



DEVELOPMENT ASSESSMENT PANEL REPORT

Application No.	DA/2024/0448
Address	20A & 20B Hopetoun Street PETERSHAM NSW 2049
Proposal	Alterations and additions to an existing garage and outbuilding, including partial demolition of existing structures and construction of internal mezzanines for use as storage.
Date of Lodgement	04 June 2024
Applicant	Mr Darren Laybutt
Owner	Ms Theony Antoun
Number of Submissions	Initial: 0
Cost of works	\$22,000.00
Reason for determination at Planning Panel	Section 4.6 variation exceeds 10%
Main Issues	Section 4.6 variation
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

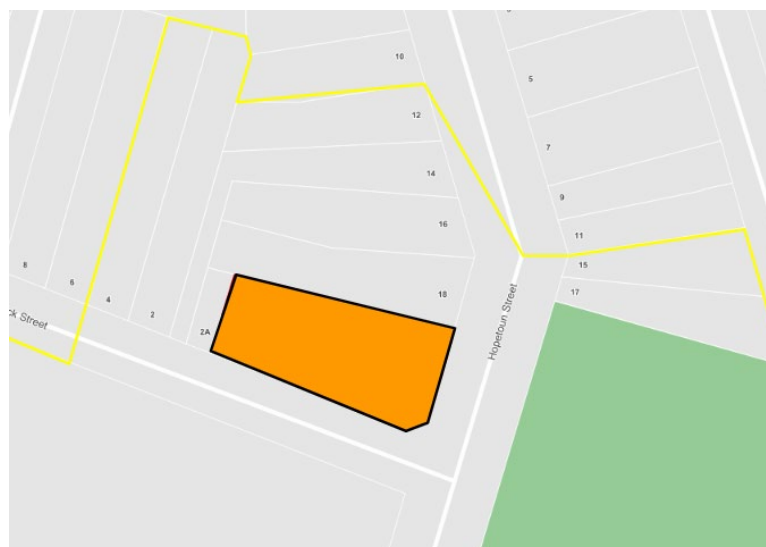


Figure 1: Locality map

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to an existing garage and outbuilding, including partial demolition of existing structures and construction of internal mezzanines for use as storage. at 20A & 20B Hopetoun Street Petersham.

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

The main issues that have arisen from the application include:

- Non-compliance with Floor Space Ratio Development Standard

The non-compliances are acceptable given that the proposal will not result in adverse amenity impacts to surrounding sites and the development will not result in undue impacts to the streetscape and wider area. Therefore, the application is recommended for approval.

2. Proposal

The proposal seeks development consent for alterations and additions to an existing garage and outbuilding, including partial demolition of existing structures and construction of internal mezzanines for use as storage. Specifically, the proposal comprises of the following works to the existing structure at the rear:

- To demolish the existing mezzanine, internal stairs, and car hoist.
- To demolish a portion of the outbuildings' external wall to create a door on 20A Hopetoun Street to access the structure at the rear.
- A portion of the outbuildings' roof to facilitate skylights.
- Construction for a new mezzanine on each lot within the existing rear structure/s.
- New stud wall on the mezzanine level.
- Fire-rated walls to separate the mezzanines along the lot boundary.
- A set of stairs for access to the mezzanine on 20A Hopetoun Street.
- A ladder access to the mezzanine for 20B Hopetoun Street.
- New door for access into the outbuilding on 20A Hopetoun Street.
- Four (4) skylights to the existing roof of the rear structure/s.

3. Site Description

The subject site is located on the western side of Hopetoun Street, between Frederick Street and Trafalgar Street. The sites the subject of this application include no's. 20A and 20B Hopetoun Street which are generally rectangular shaped, with an area of

328.8sqm and 320.8sqm, respectively. The sites are legally described as Lots 101 & 102 in DP 1255001.

The sites have a frontage to Hopetoun Street of 9.655 metres (20A) and 6.71 metres (20B). No. 20B has a secondary frontage to Frederick Street of 36.015 metres. The site is affected by a 1.2 metre wide water drainage easement within no. 20A.

Each lot supports a two-storey brick semi-attached dwelling with attic. A single storey outbuilding was approved at the rear, located across both lots (attached).

The surrounding streetscape consists mainly of single and two storey dwelling houses to the north and west, with public recreation and worship facilities located south and east of the site.

The site is adjoined by 18 Hopetoun Street to the north which contains a two-storey dwelling house. West of the sites is an Ausgrid Electricity Station. East of the site is Maundrell Park and to the south is the All-Saints Anglican Church.

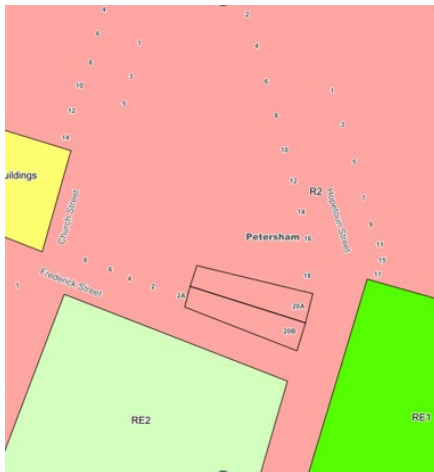


Figure 2: Zoning map



Figure 3: Image of the dwellings fronting Hopetoun Street

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

DA201500748, approved on 20/06/2016, 'To demolish existing improvements, subdivide the land into 2 lots and construct a 2 storey dwelling with attic on each lot with a detached garage at the rear of Lot A and a storage shed at the rear of Lot B'.

DA201500748.01, approved on 24/11/2016, 'Under Section 96 of the Environmental Planning and Assessment Act to modify Determination No.201500748 dated 20 June

2016 to delete condition 6 requiring retention of the *Ficus carica* (common fig) in the south-eastern corner of the property’.

CC201800119, issued on 01/05/2018, construction certificate submitted by private building surveyor

DA201500748.02, refused on 30/07/2018, ‘under Section 4.55 of the Environmental Planning and Assessment Act to modify Modified Determination No. 201500748.01 dated 24 November 2016 to increase the height of the garage by 1 metre and install a window on the southern elevation’. Appeal upheld by the Land and Environment Court on 18/06/2019.

DA201500748.03, withdrawn on 31/10/2019, ‘Application under section 4.55 of the Environmental Planning and Assessment Act to modify Determination No. DA201900748, modification involves deletion of condition 59 relating to a splay corner’.

SC/2020/0003, issued on 18/05/2020, subdivision certificate.

MOD/2020/0210, withdrawn on 27/07/2020, ‘Modification to delete the parking space for the northernmost dwelling’.

OCP/2021/0306, issued on 28/04/2021, Occupation Certificate issued by Private Certifier.

EPA/2023/0022 & EPA/2023/0023, Notice of Intent issued 22/03/2023, for the following works:

- Habitable use of the attic within both no. 20A and 20B Hopetoun Street, including the construction of a door installed in the masonry common wall within the adjoining attics, solely used and accessed by occupants of no. 20B;
- Construction of an unauthorised mezzanine floor within the ‘Shed and Storage’ located at the rear of no. 20A, which extended into the adjoining ‘Garage’ of no. 20B, solely used and accessed by occupants of no. 20B as one single outbuilding;
- Construction of an unauthorised boundary fence within the approved rear private open space of no. 20A, restricting access for no. 20A to the outbuilding; and
- Construction of an unauthorised additional kitchen and associated cooking facilities within ‘Bed 3’ on the first floor.

DA/2023/0798, refused on 09/04/2024, by the Inner West Local Planning Panel, for ‘Construction of a mezzanine level within the rear outbuilding, use the outbuilding as a garage and studio in association with 20B Hopetoun Street and carry out a subdivision boundary realignment of 20A and 20B Hopetoun Street to contain the outbuilding completely on 20B Hopetoun Street’.

Note: DA201500748 approved the Torrens title subdivision, construction of two two-storey dwellings with attic, and a single storey outbuilding at the rear of the sites, to be used as a garage for no. 20B Hopetoun Street, and a storage area for no. 20A Hopetoun Street. A wall was proposed to separate the two areas within the outbuilding, following the approved boundary line.

Surrounding properties

None relevant

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.

A search of Council's records in relation to the site has not indicated that the site is one that is specified in Section 4.6(4)(c).

The application involves does not involve category 1 remediation under the SEPP.

SEPP (Biodiversity and Conservation) 2021

Chapter 6 Water Catchments

Section 6.6 under Part 6.2 of the *Biodiversity and Conservation SEPP* provides matters for consideration which apply to the proposal. The subject site is located within the designated hydrological catchment of the Sydney Harbour Catchment and is subject to the provisions contained within Chapter 6 of the above *Biodiversity Conservation SEPP*.

It is considered that the proposal remains consistent with the relevant general development controls under Part 6.2 of the *Biodiversity Conservation SEPP* and would not have an adverse effect in terms of water quality and quantity, aquatic ecology, flooding, or recreation and public access.

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 the section as follows:</p> <ul style="list-style-type: none"> • The proposal encourages development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles, • The proposal conserves and maintains the natural, built and cultural heritage of Inner West, • The proposal encourages diversity in housing to meet the needs of, and enhance amenity for, Inner West residents, • The proposal creates a high quality urban place through the application of design excellence in all elements of the built environment and public domain, • The proposal prevents adverse social, economic and environmental impacts on the local character of Inner West, • 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	<ul style="list-style-type: none"> The application proposes alterations and additions to a pair of semi-detached dwellings, which are permissible with consent in the R2 zone. The proposal is consistent with the relevant objectives of the zone as it continues to provide for the housing needs of the community within a low density residential environment and the proposal will not result in changes to the character of the area. 	Yes
Section 2.7 Demolition requires development consent	The proposal satisfies the section as follows: <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, subject to conditions

Part 4 – Principal development standards

Control	Proposed		Compliance
Section 4.3 Height of building	Maximum	9.5m	Yes
	Proposed	5.6m	
Section 4.4 Floor space ratio	Maximum (20A)	0.7:1 or	No
	Maximum (20B)	0.7:1 or	
	Proposed (20A)	0.77:1 or 252sqm	
	Proposed (20B)	0.8:1 or 256sqm	
	Variation (20A)	21.88sqm or 9.5%	
	Variation (20B)	31.55sqm or 14%	
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 Section 4.4 Floor Space Ratio.		See discussion below

Section 4.6 – Exceptions to Development Standards**Floor Space Ratio development standard**

The applicant seeks a variation to the above mentioned floor space ratio development standard under section 4.6 of the *IWLEP 2022* by 21.88sqm (or 9.5%) to lot 20A and by 31.55sqm (or 14%) to lot 20B. Section 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

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. 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.

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 floor space ratio development standard are achieved notwithstanding the numeric non-compliance.

The **first objective of Section 4.4** is "to establish a maximum floor space ratio to enable appropriate development density". The written request, *inter alia*, states

While the technical floor area is increased on both properties, the density of visible development on the land is effectively unaltered as there is no increase in the physical volume of structures on the land as the mezzanine is facilitated within the existing structure. There is no increase in population density on the land as the mezzanines are not sought for bedrooms.

The **second objective of Section 4.4** is "to ensure development density reflects its locality". The written request states

The approval of the two storey with attics semi-detached dwellings and the detached garage and outbuilding structure at the rear of both properties was considered to be an acceptable level of density under DA201500748, and modified under DA2015000748.02. While there is an increase in GFA, the additional floor area is all contained within existing structures. The structures on the site still read as a density reflective of the locality.

The **third objective of Section 4.4** is "to provide an appropriate transition between development of different densities". The written request states

The site sits within a precinct of R2 Low Density Residential and is not located at the transition point to a different land zone or density.

As all new GFA is within existing structures, there is no impact on the visibility of the density of the development on the land. There is no impact on the application of FSR to transition between development of different densities.

The **fourth objective of Section 4.4** is "to minimise adverse impacts on local amenity". The written request states

All additional mezzanine floor area is contained within the existing garage/outbuilding and are sought to be approved as storage areas. Consequently, there are no visual privacy, acoustic privacy, overshadowing or visual bulk impacts on local amenity.

The **fifth objective of Section 4.4** is “to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain”. The written request states

The proposal involves works to the garage/outbuilding only without increasing its footprint. Consequently, it has no implications on tree canopy or any effect on the public domain.

Council accepts the applicant’s submissions in the written request that the breach with the Floor Space Ratio development standard is consistent with the objectives of this standard.

As the proposal achieves the objectives of the floor space ratio development 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 three (3) environmental planning grounds to justify contravening the Floor Space Ratio development standard. Each will be dealt with in turn:

Environmental Planning Ground 1

The proposed mezzanine levels are within the existing structures.

This environmental planning ground is accepted because the proposed works will not result in significant discernible changes to the structures as the mezzanines are proposed within the existing structures. External changes are minor, consisting of four (4) new skylights in the existing roof plane and a new door to access the structure from lot 20A.

Environmental Planning Ground 2

There are no impacts on the streetscape or the amenity of adjoining properties.

