





	
DEVELOPMENT ASSESSMENT REPORT	
<b>Application No.</b>	REV/2022/0035
<b>Address</b>	237 Marrickville Road MARRICKVILLE NSW 2204
<b>Proposal</b>	S8.2 Review of DA/2022/0069, refused on 14 September 2022, for alterations to the existing first floor for use as a dwelling
<b>Date of Lodgement</b>	18 November 2022
<b>Applicant</b>	Design Studio 407 Pty Ltd
<b>Owner</b>	Mrs Dimitra Karagiannis
<b>Number of Submissions</b>	1
<b>Value of works</b>	\$150,000.00
<b>Reason for determination at Planning Panel</b>	Refusal of Section 8.2 review
<b>Main Issues</b>	Solar Access and Waste Management
<b>Recommendation</b>	Refusal
<b>Attachment A</b>	Plans of proposed development
<b>Attachment B</b>	Draft conditions in the event the application is approved
<b>Attachment C</b>	Determination DA/2022/0069 dated 14 September 2022
	
<b>LOCALITY MAP</b>	
Subject Site	  
Notified Area	 

## 1. Executive Summary

This report is an assessment of the application submitted to Council pursuant to Section 8.2 of the *Environmental Planning and Assessment Act 1979 (EP&A Act 1979)* for a review of DA/2022/0069, refused on 14 September 2022, for alterations to the existing first floor for use as a dwelling at 237 Marrickville Road Marrickville.

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

The main issues that have arisen from the application include:

- Solar Access
- Waste Management

The non-compliances are considered unacceptable given the poor amenity outcome and therefore the application is recommended for refusal.

## 2. Proposal

Alterations to existing first floor and change of use of first floor to a dwelling. Specifically, the proposal involves the following works:

- Minor demolition works to the first floor including to the kitchen and amenities area and demolition of existing wall fronting the staircase
- Internal alterations to the first-floor office to convert use into dwelling. Works include addition of a bedroom fronting Marrickville Road and a bedroom adjoining the center courtyard. Construction of a bathroom facing the rear of the site including the provision of a garbage chute for the residential unit within the bathroom. Construction of a kitchen/dining/lounge room area. The lounge room leads out to the courtyard.
- Construction of 7 new skylights on the roof and the removal of roof over proposed courtyard.

## 3. Site Description

The subject site is located on the northern side of Marrickville Road, between Illawarra Road and Silver Street. The site consists of 1 allotment and is generally rectangular in shaped with a total area of 121.7sqm.

The site has a frontage to Marrickville Road of 4.21 metres and rear access via a right of way (ROW) that connects to Marrickville Road. The site is affected by a 0.84m metre wide right of way.

The site supports 2 storey commercial development, built to the boundaries, fronting Marrickville Road. The surrounding properties consist primarily of 2 storey commercial and mixed use developments.

The site is zoned B2 Local Centre under MLEP 2011.

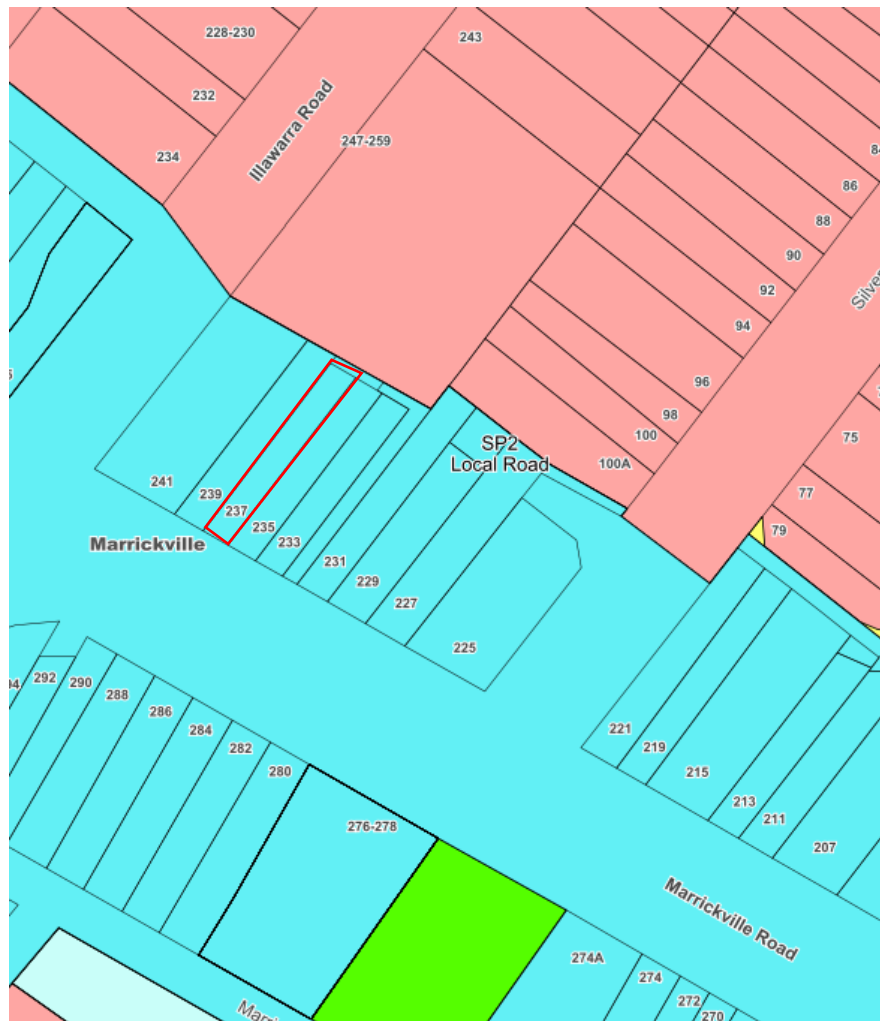


Figure 1: Zoning Map

## 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
DA/2022/0069	Alterations to existing first floor. Change of use of first floor to a dwelling.	Refused under Delegated Authority on 14 September 2022

The above-mentioned development application was refused under delegated authority for the following reasons;

1. *The proposed development is inconsistent and has not demonstrated compliance with the Marrickville Local Environmental Plan 2011, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979:*

- a. *Clause 1.2(b) & (h) - Aims of Plan, in that the proposal does not satisfactorily protect residential amenity as a result increasing the site's residential density and as such does not promote a high standard of design; and*
2. *The proposed development is inconsistent and has not demonstrated compliance with the Marrickville Development Control Plan 2011, pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979:*
  - a. *Part 2.7 – Solar access and overshadowing, in that insufficient information has been provided which demonstrates that the proposal fails to be sited and designed to maximise direct solar access to the subject site in accordance with O2;*
  - b. *Part 2.21 – Site Facilities and Waste Management, in that the submitted waste management plan (WMP) has not provided all of the required information to demonstrate satisfactory waste management practices for shop top housing developments, the recycling/waste storage area is not designed in accordance with the requirements in Appendix 4 under Part 2.21.7, the recycling/waste storage area proposed to be located in the ROW to the rear of the site is not located or designed in a manner which reduces adverse impacts upon neighbouring properties and upon the appearance of the premises, the recycling/waste storage area is located outdoors and not suitably screened, and proposed recycling/waste storage area does not provide an unobstructed and continuous accessible path of travel between the recycling/waste storage area to the entrance of the proposed shoptop housing, or to the point where bins are collected in accordance with O1, O2, O3, C1, C10, C12, C13 & C26;*
  - c. *Part 5.1.1 – General Objectives (Commercial and Mixed-Use Development), in that the proposal does not improve the environmental amenity of commercial centres or demonstrate that the proposed arrangements for waste management and disposal promote an accessible and safe environment in accordance with O8 & O10.*
3. *The proposed development is inconsistent and has not demonstrated compliance with the Draft Inner West Local Environmental Plan 2020, which has the weight of imminent and certain, pursuant to Section 4.15 (1)(a)(ii) of the Environmental Planning and Assessment Act 1979:*
  - a. *Clause 1.2(j) & (l) – Aims of Plan, in that the proposal does not protect and enhance the amenity for existing and future residents or prevent adverse environmental impacts including cumulative impacts.*
4. *The proposal will result in adverse environmental impacts in the locality, pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979.*
5. *The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979.*

#### 4(b) Application history

Not applicable

## 4(c) Section 8.2 Review

The application was lodged under Section 8.2 of the *Environmental Planning and Assessment Act 1979*.

A development application for the *alterations to existing first floor, change of use of first floor to a dwelling* was refused under Delegated Authority under Development Application No. DA/2022/0069 on 14 September 2022. An assessment of the application against the requirements of Division 8.2 Reviews of the *Environmental Planning and Assessment Act 1979* is as follows:

Requirement	Proposal
<b>8.2 Determinations and decisions subject to review</b>	
(4) The following determinations or decisions of a consent authority under Part 4 are subject to review under this Division— (d) the determination of an application for development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary), (e) the determination of an application for the modification of a development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary), (f) the decision of a council to reject and not determine an application for development consent.	The subject application relates to the review of a determination of an application for development consent by the Inner West Council.
(5) However, a determination or decision in connection with an application relating to the following is not subject to review under this Division— (d) a complying development certificate, (e) designated development, (f) Crown development (referred to in Division 4.6).	The subject application does not relate to any of the applications noted in Clause 2.
(6) A determination or decision reviewed under this Division is not subject to further review under this Division.	Noted.
<b>8.3 Application for and conduct of review</b>	
(10) An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.	Noted.

