



DEVELOPMENT ASSESSMENT PANEL REPORT

Application No.	DA/2025/0074
Address	162 Darley Street & 169 Lord Street NEWTOWN
Proposal	Boundary re-adjustment between two (2) existing lots
Date of Lodgement	13 February 2025
Applicant	Mr Graham Bakewell
Owner	Lord Darley Property Pty Ltd
Number of Submissions	Initial: 0
Cost of works	\$20,000.00
Reason for determination at Planning Panel	4.6 variation exceeds 10%
Key Considerations	Non-compliance with the FSR development standard
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	CI 4.6 Exception to Development Standards (FSR)



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for boundary re-adjustment between two (2) existing lots at 162 Darley Street & 169 Lord Street Newtown.

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

The main issues that have arisen from the application include:

- Non-compliance with the FSR development standard

The non-compliance is acceptable given the existing variation to FSR in relation to No. 169 Lord Street is reduced by the proposed boundary realignment and the resulting lot boundaries are made more consistent with the pattern of subdivision in the street. Therefore, the application is recommended for approval.

It is considered that the Section 4.6 exception relied upon by the applicant adequately demonstrates that compliance with the FSR development standard is unreasonable and unnecessary. Furthermore, there are sufficient environmental planning grounds provided by the applicant to justify contravening the development standard. As a result, the application satisfies Section 4.6(4) within the Inner West Local Environment Plan 2022 (IWLEP).

2. Proposal

This Development Application (DA) seeks Council's consent for the boundary realignment (subdivision) relating to two Torrens title allotments, specifically the realignment of the common rear boundary of the two properties. No physical works are proposed as part of the application. However, it is noted that boundary fencing may need to be altered as a result of the subdivision, but this can be undertaken under exempt development and does not form part of this application.

3. Site Description

The subject site consists of two allotments, one fronting Darley Street and the second lot fronting Lord Street. 162 Darley Street is generally rectangular with a total area of 405sqm and is legally described as Lot 1 in DP111247. 169 Lord Street is generally rectangular with a narrower rear width and a total area of area 346.5sqm and is legally described as Lot 1 in DP78832.

The frontage of 162 Darley Street measures 10.24 metres. The frontage of 169 Lord Street is 12.11 metres.

No. 162 Darley Street supports one detached single storey dwelling. No. 169 Lord Street supports a single storey commercial building, which is currently vacant. Surrounding land uses

are predominantly a mix of single and double storey dwelling houses. One commercial use is located adjacent to the site at 175 Lord Street.



Figure 1: Image of 162 Darley Street, Newtown



Figure 2: Image of 169 Lord Street, Newtown

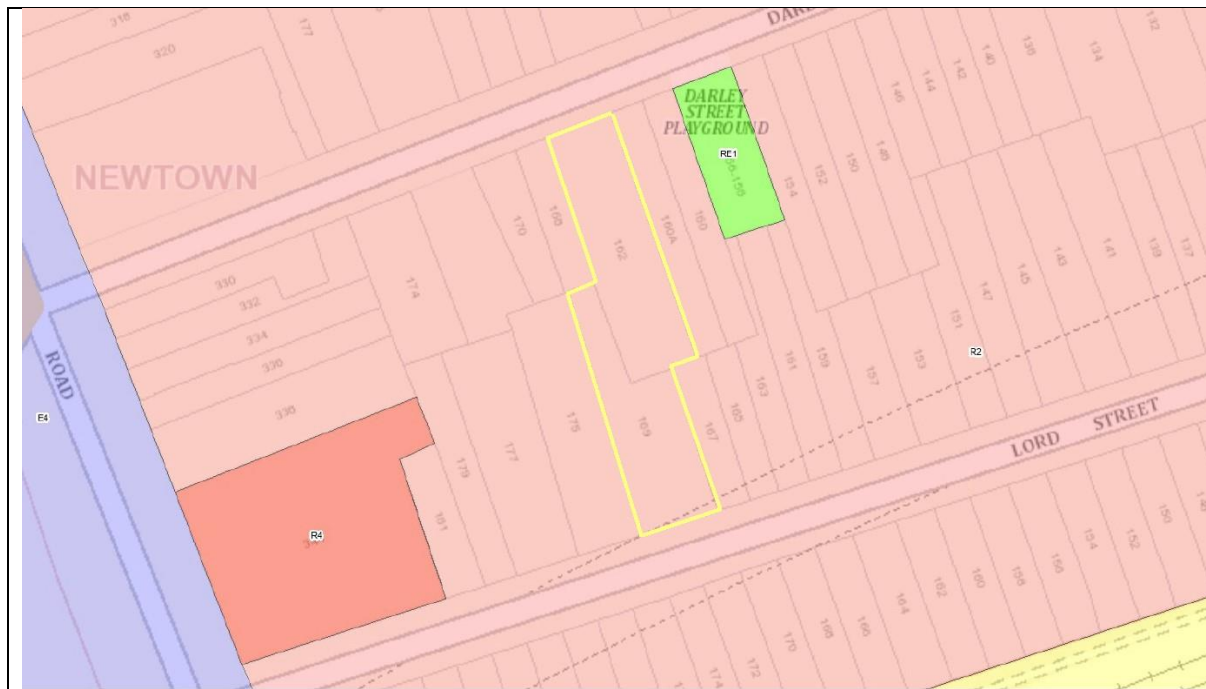


Figure 3: Zoning Map (subject site outlined in yellow)

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

162 Darley Street, Newtown

Application	Proposal	Date & Decision
BA-B579/97	For alterations and additions at rear of dwelling	Rejected 17/07/1998

169 Lord Street, Newtown

Application	Proposal	Date & Decision
DA200300264	To demolish the existing improvements and erect 7 townhouses with basement carparking for 10 vehicles.	Withdrawn 02/05/2003
DA200200040	To convert existing premises into 7 dwellings and ground floor car parking for 9 vehicles.	Refused 02/01/2003
DA199901743.01	As below (DA199901743).	Withdrawn 23/08/1999

DA199901743	Modification under Section 96 of the Environmental Planning and Assessment Act to modify Determination No 17006 to reduce the number of carparking spaces for the storage and servicing of prestige motor vehicles to 2 spaces.	Approved 17/03/2000
DA199901381.01	Review under Section 82A of the Environmental Planning and Assessment Act of an application to use the premises to store and sell prestige motor vehicles in association with the car repair business.	Refused 03/08/1999
DA199901381	to store and sell prestige motor vehicles in association with the repair business.	Refused 18/05/1999
DA199900535	to store and sell prestige motor vehicles in association with the car repair business	Refused 18/05/1999
BA-D45/99	to store and sell prestige motor vehicles in association with the car repair business.	21/01/1999 (undefined)
D607/96	To carry out alterations and additions to the factory including enclosing the concreted area at the rear and to use the premises for the storage and servicing of prestige motor vehicles	Approved 04/03/1997
BA-B821/96	To make alterations to facade and construct additions to rear of single storey brick factory	Approved 17/03/1997
BA-C383/96 -	The whole of the single storey brick (class 8) factory building.	Issued 16/12/1996

Surrounding properties

Application	Proposal	Date & Decision
DA200200401 - 160 Darley Street NEWTOWN	to demolish the existing improvements, subdivide the land into two allotments and erect a two part three storey dwelling on each new allotment.	Approved 06/11/2002
DA200400148 170 Darley Street NEWTOWN NSW 2042	To demolish the existing improvements, adjust the common boundary between allotments and erect a two storey dwelling house on each allotment.	Deferred commencement 01/06/2005 **consent operative as of 21/07/2005

Application history

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

Date	Discussion / Letter / Additional Information
13/03/2025	A request for further information was sent to the applicant requiring clause 4.6 documentation to address the proposed variation to FSR, in addition to providing a statement of intent and a subdivision concept plan.

