	VELOPMENT ASSESSMENT REPORT			
Application No.	MOD/2023/0170 18 Allen Street LEICHHARDT			
Address				
Proposal	Section 4.55(2) Modification to DA/2022/0737, to include addition of a first floor studio above the approved detached storage area and			
	decrease first floor setback to original dwelling house.			
Date of Lodgement	20 June 2023			
Applicant	Ms Jodie Dang			
Owner	Mis Jodle Dang Mrs Sophie C Ellis			
Owner	Mr Charles T Garcia			
Number of Submissions	One (1) in opposition			
Value of works	\$854,700.00			
Reason for determination at	Section 4.55(2) Modification Application that results in a variation of the			
Planning Panel	Landscaped Area development standard of greater than 10%			
Main Issues	The development is not substantially the same development to			
	• The development is not substantially the same development to that which was originally granted			
	<ul> <li>Non-compliance with the development standard under Section</li> <li>4.2C (Landacanad Area) of Inner Most Land Environmental</li> </ul>			
	4.3C (Landscaped Area) of Inner West Local Environmental			
	Plan 2022 (IWLEP 2022)			
	• Inadequate front setback of first floor addition to the dwelling			
	house			
	<ul> <li>Bulk and scale impacts from the proposed two storey studio at</li> </ul>			
	the rear			
	Overshadowing impacts and lack of demonstrated compliance			
	with applicable solar access controls of the Leichardt			
	Development Control Plan 2013 (LDCP 2013)			
Recommendation	Refusal			
Attachment A	Reasons for refusal			
Attachment B	Plans of proposed development			
Attachment C	Recommended conditions of consent in the event that the application is			
	approved.			
Attachment D	Stamped drawings of originally approved Development			
Aller Storet	3       3       3       3       3       4			
	LOCALITY MAP			
Subject Site	Objectors N			
Notified Area	Supporters			
Note: Due to scale of map, not all obj	ectors could be shown.			

# 1. Executive Summary

This report is an assessment of the application submitted to Council under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* seeking to modify Development Consent DA/2022/0737 which approved alterations and additions to existing the dwelling house and rebuild an existing rear outbuilding at 18 Allen Stret, Leichhardt. Specifically, the modifications include the addition of a first floor studio above the approved detached single storey storage area and to decrease the setback of the first floor addition to the dwelling house.

The application was notified to surrounding properties in accordance with Councils community engagement framework and five submissions were received in response.

The main issues that have arisen during the assessment of the application include:

- Whether the development is substantially the same development to that which was originally granted;
- Non-compliance with the development standard under Section 4.3C (Landscaped Area) of *IWLEP 2022*;
- Inadequate front setback of first floor addition to dwelling house;
- Bulk and scale impacts from the proposed two storey studio at the rear; and
- Overshadowing impacts and lack of demonstrated compliance with applicable solar access controls of the LDCP 2013.

Given the above fundamental issues, during the assessment of the application, Council requested the applicant to withdraw this application, however, the applicant responded in writing requesting that Council proceed to determine the application based on the originally submitted documentation. On this basis, the assessment of the proposal has proceeded.

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

# 2. Proposal

The following modifications are proposed:

- First floor addition to the dwelling house to be extended forward to the existing front roof ridge line; and
- Construction of a two storey outbuilding to create a studio to replace a single storey storage shed that was originally approved.

# 3. Site Description

The subject site is located on the southern side of Allen Street, between Cromwell Street and Norton Street. The site consists of one allotment and is generally rectangular with a total area of 407.5 sqm.

The site has a frontage to Allen Street of 9.98 metres.

The site supports a single storey dwelling and a single storey rear outbuilding.

The adjoining properties at 16 Allen Street and 20 Allen Street are single storey dwellings.

The following trees are located on the site and within the vicinity.

- Gleditsia triacanthos 'Sunburst' located within the rear yard.
- Dracaena sp. Located within the rear yard.
- Acer negundo located on the rear adjoining property at 23 Macauley Street
- Morus nigra located on the rear adjoining property at 23 Macauley Street



# 4. Background

#### 4(a) Site history

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

#### Subject Site

Application	Proposal	Decision & Date
D/2005/358	Alterations and additions to existing dwelling	Approved
		20/09/2005
DA/2022/0737	Alterations and additions to existing dwelling	Approved
	house and rebuild existing rear outbuilding	01/05/2023

# **Adjoining Sites**

# 16 Allen Street

Application	Proposal	Decision & Date	
BA/1996/29	Alts & Adds to Housing	Approved	
		20/09/2005	

#### 25 Macauley Street

Application	Proposal	Decision & Date
DA/2021/0825	Demolition of existing buildings and construction of new two storey dwelling	Approved 10/02/2022

#### 4(b) Application history

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

Date	Discussion / Letter / Additional Information
18/08/23	Letter requesting the application to be withdrawn sent to the applicant
20/9/23	The applicant provided a cover letter confirming that the application will not be withdrawn. An updated set of drawings was provided – there are no changes to the design, but updated shadow diagrams were provided. As there are no changes to the design, the updated set of drawings did not require renotification in accordance with Council's Community Engagement Strategy.

### 5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the *EPA Act 1979*.

#### 5(a) Section 4.55(2)

Section 4.55(2) of the *EPA Act* 1979 allows a consent authority to modify a development consent granted by it, if:

"(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

<u>Comment / Assessment:</u> In considering whether the development as modified is substantially the same as that for which consent was originally granted, an assessment against relevant case law has been undertaken, particularly the authority in *Moto Projects* (*No 2*) v North Sydney Council [1999] NSWLEC 280, which deals with taking both a qualitative and quantitative approach to addressing the 'Substantially the same' test of Section 4.55; and the following is noted:

- The changes at the first floor additions to the dwelling house are considered to meet the substantially the same test (but is recommended for refusal for reasons outlined elsewhere in the report).
- As the original development only approved a single storey outbuilding storage structure that is not habitable with a maximum RL of 24.6, the proposed modifications to create a two storey structure at the rear that includes a first habitable studio with a height of RL 27.1, 2.4 metres more than that approved, the changes sought is considered to result in a development that is not substantially the same as the development originally approved.

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

#### Comment / Assessment: NA

- (c) it has notified the application in accordance with—
  - *(i) the regulations, if the regulations so require, or*
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

<u>Comment / Assessment:</u> The application was notified in accordance with the above and Council's Community Engagement Strategy.

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be."

<u>Comment / Assessment:</u> One submission was received. Matters raised in the submission and Council's response are addressed in Section 5(g) of this report.

In consideration of Section 4.55(3) of the EPA Act 1979 the consent authority has taken into account the following reasons given by the determination authority for the granting of the original consent:

 The original development consent did not result in any further breaches to landscaped area development standard, was of a form that was compatible with the existing streetscape and did not result in adverse amenity impacts to the adjoining properties. As discussed in more detail in later sections of the report, the development proposed under the current modification application does not comply with the landscaped area development standard and would result in significant impacts on the amenity of the adjoining properties and the streetscape and therefore is not supported.

In summary, the proposed modifications to create a two storey structure at the rear that includes a studio is considered to result in a development that is not substantially the same as the development originally approved, and for this and other reasons outlined in this report, the proposal is recommended for refusal.

#### 5(b) Environmental Planning Instruments

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

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- Inner West Local Environmental Plan 2022 (IWLEP 2022)

The following provides further discussion of the relevant issues:

# 5(b)(i) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX Certificate was submitted with the application in accordance with the provisions of the SEPP

#### 5(b)(ii) State Environmental Planning Policy (Resilience and Hazards) 2021

#### Chapter 4 Remediation of land

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

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

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

# 5(b)(iii) State Environmental planning Policy (Biodiversity and Conservation) 2021

#### Chapter 2 Vegetation in non-rural areas

The proposal does not involve removal of any vegetation.

The proposal shows the proposed studio sits above, and cantilevers, the footprint of the approved storage area, and is of tree sensitive design with no additional impacts to the rootzone/TPZ of any trees, while the proposed dwelling house changes will not impact on existing vegetation. Tree retention and protection conditions as imposed on the original consent remain relevant and unaffected by the proposal under consideration.

#### Chapter 6 Water Catchment

The proposal raises no issues that will be contrary to the provisions of this part of the SEPP.

### 5(b)(iv) Inner West Local Environmental Plan 2022 (IWLEP 2022)

The application was assessed against the following relevant sections of the IWLEP 2022:

- Section 1.2 Aims of Plan
- Section 2.3 Land Use Table and Zone Objectives
- Section 2.7 Demolition Requires Development Consent

- Section 4.3C Landscaped Areas for Residential Accommodation in Zone R1
- Section 4.4 Floor Space Ratio
- Section 4.5 Calculation of Floor Space Ratio and Site Area
- Section 6.1 Acid Sulfate Soils
- Section 6.2 Earthworks
- Section 6.3 Stormwater Management
- Section 6.8 Development in Areas Subject to Aircraft Noise

#### (i) <u>Section 1.2 - Aims of the Plan</u>

The proposal to reduce the first floor front setback of the approved dwelling additions will have an adverse impact on the streetscape, and the proposed modifications to create a two storey storage and studio building at the rear adjacent to the rear boundary is considered to be inconsistent with the existing general pattern of development adjoining and in the street and adjacent streets.

Therefore, the proposal is contrary to the following objectives under Clause 1.2 of the *IWLEP* 2022:

- (g) to create a high quality urban place through the application of design excellence in all elements of the built environment and public domain
- (h) to prevent adverse social, economic and environmental impacts on the local character of Inner West,
- (i) to prevent adverse social, economic and environmental impacts, including cumulative impacts.

#### (ii) <u>Section 2.3 - Land Use Table and Zone Objectives</u>

The site is zoned R1 – General Residential under the *IWLEP 2022. The IWLEP 2022* defines the building in which the proposal relates as a dwelling-house i.e:

#### "dwelling house means a building containing only one dwelling".

The objectives of the R1 General residential zone areas follows:

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

The proposal seeks consent for alterations and additions to the existing dwelling house and a new ancillary structure. The development is permitted with consent within the land use table.

Due to the streetscape impacts (to the dwelling house) and bulk and scale concerns (storage and studio structure) and general pattern of development concerns raised in this report, the proposal does not satisfy and / or has not demonstrated compliance with the following objective of the R1 General Residential Zone:

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

(iii) <u>Clause 4.3C and 4.4 – Landscaped Areas for Residential Accommodation in Zone R1</u> and Floor Space Ratio

The following table provides an assessment of the application against the relevant development standards under Sections 4.3C and 4.4 of the *IWLEP 2022*:

Standard	Proposal	non compliance	Complies
Landscape AreaMinimum20% or 81.5 sqm	17% or 69sqm	12 sqm or 14%	No
Site Coverage Maximum permissible: 60% or 244.4sqm	44.4% or 180.9sqm	N/A	Yes
Floor Space Ratio Maximum permissible: 0.6:1 or 244.5 sqm	0.6:1 or 242.7 sqm	Complies	Yes

It is noted that the Landscaped Area approved under the original development consent is 71 sqm or 17.4%, being no change to existing.

(iv) Assessment of Landscaped Area Non-compliance

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

• Section 4.3C(3)(a) – Landscaped Areas for Residential Accommodation in Zone R1

The objectives of the R1 General Residential Zone have been identified previously under Section 2.3 of the *IWLEP 2022*:

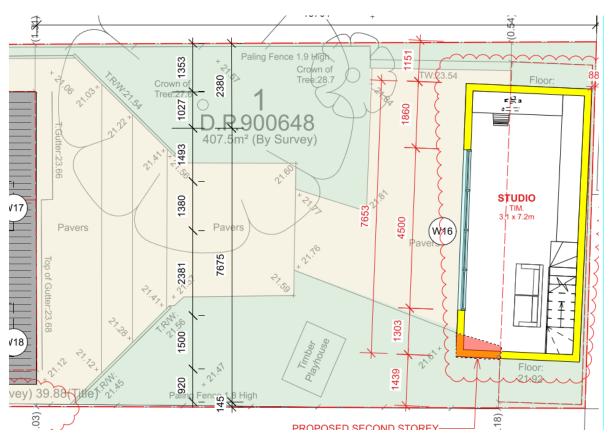
The objectives of Clause 4.3C(3)(a) of the LEP are as follows:

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

As per case law with North Sydney Council v Michael Standley & Associates Pty Ltd [1998]NSWSC 163) "a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application". Therefore, a Clause 4.6 exception is not required for modifications, notwithstanding the non-compliance needs to be assessed on its merits.

