





 DEVELOPMENT ASSESSMENT REPORT				
<b>Application No.</b>	DA/2022/0879			
<b>Address</b>	595 King Street NEWTOWN			
<b>Proposal</b>	Alterations and additions to existing shop top housing including additional unit and rooftop open space.			
<b>Date of Lodgement</b>	17 October 2022			
<b>Applicant</b>	JRU Partnership			
<b>Owner</b>	JLV Properties Pty Ltd Romeli Property Group Pty Ltd Unicorn Projects Pty Ltd			
<b>Number of Submissions</b>	Initial: 0			
<b>Value of works</b>	\$246,729.00			
<b>Reason for determination at Planning Panel</b>	Section 4.6 variation exceeds 10%			
<b>Main Issues</b>	<ul style="list-style-type: none"> <li>• Breach of height of building development standard</li> <li>• Breach of floor space ratio development standard</li> <li>• Heritage and Streetscape</li> <li>• Internal amenity</li> </ul>			
<b>Recommendation</b>	Refusal			
<b>Attachment A</b>	Reasons for refusal			
<b>Attachment B</b>	Plans of proposed development			
<b>Attachment C</b>	Section 4.6 Exception to Development Standards			
<b>Attachment D</b>	Statement of Heritage Significance			
<b>Attachment E</b>	Conditions of consent in the event of approval			
<b>Attachment F</b>	Plans of proposed development without height breach (not assessed - for comparison only)			
 <p>Figure 5: Locality Map</p>				
Subject Site		Objectors		 N
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to existing shop top housing including an additional unit and rooftop open space at 595 King Street NEWTOWN.

The application was notified to surrounding properties and no submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Breach with height of building development standard
- Breach with floor space ratio development standard
- Heritage and Streetscape
- Internal amenity

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

## 2. Proposal

### Ground Floor:

Provision of two communal open space areas

### Level 1 and Level 2:

Addition of privacy screening to bedroom window facing lightwell

### Level 3:

- Addition of one 1-bedroom apartment (50.2sqm) at the front with balcony facing King Street,
- Changes to central lobby staircase and lift to allow access to a new rooftop communal open space located above proposed additional apartment.
- Upwards extension of green wall within lightwell.

### Roof Level:

- New communal open space over additional apartment, and
- Addition of lift and staircase to access roof terrace.

## 3. Site Description

The subject site at 595 King Street Newtown is located on the western side of King Street, between Darley Street and Darley Lane. The site consists of one allotment and is generally rectangular in shape with a total area of 229.5sqm and is legally described as Lot B in Deposited Plan 443127.

The site has a frontage to King Street of 7.24 metres and a secondary frontage of 6.795 metres to Maria Lane.

The site supports a part 3 (front) and part 4 (rear) storey shop top housing development. Properties in the vicinity along King Street support predominantly a variety of two to four storey mixed use developments.

The subject site is not listed as a heritage item however is located within a Heritage Conservation Area (HCA).



Figure 6: Zoning map

## 4. Background

### 4(a) Site history

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

#### Subject Site

Application	Proposal	Date & Decision
PDA201600029	to carry retain the front façade and ground floor shop and construct a 4 storey development comprising 1 commercial tenancy and 8 residential units	24/06/2016 Issued
DA201600565	to retain the front façade and ground floor shop and construct a 4 storey development comprising 1 commercial tenancy and 5 residential units	08/05/2017 Refused
DA201600565.01	under Section 82A of the Environmental Planning and Assessment Act to review Determination No. 201600565 dated 8 May 2017 to retain the front façade and ground floor shop and construct a 4 storey development comprising 1 commercial tenancy and 5 residential units	13/10/2017 Refused by IWLPP  15/06/2018 Application approved after s34 Conciliation Conference and agreement between parties (amended plans)

## Surrounding properties

Application	Proposal	Decision & Date
<b>Site: 601-603 King Street</b>		
DA201600669.01	under Section 4.55 of the Environmental Planning and Assessment Act to modify Determination No.201600669 dated 26 May 2017 to delete condition 90 relating to the provision of undergrounding powerlines	29/10/2018 Approved
DA201600669	to demolish the rear part of the building, retaining the existing façade, construction of a 4 storey 16 room boarding house and reconfiguration of the existing ground floor commercial tenancy	26/05/2017 Approved
<b>Site: 609 King Street</b>		
DA200500049	to demolish part of the premises and carry out alterations and additions to create a four storey building containing a ground floor shop and 4 x 1 bedroom and 4 x 2 bedroom dwellings with off street car parking for 4 vehicles	08/09/2005 Deferred Commencement  Operative Consent effective from 25 May 2006

## 4(b) Application history

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

Date	Discussion / Letter / Additional Information
16/02/2023	<p>Council issued a letter recommending withdrawal of the application based on the following issues:</p> <ul style="list-style-type: none"> <li>• Significant breach with development standards</li> <li>• Non-compliance with massing and setback controls</li> <li>• Impacts and heritage conservation area and streetscape</li> <li>• Internal (on-site) amenity</li> <li>• Non-compliance with clause 6.9 <i>IWLEP 2022</i> (Design Excellence)</li> </ul> <p>However, Council advised the applicant that, should they wish to respond to the issues, amended plans and/or additional information could be submitted.</p>
17/02/2023	Council officers met with the applicant to discuss the issues raised in the letter issued on 16/02/2023.
09/03/2023 – 13/03/2023	<p>The applicant submitted amended plans that entailed the following relevant design changes:</p> <ul style="list-style-type: none"> <li>• Increased front setback of roof top terrace balustrade,</li> <li>• Provision of BBQ, shading device, seating arrangement and planter boxes on roof top terrace,</li> <li>• Addition of privacy screening to bedroom windows facing internal lightwells, and</li> </ul>

	<ul style="list-style-type: none"> <li>• Addition of two smaller communal open space areas on ground floor.</li> </ul> <p>In addition, the applicant submitted an amended clause 4.6 for the breaches with the height of buildings and floor space ratio development standards and a street view analysis showing the amended proposal from different vantage points from King Street.</p> <p>In addition, the applicant submitted additional plans (for comparison only) showing the proposal with an open staircase and platform lift at roof level, which does not breach the maximum height of 14 metres.</p>
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## 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 No. 65—Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Industry and Employment) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*

The following provides further discussion of the relevant issues:

#### 5(a)(i) **State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development**

The development is subject to the requirements of *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65)*. *SEPP 65* prescribes nine design quality principles to guide the design of residential apartment development and to assist in assessing such developments. The principles relate to key design issues including context and neighbourhood character, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction and aesthetics.

A statement from a qualified Architect was submitted with the application verifying that they designed, or directed the design of, the development. The statement also provides an explanation that verifies how the design quality principles are achieved within the development and demonstrates, in terms of the Apartment Design Guide (ADG), how the objectives in Parts 3 and 4 of the guide have been achieved.

The development is not acceptable having regard to the nine design quality principles and is therefore recommended for refusal. The proposal is not considered to meet the following design quality principles.

*Principle 1: Context and Neighbourhood Character*

The initial design was reviewed by Council's Architectural Excellence Design Review Panel (AEDRP). At this meeting the AEDRP reviewed the architectural drawings and considered that the development

*In terms of architectural expression,...the proposal is not consistent with the predominant streetscape character of the buildings along King Street. The Panel considers the proposed built form addition to be problematic since the party walls will be highly visible from the surrounding public domain and nearby development, particularly from oblique viewing angles.*

*Principle 2: Built Form and Scale*

The proposal is not compliant with the requirements and intention of principle 2, which seeks development to define the public domain, contribute to the character of streetscapes and provide internal amenity and outlooks.

Concerns are raised with the following elements of the current scheme:

- a. A 14m LEP height limit applies to the site and the proposal breaches the height limit by 2.54m or 18.14%, which suggests that the proposal is an overdevelopment for the site.
- b. The proposal does not comply with massing and setback controls contained in the Marrickville Development Control plan 2011 and the proposed setbacks and massing is inconsistent with the existing and desired future character of the area

*Principle 3: Density, Principle 4: Sustainability, and Principle 6: Amenity*

The proposal is not compliant with the requirements and intention of principles 3, 4 and 6 which seek development to achieve a high level of amenity for residents and each apartment, including the use of cross ventilation and sunlight, reducing reliance on technology and operation costs, visual and acoustic privacy, and indoor and outdoor space, resulting in a density that is inappropriate to the site and its context.

Whilst it is acknowledged that the approved, and existing, development, on the site breaches the FSR development standard and that an additional GFA of 50.2sqm is proposed, the proposed development results in a significant breach with the FSR development standard (i.e., 237.55sqm or 69.01%), which suggest that the proposal is an overdevelopment for the site.

The proposed additional unit is also considered to adversely impact upon the existing units. With regard to the above, the AEP provided the following comments:

- *The Panel has some significant concerns with the approved (now constructed) 3 storey building in terms of its planning configuration and residential amenity outcomes. The development application for a further addition of an apartment should not be supported as it will exacerbate these problems, as follows:*
  - *Highly internalised unit layouts with bedrooms relying on light-wells as the only source of daylight and natural ventilation.*
  - *Potential visual and acoustic privacy concerns with bedrooms opening onto the light-wells given adjacencies with other bedrooms located on the levels above and/or below. Furthermore, there are potential overlooking and acoustic privacy issues given the adjacency of the common corridor.*
  - *Open configuration for common staircase and corridors could be problematic as there are potential BCA compliance issues with regards to fire egress,*

- notwithstanding that Panel was advised by applicant that building is sprinklered. It was also noted that no fire hose reels were shown on the plans.*
- *The Panel noted the applicant's justification that bedroom windows are only secondary and the residents could rely on mechanical ventilation. This is not supported as the Panel would expect that all habitable areas would comply with the BCA for access to and the area requirements for have daylight and natural ventilation.*
  - *The communal open space provided on the rooftop is devoid of any amenity having no provision of landscaped areas, shade or any common facilities.*
  - *The Panel discussed that the rooftop area needs to incorporate rainwater drainage requirements which will impact amenity within the apartment below as bulkheads will be required within the apartment ceiling. As a consequence, a minimum 2.7m floor-to-ceiling height required by the NSW Apartment Design Guide (ADG) may not be achievable within the habitable areas of Unit 6.*

### *Principle 9: Aesthetics*

The proposal is not compliant with the requirements and intention of principle 9, which seek development to achieve design and built form that has good proportions and a balanced composition of elements. In addition, this principle requires that new development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

As outlined above, and elsewhere in this report, the proposed additions are visible from the public domain and not considered to be sympathetic with development in the streetscape and the existing and desired future character of the area.

### Apartment Design Guide

The Apartment Design Guide (ADG) contains objectives, design criteria and design guidelines for residential apartment development. In accordance with Section 6A of the SEPP, certain requirements contained within MDCP 2011 do not apply. In this regard the objectives, design criteria and design guidelines set out in Parts 3 and 4 of the ADG prevail.

The following provides further discussion of the relevant issues:

### Communal and Open Space

The ADG prescribes the following requirements for communal and open space:

- Communal open space has a minimum area equal to 25% of the site (i.e., 57.38sqm).
- Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).

Comment: Three areas of communal open space are depicted on the floor plans; two on ground level (5.5 and 8.5sqm) and one on the roof (48.7sqm). The three areas, combined, equate to 62.7sqm, which is 27% of the total site area.

However, the areas on the ground floor do not have a minimum dimension of 3 metres (2.6 x 2 metres and 2 x 4.3 metres) and are not considered to be usable, attractive and inviting for a range of activities, noting that these areas are thoroughfares to access the parking and bin areas at the rear, the lift and stairs to the existing dwellings and the toilets on the ground level, which are also used by the ground floor shop.

However, the communal open space on the roof top, in terms of size, is considered adequate for the six units on the site and the roof top terrace receives adequate solar access. In addition, the communal open space on the roof top includes BBQ facilities, seating and planters to provide amenity to users. While a shading device is proposed, this is small in size and not considered to provide reasonable shading. As outlined above, any additional, or larger, shading devices are considered to be visible from the public domain and shading devices will breach the maximum height of buildings prescribed under the *IWLEP 2022*.

Deep Soil Zones

The ADG prescribes the following minimum requirements for deep soil zones:

Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)
Less than 650m <sup>2</sup>	-	7%
650m <sup>2</sup> - 1,500m <sup>2</sup>	3m	
Greater than 1,500m <sup>2</sup>	6m	
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	

Comment: The development requires 16.1sqm of a deep soil zone (being 7% of the site area). No deep soil zones are accommodated within the development.

This non-compliance is acceptable in principle, noting existing site constraints of the site; being located within an existing building, in a relatively dense commercial precinct and on a relatively small and narrow lot.

Visual Privacy/Building Separation

The ADG prescribes the following minimum required separation distances from buildings to the side and rear boundaries:

Building Height	Habitable rooms and balconies	Non-habitable rooms
Up to 12 metres (4 storeys)	6 metres	3 metres
Up to 25 metres (5-8 storeys)	9 metres	4.5 metres
Over 25 metres (9+ storeys)	12 metres	6 metres

Comment: The application proposes the following building separation distances to the surrounding sites:

- A nil separation distance to the mixed-use and commercial buildings to the north and south of the site; and
- No change to the rear boundary.

The non-compliance to the south and north boundaries is reasonable for the following reasons:

- King Street is a commercial/mixed-use precinct with a predominantly nil side setback character.
- The development is consistent with the predominant setback character of the streetscape;



- In view of the above, the provision of any side setbacks would be detrimental to the urban design outcome of the streetscape; and
- The provision of any significant side setbacks for the lot would constrain any form of residential development on the site given the minimum ADG requirements for internal amenity and layouts.

In view of the above, the application is acceptable in principle having regard to building separation between buildings on neighbouring sites under the ADG. However, given the outstanding planning issues raised throughout the main body of this report, refusal of the application is recommended.

The ADG prescribes the following minimum required separation distances from buildings within the same site:

Room Types	Minimum Separation
Habitable Rooms/Balconies to Habitable Rooms/Balconies	12 metres
Habitable Rooms to Non-Habitable Rooms	9 metres
Non-Habitable Rooms to Non-Habitable Rooms	6 metres

The bedroom of the proposed additional unit is separated by approximately 4.9 metres from the wall of the internal lift; hence, the proposal does not comply with the minimum separation. As outlined above, the separation is considered to result in visual (and acoustic) privacy concerns with the bedrooms opening onto the light-wells. While the privacy screening that is proposed to all bedroom windows facing the lightwells would mitigate adverse visual privacy impacts, the privacy screening will reduce the bedrooms access to daylight natural ventilation.

Solar and Daylight Access

The ADG prescribes the following requirements for solar and daylight access:

- Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9.00am and 3.00pm at mid-winter.
- A maximum of 15% of apartments in a building receive no direct sunlight between 9.00am and 3.00pm at mid-winter.

Comment: The proposed unit will not reduce existing solar access to the existing units and the proposed unit receives solar access in excess of two hours between 9am and 3pm during the winter solstice.

Natural Ventilation

The ADG prescribes the following requirements for natural ventilation:

- At least 60% of apartments are naturally cross ventilated in the first 9 storeys of the building. Apartments at 10 storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.
- Overall depth of a cross-over or cross-through apartment does not exceed 18 metres, measured glass line to glass line.

Comment: While all apartments are cross-ventilated, all units rely on the centrally located lightwell for access to air. The additional unit will reduce the efficiency of natural cross ventilation to all units as the lightwell is increased in height.

As such, the proposal is recommended for refusal.

Ceiling Heights

The ADG prescribes the following minimum ceiling heights:

<b>Minimum Ceiling Height</b>	
Habitable Rooms	2.7 metres
Non-Habitable	2.4 metres
For 2 storey apartments	2.7 metres for main living area floor 2.4 metres for second floor, where its area does not exceed 50% of the apartment area
Attic Spaces	1.8 metres edge of room with a 30 degree minimum ceiling slope
If located in mixed used area	3.3 for ground and first floor to promote future flexibility of use

Comment: The floor to ceiling height of the proposed unit is 2.7 metres, which complies with the ADG requirement.

Apartment Size

The ADG prescribes the following minimum apartment sizes:

<b>Apartment Type</b>	<b>Minimum Internal Area</b>
Studio apartments	35m <sup>2</sup>
1 Bedroom apartments	50m <sup>2</sup>
2 Bedroom apartments	70m <sup>2</sup>
3 Bedroom apartments	90m <sup>2</sup>

Note: The additional 1-bedroom unit has a floor area of 50.2sqm, which complies with the ADG requirement.

Apartment Layout

The ADG prescribes the following requirements for apartment layout requirements:

- Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.
- Habitable room depths are limited to a maximum of 2.5 x the ceiling height.
- In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8 metres from a window.
- Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space).
- Bedrooms have a minimum dimension of 3 metres (excluding wardrobe space).
- Living rooms or combined living/dining rooms have a minimum width of:
  - 3.6 metres for studio and 1 bedroom apartments.
  - 4 metres for 2 and 3 bedroom apartments.
- The width of cross-over or cross-through apartments are at least 4 metres internally to avoid deep narrow apartment layouts.

Comment: The proposed apartment meets the minimum requirements prescribed in the ADG.

Private Open Space and Balconies

The ADG prescribes the following sizes for primary balconies of apartments:

Dwelling Type	Minimum Area	Minimum Depth
Studio apartments	4m <sup>2</sup>	-
1 Bedroom apartments	8m <sup>2</sup>	2 metres
2 Bedroom apartments	10m <sup>2</sup>	2 metres
3+ Bedroom apartments	12m <sup>2</sup>	2.4 metres

Note: The minimum balcony depth to be counted as contributing to the balcony area is 1 metres.

Comment: The balcony to the additional apartment has an area of 14sqm, exceeding the minimum width of 2 metres.

Common Circulation and Spaces

The ADG prescribes the following requirements for common circulation and spaces:

- The maximum number of apartments off a circulation core on a single level is 8.
- For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.

Comment: A maximum of 2 apartments share a circulation core being the central lift/stairs within the development.

Storage

The ADG prescribes the following storage requirements in addition to storage in kitchen, bathrooms and bedrooms:

Apartment Type	Minimum Internal Area
Studio apartments	4m <sup>3</sup>
1 Bedroom apartments	6m <sup>3</sup>
2 Bedroom apartments	8m <sup>3</sup>
3+ Bedroom apartments	10m <sup>3</sup>

Note: At least 50% of the required storage is to be located within the apartment.

Comment: The proposed unit includes a 6sqm storage area within the apartment.

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

A BASIX Certificate was submitted with the application, which is considered satisfactory.

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

## Chapter 2 Infrastructure

Development with frontage to classified road

In considering Section 2.118(2) of *SEPP (Transport and Infrastructure) 2021*:

The site has a frontage to King Street, which is a classified road. Vehicular access to the property is provided from Maria Lane and, as such, is provided by a road other than the classified road. The development would not affect the safety, efficiency and ongoing operation of the classified road.

The development is a type of development that is sensitive to traffic noise or vehicle emissions. The applicant submitted a Noise Assessment Report with the application that demonstrates that the development can comply with applicable maximum noise levels and a condition could be readily imposed with any consent granted, requiring that the development complies with the requirements of this SEPP.

**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 4.4A – Exception to maximum floor space ratio for active street frontages
- Section 4.5 – Calculation of floor space ratio and site area
- Section 4.6 – Exceptions to development standards
- Section 5.10 – Heritage conservation
- Section 6.3 – Stormwater management
- Section 6.8 – Development in areas subject to aircraft noise
- Section 6.9 – Design excellence
- Section 6.13 – Residential accommodation in business zones

Section 1.2 - Aims of Plan

Given the issues outlined elsewhere in this report, the proposal is considered to be inconsistent with the aims of the *IWLEP 2022* as follows:

- (b) the proposal does not conserve and maintain the cultural heritage of the Inner West,
- (g) the proposal does not create a high quality urban place through the application of design excellence, and
- (h) the proposal does not prevent adverse environmental impacts on the local character of Inner West.

Section 2.3 Land Use Table and Zone Objectives

The site is zoned B2 under the *IWLEP 2022*. The *IWLEP 2022* defines the development as:

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

The development is permitted with consent within the land use table. Given the issues outlined elsewhere in this report, the development is not consistent with following objectives of the B2 zone:

- *To encourage the activation of places through new development that achieves high architectural, urban design...at street level.*

Section 4.3 Height of buildings and section 4.4 Floor space ratio

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

Standard	Proposal	Non compliance	Complies
<b>Height of Buildings</b> Maximum permissible: N2 - 14m	16.54m	2.54m or 18.14%	No
<b>Floor Space Ratio</b> Maximum permissible: S1 – 1.5:1 or 344.25sqm	2.5:1 or 581.8sqm	237.55sqm or 69.01%	No

Section 4.6 Exceptions to Development Standards

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

- Section 4.3 Height of buildings, and
- Section 4.4 Floor space ratio

Section 4.3 Height of buildings

The applicant seeks a variation to the height of buildings development standard under Section 4.6 of the *IWLEP 2022* by 18.14% (2.54 metres).

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

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

- *All of the proposed habitable floor area is contained within the maximum building height of 14 metres,*

- *The proposed variation relates to the area of the communal stairs and lift, and lift overrun,*
- *The area of the communal stairs/lift and lift overrun are limited in their area, measuring just 4.90m by 4.515m and are located over the centre of the building, some 14.78 metres from the King Street frontage, ensuring this element presents as recessive in its form and appearance, with minimal visibility from King Street,*
- *The existing heritage façade remains the dominant element to the street,*
- *The proposed residential unit has then been setback 4.6 metres from King Street in keeping with the style of upper level additions to the south of the subject site including 601-603 King Street,*
- *The proposed variation will not result in any adverse impact on local amenity,*
- *The provision of communal open space at both roof level and ground floor is considered to provide for a better planning outcome,*
- The proposal does not result in adverse privacy impacts,
- The proposal does not result in adverse overshadowing,
- The proposal is consistent with the desired future character of the area,
- The additions have no visible impact on the public domain,
- The proposal has no unacceptable heritage impacts,
- *The proposed variation to building height allows for a better outcome to be achieved through the provision of communal open space at both ground level and roof level, including equitable access through the central lift to service this area,*
- *The proposal is...consistent with the design guidance [related to communal open space] prescribed by ADG,*
- The proposal is consistent with the zone objectives and objectives of the height of buildings development standard,
- *It is considered that the public benefit will not be undermined by varying the standard. The proposed variation allows for a better outcome to be achieved through the provision of communal open space at roof level including equitable access through the central lift to service this area.*

The applicant's written rationale does not adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

The zone objectives of the B2 zone are as follows:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To accommodate residential development that complements and promotes the role of local centres as lively town centres in Inner West, with Ashfield town centre as the primary town centre.
- To encourage the activation of places through new development that achieves high architectural, urban design and landscape standards at street level.

It is considered the development is not in the public interest because it is inconsistent with the objectives of the B2 zone, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- The proposed development does not complement and promote the role of the local centre the site is located in (i.e., the King Street and Enmore Road Commercial Planning Precinct), noting that the proposal is inconsistent with the desired future character of the local centre/area.

The objectives of the height of buildings development standard are as follows:

- to ensure the height of buildings is compatible with the character of the locality,
- to minimise adverse impacts on local amenity,
- to provide an appropriate transition between buildings of different heights.

It is considered the development is not in the public interest because it is inconsistent with the objectives of the height of buildings development standard, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

- The height of the proposed development is not development compatible with the character of the locality,
- The development results in adverse impacts on local amenity, and
- The development does not provide an appropriate transition to adjoining sites that are of different heights.

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

The proposal does not accord 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 throughout this report, there are no planning grounds to justify the departure from the height of buildings development standard noting, *inter alia*:

- The proposal will have adverse amenity impacts on the existing units and, hence, does not provide adequate on-site amenity,
- The proposal results in adverse impacts to the heritage conservation area and the streetscape noting that the additions will be visible from the public domain and surrounding development. While “only” the lift and access stairs to the roof top terrace breach the height standard, shading devices on the roof top terrace (which are not shown on elevations or street views submitted) will also breach the height standard and will be visible from the public domain. As outlined in this report, the proposal is inconsistent with the height and massing of other development in the streetscape and the proposal is inconsistent with the desired future character of the area.
- The proposal does not result in a better planning outcome compared with a proposal that complies with the height of buildings standard. While it is acknowledged that access to the roof top terrace could be provided without breaching the height standard (as shown on the plans submitted for comparison), to provide reasonable amenity for the roof top terrace, adequate shading devices are required, which will/would also breach the height standard. Currently, shading devices could be provided on the existing roof top terrace without breaching the height of buildings standard.
- The proposed breach is a result of additional apartment proposed. The existing building already provides a communal open space on the existing roof top.

As such, it is recommended that the Section 4.6 exception be refused.

Section 4.4 Floor space ratio

The applicant seeks a variation to the floor space ratio development standard under Section 4.6 of the *IWLEP 2022* by 69.01% (237.55sqm).

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

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

- *an overall variation of 141m<sup>2</sup>, 91.1m<sup>2</sup> already exists within the approved built form with the current application seeking an additional 50m<sup>2</sup>*
- *the existing 91.1m<sup>2</sup>, 25.27m<sup>2</sup> relates to storage areas and bin stores at ground level, located at the centre of the building, as well additional communal open space. These spaces will not be read from the public domain and as such do not contribute any additional visual bulk,*
- *an additional residential unit are deemed to result in an overall improved outcome on the site.*
- *The development has no notable impacts on surrounding properties and the broader locality.*
- *the scale and density of the form on the site are not out of character with the area.*
- *The proposal is consistent with the objectives of the floor space ratio development standard and the objectives of the B2 zone,*
- *the heritage impact is not deemed to rise to an unacceptable level,*
- *The proposal does not result in adverse amenity impacts to the subject and surrounding sites,*
- *The proposal is compatible with the existing and desired future character of the area,*
- *The proposal increases housing diversity in the area.*

The applicant's written rationale does not adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered that the development is not in the public interest because it is inconsistent with the objectives of the B2 zone, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022*, for the reasons outlined above.

The objectives of the floor space ratio development standard are as follows:

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



It is considered the development is not in the public interest because it is inconsistent with the objectives of the floor space ratio development standard, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022*, for the following reasons:

- While it is acknowledged that the existing development already breaches the maximum FSR and that “only” an additional GFA of 50.2sqm is proposed, the non-compliance with this standard is significant, which, as outlined throughout this report, suggests an overdevelopment of the site that is not appropriate for existing and envisioned density of the area.
- As outlined elsewhere in this report, the proposal does not comply with upper level massing and setback controls and the additions will have an adverse impact on the streetscape and heritage conservation area. While the adjoining sites have the same prescribed maximum FSR, the proposed non-compliances and breach with the FSR development standard would result in a development that is inconsistent with the existing and desired future character of the area in terms of density and would set a poor precedent for future development.
- As outlined throughout this report, the proposal is considered to result in adverse amenity impacts on local amenity, specifically on amenity for the subject site.

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

The proposal does not accord 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 throughout this report, there are no planning grounds to justify the departure from the height of buildings development standard noting, *inter alia*:

- The proposal will have adverse amenity impacts on the existing units and, hence, does not provide adequate on-site amenity,
- The proposal results in adverse impacts to the heritage conservation area and the streetscape noting that the additions will be visible from the public domain and surrounding development.
- The proposal is inconsistent with surrounding development in terms of GFA, massing and setbacks and the proposal is not sympathetic with other development in the streetscape that would set an undesirable context for future developments in the area.

As such, it is recommended that the Section 4.6 exception be refused.

#### Section 5.10 – Heritage conservation

The building at No. 595 King Street is not listed as a Heritage Item but located in the *King Street and Enmore Road HCA (C73 in the IWLEP 2022)*.

The significance of the HCA is expressed in the detailed Statement of Significance included within MDCP 2011 (Part 8.2.4) and includes:

- *The King Street and Enmore Road retail strip is a remarkably intact area dating from the late 19th and early 20th centuries, where the relationship between topography and street grid provides a variety of corners and landmarks, vistas and framed features.*
- *While of compatible height and scale, the buildings also display a diversity of architectural and decorative features.*
- *The streetscape has a unique and very attractive visual quality which should be preserved and enhanced.*

Council’s Heritage Specialist advised, *inter alia*,

- *Although simple in detail and unsympathetically altered, this building contributes to the reasons central to the inclusion of the HCA in the DCP*

- *The proposal seeks to add some calculated high bulk to the realised building, whose scale, bulk and design treatment had been of concern to Council previously.*
- *The SEE acknowledges that the present roof access is under-used and yet it is proposed to be perpetuated and at a higher level.*
- *Part 8.2.4 of the MDCP dealing with the HCA in which this property is set, indicates the great flexibility that Council extends to development in the Area, in façade treatment, setback, and relationship to the existing. A self-effacing treatment, set well back from the parapet, can be pursued and might be of an acceptable heritage impact. The current proposal is not.*
- *The proposed roof top terrace is now shown with a balustrade of mixed treatment and what appear to be planter boxes backing up the railings of glass and metal for privacy maintenance with the apartment below. Despite various montages it is suggested that these will be visible in long views to the building and make for an ad-hoc messy roof top out of character with what is below the parapet, which this level sits behind. The new rooftop area does not achieve an “invisible level” behind the parapet which forms the visual edge of the main façade. The lift box, essential if this area is to be considered accessible, is set well back and may not be appreciable from the street, but like other aspects of the proposed roof top area, will be visible from the upper floors of buildings around the site.*
- *The fenestration of the new apartment remains poorly scaled and out of character with the building in its pattern and proportion. The overlooking of the light well proposed to the apartment below will be invasive and discourage its reasonable free and unfettered use by residents who could only be concerned that they will be unknowingly observed from above.*
- *In these various considerations the proposal does not in my opinion, coalesce to promise an outcome of the quality commensurate with this locality and the intentions and hopes for it. Added apartments on top of King Street’s buildings have been supported by Council in many instances but the success of these and maintenance of the values of the HCA rely upon rigour in design and respect for the characteristics of the localities and buildings affected by any one proposal.*
- *The proposal is Not acceptable in its current format;*
  - *The proposed additional level and lift tower treatment are not desirable in heritage terms, because of their visual impact, arising from unreasonable scale and bulk in context*

Given the above, the proposal is inconsistent with the applicable objectives of part 5.10 of the *IWLEP 2022* as follows:

- (a) The proposal does not conserve the environmental heritage of the Inner West,
- (b) The proposal does not to conserve the heritage significance of the HCA it is located in, in particular settings and views.

