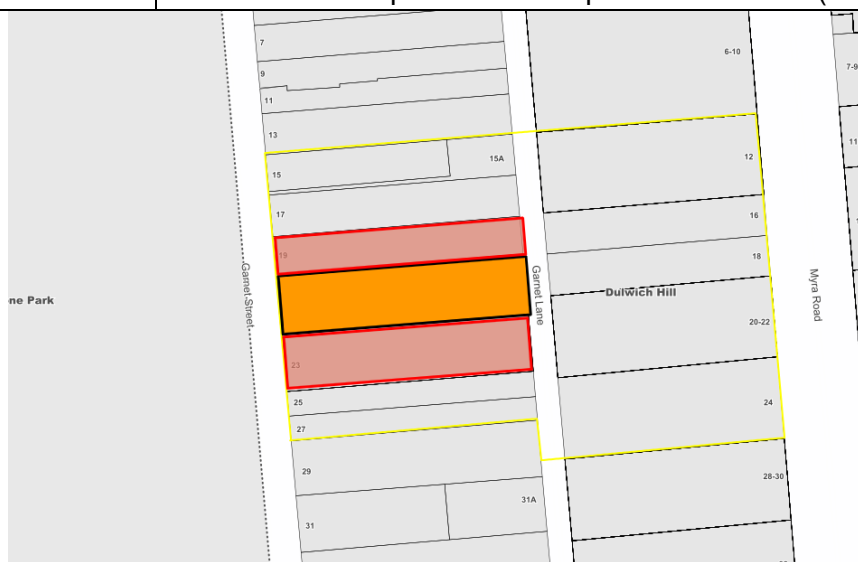

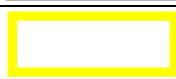
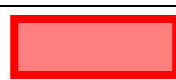

	
DEVELOPMENT ASSESSMENT PANEL REPORT	
Application No.	DA/2023/1083
Address	21 Garnet Street DULWICH HILL
Proposal	Demolition of existing improvements, including tree removal. Torrens Title subdivision of the existing allotment into two (2) lots, and construction of a two (2) storey semi-detached dwelling house on each Lot with detached double garage and two (2) storey secondary dwelling at the rear of each allotment.
Date of Lodgement	22 December 2023
Applicant	Cracknell & Lonergan Architects Pty Ltd
Owner	Mrs Dragi Dzongovski
Number of Submissions	Three (3)
Cost of works	\$1,752,300.00
Reason for determination at Planning Panel	SEPP (Housing) 2021 - Clause 53(2)(b) variation (parking)
Main Issues	<ul style="list-style-type: none"> SEPP (Housing) 2021 variations (parking and minimum Lot size) Part 2.7 – Solar Access and Overshadowing
Recommendation	Approved with Conditions
Attachment A	Recommended Conditions of Consent
Attachment B	Plans of Proposed Development
Attachment C	Section 4.6 Exception to Development Standards (Lot Size)
Attachment D	Section 4.6 Exception to Development Standards (Parking)
	
LOCALITY MAP	
Subject Site	
Notified Area	
Objectors	
Supporters	
Note: Due to scale of map, not all objectors could be shown.	

1. Executive Summary

This report is an assessment of the application submitted to Council for the demolition of existing improvements, including tree removal, Torrens Title subdivision of the existing allotment into two (2) lots, and construction of a two (2) storey dwelling house on each lot with detached double garage and two (2) storey secondary dwelling at the rear of each allotment at No. 21 Garnet Street Dulwich Hill.

The application was notified to surrounding properties and three (3) submissions were received in response to the notification.

The main issues that have arisen from the application include:

- Chapter 3 Diverse Housing, Part 1 Secondary Dwellings, Division 2 Secondary Dwellings Permitted with Consent of the *SEPP (Housing) 2021* - Clause 53(2)(a) variation (minimum lot size)
- Chapter 3 Diverse Housing, Part 1 Secondary Dwellings, Division 2 Secondary Dwellings Permitted with Consent of the *SEPP (Housing) 2021* - Clause 53(2)(b) variation (parking)
- Part 2.7 – Solar Access and Overshadowing of the MDCP 2011 variation

Despite the issues noted above, it is considered that the proposed development is capable of generally complying with the aims, objectives, and design parameters contained in the relevant State Environmental Planning Policies, *Inner West Local Environmental Plan 2022*, and Marrickville Development Control Plan 2011, subject to the imposition of conditions included in the recommendation.

The potential impacts to the surrounding environment have been considered as part of the assessment process. Any potential impacts from the development, given the context of the site and the desired future character of the precinct, are considered acceptable.

Considering the above, subject to the imposition of appropriate terms and conditions, the application is considered suitable for approval.

2. Proposal

The proposal seeks consent for the demolition of existing improvements, including tree removal, Torrens Title subdivision of the existing allotment into two (2) lots, and construction of a two (2) storey semi-detached dwelling house on each lot with detached double garage and two (2) storey secondary dwelling at the rear of each allotment. The proposal includes the following works:

- Subdivision into two (2) Torrens Title Lots of the following areas:
 - Lot 21 – 422.93sqm
 - Lot 21A – 422.93sqm
- Construction of a two-storey semi-detached dwelling on each Lot containing a bedroom, ensuite, bathroom, laundry and an open plan living, dining and kitchen area with an associated terrace on ground floor. The first floor contains a front-

- facing balcony, three (3) bedrooms, a study and three (3) bathrooms; and
- Construction of a secondary dwelling on each Lot attached to a double garage, bathroom and an open plan living, kitchen and dining room on ground floor. The first floor contains one (1) bedroom and an ensuite.

3. Site Description

The subject site is located on the western side of Garnet Street, between Garnet Lane and The Parade, Dulwich Hill. The site currently consists of one (1) allotment which is generally rectangular in shape with a total area of 846.1sqm and is legally described as Lot 15 in DP 667348.

The site has a primary frontage to Garnet Street of approximately 14.02m and a secondary frontage of approximately 14.02m to Garnet Lane. The subject site is not affected by any easements.

An existing single storey dwelling house with an associated shed and carport is located on the site. Surrounding land uses are a mix of single and double storey dwelling houses. The directly adjacent property to the south consists of four (4) townhouses. The laneway to the rear consists of multiple residential flat buildings.

The subject site adjoins the Canterbury-Bankstown Local Government Area to the west.

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

- Tree 1 - *Tristaniaopsis laurina* ('Luscious') - Street tree;
- Tree 2 - *Eucalyptus sp* (Gum) – Street tree;
- Tree 3 - *Ficus benjamina* (Weeping Fig) – located in the middle of the subject site;
- Tree 4 - *Jacaranda mimosifolia* (Jacaranda) – located along the northern side boundary of the subject site towards the rear;
- Tree 5 - *Morus spp* (Mulberry) – located along the northern side boundary of the subject site towards the rear;
- Tree 6 - *Prunus sp* (Prunus) – located towards the rear of the subject site; and
- Tree 7 - *Plumeria rubra* (Frangipani) – located on the rear boundary of the subject site.



Figure 1 – Site Photo



Figure 2 – Zoning Map

4. Background

Site history

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

Subject Site

Application	Proposal	Decision & Date
DA/2020/1129	Development application for multi dwelling housing development with four (4) dwellings with two basement parking areas.	Withdrawn, 14/01/2021
DA/2023/0480	Demolition of existing improvements, subdivision of the existing lot into 4 allotments, construction of a 2-storey dwelling house on each allotment with associated landscaping.	Withdrawn, 30/08/2023

Surrounding properties

Application	Proposal	Decision & Date
<u>No. 19 Garnet Street, Dulwich Hill:</u>		
CDCP/2023/0021	Demolition of existing garage and construction of a garage and studio above.	Approved, 15/02/2023
<u>No. 23 Garnet Street, Dulwich Hill:</u>		
D420/94	Application to strata subdivide into (2) two lots premises for townhouse.	Approved, 02/11/1994
S52/94	Strata subdivide into 4 lots.	Approved, 07/11/1994

Application history

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

Date	Discussion / Letter / Additional Information
22/12/2023	Application lodged.
17/01/2024 to 31/01/2024	Application notified.
26/02/2024	A Request for Further Information letter was sent to the applicant requiring amended plans addressing the Floor Space Ratio variation, visual bulk and scale, streetscape and design, solar access and overshadowing, acoustic and visual privacy and works over the property boundary.
18/03/2024	Amended plans and supporting documentation were received. Renotification was not required in accordance with Council's Community Engagement Strategy. The amended plans and supporting documentation are the subject of this report.

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)*.

A. Environmental Planning Instruments

The application has been assessed and the following provides a summary of the relevant Environmental Planning Instruments.

State Environmental Planning Policies (SEPPs)

SEPP (Resilience and Hazards) 2021

Chapter 4 Remediation of land

Section 4.6(1) of the *Resilience and Hazards 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.

SEPP (Housing) 2021

Chapter 3 Diverse housing, Part 1 Secondary dwellings

The application seeks consent for two secondary dwellings (one on each proposed lot) under the *Housing SEPP* which provides controls relating to various matters including zone, subdivision, Floor Space Ratio, Lot size and parking requirements. The main design parameters are addressed below:

Section	Proposal	Compliance
50 - This part applies to development for the purposes of a secondary dwelling on	The site is zoned R2 – Low Density Residential under the <i>IWLEP 2022</i> ,	Yes

Section	Proposal	Compliance
land in a residential zone if development for the purposes of a dwelling house is permissible on the land under another environmental planning instrument.	semi-detached dwelling houses are permitted with consent.	
51 - Development consent must not be granted for the subdivision of a lot.	The existing site is proposed to be subdivided into Two (2) Torrens Title Lots. One (1) principal dwelling and one (1) secondary dwelling will be located on each allotment proposed which is consistent with Clause 51 of this Part of <i>SEPP (Housing) 2021</i> . The proposal does not seek subdivision of the secondary dwelling.	Yes
52 (2)(a) - No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land.	The proposal seeks consent for a new detached secondary dwelling on each Lot at the rear of the subject site fronting Garnet Lane. The development, as proposed, will also have a principal dwelling located on each Lot fronting Garnet Street. No further dwellings beyond the principal and secondary dwellings on each Lot are proposed.	Yes
52 (2)(b) - The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument.	A maximum Floor Space Ratio of 0.6:1 or 253.758sqm applies to both Lot Nos. 21 and 21A Garnet Street. The proposal results in a Floor Space Ratio of 0.57:1 or 242.5sqm on each Lot and complies with Section 4.4 of the <i>IWLEP 2022</i> .	Yes
52 (2)(c) the total floor area of the secondary dwelling is— (i) no more than 60sqm, or (ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument—the greater floor area.	The total floor area of the proposed secondary dwellings is 55.1sqm each.	Yes
53 (2)(a) for a detached secondary dwelling a minimum site area of 450sqm	The total site area is 422.93sqm on each Lot proposed.	No – See Section 4.6 Assessment below
53 (2)(b) the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	Two (2) off-street parking spaces are proposed on each Lot. The existing site consists of one (1) off-street parking space.	No – See Section 4.6 Assessment below

Overall, the proposal is considered satisfactory and complies with the objectives and controls prescribed under the SEPP which relate to Secondary Dwellings.

SEPP (Sustainable Buildings) 2022

The applicant has included the BASIX Certificates as part of the lodgment of the application (lodged within 3 months of the date of the lodgment of this application) in compliance with the *EP and A Regulation 2021*.

SEPP (Biodiversity and Conservation) 2021*Chapter 2 Vegetation in non-rural areas*

The *Biodiversity and Conservation SEPP* requires consideration for the protection and/or removal of vegetation and gives effect to the local tree preservation provisions of Part 2.20 of the MDCP 2011.

The application seeks the removal of the following prescribed trees from within the subject site:

- Tree 3 - *Ficus benjamina* (Weeping Fig);
- Tree 4 - *Jacaranda mimosifolia* (Jacaranda);
- Tree 5 - *Morus spp* (Mulberry);
- Tree 6 - *Prunus sp* (Prunus); and
- Tree 7 - *Plumeria rubra* (Frangipani).

An assessment of the proposal against the abovementioned provisions has identified the following:

- The trees in question have been noted to be in good-to-poor health in condition;
- Whilst collectively the trees provide extensive canopy cover across the site, the majority are overgrown weeds which have not been maintained;
- None of the trees within the site are considered of high importance that would warrant their retention or require redesign; and
- The submitted Landscape Plans indicates two (2) trees will be planted within each new allotment. The species' selection are medium-to-large trees which are considered suitable for the site and will compensate for the loss of canopy resulting from the removal of the above-mentioned trees.

Overall, the proposal is considered acceptable with regard to the *Biodiversity and Conservation SEPP* and Part 2.20 of the MDCP 2011 subject to the imposition of conditions, which have been included in the Recommended Conditions of Consent attached to this report.

Inner West Local Environmental Plan 2022

The application was assessed against the following relevant sections of the *Inner West Local Environmental Plan 2022 (IWLEP 2022)*.

Part 1 – Preliminary

Section	Proposed	Compliance
Section 1.2 Aims of Plan	<p>The proposal satisfies this Section as follows:</p> <ul style="list-style-type: none"> • The proposal encourages diversity in housing to meet the needs of, and enhance amenity for, Inner West residents; • The proposal prevents adverse social, economic, and environmental impacts on the local character of the Inner West; and • The proposal prevents adverse social, economic, and environmental impacts, including cumulative impacts. 	Yes

Part 2 – Permitted or prohibited development

Section	Proposed	Compliance
Section 2.3 Zone objectives and Land Use Table <i>R2 – Low Density Residential</i>	<ul style="list-style-type: none"> • The application proposes to demolish the existing improvements on-site, including tree removal. Torrens Title subdivision of the existing allotment into two (2) Lots, and construction of a two-storey semi-detached dwelling house on each lot with detached double garage and two-storey secondary dwelling at the rear of each allotment, which is permissible with consent in the R2 – Low Density Residential zone. Semi-detached dwelling houses and secondary dwellings are permissible with consent in the R2 zone; and • The proposal is consistent with the relevant objectives of the zone, as the proposal seeks to provide additional housing to accommodate the housing needs of the local community. 	Yes
Section 2.6 Subdivision – consent requirements	<ul style="list-style-type: none"> • The application seeks development consent for the subdivision of the existing Lot into two (2) Torrens Title Lots, which is permissible with consent. 	Yes
Section 2.7 Demolition requires development consent	<p>The proposal satisfies this Section as follows:</p> <ul style="list-style-type: none"> • Demolition works are proposed, which are permissible with consent; and • Standard conditions are recommended to manage impacts which may arise during demolition. 	Yes, as conditioned

Part 4 – Principal development standards

Control	Proposed		Compliance
Section 4.3 Height of building	Maximum	<u>Lot 21:</u> 9.5m	Yes
		<u>Lot 21A:</u> 9.5m	
	Proposed	<u>Lot 21:</u>	

Control	Proposed		Compliance
		8.2m <u>Lot 21A:</u> 8.2m	
Section 4.4 Floor space ratio	Maximum	<u>Lot 21:</u> 0.6:1 or 253.758sqm <u>Lot 21A:</u> 0.6:1 or 253.758sqm	Yes
	Proposed	<u>Lot 21:</u> 0.57:1 or 242.5sqm <u>Lot 21A:</u> 0.57:1 or 242.5sqm	
Section 4.5 Calculation of floor space ratio and site area	The site area and floor space ratio for the proposal has been calculated in accordance with the section.		Yes
Section 4.6 Exceptions to development standards	The applicant has submitted a variation request in accordance with Section 4.6 to vary Clause 53 (2)(a) and Clause 53 (2)(b) of Chapter 3 Diverse Housing, Part 1 Secondary Dwellings, Division 2 Secondary Dwellings Permitted with Consent of <i>SEPP (Housing) 2021</i> .		See below under the relevant heading for further details

Section 4.6 – Exceptions to Development Standards

Clause 53 (2)(a) – Non-discretionary Development Standard of SEPP (Housing) 2021 – Lot Size

The applicant seeks a variation to the abovementioned under Section 4.6 of the *IWLEP 2022* by 27.07sqm or 6.01% for each allotment proposed. 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(3) of the *IWLEP 2022* justifying the proposed contravention of the development standard which is summarised as follows:

- It should be noted even though the proposed lot area is smaller than the required numerical value for allowing a secondary dwelling, the nature of the site is long and slender allowing for adequate setback and distance between the principle and secondary dwelling to be maintained, additionally, side setbacks are also provided with adequate distance to retain neighbouring visual privacy;*

- *The proposed secondary dwelling is able to achieve the maximum 60sqm interior space while retaining an adequate 1.5m setback from the side boundaries, additionally neighbouring residential amenity is not reduced as similar secondary dwellings and garages are located along the rear of neighbouring sites fronting Garnet Lane;*
- *The proposal will provide a consistent subdivision pattern along Garnet Street dividing along the east to west orientation, both allotments after subdivision will retain front street entrances towards Garnet Street and rear lane access through Garnet Lane, this ensures that current access preferences are retained even after subdivision which provides a coherent access along the street. Additionally, the proposed subdivision pattern reflects the prevailing cadastral pattern of having two lots of equal area positioned adjacent one another, thus demonstrating the overall subdivided lot size area is adequate in providing a high quality residential amenity which includes a secondary dwelling;*
- *The proposal seeks to provide a new semi-detached dwelling with secondary dwelling after subdivision of the site, this increases the density of the site while retaining a high quality of residential amenity; and*
- *The proposal ensures the development is provided with high levels of amenity, this includes private open spaces that are designated with space for family activities, adequate levels of solar access in maintaining a bright environment, and a secondary dwelling which can be rented out or be transformed into a guest house or children's house for a flexible function.*

Whether compliance with the development standard is unreasonable or unnecessary

In *Wehbe* at [42] – [51], Preston CJ summarises the common ways in which compliance with the development standard may be demonstrated as unreasonable or unnecessary. This is repeated in *Initial Action* at [16]. In the Applicant's written request, the first method described in *Initial Action* at [17] is used, which is that the objectives of the Clause 53 (2)(a) – non-discretionary standard are achieved notwithstanding the numeric non-compliance.

The **objective of Clause 53 (2)(a) – non-discretionary standard of SEPP (Housing) 2021** is *“the object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters”*. The written request states that the proposed variation of the standard still allows for a subdivision pattern that is consistent with the prevailing cadastral pattern along Garnet Street whilst including additional housing within the area that continues to protect the residential amenity of the subject site and adjoining properties in terms of visual bulk and scale, visual and acoustic privacy, solar access and overshadowing and providing compliant landscaping and private open space areas. Although the proposal does not numerically comply with Clause 53(2)(a) – non-discretionary standard of *SEPP (Housing) 2021*, the objective seeks to ensure that the development in question satisfies other applicable requirements, such as the overall objectives contained under *SEPP (Housing) 2021*, subdivision pattern provisions, amenity impacts and site capacity related controls. Accordingly, the breach is consistent with the objective.

As the proposal achieves the objectives of the Clause 53 (2)(a) – non-discretionary standard, compliance is considered unreasonable and unnecessary in this instance

Whether there are sufficient environmental planning grounds to justify contravening the development standard

Pursuant to Section 4.6(3)(b), the Applicant advances two (2) well-informed environmental planning grounds to justify contravening the Clause 53 (2)(a) – non-discretionary development standard. Each will be dealt with in turn:

Environmental Planning Ground 1 – *The proposed secondary dwelling is able to achieve the maximum 60sqm interior space while retaining an adequate 1.5m setback from the side boundaries and maintaining existing visual privacy, additionally neighbouring residential amenity is not reduced as similar secondary dwellings and garages are located along the rear of neighbouring sites fronting Garnet Lane.* This environmental planning ground is accepted because the proposed secondary dwellings on each allotment proposed are compliant with Clause 52 (2)(c) of *SEPP (Housing) 2021* and other applicable amenity provisions contained under the *IWLEP 2022* and *MDCP 2011*. Further, the proposed secondary dwellings will be in keeping with the established pattern of development along Garnet Lane, which mostly consists of secondary dwellings, garages and / or garages and first floor studios along the western side of Garnet Lane.

Environmental Planning Ground 2 - *The proposal seeks to provide a new semi-detached dwelling with secondary dwelling after subdivision of the site, this increases the density of the site while retaining a high quality of residential amenity.* This environmental planning ground is accepted because the addition of a secondary dwelling on each allotment proposed will allow for housing diversity and provide for the housing needs of those in the Marrickville LGA; therefore, satisfying the objectives contained within the R2 – Low Density Residential zone.

Cumulatively, the grounds are considered sufficient to justify contravening the development standard.

Whether the proposed development meets the objectives of the development standard, and of the zone

The objectives of the R2 – Low Density Residential zone under the *IWLEP 2022* are:

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

The variation will not result in adverse environmental implications by way of amenity impacts. As indicated above, Council is also satisfied that the development meets the objectives of the Clause 53 (2)(a) – non-discretionary standard. As the proposal is consistent with both the objectives of the zone and the standard, it is considered in the public interest.

•

The contravention of the development standard does not raise any matter of significance for State and Regional Environmental Planning. Council may assume the concurrence of the

Director-General under the Planning Circular PS 20-002 issued in May 2020 in accordance with section 4.6(4)(b) of the *IWLEP 2022*.

For the reasons outlined above, it is recommended the section 4.6 exception be granted.

Clause 53 (2)(b) – Non-discretionary Development Standard of SEPP (Housing) 2021 – No change to car parking

The applicant seeks a variation to the above mentioned under Section 4.6 of the *IWLEP 2022*. The existing site consists of one (1) off-street parking space for the allotment and the proposal seeks to add an additional three (3) off-street parking spaces. Two (2) off-street parking spaces will be allocated to each Lot proposed. The standard in question is a non-numerical Clause as the intent of Clause 53 (2)(b) seeks to retain the existing off-street parking arrangements on-site post development involving a secondary dwelling. Therefore, any variations to Clause 53 (2)(b) cannot be measured numerically.

The 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 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(3) of the *IWLEP 2022* justifying the proposed contravention of the development standard which is summarised as follows:

- *The proposal will provide a consistent laneway frontage along Garnet Lane, majority of properties have rear lane garages that provide parking for their property, the proposed garage has a consistent boundary setback and provide adequate driveway safety to pedestrians;*
- *Along Garnet Street, there are multiple examples of lots that provide or can accommodate more than one off street parking space, this is evident from No. 15, 30, 31, 34, 42, 44 Garnet St all having more than one off street parking spot. With other lots within the area providing more than one parking spot, it is acceptable for the proposal to provide an additional parking spot designed for the principal dwelling, additionally, the proposed car parking spot location is at the rear of the site fronting Garnet Lane with adequate setbacks and cover to provide a safe and secure environment for both pedestrians and the resident's vehicles, the solution is much more positive and preserves the front streetscape and provide a coherent streetscape expression with neighbouring buildings; and*
- *In spite the overall proposal introducing an additional parking space on the site it is allocated towards the principal dwelling and not to be utilized by the secondary dwelling, hence the construction of the secondary dwelling does not lead to an increase of parking spaces on the site but rather the principal dwelling and is deemed acceptable as it is designed to accommodate a family of four (4) or more with future growth and needs for residential mobility in and around the area of Sydney.*

Whether compliance with the development standard is unreasonable or unnecessary

In *Wehbe* at [42] – [51], Preston CJ summarises the common ways in which compliance with the development standard may be demonstrated as unreasonable or unnecessary. This is repeated in *Initial Action* at [16]. In the Applicant's written request, the first method described in *Initial Action* at [17] is used, which is that the objectives of the Clause 53 (2)(b) – non-discretionary standard are achieved notwithstanding the numeric non-compliance.

The **objective of Clause 53 (2)(b) – non-discretionary standard of SEPP (Housing) 2021** is *"the object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters"*. The written request indicates that there is no environmental impact associated with the provision of more than 1 car parking space and that the standard is to ensure that no further onerous standards are applied in the assessment of parking hence, making compliance with the standard unreasonable and unnecessary given that the proposed additional parking spaces seek to increase the residential amenity of the occupants of the subject site as well as satisfy other applicable requirements, such as the overall objectives contained under *SEPP (Housing) 2021*, laneway character, parking, and pattern of development. Accordingly, the breach is consistent with the objective.

As the proposal achieves the objectives of the Clause 53 (2)(b) – non-discretionary standard, compliance is considered unreasonable and unnecessary in this instance.

Whether there are sufficient environmental planning grounds to justify contravening the development standard

Pursuant to Section 4.6(3)(b), the Applicant advances two (2) well-informed environmental planning grounds to justify contravening the Clause 53 (2)(b) – non-discretionary development standard. Each will be dealt with in turn:

Environmental Planning Ground 1 – *In spite the overall proposal introducing an additional parking space on the site it is allocated towards the principal dwelling and not to be utilized by the secondary dwelling, hence the construction of the secondary dwelling does not lead to an increase of parking spaces on the site.* This environmental planning ground is accepted as the control fails to acknowledge the potential for subdivision and the need for additional parking for the new lot. In addition the existing and new parking would be allocated to the principal dwellings for use. As such, no additional parking spaces are created for the proposed secondary dwellings in which Clause 53 (2)(b) of *SEPP (Housing) 2021* is still satisfied in this regard.

Environmental Planning Ground 2 - *Along Garnet Street, there are multiple examples of lots that provide or can accommodate more than one off street parking, this is evident from No. 15, 30, 31, 34, 42, 44 Garnet St all having more than one off street parking spot.* This environmental planning ground is accepted because the proposed additional parking spaces on-site is in keeping with the character of the area and the prevailing pattern of development along Garnet Street and Garnet Lane.

Cumulatively, the grounds are considered sufficient to justify contravening the development standard.

Whether the proposed development meets the objectives of the development standard, and of the zone

- The objectives of the R2 – Low Density Residential zone under the *IWLEP 2022* are:
 - *To provide for the housing needs of the community within a low density residential environment.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
 - *To provide residential development that maintains the character of built and natural features in the surrounding area.*

The variation will not result in adverse environmental implications by way of amenity impacts and will seek to improve the existing off-street parking situation on-site to a lot that is capable of accommodating additional parking. As indicated above, Council is also satisfied that the development meets the objectives of the Clause 53 (2)(b) – non-discretionary standard. As the proposal is consistent with both the objectives of the zone and the standard, it is considered in the public interest.

The contravention of the development standard does not raise any matter of significance for State and Regional Environmental Planning. Council may assume the concurrence of the Director-General under the Planning Circular PS 20-002 issued in May 2020 in accordance with section 4.6(4)(b) of the *IWLEP 2022*.

For the reasons outlined above, it is recommended the section 4.6 exception be granted.