The existing landscaped area (approximately 71 sqm) is already below the required amount of landscaped area and the additional non-compliance is created as a result of the cantilevered

studio structure where the areas underneath the cantilevered structure are excluded from landscaped area calculations (see red hatched area of the extract of the first floor plan below):



The non-compliance is considered acceptable in this situation as:

- there is only a minor additional breach to a landscaped area that is already below the required 20%.
- The additional breach does not inhibit the ability of the rear yard to be used for recreational purposes.
- The additional breach of landscape area development standard does not significantly impact the ability for vegetation to be grown in the rear yard.

However, the proposed studio is not supported due to reasons in relation to pattern of development, bulk, scale and solar access impacts to surrounding properties as outlined in other sections of this report.

# 5(c) Draft Environmental Planning Instruments

There are no applicable draft Environmental Planning Instruments that need to be considered.

#### 5(d) Development Control Plans

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

LDCP2013	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes

Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	Yes
B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
Part C	
C1.0 General Provisions	No – see discussion
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	Yes
C1.3 Alterations and Additions	No – see discussion
C1.4 Heritage Conservation Areas and Heritage Items	N/A
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	N/A
C1.11 Parking	N/A
C1.12 Landscaping	No – see discussion
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies,	N/A
Verandahs and Awnings	
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	N/A
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and	N/A N/A
Rock Walls	IN/A
C1.20 Foreshore Land	Yes
C1.21 Green Roofs and Green Living Walls	N/A
Part C: Place – Section 2 Urban Character	
C2.2.3.2 West Leichhardt Distinctive Neighbourhood	No – see discussion
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	No – see discussion
C3.2 Site Layout and Building Design	No – see discussion
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	N/A
C3.6 Fences	N/A
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	No – see discussion
C3.10 Views	Yes
C3.11 Visual Privacy	Yes – see
	discussion
C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A

Part C: Place – Section 4 – Non-Residential Provisions	N/A
Part D: Energy	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	N/A
D2.5 Mixed Use Development	N/A
Part E: Water	
Section 1 – Sustainable Water and Risk Management	Yes
E1.1 Approvals Process and Reports Required With Development	Yes
Applications	
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	N/A
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	N/A
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	N/A
E1.2.4 Stormwater Treatment	Yes
E1.2.5 Water Disposal	N/A
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	N/A
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	N/A
E1.3.2 Foreshore Risk Management	Yes
Part F: Food	N/A
Part G: Site Specific Controls	N/A

The following provides discussion of the relevant issues:

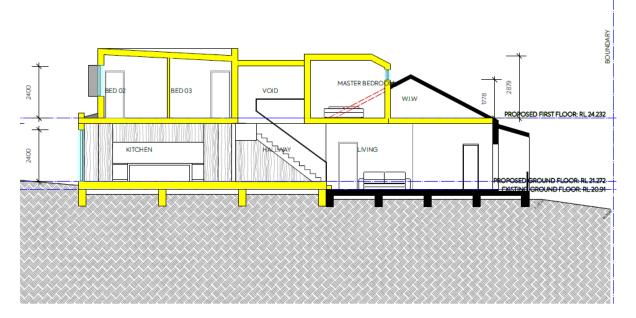
#### C1.0 General Provisions

For reasons discussed in this report, concern is raised that the proposed modifications to the first floor addition to the main dwelling is of a form and appearance that will not be compatible with the existing dwelling house or its context and that does not meet desired future character controls for the West Leichhardt Distinctive Neighbourhood, and has not demonstrated compliance with the following Objective of Part C1.0 of the LDCP2013:

 O6: Compatible: places and spaces contain or respond to the essential elements that make up the character of the surrounding area and the desired future character. Building heights, setbacks, landscaping and architectural style respond to the desired future character. Development within Heritage Conservation Areas or to Heritage Items must be responsive to the heritage significance of the item and locality.

#### C1.3 Alterations and additions

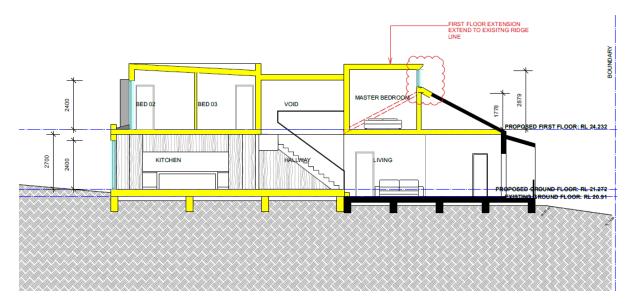
There are concerns about the current design's capability with the existing streetscape, in particular its relationship to the two directly adjoining neighbouring properties at 16 and 20 Allen Street which both have a single storey presentation to the street. The originally approved development has a first floor addition which is setback away from original roof ridge and retains the ridge capping. This allows for a single storey form presentation to the street to be retained and is of a form that is considered to conserve the character of the existing brick cottage (see extract of the approved section below) and minimises visibility from the street.



Approved section under DA/2022/0737

The current modification proposes to locate the proposed first floor master bedroom to commence at the location of the original roof ridge, which will be clearly visible from the street, and result in a roof form that clearly disrupts aesthetics of the original roof form and create an undesirable roof form to the street (see extract of the proposed section below):

Proposed section under the current modification application:



It is also noted that the proposed northern elevation under the current application does not appear to accurately depict the amount/form of the glazing depicted on the proposed sections. Notwithstanding this, the proposed modifications to the first floor addition are considered to be of a form that is disruptive to the existing roof form and the proposed modification is clearly contrary to Control C14 of this part which outlines that any first floor and above additions, where attached the existing roof forms, shall be subordinate to that roof form and must be set 300mm below the ridgeline (reproduced below):

C14 Any first floor and above additions attached to the rear of the existing roof form is to:

a. be subordinate to that roof form; i. where attached to the existing roof form, be set 300mm below the ridgeline;

Further to the above, considering that the proposed modifications would only result in an additional area associated with a void and corridor area and create a roof form which is not subordinate or sympathetic to the existing roof form, this modification is considered to result in a development that is a less desirable outcome to that originally approved and the amended proposal has not demonstrated in compliance with the following Objectives of Part 1.3 of the LDCP 2013:

- O1 To ensure that development:
  - a. complements the scale, form and materials of the streetscape including wall height and roof form;
  - b. where an alteration or addition is visible from the public domain it should appear as a sympathetic addition to the existing building;
  - c. makes a positive contribution to the desired future character of the streetscape and any heritage values associated with it;
  - d. is compatible with neighbourhood character, including prevailing site layout;
  - *h.* retains existing fabric wherever possible and maintains and repairs, where necessary, rather than replaces the fabric.

Having regard to the above, the reduced first floor setback from the primary roof form results in an awkward juncture between the existing development and new contemporary form, with little break from the 2 juxtaposing styles, the setback results in a first floor addition which fails to be subordinate to the main roof form and results in a poor architectural and streetscape outcome. This results in a proposal which is unsympathetic to the existing dwelling and streetscape is incompatible with the neighbourhood character and fails to retain existing fabric which contributes to the streetscape presentation.

#### C2.2.3.2 West Leichhardt Distinctive Neighbourhood

The proposed modifications, result in an undesirable addition projecting immediately behind and above the front roof ridge, is considered to be contrary to the following desired future character controls under C2.2.3.2 West Leichhardt Distinctive Neighbourhood:

- C3 Preserve and enhance the predominant scale and character of dwellings in this precinct, consisting of mostly single storey Victorian and Federation-style dwellings, with more dense development in appropriate areas.
- C5 Conserve and enhance the weatherboard cottages & the brick cottages found throughout the West Leichhardt Distinctive Neighbourhood.

The proposed modifications will result in a development that is inconsistent with the future desired character of the West Leichhardt Distinctive Neighbourhood.

#### C3.1 Residential General Provisions

The proposal will result in an unacceptable built form that will result in a design that will be out of character of the West Leichhardt Distinctive Neighbourhood character controls and will have adverse impacts on the streetscape. Consequently, the proposal will not achieve compliance with the objectives set out in this Clause, specifically:

- O3 to ensure that alterations, additions to residential buildings and new residential development are compatible with the established setting and character of the suburb and neighbourhood and compatible with the desired future character and heritage significance of the place and its setting;
- O4 to ensure that all residential development is compatible with the scale, form, siting and materials of existing adjacent buildings; and
- C2 Additions to an existing building are generally:
  - b. subservient to the form of the existing building; and
  - c. maintain the form, fenestration, roof forms and chimneys of the existing building when viewed from the principal street frontage; and

#### C3.2 Site Layout and Building Design

#### Building Location Zone

The proposal will establish a new building location zone (BLZ) at the first floor level as the adjoining properties are single storey only. The proposed modifications at the front of the property will result in a further breach of the front alignment of the first floor BLZ that was originally approved.

Pursuant to Part C3.2 of the LDCP 2013, where a proposal seeks to vary, or establish a new BLZ, in order to determine acceptability, various tests need to be met - an assessment of the proposal against the relevant tests is discussed below.

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

**Comment:** The proposed dwelling additions (where the BLZ breach is sought) will have no solar access, privacy or view loss implications (see discussions later in this report for details).

b) the proposed development will be compatible with the existing streetscape, desired future character and scale of surrounding development;

**Comment:** As previously discussed in this report, the proposed modifications to the front of the dwelling to reduce the first floor front setback are considered to have unacceptable streetscape impacts, are inconsistent with the controls relating to alterations and additions, are inconsistent with the desired future character of the area and are considered not to be compatible with the existing general pattern of development of the area and result in a poor design outcome.

c) the proposal is compatible in terms of size, dimensions privacy and solar access of private open space, outdoor recreation and landscaping;

**Comment:** The BLZ breach will have no implications on landscaping and private open space provision and solar access.

d) retention of existing significant vegetation and opportunities for new significant vegetation is maximised; and

**Comment:** The proposed modification in general will not impact on existing vegetation, nor result in the removal of any significant vegetation on the subject site.

e) the height of the development has been kept to a minimum to minimise visual bulk and scale, as viewed from adjoining properties, in particular when viewed from the private open space of adjoining properties.

**Comment:** The proposed modification to the first floor addition occurs at the front of the property and has a floor to ceiling height of 2900mm, and therefore, is not minimised, however, as it is located at the front of the property, there are no adverse bulk and scale impacts to the adjoining properties when viewed from adjoining private open space areas, the impact occurs to the streetscape.

#### Side Setbacks

The following is a compliance table assessed against the Side Setback Control Graph prescribed in Part C3.2 of the LDCP 2013 relating to the proposed modifications:

Elevation	Wall height (m)	Required setback (m)	Proposed setback (m)	Complies
West	6.3	2.02	0	No
East	6.3	2.02	3.24	Yes

#### 2 Storey Studio outbuilding at the rear

Elevation	Wall height (m)	Required setback (m)	Proposed setback (m)	Complies
West	5.4	1.5	1.2 -1.4	No
East	5.4	1.5	1.15-1.35	No

As noted in the table above, the proposed modification to the first floor additions at the front of the dwelling and the proposed two storey studio outbuilding will breach the Side Boundary Setbacks Graph prescribed in this part.

Pursuant to Clause C3.2 of the LDCP2013, where a proposal seeks a variation to the side setback control graph, Control C8 under this part states that Council may allow walls higher than that required by the side boundary setback controls where:

a) The development is consistent with relevant Building Typology Statements as outlined within Appendix B – Building Typologies of this Development Control Plan;

**Comment:** The proposed modifications at the front of the dwelling to reduce the first floor front setback are considered to be inconsistent with the relevant Building Typology Statements for first floor additions occurring and will have unacceptable streetscape impacts.

b) The pattern of development within the streetscape is not compromised;

**Comment:** For the reasons mentioned previously in this Report, the proposed first floor changes to the dwelling house will result in a pattern of development that will compromise the existing streetscape.

Further, the two storey structure in the rear yard is inconsistent with the general pattern of the development at the rear of the subject and surrounding sites, with structures in year yards limited to single storey.

c) The bulk and scale of development is minimised by reduced floor to ceiling heights;

**Comment:** The proposed modifications to the first floor at the front of the existing dwelling has a floor to ceiling of 2900mm, and therefore, minimal floor to ceiling heights have not been employed.

The first floor associated with the studio in the two storey outbuilding at the rear has a maximum floor-to-ceiling height of approximately 2500mm, and therefore, the bulk and scale of the development has not been minimised.

d) The potential impacts on amenity of adjoining properties, in terms of sunlight and privacy and bulk and scale, are minimised; and

**Comment:** The proposed two storey studio outbuilding will result in additional overshadowing to the rear adjoining properties, and the modification application has not demonstrated that this aspect of the proposal will comply with the solar access controls. The proposed two storey studio outbuilding is also considered to generate excessive and unnecessary bulk and scale impacts to the surrounding properties on Allen and Macauley Streets.

e) Reasonable access is retained for necessary maintenance of adjoining properties.

