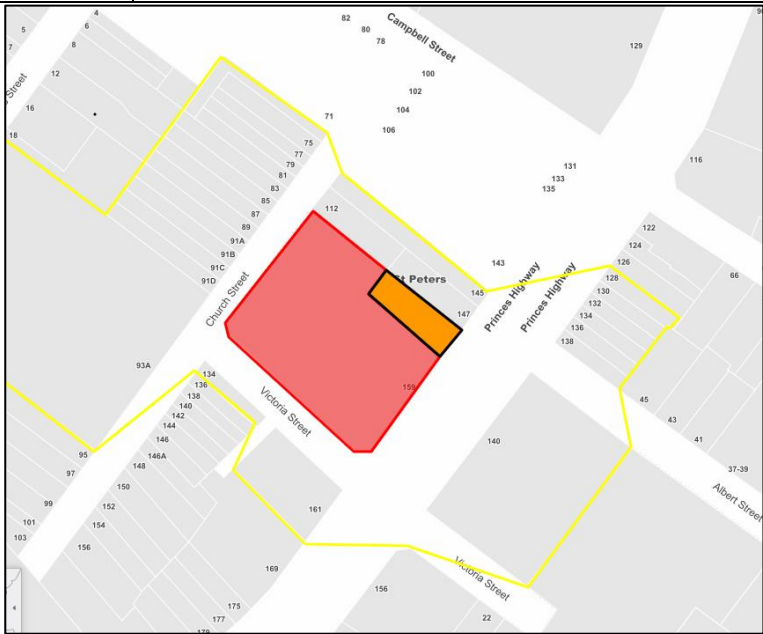




 DEVELOPMENT ASSESSMENT PANEL REPORT	
Application No.	DA/2024/0628
Address	151 Princes Highway ST PETERS
Proposal	Alterations and additions to an existing boarding house, including partial demolition of existing structures and construction of a two-storey structure to provide a total of 14 boarding rooms
Date of Lodgement	1 August 2024
Applicant	Sam Lai
Owner	American Core Drilling (Aus) Pty Ltd
Number of Submissions	Initial: Four (4) Renotification: One (1)
Cost of works	\$880,000.00
Reason for determination at Planning Panel	Section 4.6 variation exceeds 10%
Main Matters	Existing use rights, non-compliance with communal open area and car parking requirements, submissions
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Statement of Environmental Effects and Section 4.6 Exception to Development Standards
	
LOCALITY MAP	
Subject Site 	Objectors 
Notified Area 	Supporters 
Note: Due to scale of map, not all notified area could be shown.	

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to an existing boarding house, including partial demolition of existing structures and construction of a two-storey structure to provide a total of 14 boarding rooms at 151 Princes Highway St Peters.

The application was notified to surrounding properties and four (4) submissions were received in response to the initial notification. One (1) submission was received in response to renotification of the application.

The main issues that have arisen from the application include:

- Establishment of existing use rights, given the definition of a boarding house has changed since the use was approved on the site;
- Non-compliances with the car parking and communal open space development standards contained in the *SEPP (Housing) 2021*; and
- Visual privacy.

The non-compliances are acceptable given the proposal is considered to improve existing site conditions and presents an acceptable bulk and scale that is consistent with adjoining sites. Subject to recommended conditions, the proposal generally complies with the aims and objectives of the *Inner West Local Environmental Plan 2022 (IWLEP)* and the Marrickville Development Control Plan 2011 (MDCP). The proposal is considered acceptable and recommended for approval.

2. Proposal

The proposal seeks consent for the following works:

- Partial demolition of the rear of the existing building, including demolition of existing Bed 6, the laundry, and paved areas at the rear of the site.
- Partial demolition on the first floor, including the rear roof.
- Construction of an extended ground floor containing a communal living area with kitchen facilities, a laundry, an accessible bedroom (Bed 10) and bathroom.
- Construction of an extended first floor containing four new bedrooms to the rear and three lightwells.
- Internal ground and first floor alterations to existing bedrooms, office and general layout.
- Installation of bicycle parking racks at the rear of the site; and
- Associated landscaping at the rear of the site.

3. Site Description

The subject site is located on the north-eastern side of Princes Highway, between Campbell Street and Victoria Road. The site is generally rectangular in shape and is legally defined as

Lot 10 in Deposited Plan 840131.

The site area is approximately 285.8sqm with a primary frontage of 10.205m to Princes Highway, and no rear access. An existing two (2) storey ten (10) room (6 of these are approved) boarding house is located on the site.

Surrounding land uses are predominantly multi-storey mixed use commercial and residential buildings. Single and two storey dwelling houses are within the vicinity of the subject site, located to the north-east, and St Peters Anglican Church is located to the east. The site is within close proximity to WestConnex to the south-west of the site.



Figure 1: Aerial photo of the subject site outlined in red



Figure 2: photo of the subject site



Figure 3: Zoning Map (subject site outlined in red)

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
PDA/2024/0208	Construction of 2 advertising signs	Advice issued on 17/12/2024
DA201400240	To demolish part of the premises and carry out ground and first floor alterations and additions to a boarding house to construct 5 additional boarding rooms and increase amount of residents to 12	Approved on 22/09/2014
DA200900206	To demolish part of the premises and carry out alterations to convert the premises into 6 bedroom boarding house	Approved on 12/02/2010
PDA200900034	To demolish part of the premises, carry out alterations and additions to the premises to create a two storey boarding house containing 6 rooms and an office	Advice issued on 26/08/2008
PDA200800010	To demolish the existing improvements and erect a three storey boarding house	Advice issued on 29/02/2008

Note:

DA201400240, which approved the construction of five (5) additional boarding rooms, was not acted on, and has since lapsed. A construction certificate was submitted for DA200900206, and as such, the plans relied upon as existing are from DA200900206.

Surrounding properties159 Princes Highway

Application	Proposal	Decision & Date
DA200200203	To rezone the land to residential and development application to demolish the existing improvements and erect a 5 storey and 3 storey building containing 86 dwellings with basement car parking for 108 vehicles and strata subdivide the premises.	Approved on 03/12/2002

Application history

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

Date	Discussion / Letter / Additional Information
01/08/2024	Application lodged.
06/08/2024-27/08/2024	Application notified.

21/01/2025	<p>A request for further information was issued to the Applicant, raising the following matters:</p> <ul style="list-style-type: none"> • Demonstration of existing use rights is required given the minimum lot size requirements under <i>SEPP (Housing) 2021</i> prohibits boarding houses to be constructed on sites with lot areas of under 800sqm. • A number of non-compliances with a number of non-discretionary standards contained in the <i>SEPP (Housing) 2021</i>, including: <ul style="list-style-type: none"> ○ Solar access to the communal living area; ○ Minimum communal living area; ○ Communal open space; ○ Car parking; ○ Minimum room size requirements; and ○ No bicycle parking provided • Clause 4.6 required to be submitted for any non-discretionary standards not complied with. • The proposal presents bulk and scale concerns given its proximity to adjoining neighbours at the rear, and its location on the rear boundary. • A BCA and Access report is to be submitted. • Concerns regarding ongoing waste management on the site. • Increase in accessible rooms must be provided in accordance with Part 2.5 of MDCP 2011. • Internal configuration and use of Bed 03 concerns. • Amendment to the Plan of Management required. • Inadequate shadow diagrams submitted.
29/01/2025	An in-person meeting was held between Council and the Applicant to discuss the request letter.
31/01/2025 – 06/02/2025	Ongoing discussions between Council and the Applicant.
17/03/2025	<p>Amended plans and supporting documentation were submitted.</p> <p>The application was renotified in accordance with Council's Community Engagement Strategy 22-24.</p>

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A 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 2 Affordable housing

The application seeks consent for alterations and additions to a boarding house under Part 2, Division 2 of the *Housing SEPP* which provides controls relating to various matters including, but not limited to, communal living area, lot size, parking, room size, and solar access requirements. The main parameters are addressed below:

Provision	Proposed	Compliance
Section 23 Boarding houses permitted with consent	As outlined elsewhere in this report, the application relies on existing use rights, which is discussed in detail in the LEP assessment below.	Existing use rights
Section 24 Non-discretionary development standards—the Act, s 4.15	As established in the Planning Principle regarding existing use rights and merit assessments, <i>Fodor Investments v Hornsby Shire Council</i> [2005] NSWLEC 71 state, <ul style="list-style-type: none"> “<i>[While] planning controls that limit the size of a proposal (i.e., floor space ratio, height and setback) have no application...they have relevance to the assessment of applications on such sites</i>” 	

	<p>In considering the above, the following is noted:</p> <ul style="list-style-type: none"> • The site is not afforded a floor space ratio. Notwithstanding this, as discussed elsewhere in this report, the proposal is considered to have a satisfactory massing and bulk and is consistent with adjoining sites. • The communal living area, located at the rear on the ground floor, would receive a minimum 3 hours of sunlight on June 21 between 9am-3pm given the windows face north-west. • 46.7sqm of communal living area is provided on the ground floor, which complies with the minimum requirements. • The proposal provides 37.6sqm of communal open area at the rear of the site, which is a shortfall of 19.56sqm. A Clause 4.6 was submitted to support the variation, which has been discussed below. • The proposal provides no car parking. A Clause 4.6 was submitted to support the variation, which has been discussed below. 	
Section 25 Standards for boarding houses	<p>As the application relies on existing use rights, numerical standards which limit the size of the proposal do not apply. In considering this, the following is noted with regard to the provisions within Section 25(1):</p> <ul style="list-style-type: none"> • No boarding room has a GFA exceeding 25sqm; • Boarding rooms, subject to recommended conditions, will not be occupied by more than two (2) adult residents per room; • Adequate bathroom, kitchen and laundry facilities are provided; • The area fronting the street on the ground floor currently contains residential uses as previously approved. As no change is proposed to the front rooms on the ground floor, this non-compliance is acceptable; • The proposal contains at least one (1) communal living area, located on the ground floor; • While the site area is less than 800sqm, the boarding house is existing; • The room sizes are discussed in detail below; • The proposal provides bicycle parking at the rear, which is considered appropriate given the site cannot provide any car parking for occupants. The number of bicycle parking, as outlined elsewhere, is considered sufficient for the number of units on the site, and given the close proximity to the bus network. 	Acceptable subject to conditions

Section 26 Must be used for affordable housing in perpetuity	<p>In accordance with this section,</p> <p>(1) <i>Development consent must not be granted under this Division unless the consent authority is satisfied that from the date of the issue of the occupation certificate and continuing in perpetuity—</i></p> <p>(a) <i>the boarding house will be used for affordable housing, and</i></p> <p>(b) <i>the boarding house will be managed by a registered community housing provider.</i></p> <p>As outlined in <i>Stromness Pty Limited v Woollahra Municipal Council [2006]</i>, in accordance with</p> <p><i>Section 108(3) of the EP&A Act, the provisions of any environmental planning instrument that derogate from the existing use rights provisions have no force or effect whilst existing use rights remain.</i></p> <p>The site benefits from existing use rights as the site was approved under a previous definition of a boarding house in 2009 and 2014, which did not require the site to be managed by a registered community housing provider. <i>SEPP (Housing) 2021</i> came into force on 26/11/2021. Given this, it is considered unreasonable to require the site to comply with s26(1)(b).</p>	Yes
Section 27 Subdivision of boarding houses not permitted	No subdivision is proposed as part of this application.	Yes

Section 25(1)(h) - Standards for boarding houses (floor area of boarding rooms)

As mentioned previously, numerical controls are not applicable as the proposal relies on existing use rights.

The following table depicts the floor area of the proposed boarding rooms and their compliance or non-compliance with the current minimum boarding room size standards of 12sqm for a single lodger.

Room no.	Floor area (sqm)
1*	11.4sqm
2*	11.35sqm
3^	13.9sqm
4	11.65sqm
5*	9.7sqm
6*	10sqm
7*	13sqm
8	12.86sqm

9	17sqm
10	23sqm
11	14.8sqm
12	14.1sqm
13	13.48sqm
14	12.5sqm

Table 1: Size of the boarding rooms proposed and existing

*denotes existing boarding rooms per DA200900206

^ Bed 3, located at the front of the site, has been approved previously as an on-site office space in both DA200900206 and DA201400240. The submitted plans indicate that this room is to be a bedroom, and as such, is considered to be included in the number of proposed rooms as part of this application.

A number of the existing boarding rooms approved in DA200900206 do not comply with current size requirements, as shown above. However, given these rooms are not being altered as part of this proposal, it is considered unreasonable to require they be amended to comply.

Bedroom 4, which is currently being used as a boarding room without consent, has a minor noncompliance to the minimum size requirements, being 11.65sqm. As outlined elsewhere in this report, the site benefits from existing use rights and as such, numerical standards do not apply. Notwithstanding this, the proposed non-compliance for this room is considered acceptable in this instance as the non-compliance is minor (0.35sqm), the room is a functional space that includes area for a sink and shelving, and the subject application does not propose alterations to the existing room that results in a reduction of area. The amenity of the room will be improved by the subject proposal, given the proposed opening into a lightwell for light and ventilation. In addition, as the room was constructed sometime between 2009 and 2014, the room has been used and occupied by tenants for an extended period of time. Given this, the proposed non-compliance is considered acceptable in this instance.

The submitted Statement of Environmental Effects states that all rooms are to be occupied by one (1) lodger. However, given the size of rooms 9 and 10 (also indicated as the accessible rooms), and the fact that these rooms are shown as having double beds in comparison to the other proposed rooms, it is considered justified that these two rooms be treated as being occupied by a maximum two (2) lodgers.

Given this, the above table demonstrates that majority of the proposed rooms comply with the minimum requirements for one (1) and two (2) lodgers in accordance with s25(h), and the non-compliance for Bedroom 4 is considered acceptable.

Section 4.6 – Exceptions to Development Standards

Section 24(2)(i)(i) of the SEPP (Housing) 2021 development standard for car parking

The applicant seeks a variation to the above mentioned under section 4.6 of the *IWLEP 2022* by 100% (or one (1) car parking space). 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 car parking standard are achieved notwithstanding the numeric non-compliance.

The **objective of Section 24(2)(i)(i)** is “... to identify development standards for particular matters relating to development for the purposes of boarding houses that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.” Varying this standard does not result in the consent authority requiring a more onerous standard to be met. Accordingly, the proposal does not offend the intent of the objective.

As the proposal achieves the objectives of the car parking 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 provides the following environmental planning grounds to justify contravening the car parking development standard (Section 24(2)(i)(i)):

Environmental Planning Ground 1 – *The existing [site] is located on a landlocked site, with no accessibility and no space for the provision of off-street parking spaces.* This environmental planning ground is accepted because the site has no rear access, and no ability to provide a vehicular crossing from the front (being a classified road) given the existing building footprint. To accommodate any parking on the site, the existing building would need to be demolished and/or have significant alterations and additions proposed to the front. Notwithstanding this, it is unlikely that a vehicular crossing at Princes Highway would be supported given there may be adverse impacts on the state road.

Environmental Planning Ground 2 – *The site is well-served by public transport...[and] St Peters is an area with high connectivity to public transport networks.* This environmental planning ground is accepted as there are a number of bus stops located within close proximity to the subject site, and the site is located within 700m of St Peters train station. To compensate for the lack of car parking spaces, the site has provided bicycle parking facilities at the rear of the site for occupants. Given this, it is likely that occupants will use the public transport networks available, and the lack of car parking spaces on the site is considered justified.

Environmental Planning Ground 3 – *...introducing additional off-street parking spaces would require significant alterations to the site... potentially resulting in adverse environmental impacts, including the loss of landscaping and increased hard surface areas.* This environmental planning ground is accepted because the site is not able to provide off-street car parking without significant demolition of the existing building, and given the size of the site, it is unlikely that a proposal could provide compliant open space, landscaping, or reasonable amenity for occupants.

Cumulatively, grounds 1-3 are considered sufficient to justify contravening the development standard.

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

Section 24(2)(h)(i) of the SEPP (Housing) 2021 development standard for communal open spaces

The applicant seeks a variation to the above-mentioned development standard under section 4.6 of the *IWLEP 2022* by 34.22% or 19.56sqm. 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 communal open area standard are achieved notwithstanding the numeric non-compliance.

The **objective of Section 24(2)(h)(i)** is “... to identify development standards for particular matters relating to development for the purposes of boarding houses that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.” Varying this standard does not result in the consent authority requiring a more onerous standard to be met. Accordingly, the proposal does not offend the intent of the objective.

As the proposal achieves the objectives of the communal open area 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 provides the following environmental planning grounds to justify contravening the car parking development standard (Section 24(2)(h)(i)):

Environmental Planning Ground 1 – *The amended design of the boarding house ensures [improved] internal amenity and communal facilities for residents.* This environmental planning ground is accepted as the proposal seeks to construct additional boarding rooms that contain kitchenette facilities, and a new communal living area with kitchen, dining and laundry facilities, which is an improvement from existing conditions. The communal open space provided has sufficient space for a variety of outdoor furniture for occupants and is proposed to contain some landscaping which would improve the visual amenity of the rear.

Environmental Planning Ground 2 – *The site is located within close proximity to publicly accessible open spaces.* This environmental planning ground is accepted as the site is located near a number of parks, including Simpson and Sydney Parks, which provide adequate alternatives to on-site open space. In addition to this, it is noted that the area at the rear would comply if the bin storage area and the bicycle racks were able to be relocated, however, there is limited space within the front setback or internally for these to be placed elsewhere. Furthermore, it is considered that the application proposes a reasonable level of density for the site, and is consistent with the objectives of the aims of plan as the application seeks additional housing to meet the needs of Inner West residents.

Cumulatively, grounds 1-2 are considered sufficient to justify contravening the development standard.

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

SEPP (Sustainable Buildings) 2022**Chapter 2 Standards for residential development - BASIX**

The application is accompanied by a BASIX Certificate (lodged within 3 months of the date of the lodgment of this application) in compliance with the *EP&A Regulation 2021*.

SEPP (Transport and Infrastructure) 2021**Chapter 2 Infrastructure****Development on proposed classified road**

The site is reserved for acquisition by Transport for NSW (TfNSW) for the purposes of a classified road. In considering Section 2.118, the Application was referred to TfNSW for concurrence.

TfNSW has stated that there are currently no committed plans or funding for any classified road project that would utilise the reservation on the subject site. Given this, TfNSW has provided concurrence for the proposed development, subject to the inclusion of conditions of consent.

Given the above, the proposal is considered to satisfy the provisions of s2.118 of the *SEPP (Transport and Infrastructure) 2021*.

In addition to the above the applicant has submitted an acoustic report demonstrating that the proposal employs appropriate measures to ensure the development is appropriately attenuated to protect occupants in accordance with the prescribed noise levels identified under the provisions of Part 2.120 of *SEPP (Transport and Infrastructure) 2021*.

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	Complies
Section 1.2 Aims of Plan	<p>The proposal, subject to conditions, satisfies the section as follows:</p> <ul style="list-style-type: none"> • The proposal encourages walking, cycling and use of public transport through appropriate intensification of development densities surrounding transport nodes, • 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, including cumulative impacts 	Yes, subject to conditions

Part 2 – Permitted or prohibited development

Section	Proposed	Complies
Section 2.3 Zone objectives and Land Use Table	<ul style="list-style-type: none"> • The application proposes alterations and additions to a boarding house. Boarding houses are, in principle, permissible with consent in the MU1 Mixed Use zone. • However, the definition of a boarding house has changed from when the site was approved for the use, to the current definition outlined in the <i>IWLEP 2022</i>. As such, as discussed in detail below, the application benefits from existing use rights. 	No; however, existing use rights established
Section 2.7	The proposal satisfies the section as follows:	Yes, subject to conditions

Section	Proposed	Complies
Demolition requires development consent	<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. 	

Permissibility / Existing Use Rights

The site is zoned MU1 Mixed Use under the *IWLEP 2022*. The *IWLEP 2022* defines the development as:

boarding house means a building or place—

- (a) *that provides residents with a principal place of residence for at least 3 months, and*
- (b) *that contains shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- (c) *that contains rooms, some or all of which may have private kitchen and bathroom facilities, and*
- (d) *used to provide affordable housing, and*
- (e) *if not carried out by or on behalf of the Land and Housing Corporation—managed by a registered community housing provider,*

but does not include backpackers' accommodation, co-living housing, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.