This environmental planning ground is accepted because the proposal will not result in undue amenity impacts to neighbouring sites, the streetscape, nor wider area, noting that there will be no additional bulk and overshadowing. Further, the proposal will not result in undue visual or acoustic privacy impacts.

Environmental Planning Ground 3

“The approvals granted for the original development and the outbuilding, atypically tall, mean that the circumstances of this proposed variation are unique. Accordingly, no precedent would be set by the contravention of the development standard given the circumstances”.

This environmental planning ground is accepted because the height and design of the approved structures allow the mezzanines to be added without adding to the bulk and scale of it.

Cumulatively, the aforementioned 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.*

Council accepts the applicant's submissions in the written request that the relevant objectives of the R2 zone are met. The proposed development will have no undue impacts on the low density residential area nor the character of the area as the mezzanines are within the existing structures. Hence there is no additional bulk and overshadowing and the development will not result in undue visual or acoustic privacy impacts.

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

Part 5 – Miscellaneous provisions

Section	Compliance	Compliance
Section 5.10 Heritage conservation	<p>The subject site is not listed as a heritage item nor is the site located within a Heritage Conservation Area (HCA).</p> <p>However, the subject site is located in the vicinity of multiple heritage items and a HCA.</p> <p>There is no additional bulk and scale from the proposal and while external changes will be partially visible from the heritage item/s or HCA, the changes are to a contemporary building and minor. Hence, there will be no adverse impacts on the character of the buildings, heritage items and HCA in the vicinity of the subject site.</p> <p>Given the above the proposal preserves the environmental heritage of the Inner West</p>	Yes

Part 6 – Additional local provisions

Section	Proposed	Compliance
Section 6.3 Stormwater Management	<ul style="list-style-type: none"> The development does not change permeable surfaces and there are no changes required to the recently approved stormwater drainage design. 	Yes
Section 6.8 Development in areas subject to aircraft noise	<ul style="list-style-type: none"> The site is located within the ANEF 20-30 contour. The mezzanine levels are proposed to be used for storage, not for habitable purposes. As such, the proposed development will not result in an increase in the number of dwellings or people affected by aircraft noise. A condition has been included in Attachment A, outlining that the mezzanines are not to be used for habitable purposes. 	Yes, subject to conditions.

B. Development Control Plans**Summary**

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 2.3 – Site and Context Analysis	Yes
Part 2.6 – Acoustic and Visual Privacy	Yes
Part 2.7 – Solar Access and Overshadowing	Yes
Part 2.10 – Parking	Yes, see discussion
Part 4.1 – Low Density Residential Development	Yes, see discussion
Part 9 – Strategic Context	Yes, see discussion

The following provides discussion of the relevant issues:

Part 2.10 Parking

Previously, lot 20B has approval for a double car stacker in the garage accessed from Frederick Street. Two (2) car parking spaces on the ground floor level are proposed to this lot, which exceeds the prescribed on-site car parking rate by one (1) space.

No change proposed to lot 20A.

Part 4.1 Low Density Residential Development

While an increase in GFA and FSR is sought, there will be no change to setbacks, site coverage, open spaces and landscaping as the addition of a mezzanine level is contained within the existing structure at the rear. As such, except the addition of four (4) skylights to the existing roof plane, there will be no discernible changes. The proposal complies with parking provisions and will not result in any undue amenity impacts to neighbouring sites, the streetscape and wider area.

Part 9 – Strategic context

The sites are located within the Stanmore South Precinct (Precinct 7) within Part 9.7 of the MDCP 2011. The proposal is consistent with the desired future character of the area, noting:

- The proposal will not result in any additional bulk and scale.
- The proposal will retain the character of the precinct.

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 notified in accordance with Council's Community Engagement Strategy between 11 June 2024 to 25 June 2024.

No submissions were received.

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. Referrals

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

- Development Engineer;
- Building Certification; and
- Regulatory.

7. Conclusion

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

The development will not result in any significant impacts on the amenity of the adjoining premises/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.

8. Recommendation

- A. The applicant has made a written request pursuant to Section 4.6 of the *Inner West Local Environmental Plan 2022*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the Floor Space Ratio development 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 exceedance is not inconsistent with the objectives of the standard 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/2024/0448 for Alterations and additions to an existing garage and outbuilding, including partial demolition of existing structures and construction of internal mezzanines for use as storage. at 20A & 20B Hopetoun Street, Petersham subject to the conditions listed in Attachment A.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

1. The development is consistent with the objectives of the zone;
2. The development is generally consistent with the development controls;
3. The development will not unreasonably compromise the amenity of nearby properties;
4. The development is compatible with the character of the area;
5. The development is considered suitable for the site; and
6. Approval is considered to be in the public interest.

GENERAL CONDITIONS

	Condition
1.	<p>Boundary Alignment Levels</p> <p>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.</p> <p>Reason: To allow for pedestrian and vehicular access.</p>
2.	<p>Stormwater Drainage System – Simple</p> <p>Stormwater runoff from proposed new or altered roof areas may be discharged to the existing site drainage system.</p> <p>Any existing component of the stormwater system that is to be retained, must be checked and certified by a Licensed Plumber or qualified practising Civil Engineer to be in good condition and operating satisfactorily.</p> <p>If any component of the existing system is not in good condition and /or not operating satisfactorily and/or impacted by the works, the drainage system must be upgraded to discharge by gravity to the kerb and gutter of a public road.</p> <p>Reason: To ensure adequate disposal of stormwater.</p>

3.	<p style="text-align: center;">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 Local Government Act 1993 and/or Section 138 of the Roads Act 1993. Permits are required for the following activities:</p> <ul style="list-style-type: none"> • 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; • A concrete pump across the roadway/footpath; • Mobile crane or any standing plant; • Skip Bins; • Scaffolding/Hoardings (fencing on public land); • Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.; • Awning or street veranda over the footpath; • Partial or full road closure; and • 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>
4.	<p style="text-align: center;">Insurances</p> <p>Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.</p> <p>Reason: To ensure Council assets are protected.</p>

5.

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
DA02 Issue C	Existing Floor Plan - Garage	16/05/2024	Studio Panetta
DA03 Issue C	Existing Floor Plan - Mezzanine	16/05/2024	Studio Panetta
DA05 Issue C	Existing Roof Plan	16/05/2024	Studio Panetta
DA07 Issue C	Existing East & West Elevation - garage	16/05/2024	Studio Panetta
DA08 Issue C	Existing Sections	16/05/2024	Studio Panetta
DA09 Issue C	Proposed Floor Plan - Garage	16/05/2024	Studio Panetta
DA10 Issue C	Proposed Floor Plan - Mezzanine	16/05/2024	Studio Panetta
DA12 Issue C	Proposed Roof Plan	16/05/2024	Studio Panetta
DA13 Issue C	Proposed South & North Elevation - Garage	16/05/2024	Studio Panetta
DA14 Issue C	Proposed East & West Elevation - garage	16/05/2024	Studio Panetta
DA15 Issue C	Proposed Sections	16/05/2024	Studio Panetta

As amended by the conditions of consent.

Reason: To ensure development is carried out in accordance with the approved documents.

6.

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.

7.	<p style="text-align: center;">Storage of Materials on public property</p> <p>The placing of any materials on Council's footpath or roadway is prohibited, without the prior consent of Council.</p> <p>Reason: To protect pedestrian safety.</p>
8.	<p style="text-align: center;">Other works</p> <p>Works or activities other than those approved by this Development Consent will require the submission of a new Development Application or an application to modify the consent under Section 4.55 of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>Reason: To ensure compliance with legislative requirements.</p>
9.	<p style="text-align: center;">National Construction Code (Building Code of Australia)</p> <p>A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out. All building works approved by this consent must be carried out in accordance with the requirements of the National Construction Code.</p> <p>Reason: To ensure compliance with legislative requirements.</p>
10.	<p style="text-align: center;">Notification of commencement of works</p> <p>Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the PCA (not being the council) has given the Council written notice of the following information:</p> <ul style="list-style-type: none"> a. In the case of work for which a principal contractor is required to be appointed: <ul style="list-style-type: none"> i. The name and licence number of the principal contractor; and ii. The name of the insurer by which the work is insured under Part 6 of that Act. b. In the case of work to be done by an owner-builder: <ul style="list-style-type: none"> i. The name of the owner-builder; and ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit. <p>Reason: To ensure compliance with legislative requirements.</p>
11.	<p style="text-align: center;">Dividing Fences Act</p> <p>The person acting on this consent must comply with the requirements of the <i>Dividing Fences Act 1991</i> in respect to the alterations and additions to the boundary fences.</p> <p>Reason: To ensure compliance with legislative requirements.</p>

12.	<p align="center">Lead-based Paint</p> <p>Buildings built or painted prior to the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe. Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving the removal of lead based paints. Precautions should therefore be taken if painted surfaces are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned prior to occupation of the room or building.</p> <p>Reason: To protect human health.</p>
13.	<p align="center">Dial before you dig</p> <p>Contact "Dial Prior to You Dig" prior to commencing any building activity on the site.</p> <p>Reason: To protect assets and infrastructure.</p>
14.	<p align="center">Asbestos Removal</p> <p>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.</p> <p>Reason: To ensure compliance with the relevant environmental legislation.</p>
15.	<p align="center">Bin Storage - Residential</p> <p>All bins are to be stored within the property. Bins are to be returned to the property within 12 hours of having been emptied.</p> <p>Reason: To ensure resource recovery is promoted and residential amenity is protected.</p>

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

	Condition
16.	<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>

17.	<p>Parking Facilities - Domestic</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans and certification by a suitably qualified Civil Engineer demonstrating that the design of the vehicular access and off-street parking facilities comply with Australian Standard <u>AS/NZS2890.1-2004</u> Parking Facilities – Off-Street Car Parking and the following specific requirements:</p> <ul style="list-style-type: none"> a) A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors. b) The external form and height of the approved structures must not be altered from the approved plans. <p>Reason: To ensure parking facilities are designed in accordance with the Australian Standard and council's DCP.</p>
18.	<p>Structural Certificate for retained elements of the building</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a Structural Certificate prepared by a practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction. The certificate must also include all details of the methodology to be employed in construction phases to achieve the above requirements without result in demolition of elements marked on the approved plans for retention.</p> <p>Reason: To ensure the structural adequacy of the works.</p>
19.	<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 provides requirements are provided to the certifier.</p>

BEFORE BUILDING WORK COMMENCES

	Condition
20.	<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 Roads Act 1993 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>
21.	<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>
22.	<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>
23.	<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>
24.	<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
25.	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.
26.	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.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

	Condition
27.	No Encroachments Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any encroachments on to Council road or footpath resulting from the building works have been removed, including opening doors, gates and garage doors with the exception of any awnings or balconies approved by Council. Reason: To maintain and promote vehicular and pedestrian safety.
28.	Protect Sandstone Kerb Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any stone kerb, damaged as a consequence of the work that is the subject of this development consent has been replaced. Reason: To ensure Council assets are protected.

