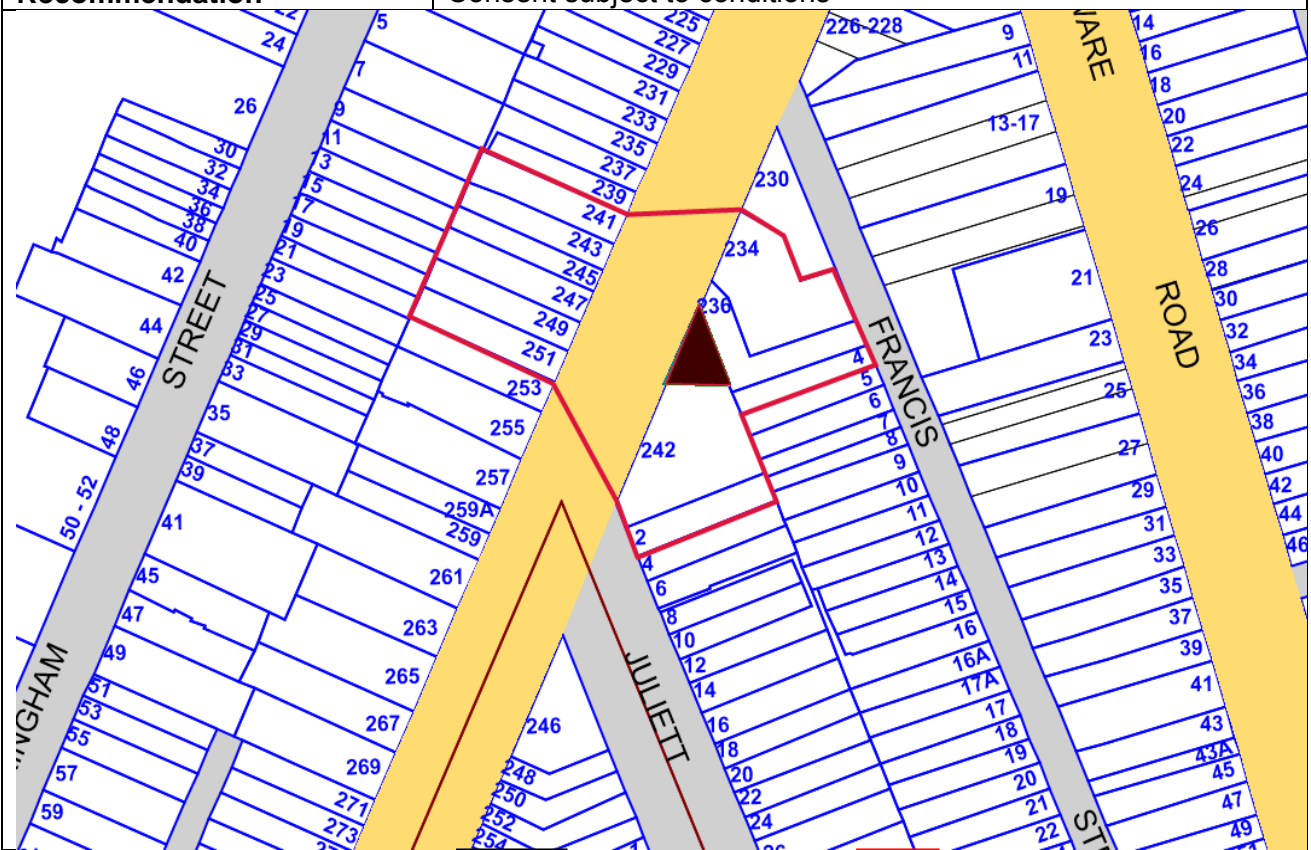







# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	201800152
<b>Address</b>	238-240 Enmore Road ENMORE
<b>Proposal</b>	To carry out alterations and additions to the existing single storey shop and to construct a first floor addition containing a 1 bedroom unit.
<b>Date of Lodgement</b>	29 November 2017
<b>Applicant</b>	Daniel James Abraham
<b>Owners</b>	Daniel James Abraham
<b>Number of Submissions</b>	Nil
<b>Value of works</b>	\$207,000.00
<b>Reason for determination at Planning Panel</b>	FSR non-compliance greater than 10%
<b>Main Issues</b>	FSR breach
<b>Recommendation</b>	Consent subject to conditions



Subject Site:   
 Notified Area: 

Objectors: 

## 1. Executive Summary

This report concerns an application to carry out alterations and additions to the existing single storey shop and to construct a first floor addition containing a 1 bedroom unit. The application was notified in accordance with Council's Notification Policy and no submissions were received.

During the assessment process the proposal was amended to address concerns raised by Council officers relating to the modifications to the contributory shopfront on the ground floor and to the first floor addition. The amended plans resulted in an equal or lesser impact and as a result re-notification was not required.

The proposal generally complies with aims, objectives and design parameters of Marrickville Local Environment Plan 2011 (MLEP 2011) with the exception that the proposal exceeds the maximum floor space ratio standard by 42.18sqm or 65%. A written request under Clause 4.6 of MLEP 2011 has been submitted by the applicant for the non-compliance and the request is considered to be well founded and worthy of support. The development generally complies with the provisions of Marrickville Development Control Plan 2011 (MDCP 2011). It is considered that the proposal will not result in any significant impacts on the streetscape or amenity of adjoining properties.

The potential impacts to the surrounding environment have been considered as part of the assessment process. Any potential impacts from the development are considered to be acceptable given the context of the site.

## 2. Proposal

Approval is sought to carry out alterations and additions to the existing single storey shop on the ground floor and to construct a new first floor addition containing a 1 bedroom unit. The works include the following:

- Construction of new fire rated wall on northern side of the shop to form an entry and stair-well to first floor;
- Demolition of existing ground floor window and replacement with larger door opening and window;
- Replacement of existing door opening on ground floor with window;
- Removal of existing air-conditioning unit above shop entry and replacement of original transom window with new glass;
- Repainting of existing external façade;
- Construction of a 1 bedroom unit with internal laundry, balcony located on the western boundary facing Enmore Road, with existing parapet to serve as balustrade; and
- Clerestory window above apartment.

## 3. Site Description

The site comprises one allotment legally described as Lot 2 in Deposited Plan 977701, more commonly known as 238-240 Enmore Road, Enmore.

The site has an overall area of 75.9qm and is triangular in shape. The site has a frontage of 15.24 metres to Enmore Road.

238-240 Enmore Road currently accommodates a single storey shop currently occupied by a bridal store. The site is bounded masonry walls by the two adjoining 2 storey commercial properties. The shop has a masonry parapet extending above the existing awning.

The site contains no trees or vehicular access.

Surrounding development is characterised by an eclectic mix of 2 storey commercial developments with single and 2 storey dwelling houses. The site is located in the Llewellyn Estate Heritage Conservation Area.

## 4. Background

### 4(a) Site history

Determination No.14475 approved an application on 5 August 1992 for the use of the existing shop as an office for a draft service.

Determination No.17492 approved an application on 6 February 1998 for design desktop publishing and print management and erection of an associated sign.

On 22 October 2015 a pre-development application meeting (PDA201600130) was held at Council for the proposal to carry out alterations and additions to the existing shop for the construction of a first floor dwelling. A number of departures were proposed from the planning controls and the development was not supported.

DA201700536 was subsequently lodged on 2 November 2017 and withdrawn at the request of Council on 6 February 2018.

### 4(b) Application history

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

Date	Discussion / Letter/ Additional Information
4 April 2018	Application submitted to Council.
31 May 2018	Request for additional information sent to applicant regarding heritage and design issues and a revised Clause 4.6 objection was requested.
14 June 2018	Amended plans and addition information submitted to Council.

## 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.

### 5(a) Environmental Planning Instruments

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

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- State Environmental Planning Policy (Infrastructure) 2008;
- Marrickville Local Environmental Plan 2011; and
- Marrickville Development Control Plan 2011.

The following sections provide further discussion of the relevant issues:

#### 5(a)(ii) State Environmental Planning Policy (Infrastructure) 2007

##### Clause 101 (2) - Development with frontage to Classified Road

The site has a frontage to Enmore Road, a classified road. Under Clause 101 (2) of State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure) the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that the efficiency and operation of the classified road will not be adversely affected by the development.

The site does not currently have vehicular access and does not propose any as part of this application and is therefore unlikely to impact on the operation of the road.

##### Clause 102 - Development in or adjacent to road corridors and road reservations

Clause 102 of SEPP Infrastructure relates to the impact of road noise or vibration on non-road development on land in or adjacent to a road corridor or any other road with an annual average daily traffic volume of more than 40,000 vehicle. Under that clause, a development for the purpose of a building for residential use requires that appropriate measures are incorporated into such developments to ensure that certain noise levels are not exceeded.

Enmore Road has an annual average daily traffic volume of less than 40,000 vehicles. Notwithstanding the above, the applicant submitted a Noise Assessment Report with the application that demonstrates that the development will comply with the LAeq levels stipulated in Clause 102 of the SEPP.

#### 5(a)(iii) State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. Under the provisions of the SEPP, Council must 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.”*

Council is required to consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines as a prior use of the site was a potentially contaminating use.

The site is currently used for commercial purposes, being a retail shop. A Preliminary Site Investigation (PSI) was submitted with the application which identifies that there is no potential for the development to have any risk of exposure to any contamination. The report prepared by Alliance Geotechnical Pty Ltd recommends that prior to construction, a hazardous materials survey should be completed to ensure any asbestos, lead paint etc. are appropriately identified. A condition is included in the recommendation of this report requiring the provision of a hazardous material survey prior to commencing works.

The proposed development is therefore considered to satisfy to provisions of SEPP 55 and is acceptable with regard to Part 2.24 of MDCP 2011.

## 5(a)(iv) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX Certificate was submitted with the application for the proposed dwellings indicating that the proposal achieves full compliance with the BASIX requirements. Appropriate conditions are included in the recommendation to ensure the BASIX Certificate commitments are implemented into the development.

## 5(a)(v) Marrickville Local Environment Plan 2011 (MLEP 2011)

The application was assessed against the following relevant clauses of the Marrickville Local Environmental Plan 2011:

- (i) Clause 2.3 - Land Use Table and Zone Objectives
- (ii) Clause 2.7 - Demolition
- (iii) Clause 4.3 - Height of Buildings
- (iv) Clause 4.4 - Floor Space Ratio
- (v) Clause 4.6 – Exceptions to development Standards
- (vi) Clause 5.10 – Heritage Conservation
- (vii) Clause 6.5 - Development in areas subject to Aircraft Noise 20-25

The following table provides an assessment of the application against the development standards:

Height of Buildings			Floor Space Ratio		
Permitted	Proposed	Complies	Permitted	Proposed	Complies
9.5 metres	9 metres	Yes	0.85:1	1.40:1	No

The following provides further discussion of the relevant issues:

(i) Land Use Table and Zone Objectives (Clause 2.3)

The property is zoned B1 – Neighbourhood Centre under the provisions of MLEP 2011. Shop-Top Housing is permissible with Council's consent under the zoning provisions applying to the land.

The development is acceptable having regard to the objectives of the B1 – Neighbourhood Centre Zone.

(ii) Demolition (Clause 2.7)

Clause 2.7 of MLEP 2011 states that the demolition of a building or work may be carried out only with development consent. The application seeks consent for minor demolition works. Council's standard conditions relating to demolition works are included in the recommendation.

(iii) Height (Clause 4.3)

A maximum building height of 9.5 metres applies to the sites as indicated on the Height of Buildings Map that accompanies MLEP 2011. The development has a maximum building height of 9 metres which complies with the height development standard.

(iv) Floor Space Ratio (Clause 4.4)

Clause 4.4 of MLEP 2011 specifies a maximum floor space ratio (FSR) of 0.85:1. The application proposes a maximum gross floor area of 106.7sqm on the 75.9sqm site which equates to a FSR of 1.4:1. The proposal would result in a non-compliance of 42.18sqm or 65%.

(v) Exceptions to Development Standards (Clause 4.6)

As detailed above, the development exceeds the maximum floor space ratio development standard prescribed under Clause 4.4 of MLEP 2011. A written request in relation to the contravention to the floor space ratio standard in accordance with Clause 4.6 (Exceptions to Development Standards) of MLEP 2011 was submitted with the application and amended during the assessment of the application.

A maximum Floor Space Ratio (FSR) of 0.85:1 applies to the property known as 238-240 Enmore Road, Enmore under Clause 4.4 of MLEP 2011. The proposed floor space ratio under this proposal would result in a maximum FSR of 1.4:1 representing a 42.18sqm or 65% variation.

Under Clause 4.6 development consent must not be granted for a development that contravenes a development standard unless the consent authority has considered a written request from the applicant that demonstrates that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify contravening the development standard.

The consent authority must also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The written request submitted as part of this development application provides due regard to Land and Environment Court decision *Wehbe v Pittwater Council* [2007] NSWLEC 827. In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston stated that there are five different ways in which a variation to a development standard might be shown as unreasonable or unnecessary in the circumstances of the case. These five ways are:

1. The objectives of the standard are achieved notwithstanding noncompliance 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 or 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.

For the purpose of this proposal, the written request provided by the applicant contends that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case for a number of ways outlined in Wehbe, invoking ways 1 and 3.

