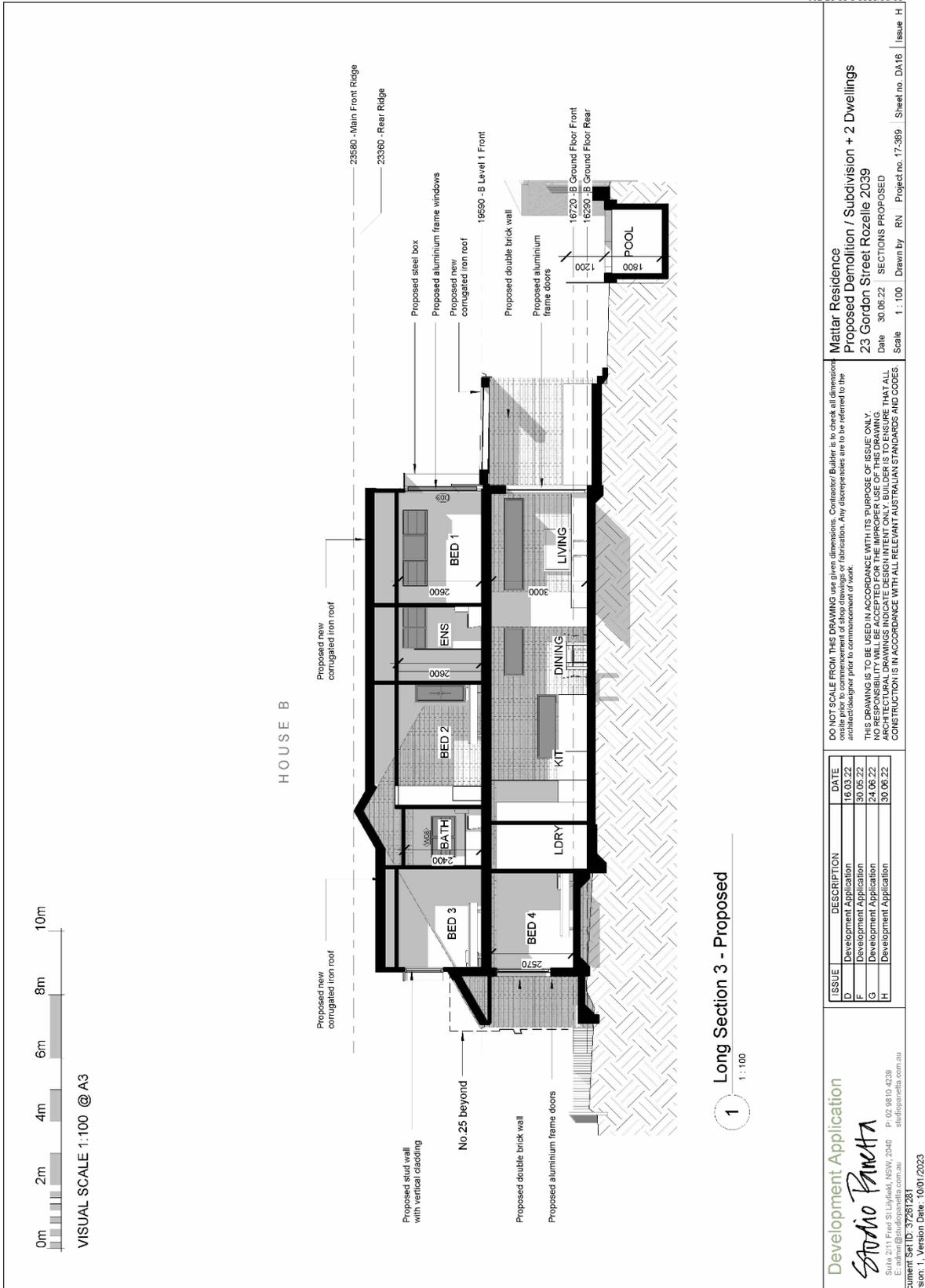


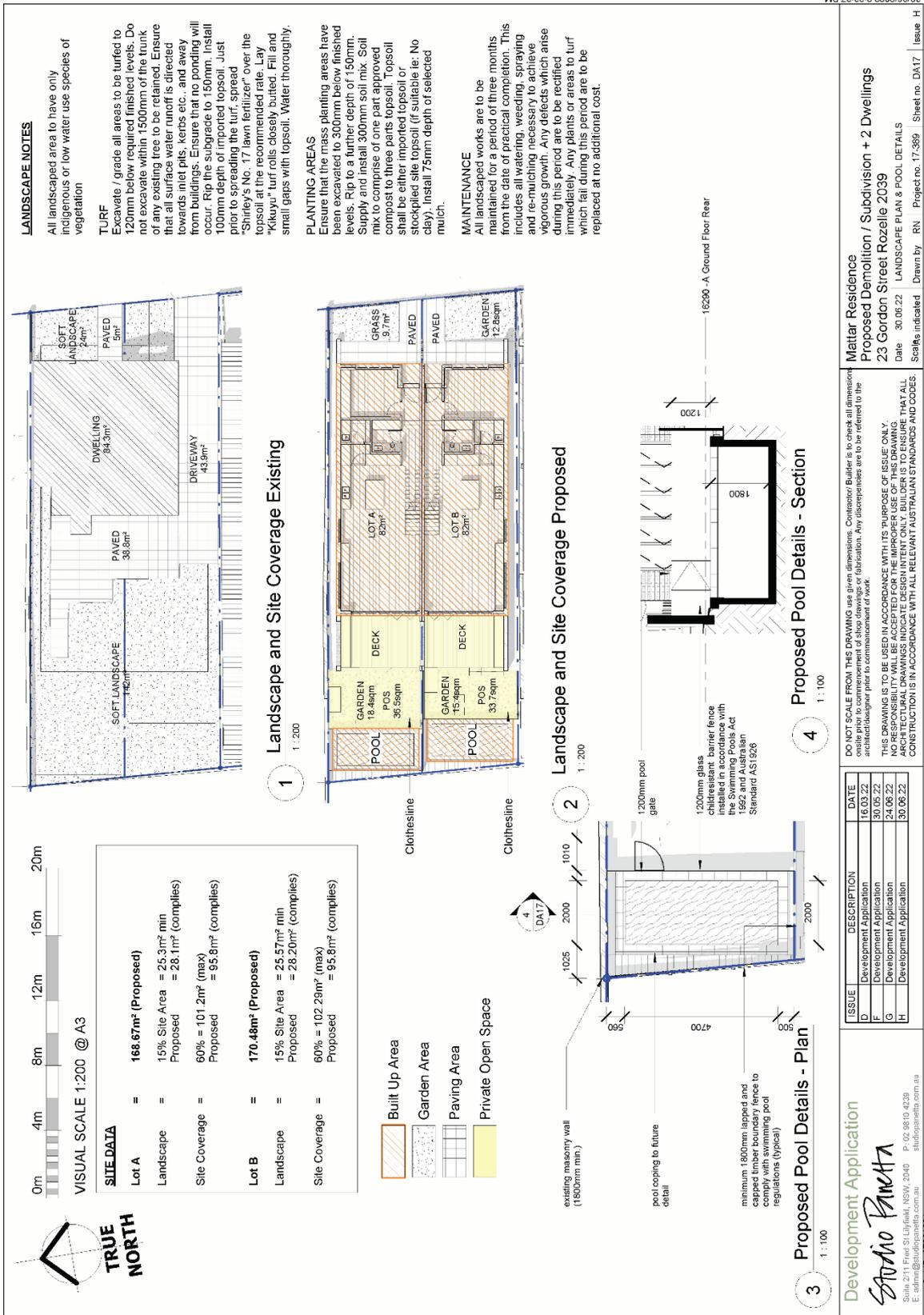
Mattar Residence
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 Date 30.06.22 SECTIONS PROPOSED
