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**7.1 DAC 26/04/23 – SUPPLEMENTARY REPORT - 30 VILLA ROAD  
WARATAH – DA2022-01085**

Dwelling house - alterations, additions and ancillary development (carport, garage and retaining walls) including demolition

- Attachment A** Report to Development Applications Committee 26 April 2023
- Submitted Plans
  - Draft Schedule of Conditions
  - Processing Chronology
  - Clause 4.6 written exception to development standard

**Attachment B:** Schedule of Conditions of Consent

**7.2 DAC 26/04/23 – SUPPLEMENTARY REPORT - 38 POWER STREET  
ISLINGTON - DA2022/0123**

Semi-detached dwellings – including demolition of existing dwelling and boundary adjustment

- Attachment A** Report to Development Applications Committee 26 April 2023
- Submitted Plans
  - Draft Schedule of Conditions
  - Processing Chronology
  - Clause 4.6 written exception to development standard

**Attachment B:** Amended Draft Schedule of Conditions

Development Applications Committee  
9 May 2023



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**SUPPLEMENTARY REPORT - DAC 09/05/23 - 30 VILLA ROAD,  
WARATAH WEST - DA2022/01085 - DWELLING HOUSE -  
ALTERATIONS, ADDITIONS AND ANCILLARY DEVELOPMENT  
(CARPORT, GARAGE AND RETAINING WALLS) INCLUDING  
DEMOLITION**

- 7.1            **Attachment A:**      Development Assessment Committee  
Assessment Report – Meeting 26 April  
2023
- 7.1            **Attachment B:**      Schedule of Conditions of Consent

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**SUPPLEMENTARY REPORT - DAC 09/05/23 - 30 VILLA ROAD,  
WARATAH WEST - DA2022/01085 - DWELLING HOUSE -  
ALTERATIONS, ADDITIONS AND ANCILLARY DEVELOPMENT  
(CARPORT, GARAGE AND RETAINING WALLS) INCLUDING  
DEMOLITION**

- 7.1                    **Attachment A:**        Development Assessment Committee  
Assessment Report – Meeting 26 April 2023

## 7. DEVELOPMENT APPLICATIONS

### 7.1. 30 VILLA ROAD, WARATAH WEST - DA2022/01085 - DWELLING HOUSE - ALTERATIONS, ADDITIONS AND ANCILLARY DEVELOPMENT (CAR PORT, GARAGE AND RETAINING WALLS) INCLUDING DEMOLLITION

**APPLICANT:** PERCEPTION PLANNING  
**OWNER:** J P EDWARDS  
**REPORT BY:** PLANNING AND ENVIRONMENT  
**CONTACT:** INTERIM EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION

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## PART I

### PURPOSE

A development application (DA2022/01085) has been received seeking consent for alterations and additions to an existing dwelling house at 30 Villa Road, Waratah West.

The submitted application was assigned to Development Officer, Ebony Pavy, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the building height development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation.



**Subject Land: 30 Villa Road Waratah West**

A copy of the plans for the proposed development at **Attachment A**.

The application was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) with no submissions being received in response.

### Issues

- 1) Height of Buildings – The proposed development has a height of 10.28m and does not comply with the maximum height of building development standard of 8.5m as prescribed under Clause 4.3 of Newcastle Local Environmental Plan 2012 (NLEP 2012). The variation equates to an exceedance of 1.78m or 20.9%.

## Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and is considered to be acceptable subject to compliance with appropriate conditions.

## RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R2 Low Density zone in which the development is proposed to be carried out; and
- B. That DA2022/01085 for alterations and additions to the existing dwelling house at 30 Villa Road, Waratah West be approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

## Political Donation / Gift Declaration

Section 10.4 of the *Environmental Planning and Assessment Act 1979* requires a person to disclose "*reportable political donations and gifts made by any person with a financial interest*" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

- a) all reportable political donations made to any local Councillor of Council; and
- b) all gifts made to any local Councillor or employee of that Council.

The applicant has answered **NO** to the following question on the application form: *Have you, or are you aware of any person having a financial interest in the application, made a 'reportable donation' or 'gift' to a Councillor or Council employee within a two-year period before the date of this application?*

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## PART II

### 1.0 THE SUBJECT SITE

The subject property is a single allotment known as 30 Villa Road Waratah West and has a legal description of Lot 108 in Deposited Plan 21085. The site is rectangular in shape and has a total site area of 498.7m<sup>2</sup>.

The site has an easterly aspect and a frontage to Villa Road. The site has a severe western slope from the east (frontage) to the west (rear) and contains one large palm tree.

The site is occupied by a single storey weatherboard dwelling and a small single car garage. The surrounding area consists of predominately single storey weatherboard cottages. Existing development on adjoining sites include a single storey weatherboard dwelling house to the north, split-level weatherboard house to the west, the Calvary Mater Hospital to the east and a Council reserve to the south (23A Angus Avenue).

## **2.0 THE PROPOSAL**

The applicant seeks consent for alterations and additions to the existing dwelling house, including internal works to the lower and upper floor. The development comprises the following works:

- i) The lower floor will contain a new master bedroom, ensuite, laundry, power room, mudroom, rumpus room and new garage and carport.
- ii) The upper floor will contain a new bedroom, bathroom, study nook, kitchen and living area, and new rear deck and staircase at the rear.
- iii) Retaining walls are proposed to the north, south and west.

A copy of the current amended plans is at **Attachment A**.

The various steps in the processing of the application to date are outlined in the Processing Chronology at **Attachment C**.

## **3.0 PUBLIC NOTIFICATION**

The application was publicly notified in accordance with CN's Community Participation Plan (CPP). No submissions were received as a result of the notification process.

## **4.0 INTEGRATED DEVELOPMENT**

The proposal is not '*integrated development*' pursuant to Section 4.46 of the EP&A Act.

## **5.0 PLANNING ASSESSMENT**

The application has been assessed having regard to the relevant matters for consideration under the provisions of section 4.15(1) of the EP&A Act, as detailed hereunder.

### **5.1 Provisions of any environmental planning instrument**

## **State Environmental Planning Policy (Resilience and Hazards) 2021**

### Chapter 4 Remediation of land

Chapter 4 SEPP R&H provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The subject site does not have a history of development uses that were likely to cause significant contamination of the land. The subject land is currently being used for residential purposes and CN's records do not identify any past contaminating activities on the site.

The proposal is acceptable having regard to Chapter 4 SEPP R&H.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to buildings that are defined as 'BASIX affected development', being "development that involves the erection (but not the relocation) of a BASIX affected building," (i.e.: contains one or more dwelling).

Accordingly, the provisions of the SEPP apply to the current development proposal. The applicant submitted a valid BASIX Certificate which lists the commitments to achieve appropriate building sustainability. A condition is recommended to be included in the development consent requiring such commitments to be fulfilled.

## **Newcastle Local Environmental Plan 2012 (NLEP 2012)**

The following summarises an assessment of the proposal against the provisions of the NLEP 2012 that are primarily relevant to the proposed development:

### Clause 2.1 - Land Use Zones

The subject property is included within the R2 Low Density Residential Zone under the provisions of NLEP 2012, within which zone the proposed development is permissible with consent.

The proposed development is consistent with the objectives of the R2 zone, which are:

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

- iii) *To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.*

The proposed alterations and additions to the existing dwelling house maximises residential amenity by reconfiguring the lower and upper floor levels to provide additional bedrooms and living spaces to cater for the needs of the owners. The design retains the existing dwelling which supports the character of the surrounding development.

The proposed development is consistent with the objectives of the R2 zone by accommodating the housing needs of the resident within a constrained site while respecting the amenity and character of surrounding development.

#### Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition to facilitate the proposed alterations and additions. Conditions are recommended to require that demolition works, and the disposal of material is managed appropriately and in accordance with relevant standards.

#### Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a height of buildings development standard of 8.5m. The proposed development will result in a maximum height of 10.28m, equating to an exceedance of 1.78m or 20.9% above the height of buildings development standard for the subject land.

The applicant has submitted a clause 4.6 variation request to this standard. Refer to discussion under clause 4.6 Exceptions to Development Standards below.

#### Clause 4.4 - Floor Space Ratio (FSR)

Under the NLEP 2012 the site has a FSR development standard of 0.6:1. The submitted FSR is approximately 0.4:1 and complies with this requirement.

#### Clause 4.6 - Exceptions to Development Standards

The objectives of Clause 4.6 'Exceptions to development standards', are (subclause (1)):

- 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.

The applicant seeks a building height of 10.28m, equating to an exceedance of 1.78m or 20.9% above the height of buildings development under Clause 4.3. As such, the



***Clause 4.6(2) - Is the provision to be varied a development standard? And is the development standard excluded from the operation of the clause.***

The height of buildings development standard in the NLEP 2012 is a development standard in that it is consistent with the definition of development standards under section 1.4 of the EP&A Act.

The height of buildings development standard is not expressly excluded from the operation of Clause 4.6.

***Clause 4.6(3)(a)- Has the applicant submitted a written request that seeks to justify contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.***

The submitted 'Clause 4.6 Variation to Building Height', prepared by Perception Planning dated 7 March 2023 constitutes a written request for the purposes of clause 4.6(3). (**Attachment D**)

There are five circumstances established by *Wehbe v Pittwater Council [2007] NSWLEC 827* in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary.

The applicant's clause 4.6 Variation Request written response seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the development standard is unreasonable, stating that strict compliance with the objectives of the development standard would compromise the objectives of the development standard.

A summary of the justification provided within the applicant's written request is provided below:

- i) Strict adherence to the numerical height of building development standard would be unreasonable and unnecessary as required under the Five Part Test (Wehbe vs Pittwater Council);*
- ii) The proposed building height is appropriate when considering it in relation to the existing features of the site;*
- iii) The non-compliant portion of the development does not impact on the architectural merits of the site. The roof section which varies the building height requirement will not increase the overall bulk and scale of the existing and results in a high-quality architectural outcome on-site;*
- iv) The proposed development has taken measures to increase privacy for adjacent properties such as altering window locations and glazing properties.*
- v) The proposed development integrates in with the desired contemporary built form of the area and will have no additional impact on the 'views' held by existing properties;*

- vi) *Despite of the variation the proposed development will achieve the objectives of the development standard and the objectives of the relevant land use zone being R2 – Low Density Residential; and*

*There are no identified environmental or social impacts as a result of the proposed variation.*

#### CN Officer Comment

The proposed development provides for alterations and additions to an existing dwelling to improve the functionality of the dwelling and overall amenity of the site for the resident. The variation results due to the site topography and the proposed development has been designed to comply with privacy, overshadowing and setback requirements.

As a result, the alterations and additions are considered to improve the functionality of the dwelling without compromising the amenity of surrounding residential properties. The variation is considered relatively minor in respect to the overall context of the development proposal.

It is noted that part of the applicant's clause 4.6 variation requests suggests that CN has abandoned the development control. This aspect of the applicant's submission is not accepted as insufficient evidence to the required threshold has been provided to demonstrate this aspect of the applicant's argument. However, the applicant's variation request provides sufficient justification for the variation in respect to the particular unique site constraints, particularly topography, and the overall design of the development.

Therefore, the applicant's written request is considered to satisfy the requirements of clause 4.6(3)(a) in demonstrating that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

#### ***Clause 4.6(3)(b) – that there are sufficient environmental planning grounds to justify contravening the development standard.***

In *Initial Action*, Preston CJ identified that for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6, focus must be on the element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify contravening the development, rather than promoting the benefits of the development.

An extract from the applicant's Clause 4.6 Request is provided as follows:

*"The development has demonstrated compliance with other primary design controls, including privacy, overshadowing and setback controls, showing that the height exceedance does not result in negative impacts when considered in the context of the site and local area.*

*The proposed development incorporates architectural features which results in an articulated design that minimises the building bulk and positively contributes to the locality. The development has been identified to be consistent with the relevant objectives, which provides sufficient environmental planning grounds under the NLEP (Clause 4.3) for a variation to the numerical development standard."*

#### CN Officer Comment

The written request outlines environmental planning grounds which justify the contravention to the development standard. In particular, the proposed alterations and additions will not be visible when viewed from Villa Road, the proposed development will not result in adverse impacts to the amenity of adjoining properties and the bulk and scale of the development is compatible with the existing and future character of the locality. The reasons outlined above are considered to provide sufficient justification to contravene the development standard.

**Clause 4.6(4)(a)(i) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3).**

As outlined above the applicant’s written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012. It follows that the test of Clause 4.6(a)(i) is satisfied.

**Clause 4.6(4)(a)(ii) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objects for development within the zone in which the development is proposed to be carried out.**

The applicant’s response to the satisfaction of the objectives of the Height of Buildings standard was considered under the Clause 4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, *‘the proposed development will be in the public interest because it is consistent’*, with the relevant objectives.

#### *Objectives of Clause 4.3 ‘Height of buildings*

The development is consistent with the objectives of Clause 4.3 ‘Height of buildings’ as the proposed alterations and additions will be to the rear of the site and will be a similar height as the existing building height. Furthermore, the development will allow adequate solar access to the subject dwelling and surrounding properties.

### *Objectives of the R2 Low Density Zone*

The development is consistent with the objectives of the R2 zone as the proposed development maximises residential amenity within a low-density residential environment and increases the internal spaces and useability of the dwelling to meet the day to day needs of residents while maintaining a scale and height that is compatible with the character of the locality and there will be no significant adverse impacts on the amenity of any existing nearby development. Further, the development is a type of land use permitted with consent within the above land zone.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the R2 zone. The proposal is satisfactory in terms of Clause 4.6(4)(a)(ii) of NLEP 2012.

**Clause 4.6(4)(b) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained.**

The Secretary's (i.e. of the Department of Planning and Environment) concurrence to the exception to the Height of Buildings development standard as required by Clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-00 of 5 May 2020.

### Conclusion

The requirements of Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation to the height of buildings development standard.

The Clause 4.6 variation request has demonstrated that the proposed height is acceptable and therefore strict compliance with the prescribed height of buildings standard would be unreasonable in this instance. In this regard, the Clause 4.6 variation request is supported.

### Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulphate soils (ASS) and the proposed development is considered satisfactory in this regard. The proposed development does not comprise significant earthworks and is therefore unlikely to expose or drain potential acid sulfate soils within the site. Accordingly, an ASSMP is not necessary, and the proposed development is considered satisfactory regarding Acid Sulfate Soils.

### Clause 6.2 - Earthworks

The level of earthworks proposed to facilitate the development is acceptable having regard to this clause. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography.

## **5.2 Any draft environmental planning instrument that is or has been placed on public exhibition**

A number of draft State Environmental Planning Policies or updates have been exhibited and are/or under consideration by the Department of Planning and Environment. The following is considered relevant to the subject application.

### *Review of Clause 4.6 of the Standard Instrument LEP: Explanation of Intended Effect*

The review of Clause 4.6 seeks to ensure that applications to vary development standards have a greater focus on the planning outcomes of the proposed development and are consistent with the strategic context of the site. The EIE was exhibited from the 31 March to 12 May 2021 and outlines those amendments to Clause 4.6 will include new criteria for consideration.

The proposed change would require applicants to demonstrate that a variation to a development standard “is consistent with the objectives of the relevant development standard and land use zone and the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.”

For the purposes of CN’s assessment, the public interest, environmental outcomes, social outcomes, or economic outcomes would need to be considered when assessing the improved planning outcome. The proposed development includes a Clause 4.6 variation request and is not inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and the NLEP 2012.

## **5.3 Any development control plan**

### **Newcastle Development Control Plan 2012 (NDCP 2012)**

Council at its meeting of 27 September 2022 adopted the amendments to the Newcastle Development Control 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 and the adopted DCP chapters include savings provisions to the following effect: 'any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply.

Notwithstanding, as the draft chapters have been publicly exhibited and adopted by Council, they have been considered within the assessment of this application below as a relevant matter for consideration.

### **Single Dwellings and Ancillary Development - Section 3.02**

The following comments are made concerning the proposed development and the relevant provisions of Section 3.02:

### *Street frontage appearance (3.02.03)*

The proposed development retains the existing front setback of the dwelling house. Further, the addition is proposed at the rear of the subject site therefore not viewable from the street frontage.

### *Side / rear setbacks (building envelope) (3.02.04)*

Side setbacks are a minimum of 900mm from each boundary up to a height of 4.5m, then at an angle of 4:1 up to a height of 10.28m. Rear setbacks are a minimum of 3m for walls up to 4.5m in height and over 6m for walls greater than 4.5m height.

### *Landscaping (3.02.05)*

The subject site has an area of 498.7m<sup>2</sup> and therefore the acceptable solutions require 20% of the site (99.74m<sup>2</sup>) to be landscaped. A landscape area of 124.7m<sup>2</sup> or 25% of the site is to be retained which meets the acceptable solutions within this section.

### *Private open space (3.02.06)*

The proposed development will retain a principal area of private open space which will be directly accessible from the main living area via the new external staircase. The proposed retaining walls will create a flat and level section of the yard that is usable and suitable for the needs of the occupants.

### *Privacy (3.02.07)*

The proposed development will include new windows on the northern, western and southern elevations. A new alfresco balcony is also included on the western elevation adjoining the new living area. The site slopes towards the rear, therefore, to minimise overlooking impacts into nearby dwellings and private open space privacy screening has been implemented.

Timber slat privacy screening will be installed on the northern, and western elevations of the proposed alfresco balcony. The privacy screening is not required on the southern elevation although, notwithstanding has been implemented. Further, the proposed living room window (W04) on the eastern elevation will have obscure glazing.

A condition will be imposed in the consent to ensure the privacy measures indicated on the approved plans are implemented. Subject to conditions, the development is considered to meet the acceptable solutions of the NDCP 2012 with respect to privacy.

### *Solar access (3.02.08)*

Due to the orientation of the site, the proposed development does not significantly overshadow living area windows and principal areas of private open space of adjacent dwellings. The shadows cast as a result of the development are focused on the private open space of the subject site and the adjoining Council reserve to the south. The

proposed development is considered to meet the acceptable solutions of the NDCP 2012 with respect to solar access.

*View sharing (3.02.09)*

The proposed development will not obscure any important views or vistas of adjoining properties. The development is considered to meet the acceptable solutions of this section within NDCP 2012.

*Car parking and vehicular access (3.02.10)*

The proposal includes a carport and garage located within the existing driveway to replace the existing car parking and vehicular access arrangements at the site and are considered satisfactory.

In conclusion, when assessed against the relevant provisions of the Single Dwellings and Ancillary Development section of the NDCP 2012, the proposed development is considered acceptable in relation to the abovementioned NDCP 2012 sections and achieves compliance with relevant acceptable solutions and performance criteria for building form, building separation and residential amenity.

The development establishes a scale and built form that is appropriate for its location. The proposal provides good presentation to the street and rear placed public domain with good residential amenity, while maintaining privacy for adjoining neighbours.

*Ancillary development (3.02.12)*

The proposed development includes the erection of a garage and attached carport on the north side of the existing dwelling house. The carport is extending from the front of the garage to provide additional parking. The structures will replace the existing garage and will have a maximum height of 4.5 metres above the existing ground level. The proposal complies with the acceptable solutions under Section 3.02.10 Car Parking and Vehicular Access.

The proposed garage and carport are located 12.6 metres from the property boundary of the road frontage and setback 190mm from the northern side boundary. Therefore, it does not comply with the minimum setback of 900mm in the acceptable solutions of the abovementioned DCP section. However, the proposal is considered to meet the performance criteria within this section.

The proposed structures are not considered to dominate the existing streetscape as there is a substantial setback from the front property boundary. The structures will not detract from the character of the existing streetscape. Further, the structure is of a similar bulk and scale to existing garages within Villa Road therefore is appropriate for its location. The existing driveway will be retained, and it is considered the vehicles can enter and exit the site in a safe manner.

The proposed development is considered acceptable in relation to the abovementioned NDCP 2012 section and achieves the relevant performance criteria for building form, building separation and residential amenity.

#### Soil Management - Section 5.01

Retaining walls are to be implemented to the north, west and south at a height of 1.5 metres. The proposed south and west facing retaining walls maintain a minimum 1m side setback from their respective boundary. The proposed north retaining wall has a setback of 190mm from the northern side boundary.

It has been assessed that the proposed height and the setback of the north retaining wall does not comply with the requirements in this section. Therefore, a variation is requested for the non-compliance. The retaining walls are proposed above the maximum retaining wall height of 1 metre to provide a flat section of private open space and amenity for the occupants to utilise. The proposed northern retaining wall encroaches the 1 metre side setback in order to preserve most of the landscaped area.

#### Aboriginal Heritage - Section 5.04

Reference to the Aboriginal Heritage Information Management System confirmed that there are no sites of Aboriginal significance recorded on the site or within 50m of the site.

#### Landscape Open Space and Visual Amenity - Section 7.02

The site will improve the existing landscaping area by providing a flat section for the occupants to utilise. The existing site comprises of a severely sloping yard with minimal landscaping. The proposed landscaping is considered reasonable due to the constraints of the site. The development is considered to meet the Performance Criteria of the NDCP 2012 with respect to landscaped area.

#### Traffic, Parking and Access - Section 7.03

The proposal includes a carport and garage located within the existing driveway to replace the existing car parking and vehicular access arrangements at the site and are considered satisfactory.

#### Section 7.05 - Energy Efficiency

The proposal is acceptable having regard to this section.

#### Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed development will discharge into the existing stormwater system. Standard conditions relating to stormwater details will be included in the consent to ensure the stormwater system complies with the relevant aims and objectives of the NDCP 2012.

### Waste Management - Section 7.08

Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued.

### Public Participation – Community Participation Plan (CPP)

The proposed development was publicly notified to neighbouring properties for 14 days in accordance with the CN's CPP and no submissions were received in response.

### Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's Development Contributions Plans.

A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions at **Attachment B**.

#### **5.4 Planning agreements**

No planning agreements are relevant to the proposal.

#### **5.5 The regulations (and other plans and policies)**

The application has been considered pursuant to the provisions of the EP&A Act requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

No Coastal Management Plan applies to the site or the proposed development.

#### **5.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and the NDCP 2012 considerations. In addition, the following impacts are considered relevant.

The proposed development will not have any undue adverse impact on the natural or built environment. The development is compatible with the existing character, bulk, scale and massing of development in the immediate area. It is considered that the proposal will not have any negative social or economic impacts.

#### **5.7 The suitability of the site for the development**

The site is suitable for the proposed development as it is located within an existing residential area and within proximity to essential urban services, commercial centres, medical facilities, community facilities and education establishments. The site has

existing connection to water, sewer, telecommunications, electricity and gas, and Villa Street is currently serviced by CN's waste services.

The constraints of the site have been considered in the proposed development and the site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development. As such, the subject site is suitable for the proposed development.

### **5.8 Any submissions made in accordance with this Act or the regulations**

The application was publicly notified in accordance with CN's Community Participation Plan (CPP) and no submissions were received.

### **5.9 The public interest**

The proposed development is consistent with the aims and design parameters contained in the NLEP 2012 and the NDCP 2012 and other relevant Environmental Planning Instruments discussed within this report. The development is consistent with the objectives of the R2 Low Density Residential Land use zone.

The proposed development will not have an adverse impact on the natural or built environments and will not result in any significant impacts on the amenity of adjacent properties or the streetscape. The proposed development is in the public interest as it provides for modernised low-impact residential accommodation within an established residential area.

The proposed development is satisfactory having regard to the principles of ecologically sustainable development. The proposal is consistent with CN's urban consolidation objectives, making more efficient use of the established public infrastructure and services.

The development is in the public interest and will allow for the orderly and economic development of the site.

### **6.0 CONCLUSION**

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the EP&A Act and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

### **ATTACHMENTS**

- Attachment A:** Submitted Plans – 30 Villa Road, Waratah West
- Attachment B:** Draft Schedule of Conditions – 30 Villa Road, Waratah West.
- Attachment C:** Processing Chronology – 30 Villa Road Waratah West
- Attachment D:** Clause 4.6 written exception to development standard – 30 Villa Road Waratah West



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DWELLING HOUSE - ALTERATIONS, ADDITIONS AND ANCILLARY  
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**DAC 26/04/2023 – 30 VILLA ROAD WARATAH – DA2022-01085 -  
DWELLING HOUSE - ALTERATIONS, ADDITIONS AND ANCILLARY  
DEVELOPMENT (CARPORT, GARAGE AND RETAINING WALLS)  
INCLUDING DEMOLITION**

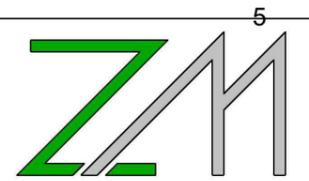
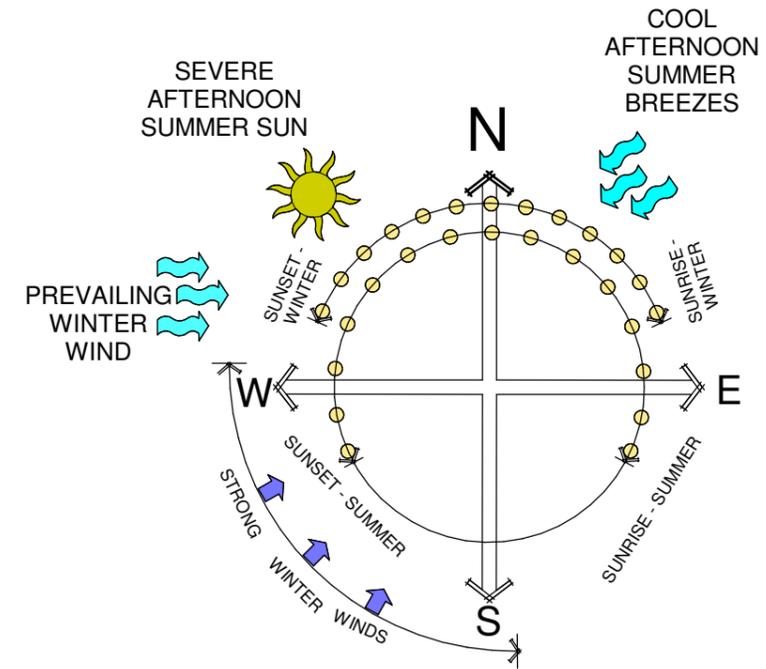
**7.1 Attachment A: Submitted Plans**

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# PROPOSED ALTERATIONS AND ADDITIONS LOT 108, D.P.21085, 30 VILLA ST, WARATAH WEST FOR J. & K. EDWARDS

## DRAWING SCHEDULE

SHEET NO.	SHEET NAME	ISSUE DATE	REVISION
S01	COVER PAGE	3.4.23	11
S02	SITE PLAN	3.4.23	11
S03	BULK EARTHWORKS PLAN	3.4.23	11
S04	PROPOSED UPPER FLOOR PLAN	3.4.23	11
S05	PROPOSED LOWER FLOOR PLAN	3.4.23	11
S06	WINDOWS - BASIX - ROOF PLAN	3.4.23	11
S07	ELEVATIONS - SH1	3.4.23	11
S08	ELEVATIONS - SH2	3.4.23	11
S09	SECTIONS	3.4.23	11
S10	PERSPECTIVES - SH1	3.4.23	11
S11	PERSPECTIVES - SH2	3.4.23	11
S12	PERSPECTIVES - SH3	3.4.23	11



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## PROPOSED ALTERATIONS & ADDITIONS

LOT 108, D.P.21085,  
30 VILLA ST,  
WARATAH WEST

FOR J & K  
EDWARDS

SHEET NAME

COVER PAGE

DRAWN: ZTM

CHECKED: MJ

DATE: 3.4.23

SCALE:

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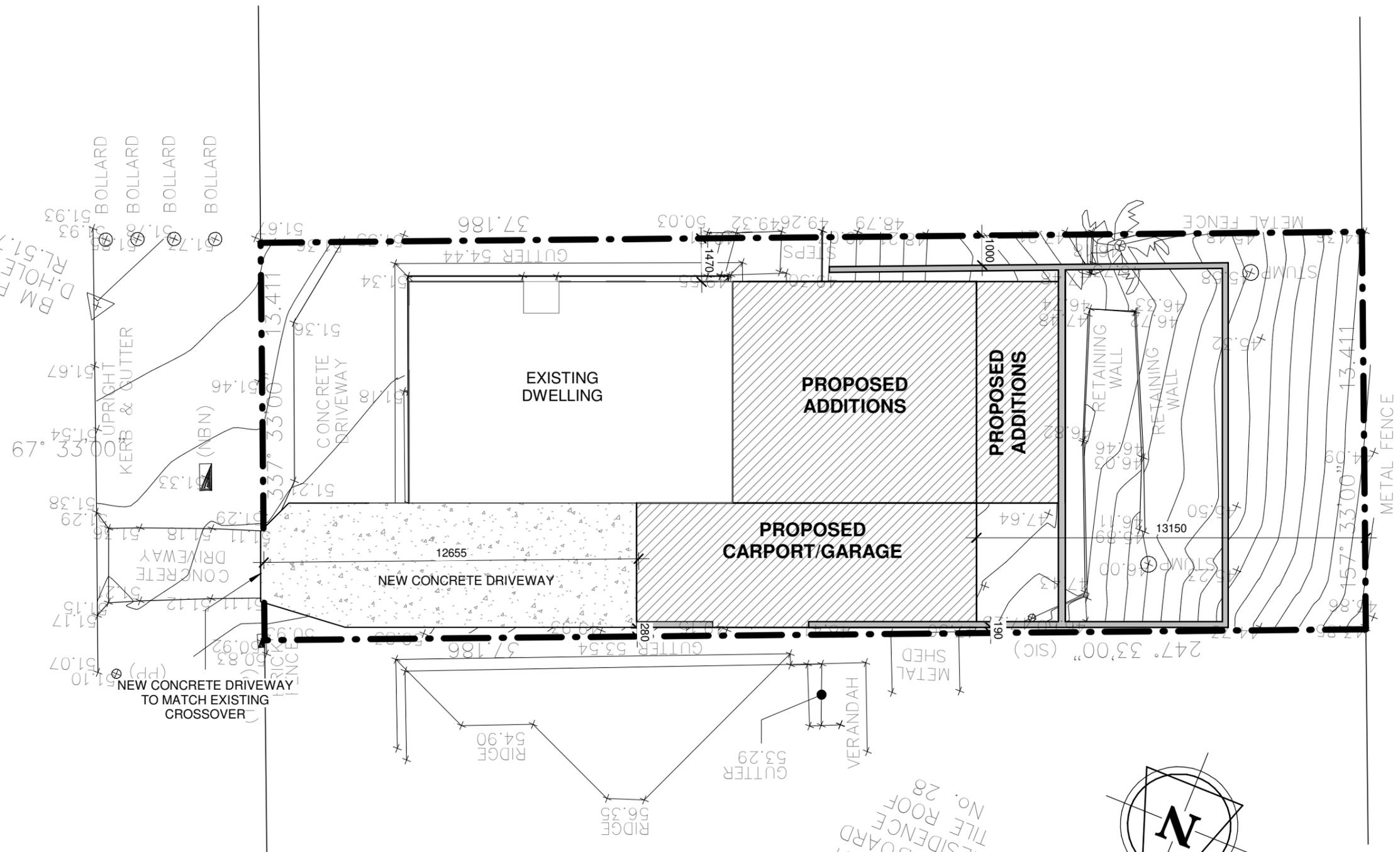
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SHEET  
S01



**LOCATION MAP**  
NTS - NORTH UP

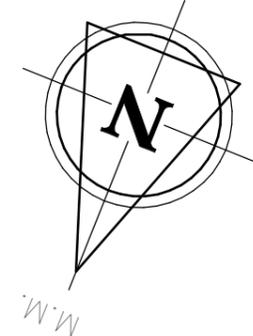
# VILLA ROAD



## SITE PLAN

1 : 150

LOT 107  
DP 21085  
SINGLE STOREY  
WEATHERBOARD  
RESIDENCE  
TILE ROOF  
No. 28



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**PROPOSED ALTERATIONS & ADDITIONS FOR J & K EDWARDS**

LOT 108, D.P.21085, 30 VILLA ST, WARATAH WEST

SHEET NAME  
**SITE PLAN**

DRAWN:	ZTM
CHECKED:	JK E
DATE:	3.4.23
SCALE:	1:150
	AT A3

**SHEET S02**



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10	REVISED PLANS ISSUED	21.2.23	ZTM
11	REVISED PLANS ISSUED	3.4.23	ZTM

### PROPOSED ALTERATIONS & ADDITIONS

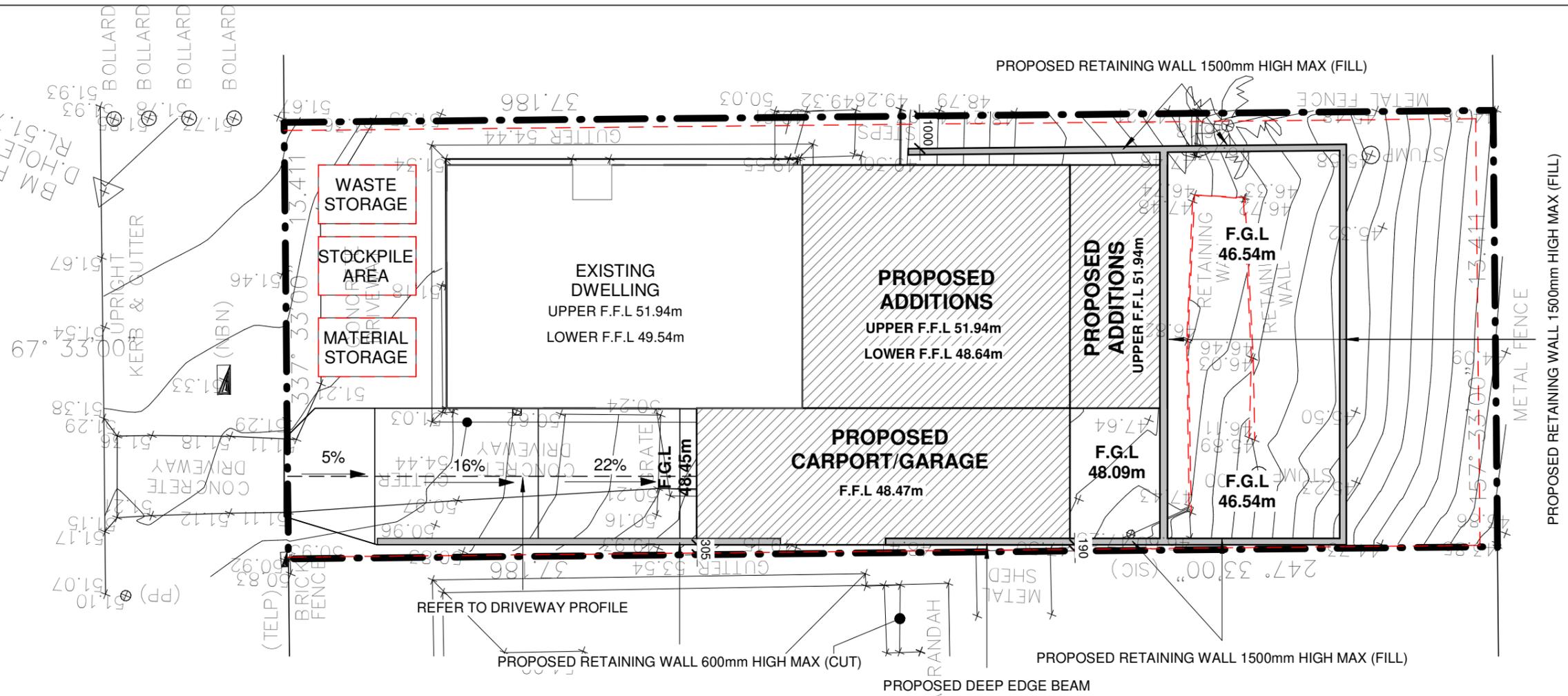
LOT 108, D.P.21085,  
30 VILLA ST,  
WARATAH WEST

FOR J & K  
EDWARDS

SHEET NAME  
**BULK EARTHWORKS PLAN**

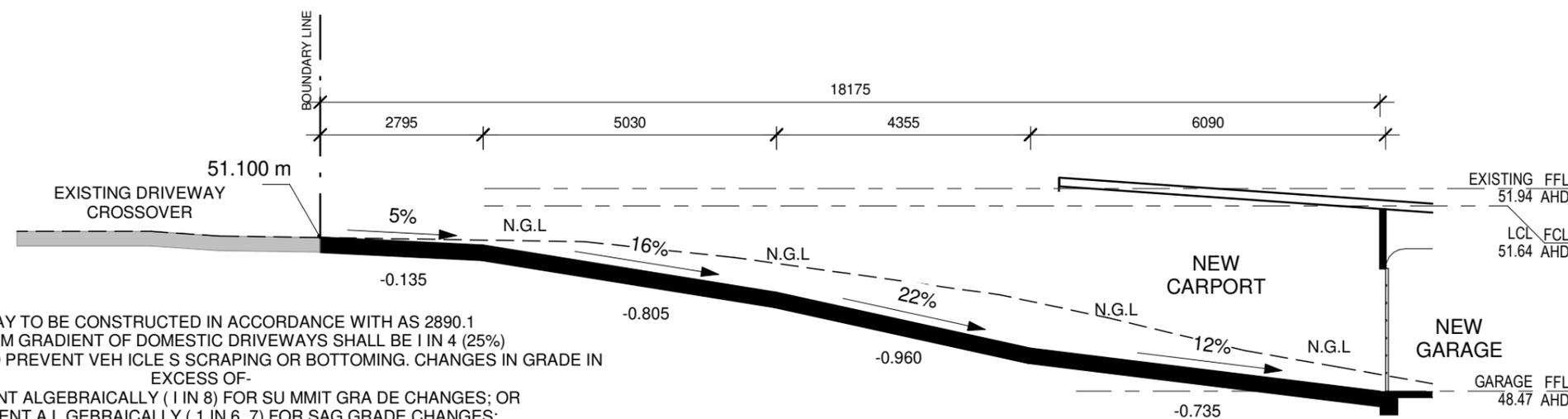
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CHECKED: JK E  
DATE: 3.4.23

SCALE:	<b>AT A3</b>
<b>1:150 , 1:100</b>	
31/03/2023 4:24:51 PM	<b>SHEET S03</b>



## BULK EARTHWORKS PLAN

1 : 150



DRIVEWAY TO BE CONSTRUCTED IN ACCORDANCE WITH AS 2890.1  
THE MAXIMUM GRADIENT OF DOMESTIC DRIVEWAYS SHALL BE 1 IN 4 (25%)  
CHANGES OF GRADE-TO PREVENT VEHICLE SCRAPING OR BOTTOMING. CHANGES IN GRADE IN EXCESS OF-

(I) 12.5 PERCENT ALGEBRAICALLY ( 1 IN 8 ) FOR SUMMIT GRADE CHANGES; OR  
(II) 15 PERCENT ALGEBRAICALLY ( 1 IN 6.7 ) FOR SAG GRADE CHANGES;

## DRIVEWAY PROFILE

1 : 100



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## PROPOSED ALTERATIONS & ADDITIONS

LOT 108, D.P.21085,  
30 VILLA ST,  
WARATAH WEST

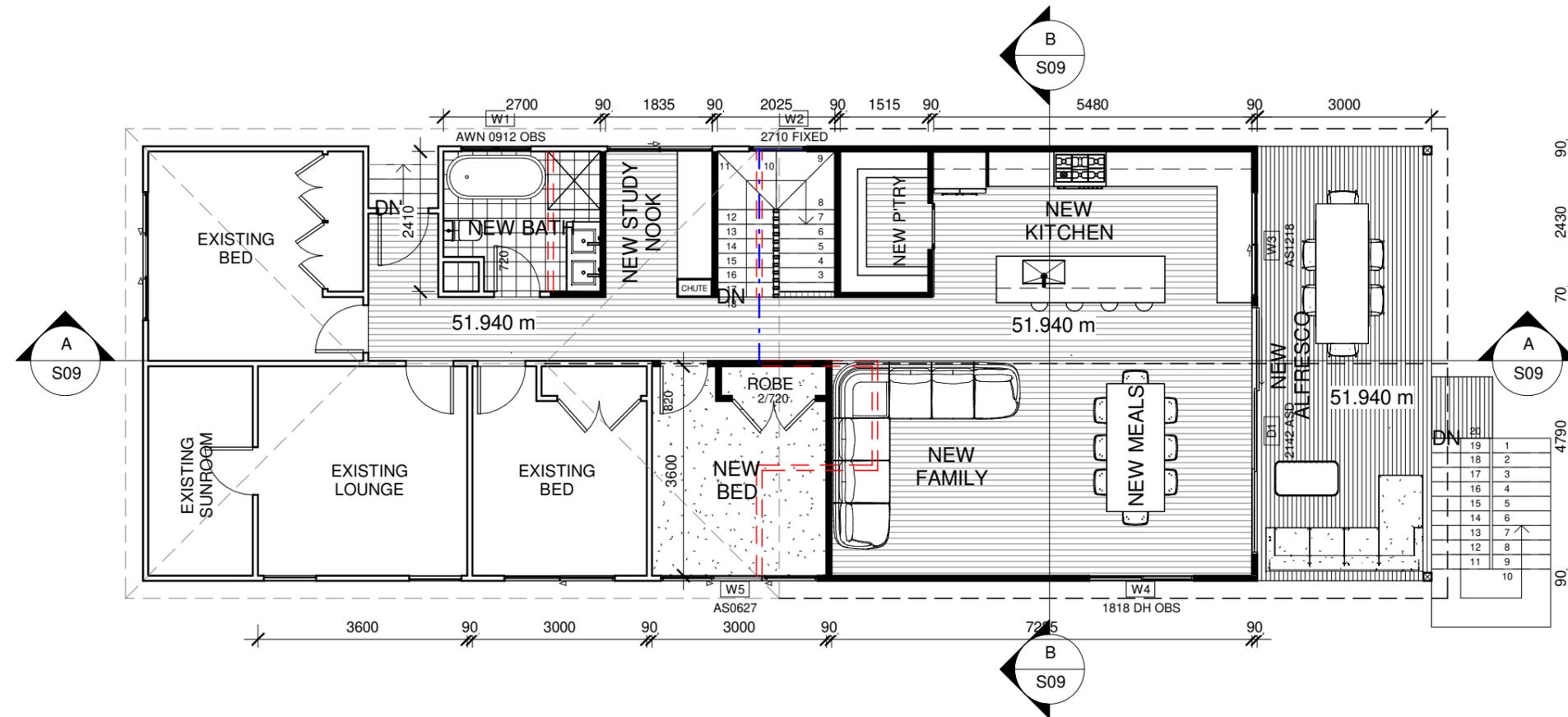
FOR J & K  
EDWARDS

SHEET NAME  
**PROPOSED UPPER FLOOR PLAN**

DRAWN: ZTM  
CHECKED: J & K E  
DATE: 3.4.23

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**SHEET S04**



## PROPOSED UPPER FLOOR PLAN

1 : 100



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## PROPOSED ALTERATIONS & ADDITIONS

