

Wollongong Local Planning Panel Assessment Report | 29 March 2022

WLPP No.	Item No. 3
DA No.	DA-2021/1058
Proposal	Mixed use development - commercial and shop top housing
Property	Lot 2 Short Lane, HELENSBURGH NSW 2508
Applicant	Zta Group
Responsible Team	Development Assessment and Certification – City Wide Planning Team (RT)

ASSESSMENT REPORT AND RECOMMENDATION

Executive Summary

Reason for consideration by Wollongong Local Planning Panel (WLPP)

The proposal has been referred to the Wollongong Local Planning Panel for **determination** pursuant to Section 2(b) of Schedule 2 of the Local Planning Panels Direction of 1 March 2018, as the application is the subject of 10 or more unique submissions by way of objection.

It is also noted the application is the subject of an Appeal against deemed refusal lodged with the NSW Land and Environment Court on 15 February 2022.

Proposal

The proposal seeks consent for the construction of shop top housing.

Permissibility

The subject site is zoned B2 Local Centre pursuant to Wollongong Local Environmental Plan (WLEP) 2009. Shop top housing development is permissible with consent in the B2 zone.

Consultation

Details of the proposal were publicly exhibited in accordance with Council's adopted Community Participation Plan 2019. Twelve (12) submissions were received. The issues identified are discussed at section 1.5 of this report.

Internal

The proposal has been referred to Council's Geotechnical, Development Engineering, Landscape, Environment, Building, Heritage, Strategic, Community Safety and Statutory Property Officers for assessment with unsatisfactory referral advice provided by Council's Development Engineering, Landscape, Heritage, Strategic and Community Safety Officers.

Satisfactory referral advice, comments and/or recommended conditions were provided by Council's Geotechnical, Environment, Building, and Statutory Property Officers only.

Likely impacts

Due to the number of variations to development control plans and issues identified within the report, it is considered the proposal will result in adverse environmental impacts on the natural and built environments. Insufficient information has been provided to demonstrate that the amenity of the subject site, adjoining development and the surrounding locality will not be adversely impacted.

Therefore, the development as proposed is considered inappropriate for the site.

Main Issues

The main issues arising from the development assessment process are:-

- Exception to a development standard – Ground floor development on land within business zones pursuant to Clause 7.13 of WLEP 2009;

- Variation to minimum site width;
- Variation to minimum ceiling height;
- Variation to the private open space minimum area and depth
- Building character and form;
- Parking and access;
- Areas of entrapment in basement;
- Amenity issues; and
- Tree impacts

Matters raised in relation to components of the proposal during the assessment of this application remain outstanding as outlined within the report.

Additional information was requested in correspondence to the applicant dated 24 December 2021, however further information remains outstanding. Determination has been made on the basis of information submitted to date.

RECOMMENDATION

DA-2021/1058 be refused subject to the reasons identified at **Attachment 5**.

1.0 APPLICATION OVERVIEW

1.1 PLANNING CONTROLS

The following planning controls apply to the proposal:

State Environmental Planning Policies:

- SEPP (Resilience and Hazards) 2021
- SEPP (Building Sustainability Index: BASIX) 2004

Local Environmental Planning Policies:

- Wollongong Local Environmental Plan (WLEP) 2009

Development Control Plans:

- Wollongong Development Control Plan (WDCP) 2009

Other policies

- Wollongong City Wide Development Contributions Plan 2021
- Wollongong Community Participation Plan 2019

1.2 DETAILED DESCRIPTION OF PROPOSAL

The application proposes the following:

- Proposed shop top housing comprising retail space and single dwelling over two levels.
- Three storeys.
- Lower Ground:
 - 1 car space
 - 1 motorcycle space
 - Lift and plant room
 - Waste and storage
- Ground floor:
 - Commercial unit
 - Rumpus room for dwelling.
- First floor:
 - First floor of dwelling comprising 3 bedrooms and open plan living
- 3 additional onsite parking spaces on ground level on Short Lane frontage

1.3 BACKGROUND

The development history of the site is as follows:

Application Number	Description	Decision	Decision Date
DA-2011/914	Commercial - shop top housing and upper floor residence	Refused	30-Nov-2011

DA-2012/641	Commercial - shop top housing and upper floor residence	Refused	29-Jan-2013
PL-2015/91	Mixed use development	Completed	01-Oct-2015
DA-2016/272	Construction of one (1) retail shop and fourteen (14) boarding house rooms with associated car parking	Rejected	16-Mar-2016
DA-2017/1474	Mixed use development - retail shops and 11 boarding house rooms with associated parking	Rejected	16-Nov-2017
DA-2021/31	Mixed Use Development - shop top housing	Withdrawn	29-Mar-2021
DA-2021/1058	Mixed use development - commercial and shop top housing	Deemed Refusal	15-Feb-2022

Application History

The subject development application, DA-2021/1058, was lodged on 20 September 2021 and notified from 19 October – 18 November 2021. The applicant was provided with a request for additional information letter on 24 December 2021. The letter highlighted Development Assessment Planning, Strategic Planning, Development Engineering, Heritage and Landscape matters to be addressed in order to progress the assessment of the application.

No response was provided by the applicant to the additional information letter dated 24 December 2021 and as such the applicant was sent a request to withdraw the application on 14 February 2022. The applicant responded by way of a Class 1 Appeal against deemed refusal, lodged with the NSW Land and Environment Court on 15 March 2022. The date for the section 34 conciliation conference for this matter is yet to be determined. In the circumstances, should the Panel concur with Council's report recommendation for refusal, delegation to defend is requested from the Panel via s2.20(8) of the Act to permit Council officers with the appropriate delegation to control and direct lawyers in the Appeal.

Customer service actions:

There are no outstanding customer service requests of relevance to the properties.

1.4 SITE DESCRIPTION

The site is located at Lot 2 Short Lane, HELENSBURGH and the title reference is Lot 2 DP 1153054.

The subject site is currently vacant. The site has frontage to Walker Street with rear access to Short Lane. The site currently serves as an informal laneway between Walker Street and Short Lane.

The land is a rectangular shaped allotment with an overall site area of approximately 312.7m². The site slopes to the rear of the block.

The street scene in the immediate vicinity is predominantly characterised by commercial/retail development of single and double storey construction. Adjoining development consists of a single storey café to the North and single storey shops to the South.



Figure 1: Aerial photograph (2012)

Property constraints

- Unstable land
- Flooding
- Easement:
 - Right of Carriage Way (3m wide)

There are no restrictions on the title.

1.5 SUBMISSIONS

The application notified in accordance with Council's adopted Community Participation Plan 2019. Twelve (12) submissions were received. The main issues identified within the submissions are discussed below.

Table 1: Submissions

Concern	Comment
1. Ownership of the subject site	<p>Council's Statutory Property Officer has provided comments in respect to the concerns raised regarding ownership of the subject site and whether it was gifted to the community.</p> <p>Advice received is that Council records indicates the following:</p> <ol style="list-style-type: none"> 1. Lot 2 DP 1153054 originally formed part of a lane 20 feet wide created in DP 2205 created in October 1888. 2. DP 2205 was a subdivision by Thomas Walker of land in Crown Grant Vol.729 Fol. 236 dated 6 February 1885 to Thomas Walker. 3. There is no evidence of any dedication of the part of the lane that is now Lot 2 DP 1153054 as public road.

Concern	Comment
	Therefore, the subject site has always been in private ownership
2. Development out of character for the area	<p>Chapter D1 indicates that shop top housing is a desired future character that is encouraged in the Helensburgh Town Centre.</p> <p>The application indicates that the proposal is for shop top housing. The subject site is zoned B2 Local Centre. Shop top housing is a land use that is permissible with consent in the B2 Local Centre zone. However, the development as proposed, when the exception to the residential development on the ground floor in a business zone development standard along with the number of WDCP2009 variations sought are taken into account, is considered an overdevelopment of the site.</p> <p>The proposal is not consistent with the Helensburgh Town Centre which is generally one and two storeys in height. Significant issues have been raised by Council's Heritage and Strategic Planning Officers in relation to the built form of the proposed shop top housing and impact on the character and heritage significance of the Helensburgh Town Centre.</p> <p>Therefore, the development as proposed is not considered compatible with the desired future character for Helensburgh and is not within the public interest.</p>
3. Impacts of retail development on existing businesses and impacts of construction on adjoining businesses and pedestrians	<p>The subject site is zoned B2 Local Centre. Under the WLEP 2009 Land Use Table, shop top housing is listed as permitted land use in the B2 zone.</p> <p>Conditions could normally be imposed on the development to minimise construction impacts on the adjoining development and for hoarding to secure the construction and protect pedestrians.</p> <p>However, in this instance, the development as proposed is not supported.</p>
4. Devaluation of Property	Devaluation of property by a proposed development is not a matter for consideration under Section 4.15 of the Environmental Planning and Assessment Act.
5. Geotechnical issues	Details of the application submission were referred to Council's Geotechnical Officer for comment. Advice received is that the application is considered conditionally satisfactory in this circumstance.
6. Overshadowing	It is considered that insufficient information has been provided to demonstrate that the development as proposed affords the private open space and living rooms of the adjoining residential development to the

Concern	Comment
	<p>South a minimum of 3 hours of direct sunlight between 9:00am and 3:00pm.</p>
7. Privacy	<p>It is considered that the development as proposed would have minimal impact on adjoining properties in terms of privacy. The building extends beyond the private open space of the residential dwelling to the South and there are no windows in the side of the elevations of the proposed building that would result in overlooking impacts. All floor level windows for the proposed development are located on the front and rear elevations addressing Walker Street and Short Lane.</p>
8. Setbacks	<p>WDCP 2009 Chapter B3 Section 4.5.2(1) indicates that a continuous street line/ zero side setback is required for the majority of mixed use development within a B2 Local Centre Zone, except in cases where a subject site directly abuts residentially zoned land, in which case the minimum side setback shall be 6m for habitable rooms that face an adjacent property and 3.5m where a non-habitable room faces an adjacent property.</p> <p>It is noted that the adjoining properties are zoned B2 Local Centre and not a residential zone and the proposal could therefore be considered to comply with the numerical requirements of the development control. It is considered that insufficient information has been submitted to enable Council to determine whether the side setbacks as proposed are supportable in this circumstance.</p>
9. Use of proposed shop	<p>The application submission indicates that the proposal is for shop top housing. The subject site is zoned B2 Local Centre. Shop top housing is a land use permissible with consent in the B2 zone.</p> <p>The application indicates that the proposed shop is for retail/food premises with an alfresco dining area. A condition would normally be imposed on a consent for a separate application for initial use so as to assess potential impacts.</p> <p>However, it is considered that insufficient information has been provided for Council to assess and be satisfied that the development as proposed is suitable for the site.</p>
10. Safety and Security	<p>Concerns were raised regarding a decrease in safety and security in the area as a result of the proposed development.</p> <p>An assessment of the proposal against Council's Crime Prevention Through Environmental Design principles was undertaken. Details of the application submission were reviewed by Council's Safer Communities (SCAT)</p>

Concern	Comment
	Officer for comment. Advice received indicates there are issues with regards to the design of the waste storage (rubbish) room and bicycle compound which have the potential to be areas of entrapment.
11. Fire Safety and Egress	<p>Council's Building Officer has assessed the application submission and considered it conditionally satisfactory with regard to fire safety.</p> <p>The subject site is in private ownership. It is the individual owners of each property to ensure compliance with the fire safety and egress requirements of the Building Code of Australia.</p>

Table 2: Number of concerns raised in submissions

Concern	1	2	3	4	5	6	7	8	9	10	11
Frequency	5	4	2	1	1	2	1	1	2	1	7

1.6 CONSULTATION

1.6.1 INTERNAL CONSULTATION

Development Engineering Officer

Council's Development Engineering Officer has assessed the application and provided unsatisfactory referral advice noting that the applicant is required to provide one bicycle, one motorcycle and one space for Short Rigid Vehicle (SRV). The proposed car parking design is in a parallel configuration with the one-way blind access aisle. The width of the access aisle is approximately 3.3m. It is noted that Figure 2.5 AS 2890.1-2004 indicates that for the one-way lane bounded on both sides with obstruction higher than 0.15m, the width must be minimum 3.6m.

It was further noted that the condition of the pavement within the lane is not adequate to provide regular access for customer and service vehicles to the proposed car park.

Council's Development Engineering Officer has also assessed the application submission in regard to flooding and stormwater matters and provided satisfactory advice.

Landscape Officer

Council's Landscape Officer has reviewed the application submission and provided unsatisfactory referral advice noting the following:

- Landscape Plan does not meet the minimum requirements set out in WDCP 2009 Chapter E6;
- There are contradictions between submitted plans and reports;
- The area of landscaping near Tree 1 differs in size and location on drawings DA-03 and DA-15;
- Lack of detail with streetscape treatment; the Landscape Plan and Site Plan are not coordinated. Report proposes porous concrete around tree 1 which is not shown on plans;
- Section 1 on page 24 of the arborist report shows a suspended slab above the FFL of the building. Positive drainage away from building would need to be achieved as well as equal access to entry; and
- Root mapping may also be beneficial.

Heritage Officer

Council's Heritage Officer has assessed the application submission and provided unsatisfactory referral advice noting that it is unclear how much of the building including roof element/services will be seen behind the single storey shopfront from the perspective below from the Heritage item, given that the proposal is essentially three storeys to the rear elevation with an additional lift overrun area. A photomontage view shown above from the opposite side of Walker Street at the heritage listed Post Office and further investigation of integrated continuous awning across the frontage were requested.

Safer Community Action Team (SCAT) Officer

Council's SCAT Officer has assessed the application submission and provided unsatisfactory referral advice noting concerns regarding safety of vehicles manoeuvring in the parking area, the bin and storage rooms appear to be areas of entrapment, access to adjoining buildings need to be maintained and impacts on pedestrian safety due to the removal of pedestrian access.

Strategic Officer

Council's Strategic Officer has reviewed the application submission and provided unsatisfactory referral advice noting the buildings bulk and scale, a design response to the narrow site width, has ignored the topographic context and is out of scale and context with the surrounds. It was further noted that the façade and street interface was not in keeping with the traditional elements of the streetscape and the surrounding context.

Building Officer

Council's Building Officer has assessed the application submission and considered it conditionally satisfactory.

Environment Officer

Council's Environment Officer has assessed the application submission and considered it conditionally satisfactory.

Geotechnical Officer

Council's Geotechnical Officer has assessed the application submission and considered it conditionally satisfactory.

Statutory Property Officer

Council's Statutory Property Officer has provided comments in regard to the query raised by Neighbourhood Forum 1 regarding ownership of the subject site and whether it was gifted to the community. Advice received is that Council records indicate that the subject site has always been in private ownership.

1.6.2 EXTERNAL CONSULTATION

There was no external consultation required for the proposed development.

2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 – 4.15 EVALUATION

2.1 SECTION 4.15(1)(A)(1) ANY ENVIRONMENTAL PLANNING INSTRUMENT

2.1.1 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

4.6 Contamination and remediation to be considered in determining development application

- (1) *A consent authority must not consent to the carrying out of any development on land unless:*
- (a) *it has considered whether the land is contaminated, and*
 - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*

- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

A desktop audit of previous land uses does not indicate any historic use that would contribute to the contamination of the site. Council's Environmental Officer has reviewed the history of the site in conjunction with details of the application submission. Satisfactory referral advice was received indicating no concerns are raised in regard to contamination as relates to the intended use of the land and the requirements of clause 4.6.

The site is therefore considered suitable for the proposed development and consistent with the assessment considerations of SEPP (Resilience and Hazards) 2021.

2.1.2 STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

The proposal is BASIX affected development to which this policy applies. In accordance with Schedule 1, Part 1, 2A of the Environmental Planning and Assessment Regulation 2000, a BASIX Certificate has been submitted in support of the application demonstrating that the proposed scheme achieves the BASIX targets.

2.1.6 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Part 1 Preliminary

Clause 1.2 Aims of the Plan

Clause 1.2(2) of WLEP 2009 indicates that the aims of the plans are as follows:

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) to provide a framework for land use management,*
- (b) to encourage economic and business development to increase employment opportunities,*
- (c) to encourage a range of housing choices consistent with the capacity of the land,*
- (d) to improve the quality of life and the social well-being and amenity of residents, business operators, workers and visitors,*
- (e) to conserve and enhance remnant terrestrial, aquatic and riparian habitats, native vegetation and fauna species,*
- (f) to conserve and enhance heritage,*
- (g) to ensure that development is consistent with the constraints of the land and can be appropriately serviced by infrastructure,*
- (h) to ensure that significant landscapes are conserved, including the Illawarra Escarpment, Lake Illawarra, the drinking water catchment and the coastline.*

Comment:

With respect to aim 2(c) and (g), the proposal does not ensure that the development is consistent with the capacity of the land and is consistent with the constraints of the land, as demonstrated by:

- The topographic context has been ignored, and the proposal extrudes up from the ground floor, with no graduation of form resulting in blank side walls, and, due to the narrow site width, a disproportionately tall scale that is out of context with the surrounds.
- The development provides for residential development on the ground floor which is not permissible in the zone.

With respect to aim 2(d) the development fails to demonstrate that the development will improve the quality of life and social well-being and amenity of residents, business operators, workers and visitors as:

- The dimensions of the proposed private open space are not considered large enough to accommodate a range of uses;
- Insufficient information has been provided to demonstrate that the private open space can receive a minimum of 3 hours of direct sunlight between 9:00am and 3:00pm.

Clause 1.4 Definitions

Shop top housing means one or more dwellings located above ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.

Note—

Shop top housing is a type of **residential accommodation**—see the definition of that term in this Dictionary.

dwelling house means a building containing only one dwelling.

Note—

Dwelling houses are a type of **residential accommodation**—see the definition of that term in this Dictionary.

retail premises means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following;

- (a) (Repealed)
- (b) cellar door premises,
- (c) food and drink premises,
- (d) garden centres,
- (e) hardware and building supplies,
- (f) kiosks,
- (g) landscaping material supplies,
- (h) markets,
- (i) plant nurseries,
- (j) roadside stalls,
- (k) rural supplies,
- (l) shops,
- (la) specialised retail premises,
- (m) timber yards,
- (n) vehicle sales or hire premises,

but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

Note—

Retail premises are a type of **commercial premises**—see the definition of that term in this Dictionary.

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

The zoning map identifies the land as being zoned **B2 Local Centre**.

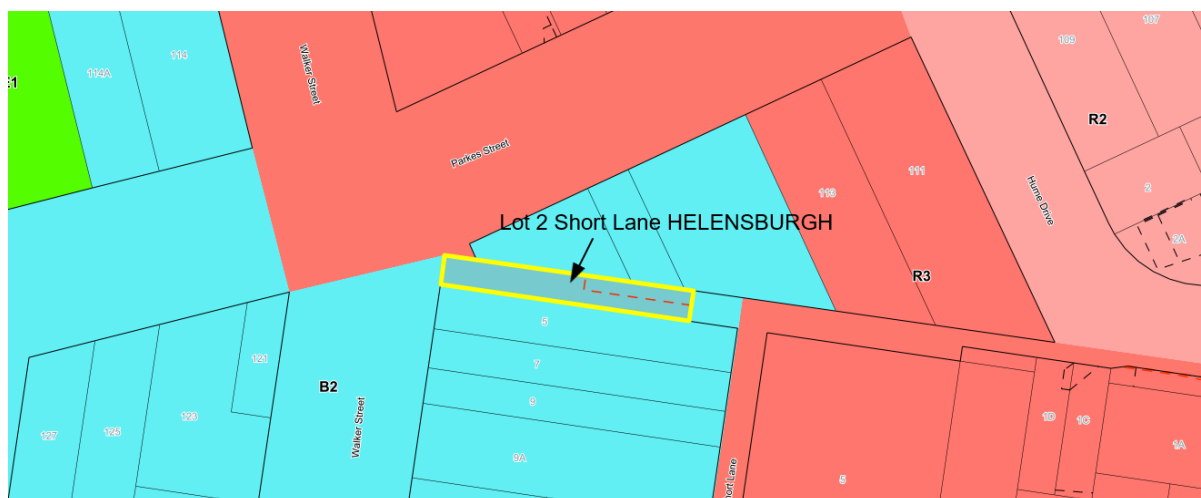


Figure 2: WLEP 2009 zoning map

Clause 2.3 – Zone objectives and land use table

The objectives of the zone B2 Local Centre are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To allow for residential accommodation and other uses while maintaining active retail, business or other non-residential uses at the street level.*

As a land use, shop top housing would be considered generally satisfactory with regard to the above objectives as it is a permissible use in the B2 Local Centre zone with development consent.

The land use table permits the following uses in the zone.

ZONE B2 Local Centre permitted uses:

*Advertising structures; Amusement centres; Boarding houses; Car parks; Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Exhibition homes; Function centres; Hostels; Information and education facilities; Medical centres; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Residential flat buildings; Respite day care centres; Restricted premises; Roads; Self-storage units; Seniors housing; Service stations; Sex services premises; **Shop top housing**; Tank-based aquaculture; Tourist and visitor accommodation; Veterinary hospitals; Wholesale supplies*

The development, whilst providing commercial/retail development on the ground floor, is inconsistent with the definition of shop top housing as it includes residential development on the ground floor, being the rumpus room associated with the dwelling, and Building Code of Australia (BCA) Class 2 structures on the lower ground floor, being the garage for the dwelling.

The garage on the lower ground floor is not considered to be a basement garage as it extends more than 1m out of ground. WLEP 2009 defines a basement as the “space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey

immediately above is less than 1 metre above ground level (existing) space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing)". Therefore, the garage is considered a storey.

The proposal is not considered to satisfy the definition of shop top housing and as such the development as proposed is not considered permissible.

Part 4 Principal development standards

Clause 4.3 Height of buildings

The proposed building height of 9.553m does not exceed the maximum of 12m permitted for the site.

Clause 4.4 Floor space ratio

Maximum FSR permitted for the site: 1.5:1

Resultant FSR provided: $250.23\text{m}^2/312.8\text{m}^2 = 0.799:1$

The proposed floor space ratio does not exceed the maximum permissible for the site.

Clause 4.6 Exceptions to development standards

Clause 4.6 of the Wollongong LEP "Exceptions to development standards" provides that 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, where certain matters are met.

In this instance, a departure is sought in respect of Clause 4.3 Height of Buildings. The applicant has provided a departure request statement prepared with reference to Clause 4.6. A copy is provided at **Attachment 3**. The development departure is dealt with as follows.

WLEP 2009 clause 4.6 proposed development departure assessment	
Development departure	<p>Clause 7.13 Certain land within business zones</p> <p><i>Clause 7.13(3) of WLEP 2009 states that the that development consent must not be granted for development for the purpose of a building on land to which this clause applies unless the consent authority is satisfied that the ground floor of the building;</i></p> <p><i>(a) will not be used for the purpose of residential accommodation; and</i></p> <p><i>(b) will have at least one entrance and at least one other door or window on the front of the building facing the street other than a service lane.</i></p>
Is the planning control in question a development standard	Yes
4.6 (3) Written request submitted by applicant contains a justification:	
that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	A satisfactory clause 4.6 variation has been submitted
that there are sufficient	No

environmental planning grounds to justify contravening the development standard.	
4.6 (4) (a) Consent authority is satisfied that:	
the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	<p>The applicant's written request seeks to justify that compliance with the development standard is considered to be unreasonable and unnecessary in the circumstances of this case as:</p> <ul style="list-style-type: none"> • The proposal is considered to achieve the objectives of the development standard; • The proposal is considered to achieve the objectives of the B2 Zone; <ul style="list-style-type: none"> • The proposal will facilitate a commercially viable development of a small residue lot that poses no negative environmental impacts and positive social outcomes will serve the ongoing sustainment of the economic health of the area. • The proposed development will promote the orderly and economic use of the land by way of providing a land use intensity generally consistent with that envisaged by Council and allow for economic use of a land parcel that was not previously identified as available for use. • No endemic or contributory vegetation is identified on the land. • The proposed development promotes good design in that it provides a land use intensity, built form and massing arrangement that serves to positively influence the future amenity and utility of the commercial space whilst also allowing for an appropriate residential amenity compatible with both the established and emerging village character. • The proposed development will comply with all relevant BCA codes, will not detract from the health and safety of occupants and will provide for lift access to all levels which ensures there is equitable access to all areas of the building. <p>A copy of the applicant's Clause 4.6 Statement is provided at Attachment 3. The written request has adequately addressed the matters required to be addressed under subclause (3).</p>
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	<p>WLEP2009 Clause 7.13 provides the following objectives for the Height of buildings development standard:</p> <p><i>(1) The objective of this clause is to ensure active uses are provided at the street level to encourage the presence and movement of people.</i></p> <p>The statement attempts to demonstrate that the proposed development will be in the public interest because it is consistent with the objectives of the Certain land within business zones development standard as follows:</p> <ul style="list-style-type: none"> • The street level on the primary commercial street frontage of Walker Street is not used for residential purposes. The residential use is confined to the rear of the site accessed from the service lane;

proposed to be carried out, and	<ul style="list-style-type: none"> • The site has a very limited street presentation to Walker Street and there is no general public access through the site to the rear. Any continuation of the commercial use towards the rear of the site at ground level is not considered to add to the commercial viability of the small street front space; • Despite this the proposed building design aims to maximise the utility and attractiveness of the small street frontage to optimise activity. The design presents an offset setback to the main street, as discussed generally throughout the accompanying report, to facilitate on street dining activity and build on the character established by the adjacent development on the corner of Parkes Street; • There is also no practical alternative to providing some residential use of the building at the ground level to facilitate access to the proposed dwelling on the site. This access is restricted to the rear but must occupy a component of the ground level to gain access to the first floor. It is a matter of fact and degree but there would be a noncompliance with the standard arising directly as a consequence of the limited site width and the need for residential access irrespective of the detail design. • The effect of the full width street frontage commercial design, the site characteristics and dimensions, and the fall from the street level, effectively ensure that the maximum practical encouragement of street level activity is achieved, despite the technical non-compliance with the rear portion of the ground floor of the proposed building being utilised for residential purposes <p>The proposal is for shop top housing which is a land use that is permissible with consent in the zone. However when the number of variations are taken into consideration, this proposal is considered likely to result in negative impacts on the environment and the amenity of the locality. The proposal is considered inappropriate with consideration to site constraints, contrary to the relevant planning controls and in the current form, approval would not be considered to be in the public interest.</p>
the concurrence of the Secretary has been obtained.	In accordance with Planning Circular PS 18-003 dated 21 February 2018 the concurrence of the Secretary is assumed for Council - DEPARTURES UP TO 10% and their established Local Planning Panels for applications made with a supporting objection under Clause 4.6.