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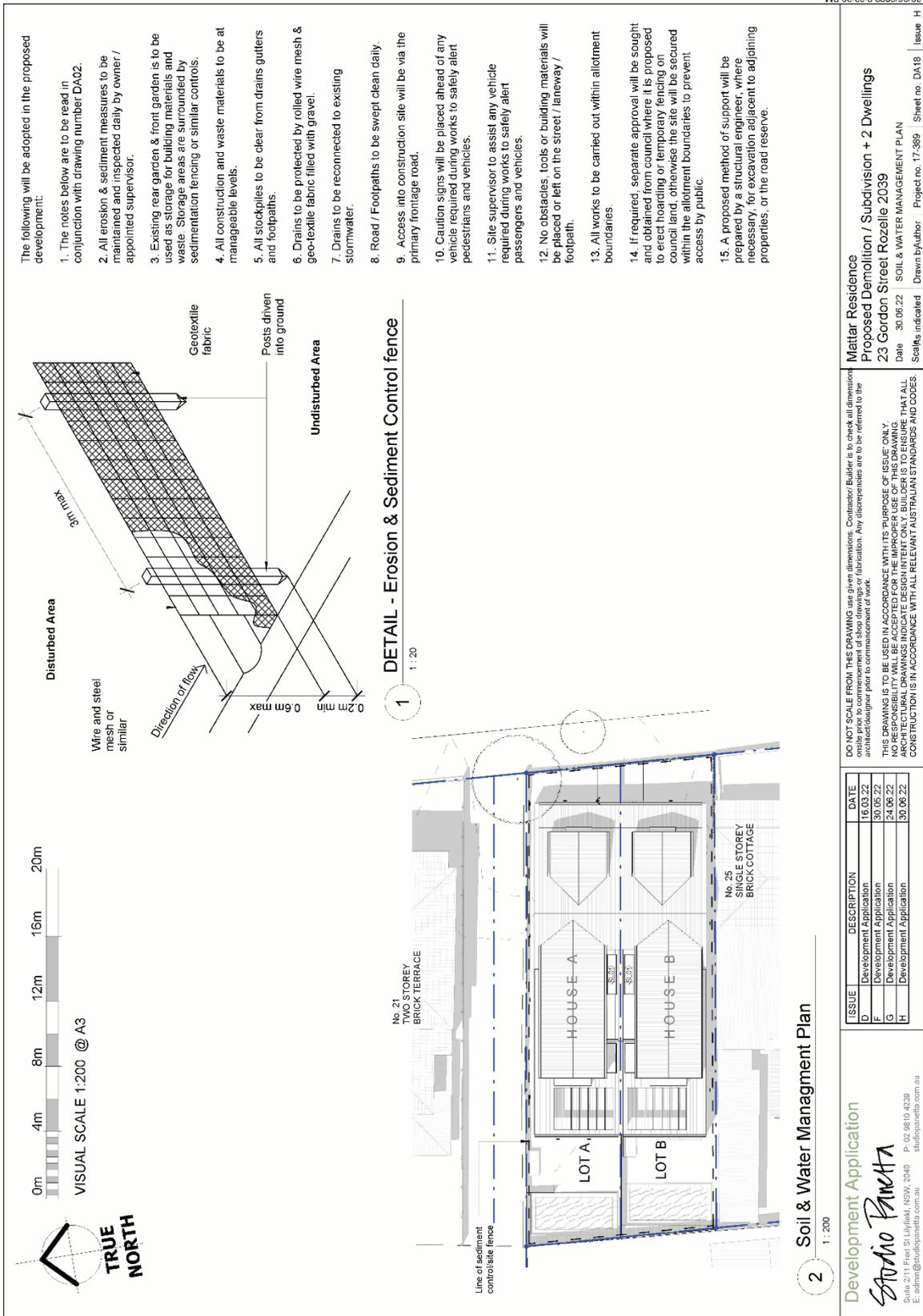
DO NOT SCALE FROM THIS DRAWING. Use plan dimensions. Contractor/Builder is to check all dimensions on site prior to commencement of site works or fabrication. Any discrepancies are to be referred to the architectural designer prior to commencement of work.
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1 Perspective - Front