**Comment:** The proposal does not unduly obstruct adjoining properties for maintenance purposes as the existing side setbacks are retained.

As a result of the above, it is considered that the proposed modifications will not satisfy the above tests under C8 and has not demonstrated compliance with the following Objectives:

- O2 To ensure the character of the existing dwelling and/or desired future character and established pattern of development is maintained.
- O4 To ensure that development:

- a. reinforces the desired future character and distinct sense of place of the streetscape, neighbourhood and Leichhardt;
- c. complements the siting, scale and form of adjoining development;

Having regard to the above and for the reasons mentioned and discussed elsewhere in this report, the proposal is recommended for refusal.

#### C3.9 Solar Access

Given the adjoining sites are north-south orientated the following solar access controls apply to the proposal in relation to solar access of affected properties:

Retaining solar access to neighbouring dwellings main living room glazing

- C13 Where the surrounding allotments are orientated north/south and the dwelling has north facing glazing serving the main living room, ensure a minimum of three hours solar access is maintained between 9am and 3pm during the winter solstice..
- C15 Where surrounding dwellings currently receive less than the required amount of solar access to the main living room between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.

Solar access diagrams provided demonstrate that the proposal will not result in any additional overshadowing to the north-facing glazing of any adjoining neighbouring properties.

Retaining solar access to neighbouring dwellings private open space

- C17 Where surrounding dwellings have north facing private open space, ensure solar access is retained for three hours between 9am and 3pm to 50% of the total area during the winter solstice.
- C19 Where surrounding dwellings currently receive less than the required amount of solar access to their private open space between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.

It is noted that the shadow diagrams indicate a shed located at 25 Macauley Street and existing shadows generated from this shed. However, DA/2021/0825 at this adjoining site approved the removal of a shed and replacement with private open space. Recent aerial photos confirm that the subject shed at 25 Macauley Street has been demolished.

Due to the orientation of the subject and surrounding site, and the location of the proposed two-storey outbuilding structure which is located only 80mm to 200mm from the rear boundary, the proposed outbuilding will result in significant overshadowing of the rear yard of No. 25 Macauley Street, and the application has not demonstrated that the proposed works complies with the requirements under C17 and C19 outlined above.

Therefore the proposed modification associated with the outbuilding is considered to be contrary to the following objectives under this part:

- d. protect residential amenity for adjoining development;
- f. minimise the degree of overshadowing to neighbouring properties.

#### C3.11 Visual Privacy

The following controls are applicable in C3.11 Visual Privacy

- C1 Sight lines available within 9m and 45 degrees between the living room or private open space of a dwelling and the living room window or private open space of an adjoining dwelling are screened or obscured unless direct views are restricted or separated by a street or laneway.
- C4 Roof terraces will be considered where they do not result in adverse privacy impacts to surrounding properties. This will largely depend on the: a. design of the terrace; b. the existing privacy of the surrounding residential properties; c. pre-existing pattern of development in the vicinity; and d. the overlooking opportunities from the roof terrace.
- C5 The provision of landscaping may be used to complement other screening methods but cannot be solely relied upon as a privacy measure
- C7 New windows should be located so they are offset from any window (within a distance of 9m and 45 degrees) in surrounding development, so that an adequate level of privacy is obtained/retained where such windows would not be protected by the above controls (i.e. bathrooms, bedrooms).

The proposed modifications to the front of the dwelling consist of first floor windows which are not associated with a living room, and there are no visual privacy impacts generated from these north facing windows as they overlook Allen Street and there are no sightlines into windows on the adjoining properties.

Opaque glazing 1600mm in height are proposed on the studio level of the rear outbuilding, and therefore complies with the requirements under this part. However, for the reasons previously mentioned elsewhere in this Report, this aspect of the proposal is considered unacceptable and not supportable.

#### 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:

- The proposed modification to the first floor addition at the front of the dwelling will result in negative impacts to the streetscape.
- The proposed modifications to create a two-storey studio outbuilding which is inconsistent with the existing general pattern of development and has adverse impacts to surrounding properties with regard to solar access and bulk and scale.

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

It is considered that the proposal will have an adverse impact to the West Leichhardt Distinctive Neighbourhood and as the application had not demonstrated that there is minimal impact on the amenity of the surrounding properties, therefore the site is not suitable for the proposed development.

#### 5(g) Any submissions

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

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

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

<u>Issue</u>: We have concerns over the proposed modification to the development, with the studio now being a 2 level studio at the bottom of the garden.

The studio will back onto neighbouring properties along Macauley Street, & the increased height will cause more overshadowing in our garden.

The bulk & scale of the design is not in keeping with anything else in the area, & aesthetically would be obtrusive from our point of view.

We are not opposed to a studio in the location, but feel a single level, such as what has already been approved, & similar to many others in the area, would be more appropriate.

<u>Comment</u>: As discussed in earlier sections of the report, the proposed two storey studio is considered to be a development that would be inconsistent with the pattern of development in the area, does not demonstrate compliance with the solar access controls and creates adverse bulk and scale impacts to neighbouring properties.

#### 5(h) The Public Interest

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

The proposal is contrary to the public interest.

# 6 Referrals

#### 6(a) Internal

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

- Development Engineering No objections.
- Urban Forest No objections.

# 7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies are payable for the proposal.

The carrying out of the proposed development would result in an increased demand for public amenities and public services within the area.

# 8. Conclusion

The proposal is inconsistent with the aims, objectives and design parameters contained in *Inner West Local Environmental Plan 2022* and Leichhardt Development Control Plan 2013.

The development would result in adverse impacts on the amenity of the adjoining properties and the streetscape, and the proposed first floor studio at the rear is not considered to result in a development that is substantially the same as that originally approved, 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

That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.55(2) of the *Environmental Planning and Assessment Act 1979,* refuse Application No. MOD/2023/0170 to modify Determination No DA/2022/0737 dated 1 May 2023, to include the addition of a first floor studio above the approved detached storage area and decrease first floor front setback to original dwelling house at 18 Allen Street, Leichhardt for the following reasons:

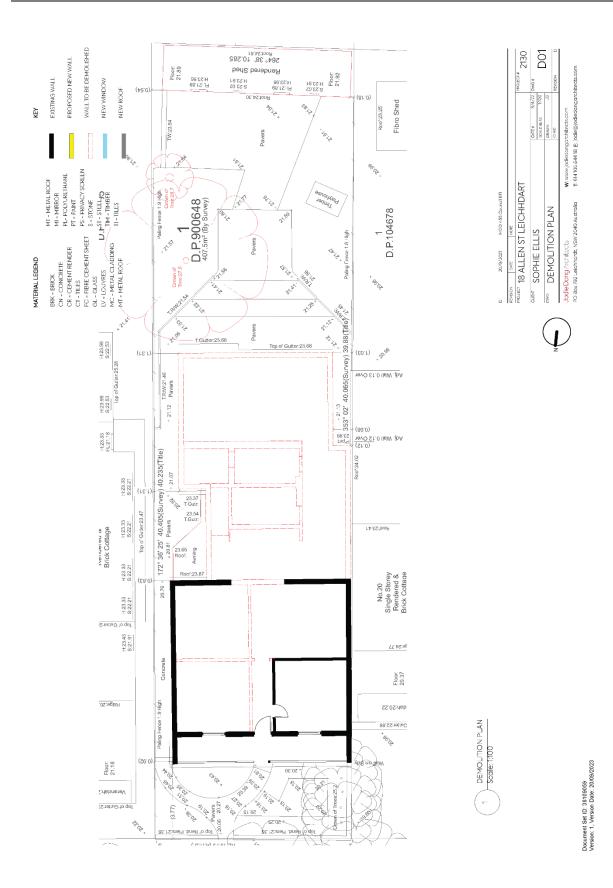
# Attachment A – Reasons of refusal

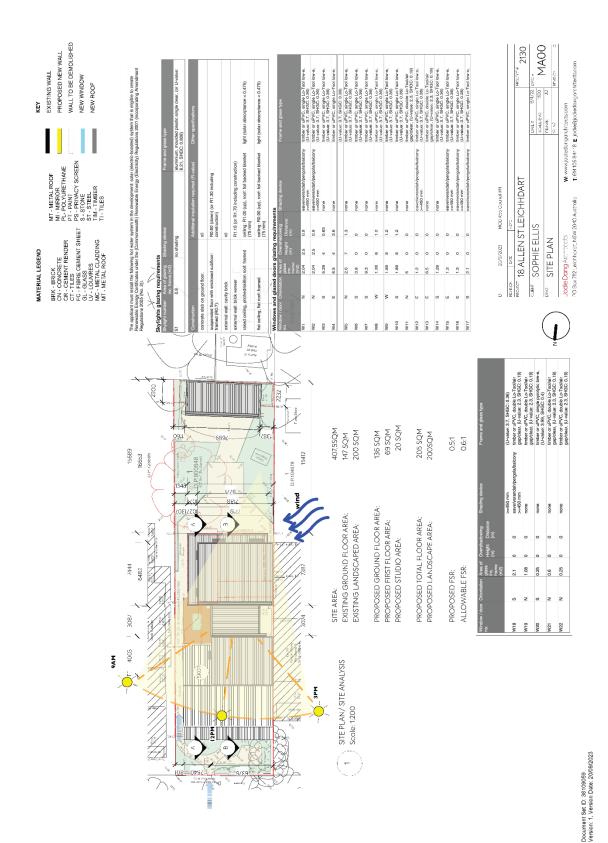
- 1. The proposed development has not satisfied Section 4.55(2)(a) of the *Environmental Planning and Assessment Act 1979*, in that the proposal is not considered to be substantially the same development as the development for which consent was originally granted.
- 2. The proposed development is inconsistent with and has not demonstrated compliance with the *Inner West Local Environmental Plan 2022*, pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, including:
  - a. Section1.2(2)(g)(h)(i) Aims of Plan;
  - b. Section 2.3 Zone Objectives and Land Use Table; and
  - 3. The proposed development is inconsistent with the Leichhardt Development Control Plan 2013, pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, including:
    - a. Part C1.0 General Provisions;
    - b. Part C1.3 Alterations and Additions;
    - c. Part C2.2.3.2 West Leichhardt Distinctive Neighbourhood;
    - d. Part C3.1 Residential General Provisions;
    - e. Part C3.2 Site Layout and Building Design; and
    - f. Part C9 Solar Access.
  - 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 At 1979.*



**Inner West Local Planning Panel** 

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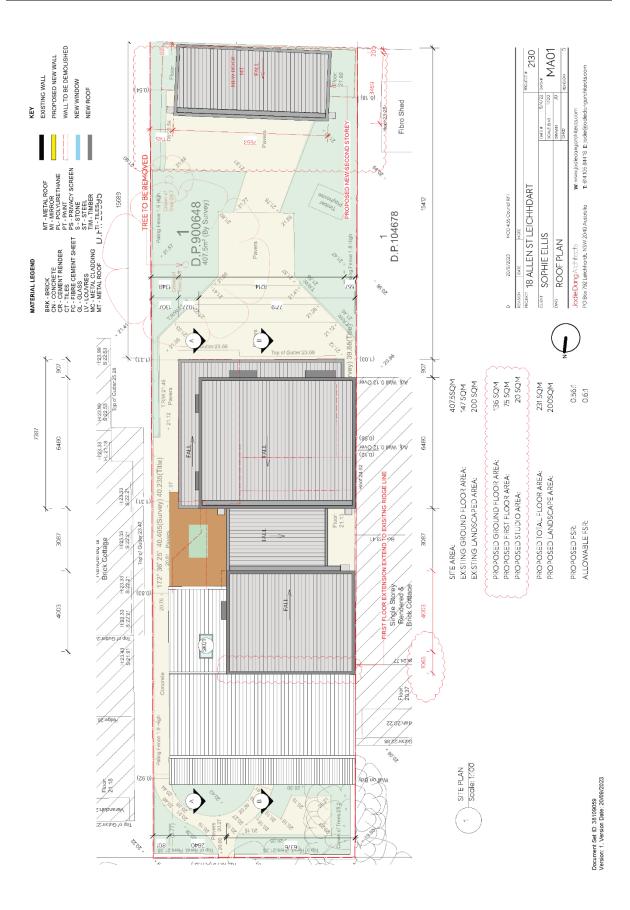




