



ELECTRONIC DETERMINATION BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

**Wednesday 23 February 2022
at 6:30pm**



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**7 ELECTRONIC - DA/1188/2021 - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
- 14 SUTHERLAND ROAD, CHELTENHAM**

EXECUTIVE SUMMARY

DA No: DA/1188/2021 (lodged 10 November 2021)

Description: Alterations and additions to a dwelling house

Property: Lot 5 DP 17378, No. 14 Sutherland Road, Cheltenham

Applicant: Catherine Munayer Architecture

Owner: Ms Lucinda Hope De Vries

Estimated Value: \$358,000

Ward: C

- The application proposes alterations and additions to a dwelling house known as “Merrivale”.
- The proposal does not comply with the *Hornsby Shire Local Environmental Plan 2013 (HLEP)* with regard to Clause 4.3 ‘Height of Buildings’. The applicant has made a submission in accordance with Clause 4.6 ‘Exceptions to development standards’ of the *HLEP* to contravene the maximum building height of 8.5m development standard. The submission is considered well founded and is supported.
- The application is required to be determined by the Hornsby Local Planning Panel as the proposal would contravene the *HLEP* development standard for maximum height of buildings by more than 10 percent.
- No submissions were received with respect to the application.
- It is recommended that the application be approved.

RECOMMENDATION

THAT the Hornsby Shire Council Local Planning Panel assume the concurrence of the Secretary of the Department of Planning and Environment pursuant to Clause 4.6 of the *Hornsby Local Environmental Plan 2013* and approve Development Application No. DA/1188/2021 for alterations and additions to a dwelling house at Lot 5 DP 17378, No. 14 Sutherland Road, Cheltenham subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP8/22.

BACKGROUND

On 10 December 2019, DA/1115/2017 was approved by the Land and Environmental Court (LEC) for the demolition of existing structures, adaptive reuse of an existing dwelling, and construction of a senior's living development at No's. 14-18 Sutherland Road, Cheltenham subject to conditions.

The subject site comprises one of the lots which was part of the LEC consent for senior's living..

On 14 October 2021, Council issued pre-lodgement advice (PL92/2021) for alterations and additions to a dwelling house within a heritage conservation area at No. 14 Sutherland Road, Cheltenham.

To date, the works associated with the DA/1115/2017 consent have not proceeded.

SITE

The 1202.5m² site is located on the north-eastern side of Sutherland Road, Cheltenham, adjacent to Cheltenham Train Station and contains a dwelling house, swimming pool and granny flat.

The site experiences a 6m cross fall to the southern, front corner of this site.

The site is not flood or bushfire prone and does not contain any easements or restrictions.

The site is located in the Beecroft/Cheltenham Precinct of the Beecroft-Cheltenham Heritage Conservation Area (HCA) identified in Schedule 5 (Environmental Heritage) of the *Hornsby Local Environmental Plan 2013*.

PROPOSAL

The application proposes alterations and additions to a dwelling house comprising the following:

- Ground floor
 - The addition of a sitting room to the south-eastern elevation in replacement of an existing open balcony.
 - The addition of a laundry and powder room to the northern, rear corner.
 - A new timber deck and pergola at the rear.
- First floor
 - The addition of a bedroom above the new laundry/powder room.
 - The addition of a walk-in-robe and ensuite to the master bedroom above the new sitting room.

The application also includes minor internal layout changes and fixtures to both floors of the existing dwelling.

The proposed additions have been designed to continue the original roof line of the dwelling house, to improve the internal layout, whilst sympathetically retaining the visual impact of the dwelling house when viewed from the street.

No trees would be removed or impacted by the development

ASSESSMENT

The development application has been assessed having regard to the *Greater Sydney Region Plan – A Metropolis of Three Cities*, the *North District Plan* and the matters for consideration prescribed

under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan

The *Greater Sydney Region Plan - A Metropolis of Three Cities* has been prepared by the NSW State Government to guide land use planning decisions for the next 40 years (to 2056). The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies dwelling targets to ensure supply meets demand. The Plan also identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

The NSW Government will use the subregional planning process to define objectives and set goals for job creation, housing supply and choice in each subregion. Hornsby Shire has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Ryde, Northern Beaches and Willoughby to form the North District. The Greater Sydney Commission has released the North District Plan which includes priorities and actions for Northern District for the next 20 years. The identified challenge for Hornsby Shire will be to provide an additional 4,350 dwellings by 2021 with further strategic supply targets to be identified to deliver 97,000 additional dwellings in the North District by 2036.

- Planning Priority N5 - Providing housing supply, choice and affordability, with access to jobs, services and public transport.
- Planning Priority N6 - Creating and renewing great places and local centres, and respecting the Districts heritage.

In giving effect to A Metropolis of Three Cities, these Planning Priority deliver on the following objective and the corresponding strategies:

- Objective 11 - Housing is more diverse and affordable.
- Objective 13 - Environmental heritage is identified, conserved and enhanced.

The proposed alterations and addition to the dwelling house have been thoroughly considered and identified within this report. It is considered that the alterations to the dwelling house would provide a contemporary, more user-friendly family home, whilst sensitively retaining the interesting form of the dwelling house within a HCA.

The proposal would meet objectives of these planning priorities and would be considered acceptable in the context of the *Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan*.

2. STATUTORY CONTROLS

Section 4.15(1)(a) requires Council to consider “*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*”.

2.1 Hornsby Local Environmental Plan 2013

The proposed development has been assessed having regard to the provisions of the *Hornsby Local Environmental Plan 2013 (HLEP)*.

2.1.1 Zoning of Land and Permissibility

The subject land is zoned R2 Low Density Residential under the *HLEP*. The objectives of the R2 zone are:

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development is defined as alterations and addition to a 'dwelling house', is permissible in the zone with Council's consent and would meet the objectives of the zone by providing for the housing needs of the community within a low-density residential environment.

2.1.2 Height of Buildings

Clause 4.3 of the *HLEP* provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m. The proposed development would result in a maximum height of 11.86m and does not comply with this provision.

The application is supported by a submission pursuant to Clause 4.6 of *HLEP* to contravene the maximum height of buildings development standard, which is discussed below in Section 2.1.3 of this report.

2.1.3 Exceptions to Development Standards

The application has been assessed against the requirements of Clause 4.6 of the *HLEP*. This clause provides flexibility in the application of the development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tender to hinder the attainment of the objectives of the zone.

The proposal would exceed the 8.5m maximum building height development standard for a low-density residential zone with a proposed height of 11.86m.

The objective of Clause 4.3 Height of Buildings is *"to permit a height of buildings that is appropriate for the site constrains, development potential and infrastructure capacity of the locality"*.

The applicant has made a submission in support of the contravention to the development standard in accordance with Clause 4.6 of the *HLEP*. Clause 4.6 provides that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

Council must be satisfied that the written request provided by the applicant under Clause 4.6 addresses both the unreasonable and unnecessary test and demonstrates sufficient environmental planning grounds to justify contravening the development standard. These matters are discussed below.

2.1.3.1 Unreasonable or Unnecessary

There are five common methods by which an applicant can demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the development. Initially proposed for objections under clause 6 of *SEPP 1* in the decision of *Wehbe v Pittwater Council [2007] NSWLEC 827* Pearson C summarised and applied these methods to written requests made under Clause 4.6 in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* [61-62]. These five methods are generally as follows:

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 of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
4. *The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
5. *The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

It is not required to demonstrate that a development meets multiple methods as listed above, and the satisfaction of one can be adequate to demonstrate that the development standard is unreasonable or unnecessary.

The applicant made a submission in support of a contravention to the development standard in accordance with Clause 4.6 of the *HLEP*. The development application seeks to contravene the development standard by 3.36m (39.5%). The applicant states the proposed contravention is considered to be consistent with the objectives of the control and is justified as follows:

- *In relation to 'site constraints' one of the characteristics of the site is its slope and this results in the level of non-compliance being greater at the SE of the building. As noted above, at the NW end the proposal is non-compliant to the same extent of the existing building (only 400mm). Given the design of the existing dwelling and being within a conservation area, it would not be appropriate to step the height of the roof down with the slope. In this regard the heritage constraints are considered to be more important than the constraint of sloping land.*
- *Another constraint is the proximity to adjoining neighbours. The proposal responds to this constraint, accordingly, ensuring that there are no unreasonable impacts on surrounding properties. In particular, the additional height proposed does not result in any additional overshadowing that will affect the use or enjoyment of neighbours' dwellings or open space. As can be seen in the submitted midwinter diagrams, additional shadow will fall on the site itself, the roof of adjoining buildings or on the adjoining front yard at various times of the day. All the relevant solar access standards will be achieved.*
- *In relation to development potential, the proposal almost fully complies with the relevant development standards except for building height. All of the proposed additional floor space is below the height control (floor space being measured at 1.4m above floor level) and so the breach of the control does not provide for additional development potential. In fact the*

proposal has significantly less floor space than permitted (232sqm compared to 430sqm) and covers significantly less site area (216sqm compared to 481sqm). With design changes, the new additions could fully comply with the height control however this would result in a built form that is not consistent with the height and character of the existing dwelling or the overall quality of the heritage conservation area. Therefore it is important to allow the breach of the control to allow a better design outcome to be achieved.

- *In relation to infrastructure capacity, as the development potential of the site does not exceed that which can be expected, the proposal will be within existing and planned increases to infrastructure capacity.*
- *Requiring compliance with the control would thwart achieving the objective of the height control as it would result in conflict with the heritage constraints of the site. As noted above the proposed breach means that the height of the existing building and its unique 'dutch gable' style is maintained and that the building maintains its role in the significance of the heritage conservation area in which it is located. Enforcing compliance would result in a flat roof solution which would detract from the quality of the building and conservation area.*
- *As noted above, the proposal has been specifically designed to provide a superior planning outcome, consistent with the objective of Clause 4.6 to "achieve better outcomes for and from development by allowing flexibility in particular circumstances". As detailed above strict compliance with the controls would result in a poorer level of integration with the existing dwelling, which already substantially breaches the height control. It would mean relying on a flat roof solution which would detract from the quality of the existing building and the significance of the heritage conservation area.*
- *As detailed above and in the submitted SEE, the proposal has very minimal impact on surrounding properties and the level of impact arising from the non-compliance is negligible. This is because the height breach is limited to the pitched roof and therefore it does not add significantly to the overall bulk and scale of the building. It is also setback from neighbours to reduce visual and overshadowing impacts. A compliant building would be lower but could be much larger than what is being proposed and be located closer to the site boundaries, creating greater impact.*
- *In view of the above it is considered that there are sufficient environmental planning grounds, specifically related to the subject site, that warrant contravention of the height standard.*

Council considers the applicants request to contravene the height development standard is considered well founded for the following reasons:

- The height departure would not result in any significant amenity impact to surrounding neighbours and would not result in additional overshadowing of adjoining and nearby premises.
- The existing dwelling house already exceeds the maximum 8.5m height development control of the HLEP with an existing height of 11.53m.
- The proposed additions are designed to match the existing roof pitch, align with the existing ridge line of RL116.33 and sympathetically conform with the existing Dutch gable roofed dwelling house.
- There would be no change to the existing RL, just a 0.33m increase in overall height as a result of the sites crossfall/topography.

- The overall appearance of the building, when viewed from the street front, would be substantially unchanged and consistent with the heritage requirements of the *HLEP*.
- The proposal is considered a sensitive and modest modification that will retain the interesting form of the building and its unusual roof. It would have no discernible impact on the HCA, nearby heritage items or the streetscape.
- The proposed development would not overly dominate the natural environment or surrounding built elements.
- The proposed height variation is appropriate considering the constraints of the site in terms of land slope and protection of trees.
- The application provides for the orderly and economic development of land, improved residential amenity of the existing residence and demonstrates adequate consideration and protection of the environmental and public interest.
- The proposed development generally meets the objectives of Clause 4.3 Height of Buildings of the *HLEP* by way of being appropriate with respect to the constraints of the site and in regard to the development potential of the site.

Based on this assessment, it is considered that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case.

2.1.3.2 Environmental Planning Grounds

In addition to demonstrating that compliance is unreasonable or unnecessary, Clause 4.6(3)(b) of the *HLEP* requires that there are sufficient environmental planning grounds to justify contravening the development standard. In demonstrating that sufficient environmental planning grounds exist, it must be demonstrated that the planning grounds are particular to the circumstances of the development on the subject site (summarised from *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 [60]).

In demonstrating the environmental planning grounds the written request states:

Compliance would result in poorer planning outcomes

As noted above the proposal has been specifically designed to provide a superior planning outcome, consistent with the objective of Clause 4.6 to “achieve better outcomes for and from development by allowing flexibility in particular circumstances”. Strict compliance with the controls would result in a poorer level of integration with the existing dwelling, which already substantially breaches the height control. It would mean relying on a flat roof solution which would detract from the quality of the existing building and the significance of the heritage conservation area.

Lack of impact

As detailed above and in the submitted SEE, the proposal has very minimal impact on surrounding properties and the level of impact arising from the non-compliance is negligible. This is because the height breach is limited to the pitched roof and therefore it does not add significantly to the overall bulk and scale of the building. It is also setback from neighbours to reduce visual and overshadowing impacts. A compliant building would be lower but could be much larger than what is being proposed and be located closer to the site boundaries, creating greater impact.

In view of the above it is considered that there are sufficient environmental planning grounds, specifically related to the subject site, that warrant contravention of the height standard.

As determined in Randwick City Council v Micaul Holdings Pty Ltd, and supported by Preston CJ in Initial Action, lack of impact is a sufficient ground for allowing a breach of a development standard pursuant to Clause 4.6.

Council considers that the environmental planning grounds stated within the written request are sufficient with respect to Clause 4.6(3)(b) and that the stated grounds are specific to the proposed development and the circumstances of the development site. It is therefore considered that the written request adequately demonstrates compliance with the clause and is acceptable in this regard.

Council further notes that in demonstrating the unreasonable and unnecessary test, the applicant further established environmental planning grounds with respect to the site and the surrounding constraints.

2.1.3.3 Public Interest and Clause 4.6(4)

Clause 4.6(4) states that development consent must not be granted for development that contravenes a development standard unless:

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

With regard to part (i), the written request is considered to adequately address the matter required to be demonstrated as outlined above.

With regard to part (ii), the proposed development is considered to 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.

With regard to (b) the concurrence of the Planning Secretary is assumed.

Accordingly, it is considered that the written request satisfactorily responds to the relevant matters required to be addressed under Clause 4.6 and that the Panel, as consent authority, may rely upon the written request and grant development consent to the development application. Should the Panel resolve to approve the application, it should also provide a statement in the reasons for approval that it has satisfied itself of the matters in Clause 4.6(4).

2.1.4 Heritage Conservation

Clause 5.10 of the *HLEP* sets out heritage conservation provisions for Hornsby Shire Council.

The site is located in the Beecroft/Cheltenham Precinct of the Beecroft-Cheltenham Heritage Conservation Area (HCA) identified in Schedule 5 (Environmental Heritage) of the *HLEP*.

Council's heritage assessment of the proposal under the pre-lodgement application is outlined as follows:

- *The proposal includes enclosing the balcony currently above the garage to extend the elevated first floor and extending the high-pitched mock Dutch gabled roof over that to provide for additional rooms in the roof space.*
- *Materials and palette including roof tiles and brick would match existing. The plans do not indicate landscaping works that would be visible from the public domain.*
- *The proposal is a sensitive and modest modification that will retain the interesting form of the building and its unusual roof. It would have no discernible impact on the HCA or streetscape.*
- *The location of the additions would not raise concerns regarding impacts on heritage items in the vicinity.*
- *In summary, as the proposal stands, there are no heritage concerns; however, in accordance with Clause 5.10(5) of the HLEP and Part 9.1.2 of the HDCP the following information is to be submitted with any future application for the proposal as identified below.*
 - *Heritage Impact Statement (HIS). The HIS should include a brief history of the site and assessment of the impacts, including the heritage requirements of the HDCP.*
 - *Detailed Schedule of Material and Finishes.*
 - *Landscape Plan if landscape works are proposed.*

Council's heritage assessment for this application concluded that *"the proposal has been considered with regards to the heritage requirements of the HLEP, the HDCP and the documentation submitted with the application. As the submitted plans are the same as those considered for PL/92/2021, there are no heritage concerns."*

In summary, the proposal would meet the objectives of Clause 5.10 of the *HLEP* and is considered acceptable.

2.1.5 Earthworks

Clause 6.2 of the *HLEP* states that consent is required for proposed earthworks on site.

- (1) *The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.*

The proposed additions including additional building footprint associated with the laundry and deck would result in minimal earthworks, with the exception of the requirements of foundations/footings. These works would have negligible impacts on adjoining properties, drainage patterns and/or soil stability of the locality. As such, the proposal is considered to meet the objective of this Clause.

2.2 State Environmental Planning Policy No. 55 Remediation of Land

The application has been assessed against the requirements of *State Environmental Planning Policy No. 55 Remediation of Land (SEPP 55)* under which consent must not be granted to the carrying out of any development on land unless the consent authority has considered whether the land is contaminated or requires remediation for the proposed use.

Should the land be contaminated, Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

An examination of Council's records and aerial photography has determined that the site has been historically used for residential purposes. It is not likely that the site has experienced any significant contamination, and further assessment under *SEPP 55* is not required.

2.3 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The application has been assessed against the requirements of *State Environmental Planning Policy (Building Sustainability Index - BASIX) 2004*. The proposal includes a BASIX Certificate for the proposed dwelling house.

A condition is recommended in Schedule 1 of this report requiring the recommendations of the BASIX certificate be complied with.

2.4 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 3, Clause 9(2) of the *Vegetation SEPP* states that a Development Control Plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1B.6.1 of the Hornsby Development Control Plan 2013 (HDCP) prescribes works that can be undertaken with or without consent to trees and objectives for tree preservation.

The application has been assessed against the requirements of the *Vegetation SEPP* and it has been determined that the proposal would meet the objectives of the *Vegetation SEPP*. This matter is addressed in Section 3.1.1 of this report.

2.5 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The application has been assessed against the requirements of *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. This Policy provides general planning considerations and strategies to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained.

Subject to the implementation of installation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would have minimal potential to impact on the Sydney Harbour Catchment.

2.6 Section 3.42 Environmental Planning and Assessment Act 1979 - Purpose and Status of Development Control Plans

Section 3.42 of the *Environmental Planning and Assessment Act 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitate development that is permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Consent authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

2.7 Hornsby Development Control Plan 2013

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the *Hornsby Development Control Plan 2013 (HDCP)*. The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

HDCP - Part 3.1 Dwelling Houses			
Control	Proposal	Requirement	Complies
Site Area	1202.5m ²	N/A	N/A
Building Height	11.86m	8.5m	No
No. storeys	3	max. 2 + attic	No
Site Coverage	18%	max. 40%	Yes
Floor Area (including granny flat)	298m ²	max. 430m ²	Yes
Setbacks			
- <i>Front</i>	Unchanged	Conform to streetscape	Yes
- <i>Side (south-east)</i>			
<i>Ground floor</i>	2.4m	0.9m	Yes
<i>First floor</i>	2.4m	1.5m	Yes
- <i>Side (north-west)</i>			
<i>Ground floor</i>	1.5m	0.9m	Yes
<i>First floor</i>	1.5m	1.5m	Yes
- <i>Rear</i>			
<i>Ground floor</i>	Unchanged	3m	Yes
<i>First floor</i>	Unchanged	8m	Yes
Landscaped Area (% of lot size)	47%	min. 40%	Yes
Private Open Space			
- <i>minimum area</i>	>24m ²	24m ²	Yes
- <i>minimum dimension</i>	>3m ²	3m	Yes
Car Parking	2 stacked spaces	2 spaces	Yes

As detailed in the above table, with the exception of height and number of storeys, the proposed development generally complies with the numerical measures of the *HDCP*. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with relevant desired outcomes.

2.7.1 Scale – Building Height

As discussed in Section 2.1.3 above, the building additions exceed the maximum building height by 3.36m and would appear as a 3-storey building along the south-eastern, side elevation.

The existing dwelling house already exceeds the maximum 8.5m height development control of the HLEP with an existing height of 11.53m.

The proposed additions are designed to match the existing roof pitch, align with the existing ridge line of RL116.33 and sympathetically conform with the existing Dutch gable roofed dwelling house.

There would be no change to the existing RL, just a 0.33m increase in overall height as a result of the sites crossfall/topography.

In support of this contravention, the height and number of storeys would not result in any significant overshadowing, loss of privacy, loss of views or loss of solar access. The proposal responds to the topographical constraints of the site, is sympathetic to the streetscape and HCA and is consistent with surrounding development.

The proposal meets the prescriptive measures of Part 3.1.1 Scale of the HDCP and is considered acceptable.

2.7.2 Privacy

The desired outcome of Part 3.1.6 Privacy under the HDCP is to encourage *“development that is designed to provide reasonable privacy to adjacent properties”*.

This is supported by the prescriptive measures which state that *“decks and the like that need to be located more than 600mm above existing ground should not face a window of another habitable room, balcony or private open space of another dwelling located within 9 metres of the proposed deck unless appropriately screened”, “living and entertaining areas of a dwelling house should be located on the ground floor and orientated towards the private open space of the dwelling house and not side boundaries”* and *“a proposed window in a dwelling house should have a privacy screen if:*

- *It is a window to a habitable room, other than a bedroom, that has a floor level of more than 1 metre above existing ground level,*
- *The window is setback less than 3 metres from a side or rear boundary, and*
- *The window has a sill height of less than 1.5 metres”.*

The application proposes a ground floor level balcony and sitting room more than 1m above existing ground level. Additionally, 3 windows are proposed along the south-eastern elevation of the first-floor level which would allow overlooking of the adjoining property at No. 12 Sutherland Road, Cheltenham.

In support of these variations, it is noted as follows:

- The window servicing the ground floor level sitting room would have a sill height of more than 1.5m above the finished floor level, resulting in minimal privacy impacts to neighbouring properties.
- A privacy screen and well-established trees and vegetations along the south-eastern boundary would provide effective screening and privacy to the adjoining neighbour at No. 12 Sutherland Road, having negligible amenity impacts.

- The 3 first floor level windows servicing the proposed walk-in-robe and ensuite which are not considered living or entertaining areas would include translucent glass reducing any potential amenity impacts to adjoining neighbours.

The proposal meets the desired outcomes for Part 3.1.6 Privacy under the HDCP and is considered acceptable.

2.7.3 Sunlight Access

The desired outcomes of Part 3.1.5 Sunlight Access of the HDCP is to encourage “*dwelling houses designed to provide solar access to open space areas*” and “*development designed to provide reasonable sunlight to adjacent properties.*”

These outcomes are supported by prescriptive measures which require 50% of the required private open space areas (24m²) of any adjoining property to receive 3 hours of unobstructed sunlight access between 9am and 3pm on the winter solstice (21 June).

As demonstrated in the supporting shadow diagrams submitted with the development application, the proposed alterations and additions would result in minimal additional overshadowing to adjoining neighbours and remain compliant in terms of the relevant sunlight access prescriptive measures, resulting in negligible additional amenity impacts to adjoining neighbours.

The proposal meets the desired outcomes of Part 3.1.5 Sunlight Access of the HDCP and is considered acceptable.

2.7.4 Heritage

Part 9 of the HDCP sets out development controls for heritage items and heritage conservation areas.

The proposal has been discussed comprehensively in Section 2.1.4 of this report, would meet the desired outcomes of Part 9.3 Heritage Conservation Areas under the HDCP and is considered acceptable.

2.8 Section 7.12 Contributions Plans

Hornsby Shire Council Section 7.12 Contributions Plan 2019-2029 applies to the development as the estimated costs of works is greater than \$100,000. An appropriate condition of consent is recommended requiring the payment of a contribution in accordance with the Plan.

3. ENVIRONMENTAL IMPACTS

Section 4.15(1)(b) of the Act requires Council to consider “*the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality*”.

3.1 Natural Environment

3.1.1 Tree and Vegetation Preservation

Section 1B.6 Tree and Vegetation Preservation of HDCP is made in accordance with *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* (the Vegetation SEPP) and prescribes the trees and vegetation to which the Vegetation SEPP and/or Clause 5.10 of the HLEP applies and the applicable approval process.

The prescriptive measures of Part 1B.6.1 Tree Preservation of the HDCP state that:

- a) *“The prescribed trees that are protected by the Vegetation SEPP and/or Clause 5.10 of the HLEP and this section of the DCP include:*
- *All trees except exempt tree species in Hornsby Shire as listed in Table 1B.6 (a) or subject to a Biodiversity Offset Scheme,*
 - *All trees on land within a heritage conservation area described within the HLEP, and*
 - *All trees on land comprising heritage items listed within the HLEP.*
- b) *To damage or remove any tree protected under the HDGP is prohibited without the written consent of Council, except in accordance with the exemptions prescribed in this part (under the heading ‘Exempt Tree Work’).”*

Council's Tree Management Team reviewed the proposal and raised no objection to the proposal. There would be no trees removed or impacted as a result of the proposed development. Notwithstanding, to ensure trees within the site and road reserve are protected during construction, conditions are recommended in Schedule 1 of this report requiring tree protection fencing to be installed prior to the commencement of works, for the duration of works and in accordance with the approved Tree Location and Fencing Plan. A condition is also recommended in Schedule 1 of this report to relocate the sand, cement and soil stockpiles to a more suitable location, outside of the tree protection fencing locations.

The proposal meets the prescriptive measures of Part 1B.6.1 Tree Preservation of the HDGP and the *Vegetation SEPP* and is considered acceptable, subject to conditions.

3.1.2 Stormwater Management

The proposal would connect to the existing system which is gravity drained and directed to the street.

The proposal meets the prescriptive measures of Part 1C.1.2 Stormwater Management under the HDGP and is considered acceptable.

3.2 Built Environment

3.2.1 Built Form

The built form would remain substantially the same when viewed from within the streetscape with only a slight extension to the south-eastern side of the dwelling house continuing the original roof line and form. The proposal would be consistent with residential development within the locality.

3.3 Social Impacts

The alterations and additions to a dwelling house would make a positive social contribution by providing for the housing needs of the community within a low-density residential environment.

3.4 Economic Impacts

The alterations and additions to a dwelling house would not have any detrimental economic impact upon the locality.

4. SITE SUITABILITY

Section 4.15(1)(c) of the Act requires Council to consider *“the suitability of the site for the development”*.

The subject site has not been identified as bushfire prone or flood prone land. The site is considered to be capable of accommodating the proposed development. The scale of the proposed development is consistent with the capability of the site and is considered acceptable.

5. PUBLIC PARTICIPATION

Section 4.15(1)(d) of the Act requires Council to consider *“any submissions made in accordance with this Act”*.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 12 November 2021 and 7 December 2021 in accordance with the Hornsby Community Engagement Plan. During this period, Council received no submissions. The map below illustrates the location of those nearby landowners who were notified.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED		PROPERTY SUBJECT OF DEVELOPMENT	
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5.2 Public Agencies

The development application was not referred to any Public Agencies for comment.

6. THE PUBLIC INTEREST

Section 4.15(1)(e) of the Act requires Council to consider *“the public interest”*.

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The application is considered to have satisfactorily addressed Council's and relevant agencies' criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. Accordingly, it is considered that the approval of the proposed development would be in the public interest.

CONCLUSION

The application proposes ground and first floor alterations and additions to a dwelling house.

The development generally meets the desired outcomes of Council's planning controls and is satisfactory having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Having regard to the circumstances of the case, approval of the application is recommended.

The reasons for this decision are:

- The request under Clause 4.6 of *Hornsby Local Environmental Plan 2013* to contravene the 'Height of buildings' development standard is well founded. Strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify the contravention to the development standards.
- The proposed development generally complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, overshadowing, solar access, amenity or privacy.

Note: At the time of the completion of this planning report, no persons have made a Political Donations Disclosure Statement pursuant to Section 10.4 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.









RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is Madeleine Brown.

CASSANDRA WILLIAMS
Major Development Manager - Development
Assessments
Planning and Compliance Division

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.   Locality Plan
2.   Architectural Plans
3.   Clause 4.6
4.   Statement of Environmental Effects

File Reference: DA/1188/2021

Document Number: D08329657

ITEM 7

SCHEDULE 1**GENERAL CONDITIONS**

The conditions of consent within this notice of determination have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the relevant legislation, planning instruments and council policies affecting the land and does not disrupt the amenity of the neighbourhood or impact upon the environment.

Note: For the purpose of this consent, the term 'applicant' means any person who has the authority to act on or the benefit of the development consent.

Note: For the purpose of this consent, any reference to an Act, Regulation, Australian Standard or publication by a public authority shall be taken to mean the gazetted Act or Regulation, or adopted Australian Standard or publication as in force on the date that the application for a construction certificate is made.

1. Approved Plans and Supporting Documentation

The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by Council and/or other conditions of this consent:

Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
Job No. 2108, Dwg. No. DA02, Issue A	Proposed Site Plan	Tasman Storey Architects	23/10/21	
Job No. 2108, Dwg. No. DA03, Issue A	Proposed Roof Plan	Tasman Storey Architects	23/10/21	
Job No. 2108, Dwg. No. DA04, Issue A	Proposed Ground Floor Plan	Tasman Storey Architects	23/10/21	
Job No. 2108, Dwg. No. DA05, Issue A	Proposed First Floor Plan	Tasman Storey Architects	23/10/21	
Job No. 2108, Dwg. No. DA06, Issue A	Proposed South West Elevation	Tasman Storey Architects	23/10/21	
Job No. 2108, Dwg. No. DA07, Issue A	Proposed South East Elevation	Tasman Storey Architects	23/10/21	
Job No. 2108, Dwg. No. DA08, Issue A	Proposed North East and North West Elevation	Tasman Storey Architects	23/10/21	
Job No. 2108, Dwg. No. DA09, Issue A	Section A-A	Tasman Storey Architects	23/10/21	
Job No. 2108, Dwg. No. DA10, Issue A	Colour and Materials Schedule	Tasman Storey Architects	23/10/21	
Job No. 2108, Dwg. No. S02, Issue A	Erosion and Sediment Control Plan	Tasman Storey Architects	23/10/21	
Job No. 2108, Dwg. No. S03, Issue A	Tree Protection Plan	Tasman Storey Architects	23/10/21	

Plan No.	Plan Title	Drawn by	Dated	Council Reference
Job No. 2108, Dwg. No. S04, Issue A	Concept Stormwater Plan	Tasman Storey Architects	23/10/21	
Not indicated	Tree Location and Fencing Plan	Hornsby Council's Tree Management Group	23/11/21	

Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
BASIX Certificate No. A437058	Catherine Munayer Architecture	26/10/21	D08291273
Waste Management Plan	Tasman Storey Architects	10/21	D08291271

2. Amendment of Plans

- a) To comply with Council's requirements in tree preservation, the approved Sediment and Erosion Control Plan is to be amended to relocate the sand, cement and top soil stock piles to the location marked in yellow on the approved Tree Location and Fencing Plan.
- b) This amended plan must be submitted with the application for the Construction Certificate.

3. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any construction works under this consent.
- b) The Construction Certificate plans must be consistent with the Development Consent plans.

4. Appointment of a Project Arborist

- a) To ensure the trees that must be retained are protected, a project arborist with AQF Level 5 qualifications must be appointed to assist in ensuring compliance with the conditions of consent and provide monitoring reports as specified by the conditions of consent.
- b) Details of the appointed project arborist must be submitted to the PCA with the application for the construction certificate.

5. Removal of Trees

No consent is granted for the removal of any trees on the site as these trees contribute to the established landscape amenity of the area/streetscape.

Note: The pruning or removal of any other trees from the site requires separate approval by Council in accordance with Part 1B.6 Tree and Vegetation Preservation of the Hornsby Development Control Plan, 2013 (HDCP).

6. Tree Pruning

- a) This development consent only permits the pruning of trees numbered 16 and 17 as identified in the Tree Location and Fencing Plan prepared by Hornsby Council's Tree Management Group, dated 23/11/2021.

- b) Works can be undertaken in the form of canopy modification as follows:

Tree number	Work prescribed
16	Prune to accommodate building and scaffolding
17	Prune to accommodate building and scaffolding

- i) All pruning work must be undertaken by an arborist with minimum AQF3 qualifications.

Note: The pruning of any other trees from the site requires separate approval by Council in accordance with Part 1B.6 Tree and Vegetation Preservation of the Hornsby Development Control Plan 2013 (HDCP).

7. Section 7.12 Development Contributions

- a) In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the *Hornsby Shire Council Section 7.12 Development Contributions Plan 2019-2029*, **\$3,580** must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of **\$358,000**.
- b) The value of this contribution is current as of 24 January 2022. If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.12 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

$$\text{\$C}_{PY} = \frac{\text{\$C}_{DC} \times \text{CPI}_{PY}}{\text{CPI}_{DC}}$$

Where:

\\$C_{PY} is the amount of the contribution at the date of Payment

\\$C_{DC} is the amount of the contribution as set out in this Development Consent

CPI_{PY} is the latest release of the Consumer Price Index (Sydney – All Groups) at the date of Payment as published by the ABS.