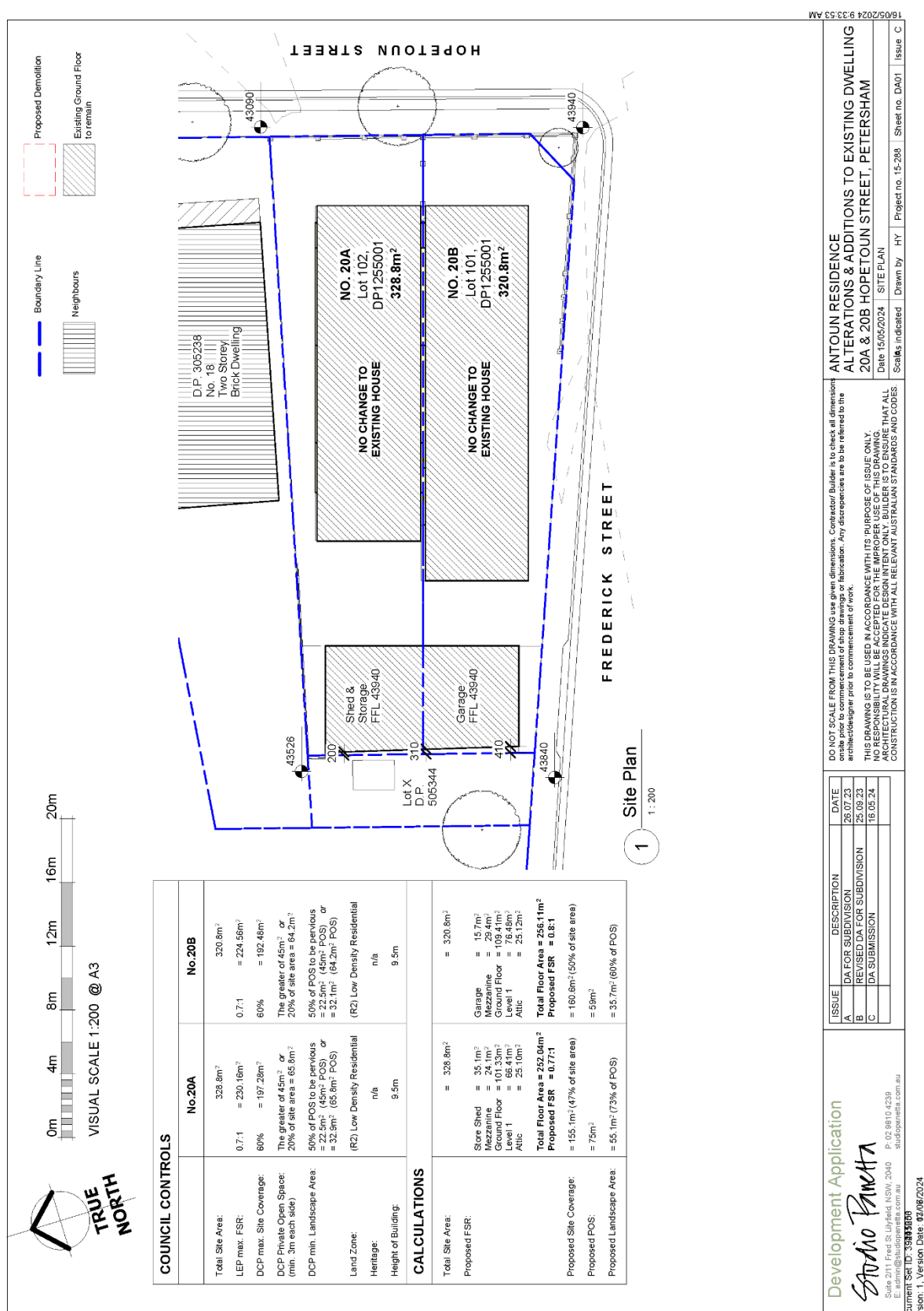
OCCUPATION AND ONGOING USE

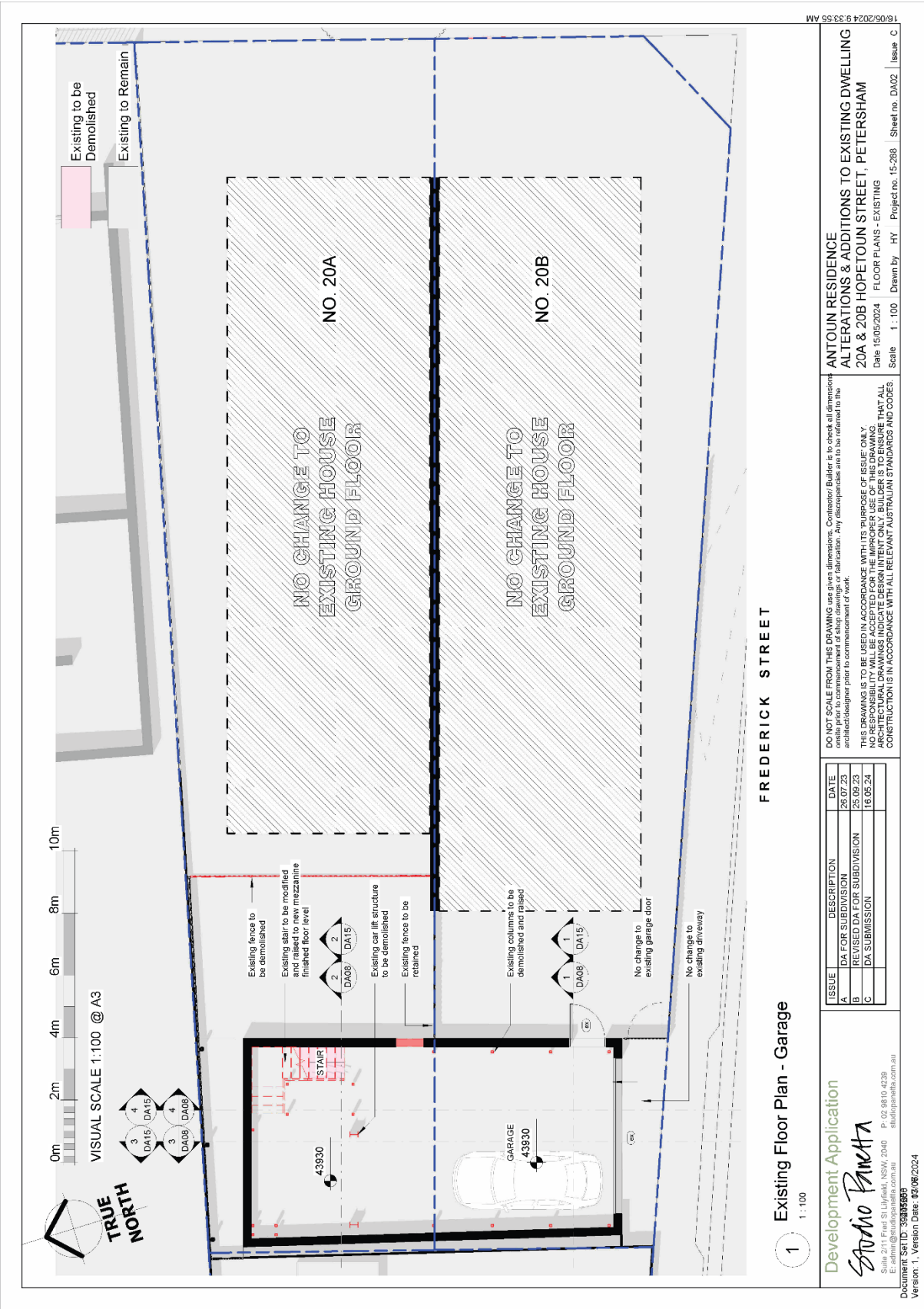
	Condition
29.	Use of the Garage/Outbuilding The approved outbuildings/garage is not to be used for habitable purposes. These must only be used for storage (lot 20A) and car parking and storage (lot 20B). Reason: To ensure the use of the structure is commensurate with its approval

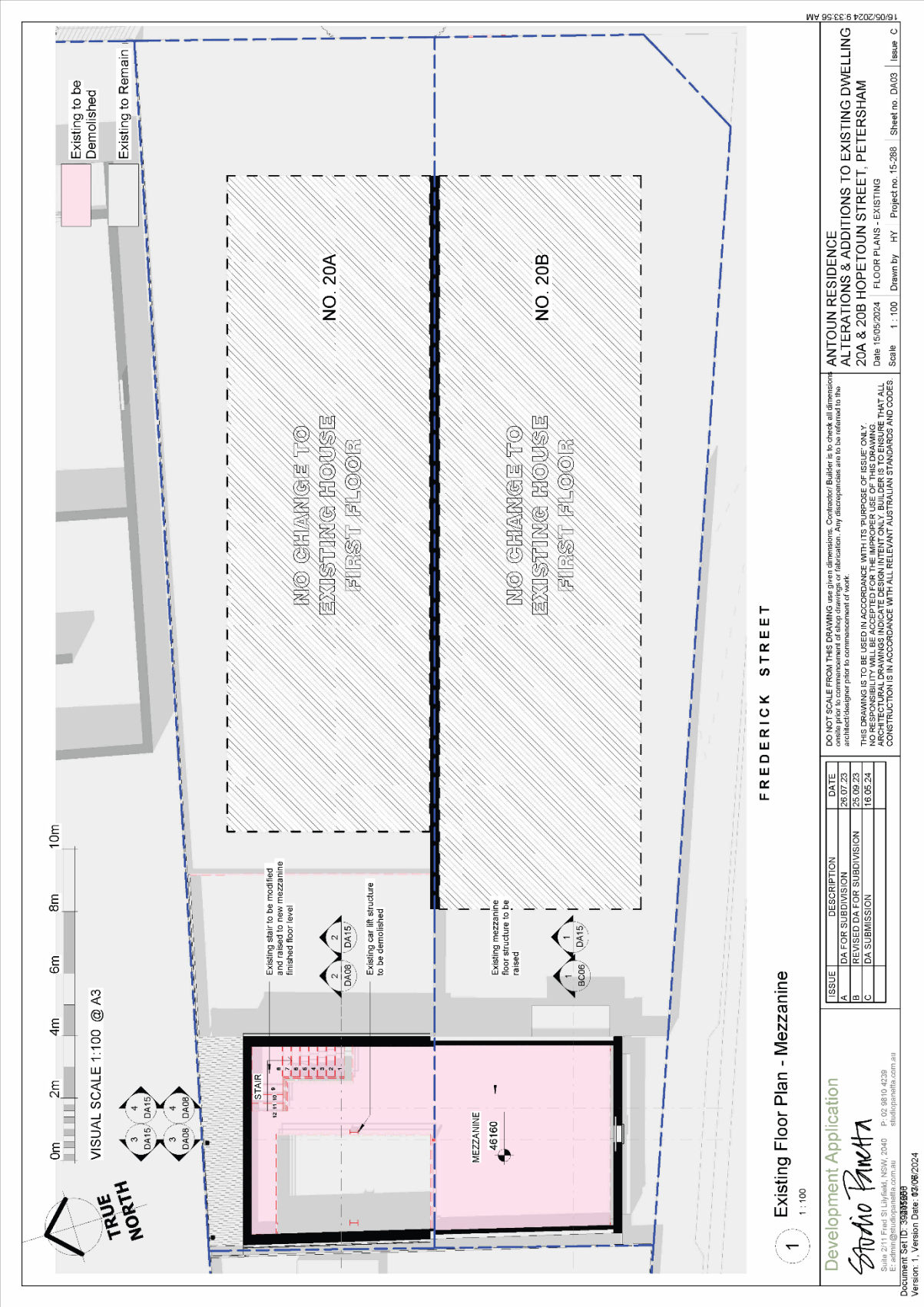
DEMOLITION WORK**BEFORE DEMOLITION WORK COMMENCES**

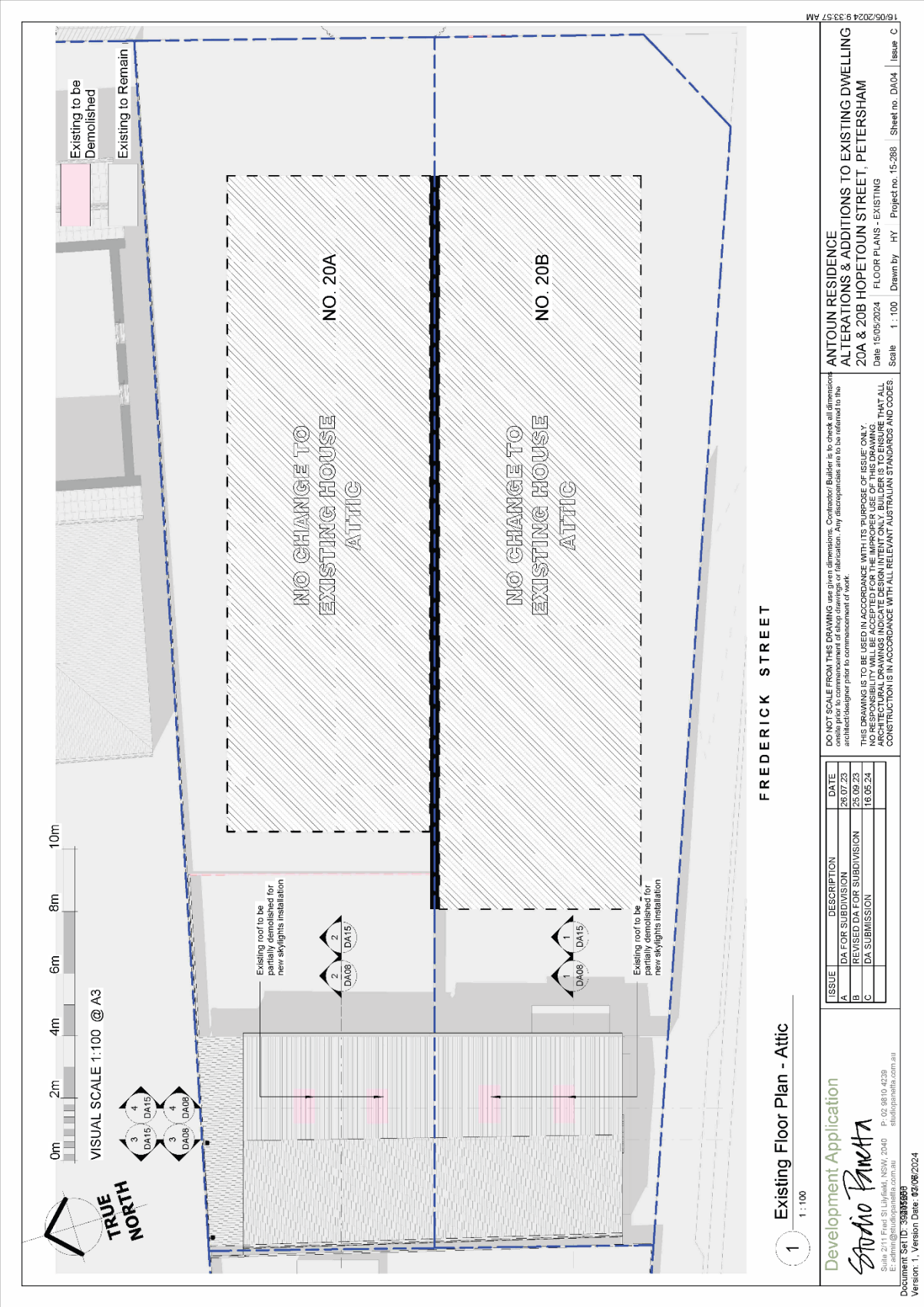
	Condition
30.	<p>Hoardings</p> <p>The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.</p> <p>If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council 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 Roads Act 1993 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>