The applicant considers compliance with the maximum FSR development standard to be unreasonable and unnecessary because the objectives of the standard are achieved notwithstanding non-compliance with the standard.

The objectives as set out by clause 4.4(1) of the MLEP 2011 are as follows

- (a) *to establish the maximum floor space ratio,*
- (b) *to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,*
- (c) *to minimise adverse environmental impacts on adjoining properties and the public domain.*

The written request provides the following comments (in summary):

- The particular circumstances of the case include the exceptionally small site area, triangular shape of the allotment and enclosure of the site by 2 storey buildings;
- The small site area produces a percentage variation to the FSR control that is numerically high, however the actual variation of 42.18sqm is considerably low in actual area;
- The proposal is consistent with the zoning objectives in that it provides small scale building elements to service local needs, provides housing of a type commensurate with the zone objectives and maintains the active street-front uses;
- The proposal is consistent with the objectives of the development standard as the proposed bulk and scale and overall building mass would be consistent with the desired future character of the streetscape and adjoining 2 storey buildings;
- The development would not have any adverse implications on the adjoining properties;
- The developments to the rear would not see the development as it is surrounded by the walls of the adjoining properties;
- The development will result in streetscape improvement with regard to the restoration of the ground floor facade;
- The FSR control does not relate to the height control as a compliant building would require building setbacks which is inconsistent with the character of the street and adjoining properties;
- Strict compliance would require demolition of part of the existing building as the existing single storey building exceeds the maximum FSR.

The applicant contends that there are sufficient environmental planning grounds to justify contravening the development standard as:

- The proposal is permissible within the B1 – Neighbourhood Centre zone and is consistent with the relevant zone objectives.
- There are no adverse implications on adjoining properties in terms of overshadowing, privacy or amenity.

- There is no matter of state or regional significance that would result from the non-compliance.

The principle of *Moskovich v Waverley Council [2016] NSWLEC 1015* emphasizes the ability of Council to apply a degree of flexibility to development standards when considering related planning objectives. The applicant contends that the development:

- Will result in an improved form of development on the site and that compliance with the standard results in no incentive to improve the existing condition;
- The proposal would result in a more useable structure with improved materials and finishes;
- Variation to the standard would result in a development more consistent with the objectives of the Act than a compliant one;
- The development would have no impact on the adjoining properties.

The justification provided in the applicant's written request is considered well founded and worthy of support. Considering the above justification, strict compliance with the development standard is considered unreasonable and unnecessary given the circumstances of the site.

Having regard to the proposed FSR of the development, the proposal is considered acceptable for the following reasons:

- The unique site characteristics demonstrate the unreasonableness to compliance with the development standard in accordance with *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009*;
- The additional gross floor area will not result in any unreasonable impacts on the surrounding properties in relation to acoustic and visual privacy, solar access and overshadowing or visual bulk and scale;
- The development complies with the maximum height development standard applicable;
- The proposal would result in the restoration of the existing contributory façade whereby if strict compliance with the standard was required this may not be achieved; and
- The first floor addition which is where the additional GFA will be located would not be readily visible from ground level as it would be setback from the front parapet wall.

The justification provides due regard to the following decisions of the NSW Land and Environment Court:

(a) *Wehbe v Pittwater Council [2007] NSWLEC 827*; (b) *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009*; (c) *Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386*; (d) *Moskovich v Waverley Council [2016] NSWLEC 1015*; and (e) *Zhang and anor v Council of the City of Ryde [2016] NSWLEC 1179*.

The contravention of the development standard does not raise any matter of significance for State and Regional environmental planning, and there is no public benefit in maintaining strict compliance with the standard.

(vi) Heritage

The site is located in the Llewellyn Estate Heritage Conservation Area (HCA 14) under Clause 5.10 of MLEP 2011.



The application was referred to Council's Heritage Officer who provided initial recommendations to the submitted proposal to improve the overall design and reduce the impact on the contributory shopfront on the ground floor. The modifications were incorporated into amended plans which included modifications to the clerestory window setback, materials and finishes, modifications to the existing openings, and clarification regarding restoration works. The amended plans were referred back to Council's Heritage Officer who was satisfied with the proposal.

The proposal is considered to be an appropriate infill development and is unlikely to have an adverse impact on the amenity of neighbouring development or on the Enmore Road streetscape. The additions are contemporarily designed to ensure they read as a new element and the restorative works to the ground floor ensure the works are in sympathy with the original building and sympathetic to the conservation area.

The proposal is acceptable with regards to Clause 5.10 of MLEP 2011 and Part 8 of MDCP 2011.

(vii) Development in areas subject to Aircraft Noise (Clause 6.5)

The land is located within the 20-25 Australian Noise Exposure Forecast (2033) Contour and as such the development is likely to be affected by aircraft noise.

The development would need to be noise attenuated in accordance with AS2021:2015. An Acoustic Report was submitted with the application which details that the development could be noise attenuated from aircraft noise to meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS2021:2015. Conditions are included in the recommendation to ensure that the requirements recommended within the acoustic Report are incorporated into the development.

## 5(b) Draft Environmental Planning Instruments

### 5(b)(i) Draft Marrickville Local Environmental Plan 2011 (Amendment 4)

Draft Marrickville Local Environmental Plan 2011 (Amendment 4) (the Draft LEP Amendment) was placed on public exhibition commencing on 3 April 2018 and accordingly is a matter for consideration in the assessment of the application under Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979.

The amended provisions contained in the Draft LEP Amendment are not relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft LEP Amendment.

## 5(c) Development Control Plans

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

Part	Compliance
Part 2.5 Equity of Access and Mobility	<b>Yes – see discussion</b>
Part 2.6 Acoustic and Visual Privacy	<b>Yes – see discussion</b>
Part 2.7 Solar Access and Overshadowing	<b>No – see discussion</b>
Part 2.9 Community Safety	<b>Yes</b>

Part 2.10 Parking	<b>Yes – see discussion</b>
Part 2.16 Energy Efficiency	<b>Yes</b>
Part 2.18 Landscaping and Open Spaces	<b>No – see discussion</b>
Part 2.21 Site Facilities and Waste Management	<b>Yes – see discussion</b>
Part 2.24 Contamination	<b>Yes – see discussion under SEPP 55</b>
Part 2.25 Stormwater Management	<b>Yes</b>
Part 5 Commercial and Mixed Use	<b>Yes – see discussion</b>
Part 8 Heritage	<b>Yes – see discussion under Clause 5.10 of MLEP 2011</b>
Part 9 Strategic Context	<b>Yes – see discussion</b>

The following provides discussion of the relevant issues:

## **PART 2 – Generic Provisions**

### (i) Equity of Access and Mobility (Part 2.5)

Part 2.5 of MDCP 2011 requires consideration to be given to accessibility before granting development consent.

For commercial developments Part 2.5 of MDCP 2011 requires:

- Appropriate access for all persons through the principal entrance of a building and a continuous accessible path of travel (CAPT), designed in accordance with the National Construction Code (Building Code of Australia) and relevant Australian Standards; and
- General access for all persons to appropriate sanitary facilities and other common facilities including kitchens, lunch room, shower facilities and outdoor recreational facilities; and
- In a car parking area containing 10 or more car spaces, a minimum of 1 accessible car parking space being provided for every 10 car spaces or part thereof.

The existing retail premises will remain unchanged with the exception of modifications to the façade and removal of one entry door. The existing main entry door would be maintained and this would provide accessible entry to the building. The existing tenancy has an internal step up to the northern section of the shop, this will be maintained. Given the use is existing and it is remaining relatively unchanged the proposal is considered acceptable with regard to Part 2.5 of MDCP 2011. The proposed 1 bedroom unit does not trigger the applicable requirements for the provision of an accessible dwelling nor for accessible parking.

Despite the above, the requirements of MDCP 2011 are effectively superseded by the introduction of the new Premises Standards. An assessment of whether or not these aspects of the proposal fully comply with the requirements of relevant Australian Standards and the new Premises Standards has not been undertaken as part of this assessment. That assessment would form part of the assessment under the Premises Standards at the Construction Certificate stage of any proposal.

(ii) Acoustic and Visual Privacy (Part 2.6)

The development maintains adequate levels of acoustic and visual privacy for the surrounding residential properties and ensures an adequate level of acoustic and visual privacy for future occupants of the development.

The development includes the construction of a first floor one bedroom unit. Two of the three boundaries will have a nil setback to the adjoining 2 storey buildings. The other elevation will face west, with a splay to the north. The proposal includes one window on the splay and 3 sets of glazed sliding doors. All the windows and doors will be orientated towards Enmore Road and would overlook the street and would not have any privacy impacts. A clerestory window is also proposed to be located above the living room to provide further solar access to the dwelling.

There is one window on the adjoining property at No.236 Enmore Road (north-western side elevation) which faces the subject site, Council records indicate that a window was not approved in this location and that light and ventilation was to be obtained via the adjoining verandah window fronting Enmore Road. The window would have direct views over the proposed balcony area of the subject sites private balcony fronting Enmore Road. The matter has been referred to Council's Regulatory division for further investigation.

Given the above the development is reasonable having regard to the objectives and controls relating to visual and acoustic privacy as contained in MDCP 2011.

(iii) Solar Access and Overshadowing (Part 2.7)

### **Overshadowing**

As the site is surrounded by 2 storey commercial buildings on both side boundaries, the proposal would not result in any overshadowing of the adjoining properties. The additions would result in some additional shadow cast on Enmore Road in the morning of 21 June, however no shadows would be cast on the adjoining property building, as the existing boundary walls would prevent the shadow being cast across the property.

Having regard to the above, the development is considered acceptable having respect to Part 2.7 of MDCP 2011.

### **Solar Access**

The solar access to the proposed private open space is restricted by the existing parapet wall. Whilst the living area of the development will achieve a minimum of 2 hours solar access to the sliding doors at winter solstice, the balcony behind the parapet wall will be entirely in shadow at 9am and a significant proportion will be in shadow at 12pm and 3pm. Notwithstanding this, the proposed open space would have ample ventilation and solar access at other times of the year and would provide an appropriate outdoor space for the unit. The built form is required to be setback from the parapet wall for heritage and urban design reasons and therefore there is no other area for the private open space to be located that would achieve greater solar access. Given the size of the unit and excellent solar access to the internal spaces via the glazed sliding doors and clerestory window, the non-compliance with solar access to the balcony is considered acceptable.

Given the above the development is reasonable having regard to the objectives and controls relating to solar access and overshadowing as contained in MDCP 2011.

(iv) Parking (Part 2.10)

The site is located in parking area 2 in accordance with Part 2.10 of MDCP 2011. The existing commercial premises does not have any car parking, a contribution for the non-compliance was paid in relation to the consent for the use as a drafting office in 1992. The existing use is to remain and therefore this non-compliance is acceptable in line with the existing approval. Notwithstanding the current commercial premises does not generate a demand for car parking under the requirements of Part 2.10 of MDCP 2011. The new 1 bedroom unit is required to provide 0.25 of a space, however in line with control C2 of Part 2.10, this figure is rounded up or down to the nearest whole figure, resulting in the proposed development not requiring any on-site parking. Notwithstanding the site is located on Enmore Road which is well serviced by buses.

The development is acceptable having regard to Part 2.10 of MDCP 2011.

(v) Landscaping and Open Spaces (Part 2.18)

Part 2.18.11.7 of MDCP 2011 prescribes that mixed use developments provide a minimum of 8sqm in the form of a balcony or deck with a minimum dimension of 2 metres. The proposal includes a balcony 19.3sqm in size, however only the northern portion has a minimum dimension of 2 metres. Notwithstanding this, 7sqm has a minimum dimension of 2 metres and overall the space is considered to provide a suitable area of private open space for the future occupants of the development.

The private open space for the 1 bedroom unit is considered to meet the objectives of Part 2.18 of MDCP 2011 and is considered acceptable.

(vi) Site Facilities and Waste Management (Part 2.21)

## 2.21.2.1 Recycling and Waste Management Plan

A Recycling and Waste Management Plan (RWMP) in accordance with Council's requirements was submitted with the application and is considered to be adequate.

## 2.21.2.5 Residential Waste

The development includes 1 unit and would generate 72 Litres of general waste and 72 Litres of recycling per week. The plans submitted with the development application indicate that 2 bins required will be stored in the entry hallway to the residential unit. The hallway is 1.6 metres wide, with the bins being 0.6 metres wide. The storage area shown on the plans is not considered appropriate without some form of ventilation. Amended plans are required to be submitted to the Principal Certifying Authority demonstrating that the transom windows above the entry door and window are operable as to allow adequate ventilation into the area. A condition to this effect is included in the recommendation.

The RWMP submitted with the application indicates that waste collection will occur from the Enmore Road which is considered acceptable.

## 2.21.2.6 Commercial Waste

The existing waste management arrangements for the operation of the commercial premises are to remain unchanged with the exception of the location of the bins for the premises now being stored under the proposed staircase and presented to the street for collection by a private contractor. The area being located under the stairs will require mechanical ventilation, which has not been demonstrated on the plans. A condition is included in the

recommendation requiring that adequate ventilation be provided to the bin storage room for amenity.

The proposal is acceptable with regard to Part 2.21 of MDCP 2011.