3 Perspective - Front



2 Perspective - Rear



4 Perspective - Rear

Development Application

Studio Panetta

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E	Updated Materials	30.03.22
F	Development Application	30.05.22
G	Development Application	24.06.22
H	Development Application	30.06.22

DO NOT SCALE FROM THIS DRAWING. Use plan dimensions. Contractor/Builder is to check all dimensions and details prior to commencement of site works or fabrication. Any discrepancies are to be referred to the architect/designer prior to commencement of work.
THIS DRAWING IS TO BE USED IN ACCORDANCE WITH ITS PURPOSE OF ISSUE ONLY
NO RESPONSIBILITY WILL BE ACCEPTED FOR THE IMPROPER USE OF THIS DRAWING
ARCHITECTURAL DRAWINGS INDICATE DESIGN INTENT ONLY. BUILDER IS TO ENSURE THAT ALL CONSTRUCTION IS IN ACCORDANCE WITH ALL RELEVANT AUSTRALIAN STANDARDS AND CODES.

Mattar Residence
Proposed Demolition / Subdivision + 2 Dwellings
23 Gordon Street Rozelle 2039
Date 30.06.22
Scale PERPECTIVES
Drawn by RN Project no. 17-389 Sheet no. DA20 Issue H

30/06/2022 2:33:47 PM

HOUSE B

HOUSE A

HOUSE B

HOUSE A

West Elevation - Materials and Finishes

North Elevation - Materials and Finishes

East Elevation - Materials and Finishes

1

Colorbond Monument
(All new roof sheeting + windows)

2

Burnt Timber Finish (Vertical Cladding)

3

Lohas Bricks - Nilo Rustic (Brick Walls)

ISSUE	DESCRIPTION	DATE
E	Updated Materials	30.03.22
F	Development Application	30.05.22
G	Development Application	24.06.22
H	Development Application	30.06.22

DO NOT SCALE FROM THIS DRAWING (not plain dimensions. Contractor/Builder to check all dimensions on site prior to commencement of site works or fabrication. Any discrepancies are to be referred to the architectural designer prior to commencement of work.)

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ARCHITECTURAL DRAWINGS INDICATE DESIGN INTENT ONLY. BUILDER IS TO ENSURE THAT ALL CONSTRUCTION IS IN ACCORDANCE WITH ALL RELEVANT AUSTRALIAN STANDARDS AND CODES.

Development Application

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Document SetID: 37261281
Version: 1, Version Date: 10/01/2023

Mattar Residence
Proposed Demolition / Subdivision + 2 Dwellings
23 Gordon Street Rozelle 2039
Date 30.06.22 MATERIALS AND FINISHES
Scale 1 : 100 Drawn by RN Project no. 17-369 Sheet no. DA21 Issue H

Attachment C- Section 4.6 Exception to Development Standards



CLAUSE 4.6 VARIATION TO CLAUSE 4.1 – MINIMUM SUBDIVISION LOT SIZE OF THE LEICHHARDT LOCAL ENVIRONMENTAL PLAN 2013

23 GORDON STREET, ROZELLE

1. Introduction

This submission seeks a variation to Clause 4.1 of the Leichhardt Local Environmental Plan 2013, which relates to minimum subdivision lot size.

This submission has been prepared with regards to a development application seeking the demolition of all structures, construction of an attached dual occupancy with swimming pools, landscaping and associated site works at 23 Gordon Street, Rozelle. It is also sought to Torrens title subdivide the dwellings.

As detailed in this written request for a variation to minimum subdivision lot size being a development standard under the Leichhardt Local Environmental Plan 2013, the development meets the requirements prescribed under Clause 4.6 of the Leichhardt Local Environmental Plan (LEP) 2013.

2. Site Background

The subject site is commonly known as 23 Gordon Street, Rozelle, and is legally defined as Lot 10 in Deposited Plan 1256816. The site is on the western site of Gordon Street on the block bounded to the north by Quirk Street, to the south by Alfred Street and to the west by Emily and Elizabeth Streets.

The site is generally rectangular in shape with a frontage of 11.58m to Gordon Street. The rear boundary is 11.705m wide. The northern side boundary measures 29.275m and the southern side boundary measures 29.26m. The overall site area is 339.2m².

Located on the subject site at present is a single storey brick and fibro cottage with a tile roof. An existing driveway runs along the southern boundary. Refer to Figure 1 Site Location Map.

Development in the area is characterised by low density residential forms which are generally of an older housing stock. However, there are more contemporary built forms and additions in the immediate locality.

Directly adjoining to the north of the site is a right of carriageway to a battle-axe allotment comprising six dwellings in a multi-dwelling housing development at 21A Gordon Street. The dwellings are two storeys and contemporary in their form, materials and finishes. Beyond the right of carriageway at 21 Gordon Street is a two storey brick terrace. To the south of the site at 25 Gordon Street is a single storey brick cottage. The rear boundary is with the rear yard of a single storey detached dwelling at 58 Alfred Street. Opposite the site is a heritage conservation area. The form of development along Gordon Street is two storey terraces, some with attic levels.

Other contemporary development in the area includes an infill multi-dwelling housing development of a single storey with attic level at 21 Quirk Street.