Council comment:

It is considered the departure to the development standard for residential development on the ground floor in a business zone is not capable of support.

Part 5 Miscellaneous provisions

Clause 5.10 Heritage conservation

The subject site is opposite the Helensburgh Post Office, Charles Harper Park and Helensburgh (Hanley) Hotel which are listed as local heritage items under the WLEP 2009. Details of the application were referred to Council's Heritage Officer for comment. Advice received is that the proposed development is considered unsatisfactory noting that it is unclear how much of the building including roof element/services will be seen behind the single storey shopfront from the perspective below from the Heritage item, given that is essential three storeys to the rear elevation with an additional lift overrun area. A photomontage view shown above from the opposite side of Walker Street at the

heritage listed Post Office and further investigation of integrated continuous awning across the frontage were requested.

Clause 5.21 Flood planning

The subject land is identified as being flood hazard affected. Council's Development Engineering Officer has assessed the application submission in this regard and provided satisfactory advice.

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

The proposal has been assessed against Clause 7.1 and it is considered that the subject site is already serviced by public utilities which can be augmented to service the new proposal.

Clause 7.6 Earthworks

Earthworks associated with the proposal are considered minor, reflective of normal residential/commercial construction and thus acceptable in this circumstance.

Clause 7.13 Certain land within business zones

This Clause applies to development in the B2 Local Centre Zone and the objective of this clause is to ensure active uses are provided at the street level to encourage the presence and movement of people.

Clause 7.13(3) of WLEP 2009 states that the that development consent must not be granted for development for the purpose of a building on land to which this clause applies unless the consent authority is satisfied that the ground floor of the building;

(a) will not be used for the purpose of residential accommodation; and

(b) will have at least one entrance and at least one other door or window on the front of the building facing the street other than a service lane.

The proposal does not comply with Clause 7.13(3)(a) as the development whilst providing commercial/retail development on the ground floor includes residential development, Building Code of Australia (BCA) Class 2 structures on the lower ground floor being the garage for the dwelling and ground floor being the rumpus room associated with the dwelling.

2.2 SECTION 4.15(1)(A)(II) ANY PROPOSED INSTRUMENT

Draft Design and Place SEPP

Public exhibition of the Design and Place SEPP Explanation of Intended Effect closed in April 2021.

The Design and Place SEPP will establish principles for the design and assessment of places in urban and regional NSW: PRINCIPLE 1. Design places with beauty and character that people feel proud to belong to PRINCIPLE 2. Design inviting public spaces to support engaged communities PRINCIPLE 3. Design productive and connected places to enable thriving communities PRINCIPLE 4. Design sustainable and greener places for the wellbeing of people and the environment PRINCIPLE 5. Design resilient and diverse places for enduring communities

The draft Design and Place SEPP will go on public exhibition later in 2021 to provide more opportunities for feedback. Supporting guidance and tools, drafts of which will also go on exhibition with the draft SEPP. These guides include revisions to the Apartment Design Guide and improvements to the Building Sustainability Index (BASIX), as well as the proposed Urban Design Guide, and Design Review Guide. The Department is currently conducting workshops with Council's around the State.

It is considered the draft SEPP is of limited relevance at this point in time.

2.3 SECTION 4.15(1)(A)(III) ANY DEVELOPMENT CONTROL PLAN

2.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

The development has been assessed against the relevant chapters of WDCP2009 and found to be unsatisfactory with regards to the site width, awning, solar access, vehicular parking, private open space, floor configuration, floor to ceiling heights, building appearance, urban design/streetscape appearance, vehicular parking, vehicular access, site facilities, landscaping, tree preservation and management, heritage conservation and crime prevention through environmental design building design principles, landscaping, tree preservation and management and heritage conservation. The proposal seeks a variation to WDCP 2009 as relates to the minimum site width, front setback, side setback, awnings and solar access development controls. The request statements are not considered to have been prepared in accordance with the requirements of part 8 of Chapter A1. It is noted that no variation request has been submitted for the variation to the private open space minimum area and minimum depth, floor configuration, floor to ceiling heights, building appearance, urban design/streetscape appearance, vehicular parking, vehicular parking aisle widths, site facilities, landscaping, tree preservation and management and heritage conservation development controls with the application submission. A full compliance table is provided at **Attachment 4** to this report.

2.3.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN 2018

The estimated cost of works is >\$100,000 and a levy of 1% would therefore be applicable under this plan as the threshold value is \$100,000.

2.4 SECTION 4.15(1)(A)(IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 7.4, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 7.4

There are no planning agreements entered into or any draft agreement offered to enter into under S7.4 which affect the development

2.5 SECTION 4.15(A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)

92 What additional matters must a consent authority take into consideration in determining a development application?

Not Applicable.

93 Fire safety and other considerations

Not applicable.

94 Consent authority may require buildings to be upgraded

Not applicable

2.6 SECTION 4.15(1)(B) THE LIKELY IMPACTS OF DEVELOPMENT

Context and Setting:

Shop top housing would normally be considered to be in context with the setting of the area as the area is characterised by residential development.

In regard to the matter of context, the planning principle in Project Venture Developments v Pittwater Council [2005] NSWLEC 191 is relevant in that it provides guidance in the assessment of compatibility. The two major aspects of compatibility are physical impact and visual impact. In assessing each of these the following questions should be asked:

- Are the proposals physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

- Is the proposals appearance in harmony with the buildings around it and the character of the street?

In this circumstance the departure to the Certain land within business zones development standard along with other Development Control Plan non-compliances and issues identified throughout the report indicate that the development as proposed is inappropriate for the subject site. The proposal is not considered to be consistent with the context and setting of the surrounding area.

Access, Transport and Traffic:

The development provides for a lower ground floor garage and open hardstand parking spaces consisting of four (4) car parking spaces, one (1) motorcycle spaces and one (1) bicycle space. Council's Traffic Officer has considered the proposed development with regards vehicular parking, access and manoeuvring. Advice received indicated that the proposed access did not satisfy Council's Development Control Plan.

Public Domain:

The proposal is not considered to be conducive to the site and would set an undesirable precedent for development within the local area. The cumulative impact of similar development would likely have an adverse impact upon the public domain of the area.

Utilities:

The proposal would not be envisaged to place an unreasonable demand on utilities supply. Existing utilities are adequate to service the proposal.

Heritage:

The site is located in the visual catchment of three (3) nearby listed local heritage items under the WLEP 2009 being the Helensburgh Post Office, Charles Harper Park and Helensburgh (Hanley) Hotel which are listed as local heritage items under the WLEP 2009. Details of the application were referred to Council's Heritage Officer for comment. Advice received is that the proposed development is considered unsatisfactory.

Other land resources:

The proposal would not be envisaged to impact upon any valuable land resources.

Water:

The site is presently serviced by Sydney Water, which could be readily extended to meet the requirements of the proposed development.

The proposal would not be envisaged to have unreasonable water consumption.

Soils:

The soil profile could be acceptable for the construction of the proposed development.

Air and Microclimate:

The proposal would not be expected to result in negative impact on air or microclimate.

Flora and Fauna:

The application submission was referred to Council's Landscape Officer for comment. Council's Landscape Officer has indicated that the Landscape Plan does not meet the minimum requirements, there are inconsistencies between submitted plans and reports, the area of landscaping near Tree 1 differs in size and location, insufficient information has been provided to ensure the protection of Tree 1 on drawings and there is a lack of detail of streetscape treatment.

Therefore Council's Landscape Officer is unable to support the application in its current form.

It is considered that the proposal will have minimal impact on significant native fauna.
<p><u>Waste:</u></p> <p>The proposal is not expected to generate significant waste.</p> <p>The application submission was referred to Council's Development Engineering Officer for comment. Council's Development Engineering Officer has indicated that the pavement on Short Lane is not adequate to provide regular access for customers and service vehicles to the proposed parking area.</p>
<p><u>Energy:</u></p> <p>The proposal would not be expected to have unreasonable energy consumption.</p>
<p><u>Noise and vibration:</u></p> <p>Conditions could be imposed to minimise nuisance during any construction, demolition, or works.</p>
<p><u>Natural hazards:</u></p> <p>There are no natural hazards affecting the site that would prevent the proposal.</p> <p>Council records list the site as being flood affected. Council's Development Engineering Officer has assessed the application submission in this regard and has not raised any issues.</p>
<p><u>Technological hazards:</u></p> <p>There are no technological hazards affecting the site that would prevent the proposal.</p> <p>Council records list the site as being potentially unstable land. The application submission was referred to Council's Geotechnical Officer who considered the application conditionally satisfactory.</p>
<p><u>Safety, Security and Crime Prevention:</u></p> <p>The proposal would not be envisaged to result in any opportunities for criminal or antisocial behaviour.</p> <p>Details of the application submission were reviewed by Council's Safer Communities (SCAT) Officer. Advice received indicates there are issues with regards to the design of the waste storage (rubbish) room and bicycle compound which have the potential to be areas of entrapment.</p>
<p><u>Social Impact:</u></p> <p>The proposal may create negative social impacts. It is considered that insufficient information has been submitted for Council to assess impacts from the proposed development on the amenity of the neighbourhood and the surrounding development.</p>
<p><u>Economic Impact:</u></p> <p>The proposal would not be envisaged to result in negative economic impacts.</p>
<p><u>Site Design and Internal Design:</u></p> <p>The application results in a departure from WLEP 2009 Clause 7.13 development standard with regard to residential development on the ground floor in a B2 Local Centre zone. The application results in variations to Council's minimum site width, front setback, awnings, solar access, private open space minimum area and minimum depth, floor to ceiling heights, vehicular parking aisle widths, site facilities, landscaping, tree preservation and management and heritage conservation development control plans as outlined in Section 2.3.1 Wollongong Development Control Plan 2009 of this report.</p>

Cumulative Impacts:

Considering the matters outlined throughout this report, the proposal is considered likely to result in adverse cumulative impacts.

2.8 SECTION 4.15(1)(C) THE SUITABILITY OF THE SITE FOR DEVELOPMENT

Does the proposal fit in the locality?

The development as proposed is considered to set an undesirable precedent given the issues raised in this report. Therefore, proposal is not considered appropriate for the locality.

Are the site attributes conducive to development?

There are no site constraints that would prevent the proposal.

2.9 SECTION 4.15(1)(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS

See section 1.5 of this report.

2.10 SECTION 4.15(1)(E) THE PUBLIC INTEREST

The application is considered likely to result in negative impacts on the environment and the amenity of the locality. The proposal is considered inappropriate with consideration to site constraints, contrary to the relevant planning controls and in the current form, approval would not be considered to be in the public interest.

3 CONCLUSION

This application has been assessed having regard to the Heads of Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979.

The development proposes an exception to the ground floor development in a business zone development standard pursuant to the Clause 7.13 of WLEP2009. The proposed exception is not supported as detailed in this report.

It is considered that the applicant has also not provided adequate justification for the variations sought to WDCP 2009 as relates to minimum site width, front setback, awnings, solar access, private open space minimum area and minimum depth, floor to ceiling height, vehicular parking aisle widths, site facilities, landscaping, tree preservation and management and heritage conservation.

Council's Development Engineering, Landscape, Strategic, Heritage and SCAT Officers have provided unsatisfactory referral advice. Council's Geotechnical, Environment, Building, and Statutory Property Officers have provided satisfactory referral advice.

Several matters including those identified within submissions remain unresolved.

It is considered the proposed development has not been designed appropriately given the constraints and characteristics of the site and has the potential to result in significant adverse impacts on the amenity of the surrounding area. The development as proposed is considered to set an undesirable precedent and approval would not be considered to be in the public interest.

4 RECOMMENDATION

The Development Application has been assessed having regard to the Heads of Consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of Wollongong Local Environmental Plan 2009 and all relevant Council DCPs, Codes and Policies.

Having regard to the above information, the application is considered to be unsatisfactory and is recommended for **refusal** subject to the reasons as at **Attachment 5**.

5 ATTACHMENTS

- 1 Plans
- 2 Site Inspection Photos
- 3 Clause 4.6 Exception to Development Standard Statement – Applicant
- 4 Compliance table for Wollongong Development Control Plan 2009
- 5 Reasons for Refusal

ATTACHMENT 1 - Plans

RESIDENTIAL DEVELOPMENT

DA SUBMISSION

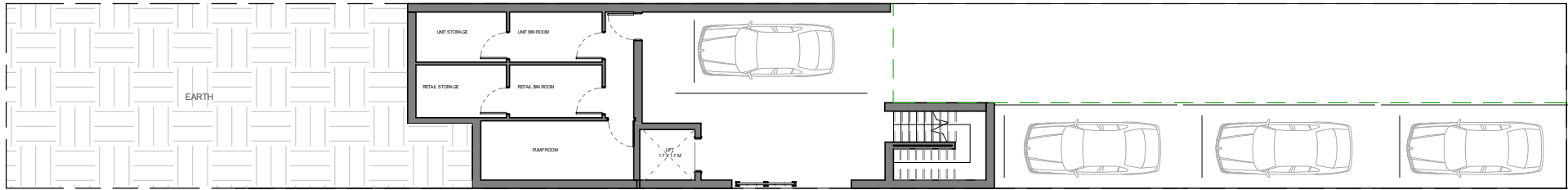
LOT 2 SHORT LANE, HELENSBURGH

PROJECT NO. 19322

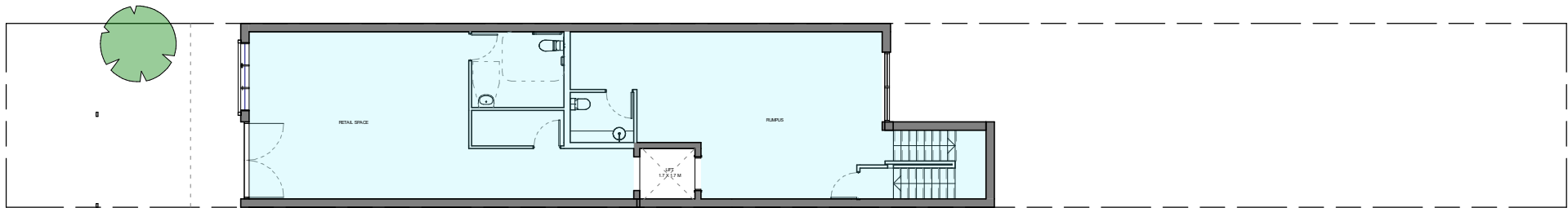
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DA-00.	COVER SHEET
DA-01.	GFA CALCULATIONS
DA-02.	LOCATION PLAN & ANALYSIS
DA-03.	SITE PLAN
DA-04.	GROUND/FIRST FLOOR PLANS
DA-05.	SECOND FLOOR PLAN /ROOF PLAN
DA-06.	ELEVATIONS
DA-07.	ELEVATIONS
DA-08.	ELEVATIONS
DA-09.	SECTION
DA-10.	WINTER SUN SHADOW
DA-11.	SUMMER SUN SHADOW
DA-12.	12M BUILDING HEIGHT PLANE
DA-13.	BUILDING FINISHES
DA-14.	STREETSCAPE
DA-15.	LANDSCAPE PLAN
DA-16.	BASIX

COMPLIANCE TABLE
Development Control Plan 2009

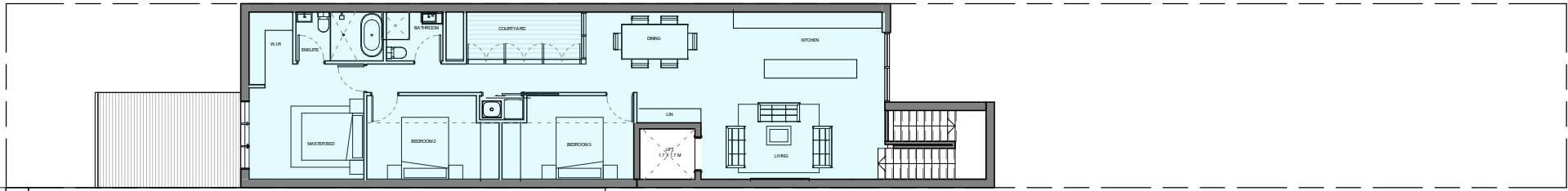
Land Zoning:	B2: Local Centre	
Site Area:	312.8m²	
	REQUIREMENTS	PROVIDED
Maximum Floor Space Ratio:	1:5:1 (469.2m²)	Site AREA = 312.8m2 GL = 114.5m² FF = 107m² Total = 221.5m²
Private Open Space:	The balcony must have a minimum area of 12m2 open space and a minimum width of 2.4 metres. The courtyard/terrace for the ground level dwellings must have a minimum area of 8m2 and depth of 2m2. Design private open spaces so that they act as direct extensions of the living areas of the dwellings they serve.	GROUND FLOOR Courtyard: 7m² Total = 7m²
Maximum Building Height:	12m	10m
Ceiling Heights:	Minimum 3.3m for both ground floor retail or commercial 2.7m minimum for all habitable rooms on all floors	Retail Space: 3.4m Upper residential floor: 3.4m
Total Car Parking Space:	Open space – restricted one side 2.7m x 5.5m	4 Car Spaces 1 Motorbike 2 Bicycles



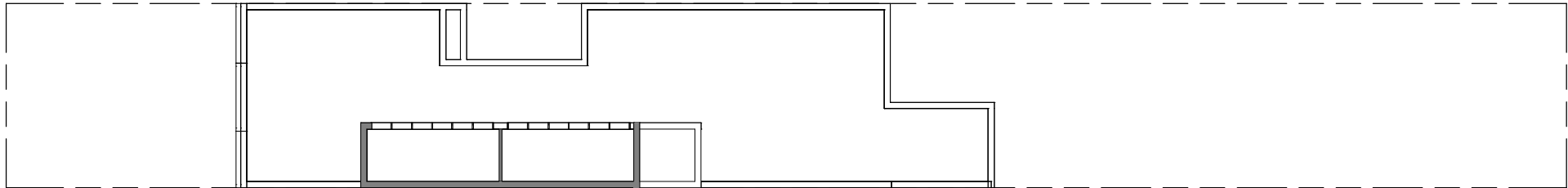
LOWER GROUND



GROUND LEVEL



FIRST FLOOR LEVEL



ROOF TOP TERRACE

GROUND LEVEL

TOTAL - 114.5m²

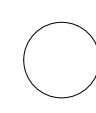
FIRST FLOOR LEVEL



TOTAL - 107m²

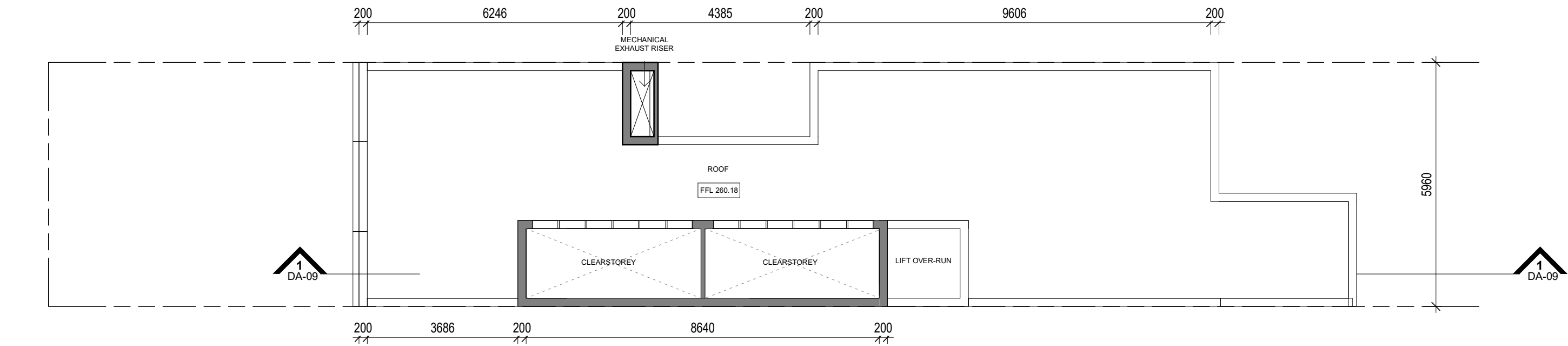
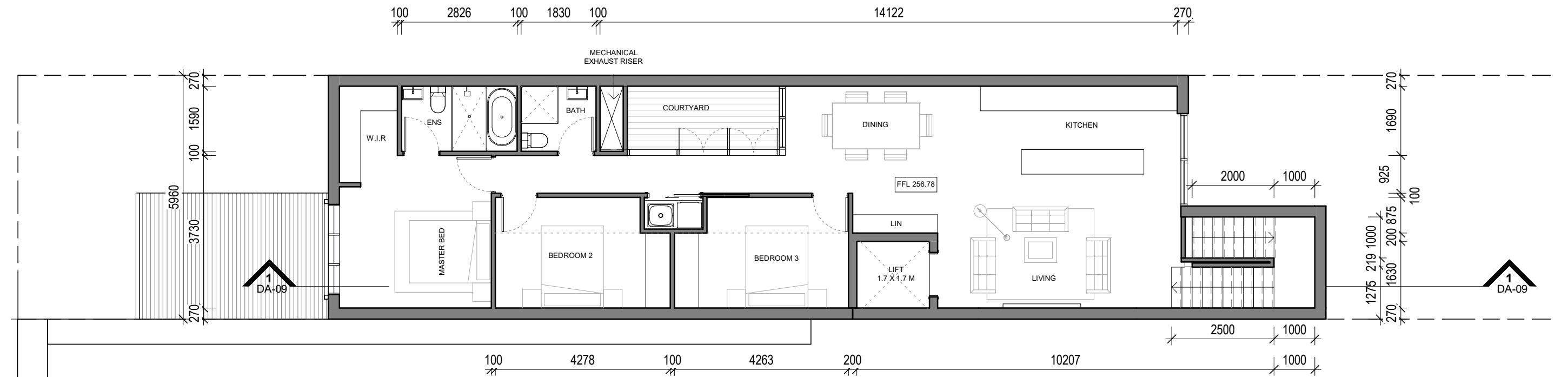
TOTAL - 221.5m²

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										DATE	DRAWING TITLE			
										20.08.21	GFA CALCULATIONS			