#### Section 6.8 – Development in areas subject to aircraft noise

The site is located within the 20-25 Australian Noise Exposure Forecast (2033) Contour.

The development is likely to be affected by aircraft noise. The carrying out of the development would result in an increase in the number of people affected by aircraft noise.

The development would need to be noise attenuated. An Acoustic Report was submitted with the application which details that the development could be noise attenuated from aircraft noise to meet indoor design sound levels.

Conditions could be readily imposed with any consent granted, ensuring that the requirements recommended within the Acoustic Report are incorporated into the development.

Section 6.9 – Design excellence

The proposed development exceeds 14 metres in height. Given the issues outlined elsewhere in this report, the proposal is inconsistent with applicable matters listed in clause 6.9(4) as follows:

- (a) The proposal does not achieve a high standard of architectural design, materials and detailing appropriate to the building type and location,
- (b) The proposed form and external appearance of the development will not improve the quality and amenity of the public domain,
- (c) the proposal will detrimentally impact on view corridors,
- (e) The proposal does not comply with all requirements of the MDCP 2011,
- (f)(i) The site is not suitable for the proposed development,
- (f)(iii) The proposal results in adverse impacts on the HCA and streetscape,
- (f)(iv) The proposal is inconsistent with other development in the streetscape in terms of setbacks and amenity,
- (f)(v) and (f)(vi) The development's massing and upper level setbacks are inconsistent with other development in the street,
- (f)(vii) The development results in adverse amenity impacts within the building,
- (viii) the achievement of the principles of ecologically sustainable development is compromised,
- (f)(xi) The development does not relate to development within the street in terms of building frontage.

As such, the application is recommended for refusal.

Section 6.13 – Residential accommodation in business zones

Section 6.13(3) reads as follows:

*(3) Development consent must not be granted to development for the purposes of residential accommodation on land to which this clause applies unless the consent authority is satisfied the building—*

- (a) is mixed use development, and*
- (b) will have an active street frontage, and*
- (c) is compatible with the desired character of the area in relation to its bulk, form, uses and scale.*

While the building provides an active street frontage and is a mixed use development, as outlined elsewhere in this report, the proposed development is not considered to be compatible with the desired character of the area in relation to its bulk, form, uses and scale. As such, the application is recommended for refusal.

## 5(d) Development Control Plans

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

Part of MDCP 2011	Compliance
Part 2.1 – Urban Design	No – see discussion
Part 2.3 – Site and Context Analysis	Yes
Part 2.5 – Equity of Access and Mobility	Yes
Part 2.6 – Acoustic and Visual Privacy	Yes
Part 2.7 – Solar Access and Overshadowing	Yes
Part 2.8 – Social Impact	N/A
Part 2.9 – Community Safety	Yes
Part 2.10 – Parking	Yes
Part 2.11 – Fencing	N/A
Part 2.12 – Signs and Advertising	N/A
Part 2.13 – Biodiversity	N/A
Part 2.14 – Unique Environmental Features	N/A
Part 2.16 – Energy Efficiency	N/A
Part 2.17 – Water Sensitive Urban Design	N/A
Part 2.18 – Landscaping and Open Space	N/A
Part 2.20 – Tree Management	N/A
Part 2.21 – Site Facilities and Waste Management	Yes
Part 2.24 – Contaminated Land	Yes
Part 2.25 – Stormwater Management	Yes
Part 3 – Subdivision	N/A
Part 4.1 – Low Density Residential Development	N/A
Part 4.2 – Multi Dwelling Housing and Residential Flat Buildings	N/A
Part 4.3 – Boarding Houses	N/A
Part 5 – Commercial and Mixed Use Development	No – see discussion
Part 6 – Industrial Development	N/A
Part 8 – Heritage	No – see discussion under <i>IWLEP 2022</i> , section 5.10, assessment
Part 9 – Strategic Context	No – see discussion

The following provides discussion of the relevant issues.

Part 2.1 – Urban Design

The proposal is inconsistent with controls C1 as the development, for reasons outlined elsewhere in this report, does not recognise, preserve and enhance the characteristics of the streetscape and area in which the site is located in, and the proposal is inconsistent with objective O1 as the development does not achieve a high quality urban design.

Part 5 – Commercial and Mixed Use Development(i) Floor space ratio (FSR) and Height (Part 5.1.3.1 and Part 5.1.3.2)

As outlined above, the proposal does not comply with the FSR and height of buildings development standards. Considering the objectives of these parts, the following is noted:

- The proposed density and height are not compatible with the future desired character of the area,
- The proposed density and height are not considered to be appropriate for the site.

In view of the above, the development is not considered to be acceptable under Part 5.1.3.1 and Part 5.1.3.2 of MDCP 2011.

(ii) Massing and Setbacks (Part 5.1.3.3)

Additions to contributory buildings and upper level massing

Part 5.1.3.3 contains massing and setback controls for commercial and mixed use developments.

Control C3 specifies that,

*Where whole existing contributory buildings or the street fronting portion of the existing contributory buildings are retained there must be no additions to the existing building mass within the front 6 metres of the building, except for 0.9 metres roof projection of the topmost dwelling occupancy level.*

In addition, control C11 outlines

*Upper levels above the street front portion of the building mass must be setback a minimum 6 metres from the street front of the building (required to both frontages when the site is located on the corner of two major streets), except for 0.9 metres roof projection of the topmost dwelling occupancy level.*

The building is classified as a 'Contributory Building'. The proposal does not comply with the aforementioned controls noting that the proposed additions are set back from the front portion of the building as follows:

- balcony of proposed unit ~ 1.2 metres,
- front wall of proposed unit ~ 5 metres,
- balustrade of roof top terrace ~ 6.3 metres, and
- Structure above roof top terrace ~ 12.8 metres.

With regard to the above, while the structure/s to access the roof top terrace would not be visible from King Street, portions of the proposed apartment, and the roof top terrace, will be visible. In particular, similar to the four storey development at No 601-603 King Street, the proposed additions will be highly visible from King Street (Figure 3 and 4), and dominant, when viewed from other points than those depicted on the submitted street view analysis, however it is considered this addition would be far more prominent and pronounced in the streetscape.



Figure 7: View at four storey development at 601-603 King Street. Source: google maps

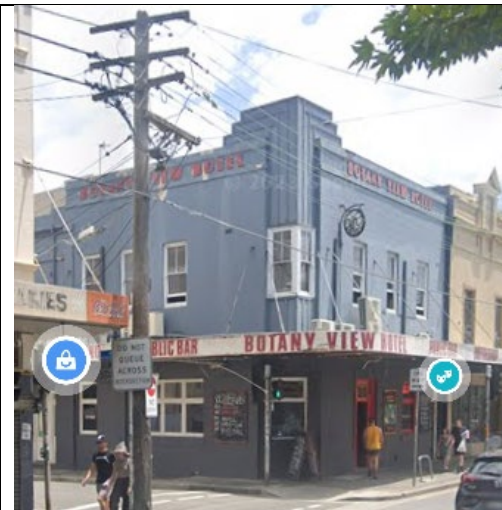


Figure View at existing three storey development at 595 King Street. Source: google maps

As shown in Figure 5 below, while the balustrade for the outdoor space at No. 601-603 King Street is only set back by 4.1 metres, the communal living room is set back by more than 7.187 metres from the front. In addition, the height of the communal living room does not exceed RL33.115. As outlined above, the balustrade of the proposed communal open space at No. 595 King Street is set back from the front by only 6.3 meters and the top of the balustrade is approximately at RL35.233, exceeding the height of the communal living room at No. 601-603 King Street by more than 2 metres.

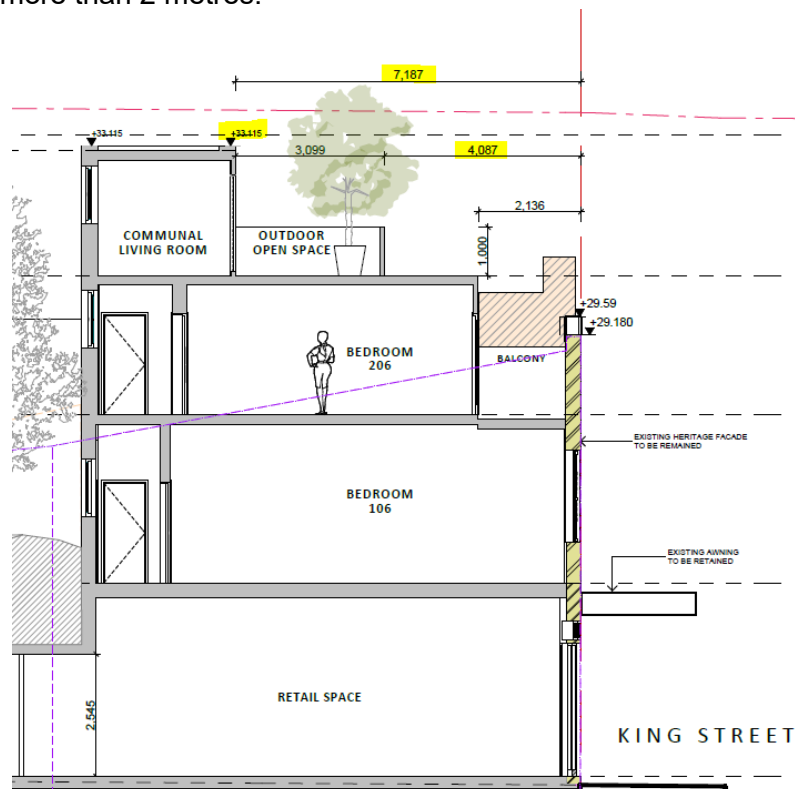


Figure 8; Setbacks from King Street at 601-603 King Street.

The front setback of the proposed additional apartment (~5m), excluding the balcony, is significantly less than the front setback of the communal living room at No. 601-603 King Street. Further, the height of the proposed apartment is approximately 100mm higher than the top of the communal living room at No. 601-603 King Street. As such, it is considered that the

proposed additions will be significantly more visible from King Street than the upper level at No. 601-603 King Street and is a poor outcome.

#### Roof-top level massing

The additional apartment is within the top three metres of the maximum height control, which is inconsistent with control C15.

The relevant objectives of Part 5.1.3.3 to consider in relation to the variations are as follows:

- *O5 To preserve the prevailing building frontage edge of the streetscape.*
- *O6 To ensure the massing of any permitted fourth and fifth storeys are setback to be subservient to the street building frontage.*
- *O7 To ensure the massing of any roof top level is not visually dominant.*

In considering a variation, for reasons outlined above, the following is noted:

- The proposed additions are not considered to be subservient to the street building frontage along King Street, and
- The proposed roof top level massing is considered to be visually dominant.

In view of the above, the development is not considered to be acceptable under Part 5.1.3.3 of MDCP 2011.

#### (iii) Dwelling mix (Part 5.1.5.2)

In accordance with C54,

*New developments with six or more dwellings must provide the following mix of dwelling types:*

- i. Studio 5 – 20%*
- ii. 1 bedroom 10 – 40%;*
- iii. 2 bedroom 40 – 75%; and*
- iv. 3 bedroom or bigger 10 – 45%.*

The existing unit mix is as follows:

1. Three x 1-bedroom units, and
2. two x 2-bedroom units.

One additional 1-bedroom unit is proposed. As such, the proposal does not comply with C54. Given that only one additional unit is proposed, it is considered unreasonable to require compliance with this control. However, given the issues outlined elsewhere in this report, the application is recommended for refusal.

#### Part 9 – Strategic Context

The property is located in the King Street and Enmore Road Commercial Planning Precinct (Precinct 37). The development is contrary to the desired future character statements of the area as follows:

2. The development does not protect the identified values of the King Street and Enmore Road Heritage Conservation Area.
3. The development does not protect and enhance the character of the streetscape within the precinct, including building setbacks.
6. The development does not protect, preserve and enhance the existing character of the streetscape.
9. The development does not demonstrate good urban design and does not provide suitable amenity for occupants.

### 5(e) The Likely Impacts

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

#### Streetscape

The proposal will result in a distinct and lasting anomaly to the streetscape, heritage conservation area, and desired future character of the area and results in a poor design outcome that will be visible from the public domain.

#### Urban Design

As noted by the AEDRP, the overall strategy is problematic and, in terms of architectural expression, the AEDRP considers the proposal to be inconsistent with the predominant streetscape character of the buildings along King Street. The AEDRP considers the proposed built form addition to be problematic since the party walls will be highly visible from the surrounding public domain and nearby development, particularly from oblique viewing angles, which is expected to result in a lack of correlation/integration between the existing and proposed.

#### Heritage

The proposed additions will be visible from the public domain and the additions will adversely impact the heritage conservation area. The design, proportions of openings, and materials and colours of the additions are not sympathetic to the character of the heritage conservation area

#### Amenity

The proposal results in poor amenity outcomes for future occupants and does not propose units which will meet the day to day needs of the community. The (existing) and proposed units rely on a centrally located lightwell for access to daylight and air; the additional unit will increase the height of the lightwell further impacting units on the lower levels.

In addition, the proposal will increase adverse acoustic privacy impacts to the bedrooms facing the centrally located lightwells. While privacy screening is proposed to the bedrooms, these will further reduce access to daylight and air.

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

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

### 5(g) Any submissions

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

No submissions were received.



### 5(h) The Public Interest

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

The proposal is contrary to the public interest.

## 6 Referrals

### 6(a) Internal

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

- Architectural Excellence Panel
- Waste Management Residential
- Heritage Officer
- Development Engineering

### 6(b) External

- N/A

## 7. Section 7.11 Contributions/7.12 Levy

The carrying out of the proposed development would result in an increased demand for public amenities and public services within the area. A condition requiring that contribution to be paid should be imposed on any consent granted.

## 8. Conclusion

The proposal does not comply with the aims, objectives and design parameters contained in *Inner West Local Environmental Plan 2022* and *Marrickville Development Control Plan 2011*.

The development would result in significant impacts on streetscape and heritage conservation area and is not considered to be in the public interest.

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

## 9. Recommendation

- A. The applicant has made written requests pursuant to Section 4.6 of the *Inner West Local Environmental Plan 2022*. After considering the requests, and assuming the concurrence of the Secretary has been given, the Panel is not satisfied that compliance with the height and floor space ratio standards is unnecessary in the circumstance of the case and that there are insufficient environmental grounds to support the variation. The proposed development will not be in the public interest because the exceedance is inconsistent with the objectives of the standards and of the zone in which the development is proposed.
- 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*, refuse Development Application No. DA/2022/0879 for alterations and additions to existing shop top housing including additional unit and rooftop open space at 595 King Street, NEWTOWN for the following reasons.

## Attachment A – Reasons for refusal

### Attachment A – Reasons for refusal

1. The proposed development is inconsistent with, and has not demonstrated compliance with, *Inner West Local Environmental Plan 2022*, pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, including:
  - a. The proposal is inconsistent with Clause 1.2(2)(b), (g) and (h) - Aims of Plan as the development is not considered conserve and maintain the cultural heritage of the Inner West, not considered to create a high quality urban place through the application of design excellence, and the proposal does not prevent adverse environmental impacts on the local character of the Inner West.
  - b. The proposal is inconsistent with Clause 2.3 - Zone objectives of the B2 zone as the development does not accommodate development that complements and promotes the role of the local centre the site is located within.
  - c. The proposed development does not comply with the height of buildings development standard within clause 4.3 of the *IWLEP 2022* and the submitted 4.6 variation does not provide sufficient environmental planning grounds to justify the variation and the development is not considered in the public interest, being inconsistent with an objective of the B2 Zone and the objectives of clause 4.3 within the *IWLEP 2022* as:
    - i. The proposed development fails to complement and promote the role of the local centre the site is located in (i.e., the King Street and Enmore Road Commercial Planning Precinct), noting that the proposal is inconsistent with the desired future character of the local centre/area.
    - ii. The height of the proposed development is not compatible with the character of the locality,
    - iii. The development results in adverse impacts on local amenity, and
    - iv. The development does not provide an appropriate transition to adjoining sites that are of different heights.
  - d. The proposed development does not comply with the floor space ratio development standard within clause 4.4 of the *IWLEP 2022* and the submitted 4.6 variation does not provide sufficient environmental planning grounds to justify the variation and the development is not considered in the public interest, being inconsistent with an objective of the B2 Zone and the objectives of clause 4.4 within the *IWLEP 2022* as the development:

- i. The proposed development does not complement and promote the role of the local centre the site is located in (i.e., the King Street and Enmore Road Commercial Planning Precinct), noting that the proposal is inconsistent with the desired future character of the local centre/area.
  - ii. The proposed floor space ratio is not appropriate for the site and does not reflect the density of the locality. Hence proposed FSR suggests an overdevelopment.
  - iii. The proposal is considered to result in adverse amenity impacts on the locality, specifically on amenity of the subject site.
  - iv. The proposal does not protect the use and enjoyment of private properties and the public domain.
- e. The proposed development is inconsistent with Clause 5.10 - Heritage Conservation as the development does not conserve the environmental heritage of the Inner West, and the development does not to conserve the heritage significance of the HCA it is located in, in particular settings and views.
- f. The proposed development is inconsistent with Clause 6.9 - Design Excellence as:
  - i. The proposed form and external appearance of the development will not improve the quality and amenity of the public domain,
  - ii. the proposal will detrimentally impact on view corridors,
  - iii. The proposal does not comply with all requirements of the MDCP 2011,
  - iv. The site is not suitable for the proposed development,
  - v. The proposal results in adverse impacts on the HCA and streetscape,
  - vi. The proposal is inconsistent with other development in the streetscape in terms of setbacks and amenity,
  - vii. The development's massing and upper level setbacks are inconsistent with other development in the street,
  - viii. The development results in adverse amenity impacts within the building,
  - ix. Fails to demonstrate the achievement of the principles of ecologically sustainable development,
  - x. The development does not relate to development within the street in terms of building frontage.
  - xi. The proposal does not achieve a high standard of architectural design, materials and detailing appropriate to the building type and location,

- g. The proposed development is inconsistent Clause 6.13 as the development is not considered to be compatible with the desired future character of the area in relation to its bulk, form, and scale.
2. The proposed development is inconsistent with, and has not demonstrated compliance with, Marrickville Development Control Plan 2011, pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, including:
- a. The proposal does not comply with control C1 within part 2.1 and is inconsistent with the applicable objective O1 as the development does not recognise, preserve and enhance the characteristics of the streetscape and area in which the site is located in, and the proposal does not achieve a high quality urban design.
- b. The proposal does not comply with control C1 and C2 within part 5.1.3 and is inconsistent with the applicable objectives O1, O2, O3 and O4 as the proposed density and height are not compatible with the future desired character of the area, and the proposed density and height are not considered to be appropriate for the site.
- c. The proposal does not comply with control C3, C11 and C15 within part 5.1.3.3 and is inconsistent with the applicable objectives O5, O6, and O7 as the proposed additions are not considered to be subservient to the street building frontage along King Street, and the proposed roof top level massing is considered to be visually dominant.
- d. The proposal is inconsistent with the desired future character for the King Street and Enmore Road Commercial Planning Precinct (Precinct 37) contained within Part 9.37 as the development:
1. does not protect the identified values of the King Street and Enmore Road Heritage Conservation Area.
  2. does not protect and enhance the character of the streetscape within the precinct, including building setbacks.
  3. does not protect, preserve and enhance the existing character of the streetscape.
  4. does not demonstrate good urban design and does not provide suitable amenity for occupants.
3. The proposal has not satisfactorily demonstrated compliance with Schedule 1 – Design Quality Principles - as required by clause 30(2)(a) & (b) of SEPP 65 – Design Quality of Residential Flat Buildings, pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979 No 203* as:
1. The proposal is not consistent with the predominant streetscape character of the buildings along King Street and the proposed addition will be highly

visible from the surrounding public domain and nearby development, particularly from oblique viewing angles.

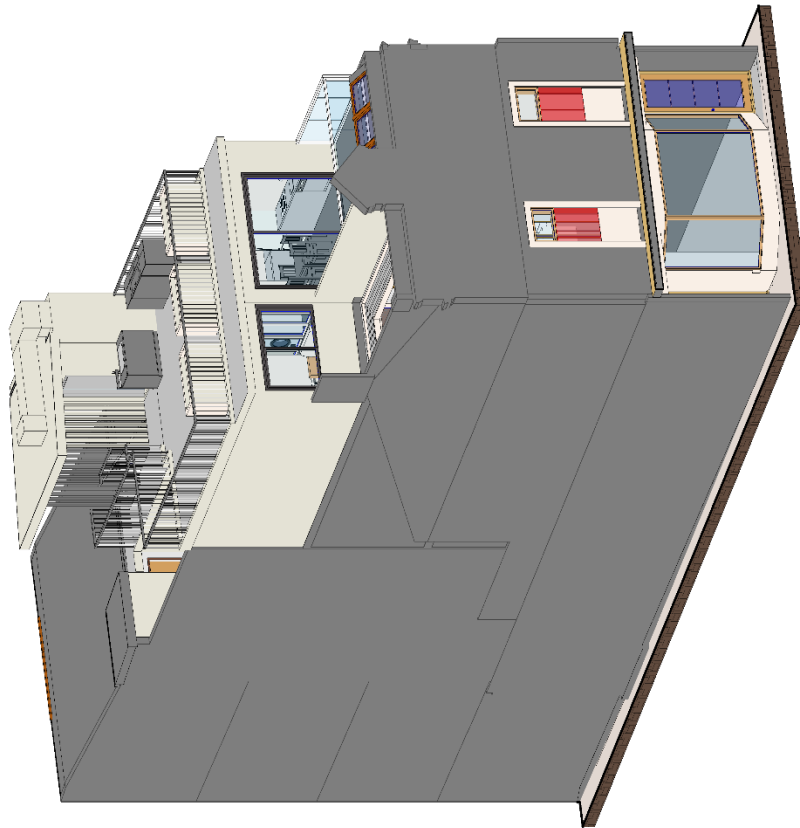
2. The proposal does not contribute to the character of streetscapes and does not provide internal amenity and outlooks.
  3. The proposal does not achieve a high level of amenity for residents and each apartment, including the use of cross ventilation and sunlight, reducing reliance on technology and operation costs, visual and acoustic privacy, and indoor and outdoor space, resulting in a density that is inappropriate to the site and its context.
  4. The development does not respond to the existing or future local context, particularly desirable elements and repetitions of the streetscape.
  5. The proposed additions are visible from the public domain and not considered to be sympathetic with development in the streetscape and the existing and desired future character of the area.
4. The proposed development will result in adverse impacts on the built environment in the locality pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.
  5. The proposal has not demonstrated that the site is suitable for the development pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
  6. The proposal has not demonstrated it is in the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*.

Attachment B – Plans of proposed development

PROPOSED 1 BEDROOM APARTMENT ADDITION TO AN EXISTING 3 STOREY APARTMENT BUILDING

Drawing List: DA	
Sheet Name	Sheet Number
Cover Sheet	DA000
Site Plan	DA101
Ground Floor Plan	DA201
Level 1	DA202
Level 2	DA203
Level 3	DA204
ROOF PLAN	DA205
SECTION A & B	DA301
SECTION B & C	DA302
SECTIONS D & E	DA303
EAST & WEST ELEVATIONS	DA401
NORTH ELEVATION	DA402
SHADOW DIAGRAM	DA501
SOLAR DIAGRAM	DA502
3D VIEWS 1 & 2	DA601
3D VIEWS 3 & 4	DA602
STREET VIEWS REFERENCE PLAN	DA800
STREET VIEW 1	DA801
STREET VIEW 2	DA802
STREET VIEW 3	DA803
STREET VIEW 4	DA804
STREET VIEW 5	DA805
STREET VIEW 6	DA806

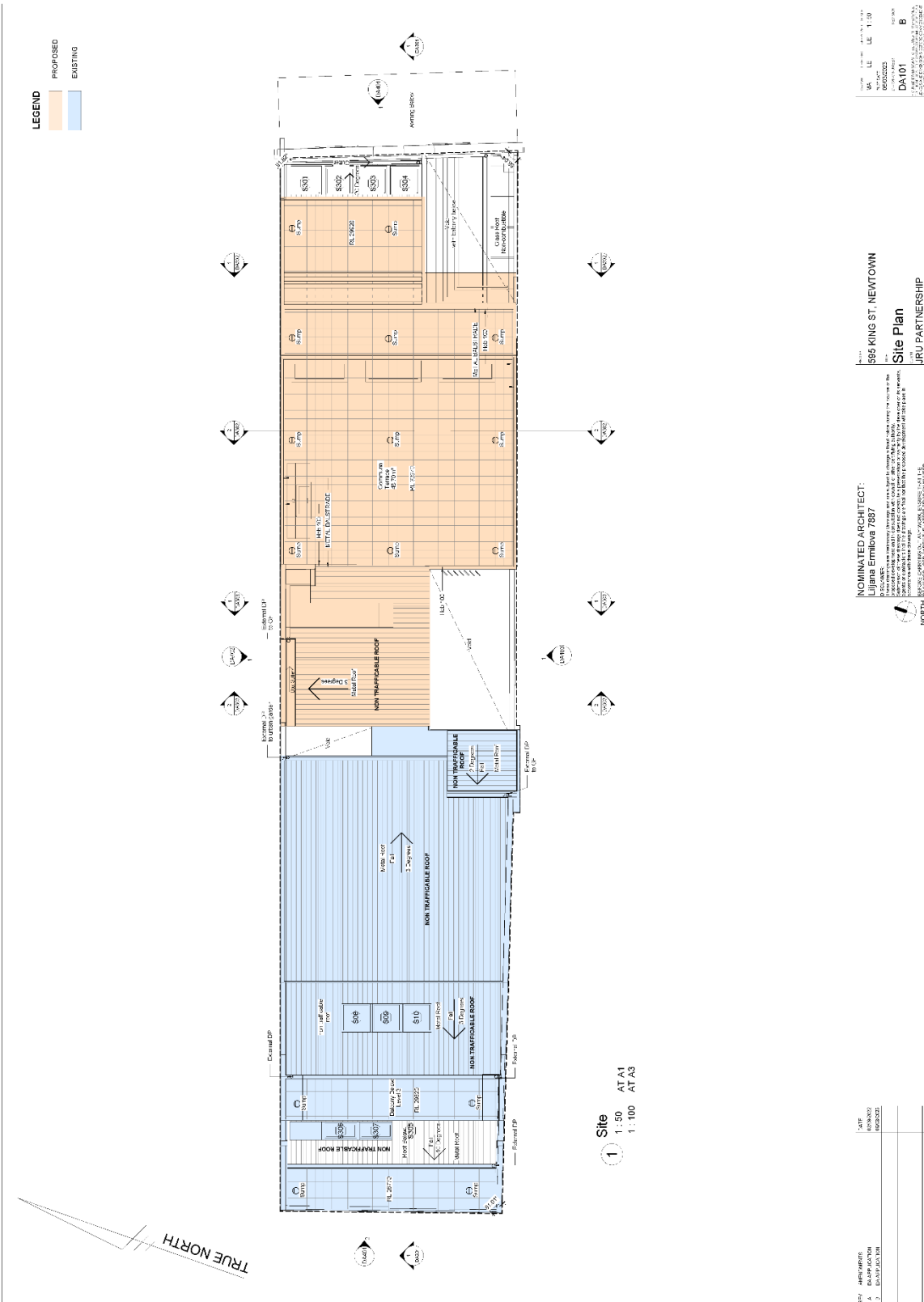
**GFA CALCULATION**  
 SITE AREA: 225.4m<sup>2</sup>  
 EXISTING PERMISSIBLE GFA: 661.0m<sup>2</sup> (MAXIMUM PERMISSIBLE GFA, OVER MAX PERMISSIBLE)  
 PROPOSED GFA: 604m<sup>2</sup>  
 PROPOSED GFA: 604m<sup>2</sup> (MAXIMUM PERMISSIBLE GFA, OVER MAX PERMISSIBLE)  
 PROPOSED GFA: 141m OVER MAX PERMISSIBLE (14% OVER INCLUDING PREVIOUSLY APPROVED DEVELOPMENT)  
 PROPOSED COMMUNAL AREA: 22.84m<sup>2</sup>