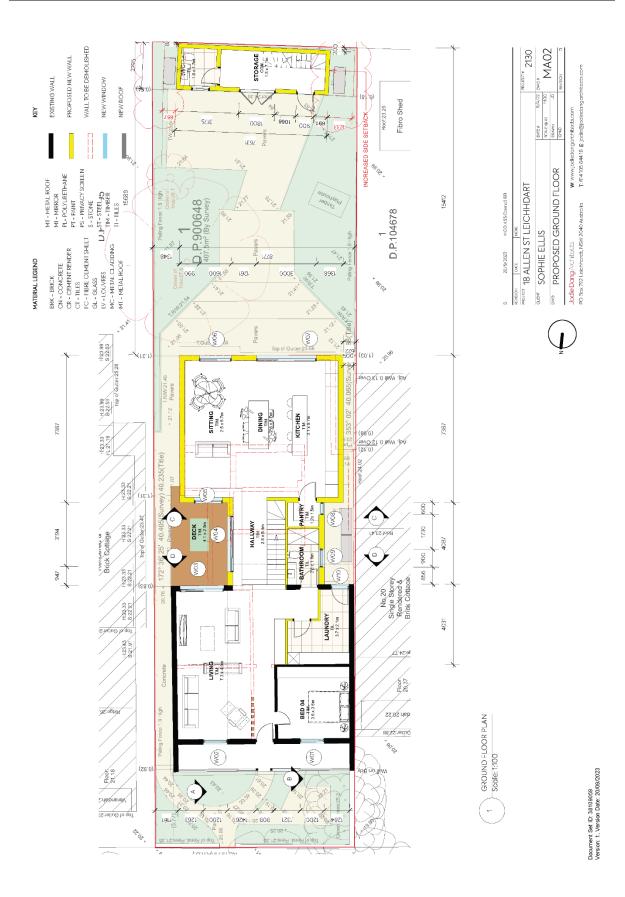
**Inner West Local Planning Panel** 

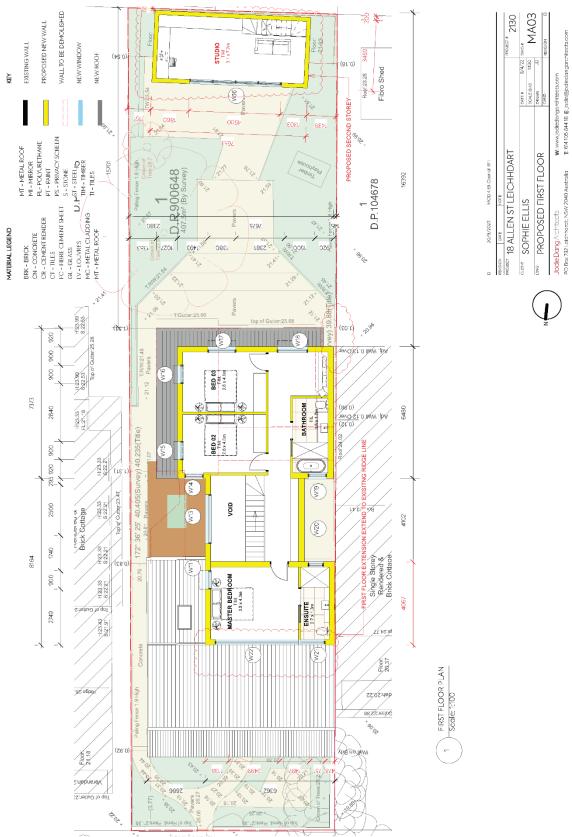
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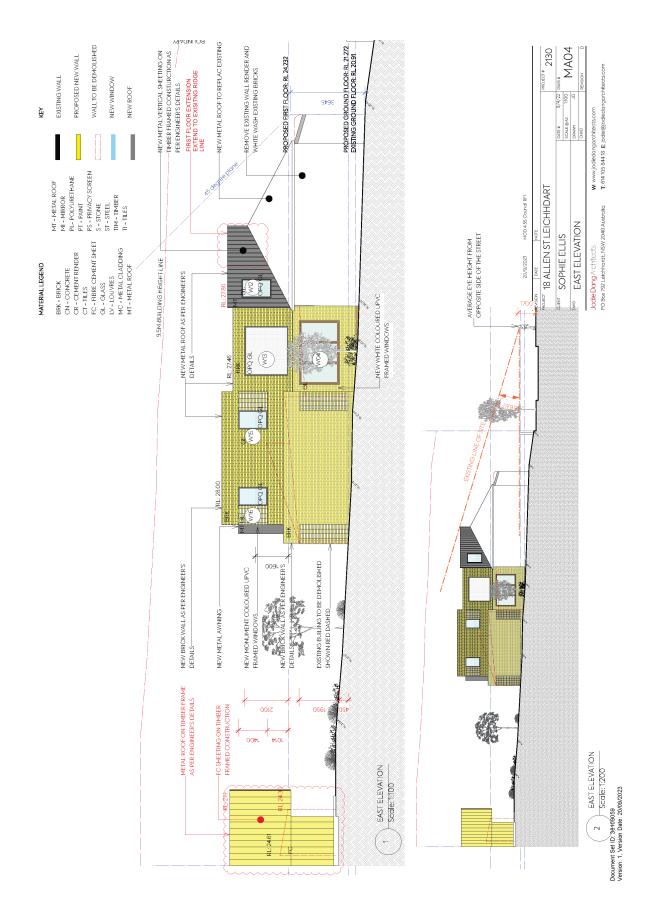




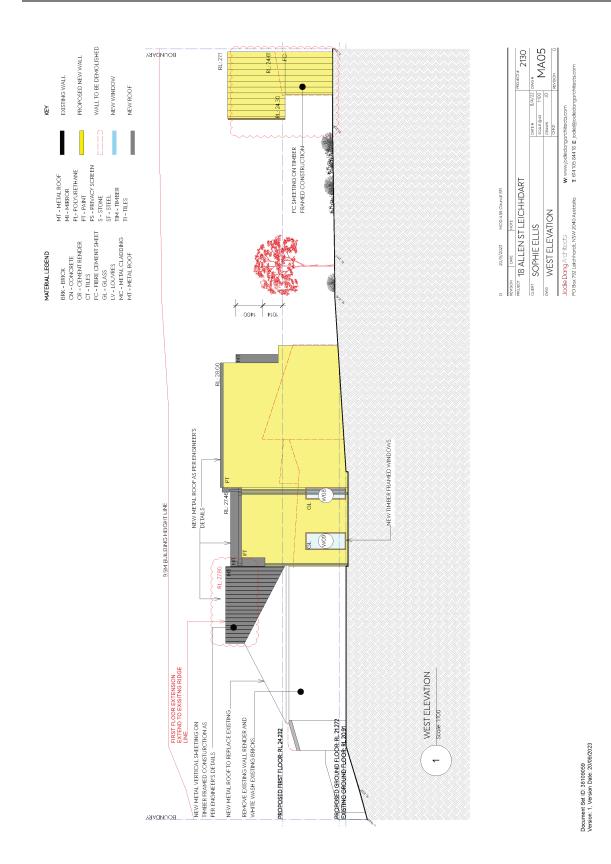




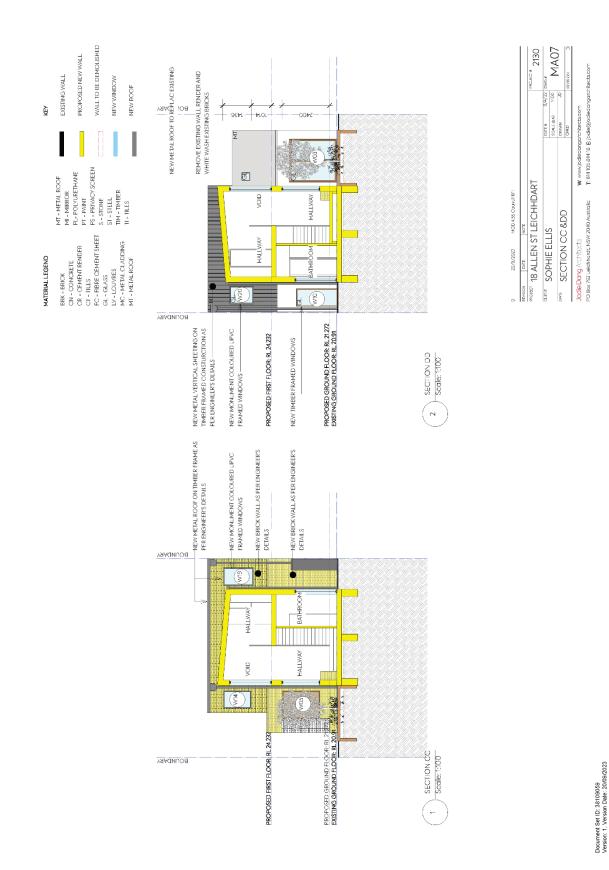
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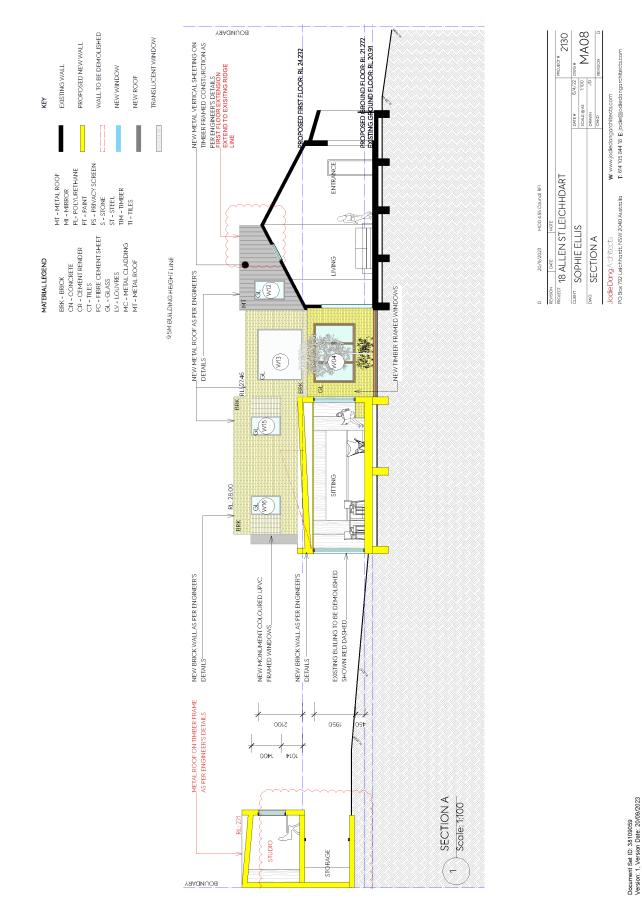
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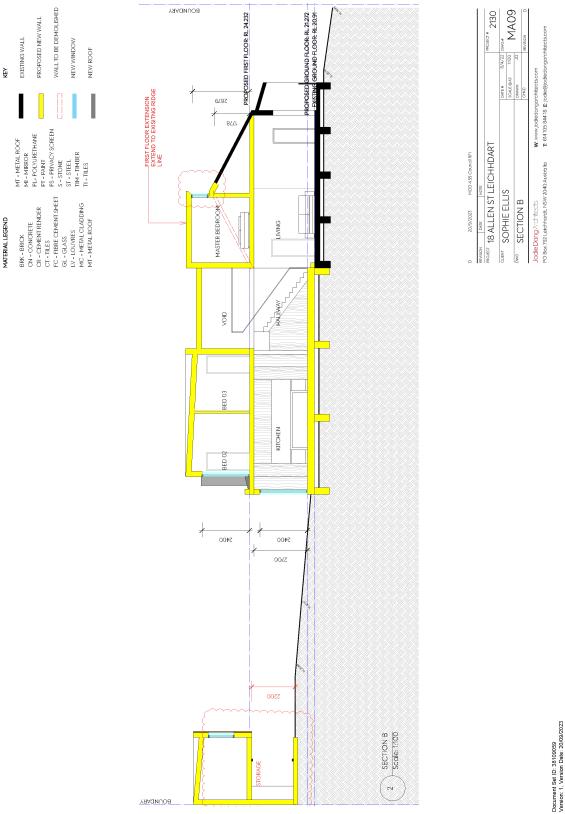