CPI_{DC} is the Consumer Price Index (Sydney – All Groups) for the financial quarter at the date of this Development Consent.

- c) The monetary contributions shall be paid to Council:
- Prior to the issue of the Subdivision Certificate where the development is for subdivision.
 - Prior to the issue of the first Construction Certificate where the development is for building work.

- (iii) Prior to issue of the Subdivision Certificate or first Construction Certificate, whichever occurs first, where the development involves both subdivision and building work.
- (iv) Prior to the works commencing where the development does not require a Construction Certificate or Subdivision Certificate.

Note: It is the professional responsibility of the Principal Certifying Authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.

Note: In accordance with Ministerial Directions, the payment of contribution fees for development with a cost of works of over \$10 million can be deferred to prior to Occupation Certificate.

Note: The Hornsby Shire Council Section 7.12 Development Contributions Plan may be viewed at www.hornsby.nsw.gov.au or a copy may be inspected at Council's Administration Centre during normal business hours.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

8. Building Code of Australia

- a) Detailed plans, specifications and supporting information is required to be submitted to the certifying authority detailing how the proposed building work achieves compliance with the *National Construction Code - Building Code of Australia*.
- b) All building work must be carried out in accordance with the requirements of the *National Construction Code - Building Code of Australia*.

9. Contract of Insurance (Residential Building Work)

Where residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, this contract of insurance must be in force before any building work authorised to be carried out by the consent commences.

10. Notification of Home Building Act 1989 Requirements

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being Council) has given Council written notice of the following information:

- a) In the case of work for which a principal contractor is required to be appointed:
 - i) The name and licence number of the principal contractor.
 - ii) The name of the insurer by which the work is insured under Part 6 of that Act.
- b) In the case of work to be done by an owner-builder:
 - i) The name of the owner-builder.
 - ii) If the owner-builder is required to hold an owner-builder's permit under that Act, the number of the owner-builder's permit.

Note: If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being Council) has given Council written notification of the updated information.

11. Sydney Water

This application must be submitted to *Sydney Water* for approval to determine whether the development would affect any *Sydney Water* infrastructure, and whether further requirements are to be met.

Note: Building plan approvals can be obtained online via Sydney Water Tap in™ through www.sydneywater.com.au under the Building and Development tab.

12. Stormwater Drainage

The stormwater drainage system for the development must be designed for an average recurrence interval (ARI) of 20 years and be gravity drained and connected to the existing drainage system, direct to the street in accordance with the approved Stormwater Concept Plan.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

13. Erection of Construction Sign

- a) A sign must be erected in a prominent position on any site on which any approved work is being carried out:
 - i) Showing the name, address, and telephone number of the principal certifying authority for the work.
 - ii) Showing the name of the principal contractor (if any) for any demolition or building work and a telephone number on which that person may be contacted outside working hours; and
 - iii) Stating that unauthorised entry to the work site is prohibited.
- b) The sign is to be maintained while the approved work is being carried out and must be removed when the work has been completed.

14. Protection of Adjoining Areas

A temporary hoarding, fence or awning must be erected between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works if the works:

- a) Could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic.
- b) Could cause damage to adjoining lands by falling objects.
- c) Involve the enclosure of a public place or part of a public place.
- d) Have been identified as requiring a temporary hoarding, fence or awning within the Council approved Construction Management Plan (CMP).

Note: Notwithstanding the above, Council's separate written approval is required prior to the erection of any structure or other obstruction on public land.

15. Toilet Facilities

- a) To provide a safe and hygienic workplace, toilet facilities must be available or be installed at the works site before works begin and must be maintained until the works are completed at a ratio of one toilet for every 20 persons employed at the site.
- b) Each toilet must:
 - i) Be a standard flushing toilet connected to a public sewer.
 - ii) Be a temporary chemical closet approved under the *Local Government Act 1993*.

16. Erosion and Sediment Control

- a) To protect the water quality of the downstream environment, erosion and sediment control measures must be provided and maintained throughout the construction period in accordance with the manual '*Soils and Construction 2004 (Bluebook)*', the approved plans, Council specifications and to the satisfaction of the principal certifying authority.
- b) The erosion and sediment control devices must remain in place until the site has been stabilised and revegetated.

Note: On the spot penalties may be issued for any non-compliance with this requirement without any further notification or warning.

17. Installation of Tree Protection Measures

- a) Trees to be retained and numbered 1, 2, 3, 7, 8, 9, 10, 11, 13, T14, 15, 16 and 17 must have tree protection measures for the ground, trunk and canopy installed by the project arborist for the duration of demolition and construction works, in accordance with the Tree Location and Fencing Plan prepared by Council's Tree Management Group dated 23/11/2021.
- b) Tree protection fencing for the trees to be retained numbered 1, 2, 3, 7, 8, 9, 10, 11, 13, T14, 15, 16 and 17 must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with *Australian Standard AS4687-2007 Temporary fencing and hoardings*.
- c) The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates and liquids from entering the tree protection zone.
- d) The circumference of the trunks of trees number 4, 5 and 6 must be wrapped in hessian material to provide cushioning for the installation of timber planks.
- e) Timber planks (50 x100mm) must be spaced at 100mm intervals and must be attached using adjustable ratchet straps.

REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION**18. Construction Work Hours**

- a) All works on site, including demolition and earth works, must only occur between 7am and 5pm Monday to Saturday.

- b) No work is to be undertaken on Sundays or public holidays.

19. Demolition

To protect the surrounding environment, all demolition work must be carried out in accordance with *Australian Standard AS2601-2001 Demolition of structures* and the following requirements:

- a) Demolition material must be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan.
- b) Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by *SafeWork NSW* in accordance with the *Work Health and Safety Regulation 2017* and be appropriately transported and disposed of in accordance with the *Protection of the Environment Operations (Waste) Regulation 2014*; and
- c) On construction sites where any building contains asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' and measuring not less than 400mm x 300mm must be displayed in a prominent position visible from the street.

20. Environmental Management

To prevent sediment run-off, excessive dust, noise or odour emanating from the site during the construction, the site must be managed in accordance with the publication '*Managing Urban Stormwater – Landcom (March 2004)*' and the *Protection of the Environment Operations Act 1997*.

21. Council Property

To ensure that the public reserve is kept in a clean, tidy and safe condition during construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath.

22. Disturbance of Existing Site

During construction works, the existing ground levels of open space areas and natural landscape features, including natural rock-outcrops, vegetation, soil and watercourses must not be altered unless otherwise nominated on the approved plans.

23. Prohibited Actions Within the Fenced Tree Protection Zone

The following activities are prohibited within the approved fenced tree protection zones unless otherwise approved by Council:

- a) Soil cutting or filling, including excavation and trenching
- b) Soil cultivation, disturbance or compaction
- c) Stockpiling storage or mixing of materials
- d) The parking, storing, washing and repairing of tools, equipment and machinery
- e) The disposal of liquids and refuelling
- f) The disposal of building materials

- g) The siting of offices or sheds
- h) Any action leading to the impact on tree health or structure

24. Maintaining Tree Protection Measures

Tree Protection Measures must be maintained by the project arborist in accordance with Condition No. 17 of this consent for the duration of works.

25. Approved Works within Tree Protection Zone Incursions

Where scaffolding is required within a Tree Protection Zone, ground protection must be installed beneath the scaffolding in the following order:

- a) Installation of a 100mm deep layer of woodchip.
- b) Installation of geotextile fabric ground covering.
- c) Installation of scaffold boarding above the woodchip and geotextile fabric.

26. Building Materials and Site Waste

The stockpiling of building materials, the parking of vehicles or plant, the disposal of cement slurry, wastewater or other contaminants must be located outside the tree protection zones as prescribed in the conditions of this consent of any tree to be retained.

27. Waste Management

All work must be carried out in accordance with the approved waste management plan.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

28. Fulfilment of BASIX Commitments

The applicant must demonstrate the fulfilment of BASIX commitments pertaining to the development.

29. Construction of engineering works.

All engineering works identified in this consent are to be completed and a Compliance Certificate issued prior to the release of the Occupation Certificate.

30. Damage to Council Assets

- a) To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions).
- b) Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

31. Final Certification

The AQF 5 Project arborist must submit to the Principal Certifying Authority a certificate that includes the following:

- a) All tree protection requirements complied with the as approved tree protection plan for the duration of demolition and/or construction works.
- b) All completed works relating to tree protection and maintenance have been carried out in compliance with the conditions of consent and approved plans.
- c) Dates, times and reasons for all site attendance.
- d) Details of tree protection zone maintenance for the duration of works.

Note: Copies of monitoring documentation may be requested throughout DA process.

- END OF CONDITIONS -

ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2000*, other relevant legislation and Council's policies and specifications. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

Environmental Planning and Assessment Act 1979 Requirements

The *Environmental Planning and Assessment Act 1979* requires:

- The issue of a construction certificate prior to the commencement of any works. Enquiries can be made to Council's Customer Services Branch on 9847 6760.
- A principal certifying authority to be nominated and Council notified of that appointment prior to the commencement of any works.
- Council to be given at least two days written notice prior to the commencement of any works.
- Mandatory inspections of nominated stages of the construction inspected.
- An occupation certificate to be issued before occupying any building or commencing the use of the land.

Long Service Levy

In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, a 'Long Service Levy' must be paid to the Long Service Payments Corporation or Hornsby Council.

Note: The rate of the Long Service Levy is 0.35% of the total cost of the work.

Note: Hornsby Council requires the payment of the Long Service Levy prior to the issue of a construction certificate.

Tree and Vegetation Preservation

Hornsby Development Control Plan 2013 Tree and Vegetation Preservation provisions have been developed under Council's authorities contained in *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* and the *Environmental Planning and Assessment Act 1979*.

In accordance with these provisions a person must not cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation, lop or otherwise remove a substantial part of the trees or vegetation to which any such development control plan applies without the authority conferred by a development consent or a permit granted by Council.

Fines may be imposed for non-compliance with the *Hornsby Development Control Plan 2013*.

Note: A tree is defined as a long lived, woody perennial plant with one or relatively few main stems with the potential to grow to a height greater than three metres (3m). (HDCP 1B.6.1.c).

Covenants

The land upon which the subject building is to be constructed may be affected by restrictive covenants. Council issues this approval without enquiry as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this consent. Applicants must rely on their own enquiries as to whether or not the building breaches any such covenant.

Dial Before You Dig

Prior to commencing any works, the applicant is encouraged to contact *Dial Before You Dig* on 1100 or www.dialbeforeyoudig.com.au for free information on potential underground pipes and cables within the vicinity of the development site.

Telecommunications Act 1997 (Commonwealth)

If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact Telstra's Network Integrity Team on Phone Number 1800810443.

Asbestos Warning

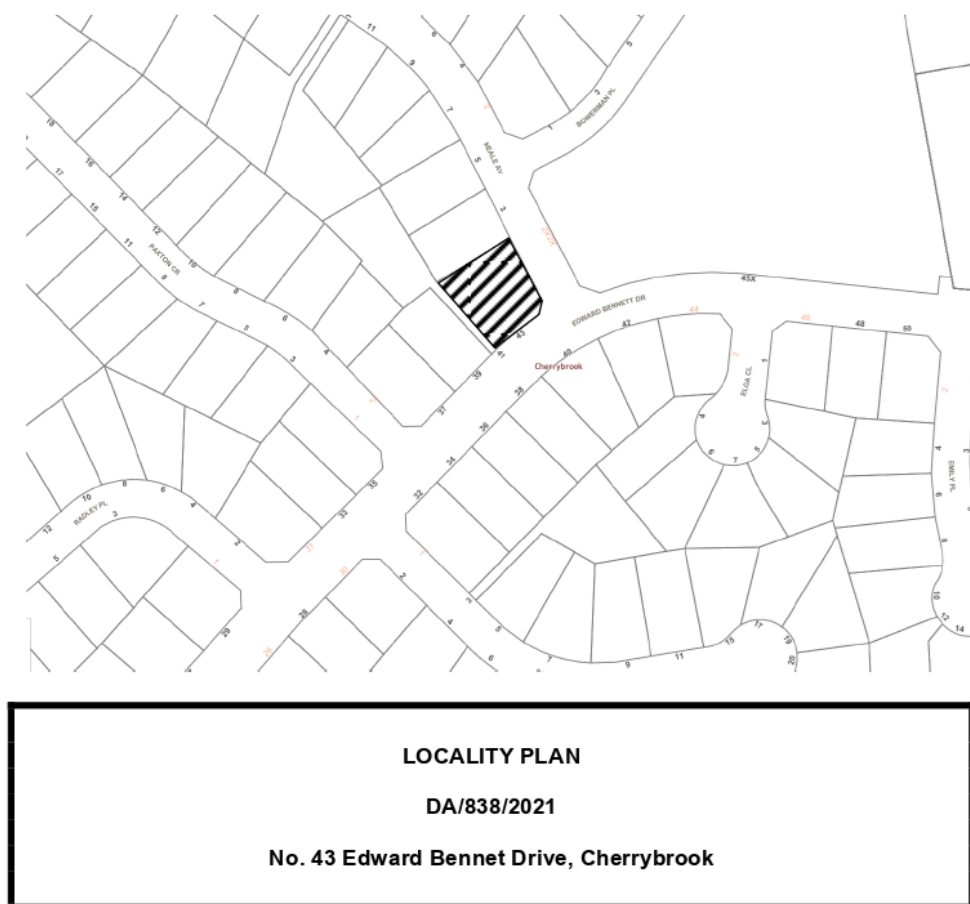
Should asbestos or asbestos products be encountered during demolition or construction works, you are advised to seek advice and information prior to disturbing this material. It is recommended that a contractor holding an asbestos-handling permit (issued by *SafeWork NSW*) be engaged to manage the proper handling of this material. Further information regarding the safe handling and removal of asbestos can be found at:

www.environment.nsw.gov.au

www.adfa.org.au

www.safework.nsw.gov.au

Alternatively, telephone the *SafeWork NSW* on 13 10 50



ATTACHMENT 1 - ITEM 7

ALTERATIONS AND ADDITIONS TO "MERRIVALE" NO.14 SUTHERLAND ROAD, CHELTENHAM

DEVELOPMENT DATA

HORNSBY COUNCIL

SITE AREA: 1202.5m²

ZONE: R2

HEIGHT

Maximum permissible heights 8.5m
Proposed maximum height to parapet is 11.53m
(note proposed roof line to match existing)
Existing maximum height 11.53m

SITE COVERAGE

Permissible Max. Site Coverage for Lot Size
900m² to 1499m² = 40%
i.e. 481m²
Existing Site Coverage
Dwelling House + Outbuildings =
124.5m² + 76.9m² = 201.4m²
Proposed Site Coverage
139.3m² + 76.9m² = 216.2m²

FLOOR AREA

Permissible maximum floor area
For a site of 900m² + larger
= 430m² for dwelling house and
= 100m² for all outbuildings
Proposed floor area:
Garage = 21.25m²
Ground Floor = 121.46m²
Attic = 89.93m²
Total = 232.64m²
Outbuildings = 65.54m²

SIDE SETBACK

Permissible maximum side setbacks
1.5m to second storey
proposed - 1.5m (to match existing)

LANDSCAPING

Permissible Min. Landscaping for Lot Size
900m² to 1499m² = 40%
i.e. 481m²
Proposed landscape
570.97m² i.e. 47%

ALTERATIONS AND ADDITIONS - DRAWING SCHEDULE

Sheet Number	Sheet Name
DA02	PROPOSED SITE PLAN
DA03	PROPOSED ROOF PLAN
DA04	PROPOSED FIRST FLOOR PLAN
DA05	PROPOSED SOUTH WEST ELEVATION
DA06	PROPOSED SOUTH EAST ELEVATION
DA07	PROPOSED NORTH EAST & NORTH WEST ELEVATIONS
DA08	SECTION A-A
DA09	COLOUR AND MATERIALS SCHEDULE
DA10	EXISTING SITE PLAN
DA-EX01	EXISTING GROUND FLOOR PLAN
DA-EX02	EXISTING FIRST FLOOR PLAN
DA-EX03	SITE ANALYSIS
S01	EROSION & SEDIMENT CONTROL PLAN
S02	TREE PROTECTION PLAN
S03	CONCEPT SEWER AND STORMWATER PLAN
S04	JUNE 21st 9am SHADOW DIAGRAMS
S05	JUNE 21st NOON SHADOW DIAGRAMS
S06	JUNE 21st 3pm SHADOW DIAGRAMS
S07	

BASIC COMMITMENTS

Note: The following are basic commitments for Alterations and Additions to 14 Sutherland Road, Cheltenham
Certificate No. 19804UD

Lighting

The applicant must ensure a minimum 40% of new or altered light fixtures are fitted with fluorescent compact fluorescent or light-emitting-diode (LED) lamps.

Fixtures & Fittings

The applicant must install the following fixtures

Showerheads 3 star (≤ 9 L/min)
Toilets 3 star
Kitchen tap 3 star
Bath taps 3 star

Construction

Insulation Requirements

The applicant must construct the new or altered construction in accordance with the specification listed below:

Suspended floor with enclosed subfloor framed (R0.7) : R0.60 (down) or R1.30 (including construction)
Flat ceiling, pitched roof:
ceiling: R1.40 (up, roof: full backed blanket (75mm) medium (total absorbance 0.4750.70)

Glazing Requirements:

All new glazed windows and doors to have frame and glass type as follows:
- Single glazed windows: minimum U-value 4.48, (U-value 4.48, SHGC 0.48)

ISSUE	DATE	REVISION
A	23.10.21	DA ISSUE
P7	06.09.21	PRE DA PLANS
P6	03.09.21	PRELIMINARY ISSUE
P5	30.08.21	PRELIMINARY ISSUE
P4	27.08.21	PRELIMINARY ISSUE
P3	25.08.21	PRELIMINARY ISSUE
P2	20.08.21	PRELIMINARY ISSUE

TASMAN STOREY ARCHITECTS
2/1 Cammeray Rd, Cammeray NSW 2062

Principal:
Tasman Storey FRAHA
Registered Architect
ARB/NSW 3144

CLIENT:

Lucinda Hope de Vries

PROJECT

**ALTERATIONS AND ADDITIONS
TO MERRIVALE, EXISTING 2 STOREY DWELLING**

ADDRESS

**14 SUTHERLAND ROAD,
CHELTENHAM NSW 2119**

TITLE:

DRAWING SCHEDULE

GENERAL NOTES
The builder must check all dimensions and levels on site prior to construction.
Notwithstanding to the above, the drawings shall not be used for construction purposes until issued for construction.
Do not scale drawings. All boundaries and contours subject to survey.

SCALE

@ A3

DRAWING NO.

DA01

JOB NO.

2108

DATE

23.10.21

DRAWN BY

Catherine M

CHECKED BY

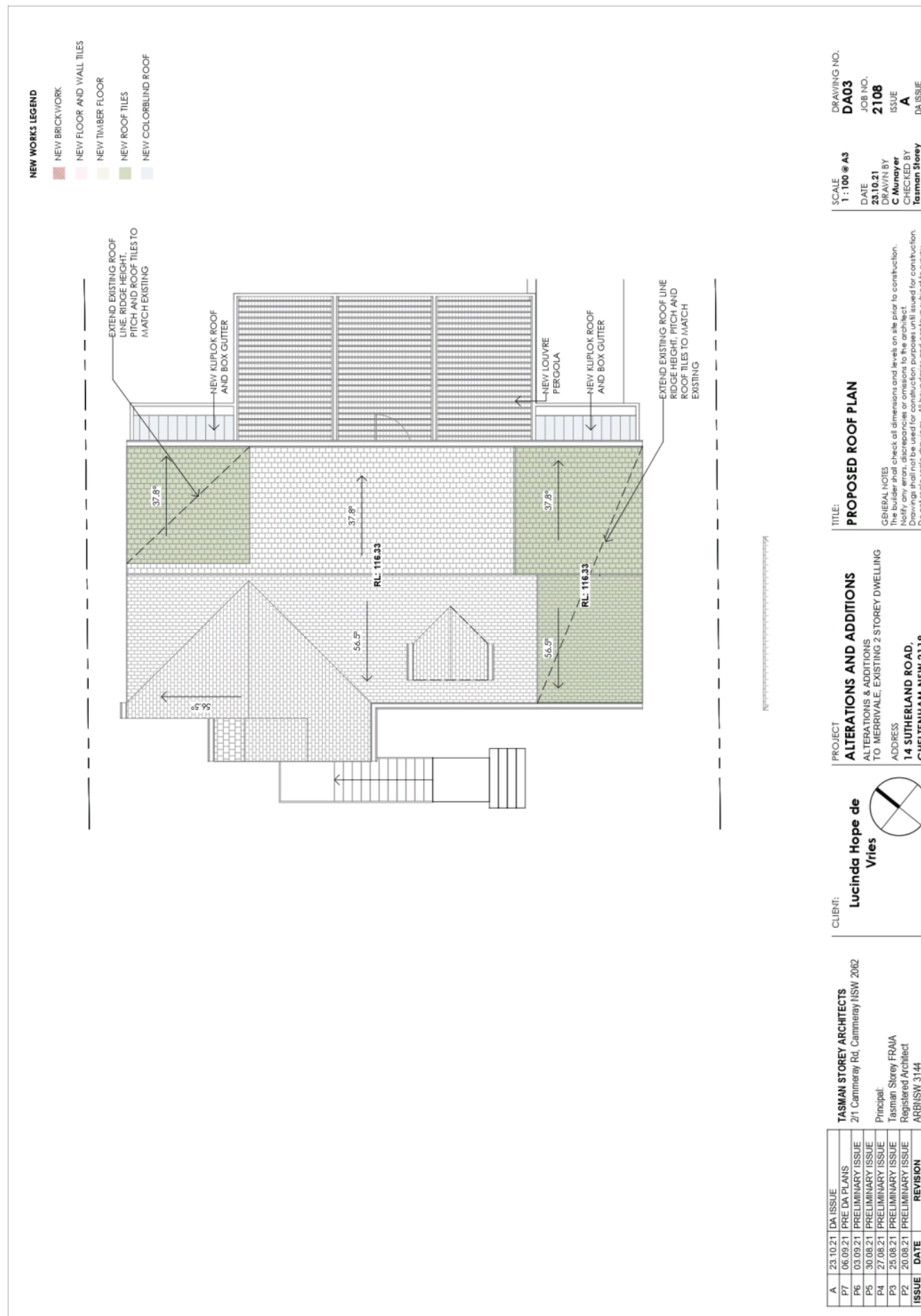
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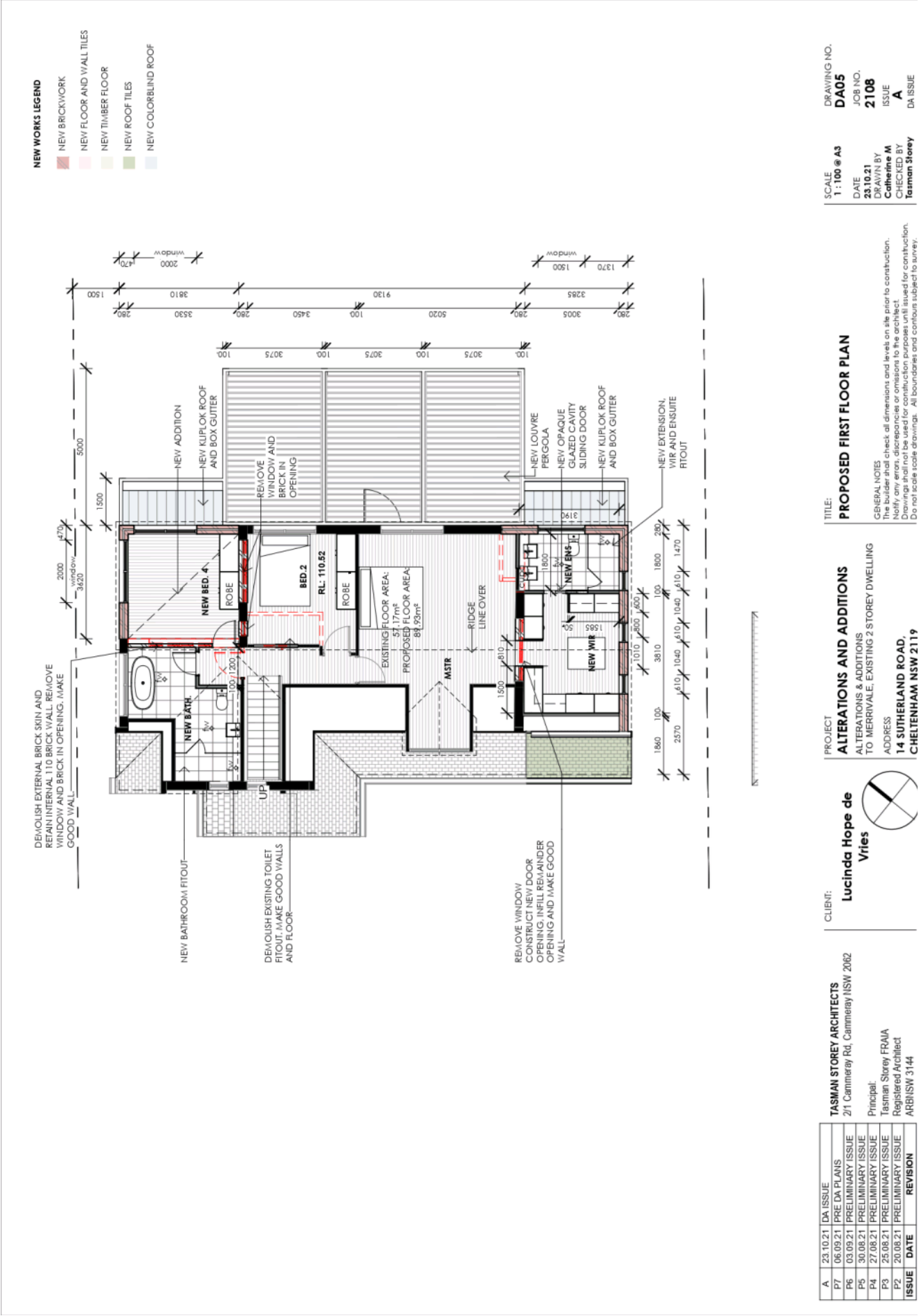
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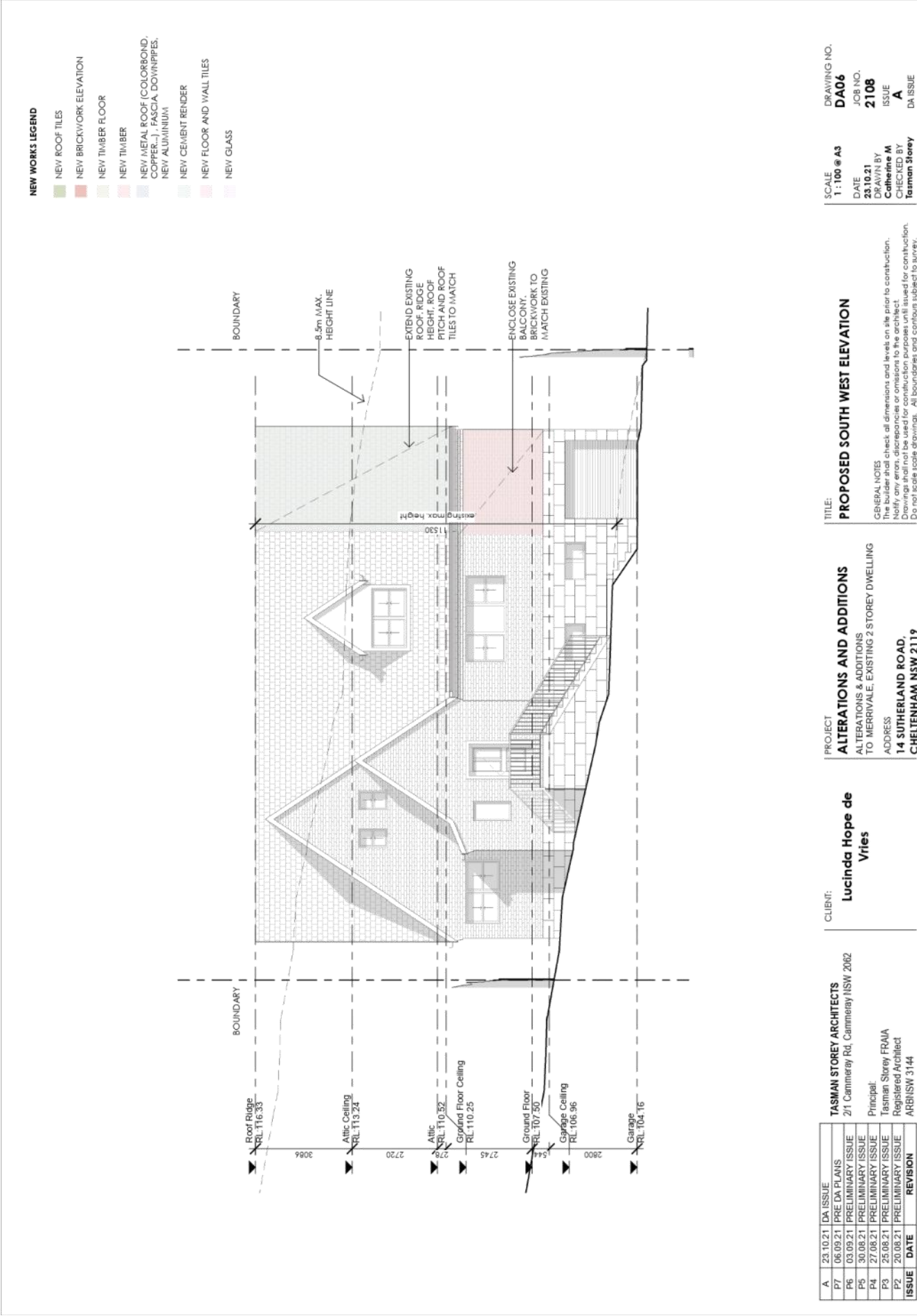
ATTACHMENT 2 - ITEM 7

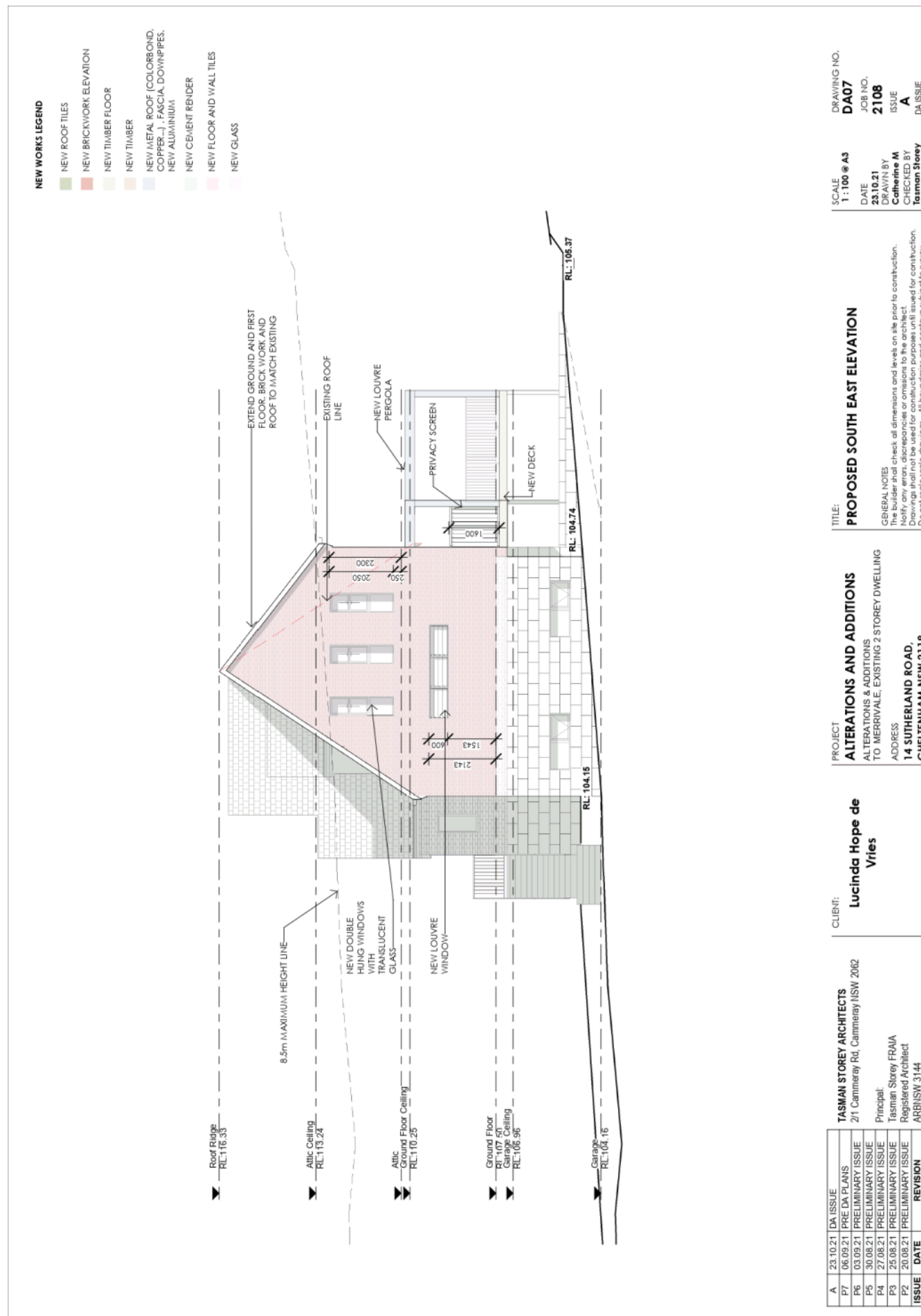


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NEW WORKS LEGEND

- NEW ROOF TILES
- NEW BRICKWORK ELEVATION
- NEW TIMBER FLOOR
- NEW TIMBER
- NEW METAL ROOF (COLORBOND, COPPER-); FASCIA, DOWNPIPES, NEW ALUMINIUM
- NEW CEMENT RENDER
- NEW FLOOR AND WALL TILES
- NEW GLASS