Part 5 – Miscellaneous provisions

Section	Compliance	Compliance
Section 5.4 Controls relating to miscellaneous permissible uses	<ul style="list-style-type: none"> • Section 5.4(9) states that secondary dwellings are limited to a maximum gross floor area of 60sqm, or 35% of the gross floor area of the principal dwelling, whichever is greater. The proposed secondary dwelling on each Lot proposed is 55.1sqm in area and is therefore acceptable with regard to this Section. 	Yes

Part 6 – Additional local provisions

Section	Proposed	Compliance
Section 6.1 Acid sulfate soils	<ul style="list-style-type: none"> The site is identified as containing Class 5 acid sulfate soils. The proposal is considered to adequately satisfy this section as the application does not propose any works that would result in any significant adverse impacts to the watertable. 	Yes
Section 6.2 Earthworks	<ul style="list-style-type: none"> The proposal seeks to excavate the subject site below the existing RLs of Nos. 19 and 23 Garnet Street at the rear of the subject site. The proposed outbuilding will be adequately setback from the property boundary and retaining walls are proposed along both side boundaries at the rear of the site to ensure that both neighbouring properties are protected. Overall, it is considered that the earthworks proposed are unlikely to have a detrimental impact on environmental functions and processes, existing drainage patterns, or soil stability. 	Yes
Section 6.3 Stormwater Management	<ul style="list-style-type: none"> The proposal will remain satisfactory with respect to the provisions of this Section of <i>IWLEP 2022</i> and subject to standard conditions would not result in any significant runoff to adjoining properties or the environment. 	Yes, as conditioned

B. Development Control Plans

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

MDCP 2011	Compliance
Part 2.1 – Urban Design	Yes
Part 2.6 – Acoustic and Visual Privacy	Yes – see discussion
Part 2.7 – Solar Access and Overshadowing	Acceptable, on merit – see discussion
Part 2.9 – Community Safety	Yes
Part 2.10 – Parking	Yes – see discussion
Part 2.11 – Fencing	Yes
Part 2.18 – Landscaping and Open Space	Yes
Part 2.20 – Tree Management	Yes – refer to <i>Chapter 2 Vegetation in non-rural areas</i> under the <i>SEPP (Biodiversity and Conservation) 2021</i> section of this report
Part 2.21 – Site Facilities and Waste Management	Yes, as conditioned
Part 2.25 – Stormwater Management	Yes, as conditioned
Part 3 – Subdivision	Yes – see discussion
Part 4.1 – Low Density Residential Development	Yes – see discussion
Part 9 – Strategic Context	Yes

The following provides discussion of the relevant issues:

Part 2 – Generic Provisions

Control	Assessment	Compliance
Part 2.6 Acoustic and Visual Privacy	<p>The proposal will have a satisfactory impact on visual and acoustic privacy levels of the surrounds as follows:</p> <ul style="list-style-type: none"> The proposal maintains / proposes a low impact residential use and as such is unlikely to result in adverse acoustic impacts; The proposed private open space areas for both principal dwellings and secondary dwellings are appropriately located to ensure minimal acoustic impacts to neighbouring bedroom areas. Further, the boundary fencing will obscure any sightlines into neighbouring main living room glazing and / or private open space areas to ensure that the visual privacy of adjoining properties as well as the occupants of the site is protected; The location of the proposed garages is in a suitable location, similar to adjoining garage locations and away from sensitive areas, such as bedroom windows, in order to avoid acoustic impacts; The proposed glazing on the eastern elevation of the principal dwelling (D100, W101 and W107) overlook Garnet Street, and as such, will have minimal opportunity to overlook into neighbouring main living room glazing and / or private open space areas. Further, the glazing in question is in accordance with C3(iii) of this Part of the MDCP 2011; 	Yes

Control	Assessment	Compliance
	<ul style="list-style-type: none"> • The proposed first floor balconies on the eastern elevation of the principal dwellings is of a dimension (1.5m depth and less than 10sqm in area) that is compliant with C3(ii) of this Part of the MDCP 2011. Further, the balconies in question service the bedroom and are designed to provide passive surveillance of the street. There are no concerns regarding privacy as the balconies face the street. • The first-floor glazing (W112) on the western elevation of the secondary dwellings overlooks Garnet Lane. The glazing in question provides surveillance to Garnet Lane which improves safety and security to this area. Further, the proposed windows will not directly overlook neighbouring main living room glazing and / or private open space areas, thereby having minimal visual privacy impacts; • The proposed ground floor side-facing glazing (W102, W103, W104 and W105) of the principal dwellings face the side boundary fence and therefore will have minimal visual privacy impacts on adjoining properties; • Similarly, the first-floor side-facing glazing (W108, W208 and W308) of the principal dwellings consist of an opaque film to obscure any direct view lines into neighbouring glazing and / or private open space areas. The windows also service bedrooms and bathrooms. As such, the proposed visual privacy measures added to the glazing in question protects the visual privacy of adjoining properties which is a satisfactory outcome; • The proposed ground floor glazing (W106 and W110) on the principal dwellings and the secondary dwellings which overlook the subject site's private open space will have minimal privacy impacts on the occupants of the site given that a fence is proposed between the principal dwelling and the secondary dwelling on both allotments in order to obscure direct view corridors. Further, existing boundary fences will mitigate any overlooking opportunities from these windows into neighbouring properties; • The proposed first floor glazing (W111) to the secondary dwellings which overlook the courtyard contain opaque film to obscure sightlines into neighbouring private open space areas and main living room glazing which is a satisfactory outcome; • The proposed first floor glazing (W109) on the rear elevation of the principal dwellings overlooks the subject site's private open space and is in a location that is consistent with C3(iii) of this Part of the MDCP 2011. Given that the glazing in question is located more than 17m from the secondary dwellings' private open space, it is considered that the overlooking impacts will be minor and will not cause any adverse visual privacy impacts. It should also be noted that these windows service bedrooms as such, W109 is supported; and 	

Control	Assessment	Compliance
	<ul style="list-style-type: none"> No air-conditioning units are proposed as part of this application. However, air conditioning units may be installed under the exempt development provisions for air conditioning under <i>State Environmental Planning Policy (Exempt and Complying Development) 2008</i>. 	
Part 2.7 Solar Access and Overshadowing	<p>The proposal will have a reasonable and acceptable impact in terms of solar access and overshadowing on the surrounds as follows:</p> <p><i>Overshadowing</i></p> <ul style="list-style-type: none"> The development will not result in adverse amenity impacts as a result of overshadowing; The proposed additions will not result in additional overshadowing to No. 19 Garnet Street's private open space and / or main living room glazing on June 21 which is a satisfactory outcome; Unit 3 at No. 23 Garnet Street obtains a minimum of 2 hours solar access to 50% of their private open space and main living room glazing on June 21. Therefore, satisfying C2 of this Part of the MDCP 2011; Units 2 and 4 at No. 23 Garnet Street also obtain a minimum 2-hour solar access to 50% of their main living room glazing on June 21. However, Unit 1 does not obtain the minimum required solar access during mid-winter; thus, varying C2 of this Part of the MDCP 2011. See below discussion regarding this variation; and Units 1, 2 and 4 at No. 23 Garnet Street are additionally overshadowed as a result of the proposed works, resulting in less than 2 hours solar access to 50% of their private open space to be obtained. Therefore, varying C2 of this Part of the MDCP 2011. See below discussion regarding this variation. <p><i>Solar Access</i></p> <ul style="list-style-type: none"> The main living room glazing of both principal dwellings and secondary dwellings on-site will not obtain a minimum 2 hour solar access to 50% of the finished surface on June 21. Thus, varying C8 of this Part of the MDCP 2011. See below discussion for a detailed assessment of this variation; The private open space provided for the principal dwellings at No. 21 and 21A Garnet Street receives a minimum 2 hours of direct sunlight to over 50% of its finished surface between 9.00am and 3.00pm on 21 June. Therefore, satisfying C8 of this Part of the MDCP 2011; and The secondary dwelling's private open space at No. 21 Garnet Street obtains a minimum 2-hour solar access to 50% of the finished surface. However, the secondary dwelling at No. 21A Garnet Street only obtains 1-hour solar access to 50% of the private open space; thus, varying C2 of this Part 	Acceptable, on merit – See discussion below

Control	Assessment	Compliance
	of the MDCP 2011. Refer to the below discussion regarding this variation.	
<p><u>Consideration of non-compliances</u></p> <p>Part 2.7 Solar Access and Overshadowing</p> <p><i>Overshadowing</i></p> <p>The shadow diagrams provided demonstrate that the proposed additions will result in additional overshadowing to No. 1/23 Garnet Street's main living room glazing from 9am to 1pm on June 21. Further, both principal dwellings and secondary dwellings on the subject site will not obtain a minimum 2-hour solar access to 50% of their main living room glazing. Therefore, varying C2 and C8 of this Part of the MDCP 2011.</p> <p>Moreover, the secondary dwelling at No. 21A Garnet Street and Nos. 1/23, 2/23 and 4/23 Garnet Street do not obtain a minimum 2-hour solar access to 50% of their private open space on June 21 as a result of the proposed works. As such, the proposed development results in a variation to C2 and C8 of this Part of the MDCP 2011.</p> <p>Where a development proposal results in a decrease in sunlight available on 21 June resulting in less than two hours of solar access for the subject site and adjoining property, the proposal may be considered on its merit with regard to the criteria of points a to d in C2 contained in Part 2.7 of MDCP 2011. The planning principle regarding access to sunlight as developed in the case law <i>Benevolent Society v Waverley Council</i> [2010] NSWLEC 1082 is also used as a tool to interpret the following control.</p> <p>C2(ii) of Part 2.7.3 of MDCP 2011 states:</p> <p><i>If the development proposal results in a further decrease in sunlight available on 21 June, Council will consider:</i></p> <p><i>a. The development potential of the site;</i></p> <p>The development potential of the site prescribed by the development standards under the <i>IWLEP 2022</i> is a maximum 9.5 metre height limit and 0.6:1 Floor Space Ratio. In addition, the subject site is zoned R2 Low Density Residential under the <i>IWLEP 2022</i>, which permits mainly low-density residential development.</p> <p>The following is noted with respect to this matter:</p> <ul style="list-style-type: none"> As discussed earlier in this report, the proposal readily complies with both Development Standards, is a reasonable development and does not achieve the maximum Height of Building and Floor Space Ratio controls in order to ensure the scale of the development minimises impacts on neighbouring properties and the subject site; The application proposes to demolish the existing dwelling house to make way for a pair of semi-detached principal dwellings and secondary dwellings, which is a form of low density, residential development permissible within the site's R2 Low Density Residential zone under the <i>IWLEP 2022</i>; The proposed ground floor rear building line of the principal dwellings is adjacent to No. 19 Garnet Street's ground floor rear building line and the proposed first floor rear building line is well behind established first floor building footprints along Garnet Street including Nos. 25 and 27 Garnet Street. As such, the proposed rear setbacks ensure a consistent pattern of development is maintained along Garnet Street and minimise the visual bulk and scale and the associated overshadowing impacts of the proposed development; Similarly, the building footprint of the secondary dwellings and the associated garages are in a similar location as other laneway developments along Garnet Lane and are of a height, bulk 		

Control	Assessment	Compliance
	<p>and scale and front, rear and side setback that is consistent with the relevant provisions contained under Part 4.1.6 – Built Form and Character of the MDCP 2011;</p> <ul style="list-style-type: none"> The proposed semi-detached principal dwellings and secondary dwellings consist of a 1.5m side setback on both ground floor and first floor where a setback would not be strictly required in accordance with C10(ii) of Part 4.1.6.2 – Building Setbacks of the MDCP 2011. Therefore, the proposal has been designed in a manner that seeks to reduce the visual bulk and scale implications when viewed from neighbouring private open space areas and main living room glazing and the associated solar access and overshadowing impacts. It is important to note that a condition is recommended to be imposed to reduce the side setback to the garages on ground floor by 400mm to ensure compliance with the minimum off-street parking dimensions. This change will have minimal additional impacts in terms of visual bulk and scale and associated overshadowing impacts given that it is restricted to a portion of the ground floor of the outbuilding structure. Refer to <i>Part 4.1.7 – Car Parking</i> of this report for a detailed assessment; Although the proposed principal dwelling and secondary dwelling on No. 21A Garnet Street is located adjacent to Nos. 1/23, 2/23, 3/23 and 4/23 Garnet Street's private open space and main living room glazing, the orientation of the development is consistent with the prevailing streetscape orientation. However, in order to improve the visual bulk and scale of the development and the associated overshadowing impacts, the proposed additions have been reduced in scale by increasing the side setbacks of the principal dwellings and the secondary dwellings proposed and by reducing the height of the overall development. As such, the proposed development is considered to be acceptable in terms of visual bulk and scale and its associated impacts. Refer to <i>Part 4.1.6 – Built Form and Character</i> of this report for a detailed assessment; and Based on the above, it is considered the development is within its development potential and is of an appropriate bulk and scale that is supported by Council. <p><i>b. The particular circumstances of the neighbouring site(s), for example, the proximity of any residential accommodation to the boundary, the resultant proximity of windows to the boundary, and whether this makes compliance difficult;</i></p>	
	<p>The following is noted with respect to this matter:</p> <ul style="list-style-type: none"> The site's orientation and sloping topography are significant constraints for the subject site to obtain direct solar access to their main living room glazing and No. 21A Garnet Street's secondary dwelling's private open space. The proposed principal dwellings are substantially elevated in comparison to the secondary dwellings' private open space and main living room glazing; therefore, resulting in the proposed laneway development to be naturally vulnerable to a reduction in solar access on June 21; Further, the angle of the sun does not allow for substantial solar access to be obtained to the principal dwellings' rear-facing main living room glazing in the afternoon and the side-facing main living room glazing is self-shadowed by the development or shadowed by the existing boundary fence. Therefore, the orientation of the site, proposed built form and existing structures on-site (fencing) make compliance with C8 of Part 2.7 of the MDCP 2011 difficult; Nos. 1/23, 2/23, 3/23 and 4/23 Garnet Street's main living room glazing, and private open space is located along the northern elevation of the townhouses; therefore, access to sunlight to these openings is difficult to protect given that it is located along the side boundary. Further, the existing boundary fence self-shadows majority of Nos. 1/23, 2/23, 3/23 and 4/23 Garnet Street's private open space. Therefore, any additions on the subject site make compliance or near compliance more difficult due to the existing built form of Nos. 1/23, 2/23, 3/23 and 4/23 Garnet Street; The subject site adjoins four (4) townhouses located directly to the south of the subject site. As such, any development on the subject site will result in overshadowing on June 21; and The subject site and Nos. 1/23, 2/23 and 4/23 Garnet Street will still receive solar access as a result of this proposal to portions of their private open space and main living room glazing at various times of the day during mid-winter. 	

Control	Assessment	Compliance
	<p><i>c. Any exceptional circumstances of the subject site such as heritage, built form or topography; and</i></p> <p>The following is noted with respect to this matter:</p> <ul style="list-style-type: none"> With respect to the above, it is considered that there are no exceptional circumstances on the subject site. <p><i>d. Whether the sunlight available in March to September is significantly reduced, such that it impacts upon the functioning of principal living areas and the principal areas of open space. To ensure compliance with this control, separate shadow diagrams for the March/September period must be submitted.</i></p> <p>Shadow diagrams in plan and elevational form for the Equinox were submitted to demonstrate the development's impact during this time. Based on an assessment of these diagrams, the following is evident:</p> <ul style="list-style-type: none"> The submitted Equinox shadow diagrams show that Lot No. 21A Garnet Street's secondary dwelling obtains more than 50% solar access to their private open space for a minimum of 2 hours; The submitted elevational Equinox shadow diagrams indicate that a minimum of 2 hours solar access is obtained to more than 50% of the finished surface of No. 1/23 Garnet Street's main living room glazing; A minimum of 2 hours solar access is obtained to 50% of Nos. 1/23, 2/23 and 4/23 Garnet Street's private open space during the Equinox period; and Both principal dwellings and secondary dwellings proposed receive a minimum 2 hour solar access to 50% of their main living room glazing during the Equinox period. <p>In assessment of the above and solar access principles, it is considered that the impacts are reasonable, and that the proposal satisfies the objectives of Part 2.7 of MDCP 2011.</p>	
Part 2.10 Parking	<p>The proposed development satisfies the relevant provisions of this Part of the MDCP 2011 as follows:</p> <ul style="list-style-type: none"> Two (2) car parking spaces are proposed on each Lot proposed. The number of parking spaces proposed exceeds compliance with C1 of this Part of the MDCP 2011 to enhance the amenity of the occupants on the subject site. The proposed number of parking spaces is consistent with the prevailing pattern of development along the laneway including Nos. 3, 13, 19, 23, 29, 37, 39, and 43 Garnet Street. Considering the above, the proposed number of parking spaces is considered acceptable; The proposed number of off-street parking spaces satisfies the objectives of this Part of the MDCP 2011 as the proposal will improve the provision of on-street parking to Garnet Street as the existing vehicle crossover to Garnet Street is conditioned to be deleted as access is solely from the rear of the subject site. Further, the urban form of the proposed development is well designed and is of an appropriate bulk and scale that is consistent with surrounding development along Garnet Lane and will have minimal amenity impacts on adjoining properties in terms of visual bulk and scale and acoustic impacts. Considering the above, the proposal satisfies the following applicable objectives contained under this Part of the MDCP 2011, such as O1, O4, and O8. 	Yes, as conditioned

Part 3 – Subdivision, Amalgamation and Movement Networks

Control	Assessment	Compliance																																							
Part 3.2.2 Residential Torrens title subdivision and amalgamation controls	See below assessment for details.	Yes - See discussion below																																							
<p>Part 3.1.1.2 of the MDCP 2011 does not contain minimum Lot width or area requirements for subdivisions, but rather relies on performance-based controls that aim to ensure that new Lots facilitate development that is compatible with the immediate area.</p> <p>The application proposes to subdivide the property into two (2) Lots. The streetscape and immediate locality are generally characterised by a mix of single and double storey dwellings, residential flat buildings, and townhouses on a mix of narrow and wide Lots. The following table illustrates the proposed Lot dimensions and the approximate dimensions of Lots within the street:</p> <table border="1"> <thead> <tr> <th>Number</th><th>Site Area</th><th>Frontage</th></tr> </thead> <tbody> <tr> <td>No. 21</td><td>422.93sqm</td><td>7.010m</td></tr> <tr> <td>No. 21A</td><td>422.93sqm</td><td>7.010m</td></tr> <tr> <td>No. 13</td><td>588sqm</td><td>10m</td></tr> <tr> <td>No. 15</td><td>390.2sqm</td><td>8.9m</td></tr> <tr> <td>No. 15A</td><td>195.76sqm</td><td>0.8m</td></tr> <tr> <td>No. 17</td><td>616.1sqm</td><td>10.2m</td></tr> <tr> <td>No. 19</td><td>587.1sqm</td><td>9.9m</td></tr> <tr> <td>No. 23</td><td>840.8sqm</td><td>13.9m</td></tr> <tr> <td>No. 25</td><td>359.7sqm</td><td>5.9m</td></tr> <tr> <td>No. 27</td><td>353.7sqm</td><td>5.9m</td></tr> <tr> <td>No. 29</td><td>834.6sqm</td><td>13.6m</td></tr> <tr> <td>No. 31</td><td>502.4sqm</td><td>13.9m</td></tr> </tbody> </table> <p>As the above table demonstrates, the frontages of adjoining properties range between 0.8 metres at the lower end of the range up to 13.9 metres at the higher end. The subdivision would result in two (2) Lots with site areas within the range of the prevailing cadastral pattern. The shape of the allotments being generally rectangular and fronting Garnet Street demonstrate the compliance of the proposal with the subdivision requirements.</p> <p>The assessment of the application against the other relevant controls in MDCP demonstrates that the Lots satisfy C6 and C7 of this Part of the MDCP 2011. The proposal ultimately achieves the aims and objectives of Part 3.2 of MDCP.</p>			Number	Site Area	Frontage	No. 21	422.93sqm	7.010m	No. 21A	422.93sqm	7.010m	No. 13	588sqm	10m	No. 15	390.2sqm	8.9m	No. 15A	195.76sqm	0.8m	No. 17	616.1sqm	10.2m	No. 19	587.1sqm	9.9m	No. 23	840.8sqm	13.9m	No. 25	359.7sqm	5.9m	No. 27	353.7sqm	5.9m	No. 29	834.6sqm	13.6m	No. 31	502.4sqm	13.9m
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Part 4 – Low Density Residential Development

Control	Assessment	Compliance
<p>Part 4.1.6 Built form and character</p> <p><u>Front setback</u></p> <ul style="list-style-type: none"> Consistent with adjoining developments <p><u>Side setbacks</u></p> <ul style="list-style-type: none"> Lot width <8m – On merit <p><u>Rear setback</u></p> <ul style="list-style-type: none"> On merit <p><u>Site coverage</u></p> <ul style="list-style-type: none"> 50% or 211.47sqm 	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> As discussed earlier in this report, the proposal readily complies with the Height of Building and Floor Space Ratio development standards; The proposed front setback of the principal dwellings on each allotment is generally consistent with the mixed front setback pattern along Garnet Street; The 1.5m side setbacks proposed on ground and first floor of the principal dwelling and the secondary dwelling on each allotment proposed are considered satisfactory, as the proposal has an acceptable impact on adjoining properties in terms of overshadowing, visual bulk, and privacy. In addition, the proposed side setbacks are consistent with the established setback pattern of the street; The proposed rear setback on ground floor is consistent with No. 19 Garnet Street's ground floor rear building line. Therefore, the proposal is a positive integration with the established setback character of the street; The proposed first floor rear setback is well behind Nos. 25 and 27 Garnet Street's first floor rear building line in an attempt to minimise the scale of the development and to ensure that the proposal will not create adverse impacts on adjoining properties in terms of visual bulk, overshadowing or privacy; The proposed secondary dwellings on each allotment proposed is located behind the principal dwelling and fronting the laneway which is in accordance with C11(ii)(a) and (c) of this Part of the MDCP 2011; A 1.5m side setback on both ground floor and first floor is maintained between the secondary dwelling and the neighbouring property boundary on each allotment which is a satisfactory outcome in terms of minimising the visual bulk and associated amenity implications on adjoining properties (solar access and overshadowing and visual and acoustic privacy). The proposed side setbacks along the garage also assist in providing improved access and safety to the side pedestrian entry at Nos. 19 and 23 Garnet Street. It is important to note that a condition is recommended to be imposed as part of this consent granted to reduce the side setback to the garages on ground floor by 400mm to ensure compliance with the minimum off-street parking dimensions. This change will have minimal additional impacts in terms of visual bulk and scale and associated overshadowing impacts given that it is restricted to a portion of the ground floor of the outbuilding structure; A nil setback is proposed along the side boundary shared with Nos. 21 and 21A Garnet Street. This setback is 	Yes

Control	Assessment	Compliance
	<p>supported given that a side setback is not required for attached secondary dwellings under C11(iii)(a) of this Part of the MDCP 2011 and considering that both secondary dwellings proposed are of the same bulk and scale, there will be minimal amenity implications as a result</p> <ul style="list-style-type: none"> • The proposed secondary dwellings are built to the rear boundary and as such, the proposed nil rear setback is compliant with C11(iv)(b) of this Part of the MDCP 2011; • The proposed secondary dwelling on each allotment proposed is located more than 4m away from the principal dwelling on each Lot. Therefore, the proposal is in accordance with C11(v)(a) of this Part of the MDCP 2011; • The height of the proposed secondary dwellings has been limited to a maximum of two storeys to protect the amenity of surrounding properties, particularly with respect to overshadowing, loss of privacy and solar access; and • For each allotment proposed, a maximum of 164.2sqm or 38.8% of site coverage is proposed which is considerably under the 211.47sqm or 50% requirement as stipulated under C13 of this Part of the MDCP 2011 which is a satisfactory outcome. 	
Part 4.1.7 Car Parking	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> • A standard condition has been imposed to ensure that the proposed garage on each Lot and the associated off-street parking spaces comply with the design requirements and minimum dimension for car parking under Part 2.10 of the MDCP 2011. The condition in question requires that the proposed garages are to be 5.4m x 5.4m. This condition will require the garages to be extended in width by 400mm to comply with the minimum parking requirements as stipulated under AS/NZS2890.1-2004 Parking Facilities – Off-Street Car Parking. As such, a design change condition is included in the recommendation to increase the width of the garages by 400mm; • The proposed garages are located to the rear of the site and are safely and conveniently located for use; • The design of the garages is appropriate to the proposed semi-detached principal and secondary dwellings and the presentation of the garages to the laneway is consistent in height and form with other approved development in the laneway; and • The location of the driveways are suitable within the laneway and will not impact traffic or parking. 	Yes, as conditioned
Part 4.1.7.5 – Loft structures over garages	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> • As discussed throughout this report, the proposal readily complies with the Height of Building and Floor Space Ratio 	Yes

Control	Assessment	Compliance
	<p>development standards, landscaping and parking requirements of the MDCP 2011;</p> <ul style="list-style-type: none"> The proposed structures to the rear laneway, particularly the loft structures above the garage, will be of minimal impact to the public domain as it is of a consistent bulk, height and scale as similar laneway development and will have minimal amenity implications on adjoining properties in terms of solar access and overshadowing, visual bulk and scale, and visual and acoustic privacy. Refer to <i>Part 2.6 – Acoustic and Visual Privacy</i>, <i>Part 2.7 – Solar Access and Overshadowing</i> and <i>Part 4.1.6 – Built Form and Character</i> of this report for a detailed assessment; and The design of the proposed laneway development will make a positive contribution to the mixed character of Garnet Lane. 	

C. The Likely Impacts

These matters have been considered as part of the assessment of the development application. It is considered that the proposed development will not have significant adverse environmental, social, or economic impacts upon the locality.

D. The Suitability of the Site for the Development

The proposal is of a nature in keeping with the overall function of the site. The premises are in a residential surrounding and amongst similar uses to that proposed.

E. Submissions

The application was required to be notified in accordance with Council's Community Engagement Strategy between 17 January 2024 to 31 January 2024.

A total of three (3) submissions were received in response to the notification. The following matters were raised in the submissions and have been discussed elsewhere in this report:

- Use of the site
- Earthworks
- Visual bulk and scale
- Impact on neighbouring residential amenity
- Visual and acoustic privacy
- Solar access
- Floor Space Ratio
- Side setbacks

Further issues raised in the submissions received are discussed below:

Concern	Comment
Lack of on-street parking and street congestion from contractors working on-site	Whilst is not a matter for consideration under the <i>Environmental Planning and Assessment Act 1979</i> , it is noted that works are temporary, however it is unlikely the works would cause traffic congestion as indicated.
The proposal does not result in a desirable residential outcome	As discussed throughout this report, the proposal is in keeping with the character and pattern of development in the area. Therefore, it is considered that the proposed development is within the public interest of the local community.
Potential use as an Airbnb and / or short-term rental accommodation	No references are made in the documentation provided that the proposed development will be used as an Airbnb and / or short-term rental accommodation. Consent is only sought for the use as a secondary dwelling and principal dwelling on each Lot proposed.
Distance from boundary fence to No. 2/23 Garnet Street's built form	The distance from the boundary fence to No. 2/23 Garnet Street's built form is 0.89m to 1.6m which is considered reasonable.
Rear-facing balcony on the first floor of the principal and secondary dwellings	Concerns regarding the visual privacy impacts from the initially proposed first floor balcony on the rear elevation of the principal and secondary dwellings was taken into consideration and requested to be deleted as part of the amended plans received. The applicant's submission in response to the Request for Further Information letter issued by Council indicated that the rear-facing balconies on first floor were deleted from the proposal.
Potential nesting on the flat brick ledge along the length of the dwellings	The initially proposed flat brick ledge has been deleted from the proposal. As such, potential nesting on this area is no longer a concern.
Encroachment into neighbouring properties	The initially proposed plans show that a portion of the roof and gutters of the secondary dwelling encroached into neighbouring properties. This matter was addressed in the Request for Further Information letter and the amended plans show that a side setback has been provided in order to mitigate any encroachments into adjoining properties.