LOT 108, D.P.21085,  
30 VILLA ST,  
WARATAH WEST

FOR J & K  
EDWARDS

SHEET NAME

## PROPOSED LOWER FLOOR PLAN

DRAWN: ZTM  
 CHECKED: J&K E  
 DATE: 3.4.23

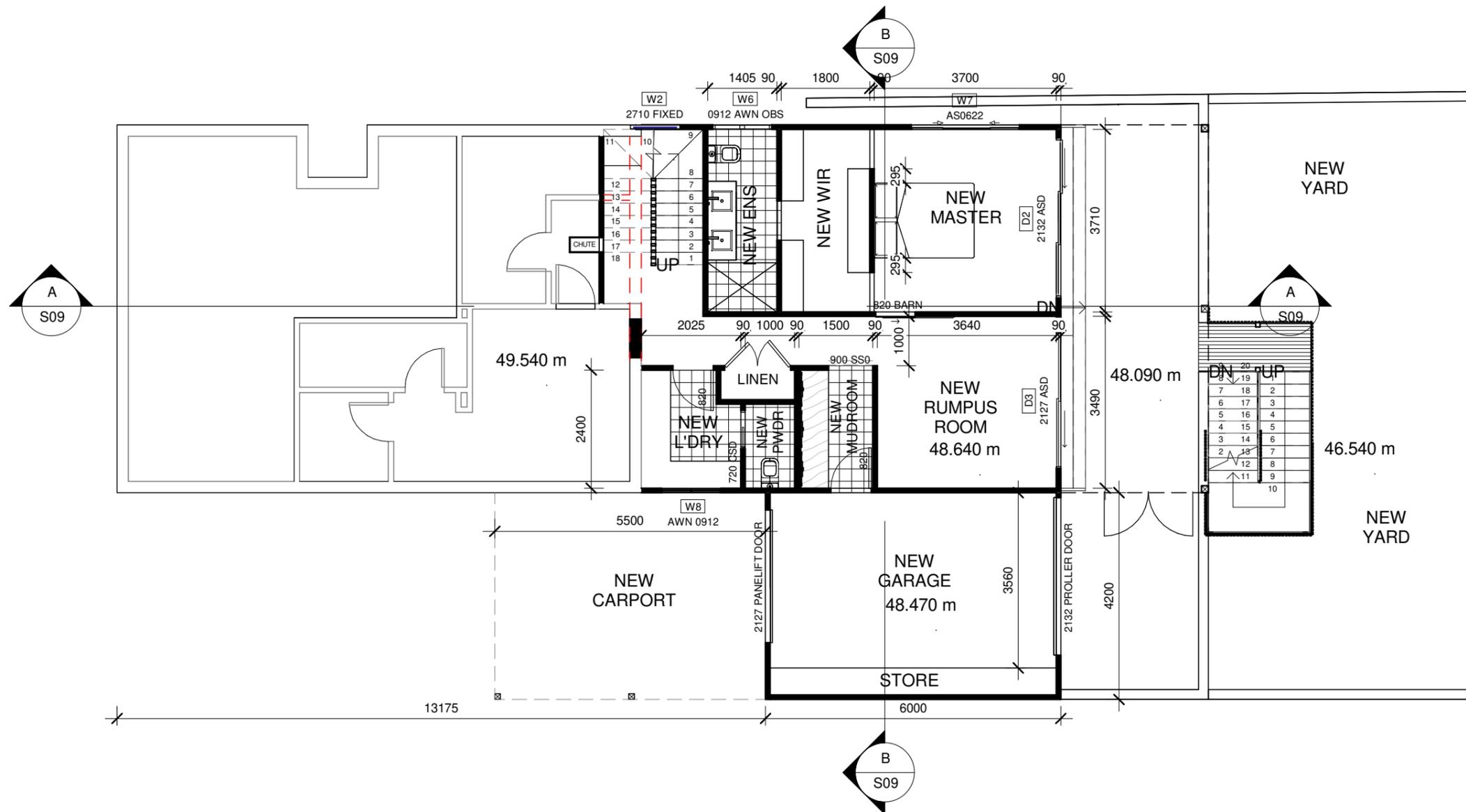
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SHEET  
**S05**



## PROPOSED LOWER FLOOR PLAN

1 : 100

# BASIX COMMITMENTS

OWNER AND/OR BUILDER TO CHECK ALL COMMITMENTS ON THE BASIX CERTIFICATE 'SCHEDULE OF COMMITMENTS'. TABLE TO BE READ IN CONJUNCTION WITH SCHEDULE OF COMMITMENTS & SPECIFICATION. SCHEDULE OF COMMITMENTS TO TAKE PRECEDENCE OVER PLANS AND SPECIFICATION. ALSO CONFIRM CERT. NUMBER MATCHES BASIX CERTIFICATE

CERTIFICATE NUMBER: A474904      DATE OF ISSUE: 23.9.22

## FIXTURES AND SYSTEMS

FIXTURES	N/A		
SHOWER HEAD RATING	3 STAR	KITCHEN TAP RATING	3 STAR
TOILET FLUSHING SYSTEM RATING	3 STAR	BASIN TAPS	3 STAR

## LIGHTING

THE APPLICANT MUST ENSURE A MINIMUM OF 40% OF NEW OR ALTERED LIGHT FIXTURES ARE FITTED WITH FLUORESCENT, COMPACT FLUORESCENT, OR LIGHT EMITTING-DIODE LAMPS

## CONSTRUCTION

CONSTRUCTION	R VALUE	OTHER SPEC.
CONC. SLAB ON GROUND	NIL	
SUS. FLOOR - ENCLOSED	R0.6(DOWN) OR R1.30 INCL. CONSTRUCTION	
EXTERNAL WALL: CLAD	R1.30 OR R1.70 INCL. CONSTRUCTION	
FLAT CEILING, PITCHED ROOF	CEILING: R3.0 (UP) ROOF: FOIL/SARKING	MEDIUM (SOLAR ABSORPTANCE 0.475- 0.70)
RAKED CEILING, PITCHED/SKILLION ROOF	CEILING: R3.0 (UP) ROOF: FOIL/SARKING	MEDIUM (SOLAR ABSORPTANCE 0.475- 0.70)

# WINDOW / DOOR SCHEDULE

MARK	ORIEN.	TYPE	AREA	MATERIAL	GLAZING	U-VALUE	SHGC	SHADING	O-SHAD.	OPERATION
D1	WEST	2142 ASD	8.82	ALUMINIUM	CLEAR	6.44	0.75	EAVE 3300	NONE	SLIDING DOOR
D2	WEST	2132 ASD	6.72	ALUMINIUM	CLEAR	6.44	0.75	SOLID 3300	NONE	SLIDING DOOR
D3	WEST	2127 ASD	5.67	ALUMINIUM	CLEAR	6.44	0.75	SOLID 3300	NONE	SLIDING DOOR
SK1	SOUTH	1206 SKYLIGHT	0.72	ALUMINIUM	CLEAR	6.44	0.75	ADJUSTABLE	NONE	SKYLIGHT
SK2	SOUTH	1206 SKYLIGHT	0.72	ALUMINIUM	CLEAR	6.44	0.75	ADJUSTABLE	NONE	SKYLIGHT
SK3	SOUTH	1206 SKYLIGHT	0.72	ALUMINIUM	CLEAR	6.44	0.75	ADJUSTABLE	NONE	SKYLIGHT
W1	SOUTH	AWN 0912 OBS	1.08	ALUMINIUM	OBSCURE	6.44	0.75	EAVE 450	NONE	AWNING
W2	SOUTH	2710 FIXED	2.7	ALUMINIUM	CLEAR	6.44	0.75	EAVE 450	NONE	FIXED
W3	WEST	AS1218	2.16	ALUMINIUM	CLEAR	6.44	0.75	EAVE 3300	NONE	SLIDING WINDOW
W4	NORTH	1818 DH OBS	3.24	ALUMINIUM	OBSCURE	6.44	0.75	EAVE 450	NONE	DOUBLE HUNG
W5	NORTH	AS0627	1.62	ALUMINIUM	CLEAR	6.44	0.75	EAVE 450	NONE	SLIDING WINDOW
W6	SOUTH	0912 AWN OBS	1.08	ALUMINIUM	OBSCURE	6.44	0.75	NONE	NONE	AWNING
W7	SOUTH	AS0622	1.31	ALUMINIUM	CLEAR	6.44	0.75	NONE	NONE	SLIDING WINDOW
W8	NORTH	AWN 0912	1.08	ALUMINIUM	CLEAR	6.44	0.75	EAVE 4200	NONE	AWNING



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## PROPOSED ALTERATIONS & ADDITIONS

LOT 108, D.P.21085,  
30 VILLA ST,  
WARATAH WEST

FOR J & K  
EDWARDS

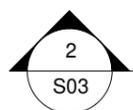
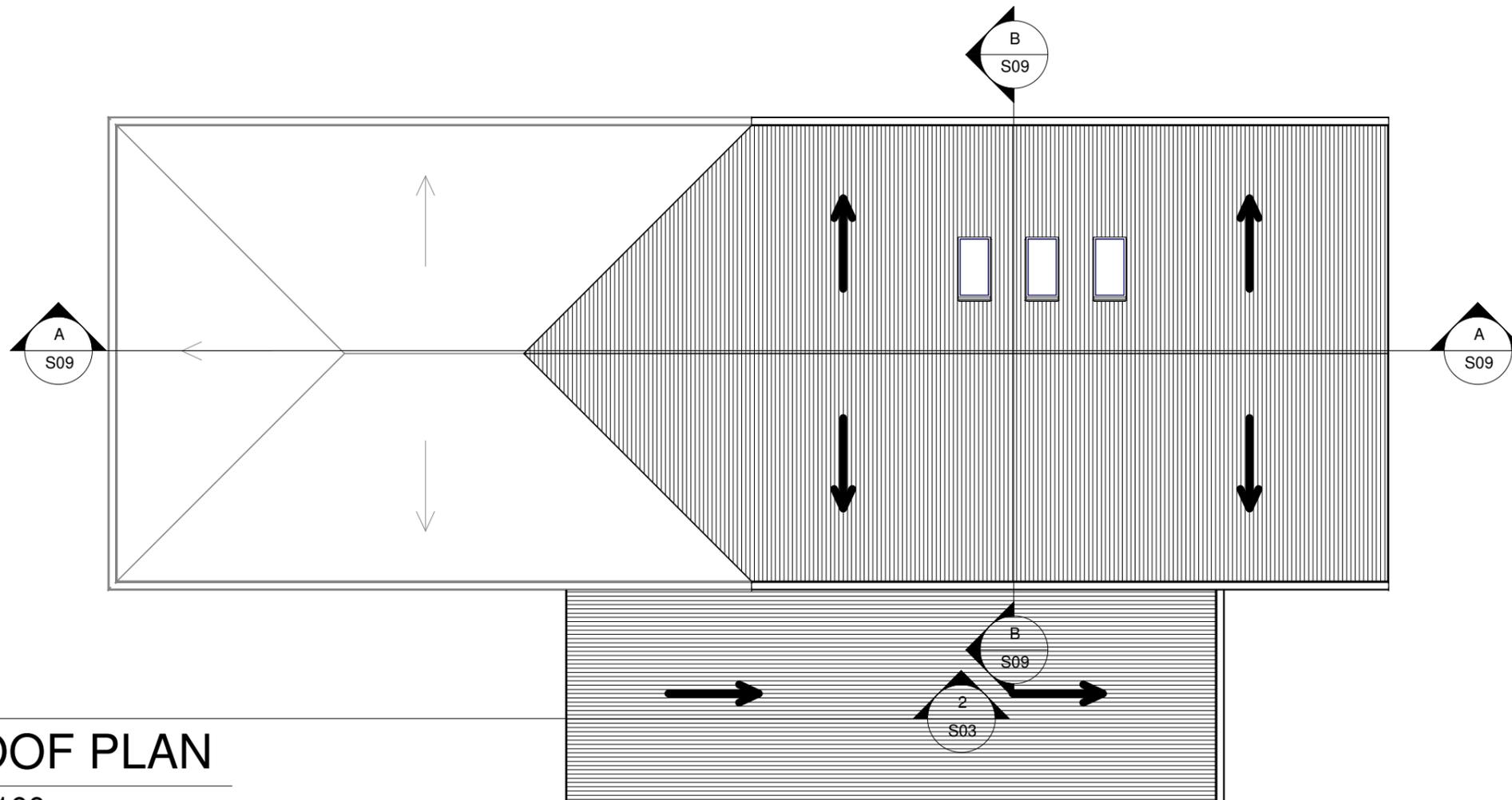
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**WINDOWS -  
BASIX - ROOF  
PLAN**

DRAWN: ZTM  
CHECKED: J&K E  
DATE: 3.4.23

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31/03/2023  
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**SHEET  
S06**



# ROOF PLAN

1 : 100



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**PROPOSED ALTERATIONS & ADDITIONS**

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WARATAH WEST

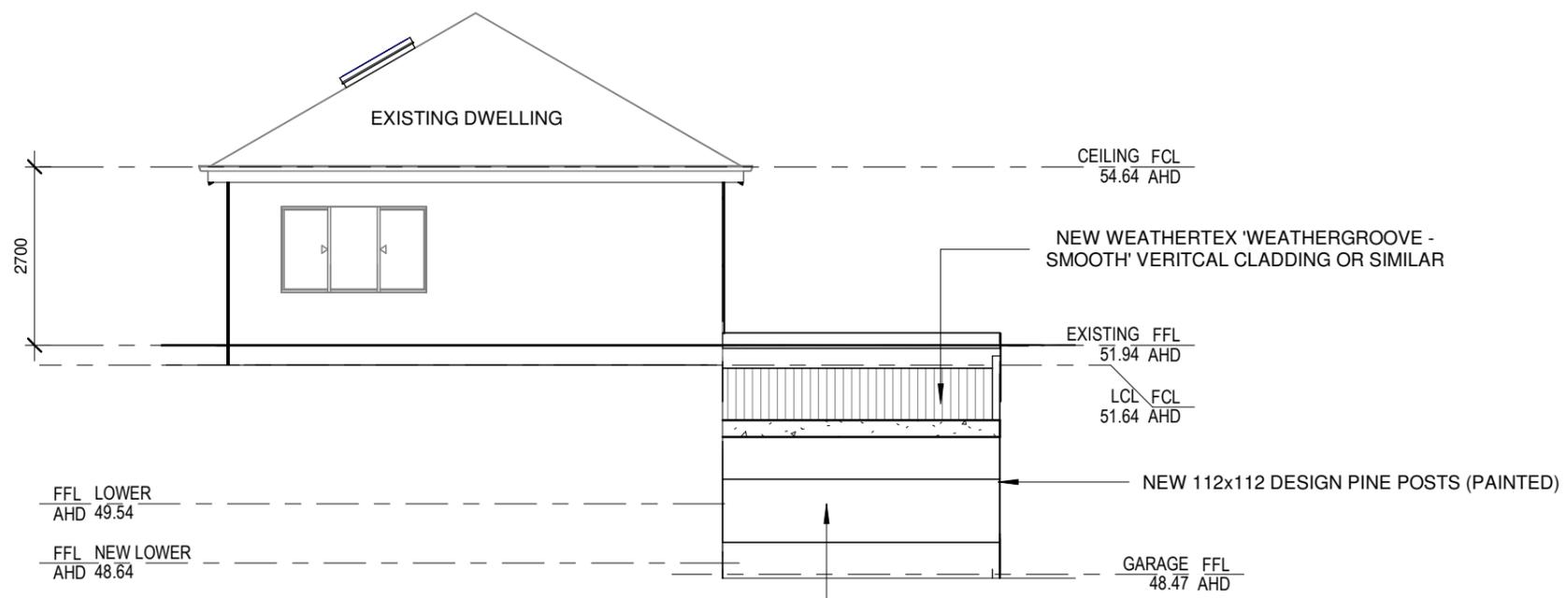
FOR J & K EDWARDS

SHEET NAME  
**ELEVATIONS - SH1**

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DATE:	3.4.23

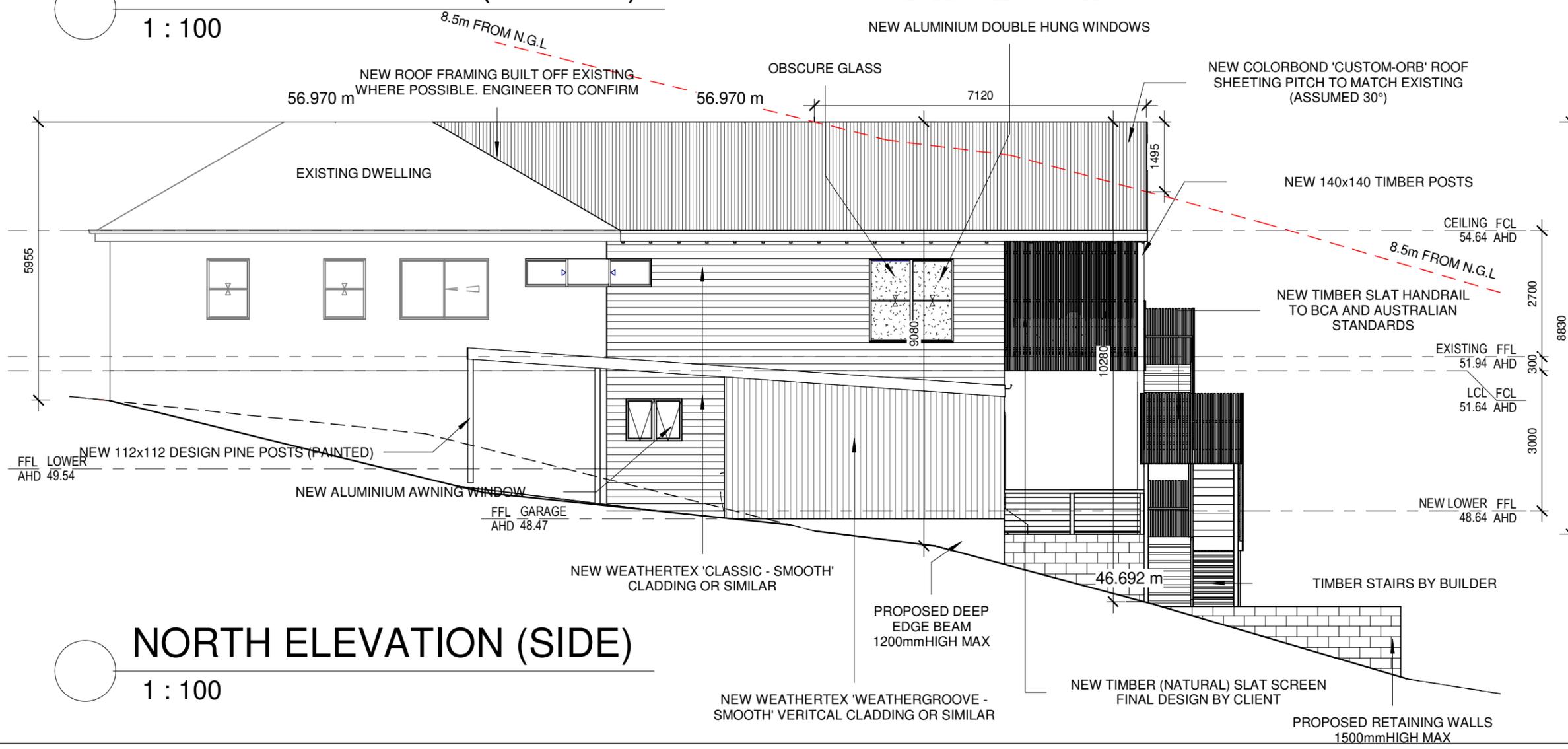
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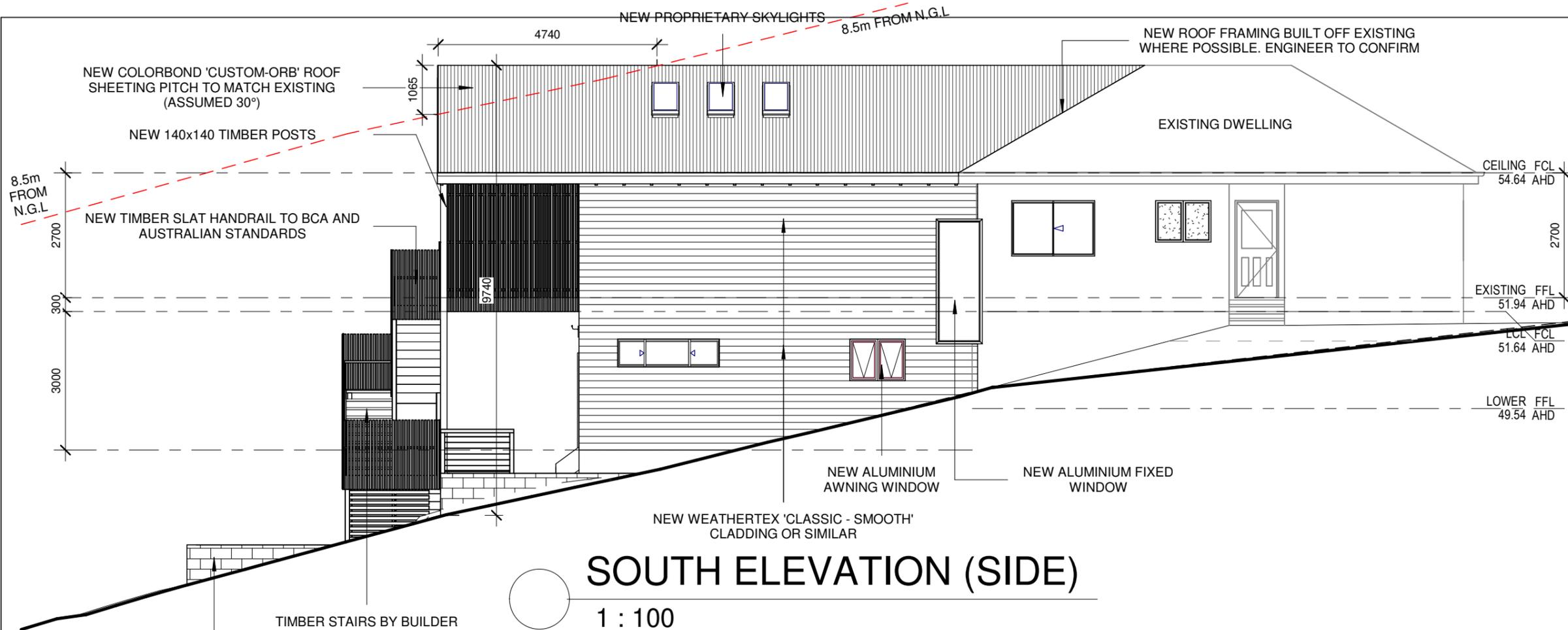
**EAST ELEVATION (FRONT)**

1 : 100



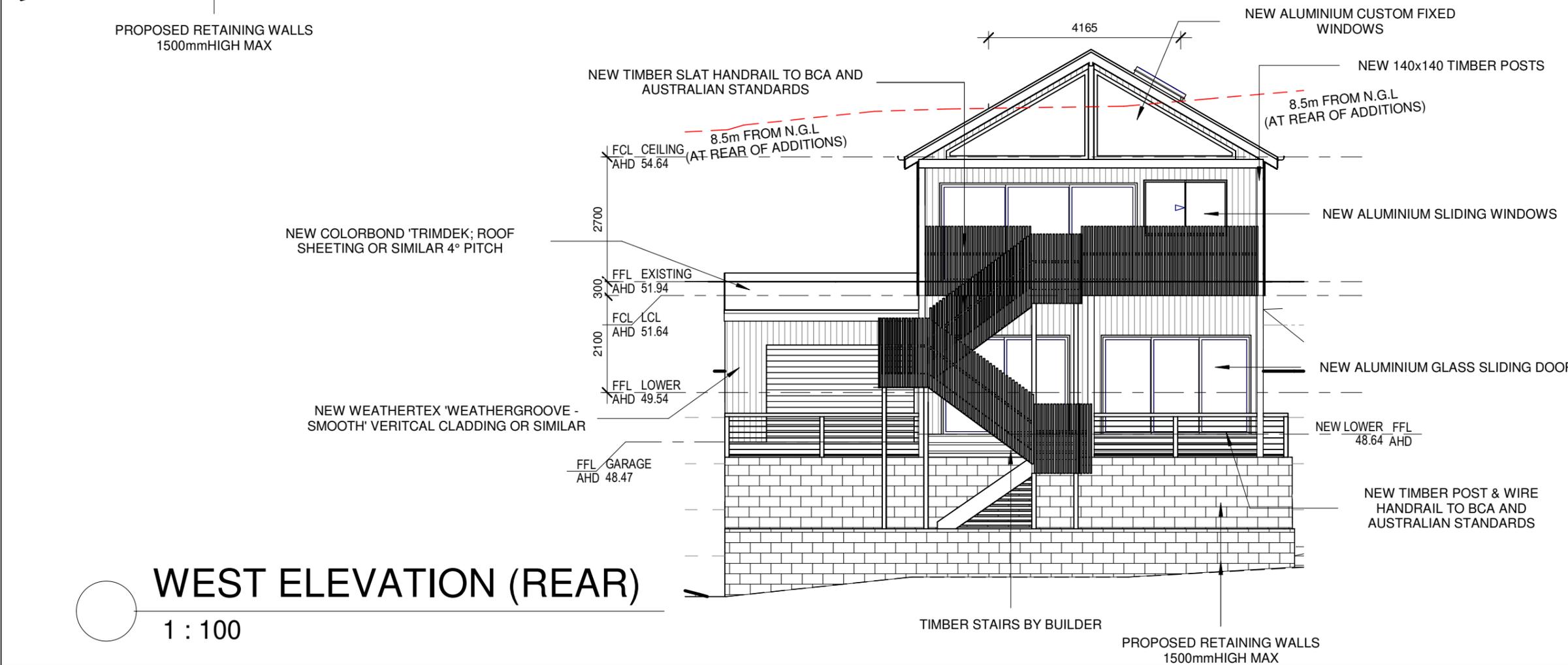
**NORTH ELEVATION (SIDE)**

1 : 100



## SOUTH ELEVATION (SIDE)

1 : 100



## WEST ELEVATION (REAR)

1 : 100



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EDWARDS

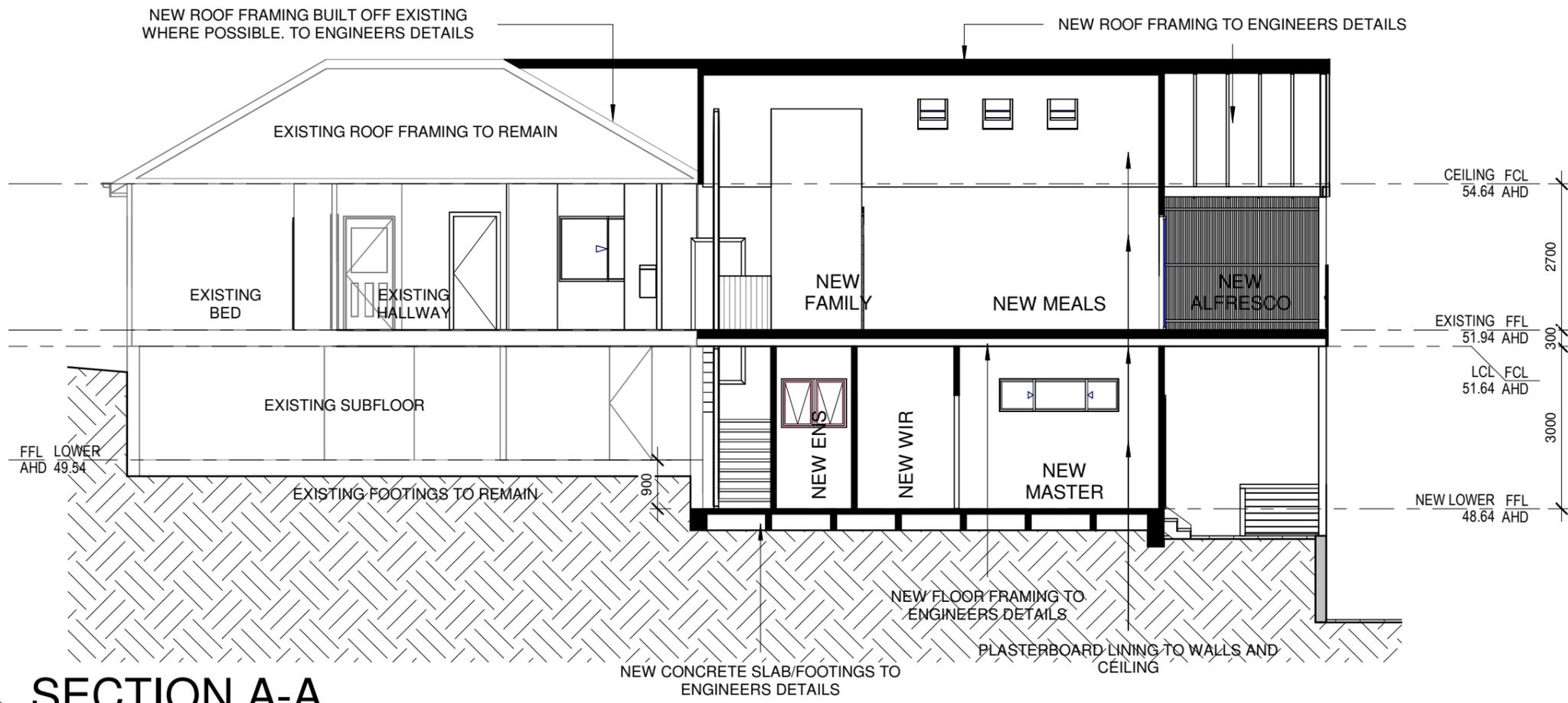
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CHECKED: MJ  
DATE: 3.4.23

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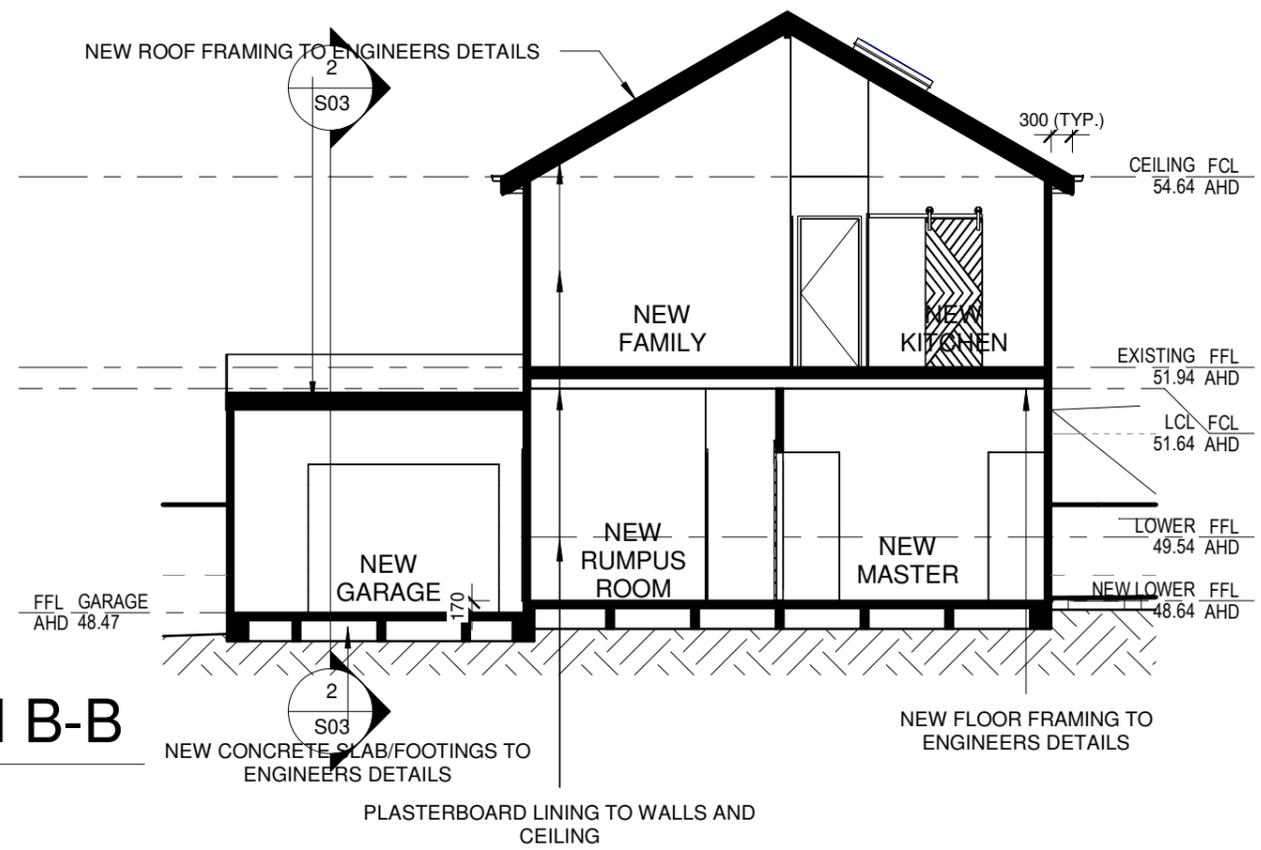
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**SHEET  
S08**



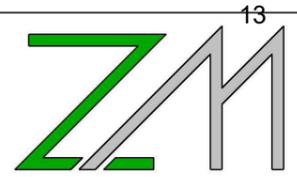
**SECTION A-A**

1 : 100



**SECTION B-B**

1 : 100



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**PROPOSED ALTERATIONS & ADDITIONS**

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30 VILLA ST,  
WARATAH WEST

FOR J & K EDWARDS

SHEET NAME  
**SECTIONS**

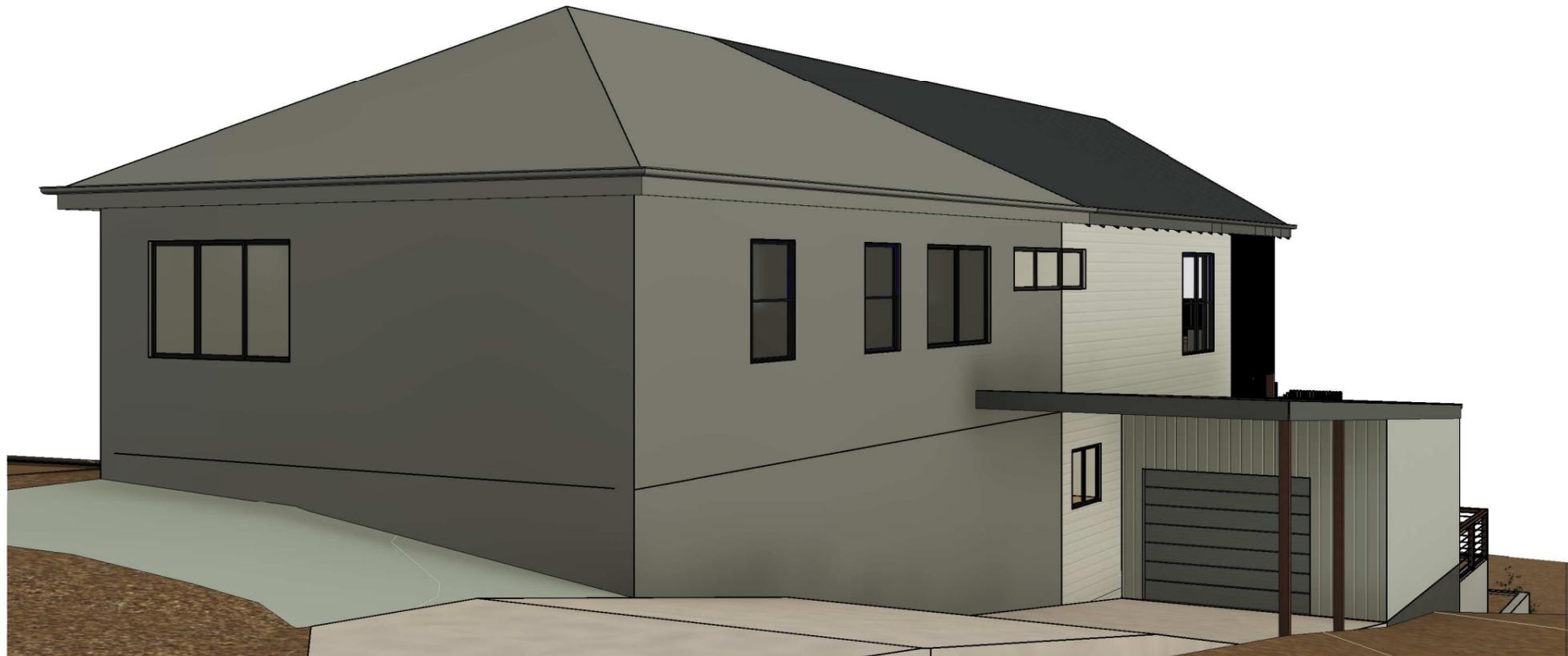
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**AT A3**

**SHEET S09**

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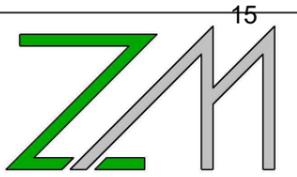
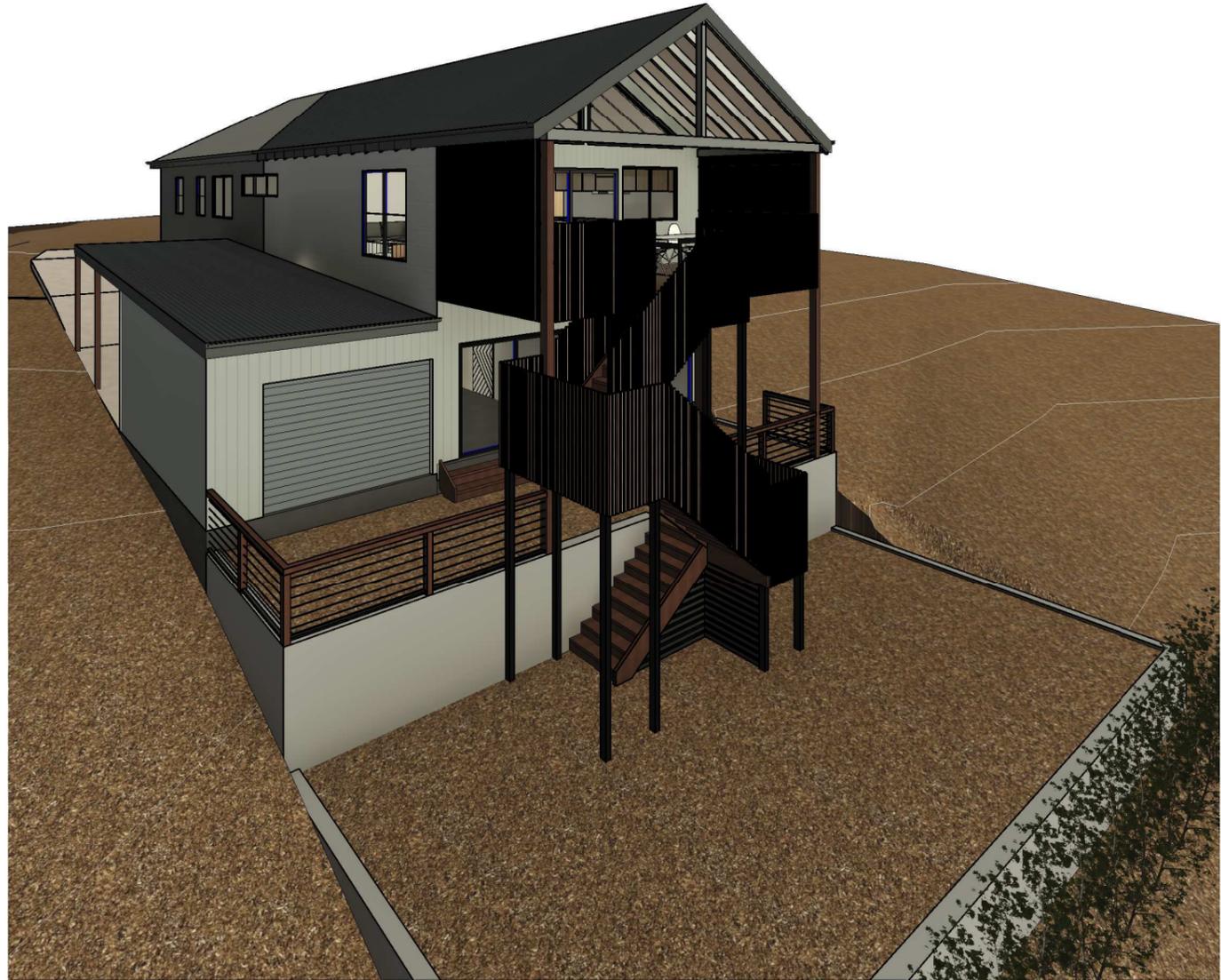
**PROPOSED ALTERATIONS & ADDITIONS FOR J & K EDWARDS**

LOT 108, D.P.21085, 30 VILLA ST, WARATAH WEST

SHEET NAME  
**PERSPECTIVES - SH1**

DRAWN:	ZTM
CHECKED:	JKE
DATE:	3.4.23
SCALE:	NTS
	AT A3

**SHEET S10**



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6	ISSUED FOR CHECKING	12.7.22	ZTM
7	ISSUED FOR COUNCIL LODGEMENT	22.9.22	ZTM
8	REVISED PLANS ISSUED	20.1.23	ZTM
9	REVISED PLANS ISSUED	2.2.23	ZTM
10	REVISED PLANS ISSUED	21.2.23	ZTM
11	REVISED PLANS ISSUED	3.4.23	ZTM

**PROPOSED ALTERATIONS & ADDITIONS**

LOT 108, D.P.21085,  
30 VILLA ST,  
WARATAH WEST

FOR J & K EDWARDS

SHEET NAME  
**PERSPECTIVES - SH2**

DRAWN: ZTM  
CHECKED: JKE  
DATE: 3.4.23

SCALE :  
**NTS AT A3**

31/03/2023  
4:25:23 PM

**SHEET S11**




**Z MEXON**  
 27 SECOND AVENUE,  
 RUTHERFORD, NSW 2320  
 M: 0400 308 717  
 E: zac.mexon@hotmail.com

Rev	Description	Date	Iss
5	ISSUED FOR CLIENT COMMENT/PRICING	28.6.22	ZTM
6	ISSUED FOR CHECKING	12.7.22	ZTM
7	ISSUED FOR COUNCIL LODGEMENT	22.9.22	ZTM
8	REVISED PLANS ISSUED	20.1.23	ZTM
9	REVISED PLANS ISSUED	2.2.23	ZTM
10	REVISED PLANS ISSUED	21.2.23	ZTM
11	REVISED PLANS ISSUED	3.4.23	ZTM

**PROPOSED ALTERATIONS & ADDITIONS FOR J & K EDWARDS**

LOT 108, D.P.21085, 30 VILLA ST, WARATAH WEST

SHEET NAME  
**PERSPECTIVES - SH3**

DRAWN:	ZTM
CHECKED:	JKE
DATE:	3.4.23
SCALE:	NTS
	AT A3

**SHEET S12**



**ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER**

**DAC 26/04/2023 – 30 VILLA ROAD WARATAH – DA2022-01085 -  
DWELLING HOUSE - ALTERATIONS, ADDITIONS AND ANCILLARY  
DEVELOPMENT (CARPORT, GARAGE AND RETAINING WALLS)  
INCLUDING DEMOLITION**

**7.1 Attachment B: Draft Schedule of Conditions**

**DISTRIBUTED UNDER SEPARATE COVER**

<b>Application No:</b>	DA2022/01085
<b>Land:</b>	Lot 108 DP 21085
<b>Property Address:</b>	30 Villa Road Waratah West NSW 2298
<b>Proposed Development:</b>	Dwelling house - alterations, additions and ancillary development (carport, garage and retaining walls) including demolition

## 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
Site Plan	S02/REV11	Agcad Pty Limited	3/04/2023
Bulk Earthworks Plan	S03/REV11	Agcad Pty Limited	3/04/2023
Driveway Profile	S03/REV11	Agcad Pty Limited	3/04/2023
Proposed Upper Floor Plan	S04/REV11	Agcad Pty Limited	3/04/2023
Proposed Lower Floor Plan	S05/REV11	Agcad Pty Limited	3/04/2023
Roof Plan	S06/REV11	Agcad Pty Limited	3/04/2023
North and East Elevations	S07/REV11	Agcad Pty Limited	3/04/2023
South and West Elevations	S08/REV11	Agcad Pty Limited	3/04/2023
Section Plan	S09/REV11	Agcad Pty Limited	3/04/2023
BASIX Certificate	A474904	Agcad Pty Limited	21/02/2023

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

- In accordance with the City of Newcastle Section 7.12 Development Contributions Plan (the Plan), a monetary contribution of **\$3,500** shall be paid to the City of Newcastle for the purposes of the provision, extension or augmentation of transport and social infrastructure.
  - If the contribution is not paid within the financial quarter that this consent is granted, the contribution payable will be adjusted in accordance with the provisions of the Plan and the amount payable will be calculated on the basis of the contribution rates applicable at the time of payment.