 **LOCATION PLAN**
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									20.08.21	LOCATION PLAN & ANALYSIS	



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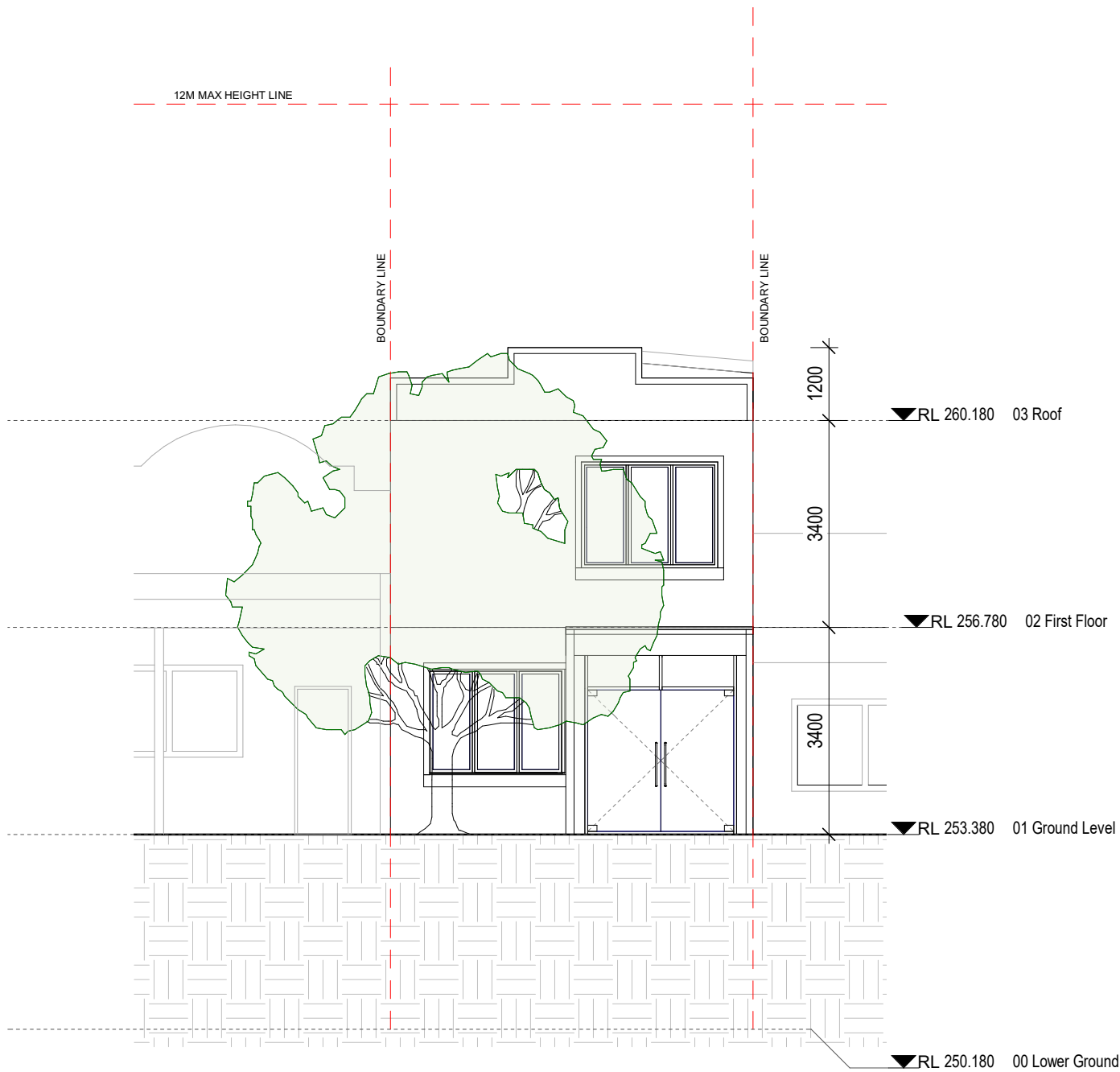
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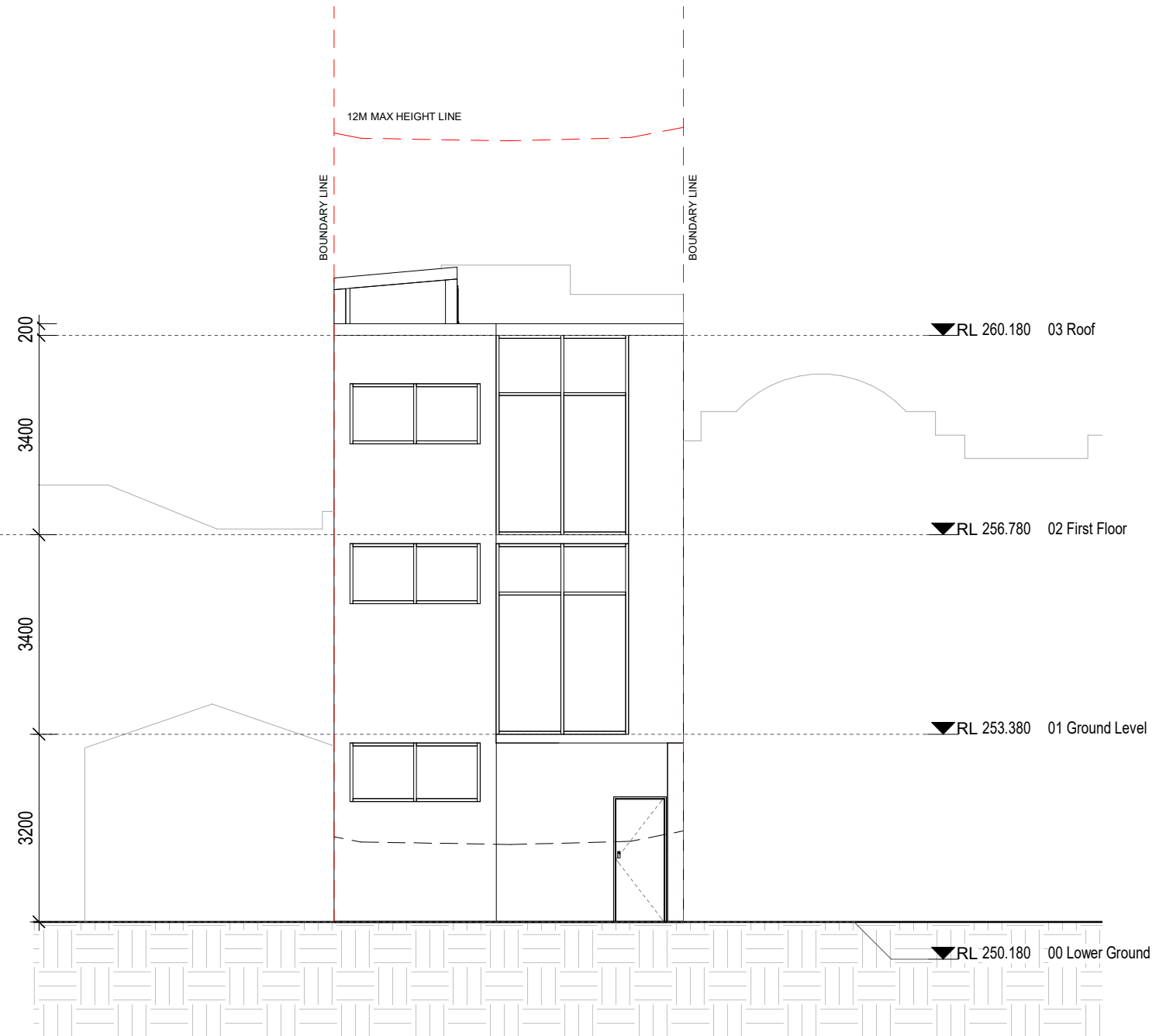
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2 West Elevation
1 : 100



1 East Elevation
1 : 100

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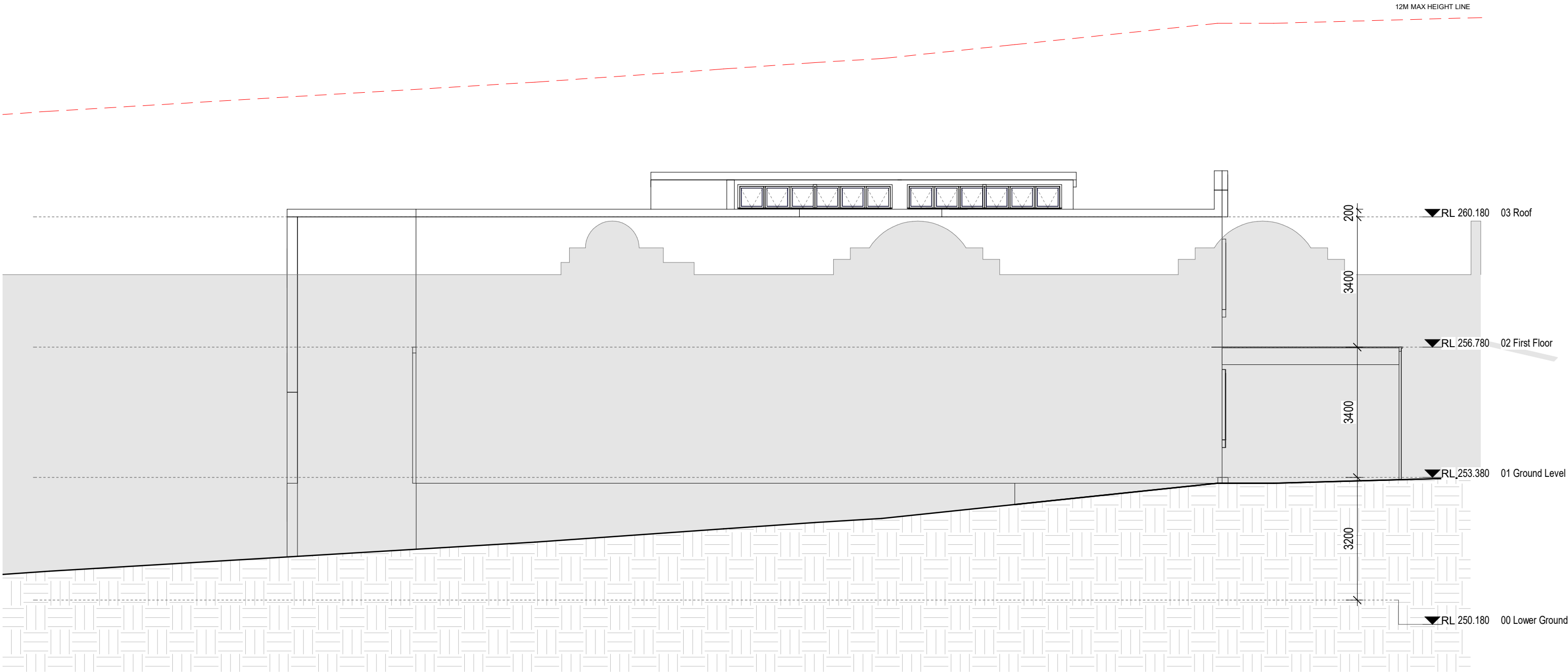
ELEVATION

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1

North Elevation

1 : 100



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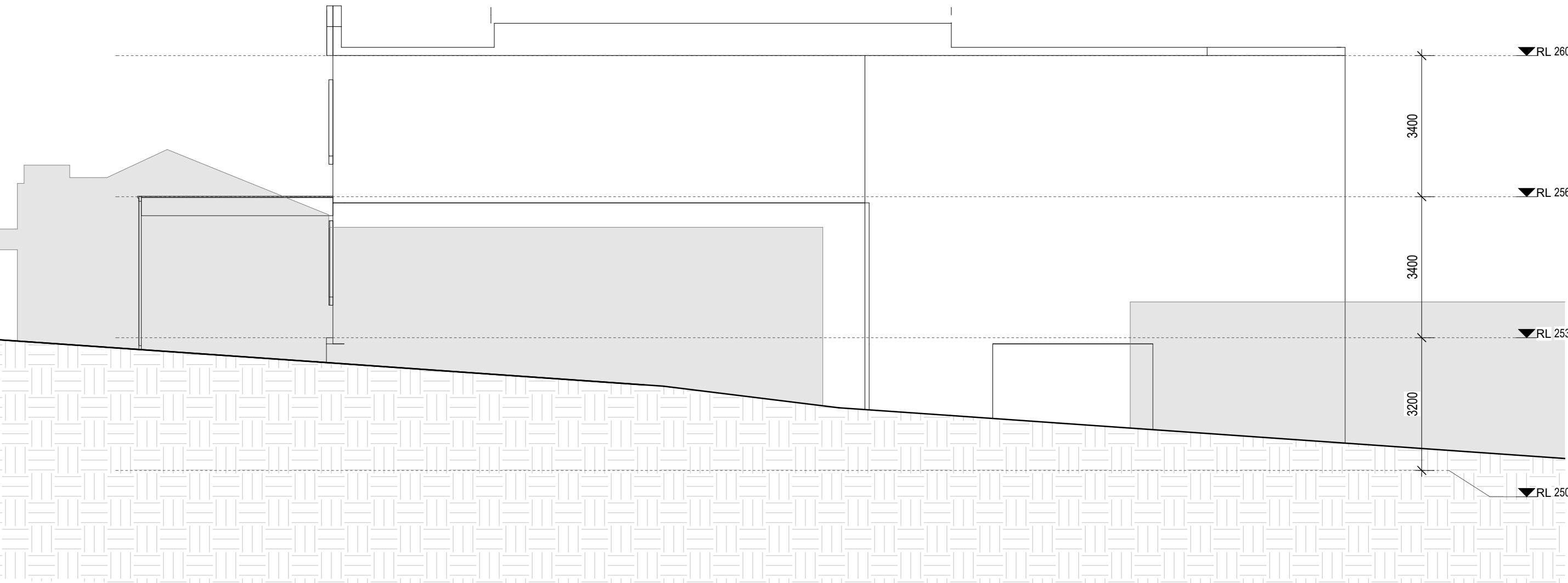
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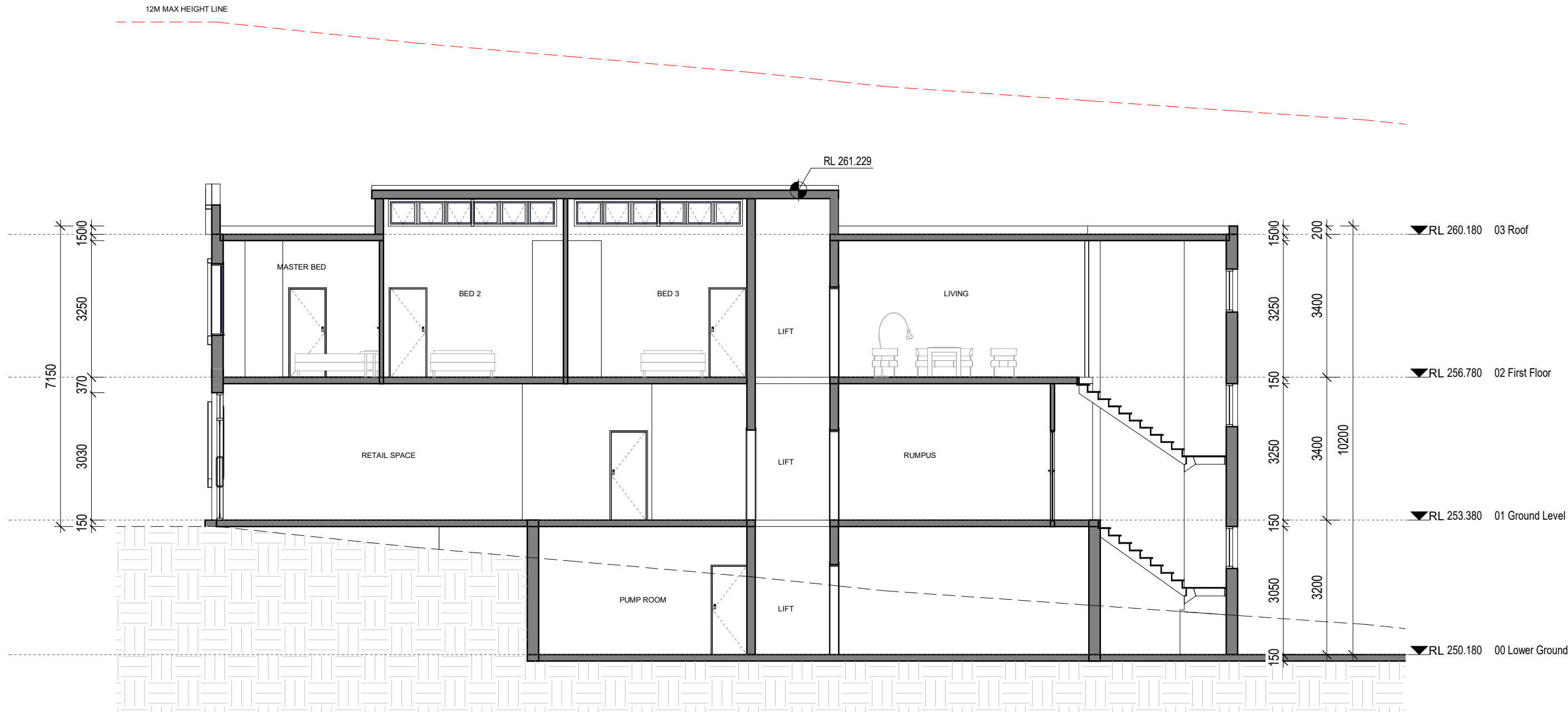
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1 Long-Section

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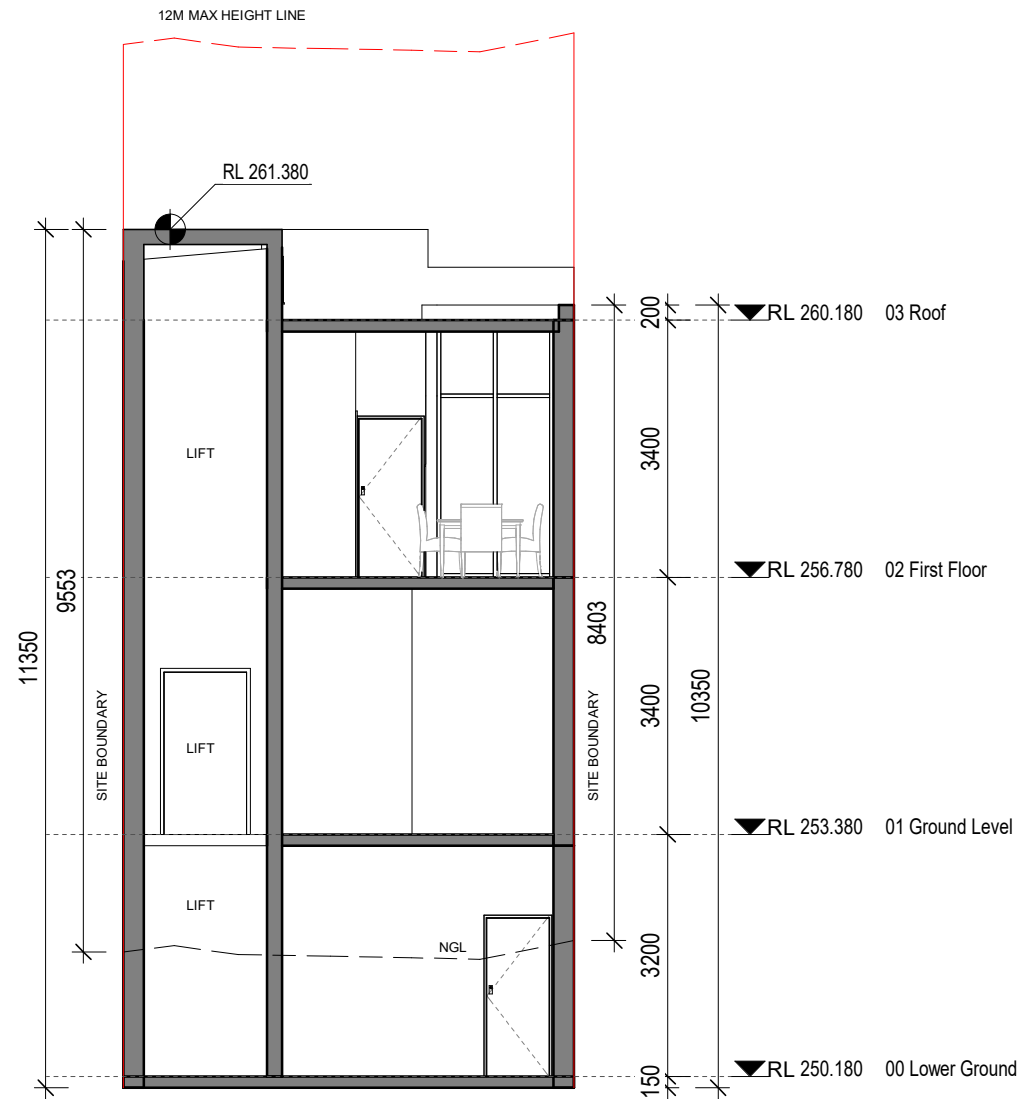
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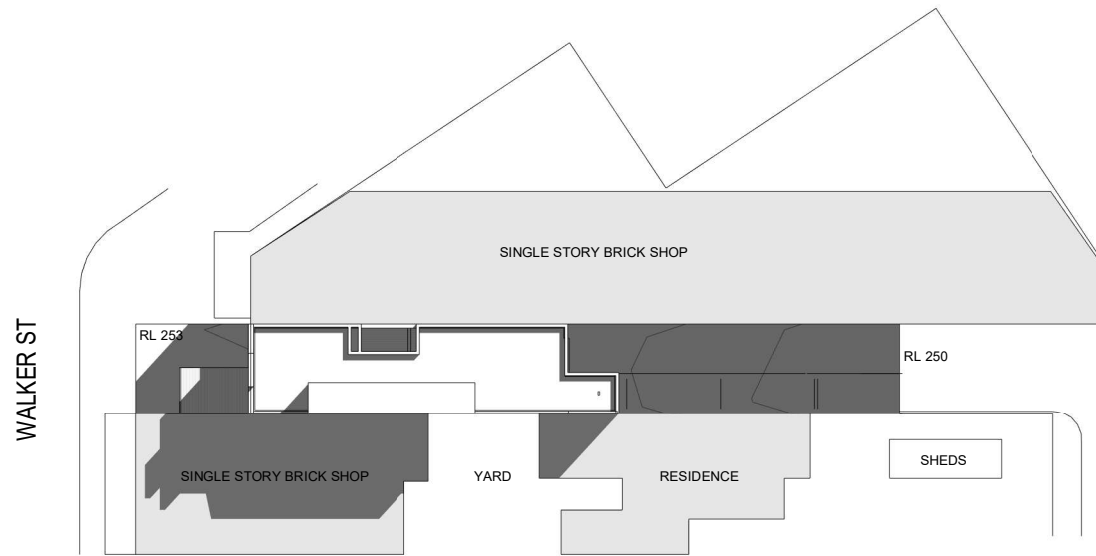
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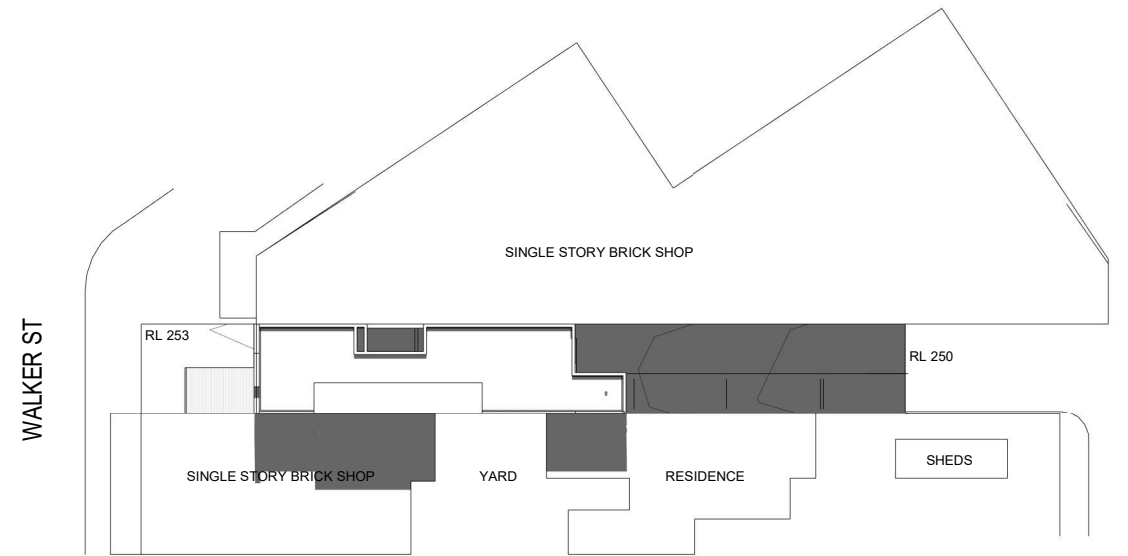