<p>(11) A determination or decision cannot be reviewed under this Division—</p> <ul style="list-style-type: none"> <li>(c) after the period within which any appeal may be made to the Court has expired if no appeal was made, or</li> <li>(d) after the Court has disposed of an appeal against the determination or decision.</li> </ul>	<p>The original application was determined on 14 September 2022. Pursuant to Section 8.10(1)(a) of the <i>Environmental Planning and Assessment Act 1979</i>, an appeal may be made to the Court 6 months after the date of determination.</p> <p>The subject application was lodged on 18 November 2022 and has been reported to the Inner West Local Planning Panel for determination prior to the expiry of the appeal period.</p>
<p>(12) In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.</p>	<p>The applicant has provided supporting information justifying the proposed changes to the subject application. It is considered that, notwithstanding the proposed amendments, the development remains substantially the same as that proposed in the original DA.</p>
<p>(13) The review of a determination or decision made by a delegate of a council is to be conducted—</p> <ul style="list-style-type: none"> <li>(c) by the council (unless the determination or decision may be made only by a local planning panel or delegate of the council), or</li> <li>(d) by another delegate of the council who is not subordinate to the delegate who made the determination or decision.</li> </ul>	<p>The determination is to be made by the Inner West Local Planning Panel</p>
<p>(14) The review of a determination or decision made by a local planning panel is also to be conducted by the panel.</p>	<p>The original DA was determined under delegated authority</p> <p>The current application is to be determined by the Inner West Local Planning Panel.</p>
<p>(15) The review of a determination or decision made by a council is to be conducted by the council and not by a delegate of the council.</p>	<p>NA.</p>

(16) The review of a determination or decision made by a Sydney district or regional planning panel is also to be conducted by the panel.	NA.
(17) The review of a determination or decision made by the Independent Planning Commission is also to be conducted by the Commission.	NA.
(18) The review of a determination or decision made by a delegate of the Minister (other than the Independent Planning Commission) is to be conducted by the Independent Planning Commission or by another delegate of the Minister who is not subordinate to the delegate who made the determination or decision.	NA.

The application is supported by plans and documentation that have been amended in response to the previous reasons for refusal. The response provided by the applicant to each reason of refusal is provided below.

- 1. The proposed development is inconsistent and has not demonstrated compliance with the Marrickville Local Environmental Plan 2011, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979:*

*Clause 1.2(b) & (h) - Aims of Plan, in that the proposal does not satisfactorily protect residential amenity as a result increasing the site's residential density and as such does not promote a high standard of design;*

#### Response

As detailed further in this report, due to the highly restricted solar access to the proposed first floor residential unit and concerns with the combined waste arrangements for the commercial and residential tenancies the revised proposal has not appropriately addressed this reason of refusal and that the increased residential density on site does not promote a high standard design.

- 2. The proposed development is inconsistent and has not demonstrated compliance with the Marrickville Development Control Plan 2011, pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979:*
  - a. Part 2.7 – Solar access and overshadowing, in that insufficient information has been provided which demonstrates that the proposal fails to be sited and designed to maximise direct solar access to the subject site in accordance with O2;*

#### Response

The original assessment determined that the proposal is inconsistent with objective O2, of part 2.7 of the MDCP 2011, in that the POS provided for the dwelling does not receive a minimum 2 hours of sunlight to over 50% of its finished surface between 9am and 3pm on 21 June.

Moreover, it was indicated in the original assessment report that given the orientation of the site and the density of surrounding area, the development of the site is inherently constrained

with respect to the provision of adequate POS areas on the first floor with an adequate level of solar access.

The original proposal had also proposed 3 skylights above the lounge/dining areas to provide natural light and ventilation for the primary living areas. The original proposal also proposed bedrooms directly adjoining the courtyard which was not considered compliant with Part 2.18, O7 & C26 of the MDCP 2011, as the courtyards were disconnected from the principle living area.

In response to the solar access matters the plans submitted with the 8.2 review, have increased the size of the courtyard from a length of 4m to a length of 5m. The width of the courtyard remains at 2.8m. The number of skylights have been increased from 3 to 7 and the internal layout was reconfigured to enable the lounge room to have direct access to the courtyard/POS.

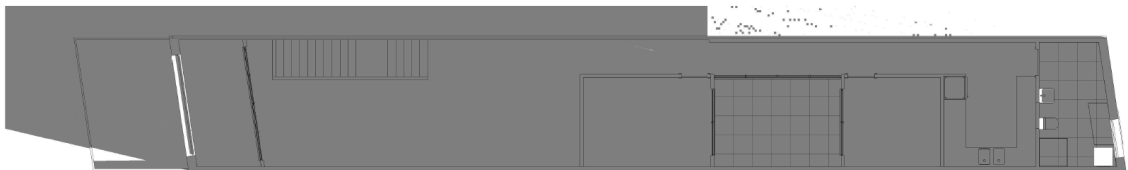
Whilst it is acknowledged the 8.2 review has revised the plans to try and address the solar access concerns, it is considered that solar access to the first floor remains severely constrained notwithstanding the slight improvement in sunlight access. It is still considered that neither the primary living areas nor the courtyard/POS achieves an appropriate amount of solar access that would be considered acceptable or conducive to a reasonable level of amenity for future occupants.

A comparison of the originally lodged shadow diagrams and the proposed shadows are detailed below;

#### **Original Shadows for 8am, 9am and 10am**



1) PROPOSED FIRST FLOOR PLAN SHADOWS 21st JUNE - 8am



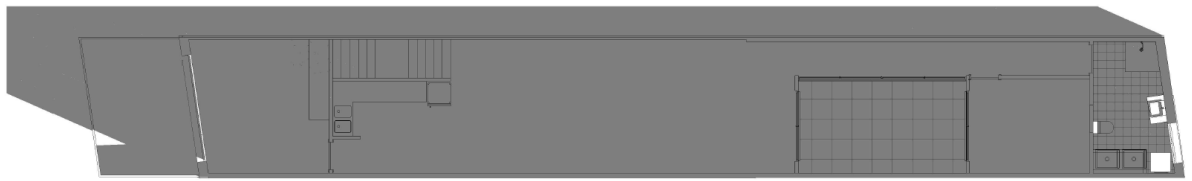
2) PROPOSED FIRST FLOOR PLAN SHADOWS 21st JUNE - 9am



3) PROPOSED FIRST FLOOR PLAN SHADOWS 21st JUNE - 10am



**Proposed Shadows for 8am, 9am and 10am**



1) PROPOSED FIRST FLOOR PLAN SHADOWS 21st JUNE - 8am

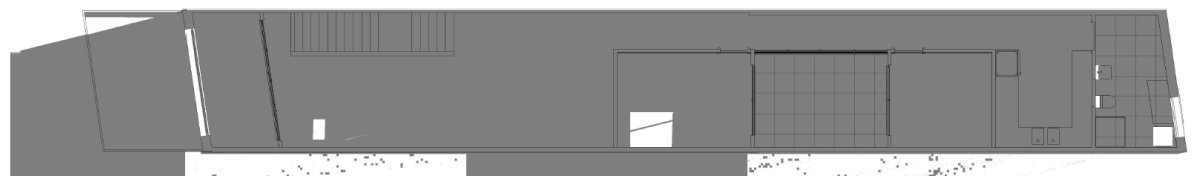


2) PROPOSED FIRST FLOOR PLAN SHADOWS 21st JUNE - 9am



3) PROPOSED FIRST FLOOR PLAN SHADOWS 21st JUNE - 10am

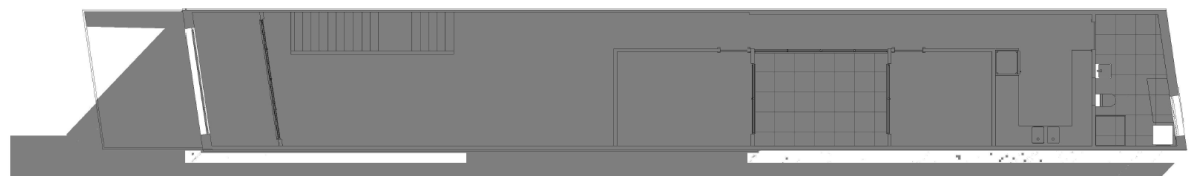
**Original Shadows for 11am, 12pm and 1pm**