### **Part 5 – Commercial and Mixed Use**

Part 5 of MDCP 2011 provides controls relating to commercial and mixed use developments including internal and external alterations and additions and infill developments. Provisions relating to building form, massing building detail and desired future character guidelines and controls for specific centres are outlined in the objectives and controls. Given the unique nature of the site, a number of the controls are not applicable to the proposal given the small site area, triangular shape, depth and surrounding built form. An assessment of the development having regard to the relevant provisions of Part 5 of MDCP 2011 is provided below.

#### **(vii) Massing and Setback (Part 5.1.3.3)**

Control C3 prescribes that where the whole or street-front portion of the contributory building is maintained a minimum 6 metre setback from the front building line must be maintained.

Whilst the development does not comply with this requirement, the proposal is setback a minimum of 1.2 metres, with the higher clerestory window setback a further 1.5 metres. The small development site does not lend itself to allow such a large setback, however the 1.5 metre high parapet wall combined with the proposed setbacks and topography will provide an adequate screen of the proposed development from the street.

Similarly the requirement for rear massing of 5 metres and 45 degree slope of the rear plane is considered unattainable and unnecessary given the site is surrounded by 2 storey high walls on the boundary, any rear setback to the form would serve no purpose in mitigating bulk.

The development is considered to satisfy the objectives and controls of Part 5.1.3.3 of MDCP 2011.

#### **(viii) Building Frontages (Part 5.1.4)**

The proposal maintains the existing ground floor shop and parapet above the existing awning, the proposed 1 bedroom unit is screened by the existing parapet wall. In line with the requirement of Part 5.1.4 the new works are subservient to the existing period building and revision of materials and finishes and improved modifications to the shopfront to allow a residential entry have been guided by Council's Heritage Officer.

The existing air conditioning unit from the ground floor shop which is a detracting element will be relocated to the first floor and will sit behind the parapet wall and will not be visible from the street.

The development satisfies the objectives and controls of Part 5.1.4 of MDCP 2011.

#### **(ix) Ceiling Heights ( Part 5.1.5.3)**

The ground floor would retain the existing 4-4.5 metre floor to ceiling heights, the proposed first floor unit has a 3 metre high floor to ceiling height which complies with the minimum 3.3 metres for ground floor and 2.7 metres minimum for residential prescribed by Part 5.1.5.3 of MDCP 2011. The proposed floor to ceiling heights would result in good amenity for the future occupants.

The proposal is acceptable and compliant with regard to the requirements of Part 5.1.5.3 of MDCP 2011.

### **PART 9 – Strategic Context**

The property is located in the Enmore Park (Precinct 15) planning precinct under Marrickville Development Control Plan 2011.

#### **(x) Desired future character (Part 9.15)**

The development is considered to be consistent with the desired future character of the Enmore Park Planning Precinct as it achieves the following objectives:

- “1. To protect and preserve the identified period buildings within the precinct and encourage their sympathetic alteration or restoration.*
- 6. To preserve the predominantly low density residential character of the precinct.*
- 9. To protect the identified values of the Llewellyn Estate Heritage Conservation Area and Enmore House Estate Heritage Conservation Area.”*

The proposal is considered to be an appropriate infill development and is unlikely to have an adverse impact on the amenity of neighbouring development or on the Enmore Road streetscape.

#### **5(d) The Likely Impacts**

The assessment of the Development Application demonstrates that, subject to the recommended conditions, the proposal will not result in significant or unreasonable impacts in the locality.

#### **5(e) The suitability of the site for the development**

The site is zoned B1 – Neighbourhood Centre under MLEP 2011. Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

#### **5(f) Any submissions**

The application was advertised, an on-site notice displayed on the property and residents/property owners in the vicinity of the property were notified of the development in accordance with Council's Notification Policy. No submissions were received.

#### **5(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.

The development is consistent with the aims, and design parameters contained in Marrickville Local Environmental Plan 2011 and Marrickville Development Control Plan 2011 and other relevant Environmental Planning Instruments. As discussed throughout this report, the development will not result in any significant impacts on the amenity of adjoining premises and the streetscape and thus the development is considered to be in the public interest.

## 6. Referrals

### 6(a) Internal

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

- Heritage Officer

## 7. Section 7.11 Contributions

Section 7.11 contributions are payable for the proposal. The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$14,143.39 would be required for the development under Marrickville Section 94 Contributions Plan 2014. A condition requiring that contribution to be paid is included in the recommendation.

## 8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in Marrickville Local Environmental Plan 2011 (MLEP 2011) with the exception that the proposal exceeds the maximum floor space ratio development standard. The proposal is generally consistent Marrickville Development Control Plan 2011. The development will not result in any detrimental impacts on the amenity of adjoining premises and the streetscape. The application is suitable for the issue of consent subject to appropriate terms and conditions.

## 9. Recommendation

- A. That the Inner West Local Planning Panel (IWLPP) approve a variation to Floor Space Ratio prescribed by clause 4.4 in the Marrickville Local Environmental Plan 2011, as it is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and objectives for development within the zone
- B. That the Panel, as the consent authority pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application No. 201700594 to carry out alterations and additions to the existing single storey shop and to construct a first floor addition containing a 1 bedroom unit subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

1. The development must be carried out in accordance with plans and details listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by	Date Submitted
Da101, Revision i	Ground Floor Plan	13.06.2018	Gm Architects	14.06.2018
Da102, Revision i	Level 1 Plan	13.06.2018	Gm Architects	14.06.2018
Da103, Revision i	Roof Level	13.06.2018	Gm Architects	14.06.2018
Da300, Revision i	Elevation	13.06.2018	Gm Architects	14.06.2018
Da400, Revision i	Section a-a	13.06.2018	Gm Architects	14.06.2018
Da401, Revision i	Section b-b	13.06.2018	Gm Architects	14.06.2018
2271/ER-1-1	Preliminary Site Investigation	13.06.2018	Gm Architects	14.06.2018
3799R001.LB.171 024, Revision 1	Aircraft & Road Noise Intrusion Assessment	24.10.2017	Acoustic Dynamics	4.04.2018
874871M_02	BASIX Certificate	30.03.2018	Outsource Ideas P/I	4.04.2018

and details submitted to Council on 4 April and 14 June 2018 with the application for development consent and as amended by the following conditions.

2. Where any plans and/or information forming part of a construction certificate issued in relation to this consent are inconsistent with:

- (a) the plans and/or information approved under this consent; or  
 (b) any relevant requirements of this consent,

the plans, information and/or requirements of this consent (as the case may be) shall prevail to the extent of the inconsistency.

All development approved under this consent shall be carried out in accordance with the plans, information and/or requirements of this consent taken to prevail by virtue of this condition.

3. The materials and finishes of the building constructed pursuant to this consent must be strictly in accordance with the materials and finishes identified in Drawing Nos. da101, da2012, da103, and da300 issue i, dated 13 June 2018, prepared by gm Architects. No changes may be made to these drawings except by way of an application under section 4.55 of the *Environmental Planning and Assessment Act 1979*.
4. The preservation of the existing tessellated tiles and contributory façade elements is required. No modification is permitted in any manner to the existing front facade and entry flooring other than that shown on the plans approved under condition 1 of this consent except by way of an application under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.
5. If the unit is to be provided with separate individual hot water system this must be located within the internal area of the unit/dwelling and not on any balcony or terrace.



6. The dwelling must be used exclusively as a single dwelling and not be adapted for use as backpackers' accommodation, serviced apartment or a boarding house and not be used for any industrial or commercial purpose.
7. No injury must be caused to the amenity of the neighbourhood by the emission of noise, smoke, smell, vibration, gases, vapours, odours, dust, particular matter, or other impurities which are a nuisance or injurious or dangerous or prejudicial to health, the exposure to view of any unsightly matter or otherwise.
8. The use of the premises, including any plant and equipment, must not give rise to:
  - a) transmission of unacceptable vibration to any place of different occupancy;
  - b) a sound pressure level at any affected premises that exceeds the background (LA90) noise level in the absence of the noise under consideration by more than 5dB(A). The source noise level shall be assessed as an LAeq,15min and adjusted in accordance with Environment Protection Authority guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content as described in the NSW Environment Protection Authority's Environmental Noise Control Manual and Industrial Noise Policy 2000 and The Protection of the Environment Operations Act 1997 (NSW).
9. The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones respectively to the property.
10. All trade waste must be stored within the site boundaries and contained in such a manner so as not to cause a nuisance.
11. All building work must be carried out in accordance with the provisions of the National Construction Code (Building Code of Australia).

#### **BEFORE COMMENCING DEMOLITION, EXCAVATION AND/OR BUILDING WORK**

12. No work must commence until:
  - a) A PCA has been appointed. Where an Accredited Certifier is the appointed, Council shall be notified within 2 days of the appointment; and
  - b) A minimum of 2 days written notice given to Council of the intention to commence work.
13. A Recycling and Waste Management Plan (RWMP) being prepared in accordance with Part 2.21 of Marrickville Development Control Plan 2011 – Site Facilities and Waste Management and submitted to and accepted by the PCA before work commences.
14. A Construction Certificate must be obtained before commencing building work. Building work means any physical activity involved in the construction of a building. This definition includes the installation of fire safety measures.
15. Sanitary facilities must be provided at or in the vicinity of the work site in accordance with the WorkCover Authority of NSW, Code of Practice 'Amenities for Construction'. Each toilet must be connected to the sewer, septic or portable chemical toilet before work commences.

Facilities must be located so that they will not cause a nuisance.

16. All demolition work must:
  - a) Be carried out in accordance with the requirements of Australian Standard AS 2601 'The demolition of structures' and the Occupational Health and Safety Act and Regulations; and
  - b) Where asbestos is to be removed it must be done in accordance with the requirements of the WorkCover Authority of NSW and disposed of in accordance with requirements of the Department of Environment, Climate Change and Water.
17. Where any loading, unloading or construction is to occur from a public place, Council's Infrastructure Services Division must be contacted to determine if any permits or traffic management plans are required to be obtained from Council before work commences.
18. 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, before work commences.
19. A rigid and durable sign must be erected in a prominent position on the site, before work commences. The sign must be maintained at all times until all work has been completed. The sign is to include:
  - a) The name, address and telephone number of the PCA;
  - b) A telephone number on which Principal Contractor (if any) can be contacted outside working hours; and
  - c) A statement advising: 'Unauthorised Entry To The Work Site Is Prohibited'.
20. A Soil and Water Management Plan must be prepared in accordance with Landcom Soils and Construction, Volume 1, Managing Urban Stormwater (Particular reference is made to Chapter 9, "Urban Construction Sites") and submitted to and accepted by the PCA. A copy of this document must be submitted to and accepted by PCA before work commences. The plan must indicate:
  - a) Where the builder's materials and waste are to be stored;
  - b) Where the sediment fences are to be installed on the site;
  - c) What facilities are to be provided to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way; and
  - d) How access to the site will be provided.

All devices must be constructed and maintained on site while work is carried out.

21. The person acting on this consent is responsible for arranging and meeting the cost of dilapidation reports prepared by a suitably qualified person. The reports are to include colour photographs and must be submitted to the Certifying Authority's satisfaction, with a colour copy being provided to Council and the respective property owner(s) of the identified properties, before work commences, on the buildings on the adjoining properties at 236 Enmore Road and 242A Enmore Road, if the consent of the adjoining property owner(s) can be obtained. In the event that the consent of the adjoining property owner(s) cannot be obtained copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the PCA before work commences.
22. Before commencing works the person acting on this consent must provide a contact number for a designated person to be available during the demolition and construction for residents to contact regarding breaches of consent or problems relating to the construction.

Reason: To provide a person that residents can contact.

23. Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent shall 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:
- a) Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application.
  - b) A concrete pump across the roadway/footpath
  - c) Mobile crane or any standing plant
  - d) Skip bins
  - e) Scaffolding/Hoardings (fencing on public land)
  - f) Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.
  - g) Awning or street verandah over footpath
  - h) Partial or full road closure
  - i) Installation or replacement of private stormwater drain, utility service or water supply

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities.

Applications for such Permits shall be submitted and approved by Council prior to the commencement of the works associated with such activity or issue of the Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

24. The person acting on this consent must apply as required for all necessary permits including crane permits, road opening permits, hoarding permits, footpath occupation permits and/or any other approvals under Section 68 (Approvals) of the Local Government Act, 1993 or Section 138 of the Roads Act, 1993.
25. A detailed Traffic Management Plan to cater for construction traffic must be submitted to and approved by Council before commencement of works. Details must include proposed truck parking areas, construction zones, crane usage, truck routes etc. All construction traffic must comply at all times with the approved Traffic Management Plan. The developer must ensure that all construction workers and contractors are fully aware of the approved Traffic Management Plan.
26. The person acting on this consent must provide details of the means to secure the site and to protect the public from the construction works. Where the means of securing the site involves the erection of fencing or a hoarding on Council's footpath or road reserve the person acting on this consent must submit a hoarding application and pay all relevant fees before commencement of works.
27. If a new street number or a change to the street number (this includes unit and shop numbers) is required, a separate application must be made to and approved by council prior to that street number being displayed.
28. A Hazardous Materials Assessment is required to be undertaken and submitted to the satisfaction of the Principal Certifying Authority prior to commencing works.

**BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE****Section 7.11 Contribution**

29. a) This condition is imposed in accordance with Section 7.11 of the Environmental Planning and Assessment Act 1979.

- b) Before the \*issue of a Construction Certificate, the Council must be paid a monetary contribution of \$14,143.39 indexed in accordance with Marrickville Section 94/94A Contributions Plan 2014 ("CP").