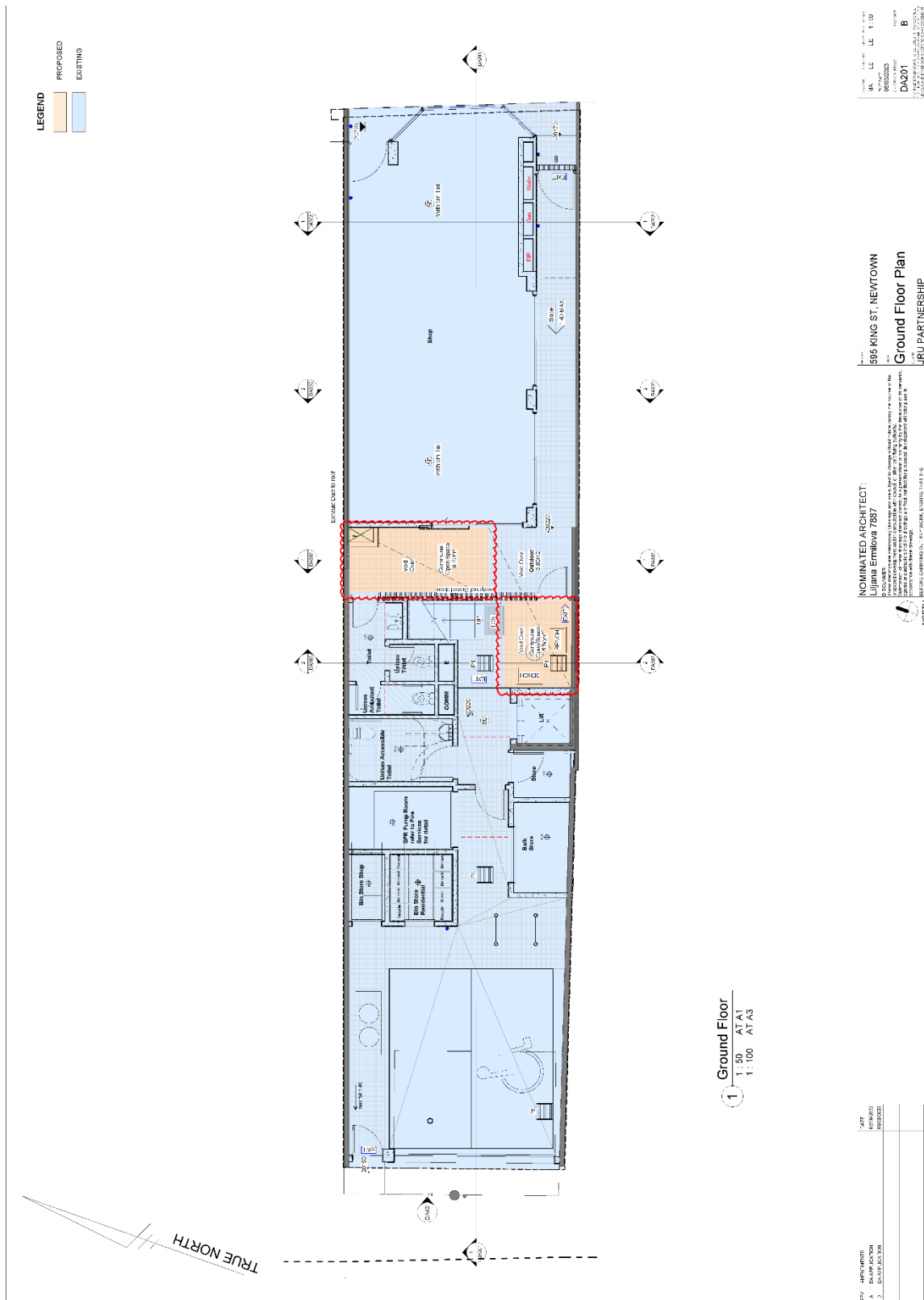
BY: ARCHITECT	DATE: 05/03/2023
A: QUALIFICATION	REVISION: 01
J: DESCRIPTION	DESCRIPTION: COVER SHEET

**NOMINATED ARCHITECT:**  
 Lijana Emlova 7887  
 585 KING ST, NEWTOWN  
 Cover Sheet  
 JRU PARTNERSHIP

NO.	DATE	BY	REVISION
1	05/03/2023	LE	LE
DA000			

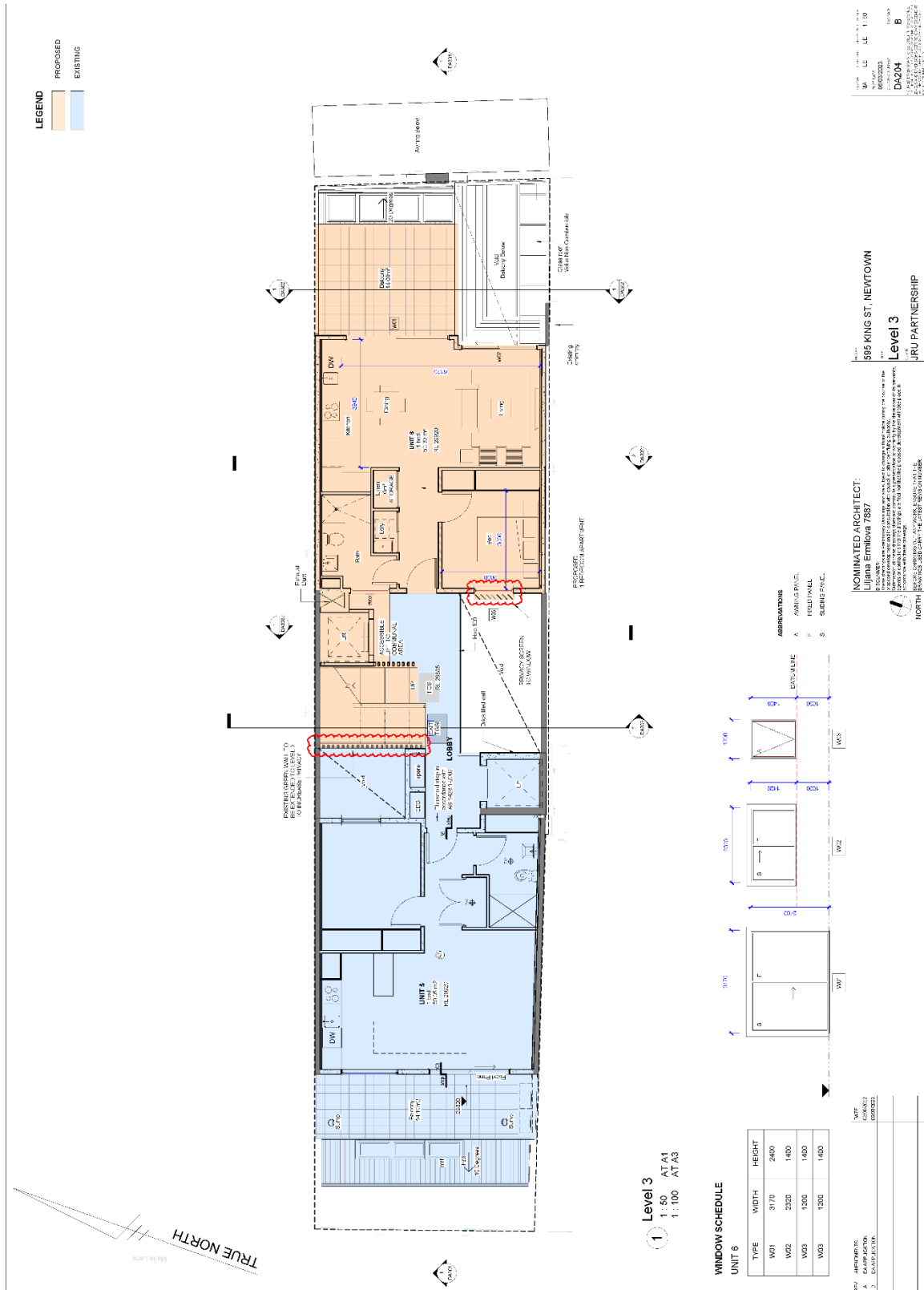


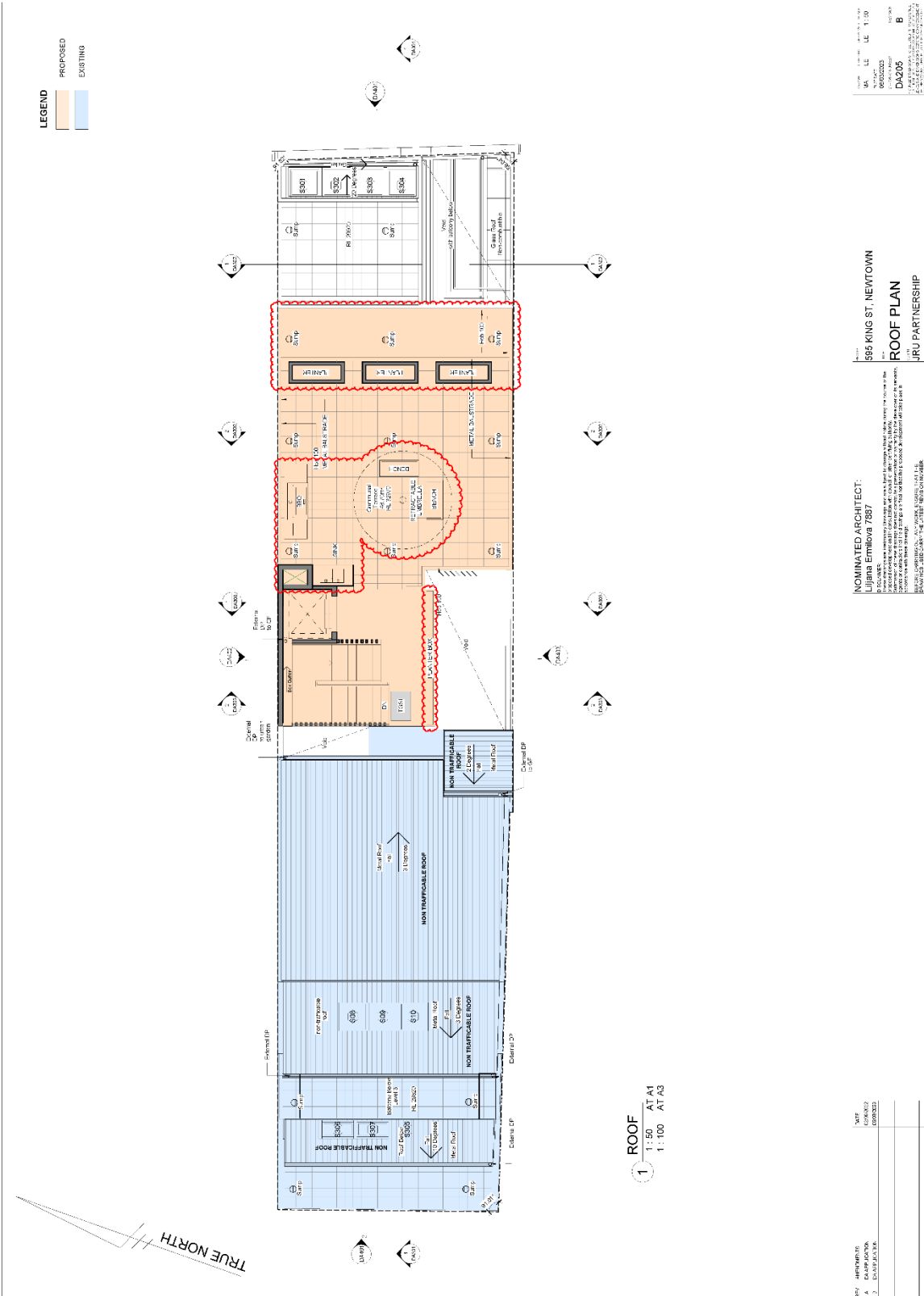


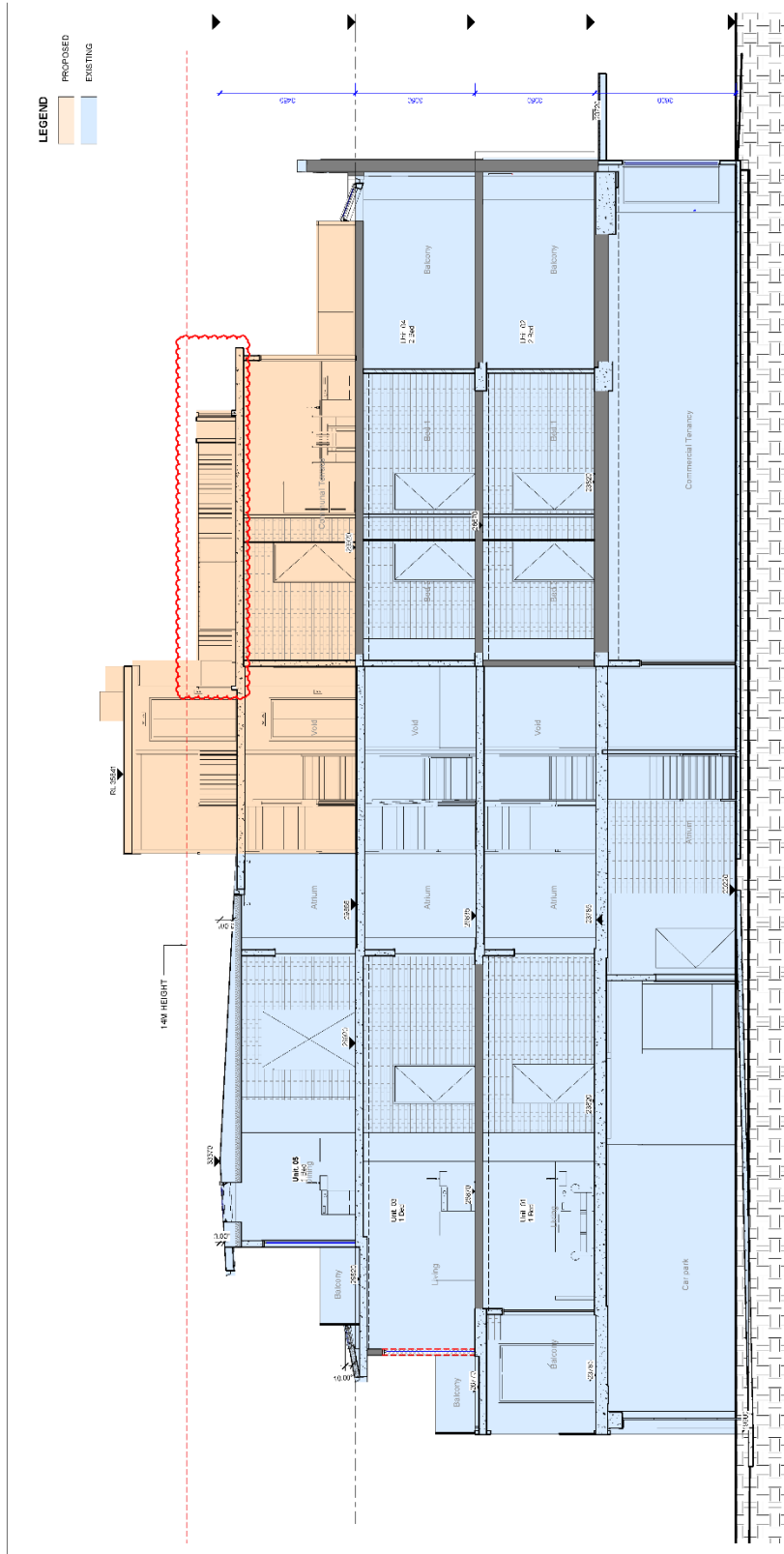












SECTION A  
 1:50 AT A1  
 1:100 AT A3

DATE: 10/10/2023  
 DRAWN BY: LE  
 CHECKED BY: LE  
 PROJECT NO: 800002023  
 CLIENT: D430  
 PROJECT: R

NOMINATED ARCHITECT:  
 Lijana Ermliva 7887  
 565 KING ST, NEWTOWN  
 SECTION A  
 URU PARTNERSHIP

REV	DESCRIPTION	DATE
1	ISSUED FOR PERMIT	10/10/2023
2	ISSUED FOR PERMIT	10/10/2023



1 SECTION B  
1:50 AT A1  
1:100 AT A3

2 SECTION C  
1:50 AT A1  
1:100 AT A3


REV	DATE	BY	CHKD
1			
2			

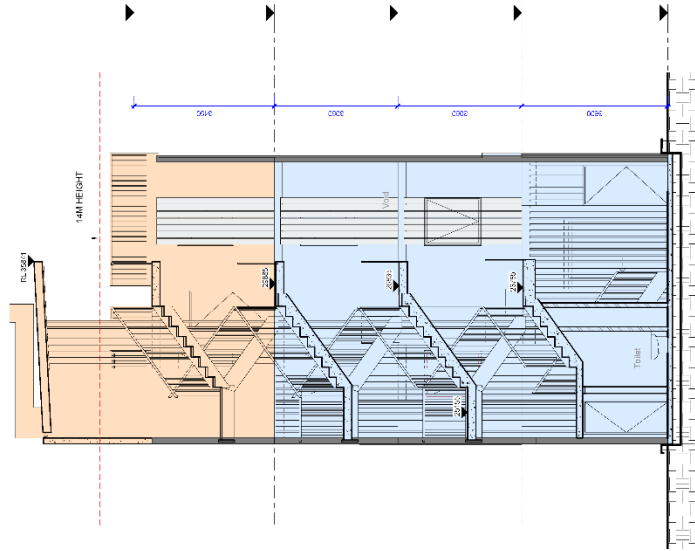
**NOMINATED ARCHITECT:**  
Lijana Ermlova 7887  
By submitting this application, the applicant warrants that the information contained in this application is true and correct to the best of their knowledge and belief. The applicant also warrants that the information contained in this application is not misleading or deceptive. The applicant also warrants that the information contained in this application is not false or fraudulent. The applicant also warrants that the information contained in this application is not in breach of any law or regulation. The applicant also warrants that the information contained in this application is not in breach of any contract. The applicant also warrants that the information contained in this application is not in breach of any duty of care. The applicant also warrants that the information contained in this application is not in breach of any other obligation. The applicant also warrants that the information contained in this application is not in breach of any other law or regulation. The applicant also warrants that the information contained in this application is not in breach of any contract. The applicant also warrants that the information contained in this application is not in breach of any duty of care. The applicant also warrants that the information contained in this application is not in breach of any other obligation.

565 KING ST, NEWTOWN  
**SECTION B & C**  
 URU PARTNERSHIP

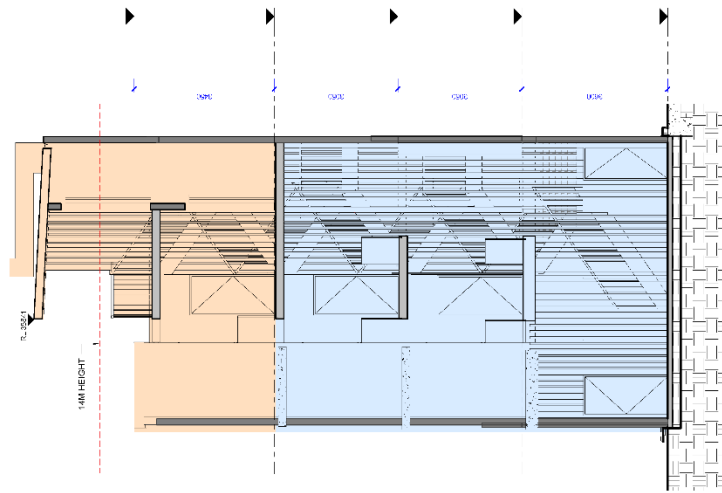
DATE	REV	BY	CHKD
08/03/2023	1	LE	LE
	2	LE	LE

PROJECT NO: DA300  
 DRAWN BY: L.ERMLOVA  
 CHECKED BY: L.ERMLOVA  
 DATE: 11/03/2023

**LEGEND**  
  
 PROPOSED  
 EXISTING



**SECTION E**  
 1: 50 AT A1  
 1: 100 AT A3



**SECTION D**  
 1: 50 AT A1  
 1: 100 AT A3

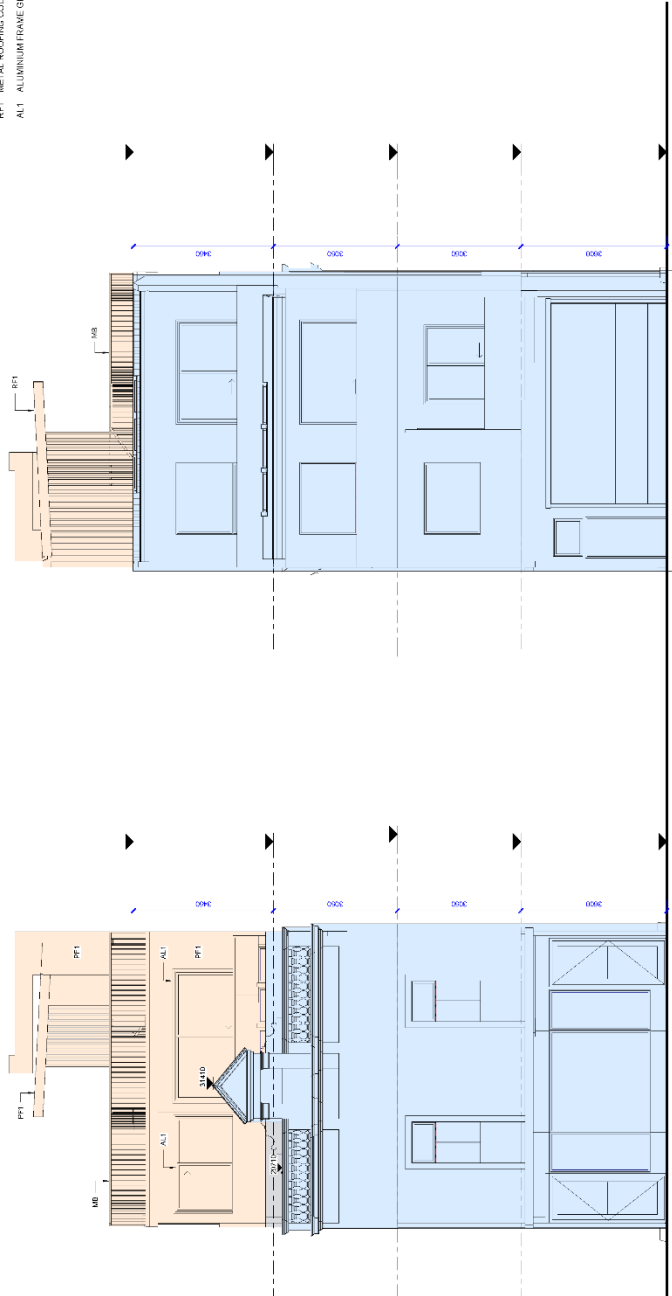
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1	ISSUED FOR PERMIT	10/01/2023
2	ISSUED FOR PERMIT	10/01/2023

**NOMINATED ARCHITECT:**  
 Lijana Ermlova 7887  
 565 KING ST, NEWTOWN  
**SECTIONS D & E**  
 URU PARTNERSHIP

URU PARTNERSHIP  
 565 KING ST, NEWTOWN  
 NSW 1590  
 02 9550 2222  
 D:\0303  
 10/01/2023 10:00:00 AM  
 10/01/2023 10:00:00 AM



- LEGEND**
- PROPOSED
  - EXISTING
- FINISHES SCHEDULE**
- MB METAL BALUSTRADE COLOUR DOUBLE STRENGTH SURPHIST
  - PF1 SURPHIST
  - RF1 METAL ROOFING COLOUR SURPHIST
  - AL1 ALUMINIUM FRAME BLAZING COLOUR BASALT



2 West  
1:50

AT A1  
1:100 AT A3

1 East  
1:50

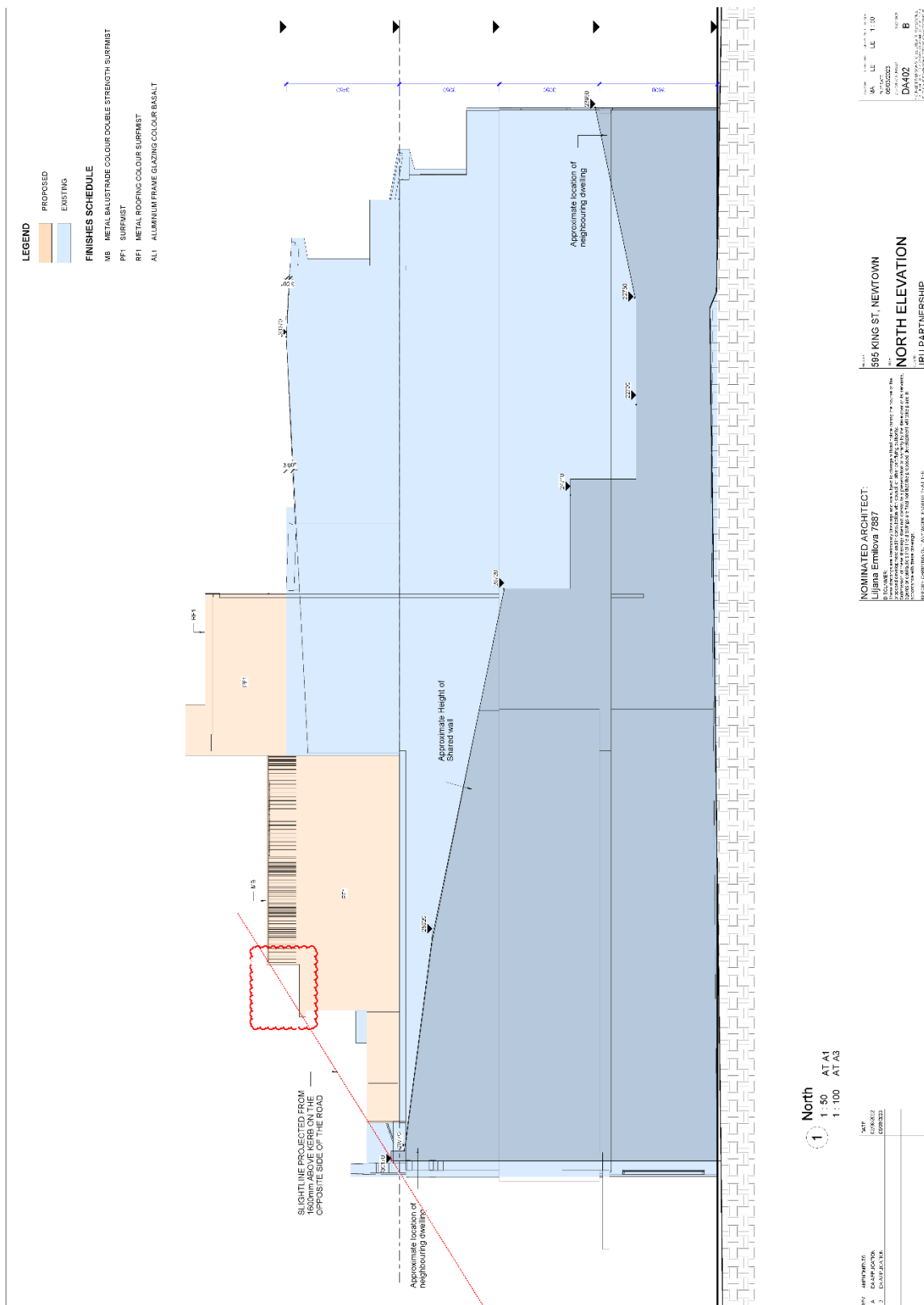
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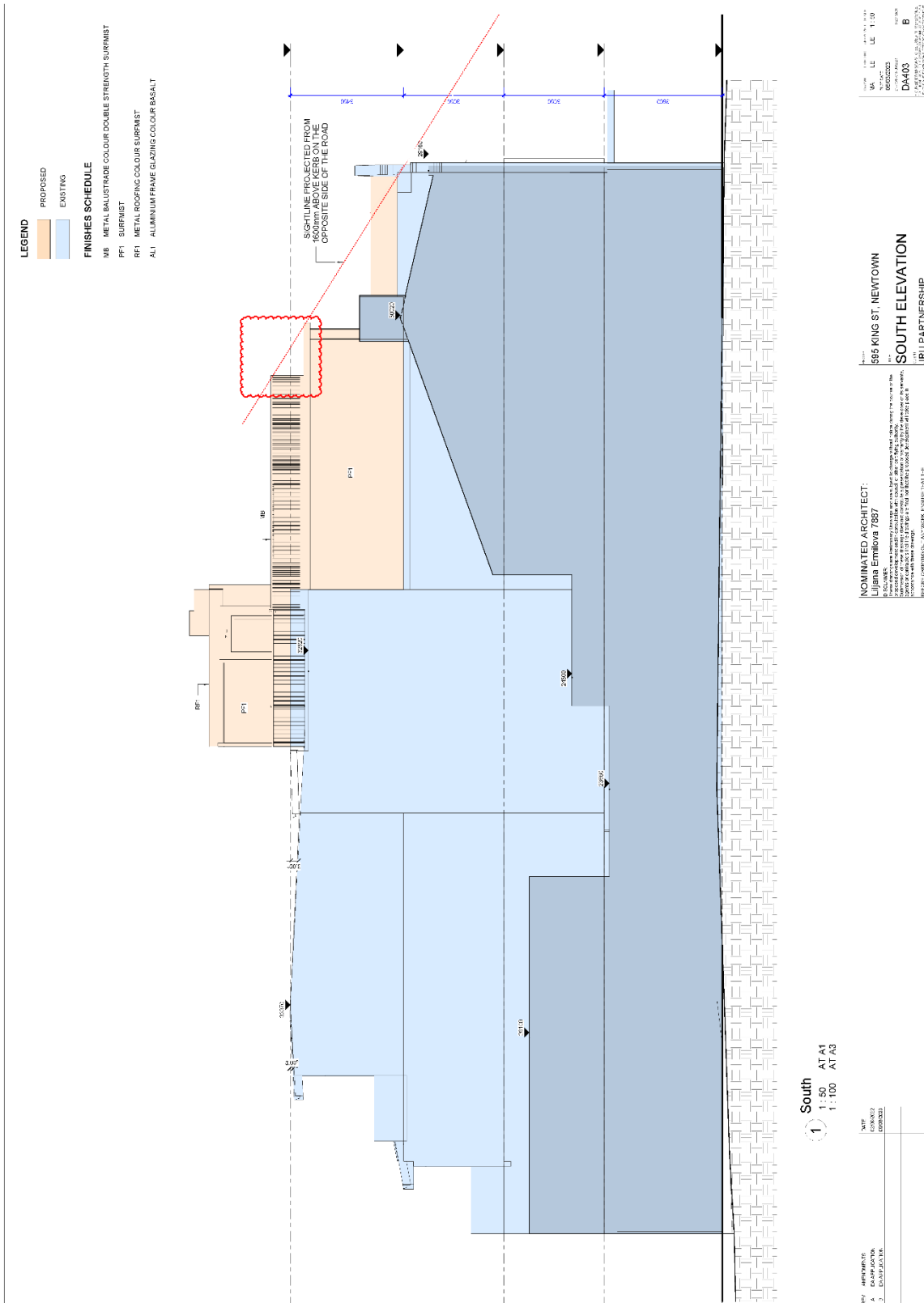
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DATE	15/03/2023
SCALE	LE 1:50
DRAWN BY	D440
CHECKED BY	B