1) PROPOSED FIRST FLOOR PLAN SHADOWS 21st JUNE - 11am



2) PROPOSED FIRST FLOOR PLAN SHADOWS 21st JUNE - 12pm



3) PROPOSED FIRST FLOOR PLAN SHADOWS 21st JUNE - 1pm

**Proposed Shadows for 11am, 12pm and 1pm**



1) PROPOSED FIRST FLOOR PLAN SHADOWS 21st JUNE - 11am

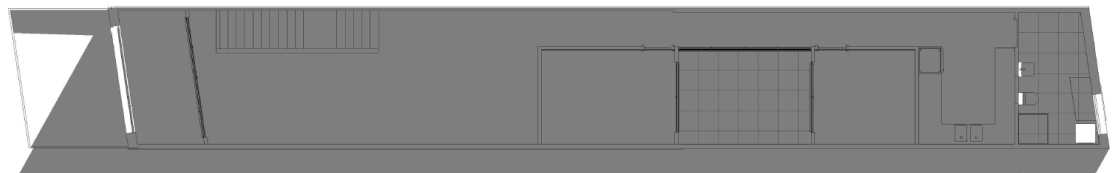


2) PROPOSED FIRST FLOOR PLAN SHADOWS 21st JUNE - 12pm

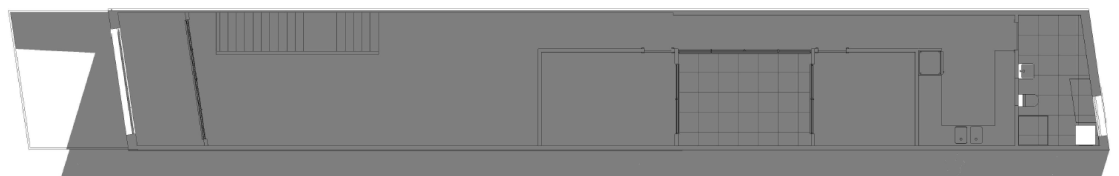


3) PROPOSED FIRST FLOOR PLAN SHADOWS 21st JUNE - 1pm

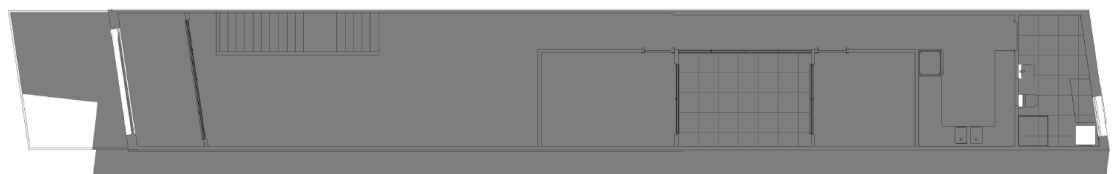
**Original Shadows for 2pm, 3pm and 4pm**



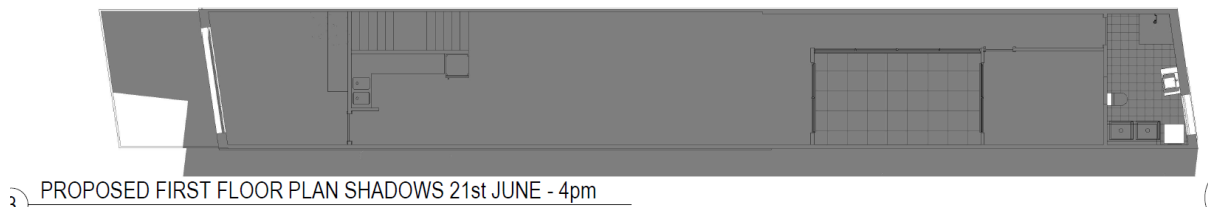
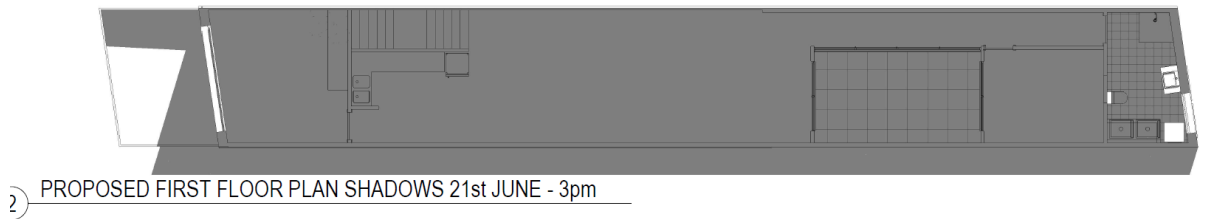
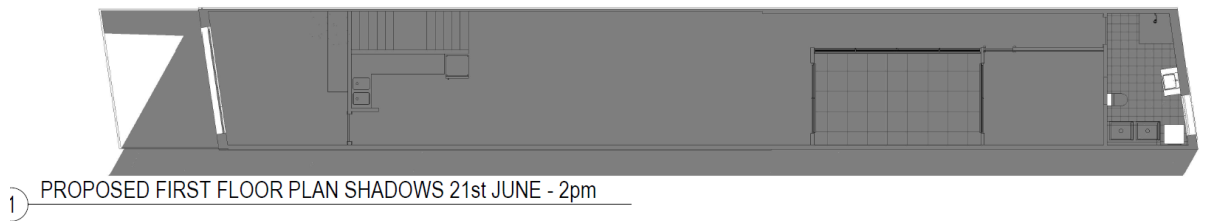
1) PROPOSED FIRST FLOOR PLAN SHADOWS 21st JUNE - 2pm



2) PROPOSED FIRST FLOOR PLAN SHADOWS 21st JUNE - 3pm



3) PROPOSED FIRST FLOOR PLAN SHADOWS 21st JUNE - 4pm

**Proposed Shadows for 2pm, 3pm and 4pm**

Based on the above it is still considered solar access remains a concern and still inconsistent with Part 2.7 of MDCP 2011. Whilst the amended plans result a slight improvement, the majority of the proposed first floor dwelling remains with very limited solar access throughout the day. This is considered a very poor amenity outcome for future residents and is not considered a form of development that is suitable given the severe solar access constraints. The review has also not provided shadow diagrams at the equinox to determine if there is an improvement in sunlight access during that period of the year. As such it is considered the revised proposal has not adequately addressed the solar access concerns as its fails to provide the minimum solar access required to principal living areas and the principal area of open space and cannot be supported.

The proposal is therefore inconsistent with O2, C1 and C9 of Part 2.7 and O7 and C26 of Part 2.18 of the MDCP 2011

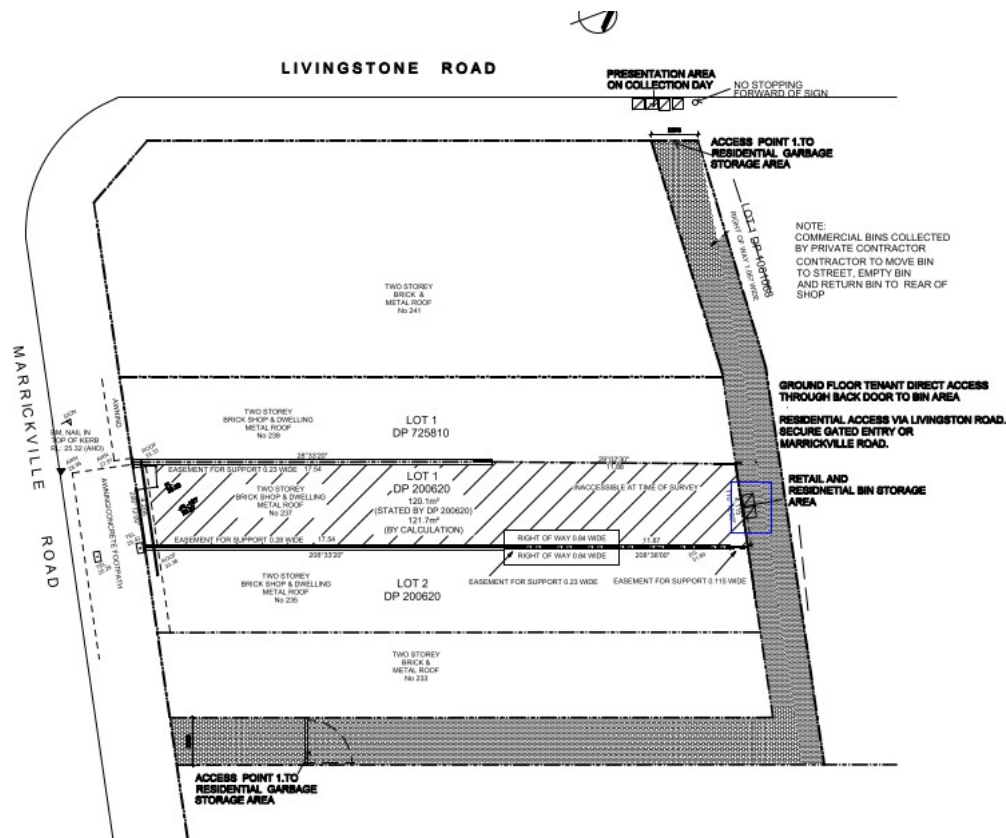
- b. *Part 2.21 – Site Facilities and Waste Management, in that the submitted waste management plan (WMP) has not provided all of the required information to demonstrate satisfactory waste management practices for shop top housing developments, the recycling/waste storage area is not designed in accordance with the requirements in Appendix 4 under Part 2.21.7, the recycling/waste storage area proposed to be located in the ROW to the rear of the site is not located or designed in a manner which reduces adverse impacts upon neighbouring properties and upon the appearance of the premises, the recycling/waste storage area is located outdoors and not suitably screened, and proposed recycling/waste storage area does not provide an unobstructed and continuous accessible path of travel between the recycling/waste storage area to the entrance of the proposed shoptop housing, or to the point where bins are collected in accordance with O1, O2, O3, C1, C10, C12, C13 & C26;*

### Response

The original application had proposed the waste storage area to be located in the existing ROW to the rear of the site which was considered contrary to C10 and C12 of MDCP 2011 Part 2.21, as the proposed waste storage area was not located or designed in a manner which reduces adverse impacts upon neighbouring properties and on the appearance of the premises. The original application did not include separate residential and non-residential waste storage areas nor were the waste areas located in a designated waste storage area.

