





INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2022/0774
Address	45A Railway Street PETERSHAM NSW 2049
Proposal	Demolition of existing outbuilding at the rear of the site and construction of a 2 storey building comprising a garage and secondary dwelling
Date of Lodgement	18 September 2022
Applicant	Mr Brad Swartz
Owner	Mr John R Locke & Mrs Jodie A Locke
Number of Submissions	Initial: 2
Value of works	\$377,230.00
Reason for determination at Planning Panel	CI 4.6 variation >10%
Main Issues	Heritage
Recommendation	Deferred Commencement
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Applicant's Heritage Statement
Attachment D	Clause 4.6 Exception to Minimum Lot size for Secondary Dwellings
Attachment E	Clause 4.6 Exception to Floor Space Ratio Development Standard



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for demolition of the existing outbuilding at the rear of the site and construction of a two (2) storey building comprising a garage and secondary dwelling at 45A Railway Street Petersham.

The application was notified to surrounding properties and two (2) submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- The application breaches the Non-Discretionary Development Standard under Clause 53 (2)(a) of State Environmental Planning Policy (Housing) 2021 relating to site area for secondary dwellings by 22%.
- The application breaches the Floor Space Ratio Development Standard under Clause 4.4 of the Inner West Local Environmental Plan 2022 by 33.52sqm or 15.9%.
- The proposal includes a 45 degree roof pitch which is not consistent with traditional forms in the Petersham North Heritage Conservation Area, or the bulk and scale envisaged for rear structures under Marrickville Development Control Plan 2011 and is inconsistent with Clause 5.10 of the Inner West Local Environmental Plan 2022.

Notwithstanding the above, the development is largely acceptable having regard to the relevant planning controls, subject to the proposed roof pitch of the building being amended to address the heritage concerns. As such, the application is recommended for a deferred commencement approval requiring the roof pitch of the building to be amended to a maximum of 40 degrees with any internal layout amendments required to achieve this and meet minimum internal ceiling heights.

2. Proposal

The proposal seeks to demolish the existing outbuilding at the rear of the site and construct a two (2) storey secondary dwelling with an attached garage comprising one (1) car parking space. Specifically, this involves the following works:

Demolition

- Existing garage and attached studio structure
- Associated path and deck area within private open space

Construction

Ground floor:

- One (1) car parking space within garage
- Open plan dining/kitchen/living area
- One (1) WC
- Internal access stairs

First floor:

- One (1) bedroom
- One (1) ensuite
- Five (5) skylights
- Dormer window facing into site

3. Site Description

The subject site is located on the eastern side of Railway Street between Brighton Street and Terminus Street. The site consists of one (1) irregular shaped allotment with a total area of 351.3 sqm.

The site has a frontage to Railway Street of 6.565 metres and a secondary frontage of 10.88 metres to Brighton Lane.

The site supports an existing two (2) storey dwelling house and a rear garage/studio structure. It is noted that the existing garage is not able to accommodate a standard car parking space. The adjoining properties support one (1) and two (2) storey dwelling houses.

The property is zoned R2 Low Density Residential and is located within the Petersham North Heritage Conservation Area.

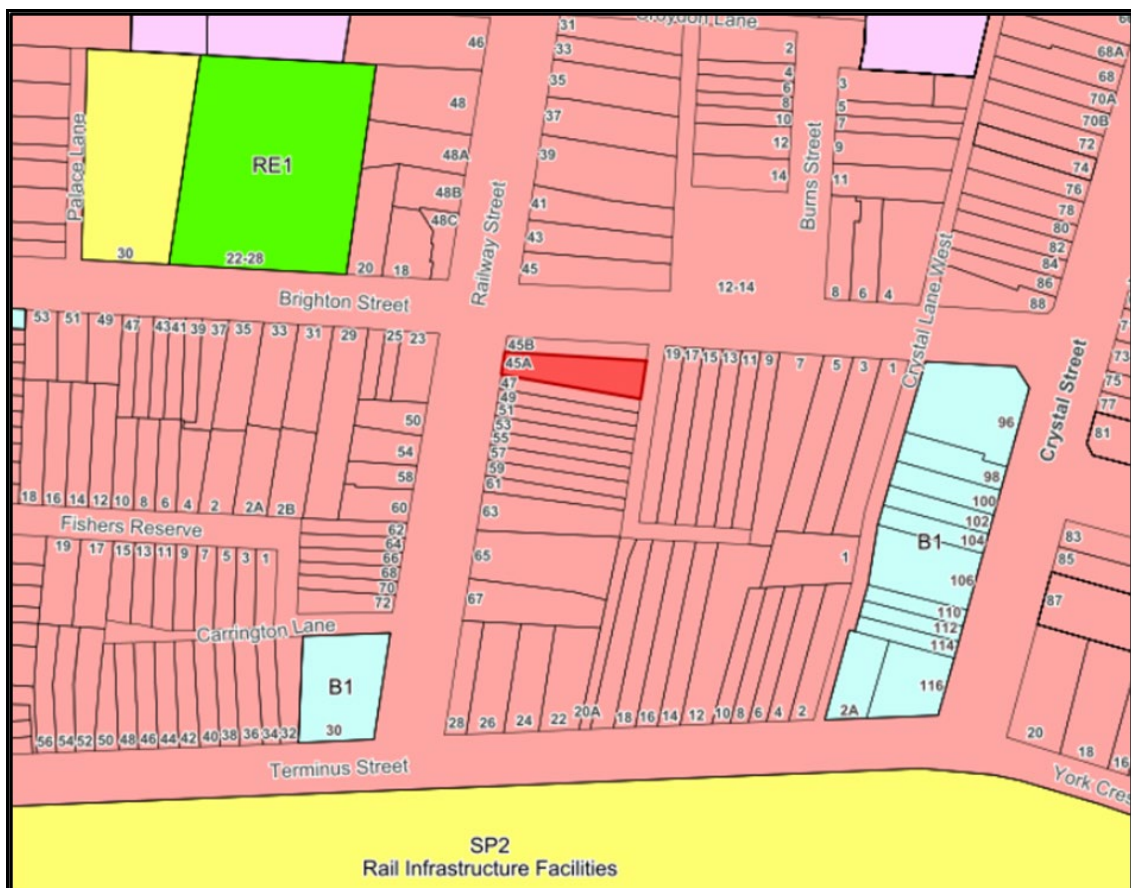


Figure 4: Zoning Map (IWLEP 2022)



Figure 5: View of existing structure from Brighton Lane



Figure 6: View of existing structure and associated deck area looking from private open space area towards Brighton Lane

4. Background

4(a) Site history

The following outlines the relevant applications on surrounding properties.

Surrounding properties

Application & Property	Proposal	Decision & Date
DA201600109 53 Railway Street	To demolish the existing garage and erect a new garage with loft studio above at the rear of the site.	Approved – 5 July 2016

4(b) Application history

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

Date	Discussion / Letter / Additional Information
7 December 2022	<p>Council issued a letter requesting the following additional information/ amendments to the application:</p> <ul style="list-style-type: none"> a) <i>Delete the roof terrace and associated laundry facilities to reduce the bulk and massing of the first floor</i> b) <i>Provide a traditional roof form and pitch, acknowledging this will require a dormer window to be incorporated into the design. The first floor of the structure should be contained within a roof form, so the rear structure has a single storey appearance to the laneway. Any dormer elements required should be inset within any roof plane and have regard to traditional dormer proportions.</i> c) <i>Reduce the overall height of the addition where possible to alleviate bulk. This should be achieved by lowering ceiling height internally, in particular the first floor should have minimum ceiling heights to alleviate bulk.</i> d) <i>A Clause 4.6 Variation Report to vary Clause 53 in the State Environmental Planning Policy (Housing) 2021, as the site is less than 450sqm which is required for a secondary dwelling</i> e) <i>Amended plans demonstrating that 50% of the private open space area has been maintained as pervious area</i> f) <i>Hourly shadow diagrams for 21 March/September.</i>
22 December 2022	<p>Council provided further clarification to the applicant regarding the proposed roof pitch. The applicant sought clarification as to whether a 45 degree roof pitch would be appropriate for the site however Council's Heritage Specialist advised that a roof pitch of more than 40 degrees is generally not supported in HCA's to ensure new roof forms are consistent with the traditional form of development and do not detract from the significance of roof forms within the HCA.</p>
23 January 2023	<p>The applicant provided amended information to respond to Council's letter that addressed the majority of issues, however the roof pitch proposed was 45 degrees.</p>

30 January 2023	Council informed the applicant that there were still outstanding issues with the amended proposal. Specifically, Council noted concerns regarding the 45 degree roof pitch which was not in accordance with Council's advice as well as the overall height of the structure. A further extension of time was provided to give the applicant an opportunity to amend the design to facilitate a 40 degree roof pitch.
6 February 2023	<p>The applicant provided an additional diagram demonstrating a 40 degree roof pitch. The diagram indicated that the proposed development would not meet the minimum BCA floor to ceiling height over the stair landing on the first floor if the pitch was reduced to 40 degrees.</p> <p>Given no further wholistic amendments were provided in response to Council's request on 30 January 2023, the amended plans provided by the applicant on 23 January are the subject of this assessment report.</p>

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 (Housing) 2021*

The following provides further discussion of the relevant issues:

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

Chapter 4 Remediation of land

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

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

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

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

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

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

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

5(a)(iii) *State Environmental Planning Policy (Housing) 2021*

Chapter 3 Diverse housing, Part 1 Secondary dwellings

The application proposes the construction of a new secondary dwelling. As such, the provisions of Chapter 3, Part 1 of *Housing SEPP 2021* are applicable.

The following is an assessment against the relevant clauses of *Housing SEPP 2021*:

Division 2 Secondary dwellings permitted with consent

Clause	Standard	Proposed	Complies?
49 – Definitions	Development for the purposes of a secondary dwelling includes the following: <ul style="list-style-type: none"> a. the erection of, or alterations or additions to – <ul style="list-style-type: none"> i. a secondary dwelling, o r ii. an ancillary structure within the meaning of Schedule 1, b. alterations or additions to a principle dwelling for the purpose of a secondary dwelling 	The proposal is for the erection of a new secondary dwelling.	Yes
50 - Zone	This Part applies to development for the purposes of a secondary dwelling on land in a residential zone if development for the purposes of a dwelling house is permissible on the land under another environmental planning instrument.	The site is zoned R2 <i>Low Density Residential</i> . The proposal is permissible with development consent.	Yes
51 – No subdivision	Development consent must not be granted for the subdivision of a lot on which development has been carried out under this Part.	The proposal does not involve subdivision.	Yes
52 (2)(a) – Number of dwellings	No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land	The proposal contains no additional dwellings other than the principal dwelling and secondary dwelling on the land.	Yes

52 (2)(b) – Total Floor Area	Maximum 210.7sqm permitted under IWLEP 2022 for site	Proposed GFA = 244.3sqm. A Clause 4.6 Variation Request was submitted with the proposal to vary the floor space ratio development standard under the IWLEP 2022.	No. See discussion in part 5(a)(iii) of this report.
52 (2)(c) - Secondary Dwelling Floor Area	Maximum 60sqm	55.99sqm	Yes
53 (2)(a)	Non-discretionary development standards in relation to the carrying out of development to which this Part applies – a) for a detached secondary dwelling—a minimum site area of 450m ² ,	Site area = 351.3sqm.	No. See discussion below.
53 (2)(b)	b) the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	The existing garage proposed to for demolition does not meet the minimum depth dimensions for a standard car parking space and as such, the site does not comprise functional on-site parking. The proposal includes the provision of one (1) car compliant parking space within the garage.	Yes

The proposed development is consistent with Chapter 3, Part 1 of the Housing SEPP with the exception of the minimum site area requirements. The development proposes a variation to the minimum site area required by Clause 53(2)(a) of the Housing SEPP under Clause 4.6 of the IWLEP 2022. This matter is discussed in more detail below under Clause 4.6 of IWLEP 2022.

5(a)(iv) Inner West Local Environmental Plan 2022 (IWLEP 2022)

The application was assessed against the following relevant sections of the *Inner West Local Environmental Plan 2022*:

- Section 1.2 - Aims of Plan
- Section 2.3 - Land Use Table and Zone Objectives
- Section 2.7 – Demolition requires development consent
- Section 4.3 – Height of buildings
- Section 4.4 – Floor space ratio
- Section 4.5 – Calculation of floor space ratio and site area
- Section 4.6 – Exceptions to development standards
- Section 5.10 – Heritage conservation
- Section 6.2 – Earthworks
- Section 6.3 – 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 R2 Low Density Residential under the *IWLEP 2022*. The *IWLEP 2022* defines the development as:

- **Dwelling house** means a building containing only one dwelling; and
- **Secondary dwelling** means a self-contained dwelling that—
 - (a) is established in conjunction with another dwelling (the principal dwelling), and
 - (b) is on the same lot of land as the principal dwelling, and
 - (c) is located within, or is attached to, or is separate from, the principal dwelling.

The development is permitted with consent within the land use table. The development is consistent with the objectives of the R2 Low Density Residential zone.

Section 4 – Principal Development Standards

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

Standard	Proposal	Non compliance	Complies
Height of Buildings Maximum permissible: 9.5m	6.8m	N/A	Yes
Floor Space Ratio Maximum permissible: 0.6:1 or 210.78sqm	0.7:1 or 244.3sqm	33.52sqm or 15.9%	No

Section 4.6 Exceptions to Development Standards

As outlined in above, the proposal results in a breach of the following development standards:

- Clause 53(2)(a) – Non-discretionary development standards
- Clause 4.4 – Floor Space Ratio

Clause 53(2)(a) – Minimum lot size for detached secondary dwelling (Housing SEPP 2021)

The applicant seeks a variation to the minimum lot size for a detached secondary dwelling under Clause 53(2)(a) of the State Environmental Planning Policy (Housing) 2021 by 22% (98.7sqm).

Section 4.6 allows Council to vary non-discretionary development standards as per Section 4.15(3)(b) of the Environmental Planning and Assessment Act 1979, 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 non-discretionary development standard has been assessed against the objectives and provisions of Section 4.6 of the *IWLEP 2022* below.