1 NORTH EAST ELEVATION
1 : 100

2 NORTH WEST ELEVATION
1 : 100

PROJECT: ALTERATIONS AND ADDITIONS TO MERRIVALE, EXISTING 2 STOREY DWELLING

CLIENT: Lucinda Hope de Vries

ARCHITECT: TASMAN STOREY ARCHITECTS
2/1 Cammerlay Rd, Cammerlay NSW 2062

Principal: Tasman Storey FRAIA
Registered Architect
APR/NSW 3144

ISSUE **DATE** **REVISION**

A	23.10.21	DA ISSUE
P7	06.09.21	PRE DA PLANS
P6	03.09.21	PRELIMINARY ISSUE
P5	30.08.21	PRELIMINARY ISSUE
P4	27.08.21	PRELIMINARY ISSUE
P3	25.08.21	PRELIMINARY ISSUE
P2	20.08.21	PRELIMINARY ISSUE
P1	20.08.21	PRELIMINARY ISSUE

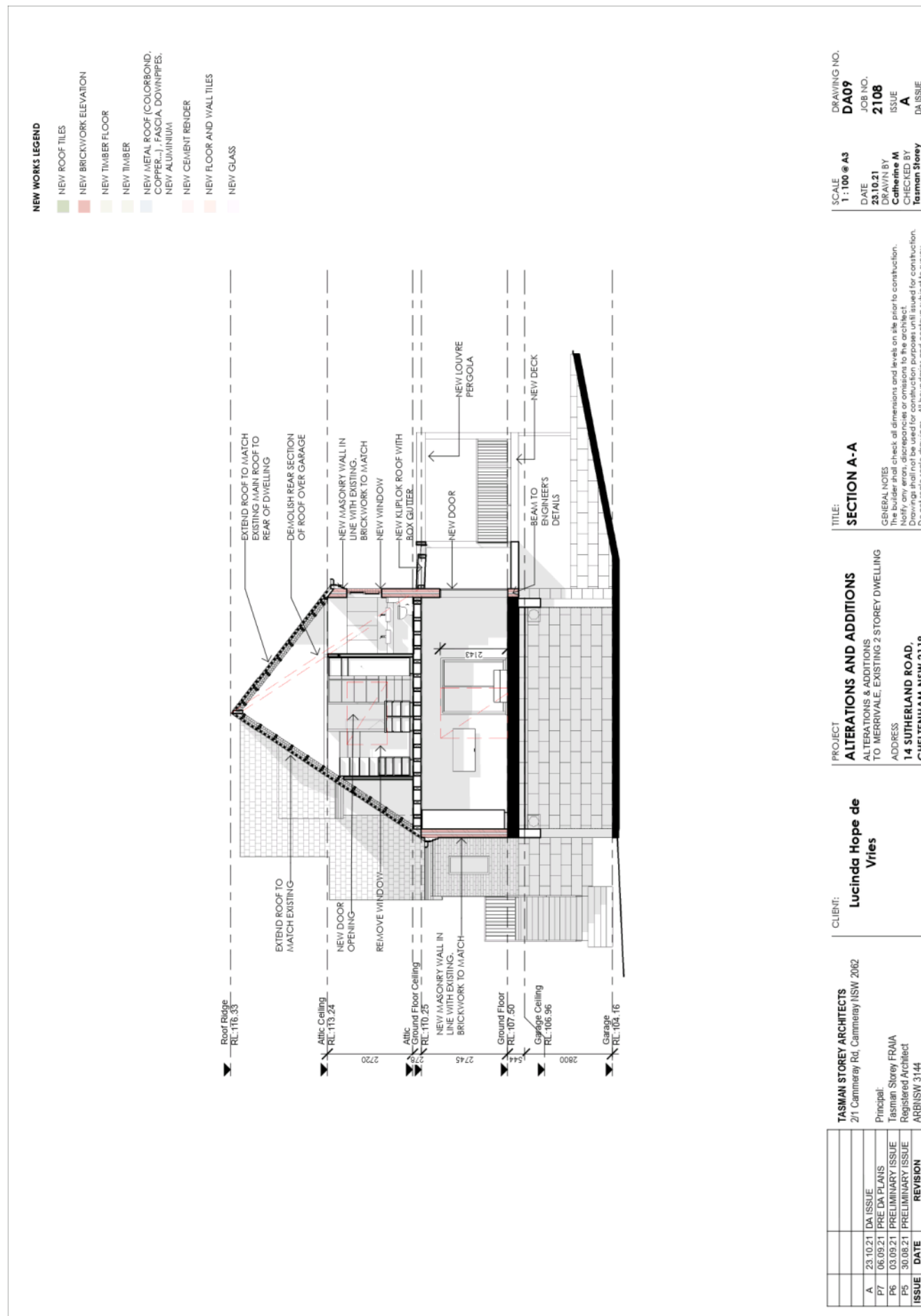
TITLE: PROPOSED NORTH EAST & NORTH WEST ELEVATIONS

GENERAL NOTES
The builder shall check all dimensions and levels on site prior to construction. Notify any errors, discrepancies or omissions to the architect. Drawings shall not be used for construction purposes until issued for construction.

DRAWING NO. DA08
JOB NO. 2108
ISSUE A
CHECKED BY Catherine M
DRAWN BY Tasman Storey

SCALE 1 : 100 @ A3
DATE 23.10.21
DATE 23.10.21

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ATTACHMENT 2 - ITEM 7

A	23.10.21	DA ISSUE			
ISSUE	DATE	REVISION			

TASMAN STOREY ARCHITECTS

2/1 Cammeray Rd, Cammeray NSW 2062

Principal:

Tasman Storey FRAHA

Registered Architect

ARB/NSW 3144

CLIENT:

Lucinda Hope de Vries

PROJECT

ALTERATIONS AND ADDITIONS TO MERRIVALE, EXISTING 2 STOREY DWELLING

ADDRESS

14 SUTHERLAND ROAD, CHELTENHAM NSW 2119

TITLE:

COLOUR AND MATERIALS SCHEDULE

SCALE

@ A3

DRAWING NO.

DA10

JOB NO.

2108

ISSUE

A

CHECKED BY

Tasman Storey

DATE


23.10.21

DRAWN BY


Catherine M

GENERAL NOTES


The builder shall check all dimensions and levels on site prior to construction. All dimensions shall be taken from the top of the slab to the top of the roofline. Drawings shall not be used for construction purposes until issued for construction. Do not scale drawings. All boundaries and contours subject to survey.




Terracotta roof tiles.
Salvage and reuse where possible



Colorbond, gutter, fascia and downpipes. Jasper colour to match existing



White aluminium window and door frames.



Face brick to match existing.
Salvage and reuse where possible

ATTACHMENT 2 - ITEM 7

Local Planning Panel meeting 23 February 2022

Business Paper Page 38

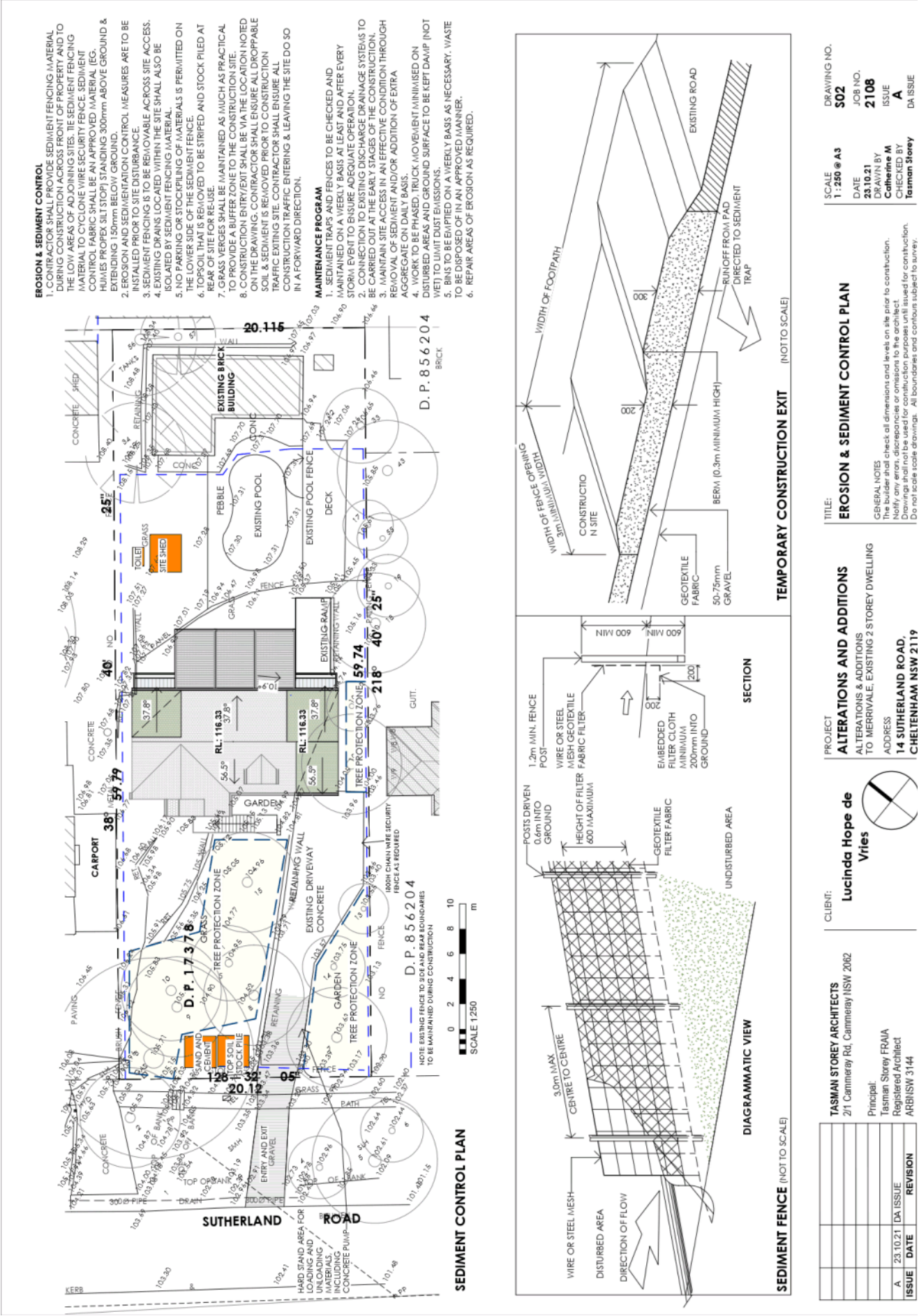




Figure 2 - Tree Protection Zone Signage

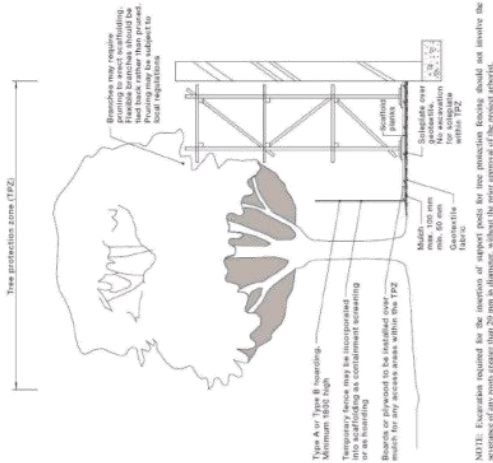


Figure 4: Indicative Scaffolding within a TPZ

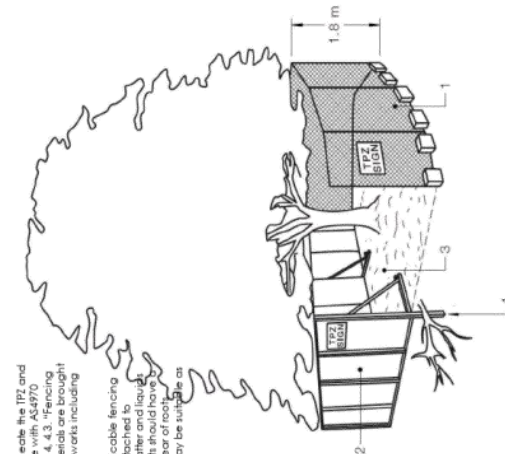


Figure 1 Protective Fencing

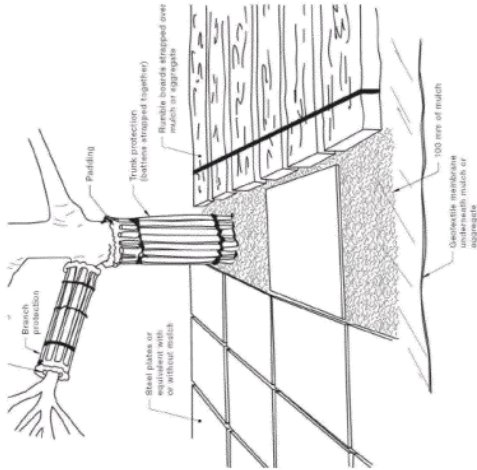


Figure 3: Examples of Trunk, Branch & Ground Protection

PROJECT
ALTERATIONS AND ADDITIONS TO MERRIVALE, EXISTING 2 STOREY DWELLING
ADDRESS
14 SUTHERLAND ROAD, CHELTENHAM NSW 2119

TITLE:
TREE PROTECTION PLAN

SCALE
@ A3

DRAWING NO.
S03

DATE
23.10.21

JOB NO.
2108

DRAWN BY
Catherine M

CHECKED BY
Iainman Storey

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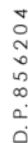
CLIENT:
Lucinda Hope de Vries

Principal:
Tasman Storey FRAIA
Registered Architect
AR/NSW 3144

211 Cammeray Rd, Cammeray NSW 2062

ISSUE	DATE	DA ISSUE	REVISION
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TASMAN STOREY ARCHITECTS
2/1 Cammeray Rd, Cammeray NSW 2062

Principal:
Tasman Storey FRAIA
Registered Architect
ARBNSW 3144

CLIENT: **Luc**

...a Hope de



PROJECT
ALTERATIONS AND ADDITIONS
ALTERATIONS & ADDITIONS
TO MERRIVALE, EXISTING 2 STOREY DWELLING
ADDRESS
14 SUTHERLAND ROAD,
CHILTERNHAM NSW 2119

TITLE:
CONCEPT SEWER AND STORMWATER PLAN

GENERAL NOTES
The builder shall check all dimensions and levels on site prior to construction. Notify any errors, discrepancies or omissions to the architect.
Drawings shall not be used for construction purposes until issued for construction. Do not scale scale drawings. All boundaries and contours subject to survey.

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S04

JOB NO.
2108

ISSUE
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23.10.21

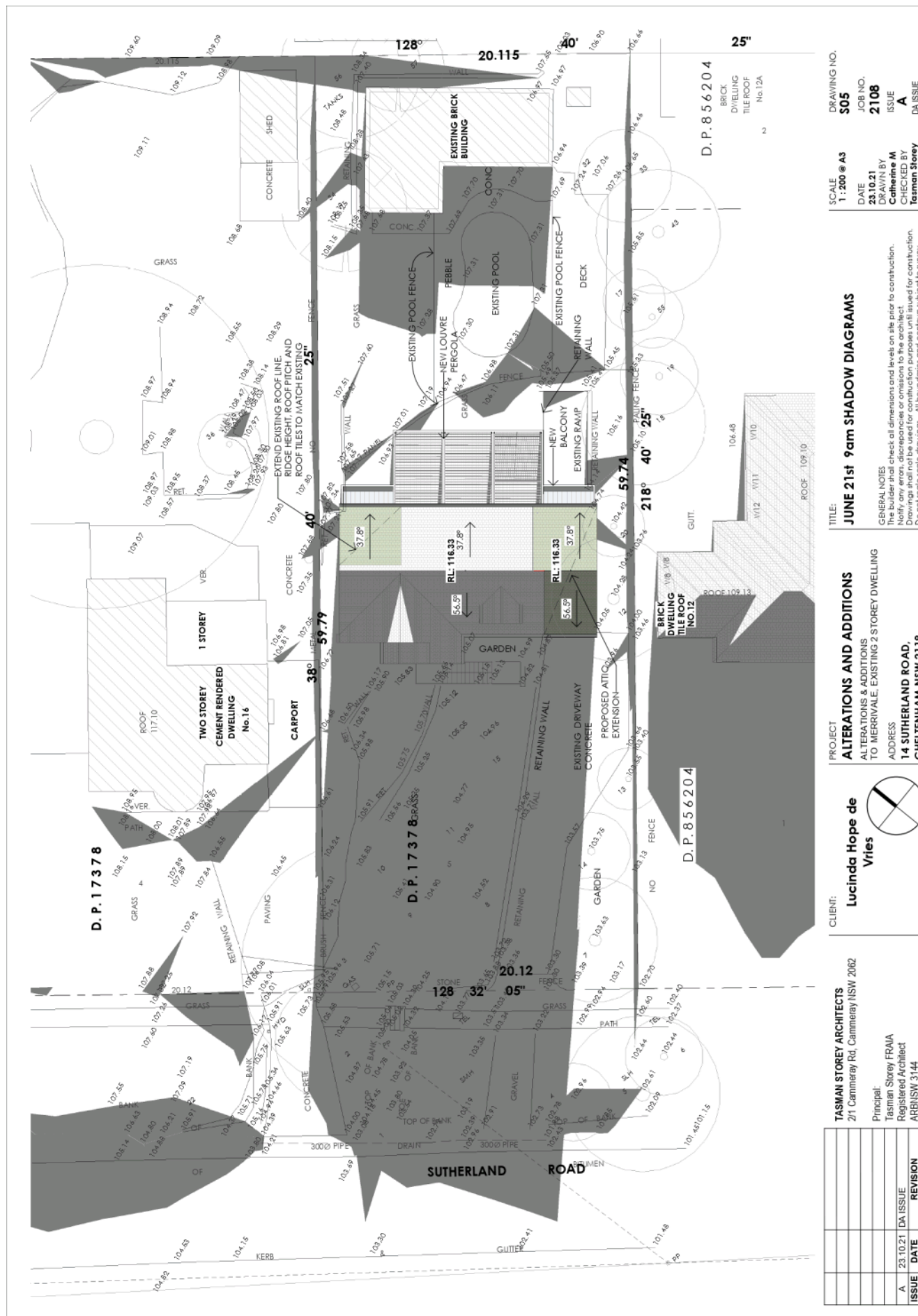
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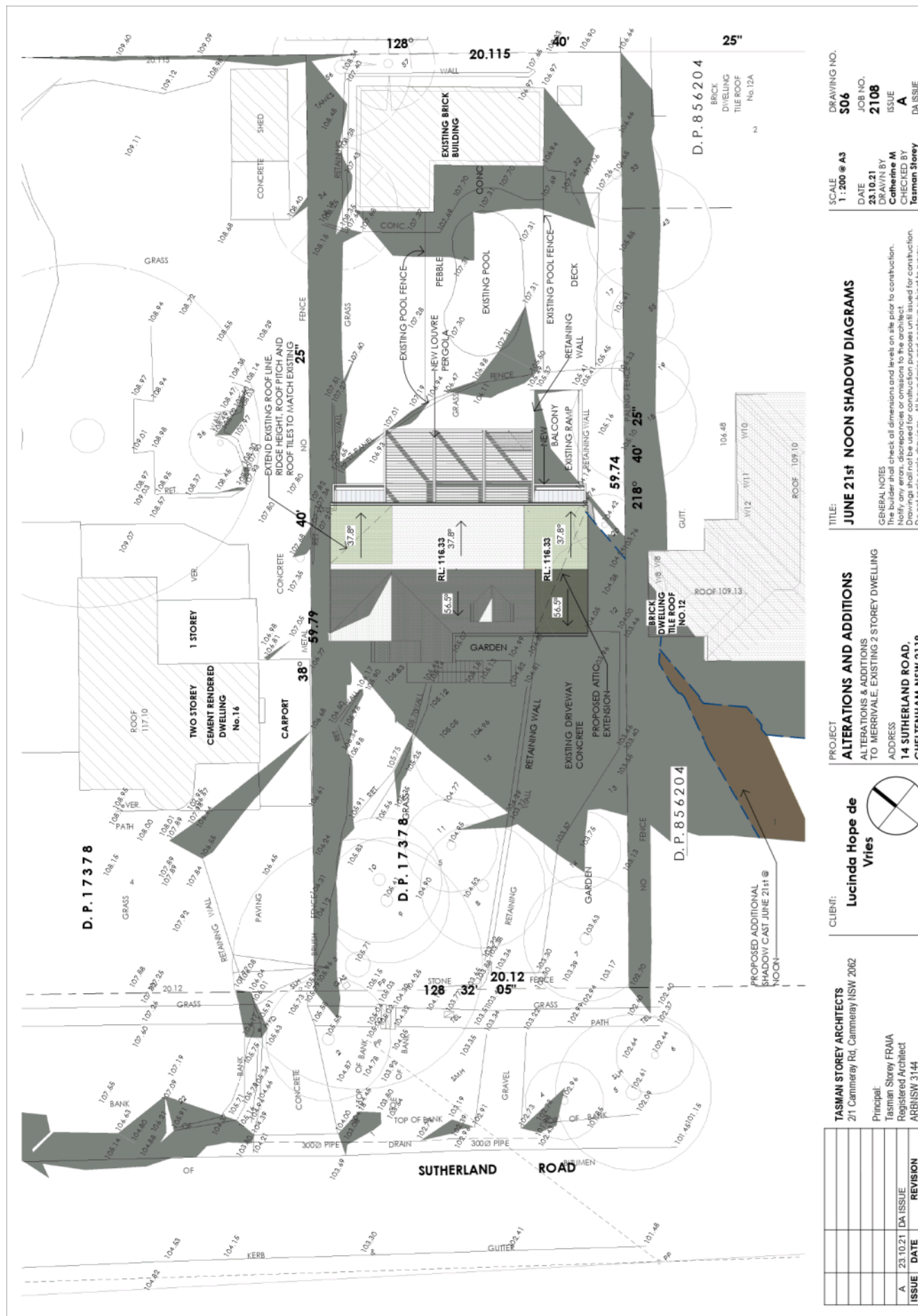
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Tasman Storey

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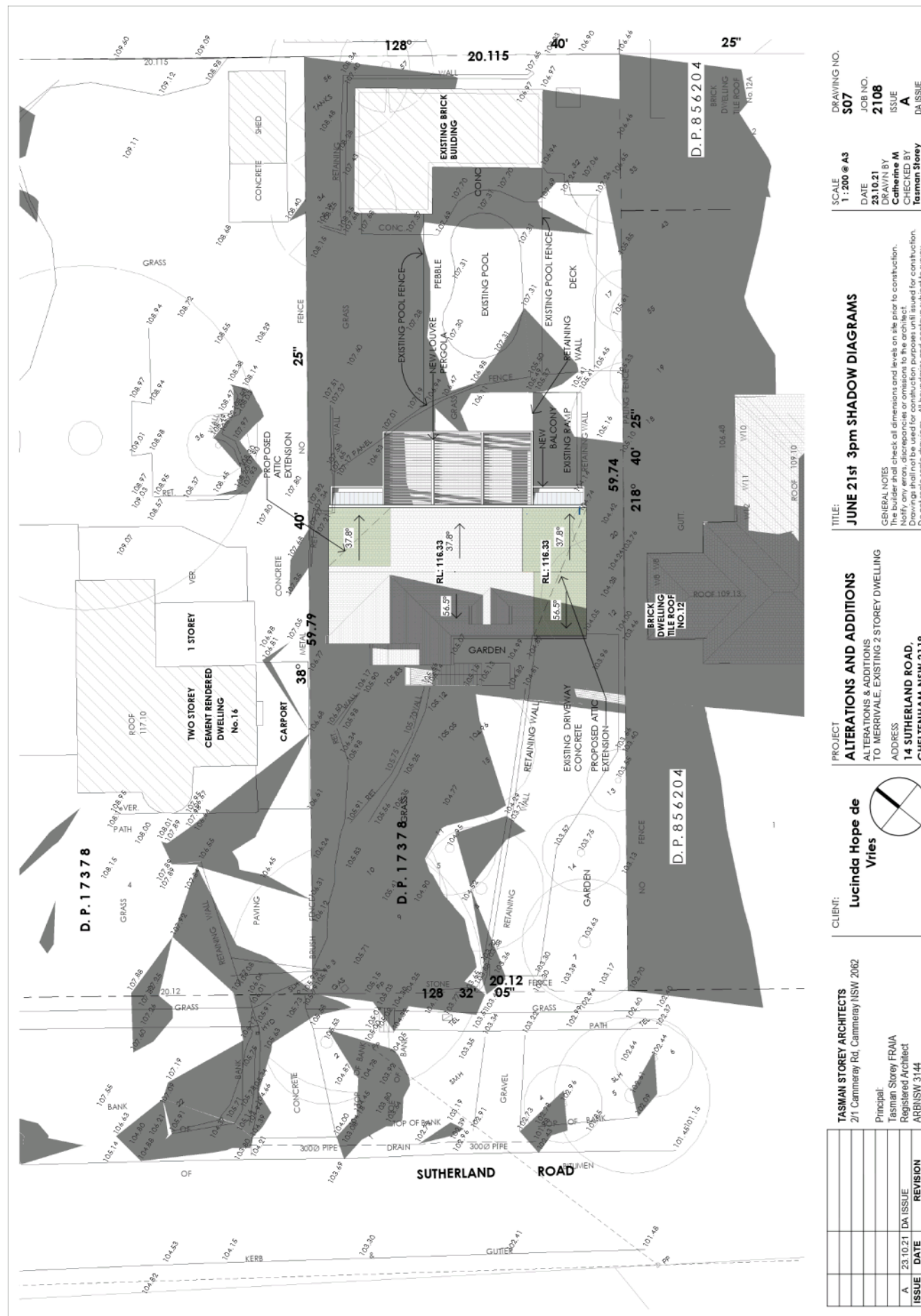
DA ISSUE

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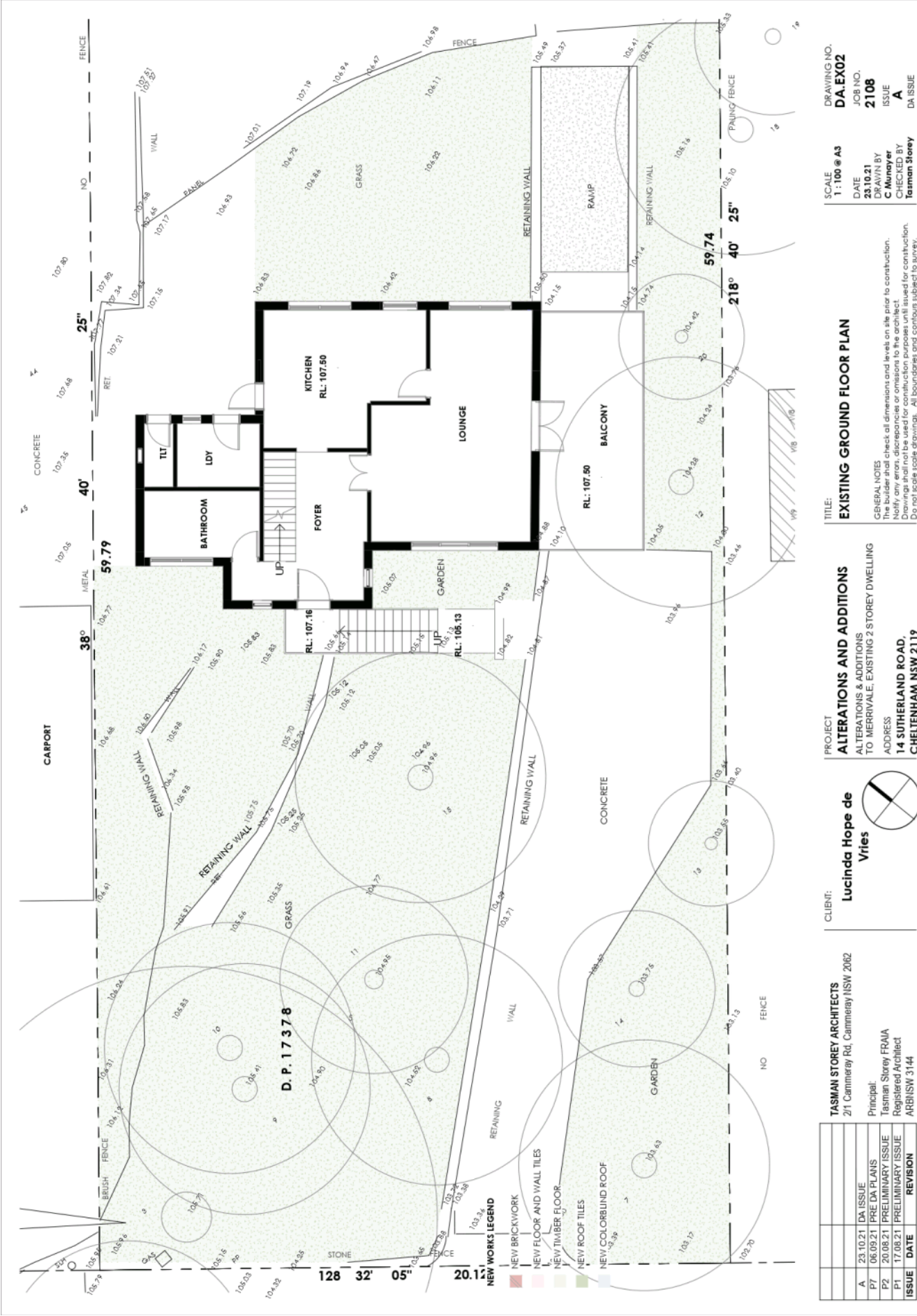


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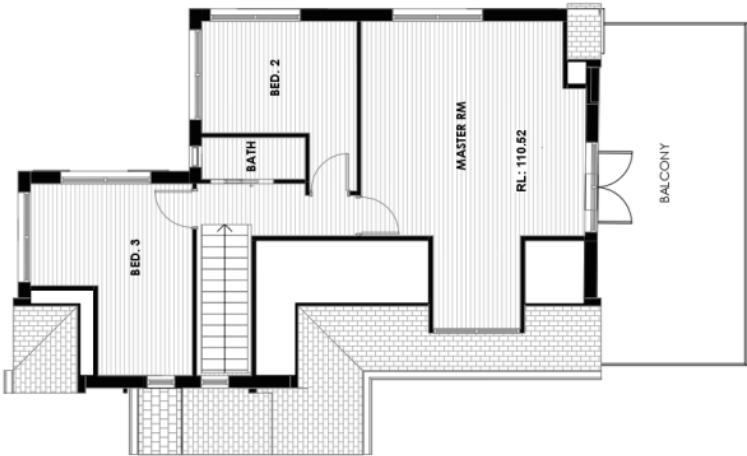




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P1	06.09.21	PRE DA PLANS
P2	20.08.21	PRELIMINARY ISSUE
P1	17.06.21	PRELIMINARY ISSUE

TASMAN STOREY ARCHITECTS
2/1 Cammeray Rd, Cammeray NSW 2062
Principal:
Tasman Storey FRAHA
Registered Architect
AR/NSW 3144

CLIENT:
Lucinda Hope de Vries

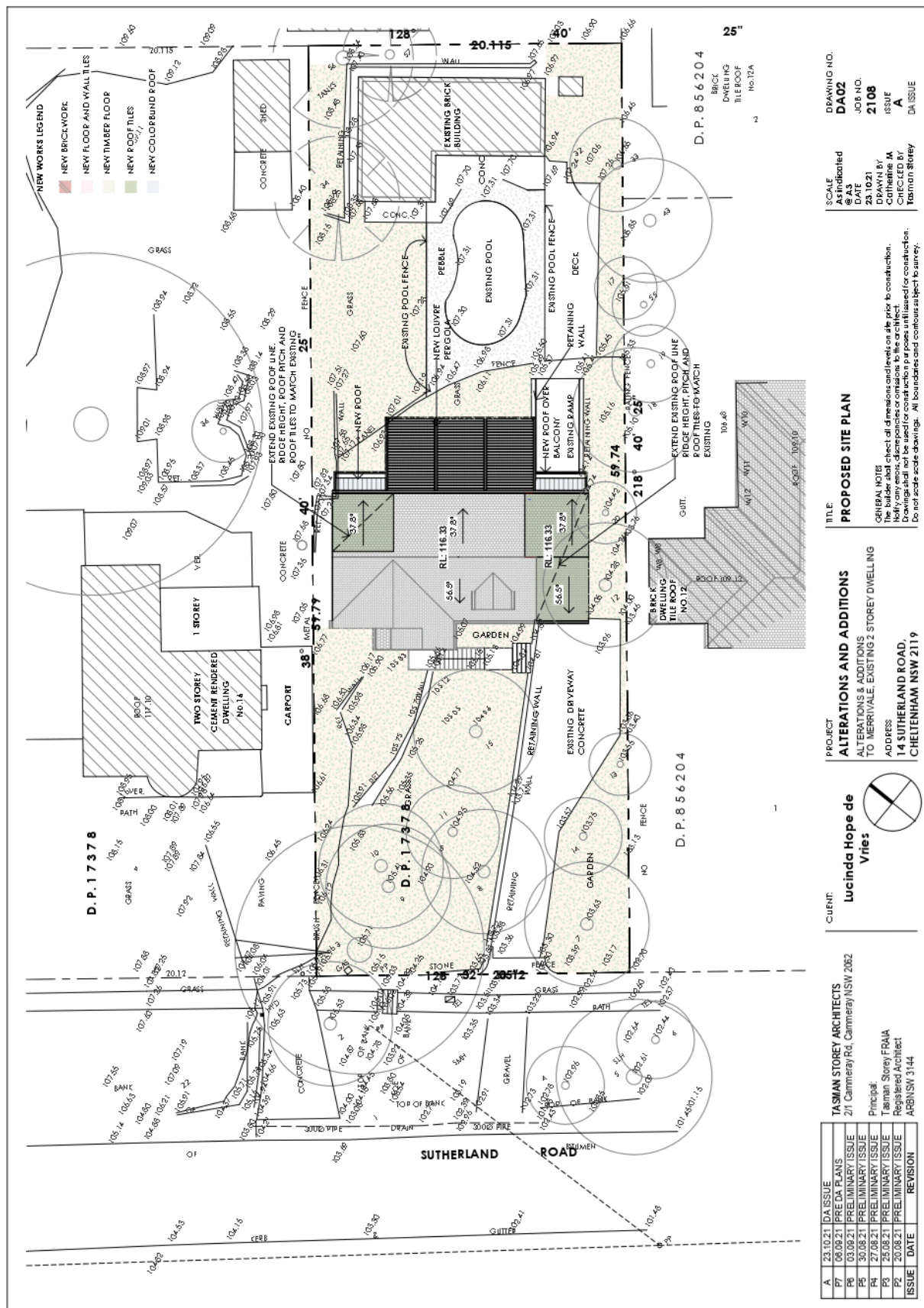
PROJECT
**ALTERATIONS AND ADDITIONS
TO MERRIVALE, EXISTING 2 STOREY DWELLING**
ADDRESS
**14 SUTHERLAND ROAD,
CHELTENHAM NSW 2119**

TITLE:
EXISTING FIRST FLOOR PLAN
GENERAL NOTES
The builder shall check all dimensions and levels on site prior to construction.
This drawing is not to be used for construction purposes until issued for construction.
Drawings shall not be used for construction purposes until issued for construction.
Do not scale drawings. All boundaries and contours subject to survey.