The original application also located the waste storage area outdoors and not suitably screened which did not comply with C13 of MDCP 2011 Part 2.21.

Moreover, the original application was considered unsatisfactory as the proposed recycling/waste storage area did not provide an unobstructed and continuous accessible path of travel between the recycling/waste storage area to the entrance of the proposed shop top housing, or to the point where bins are collected did not comply with C26 of MDCP 2011 Part 2.21. As the shop top dwelling is located on the first floor of an existing building, internal works would be required within the building to ensure that a route of transfer is provided that is free of obstructions such as steps, has a minimum wall to wall clearance of 1200mm and have a maximum gradient of 1:12. The original proposal did not demonstrate this option, and has relied upon legal details which have not been confirmed that the site benefits from using the ROW for the purposes of waste storage.



The originally proposed waste storage area was consequently considered inconsistent with C1 as it was not designed in accordance with appendix 4 of Part 2.21 of the MDCP 2011. At the time the proposal was not supported by Council's Waste Officers, from both a commercial and residential perspective.

To address this matter the amended plans submitted with s8.2 review that have propose additional alterations to the first floor to accommodate a garbage chute. The proposal locates two 500mm diameter chutes, accessed by a hinged top 900mm high cupboard housing the two chutes leading down to the location of the bins – located in a proposed garbage room. The garbage chutes are located within the proposed first floor bathroom. The waste storage area is to service both the ground floor and first floor tenancies.

The amended plans have also included a designated garbage room on the ground floor within the building envelope. The proposed garbage room is to have smooth surface finishes, perimeter coving, removable basket trap to floor waste, hot and cold-water supply and a solid core door fitted with fixed aluminium louvres for air circulation (as indicated on the revised floor plans).

The revised plans associated with the review were referred to Council's Waste Officer who has indicated the revised proposal remains unsatisfactory. The revised waste storage design still does not provide the ability to separate the residential and non-residential waste. The proposed design is to service both the ground floor commercial and the proposed first floor residential uses. This design is still considered non-compliant with C1 of Part 2.21 of the MDCP 2011 which requires the waste storage area to comply with Appendix 4 of Part 2.21. Appendix 4 requires non-residential development recycling/waste storage areas or rooms to be able to accommodate separate recycling/waste containers of sufficient size.

Moreover, as the proposal has not proposed separate commercial/residential waste area, the proposal does not comply with C46 and C47 of Part 2.21, which prescribes;

**C46** *Mixed use developments must incorporate separate and self-contained waste management systems for the residential component and the non-residential component. In particular, the development must incorporate separate recycling/waste storage rooms/areas for the residential and non-residential components.*

**C47** *The residential waste management system must be designed in accordance with the controls in Section 2.21.2.5 and the non-residential waste management system must be designed in accordance with the controls in Section 2.21.2.6, so they can efficiently operate without conflict.*

Given the above the proposed waste storage design is considered unsatisfactory and inconsistent with Part 2.21 of the MDCP 2011.

- c. *Part 5.1.1 – General Objectives (Commercial and Mixed-Use Development), in that the proposal does not improve the environmental amenity of commercial centres or demonstrate that the proposed arrangements for waste management and disposal promote an accessible and safe environment in accordance with O8 & O10.*

### Response

Given the concerns remaining with regard to solar access and waste management, it is considered that the proposal has not addressed this reason for refusal.

- 3. *The proposed development is inconsistent and has not demonstrated compliance with the Draft Inner West Local Environmental Plan 2020, which has the weight of imminent and certain, pursuant to Section 4.15 (1)(a)(ii) of the Environmental Planning and Assessment Act 1979:*

- a. *Clause 1.2(j) & (l) – Aims of Plan, in that the proposal does not protect and enhance the amenity for existing and future residents or prevent adverse environmental impacts including cumulative impacts.*

Response

Given the adverse solar access and waste management concerns that remain with the application it is considered that this reason for refusal remains unaddressed. The poor solar access and the conflict between the residential and commercial waste will result in poor amenity for future residents.

4. *The proposal will result in adverse environmental impacts in the locality, pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979.*

Response

The proposal will have an adverse environmental impact in the locality. The proposed amended design does not present an appropriate amenity outcome for future residents in the locality.

5. *The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979.*

Response

Given the adverse solar access impacts and concerns with the waste management the site remains unsuitable for the proposed development.

## 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

#### 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:

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.

A search of Councils records does not indicate any knowledge or incomplete knowledge of uses listed within Table 1 of the contaminated land planning guidelines.

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

The applicant has included a BASIX Certificate (certificate number: 1260446S) as part of the lodgment of the 8.2A Review (lodged within 3 months of the date of the lodgment of this application) in compliance with the *EP&A Regulation 2021*.

**5(a)(iii) Marrickville Local Environmental Plan 2011 (MLEP 2011)**

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

Section 1.2 - Aims of the Plan

The proposal is inconsistent with aims (b) and (h) under this Clause. As detailed above in this report, the proposal does not satisfactorily protect residential amenity as a result increasing the site's residential density without appropriate amenity consideration and the proposal fails to provide a high standard of design in the private domain.

Section 2.3 - Zone objectives and Land Use Table

The site is zoned B2- Local Centre under MLEP 2011. The MLEP 2011 defines the development as:

***shop top housing*** means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.

It is considered that the proposal is consistent with the relevant objectives of the zone, as it will provide employment opportunities and housing that is connected to a permissible non-residential use.



Section 2.7 – Demolition

Clause 2.7 of the *MLEP 2011* states that the demolition of a building or work may be carried out only with development consent. The application seeks consent for demolition works.

Section 4.3 - Height of buildings & Section 4.4 - Floor space ratio (Development Standards)

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

Control	Proposed		Compliance
Clause 4.3 Height of building	Maximum	20m	Yes
	Proposed	8.12m (no change from existing)	
	Variation	N/A	
Clause 4.4 Floor space ratio (FSR)	Maximum	2.5:1 or 306.05sqm	Yes
	Proposed	1.68:1 or 205.93sqm	
	Variation	N/A	
Clause 4.5 Calculation of FSR and site area	The site area and floor space ratio for the proposal has been calculated in accordance with the clause.		Yes

Section 6.5 - Development in areas subject to aircraft noise

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

The proposal is capable of satisfying this clause and if the application were to be recommended for approval, a condition would be included in the recommendation to ensure that the proposal would meet the relevant requirements of Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2015, thereby ensuring the proposal's compliance with the relevant provisions Cl. 6.5 *MLEP 2011* and Part 2.6 of the *MDCP 2011*, respectively.

**5(b) Draft Environmental Planning Instruments***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 original DA application was lodged on 15 February 2022, on this date, the *IWLEP 2022* was a draft EPI, which had been publicly exhibited and was considered imminent and certain.

Given the adverse solar access and waste management concerns that remain with the application it is considered that the proposal remains inconsistent with the aims of the draft EPI in that it does not protect and enhance the amenity for existing and future residents or prevent adverse environmental impacts including cumulative impacts. The restrictive solar

access and the conflict with the residential and commercial waste management will result in poor amenity for future residents and commercial tenants.

### 5(c) Development Control Plans

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

The following provides discussion of the relevant issues:

MDCP 2011 Part of MDCP 2011	Compliance
Part 2.1 – Urban Design	No – See discussion
Part 2.7 – Solar Access and Overshadowing	No – See discussion
Part 2.10 – Parking	No – See discussion
Part 2.18 – Landscaping and Open Space	No – See discussion
Part 2.21 – Site Facilities and Waste Management	No – See discussion
Part 5 – Commercial and Mixed-Use Development	No – See Discussion
Part 9 – Strategic Context	Yes

#### Part 2.1 – Urban Design

The proposal is not considered consistent with Principle 3 of Part 2.1 with regard to complementary mix of uses. The proposal has not demonstrated the proposed residential and existing ground floor commercial tenancy are able to function independently of each other as the waste management is not able to work separately.

This matter has arisen after an assessment of the 8.2A review and the amended waste management arrangement.

#### Part 2.7 – Solar Access and Overshadowing

The concerns relating to solar access are detailed previously in this report under section 4(c). The proposal remains unsatisfactory with regard to this section of the DCP.

#### Part 2.10 – Parking

Part 2.10 of MDCP 2011 requires a total of 0.8 car parking spaces to be provided for a 2-bedroom shop top housing development. The application proposes no additional car parking; however, this is considered acceptable for the following reasons:

- Given the site constraints regarding the existing building, the Right of Way to the rear of the site and adjoining a classified road, there is no scope to provide additional on-site car parking; and
- As a result of the site's location within Marrickville Town Centre, the site is well serviced by public transport between buses and its proximity to Marrickville Train Station.

### Part 2.18 – Landscaping and Open Space

The revised proposal still does not provide adequate solar access to the courtyard POS area. The matter of solar access is discussed under section 4 (c) of the report. The proposal is therefore inconsistent with C4 of this section of the DCP as C4(ii) requires developments to comply with solar access under Part 2.7 providing a minimum of 2 hours of solar access to principal living areas and private open space.