The subject site is proximate to open space, services and public transportation. The site is located within 200m walking distance of St Joseph's Catholic Church, the Sydney Community College at Rosebud Cottage Child Care. The site is 300m walking distance from O'Connor Reserve and 350m walking distance from the more expansive Easton Park public recreation area.



Figure 1: Site Location Map

Source: <https://maps.six.nsw.gov.au/>

The site is 240m-300m walking distance from bus stops along Victoria Road which enable easy access to centres nearby and those further afield, including but not limited to the Balmain, Drummoyne, Gladesville and the Sydney CBD. It is also proximate to the future Bays Precinct Light Rail Station.

The site is zoned R1 General Residential. Refer to Figure 2 Land Zoning Map. The proposed development is permissible with consent in this zone under the Leichhardt LEP 2013. Furthermore, the subject site has not been identified as an item of heritage, nor is the site located within a heritage conservation area.

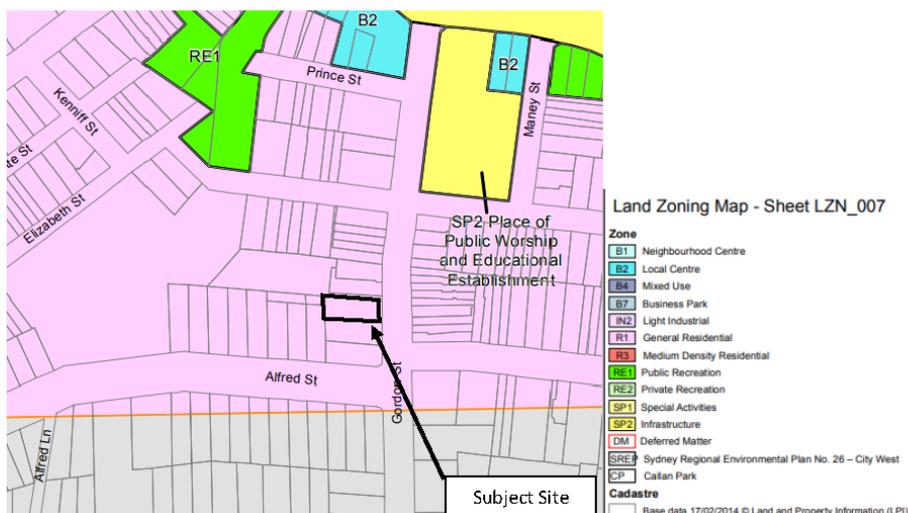


Figure 2: Land Zoning Map

Source: NSW Legislation, LLEP13, map 7.

3. Clause 4.6

This submission is made under Clause 4.6 of the Leichhardt LEP 2013 – Exceptions to development standards. Clause 4.6 states the following:

“4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for a 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 Director-General has been obtained.*
- (5) In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.*
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

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

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

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

- 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- 4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.*

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

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

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

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

The Environmental Planning Instrument to which these variations relate to is the Leichhardt LEP 2013.

The development standard to which this variation relates to is Clause 4.1 – Minimum subdivision Lot Size which reads as follows:

- (1) *The objectives of this clause are as follows—*
- (a) *to ensure that lot sizes are able to accommodate development that is consistent with relevant development controls,*
 - (b) *to ensure that lot sizes are capable of supporting a range of development types.*
- (2) *This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*
- (3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*
- (4) *This clause does not apply in relation to the subdivision of any land—*
- (a) *by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or*
 - (b) *by any kind of subdivision under the Community Land Development Act 1989.*

Council's maps identify a minimum subdivision lot size on the site of 200m². Refer to Figure 3 below.



Figure 3: Minimum Lot Size Map

Source: NSW Legislation, LLEP13, map 7.

Under the proposed Torrens title subdivision, the proposed lot sizes are as follows:

- Proposed Lot A: 168.67m²
- Proposed Lot B: 170.48m²

A written justification is justly required for the proposed variation to the minimum subdivision lot size development standard, in accordance with Clause 4.6 of the Leichhardt LEP 2013.

4. Extent of Non-Compliance

As noted above, Clause 4.1 of the Leichhardt LEP 2013 states that the minimum subdivision lot size for the site is 200m².

The subject site has a total area of 339.12m². It is sought to Torrens title subdivided the proposed dual occupancy.

The proposed Torrens title lots will provide for the following are as:

- Lot A: 168.67m²
- Lot B: 170.48m²

Given the minimum lot size of 200m², the proposal falls short of the requirements as summarised below.