- (b) Subject to prevailing Ministerial Directions, the monetary contribution shall be paid to the City of Newcastle
    - (i) prior to the issue of the Subdivision Certificate where the development is for subdivision; or
    - (iii) 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; or
    - (iv) prior to the works commencing where the development does not require a Construction Certificate or Subdivision Certificate.
3. The car parking and vehicular access are to be designed to comply with the relevant provisions of *AS/NZS 2890 Parking facilities*. Details are to be included in documentation for a Construction Certificate application.
  4. All proposed driveways, parking bays, loading bays and vehicular turning areas are to be constructed with a basecourse of a depth to suit design traffic and be sealed with either bitumen seal, asphaltic concrete, concrete or interlocking pavers. Details are to be included in documentation for a Construction Certificate application.
  5. Roof water from the dwelling (excluding garage) is to be directed to a water tank with a minimum capacity of 4,000 litres, designed in accordance with Appendix 8 of Newcastle City Council's Technical Manual - Stormwater and Water Efficiency for Development, which supports relevant provisions of Newcastle Development Control Plan 2012.

The upper 50% of the capacity of the rainwater tank is to drain from the tank by way of a 5mm weep hole connected to the main overflow pipe for the tank. The tank is to be reticulated there from into outdoor taps and/or site irrigation systems.

A mains water top-up system is to be installed to maintain a minimum water depth of 100mm within the tank. Alternatively, an electronically activated mechanical valve device is to be installed to switch to mains water when the water level in the tank falls below the minimum depth. The water tank and plumbing are to be designed in accordance with the Plumbing Code of Australia (National Construction Code Volume 3). Details are to be included in documentation for a Construction Certificate application.

6. 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*. The consent is to be obtained, or other satisfactory arrangements confirmed in writing from the Newcastle City Council, before the issue of a Construction Certificate.

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

7. Certification is to be prepared by a Registered Surveyor and submitted to the Principal Certifying Authority at the stages of construction indicated:
  - a) When the roof has been completed, confirming that the building does not exceed the approved levels.
  - b) On completion of the retaining wall construction, verifying that the location and finished levels of the wall/walls is consistent with the approved plans.
8. 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.

9. Building work must be carried out in accordance with the requirements of the Building Code of Australia.
10. 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.
11. 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.
12. 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.
13. 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.
14. All roof waters from the dwelling (other than garage/carport roof) are to be conveyed to the street gutter by way of a sealed pipe system, extending through the footway to Council's requirements, in accordance with Element 7.06 'Stormwater' of Newcastle Development Control Plan 2012.
15. The garage/carport roof and surface waters from the driveway are to be directed to a dispersion trench measuring 600mm x 600mm x 1m in length for every 25m<sup>2</sup> of new impervious area. The required dispersion trench is to be designed and constructed in accordance with Element 7.06 'Stormwater' of Newcastle Development Control Plan 2012. Details are to be included in documentation for a Construction Certificate application.
16. 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.

17. 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.

18. Erosion and sediment control measures are to be implemented prior to the commencement of works and maintained during the period of demolition and/or construction in accordance with the requirements of *Managing Urban Stormwater: Soils and Construction 4<sup>th</sup> Edition - Vol. 1* (the 'Blue Book') published by Landcom, 2004. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.
19. 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)

20. 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*.
21. 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.

22. 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.

23. 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.
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*.

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

27. All commitments listed in the relevant BASIX certificate for:
  - a. BASIX development,
  - b. BASIX optional development, if the development application was accompanied by a BASIX certificate.
 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 Newcastle City Council with Occupation Certificate documentation.

25. 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.
26. All privacy screening required by this consent as indicated on the approved plans, including the privacy screening indicated on the approved northern and western elevations is to be installed prior to the issue of an Occupation Certificate.
27. All works within the road reserve required by this consent are to be completed prior to the issue of a Occupation Certificate.

### **ADVISORY MATTERS**

- 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.
- 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.
- 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).
  - 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](mailto: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](mailto: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.

**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.

### 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 26/04/2023 – 30 VILLA ROAD WARATAH – DA2022-01085 -  
DWELLING HOUSE - ALTERATIONS, ADDITIONS AND ANCILLARY  
DEVELOPMENT (CARPORT, GARAGE AND RETAINING WALLS)  
INCLUDING DEMOLITION**

**7.1 Attachment C: Processing Chronology**

**DISTRIBUTED UNDER SEPARATE COVER**

**PROCESSING CHRONOLOGY**

**DA2022/01085 – 30 Villa Road Waratah West**

29 September 2022	-	Application lodged.
7 to 21 October 2022	-	Application notified in accordance with CN's Community Participation Plan (CPP)
27 October 2022	-	Request for additional information issued to applicant.
1 November 2022	-	Additional information received from applicant.
22 November 2022	-	Request for additional information issued to applicant.
2 February 2023	-	Request for additional information issued to applicant.
7 March 2023	-	Additional information received from applicant.



# **VARIATION TO DEVELOPMENT STANDARD (CLAUSE 4.6) REPORT**

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## **CLAUSE 4.6 – HEIGHT**

**30 Villa Road, Waratah West, NSW, 2298,  
(LOT: 108 DP: 21085)**

Jordan Long Town Planner PO Box 107 Clarence Town, NSW, 2321		Phone: [REDACTED] Email: [REDACTED]		
<b>PP Reference</b>		J003713		
<b>Prepared for (client)</b>		Kate and Joel Edwards		
<b>Document Versions and Control</b>				
Variation to Development Standard, 30 Villa Rd, Waratah West, NSW, 2298				
Version	Date	PP ref	Author	Reviewed by
1	07/03/2023	Clause 4.6 – 30 Villa Rd, Waratah West, NSW, 2298	JL	CA
2	07/03/2023	Clause 4.6 – 30 Villa Rd, Waratah West, NSW, 2298	JL	Client
<b>Disclaimer:</b>				
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## EXECUTIVE SUMMARY

Perception Planning Pty Ltd have prepared this letter as a result of a variation to a development standard, at 30 Villa Rd, Waratah West, NSW, 2298 (LOT: 108 DP: 21085) ('the site'). The proposed development results in a maximum building height above ground level of 10.280m, measuring 1.78m greater than the maximum building height applicable to the land specified under Clause 4.3 of the Newcastle Local Environmental Plan 2012 (The 'LEP'). The maximum building height applicable to the site is 8.5m, whereas the proposed development incorporates a maximum height of 10.280m, raising a 1.78m or 20.9% variation request.

This height exceedance has been caused by the severely sloping site, resulting in a small section of roof at the rear of the proposed development exceeding the height limit of 8.5m.

The area of exceedance is limited to roof area only, with no habitable space, windows, or doors being contained within this area.

The proposed development proposes alterations and additions to the existing dwelling on the site.

The proposed alterations and additions will consist of the following components:

### Upper Floor

- New bedroom
- New hallway
- New Bathroom
- New study nook
- New staircase
- New kitchen, pantry, meals, and family areas
- New rear deck and staircase

### Lower Floor

- New master bedroom, walk in wardrobe, and ensuite
- New laundry
- New powder room
- New linen cupboard
- New mudroom
- New rumpus room
- New garage and carport

### Retaining Walls

Retaining walls to the North, South and East.

The proposed alterations and additions have been architecturally designed to minimise any adverse visual effects on the streetscape and neighbouring lots. The proposal results in no overshadowing or privacy conflicts for adjacent lots, and presents a considered built form that is consistent with the objectives of the DCP and LEP.

Due to the severely sloping site, an exceedance to the maximum building height has resulted.

The area of exceedance is limited to a small section of roof at the rear of the proposed development and will have no adverse effects on privacy or overshadowing for neighbouring lots.

Clause 4.6 of the LEP provides for an appropriate degree of flexibility in applying certain development standards such building height to achieve better planning outcomes. This report demonstrates that the proposed development should not be refused on the basis of a variation to the building height resulting from the development. In summary, through this Clause 4.6 analysis it has been found that:

- Strict adherence to the numerical height of building development standard would be unreasonable and unnecessary as required under the Five Part Test (*Wehbe vs Pittwater Council*);
- The proposed building height is appropriate when considering it in relation to the existing features of the site;
- The non-compliant portion of the development does not impact on the architectural merits of the site. The roof section which varies the building height requirement will not increase the overall bulk and scale of the existing and results in a high-quality architectural outcome on-site;
- The proposed development has taken measures to increase privacy for adjacent properties such as altering window locations and glazing properties.
- The proposed development integrates in with the desired contemporary built form of the area and will have no additional impact on the 'views' held by existing properties;
- Despite of the variation the proposed development will achieve the objectives of the development standard and the objectives of the relevant land use zone being R2 – Low Density Residential; and
- There are no identified environmental or social impacts as a result of the proposed variation.

It is our view that the development is consistent with the character of the locality and enables the objectives of the LEP to be satisfied.

## TERMS AND ABBREVIATIONS

EP&A Act	Environmental Planning & Assessment Act 1979
EPI	Environmental Planning Instrument
DA	Development Application
LGA	Local Government Area
NLEP	Newcastle Local Environmental Plan
SEPP	State Environmental Planning Policy
SEE	Statement of Environmental Effects

## FIGURES AND TABLES

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## PROPOSED VARIATION TO DEVELOPMENT STANDARD

### **Clause 4.3 – Height of Buildings**

The objectives of this clause are to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy and allows for reasonable daylight access to all developments and the public domain.

The subject site has a height of buildings limit of 8.5m, whereas the proposed development incorporates a maximum height of 10.280m, resulting in a 20.9% variation request.

Given the exceedance to the height of building proposed, please refer to assessment under Clause 4.6 of the NLEP below.

### **Clause 4.6 – Exceptions to development standards**

Clause 4.6 of the NLEP allows Council, where certain requirements are met, to exercise its discretion to grant development consent even though the proposed development contravenes a development standard. Therefore, it is considered the use of Clause 4.6 of the NLEP to enable consent for the proposed development is appropriate in this instance. This has been justified below.

Under clause 4.6, the following objectives apply:

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

As per Clause 4.6(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 that:

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

The following approach to providing a detailed request to vary the development standard for height of buildings has been informed by the following documents:

- Department of Planning & Infrastructure, 'Varying Development Standards: A Guide';
- Department of Planning & Environment, 'Circular PS 08-003, Variations to Development Standards'; and
- Independent Commission Against Corruption, 'Corruption Risks in NSW Development Approval Process: Position Paper'.

A relevant question is stated, and an appropriate response provided below.

**a. What is the Environmental Planning Instrument (EPI) that applies to the land?**

Newcastle Local Environmental Plan 2012

**b. What is the zoning of the land?**

R2 – Low Density Residential

**c. What are the objectives of the zone?**

The Land Use Table of the NLEP identifies the following objectives for the R2 zone:

- To provide for the housing needs of the community within a low-density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.

**d. What is the development standard being varied?**

Height of Buildings

**e. What clause is the development standard listed in the EPI?**

Clause 4.3 – Height of Buildings

**f. What are the objectives of the development standard?**

*Clause 4.3*

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

- (a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,
- (b) to allow reasonable daylight access to all developments and the public domain.

**g. What is the numeric value of the development standard in the EPI?**

Maximum Building Height – 8.5m above ground level

**h. What is the proposed numeric value of the development standard in your DA?**

Proposed maximum building height above ground level – 10.280m.

i. What is the percentage variation (between your proposal and the EPI)?

Building Height Percentage Variation
$10.28 - 8.5 = 1.78$
$1.78 / 8.5 = 0.209$
$0.209 \times 100 = \mathbf{20.9\%}$

j. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

In *Wehbe vs Pittwater Council (2007) LEC 827*, it was determined that the applicant was to satisfy the consent authority that "the objection was well founded" and compliance with the development standard was unreasonable or unnecessary in the circumstances of the case. In this instance, strict compliance with the standard is considered unreasonable in that the impact created by the proposed development will be minor and insignificant to neighbouring development. The proposed development does not contravene the objectives of the zone and is considered a good use of the site, as it provides contemporary designed low density residential development which provides for the housing needs of the community whilst also protecting the amenity of residents and recognising the desirable elements of the existing streetscape and built form.

While the proposed development utilises a larger footprint than the existing dwelling, it maintains the visual amenity of the site without negatively impacting on neighbouring lots in terms of visual privacy or overshadowing. The density of the proposed development is considered to be consistent with the established development pattern within the Waratah West area and immediate locality and will not be out of character with the built form or scale evident.

A review of the Newcastle City Council Register of Variations to Development Standards (2022 only) was undertaken to determine whether the development standard has been abandoned or destroyed by previous approvals. As evidenced by the **Table 1** below, multiple properties in the same LGA have obtained approvals for development inclusive of departures to the maximum building height development standard.

*Table 1: Approved variations to Maximum Building Height Development Standard*

DA	Determination Date	Address	Justification of variation	Development Standard	Variation approved
DA2021/01360	17/02/2022	51 Macquarie St, Merewether	Achieves underlying objectives of height control	4.3 Building Height	11.79%
DA2021/01437	10/02/2022	223 Mitchell St, Stockton	Not have unreasonable	4.3 Building Height	8.8%

			impact on amenity of area		
DA2021/01452	09/02/2022	59 Scenic Drive, Merewether	Compatible with streetscape (bulk, scale and mass)	4.3 Building Height	9.4%
DA2022/00279	05/07/2022	34 Eames Avenue, Stockton	Achieves underlying objectives of height control	4.3 Building Height	10%
DA2021/01648	09/12/2022	20 Summer Place, Merewether Heights	Not have unreasonable impact on amenity of the area	4.3 Building Height	11.7%
DA2022/00798	02/12/2022	220 Scenic Drive, Merewether Heights	Not have unreasonable impact on amenity of the area	4.3 Building Height	9.7%
DA2022/00557	11/10/2022	31 Carrington Parade, New Lambton	Not have unreasonable impact on amenity of the area	4.3 Building Height	9.18%
DA2020/01382	22/07/2021	7 Fort Drive, Newcastle East	Achieves underlying objectives of height control	4.3 Building Height	20%
DA2020/00758	14/12/2020	59 Scenic Drive, Merewether	Not have unreasonable impact on amenity of area	4.3 Building Height	14.3%
DA2020/00717	02/12/2020	5 Hillview Crescent, The Hill	Not have unreasonable impact on amenity of area	4.3 Building Height	17%
DA2020/00123	24/08/2020	15 Clyde St, Stockton	Not have unreasonable impact on amenity of area	4.3 Building Height	11.1%

From review of the above, it is clear that precedence has been set in the area with similar development for greater building heights than the prescribed standard.

This seems to be due to the natural topography of these areas in the Newcastle region, requiring developments of varying heights, resulting in maximum height variations for certain parts of these developments.

The proposed development, which continues the roofline of the existing dwelling, enables the effective use of the site to meet each of the occupants needs without compromising views or amenity of the site's occupants or those of neighbouring properties. The following elements have been considered during the design stage:

- Re-positioning and design of windows to ensure privacy between properties. Highlight windows with high sills and frosted glazing has been utilised to avoid any potential privacy conflicts.
- The implementation of compliant setbacks and considered positioning of windows and habitable rooms to avoid any privacy issues with adjacent lots.

**k. How would strict compliance hinder the attainment of the objects of the Environmental Planning and Assessment Act 1979?**

It was also determined in *Wehbe v Pittwater Council* that the consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 1.3(a), (b) and (c) of the *Environmental Planning & Assessment Act 1979*.

The objects of the Act and an appropriate response is provided as follows:

- a) *To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*

The proposed development will promote the social and economic welfare of the local community through the provision of suitable liveable housing at an appropriate density located within close proximity to commercial zones and strategic centres, accommodating the facilities supporting residential living. Waratah West incorporates good access to public transport to access commercial zones and strategic centres and also includes small coffee, convenience, and restaurant services.

Strict compliance with this development standard is not seen to facilitate the conservation of the State's natural and other resources. By impeding the proposed development, the efficient utilisation of the subject site will not occur.

- b) *To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

Strict compliance does not assist with the facilitation of ecologically sustainable development. The proposed development provides numerous economic and social benefits for the community as a result of the construction and provision of housing. The maximum height variation proposed does not compromise the natural environment in which the site is located and is appropriate in the context of surrounding built form.

*c) To promote the orderly and economic use and development of land,*

The existing dwelling on-site is dated and does not respond to the existing and desired contemporary character of the area. The proposed development provides a more attractive and efficient use of the site whilst avoiding the complete demolition of the existing structure. This is a desirable outcome within the area and promotes the orderly and economic use and development of the land within a low-density environment without negatively impacting on the natural and scenic views held by surrounding properties.

*d) To promote the delivery and maintenance of affordable housing, the development is not proposed to be affordable housing; however, strict compliance does contribute to housing affordability.*

The proposal does not seek to provide affordable housing as defined under the State Environmental Planning Policy No 70 – Affordable Housing.

*e) To protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*

Strict compliance with the building height limit will not impact site specific environmental outcomes.

*f) To promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*

Strict compliance with the building height limit will not impact site specific cultural heritage outcomes. The site is not identified as containing any heritage items or places and is not located within a Heritage Conservation Zone. Strict compliance places increased pressure on the urban periphery where cultural heritage can be preserved.

*g) To promote good design and amenity of the built environment,*

Strict compliance will hinder the attainment of improved design and amenity of the built environment. The proposed development remains consistent with the desired built form of the area and ensures reasonable daylight access and privacy is provided to both the dwelling and surrounding properties. The proposal has been carefully designed and is consistent with urban design principles. The proposed development has made adjustments to window locations and design in order to increase privacy for adjacent properties.

- h) To promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*

Strict compliance has no impact on proper construction.

- i) To promote the sharing of the responsibility for environmental planning and assessment between the different levels of government to the State,*

Strict compliance has no impact on responsibility between levels of government.

- j) To provide increased opportunity for community participation in environmental planning and assessment.*

Strict compliance has no impact on community participation. The development is anticipated to be publicly notified, with any submissions received to be appropriately addressed by the Consent Authority.

**l. Is the development standard a performance-based control? Give details?**

No. The development standard is numerical.

**m. Are there sufficient environmental planning grounds to justify contravening the development standard? Give details?**

The development has demonstrated compliance with other primary design controls, including privacy, overshadowing and setback controls, showing that the height exceedance does not result in negative impacts when considered in the context of the site and local area. The proposed development incorporates architectural features which results in an articulated design that minimises the building bulk and positively contributes to the locality. The development has been identified to be consistent with the relevant objectives, which provides sufficient environmental planning grounds under the NLEP (Clause 4.3) for a variation to the numerical development standard.

**n. Is the Variation in the Public Interest?**

The proposed variation results from the desire to provide low density development, compliant with the DCP controls and objectives of the R2 zone, which discusses the need to provide for the housing needs of the community and to enhance the existing residential amenity and character. The potential impacts on amenity due to overshadowing or privacy are not attributable to any exceedance in maximum building height due to the considered positioning, design, and orientation of the proposed development, in combination with its compliant built form. The exceedance in maximum height is due to the severely sloping site and the ridgeline of the existing dwelling being continued.

The development will provide modern and efficient architectural design consistent with the urban planning objectives for this area. The approval of this variation will facilitate the proposed development which is considered to be in the interest of the local and greater community of Waratah West.

**o. Public Benefit of Maintaining the Standard**

There appears to be little public benefit in maintaining the standard. The maintenance of the standard will likely result in a reduction of suitable housing able to be provided by the development.

This variation sought to Clause 4.3 of the NLEP is considered acceptable in this particular instance as it will allow for a development that contributes to the diversity of housing provided whilst maintaining positive visual and physical impacts.

## CONCLUSION

In summary, through this Clause 4.6 analysis it has been found that;

- Strict adherence to the numerical building height development standard would be unreasonable and unnecessary as required under the Five Part Test (*Wehbe vs Pittwater Council*);
- The proposed maximum building height is appropriate when considering it in relation to the existing context of the site;
- The non-compliant portions of the development do not impact on the architectural merits of the development. The proposed building height will not result in unreasonable bulk and scale of the proposed development and results in a high-quality architectural outcome on-site.
- The proposed development integrates in with the desired contemporary built form of the area and will have no additional privacy or overshadowing impacts on existing properties;
- Despite the minor variation, the proposed development will achieve the objectives of the development standard and the objectives of the relevant land use zone being R2 – Low Density Residential; and
- There are no identified environmental or social impacts as a result of the proposed variation.
- It is our view that the development is consistent with the character of the locality and enables the objectives of the NLEP to be satisfied.

Whilst the maximum height proposed is higher than the maximum height applicable to the site from a quantitative perspective, when reviewing the proposal from a practical or qualitative perspective, the increase in height is as a result of the severely sloping site and does not present any adverse effects for neighbouring properties.

Considering the minimal impact of the variation which provides a substantial increase in practicality, the variation is considered to have positive results for the site and surrounding area.

In response to the above matters and identified response, justification has been provided for the development standard variation.

Thank you for taking the time to review this information. If you have any questions, please contact me at

Kind Regards,



**JORDAN LONG**  
Town Planner  
BArch (UoN)

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**ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER**

**SUPPLEMENTARY REPORT - DAC 21/03/2023 – 37 STEVENSON  
PLACE NEWCASTLE EAST – DA2022/00611 - DWELLING HOUSE -  
ALTERATIONS AND ADDITIONS**

**7.2**                    **Attachment C:**      Amended Schedule of Conditions of Consent

**DISTRIBUTED UNDER SEPARATE COVER**



**ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER**

**SUPPLEMENTARY REPORT - DAC 09/05/23 - 30 VILLA ROAD,  
WARATAH WEST - DA2022/01085 - DWELLING HOUSE -  
ALTERATIONS, ADDITIONS AND ANCILLARY DEVELOPMENT  
(CARPORT, GARAGE AND RETAINING WALLS) INCLUDING  
DEMOLITION**

7.1                    **Attachment B:**      Schedule of Conditions of Consent

**DISTRIBUTED UNDER SEPARATE COVER**

**Application No:** DA2022/01085

**Land:** Lot 108 DP 21085

**Property Address:** 30 Villa Road Waratah West NSW 2298

**Proposed Development:** Dwelling house - alterations, additions and ancillary development (carport, garage and retaining walls) including demolition

### 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
Site Plan	S02/REV11	Agcad Pty Limited	3/04/2023
Bulk Earthworks Plan	S03/REV11	Agcad Pty Limited	3/04/2023
Driveway Profile	S03/REV11	Agcad Pty Limited	3/04/2023
Proposed Upper Floor Plan	S04/REV11	Agcad Pty Limited	3/04/2023
Proposed Lower Floor Plan	S05/REV11	Agcad Pty Limited	3/04/2023
Roof Plan	S06/REV11	Agcad Pty Limited	3/04/2023
North and East Elevations	S07/REV11	Agcad Pty Limited	3/04/2023
South and West Elevations	S08/REV11	Agcad Pty Limited	3/04/2023
Section Plan	S09/REV11	Agcad Pty Limited	3/04/2023
BASIX Certificate	A474904	Agcad Pty Limited	21/02/2023

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

- In accordance with the City of Newcastle Section 7.12 Development Contributions Plan (the Plan), a monetary contribution of **\$3,500** shall be paid to the City of Newcastle for the purposes of the provision, extension or augmentation of transport and social infrastructure.
  - If the contribution is not paid within the financial quarter that this consent is granted, the contribution payable will be adjusted in accordance with the provisions of the Plan and the amount payable will be calculated on the basis of the contribution rates applicable at the time of payment.

- (b) Subject to prevailing Ministerial Directions, the monetary contribution shall be paid to the City of Newcastle
  - (i) prior to the issue of the Subdivision Certificate where the development is for subdivision; or
  - (iii) 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; or
  - (iv) prior to the works commencing where the development does not require a Construction Certificate or Subdivision Certificate.
- 3. The bulk earthworks plan and the site plan are to be amended to reflect the proposed retaining walls and drop edge beam that are shown on the elevations and floor plans. Details are to be included in documentation for a Construction Certificate application.
- 4. The car parking and vehicular access are to be designed to comply with the relevant provisions of *AS/NZS 2890 Parking facilities*. Details are to be included in documentation for a Construction Certificate application.
- 5. All proposed driveways, parking bays, loading bays and vehicular turning areas are to be constructed with a basecourse of a depth to suit design traffic and be sealed with either bitumen seal, asphaltic concrete, concrete or interlocking pavers. Details are to be included in documentation for a Construction Certificate application.
- 6. Roof water from the dwelling (excluding garage) is to be directed to a water tank with a minimum capacity of 4,000 litres, designed in accordance with Appendix 8 of Newcastle City Council's Technical Manual - Stormwater and Water Efficiency for Development, which supports relevant provisions of Newcastle Development Control Plan 2012.

The upper 50% of the capacity of the rainwater tank is to drain from the tank by way of a 5mm weep hole connected to the main overflow pipe for the tank. The tank is to be reticulated there from into outdoor taps and/or site irrigation systems.

A mains water top-up system is to be installed to maintain a minimum water depth of 100mm within the tank. Alternatively, an electronically activated mechanical valve device is to be installed to switch to mains water when the water level in the tank falls below the minimum depth. The water tank and plumbing are to be designed in accordance with the Plumbing Code of Australia (National Construction Code Volume 3). Details are to be included in documentation for a Construction Certificate application.

- 7. 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*. The consent is to be obtained, or other satisfactory arrangements confirmed in writing from the Newcastle City Council, before the issue of a Construction Certificate.

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

- 8. Certification is to be prepared by a Registered Surveyor and submitted to the Principal Certifying Authority at the stages of construction indicated:
  - a) When the roof has been completed, confirming that the building does not exceed the approved levels.
  - b) On completion of the retaining wall construction, verifying that the location and finished levels of the wall/walls is consistent with the approved plans.
- 9. 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.

10. Building work must be carried out in accordance with the requirements of the Building Code of Australia.
11. 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.
12. 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.
13. 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.
14. 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.
15. All roof waters from the dwelling (other than garage/carport roof) are to be conveyed to the street gutter by way of a sealed pipe system, extending through the footway to Council's requirements, in accordance with Element 7.06 'Stormwater' of Newcastle Development Control Plan 2012.
16. The garage/carport roof and surface waters from the driveway are to be directed to a dispersion trench measuring 600mm x 600mm x 1m in length for every 25m<sup>2</sup> of new impervious area. The required dispersion trench is to be designed and constructed in accordance with Element 7.06 'Stormwater' of Newcastle Development Control Plan 2012. Details are to be included in documentation for a Construction Certificate application.
17. 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.

18. 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.

19. Erosion and sediment control measures are to be implemented prior to the commencement of works and maintained during the period of demolition and/or construction in accordance with the requirements of *Managing Urban Stormwater: Soils and Construction 4<sup>th</sup> Edition - Vol. 1* (the 'Blue Book') published by Landcom, 2004. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.
20. 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)

21. 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*.
22. 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.

23. 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.
24. 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.
25. 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*.

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

27. All commitments listed in the relevant BASIX certificate for:
  - a. BASIX development,
  - b. BASIX optional development, if the development application was accompanied by a BASIX certificate.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 Newcastle City Council with Occupation Certificate documentation.

26. 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.
27. All privacy screening required by this consent as indicated on the approved plans, including the privacy screening indicated on the approved northern and western elevations is to be installed prior to the issue of an Occupation Certificate.
28. All works within the road reserve required by this consent are to be completed prior to the issue of a Occupation Certificate.

#### **ADVISORY MATTERS**

- 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.
- 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.

- 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).
- 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](mailto: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](mailto: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.

**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.

### **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**

**SUPPLEMENTARY REPORT - DAC 09/05/23 - 38 POWER STREET  
ISLINGTON - DA2022/01239 - SEMI-DETACHED DWELLINGS -  
INCLUDING DEMOLITION OF EXISTING DWELLING AND  
BOUNDARY ADJUSTMENT**

- |            |                      |  |
|------------|----------------------|--|
| <b>7.2</b> | <b>Attachment A:</b> | Development Assessment Committee<br>Assessment Report – Meeting 26 April<br>2023 |
| <b>7.2</b> | <b>Attachment B:</b> | Amended Draft Schedule of Conditions<br>of Conditions                            |

**ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER**

**SUPPLEMENTARY REPORT - DAC 09/05/23 - 38 POWER STREET  
ISLINGTON - DA2022/01239 - SEMI-DETACHED DWELLINGS -  
INCLUDING DEMOLITION OF EXISTING DWELLING AND  
BOUNDARY ADJUSTMENT**

**7.2**                      **Attachment A:**      Development Assessment Committee  
Assessment Report – Meeting 26 April 2023

**DISTRIBUTED UNDER SEPARATE COVER**

## 7.2. 38 POWER STREET ISLINGTON - DA2022/01239 - SEMI-DETACHED DWELLINGS - INCLUDING DEMOLITION OF EXISTING DWELLING AND BOUNDARY ADJUSTMENT

**APPLICANT:** WILSON PLANNING PTY LTD  
**OWNER:** WALLABY GULLY ROAD PTY LTD  
**REPORT BY:** PLANNING AND ENVIRONMENT  
**CONTACT:** INTERIM EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT / ACTING EXECUTIVE MANAGER, PLANNING, TRANSPORT & REGULATION

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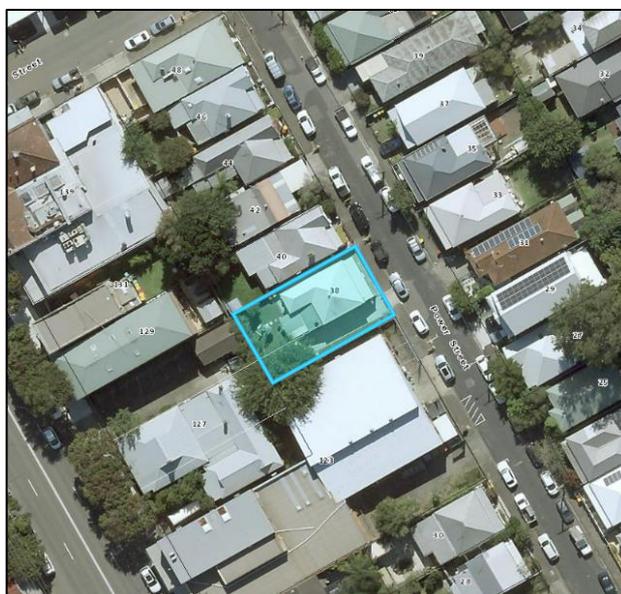
### PART I

#### PURPOSE

A development application (DA2022/01239) has been received seeking consent for the construction of two semi-detached dwellings and subdivision by way of boundary adjustment of the land located at 38 Power Street, Islington.

The submitted application was assigned to Development Officer, Alex Hunter, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to Clause 4.1 Minimum Lot Size development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation.



**Subject Land: 38 Power Street Islington**

A copy of the plans for the proposed development is at **Attachment A**.

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) and no submissions have been received in response.

#### Issues

1. Minimum Lot Size - The proposed two-into-two lot (boundary alteration) Torrens title subdivision does not comply with the minimum lot size development standard of 400m<sup>2</sup> as prescribed under Clause 4.1 of the Newcastle Local Environmental Plan 2012 (NLEP 2012). The proposed lot size for both Lot 1 and Lot 2 is 167m<sup>2</sup> which equates to 58% variation to the minimum lot size standard.

## Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and is considered to be acceptable subject to compliance with appropriate conditions.

## RECOMMENDATION

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.1 Minimum Subdivision Lot Size, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.1 and the objectives for development within the R3 Medium Density Residential Zone in which the development is proposed to be carried out; and
- B. That DA2022/01239 for the construction of two semi-detached dwellings and two-into-two lot (boundary alteration) subdivision at 38 Power Street, Islington, be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

## Political Donation / Gift Declaration

Section 10.4 of the *Environmental Planning and Assessment Act 1979* requires a person to disclose "*reportable political donations and gifts made by any person with a financial interest*" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

- a) all reportable political donations made to any local Councillor of Council; and
- b) all gifts made to any local Councillor or employee of that Council.

The applicant has answered 'No' to the following question on the application form:

*Have you, or are you aware of any person having a financial interest in the application, made a 'reportable donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?*

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## PART II

### 1.0 THE SUBJECT SITE

The site is known as 38 Power Street Islington and comprises two allotments being legally known as Lot 1 in Deposited Plan 104831 and Lot 22 Section B in Deposited Plan 2331.

The site has a total area 334.5m<sup>2</sup> with a total frontage to Power Street of 13.715m.

The site accommodates an existing single-storey weatherboard dwelling and ancillary garage. Each separated allotment is rectangular in shape. The site is generally flat land and accommodates five established trees to the rear of the dwelling and garage.

**Table 1** below provides an overview of each allotment:

Allotment	Area	Frontage	Improvements
Lot 22 Sec B DP 2331	223m <sup>2</sup>	9.145m to Power St.	Single Dwelling
Lot 1 DP 104831	111.5m <sup>2</sup>	4.57m to Power St.	Ancillary garage.

**Table 1: Existing Lot Schedule**

The development site is located in an existing residential suburb in close proximity to the commercial services along Beaumont Street and public recreation facilities in Islington Park. The surrounding neighbourhood is characterised by a fine-scale subdivision pattern comprising mostly 200-300m<sup>2</sup> lot sizes. Road widths in the locality are also small with Power Street comprising a 12.5m wide road reserve and 8m wide carriage way.

Dwellings within the locality are predominately single storey workers cottages with two storey forms intermittently located along the streetscape (including opposite the subject site). Surrounding residences have typically adopted a 1.5-2m front setback and 500mm to 900mm side boundary setbacks. Adjoining the site to the south is an industrial warehouse and to the north is a single-storey workers cottage. Adjoining the site to the rear are commercial premises which front Maitland Road.

## 2.0 THE PROPOSAL

The applicant seeks consent for the construction of two semi-detached dwellings and subdivision by way of boundary adjustment. The development comprises the following works:

- i) Demolition of the existing built form within the site.
- ii) Construction of two semi-detached, two storey dwellings comprising:
  - a) Ground floor living, kitchen and dining areas, bathroom and laundry, single car garage and outdoor private open space.
  - b) Upper-level master bedroom with ensuite, walk-in robe and small balcony, two additional bedrooms and bathroom.

- iii) Two-into-two lot subdivision (i.e., boundary adjustment) to create two Torrens title allotments of 167.26m<sup>2</sup> and 167.24m<sup>2</sup> to accommodate each proposed dwelling.

The proposed development comprises a substantial departure from the applicable minimum lot size requirement under the NLEP 2012 as part of the proposed boundary alteration due to the existing lot arrangement.

A copy of the current amended plans is at **Attachment A**.

The various steps in the processing of the application to date are outlined in the Processing Chronology at **Attachment C**.

### **3.0 PUBLIC NOTIFICATION**

The application was publicly notified in accordance with CN's Community Participation Plan (CPP). No submissions were received as a result of the notification process.

### **4.0 INTEGRATED DEVELOPMENT**

The proposal is not '*integrated development*' pursuant to Section 4.46 of the EP&A Act.

### **5.0 PLANNING ASSESSMENT**

The application has been assessed having regard to the relevant matters for consideration under the provisions of section 4.15(1) of the EP&A Act, as detailed hereunder.

#### **5.1 Provisions of any environmental planning instrument**

##### **State Environment Planning Policy (Resilience and Hazards) 2021 (SEPP R&H)**

###### Chapter 2 Coastal management

Chapter 2 of the SEPP R&H seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management, consistent with the objectives of the Coastal Management Act 2016 (the Act). The 'coastal zone' is defined in the Act as comprising four coastal management areas; coastal wetlands and littoral rainforest, coastal environment, coastal use and coastal vulnerability.

The site is in a coastal environmental area. The subject site is within the established metropolitan suburb of Islington and is situated approximately 375m from the nearest receiving waters (Throsby Creek). The proposed development will satisfactorily manage stormwater run-off by capturing roofwater and conveying to an underground rainwater tank for detention before being discharged to public stormwater systems within Power Street.

Accordingly, it is not anticipated that the proposed development will result in any significant coastal hazards to the subject site or to other lands. The proposed development is not inconsistent with the provisions of Chapter 2 of SEPP R&H.