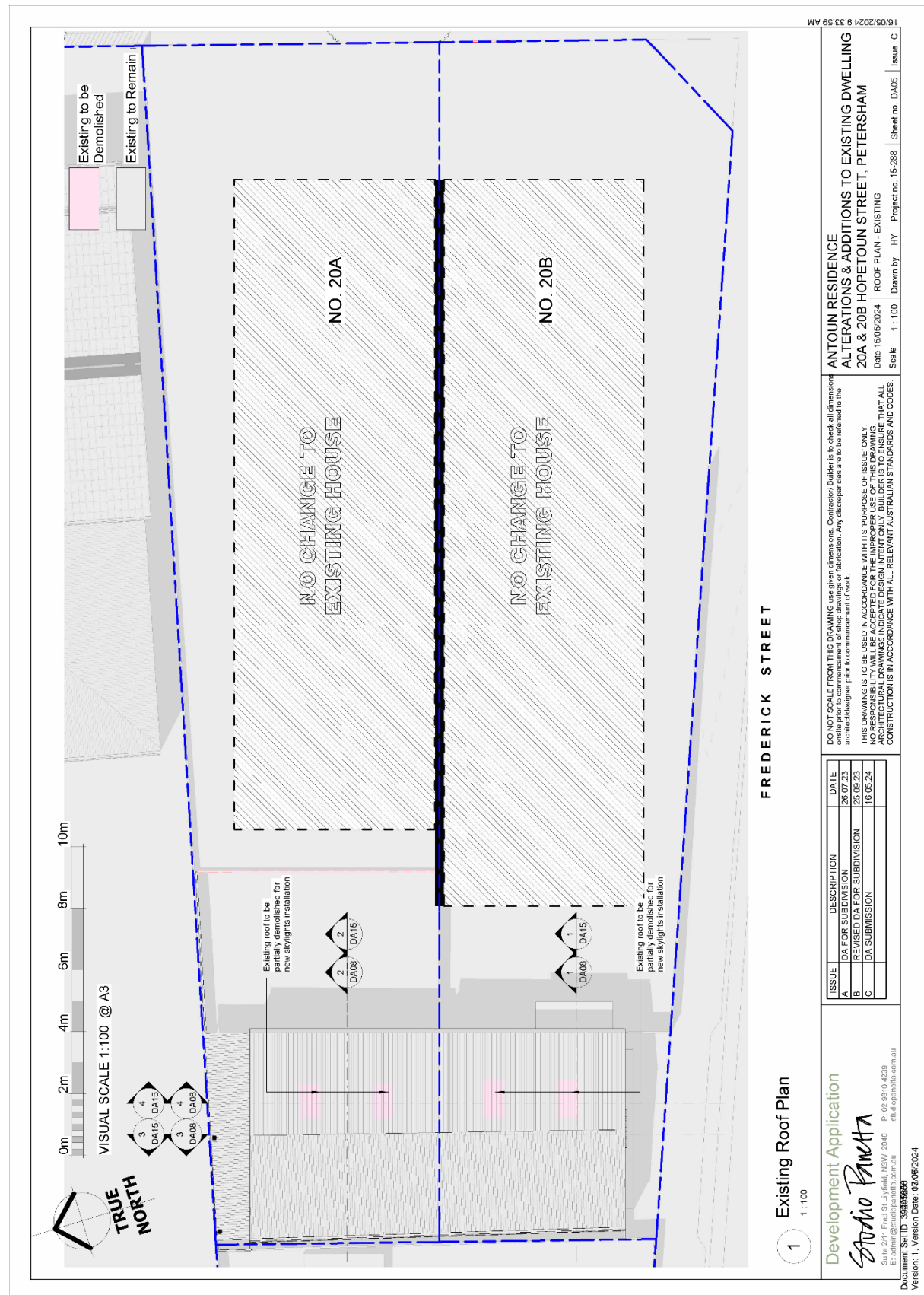
Attachment B – Plans of proposed development