F. The Public Interest

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

This has been achieved in this instance.

6. Section 7.11 / 7.12 Contributions

Section 7.11 contributions are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$60,000.00 would be required for the development under the Inner West Local Infrastructure Contributions Plan 2023.

A condition requiring that contribution to be paid is included in the recommendation.

7. Housing and Productivity Contributions

The carrying out of the development would result in an increased demand for essential state infrastructure such as schools, hospitals, major roads, public transport infrastructure and regional open space. A contribution of \$12,321.97 would be required for the development under Part 7, Subdivision 4 Housing and Productivity Contributions of the *EP and A Act 1979*.

A housing and productivity contribution is required in addition to any Section 7.11 or 7.12 Contribution. A condition requiring that the housing and productivity contribution is to be paid is included in the recommendation.

8. Referrals

The following internal referrals were made, and their comments have been considered as part of the above assessment:

- Development Engineer;
- Urban Forest; and
- Resource Recovery.

9. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *SEPP (Housing) 2021*, *Inner West Local Environmental Plan 2022* and the Marrickville Development Control Plan 2011.

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

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

10. Recommendation

- A. The applicant has made a written request pursuant to Section 4.6 *Inner West Local Environmental Plan 2022* to vary Sections 53(2)(a) and (b) of the *Housing SEPP 2021*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the minimum site area and parking standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variations. The proposed development will be in the public interest because the exceedances are not inconsistent with the objectives of the standards and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2023/1083 for demolition of existing improvements, including tree removal, Torrens Title subdivision of the existing allotment into 2 lots, and construction of a 2 storey dwelling house on each lot with detached double garage and 2 storey secondary dwelling at the rear of each allotment at 21 Garnet Street, Dulwich Hill subject to the conditions listed in Attachment A below.

Attachment A – Recommended Conditions of Consent

CONDITIONS OF CONSENT

GENERAL CONDITIONS

	Condition
1.	<p>Permits</p> <p>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 <i>Local Government Act 1993</i> and/or Section 138 of the <i>Roads Act 1993</i>. Permits are required for the following activities:</p> <ul style="list-style-type: none"> a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application; b. A concrete pump across the roadway/footpath; c. Mobile crane or any standing plant; d. Skip Bins; e. Scaffolding/Hoardings (fencing on public land); f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.; g. Awning or street veranda over the footpath; h. Partial or full road closure; and i. Installation or replacement of private stormwater drain, utility service or water supply. <p>If required contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. Applications for such Permits must be submitted and approved by Council prior to the commencement of the works associated with such activity.</p> <p>Reason: To ensure works are carried out in accordance with the relevant legislation.</p>
2.	<p>Bin Storage</p> <p>All bins are to be stored within the site. Bins are to be returned to the properties within 12 hours of having been emptied.</p> <p>Reason: To ensure resource recovery is promoted and residential amenity is protected.</p>

3.	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/Received	Prepared by
	DA004, Issue B	Existing Plan (Demolition)	19/03/2024	Cracknell & Lonergan Architects Pty Ltd
	DA101, Issue B	Ground Floor Plan	19/03/2024	Cracknell & Lonergan Architects Pty Ltd
	DA102, Issue B	First Floor Plan	19/03/2024	Cracknell & Lonergan Architects Pty Ltd
	DA103, Issue B	Roof Plan	19/03/2024	Cracknell & Lonergan Architects Pty Ltd
	DA201, Issue B	Long Elevations	19/03/2024	Cracknell & Lonergan Architects Pty Ltd
	DA202, Issue B	Short Elevations	19/03/2024	Cracknell & Lonergan Architects Pty Ltd
	DA301, Issue B	Long Sections	19/03/2024	Cracknell & Lonergan Architects Pty Ltd
	DA302, Issue B	Short Sections	19/03/2024	Cracknell & Lonergan Architects Pty Ltd
	DA303, Issue B	Kerb Construction (Typical Detail)	19/03/2024	Cracknell & Lonergan Architects Pty Ltd
	DA304, Issue B	Kerb Construction (Typical Detail)	19/03/2024	Cracknell & Lonergan Architects Pty Ltd
	DA402, Issue B	Draft Torrens Subdivision Plan	19/03/2024	Cracknell & Lonergan Architects Pty Ltd
	DA501, Issue B	Landscape Architectural Plan	19/03/2024	Cracknell & Lonergan Architects Pty Ltd
	DA502, Issue B	Landscape Architectural Plan (Notes)	19/03/2024	Cracknell & Lonergan Architects Pty Ltd
	DA601, Issue B	Materials & Finishes	19/03/2024	Cracknell & Lonergan Architects Pty Ltd
	Unknown	Arboricultural Impact Assessment (AIA) Report	18/03/2022	Margot Blues Consulting Arborist
	1743041S	BASIX Certificate	09/04/2024	Bonnefin Consulting Pty Ltd
	1743042S	BASIX Certificate	09/04/2024	Bonnefin Consulting Pty Ltd
	1743039S	BASIX Certificate	09/04/2024	Bonnefin Consulting Pty Ltd

	1743038S	BASIX Certificate	09/04/2024	Bonnefin Consulting Pty Ltd
	As amended by the conditions of consent.			
	Reason: To ensure development is carried out in accordance with the approved documents.			
4.	Works Outside the Property Boundary			
	This development consent does not authorise works outside the property boundaries on adjoining lands.			
	Reason: To ensure works are in accordance with the consent.			
5.	Asbestos Removal			
	Hazardous and industrial waste arising from the use must be removed and / or transported in accordance with the requirements of the NSW Environment Protection Authority (EPA) and the New South Wales WorkCover Authority.			
	Reason: To ensure compliance with the relevant environmental legislation.			
6.	Boundary Alignment Levels			
	Alignment levels for the site at all pedestrian and vehicular access locations must match the existing back of footpath levels at the boundary unless levels are otherwise approved by Council via a S138 approval.			
	Reason: To allow for pedestrian and vehicular access.			

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

	Condition				
7.	Security Deposit - Custom Prior to the commencement of demolition works or prior to the issue of a Construction Certificate (whichever occurs first), 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. <table border="1"> <tr> <td>Security Deposit:</td><td>\$39,190.00</td></tr> <tr> <td>Inspection Fee:</td><td>\$374.50</td></tr> </table> 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.	Security Deposit:	\$39,190.00	Inspection Fee:	\$374.50
Security Deposit:	\$39,190.00				
Inspection Fee:	\$374.50				

	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Reason: To ensure required security deposits are paid.</p>
8.	<p>Dilapidation Report – Pre-Development – Minor</p> <p>Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site.</p> <p>Reason: To ensure Council assets are protected.</p>
9.	<p>Stormwater Drainage System – Minor Developments (OSD is required)</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention and/or on site retention/ re-use facilities (OSR/OSD), certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:</p> <ol style="list-style-type: none"> Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any rainwater tank(s), by gravity to the kerb and gutter of a public road/directly to Council's piped drainage system via the OSD/OSR tanks as necessary; Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP; Charged or pump-out stormwater drainage systems are not permitted including for roof drainage; The design plans must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes; The on-site detention system must be designed for all storm events from the 1 in 5 years to the 1 in 100 year storm event, with discharge to a Council controlled storm water system limited to pre-development conditions with the

	<p>maximum allowable discharge to Council's street gutter limited to 25 litres/second (20 years ARI/100years ARI);</p> <ul style="list-style-type: none"> f. OSD may be reduced or replaced by on site retention (OSR) for rainwater reuse in accordance with the relevant DCP that applies to the land. Where this is pursued, the proposed on-site retention (OSR) tanks must be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks where the collected water is to be used to supply water inside the dwelling, such as for toilet flushing or laundry use; g. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows from the contributing catchment to the OSD/OSR tanks; h. Details of the 100-year ARI overflow route in case of failure/blockage of the drainage system must be provided; i. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas except where a reduced step is permitted under Section 3.1.2.3 (b) of the Building Code of Australia for Class 1 buildings; j. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands; k. Details of external catchments currently draining to the site must be included on the plans. Existing natural overland flows from external catchments may not be blocked or diverted, but must be captured and catered for within the proposed site drainage system. Where necessary an inter-allotment drainage system must be incorporated into the design; l. No nuisance or concentration of flows to other properties; m. Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required; n. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets; o. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site; p. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a maximum section height and width of 100mm or sewer grade uPVC pipe with a maximum diameter of 100mm; q. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings; and r. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated. <p>Reason: To ensure that the adequate provision of stormwater drainage is provided</p>
10.	<p>Public Domain Works – Prior to Construction Certificate</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a public domain works design, prepared by a qualified practising Civil Engineer and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the <i>Roads Act 1993</i> incorporating the following requirements:</p>

	<ul style="list-style-type: none"> a. The public domain along all frontages of the site inclusive of footpath paving, kerb, street trees, etc. must be reconstructed and upgraded in accordance with the Street Tree Master plan and the Public Domain Design Guide or scheme; b. The construction of light duty vehicular crossings to all vehicular access locations and removal of all redundant vehicular crossings to the site; c. New concrete footpath and kerb and gutter along the frontage of the site. The kerb type (concrete or stone) must be consistent with the majority of kerb type at this location as determined by the Council Engineer; d. Cross sections are to be provided at the boundary at a minimum distance of every 5m. Note, the cross fall of the footpath must be set at 2.5%. These sections will set the alignment levels at the boundary; and e. Installation of stormwater outlet to the kerb and gutter. <p>All works must be completed prior to the issue of an Occupation Certificate.</p> <p>Reason: To ensure public domain works are constructed to Council's standards</p>
11.	<p>Parking Facilities - Domestic</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably qualified Civil Engineer demonstrating that the design of the vehicular access and off-street parking facilities must comply with Australian Standard AS/NZS2890.1-2004 Parking Facilities – Off-Street Car Parking and the following specific requirements:</p> <ul style="list-style-type: none"> a. The internal vehicle hardstand area must be redesigned such that the level at the boundary must match the invert level of the adjacent gutter plus 110mm [rear lane only] at both sides of the vehicle entry. This will require the internal garage slab or hard stand area to be adjusted locally at the boundary to ensure that it matches the above-issued alignment levels. b. The garage slab or driveway must then rise within the property to be a minimum of 170mm (as quickly as possible) above the adjacent road gutter level and/or higher than the street kerb and footpath across the full width of the vehicle crossing. c. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004 for a B85 vehicle. Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements. d. A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors; e. Longitudinal sections along each outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements; f. The parking space must have minimum clear internal dimensions of 5400 x 5400 mm (length x width). The dimensions must be exclusive of obstructions such as walls, doors and columns, except where they do not encroach inside the design envelope specified in Section 5.2 of AS/NZS 2890.1-2004; g. A plan of the proposed access and adjacent laneway, drawn at a 1:100 scale, demonstrating that vehicle manoeuvrability for entry and exit to the parking space complies with swept paths from AS/NZS 2890.1:2004. The plan must include any existing on-street parking spaces;

	<p>h. The maximum gradients within the parking module must not exceed 1 in 20 (5%), measured parallel to the angle of parking and 1 in 16 (6.25%), measured in any other direction in accordance with the requirements of Section 2.4.6 of AS/NZS 2890.1-2004; and</p> <p>i. The external form and height of the approved structures must not be altered from the approved plans.</p> <p>Reason: To ensure parking facilities are designed in accordance with the Australian Standard and council's DCP.</p>									
12.	<p>Resource Recovery and Waste Management Plan - Demolition and Construction</p> <p>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.</p> <p>Reason: To ensure resource recovery is promoted and local amenity protected during construction.</p>									
13.	<p>Bin Storage Area - Residential</p> <p>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 demonstrating that the bin storage area to be provided within the site will fully accommodate the number of bins required for all waste generated by a development of this type and scale.</p> <p>Reason: To ensure resource recovery is promoted and local amenity protected during construction.</p>									
14.	<p>Construction Methods to Minimise Impact on Trees</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with details certified by a suitably qualified Arborist demonstrating that the footings of the approved front boundary fence utilise tree sensitive construction techniques (such as isolated pier or pier and beam construction) within the specified radius of the trunk/s of the following tree/s:</p> <table><tr><th>Tree No.</th><th>Species Name</th><th>Radius in metres</th></tr><tr><td>1</td><td><i>Tristaniopsis laurina</i> 'Luscious'</td><td>2.5m</td></tr><tr><td>2</td><td><i>Eucalyptus</i> spp.</td><td>4.2m</td></tr></table> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must verify that no proposed underground services are located beneath the canopy of any prescribed tree/s located on the subject site and adjoining sites (including trees located within the public domain).</p> <p>Reason: To mitigate the impact of the work on trees to be retained.</p>	Tree No.	Species Name	Radius in metres	1	<i>Tristaniopsis laurina</i> 'Luscious'	2.5m	2	<i>Eucalyptus</i> spp.	4.2m
Tree No.	Species Name	Radius in metres								
1	<i>Tristaniopsis laurina</i> 'Luscious'	2.5m								
2	<i>Eucalyptus</i> spp.	4.2m								

15.	<p>Long Service Levy</p> <p>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.</p> <p>Reason: To ensure the long service levy is paid.</p>														
16.	<p>Sydney Water – Tap In</p> <p>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.</p> <p>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.</p> <p>Reason: To ensure relevant utility and service providers' requirements are provided to the certifier.</p>														
17.	<p>Section 7.11 Contribution</p> <p>In accordance with section 7.11 of the <i>Environmental Planning and Assessment Act 1979</i> and the Inner West Local Infrastructure Contribution Plan 2023 (the Plan), the following monetary contributions shall be paid to Council to cater for the increased demand for local infrastructure resulting from the development:</p> <table border="1"> <thead> <tr> <th>Contribution Category</th><th>Amount</th></tr> </thead> <tbody> <tr> <td>Open Space & Recreation</td><td>\$42,900.00</td></tr> <tr> <td>Community Facilities</td><td>\$7,951.00</td></tr> <tr> <td>Transport</td><td>\$5,640.00</td></tr> <tr> <td>Plan Administration</td><td>\$551.00</td></tr> <tr> <td>Drainage</td><td>\$2,958.00</td></tr> <tr> <td>TOTAL</td><td>\$60,000.00</td></tr> </tbody> </table> <p>At the time of payment, the contributions payable will be adjusted for inflation in accordance with indexation provisions in the Plan in the following manner:</p> $C_{\text{payment}} = C_{\text{consent}} \times (CPI_{\text{payment}} \div CPI_{\text{consent}})$ <p>Where:</p> <p>C_{payment} = is the contribution at time of payment</p> <p>C_{consent} = is the contribution at the time of consent, as shown above</p> <p>CPI_{consent} = is the Consumer Price Index (All Groups Index) for Sydney at the date the contribution amount above was calculated.</p> <p>CPI_{payment} = is the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics that applies at the time of payment</p>	Contribution Category	Amount	Open Space & Recreation	\$42,900.00	Community Facilities	\$7,951.00	Transport	\$5,640.00	Plan Administration	\$551.00	Drainage	\$2,958.00	TOTAL	\$60,000.00
Contribution Category	Amount														
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Plan Administration	\$551.00														
Drainage	\$2,958.00														
TOTAL	\$60,000.00														

	<p>Note: The contribution payable will not be less than the contribution specified in this condition.</p> <p>The monetary contributions must be paid to Council (i) <u>if the development is for subdivision – prior to the issue of the subdivision certificate</u>, or (ii) if the development is for building work – prior to the issue of the first construction certificate, or (iii) if the development involves both subdivision and building work – prior to issue of the subdivision certificate or first construction certificate, whichever occurs first, or (iv) if the development does not require a construction certificate or subdivision certificate – prior to the works commencing.</p> <p><u>It is the professional responsibility of the principal certifying authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.</u></p> <p>Council's Plan may be viewed at www.innerwest.nsw.gov.au or during normal business hours at any of Council's customer service centres.</p> <p>Please contact any of Council's customer service centres at council@innerwest.nsw.gov.au or 9392 5000 to request an invoice confirming the indexed contribution amount payable. Please allow a minimum of 2 business days for the invoice to be issued.</p> <p>Once the invoice is obtained, payment may be made via (i) BPAY (preferred), (ii) credit card / debit card (AMEX, Mastercard and Visa only; log on to www.innerwest.nsw.gov.au/invoice; please note that a fee of 0.75 per cent applies to credit cards), (iii) in person (at any of Council's customer service centres), or (iv) by mail (make cheque payable to 'Inner West Council' with a copy of your remittance to PO Box 14 Petersham NSW 2049).</p> <p>The invoice will be valid for 3 months. If the contribution is not paid by this time, please contact Council's customer service centres to obtain an updated invoice. The contribution amount will be adjusted to reflect the latest value of the Consumer Price Index (All Groups Index) for Sydney.</p> <p>Reason: To ensure payment of the required development contribution.</p>						
18.	<p>Housing and Productivity Contribution</p> <p>a. The housing and productivity contribution (HPC) set out in the table below, but as adjusted in accordance with condition (b.), is required to be made:</p> <table border="1"> <thead> <tr> <th>Housing and productivity contribution</th><th>Amount</th></tr> </thead> <tbody> <tr> <td>Housing and productivity contribution (base component)</td><td>\$12,321.97</td></tr> <tr> <td>Total housing and productivity contribution</td><td>\$12,321.97</td></tr> </tbody> </table> <p>b. The amount payable at the time of payment is the amount shown in condition 1 as the total housing and productivity contribution adjusted by multiplying it by:</p> <p style="text-align: center;"><i>Highest PPI number</i></p>	Housing and productivity contribution	Amount	Housing and productivity contribution (base component)	\$12,321.97	Total housing and productivity contribution	\$12,321.97
Housing and productivity contribution	Amount						
Housing and productivity contribution (base component)	\$12,321.97						
Total housing and productivity contribution	\$12,321.97						

	<p style="text-align: center;">Consent PPI number</p> <p>Where:</p> <p><i>highest PPI number</i> is the highest PPI number for a quarter following the June quarter 2023 and up to and including the 2nd last quarter before the quarter in which the payment is made, and</p> <p><i>consent PPI number</i> is the PPI number last used to adjust HPC rates when consent was granted, and</p> <p><i>June quarter 2023</i> and <i>PPI</i> have the meanings given in clause 22 (4) of the <i>Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023</i>.</p> <p>If the amount adjusted in accordance with this condition is less than the amount at the time consent is granted, the higher amount must be paid instead.</p> <p>c. The HPC must be paid before the issue first construction certificate in relation to the development, or before the commencement of any work authorised by this consent (if no construction certificate is required). However, if development is any of the kinds set out in the table below, the total housing and productivity contribution must be paid as set out in the table:</p> <table border="1" data-bbox="493 857 1029 1525"> <thead> <tr> <th data-bbox="496 857 762 913">Development</th><th data-bbox="762 857 1026 913">Time by which HPC must be paid</th></tr> </thead> <tbody> <tr> <td data-bbox="496 913 762 1081">Development consisting only of residential subdivision within the meaning of the HPC Order</td><td data-bbox="762 913 1026 1081">Before the issue of the first subdivision certificate</td></tr> <tr> <td data-bbox="496 1081 762 1249">High-density residential development within the meaning of the HPC Order for which no construction certificate is required</td><td data-bbox="762 1081 1026 1249">Before the issue of the first strata certificate</td></tr> <tr> <td data-bbox="496 1249 762 1525">Development that consists only of residential strata subdivision (within the meaning of the HPC Order) or only of residential strata subdivision and a change of use of an existing building</td><td data-bbox="762 1249 1026 1525">Before the issue of the first strata certificate</td></tr> </tbody> </table>	Development	Time by which HPC must be paid	Development consisting only of residential subdivision within the meaning of the HPC Order	Before the issue of the first subdivision certificate	High-density residential development within the meaning of the HPC Order for which no construction certificate is required	Before the issue of the first strata certificate	Development that consists only of residential strata subdivision (within the meaning of the HPC Order) or only of residential strata subdivision and a change of use of an existing building	Before the issue of the first strata certificate
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Development that consists only of residential strata subdivision (within the meaning of the HPC Order) or only of residential strata subdivision and a change of use of an existing building	Before the issue of the first strata certificate								

	<table border="1"> <tr> <td>Manufactured home estate for which no construction certificate is required</td><td>Before the installation of the first manufactured home</td></tr> </table> <p>In the Table, <i>HPC Order</i> means the <i>Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023</i>.</p> <p>d. The HPC must be paid using the NSW planning portal (http://pp.planningportal.nsw.gov.au/).</p> <p>e. If the Minister administering the <i>Environmental Planning and Assessment Act 1979</i> agrees, the HPC (apart from any transport project component) may be made, instead of as a monetary contribution, in the following ways:</p> <ul style="list-style-type: none"> (a) the dedication or provision of land for the purpose of regional infrastructure in the region in which the development will be carried out, (b) the carrying out of works for the purpose of regional infrastructure in the region in which the HPC development will be carried out. <p>If the HPC is made partly as a monetary contribution, the amount of the part payable is the amount of the part adjusted in accordance with condition (b.) at the time of payment.</p> <p>f. Despite condition (a.), a housing and productivity contribution is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the <i>Environmental Planning and Assessment Act 1979</i> to the development, or the <i>Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023</i> exempts the development from the contribution. The amount of the contribution may also be reduced under the order, including if payment is made before 1 July 2025.</p> <p>Reason: To ensure payment of the required development contribution.</p>	Manufactured home estate for which no construction certificate is required	Before the installation of the first manufactured home
Manufactured home estate for which no construction certificate is required	Before the installation of the first manufactured home		
19.	<p>Design Change</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating the following:</p> <p>a. The width of the garage proposed on each Lot is to be increased by 400mm.</p> <p><i>Note: The side setbacks of the secondary dwellings (both ground floor and first floor) are to remain unaltered as a result of this design change.</i></p> <p>Reason: To ensure that the design changes protect the amenity of the neighbourhood.</p>		
20.	<p>Fibre-ready Facilities</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with evidence that arrangements have been made for:</p> <p>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</p>		

	<p>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.</p> <p>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.</p> <p>Reason: To ensure relevant utility and service providers' requirements are provided to the certifier.</p>
21.	<p>Concealment of Plumbing and Ductwork</p> <p>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.</p> <p>Reason: To protect the visual amenity of the neighbourhood.</p>

BEFORE BUILDING WORK COMMENCES

	Condition
22.	<p>Project Arborist</p> <p>Prior to the commencement of any demolition or construction works within close proximity to protected trees a Project Arborist must be engaged for the duration of the site preparation, demolition, construction and landscaping to supervise works. Details of the Project Arborist must be submitted to the Certifying Authority before work commences.</p> <p>Reason: To protect and retain trees.</p>
23.	<p>Waste Management Plan</p> <p>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.</p> <p>Reason: To ensure resource recovery is promoted and local amenity is maintained.</p>
24.	<p>Erosion and Sediment Control</p> <p>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.</p> <p>Reason: To ensure resource recovery is promoted and local amenity is maintained.</p>

25.	<p>Standard Street Tree Protection</p> <p>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.</p> <p>Reason: To protect and retain trees.</p>
26.	<p>Dilapidation Report</p> <p>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 identified properties (Nos. 19 and 23 Garnet Street) 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.</p> <p>Reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is completed and ensure neighbours and council are provided with the dilapidation report.</p>
27.	<p>Construction Fencing</p> <p>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.</p> <p>Reason: To protect the built environment from construction works.</p>

DURING BUILDING WORK

	Condition
28.	<p>Tree Protection</p> <p>No trees on public property (footpaths, roads, reserves etc.) are to be removed or damaged during works unless specifically approved in this consent or marked on the approved plans for removal.</p> <p>Prescribed trees protected by Council's Management Controls on the subject property and/or any vegetation on surrounding properties must not be damaged or removed during works unless specific approval has been provided under this consent.</p> <p>Any public tree within five (5) metres of the development must be protected in accordance with Council's <i>Development Fact Sheet—Trees on Development Sites</i>.</p> <p>No activities, storage or disposal of materials taking place beneath the canopy of any tree (including trees on neighbouring sites) protected under Council's Tree Management Controls at any time.</p> <p>The trees identified below are to be retained and protected in accordance with the conditions of consent or approved Tree Protection Plan throughout the development</p>

			works, landscaping works and tree/planting replenishment within the TPZ; <ul style="list-style-type: none"> Supervise all tree work. 									
<p>Recommendations to ensure the tree/s long term survival must be carried out immediately upon receipt of the report.</p> <p>Reason: To protect and retain trees</p>												
30.	<p>Limited Root Pruning</p> <p>No tree roots of 30mm or greater in diameter located within the specified radius of the trunk/s of the following tree/s must be severed or injured in the process of any works during the construction period:</p> <table border="1"> <thead> <tr> <th>Tree No.</th> <th>Species Name</th> <th>Radius in metres</th> </tr> </thead> <tbody> <tr> <td>1</td> <td><i>Tristaniopsis laurina</i> 'Luscious'</td> <td>2.5m</td> </tr> <tr> <td>2</td> <td><i>Eucalyptus</i> spp.</td> <td>4.2m</td> </tr> </tbody> </table> <p>All excavation within the specified radius of the trunks of the following tree(s) must be hand dug using either pneumatic or hydraulic tools only (e.g. <i>Airspade®</i> or hydro excavation to a depth of one (1) metre under direct supervision of the Project Arborist and then by mechanical means as agreed by the Project Arborist. If tree roots less than 30mm diameter are required to be severed for the purposes of constructing the approved works, they must be cut cleanly using a sharp and <i>fit for purpose tool</i>. The pruning must be undertaken by a practicing Arborist.</p> <p>Reason: To protect and retain trees</p>			Tree No.	Species Name	Radius in metres	1	<i>Tristaniopsis laurina</i> 'Luscious'	2.5m	2	<i>Eucalyptus</i> spp.	4.2m
Tree No.	Species Name	Radius in metres										
1	<i>Tristaniopsis laurina</i> 'Luscious'	2.5m										
2	<i>Eucalyptus</i> spp.	4.2m										

31.

Excavation Methods to Limit Impacts to Trees

Excavation for the installation of any services within the specified radius of the trunk/s of the following tree/s must utilise the thrust boring method or non-destructive excavation method such as either pneumatic or hydraulic tools only (e.g. *Airspade®* or hydro excavation). Thrust boring being carried out at least 600mm beneath natural ground level to minimise damage to tree/s root system:

Tree No.	Species Name	Radius in metres
1	<i>Tristaniopsis laurina</i> 'Luscious'	2.5m
2	<i>Eucalyptus</i> spp.	4.2m

Reason: To protect and retain trees.