Boarding houses are permissible within the MU1 zoning. However, the definition of a boarding house has changed since the initial approval of the use on the site in 2009, and as such, the proposal cannot comply with the above definition, or the minimum lot size requirements as shown below:

boarding house includes a house let in lodgings, hostel or Class 3 boarding house under the *Building Code of Australia* which provides a permanent place of residence, but does not include a backpackers' hostel, a guest house, a private hotel, a motel or other tourist accommodation.

Thus, the current definition prohibits the ongoing use of the site as a boarding house should existing use rights not be established.

Division 4.11 (Part 4.65-4.68) of the *Environmental Planning and Assessment Act 1979 (EP&A Act 1979)* contains provisions that provide a framework for the definition of an 'existing use' and provides further limitations and regulation for the continuation and development of existing uses.

Firstly, Part 4.65 of the Act provides a definition of an existing use. In plain terms, an existing use is defined in the following manner:

- It is a use that was lawfully commenced
- It is a use that is currently prohibited
- It is a use that has not been abandoned since the time that it became a prohibited use

In considering the above, the following information is noted to demonstrate that the site benefits from existing use rights:

- The site received development consent on 12/02/2010 (DA200900206) 'To demolish part of the premises and carry out alterations to convert the premises into 6-bedroom boarding house'. A further development consent was issued on 22/09/2014 'To demolish part of the premises and carry out ground and first floor alterations and additions to a boarding house to construct 5 additional boarding rooms and increase amount of residents to 12'. The Applicant has submitted a copy of this development consent.
- The applicant has stated that, *inter alia*, "...consent was issued for boarding house use of the subject site and had been in continuous operation before the commencement of the current version of the [IWLEP 2022]".
- The site is a registered boarding house and has obtained a boarding house licence with Inner West Council (BH/3644) and can be located on the Accommodation Registers with NSW Fair Trading.

It is noted that Part 4.67(3) of the Act specifies that:

"An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force."

As such, the provisions contained in *IWLEP 2022* do not apply to the development to the extent that it relates to the boarding house use. Rather, Division 4.11 of the Act services to enable the continuation of an existing use and refers to the relevant regulations (Environmental Planning and Assessment Regulation 2021) with respect to the premises being enlarged, expanded or intensified; or being altered or extended for the existing use.

(ii) Environmental Planning and Assessment Regulation 2021

Sections 163 - 165 of the EPA&A Regulations 2021 are relevant to the development as they set out the matters for consideration for enlargement, expansion or intensification of existing uses and the consent requirements for alterations and additions to an existing use.

Comment:

Clause 163 - Certain development allowed

The proposal involves alterations and additions to the existing boarding house development, which is permitted by Clause 163(1) of the EPA&A Regulations 2021.

Clause 164 - Enlargement, expansion and intensification of existing uses

Clause 165 - Alteration of buildings and works

Enlargement/expansion of the existing boarding house use is sought. However, this is proposed to be undertaken for the existing use and for no other use and will be carried out only on the land on which the existing use as carried out immediately before the relevant date. The proposed works would be for the existing use of the buildings as a boarding house, thereby, satisfying Clauses 164 and 165 of the EPA&A Regulations 2021.

(iii) Land and Environment Court Planning Principles – Existing Use Rights

An assessment of the proposed alterations and additions to the boarding house has been carried out in accordance with the NSW Land and Environmental Court planning principles in relation to the assessment of development applications based on existing use rights, which were stated by Senior Commissioner Roseth in *Fodor Investments V Hornsby Shire Council [2005]*.

(a) Principle 1 – How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

Height

The site is not afforded a maximum building height. Notwithstanding this, the application proposes a maximum height of 6.4 metres. This height is consistent with adjoining neighbours and surrounding context, given the site adjoins a five and three storey residential flat building to the rear and side. The proposed building is consistent with the objectives of the building height development standard contained within *IWLEP 2022*.

Floor space ratio

The site is not afforded a maximum floor space ratio. Notwithstanding this, the proposed FSR of 1.3:1 or 371.5sqm is considered acceptable, as the proposal does not result in any undue privacy or solar access impacts, and the overall bulk and scale of the proposal is consistent with surrounding sites. The proposed building is consistent with the objectives of the floor space ratio development standard contained within *IWLEP 2022*.

Setbacks

Side Setbacks

- Nil setback along the ground and first floor north-eastern and south-western elevations, and

Front Setback

- No change is proposed to the existing front setback.

Rear Setback

- 6.1m rear setback

The proposed building setbacks are acceptable in the site circumstances – refer to a more detailed discussion under Part 4.3 of the MDCP 2011.

(b) Principle 2 – What is the relevance of the building in which the existing use takes place?

The development would continue to be used as a boarding house.

(c) Principle 3 – What are the impacts of the development on adjoining land?

The impacts of the proposed alterations and additions have been assessed elsewhere in this report and are generally considered to be acceptable

Concluding Remarks

The proposal has been assessed against the four (4) planning principles established by the NSW Land and Environment Court in relation to existing use rights. As outlined above, the proposal is not considered to result in undue or adverse impacts to adjoining properties or the streetscape.

The following is an assessment of the application with regard to the heads of consideration under the provisions of Section 4.15 of the *Environmental Planning & Assessments Act 1979*.

Part 4 – Principal development standards

Section	Proposed		Complies
Section 4.3 Height of buildings	Maximum	The site is not afforded a maximum height.	N/A
	Proposed	6.4m	
Section 4.4 Floor space ratio	Maximum	The site is not afforded a maximum FSR.	N/A
	Proposed	1.3:1 or 371.5sqm	
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

Part 5 – Miscellaneous provisions

Section	Proposed	Complies
Section 5.1 Relevant acquisition authority	<ul style="list-style-type: none"> • As outlined elsewhere in this report, the site is reserved for acquisition by TfNSW for the purposes of a classified road. 	Yes, subject to conditions

Section	Proposed	Complies
	<ul style="list-style-type: none"> TfNSW has provided its concurrence for the proposed alterations and additions to a boarding house, stating that there are no current proposals to acquire the land for the purposes of a classified road. Conditions of consent have been recommended by TfNSW to be imposed. 	

Part 6 – Additional local provisions

Section	Proposed	Complies
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 proposed earthworks 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 development maximises the use of permeable surfaces and subject to conditions would not result in any significant runoff to adjoining properties or the environment. 	Yes, subject to conditions
Section 6.8 Development in areas subject to aircraft noise	<ul style="list-style-type: none"> The site is located within the ANEF 25-30 contour, and as such an Acoustic Report was submitted with the application. The proposal is capable of satisfying this section as conditions have been included in the development consent to ensure that the proposal will meet the relevant requirements of Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2015, thereby ensuring the proposal's compliance with the relevant provisions of Section 6.8 of the <i>IWLEP 2022</i>. 	Yes, subject to conditions
Section 6.13 Residential accommodation in Zones E1, E2 and MU1	<ul style="list-style-type: none"> As the subject application seeks consent for alterations and additions to an existing boarding house within a MU1 zone, the provisions of this section do not apply. Further it is noted that approval of the use on the site occurred prior to the MU1 Mixed Use zoning on the site. 	Not applicable

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	Complies
Part 2.1 – Urban Design	Yes
Part 2.5 – Equity of Access and Mobility	Yes
Part 2.6 – Acoustic and Visual Privacy	Yes
Part 2.7 – Solar Access and Overshadowing	No – see discussion
Part 2.9 – Community Safety	Yes
Part 2.10 – Parking	No – see discussion
Part 2.18 – Landscaping and Open Space	Yes
Part 2.20 – Tree Management	No – see discussion
Part 2.21 – Site Facilities and Waste Management	Yes
Part 2.25 – Stormwater Management	Yes
Part 4.3 – Boarding Houses	Yes
Part 9 – Strategic Context	Yes

The following provides discussion of the relevant issues:

Part 2 – Generic Provisions

Control	Assessment	Complies
Part 2.1 Urban Design	<p>The proposed development, as amended, satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> • The proposal does not impact the definition between the public and private domain and is appropriate for the character of the locality given its form, massing, and siting at the rear of the site; and • The proposal preserves the existing character of the streetscape, as the proposed addition will not be visible from the public domain and protects the street elevation of the existing building. 	Yes
Part 2.5 Equity of Access and Mobility	<p>The proposed development, as amended, satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> • Two (2) accessible rooms are provided (based on the requirement of 1 per 5 new rooms or part thereof for the 8 new rooms) in accordance with C11. The proposed accessible rooms have been located in close proximity to all common living and open areas. • Appropriate access is provided for all persons through the principal entrance to the premises. • A continuous accessible path of travel to and within the subject premises is provided which allows a person with a disability to gain access to all ground floor areas within the boarding house. • Suitable accessible sanitary facilities are provided. • Council's Building Certification team have reviewed the submitted documentation and have recommended conditions of consent ensuring the development complies with the BCA during the construction certificate stage. 	Yes, subject to conditions

Control	Assessment	Complies
Part 2.6 Acoustic and Visual Privacy	<p>The proposal will have a satisfactory impact on visual and acoustic levels of the surrounds as follows:</p> <ul style="list-style-type: none"> • The communal living area and area of communal open space is located at the rear of the site and has been designed and located to offer reasonable amenity to occupants. • The proposed doors along the ground floor rear elevation are considered to have an acceptable impact on neighbouring amenity, as they face into the rear of the site, and are located to provide access into the communal open areas. Furthermore, the rear and side boundary walls are considered to provide adequate screening. • A submission was received raising concern regarding the proposed first floor windows serving three (3) bedrooms along the rear elevation and potential overlooking opportunities to neighbouring balconies and windows located to the north-east of the site. It is noted that there is over 10 metres separation between the proposed windows and the neighbouring site at the rear, it is considered reasonable to impose a design change condition requiring the windows to have fixed screening up to 1.6 metres from finished floor level, in accordance with control C3. Any window above 1.6 metres can be operable to allow ventilation. • A submission was received regarding an increase in acoustic impacts from occupants using the communal areas, as there will be an increase in the number of occupants. The proposal includes appropriate management techniques outlined in the Plan of Management (POM) to limit acoustic impacts to nearby/adjoining residents, and the POM will be included as a condition of consent. 	Yes, subject to conditions
Part 2.7 Solar Access and Overshadowing	<p>The proposal will have a satisfactory 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 proposal will result in a minor increase in overshadowing to the balconies of the immediate neighbour to the south-east between 9am-11am. However, a minimum of 2 hours direct solar access to these windows of principal living areas and principal areas of open space between 9:00am and 3:00pm on 21 June are retained. • Given the above, the development will not result in adverse amenity impacts as a result of overshadowing. <p><i>Solar Access</i></p> <ul style="list-style-type: none"> • Solar access to communal living areas has been discussed elsewhere in this report. • Control C11 of this Part requires a minimum of 65% of rooms to have a window positioned within 30 degrees east and 20 degrees west of true north and to allow for direct sunlight over minimum 50% of the glazed surface for at least 2 hours on June 21 between 9am-3pm. Given the location of the new 	No, but acceptable

Control	Assessment	Complies
	<p>rooms (directed north-west on the ground and first floor), the proposed new rooms all have windows located within the required directions, and will receive a minimum 2 hours of compliant solar access to windows on June 21.</p> <ul style="list-style-type: none"> The communal open space would not comply with the minimum solar access requirements given the tall boundary walls at the side and the rear, however, the location of the open space at the rear has not changed from existing. As such, the overshadowing to this area is considered acceptable in this instance. 	
Part 2.9 Community Safety	<p>The proposed development, as amended, satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> The boarding house entrance remains identifiable and visible from the street. The Plan of Management includes provisions regarding building security to ensure ongoing safety on the site for occupants and neighbours. A condition has been included in the recommendation to incorporate the submitted Plan of Management. 	Yes
Part 2.10 Parking	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> Car parking has been assessed earlier in this report. No car parking spaces are proposed on the site. The non-compliance is acceptable given the site has no ability to provide car parking, as there is no rear access. Further, the site fronts a classified, TfNSW owned road, and it is unlikely that vehicular access from the frontage would be supported. The application proposes six (6) bicycle parking spaces at the rear of the site as an alternative solution for occupants. Given the above, the proposal is considered acceptable in this instance and satisfies the following objective: <i>O6 The proposed bicycle parking is considered to be situated in an appropriate location and is well-designed.</i> 	No but acceptable
Part 2.18 Landscaping and Open Spaces	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> The proposal provides non-compliant communal open space per the requirements contained in the <i>SEPP (Housing) 2021</i>. Notwithstanding this, the proposal provides a minimum of 20sqm of communal open space at the rear of the site, which is proposed to be landscaped. The design of the communal open area would allow for outdoor furniture, including chairs and tables. No change is proposed to the front setback. Given the above, the proposal is considered to provide adequate communal open space. 	Yes

Part 2.20 Tree Management	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> Given the size of the communal open area to the rear of the site, and given the constraints of locating bins and bicycle storage areas at the rear, it is considered onerous to require the planting of a tree on the site. 	No but acceptable
Part 2.21 Site Facilities and Waste Management	<p>The proposed development, as amended, satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> The application was accompanied by a waste management plan in accordance with the Part. Council's Resource Recovery officer has reviewed the submitted documentation and has recommended conditions to ensure the appropriate management of waste during the construction of the proposal. The plans indicate the location of the bin storage area, which is located at the rear of the site. It is noted that given the existing constraints of the site, being that there is no rear access available, and that there is limited area within the front setback, the proposed bin storage area at the rear of the site is a suitable location. However, given the close proximity to adjoining neighbours at the side and rear, it is recommended that a design change condition be imposed requiring a bin enclosure to be constructed, being no higher than 1.5m, to reduce visual and odour impact. Given the above, the proposal is considered to satisfy the provisions of this Part subject to conditions. 	Yes, subject to conditions
Part 2.25 Stormwater Management	Conditions are recommended to ensure the appropriate management of stormwater.	Yes, subject to conditions

Part 4 – Residential Development

Control	Assessment	Complies
Part 4.3.3.1 Character and amenity of the local area	<p>The proposed development, as amended, satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> The site is not afforded a floor space ratio within the <i>IWLEP 2022</i>. Notwithstanding this, the proposed development, as amended, is compatible in density with its immediate locality, and with the desired future character of the area. Furthermore, the proposed nil side setbacks are consistent with the predominant setback character found in the area, and do not adversely impact the amenity of adjoining premises with regards to visual bulk or solar access. The proposed rear setback is also considered acceptable, as it is consistent with the immediate neighbouring buildings located to the east and west, as is not considered to create undue amenity impact to the subject site or neighbouring properties. The neighbour to the south-west and north-east are a five-storey and three-storey residential flat building, respectively. 	Yes

Control	Assessment	Complies
	<p>The proposed two storey boarding house is considered to be of an appropriate bulk and scale given the surrounding context, and is not considered to present undue amenity impacts with regards to visual bulk, scale, overshadowing or visual privacy, as discussed in this report.</p> <ul style="list-style-type: none"> Given the above, the proposed alterations and additions are acceptable in this instance and satisfy the objectives of this Part. 	
Part 4.3.3.5 Boarding Rooms	<p>The proposed development, as amended, satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> As outlined elsewhere in this report, the proposed new rooms are considered adequate in size, configuration and facilities for future occupants, and provides a reasonable level of privacy and comfort. 	Yes
Part 4.3.3.6 Communal rooms and facilities	<p>The proposed development, as amended, satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> As outlined elsewhere in this report, compliant communal living area has been provided. Notwithstanding this, the proposal is considered to provide relief and comfort, and contains cooking, laundry and dining facilities for occupants. 	Yes

Part 9 – Strategic Context

Control	Assessment	Complies
Part 9.33 Princes Highway (Precinct 33)	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> The proposal does not seek any changes to the existing façade, and as such will not impact the existing streetscape character; and The proposal will not adversely impact operation of Princes Highway. 	Yes

C. Environmental Planning Regulations

The application has been assessed and the following provides a summary of the relevant sections of the *Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)*.

Part 4 Determination of Development Applications

Section 64 of the *EP&A Regulation 2021* applies to a development application *that involves the rebuilding or alteration of an existing building if.*

- (a) *the proposed building work and previous building work together represent more than half of the total volume of the building, or*
- (b) *the measures contained in the building are inadequate—*
 - (i) *to protect persons using the building, if there is a fire, or*

- (ii) *to facilitate the safe egress of persons using the building from the building, if there is a fire, or*
- (iii) *to restrict the spread of fire from the building to other buildings nearby.*

The consent authority must *consider whether it is appropriate to require the existing building to be brought into total or partial conformity with the Building Code of Australia.*

In considering the above, the applicant has provided a report demonstrating the works can conform with the Building Code of Australia.

D. 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.

E. 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 and commercial surrounding and amongst similar uses to that proposed.

F. Submissions

The application was notified in accordance with Council's Community Engagement Strategy between 06 August 2024 to 27 August 2024 and was renotified on 08 April 2025 to 02 May 2025.

A total of four (4) submissions were received in response to the initial notification. The application was renotified due to amended plans being submitted and one (1) submission was received.

Issues raised as follows have been discussed in this report:

- Visual bulk
- Visual privacy
- Waste management
- Acoustic impact
- Public interest
- Landscaping and open space
- Plan of management

Further issues raised in the submissions received are discussed below:

Concern	Comment
Loss of outlook and sense of enclosure	Concern was raised regarding the loss of outlook from a balcony and living area located at the rear of the site (to the north-west).

	<p>The image copied below is an excerpt from the submission.</p> <div data-bbox="611 241 1217 616" data-label="Image"> </div> <p>While it is acknowledged that there will be changes to the outlook from the proposed two storey addition, it is not considered to have an unreasonable impact on the amenity of neighbouring properties. The location of the proposed second storey is consistent in bulk and scale with neighbouring properties, and the proposal, as amended, has located the bulk to the centre of the site, which is where Council's controls would ideally locate first floor additions. In addition, the proposed first floor seeks to maintain the height of the existing building (6.4m).</p> <p>It is considered that the proposal has been designed in accordance with Council's IWLEP 2022 and MDCP 2011, as discussed throughout this report.</p>
Solar access between 7am-9am	Part 2.6 of MDCP 2011 requires applications to provide solar access and overshadowing diagrams on June 21 between 9am-3pm, which has been submitted.
Increase in traffic and parking due to increase in occupants	As outlined elsewhere in this report, the site does not have the ability to provide car parking on the site without substantial alterations to the existing building. Notwithstanding this, bicycle parking facilities have been provided as an alternative solution, and Council's Development Engineer has considered the proposal acceptable with regard to traffic and parking.
Loss of natural ventilation	The proposal, as amended, will not adversely impact the adjoining properties natural ventilation as the additions are located where the existing building form is (i.e., the centre of the site).
Fire safety	The site is required to submit annual fire safety statements to ensure the safety of the premises, and to ensure compliance with the relevant requirements. Notwithstanding this, the proposal will be required to demonstrate compliance during the construction certificate and occupation certificate stage.
Inconsistencies in the SEE	It is considered sufficient details and information have been submitted with the application, as amended, to allow for a complete assessment. As detailed in this report, an independent assessment against the relevant planning controls/policies was carried out on the merits of the proposal. In summary, the proposal is considered to satisfy the relevant provisions.

G. 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 Contributions

Section 7.11 contributions are payable for the proposal. The 'existing' development has been calculated using the number of approved rooms per the activated consent in DA200900206.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of **\$118,251.00** 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. Referrals

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

- Development Engineer
- Resource Recovery
- Environmental Health
- Building Certification

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

- Transport for NSW
- Sydney Water

Comment: The application was referred to Sydney Water who generally support the proposal subject to conditions of consent being imposed requiring a Section 73 and Building Plan Approval be sought.