#### Chapter 4 Remediation of land

Chapter 4 SEPP R&H provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The subject site does not have a history of development uses that were likely to cause significant contamination of the land. The subject land is currently being used for residential purposes and CN's records do not identify any past contaminating activities on the site. The proposal is acceptable having regard to Chapter 4 SEPP R&H.

#### **State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004**

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to buildings that are defined as 'BASIX affected development', being "development that involves the erection (but not the relocation) of a BASIX affected building," (i.e.: contains one or more dwelling).

Accordingly, the provisions of the SEPP apply to the current development proposal. The applicant submitted a valid BASIX Certificate which lists the commitments to achieve appropriate building sustainability. A condition is recommended to be included in the development consent requiring such commitments to be fulfilled.

#### **State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP B&C)**

##### Chapter 2 Vegetation in non-rural areas

Chapter 2 of SEPP B&C aims to protect the biodiversity value of trees and other vegetation in non-rural areas of the State and to preserve the amenity of non-rural areas of the state through the preservation of trees and other vegetation.

The proposed development proposes the removal of two trees as follows:

- i) One x *Callistemon viminalis* (Bottlebrush) tree located in the rear yard of the subject site.
- ii) One x *Alnus glutinosa* (Black Alder) located in the side setback for the adjoining property to the south (123 Maitland Road, Islington). Owner's consent of the adjoining landowners for the removal of this tree has been provided.

As required under SEPP B&C an assessment has been completed in accordance with the Newcastle Development Control Plan 2012 (NDCP 2012) and the development

meet the objectives of Section 5.03 (Tree Management). The proposal is acceptable having regard to this policy.

### **Newcastle Local Environmental Plan 2012 (NLEP 2012)**

The following summarises an assessment of the proposal against the provisions of the NLEP 2012 that are primarily relevant to the proposed development:

#### Clause 2.1 - Land Use Zones

The site is located in the R3 Medium Density Residential and the proposed development is defined as semi-detached dwellings which are permitted with consent in the R3 Medium Density Residential Zone.

The proposed development is consistent with the objectives of the R3 zone, which are:

- i) To provide for the housing needs of the community within a medium density residential environment.*
- ii) To provide a variety of housing types within a medium density residential environment.*
- iii) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- iv) To allow some diversity of activities and densities if—*
  - a) the scale and height of proposed buildings is compatible with the character of the locality, and*
  - b) there will be no significant adverse impact on the amenity of any existing nearby development.*
- v) To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development—*
  - a) has regard to the desired future character of residential streets, and*
  - b) does not significantly detract from the amenity of any existing nearby development.*

The proposed development will maximise the use of existing land resources in the existing urban footprint through the demolition of the existing single dwelling and the construction of two self-contained, three-bedroom, semi-detached dwellings. The development facilitates increased population levels and dwelling densities in a location near to the commercial centre of Beaumont Street.

Whilst the proposed development seeks to create lots less than the minimum lot size, the application details that the proposed dwellings can be suitably sited and oriented within the site without significant adverse impacts to surrounding land or internal

amenity. The proposed dwellings are of a scale that is consistent with the desired future character of the area as implied by the R3 Medium Density Residential zoning.

The development is therefore considered to be consistent with the objectives of the R3 zone.

#### Clause 2.6 - Subdivision—Consent Requirements

The development proposal includes a two-into-two lot Torrens title residential subdivision (i.e., a boundary adjustment). Clause 2.6 provides that the subdivision of land, other than exempt or complying subdivision, requires development consent.

The applicant has sought development consent for the proposed subdivision under the subject development application.

#### Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the structures on the site. Conditions are recommended to require that demolition works and the disposal of material is managed appropriately and in accordance with relevant standards.

#### Clause 4.1 - Minimum Subdivision Lot Size

The applicable minimum lot size to the site is 400m<sup>2</sup>. The existing subdivision arrangement comprises two allotments which are both under the minimum lot size, and the proposed boundary alteration will result in two allotments under the minimum lot size as detailed within **Table 2** below.

Existing		Proposed	
Lot	Area	Lot	Area
Lot 22 Sec B DP2331	223m <sup>2</sup>	Proposed Lot 1	167.26m <sup>2</sup>
<b>Lot 1 DP 104831</b>	<b>111.5m<sup>2</sup></b>	<b>Proposed Lot 2</b>	<b>167.24m<sup>2</sup></b>

**Table 2: Existing and Proposed Subdivision Arrangement**

The proposed lot sizes represent a 58.2% variation to the minimum lot size requirement of 400m<sup>2</sup> for each resulting allotment. A Clause 4.6 Request to Vary a Development Standard has been submitted by the applicant in relation to Clause 4.1 of the NLEP 2012.

This report is further discussed below.

### Clause 4.1A - Exceptions to Minimum Lot Sizes for Certain Residential Development

The provisions of Clause 4.1A enable an exception to the minimum lot size standard for residential zoned land in instances where the resulting allotments are greater than 200m<sup>2</sup> and the construction of a dwelling within each resulting lot is proposed under the same development application as the subdivision.

The applicants cannot rely on the provisions of this clause, as the subject application seeks to create two lots below 200m<sup>2</sup> in area. It is noted that Clause 4.1A is not a development standard which can be varied under Clause 4.6 (see *Elimatta Pty Ltd v Read and Anor* [2021] NSWLEC 75).

### Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a height of buildings development standard of 10m. The proposed maximum height is 8.8m and the development complies with the maximum height applicable to the site and achieves the objectives of the control.

### Clause 4.4 - Floor Space Ratio

Under the NLEP 2012 the site has a Floor Space Ratio (FSR) development standard of 0.9:1. The proposed development will result in a total FSR of 0.88:1 and complies with this requirement.

### Clause 4.6 - Exceptions to Development Standards

The objectives of Clause 4.6 'Exceptions to development standards', are (subclause (1):

- b) 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.

The applicant seeks to create two allotments approximately 167.2m<sup>2</sup> in area which represents a 58.2% variation to the minimum lot size development standard of 400m<sup>2</sup> under Clause 4.1. As such, the application is supported by a formal request to vary the development standard under Clause 4.6 of NLEP 2012.

An assessment of the Clause 4.6 variation requests has been undertaken below. In undertaking the assessment, consideration has been given to both the provisions of Clause 4.6 and the relevant Land and Environment Court judgements including: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (and appeal at NSWLEC 90)(*Four2Five*), *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('*Initial Action*'), and *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), namely that the objection is well founded, that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are

sufficient environmental planning grounds to justify contravening the development standard.

***Clause 4.6(2) – is the provision to be varied a development standard? And is the development standard excluded from the operation of the Clause?***

The minimum lot size development standard in the NLEP 2012 is a development standard in that it is consistent with the definition of development standards under Section 1.4 of the EP&A Act and is not expressly excluded from the operation of Clause 4.6.

***Clause 4.6 (3)(a) – has the applicant submitted a written request that seeks to justify contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?***

The applicant has prepared a written request for the purpose of Clause 4.6(3), refer to **Attachment D**.

There are five circumstances established by *Wehbe v Pittwater Council* [2007] NSWLEC 827 in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary.

The applicants' Clause 4.6 Variation Request written response seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the development standard is unreasonable or unnecessary; namely that the objectives of the standard have been met notwithstanding noncompliance with the standard.

An extract from the applicant's Clause 4.6 Request is provided as follows:

*"Lot 1 and 22 are two existing lot titles with both having a dwelling entitlement, one containing a dwelling and one containing a garage, and meeting community expectations. The proposed boundary adjustment allows both legal titles to contain a dwelling, thereby encouraging housing diversity without impacting on the amenity of adjoining land.*

*The proposed boundary adjustment would result in creating orderly lots that would result in creating additional housing rather than remaining as is. This results in a superior outcome for the site that through quality design and consistency with the objectives of the zone objectives."*

**CN Officer Comment**

The proposed development will result in two legally separated allotments that are of a suitable size and configuration to support two self-contained semi-detached dwellings. The development can be established without significant adverse impacts on adjoining land, the surrounding environment, and the public realm.

The area of each existing allotment is less than the 400m<sup>2</sup> minimum lot size. Furthermore, the combined area is 334.5m<sup>2</sup> and thereby also less than the minimum lot size. Therefore, even with the consolidation of each allotment, it is not possible to

achieve a compliant lot size. Strict compliance with the standard is therefore considered unnecessary and unreasonable.

In addition to the above, each existing allotment is currently benefitted by a dwelling entitlement. However, the current size and configuration of Lot 1 is prohibitive to efficient residential development. The proposed development adequately demonstrates that the site has the capacity to accommodate two well-appointed, semi-detached dwellings within the existing urban footprint in proximity to utilities, transport, commercial centres and other urban services without significant adverse impact to the surrounding natural and built environment. Accordingly, strict compliance with the minimum lot size standard is unreasonable as it will hinder the orderly and efficient development of land.

As such, the Applicant's written request is considered to satisfy the requirements of Clause 4.6(3)(a) in demonstrating that compliance with the development standard is unnecessary in the circumstances of the case.

***Clause 4.6(3)(b) – that there are sufficient environmental planning grounds to justify contravening the development standard.***

In *Initial Action*, Preston CJ identified that for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6, focus must be on the element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify contravening the development, rather than promoting the benefits of the development.

An extract from the applicant's Clause 4.6 Request is provided as follows:

*"Lot 1, as amended, represents a 58% variation to the minimum lot size. As it is not possible to achieve compliant lots due to the two current legal titles only equalling a total of 334.5m<sup>2</sup>, the proposed boundary adjustment would facilitate the best possible outcome at the site, whilst achieving the clause and zone objectives.*

*The proposal enables the development of each legal title for a valuable home in an area of high demand. It does so without compromising the objectives of Clause 4.1 and the R3 zone and maintains a medium density residential environment. The boundary adjustment will retain the existing number of lots and will enable the orderly development of both legal titles. Both lots, when amended, can accommodate an attached dwelling, which is permissible.*

*The proposal does not create any new dwelling entitlements or an increase in the number of undersized parcels. It has no material impact outside of the site."*

**CN Officer Comment**

The proposed subdivision will facilitate the efficient development of the site for residential use in accordance with the R3 Medium Density Residential zone objectives

and the objectives of the Clause 4.1 of the NLEP 2012. The written request outlines environmental planning grounds which adequately justify the contravention.

***Clause 4.6(4)(a)(i) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).***

As outlined above the Applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the NLEP 2012. It follows that the test of Clause 4.6(a)(i) is satisfied.

***Clause 4.6(4)(a)(ii) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.***

The applicant's response to the satisfaction of the objectives of the minimum lot size development standard was considered under the Clause 4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, 'the proposed development will be in the public interest because it is consistent', with the relevant objectives.

#### *Objectives of Clause 4.1 'Minimum subdivision lot size'*

The proposed development provides subdivision lot sizes which meet community and economic needs as well as facilitating greater diversity in housing choice, consistent with the objectives of Clause 4.1 'Minimum subdivision lot size'.

#### *Objectives of the R3 Medium Density Zone*

The development is consistent with the objectives of the R3 Medium Density Zone as it will result in an additional residential dwelling in a medium density format. The proposal will facilitate the orderly development of both allotments without significant adverse impacts to the surrounding natural and built environment or to the public streetscape. The proposed attached dwellings are permissible within the zone and are consistent with the desired future character of the area.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for the development in the relevant zone. Therefore, the test of Clause 4.6(4)(a)(ii) of NLEP 2012 is satisfied.

***Clause 4.6(4)(b) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained.***

The Secretary's concurrence to the exception to the minimum lot size development standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-002 of 5 May 2020.

### Conclusion

The states of satisfaction required by Clause 4.6 of the NLEP 2012 have been achieved and there is power to grant development consent to the proposed development notwithstanding the variation from the minimum subdivision lot size development standard.

The Clause 4.6 variation request has demonstrated that the proposed lot size is acceptable and therefore that strict compliance with the prescribed lot size would be unnecessary in this instance. Further, it is considered that the Clause 4.6 variation request is well founded.

### Clause 5.21 – Flood Planning

According to information provided in the Newcastle City-wide Floodplain Risk Management Study and Plan (BMT WBM June 2012), the subject allotment is affected by Local Catchment Flooding (flash) during both the 1% Annual Exceedance Probability (AEP) and Probable Maximum Flood (PMF) events.

The application has been referred to CN's Development Officer (Engineering) who has confirmed that the minimum flood planning levels have been achieved and the development as proposed is consistent with the requirements of Clause 5.21 of the NLEP 2012 and is generally in accordance with the relevant controls of Section 4.01 of the NDCP 2012.

### Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 4 acid sulphate soils which requires that earthworks greater than 2m below natural ground surface require the preparation of an Acid Sulfate Soils Management Plan. The proposed development does not comprise significant earthworks and is therefore unlikely to expose or drain potential acid sulfate soils within the site. Accordingly, an ASSMP is not necessary, and the proposed development is considered satisfactory regarding Acid Sulfate Soils.

### Clause 6.2 - Earthworks

The level of earthworks proposed to facilitate the development is acceptable having regard to this clause. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography.

## **5.2 Any draft environmental planning instrument that is or has been placed on public exhibition**

A number of draft State Environmental Planning Policies or updates have been exhibited and are/or under consideration by the Department of Planning and Environment. The following is considered relevant to the subject application.

*Review of Clause 4.6 of the Standard Instrument LEP: Explanation of Intended Effect*

The review of Clause 4.6 seeks to ensure that applications to vary development standards have a greater focus on the planning outcomes of the proposed development and are consistent with the strategic context of the site. The EIE was exhibited from the 31 March to 12 May 2021 and outlines those amendments to Clause 4.6 will include new criteria for consideration.

The proposed change would require applicants to demonstrate that a variation to a development standard “is consistent with the objectives of the relevant development standard and land use zone and the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.”

For the purposes of CN’s assessment, the public interest, environmental outcomes, social outcomes, or economic outcomes would need to be considered when assessing the improved planning outcome. The proposed development includes a Clause 4.6 variation request and is not inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and the NLEP 2012

### **5.3 Any development control plan**

#### **Newcastle Development Control Plan 2012 (NDCP 2012)**

Council at its meeting of 27 September 2022 adopted the amendments to the Newcastle Development Control 2012 - Section 4.02 Bush Fire Protection, Section 4.03 Mine Subsidence, Section 4.04 Safety and Security and Section 7.03 Traffic, Parking and Access.

The amendment came into effect on 1 November 2022 and the adopted DCP chapters include savings provisions to the following effect: 'any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply.

Notwithstanding, as the draft chapters have been publicly exhibited and adopted by Council, they have been considered within the assessment of this application below as a relevant matter for consideration.

#### Subdivision - Section 3.01

The proposed development comprises a two-into-two lot subdivision of the site (i.e. a boundary alteration) to create two allotments of 167.2m<sup>2</sup>. Whilst the proposed allotments are small, the application demonstrates that they are suitably sized to facilitate residential development without significant adverse impact on internal amenity and neighbouring land uses. Furthermore, the proposal will result in a more

efficient use of land by amending the geometry of Lot 1 DP 104831 to a useable size and layout.

The existing site has connection to relevant urban services and utilities such as water, sewer, electricity and telecommunications which can be extended to each resulting allotment. Each allotment will have 6.859m frontage to Power Street and access via a 3m wide verge crossing.

### Residential Development - Section 3.03

The objective of this section of the NDCP 2012 is to improve the quality of residential development. This can be achieved through a design that has a positive impact on the streetscape through its built form, maximising the amenity and safety on the site and creating a vibrant place for people to live in a compact and sustainable urban form.

The following comments are made concerning the proposed development and the relevant provisions of Section 3.03:

#### ***Principal controls (3.03.01)***

##### *Frontage widths*

Attached dwellings within the R3 zone are required to have a minimum site frontage width of 12m. The proposed development will establish a site frontage width of 6.859m for each allotment. This is considered acceptable in the subject case as the existing allotments each do not meet the 12m requirement (Lot 22 has 9.145m width and Lot 1 has 4.57m width).

Furthermore, the application demonstrates that suitably sized and functional dwellings can be constructed on each allotment. A draft condition has been applied requiring the completion of the proposed attached dwellings to 'lock-up' prior to the release of the subdivision certificate.

##### *Front setbacks*

The proposed development seeks a one metre front setback which is consistent with the establish building line along Power Street.

##### *Side and rear setbacks*

The proposed development includes the following side and rear setbacks for each dwelling:

- a) North-west Boundary Side Setback – 254mm.
- b) South-east Boundary Side Setback – 254mm.
- c) South-west Boundary Ground Level Rear Setback – 4.7m.
- d) South-west Boundary Upper-Level Rear Setback – 8.8m.

Whilst not strictly compliant with side setback requirements, the proposed side setbacks are not out of character with the surrounding neighbourhood with surrounding development being setback between 250mm and 900mm from side boundaries.

Furthermore, the proposed setbacks are consistent with the performance criteria of the control in the proposal as; the development maintains sufficient area for landscaping at the rear of the site, is consistent with the desired built form in the street and will not significantly impact on the privacy or amenity of adjoining dwellings.

#### *Landscaped Area*

The proposed development will result in approx. 45m<sup>2</sup> or 13% soft landscaping, containing a deep soil zone of approx. 45m<sup>2</sup> or 13% of the site area. The proposed development results in a non-compliance with the landscaped area requirement, however the minimum deep soil zone requirement is achieved.

Notwithstanding, the proposed landscaping is consistent with the performance criteria of the control as the proposal generally maintains existing, established vegetation within the site to provide visual buffers to adjoining development to maintain privacy and amenity.

Further, the landscaped areas are large enough to facilitate outdoor private open space for each dwelling and there is sufficient area for future domestic style landscaping to give overall residential scale to the development. The proposed development is satisfactory with respect to landscaped area within the site.

#### ***Siting the development (3.03.02)***

##### *Local character and context*

The architectural form of the proposed development is consistent with the desired future character of the neighbourhood as sought by the R3 Medium Density Residential Zone. Furthermore, there is precedent within the existing streetscape for double storey single dwellings. Accordingly, the development is satisfactory regarding this clause.

##### *Public domain Interface*

The proposed development addresses the street front through the provision main pedestrian entry to the building closest to the boundary. The garage area of each dwelling is setback further within the site to not visually dominate presentation to public areas. Variation in facade materials create modulation and articulation in design which thereby avoids unrelieved expanses of walls fronting the public. No fencing is provided forward of the building line and direct visibility to the street is achieved from the front door of each dwelling. The development is satisfactory regarding this clause.

### *Pedestrian and vehicle access*

The proposed parking arrangement is compliant with AS2890.1 and pockets of landscaping have been provided within the front setback. The development is satisfactory regarding this clause.

### *Orientation and siting*

Each proposed dwelling is oriented towards Power Street and external windows have been located and designed to avoid overlooking impacts to adjoining land. The proposed development may result in some overshadowing impacts to adjoining land to the south, however, the site to the south is a large industrially used building with no private open space and proposed impacts are considered acceptable.

### **Amenity (3.03.03)**

#### *Solar and daylight access*

The internal ground floor living areas will achieve late afternoon solar access through the sliding patio doors and kitchen servery windows. In addition, the private open space areas of each dwelling will achieve direct sunlight between 12-noon and 3pm.

Shadows will fall predominately within the rear yard of the site or over the roof area of the adjoining commercial warehouse to the south. Accordingly, overshadowing is not expected to have a significant adverse impact to adjoining land users. The development is satisfactory regarding this clause.

#### *Natural ventilation*

The ground floor of each dwelling achieves cross ventilation from the front door to the rear patio. All upstairs bedrooms are equipped with a window directly to the outside for ventilation. In addition, each bathroom will be mechanically ventilated by internal fans. The development is satisfactory.

#### *Ceiling heights*

Each floor of each dwelling comprises internal floor to ceiling heights of 3m which exceeds the minimum requirement of 2.7m for ground floor habitable rooms and 2.4m for first floor bedrooms. The development is satisfactory regarding this clause.

#### *Dwelling size and layout*

Each dwelling is a three-bedroom format and has a total GFA of 147.58m<sup>2</sup>. The development is satisfactory regarding this clause.

#### *Private open space*

Each dwelling has been provided with approximately 32m<sup>2</sup> of private open space which exceeds the minimum requirement of 16m<sup>2</sup>.

### *Storage*

The proposed development has sufficient storage regarding this clause.

### *Car and bicycle parking*

Each dwelling has a single car garage space and an undercover stack parking space. The garage is of sufficient size and configuration to facilitate the onsite storage of bicycles.

### *Visual privacy*

The upper floor levels achieve views over Power Street or to the rear of the site. Accordingly, the proposal will not have a significant adverse impact on the visual privacy of adjoining land.

## **Configuration (3.03.04)**

### *Universal design*

The finished floor level of the site is required to be slightly raised to due to the floor risk of the site, and as such, two stairs will be necessary to access each dwelling.

Notwithstanding, each dwelling includes ground level bathroom facilities and free unimpeded movement between ground floor spaces. Internal bathrooms can readily be made consistent with the Liveable Housing Design Guide. The development is satisfactory.

### *Visual appearance and articulation*

The proposed development is highly modulated and articulated in form to provide a visually amenable building.

## **Environment (3.03.05)**

### *Energy efficiency*

There is sufficient area in the rear yard of each dwelling for a clothesline. The development is satisfactory regarding this clause.

### *Water management and conservation*

The proposed development includes appropriate stormwater management processes prior to discharging from the site.

### *Waste management*

Each unit will be provided with a three-stream waste management system that will be collected by weekly Council pick up.

#### Flood Management - Section 4.01

The proposed development complies with the applicable minimum flood planning levels and accordingly, the proposal is acceptable in relation to flooding.

#### Soil Management - Section 5.01

Erosion and Sediment Control has been proposed in accordance with the relevant requirements of 'Managing Urban Stormwater: Soils and Construction' (the 'Blue Book'). Appropriate conditions have been recommended.

#### Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP R&H. The subject site is not listed on CN's contaminated lands register and has been used for residential purposes for several years. The proposed development is therefore suitable regarding Section 5.02.

#### Vegetation Management - Section 5.03

The proposed development proposes the removal of two trees as detailed SEPP B&C discussion above.

In support of the proposed works, the applicant has submitted an arborist's report that details species, location, size, health, and value. The report is prepared generally in accordance with CN tree assessment requirements, and it is considered that the proposed tree removal is acceptable.

The amenity of the area will not be significantly impacted in respect of the local character and appearance.

#### Aboriginal Heritage - Section 5.04

Reference to the Aboriginal Heritage Information Management System confirmed that there are no sites of Aboriginal significance recorded on the site.

#### Heritage Items - Section 5.05

The subject site is not mapped as a heritage item nor is it located in a heritage conservation area.

#### Archaeological Management - Section 5.06

The site is not specifically listed in the Newcastle Archaeological Management Plan 1997 or NLEP 2012 as an '*Archaeological Site*'.

#### Landscape Open Space and Visual Amenity - Section 7.02

The proposed development is a 'Category 1' Landscape Category, meaning that a Concept Landscaping plan is not necessary for the proposed development application. Notwithstanding, as compensatory planting is required, a condition has been recommended for the provision of a detailed landscaping plans to be prepared and submitted as part of detailed design documentation.

### Traffic, Parking and Access - Section 7.03

#### *Vehicle Access, Driveway Design and Crossing Location*

The proposed access is generally acceptable within the boundary of the lots and designed in accordance with AS2890.1.

Further, parking requirements have been satisfied. Each dwelling has been provided with two car parking spaces via a single garage and an undercover stacked parking space. This is consistent with the requirements for three-bedroom dwellings under the NDCP. In addition, Power Street and the surrounding road network has the capacity to absorb the traffic generated from the proposed additional dwelling.

The TfNSW Guide to Traffic Generating Developments, the low-density residential dwelling is generally expected generate 0.78 and 0.71 vehicle trips per hour during the evening and morning peaks respectively. It is expected that the scale and nature of the infill development, which will remain residential, will not have an adverse impact on the capacity of the local traffic network based on the fact the increase is considered negligible.

### Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The plans indicate that the below ground rainwater tank outlets are charged between the overflow and surface inlet pits (SIP) at the boundary, with a gravity system used between the SIP and kerb in the road reserve.

Stormwater management plans detail a segregation of the rainwater tank overflow and site drainage systems, minimising backflows into the rainwater tank from the hardstand areas. The proposed stormwater management plan is supported.

The proposed stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012.

### Waste Management - Section 7.08

Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued.

Ongoing waste will be managed via weekly Council kerbside pick. Each dwelling will be provided a three-stream waste management system comprising three 240L moveable garbage bins. This is acceptable.

### Community Participation Plan

The proposal was notified to neighbouring properties for fourteen days in accordance with the NDCP 2012. In response, no submissions objecting to the proposal were received.

### Development Contributions

The EP&A Act enables CN to levy contributions for public amenities and services. The proposed development does not attract a development contribution to CN, as detailed in CN's Development Contributions Plans.

#### **5.4 Planning agreements**

No planning agreements are relevant to the proposal.

#### **5.5 The regulations (and other plans and policies)**

The application has been considered pursuant to the provisions of the EP&A Act requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

No Coastal Management Plan applies to the site or the proposed development.

#### **5.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and the NDCP 2012 considerations. The development is compatible with the existing character, bulk, scale and massing of development in the immediate area. The proposal will not have any negative social or economic impacts.

#### **5.7 The suitability of the site for the development**

The site is suitable for the proposed development as it is located in close proximity to essential urban services, commercial centres, medical facilities, community facilities and education establishments. The site provides easy accessibility to nearby public transport through the bus services provided to Maitland Road and the nearby Hamilton Train Station. The site has existing connection to water, sewer, telecommunications, electricity and gas, and Power Street is currently serviced by CN's waste services.

The constraints of the site have been considered in the proposed development, which includes flooding, and potential acid sulfate soils. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development. As such, the subject site is suitable for the proposed development.

## **5.8 Any submissions made in accordance with this Act or the regulations**

The application was publicly notified, and no submissions were received.

## **5.9 The public interest**

The proposed development is consistent with the aims and design parameters contained in the NLEP 2012 and the NDCP 2012 and other relevant Environmental Planning Instruments discussed within this report. The development is consistent with the objectives of the R3 Medium Density Residential zone.

The proposed development will not have an adverse impact on the natural or built environments and will not result in any significant impacts on the amenity of adjacent properties or the streetscape. The proposed development is in the public interest as it provides for modernised low-impact residential accommodation within an established residential area.

The proposed development is satisfactory having regard to the principles of ecologically sustainable development. The proposal is consistent with CN's urban consolidation objectives, making more efficient use of the established public infrastructure and services.

The development is in the public interest and will allow for the orderly and economic development of the site.

## **6.0 CONCLUSION**

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the EP&A Act and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

## **ATTACHMENTS**

<b>Attachment A:</b>	Submitted Plans – 38 Power Street, Islington
<b>Attachment B:</b>	Draft Schedule of Conditions - 38 Power Street, Islington
<b>Attachment C:</b>	Processing Chronology - 38 Power Street, Islington
<b>Attachment D:</b>	Clause 4.6 written exception to development standard – 38 Power Street, Islington

**Attachments A - D distributed under separate cover**



**ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER**

**DAC 26/04/23 - 38 POWER STREET ISLINGTON - DA2022/01239 -  
SEMI-DETACHED DWELLINGS - INCLUDING DEMOLITION OF  
EXISTING DWELLING AND BOUNDARY ADJUSTMENT**

7.2	<b>Attachment A:</b>	Submitted Plans
7.2	<b>Attachment B:</b>	Draft Schedule of Conditions
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**ITEM 7.2**      **Attachment A:**      Submitted Plans

**DISTRIBUTED UNDER SEPARATE COVER**

INDEX

A-DA001 COVER SHEET  
 A-DA002 PRELIMINARY SUBDIVISION PLAN  
 A-DA003 DEMOLITION PLAN  
 A-DA004 SITE PLAN  
 A-DA005 GROUND FLOOR PLAN  
 A-DA006 UPPER FLOOR PLAN  
 A-DA007 ELEVATIONS  
 A-DA008 ELEVATIONS  
 A-DA009 TYPICAL SECTION  
 A-DA010 SHADOW DIAGRAMS



AERIAL VIEW

CALCULATIONS						
EXISTING LOT AREAS:	LOT 1	111.50m <sup>2</sup>	LOT 1		LOT 22	
	LOT 22	223.00m <sup>2</sup>	LOWER LIVING AREA	81.24m <sup>2</sup>	LOWER LIVING AREA	81.24m <sup>2</sup>
PROPOSED LOT AREAS:	LOT 1	167.24m <sup>2</sup>	GARAGE AREA	21.77m <sup>2</sup>	GARAGE AREA	21.77m <sup>2</sup>
	LOT 22	167.26m <sup>2</sup>	PORCH AREA	2.60m <sup>2</sup>	PORCH AREA	2.60m <sup>2</sup>
LANDSCAPE AREA:	LOT 1	16.97m <sup>2</sup>	PERGOLA AREA	9.60m <sup>2</sup>	PERGOLA AREA	9.60m <sup>2</sup>
	LOT 22	16.97m <sup>2</sup>	UPPER LIVING AREA	88.51m <sup>2</sup>	UPPER LIVING AREA	88.51m <sup>2</sup>
GFA - LOWER FLOOR:	LOT 1	69.03m <sup>2</sup>	BALCONY AREA	4.91m <sup>2</sup>	BALCONY AREA	4.91m <sup>2</sup>
GFA - UPPER FLOOR:	LOT 1	78.55m <sup>2</sup>	TOTAL AREA	208.63m <sup>2</sup>	TOTAL AREA	208.63m <sup>2</sup>
GFA TOTAL:	LOT 1	147.58m <sup>2</sup>				
GFA - LOWER FLOOR:	LOT 22	69.03m <sup>2</sup>				
GFA - UPPER FLOOR:	LOT 22	78.55m <sup>2</sup>				
GFA TOTAL:	LOT 22	147.58m <sup>2</sup>				
FLOOR SPACE RATIO:	LOT 1	0.89				
FLOOR SPACE RATIO:	LOT 22	0.89				

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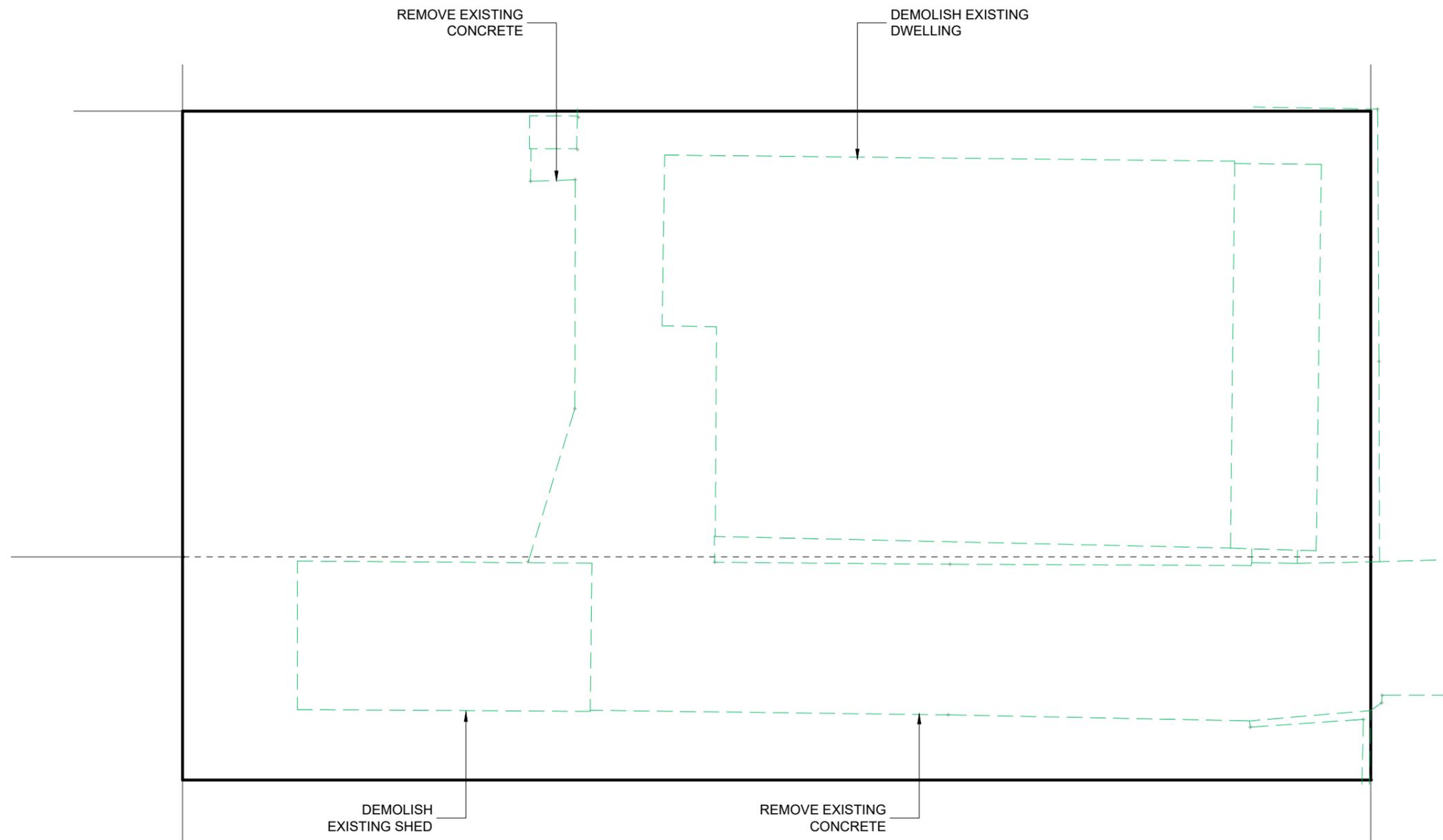


PROJECT :  
**REALIGNMENT OF BOUNDARY & 2 x DWELLINGS**  
 ADDRESS :  
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**38 POWER STREET, ISLINGTON**  
 CLIENT :  
**J RANIERI**

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7	Shadow diagrams added	14/11/22
8	Amended floor level & construction	24/01/23

DWG NO  
 A-DA001 COVER SHEET





**DEMOLITION PLAN**  
SCALE 1 : 100 @ A3

THESE PLANS TO BE READ IN CONJUNCTION WITH ALL SUPPORTING CONSULTANT'S CURRENT DOCUMENTATION

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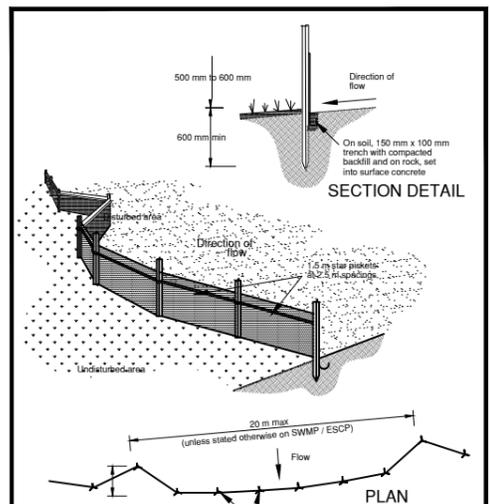
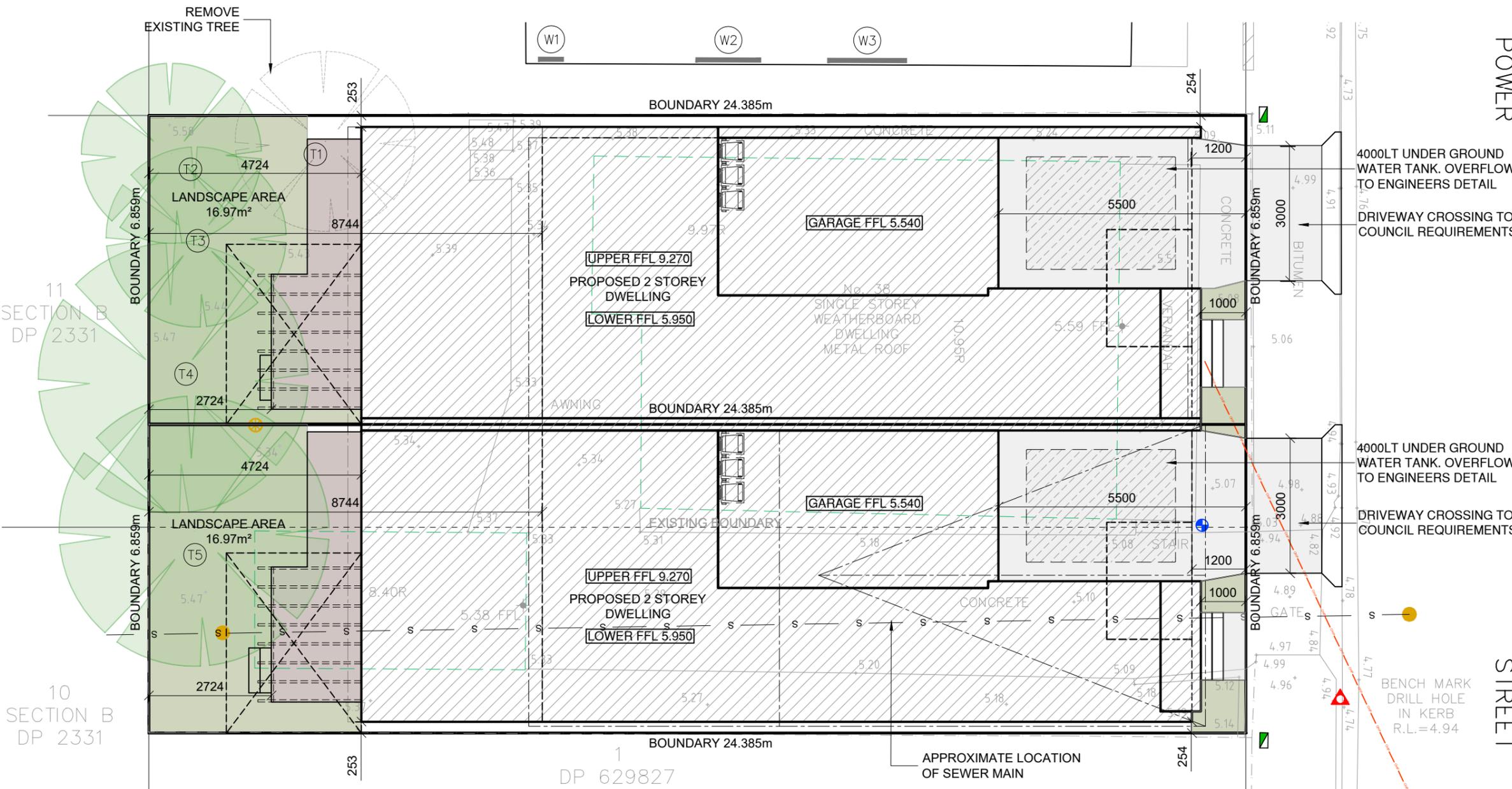


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DWG NO	A-DA003
DEMOLITION PLAN	

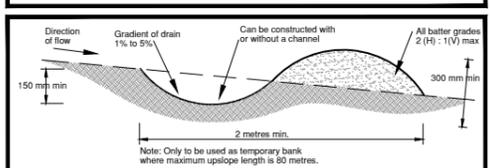
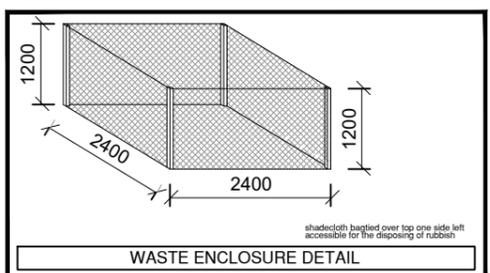




**CONSTRUCTION NOTES**

- Construct sediment fences as close as possible to being parallel to the contours of the site, but with small returns as shown in the drawing to limit the catchment area of any one section. The catchment area should be small enough to limit water flow of concentrated at one point to 50 litres per second in the design storm event, usually the 10 year event.
- Cut a 150-mm deep trench along the upslope line of the fence for the bottom of the fabric to be entrenched.
- Drive 1.5 metre long star pickets into ground at 2.5 metre intervals (max) at the downslope EDGE of the trench. Ensure any star pickets are fitted with safety caps.
- Fix self-supporting geotextile to the upslope side of the posts ensuring it goes to the base of the textile with wire ties or as recommended by the manufacturer. Only use geotextile specifically produced for sediment fencing, the use of shade cloth for this purpose is not satisfactory.
- Join sections of fabric at a support post with a 150-mm overlap.
- Backfill the trench over the base of the fabric and compact it thoroughly over the geotextile.

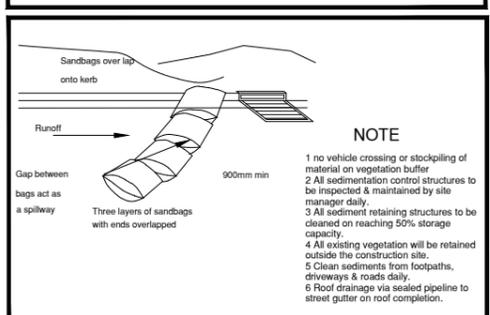
**SEDIMENT FENCE** SD 6-8  
Ref: Landcom (2004) Managing Urban Stormwater: Soil & Construction, 4th Edition



**CONSTRUCTION NOTES**

- Build with gradients between 1 percent and 5 percent.
- Avoid removing trees and shrubs if possible - work around them.
- Ensure the structures are free of projections or other irregularities that could impede water flow.
- Build the drains with circular, parabolic or trapezoidal cross sections, not V shaped.
- Ensure the banks are properly compacted to prevent failure.
- Complete permanent or temporary stabilisation within 10 days of construction.