10/04/2025	Supporting documentation was received. Renotification was not required in accordance with Council's Community Engagement Strategy 2025-2029. The supporting documentation is the subject of this report.
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5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979 (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.

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 satisfies the section as follows:</p> <ul style="list-style-type: none"> • The proposal encourages development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles, • The proposal encourages diversity in housing to meet the needs of, and enhance amenity for, Inner West residents • The proposal is consistent with the relevant aims of the plan in that the proposed subdivision has a satisfactory impact on the private public domain. 	Yes

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 a boundary realignment involving two lots, which is permissible with consent in the R2 Low Density Residential zone. • The proposal is consistent with the relevant objectives of the zone by providing for the housing needs of the community within a low-density residential environment, maintaining a density consistent with the character of the area, and maintaining facilities or services to meet the day to day needs of residents. 	Yes
Section 2.6 Subdivision – consent requirements	<ul style="list-style-type: none"> • The application seeks development consent for the boundary realignment (subdivision) of two (2) Torrens title lots, which is permissible with consent. 	Yes

Part 4 – Principal development standards

Section	Proposed		Complies
Section 4.3 Height of buildings	Maximum	9.5m	N/A (no change)
	Proposed	N/A	
Section 4.4 Floor space ratio	162 Darley Street		No, but acceptable (refer to below discussion)
	Maximum	0.90:1 or 213.00sqm	
	Proposed	0.41:1 or 98.20sqm	
	Variation	N/A	
	169 Lord Street		
	Maximum	0.60:1 or 308.16sqm	
	Proposed	0.74:1 or 380.50sqm	
	Variation	72.34sqm or 23%	
Section 4.5	The site area and floor space ratio for the proposal has been calculated in accordance with the section.		Yes

Section	Proposed	Complies
Calculation of floor space ratio and site area		
Section 4.6 Exceptions to development standards	The applicant has submitted a variation request in accordance with Section 4.6 to vary Section 4.4 Floor Space Ratio.	See discussion below

Section 4.6 – Exceptions to Development Standards

Floor space Ratio (FSR) development standard

The applicant seeks a variation to the FSR development standard under section 4.6 of the *IWLEP 2022* by 72.34sqm (23%). Section 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

A written request has been submitted to Council in accordance with Section 4.6(3) of the *IWLEP 2022* justifying the proposed contravention of the development standard. In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Section 4.6 of the *IWLEP 2022* below.

Whether compliance with the development standard is unreasonable or unnecessary

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

The **first objective of Section 4.4** is “to establish a maximum floor space ratio to enable appropriate development density”. The written request states the proposed development does not involve works; therefore, the breach is consistent with the first objective. This is accepted because this is a technical breach as the breach relates to the property at 169 Lord Street, which does not currently accommodate a residential use and is not afforded an FSR bonus under Clause 4.4 (2C). Accordingly, the site at Lord Street is assigned a Floor Space Ratio (FSR) of 0.6:1. Should the site be developed for low-density residential use in the future, a higher FSR may be applied and made consistent with its zoning and the FSR of nearby residential properties. Accordingly, the breach is consistent with the first objective.

The **second objective of Section 4.4** is *“to ensure development density reflects its locality”*. The written request states the proposed development will not adversely affect the area's density as it only involves realigning the rear shared boundary of the lots. This reasoning is accepted as no physical works are included in the subdivision, and the proposal will improve the existing subdivision pattern of the streetscape without adding to any perception of bulk or scale. Therefore, the development does not result in any impact to the public domain. Accordingly, the breach is consistent with the second objective.

The **third objective of Section 4.4** is *“to provide an appropriate transition between development of different densities”*. The written request states the proposal only involves developments across lots within the R2 zone, so there is no area of transition. This is accepted as both subject lots are contained within the R2 Low Density Residential zone. Notwithstanding, the proposal will reform the existing net lot area of the two properties and allow for future developments and a density that is more commensurate with the streetscape by regularising the shape of the Lord Street lot. Accordingly, the breach is consistent with the third objective.

The **fourth objective of Section 4.4** *“to minimise adverse impacts on local amenity”*. The written request states the proposed development will maintain a good standard of inner suburban residential amenity without material adverse impacts on the amenity of neighbouring properties. This is accepted because the proposal relates only to subdivision, and as indicated on the concept plans, the amenity of the locality will be improved by increasing the potential open space on the Lord Street allotment to reflect neighbouring urban patterns. Accordingly, the breach is consistent with the fourth objective.

The **fifth objective of Section 4.4** is *“to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain”*. The written request states the proposed development increases the potential tree canopy for the 169 Lord Street lot, which is accepted. As outlined in the below assessment, the concept plans increase the potential open space at the rear of the Lord Street lot and allows for the potential planting of one replacement tree in the rear courtyard to satisfy Part 2.20 of MDCP 2011. In this respect, the potential for tree canopy is also increased for the use and enjoyment of the subject site and neighbouring properties. It is acknowledged that no tree planting is proposed as part of this application, the subdivision does not preclude the ability to provide planting on the sites. Accordingly, the breach is consistent with the fifth objective.

As the proposal achieves the objectives of the FSR 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 three (3) the following environmental planning grounds to justify contravening the floor space ratio development standard:

Environmental Planning Ground 1 –

The amenity of neighbouring properties is unaffected by the development because the development will not result in a material or physical change to the existing built form.

This environmental planning ground is accepted because the proposed development does not involve works – only the realignment of the shared rear boundary. It is noted that boundary fencing may need to be altered because of the subdivision, but this can be undertaken as exempt development and does not form part of this application. The amenity of adjoining properties will not be adversely impacted by the proposal, or by the erection of a sufficient dividing fence along the realigned boundary.

Environmental Planning Ground 2 –

The size and shape of the Lord Street property will be made similar to the size and shape of other properties in the streetscape, thereby improving the degree of consistency of the subdivision pattern in the streetscape.

This environmental planning ground is accepted because the lot shape of 169 Lord Street will be made more regular in shape by expanding the narrow rear boundaries of the existing lot. As assessed under Part 3 of the MDCP, the proposed development illustrates that the proposal will result in lot boundary dimensions that are more consistent with the pattern of subdivision along both Lord Street and Darley Street.

Environmental Planning Ground 3 –

The new lot shape will create an improved connection to private open space and additional solar access exposure of the occupants of that the Lord Street site.

This environmental planning ground is accepted because the proposal will result in a substantial increase to potential open space for the Lord Street property whilst maintaining adequate open space for 162 Darley Street. The position of the added lot area, located on the northern side of the lot, permits substantial access to sunlight for the benefit of future residents. Further, the potential amenity of the private open space (as shown on the concept plan) is considered an improvement over the amenity of open space that could be provided within the current dimensions of the Lord Street allotment, noting the existing rear portion of the lot would likely be utilised as private open space should a redevelopment of the site be proposed in the future.

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

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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 6.3	<ul style="list-style-type: none"> As existing, the development maximises the use of permeable surfaces and, subject to conditions, 	Yes, subject to conditions

Section	Proposed	Complies
Stormwater Management	would not result in any significant runoff to adjoining properties or the environment.	

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 2.3 – Site and Context Analysis	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	Yes
Part 2.18 – Landscaping and Open Space	Yes
Part 2.20 – Tree Management	Yes
Part 2.21 – Site Facilities and Waste Management	Yes
Part 2.25 – Stormwater Management	Yes
Part 3 – Subdivision	Yes
Part 4.1 – Low Density Residential Development	Yes
Part 9 – Strategic Context	Yes

The following provides discussion of the relevant issues:

Marrickville Development Control Plan 2011

The application was assessed against the following relevant parts of the Marrickville Development Control Plan 2011 (MDCP 2011).