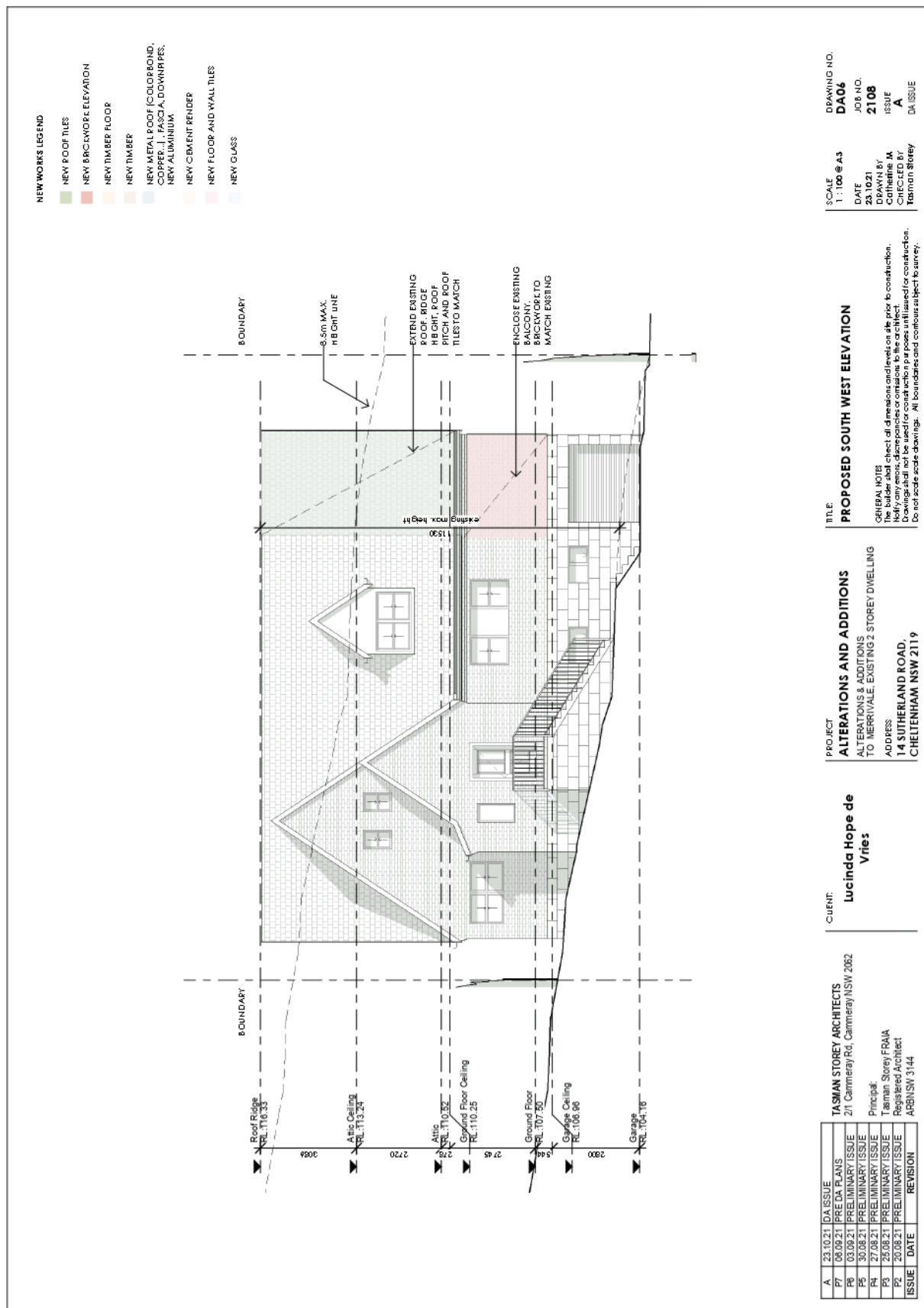
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DATE
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DRAWN BY
Catherine M
CHECKED BY
Tasman Storey

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DA.EX03
JOB NO.
2108
ISSUE
A
DA ISSUE

ATTACHMENT 2 - ITEM 7

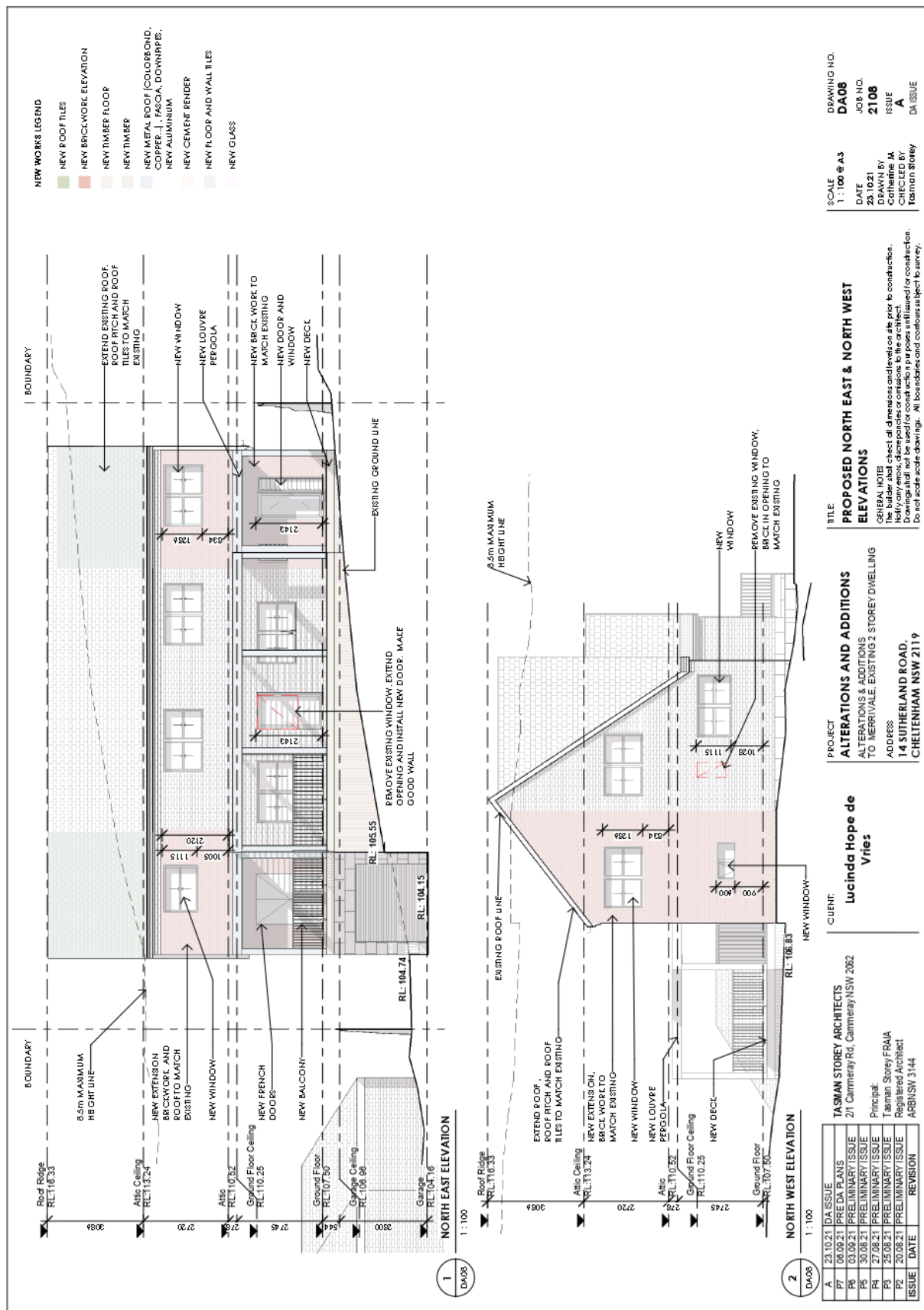


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ATTACHMENT 2 - ITEM 7



**REQUEST TO BREACH HEIGHT CONTROL PURSUANT TO CLAUSE 4.6 OF HORNSBY LEP IN RELATION TO –
14 Sutherland Road Cheltenham - October 2021**

Clause 4.3 of the *Hornsby Local Environmental Plan 2013 (LEP)* and the relevant map indicate that the site is subject to an 8.5m height control. The proposal achieves a maximum height of RL116.33m at the roof ridge level which is at the same level as the existing roof ridge. At the lowest part of the site beneath this ridge, the proposal is a maximum of around 3.36m above the height control. The SE end of the existing building already breaches the height control by around 3m (see figure below). There is also a very minor beach by the extension of the roof in the NW part of the building (around 400mm).



Notwithstanding the above, a request to breach the control must be submitted in accordance with Clause 4.6 of the LEP.

The relevant parts of Clause 4.6 of Hornsby LEP 2013 are:

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and



(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

The purpose of this written request is to satisfy (3)(a) and (b) above and to demonstrate that (4)(a)(ii) and 5(a) and (b) can be satisfied. In preparing this request, regard has been had to the document: "Varying development standards: A Guide (August 2011)" prepared by the NSW Department of Planning & Infrastructure, and to relevant Land Environment Court judgements including the recent judgements of *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245, by Chief Judge Preston CJ in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118 and *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 and *Rebel MH Neutral Bay Pty Ltd v North Sydney Council*. And, most recently, the decision of Chief Justice Preston in *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115.

Clause (3)(a) - whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Whilst it was prepared in relation SEPP 1, the Land and Environment Court judgment *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007), is referred to in the Four2Five judgment and remains relevant to the consideration of concept of compliance being unreasonable or unnecessary. The DP&I Guide referred to above outlines the following 5 part test used in *Wehbe*:

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 objective 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 compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

It should be noted that the Courts have reiterated that it is only necessary to satisfy **one of** these 5 paths, although in some instances more than one may be relevant and achieved.

In regard to the issue here, it is considered that Tests 1 and 3 are applicable.

Test 1

Strict compliance with the development standard for building height in clause 4.3 of the LEP would be unreasonable and unnecessary because the proposal achieves the only stated objective of the height control:

(a) to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.

Comment – In relation to 'site constraints' one of the characteristics of the site is that it slopes and this results in the level of non-compliance being greater at the SE of the building. As noted above, at the NW end the proposal is non-compliant to the same extent of the existing building (only 400mm). Given the design of the existing dwelling and being within a conservation area, it would not be appropriate to step the height of the roof down with the slope. In this regard the heritage constraints are considered to be more important than the constraint of sloping land.

Another constraint is the proximity to adjoining neighbours. The proposal responds to this constraint accordingly, ensuring that there are no unreasonable impacts on surrounding properties. In particular, the additional height proposed does not result in any additional overshadowing that will affect the use or enjoyment of neighbours' dwellings or open space. As can be seen in the submitted midwinter diagrams, additional shadow will fall on the site itself, the roof of adjoining buildings or on the adjoining front yard at various times of the day. All the relevant solar access standards will be achieved.

In relation to development potential, the proposal almost fully complies with the relevant development standards except for building height. All of the proposed additional floor space is below the height control (floor space being measured at 1.4m above floor level) and so the breach of the control does not provide for additional development potential. In fact the proposal has significantly less floor space than permitted (232sqm compared to 430sqm) and covers significantly less site area (216sqm compared to 481sqm). With design changes, the new additions could fully comply with the height control however this would result in a built form that was not consistent with the height and character of the existing dwelling or the overall quality of the heritage conservation area. Therefore it is important to allow the breach of the control to allow a better design outcome to be achieved.

In relation to infrastructure capacity, as the development potential of the site does not exceed that which can be expected, the proposal will be within existing and planned increases to infrastructure capacity.

Test 3

Requiring compliance with the control would thwart achieving the objective of the height control as it would result in conflict with the heritage constraints of the site. As noted above the proposed breach means that the height of the existing building and its unique 'dutch gable' style is maintained and that the building maintains its role in the significance of the heritage conservation area in which it is located. Enforcing compliance would result in a flat roof solution which would detract from the quality of the building and conservation area.

In view of the above, having regard to Tests 1 and 3 of *Wehbe* enforcing compliance in the circumstances is considered to be unreasonable and unnecessary. Flexibility should be applied, consistent with objective (a) of clause 4.6 of the LEP.



Clause (3)(b) – whether there are sufficient environmental planning grounds to justify contravening the development standard

In addition to the above the following comments are made.

Compliance would result in poorer planning outcomes

As noted above the proposal has been specifically designed to provide a superior planning outcome, consistent with the objective of Clause 4.6 to “achieve better outcomes for and from development by allowing flexibility in particular circumstances”. As detailed above strict compliance with the controls would result in a poorer level of integration with the existing dwelling, which already substantially breaches the height control. It would mean relying on a flat roof solution which would detract from the quality of the existing building and the significance of the heritage conservation area.

Lack of impact

As detailed above and in the submitted SEE, the proposal has very minimal impact on surrounding properties and the level of impact arising from the non-compliance is negligible. This is because the height breach is limited to the pitched roof and therefore it does not add significantly to the overall bulk and scale of the building. It is also setback from neighbours to reduce visual and overshadowing impacts. A compliant building would be lower but could be much larger than what is being proposed and be located closer to the site boundaries, creating greater impact.

In view of the above it is considered that there are sufficient environmental planning grounds, specifically related to the subject site, that warrant contravention of the height standard.

As determined in *Randwick City Council v Micaul Holdings Pty Ltd*, and supported by Preston CJ in *Initial Action*, lack of impact is a sufficient ground for allowing a breach of a development standard pursuant to Clause 4.6.

Clause (4)(a)(ii) – whether 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

As noted above the proposal will be consistent with the relevant objectives of the height standard. In relation to the objectives of the subject R2 zoning the following comments are made:

- To provide for the housing needs of the community within a low density residential environment.

Comment – the proposal provides for a low density residential dwelling, consistent with this objective.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment - NA

In view of the above it is considered that the proposal suitably achieves the objectives of the R2 zone.

Clauses 4.6(4)(b) and 4.6(5)

Clause 4.6(4)(b) – SECRETARY’S CONCURRENCE

In *Initial Action*, Preston CJ noted at [28-29] that:

“Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary’s concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.”

It is therefore noted that concurrence is to be assumed, but the relevant matters for consideration are assessed below for completeness.

Clause 5(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning

No, the variation of the height standard is a minor matter and not uncommon. It does not raise any issues at a regional or state level.

Clause 5 (b) the public benefit of maintaining the development standard

For the reasons outlined above there is no public benefit in maintaining the standard. In fact, there will be public benefits in allowing a variation as a better planning outcome will be achieved.

Conclusion

Having regard to the above it is considered that this written request satisfies the requirements of Clause 4.6 and that the consent authority can be satisfied that the proposal also meets the other requirements of Clause 4.6. The proposed contravention of the standard will meet the objectives of Clause 4.6 as it achieves “better outcomes for and from development by allowing flexibility in particular circumstances”.

It is considered that the proposal represents a high quality planning outcome for the site.

Brett Brown, Ingham Planning Pty Ltd

October 2021

Tasman Storey Architects

**Alterations and Additions
14 Sutherland Road Cheltenham
'Merrivale'**

Statement of Environmental Effects (SEE)

To accompany the Development Application



**Prepared for
Ms Lucinda De Vries
For submission to
Hornsby Council
Ref: LDV SEE DA
October 2021**

Tasman Storey Architects
14 Sutherland Road Cheltenham
Statement of Environmental Effects

i
TS LDV SEE :DA
October 2021

Report Register

The following table is a report register tracking the issues of the *14 Sutherland Road Cheltenham Statement of Environmental Effects* prepared by Tasman Storey Architects.

Project Ref No.	Issue No.	Description	Prepared by	Checked by	Issued To	Issue Date
TS LDV SEE :DA	01	Statement of Environmental Effects	Tasman Storey	Joanne Lloyd	Hornsby Council	October 2021

Abbreviations:

CMP: Conservation Management Plan,
DA: Development Application.
TME: To match existing original or early.
HC: Hornsby Council
HIS SOHI Heritage Impact Statement or Statement of Heritage Impact
HCBCHCA Hornsby Council Beecroft Cheltenham Conservation Area.

Tasman Storey Architects
14 Sutherland Road Cheltenham
Statement of Environmental Effects

ii
TS LDV SEE :DA
October 2021

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TASMAN STOREY ARCHITECTS

NSW ARCHITECTS REGISTRATION BOARD NO. 3144
ABN 20 218 703 592

ATTACHMENT 4 - ITEM 7

Tasman Storey Architects
14 Sutherland Road Cheltenham
Statement of Environmental Effects

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TASMAN STOREY ARCHITECTS

NSW ARCHITECTS REGISTRATION BOARD NO. 3144
ABN 20 218 703 592

ATTACHMENT 4 - ITEM 7

Tasman Storey Architects
14 Sutherland Road Cheltenham
Statement of Environmental Effects

iv
TS LDV SEE :DA
October 2021

1.0 EXECUTIVE SUMMARY\

This is a Statement of Environmental Effects for alterations and additions within the footprint to the building known as "Merrivale" at 14 Sutherland Road Cheltenham, consisting of an addition for living a ground floor and an additional bedroom at the upper level to the southern side of the house above an existing garage and following the original roof line.

These are works which have been determined will require a development approval from the Hornsby Council.

The site is registered as the following deposited plan: Lot 5 DP 17378

The works involve reconfiguration of some walls internally to improve the planning and liveability.

The upper floor follows the current arrangement of an attic style behind a tall steeply pitched roof.

The other external works consist of a modest pergola facing the garden. No other works are proposed.

The building and new works, except for the lightweight pergola are generally within the existing footprint.

The Pergola is considered to be Exempt Development. under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

It is the considered opinion of the heritage architect and due to the configuration of the accommodation behind the roof that continuing the original roof line provides both the best internal layout and urban response to the street.

NBRS Heritage Consultants have previously advised that in their opinion the building at No 14 Sutherland Road constructed in circa 1958 and is not an interwar building or a local heritage item

The whole house breaches the height limit of 8.5 metres and therefore the extension to the roof will breach the height plane. Because of this, Ingham Planning has prepared a request to breach height control pursuant to clause 4.6 of Hornsby LEP in relation to – 14 Sutherland Road Cheltenham.

TASMAN STOREY ARCHITECTS

NSW ARCHITECTS REGISTRATION BOARD NO. 3144
ABN 20 218 703 592

Tasman Storey Architects
14 Sutherland Road Cheltenham SEE
Statement of Environmental Effects

5
LDV SEE DA
October 2021

1.1 Background

This report has been prepared on behalf of Mrs Lucinda DeVries for submission to Hornsby Council.

The aim of this report is to review the works proposed and to produce A Statement of Environmental Effects relating SEE To the Proposed Works.

This report should be read in conjunction with drawings prepared by Tasman Storey Architects. The Pre-Lodgment Application proposed alterations and additions to a this dwelling house within a Beecroft- Cheltenham Heritage Conservation Area.

In December 2019, DA/1115/2017 was approved for the construction of a Seniors Living Development at over three lots, No. 14, 16 & 18 Sutherland Road, Cheltenham. This was approved by the Land and Environment Court. The approval included the demolition of the existing dwelling at No. 14 Sutherland Road.

To date, the works associated with this DA have not proceeded.

1.2 Author Identification

This report has been prepared by:

Tasman Storey FRAIA

Bachelor of Architecture (Hons) UNSW Principal, Architect, Heritage Consultant
ARBNSW 3144

Joanne Lloyd B Arts (Writing)Macquarie University Writer and Researcher

Tasman Storey Architects
14 Sutherland Road Cheltenham SEE
Statement of Environmental Effects

6
LDV SEE DA
October 2021

1.3 Document

The following documents form this development Application

DOCUMENTS	AUTHOR
Request To Breach Height Control Pursuant To Clause 4.6 Of Hornsby LEP In Relation To – <i>14 Sutherland Street Cheltenham -October 2021</i>	Ingham Planning
Heritage Impact Statement	Tasman Storey Architects and Heritage Consultants
DA 01 Drawing Schedule DA 02 Proposed Site Plan DA 03 Proposed Roof Plan DA 04 Proposed Ground Floor Plan DA 05 Proposed First Floor Plan DA 06 Proposed Southwest Elevation DA 07 Proposed Southeast Elevation DA 08 Proposed Northeast & Northwest Elevations DA 09 Section A-A DA 10 Colour And Materials Schedule DA.Ex01 Existing Site Plan DA.Ex02 Existing Ground Floor Plan DA.Ex03 Existing First Floor Plan S01 Site Analysis S02 Erosion & Sediment Control Plan S03 Tree Protection Plan S04 Concept Sewer and Stormwater Plan S05 June 21st 9am Shadow Diagrams S06 June 21st Noon Shadow Diagrams S07 June 21st 3pm Shadow Diagrams	Tasman Storey Architects

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2.0 SITE AND EXISTING DWELLING DESCRIPTION

2.1 Previous Applications

The site is a suburban lot which was one of three lots 14, 16 and 18, approved to be combined to form a Seniors Living development.

That Approval was for four separate two storey buildings comprising 12 dwellings over basement level parking. Dwelling 1 & 2 (block 01) have a separate driveway to attached at grade garages.

The subject site comprised Lot 3 in DP 878440 and Lots 4 & 5 in DP 17378. The parcel of land is located on the northeast side of Sutherland Road. The site is to be consolidated.

Each allotment of land supports a single detached dwelling house with associated outbuildings.

The Development has so far not proceeded, and this application is for alterations and additions to No 14 Sutherland Road only.

2.2 Site information

"The site is located on the north-eastern side of Sutherland Road, Cheltenham, adjacent to Cheltenham Train Station and experiences a 6-metre cross fall to the southern front, corner of this site. (Council description PLA Advice)"

The site is a complex one with a two directional slope as it falls down the hill to the south and down toward the street from the rear.

The Zone is R2.

The subject site is situated approximately 300 metres south from the intersection of Cheltenham Road and Sutherland Road and directly across from the level access to the new Cheltenham Station.

Number	Street	Lot No.	DP No.	Area
14	Sutherland Road	5	17138	1202m ²

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Figure 1 Cheltenham Station access from Sutherland Road

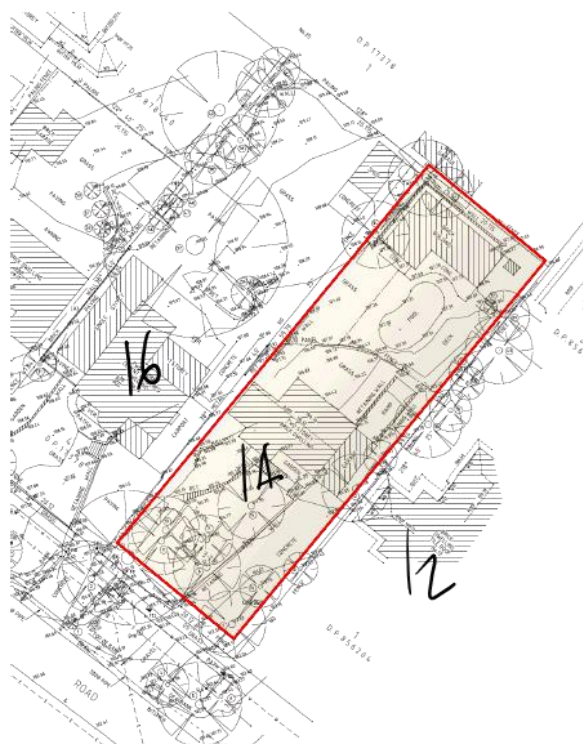


Figure 2 Site Survey of No 14 with adjacent houses

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There is a large area of unconstructed and unpaved Council owned verge between the boundary and the street.

On the left-hand upper side is a large Art Deco dwelling **No 16**, proposed to be kept and renovated in the approved Seniors Living Proposal.

On the lower side to the south is **No 12** Sutherland Road a single storey brick dwelling house of a similar vintage to **No 14** Sutherland Road.

That dwelling is already unavoidably influenced by the shadow effect of the existing taller dwelling due to the design of **No 14** and the topography.

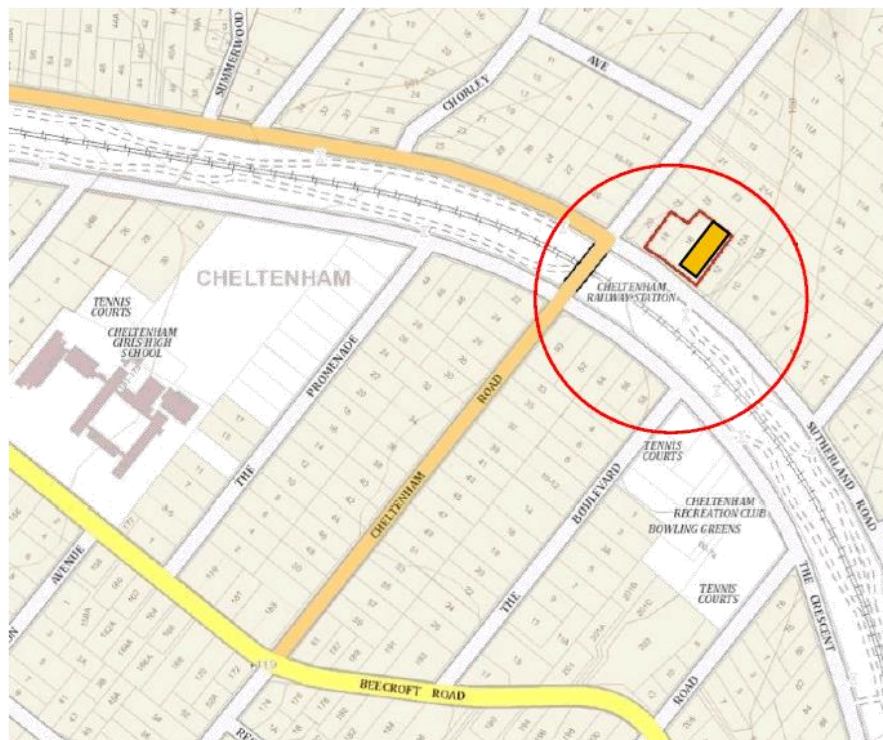


Figure 3 — The subject site is outlined in black it is opposite Cheltenham Railway Station, and more distant from Beecroft Road. [SIX Maps] N

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Figure 4 — Aerial photograph The Current Development Site is No 14 outlined in RED 14 The approved Seniors Living Development, outlined in yellow, showing the house. source SIX Maps



Figure 5 The house at No.16 Sutherland Road, looking east, including extensions on the far left. Source Photo by Tasman Storey

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Figure 6 The boundary line between Nos 12 and 14 Sutherland Road showing the large street verge *Source* Photo by Tasman Storey

2.3 The Existing House

The existing dwelling consists of a garage on the ground at the lower side which has level access from the street while access to the living areas at the elevated "Ground" floor is by a staircase along the front elevation.

The first floor is within the large high-pitched roof with dormer windows. This roof has different pitch to the rear and the internal planning is compromised by the awkward configuration of the geometry.

The original roof and internal attic/bedroom area are well above the 8.5 metre height plane by the nature of the faux "Dutch gable" design. And the steeply sloping terrain.

The dwelling represents a fashionable theme not uncommon 1950s in non-architect designed middle class houses and its aesthetic is weak and uncertain while the interior planning is poor with tight and compromised spaces. The style is one of grand façades with little substance behind and reflects that post war period of aspiration when building materials were scarce. Houses in this form and other aspiring styles and be found in many of the North Shore suburbs along the Railway lines and around the harbour.