- Lot A: 31.33m² or 15.67%
- Lot B: 29.52m² or 14.76%

It is our subdivision that the variation is in keeping with the subdivision pattern of the area. The breach to the minimum subdivision lot size will not unreasonably impact on the capacity of the

lots to provide dwellings of appropriate amenity or compromise the amenity of adjoining properties. Compliance with the standard is therefore unreasonable in this instance.

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

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

In the matter of *Four2Five*, the Commissioner stated within the judgement the following, in reference to a variation:

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

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below:

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

In respect of the minimum subdivision lot size standard, the first method is invoked.

The objectives supporting the minimum subdivision lot size control identified in Clause 4.1 are discussed below. Consistency with the objectives and the absence of any environmental impacts,

would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.1.

- 1) *The objectives of this clause are as follows:*
 - a) *to ensure that lot sizes are able to accommodate development that is consistent with relevant development controls,*
 - b) *to ensure that lot sizes are capable of supporting a range of development types.*

In response to (a), it is important to note that the proposed dwellings are compliant with the FSR, landscaped area and site coverage controls. They are also easily compliant with the private open space control, excluding the swimming pool.

A variation to the side setback control is proposed. However, the character of the street is for minimal or no setbacks. The proposed BLZ generally aligns with the character of the area.

The dwellings achieve their required solar access to living rooms and private open spaces, with the exception of the living room to Lot A which receives only 2 hours on June 21. This variation is driven solely by the east-west orientation and existing overshadowing from 21 Gordon Street. The variation is not out of poor design or unrealised opportunity for northerly solar access. Notwithstanding this, the private open space is compliant, and the living room will continue to receive solar access after 3pm.

In essence, the variation to the minimum subdivision lot size has not compromised the amenity of the dwellings and consistency with the relevant development standards and other key controls.

Regarding objective (b), the proposed lots are suitably sized to accommodate the proposed dwelling types. The streetscape of Gordon Street and the immediate locality provides a range of lot sizes and dwelling types, whether detached, semi-detached, terrace style, or multi-dwelling housing. The proposal continues to provide a range of development types in the locality.

The design of the dwellings is compatible with the streetscape and, as mentioned above, is compliant with the other key development controls.

The proposal is consistent with the objectives of the clause.

Further to the above, it is to be acknowledged that the subdivision pattern of Gordon Street, particularly in the immediate locality, is dominantly for small lot sizes and lot frontage widths. With reference to a cadastral map in Figure 3 and a summary table of lot sizes and lot frontage widths in the immediate locality in Figure 4, it is submitted that the proposed lot sizes, despite being a variation to the development standard, are generally consistent and even above the majority of the lots in the area.



Figure 4: Cadastral Map

Source: <https://maps.six.nsw.gov.au/>

Street Number (Western Gordon Street)	Lot size	Lot width Frontage	Street Number (Eastern Side Gordon Street)	Lot Size	Lot width frontage
27	334	10.7	26	154	5
25	341	11.2	24	126	4
23 (Lot A)	170.48	5.74	22	143	4
23 (Lot B)	168.67	5.89	20	175	6
21	221	8	18	115	4
19	248	9	16	131	4
17	141	4	14	124	4
15	116	4	12	122	4
13	113	4	10	115	4
11	113	4	8	86	5
9	230	8	6	131	7
			4	132	7
			2	136	8

Figure 5: Summary Table of Lot Sizes and Frontages in Immediate Locality

As illustrated above, the proposed 167.67m² and 170.48m² exceeds the majority of the allotments in the locality on both sides of Gordon Street.

It is acknowledged that the eastern side of Gordon Street opposite the site is within a heritage conservation area and the subdivision pattern there likely reflects the original or early subdivision. However, there remain properties on the western side of Gordon Street, and therefore outside of any conservation area, where the lot sizes are well below the standard (Nos. 11-17). Additional properties on surrounding streets outside of the conservation area that vary the standard are also present, including but not limited to 54, 56 and 58 Quirk Street (195m², 158m², and 152m² respectively) and 23 and 25 Quirk Street (127m² and 128m² respectively).

In view of the above, it is submitted that compliance with the standard is both unreasonable and unnecessary as the variation and development meets the objectives of the standard and is consistent with the subdivision pattern of the area.