Part 2 – Generic Provisions

Control	Assessment	Complies
Part 2.1 Urban Design	<p>The proposed development 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 the subdivision appropriately considers context, scale, density, streetscape, travel networks and connections. 	Yes
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"> No new windows are proposed, thereby protecting existing privacy levels for surrounding occupiers. 	Yes

Control	Assessment	Complies
	<ul style="list-style-type: none"> All existing side windows are located at ground level and will be adequately screened by standard height dividing fencing. 	
Part 2.7 Solar Access and Overshadowing	The proposal will have a satisfactory impact in terms of solar access and overshadowing on the surrounds.	Yes
Part 2.9 Community Safety	The proposed development satisfies the relevant provisions of this Part as the entrances of each building remain identifiable and visible from the street.	Yes
Part 2.10 Parking	<ul style="list-style-type: none"> One existing vehicle crossing is maintained serving 162 Darley Street. No car bay or driveway is provided in relation to 169 Lord Street. The proposal relates to existing buildings and as such a variation to car parking requirements is acceptable given there are no new impacts as a result of the proposed boundary adjustment. 	No but acceptable as per existing, no change proposed
Part 2.11 Fences	<ul style="list-style-type: none"> As a result of the subdivision, boundary fencing may need to be altered. However, this can be undertaken under exempt development and does not form part of this application. An exempt fence with a height of 1.8m is consistent with the design and style of nearby fences and existing fences on the subject site. 	Yes
Part 2.18 Landscaping and Open Spaces	<p>Part 2.18 of MDCP 2011 includes objectives and controls with respect to the provision of POS and landscaped area for dwelling houses.</p> <p>According to the Concept Building Plan, the entire front setback to both allotments is to remain as existing.</p> <ul style="list-style-type: none"> The Concept Building Plan identifies that a minimum of 20% of the site or 47.2sqm of 162 Darley Street is required to be private open space, with no dimension being less than 3m. However, 40.3sqm is provided, being a variation of 6.9sqm or 14.6%. It is considered the shortfall of 6.9sqm is acceptable as the open space is considered of a size capable in providing adequate area for recreation for residents of the dwelling. 50% of the provided private open space is required to be pervious. In excess of 100% of the private open space is to be maintained as pervious landscaping. With regard to 169 Lord Street, the proposed Concept Building Plan demonstrates that the proposed subdivision is capable of satisfying the minimum POS and pervious landscaping requirements as stipulated under this Part of the MDCP 2011. <p>Considering the above, whilst the proposal does not satisfy all the relevant controls under Part 2.18 of MDCP 2011, the Concept Plans demonstrate that the development satisfies Objectives O1, O7, and O11 of this Part.</p>	No, but acceptable (see below discussion)
Part 2.21 Site Facilities and	The proposed development satisfies the relevant provisions of this Part as follows:	Yes, subject to conditions

Control	Assessment	Complies
Waste Management	<ul style="list-style-type: none"> Standard conditions are recommended to ensure the appropriate management of waste during the development of the proposal. 	
Part 2.25 Stormwater Management	Standard conditions are recommended to ensure the appropriate management of stormwater.	Yes, subject to conditions

Part 3 – Subdivision, Amalgamation and Movement Networks

Control	Assessment	Complies
Part 3.2.2 Residential Torrens title subdivision and amalgamation controls	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> The subdivision is consistent with and retains the prevailing cadastral pattern of the lots fronting the same street; The subdivision would allow for continuation of the dominant built form of development in the street; Solar access, open space, parking and other amenity impacts of the proposal have been discussed elsewhere in the report and the proposed allotments are considered to allow for built forms which comply with Council's requirements with respect to those issues; and The subdivision maintains suitable amenity to neighbouring properties and provides suitable amenity for future occupants 	Yes

Part 3.1.1.2 of MDCP 2011 does not contain minimum lot width or area requirements for subdivisions, but rather relies on performance based controls that aim to ensure that new lots facilitate development that is compatible with the immediate area.

The application proposes to realign the rear boundary of two lots. The streetscape and immediate locality is generally characterised by a mix of single storey dwellings, residential and commercial buildings on a mix of narrow and wide lots. The following table illustrates the proposed lot dimensions and the approximate dimensions of lots within the street:

Properties fronting Darley Street (north)

Number	Site Area	Frontage
143	185.00sqm	5.30 metres
145	193.40sqm	5.10 metres
147	214.00sqm	6.50 metres
149	224.70sqm	5.70 metres
151	183.00sqm	5.10 metres
153	167.00sqm	4.60 metres
155	166.00sqm	4.40 metres
157	177.00sqm	4.60 metres
159	176.00sqm	4.60 metres
161	179.50sqm	4.80 metres
165	468.60sqm	14.20 metres
167	195.00sqm	5.00 metres

169	206.40sqm	5.40 metres
171	205.50sqm	5.20 metres
175	506.00sqm	13.10 metres
177	344.00sqm	8.60 metres

Properties fronting Darley Street (south)

Number	Site Area	Frontage
142	136.90 sqm	4.90 metres
144	130.40 sqm	5.40 metres
146	133.20 sqm	5.00 metres
148	190.60 sqm	4.60 metres
150	212.90 sqm	5.50 metres
152	192.80 sqm	5.00 metres
154	192.70 sqm	5.20 metres
N/A	228.00 sqm	9.50 metres
160	189.20 sqm	5.20 metres
160(A)	198.00 sqm	5.30 metres
*162	236.2 sqm	10.26 metres
168	121.70 sqm	5.70 metres
170	140.00 sqm	7.30 metres
172	261.00 sqm	10.00 metres
174	268.00 sqm	10.50 metres

Properties fronting Lord Street (north)

Number	Site Area	Frontage
181	139.70 sqm	6.40 metres
179	202.20 sqm	4.90 metres
177	384.50 sqm	10.00 metres
175	381.20 sqm	10.00 metres
*169	524 sqm	12.2 metres
167	120.40 sqm	5.20 metres
165	110.70 sqm	4.50 metres
163	141.50 sqm	4.80 metres
161	200.90 sqm	5.10 metres
159	168.00 sqm	5.00 metres
157	175.90 sqm	7.60 metres
153	206.70 sqm	8.20 metres
151	184.40 sqm	5.80 metres
147	235.20 sqm	5.70 metres
145	235.10 sqm	6.90 metres

Properties fronting Lord Street (south)

Number	Site Area	Frontage
190	176.30 sqm	6.00 metres

188	184.80 sqm	5.80 metres
186	183.30 sqm	5.70 metres
184	178.00 sqm	5.40 metres
182	174.10 sqm	5.80 metres
180	170.90 sqm	5.70 metres
178	166.80 sqm	5.50 metres
176	172.00 sqm	5.90 metres
174	153.20 sqm	5.30 metres
172	164.00 sqm	5.90 metres
170	162.30 sqm	6.00 metres
168	154.40 sqm	6.20 metres
166	158.60 sqm	6.00 metres
164	179.70 sqm	6.80 metres
162	161.50 sqm	6.00 metres
160	144.60 sqm	5.60 metres
158	160.50 sqm	6.00 metres
156	158.40 sqm	6.10 metres
154	159.60 sqm	6.50 metres
152	151.20 sqm	6.20 metres

As the above tables demonstrate, the frontages of adjoining properties range between 4.6 metres at the lower end of the range up to 14.2 metres at the higher end. The subdivision would result in two lots with site areas within the range of the prevailing cadastral pattern. The shape of the allotments being generally rectangular and fronting Darley Street and Lord Street demonstrate the compliance of the proposal with the subdivision requirements.