32.

Tree Protection Works

All tree protection for the site must be undertaken in accordance with Council's *Development Fact Sheet—Trees on Development Sites* and AS4970—*Protection of trees on development sites*.

Reason: To protect and retain trees

33.

Works to Trees

Approval is given for the following works to be undertaken to trees on the site after the issuing of a Construction Certificate:

Tree/location	Approved works
Various Species - within subject property boundary only	Remove all vegetation

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and shall be retained and protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

Reason: To identify trees permitted to be pruned or removed.

34.

Advising Neighbours Prior to Excavation

At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, reasonable notice must be provided to the owner of the adjoining allotment of land including particulars of the excavation.

Reason: To ensure surrounding properties are adequately notified of the proposed works.

35.	Construction Hours – Class 1 and 10 Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5:00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays. Reason: To protect the amenity of the neighbourhood.
36.	Survey Prior to Footings Upon excavation of the footings and before the pouring of the concrete, the Certifying Authority must be provided with a certificate of survey from a registered land surveyor to verify that the structure will not encroach over the allotment boundaries. Reason: To ensure works are in accordance with the consent.
37.	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. Reason: To ensure that the construction is undertaken in accordance with the consent.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

	Condition
38.	No Encroachments Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any encroachments on to Council road or footpath resulting from the building works have been removed, including opening doors, gates and garage doors with the exception of any awnings or balconies approved by Council. Reason: To maintain and promote vehicular and pedestrian safety.
39.	Protect Sandstone Kerb Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any stone kerb, damaged as a consequence of the work that is the subject of this development consent, has been replaced. Reason: To ensure Council assets are protected.
40.	Works as Executed – Site Stormwater Drainage System Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a suitably qualified Civil Engineer that: <ol style="list-style-type: none"> The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSD/OSR system commissioned and installed in accordance with the

	<p>approved design and relevant Australian Standards have been submitted to Council. The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped Construction Certificate plans.</p> <p>Reason: To ensure the approved works are undertaken in accordance with the consent.</p>
41.	<p>Operation and Management Plan</p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an Operation and Management Plan has been prepared and implemented for the on-site detention and/or on-site retention/re-use facilities. The Plan must set out the following at a minimum:</p> <ul style="list-style-type: none"> a. The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners; and b. The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc. <p>Reason: To ensure the approved works are undertaken in accordance with the consent.</p>
42.	<p>Parking Signoff – Minor Developments</p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification from a qualified practising Civil Engineer that the vehicle access and off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.</p> <p>Reason: To ensure parking facilities are designed in accordance with the Australian Standard and council's specifications.</p>
43.	<p>Public Domain Works</p> <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with written evidence from Council that the following works on the Road Reserve have been completed in accordance with the requirements of the approval under Section 138 of the <i>Roads Act 1993</i> including:</p> <ul style="list-style-type: none"> a. Light duty concrete vehicle crossings at the vehicular access locations; b. The redundant vehicular crossing to the site must be removed and replaced by kerb and gutter and footpath. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb must also be in stone; c. The existing concrete footpath across the frontage of the site must be reconstructed; and d. Other works subject to the <i>Roads Act 1993</i> approval.

	<p>All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications".</p> <p>Reason: To ensure Council assets are protected, and that works that are undertaken in the public domain maintain public safety.</p>
44.	<p>Notice to Council to deliver Residential Bins</p> <p>Council should be notified of bin requirements three weeks prior to the occupation of the building to ensure timely delivery.</p> <p>Council will place an order for the required bins. Delivery will occur once the applicant has completed a Request for New Service.</p> <p>Reason: To ensure resource recovery is promoted and residential amenity is protected.</p>
45.	<p>Certification of Tree Planting</p> <p>Prior to the issue of any Occupation Certificate a Final Landscape Inspection must be carried out and a certificate issued by Council's Urban Forest officer. This certificate is required to ensure that all tree protection measures, landscaping works, replacement tree planting and the deep soil percentage requirements have been carried out in accordance with the conditions of this consent. To arrange a Final Landscape Inspection please phone 02 9392 5000 a minimum of 48 hours prior to the required inspection date. An inspection fee will be charged in accordance with the current schedule of rates listed in Council's Fees and Charges. Any secondary inspections will incur a reinspection fee.</p> <p>A minimum of 2 x 100 litre size trees, which will attain a minimum mature height of 15 metres, must be planted in a suitable location within the front and rear yards each new allotment, (at least 1 metre from any boundary and 1.5 metres from any structure) and allowing for future tree growth. The purchased tree must meet the requirements of AS2303—Tree stock for landscape use. Trees listed as exempt species from Council's Tree Management Development Control Plan, which include fruit trees and species recognised to have a short life span, will not be accepted as suitable replacements.</p> <p>Trees required by this condition must be maintained and protected until they are protected by Council's Tree Management DCP. Any replacement trees found damaged, dying or dead must be replaced with the same species in the same container size within one month with all costs to be borne by the owner.</p> <p>Reason: To ensure appropriate landscaping is undertaken.</p>
46.	<p>Project Arborist Certification</p> <p>Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with certification from the project arborist the requirements of the conditions of consent related to the landscape plan and the role of the project arborist have been complied with.</p> <p>Reason: To protect and retain trees.</p>

47.	Torrens Title Subdivision to Occur before Occupation <p>Prior to the issue of an Occupation Certificate for any dwelling on the site, the certifying authority is to be provided with evidence that the subdivision that forms part of this consent has been registered with the NSW Land Registry Services.</p> <p>Reason: To ensure that the subdivision is in accordance with the consent.</p>
48.	Dilapidation Report <p>Prior to the issue of an Occupation Certificate, the Certifying Authority and owners of identified properties must be provided with a second colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the identified properties (Nos. 19 and 23 Garnet Street) 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.</p> <p>Reason: To determine potential construction impacts.</p>
49.	Section 73 Certificate <p>Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a Section 73 Certificate under the Sydney Water Act 1994.</p> <p>Reason: To ensure relevant utility and service providers' requirements are provided to the certifier.</p>

OCCUPATION AND ONGOING USE

	Condition
50.	Operation and Management Plan <p>The Operation and Management Plan for the on-site detention and/or on-site retention/re-use, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.</p> <p>Reason: To ensure that the adequate provision of stormwater drainage is provided.</p>
51.	Tree Establishment <p>The tree/s planted as part of this consent is/are to be maintained in a healthy and vigorous condition for 12 months from the issue of an Occupation Certificate. If any of the tree/s is/are found faulty, damaged, dying or dead within 12 months of the issue of an Occupation Certificate it/they must be replaced with the same species within one (1) month (up to 3 occurrences).</p> <p>Reason: To protect and retain trees.</p>

DEMOLITION WORK

BEFORE DEMOLITION WORK COMMENCES

	Condition						
52.	<p>Hoardings</p> <p>The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.</p> <p>If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.</p> <p>Separate approval is required from the Council under the <i>Roads Act 1993</i> to erect a hoarding or temporary fence or awning on public property.</p> <p>Reason: To ensure the site is secure and that the required permits are obtained if enclosing public land.</p>						
53.	<p>Tree Protection</p> <p>To protect the following tree/s, ground, trunk and branch protection must be installed prior to any works commencing in accordance with the approved <i>Tree Protection Plan</i> and/or with Council's <i>Development Fact Sheet—Trees on Development Sites</i>:</p> <table border="1" style="margin-left: 40px;"> <tr> <th>Tree No.</th><th>Species Name/Location</th></tr> <tr> <td>1</td><td><i>Tristaniopsis laurina</i> 'Luscious' - street tree</td></tr> <tr> <td>2</td><td><i>Eucalyptus</i> spp. - street tree</td></tr> </table> <p>Reason: To protect and retain trees.</p>	Tree No.	Species Name/Location	1	<i>Tristaniopsis laurina</i> 'Luscious' - street tree	2	<i>Eucalyptus</i> spp. - street tree
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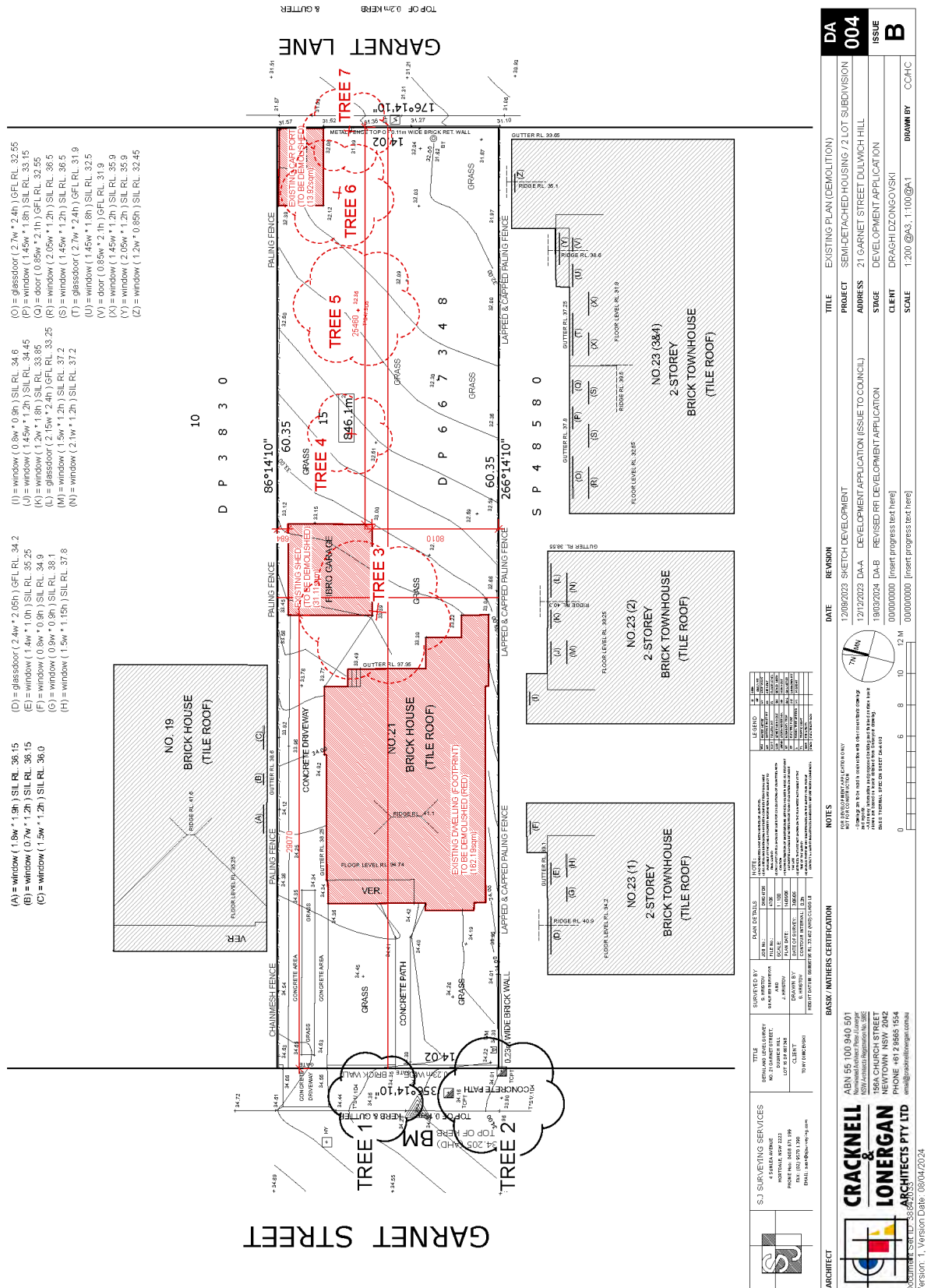
SUBDIVISION WORK

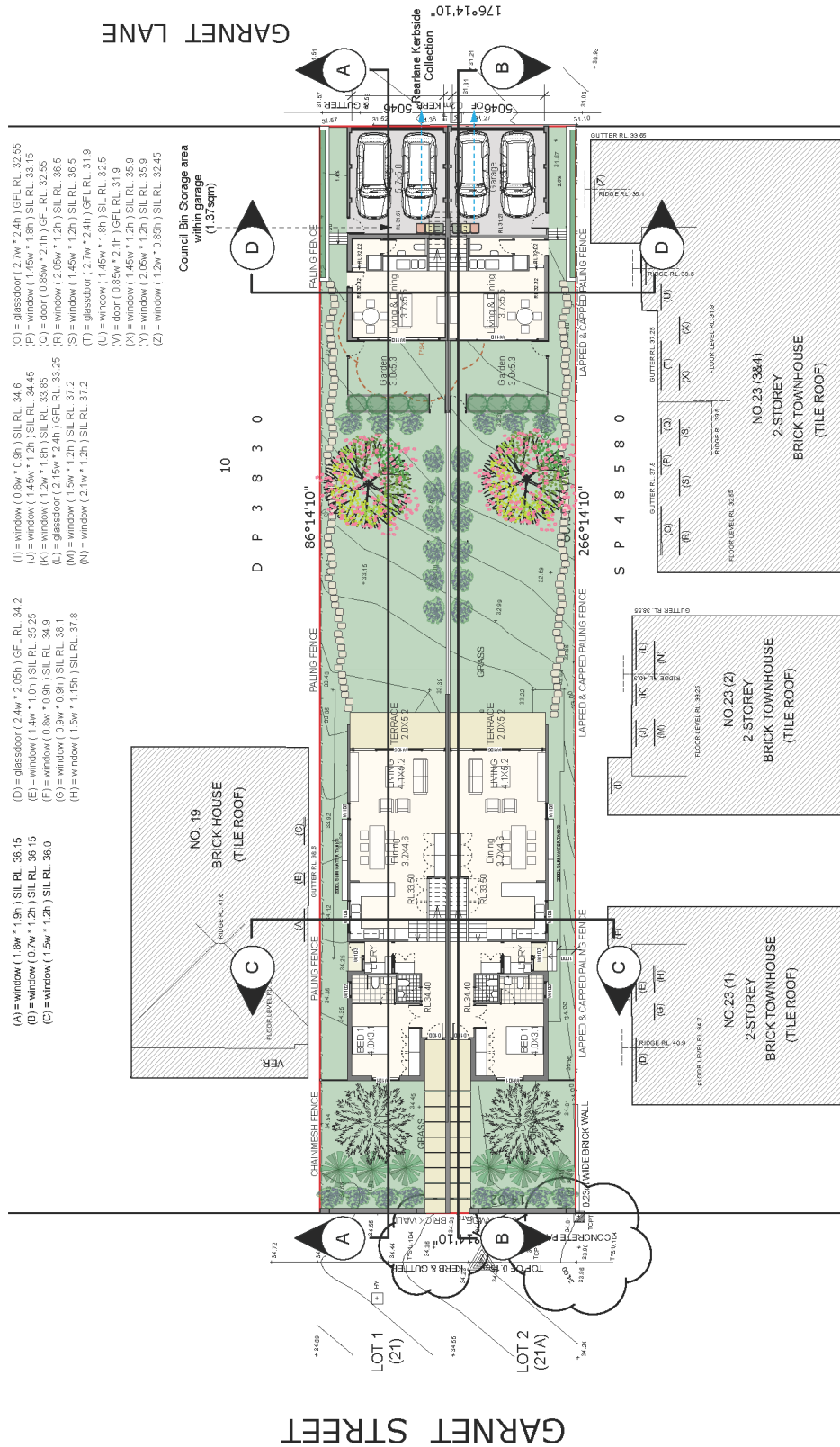
BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

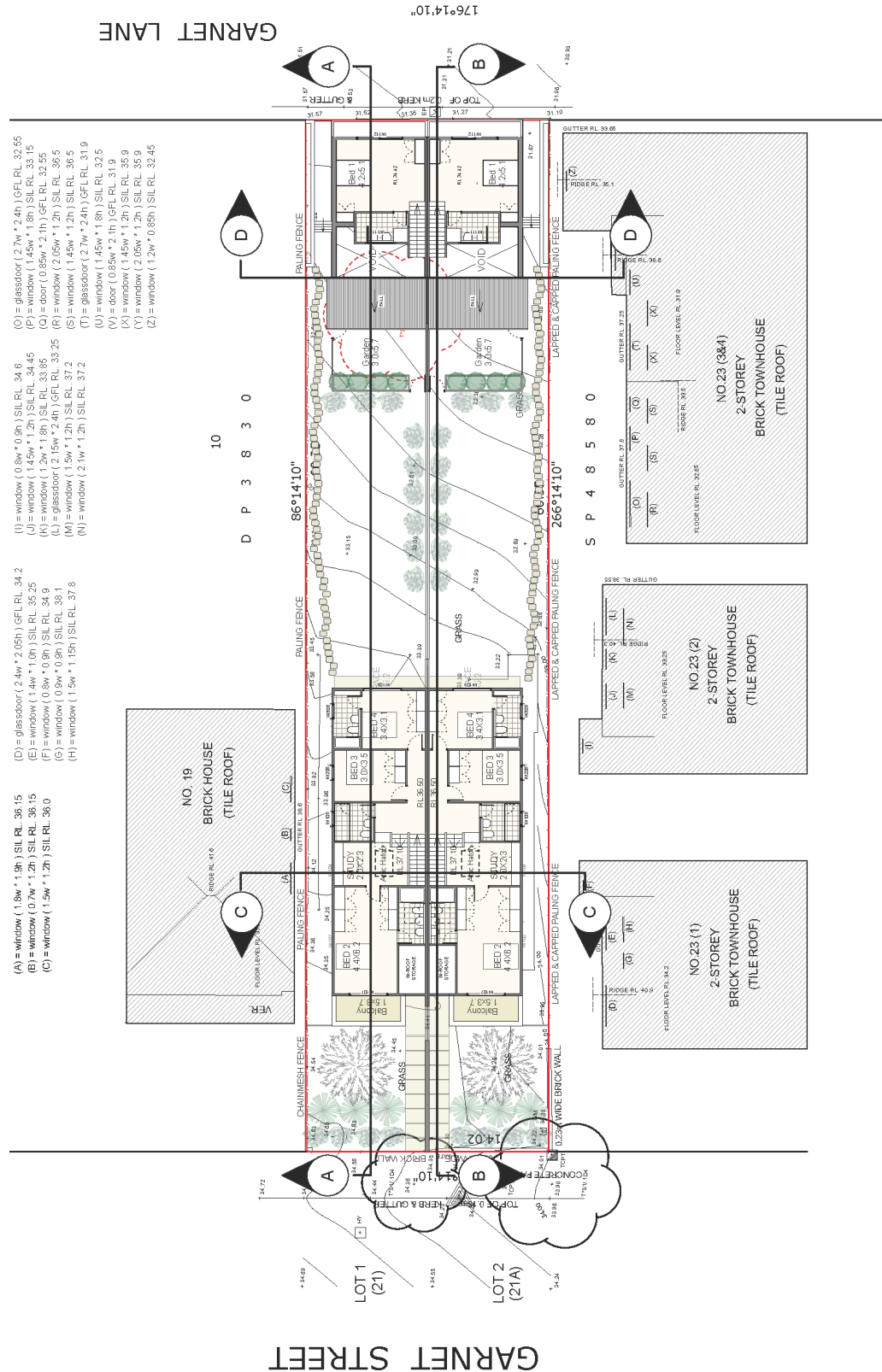
	Condition
54.	<p>Separate Drainage Systems</p> <p>Prior to the issue of a Subdivision Certificate, the Principal Certifier must be provided with a plan detailing that separate drainage systems must be provided to drain each proposed lot.</p> <p>Reason: To ensure that the adequate provision of stormwater drainage is provided.</p>

55.	<p>Civil Engineer Verification</p> <p>Prior to the issue of a Subdivision Certificate, the Principal Certifier must be provided with written verification from a suitably experienced Civil Engineer, stating that all stormwater drainage and related work has been and constructed in accordance with the approved plans.</p> <p>Reason: To ensure the approved works are undertaken in accordance with the consent.</p>
56.	<p>Redundant Vehicle Crossing</p> <p>Prior to the issue of a Subdivision Certificate, the Principal Certifier must verify that all redundant vehicular crossings to the site must be removed and replaced by kerb and gutter and footpath paving in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications". Where the kerb in the vicinity of the redundant crossing is predominately stone, the replacement kerb must also be in stone.</p> <p>Reason: To ensure Council assets are protected, and that works that are undertaken in the public domain maintain public safety.</p>
57.	<p>Street Numbering</p> <p>If there are any changes to the number of occupancies including any additional occupancies created, a street numbering application must be lodged and approved by Council's GIS team before any street number is displayed. Link to Street Numbering Application</p> <p>Reason: To ensure occupancies are appropriately numbered.</p>
58.	<p>Torrens Title Subdivision</p> <p>Prior to the issue of a Subdivision Certificate, the Certifying Authority must verify that the physical works within this consent have been constructed.</p> <p>If there are any changes to the number of occupancies including any additional occupancies created, a street numbering application must be lodged and approved by Council's GIS team before any street number is displayed. Street Numbering Application</p> <p>Reason: To ensure that the subdivision works is in accordance with the consent.</p>

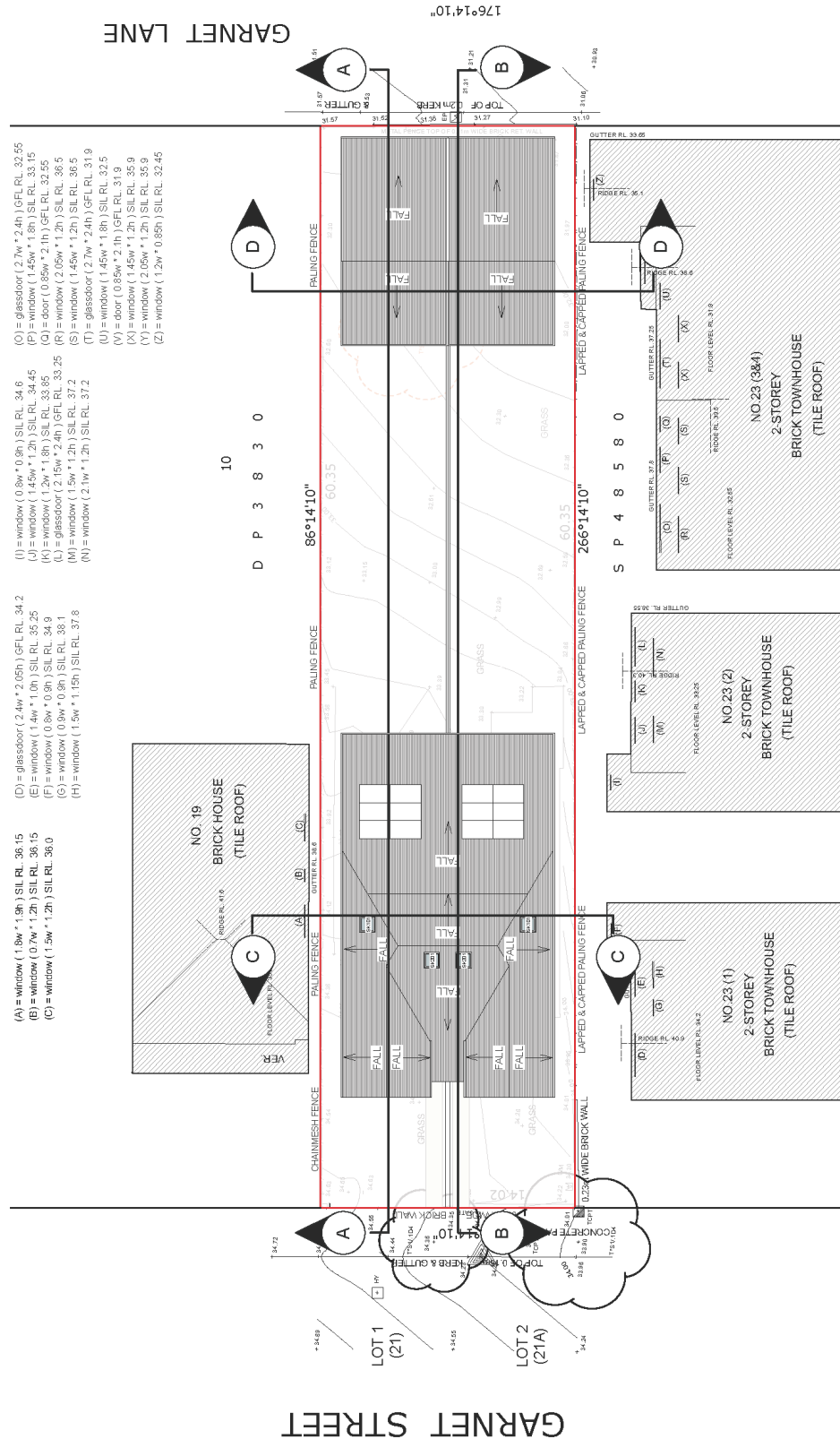
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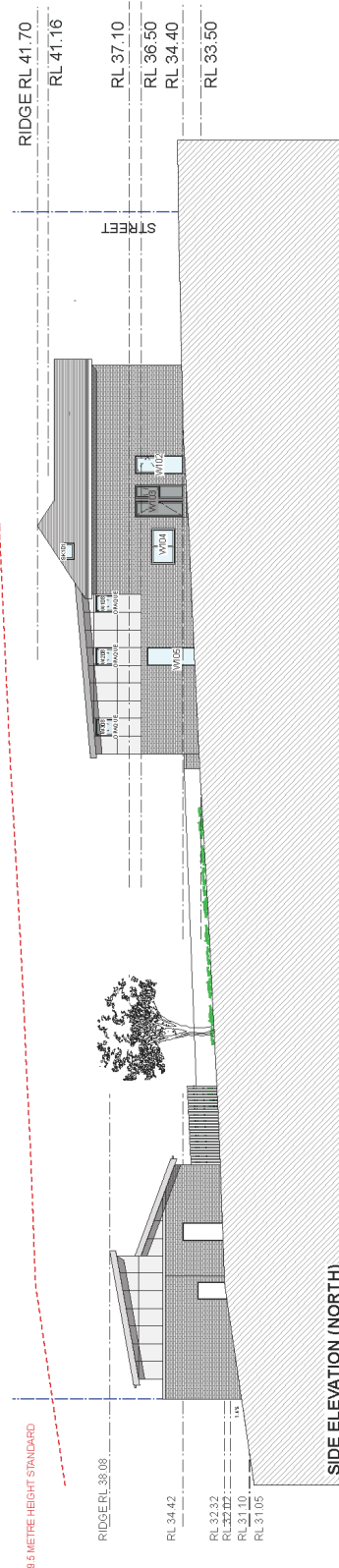
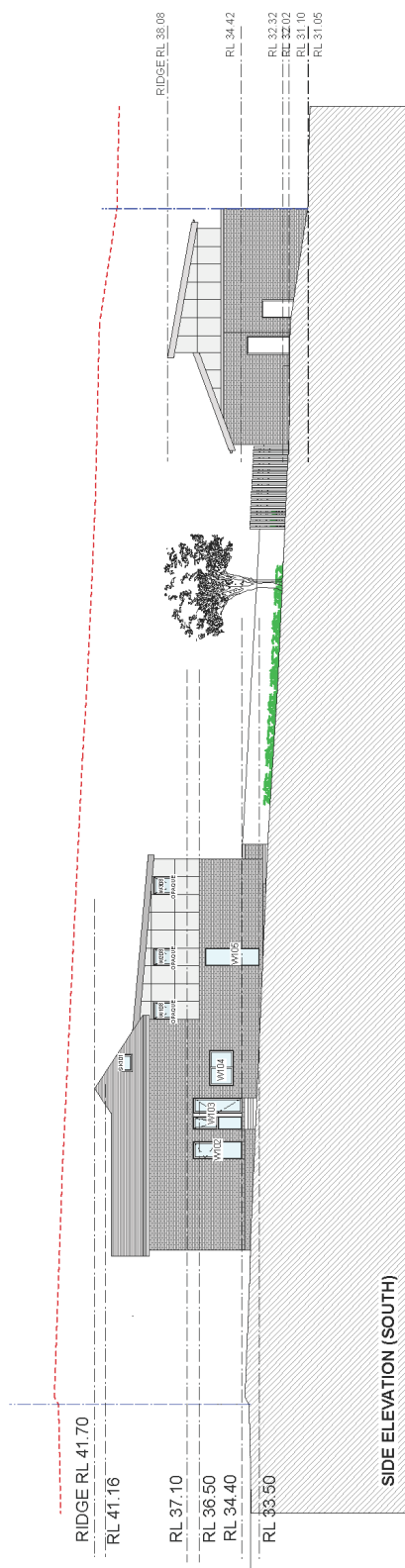