A written request has been submitted to Council in accordance with Section 4.6(4)(a)(i) of the *IWLEP 2022* justifying the proposed contravention of the non-discretionary development standard which is summarised as follows:

- *The proposed development does not comply with the development standard and so Council is not prevented from requiring more onerous standards. The development however meets the requirements in relation to neighbour amenity and the amended plans demonstrate an increased compatibility with the streetscape of the Lane. Generally utilising the existing building footprint and noting that the proposed secondary dwelling is able to meet the open space requirements, the variation to the 450sqm lot size does not prevent the site from providing an appropriate level of amenity for the secondary dwelling. Council has the power to approve the development, notwithstanding the proposed variation.*
- *The lot size variation will have no impact on the ability of the site to achieve ample amenity and retain the same level of impact as a lot which was 450sqm. The existing footprint is generally being utilised, with only a very small increase to ensure appropriate depth for parking. The upper level floor area is contained within a traditional roof space and dormer. It is therefore considered this objective is met, despite the numerical variation.*
- *The site will remain consistent with the character of the locality, despite the variation to lot size, with the site presenting as floor space within the roof form from the Lane frontage.*
- *The site is notably larger than most other allotments in the street and near vicinity. Being nearly double the typical lot size in this part of Railway Street, the site has sufficient space to accommodate both a primary and secondary dwelling.*
- *The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for low density residential development in a residential zone, with a bulk and scale consistent with the locality. Compliance with the lot size for detached secondary dwellings standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.*

The applicant's written rationale adequately demonstrates compliance with the development standard is unreasonable 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 R2 Low Density Residential Zone, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022*. The relevant objectives are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To provide residential development that maintains the character of built and natural features in the surrounding area.*

The proposal is consistent with the objectives of the zone as it seeks to demolish an existing garage which does not meet the minimum depth dimensions of a standard car parking space and construct a new garage and secondary dwelling development of a similar building footprint. The proposed development provides a secondary dwelling which satisfies the objectives of the zone to provide housing needs of the community in a low density residential environment.

Additionally, while the development largely maintains the character of the built and natural features in the area, it is noted that the proposed 45 degree roof pitch is inconsistent with the character of the HCA the site is located within, this is discussed in more detail under Clause 5.10 of IWLEP 2022 later in this report. As such, this portion of the development would not maintain the character of the built features in the surrounding area and is contrary to part of the applicant's justification for the breach to minimum lot size for secondary dwellings.

Notwithstanding, the imposition of a deferred commencement condition requiring the roof pitch to be amended to be a maximum of 40 degree would resolve this issue and ensure the development maintains the character of the built features in the surrounding area in accordance with the zone objectives. As such, subject to the imposition of the recommended deferred commencement conditions the development is considered consistent with the zone objectives and in the public interest despite the proposed breach to the non-discretionary development standard.

Council concurs with the applicant's justification that the secondary dwelling does not inhibit the ability for the site to maintain a compliant level of private open space for both the primary and secondary dwelling. The size of the open space is comparative to adjoining development thereby maintaining the landscape character of the locality.

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 *IWLEP 2022*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from non-discretionary development standards under Clause 53(2)(a) and it is recommended the Section 4.6 exception be granted.

Clause 4.4 – Floor Space Ratio (IWLEP 2022)

The applicant seeks a variation to the Floor Space Ratio development standard under Clause 4.4 of the Inner West Local Environmental Plan 2022 by 15.9% (33.52sqm).

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

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Section 4.6 of the *IWLEP 2022* below.

A written request has been submitted to Council in accordance with Section 4.6(4)(a)(i) of the *IWLEP 2022* justifying the proposed contravention of the development standard which is summarised as follows:

- *Appropriate development density is achieved as the proposal results in only a primary dwelling and a secondary dwelling, and the amount of additional floor space is minor. As Clause 4.4 2(c) applies the site is only 1.2sqm over the threshold that restricts FSR to 0.6:1. If the site area was 1.2sqm smaller the maximum FSR allowable under this Clause would be 0.7:1 for site areas >300sqm and <350sqm. The subject site area is 351.2sqm This negligible amount of additional site area prevents what would otherwise be considered to be compliant and appropriate density being achieved on the site. It would be unreasonable to require compliance in these circumstances.*
- *The 351.2sqm site is located in an area where lot sizes are much smaller, typically 170sqm. The larger lot provides additional spatial separation from its smaller neighbours, and the additional floor space is adjacent to the rear lane and separate from the primary dwelling. This means that the additional floor space is separated on the site rather than concentrated as part of the primary dwelling, allowing neighbour amenity to be maintained. The additional width of the site at the rear lane frontage also assists in providing good separation for neighbours.*
- *To require compliance with 0.6:1 FSR in these circumstances would be contrary to the Clause 1.3(c) of the Act to promote the orderly and economic use and development of land.*
- *The inclusion of the FSR variation to facilitate the proposed development has no impact on the natural environment. The proposal results in negligible loss of landscape area. The natural environment is unaffected by the small departure from the development standard, and it would be unreasonable for the development to be refused on this basis.*

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

It is considered the development is in the public interest because it is generally consistent with the objectives of the R2 Low Density Residential Zone, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022*. The relevant objectives of the zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To provide residential development that maintains the character of built and natural features in the surrounding area.*

The proposal is consistent with the objectives of the zone as it seeks to demolish an existing garage which does not meet the minimum depth dimensions of a standard car parking space and construct a new garage and secondary dwelling development of a similar building footprint. The proposed development provides a secondary dwelling which satisfies the objectives of the zone to provide housing needs of the community in a low density residential environment.

Additionally, while the development largely maintains the character of the built and natural features in the area, it is noted that the proposed 45 degree roof pitch is inconsistent with the character of the HCA the site is located within, this is discussed in more detail under Clause 5.10 of *IWLEP 2022* later in this report. As such, this portion of the development would not maintain the character of the built features in the surrounding area and is contrary to part of the applicant's justification for the breach to the floor space ratio.

Notwithstanding, the imposition of a deferred commencement condition requiring the roof pitch to be amended to be a maximum of 40 degree would resolve this issue and ensure the development maintains the character of the built features in the surrounding area in accordance with the zone objectives. As such, subject to the imposition of the recommended deferred commencement conditions the development is considered consistent with the zone objectives and in the public interest despite the proposed breach to the FSR development standard.

It is considered the development is in the public interest because it is consistent with the objectives of the floor space ratio development standard, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022*. The objectives of the standard are as follows;

- *to establish the maximum floor space ratio,*
- *to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,*
- *to minimise adverse environmental impacts on adjoining properties and the public domain*

The proposal results in a floor space which is appropriate for the site noting that the site area is 1.2sqm over the threshold which restricts the site to an FSR of 0.6: 1 instead of 0.7:1. The proposal has an acceptable impact on the amenity of adjoining sites with regard to overshadowing. As discussed above, the site is capable of achieving an acceptable bulk and height and achieving consistency with the desired future character of the area subject to compliance with the recommended deferred commencement condition which requires a reduction of the proposed roof pitch from 45 degrees to 40 degrees. As such, subject to the imposition of the recommended deferred commencement conditions the development is considered consistent with the development standard objectives and in the public interest despite the proposed breach to floor space ratio.

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 *IWLEP 2022*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the floor space ratio development standard and it is recommended the Section 4.6 exception be granted.

Section 5.10 – Heritage conservation

The subject site is a contributory building within the Petersham North Heritage Conservation Area (HCA). The proposed development would not be highly visible from Railway Street however would be visible from Brighton Street and Brighton Lane at the rear of the site.

Council's Heritage Specialist has reviewed the proposal and while the proposal is generally consistent with the heritage provisions, the proposed 45 degree roof pitch and overall height of the development is not appropriate within the HCA noting that the structure is inconsistent with the predominant height and bulk of development in the lane.

Part 8 of MDCP 2011 contains the following objectives and controls for heritage conservation areas that are relevant to the proposal:

O3 To provide guidelines for alterations and additions which complement and do not detract from the heritage significance of individually listed heritage items, HCAs and period buildings

O5 To encourage new development which complements existing heritage items and heritage conservation areas in a modern context

C21 Extensions and alterations visible from the street must be consistent with the overall massing and form of the property (refer to the specific style sheets) and must not dominate the existing building form.

The proposed 45 degree roof pitch does not respond to the significance of the HCA or comply with the objectives or controls within Part 8 of MDCP 2011 in that the proposed roof pitch and form that is visible from the street is not consistent with the form and massing of buildings within the HCA. Council considers that a roof pitch of 40 degrees would be more consistent with the overall massing and form of development within the lane, would lessen the height and dominance of the development and is more consistent with traditional forms within the HCA.

It is noted that a reduction in height as result of a reduction in roof pitch would further align the proposal with control C31(iii) in Part 4.1.7.5 of MDCP 2011 relating to loft structures over garages which requires the bulk and scale of the overall structure to not be dominant compared with other rear lane structures or the houses in the locality. Council acknowledges the development at No. 53 Railway Street which comprises a garage and loft above with a roof pitch of approximately 70 degrees, however this development is not considered to be a positive outcome with regard to the HCA and should not be looked to to replicate or justify other similar elements for other proposals in the lane.

During the assessment of the application, Council's Heritage Advisor raised concerns with proposed 45 degree roof pitch and overall height of the development due to the abovementioned reasons and requested additional information to address these concerns. Specifically, Council's Heritage Advisor requested that the roof pitch be lowered to 40 degrees or less to maintain consistency with the HCA and to lower the overall height and bulk of the structure.

In response, the applicant provided a diagram demonstrating that a roof pitch of 40 degrees could be achieved however would not be feasible for the current internal configuration as this would result in a non-compliant minimum floor to ceiling height above the stair landing. Council is not satisfied that a roof pitch of 40 degrees is not feasible for the development and considers that the internal configuration could be amended to achieve minimum BCA floor to ceiling heights. In particular, the stairs could be reconfigured to eject at the highest ceiling point within the first floor with minimal impact to the ground floor layout of the secondary dwelling

As such, in its current form, the application is inconsistent with the objectives of Clause 5.10(1) in that the proposal does not seek:

- (a) *to conserve the environmental heritage of Marrickville,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*

Notwithstanding, the proposal is capable of satisfying Section 5.10 of IWLEP 2022 subject to the imposition of a deferred commencement requiring a reduction in the roof pitch to 40

degrees and allowing any minor internal layout amendments to achieve minimum ceiling heights under the BCA.

Additionally, subject to imposition of the deferred commencement condition, the development is considered consistent with objective O3 and O5 within Part 8 of MDCP 2011 as it would not detract from the HCA or dominate the existing building form.

Consequently, the application is recommended for a deferred commencement approval.

It is noted that two (2) submissions were received during the initial notification of this application which raised concerns about the heritage implications of the proposed design and the overall inconsistency of the bulk of the development in the context. It is noted that amended plans were received during the assessment of the application and with the exception of the proposed 45 degree roof pitch which is subject to a deferred commencement condition, the proposal is considered acceptable with regard to Section 5.10 of IWLEP 2022 and Part 8 of MDCP 2011.

5(b) 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.

Part of MDCP 2011	Compliance
Part 2.1 – Urban Design	Yes – subject to recommended deferred commencement conditions
Part 2.3 – Site and Context Analysis	Yes
Part 2.6 – Acoustic and Visual Privacy	Yes
Part 2.7 – Solar Access and Overshadowing	No – see discussion
Part 2.9 – Community Safety	Yes
Part 2.10 – Parking	Yes
Part 2.11 – Fencing	Yes
Part 2.16 – Energy Efficiency	Yes
Part 2.18 – Landscaping and Open Space	Yes
Part 2.20 – Tree Management	Yes
Part 2.21 – Site Facilities and Waste Management	Yes
Part 2.25 – Stormwater Management	Yes
Part 4.1 – Low Density Residential Development	Yes – subject to recommended deferred commencement conditions
Part 8 – Heritage	Yes – subject to recommended deferred commencement conditions
Part 9 – Strategic Context	Yes – subject to recommended deferred commencement conditions

The following provides discussion of the relevant issues:

Part 2.7 – Solar Access and Overshadowing

The proposal does not comply with the requirements of control C2 within Part 2.7 of the Marrickville Development Control Plan 2011. The relevant objective to consider in relation to the variation is objective O3 within Part 2.7 of the Marrickville Development Control Plan 2011. In considering a variation the following is noted:

- The neighbouring private open space areas at No.47 and 49 Railway Street do not currently receive a minimum of 2 hours direct solar access to 50% of its finished surface between 9am and 3pm on 21 June. The proposal results in additional overshadowing to these POS areas during this time.
- One (1) submission raised concern of the overshadowing impacts to the private open space area at No. 47 Railway Street.

In such circumstances, Control C2(ii) allows Council to consider the following to determine if the level of overshadowing proposed is acceptable:

- a. The development potential of the site;*
- b. The particular circumstances of the neighbouring site(s), for example, the proximity of any residential accommodation to the boundary, the resultant proximity of windows to the boundary, and whether this makes compliance difficult;*
- c. Any exceptional circumstances of the subject site such as heritage, built form or topography; and*
- d. Whether the sunlight available in March to September is significantly reduced, such that it impacts upon the functioning of principal living areas and the principal areas of open space. To ensure compliance with this control, separate shadow diagrams for the March/September period must be submitted in accordance with the requirements of C1.*

With regard to the above, the following is noted:

- The subject site is permitted a maximum building height of 9.5 metres and a FSR of 0.6:1 under MLEP 2011. The proposal submitted a Clause 4.6 Variation Request to vary the floor space ratio development standard and Council is satisfied that the site has a development potential that allows the extent and scale of the development proposed.
- The proposal is below the maximum height control in order to ensure the scale of the development has minimal impacts on neighbouring development.
- The subject site and neighbouring properties are primarily east to west orientated and as such properties to the southern side of other sites will experience a high level of overshadowing which is difficult to avoid because of the orientation.
- The proposal retains a minimum of 2 hours direct solar access to 50% of the finished surface area of the POS areas at No.47 and 49 Railway Street on 21 March/September between 9am and 3pm.