The assessment of the application against the other relevant controls in MDCP demonstrates that the lots satisfy controls C6 and C7. The proposal ultimately achieves the aims and objectives of Part 3.2 of MDCP. An assessment of the dwelling concept plans indicates that the proposal has the capacity to comply with the MDCP and Inner West Local Environmental Plans 2022.

Part 4 – Low Density Residential Development

Control	Assessment	Complies
Part 4.1.6 Built form and character <u>Front setback</u> <ul style="list-style-type: none"> Consistent with adjoining developments <u>Side setbacks</u> <ul style="list-style-type: none"> One storey – 900mm 	The proposed development satisfies the relevant provisions of this Part as follows: <ul style="list-style-type: none"> The existing front setbacks and side setbacks of the dwelling are to remain unaltered by the proposal; The proposed rear setbacks are considered appropriate, as they will not create adverse impacts on adjoining properties in terms of visual bulk, overshadowing or privacy; and In accordance with C13 of this Part, a maximum site coverage of 45% is permitted for no. 169 Lord Street (lots >500-700sqm), however a site coverage of 66% is proposed. This variation is considered acceptable as the proposal results in a site coverage that is more consistent with the existing character of neighbouring dwellings, and 	No, but acceptable

Control	Assessment	Complies
<u>Rear setback</u> <ul style="list-style-type: none"> On merit <u>Site coverage</u>	<p>the proposal introduces adequate provision for uses such as outdoor recreation, footpaths, deep soil tree planting, other landscaping, waste management, clothes drying and stormwater management, thereby satisfying Objectives O15 and O16 of this Part.</p> <ul style="list-style-type: none"> With regard to no. 162 Darley Street, the proposal seeks to increase the existing site coverage by a minor amount. The overall site coverage of the development is considered acceptable, as it is consistent with the pattern development of the street and will have an acceptable impact on adjoining properties. 	

Part 9 – Strategic Context

Control	Assessment	Complies
Part 9.14 Camdenville (Precinct 14)	<p>The proposed development satisfies the relevant provisions of this Part as follows:</p> <ul style="list-style-type: none"> The proposal does not affect the existing period dwelling and commercial building on the respective sites; The proposal maintains the single storey streetscape, as the development does not propose works to affect the streetscape appearance of each existing building. 	Yes

C. The Likely Impacts

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

D. The Suitability of the Site for the Development

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

E. Submissions

The application was notified in accordance with Council's Community Engagement Strategy 2025-2029 between 25 February 2025 to 11 March 2025.

No submissions were received.

F. The Public Interest

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

This has been achieved in this instance.

6. Referrals

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

- Development Engineer

7. Conclusion

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

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

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

8. Recommendation

- A. In relation to the proposal in Development Application No. DA/2025/0074 to contravene the FSR development standard in Clause 4.4 of *Inner West Local Environmental Plan 2022* 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.
- A. 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/2025/0074 for boundary re-adjustment between two (2) existing lots at 162 Darley Street and 169 Lord Street NEWTOWN subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

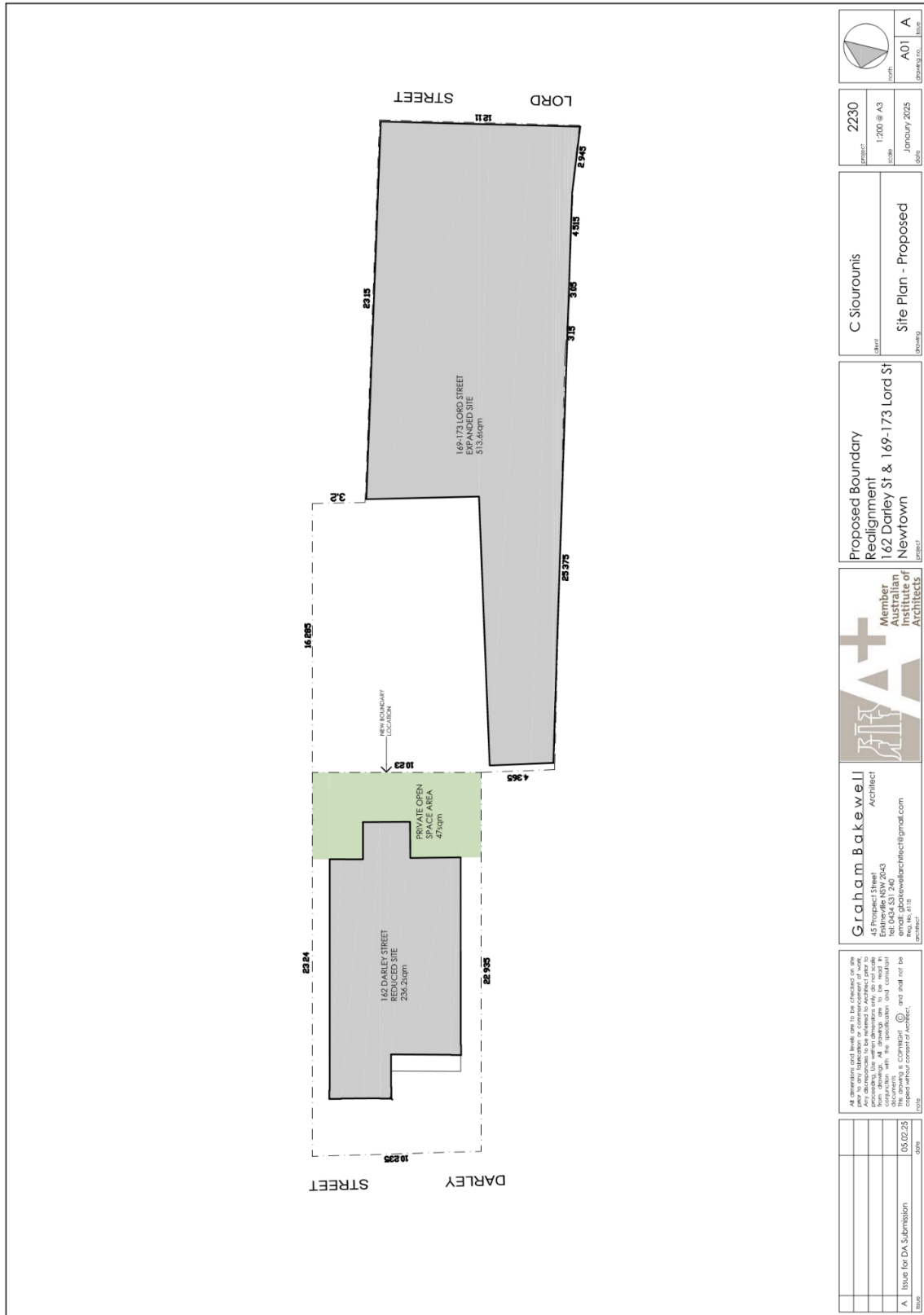
GENERAL CONDITIONS

Condition				
1.	Documents related to the consent			
	The development must be carried out in accordance with plans and documents listed below:			
	Plan, Revision and Issue No.	Plan Name	Date Issued/Received	Prepared by
	A01, Rev A	Site Plan - Proposed	5 February 2025	Graham Bakewell
	A02, Rev A	Existing Plan	5 February 2025	Graham Bakewell
	A03, Rev A	Existing Plans	5 February 2025	Graham Bakewell
	SA01, Rev A	Subdivision Concept Plan	10 April 2025	Graham Bakewell
	not stated	Plan of Proposed Subdivision	17 January 2025	PS Pang Surveyors
As amended by the conditions of consent.				
Reason: To ensure development is carried out in accordance with the approved documents.				
2.	Works Outside the Property Boundary			
	This development consent does not authorise works outside the property boundaries on adjoining lands.			
Reason: To ensure works are in accordance with the consent.				
3.	Other works			
	Works or activities other than those approved by this Development Consent will require the submission of a new Development Application or an application to modify the consent under Section 4.55 of the <i>Environmental Planning and Assessment Act 1979</i> . This consent relates only to the boundary. Any proposal to use 169 Lord Street for residential purposes must be sought by way of a new Development Application.			
Reason: To ensure compliance with legislative requirements.				
4.	Dividing Fences Act			
	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.			
Reason: To ensure compliance with legislative requirements.				