### Part 2.21 – Site Facilities and Waste Management

The concerns relating to waste management are detailed previously in this report under section 4(c). The proposal is still considered unsatisfactory with regard to this section of the DCP.

### Part 5 – Commercial and Mixed-use development

Having regard to the issues of sunlight access and waste management it is considered the proposal is still inconsistent with 5.1.1 General Objectives (Commercial and Mixed-Use Development), in that the proposal does not improve the environmental amenity of commercial centres or demonstrate that the proposed arrangements for waste management and disposal promote an accessible and safe environment in accordance with O8 and O10.

#### 5(d) The Likely Impacts

These matters have been considered as part of the assessment of the development application. It is considered that the proposed development will have significant adverse impacts upon the locality and occupants of the building having regard to waste management.

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

It is considered that the proposal will have an adverse impact for future occupants of the site, and therefore it is considered that the site is unsuitable to accommodate the proposed development.

#### 5(f) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties. 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: Inadequate information regarding stormwater management

Comment: The original application was reviewed by Councils Development Engineer. The proposed development was considered satisfactory from an engineering perspective. The proposed review does not generate any additional engineering matters of consideration that would alter the original conclusion. It is noted that if the development were to be approved the engineering conditions recommended would be included as part of conditions of consent.

Issue: Concerns regarding to the adherence of the revised waste management arrangement

Comment: As indicated in the report the revised proposal has addressed to a certain extent the waste management concerns by providing the internal garbage chutes and relocating the waste storage area to within the building envelope. However concerns are still maintained regarding the separation of the commercial and residential waste and therefore the application is not supported.

### 5(g) The Public Interest

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

As detailed within this report, given the several inconsistencies with relevant EPIs and the MDCP 2011, which results in adverse impacts on future tenants and the surrounds, the proposal is not considered to be in the public interest.

## 6 Referrals

### 6(a) Internal

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

Referrals	Summary of Response
Building Certification	No objections.
Waste Management	Not supported, as discussed under Section 4(c) above.

## 7. Conclusion

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

The development would result in significant amenity impacts and is not considered to be in the public interest.

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

## 8. Recommendation

- A. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, refuse Development Application No. REV/2022/0035 for a S8.2 Review of DA/2022/0069, refused on 14 September 2022, for alterations to the existing first floor for use as a dwelling at 237 Marrickville Road, Marrickville for the following reasons:
1. The proposed development is inconsistent and has not demonstrated compliance with the Marrickville Local Environmental Plan 2011, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979:
    - a. Clause 1.2(b) & (h) - Aims of Plan, in that the proposal does not satisfactorily protect residential amenity and fails to promote a high standard of design.
  2. The proposed development is inconsistent and has not demonstrated compliance with the Marrickville Development Control Plan 2011, pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as follows:
    - a. Part 2.1 – Principle 3 -Complementary mix of uses and types. The proposal has not demonstrated the proposed residential and existing ground floor commercial are able to operate independently of each other as the waste management is combined. In this instance the proposed mixed uses are not complimentary and present as a poor urban design outcome.
    - b. Part 2.7 – Solar access and overshadowing, in that insufficient information has been provided, notwithstanding assessment indicates that the proposal fails to be sited and designed to maximise direct solar access to the subject site in accordance with O2, C1 and C9 of Part 2.7 and O7 and C26 of Part 2.18 of the Marrickville Development Control Plan 2011
    - c. Part 2.21 – Site Facilities and Waste Management, in that the submitted waste management plan (WMP) has not provided all of the required information to demonstrate satisfactory waste management practices for shop top housing developments, the recycling/waste storage area is not designed in accordance with the requirements in Appendix 4 under Part 2.21.7, the recycling/waste storage area is proposed to be shared between the residential and non-residential uses. Therefore, the proposal is not considered to be in accordance with O1, O2, O3, C1 and C46.
    - d. Part 5.1.1 – General Objectives (Commercial and Mixed-Use Development), in that the proposal does not improve the environmental amenity of commercial centres or demonstrate that the proposed arrangements for waste management and disposal promote an accessible and safe environment in accordance with O8 and O10.

3. The proposed development is inconsistent and has not demonstrated compliance with the Draft Inner West Local Environmental Plan 2020, which has the weight of imminent and certain, pursuant to Section 4.15 (1)(a)(ii) of the Environmental Planning and Assessment Act 1979v having regard to the following:
  - a. Clause 1.2(j) & (l) – Aims of Plan, in that the proposal does not protect and enhance the amenity for existing and future residents or prevent adverse environmental impacts including cumulative impacts.
4. The proposal will result in adverse environmental impacts in the locality, pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979.
5. The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979.

**EXISTING SITE AND ROOF PLAN**  
1:100

**LOT 1 DP 725810**  
TWO STOREY BRICK SHOP & DWELLING METAL ROOF No 236

**LOT 1 DP 200620**  
TWO STOREY BRICK SHOP & DWELLING METAL ROOF No 237  
120.1m<sup>2</sup> (STATED BY DP 200620)  
121.7m<sup>2</sup> (BY CALCULATION)