- The ground floor as proposed involves minimum floor to ceiling heights.
- Council has imposed a condition to lower the roof pitch from 45 degrees to 40 degrees in order to lower the overall height of the development and to achieve minimum floor to ceiling heights on the first floor. Notwithstanding, the applicant provided additional shadow diagrams during the assessment of the application which demonstrate that an altered roof pitch from 45 degrees to 40 degrees has a negligible impact on the extent of overshadowing impacts to neighbouring properties.

Given the above, the development is considered to maintain an acceptable level of solar access to the neighbouring property in the circumstances.

Subject to compliance with the deferred commencement condition, the development is considered consistent with objective O3 to protect solar access enjoyed by neighbours for the following reasons:

- The development maintains as much solar access as possible to the neighbouring properties in the circumstances and in excess of 2 hours solar access during the equinoxes to private open space areas.

5(c) 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(d) 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(e) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties. Two (2) submissions were received in response to the initial notification.

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

- Overshadowing Impacts – see Part 5(b)
- Impact on the Heritage Conservation Area – see Part 5(a)

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

Privacy:

Two (2) submissions raised concern about the visual privacy implications of the proposal noting that the initial design involves a first floor terrace area and extensive windows on the first floor.

During the assessment of the application, Council raised concern about the terrace area and opportunity for overlooking to neighbouring properties. The terrace area was subsequently deleted. The windows on the first floor were also amended to dormer windows which face into the subject site and which are in accordance with Part 2.6 of MDCP 2011.

Public Safety:

One (1) submission raised concern about the implications of having access to a secondary dwelling from the existing narrow laneway. It is noted that the lane is actively used for the purpose of vehicle access to residential dwellings on Railway Street and Brighton Street and the proposal has demonstrated that the design can accommodate sufficient vehicle manoeuvring to the site.

Parking:

One (1) submission raised concern that the proposed development involves the removal of two parking spaces and maintains only one, shared between two residences. It is noted that the existing garage does not meet the minimum depth dimensions of a standard car parking space and is therefore not currently used for on-site car parking. The proposal involves one (1) new car parking space that meets minimum requirements.

Floor Space Ratio:

Two (2) submissions raised concern about the proposed variation to the floor space ratio standard and that the site could not accommodate the proposed bulk of the development without amenity impacts to neighbouring properties.

It is noted that a Clause 4.6 Variation Request was submitted with the application to justify why the proposed variation is appropriate for the site. This is further discussed under Section 5(a)(iii) of this report. Similarly, the proposal is considered acceptable with regard to overshadowing to adjoining properties which is further discussed within Section 5(d) of this report.

5(f) 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.

- Heritage
- Development Engineer
- Urban Forest

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 \$18, 631.66 would be required for the development under Marrickville Section 94/94A Contributions Plan 2014. 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 *Inner West Local Environmental Plan 2022* and Marrickville Development Control Plan 2011.

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, subject to compliance with the deferred commencement condition.

The application is considered suitable for the issue of a deferred commencement consent subject to the imposition of appropriate terms and conditions.

9. Recommendation

- A. The applicant has made a written request pursuant to *Inner West Local Environmental Plan 2022*. After considering the requests, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the minimum site area and floor space ratio development standards are unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variations. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standards 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 a deferred commencement consent to Development Application No. DA/2022/0774 for demolition of the existing outbuilding at the rear of the site and construction of a 2 storey building comprising a garage and secondary dwelling at 45A Railway Street, Petersham subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

The following is a Deferred Commencement condition imposed pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*. This Consent will not operate and may not be acted upon until the Council is satisfied as to the following matter(s):

A. Architectural Plans

Amended architectural plans must be submitted to Council indicating the following:

- a. The roof pitch of the garage and secondary dwelling being reduced to a maximum of 40 degrees.
- b. Any internal layout reconfiguration required to address any minimum ceiling height non-compliances under the BCA that may arise as a result of reducing the roof pitch to 40 degrees.

Evidence of the above matter(s) must be submitted to Council within 2 years otherwise the Consent will not operate.

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
DA001 - Rev F	Materials and Finishes Schedule	20/01/2023	Brad Swartz Architects
DA050 - Rev F	Site Plan	20/01/2023	Brad Swartz Architects
DA051 - Rev F	Landscape Plan	20/01/2023	Brad Swartz Architects
DA100 - Rev F	Existing Ground Floor Plan	20/01/2023	Brad Swartz Architects
DA101 - Rev F	Existing Roof level Plan	20/01/2023	Brad Swartz Architects
DA110 - Rev F	Proposed Ground Floor Plan	20/01/2023	Brad Swartz Architects
DA111 - Rev F	Proposed Level 1 Plan	20/01/2023	Brad Swartz Architects
DA112 - Rev F	Proposed Roof Plan	20/01/2023	Brad Swartz Architects

DA200- Rev G	East & West Elevation	23/01/2023	Brad Swartz Architects
DA201- Rev G	North & South Elevation	23/01/2023	Brad Swartz Architects
DA300- Rev G	Section A-A & Section B-B	23/01/2023	Brad Swartz Architects
DA301- Rev G	Section C-C & Section D-D	23/01/2023	Brad Swartz Architects
DA302- Rev E	Driveway Sections	05/09/2022	Brad Swartz Architects
DA303- Rev G	Section G-G	23/01/2023	Brad Swartz Architects
1303147S_03	BASIX Certificate	17/01/2023	Brad Swartz Architects

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:	\$5600.00
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. Section 7.11 (Former Section 94) Contribution

Prior to the issue of a Construction Certificate written evidence must be provided to the Certifying Authority that a monetary contribution of \$18,613.66 indexed Marrickville Section 94/94A Contributions Plan 2014 ("CP") has been paid to the Council.

The above contribution is the contribution applicable as at 22 February 2022.

***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	16168.28
Community Facilities	1816.06
Traffic Facilities	264.36
Plan Administration	364.97
TOTAL	18613.66

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

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

Payment methods:

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

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

4. Long Service Levy

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed rate of 0.25% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$250,000 or more.

GENERAL CONDITIONS

5. Stormwater Drainage System – Simple

Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, down pipe, 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, 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.

6. Car Parking

The development must provide and maintain one (1) car parking space within the garage on the site.

7. Waste Management Plan

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

8. Erosion and Sediment Control

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

9. Standard Street Tree Protection

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

10. 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.

11. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION

12. 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.

13. 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.

14. 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.

15. 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

16. 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.

17. Public Domain Works – Prior to Construction Certificate

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a public domain works design, prepared by a qualified practising Civil Engineer and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the *Roads Act 1993* incorporating the following requirements:

- a. The construction of a light duty vehicular crossing to the vehicular access location and removal of all redundant vehicular crossings to the site

All works must be completed prior to the issue of an Occupation Certificate.

18. Alignment Levels – Rear Lane

The internal vehicle hardstand area shall be redesigned such that the level at the boundary shall match the invert level of the adjacent gutter plus 110mm at both sides of the vehicle entry. This will require the internal garage slab to be adjusted locally at the boundary to ensure that it matches the above Alignment Levels. Amended plans shall be submitted to and approved by Council before the issue of the Construction Certificate.

The garage slab or driveway must then rise within the property to be 170mm above the adjacent road gutter level. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004.

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

19. Parking Facilities - Domestic

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

- a. A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors;

- b. A plan of the proposed access and adjacent laneway, drawn at a 1:100 scale, demonstrating that vehicle manoeuvrability for entry and exit to the parking space complies with swept paths from AS/NZS 2890.1:2004. The plan must include any existing on-street parking spaces;
- c. The maximum gradients within the parking module must not exceed 1 in 20 (5%), measured parallel to the angle of parking and 1 in 16 (6.25%), measured in any other direction in accordance with the requirements of Section 2.4.6 of AS/NZS 2890.1-2004; and
- d. The external form and height of the approved structures must not be altered from the approved plans.

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. Acoustic Report – Aircraft Noise

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

DURING DEMOLITION AND CONSTRUCTION

22. 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.

23. 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**24. Public Domain Works**

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

- a. Light duty concrete vehicle crossing at the vehicular access location;
- b. 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
- c. 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".

25. 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.

26. Parking Signoff – Minor Developments

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification from a qualified practising Civil Engineer that the vehicle access and off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.

27. Redundant Vehicle Crossing

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that all redundant vehicular crossings to the site have been removed and replaced by kerb and gutter and footpath paving in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications". Where the kerb in the vicinity of the redundant crossing is predominantly stone the replacement kerb must also be in stone.

28. Certification of Tree Planting

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

A minimum of 1 x 45 litre size tree, which will attain a minimum mature height of six (6) metres, must be planted in a more suitable location within the property at a minimum of 1.5 metres from any boundary or structure and allowing for future tree growth. The tree is to conform to AS2303—*Tree stock for landscape use*. 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 new tree is 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 tree is found dead before it reaches a height where they are protected by Council's Tree Management Controls, it must be replaced with the same species.

29. Aircraft Noise

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.

ON-GOING

30. Bin Storage

All bins are to be stored within the site.

ADVISORY NOTES**Permits**

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

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

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

Insurances

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

Prescribed Conditions

This consent is subject to the prescribed conditions of consent within Sections 69-86 of the *Environmental Planning and Assessment Regulations 2021*.

Notification of commencement of works

At least 7 days before any demolition work commences:

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

Storage of Materials on public property

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

Toilet Facilities

The following facilities must be provided on the site:

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

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

Infrastructure

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

Other Approvals may be needed

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

Failure to comply with conditions

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

Other works

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

Obtaining Relevant Certification

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

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

National Construction Code (Building Code of Australia)

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

Notification of commencement of works

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

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

- i. The name of the owner-builder; and
- ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

Dividing Fences Act

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

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.









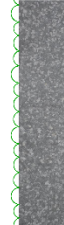



Attachment B – Plans of proposed development

45A RAILWAY STREET PETERSHAM NSW 2049
 PROPOSED DEMOLITION OF EXISTING GARAGE AND STUDIO AND CONSTRUCTION OF NEW GARAGE AND SECONDARY DWELLING

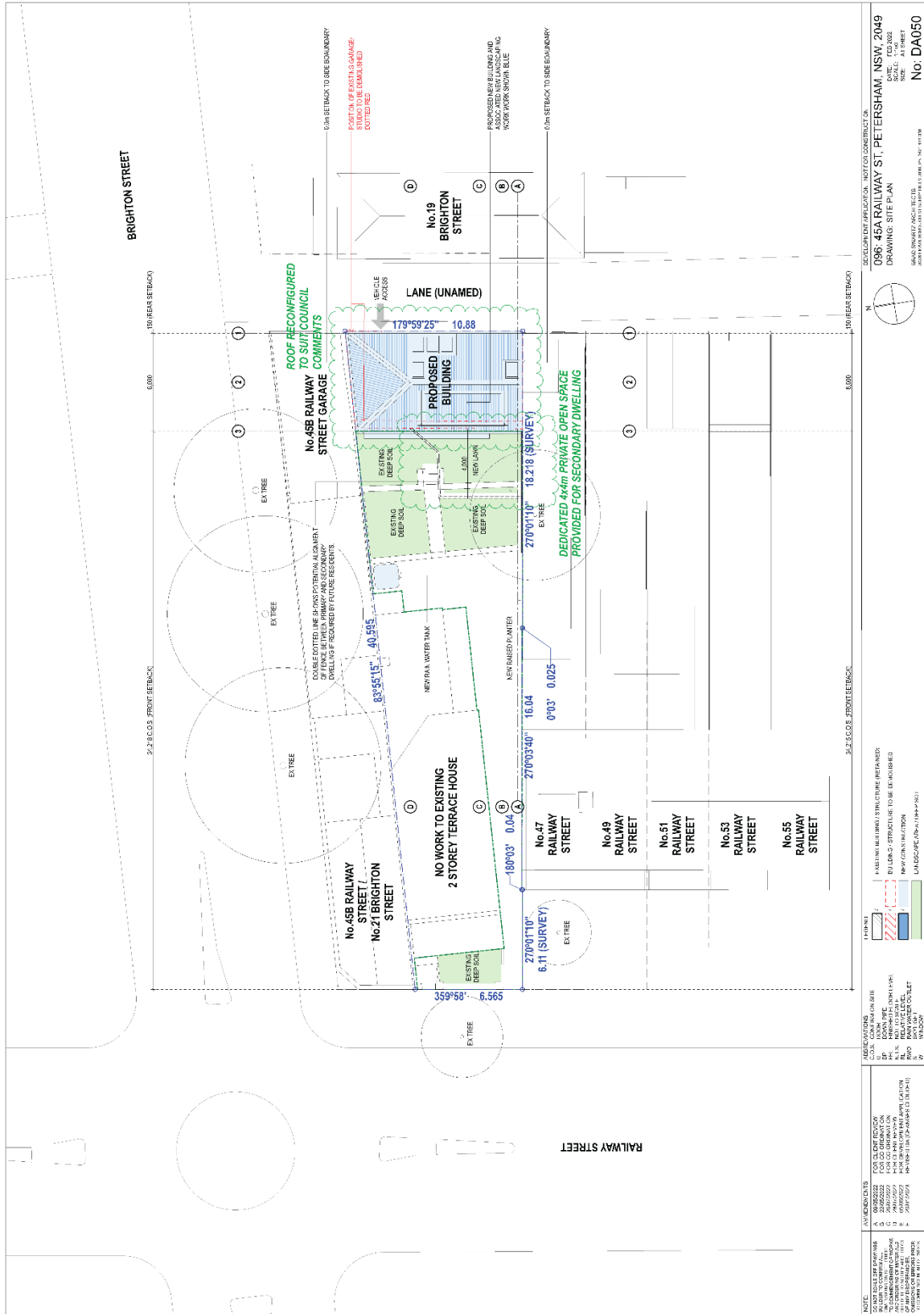
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 ARCHITECTURAL

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DA001	MATERIALS AND FINISHES SCHEDULE	1:100	F
DA002	LANDSCAPE PLAN	1:100	F
DA003	EXISTING GROUND FLOOR PLAN	1:50	F
DA004	PROPOSED GROUND FLOOR PLAN	1:50	F
DA005	PROPOSED FIRST FLOOR PLAN	1:50	F
DA006	PROPOSED ROOF PLAN	1:50	F
DA007	FAST & VEST ELEVATION	1:50	G
DA008	FAST & VEST SECTION	1:50	G
DA009	SECTION C & SECTION D	1:50	G
DA010	SECTION E	1:50	G
DA011	SECTION F	1:50	G
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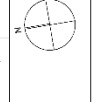
MATERIALS AND FINISHES SCHEDULE