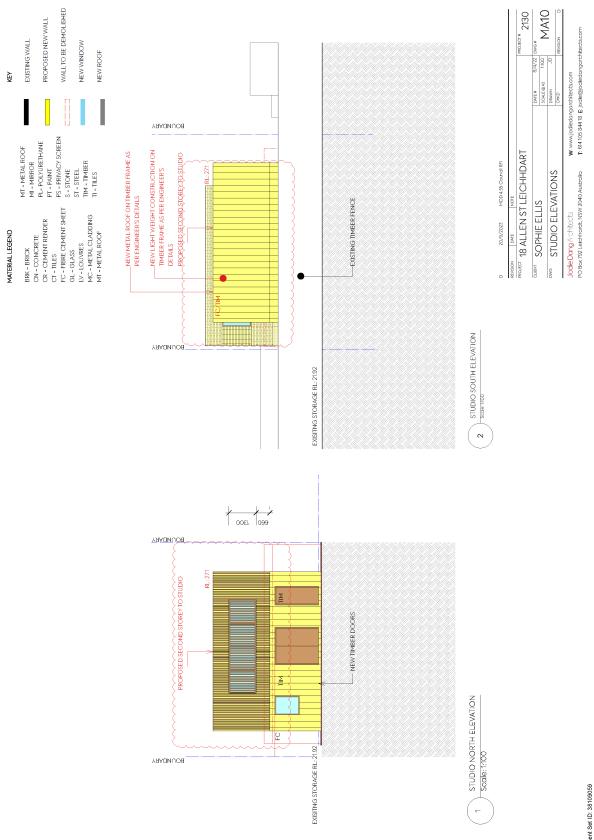


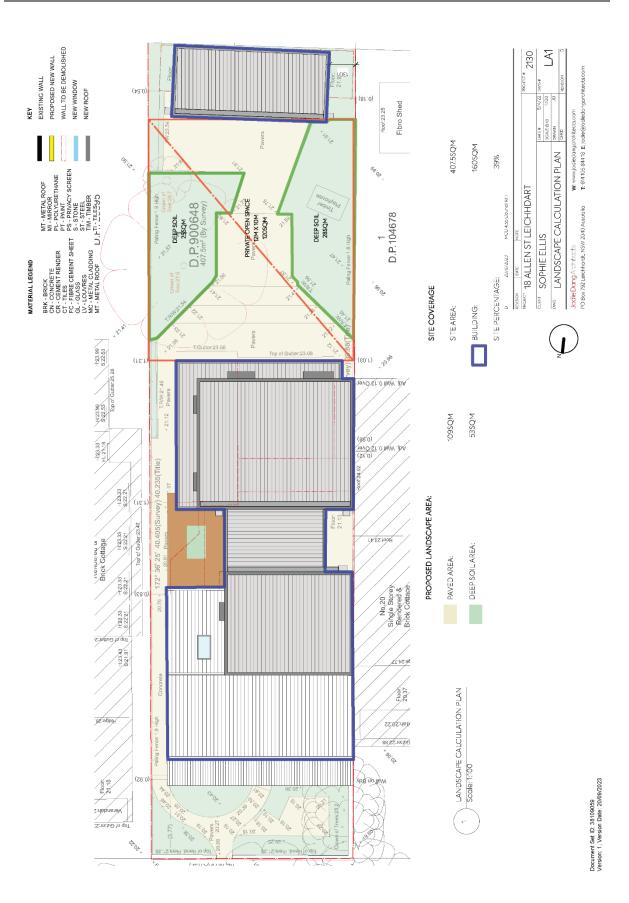


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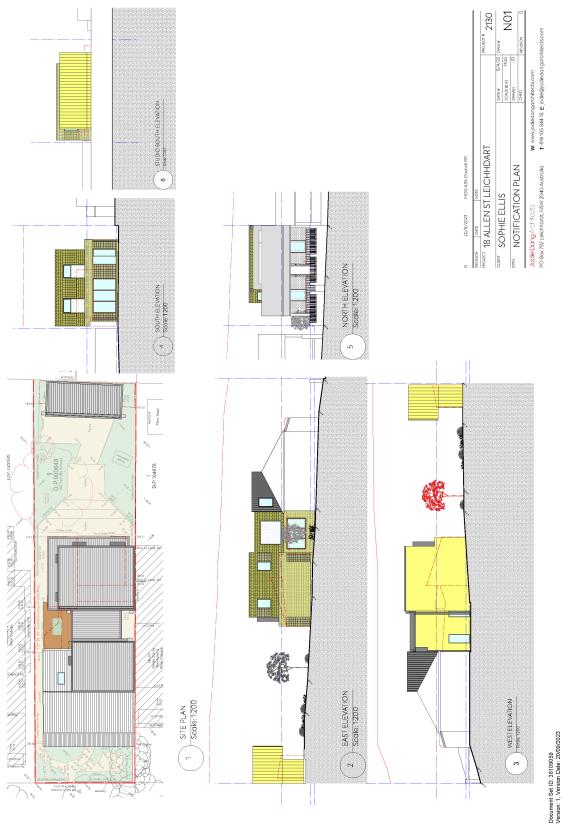
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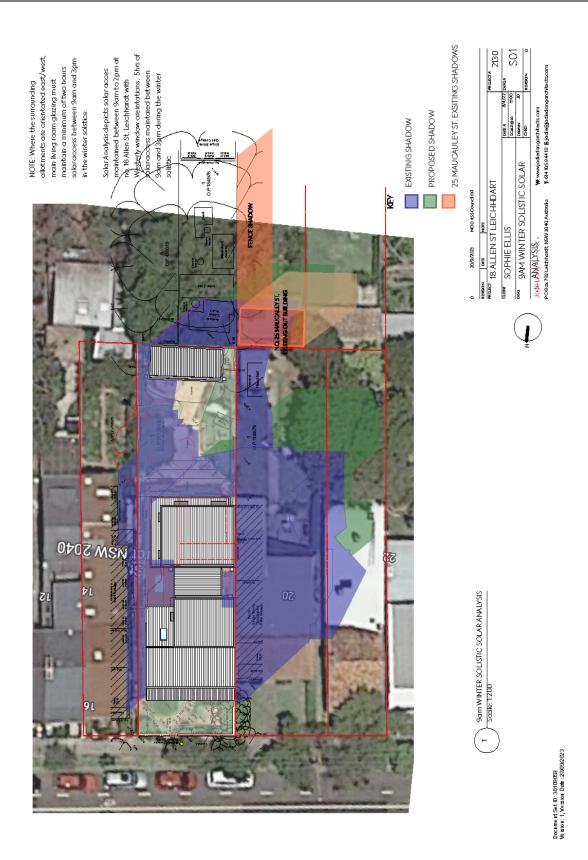






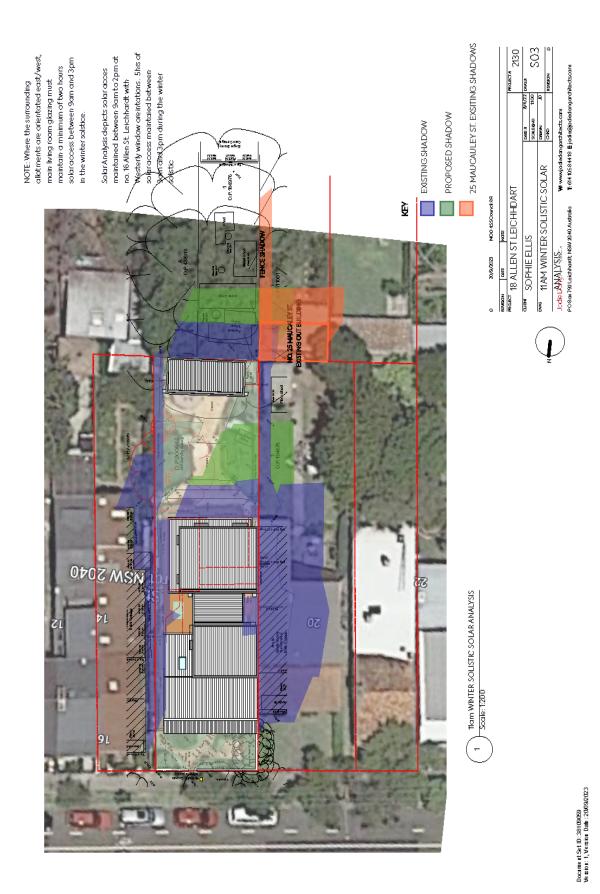
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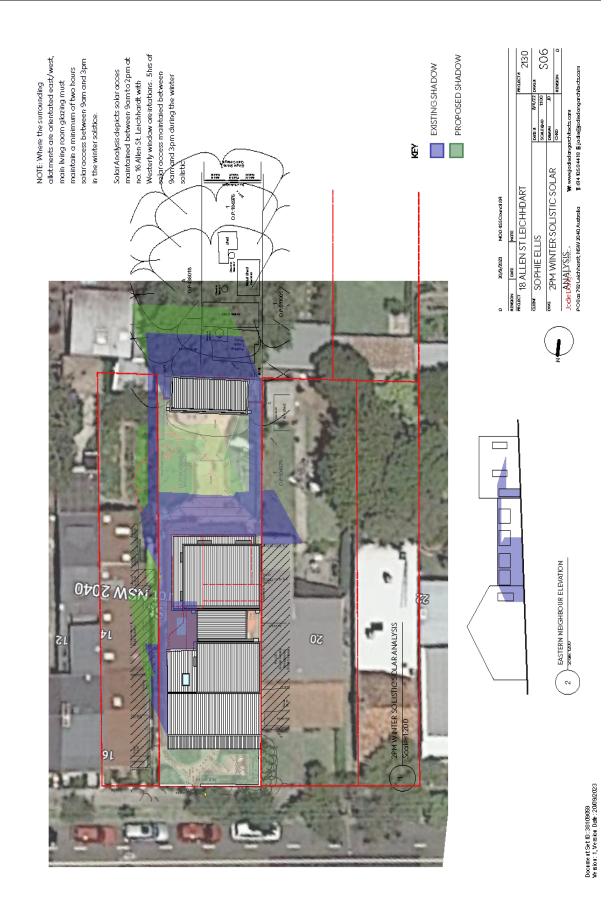
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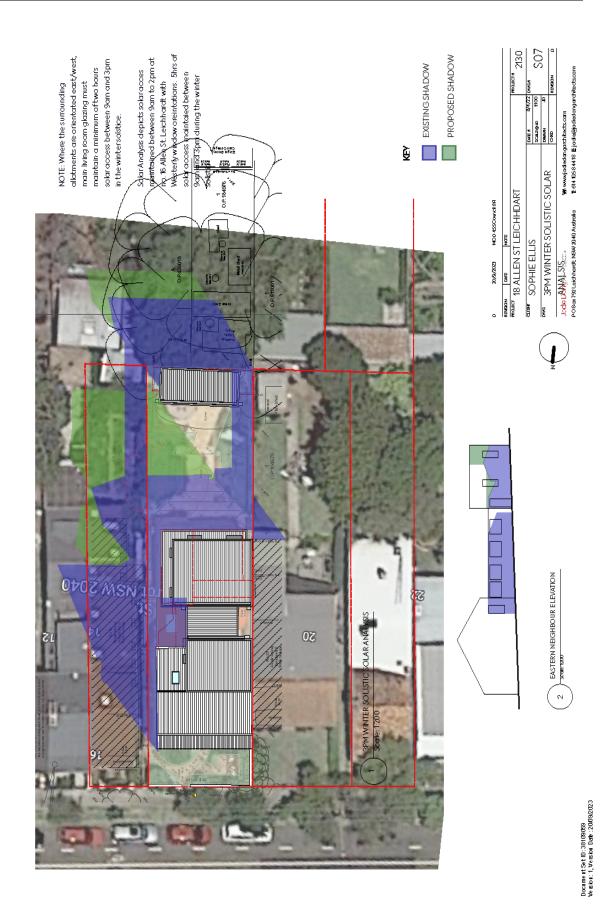