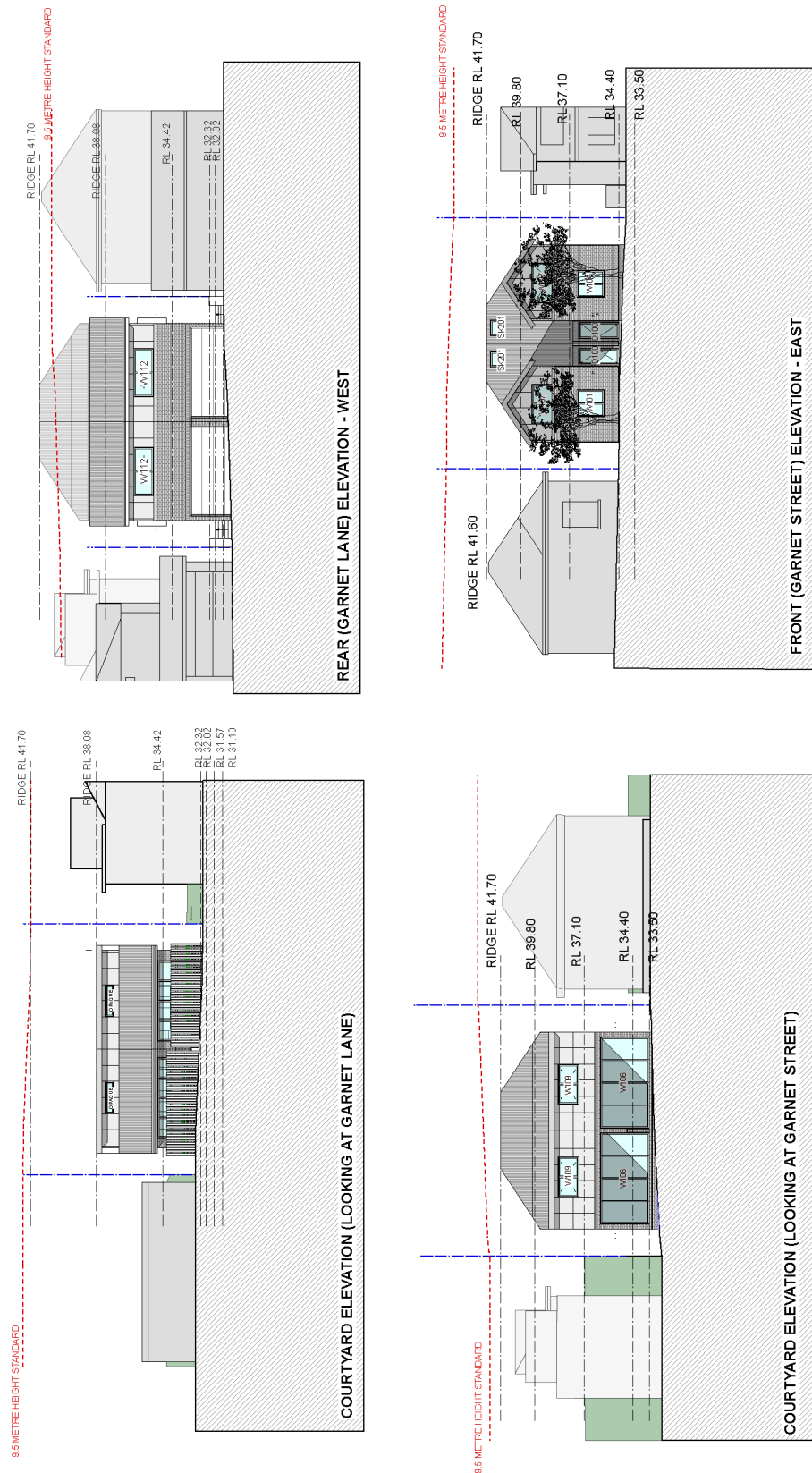
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					PROJECT	21 GARNET STREET DULWICH HILL
					STAGE	DEVELOPMENT APPLICATION
					CLEINT	DRAGHI DZONGOVSKI
					SCALE	1:200 @A3, 1:100 @A1
					DRAWN BY	CCHC

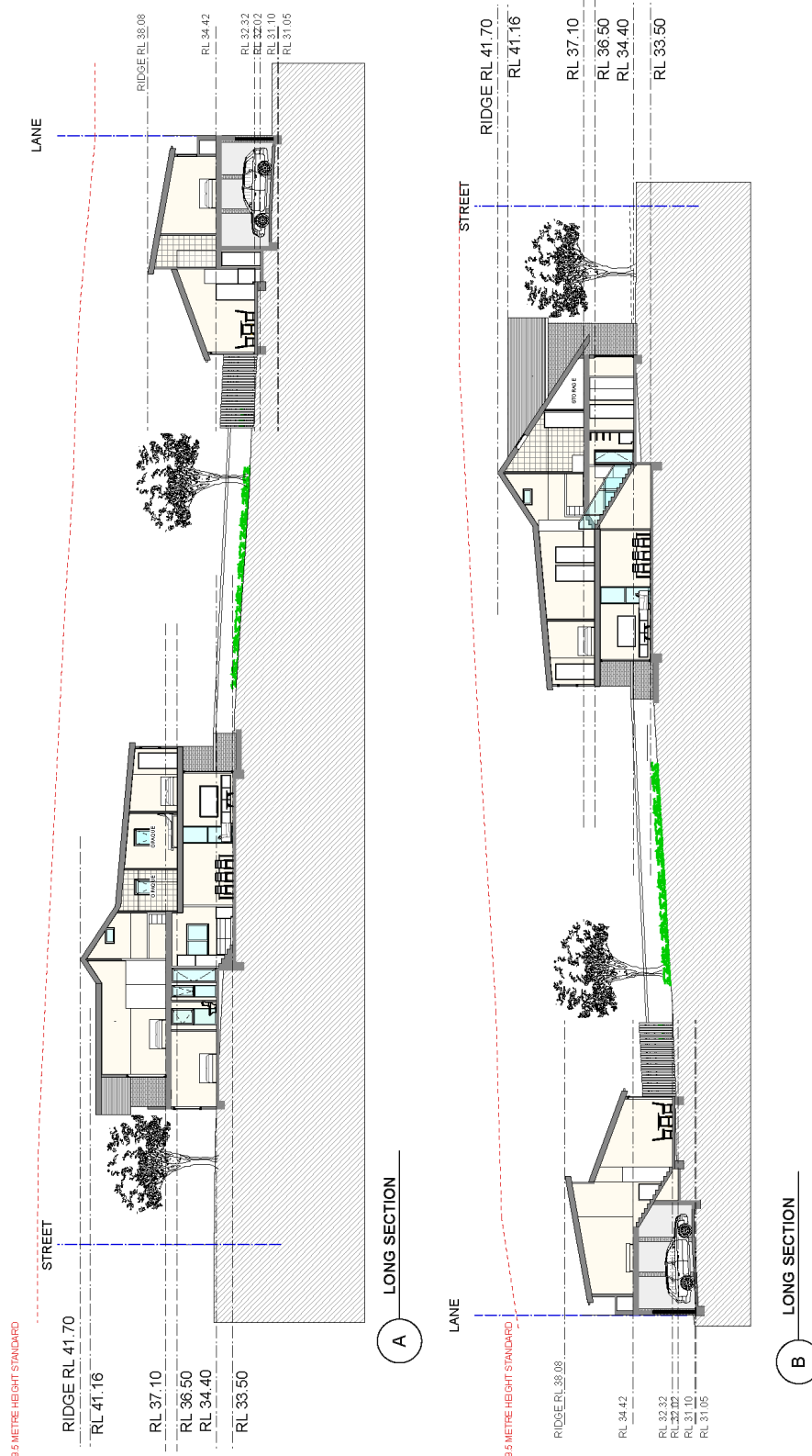


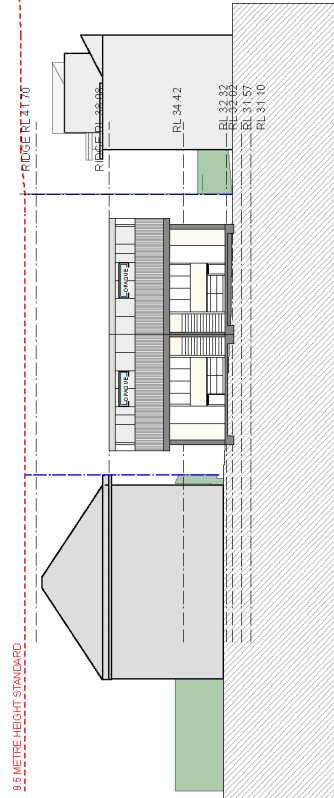
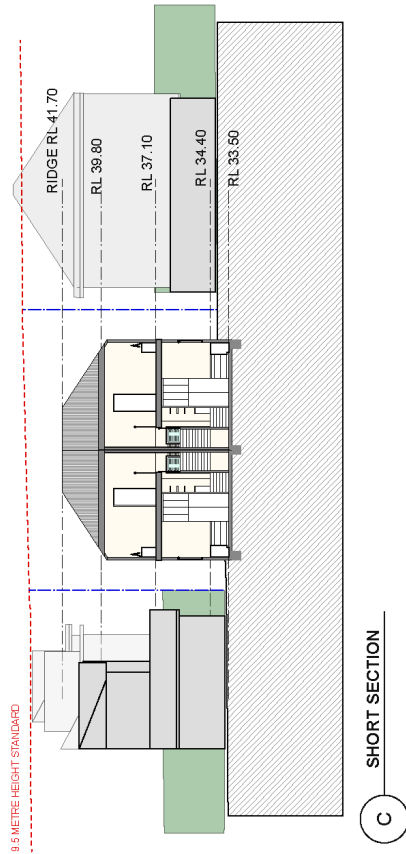
NOTE: EACH SOLARPANEL SYSTEM HAS MAX OUTPUT OF 1.5KW


ARCHITECT	BASIC / MATRIS CERTIFICATION	NOTES	DATE	REVISION	TITLE	ROOF PLAN
CRACKNELL & LONERGAN ARCHITECTS PTY LTD ABN 65 100 940 501 156A CHURCH STREET NEWTOWN NSW 2042 PHONE 02 9550 4444 email@cracknellandlorgan.com.au		1.2024/2023 DA-A DEVELOPMENT APPLICATION (ISSUE TO COUNCIL) 1.2024/2023 DA-B REVISED RFI DEVELOPMENT APPLICATION 0.00000000 [insert progress text here] 0.00000000 [insert progress text here]	12/09/2023	DA-A	SEMI-DETACHED HOUSING / 2 LOT SUBDIVISION	DA 103
			12/09/2023	DA-B	21 GARNET STREET DULWICH HILL	ISSUE
			18/09/2024	DA-B	DEVELOPMENT APPLICATION	B
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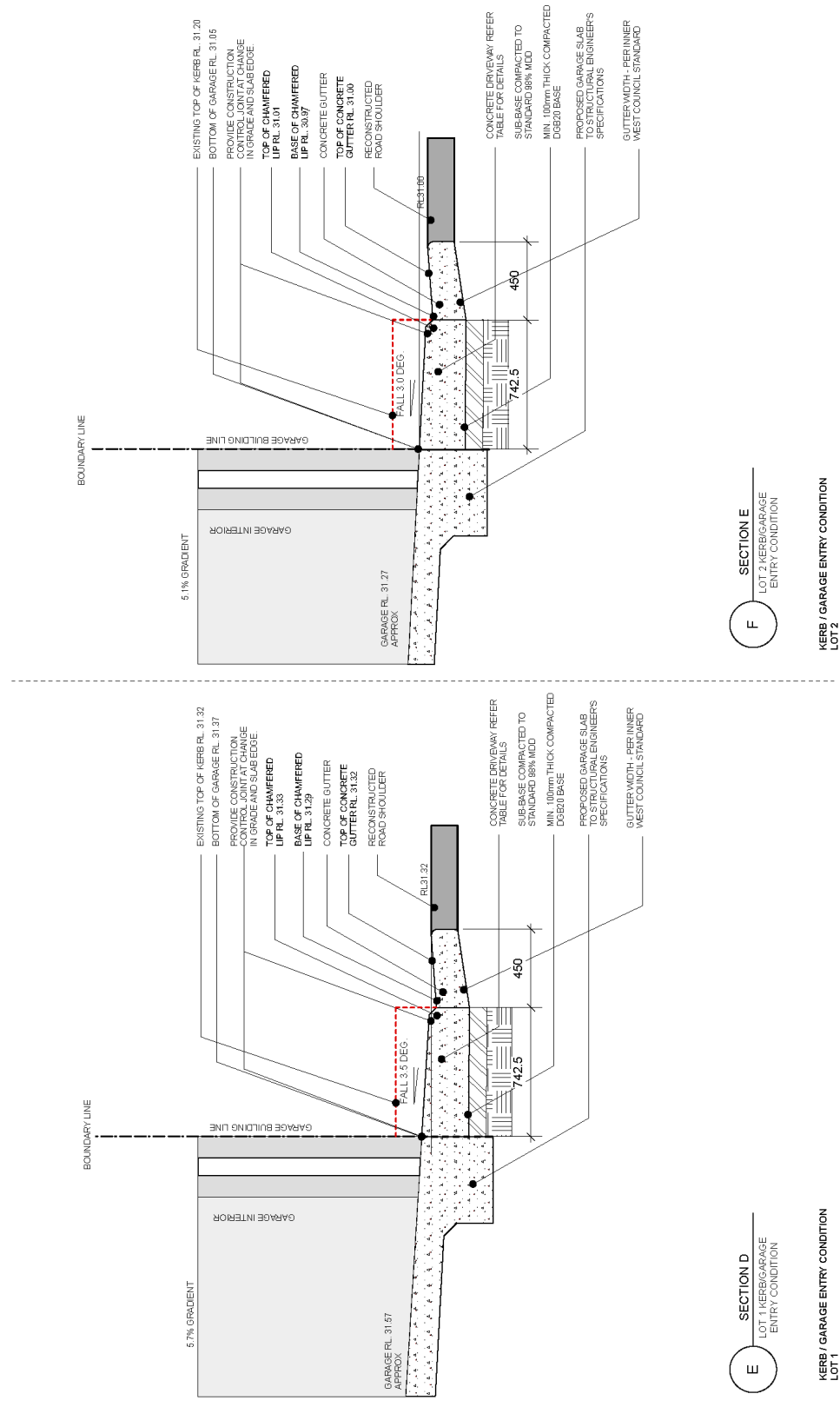
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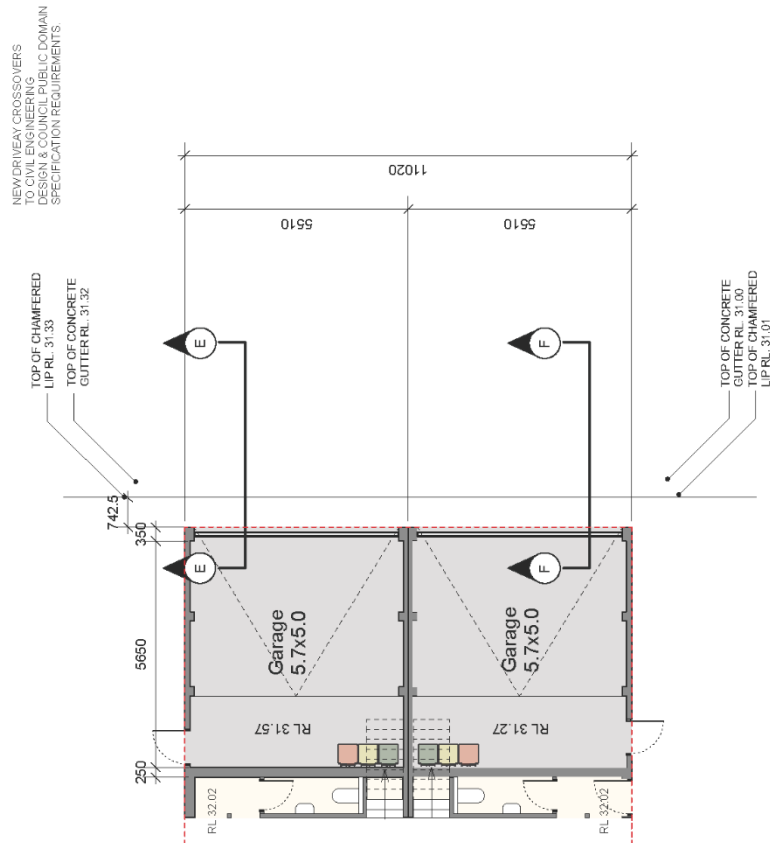
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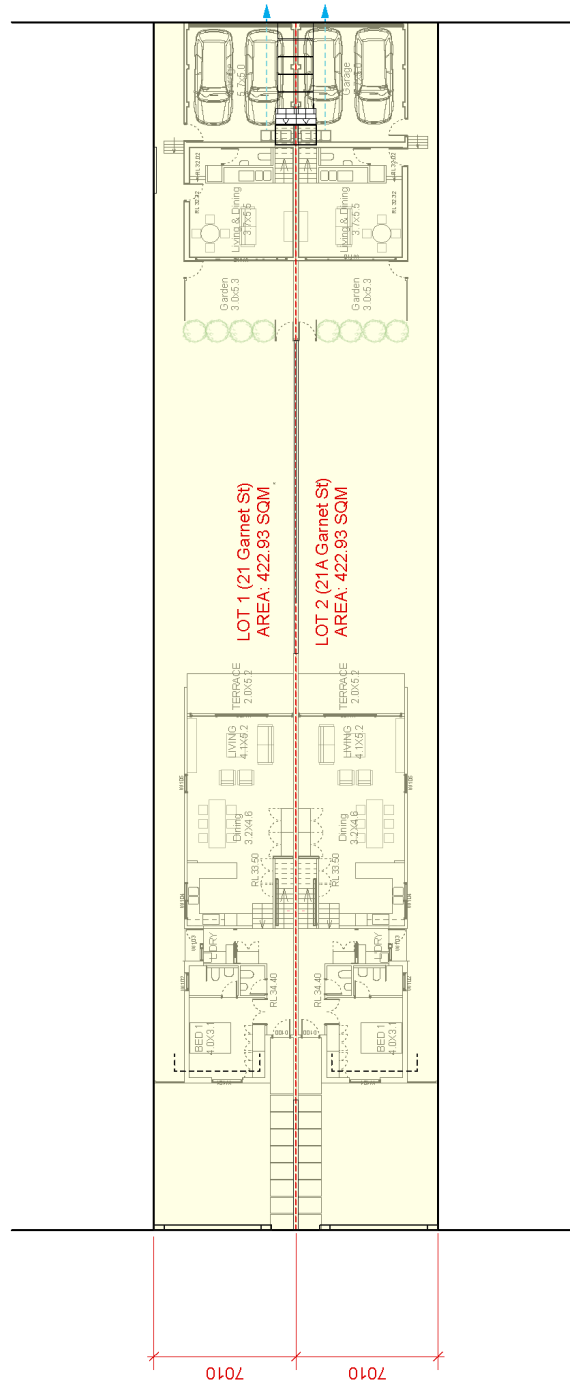
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Version 1, Version Date 06/04/2024														Document Set ID: 3862033	

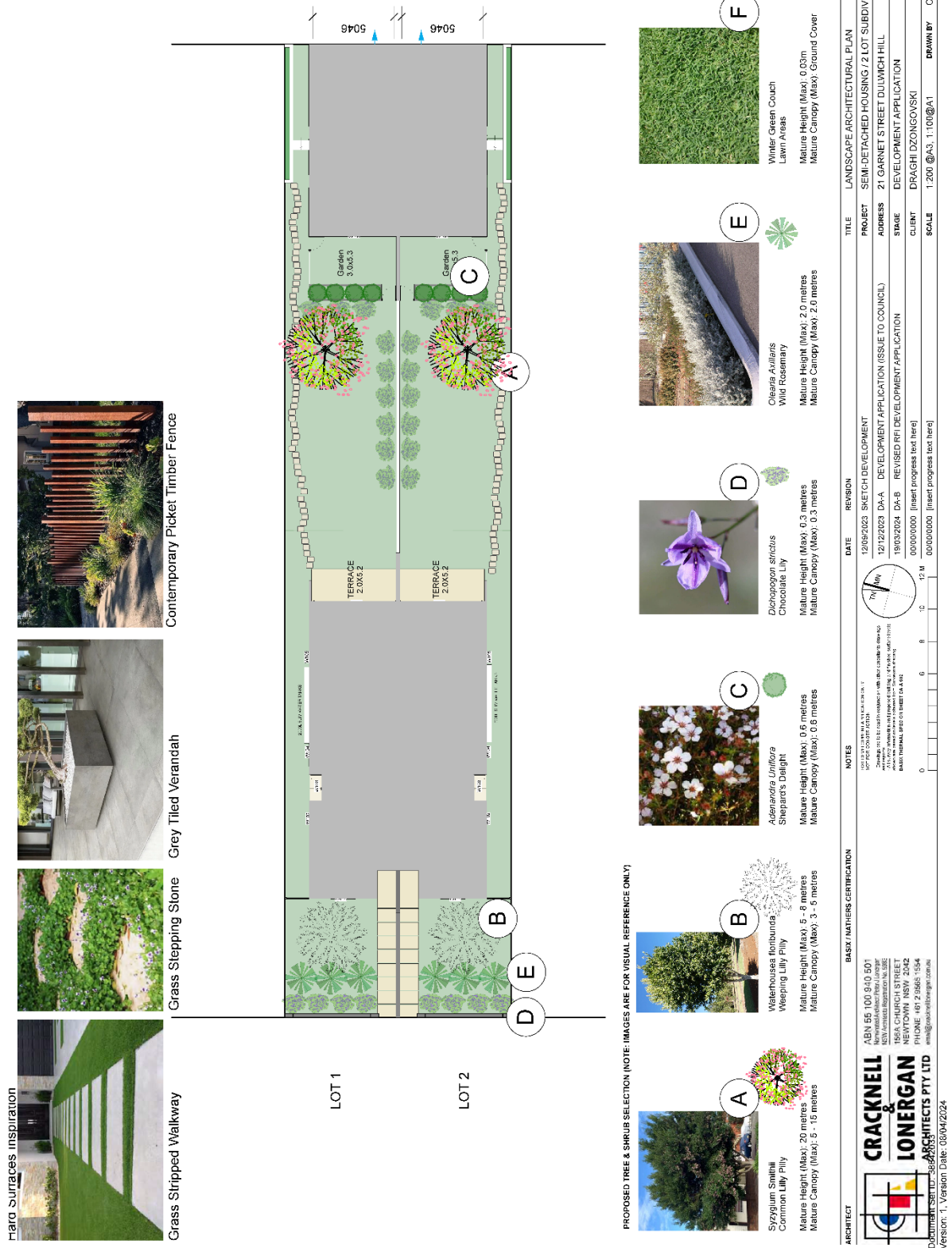


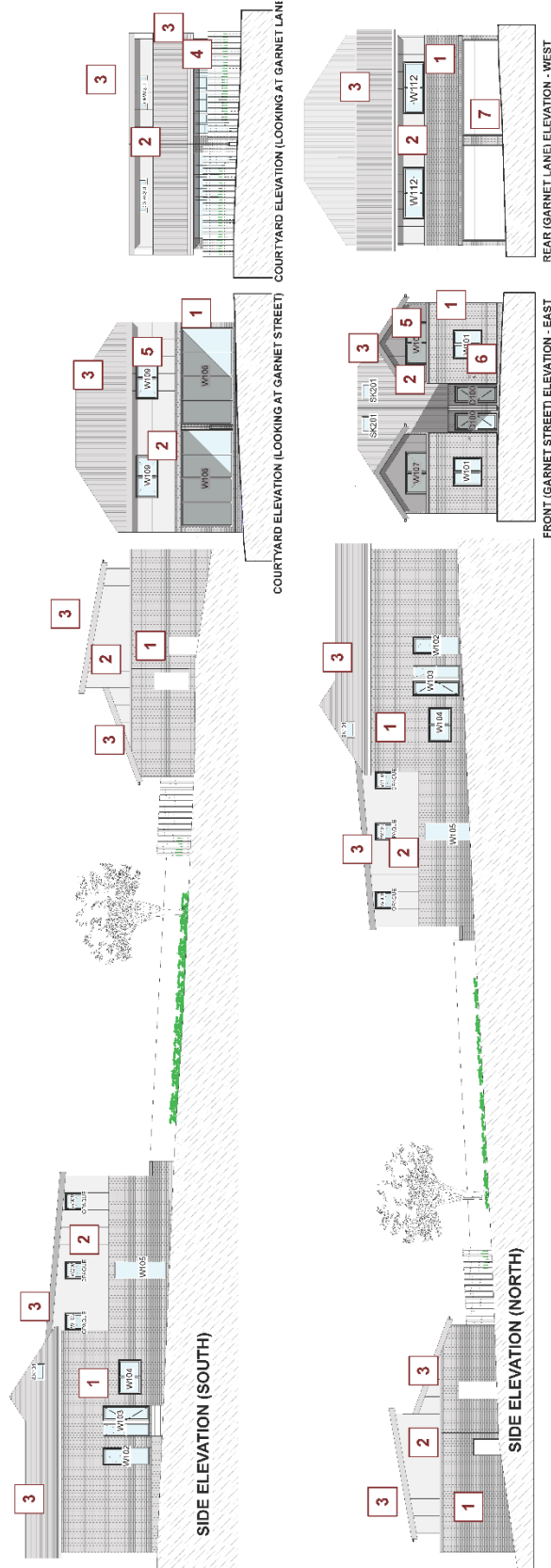
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PROPOSED SUBDIVISION OF EXISTING SITE INTO TWO LOTS
EXISTING LOT SIZE: 846.10 SQM (BY SURVEY)