CODE	DESCRIPTION	LOCATION	SPECIFICATION	COLOUR / IMAGE
BK-1	BRICK	EXTERNAL WALLS	STANDARD SIZE BRICKS FINISH: BAGGED & PAINTED	
CL-1	CLADDING TYPE 1	FASCIAS	TIMBER FINISH: PAINT	
CL-2	CLADDING TYPE 2	LIGHTWEIGHT WALLS	CORRUGATED METAL SHEET WALLING	
CON-1	CONCRETE	GROUND FLOOR SLAB	CONCRETE FINISH: OFF-FORM OR TROWEL	
DP-1	DOWNPIPE	THROUGHOUT	METAL DOWNPIPE TO HYDRAULIC ENGINEER'S SPECIFICATION	
GU-1	GUTTER	THROUGHOUT	METAL GUTTER TO HYDRAULIC ENGINEER'S SPECIFICATION PROFILE: QUAD 115 LOW FRONT (NSW) UNLESS NOTED OTHERWISE	
MSR-1	METAL SHEET ROOF	THROUGHOUT	CORRUGATED METAL SHEET ROOFING	
TF-1	TIMBER FLOORING	LEVEL 1	TIMBER FLOORING	
ST-1	STEEL PLATE	GROUND FLOOR AWNINGS/PELMET & ATTIC WINDOW REVEAL	STEEL PLATE	
D.01	ENTRY DOOR	ENTRY	SOLID CORE HINGED DOOR WITH VERTICAL CLADDING FINISH: PAINT	
D.02	GARAGE DOOR	GARAGE	SOLID CORE SLIDING DOOR WITH VERTICAL CLADDING FINISH: PAINT	
D.03, D04 D.11, W.11 W.42	GLAZED DOORS AND WINDOWS	THROUGHOUT	METAL FRAME WINDOWS & GLASS DOORS IN ACCORDANCE WITH BASIX REQUIREMENTS. FINISH: POWDERCOAT	

APPROVED BY: [Signature]
 DATE: 20/08/2022
 DRAWING NO: 096-45A RAILWAY ST. PETERSHAM, NSW, 2049
 PROJECT NAME: 096-45A RAILWAY ST. PETERSHAM, NSW, 2049
 SHEET NO: 01 OF 02
 NO: DA001



DEVELOPMENT APPLICATION - NOT FOR CONSTRUCTION
 098/45A RAILWAY ST, PETERSHAM, NSW, 2049
 DRAWING: SITE PLAN
 SCALE: 1:500
 DATE: 21 FEBRUARY 2023
 DRAWN BY: JAMES WILSON
 CHECKED BY: JAMES WILSON
 PROJECT NO: DA050



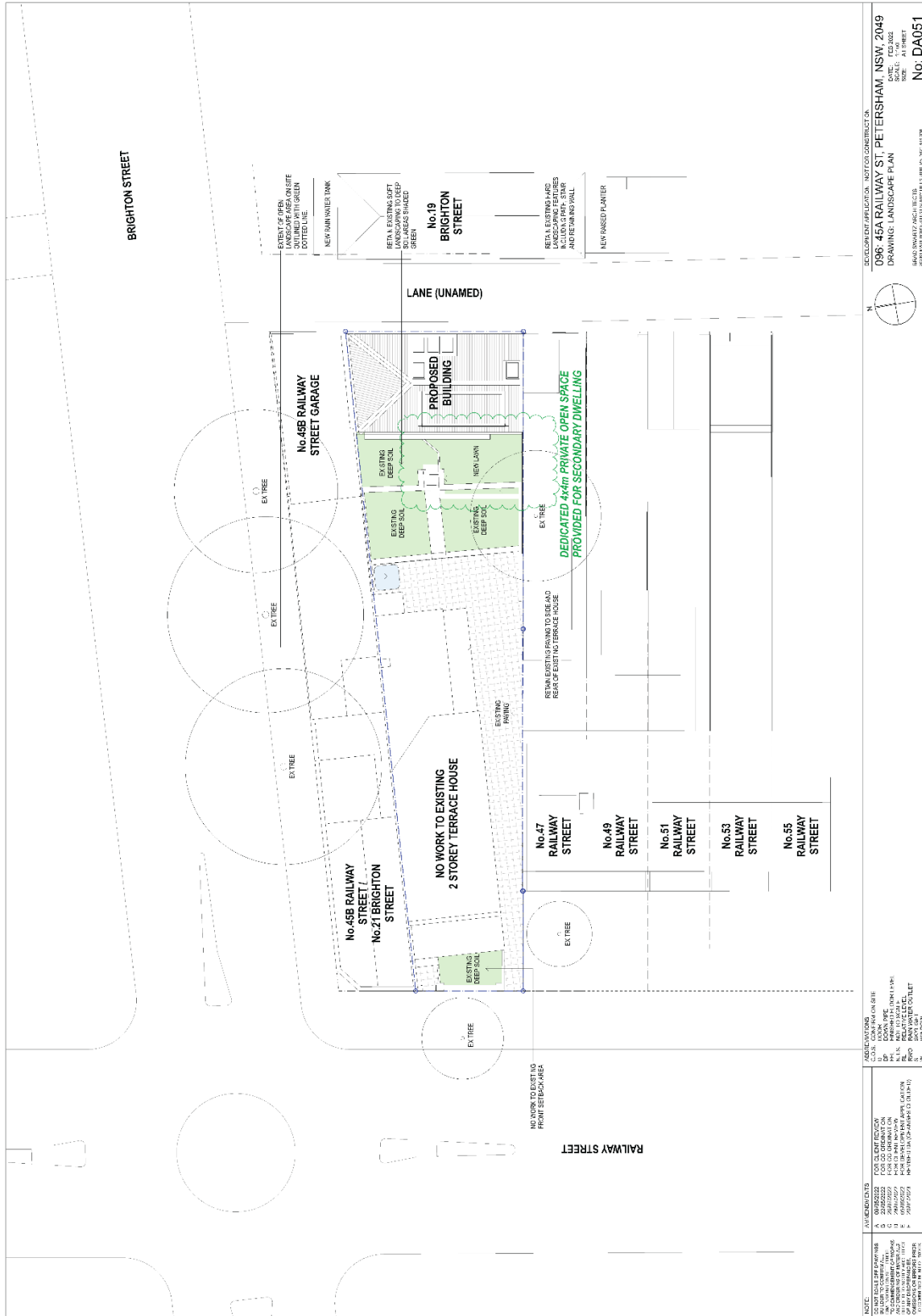
LEGEND:
 EXISTING BUILDING
 PROPOSED BUILDING
 NEW CONSTRUCTION
 LANDSCAPE (PERMITS REQUIRED)
 EXISTING DEEP SOIL
 NEW DEEP SOIL
 EXISTING LAWN
 NEW LAWN
 EXISTING WATER TANK
 NEW WATER TANK
 EXISTING DRIVEWAY
 NEW DRIVEWAY
 EXISTING SIDEWALK
 NEW SIDEWALK
 EXISTING CURB
 NEW CURB
 EXISTING ROADWAY
 NEW ROADWAY

NOTES:
 1. ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE SPECIFIED.
 2. THE PROPOSED BUILDING IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE CURRENT BUILDING REGULATIONS.
 3. THE PROPOSED BUILDING IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE CURRENT ZONING REGULATIONS.
 4. THE PROPOSED BUILDING IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE CURRENT ENVIRONMENTAL REGULATIONS.
 5. THE PROPOSED BUILDING IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE CURRENT PLANNING REGULATIONS.
 6. THE PROPOSED BUILDING IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE CURRENT LANDSCAPE REGULATIONS.
 7. THE PROPOSED BUILDING IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE CURRENT WATER REGULATIONS.
 8. THE PROPOSED BUILDING IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE CURRENT ROAD REGULATIONS.

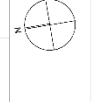
APPROVED BY:
 JAMES WILSON
 21 FEBRUARY 2023
 FOR THE DEVELOPER:
 JAMES WILSON
 21 FEBRUARY 2023
 FOR THE COUNCIL:
 JAMES WILSON
 21 FEBRUARY 2023

APPROVED BY:
 JAMES WILSON
 21 FEBRUARY 2023
 FOR THE DEVELOPER:
 JAMES WILSON
 21 FEBRUARY 2023
 FOR THE COUNCIL:
 JAMES WILSON
 21 FEBRUARY 2023

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 JAMES WILSON
 21 FEBRUARY 2023
 FOR THE DEVELOPER:
 JAMES WILSON
 21 FEBRUARY 2023
 FOR THE COUNCIL:
 JAMES WILSON
 21 FEBRUARY 2023