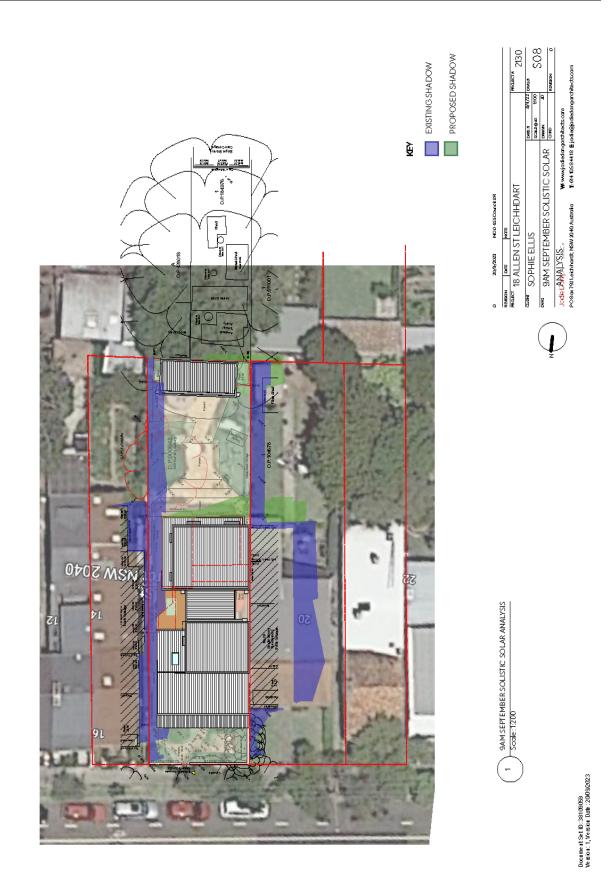




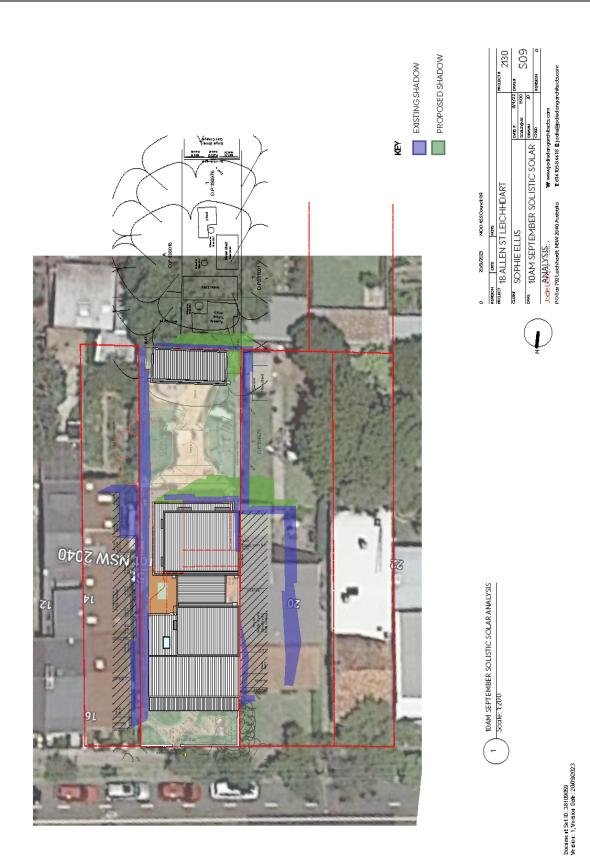


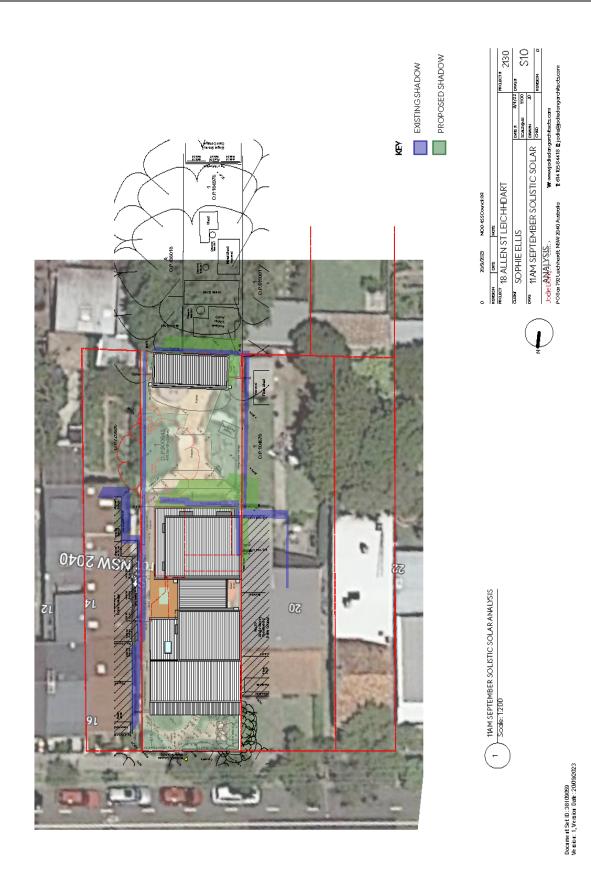


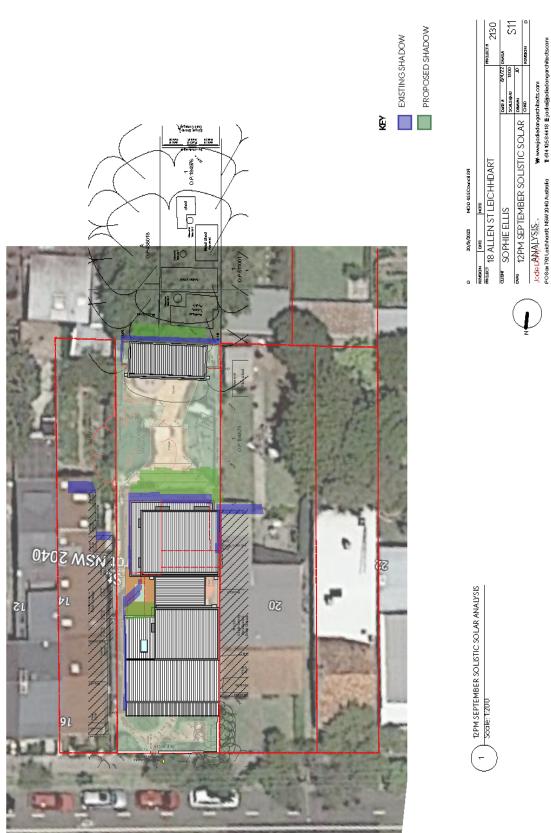


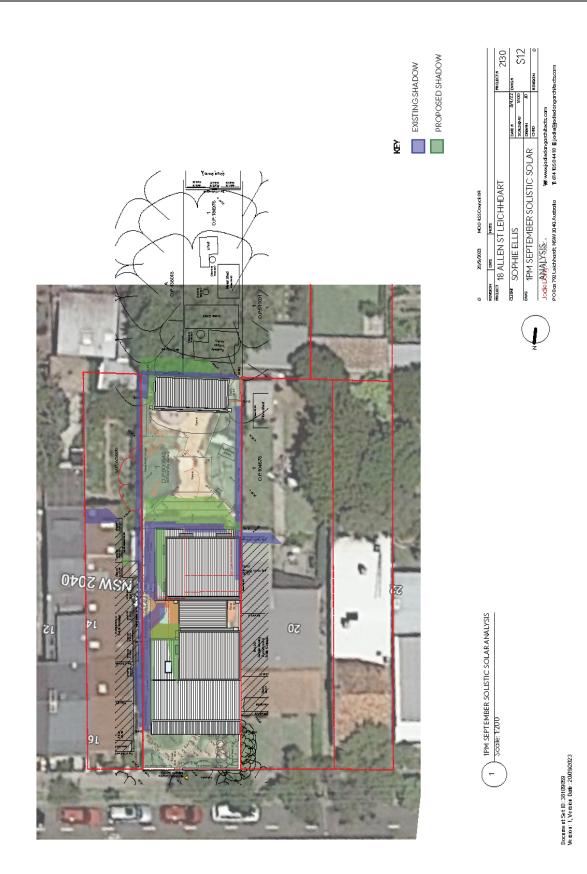


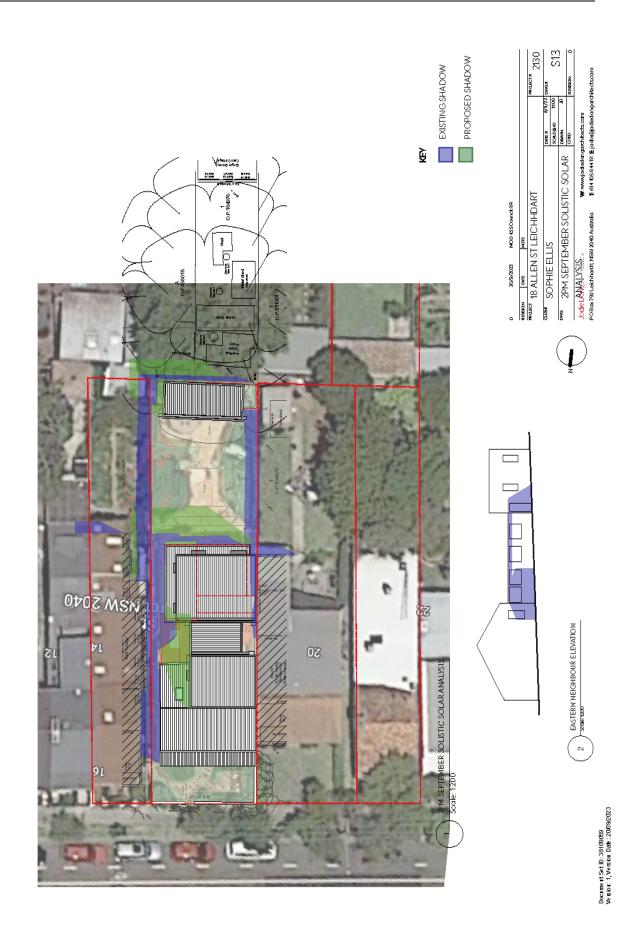
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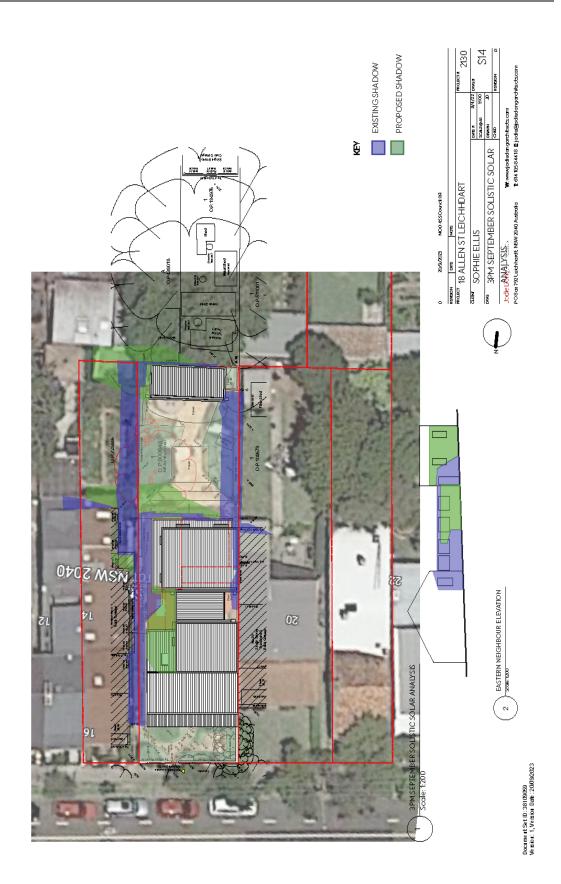