The above contribution is the contribution applicable as at 09 July 2018.

- \*NB** Contribution rates under Marrickville Section 94/94A Contributions Plan 2014 are indexed quarterly (for the method of indexation refer to Section 2.15 of the Plan).

The indexation of the contribution rates occurs in the first week of the months of February, May, August and November each year, following the release of data from the Australian Bureau of Statistics.

**(CONTRIBUTION PAYMENT REFERENCE NO. DC002345)**

- c) The contribution payable has been calculated in accordance with the CP and relates to the following public amenities and/or services and in the following amounts:

Community Facilities	\$1,552.37
Plan Administration	\$277.32
Recreation Facilities	\$12,195.04
Traffic Facilities	\$118.66

- d) A copy of the CP can be inspected at Council's offices at 2-14 Fisher Street, Petersham or online at <http://www.marrickville.nsw.gov.au>.

- e) The contribution must be paid either in **cash, by unendorsed bank cheque (from an Australian Bank only), via EFTPOS (Debit only) or credit card\***.

**\*NB** A 1% credit card transaction fee applies to all credit card transactions.

30. Evidence of payment of the building and construction industry Long Service Leave Scheme, must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate. (The required payment can be made at the Council Offices).

**NOTE:** The required payment is based on the estimated cost of building and construction works and the long service levy rate, set by the Long Service Payments Corporation. The rate set by the Long Service Payments Corporation is currently of 0.35% of the cost of the building and construction work.

For more information on how to calculate the amount payable and where payments can be made contact the Long Services Payments Corporation.

<http://www.lspc.nsw.gov.au>.

**Reason:** To ensure that the required levy is paid in accordance with the Building and Construction Industry Long Service Payments Act.

31. The approved plans must be submitted to a Sydney Water Quick Check agent to determine whether the development will affect any Sydney Water wastewater and water mains, stormwater drains and/or easement, and if any requirements need to be met. Plans will be appropriately stamped.

Please refer to the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- Quick Check agents details - see Plumbing, building and developing then Quick Check agents and
- Guidelines for Building Over/Adjacent to Sydney Water Assets – see Plumbing, building and developing then Plan submissions  
or telephone 13 20 92.

The stamped plans must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

32. All plumbing and ductwork including stormwater downpipes must be concealed within the outer walls of the building so they are not visible. Plans and elevations detailing the method of concealment must be submitted to and approved by Council before the issue of a Construction Certificate. Any variation to this requirement requires Council approval.
33. Letterboxes and mail collection facilities must be provided and adequately protected in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
34. Lighting details of the pedestrian areas and all entrances must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
35. Plans fully reflecting the selected commitments listed in BASIX Certificate submitted with the application for development consent must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

**NOTE: The application for the Construction Certificate must be accompanied by either the BASIX Certificate upon which development consent was granted or a revised BASIX Certificate (Refer to Clause 6A of Schedule 1 to the Regulation).**

36. Noise attenuation measures being incorporated into the development complying with Australian Standard 2021-2015 in relation to interior design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction), in accordance with details must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate together with certification by a suitably qualified acoustical engineer that the proposed noise attenuation measures satisfy the requirements of Australian Standard 2021-2015.
37. Noise attenuation measures must be incorporated into the development complying with Australian Standard 2021:2015, State Environmental Planning Policy (Infrastructure) 2007 and with the Department of Planning and Infrastructure's Development Assessment Guideline titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines" in relation to interior design sound levels and in accordance with details being submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate together with certification by a suitably qualified acoustical engineer that the proposed noise attenuation measures satisfy the requirements of Australian Standard 2021:2015, State Environmental Planning Policy (Infrastructure) 2007 and with the Department of Planning and Infrastructure's Development Assessment Guideline titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines".

38. Before the issue of a Construction Certificate an amended plan must be submitted to the Certifying Authority's satisfaction addressing the requirements of The Disability (Access to Premises – buildings) Standards 2010 (the Premises Standards).
39. Before the issue of a Construction Certificate the owner or builder must sign a written undertaking that they are responsible for the full cost of repairs to footpath, kerb and gutter, or other Council property damaged as a result of construction of the development. Council may utilise part or all of any Building Security Deposit (B.S.D.) or recover in any court of competent jurisdiction, any costs to Council for such repairs.
40. Before the issue of a Construction Certificate, amended plans are required to be submitted to the Principal Certifying Authority demonstrating the following:
  - a) The transom windows above the window and door on the northern side of the front façade providing entry to the new unit are required to be modified to operable glazed transom windows to allow adequate ventilation to the stairwell which includes the garbage storage;
  - b) Demonstration of adequate mechanical or natural ventilation to the garbage storage room located under the staircase servicing the existing commercial tenancy.

#### **SITE WORKS**

41. Unless otherwise approved by Council, excavation, demolition, construction or subdivision work shall only be permitted during the following hours:
  - a) 7:00 am to 6.00 pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
  - b) 8:00 am to 1:00 pm on Saturdays with no demolition works occurring during this time; and
  - c) at no time on Sundays or public holidays.

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.

In the case that a standing plant or special 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.

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.

Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving shall be limited to:

8:00 am to 12:00 pm, Monday to Saturday; and  
2:00 pm to 5:00 pm Monday to Friday.

The Proponent shall not undertake such activities for more than three continuous hours and shall 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.

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

42. During any construction works and activities, no injury must be caused to the amenity of the neighbourhood by the emission of noise, smoke, smell, vibration, gases, vapours, odours, dust, particular matter, or other impurities which are a nuisance or injurious or dangerous or prejudicial to health, the exposure to view of any unsightly matter or otherwise.
43. The area surrounding the building work must be reinstated to Council's satisfaction upon completion of the work.
44. The placing of any materials on Council's footpath or roadway is prohibited, without the consent of Council. The placement of waste storage containers in a public place requires Council approval and must comply with Council's Policy - 'Placement of Waste Storage Containers in a Public Place'.
45. All demolition work must be carried out in accordance with the following:
  - a) compliance with the requirements of Australian Standard AS 2601 'The demolition of structures' with specific reference to health and safety of the public, health and safety of the site personnel, protection of adjoining buildings and protection of the immediate environment;
  - b) all works involving the demolition, removal, transport and disposal of asbestos cement must be carried out in accordance with the 'Worksafe Code of Practice for Removal of Asbestos' and the requirements of the WorkCover Authority of NSW and the Department of Environment, Climate Change and Water;
  - c) all building materials arising from the demolition must be disposed of in an approved manner in accordance with Part 2.21 of Marrickville Development Control Plan 2011 – Site Facilities and Waste Management and any applicable requirements of the Department of Environment, Climate Change and Water;
  - d) sanitary drainage, stormwater drainage, water, electricity and telecommunications must be disconnected in accordance with the requirements of the responsible authorities;
  - e) the generation of dust and noise on the site must be controlled;
  - f) the site must be secured to prohibit unauthorised entry;
  - g) suitable provision must be made to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way;
  - h) all trucks and vehicles associated with the demolition, including those delivering to or removing material from the site, must only have access to the site during work hours nominated by Council and all loads must be covered;
  - i) all vehicles taking materials from the site must be loaded wholly within the property unless otherwise permitted by Council;
  - j) no waste collection skips, spoil, excavation or demolition material from the site must be deposited on the public road, footpath, public place or Council owned property without the approval of Council; and
  - k) the person acting on this consent must ensure that all contractors and sub-contractors associated with the demolition are fully aware of these requirements.
46. The works are required to be inspected at critical stages of construction, by the PCA or if the PCA agrees, by another certifying authority. The last inspection can only be carried out by the PCA. The critical stages of construction are:
  - a) At the commencement of the building work;
  - b) For Class 2, 3 and 4 buildings, prior to covering waterproofing in any wet areas

- (a minimum of 10% of wet areas within a building);
- c) Prior to covering any stormwater drainage connections, and after the building work has been completed and prior to any occupation certificate being issued in relation to the building; and
  - d) After the building work has been completed and prior to any Occupation Certificate being issued in relation to the building.

You are advised to liaise with your PCA to establish if any additional inspections are required.

- 47. All vehicles carrying materials to, or from the site must have their loads covered with tarpaulins or similar covers.
- 48. A clear unobstructed path of travel of not less than 1,000mm must be provided to all exits and paths of travel to exits.
- 49. To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, shall be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Marrickville Council Stormwater and On Site Detention Code. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled.

#### **BEFORE OCCUPATION OF THE BUILDING**

- 50. You must obtain an Occupation Certificate from your PCA before you occupy or use the building. The PCA must notify the Council of the determination of the Occupation Certificate and forward the following documents to Council within 2 days of the date of the Certificate being determined:
  - a) A copy of the determination;
  - b) Copies of any documents that were lodged with the Occupation Certificate application;
  - c) A copy of Occupation Certificate, if it was issued;
  - d) A copy of the record of all critical stage inspections and any other inspection required by the PCA;
  - e) A copy of any missed inspections; and
  - f) A copy of any compliance certificate and any other documentary evidence relied upon in issuing the Occupation Certificate.
- 51. Occupation of the building must not be permitted until such time as:
  - a) All preconditions to the issue of an Occupation Certificate specified in this development consent have been met;
  - b) The building owner obtains a Final Fire Safety Certificate certifying that the fire safety measures have been installed in the building and perform to the performance standards listed in the Fire Safety Schedule; and
  - c) An Occupation Certificate has been issued.
- 52. The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:
  - a) Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and



- b) Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).

Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Certificate for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Certificate shall be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

53. The Section 73 Certificate must be submitted to the Principal Certifying Authority before the issue of an Occupation Certificate.
- a) A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Make early application for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.
- b) Application must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Plumbing, building and developing > Providers > Lists or telephone 13 20 92.
54. The Certifying Authority must be satisfied that each of the commitments listed in BASIX Certificate referred to in this Determination have been fulfilled before the issue of an Occupation Certificate (whether an interim or final Occupation Certificate).
55. The Certifying Authority must apply to the Director-General for a BASIX Completion Receipt within 2 days of the issue of a final Occupation Certificate. Completion Receipts can be applied for at [www.basix.nsw.gov.au](http://www.basix.nsw.gov.au).
56. a) Upon completion of the required noise attenuation measures referred to in the "Before the Issue of a Construction Certificate" Section of this Determination, and prior to the occupation of the development a report must be prepared and submitted to the Certifying Authority's satisfaction by an accredited Acoustics Consultant certifying that the final construction meets AS2021-2015 as set down in the subject condition of this consent. Such report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development; and
- b) Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a further certificate being prepared and submitted to Council in accordance with the requirements as set down in Part a) of this condition.
57. a) Upon completion of the required noise attenuation measures referred to in the "Before the Issue of a Construction Certificate" Section of this Determination and before the issue of an Occupation Certificate (whether an interim or final Occupation Certificate), a report must be prepared and submitted to the Certifying Authority's satisfaction by an accredited Acoustics Consultant, certifying that the final construction meets Australian Standard 2021:2015, State Environmental Planning Policy (Infrastructure) 2007 and with the Department of Planning and Infrastructure's Development Assessment Guideline titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines" as set down in the subject condition of this consent. Such report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development; and
- b) Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must

be carried out and a further certificate must be prepared and submitted to Council in accordance with the requirements as set down in Part a) of this condition.

58. Before the issue of an Occupation Certificate, a street number and identifier of separate occupancies (if applicable) must be clearly displayed in a readily visible location (numbers having a height of not less than 75mm). If any new street numbers or change to street numbers (this includes unit and shop numbers) are required they must have the prior approval of council before being displayed.
59. All works required to be carried out in connection with drainage, crossings, alterations to kerb and guttering, footpaths and roads resulting from the development must be completed before the issue of an Occupation Certificate. Works must be in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications".
60. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be at no cost to Council and undertaken before the issue of an Occupation Certificate.
61. No encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever are permitted. Any encroachments on to Council road or footpath resulting from the building works must be removed before the issue of an Occupation Certificate.
62. The existing stone kerb adjacent to the site is of heritage significance and must be preserved at no cost to Council. Any damage to the stone kerb will require the replacement of the damaged individual stone units before the issue of an Occupation Certificate and at no cost to Council.

#### **ADVISORY NOTES**

- A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out.
- The approved plans must be submitted to the Customer Centre of any office of Sydney Water before the commencement of any work to ensure that the proposed work meets the requirements of Sydney Water. Failure to submit these plans before commencing work may result in the demolition of the structure if found not to comply with the requirements of Sydney Water.
- Any natural light or ventilation gained by windows within 900mm of the boundary will not be taken into consideration in the event that the adjoining property owner makes application to Council to carry out building works on their property. The window has been consented to on the basis that alternative sources of light and ventilation are available to the room.
- Buildings built or painted before 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 before occupation of the room or building.

- Contact “Dial Before You Dig” before commencing any building activity on the site.
- Useful Contacts

BASIX Information  1300 650 908 weekdays 2:00pm - 5:00pm  
[www.basix.nsw.gov.au](http://www.basix.nsw.gov.au)

Department of Fair Trading  13 32 20  
[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)  
Enquiries relating to Owner Builder Permits and Home Warranty Insurance.