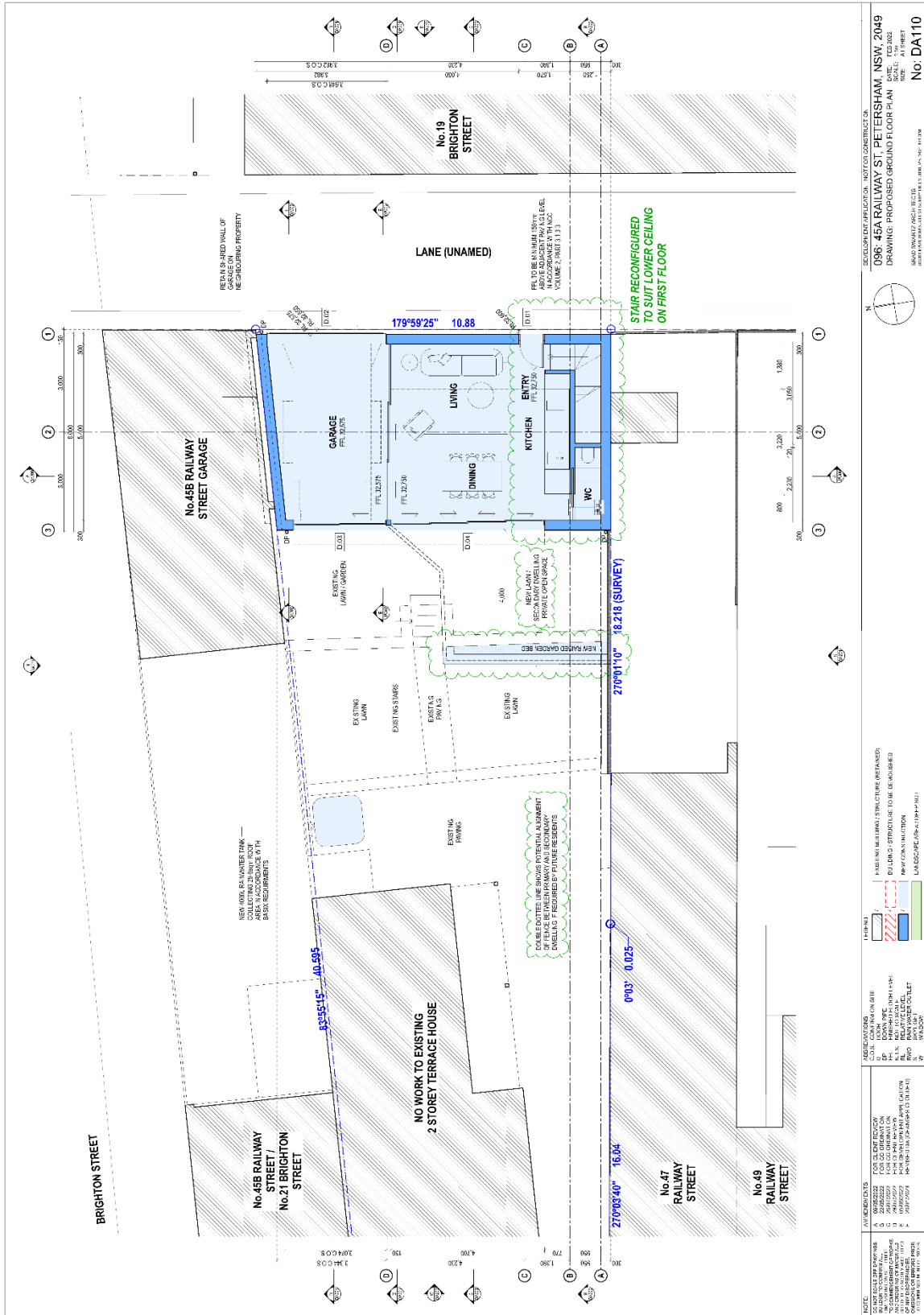


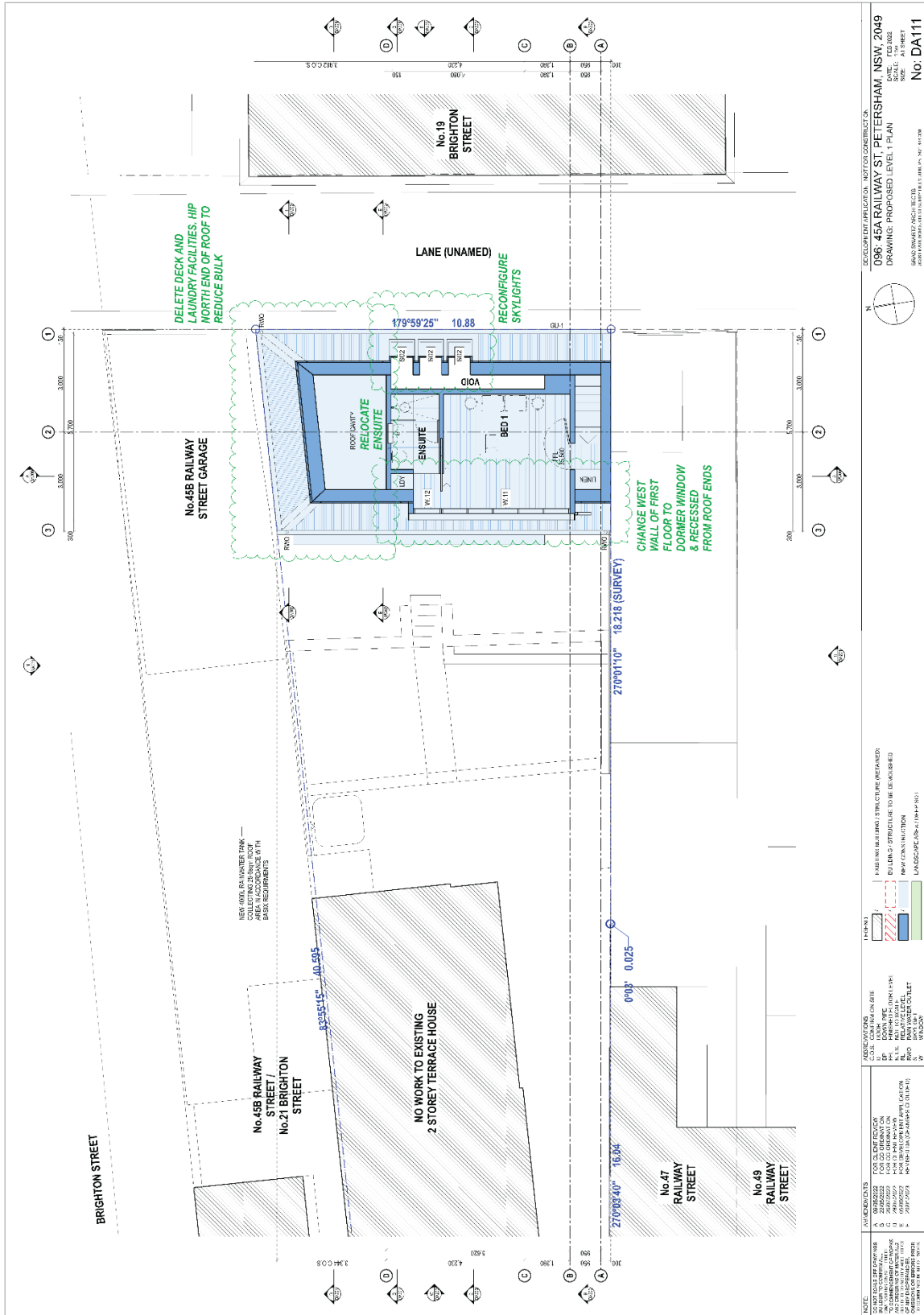
DEVELOPMENT APPLICATION - NOT FOR CONSTRUCTION
 098: 45A RAILWAY ST, PETERSHAM, NSW, 2049
 DRAWING: LANDSCAPE PLAN
 DATE: 17/06/2022
 SCALE: 1:100
 NO: DA051

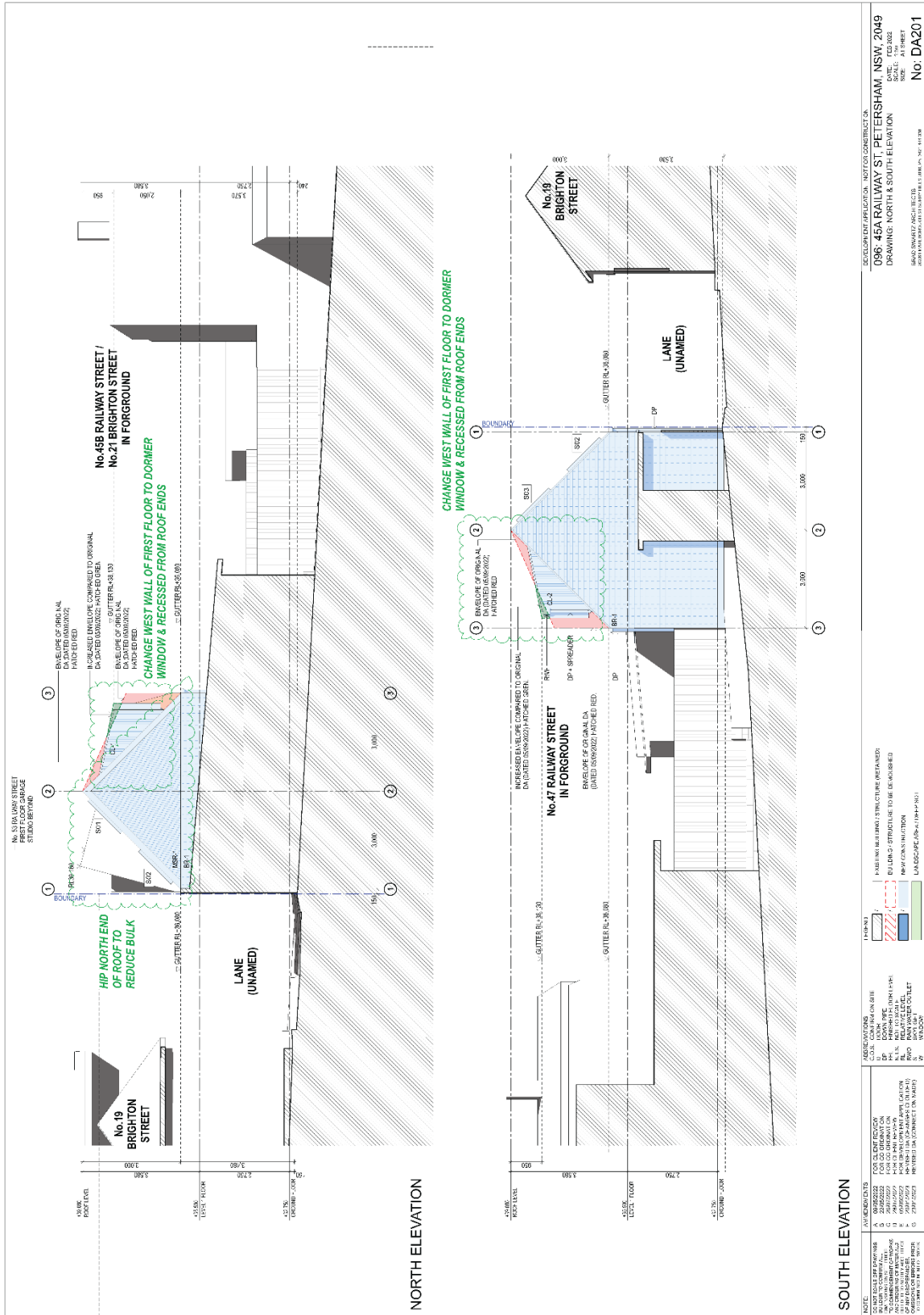


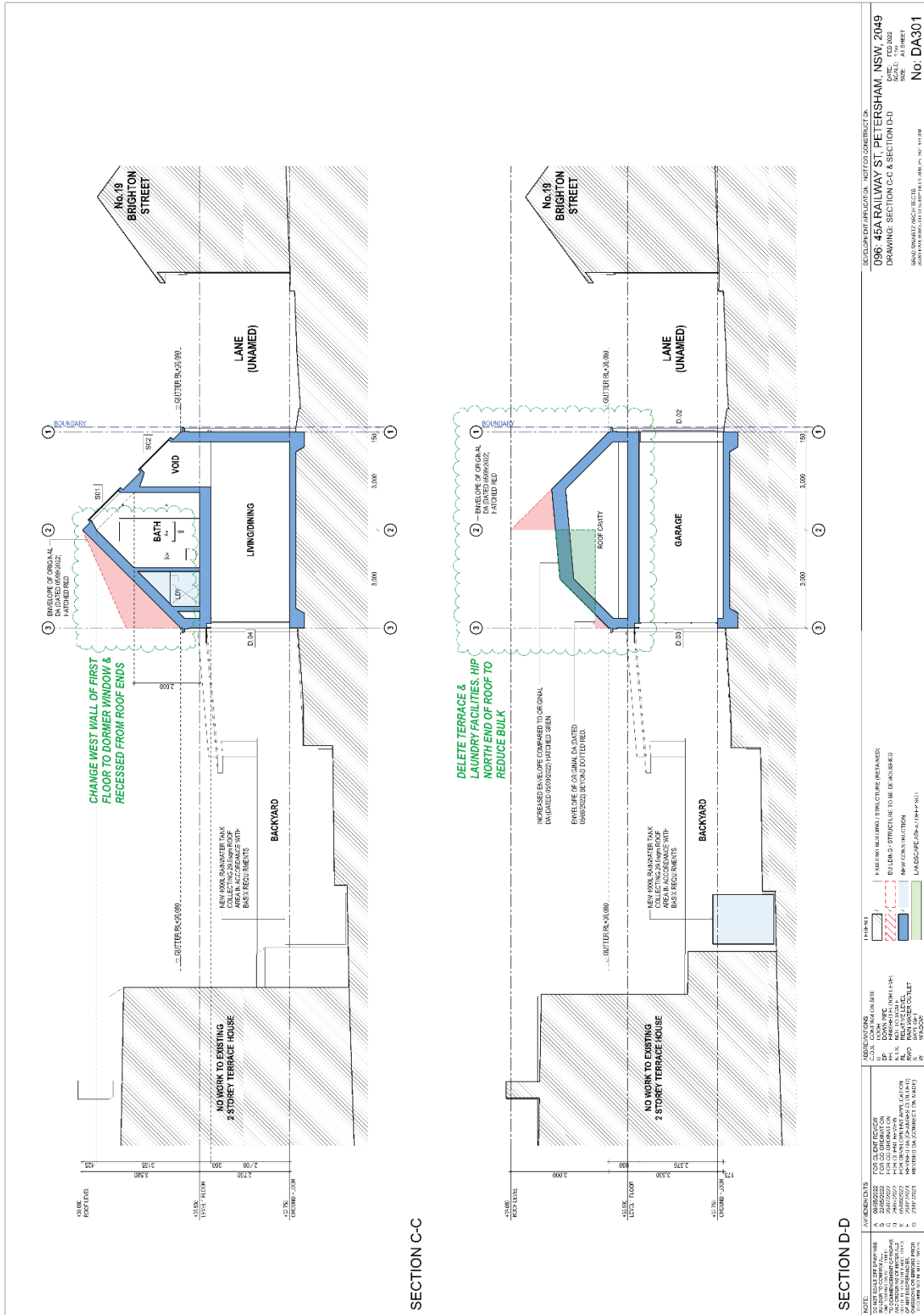
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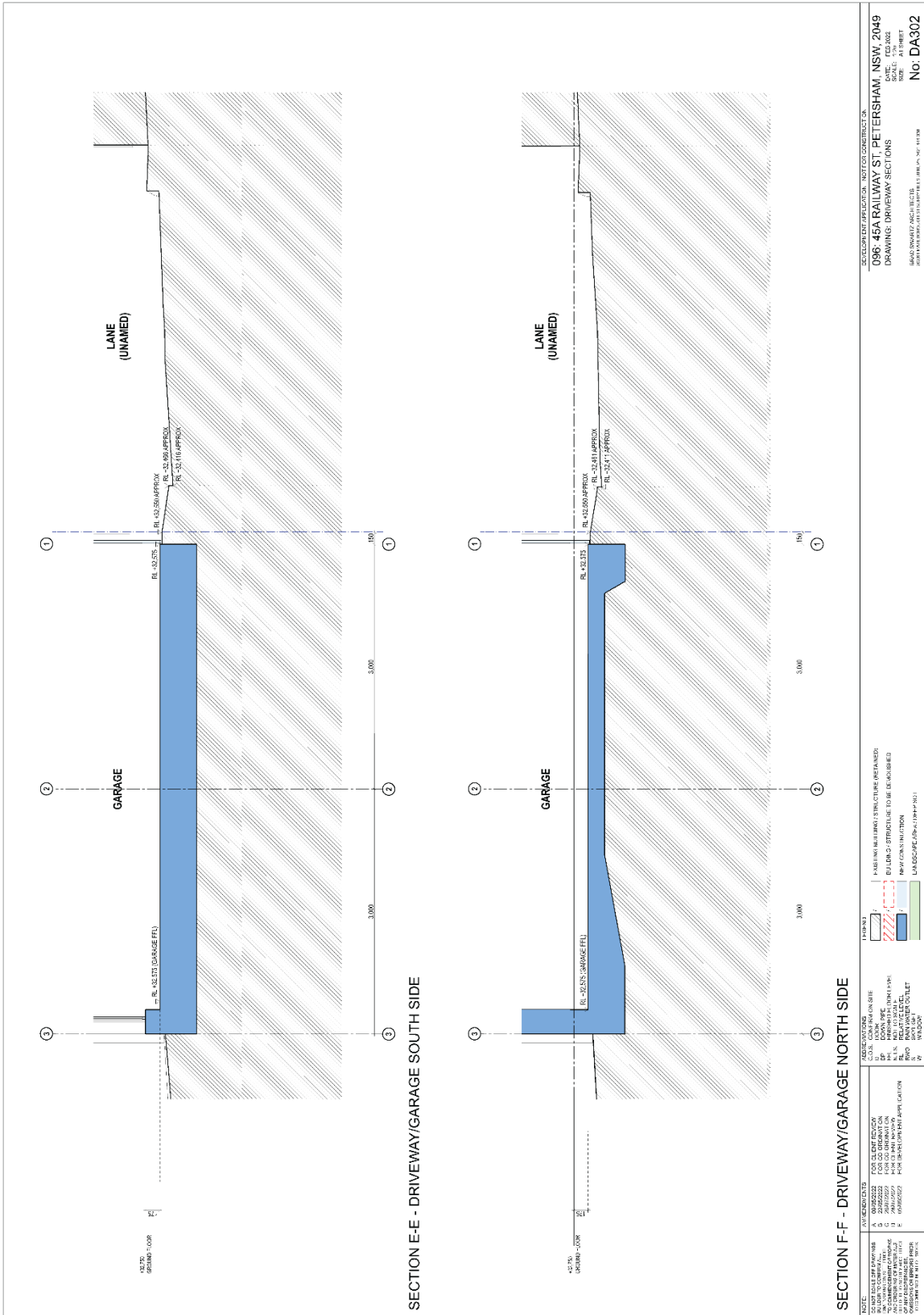
NOTE: THIS DRAWING IS FOR INFORMATION ONLY AND IS NOT TO BE USED FOR CONSTRUCTION. THE DRAWING IS THE PROPERTY OF THE DESIGNER AND WILL BE KEPT ON FILE. THE DESIGNER ACCEPTS NO LIABILITY FOR ANY ERRORS OR OMISSIONS. THE CLIENT ACCEPTS FULL RESPONSIBILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED. THE DRAWING IS VALID FOR 12 MONTHS FROM THE DATE OF ISSUE. ANY CHANGES TO THE DRAWING MUST BE APPROVED BY THE DESIGNER. THE DRAWING IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF THE DESIGNER.











