



ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

**DAC 16/05/2023 – 53 STEVENSON PLACE NEWCASTLE EAST -
DA2022/01127 - DWELLING HOUSE - ALTERATIONS AND
ADDITIONS**

- | | | |
|-----|----------------------|--|
| 7.1 | Attachment A: | Submitted Plans |
| 7.1 | Attachment B: | Draft Schedule of Conditions |
| 7.1 | Attachment C: | Processing Chronology |
| 7.1 | Attachment D: | Clause 4.6 written exception to development standard |



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**DAC 16/05/2023 – 53 STEVENSON PLACE NEWCASTLE EAST
- DA2022/01127 - DWELLING HOUSE - ALTERATIONS AND
ADDITIONS**

7.1 Attachment A: Submitted Plans

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DEVELOPMENT APPLICATION 22059

Additions and Alterations - 53 Stevenson Place, Newcastle East

Robert Faraday

SCHEDULE OF DRAWINGS

DA000	COVER PAGE
DA020	DEMO PLAN
DA030	SITE PLAN
DA040	PERSPECTIVES
DA100	EXISTING AND PREPOSED FLOOR PLANS
DA150	ROOF PLAN
DA300	ELEVATIONS
DA350	EXTERNAL FINISHES
DA400	SECTION
DA900	EXTERNAL SHADOW DIAGRAMS
DA960	SEDIMENT CONTROL



SITE LOCATION

SUMMARY OF BASIX COMMITMENTS			
Robert Faraday, Additions and Alterations, 53 Stevenson Place Newcastle East			
<i>This is a summary of the BASIX Commitments as detailed in the BASIX Certificate. Refer to the CURRENT BASIX Certificate for Complete details. For definitions refer to basix.nsw.gov.au</i>			
WATER COMMITMENTS			
Fixtures			
Shower Heads	N/A	Toilet	N/A
Kitchen Taps	N/A	Basin Taps	N/A
Alternative Water			
Rainwater Tank Size (L)	N/A	Collected from Roof Area (m2)	N/A
Tank Connected To:			
All Toilets	N/A	Laundry W/M Cold Tap	N/A
Landscaping	N/A	All Hot Water Systems	N/A
THERMAL COMFORT COMMITMENTS			
Construction	Insulation	Colour/Detail	
External Wall Construction			
Framed (weatherboard, fibro, metal clad)	R1.16 (or R1.70 including construction)		
Internal Wall Construction			
Framed	R1.16 (or R1.70 including construction)		
Ceiling Construction			
Flat Ceiling	R1.75 (up)		
Roof Construction			
Pitched Roof	foilsarking	light (solar absorptance <0.475)	
Floor Construction			
concrete slab on ground			
Windows and doors		Windows and doors to be standard aluminium, single clear, (or U-value: 7.63, SHGC:0.75)	



SUBJECT SITE

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Nominated Architect: Daniel Hadley 8209
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Consultants

Issue	Description	Date
P1	For Review	12/04/2022
P2	For Review	10/05/2022
P3	For Review	29/06/2022
P4	For Review	6/07/2022
P5	For Review	11/07/2022
A	DEVELOPMENT APPLICATION	21/07/2022
B	RFI	18/01/2023

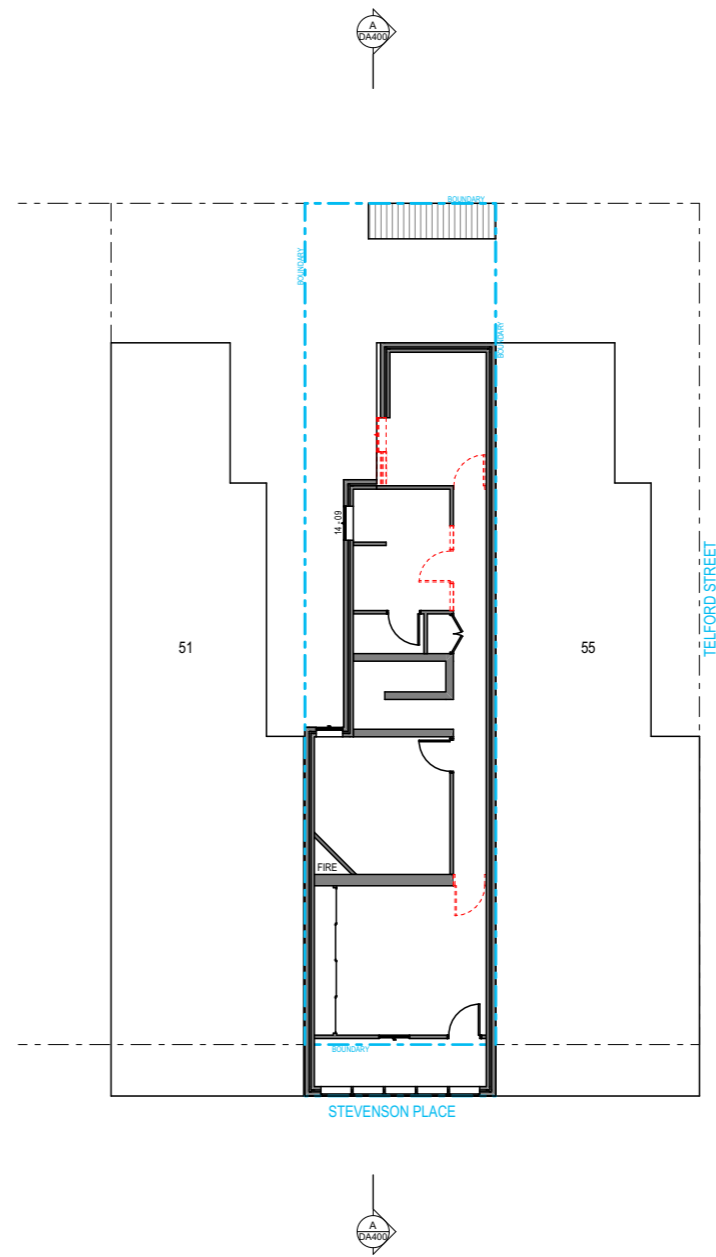
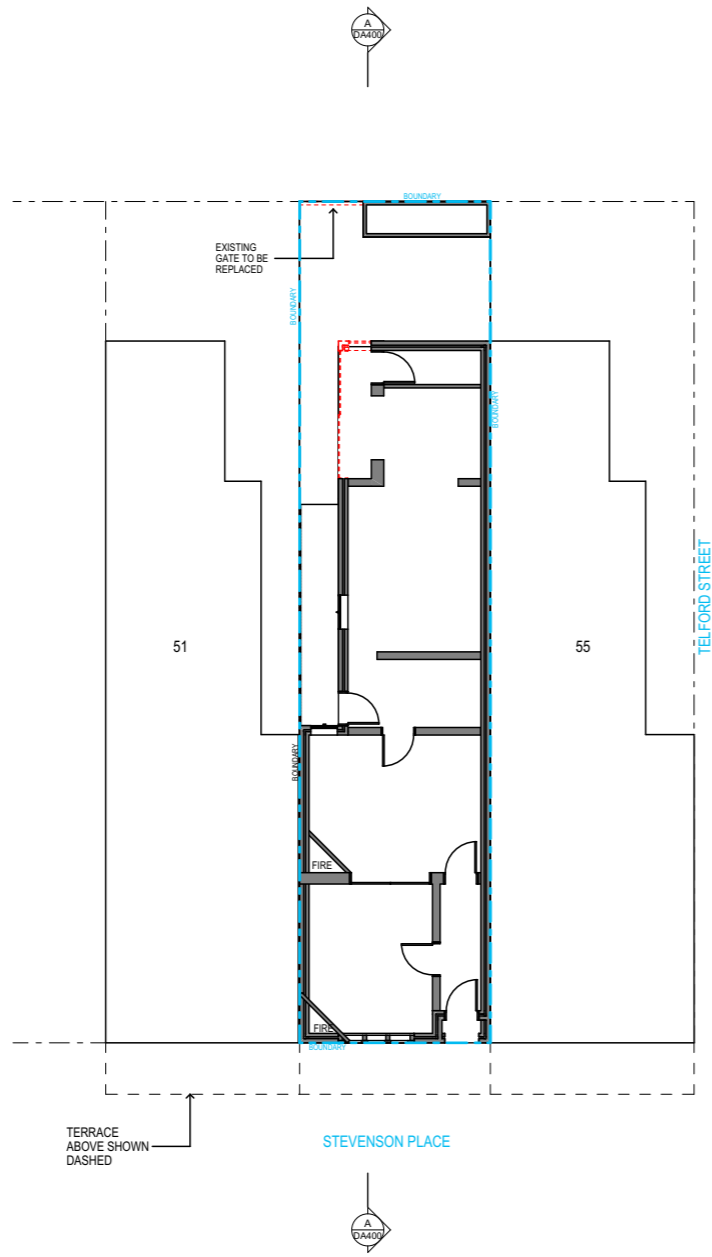
Project
Additions and Alterations
Location
**53 Stevenson Place
Newcastle East**
Client
Robert Faraday

Drawing
COVER PAGE
Scale
@ A3
DRAWN
SE

QA CHECKED
XX

Drawing Number
DA000
Issue
B
Project Number
22059

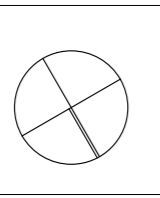




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Project
Additions and Alterations
Location
53 Stevenson Place
Newcastle East
Client
Robert Faraday