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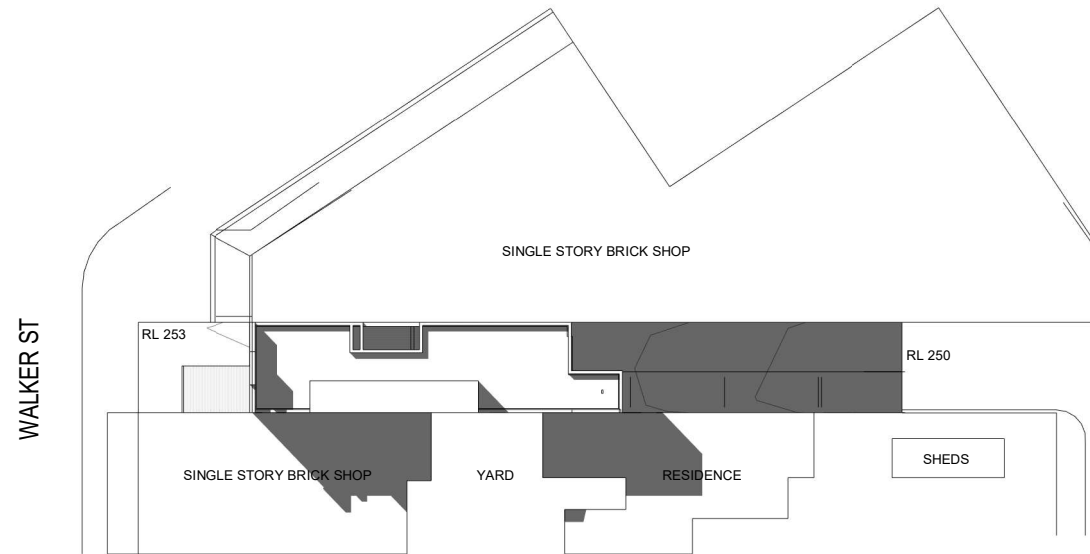
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1 21st June 9am
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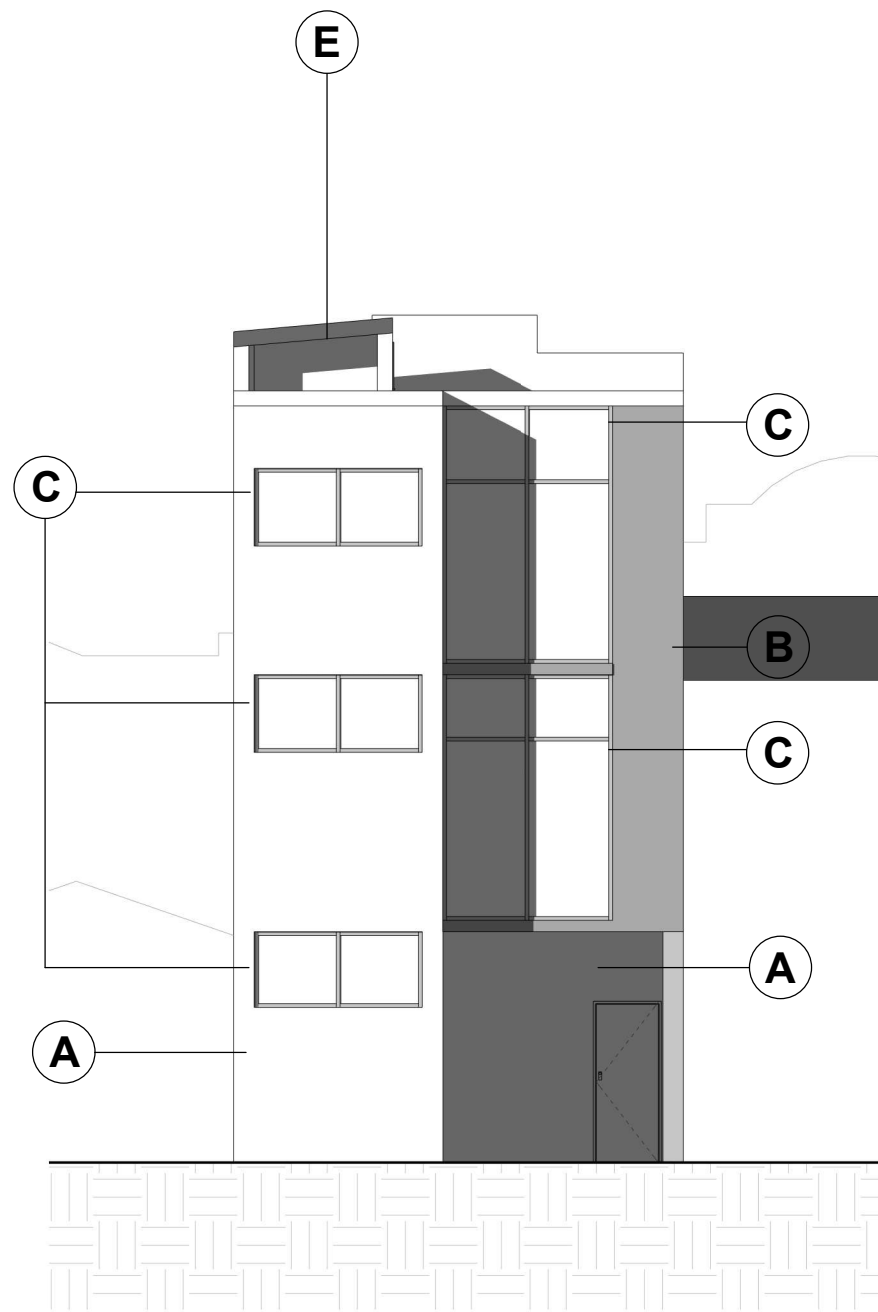


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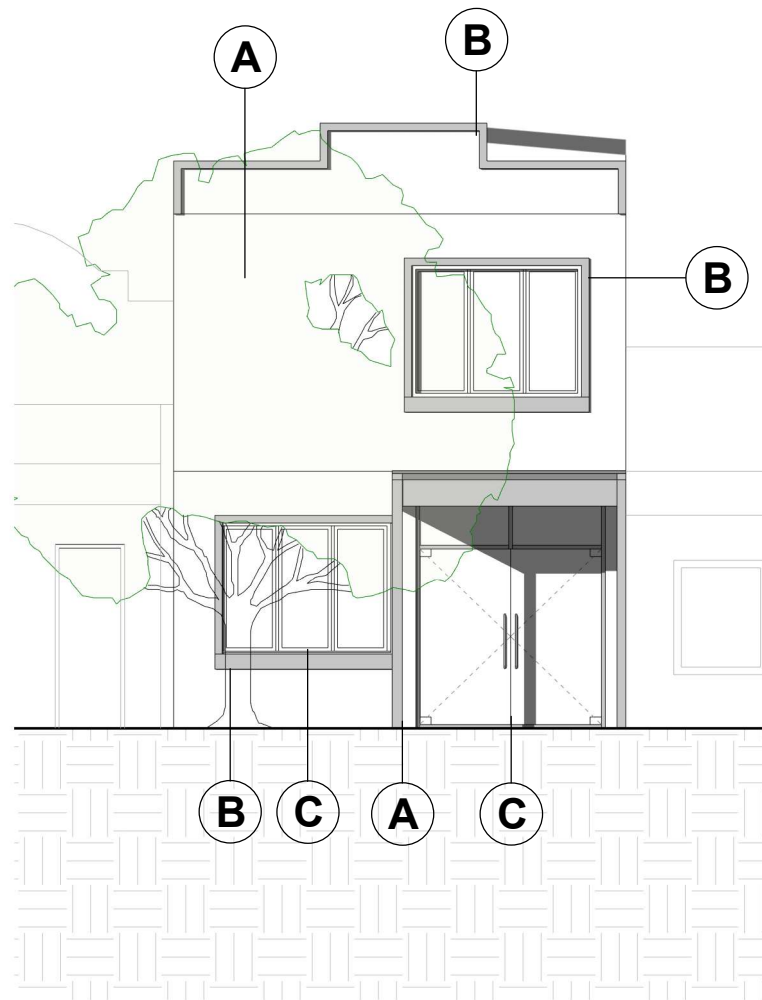


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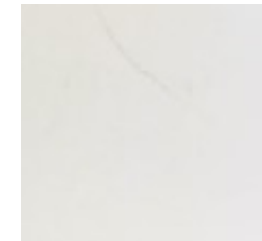
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1 East Elevation finishes
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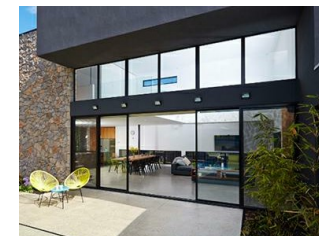
2 West Elevation finishes
1 : 100




A PAINT FINISH- Render A



B PAINT FINISH- Render B



C BLACK ALUMINIUM FRAMED GLASS DOORS AND WINDOWS



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SCALE

As indicated

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BUILDING FINISHES	

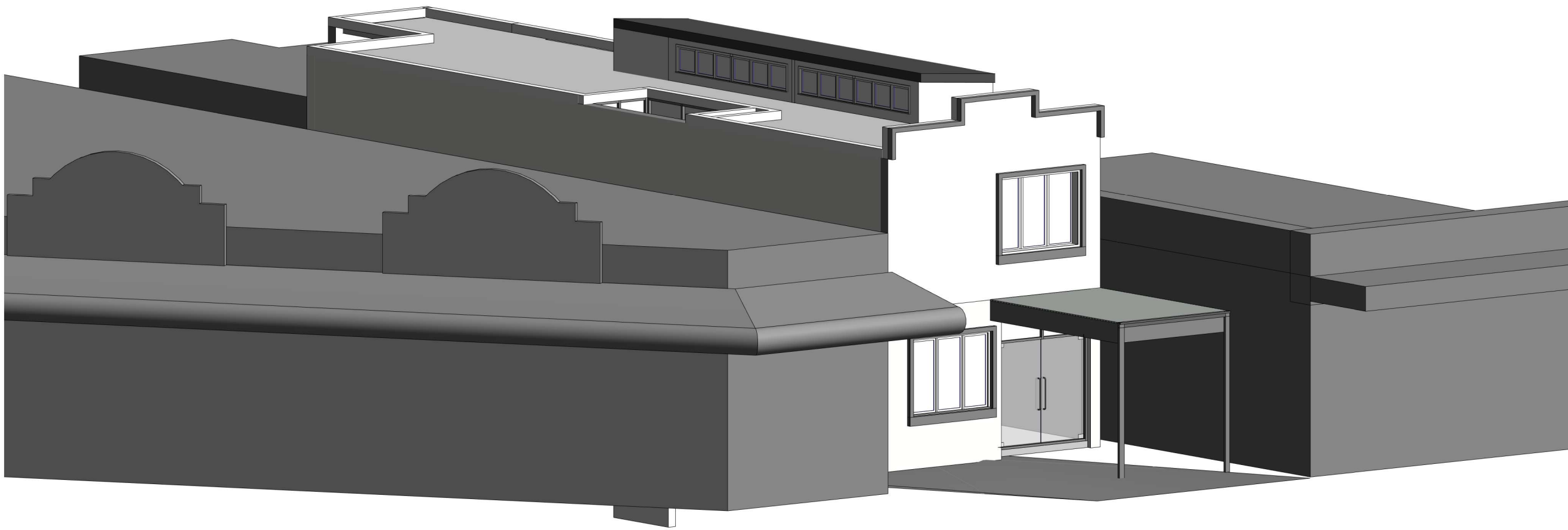


1

STREETSCAPE

1 : 100

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									20.08.21	STREETSCAPE		



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PROJECT

Lot 2 Short Lane, Helensburgh
NSW 2508

CLIENT

-

STATUS

FOR APPROVAL

STAGE

DA

DRAWING NO.

DA-14.1

SCALE

DATE

20.08.21

ISSUE

A

JOB NO.

20343

DRAWING TITLE

DRAWN BY

NK

CHECKED BY

RZ



zta

zta architects

architecture / urban design / interior design

Level 1, 538 King Georges Road,
Beverly Hills, NSW 2209

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e: admin@zta.net.au
ABN 56 164 632 517

CONSULTANTS

NOTE

ISSUE	DATE	PURPOSE OF ISSUE
A	02.09.21	Amendments

PROJECT
Lot 2 Short Lane, Helensburgh
NSW 2508

CLIENT
-

STATUS
FOR APPROVAL

STAGE
DA

DRAWING NO.
DA-14.2

SCALE

DATE
20.08.21

ISSUE
A



JOB NO.
20343

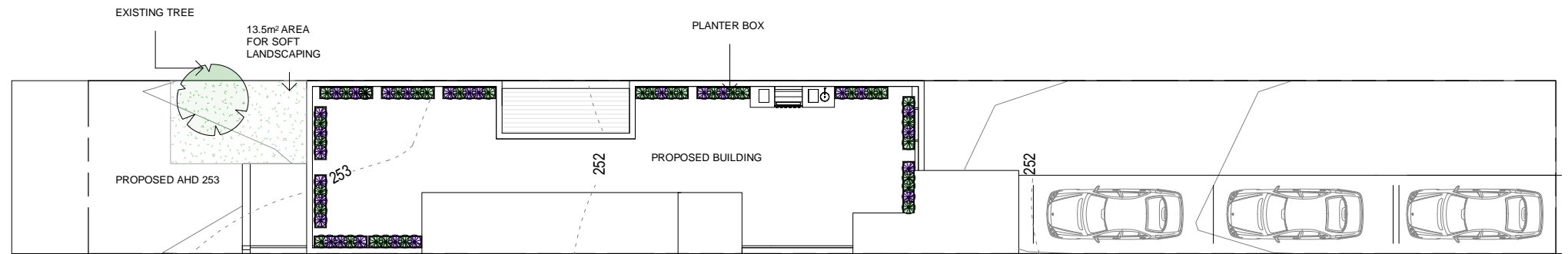
DRAWING TITLE

DRAWN BY
NK


CHECKED BY
RZ

LEGEND

	SPX
	SPT



1 : 200

<div><div></div><div>Level 1, 538 King Georges Road, Beverly Hills, NSW 2209</div><div>ph: +61 2 8098 7886 fx: +61 2 8098 7886 e: admin@zta.net.au ABN 56 164 632 517</div></div> <div><div>zta architects</div><div>architecture / urban design / interior design</div></div>	CONSULTANTS	NOTE Notes: • Refer Architects drawings for pavement, walls, fence, steps, and levels • Refer Engineers drawings for hydraulic information	ISSUE	DATE	PURPOSE OF ISSUE	PROJECT Lot 2 Walker St, Helensburgh NSW 2508 CLIENT -	STATUS PRELIMINARY STAGE DA	DRAWING NO. DA-15 SCALE As indicated DATE 26.10.20	ISSUE A JOB NO. 20343 DRAWING TITLE LANDSCAPE PLAN	DRAWN BY NK CHECKED BY RZ
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Single Dwelling

Certificate number: 1146380S

This certificate confirms that the proposed development will meet the NSW government's requirements for sustainability, if it is built in accordance with the commitments set out below. Terms used in this certificate, or in the commitments, have the meaning given by the document entitled "BASIX Definitions" dated 10/09/2020 published by the Department. This document is available at www.basix.nsw.gov.au

Secretary
Date of issue: Monday, 19 October 2020
To be valid, this certificate must be lodged within 3 months of the date of issue.



Project summary		
Project name	lot 2 walker street	
Street address	walker Street helensburgh 2508	
Local Government Area	Wollongong City Council	
Plan type and plan number	deposited 1153054	
Lot no.	2	
Section no.	-	
Project type	unit	
No. of bedrooms	3	
Project score		
Water	✔ 42	Target 40
Thermal Comfort	✔ Pass	Target Pass
Energy	✔ 53	Target 50

Certificate Prepared by
Name / Company Name: msconsult
ABN (if applicable): 31963963857

Description of project

Project address	
Project name	lot 2 walker street
Street address	n/a walker Street helensburgh 2508
Local Government Area	Wollongong City Council
Plan type and plan number	Deposited Plan 1153054
Lot no.	2
Section no.	-
Project type	
Project type	unit
No. of bedrooms	3
Site details	
Site area (m²)	313
Roof area (m²)	102
Conditioned floor area (m2)	222.0
Unconditioned floor area (m2)	22.0
Total area of garden and lawn (m2)	20

Assessor details and thermal loads		
Assessor number	n/a	
Certificate number	n/a	
Climate zone	n/a	
Area adjusted cooling load (MJ/m²·year)	n/a	
Area adjusted heating load (MJ/m²·year)	n/a	
Project score		
Water	✔ 42	Target 40
Thermal Comfort	✔ Pass	Target Pass
Energy	✔ 53	Target 50

Schedule of BASIX commitments

The commitments set out below regulate how the proposed development is to be carried out. It is a condition of any development consent granted, or complying development certificate issued, for the proposed development, that BASIX commitments be complied with.

Water Commitments	Show on DA plans	Show on CC/CDC plans & specs	Certifier check
Fixtures			
The applicant must install showerheads with a minimum rating of 4 star (> 4.5 but <= 6 L/min plus spray force and/or coverage tests) in all showers in the development.		✔	✔
The applicant must install a toilet flushing system with a minimum rating of 5 star in each toilet in the development.		✔	✔
The applicant must install taps with a minimum rating of 5 star in the kitchen in the development.		✔	
The applicant must install basin taps with a minimum rating of 5 star in each bathroom in the development.		✔	
Alternative water			
Stormwater tank			
The applicant must install a stormwater tank with a capacity of at least 6000 litres on the site. This stormwater tank must meet, and be installed in accordance with, the requirements of all applicable regulatory authorities.	✔	✔	✔
The applicant must configure the stormwater tank to collect runoff from: <ul style="list-style-type: none">at least 102 square metres of roof area of the development (excluding the area of the roof which drains to any rainwater tank or private dam)at least 50 square metres of impervious areas		✔	✔
The applicant must connect the stormwater tank to: <ul style="list-style-type: none">a sub-surface or non-aerosol irrigation system, or if the stormwater has been appropriately treated in accordance with applicable regulatory requirements, to at least one outdoor tap in the development (Note: NSWHealth does not recommend that stormwater be used to irrigate edible plants which are consumed raw.)		✔	✔

Thermal Comfort Commitments	Show on DA plans	Show on CC/CDC plans & specs	Certifier check
Windows, glazed doors and skylights			
The applicant must install the windows, glazed doors and shading devices described in the table below, in accordance with the specifications listed in the table. Relevant overshadowing specifications must be satisfied for each window and glazed door.	✔	✔	✔
The dwelling may have 1 skylight (<0.7 square metres) which is not listed in the table.	✔	✔	✔
The following requirements must also be satisfied in relation to each window and glazed door: <ul style="list-style-type: none">For the following glass and frame types, the certifier check can be performed by visual inspection.<ul style="list-style-type: none">Aluminium single clearAluminium double (air) clearTimber/uPVC/fibreglass single clearTimber/uPVC/fibreglass double (air) clear	✔	✔	✔

Window/glazed door no.	Maximum height (mm)	Maximum width (mm)	Type	Shading Device (Dimension within 10%)	Overshadowing
North facing					
W01	600	2000	aluminium, single, clear	solid overhang 2000 mm, 350 mm above head of window or glazed door	not overshadowed
W02	600	200	aluminium, single, clear	solid overhang 2000 mm, 350 mm above head of window or glazed door	not overshadowed
East facing					
W03	750	1000	aluminium, single, clear	none	not overshadowed
W04	750	1000	aluminium, single, clear	solid overhang 1500 mm, 250 mm above head of window or glazed door	not overshadowed
W05	2200	1500	aluminium, single, clear	none	not overshadowed

Thermal Comfort Commitments	Show on DA plans	Show on CC/CDC plans & specs	Certifier check
General features			
The dwelling must not have more than 2 storeys.	✔	✔	✔
The conditioned floor area of the dwelling must not exceed 300 square metres.	✔	✔	✔
The dwelling must not contain open mezzanine area exceeding 25 square metres.	✔	✔	✔
The dwelling must not contain third level habitable attic room.	✔	✔	✔
Floor, walls and ceiling/roof			
The applicant must construct the floor(s), walls, and ceiling/roof of the dwelling in accordance with the specifications listed in the table below.	✔	✔	✔

Construction	Additional insulation required (R-Value)	Other specifications
floor - concrete slab on ground	nil	
external wall - cavity brick	0.50 (or 1.17 including construction)	
internal wall shared with garage - single skin masonry	nil	
ceiling and roof - flat ceiling / flat roof, concrete/plasterboard internal	ceiling: 3.5 (up), roof: foil/sarking	concrete/plasterboard internal; medium (solar absorbance 0.475-0.70)

Note	• Insulation specified in this Certificate must be installed in accordance with Part 3.12.1.1 of the Building Code of Australia.
Note	• In some climate zones, insulation should be installed with due consideration of condensation and associated interaction with adjoining building materials.

Window/glazed door no.	Maximum height (mm)	Maximum width (mm)	Type	Shading Device (Dimension within 10%)	Overshadowing
W06	2500	2500	aluminium, single, clear	solid overhang 700 mm, 2500 mm above head of window or glazed door	not overshadowed
W07	2500	2500	aluminium, single, clear	solid overhang 700 mm, 2500 mm above head of window or glazed door	not overshadowed
West facing					
W08	2500	2500	aluminium, single, clear	verandah 2500 mm, 2500 mm above base of window or glazed door	not overshadowed

Energy Commitments	Show on DA plans	Show on CC/CDC plans & specs	Certifier check
Hot water			
The applicant must install the following hot water system in the development, or a system with a higher energy rating: solar (gas boosted, flat plate) with a performance of 41 to 45 STCs or better.	✔	✔	✔
Cooling system			
The applicant must install the following cooling system, or a system with a higher energy rating, in at least 1 living area: airconditioning ducting only; Energy rating: n/a		✔	✔
The applicant must install the following cooling system, or a system with a higher energy rating, in at least 1 bedroom: airconditioning ducting only; Energy rating: n/a		✔	✔
Heating system			
The applicant must install the following heating system, or a system with a higher energy rating, in at least 1 living area: gas fixed flued heater; Energy rating: 5 Star		✔	✔
The applicant must install the following heating system, or a system with a higher energy rating, in at least 1 bedroom: gas fixed flued heater; Energy rating: 5 Star		✔	✔
Ventilation			
The applicant must install the following exhaust systems in the development: At least 1 Bathroom: individual fan, ducted to façade or roof; Operation control: manual switch on/off Kitchen: individual fan, ducted to façade or roof; Operation control: manual switch on/off Laundry: individual fan, ducted to façade or roof; Operation control: manual switch on/off		✔	✔
Artificial lighting			
The applicant must ensure that the "primary type of artificial lighting" is fluorescent or light emitting diode (LED) lighting in each of the following rooms, and where the word "dedicated" appears, the fittings for those lights must only be capable of accepting fluorescent or light emitting diode (LED) lamps: <ul style="list-style-type: none">at least 3 of the bedrooms / study;at least 3 of the living / dining rooms;the kitchen; dedicated		✔	✔

Energy Commitments	Show on DA plans	Show on CC/CDC plans & specs	Certifier check
• all bathrooms/toilets; dedicated		✔	✔
Natural lighting			
The applicant must install a window and/or skylight in the kitchen of the dwelling for natural lighting.	✔	✔	✔
Alternative energy			
The applicant must install a photovoltaic system with the capacity to generate at least 0.5 peak kilowatts of electricity as part of the development. The applicant must connect this system to the development's electrical system.	✔	✔	✔
Other			
The applicant must install a gas cooktop & electric oven in the kitchen of the dwelling.		✔	
The applicant must construct each refrigerator space in the development so that it is "well ventilated", as defined in the BASIX definitions.		✔	
The applicant must install a fixed outdoor clothes drying line as part of the development.		✔	
The applicant must install a fixed indoor or sheltered clothes drying line as part of the development.		✔	



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zta architects

architecture / urban design / interior design

CONSULTANTS

NOTE

ISSUE

DATE

PURPOSE OF ISSUE

A

02.09.21

Amendments

PROJECT

Lot 2 Short Lane, Helensburgh
NSW 2508

CLIENT

-

STATUS

FOR APPROVAL

STAGE

DA

DRAWING NO.

DA-16

SCALE

DATE

20.08.21

ISSUE

A

JOB NO.