Dial Before You Dig  1100  
[www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au)

Landcom  9841 8660  
To purchase copies of Volume One of “Soils and Construction”

Long Service Payments Corporation  131441  
[www.lspc.nsw.gov.au](http://www.lspc.nsw.gov.au)

NSW Food Authority  1300 552 406  
[www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au)


NSW Government [www.nsw.gov.au/fibro](http://www.nsw.gov.au/fibro)  
[www.diysafe.nsw.gov.au](http://www.diysafe.nsw.gov.au)  
Information on asbestos and safe work practices.

NSW Office of Environment and Heritage  131 555  
[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

Sydney Water  13 20 92  
[www.sydneywater.com.au](http://www.sydneywater.com.au)

Waste Service - SITA Environmental Solutions  1300 651 116  
[www.wasteservice.nsw.gov.au](http://www.wasteservice.nsw.gov.au)

Water Efficiency Labelling and Standards (WELS) [www.waterrating.gov.au](http://www.waterrating.gov.au)

WorkCover Authority of NSW  13 10 50  
[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)  
Enquiries relating to work safety and asbestos removal and disposal.

- B. THAT** the Department of Planning and Environment be advised, as part of the quarterly review of the monitoring of Clause 4.6 of Marrickville Local Environmental Plan 2011 - Exceptions to Development Standards, that Council has agreed to the variation of the following development standard:

Premises: 238-240 Enmore Road ENMORE  
Applicant: Daniel James Abraham  
Proposal: To carry out alterations and additions to the existing single storey shop and to construct a first floor addition containing a 1 bedroom unit.

Determination: Consent subject to conditions  
DA No: DA201800152  
Lot and DP: Lot 2 DP 977701  
Category of Development: Mixed Use  
Environmental Planning Instrument: Marrickville Local Environmental Plan 2011  
Zoning of Land: B1 – Neighbourhood Centre  
Development Standard(s) varied: Clause 4.4 – Floor Space Ratio  
Justification of variation: Compliance unreasonable and unnecessary given site size, shape and context of surrounding development.

Extent of variation: 65% or 42.18sqm  
Concurring Authority: IWPP - Council under assumed concurrence of the Secretary Department of Planning and Environment

Date of Determination:

Attachment B – Plans of proposed development

13/04/2018 2:53:34 PM

**DETAILS / CALCULATIONS**

**Site Details**

Address: 238 - 240 emmore road, ENMORE  
 DP & LOT: 977701 + 2  
 Site Area: 75.9m<sup>2</sup>  
 Site Frontage: 15.24m  
 Current Use: single level commercial building  
 Existing Gross Floor Area: 60.3m<sup>2</sup>

**LEP / ADG**

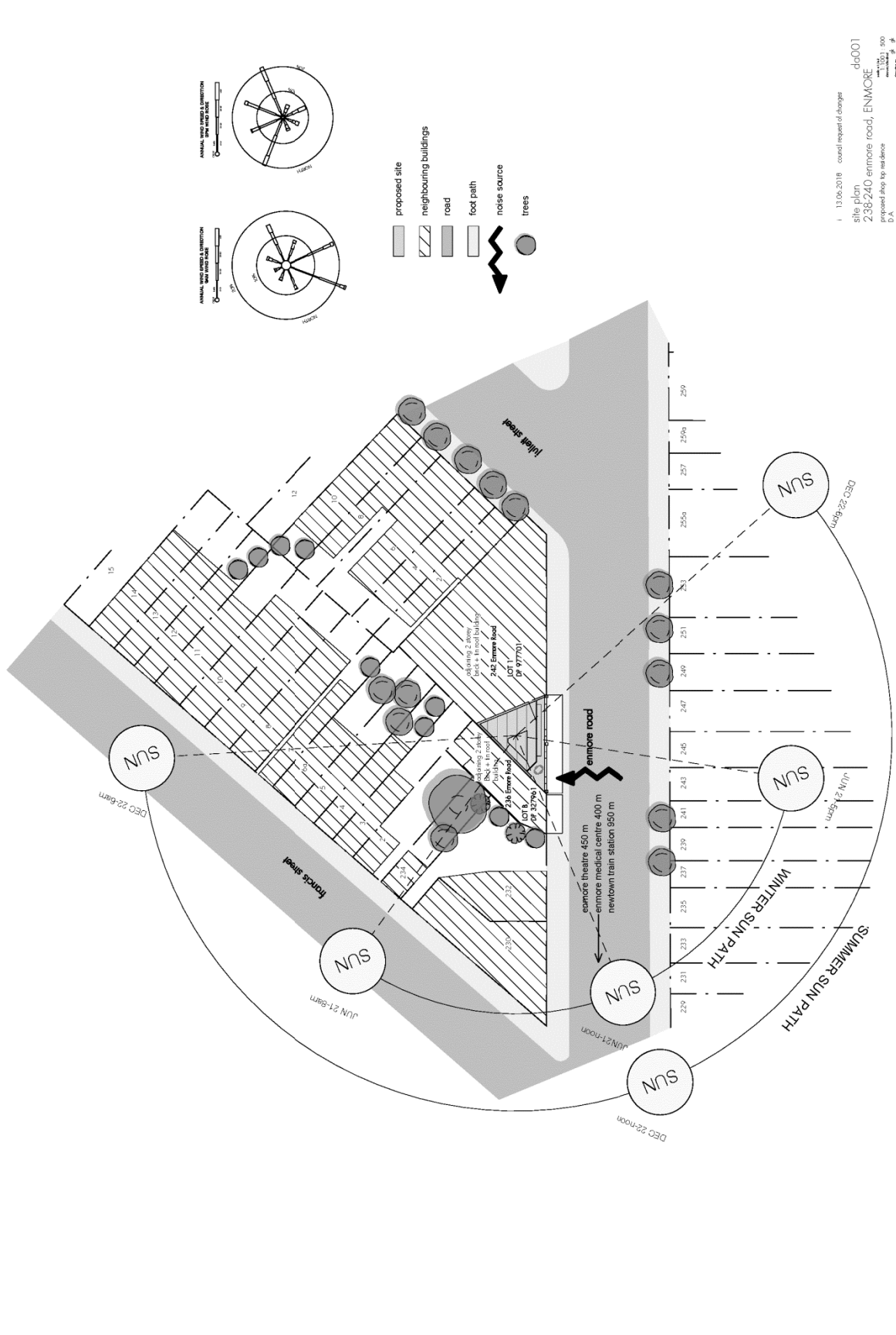
Zone: B1  
 Height of building: 9.5m  
 Proposed building height: 9.0m  
 Setbacks: Nil  
 Private Open Space: 19.3m<sup>2</sup>  
 Proposed FSR: 1.40:1

**D.A**

238-240 emmore road, ENMORE  
 proposed shop for residence  
 da001 site plan  
 da002 site analysis  
 da101 ground floor plan  
 da102 level 1 plan  
 da103 roof level  
 da104 survey + existing floor plan  
 da300 elevation  
 da400 section oa  
 da401 section bb  
 da500 shadow diagrams  
 da500 waste management (ground floor)



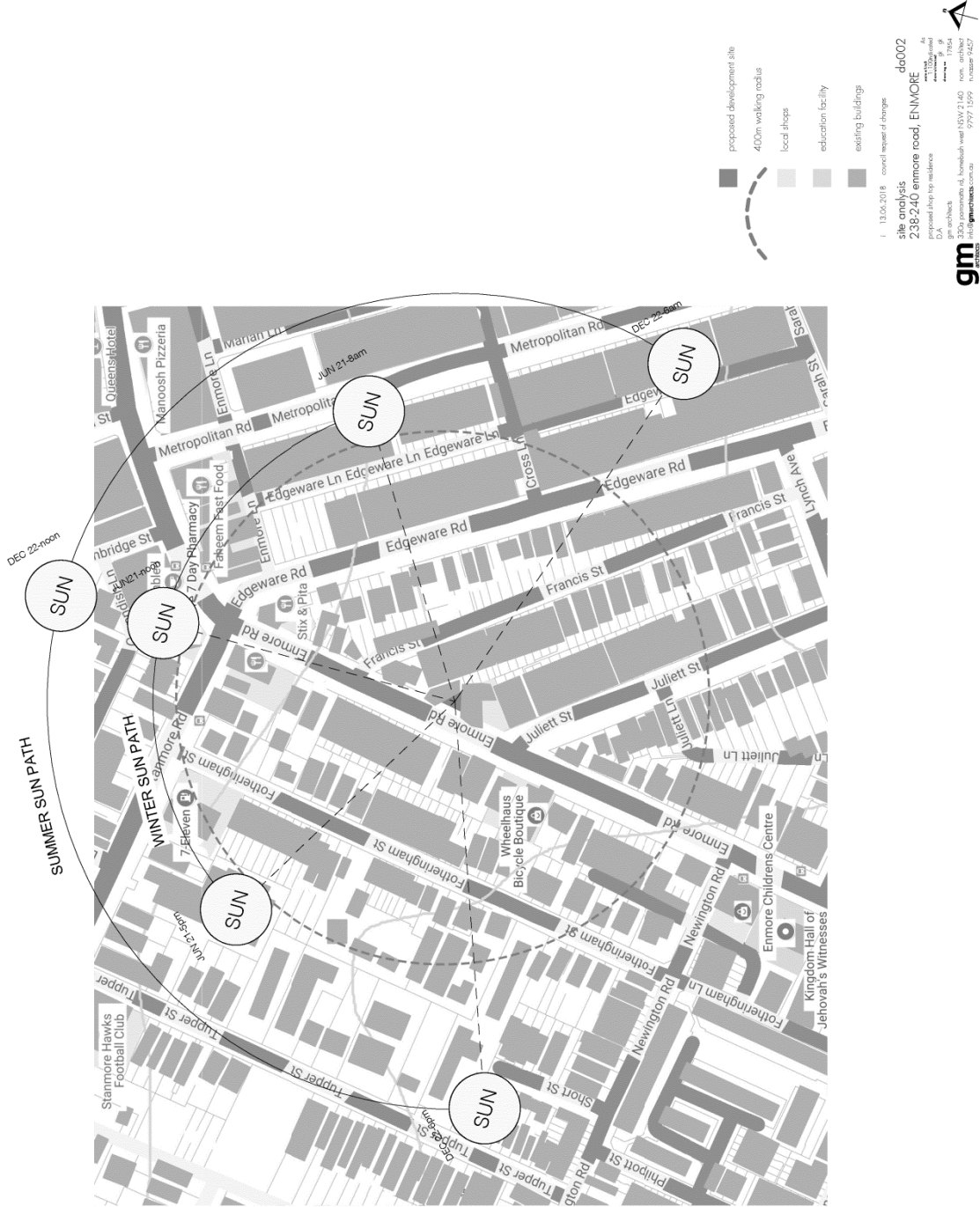
13/06/2018 2:53:38 PM



13/06/2018 council request of change  
site plan  
238-240 emmore road, ENMORE  
da001  
1:500  
scale  
prepared for site residence  
by G.A. Architects  
3/06 pomonalia rd, homebush, west NSW 2142. nrom.architect  
0779 1 1979 n.rose@ga57.com.au  
ga57.com.au  
9m  
architect

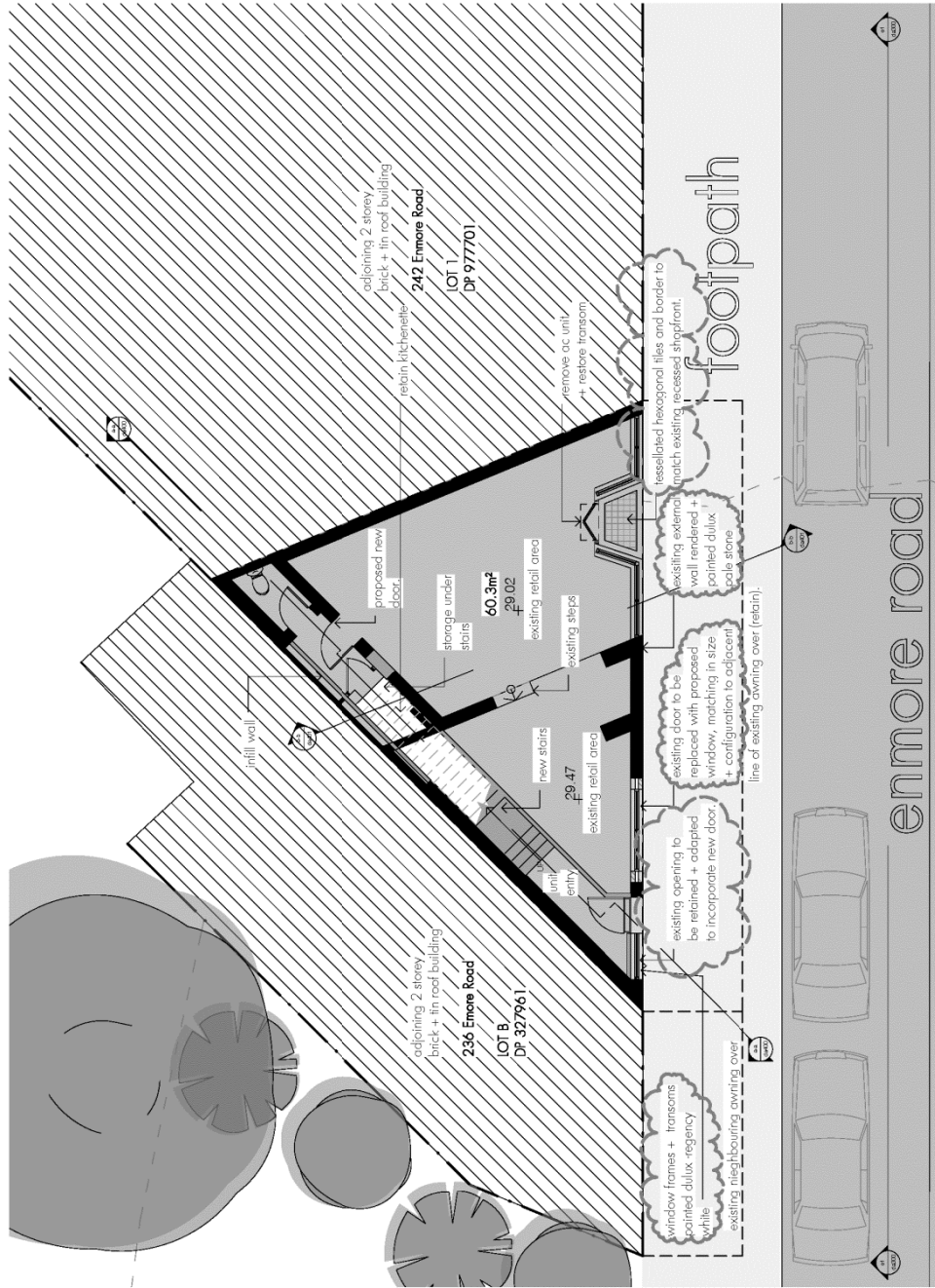
site plan

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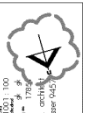
site analysis