ARCHITECT  CRACKNELL & LONERGAN ARCHITECTS PTY LTD ABN 65 100 840 501 156A CHURCH STREET NEW TOWN NSW 2042 PHONE 02 9550 4444 email@cracknell-lonerGAN.com.au	BASIC / MATTERS CERTIFICATION	NOTES 1. THIS PLAN IS A PRELIMINARY DESIGN ONLY. 2. THE CLIENT HAS ADVISED THAT THE SITE IS A DEVELOPMENT OF A PREVIOUSLY DEVELOPED SITE. 3. THE CLIENT HAS ADVISED THAT THE SITE IS A DEVELOPMENT OF A PREVIOUSLY DEVELOPED SITE. 4. THE CLIENT HAS ADVISED THAT THE SITE IS A DEVELOPMENT OF A PREVIOUSLY DEVELOPED SITE. 5. THE CLIENT HAS ADVISED THAT THE SITE IS A DEVELOPMENT OF A PREVIOUSLY DEVELOPED SITE.	DATE 12/09/2023	REVISION DA-A	TITLE DRAFT TORRENS SUBDIVISION PLAN	DA 402
ISSUE B	SCALE 1:200 @A3, 1:100 @A1	CLIENT DRAGHI DZONGOVSKI	STAGE DEVELOPMENT APPLICATION	ADDRESS 21 GARNET STREET DULWICH HILL	PROJECT SEMI-DETACHED HOUSING / 2 LOT SUBDIVISION	DA 402
Version 1, Version Date 06/04/2024	Drawn By CCHC	Scale 1:200 @A3, 1:100 @A1	Client DRAGHI DZONGOVSKI	Stage DEVELOPMENT APPLICATION	Address 21 GARNET STREET DULWICH HILL	Project SEMI-DETACHED HOUSING / 2 LOT SUBDIVISION





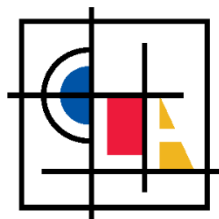
ARCHITECT	BASIC / MATTERS CERTIFICATION	NOTES	DATE	REVISION	TITLE	MATERIALS & FINISHES	DA
CRACKNELL & LONERGAN ARCHITECTS PTY LTD ABN 55 100 540 501 156A CHURCH STREET NEWTOWN NSW 2042 PHONE +61 2 9565 1564 info@cracknell-ologan.com.au		NOT FOR CONSTRUCTION THIS DRAWING IS THE PROPERTY OF CRACKNELL & LONERGAN ARCHITECTS PTY LTD IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED IT IS NOT TO BE REPRODUCED, COPIED, OR USED FOR ANY OTHER PROJECT WITHOUT THE WRITTEN PERMISSION OF CRACKNELL & LONERGAN ARCHITECTS PTY LTD DRAWN: T. DZONGOVSKI CHECKED: T. DZONGOVSKI DATE: 08/04/2024	12/09/2023	SKETCH DEVELOPMENT	PROJECT	SEMI-DETACHED HOUSING / 2 LOT SUBDIVISION	601
			12/12/2023	DA-A DEVELOPMENT APPLICATION (ISSUE TO COUNCIL)	ADDRESS	21 GARNET STREET DULWICH HILL	ISSUE
			18/03/2024	DA-B REVISED RFI DEVELOPMENT APPLICATION	STAGE	DEVELOPMENT APPLICATION	
			00/00/0000	[insert progress text here]	CLIENT	DRAGHI DZONGOVSKI	B
			00/00/0000	[insert progress text here]	SCALE	1:200 @A3, 1:100 @A1	
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**Attachment C – Section 4.6 Exception to Development Standards
(Lot Size)**

Clause 4.6 Variation Request

**21 Garnet Street, Dulwich Hill
Gadigal Country**

**Development Standard:
Variation of 450sqm lot size for
secondary dwellings.**



**CRACKNELL
&
LONERGAN
ARCHITECTS PTY LTD**

FINAL

Site Registration
Prepared on
Prepared for

Lot 15 in D.P. 667348
28th March 2024
Draghi Dozoveski



Contents

1.0	Introduction	01
1.1	Executive Summary	
2.0	Setting & Context	02
2.1	Site Identification	
2.2	Character of Existing Locality	
3.0	The Proposal	08
3.1	Description of the Proposal	
3.2	Numerical Summary	
4.0	Development Standard Variation Sought	10
4.1	Identification of Development Standard to be Varied	
4.2	Extent of Variation Sought	
5.0	Variation Assessment Framework	12
5.1	Overview of Relevant Considerations	
5.2	Assessment Against Clause 4.6 Objectives	
5.3	Assessment Against Relevant NSWLEC Principles	
6.0	Report Findings	24
5.1	Recommendations	
5.2	Conclusion	
	Appendix A: Curriculum Vitae of Peter J. Lonergan	25

Prepared On:

20 March, 2024 [DRAFT]

28 March, 2024 [FINAL]

Project Address:

21 Garnet Street, Dulwich Hill

Gadigal Country

Prepared For:

Draghi Dozoveski

Prepared By:

Cracknell & Lonerган

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1.0 Introduction

1.1 Executive Summary

This report relates to a Statement of Environmental Effects (SEE) and a Development Application (DA) seeking to propose a subdivision and an addition of a semi-detached dwelling after subdivision for the site No. 21 Garnet Street, Dulwich Hill.

Clause 4.6 of the Local Environmental Plan allows the consent authority to grant consent for development even though the development seeks to depart from the numerical controls regarding the minimum subdivision lot size, of a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in the application of development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and,
- That 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.

In this report, it has been explained that flexibility is justified within this case in terms of the matters described in Clause 4.6 which are required to be addressed as part of the written request. This report also addresses, where relevant and helpful, additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.



Peter Lonergan

Architect & Director of Design
Cracknell Lonergan Architects Pty Limited
NSW Architects Registration No. 5983

2.0 Setting & Context

2.1 Site Identification

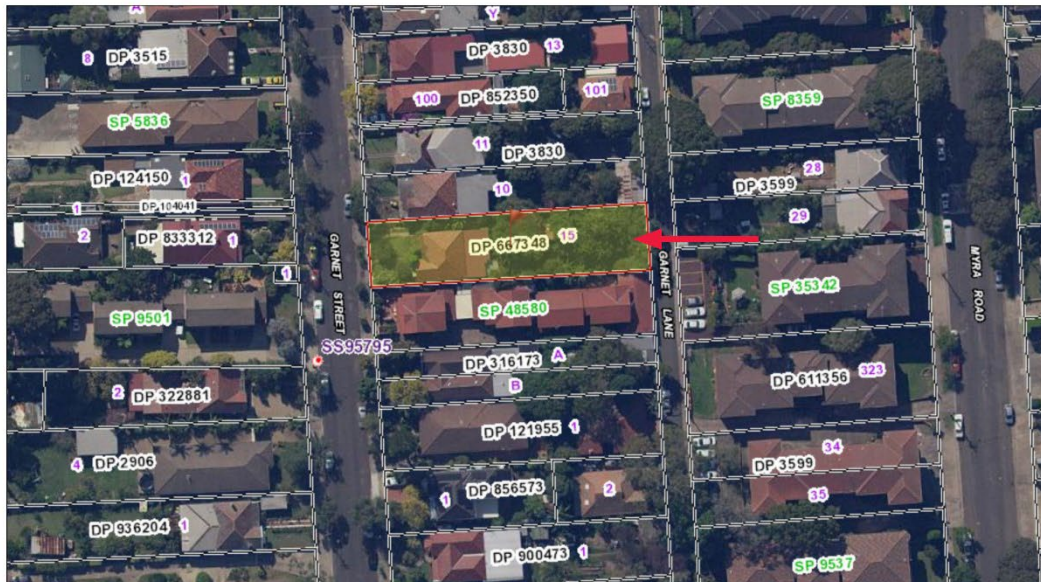
The project site description and location is summarised as follows:

Street Address	21 Garnet Street, Dulwich Hill
Legal Definition	Lot 15 in D.P. 667348
Country	Gadigal Country
Site Area	846.18 sqm
Brief Site Description	The subject site is a rectangular subdivision along Garnet Street and back facing to Garnet Lane, with an approximate street width of 14.02m and a depth of 60.33m. The existing site consists of a single-storey brick dwelling, with in-site parking at the front. An existing outbuilding serves its purpose as a shed. Furthermore, the existing lot is also considered large in area when compared to some of its neighbouring lots.
Topography	The subject site is sloped in a slight north-easterly direction from the front to the rear of the site. The front north corner site is RL 34.40 and the rear corner is RL 31.36, representing an approximate level change of 3040mm over the length of the site.
Public Transport	The site is situated within an accessible area, and is within 500 radial metres from Dulwich Hill Train and Light Rail Station. The site is also located within 150 radial metres from Hampden Street, which contains a regular bus to Marrickville suburbs and Sydenham Station.
Existing Services	The subject site is currently connected to all standard services - electricity, gas, water, sewerage, telecommunications.



The subject site as viewed looking from Garnet Street in an easterly direction. The existing one-storey brick dwelling is just visible from the landscaping that is found at the front of site, which also houses an existing driveway.

2.0 Setting & Context



NSW SIX Maps Imagery - Aerial Map of Site Location



NSW SIX Maps Imagery - Historical 1943 Aerial Image

2.0 Setting & Context

2.2 Character of Existing Locality

Sourced from the Marrickville DCP 2011 9.17.1 New Canterbury Road West Precinct 17 - existing character

This precinct is located in the western portion of the local government area in the suburb of Dulwich Hill. Its western boundary adjoins the suburbs of Hurlstone Park and Ashfield while the Goods rail line and Bankstown rail line define its eastern boundary. New Canterbury Road is a major east west arterial road running through the precinct. The precinct contains commercial buildings along New Canterbury Road, prominent church and church buildings, St Paul of the Cross Primary School and a substantial number of residential flat buildings located off Williams Parade, Myra Road and Terrace Road.

The subdivision pattern of the area is characterised by long north south running blocks, with laneways to the south of New Canterbury Road with shorter blocks to the north of this road. Several large lots (formerly industrial or manufacturing sites) have been redeveloped for medium/high density residential. The topography of the precinct falls from the ridge line of New Canterbury Road towards the rail lines. The church on the ridge is a landmark feature of the area, located in its centre.

The streets are relatively wide and are characterised by generally uniform plantings of street trees with footpaths and nature strips. Sandstone kerbs are a feature of most streets in this area. Traffic calming measures have been introduced to Hercules Street, Terrace Road, Myra Road and Garnet Street which feed traffic either over or under the Bankstown railway line. Cobar Street to Kroombit Street also has traffic calming measures. From the elevated parts of the precinct, regional views over the Cooks River to Earlwood are enjoyed by some. Most views are however contained within the precinct.

The main area of open space in the precinct is Allison Playground, a local park with children's play equipment and seating. Along The Parade, is a landscape edge to the Bankstown rail line with large, uniform street trees. Part of Jack Shanahan Reserve is also located within this precinct. Jack Shanahan Reserve has been identified as a potential GreenWay Hub in the GreenWay Active Transport Strategy (2012) due to its significant location and role as a Southern gateway to the GreenWay and Inner West Light Rail.

Part of the GreenWay, a proposed regional cycling and walking trail, traverses this precinct. The GreenWay is an urban green corridor in Sydney's Inner West connecting the Cooks River to Iron Cove. The GreenWay follows the route of the disused Rozelle freight rail corridor, which has been converted to light

rail, and also incorporates the Hawthorne Canal. The vision for the GreenWay is for a "recognisable environmental, cultural and sustainable transport corridor linking two of Sydney's most important waterways".

Areas within parts of the precinct have been identified as having high biodiversity values within the LGA. It is essential that development within those areas considers the potential impacts to biodiversity including native fauna (including Threatened Species and Endangered Populations); native vegetation (including Endangered Ecological Communities); and habitat elements (including their condition, structure, function, connectivity and disturbance).

The dominant land-use pattern of the precinct is medium-high density residential with abutting streets of low density residential development. New Canterbury Road in this precinct is defined by commercial buildings to the west and residential to the east. Residential flat buildings are predominantly two and three storey Post-War buildings, with several new contemporary buildings found in the precinct. Williams Parade is a self contained 'village' of three and four storey residential flat buildings.

Dwellings in the precinct consist mainly of Federation detached houses with a mix of Inter-War, Post-War and some contemporary infill buildings, particularly in the southern parts of the precinct. While brick is the predominant building material there are a number of timber cottages in Hercules Street, Garnet Street and The Parade. Front setbacks vary across the precinct and are not necessarily uniform in all streets. Private open space varies significantly between the single dwellings which have some open space areas and residential flat buildings and multi dwelling housing developments which typically contain less private open space.

There are no Heritage Conservation Areas contained within the precinct.

Front fences are a mix of materials but are generally low in height. Parts of the precinct have retained on street parking. The Parade being the most notable, however the majority of streets have some form of off-street parking comprising a mix of hard stand in front of or beside buildings, carports and garages. Loss of on street parking is notable where large laybacks have been built to residential flat buildings.

2.0 Setting & Context

Existing two storey semi-detached brick building adjacent to site. A relatively new development that has been included into the neighbourhood adjacent utilising the same brick veneer into its construction.



Garnet Lane, opposite the rear of the subject site, where there are several multi residential buildings



Rear lane of subject site, includes the garage of the adjacent new semi-detached dwelling. Note that the colourbond used as a wall for the subject site is detracting and creates a different atmosphere for the rear lane. There is also visible existing shared carpark opposite the site..



2.0 Setting & Context



Exterior view of the existing dwelling house. It is noted that many of the items and elements are dilapidated and the fabric does not appear to be original, whilst it is a replication of original styles. It is further noted that this is one of the few single storey dwellings along the streetscape, and is not characteristic of the Victorian two storey terrace dwellings which populate the area.



Rear view of old rundown existing shed located at the rear of the existing house.



Side view of neighbouring site (23 Garnet Street) through overgrown plantation on the site.

2.0 Setting & Context

Rear laneway view of adjacent property (23 Garnet Street) with a two car garage driveway fronting Garnet Lane.



Existing rear laneway elevation of subject site, note that the colourbond used as a wall for the subject site is distracting and creates a different atmosphere for the rear lane.



Adjacent site (19 Garnet Street & 17 Garnet Street) rear laneway perspective. Note both adjacent sites have revolting fragile tin sheds that diminish the overall quality and safety of the laneway.



3.0 The Proposal

3.1 Description of Proposal

The proposed development at No. 21 Garnet Street, Dulwich Hill seeks to make a torrens title land subdivision to create a new 2 lot semi-detached dwellings to an existing single storey dwelling which possesses a street frontage at Garnet Street and another at Garnet Lane, the proposed works consists of the following:

- Subdivision of Lot 15 in D.P.667348 to provide the existing space with a semi-detached dwelling with a detached secondary dwelling located at the rear of the site for each allotment after subdivision.

- Construction of a new semi-detached two storey principle dwelling located at the front with a secondary dwelling over garage at the rear fronting Garnet Lane.

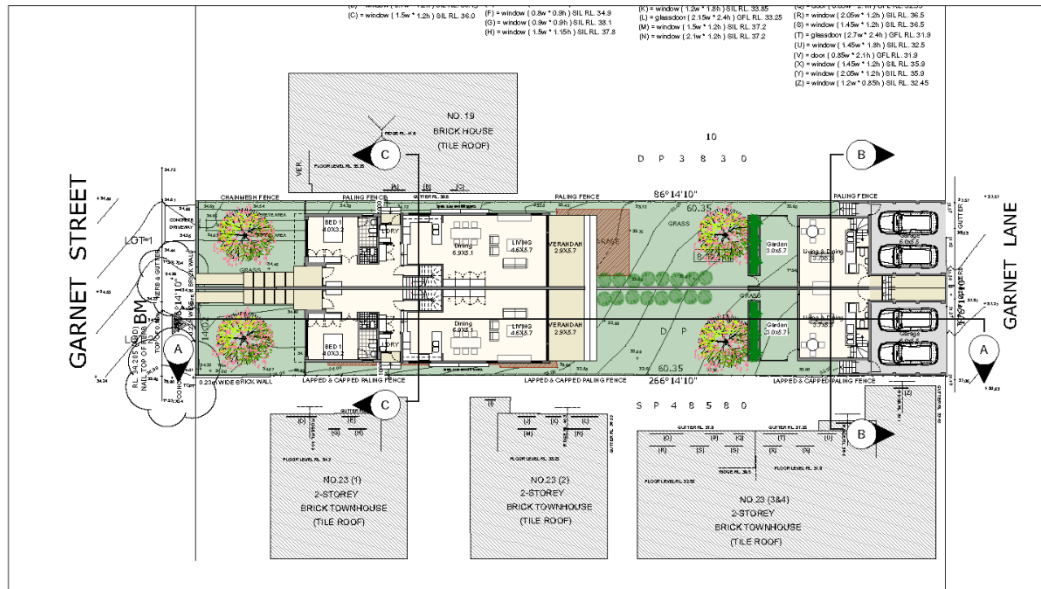
3.2 Numerical Summary

The numerical overview of the proposal is as follows:

Existing Site Area	846.1 sqm
Proposed Lot 1:	
Proposed Site Area	422.93 sqm
Proposed Gross Floor Area	248.46 sqm
Proposed Floor Space Ratio	0.58:1
Permissible Floor Space Ratio	0.6:1
Maximum Building Height	8.3m to 6.0m*
Proposed Lot 2:	
Proposed Site Area	422.93 sqm
Proposed Gross Floor Area	248.46 sqm
Proposed Floor Space Ratio	0.58:1
Permissible Floor Space Ratio	0.6:1
Maximum Building Height	8.3m to 6.0m*

*Maximum building height varies depending on topography but will not protrude over the maximum permissible height outlined in the Inner West Local Environmental Plans. This is further detailed in section 4.4.3 of the Statement of Environmental Effects that is submitted in conjunction with this Development Application.

3.0 The Proposal



Select Floor Plans & materials of the Proposal - (NOT TO SCALE)

4.0 Development Standard Variation Sought

4.1 Identification of the Standard to be Varied

Pursuant to Clause 4.6 of the Local Environment Plan (LEP) this objection seeks to vary the State Environmental Planning Policy (Housing) 2021, Chapter 3 Diverse Housing, Part 1 Secondary Dwellings Clause 53 (2)(a) for a detached secondary dwelling - a minimum site area of 450sqm. Stating that the minimum site required to allow for a detached secondary dwelling is 450sqm

Chapter 3 Diverse Housing, Part 1 Secondary Dwellings

Division 2 Secondary dwellings permitted with consent

52 Development may be carried out with consent

(1) Development to which this Part applies may be carried out with consent.

(2) Development consent must not be granted for development to which this Part applies unless—

(a) no dwellings, other than the principle dwelling and the secondary dwelling, will be located on the land, and

(b) the total floor area of the principle dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and

(c) the total floor area of the secondary dwelling is—

(i) no more than 60m², or

(ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument—the greater floor area.

53 Non-discretionary development standards—the Act, s 4.15

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

Note—

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

(2) The following are non-discretionary development standards in relation to the carrying out of development to which this Part applies—

(a) for a detached secondary dwelling—a minimum site area of 450m²,

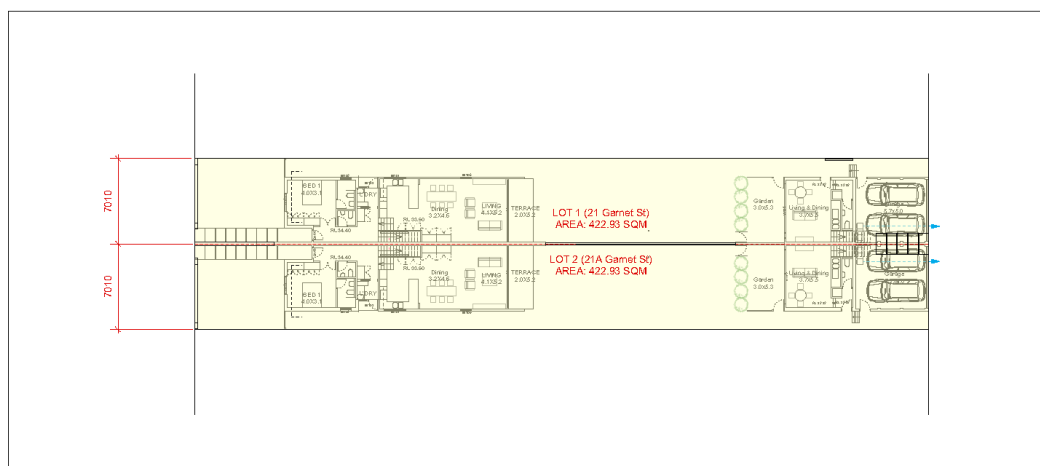
(b) the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.

4.0 Development Standard Variation Sought

4.2 Extent of Variation Sought

The following is a numerical summary of the extent of the variation sought for this proposed development.

Maximum Permissible	Proposed Development	Extent of Variation (%)
State Environmental Planning Policy 2021, Chapter 3, Part 1, Division 2, Clause 53(2)(a)		
Minimum of 450sqm lot area required to allow for detached secondary dwelling.	Lot 1 - Proposed 422.93 sqm	Variation 27.07 sqm 6.01%
	Lot 2 - Proposed 422.93 sqm	Variation 27.07 sqm 6.01%
It should be noted even though the proposed lot area is smaller than the required numerical value for allowing a secondary dwelling, the nature of the site is long and slender allowing for adequate setback and distance between the principle and secondary dwelling to be maintained, additionally, side setbacks are also provided with adequate distance to retain neighbouring visual privacy.		



5.0 Variation Assessment Framework

5.1 Overview of Relevant Considerations

5.1.1 Clause 4.6 of the Local Environmental Plan

Clause 4.6 of the LEP includes provisions that allow for exceptions to development standards in certain circumstances. The objective of the clause are:

- (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.*

The function of Clause 4.6 is to enable flexibility in the application of planning provisions by providing the consent authority the ability to approve a development which does not comply with the numerical controls of certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve a better outcome for and from the development.

In determining whether to grant consent for development which contravenes a development standard, Cl.4.6(3) requires the consent authority to consider a written request from the proponent of an application that seeks to justify the contravention of the development by demonstrating that:

- (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.*

Furthermore, the consent authority must also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the development within the zone, and whether the concurrence of the Secretary has been obtained.

In Cl.4.6(5) the Secretary is required to consider certain matters before granting concurrence, namely:

- (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 Planning Secretary before granting concurrence.*

This document forms a written request in compliance with the required consideration under Cl.4.6 to provide a justification for the contravention of the Minimum subdivision lot size contained in the LEP. The assessment of the proposed variation has been undertaken in accordance with this clause.

5.0 Variation Assessment Framework

5.1.2 NSW Land & Environment Court - Case Law

Several decisions by the NSW Land & Environment Court (NSWLEC) have refined the content and structure in which variations to development standards are required to be approached and considered.

The correct approach to preparing and dealing with a request under Cl.4.6 was eloquently summarised by Chief Justice Brian Preston in the case *Initial Action -v- Wollahra Municipal Council [2018] NSWLEC 118* at [13] - [21]. For brevity, this decision is not reproduced in full but it is necessary to note that this decision establishes that "sufficient environmental planning grounds" must be articulated in the written request.

Additionally, in the decision of the commissioner in *Wehbe v Pittwater Council [2007] NSWLEC 827*, Chief Justice Preston expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. The five tests for this are tabulated and responded to.

Finally, in the decision of Commissioner Pearson in *Four2Five Pty Ltd* and the subsequent appeal endorsed by Commissioner Pain, further reaffirmed in the recent court cases *Moskovich v Waverley Council [2016] NSWLEC1015* and *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC7*, recognises the need to identify grounds particular to the circumstances of a proposed development - as opposed merely to grounds that would apply to any similar development on the site or in the vicinity.