20343

DRAWING TITLE

BASIX

DRAWN BY

NK

CHECKED BY

RZ

PROPOSED DEVELOPMENT

AT LOT 2 WALKER STREET, HELENSBURGH NSW 2508

DRAINAGE NOTES:

ALL PIPES TO BE LAID ON 75mm SAND BED WITH THE BARRELS FULLY SUPPORTED

100mm AND 150mm DIAMETER PIPES TO BE LAID ON MINIMUM 1% GRADE

MINIMUM DEPTH OF COVER FOR PIPES NOT SUBJECT TO VEHICULAR LOADING TO BE 300mm

ALL DRAINAGE PIPES LAID UNDER PAVEMENT SHALL BE REINFORCED CONCRETE WITH RUBBER RING JOINTS

BACKFILL TRENCHES WITH COMPACTED SAND OR APPROVED AGGREGATE MATERIAL

ALL PITS TO HAVE 600x600mm INTERNAL DIMENSIONS (U.N.O.)

SILT ARRESTORS TO HAVE 900x900mm INTERNAL DIMENSIONS

HEAVY DUTY GRATES AND COVERS ARE TO BE PROVIDED IN TRAFFICABLE AREAS

PIT GRATE TO BE TYPE WELDLOK OR APPROVED EQUIVALENT

ALL PITS SHALL BE PROVIDED WITH A LOCKING CLIP

ALL PITS SHALL BE MAINTAINED REGULARLY

TOP OF BENCHING SHALL BE TO THE HALF OF THE OUTLET PIPE DIAMETER

MAXIMUM FRONT ENTRY PIPE:-
STRAIGHT ENTRY - Ø750
SKEW ENTRY 45° - Ø525

Ø100 SUBSOIL DRAINAGE PIPE 3000mm LONG WRAPPED IN FABRIC SOCK TO BE PROVIDED ADJACENT TO INLET PIPES

COMPRESSIVE STRENGTH f_c FOR CAST IN SITU CONCRETE TO BE A MINIMUM OF 20MPa AT 28 DAYS

PROVIDE CLEANING EYES TO ALL DOWNPIPES NOT DIRECTLY CONNECTED TO PITS

ISOLATED JOINTS TO BE PROVIDED TO ISOLATE CONCRETE PAVEMENTS FROM PITS

ALL TRENCH GRATES PROVIDED SHALL HAVE A MINIMUM CLEAR WIDTH OF 200mm

STORMWATER DRAINAGE CONNECTIONS TO THE MAIN SYSTEM SHALL BE TO THE REQUIREMENTS AND THE SATISFACTION OF LOCAL COUNCIL

STORMWATER PIPE BEDDING/PAVING NOTES:

WHERE TRENCH BASE IS ROCK A MINIMUM OF 75mm BEDDING TO BE PROVIDED UNDER PIPE COLLARS.

STORMWATER PIPE BEDDING DETAIL TO BE IN ACCORDANCE WITH LOCAL COUNCIL REQUIREMENTS. BEDDING DETAILS TO BE CONFIRMED UPON EXCAVATION & PRIOR TO INSTALLATION OF PIPEWORK.

FOOTPATH REINSTATEMENT NOTES:

REMOVE ALL SAND FILL WITHIN THE FOOTPATH AREA TO THE EXISTING SUBGRADE.

SUPPORT ALL AUTHORITY SERVICES TO STRUCTURAL ENGINEERS DETAILS DURING EXCAVATION.

REINSTATE FOOTPATH SUBGRADE.

THE CONTRACTOR SHALL PROVIDE CERTIFICATION OF COMPACTION FROM A NATA REGISTERED TESTING AUTHORITY. MINIMUM THREE TESTS PER LAYER AS FOLLOWS:
SELECT FILL 95% MODIFIED
SELECT FILL (LESS THAN 300mm 98% MODIFIED BELOW BASE COURSE)
BASE COURSE 100% MODIFIED

EROSION & SEDIMENT CONTROL NOTES:

CONTRACTOR TO PROVIDE SILT FENCE/HAY BAIL BARRIERS TO THE LOW SIDE OF ALL EXPOSED EARTH EXCAVATIONS (TYP).

ISOLATE EXISTING STORMWATER PITS WITH HAY BALES TO FILTER ALL INCOMING FLOWS.

DO NOT STOCK PILE EXCAVATED MATERIAL ON THE ROAD WAY.



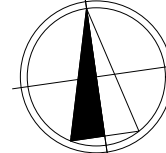
SURVEY

THE EXISTING SITE CONDITIONS SHOWN ON THE FOLLOWING DRAWINGS HAVE BEEN INVESTIGATED BY OSUM SURVEYING P/L, BEING REGISTERED SURVEYORS. THE INFORMATION IS SHOWN TO PROVIDE A BASIS FOR DESIGN. SYDNEY STRUCTURAL DOES NOT GUARANTEE THE ACCURACY OR COMPLETENESS OF THE SURVEY BASE OR ITS SUITABILITY AS A BASIS FOR CONSTRUCTION DRAW.

SHOULD DISCREPANCIES BE ENCOUNTERED DURING CONSTRUCTION BETWEEN THE SURVEY DATA AND ACTUAL FIELD DATA, CONTACT SYDNEY STRUCTURAL.

DRAWING SCHEDULE

DRAWING No.	DRAWING TITLE
D00	COVER SHEET
D01	STORMWATER DRAINAGE PLAN - BASEMENT
D02	STORMWATER DRAINAGE PLAN - GROUND
D03	STORMWATER DRAINAGE DETAILS

C	19/10/20	ISSUED FOR D.A.	AK		
B	16/09/20	ISSUED FOR D.A.	AK		
A	13/09/20	ISSUED FOR D.A.	AK		
REV	DATE	DESCRIPTION	RVD		
REVISIONS					
CLIENT					
					
Sydney Office — A - 69 / 23 Macmahon Street, Hurstville, NSW 2220 P - +61 401 200 104 E - info@sydneystructural.com.au W - www.sydneystructural.com.au					
<div>SSCENGINEERING</div> <div>SYDNEY STRUCTURAL & CIVIL</div>					
 ENGINEERS AUSTRALIA Professional Engineer MEMBER					
ADDRESS					
LOT 2 WALKER STREET, HELENSBURGH, NSW, 2508					
PROJECT					
PROPOSED DEVELOPMENT					
STATUS					
ISSUED FOR D.A.					
DRAWN AM	DESIGNED AK	CHECKED AE	APPROVED AK		
DO NOT SCALE DRAWING, USE FIGURED DIMENSIONS ONLY.			SCALE 1:100 UNO AT A1 SIZE		
TITLE					
COVER SHEET					
PROJECT No. SSCE200818		DRAWING No. D00	REV B		



WALKER ST

MAIN TRAFFIC

SHORT LANE

CAR PARK AND PEDESTION ACCESS

NOTES

- ALL LINES ARE TO BE MIN. 100Ø UPVC @ MIN 1.0% GRADE UNLESS NOTED OTHERWISE.
- IT IS THE CONTRACTORS RESPONSIBILITY TO LOCATE & LEVEL ALL EXISTING SERVICES PRIOR TO THE COMMENCEMENT OF ANY EARTHWORKS. ALL DESIGN LEVELS SHOWN ON PLAN SHALL BE VERIFIED ON SITE PRIOR TO THE COMMENCEMENT OF ANY WORK.
- ALL PIPES TO HAVE MIN 200mm COVER IF LOCATED WITHIN PROPERTY.
- ALL PITS IN DRIVEWAYS BE HEAVY DUTY GRATES. DIRECT SURFACE FLOW TO ALL GRATED SURFACE INLET PITS.
- ALL WORK DO BE DONE IN ACCORDANCE WITH AS/NZ 3500.3.2:1998 AND COUNCIL SPECIFICATIONS.
- LOCATION OF DOWNPIPES & FLOOR WASTES ARE INDICATIVE ONLY. DOWNPIPE & FLOOR WASTE SIZE, LOCATION & QUANTITY TO BE DETERMINED BY BUILDER & IN ACCORDANCE WITH RELEVANT AUSTRALIAN STANDARDS.
- THIS PLAN IS TO BE READ IN CONJUNCTION WITH THE ARCHITECTURAL, LANDSCAPE AND STRUCTURAL PLANS.
- ANY DISCREPANCIES OR OMISSIONS SHALL BE REFERRED TO THE DESIGN ENGINEER FOR RESOLUTION.
- ALL PITS OR GRATES IN TRAFFICABLE AREAS TO BE HEAVY DUTY.
- ALL GUTTERS WILL BE FITTED WITH LEAF GUARDS AND SHOULD BE INSPECTED AND CLEANED TO ENSURE LEAF LITTER CANNOT ENTER THE DOWNPIPES
- EXISTING STORMWATER DRAINAGE TO BE UTILISED WHERE CONTRACTOR SEE FIT.

SYMBOLS

RL	PIT SURFACE LEVEL
IL	INVERT LEVEL
TK	TOP OF KERB
SW	STORMWATER DRAINAGE PIPE
RWT	DOWNPIPE TO RAINWATER TANK
SW	OVERFLOW PIPE FROM RAINWATER TANK
AO	Ø100 SUBSOIL PIPE
RM	RISING MAIN
FW	FLOOR WASTE 150X150
FW	FLOOR WASTE 150Ø
RWO	RAINWATER OUTLET 300Ø
DP	DOWN PIPE
CO	CLEAN OUT
IO	INSPECTION OPENING
VD	VERTICAL DROP
VR	VERTICAL RISER
	CONCRETE COVER JUNCTION PIT
	GRATED INLET PIT
	WIDE GRATED DRAIN

DESIGN NOTES

- LGA = WOLLONGONG CITY COUNCIL
- SCOPE OF WORKS TO INCLUDE CONSTRUCT RESIDENTIAL DEVELOPMENT.
- IN ACCORDANCE WITH STORMWATER GUIDELINES, OSD IS REQUIRED FOR PROPOSED DEVELOPMENT. REFER TO DRAINS MODEL ASSESSMENT FOR FURTHER DETAILS.
- RAINWATER TANK AS PER BASIX SPECIFICATIONS.



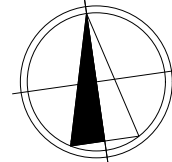
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REVISIONS

CLIENT	

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SSC SYDNEY
ENGINEERING STRUCTURAL &
CIVIL



ADDRESS
**LOT 2 WALKER STREET,
HELENSBURGH, NSW, 2508**

PROJECT
PROPOSED DEVELOPMENT

STATUS
ISSUED FOR D.A.

DRAWN AM	DESIGNED AK	CHECKED AE	APPROVED AK
DO NOT SCALE DRAWING. USE FIGURED DIMENSIONS ONLY.			SCALE 1:100 UNO AT A1 SIZE

TITLE
STORMWATER DRAINAGE PLAN - BASEMENT

PROJECT No. SSCE200818	DRAWING No. D01	REV B
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WALKER ST

MAIN TRAFFIC

SINGLE STORY BRICK SHOP

SINGLE STORY BRICK SHOP

SINGLE STORY BRICK SHOP

SHORT LANE

CUBBY HOUSE

NOTES

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REVISIONS

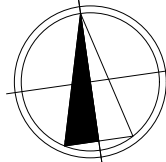
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SSC SYDNEY
ENGINEERING STRUCTURAL & CIVIL



ADDRESS
**LOT 2 WALKER STREET,
HELENSBURGH, NSW, 2508**

PROJECT
PROPOSED DEVELOPMENT

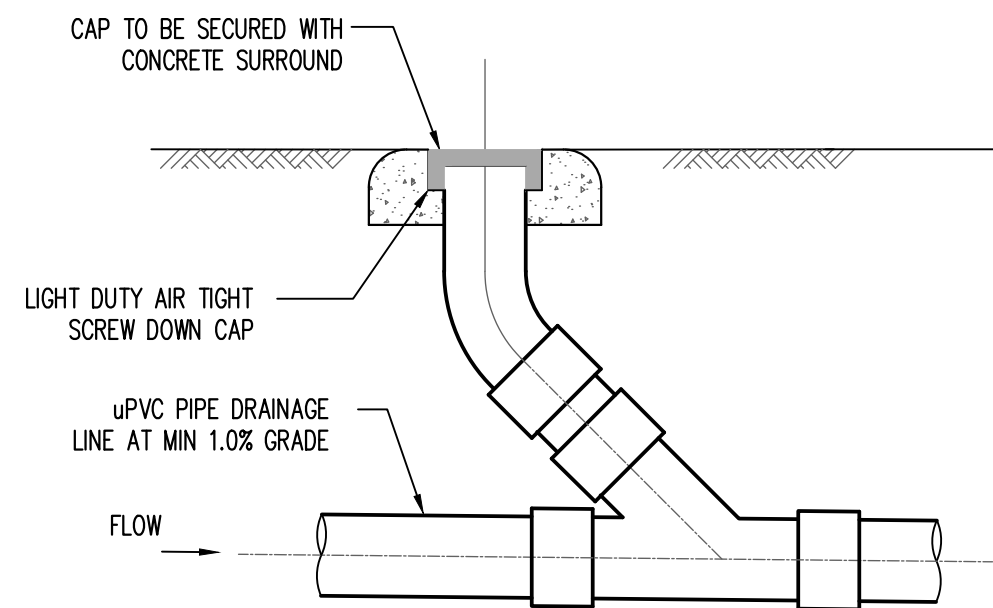
STATUS
ISSUED FOR D.A.

DRAWN AM	DESIGNED AK	CHECKED AE	APPROVED AK
DO NOT SCALE DRAWING, USE FIGURED DIMENSIONS ONLY.			SCALE 1:100 UNO AT A1 SIZE

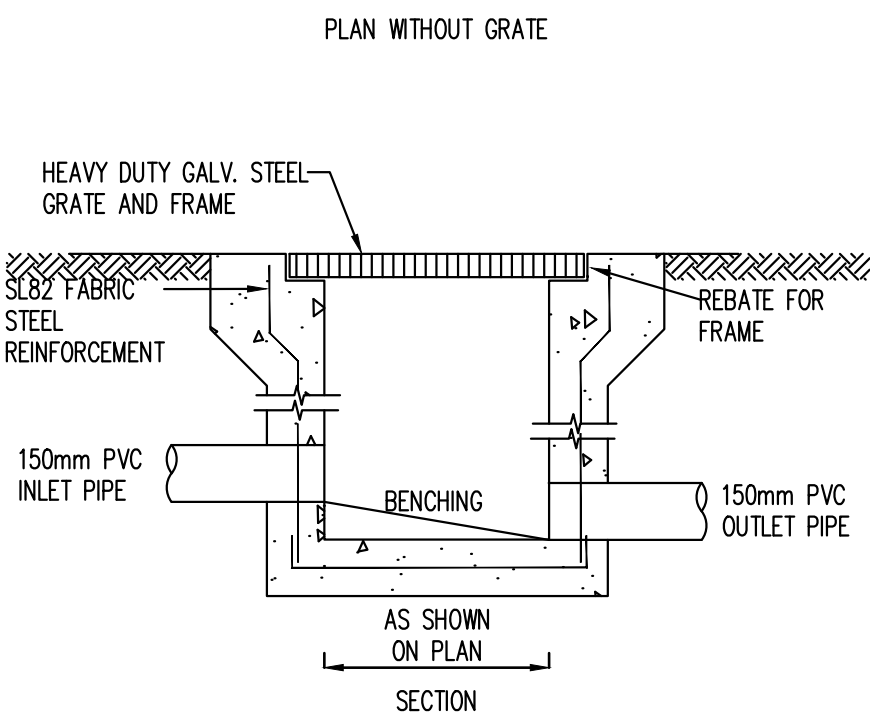
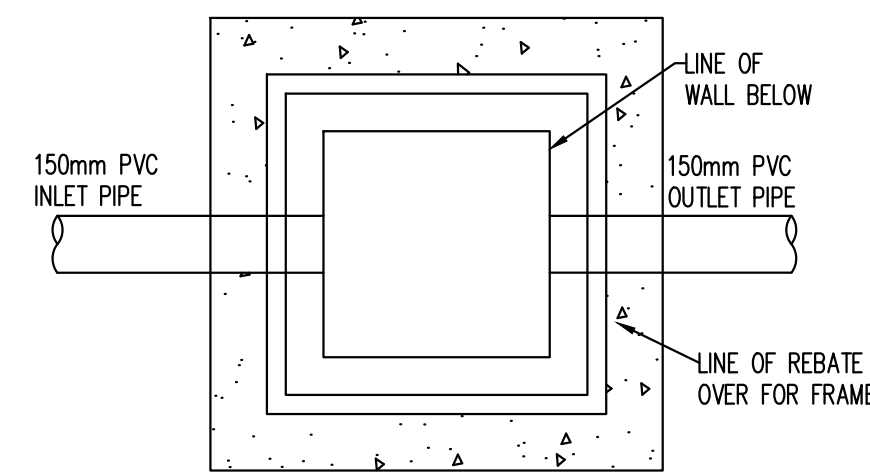
TITLE STORMWATER DRAINAGE PLAN - GROUND			
PROJECT No. SSC200818	DRAWING No. D02	REV B	

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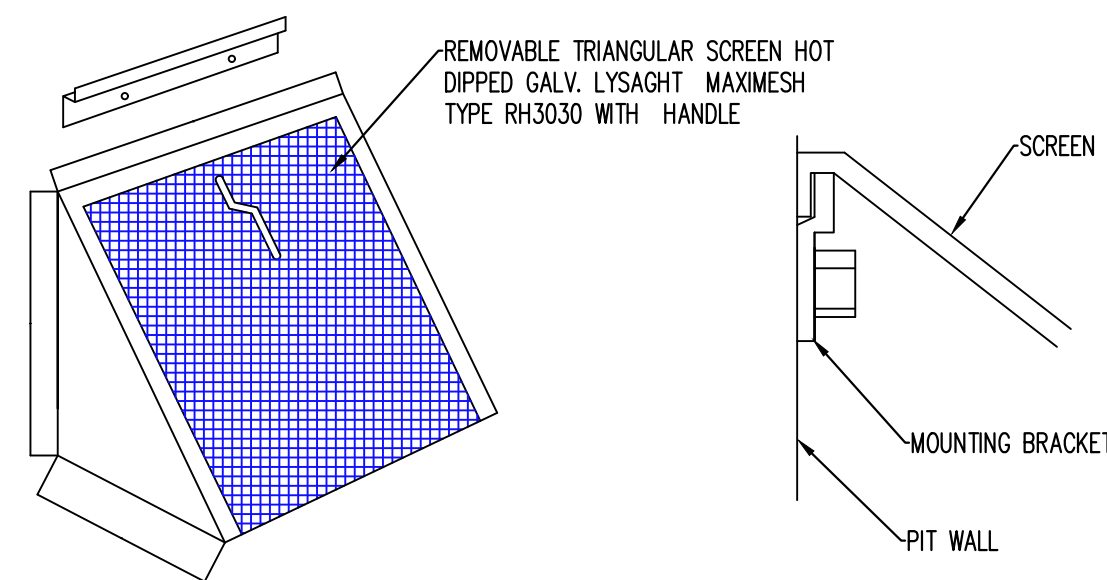