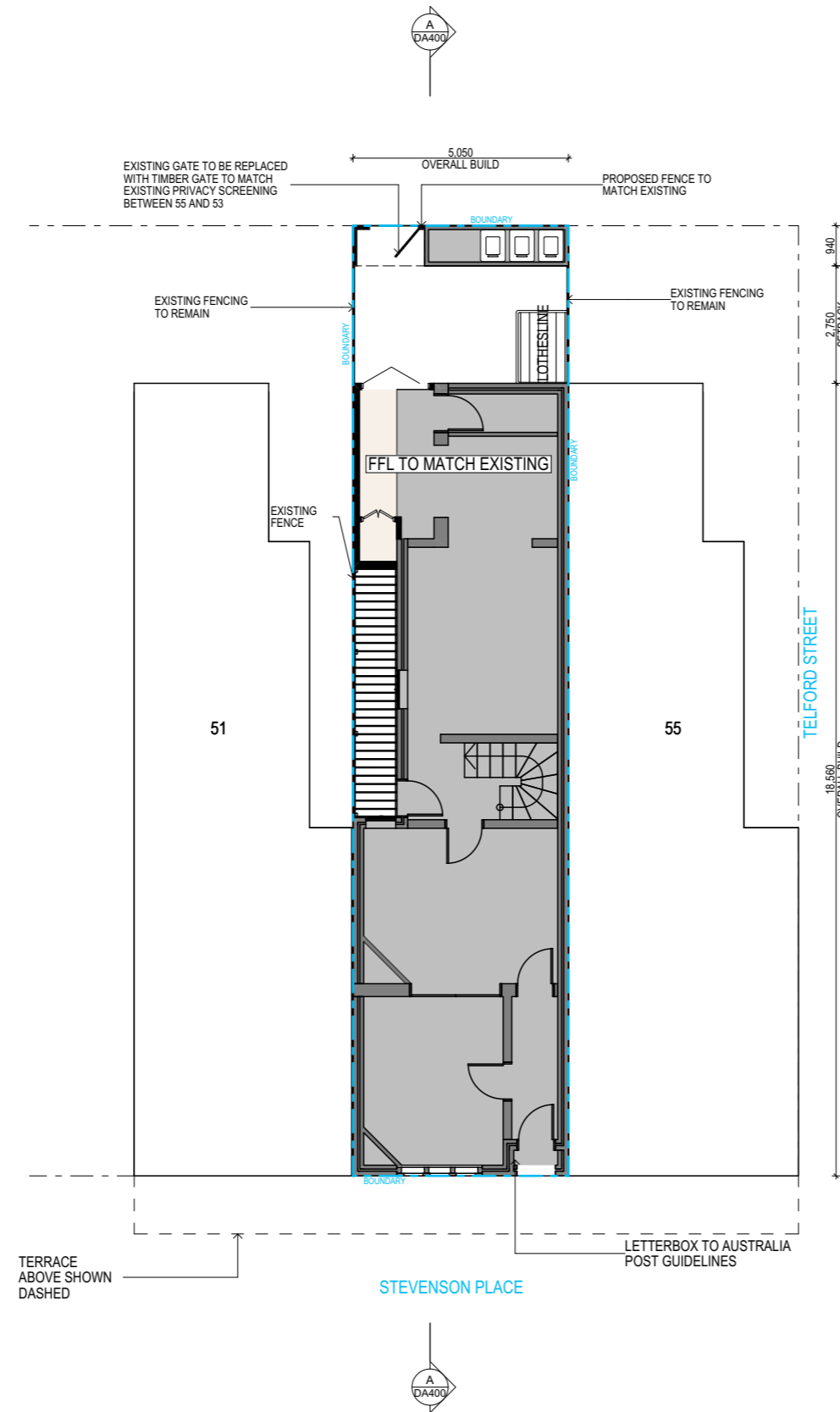
Drawing
DEMO PLAN
Scale
1:200 @ A3
DRAWN
SE
QA CHECKED
XX

Drawing Number
DA020
Issue
C
Project Number
22059



AREA CALCULATION (m2)	
FIRST FLOOR	77
GROUND FLOOR	78

AREAS	
SITE AREA	111.3m ²
TOTAL GFA	155m ²



SITE LEGEND

- WT-1 4,000 LITRE ABOVE GROUND WATER STORAGE TANK TO ENGINEERS AND BASIX DETAILS
- WT-2 4,000 LITRE UNDER GROUND WATER STORAGE TANK TO ENGINEERS AND BASIX DETAILS
- RW RETAINING WALLS TO ENGINEERS SPECIFICATIONS & DETAILS
- EXISTING TREE TO BE RETAINED
- PROPOSED BUILDING FOOTPRINT
- EXISTING BUILDING FOOTPRINT

SITE NOTES

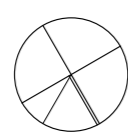
1. GFA (GROSS FLOOR AREA) AS DEFINED BY THE LOCAL COUNCIL
2. PLEASE REFER TO CONSULTING ENGINEERS DRAWINGS FOR STORMWATER DETAILS
3. FOR ROADWAY, DRIVEWAY AND RETAINING WALL DESIGN & LEVELS REFER TO CIVIL ENGINEERS DOCUMENTATION
4. DOWNPIPE POSITIONS ARE INDICATIVE ONLY, POSITION OF DOWNPIPES TO BE CONFIRMED BY HYDRAULIC ENGINEER OR BUILDER.
5. FOR LANDSCAPE DESIGN & FENCE LOCATIONS REFER TO LANDSCAPE DESIGNERS DOCUMENTATION

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Project
Additions and Alterations

Location
53 Stevenson Place
Newcastle East

Client
Robert Faraday

Drawing
SITE PLAN

Scale
1:150 @ A3

DRAWN
SE

QA CHECKED
XX

Drawing Number
DA030

Issue
C

Project Number
22059





View From South



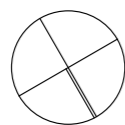
View From West

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Issue	Description	Date
A	RFI	18/04/2023

Project
Additions and Alterations

Location
**53 Stevenson Place
Newcastle East**

Client
Robert Faraday

Drawing
PERSPECTIVES

Scale
@ A3

DRAWN
SE

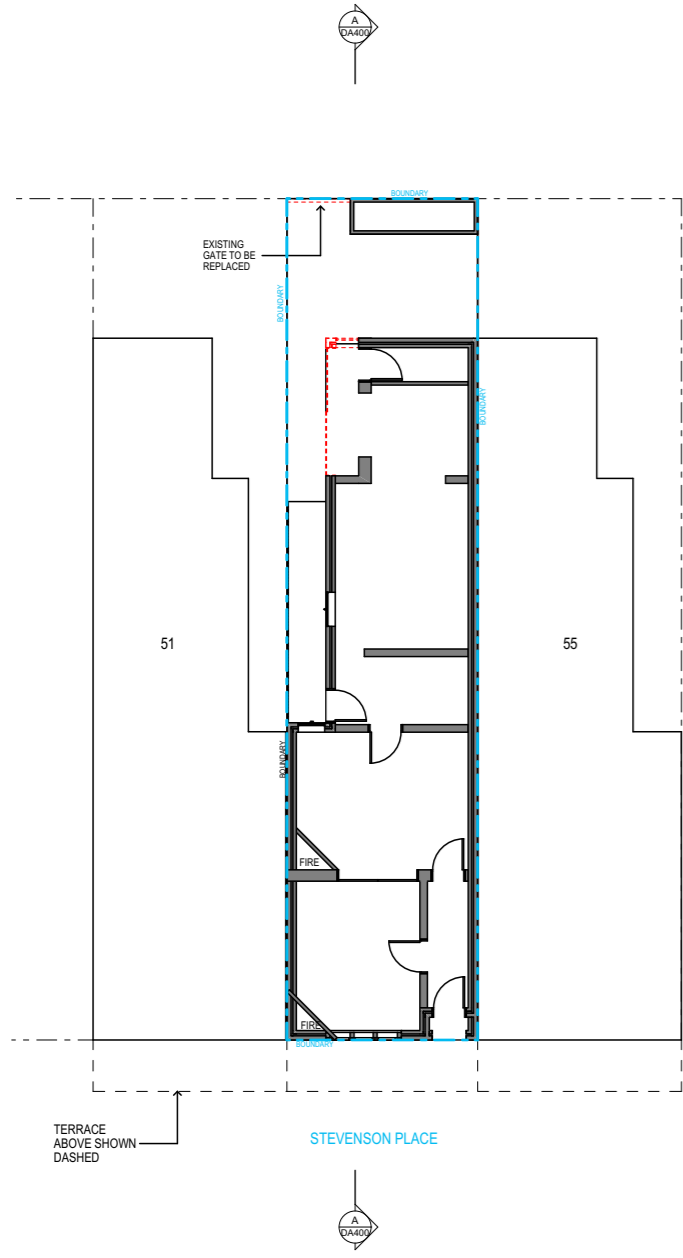
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Drawing Number
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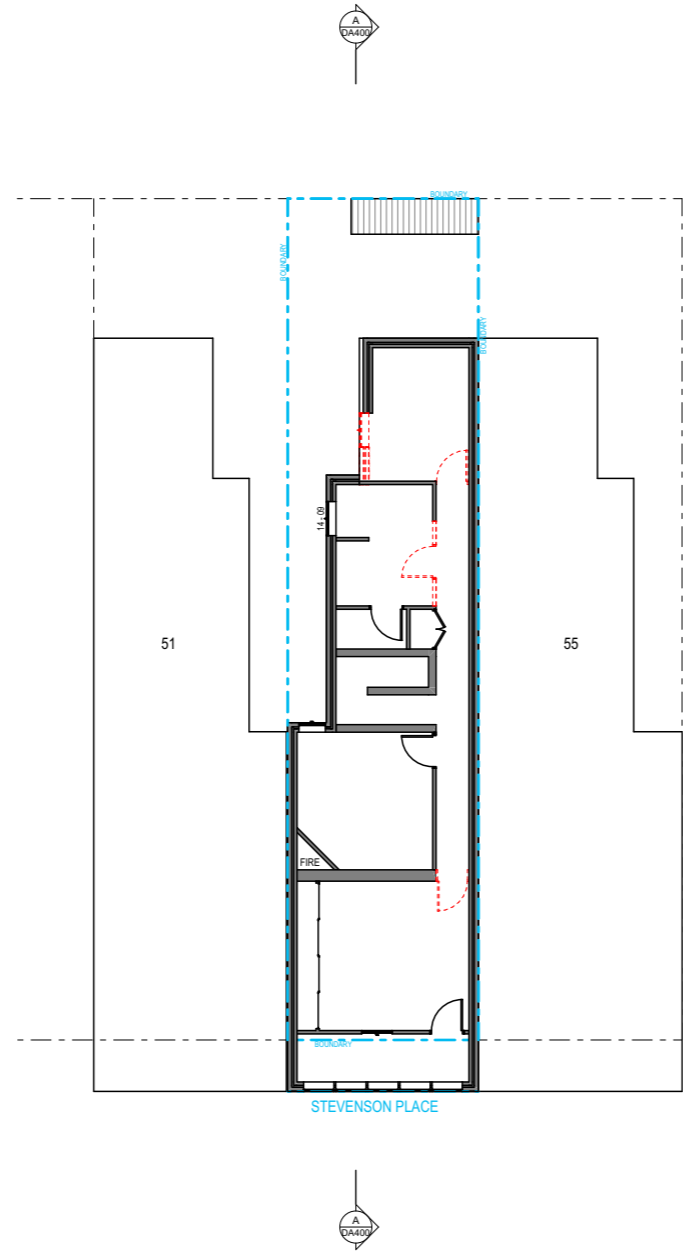
Issue
A