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- existing floor area
- existing walls to remain
- proposed new walls
- proposed new building works
- structure to be removed

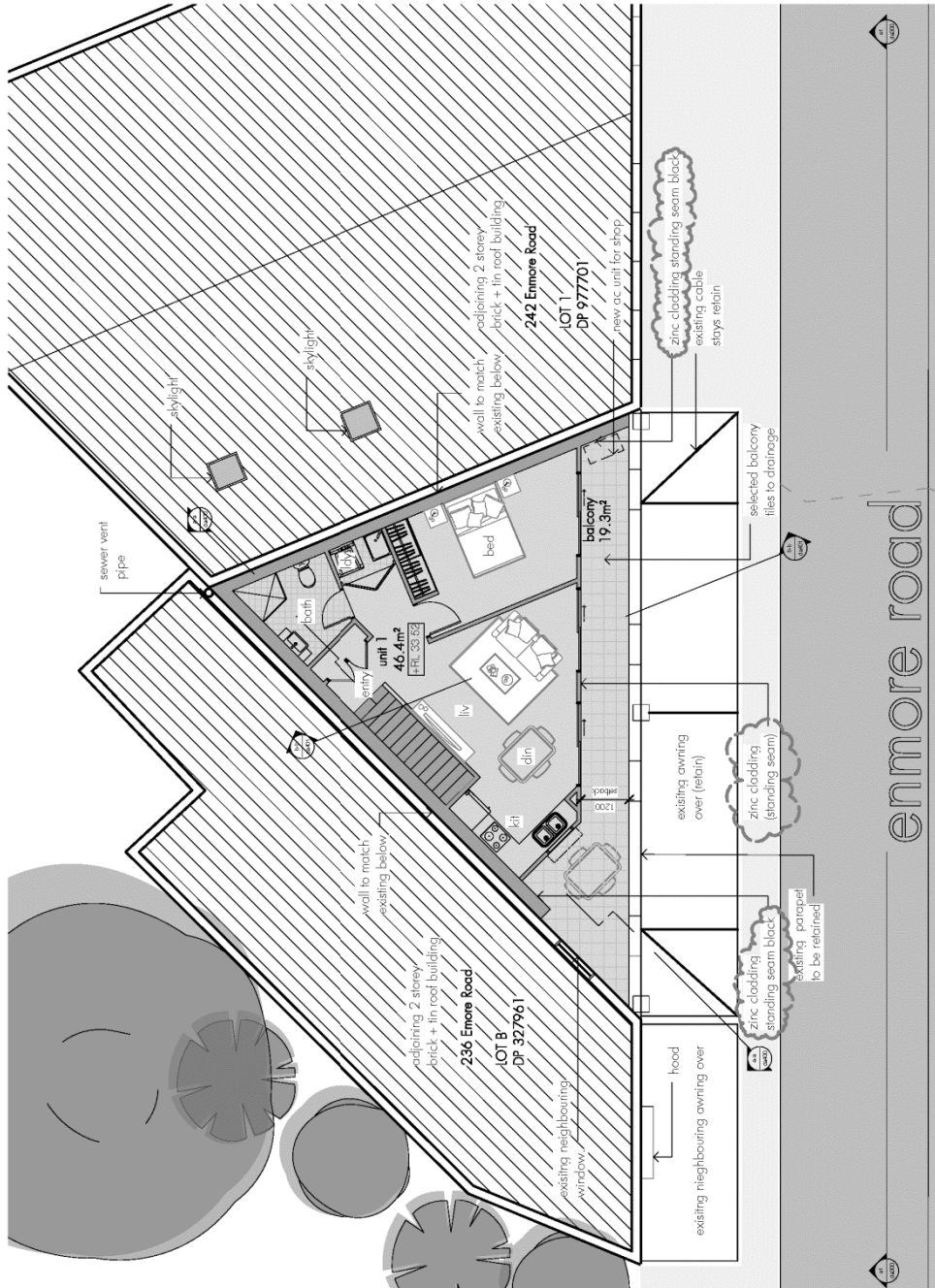
13.06.2018 - copied report of designer  
 ground floor plan  
 236-240 enmore road, ENMORE da 101  
 proposed floor by residence  
 1:100  
 gm architect  
 100a parramatta rd, homebush west NSW 2140 nsw australia  
 9797 1599 n.n.n@gm.com.au  
 gm.com.au



ground floor plan



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- existing floor area
- existing walls to remain
- proposed new walls
- proposed new building works
- structure to be removed

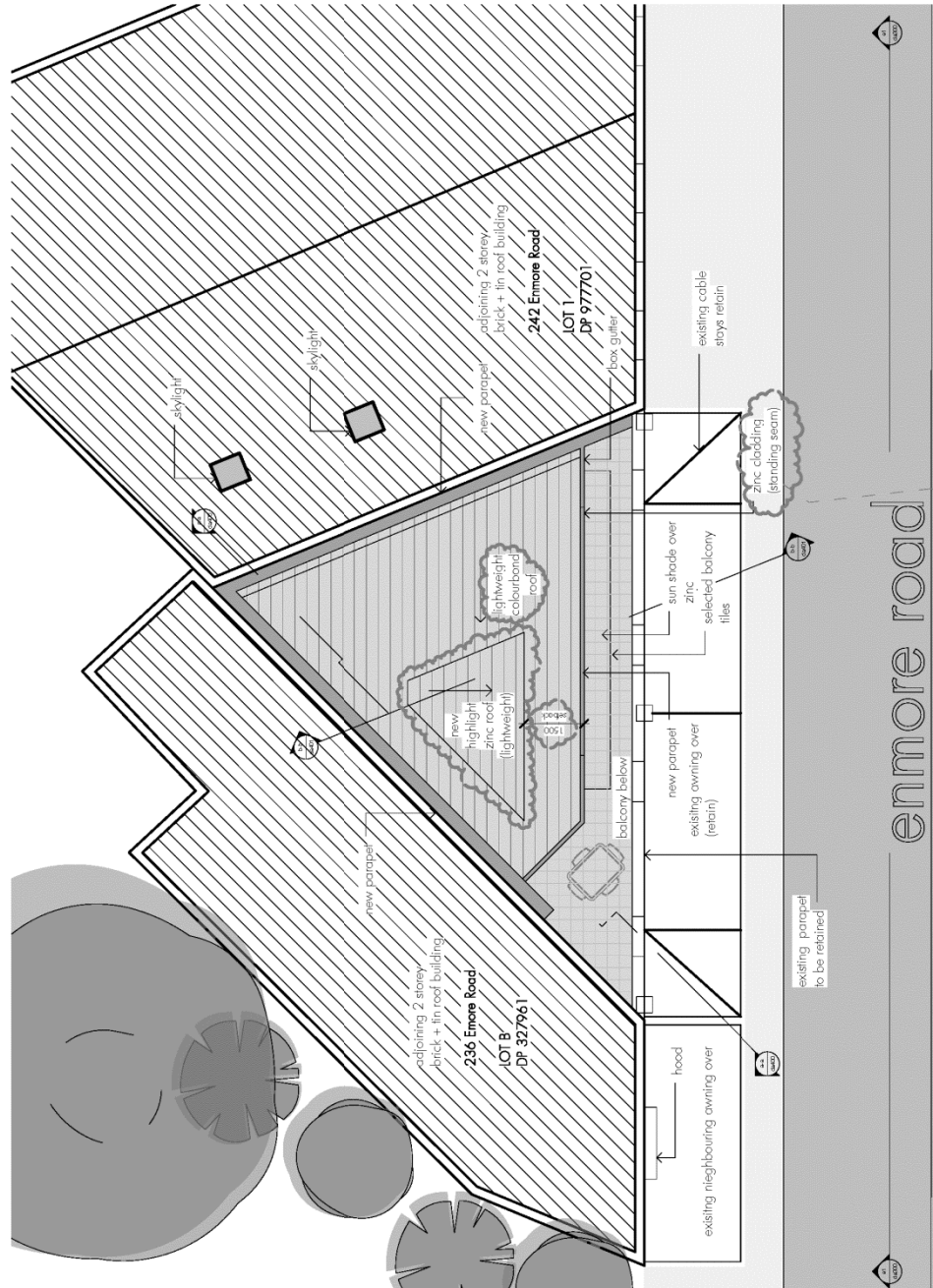
13.06.2018 - covid repair of charges  
 level 1 plan  
 238-240 emmore road, ENMORE  
 proposed shop top residence  
 D.A.  
 1:100  
 1:100  
 1:100



gm  
 3100 greenway rd, borwick vic 3140  
 9797 1599 n.raster@gm.com.au

level 1 plan

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- existing floor area
- existing walls to remain
- proposed new walls
- proposed new building works
- structure to be removed

13/06/2018 - final request of charge  
 roof level  
 236-240 emmore road, ENMORE  
 da103  
 proposed shop top level  
 D.A.  
 scale 1:100  
 1:100

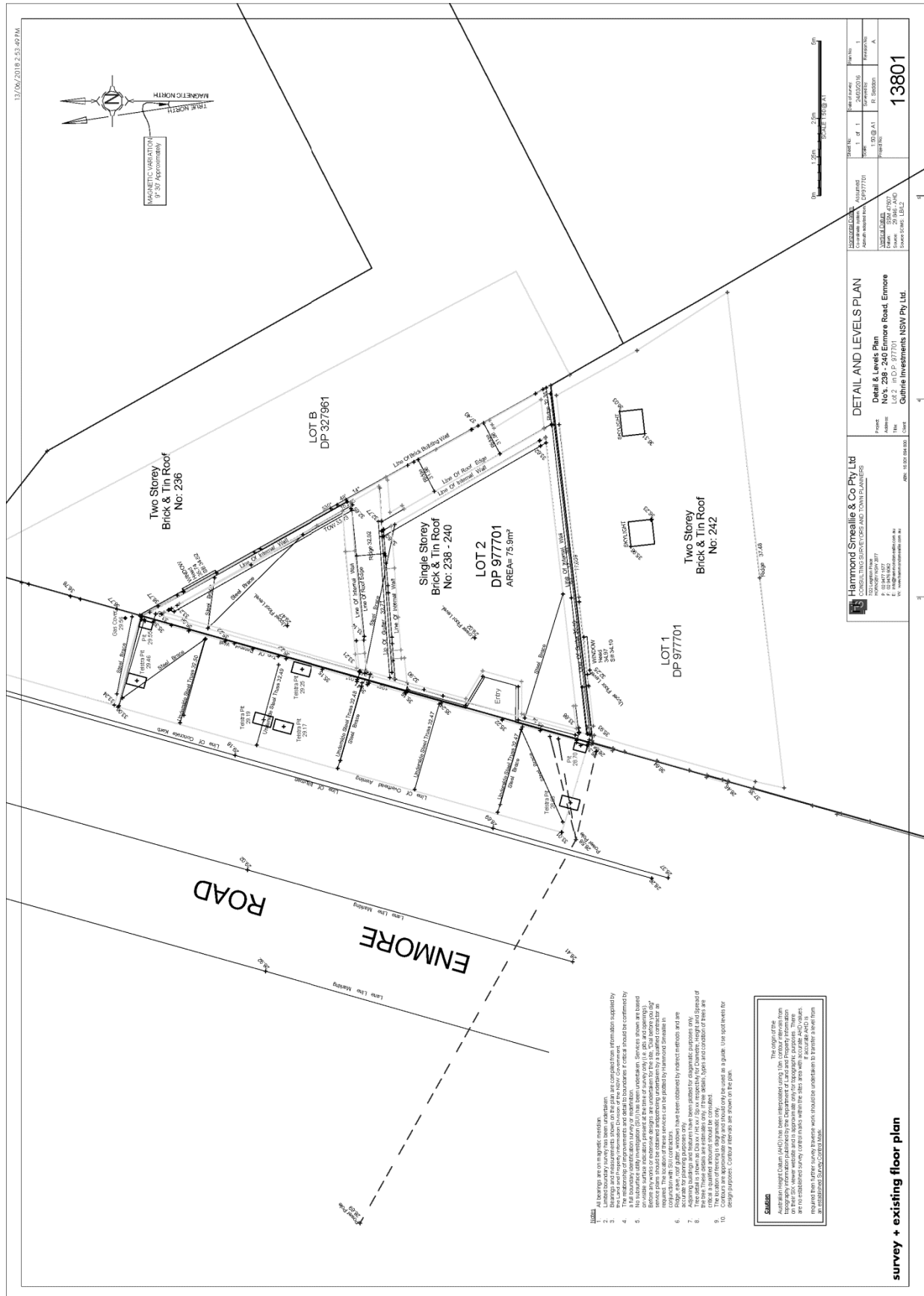


gm  
 architects  
 150a centennial drive, homebush west NSW 2140  
 9797 1599 n.casper@gm.com.au