**LOT 2 DP 200620**  
TWO STOREY BRICK SHOP & DWELLING METAL ROOF No 235

**MARRICKVILLE ROAD**

**AWNING**  
SIGN  
B.M. NAIL IN TOP OF KERB RL: 25.32 (AHD)

**AWNING/CONCRETE FOOTPATH**

**EASEMENT FOR SUPPORT 0.23 WIDE**  
EASEMENT FOR SUPPORT 0.28 WIDE

**EASEMENT FOR SUPPORT 0.23 WIDE**  
EASEMENT FOR SUPPORT 0.23 WIDE

**RIGHT OF WAY 0.84 WIDE**  
RIGHT OF WAY 0.84 WIDE

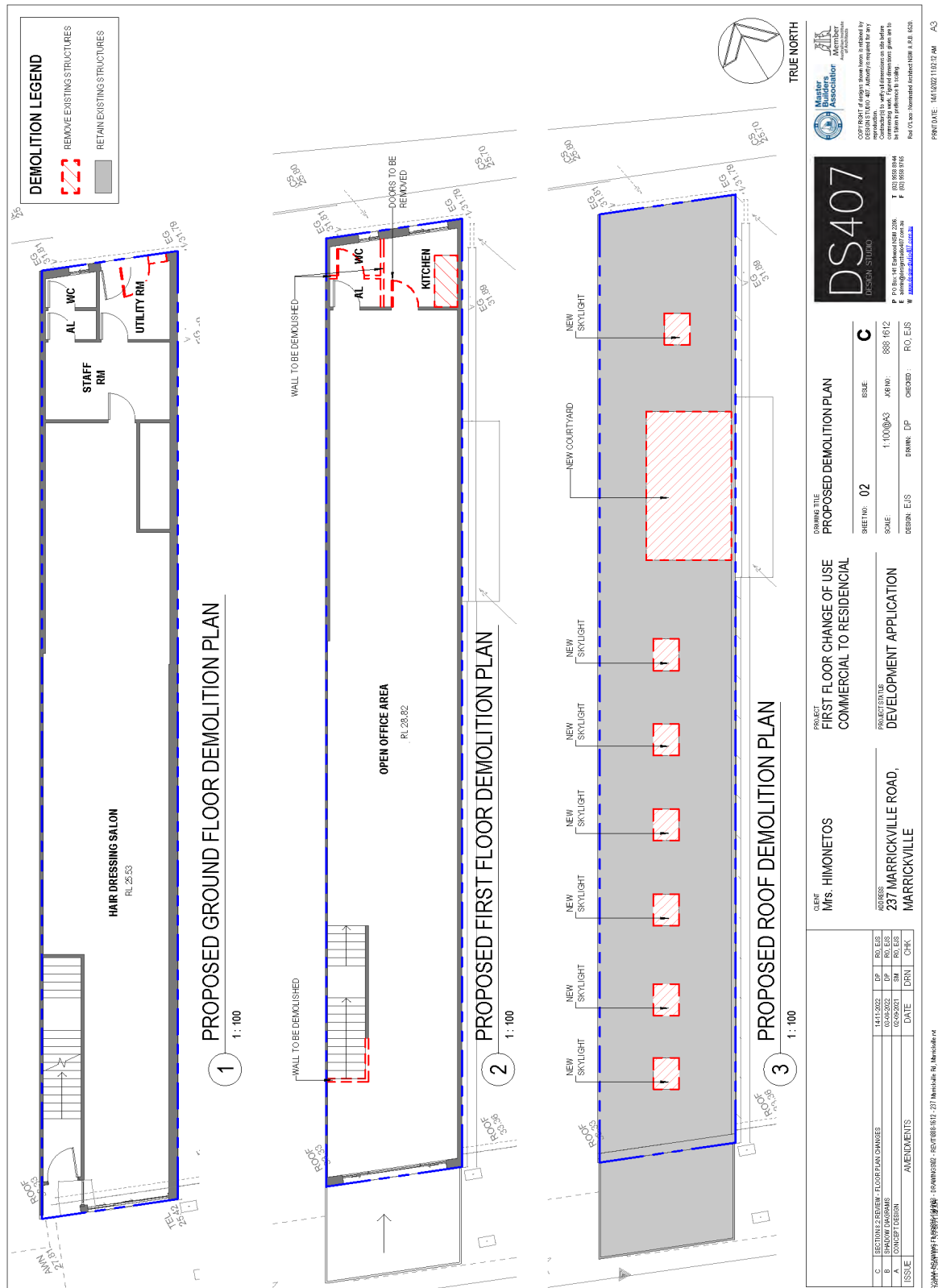
**INACCESSIBLE AT TIME OF SURVEY**

**METAL FENCE**  
RIGHT OF WAY 1.067 WIDE

**LOT 1 DP 1061068**

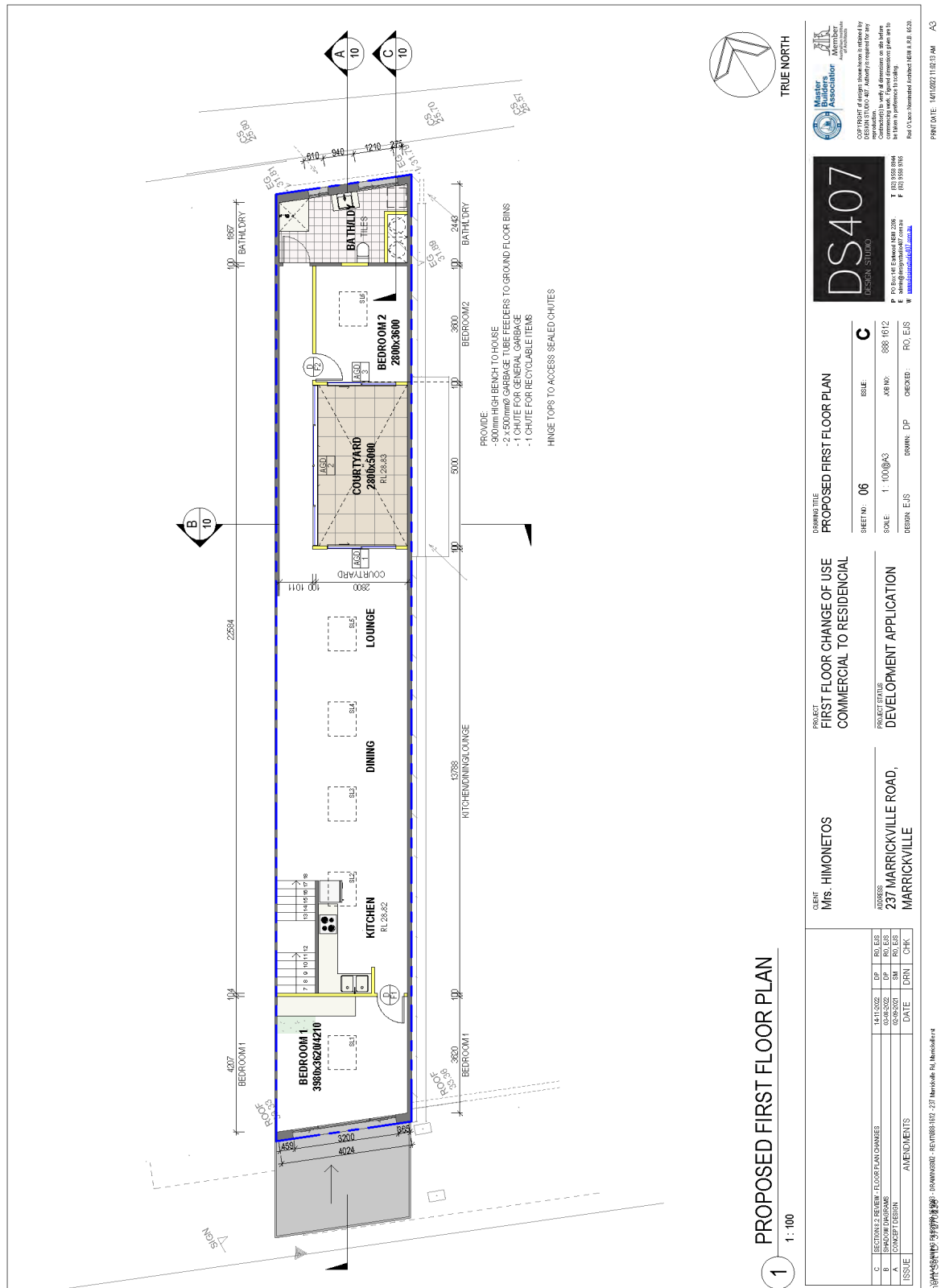
**TRUE NORTH**

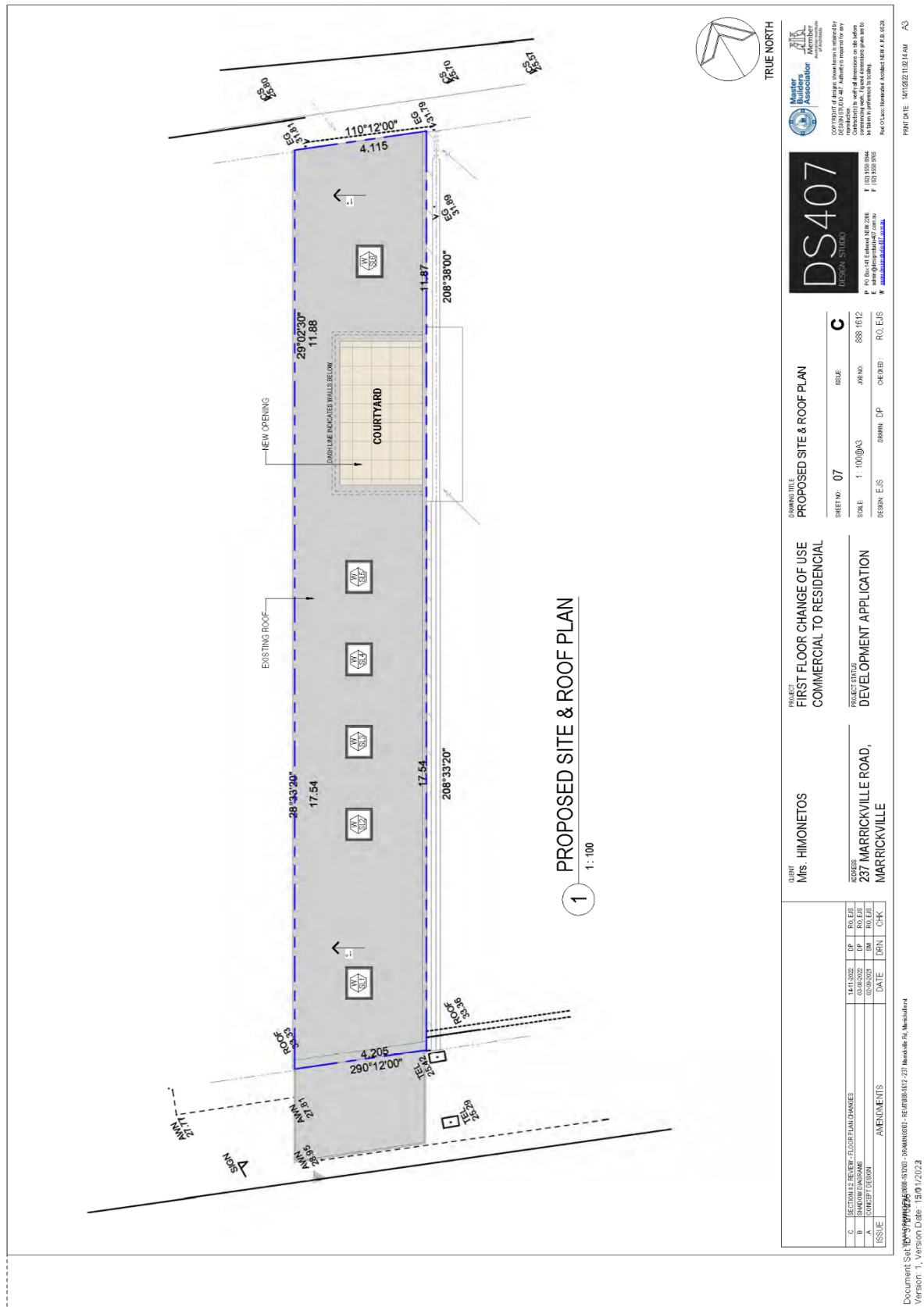
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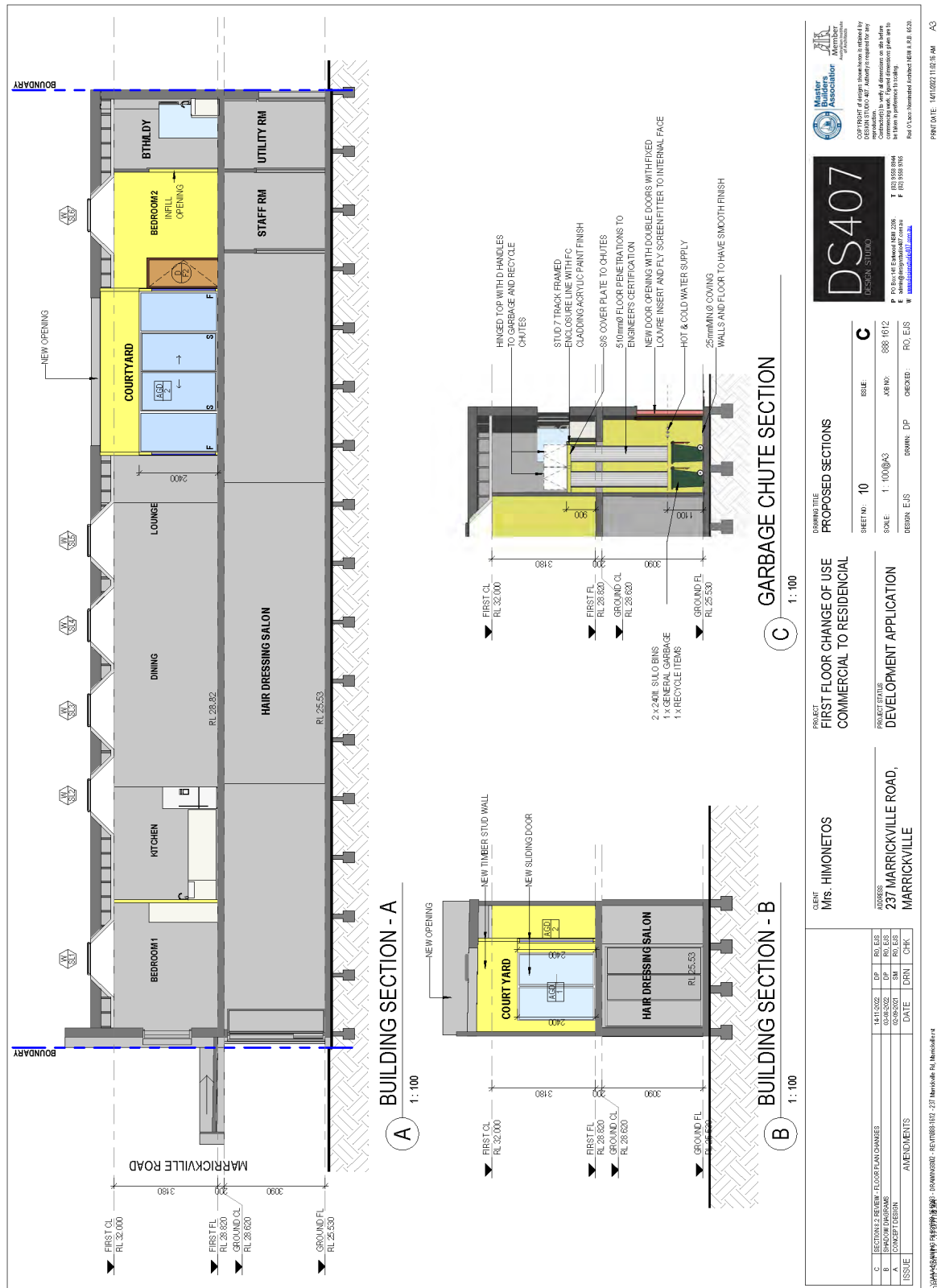