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Figure 7 The front elevation showing the complex Dutch gable style of the roof with the dormer windows and bedrooms “in the roof” *Source* Photo by NBR

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Figure 8 Rear area to the northeast to be infilled



Figure 9 Rear view

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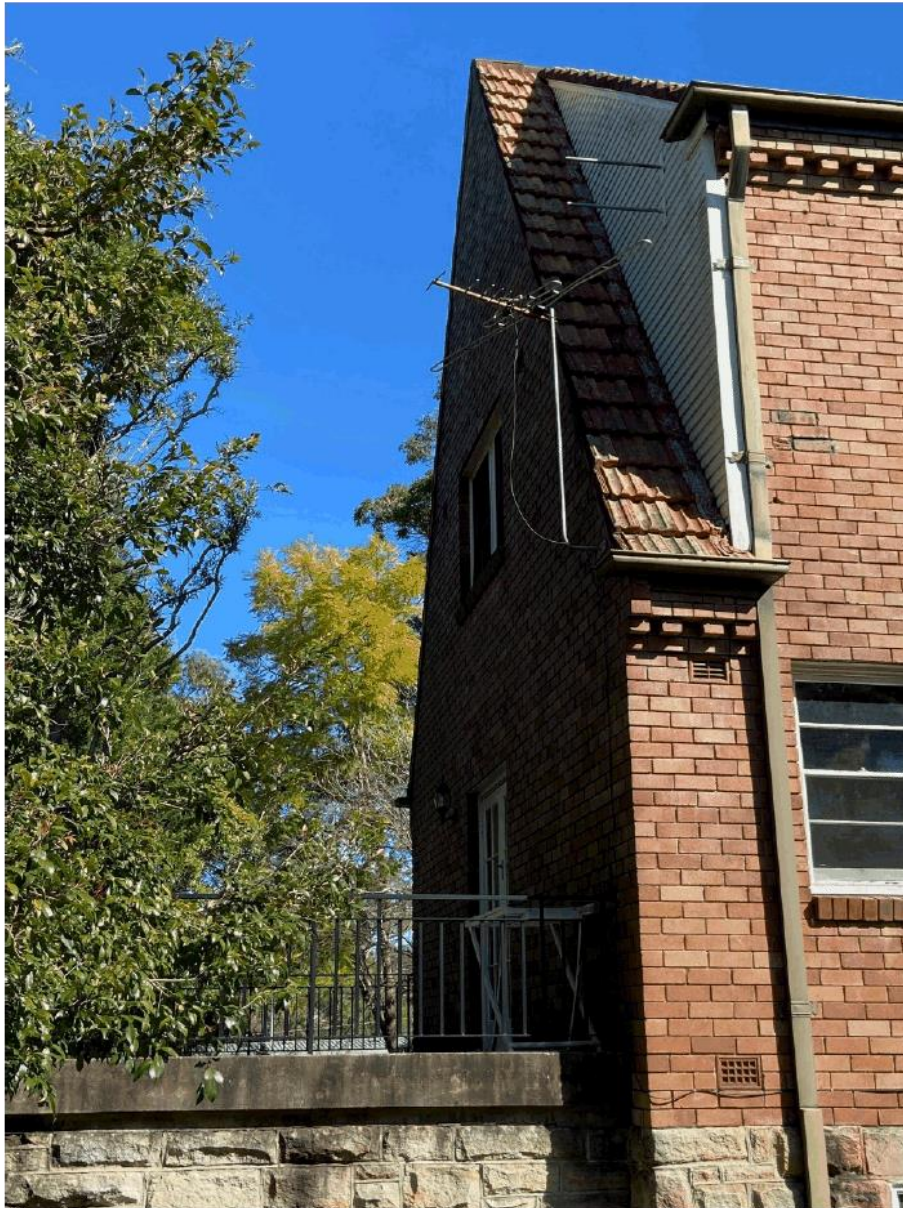


Figure 10 Garage below existing balcony to be built over

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Figure 11 Front elevation showing balcony over garage



Figure 12 North elevation showing the complex roof arrangement

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3.0 THE PROPOSAL

3.01 Continuation of Use

This proposal is for development of No 14 Sutherland Road as a standalone residence for a single-family dwelling house and therefore its use is unchanged

The proposal includes enclosing the open balcony currently above the garage to extend the elevated first floor and extending the high-pitched mock English Vernacular roof over that to provide for a first-floor level with additional rooms within the roof space.

The internal planning is poor, and rooms awkwardly arranged.

The proposal seeks to address these short comings and provide a contemporary family home by extending over the existing balcony roof of the garage in matching face brick walls and tile roof and continuing the same lines for a holistic design solution.

The new room at the south of first floor is a walk-in wardrobe and dressing room and overlooking is not considered a problem.

A privacy screen will be provided on the edge of the new deck.

The Pergola structure is light weight and timber construction.

The garden and grounds will remain unchanged.

The garden already has a Cabana and swimming pool

Access is maintained from the garage level through the subfloor and the subfloor area remains as storage

3.02 Heritage Assessment

The Heritage Impact Statements by Tasman Storey Architects Tropman and Tropman Architects and NBRs Heritage Consultants have all determined that this building is of no heritage value.

While the residence has no intrinsic heritage value and as such has a demolition permit in the current development approval, the owner wishes to maintain the house and its somewhat unique appearance rather than modernize the facade or knock down and rebuild.

This is a best urban and most sustainable outcome for Sutherland Road and is in

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keeping with the Beecroft Cheltenham Heritage Conservation Area.

It is noted that the Hornsby Council Heritage Officer has endorsed the design as being appropriate

3.03 REQUEST TO BREACH HEIGHT CONTROL

The following is an extract from the Ingham Planning Report which has been prepared to support the design where the original roof line. The overlay shows the original building is designed in a manner that breaches the height plane

The ceiling line of the original building Breaches the height control.

“REQUEST TO BREACH HEIGHT CONTROL PURSUANT TO CLAUSE 4.6 OF HORNSBY LEP IN RELATION TO –
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Clause 4.3 of the Hornsby Local Environmental Plan 2013 (LEP) and the relevant map indicate that the site is subject to an 8.5m height control. The proposal achieves a maximum height of RL 116.33m at the roof ridge level which is at the same level as the existing roof ridge. At the lowest part of the site beneath this ridge, the proposal is a maximum of around 3.36m above the height control. The SE end of the existing building already breaches the height control by around 3m (see figure below). There is also a very minor breach by the extension of the roof in the NW part of the building (around 400mm).”

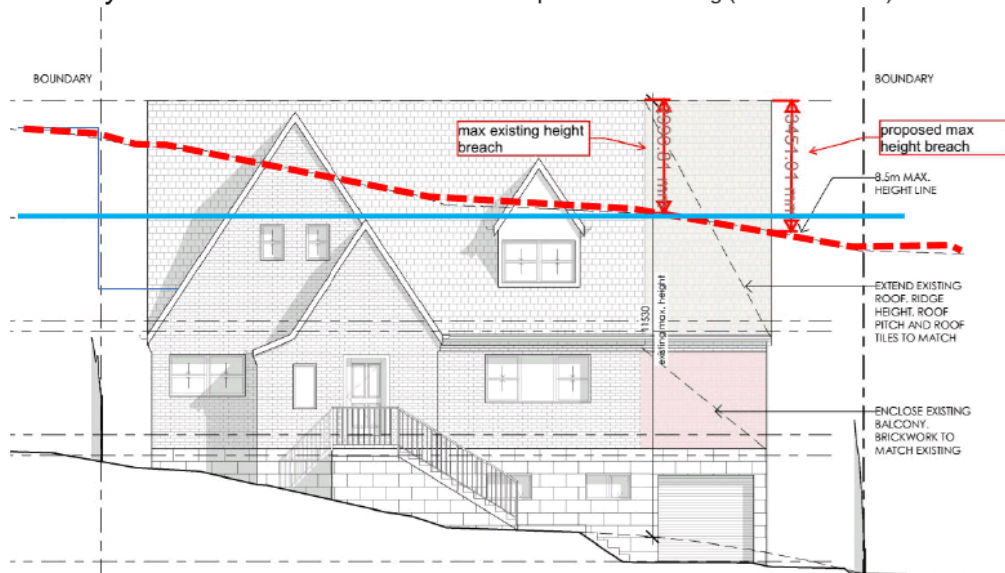


Figure 13 Non Compliance in regards to the height plane source Ingham Planning over lay in red and Blue TSA

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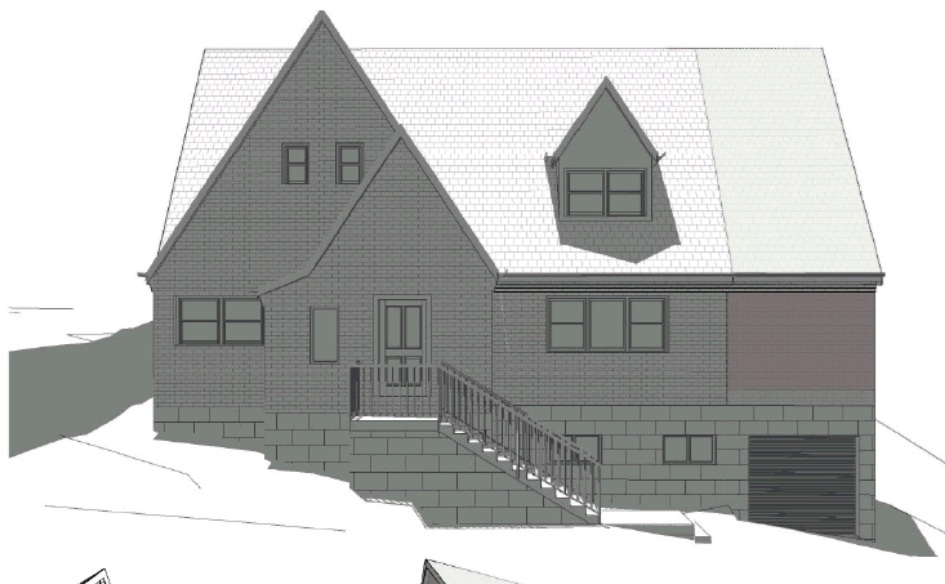


Figure 14 Architects perspectives of Front to Sutherland Road demonstrating the Dutch Gable style



Figure 15 Architects perspectives of the development identifying the new additions have a consistent appearance with the original building

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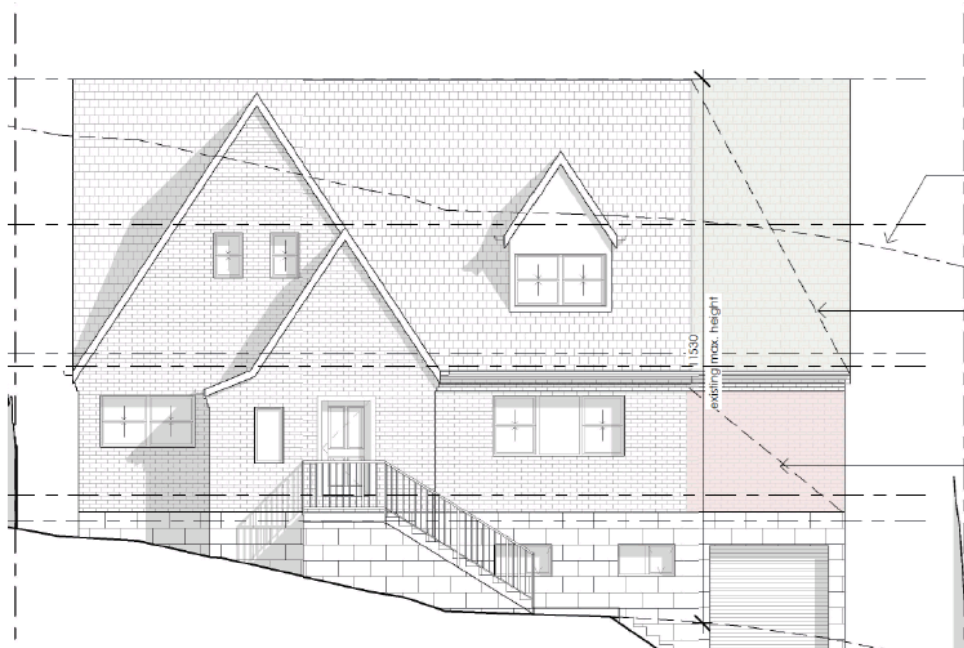


Figure 16 Front elevation showing original significant noncompliance with height

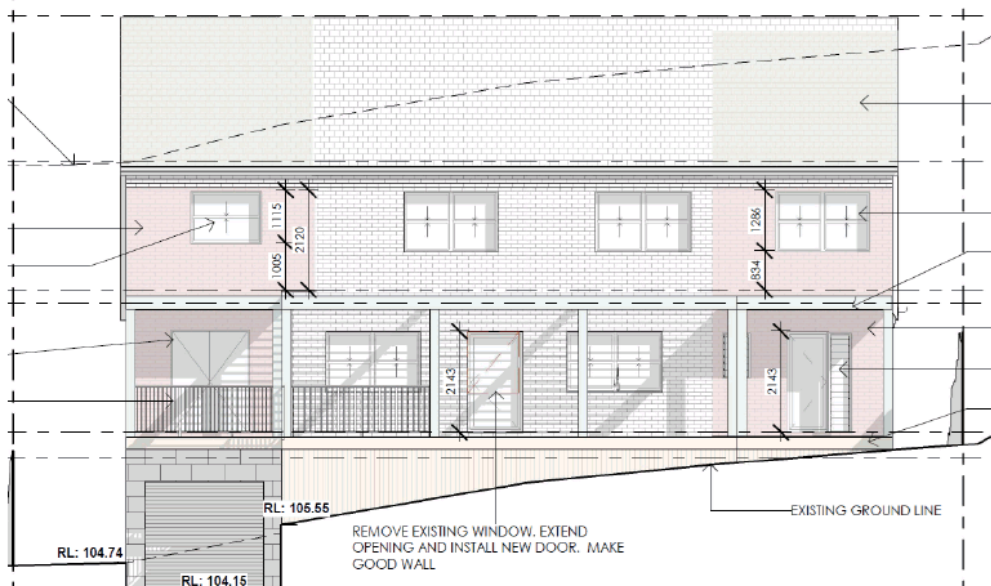


Figure 17 Rear Elevation Showing extensions to the north and south as infills with the lightweight pergola. Note that there is through access from the front to the back via the garage. The Height control is breached on this elevation as well

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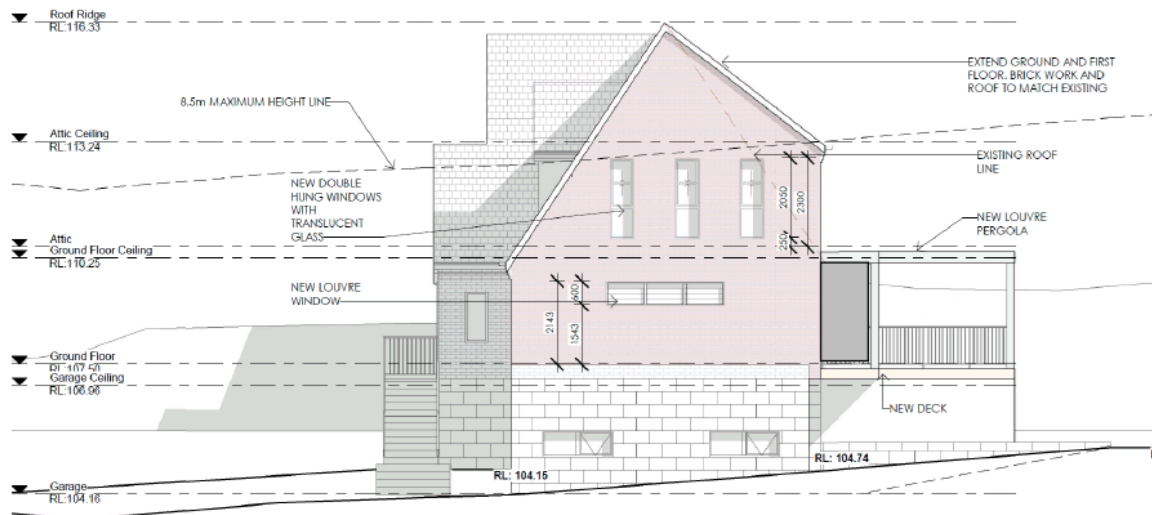


Figure 18 South elevations showing privacy provisions of highlight windows and screening at the edge of the balcony and obscure glass at the upper level

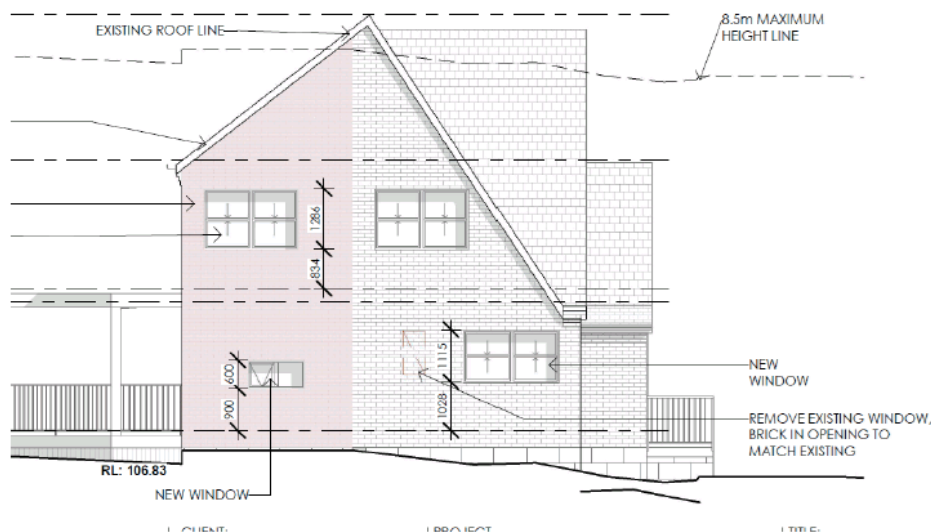


Figure 19 North elevations showing privacy provisions of highlight windows and screening at the edge of the balcony and obscure glass at the upper level

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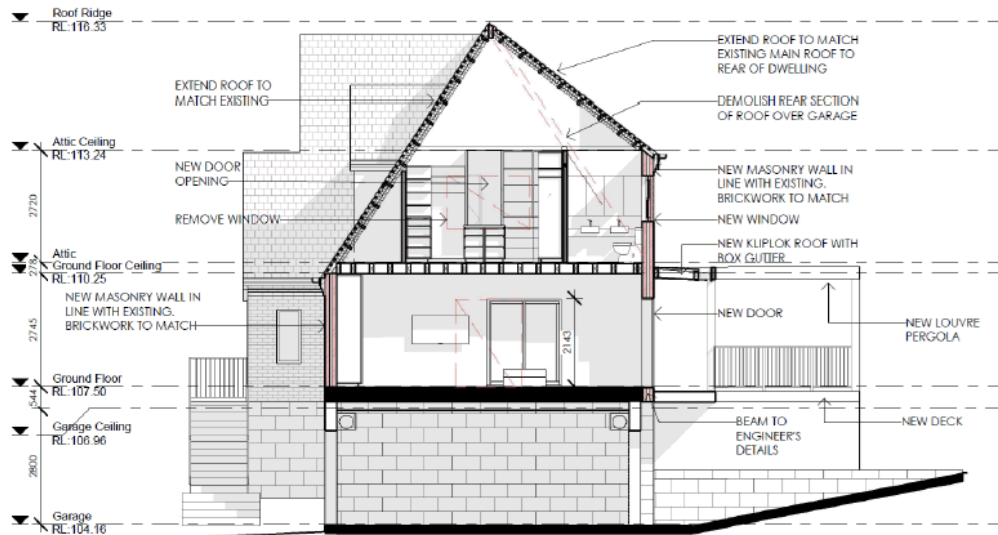


Figure 20 Section illustration the consistent roof profile and the complex change of slope of the roof front to back where the rear roof forms a large Mansard type change of pitch. The through access is seen here with the steep cutting up to the rear garden from the street and under the house.

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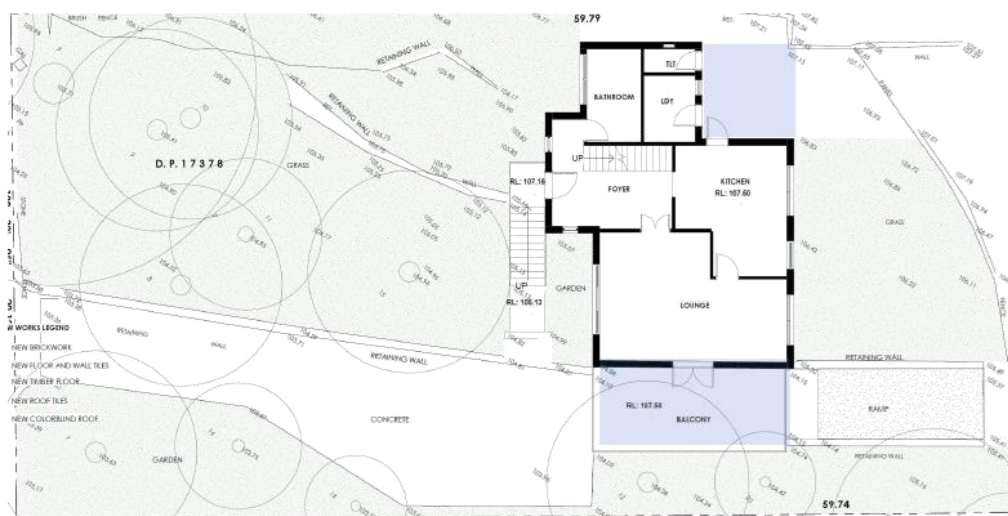


Figure 21 Original ground floor plan infill shown in blue

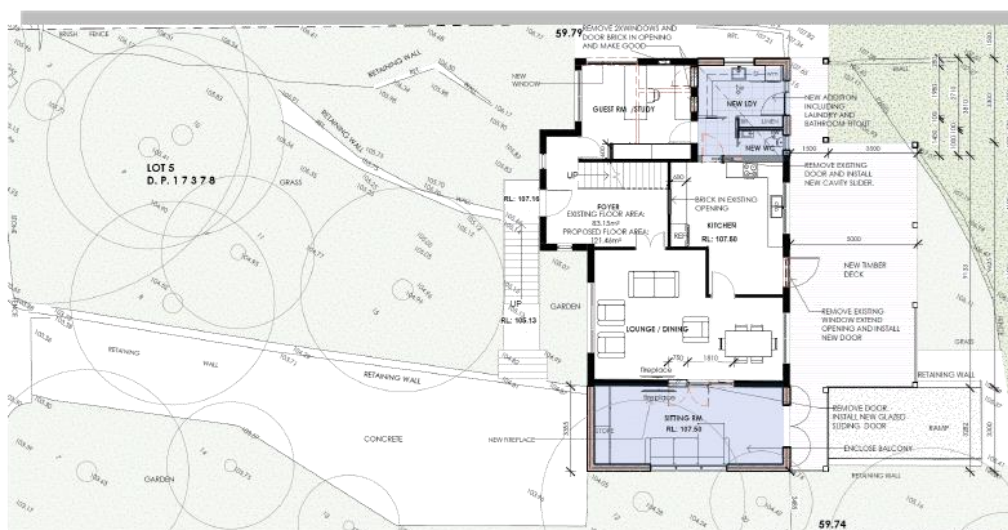


Figure 22 Proposed Ground Floor plan with rationalized spaces

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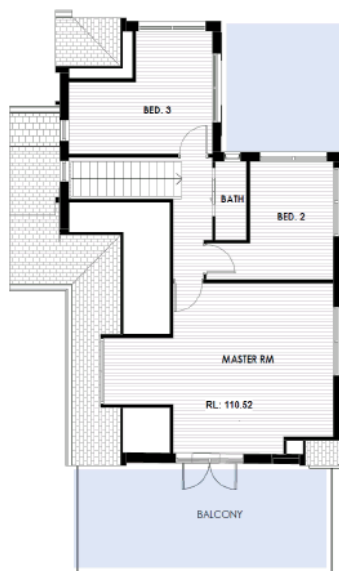


Figure 23 Original First Floor Plan infill shown in blue

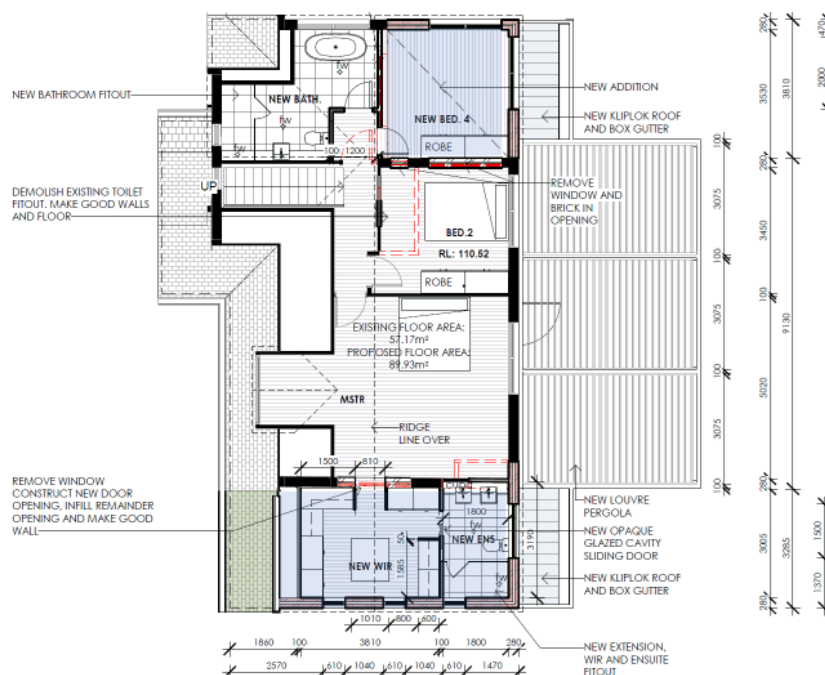


Figure 24 Proposed first floor plan showing walk-in wardrobe /dressing room to the south

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3.04 Materials

Materials have been chosen to match the existing and to be in accordance with the Beecroft Cheltenham Conservation area. The Windows will be replaced with sound reducing double glazing to ameliorate the railway traffic noise. The materials will be powder coated aluminum in a section of a similar size and proportion to the existing timber windows.

The interior linings will be sound proofed in a designed system under advice from an acoustic engineer.



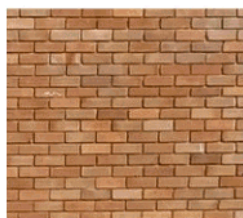
Terracotta roof tiles.
Salvage and reuse where possible



Colorbond, gutter,
fascia and
downpipes. Jasper
colour to match
existing



JASPER®



face brick to match existing.
Salvage and reuse where possible



White aluminium
window and door
frames.

- Tiled Roof Terra Cotta Tiles Marseille Pattern
- Walls red bricks mottle yellow,
- Windows will be upgraded to an acoustic standard Aluminium
- Roof structure sound insulated

Figure 25 Materials Palette

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3.06 Privacy

There is no overlooking from the ground floor as the upper floor is a walk-in wardrobe and dressing room while the ground floor has windows sills above 1.5 metres.

A privacy screen 1600 high will be placed on the end of the balcony
Note that currently this area is an open balcony above the garage and there is no privacy screen

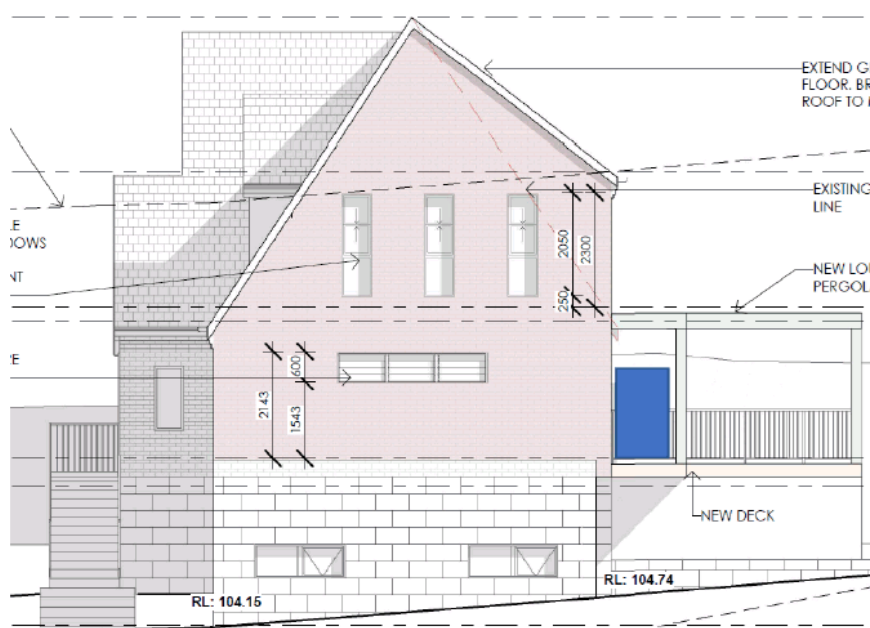


Figure 26 South elevation high light window at GF and obscure glass at first floor

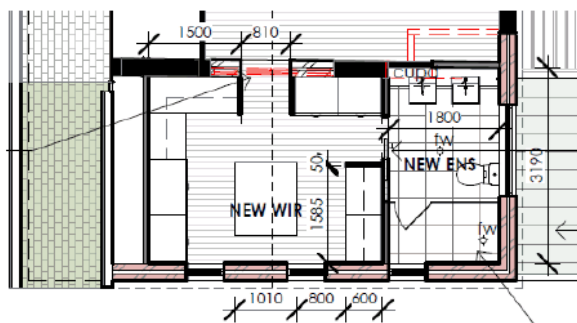


Figure 27 use of the extension at first floor is as a Dressing Room

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4.0 PLANNING CONTROLS

The following Environmental Planning Instruments and Policies have been addressed as advised by Hornsby Council in the table below:

- Hornsby Local Environmental Plan 2013 (HLEP)
- Hornsby Development Control Plan 2013 (HDCP)
- Environmental Planning and Assessment Act 1979
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Hornsby Shire Council Section 7.12 Development Contributions Plan 2019-2029

5.0 RESPONSE TO PDL ADVICE

The following table identifies the response to the PDA received for Hornsby Council.

5.01 Hornsby Local Environmental Plan 2013

Council Advice	Actions and assessment
• The subject land is zoned R2 Low Density Residential under the HLEP.	Conforms with the zoning
• The proposed alterations and additions to the dwelling house would be permissible within this zone.	Conforms with the zoning
Under Clause 4.3 of the HLEP, the maximum height for this site is 8.5 metres	Does not conform with the HLEP a Clause 4.6 variation to the height has been prepared by Ingham Planning
• Under Clause 4.6 of the HLEP, ⁽³⁾ <i>Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify</i>	Does not conform with the HLEP a Clause 4.6 variation to the height has been prepared by Ingham Planning a) the height plane matches the existing and the style of the house requires that additional rooms fall within the parameters of the unusual roof which is unique.