roof level

enmore road

roof level



- NOTES**
- The survey was carried out in accordance with the Survey Act 2002.
  - Unless otherwise stated, all dimensions are in metres.
  - The survey was carried out in accordance with the Survey Act 2002.
  - The survey was carried out in accordance with the Survey Act 2002.
  - No subsurface utility investigations (SUI) have been undertaken. Services shown are based on the information provided by the Council and are not to be relied upon for any purpose other than the design of the proposed works.
  - Before any works or response designs are undertaken for this site, you should refer to the relevant Council records to determine the location of any services and any other information that may be required. The location of these services can be located by a licensed Surveyor in accordance with the Survey Act 2002.
  - Proposed buildings and structures have been designed for residential purposes only.
  - The plan is shown in plan view and does not show the vertical alignment of the proposed works. The vertical alignment of the proposed works should be determined by a qualified professional.
  - The plan is shown in plan view and does not show the vertical alignment of the proposed works. The vertical alignment of the proposed works should be determined by a qualified professional.
  - The plan is shown in plan view and does not show the vertical alignment of the proposed works. The vertical alignment of the proposed works should be determined by a qualified professional.
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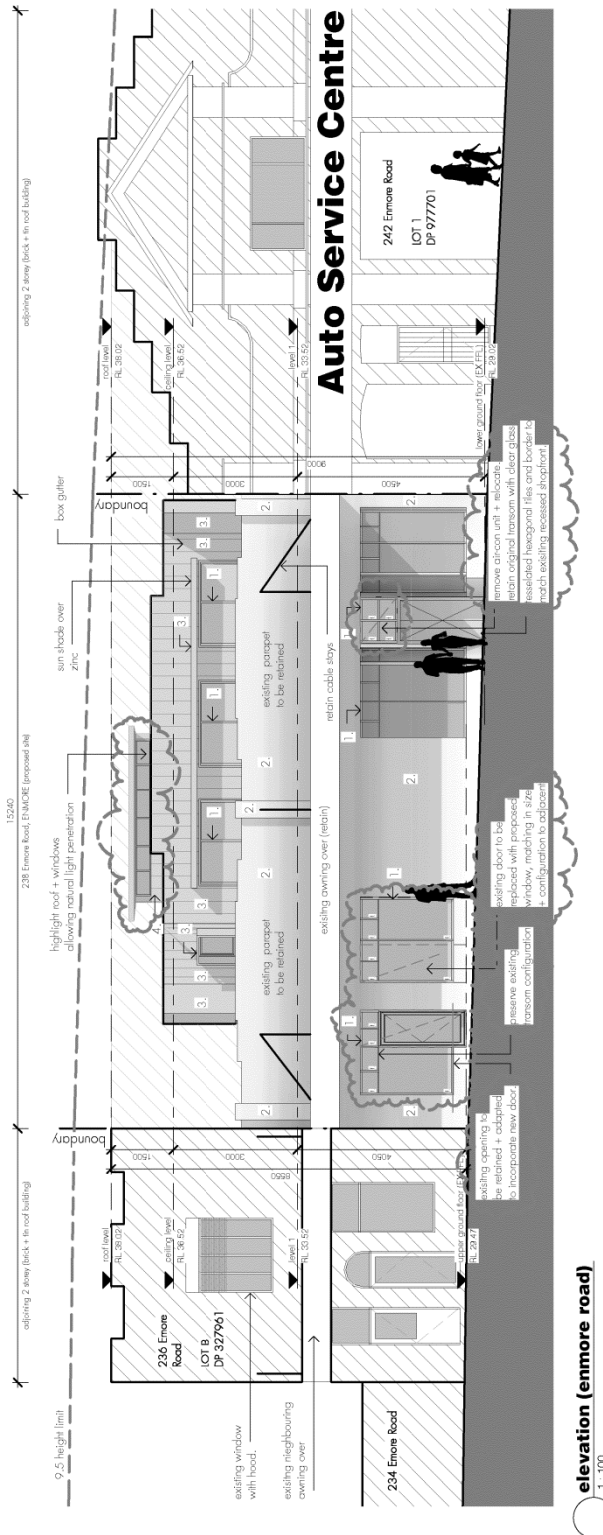
**DISCLAIMER**

The design of the proposed works has been prepared using the information provided by the client and is based on the information provided by the client. The design is not to be relied upon for any purpose other than the design of the proposed works. The design is not to be relied upon for any purpose other than the design of the proposed works. The design is not to be relied upon for any purpose other than the design of the proposed works.

<b>Hammond Smeallie &amp; Co Pty Ltd</b> CONSULTING SURVEYORS AND TOTAL PLANNERS HAMILTON AVENUE #11 SYDNEY NSW 2000 T: 02 9439 0000 W: www.hammondsmeallie.com.au		<b>DETAIL AND LEVELS PLAN</b> Detail & Levels Plan No's 236 - 240 Enmore Road, Enmore Project: No. 236 - 240 Enmore Road, Enmore Address: No. 236 - 240 Enmore Road, Enmore Client: Guthrie Investments NSW Pty Ltd.	
PROJECT NO: 13801 SHEET NO: 1 OF 1 DATE: 10/09/21 DRAWN BY: J. B. BODDICE CHECKED BY: J. B. BODDICE	PROJECT NO: 13801 SHEET NO: 1 OF 1 DATE: 10/09/21 DRAWN BY: J. B. BODDICE CHECKED BY: J. B. BODDICE	PROJECT NO: 13801 SHEET NO: 1 OF 1 DATE: 10/09/21 DRAWN BY: J. B. BODDICE CHECKED BY: J. B. BODDICE	PROJECT NO: 13801 SHEET NO: 1 OF 1 DATE: 10/09/21 DRAWN BY: J. B. BODDICE CHECKED BY: J. B. BODDICE

survey + existing floor plan

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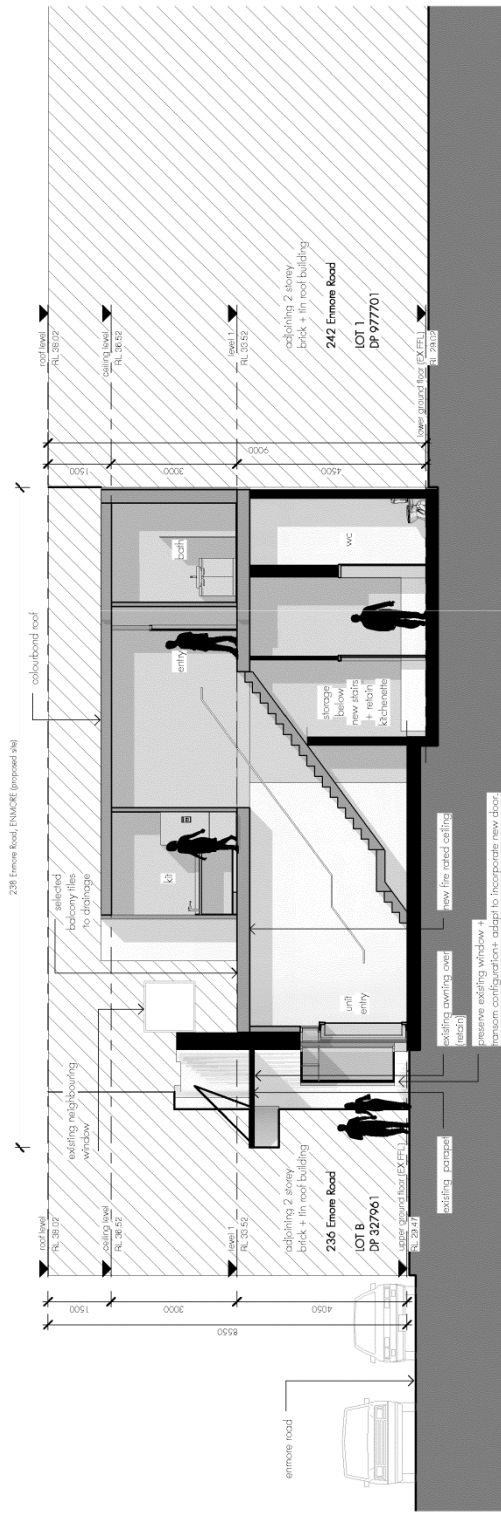
**colours + finishes**

- 1. dulux - regency white WINDOW FRAMES
- 2. dulux traditional colour - pale stone (37523) RENDERED + PAINTED EXISTING EXTERNAL WALLS
- 3. zinc cladding - standing seam, BLACK

- existing floor area
- existing walls to remain
- proposed new walls
- proposed new building works
- structure to be removed

13/04/2018 council request of change  
 elevation  
 238/240 enmore road, ENMORE  
 da300  
 238/240 enmore road  
 D.A  
 gm architects  
 330a pennants rd, homebush west NSW 2140  
 9797 1579  
 9797 1579  
 9797 1579

13/04/2018 2:53:37 PM



- existing floor area
- existing walls to remain
- proposed new walls
- proposed new building works
- structure to be removed

13/04/2018 covid repair of changes

section a-a

238-240 enmore road, ENMORE

da-400

proposed shop top residence

D.A. 1:100

10/10/18

gm architects

355a cammerah rd, bondi rd west NSW 2140

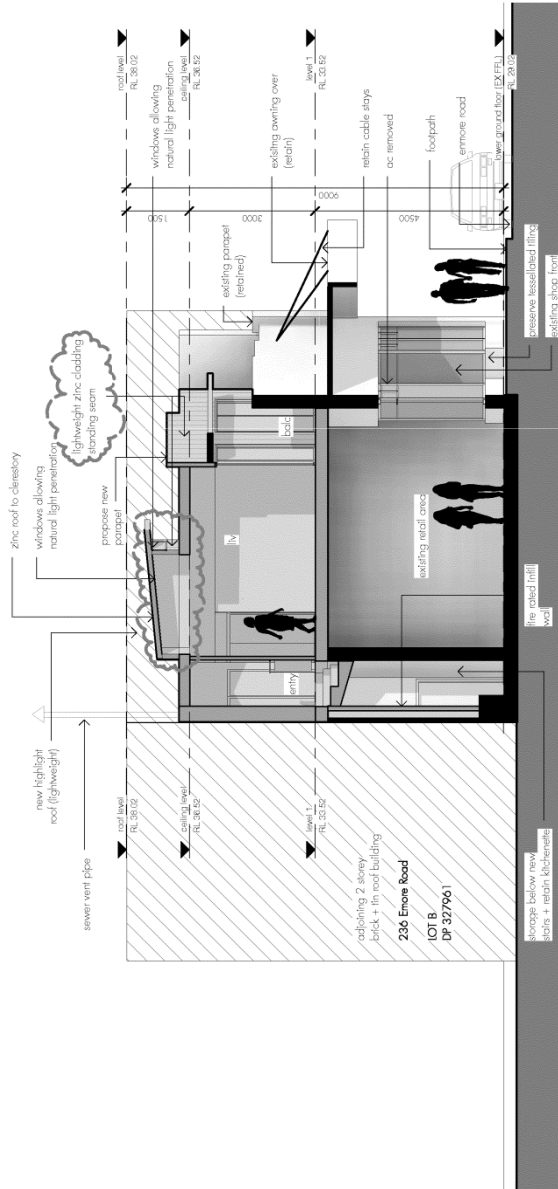
0757 1599

gm.com.au

**gm**  
architects

section a-a

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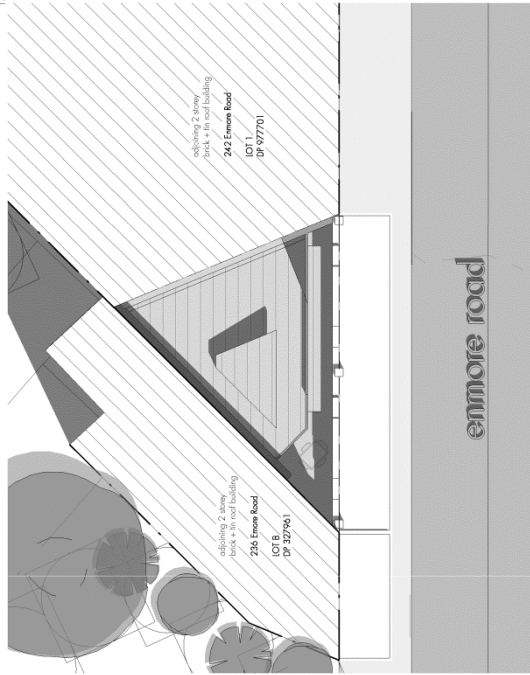