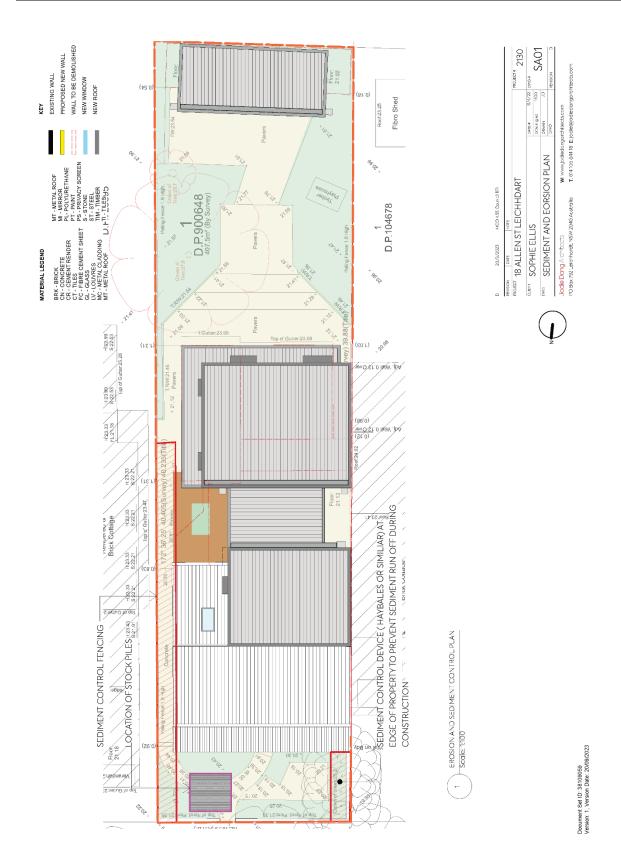












# Attachment C- Recommended conditions of consent in the event that the application is approved

A. Modify the following Conditions to read as follows:

### 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
D01, Revision <b>⊢ D</b>	DEMOLITION	14/4/2023	Jodie Dang
	PLAN	20/9/23	Architects
DA00, Revision I, MA00,	SITE PLAN	<del>14/4/2023</del>	Jodie Dang
Revision D		<b>20/9/23</b>	Architects
DA01, Revision I, MA01,	ROOF PLAN	<del>14/4/2023</del>	Jodie Dang
Revision D		<b>20/9/23</b>	Architects
DA02, Revision I, MA02,	PROPOSED	<del>14/4/2023</del>	Jodie Dang
Revision D	GROUND FLOOR	<b>20/9/23</b>	Architects
DA03, Revision I, MA03,	PROPOSED FIRST	14/4/2023	Jodie Dang
Revision D	FLOOR	20/9/23	Architects
DA04, Revision I, MA04,	EAST ELEVATION	<del>14/4/2023</del>	Jodie Dang
Revision D		<b>20/9/23</b>	Architects
DA05, Revision I, MA05,	WEST ELEVATION	<del>14/4/2023</del>	Jodie Dang
Revision D		<b>20/9/23</b>	Architects
	NORTH & SOUTH	<del>14/4/2023</del>	Jodie Dang
	ELEVATION	<b>20/9/23</b>	Architects
Revision D	SECTION CC & DD	14/4/2023 20/9/23	Jodie Dang Architects
DA08, Revision I, MA08,	SECTION A	<del>14/4/2023</del>	Jodie Dang
Revision D		<b>20/9/23</b>	Architects
DA09, Revision I, MA09,	SECTION B	<del>14/4/2023</del>	Jodie Dang
Revision D		<b>20/9/23</b>	Architects
	STUDIO ELEVATIONS	20/9/23	Jodie Dang Architects
M01, Revision I, M01A, Revision	MATERIAL BOARD	<del>14/4/2023</del>	Jodie Dang
D		<b>20/9/23</b>	Architects
M02, Revision I, M02A, Revision		14/4/2023	Jodie Dang
D		20/9/23	Architects
M03, Revision I., <b>M03A, Revision</b>		<del>14/4/2023</del>	Jodie Dang
D		<b>20/9/23</b>	Architects
5516R20220725lb18AllenStreet Leichardt_DA	Acoustical Report	2022	Koikas Acoustics Pty Ltd
	Arboricultural Impact Assessment Report	21/11/22	The Tree Guardian
A465102_03	BASIX Certificate	20 April 2023	Jodie Dang
SW1, Revision A	Concept Roof Drainage Plan	2 August 2022	E2 CIVIL & STRUCTURAL DESIGN
SW2, Revision A	Concept Ground & First Floor Drainage	03.08.2022	E2 CIVIL & STRUCTURAL DESIGN

As amended by the conditions of consent.

#### (Amended - 19/12/2023 - MOD/2023/0170)

#### 2. Design Change

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

a. All components of the fence to not exceed the height of RL21.35AHD.

## b. The north elevation to be amended to be consistent with section

#### (Amended - 19/12/2023 - MOD/2023/0170)

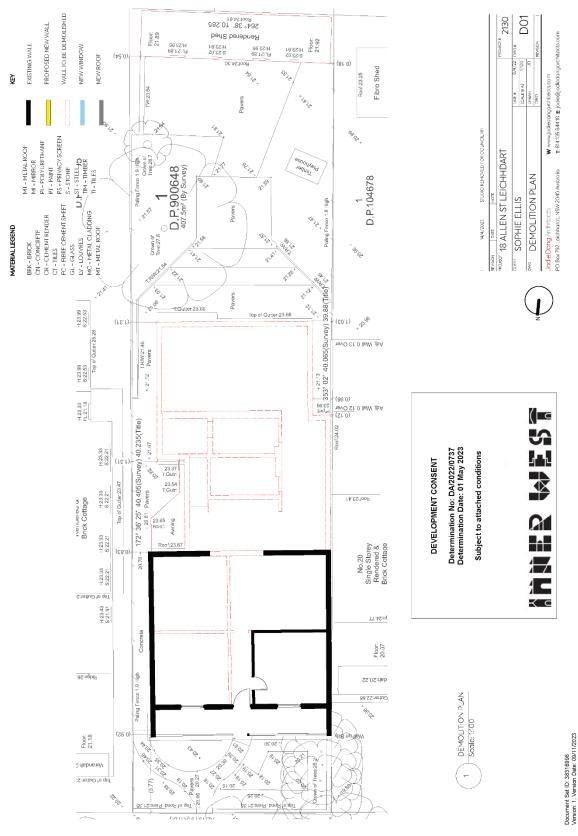
B. Add the following Condition to read as follows:

#### 33. Studio not to used as a self-contained dwelling or secondary dwelling

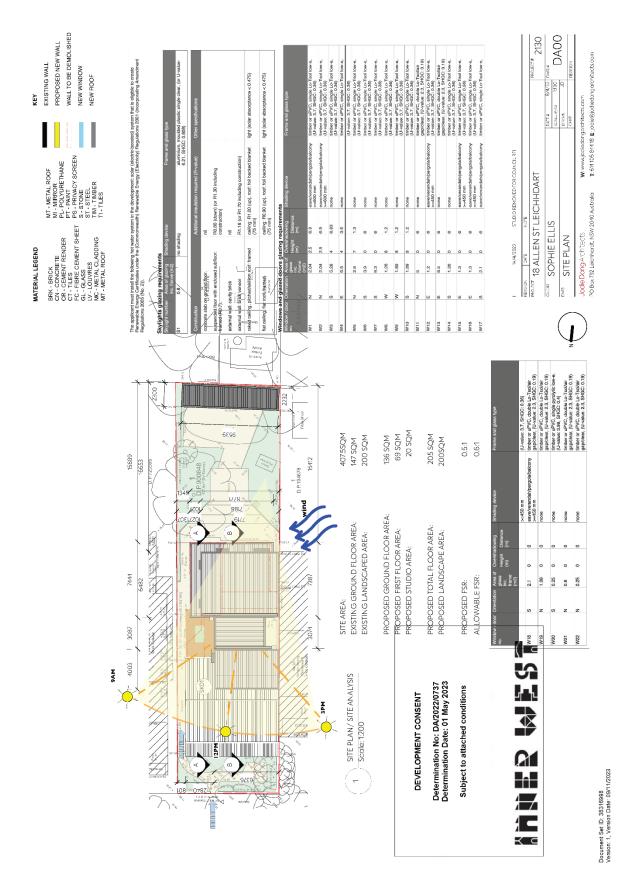
The studio at the rear of the subject site is ancillary to the residential use of the premises and is only to be used by the permanent residents of the dwelling. The studio must not incorporate kitchen or bathroom facilities. No approval is given for the use of studio as a self-contained dwelling or secondary dwelling. The studio shall not be separately leased.

(Added - 19/12/2023 - MOD/2023/0170)