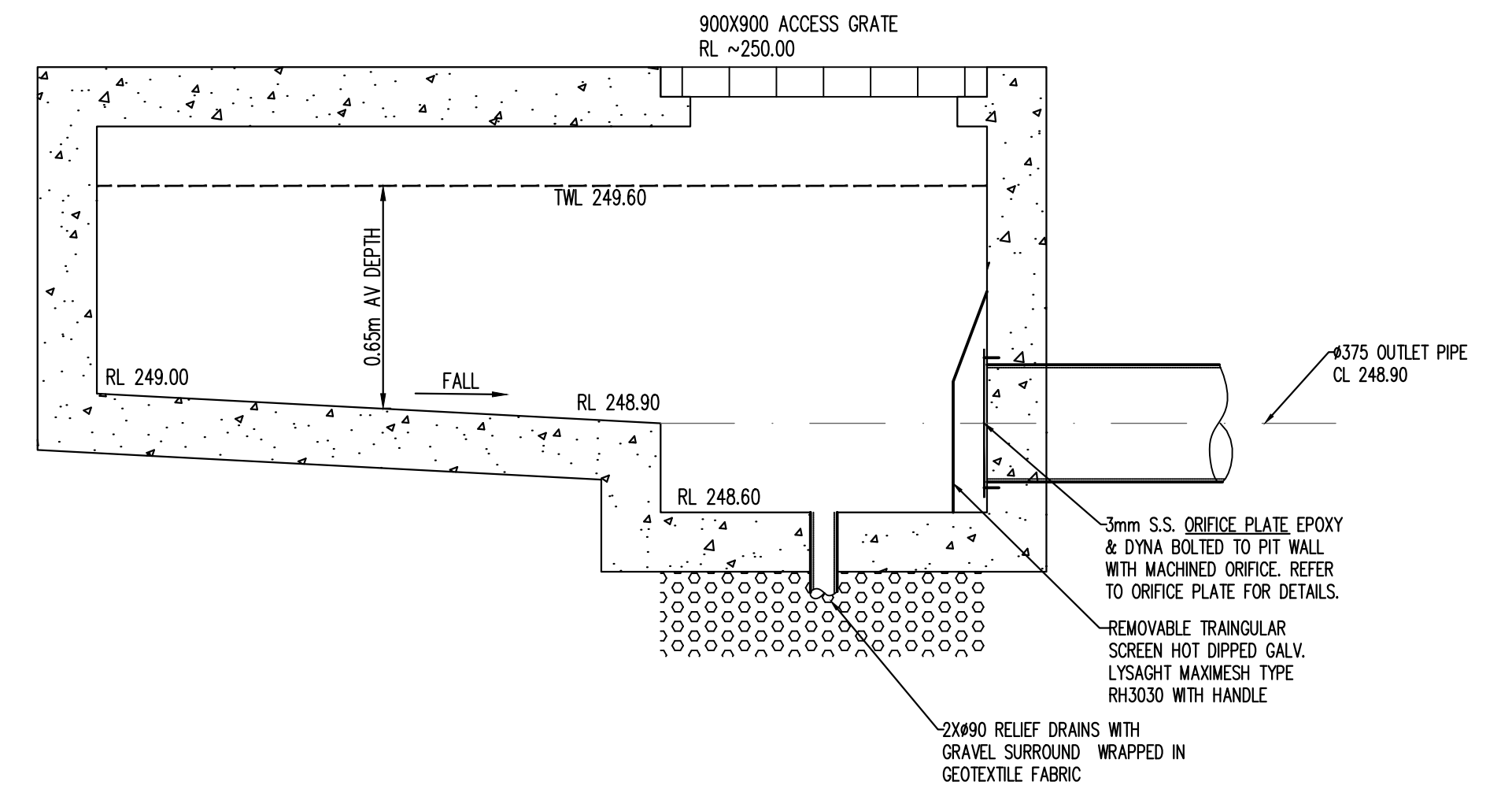
TYPICAL CLEANING EYE DETAIL
SCALE NTS



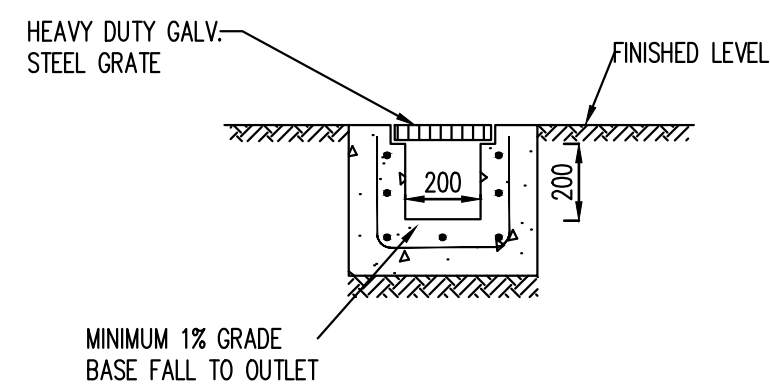
STORMWATER PIT DETAIL
SCALE NTS



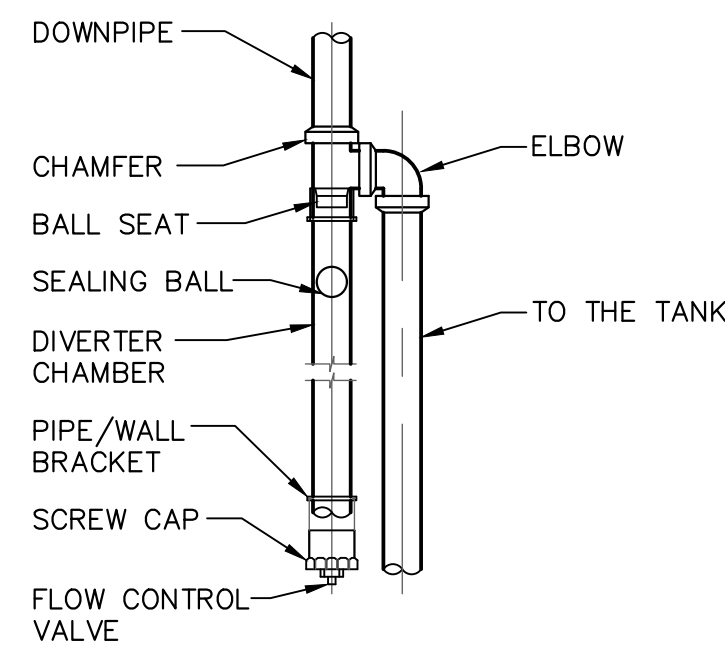
MULTI PURPOSE FILTER SCREEN
SCALE 1:10



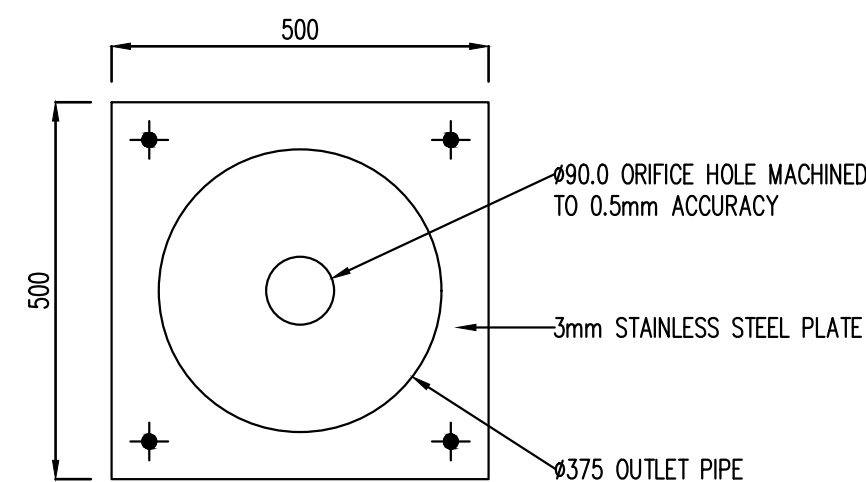
TYPICAL OSD SECTION
SCALE 1:20



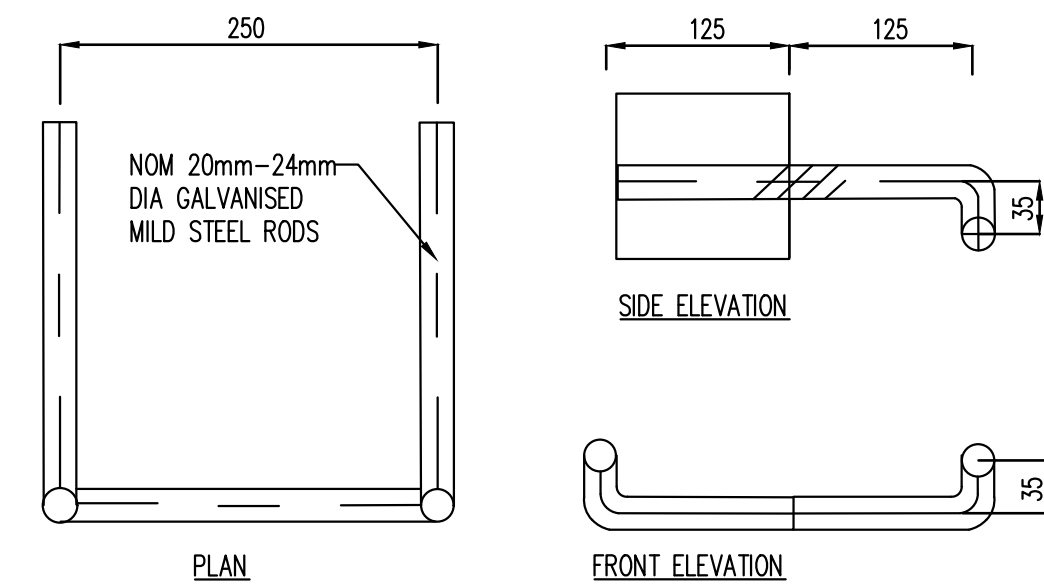
GRADED TRENCH DRAIN DETAIL
SCALE 1:20



FIRST FLUSH DETAIL
SCALE 1:20



ORIFICE PLATE ELEVATION
SCALE 1:10



DETAIL
STEP IRONS
1:5
NOTE: INSTALL WHERE PITS ARE DEEPER THAN 1000

C	19/10/20	ISSUED FOR D.A.	AK
B	16/09/20	ISSUED FOR D.A.	AK
A	13/09/20	ISSUED FOR D.A.	AK
REV	DATE	DESCRIPTION	RVD

REVISIONS

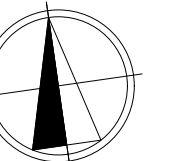
CLIENT



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SSC SYDNEY
ENGINEERING STRUCTURAL &
CIVIL



ADDRESS

LOT 2 WALKER STREET,
HELENSBURGH, NSW, 2508

PROJECT

PROPOSED DEVELOPMENT

STATUS

ISSUED FOR D.A.

DRAWN AM	DESIGNED AK	CHECKED AE	APPROVED AK
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DO NOT SCALE DRAWING, USE FIGURED
DIMENSIONS ONLY.

SCALE
1:100 UNO
AT A1 SIZE

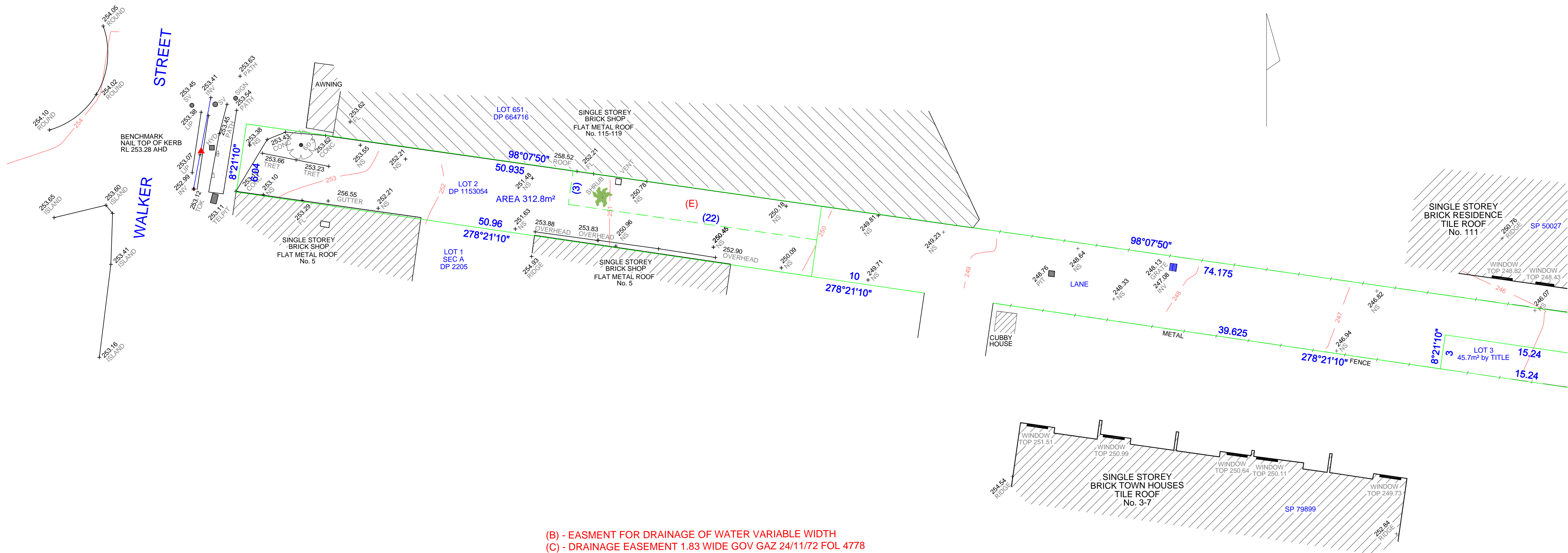
TITLE

STORMWATER DRAINAGE DETAILS

PROJECT No. SSC200818	DRAWING No. D03	REV B
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SEE PAGE 2

- (B) - EASMENT FOR DRAINAGE OF WATER VARIABLE WIDTH
(C) - DRAINAGE EASEMENT 1.83 WIDE GOV GAZ 24/11/72 FOL 4778
(E) - EASEMENT FOR DRAINAGE OF SEWAGE 3.0 WIDE
(F) - RIGHT OF CARRIAGEWAY VARIABLE WIDTH
(F) - EASEMENT FOR SERVICES VARIABLE WIDTH



- ALL SURVEYING SERVICES
- LAND SUBDIVISION
- ROAD / DRIVEWAY DESIGN
- DRAINAGE / OSD DESIGN
- DETAIL SURVEYS
- STRATA PLANS
- IDENTIFICATION SURVEYS
- CONSTRUCTION SETOUT
- PROJECT MANAGEMENT

Head Office: Liverpool
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Southcoast Office
92 Jasmine Drive, Bombaderry NSW 2541
Northbridge Office
152 Sailors Bay Rd, Northbridge, NSW 1560

LOCAL COUNCIL AREA: WOLLONGONG
**DETAIL SURVEY OVER LOT 2
IN DP1153054**
BEING No. WALKER STREET, HELENSBURGH
DRAWN: FC DATE: 17-04-2015 CADREF: 2348WALKER-01-01A
SCALE 1:200 APPROVED: LC DATUM: A.H.D.

PLAN	AMENDMENT	REFERENCE
E	02-07-2015	ADDITIONAL SURVEY
D	22-05-2015	ADDITIONAL LOTS
C	20-04-2015	BOUNDARY LINE ADDED
B	17-04-2015	INITIAL ISSUE
A	09-03-2015	INITIAL ISSUE
AMEND.	DATE	DESCRIPTION

PLAN REFERENCE:
2348WALKER
SHEET 1 OF 2

ATTACHMENT 2 – Site Photos

Map of Locations of Photos



KEY

1 = Approximate location photo was taken from

→ = Direction facing for photo

Date: 21 February 2022

1: Short Lane as viewed from Short Street facing North towards subject site.



Date: 21 February 2022

2: Adjoining commercial/retail development to the North of the subject site as viewed from Short Lane facing North West.



Date: 21 February 2022

3: Subject site as viewed from Short Lane facing West.



Date: 21 February 2022

4: Ancillary structures to the rear of the adjoining property to the South of the subject site as view form the rear of the subject site facing South west.



Date: 21 February 2022

5: Residential component of the adjoining property to the South of the subject site as viewed from site of proposed development.



Date: 21 February 2022

6: View South form site of proposed development.



Date: 21 February 2022

7: Subject site as viewed from the Walker Street boundary facing East



Date: 21 February 2022

8: Subject site as viewed from Walker Street facing East.



Date: 21 February 2022

9: View North toward the Helensburgh Hotel (WLEP Heritage Item 6115). Photo taken from Walker Street footpath forward of the subject site.



Date: 21 February 2022

10: View North west toward the Helensburgh Post Office (WLEP Heritage Item 6114) and Charles Harper Park (WLEP Heritage Item 6124). Photo taken from Walker Street footpath forward of the subject site.



Date: 21 February 2022

11: Photo West of the subject site. Photo taken from Walker Street footpath forward of the subject site.



Date: 21 February 2022

12: Subject site as viewed from the footpath South of the Helensburgh Hotel.



Date: 21 February 2022

13: Helensburgh Post Office (WLEP Heritage Item 6114) as viewed from the roundabout at the intersection Walker and Parkes Street.



Date: 21 February 2022

14: View towards Charles Harper Parker (WLEP Heritage Item 6124) as viewed from the roundabout at the intersection Walker and Parkes Street. Helensburgh Post Office (WLEP Heritage Item 6114) is on right of photo.



Date: 21 February 2022

15: Subject site as viewed from the Western side of Walker Street facing East.



Date: 21 February 2022

16: Streetscape along Walker Street South of the subject site. Photo taken from Western side of Walker Street facing South east. Subject site is on left of photo.



Annexure 2

Clause 4.6 Request to Vary Development Standard

Introduction

This Clause 4.6 Exception to Development Standards request has been prepared by Rod Logan Planning in support of a Development Application (DA) for the redevelopment of the subject site, Lot 2 Short Lane, Helensburgh, proposing construction of a mixed use (retail and shop top housing).

The following sections provide an assessment of the request to vary the development standard relating to the ground floor use of the site for residential purposes and the provisions of Clause 7.13 of the *Wollongong Local Environmental Plan 2009* ('WLEP 2009').

Consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court. The *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 court judgement is the most relevant of recent case law, albeit as refined recently by the Court of Appeal in *Rebel MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSCA 130.

Chief Justice Preston of the Land and Environment Court confirmed (in the *Initial Action* judgement that:

- i) the consent authority must, primarily, be satisfied the applicant's written request adequately addresses the 'unreasonable and unnecessary' and 'sufficient environmental planning grounds' tests;
- ii) in establishing 'sufficient environmental planning grounds', the focus must be on the contravention and not the development as a whole; and
- iii) clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.

This clause 4.6 variation has specifically responded to the matters outlined above and demonstrates that the request meets the relevant tests with regard to recent case law.

In accordance with the WLEP 2009 requirements, this Clause 4.6 variation request:

- identifies the development standard to be varied (**Part 2**);
- identifies the variation sought (**Part 3**);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Part 4**);
- demonstrates there are sufficient environmental planning grounds to justify the contravention (**Part 5**);
- demonstrates that the proposed variation is 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 (**Part 6**);
- provides an assessment of the matters the secretary is required to consider before providing concurrence (**Part 7**); and
- Provides a conclusion summarising the preceding parts (**Part 8**).

This Clause 4.6 Exceptions to Development Standards should be read in conjunction with the architectural plan details prepared by ZTA Architects.

Development Standard to be Varied

The relevant development standard to be varied is contained within WLEP 2009 Clause 7.13 “Certain Land within Business zones” which generally applies to land zoned B2 Local Centre and contains the following relevant subclause:

- (3) **Development consent must not be granted** for development for the purpose of a building on land to which this clause applies **unless the consent authority is satisfied that the ground floor of the building—**
- (a) **will not be used for the purpose of residential accommodation**, and
 - (b) will have at least one entrance and at least one other door or window on the front of the building facing the street other than a service lane.

A development standard is defined in s1.4 of the *Environmental Planning and Assessment Act 1979* (“EP&A Act”) to mean (bold type added where relevant):

"provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) **the proportion or percentage of the area of a site which a building or work may occupy,***

- (c) **the character, location, siting,** bulk, scale, shape, size, height, density, design or external appearance **of a building or work,**
- (d) the cubic content or floor space of a building,
- (e) the intensity or density of the use of any land, building or work,
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- (h) the volume, nature and type of traffic generated by the development, (i) road patterns,
- (j) drainage,
- (k) the carrying out of earthworks,
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- (m) the provision of services, facilities and amenities demanded by development,
- (n) the emission of pollution and means for its prevention or control or mitigation, and
- (o) **such other matters as may be prescribed.” (bold added)**

Having regard to the above, Clause 7.13 is considered to be a development standard as defined under the EP&A Act 1979.

Clause 4.6 of Wollongong WLEP 2009

The following table provides a summary of the key matters for consideration under Clause 4.6 of WLEP 2009 and a response as to where each is addressed in this written request:

Requirements/Subclause of Clause 4.6	Response/Comment
(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.	It is key to note that the objectives of the clause are to provide flexibility in applying development standards and that in doing so, a better planning outcome ensues.
(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.	Clause 17.3 of WLEP 2009 is not expressly excluded from operation of this clause. Accordingly, consent may be granted.

However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.	
<p>(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:</p> <p>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p> <p>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p>	This written request seeks to justify the variation by demonstrating (a) and (b) are achieved.
<p>(4) Development consent must not be granted for development that contravenes a development standard unless:</p> <p>(a) the consent authority is satisfied that:</p> <p>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p> <p>(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</p> <p>(b) the concurrence of the Director-General has been obtained.</p>	<p>This written request addresses all requirements of subclause (3).</p> <p>As set out in this objection, the proposed development will be in the public interest because it is <i>consistent</i> with the <i>objectives</i> of the particular <i>standard</i> and the <i>objectives</i> for the zone.</p> <p>Concurrence is assumed but this is a matter to be determined by the consent authority.</p>
<p>(5) In deciding whether to grant concurrence, the Director-General must consider:</p> <p>(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</p> <p>(b) the public benefit of maintaining the development standard, and</p>	<p>Potential matters of significance for State or regional environmental planning are addressed in in this Objection.</p> <p>Consideration of whether there is any public benefit in maintaining the development standard have been also considered.</p>

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.	Concurrence is a matter to be determined by the consent authority.
(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if.....	Does not apply.
(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).	This is a matter for the determining authority.
(8) This clause does not allow development consent to be granted for development that would contravene any of the following: (a) a development standard for complying development, (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated, (c) clause 5.4, (d) clause 4.2A, 6.1 or 8.3.	Does not apply to the site/proposed variation.

As can be evidenced from the summary above, the development standards in clause 7.13 are not “*expressly excluded*” from the operation of clause 4.6.

Extent of Variation Sought

The proposed design clearly utilises the street front of the ground floor of the building for commercial purposes but also proposes that part of the ground floor at the rear be utilised in association with the first floor residence as a rumpus room, toilet facilities and access. **Figure 1** below best demonstrates the extent of the proposed residential use of the ground level.

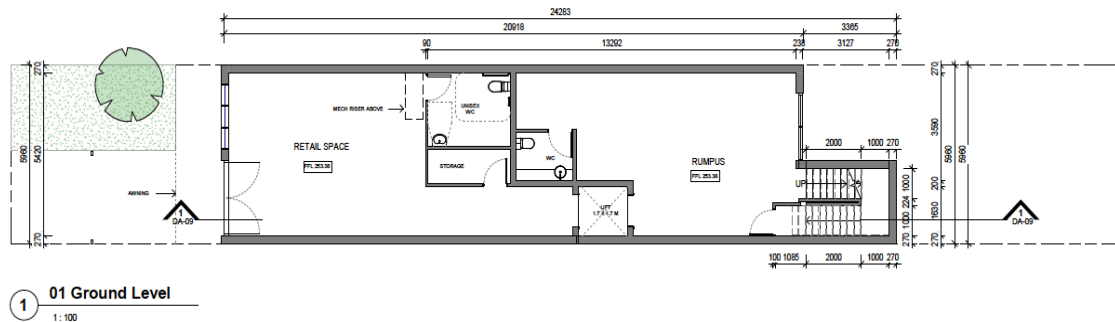


Figure 1: Proposed Ground Level uses
Source: ZTA

The proposed use for residential purposes at ground level is therefore contrary to Clause (3) (a) which requires that the ground floor of a building not be used for such purpose.

The further requirement of Clause (3) (b) that there be at least one entrance and at least one other window or door on the street edge is considered to be satisfied by the design and is not subject to this request.

Relevant Decisions

As outlined earlier in this variation request, in the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('Initial Action'), Preston CJ indicated that cl 4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts.

Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving *consistency* with the objectives of the zone and the objectives of the development standard.

The relevant test is whether the environmental planning grounds relied upon and identified in the written request are "sufficient" to justify the non-compliance sought.

In addition, in *Initial Action* Preston CJ ruled that cl 4.6 does not directly or indirectly establish a “test” that a development which contravenes a development standard results in a “*better environmental planning outcome*” relative to a development that complies with the development standard. There is no provision in WLEP 2009 cl 4.6 that requires a development that contravenes a development standard to achieve better outcomes.

Compliance with the development standard is unreasonable or unnecessary in the circumstance of this case (Clause 4.6(3)(a)).

In dealing with the “unreasonable and unnecessary” requirement of clause 4.6, Preston CJ identifies the 5 options typically available to an applicant in *Wehbe v Pittwater* [2007] NSW LEC 827 which can be adopted in dealing with the *unreasonable and unnecessary* test under **Cl. 4.6(3)(a)**. However, His Honour in that case (and subsequently in *Initial Action*) confirmed that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways.

The five methods outlined in *Wehbe* are:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

In this instance, the First Method is of particular assistance in establishing that compliance with a development standard is unreasonable or unnecessary.

The objectives of the development standard are achieved notwithstanding the non-compliance (First Method)

The sole objective of the control is stated below:

“The objective of this clause is to ensure that active uses are provided at the street level to encourage the presence and movement of people”.

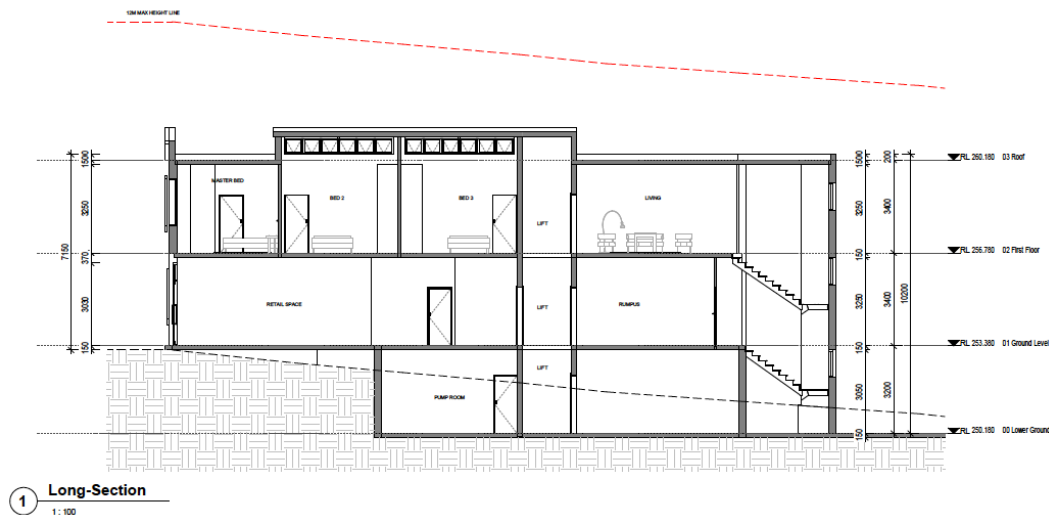


Figure 2: Proposed Building Section

Source: ZTA

The previously shown ground floor plan (Figure 1) and the above cross section through the proposed building shown above clearly demonstrates that the “street level” on the primary commercial street frontage of Walker St is not used for residential purposes. The residential use is confined to the rear of the site accessed from the service lane. It is noted that CI 7.13 (3) (b) also separately references “service lanes” and effectively differentiates those frontages from the primary street frontage. The street or laneway level at the rear (Lower Ground) does propose a mix of commercial service area and access, but this frontage is not considered to be relevant to the purpose of the development standard.

The site has a very limited street presentation to Walker St and there is no general public access through the site to the rear. The overall site width is extremely limited and any commercial usage has constrained utility with a focus on serving the street front. Any continuation of commercial use towards the rear of the site at ground level is not considered to add to the commercial viability of the small street front space.

Despite this the proposed building design aims to maximise the utility and attractiveness of the small street frontage to optimise activity. The design presents an offset setback to the main street, as discussed generally throughout the accompanying report, to facilitate on street dining activity and build on the character established by the adjacent development on the corner of Parkes Street.

There is also no practical alternative to providing some residential use of the building at the ground level to facilitate access to the proposed dwelling on the site. This access is restricted to the rear but must occupy a component of the ground level to gain access to the first floor. It is a matter of fact and degree but there would be a non-compliance with the standard arising directly as a consequence of the limited site width and the need for residential access irrespective of the detail design.

The effect of the full width street frontage commercial design, the site characteristics and dimensions, and the fall from the street level, effectively ensure that the maximum practical encouragement of street level activity is achieved, despite the technical non compliance with the rear portion of the ground floor of the proposed building being utilised for residential purposes.

On that basis the objective is considered to be satisfied and compliance with the standard is therefore unnecessary.

There are sufficient environmental planning grounds to justify contravening the standard (Clause 4.6(3)(b)).

Clause 4.6(3)(b) of the WLEP 2009, requires the consent authority to be satisfied that the applicant's written request has adequately demonstrated:

“That there are sufficient environmental planning grounds to justify contravening the development standard”.

The grounds relied on must be “environmental planning grounds” by their nature, as outlined in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 (‘Four2Five’) and confirmed in Initial Action. While “environmental planning” is not defined in the EP&A Act, Preston CJ considered in Initial Action it would refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in s1.3 of the EP&A Act.

The environmental planning grounds relied upon must be ‘sufficient’ in two respects, the first being that they must be sufficient to justify contravening the development standard with the focus being on the aspect or element of the development that contravenes the development standard and not on the development as a whole, and why that contravention is justified on environmental planning grounds. The second respect relates to whether the written request has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter.