- existing floor areas
- existing walls to remain
- proposed new walls
- proposed new building works
- structure to be removed

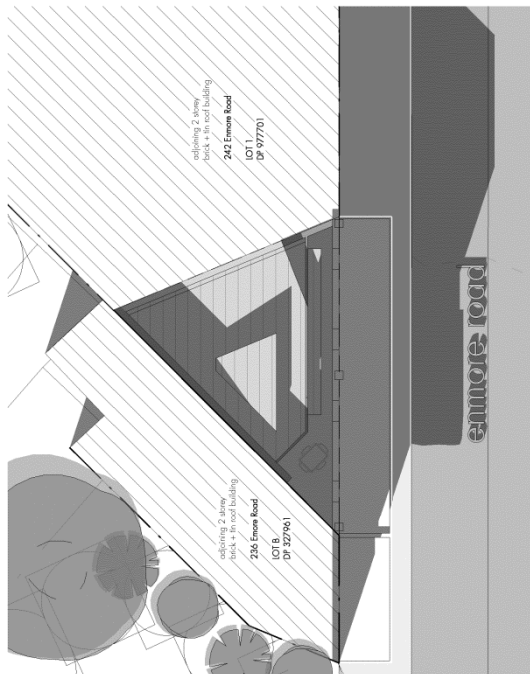
13.06.2018 - civil repair of shop  
 section b-b  
 236-240 enmore road, ENMORE  
 dar-01  
 proposed shop for residence  
 100  
 100  
 100  
 gm architects  
 3/0a panmuth rd, homebush west NSW 2140 nom. architect  
 9777 1579 n.s.w. 2457  
**gm**  
 architects

section b-b

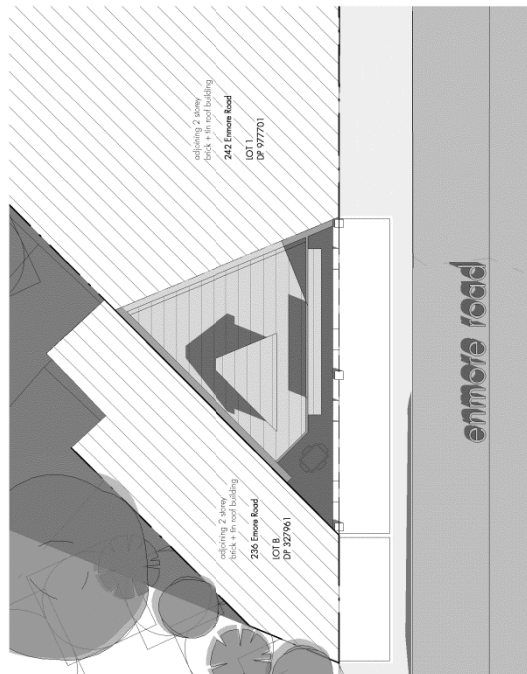
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shadow diagrams -12pm  
1:200



shadow diagrams -9am  
1:200

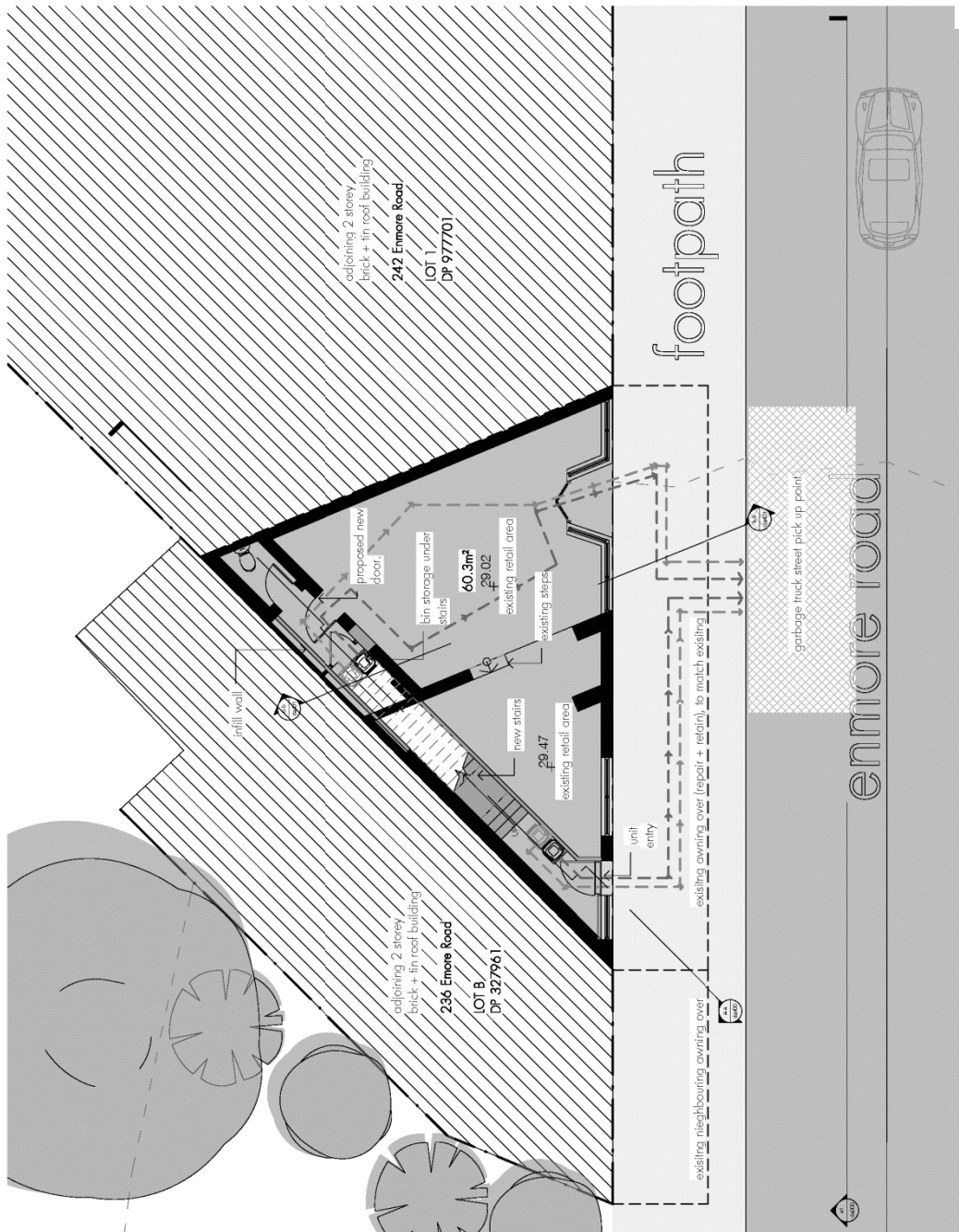


shadow diagrams -3pm  
1:200  
shadow diagrams

13/04/2018 council request of change do500  
 shadow diagrams 238/240 enmore road, ENMORE  
 proposed shop top residence  
 DP 877701  
 DP 327961  
 330a pennant Hills rd, Hornsby West NSW 2140 from: architect  
 9797 1599 [www.gim.com.au](http://www.gim.com.au)

**gim**  
 GROUP  
 ARCHITECTS

13/06/2018 2:53:57 PM



- - - path of travel to pick up point
- - - path of travel to pick up point
- recycle bin
- General waste bin

13.06.2018 cover request of change  
 waste management (ground floor) d6900  
 236,240 emmore road, ENMORE  
 proposed shop top residence  
 1:100  
 gm architects  
 17/47  
 1188 emmore road  
 9727 1597  
**gm**  
 architects

waste management (ground floor)



## Attachment C – Clause 4.6 Exceptions to Development Standards

MIKE GEORGE PLANNING

### Request for Clause 4.6 Variation of Development Standards

#### Applicable LEP

Marrickville Local Environmental Plan 2011

#### Zoning

B1 Neighbourhood Centre

#### Zone Objectives

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To provide for housing attached to permissible non-residential uses in development of a type and scale compatible with the surrounding neighbourhood.*
- *To provide for spaces, at street level, which are of a size and configuration suitable for land uses which generate active street-fronts.*
- *To enable a purpose built dwelling house to be used in certain circumstances as a dwelling house.*

#### Development Standard Being Varied

Floor Space Ratio (FSR)

#### LEP Clause

Clause 4.4

#### Objectives Of Standard

- (a) to establish the maximum floor space ratio,*
- (b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,*
- (c) to minimise adverse environmental impacts on adjoining properties and the public domain.*

#### Numeric Value Of Standard

0.85:1 under Floor Space Ratio map. This equates to 64.52m<sup>2</sup> on the site area of 75.9m<sup>2</sup>

#### Proposed Numeric Value

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M 0414 643 308  
E mgppl@bigpond.net.au

MIKE GEORGE PLANNING

1:4:1 being 106.7m<sup>2</sup>, a difference of 42.18m<sup>2</sup> from the standard, and an increase of 46.4m<sup>2</sup> over the existing gross floor area of 60.3m<sup>2</sup>.

#### Percentage Variation

An increase of 65% in terms between the standard and proposed gross floor area.

#### Justification for Variation of Standard

Strict compliance with the FSR standard is unnecessary and unreasonable in the particular circumstances of this case, for the following reasons

1. The particular circumstances of the case include-
  - the exceptionally small site area
  - the triangular shape of the site, and
  - the enclosure of the site by 2 larger neighbouring buildings.

These unique circumstances make the application of development standards that presume larger and regular allotments highly problematic, and mean that the impacts of any non-compliance on sensitive land are avoided. The small site area produces percentage variations to the FSR that are numerically high, but that should not enable any presumption that there is significance in the numerical value of the variation in the circumstances. The **actual** extent of the proposed variation (42.18m<sup>2</sup>) is not significant in terms of building mass or implications, particularly given the effect of the adjoining buildings. This issue is addressed in other areas by way of a sliding FSR scale that acknowledges the differences in the application of a number between large and small sites.

2. The proposal is otherwise consistent with the zone objectives. It provides small scale building elements able to service local needs. It provides housing of the type promoted by the objectives, and maintains the potential for active street-front uses
3. The proposal, notwithstanding the non-compliance, is consistent with the objectives of the development standard. The proposed building bulk and mass is entirely consistent with the existing and desired future character, that appear to be based on 2 storey buildings addressing the street. The proposal has no material adverse implications for adjoining properties or the streetscape.

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Residential premises to the rear are shielded by the buildings adjoining the site. The streetscape will be improved by the site-upgrading. The objective to establish a maximum FSR, while stating the obvious, does not in itself justify the application of a single, relatively low FSR to every set of circumstances that are covered.

4. The FSR control does not reasonably relate to the height control. A building to the maximum height of 9.5m would require an exceptionally low site coverage to achieve 0.85:1 FSR. This is problematic for small sites that are typical in most of Marrickville. It would produce a building form that is contrary to that envisaged by the DCP, which has an emphasis on building to the street and side boundaries in business zones.
5. Clause 4.6 of the LEP provides an avenue for flexibility in applying the development standards where a non complying development would in fact provide a better result than a complying development and to achieve better outcomes in particular circumstances.

As outlined in the preceding paragraphs the proposal is consistent with the objectives of the development standard, it has no material adverse implications for adjoining properties or the streetscape and given case law has clearly emphasised the significance of unique site characteristics and in more recent times (*Moskovitch v Waverley Council* [2016] NSWLEC 1015) emphasised the consent authority's increased flexibility in the attainment of the related planning objectives when exercising such discretion.

The proposal is entirely consistent with such parameters.

6. The proposal seeks to improve the site in a reasonable manner, notwithstanding the non-compliance with the FSR standard. The likely consequence of strict compliance with the standard, given the particular site circumstances, is to remove any incentive for improvement.

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7. The proposal produces a better and more useable structure than a fully compliant development would. The architectural plans note the improvements in building details, materials and finishes. To achieve full compliance it would be necessary to remove part of what is an uncharacteristically small building.

#### **Whether Strict Compliance Hinders Attainment of the Act's Objectives**

Strict Compliance with the standard would necessitate the demolition of 15% of the existing building, which is not a circumstance contemplated by the Act's objectives or otherwise

Variation of the standard in the circumstances would be consistent with the Objects of the Act, in that it would facilitate the reasonable development of the land in a manner which avoids conflicts with other land.

#### **Whether the Standard is Performance Based**

No

#### **Environmental Planning Grounds**

There is no matter of state or regional planning significance which flows from the non-compliance. There is no demonstrable public interest in strictly maintaining the planning controls in the particular circumstances.

The environmental planning grounds that justify contravening the LEP FSR development standard include-

1. The non-compliance in part arises from the proposal being the product of the interplay of a number of environmental planning principles and objectives in the particular set of circumstances of the site and its context, as discussed above.
2. The proposal otherwise satisfies local planning objectives on a site that has the particular characteristics that sustain the proposed development in a manner that has minimal implications for other land or the public domain.

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3. There are no material planning consequences that arise, consistent with the planning objectives for the zone and the standard.
4. Variation of the standard in these particular circumstances would have no apparent bearing on the application of the standard in other situations.

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E [mgppl@bigpond.net.au](mailto:mgppl@bigpond.net.au)