SECTION E-E - DRIVEWAY/GARAGE SOUTH SIDE

SECTION F-F - DRIVEWAY/GARAGE NORTH SIDE

NOTE: THIS DRAWING IS FOR INFORMATION ONLY. IT IS NOT TO BE USED FOR CONSTRUCTION.

098: 45A RAILWAY ST, PETERSHAM, NSW, 2049
 DRAWING: DRIVEWAY SECTIONS
 SCALE: 1:50
 DATE: 15/08/2022
 NO: DA302

DEVELOPMENT APPLICATION - NOT FOR CONSTRUCTION ON

PROJECT NO: 2022/00000000
 PROJECT NAME: 45A RAILWAY ST, PETERSHAM, NSW, 2049
 PROJECT ADDRESS: 45A RAILWAY ST, PETERSHAM, NSW, 2049
 PROJECT CONTACT: 02 9550 1234
 PROJECT DATE: 15/08/2022

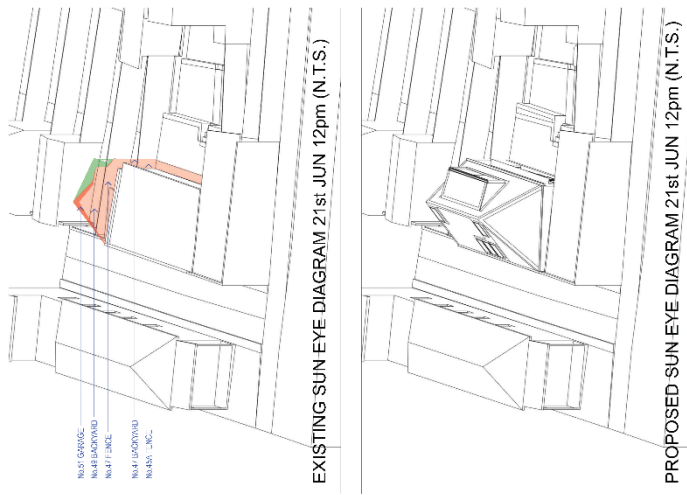
CLIENT: 45A RAILWAY ST, PETERSHAM, NSW, 2049
 PROJECT NO: 2022/00000000
 PROJECT NAME: 45A RAILWAY ST, PETERSHAM, NSW, 2049
 PROJECT ADDRESS: 45A RAILWAY ST, PETERSHAM, NSW, 2049
 PROJECT CONTACT: 02 9550 1234
 PROJECT DATE: 15/08/2022

DESIGNER: 45A RAILWAY ST, PETERSHAM, NSW, 2049
 PROJECT NO: 2022/00000000
 PROJECT NAME: 45A RAILWAY ST, PETERSHAM, NSW, 2049
 PROJECT ADDRESS: 45A RAILWAY ST, PETERSHAM, NSW, 2049
 PROJECT CONTACT: 02 9550 1234
 PROJECT DATE: 15/08/2022

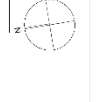
DATE: 15/08/2022
 SCALE: 1:50
 NO: DA302

LEGEND:
 1. EXISTING BUILDING STRUCTURE (PERMANENT)
 2. EXISTING BUILDING STRUCTURE TO BE DEMOLISHED
 3. NEW CONSTRUCTION
 4. LANDSCAPE (PERMANENT)
 5. LANDSCAPE (TEMPORARY)

SYMBOLS:
 1. EXISTING BUILDING STRUCTURE (PERMANENT)
 2. EXISTING BUILDING STRUCTURE TO BE DEMOLISHED
 3. NEW CONSTRUCTION
 4. LANDSCAPE (PERMANENT)
 5. LANDSCAPE (TEMPORARY)

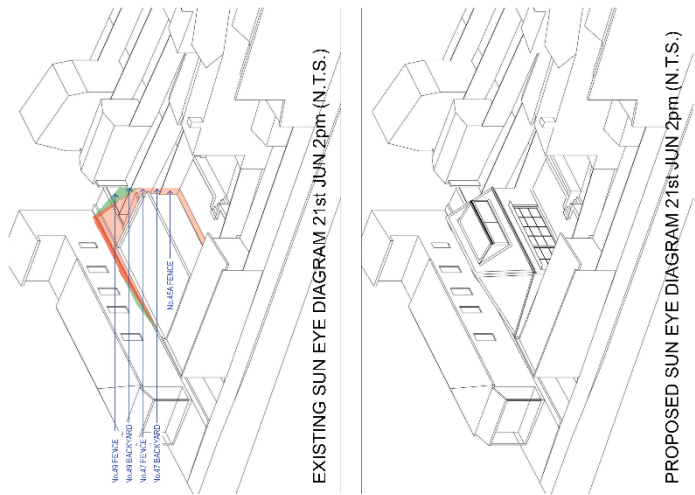


LEVEL 1 PLAN (APPLICATION NOT FOR CONSTRUCTION)
 096: 45A RAILWAY ST, PETERSHAM, NSW, 2049
 DRAWING: 1/2018
 DRAWING DATE: 21st JUNE 2018
 DRAWING NO: DA404



NOTES:
 1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
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 6. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
 7. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
 8. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
 9. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
 10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

LEGEND:
 1. EXISTING CONCRETE
 2. EXISTING BRICK
 3. EXISTING ROOF
 4. EXISTING FLOOR
 5. EXISTING WALL
 6. EXISTING CEILING
 7. EXISTING STAIR
 8. EXISTING PATIO
 9. EXISTING DRIVE
 10. EXISTING FENCE
 11. EXISTING GARDEN
 12. EXISTING TREE
 13. EXISTING POWER
 14. EXISTING WATER
 15. EXISTING GAS
 16. EXISTING TELEPHONE
 17. EXISTING CABLE
 18. EXISTING ANTENNA
 19. EXISTING SIGN
 20. EXISTING LIGHT



LEVEL 1 APPLICATION NO: 10/10/2018

096: 45A RAILWAY ST, PETERSHAM, NSW, 2049

DRAWING: 3/01

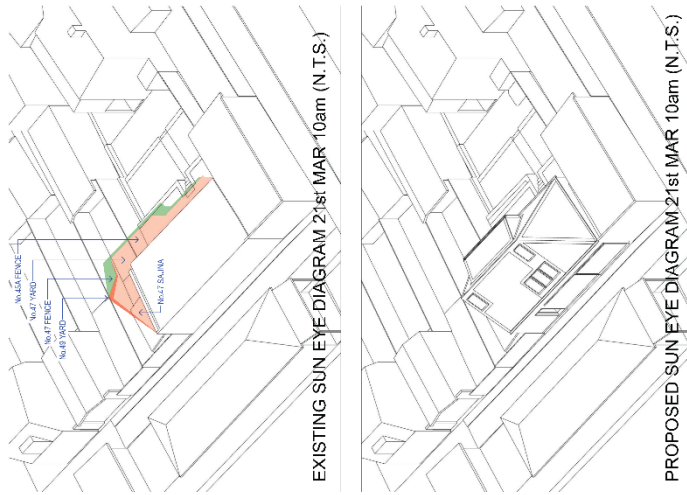
DATE: 21/06/2018

SCALE: 1:100

NO: DA406



- NOTES:
1. ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE SPECIFIED.
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
 3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
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 10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
- LEGEND:
- 1. EXISTING BUILDING FOOTPRINT
 - 2. EXISTING DRIVEWAY
 - 3. EXISTING DRIVEWAY
 - 4. EXISTING DRIVEWAY
 - 5. EXISTING DRIVEWAY
 - 6. EXISTING DRIVEWAY
 - 7. EXISTING DRIVEWAY
 - 8. EXISTING DRIVEWAY
 - 9. EXISTING DRIVEWAY
 - 10. EXISTING DRIVEWAY



LEVEL 1 APPLICATION NO: 100/2021/DCB1 (FUNCTION)
 096: 45A RAILWAY ST, PETERSHAM, NSW, 2049
 DRAWING: SHADOW DIAGRAMS - 21st MARCH
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 DATE: 21/03/2021
 NO: DA411



LEGEND - SHADOW DIAGRAMS
 INCREASED OVERSHADING COMPARED TO EXISTING
 REDUCED OVERSHADING COMPARED TO EXISTING
 UNCHANGED OVERSHADING COMPARED TO EXISTING
 EXCESS OVERSHADING CAUSED BY PROPOSED 47' TOWER (COMBINED TO 40' FOOT PITCH)

AWARD NUMBER: 100/2021/DCB1 (FUNCTION)
 DATE OF ISSUE: 21/03/2021
 PROJECT NAME: 45A RAILWAY ST, PETERSHAM, NSW, 2049
 DRAWING NO: DA411
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 DATE: 21/03/2021

NOTES:
 1. SHADOWS ARE SHOWN FOR 10AM ON 21st MARCH.
 2. SHADOWS ARE SHOWN FOR THE PROPOSED DEVELOPMENT.
 3. SHADOWS ARE SHOWN FOR THE EXISTING DEVELOPMENT.
 4. SHADOWS ARE SHOWN FOR THE EXISTING DEVELOPMENT.
 5. SHADOWS ARE SHOWN FOR THE EXISTING DEVELOPMENT.

Attachment C- Applicant's Heritage Statement

22 Waugoola Street
Gordon NSW 2072

The General Manager
Inner West Council

Attn: McKenzie Quigg
Assessment Planner
Phone: +61 2 9392 5847

Email: mckenzie.quigg@innerwest.nsw.gov.au

23 January 2023

Application number: DA/2022/0774

Proposal: Demolition of existing outbuilding at the rear of the site and construction of a 2 storey building comprising a garage and secondary dwelling

Property: 45A Railway Street, Petersham, NSW 2049

Dear Ms Quigg,

In response to your letter of 7 December 2022 to Brad Swartz Architects regarding the above Development Application (DA), I have been engaged by the owners of the subject site to provide an expert review of the heritage issues raised by council and the extent to which the amended application has satisfactorily resolved these to mitigate identified impacts.

Having reviewed the amended DA documentation by Brad Swartz Architects—which I understand is to be submitted to council today—and carried out an inspection of the site and its setting, I believe that the submission has satisfied the heritage issues identified and will be a sympathetic component of its laneway setting.

As shown in the accompanying set of images (taken from the amended DA documentation), the following changes have been made:

- Removal of the previous first floor terrace and incorporation of the whole of the first-floor area within the proposed new roof structure.
- Use of a traditional pitched roof with a hipped end facing the major thoroughfare views (north along Brighton Street) and gable at the south end adjoining the neighbouring property to minimize physical and visual scale/massing. Note: Given the variety of traditional hipped and gabled roof forms/pitches in the surrounding area, the form of the proposed new roof (determined by council's requirements as identified in their letter) was found to be both compatible with, and sympathetic to, its context. Indeed, the least successful of new infill developments sighted in the immediate setting were those with too shallow a hipped/gabled

roofs as well as the more awkward juxtapositions of non-traditional forms (such as number 53 Railway Street, shown in Figures 4 and 5 below).

- Incorporation of flush, roof-mounted skylights on the pitched roof facing the laneway to maintain visual dominance of pitched roof form.
- Simply detailed, 'eye-lid' dormer to roof facing into garden set back from the top of the ridge and roof ends to minimise impacts.
- Reduction of overall height and bulk to minimum specified by lowering ceiling and using roof space to provide as much living space as possible.

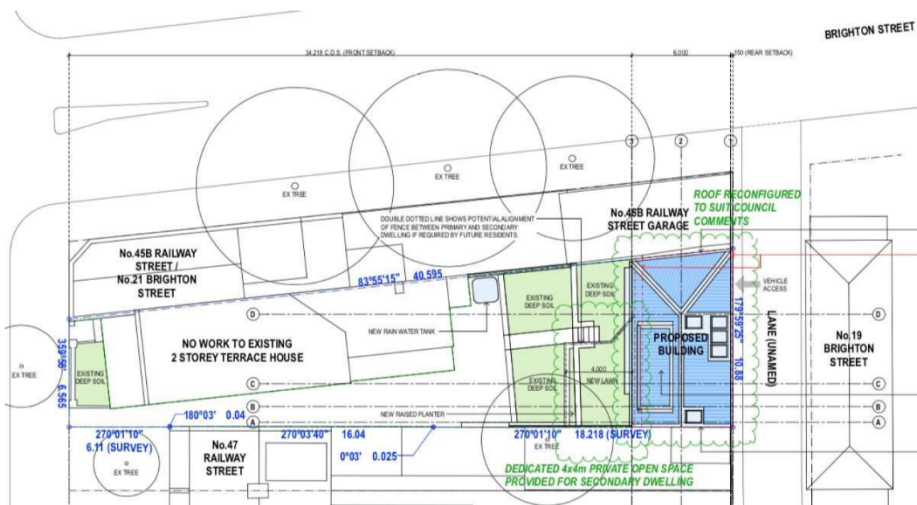


Figure 1. Amended plan with pitched roof, hipped at exposed north end following example of 19 Brighton Street on opposite side of laneway. (Ref: DA page 3/32)

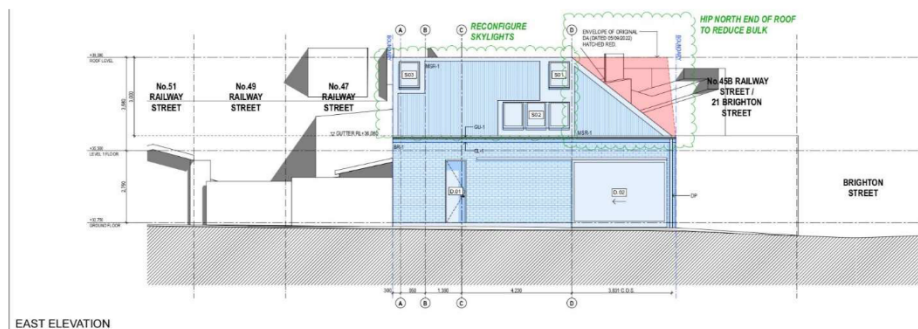


Figure 2. East elevation to laneway showing reduced bulk and scale of first floor addition (red area previously proposed has been removed) with hipped roof to north lowering overall scale and visual massing in views from the north and east. (Ref: DA page 10/32)

Superimposing these changes on the existing site elements to allow evaluation/comparison of the proposed new development to its setting, primarily along the laneway frontage and from the northeast, the amended documentation demonstrates its appropriate scale and sympathetic form within its context.