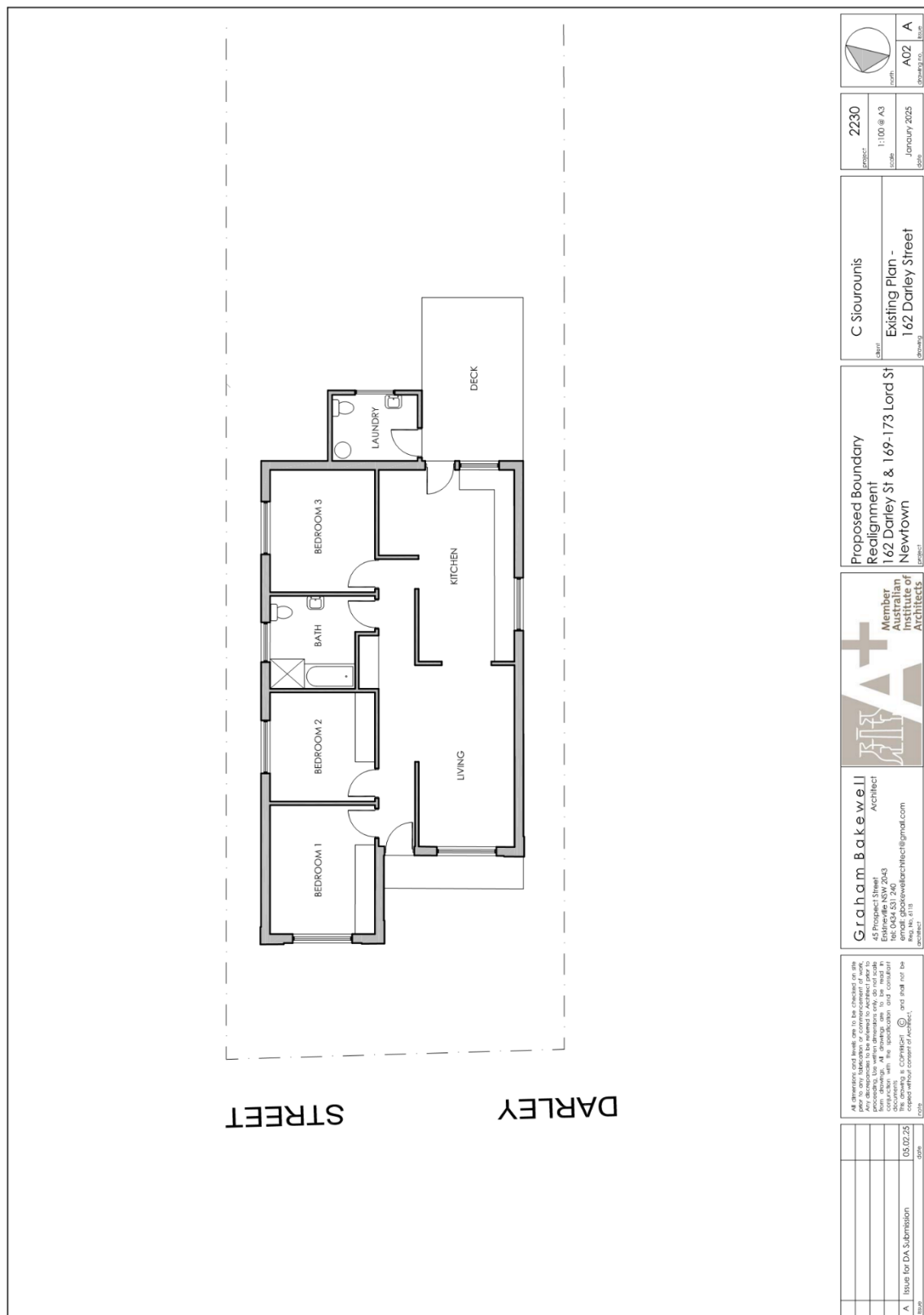
SUBDIVISION WORK**BEFORE ISSUE OF A SUBDIVISION CERTIFICATE**

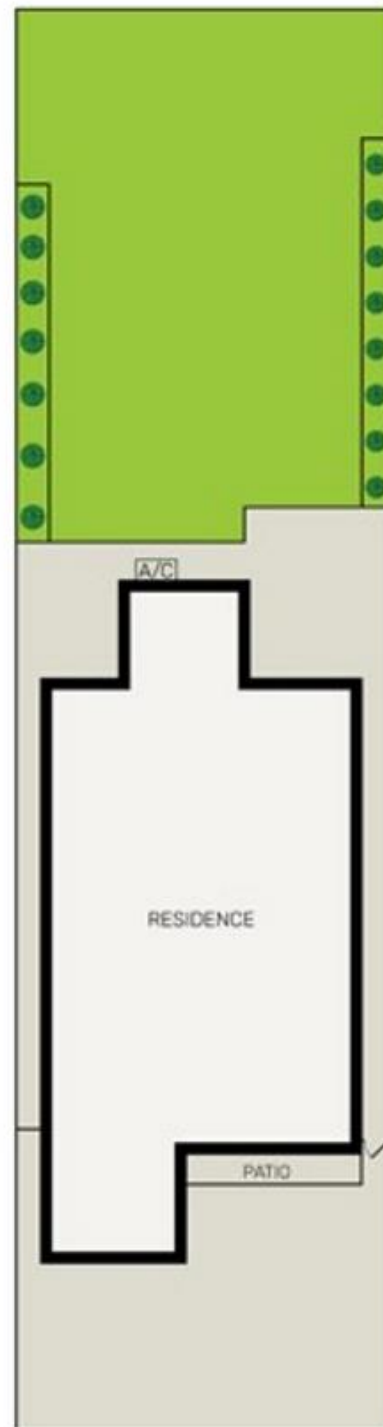
	Condition
5.	Section 73 Certificate Prior to the issue of a Subdivision Certificate, the Certifying Authority must be provided with the Section 73 Certificate. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Reason: To ensure relevant utility and service providers' requirements are provided to the certifier.
6.	Separate Stormwater Prior to the issue of a Subdivision Certificate, the Certifying Authority must be provided with details, endorsed by a practising stormwater engineer demonstrating separate drainage systems to drain each proposed lot. Reason: To ensure development is provided with adequate stormwater drainage.