Project Number
22059

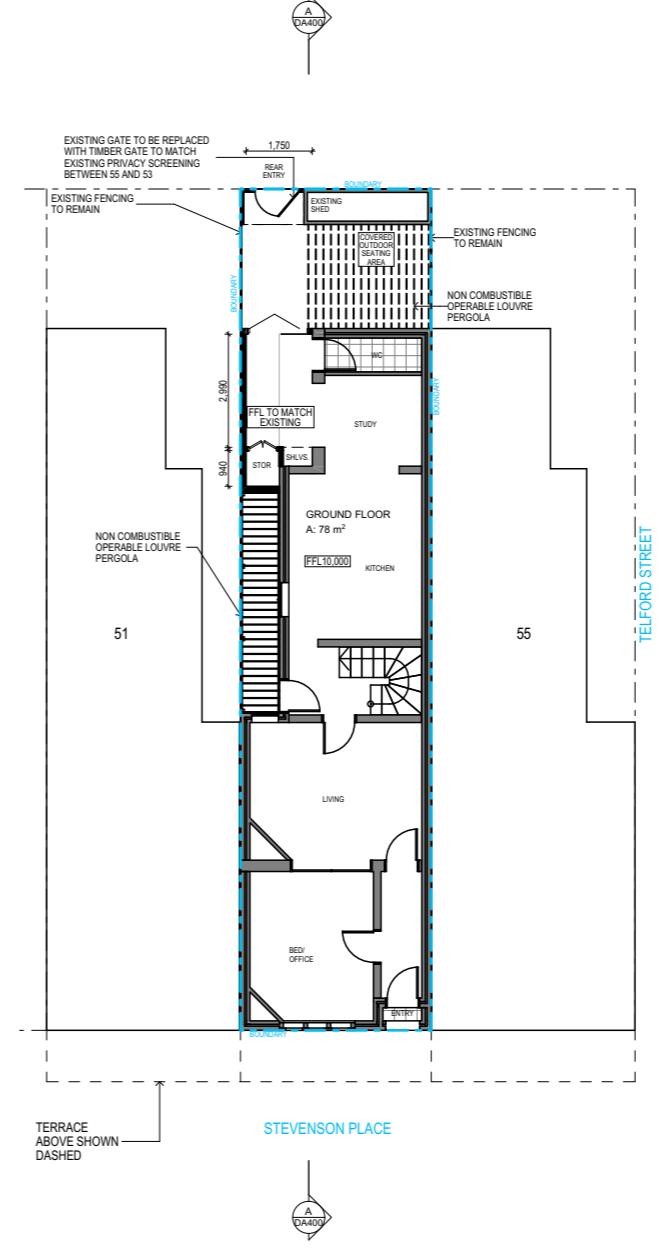




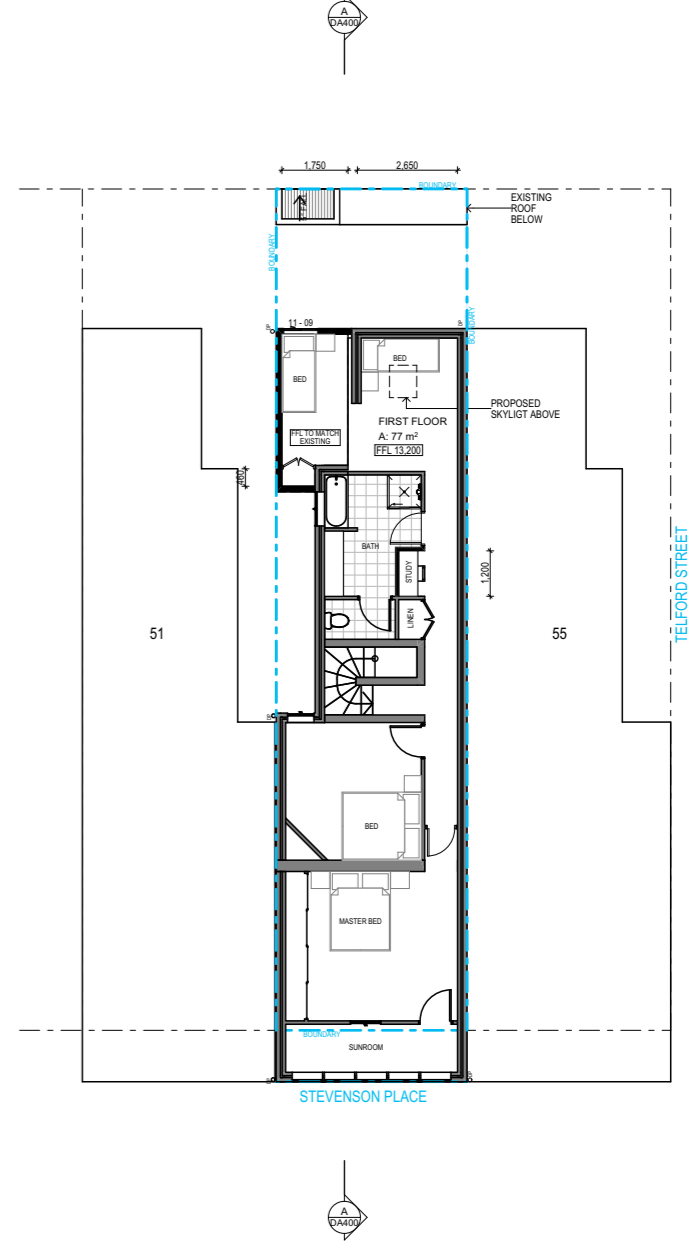
EXISTING PLAN GROUND FLOOR



EXISTING FIRST FLOOR



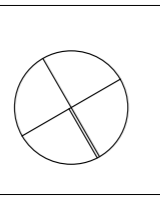
PROPOSED GROUND FLOOR



PROPOSED FIRST FLOOR

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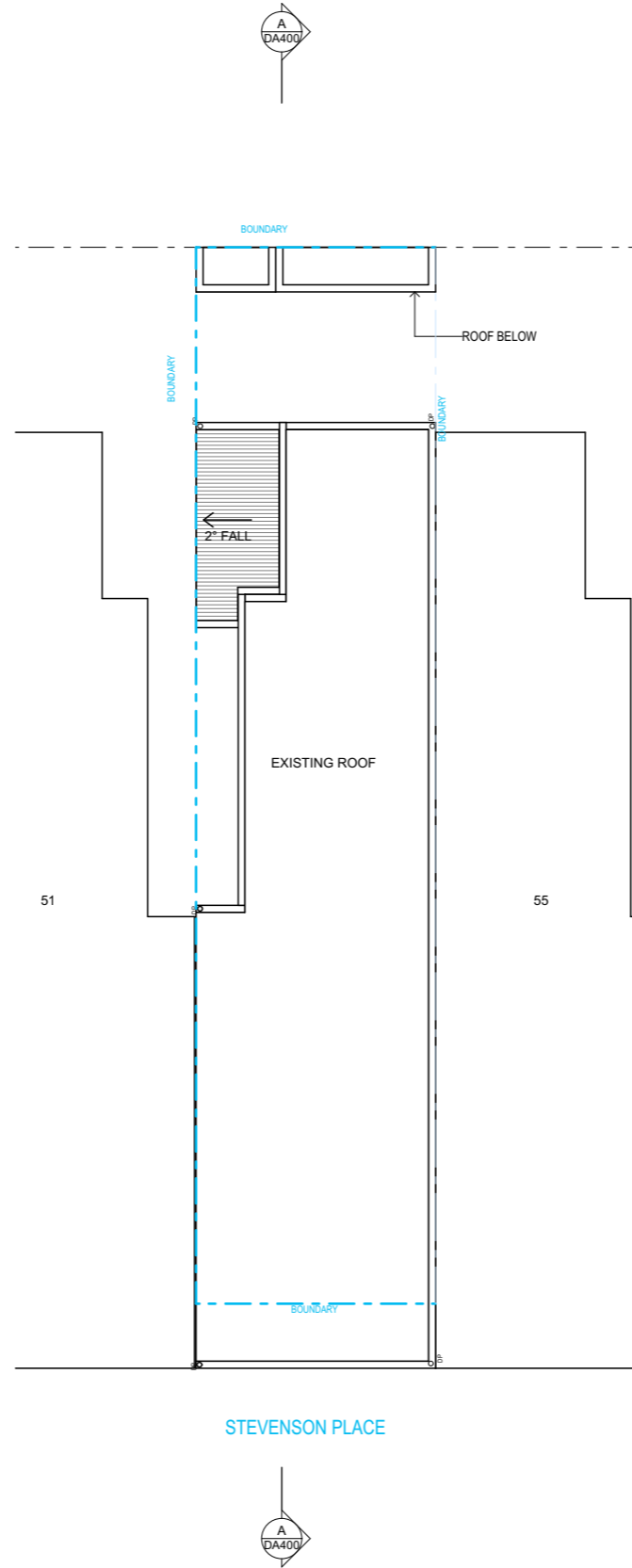
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D	RFI	18/04/2023

Project	Location	Client
Additions and Alterations	53 Stevenson Place Newcastle East	Robert Faraday

Drawing	Scale	Drawn	Checked
EXISTING AND PROPOSED FLOOR PLANS	1:200 @ A3	SE	XX

Drawing Number	Issue	Project Number
DA100	D	22059

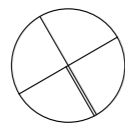




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Newcastle East**
Client
Robert Faraday

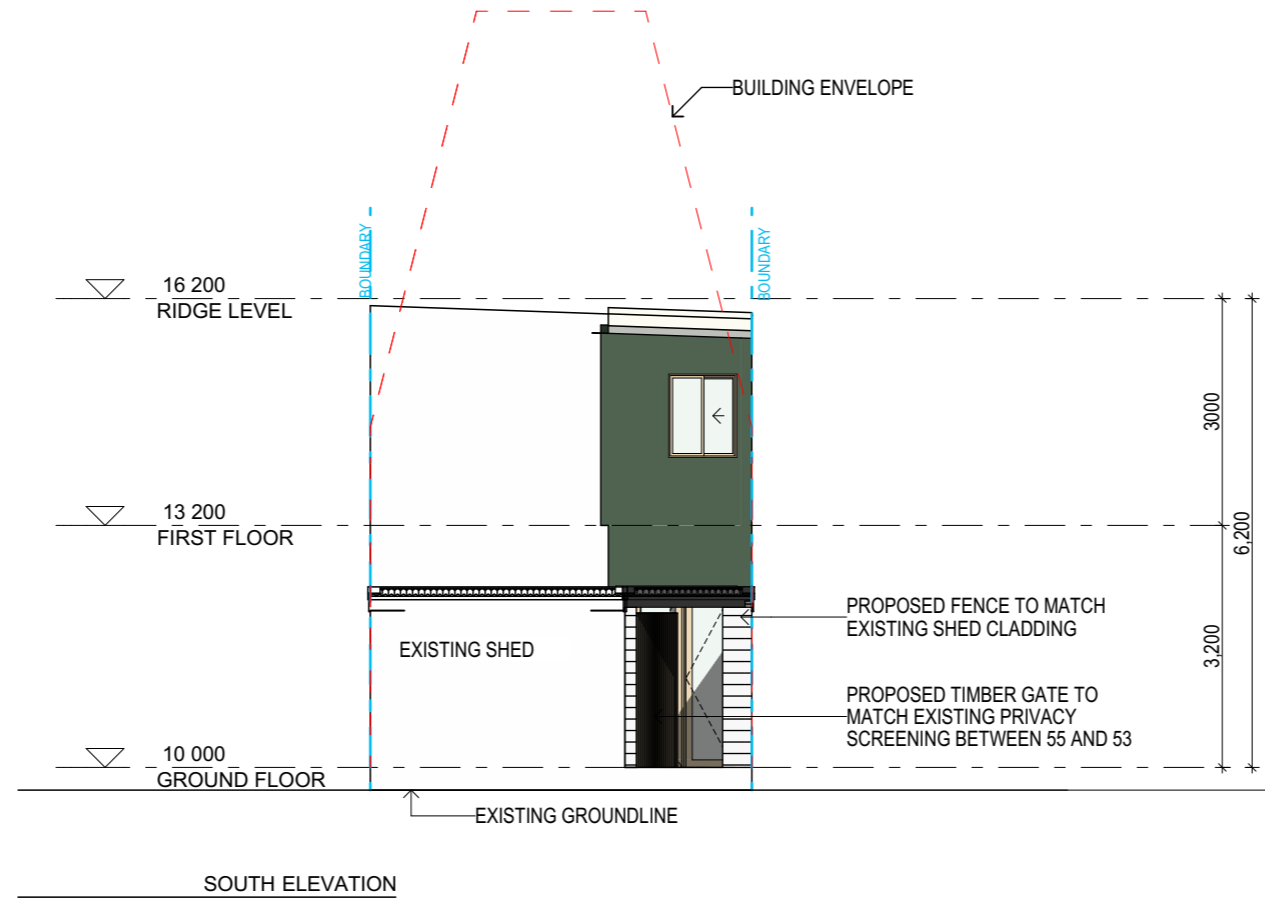
Drawing
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Scale
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DRAWN
SE
QA CHECKED
XX