8. Conclusion

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

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

9. Recommendation

- A. In relation to the proposal in Development Application No. DA/2024/0628 to contravene the car parking and communal open space development standard in Section 24(2)(h) and Section 24(2)(i)(i) of *State Environmental Planning Policy (Housing) 2021* the Inner West Local Planning Panel is satisfied that the Applicant has demonstrated that:
 - (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.
- 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/2024/0628 for alterations and additions to an existing boarding house, including partial demolition of existing structures and construction of a two-storey structure to provide a total of 14 boarding rooms at 151 Princes Highway ST PETERS subject to the conditions listed in Attachment A below:

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

GENERAL CONDITIONS

	Condition
1.	<p>Recycling / Garbage / Organics Service Information and Education</p> <p>The building manager / strata title manager or body corporate is responsible for ensuring all tenants are kept informed regarding Council's services, and best practice waste and recycling source separation.</p> <p>Reason: To ensure resource recovery is promoted and residential amenity is protected.</p>
2.	<p>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 to the approved bin storage area.</p> <p>Reason: To ensure resource recovery is promoted and residential amenity is protected.</p>
3.	<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 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.

Insurances

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

Reason: To ensure Council assets are protected.

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
Sheet 01/18, Rev E	Site Plan	20.02.2025	M. Groupe
Sheet 02/18, Rev E	Proposed Ground Floor Plan	15.02.2025	M. Groupe
Sheet 01/18, Rev E	Proposed First Floor Plan	15.02.2025	M. Groupe
Sheet 01/18, Rev E	Proposed Roof Plan	15.02.2025	M. Groupe
Sheet 01/18, Rev E	North-east and South-west Elevations	15.02.2025	M. Groupe
Sheet 01/18, Rev E	North-west and South-east elevations	15.02.2025	M. Groupe
Sheet 01/18, Rev E	Section A-A	15.02.2025	M. Groupe
Not stated	Schedule of finish	Not stated	Not stated
Not stated	Plan of Management	Not stated	Not stated
nss24198	Aircraft and Road Traffic Noise & Assessment	May 2024	Noise and Sound Services

As amended by the conditions of consent.

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

6.	<p>Works Outside the Property Boundary</p> <p>This development consent does not authorise works outside the property boundaries on adjoining lands.</p> <p>Reason: To ensure works are in accordance with the consent.</p>
7.	<p>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>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>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>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>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.	Lead-based Paint Buildings built or painted prior to the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe. Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving the removal of lead based paints. Precautions should therefore be taken if painted surfaces are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned prior to occupation of the room or building. Reason: To protect human health.
13.	Dial Before You Dig Contact "Dial Before You Dig" prior to commencing any building activity on the site. Reason: To protect assets and infrastructure.
14.	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.
15.	Road Occupancy Licence A Road Occupancy Licence (ROL) shall be obtained from the Transport Management Centre (TMC) for any works that may impact traffic flows on the Princes Highway during construction activities. A ROL can be obtained through https://myrta.com/oplinc2/pages/security/oplincLogin.jsf . Reason: To protect TfNSW assets during demolition and construction.
16.	Compliance with Construction Code All building work must be carried out in accordance with the provisions of the Building Code of Australia and the National Construction Code. Reason: To ensure the work is carried out to an acceptable standard and in accordance with the Building Code of Australia and the National Construction Code.
17.	Bicycle Parking The development must provide and maintain within the site: Bicycle storage capacity within the site to accommodate a minimum of 6 bicycles. Reason: To ensure parking facilities are designed in accordance with the Australian Standard and Council's DCP.

18.	Health Premises Registration – Generic The premises are required to be registered with Council's Environment Health Team in accordance with the following legislation, as relevant: <ol style="list-style-type: none"> 1. Food Shop - Food Act 2003; 2. Hairdressing Salon / Barber - Public Health Act 2010 and the Local Government (General) Regulation 2005; 3. Skin Penetration - Public Health Regulation 2012; 4. Cooling Tower / Warm Water System - Public Health Act 2010 and Public Health Regulation 2012; and 5. Boarding House / Shared Accommodation - Boarding Houses Act 2012 and the Local Government (General) Regulation 2005. Reason: To ensure the premises operate in accordance with the relevant legislation.
19.	Mechanical Ventilation System Certification The mechanical ventilation systems are to be designed, constructed and operated in accordance with the following: <ol style="list-style-type: none"> 1. Australian Standard AS 1668 Part 1 – 1998; 2. Australian Standard AS 1668 Part 2 – 2012; 3. Australian Standard 3666.1 – 2011; 4. Australian Standard 3666.2 – 2011; and 5. Australian Standard 3666.3 - 2011. The system must be located in accordance with the approved plans and/or within the building envelope, design and form of the approved building. Any modifications to the approved plans required to house the system must be the subject of further approval from Council. Reason: To ensure compliance with the relevant Australian Standards.

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

	Condition
20.	Resource Recovery and Waste Management Plan - Demolition and Construction Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a "Waste and Recycling Waste Management Plan - Demolition and Construction" in accordance with the relevant Development Control Plan. Reason: To ensure resource recovery is promoted and local amenity protected during construction.

21.	<p>Bin Storage Area</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Waste and Recycling Management Plan.</p> <p>The submitted Waste and Recycling Management Plan must demonstrate that that the bin storage area will accommodate the number of bins required for all waste and recycling generated by a development of this type and scale. The number of bins required must be calculated based on a weekly collection of garbage, a weekly collection of organics which includes food and garden organics (FOGO), and a fortnightly collection of mixed recycling.</p> <p>The area must also include 50% allowance for manoeuvring of bins. The bin storage area is to be located away from habitable rooms, windows, doors and private useable open space, and to minimise potential impacts on neighbours in terms of aesthetics, noise and odour.</p> <p>The bin storage area is to meet the design requirements detailed in the Development Control Plan.</p> <p>Reason: To ensure resource recovery is promoted and local amenity protected.</p>				
22.	<p>Security Deposit - Custom</p> <p>Prior to the commencement of demolition works or prior to the issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.</p> <table border="1" data-bbox="435 1014 1198 1093"> <tr> <td>Security Deposit:</td><td>\$8800.00</td></tr> <tr> <td>Inspection Fee:</td><td>\$389.90</td></tr> </table> <p>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.</p> <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>	Security Deposit:	\$8800.00	Inspection Fee:	\$389.90
Security Deposit:	\$8800.00				
Inspection Fee:	\$389.90				

	<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>
23.	<p>Stormwater Drainage System – Minor Developments (OSD is not required)</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans 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 and paved areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together overflow pipelines from any rainwater tank(s) by gravity to the kerb and gutter of a public road. 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 other than to drain downpipes to the rainwater tanks. The Drainage Plan must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes. No nuisance or concentration of flows to other properties. 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. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets. 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. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings. 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>

24.	<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>
25.	<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> <ol style="list-style-type: none"> A bin enclosure being no higher than 1.5 metres from ground level be constructed at the rear of the site to store the required bins for the approved use. <p>Reason: To ensure that the design changes protect the amenity of the neighbourhood.</p>
26.	<p>Privacy</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans indicating that the windows serving Bed12, 13 and 14 being amended in the following manner:</p> <ul style="list-style-type: none"> Fixed and obscure glazing to a minimum level of 1.6 metres above the floor level; Suitable externally fixed screening with a minimum block out density of 75% to a level of 1.6 metres above the floor level; Note: The louvers are to have no individual opening more than 30mm wide, the screen is to have a maximum total area of opening of 30% of the surface area of the screen, and is to be made of durable materials. Louvered screens must be securely fitted and may be able to be tilted open from a closed position to an angle of 45 degrees in a downward or upward position. The window portion above 1.6m from finished floor level may be operable to allow ventilation. <p>Reason: To ensure that visual privacy treatment protects the amenity of the neighbourhood.</p>
27.	<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>

28.	<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>														
29.	<p>Acoustic Report – Aircraft and Road Noise</p> <p>Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans detailing the recommendations of an acoustic report prepared by a suitably qualified Acoustic Engineer demonstrating compliance of the development with the relevant provisions of Australian Standard AS 2021:2015 Acoustics – Aircraft noise intrusion – Building siting and construction and the requirements of the <i>SEPP (Transport and Infrastructure) 2021</i>.</p> <p>Reason: To ensure all noise attenuation is in accordance with the relevant Australian Standard.</p>														
30.	<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" data-bbox="438 1075 1145 1377"> <thead> <tr> <th>Contribution Category</th><th>Amount</th></tr> </thead> <tbody> <tr> <td>Open Space & Recreation</td><td>\$84,549</td></tr> <tr> <td>Community Facilities</td><td>\$15,671</td></tr> <tr> <td>Transport</td><td>\$11,116</td></tr> <tr> <td>Drainage</td><td>\$5,829</td></tr> <tr> <td>Plan Administration</td><td>\$1,086</td></tr> <tr> <td>TOTAL</td><td>\$118,251</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>	Contribution Category	Amount	Open Space & Recreation	\$84,549	Community Facilities	\$15,671	Transport	\$11,116	Drainage	\$5,829	Plan Administration	\$1,086	TOTAL	\$118,251
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TOTAL	\$118,251														

	<p>CPIconsent = is the Consumer Price Index (All Groups Index) for Sydney at the date the contribution amount above was calculated being 140.9 for the Mar-25 quarter.</p> <p>CPIpayment = 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> <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>
31.	<p>Building Plan Approval (including Tree Planting Guidelines)</p> <p>The plans must be approved by Sydney Water prior to demolition, excavation or construction works commencing. This allows Sydney Water to determine if sewer, water or stormwater mains or easements will be affected by any part of your development. Any amendments to plans will require re-approval. Please go to Sydney Water Tap in@ to apply. Sydney Water recommends developers apply for a Building Plan Approval early as to reduce unnecessary delays to further referrals or development timescales.</p> <p>Reason: To protect Sydney Water assets.</p>

32.	<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>
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BEFORE BUILDING WORK COMMENCES

	Condition
33.	<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>
34.	<p>Construction Traffic Management Plan</p> <p>Prior to any works commencing, the Certifying Authority, must be provided with a detailed Construction Traffic Management Plan (CTMP) to cater for construction prepared by a person with RMS accreditation to prepare a work zone traffic management plan. Details must include haulage routes, estimated number of vehicle movements, truck parking areas, work zones, crane usage, etc., related to demolition/construction activities. A work zone approval must be obtained. If in the opinion of Council, TfNSW or the NSW Police the works results in unforeseen traffic congestion or unsafe work conditions the site may be shut down and alternative Traffic Control arrangements shall be implemented to remedy the situation. In this regard you shall obey any lawful direction from the NSW Police or a Council officer if so required. Any approved CTMP must include this as a note."</p> <p>Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>

35.	Waste Management Plan Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Development Control Plan. Reason: To ensure resource recovery is promoted and local amenity is maintained.
36.	Erosion and Sediment Control Prior to the issue of a commencement of any works (including any demolition works), the Certifying Authority must be provided with an erosion and sediment control plan and specification. Sediment control devices must be installed and maintained in proper working order to prevent sediment discharge from the construction site. Reason: To ensure resource recovery is promoted and local amenity is maintained.
37.	Standard Street Tree Protection Prior to the commencement of any work, the Certifying Authority must be provided with details of the methods of protection of all street trees adjacent to the site during demolition and construction. Reason: To protect and retain trees.
38.	Dilapidation Report Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the identified properties (no. 159 Princes Highway along the south-western elevation & no. 147 Princes Highway to the north-eastern elevation) 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. 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.
39.	Construction Fencing Prior to the commencement of any works (including demolition), the site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property. Reason: To protect the built environment from construction works.
40.	TfNSW Assets Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system that impact the Princes Highway road reserve are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au . A plan checking fee will be payable, and a performance bond may be required before TfNSW approval is issued.

	<p>The developer is required to enter into a Works Authorisation Deed (WAD) with the TfNSW, or other suitable arrangement as agreed to by TfNSW, for the abovementioned works.</p> <p>Reason: To ensure TfNSW assets are protected during demolition and construction.</p>
41.	<p>Public utility adjustments</p> <p>The Applicant shall be responsible for all public utility adjustment/relocation works, necessitated by the approved development, and as required by the various public utility authorities and/or their agents. Any public utility adjustment/relocation works on the state road network/the Princes Highway will require detailed civil design plans for road opening/under boring to be submitted to TfNSW for review and acceptance prior to the commencement of any works. The developer must also obtain any necessary approvals from the various public utility authorities and/or their agents. Please send all documentation to development.sydney@transport.nsw.gov.au. A plan checking fee will be payable, and a performance bond may be required before TfNSW approval is issued.</p> <p>The developer is required to enter into a Works Authorisation Deed (WAD) with the TfNSW, or other suitable arrangement as agreed to by TfNSW, for the abovementioned works.</p> <p>Reason: To protect TfNSW assets during demolition and construction.</p>

DURING BUILDING WORK

	Condition
42.	<p>Advising Neighbours Prior to Excavation</p> <p>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.</p> <p>Reason: To ensure surrounding properties are adequately notified of the proposed works.</p>
43.	<p>Survey Prior to Footings</p> <p>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.</p> <p>Reason: To ensure works are in accordance with the consent.</p>
44.	<p>Construction Hours – Class 2-9</p> <p>Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours:</p> <p>7:00am to 6:00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm); 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and at no time on Sundays or public holidays.</p>

	<p>Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc. and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.</p> <p>In the case that a standing plant or special out of hours permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.</p> <p>This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.</p> <p>Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving must be limited to 8:00am to 12:00pm, Monday to Saturday; and 2:00pm to 5:00pm Monday to Friday.</p> <p>The person acting on this consent must not undertake such activities for more than three continuous hours and must provide a minimum of one 2 hour respite period between any two periods of such works. "Continuous" means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.</p> <p>Reason: To protect the amenity of the neighbourhood.</p>
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BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

	Condition
45.	<p>Notice to Council to deliver Residential Bins</p> <p>Council is to be notified of bin requirements three weeks prior to the occupation of the building to ensure timely delivery.</p> <p>Reason: To ensure resource recovery is promoted and residential amenity is protected.</p>
46.	<p>No Encroachments</p> <p>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.</p> <p>Reason: To maintain and promote vehicular and pedestrian safety.</p>
47.	<p>Aircraft and Road Noise</p> <p>Prior to the issue of an Occupation Certificate (whether an interim or final Occupation Certificate), the Principal Certifier must be provided with a report from a suitably qualified person demonstrating that each of the commitments listed in Aircraft and Road Noise Assessment Report required by this consent has been satisfied.</p> <p>Reason: To ensure all noise attenuation is in accordance with the relevant Australian Standard.</p>

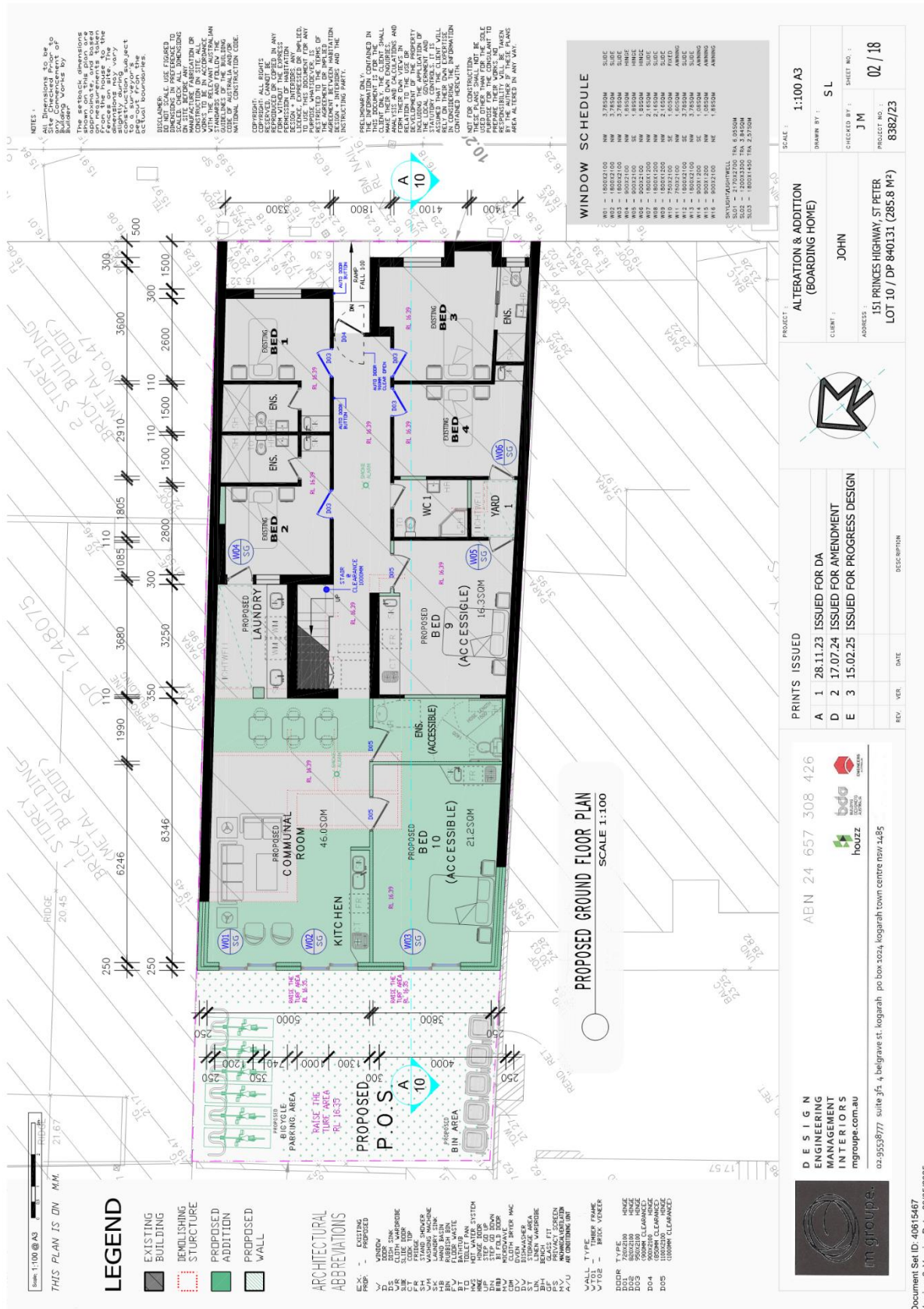
48.	<p>Smoke Alarms - Certification of upgrade to NCC requirements</p> <p>Prior to the issue of any Occupation Certificate, the Principal Certifier is required to be satisfied the existing building has been upgraded to comply with the provisions of the National Construction Code (Building Code of Australia) in relation to smoke alarm systems.</p> <p>Reason: To ensure compliance with the National Construction Code (Building Code of Australia).</p>
49.	<p>Section 73 Compliance Certificate</p> <p>A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Our assessment will determine the availability of water and wastewater services, which may require extensions, adjustments, or connections to our mains. Make an early application for the certificate, as there may be assets to be built and this can take some time. A Section 73 Compliance Certificate must be obtained before an Occupation or Subdivision Certificate will be issued.</p> <p>Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator.</p> <p>Go to the Sydney Water website or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.</p> <p>Reason: To ensure the development can comply with Sydney Water guidelines.</p>