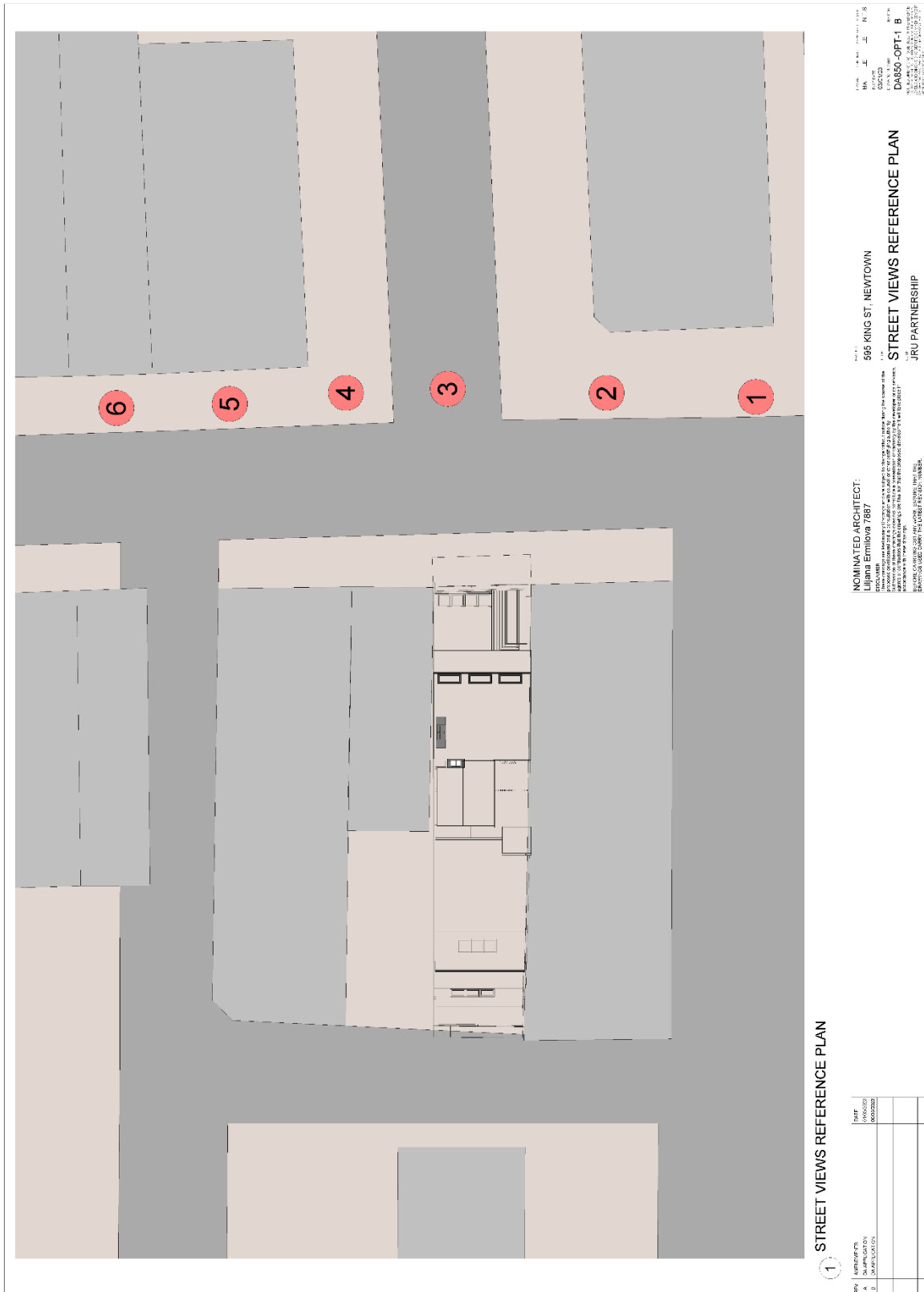
**EAST & WEST ELEVATIONS**  
 JR/J PARTNERSHIP

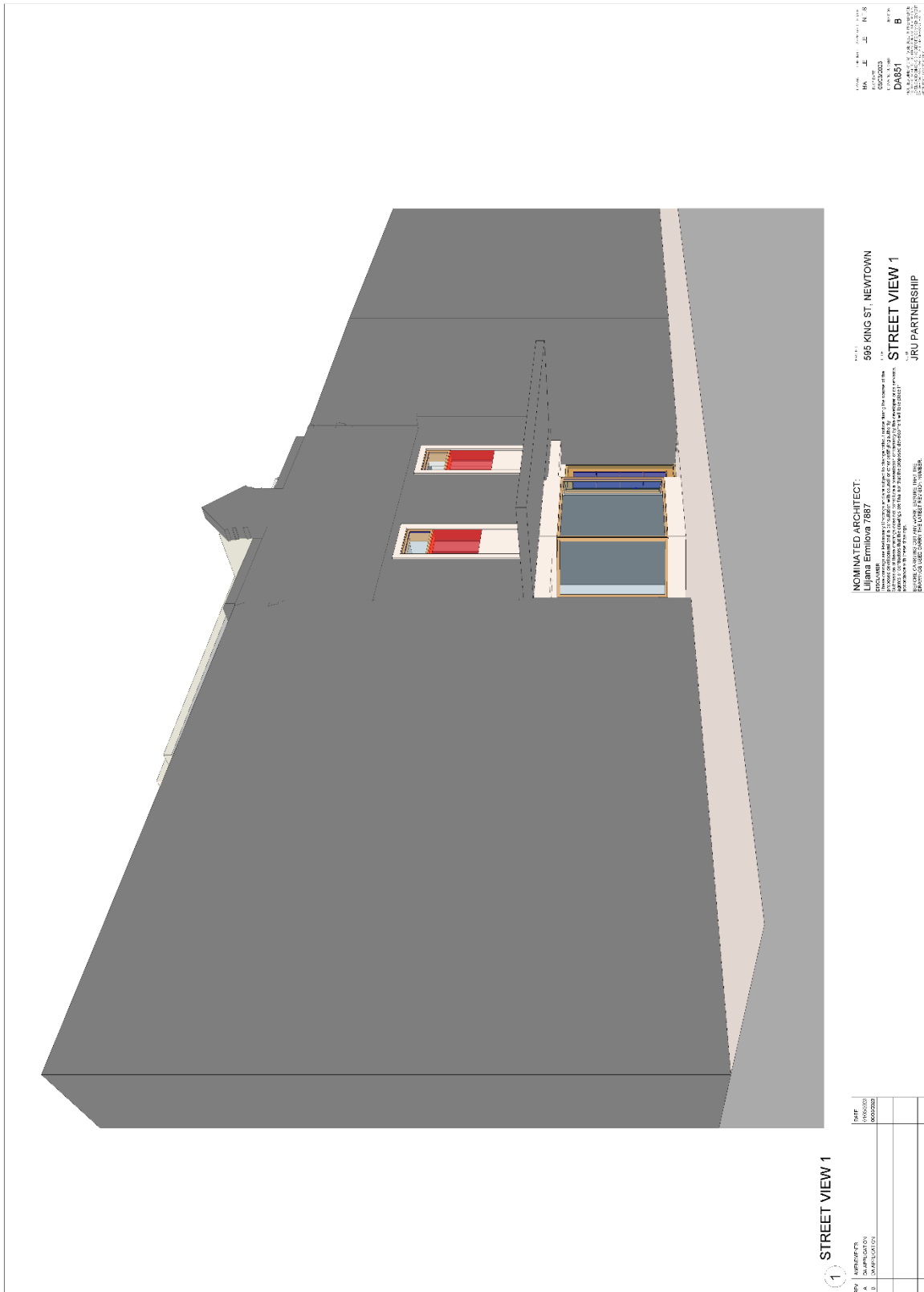
**NOMINATED ARCHITECT:**  
 Lijana Ermilova 7887

DATE	
BY	
REVISION	
DESCRIPTION	







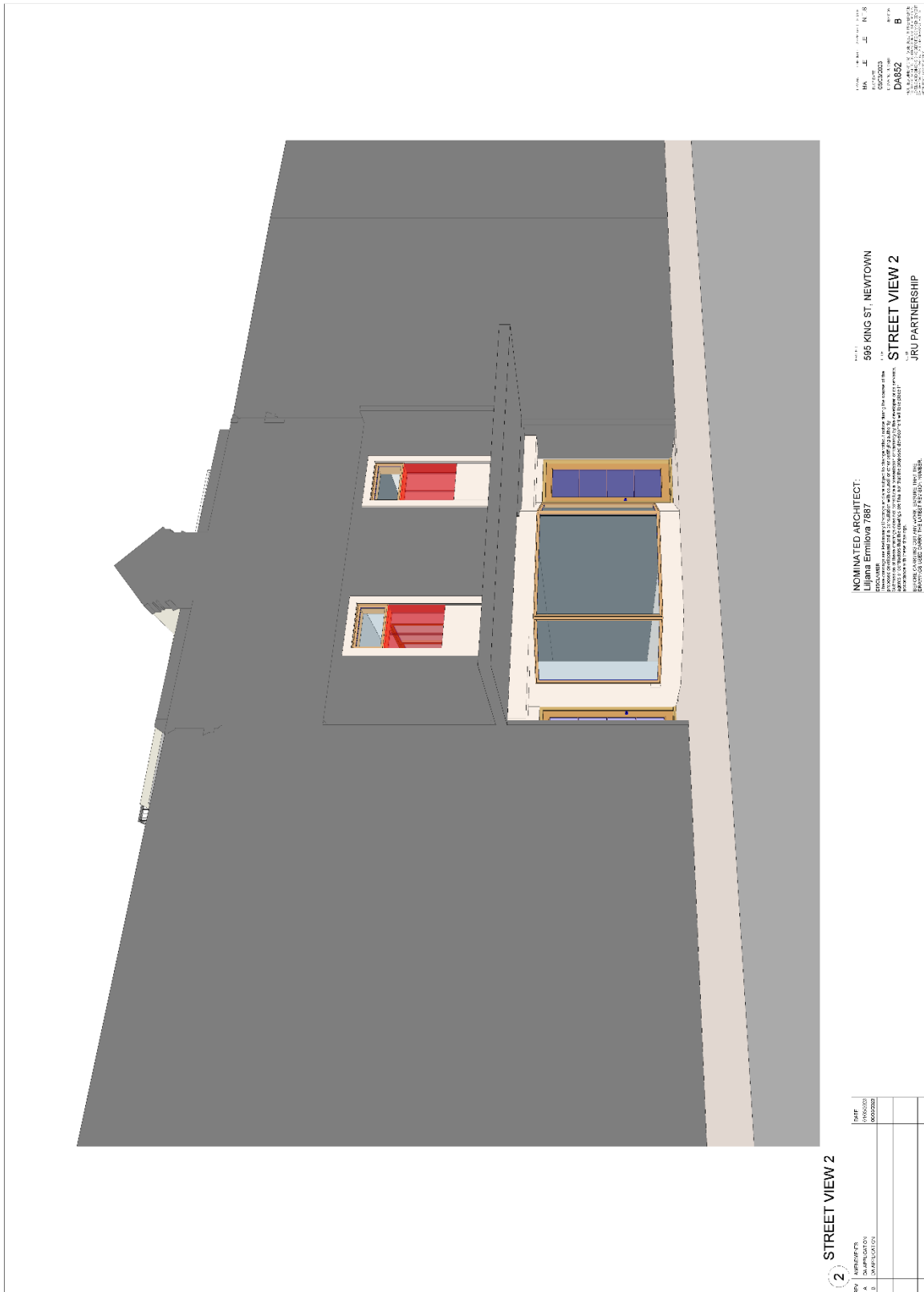


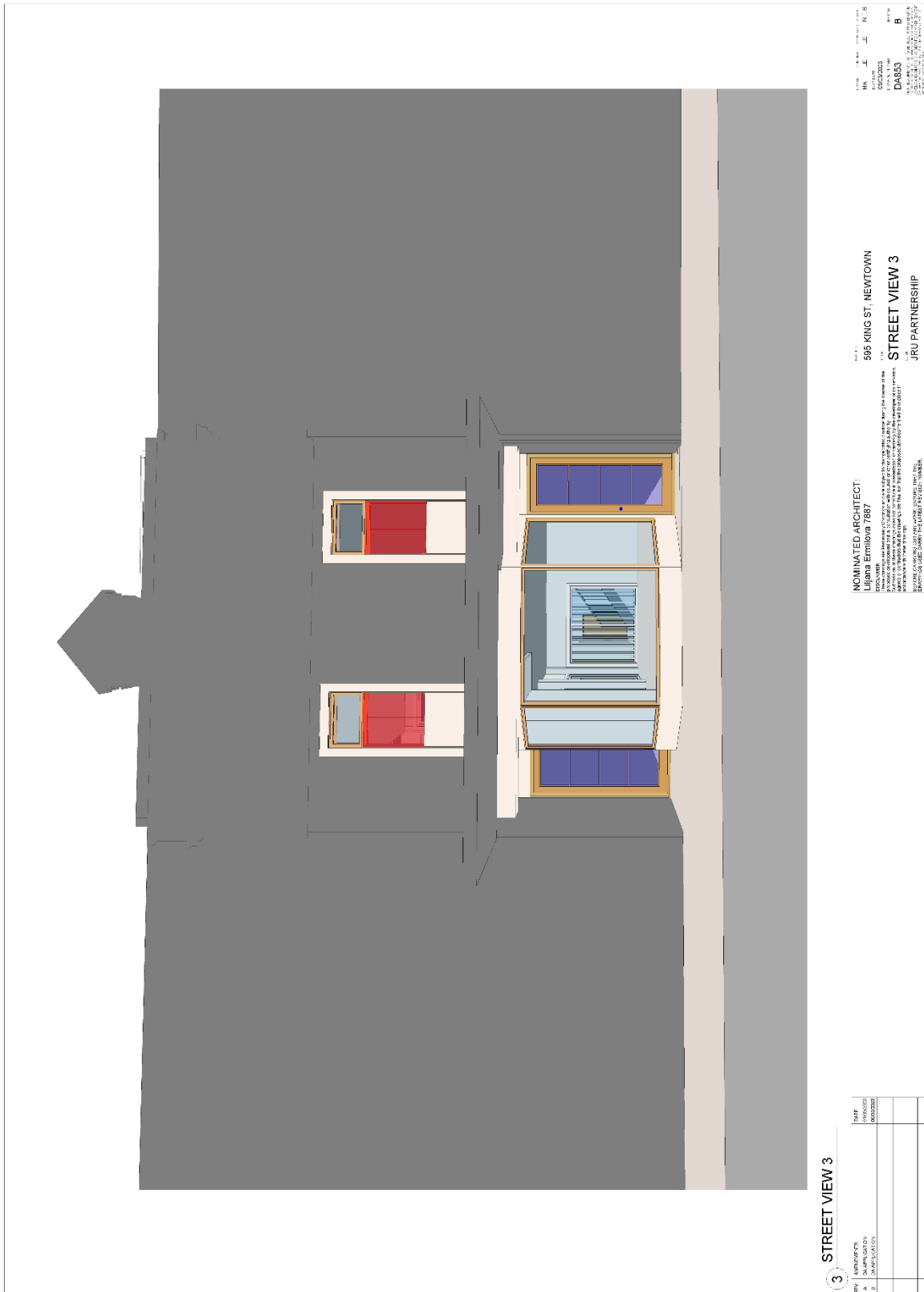
1 STREET VIEW 1

REV	DESCRIPTION	DATE
A	SUBMISSION	09/03/2023
B	REVISIONS	09/03/2023

**NOMINATED ARCHITECT:**  
 Lijana Emilova 7887  
 595 KING ST, NEWTOWN  
**STREET VIEW 1**  
 JURU PARTNERSHIP

DATE: 09/03/2023  
 DRAWN BY: DAB  
 CHECKED BY: B  
 PROJECT NO: 22/00000001



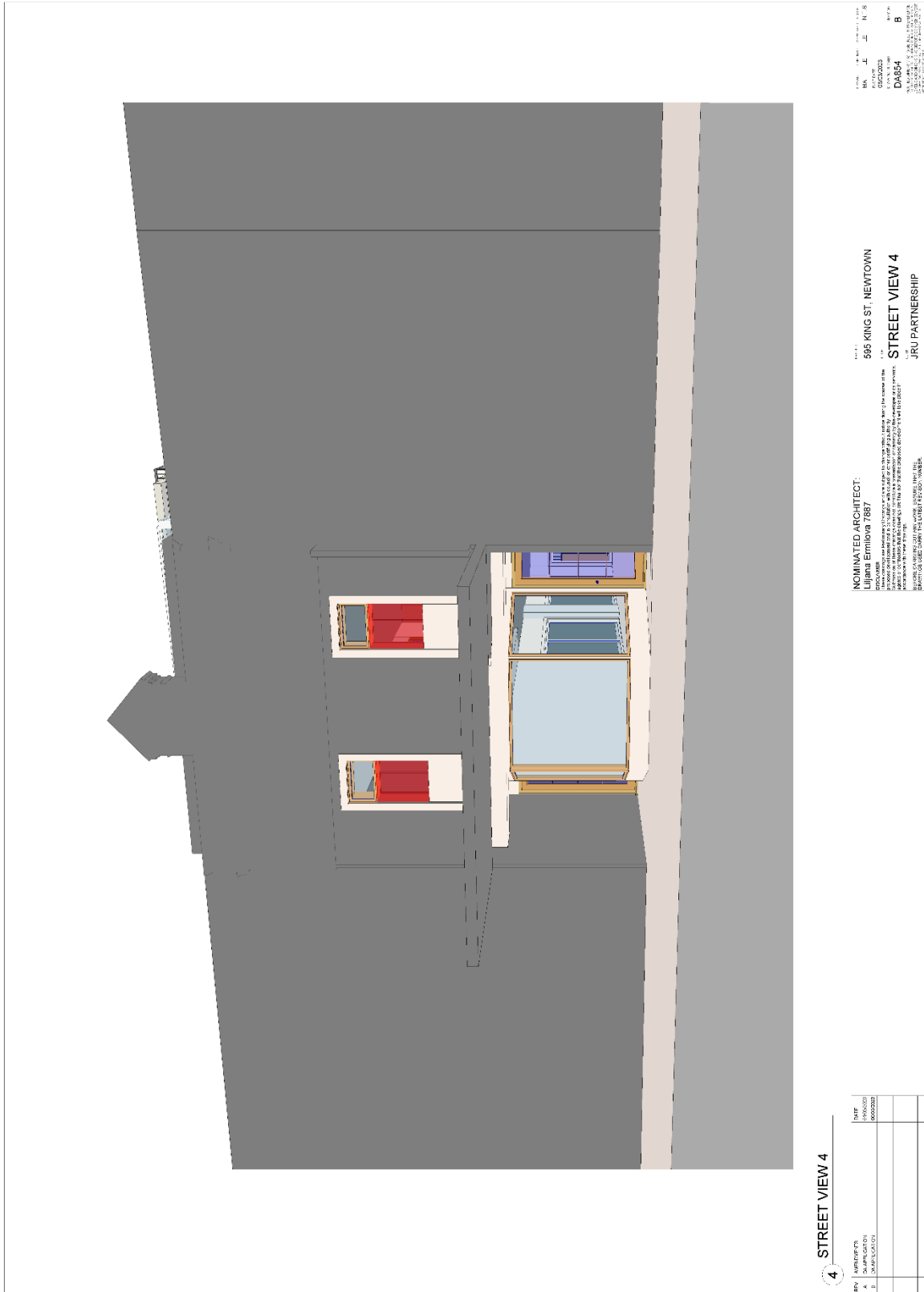


3 STREET VIEW 3

REV	DESCRIPTION	DATE
A	DATE	DATE
B	DATE	DATE

**NOMINATED ARCHITECT:**  
 Lijana Emilova 7887  
 595 KING ST, NEWTOWN  
**STREET VIEW 3**  
 JURU PARTNERSHIP

DATE: 11/11/2023  
 DRAWN BY: J. N. S.  
 CHECKED BY: J. N. S.  
 PROJECT NO: 2023003  
 DRAWING NO: D1883  
 SHEET NO: 1 OF 1



4 STREET VIEW 4

REV	DESCRIPTION	DATE
A	DATE PUBLISHED	05/03/2023
B	DATE PUBLISHED	05/03/2023

**NOMINATED ARCHITECT:**  
 Lijana Emilova 7887

**PROJECT:** 595 KING ST, NEWTOWN

**DATE:** 05/03/2023

**SCALE:** 1:100

**PROJECT NAME:** STREET VIEW 4

**CLIENT:** JURU PARTNERSHIP

**DATE:** 05/03/2023

**SCALE:** 1:100

**PROJECT NAME:** STREET VIEW 4

**CLIENT:** JURU PARTNERSHIP

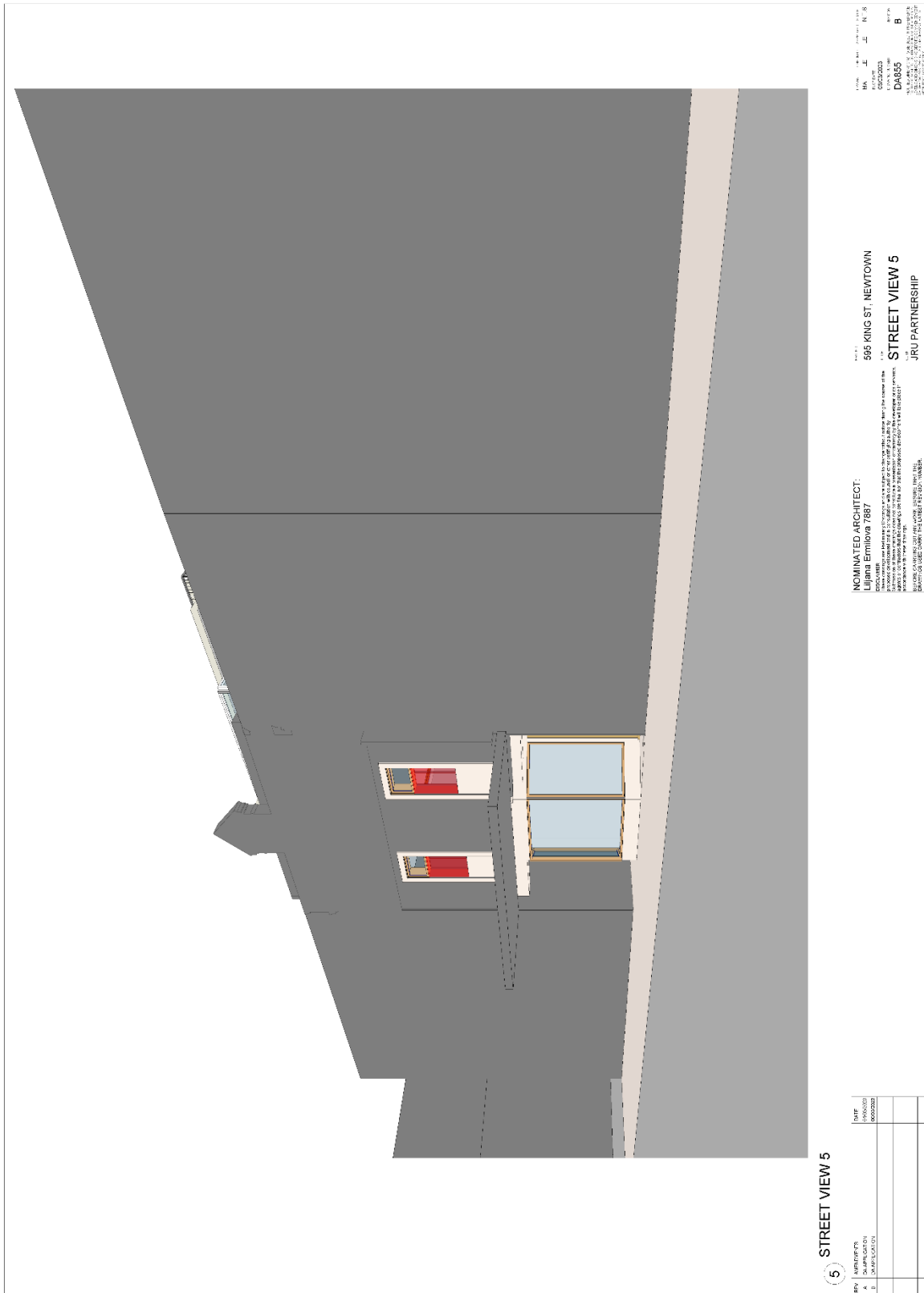
**DATE:** 05/03/2023

**SCALE:** 1:100

**PROJECT NAME:** STREET VIEW 4

**CLIENT:** JURU PARTNERSHIP





5 STREET VIEW 5

REV	DESCRIPTION	DATE
A	DATE SUBMITTED	08/03/2023
B	DATE APPROVED	08/03/2023

**NOMINATED ARCHITECT:**  
 Lijana Emilova 7887

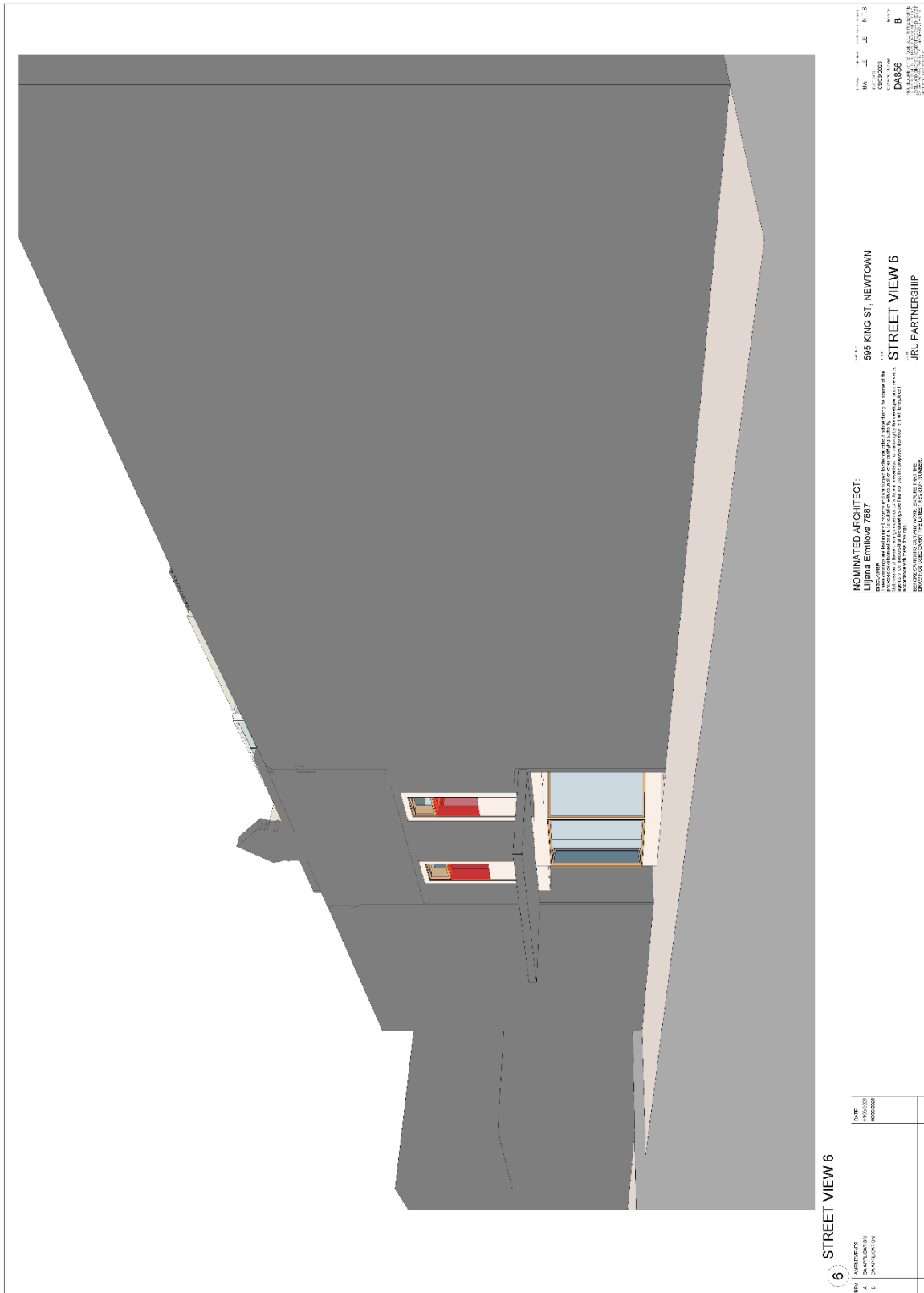
**595 KING ST, NEWTOWN**  
**STREET VIEW 5**  
 JURU PARTNERSHIP