Drawing Number
DA150
Issue
D
Project Number
22059

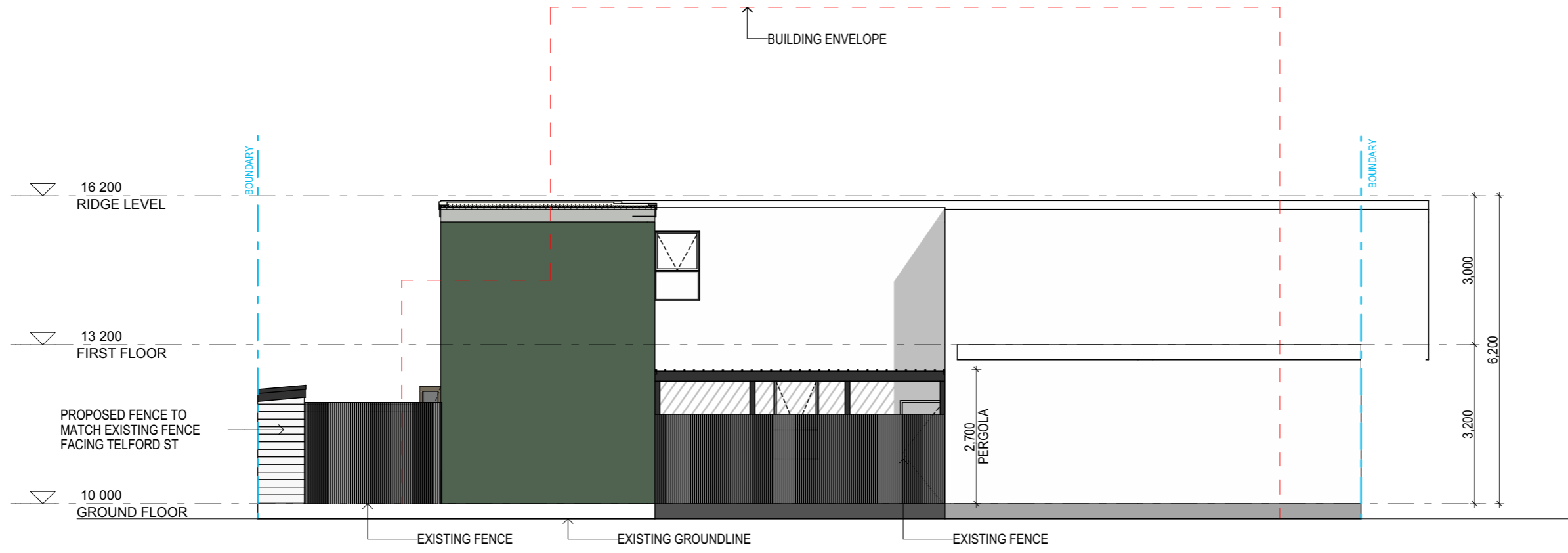


ELEVATIONS NOTES

1. FOR EXTERNAL FINISHES REFER TO EXTERIOR FINISHES SCHEDULE



SOUTH ELEVATION



EAST ELEVATION

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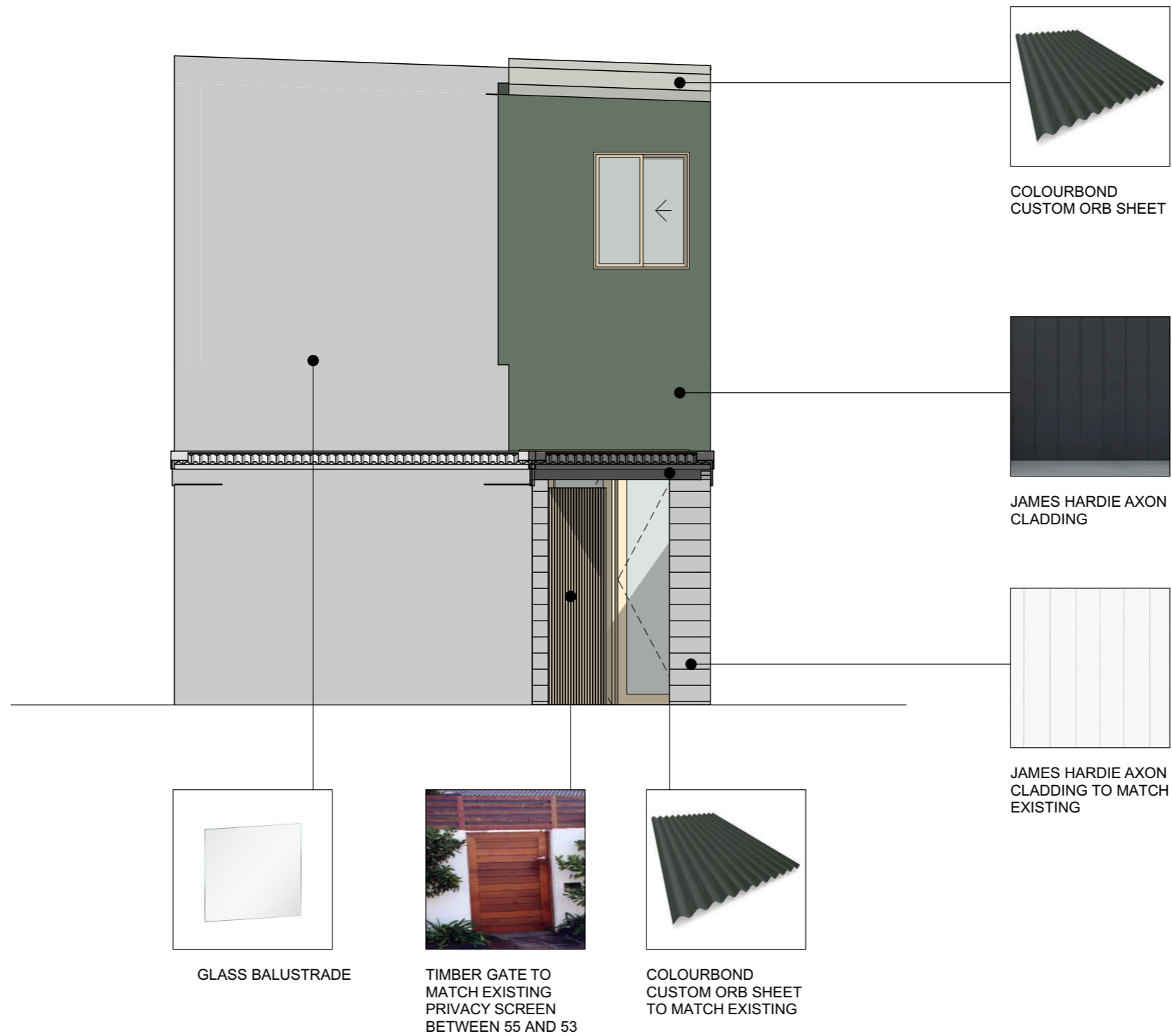
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C	RFI	18/01/2023
D	RFI	18/04/2023

Project	Location	Client
Additions and Alterations	53 Stevenson Place Newcastle East	Robert Faraday

Drawing	Scale	Drawn	QA Checked
ELEVATIONS	1:100 @ A3	SE	XX

Drawing Number	Issue	Project Number
DA300	D	22059





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Project	Location	Client
Additions and Alterations	53 Stevenson Place Newcastle East	Robert Faraday

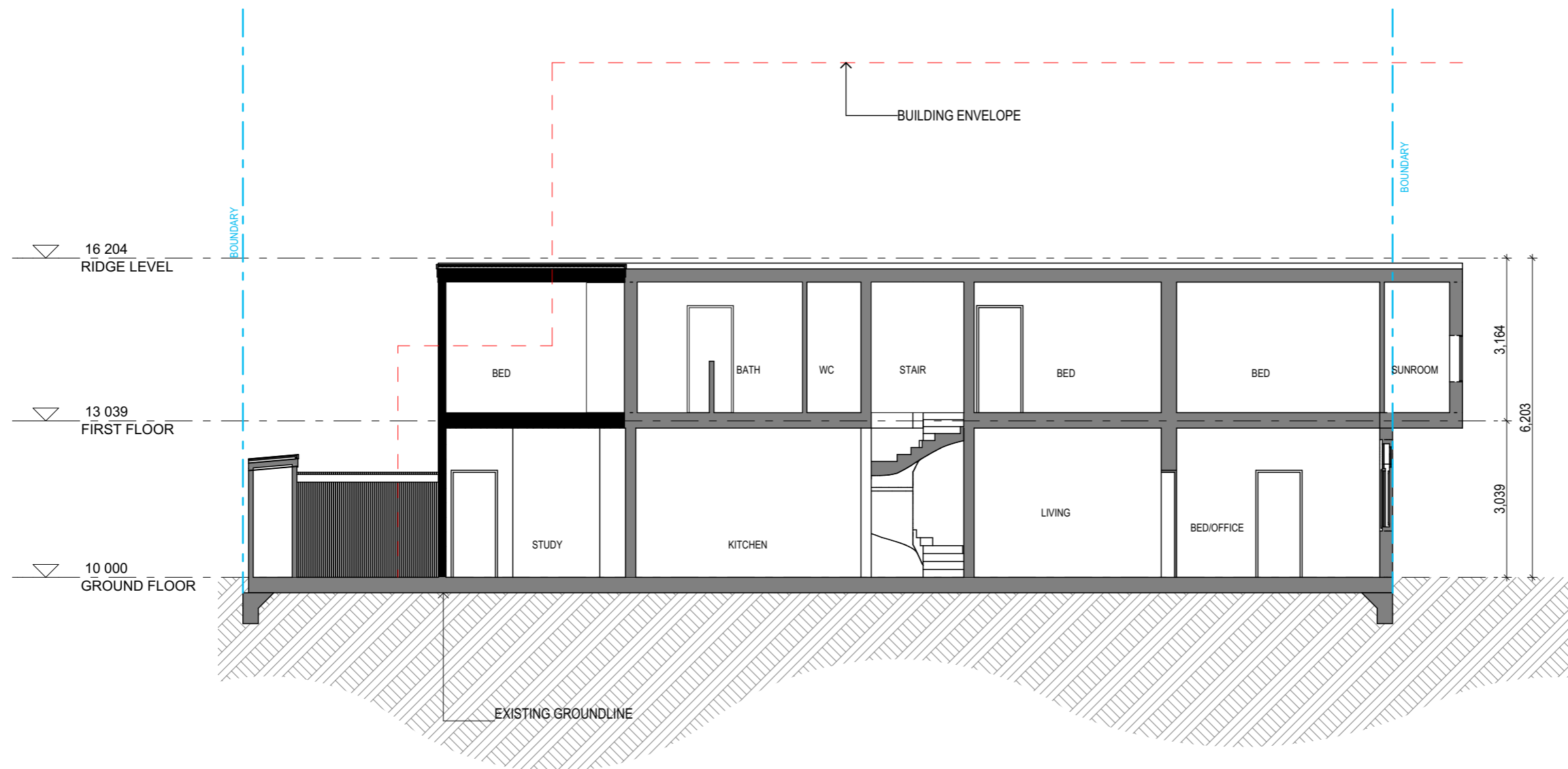
Drawing	Scale	DRAWN	QA CHECKED
EXTERNAL FINISHES	1:50 @ A3	SE	XX