OCCUPATION AND ONGOING USE

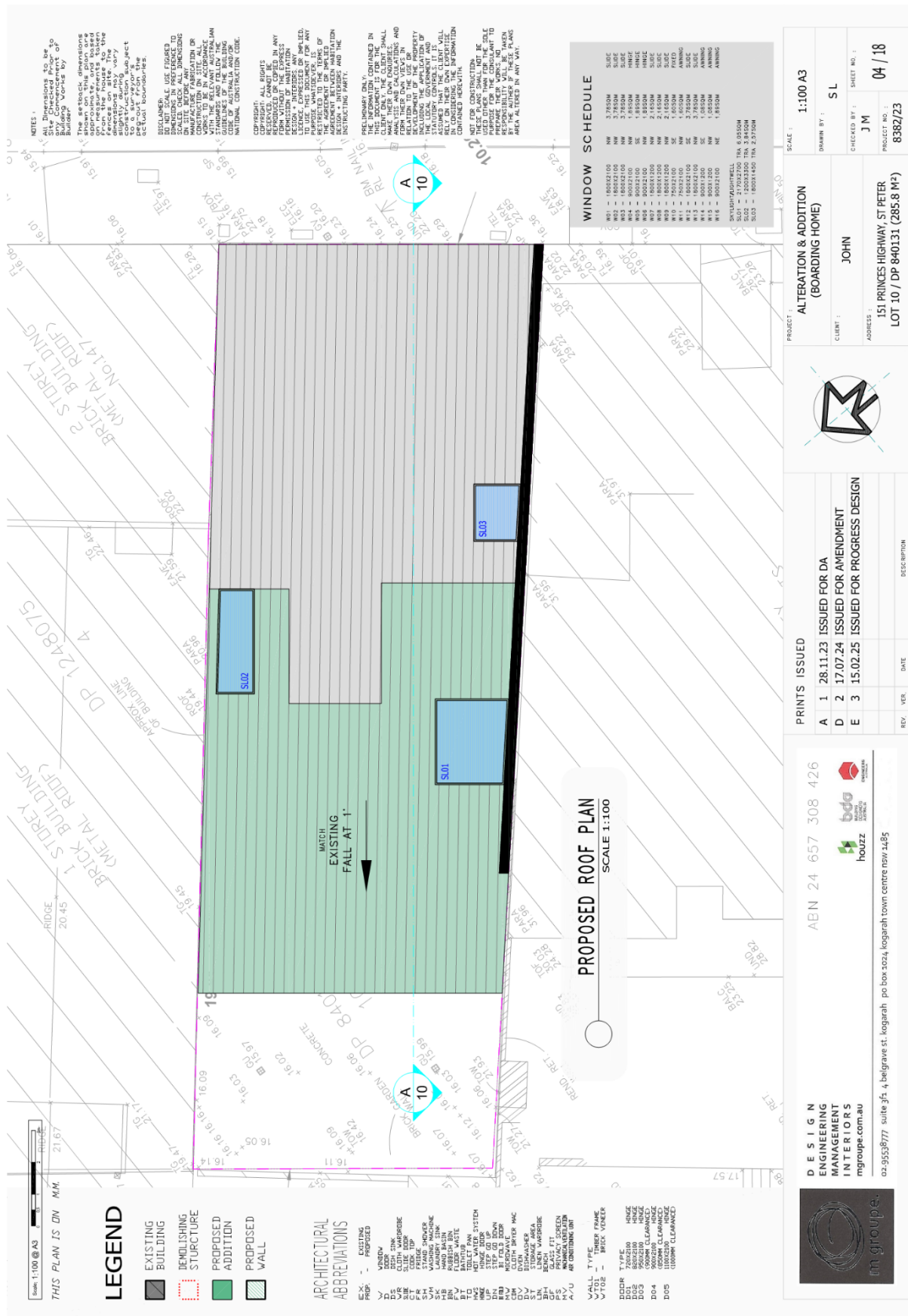
	Condition
50.	<p>Boarding House</p> <p>The use of the premises as a boarding house must comply at all times with the following:</p> <ol style="list-style-type: none"> The use must comply at all times with the Plan of Management referred to in the 'documents related to the consent' table and as amended by the conditions in this Determination; A copy of the Plan of Management and House Rules must be annexed to each and every tenancy/occupation agreement for a room; A copy of the approved Plan of Management and House Rules must be clearly displayed within every common room in the building at all times; The Plan of Management must not to be amended without the prior consent of Council and must be made available to Council officers and the Police upon request; All tenancy/occupation agreements for rooms within the premises must be for a minimum period of three (3) months; The premises must be used exclusively as a boarding house containing a maximum total of 14 lodger rooms with not more than 16 adult lodgers residing in the premises at any one time; Not more than two (2) lodgers must occupy boarding rooms 9 and 10; Not more than one (1) lodger must occupy boarding rooms 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13 and 14; Rooms 9 & 10 must be maintained as accessible rooms; The premises must not be adapted for use as backpacker's accommodation, serviced apartments or a residential flat building;

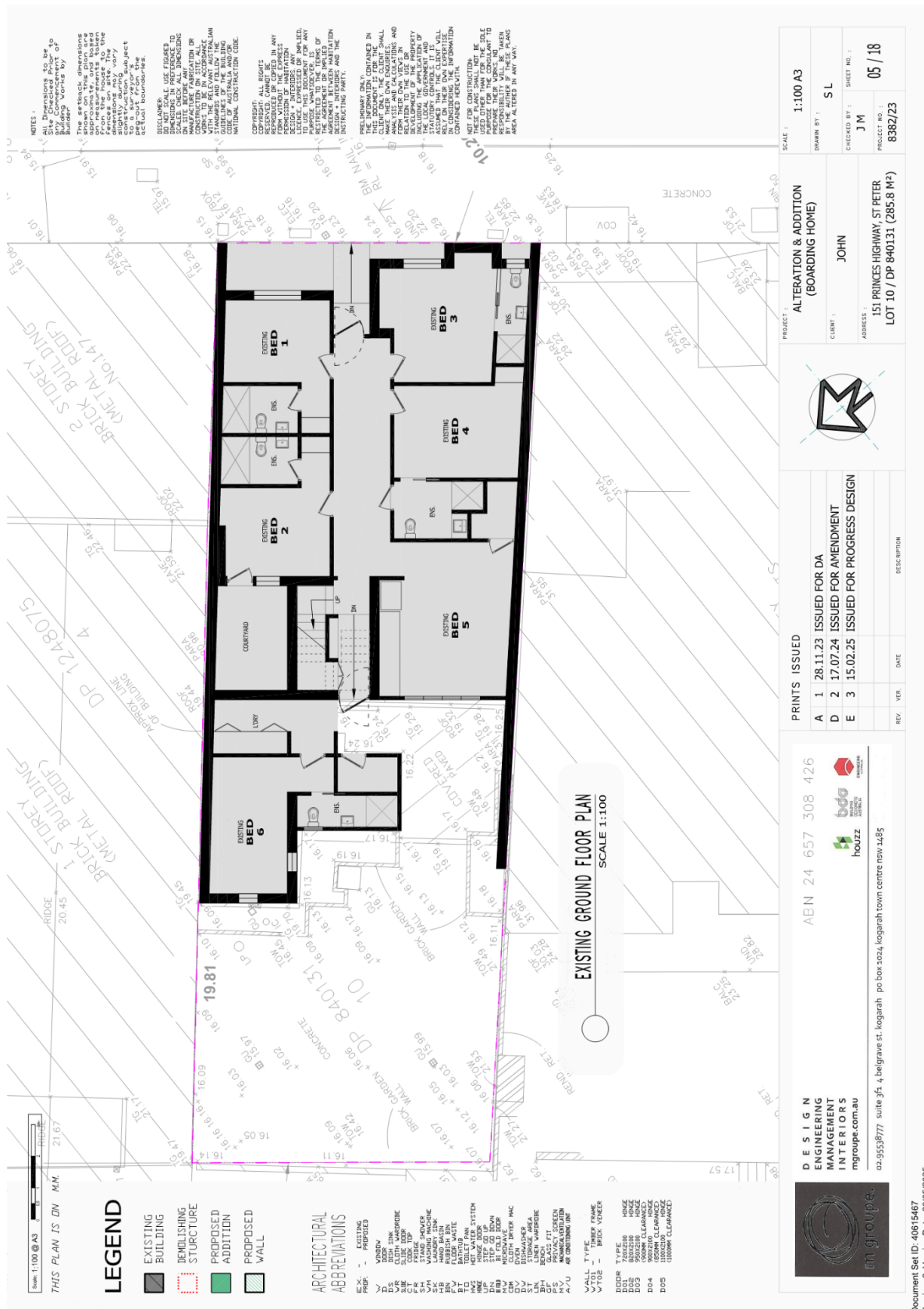
	<p>k. All common rooms/areas and recreation rooms/areas must be maintained at all times for the use of the lodgers; and</p> <p>j. Each self-contained room and shared kitchen must be fitted out with washing up facilities, a cooktop, oven, fridge and storage space with such utilities being maintained in working order at all times.</p> <p>Reason: To protect the amenity of the neighbourhood and ensure compliance with the consent.</p>
51.	<p>Noise General</p> <p>The proposed use of the premises and the operation of all plant and equipment must not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations, NSW EPA Noise Policy for Industry and NSW EPA Noise Guide for Local Government.</p> <p>Reason: To protect the amenity of the neighbourhood.</p>

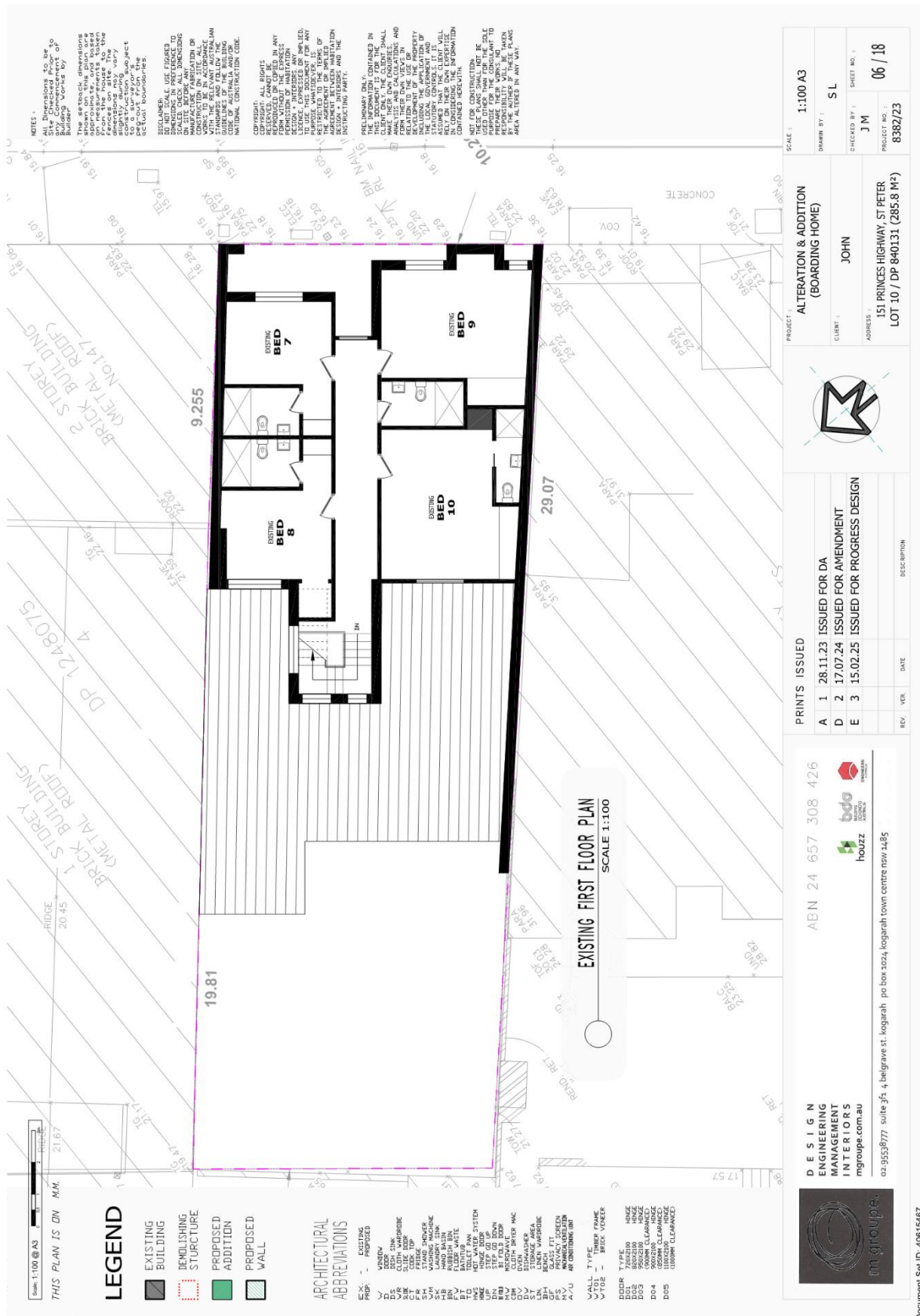
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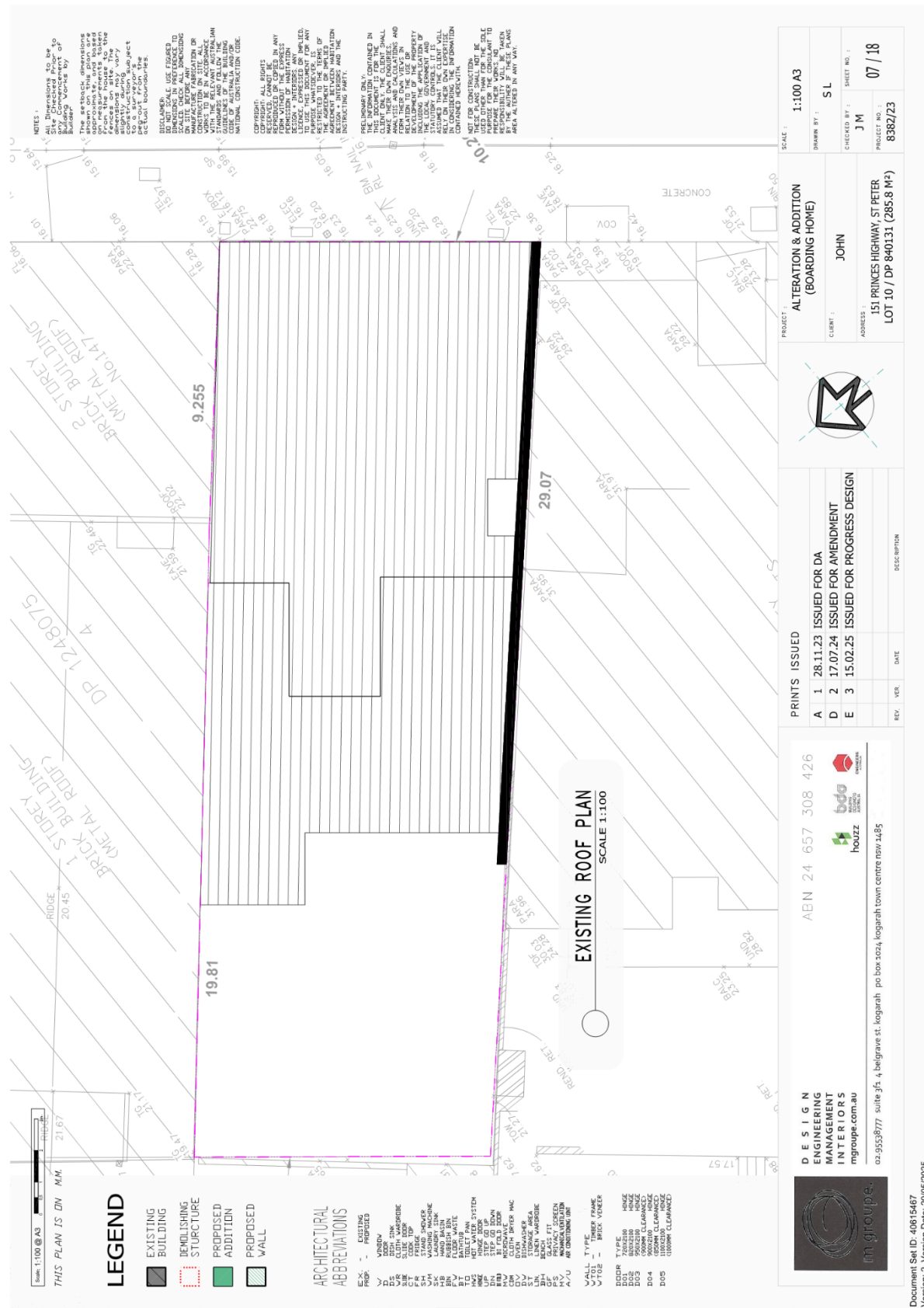