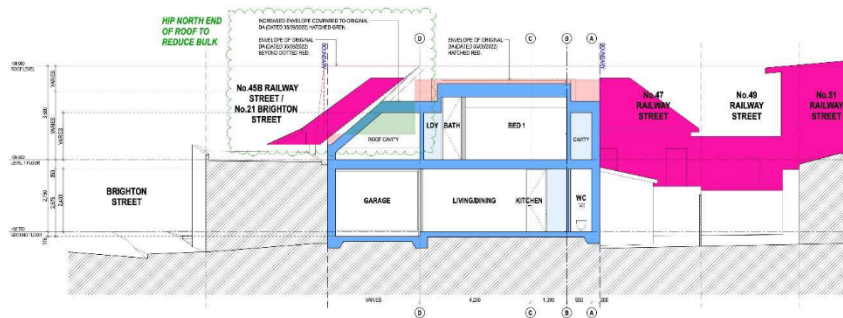


Figure 3. Cross section through proposed new development showing similar roof-forms of proposed new roof and existing dwelling (19 Brighton Street) on opposite side of laneway (shaded pink behind). (Ref: DA page 11/32)

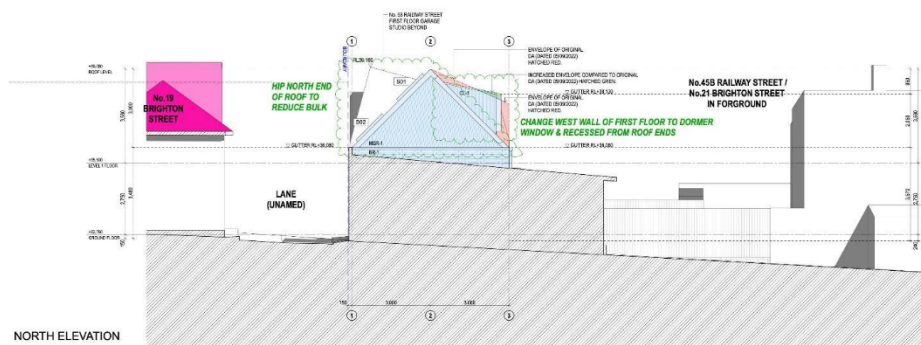


Figure 4. View from Brighton Street showing relative heights and massing of proposed development (blue) compared to form and height of 19 Brighton Street (pink) to east and 53 Railway Street (outlined) to the south. (Ref: DA page 12/32)

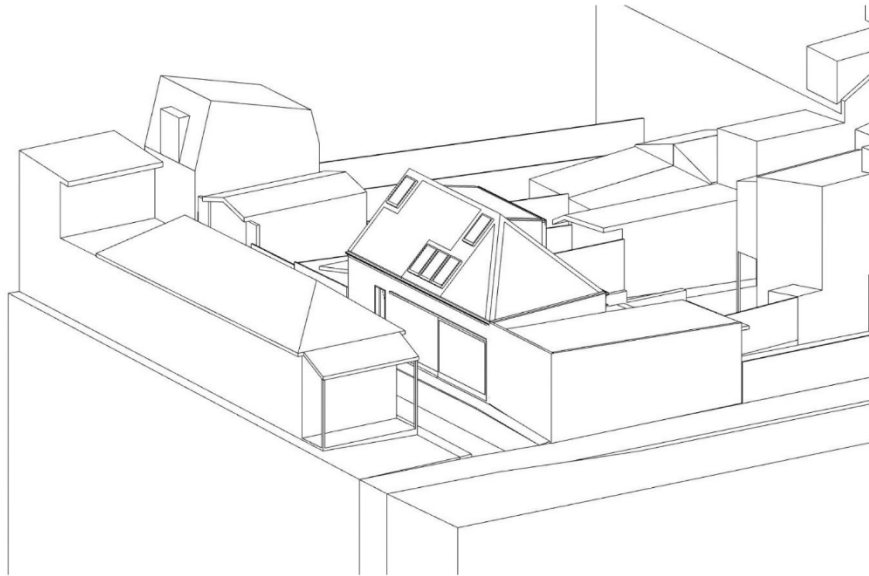


Figure 5. 'Bird's eye' view of relative form/massing of proposed development in context of its laneway frontage and the corner residence at 19 Brighton Street. Note: In actual street-level views the hipped end of the proposed new roof will significantly reduce its visibility—as shown by superimposing human scale views in Figure 3. (Ref: DA, page 17/32).

Conclusion

In conclusion, I believe that with the changes made to the previous DA, the current submission has successfully satisfied the heritage issues identified by council and has integrated these into a simply detailed and well-designed structure which will relate compatibly with its heritage and laneway setting.

I hope this brief report is of assistance to council in its assessment process.

Yours sincerely

Jyoti Somerville

Cc: Brad Swartz <brad@bradswartz.com.au>



Jyoti Somerville Senior Associate

Jyoti Somerville is an architectural conservation expert with over 30 years' experience in built heritage conservation. Her expertise is focused on heritage assessments and conservation policies for buildings and their settings, ranging from large complex sites to individual buildings.

Jyoti specialises in nineteenth to late twentieth century architectural heritage; groups of buildings and their settings; and the conservation of complex sites in urban and regional areas. She has a proven track record working with statutory bodies and public authorities to develop and resolve heritage issues and challenges. Jyoti's work encompasses 'hands-on' conservation including condition assessments and scheduling of works for repair/restoration and adaptation of public, private and institutional buildings and sites.

Jyoti has acted as a heritage adviser and trainer for local government and she has held a number of key positions in the heritage industry including Vice President of Australia ICOMOS.

Qualifications

Bachelor of Architecture (Honours), University of Sydney
 Bachelor of Science (Architecture), University of Sydney
 'Train the Trainer' Course, National Institute of Trainers and Assessors

Professional affiliations

Australia ICOMOS (International Council on Monuments and Sites)
 National Trust of Australia (Life Member)



'Why is it so?' The many answers to this question underlie the heritage consultant's work. By understanding the historical background, architectural character, structure, detailing and materials, an account of the past can be reconstructed to inform the present and future. For our present and future achievements stand or fall on our understanding of our past.

Key experience

Conservation management plans

- Eames House, Los Angeles, Conservation Management Plan—Client: Getty Institute
- Maitland Town Hall—Client: Maitland City Council
- Mercantile Hotel, The Rocks—Client: Sydney Harbour Foreshore Authority
- St David's Uniting Church, Haberfield—Client: St David's Uniting Church
- Spectacle Island, Sydney—Client: GHD Pty Ltd
- Ashton, 102 Elizabeth Bay Road, Elizabeth Bay—Client: Southern Cross Group
- Cockatoo Island Dockyard, Sydney Harbour—Client: Sydney Harbour Federation Trust
- Minda/Minali Juvenile Justice Centre, Former Superintendent's Residences, Lidcombe Hospital—Client: NSW Department of Public Works and Services
- McMaster Laboratory, Sydney—Client: University of Sydney
- The Priory, Gladesville—Client: NSW Department of Public Works and Services
- Police and Justice Museum, Phillip Street, Sydney—Client: NSW Department of Public Works and Services, Sydney

Heritage assessments

- Built Heritage Assessment, North Penrith Defence Site—Client: Department of Defence
- Various Residences, Victoria Barracks, Sydney—Client: Defence Housing Australia
- Forrester's Hotel, Surry Hills—Client: Giles Tribe Architects
- Former Administration Building, ADI Site, St Marys—Client: Delfin Lend Lease
- Catherine Hill Bay, Conservation Area—Client: Lake Macquarie City Council
- The Mall, Leura, Proposed Development—Client: Blue Mountains City Council, Leura
- Former Price Henry Hospital Site, Little Bay, Special Elements Conservation Policies for Flowers Ward Group, Nurses' Dining Hall, Motor Garage and Henry's Trading Post—Client: Landcom
- Lawson Town Centre—Client: Roads and Maritime Services (NSW) and Blue Mountains City Council
- Former Nurses' Home, Wollongong Hospital—Client: NSW Health Infrastructure



Architectural conservation

- Pitt Street Uniting Church, Sydney—Client: Pitt Street Uniting Church
- 'Yaralla', Dame Eadith Walker Hospital, Concord West—Client: Sydney Local Health Network
- Holsworthy Historic Ruins—Client: Department of Defence
- Hunter Baillie Memorial Presbyterian Church, Preliminary Architectural Survey and Conservation Recommendations
- Bathurst Uniting Church Hall (Former Wesleyan Church), William Street, Conservation Works—Client: Bathurst Uniting Church
- Minda/Minali Juvenile Justice Centre, Former Superintendent's Residence, Lidcombe Hospital, Schedule of Conservation Works—Client: NSW Department of Public Works and Service
- St David's Uniting Church Manse, Haberfield, Assessments and Schedules of Conservation Works—Client: St David's Uniting Church
- Police and Justice Museum, Phillip Street, Sydney, Conservation and Adaptation—Client: NSW Department of Public Works, Sydney

Heritage impact assessments

- Former Nurses' Home, Wollongong Hospital—Client: NSW Health Infrastructure
- Shoalhaven Hospital Cancer Centre—Client: NSW Health Infrastructure
- HMAS Watson, Sydney—Client: Department of Defence
- The Priory, Gladesville, Curtilage—Client: East Bay Investments
- Ashton, 102 Elizabeth Bay Road, Elizabeth Bay—Client: Southern Cross Group

Heritage advice

- RAAF Glenbrook Administration Building—Client: Department of Defence
- Dame Eadith Walker Hospital, Concord West, Conservation and Adaptation—Client: Sydney Local Health Network
- HMAS Watson Residences, Sydney—Client: Defence Housing Australia
- Victoria Barracks Landscape and Built Heritage—Client: Department of Defence

Heritage studies

- West Roseville Urban Conservation Area Study—Client: Ku-ring-gai Municipal Council
- Central Sydney Heritage Inventory Review Stage 5—Client: Council of the City of Sydney
- Holroyd Heritage Study—Client: Holroyd City Council and NSW Department of Planning

Professional background

Senior Associate, GML Heritage, August 2021–present
 Associate, GML Heritage, 2003–August 2021
 Visiting Lecturer, Masters of Heritage, University of Sydney, 1992–2006
 Director, Jyoti Somerville Pty Ltd, Architectural Conservation Consultants, 1990–2003
 Senior Conservation Architect, Travis Partners Pty Ltd, 1984–1990
 Architectural Design Tutor, University of Sydney, 1984
 Conservation Architect, Fisher Lucas Pty Ltd, 1979–1983

Honorary positions

Vice President, Australia ICOMOS (International Council on Monuments and Sites), 2000
 Religious Property Advisory Panel, Heritage Council of NSW (representing Australia ICOMOS), 2000–2002
 Religious Property Advisory Panel, Heritage Council of NSW (representing Australia ICOMOS), 1995–1999
 Architectural Advisory Panel, National Trust of Australia (NSW), 1995–1999

Selected lectures/papers

'Conserving Sydney's Cathedrals—St Andrews' and St Mary's', Reflections, National Trust of Australia (NSW), 2000
 'Religious Property and Local Government: The Local Government Perspective', in Tradition and Change—National Conference on the Heritage Conservation of Religious Property (1988), 2000
 Various Masters of Heritage Lectures: Heritage Advisors and Local Government and Development of Conservation Policies, University of Sydney, 1992–2007
 'Conservation in Country Towns', Conservation versus Consolidation Conference, National Trust of Australia (NSW), Sydney, 1995
 'Introduction to Building Conservation', National Trust of Australia (NSW) Regional Seminars on Building Conservation, Woodford Academy, 1992
 'Documentation for Conservation Projects', Professional Development Course for RAI (NSW Chapter), 1989
 'The Villas of Woolloomooloo Hill', lecture to Friends of Elizabeth Bay House, 1980
 'Architecture in Scandinavia', lecture to Department of Architecture, University of Sydney, 1979

Heritage short courses

'An Introduction to Heritage', Heritage Training Course for Council Officers, Hawkesbury City Council, 2000
 'Heritage Planning and Practice for Lismore City Council and Queanbeyan City Council', NSW Heritage Office, 1996 and 1998
 'Understanding and Working with Heritage Buildings', Heritage Seminar, Orange City Council, 1997
 'Heritage Conservation in Australia', ITP University, Bandung, Indonesia, 1996
 'How to, on Heritage', Professional Development Seminar for RAI (with M Knaggs) (NSW Chapter), 1996
 'Heritage and Local Government', Professional Development Seminar for RAI (NSW Chapter), 1996
 'Heritage and Local Government', Land Use Forum, Blue Mountains City Council, 1996
 'Heritage Conservation and Local Government', Heritage Training Course of Council Officers, Blue Mountains City Council, 1996

Specialist consultancies for heritage authorities

Heritage Council of NSW and Australian Heritage Commission Joint Accreditation for Heritage Assessments—Client: Heritage Council of NSW and Australian Heritage Council
 Review of Permanent Conservation Order Exemptions—Client: NSW Department of Planning and Environment

Attachment D – Section 4.6 Exception to Floor Space Ratio Development Standard

Appendix One - Clause 4.6 Exceptions to Development Standards Lot Size for a detached secondary dwelling 45A Railway Street, Petersham

Clause 4.6 of the Inner West Local Environmental Plan 2013 (IWLEP 2022) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* being:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

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Document Set ID: 37317261
Version: 1, Version Date: 25/01/2023



The aims and objectives of Inner West LEP 2022 Clause 4.6 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.