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<p><i>the contravention of the development standard by demonstrating—</i></p> <p>(a) <i>that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</i></p> <p>(b) <i>that there are sufficient environmental planning grounds to justify contravening the development standard</i></p>	<p>The existing house does not conform and any addition cannot conform. There is a substantial argument that the design is in keeping with the original pattern and it is acceptable as a heritage-based solution</p> <p>b) Ingham Planning has substantiated the design based on existing and legitimate planning precedents</p>
<ul style="list-style-type: none"> • If the application includes a variation to the height limit, a Clause 4.6 Variation must be prepared by a suitably qualified planner demonstrating why it is “unreasonable or unnecessary in the circumstances of the case” to comply with the prescribed height requirements. <p><i>Note: If the variation is greater than 10% of 8.5 metres, the application will require determination by Council's Local Planning Panel.</i></p>	<p>The Variation to the standard has been prepared by expert professional planners highly experienced in all aspects of the EP & A Act and Land and Environment Court judgements in this field.</p> <p>INGHAM PLANNING <u>Bret Brown Director</u> <i>Bachelor of Town Planning from UNSW in 1990, Brett has worked in public and private sector planning for 30 years and has gained a broad range of experience. As well as having experience with Northern Beaches, Willoughby and Woollahra Councils, he has worked on some of Sydney's most recognisable large scale developments including Fox Studios, Sydney Olympic Park, Jacksons Landing at Pymont and Westfield Sydney (Centrepont). Brett has also given expert evidence in many Land and Environment Court cases and presented to a variety of local and regional Planning Panels.</i></p>
<ul style="list-style-type: none"> • Whilst no objections are raised to the alterations and additions on heritage grounds (as identified in further discussion below), the amenity impacts associated with this height variation must be adequately addressed 	<p>Refer to the report Clause 4.6 Ingham Planning attached</p> <p>No substantial shadow effect and complies with setbacks as per the HLEP</p>

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within the Clause 4.6 Variation, specifically with regards to the adjoining neighbour at No. 12 Sutherland Road.	
<p>• The additional bulk and scale of the south-eastern extension to the dwelling house must be thoroughly addressed within the Clause 4.6 Variation—consideration may need be made to amending the design with regards to south-eastern, side additions. Rear additions may be more appropriate for the site, given the significant height variation.</p>	<p>Refer to the report Clause 4.6 Ingham Planning attached</p> <p>No substantial shadow effect and complies with setbacks as per the HLEP</p>

6.0 HORNSBY DEVELOPMENT CONTROL PLAN 2013 (HDCP)

<p>The proposal should address the relevant controls within Part 1 General Controls, Part 3 Residential and Part 9 Heritage of the <i>HDCP</i>.</p> <p>•</p>	Noted
<p>1B6.1 TREE PRESERVATION If any trees are impacted by the development, an AIA should be submitted with a future development application prepared by an arborist with AQF Level 5 qualifications and in accordance with Council's Arboricultural (Tree) Report Guidelines - https://www.hornsby.nsw.gov</p>	<p>Access will be through the garage and driveway which connects directly to the rear garden. No alteration or changes to the landscape are proposed</p> <p>Tree protection plan is included in the drawing set</p>

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.au/environment/flora-and-fauna/tree-management/application <ul style="list-style-type: none"> A Tree Protection Plan must also be submitted in accordance with these guidelines. . 	
1C1.2 STORMWATER MANAGEMENT <ul style="list-style-type: none"> A Stormwater Concept Plan must be submitted with the application, demonstrating the proposed method of stormwater drainage. The plan must show the existing drainage pipelines (if any) and any additional drainage pipelines required. There must be no additional drainage pipelines within the tree protection zones of the significant trees on the site including trees on the adjoining site and Council strip. If this is unavoidable, the installation of these services must be incorporated into the required AIA. . 	<p>No additional area is to be built on.</p> <p>The footprint and catchment remain the same. The rainwater will be directed to the exiting RDP and discharge into the street No additional hard landscape areas are proposed.</p>
<p><i>Sediment and Erosion Control:</i></p> <ul style="list-style-type: none"> stabilise and retain soil The development should have appropriate controls and sediments during the construction phase, designed in accordance with Landcom's <i>Managing Urban Stormwater (2006)</i> also known as The Blue Book and/or Council's management guidelines. . 	<p>A sediment control; plan has been provided in the drawings</p>

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<p>3.1.1 SSCALE</p> <ul style="list-style-type: none"> The proposal must comply with a maximum building height of 8.5 metres, maximum 40% sitecoverage and maximum 430m² floor area. Any variation must be addressed and well justified, referring back to the desired outcomes andprescriptive measures of the HDCP. 	<p>The height exceeds the standards Refer to the Clause 4.6 in support of the variation to the standard for height by Ingham Planning Does Not Comply</p> <p>The maximum site cover has not been exceeded Complies</p>
<p>3.1.2 SETBACKS</p> <ul style="list-style-type: none"> Front: Conform to streetscape character Sides: 900mm (ground floor), 1.5m (first floor). Rear: 3m (ground floor), 8m (first floor). Any setback non-compliance must be addressed and well justified, referring back to the desiredoutcomes and prescriptive measures of the HDCP 	<p>Complies</p>
<p>3.1.3 LANDSCAPING</p> <ul style="list-style-type: none"> A 40% minimum landscaped area is required. A landscape plan must be submitted if any landscape works are proposed. Top of wall heights to AHD must be included for any new retaining walls. 	<p>Complies with the standards</p>

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3.1.4 OPEN SPACE <ul style="list-style-type: none"> The proposed dwelling house must contain a minimum 24m² of private open space. 	Complies with the standard
(A) SUNLIGHT ACCESS <ul style="list-style-type: none"> Shadow Diagrams are required for any two storey element. 	Complies no added shadow effect at 21 June Shadow diagrams have been supplied in the drawings no additional shadow effect occurred to No 12 Sutherland Road
3.1.5 PRIVACY <ul style="list-style-type: none"> Development should be designed to provide reasonable privacy to adjacent properties. Privacy must be addressed and well justified, referring back to the desired outcomes and prescriptive measures of the HDCP. Specifically, potential privacy impacts associated with the proposed development and the adjoining neighbour at No. 12 Sutherland Road should be well considered and addressed as part of the proposal. 	Complies no impact \ <ul style="list-style-type: none"> Privacy considerations include small windows in the new addition southern elevation with obscure glass High light windows are used at the ground floor level A privacy screen is provided on the verandah

7.0 PART 9 HERITAGE

<ul style="list-style-type: none"> The current proposal has been considered with regard to the heritage requirements of the HLEP, 	COMPLIES with the intent fo the Beecroft and Cheltenham Conservation Area requirements see the Tasman Storey Architects HIS
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<p>HDCP and preliminary documentation submitted with the application.</p> <ul style="list-style-type: none"> The subject site is located in the Beecroft/Cheltenham Precinct of the Beecroft-Cheltenham Heritage Conservation Area (HCA) identified in Schedule 5 (Environmental Heritage) of the HLEP. Heritage Items in the Vicinity of the site are outlined as follows: <ol style="list-style-type: none"> (3) Heritage Item No.292 – No.50 The Crescent, Cheltenham; (4) Heritage Item No 293 – No.52 The Crescent, Cheltenham; (5) Heritage Item No 294 – No.54 The Crescent, Cheltenham; and (6) Heritage Item No 295 – No.56 The crescent, Cheltenham. The proposal includes enclosing the balcony currently above the garage to extend the elevated first floor and extending the high-pitched mock English Venacular roof over that to provide for additional rooms in the roof space. Materials and palette including roof tiles and brick would match existing. The plans do not indicate landscaping works that would be visible from the public domain. The proposal is a sensitive and modest modification that will retain the interesting form of the building and its unusual roof. It would have no discernible impact on the HCA or streetscape. The location of the additions would not raise concerns 	<p>Note</p> <ol style="list-style-type: none"> the property is not a local; Heritage Item. Approval has been granted in the LEC the demolition of No 14 Sutherland Road Council Heritage Planner has advised that <i>“The proposal is a sensitive and modest modification that will retain the interesting form of the building and its unusual roof. It would have no discernible impact on the HCA or streetscape”</i> An HIS has been provided which complied with Heritage Branch if Premier and Cabinet’s requirements The proposal is not in the immediate vicinity of any heritage item and in any event, it has an acceptable impact
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<p>regarding impacts on heritage items in the vicinity.</p> <ul style="list-style-type: none">• In summary, as the proposal stands, there are no heritage concerns; however, in accordance with Clause 5.10(5) of the HLEP and Part 9.1.2 of the HDCP the following information is to be submitted with any future application for the proposal as identified below. <p>(3) Heritage Impact Statement (HIS). The HIS should include a brief history of the site and assessment of the impacts, including the heritage requirements of the HDCP.</p> <p>(4) Detailed Schedule of Material and Finishes.</p> <p>(5) Landscape Plan if landscape works are proposed.</p> <ul style="list-style-type: none">•	
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8.0 SEPP COMPLIANCE

<p>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</p> <p>The application would be assessed against the requirements of <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)</i>, which aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.</p> <p>•</p>	<p>No alterations changes or additions are proposed that would adversely affect tr the <u>SEPP_Vegetation in Non-Rural Areas) 2017</u></p>
<p>State Environmental Planning Policy (Building Sustainability Index - BASIX) 2004</p> <p>•The proposal would be assessed against the requirements of <i>State Environmental Planning Policy (Building Sustainability Index – BASIX) 2004</i>. A BASIX certificate would need to be included for any new dwelling house</p>	<p>A BASIX certificate has been provided</p>

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<p>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</p> <p>The proposal would be assessed against the requirements of the <i>Sydney Regional Environmental Plan Sydney Harbour Catchment) 2005</i>. The proposed development would have minimal potential to impact on the water quality of the catchment, subject to the implementation of erosion and sediment control management measures for the construction phase of the development.</p>	<p>Noted</p> <p>A sediment control plan has been provided</p>
<p>Hornsby Shire Council Section 7.12 Development Contributions Plan 2019 – 2029</p> <p>The development would be subject to Section 7.12 development contributions for the provision of community infrastructure. This would be payable prior to the issue of a Construction Certificate.</p>	<p>Noted</p> <p>The correct fees will be paid by the owner.</p>

9.0 DA SUBMISSION REQUIREMENTS

Submission Requirements	Notes	
Completed/signed Application Form	Required (available on Council's website)	Submitted with this application by the Planning Portal
Cost Summary Report	Required	As above
Plans	Required (existing floor plans; and proposed site plans, floor plans, elevations and sections)	Plans Sections and elevations provided

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Survey Plan	Required	The Survey is Provided
Statement of Environmental Effects (SEE)	Required	
Clause 4.6 Variation	Required for any HLEP variation (i.e. height)	Ingham Planning have provided a Clause 4.6 variation to the height
Landscape Plan	Required if landscape works are proposed (top of wall heights included for any proposed retaining walls)	This is an existing House and there is no change to the landscape
Sediment and Erosion Control Plan	Required	Submitted with the Application
Stormwater Concept Plan	Required	Submitted No change to the footprint or catchment and stormwater is
Waste Management Plan	Required	Submitted with the Application
Arboricultural Impact Assessment	May be required if trees are impacted by the proposal	Not submitted as this is an existing suite no alterations to the existing footprint print are
Tree Protection Plan	May be required	Not submitted as this is an existing suite no alterations to the existing footprint print. No changes to the exiting tree canopy
Heritage Impact Statement	Required (must include a brief history of the site and assessment of the impacts, including the heritage requirements of the HDCP)	Submitted and prepared by Tasman Storey Architect Heritage Consultant
BASIX Certificate	Required	Submitted with the application
Shadow Diagrams	Required	Submitted with the application
Detailed Schedule of Materials and Finishes	Required	Submitted with the application

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10.0 SITE METRICS

LGA

HORNSBY COUNCIL

SITE AREA:

1202.5 m²

ZONE:

R2

HEIGHT

Maximum permissible heights 8.5m
 Proposed maximum height to parapet is 11.53m
 (note proposed roof line to match existing)
 Existing maximum height 11.53m

SITE COVERAGE

Permissible Max. Site Coverage for Lot Size
 900m² to 1499m² = 40%
 e 481m²

Proposed Site Coverage
 Proposed Dwelling House + Outbuildings =
 Existing Floor Area: 139.3m² + 76.9m² = 216.2m²

FLOOR AREA

Permissible maximum Floor area
 For site area 900m² or larger
 = 430m² for dwelling house and
 = 100m² for all out-buildings

Proposed Floor area

Garage = 21.25m²
 Ground Floor = 121.46m²
 Attic = 89.93m²

Total = 232.64m²

Outbuildings = 65.54m²

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SIDE SETBACK

Permissible maximum side setbacks
1.5m to second storey
proposed - 1.5m (to match existing)

LANDSCAPING

Permissible Min. Landscaping for Lot Size 900m² to 1499m² = 40%

i. e 481m²
Proposed landscape
570.97m² i.e 47%

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11.0 CONCLUSIONS

Proposal for alterations and additions to No 14 Sutherland Road Cheltenham is one with merit as it preserves the existing building stock and the urban context albeit that this dwelling house has been identified as have little heritage value by two esteemed Heritage Consultants. To that end the current approval for Seniors Living accommodation permits the demolition of No 14 Sutherland Road

However, the owner Mrs Lucinda De Vries wishes to address the several unsatisfactory aspects of the plan and improve the residence by adding an addition to the southern side and infilling the open norther corner.,.

The only other improvement proposed is a pergola which could be considered as Exempt Complying Development.

There is no over viewing, or privacy issues and the site metrics indicate that there is no non-compliances save exceeding the Height Control of 8.5 metres from the natural ground level.

Ingham Planning have prepared the requisite clause 4.6 amendment to the height control attached as Addendum 1

From information provided in a Pre DA lodgement meeting (PDLM) Council's Heritage Planner has found merit in the application in respect of the Beecroft Cheltenham Heritage Conservation Area.

This application is therefore recommended for approval.

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ADDENDUM 1

**REQUEST TO BREACH HEIGHT CONTROL PURSUANT TO CLAUSE 4.6 OF HORNSBY
LEP IN RELATION TO –**

14 Sutherland Street Cheltenham - October 2021

ATTACHMENT 4 - ITEM 7

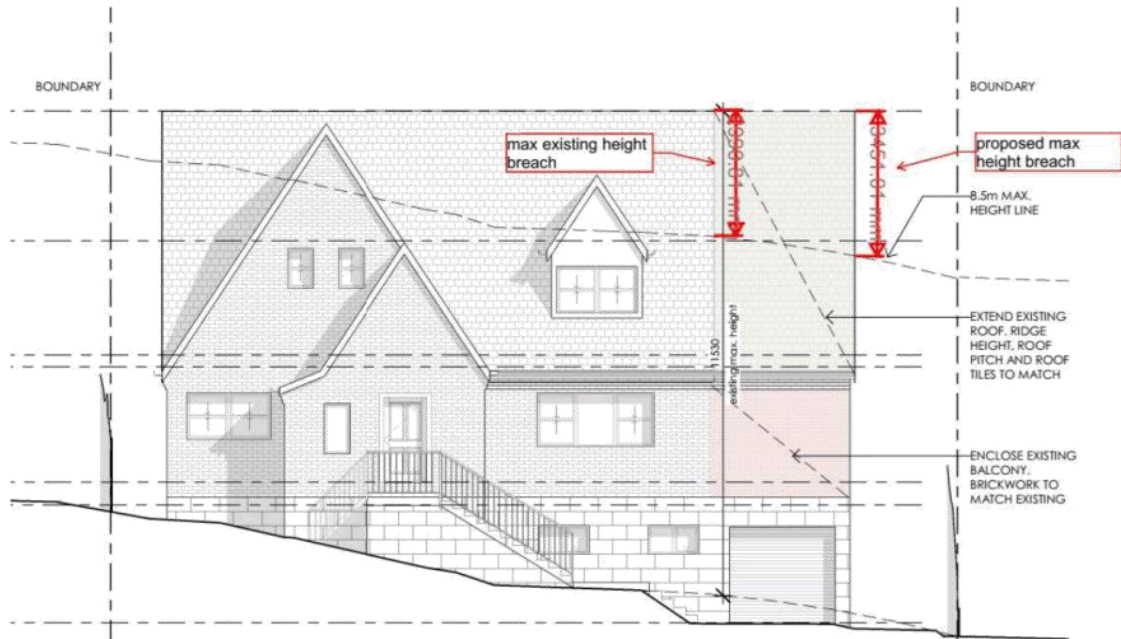
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**REQUEST TO BREACH HEIGHT CONTROL PURSUANT TO CLAUSE 4.6 OF HORNSBY LEP IN RELATION TO –
14 Sutherland Road Cheltenham - October 2021**

Clause 4.3 of the *Hornsby Local Environmental Plan 2013 (LEP)* and the relevant map indicate that the site is subject to an 8.5m height control. The proposal achieves a maximum height of RL116.33m at the roof ridge level which is at the same level as the existing roof ridge. At the lowest part of the site beneath this ridge, the proposal is a maximum of around 3.36m above the height control. The SE end of the existing building already breaches the height control by around 3m (see figure below). There is also a very minor beach by the extension of the roof in the NW part of the building (around 400mm).



Notwithstanding the above, a request to breach the control must be submitted in accordance with Clause 4.6 of the LEP.

The relevant parts of Clause 4.6 of Hornsby LEP 2013 are:

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and



(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

The purpose of this written request is to satisfy (3)(a) and (b) above and to demonstrate that (4)(a)(ii) and 5(a) and (b) can be satisfied. In preparing this request, regard has been had to the document: "Varying development standards: A Guide (August 2011)" prepared by the NSW Department of Planning & Infrastructure, and to relevant Land Environment Court judgements including the recent judgements of *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245, by Chief Judge Preston CJ in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118 and *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 and *Rebel MH Neutral Bay Pty Ltd v North Sydney Council*. And, most recently, the decision of Chief Justice Preston in *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115.

Clause (3)(a) - whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Whilst it was prepared in relation SEPP 1, the Land and Environment Court judgment *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007), is referred to in the Four2Five judgment and remains relevant to the consideration of concept of compliance being unreasonable or unnecessary. The DP&I Guide referred to above outlines the following 5 part test used in *Wehbe*:

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 objective 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 compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

It should be noted that the Courts have reiterated that it is only necessary to satisfy **one of** these 5 paths, although in some instances more than one may be relevant and achieved.

In regard to the issue here, it is considered that Tests 1 and 3 are applicable.

Test 1

Strict compliance with the development standard for building height in clause 4.3 of the LEP would be unreasonable and unnecessary because the proposal achieves the only stated objective of the height control:

(a) to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.

Comment – In relation to 'site constraints' one of the characteristics of the site is that it slopes and this results in the level of non-compliance being greater at the SE of the building. As noted above, at the NW end the proposal is non-compliant to the same extent of the existing building (only 400mm). Given the design of the existing dwelling and being within a conservation area, it would not be appropriate to step the height of the roof down with the slope. In this regard the heritage constraints are considered to be more important than the constraint of sloping land.

Another constraint is the proximity to adjoining neighbours. The proposal responds to this constraint accordingly, ensuring that there are no unreasonable impacts on surrounding properties. In particular, the additional height proposed does not result in any additional overshadowing that will affect the use or enjoyment of neighbours' dwellings or open space. As can be seen in the submitted midwinter diagrams, additional shadow will fall on the site itself, the roof of adjoining buildings or on the adjoining front yard at various times of the day. All the relevant solar access standards will be achieved.

In relation to development potential, the proposal almost fully complies with the relevant development standards except for building height. All of the proposed additional floor space is below the height control (floor space being measured at 1.4m above floor level) and so the breach of the control does not provide for additional development potential. In fact the proposal has significantly less floor space than permitted (232sqm compared to 430sqm) and covers significantly less site area (216sqm compared to 481sqm). With design changes, the new additions could fully comply with the height control however this would result in a built form that was not consistent with the height and character of the existing dwelling or the overall quality of the heritage conservation area. Therefore it is important to allow the breach of the control to allow a better design outcome to be achieved.

In relation to infrastructure capacity, as the development potential of the site does not exceed that which can be expected, the proposal will be within existing and planned increases to infrastructure capacity.

Test 3

Requiring compliance with the control would thwart achieving the objective of the height control as it would result in conflict with the heritage constraints of the site. As noted above the proposed breach means that the height of the existing building and its unique 'dutch gable' style is maintained and that the building maintains its role in the significance of the heritage conservation area in which it is located. Enforcing compliance would result in a flat roof solution which would detract from the quality of the building and conservation area.

In view of the above, having regard to Tests 1 and 3 of *Wehbe* enforcing compliance in the circumstances is considered to be unreasonable and unnecessary. Flexibility should be applied, consistent with objective (a) of clause 4.6 of the LEP.



Clause (3)(b) – whether there are sufficient environmental planning grounds to justify contravening the development standard

In addition to the above the following comments are made.

Compliance would result in poorer planning outcomes

As noted above the proposal has been specifically designed to provide a superior planning outcome, consistent with the objective of Clause 4.6 to “achieve better outcomes for and from development by allowing flexibility in particular circumstances”. As detailed above strict compliance with the controls would result in a poorer level of integration with the existing dwelling, which already substantially breaches the height control. It would mean relying on a flat roof solution which would detract from the quality of the existing building and the significance of the heritage conservation area.

Lack of impact

As detailed above and in the submitted SEE, the proposal has very minimal impact on surrounding properties and the level of impact arising from the non-compliance is negligible. This is because the height breach is limited to the pitched roof and therefore it does not add significantly to the overall bulk and scale of the building. It is also setback from neighbours to reduce visual and overshadowing impacts. A compliant building would be lower but could be much larger than what is being proposed and be located closer to the site boundaries, creating greater impact.

In view of the above it is considered that there are sufficient environmental planning grounds, specifically related to the subject site, that warrant contravention of the height standard.

As determined in *Randwick City Council v Micaul Holdings Pty Ltd*, and supported by Preston CJ in *Initial Action*, lack of impact is a sufficient ground for allowing a breach of a development standard pursuant to Clause 4.6.

Clause (4)(a)(ii) – whether 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

As noted above the proposal will be consistent with the relevant objectives of the height standard. In relation to the objectives of the subject R2 zoning the following comments are made:

- To provide for the housing needs of the community within a low density residential environment.

Comment – the proposal provides for a low density residential dwelling, consistent with this objective.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment - NA

In view of the above it is considered that the proposal suitably achieves the objectives of the R2 zone.

Clauses 4.6(4)(b) and 4.6(5)

Clause 4.6(4)(b) – SECRETARY’S CONCURRENCE

In *Initial Action*, Preston CJ noted at [28-29] that:

“Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary’s concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.”

It is therefore noted that concurrence is to be assumed, but the relevant matters for consideration are assessed below for completeness.

Clause 5(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning

No, the variation of the height standard is a minor matter and not uncommon. It does not raise any issues at a regional or state level.

Clause 5 (b) the public benefit of maintaining the development standard

For the reasons outlined above there is no public benefit in maintaining the standard. In fact, there will be public benefits in allowing a variation as a better planning outcome will be achieved.

Conclusion

Having regard to the above it is considered that this written request satisfies the requirements of Clause 4.6 and that the consent authority can be satisfied that the proposal also meets the other requirements of Clause 4.6. The proposed contravention of the standard will meet the objectives of Clause 4.6 as it achieves “better outcomes for and from development by allowing flexibility in particular circumstances”.

It is considered that the proposal represents a high quality planning outcome for the site.

Brett Brown, Ingham Planning Pty Ltd

October 2021

**8 ELECTRONIC - DA/1258/2021 - STRATA SUBDIVISION - ONE LOT INTO THREE LOTS - 33
COPELAND ROAD, BEECROFT**

EXECUTIVE SUMMARY

DA No: DA/1258/2021 (Lodged on 23 November 2021)

Description: Subdivision of one Torrens title allotment into three strata title lots

Property: Lot 34 DP 1208064, No. 33 Copeland Road, Beecroft

Applicant: William Xie

Owner: Mrs R Merhi

Estimated Value: Nil

Ward: C

- The proposal does not comply with the *Hornsby Local Environmental Plan 2013 (HLEP)* with regard to Clause 4.1A 'Minimum subdivision lot size for strata plan schemes in certain zones'. The applicant has made a submission in accordance with Clause 4.6 'Exceptions to development standards' of the *HLEP* to vary the minimum 600m² lot size development standard. The submission is considered well founded and is supported.
- The application is required to be determined by the Hornsby Local Planning Panel as the proposal would contravene the *HLEP* development standard for minimum subdivision lot size by more than 10 percent.
- No submissions have been received in respect of the application.
- It is recommended that the application be approved.

RECOMMENDATION

THAT the Hornsby Shire Council Local Planning Panel assume the concurrence of the Secretary of the Department of Planning and Environment pursuant to Clause 4.6 of the *Hornsby Local Environmental Plan 2013* and approve Development Application No. DA/1258/2021 for the subdivision of one Torrens title allotment into three strata title lots at Lot 34 DP 1208064, No. 33 Copeland Road Beecroft subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP9/22.

BACKGROUND

Upon gazettal of the then *Hornsby Shire Local Environmental Plan 1994 (HSLEP)* in July 1994, Hornsby Shire was exempted from the provisions of the now repealed NSW State Government's urban consolidation policies, namely *Sydney Regional Environmental Plan No. 12 Dual Occupancy (SREP 12)* and *State Environmental Planning Policy No. 25 Residential Allotment Sizes (SEPP 25)*.

The exemption was granted as a result of the housing initiatives embodied within the *HSLEP* which presented an alternative solution to meet both local and State housing objectives. The *HSLEP* incorporated higher density residential zones around transport and employment nodes, such as the Hornsby Town Centre. The *HSLEP* also permitted multi-unit housing at a density of one dwelling per 350m² of land area within the Residential A (Low Density) zone. In accordance with Clause 4(2) of the *HSLEP*, *SREP 12* and *SEPP 25* no longer applied to Hornsby Shire.

The then Minister for Urban Affairs and Planning subsequently repealed the right to separate titles on dual occupancy developments. However, despite the repeal of *SREP 12* and *SEPP 25*, the subdivision of dual occupancy with reduced lot sizes was still possible under the *HSLEP*.

On 15 December 1995, to bring the now repealed *HSLEP* in accordance with State Government policies, *HSLEP (Amendment No. 8)* was gazetted to exclude the subdivision of multi-unit housing developments where proposed allotment sizes were less than the minimum allotment size under Clause 14 (Density).

In September 2013, the *Hornsby Local Environmental Plan 2013 (HLEP)* was gazetted which permitted a minimum allotment size of 600m² (for the subject site) and prohibited 'multi-unit housing' and 'dual occupancies' within the R2 Low Density Residential zone.

SITE HISTORY

On 17 May 1990, Council approved Development Application No. 78/90 for the demolition of the existing dwelling and the erection of one duplex building (Villas 1 and 2) and one detached dwelling (Villa 3). The development was approved under the provisions of the now repealed Hornsby Shire Council Cluster Housing Code.

SITE

The 2,048.6m² battle-axe site is located on the northern side of Copeland Road Beecroft and contains multi-dwelling housing in the form of a single storey duplex and a detached single storey dwelling house.

The site experiences a fall of 6.4m to the southern front boundary, representing an average gradient of 5.7%.

The site is not burdened by any easements or restrictions. The site is located above the *NorthConnex* corridor.

The site does not contain a heritage item and is not located within a heritage conservation area.

The site is adjacent to a heritage listed item (landscape) namely the 'Grounds - Pennant Hills Golf Club' listed in Schedule 5 of the *HLEP*. This heritage listed Golf Club contains Turpentine-Ironbark Forest and Blue Gum Shale Forest which is listed as Endangered Ecological Community under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1995* and a Critically Endangered Ecological Community under the NSW *Biodiversity Conservation Act 2016*.

The site is surrounded by low density residential land uses to the north, east and west comprising a mixture of single and two storey dwellings and several subdivided battle-axe allotments. Pennant Hills Golf Club adjoins the southern side of the subject site across Copeland Road.

PROPOSAL

The application proposes the subdivision of one Torrens title allotment into three strata title lots.

Proposed Lot 1 would have an area of 387m² and would retain the southernmost dwelling (existing Villa 1).

Proposed Lot 2 would have an area of 407m² and would accommodate the rear dwelling of the dual occupancy building (existing Villa 2).

Proposed Lot 3 would have an area of 510m² and would retain the detached single storey dwelling house to the rear of the site.

The application seeks to retain the existing driveway and visitor car parking space along the battle-axe handle to be re-allocated to common property.

The subdivision would be serviced by the existing on-site stormwater detention system which drains to Council's drainage system along Copeland Road.

No physical works are proposed as part of this application.

The application would not necessitate the removal of any trees to facilitate the proposed subdivision.

ASSESSMENT

The development application has been assessed having regard to the *Greater Sydney Region Plan – A Metropolis of Three Cities*, the *North District Plan* and the matters for consideration prescribed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan

The Greater Sydney Region Plan - A Metropolis of Three Cities has been prepared by the NSW State Government to guide land use planning decisions for the next 40 years (to 2056). The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies dwelling targets to ensure supply meets demand. The Plan also identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

The NSW Government will use the subregional planning process to define objectives and set goals for job creation, housing supply and choice in each subregion. Hornsby Shire has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Ryde, Northern Beaches and Willoughby to form the North District. The Greater Sydney Commission has released the North District Plan which includes priorities and actions for Northern District for the next 20 years. The identified challenge for Hornsby Shire will be to provide an additional 4,350 dwellings by 2021 with further strategic supply targets to be identified to deliver 97,000 additional dwellings in the North District by 2036.

The proposed development would be consistent with the *Greater Sydney Region Plan - A Metropolis of Three Cities* and the *North District Plan*, by providing additional residential allotments capable of

being sold separately which will enable potential home buyers the opportunity to purchase affordable housing on smaller allotments in the locality.

2. STATUTORY CONTROLS

Section 4.15(1)(a) requires Council to consider “*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*”.

2.1 Hornsby Local Environmental Plan 2013

The proposed development has been assessed having regard to the provisions of the *Hornsby Local Environmental Plan 2013 (HLEP)*.

2.1.1 Zoning of Land and Permissibility

The subject land is zoned R2 Low Density Residential under the *HLEP*. The objectives of the R2 zone are:

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development is defined as ‘subdivision’ and is permissible with Council’s consent.

2.1.2 Minimum Subdivision Lot Size for Strata Plan Schemes in Certain Zones

Clause 4.1A of the *HLEP* prescribes that the minimum subdivision lot size for strata plan schemes is not to be less than shown for the land on the minimum lot size Map, which is 600m².

The proposed Strata subdivision would result in Lot 1 having an area of 387m² (35.5% variation), Lot 2 having an area of 407m² (32.1% variation) and Lot 3 having an area of 510m² (15% variation) and does not comply with the minimum lot size development standard.

The application is supported by a submission pursuant to Clause 4.6 of *HLEP* to contravene the minimum 600m² allotment size development standard, which is discussed below in Section 2.1.4 of this report.

2.1.3 Height of Buildings

Clause 4.3 of the *HLEP* provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m. The existing dwellings exhibit a maximum height of 6.2m above existing ground level.

Accordingly, the proposal complies with Clause 4.3 of the *HLEP*.

2.1.4 Exceptions to Development Standards

The application has been assessed against the requirements of Clause 4.6 of the *HLEP*. This clause provides flexibility in the application of the development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary, and it can be demonstrated that sufficient environmental planning grounds are present to justify contravening a development standard.

The application seeks to contravene Clause 4.1A of the *HLEP* as the proposed strata subdivision would result in Lot 1 having an area of 387m² (35.5% contravention), Lot 2 having an area of 407m² (32.1% contravention) and Lot 3 having an area of 510m² (15% contravention) and does not comply with the minimum lot size development standard.

The objective of Clause 4.1A Minimum subdivision lot size for strata plan schemes in certain zones is as follows—

- (1) *The objective of this clause is to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.*

The applicant has made a submission in support of the contravention to the development standard in accordance with Clause 4.6 of the *HLEP*. Clause 4.6 provides that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

Council must be satisfied that the written request provided by the applicant under Clause 4.6 addresses both the unreasonable and unnecessary test and demonstrates sufficient environmental planning grounds to justify contravening the development standard. These matters are discussed below.

2.1.4.1 Unreasonable or Unnecessary

There are five common methods by which an applicant can demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the development. Initially proposed for objections under clause 6 of *SEPP 1* in the decision of *Wehbe v Pittwater Council [2007] NSWLEC 827* Pearson C summarised and applied these methods to written requests made under Clause 4.6 in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* [61-62]. These five methods are generally as follows:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose is not relevant to the development.
- That the objective would be defeated or thwarted if compliance was required.
- That the development standard has been virtually abandoned or destroyed by the Council's own actions in departing from the standard.
- The zoning of the land is unreasonable or inappropriate.

It is not required to demonstrate that a development meets multiple methods as listed above, and the satisfaction of one can be adequate to demonstrate that the development standard is unreasonable or unnecessary.

The written request prepared by ATS Land & Engineering Surveyors provides justification for the variation in lot size by seeking to demonstrate that the objectives of the development standard, and

the objectives of the zone are achieved notwithstanding non-compliance with the development standard.

The written request provides justification as follows:

The proposal of strata subdivision is entirely reasonable as the development of the villas is inherently tied with strata subdivision in order for individual lots and common property to be created. Common property in this case is related directly to the access handle which is critical for all owners and visitors. Thus, the proposal satisfies the objective of the development standard, as it supports individual ownership of the lots and does not create additional dwelling entitlements, as the subdivision is based entirely existing dwellings (i.e. three residential villas being three lots and common property for access). By denying the proposed subdivision and enforcing compliance with the standard, it goes against the objective set out by the standard. It would leave the three individual dwellings as the existing lot which is unreasonable for a number of reasons. Most problematically, it would leave the owners of the three existing villas under one title which by itself is unnecessary. As such, the individual addressing of each villa is not officially registered, leaving further complications for the owners of each villa. A similar case to where a clause 4.6 variation had been granted by Hornsby Council was for DA/1100/2019 where the minimum lot size development standard was varied. A 32.42% variation in lot size was allowed in the proposed development, which was a Torrens title subdivision of one allotment (lot 3 in DP35906) into two lots. The justification for the variation from Hornsby Council was:

- The proposal would convert a prohibited 'dual occupancy' development to a permissible use (dwelling house) within the R2 Low Density Residential zone under the HLEP.*
- Approval of the application for Torrens title subdivision would not alter the intensity or scale of the existing development on the site. The proposal would allow the existing dwellings to be on separate titles, thereby adding economic value and versatility to existing housing stock.*

This current proposal is similar in extent in terms of the variation, and while it is a strata subdivision, the points of justification are fairly similar. As previously established, it would allow separate dwellings to be under separate titles, and therefore separate ownership, thereby supporting the objectives of the R2 zoning. The other points of justification are similarly shared and will be expanded upon in the following sections.

Council considers that the applicant's written request sufficiently identifies that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. With respect to the objective of Clause 4.1A(1) of the *HLEP*, Council is satisfied that the proposal is consistent with the objective as the proposed strata subdivision would not result in additional dwelling entitlements or land fragmentation on the site given that the existing Torrens title allotment is already lawfully improved by three dwellings resulting from the approval of a multi-unit housing development under Development Application No. 78/90.