**EARTH BANK (LOW FLOW)** SD5-5  
Ref: Landcom (2004) Managing Urban Stormwater: Soil & Construction, 4th Edition



**SEDIMENTATION NOTES**

SITE WORKS ARE NOT TO START UNTIL THE EROSION AND SEDIMENTATION CONTROL MEASURES ARE INSTALLED AND FUNCTIONAL.

ENTRY AND DEPARTURE OF VEHICLES IS TO BE CONFINED TO THE NOMINATED EXISTING VEHICLE ACCESS OR STABILISED SITE ACCESS.

TOPSOIL IS TO BE STRIPPED FROM BUILDING SITE AND STOCKPILED FOR LATER USE IN LANDSCAPING THE SITE. TOPSOIL IS TO BE RESPREAD AND ALL DISTURBED AREAS REHABILITATED (TURFED) WITHIN 20 WORKING DAYS OF COMPLETION OF WORKS. THE FOOTPATH, OTHER THAN STABILISED SITE ACCESS, IS NOT TO BE DISTURBED, INCLUDING STOCKPILING OF MATERIALS. WHERE ESSENTIAL WORKS (eg DRAINAGE) ARE REQUIRED, THE FOOTPATH IS TO BE REHABILITATED (TURFED) AS SOON AS POSSIBLE.

WASTE ENCLOSURE MINIMUM 1800 x 1800 x 1200 CONSTRUCTED USING STAR PICKETS AND 1200MM HIGH WEED CONTROL MAT ARRANGEMENTS ARE TO BE MADE FOR REGULAR COLLECTION AND DISPOSAL OR RECYCLING OF CONSTRUCTION WASTE.

ROOF DOWNPIPES TO BE CONNECTED TO STREET KERB OR OTHER STORMWATER DISPOSAL SYSTEM ON COMPLETION OF ROOF AND GUTTERING.

ALL SEDIMENTATION CONTROLS ARE TO BE CHECKED DAILY (AT A MINIMUM WEEKLY) AND AFTER ALL RAIN EVENTS. ALL STRUCTURES TO BE CLEANED ON REACHING 50% STORAGE CAPACITY TO ENSURE THEY ARE MAINTAINED IN FULL FUNCTIONAL CONDITION.

**WINDOW SCHEDULE**

WINDOW	HEAD	SILL
W1	7.85	7.40
W2	7.99	6.63
W3	8.00	6.59
W4	9.27	7.81
W5	9.54	7.86
W6	9.50	7.84
W7	9.52	7.84

**TREE TABLE**

TREE NO.	SPREAD	TRUNK	HEIGHT
T1	4	0.2	4
T2	4	0.3	2
T3	4	0.3	2
T4	6	0.2	6
T5	6	0.2	4

**SITE PLAN**  
SCALE 1 : 100 @ A3

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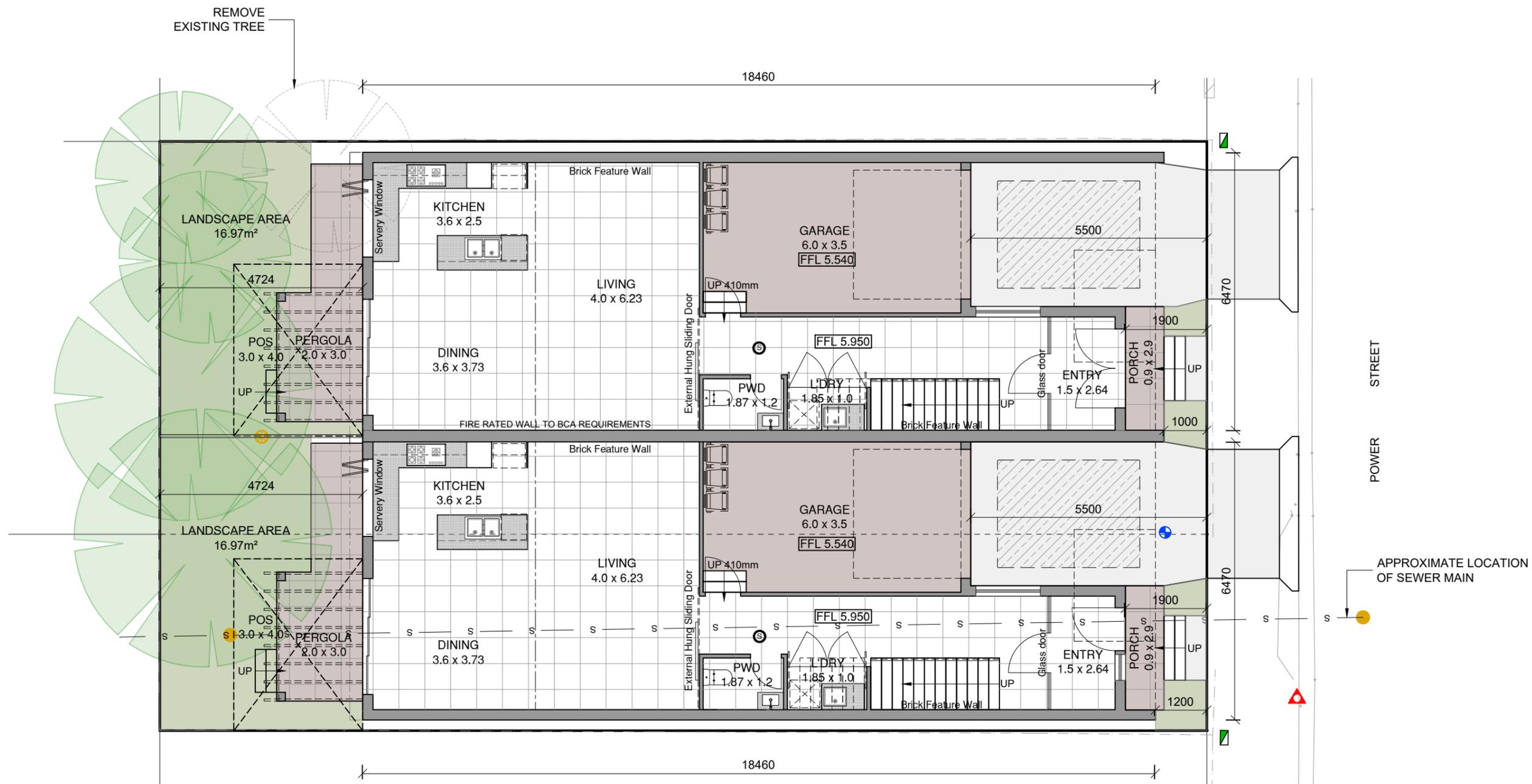


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DATE	BY
31/08/22	
01/09/22	
05/09/22	
27/09/22	
04/10/22	
21/10/22	
14/11/22	
24/01/23	

DWG NO: A-DA004  
SITE PLAN



**GROUND FLOOR PLAN**  
SCALE 1 : 100 @ A3

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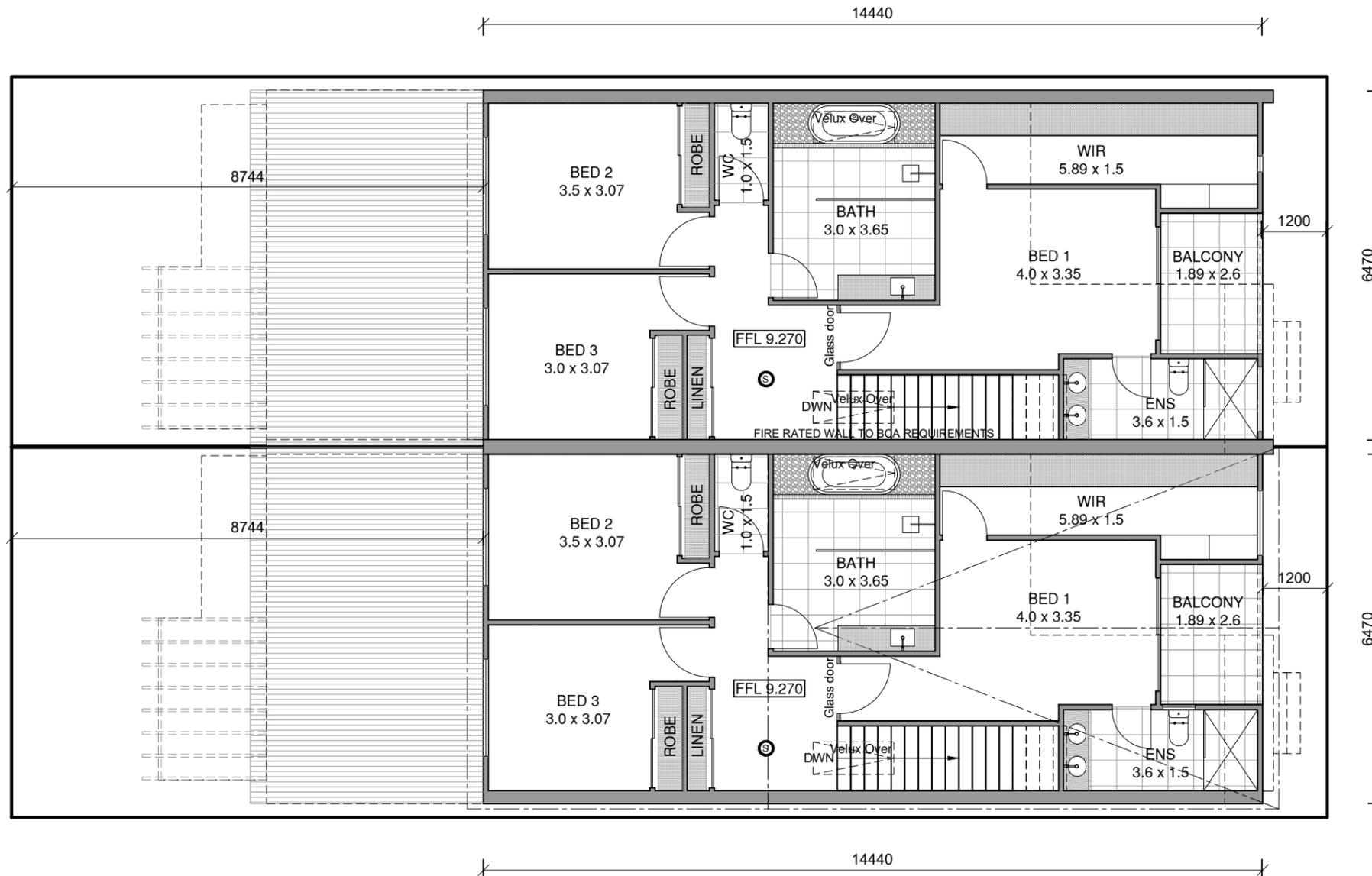
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**LEGEND**

- Ⓢ SMOKE ALARM TO BCA REQUIREMENTS



DWG NO: A-DA005 GROUND FLOOR PLAN



**UPPER FLOOR PLAN**  
SCALE 1 : 100 @ A3

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LEGEND	
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- WORK TO FIGURED DIMENSIONS ONLY. DO NOT SCALE
- SMOKE DETECTORS TO BE HARDWIRED TO BCA REQUIREMENTS
- SEDIMENTATION FENCING TO BE ERECTED AND IN PLACE AT CONSTRUCTION STAGE

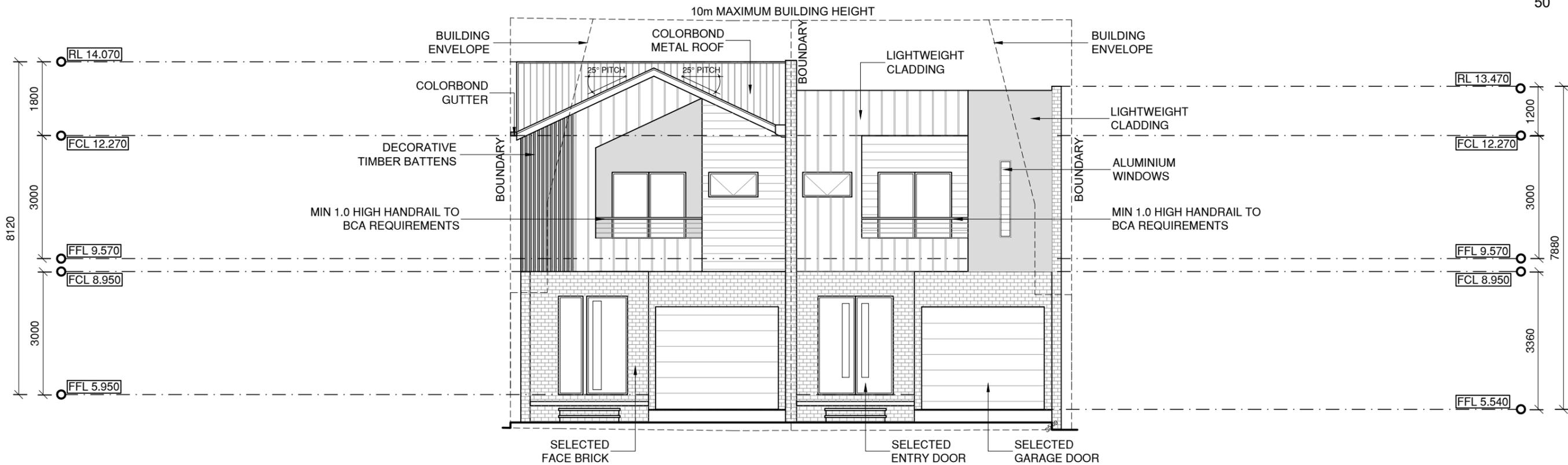
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PROJECT :  
**REALIGNMENT OF BOUNDARY & 2 x DWELLINGS**  
ADDRESS :  
**LOT 1, DP104831 & LOT 22, SEC B, DP2331**  
**38 POWER STREET, ISLINGTON**  
CLIENT :  
**J RANIERI**

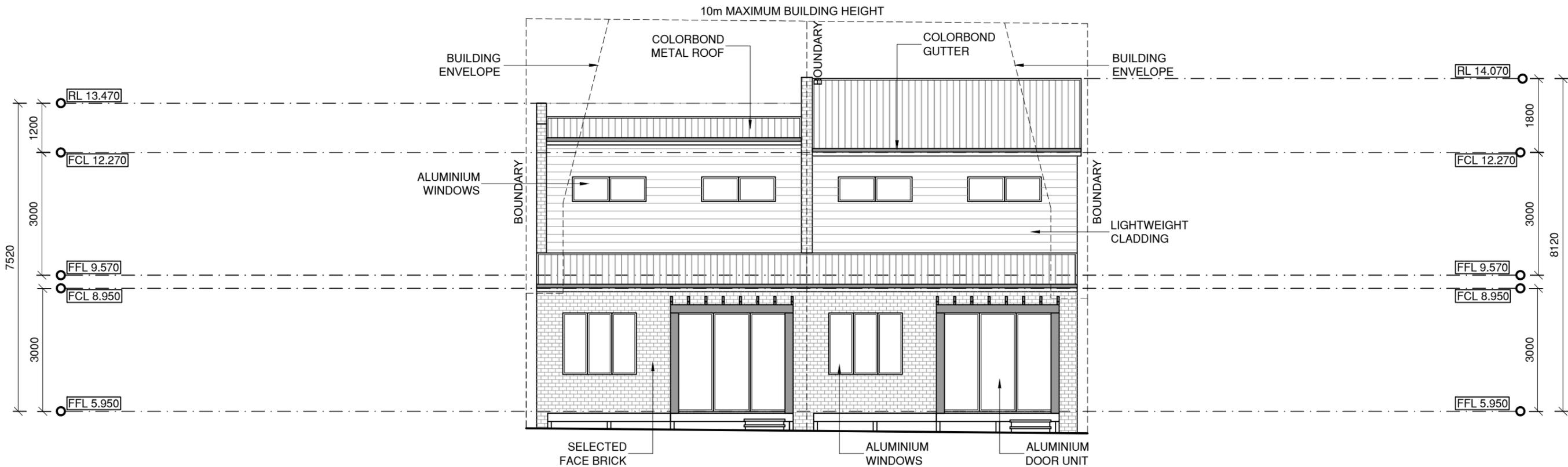
REV	COMMENTS	DATE
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2	Revised sketch	01/09/22
3	Revised sketch	05/09/22
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5	Issued for DA	04/10/22
6	Issued for DA - GFA Calculations included	21/10/22
7	Shadow diagrams added	14/11/22
8	Amended floor level & construction	24/01/23

DWG NO: A-DA006  
UPPER FLOOR PLAN



**NORTHEAST ELEVATION**

SCALE 1 : 100 @ A3



**SOUTHWEST ELEVATION**

SCALE 1 : 100 @ A3

THESE PLANS TO BE READ IN CONJUNCTION WITH ALL SUPPORTING CONSULTANT'S CURRENT DOCUMENTATION

**GENERAL NOTES**

- ALL NEW WORKS IS TO COMPLY WITH THE CURRENT AUSTRALIAN STANDARDS AT TIME OF CONSTRUCTION
- BRACING, TIE DOWN, DRAINAGE & BEAMS TO STRUCTURAL ENGINEERS DESIGN
- ALL NEW STORMWATER DRAINAGE TO BE CONNECTED TO EXISTING DRAINAGE SYSTEM
- SELECTED TERMITE SYSTEM TO COMPLY WITH AS 3660.1:2000 TO BE PROVIDED TO ALL NEW BUILDING WORK & IS TO BE INSTALLED TO MANUFACTURERS DETAILS WITH ANNUAL TREATMENTS AS REQUIRED
- LEVELS ARE TO BE CONFIRMED ONSITE PRIOR TO CONSTRUCTION
- ALL DIMENSIONS & LEVELS TO BE CONFIRMED ON SITE BY BUILDER PRIOR TO START OF WORK
- SITE IS TO BE SET OUT BY A REGISTERED SURVEYOR
- THESE DRAWINGS ARE TO BE READ IN CONJUNCTION WITH ALL RELEVANT DOCUMENTS
- WORK TO FIGURED DIMENSIONS ONLY. DO NOT SCALE
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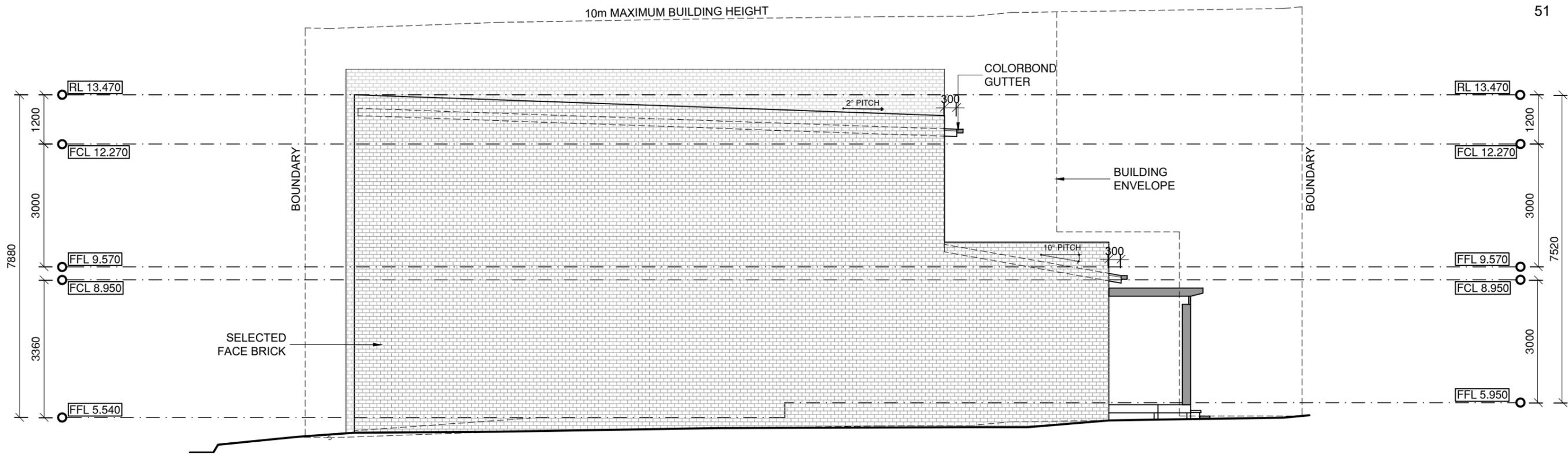
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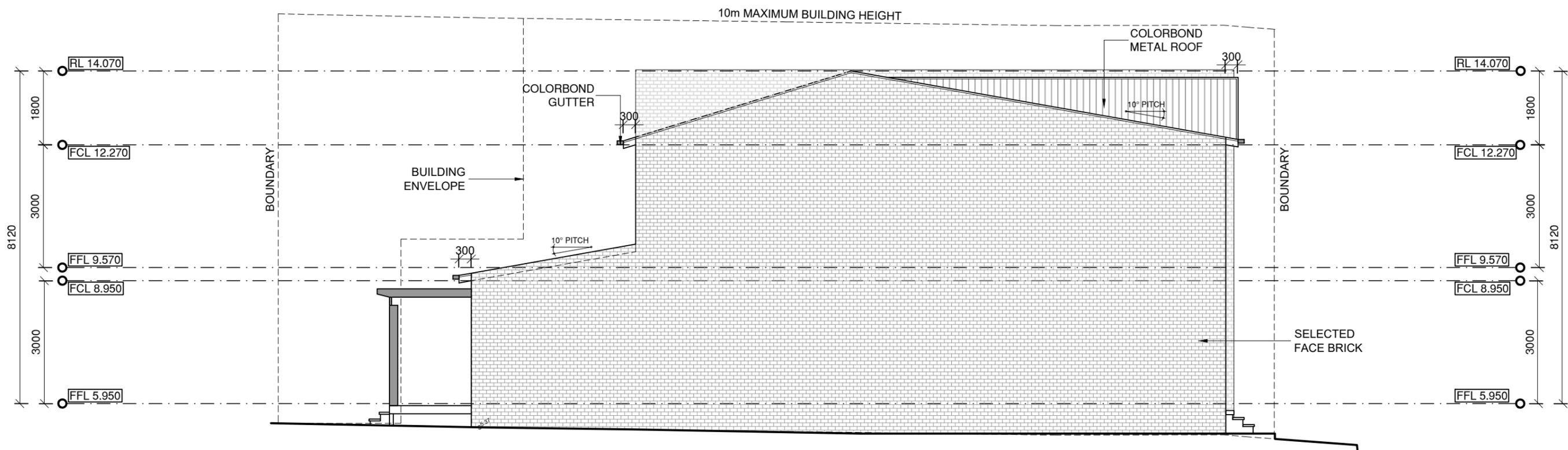
PROJECT :  
**REALIGNMENT OF BOUNDARY & 2 x DWELLINGS**  
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**38 POWER STREET, ISLINGTON**  
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**J RANIERI**

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DWG NO: A-DA007 ELEVATIONS



**NORTHWEST ELEVATION**  
SCALE 1 : 100 @ A3



**SOUTHEAST ELEVATION**  
SCALE 1 : 100 @ A3

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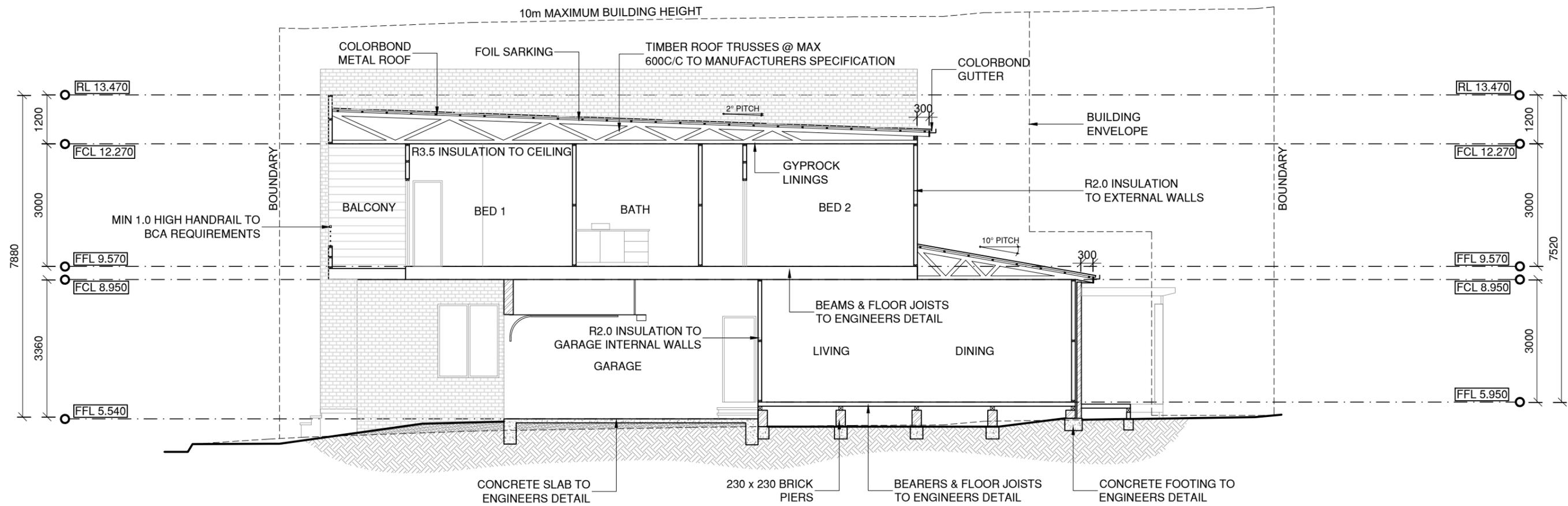
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DWG NO: A-DA008 ELEVATIONS



**TYPICAL SECTION**  
SCALE 1 : 100 @ A3

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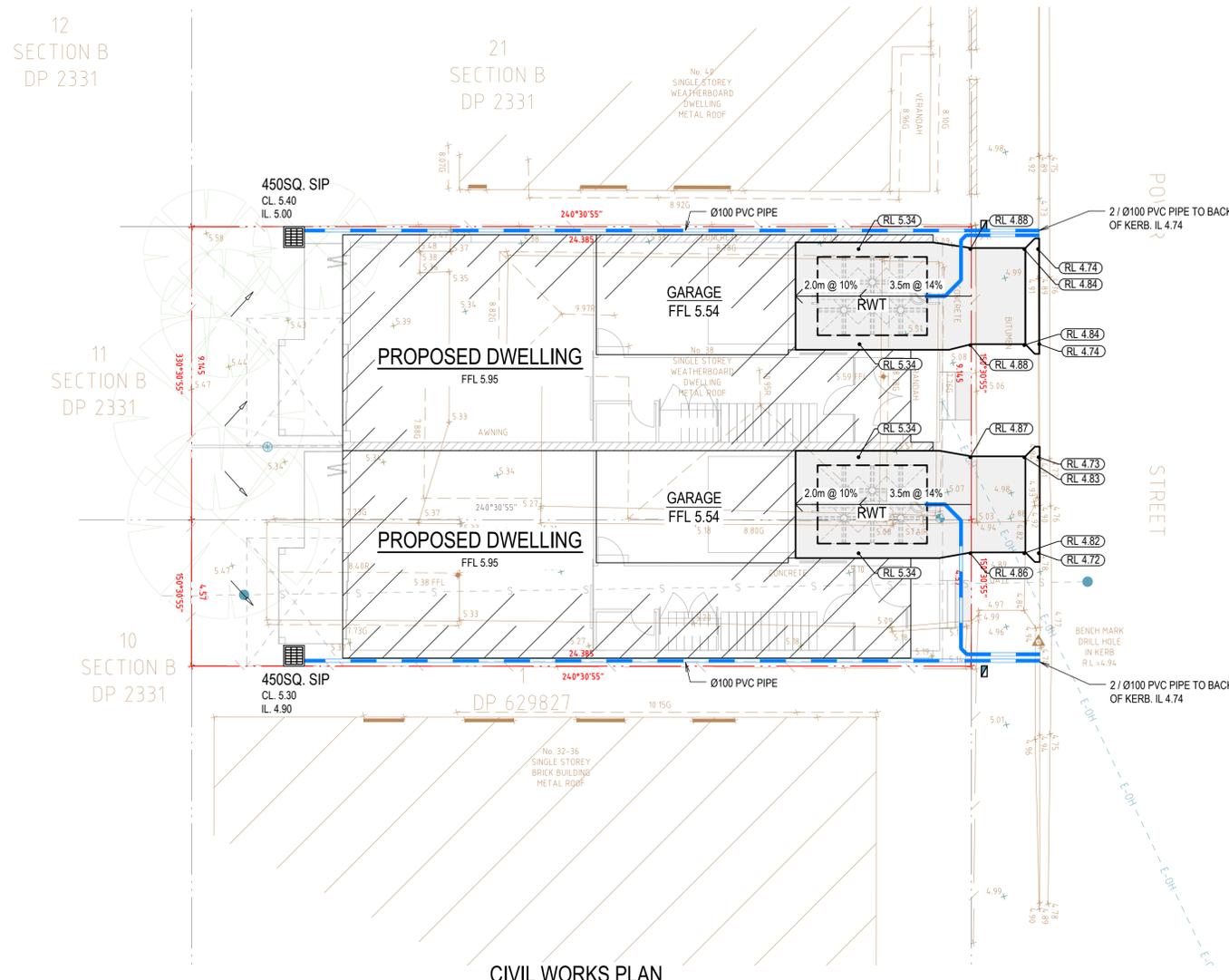


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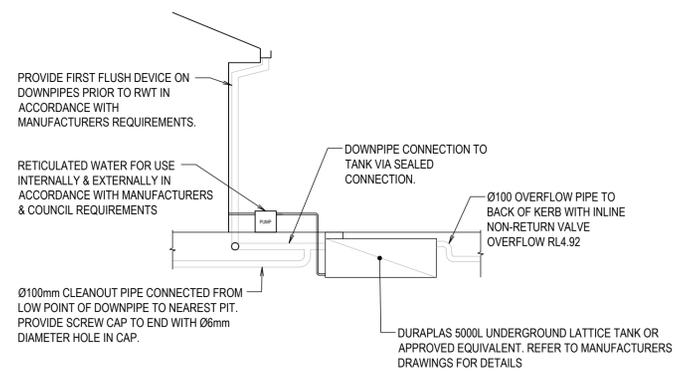
DWG NO: A-DA009 TYPICAL SECTION

LEGEND	
	NEW BOUNDARY LINE
	EXISTING BOUNDARY LINE
	EXISTING ELECTRICITY OHP
	EXISTING SEWER (APPROX.)
	EXISTING CONTOURS
	EXISTING SPOTLEVEL
	PROPOSED SPOT HEIGHT
	STORMWATER PIPE
	CHARGED STORMWATER DOWNPIPE DRAINAGE LINE
	SW PIT CL. XXXX IL. XXXX
	STORMWATER PIT AND TAG COVER LEVEL / INVERT LEVEL
	DURAPLAS 4000L (MIN.) UNDERGROUND LATTICE TANK OR APPROVED EQUIVALENT. REFER TO MANUFACTURERS DRAWINGS FOR DETAILS
	DENOTES EXTENT OF IMPERVIOUS PAVEMENT, DETAILS AT CC STAGE
	DIRECTION OF SURFACE FLOW



**CIVIL WORKS PLAN**  
SCALE 1:100

NOTE: ALL ROOFWATER TO BE CONNECTED TO THE RESPECTIVE RAINWATER TANKS. PROVIDE FIRST FLUSH TO DOWNPIPES PRIOR TO CONNECTING TO TANK.

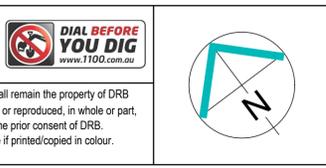


**RWT (UNDER GROUND) SCHEMATIC SECTION**  
NOT TO SCALE

REV	DATE	DRN	CHK	APP	DRAWING STATUS
B	23.01.23	C.T.	B.R.	M.M.	RE-ISSUED FOR DEVELOPMENT APPROVAL
A	30.09.22	C.T.	B.R.	M.M.	ISSUED FOR DEVELOPMENT APPROVAL

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CLIENT  
**SNL BUILDING & CONSTRUCTIONS**

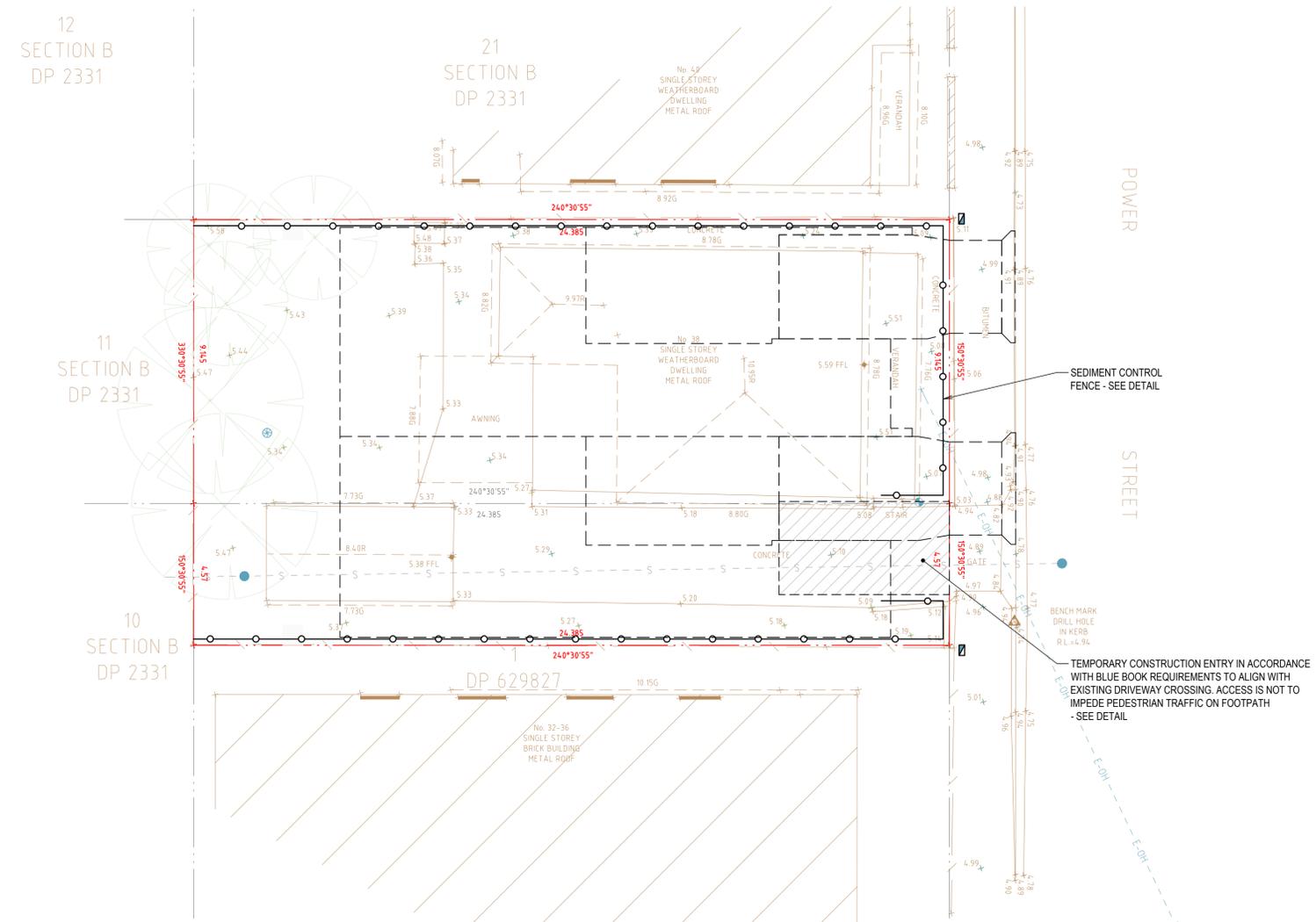
TITLE  
**CIVIL WORKS PLAN**

PROJECT  
**RESIDENTIAL DEVELOPMENT  
38 POWER STREET,  
ISLINGTON, NSW 2296**

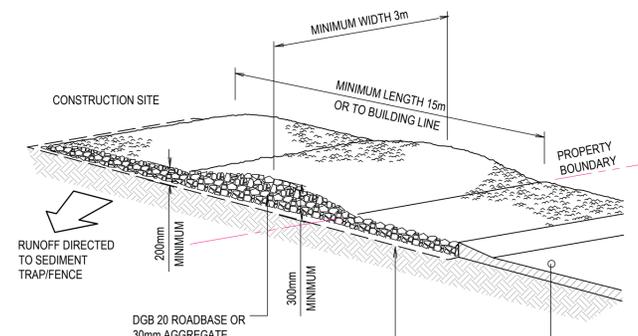
DRAWING STATUS DEVELOPMENT APPROVAL	SHEET SIZE A1
SCALE 1:100 (A1)	DRAWN C.T.
PROJECT REF. No. 222225	REVISION B
DRAWING No. CIV-010	

**LEGEND**

- BOUNDARY LINE
- - - EXISTING CONTOURS
- × 4.00 EXISTING SPOTLEVEL

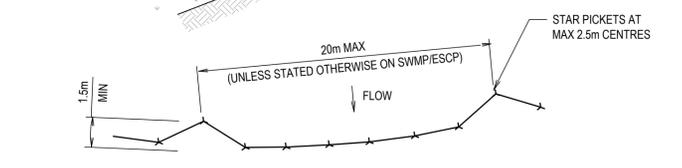
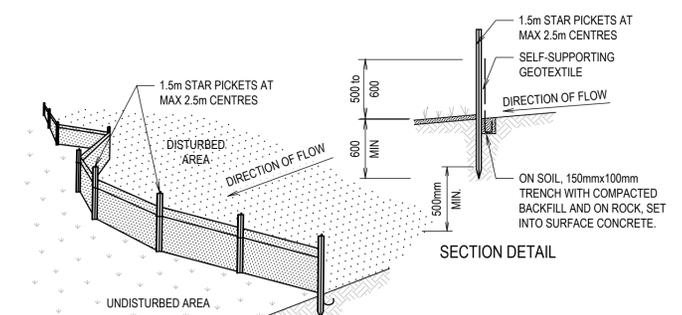


**EROSION & SEDIMENT CONTROL PLAN**  
SCALE 1:100



- CONSTRUCTION NOTES**
- STRIP THE TOPSOIL, LEVEL THE SITE AND COMPACT THE SUBGRADE.
  - COVER THE AREA WITH NEEDLE-PUNCHED GEOTEXTILE.
  - CONSTRUCT A 200mm THICK PAD OVER THE GEOTEXTILE USING ROAD BASE OR 30mm AGGREGATE.
  - ENSURE THE STRUCTURE IS AT LEAST 15 METRES LONG OR TO BUILDING ALIGNMENT AND AT LEAST 3 METRES WIDE.
  - WHERE A SEDIMENT FENCE JOINS ONTO THE STABILISED ACCESS, CONSTRUCT A HUMP IN THE STABILISED ACCESS TO DIVERT WATER TO THE SEDIMENT FENCE.

**STABILISED SITE ACCESS (SD 6-14)**  
NOT TO SCALE



- CONSTRUCTION NOTES**
- CONSTRUCT SEDIMENT FENCES AS CLOSE AS POSSIBLE TO BEING PARALLEL TO THE CONTOURS OF THE SITE, BUT WITH SMALL RETURNS AS SHOWN IN THE DRAWING TO LIMIT THE CATCHMENT AREA OF ANY ONE SECTION. THE CATCHMENT AREA SHOULD BE SMALL ENOUGH TO LIMIT WATER FLOW IF CONCENTRATED AT ONE POINT TO 50 LITRES PER SECOND IN THE DESIGN STORM EVENT, USUALLY THE 10-YEAR EVENT.
  - CUT A 150mm DEEP TRENCH ALONG THE UPSLOPE LINE OF THE FENCE FOR THE BOTTOM OF THE FABRIC TO BE ENTRENCHED.
  - DRIVE 1.5 METRE LONG STAR PICKETS INTO GROUND AT 2.5 METRE INTERVALS (MAX) AT THE DOWNSLOPE EDGE OF THE TRENCH. ENSURE ANY STAR PICKETS ARE FITTED WITH SAFETY CAPS.
  - FIX SELF-SUPPORTING GEOTEXTILE TO THE UPSLOPE SIDE OF THE POSTS ENSURING IT GOES TO THE BASE OF THE TRENCH. FIX THE GEOTEXTILE WITH WIRE TIES OR AS RECOMMENDED BY THE MANUFACTURER. ONLY USE GEOTEXTILE SPECIFICALLY PRODUCED FOR SEDIMENT FENCING. THE USE OF SHADE CLOTH FOR THIS PURPOSE IS NOT SATISFACTORY.
  - JOIN SECTIONS OF FABRIC AT A SUPPORT POST WITH A 150mm OVERLAP.
  - BACKFILL THE TRENCH OVER THE BASE OF THE FABRIC AND COMPACT IT THOROUGHLY OVER THE GEOTEXTILE.