Attachment B – Plans of proposed development



<p>Project: 2230 Scale: 1:200 @ A3 Date: January 2025 Sheet: 02/05</p>		<p>Client: C Siourounis Project: Site Plan - Proposed</p>		<p>Proposed Boundary Redignment 162 Darley St & 169-173 Lord St Newtown</p>		<p>Member of the Australian Institute of Architects</p>		<p>Graham Bakewell Architect 45 Prospect Street Newtown NSW 1590 Tel: 02 9554 5326 Email: graham.bakewell@architect.com.au</p>		<p>All dimensions and levels are to be checked on the ground prior to any excavation or commencement of work. The architect is not responsible for any errors or omissions in the drawings. The drawings are for information only and do not constitute a contract. The drawings are the property of the architect and must not be reproduced without written consent of the architect.</p>	
<p>Issue for DA Submission</p>		<p>05.02.25</p>		<p>02/05</p>		<p>02/05</p>		<p>02/05</p>		<p>02/05</p>	





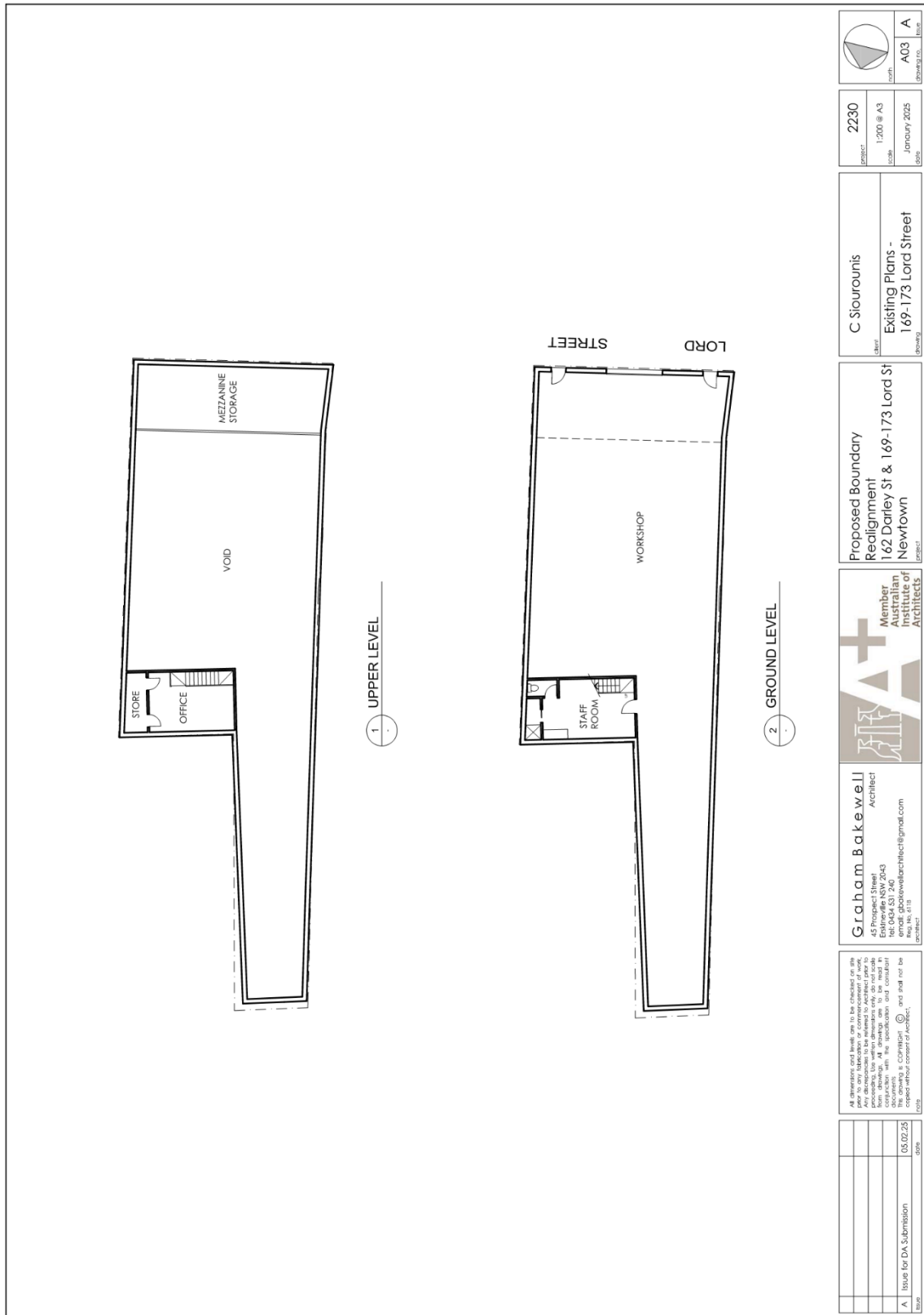
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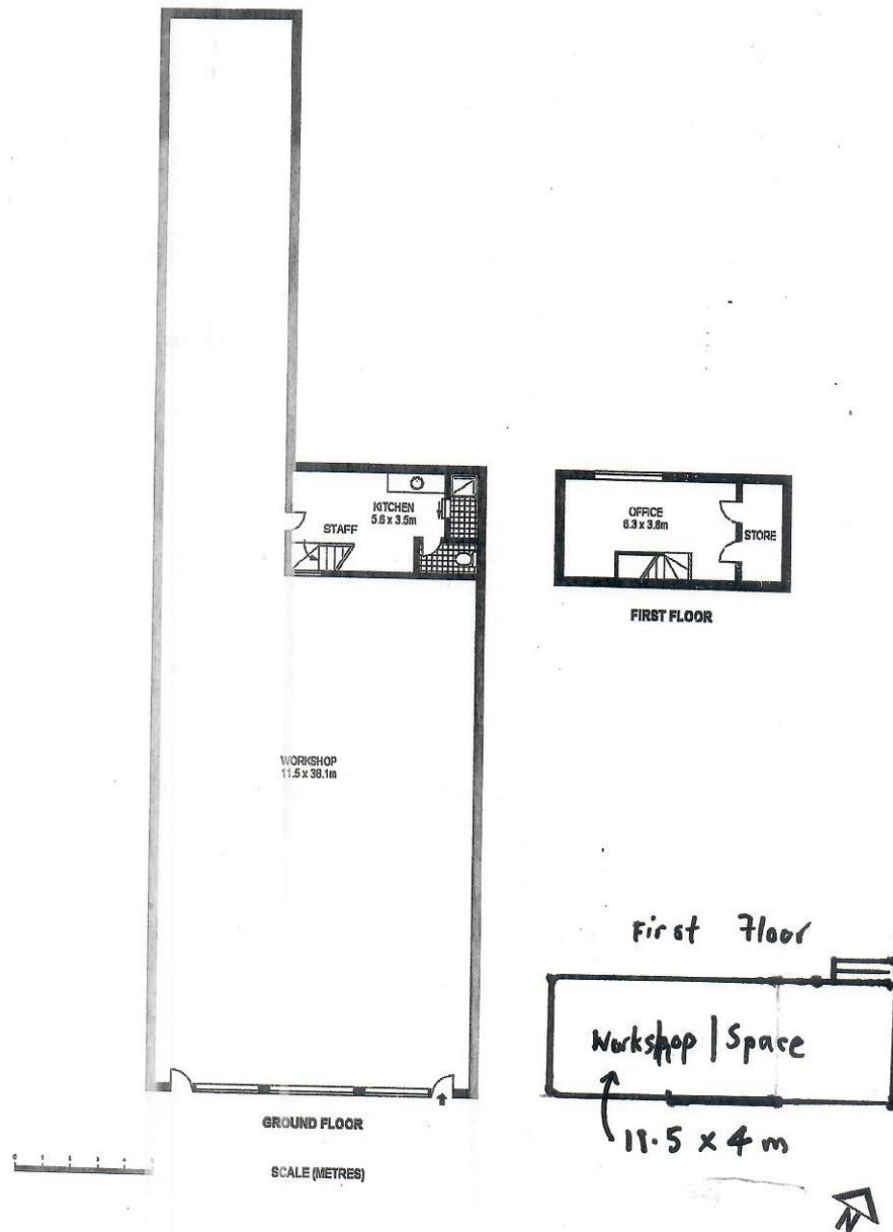
Version: 1, Version Date: 02/06/2025