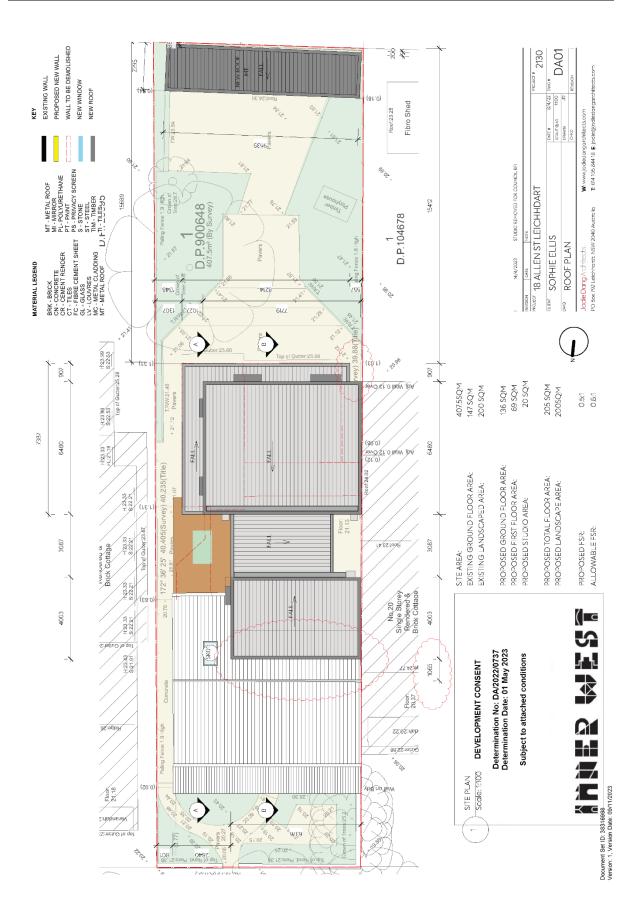


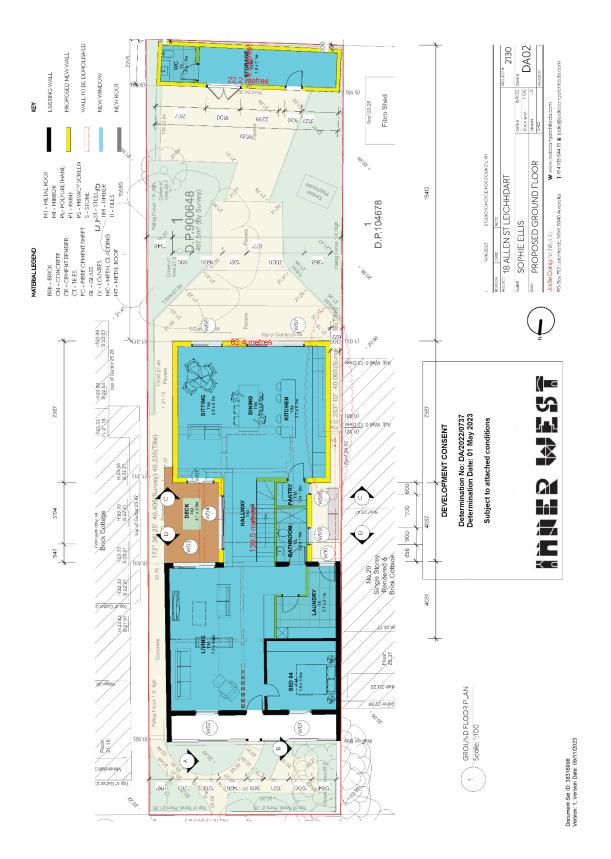


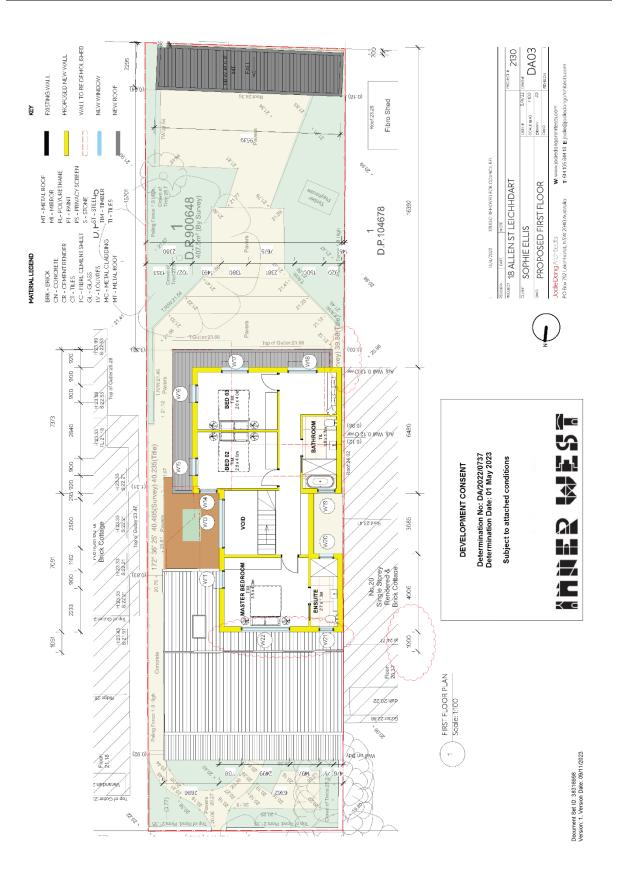


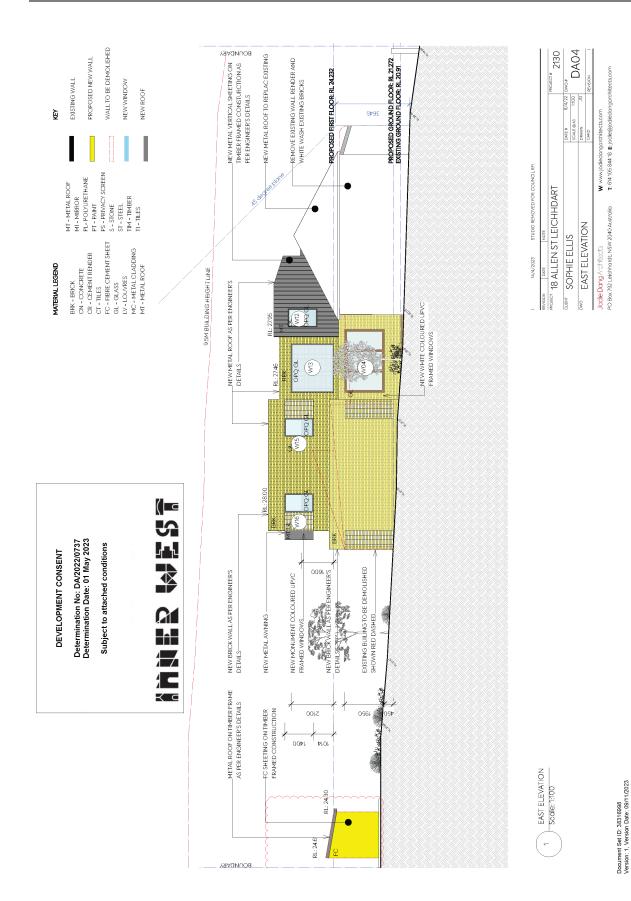


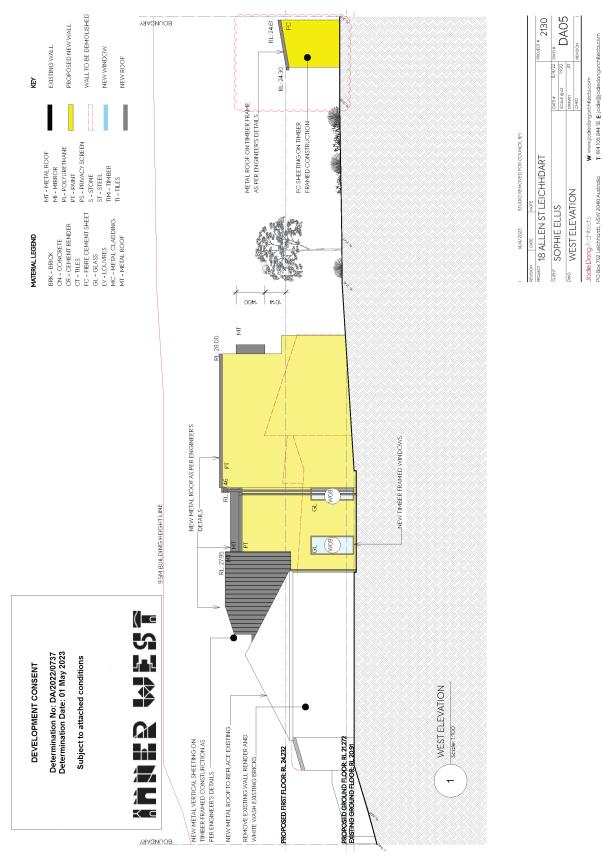




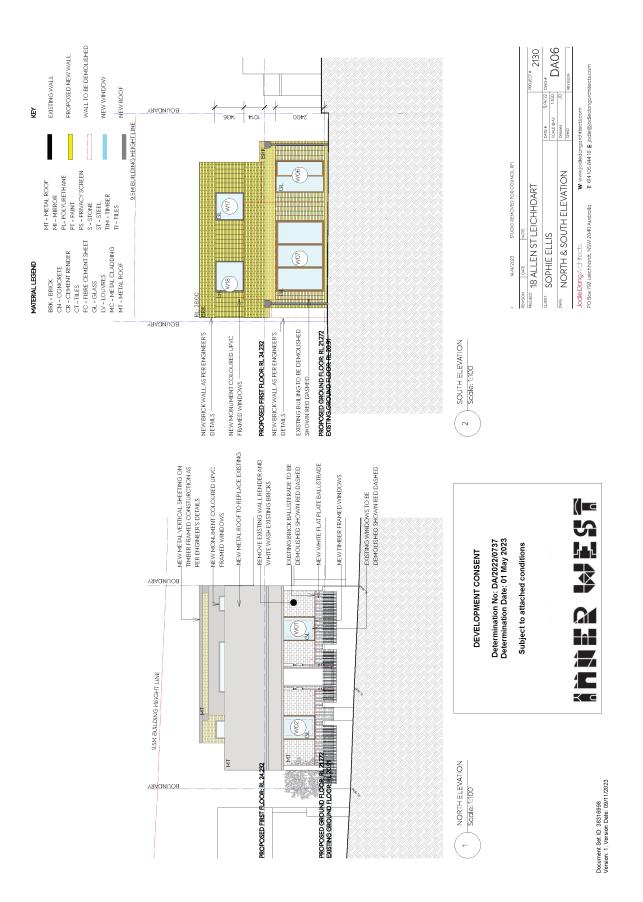




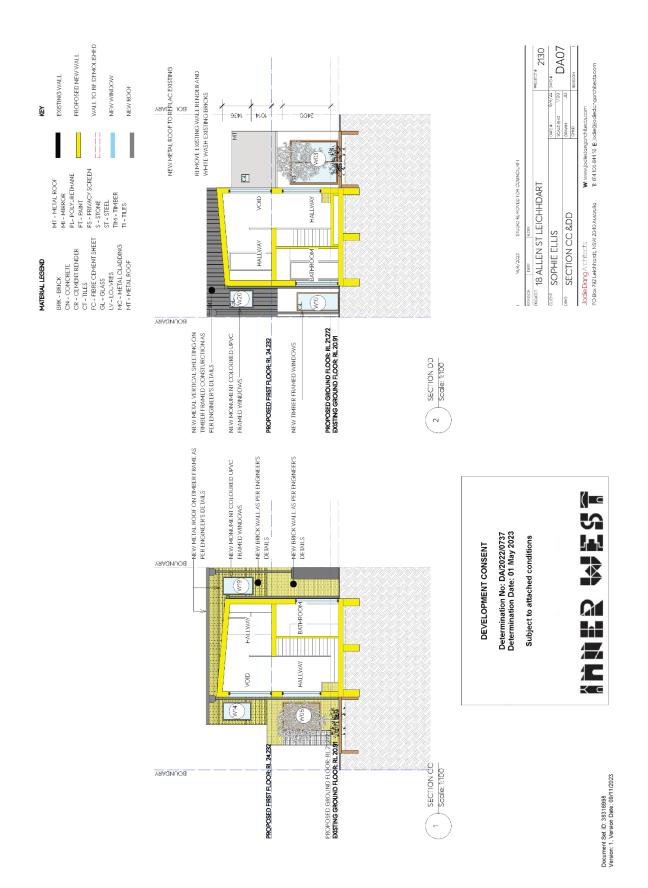


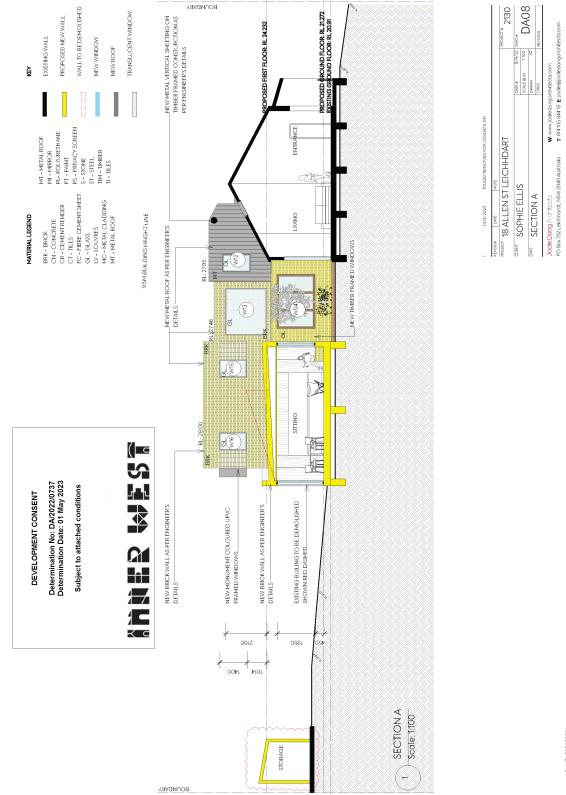


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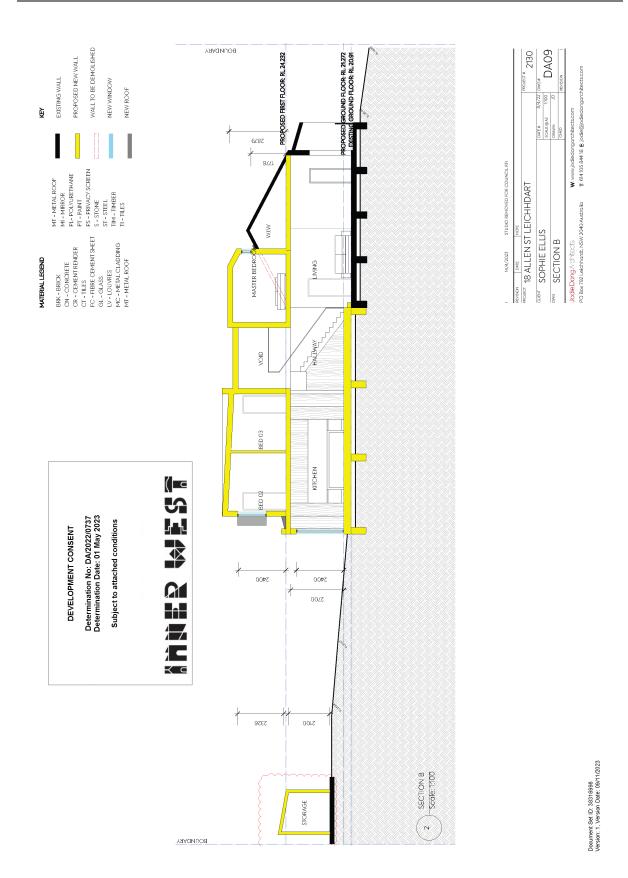








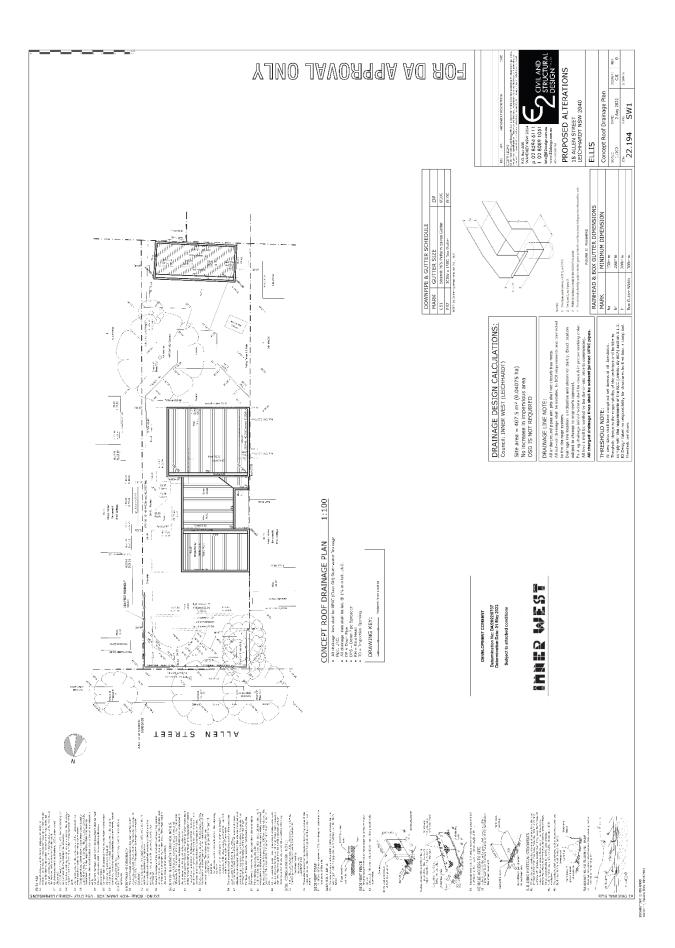
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**ITEM 4** 