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
<p>(1)(a) To provide an appropriate degree of flexibility in applying certain development standards to particular development,</p> <p>(1)(b) To achieve better outcomes for and from development by allowing flexibility in particular circumstances,</p>	<p>The latest authority in relation to the operation of Clause 4.6 is the decision of His Honour Chief Justice Preston in <i>Initial Action Pty Ltd -v- Woollahra Municipal Council</i> [2018] NSWLEC118. Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of Initial Action, the Court held that:</p> <p><i>In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.</i></p> <p>The legal consequence of this decision is that Cl.4.6(1) is not an operational provision and that the remaining clauses of Cl.4.6 constitute the operational provisions for which an assessment must be made in varying a development standard.</p>
<p>(2) Development consent may, subject to this clause, be granted for 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.</p>	<p>The development standard subject to this cl.4.6 Variation Request is not expressly excluded from the operation of this clause.</p>
<p>(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—</p> <p>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p>	<p>An established manner for addressing whether or not compliance with a development standard is unreasonable or unnecessary was established in the 'five-part test' outlined in <i>Wehbe -v- Pittwater</i> [2007] NSWLEC 827.</p> <p>It is not considered necessary for an application to need to establish all of the tests or 'ways' a development standard is unreasonable or unnecessary. It may be sufficient to establish only one way, although if more ways are applicable, an Applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way. The development is justified against the Wehbe Tests in the subsequent section of this report.</p>

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives
<p>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p> <p>The sufficient environmental planning grounds to justify the contravention of the development standard are as follows:</p> <ul style="list-style-type: none"> - In spite the overall lot area not satisfying the numerical value of 450sqm, the proposed secondary dwelling is able to achieve the maximum 60sqm interior space while retaining an adequate 1.5m setback from the side boundaries and maintaining existing visual privacy, additionally neighbouring residential amenity is not reduced as similar secondary dwellings and garages are located along the rear of neighbouring sites fronting Garnet Lane. - The proposal will provide a consistent subdivision pattern along Garnet Street dividing along the east to west orientation, both allotments after subdivision will retain front street entrances towards Garnet Street and rear lane access through Garnet Lane, this ensures that current access preferences are retained even after subdivision which provides a coherent access along the street. Additionally, the proposed subdivision pattern reflects the prevailing cadastral pattern of having two lots of equal area positioned adjacent one another, thus demonstrating the overall subdivided lot size area is adequate in providing a high quality residential amenity which includes a secondary dwelling. - The proposal seeks to provide a new semi-detached dwelling with secondary dwelling after subdivision of the site, this increases the density of the site while retaining a high quality of residential amenity. This reflects the statement in the NSW Productivity Commission's "Building more homes where infrastructure costs less" stating that "DPE projects that by 2041 we will need 550,000 new homes in Sydney - that is around 30,000 new homes per year" (Building more homes where infrastructure costs less, p.9) With the subject site's locality and availability to public transport, the secondary dwelling resembles a private retreat in a slowly increasing housing density due to the site's prime location and prospect in achieving the DPE's goal. - The Department of Planning and Environment's "Explanation of Intended Effect: Changes to create low-and mid-rise housing" identifies the problem with Low Density Residential Zoned areas are lacking housing diversity, this is due to 94% of councils within Greater Sydney prohibiting the construction of higher density houses such as multi-dwelling or manor houses. To provide a positive outcome while withstanding current zoning requirements, the proposal provides the Low Density Residential Zoned area of Dulwich Hill increased housing density by introducing a semi-detached dwelling with a secondary dwelling on an existing site which previously had a single storey detached dwelling, with increased density, the proposal still improves upon residential density without producing a solution that greatly hinders the neighbouring residential amenities. This helps relief the housing crisis as identified by the state government while providing comfortable living amenities and retaining privacy of existing dwellings within the area.
<p>(4) Development consent must not be granted for development that contravenes a development standard unless—</p>
<p>(a) the consent authority is satisfied that—</p>
<p><i>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</i></p>
<p>This report provides an adequate assessment of relevant considerations under cl.4.6(3) and provides a written response for the purposes of applying for a development standard variation.</p>

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
<i>(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</i>	
Objectives of the SEPP Housing 2021 - Principles of Policy	
Objective	Compliance / Response
a) Enabling the development of diverse housing types, including purpose-built rental housing,	Complies The proposal introduces the semi-detached dwelling typology towards Garnet Street which is predominantly occupied by single storey detached dwelling, this introduces greater diversity along Garnet Street, additionally it is not uncommon to see secondary dwellings as part of the site developments and the proposal is considered consistent while simultaneously increasing the diversity of housing types along Garnet Street.
b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,	Complies The proposed semi-detached dwelling was designed with consideration to accommodate different generations of families together, this includes the ground floor bedroom to accommodate seniors with disability, additionally the proposed secondary dwelling allows for families with children to grow out and have the opportunity to live by themselves in an environment of constant housing crisis.
c) ensuring new housing development provides residents with a reasonable level of amenity,	Complies The proposal ensures the development is provided with high levels of amenity, this includes private open spaces that are designated with space for family activities, adequate levels of solar access in maintaining a bright environment, and a secondary dwelling which can be rented out or be transformed into a guest house or children's house for a flexible function.
d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,	Complies The proposal promotes the delivery of additional and increased housing density in a location of good existing infrastructure. With the subject site within 10mins walk from Hurlstone Park Train Station and multiple bus stops along New Canterbury Road
e) minimising adverse climate and environmental impacts of new housing development,	Complies The proposal optimises the usage of natural lighting with provided floor to ceiling windows located on the ground floor and skylights for the first floor ensuring solar access is achieved while retaining visual privacy. Additionally, a solar panel system has been adopted to minimise electricity usage of the proposed development.

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,	Complies The proposal introduces a semi-detached dwelling that reflects and enhances its locality by providing a facade language that is in keeping with the prevailing streetscape expression, this is represented with the brick facades rising to match neighbouring existing brick heights, additionally the front gable roof form reflects the neighbouring form and creates a coherent streetscape language along Garnet Street.
g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,	Not Applicable The proposal is not designed to provide short-term rental, it is a semi-detached dwelling designed for families to live long term due to its improved residential amenities. Additionally, the proposal is not at a scale that can accommodate short-term rentals.
h) mitigating the loss of existing affordable rental housing.	Not Applicable The proposal does not seek to reduce the number of existing affordable rental housing as the existing building on site is a private dwelling.
Clause 53 Non-Discretionary development standards - the Act, s 4.15	
1) The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters	Complies, The proposal has identified the particular development standards relating to the development for the purposes of a secondary dwelling. Despite not meeting the controls, the proposal demonstrates strong consistency with the overall objectives of the SEPP (Housing) 2021 and thus is considered acceptable.
2) The following are non-discretionary development standards in relation to the carrying out of development to which this Part applies—	-
(a) for a detached secondary dwelling—a minimum site area of 450m ² ,	The proposes a detached secondary dwelling on a subdivided lot size of 422.93sqm, applicable to both allotments. Despite not meeting the numerical controls, the proposal demonstrates strong consistency with the overall objectives of the SEPP (Housing) 2021 and thus is considered acceptable.

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
(b) the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	The proposal contains a total of 4 parking spots with 2 parking spots assigned per allotment. Despite it increasing the total number of parking spaces when compared to immediately before the development, the proposal demonstrates strong consistency with the overall objectives of the SEPP (Housing) 2021 and thus is considered acceptable.
Objectives of Clause 2.1 Land Use Zone (R2 Low Density Residential)	
To provide for the housing needs of the community within a low density residential environment.	Complies The proposal complies with the objectives of the zone by proposing a use which is permissible within the land zone. The proposal rationalises the existing residential layout to provide for a contemporary dwelling which respects its context whilst also meeting the amenity needs of contemporary living.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	Not Applicable The proposal is a residential use.
To provide residential development that maintains the character of built and natural features in the surrounding area.	Complies The proposal seeks to maintain the residential use by constructing new dwellings within a residential area.
2 Permitted without consent	-
Home occupations	Complies The proposed development is a demolition of the existing building and a subsequent construction of semi-detached housing with 2 lot Torrens Title subdivision which involves home occupation.
3 Permitted with consent	
Bed and breakfast accommodation; Centre-based child care facilities; Dwelling houses; Group homes; Home businesses; Home industries; Hostels; Neighbourhood shops; Oyster aquaculture; Pond-based aquaculture; Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Tank-based aquaculture; Any other development not specified in item 2 or 4	COMPLIES The proposed use is permissible with consent and does activate this clause.
4 Prohibited	

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
Advertising structures; Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Biosolids treatment facilities; Boarding houses; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Car parks; Caravan parks; Cemeteries; Charter and tourism boating facilities; Commercial premises; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Emergency services facilities; Entertainment facilities; Environmental facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Information and education facilities; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Passenger transport facilities; Port facilities; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Research stations; Residential accommodation; Restricted premises; Rural industries; Service stations; Sewage treatment plants; Sex services premises; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Waste or resource management facilities; Water recreation structures; Water supply systems; Wharf or boating facilities; Wholesale supplies	<p>COMPLIES</p> <p>The proposed use is not of prohibited use.</p>
Objectives of Clause 4.1 Minimum Subdivision Lot Size	
<p><i>It should be noted that clause 4.1 "minimum subdivision lot size" does not apply to the subject site of 21 Garnet Street, Dulwich Hill, the objectives of this clause are explored as secondary information to help supplement and give context to the points listed in the subsequent sections.</i></p>	
1) The objectives of this clause are as follows -	
a) to ensure lot sizes cater for a variety of development,	<p>Complies</p> <p>The proposal is a semi-detached dwelling which provides housing variety along Garnet Street, subsequently, the subdivided lot sizes provide acceptable lot area in retaining high levels of residential amenity and existing neighbouring amenities.</p>

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
b) to ensure lot sizes do not result in adverse amenity impacts,	Complies The proposed subdivision lot size do not result in adverse amenity impacts for the proposed or neighbouring dwellings. Adequate setbacks are retained to continue existing visual and acoustic privacy.
c) to ensure lot sizes deliver high quality architectural, urban and landscape design,	Complies The proposed subdivision lot size delivers adequate space for the proposal in providing high quality architectural and landscape design that improve the residential amenity of the area.
d) to provide a pattern of subdivision that is consistent with the desired future character,	Complies The proposed subdivision is consistent with the prevailing cadastral pattern along Garnet Street with lots orientated along the east - west orientation, this is demonstrated within the architectural drawing set submitted in conjunction with this development application.
e) to ensure lot sizes allow development to be sited to protect and enhance riparian and environmentally sensitive land.	Not Applicable The subject site is not located near existing riparian or in environmentally sensitive land, thus does not activate this clause.
2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.	Not Applicable The subject site is not land shown on the lot size map that would require development consent for its proposed subdivision. This section is provided as secondary information to help better understand the context and points that are listed in the below section of this clause 4.6.
3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.	Not Applicable The subject site is not land shown on the lot size map that would require development consent for its proposed subdivision. This section is provided as secondary information to help better understand the context and points that are listed in the below section of this clause 4.6.
4) This clause does not apply in relation to the subdivision of any land—	
a) by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or	Not Applicable The subject site is not a strata plan or a strata plan subdivision. Thus does not activate this clause.
b) by any kind of subdivision under the Community Land Development Act 2021.	Not Applicable The subject site is not any kind of subdivision listed under the Community Land Development Act 2021
(b) the concurrence of the Planning Secretary has been obtained.	
The proposed variation has a percentage exceedance less than 10%, meaning that external referral and concurrence of the Planning Secretary is not required for this project.	
(5) In deciding whether to grant concurrence, the Planning Secretary must consider—	

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and	Not Applicable. Concurrence of the Secretary is not required.
(b) the public benefit of maintaining the development standard, and	Not Applicable. Concurrence of the Secretary is not required.
(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.	Not Applicable. Concurrence of the Secretary is not required.
(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.	Not Applicable. The subject site is not located within one of the zones listed under this clause.
(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).	Noted. It is the responsibility of the consent authority Council to keep a record of its assessment of this variation.
(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,	Compliant. The proposed development is not an application for complying development.
	Compliant. The proposed variation request does not seek to vary a provision under SEPP BASIX.

5.0 Variation Assessment Framework

5.3 Assessment Against Relevant NSWLEC Principles

Webbe -v- Pittwater Council [2007] NSWLEC 827

5.3.1 Test 1: The Objectives of the Development Standard Are Achieved Notwithstanding Non-Compliance with the Standard.

As discussed in Section 5.2 of this report, the objectives of the development standard are adequately achieved notwithstanding non-compliance with the numerical control of the standard:

- The proposal introduces a semi-detached dwelling with secondary dwelling located at the rear of the site, which introduces housing diversity on a street that is predominantly built with single storey dwelling.
- The proposal provides the existing site with high levels of residential amenity through increasing residential opportunities in different housing typologies. The semi-detached dwelling provides efficient use of lot area while retaining adequate areas of private open space in increasing the level of amenity for its residents.
- The proposal reflects and enhances the locality of the area, this is achieved through a coherent facade expression and proposed subdivision that reflects the prevailing cadastral pattern along Garnet Street.

This proposed variation therefore satisfies the requirements under Webbe test 1.

5.3.2 Test 2: The Underlying Objective or Purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

This test is not relied upon for the purposes of this development standard variation request.

5.3.3 Test 3: The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required with the consequence being that compliance is unreasonable.

This test is not relied upon for the purposes of this development standard variation request.

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

As outlined in the SEPP Housing 2021, principle 3(a) "enabling the development of diverse housing types, including purpose-built rental housing" the purpose of enacting certain provisions is to provide more housing diversity, the proposal achieves this by introducing a permitted semi-detached dwelling with the addition of a secondary dwelling located at the rear of the site, this provides high levels of diversity on a street that is predominantly built with single storey detached dwellings, if clause 53(2)(a) "a minimum site area of 450sqm" were to be applied to the proposal, it would suggest that council were to abandon the primary principles of increasing housing diversity within this SEPP. The proposed secondary dwelling provides diversity along Garnet Lane and increased residential amenity. Additionally, the principle alludes to providing more rental opportunities within developments, the proposal's secondary dwellings is an opportunity to alleviate rental crisis by opening opportunities for low cost rental. Thus, it is evident that if the secondary dwelling were not to be constructed due to insufficient lot area, it would suggest council's own actions were to diminish the importance of housing diversity.

Subsequently, the subject site is not subjected to Clause 4.1 "Minimum subdivision lot size" suggesting any subdivision can be proposed that is within reasonable consideration within existing cadastral pattern, this alludes to the possibility for the site to be subdivided into four separate lots, all with less than 450sqm area, which increases housing density and diversity and is consistent with Clause 4.1's objectives, if SEPP (Housing) 2021 clause 53(2)(a) "a minimum site area of 450sqm" this would result in direct conflict with the LEP if the development standard were to be enacted as

5.0 Variation Assessment Framework

5.3 Assessment Against Relevant NSWLEC Principles

Wehbe -v- Pittwater Council [2007] NSWLEC 827

both solutions lead to the result of having four separate residential structures on the subject site, thus reducing the opportunity for increase density and diversity and demonstrating that inconsistent planning controls practically destroys the purpose of one another.

5.3.5 Test 5: The zoning of the particular land on which the development is proposed not be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstance of the case would also be unreasonable or unnecessary.

This test is not relied upon for the purposes of this development standard variation request.

6.0 Report Findings

6.1 Recommendations

There are no further recommendations to be made in this report.

6.2 Conclusion

Clause 4.6 of the Local Environmental Plan allows the consent authority to grant consent for development even though the development seeks to depart from the numerical controls regarding the CI 4.1 Minimum Subdivision Lot Size of a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in the application of development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and,
- That 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.

For the following reasons, it is concluded that the proposed numerical variation to the development standard is acceptable and presents sufficient environmental planning grounds because:

- The proposal retains adequate boundary setbacks and is consistent with the outlines maximum Gross Floor Area outlined for secondary dwellings.
- The proposal provides a consistent subdivision pattern that is reflective of the primary cadastral pattern along Garnet Street
- The proposal seeks to provide a new semi-detached dwelling with a secondary dwelling after subdivision of the site, this increases the density of the site and is consistent with the NSW Productivity Commission's "Building more homes where infrastructure costs less" stating that "DPE projects that by 2041 we will need 550,000 new homes in Sydney - that is around 30,000 new homes per year" (Building more homes where infrastructure costs less, p.9) With the subject site's locality and availability to public transport, it is considered a good location for increasing housing density in achieving the DPE's goal.

- The proposal provides a current solution in solving housing density issues within a Low Density Residential Zoned area, as identified within the Department of Planning and Environment's "Explanation of Intended Effect: Changes to create low-and mid-rise housing" Low Density Residential Zoned areas are lacking diversity in their houses, this is due to 94% of councils within Greater Sydney prohibiting the construction of higher density houses such as multi-dwelling or manor houses.

In view of this, it is believed that this Clause 4.6 Variation Request is supportable by the consent authority and that, notwithstanding the numerical non-compliance, the proposal is appropriate for its context, consistent with both the objectives of the standard and the land zone.

7.0 Appendix A: Curriculum Vitae of Peter Lonergan



Peter J. Lonergan

Director & Nominated Architect

FRAIA | NSWARB 5983 | DEP 0001205 | PDP 0000401

Formal Qualifications

BArchitecture | UNSW
BScArchitecture (Hons) | UNSW
MBEnv (Building Conservation) | UNSW
Certificate Sustainable Design | University of Sydney

Career Profile

Peter Lonergan is Director of Cracknell & Lonergan Architects, a practice he established with Julie Cracknell in 1984. Peter has accumulated over thirty-five years of experience in the field of architecture, interior design, heritage conservation, exhibition design and expert consultancy for the Land & Environment Court. He has also lectured, written, published and taught extensively in the fields of architecture, heritage, planning, history and design. Peter was elected a Fellow of the Royal Australian Institute of Architects in 2019 and continues to serve as a member of the NSWAIA Chapter's Heritage Committee.

The practice is actively engaged in the design and construction of many projects of varying scale, often with complex heritage issues. The firm has also been actively engaged in the procurement design and construction of public art projects, also often within very sensitive heritage contexts. Cracknell & Lonergan Architects also works extensively within the fields of heritage conservation and the adaptive reuse of many heritage items and historic structures, as well as providing heritage consultancy services to Sydney architectural practices, advising on the feasibility and opportunities of adaptation.

Experience

NSW Land & Environment Court

Participation in numerous matters in the NSWLEC both as design architect and as expert witness in town planning and heritage matters. Involved in supplying evidence in *Coorey -v- Hunters Hill* which ultimately led to the establishment of the planning principle for determining if a project is new development or alterations and additions.

Architecture

Bradfield, East Crescent St, McMahon's Pt | Residential
Aleuca, Miller St, Cammeray | Residential
Kalmar Antiques, QVB | Retail / Heritage

Heritage

Powerhouse Museum | Independent Heritage Review
Mary MacKillop Place | Conservation Management
Mechanics School of Arts (Arthouse Hotel) | Conservation

North Sydney Masonic Temple | Conservation Management

Jarjum College | Restoration & Conservation

Pemulwuy, 'The Block', Redfern | Redevelopment

Redfern Cottage, Minto | Conservation Management

Public Art

Yininmadyemi - Thou Didst Let Fall | Artist: Tony Albert

Murri Totem Poles | Artist: Reko Rennie

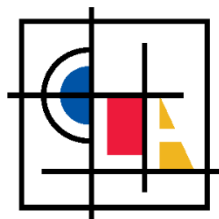
Indigenous Art Commission | Musee du Quai Branly, France

**Attachment D – Section 4.6 Exception to Development Standards
(Parking)**

Clause 4.6 Variation Request

**21 Garnet Street, Dulwich Hill
Gadigal Country**

**Development Standard:
Parking Space**



**CRACKNELL
&
LONERGAN
ARCHITECTS PTY LTD**

FINAL

Site Registration
Prepared on
Prepared for

Lot 15 in D.P. 667348
28th March 2024
Draghi Dozoveski



Contents

1.0	Introduction	01
1.1	Executive Summary	
2.0	Setting & Context	02
2.1	Site Identification	
2.2	Character of Existing Locality	
3.0	The Proposal	08
3.1	Description of the Proposal	
3.2	Numerical Summary	
4.0	Development Standard Variation Sought	10
4.1	Identification of Development Standard to be Varied	
4.2	Extent of Variation Sought	
5.0	Variation Assessment Framework	12
5.1	Overview of Relevant Considerations	
5.2	Assessment Against Clause 4.6 Objectives	
5.3	Assessment Against Relevant NSWLEC Principles	
6.0	Report Findings	21
5.1	Recommendations	
5.2	Conclusion	
	Appendix A: Curriculum Vitae of Peter J. Lonergan	22

Prepared On:

27 March, 2024 [DRAFT]

28 March, 2024 [FINAL]

Project Address:

21 Garnet Street, Dulwich Hill

Gadigal Country

Prepared For:

Draghi Dozoveski

Prepared By:

Cracknell & Lonerган

Architects Pty Ltd

Report Set Up By: MH

Draft Report By: MH

Reviewed By: PL

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1.0 Introduction

1.1 Executive Summary

This report relates to a Statement of Environmental Effects (SEE) and a Development Application (DA) seeking to propose a subdivision and an addition of a semi-detached dwelling after subdivision for the site No. 21 Garnet Street, Dulwich Hill.

Clause 4.6 of the Local Environmental Plan allows the consent authority to grant consent for development even though the development seeks to depart from the numerical controls regarding the minimum subdivision lot size, of a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in the application of development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and,
- That 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.

In this report, it has been explained that flexibility is justified within this case in terms of the matters described in Clause 4.6 which are required to be addressed as part of the written request. This report also addresses, where relevant and helpful, additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.



Peter Lonergan

Architect & Director of Design
Cracknell Lonergan Architects Pty Limited
NSW Architects Registration No. 5983

2.0 Setting & Context

2.1 Site Identification

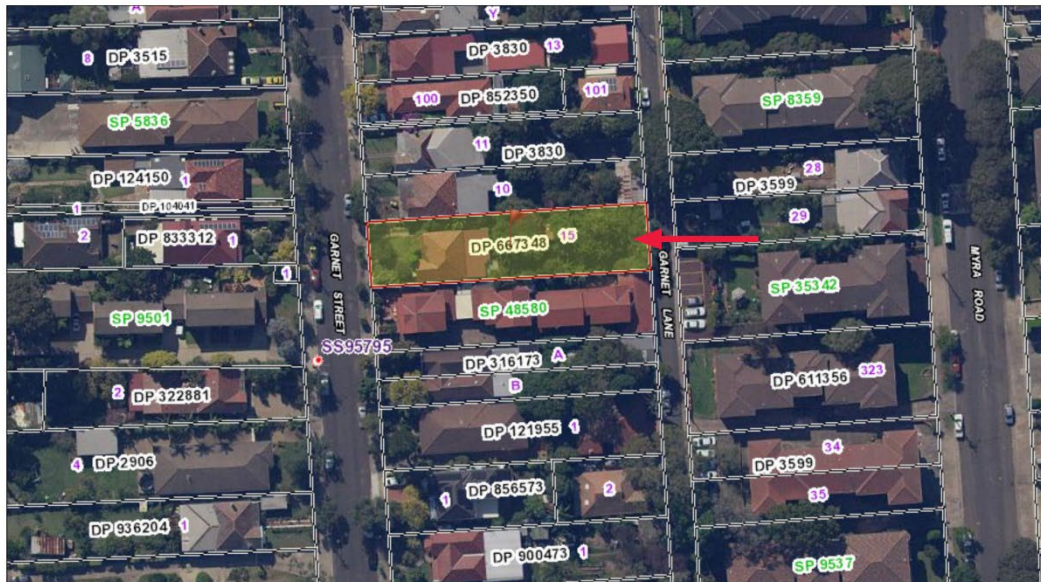
The project site description and location is summarised as follows:

Street Address	21 Garnet Street, Dulwich Hill
Legal Definition	Lot 15 in D.P. 667348
Country	Gadigal Country
Site Area	846.18 sqm
Brief Site Description	The subject site is a rectangular subdivision along Garnet Street and back facing to Garnet Lane, with an approximate street width of 14.02m and a depth of 60.33m. The existing site consists of a single-storey brick dwelling, with in-site parking at the front. An existing outbuilding serves its purpose as a shed. Furthermore, the existing lot is also considered large in area when compared to some of its neighbouring lots.
Topography	The subject site is sloped in a slight north-easterly direction from the front to the rear of the site. The front north corner site is RL 34.40 and the rear corner is RL 31.36, representing an approximate level change of 3040mm over the length of the site.
Public Transport	The site is situated within an accessible area, and is within 500 radial metres from Dulwich Hill Train and Light Rail Station. The site is also located within 150 radial metres from Hampden Street, which contains a regular bus to Marrickville suburbs and Sydenham Station.
Existing Services	The subject site is currently connected to all standard services - electricity, gas, water, sewerage, telecommunications.



The subject site as viewed looking from Garnet Street in an easterly direction. The existing one-storey brick dwelling is just visible from the landscaping that is found at the front of site, which also houses an existing driveway.

2.0 Setting & Context



NSW SIX Maps Imagery - Aerial Map of Site Location



NSW SIX Maps Imagery - Historical 1943 Aerial Image

2.0 Setting & Context

2.2 Character of Existing Locality

Sourced from the Marrickville DCP 2011 9.17.1 New Canterbury Road West Precinct 17 - existing character

This precinct is located in the western portion of the local government area in the suburb of Dulwich Hill. Its western boundary adjoins the suburbs of Hurlstone Park and Ashfield while the Goods rail line and Bankstown rail line define its eastern boundary. New Canterbury Road is a major east west arterial road running through the precinct. The precinct contains commercial buildings along New Canterbury Road, prominent church and church buildings, St Paul of the Cross Primary School and a substantial number of residential flat buildings located off Williams Parade, Myra Road and Terrace Road.

The subdivision pattern of the area is characterised by long north south running blocks, with laneways to the south of New Canterbury Road with shorter blocks to the north of this road. Several large lots (formerly industrial or manufacturing sites) have been redeveloped for medium/high density residential. The topography of the precinct falls from the ridge line of New Canterbury Road towards the rail lines. The church on the ridge is a landmark feature of the area, located in its centre.

The streets are relatively wide and are characterised by generally uniform plantings of street trees with footpaths and nature strips. Sandstone kerbs are a feature of most streets in this area. Traffic calming measures have been introduced to Hercules Street, Terrace Road, Myra Road and Garnet Street which feed traffic either over or under the Bankstown railway line. Cobar Street to Kroombit Street also has traffic calming measures. From the elevated parts of the precinct, regional views over the Cooks River to Earlwood are enjoyed by some. Most views are however contained within the precinct.

The main area of open space in the precinct is Allison Playground, a local park with children's play equipment and seating. Along The Parade, is a landscape edge to the Bankstown rail line with large, uniform street trees. Part of Jack Shanahan Reserve is also located within this precinct. Jack Shanahan Reserve has been identified as a potential GreenWay Hub in the GreenWay Active Transport Strategy (2012) due to its significant location and role as a Southern gateway to the GreenWay and Inner West Light Rail.

Part of the GreenWay, a proposed regional cycling and walking trail, traverses this precinct. The GreenWay is an urban green corridor in Sydney's Inner West connecting the Cooks River to Iron Cove. The GreenWay follows the route of the disused Rozelle freight rail corridor, which has been converted to light

rail, and also incorporates the Hawthorne Canal. The vision for the GreenWay is for a "recognisable environmental, cultural and sustainable transport corridor linking two of Sydney's most important waterways".

Areas within parts of the precinct have been identified as having high biodiversity values within the LGA. It is essential that development within those areas considers the potential impacts to biodiversity including native fauna (including Threatened Species and Endangered Populations); native vegetation (including Endangered Ecological Communities); and habitat elements (including their condition, structure, function, connectivity and disturbance).

The dominant land-use pattern of the precinct is medium-high density residential with abutting streets of low density residential development. New Canterbury Road in this precinct is defined by commercial buildings to the west and residential to the east. Residential flat buildings are predominantly two and three storey Post-War buildings, with several new contemporary buildings found in the precinct. Williams Parade is a self contained 'village' of three and four storey residential flat buildings.

Dwellings in the precinct consist mainly of Federation detached houses with a mix of Inter-War, Post-War and some contemporary infill buildings, particularly in the southern parts of the precinct. While brick is the predominant building material there are a number of timber cottages in Hercules Street, Garnet Street and The Parade. Front setbacks vary across the precinct and are not necessarily uniform in all streets. Private open space varies significantly between the single dwellings which have some open space areas and residential flat buildings and multi dwelling housing developments which typically contain less private open space.

There are no Heritage Conservation Areas contained within the precinct.

Front fences are a mix of materials but are generally low in height. Parts of the precinct have retained on street parking. The Parade being the most notable, however the majority of streets have some form of off-street parking comprising a mix of hard stand in front of or beside buildings, carports and garages. Loss of on street parking is notable where large laybacks have been built to residential flat buildings.

2.0 Setting & Context

Existing two storey semi-detached brick building adjacent to site. A relatively new development that has been included into the neighbourhood adjacent utilising the same brick veneer into its construction.



Garnet Lane, opposite the rear of the subject site, where there are several multi residential buildings



Rear lane of subject site, includes the garage of the adjacent new semi-detached dwelling. Note that the colourbond used as a wall for the subject site is detracting and creates a different atmosphere for the rear lane. There is also visible existing shared carpark opposite the site..



2.0 Setting & Context



Exterior view of the existing dwelling house. It is noted that many of the items and elements are dilapidated and the fabric does not appear to be original, whilst it is a replication of original styles. It is further noted that this is one of the few single storey dwellings along the streetscape, and is not characteristic of the Victorian two storey terrace dwellings which populate the area.