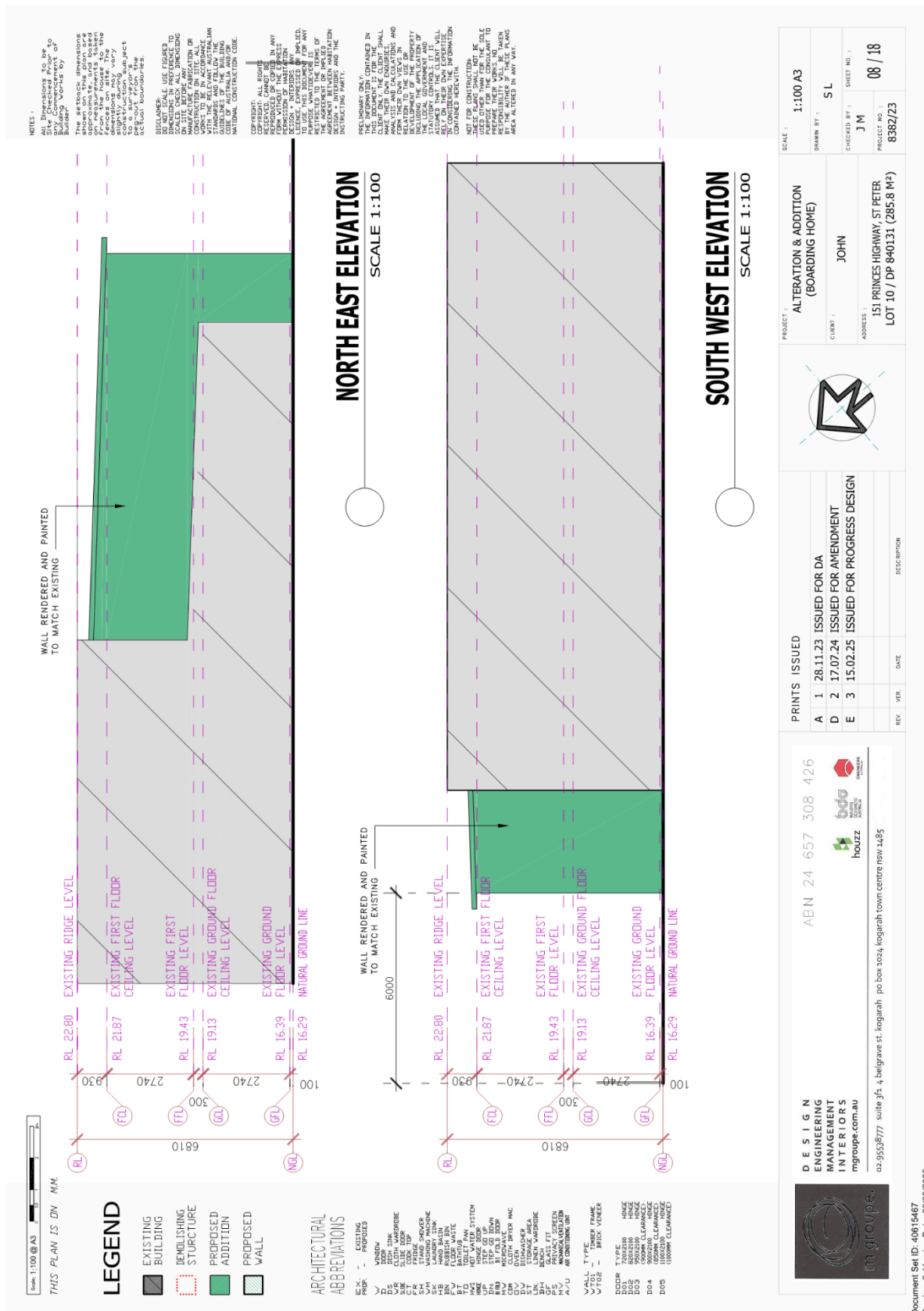






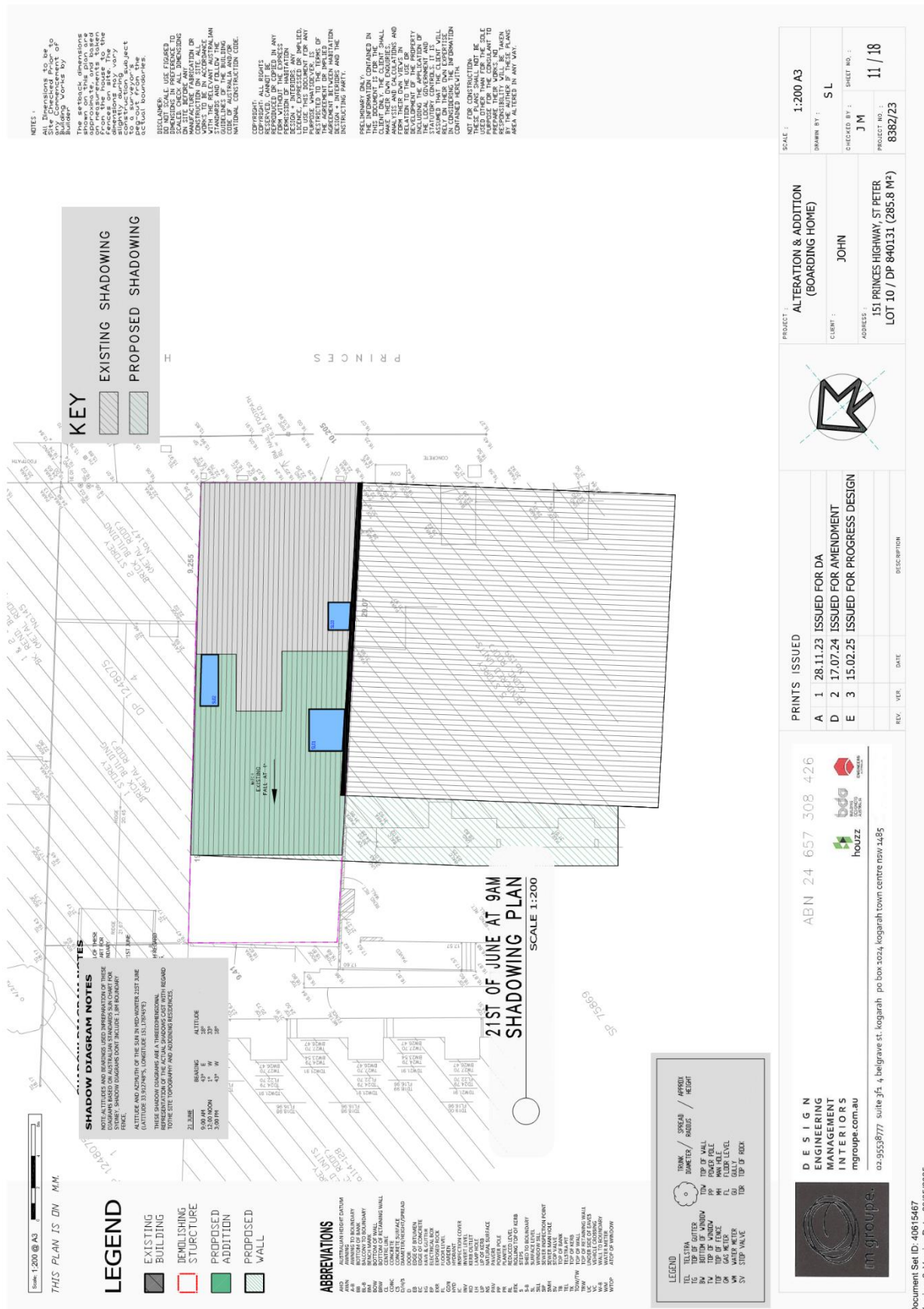


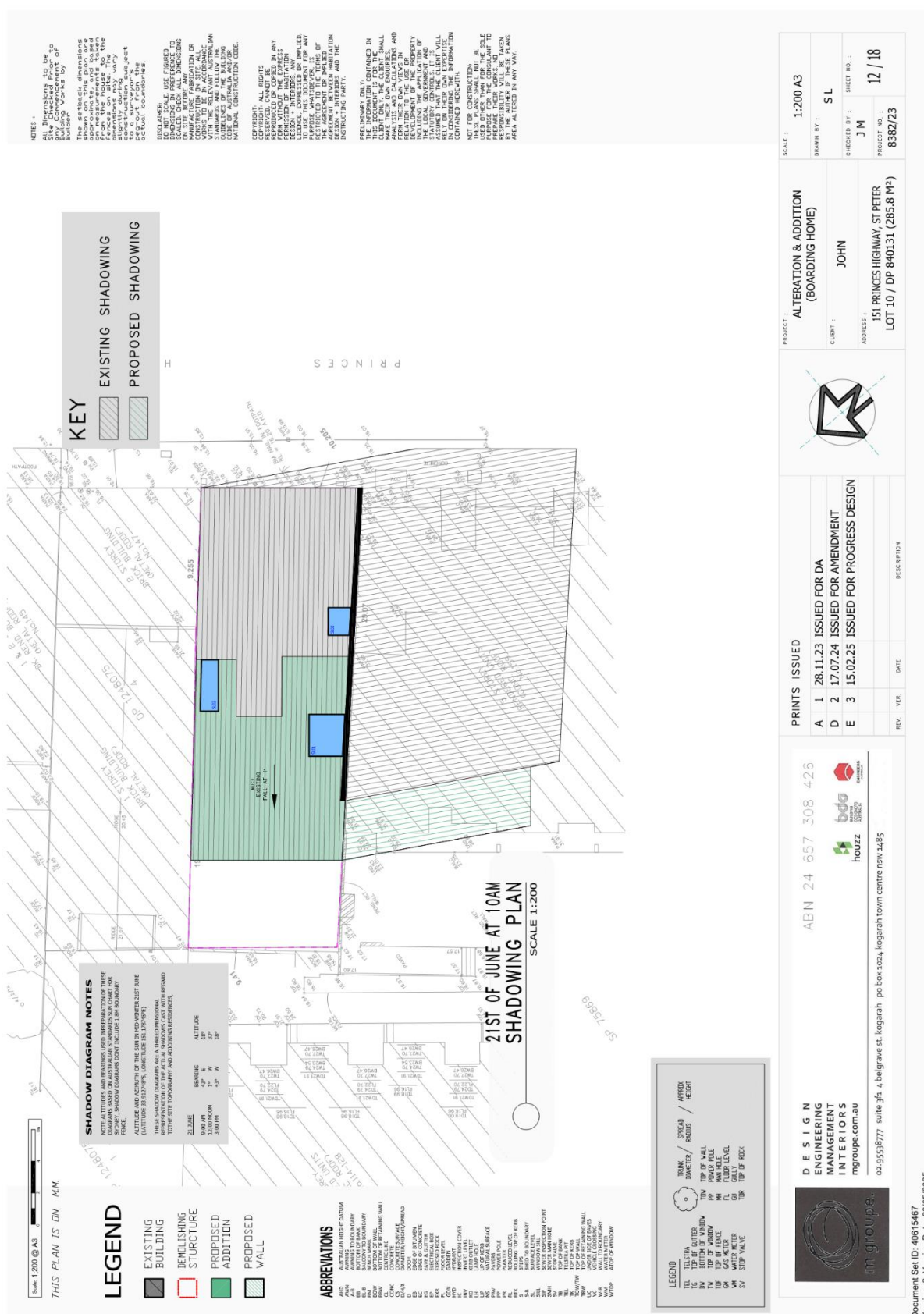


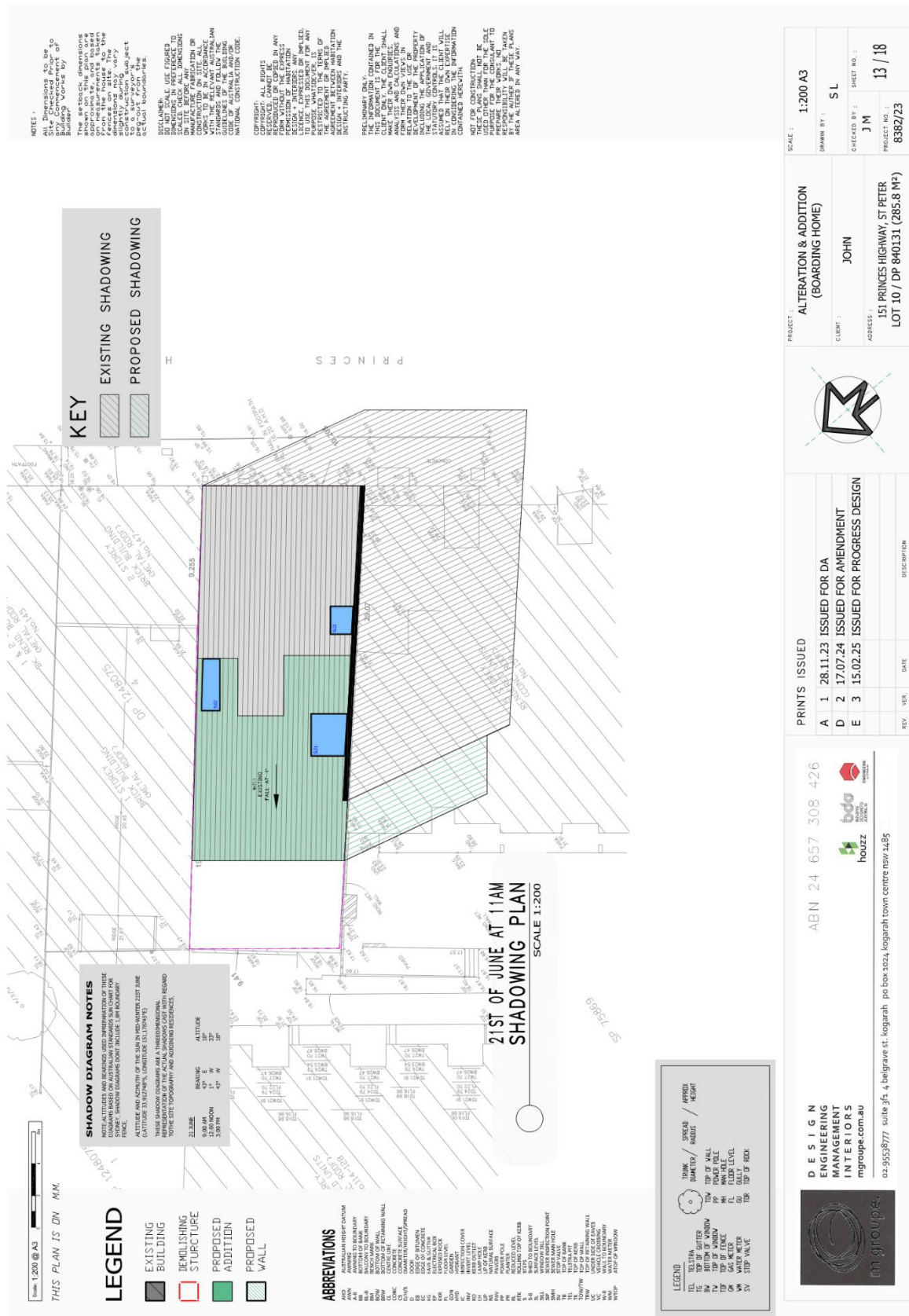


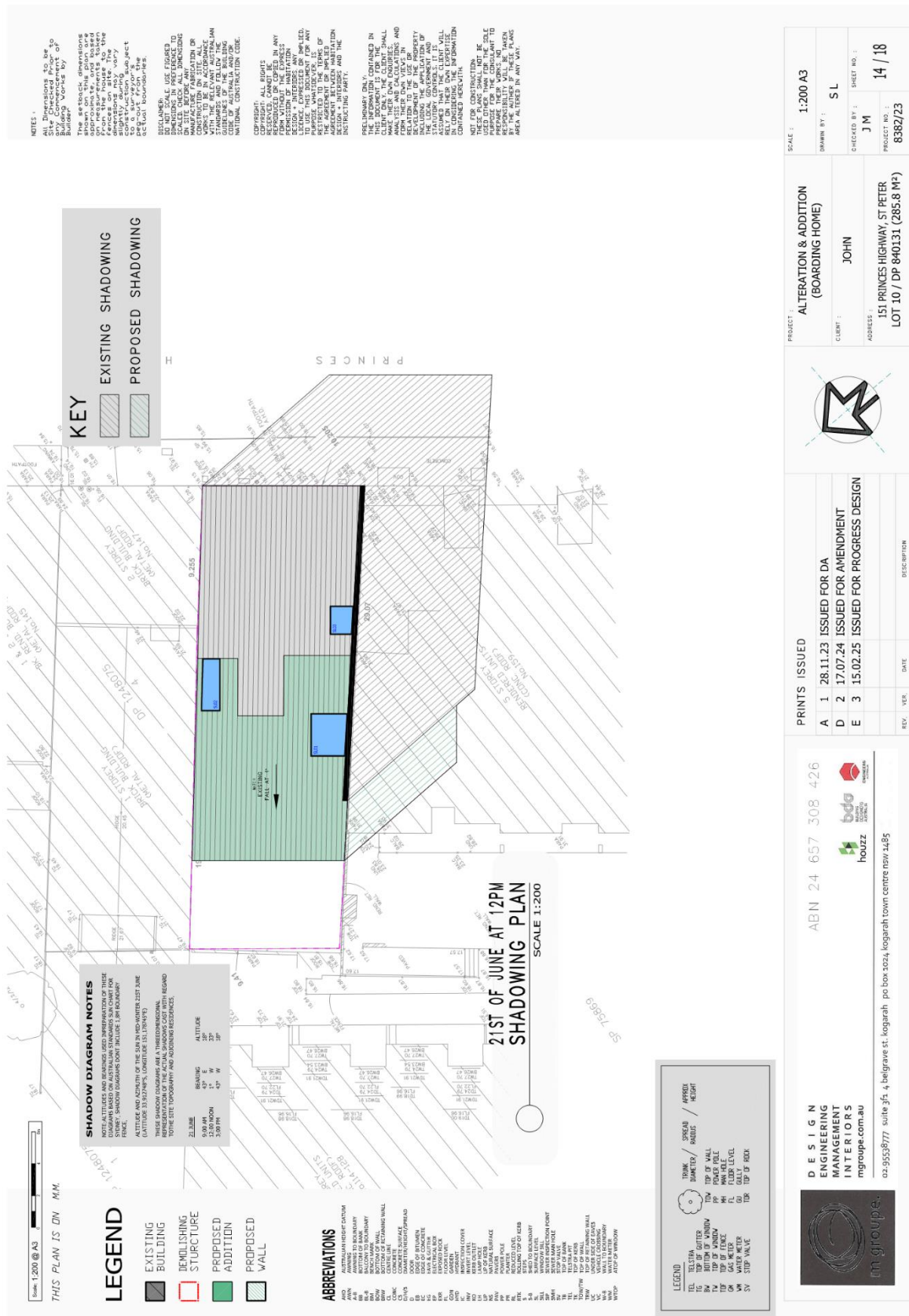
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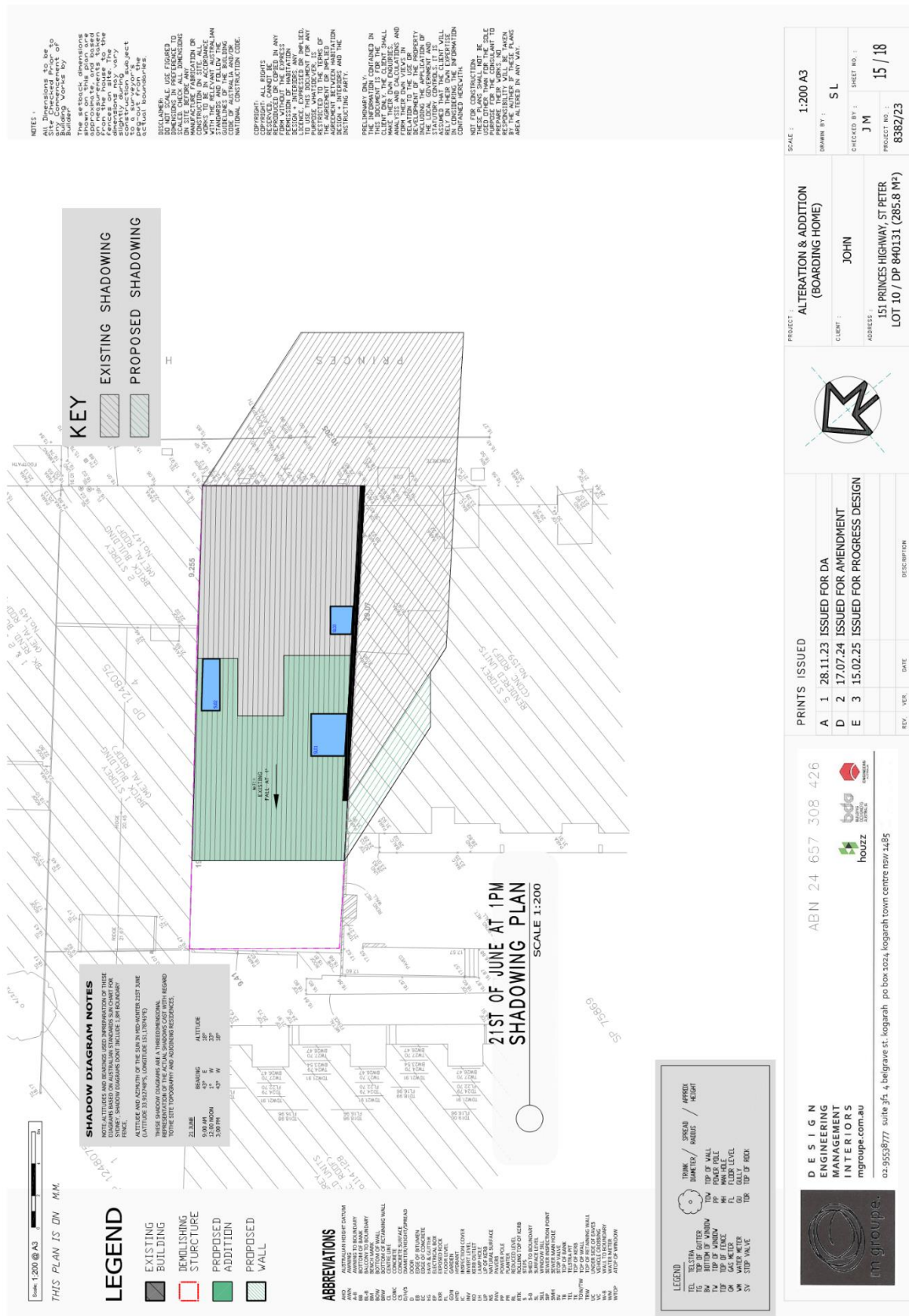
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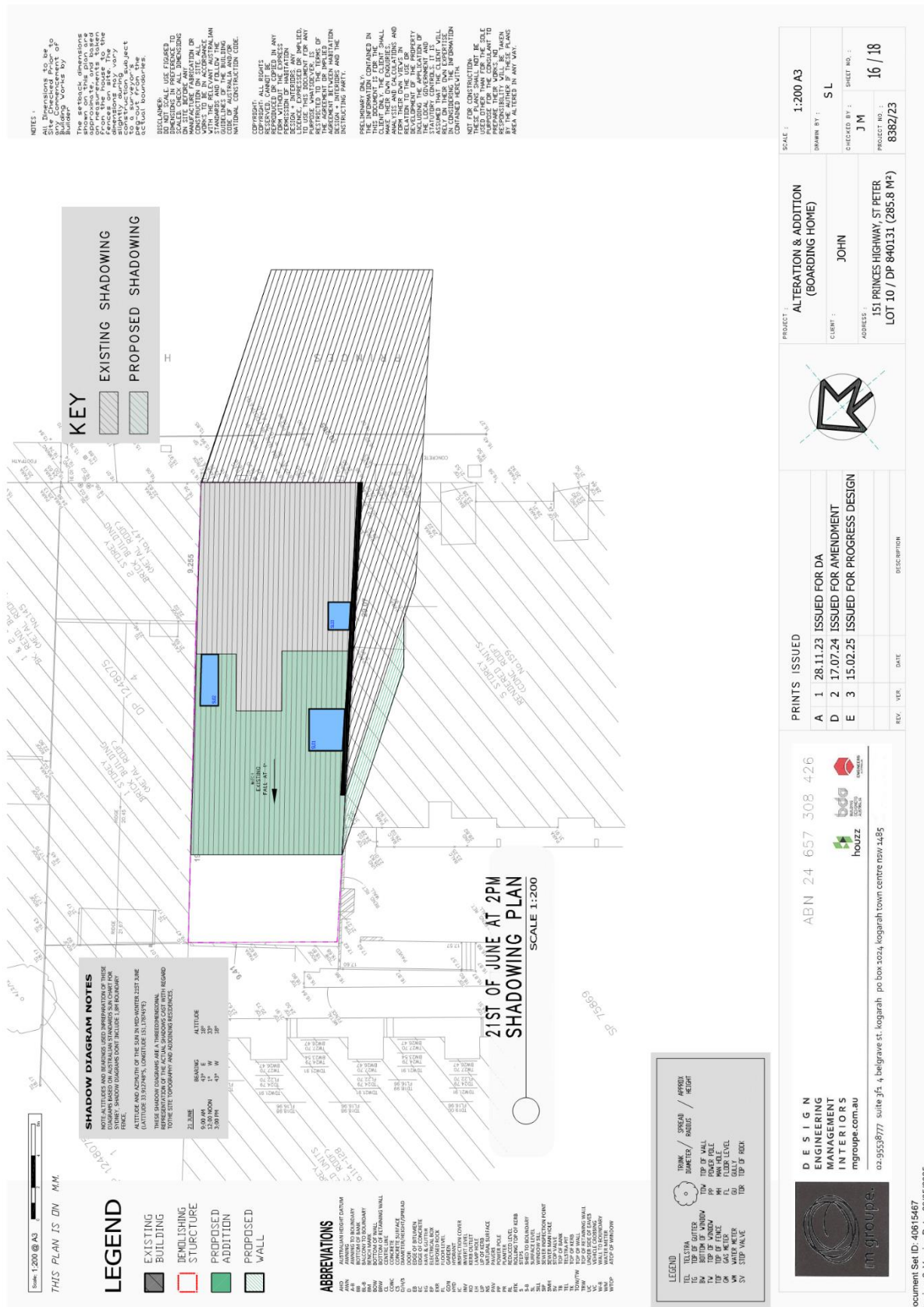