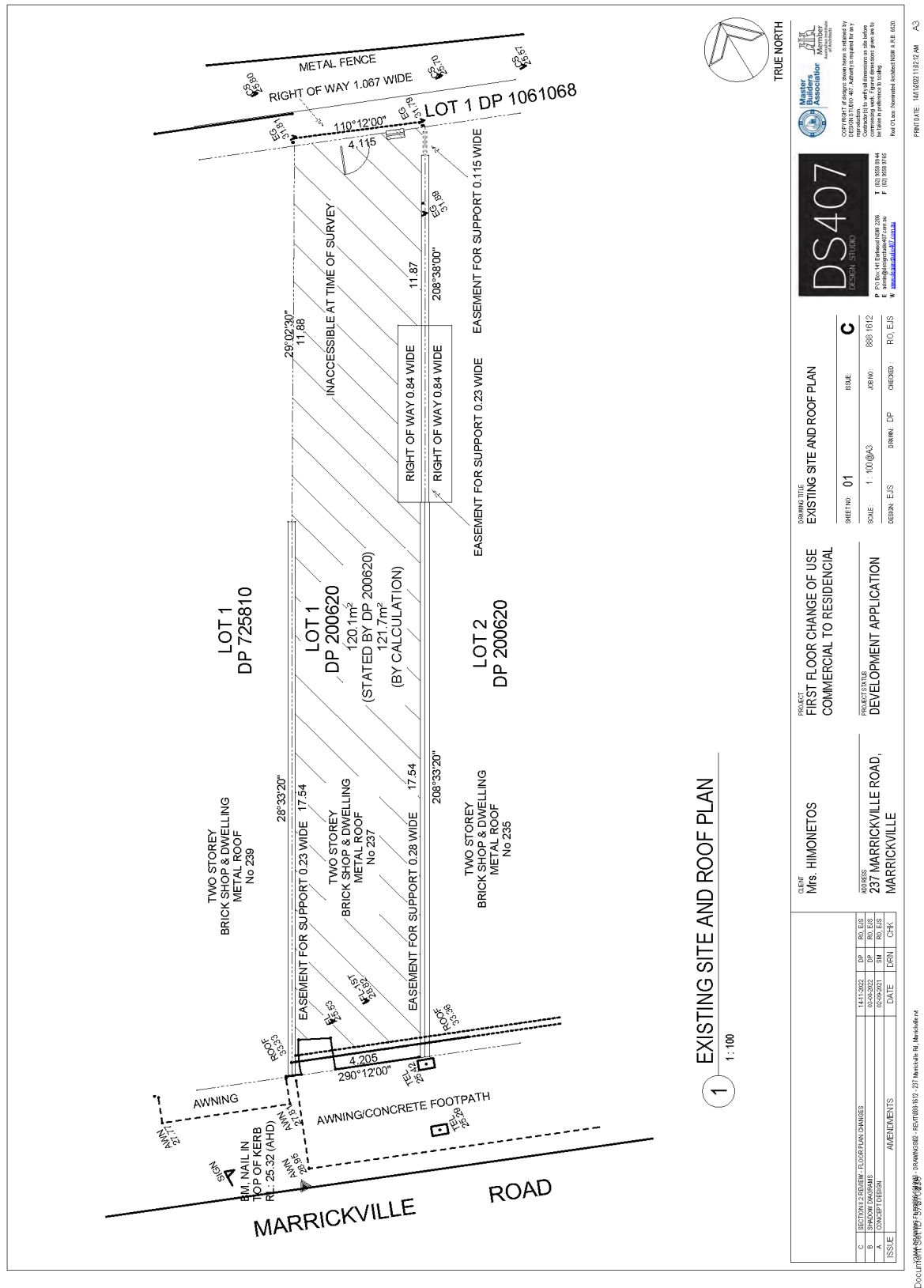


INTERNAL DOOR SCHEDULE - NEW DOORS						
Mark	Height	Width	Door Area	Location	Description	Basix Requirements
F1	2100	820	1.72	BEDROOM 1	Internal door	
F2	2100	820	1.72	BEDROOM 2	Internal door	

SLIDING DOOR SCHEDULE - NEW DOORS						
Mark	Height	Width	Door Area	Location	Description	Basix Requirements
1	2400	2100	5.04	LOUNGE	Alum. Frame Sliding Door w/ 6.38mm Lam. Clear Glazing	
2	2400	5000	12.00	HALLWAY	Alum. Frame Sliding Door w/ 6.38mm Lam. Clear Glazing	
3	2400	2100	5.04	BEDROOM 2	Alum. Frame Sliding Door w/ 6.38mm Lam. Clear Glazing	

SKYLIGHT SCHEDULE						
Mark	Height	Width	Window Area	Location	Description	Basic Requirements
SL1	980	780	0.76	BEDROOM 1	Fixed (non-operating) skylight	
SL2	980	780	0.76	KITCHEN	Fixed (non-operating) skylight	
SL3	980	780	0.76	DINING/LOUNGE ROOM	Fixed (non-operating) skylight	
SL4	980	780	0.76	DINING/LOUNGE ROOM	Fixed (non-operating) skylight	
SL5	980	780	0.76	DINING/LOUNGE ROOM	Fixed (non-operating) skylight	
SL6	980	780	0.76	BEDROOM 2	Fixed (non-operating) skylight	

[illegible]





## Attachment B – Draft conditions in the event of approval

### CONDITIONS OF CONSENT

#### DOCUMENTS RELATED TO THE CONSENT

##### 1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
Sheet No. 01-11, Revision C	Architectural Plans	14-11-2022	Design Studio 407
1260446S	BASIX Certificate	1 December 2021	Building & Energy Consultants Australia

As amended by the conditions of consent.

#### FEES

##### 2. 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.

##### 3. Security Deposit - Standard

Prior to the commencement of demolition works or issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused

to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

<b>Security Deposit:</b>	\$2,800.00
<b>Inspection Fee:</b>	\$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.

#### **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 \$6098.90 indexed in accordance with Marrickville Section 94/94A Contributions Plan 2014] ("CP") has been paid to the Council. The above contribution is the contribution applicable as at 17 January 2023

**\*NB** Contribution rates under Marrickville Section 94/94A Contributions Plan 2014 are indexed quarterly (for the method of indexation refer to Section 2.15 of the Plan).

The indexation of the contribution rates occurs in the first week of the months of February, May, August and November each year, following the release of data from the Australian Bureau of Statistics.