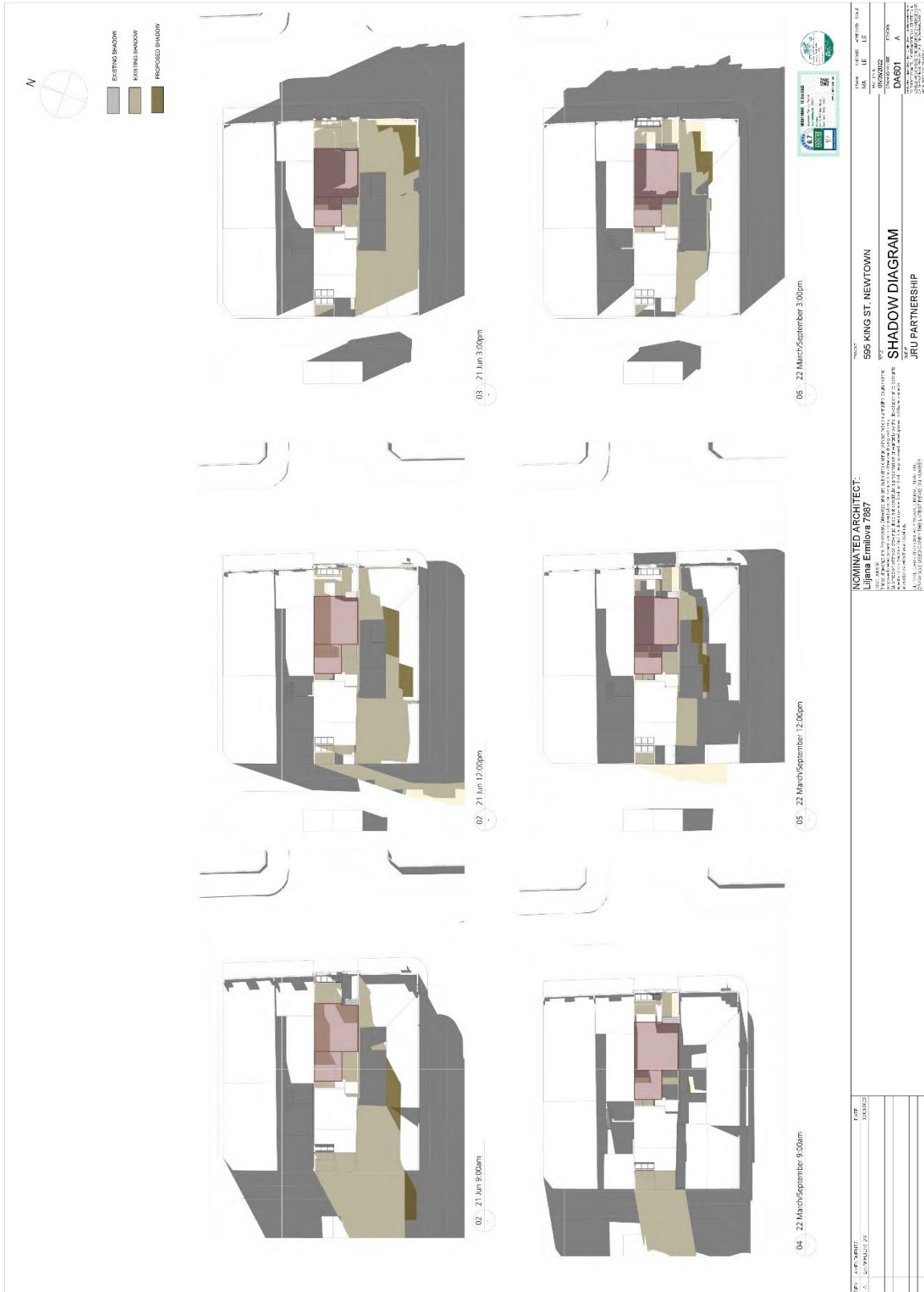
**DATE:** 08/03/2023  
**SCALE:** 1:100  
**PROJECT NO.:** D4885

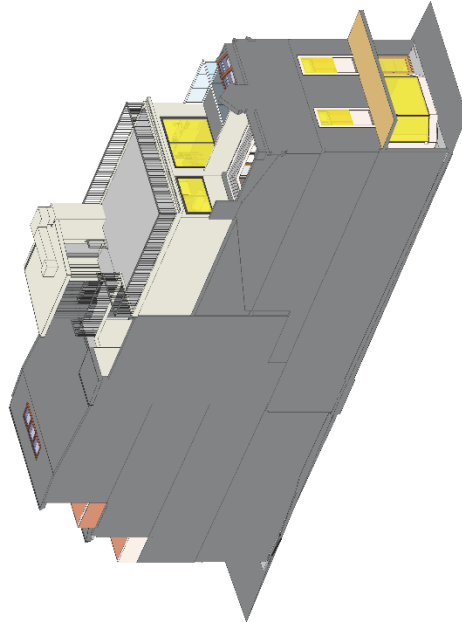
THIS DRAWING IS THE PROPERTY OF JURU PARTNERSHIP. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. NO PART OF THIS DRAWING IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF JURU PARTNERSHIP.

**DATE:** 08/03/2023  
**SCALE:** 1:100  
**PROJECT NO.:** D4885

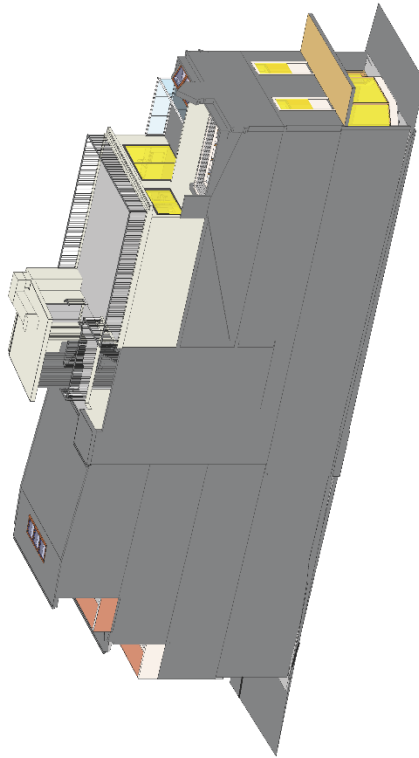
THIS DRAWING IS THE PROPERTY OF JURU PARTNERSHIP. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. NO PART OF THIS DRAWING IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF JURU PARTNERSHIP.







1 SOLAR DIAGRAM 10.00AM



2 SOLAR DIAGRAM 11.00AM



REV	DATE	BY	APP
A			

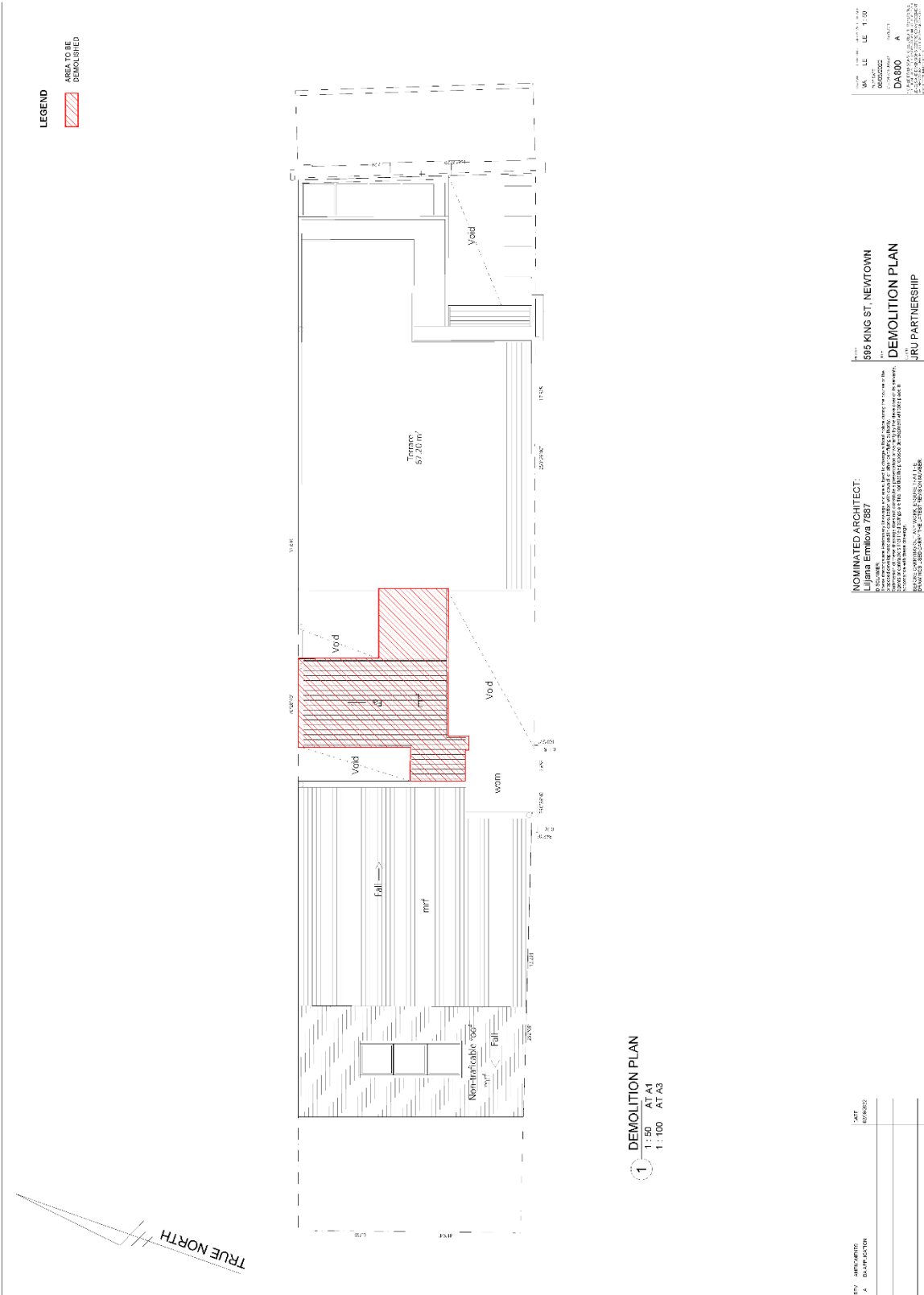
**NOMINATED ARCHITECT:**  
Lijana Ermlova 7887

THE ARCHITECT'S OBLIGATION IS LIMITED TO THE DESIGN OF THE BUILDING AND DOES NOT INCLUDE THE DESIGN OF ANY OTHER WORKS OR THE DESIGN OF ANY OTHER WORKS THAT MAY BE REQUIRED FOR THE BUILDING OR THE DESIGN OF ANY OTHER WORKS THAT MAY BE REQUIRED FOR THE BUILDING.

585 KING ST, NEWTOWN  
**SOLAR DIAGRAM**  
URU PARTNERSHIP

URU PARTNERSHIP  
585 KING ST, NEWTOWN  
NSW 1570  
URU PARTNERSHIP

DATE: 17/03/22



**LEGEND**  
  AREA TO BE DEMOLISHED

**1** DEMOLITION PLAN  
 1:50 AT A1  
 1:100 AT A3

DATE: 15/05/2022  
 DRAWN: DA800  
 CHECKED: A  
 PROJECT: 565 KING ST, NEWTOWN  
 CLIENT: URU PARTNERSHIP

**NOMINATED ARCHITECT:**  
 Lijana Emiliova 7887  
 565 KING ST, NEWTOWN  
**DEMOLITION PLAN**  
 URU PARTNERSHIP

REV	DESCRIPTION	DATE
A	ISSUE FOR PERMIT	

DATE PLOTTED: 15/05/2022  
 TIME: 10:04:17 AM

# SURVEYOR'S REPORT



REGISTERED BY THE INSTITUTE OF SURVEYORS, AUSTRALIA.  
FOR THE USE OF ITS MEMBERS ONLY.

**A.B. STEPHENS & ASSOCIATES**  
*Registered Surveyors*

**Property:** 595 King Street, Newtown

**Date:** 17<sup>th</sup> August, 2021

**Re:** Mr. N. Sekulovski



## SURVEYOR'S REPORT

Mr. N. Sekulovski  
595 King Street  
NEWTOWN NSW 2042

In reply please quote: 16011

17<sup>th</sup> August, 2021

We Certify that we have surveyed, for identification purposes only, the whole of the land comprised in Certificate of Title registered Folio Identifier B/443127 being also Lot B of a subdivision as shown in Deposited Plan numbered 443127 having a frontage of 7.24 metres to King Street at Newtown in the Local Government Area of Marrickville, Parish of Petersham, County of Cumberland.

The Land is further shown edged red in the attached sketch plan and we further report as follows: -

1. A three storey rendered concrete commercial building on concrete foundations and with a metal roof all of which stand on the subject land within the boundaries thereof. The property is known as No. 595 King Street, Newtown.
2. The said building, in our opinion, stands on the subject land as shown in the sketch plan.
3. The subject property is affected by Cross Easements affecting the party walls shown on the common boundary of Lots A and B in D.P. 443127.
4. Levels have been taken on the building. Datum for the site is a Bench Mark on kerb outside No. 595 King Street and has a given value of R.L. 20.15 on Australian Height Datum.

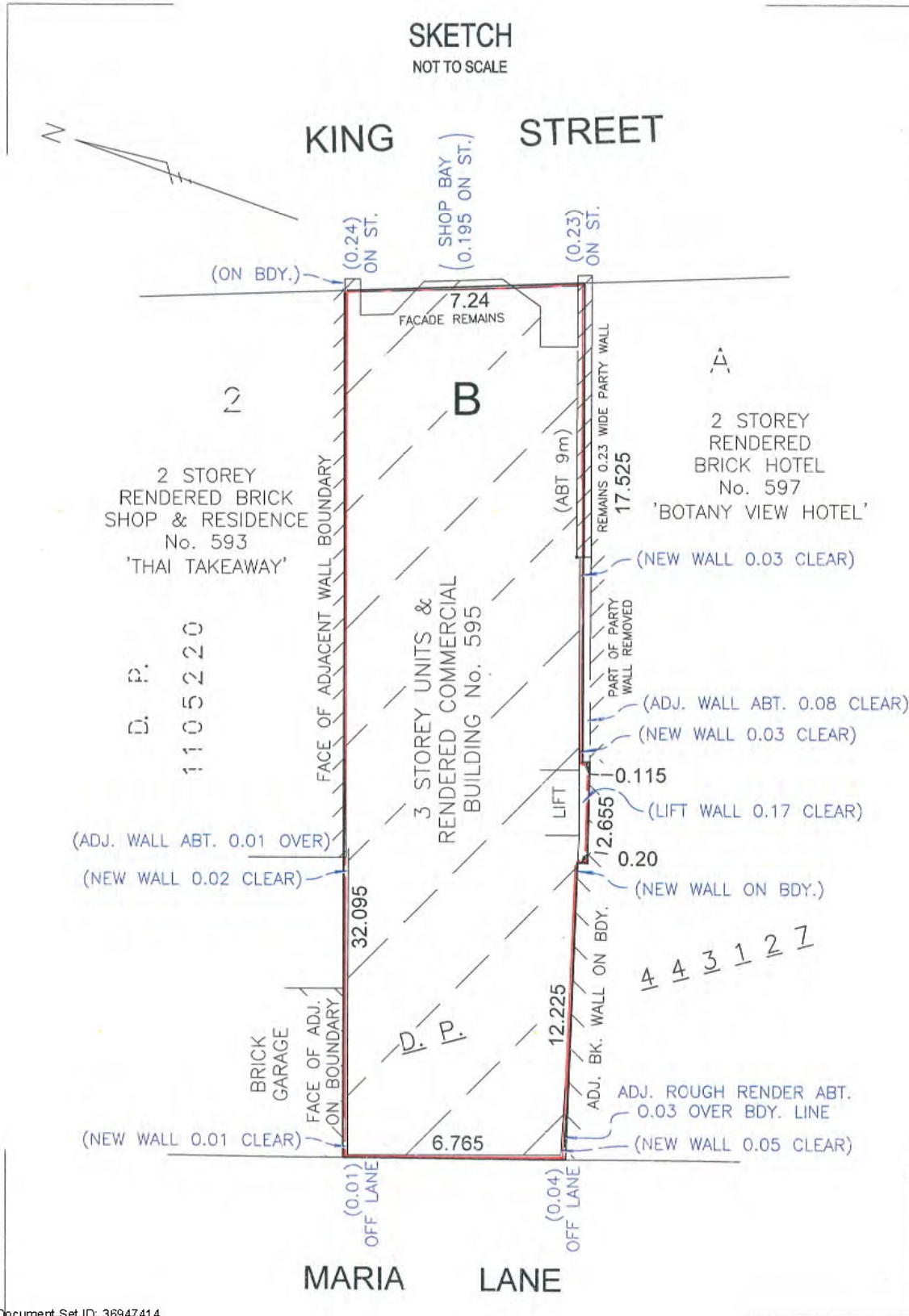
King Street Entry Floor Level is R.L. 20.18  
First Floor Level is R.L. 23.86  
Second Floor Level is R.L. 26.84  
Third Floor Level is R.L. 29.83  
Top of Lower King Street parapet is R.L. 30.14  
Top of Lift is R.L. 33.51

5. This survey does not define the boundaries and has been undertaken, on instructions, for identification purposes only. Where it is intended to erect any improvements along or near the boundaries of the subject land those boundaries should be marked by a separate survey. Boundaries are not to be established from information on the sketch plan.

Per  17-8-21  
Surveyor Registered under  
the Surveying Act, 2002.

**A.B. STEPHENS & ASSOCIATES**  
Land, Engineering & Mining Surveyors

Document Set ID: 36947414    www.sydneyssurvey.net    tel: 97851437    email: sydneyssurvey@hotmail.com  
Version: 1, Version Date: 17/10/2022



Document Set ID: 36947414  
Version: 1, Version Date: 17/10/2022



## Attachment C- Section 4.6 Exception to Development Standards



### CLAUSE 4.6 VARIATION TO CLAUSE 4.3 – HEIGHT OF BUILDINGS OF THE INNER WEST LOCAL ENVIRONMENTAL PLAN 2022

595 King Street, Newtown

March 2023  
REV 2.0

#### 1. Introduction

---

This submission seeks a variation to Clause 4.3 of the Inner West Local Environmental Plan 2022, which relates to building height.

This submission has been prepared in relation to a development application for the construction of one (1) additional residential unit (Unit 6) and rooftop communal open space to a recently completed shop top housing development at 595 King Street, Newtown.

As detailed in this written request for a variation to Clause 4.3, being a development standard under the Inner West Local Environmental Plan 2022, the development meets the requirements prescribed under Clause 4.6 of the Inner West Local Environmental Plan (LEP) 2022.

#### 2. Site Background

---

The subject site is commonly known as 595 King Street, Newtown and is legally referred to as Lot B in Deposited Plan 443127. The site is located on the western side of King Street between Darley Lane to the north and Darley Street to the south and is otherwise bounded to the rear by Maria Lane. The site is irregular in shape, narrowing at its rear. Per the survey plan prepared by A. B. Stephens & Associates and submitted under separate cover, the front boundary to King Street measures a total of 7.24 metres while the rear measures 6.75m. The northern side boundary measures 32.095m and the southern side measures 32.405m. The total site area is 229.5m<sup>2</sup>. Refer to Figure 1.

**Figure 1 Site Location Map**



Source: SIX Maps, 07-04-2018

The site is currently occupied by a recently completed part 3, part 4 storey shop top housing development. The existing building provides for a ground floor retail tenancy fronting King Street, that is currently being used as a café, with five residential units (3 x 1 bedroom and 2 x 2 bedroom) located over Levels 1 – 3.

At Level 3, an area of communal open space is provided for the residential tenants overlooking King Street. Pedestrian access to the building is via King Street with separate entries to the café and residential lobby.

Vehicular access to the site is via Maria Lane to the rear with one (1) secured, accessible car space available for residential use. A loading bay/shared zone immediately adjoins the car space. Provision has also been made for four (4) bicycle spaces. Dedicated bin rooms and storage for both retail and residential uses are located at the centre of the ground level.

Development in the surrounding area is characterised by two to four storey mixed use developments with a consistent awning provided over ground floor commercial premises. Immediately to the rear of the site is the Tom Foster Community Care Centre and low density residential development, in keeping with the zoning pattern.

Located to the north of the subject site at No. 593 King Street, Newtown is a 2 storey rendered brick shop and residence, with a rendered brick garage at the rear lane.

Adjoining the subject site to the south at No. 597 King Street is the Botany View Hotel which includes a split level outdoor dining area at the centre of the site.

King Street is slowly experiencing a transition from older stock buildings to contemporary development, reflecting the zoning, height and FSR controls prescribed to the area. The subject site is noted to be a B2 Local Centre zone with a 14m height of buildings control and 1.5:1 FSR, indicating a three-four storey desired future character as opposed to the existing predominantly two storey streetscape. Refer to Figure 2 Land Zoning Map below.

**Figure 2 Land Zoning Map**



Source: ePlanning Spatial Viewer

The site is located between the ANEF 20 – 25 contours and therefore impacted by aircraft noise. The site is further impacted by road traffic noise from vehicles travelling along King Street. An acoustic report has been prepared by Day Design Pty. Ltd. with regards to the proposed development and is submitted under separate cover.

Although the site itself has not been listed as an item of heritage, the site adjoins and is located in the vicinity of several items of heritage including:

- I158: Botany View Hotel
- I157: 555 King Street, Newtown (shop)
- I156: 539 King Street, Newtown (shop)
- A10: 1–15 Darley Street, part Darley Lane, Maria Lane, 2A-8 Wells Street

The subject property is also located within the King Street and Enmore Road Heritage Conservation Area. The Marrickville Development Control Plan 2011 further identifies the subject property as a contributory building. A Heritage Impact Statement has been prepared by Touring the Past and provides for an assessment of the proposed development within the context of the conservation area.

The subject property is located in proximity to local shops, services, community facilities and public transportation. St Peters Train Station is 260m to the south of the site, while tandem bus stops are 70–100m to the south of the site along King Street. Both options offer frequent transportation leading to centres near and further afield, including Marrickville, Glebe Point and the CBD. Numerous shops, supermarkets, chemists and other services are available along King Street and Enmore Road. Local open space is available to the south-east at Sydney Park and to the south-west at Camdenville Oval/Park.

### 3. Clause 4.6

This submission is made under Clause 4.6 of the Inner West LEP 2022 – Exceptions to development standards. Clause 4.6 states the following:

#### ***“4.6 Exceptions to development standards***

- (1) *The objectives of this clause are as follows:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for a development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - (b) the concurrence of the Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- Note.** When this Plan was made it did not include all of these zones.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
  - (c) clause 5.4,
  - (caa) clause 5.5,
  - (ca) clause 6.27(4),
  - (cb) clause 6.28,
  - (cc) clause 6.29,
  - (cd) clause 6.31".

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

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that

contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

*4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.*

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

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

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

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

The Environmental Planning Instrument to which these variations relate to is the Inner West LEP 2022.

The development standard to which this variation relates to is Clause 4.3 – Building height which reads as follows:

#### **4.3 Height of buildings**

*(1) The objectives of this clause are as follows—*

*(a) to ensure the height of buildings is compatible with the character of the locality,*

*(b) to minimise adverse impacts on local amenity,*

*(c) to provide an appropriate transition between buildings of different heights.*

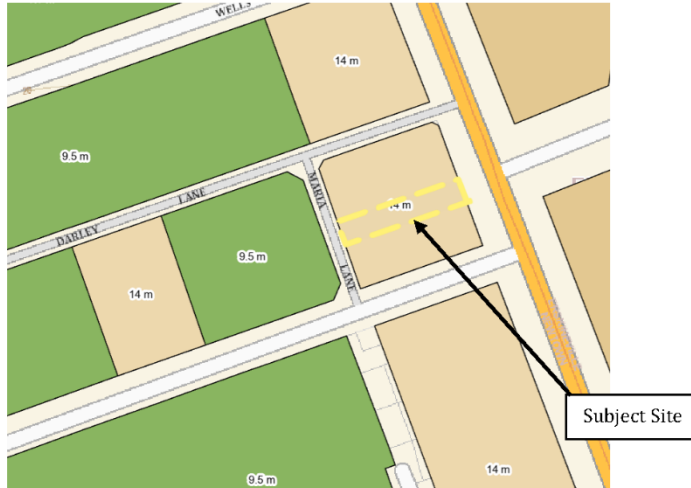
*(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

*(2A) A building on land identified as "Area 1", "Area 2" or "Area 3" on the Height of Buildings Map must not contain, or be reasonably capable of being modified to contain, an area forming part of the building's gross floor area within 3m of the maximum height shown for the land on the Height of Buildings Map.*

*(2B) Subclause (2A) does not apply to development on land identified as "Area 3" on the Height of Buildings Map if the consent authority is satisfied the development achieves the objectives of this clause.*

The subject site is identified on the Height of Building Map as having a maximum building height of 14 metres. Refer to Figure 3.

Figure 3: Building Height Map



Source: ePlanning Spatial Viewer

The proposal seeks a maximum building height of 16.54m as measured to the top of the lift overrun. A maximum variation of 2.54m is proposed.

A written justification is therefore required for the proposed variation to the development standard, in accordance with Clause 4.6 of the Inner West LEP 2022.

**4. Extent of Non-Compliance**

As noted above, per Clause 4.3 of the Inner West LEP 2022 a maximum building height of 14 metres.

As demonstrated on the submitted architectural plans, the maximum proposed height as measured in metres is 16.540m with the proposed variation ranging from 1.940m – 2.54m. The maximum variation is therefore 18.14%.

It is important to note that all of the proposed habitable floor area is contained within the maximum building height of 14 metres. The only variation relates to the communal stairs/lift and lift overrun which are used to access the communal open space at roof level.

A degree of flexibility is considered reasonable in this instance.

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

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

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

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

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

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

In respect of the building height standard, the first method is invoked.

The objectives supporting the building height development standard identified in Clause 4.3 are discussed below. Consistency with the objectives and the absence of any environmental impacts demonstrates that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.3.

*(1) The objectives of this clause are as follows:*

*(a) to ensure the height of buildings is compatible with the character of the locality,*

As acknowledged above, the proposed variation relates to the area of the communal stairs and lift, and lift overrun, which provide access to the communal open space. When considering the height of the habitable floor area, the proposal

is compliant with the maximum 14 metre control ensuring that the bulk of the proposed building mass is compliant with the control.

The area of the communal stairs/lift and lift overrun are limited in their area, measuring just 4.90m by 4.515m and are located over the centre of the building, some 14.78 metres from the King Street frontage, ensuring this element presents as recessive in its form and appearance, with minimal visibility from King Street.

This allows from a character perspective that the existing heritage façade, which is built to the boundary, remains the dominant element to the street. The proposed residential unit, albeit compliant with the height control, has then been setback 4.6 metres from King Street in keeping with the style of upper level additions to the south of the subject site including 601-603 King Street as demonstrated in the images below.







In view of the above, the proposal is considered to be compatible with the character of the locality.

*(b) to minimise adverse impacts on local amenity,*

The proposed variation will not result in any adverse impact on local amenity. The provision of communal open space at both roof level and ground floor is considered to provide for a better planning outcome on the site acknowledging that the area will receive excellent solar access on the roof level and provides for a consistent interface to King Street.

In terms of privacy, the area of communal open space is orientated towards King Street ensuring there is no overlooking to habitable spaces.

From a solar access perspective, the proposal will result in minimal additional overshadowing. Where new shadows are cast, they are limited to the car park, lane

and roof of adjoining developments and as such will not pose any adverse impact in terms of internal or external amenity.

*(c) to provide an appropriate transition between buildings of different heights.*

The proposal endeavours to represent a scale appropriate to the desired future character of the area as identified by the LEP and DCP. Sight lines have been demonstrated on the submitted Northern and Southern elevations which show that at street level, despite the additional floor area being sought, the existing heritage façade will remain the dominant element. The balustrades to the proposed rooftop communal open space and the depth of the additional unit have been appropriately set-in from the rear of the built form to have no visual impact from the public street level and ensure no views to the addition from the public domain, and thus in keeping with an appropriate transition between the scale of buildings along King Street. Per Figure 4, the proposed balustrades; roof overhang and; communal open space balustrade have a negligible impact on views of the building from the streetscape, beyond the existing façade parapet.

As acknowledged by the heritage report,

*"In light of the proposal's increased level of visibility as a backdrop element, the key heritage impact question is —would the new work dominate, overwhelm, or diminish the subject place, neighbouring heritage item, or bordering/nearby Contributory buildings?"*

*Any response should first accept that no sightlines to original elements of the subject place or neighbouring buildings would be concealed or obscured by the new work. There would be no reduction in the interpretability or intactness/integrity of the subject place, Botany View Hotel, or nearby contributory buildings.*

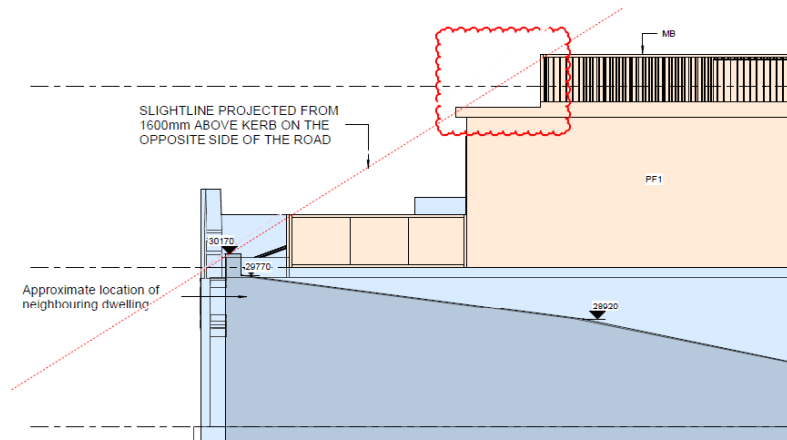
*The existing conditions of this section of King Street (north of St Peters station, south of Dickson) should also be acknowledged. This streetscape includes several examples of contemporary third or fourth storeys, set behind a retained parapet, as well as some tall infill development, particularly at nos 654-670. The broad character of the streetscape remains interpretable as a human scale within the relatively enclosed views of thoroughfare and predominantly historic (late 19th/early 20th century); however, the setback silhouette presence of low-key contemporary elements/additions is now an established component of the area.*

*It is noted that a light, recessive colour scheme (Surfmist) has been selected for the new work, which would assist it in blending into the skyline rather than contrasting sharply. A factor that contributes to its capacity to be understood as recessive element.*

*Taking into consideration such factors, the proposal is viewed as not forming a discordant visual relationship with the subject place, Botany View Hotel, or adjacent/nearby Contributory buildings. Further, while perceptible from the public domain, the new work would not be 'read' as incongruent with the established streetscape conditions.*

*On balance, the heritage impact is not deemed to rise to an unacceptable level".*

Figure 4: Excerpt of northern elevation



The proposal aligns with the objectives of the clause.