162 Darley Street, Newtown



Newtown

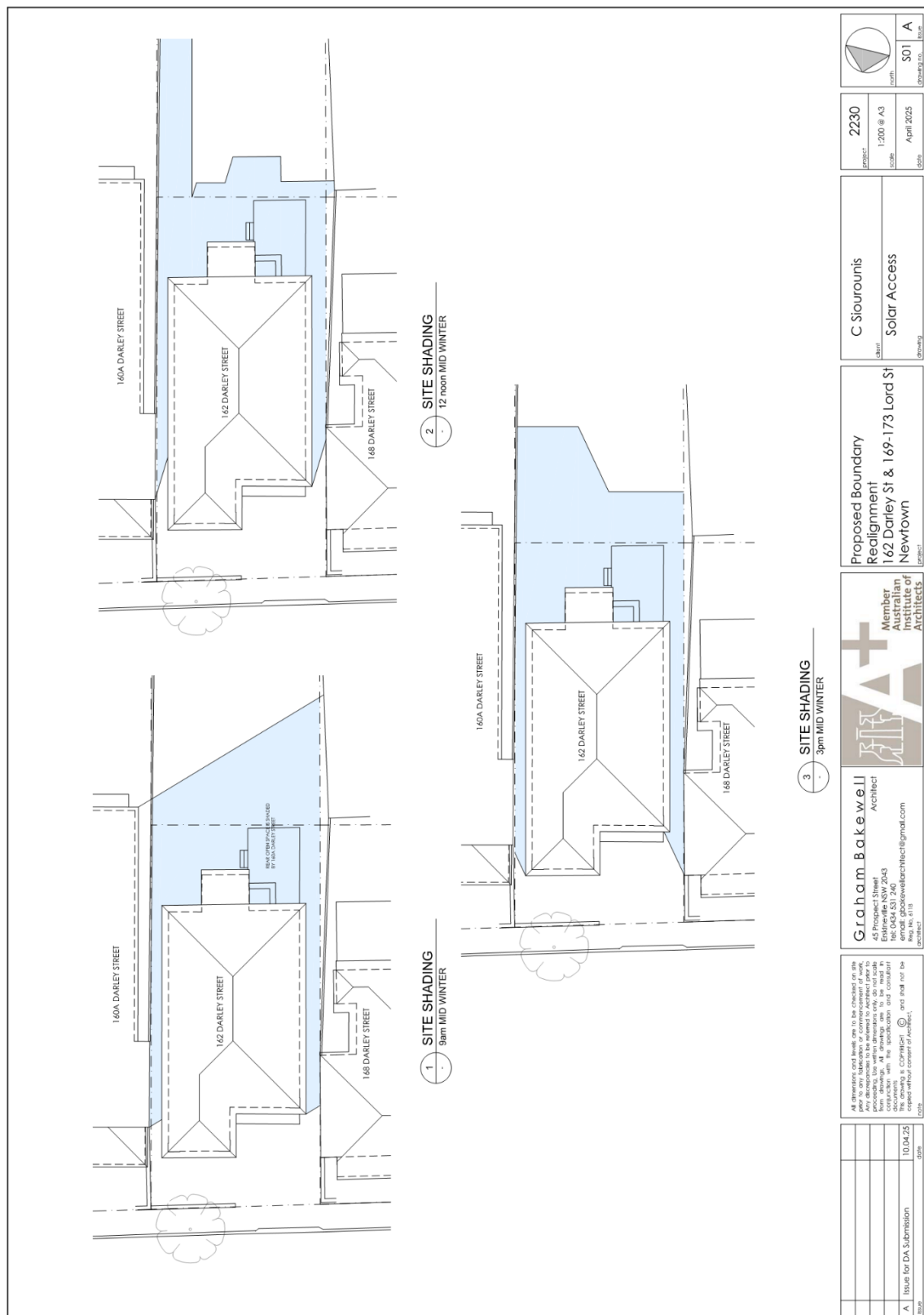
169-173 Lord Street

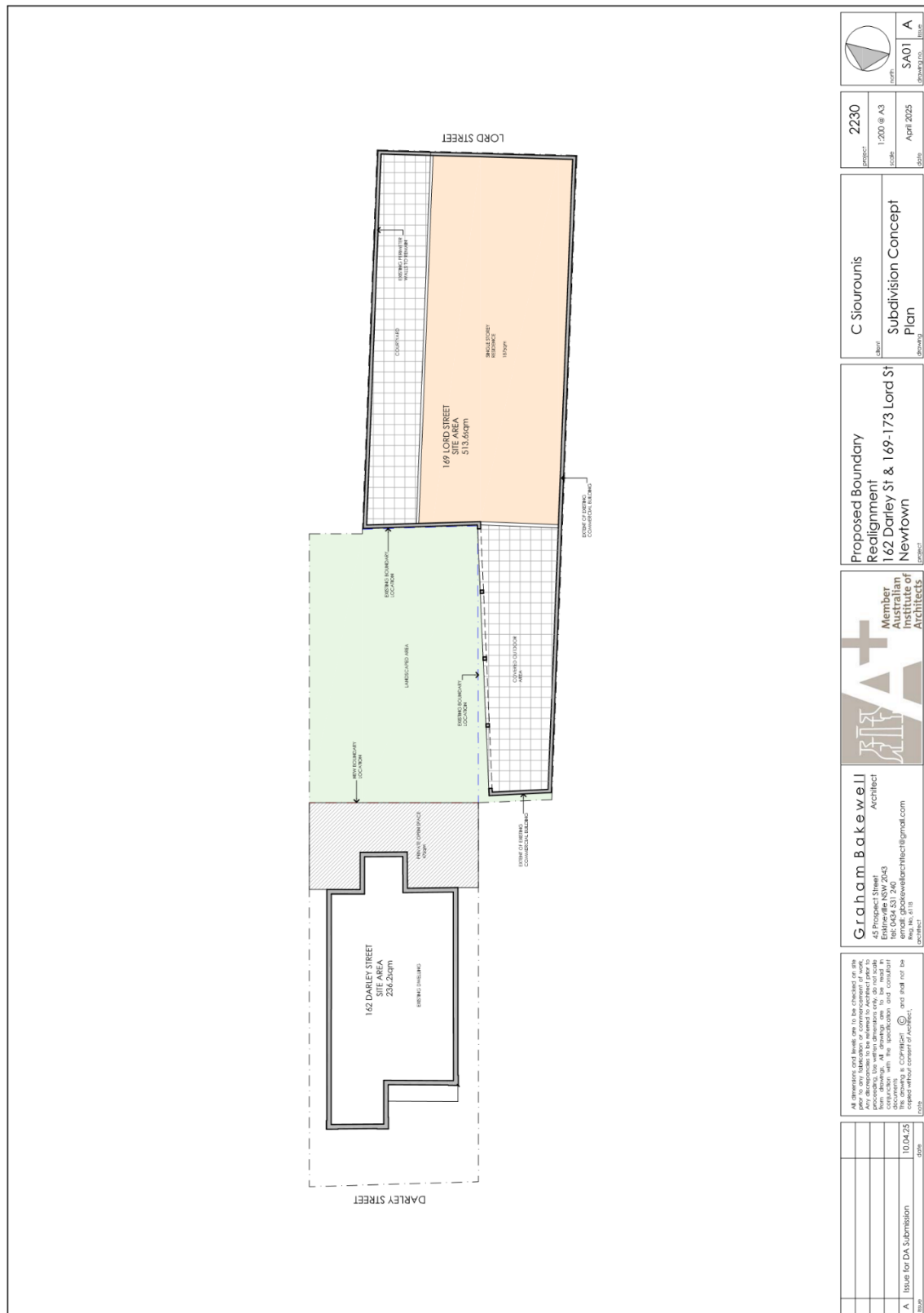


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Document Set ID: 40684625

Version: 1; Version Date: 02/08/2025











Attachment C – Section 4.6 Exception to Development Standards

169-173 Lord Street & 162 Darley Street, Newtown
May 2025

AMENDED CLAUSE 4.6 VARIATION – FLOOR SPACE RATIO

ADDRESS: 169-173 Lord Street & 162 Darley Street, Newtown

1. Introduction

This Clause 4.6 Variation Request accompanies a development application to Inner West Council seeking consent to adjust the boundaries between 2 existing lots at the above address to create a reduced site area for Lot 1 (the existing dwelling house lot fronting Darley Street) and an increased site area for Lot 2 (the existing warehouse lot fronting Lord Street).

Although the site area is actually being increased for the Lord Street warehouse Lot and the FSR is technically being reduced with an improved degree of compliance, Council has requested a Clause 4.6 variation statement to justify the existing, improved FSR variation. The FSR for the reduced dwelling house lot will remain compliant with the LEP.

Whilst it is the applicant's position that no new FSR variation is being created as the lot size is to increase and no additional floor area forms part of the proposal, this Clause 4.6 variation request is provided on a non-admissions basis to enable determination of the application should Council be of a different view.

This variation request demonstrates that the proposed FSR variation is technical in nature, will not bring with it any impact on local character or neighbour amenity, and will be consistent with the objectives of the zone and the development standard. On this basis, it would be unreasonable and unnecessary for strict compliance to be enforced.

2. What is the name of the environmental planning instrument that applies to the land?

Inner West Local Environmental Plan 2022.

3. What is the zoning of the land and what are the objectives of the zone?

R2 – Low Density Residential Zone – Objectives

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

4. Identify the Development Standard to which this Clause 4.6 Variation applies?

Clause 4.4 Floor Space Ratio of Inner West LEP 2022.

5. Is the standard expressly excluded from operation of Clause 4.6

Clause 4.4 is not identified as being expressly excluded from operation of Clause 4.6 of the LEP.

Clause 4.6 Variation Request - FSR
169-173 Lord Street & 162 Darley Street, Newtown

6. What are the objectives of the development standard?

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

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

7. What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.4 of the LEP specifies a maximum FSR as follows:

- For the dwelling house lot (fronting Darley Street): Clause 4.4(2C): $>200 <250\text{m}^2 = 0.9:1$
- For the warehouse lot (fronting Lord Street): Clause 4.4(2): $= 0.6:1$

8. How do the existing and proposed numeric values relate to the development standard?
What is the percentage variation (between the proposal and the environmental planning instrument)?

The existing and proposed FSR is outlined in the below table.

	Existing area	Existing GFA/FSR	New area	New GFA/FSR	Complies?
169-173 Lord St	346.50m ²	380.50m ² / 1.1:1	513.60m ²	380.50m ² / 0.74:1	No (although improved over existing)
162 Darley St	405m ²	98m ² / 0.242:1	236.20m ²	98m ² / 0.41:1	Yes

In accordance with Clause 4.4(2), the maximum permitted GFA for the new warehouse lot area is 308.16m². The warehouse (the Lord Street lot) has a new FSR of 0.74:1 (existing GFA of 380.50m²), resulting in a technical variation to the development standard of 72.34m², being a 23.47% variation to the development standard.

9. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?

The NSW Land and Environment Court in *Four2Five Pty LTD v Ashfield Council* [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827. The court provided five tests that can be used as prompts to answer the above question.

It is noted that these 5 tests are not exhaustive of the ways in which a variation request may demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. Further, it is not necessary to satisfy all 5 tests, but instead it may be sufficient to establish only one way, although if more ways are applicable, they can be used to assist a variation request to demonstrate that compliance is unreasonable or unnecessary.