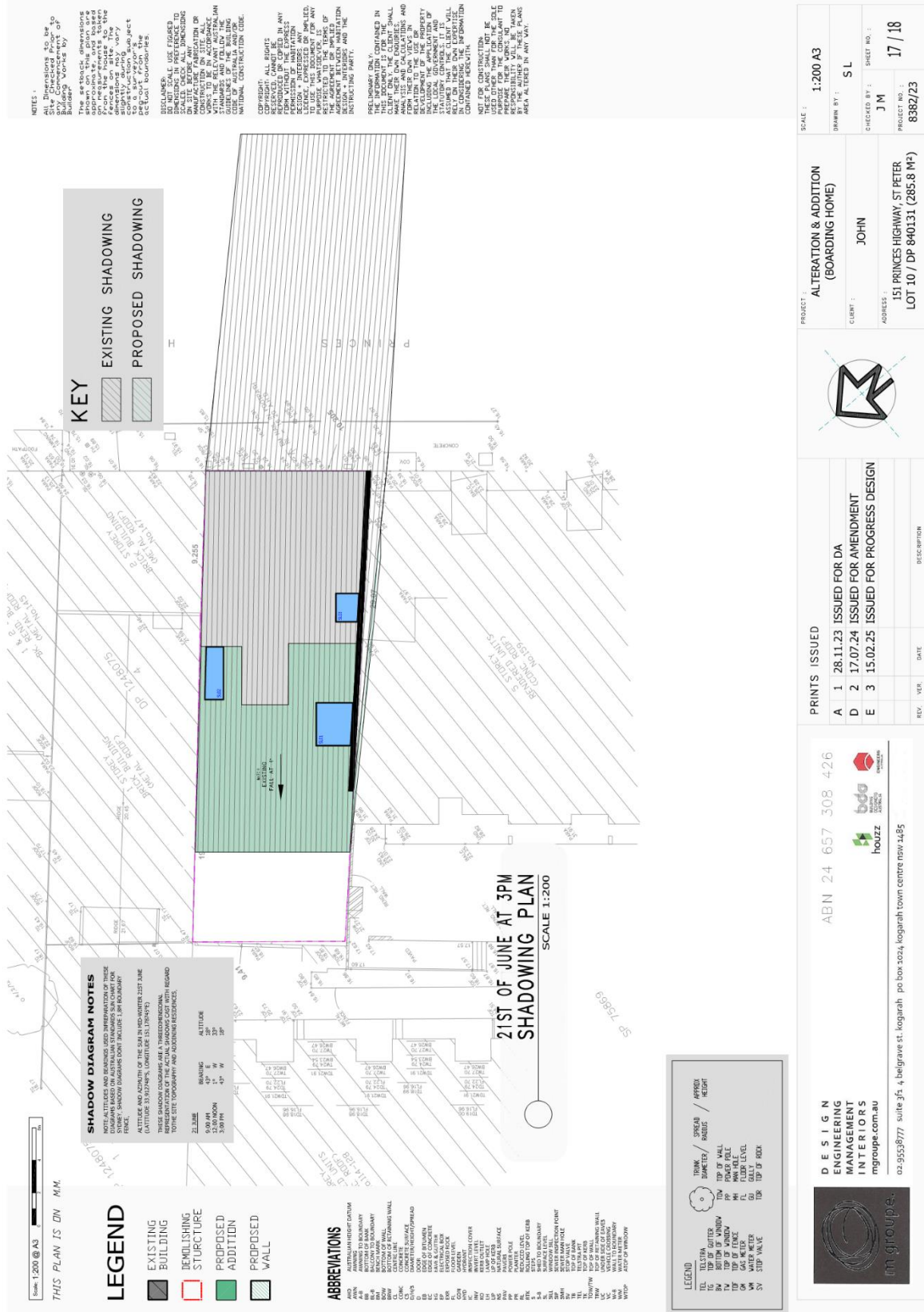


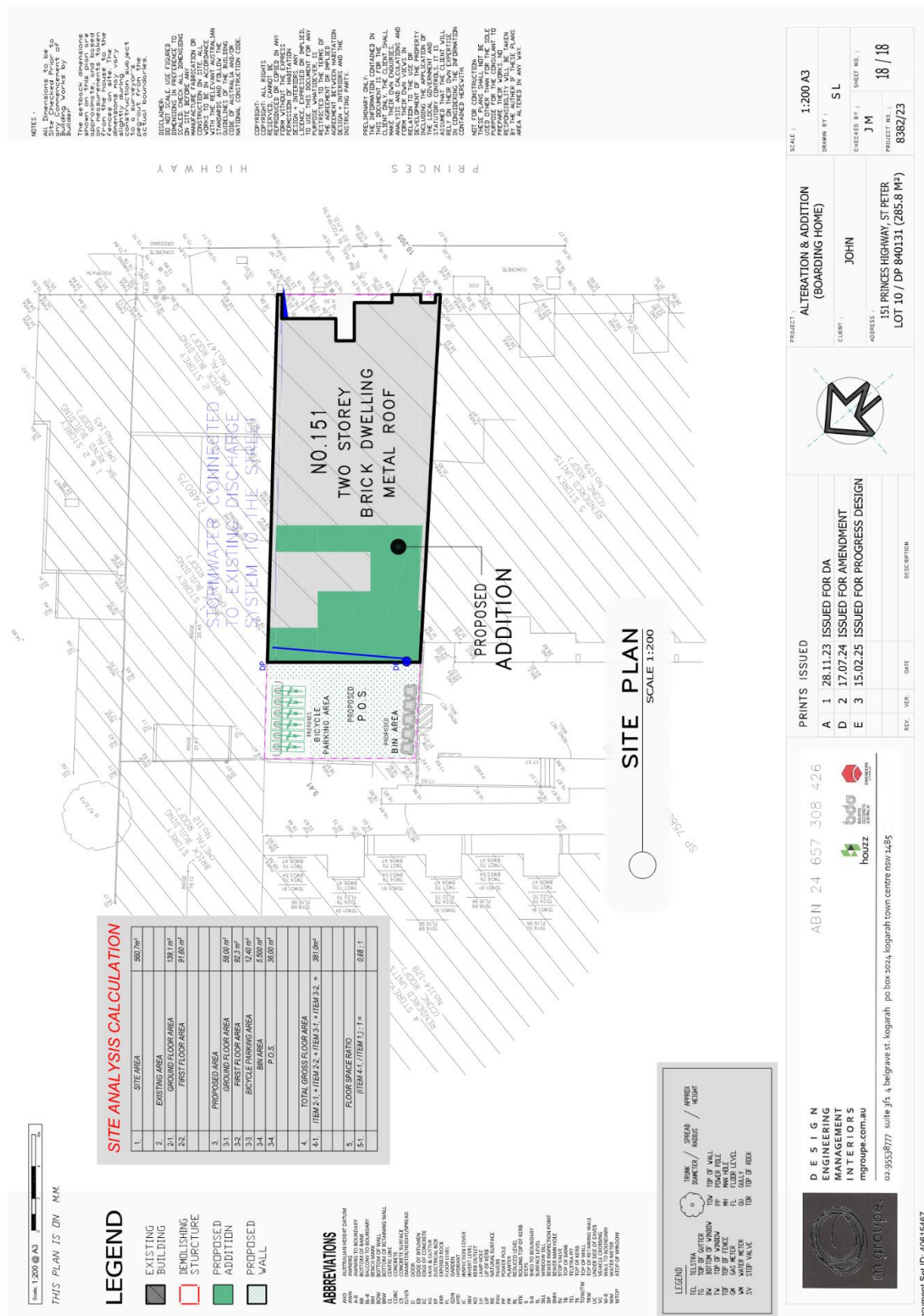












Attachment C – Section 4.6 Exception to Development Standards**JC Town Planning Consultant****Statement of Environmental Effects
Amended**

Original submission which was alterations and additions to existing nine (9) room boarding house, including the construction of a two storey addition to the rear of the site, proposing an additional seven (7) boarding house rooms.

Amended submission is alterations and additions to the existing nine (9) room boarding house, to the rear of the existing part one and part two storey building, including a minor extension to the rear of the existing building and replicating same to the first floor, resulting in an additional five (5) boarding house rooms.

**151 Princes Highway, St Peters**

Prepared by: Joe Cagliata

Amended Dated: March 2025

JC Town Planning Consultant • 7 Kyogle Street, EASTLAKES, SYDNEY, NSW, 2018, AUSTRALIA
TEL: 0404 812 512 • EMAIL: jocagliata@hotmail.com

Statement of Environmental Effects: 151 Princes Highway, St Peters

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Statement of Environmental Effects: 151 Princes Highway, St Peters

1.0 INTRODUCTION/HISTORY

The original Statement of Environmental Effects (SEE) was submitted to Inner West Council in support of a Development Application (DA 2024/0628) at 151 Princes Highway, St Peters, which was lodged in July 2024. The DA sought approval for:

Alterations and additions to existing boarding house, including the construction of a two storey addition to the rear of the site, proposing an additional 7 boarding house rooms.

Council sent the applicant a preliminary assessment letter dated 21 January 2025, where it raised various planning issues, including existing use rights issues, noting the following:-

The minimum lot size requirement of 800sqm for the use of boarding houses under SEPP (Housing) 2021 has the effect of prohibiting this use on the subject site. However, the subject site relies on a repealed definition of a boarding house as defined under the repealed SEPP (Affordable Rental Housing) 2009, given the site's previous approval for a boarding house in 2009 and 2014. As outlined elsewhere in this letter, it is considered that the proposal does not conform to the current definition of a boarding house as defined under SEPP (Housing) 2021, as the site is not managed by a registered community housing provider

The letter stated that the applicant is required to satisfactorily demonstrate that the subject site benefits from Existing Use Rights for the use of the site as a boarding house, as previously defined. Evidence such as previous development consents should be provided as part of this evidence.

This report will provide such evidence.

The letter also raised non compliances with sections 24 and 25 the of State Environmental Planning Policy (Housing) 2021.

The proposed amendments have addressed the majority of these non-compliances. The remaining non-compliances are justifiable, and this amended statement of environmental effects is accompanied by two (2) clause 4.6 variations, showing that compliance with the development standards is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention to the development standards.

The letter also refers to issues with built form and design, in particular:-

The proposal in its current form is considered to result in several amenity concerns for both future occupants and adjoining neighbours. The following concerns are noted: • Part 5.1.3.3 Objective (O) O9 & Control C14(i) & C14(ii) – The proposed rear and south-western side setback are inconsistent with the desired rear massing, and result in adverse visual bulk and solar access impacts to adjoining neighbours.

.....In this regard, it is considered that the location and height of the additions be reconsidered. It is recommended that an amended design should explore increasing the floor area of the existing building (i.e., via increasing the ground and first floors, or potentially adding a third floor).

The revised plans have taken on board council's comments and have removed the rear two storey addition. The amended proposed additions are now generally speaking located within much of the existing footprint of the building, with an extension of the floor area to the rear of the existing building and replication of same to the first floor.

This Amended Statement of Environmental evaluates the subject site and its context (section 2), details the amended proposed works (section 3) and provides an assessment of the amended proposed development with consideration to the relevant planning framework and the impacts of the development in accordance with section 4.15 of the Environmental Planning and Assessment Act, 1979 (section 4).

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As identified in this Statement, the amended proposal complies with the majority of all relevant State and Local statutory development standards and has been designed to comply with the applicable DCP provisions. Where there are numerical non compliances with the Housing SEPP (2021), there are two (2) completed clause 4.6 variations in the appendix of the statement showing that compliance with these development standards is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention to the development standards.

The report will show that the amended proposal has addressed council's concerns and confirm that the proposed amended development represents a form of development reasonably expected for the site.

This amended Statement of Environmental Effects is based on information and details shown on the following plans prepared by MGroupe:

- Drawing No. 8382/23 Sheet 1, Rev E, Ver 3, dated 15.2.25 Site Plan
- Drawing No. 8382/23 Sheet 2, Rev E, Ver 3, dated 15.2.25 Ground Floor Plan
- Drawing No. 8382/23 Sheet 3, Rev E, Ver 3, dated 15.2.25 First Floor Plan
- Drawing No. 8382/23 Sheet 4, Rev E, Ver 3, dated 15.2.25 Roof Plan
- Drawing No. 8382/23 Sheet 5, Rev E, Ver 3, dated 15.2.25 Existing Ground Floor Plan
- Drawing No. 8382/23 Sheet 6, Rev E, Ver 3, dated 15.2.25 Existing First Floor Plan
- Drawing No. 8382/23 Sheet 7, Rev E, Ver 3, dated 15.2.25 Existing Roof Plan
- Drawing No. 8382/23 Sheet 8, Rev E, Ver 3, dated 15.2.25 North East and South West Elevation
- Drawing No. 8382/23 Sheet 9, Rev E, Ver 3, dated 15.2.25 North West and South East Elevation
- Drawing No. 8382/23 Sheet 10, Rev E, Ver 3, dated 15.2.25 Section A-A
- Drawing No. 8382/23 Sheet 11, Rev E, Ver 3, dated 15.2.25 21st June (9am) Shadow Plan
- Drawing No. 8382/23 Sheet 12, Rev E, Ver 3, dated 15.2.25 21st June (10am) Shadow Plan
- Drawing No. 8382/23 Sheet 13, Rev E, Ver 3, dated 15.2.25 21st June (11am) Shadow Plan
- Drawing No. 8382/23 Sheet 14, Rev E, Ver 3, dated 15.2.25 21st June (12pm) Shadow Plan
- Drawing No. 8382/23 Sheet 15, Rev E, Ver 3, dated 15.2.25 21st June (1pm) Shadow Plan
- Drawing No. 8382/23 Sheet 16, Rev E, Ver 3, dated 15.2.25 21st June (2pm) Shadow Plan
- Drawing No. 8382/23 Sheet 17, Rev E, Ver 3, dated 15.2.25 21st June (3pm) Shadow Plan
- Drawing No. 8382/23 Sheet 18, Rev E, Ver 3, dated 15.2.25 Site Plan

2.0 SITE ANALYSIS

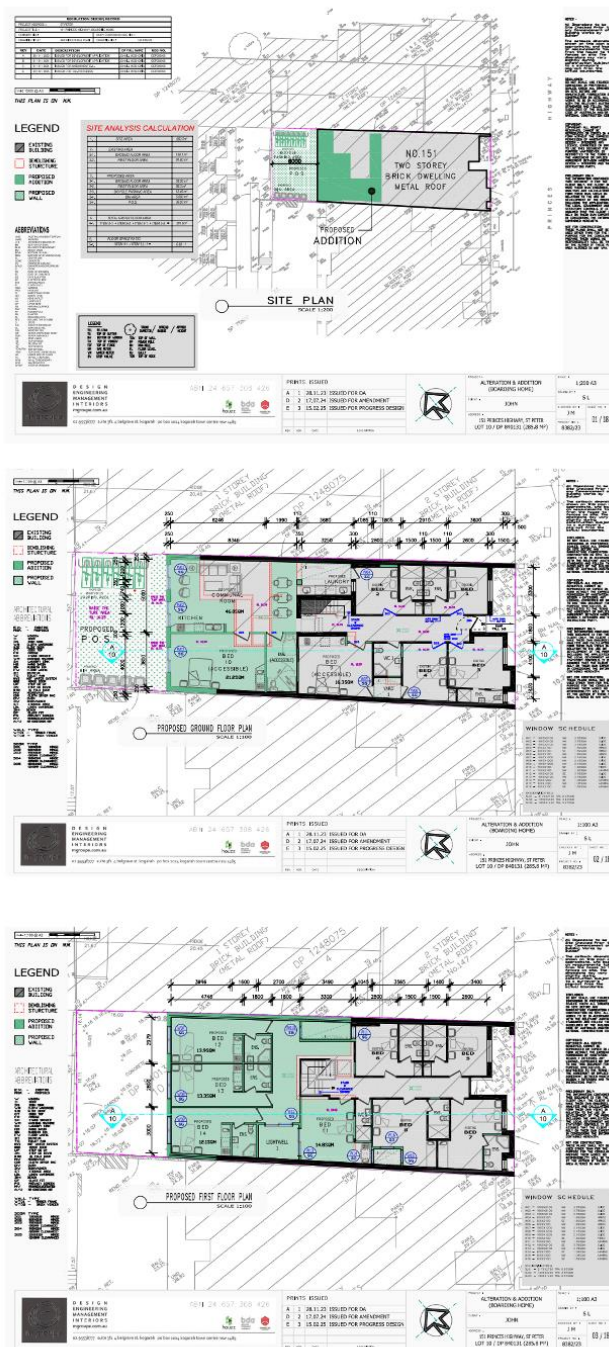
Please refer to the original statement of environmental effects dated June 2024, for the detailed site analysis. There has been no change since then.

3.0 PROPOSED AMENDED DEVELOPMENT

The proposed amended development seeks the following:-

- Alterations and additions to existing one and two storey boarding house, currently comprising of nine (9) boarding rooms, by way of rear extension to the existing ground and first floor levels, proposing an additional five (5) boarding house rooms. Each additional room will have its own bathroom and kitchenette/bar. No more than 1 adult lodger is proposed per room.