Rear view of old rundown existing shed located at the rear of the existing house.



Side view of neighbouring site (23 Garnet Street) through overgrown plantation on the site.

2.0 Setting & Context

Rear laneway view of adjacent property (23 Garnet Street) with a two car garage driveway fronting Garnet Lane.



Existing rear laneway elevation of subject site, note that the colourbond used as a wall for the subject site is distracting and creates a different atmosphere for the rear lane.



Adjacent site (19 Garnet Street & 17 Garnet Street) rear laneway perspective. Note both adjacent sites have revolting fragile tin sheds that diminish the overall quality and safety of the laneway.



3.0 The Proposal

3.1 Description of Proposal

The proposed development at No. 21 Garnet Street, Dulwich Hill seeks to make a torrens title land subdivision to create a new 2 lot semi-detached dwellings to an existing single storey dwelling which possesses a street frontage at Garnet Street and another at Garnet Lane, the proposed works consists of the following:

- Subdivision of Lot 15 in D.P.667348 to provide the existing space with a semi-detached dwelling with a detached secondary dwelling located at the rear of the site for each allotment after subdivision.

- Construction of a new semi-detached two storey principal dwelling located at the front with a secondary dwelling over garage at the rear fronting Garnet Lane.

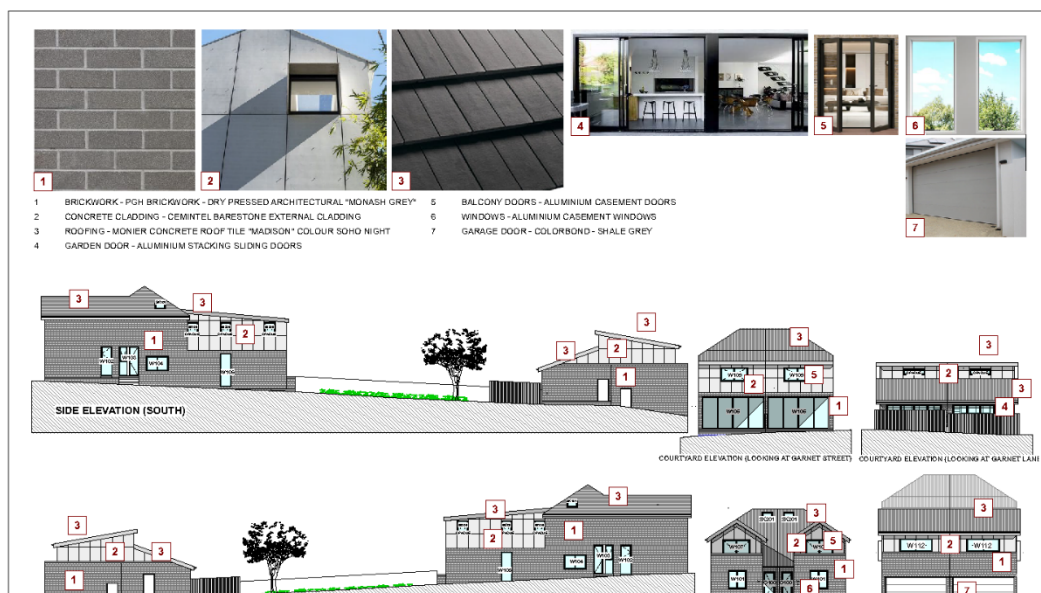
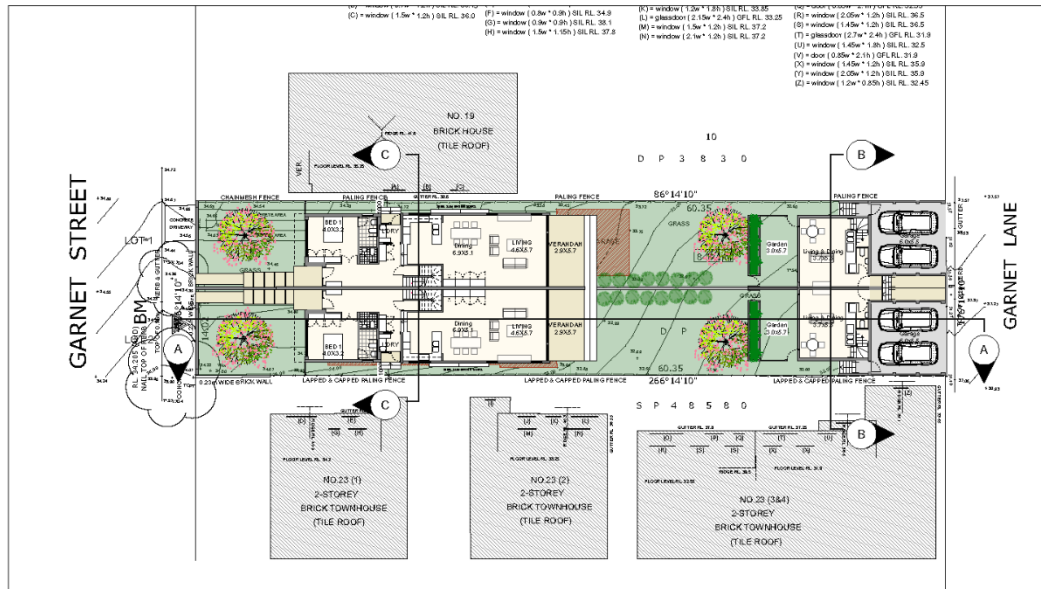
3.2 Numerical Summary

The numerical overview of the proposal is as follows:

Existing Site Area	846.1 sqm
Proposed Lot 1:	
Proposed Site Area	422.93 sqm
Proposed Gross Floor Area	253.62 sqm
Proposed Floor Space Ratio	0.6:1
Permissible Floor Space Ratio	0.6:1
Maximum Building Height	8.2m to 9.2m*
Proposed Lot 2:	
Proposed Site Area	422.93 sqm
Proposed Gross Floor Area	253.62 sqm
Proposed Floor Space Ratio	0.6:1
Permissible Floor Space Ratio	0.6:1
Maximum Building Height	8.2m to 9.2 m*

*Maximum building height varies depending on topography but will not protrude over the maximum permissible height outlined in the Inner West Local Environmental Plans. This is further detailed in section 4.4.3 of the Statement of Environmental Effects that is submitted in conjunction with this Development Application.

3.0 The Proposal



Select Floor Plans & materials of the Proposal (NOT TO SCALE)

4.0 Development Standard Variation Sought

4.1 Identification of the Standard to be Varied

Pursuant to Clause 4.6 of the Local Environment Plan (LEP) this objection seeks to vary the State Environmental Planning Policy (Housing) 2021, Chapter 3 Diverse Housing, Part 1 Secondary Dwellings Clause 53 (2)(b) for “the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.”

Chapter 3 Diverse Housing, Part 1 Secondary Dwellings

Division 2 Secondary dwellings permitted with consent

52 Development may be carried out with consent

(1) Development to which this Part applies may be carried out with consent.

(2) Development consent must not be granted for development to which this Part applies unless—

- (a) no dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land, and
- (b) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and
- (c) the total floor area of the secondary dwelling is—

(i) no more than 60m², or

(ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument—the greater floor area.

53 Non-discretionary development standards—the Act, s 4.15

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

Note—

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

(2) The following are non-discretionary development standards in relation to the carrying out of development to which this Part applies—

(a) for a detached secondary dwelling—a minimum site area of 450m²,

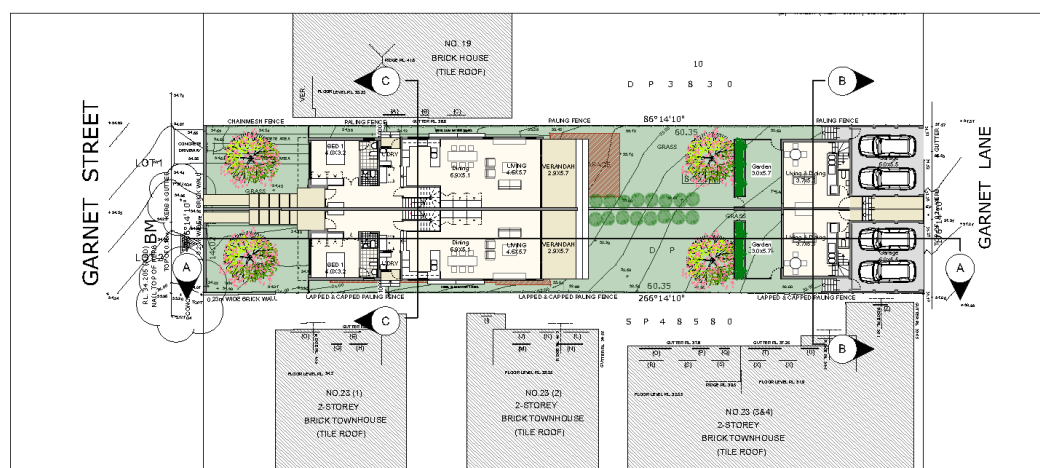
(b) the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.

4.0 Development Standard Variation Sought

4.2 Extent of Variation Sought

The following is a numerical summary of the extent of the variation sought for this proposed development.

Maximum Permissible	Existing	Proposed	Variation
State Environmental Planning Policy (Housing) 2021, Chapter 3, Part 1, Division 2, Clause 53(2)(b)			
The number of parking should be the same number of parking spaces provided on the site immediately before the development is carried out.	Lot 1 - Existing 1	Lot 1 - Proposed 2	1 new off street parking spots
	Lot 2 - Existing 0	Lot 2 - Proposed 2	2 new off street parking spots
As this application applies to both lots, the existing site currently consists of 1 off street parking, the proposal seeks approval for 4 parking spaces in total, 2 for each allotment after subdivision. It should be noted that all proposed off street parking on the site are dedicated solely to the principal dwelling and are not to be used by the residents of the secondary dwelling.			



Clause 4.6 Variation Request | 21 Garnet Street, Dulwich Hill Gadigal Country | Prepared on 28th March 2024 for Draghi Dozoveski | 11 of 22

Document Set ID: 38855009

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FINAL

5.0 Variation Assessment Framework

5.1 Overview of Relevant Considerations

5.1.1 Clause 4.6 of the Local Environmental Plan

Clause 4.6 of the LEP includes provisions that allow for exceptions to development standards in certain circumstances. The objective of the clause are:

- (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.*

The function of Clause 4.6 is to enable flexibility in the application of planning provisions by providing the consent authority the ability to approve a development which does not comply with the numerical controls of certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve a better outcome for and from the development.

In determining whether to grant consent for development which contravenes a development standard, Cl.4.6(3) requires the consent authority to consider a written request from the proponent of an application that seeks to justify the contravention of the development by demonstrating that:

- (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.*

Furthermore, the consent authority must also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the development within the zone, and whether the concurrence of the Secretary has been obtained.

In Cl.4.6(5) the Secretary is required to consider certain matters before granting concurrence, namely:

- (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 Planning Secretary before granting concurrence.*

This document forms a written request in compliance with the required consideration under Cl.4.6 to provide a justification for the contravention of the Minimum subdivision lot size contained in the LEP. The assessment of the proposed variation has been undertaken in accordance with this clause.

5.0 Variation Assessment Framework

5.1.2 NSW Land & Environment Court - Case Law

Several decisions by the NSW Land & Environment Court (NSWLEC) have refined the content and structure in which variations to development standards are required to be approached and considered.

The correct approach to preparing and dealing with a request under Cl.4.6 was eloquently summarised by Chief Justice Brian Preston in the case *Initial Action -v- Wollahra Municipal Council [2018] NSWLEC 118* at [13] - [21]. For brevity, this decision is not reproduced in full but it is necessary to note that this decision establishes that "sufficient environmental planning grounds" must be articulated in the written request.

Additionally, in the decision of the commissioner in *Wehbe v Pittwater Council [2007] NSW LEC 827*, Chief Justice Preston expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. The five tests for this are tabulated and responded to.

Finally, in the decision of Commissioner Pearson in *Four2Five Pty Ltd* and the subsequent appeal endorsed by Commissioner Pain, further reaffirmed in the recent court cases *Moskovich v Waverley Council [2016] NSWLEC1015* and *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC7*, recognises the need to identify grounds particular to the circumstances of a proposed development - as opposed merely to grounds that would apply to any similar development on the site or in the vicinity.

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
<p>(1)(a) To provide an appropriate degree of flexibility in applying certain development standards to particular development,</p> <p>(1)(b) To achieve better outcomes for and from development by allowing flexibility in particular circumstances,</p>	<p>The latest authority in relation to the operation of Clause 4.6 is the decision of His Honour Chief Justice Preston in <i>Initial Action Pty Ltd -v- Woollahra Municipal Council</i> [2018] NSWLEC118. Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of Initial Action, the Court held that:</p> <p><i>In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.</i></p> <p>The legal consequence of this decision is that Cl.4.6(1) is not an operational provision and that the remaining clauses of Cl.4.6 constitute the operational provisions for which an assessment must be made in varying a development standard.</p>
<p>(2) Development consent may, subject to this clause, be granted for 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.</p>	<p>The development standard subject to this cl.4.6 Variation Request is not expressly excluded from the operation of this clause.</p>
<p>(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—</p> <p>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p>	<p>An established manner for addressing whether or not compliance with a development standard is unreasonable or unnecessary was established in the 'five-part test' outlined in <i>Wehbe -v- Pittwater</i> [2007] NSWLEC 827.</p> <p>It is not considered necessary for an application to need to establish all of the tests or 'ways' a development standard is unreasonable or unnecessary. It may be sufficient to establish only one way, although if more ways are applicable, an Applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way. The development is justified against the Wehbe Tests in the subsequent section of this report.</p>

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.	
<p>The sufficient environmental planning grounds to justify the contravention of the development standard are as follows:</p> <ul style="list-style-type: none"> - In spite of the overall proposal introducing an additional parking space on the site it is allocated towards the principal dwelling and not to be utilized by the secondary dwelling, hence the construction of the secondary dwelling does not lead to an increase of parking spaces on the site but rather the principal dwelling and is deemed acceptable as it is designed to accommodate a family of four (4) or more with future growth and needs for residential mobility in and around the area of Sydney. - The proposal will provide a consistent laneway frontage along Garnet Lane, majority of properties have rear lane garages that provide parking for their property, the proposed garage has a consistent boundary setback and provide adequate driveway safety to pedestrians. - Along Garnet Street, there are multiple examples of lots that provide or can accommodate more than one off street parking, this is evident from No. 15, 30, 31, 34, 42, 44 Garnet St all having more than one off street parking spot. With other lots within the area providing more than one parking spot, it is acceptable for the proposal to provide an additional parking spot designed for the principal dwelling, additionally, the proposed car parking spot location is at the rear of the site fronting Garnet Lane with adequate setbacks and cover to provide a safe and secure environment for both pedestrians and the resident's vehicles, the solution is much more positive and preserves the front streetscape and provide a coherent streetscape expression with neighbouring buildings. 	
(4) Development consent must not be granted for development that contravenes a development standard unless—	
(a) the consent authority is satisfied that—	
<i>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</i>	
This report provides an adequate assessment of relevant considerations under cl.4.6(3) and provides a written response for the purposes of applying for a development standard variation.	
<i>(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</i>	
Objectives of the SEPP Housing 2021 - Principles of Policy	
Objective	Compliance / Response
a) Enabling the development of diverse housing types, including purpose-built rental housing.	<p>Complies</p> <p>The proposal introduces the semi-detached dwelling typology towards Garnet Street which is predominantly occupied by single storey detached dwelling, this introduces greater diversity along Garnet Street, additionally it is not uncommon to see secondary dwellings as part of the site developments and the proposal is considered consistent while simultaneously increasing the diversity of housing types along Garnet Street.</p>

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,	Complies The proposed semi-detached dwelling was designed with consideration to accommodate different generations of families together, this includes the ground floor bedroom to accommodate seniors with disability, additionally the proposed secondary dwelling allows for families with children to grow out and have the opportunity to live by themselves in an environment of constant housing crisis.
c) ensuring new housing development provides residents with a reasonable level of amenity,	Complies The proposal ensures the development is provided with high levels of amenity, this includes private open spaces that are designated with space for family activities, adequate levels of solar access in maintaining a bright environment, a secondary dwelling which can be rented out or be transformed into a guest house or children's house for a flexible function and a two car garage provided for future residential growth and improving local pedestrian safety.
d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,	Complies The proposal promotes the delivery of additional and increased housing density in a location of good existing infrastructure. With the subject site within 10mins walk from Hurlstone Park Train Station and multiple bus stops along New Canterbury Road
e) minimising adverse climate and environmental impacts of new housing development,	Complies The proposal optimises the usage of natural lighting with provided floor to ceiling windows located on the ground floor and skylights for the first floor ensuring solar access is achieved while retaining visual privacy. Additionally, a solar panel system has been adopted to minimise electricity usage of the proposed development.
f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,	Complies The proposal introduces a semi-detached dwelling that reflects and enhances its locality by providing a facade language that is in keeping with the prevailing streetscape expression, this is represented with the brick facades rising to match neighbouring existing brick heights, additionally the front gable roof form reflects the neighbouring form and creates a coherent streetscape language along Garnet Street.
g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,	Not Applicable The proposal is not designed to provide short-term rental, it is a semi-detached dwelling designed for families to live long term due to its improved residential amenities. Additionally, the proposal is not at a scale that can accommodate short-term rentals.
h) mitigating the loss of existing affordable rental housing.	Not Applicable The proposal does not seek to reduce the number of existing affordable rental housing as the existing building on site is a private dwelling.

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
Clause 53 Non-Discretionary development standards - the Act, s 4.15	
1) The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters	Complies, The proposal has identified the particular development standards relating to the development for the purposes of a secondary dwelling. Despite not meeting the controls, the proposal demonstrates strong consistency with the overall objectives of the SEPP (Housing) 2021 and thus is considered acceptable.
2) The following are non-discretionary development standards in relation to the carrying out of development to which this Part applies—	-
(a) for a detached secondary dwelling—a minimum site area of 450m ² ,	The proposal proposes a detached secondary dwelling on a subdivided lot size of 422.93sqm, applicable to both allotments. Despite not meeting the numerical controls, the proposal demonstrates strong consistency with the overall objectives of the SEPP (Housing) 2021 and thus is considered acceptable.
(b) the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	The proposal contains a total of 4 parking spots with 2 parking spots assigned per allotment. Despite it increasing the total number of parking spaces when compared to immediately before the development, the proposal demonstrates strong consistency with the overall objectives of the SEPP (Housing) 2021 and thus is considered acceptable.
Objectives of Clause 2.1 Land Use Zone (R2 Low Density Residential)	
To provide for the housing needs of the community within a low density residential environment.	Complies The proposal complies with the objectives of the zone by proposing a use which is permissible within the land zone. The proposal rationalises the existing residential layout to provide for a contemporary dwelling which respects its context whilst also meeting the amenity needs of contemporary living.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	Not Applicable The proposal is a residential use.
To provide residential development that maintains the character of built and natural features in the surrounding area.	Complies The proposal seeks to maintain the residential use by constructing new dwellings within a residential area.
2 Permitted without consent	-
Home occupations	Complies The proposed development is a demolition of the existing building and a subsequent construction of semi-detached housing with 2 lot Torrens Title subdivision which involves home occupation.

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
3 Permitted with consent	
Bed and breakfast accommodation; Centre-based child care facilities; Dwelling houses; Group homes; Home businesses; Home industries; Hostels; Neighbourhood shops; Oyster aquaculture; Pond-based aquaculture; Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Tank-based aquaculture; Any other development not specified in item 2 or 4	COMPLIES The proposed use is permissible with consent and does activate this clause.
4 Prohibited	
Advertising structures; Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Biosolids treatment facilities; Boarding houses; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Car parks; Caravan parks; Cemeteries; Charter and tourism boating facilities; Commercial premises; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Emergency services facilities; Entertainment facilities; Environmental facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Information and education facilities; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Passenger transport facilities; Port facilities; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Research stations; Residential accommodation; Restricted premises; Rural industries; Service stations; Sewage treatment plants; Sex services premises; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Waste or resource management facilities; Water recreation structures; Water supply systems; Wharf or boating facilities; Wholesale supplies	COMPLIES The proposed use is not of prohibited use.

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
(b) the concurrence of the Planning Secretary has been obtained.	The proposed variation cannot be numerically measured thus is deemed to have 0% percentage in variation. As a result, external referral and concurrence of the Planning Secretary is not required for this project.
(5) In deciding whether to grant concurrence, the Planning Secretary must consider—	
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and	Not Applicable. Concurrence of the Secretary is not required.
(b) the public benefit of maintaining the development standard, and	Not Applicable. Concurrence of the Secretary is not required.
(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.	Not Applicable. Concurrence of the Secretary is not required.
(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.	Not Applicable. The subject site is not located within one of the zones listed under this clause.
(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).	Noted. It is the responsibility of the consent authority Council to keep a record of its assessment of this variation.
(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,	Compliant. The proposed development is not an application for complying development.

5.0 Variation Assessment Framework

5.3 Assessment Against Relevant NSWLEC Principles

Wehbe -v- Pittwater Council [2007] NSWLEC 827

5.3.1 Test 1: The Objectives of the Development Standard Are Achieved Notwithstanding Non-Compliance with the Standard.

As discussed in Section 5.2 of this report, the objectives of the development standard are adequately achieved notwithstanding non-compliance with the numerical control of the standard:

- The proposal's addition of a car space ensures that new housing are built to increase residential amenity, the proposal is designed to accommodate a family of four (4) and up, thus the addition of a car space is acceptable and provides adequate off street parking to reduce the amount of street congestion along Garnet Street hence improving pedestrian safety.

- The proposed car space is located within a dedicated rear lane garage designed to accommodate two parking spaces in a comfortable and safe environment. The garage and driveway design allows for adequate side boundary setbacks in ensuring high levels of pedestrian safety and residential amenity is achieved while providing a laneway expression that is consistent with neighbouring buildings.

This proposed variation therefore satisfies the requirements under Wehbe test 1.

5.3.2 Test 2: The Underlying Objective or Purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

This test is not relied upon for the purposes of this development standard variation request.

5.3.3 Test 3: The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required with the consequence being that compliance is unreasonable.

This test is not relied upon for the purposes of this development standard variation request.

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

Within the SEPP (Housing) 2021 Chapter 3, Part 1, Division 2, Clause 53(2)(b) states "the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out." suggesting that an increase of parking is prohibited, however, in the Marrickville DCP a direct conflict of parking provision is published where in section 2.10.5 C2 iii) states "Required parking is to be excluded from GFA Calculations, with any parking in excess of those requirements included in GFA calculations." This clause indirectly alludes to allowing more than the provisioned parking spaces at the cost of decreased internal floor area, with the proposal complying with the FSR with the FSR calculation including a parking spot, it is considered acceptable in providing an extra parking space than provisioned. This demonstrates the inconsistency in development standards which oppose one another which shows council's own actions have abandoned the standard and hence compliance with the standard is unnecessary and unreasonable.

This proposed variation therefore satisfies the requirements under Wehbe test 4.

5.3.5 Test 5: The zoning of the particular land on which the development is proposed not be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstance of the case would also be unreasonable or unnecessary.

This test is not relied upon for the purposes of this development standard variation request.

6.0 Report Findings

6.1 Recommendations

There are no further recommendations to be made in this report.

6.2 Conclusion

Clause 4.6 of the Local Environmental Plan allows the consent authority to grant consent for development even though the development seeks to depart from the numerical controls regarding the CI 4.1 Minimum Subdivision Lot Size of a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in the application of development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and,
- That 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.

For the following reasons, it is concluded that the proposed numerical variation to the development standard is acceptable and presents sufficient environmental planning grounds because:

- In spite of the proposal providing an additional parking spot when compared to the existing condition, it is considered acceptable as it improves the residential amenity of the subject site.
- Many other lots in the area provide or have the ability to provide more than one off site parking, this includes No. 15, 30, 31, 34, 42, 44 Garnet St; therefore, it is acceptable for the proposal to provide an additional parking spot, subsequently, by locating the car parking spots at the rear of the site fronting Garnet Lane, it provides a coherent and unobstructed front streetscape along Garnet Street.
- With the proposal providing one additional parking spot accessed through Garnet Lane per allotment, it is able to improve pedestrian safety along Garnet Street by removing a driveway cross and reducing vehicle movement along Garnet Street, and not disturbing the existing neighbouring site condition and amenities.

In view of this, it is believed that this Clause 4.6 Variation Request is supportable by the consent authority and that, notwithstanding the numerical non-compliance, the proposal is appropriate for its context, consistent with both the objectives of the standard and the land zone.

7.0 Appendix A: Curriculum Vitae of Peter Lonergan



Peter J. Lonergan

Director & Nominated Architect

FRAIA | NSWARB 5983 | DEP 0001205 | PDP 0000401

Formal Qualifications

BArchitecture | UNSW
BScArchitecture (Hons) | UNSW
MBEnv (Building Conservation) | UNSW
Certificate Sustainable Design | University of Sydney

Career Profile

Peter Lonergan is Director of Cracknell & Lonergan Architects, a practice he established with Julie Cracknell in 1984. Peter has accumulated over thirty-five years of experience in the field of architecture, interior design, heritage conservation, exhibition design and expert consultancy for the Land & Environment Court. He has also lectured, written, published and taught extensively in the fields of architecture, heritage, planning, history and design. Peter was elected a Fellow of the Royal Australian Institute of Architects in 2019 and continues to serve as a member of the NSWAIA Chapter's Heritage Committee.

The practice is actively engaged in the design and construction of many projects of varying scale, often with complex heritage issues. The firm has also been actively engaged in the procurement design and construction of public art projects, also often within very sensitive heritage contexts. Cracknell & Lonergan Architects also works extensively within the fields of heritage conservation and the adaptive reuse of many heritage items and historic structures, as well as providing heritage consultancy services to Sydney architectural practices, advising on the feasibility and opportunities of adaptation.

Experience

NSW Land & Environment Court

Participation in numerous matters in the NSWLEC both as design architect and as expert witness in town planning and heritage matters. Involved in supplying evidence in *Coorey -v- Hunters Hill* which ultimately led to the establishment of the planning principle for determining if a project is new development or alterations and additions.

Architecture

Bradfield, East Crescent St, McMahon's Pt | Residential
Aleuca, Miller St, Cammeray | Residential
Kalmar Antiques, QVB | Retail / Heritage

Heritage

Powerhouse Museum | Independent Heritage Review
Mary MacKillop Place | Conservation Management
Mechanics School of Arts (Arthouse Hotel) | Conservation

North Sydney Masonic Temple | Conservation Management

Jarjum College | Restoration & Conservation

Pemulwuy, 'The Block', Redfern | Redevelopment

Redfern Cottage, Minto | Conservation Management

Public Art

Yininmadyemi - Thou Didst Let Fall | Artist: Tony Albert

Murri Totem Poles | Artist: Reko Rennie

Indigenous Art Commission | Musee du Quai Branly, France