Drawing Number	Issue	Project Number
DA350	B	22059



SECTIONS NOTES

1. FOR INTERNAL AND EXTERNAL WALL INSULATION TYPES REFER TO BASIX CERTIFICATE
2. FOR EXTERIOR FINISHES REFER TO EXTERIOR FINISHES SCHEDULE AND ELEVATIONS DRAWINGS
3. TIMBER FRAMING AND ROOF TRUSSES TO MANUFACTURERS SPECIFICATIONS AND STRUCTURAL ENGINEER'S DETAILS
4. FOR DETAILS REGARDING STRUCTURAL ELEMENTS REFER TO STRUCTURAL ENGINEERS DOCUMENTATION



SECTION AA
1:100

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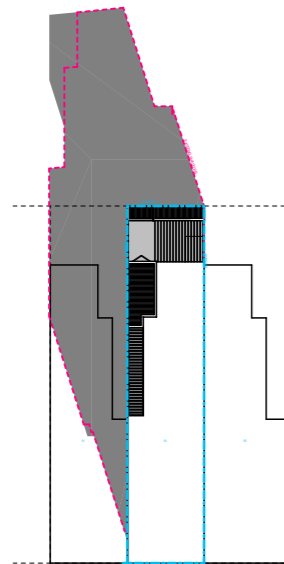
Project
Additions and Alterations
Location
**53 Stevenson Place
Newcastle East**
Client
Robert Faraday

Drawing
SECTION
Scale
1:100 @ A3
DRAWN
SE

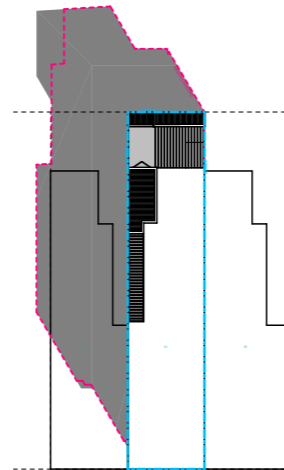
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Drawing Number
DA400
Issue
D
Project Number
22059

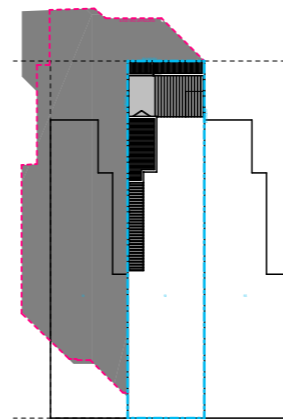




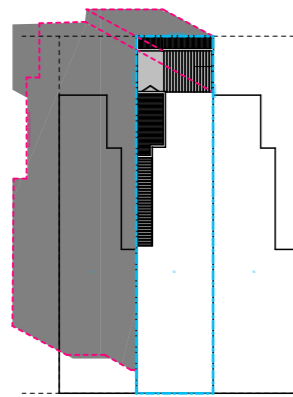
21 JUN at 0900h



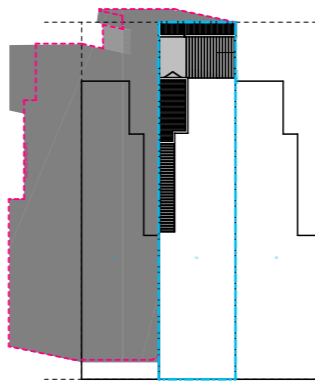
21 JUN at 1000h



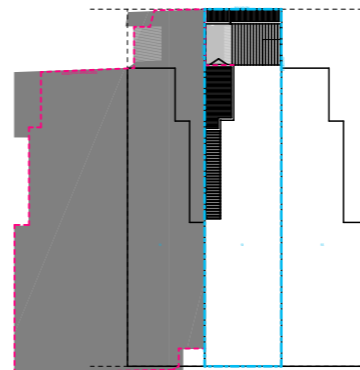
21 JUN at 1100h



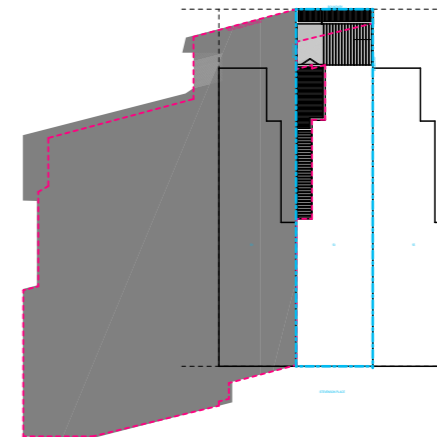
21 JUN at 1200h



21 JUN at 1300h



21 JUN at 1400h

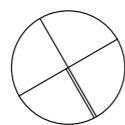


21 JUN at 1500h

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Date
21/07/2022
16/01/2023
18/01/2023

Project
Additions and Alterations
Location
**53 Stevenson Place
Newcastle East**
Client
Robert Faraday

Drawing
**EXTERNAL SHADOW
DIAGRAMS**
Scale
1:500 @ A3
DRAWN
SE

QA CHECKED
XX

Drawing Number
DA900
Issue
C
Project Number
22059



Sediment and erosion control

All erosion and sediment control measures to be installed prior to site disturbance.

The project manager to inform all contractors and sub-contractors of their obligations under the erosion and sediment control plan.

Topsoil from all areas that will be disturbed to be stripped and stockpiled at the nominated site.

All sediment control structures to be inspected by site supervisor after each rainfall event for structural damage and all trapped sediment to be removed to a nominated stockpile site.

Sediment and erosion control shall be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the superintendent's satisfaction.

A single all weather access way will be provided at the front of the property consisting of 50-75 aggregate or similar material at a minimum thickness of 150 laid over needle-punched geotextile fabric and constructed prior to commencement of works.

The contractor shall ensure that no spoil or fill encroaches upon adjacent areas for the duration of works.

The contractor shall ensure that kerb inlets and drains receiving stormwater shall be protected at all times during development. Kerb inlet sediment traps shall be installed along the immediate vicinity along the street frontage.

Sediment fencing shall be secured by post (where metal star pickets are used plastic safety caps shall be used) at 3000 intervals with geotextile fabric embedded 200 in soil.

All topsoil stripped from the site and stockpiled does not interfere with drainage lines and stormwater inlets and will be suitably covered with an impervious membrane material and screened by sediment fencing.

Soil conservation

Prior to commencement of construction provide 'sediment fence,' 'sediment trap' and washout area to ensure the capture of water borne material generated from the site.

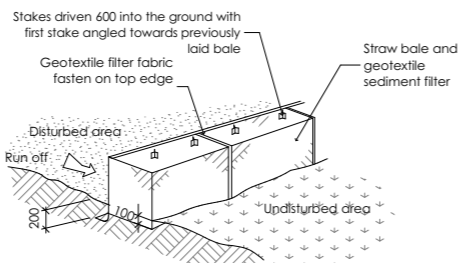
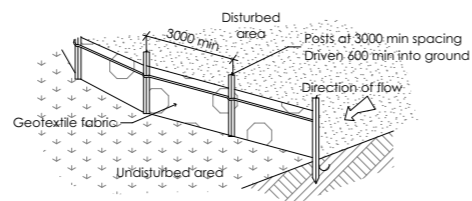
Maintain the above during the course of construction, and clear the 'sediment trap' after each storm.

Sediment trap

1000 x 1000 wide 500 deep pit, located at the lowest point to trap sediment.

Sediment fence

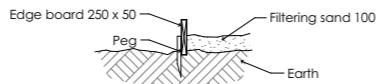
Provide sediment fence on down slope boundary as shown on plan. Fabric to be buried below ground at lower edge.



Drainage area 0.5 ha. max. slope gradient 1:2 max. slope length 50m.

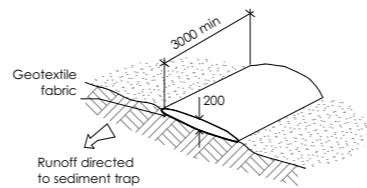
Washout area

to be 1800 x 1800 allocated for the washing of tool and equipment



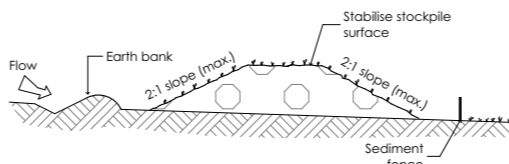
Vehicle access to site

Vehicle access to the building site should be restricted to a single point so as to reduce the amount of soil deposited on the street pavement.



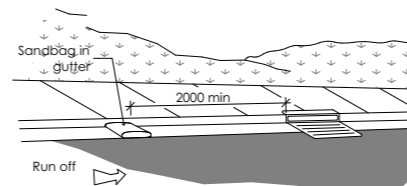
Building material stockpiles

All stockpiles of building material such as sand and soil must be protected to prevent scour and erosion. They should never be placed in the street gutter where they will wash away with the first rainstorm.



Sandbag kerb sediment trap

In certain circumstances extra sediment trapping may be needed in the street gutter.



PRELIMINARY

FOR AUTHORITY APPROVAL ONLY
NOT FOR CONSTRUCTION

PO Box 601 Kolar
NSW 2289 Ph 49524425
Nominated Architect: Daniel Hadley 8209
Notes
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Verify all dimensions and levels on site and report any discrepancies prior to the commencement of work and any ordering of materials.
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Use figured dimensions only. Do not scale from drawings.
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The completion of the issue details checked and authorised section below is conformation of the status of the drawing. The drawing shall not be used for construction unless endorsed 'For Construction' and authorised for issue.