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:

Public Amenities Type	Contribution \$
Recreation Facilities	5866.54
Community Facilities	1718.57
Traffic Facilities	-1605.79
Plan Administration	119.59
<b>Total</b>	<b>6098.90</b>

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

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

Payment methods:

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

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

## **GENERAL CONDITIONS**

### **5. Separation of Commercial and Residential Waste and Recycling**

The waste and recycling handling and storage systems for residential waste and commercial waste (including waste originating from retail premises) are to be separate and self-contained. Commercial and retail tenants must not be able to access residential waste storage area/s, or any storage containers or chutes used for residential waste and recycling.

### **6. 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.

**7. 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.

**8. Works Outside the Property Boundary**

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

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

**PRIOR TO ANY DEMOLITION****10. Resource Recovery and Waste Management Plan - Demolition and Construction**

Prior to any demolition works, the Certifying Authority must be provided with a Resource Recovery and Waste Management Plan - Demolition and Construction that includes details of materials that will be excavated and their proposed destination or reuse.

**11. Dilapidation Report**

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

**12. Advising Neighbours Prior to Excavation**

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

**13. Construction Fencing**

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

**PRIOR TO CONSTRUCTION CERTIFICATE****14. Bin Storage Area - Residential**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a report detailing the ongoing waste generation requirements of the development and demonstrate that the bin storage area is to be provided within the site that will fully accommodate the number of bins required for all waste generated by a development of this type and scale. The number of bins required must be calculated based on a weekly collection of garbage, and a fortnightly collection of recycling.

The area must also include 50% allowance for manoeuvring of bins. The bin storage area is to be located away from habitable rooms, windows, doors and private useable open space, and to minimise potential impacts on neighbours in terms of aesthetics, noise and odour.

The bin storage area is to meet the design requirements detailed in the Marrickville DCP 2011 and must include doorways/entrance points of 1200mm.

**15. Waste Transfer Route**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a plan demonstrating that the path of travel between the bin storage area/bulky waste storage area and the designated waste/recycling collection point is has a minimum 1200mm wall-to-wall clearance, be slip-proof, of a hard surface, be free of obstructions and at no point have a gradient exceeding 1:12.

**16. Each Residential Level is to have Access to a Disposal Point for All Waste Streams**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a plan demonstrating that the disposal point is to be within 30m of the dwelling access (distance covered by lifts excluded). Any bins stored on residential floors are to have the capacity to store, at minimum, all waste generated by that floor over a 24 hour period.

**17. Party Walls**

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

**18. Structural Certificate for retained elements of the building**

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

**19. 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*

**20. Acoustic Report – Aircraft Noise**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans detailing the recommendations of an acoustic report prepared by a suitably qualified Acoustic Engineer demonstrating compliance of the development with the relevant provisions of Australian Standard AS 2021:2015 Acoustics – Aircraft noise intrusion – Building siting and construction.

**21. Concealment of Plumbing and Ductwork**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans detailing the method of concealment of all plumbing and ductwork (excluding stormwater downpipes) within the outer walls of the building so they are not visible.

**DURING DEMOLITION AND CONSTRUCTION****22. Documentation of Demolition and Construction Waste**

All waste dockets from the recycling and/or disposal of any demolition and construction waste generated from the works must be retained on site.

**23. Stormwater Drainage System**

Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines discharged by gravity to the kerb and gutter of a public road.

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

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

**24. 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.

**25. Construction Hours – Class 2-9**

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours:

- a. 7:00am to 6.00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b. 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and
- c. at no time on Sundays or public holidays.

Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc. and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.

In the case that a standing plant or special out of hours permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.

This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.

Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving must be limited to:

- a. 8:00am to 12:00pm, Monday to Saturday; and
- b. 2:00pm to 5:00pm Monday to Friday.

The person acting on this consent must not undertake such activities for more than three continuous hours and must provide a minimum of one 2 hour respite period between any two periods of such works.

"Continuous" means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.

#### **PRIOR TO OCCUPATION CERTIFICATE**

##### **26. Aircraft Noise –New Dwelling**

Prior to the issue of any Occupation Certificate, the Principal Certifier must be provided with a report prepared and submitted by an accredited Acoustics Consultant certifying that the final construction meets AS2021-2015 with regard to the noise attenuation measures referred to in the "Before the Issue of a Construction Certificate" Section of this Determination. Such report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development.

Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a further certificate being prepared and submitted to the Principal Certifier in accordance with this condition.



**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. Smoke Alarms - Certification of upgrade to NCC requirements**

Prior to the issue of any Occupation Certificate, the Principal Certifier is required to be satisfied the existing building has been upgraded to comply with the provisions of the National Construction Code (Building Code of Australia) in relation to smoke alarm systems.

**ON-GOING****30. Bin Storage**

All bins are to be stored within the property boundary. Bins are to be returned to the bin storage room within 12 hours of having been emptied.

**ADVISORY NOTES****Notice to Council to deliver Residential Bins**

Council should be notified of bin requirements three weeks prior to the occupation of the building to ensure timely delivery.

Council will place an order for the required bins. Delivery will occur once the applicant has completed a Request for New Service.

**Recycling / Garbage / Organics Service Information and Education**

The building manager / strata title manager or body corporate is responsible for ensuring all tenants are kept informed regarding Council's services, and best practice waste and recycling source separation.

**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.

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

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

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

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

Enquiries relating to work safety and asbestos removal and disposal.

#### 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.

#### Fire Safety Certificate

The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:

- a. Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and
- b. Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).

Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Statement for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Statement must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

## Attachment C - Determination DA/2022/0069

**NOTICE OF DETERMINATION – REFUSAL**

*Issued under Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979*

<b>Development Application No.</b>	DA/2022/0069
<b>Applicant</b>	Design Studio 407 Pty Ltd
<b>Land to be developed</b>	237 Marrickville Road MARRICKVILLE NSW 2204
<b>Proposed development</b>	Alterations to existing first floor. Change of use of first floor to a dwelling.
<b>Cost of development</b>	\$150,000.00
<b>Determination</b>	The application was determined by Delegation to Staff and consent was <b>refused</b> .
<b>Date of refusal</b>	14 September 2022

**Reasons for refusal**

1. The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the *Environmental Planning and Assessment Act 1979*.
2. The proposal will result in adverse environmental impacts in the locality, pursuant to Section 4.15 (1)(b) of the *Environmental Planning and Assessment Act 1979*.
3. The proposed development is inconsistent and has not demonstrated compliance with the Draft Inner West Local Environmental Plan 2020, which has the weight of imminent and certain, pursuant to Section 4.15 (1)(a)(ii) of the *Environmental Planning and Assessment Act 1979*.
  - Clause 1.2(j) & (l) – Aims of Plan, in that the proposal does not protect and enhance the amenity for existing and future residents or

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prevent adverse environmental impacts including cumulative impacts.

4. The proposed development is inconsistent and has not demonstrated compliance with the Marrickville Development Control Plan 2011, pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*:
  - a. Part 2.7 – *Solar access and overshadowing*, in that insufficient information has been provided which demonstrates that the proposal fails to be sited and designed to maximise direct solar access to the subject site in accordance with O2;
  - b. Part 2.21 – *Site Facilities and Waste Management*, in that the submitted waste management plan (WMP) has not provided all of the required information to demonstrate satisfactory waste management practices for shop top housing developments, the recycling/waste storage area is not designed in accordance with the requirements in Appendix 4 under Part 2.21.7, the recycling/waste storage area proposed to be located in the ROW to the rear of the site is not located or designed in a manner which reduces adverse impacts upon neighbouring properties and upon the appearance of the premises, the recycling/waste storage area is located outdoors and not suitably screened, and proposed recycling/waste storage area does not provide an unobstructed and continuous accessible path of travel between the recycling/waste storage area to the entrance of the proposed shoptop housing, or to the point where bins are collected in accordance with O1, O2, O3, C1, C10, C12, C13 & C26;
  - c. Part 5.1.1 – *General Objectives (Commercial and Mixed-Use Development)*, in that the proposal does not improve the environmental amenity of commercial centres or demonstrate that the proposed arrangements for waste management and disposal promote an accessible and safe environment in accordance with O8 & O10.
5. The proposed development is inconsistent and has not demonstrated compliance with the *Marrickville Local Environmental Plan 2011*, pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*:
  - Clause 1.2(b) & (h) - Aims of Plan, in that the proposal does not satisfactorily protect residential amenity as a result increasing the

site's residential density and as such does not promote a high standard of design.

**Right of appeal**

If you are dissatisfied with this decision, Section 8.7 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court in accordance with the timeframes set out in [Section 8.10](#) of the *Environmental Planning and Assessment Act 1979*. In addition to the above, third party appeal rights are set out in the *Environmental Planning and Assessment Act 1979* and may be applicable.

Section 8.2 of the *Environmental Planning and Assessment Act 1979* provides that the applicant may request the Council to review the determination. Section 8.2 does not apply to complying development, designated development, a determination made by Council under Section 4.2 in respect of Crown applications, or a decision that is already subject to a Section 8.2 review.

For further information please contact **Sean Wilson** on 0293925065 or [sean.wilson@innerwest.nsw.gov.au](mailto:sean.wilson@innerwest.nsw.gov.au).



Martin Amy  
Team Leader Development Assessment (South)