Test 1: It is the position of the applicant that the proposal satisfies the first test in *Wehbe v Pittwater Council* [2007] NSWLEC 827 as the objectives of the standard are achieved notwithstanding non-compliance with the standard. Refer to the discussion below relating to compliance with the objectives of the development standard.

10. Are there sufficient environmental planning grounds to justify contravening the development standard?

In considering whether there are sufficient environmental planning grounds to support the proposed building FSR non-compliance, the following principles are relied on.

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ further clarified the correct approach in the consideration of clause 4.6 requests. This advice further confirms that the clause does not require that a development that contravenes a development standard must have a neutral or better environmental planning outcome than one that does not.

With regard to the above, it is our view that there are sufficient environmental planning grounds to support the proposed non-compliance for the following reasons:

- There will be **no material, physical change** to the built form on the site and **no change to neighbour interface or amenity**.
- Despite the variation proposed, the building will appear as it does today from all vantage points and in this regard, the variation is technical in nature.
- Further, the FSR on the proposed Lord Street lot is proposed to **decrease**.
- The new lot shape for the Lord Street property will create **improved connection** to private open space and **additional solar access exposure** for the occupants of that property. The subdivision will therefore be **consistent** with objective O4 of Part 3.2.2 of MDCP 2011.
- The size and shape of the Lord Street property will become similar to the size and shape of No. 175 Lord Street (adjoining to the west), thereby creating a degree of **consistency with the subdivision pattern**. Similarly, the size and shape of the Darling Street property will become similar to the size and shape of Nos. 168 and 170 Darling Street (adjoining to the west).
- The shape of the Lord Street property will become more regular, creating improved future development potential, whilst maintaining good development potential for the Darling Street property.

Furthermore, the proposal is not antipathetic with the objectives of Clause 4.4 – Floor Space Ratio, which are:

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

In this regard, consistency with objective (a) is being improved as the site area is being increased and the FSR reduced, and the remaining objectives are either not offended or not

Clause 4.6 Variation Request - FSR
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relevant as there is no built form change being proposed. There will be no change to building size, its construction to local character, amenity relationship with the adjoining properties or tree canopy on the site or public domain. Conversely, the proposed lot layout will create improved amenity for the occupants of the Lord Street property with increased solar access and private open space, and increased potential for tree canopy for that property.

For similar reasons to the proposal's consistency with the development standard objectives, the proposal is consistent with the objectives of the **R2 – Low Density Residential zone**, which are:

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

The FSR variation is technical in nature with no density change proposed. The development will continue to provide a built form that is consistent with the mix of land uses found in the locality. Given the technical nature of the variation, the proposal is therefore broadly consistent with zone objectives to the extent that is practically possible or reasonable. As outlined above, the proposed lot layout will create improved amenity for the occupants of the Lord Street property with increased solar access and private open space, and increased potential for tree canopy for that property.

11. The concurrence of the Secretary has been obtained

Clause 4.6 was amended on 1 November 2023 by removing the requirement for the concurrence of the Planning Secretary.

12. Matters of significance for State or Regional Environmental Planning.

The proposed variation to the FSR development standard does not raise any matters of significance for State or regional environmental planning.

13. Conclusion

As outlined above, the floor space ratio non-compliance is technical in nature as no changes to building size, density or appearance will result.

On these grounds as well as based on the above assessment of the Statutory tests of Clause 4.6 of IWLEP 2022, it is requested that the Court support the proposed variations.