**SEDIMENT FENCE (SD 6-8)**  
NOT TO SCALE

REV	DATE	DRN	CHK	APP	DRAWING STATUS
B	23.01.23	C.T.	B.R.	M.M.	RE-ISSUED FOR DEVELOPMENT APPROVAL
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**CLIENT**  
SNL BUILDING & CONSTRUCTIONS

**TITLE**  
EROSION & SEDIMENT CONTROL PLAN & DETAILS

**PROJECT**  
RESIDENTIAL DEVELOPMENT  
38 POWER STREET,  
ISLINGTON, NSW 2296

**DRAWING STATUS**  
DEVELOPMENT APPROVAL

**SCALE**  
1:100 (A1)

**PROJECT REF No.**  
222225

**DRAWING No.**  
CIV-020

**SHEET SIZE**  
A1

**DRAWN**  
C.T.

**REVISION**  
B

**GENERAL**

1. ESCP REFERS TO EROSION AND SEDIMENT CONTROL PLAN AND SWMP REFERS TO SOIL AND WATER MANAGEMENT PLAN.
2. ESC REFERS TO EROSION AND SEDIMENT CONTROL.
3. SEDIMENT ,INCLUDES ,BUT IS NOT LIMITED TO, CLAY, SILT, SAND, GRAVEL ,SOIL, MUD, CEMENT, AND CERAMIC WASTE.
4. ANY REFERENCE TO THE BLUE BOOK REFERS TO MANAGING URBAN STORMWATER -SOILS AND CONSTRUCTION. LANDCOM, 2004.
5. ANY REFERENCE TO THE IECA WHITE BOOKS (2008) REFERS TO IECA 2008. BEST PRACTICE EROSION AND SEDIMENT CONTROL BOOKS 1-8.INTERNATIONAL EROSION CONTROL ASSOCIATION (AUSTRALASIA), PICTON NSW.
6. ANY MATERIAL DEPOSITED IN ANY CONSERVATION AREA FROM WORKS ASSOCIATED WITH THE DEVELOPMENTS HALL BE REMOVED IMMEDIATELY BY MEASURES INVOLVING MINIMAL GROUND AND/OR VEGETATION DISTURBANCE AND NO MACHINERY ,OR FOLLOWING DIRECTIONS BY COUNCIL L AND/OR WITHIN A TIMEFRAME ADVISED BY COUNCIL.
7. THE ESCP AND ITS ASSOCIATED ESC MEASURES SHALL BE CONSTANTLY MONITORED, REVIEWED ,AND MODIFIED AS REQUIRED TO CORRECT DEFICIENCIES. COUNCIL HAS THE RIGHT TO DIRECT CHANGES IF, IN ITS OPINION, THE MEASURES THAT ARE PROPOSED OR HAVE BEEN INSTALLED ARE INADEQUATE TO PREVENT POLLUTION.
8. PRIOR TO ANY ACTIVITIES ONSITE, THE RESPONSIBLE PERSON(S) IS TO BE NOMINATED. THE RESPONSIBLE PERSON(S) SHALL BE RESPONSIBLE FOR THE ESC MEASURES. THE NAME, ADDRESS AND 24 HOUR CONTACT DETAILS OF THE PERSON(S) SHALL BE PROVIDED TO COUNCIL IN WRITING . COUNCIL SHALL BE ADVISED WITHIN 48 HOURS OF ANY CHANGES TO THE RESPONSIBLE PERSON(S) ,OR THEIR CONTACT DETAILS, IN WRITING.
9. AT LEAST 14 DAYS BEFORE THE NATURAL SURFACE IS DISTURBED IN ANY NEW STAGE, THE CONTRACTOR SHALL SUBMIT TO THE CERTIFIER ,A PLAN SHOWING ESC MEASURES FOR THAT STAGE. THE DEGREE OF DESIGN DETAIL SHALL BE BASED ON THE DISTURBED AREA.
10. AT ANY TIME, THE ESC MEASURES ONSITE SHALL BE APPROPRIATE FOR THE AREA OF DISTURBANCE AND ITS CHARACTERISTICS INCLUDING SOILS (IN ACCORDANCE WITH THOSE REQUIRED FOR THE SITE AS PER DCP).
11. THE IMPLEMENTATION OF THE ESCP SHALL BE SUPERVISED BY PERSONNEL WITH APPROPRIATE QUALIFICATIONS AND/OR EXPERIENCE IN ESC ON CONSTRUCTION SITES.
12. THE APPROVED ESCP SHALL BE AVAILABLE ON-SITE FOR INSPECTION BY COUNCIL OFFICERS WHILE WORK ACTIVITIES ARE OCCURRING.
13. THE APPROVED ESCP SHALL BE UP TO DATE AND SHOW A TIMELINE OF INSTALLATION, MAINTENANCE AND REMOVAL OF ESC MEASURES.
14. ALL ESC MEASURES SHALL BE APPROPRIATE FOR THE SEDIMENT TYPE(S) OF THE SOILS ONSITE, IN ACCORDANCE WITH THE BLUE BOOK ,IECA WHITE BOOKS OR OTHER CURRENT RECOGNISED INDUSTRY STANDARD FOR ESC FOR AUSTRALIAN CONDITIONS
15. ADEQUATE SITE DATA ,INCLUDING SOIL DATA FROM A NATA APPROVED LABORATORY, SHALL BE OBTAINED TO ALLOW THE PREPARATION OF AN APPROPRIATE ESCP, AND ALLOW THE SELECTION, DESIGN AND SPECIFICATION OF REQUIRED ESC MEASURES.
16. ALL WORKS SHALL BE CARRIED OUT IN ACCORDANCE WITH THE APPROVED ESCP (AS AMENDED FROM TIME TO TIME) UNLESS CIRCUMSTANCES ARISE WHERE:
  - a) COMPLIANCE WITH THE ESCP WOULD INCREASE THE POTENTIAL FOR ENVIRONMENTAL HARM; OR
  - b) CIRCUMSTANCES CHANGE DURING CONSTRUCTION AND THOSE CIRCUMSTANCES COULD NOT HAVE BEEN FORESEEN; OR
  - c) COUNCIL DETERMINE S THAT UNACCEPTABLE OFF-SITE SEDIMENTATION IS OCCURRING AS A RESULT OF A LAND-DISTURBING ACTIVITY . IN EITHER CASE, THE PERSON(S) RESPONSIBLE MAY BE REQUIRED TO TAKE ADDITIONAL ,OR ALTERNATIVE PROTECTIVE ACTION, AND/OR UNDERTAKE REASONABLE RESTORATION WORKS WITHIN THE TIMEFRAME SPECIFIED BY THE COUNCIL.
17. ADDITIONAL ESC MEASURES SHALL BE IMPLEMENTED, AND A REVISED ESCP SUBMITTED FOR APPROVAL TO THE CERTIFIER (WITHIN FIVE BUSINESS DAYS OF ANY SUCH AMENDMENTS) IN THE EVENT THAT:
  - a) THERE IS A HIGH PROBABILITY THAT SERIOUS OR MATERIAL ENVIRONMENTAL HARM MAY OCCUR AS A RESULT OF SEDIMENT LEAVING THE SITE; OR
  - b) THE IMPLEMENTED WORKS FAIL TO ACHIEVE COUNCIL'S WATER QUALITY OBJECTIVES SPECIFIED IN THESE CONDITIONS; OR
  - c) SITE CONDITIONS SIGNIFICANTLY CHANGE; OR
  - d) SITE INSPECTIONS INDICATE THAT THE IMPLEMENTED WORKS ARE FAILING TO ACHIEVE THE "OBJECTIVE" OF THE ESCP.
18. A COPY OF ANY AMENDED ESCP SHALL BE FORWARDED TO AN APPROPRIATE COUNCIL OFFICER, WITHIN FIVE BUSINESS DAYS OF ANY SUCH AMENDMENTS. SITE ESTABLISHMENT INCLUDING CLEARING AND MULCHING

**SITE ESTABLISHMENT INCLUDING CLEARING AND MULCHING**

19. NO LAND CLEARING SHALL BE UNDERTAKEN UNLESS PRECEDED BY THE INSTALLATION OF ADEQUATE DRAINAGE AND SEDIMENT CONTROL MEASURES .UNLESS SUCH CLEARING IS REQUIRED FOR THE PURPOSE OF INSTALLING SUCH MEASURES ,IN WHICH CASE, ONLY THE MINIMUM CLEARING REQUIRED TO INSTALL SUCH MEASURES SHALL OCCUR.
20. BULK TREE CLEARING AND GRUBBING OF THE SITE SHALL BE IMMEDIATELY FOLLOWED BY SPECIFIED TEMPORARY EROSION CONTROL MEASURES (E.G. TEMPORARY GRASSING OR MULCHING) PRIOR TO COMMENCEMENT OF EACH STAGE OF CONSTRUCTION WORKS.
21. TREES AND VEGETATION CLEARED FROM THE SITE SHALL BE MULCHED ONSITE WITHIN 7 DAYS OF CLEARING.
22. APPROPRIATE MEASURES SHALL BE UNDERTAKEN TO CONTROL ANY DUST ORIGINATING DUE TO THE MULCHING OF VEGETATION ONSITE.
23. ALL OFFICE FACILITIES AND OPERATIONAL ACTIVITIES SHALL BE LOCATED SUCH THAT ANY EFFLUENT, INCLUDING WASH-DOWN WATER, CAN BE TOTALLY CONTAINED AND TREATED WITHIN THE SITE.
24. ALL REASONABLE AND PRACTICABLE MEASURES SHALL BE TAKEN TO ENSURE STORMWATER RUNOFF FROM ACCESS ROADS AND STABILISED ENTRY/EXIT SYSTEMS, DRAINS TO AN APPROPRIATE SEDIMENT CONTROL DEVICE.
25. SITE EXIT POINTS SHALL BE APPROPRIATELY MANAGED TO MINIMISE THE RISK OF SEDIMENT BEING TRACKED ONTO SEALED, PUBLIC ROADWAYS.
26. STORMWATER RUNOFF FROM ACCESS ROADS AND STABILISED ENTRY/EXIT POINTS SHALL DRAIN TO AN APPROPRIATE SEDIMENT CONTROL DEVICE.
27. THE APPLICANT SHALL ENSURE AN ADEQUATE SUPPLY OF ESC, AND APPROPRIATE POLLUTION CLEAN-UP MATERIALS ARE AVAILABLE ON-SITE AT ALL TIMES.

28. ALL TEMPORARY EARTH BANKS , FLOW DIVERSION SYSTEMS, AND SEDIMENT BASIN EMBANKMENTS SHALL BE MACHINE-COMPACTED, SEEDED AND MULCHED WITHIN TEN (10) DAYS OF FORMATION FOR THE PURPOSE OF ESTABLISHING A VEGETATIVE COVER, OR LINED APPROPRIATELY.
29. SEDIMENT DEPOSITED OFF SITE AS A RESULT OF ON-SITE ACTIVITIES SHALL BE COLLECTED AND THE AREA CLEANED/REHABILITATE ADS SOON AS REASONABLE AND PRACTICABLE.
30. CONCRETE WASTE AND CHEMICAL PRODUCTS ,INCLUDING PETROLEUM AND OIL-BASED PRODUCTS ,SHALL BE PREVENTED FROM ENTERING ANY INTERNAL OR EXTERNAL WATER BODY, OR ANY EXTERNAL DRAINAGE SYSTEM , EXCLUDING THOSE ON-SITE WATER BODIES SPECIFICALLY DESIGNED TO CONTAIN AND/OR TREAT SUCH MATERIAL. APPROPRIATE MEASURES SHALL BE INSTALLED TO TRAP THESE MATERIALS ONSITE.
31. BRICK, TILE OR MASONRY CUTTING SHALL BE CARRIED OUT ON A PERVIOUS SURFACE GRASS OR OPEN SOIL) AND IN SUCH A MANNER THAT ANY RESULTING SEDIMENT-LADDER RUNOFF IS PREVENTED FROM DISCHARGING INTO A GUTTER ,DRAIN OR APPROPRIATE MEASURES SHALL BE INSTALLED TO TRAP THESE MATERIALS ONSITE.
32. NEWLY SEALED HARD-STAND AREAS (E.G. ROADS, DRIVEWAYS AND CAR PARKS) SHALL BE SWEEPED THOROUGHLY AS SOON AS PRACTICABLE AFTER SEALING/SURFACING TO MINIMISE THE RISK OF COMPONENTS OF THE SURFACING COMPOUND ENTERING STORMWATER DRAINS.
33. STOCKPILES OF ERODIBLE MATERIAL SHALL BE PROVIDED WITH AN APPROPRIATE PROTECTIVE COVER (SYNTHETIC OR ORGANIC) IF THE MATERIALS ARE LIKELY TO BE STOCKPILED FOR MORE THAN 10 DAYS.
34. STOCKPILES ,TEMPORARY OR PERMANENT ,SHALL NOT BE LOCATED IN AREAS IDENTIFIED AS NO-GO ZONES (INCLUDING ,BUT NOT LIMITED TO, RESTRICTED ACCESS AREAS, BUFFER ZONES, OR AREAS OF NON-DISTURBANCE) ON THE ESCP.
35. NO MORE THAN 150M OF A STORMWATER ,SEWER LINE OR OTHER SERVICE TRENCH SHALL TO BE OPEN AT ANY ONE TIME.
36. SITE SPOIL SHALL BE LAWFULLY DISPOSED OF IN A MANNER THAT DOES NOT RESULT IN ONGOING SOIL EROSION OR ENVIRONMENTAL HARM.
37. WHEREVER REASONABLE AND PRACTICABLE ,STORMWATER RUNOFF ENTERING THE SITE FROM EXTERNAL AREAS , AND NON-SEDIMENT LADEN STORMWATER RUNOFF ENTERING A WORK AREA OR AREA OF SOIL DISTURBANCE ,SHALL BE DIVERTED AROUND OR THROUGH THAT AREA IN A MANNER THAT MINIMISES SOIL EROSION AND THE CONTAMINATION OF THAT WATER FOR ALL DISCHARGES UP TO THE SPECIFIED DESIGN STORM DISCHARGE.

**SITE MANAGEMENT INCLUDING DUST**

38. PRIORITY SHALL BE GIVEN TO THE PREVENTION ,OR AT LEAST THE MINIMISATION O, F SOIL EROSION ,RATHER THAN THE TRAPPING OF DISPLACED SEDIMENT . SUCH A CLAUSE SHALL NOT REDUCE THE RESPONSIBILITY TO APPLY AND MAINTAIN AT ALL TIMES, ALL NECESSARY ESC MEASURES.
39. MEASURES USED TO CONTROL WIND EROSION SHALL BE APPROPRIATE FOR THE LOCATION AND PREVENT SOIL EROSION AND EMISSIONS FROM SITE AT ALL TIMES, INCLUDING WORKING HOURS ,OUT OF HOURS ,WEEKENDS ,PUBLIC HOLIDAYS ,AND DURING ANY OTHER SHUTDOWN PERIODS.
40. THE APPLICATION OF LIQUID OR CHEMICAL-BASED DUST SUPPRESSION MEASURES SHALL ENSURE THAT SEDIMENT-LADEN RUNOFF RESULTING FROM SUCH MEASURES DOES NOT CREATE A TRAFFIC OR ENVIRONMENTAL HAZARD
41. ALL CUT AND FILL EARTH BATTERS LESS THAN 3M IN ELEVATION SHALL BE TOPSOILED, AND GRASS SEEDED/HYDROMULCHED WITHIN 10 DAYS OF COMPLETION OF GRADING IN CONSULTATION WITH COUNCIL.
42. ALL DISTURBED AREAS SHALL BE STABILISED IN ACCORDANCE WITH TIME LINES IN THE BLUE BOOK.
43. ALL REASONABLE AND PRACTICABLE MEASURES SHALL BE TAKEN TO PREVENT, ,OR AT LEAST MINIMISE ,THE RELEASE OF SEDIMENT FROM THE SITE.
44. SUITABLE ALL-WEATHER MAINTENANCE ACCESS SHALL BE PROVIDED TO ALL SEDIMENT CONTROL DEVICES.
45. SEDIMENT CONTROL DEVICES ,OTHER THAN SEDIMENT BASINS ,SHALL BE DE-SILTED AND MADE FULLY OPERATIONAL AS SOON AS REASONABLE AND PRACTICABLE AFTER A SEDIMENT-PRODUCING EVENT , WHETHER NATURAL OR ARTIFICIAL , IF THE DEVICE'S SEDIMENT RETENTION CAPACITY FALLS BELOW 75% OF ITS DESIGN RETENTION CAPACITY.
46. ALL EROSION AND SEDIMENT CONTROL MEASURES ,INCLUDING DRAINAGE CONTROL MEASURES ,SHALL BE MAINTAINED IN PROPER WORKING ORDER AT ALL TIMES DURING THEIR OPERATIONAL LIVES.
47. WASHING/FLUSHING OF SEALED ROADWAYS SHALL ONLY OCCUR WHERE SWEEPING HAS FAILED TO REMOVE SUFFICIENT SEDIMENT AND THERE IS A COMPELLING NEED TO REMOVE THE REMAINING SEDIMENT (E.G. FOR SAFETY REASONS) . IN SUCH CIRCUMSTANCES A, L REASONABLE AND PRACTICABLE SEDIMENT CONTROL MEASURES SHALL BE USED TO PREVENT ,OR AT LEAST MINIMISE ,THE RELEASE OF SEDIMENT INTO RECEIVING WATERS. ONLY THOSE MEASURES THAT WILL NOT CAUSE SAFETY AND PROPERTY FLOODING ISSUES SHALL BE EMPLOYED. SEDIMENT REMOVED FROM ROADWAYS SHALL BE DISPOSED OF IN A LAWFUL MANNER THAT DOES NOT CAUSE ONGOING SOIL EROSION OR ENVIRONMENTAL HARM.
48. SEDIMENT REMOVED FROM SEDIMENT TRAPS AND PLACES OF SEDIMENT DEPOSITION SHALL BE DISPOSED OF IN A LAWFUL MANNER THAT DOES NOT CAUSE ONGOING SOIL EROSION OR ENVIRONMENTAL HARM.

**SEDIMENT BASINS (WHERE REQUIRED) - INSTALLATION ,MAINTENANCE AND REMOVAL, INCLUDING SEDIMENT TRAPS**

49. AS-CONSTRUCTED PLANS SHALL BE PREPARED FOR ALL CONSTRUCTED SEDIMENT BASINS AND ASSOCIATED EMERGENCY SPILLWAYS . SUCH PLANS SHALL VERIFY THE BASIN'S DIMENSIONS, LEVELS AND VOLUMES COMPLY WITH THE APPROVED DESIGN DRAWINGS. THESE PLANS MAY BE REQUESTED BY THE CERTIFIER OR COUNCIL.
50. SEDIMENT BASINS SHALL BE CONSTRUCTED AND FULLY OPERATIONAL PRIOR TO ANY OTHER SOIL DISTURBANCE IN THEIR CATCHMENTS.
51. INSTALL AN INTERNAL GATED VALVE, OR SIMILAR ,IN ANY OUTLET PIPE ONCE PIPES INSTALLED, ,OR INSTALL A SACRIFICIAL PIPE FROM BASIN THROUGH WALL TO EXTERNAL OUTLET POINT. THE VALVE SHALL BE CONNECTED TO A RISER MADE FROM SLOTTED PIPE IN THE BASIN. THE VALVE MAY BE OPENED ONCE CAPTURED WATER MEETS WATER QUALITY REQUIREMENTS .THE FINAL SETUP FOR TEMPORARY INTERNAL OUTLET STRUCTURES TO BE CONFIRMED PRIOR TO CONSTRUCTION WITH COUNCIL. THIS SETUP WILL ENABLE DISCHARGE OF TREATED WATER FROM SITE WITHOUT NEED FOR PUMPING.
52. A SEDIMENT STORAGE LEVEL MARKER POST SHALL BE WITH A CROSS MEMBER SET JUST BELOW THE TOP OF THE SEDIMENT STORAGE ZONE (AS SPECIFIED ON THE APPROVED ESCP). AT LEAST A 75MM WIDE POST SHALL BE FIRMLY SET INTO THE BASIN FLOOR.
53. THE SITE MANAGER SHALL OBTAIN THE RELEVANT APPROVALS FROM THE RELEVANT ORGANISATIONS TO DISCHARGE TREATED WATER FROM ANY EXISTING BASINS. ORGANISATIONS MAY INCLUDE , BUT NOT BE LIMITED TO, HUNTER WATER , AND COUNCIL.
54. WHERE MORE THAN ONE STAGE IS TO BE DEVELOPED AT ONE TIME, OR BEFORE THE PRECEDING STAGE IS COMPLETE ,THE SEDIMENT BASIN(S) FOR THESE STAGES SHALL HAVE SUFFICIENT CAPACITY TO CATER FOR ALL AREA DIRECTED TO THE BASIN(S).

55. PRIOR TO ANY FORECAST WEATHER EVENT LIKELY TO RESULT IN RUNOFF, ANY BASINS/TRAPS SHALL BE DEWATERED TO PROVIDE SUFFICIENT CAPACITY TO CAPTURE SEDIMENT LADEN WATER FROM THE SITE.
56. SUFFICIENT QUANTITIES OF CHEMICALS/AGEN TSTO TREAT CAPTURED WATER SHALL BE PLACED SUCH THAT WATER ENTERING THE BASIN MIXES WITH THE CHEMICALS/AGENTS AND IS CARRIED INTO THE BASIN TO SPEED UP CLARIFICATION.
57. ANY BASIN SHALL BE DEWATERED WITHIN THE X-DAY RAINFALL DEPTH USED TO CALCULATE THE CAPACITY OF THE BASIN, AFTER A RAINFALL EVENT.
58. SUFFICIENT QUANTITIES OF CHEMICALS/AGENTS TO TREAT TURBID WATER SHALL BE SECURELY STORED ON-SITE TO PROVIDE FOR AT LEAST THREE COMPLETE TREATMENTS OF ALL BASINS REQUIRING CHEMICALLY TREATMENT ONSITE.
59. PRIOR TO THE CONTROLLED DISCHARGE (E.G. DE-WATERING ACTIVITIES) FROM SITE INCLUDING EXCAVATION SAND/OR SEDIMENT BASINS, THE FOLLOWING WATER QUALITY OBJECTIVES SHALL BE ACHIEVED:
  - a) TOTAL SUSPENDED SOLIDS (TSS) TO A MAXIMUM 50 MILLIGRAMS/L;
  - b) WATER PH BETWEEN 6.5 AND 8.5, UNLESS OTHERWISE REQUIRED BY THE COUNCIL;
  - c) TURBIDITY (MEASURED IN NTUS) TO A MAXIMUM OF 60 NTU); AND
  - d) EC LEVELS NO GREATER THAN BACKGROUND LEVELS.
60. THE DEVELOPMENT AT APPROVAL MAY REQUIRE TESTING OF ADDITIONAL WATER QUALITY ELEMENTS PRIOR TO DISCHARGE ,E.G. INCLUDING BUT NOT LIMITED TO METALS, ORGANIC SUBSTANCES, CHEMICALS OR BACTERIOLOGICAL INDICATORS.
61. A SAMPLE OF THE RELEASED TREATED WATER SHALL BE KEPT ONSITE IN A CLEAR CONTAINER WITH THE SAMPLE DATE RECORDED ON IT
62. WATER QUALITY SAMPLES SHALL BE TAKEN AT A DEPTH NO LESS THAN 200MM BELOW THE WATER SURFACE OF THE BASIN.
63. NO ALUMINUM BASED PRODUCTS MAY BE USED TREAT CAPTURED WATER ONSITE WITHOUT THE PRIOR WRITTEN PERMISSION FROM AN APPROPRIATE COUNCIL OFFICER. THE APPLICANT SHALL HAVE A DEMONSTRATED ABILITY TO USE SUCH PRODUCTS CORRECTLY AND WITHOUT ENVIRONMENTAL HARM PRIOR TO ANY APPROVAL.
64. THE CHEMICAL/AGENT USED IN TYPE D AND TYPE F BASINS TO TREAT CAPTURED WATER CAPTURED IN THE BASIN SHALL BE APPLIED IN CONCENTRATION SUFFICIENT TO ACHIEVE COUNCIL'S WATER QUALITY OBJECTIVES WITHIN THE X-DAY RAINFALL DEPTH USED TO CALCULATE THE CAPACITY OF THE BASIN, AFTER A RAINFALL EVENT.
65. ALL MANUFACTURERS INSTRUCTION SHALL BE FOLLOWED FOR ANY CHEMICALS/AGENTS USED ONSITE, EXCEPT WHERE APPROVED BY THE RESPONSIBLE PERSON OR AN APPROPRIATE COUNCIL OFFICER.
66. THE APPLICANT SHALL ENSURE THAT ON EACH OCCASION A TYPE F OR TYPE D BASIN WAS NOT DE-WATERED PRIOR TO BEING SURCHARGED BY A FOLLOWING RAINFALL EVENT ,A REPORT IS PRESENTED TO AN APPROPRIATE COUNCIL OFFICER WITHIN 5 DAYS
67. IDENTIFYING THE CIRCUMSTANCE SAND PROPOSED AMENDMENTS ,IF ANY, TO THE BASIN'S OPERATING PROCEDURES.
68. SETTLED SEDIMENT SHALL BE REMOVED AS SOON AS REASONABLE AND PRACTICABLE FROM ANY SEDIMENT BASIN IF:
  - a) IT IS ANTICIPATED THAT THE NEXT STORM EVENT IS LIKELY TO CAUSE SEDIMENT TO SETTLE ABOVE THE BASIN'S SEDIMENT STORAGE ZONE, OR
  - b) THE ELEVATION OF SETTLED SEDIMENT IS ABOVE THE TOP OF THE BASIN'S SEDIMENT STORAGE ZONE, OR
  - c) THE ELEVATION OF SETTLED SEDIMENT IS ABOVE THE BASIN'S SEDIMENT MARKER LINE.
69. SCOUR PROTECTION MEASURES PLACED ON SEDIMENT BASIN EMERGENCY SPILLWAYS SHALL APPROPRIATELY PROTECT THE SPILLWAY CHUTE AND ITS SIDE BATTERS FROM SCOUR, AND SHALL EXTEND A MINIMUM OF 3M BEYOND THE DOWNSTREAM TOE OF THE BASIN'S EMBANKMENT.
70. SUITABLE ALL-WEATHER MAINTENANCE ACCESS SHALL BE PROVIDED TO ALL SEDIMENT CONTROL DEVICES.
71. MATERIALS ,WHETHER LIQUID OR SOLID, REMOVED FROM ANY ESC MEASURE OR EXCAVATION DURING MAINTENANCE OR DECOMMISSIONING S,HALL BE DISPOSED OF IN A MANNER THAT DOES NOT CAUSE ONGOING SOIL EROSION, WATER POLLUTION OR ENVIRONMENTAL HARM.
72. ALL SEDIMENT BASINS SHALL REMAIN FULLY OPERATIONAL LAT ALL TIMES UNTIL THE BASIN'S DESIGN CATCHMENTS ACHIEVES 70% GROUND COVER OR SURFACE STABILISATION ACCEPTABLE TO COUNCIL.
73. THE ESC MEASURES INSTALLED DURING THE DECOMMISSIONING AND REHABILITATION OF A SEDIMENT BASIN SHALL COMPLY WITH SAME STANDARDS SPECIFIED FOR THE NORMAL CONSTRUCTION WORKS.
74. A SEDIMENT BASIN SHALL NOT BE DECOMMISSIONED UNTIL ALL UP-SLOPE SITE STABILISATION MEASURES HAVE BEEN IMPLEMENTED AND ARE APPROPRIATELY WORKING TO CONTROL SOIL EROSION AND SEDIMENT RUNOFF
75. IMMEDIATELY PRIOR TO THE CONSTRUCTION N OF THE PERMANENT T STORMWATER TREATMENT DEVICE ,APPROPRIATE FLOW BYPASS CONDITIONS SHALL BE ESTABLISHED TO PREVENT SEDIMENT-LADEN WATER ENTERING THE DEVICE.

**REVEGETATION/STABILISATION**

75. TEMPORARY STABILISATION MAY BE ATTAINED USING VEGETATION ,NON REWETTABLE SOIL POLYMERS, OR PNEUMATICALLY APPLIED EROSION CONTROLS.
76. ALL CUT AND FILL EARTH BATTERS LESS THAN 3M IN ELEVATION SHALL BE TOPSOILED, AND GRASS SEEDED/HYDROMULCHE WIDITHIN 10 DAYS OF COMPLETION OF GRADING IN CONSULTATION WITH COUNCIL.
77. AT THE COMPLETION OF FORMATION IN ANY SECTION, ALL DISTURBED AREAS SHALL BE STABILISED IN ACCORDANCE WITH TIME LINES IN THE BLUE BOOK.
78. THE LMCC SEED MIX SHALL BE USED UNLESS STATED ON THE ESCP/SWMP.
79. THE PH LEVEL OF TOPSOIL SHALL BE APPROPRIATE TO ENABLE ESTABLISHMENT AND GROWTH OF SPECIFIED VEGETATION PRIOR TO INITIATING THE ESTABLISHMENT OF VEGETATION.
80. NON REWETTABLE BINDER SHALL BE USED IN ALL HYDROMULCH/HYDROSEED/POLYMER MIXES ON SLOPES OR WORKS ADJACENT TO A WATER COURSE.
81. SOIL AMELIORANTS SHALL BE ADDED TO THE SOIL IN ACCORDANCE WITH AN APPROVED LANDSCAPE PLAN, VEGETATION MANAGEMENT PLAN, AND/OR SOIL ANALYSIS.
82. SURFACE SOIL DENSITY, COMPACTION AND SURFACE ROUGHNESS SHALL BE ADJUSTED PRIOR TO SEEDING/PLANTING IN ACCORDANCE WITH AN APPROVED LANDSCAPE PLAN, VEGETATION MANAGEMENT PLAN, AND/OR SOIL ANALYSIS.
83. PROCEDURE S FOR INITIATING A SITE SHUTDOWN , WHETHER PROGRAMMER OR UN-PROGRAMMED ,SHALL INCORPORATE REVEGETATION OF ALL SOIL DISTURBANCES UNLESS OTHERWISE APPROVED BY COUNCIL. THE STABILISATION WORKS SHALL NOT RELY UPON THE LONGEVITY OF NON-VEGETATED EROSION CONTROL BLANKETS ,OR TEMPORARY SOIL BINDERS.

**SITE MONITORING AND MAINTENANCE**

84. THE APPLICANT SHALL ENSURE THAT APPROPRIATE PROCEDURE SAND SUITABLY QUALIFIED PERSONNEL ARE ENGAGED TO PLAN AND CONDUCT SITE INSPECTION SAND WATER QUALITY MONITORING THROUGHOUT THE CONSTRUCTION AND MAINTENANCE PHASE.
85. ALL ESC MEASURES SHALL BE INSPECTED AND ANY MAINTENANCE UNDERTAKEN IMMEDIATELY.
  - a) AT LEAST DAILY (WHEN WORK IS OCCURRING ON-SITE); AND
  - b) AT LEAST WEEKLY (WHEN WORK IS NOT OCCURRING ON-SITE); AND
  - c) WITHIN 24HRS OF EXPECTED RAINFALL; AND
  - d) WITHIN 18HRS OF A RAINFALL EVENT THAT CAUSES RUNOFF ON THE SITE.
86. WRITTEN RECORDS SHALL BE KEPT ONSITE OF ESC MONITORING AND MAINTENANCE ACTIVITIES CONDUCTED DURING THE CONSTRUCTION AND MAINTENANCE PERIODS, AND BE AVAILABLE TO COUNCIL OFFICERS ON REQUEST.
87. ALL ENVIRONMENTAL IRRELEVANT INCIDENTS SHALL BE RECORDED IN A FIELD LOG THAT SHALL REMAIN ACCESSIBLE TO ALL RELEVANT REGULATORY AUTHORITIES
88. ALL WATER QUALITY DATA, INCLUDING DATES OF RAINFALL, DATES OF TESTING, TESTING RESULTS AND DATES OF WATER RELEASE ,SHALL BE KEPT IN AN ON-SITE REGISTER. THE REGISTER IS TO BE MAINTAINED UP TO DATE FOR THE DURATION OF THE APPROVED WORKS AND BE AVAILABLE ON-SITE FOR INSPECTION BY ALL RELEVANT REGULATORY AUTHORITIES ON REQUEST.
89. AT NOMINATED INSTREAM WATER MONITORING SITES, A MINIMUM OF 3 WATER SAMPLES SHALL BE TAKEN AND ANALYSED ,AND THE AVERAGE RESULT USED TO DETERMINE QUALITY

**INSTREAM WORKS**

90. ALL INSTREAM WORKS (INCLUDING IN OR ADJACENT TO WATERCOURSES NATURAL OR MANMADE, FLOWING OR NOT) SHALL BE CARRIED OUT IN ACCORDANCE WITH THE IECA WHITE BOOKS

REVISIONS							This drawing is <b>not</b> approved for construction unless signed.			260 MAITLAND ROAD, MAYFIELD PO BOX 4105 KOTARA EAST 2305  0402 915 549 mathew@drbengineering.com.au  ABN 64 625 755 482	CLIENT <b>SNL BUILDING &amp; CONSTRUCTIONS</b>	PROJECT <b>RESIDENTIAL DEVELOPMENT                  38 POWER STREET,                  ISLINGTON, NSW 2296</b>	DRAWING STATUS DEVELOPMENT APPROVAL		SHEET SIZE A1
	B	23.01.23	C.T.	B.R.	M.M.	RE-ISSUED FOR DEVELOPMENT APPROVAL	SCALE						DRAWN C.T.		
	A	30.09.22	C.T.	B.R.	M.M.	ISSUED FOR DEVELOPMENT APPROVAL	PROJECT REF No. 222225						DRAWING No. CIV-021	REVISION B	
	REV	DATE	DRN	CHK	APP	DRAWING STATUS									

<p><b>PLAN FORM 6 (2019)</b></p>	<p><b>DEPOSITED PLAN ADMINISTRATION SHEET</b></p>	<p>Sheet 1 of 2 sheet(s)</p>
<p style="text-align: right;">Office Use Only</p> <p>Registered:</p> <p>Title System:</p>		<p style="text-align: right;">Office Use Only</p> <p style="text-align: center;"><b>PRELIMINARY ONLY</b></p> <p>THIS PLAN IS PRELIMINARY ONLY AND IS SUBJECT TO COUNCIL APPROVAL, FINAL DESIGN, CONSTRUCTION, FINAL SURVEY AND REGISTRATION AT THE LAND REGISTRY SERVICES.</p>
<p><b>PLAN OF SUBDIVISION OF LOT 22 SECTION B D.P.2331 AND LOT 1 D.P.104831</b></p>		<p>LGA: NEWCASTLE</p> <p>Locality: ISLINGTON</p> <p>Parish: NEWCASTLE</p> <p>County: NORTHUMBERLAND</p>
<p style="text-align: center;">Survey Certificate</p> <p>I, <u>TIMOTHY R. RHEINBERGER</u>  of <u>DELFS LASCELLES CONSULTING SURVEYORS PTY LIMITED</u>  a surveyor registered under the Surveying and Spatial Information Act 2002, certify that:</p> <p>*(a) The land shown in the plan was surveyed in accordance with the Surveying and Spatial Information Regulation 2017, is accurate and the survey was completed on ....., or</p> <p>*(b) The part of the land shown in the plan (*being/*excluding ** .....) was surveyed in accordance with the Surveying and Spatial Information Regulation 2017, the part surveyed is accurate and the survey was completed on..... the part not surveyed was compiled in accordance with that Regulation, or</p> <p>*(c) The land shown in this plan was compiled in accordance with the Surveying and Spatial Information Regulation 2017.</p> <p>Datum Line: .....</p> <p>Type: *Urban/*Rural</p> <p>The terrain is *Level-Undulating / *Steep-Mountainous.</p> <p>Signature: ..... Dated: .....</p> <p>Surveyor Identification No: <u>SU008731</u>  Surveyor registered under the Surveying and Spatial Information Act 2002</p> <p>*Strike out inappropriate words.  **Specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey.</p>		<p style="text-align: center;">Crown Lands NSW/Western Lands Office Approval</p> <p>I, ..... (Authorised Officer) in approving this plan certify that all necessary approvals in regard to the allocation of the land shown herein have been given.</p> <p>Signature: .....</p> <p>Date: .....</p> <p>File Number: .....</p> <p>Office: .....</p>
<p>Plans used in the preparation of survey/compilation.</p> <p>D.P. 2331  D.P. 104831</p>		<p style="text-align: center;">Subdivision Certificate</p> <p>I, .....  *Authorised Person/*General Manager/*Accredited Certifier, certify that the provisions of s.6.15 of the Environmental Planning and Assessment Act 1979 have been satisfied in relation to the proposed subdivision, new road or reserve set out herein.</p> <p>Signature: .....</p> <p>Accreditation number: .....</p> <p>Consent Authority: .....</p> <p>Date of endorsement: .....</p> <p>Subdivision Certificate number: .....</p> <p>File number: .....</p> <p>* Strike through if inapplicable</p>
<p>Surveyor's Reference: 22566_DRAFT</p>		<p>Signatures, Seals and Section 88B Statements should appear on  <b>PLAN FORM 6A</b></p>

Office Use Only

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Registered:

# PRELIMINARY ONLY

**PLAN OF SUBDIVISION OF LOT 22  
SECTION B D.P.2331 AND LOT 1  
D.P.104831**

THIS PLAN IS PRELIMINARY ONLY AND IS SUBJECT TO COUNCIL APPROVAL, FINAL DESIGN, CONSTRUCTION, FINAL SURVEY AND REGISTRATION AT THE LAND REGISTRY SERVICES.

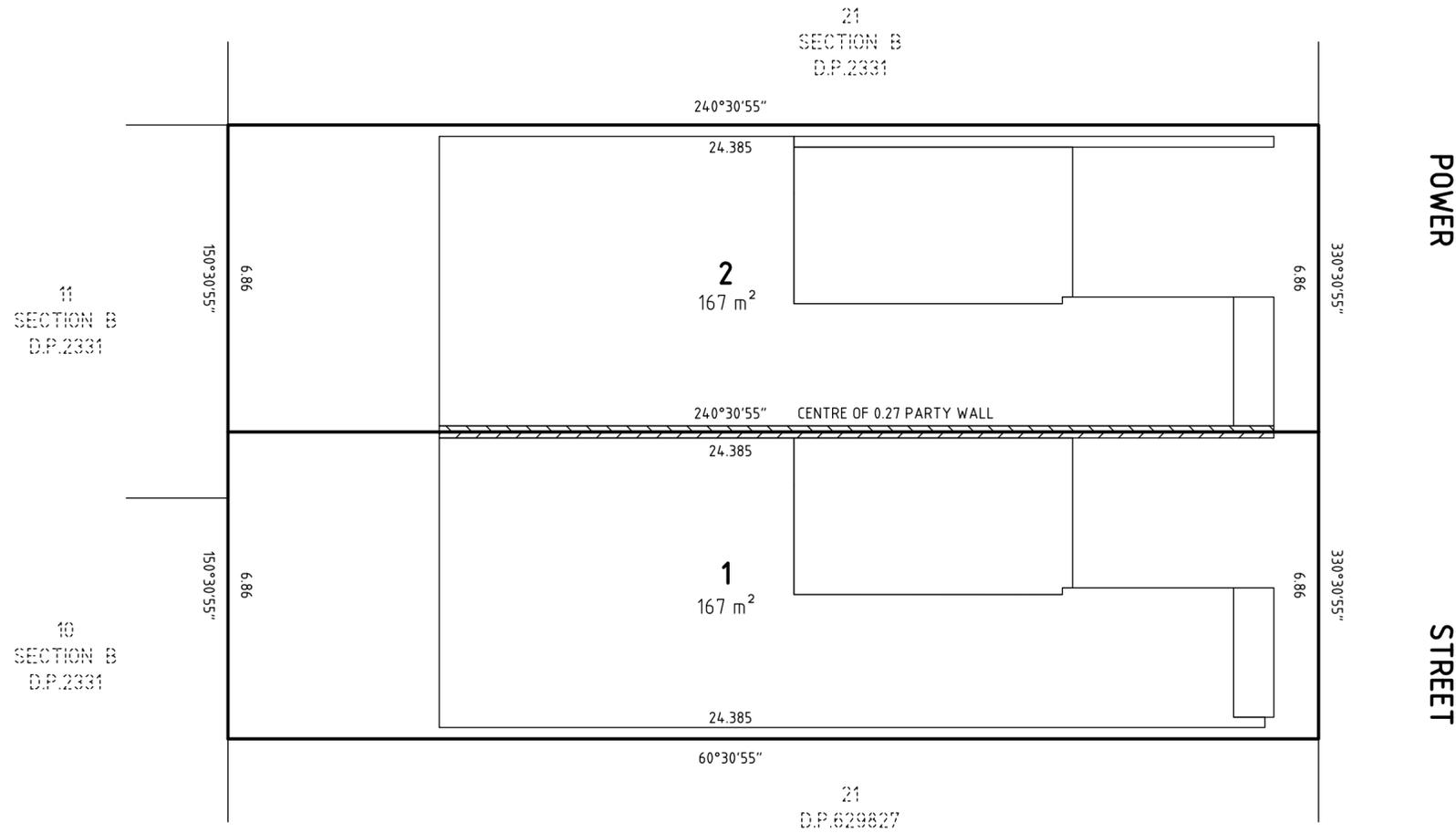
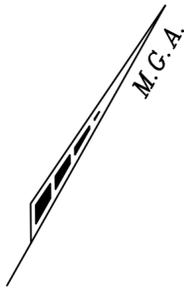
- This sheet is for the provision of the following information as required:
- A schedule of lots and addresses - See 60(c) *SSI Regulation 2017*
  - Statements of intention to create and release affecting interests in accordance with section 88B *Conveyancing Act 1919*
  - Signatures and seals - See 195D *Conveyancing Act 1919*
  - Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets.