Consultants

Issue Description Date
A DEVELOPMENT APPLICATION 21/07/2022

Project
Additions and Alterations
Location
**53 Stevenson Place
Newcastle East**
Client
Robert Faraday

Drawing
SEDIMENT CONTROL
Scale
1:150 @ A3
DRAWN
SE QA CHECKED
XX

Drawing Number
DA960
Issue
A
Project Number
22059





ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

**DAC 16/05/2023 – 53 STEVENSON PLACE NEWCASTLE EAST
- DA2022/01127 - DWELLING HOUSE - ALTERATIONS AND
ADDITIONS**

7.1 Attachment B: Draft Schedule of Conditions

DISTRIBUTED UNDER SEPARATE COVER

Application No:	DA2022/01127
Land:	Lot 2 DP 9520
Property Address:	53 Stevenson Place Newcastle East NSW 2300
Proposed Development:	Dwelling house - alterations and additions

SCHEDULE 1

APPROVED DOCUMENTATION

- The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan No / Supporting Document	Reference / Version	Prepared by	Dated
Demolition Plan	DA020 Rev C	Daniel Hadley	18/01/23
Site Plan	DA030 Rev C	Daniel Hadley	18/01/23
Existing and Proposed Floor Plans	DA100 Rev D	Daniel Hadley	18/04/23
Roof Plan	DA150 Rev D	Daniel Hadley	18/04/23
Elevations	DA300 Rev D	Daniel Hadley	18/04/23
External Finishes	DA350 Rev B	Daniel Hadley	18/01/23
Section	DA400 Rev D	Daniel Hadley	18/04/23
BASIX Certificate	A466700	Elk Designs	-

In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

- The new window to the southern elevation is to be timber framed. Full details to be provided with documentation for a Construction Certificate.
- New roof sheets are to match the existing in all aspects. Full details to be provided with documentation for a Construction Certificate.
- Existing chimneys are to be retained and protected for the duration of the development. Full details to be provided with documentation for a Construction Certificate.
- All stormwater runoff from the proposed development being managed in accordance with the requirements of Element 7.06 'Stormwater' of Newcastle Development Control Plan 2012, the associated Technical Manual and the latest issue of AS 3500.3 as applicable.

CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK AND DURING THE CONSTRUCTION PHASE

6. Consent is not given to undertake works to the party wall(s).
7. A Registered Surveyor's certificate detailing the setting out of the proposed building on the site, including the relationship of the set out building to property boundaries and the party wall(s), is to be submitted to the Principal Certifying Authority before construction is commenced.
8. Stormwater is to be conveyed to the existing property stormwater drains by way of a sealed pipe system. The existing drains are to be checked for adequacy and cleared of any obstructions.
9. Toilet facilities are to be available or provided at the work site before works begin and be maintained until the works are completed, at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

Each toilet is to:

- a) Be a standard flushing toilet connected to a public sewer, or
 - b) Have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
 - c) Be a temporary chemical closet approved under the *Local Government Act 1993*.
10. Building demolition is to be planned and carried out in accordance with *Australian Standard 2601:2001 - The Demolition of Structures*.
 11. A Hazardous Substances Management Plan is to be prepared by a competent person for the building(s) or parts of the building(s) proposed to be demolished in accordance with *Australian Standard 2601:2001 - The Demolition of Structures*. A copy of the Hazardous Substances Management Plan is to be provided to the Council and to the demolisher prior to commencement of work.
 12. The demolition works are to be undertaken in accordance with Australian Standard 2601:2001 - The Demolition of Structures and the following requirements:
 - a) prior to commencement of demolition works a competent person shall determine the presence of hazardous substances impacted by the proposed demolition works in accordance with Section 1.6.1 of AS2601:2001 and where required produce a Hazardous Substances Management Plan
 - b) demolition works shall be conducted in accordance with any required Hazardous Substances Management Plan. A copy of the Plan shall be kept on-site for the duration of the proposed development and a copy is to be held in the possession of the landowner
 - c) the removal, handling and disposal of any asbestos material is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by the WorkCover Authority of NSW
 - d) a copy of all waste disposal receipts are to be kept in the possession of the landowner and made available to authorised Council Officers upon request
 - e) seven working days notice in writing is to be given to the owners/occupiers of neighbouring premises prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number(s) and licence details (type of licences

held and licence numbers) of any asbestos removal contractor and demolition contractor, and

- f) on sites where asbestos materials are to be removed, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent position during asbestos removal works.

13. The demolisher is to ensure that all services (ie water, telecommunications, gas, electricity, sewerage etc), are disconnected in accordance with the relevant authority's requirements prior to demolition.

14. Any waste containers used in association with the proposed demolition are to be located on the site where possible.

Note: Where this is not feasible, an application is to be made for the approval to position the container on the adjacent public road in accordance with the Council's adopted Building Waste Container Policy.

15. All demolition material incapable of being re-used in future redevelopment of the site is to be removed from the site and the site being cleared and levelled.

Note: Where reusable building materials are to be stored on site for use in future building works, such materials are to be neatly stacked at least 150 mm above the ground.

16. The demolisher is to ensure that all demolition material is kept clear of the public footway and carriageway as well as adjoining premises.

17. At a minimum, the following measures are to be implemented during the construction phase:

- a) A waste container of at least one cubic metre capacity is to be provided, maintained and regularly serviced from the commencement of operations until the completion of the building, for the reception and storage of waste generated by the construction of the building and associated waste;
- b) The waste container is to be, at minimum, constructed with a 'star' picket (corners) and weed control mat (sides), or equivalent. The matting is to be securely tied to the pickets;
- c) Provision is to be made to prevent windblown rubbish leaving the site; and
- d) Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

Note: Fines may be issued for pollution/littering offences under the *Protection of the Environment Operations Act 1997*.

18. A rigid and durable sign is to be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out, before the commencement of the work:

- a) showing the name, address and telephone number of the Principal Certifier for building work and subdivision work, and
- b) showing the name, address and telephone number of the Principal Contractor, if any, for any building work and a telephone number on which the Principal Contractor may be contacted at any time for business purposes, and
- c) stating that unauthorised entry to the work site is prohibited, and

- d) being erected in a prominent position that can be read easily by anyone in any public road or other public place adjacent to the site.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, and must be removed when the work has been completed.

Note: This does not apply in relation to building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.

19. All excavations and backfilling are to be executed safely and excavations are to be properly guarded and protected to prevent them from being dangerous to life and property.
20. All building materials, plant and equipment is to be placed on the site of the development, to ensure that pedestrian and vehicular access in public places is not restricted and to prevent damage to the road reserve. The storage of building materials on Council reserves, including the road reserve, is not permitted.
21. Any alteration to natural surface levels on the site is to be undertaken in such a manner as to ensure that there is no increase in surface water runoff to adjoining properties or that runoff is impounded on adjoining properties, as a result of the development.
22. Construction/demolition work that generates noise that is audible at residential premises is to be restricted to the following times:
 - Monday to Friday, 7:00 am to 6:00 pm and
 - Saturday, 8:00 am to 1:00 pm.

No noise from construction/demolition work is to be generated on Sundays or public holidays.

23. Council's '*Prevent Pollution*' sign is to be erected and maintained in a conspicuous location on or adjacent to the property boundary, so it is clearly visible to the public, or at other locations on the site as otherwise directed by Council, for the duration of demolition and construction work.

The sign can be obtained by presenting your development application receipt at City of Newcastle's Customer Enquiry Centre, Wallsend Library or the Master Builders Association Newcastle.

24. Where the proposed development involves the destruction or disturbance of any survey monuments, those monuments affected are to be relocated, at no cost to the City of Newcastle, by a Surveyor registered under the *Surveying and Spatial Information Act 2002*.
25. Building work must be carried out in accordance with the requirements of the Building Code of Australia.
26. In the case of 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, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
27. If the soil conditions require it, retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil are to be provided. A separate application is to be lodged and consent obtained from the City of Newcastle for all works within the road reserve, pursuant to Section 138 of the *Roads Act*

1993, prior to the commencement of works.

28. The following waste management measures are to be implemented during construction:
- a) waste container of at least one cubic metre capacity shall be provided, maintained and regularly serviced from the commencement of operations until the completion of the building for the reception and storage of waste generated by the construction of the building and associated waste
 - b) the waste container is to be, at minimum, constructed with a 'star' picket (corners) and weed control mat (sides), or equivalent. The matting is to be securely tied to the pickets
 - c) appropriate provision is to be made to prevent wind blown rubbish leaving the site and
 - d) footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

Note: Fines may be issued for pollution/littering offences under the *Protection of the Environment Operations Act 1997* (NSW)

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE, A SUBDIVISION CERTIFICATE OR A STRATA CERTIFICATE

29. All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a condition that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to City of Newcastle's satisfaction prior to the completion of demolition work or prior to the issue of any Occupation Certificate in respect of development involving building work.
30. All commitments listed in the relevant BASIX certificate for the development are to be satisfactorily completed prior to the issue of an Occupation Certificate. Should there be any changes to the specifications of the dwelling that have implications for compliance with the approved certificate, except where restricted or excluded by any other condition of consent, an amended BASIX Certificate can be relied upon as having complied with this condition. A copy of any amended BASIX Certificate is to be provided to the City of Newcastle with Occupation Certificate documentation.

ADVISORY MATTERS

- It is recommended that, prior to commencement of work, the free national community service 'Dial before you Dig' be contacted on 1100 or by fax on 1200 652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.
- Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of the City of Newcastle and any other relevant authorities. City of Newcastle and other service authorities should be contacted for specific requirements prior to the commencement of any works.
- It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* to act in a manner causing, or likely to cause, harm to the environment. Anyone

allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice (ie 'on-the-spot fine') or prosecution.

- Failure to comply with the conditions of consent constitutes a breach of the *Environmental Planning and Assessment Act 1979*, which may be subject to a penalty infringement notice (ie 'on-the-spot fine') or prosecution.
- A person who is aware or believes that he or she has discovered or located a relic not identified and considered in the supporting documents for this approval, in any circumstances (including where works are carried out in reliance on an exception under section 139(4)), excavation or disturbance must cease in the affected area(s) and the Heritage Council must be notified in accordance with section 146 of the *Heritage Act 1977*. Depending on the nature of the discovery, additional assessment and approval under the *Heritage Act 1977* may be required prior to the recommencement of excavation in the affected area(s).

Note: Heritage NSW can be contacted on 02 9873 8500 or heritagemailbox@environment.nsw.gov.au. A 'relic' is any deposit, object or material evidence that relates to the settlement of New South Wales, not being Aboriginal settlement, and is of State or local significance. It is an offence under the provisions of the *Heritage Act 1977 (NSW)* for a person to disturb or excavate any land upon which the person has discovered a relic except in accordance with a gazetted exception or an excavation permit issued by the Heritage Council of NSW.

- If any Aboriginal objects are discovered which are not covered by a valid Aboriginal Heritage Impact Permit, excavation or disturbance of the area is to stop immediately and Heritage NSW is to be notified in accordance with section 89A of the *National Parks and Wildlife Act 1974 (NPW Act)*. Depending on the nature of the discovery, additional assessment and approval under the NPW Act may be required prior to works continuing in the affected area(s). Aboriginal objects in NSW are protected under the NPW Act. Unless the objects are subject to a valid Aboriginal Heritage Impact Permit, work must not recommence until approval to do so has been provided by Heritage NSW.