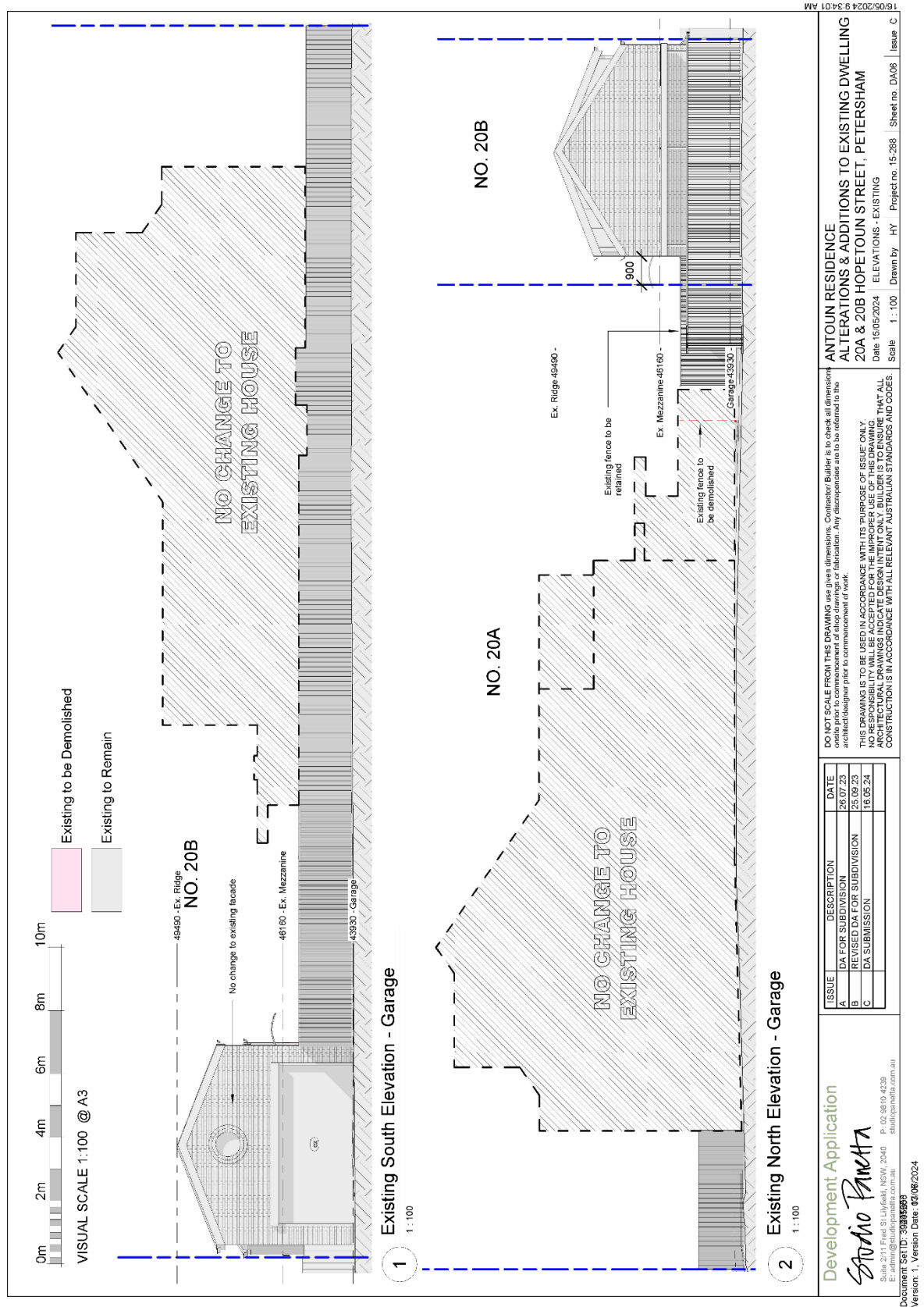


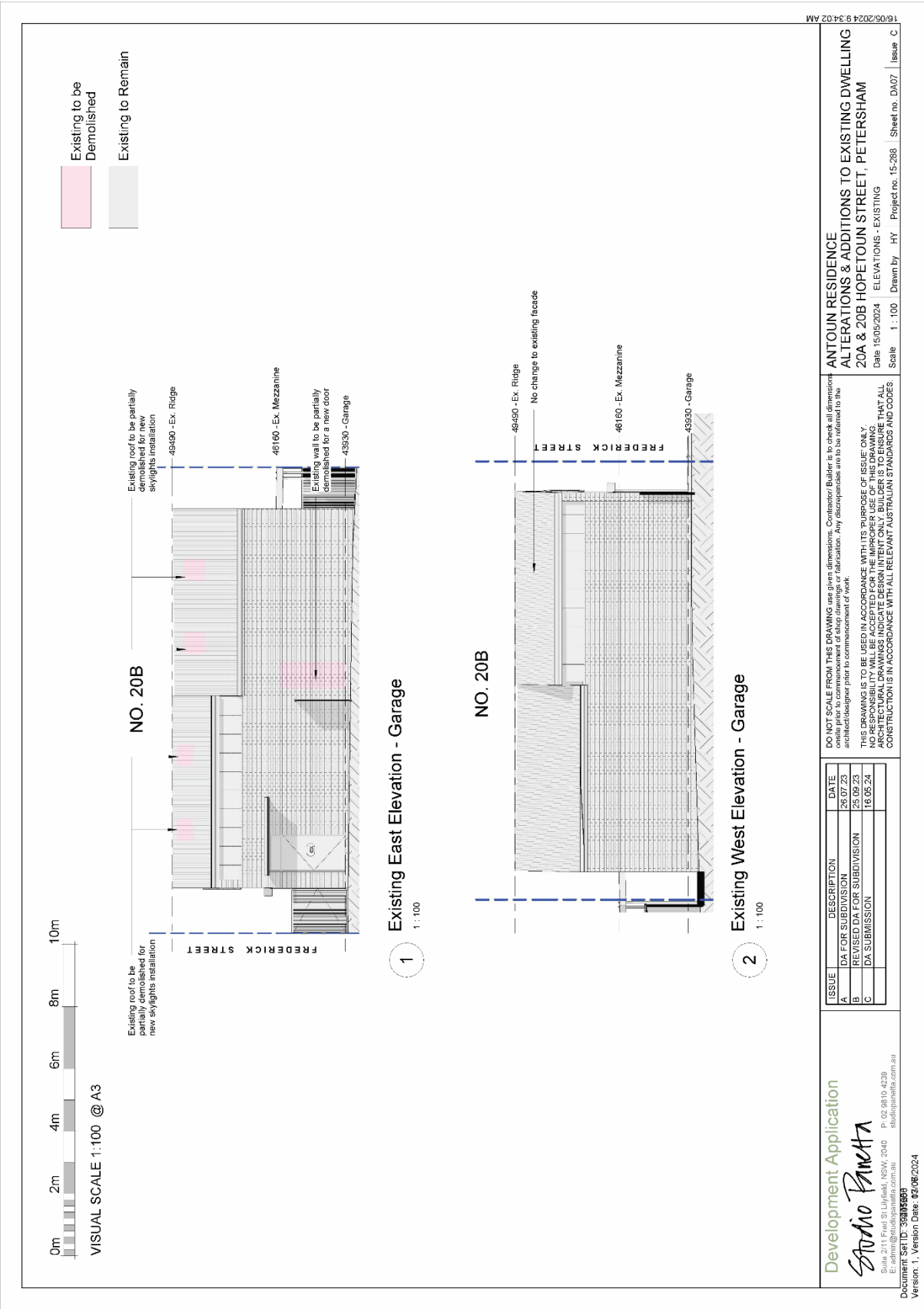


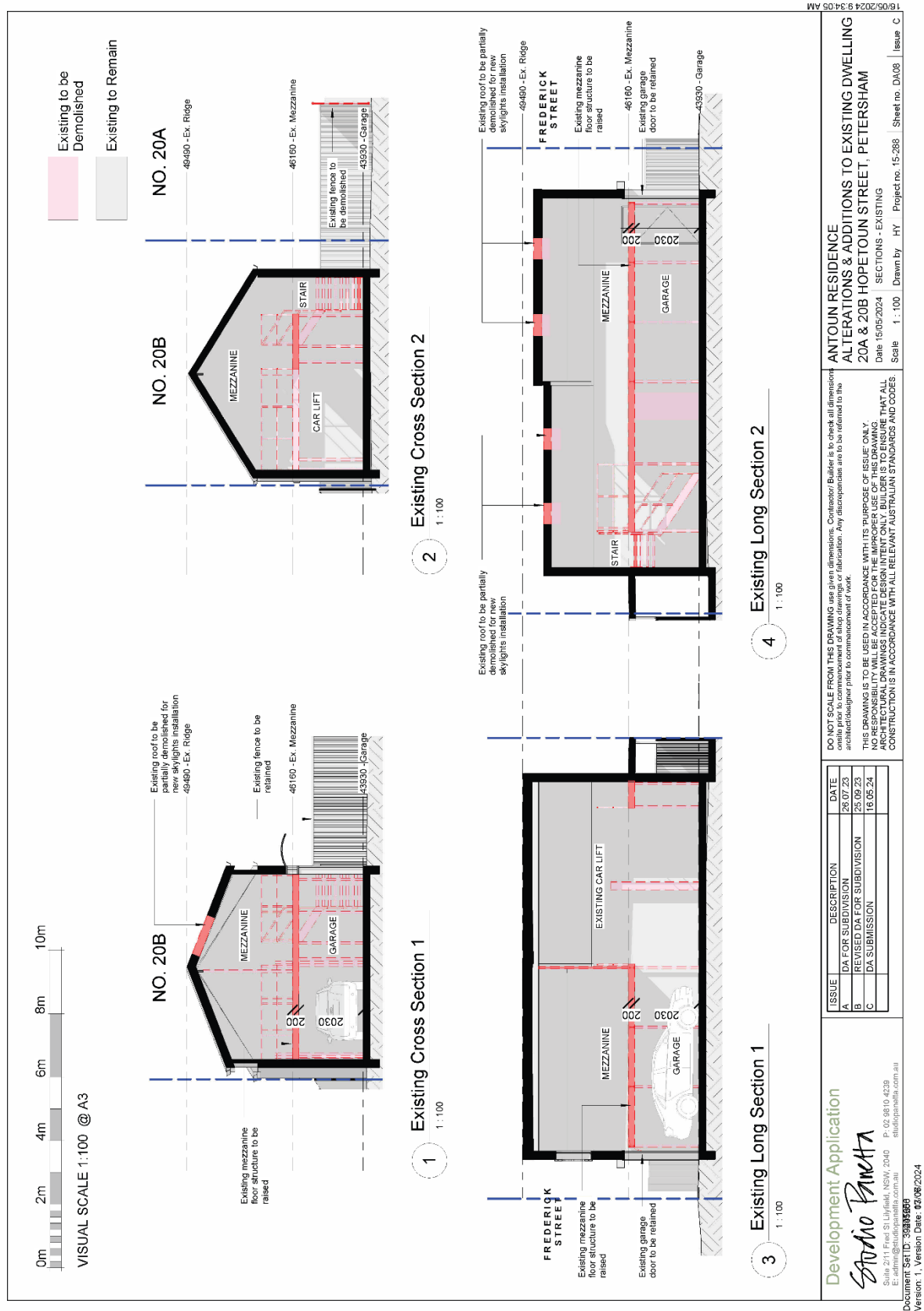


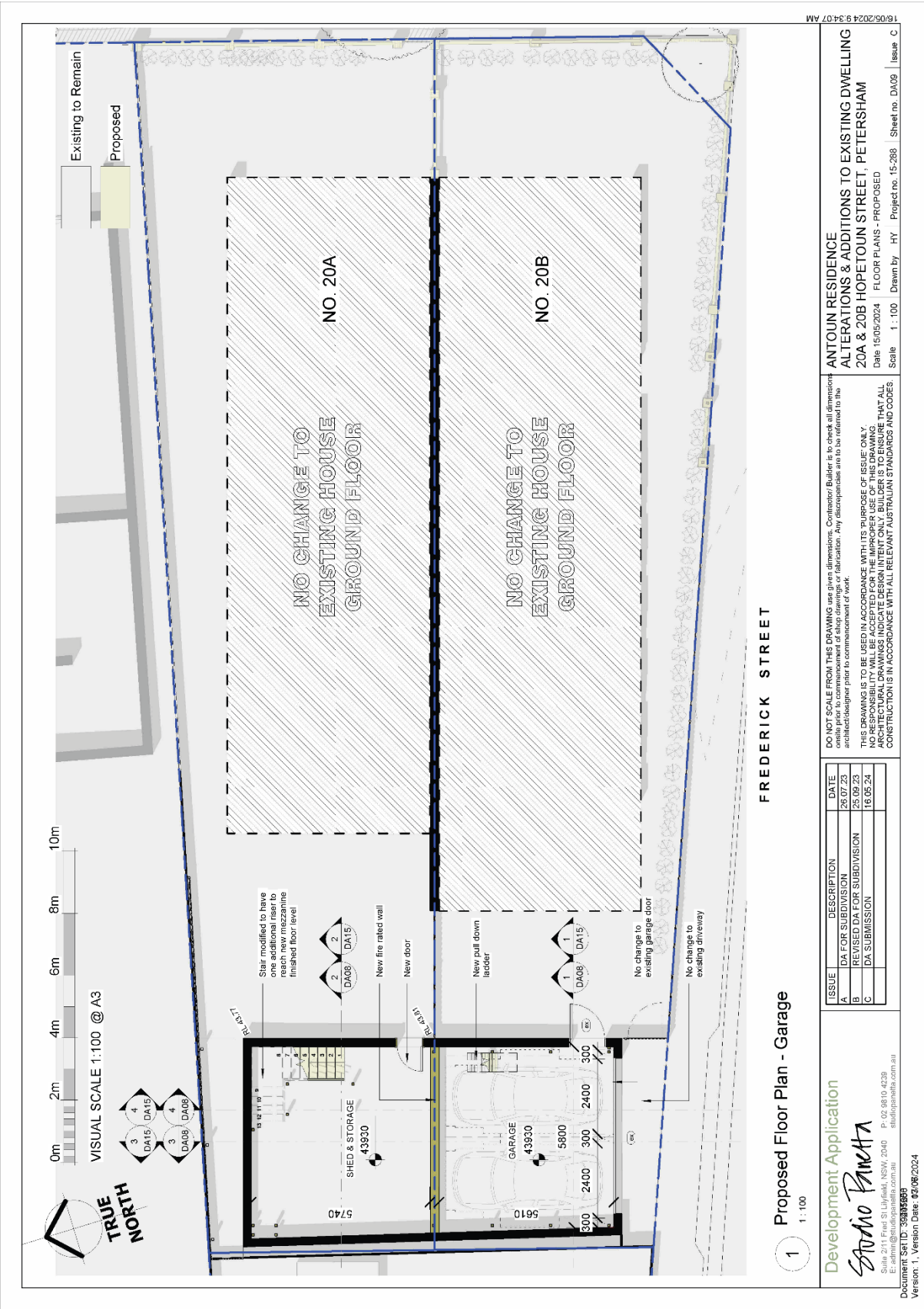


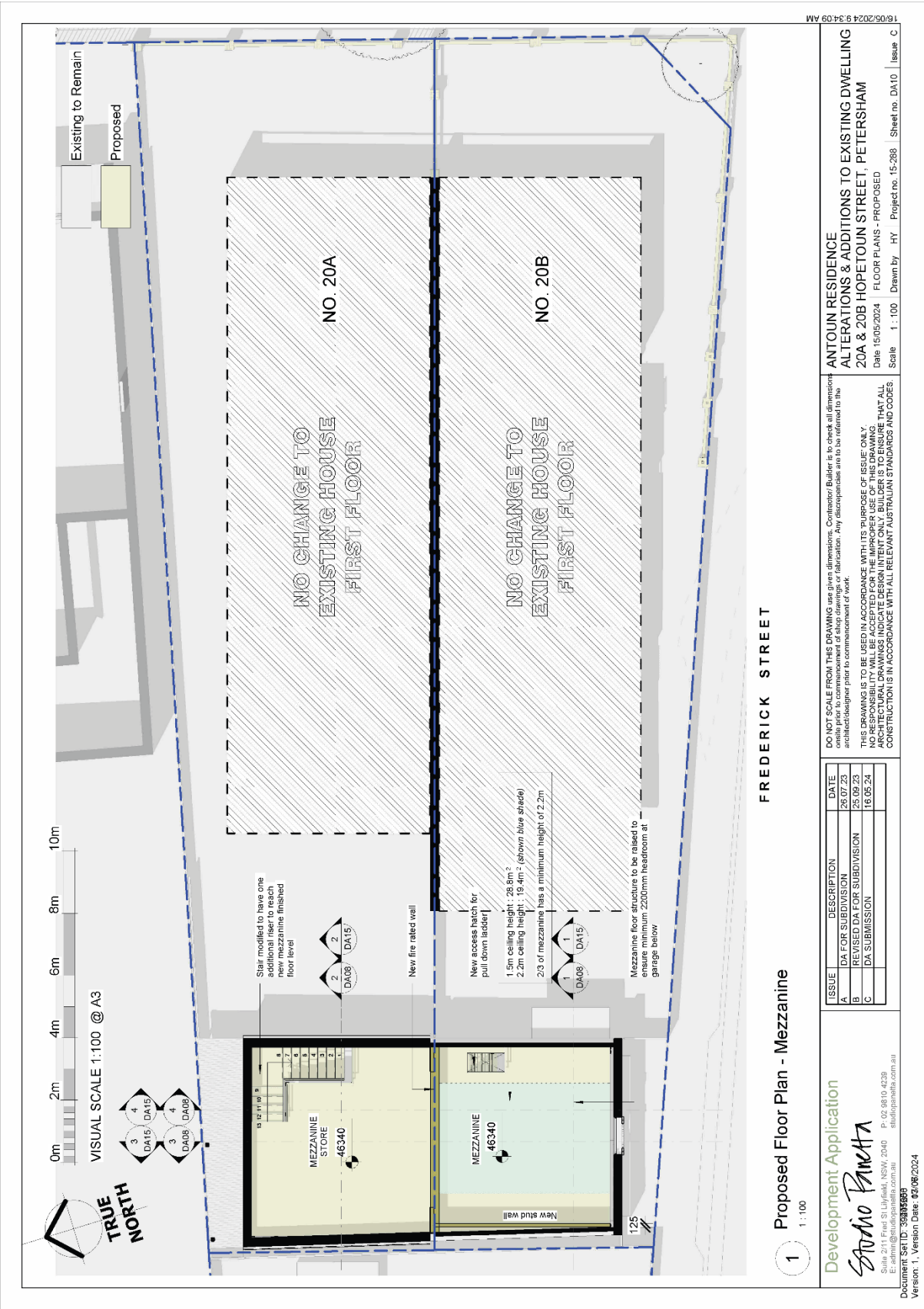


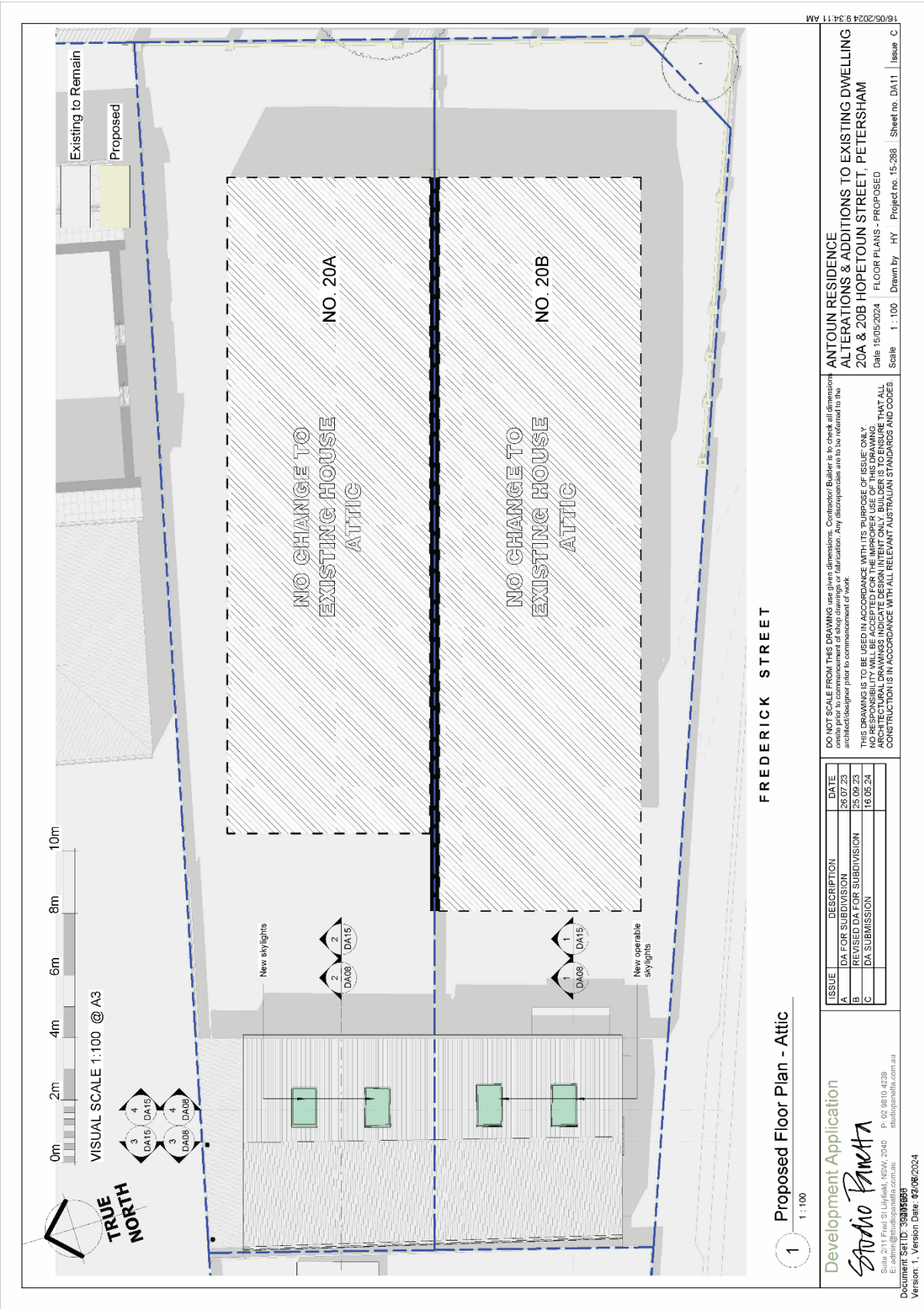


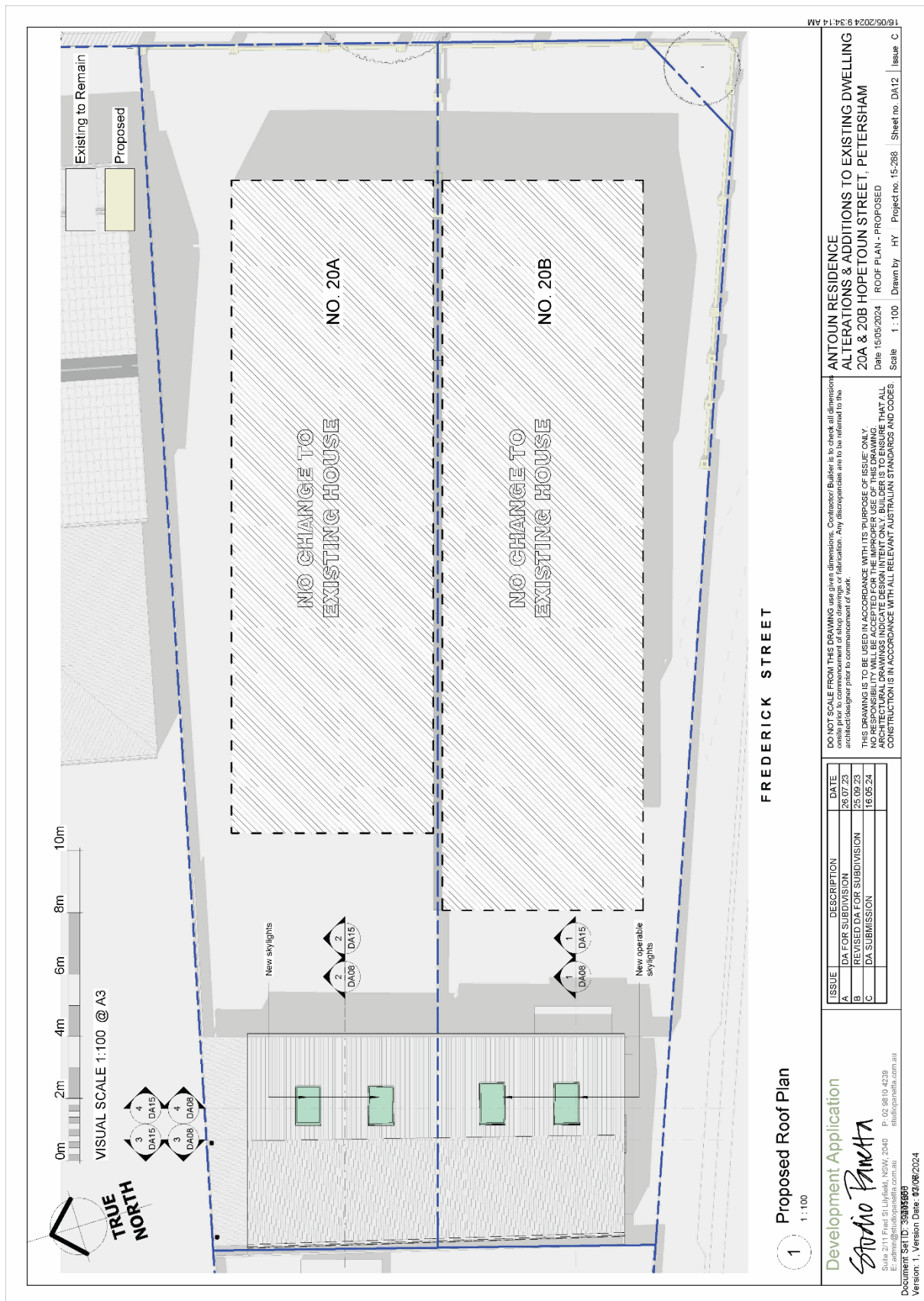


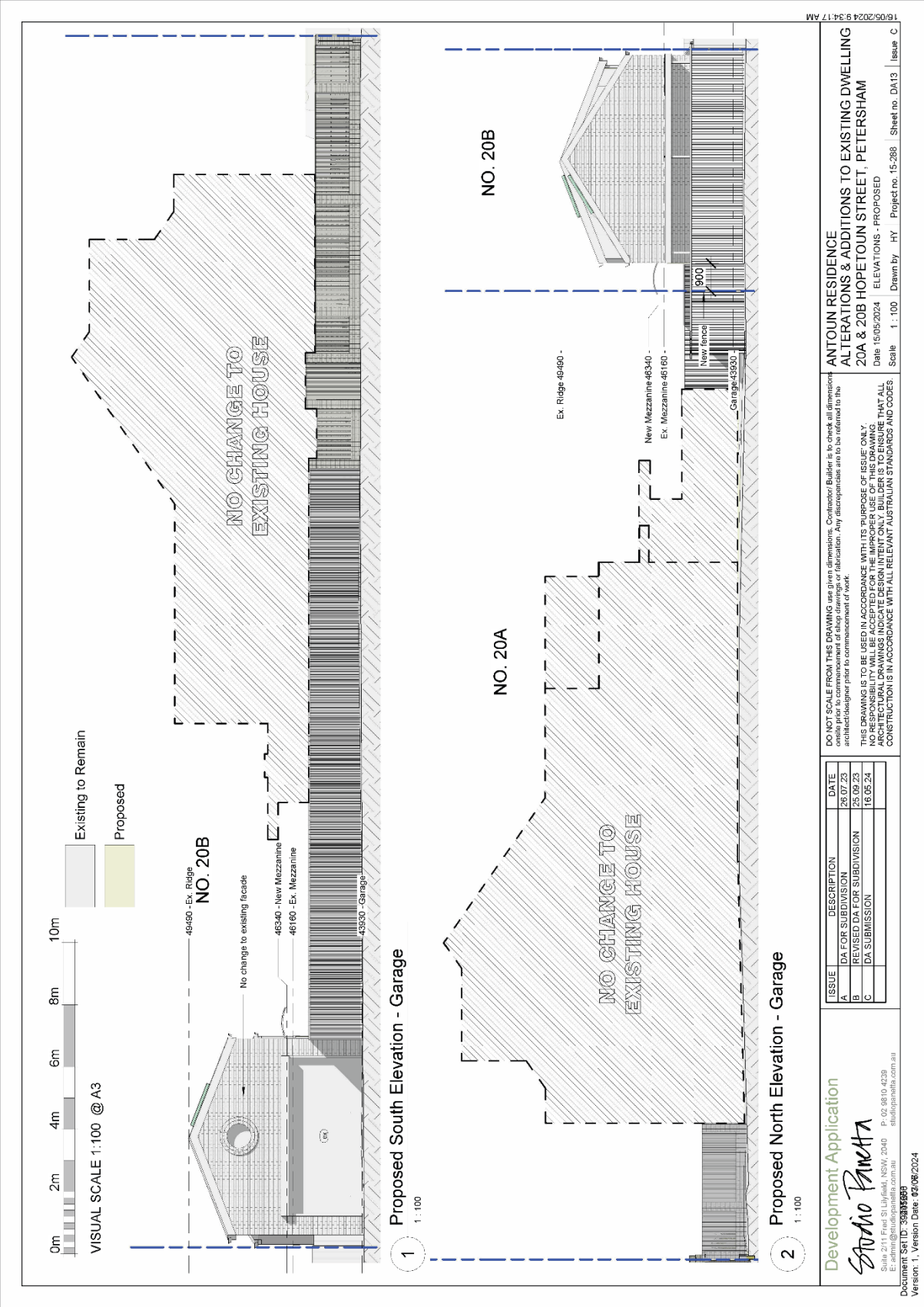


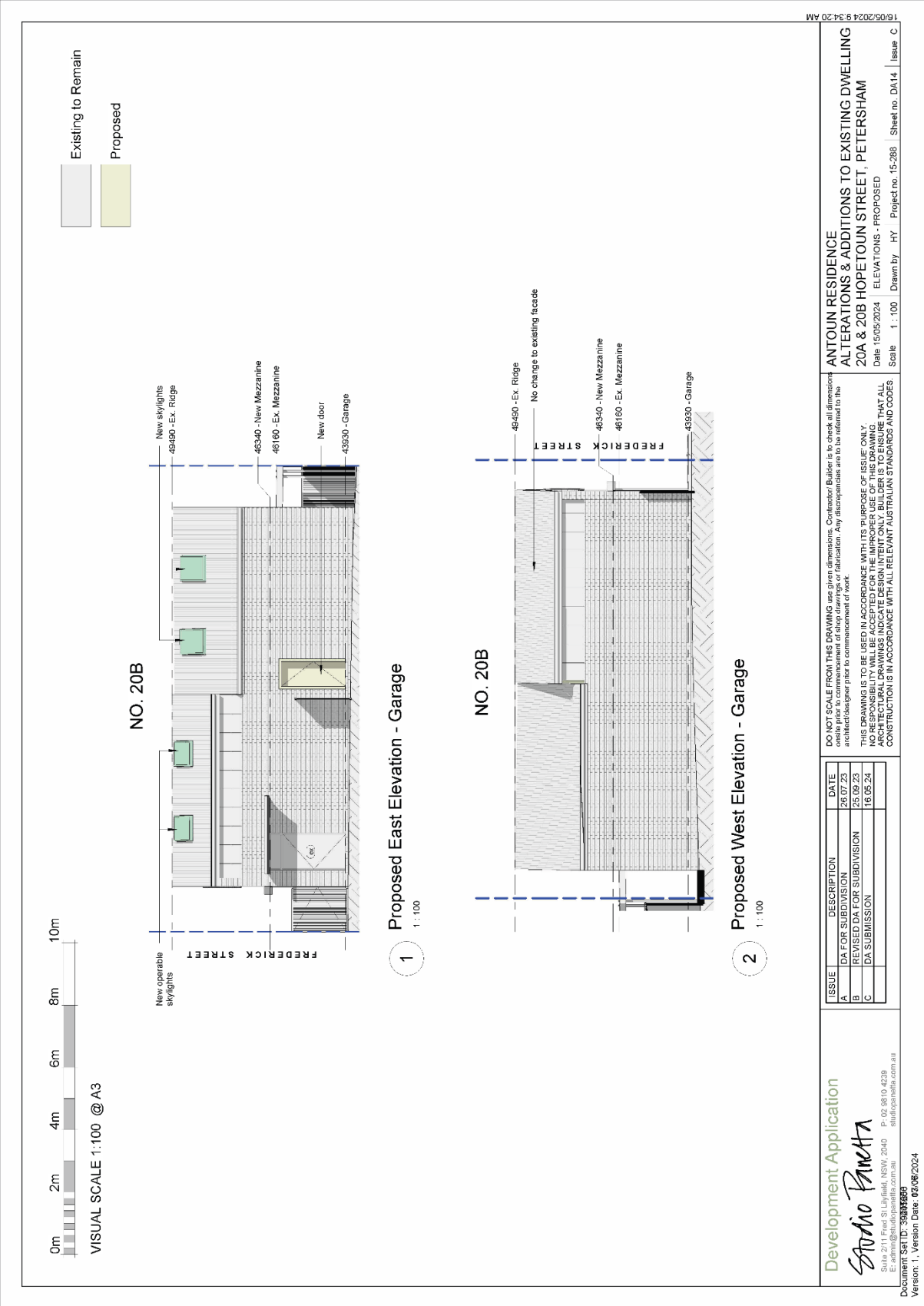


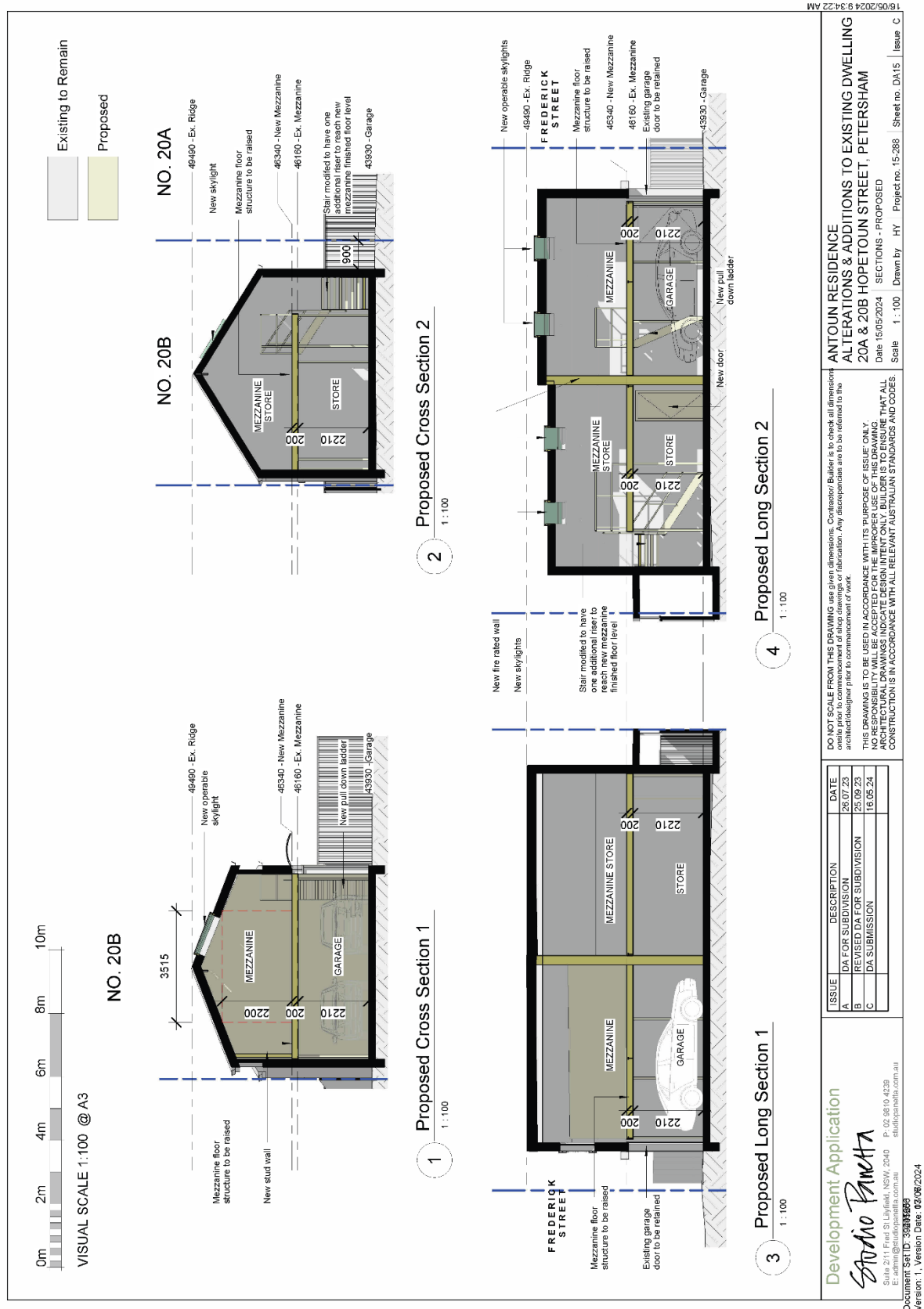


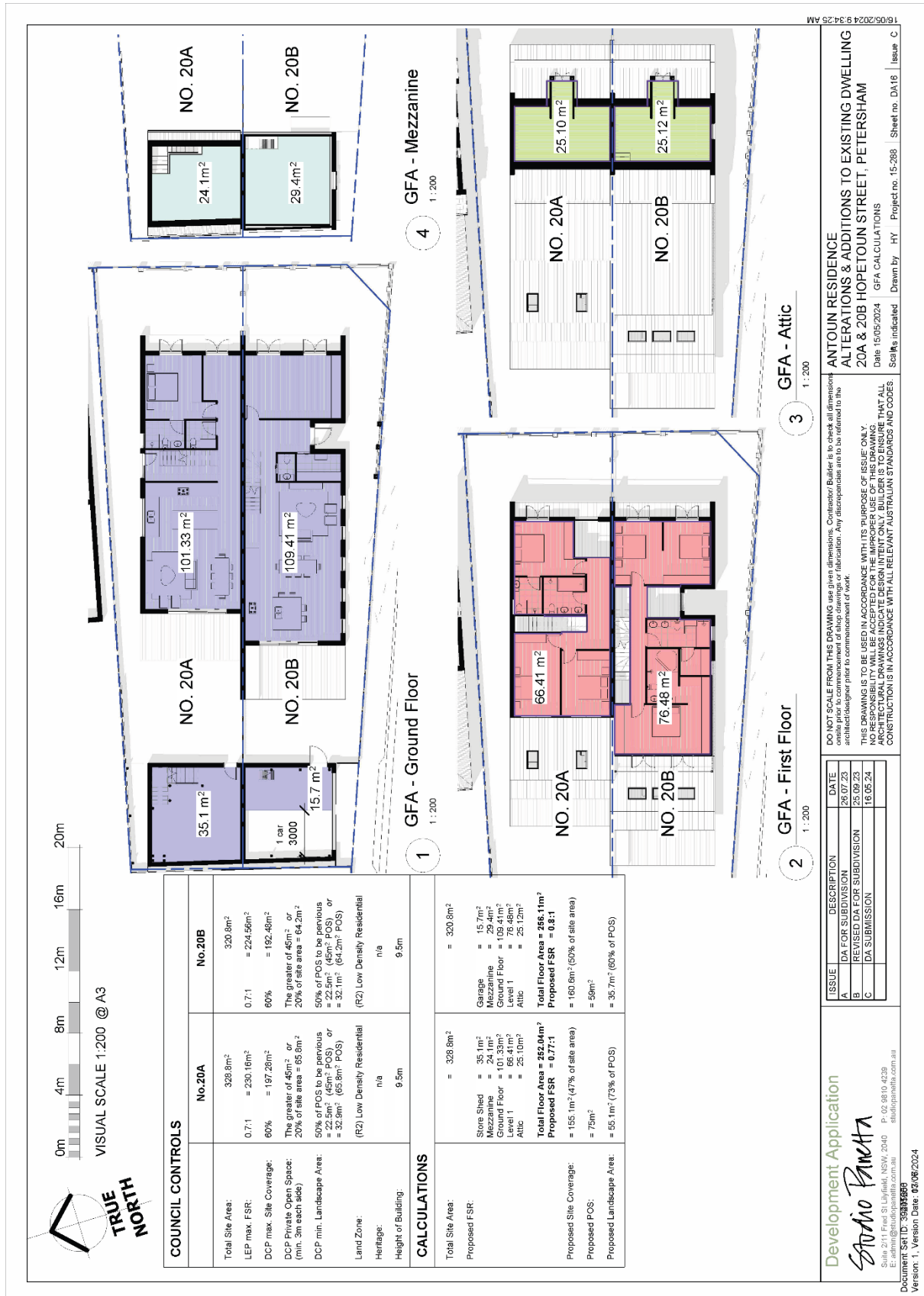


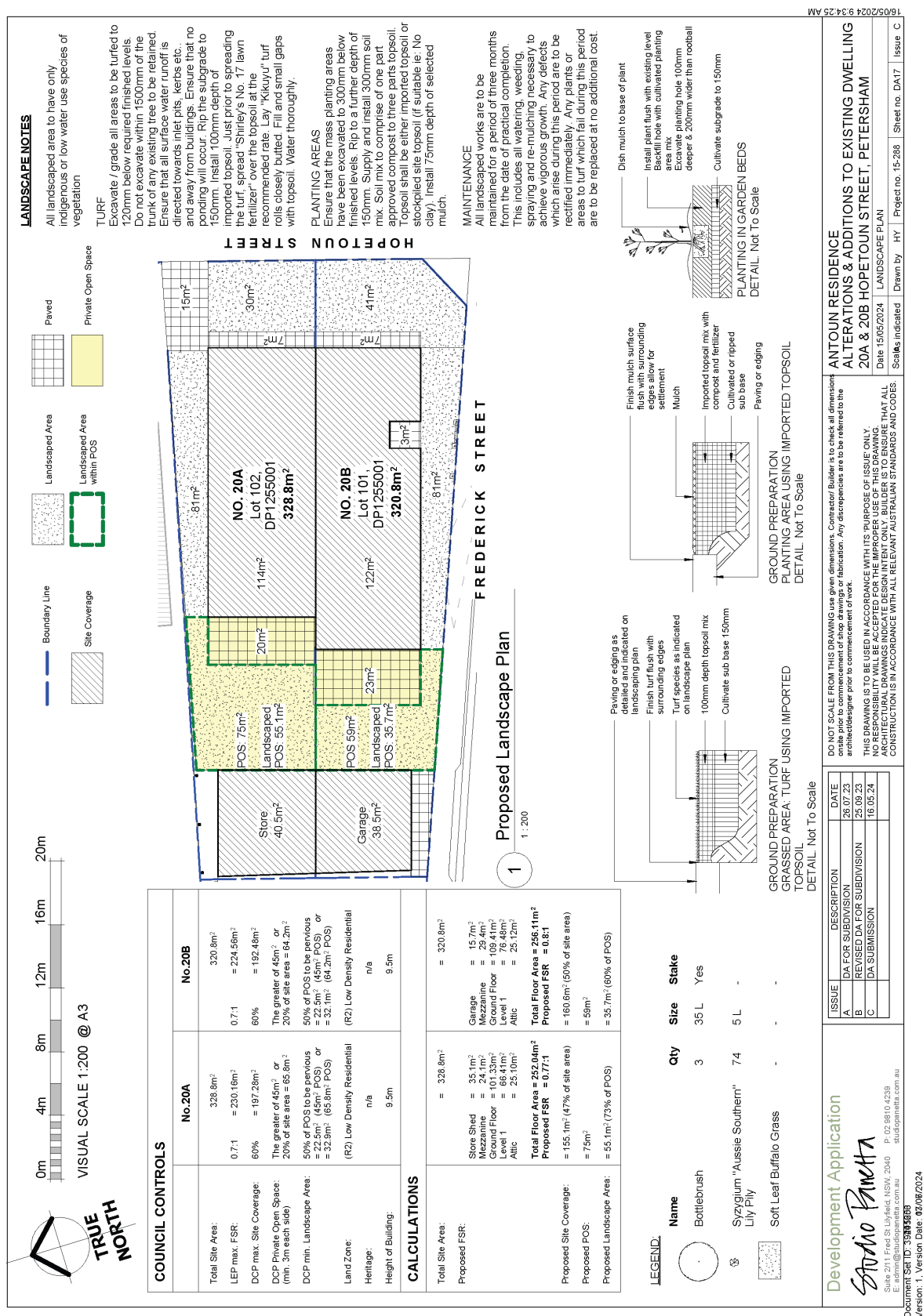












Attachment C – Section 4.6 Exception to Development Standards

CLAUSE 4.6 VARIATION CLAUSE 4.4 (FLOOR SPACE RATIO) INNER WEST LOCAL ENVIRONMENTAL PLAN 2022 Date: May 2024

1. EXECUTIVE SUMMARY