In view of the above, it is submitted that compliance with the standard is both unreasonable and unnecessary as the variation and development meet the objectives of the standard.

**6. Are there Sufficient Environmental Planning Grounds?**

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

While numerically non-compliant, the proposed variation to building height allows for a better outcome to be achieved through the provision of communal open space at both ground level and roof level, including equitable access through the central lift to service this area.

On this basis, the most logical location for communal open space on this particular site is at roof level. The proposal provides for 48.70m<sup>2</sup> of communal open space to the roof (21.27%), which is afforded generous solar access all year around, given its location at roof level. Additionally, the alterations to the existing building achieve 13.97m<sup>2</sup> (6.10%) of communal open space to the ground floor. Objective 3D-1 of the Apartment Design Guide makes specific reference to the provision of communal open space on the roof, by stating that where developments cannot offer communal open space at ground level, such as sites within business zones, they should provide communal spaces elsewhere such as a landscaped roof top terrace. The rooftop communal open space is detailed with landscape planter boxes, a BBQ and sink, seating, and a retractable umbrella for passive shading. Further, the ground floor communal open space is designed with a green wall in an open courtyard, with benching and tables for a comfortable space that residents can enjoy. The proposal is therefore consistent with the design guidance prescribed by ADG.

In providing a communal open space that achieves great residential amenity and equitable access, it is essential to extend the lift core to service the rooftop communal open space, which ultimately results in a maximum variation to the height control of 2.54m (or 18.14%). This variation permits disabled access to the communal open space, ensuring all residents are given the same opportunity to utilise the dedicated recreational space and engage in social interaction.

A compliant proposal has been considered as part of the design of the rooftop communal open space. In this design scenario, an unroofed stair and platform lift services access, however this greatly limits all-weather access and use. The provision of a lift core and roofed stair is a better design outcome for residential amenity, particularly as there are no sightlines to the rooftop communal open space where the lift and stair core is integrated into the overall design of the building.

Thus, the ability to achieve the future desired character of the locality and a high-quality communal open space provides a better planning and environmental grounds.

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

In this case, strict compliance with the Building Height development standard in the Inner West LEP 2022 is unnecessary and unreasonable.

#### **7. Is the Variation in the Public Interest?**

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

As established in Part 5 of this submission, the development is consistent with the objectives of the standard.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard as detailed within the submission generally and under Part 6.

Furthermore, the development is considered to be consistent with the objectives of the B2 Local Centre zone, which are as follows:

##### ***Objectives of zone***

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide housing attached to permissible non-residential uses which is of a type and scale commensurate with the accessibility and function of the centre or area.*
- *To accommodate residential development that complements and promotes the role of local centres as lively town centres in Inner West, with Ashfield town centre as the primary town centre.*
- *To encourage the activation of places through new development that achieves high architectural, urban design and landscape standards at street level.*

The following comments are provided in response to the objectives:

- Currently located on the subject site is a recently completed shop top housing development. The existing building provides for a commercial (café) use at ground level and five residential units above. The current proposal seeks to create one additional residential unit at Level 3 in response to local demand for increased housing in the precinct.
- The existing building provides for a café at ground level, generating employment opportunities within a community that is well serviced by public transport.
- The proposal does not include any additional car parking on site however is located proximate to train and bus public transport options with St Peters Train Station located

some 260m away and bus stops along King Street being between 70 – 100m walking distance. The proposal maximises the potential for public transport patronage, walking or cycling.

- The additional residential unit has been proposed in response to local demand for increased housing in the area, with the existing five residential tenancies already occupied following completion of the building earlier this year. The proposed alterations and additions offer additional communal open space to the ground floor, which has been appropriately integrated into the existing building footprint with screening features, green walls and private seating for residents.
- The proposal will not alter the existing active street frontage created by the café to King Street.
- The proposal will not alter the appearance of the development, as approved, at street level.
- Given the above, the proposal is consistent with the objectives of the zone.

The proposal consequently satisfies the objectives of the zone. The departure from the standard has not precluded consistency with any of the above objectives.

In view of the above, it is submitted that the variation is in the public interest and should be supported.

#### **8. Public Benefit of Maintaining the Standard**

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It is considered that the public benefit will not be undermined by varying the standard. The proposed variation allows for a better outcome to be achieved through the provision of communal open space at roof level including equitable access through the central lift to service this area.

Great attention to detail has been given to the design as the building sits beside a heritage item and is located within a heritage conservation area. Sight lines prepared as part of the development reveal that the existing heritage façade will remain the dominant element to the street with the new works recessive in their form and finish.

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

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

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

#### **9. Is the Variation Well Founded?**

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It is considered that this has been adequately addressed in Parts 5 and 6 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the Inner West LEP 2022 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standards;
- The development meets the objectives of the standard to be varied (building height) and objectives of the B2 Local Centre zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;

- The breach does not raise any matter of State or Regional Significance; and
- The development submitted aligns with the predominantly mixed use nature of the neighbourhood.

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

#### 10. General

Clause 4.6 also states that:

*“(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if:*

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

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

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

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

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

*(a) a development standard for complying development,*

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

*(c) clause 5.4,*

*(caa) clause 5.5,*

*(ca) clause 6.27(4),*

*(cb) clause 6.28,*

*(cc) clause 6.29,*

*(cd) clause 6.31”.*

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

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

The development proposed is not complying development.

A BASIX certificate has been submitted under a separate cover

Clauses 5.4, 5.5, 6.27(4), 6.28, 6.29 and 6.31 do not apply to the proposal.

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**11. Conclusion**

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The proposal does not strictly comply with building height development standard as prescribed by Clause 4.3 of the Inner West LEP 2022. Having evaluated the likely effects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the Inner West LEP 2022 are satisfied as the breach of the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and the use of Clause 4.6 of the Inner West LEP 2022 to vary this development control is appropriate in the context of the case.

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

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

Melissa Rodrigues  
Town Planner  
**GAT & Associates**  
Plan 2906



**CLAUSE 4.6 VARIATION TO CLAUSE 4.4 – FLOOR SPACE RATIO  
OF THE INNER WEST LOCAL ENVIRONMENTAL PLAN 2022**

**595 King Street, Newtown**

**March 2023  
REV 2.0**

**1. Introduction**

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This submission seeks a variation to Clause 4.4 of the Inner West Local Environmental Plan 2022, which relates to floor space ratio.

This submission has been prepared in relation to a development application for the construction of one (1) additional residential unit (Unit 6) and rooftop communal open space to a recently completed shop top housing development at 595 King Street, Newtown.

As detailed in this written request for a variation to Clause 4.4, being a development standard under the Inner West Local Environmental Plan 2022, the development meets the requirements prescribed under Clause 4.6 of the Inner West Local Environmental Plan (LEP) 2022.

**2. Site Background**

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The subject site is commonly known as 595 King Street, Newtown and is legally referred to as Lot B in Deposited Plan 443127. The site is located on the western side of King Street between Darley Lane to the north and Darley Street to the south and is otherwise bounded to the rear by Maria Lane. The site is irregular in shape, narrowing at its rear. Per the survey plan prepared by A. B. Stephens & Associates and submitted under separate cover, the front boundary to King Street measures a total of 7.24 metres while the rear measures 6.75m. The northern side boundary measures 32.095m and the southern side measures 32.405m. The total site area is 229.5m<sup>2</sup>. Refer to Figure 1.

**Figure 1 Site Location Map**



Source: SIX Maps, 07-04-2018



The site is currently occupied by a recently completed part 3, part 4 storey shop top housing development. The existing building provides for a ground floor retail tenancy fronting King Street, that is currently being used as a café, with five residential units (3 x 1 bedroom and 2 x 2 bedroom) located over Levels 1 – 3.

At Level 3, an area of communal open space is provided for the residential tenants overlooking King Street. Pedestrian access to the building is via King Street with separate entries to the café and residential lobby.

Vehicular access to the site is via Maria Lane to the rear with one (1) secured, accessible car space available for residential use. A loading bay/shared zone immediately adjoins the car space. Provision has also been made for four (4) bicycle spaces. Dedicated bin rooms and storage for both retail and residential uses are located at the centre of the ground level.

Development in the surrounding area is characterised by two to four storey mixed use developments with a consistent awning provided over ground floor commercial premises. Immediately to the rear of the site is the Tom Foster Community Care Centre and low density residential development, in keeping with the zoning pattern.

Located to the north of the subject site at No. 593 King Street, Newtown is a 2 storey rendered brick shop and residence, with a rendered brick garage at the rear lane.

Adjoining the subject site to the south at No. 597 King Street is the Botany View Hotel which includes a split level outdoor dining area at the centre of the site.

King Street is slowly experiencing a transition from older stock buildings to contemporary development, reflecting the zoning, height and FSR controls prescribed to the area. The subject site is noted to be a B2 Local Centre zone with a 14m height of buildings control and 1.5:1 FSR, indicating a three-four storey desired future character as opposed to the existing predominantly two storey streetscape. Refer to Figure 2 Land Zoning Map below.

**Figure 2 Land Zoning Map**



Source: ePlanning Spatial Viewer

The site is located between the ANEF 20 – 25 contours and therefore impacted by aircraft noise. The site is further impacted by road traffic noise from vehicles travelling along King Street. An acoustic report has been prepared by Day Design Pty. Ltd. with regards to the proposed development and is submitted under separate cover.

Although the site itself has not been listed as an item of heritage, the site adjoins and is located in the vicinity of several items of heritage including:

- I158: Botany View Hotel
- I157: 555 King Street, Newtown (shop)
- I156: 539 King Street, Newtown (shop)
- A10: 1–15 Darley Street, part Darley Lane, Maria Lane, 2A-8 Wells Street

The subject property is also located within the King Street and Enmore Road Heritage Conservation Area. The Marrickville Development Control Plan 2011 further identifies the subject property as a contributory building. A Heritage Impact Statement has been prepared by Touring the Past and provides for an assessment of the proposed development within the context of the conservation area.

The subject property is located in proximity to local shops, services, community facilities and public transportation. St Peters Train Station is 260m to the south of the site, while tandem bus stops are 70–100m to the south of the site along King Street. Both options offer frequent transportation leading to centres near and further afield, including Marrickville, Glebe Point and the CBD. Numerous shops, supermarkets, chemists and other services are available along King Street and Enmore Road. Local open space is available to the south-east at Sydney Park and to the south-west at Camdenville Oval/Park.

### 3. Clause 4.6

This submission is made under Clause 4.6 of the Inner West LEP 2022 – Exceptions to development standards. Clause 4.6 states the following:

#### ***“4.6 Exceptions to development standards***

- (1) *The objectives of this clause are as follows:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for a development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - (b) the concurrence of the Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- Note.** When this Plan was made it did not include all of these zones.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
  - (c) clause 5.4,
  - (caa) clause 5.5,
  - (ca) clause 6.27(4),
  - (cb) clause 6.28,
  - (cc) clause 6.29,
  - (cd) clause 6.31".

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

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that

contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

*4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.*

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

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

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

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

The Environmental Planning Instrument to which these variations relate to is the Inner West LEP 2022.

The development standard to which this variation relates to is Clause 4.4 – Floor Space Ratio which reads as follows:

**4.4 Floor space ratio**

*(1) 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.*

*(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

(2A) The maximum floor space ratio for development for a purpose other than residential accommodation on land in Zone R1 General Residential identified as “Area 1” on the Key Sites Map is 1:1.

(2B) The maximum floor space ratio for development for the purposes of residential accommodation is as follows—

(a) on land shown edged black or pink on the Floor Space Ratio Map—

<b>Site area</b>	<b>Maximum floor space ratio</b>
< 150m <sup>2</sup>	0.9:1
≥ 150 < 300m <sup>2</sup>	0.8:1
≥ 300m <sup>2</sup> < 450m <sup>2</sup>	0.7:1
≥ 450m <sup>2</sup>	0.6:1

(b) on land shown edged orange or green on the Floor Space Ratio Map is—

<b>Site area</b>	<b>Maximum floor space ratio</b>
< 150m <sup>2</sup>	1.0:1
≥ 150 < 300m <sup>2</sup>	0.9:1
≥ 300m <sup>2</sup> < 450m <sup>2</sup>	0.8:1
≥ 450m <sup>2</sup>	0.7:1

(c) on land shown edged brown on the Floor Space Ratio Map is—

<b>Site area</b>	<b>Maximum floor space ratio</b>
< 150m <sup>2</sup>	0.8:1
≥ 150 < 300m <sup>2</sup>	0.7:1
≥ 300m <sup>2</sup> < 450m <sup>2</sup>	0.6:1
≥ 450m <sup>2</sup>	0.5:1

(d) on land shown edged yellow on the Floor Space Ratio Map is—

<b>Site area</b>	<b>Maximum floor space ratio</b>
< 150m <sup>2</sup>	0.9:1
≥ 150 < 300m <sup>2</sup>	0.8:1
≥ 300m <sup>2</sup>	0.7:1

(2C) The maximum floor space ratio for development for the purposes of attached dwellings, bed and breakfast accommodation, dwelling houses and semi-detached dwellings on land identified as “F” on the Floor Space Ratio Map is specified in the Table to this subclause.

<b>Site area</b>	<b>Maximum floor space ratio</b>
≤ 150m <sup>2</sup>	1.1:1
> 150 ≤ 200m <sup>2</sup>	1:1
> 200 ≤ 250m <sup>2</sup>	0.9:1
> 250 ≤ 300m <sup>2</sup>	0.8:1
> 300 ≤ 350m <sup>2</sup>	0.7:1

> 350m<sup>2</sup>

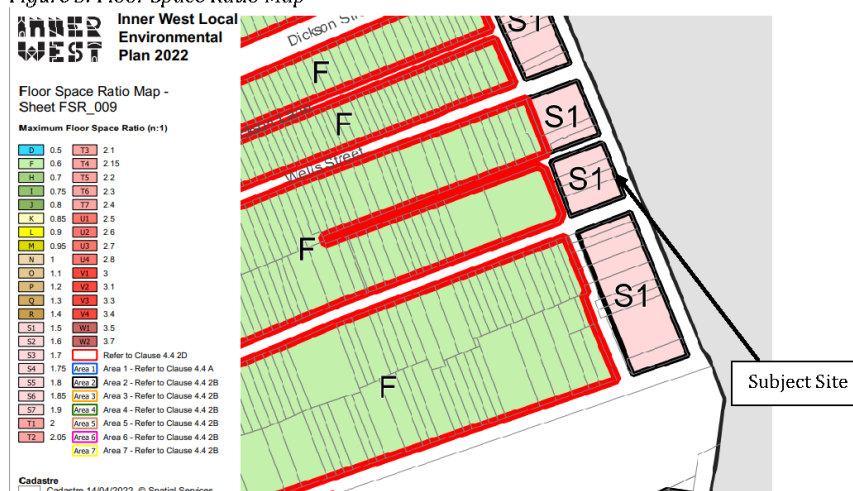
0.6:1

(2D) The maximum floor space ratio for development for the purposes of residential flat buildings on land shown edged red on the Floor Space Ratio Map is 0.25:1.

(2E) In calculating the floor space ratio in relation to land dedicated to the Council for the purposes of a proposed road on the Land Reservation Acquisition Map, land marked "Local Road (SP2)" must be included in the site area.

The subject site is identified on the Floor Space Ratio Map as having an FSR of 1.5:1 ("S1"). Refer to Figure 3.

Figure 3: Floor Space Ratio Map



Source: NSW Legislation, IWEP22, map 9.

Based on a site area of 229.5m<sup>2</sup> and a floor space ratio control of 1.5:1, a maximum gross floor area of 344.25m<sup>2</sup> is achievable over the subject site.

The proposed GFA is 485.35m<sup>2</sup>, a FSR of 2.1:1. A variation of 41% is proposed.

A written justification is therefore required for the proposed variation to the development standard, in accordance with Clause 4.6 of the Inner West LEP 2022.

**4. Extent of Non-Compliance**

As noted above, per Clause 4.4 of the Inner West LEP 2022 a maximum FSR of 1.5:1 is prescribed for the subject site.

It is important to consider that the proposed development is for alterations and additions to an approved shop top housing development. As part of its original approval, the existing development provides for a gross floor area of 435.35m<sup>2</sup> (26%). Therefore, although an overall variation of 141m<sup>2</sup>, 91.1m<sup>2</sup> already exists within the approved built form with the current application seeking an additional 50m<sup>2</sup> to accommodate proposed Unit 6.

It is also worthy to note that of the existing 91.1m<sup>2</sup>, 25.27m<sup>2</sup> relates to storage areas and bin stores at ground level, located at the centre of the building, as well additional communal open space.

These spaces will not be read from the public domain and as such do not contribute any additional visual bulk.

Whilst a variation is sought, the proposed works to create an additional residential unit are deemed to result in an overall improved outcome on the site. The development has no notable impacts on surrounding properties and the broader locality. Further, the scale and density of the form on the site are not out of character with the area.

A degree of flexibility is considered reasonable in this instance.

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

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

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

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

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

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

In respect of the floor space ratio standard, the first method is invoked.

The objectives supporting the floor space ratio development standard identified in Clause 4.4 are discussed below. Consistency with the objectives and the absence of any environmental impacts would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.4.

*(1) The objectives of this clause are as follows:*

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

With respect to objective (a), a maximum FSR of 1.5;1 or GFA of 344.25m<sup>2</sup> is permitted on the site. Objective (a) does not attempt to guide development and is an explanation of the development standard itself. The proposed development is not antipathetic to objective (a), and is of an appropriate that integrates not the existing character of development within the immediate vicinity.

*(b) to ensure development density reflects its locality,*

The proposal endeavours to represent a scale appropriate to the desired future character of the area as identified by the LEP and DCP. Sight lines have been demonstrated on the submitted Northern and Southern elevations which show that at street level, despite the additional floor area being sought, the existing heritage façade will remain the dominant element, with all other elements (the proposed rooftop communal open space and Unit 6) located substantially setback from view lines, and thus the public domain. Refer to Figure 4 on the following page.

As acknowledged by the heritage report,

*"In light of the proposal's increased level of visibility as a backdrop element, the key heritage impact question is —would the new work dominate, overwhelm, or diminish the subject place, neighbouring heritage item, or bordering/nearby Contributory buildings?"*

*Any response should first accept that no sightlines to original elements of the subject place or neighbouring buildings would be concealed or obscured by the new work. There would be no reduction in the interpretability or intactness/integrity of the subject place, Botany View Hotel, or nearby contributory buildings.*

*The existing conditions of this section of King Street (north of St Peters station, south of Dickson) should also be acknowledged. This streetscape includes several examples of contemporary third or fourth storeys, set behind a retained parapet, as well as some tall infill development, particularly at nos 654-670. The broad character of the streetscape remains interpretable as a human scale within the relatively enclosed views of thoroughfare and predominantly historic (late 19th/early 20th century); however, the setback silhouette presence of low-key contemporary elements/additions is now an established component of the area.*

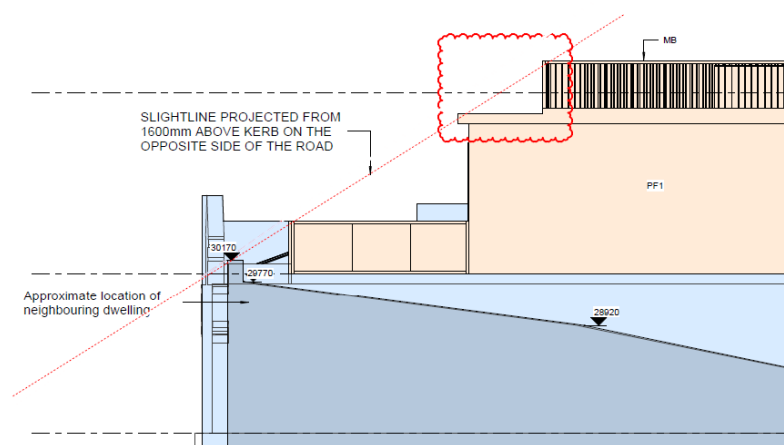


It is noted that a light, recessive colour scheme (Surfmist) has been selected for the new work, which would assist it in blending into the skyline rather than contrasting sharply. A factor that contributes to its capacity to be understood as recessive element.

Taking into consideration such factors, the proposal is viewed as not forming a discordant visual relationship with the subject place, Botany View Hotel, or adjacent/nearby Contributory buildings. Further, while perceptible from the public domain, the new work would not be 'read' as incongruent with the established streetscape conditions.

On balance, the heritage impact is not deemed to rise to an unacceptable level".

Figure 4 : Excerpt of northern elevation



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

The additional floor area sought by the proposal is sited to the front of the development and will have direct relationship to the B2 Local Centre zone along King Street. As described under objective (b), the resultant bulk and scale is considered to be acceptable.

While it is acknowledged that to the rear of the site, the subject site adjoins a residential zone, as no change is proposed to the rear façade of the existing building an appropriate transition is maintained between the two land zones as evident in the original approval for the site.

(d) to minimise adverse impacts on local amenity,

With respect to amenity, the subject site is affected by aircraft and traffic noise as identified in this report. The submitted acoustic report prepared by Day Design Pty. Ltd. and is submitted under considers the impact of these noise sources and provides recommendations to the wall/roof thickness/materials, glazing and insulation to ensure that impact of noise generating sources to the development is minimised. Subject to the report's recommendations, the proposal satisfies acoustic privacy objectives.

In terms of visual privacy, the proposed mixed use development is to fundamentally be built to its side boundaries. Consequently, no windows are proposed to the side elevations. A window is however sought to the proposed bedroom of Unit 6 into a central void. To minimise any potential overlooking from the adjacent common lobby/hallway, the window to the bedroom has been strategically located as far away as possible from the communal stairs. The siting of the window also follows the pattern of Units 2 and 4 at the lower levels, which will have additional privacy measures in the form of louvred screens.

The provision of communal open space at roof level is considered to provide for a better planning outcome on the site acknowledging that the area will receive excellent solar access and provides for an interface to King Street. Amenity is also achieved through the eastern orientation of proposed Unit 6, granting generous solar access as measured at the winter solstice.

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

There are no new trees proposed by the application. The highly urban streetscape and existing, strong building footprint has resulted in limited opportunity for landscaping on site. The proposal is considered to be in keeping with the form of similar developments along King Street where little, to no landscaping is provided. The existing green wall located within the central atrium will be unaffected by the proposed works, and contributes to the ground floor communal open space.

The proposal aligns with the objectives of the clause.

In view of the above, it is submitted that compliance with the standard is both unreasonable and unnecessary as the variation and development meet the objectives of the standard.

#### **6. Are there Sufficient Environmental Planning Grounds?**

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

As established in the previous section of this written request, the FSR variation occurs without any unacceptable environmental impacts and will maintain the integrity of the amenity of adjacent and nearby properties. Further, it is of a form and scale that is compatible with the existing and desired future character of the area which includes examples of four storey development to the south of the site, between Nos. 601 – 617 King Street including the corner property at King and Darley Streets. Thus, the key environmental planning ground is that the development achieves consistency in the character of development found along King Street.

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

The construction of an additional 1 bedroom unit will inject increased housing diversity into the Newtown Locality. The pressures for housing choice in the locality is significantly high given its close proximity to Sydney's CBD, public transport services and Newtown entertainment precinct.

The proposed development limits the number of off street car parking spaces, thus reducing the dependency on private modes of transport and increasing the use of public transport.

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

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

In this case, strict compliance with the FSR development standard in the Inner West LEP 2022 is unnecessary and unreasonable.

#### **7. Is the Variation in the Public Interest?**

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

As established in Part 5 of this submission, the development is consistent with the objectives of the standard.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard as detailed within the submission generally and under Part 6.

Furthermore, the development is considered to be consistent with the objectives of the B2 Local Centre zone, which are as follows:

##### ***Objectives of zone***

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide housing attached to permissible non-residential uses which is of a type and scale commensurate with the accessibility and function of the centre or area.*
- *To accommodate residential development that complements and promotes the role of local centres as lively town centres in Inner West, with Ashfield town centre as the primary town centre.*
- *To encourage the activation of places through new development that achieves high architectural, urban design and landscape standards at street level.*

The following comments are provided in response to the objectives:

- Currently located on the subject site is a recently completed shop top housing development. The existing building provides for a commercial (café) use at ground level and five residential units above. The current proposal seeks to create one additional residential unit at Level 3 in response to local demand for increased housing in the precinct.
- The existing building provides for a café at ground level, generating employment opportunities within a community that is well serviced by public transport.
- The proposal does not include any additional car parking on site however is located proximate to train and bus public transport options with St Peters Train Station located some 260m away and bus stops along King Street being between 70 – 100m walking distance. The proposal maximises the potential for public transport patronage, walking or cycling.
- The additional residential unit has been proposed in response to local demand for increased housing in the area with the existing five residential tenancies already occupied following completion of the building earlier this year. The proposed alterations and additions offer additional communal open space to the ground floor, which has been appropriately integrated into the existing building footprint with screening features, green walls and private seating for residents.

- The proposal will not alter the existing active street frontage created by the café to King Street.
- The proposal will not alter the appearance of the development, as approved, at street level.
- Given the above, the proposal is consistent with the objectives of the zone.

The proposal consequently satisfies the objectives of the zone. The departure from the standard has not precluded consistency with any of the above objectives.

In view of the above, it is submitted that the variation is in the public interest and should be supported.

#### **8. Public Benefit of Maintaining the Standard**

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It is considered that the public benefit will not be undermined by varying the standard.

The submission of this proposal follows the completion of the current building which comprises of 1 x commercial tenancy and 5 x residential units which at the time of writing this report are all currently leased. The use of the completed and fully occupied building has revealed that the communal open space at roof level is under utilised whilst there is a demand for increased residential accommodation in the area.

The inclusion of Unit 6 as part of the proposed works will benefit the public through the creation of new residential accommodation in an area well serviced by local infrastructure and services.

Great attention to detail has been given to the design as the building sits beside a heritage item and is located within a heritage conservation area. Sight lines prepared as part of the development reveal that the existing heritage façade will remain the dominant element to the street with the new works recessive in their form and finish.

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

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

#### **9. Is the Variation Well Founded?**

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It is considered that this has been adequately addressed in Parts 5 and 6 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the Inner West LEP 2022 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standards;
- The development meets the objectives of the standard to be varied (floor space ratio) and objectives of the B2 Local Centre zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance; and
- The development submitted aligns with the predominantly mixed use nature of the neighbourhood.

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

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**10. General**

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Clause 4.6 also states that:

*“(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if:*

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

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

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

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

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

*(a) a development standard for complying development,*

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

*(c) clause 5.4,*

*(caa) clause 5.5,*

*(ca) clause 6.27(4),*

*(cb) clause 6.28,*

*(cc) clause 6.29,*

*(cd) clause 6.31”.*

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

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

The development proposed is not complying development.

A BASIX certificate has been submitted under a separate cover.

Clauses 5.4, 5.5, 6.27(4), 6.28, 6.29 and 6.31 do not apply to the proposal.

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**11. Conclusion**

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The proposal does not strictly comply with floor space ratio development standard as prescribed by Clause 4.4 of the Inner West LEP 2022. Having evaluated the likely effects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the Inner West LEP 2022 are satisfied as the breach of the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and the use of Clause 4.6 of the Inner West LEP 2022 to vary this development control is appropriate in the context of the case.

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

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

Melissa Rodrigues  
Town Planner  
**GAT & Associates**  
Plan 2906

## Attachment D – Statement of Heritage Significance

### **8.2.4.1 Statement of heritage significance**

1. The King Street and Enmore Road retail strip provides an evocative physical record of significant historical phases which shaped the "New Town" from the 19th to the early 20th century.
2. The retail strip provides evidence of the working class residential boom of the late 1870/80s, as evidenced by the rail station and surviving tramsheds.
3. The quality and quantity of the late Victorian period building stock exemplifies the economic boom of the late 19th century. Many of the buildings are impressive reminders of the area's role as a civic, retail and entertainment hub.
4. The continuous two and three storey stucco facades and the general uniformity of scale in the area create a distinct visual impression and outstanding townscape qualities, particularly in the central King Street area.
5. The consistency and relative intactness of the late 19th to early 20th century building stock is unique in the Sydney metropolitan area and NSW.
6. A large number of Art Deco and Inter-War period hotels demonstrate the highly populated, working class nature of the suburb in the early part of the 20th century.
7. The streetscape has high aesthetic values which are enhanced by the closed vistas created by the street curves and by the views over the surrounding areas afforded by the alignment following the ridgeline.
8. Mixed retail uses, including delicatessens, and changes to shopfronts dating from the 1950s and 1960s reflect the strong influence of post-war migrants on the area.
9. The area has social significance to the local and broader community, demonstrated through the involvement of the local community in the management of the area and its recognition by the National Trust and the Australian Heritage Commission.