In this regard, it is acknowledged that the site benefits from existing use rights established under Development Application No. 78/90 for multi-unit housing in the form of a duplex building and a detached dwelling house. Although the existing multi-unit housing development is not permissible under the in-force *HLEP* within the R2 Low density residential zone, the proposal presents an

opportunity to convert a prohibited 'multi-unit housing' development to a permissible land use (dwelling house).

Council concurs with the applicant that approval of the application would not alter the intensity or scale of the existing development on the site and would allow the existing dwellings to be on separate titles and under separate ownership, thereby adding economic value and versatility to existing housing stock. It is considered that the three lots could be sold separately which would allow potential home buyers the opportunity to buy affordable property that has proven to be of a suitable size for residential purposes.

The proposal includes no changes to the approved built form, and therefore, the proposal would have a neutral impact on the existing streetscape or the amenity of adjoining properties. Approval of the application would not alter the intensity or scale of the existing development on the site.

The proposal would result in allotments consistent with the objectives of the development standard. This is evident as the existing multi-unit housing development on the site demonstrates that the proposed allotments are capable of accommodating dwellings with the necessary ancillary services including stormwater and sewer.

The written request adequately demonstrates that compliance with the minimum lot size development standard is unreasonable and unnecessary in this instance.

2.1.4.2 Environmental Planning Grounds

In addition to demonstrating that compliance is unreasonable or unnecessary, Clause 4.6(3)(b) of the *HLEP* requires that there are sufficient environmental planning grounds to justify contravening the development standard. In demonstrating that sufficient environmental planning grounds exist, it must be demonstrated that the planning grounds are particular to the circumstances of the development on the subject site (summarised from *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* [60]).

In demonstrating the environmental planning grounds the written request states:

The proposed variation is fairly notable when considered quantitatively, but is justified in the following points:

- *The proposal of the construction of the villas was previously approved by Hornsby Council and subdivision of the land would inherently be associated with it.*
- *Separate titles, and separate ownership for each villa would be achieved, thereby making sales/purchases far easier, and like the previously mentioned case, it would provide similar benefits of adding economic value and versatility to housing stock. It helps to achieve objectives of the R2 zone by allowing separate ownership of each villa, thereby making it easier to satisfy the housing needs of the local community without creating additional dwelling entitlements.*
- *Having common property will allow for a common space for access that will be maintained by all owners through a strata scheme.*
- *Since the proposal is only a subdivision of existing villas, it will have no adverse impacts on adjoining properties. The existing villas already fit in with the character of the local area, being mostly low-density residential.*

Council considers that the environmental planning grounds stated within the written request are sufficient with respect to Clause 4.6(3)(b) and that the stated grounds are specific to the proposed

development and the circumstances of the development site. It is therefore considered that the written request adequately demonstrates compliance with the clause and is acceptable in this regard.

Council further notes that in demonstrating the unreasonable and unnecessary test, the applicant further established environmental planning grounds with respect to the site and the surrounding constraints.

2.1.4.3 Public Interest and Clause 4.6(4)

Clause 4.6(4) states that development consent must not be granted for development that contravenes a development standard unless:

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

With regard to part (i), the written request is considered to adequately address the matter required to be demonstrated as outlined above.

With regard to part (ii), the proposed development is considered to 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.

With regard to (b) the concurrence of the Planning Secretary has been obtained.

Accordingly, it is considered that the written request satisfactorily responds to the relevant matters required to be addressed under Clause 4.6 and that the Panel, as consent authority, may rely upon the written request and grant development consent to the development application. Should the Panel resolve to approve the application, it should also provide a statement in the reasons for approval that it has satisfied itself of the matters in Clause 4.6(4).

2.1.5 Heritage Conservation

Clause 5.10 of the *HLEP* sets out heritage conservation provisions for Hornsby Shire.

The site does not include a heritage item and is not located in a heritage conservation area. Notwithstanding, the site is adjacent to a heritage listed item (landscape) namely the 'Grounds - Pennant Hills Golf Club' listed in Schedule 5 of the *HLEP*. The heritage listed Golf Club contains Turpentine-Ironbark Forest and Blue Gum Shale Forest which is listed as Endangered Ecological Community under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1995* and a Critically Endangered Ecological Community under the *NSW Biodiversity Conservation Act 2016*.

The application does not necessitate any physical works and the existing low density residential land use would be maintained as part of this proposal. It is considered that the proposal would not pose a detrimental impact to the heritage significance of the heritage item, including its setting and views to and from the item.

The proposal meets the objectives of Clause 5.10 of the *HLEP* and is deemed acceptable in this regard.

2.1.6 Earthworks

Clause 6.2 of the *HLEP* states that consent is required for proposed earthworks on site. Before granting consent for earthworks, Council is required to assess the impacts of the works on adjoining properties, drainage patterns and soil stability of the locality.

The application does not propose any physical works and is consistent with Clause 6.2 of the *HLEP*.

Subject to compliance with the recommended conditions, the proposal is considered acceptable in this regard.

2.1.7 Flood Planning

The site is not identified as a flood planning area on the Flood Planning Map and further assessment under Clause 5.21 of the *HLEP* is not required.

2.2 State Environmental Planning Policy No. 55 Remediation of Land

The application has been assessed against the requirements of *State Environmental Planning Policy No. 55 Remediation of Land (SEPP 55)* under which consent must not be granted to the carrying out of any development on land unless the consent authority has considered whether the land is contaminated or requires remediation for the proposed use.

Should the land be contaminated, Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

An examination of Council's records and aerial photography has determined that the site has been historically used for residential purposes. It is not likely that the site has experienced any significant contamination, and further assessment under *SEPP 55* is not required.

2.3 State Environmental Planning Policy (Infrastructure) 2007

The application has been assessed against the requirements of Clause 103 of *State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)* under which written notice of any application proposing ground penetration of 3m or greater within road corridors including the *NorthConnex* is to be provided to *Transport for NSW (TfNSW)*.

Although the site is located above the *NorthConnex* corridor, the application does not propose excavation works and accordingly Clause 103 of the *Infrastructure SEPP* does not apply to the proposed development.

2.4 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 3, Clause 9(2) of the *Vegetation SEPP* states that a Development Control Plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1B.6.1 of the Hornsby Development Control Plan 2013 (HDCP) prescribes works that can be undertaken with or without consent to trees and objectives for tree preservation.

The application has been assessed against the requirements of the *Vegetation SEPP* and it has been determined that the proposal would meet the objectives of the *Vegetation SEPP*. This matter is addressed in Section 3.1.1 of this report.

2.5 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The application has been assessed against the requirements of *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. This Policy provides general planning considerations and strategies to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained.

The proposed development does not include earthworks and would not result in any additional impacts on the Sydney Harbour Catchment.

2.6 Section 3.42 Environmental Planning and Assessment Act 1979 - Purpose and Status of Development Control Plans

Section 3.42 of the *Environmental Planning and Assessment Act 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitate development that is permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Consent authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

2.7 Hornsby Development Control Plan 2013

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the *Hornsby Development Control Plan 2013 (HDCP)*. The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

Strata Subdivision of one lot into three:

HDCP – Part 6 – Subdivision			
Control	Proposal	Requirement	Complies
Site Area	2,048.6m ²	N/A	N/A
Lot Area			
- Lot 1	387m ²	600m ²	No
- Lot 2	407m ²	600m ²	No
- Lot 3	510m ²	600m ²	No
Minimum Lot Width at Frontage			
- Lot 1	21m	15m	Yes

- Lot 2	21m	15m	Yes
- Lot 3	26m	15m	Yes
Accessway Width			
- Carriageway (existing)	3.4m - 7.3m	3m	Yes
- Landscape Verge Width	0.5m - 3.7m	0.5m	Yes

Existing dwelling on proposed (Lot 1):

HDCP – Part 3.1 Dwelling Houses			
Control	Proposal	Requirement	Complies
Dwelling House height	5.9m	8.5m	Yes
No. storeys	1 storey	max. 2 + attic	Yes
Site Coverage	41%	55%	Yes
Floor Area	160m ²	270m ²	Yes
Setbacks			
- Front (east)	5m	900mm	Yes
- Side (south)	4m	900mm	Yes
- Side (north)	3.7m	900mm	Yes
- Rear (west)	3m	3m	Yes
Landscaped Area (% of lot size)	42%	15%	Yes
Private Open Space			
- minimum area	>24m ²	24m ²	Yes
- minimum dimension	>3m	3m	Yes
Car Parking	2 spaces	2 spaces	Yes

Existing dwelling on proposed (Lot 2):

HDCP – Part 3.1 Dwelling Houses			
Control	Proposal	Requirement	Complies
Dwelling House height	5.7m	8.5m	Yes
No. storeys	1 storey	max. 2 + attic	Yes

Site Coverage	39%	55%	Yes
Floor Area	160m ²	270m ²	Yes
Setbacks			
- <i>Front (east)</i>	5m	900mm	Yes
- <i>Side (south)</i>	2m	900mm	Yes
- <i>Side (north)</i>	9m	900mm	Yes
- <i>Rear (west)</i>	3m	3m	Yes
Landscaped Area (% of lot size)	52%	15%	Yes
Private Open Space			
- <i>minimum area</i>	>24m ²	24m ²	Yes
- <i>minimum dimension</i>	>3m	3m	Yes
Car Parking	2 spaces	2 spaces	Yes

Existing dwelling house on proposed (Lot 3):

HDCP – Part 3.1 Dwelling Houses			
Control	Proposal	Requirement	Complies
Dwelling House height	6.2m	8.5m	Yes
No. storeys	1 storey	max. 2 + attic	Yes
Site Coverage	37%	50%	Yes
Floor Area	190m ²	330m ²	Yes
Setbacks			
- <i>Front (east)</i>	3.2m	900mm	Yes
- <i>Side (south)</i>	4.7m	900mm	Yes
- <i>Side (north)</i>	3.8m	900mm	Yes
- <i>Rear (west)</i>	3.45m	3m	Yes
Landscaped Area (% of lot size)	55%	20%	Yes
Private Open Space			
- <i>minimum area</i>	>24m ²	24m ²	Yes
- <i>minimum dimension</i>	>3m	3m	Yes

Car Parking	2 spaces	2 spaces	Yes
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As detailed in the above tables, the proposed development complies with the prescriptive requirements within the *HDCP*, with the exception of lot size. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with relevant desired outcomes.

2.7.1 Lot Size

As discussed under Section 2.1.4 of this report, the existing multi-dwelling housing development demonstrates that the site is of sufficient size and shape to accommodate three dwellings. The proposed strata title subdivision would not alter the intensity or scale of the existing development on the site and would convert a prohibited '*multi-dwelling housing*' development to a permissible '*dwelling house*' development within the R2 Low Density Residential zone under the *HLEP*.

The proposal would not have a detrimental impact on the existing streetscape or the amenity of adjoining properties and is considered acceptable in this regard.

2.7.2 Transport and Parking

The *HDCP* encourages the provision of two car parking spaces to be behind the building line of dwelling houses to maintain the streetscape. The existing dwellings contain two integrated car parking spaces and comply with the car parking provisions of the *HDCP*.

Surplus to the requirements of the *HDCP*, the existing on-grade visitor car parking space would be retained within the battle-axe handle.

Council's engineering assessment raises no concerns to the structural integrity and utilisation of the existing crossing and driveway.

2.8 Section 7.11 Contributions Plans

The existing multi-dwelling housing development was approved prior to the gazettal of all previous Development Contribution Plans adopted by Council. A Section 7.11 Contribution is not applicable as the development would not increase demand for services and no additional dwellings are proposed.

3. ENVIRONMENTAL IMPACTS

Section 4.15(1)(b) of the Act requires Council to consider "*the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality*".

3.1 Natural Environment

3.1.1 Tree and Vegetation Preservation

No physical works are proposed as part of this application. It is also noted that the conditions recommended under Schedule 1 would not necessitate any physical works to facilitate the proposed strata subdivision. Accordingly, the application would not require the removal of any trees or vegetation from the site.

3.1.2 Stormwater Management

The subdivision would be serviced by the existing on-site stormwater detention system which drains to Council's drainage system along Copeland Road.

Council's stormwater assessment has determined that the existing method of stormwater disposal would be suitable to service the proposed subdivision, subject to a recommended condition requiring the creation of an appropriate *"Positive Covenant"* and *"Restriction as to User"* over the existing on-site detention system.

The proposal meets the desired outcomes of Part 1C.1.2 Stormwater Management of the *HDCP* and is deemed acceptable in this regard.

3.2 Built Environment

3.2.1 Built Form

As previously discussed, physical works have not been proposed as part of this application. The built form on-site would remain unaltered and would maintain its existing presence and character within the streetscape and to adjoining properties.

3.2.2 Building Code of Australia (BCA)

The application has been accompanied by a BCA Assessment prepared by All State Building Surveying dated 30 June 2021. The purpose of the report is to identify BCA requirements relating to fire separation between the existing dwellings.

The submitted BCA Assessment concludes that the existing development satisfies the intent of the applicable *Deemed to Satisfy* and *Performance Requirements* of the BCA. Council's building surveying assessment concurs with the conclusions of the BCA Assessment, subject to a recommended condition under Schedule 1 requiring that a certificate be provided from a licensed electrician certifying that the smoke alarms have been connected to the consumer mains power in accordance with *Australian Standard AS 3786-2014 Smoke alarms* and interconnected where there is more than one alarm in accordance with Part 3.7.2 of the *Building Code of Australia*.

3.2.3 Traffic

The proposed strata subdivision of the existing dwellings would not result in any change to traffic generation from the site.

3.3 Social Impacts

The strata subdivision would improve housing mix in the locality by enabling the existing dwellings to be either separately owner occupied or rented. This is consistent with Council's Housing Strategy which identifies the need to provide a mix of housing options to meet future demographic needs in Hornsby Shire.

3.4 Economic Impacts

The proposal is both site specific and accords with the objectives of the zone as the proposal would allow the existing dwellings to be on separate strata titles, thereby adding economic value and versatility to existing housing stock.

Accordingly, the proposal would have a minor positive impact on the local economy in conjunction with other new low-density residential development in the locality.

4. SITE SUITABILITY

Section 4.15(1)(c) of the Act requires Council to consider *“the suitability of the site for the development”*.

The subject site is not subject to any constraints and is considered suitable for subdivision of an existing established multi-unit housing development.

5. PUBLIC PARTICIPATION

Section 4.15(1)(d) of the Act requires Council to consider *“any submissions made in accordance with this Act”*.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 25 November 2021 and 16 December 2021 in accordance with the Hornsby Community Engagement Plan. During this period, Council received no submissions. The map below illustrates the location of those nearby landowners who were notified of the subject application.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED		PROPERTY SUBJECT OF DEVELOPMENT	
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5.2 Public Agencies

The development application was not referred to any Public Agencies for comment.

6. THE PUBLIC INTEREST

Section 4.15(1)(e) of the Act requires Council to consider “*the public interest*”.

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The application is considered to have satisfactorily addressed Council’s and relevant agencies’ criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. Accordingly, it is considered that the approval of the proposed development would be in the public interest.

CONCLUSION

The application proposes the subdivision of one Torrens title allotment into three strata title lots.

The development generally meets the desired outcomes of Council’s planning controls and is satisfactory having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

The application does not comply with the *HLEP* in respect to the minimum 600m² lot size. The applicant submitted a written request in response to Clause 4.6 Exceptions to Development Standard to contravene Clause 4.1A Minimum subdivision lot size for strata plan schemes in certain zones development standard. The objection is considered well founded with regard to the approved development on the site and the principles established by the Land and Environment Court.

Having regard to the circumstances of the case and consideration of the Clause 4.6 written request, approval of the application is recommended.

The reasons for this decision are:

- The request under Clause 4.6 of *Hornsby Local Environmental Plan 2013* to contravene the ‘Minimum subdivision lot size for strata plan schemes in certain zones’ development standard is well founded. Strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify the contravention to the development standards.
- The proposed development generally complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.
- There are no visual or physical impacts associated with the proposed subdivision as there will be no change to the built form as a result of this proposal.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to tree and vegetation preservation, stormwater, vehicle access, earthworks, amenity or privacy.

Note: At the time of the completion of this planning report, no persons have made a Political Donations Disclosure Statement pursuant to Section 10.4 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.











RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is Thomas Dales.

CASSANDRA WILLIAMS
Major Development Manager - Development
Assessments
Planning and Compliance Division

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.   Locality Plan
2.   Strata Subdivision Plan
3.   Clause 4.6
4.   Site Survey Plan
5.   Approved Plans for Multi-Unit Housing Development

File Reference: DA/1258/2021
Document Number: D08330364

SCHEDULE 1**ITEM 8****GENERAL CONDITIONS**

The conditions of consent within this notice of determination have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the relevant legislation, planning instruments and Council policies affecting the land and does not disrupt the amenity of the neighbourhood or impact upon the environment.

Note: For the purpose of this consent, the term 'applicant' means any person who has the authority to act on or the benefit of the development consent.

Note: For the purpose of this consent, any reference to an Act, Regulation, Australian Standard or publication by a public authority shall be taken to mean the gazetted Act or Regulation, or adopted Australian Standard or publication as in force on the date that the application for a construction certificate is made.

1. Approved Plans and Supporting Documentation

The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by Council and/or other conditions of this consent:

Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
10976-SP, Sheet 1 of 2	Plan of Subdivision (Location Plan)	Rolf Cambridge	7.5.20	
10976-SP, Sheet 2 of 2	Plan of Subdivision (Ground Floor Plan)	Rolf Cambridge	7.5.20	

Supporting Documents

Document Title	Prepared by	Dated	Council Reference
BCA Report	All State Building Surveying	30.6.21	D08300582

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE**2. Smoke Alarm Certification**

A certificate must be provided from a licensed electrician prior to the issue of a Subdivision Certificate certifying that the smoke alarms have been connected to the consumer mains power in accordance with *Australian Standard AS 3786-2014 Smoke alarms* and interconnected where there is more than one alarm in accordance with Part 3.7.2 of the *Building Code of Australia*.

3. Creation of Easements (Application for Execution of Legal Documents)

The following easement is to be created on the title of the property under the *Conveyancing Act 1919*:

- a) The creation of an appropriate "*Positive Covenant*" and "*Restriction as to User*" over the constructed on-site detention/retention systems and outlet works, within the lots in favour of Council in accordance with Council's prescribed wording. The position of the on-site detention system is to be clearly indicated on the title.
- b) To register the OSD easement, the restriction on the use of land "*works-as-executed*" details of the on-site-detention system must be submitted verifying that the required storage and discharge rates have been constructed in accordance with the design requirements. The details must show the invert levels of the onsite system together with pipe sizes and grades. Any variations to the approved plans must be shown in red on the "*works-as-executed*" plan and supported by calculations.

Note: Council must be nominated as the authority to release, vary or modify any easement, restriction, or covenant.

- END OF CONDITIONS -

ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with *the Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2000*, other relevant legislation and Council's policies and specifications. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

Environmental Planning and Assessment Act 1979 Requirements

The *Environmental Planning and Assessment Act 1979* requires:

- The issue of a construction certificate prior to the commencement of any works. Enquiries can be made to Council's Customer Services Branch on 9847 6760.
- A principal certifying authority to be nominated and Council notified of that appointment prior to the commencement of any works.
- Council to be given at least two days written notice prior to the commencement of any works.
- Mandatory inspections of nominated stages of the construction inspected.
- An occupation certificate to be issued before occupying any building or commencing the use of the land.

Covenants

The land upon which the subject building is to be constructed may be affected by restrictive covenants. Council issues this approval without enquiry as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this consent. Applicants must rely on their own enquiries as to whether or not the building breaches any such covenant.

Asbestos Warning

Should asbestos or asbestos products be encountered during installation of smoke alarms, you are advised to seek advice and information prior to disturbing this material. It is recommended that a contractor holding an asbestos-handling permit (issued by *SafeWork NSW*) be engaged to manage

the proper handling of this material. Further information regarding the safe handling and removal of asbestos can be found at:

www.environment.nsw.gov.au

www.adfa.org.au

www.safework.nsw.gov.au

Alternatively, telephone the *SafeWork NSW* on 13 10 50.

Subdivision Certificate Requirements

A subdivision certificate application is required to be lodged with Council containing the following information:

- A surveyor's certificate certifying that all structures within the subject land comply with the development consent in regard to the setbacks from the new boundaries.
- A surveyor's certificate certifying that all services, drainage lines or access are located wholly within the property boundaries. Where services encroach over the new boundaries, easements are to be created.
- Certification that the requirements of relevant utility authorities have been met.
- A surveyor's certificate certifying finished ground levels are in accordance with the approved plans.

Note: Council will not issue a subdivision certificate until all conditions of the development consent have been completed.

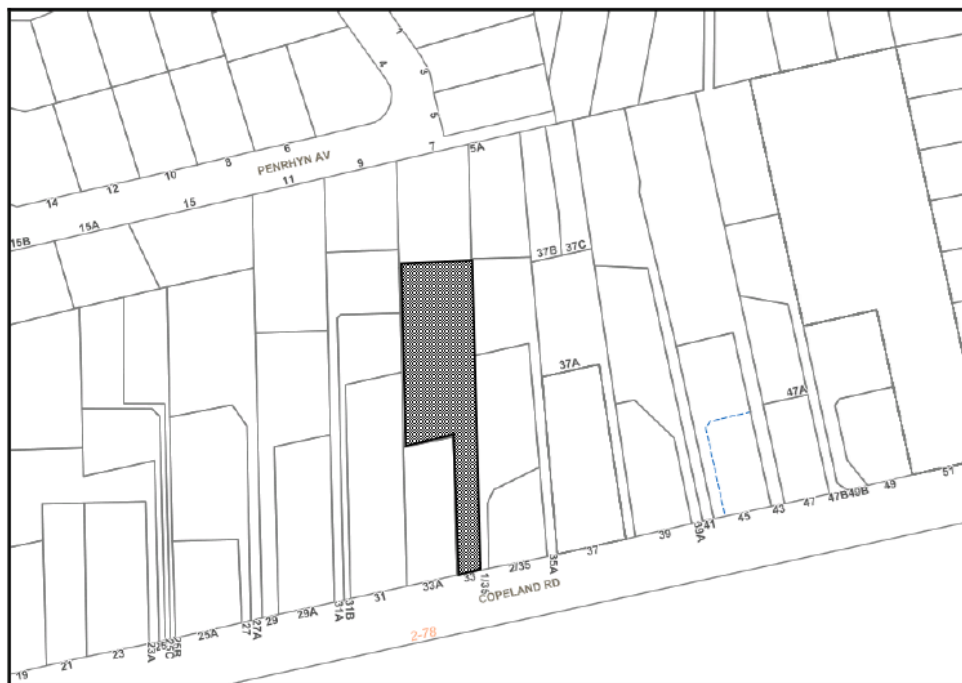
Note: At the present time Hornsby Shire Council is the only authority that can be appointed as a PCA for subdivision works within the Shire.

Fees and Charges – Subdivision

All fees payable to Council as part of any construction, compliance or subdivision certificate or inspection associated with the development (including the registration of privately issued certificates) are required to be paid in full prior to the issue of the subdivision certificate. Any additional Council inspections beyond the scope of any compliance certificate required to verify compliance with the terms of this consent will be charged at the individual inspection rate nominated in Council's Fees and Charges Schedule.

Unit Numbering (Strata Units)

All units are to be numbered consecutively commencing at No. 1. The strata plan lot number is to coincide with the unit number. E.g. Unit 1 = Lot 1.

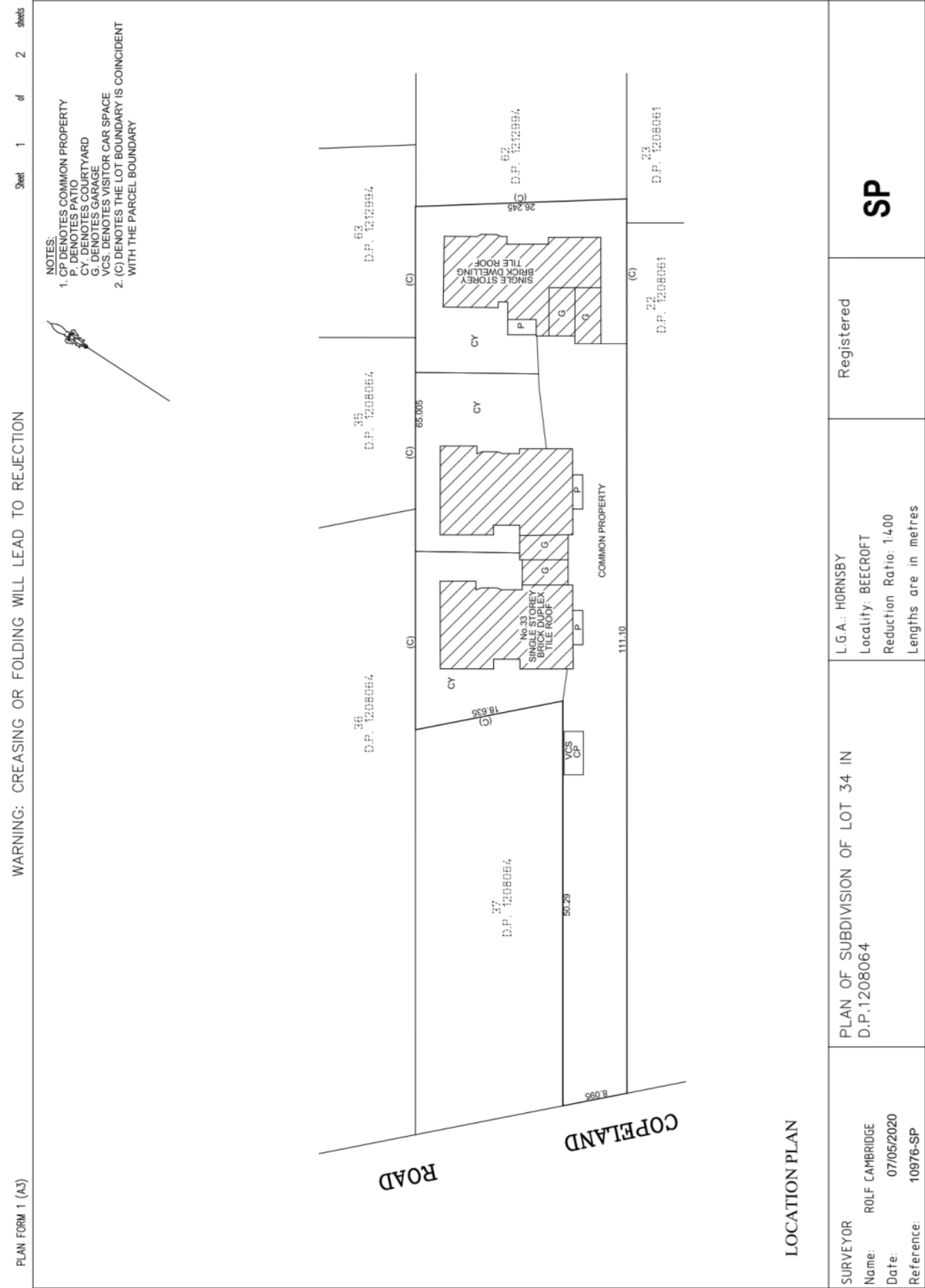


LOCALITY PLAN

DA/1258/2021

No. 33 Copeland Road, Beecroft

ATTACHMENT 1 - ITEM 8



ATTACHMENT 2 - ITEM 8

PLAN FORM 1 (A3)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

Sheet 2 of 2 sheets

NOTES:

1. ALL AREAS ARE APPROXIMATE

2. CY DENOTES COURTYARD

3. DENOTES PATIO

4. DENOTES GARAGE

5. DENOTES VISITOR CAR SPACE

6. DENOTES PROLONGATION OF NORTHERN FACE OF WALL

7. DENOTES PROLONGATION OF EASTERN FACE OF WALL

8. DENOTES PROLONGATION OF SOUTHERN FACE OF WALL

9. DENOTES PROLONGATION OF WESTERN FACE OF WALL

10. DENOTES 90°

11. THE WHOLE OF THE STRUCTURE OF THE BUILDING STANDING ON EACH LOT, INCLUDING WALLS, FLOORS, CEILINGS AND ROOFS, FORM PART OF LOT AND IS NOT COMMON PROPERTY EXCLUDING THE COMMON WALL WHICH IS COMMON PROPERTY.

12. ALL LOTS ARE LIMITED IN STRATUM FROM 50 BELOW TO 50 ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE UNITS GROUND FLOOR SLAB.

13. ANY SERVICE LINES WITHIN ONE LOT SERVICING ANOTHER LOT IS COMMON PROPERTY

14. ANY COMMON SERVICE LINES ARE COMMON PROPERTY

15. THE COMMON WALL (B) IS COMMON PROPERTY

16. THE STRATUM OF THE PATIO EXTEND 3 ABOVE THE UPPER SURFACE OF THEIR PAVED FLOOR, EXCEPT WHERE COVERED WITHIN THIS LIMIT.

17. THE STRATUM OF THE COURTYARDS EXTEND 5 ABOVE & 5 BELOW THE UPPER SURFACE OF THE ADJOINING GROUND FLOOR UNIT EXCEPT WHERE COVERED WITHIN THIS LIMIT

GROUND FLOOR PLAN

The diagram is a ground floor plan of Lot 34, divided into three units labeled 1, 2, and 3. Unit 1 is on the left, Unit 2 is in the middle, and Unit 3 is on the right. Each unit contains various areas labeled with abbreviations: CY (Courtyard), G (Garage), P (Patio), and B (Visitor Car Space). Dimensions are provided for various boundaries and areas. A north arrow is located in the top right corner of the plan. The plan also shows common property areas and service lines.

SURVEYOR
Name: ROLF CAMBRIDGE
Date: 07/05/2020
Reference: 10976-SP

PLAN OF SUBDIVISION OF LOT 34 IN D.P.1208064

L.G.A.: HORNSBY
Locality: BEECROFT
Reduction Ratio: 1:400
Lengths are in metres

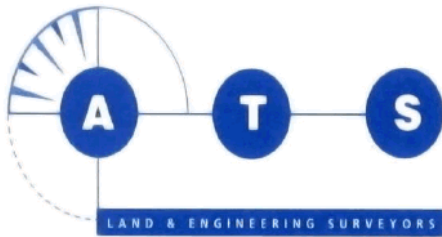
Registered

SP

ATTACHMENT 2 - ITEM 8

Local Planning Panel meeting 23 February 2022

Business Paper Page 122



CLAUSE 4.6 VARIATION REQUEST

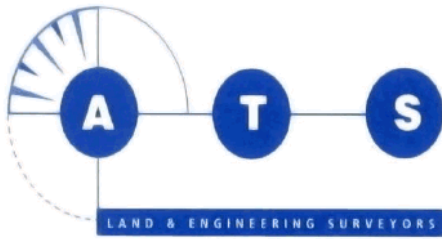
***33 Copeland Road
Beecroft***

November 2021

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1. Introduction

This Clause 4.6 Variation Request has been prepared in reference to varying the minimum lot size standard included in Clause 4.1A Minimum subdivision lot size for strata plan schemes in certain zones in the Hornsby Local Environmental Plan 2013 (HLEP 2013). The proposal, as detailed in the Statement of Environmental Effects, is a strata subdivision of three existing villas into three lots and common property on the site known as Lot 34 DP 1208064, No. 33 Copeland Road, Beecroft. The site is located in the R2 low density residential zone.

2. Zoning and objectives of the zone

As just mentioned, the site exists in the R2 low density residential zone as shown in Figure 1.

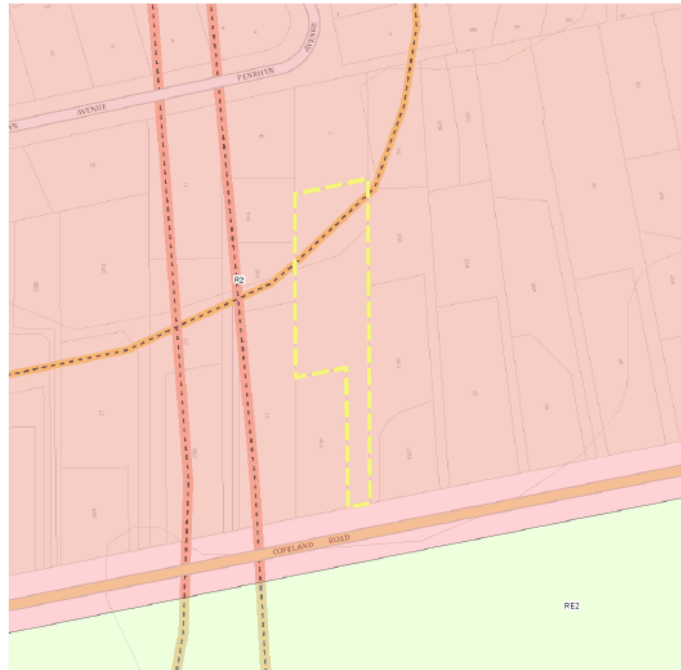


Figure 1: Planning control excerpt from ePlanning Spatial Viewer

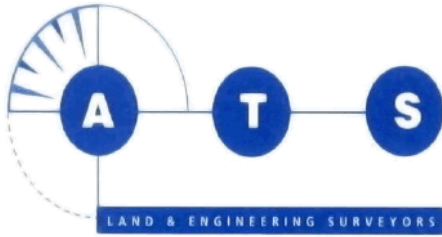
The objectives of the zone are as follows, extracted from the HLEP 2013:

- **To provide for the housing needs of the community within a low density residential environment.**
- **To enable other land uses that provide facilities or services to meet the day to day needs of residents.**

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3. Development standard to be varied

The development standard to which the Clause 4.6 Variation applies to is the Clause 4.1A Minimum subdivision lot size for strata plan schemes in certain zones from the HLEP 2013. It is detailed as follows:

(1) The objective of this clause is to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.