This submission under Clause 4.6 seeks a variation to Clause 4.4 of the Inner West Local Environmental Plan 2022 (IWLEP22) pertaining to the maximum floor space ratio (FSR) development standard.

This submission has been prepared in relation to an application for the demolition and reconstruction of a mezzanine on each property, the use of the mezzanines as storage and minor alterations to the garage and outbuilding at 20A and 20B Hopetoun Street, Petersham.

As detailed in this written request for a variation to the floor space ratio development standard under the IWLEP22, the proposed development meets the requirements prescribed under Clause 4.6 of the IWLEP22.

2. SITE DESCRIPTION

The subject site comprises two allotments commonly referred to as 20A and 20B Hopetoun Street, Petersham and legally defined as Lots 101 and 102 in Deposited Plan 1255001.

The site is located on the northwestern corner of Hopetoun Street and Frederick Street and is on the block otherwise bounded by Trafalgar Street in the north and Church Street in the west.

Both allotments have a frontage to Hopetoun Street with a 9.655m frontage for 20A Hopetoun Street and 6.71m plus the 4.065m splay for 20B Hopetoun Street. No. 20A is 328.8m² and No. 20B is 320.8m² in site area. The lots contain recently constructed two storey dwellings with attics, constructed of brick and metal cladding and a metal roof, with a brick and metal roof garage/outbuilding accessed from Frederick Street. Reference should be made to the site location map in Figure 1 and the recent aerial in Figure 2.