6. Are there Sufficient Environmental Planning Grounds?

As required by Clause 4.6 (3)(b), it must be demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

The assessment above and shown throughout the Statement of Environmental Effects demonstrates that the resultant environmental impacts of the proposal will be satisfactory.

The proposed minimum subdivision lot size variation has demonstrably not resulted in a diminished residential amenity outcome as a result of the non-compliance. Further, the variation has not compromised the development by way of additional breaches to development standards or key DCP controls.

Consequently, despite the proposed allotment sizes falling below the development standard, each proposed lot is capable of accommodating a dwelling that are not undersized.

As has been established in the previous section, the character of the locality includes numerous lot sizes below the development standard. These examples are of varying age, but the character of the area is, by the majority, for smaller lots than those proposed, in lot size and frontage width.

In view of the above, the proposal has addressed the site constraints, streetscape character, architectural and aesthetics characteristics, and is consistent with the objectives of the development standard.

The proposal results in a development that provides for an orderly and economic use of the land.

This provides for sufficient environmental planning grounds to vary the development standard.

In this case, strict compliance with the development standard for minimum subdivision lot size in the Leichhardt LEP 2013 is unnecessary and unreasonable.

7. Is the Variation in the Public Interest?

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

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 4.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.1.

The proposed built form and lot sizes contextually has regard to the surrounding properties and is considered to provide sufficient internal and external amenity, room sizes, open space and landscaping for the amenity of future residents, while allowing neighbouring properties to retain required solar access requirements as per the DCP.

Furthermore, it is important to also consider the objectives of the R1 General Residential zone in relation to the development, which are as follows:

Zone R1 General Residential

Objectives of zone

- *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.*

The following comments are provided in response to the objectives:

- The proposed two new dwellings with subdivision will provide for a greater supply of housing to meet the growing needs of the community.
- The proposed development will provide a well sought-after variety of housing types and continue to provide for low-density housing needs of the Inner West.
- There are no other land uses proposed as part of this application.
- Both dwellings are for four bedrooms, with each easily convertible to a work from home space as needed.
- The proposal is compatible with the existing and desired character of the locality, through providing a dual occupancy that is well suited to the locality.
- The proposal provides compliant landscape area for the use and enjoyment of future residents of the site.
- The proposed Torrens Title subdivision of the site creates two lots that are consistent with the character of subdivision along Gordon Street.
- The proposal serves to enhance the amenity of the existing and future residents of the site, while also protecting the amenity of those adjoining. Shadow diagrams have been prepared demonstrating a minimal additional impact while maintaining compliance with controls, and no privacy concerns are raised.

The proposal therefore satisfies the objectives of the zone. The minimum subdivision lot size variation has not precluded consistency with any of the objectives.

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

8. Public Benefit of Maintaining the Standard

It is considered that the public benefit will not be undermined by varying the standard. The variation to the minimum subdivision lot size is consistent with the subdivision pattern in the immediate area. No notable adverse negative impacts to the development itself or its adjacent properties will occur due to the variation.

The proposal provides for the orderly and economic development of the site. Given the site's orientation, location and context it is considered that the site is well suited for the subdivision.

The subdivision is consistent with the current planning controls such as the FSR, landscaped area and site coverage standards.

The built form has been designed to be compatible with the streetscape, ensuring a positive development outcome for the site and the existing and desired future character of the area.

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

It is considered that the public is not impacted in any way by maintaining the standard.

9. Is the Variation Well Founded?

It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the Leichhardt LEP 2013 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standards;
- The development meets the objectives of the standard to be varied (minimum subdivision lot size) and objectives of the R1 General Residential zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance; and
- The development submitted aligns with the predominantly residential nature of the neighbourhood.

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

10. General

Clause 4.6 also states that:

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

Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

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

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

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

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

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,"

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

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

The development proposed is not complying development.

A BASIX certificate is not required for this application.

Clause 5.4 does not apply to the proposal.

11. Conclusion

The proposal does not strictly comply with the minimum subdivision lot size control as prescribed by Clause 4.1 of the Leichhardt LEP 2013. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the Leichhardt LEP 2013 are satisfied as the breach to the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the Leichhardt LEP 2013 to vary this development control is appropriate in the context of the case.

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

Should you have any questions, please do not hesitate to contact me.

Darren Laybutt
Town Planner
GAT & Associates
Plan 3835