**Attachment E – Conditions of consent should the Panel approve the application**

**CONDITIONS OF CONSENT**

**DOCUMENTS RELATED TO THE CONSENT**

**1. Documents related to the consent**

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DA101 Rev B	Site Plan	06/03/2023	Liljana Ermilova
DA201 Rev B	Ground Floor Plan	06/03/2023	Liljana Ermilova
DA202 Rev B	Level 1	06/03/2023	Liljana Ermilova
DA203 Rev B	Level 2	06/03/2023	Liljana Ermilova
DA204 Rev B	Level 3	06/03/2023	Liljana Ermilova
DA205 Rev B	Roof Plan	06/03/2023	Liljana Ermilova
DA301 Rev B	Section A	06/03/2023	Liljana Ermilova
DA302 Rev B	Section B & C	06/03/2023	Liljana Ermilova
DA303 Rev B	Section D & E	06/03/2023	Liljana Ermilova
DA401 Rev B	East & West Elevation	06/03/2023	Liljana Ermilova
DA402 Rev B	North Elevation	06/03/2023	Liljana Ermilova
DA403 Rev B	South Elevation	06/03/2023	Liljana Ermilova
1343834M	BASIX	10/10/2022	GAT and Associates
6056-3.1 R Rev A	Amended Acoustic Assessment	23/05/2018	Day Design



As amended by the conditions of consent.

**FEES**

**2. Security Deposit - Custom**

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

<b>Security Deposit:</b>	<b>\$2,800.00</b>
<b>Inspection Fee:</b>	<b>\$350.00</b>

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 or before commencing works, written evidence must be provided to the Certifying Authority that a monetary contribution of \$XXX, indexed, in accordance with the Marrickville Section 94/94A Contributions Plan 2014] ("CP") has been paid to the Council.

The above contribution is the contribution applicable as at 17/03/2023.

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

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

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

Public Amenities Type:	Contribution \$
Recreation Facilities	\$16,168.28
Community Facilities	\$1,816.06
Traffic Facilities	\$246.36
*Road access dedication (*only applies Planning Precincts identified in the Contributions Plan, delete if not relevant)	N/A
Plan Administration	\$364.97
<b>TOTAL</b>	<b>\$18,613.66</b>

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

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

Payment methods:

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

minimum of 2 business days for the invoice to be issued before payment can be accepted.

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

#### **4. Long Service Levy**

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed rate of 0.25% 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. Separation of Commercial and Residential Waste and Recycling**

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

#### **6. Residential Flat Buildings – Hot Water Systems**

Where units or dwellings are provided with separate individual hot water systems, these must be located so they are not visible from the street.

#### **7. Residential Flat Buildings – Air Conditioning Systems**

Where units or dwellings are provided with separate individual air conditioning systems, these must be located so they are not visible from the street.

#### **8. Residential Flat Buildings – Adaptable Dwellings**

Prior to the issue of a Construction Certificate, the Certifying Authority, must be provided with plans that demonstrate that one unit is an Adaptable unit.

No works are to occur to the premises that would prevent the Adaptable units from being adapted for persons with a disability.

**9. Waste Management Plan**

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

**10. Erosion and Sediment Control**

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

**11. Standard Street Tree Protection**

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

**12. Works Outside the Property Boundary**

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

**13. Residential Flat Buildings – Hot Water Systems**

Where units or dwellings are provided with separate individual hot water systems, these must be located so they are not visible from the street.

**14. Residential Flat Buildings – Air Conditioning Systems**

Where units or dwellings are provided with separate individual air conditioning systems, these must be located so they are not visible from the street.

**15. Waste Management Plan**

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

**16. 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.

#### **17. 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.

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

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

### **PRIOR TO ANY DEMOLITION**

#### **19. Resource Recovery and Waste Management Plan - Demolition and Construction**

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

#### **20. 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.

#### **21. 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.

**22. 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****23. Bin Storage Area - Residential**

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

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

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

**24. Bulky Waste Storage Area – Residential**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating that the bulky waste storage area must meet the floor area requirements as per the Marrickville DCP 2011 and have minimum doorways of 1200mm wide to accommodate large items.

**25. Waste Transfer Route**

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

**26. Each Residential Dwelling is to have Access to a Disposal Point for All Waste Streams**

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

**27. Party Walls**

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

**28. Acoustic Report – Aircraft and Road 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 and *State Environmental Planning Policy (Transport and Infrastructure) 2021*.

**29. Concealment of Plumbing and Ductwork**

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

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

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

**31. 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*

**32. Fibre-ready Facilities**

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

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

**DURING DEMOLITION AND CONSTRUCTION****33. Documentation of Demolition and Construction Waste**

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

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

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

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



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

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

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

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

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

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

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

### **PRIOR TO OCCUPATION CERTIFICATE**

#### **35. Aircraft Noise –Alterations and Additions**

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 and *State Environmental Planning Policy (Transport and Infrastructure) 2021* 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.

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

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

**ON-GOING****37. Bin Storage**

All bins are to be stored within the site. Bins are to be returned to the property within 12 hours of having been emptied.

**38. Documentation of Businesses Waste Services**

All businesses must have written evidence of all valid and current contracts and/ or tip dockets for the disposal and/ or processing of all waste streams generated from the site.

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

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

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

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

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

**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.

#### **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.

#### **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.

#### **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.

#### **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.

**Amenity Impacts General**

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

**Lead-based Paint**

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

**Dial before you dig**

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

**Useful Contacts**

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm <a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a>
Department of Fair Trading	13 32 20 <a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a> Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 <a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>

Landcom	9841 8660	To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441	<a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Food Authority	1300 552 406	<a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>
NSW Government		<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diySAFE.nsw.gov.au">www.diySAFE.nsw.gov.au</a> Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555	<a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>
Sydney Water	13 20 92	<a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>
Waste Service - Environmental Solutions	SITA 1300 651 116	<a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>
Water Efficiency Labelling and Standards (WELS)		<a href="http://www.waterrating.gov.au">www.waterrating.gov.au</a>
WorkCover Authority of NSW	13 10 50	<a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a> Enquiries relating to work safety and asbestos removal and disposal.

**Prescribed Conditions**

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

**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.

**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 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*.

**Disability Discrimination Access to Premises Code**

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

**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.

**Noise**

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

**Fire Safety Certificate**

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

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

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

**Asbestos Removal**

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m<sup>2</sup> of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

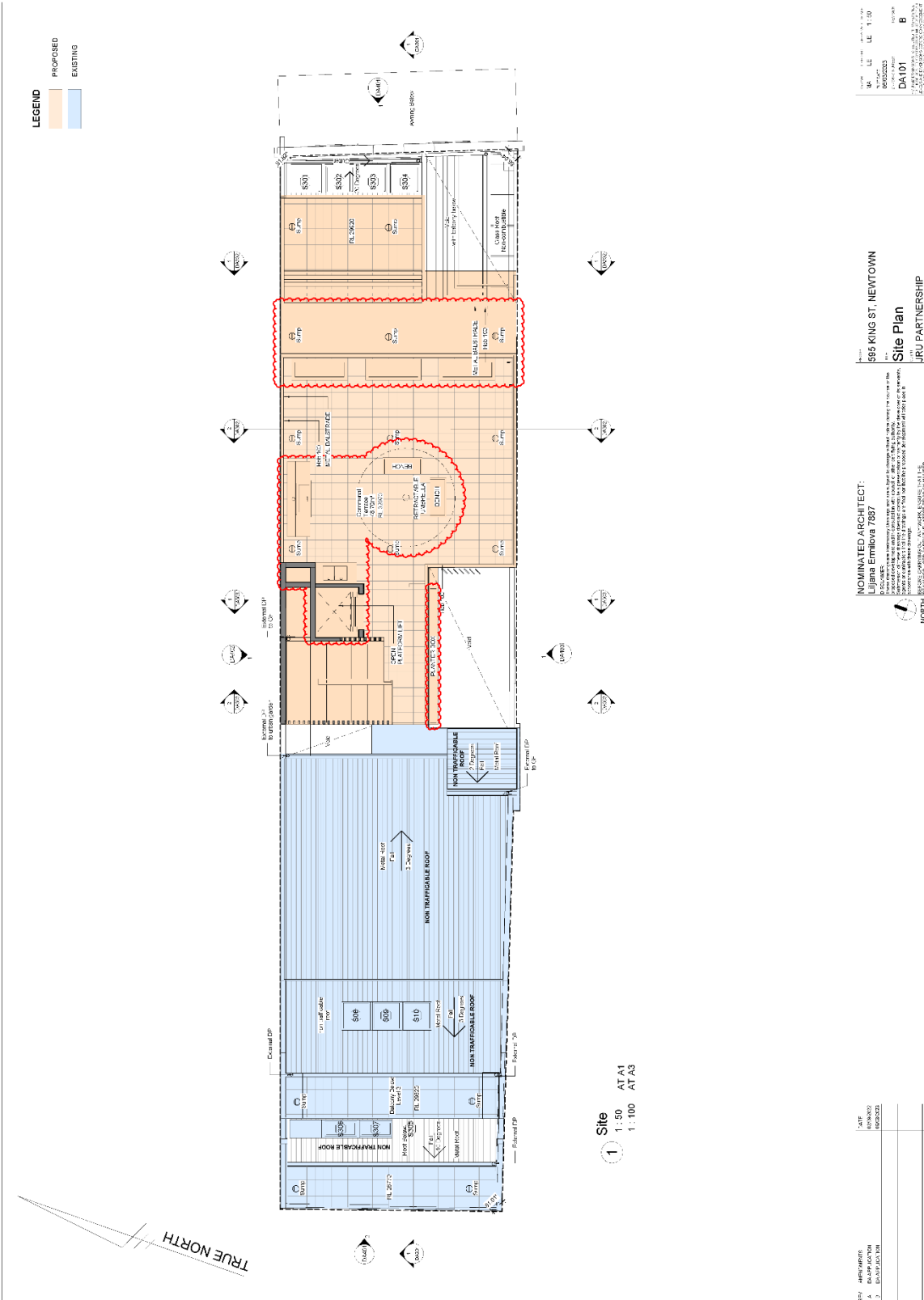
Removal of friable asbestos material must only be undertaken by a contractor that holds a current Class A Friable Asbestos Removal Licence.

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.





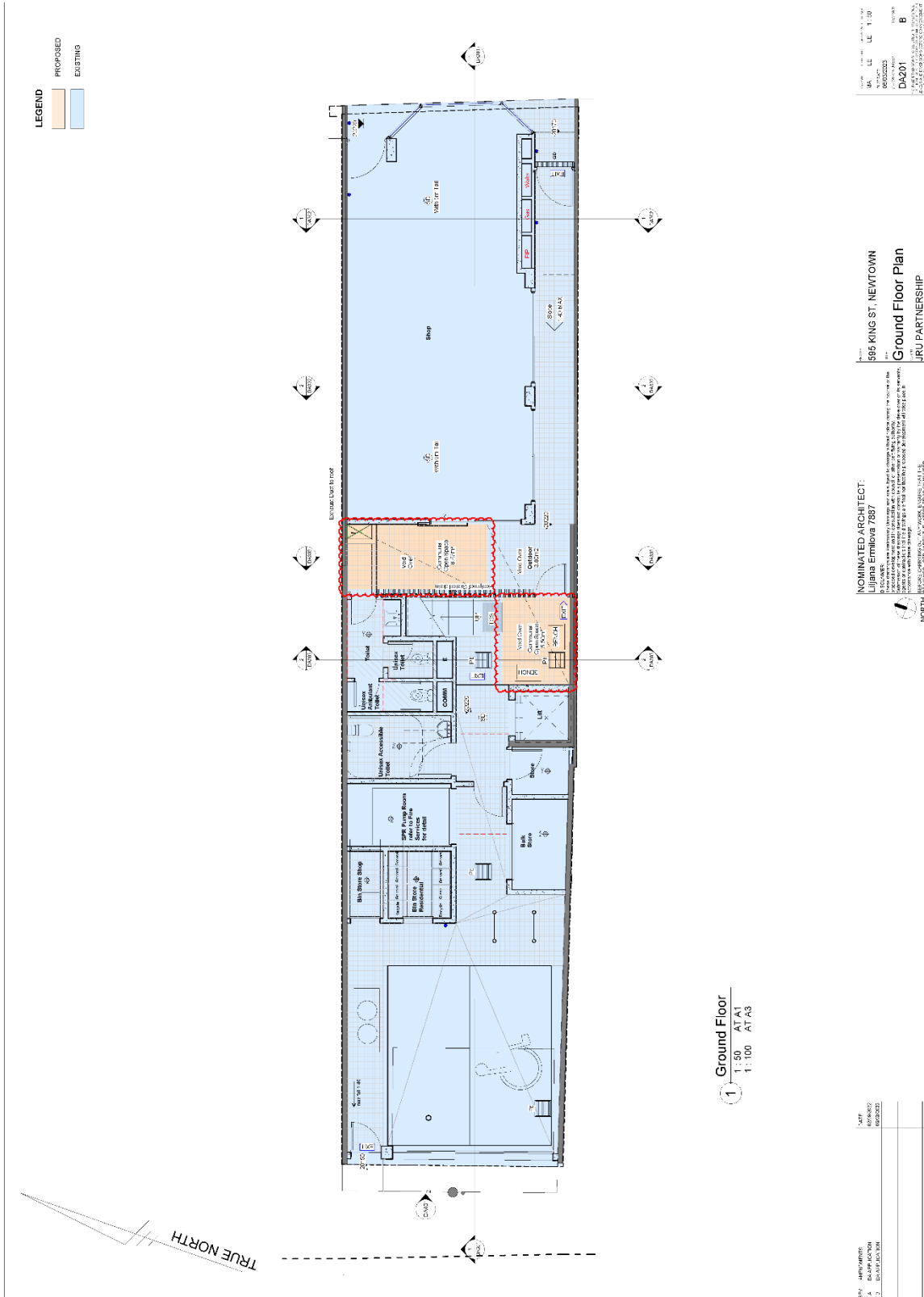


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 SHEET NO: 1 OF 1

NOMINATED ARCHITECT:  
 Lijana Embrova 7887  
 565 KING ST, NEWTOWN  
 NSW 1590  
 URU PARTNERSHIP  
 Site Plan

Site  
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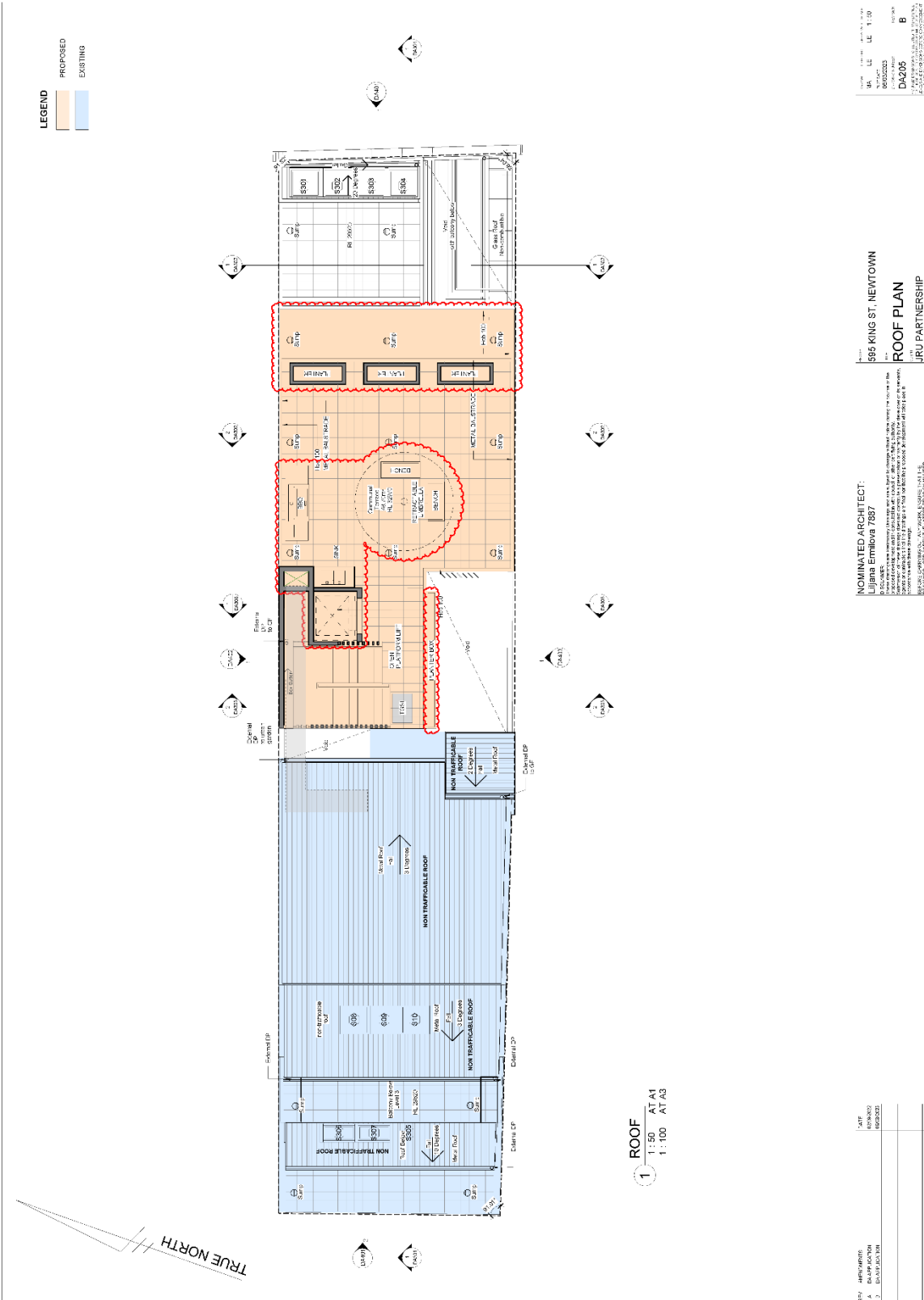
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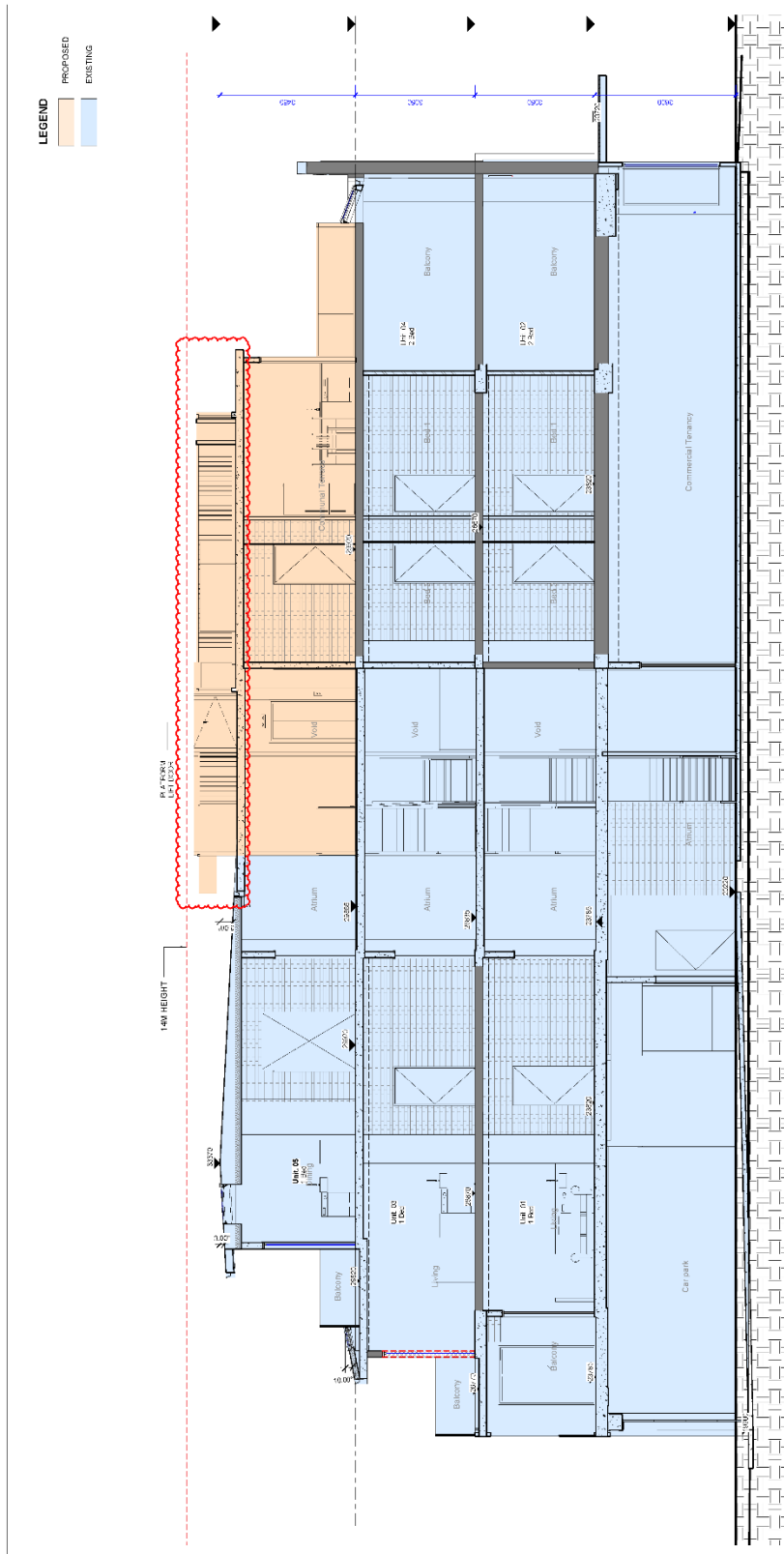


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NOMINATED ARCHITECT:  
 Lijana Embrova 7887  
 585 KING ST, NEWTOWN  
 ROOF PLAN  
 URU PARTNERSHIP

REV	DESCRIPTION	DATE
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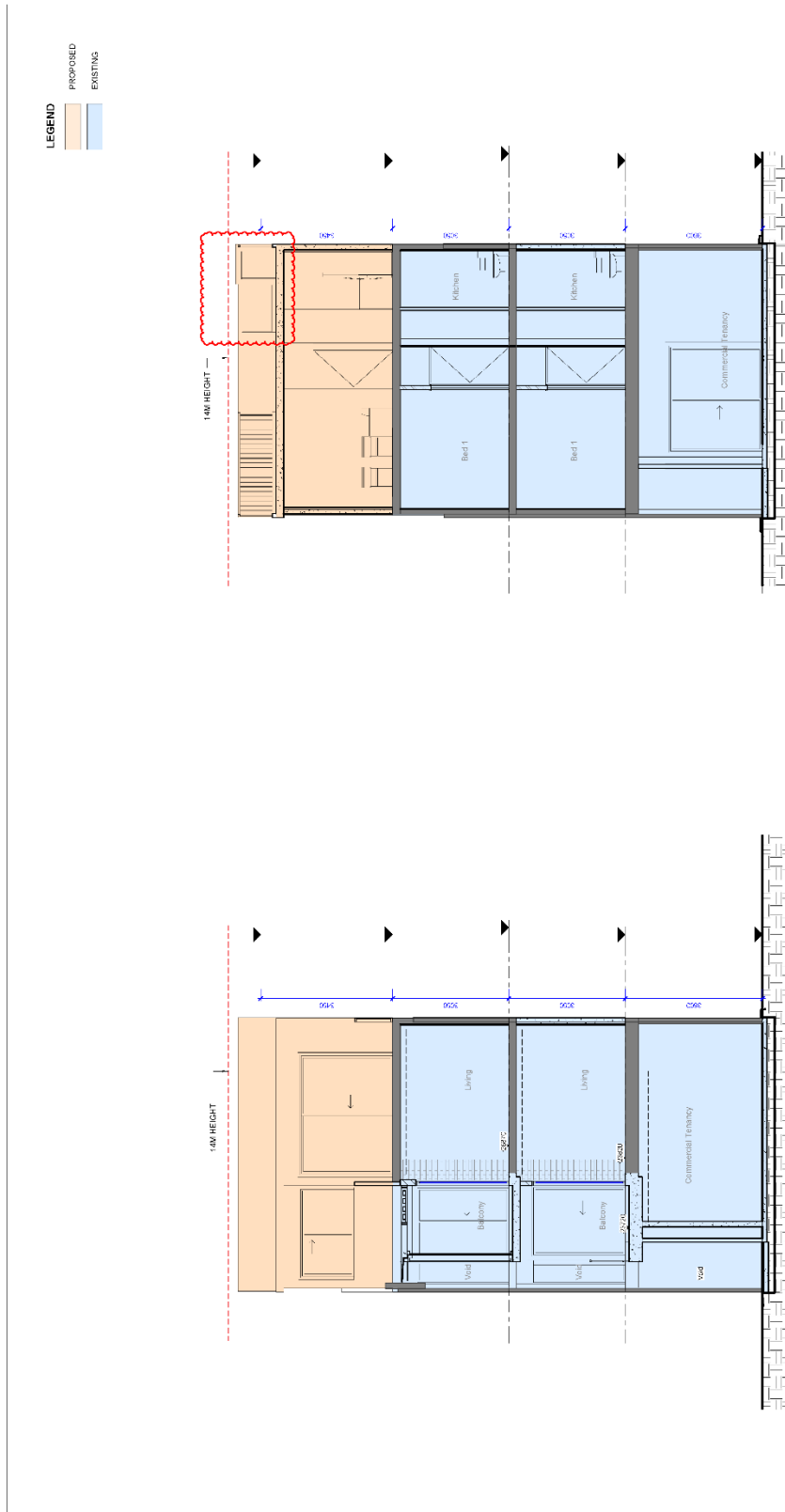
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NOMINATED ARCHITECT:  
 Lijana Ermlova 7887  
 565 KING ST, NEWTOWN  
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 URU PARTNERSHIP

REV	DESCRIPTION	DATE
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2	ISSUED FOR PERMIT	11/06/2023





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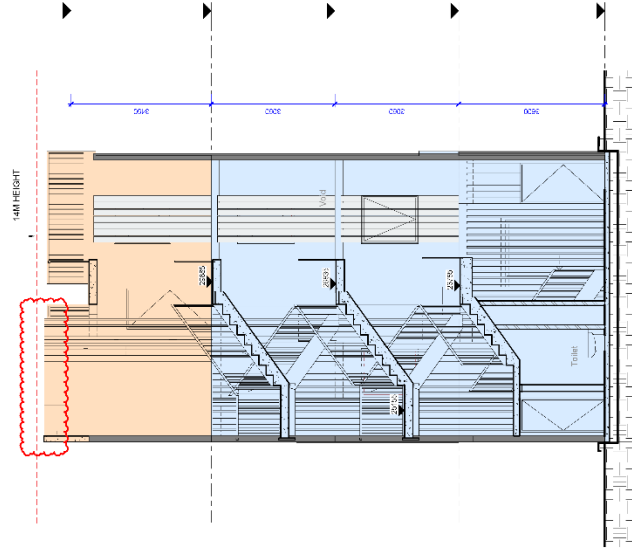
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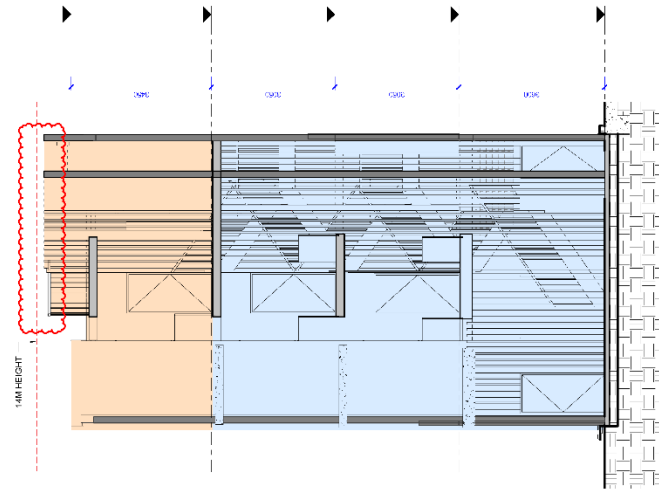
NOMINATED ARCHITECT:  
Lijana Ermlova 7887  
565 KING ST, NEWTOWN  
SECTION B & C  
URU PARTNERSHIP