Note: Heritage NSW can be contacted on 02 9873 8500 or heritagemailbox@environment.nsw.gov.au. An 'Aboriginal object' is any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains. It is an offence under the provisions of the *National Parks and Wildlife Act 1974 (NPW Act)* for a person to harm or desecrate an Aboriginal object, with defence from prosecution and certain activities exempt as prescribed under the NPW Act.

- Retaining walls not clearly noted on the approved plans or outside of the parameters of 'exempt development', as specified in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, are to be subject to a separate development application. An application in this regard is to be approved prior to any works relating to such a retaining wall taking place.
- Prior to commencing any building works, the following provisions of Division 6.2 of the *Environmental Planning and Assessment Act 1979* are to be complied with:
 - a) A Construction Certificate is to be obtained; and
 - b) A Principal Certifier is to be appointed for the building works and Newcastle City Council is to be notified of the appointment; and
 - c) Newcastle City Council is to be given at least two days notice of the date intended for commencement of building works.

- Prior to the occupation or use of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifier appointed for the proposed development. An application for an Occupation Certificate must contain the information set out in Section 37 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* (NSW).

END OF CONDITIONS

SCHEDULE 2

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; *Newcastle Local Environmental Plan 2012* (NLEP) and applicable State Environmental Planning Policies.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012 (NDCP).
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development has appropriate management and mitigation of impacts through conditions of consent.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- No objections were received and no negative neighbour impacts are anticipated.
- The NLEP 2012 Clause 4.6 written request to vary the floor space ratio development standard applying to the site is considered to be well founded and acceptable in the circumstances.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

- Confirm and clarify the terms of Council's determination;
- Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
- Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- Set standards and measures for acceptable environmental performance; and
- Provide for the ongoing management of the development.



ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

**DAC 16/05/2023 – 53 STEVENSON PLACE NEWCASTLE EAST
- DA2022/01127 - DWELLING HOUSE - ALTERATIONS AND
ADDITIONS**

7.1 Attachment C: Processing Chronology

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PROCESSING CHRONOLOGY

DA2022/01127 – 53 Stevenson Place, Newcastle East

7 October 2022	-	Application lodged
10 October to 27 October 2022	-	Application notified in accordance with CN's Community Participation Plan (CPP)
27 October 2022	-	External referrals commenced: Ausgrid
6 November 2022	-	External referrals received: Ausgrid
27 October 2022	-	Request for additional information issued: Clause 4.6 and Heritage Impact Statement
19 January 2023 and 7 February 2023	-	Additional information received from applicant: Clause 4.6 documentation and heritage impact statement.
18 April 2023		Request for additional information issued: Amended plans
18 April 2023		Additional information received: Amended plans



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**DAC 16/05/2023 – 53 STEVENSON PLACE NEWCASTLE EAST
- DA2022/01127 - DWELLING HOUSE - ALTERATIONS AND
ADDITIONS**

- 7.1 **Attachment D:** Clause 4.6 written exception to development standard

CLAUSE 4.6 VARIATION REQUEST CLAUSE 4.4 FLOOR SPACE RATIO

ALTERATIONS AND ADDITIONS TO A DWELLING

53 STEVENSON PLACE, NEWCASTLE EAST NSW 2300
(LOT 2 DP9520)



CLIENT: ELK DESIGNS

DATE: 19 JANUARY 2023

PREPARED BY:



ABN 23 104 067 405

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Prepared by:	Reviewed by:	Released by:
Name: Liberty Pannowitz Position: Senior Town Planner	Name: Emma Mason Position: Principal Town Planner	Name: Liberty Pannowitz Position: Senior Town Planner Signed: Date: 19 January 2023 Version: Version 1 – RFI Response

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1. INTRODUCTION

Development standards are a means to achieving an environmental planning objective and can be numerical or performance based. Some developments may achieve planning objectives despite not meeting the required development standards. The planning system provides flexibility to allow these objectives to still be met by varying development standards in exceptional cases.

This submission has been prepared to accompany a Development Application (DA) for alterations and additions to an existing dwelling house on land known as 53 Stevenson Place, Newcastle East NSW 2300 (Lot 2 DP9520) (the site). This submission seeks a variation to Clause 4.4 of the Newcastle Local Environmental Plan (LEP) 2012 which prescribes a maximum floor space ratio (FSR) of 1:1 to the subject site.

As detailed in this request, the proposed development is considered to meet the requirements prescribed under Clause 4.6 of the Newcastle LEP 2012, as the development standard is considered unreasonable and the development displays sufficient environmental planning grounds to warrant contravention of the development standard.

Clause 4.6 states the following:

“4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (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.*
- (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.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.

- (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).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4
 - (caa) clause 5.5,
 - (ca) clause 8.1 or 8.2."

The use of Clause 4.6 to enable an exception to this development standard is appropriate in this instance and the consent authority should be satisfied that all requirements of the clause have been suitably addressed via the content in this formal request.

The Environmental Planning Instrument (EPI) to which this variation relates to is the Newcastle LEP 2012. The development standard to which this variation relates to is Clause 4.4 Floor space ratio, which reads as follows:

4.4 Floor space ratio

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

- (a) to provide an appropriate density of development consistent with the established centres hierarchy,
- (b) to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.

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

(2A) Despite subclause (2), the maximum floor space ratio for a building on land in any zone in this Plan is to be determined as if the area of the access laneway of a battle-axe lot were not part of the area of the lot."



Figure 1: Floor Space Ratio Map – subject site outlined in yellow (Source: eSpatial Viewer)

A maximum Floor Space Ratio of 1:1 applies to the subject site, as per *Figure 1* above.

Written justification for the proposed variation to the FSR development standard in accordance with Clause 4.6 of Newcastle LEP 2012 is required.

2. EXTENT OF VARIATION

As noted above, Clause 4.4 of Newcastle LEP 2012 states that the subject land is subject to a maximum FSR of 1:1. Referring to the Architectural Plans incorporated in the DA package prepared by ELK Designs (dated 21/07/2022) it is noted that the maximum proposed GFA is 155m² over a site area of 111.3m², resulting in a FSR of 1.39:1, being a 43.7m² numerical exceedance to the development standard, or a 39% variation. Further, there was confusion as part of the original submission as to the actual site area. The historic DP has been obtained, which reveals that the site area is in fact 111.3m².

It is acknowledged the variation exceeds 10%, which is what is considered minor; however, it is also relevant to note that the site and existing building are part of the historical 19th century Pembroke Terraces – the building originally being built in 1900, approved and constructed long before the current 2012 LEP and subsequent FSR development controls. To this end, the existing building has a gross floor area (GFA) of 145m², being an FSR of 1.3:1 – also a 30% variation. As such, whilst the proposed works seek an FSR greater than that of the existing building, and being an attached terrace house, there are limited opportunities to redevelop and update the existing building or even decrease the historic variation. The proposed alterations and additions seek generally quite minor changes to the existing building, being the demolition of part of the existing dwelling (generally internal walls) and to construct a new rear entry, outdoor area, and add additional space (a small fourth bedroom) and small balcony to the upper level on the south side (rear) of the site. This current DA seeks to retain as much of the existing structure as possible, and refurbish the existing building, meaning that there are very limited opportunities for a lessened, or even compliant overall FSR as part of this DA.

As above, the exceedance is fully attributed to the retention of the existing building, and the historic nature of the site and building, and the variation allows for the continued use of the site for low density residential accommodation. Further, the alterations and additions are focused to the rear of the site, where there is less visibility and proximity to other development. Further, the existing rear elevation is poorly articulated and the space not inviting, nor functional. By making alterations to the existing building in this location, the overall scale of the site will remain the same, but the perceived visual impact is lessened through a more attractive and active laneway presentation and well-articulated, visually interesting elevations. This has a positive contribution to the overall built environment and increases amenity for residents. A comparison of the existing elevation and the proposed elevation are shown in *Figures 2 and 3* to highlight the necessity for the works.



Figure 2: Existing southern elevation fronting the laneway. (Source: RealEstate.com) (note there is now a garden shed already existing along the south boundary)



Figure 3: Proposed elevation showing additions. (Source: ELK Designs)

In addition to this, the site is located within the Newcastle East Heritage Conservation Area (HCA). The Statement of Heritage Impact (SOHI) which has now been prepared at Council’s request accompanies the resubmitted DA package, and states that the works do not have an impact on the heritage significance or streetscape character of the group item or the HCA.

It is our submission that the exceedance provides for increased internal and external amenity and functionality for future residents. It will not adversely impact on the amenity of adjoining properties, nor will the variation compromise the character of the HCA being largely consistent with the existing historic FSR

on site. As such, a degree of flexibility is considered reasonable in this instance and anticipated under the LEP where justification is made. Further justification is provided below.

3. IS COMPLIANCE UNREASONABLE OR UNNECESSARY?

With reference to Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827, the first and most commonly invoked way to establish that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, is to demonstrate that the objectives of the development standard are achieved, notwithstanding the non-compliance.

The proposed variation from the development standard is assessed against the accepted “5 Part Test” for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council* (2007) LEC 827.

In the decision of *Wehbe vs Pittwater Council* (2007) LEC 827, Chief Justice Preston expressed the view that there are five (5) different ways in which an objection may be well founded, and that approval of the objection may be consistent with the aims of the policy.

It is therefore our submission that the *Wehbe* test is of relevance in the consideration of a standard to determine whether or not it is unreasonable or unnecessary. This attributes to determining whether compliance with the standard is unreasonable or unnecessary in the circumstances of the case as set out below:

First – The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development provides an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.

Second – A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.

Third – A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

Fourth – A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

Fifth – A fifth way is to establish that “the zoning of particular land” was “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land” and that “compliance with the standard in that case would also be unreasonable or unnecessary”.

Satisfactorily demonstrating that compliance with a development standard is unreasonable or unnecessary in any one of these ways is sufficient for meeting the requirement in Clause 4.6(3)(a) of LEP 2012.

The following discussion is provided in response to each of the above tests:

3.1 THE OBJECTIVES OF THE STANDARD ARE ACHIEVED NOTWITHSTANDING NON-COMPLIANCE WITH THE STANDARD

The objectives supporting the FSR control identified in Clause 4.4 are discussed below. Consistency with the objectives and the absence of any environmental planning impacts, would demonstrate that strict compliance with Clause 4.4 would be unreasonable in this instance. The objectives of the development standard are as follows

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

(a) to provide an appropriate density of development consistent with the established centres hierarchy,

(b) to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.

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

(2A) Despite subclause (2), the maximum floor space ratio for a building on land in any zone in this Plan is to be determined as if the area of the access laneway of a battle-axe lot were not part of the area of the lot."

The maximum FSR is 1.39:1, resulting in a numerical breach of 43.7m², represented as 39%. Discussion regarding how the proposal meets the objectives of the Clause are provided below. Strict compliance with the FSR development standard is unreasonable and unnecessary in the circumstances of the case, as the objectives of the standard have been achieved.