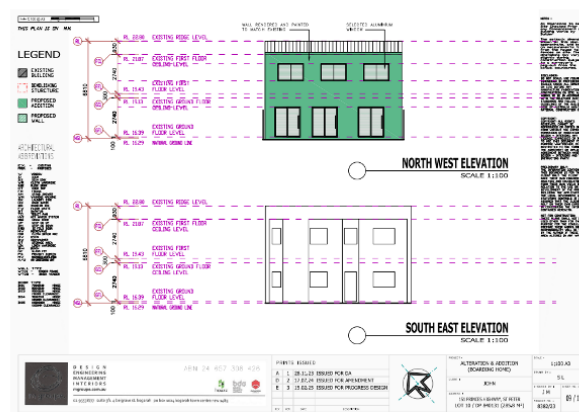
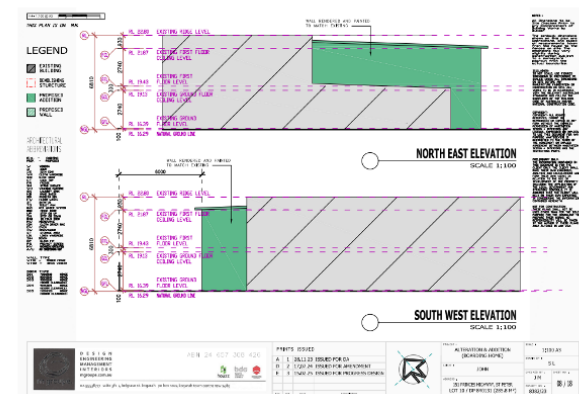
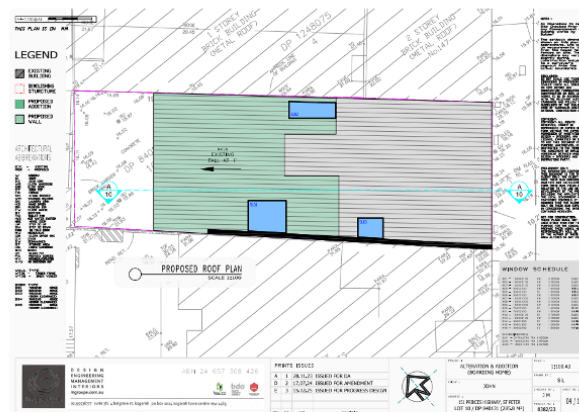
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4.0 **ASSESSMENT UNDER SECTION 4.15 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

This section deals with the application's consistency with the various statutory and non-statutory provisions. It also addresses the relevant matters for consideration under Section 4.15(1), that are relevant to the development as modified are to be considered, of the Environmental Planning and Assessment Act 1979.

Permissibility and Existing Use Rights

Boarding Houses are permissible under MU 1 – Mixed Use, where the subject site is located.

The definition of a boarding house in the LEP is as follows:-

boarding house means a building or place—

- (a) that provides residents with a principal place of residence for at least 3 months, and
 - (b) that contains shared facilities, such as a communal living room, bathroom, kitchen or laundry, and
 - (c) that contains rooms, some or all of which may have private kitchen and bathroom facilities, and
 - (d) used to provide affordable housing, and
 - (e) if not carried out by or on behalf of the Land and Housing Corporation—managed by a registered community housing provider,
- but does not include backpackers' accommodation, co-living housing, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.

Council in its letter dated 21 January 2025, stated the following:-

The minimum lot size requirement of 800sqm for the use of boarding houses under SEPP (Housing) 2021 has the effect of prohibiting this use on the subject site. However, the subject site relies on a repealed definition of a boarding house as defined under the repealed SEPP (Affordable Rental Housing) 2009, given the site's previous approval for a boarding house in 2009 and 2014. As outlined elsewhere in this letter, it is considered that the proposal does not conform to the current definition of a boarding house as defined under SEPP (Housing) 2021, as the site is not managed by a registered community housing provider.

The letter goes on further to say, with respect to existing use rights:-

Division 4.11 of the Environmental Planning and Assessment Act 1979 (EP&A 1979) defines existing use as:

- (a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and
- (b) the use of a building, work or land—
 - (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and
 - (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.

Given the above, in accordance with Division 4.11 of the Environmental Planning and Assessment Act 1979 and Part 7 of the Environmental Planning and Assessment Regulation 2021, you are required to satisfactorily demonstrate that the subject site benefits from Existing Use Rights for the use of the site as a boarding house, as previously defined. Evidence such as previous development consents should be provided as part of this evidence.

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Council letter states that the site was previously approved for a boarding house in 2009 and 2014. The applicant has a copy of the development consent dated 22 September 2014, being DA201400240. The approval was to demolish part of the premises and carry out ground and first floor alterations and additions to a boarding house to construct 5 additional boarding rooms and increase the residents to 12.

Section 4.65 of the Act defines an 'existing use'. The subject site benefits from existing use rights as consent was issued for boarding house use of the subject site and had been in continuous operation before the commencement of the current version of the MLEP 2022.

Furthermore, the continued operation of the boarding house relies on Clause 4.66 'Continuance of and limitation on existing use' of the Act as noted in the aforementioned Council records. Given that there are no records of the business ceasing operation for a continuous period of 12 months, the existing use is not considered abandoned. Accordingly, Part 3 of the Clause is satisfied.

In accordance with Clause 42 'Development consent required for enlargement, expansion and intensification of existing uses' of the Environmental Planning and Assessment Regulation 2000, states that development consent is required for any enlargement, expansion or intensification of an existing use and that the enlargement, expansion or intensification must be for the existing use and for no other use, and must be carried out only on the land on which the existing use was carried out immediately before the relevant date.

The proposal complies with the above.

In accordance with the existing use rights provisions contained in the Act and the Regulation, the proposal has established that the proposed development is related to an existing boarding house on the subject site and benefits from existing use rights. In this regard, the proposed development application should be considered that the existing use rights are lawful.

4.1.1 Statutory and Non-Statutory provisions

State Environmental Planning Instruments

The relevant environmental planning instruments applicable to this proposal include:

State Environmental Planning Policy (Resilience and Hazards)
State Environmental Planning Policy (Building Sustainability Index: BASIX): 2004
State Environmental Planning Policy (Housing) 2021
State Environmental Planning Policy (Transport and Infrastructure) 2021
Inner West Local Environmental Plan 2022

4.1.1 State Environmental Planning Policy (Resilience and Hazards)

Please refer to the original statement of environmental effects dated June 2024, for the assessment of the State Environmental Planning Policy (Resilience and Hazards).

4.1.2 State Environmental Planning Policy Building Sustainability Index: BASIX): 2004

As required by Schedule 1 of the EPA Regulation 2000, a BASIX Assessment was undertaken for the proposed development. This Assessment indicated compliance with the relevant water reduction, thermal comfort and energy targets.

A copy of the BASIX Certificate was submitted with the application.

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4.1.3 State Environmental Planning Policy (Housing) 2021

As noted with the Introduction/History section of the statement, Council carried out a preliminary assessment dated 21 January 2025, where it raised various issues, including non-compliances with sections 24 and 25 of the State Environmental Planning Policy (Housing) 2021, specifically the following:-

- s24(2)(e) – The proposal does not provide the communal living area at least 3 hours of direct solar access between 9am-3pm on June 21.
- s24(2)(g)(i) – The proposal is required to provide a minimum 50sqm of communal living area for 16 boarding rooms. Only 13.95sqm is provided.
- s24(2)(h)(i) – The proposal is required to provide a communal open space that equates to 20% of the site area (minimum 57.16sqm). Only 15.82sqm is provided.
- s24(i) – No car parking is provided on site.
- s25(1)(h)(i) – A number of the proposed rooms are below the minimum floor area requirement for a single occupant. Rooms 5, 10, 12 and 13 are smaller than 12sqm when excluding the bathroom and private kitchenette areas.
- s25(i) – No bicycle parking spaces are proposed, and no existing area is identified.
- s25(3) – The proposal is not considered to be minor alterations and additions, as such, the requirements listed in s25 apply.

The non-compliances listed in section 25 of the SEPP (Housing) 2021 must be complied with and are not able to be varied.

It is noted that the site is below the 800sqm minimum lot size requirement as outlined in s25(g)(ii). While the existing boarding house was approved under repealed planning controls, it is considered that the site cannot accommodate the number of proposed additional rooms at the rear of the site, while also complying with the SEPP (Housing) 2021 requirements outlined above.

Given the above, it is considered that the scope of the proposal (i.e., the number of additional rooms) would need to be reduced, and the scheme be amended in order to satisfy the above requirements. It is noted, as outlined elsewhere in this letter, that an amended proposal that was contained to the front of the site (i.e., the existing building) could be considered.

The applicant in an attempt to address councils concerns, met with the assessment officer and also submitted revised plans for the officers perusal.

The amended plans have directly addressed the following clauses of the Housing SEPP, initially raised by council as resulting in numerical non-compliances, being:-

- s24(2)(e) – The proposal does not provide the communal living area at least 3 hours of direct solar access between 9am-3pm on June 21.

The proposed amended plans have resulted in deleting the rear two storey extension, with the addition now extending slightly beyond the existing rear building line and with the communal living area to the rear of the building at ground floor level having windows facing north west, ensuring that the communal area has at least 3 hours of direct solar access between 9 am and 3pm on June 21.

- s24(2)(g)(i) – The proposal is required to provide a minimum 50sqm of communal living area for 16 boarding rooms. Only 13.95sqm is provided

The proposed amended development has resulted in a reduction of boarding house rooms from 16 to 14, reducing the required communal floor space area from 50 square metres to 46 square metres. The amended plans show that the communal living area has a floor area of 46 square metres.

- s24(2)(h)(i) – The proposal is required to provide a communal open space that equates to 20% of the site area (minimum 57.16sqm). Only 15.82sqm is provided.

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The proposed amendments have shown an increase in the communal open space, however the amendments will not comply with the minimum numerical requirement. As a result, a clause 4.6 variation has been prepared, and it will show that compliance with the development standard is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention to the development standard.

- S24(i) – No car parking is provided on site.

The existing boarding house building is completely land locked and does not provide any off street parking. As a result, a clause 4.6 variation has been prepared, and it will show that compliance with the development standard is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention to the development standard.

- s25(1)(h)(i) – A number of the proposed rooms are below the minimum floor area requirement for a single occupant. Rooms 5, 10, 12 and 13 are smaller than 12sqm when excluding the bathroom and private kitchenette areas.

The proposed amended plans have been amended showing that all proposed boarding rooms are greater than 12 square metres, when excluding the bathroom and private kitchenette areas.

- s25(i) – No bicycle parking spaces are proposed, and no existing area is identified.

The proposed amended plans now show six (6) bicycle spaces.

C16 under Part 2.10 of the Marrickville DCP 2011, it notes that for Boarding houses, the requirement is 1 per 2 boarding rooms for residents + 1 per 10 boarding rooms for visitors. This would result in 8 spaces.

Notwithstanding the minor non compliance, the proposed amendments comply with the objectives under 2.10.1.

4.1.4 State Environmental Planning Policy (Transport and Infrastructure) 2021

Please refer to the original statement of environmental effects dated June 2024, for the assessment of the State Environmental Planning Policy (Transport and Infrastructure) 2021.

4.2 Local Environmental Plans

Please refer to the original statement of environmental effects dated June 2024, for the detailed assessment of the Inner West Local Environmental Plan 2022.

4.3 Development Control Plans

Please refer to the original statement of environmental effects dated June 2024, for the detailed assessment of the Marrickville Development Control Plan 2011.

Council's letter dated 21 January 2025, referred to various non-compliances with Marrickville DCP 2011. This report will address the issues raised.

Built form and design

Under "Point 4 Built form and design", Council's letter dated 21 January 2025, noted the following:-

Part 4.3 and Part 5 of the MDCP 2011 contains controls and objectives regarding boarding houses, including their ongoing management and overall built form.

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The proposal in its current form is considered to result in several amenity concerns for both future occupants and adjoining neighbours. The following concerns are noted:

• *Part 5.1.3.3 Objective (O) O9 & Control C14(i) & C14(ii) – The proposed rear and south-western side setback are inconsistent with the desired rear massing, and result in adverse visual bulk and solar access impacts to adjoining neighbours.*

As outlined, in principle, additional boarding rooms can be considered on the site. However, the current location and height of the additions is considered to result in a number of non-compliances with private open space and solar access requirements (outlined in Point 2), and creates adverse amenity impacts on the adjoining properties, namely no. 159 Princes Highway which encompasses the subject site at the rear and southern side. In addition, while the additions could in principle have greater rear and side setbacks, this would result in further non-compliances with s24 of the SEPP (Housing) 2021.

In this regard, it is considered that the location and height of the additions be reconsidered. It is recommended that an amended design should explore increasing the floor area of the existing building (i.e., via increasing the ground and first floors, or potentially adding a third floor).

Part 5.1.3.3 Objective (O9), states the following:-

O9 To ensure the rear massing of developments does not cause significant visual bulk or amenity impacts on neighbouring properties to the rear.

Part 5.1.3.3 Control C14(i) and C14(ii) state the following:-

C14 Where the rear boundary is a common boundary between properties:

- i. The rear building envelope must be contained within the combination of the rear boundary plane and a 45 degree sloping plane from a point 5 metres vertically above the ground level of the property being developed, measured at the rear boundary, and contain a maximum of one storey on the rear most building plane;*
- ii. notwithstanding point i., building envelopes may exceed the above building envelope control where it can be demonstrated that any rear massing that penetrates above the envelope control will not cause significant visual bulk or amenity impacts on neighbouring properties to the rear.*

The proposed amended plans, which has heeded the advice of Council by increasing the floor area of the existing building, i.e., via increasing the ground and first floors, have addressed the concerns raised by council noted above.

The amendment to the proposal removes the originally planned two-storey addition at the rear boundary and replaces it with a more modest two-storey extension. This extension is now set back 6 meters from the rear boundary and is integrated into the existing building, which consists of one and two-storey elements. The revised design ensures a better alignment with the surrounding context and reduces any adverse impacts on the visual amenity of the area and neighbouring properties, with respect to visual scale and bulk and solar access..

The deletion of the rear two storey addition also ensures compliance with control C14(i) and (ii).

The proposed amendments have also resulted in the development now complying with the solar access and overshadowing objectives under the DCP.

Parking

Under "Point 6 Engineering matters", Council's letter referred to the opportunity to provide bicycle parking spaces within the site in accordance with C16 of the Marrickville DCP 2011.

C16 under Part 2.10 of the Marrickville DCP 2011, notes that for Boarding houses, the requirement is 1 per 2 boarding rooms for residents + 1 per 10 boarding rooms for visitors. This would result in 8 spaces.

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Notwithstanding the minor non compliance, the proposed amendments comply with the objectives under 2.10.1.

Accessible rooms

Under "Point 8 Accessible rooms", Councils letter stated the following:-

Part 2.5 of the MDCP 2011 contains controls and objectives relating to accessibility. Boarding houses are required to provide one (1) accessible bedroom per five boarding rooms, and all common facilities must be accessible too.

The site currently proposes two (2) accessible rooms. However, given the site seeks to accommodate a total of 16 rooms. Thus, three (3) accessible rooms must be provided. Please amend accordingly.

The proposed amended plans have resulted in the number of boarding rooms being reduced from 16 to 14. As a result of same, the proposed amount of accessible rooms is two.

This would comply with the minimum access table under Part 2.5 of the Marrickville DCP 2011, which states one accessible boarding room per 5 boarding rooms.

Internal configuration and use of Bed 03

Under "Point 9 Internal configuration and use of Bed 03", Councils letter stated the following:-

The architectural plans indicate that Bed 10 could be used as a thoroughfare for occupants travelling to the new structure at the rear via the proposed platform. This impacts the amenity for any future occupants for Bed 10; as such, the proposed door to the new platform from this bedroom should be deleted.

The amended plans have address the above.

4.4 Likely impacts of the development

Environmental impacts on both the natural and built environments

The proposed amended alterations and additions to the existing boarding house will not result in any adverse impacts on the natural environment noting that the existing boarding house is within an established mixed use zone and has been in its existing use for many years

The amended proposal will maintain the character and sense of place characteristics of the locality.

The proposed amended alterations and additions to the existing boarding house remain appropriate, with no change to the design, form and finish presented to towards the street and of which is consistent with existing built form.

The rear two storey addition under the original application has been deleted and the proposed alterations and additions are limited to a minor increase beyond the existing rear building line for the building and this being replicated to the first floor, which results in addressing council's concern being that the proposed visual scale and bulk issues relating to the rear two storey addition, with nil rear and south-western side setbacks, which have now been deleted, which were inconsistent with the desired rear massing, and result in adverse visual bulk and solar access impacts to adjoining neighbours.

The amended proposal now has a similar scale and bulk of that of the building to the front of the site and covers less of the entire site when compared to the development to either side of the site.

The amended minor rear extension to the existing building will not adversely impact the adjoining developments, namely with regarding to the assessment of the two adjoining residential developments, to the south-west and north-west respectively. These sites are

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located within the mixed use zone where there are no numerical controls with regard to height, floor space ratio nor setbacks. The amended rear two storey extension will not impact on these properties with regard to scale and bulk as the scale and bulk, is similar to that of existing development.

The proposed amendment to the proposal, removes the originally planned two-storey addition at the rear boundary and replaces it with a more modest two-storey extension. This extension is now set back 6 meters from the rear boundary and is integrated into the existing building, which consists of one and two-storey elements, ensuring nil adverse impacts with regard to privacy nor overshadowing to the adjoining properties.

The proposed amended development has been assessed against applicable provisions contained within the Inner West LEP 2022 and Marrickville DCP 2011 and retains an appropriate level of compliance.

Social and economic impacts in the locality.

The proposed amended development will not be detrimental to the social and economic environment in the locality.

Suitability of the site for the development

Having regard to the assessment contained within this report, the site is considered to be suitable for the proposed amended works.

4.5 Submissions made in accordance with the Act

It is acknowledged that the consent authority must consider and assess all submissions made regarding this amended development application.

4.6 The Public Interest

Given that the relevant issues have been addressed with regard to the public interest as reflected in the relevant planning policies and codes, the amended development is unlikely to result in any adverse impact to the public interest in the circumstance of the case.

The proposed amended rear part two storey addition will retain the approved boarding house use and will continue to provide a well-designed building, which will be compatible with development in the locality. The amended proposal will enhance the functionality and amenity of the existing boarding house, while also maintaining approved levels of amenity for neighbouring buildings and the public domain. Accordingly, the proposed amended plans are in the public interest.

5.0 CONCLUSION

This Statement of Environmental Effects for the submitted amended plans has demonstrated that the proposed amended development for a rear part two storey extension to the existing boarding house, at 151 Princes Highway, St Peters, is permissible on the site, due to existing use rights and represents a desirable outcome for the site and the locality.

The proposed amended development is permissible under the Inner West Local Environmental Plan (LEP) 2012. The site is zoned MU 1, mixed use and the proposed use is permissible in this zone. As noted in the body of the report, council has noted that this proposal does not fall strictly speaking under the definition of a boarding house under the current LEP, so existing use rights would need to apply to this site. This report has established that existing use rights exist.

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The amended proposal's height and built form represent a bulk and scale that is compatible with the adjoining neighbouring buildings and existing mixed use environment of the locality.

Furthermore, the amended proposal, showing a significant reduction in scale and bulk, by the deletion of the rear two storey addition, will not have significant environmental nor adverse amenity impacts on the adjoining buildings and streetscape regarding visual impact from bulk and scale, loss of privacy, overshadowing or views. The amended proposal complies with Marrickville DCP 2011, particularly regarding, boarding houses, thereby retaining amenity to surrounding buildings and streetscape.

Overall, the amended proposed design represents a high-quality urban outcome that responds appropriately to the site's constraints.

The revised design demonstrates a more contextually appropriate response to the site, enhancing the overall quality of the development while still providing much-needed affordable housing in this area. The increase in boarding rooms remains a critical step in addressing the housing crisis in inner Sydney, while the design changes ensure that the development complies with planning controls and does not result in negative environmental, social, or visual impacts.

Accordingly, considering the above and the lack of detrimental impacts resulting from the proposed development, the amended proposal is considered appropriate and submitted to the Council for favourable consideration.

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JC Town Planning Consultant

Annexure A

**4.6 Variation Statement –
s24(2)(h)(i) of the State Environmental
Planning Policy (Housing) 2021**

Communal open space.

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Prepared by Joe Cagliata
JC Town Planning Consultant

Clause 4.6 Variation Statement – 24(2)(h)(i) of the SEPP (Housing) 2021

1. INTRODUCTION

This Clause 4.6 Variation Statement has been prepared on behalf of the applicant to be assessed by council in conjunction with the amended plans for DA 2024/0628, as requested by council letter dated 21 January 2025, which is to be used as a planning tool for the assessment of the amended plans at No. 151 Princes Highway, St Peters ('the site').

The statement seeks a variation to the communal open space provisions contained in s24(2)(h)(i) of the State Environmental Planning Policy (Housing) 2021.

The variation sought under Clause 4.6 of the LEP has been prepared in accordance with the Land and Environment Court Ruling Initial action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118. The case further clarified the correct approach of Clause 4.6 requests including that the clause does not require a development with a variation to have a better or neutral outcome.