As previously noted, in dealing with the sufficient environmental planning grounds Preston CJ in Initial Action considers that it is available to the applicant to also deal with the Objectives of the Act under S1.3 in order to demonstrate that grounds exist to warrant a variation. While this does not necessarily require that the proposed

development should be consistent with the objects of the Act, nevertheless, in **the table below** an assessment is made of how the proposed development is consistent with each object, notwithstanding the proposed variation.

The objects of the EP&A Act and how this proposal responds to the object are as follows:

Object	Comment
(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,	This object is not relevant to this development
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The proposal will facilitate a commercially viable development of a small residue lot that poses no negative environmental impacts and positive social outcomes will serve the ongoing sustainment of the economic health of the area.
(c) to promote the orderly and economic use and development of land,	The proposed development will promote the orderly and economic use of the land by way of providing a land use intensity generally consistent with that envisaged by Council and allow for economic use of a land parcel that was not previously identified as available for use.
(d) to promote the delivery and maintenance of affordable housing,	This object is not relevant to this development.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	No endemic or contributory vegetation is identified on the land.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	This object is not relevant to this development.

(g) to promote good design and amenity of the built environment,	The proposed development promotes good design in that it provides a land use intensity, built form and massing arrangement that serves to positively influence the future amenity and utility of the commercial space whilst also allowing for an appropriate residential amenity compatible with both the established and emerging village character.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposed development will comply with all relevant BCA codes, will not detract from the health and safety of occupants and will provide for lift access to all levels which ensures there is equitable access to all areas of the building.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	This object is not relevant to this development
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The proposed development will be publicly notified in accordance with Council's DCP requirements.

Based on the above, the consent authority can be satisfied that the proposed development, notwithstanding the residential use of the rear of the ground floor building, remains consistent with the Objects of the Act.

The proposed development is supportable on environmental planning grounds as:

Strict compliance with the standard may result in provision of commercial floorspace with marginal utility at the rear of a narrow site that may compromise the economic viability of the project; and

Strict compliance with the standard would prevent residential access to the proposed shop top housing which is a permissible and appropriate additional use of the site.

The proposal is in the public interest as it is consistent with the objectives of the standard and the zone objectives (Clause 4.6(4)(a)(ii))

Clause 4.6(4)(a)(ii) provides that development consent must not be granted for development that contravenes a development standard unless 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.

In Part 4 of this request, it was demonstrated that the proposal is consistent with the objectives of the development standard. The applicant repeats and adopts those reasons. The proposal, inclusive of the non-compliance, is also considered to be consistent with the objectives of the B2 Local Centre as detailed below:

Zone B2 Local Centre Objectives

Objective	Comment
To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area	The development will provide commercial premises to the primary street front of the site on the main shopping strip of the centre.
To encourage employment opportunities in accessible locations.	The commercial use of the site will provide an opportunity for local employment.
To maximise public transport patronage and encourage walking and cycling.	The site is accessible to public transport and is well located to be accessed by walking and cycling.
To allow for residential accommodation and other uses while maintaining active retail business or other non residential uses at the street level.	The development proposes a single shop top dwelling, accessed from the rear of the site, with the full street front at ground level occupied by commercial use.

In summary it is concluded that it would be unnecessary to insist on compliance with the development standard under the circumstances of this case and that the proposed variation to the standard is in the public interest. On that basis both matters required to be satisfied as the first precondition to grant of a variation are considered to have been satisfied.

Secretary's Concurrence

The second precondition that must be satisfied before the consent authority can grant consent for development that contravenes a development standard is that the concurrence of the Secretary has been obtained pursuant to Clause 4.6(4)(b) of WLEP 2009. Pursuant to Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has granted assumed concurrence to various proposals as outlined in Planning Circular PS 20-002 issued on 5 May 2020 subject to conditions.

This proposal falls within the delegation of concurrence. In Initial Action, Preston CJ, considered that the Court (in this case the Council as determining authority) should still consider the matters in cl 4.6(5) when exercising the power to grant development consent.

These matters include consideration of the following:

Contravention of the standard does not give rise to any matter of significance for State or Regional Environmental Planning - Clause 4.6(5)(a)

There is no identified outcome which would be prejudicial to planning matters of State or Regional significance that would result as a consequence of varying the development standard as proposed by this application.

There is no public benefit of maintaining the standard - Clause 4.6(5)(b)

There is generally a public benefit arising from compliance with a standard but in this case strict compliance with the development standard would unreasonably impose a requirement that would undermine the economic viability of satisfying the intent of the standard to create an active commercial edge to the retail shopping strip. Importantly, the non compliance will not detract from the ability to satisfy the objective of the standard nor present any unreasonable impacts upon adjoining development or the public domain over what would generally be considered acceptable given the characteristics of the land.

Accordingly, there is no public benefit in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to this standard and under the specific circumstances of this site the grant of approval would not set an undesirable precedent.

Conclusion

This written request has been prepared in relation to the proposed variation to a development standard contained in Clause 7.13 of WLEP 2009. The request explains that, despite the proposed variation, the development satisfies the objectives of the standard and the objectives of the B2 Local Centre zoning.

The request also explains that it is unnecessary to require strict compliance with the development standard in circumstances where there are no significant/unreasonable adverse impacts from the variation and important planning goals are better achieved by allowing the variation. In addition, the request demonstrates that there are sufficient site specific environmental planning grounds to justify the variation, and therefore the proposal is considered to be in the public interest.

Having regard to the details set out above, the consent authority is requested to grant this exception to a development standard made under CI 4.6 of WLEP 2009.

Attachment 4: WDCP 2009 compliance table

CHAPTER A1 – INTRODUCTION

8 Variations to development controls in the DCP

The development has been assessed against the relevant chapters of WDCP2009 and found to be unsatisfactory with regards to the site width, awning, solar access, vehicular parking, private open space, floor configuration, floor to ceiling heights, floor configuration, building appearance, urban design/streetscape appearance, vehicular parking, vehicular access, site facilities, landscaping, tree preservation and management, heritage conservation and crime prevention through environmental design building design principles, landscaping, tree preservation and management and heritage conservation. The proposal seeks a variation to WDCP 2009 as relates to the minimum site width, front setback, side setback, awnings and solar access development controls. The request statements are not considered to have been prepared in accordance with the requirements of part 8 of Chapter A1. It is noted that no variation request has been submitted for the variation to the private open space minimum area and minimum depth, floor configuration, floor to ceiling heights, building appearance, urban design/streetscape appearance, vehicular parking, vehicular parking aisle widths, site facilities, landscaping, tree preservation and management and heritage conservation development controls with the application submission.

CHAPTER A2: ECOLOGICALLY SUSTAINABLE DEVELOPMENT

Development controls to improve the sustainability of development throughout Wollongong are integrated into the relevant chapters of this DCP.

Generally speaking, the proposal is not considered to be consistent with the principles of Ecologically Sustainable Development.

CHAPTER B3: MIXED USE DEVELOPMENT

<i>Controls/objectives</i>	<i>Comment</i>	<i>Compliance</i>
<u>4.1 Minimum Site Width</u> Minimum 24m.	The subject site with a minimum width of approximately 6.04m does not comply with the minimum 24m site width required for mixed use development.	No
<u>4.2 Maximum Floor Space Ratio / Density</u> 1.5:1	$250.23\text{m}^2/312.8\text{m}^2 = 0.799:1$	Yes
<u>4.3 Building Height</u> 12m	The proposed building height of 9.553m does not exceed the maximum of 12m permitted for the site	Yes
<u>4.4 Front Setbacks</u> Should be located on the front boundary.	7.5m in line with northern neighbouring property.	No
<u>4.5 Side and Rear Setbacks / Building Separation</u> Buildings of 4 storeys adjoining residential zones: 6m habitable room/balcony	Zero side setback proposed. It is noted that there is a residential dwelling on the adjoining lot to the	Yes

<i>Controls/objectives</i>	<i>Comment</i>	<i>Compliance</i>
<p>3.5m non-habitable room/blank wall faces an adjacent property</p> <p>6m Rear Setback</p> <p>Continuous street line/zero side setback is required for majority of mixed use development within B2 Local Centre zone</p> <p><u>4.6 Built Form</u></p> <p>Appearance to be in harmony with surrounding buildings and streetscape</p> <p>Siting, form height and external appearance to be sympathetic to surrounding</p> <p>Minimum 3.3m floor to ceiling height clearances</p>	<p>South however the site is zoned B2 Local Centre</p> <p>Rear setback proposed: 19.52m.</p> <p>The appearance of the proposal is not considered to be in harmony with the buildings around it and the streetscape character of the locality. The proposal is located on a dominate and highly visible corner in the Helensburgh town centre and the proposal is not considered to have been designed to be in keeping with surrounding buildings or the heritage significance of the locality. Council's Heritage and Strategic Planning Officers are not satisfied with the proposal.</p> <p>The proposal is considered to be designed to provide active street frontages on the ground floor level.</p> <p>Separate entrances is provided for retail.</p> <p>Minimum floor to ceiling height of 3.25m is proposed.</p>	<p>No</p> <p>No</p>
<p><u>4.7 Active Street Frontages</u></p> <p>Mixed use buildings to provide ground floor active street frontages.</p> <p>No more than 5 metres of ground floor wall without door or window.</p> <p>Windows should make up 50% of the ground floor.</p> <p>Direct pedestrian access and visual presentation from front of building</p>	<p>Retail space proposed at ground level would activate the street.</p>	<p>Yes</p>
<p><u>4.8 Awnings</u></p> <p>Continuous awnings where required</p>	<p>Awning provided. However, Council's Strategic Planning Officer recommended the applicant further investigate an integrated continuous awning across the frontage. Council's Heritage Officer advised the awning appears to be an afterthought and does not integrate well into the frontage of Walker Street.</p>	<p>No</p>

Controls/objectives	Comment	Compliance
<p><u>4.9 Car Parking</u></p>	<p>It appears a continuous awning may be able to be provided without impacting on the street tree.</p> <p>Proposal allows for garage parking consisting of one (1) car parking space, 1 motor cycle and one (1) bicycle and three (3) onsite hard stand parking spaces in parallel configuration to the rear of the building.</p> <p>It is noted that the proposed number of parking spaces provided would comply with Council's parking requirements as provided in WDCP2009 Chapter E3. Council's Development Engineering Officer has considered the proposed development with regards vehicular parking, access and manoeuvring. Advice received indicated that the proposed access did not satisfy Council's Development Control Plan.</p> <p>The applicant is required to provide one bicycle, one motorcycle and space for one Short Rigid Vehicle (SRV) external to the private garage, which have not been provided.</p> <p>The proposed car parking design is in a parallel configuration with the one-way blind access aisle. The width of the access aisle is approximately 3.3m. It is noted that Figure 2.5 AS 2890.1-2004 indicates that for the one-way lane bounded on both sides with obstruction higher than 0.15m, the width must be minimum 3.6m.</p> <p>It was further noted that the condition of the pavement within the lane is not adequate to provide regular access for customer and service vehicles to the proposed car park.</p>	No
<p><u>4.10 Basement Car Parking</u></p>	<p>Not Applicable. The garage on the lower ground floor is not considered to be a basement garage as it extends more than 1m out of ground. WLEP 2009 defines a basement as the "space of a</p>	N/A

Controls/objectives	Comment	Compliance
	<p><i>building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing) space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing)". Therefore, the garage is considered a storey</i></p>	
<p><u>4.11 Driveways</u></p> <p>Provide driveways to parking areas from lanes and secondary streets rather than the primary street, wherever practical.</p> <p>Driveway grades, vehicular ramp width/grades and passing bays must be in accordance with the relevant Australian Standard, being AS 2890.1.</p>	<p>Council's Development Engineering Officer has considered the proposed development with regards vehicular parking, access and manoeuvring. Advice received indicated that the proposed access did not satisfy Council's Development Control Plan, as described above under 4.9 Car Parking</p>	No
<p><u>4.12 Landscaping</u></p> <p>Landscaping within mixed use developments must be provided on terraces or balconies where required for screening purposes.</p> <p>Green roofs, green walls and landscaping on podium and planters must provide sufficient soil depth.</p> <p>Green walls encouraged</p> <p>Public domain improvements and street trees.</p> <p>Landscape Plan required.</p>	<p>Council's Landscape Officer has reviewed the application submission and provided unsatisfactory referral advice noting the following:</p> <ul style="list-style-type: none"> • Landscape Plan does not meet the minimum requirements set out in WDCP 2009 Chapter E6; • There are contradictions between submitted plans and reports; • The area of landscaping near Tree 1 differs in size and location on drawings DA-03 and DA-15; • Lack of detail with streetscape treatment, the Landscape Plan and Site Plan are not coordinated. Report proposes porous concrete around tree 1 which is not shown on plans; <p>Insufficient information has been provided to demonstrate that the proposal satisfies Council's Landscaping development controls</p>	No

<i>Controls/objectives</i>	<i>Comment</i>	<i>Compliance</i>
<u>4.13 Communal Open Space</u>	N/A	
<u>4.14 Private Open Space</u> When provided in form of a balcony, the balconies must have a minimum area of 12sqm and width of 2.4m. Avoid locating primary balconies towards side setbacks. Primary balcony of at least 70% of the residential dwellings shall receive a minimum of three hours of direct sunlight between 9.00am and 3.00pm on June 21.	Approximate area of POS is 5.6m². Approximate width of POS is 1.56m. Insufficient information has been provided to demonstrate that the proposed POS can receive a minimum of 3 hours of direct sunlight between 9:00am and 3:00pm.	No No No
<u>4.15 Solar Access</u> Mixed use developments must aim to maximise the number of dwellings having a northern aspect. Where a northern aspect is available, the living spaces and balconies of such apartments must typically be orientated towards the north. Maximise dual oriented units. Single aspect, single storey apartments should preferably have a northerly or easterly aspect and a reduced depth to allow for access of natural light to all habitable spaces. The living rooms and private open space of at least 70% of apartments within the subject development must receive a minimum of three (3) hours direct sunlight between 9.00am and 3.00pm on 21 June. The number of single aspect apartments with a southerly (south-westerly to south-easterly) aspect shall be limited to a maximum of 10% of the total number of apartments proposed in the development.	The living room has an easterly aspect and would receive adequate solar access. Insufficient information has been provided to demonstrate that the adjoining residential dwelling and its POS can receive a minimum of 3 hours of direct sunlight between 9:00am and 3:00pm.	Yes No
<u>4.16 Visual privacy</u> Buildings are to be designed to increase privacy without compromising access to sunlight and natural ventilation	It is considered that the development as proposed could satisfy this control.	Yes
<u>4.17 Acoustic privacy</u> Residential apartments and / or serviced apartments should be arranged in a mixed use building, to minimise noise transition between apartments by:	It is considered that the development as proposed could satisfy this control. Details of the application including the submitted acoustic report were referred to Council's Environment Officer for	Yes

<i>Controls/objectives</i>	<i>Comment</i>	<i>Compliance</i>
<p>(a) Locating busy, noisy areas next to each other and quieter areas, next to other quieter areas (eg living rooms with living rooms and bedrooms with bedrooms);</p> <p>(b) Using storage or circulation zones within an apartment to buffer noise from adjacent apartments, mechanical services or corridors and lobby areas; and</p> <p>(c) Minimising the amount of party (shared) walls with other apartments.</p> <p><u>4.18 Adaptable Housing</u></p> <p><u>4.19 Residential Component - Apartment Mix and Layout</u></p> <p><u>4.20 Natural Ventilation</u></p> <ul style="list-style-type: none"> • Maximum depth 21m • Dual aspect if possible <p><u>4.21 Adaptive Re-use</u></p> <p><u>4.22 Crime Prevention Through Environmental Design (Safety and Security)</u></p>	<p>comment. Advice received is that the application is considered satisfactory.</p> <p>N/A</p> <p>N/A</p> <p>The residential dwelling has a depth of 21m. Due to nil setback to the side boundaries the living areas and bedroom each have a single aspect. However, a courtyard has been designed mid-way along the dwelling which would provide a dual aspect as it may allow sufficient light and ventilation into the living areas.</p> <p>The proposed design allows flexibility for different uses.</p> <p>Council's SCAT officer has assessed the application submission and provided unsatisfactory referral advice noting concerns regarding safety of vehicles manoeuvring in the parking area, the bin and storage rooms appear to be areas of entrapment, access to adjoining buildings need to be maintained and impacts on pedestrian safety due to the removal of pedestrian access.</p>	<p></p> <p></p> <p></p> <p>Yes</p> <p>Yes</p> <p>No</p>

<i>Controls/objectives</i>	<i>Comment</i>	<i>Compliance</i>
<u>5 GENERAL REQUIREMENTS FOR ALL MIXED USE DEVELOPMENT</u>		
<u>5.1 Floodplain Management</u>	The subject land is identified as being flood hazard affected. Council's Development Engineering Officer has assessed the application submission in this regard and provided satisfactory advice.	Yes
<u>5.2 Land Re-Shaping Works (Cut and Fill Earthworks)</u>	Excavation is proposed for the lower ground floor. The land is located in a geotechnically unstable area. Council's Geotechnical Engineer has assessed the proposal and is satisfied. The proposed excavation is not anticipated to affect drainage patterns in the locality. Council's Development Engineer has assessed the proposal and is satisfied.	Yes
<u>5.3 Retaining Walls</u>	No external retaining walls are proposed. Only an internal retaining wall proposed to retain the basement excavation.	Yes
<u>5.4 Soil Erosion and Sediment Control</u>	Usual soil erosion and sediment control conditions will be imposed on any consent to be granted.	Conditions
<u>5.5 Fences</u>	N/A	
<u>5.6 Access for People with a Disability</u>	The retail space is located at ground level and provides opportunity to provide access for people with a disability.	Yes
<u>5.7 Services</u>	The site is serviced. The existing services can be extended to service the development.	Yes
<u>5.8 Swimming Pools</u>	N/A	

<i>Controls/objectives</i>	<i>Comment</i>	<i>Compliance</i>
<u>5.9 Fire Brigade Servicing</u>	The site is able to be serviced by the Fire Brigade. It is noted there is access at both front and rear of the building via Short Lane.	Yes
<u>5.10 Site Facilities</u>	Site facilities have not shown on the plans. There does not appear to be a suitable location for letterboxes and drying area.	No
<u>5.11 Storage Facilities</u>	Dedicated storage rooms are provided in the basement for both the retail space and the residential dwelling.	Yes
<u>5.12 Waste Management</u>	Dedicated waste storage room provided in the basement for both the retail and residential dwelling. However, the applicant proposes waste collection from Short Lane to the rear and Council's Development Engineer has raised concerns regarding the condition of the rear laneway.	No

CHAPTER B4 – DEVELOPMENT IN BUSINESS ZONES

The development is located in a business zone and as such this chapter is applicable to the development. An assessment against the relevant sections is outlined below.

2 Objectives

The development is considered consistent with the objectives of development in business zones.

3. Retail and business centre hierarchy strategy

This section is not considered applicable to the proposal as the changes are generally aesthetic in nature.

4 Economic impact assessment – retail hierarchy

Not applicable.

5 Planning requirements for development in the regional city and major regional centres

5.1 Wollongong City Centre

1. The specific planning requirements for development upon any land within the Wollongong City Centre are contained in Part D (Locality Based/ Precinct Plan) of this DCP.

6 Planning requirements for development in the major town centres

N/A

7 Planning requirements for development in the town centres

The site is located in the Helensburgh town centre near a dominant street corner.

8 Planning requirements for development in the village (local convenience) centres

N/A

9 General design requirements for retail and business premises developments

Control	Comment
(a) To ensure all new ground floor retail shops and business premises are designed to provide a uniform transition between the floor level of the premises and Council's footpath, in order to provide satisfactory access along the footpath and into retail and commercial office buildings for all people, including people with a disability.	Satisfactory
(b) To ensure all ground level premises have direct access to street and clear glazing, to encourage active street frontages.	Active street frontage has been provided. Submitted plans indicate a 150mm step from ground floor to the street level therefore, at grade access to the street has not been provided.
(c) To set minimum floor to ceiling heights for new buildings, in order to maximise the flexibility in the future use of the ground floor and first floor levels in the building.	The floor to ceiling height is 3.25m and is less than the minimum requirement.
(d) To encourage larger retail or commercial office floor space not requiring direct connection to the street to be 'wrapped' by smaller retail shops or commercial offices to avoid blank walls and encourage active street frontages.	Satisfactory
(e) To ensure security grilles are transparent and fitted retail shopfronts only, in order to encourage active street frontages at night-time.	Satisfactory.
(f) To ensure new retail or business premise buildings are consistent with the predominant built form character of the locality, in terms of built form and external appearance.	The topographic context has been ignored, and the proposal extrudes up from the ground floor, with no graduation of form resulting in blank side walls, and, due to the narrow width, a disproportionately tall scale that is out of context with the surrounds. The bulk of this proposal is also the result of the applicant seeking to fit a 3-bedroom dwelling into a constrained site which leads to some unusual built form outcomes and adds to the poor contextual fit.
(g) To ensure new buildings maintain the balance of horizontal and vertical proportions of other existing buildings in the locality.	The proposal does not ensure new buildings maintain the balance of horizontal and vertical proportions of other existing buildings in the locality.

Control	Comment
<p>(h) To ensure the street corners of any new corner building are strengthened by massing and building articulation to both street frontages.</p> <p>(i) To ensure all new retail, business or mixed use buildings provide a continuous awning along the full length of the building's street frontage, in order to provide all weather protection for pedestrians.</p> <p>(j) To provide pedestrian amenity and provide a 'unique' streetscape character for each business centre.</p> <p>k) To provide innovative roof elements and parapet walls which positively contribute to the overall design of the proposed building and the streetscape of the immediate locality.</p> <p>(l) To ensure all new retail and business developments are designed to minimise potential overshadowing impacts and maximise solar access opportunities to any adjoining residential properties and the public domain (public reserves and / or footpaths) in the locality.</p> <p><u>9.2.1 Floor Configuration</u></p> <p>1. The ground floor of developments is to be set at a level determined with reference to existing/required footpath levels in order to provide for an even transition between the building and the footpath and provide cross fall grades on footpaths that meet Council's standards. Council's Infrastructure Division may be contacted with regard to existing/required footpath levels.</p> <p>2. Any retail premises of less than 200m² in gross floor area should generally have a depth to width ratio ranging between 1:1 and a maximum 3:1.</p> <p>3. The maximum building depth for any ground floor retail or commercial office development shall be 20 metres with openings on one side only. The maximum building depth for any retail or office building with openings on two or more side is 30 metres. Shopping centre developments may vary from this control.</p> <p>4. Any residential storeys in a building shall have a maximum building depth of 18 metres.</p> <p>5. The floor to ceiling height of the ground floor development in a B1 or B3 zone shall be a minimum 3.3 metres, in order to allow flexibility in retail and / or other business tenancies in the future.</p>	<p>Not Applicable</p> <p>The development does not provide a continuous awning across the frontage of the building.</p> <p>Satisfactory</p> <p>Satisfactory</p> <p>Insufficient information has been provided to demonstrate that the POS of the adjoining residential dwelling can receive a minimum of 3 hours of direct sunlight between 9:00am and 3:00pm.</p> <p>Submitted plans indicate a 150mm step from ground floor to the street level therefore, at grade access to the street has not been provided.</p> <p>Depth to width ratio is 1:3.5 does not satisfy this control.</p> <p>Depth of retail/commercial space is approximately 12.5m.</p> <p>Building has a depth of 21m.</p> <p>The floor to ceiling height is 3.25m and does not comply with this control</p>

Control	Comment
6. In the B4 Mixed zone, the ground floor and first floor levels in a building shall incorporate a minimum 3.3 metre floor to ceiling height clearance, to maximise the flexibility in the future use of the building.	Not Applicable
7. The floor to ceiling height requirements for ground and first floor levels of a development situated upon land within the B3 Commercial Core zone of the Wollongong City Centre, are specified in clause 2.6.2 in Chapter D13 Wollongong City Centre to this DCP.	Not Applicable
8. Large retail or commercial office floor space not requiring continuous and direct connection to the street (e.g. supermarkets) should be 'wrapped' by smaller retail shops or commercial offices to avoid blank walls and encourage active street frontages.	Not Applicable
9. The retail frontage at street level for individual retail shops / units should match the existing traditional retail shop pattern for the specific retail and business centre.	Satisfactory
10. Where sites are amalgamated, the design of any new building should express the existing or prevalent lot structure in the immediate locality.	Not Applicable
<u>9.2.2 Building Appearance</u>	
1. New retail or business development shall continue the predominant built form character of the locality, including parapets, floor to ceiling heights and roof pitches.	Council's Strategic Officer has reviewed the application submission and provided unsatisfactory referral advice noting the buildings bulk and scale, which is result of the narrow site width, has ignored the topographic context and is out of scale and context with the surrounds. It was further noted that the façade and street interface was not in keeping with the traditional elements of the streetscape and the surrounding context.
2. For large buildings including multi-storey mixed use buildings, the treatment of the facades should be designed to provide character, visual legibility and human scale and to delineate the distinct uses.	
3. Facades facing each street or lane should be composed as at least three distinct layers. In this respect:	
(a) The "base" of each building includes the ground floor, and may also include the second and third storey above street level.	
(b) The "middle" of each building should accommodate at least one level, but not the uppermost storey.	
(c) The "top" of each building should accommodate the upper-most storey and the roof.	
4. New buildings should also maintain the balance of horizontal and vertical proportions of other existing buildings in the locality.	