(a) to provide an appropriate density of development consistent with the established centres hierarchy,

The surrounding locality – the East End – is located within the “Newcastle City Centre” Commercial Centres Hierarchy pursuant to the Local Strategic Planning Statement (LSPS). This Strategic Centre services the Hunter region with higher order administration, education, health services, cultural and recreational facilities with high density commercial and residential uses (LSPS, 2040). True to this, the surrounding area supports a variety of high density residential, commercial and recreational land uses. The proposal is entirely consistent with the existing density of the site, being only an additional 10m² of GFA from that which has existed for an extended period of time. The proposed works do not alter the density of the site in terms of unreasonable intensification – the building will remain as a single dwelling. Therefore, as the proposal represents minor alterations and additions to an existing, historic building, and does not seek to intensify the existing land use albeit for an additional small bedroom, the development provides for the continued *appropriate* density of residential use that is compatible and consistent with the established centers hierarchy.

(b) to ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.

The desired built form as identified by the established centers hierarchy is a cumulation of several elements, but most significantly it is achieved through maintaining, protecting and enhancing heritage buildings, streetscapes, views and key features. As above, the existing circa 1900 building already has an FSR of 1.3:1, a historical variation to the current LEP development standards. The existing historic building which is part of a consistent streetscape of two and three storey terrace housing dating from the mid-19th through to the early 20th centuries, whilst being a historically and aesthetically important building in Newcastle East, particularly to the north along Stevenson Place, does require updating to meet the needs and achieve a suitable amenity for a contemporary household. As such, and as proposed as part of these works, largely internal works are proposed, with the addition of external elements, which have been strategically limited to the southern side of the building, only viewable from the adjoining laneway. As is, the existing laneway presentation provides little to no articulation or connection, with high, solid blank walls, which is just as a poor safety outcome in terms of passive surveillance as it is a visual detriment.

It has been established that the existing building does not make a positive contribution to the southern elevation and the adjoining laneway, and is in need of refurbishment. It is worth noting that this negative perception is not owed to any FSR (and historic variation), but more notably the external built form elements and aged nature of the building, rather than the actual density and building footprint as a whole. Therefore, it is discussed herein how the proposed additional works do indeed make a positive contribution to the desired built form, notwithstanding the FSR. Again, we would refer back to *Figures 2 and 3* which show comparison between the existing and proposed outcomes.

The reworked southern façade significantly reduces the presence of bulk and dominance as viewed from the laneway. By replacing the aforementioned domineering blank wall expanse with additional windows, openings and a small balcony, the proposal has created visual interest and an articulated façade with less massing. Furthermore, the introduction of windows, openings and a small balcony provide opportunity for much needed natural and passive surveillance of the laneway, which is not currently available.

So, while the proposal sits above the allowable FSR for the site, it is considered that the works represents a significant visual improvement to this part of the site. The additional 10m² of floor area (from the existing) does not result in an increased bulk or scale, with the new building have a significantly decreased perceived bulk and scale and a more positive impact on the laneway, as well as improving amenity and safety outcomes for residents.

It is worth acknowledging again that the removal of GFA across the development site, to achieve numerical compliance with the standard would be very difficult, due to the development focus being an upgrade of the existing building on site. Even if some reduction of floor area was achievable this would undoubtedly reduce the amenity and affect the existing footprint of the building. This is not considered necessary to achieve the objectives of the standard and would have a detrimental effect on future residents and the greater HCA.

Having regard for these matters, and the fact that the objectives of the standard are considered to be achieved, notwithstanding the non-compliance with the FSR, the proposal is considered justified.

3.2 THE UNDERLYING OBJECTIVE OR THE PURPOSE OF THE STANDARD IS NOT RELEVANT TO THE DEVELOPMENT

The underlying objective or purpose of the standard is relevant to the development and is achieved as outlined in 3.1 above. Therefore, this clause is not applicable.

3.3 THE UNDERLYING OBJECT OR PURPOSE WOULD BE DEFEATED OR THWARTED

Restricting development forms via the development standard may be overly restrictive and could result in outcomes that are both unsuitable to the locality and of lesser or poor quality. The proposal has not disregarded the development standard, however, looks for a level of flexibility tailored to the specifics of the site and considering existing variations and the historic nature of the building.

On balance, the proposed development provides a better outcome. The proposal represents a significant visual improvement to the southern side of the site and will significantly enhance amenity within the site, as described above, notwithstanding the variation. The result is a high amenity development which caters to future residents and one in which the HCA fabric is maintained. Therefore, the proposal in its current form is more appropriate for its location than a development that complies with the standard.

3.4 THE DEVELOPMENT STANDARD HAS BEEN VIRTUALLY ABANDONED OR DESTROYED

Whilst it is not suggested that the development has been virtually abandoned or destroyed, it is noted that Council has granted consent to several developments that depart from the standard, demonstrating that compliance with the standard is unnecessary and unreasonable. It is acknowledged that the existing building displays a long-standing historic variation and was approved and constructed prior to the current LEP 2012, so cannot be relied upon for this type of precedent. However, there have been similar developments with FSR variations occurring within the vicinity of the site (250m radius), including:

- 8 Zaara Street, Newcastle East NSW 2300 – an 8.2% variation
- 22 Alfred Street, Newcastle East NSW 2300 – a 24% variation
- 37 Alfred Street, Newcastle East NSW 2300 – a 7% variation
- 2 Parnell Place, Newcastle East NSW 2300 – a 71% variation
- 7 Fort Drive, Newcastle East NSW 2300 – a 68% variation
- 23 Alfred Street, Newcastle East NSW 2300 – a 30% variation
- 4 Beach Street, Newcastle East NSW 2300 – a 49% variation
- 37 Stevenson Place, Newcastle East NSW 2300. This DA was supported at the Development Assessment Committee (DAC) meeting on the 6th December 2022 however is showing as pending on the DA tracker at the time of writing.

As previously identified, the site benefits from a historic variation, and this DA seeks approval for the continued use of the site as a residential dwelling, meaning that there are fewer opportunities for a lessened overall FSR as part of this DA.

It is noted that an allowable FSR of 1:1 is also comparatively low for the zoning and allowable development (compared to other adjoining areas of R3 where the FSR is 1:5 to the south and west), meaning these types of variation requests are generally well founded and a common occurrence in the locality, particularly considering historic variations.

3.5 THE ZONING OF THE LAND IS UNREASONABLE OR INAPPROPRIATE

Not applicable as the zoning of the site is appropriate.

4. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS?

The assessment within this report as well as the supporting documentation demonstrates that the resultant environmental impacts of the proposal will be satisfactory. Notwithstanding the variation, the proposal represents a very well-considered development that addresses the limitations of existing historic development forms, improved laneway presentation (surveillance and articulation), locality and the HCA, and relevant objectives of both the development standards and the R3 Medium Density Residential zone. The proposal will improve internal and external amenity of the site for residents and does not adversely impact on the HCA by virtue of the extent and location of works. It is therefore considered that the development, despite the variation being sought to the FSR, will deliver positive environmental outcomes.

There are sufficient environmental and planning grounds to justify contravening the development standard and they are as follows:

- Standards achieved notwithstanding: The proposed development meets the R3 zone objectives by continuing to provide low density residential accommodation which is compatible with the existing development on site and surrounding forms. The proposed development also meets the FSR objectives, as above.
- Other planning controls: The exceedance is not a direct result of any breach of other DCP planning controls for the site (such as view and vistas, landscaping, heritage, privacy, shadows, and setbacks). In this regard, it does not result in any adverse environmental impacts.
- Existing state of the site: The variation is attributed to an existing building with an existing historic variation. The proposed development will provide a significant improvement to the building and provide a better use of the space / property.
- Compatibility with surrounding area: The proposed works ensure the building remains compatible with the existing development including the adjoining 19th and 20th century terrace housing along Stevenson Place.
- Visual impact: The proposed GFA will not result in unreasonable visual impacts resulting from density, bulk or scale with the existing overall vertical and horizontal footprint being generally maintained. Through the addition of a small amount of floor space on the southern side (additional bedroom), additional windows and a balcony, the building actually has a reduced perception of bulk and scale achieved by replacing massing and solid elements (i.e., the solid blank rear wall). Further, passive surveillance of the laneway is also improved in this regard, which is a worthy crime and safety consideration.
- Privacy: The proposed GFA does not increase opportunities for overlooking. There are no other new windows to side boundaries proposed.
- Solar access: Solar access is generally maintained as existing, with surrounding properties areas of private open space (to the east and west) still achieving in excess of 2 hours as shown by the shadow diagrams.
- Views: The proposed GFA will not impact on view sharing. The additional floor space has not increased the bulk and scale or height of the development (being well below the maximum height) and results in the best outcome for the allocation of new floor space on site.

In this case, we submit that the proposal displays sufficient environmental planning grounds to warrant variation to the development standard.

5. IS THE VARIATION IN THE PUBLIC INTEREST?

As detailed above, Clause 4.6 (4) (a) (ii) of the LEP requires demonstration that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard (described in Section 3.1 above) and the objectives for development within the zone in which the development is proposed to be carried out.

The public interest is best served by the orderly and economic use of land for purposes permissible under the relevant planning regime and predominantly in accordance with the prevailing planning controls. The development is a permissible form of development, consistent with the objectives of the R3 Medium Density Residential zone and is therefore considered to be in the public interest.

6. PUBLIC BENEFIT OF MAINTAINING THE STANDARD?

It is considered that there is no benefit to the public or the Newcastle East community in maintaining the development standard. The proposed development will update part of the existing building and allow the continued use of the site to match contemporary housing needs.

It is not considered that the variation sought raises any matter of significance for State or regional environmental planning. The departure from Clause 4.4 within LEP 2012 still allows for the orderly and economic use of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

7. IS THE VARIATION WELL FOUNDED?

It is considered that this has been adequately addressed above. In summary, this Clause 4.6 variation is well founded as required by Clause 4.6 of the LEP 2012 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standards;
- The development meets the objectives of the standard to be varied (floor space ratio) and objectives of the R3 Medium Density Residential zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or regional significance; and
- The development submitted aligns with the development expectations for the surrounding area.

Based on the above, the proposed variation is considered well founded.

8. GENERAL

Clause 4.6 also states that:

(6) *“Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*

(a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*

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

Note. *When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential*

- (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).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4,
 - (caa) clause 5.5,
 - (ca) clause 8.1 or 8.2"

This variation does not relate to the subdivision of land. The variation sought is not contrary to subclause (6). Should the exception to the development standard sought under this submission be supported by Newcastle City Council (Council), Council must retain a record of the assessment of this submission.

The development proposed is not complying development. A BASIX Certificate has been prepared for the proposed development and forms part of the supporting documentation submitted with the DA. The development is not affected by clauses 5.4, 5.5, 8.1 or 8.2 of LEP 2012.

9. CONCLUSION

The proposal does not comply with the floor space ratio control as prescribed by Clause 4.4 of Newcastle LEP 2012. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of LEP 2012 are met, as the breach to the FSR does not create any significant adverse environmental planning impacts and is consistent with the historic use of the site.

Based on the above, it is reasonable to conclude that strict compliance with the allocated FSR is not necessary and that a better planning and community outcome is achieved for this development by allowing flexibility in the application. There are sufficient environmental planning grounds to warrant an approval for the variation to the standard, in particular, approving the internal and external amenity of the existing building and improving laneway presentation.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and the use of Clause 4.6 of LEP 2012 to vary this development control is appropriate in this instance.