Subdivision Certificate number : .....

Date of Endorsement : .....

LOT	STREET No.	STREET NAME	STREET TYPE	LOCALITY
1				
2				

If space is insufficient use additional annexure sheet



**PRELIMINARY ONLY**

**DRAWING NOTE**

THIS PLAN IS PRELIMINARY ONLY AND IS SUBJECT TO COUNCIL APPROVAL, FINAL DESIGN, CONSTRUCTION, FINAL SURVEY AND REGISTRATION AT THE LAND REGISTRY SERVICES.

THIS PLAN HAS BEEN PREPARED USING PLANS PROVIDED BY:  
 COMPANY: SNL BUILDING  
 DRAWING REFERENCE: 38 POWER STREET, ISLINGTON  
 REVISION: 7 DATE: 14.11.2022

<p>SURVEYOR                  Name: TIMOTHY R. RHEINBERGER                  Date: 09.01.2023                  Reference: 22566_DRAFT</p>	<p>PLAN OF SUBDIVISION OF LOT 22 SECTION B D.P.2331                  AND LOT 1 D.P.104831</p>	<p>LGA: NEWCASTLE                  Locality: ISLINGTON                  Reduction Ratio 1:100                  Lengths are in metres.</p>	<p>REGISTERED</p>	<p>D.P.</p>
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# ***Arborist Report***

**Client: Mrs Ranieri**

Address: 38 Power Street,

ISINGTON N.S.W 2296



## ***Bradley Magus***

Valuation Solutions PTY LTD

Trading as ***Abacus Tree Services***

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Tafe RTO Provider Number: 90002

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## 1.0 *Executive Summary*

- It is recommended that Trees 2 - 5 (6 in total) be retained and incorporated into the development. Conditions and recommendations are to be outlined in section 7 of the report.
- It is recommended that Trees 1 & 6 be removed before commencement of building works on site. Conditions and recommendations are to be outlined in section 7 of the report.

## 2.0 Arborist Details

<p><b>Bradley Magus</b></p> <p><b>Contact Details:</b></p> <p>P.O Box 333 Newcastle 2300 Ph: 0425 203 049</p> <p>Email: <a href="mailto:abacustrees@gmail.com">abacustrees@gmail.com</a> or <a href="mailto:bradmagus1@bigpond.com">bradmagus1@bigpond.com</a> Web: <a href="http://www.abacustreeservices.com">www.abacustreeservices.com</a></p>	<p><b>Qualifications</b></p> <ol style="list-style-type: none"> <li>1. Diploma Horticulture (1993)</li> <li>2. Bachelor of Horticulture Science (1996)</li> <li>3. Masters Land Economics (2002)</li> <li>4. Diploma Horticulture (Arboriculture) (AQF 5) 2007 (Dux)</li> <li>5. International Society of Arboriculture Certified Arborist (2007)</li> <li>6. QTRA Assessor – 2011 &amp; 2013</li> </ol>
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## 2.1 Introduction

Abacus Tree Services was commissioned by Mrs Ranieri to assist in the preparation of an arborist report. An assessment was made on six (6) trees (Trees 1 – 6) located within the confines of 36 & 38 Power Street, Islington. There is in total six (6) trees located at 36 & 38 Power Street, Islington that were assessed as per the applicant's instructions.

The purpose of this report is to provide information and guidance to the applicant in relation to six (6) trees only. The information in this report is to be used in correlation with other reports identified by Newcastle City Council and will provide Newcastle City Council with a framework for determining the development application (D.A).

This report and its recommendations are based upon a physical site inspection undertaken on the 10 January 2023.

The photographs included in this report were taken at the time of the inspection on the 10 January 2023.

## 2.2 Aims of this report/Procedure

The aim of this report is to assess the health and condition of six (6) trees (Trees 1 - 6). The condition of the trees was assessed from ground level using the VTA (Visual Tree Assessment) method as outlined by Mattheck & Breloer (1999). The following criteria will be assessed within this report –

- An assessment of the dimensions (age, class, height and Diameter at Breast Height (D.B.H))
- An assessment of the health and condition of the trees;
- An assessment of the Useful Life Expectancy (U.L.E)
- Compilation of an appropriate report detailing the results of the above assessments
- Trees earmarked for retention to be assessed as per Australian Standards 4970-2009
- Hazard Rating, Recommendations for each tree

The (U.L.E) method of tree assessment, as outlined by Jeremy Barrell (1999) has been adopted within this report. U.L.E categories give an indication of the useful life expectancy anticipated for the tree that has been adopted for this report. Several factors are considered in determining this rating such as species, location, age, condition and health of the tree. The five U.L.E categories are outlined in detail within Appendix 2.

## 3.0 Disclaimer

This assessment has been prepared for the exclusive use of the applicant (Mrs Ranieri), for the preparation of a development application submission. Information in this report relates to six (6) trees (Trees 1 – 6) within the premises of 36 & 38 Power Street, Islington only and should not be used in conjunction with any other property.

This assessment was carried out from the ground, and covers what was reasonably able to be assessed and available to the assessor at the time of the inspection. The assessor carried out no aerial inspections. Information contained in this report covers only the trees that were examined and reflects the condition of the trees at the time of the inspection; furthermore the inspection was limited to a visual examination of the subject trees without dissection, excavation, probing or coring. Trees are living things and their condition will change over time. Therefore there is no guarantee that problems or deficiencies of the subject tree may not arise in the future.

### 3.1 Site Map

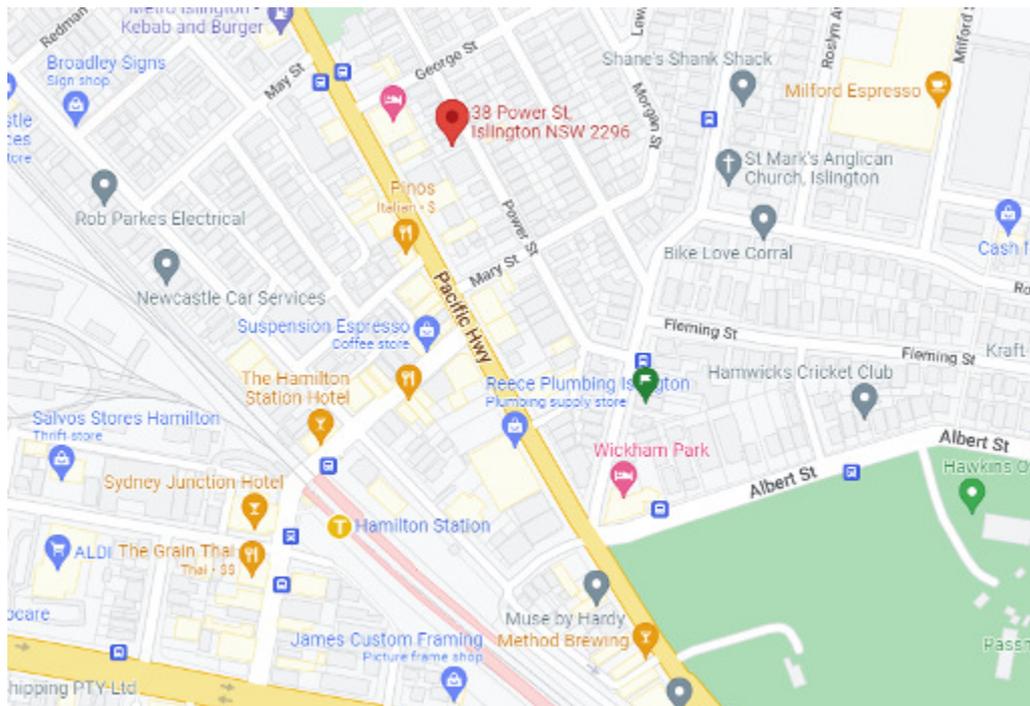


Figure 1

Location: All trees are located within 36 & 38 Power Street, Islington

Source: [www.googlemaps.com.au](http://www.googlemaps.com.au)

### 3.2 Site Description

Trees 1 – 6 are located wholly within 36 & 38 Power Street, Islington. The site is located in the municipality of Newcastle City Council. The species on site have been assessed against the requirements set out in Newcastle City Council's Urban Forestry Technical Manual (NCCUFTM). The species on site have been assessed against the requirements set out in Newcastle City Council's Local Environmental Plan (2012) pursuant to Section 5.9 & 5.9AA (repealed) & Development Control Plan (2012) & associated Technical Manual (Urban Forestry Technical Manual – UFTM). This report will assess but not limited to a tree retention value assessment in accordance with Section 4.1 of the UFTM. This report will define tree protection zone offsets and protection requirements in accordance with Section 7 of the UFTM. This report is prepared in accordance with Part A, Section 6 of the UFTM. Abacus Tree Services has assessed Part A (Private Trees), Part B (Public Trees) & Part C (Native Vegetation). All information is assessed per the requirements as set out within section 5.03 Tree Management. I have assessed the property against Schedule 5 (Environmental Heritage) within NCC LEP. The property is not listed in accordance with Part 1 (Heritage Items) and/or Part 2 (Heritage Conservation Area).

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© Abacus Tree Services Ph: 0425 203 049

Project: 38 Power Street, Islington

Client: Mrs Ranieri

Date: 20 January 2023

The subject property has also been assessed against the SEPP Policy (Biodiversity and Conservation) 2021. This property or council area is listed as being within Part 2 (Section 2.3) of the SEPP (Biodiversity and Conservation) 2021. All councils have items of local government and state heritage significance. These items are found in the NSW heritage website. The subject property has been assessed against the Heritage NSW database. In accordance with Heritage NSW listed items there are no listings (Items listed by Local Government & State Agencies) for the subject property. This also includes no trees of heritage significance for the subject property.

The site is set on a flat block with the immediate area being dominated by residential houses. The nearest major arterial road is the Pacific Highway. Trees 1 – 6 are located within the subject properties identified as 36 & 38 Power Street, Islington. The trees are located within close proximity to the subject property & proposed development.



Figure 2 – Location of subject property identified as 38 Power Street, Islington

## 4.0 *Tree Schedule*

Species & dimension requirements on Page 9. This page intentionally left blank

**Key:**

Tree No	Scientific Name	Common Name	DBH (MM)	Height (M)	AGE CLASS	Vigour	SPREAD N.E.S.W.	ULE	Comments
1	Callistemon viminalis	Bottlebrush	MS (170)	4	YM	G	1,2,2,1	2a	Symmetrical, LCR = 85 – 100%
2	Draceana marginata	Dragon Tree	MS (185)	4.5	YM	G	1,3,1,1	2a	Symmetrical, LCR = 85 – 100%
3	Plumeria rubra	Frangipani	MS (180)	3.5	YM	G	1,2,2,1	2a	Symmetrical, LCR = 85 – 100%
4	Callistemon viminalis	Bottlebrush	MS (160)	4.5	YM	G	1,2,2,2	2a	Located 2.4 metres to the neighbours' building, Symmetrical, LCR = 85 – 100%
5	Olea europea	Olive Tree	130,145	6	M	G	6,3,1,3	2d	Symmetrical, LCR = 85 – 100%
6	Alnus glutinosa	Black Alder	700	14	M	G	8,7,6,6	2d	Neighbours' Tree, Symmetrical, LCR = 85 – 100%. Located 0.05 metres to the neighbours' building.

Age class: Young = Y, Semi mature = SM, Mature = M, YM = Young Mature, Over mature = OM

DBH = Diameter at Breast Height LCR = Live Crown Ratio

Vigour = E = Excellent, G = Good, F = Fair, P = Poor, D = Dead, Do = Dormant

LDW = large deadwood over 40mm, MDW = Minor deadwood less than 40mm

N = north, E = east, W = west, S = south MS = multiple Stems

ULE = Useful Life Expectancy (See appendix 2 for guidelines)

MS = Multiple Stems S = Shrub

NCC = Newcastle City Council UFTM + Urban Forestry Technical Manual

SRZ = Structural Root Zone TPZ = Tree Protection Zone

## 4.1 *Trees & Impact on Development*

Trees are living organisms and their root systems play an integral role in stability and providing nutrient storage as well as water uptake. The majority of tree roots for Dicotyledons occur within the first metre of the soil. Therefore construction works can have a profound effect on their health and longevity as well as their structural stability. Tree distances from excavation works must be taken into consideration at the planning stage to ensure that the tree is not damaged.

There are several main factors that occur at the construction phase that can have a negative impact on the trees health and stability. These practices can include but are not limited to –

- Parking of vehicles and heavy machinery within the drip line of the tree.
- Stockpiling of materials within the drip line of the tree.
- Excavating within the drip line and damaging the structural root system.
- Raising soil levels in and around the base of the tree therefore reducing the trees ability for gaseous exchange.
- Damage to the tree due to heavy machinery and equipment resulting in large bark tears or loss of branches and scaffolds.

To reduce the effects of construction it is imperative to provide an area underneath the tree where no works are undertaken. The area where supervised works are undertaken is referred to as the structural root zone (SRZ). The S.R.Z/T.P.Z is an area where no to minimal activities listed above should occur. All trees require an S.R.Z/T.P.Z and will vary from species to species but for the purposes of this report the Australian Standards 4970 has now been adopted.

In conclusion the Australian Standards like similar methods for protecting trees is only a guide. To ensure the health and longevity of trees within construction sites it is imperative to provide a large protection zone taking into consideration that the tree will also grow over time. The greater area that can be put aside where no works occur will aid in the preservation of the tree. The activities listed above should be kept to a minimum and encroachment within the SRZ/TPZ will require the supervision by a qualified AQF 5 arborist. These impacts will be taken into consideration in the discussion & recommendations section of this report.

## 5.0 Discussion & Compliance to Australian Standards 4970 – 2009, 4373 – 2007 & Rural Fire Service (RFS) 10:50 Code

Abacus Tree Services has been approached by SNL Building on behalf of their client (Mrs Ranieri) to undertake an arborist (assessment) report on trees that come under the requirements of Newcastle City Council Urban Forestry Technical Manual (NCCUFTM) & trees that will be affected by the proposed development. There are six (6) trees that have been assessed within the subject properties identified as 36 & 38 Power Street, Islington. Trees 1 - 5 are located within the backyard of the subject property. Tree 6 is located in the premises of 32 – 36 Power Street, Islington. The applicant proposes to construct two (2) dwellings within the subject property identified as 38 Power Street, Islington (Appendix 1).

Abacus Tree Services has relied upon the sketch drawings provided by SNL Building (Drawing number – Site Plan DA004) to formulate distances and setbacks in accordance with Australian Standards 4970 – 2009. I have relied upon this information to be true and accurate. Any changes to the sketching and drawings will require the calculations to be reassessed in accordance with Australian Standards 4970 – 2009.

The table below represents the S.R.Z (Structural Root Zone) and TPZ (Tree Protection Zone) figures based on Australian Standards 4970 - 2009.

Tree No	SRZ (metres)	TPZ (metres)
1	1.55	2.04
2	1.61	2.22
3	1.50	2.16
4	1.51	2.00
5	1.51	2.28
6	3.01	8.40

All trees require a S.R.Z and a T.P.Z with Australian Standards 4970- 2009 being used as a guideline. Tree 1 has been given an SRZ and TPZ of 1.55 & 2.04 metres in accordance with Australian Standards 4970 – 2009. Tree 1 is located in the backyard of the subject property. Tree 1 is located 0.8 metres to the proposed dwelling. AS 4970 – 2009 indicates that the TPZ radius is taken from the centre of the trunk. This leaves a spatial separation of 0.88 metres from the centre of the trunk to the proposed dwelling. The overall loss of TPZ has been calculated at 22.92% that doesn't comply with AS 4970 – 2009. The incursion into the SRZ on one side has been calculated at 43.23%. The loss of SRZ will lead to instability of the tree. Tree 1 would be located inside of the proposed deck. Tree 1 is earmarked for removal before commencement of building works on site.



Figure 3 – showing the location of Trees 1 – 5 in the backyard of the subject property.

Tree 2 has been given an SRZ and TPZ of 1.61 & 2.22 metres in accordance with Australian Standards 4970 - 2009. Tree 2 is located 3 metres to the proposed deck and 4.3 metres to the proposed development. This species is located outside the scope of works. This species could be retained on the proviso that the existing soil levels are retained inside the TPZ. Conditions and recommendations will be outlined in section 7 of the report. Tree 2 is earmarked for retention and incorporation into the development.

Tree 3 has been given an SRZ and TPZ of 1.50 & 2.16 metres in accordance with Australian Standards 4970 - 2009. Tree 3 is located 2.4 metres to the proposed deck and 3.4 metres to the proposed development. This species is located outside the scope of building works. This species could be retained on the proviso that the existing soil levels are retained inside the TPZ. Conditions and recommendations will be outlined in section 7 of the report. Tree 3 is earmarked for retention and incorporation into the development.



Figure 4 – showing the location of the proposed development in red. The area as highlighted by the arrows are to be retained to protect the TPZ and existing soil levels during construction works. This area is to be cordoned off in order to protect the root plate and canopy.

Tree 4 has been given an SRZ and TPZ of 1.51 & 2.00 metres in accordance with Australian Standards 4970 - 2009. Tree 4 is located 2.2 metres to the proposed deck and 4.0 metres to the proposed development. This species is located outside the scope of works. This species could be retained on the proviso that the existing soil levels are retained inside the TPZ. Conditions and recommendations will be outlined in section 7 of the report. Tree 4 is earmarked for retention and incorporation into the development.

Tree 5 has been given an SRZ and TPZ of 1.79 & 2.28 metres in accordance with Australian Standards 4970 - 2009. Tree 5 is located 1.6 metres to the closest section of the deck and 3.7 metres to the proposed development. AS 4970 – 2009 indicates that the TPZ radius is taken from the centre of the trunk. This leaves a spatial separation of 1.72 metres from the centre of the trunk to the proposed patio. The overall loss of TPZ has been calculated at 5.78% that complies with AS 4970 – 2009. Tree 5 is earmarked for retention and incorporation into the development. This is based on the proviso that the existing soil levels can be retained between the development and the trunk inside the TPZ.

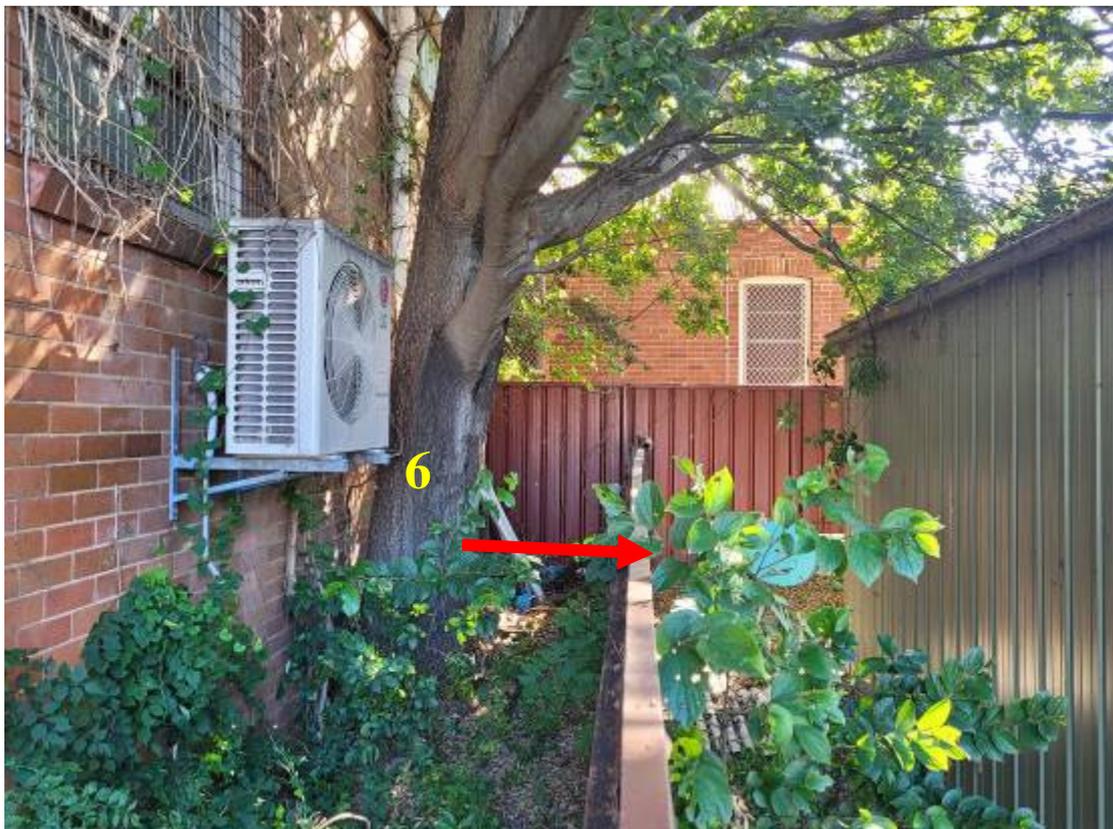


Figure 5 – showing the location of Tree 6 in the neighbour's property. Tree 6 is a mature species that is located 1.2 metres to the side boundary.

Tree 6 has been given an SRZ and TPZ of 3.01 & 8.40 metres in accordance with Australian Standards 4970 - 2009. Tree 6 is located 0.05 metres to the building as indicated in Figure 5. This species is located in the neighbour's property with a large section of the canopy extending into the subject property (backyard). Tree 6 is located 1.2 metres to the side boundary. Tree 6 is located an estimated 2.2 metres to the proposed development. AS 4970 – 2009 indicates that the TPZ radius is taken from the centre of the trunk. This leaves a spatial separation of 2.49 metres from the centre of the trunk to the proposed development. The overall loss of TPZ has been calculated at 18.37% that doesn't comply with AS 4970 – 2009. This figure is based on the proviso that the remaining section of backyard outside the scope of building works is maintained at existing soil levels. This species is earmarked for removal due to the distance and damage that is being caused to the neighbours dwelling and the layout to the proposed development. Tree 6 is earmarked for removal before commencement of building works on site.



Figure 6 – showing the canopy associated with Tree 6. Tree 6 will require pruning works to be completed in order to construct the proposed development. The removal of the concrete will have to be undertaken using non-mechanised methods inside the TPZ. This will ensure the root plate isn't removed.

## 5.2 Tree Retention Values

Tree retention and values are part of the process when evaluating trees within NCC. The significance and the assessment criteria are to be assessed within the 7 step criteria set out within Urban Forestry Technical Manual. Section 4.3 of the UFTM also highlights the guide to compensatory planting on development sites. This section also looks at the total area of crown projection to be removed and the formula used to determine the canopy area. Trees of moderate to high retention value if earmarked for removal on private land will require compensatory replanting in accordance with Section 4.1 of the UFTM.

Trees with very low to low retention values have not been considered for replacement as this reflects the comments as outlined in Section 4.0 of the UFTM. Section 4.0 of the UFTM highlights that where it is not feasible to retain a tree of moderate or high value on private land, compensatory planting will be required. A guide to compensatory planting range for trees of moderate or high value is provided in accordance with Table 2 of the UFTM.

Tree retention and values are part of the process when evaluating trees within NCC. The significance and the assessment criteria are to be assessed within the 7 step criteria set out within Urban Forestry Technical Manual. Trees 1 – 4 have canopy areas less than 40m<sup>2</sup>. These species have been given landscape significance ratings of 5. Trees 1 - 4 (4 in total) have a low retention value in accordance with the criteria assessed and modelled within the matrix. Trees 5 & 6 (2 in total) have been given a moderate retention value in accordance with the criteria assessed and modelled within the matrix. Trees with low retention value do not require replacement plantings in accordance with the UFTM. Trees 2 – 5 are being retained therefore require no replacement plantings. A sufficient landscape plan will therefore satisfy the requirements of NCC UFTM (Section 4.3). Tree 6 will require two (2) replacement plantings in accordance with NCC UFTM. Replacement plantings are to be a minimum of 45 litre pot size. Replacement plantings are to be *Hymenosporum flavum*, *Acmena smithii* or similar species.

Tree Retention Value – As per 7 step criteria (Urban Forestry Policy)

Tree	ULE	Landscape Significance	Retention Value
1	2a, 2d	5	L
5 & 6	2d	4	M

## 6.0 Conclusions

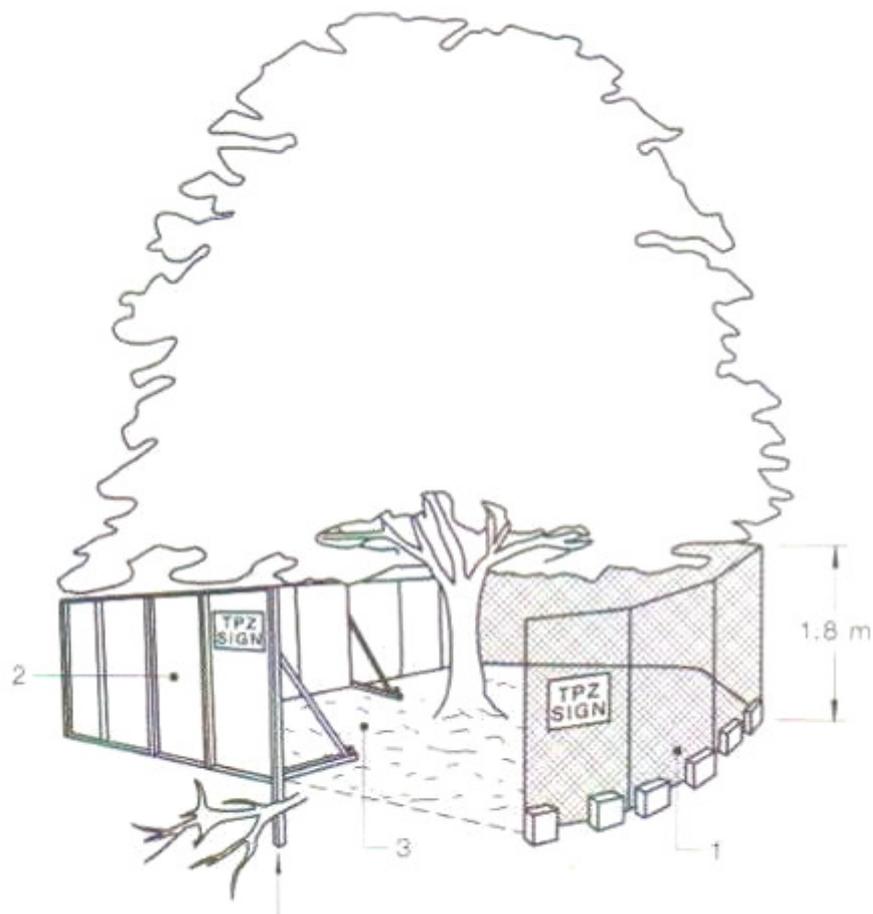
- Abacus Tree Services has been approached by SNL Building on behalf of their client (Mrs Ranieri) to undertake an arborist (assessment) report on trees that come under the requirements of Newcastle City Council Urban Forestry Technical Manual (NCCUFTM) & trees that will be affected by the proposed development. There are six (6) trees that have been assessed within the subject properties identified as 36 & 38 Power Street, Islington. Trees 1 - 5 are located within the backyard of the subject property. Tree 6 is located in the premises of 32 – 36 Power Street, Islington. The applicant proposes to construct two (2) dwellings within the subject property identified as 38 Power Street, Islington (Appendix 1). Trees 1 - 6 have been assessed in accordance with Australian Standards 4970 – 2009.
- Trees 1 – 6 are located wholly within 36 & 38 Power Street, Islington. The site is located in the municipality of Newcastle City Council. The species on site have been assessed against the requirements set out in Newcastle City Council’s Urban Forestry Technical Manual (NCCUFTM). The species on site have been assessed against the requirements set out in Newcastle City Council’s Local Environmental Plan (2012) pursuant to Section 5.9 & 5.9AA (repealed) & Development Control Plan (2012) & associated Technical Manual (Urban Forestry Technical Manual – UFTM). Abacus Tree Services has assessed Part A (Private Trees), Part B (Public Trees) & Part C (Native Vegetation). All information is assessed per the requirements as set out within section 5.03 Tree Management. I have assessed the property against Schedule 5 (Environmental Heritage) within NCC LEP. The property is not listed in accordance with Part 1 (Heritage Items) and/or Part 2 (Heritage Conservation Area). This report will assess but not limited to a tree retention value assessment in accordance with Section 4.1 of the UFTM. This report will define tree protection zone offsets and protection requirements in accordance with Section 7 of the UFTM. This report is prepared in accordance with Part A, Section 6 of the UFTM.
- The subject property identified as 38 Power Street, Islington is not located in a Rural Fire Service (RFS) 10:50 area. Therefore all trees have been assessed in accordance with council requirements with no exemptions under RFS 10:50 legislation. The search was undertaken on the 20 January 2023. Rules and regulations in relation to the RFS 10:50 can change and it is therefore up to the applicant to ensure they comply with the 10:50 code and any updates that may occur.

- Protection fencing for Trees 2 - 5 (4 in total) has been considered due to the proximity to the proposed development. The fencing will also protect the root plate during construction works. Trees 2 - 5 will require retention in accordance with Australian Standards 4970 – 2009. Protection fencing has also been considered in accordance with the UFTM (Part A – Section 4.5 & Section 7.0).
- Protection fencing for all the TPZ is impractical as this would take up majority of the backyard. Protection fencing for all areas of the backyard that is outside the building works will be undertaken to minimise damage to the tree.
- Trees 2 - 5 have the potential for future growth and therefore the canopy and root plate have the potential for future growth. All measures have been taken to minimise damage to the proposed buildings and hardstand areas however future growth has the potential to cause damage to the proposed buildings and/or hardstand areas.
- The applicant has therefore assessed all trees within 5 metres of the proposed development. This includes all trees on neighbouring properties within 5 metres of the proposed development. The applicant has assessed all trees necessary for the development to meet the requirements of NCC UFTM & Australian Standards 4970 – 2009.
- In order for the development to proceed in its current format will require the removal of Trees 1 & 6 (2 in total). This includes all trees inside the proposed development, hardstand areas and those that do not pass the requirements of AS 4970 – 2009. Trees 2 - 5 (4 in total) can be retained and incorporated into the development. Tree 6 has not been considered for retention due to the proximity to the existing dwelling. There is the potential that this species is considered exempt as it is within 3 metres to the existing dwelling on the proviso that it meets all other council requirements. Conditions and recommendations in relation to retained trees will be outlined in section 7 of the report.
- Permission will be required from the owner of 36 Power Street, Islington before Tree 6 is removed.

## 7.0 Recommendations

- It is recommended that Mrs Ranieri embark on a management program for six (6) trees (Trees 1 – 6) before commencement of the proposed building and constructions works as follows:
- It is recommended that Trees 1 & 6 (2 in total) be removed immediately (before commencement of building works) by a qualified arborist (minimum certificate 2 in arboriculture). It is recommended that professional indemnity and public liability insurances be current and sighted before commencement of works begin. The level of cover has to be one in agreement between Mrs Ranieri and the arborist.
- It is recommended that Trees 2 - 5 (4 in total) be retained and incorporated into the development. It is recommended that no change to the soil profile occur between the trunk of Trees 2 – 5 and the proposed deck. This includes retaining this section of the existing grass during the construction phase.
- All underground services are to be outside the TPZ of Trees 2 – 5.
- It is recommended that all debris and waste on site that is located within the TPZ (2 – 5) of retained trees be removed by non-mechanised methods being wheel barrow and shovel and/or similar method.
- It is recommended that protection measures be put in place that aid in the preservation of Trees 2 - 5 (4 in total). It is recommended that 1.8 metre inter locking chain wire fencing be installed before commencement of building works on site as indicated in Figure 7. Protection fencing is to be installed to within 0.2 metres of the proposed deck inside the TPZ of Trees 2 – 5. The protection fencing will be outlined in Figures 7 & 8. Protection fencing is to be installed before commencement of all civil & building works and remain in place until the release of the occupation certificate.
- It is recommended that all civil contractors that enter the site are made aware of the importance of preserving Trees 2 - 5 and understand the tree protection measures that are put in place to preserve Trees 2 - 5.
- All stockpile sites to be maintained a minimum 3 metres away from the trunk of Trees 2 – 5.
- It is recommended that all parking of vehicles and machinery be kept outside of the fenced areas at all times. Machinery can be placed on the existing concrete during construction works. Once the driveway is removed than no machinery or vehicles are allowed within the TPZ of Trees 2 – 5.

- This report is not for publication to the internet and submission of this report in the submission phase set out by Council is to be taken down upon completion of the development application.



- Figure 7 – showing the proposed fencing that is to be put in place before the commencement of building works on site (Trees 2 - 5 only).  
Source: Australian Standards 4970 - 2009

**Bradley Magus** (Member ISAAC & LGTRA)  
 Consulting Arborist/Certified Arborist (ISAAC 2007)  
 Diploma in Horticulture (Arboriculture) (AQF 5) (Dux)  
 Bachelor of Horticulture Science

## 8.0 References

AS4373-2007 Pruning of Amenity Trees. Standards Australia

AS 4970 – 2009 Protection of trees on development sites

Clark R.J & Matheny N (1998) Trees & Development – A technical guide to Preservation of trees during land development: International Society of Arboriculture

Mattheck C., Breloer, (1999) The Body Language of Trees – a handbook for failure analysis 5<sup>th</sup> ed., London: The Stationery Office, U.K

### Internet Sites

[www.googlemaps.com.au](http://www.googlemaps.com.au)

[www.heritagensw.gov.au](http://www.heritagensw.gov.au)

[www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)

[www.ncc.nsw.gov.au](http://www.ncc.nsw.gov.au)

[www.planningportal.nsw.gov.au](http://www.planningportal.nsw.gov.au)

9.0 APPENDIX 1 Site Maps

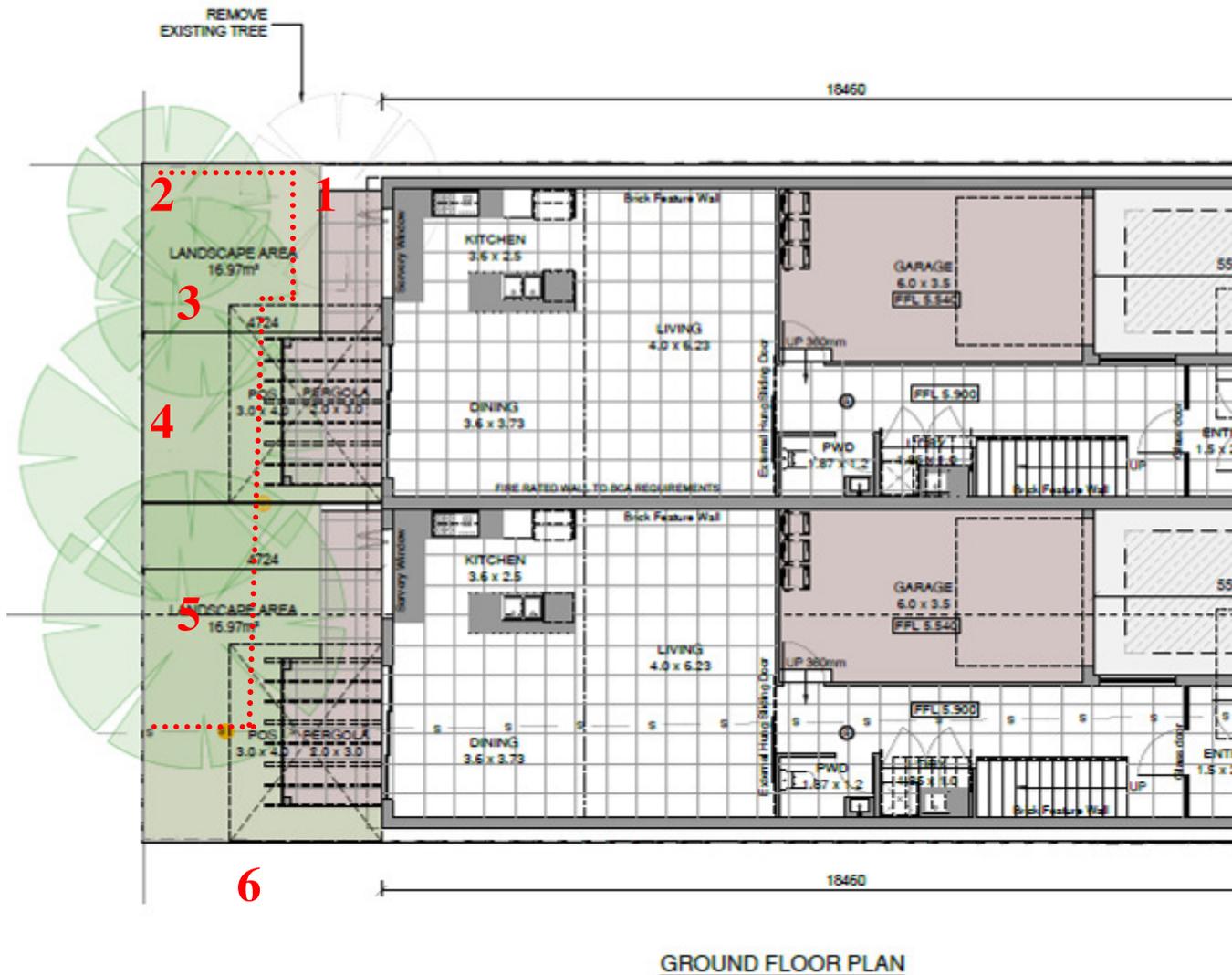


Figure 8 - Close up of the subject property and canopy area of Trees 1 - 6. The fencing is highlighted in red that is to span along the back of the property within 0.2 metres of the proposed deck. This area is to be devoid of machinery and vehicles. No earthworks or change in the soil profile is to occur in this zone. Bearers and joists are to be used for the deck and building inside the TPZ. Not to scale  
 Source: SNL

## **APPENDIX 2 U.L.E (Useful Life Expectancy) Categories and Subgroups**

### **Useful Life Expectancy – Classification**

#### **1. Long ULE > 40 Years**

- a. Structurally sound and can accommodate future growth
- b. Long term potential with minor remedial treatment
- c. Trees of special significance which warrant extra care

#### **2. Medium ULE of 15-40years**

- a. Will live between 15 – 40 years
- b. Will live for more than 40 years but would be removed for safety or other reasons
- c. May live for more than 40 years but will interfere with more suitable specimens and need removal eventually
- d. More suitable for retention in the medium term with some remedial care

#### **3. Short ULE of 5-15 years**

- a. Trees that may only live between 5 – 15 more years
- b. May live for more than 15 years but would need removal for safety or other reasons
- c. Will live for more than 15 years but will interfere with more suitable specimens or provide space for replacement plantings
- d. Require substantial remedial care but are only suitable for short term retention

#### **4. Remove tree within 5 years**

- a. Dead, dying or seriously diseased
- b. Dangerous trees through instability or loss of adjacent trees
- c. Structural defects such as cavities
- d. Damaged that are clearly not safe to retain
- e. May live for more than 5 years but will need replacement to prevent interference or make space for more suitable trees
- f. May or are causing damage to structures
- g. That will become dangerous

#### **5 Trees suitable to transplant**

- a. Small trees can be reliably moved or replaced
- b. Young trees between 5 – 15 years
- c. Trees that have been regularly pruned to control growth

## APPENDIX 3

## Notes on Tree Assessment

Key	Criteria	Comments
<b>Tree no</b>		
<b>Species</b>	Relates to the six on the site plan	
<b>Remnant /planted Self Sown</b>	May be coded – See Key for details	
<b>Special Significance</b>	A – Aboriginal C- Commemorative Ha- Habitat Hi- Historic M- Memorial R- Rare U- Unique form O- Other	May require specialist knowledge
<b>Age Class</b>	Y- Young- Recently Planted S-Semi mature (<20% of life expectancy) M- Mature (20-80% of life expectancy) O- Over mature (>80% of life expectancy)	
<b>Height</b>	In Metres	
<b>Spread</b>	Average diameter of canopy in metres	
<b>Crown Condition</b>	Overall vigour and vitality 0 – Dead 1 – Severe decline (<20% canopy, major deadwood 2 – Declining 20-60% canopy density, twig dieback 3- Average/low vigour (60-90% canopy density, twig dieback) 4- Good (90-100% crown cover, little or no dieback or other problems) 5- Excellent (100% crown cover, no deadwood or other problems	
<b>Failure Potential</b>	Identifies the most likely failure and rates the likelihood that the structural defects will result in failure within the inspection period. 1- Low – Defects are minor (eg dieback of twigs, small wounds with good wound development) 2 – Medium – Defects are present and obvious egg Cavity encompassing 10-25% of the circumference of the trunk) 3 High- Numerous and/or significant defects present (eg cavity encompassing 30-50% of the circumference of the trunk, major bark inclusions) 4- Severe- Defects are very severe (eg fruiting	Requires specialist knowledge

	bodies, cavity encompassing more than 50% of the trunk)	
<b>Size of defective part</b>	Rates the size of the part most likely to fail. The larger the part that fails the greater the potential for damage. 1- Most likely failure less than 150mm in diameter 2- Most likely failure 150-450mm in diameter 3- Most likely failure 450-750mm in diameter 4- Most likely failure more than 750mm in diameter	
<b>Target rating</b>	Rates the use and occupancy that would be struck by the defective part: 1. Occasional use (jogging, cycle track 2. Intermittent use (e.g picnic area, day use parking 3. Frequent use, secondary structure (eg seasonal camping, storage facilities) 4. Constant use structures (year round use for a six of hours each day, residences)	
<b>Hazard rating</b>	Failure potential + size of part + target rating Add each of the above sections for a six out of 12	The final six identifies the degree of risk. The next step is to determine a management strategy. A rating in this column does not condemn a tree but may indicate the need for more investigation and a risk management strategy.
<b>Root Zone</b>	C-Compaction D- Damaged/wounded roots E- Exposed roots Ga- Tree in graded bed Gi- Girdled roots Gr- Grass K-Kerb close to tree L+- Raised soil level L- Lowered soil level M- Mulched Pa- Paving concrete bitumen	