Under Clause 4.6(3) and (4) of the IWLEP 2022, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

(3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

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

(4)(a)(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,

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

1. Environmental Planning Instrument Details

1.1 What is the name of the environmental planning instrument that applies to the land?

State Environmental Planning Policy (Housing) 2021

1.2 What is the zoning of the land?

R2 – Low Density Residential
(Inner West LEP 2022)

1.3 What are the objectives of the zone?

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*



▪ To provide residential development that maintains the character of built and natural features in the surrounding area.

1.4 What is the development standard being varied?

Minimum lot size for detached secondary dwelling – 450m²
(SEPP (Housing) 2021)

1.5 Under what clause is the development standard listed in the environmental planning instrument?

Cl 53(2)(a) of SEPP (Housing) 2021

1.6 What are the objectives of the development standard?

The SEPP states at Clause 53(1):

The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

The assumed objective is to ensure that the lot has ample size to allow for reasonable amenity when a secondary dwelling is proposed.

1.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the lot size development standard applicable to the subject site is 450m².

1.8 What is proposed numeric value of the development standard in your development application?

The subject site has a lot size of 351.3m².

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation sought is 22%.



2. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

2.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

In the *Micaul* decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

2.2 *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe v Pittwater* [2007] NSW LEC 827 and demonstrate the following:



1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

2.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

2.4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone



objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

2.5 Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.



3. Consideration

The following section addresses the provisions of clause 4.6 of the IWLEP 2022 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - *Wehbe v Pittwater*

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*

The objectives of clause 53 of SEPP (Housing 2021) is

The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

Comment

The proposed development does not comply with the development standard and so Council is not prevented from requiring more onerous standards. The development however meets the requirements in relation to neighbour amenity and the amended plans demonstrate an increased compatibility with the streetscape of the Lane. Generally utilising the existing building footprint, and noting that the proposed secondary dwelling is able to meet the open space requirements, the variation to the 450sqm lot size does not prevent the site from providing an appropriate level of amenity for the secondary dwelling. Council have the power to approve the development, notwithstanding the proposed variation.

The assumed objective is:

To ensure that the lot has ample size to allow for reasonable amenity when a secondary dwelling is proposed.



Comment

The lot size variation will have no impact on the ability of the site to achieve ample amenity and retain the same level of impact as a lot which was 450m². The existing footprint is generally being utilised, with only a very small increase to ensure appropriate depth for parking. The upper level floor area is contained within a traditional roof space and dormer.

It is therefore considered this objective is met, despite the numerical variation.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).

This exception to development standards request does not rely on this reason.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).

This exception to development standards request does not rely on this reason.

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

This exception to development standards request does not rely on this reason.

5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the lot size for a detached secondary dwelling control pursuant to the First Way outlined in Wehbe.

Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the



Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*. In particular:

Context

- The variation will result only a very minor built footprint than existing. The floor space is generally able to be contained within the footprint of the existing garage and studio, with the upper level amended to be largely within a traditional pitched roof form.
- The site will remain consistent with the character of the locality, despite the variation to lot size, with the site presenting as floor space within the roof form from the Lane frontage.
- The site is notably larger than most other allotments in the street and near vicinity. Being nearly double the typical lot size in this part of Railway Street, the site has sufficient space to accommodate both a primary and secondary dwelling.

Future Development

- The proposed development will allow for the provision of a desirable affordable housing for the Petersham locality generally within the footprint of an existing structure.
- This represents an efficient use of an existing developed site, with all services readily available.
- The built form proposed is consistent with other buildings in the locality, and the site is noticeably larger than others in the street, ensuring greater capacity of the site to minimize impact upon neighbors.
- Given the site context, the proposed variation does not result in any unreasonable impacts to neighbouring properties.
- The proposed works will not hinder any future development of the lot,
- The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for low density residential development in a residential zone, with a bulk and scale consistent with the locality. Compliance with the lot size for detached secondary dwellings standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The proposed development allows for the current and future housing needs of the



residents to be met, without developing a greenfield site, representing an efficient use of existing developed land.

- The development does not require the removal of any native trees,
- The proposal allows for environmental impacts to be minimised, by locating works on an already disturbed residential lot and almost entirely within the existing building footprint.
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with CI 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the development standard will have a positive social impact, as it will provide affordable housing. It utilizes existing services, satisfying CI1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.

The variation to the lot size for detached secondary dwellings standard and the discussion above reflects the unique circumstances for the subject site and proposed development. The proposed development will not present out of character with neighbouring sites and utilises an existing building on site.

By supporting this variation, in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, consistent with developments within the locality.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see CI 4.6(3)(A)).

An assessment of consistency with the objectives of the Zone is provided below:



Zone – R2 Low Density Residential

Objectives of zone

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

Consistent. The proposed works will allow the current and future housing needs of the residents and the local community to be met in their current local community.

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

Consistent. The proposal will not compromise the ability of the locality to provide for the day to day needs of residents.

- *To provide residential development that maintains the character of built and natural features in the surrounding area.*

The presentation of the secondary dwelling to the Lane is consistent with other development in the Lane and the design of floor space being contained within a traditional roof form is complimentary to the character of the locality in general.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in



section 1.3 of the Act

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

Strict numerical compliance with the 450m² lot size for detached secondary dwellings standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

The proposed development including a secondary dwelling on land zoned R2 – Low Density Residential is appropriate and reasonable for the following reasons:

- The proposed development is contained largely within the existing footprint and additional floor area has been contained within the roof form. It does not present with excessive bulk and is of a consistent scale to surrounding properties. The proposal will not result in any unreasonable impacts upon neighbours.
- The site is significantly larger than others in the street and both a primary and



secondary dwelling are appropriately located on the site within minimal neighbour impact.

- The works proposed will allow the housing needs of the residents and the community to be met with the provision of affordable housing,
- The objectives of the R2 zone can be met despite the numerical variation.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6. The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the lot size variation.

The proposal is consistent with the surrounding context where there are a number of primary dwellings on small sites of between 150 – 200sqm. Requiring a minimum of 450sqm for inclusion of a secondary dwelling in this context would be unreasonable.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 of the Inner West LEP 2022 and Clause 53 of SEPP (Housing) 2021, and therefore the merits of the proposed variation are considered to be worthy of approval.

Attachment E – Section 4.6 Exception to Minimum Lot Size for Secondary Dwellings

Clause 4.6 Exceptions to Development Standards Floor Space Ratio 45A Railway Street Petersham

• Introduction

Clause 4.6 of the Inner West Local Environmental Plan 2022 (IWLEP 2022) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) being:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

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The aims and objectives of the Inner West LEP 2022 Clause 4.6 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.

Under Clause 4.6(3) and (4) of the IWLEP 2022, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

(3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

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

(4)(a)(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,

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

It is of interest that the consent authority specifies a number of development standards that cannot be varied under Clause 4.6, listed in Clause 4.6(8). Clause 4.4 – Floor Space Ratio is not one of the standards excluded, it must therefore be assumed that the standard for FSR, is one of the development standards that can have an appropriate degree of flexibility applied under clause 4.6.

• Environmental Planning Instrument Details (Inner West LEP 2022)

.1 What is the name of the environmental planning instrument that applies to the land?

Inner West Local Environmental Plan 2022

.2 What is the zoning of the land?

R2 Low Density



.3 What are the objectives of the zone?

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide residential development that maintains the character of built and natural features in the surrounding area.*

.1 What is the development standard being varied?

The floor space ratio control under clause 4.4 of the IWLEP 2022

.2 Under what clause is the development standard listed in the environmental planning instrument?

Clause 4.4 – Floor Space Ratio

.3 What are the objectives of the development standard?

The objectives of this clause are as follows:

- (a) to establish a maximum floor space ratio to enable appropriate development density,*
- (b) to ensure development density reflects its locality,*
- (c) to provide an appropriate transition between development of different densities,*
- (d) to minimise adverse impacts on local amenity,*
- (e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.*

.4 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the Floor Space Ratio development standard applicable to the subject site is a maximum of 0.6:1.

.5 What is proposed numeric value of the development standard in your development application?

The site is mapped with a maximum FSR of 0.6:1. This equates to a maximum floor area of 210.7m² for the site area of 351.2m².



The development proposes a maximum Floor Space Ratio of 0.7:1 (246.3m²), which equates to a breach of 35.6m².

The existing FSR of the site is 0.58:1 (205.3m²).

.6 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation between the proposal and the environmental planning instrument is 16% or 35.6m².

• NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

.1 Wehbe v Pittwater [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater [2007] NSW LEC 827*, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
- 3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
- 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*



5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

In the Micaul decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in Wehbe) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

.2 Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each, but it is not essential.

.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

.4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:



1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

.5 Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.

• Consideration

The following section addresses the provisions of clause 4.6 of the IWLEP 2022 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in Winten v North Sydney Council and expanded by Justice Preston in Wehbe v Pittwater [2007] NSW LEC 827 is considered:



The five ways outlined in *Wehbe* include:

.1 Five (5) Part Test - Wehbe v Pittwater

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*

It is considered that the proposal is consistent with the objectives of the standard for the following reasons:

(a) to establish a maximum floor space ratio to enable appropriate development density,

Appropriate development density is achieved the proposal results in only a primary dwelling and a secondary dwelling, and the amount of additional floor space is minor. As Clause 4.4 2(c) applies the site is only 1.2sqm over the threshold that restricts FSR to 0.6:1. This negligible amount of additional site area prevents what would otherwise be considered to be compliant and appropriate density being achieved on the site. It would be unreasonable to require compliance in these circumstances.

(b) to ensure development density reflects its locality,

The 351.2sqm site is located in an area where lot sizes are much smaller, typically 170sqm. See below Aerial Photo. The larger lot provides additional spatial separation from its smaller neighbours, and the additional floor space is adjacent to the rear lane and separate from the primary dwelling. This means that the additional floor space is separated on the site rather than concentrated as part of the primary dwelling, allowing neighbour amenity to be maintained. The additional width of the site at the rear lane frontage also assists in providing good separation for neighbours.





(c) to provide an appropriate transition between development of different densities,

The subject site is located within an area having consistently much higher density provisions, up 1:1 where lots are much smaller at <200sqm. The site is not transitional to another lesser floor space provision.

(d) to minimise adverse impacts on local amenity,

The additional 35.6sqm of floor space will not have adverse impacts upon the local amenity as is outlined in the accompanying Statement of Environmental Effects.

(e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.

The use and enjoyment of private properties is not compromised by the proposed additional floorspace and no trees or landscaping will be removed. The site retains capacity to increase the tree canopy on the site.

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*

This exception to development standards request does not rely on this reason.

3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*

This exception to development standards request does not rely on this reason

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

This exception to development standards request does not rely on this reason.

5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is,*



the particular parcel of land should not have been included in the particular zone (Fifth Way).

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the FSR control pursuant to the First Way outlined in Wehbe.

Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

4.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

- The site area is only 1.2sqm over the threshold that permits the higher FSR. The addition 1.2sqm of site area is prejudicial to achieving appropriate density that will fit comfortably with surrounding allotments which have far higher FSR permitted. Requiring compliance would be unreasonable given the minor exceedance of the 350sqm threshold, and is unnecessary because the site is easily able to mitigate any impact arising from the additional floor space.
- To require compliance with 0.6:1 FSR in these circumstances would be contrary to the Clause 1.3(c) of the Act to *promote the orderly and economic use and development of land.*

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone ensuring that appropriate and reasonable housing suitable for the local community is proposed. Compliance with the development standard based on this would be unreasonable.

Natural Environment

- The inclusion of the FSR variation to facilitate the proposed development has no impact on the natural environment. The proposal results in negligible loss of landscape area. The natural environment is unaffected by the small departure from the development standard, and it would be unreasonable for the development to be refused on this basis.



Environmentally Sustainable Development

- The proposal represents an environmentally sustainable design satisfying Cl1.3(f) of the Act. Compliance with the development standard based on this would be unreasonable.

Social and economic welfare

- The variation to the FSR as detailed above will have no social impacts for the site or local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.
- The variation to the FSR as detailed above will have no economic impacts for the site or the local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.
- The variation does not result in a building bulk beyond that which is found in the immediate context, with neighbouring dwellings of a similar bulk and scale. The variation will be compatible within the context in which it sits and is reasonable in the circumstances of the case satisfying Cl1.3(c). Compliance with the development standard based on this would be unreasonable.
- Removal of the non-compliance would not alter the perceived bulk and scale due to the very minor additional land area that causes the non-compliance (1.2sqm).

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the floor space ratio variation.

4.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.



The proposed development is consistent with the objectives of the standard (see CI 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

Zone – R2 Low density residential

Objectives of zone

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

Consistent. The proposal provides valuable affordable housing options whilst remaining appropriate to a low density environment.

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

Consistent. The proposed secondary dwelling does not prevent the low density zone from achieving a variety of land uses providing services and facilities for the residents.

- *To provide residential development that maintains the character of built and natural features in the surrounding area*

Consistent. There will be no adverse impact on the character of the Conservation Area, the adjacent Heritage item, or the streetscape of either Railway Street or the rear lane as a result of the proposed secondary dwelling.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard. The variation is reasonable, not easily discernible from any viewpoint and has no adverse impact on the public domain.

Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in



section 1.3 of the Act

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

As proposed the development allows for all of the above objects to be achieved. In particular it is noted that compliance with the standard would not be consistent with the requirements for promoting orderly and economic development.

The utilisation of the rear yard area to provide a secondary dwelling which contributes positively to the social needs of the community whilst being aesthetically appropriate in the immediate locality is a positive environmentally sustainable result.

Strict compliance with the FSR development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment.*



Conclusion

The proposed development is for construction of a secondary dwelling and new garage on land zoned R2 Low Density Residential.

The proposed development will present as contributory to the streetscape of the lane and does not present with excessive bulk to surrounding properties. There will not be any view loss and solar access is fully compliant with Council controls. Amenity is retained for all neighbours.

Strict numerical compliance is considered to be unnecessary and unreasonable given the minor exceedance of the site area requirement (1.2sqm). The proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6.

The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.4, and therefore the merits of the proposed variation are considered to be worthy of approval.