URU PARTNERSHIP  
11 MARKET ST  
SYDNEY NSW 2000  
TEL: 02 9231 1234  
WWW.URUPARTNERSHIP.COM.AU

LEGEND  
 PROPOSED  
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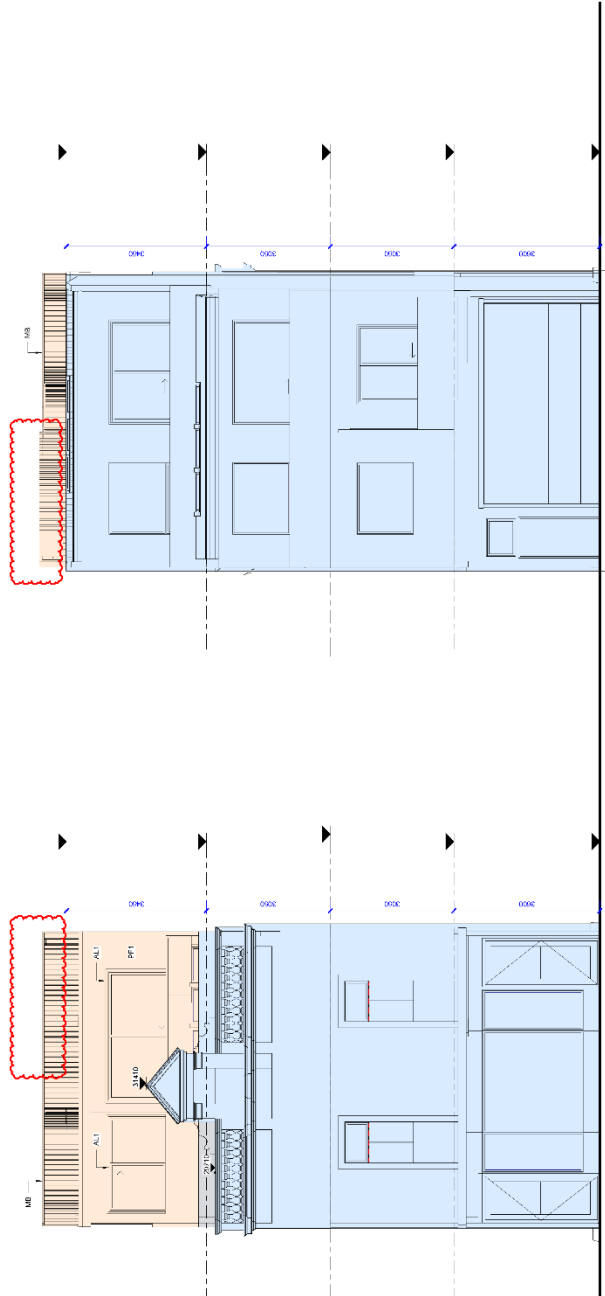
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NOMINATED ARCHITECT:  
 Lijana Ermllova 7887  
 585 KING ST, NEWTOWN  
 SECTIONS D & E  
 URU PARTNERSHIP

REV	DESCRIPTION	DATE
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2	ISSUE FOR PERMIT	11/01/2023

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- PROPOSED
  - EXISTING
- FINISHES SCHEDULE**
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  - PFT SURPRIST
  - RF1 METAL ROOFING COLOUR SURPIST
  - AL1 ALUMINIUM FRAME BLAZING COLOUR BASALT



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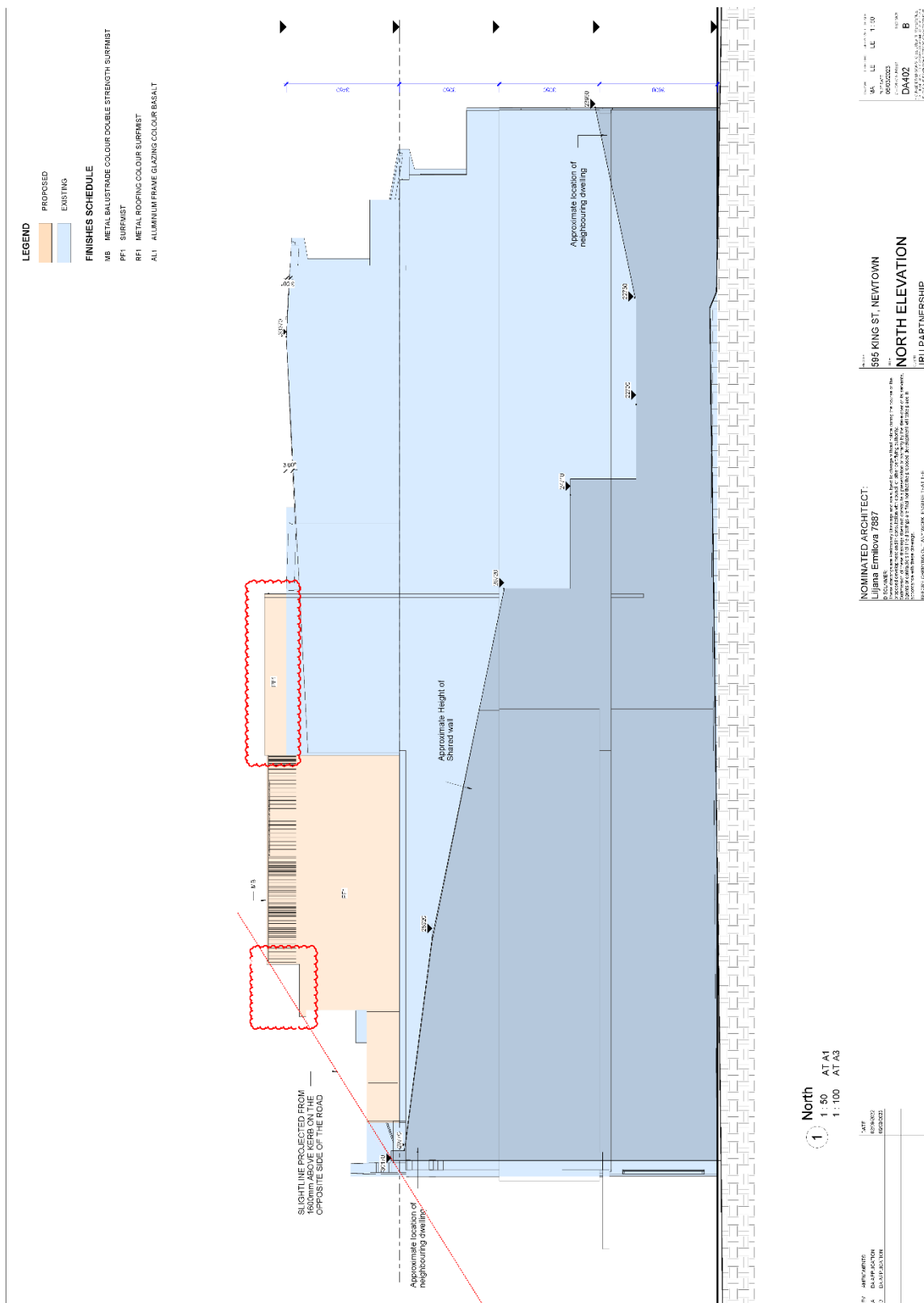
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BY	B

**NOMINATED ARCHITECT:**  
Liljana Ermilova 7887

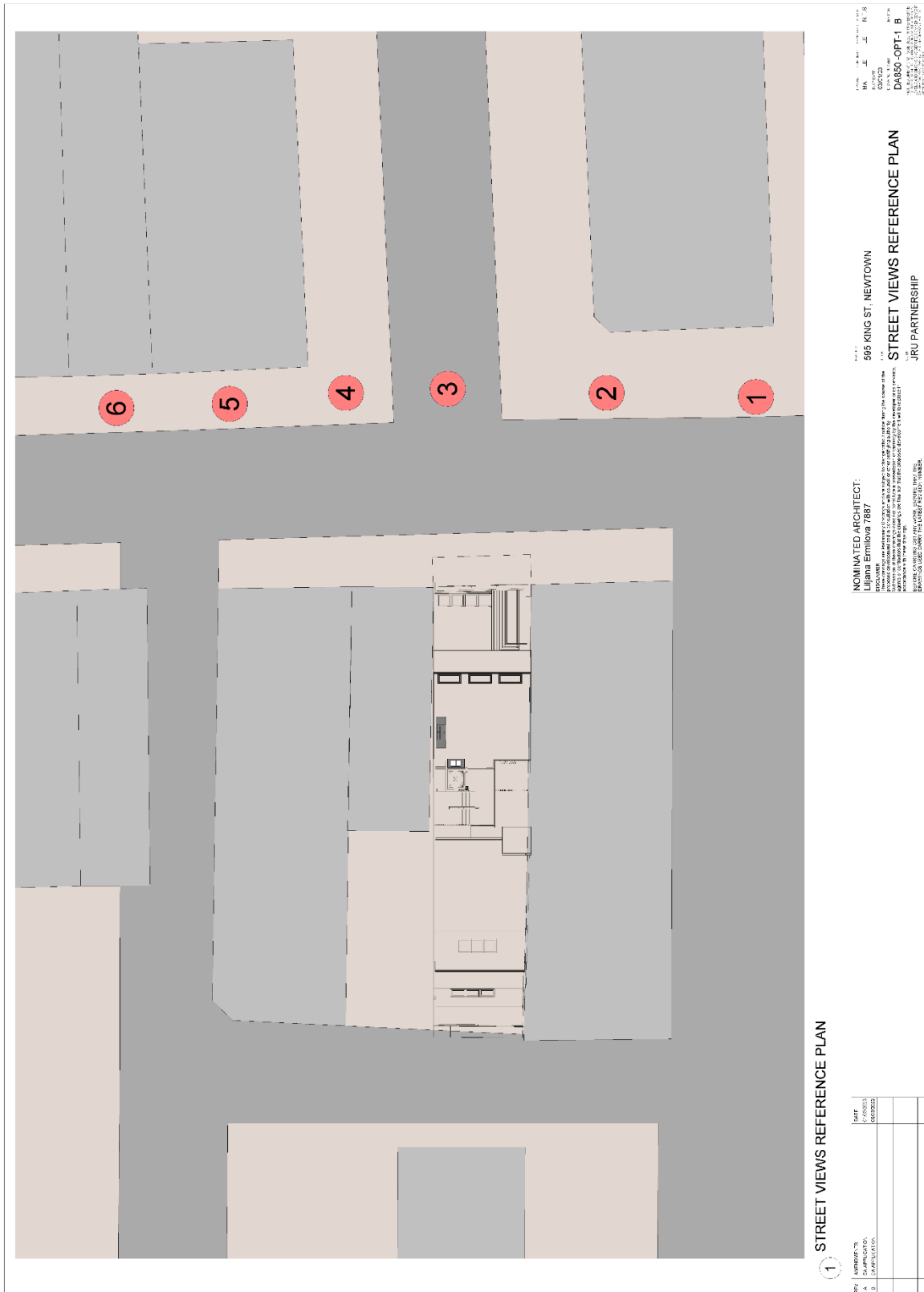
**EAST & WEST ELEVATIONS**  
JRU PARTNERSHIP

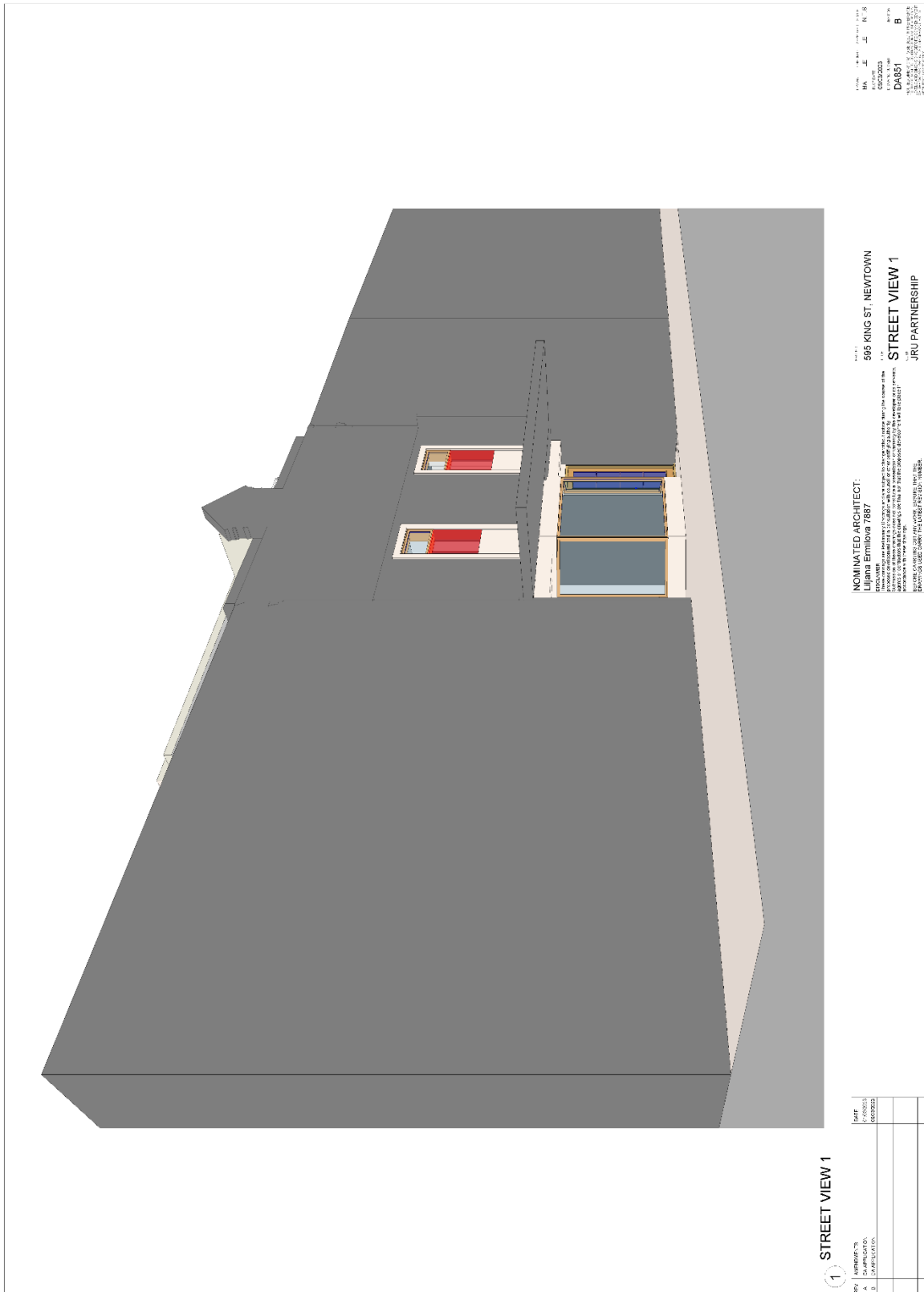
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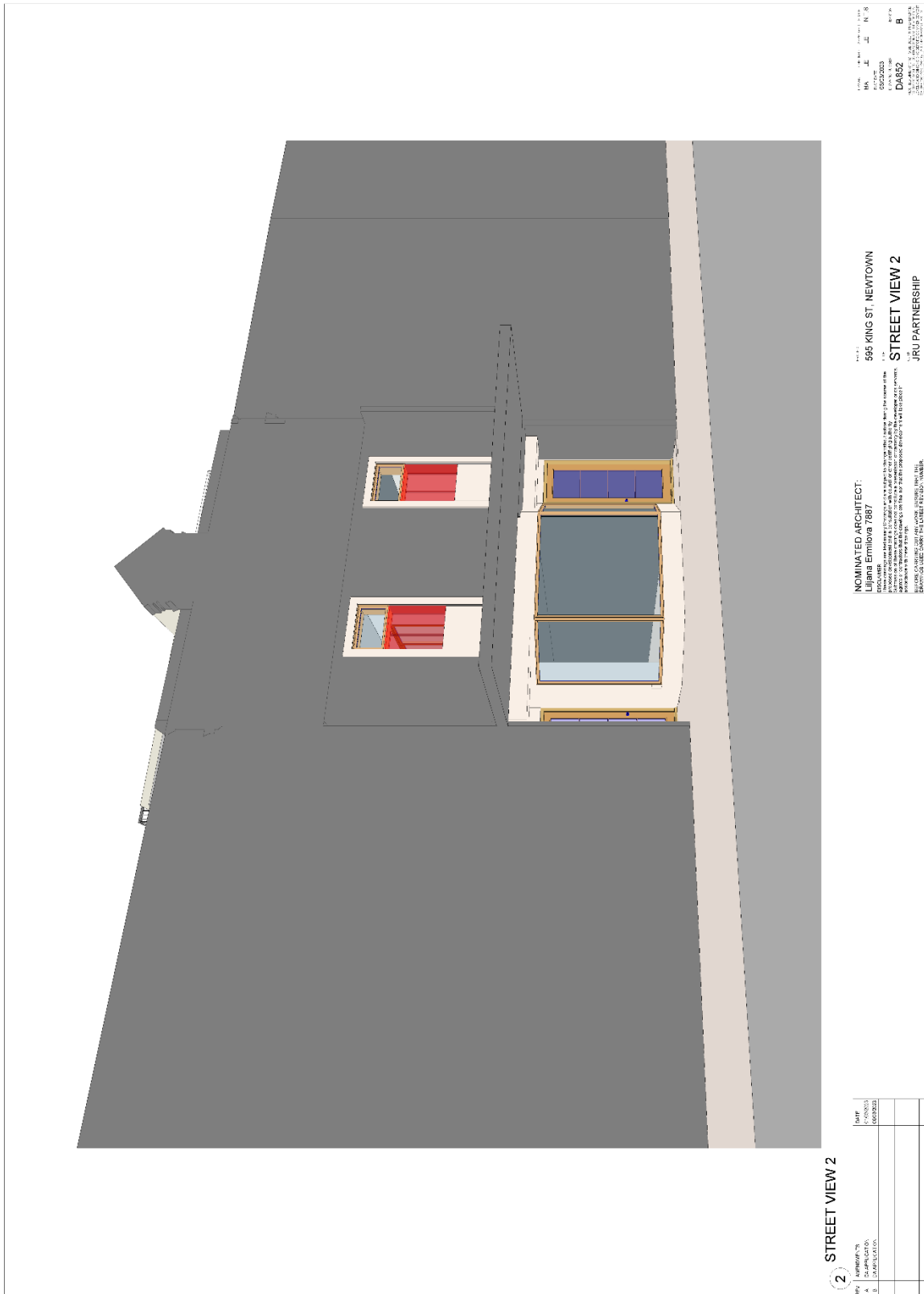


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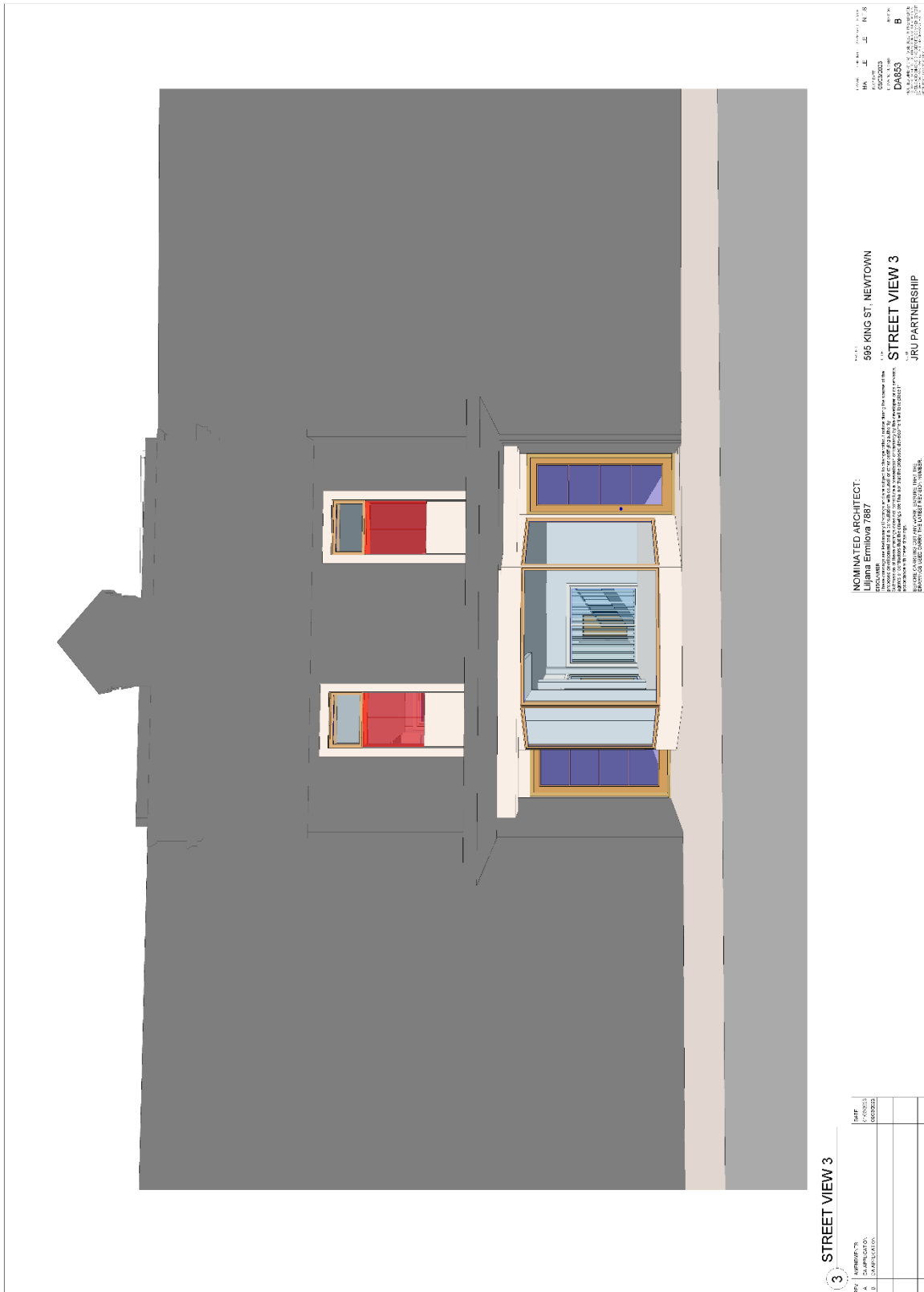
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FOR	JRU PARTNERSHIP
NO.	00000000

**NOMINATED ARCHITECT:**  
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 595 KING ST, NEWTOWN  
**STREET VIEW 1**  
 JRU PARTNERSHIP

DATE: 05/03/2023  
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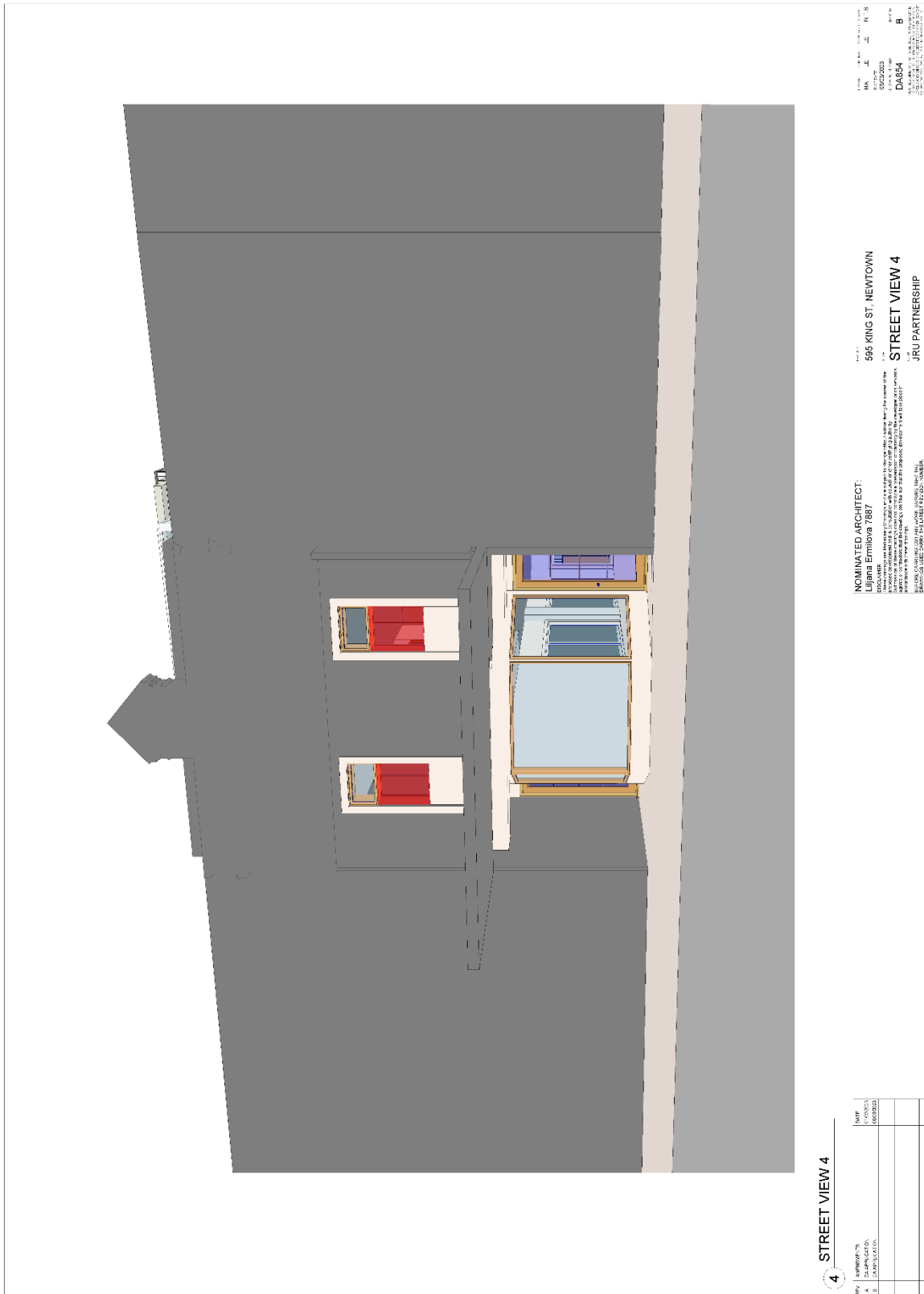


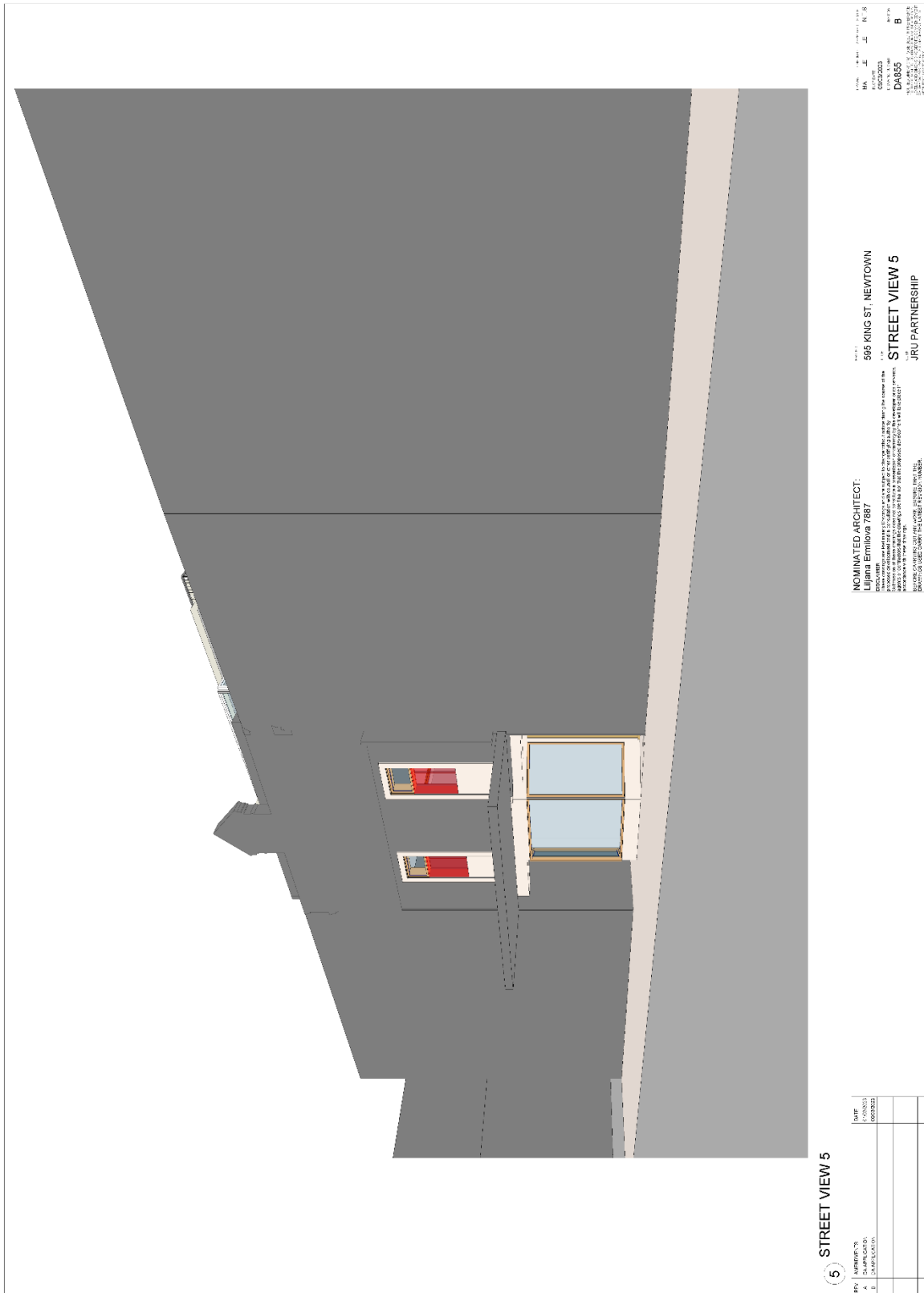
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NO.	10/03/2023
BY	ARCHITECT
NO.	10/03/2023

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 Lijana Emilova 7887  
 595 KING ST, NEWTOWN  
**STREET VIEW 3**  
 JURU PARTNERSHIP

DATE: 10/03/2023  
 DRAWN BY: ARCHITECT  
 CHECKED BY: ARCHITECT  
 PROJECT NO: 10/03/2023  
 SHEET NO: 10/03/2023





5 STREET VIEW 5

REV	DESCRIPTION	DATE
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B	ISSUED FOR PERMIT	10/03/2023

**NOMINATED ARCHITECT:**  
 Lijana Emilova 7887  
 595 KING ST, NEWTOWN  
**STREET VIEW 5**  
 JURU PARTNERSHIP

DATE: 10/03/2023  
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 CHECKED BY: J. N. S.  
 PROJECT NO: D4885  
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