	Pr- Roots pruned O-Other	
<b>Defects</b>	B-Borers C-Cavity D-Decay Dw-Deadwood E-Epicormics I-Inclusions L- Lopped LDCMP- Leaf damage by chewing mouthpiece insects M- Mistletoe/parasites MBA- Multi branch attachments PD- Parrot damage PFS- Previous failure sites S-Splits/Cracks T-Termites TL- Trunk lean TW- Trunk wound O-Other	
<b>Services/adjacent structures</b>	Bs- Bus stop Bu- Building within 3 metres Hvo- High voltage open wire construction Hvb- High voltage bundled (ABC) Lvo- Low voltage open wire construction Lvb- Low voltage bundled (ABC) Na- No services above Nb- No services below ground Si- Signage SL- Street light T- Transmission U- Underground services O- Other	More than one of these may apply



**ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER**

**DAC 26/04/23 - 38 POWER STREET ISLINGTON - DA2022/01239 -  
SEMI-DETACHED DWELLINGS - INCLUDING DEMOLITION OF  
EXISTING DWELLING AND BOUNDARY ADJUSTMENT**

**ITEM 7.2      Attachment B:      Draft Schedule of Conditions**

**DISTRIBUTED UNDER SEPARATE COVER**

**Application No:** DA2022/01239

**Land:** Lot 1 DP 104831 & Lot 22 Sec B DP 2331,

**Property Address:** 38 Power Street Islington NSW 2296

**Proposed Development:** Semi-detached dwellings - including demolition of existing dwelling and boundary adjustment

**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.

<b>Plan No / Supporting Document</b>	<b>Reference / Version</b>	<b>Prepared by</b>	<b>Dated</b>
Demolition Plan	A-DA003 Rev 8	SNL Building	24/01/2023
Site Plan	A-DA004 Rev 8	SNL Building	24/01/2023
Ground Floor Plan	A-DA005 Rev 8	SNL Building	24/01/2023
Upper Floor Plan	A-DA006 Rev 8	SNL Building	24/01/2023
Elevations	A-DA007 Rev 8	SNL Building	24/01/2023
Elevations	A-DA008 Rev 8	SNL Building	24/01/2023
Typical Section	A-DA009 Rev 8	SNL Building	24/01/2023
Civil Works Plan	CIV-010 Rev B	DRB Consulting Engineers	23/01/2023
Erosion & Sediment Control Plan & Details	CIV-020 Rev B	DRB Consulting Engineers	23/01/2023
Erosion & Sediment Control Notes	CIV-021 Rev B	DRB Consulting Engineers	23/01/2023
Plan of Subdivision of Lot 22 Section B DP2331 and Lot 1 DP104831	22566_DRAFT	Timothy R. Rheinberger	09/01/2023
Arborist Report	Not provided	Abacus Tree Services	20/01/2023
BASIX Certificate	1344192M	Building Sustainability Assessments	05/10/2022

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**

2. 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*. The consent is to be obtained, or other satisfactory arrangements confirmed in writing from the City of Newcastle, before the issue of a Construction Certificate.
3. The floor level of habitable areas all proposed buildings or building additions is to be verified on plans for a Construction Certificate application to be 5.95m Australian Height Datum. The minimum floor level of the garages is 5.54m AHD.
4. The whole of the proposed structure below known flood level (5.6m Australian Height Datum) is to be constructed in materials and finishes that are resistant to damage from floodwaters/tidal waters. Any new machinery or equipment, electrical circuitry or fitting, storage unit or similar items likely to be damaged by floodwaters/tidal waters are to be installed above the said height, or alternatively be of materials and functional capability resistant to the effects of floodwaters/tidal waters. Details are to be included in documentation for a Construction Certificate application.
5. All stormwater runoff from the proposed development is to be managed in accordance with the requirements of Element 7.06 '*Stormwater*' of Newcastle Development Control Plan 2012, the associated Technical Manual and *AS/NZS 3500.3 Plumbing and drainage Part 3 Stormwater drainage*, as indicated on the stormwater management concept plan prepared by DRB Consulting Engineers (Dwg no. CIV-001, CIV-010, CIV-020, CIV-021, REV B, dated 23/01/2023). Full details are to be included in documentation for a Construction Certificate application.
6. Roof water from the proposed new work is to be directed to the proposed water tank for each dwelling (total of 2) with a minimum capacity of 5,000 litres per tank per dwelling and being reticulated to any new toilet cisterns and cold water washing machine taps, with a mains water top up being installed to maintain between 10% and 15% of the tank capacity. Alternatively, an electronically activated mechanical valve device is to be installed to switch any new toilet cisterns and laundry taps to mains water when the tank falls below 10% capacity. The water tank and plumbing is to be designed in accordance with the Plumbing Code of Australia (National Construction Code Volume 3). Full details are to be included in documentation for a Construction Certificate application.
7. Overflows from the roof water tank and any additional discharge controls (if required) are to be directed to City of Newcastle's drainage system by means of an inter-allotment drainage line or underground pipe directly to the street gutter. Details are to be included in documentation for a Construction Certificate application.
8. All new impervious surfaces, including driveways and paved areas are to be drained to the nominated discharge controls. Details are to be included in documentation for a Construction Certificate application.
9. The car parking and vehicular access are to be designed to comply with the relevant provisions of *AS/NZS 2890 Parking facilities*. Details are to be included in documentation for a Construction Certificate application.
10. All proposed driveways and parking bays are to be constructed with a basecourse of a depth to suit design traffic and be sealed with either bitumen seal, asphaltic concrete, concrete or interlocking pavers. Details are to be included in documentation for a Construction Certificate application.
11. The proposed garage door openings are to have a minimum clear width of 3m. Details are to be included in documentation for a Construction Certificate application.
12. Kerbing or dwarf walls having a minimum height of 100mm are to be constructed along the edge of all garden or lawn areas adjacent to driveways and parking bays, sufficient to discourage the encroachment of vehicles thereon. Details are to be included in documentation for a Construction Certificate application.

13. Letterboxes, landscaping and any other obstructions to visibility are to be kept clear of a 2.0m by 2.5m splayed area within the property boundary, each side of the driveway entrance, or limited to 1.2m in height in that area, in accordance with *AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking*. Details are to be included in documentation for a Construction Certificate application.
14. The developer is to design and construct the following works in connection with the proposed development within the Power Street public road reserve, adjacent to the site, at no cost to the City of Newcastle and in accordance with City of Newcastle's guidelines and design specifications:
  - Associated drainage works,
  - Two residential vehicular crossings

Engineering design plans and specifications for the works to be undertaken within the public road reserve are to be prepared by a practising professional engineer with experience and competence in the related field and submitted to the City of Newcastle for approval pursuant to Section 138 of the *Roads Act 1993*.

15. A detailed electrical plan of all off-street car parking spaces must be prepared by a suitably qualified and experienced person and it must include details and specifications to illustrate how the off-street car parking spaces will be constructed with the capacity to install at a minimum, a 'Level 2' (single phase, 7kW power) electric vehicle charger point. This plan must be submitted to the certifier, prior to the issue of the construction certificate.

Note: This condition does not require the installation of a charging point.

16. All proposed planting and landscape elements indicated on the submitted landscape concept plan or otherwise required by the conditions of this consent are to be detailed on a comprehensive landscape plan and specification. The plan and specification are to be prepared in accordance with the provisions of Newcastle Development Control Plan 2012 and is to include details of the following:
  - a) cross sections through the site
  - b) proposed contours or spot levels
  - c) botanical names
  - d) quantities and container size of all proposed trees
  - e) shrubs and ground cover
  - f) details of proposed soil preparation
  - g) mulching and staking
  - h) treatment of external surfaces and retaining walls where proposed
  - i) drainage, location of taps and
  - j) maintenance periods.

The plan and specification are to be prepared by a qualified landscape designer and be included in documentation for a Construction Certificate application.

17. The following existing trees identified in the approved Arborist Report are to be

preserved and identified for preservation on the required comprehensive landscape design plan:

- Tree No.4 - *Callistemon viminalis* (Bottlebrush)
- Tree No.5 - *Olea europaea* (Olive Tree)

Full details are to be included in documentation for a Construction Certificate application.

18. The applicant is to comply with all of Hunter Water's requirements to provide your development with water supply and sewerage services. A copy of Hunter Water's compliance certificate (*Hunter Water Act 1991* - Section 50) must be submitted with your Construction Certificate application.

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

19. Building work must be carried out in accordance with the requirements of the Building Code of Australia.
20. 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.

21. Prior to the commencement of work, a 3.0m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction, to reduce the potential for soil erosion. Sand or soil is not to be stockpiled on the all-weather vehicle access.
22. 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*.
23. 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.

24. 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.

25. 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.
26. 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.
27. 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.

28. 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.

29. The demolisher is to ensure that all demolition material is kept clear of the public footway and carriageway as well as adjoining premises.
30. 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*.

31. 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.
32. 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.
33. 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.
34. Erosion and sediment control measures are to be implemented prior to the commencement of works and maintained during the period of demolition and/or construction in accordance with the requirements of *Managing Urban Stormwater: Soils and Construction 4<sup>th</sup> Edition - Vol. 1 (the 'Blue Book')* published by Landcom, 2004. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.
35. 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*.
36. 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.

37. Any proposed paving works within the Power Street public footway are to be in accordance with City of Newcastle's specification (Form PLE/SOO9).

Note: It will be necessary for the developer to notify water, telecommunications, gas and electricity authorities of the proposed paving works, before such works are commenced, in order to enable the various authorities to carry out and complete any necessary repairs and/or amplification to their respective services.

38. All roof and surface waters are to be conveyed to the street gutter by way of a sealed pipe system, extending through the footway to Council's requirements, in accordance with Element 7.06 'Stormwater' of Newcastle Development Control Plan 2012.
39. Two residential vehicular crossings are to be constructed across the road reserve, in accordance with the following criteria:
- a) Constructed in accordance with City of Newcastle's A1300 - Driveway Crossings Standard Design Details.
  - b) The driveway crossings, within the road reserve, is to be a maximum of 3.0m wide.
  - c) Letterboxes, landscaping and any other obstructions to visibility are to be kept clear of or limited in height to 1.2m, in the 2.0m by 2.5m splay within the property boundary, each side of the driveway entrance.
  - d) The proposed driveway is to be a minimum of 3.0m clear of the trunk of any tree within the road reserve.
  - e) The proposed driveway is to be a minimum of 750mm clear of the centre of any pole or obstruction within the road reserve and 1.0m clear of any drainage pit.

These works cannot commence until consent under Section 138 of the *Roads Act 1993* has been granted by the City of Newcastle.

40. All necessary measures are to be undertaken to control dust pollution from the site. These measures are to include, but are not limited to:
- a) Restricting topsoil removal;
  - b) Regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion);
  - c) Alter or cease construction work during periods of high wind; and
  - d) Erect green or black shade cloth mesh or similar products 1.8m high around the perimeter of the site and around every level of the building under construction.
41. Certification is to be prepared by a Registered Surveyor and submitted to the Principal Certifier at the stages of construction indicated:
- a) On completion of ground floor construction, confirming that the floor levels are in accordance with the approved levels.
  - b) On completion of each subsequent floor level, confirming that the floor levels are in accordance with the approved levels.

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

42. Any redundant existing vehicular crossing is to be removed at no cost to the City of Newcastle. The road reserve and kerb is to be restored to the City of Newcastle's satisfaction. Works are to be completed prior to the issuing of an Occupation Certificate for the proposed development.
43. The water management measures as indicated on the submitted plans and/or as modified under the terms of this consent are to be implemented and the nominated fixtures and appliances are to be installed and operational prior to issue of an Occupation Certificate.
44. 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.
45. All commitments listed in the relevant BASIX certificate for:
  - a) BASIX development,
  - b) BASIX optional development, if the development application was accompanied by a BASIX certificate.

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 Newcastle City Council with Occupation Certificate documentation.

46. All works within the road reserve required by this consent are to be completed prior to the issue of an Occupation Certificate.
47. A Landscape Practical Completion Report is to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate. The report is to verify that all landscape works have been carried out in accordance with the comprehensive landscape design plan and specifications that were required to be included in documentation for a Construction Certificate application and is to verify that an effective maintenance program has been commenced.
48. The premises are to be identified by the provision of house numbers on the building exterior and mailbox such that they are clearly visible from the road frontage.  
  
The minimum numeral height is to be 75mm.
49. An application is to be made for a Subdivision Certificate. The application is to be supported by a digital copy (pdf format) of the survey plan of subdivision, associated administration sheets and a Section 50 Certificate from the Hunter Water Corporation.
50. An instrument under Section 88B of the *Conveyancing Act 1919*, setting out the terms of easements as required by this consent, along with related notations on the plan of subdivision, are to be submitted to the City of Newcastle for certification. The City of Newcastle is to be identified as a party whose consent is required to release, vary or modify easements.
51. Written evidence of arrangements being made with the Hunter Water Corporation for the provision of water supply and sewerage and with the electricity authority for the provision of overhead or underground electricity supply is to be submitted to the Principal

Certifier prior to the issue of the Subdivision Certificate.

52. Written evidence of arrangements being made with the telecommunications authority for the provision of underground telephone services to the lots is to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.
53. The approved dual occupancy development on the site is to be completed to at least lock-up stage prior to the issue of the Subdivision Certificate.

Lock-up stage is taken to mean the stage at which a building's external wall cladding and roof covering is fixed and external doors and windows are fixed (even if those doors and windows are only temporary).

## CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

54. The premise/s is/are allocated the following street address/es in accordance with City of Newcastle's *House Numbering Policy* and the *Surveying and Spatial Regulation*.

Unit/ Dwelling/ Lot Number on plan	Council Allocated Street Addresses			
	House Number	Street Name	Street Type	Suburb
Lot 1 DP104831 (boundary realigned)	36	Power	Street	Islington
Lot 22 Sec B DP2331 (boundary realigned)	38	Power	Street	Islington

## 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](mailto: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](mailto: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.
- An application is to be submitted to the City of Newcastle for the removal or pruning of any trees located more than three metres from the dwelling wall, measured from the centre of the trunk to the footings of the dwelling, excluding carports and pergolas.
- Any approval for fences on side boundaries, common to other private properties, is independent of any consent or agreement which may be required from any adjoining owner under the provisions of the *Dividing Fences Act 1991*.
- 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.
- The City of Newcastle has considered and accepted the proposed development standard variation made under Clause 4.1 of the Newcastle Local Environmental Plan 2012. The proposed variation is considered acceptable in the particular circumstances of this case.

### **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 26/04/23 - 38 POWER STREET ISLINGTON - DA2022/01239 -  
SEMI-DETACHED DWELLINGS - INCLUDING DEMOLITION OF  
EXISTING DWELLING AND BOUNDARY ADJUSTMENT**

**ITEM 7.2**      **Attachment C:**      Processing Chronology

**DISTRIBUTED UNDER SEPARATE COVER**

**PROCESSING CHRONOLOGY**

**DA2022-01239 – 38 Power Street, Islington**

31 October 2022	-	Application lodged.
04 to 18 November 2022	-	Application notified in accordance with CN's Community Participation Plan (CPP)
12 December 2022	-	Request for additional information issued: Amended Clause 4.6, Arborist Report, Amended Plan of Subdivision, Amended Civil Engineering Plans and Amended Architectural Plans.
03 February 2023	-	Additional information received from applicant: Amended Clause 4.6, Arborist Report, Amended Plan of Subdivision, Amended Civil Engineering Plans and Amended Architectural Plans.
16 February 2023	-	Additional information received from applicant: Further Amended Arborist Report.



**ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER**

**DAC 26/04/23 - 38 POWER STREET ISLINGTON - DA2022/01239 -  
SEMI-DETACHED DWELLINGS - INCLUDING DEMOLITION OF  
EXISTING DWELLING AND BOUNDARY ADJUSTMENT**

**ITEM 7.2 Attachment D:** Clause 4.6 written exception to development standard

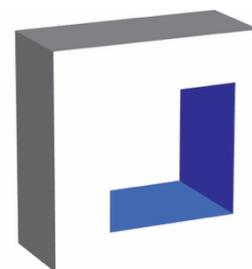
**DISTRIBUTED UNDER SEPARATE COVER**

**NEWCASTLE LEP - CLAUSE 4.1 -  
MINIMUM LOT SIZE -  
38 POWER STREET, ISLINGTON**

**CLAUSE 4.6  
VARIATION REQUEST**

**JANUARY 2023**

**VERSION 3**



**WILSON PLANNING**

# 1.0 Introduction

## 1.1 Subject Site

The subject site is known as 38 Power Street, Islington and comprises of the following titles:

- Lot 1, DP 104831 and
- Lot 22, Section B, DP 2331.

The subject site ('The Site') is rectangular in shape and displays two existing lot titles. The site has a frontage width of 13.718m and equal side depths of 24.385m. The site is orientated on a west to east axis with vehicular access off Power Street on the eastern side. The site is cleared of native vegetation and contains only shrubs present in the rear yard.

## 1.2 Background

### 1.2.1 Application Details

Consent is sought for a boundary adjustment (2 into 2 lot subdivision) with the following details:

Existing Lot 1	Existing Lot 22	Difference
111.5m <sup>2</sup>	223m <sup>2</sup>	+55.74m <sup>2</sup>

Proposed Lot 1	Proposed Lot 22	Difference
167.24m <sup>2</sup>	167.26m <sup>2</sup>	-55.74m <sup>2</sup>

### 1.2.2 Clause 4.6 - Summary

The applicant seeks to use Clause 4.6 of the Newcastle Local Environmental Plan (NLEP) to enable Council to flexibly apply the provisions of Clause 4.1 and approve an exception to the identified development standard.

This request is made pursuant to Clause 4.6 of NLEP; justifies why strict compliance with Clause 4.1 of the NLEP is unnecessary in the circumstances of the case; and demonstrates that there are sufficient environmental planning grounds to justify approval of a variation to the identified development standard. This Clause 4.6 Variation Request should be read in conjunction with Wilson Planning's Statement of Environmental Effects, Version 2, dated October 2022.

This request also explains how the proposed development will, despite not complying with the stated minimum lot size, be in the public interest given that it will continue to be consistent with the objectives of the development standard and the objectives within Clause 4.1 and the R3 Medium Density Residential Zone.

The variation request has been prepared in accordance with the NSW Planning & Infrastructure Guideline "Varying Development Standards: A Guide" (the Guideline); considers NSW Land and Environment Court planning principles and case law; and includes other information deemed relevant to the justification of the variation.

## 2.0 Details of development standard to be varied

### 2.1 Name of EPI that applies to the land

Newcastle Local Environmental Plan (NLEP) 2012.

### 2.2 Zoning of the land

R3 Medium Density Residential zone.

### 2.3 Objectives of the zone

The objectives of the R3 Zone are:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To allow some diversity of activities and densities if;
  - (i) the scale and height of proposed buildings is compatible with the character of the locality, and
  - (ii) there will be no significant adverse impact on the amenity of any existing nearby development.
- To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development—
  - (i) has regard to the desired future character of residential streets, and
  - (ii) does not significantly detract from the amenity of any existing nearby development.

### 2.4 Development standard being varied

Clause 4.1 of NLEP - Minimum subdivision lot size

### 2.5 Performance based development standard?

The development standard in Clause 4.1 is not performance based. Rather, it is a numerical control.

### 2.6 Objectives of the development standard

- (1) The objectives of Clause 4.1 is as follows:
  - (a) to provide subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded,
  - (b) to facilitate greater diversity in housing choice,
  - (c) to ensure that lots are of sufficient size to meet user requirements and to facilitate energy efficiency of the future built form

(d) Not applicable.

## 2.7 Numeric value of the development standard in the EPI

Minimum Lot Size - 400m<sup>2</sup>

## 2.8 Proposed numeric value of the development standard in DA

	LEP Min. Lot Size	Existing Lot Size	Proposed Lot Size	Variation
Lot 22	400m <sup>2</sup>	223m <sup>2</sup>	167.26m <sup>2</sup>	58%
Lot 1	400m <sup>2</sup>	111.5m <sup>2</sup>	167.24m <sup>2</sup>	58%

## 2.9 Percentage variation between proposal and EPI

See table in Section 2.8 above.

# 3.0 Assessment of variation to development standard

## 3.1 NLEP Clause 4.6 Considerations

Clause 4.6 of NLEP provides:

(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 following sections of this variation request confirm that the proposed development of the subject site has merit and meets the objectives of this clause, and other relevant clauses. As such, Council's flexibility is sought in applying the development standard on this occasion.

(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

There is nothing within Clauses 4.1 or 4.6(8) that exclude the operation of Clause 4.6 in this instance.

*(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.*

## Comment

An assessment of the variation is provided below in accordance the requirements of Clause 4.6.

- (b) the concurrence of the Secretary has been obtained.*

## Comment

Planning Circular 20-002 issued on 5 May 2020, states that, if the development contravenes a numerical standard by greater than 10%, concurrence cannot be assumed under clause 55 of the Environmental Planning and Assessment Regulation 2021.

The concurrence of the Secretary will be required, and the DA will likely need to be reported to Council.

### **3.2 How is strict compliance with the development standard unreasonable and/or unnecessary in this particular case?**

In the circumstances of this case, strict numerical compliance with the minimum lot size development standard is unreasonable or unnecessary because the proposal is consistent with the objectives of Clause 4.1 as demonstrated below.

#### **Objectives of Clause 4.1**

The objective of this clause to provide subdivision lot size that meet community and economic needs, while ensuring that environmental and social value are safeguarded. To facilitate greater

diversity in housing choice and ensure that lots are of sufficient size to meet user requirements and to facilitate energy efficiency of the future built form.

### Comment

The subject site ('The Site') is rectangular in shape and displays two existing lot titles, as follows:

- Lot 1, DP 104831 and
- Lot 22, Section B, DP 2331.

Lot 1 and 22 are two existing lot titles with both having a dwelling entitlement, one containing a dwelling and one containing a garage, and meeting community expectations. The proposed boundary adjustment allows both legal titles to contain a dwelling, thereby encouraging housing diversity without impacting on the amenity of adjoining land.

The proposed boundary adjustment would result in creating orderly lots that would result in creating additional housing rather than remaining as is. This results in a superior outcome for the site that through quality design and consistency with the objectives of the zone objectives.

Existing Lot 22 is large enough in size to accommodate a dwelling, whereas Existing Lot 1 is not. The proposal will allow future dwellings on both legal titles that will be well resolved having regard to solar access, amenity and privacy of future residents and existing neighbours.

There will be no additional environmental or social impacts resulting from the boundary adjustment.

For these reasons, the proposal represents an efficient use of land consistent with this objective. To refuse the boundary adjustment would have little planning benefit.

### 3.3 Strict compliance with the development standard would hinder the attainment of the objects of Section 5(a)(i) and (ii) of the EP&A Act

The objects stated in Section 5(a)(i) and (ii) are as follows:

*(a) to encourage:*

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land.*

### Comment

Development of land within existing urban areas where utilities, services and infrastructure already exist, and within walking distance of public transport, commercial centres and education establishments, is considered a far more efficient use of land.

The proposed boundary adjustment is permitted within the zone. It has been designed in response to the constraints, natural features of the site and prevailing streetscape. It will provide vehicular and pedestrian access.

It will have no physical impacts upon the environment or current streetscape. It will have no additional impact on essential services or infrastructure.

The proposal promotes a more orderly subdivision pattern and is considered to meet the stated object of the Act, despite the non-compliance with the minimum lot size.

### **3.4 Are there sufficient environmental planning grounds to justify contravening the development standard?**

Lot 1, as amended, represents a 58% variation to the minimum lot size. As it is not possible to achieve compliant lots due to the two current legal titles only equalling a total of 334.5m<sup>2</sup>, the proposed boundary adjustment would facilitate the best possible outcome at the site, whilst achieving the clause and zone objectives.

The proposal enables the development of each legal title for a valuable home in an area of high demand. It does so without compromising the objectives of Clause 4.1 and the R3 zone, and maintains a medium density residential environment.

The boundary adjustment will retain the existing number of lots and will enable the orderly development of both legal titles. Both lots, when amended, can accommodate an attached dwelling, which is permissible.

The proposal does not create any new dwelling entitlements or an increase in the number of undersized parcels. It has no material impact outside of the site.

There would be no planning benefit or merit in refusing to approve the boundary adjustment.

### **3.5 Is the variation well founded?**

Having regard to the comments provided in Sections 3.2 - 3.4 above, and the lack of impacts resulting from the deficiency in lot size, the variation is considered to be well founded and worthy of Council's support.

### **3.6 Is the development in the public interest?**

Clause 4.6(4)(a)(ii) states that *'development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out...'*

An assessment against the development standard's objective is set out in Section 3.2 and an assessment against the R3 zone objectives is included below:

*The objectives of the R3 Zone are:*

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To allow some diversity of activities and densities if;*
  - (i) the scale and height of proposed buildings is compatible with the character of the locality, and*
  - (ii) there will be no significant adverse impact on the amenity of any existing nearby development.*
- *To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development—*
  - (i) has regard to the desired future character of residential streets, and*
  - (ii) does not significantly detract from the amenity of any existing nearby development.*

The proposed development to achieves the first objective by providing additional housing choice in the locality. The proposed bulk, scale and design of the proposed building has been carefully chosen to reflect the prevailing historic character and modern streetscape within Power Street. As such the proposal meets the fourth objective.

The proposed boundary adjustment will facilitate the orderly development of both existing lots without compromising the amenity to the neighbouring properties.

The proposed intensification of the use of the land for residential purposes is consistent with the desired future character of the area and objectives 1 and 2.

Given that the proposal is consistent with the objectives of Clause 4.1 and the R3 zone objectives, approval of the development is considered to be in the public interest.

## 4.0 Conclusion

Development standards are a means of implementing planning purposes for a development, class of development or specific locality.

The variation to minimum lot size is considered appropriate to the context and circumstances of the site, without having detrimental environmental, amenity or privacy impacts.

As the above assessment indicates, the proposal is considered to be compatible with the existing subdivision pattern and future development outcome, despite the non-compliance with the minimum lot size.

It is possible that other sites with similar characteristics will apply for variations to minimum lot size. However, in every instance clause 4.6 is invoked, it will be necessary for Council to be satisfied that the development is consistent with the objectives of the relevant standard, that the

development will fit within the established and/or desired future character of the locality, and that the development will have no detrimental physical, amenity or privacy impacts, as is the case here.

This Variation Request satisfies the provisions of clause 4.6(3)(a), 4.6(3)(b) and 4.6(4)(a) of NLEP as it has been demonstrated that:

- compliance with the minimum lot size is both unnecessary and unreasonable in the circumstances of this case,
- there are sufficient environmental planning grounds to justify contravening the development standard, and
- the proposed development will be in the public interest because:
  - it is consistent with the objectives of the development standard,
  - it is consistent with the objectives for development within the zone in which the development is proposed to be carried out, and,
  - it is consistent with the objectives of clause 4.6.

Council's favourable consideration of this Variation Request and the DA it accompanies is sought.

**ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER**

**SUPPLEMENTARY REPORT - DAC 09/05/23 - 38 POWER STREET  
ISLINGTON - DA2022/01239 - SEMI-DETACHED DWELLINGS -  
INCLUDING DEMOLITION OF EXISTING DWELLING AND  
BOUNDARY ADJUSTMENT**

**7.2**                      **Attachment B:**      Amended Draft Schedule of Conditions

**DISTRIBUTED UNDER SEPARATE COVER**

**Application No:** DA2022/01239

**Land:** Lot 1 DP 104831 & Lot 22 Sec B DP 2331

**Property Address:** 38 Power Street Islington NSW 2296

**Proposed Development:** Semi-detached dwellings - including demolition of existing dwelling and boundary adjustment

**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.

<b>Plan No / Supporting Document</b>	<b>Reference / Version</b>	<b>Prepared by</b>	<b>Dated</b>
Demolition Plan	A-DA003 Rev 8	SNL Building	24/01/2023
Site Plan	A-DA004 Rev 8	SNL Building	24/01/2023
Ground Floor Plan	A-DA005 Rev 8	SNL Building	24/01/2023
Upper Floor Plan	A-DA006 Rev 8	SNL Building	24/01/2023
Elevations	A-DA007 Rev 8	SNL Building	24/01/2023
Elevations	A-DA008 Rev 8	SNL Building	24/01/2023
Typical Section	A-DA009 Rev 8	SNL Building	24/01/2023
Civil Works Plan	CIV-010 Rev B	DRB Consulting Engineers	23/01/2023
Erosion & Sediment Control Plan & Details	CIV-020 Rev B	DRB Consulting Engineers	23/01/2023
Erosion & Sediment Control Notes	CIV-021 Rev B	DRB Consulting Engineers	23/01/2023
Plan of Subdivision of Lot 22 Section B DP2331 and Lot 1 DP104831	22566_DRAFT	Timothy R. Rheinberger	09/01/2023
Arborist Report	Not provided	Abacus Tree Services	20/01/2023
BASIX Certificate	1344192M	Building Sustainability Assessments	05/10/2022

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**

2. 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*. The consent is to be obtained, or other satisfactory arrangements confirmed in writing from the City of Newcastle, before the issue of a Construction Certificate.
3. The floor level of habitable areas all proposed buildings or building additions is to be verified on plans for a Construction Certificate application to be 5.95m Australian Height Datum. The minimum floor level of the garages is 5.54m AHD.
4. The whole of the proposed structure below known flood level (5.6m Australian Height Datum) is to be constructed in materials and finishes that are resistant to damage from floodwaters/tidal waters. Any new machinery or equipment, electrical circuitry or fitting, storage unit or similar items likely to be damaged by floodwaters/tidal waters are to be installed above the said height, or alternatively be of materials and functional capability resistant to the effects of floodwaters/tidal waters. Details are to be included in documentation for a Construction Certificate application.
5. All stormwater runoff from the proposed development is to be managed in accordance with the requirements of Element 7.06 '*Stormwater*' of Newcastle Development Control Plan 2012, the associated Technical Manual and *AS/NZS 3500.3 Plumbing and drainage Part 3 Stormwater drainage*, as indicated on the stormwater management concept plan prepared by DRB Consulting Engineers (Dwg no. CIV-001, CIV-010, CIV-020, CIV-021, REV B, dated 23/01/2023). Full details are to be included in documentation for a Construction Certificate application.
6. Roof water from the proposed new work is to be directed to the proposed water tank for each dwelling (total of 2) with a minimum capacity of 5,000 litres per tank per dwelling and being reticulated to any new toilet cisterns and cold water washing machine taps, with a mains water top up being installed to maintain between 10% and 15% of the tank capacity. Alternatively, an electronically activated mechanical valve device is to be installed to switch any new toilet cisterns and laundry taps to mains water when the tank falls below 10% capacity. The water tank and plumbing is to be designed in accordance with the Plumbing Code of Australia (National Construction Code Volume 3). Full details are to be included in documentation for a Construction Certificate application.
7. Overflows from the roof water tank and any additional discharge controls (if required) are to be directed to City of Newcastle's drainage system by means of an inter-allotment drainage line or underground pipe directly to the street gutter. Details are to be included in documentation for a Construction Certificate application.
8. All new impervious surfaces, including driveways and paved areas are to be drained to the nominated discharge controls. Details are to be included in documentation for a Construction Certificate application.
9. The car parking and vehicular access are to be designed to comply with the relevant provisions of *AS/NZS 2890 Parking facilities*. Details are to be included in documentation for a Construction Certificate application.
10. All proposed driveways and parking bays are to be constructed with a basecourse of a depth to suit design traffic and be sealed with either bitumen seal, asphaltic concrete, concrete or interlocking pavers. Details are to be included in documentation for a Construction Certificate application.
11. The proposed garage door openings are to have a minimum clear width of 3m. Details are to be included in documentation for a Construction Certificate application.
12. Kerbing or dwarf walls having a minimum height of 100mm are to be constructed along the edge of all garden or lawn areas adjacent to driveways and parking bays, sufficient to discourage the encroachment of vehicles thereon. Details are to be included in documentation for a Construction Certificate application.

13. Letterboxes, landscaping and any other obstructions to visibility are to be kept clear of a 2.0m by 2.5m splayed area within the property boundary, each side of the driveway entrance, or limited to 1.2m in height in that area, in accordance with *AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking*. Details are to be included in documentation for a Construction Certificate application.
14. The developer is to design and construct the following works in connection with the proposed development within the Power Street public road reserve, adjacent to the site, at no cost to the City of Newcastle and in accordance with City of Newcastle's guidelines and design specifications:
  - Associated drainage works,
  - Two residential vehicular crossings

Engineering design plans and specifications for the works to be undertaken within the public road reserve are to be prepared by a practising professional engineer with experience and competence in the related field and submitted to the City of Newcastle for approval pursuant to Section 138 of the *Roads Act 1993*.

15. A detailed electrical plan of all off-street car parking spaces must be prepared by a suitably qualified and experienced person and it must include details and specifications to illustrate how the off-street car parking spaces will be constructed with the capacity to install at a minimum, a 'Level 2' (single phase, 7kW power) electric vehicle charger point. This plan must be submitted to the certifier, prior to the issue of the construction certificate.

Note: This condition does not require the installation of a charging point.

16. All proposed planting and landscape elements indicated on the submitted landscape concept plan or otherwise required by the conditions of this consent are to be detailed on a comprehensive landscape plan and specification. The plan and specification are to be prepared in accordance with the provisions of Newcastle Development Control Plan 2012 and is to include details of the following:
  - a) cross sections through the site
  - b) proposed contours or spot levels
  - c) botanical names
  - d) quantities and container size of all proposed trees
  - e) shrubs and ground cover
  - f) details of proposed soil preparation
  - g) mulching and staking
  - h) treatment of external surfaces and retaining walls where proposed
  - i) drainage, location of taps
  - j) maintenance periods
  - k) two replacement plantings at a minimum of 45 litre pot size, such as *Hymenosporum flavum*, *Acmena smithii* or similar species are to be included on the plan

l) details of planting within the landscaped areas in the front setback area.

The plan and specification are to be prepared by a qualified landscape designer and be included in documentation for a Construction Certificate application.

17. The following existing trees identified in the approved Arborist Report are to be retained and incorporated into the comprehensive landscape design plan:

- Tree No.2 – *Dracaena marginate* (Dragon Tree)
- Tree No.3 – *Plumeria rubra* (Frangipani)
- Tree No.4 – *Callistemon viminalis* (Bottlebrush)
- Tree No.5 – *Olea europaea* (Olive Tree)

Full details are to be included in documentation for a Construction Certificate application.

18. The applicant is to comply with all of Hunter Water's requirements to provide your development with water supply and sewerage services. A copy of Hunter Water's compliance certificate (*Hunter Water Act 1991* - Section 50) must be submitted with your Construction Certificate application.

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

19. The recommendations in the Arborist Report are to be implemented during the construction of the development.

20. Building work must be carried out in accordance with the requirements of the Building Code of Australia.

21. 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.

22. Prior to the commencement of work, a 3.0m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction, to reduce the potential for soil erosion. Sand or soil is not to be stockpiled on the all-weather vehicle access.

23. 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*.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

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

31. 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*.

32. 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.

33. 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.

34. 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.

35. Erosion and sediment control measures are to be implemented prior to the commencement of works and maintained during the period of demolition and/or

construction in accordance with the requirements of *Managing Urban Stormwater: Soils and Construction 4<sup>th</sup> Edition - Vol. 1 (the 'Blue Book')* published by Landcom, 2004. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.

36. 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*.
37. 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.
38. Any proposed paving works within the Power Street public footway are to be in accordance with City of Newcastle's specification (Form PLE/SOO9).

Note: It will be necessary for the developer to notify water, telecommunications, gas and electricity authorities of the proposed paving works, before such works are commenced, in order to enable the various authorities to carry out and complete any necessary repairs and/or amplification to their respective services.

39. All roof and surface waters are to be conveyed to the street gutter by way of a sealed pipe system, extending through the footway to Council's requirements, in accordance with Element 7.06 '*Stormwater*' of Newcastle Development Control Plan 2012.
40. Two residential vehicular crossings are to be constructed across the road reserve, in accordance with the following criteria:
  - a) Constructed in accordance with City of Newcastle's A1300 - Driveway Crossings Standard Design Details.
  - b) The driveway crossings, within the road reserve, is to be a maximum of 3.0m wide.
  - c) Letterboxes, landscaping and any other obstructions to visibility are to be kept clear of or limited in height to 1.2m, in the 2.0m by 2.5m splay within the property boundary, each side of the driveway entrance.
  - d) The proposed driveway is to be a minimum of 3.0m clear of the trunk of any tree within the road reserve.
  - e) The proposed driveway is to be a minimum of 750mm clear of the centre of any pole or obstruction within the road reserve and 1.0m clear of any drainage pit.

These works cannot commence until consent under Section 138 of the *Roads Act 1993* has been granted by the City of Newcastle.

41. All necessary measures are to be undertaken to control dust pollution from the site. These measures are to include, but are not limited to:
  - a) Restricting topsoil removal;
  - b) Regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion);
  - c) Alter or cease construction work during periods of high wind; and
  - d) Erect green or black shadecloth mesh or similar products 1.8m high around the perimeter of the site and around every level of the building under construction.
42. Certification is to be prepared by a Registered Surveyor and submitted to the Principal

Certifier at the stages of construction indicated:

- a) On completion of ground floor construction, confirming that the floor levels are in accordance with the approved levels.
- b) On completion of each subsequent floor level, confirming that the floor levels are in accordance with the approved levels.

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

43. Any redundant existing vehicular crossing is to be removed at no cost to the City of Newcastle. The road reserve and kerb is to be restored to the City of Newcastle's satisfaction. Works are to be completed prior to the issuing of an Occupation Certificate for the proposed development.
44. The water management measures as indicated on the submitted plans and/or as modified under the terms of this consent are to be implemented and the nominated fixtures and appliances are to be installed and operational prior to issue of an Occupation Certificate.
45. 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.
46. All commitments listed in the relevant BASIX certificate for:
  - a) BASIX development,
  - b) BASIX optional development, if the development application was accompanied by a BASIX certificate.

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 Newcastle City Council with Occupation Certificate documentation.

47. All works within the road reserve required by this consent are to be completed prior to the issue of an Occupation Certificate.
48. A Landscape Practical Completion Report is to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate. The report is to verify that all landscape works have been carried out in accordance with the comprehensive landscape design plan and specifications that were required to be included in documentation for a Construction Certificate application and is to verify that an effective maintenance program has been commenced.
49. The premises are to be identified by the provision of house numbers on the building exterior and mailbox such that they are clearly visible from the road frontage.

The minimum numeral height is to be 75mm.

50. An application is to be made for a Subdivision Certificate. The application is to be supported by a digital copy (pdf format) of the survey plan of subdivision, associated administration sheets and a Section 50 Certificate from the Hunter Water Corporation.

51. An instrument under Section 88B of the *Conveyancing Act 1919*, setting out the terms of easements as required by this consent, along with related notations on the plan of subdivision, are to be submitted to the City of Newcastle for certification. The City of Newcastle is to be identified as a party whose consent is required to release, vary or modify easements.
52. Written evidence of arrangements being made with the Hunter Water Corporation for the provision of water supply and sewerage and with the electricity authority for the provision of overhead or underground electricity supply is to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.
53. Written evidence of arrangements being made with the telecommunications authority for the provision of underground telephone services to the lots is to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.
54. The approved dual occupancy development on the site is to be completed to at least lock-up stage prior to the issue of the Subdivision Certificate.

Lock-up stage is taken to mean the stage at which a building's external wall cladding and roof covering is fixed and external doors and windows are fixed (even if those doors and windows are only temporary).

## CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

55. The premise/s is/are allocated the following street address/es in accordance with City of Newcastle's *House Numbering Policy* and the *Surveying and Spatial Regulation*.

Unit/ Dwelling/ Lot Number on plan	Council Allocated Street Addresses			
	House Number	Street Name	Street Type	Suburb
Lot 1 DP104831 (boundary realigned)	36	Power	Street	Islington
Lot 22 Sec B DP2331 (boundary realigned)	38	Power	Street	Islington

## 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](mailto: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](mailto: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.
- An application is to be submitted to the City of Newcastle for the removal or pruning of any trees located more than three metres from the dwelling wall, measured from the centre of the trunk to the footings of the dwelling, excluding carports and pergolas.
- Any approval for fences on side boundaries, common to other private properties, is independent of any consent or agreement which may be required from any adjoining owner under the provisions of the *Dividing Fences Act 1991*.
- 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.
- The City of Newcastle has considered and accepted the proposed development standard variation made under Clause 4.1 of the Newcastle Local Environmental Plan 2012. The proposed variation is considered acceptable in the particular circumstances of this case.

### **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.