(2) This clause applies to land in the following zones that is used, or is proposed to be used, for residential accommodation or tourist and visitor accommodation—

- (a) Zone RU1 Primary Production,*
- (b) Zone RU2 Rural Landscape,*
- (c) Zone RU4 Primary Production Small Lots,*
- (d) Zone RU5 Village,*
- (e) Zone R2 Low Density Residential,*
- (f) Zone SP3 Tourist,*
- (g) Zone E2 Environmental Conservation,*
- (h) Zone E3 Environmental Management,*
- (i) Zone E4 Environmental Living.*

(3) The size of any lot resulting from a subdivision of land to which this clause applies for a strata plan scheme (other than any lot comprising common property within the meaning of the Strata Schemes (Freehold Development) Act 1973 or Strata Schemes (Leasehold Development) Act 1986) is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

Note—

Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 provides that strata subdivision of a building in certain circumstances is specified complying development.

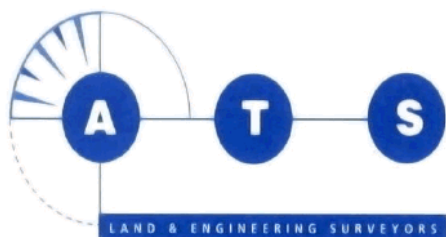
(4) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size.

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4. Proposed variation to development standard

The proposed strata subdivision is shown on the subdivision plan prepared by ATS Surveyors below in figures 2-3. The overall site area 2049 sqm, is to be subdivided into 3 strata lots and common property. Lot 1 is 387 sqm, lot 2 is 407 sqm, lot 3 is 510 sqm.

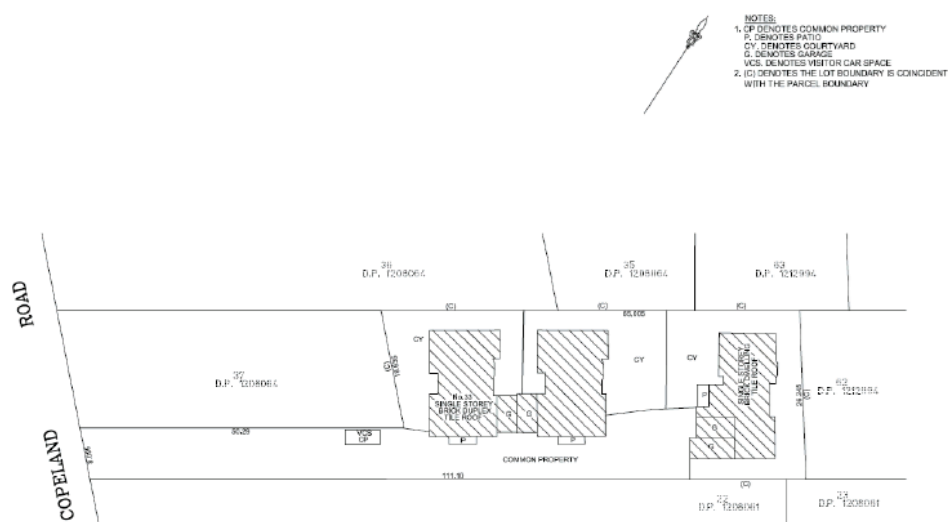


Figure 2: Location plan of strata plan

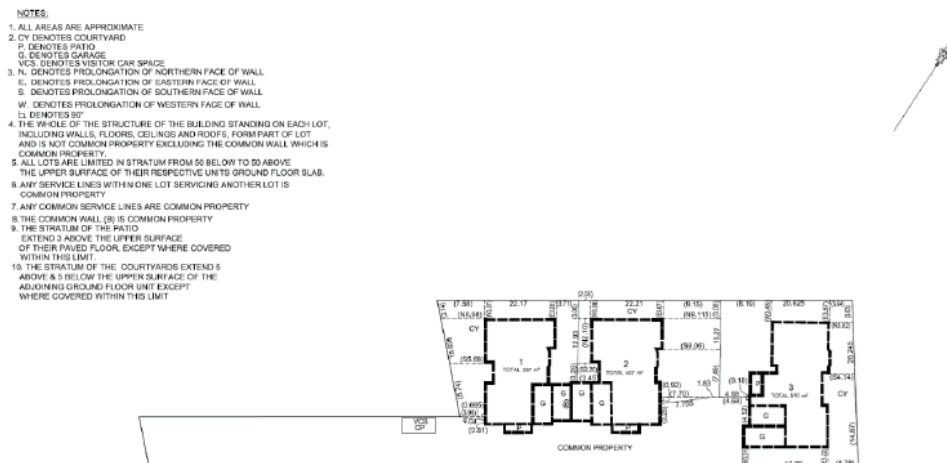
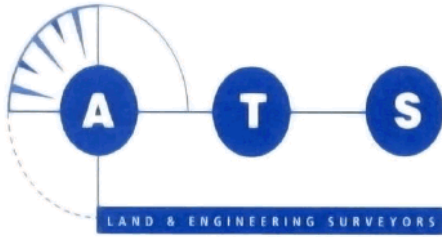


Figure 3: Ground level of strata plan

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As mentioned prior, the minimum lot size the R2 low density residential zone is 600m². Hence, the maximum percentage variation proposed is 35.5% from the proposed lot 1.

5. Matters of consideration under Clause 4.6

Comments on the individual issues of Clause 4.6 will be included in this section.

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,***
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.***

Comment: The proposal uses this flexibility to provide better outcomes through improving the use of the villas through subdivision, which is detailed in the following section.

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

Comment: The minimum lot size standard is not expressly excluded from operation of this clause.

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

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

Comment: The following two sections (6 & 7) justifies the variation.

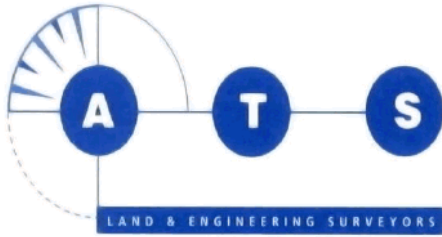
(4) Development consent must not be granted for development that contravenes a development standard unless—

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

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Comment: This report addresses all requirements of subclause (3). Section 8 details how the proposal is in the public interest, as well as satisfying objectives of the development standard and the objectives of the zone. Concurrence is assumed but is a matter to be determined by Hornsby Council.

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and**
- (b) the public benefit of maintaining the development standard, and**
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.**

Comment: There are no matters of significance for state or regional environmental planning. The issue of public benefit is detailed in section 8.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or**
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.**

Note—

When this Plan was made it did not include of these zones.

Comment: Not applicable.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

Comment: This is a matter for Hornsby Council.

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

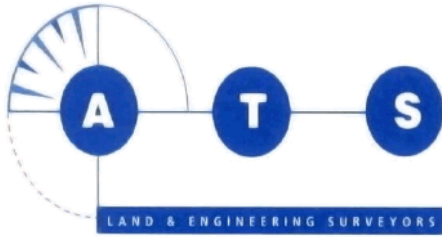
- (a) a development standard for complying development,**
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,**
- (c) clause 5.4.**

Comment: Not applicable.

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(8A) This clause does not allow development consent to be granted for development that would contravene clause 4.4 for a building on land in Zone B2 Local Centre within the Epping Town Centre, identified as “Area 9” on the Floor Space Ratio Map for the following purposes—

- (a) boarding houses,**
- (b) group homes,**
- (c) hostels,**
- (d) shop top housing,**
- (e) tourist and visitor accommodation,**
- (f) a mixed use development comprising a combination of uses specified in paragraphs (a)–(e).**

Comment: Not applicable.

(8B) Subclause (8A) and this subclause are repealed at the beginning of 31 July 2024.

Comment: Not applicable.

6. How compliance with the development standard is unreasonable in the circumstances of this particular case

The proposal of strata subdivision is entirely reasonable as the development of the villas is inherently tied with strata subdivision in order for individual lots and common property to be created. Common property in this case is related directly to the access handle which is critical for all owners and visitors. Thus, the proposal satisfies the objective of the development standard, as it supports individual ownership of the lots and does not create additional dwelling entitlements, as the subdivision is based entirely existing dwellings (i.e. three residential villas being three lots and common property for access).

By denying the proposed subdivision and enforcing compliance with the standard, it goes against the objective set out by the standard. It would leave the three individual dwellings as the existing lot which is unreasonable for a number of reasons. Most problematically, it would leave the owners of the three existing villas under one title which by itself is unnecessary. As such, the individual addressing of each villa is not officially registered, leaving further complications for the owners of each villa.

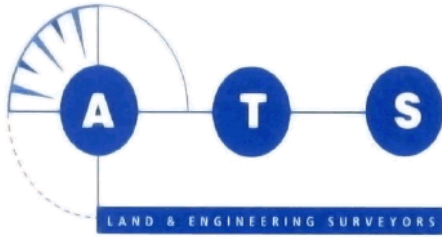
A similar case to where a clause 4.6 variation had been granted by Hornsby Council was for DA/1100/2019 where the minimum lot size development standard was varied. A 32.42% variation in lot size was allowed in the proposed development, which was a Torrens title subdivision of one allotment (lot 3 in DP35906) into two lots. The justification for the variation from Hornsby Council was:

- **The proposal would convert a prohibited ‘dual occupancy’ development to a permissible use (dwelling house) within the R2 Low Density Residential zone under the HLEP.**
- **Approval of the application for Torrens title subdivision would not alter the intensity or scale of the existing development on the site. The proposal would allow the**

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existing dwellings to be on separate titles, thereby adding economic value and versatility to existing housing stock.

This current proposal is similar in extent in terms of the variation, and while it is a strata subdivision, the points of justification are fairly similar. As previously established, it would allow separate dwellings to be under separate titles, and therefore separate ownership, thereby supporting the objectives of the R2 zoning. The other points of justification are similarly shared and will be expanded upon in the following sections.

7. Sufficient environmental planning grounds to justify the contravention

The proposed variation is fairly notable when considered quantitatively, but is justified in the following points:

- The proposal of the construction of the villas was previously approved by Hornsby Council and subdivision of the land would inherently be associated with it.
- Separate titles, and separate ownership for each villa would be achieved, thereby making sales/purchases far easier, and like the previously mentioned case, it would reap similar benefits of adding economic value and versatility to housing stock. It helps to achieve objectives of the R2 zone by allowing separate ownership for of each villa, thereby making it easier to satisfy the housing needs of the local community without creating additional dwelling entitlements.
- Having common property will allow for a common space for access that will be maintained by all owners through a strata scheme.
- Since the proposal is only a subdivision of existing villas, it will have no adverse impacts on adjoining properties. The existing villas already fit in with the character of the local area, being mostly low-density residential.

8. Consideration of public interest

The proposal is purely a strata subdivision and the contravention of the development standard does not intensify existing land use, nor propose any alterations or construction that would affect the local community. It will have benefits for the owners of the villas, providing individualised ownership for housing, without creating additional dwelling entitlements and will have no impact on the public. It satisfies the objectives of the original clause, as well as the objectives of the R2 zone and therefore would be in the public interest.

9. Conclusion

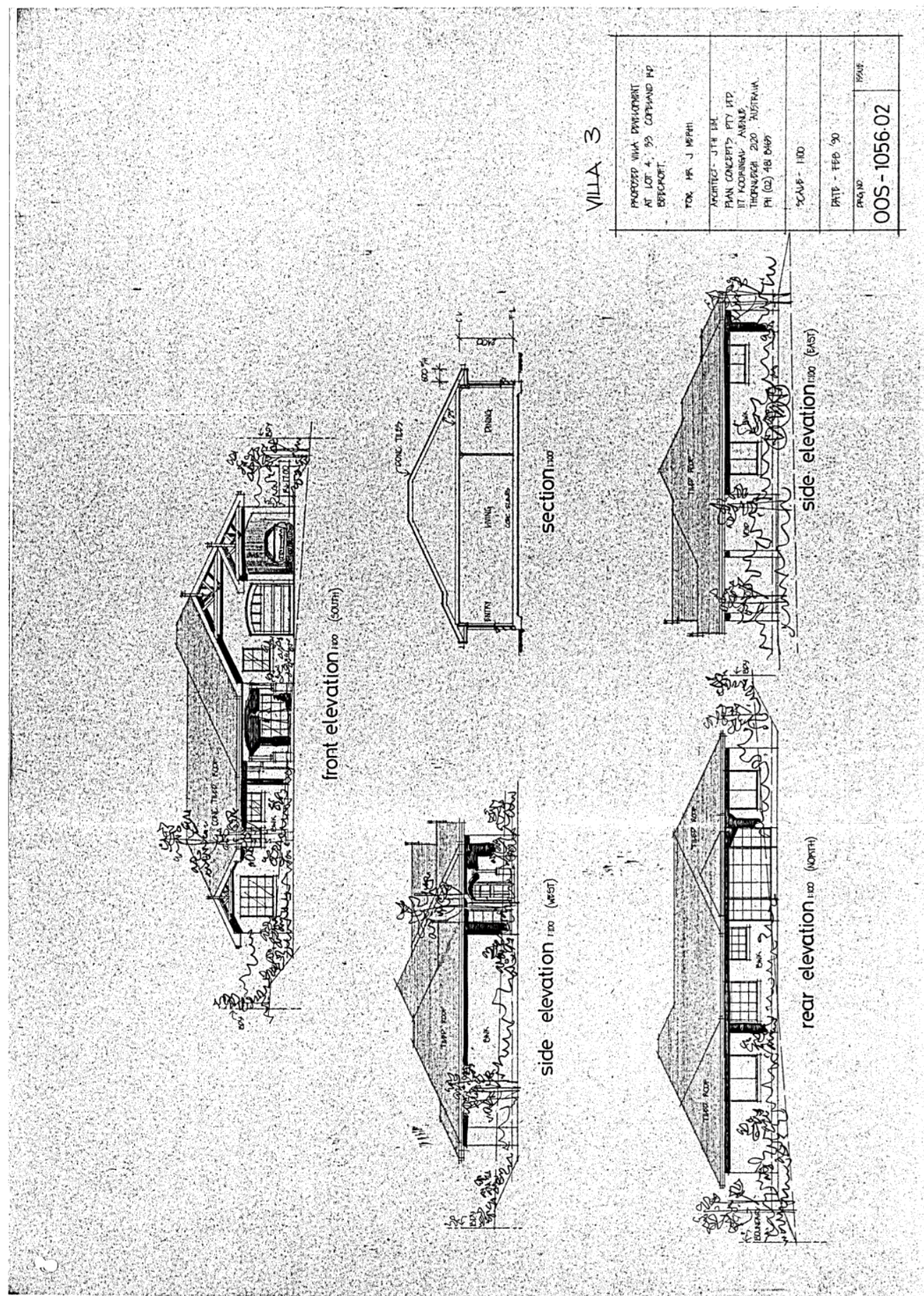
Overall, the Clause 4.6 Variation is well-founded and while the quantitative measure of the variation is notable, there are a range of benefits that will result from it. Therefore, the variation is appropriate given the circumstances of this case.

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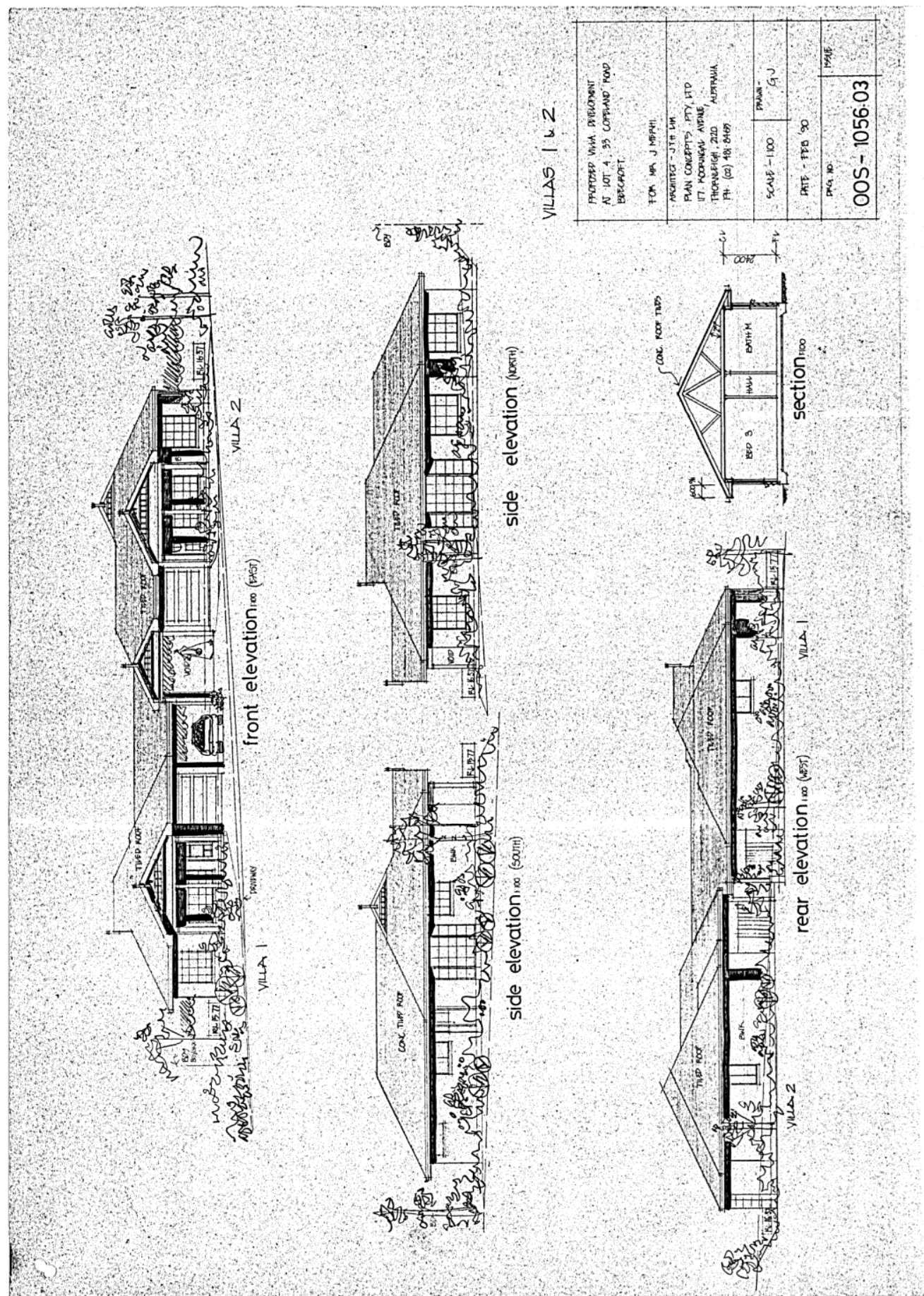
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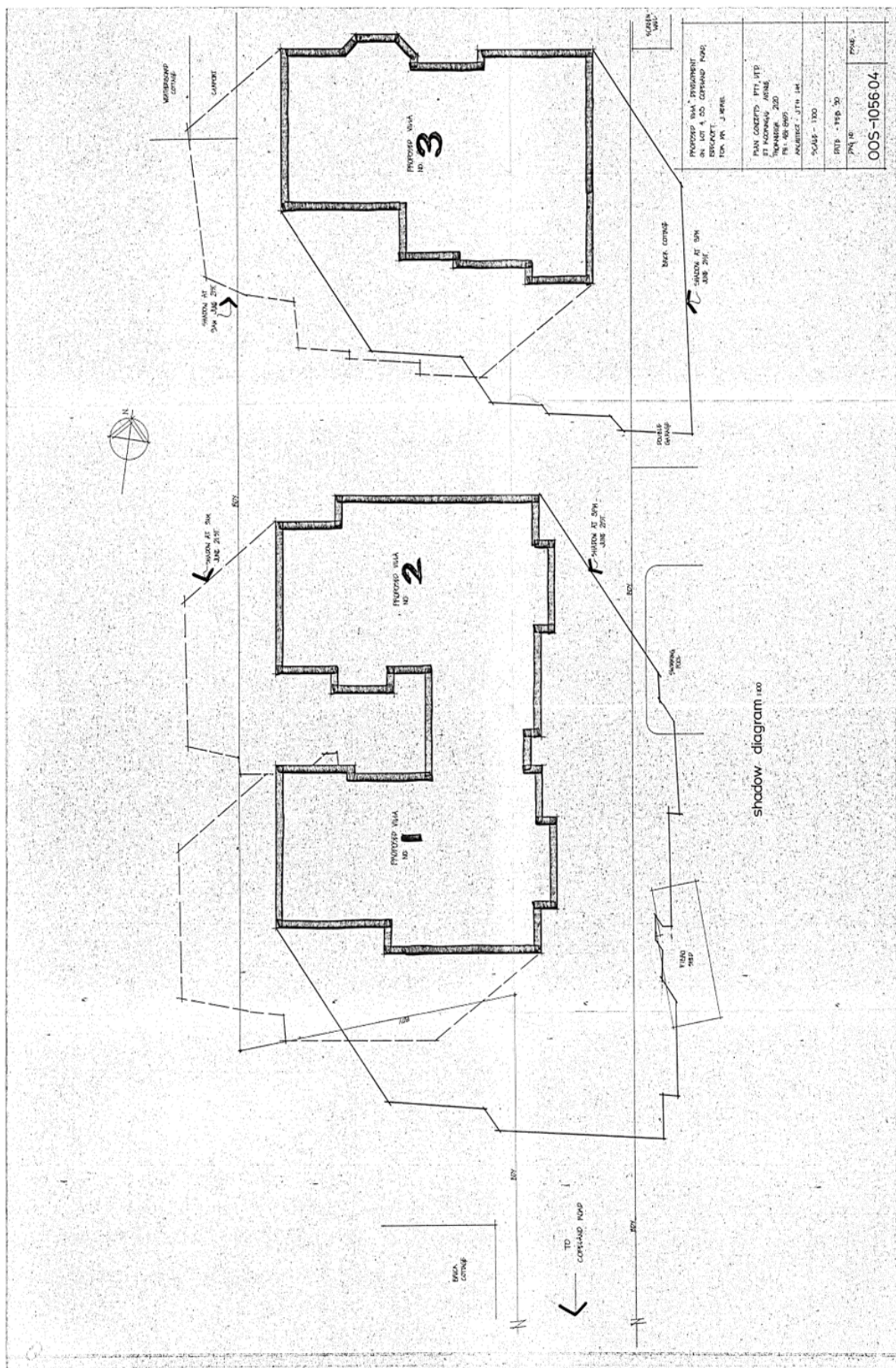




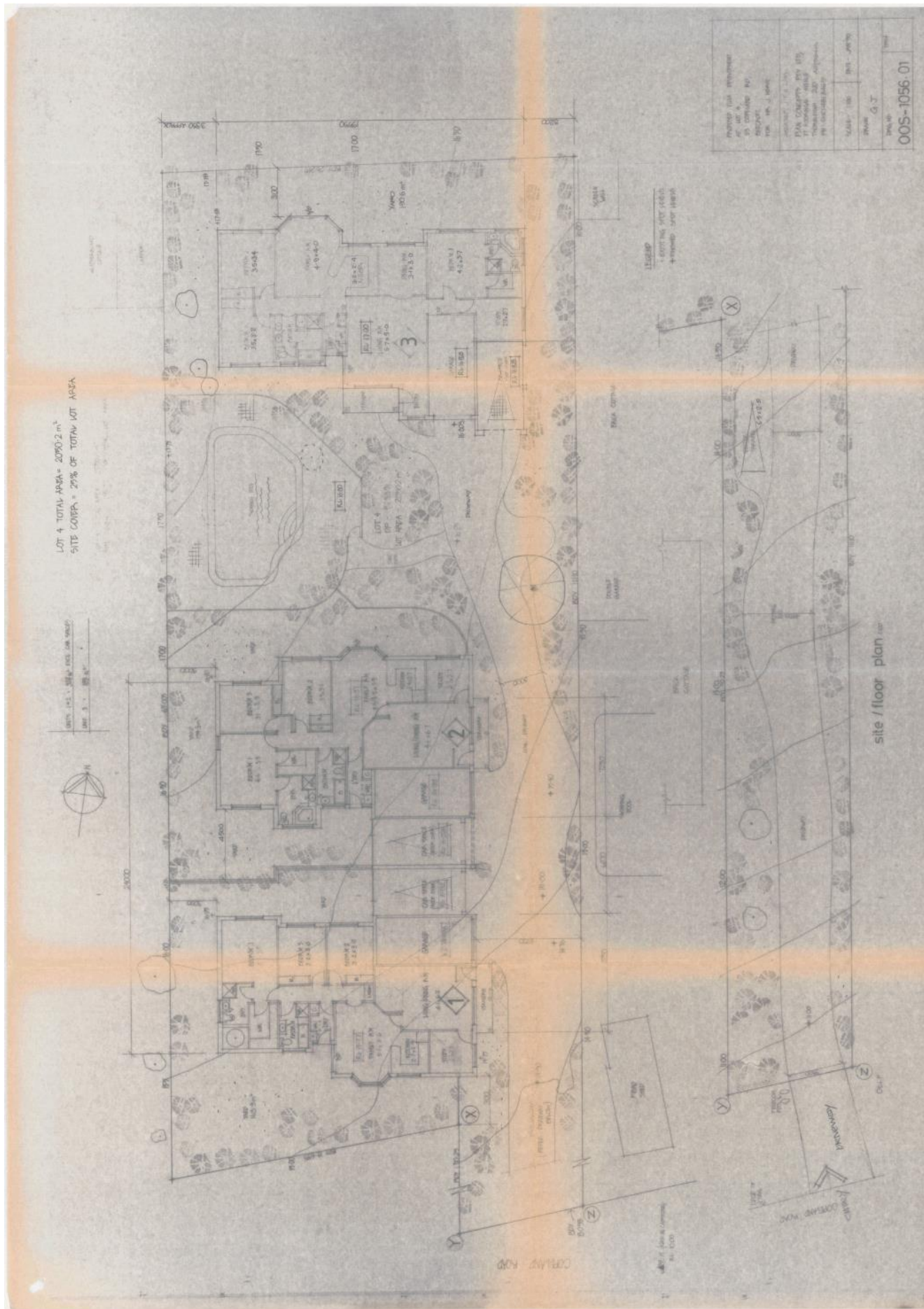
ATTACHMENT 5 - ITEM 8



ATTACHMENT 5 - ITEM 8



ATTACHMENT 5 - ITEM 8



ATTACHMENT 5 - ITEM 8

9 ELECTRONIC - REPORTING DEVELOPMENT APPLICATIONS FOR DETERMINATION BY THE HORNSBY LOCAL PLANNING PANEL OVER 180 DAYS

EXECUTIVE SUMMARY

- In accordance with the Local Planning Panels Directions - Operational Procedures, Council is required to monitor development applications to be determined by the Panel that may be experiencing unreasonable delays of over 180 days from lodgement.
- A list of out outstanding development applications in excess of 180 calendar days from lodgement is attached for the Hornsby Local Planning Panel's advice.

RECOMMENDATION

THAT the contents of LPP Report No. LPP12/22 be received and noted.

PURPOSE

The purpose of this report is to advise the Hornsby Local Planning Panel of development applications required to be determined by the Panel that are over 180 calendar days from lodgement.

DISCUSSION

In 2019 the NSW Productivity Commission conducted a review of the Independent Planning Commission (IPC). The review recommended several actions to streamline processes to optimise efficiency, output and performance.

The planning panel changes were implemented on 1 August 2020 to incorporate a number of the NSW Productivity Commission 's recommendations to the way Local Planning Panels work to make them more efficient and to improve the assessment and determination times of development applications and maintain panel oversight of sensitive and contentious applications.

These changes were made as part of the Planning Acceleration Program to support the State's immediate and long-term economic recovery from the COVID-19 crisis.

The changes will speed up panel determinations by:

1. Reducing the need to conduct public panel meetings for non-contentious matters by applying a '10-or-more' objection trigger for public meetings.
2. Reducing the amount of modifications going to panels.
3. Obliging panel chairs to more actively manage development applications (DAs) coming to the panels to reduce panel deferrals and assessment timeframes.
4. Allowing chairs to bring forward determination on DAs that are experiencing unreasonable delays of over 180 days from lodgement.
5. Introducing panel performance measures.

The Local Planning Panels Directions - Operational Procedures has been amended to:

- Require panels to make determinations within two weeks of being provided an assessment report.
- Require panels to hold a public meeting only where the Development Application has attracted 10 or more unique submissions by way of objection.
- Allow, at the Chair's discretion, applicants to attend a briefing, along with council staff, to explain complex matters or present confidential or commercially sensitive material.
- Oblige panel chairs to work with council to ensure key issues are addressed during assessment in order to minimise deferrals by the panels at determination stage.
- Require the panels to provide reasons for deferring a decision and set timeframes in which any additional information must be provided in order to finalise the determination.
- Give panel chairs the ability to require council to report a DA to the panel within four weeks for determination if the application has experienced unreasonable delays in excess of 180 calendar days from lodgement.

In accordance with Point 6 of the Local Planning Panels Directions - Operational Procedures, attached is a list of development applications required to be determined by the Panel that are over 180 calendar days from lodgement.

CONCLUSION

Council is required to monitor development applications to be determined by the Panel that are over 180 calendar days from lodgement. This report provides advice to the Local Planning Panel on DAs that are experiencing unreasonable delays of over 180 days from lodgement.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is the Major Development Manager, Cassandra Williams.

JAMES FARRINGTON

Director - Planning and Compliance

Planning and Compliance Division

Attachments:

1.  Over 180



Days

File Reference: F2013/00295-003

Document Number: D08338720

List of development applications required to be determined by the LPP that are over 180 calendar days from lodgement

DA No.	Proposal	Address	Ward	Reason	Est. Date to LPP	Advice to Chair	No. Days at 23/2
DA/416/2020	10-12 storey mixed use building accommodating retail tenancies at the ground floor level, commercial tenancies at the first-floor level, a residential care facility at levels 3-11, a residential apartment at level 12 and strata subdivision	228-234 Pacific Highway Hornsby	B	>10% contravention of height development standard	April	Applicant advised Council on 7 Feb that the outstanding matters will be completed in the next 4 weeks, to enable a report to be prepared for determination by the Panel in accordance with the LPP resolution on 15 December 2021.	632
DA/528/2020	Concept development application for shop top housing comprising a ground level drive thru KFC restaurant and 35 units in a 5-storey building	409-411 Pacific Highway Asquith	A	SEPP 65 Affected Development	March	Amended plans have been submitted and referred to DEP for comment. Application under assessment.	597
DA/1146/2020	Torrens title subdivision of 1 into 10	90-92 Franklin Road Cherrybrook	C	VPA	April	Additional information requested in relation to the revised VPA is currently under review for referral to Council.	429
DA/131/2021	Construction of a Boarding House	Lot B - 134 Burdett Street Wahroonga	B	>10 submissions	March	Submission of applicant's legal advice re: permissibility of development on unregistered lot outstanding.	380

ATTACHMENT 1 - ITEM 9

List of development applications required to be determined by the LPP that are over 180 calendar days from lodgement

DA No.	Proposal	Address	Ward	Reason	Est. Date to LPP	Advice to Chair	No. Days at 23/2
DA/133/2021	Construction of a Boarding House	Lot A - 134 Burdett Street Wahroonga	B	>10 submissions	March	Submission of applicant's legal advice re: permissibility of development on unregistered lot outstanding.	380
DA/700/2021	Construction of a dwelling house	14A Nancy Street Galston	A	Owner is council staff	March (April if plans required to be re-notified)	Applicant advised revised plans to address TfNSW access issues to be submitted by end of February	224

ATTACHMENT 1 - ITEM 9