The existing structures were approved under DA201500748 on 20 June 2016 and modified by way of consent through a conciliation conference in the Land and Environment Court under DA2015000748.02 on 18 June 2019. The original approval sought the demolition of existing structures and the construction of two storey with attic semi-detached dwellings with a rear garage and storage outbuilding. The modification sought to increase the height of the garage/storage room and install a window on the southern elevation.

The site is zoned R2 Low Density Residential as demonstrated in Figure 3.

The locality is predominantly residential with a mixture of other land uses. Specifically, the adjoining properties include:

- North: A two storey brick with tile roof dwelling at 18 Hopetoun Street.
- West: The immediate western allotment is a substation. Further west is a right of way to 14 Hopetoun Street, followed by two storey terrace dwellings at 2 and 4 Frederick Street.
- South: The entire southern block is occupied by All Saints Anglican Church.

- East: Public open space (Maundrell Park) and semi-detached dwellings at 15 and 17 Hopetoun Street.



Figure 1: Site Location Map (Source: Mecone Mosaic)



Figure 2: Current Site Aerial (Inner West Property Search)



Figure 3: Land Zoning Map (Source: NSW Planning Portal Digital EPI Viewer)

3. VARIATION SOUGHT: CLAUSE 4.4 FLOOR SPACE RATIO

The Environmental Planning Instrument to which this variation relates is the IWLEP22. The development standard to which this variation relates is Clause 4.4 Floor Space Ratio, which reads as follows:

4.4 Floor space ratio

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

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

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

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

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

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

Site area	Maximum floor space ratio
$< 150\text{m}^2$	0.9:1
$\geq 150 < 300\text{m}^2$	0.8:1
$\geq 300\text{m}^2 < 450\text{m}^2$	0.7:1
$\geq 450\text{m}^2$	0.6:1

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

Site area	Maximum floor space ratio
$< 150\text{m}^2$	1.0:1
$\geq 150 < 300\text{m}^2$	0.9:1
$\geq 300\text{m}^2 < 450\text{m}^2$	0.8:1
$\geq 450\text{m}^2$	0.7:1

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

Site area	Maximum floor space ratio
$< 150\text{m}^2$	0.8:1
$\geq 150 < 300\text{m}^2$	0.7:1
$\geq 300\text{m}^2 < 450\text{m}^2$	0.6:1
$\geq 450\text{m}^2$	0.5:1

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

Site area	Maximum floor space ratio
$< 150\text{m}^2$	0.9:1
$\geq 150 < 300\text{m}^2$	0.8:1
$\geq 300\text{m}^2$	0.7:1

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

Site area	Maximum floor space ratio
$\leq 150\text{m}^2$	1.1:1
$> 150 < 200\text{m}^2$	1.1
$\geq 200 < 250\text{m}^2$	0.9:1
$\geq 250 < 300\text{m}^2$	0.8:1
$\geq 300 < 350\text{m}^2$	0.7:1
$\geq 350\text{m}^2$	0.6:1

(2D) The maximum floor space ratio for development for the purposes of residential flat buildings on land shown edged red on the Floor Space Ratio Map may be greater than the maximum floor space ratio shown for the land on the Floor Space Ratio Map by up to 0.25:1.

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

The site is mapped "F" and is land shown edged red per Figure 4 below.

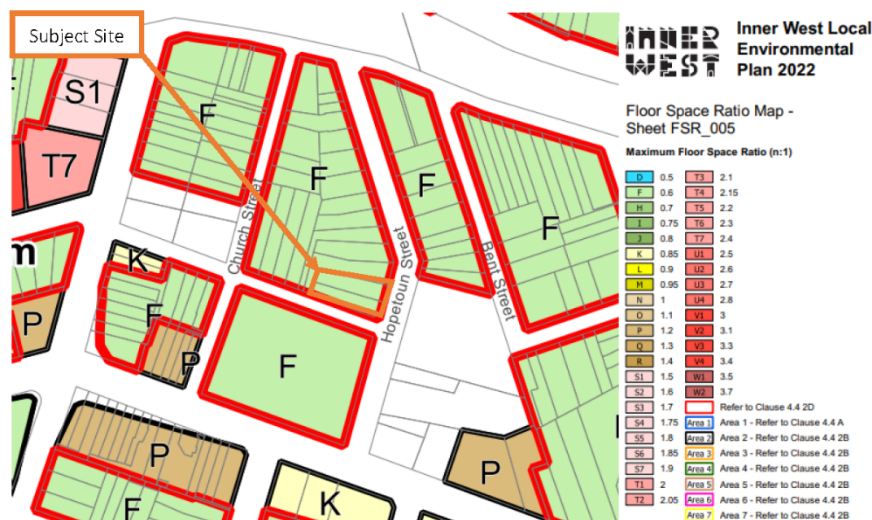


Figure 4: Floor Space Ratio Map (Source: NSW Legislation)

Clause 4.4(2C) prescribes the maximum permissible FSR for the purposes of semi-detached dwellings on land identified as "F" on the Map. The proposal involves semi-detached dwellings and thus the subclause applies.

Both properties are within the 300m²-350m² site area band and are prescribed a maximum 0.7:1 FSR.

4. EXTENT OF NON-COMPLIANCE

As above, Clause 4.4 (2C) of the IWLEP22 prescribes a maximum FSR of 0.7:1 based on the site areas.

The proposed FSR and degree of variation are identified in the table below.

Address	Site Area	Additional GFA	Proposed Total GFA	Proposed FSR	GFA Variation	Variation Percentage
20A Hopetoun	328.8m ²	24.1m ²	252.04m ²	0.77:1	21.88m ²	9.5%
20B Hopetoun	320.8m ²	29.4m ²	256.11m ²	0.8:1	31.55m ²	14%

The additional floor area sought is entirely limited to the mezzanines for each property, as the outbuilding was already approved across both properties including two car spaces on 20B Hopetoun Street, being one above the maximum requirement under the Marrickville Development Control Plan 2011. Consequently, the only additional floor area is the mezzanines.

Refer to Drawing No. DA16 GFA Calculations for the areas included.

We submit that the breach of the maximum FSR standard will not impact the amenity of the development or adjoining properties, nor will the variation compromise the bulk and scale of the

development. A degree of flexibility is considered reasonable in this instance as is detailed within this statement below.

5. CLAUSE 4.6

This submission is made under Clause 4.6 of the IWLEP22 *Exceptions to development standards*. Clause 4.6 states the following:

4.6 *Exceptions to development standards*

- (1) *The objectives of this clause are as follows—*
- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Note—

The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

- (4) *The consent authority must keep a record of its assessment carried out under subclause (3).*

- (5) *(Repealed)*

- (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.*

- (7) *(Repealed)*

- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
- (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) *clause 5.4,*
 - (caa) *clause 5.5,*
 - (ca) *clause 6.27(4),*
 - (cb), (cc) *(Repealed)*
 - (cd) *clause 6.31.*

Application of Clause 4.6

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

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

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

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

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

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

Additionally, this submission has been prepared with regard to the following guideline judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 ('Four2Five No 1')*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 ('Four2Five No 2')*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 ('Four2Five No 3')*
- *Micaul Holdings Pty v Randwick City Council [2015] NSWLEC 1386;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118; and*
- *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.*

6. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

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

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

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

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

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

A discussion against the 'tests' in determining whether the standard is unreasonable or unnecessary in the circumstance of the case is provided below under the applicable test/methods:

First Method: Objectives of the Development Standard

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

The objectives of Clause 4.4, with a discussion below, are as follows:

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

The original application for semi-detached dwellings and the garage/outbuilding structure under DA201500748, and modified under DA2015000748.02, was compliant with the maximum FSR at the time of approval. A discrepancy exists between a compliant and the 'existing' GFA due to the reduction in site area that occurred for 20B Hopetoun Street in providing the corner splay, thus resulting in 226.71m² as the existing GFA, a variation of 2.15m² based on the surveyed 320.8m² site area.

The construction of mezzanines on both properties within the connected outbuilding will increase the floor area by 24.1m² on 20A Hopetoun Street and 29.4m² on 20B Hopetoun Street.

The mezzanines are sought to be approved as storage areas. While the technical floor area is increased on both properties, the density of visible development on the land is effectively unaltered as there is no increase in the physical volume of structures on the land as the mezzanine is facilitated within the existing structure. There is no increase in population density on the land as the mezzanines are not sought for bedrooms.

No additional density will be perceived from the public domain.

Consequently, the proposal is deemed to still achieve an appropriate development density notwithstanding the contravention of the development standard.

(b) to ensure development density reflects its locality,

The approval of the two storey with attics semi-detached dwellings and the detached garage and outbuilding structure at the rear of both properties was considered to be an acceptable level of density under DA201500748, and modified under DA2015000748.02. While there is an increase in GFA, the additional floor area is all contained within existing structures. The structures on the site still read as a density reflective of the locality.

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

The site sits within a precinct of R2 Low Density Residential and is not located at the transition point to a different land zone or density.

As all new GFA is within existing structures, there is no impact on the visibility of the density of the development on the land. There is no impact on the application of FSR to transition between development of different densities.

(d) to minimise adverse impacts on local amenity,

All additional mezzanine floor area is contained within the existing garage/outbuilding and are sought to be approved as storage areas. Consequently, there are no visual privacy, acoustic privacy, overshadowing or visual bulk impacts on local amenity.

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

The proposal involves works to the garage/outbuilding only without increasing its footprint. Consequently, it has no implications on tree canopy or any effect on the public domain.

The commentary above outlined that compliance with the FSR development standard is unreasonable and unnecessary for the circumstance, given that the proposal is consistent with the objectives of the development standards.

7. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS?

The assessment above demonstrates that the resultant environmental impacts of the proposal will be satisfactory for the circumstances of the case.

The proposal seeks to construct mezzanines within both portions of the garage/outbuilding that is situated over 20A and 20B Hopetoun Street. The mezzanine will allow for additional storage areas for both dwellings within the volume of the existing structure.

It is deemed acceptable to facilitate the mezzanines notwithstanding the contravention of the development standard as the outcome can be achieved within the existing structures. The external works proposed are only to allow for access for No. 20A in the form of a new entry door, and for two operable skylights to each mezzanine for natural light and ventilation. The better outcome is the full use of the existing, approved volume of the garage/outbuilding for the residents of both dwellings.

The proposal achieves this outcome without any additional environmental impacts. There are no introduced external bulk and scale elements and no visual or acoustic privacy or additional overshadowing. There are no impacts on the streetscape or the amenity of adjoining properties.

The approvals granted for the original development and the outbuilding, atypically tall, mean that the circumstances of this proposed variation are unique. Accordingly, no precedent would be set by the contravention of the development standard given the circumstances.

In this case, strict compliance with the development standard for maximum FSR development standard of the IWLEP22 is unnecessary and unreasonable and there are sufficient environmental planning grounds to allow the contravention of the development standard.

Furthermore, it is important to also consider the objectives of the *R2 Low Density Residential* zone in relation to the development. These are as follows:

- *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.*

In response to the above the following is provided:

- The proposed construction of a mezzanine on each lot will not have a negative impact on the low density residential environment. The mezzanine creates additional storage areas to meet the needs of the land owners without any consequence on bulk and scale or amenity impacts to the dwelling itself or the neighbours. The proposal allows for the land to efficiently be used to meet the housing needs of the community within a low density residential environment.
- No other land uses are proposed. The proposal does not preclude any other site from proposing other land uses to meet the day to day needs of residents.
- The proposal involves no external works beyond the construction of skylights and a new entry door for 20A Hopetoun Street to access their portion of the outbuilding. Consequently, there is no change to the character of the built or natural features on the site, or the surrounding area.

In view of the above, the variation in the FSR development standard does not interfere with or inhibit the development's consistency with the zone objectives.

8. IS THE VARIATION WELL FOUNDED?

It is considered that this has been adequately addressed within this written submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the IWLEP22 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standard;
- The development meets the underlying objectives of the standard to be varied (FSR) and objectives of the R2 Low Density Residential zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance.

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

9. GENERAL

Clause 4.6 also states that:

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

- (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.*
- (7) *(Repealed)*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
- (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) clause 5.4,*
 - (caa) clause 5.5,*
 - (ca) clause 6.27(4),*
 - (cb), (cc) (Repealed)*
 - (cd) clause 6.31.*

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

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

The development proposed is not complying development.

A BASIX certificate is not required for this application as the cost of works does not exceed the minimum threshold.

The development does not rely on or conflict with any of the clauses referenced in (c) through to (cd).

11. CONCLUSION

The proposal does not strictly comply with the maximum FSR development standard as prescribed by Clause 4.4 of the IWLEP22. Having evaluated the likely effects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the IWLEP22 have been met as the breach of the development standard does not create any adverse environmental impacts and there are sufficient environmental planning grounds.

Consequently, strict compliance with this development standard is unreasonable and unnecessary and the use of Clause 4.6 of the IWLEP22 to vary this development standard is appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the floor space ratio control is unnecessary and that a better outcome is achieved for this development by allowing flexibility in the application.

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