Control	Comment
<p>5. The street corners of any new corner building should be strengthened by massing and building articulation to both street frontages. In this regard, Council may permit a variation to the height limits contained in this DCP (but no greater than the building height limit in the LEP) by permitting an additional 1 – 2 storeys for the corner element of a building where in the opinion of Council a strong corner element is necessary for the building. Any such variation to the height limit will only be supported by Council in circumstances where in the opinion of Council, the proposed development will exhibit design excellence through the provision a strong corner element in the proposed building.</p> <p>6. The profile of parapets and roof top elements should be integrated in the overall roof design of the building.</p> <p>7. The angle of any pitched roof shall be compatible with existing development.</p> <p>8. Any development involving the re-use of existing buildings should reinstate any missing façade elements or other decorative details, wherever practicable.</p> <p>9. The external building materials and finishes of any retail or business development should be sympathetic to the existing fabric and character of buildings within that retail and business precinct.</p> <p>10. Highly reflective finishes, reflective glass and curtain wall glazing are not permitted above ground floor level.</p> <p>11. The reflectivity of glazing shall be restricted to less than 20%. A reflectivity diagram may be required where in the opinion of Council has the potential to pose future glare impacts upon pedestrians within public domain areas or motorists travelling past the site.</p> <p>12. All Development Applications for new buildings or external alterations and additions to existing premises in these centres must be accompanied by a schedule of proposed external building materials and finishes (colours) board which shows the proposed building materials and finishes (colours) to be used on the external facades of the building. An A4 sized photograph of the schedule of external building materials and finishes (colours) board is also required.</p>	
<p><u>9.2.3 Building Alignment</u></p>	
<p>1. The design of corner buildings should reflect the geometry of the road, topographical conditions of the immediate locality and sight lines.</p>	<p>Building aligns with footpath</p>

Control	Comment
<p>2. Buildings should be aligned with footpaths to create spatial enclosure and a sense of place.</p> <p>3. Buildings shall be designed for retail or business uses only at the ground floor of a building. Residential uses are not permitted on the ground floor of any land within a retail or business centre with the exception of access areas for residential uses on upper levels of a building.</p> <p><u>9.2.4 Active Street Frontages</u></p> <p>1. All new retail, business or mixed use buildings are required to provide ground level active street frontages.</p> <p>2. Buildings should contain no more than 5 metres of ground floor wall without a door or window. Windows should make up at least 50% of the ground floor front wall.</p> <p>3. Buildings with frontages to retail streets are to contribute to the liveliness and vitality of those streets by:</p> <p>(a) Providing product retailing and / or food and drink premises within all enclosed shop fronts;</p> <p>(b) Minimising the extent and visual impact of building entrances, office lobbies, foyers, vehicle entrances and other entries not associated with retail, service areas and fire escapes;</p> <p>(c) Locating activities that may involve queuing (e.g. automatic teller machines) behind building frontages so that footpaths remain free for pedestrian movement; and</p> <p>(d) Providing a high standard of finish to retail shopfronts.</p> <p>4. All street frontage windows at ground level are to have clear glazing.</p> <p>5. Display windows with clear glazing to ground floor retail and business premises are required with a maximum window sill height of 0.7 metres above finished ground level.</p> <p>6. Security grilles are to be fitted only within the retail shopfront. Such grilles are to be transparent and not of any roller door type.</p>	<p>Retail use has been provided on the ground floor. However, the development as proposed also contains residential development on the ground floor.</p> <p>Active street frontage provided.</p> <p>Windows and doors less than 5m apart on elevation Elevations demonstrate greater than 50% of ground floor façade consists of windows The proportions and placement of the glazing however aren't in keeping with this style.</p> <p>Retail/commercial development provided on Walker Street frontage.</p> <p>Clear glazing provided.</p>

Control	Comment
<p><u>9.2.5 Urban Design / Streetscape Appearance</u></p> <p>1. The siting, form, height and external appearance of any retail or business premise development should be sympathetic with adjoining buildings in the surrounding retail and business precinct in addition to any abutting or nearby residential dwellings</p> <p>2. The parapet height of any retail or business premises building must be consistent with the parapet height of the surrounding streetscape of the locality.</p> <p>3. Any retail or business premises (commercial office) building should feature highly articulated facades, particularly any facades facing road frontages and any abutting residential area, in order to add visual interest to the building.</p> <p>4. The horizontal form of any building should also be broken up vertically, in order to provide visual relief and interest to the development. The horizontal and vertical emphasis is especially critical for the middle and upper levels of a building</p> <p>5. Any retail or commercial office building must be designed to provide active street frontages on the ground floor level of the building to all street frontages and in some cases, Council may require appropriate pedestrian thoroughfare links.</p> <p>6. External walls should be constructed of high quality and durable materials and finishes with low maintenance costs.</p> <p>7. Highly reflective finishes are not permitted above ground floor level.</p> <p>8. An external materials and finishes board and accompanying A4 sized photograph of the external materials and finishes board must be submitted with the Development Application.</p> <p><u>9.2.6 Pedestrian Access</u></p> <p>1. Pedestrian through-site routes must be direct without any concealment opportunities and designed to provide clear sightlines from one end to the other.</p>	<p>Council's Strategic Officer has reviewed the application submission and provided unsatisfactory referral advice noting the buildings bulk and scale, which is result of the narrow site width, has ignored the topographic context and is out of scale and context with the surrounds. It was further noted that the façade and street interface was not in keeping with the traditional elements of the streetscape and the surrounding context.</p> <p>The development seeks to replicate an interwar shopfront with a traditional parapet which is supported</p> <p>Active street frontage provided</p> <p>Council's Strategic Officer has reviewed the application submission and provided unsatisfactory referral advice noting better consideration should be given to providing a material palette that is in keeping with the traditional elements of the streetscape and the surrounding context.</p> <p>Direct pedestrian access from Walker street to retail/commercial on ground floor provided.</p>

Control	Comment
<p>2. Pedestrian through-site links should be a minimum of 3 metres in width and activated by retail, civic and /or commercial office land uses, wherever possible.</p> <p>3. The pedestrian through-site links should also be well lit at night-time and publicly accessible at least between 7.00 am to 7.00 pm daily with preference for 24 hour public access. Any such pedestrian link should be designed to provide satisfactory access for all patrons, including patrons using wheelchairs or patrons using strollers for young children.</p> <p>4. Direct pedestrian access and visual inspection should be provided from the front of the building, to encourage active street frontage to retail shops and business premises.</p>	<p>Details of the application were referred to Council's SCAT Officer for comment. Unsatisfactory advice was received indicates that there are concerns with regard to access from the visitor parking spaces and access to adjoining development which will have impacts on the safety of pedestrians trying to find alternate routes.</p>
<p><u>9.2.7 Awnings</u></p> <p>1. Buildings with frontage to any street must incorporate an awning or colonnade (only in areas where existing buildings have colonnades) along the full length of the building's street frontage.</p> <p>2. All retail, business or mixed use buildings must provide a continuous awning along the full length of the building's street frontage, in order to provide all weather protection for pedestrians.</p> <p>3. Awnings should be designed of a solid cantilevered / suspended steel box type section with a minimum soffit height of 3.2 metres, taking into account the grade of the road reserve (footway area).</p> <p>4. Under awning lighting is required for the majority of retail and business centres in the LGA, except for the small village (local convenience) centres. The under awning lighting should either be recessed into the soffit of the awning or wall mounted on the building.</p> <p>5. Awnings shall also be designed to provide adequate shade and shelter for pedestrians.</p> <p>6. All awnings shall be weather sealed to the face of the building to which they are attached.</p> <p>7. Awnings shall be setback a minimum of 600 millimetres from the kerb line of the road carriageway.</p>	<p>The development does not provide a continuous awning across the frontage of the building.</p>

Control	Comment
<p><u>9.2.8 Public Domain – Footpath Paving</u></p>	<p>Council's Landscape Officer has reviewed the application submission and provided unsatisfactory referral advice noting insufficient information has been provided in order for Council to assess the streetscape treatment.</p>
<p><u>9.2.9 Solar access and overshadowing</u></p> <p>1. All retail and business developments are to be designed so as to minimise overshadowing impacts and maximise solar access opportunities to any adjoining residential properties and the public domain (public reserves and / or footpaths) in the locality.</p> <p>2. Solar access shall be maintained for any north facing window of a habitable room of any adjoining residential dwelling and at least 50% of the private courtyard area for a minimum 3 hour continuous period between 9.00 am and 3.00 pm for the 21st June winter solstice period.</p> <p>3. The submission of shadow diagrams will be required for any new retail, business or mixed use building or any major alterations and additions to an existing retail or business building where in the opinion of Council, the development may pose potential overshadowing impacts upon any residential land use or public domain area. The shadow diagrams will be required for the 9.00 am, 12 noon and 3.00 pm 21 June winter solstice periods, as a minimum.</p> <p>4. Additional hourly shadow diagrams between 9.00 am to 3.00 pm 21 June may be required where Council is uncertain as to the potential adverse overshadowing impacts upon surrounding properties and / or the public domain. Further, Council may also require additional shadow diagrams for the equinox periods where the overshadowing impact of a development requires further in-depth assessment.</p>	<p>The topographic context has been ignored, and the proposal extrudes straight up from the ground floor, with no graduation of form resulting in blank side walls, and, due to the narrow width, a disproportionately tall scale that is out of context with the surrounds creating additional overshadowing on the adjoining residential property to the South</p>

Control	Comment
<u>9.2.13 Access, Car parking and Servicing</u>	<p>Council's Development Engineering Officer has assessed the application and provided unsatisfactory referral advice noting that the applicant is required to provide one bicycle, one motorcycle and space for one Short Rigid Vehicle (SRV). The proposed car parking design is in a parallel configuration with the one-way blind access aisle. The width of the access aisle is approximately 3.3m. It is noted that Figure 2.5 AS 2890.1-2004 indicates that for the one-way lane bounded on both sides with obstruction higher than 0.15m the width must be minimum 3.6m.</p> <p>It was further noted that the condition of the pavement within the lane is not adequate to provide regular access for customer and service vehicles to the proposed car park.</p>
<u>9.2.14 Access for People with a Disability</u>	<p>The applicant's submission contains an Access Consultants Report and could be addressed by condition</p>
<u>9.2.15 Land Consolidation</u>	<p>Not Applicable</p>

13 Works in the public domain

Council's Landscape Officer has reviewed the application submission and provided unsatisfactory referral advice noting insufficient information has been provided in order for Council to assess the streetscape treatment.

CHAPTER D1: HELENSBURGH

The proposal is not consistent with the Helensburgh town centre which is generally one and two storeys in height. The proposed land use is consistent with the desired future character for the locality as shop top housing is encouraged in the town centre, however significant issues have been raised by Council's Heritage and Strategic Planning Officers in relation to the built form of the proposed shop top housing and impact on the character and heritage significance of the Helensburgh Town Centre.

CHAPTER E1: ACCESS FOR PEOPLE WITH A DISABILITY

It is considered that disabled access to the proposed development is acceptable in this circumstance. Council's Building Officer has reviewed the application submission including the Access Consultant's Report and returned a conditionally satisfactory referral response.

CHAPTER E2: CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

<i>Control/objective</i>	<i>Comment</i>	<i>Compliance</i>
<u>3.1 Lighting</u>	It is considered that the proposed development will improve existing lighting conditions on the subject site.	Yes
<u>3.2 Natural surveillance and sightlines</u>	The proposed development will improve natural surveillance and sight lines of adjoining properties and the street.	Yes
<u>3.3 Signage</u>	No signage is proposed with this application and the proposed development will have minimal impact on the existing signage within the vicinity.	Yes
<u>3.4 Building design</u>	<p>The proposal is for shop top housing which has been designed to address the Walker Street frontage.</p> <p>Details of the application submission were reviewed by Council's Safer Communities (SCAT) Officer for comment. Advice received indicates there are issues with regards to the design of the waste storage (rubbish) room and bicycle compound which have the potential to be areas of entrapment.</p>	<p>Yes</p> <p>No</p>
<u>3.5 Landscaping</u>	The proposal is considered to satisfy the landscaping controls for CPTED in this circumstance as relates to minimising areas of concealment.	Yes
<u>3.6 Public open space and parks.</u>	The proposal is for a shop top housing development only on a privately owned lot.	N/A
<u>3.7 Community facilities & Public Amenities</u>	The proposal is for a shop top housing development only on a privately owned lot.	N/A
<u>3.8 Bus stops and taxi ranks</u>	The subject site is not adjacent to any major bus stops or taxi ranks.	Yes

CHAPTER E3: CAR PARKING, ACCESS, SERVICING/LOADING FACILITIES AND TRAFFIC MANAGEMENT

Details of the application submission were referred to Council's Development Engineering Officer for comment. Unsatisfactory referral advice was provided noting that the applicant is required to provide one bicycle, one motorcycle and space for one Short Rigid Vehicle (SRV) for the retail development.

The proposed car parking design is in a parallel configuration with the one-way blind access aisle. The width of the access aisle is approximately 3.3m. It is noted that Figure 2.5 AS 2890.1-2004 indicates that for the one-way lane bounded on both sides with obstruction higher than 0.15m the width must be minimum 3.6m.

It was further noted that the condition of the pavement within the lane is not adequate to provide regular access for customer and service vehicles to the proposed car park.

The proposed development does not comply with the requirements of Council's Car Parking, Access, Servicing/Loading Facilities and Traffic Management development controls and policies.

CHAPTER E6: LANDSCAPING

The application submission was referred to Council's Landscape Officer for comment. Advice received indicates there are issues with the proposal.

Council's Landscape Officer has indicated the following:

- Landscape Plan does not meet the minimum requirements set out in WDCP 2009 Chapter E6;
- There are contradictions between submitted plans and reports;
- The area of landscaping near Tree 1 differs in size and location on drawings DA-03 and DA-15;
- Lack of detail with streetscape treatment, the Landscape Plan and Site Plan are not coordinated. Report proposes porous concrete around tree 1 which is not shown on plans;
- Section 1 on page 24 of the arborist report shows a suspended slab above the FFL of the building. Positive drainage away from building would need to be achieved as well as equal access to entry; and
- Root mapping may also be beneficial.

Therefore, Council's Landscape Officer is unable to support the application in its current form.

CHAPTER E7: WASTE MANAGEMENT

Conditions could be imposed to ensure that Waste Management is carried out to Council's Waste Management specification during construction.

Council's Development Engineering Officer noted that the condition of the pavement within the lane is not adequate to provide regular access for customer and service vehicles to the proposed car park.

CHAPTER E11: HERITAGE CONSERVATION

Council's Heritage Officer has assessed the application submission and provided unsatisfactory referral advice noting that it is unclear how much of the building including roof element/services will be seen behind the single storey shopfront from the perspective below from the Heritage item, given that is essentially three storeys to the rear elevation with an additional lift overrun area. A photomontage view shown above from the opposite side of Walker Street at the heritage listed Post Office and further investigation of integrated continuous awning across the frontage were requested.

Insufficient information has been provided for the consent authority to assess and be satisfied that the built form of the development does not detract from the identified significance or setting of the heritage items within the vicinity of the subject site so as to satisfy Clause 5.10(c) of Wollongong LEP 2009 and Section 14.2(1) of Chapter E11 of Wollongong DCP 2009.

Therefore, Council's Heritage Officer is unable to support the application in its current form.

CHAPTER E13 FLOODPLAIN MANAGEMENT

The application has been reviewed by Council's Development Engineering Officer in relation to floodplain management. Advice received indicates that the proposed development satisfies the objectives of WDCP2009 Chapter E13 Floodplain Management and is considered conditionally satisfactory. For Council's Development Engineering Officer's response please see section 1.6.1 Internal Consultation of the Assessment Report.

CHAPTER E14 STORMWATER MANAGEMENT

The application has been reviewed by Council's Development Engineering Officer in relation to stormwater management. Advice received indicates that the proposed development satisfies the objectives of WDCP2009 Chapter E14 Stormwater Management and is considered conditionally satisfactory. For Council's Development Engineering Officer's response please see section 1.6.1 Internal Consultation of the Assessment Report.

CHAPTER E17 PRESERVATION AND MANAGEMENT OF TREES AND VEGETATION

The application does not propose the removal of the existing tree on the site. However, works are proposed within the vicinity of the existing mature tree to facilitate the proposal. The application submission was referred to Council's Landscape Officer for comment. Advice received indicates there are issues with the proposal. Council's Landscape Officer has indicated that there are contradictions between submitted plans and reports, the area of landscaping near Tree 1 differs in size and location on drawings DA-03 and DA-15, there is a lack of detail with streetscape treatment, the Landscape Plan and Site Plan are not coordinated. Report proposes porous concrete around tree 1 which is not shown on plans, and root mapping would also be of benefit to determine impact on the existing tree.

Therefore, Council's Landscape Officer is unable to support the application in its current form.

CHAPTER E19 EARTHWORKS (LAND RESHAPING WORKS)

The proposal involves earthworks to facilitate the proposed development.

The application submission was referred to Council's Geotechnical, Development Engineering and Environment Officers for comment and no objections were raised. It is considered that the earthworks will have minimal detrimental impact on environmental functions and processes, neighbouring uses and features of the surrounding land.

CHAPTER E22 SOIL EROSION AND SEDIMENT CONTROL

Conditions could be imposed to minimise the impacts of the proposed works on the environment.

Attachment 5: Reasons for refusal

- 1 Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act, 1979, it is considered the proposal is contrary to the aims of the Wollongong Local Environmental Plan 2009, as:
 - a. The proposal ignores topographic context with no graduation of form resulting in blank side walls and the design response to the narrow site width results in a disproportionately tall building that is out scale and context with the surrounds;
 - b. The development provides for residential development on the ground floor which is not permissible in the zone;
 - c. The development does not provide for a private open space that is large enough to accommodate a range of uses or can receive sufficient solar access so as to improve the quality of life and amenity of the residents.
- 2 Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act, 1979, it is considered the proposal is not consistent with the definition of shop top housing in that it provides for residential development on the ground floor.
- 3 Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act, 1979, it is considered that insufficient information has been provided with the proposal for the consent authority to assess and be satisfied that the built form of the development does not detract from the identified significance or setting of the heritage items within the vicinity of the Site so as to satisfy Wollongong Local Environmental Plan 2009 Clause 5.10(5)(c).
- 4 Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act, 1979, it is considered the proposal provides residential development on the ground floor of a building in business zone contrary to Wollongong Local Environmental Plan 2009 Clause 7.13(3).
- 5 Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the site width does not comply with the minimum site width prescribed by Wollongong Development Control Plan 2009 Chapter B3 *Mixed use Development*, Section 4.1.2(2) and is contrary to the objectives of this Section as:
 - a. The site width is insufficient to accommodate the required building envelope and vehicular parking.
- 6 Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the built form and scale of the proposed development is not in harmony with the buildings around it and streetscape character, and is inconsistent with the objectives and controls of Wollongong Development Control Plan 2009 Chapter B3 *Mixed use Development*, Section 4.6 – Built Form
- 7 Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed awning is inconsistent with the objectives and controls of Wollongong Development Control Plan 2009 Chapter B3 *Mixed use Development*, Section 4.8 – Awnings.
- 8 Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the onsite parking and access provided for the proposed development is inconsistent with the objectives and controls of Wollongong Development Control Plan 2009 Chapter B3 *Mixed use Development*, Section 4.9 – Car Parking, Section 4.11 - Driveways and Chapter E3 *Car Parking, Access, Servicing/loading Facilities and traffic Management*, Section 7.1 – Car Parking, Motor Cycle, Bicycle and Delivery/Servicing

Vehicle Requirements, Section 7.7 – Car Parking Layout and Design and Chapter B4 *Development in Business Zones*, Section 9.2.13 – Access, Car Parking Servicing.

- 9 Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that insufficient landscaping information has been provided to demonstrate the proposed development is consistent with the objectives and controls of Wollongong Development Control Plan 2009 Chapter B3 *Mixed use Development*, Section 4.12 – Landscaping, Chapter E6 *Landscaping*, Section 2 – Objectives and Section 4 – Minimum Information Requirements to Accompany a Development Application, Chapter E17 *Preservation and Management of Trees and Vegetation*, Section 2 – Objectives and Chapter B4 *Development in Business Zones*, Section 9.2.8 – Public Domain – Footpath Paving.
- 10 Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the area and width of private open space, and solar access to the private open space of the proposed development is inconsistent with the objectives and controls of Wollongong Development Control Plan 2009 Chapter B3 *Mixed use Development*, Section 4.14 – Private Open Space.
- 11 Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that insufficient information has been submitted to demonstrate that solar access to the adjoining property is consistent with the objectives and controls of Wollongong Development Control Plan 2009 Chapter B3 *Mixed use Development*, Section 4.15 – Solar Access and Chapter B4 *Development in Business Zones*, Section 9.2.9 – Solar access and overshadowing.
- 12 Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the design of the bin and storage areas provided for the proposed development is inconsistent with the objectives and controls of Wollongong Development Control Plan 2009 Chapter B3 *Mixed use Development*, Section 4.9 – Car Parking, Section 4.22 – Crime Prevention Through Environmental Design and Chapter E2 *Crime Prevention Through Environmental Design*, Section 3.4 – Building Design.
- 13 Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that insufficient information has been submitted to demonstrate adequate site facilities can be provided to the proposed development to satisfy the objectives and controls of Wollongong Development Control Plan 2009 Chapter B3 *Mixed use Development*, Section 5.10 – Site Facilities.
- 14 Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the built form and scale of the proposed development is inconsistent with the objectives of Wollongong Development Control Plan 2009 Chapter B4 *Development in Business Zones*, Section 9 – General Design Requirements For Retail and Business Premises Developments as:
 - a. Submitted plans indicate that at grade street access has not been provided;
 - b. The floor to ceiling height is less than the minimum required;
 - c. The proposal ignores topographic context with no graduation of form resulting in blank side walls and the design response to the narrow site width results in a disproportionately tall building that is out scale and context with the surrounds;
 - d. The proposed building is disproportionately narrow and tall and does not maintain the horizontal and vertical proportions of other existing buildings in the locality.
 - e. Insufficient information has been provided to demonstrate that solar access to adjoining property is maintained.

- 15 Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the built form and scale of the proposed development is inconsistent with the controls of Wollongong Development Control Plan 2009 Chapter B4 *Development in Business Zones*, Section 9.2.1 – Floor Configuration
- 16 Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the built form and scale of the proposed development is out of scale and context with its surrounds and is inconsistent with the controls of Wollongong Development Control Plan 2009 Chapter B4 *Development in Business Zones*, Section 9.2.2 – Building Appearance.
- 17 Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the built form and scale of the proposed development is inconsistent with the controls of Wollongong Development Control Plan 2009 Chapter B4 *Development in Business Zones*, Section 9.2.5 – Urban Design/Streetscape Appearance as;
 - a. The built form, which is result of the narrow site width, is out of scale and context with its surrounds;
 - b. The façade treatment and material palette is not in keeping with the traditional elements of the streetscape and surrounding context.
- 18 Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the built form and scale of the proposal is inconsistent with the desired future character of Helensburgh, as prescribed by Wollongong Development Control Plan 2009, Chapter D1 *Character Statements*, of Section 3.1 – Helensburgh.
- 19 Pursuant to the provisions of Section 4.15 (1)(b) of the Environmental Planning and Assessment Act, 1979, it is considered the proposal fails to demonstrate the likely impacts of the development will not be adverse.
- 20 Pursuant to the provisions of Section 4.15 (1)(c) of the Environmental Planning and Assessment Act, 1979, it is considered the proposal fails to demonstrate that the site is suitable for the development.
- 21 Pursuant to the provisions of Section 4.15 (1)(d) of the Environmental Planning and Assessment Act 1979, it is considered that having regard for public submissions, the development is unsuitable with respect to:
 - Character of the area;
 - Solar access; and
 - Safety and security
- 22 Pursuant to the provisions of Section 4.15 (1)(e) of the Environmental Planning and Assessment Act, 1979, it is considered that approval of the development would set an undesirable precedent for similar inappropriate development and is therefore, not in the public interest.