2. SECTION 24(2)(h)(i) OF THE SEPP (HOUSING) 2021

Section 24(2)(h)(i) of the State Environmental Planning Policy (Housing) 2021, sets out the communal open space for boarding houses, being:-

(h) communal open spaces—

(i) with a total area of at least 20% of the site area, and

(ii) each with minimum dimensions of 3m,

Under the SEPP, the subject site is required to have a minimum communal open space area of 57.16sqm.

3. PROPOSED VARIATION

The original development application DA 2024/0628, being alterations and additions to an existing boarding house, including partial demolition of existing structures and the construction of a two storey structure at the rear of the to provide sixteen (16) boarding rooms, was submitted in mid 2024. Council in its letter dated 21.1.25, noted the following with respect to Section 24(2)(h)(i) of the State Environmental Planning Policy (Housing) 2021:-

s24(2)(h)(i) – The proposal is required to provide a communal open space that equates to 20% of the site area (minimum 57.16sqm). Only 15.82sqm is provided.

The applicant subsequent to this letter met with Council to address these issues. As a result of the meeting draft plans were drawn, addressing councils concerns.

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The amended plans now show an increase in communal open space to 36 square metres. This is more than double that of the original submission and now resulting in a minor non-compliance of 21.16 square metres, as the minimum as noted above is 57.16 square metres.

4. CLAUSE 4.6 OF INNER WEST LEP 2022

Clause 4.6 of Inner West LEP 2022 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of the Inner West LEP 2022 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.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development 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.*

This clause 4.6 request demonstrates that compliance with providing a communal open space that equates to 20% of the site area standard as prescribed in s24(2)(h)(i) of the SEPP (Housing) 2021, is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the 20% communal open space provision development standard be varied. We will set out below the justification for the departure to the communal open space numerical control applicable under the SEPP.

5. IS THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE – CLAUSE 4.6(3)(A)

There are two Land and Environment Court judgments which provide guidance on the interpretation and application of Clause 4.6 that are considered relevant to the communal open space standard variation currently being sought.

Firstly, *Wehbe v. Pittwater Council* [2007] NSWLEC 827 establishes a number of ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary, namely that:

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1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
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.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Whilst *Webbe* was a decision of the Court dealing with SEPP 1, it has been also found to be applicable in the consideration and assessment of Clause 4.6.

Furthermore, in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

"...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Compliance with the communal open space standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out in Section 8 of this statement. For the same reasons, the objection is considered to be well-founded as per point one above.

On this basis, the requirements of Clause 4.6(3)(a) are satisfied.

6. ADEQUATE ENVIRONMENTAL PLANNING GROUNDS FOR CONTRAVENING THE DEVELOPMENT STANDARD - CLAUSE 4.6(3)(B)

Clause 4.6(3)(b) requires the applicant to demonstrate that there are sufficient environmental planning grounds to contravene the development standard. Further, the judgement handed down in the *Four2Five* case requires that the applicant demonstrate this in light of environmental planning grounds particular to the circumstances of the site.

The following planning grounds are submitted to justify contravening the minimum communal open space provision:

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- The subject site presents specific constraints that make strict adherence to the minimum communal open space requirements unreasonable. These constraints, coupled with the proximity to public parks or open spaces, existing surrounding urban density, mean that the minimal non compliance is justifiable.
- The site is located within close proximity to publicly accessible open spaces, such as [mention nearby parks, plazas and green spaces, that provide adequate alternatives to on-site communal open space. These spaces serve the needs of boarding house residents and significantly reduce the necessity for additional open space on the development site itself.
- The subject site is located in an area where land is scarce and at a premium. Requiring excessive on-site communal open space would lead to inefficient use of the available land, which could otherwise be used to provide essential housing. In this context, the provision of the required minimum open space would unduly undermine its capacity to meet local housing demand.
- The amended design of the boarding house ensures high-quality internal amenity and communal facilities for residents, with the large communal room, with north facing windows, adjoining the communal open space, which provide for their daily needs. The proposed amendments would still allow for an environment conducive to social interaction, relaxation, and recreation. Given the character of the boarding house and the surrounding urban context, the amended plans show an increase in the wellbeing of residents, by the amended design having the communal open space adjoining the communal room, showing the flowing and uniformed design.
- The proposed variation to the communal open space requirement will not result in non-compliance with other key planning controls nor adversely affect the overall design, public safety, or environmental outcomes.
- Granting the variation would serve the public interest by enabling the provision of additional boarding house accommodation in a location where there is a demonstrated need. The increase in available housing supply outweighs the minor variation in communal open space, especially considering the alternative public open spaces available to residents nearby.
- The increase in density on the site is balanced with appropriate landscaping and open space provisions to ensure that residents have access to amenity while maintaining the environmental quality of the surrounding area. Additionally, the development will not result in any significant adverse impacts on local infrastructure or the natural environment.

As outlined above, it is considered that the proposal will provide for a better planning outcome than a strictly compliant development.

7. CLAUSE 4.6(4) :THE CONSENT AUTHORITY MUST KEEP A RECORD OF ITS ASSESSMENT CARRIED OUT UNDER SUBCLAUSE (3).

The consent authority must keep a record of assessment.

8. CLAUSE 4.6(5): REPEALED

Not applicable.

9. CLAUSE 4.6(6): SUBDIVISION PROVISIONS

Clause 6 states:-

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(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.

No subdivision is proposed.

10. CLAUSE 4.6(7): REPEALED

11. CLAUSE 4.6(8): COMPLYING DEVELOPMENT AND BASIX

Clause 8 states the following:-

(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.

The proposal variation to section 24(2)(h)(i) does not contravene any of the listed development standards or clauses as there is a demonstrable public benefit, of providing a legal use of the boarding house.

The proposal does not alter the public domain appearance.

The proposed alterations and additions to the boarding house complies with the BASIX principles.

12. COMPLIANCE WITH OBJECTIVES OF PARTICULAR DEVELOPMENT STANDARD

The consent authority is to 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 zone in which the development is proposed to be carried out.

The below provides discussion against the provisions of the SEPP that relate to “boarding houses”, being:-

3 Principles of Policy

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The principles of this Policy are as follows:

- (a) enabling the development of diverse housing types, including purpose-built rental housing,*
- (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,*
- (c) ensuring new housing development provides residents with a reasonable level of amenity,*
- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- (e) minimising adverse climate and environmental impacts of new housing development,*
- (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- (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,*
- (h) mitigating the loss of existing affordable rental housing*

The amended proposal is a form of affordable rental housing directly sought in the SEPP. The amended proposal will result in the addition of affordable short-term rental housing in the area that is close to public transport and as such is consistent with the aims of the policy.

The proposed amended alterations and additions to the existing boarding house, proposing now an additional five (5) additional rooms, which each of these rooms being consistent with the SEPP to ensure future lodgers are provided with a reasonable level of amenity with each room being self-contained, containing a kitchenette/bar and bathroom and the provision of communal areas and communal open spaces.

The proposal will result in the addition of affordable short term rental housing in the area that is close to public transport and as such is consistent with the aims of the policy.

St Peters, with its proximity to major employment hubs, public transportation networks, and essential services, is ideally positioned to offer affordable housing solutions. The site is well-served by local amenities such as shops, schools, parks, and public transport, making it an attractive location for people who need to live close to work or study, but cannot afford the rising rents of other nearby suburbs.

Increasing the number of boarding rooms will provide much-needed affordable housing in a location that is well connected to public transport, reducing reliance on private vehicles and contributing to more sustainable, low-impact living.

As detailed in this submission, there are no unreasonable impacts that will result from the proposed variation to the communal open space development standard. As such there is no public benefit in maintaining strict compliance with the development standard. The amended plans are consistent with the objectives of the development standard and objectives for development of the zone. The amended plans are consistent with the objectives of the development standard and the objectives of the zone that make the modification in the public interest.

13. CONCLUSION

Despite the non-compliance with the communal open space development standard, is compatible with the character of the locality and the scale and form of other buildings within the area.

The amended proposal aligns with the objectives of the SEPP (Housing) 2021, which seeks to promote a diverse range of housing types, including affordable and low-cost housing options. Boarding houses are recognized in planning policy as an efficient use of land that contributes to meeting the housing

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needs of a diverse population, particularly in urban areas facing significant population growth and housing demand.

Furthermore, the development is designed to integrate with the surrounding neighbourhood, maintaining the character of St Peters while meeting the pressing need for additional housing. The architectural design and scale of the amended proposal are consistent with the site's zoning and will not result in adverse impacts on the surrounding environment or the community.

The amended proposal will not only provide affordable housing but also create economic opportunities for local businesses and service providers. Residents of the boarding house are likely to frequent local shops, public services, and transport, stimulating the local economy.

In addition to the economic benefits, this development provides an essential social benefit by offering housing options for individuals who may face challenges in securing stable accommodation due to the current market conditions. It will assist vulnerable groups, including students, young professionals, and key workers, in maintaining secure, affordable housing close to their place of work or study.

Having regard to all of the above, it is our opinion that compliance with the communal open space development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The application has also demonstrated sufficient environmental planning grounds to support the breach.

As such, the proposed variation should be supported as part of this application.

We trust that the proposed development will be viewed as a positive step towards addressing the housing needs of the region, contributing to the ongoing efforts to make housing more accessible for all.

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JC Town Planning Consultant

Annexure B

4.6 Variation Statement –

**s24(2)(i)(i) of the State Environmental
Planning Policy (Housing) 2021**

Number of Car Parking spaces.

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Prepared by Joe Cagliata
JC Town Planning Consultant

Clause 4.6 Variation Statement – 24(2)(i) of the SEPP (Housing) 2021

1. INTRODUCTION

This Clause 4.6 Variation Statement has been prepared on behalf of the applicant to be assessed by council in conjunction with the amended plans for DA 2024/0628, as requested by council letter dated 21 January 2025, which is to be used as a planning tool for the assessment of the amended plans at No. 151 Princes Highway, St Peters ('the site').

The statement seeks a variation to the number of car parking spaces provision contained in s24(2)(i)(i) of the State Environmental Planning Policy (Housing) 2021.

The variation sought under Clause 4.6 of the LEP has been prepared in accordance with the Land and Environment Court Ruling Initial action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118. The case further clarified the correct approach of Clause 4.6 requests including that the clause does not require a development with a variation to have a better or neutral outcome.

2. SECTION 24(2)(i)(i) OF THE SEPP (HOUSING) 2021

Section 24(2)(i) of the State Environmental Planning Policy (Housing) 2021, sets out the number of car parking spaces for boarding houses, being:-

- (i) if a relevant planning instrument does not specify a requirement for a lower number of parking spaces—at least the following number of parking spaces—
- (i) for development on land within an accessible area—0.2 parking spaces for each boarding room,
- (ii) otherwise—0.5 parking spaces for each boarding room,

The SEPP defines "accessible area" as areas with a high level of public transport access, walking and cycling infrastructure, and proximity to essential services, like shops and amenities, as a result .

As a result of the above, subclause (i) would apply and not subclause (ii).

Under the SEPP, the subject site is required to have a 3 (2.8) car parking spaces, as fourteen (14) boarding house rooms are proposed.

3. PROPOSED VARIATION

The original development application DA 2024/0628, being alterations and additions to an existing boarding house, including partial demolition of existing structures and the construction of a two storey structure at the rear of the to provide sixteen (16) boarding rooms, was submitted in mid 2024. Council in its letter dated 21.1.25, noted the following with respect to Section 24(2)(i)(i) of the State Environmental Planning Policy (Housing) 2021:-

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S24(i) – No car parking is provided on site.

The existing boarding house is located on a landlocked site, with no accessibility and no space for the provision of off-street parking spaces. The current layout of the site, including existing building footprint, being built side boundary to side boundary to the front elevation, adjoining Princes Highway, is such that there is no space to allow any off-street parking spaces without significant demolition, reconfiguration, or adverse impacts on the operation of the boarding house itself.

4. CLAUSE 4.6 OF INNER WEST LEP 2022

Clause 4.6 of Inner West LEP 2022 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of the Inner West LEP 2022 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.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development 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.*

This clause 4.6 request demonstrates that compliance with number of car parking spaces as prescribed in s24(i)(i) of the SEPP (Housing) 2021, is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the number of car parking spaces provision development standard be varied. We will set out below the justification for the departure to the number of car spaces applicable under the SEPP.

5. IS THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE – CLAUSE 4.6(3)(A)

There are two Land and Environment Court judgments which provide guidance on the interpretation and application of Clause 4.6 that are considered relevant to the number of car parking spaces standard variation currently being sought.

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Firstly, *Wehbe v. Pittwater Council* [2007] NSWLEC 827 establishes a number of ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary, namely that:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
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.*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Whilst *Wehbe* was a decision of the Court dealing with SEPP 1, it has been also found to be applicable in the consideration and assessment of Clause 4.6.

Furthermore, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

"...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Compliance with the number of car parking spaces standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out in Section 8 of this statement. For the same reasons, the objection is considered to be well-founded as per point one above.

On this basis, the requirements of Clause 4.6(3)(a) are satisfied.

6. ADEQUATE ENVIRONMENTAL PLANNING GROUNDS FOR CONTRAVENING THE DEVELOPMENT STANDARD - CLAUSE 4.6(3)(B)

Clause 4.6(3)(b) requires the applicant to demonstrate that there are sufficient environmental planning grounds to contravene the development standard. Further, the judgement handed down in the *Four2Five* case requires that the applicant demonstrate this in light of environmental planning grounds particular to the circumstances of the site.

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The following planning grounds are submitted to justify contravening the number of car parking spaces provision:

- The existing boarding house is located on a landlocked site, with no accessibility and no space for the provision of off-street parking spaces. The current layout of the site, including existing building footprint, being built side boundary to side boundary, at the front elevation, adjoining the Princes Highway, is such that there is no space to accommodate the required number of off-street parking spaces without significant demolition, reconfiguration, or adverse impacts on the operation of the boarding house itself.
- The landlocked nature of the site means that there is no opportunity to introduce parking areas without compromising the functionality of the development or surrounding properties. Moreover, there are no reasonable alternatives for creating parking spaces off-site, as the surrounding area is also highly constrained and predominantly developed.
- The site is well-served by public transport, including bus and nearby train services, which significantly reduces the reliance on private vehicles for residents. St Peters is an area with high connectivity to public transport networks, with bus stops and St Peters Station located within walking distance of the boarding house. The proposed additional rooms are intended to cater to residents who are likely to utilise these public transport options, such as students and workers who do not own vehicles.
- Given the proximity to public transport, the demand for private car parking is anticipated to be minimal. The provision of off-street parking is unlikely to serve a practical purpose, as the majority of residents are expected to rely on sustainable modes of transport.
- The St Peters area is subject to a high demand for on-street parking, with limited availability of parking spaces. This is exacerbated by the dense urban environment, the popularity of the area, and high demand from surrounding residents and businesses. The introduction of additional parking on the site would not necessarily alleviate the local parking pressure and may further exacerbate on-street parking shortages.
- Furthermore, the local traffic conditions already experience congestion at peak times, and the provision of additional car parking spaces on-site may lead to additional traffic and environmental impacts in the area. The absence of additional car parking spaces will help mitigate any further strain on local traffic and parking demand.
- The increase in boarding rooms aligns with the broader goal of addressing housing affordability in the inner-city area. Introducing additional off-street parking spaces would require significant alterations to the site, potentially resulting in adverse environmental impacts, including the loss of landscaping and increased hard surface areas. These changes could have negative effects on local stormwater management and the overall environmental quality of the site and surrounding area.
- Maintaining the current site layout without parking spaces will help retain the environmental quality of the site while still meeting the urgent need for affordable housing in the area. The minimal impact on local infrastructure, coupled with the focus on sustainable transport, reflects a balanced approach to development.

As outlined above, it is considered that the proposal will provide for a better planning outcome than a strictly compliant development.

7. CLAUSE 4.6(4) :THE CONSENT AUTHORITY MUST KEEP A RECORD OF ITS ASSESSMENT CARRIED OUT UNDER SUBCLAUSE (3).

The consent authority must keep a record of assessment.

8. CLAUSE 4.6(5): REPEALED

Not applicable.

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9. CLAUSE 4.6(6): SUBDIVISION PROVISIONS

Clause 6 states:-

(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—

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(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.

No subdivision is proposed.

10. CLAUSE 4.6(7): REPEALED

11. CLAUSE 4.6(8): COMPLYING DEVELOPMENT AND BASIX

Clause 8 states the following:-

(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.

The proposal variation to section 24(2)(i)(i) does not contravene any of the listed development standards or clauses as there is a demonstrable public benefit, of providing a legal use of the boarding house.

The proposal does not alter the public domain appearance.

The proposed alterations and additions to the boarding house complies with the BASIX principles.

12. COMPLIANCE WITH OBJECTIVES OF PARTICULAR DEVELOPMENT STANDARD

The consent authority is to 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 zone in which the development is proposed to be carried out.

The below provides discussion against the provisions of the SEPP that relate to “boarding houses”, being:-

3 Principles of Policy

The principles of this Policy are as follows:

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- (a) enabling the development of diverse housing types, including purpose-built rental housing,*
- (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,*
- (c) ensuring new housing development provides residents with a reasonable level of amenity,*
- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- (e) minimising adverse climate and environmental impacts of new housing development,*
- (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- (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,*
- (h) mitigating the loss of existing affordable rental housing*

The amended proposal is a form of affordable rental housing directly sought in the SEPP. The amended proposal will result in the addition of affordable short-term rental housing in the area that is close to public transport and as such is consistent with the aims of the policy.

The proposed amended alterations and additions to the existing boarding house, proposing now an additional five (5) additional rooms, which each of these rooms being consistent with the SEPP to ensure future lodgers are provided with a reasonable level of amenity with each room being self-contained, containing a kitchenette/bar and bathroom and the provision of communal areas and communal open spaces.

The proposal will result in the addition of affordable short term rental housing in the area that is close to public transport and as such is consistent with the aims of the policy.

St Peters, with its proximity to major employment hubs, public transportation networks, and essential services, is ideally positioned to offer affordable housing solutions. The site is well-served by local amenities such as shops, schools, parks, and public transport, making it an attractive location for people who need to live close to work or study, but cannot afford the rising rents of other nearby suburbs.

Increasing the number of boarding rooms will provide much-needed affordable housing in a location that is well connected to public transport, reducing reliance on private vehicles and contributing to more sustainable, low-impact living.

As detailed in this submission, there are no unreasonable impacts that will result from the proposed variation to the number of car spaces development standard. As such there is no public benefit in maintaining strict compliance with the development standard. The amended plans are consistent with the objectives of the development standard and objectives for development of the zone. The amended plans are consistent with the objectives of the development standard and the objectives of the zone that make the modification in the public interest.

13. CONCLUSION

Despite the non-compliance with the number of car parking spaces development standard, is compatible with the character of the locality and the scale and form of other dwellings within the area.

The amended proposal aligns with the objectives of the SEPP (Housing) 2021, which seeks to promote a diverse range of housing types, including affordable and low-cost housing options. Boarding houses

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are recognized in planning policy as an efficient use of land that contributes to meeting the housing needs of a diverse population, particularly in urban areas facing significant population growth and housing demand.

Furthermore, the development is designed to integrate with the surrounding neighbourhood, maintaining the character of St Peters while meeting the pressing need for additional housing. The architectural design and scale of the amended proposal are consistent with the site's zoning and will not result in adverse impacts on the surrounding environment or the community.

The amended proposal will not only provide affordable housing but also create economic opportunities for local businesses and service providers. Residents of the boarding house are likely to frequent local shops, public services, and transport, stimulating the local economy.

In addition to the economic benefits, this development provides an essential social benefit by offering housing options for individuals who may face challenges in securing stable accommodation due to the current market conditions. It will assist vulnerable groups, including students, young professionals, and key workers, in maintaining secure, affordable housing close to their place of work or study.

Having regard to all of the above, it is our opinion that compliance with the number of car parking spaces development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The application has also demonstrated sufficient environmental planning grounds to support the breach.

As such, the proposed variation should be supported as part of this application.

We trust that the proposed development will be viewed as a positive step towards addressing the housing needs of the region, contributing to the ongoing efforts to make housing more accessible for all.