

10 June 2020

At 5.00 pm

Local Planning Panel



Agenda

- 1. Disclosures of Interest**
- 2. Confirmation of Minutes**
- 3. Development Application: 40 Princess Avenue, Rosebery - D/2019/996**
- 4. Report to the Local Planning Panel - Status of Applications**



As part of our democratic process, the City invites members of the community to speak directly to Members of the Local Planning Panel (LPP) about items on a meeting agenda.

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Consent

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To enable the LPP to hear a wide range of views and concerns within the limited time available, we encourage people interested in speaking at meetings to:

1. Register to speak by calling Secretariat on 9265 9310 or emailing secretariat@cityofsydney.nsw.gov.au before 10.00am on the day of the meeting.
2. Check the recommendation in the LPP report before speaking, as it may address your concerns so that you just need to indicate your support for the recommendation.
3. Note that there is a three minute time limit for each speaker and prepare your presentation to cover your major points within that time.
4. Avoid repeating what previous speakers have said and focus on issues and information that the LPP may not already know.
5. If there is a large number of people interested in the same item as you, try to nominate three representatives to speak on your behalf and to indicate how many people they are representing.

At the start of each LPP meeting, the Chair may re-order agenda items so that those items with speakers can be dealt with first.

LPP reports are on line at www.cityofsydney.nsw.gov.au.

Item 1.

Disclosures of Interest

Pursuant to the provisions of Clause 15 of Schedule 4B of the Environmental Planning and Assessment Act 1979, members of the Local Planning Panel are required to disclose pecuniary interests in any matter on the agenda for this meeting of the Local Planning Panel.

Panel members are also required to disclose any non-pecuniary interests in any matter on the agenda for this meeting of the Local Planning Panel.

In both cases, the nature of the interest must be disclosed.

In accordance with section 4.9 of the Code of Conduct for Local Planning Panel Members, all Panel members are required to sign a declaration of interest in relation to each matter on the agenda.

Item 2.

Confirmation of Minutes

Minutes of the following meeting of the Local Planning Panel, which have been endorsed by the Chair of that meeting, are submitted for noting:

Meeting of 20 May 2020

Item 3.**Development Application: 40 Princess Avenue, Rosebery - D/2019/996**

File No.: D/2019/996

Summary

Date of Submission: 6 September 2019. Amended plans and additional information submitted 9 April 2020.

Applicant/Architect: Bureau SRH Architecture

Owner: Mr N Dolan and Ms J Murphy

Cost of Works: \$76,000

Zoning: R1 General Residential - secondary dwellings are permitted with consent in the zone.

Proposal Summary: The subject application seeks consent for partial demolition of existing fences and landscape structures and construction of a laneway building. This will comprise a garage at ground level, with vehicle access from Salisbury Lane, a secondary dwelling contained within the attic space above and associated landscaping of the rear yard.

The site is located within the Green Square Urban Renewal Area as designated under the Sydney Local Environmental Plan 2012 (the LEP). The proponent seeks to utilise additional community infrastructure floor space under clause 6.14 of the LEP. The base FSR for the site is 1:1 with additional community infrastructure floor space of up to 0.25:1. Considering all the relevant floor space provisions contained in the LEP the maximum FSR for the site is 1.25:1. The proposal includes a maximum FSR of 1.13:1.

Consequently, the owner of the site has made a formal offer to enter into a voluntary planning agreement (VPA) with Council for a monetary contribution of \$8,018 towards infrastructure provision in Green Square.

Subject to the execution and registration of the VPA on the title of the land, the proposed development is eligible for additional community infrastructure floor space under clause 6.14 of the LEP.

The proposed laneway building is a single storey with an attic, to a maximum height of 5.2m. This complies with the LEP height control of 9m and the DCP height control of 5.4m for laneway dwellings set out under provision 4.1.6 of the Sydney Development Control Plan 2012 (the DCP). The intent of the DCP is that rear lane buildings appear as a single storey by incorporating a dwelling as an attic level.

Several iterations of amendments have been submitted over the course of the assessment period. These amendments have been to change the form of the building from a two-storey, to a one-storey building and to incorporate a public benefit offer to be eligible for additional community infrastructure floor space pursuant to clause 6.14 of the LEP.

The amended scheme complies with all the relevant planning controls. It provides an appropriate form that responds to its context, including the new secondary / laneway dwellings, approved by the Local Planning Panel on the neighbouring site to the north at 38 Princess Avenue Rosebery, under application D/2019/1168. It has no unacceptable adverse amenity impacts and exhibits design excellence.

The subject application was notified for a period of 14 days between 30 September and 15 October 2019. As a result of this notification one submission in support of the proposal was received.

The draft VPA has commenced its public exhibition period, which is for a duration of 28 days, in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

As the application is subject to an associated VPA, it is to be determined by the Local Planning Panel.

It is recommended that authority be delegated to the Chief Executive Officer (CEO) to determine the application, following the conclusion of the public exhibition of the VPA and considering any public submissions received in response. Consideration should be given to granting deferred commencement development consent subject to the recommended conditions requiring the VPA to be executed prior to the consent becoming operative.

Summary Recommendation: Authority be granted to the CEO to determine the application following the conclusion of the public exhibition of the VPA and considering any public submissions received in response.

Development Controls:

- (i) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (ii) Sydney Local Environmental Plan 2012
- (iii) Sydney Development Control Plan 2012

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Draft Voluntary Planning Agreement

Recommendation

It is resolved that:

- (A) authority be delegated to the Chief Executive Officer to determine Development Application No. D/2019/996, following the conclusion of the public exhibition of the draft Voluntary Planning Agreement and considering any public submissions received in response;
- (B) if the Chief Executive Officer determines to approve the application, pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application No. D/2019/996 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for deferred commencement approval for the following reasons:

- (A) The proposed development is for a secondary dwelling which is permitted with consent in the R1 General Residential zone.
- (B) The proposed development complies with the 9m height of buildings control and the 1.25:1 floor space ratio control pursuant to clauses 4.3, 4.4 and 6.14 of the Sydney Local Environmental Plan 2012. The proposed development complies with the 5.4m height and built form controls contained in provision 4.1.6 of the Sydney Development Control Plan 2012.
- (C) The proposed development complies with all the relevant planning controls. It provides an appropriate form that responds to its context. It has no unacceptable adverse amenity impacts and satisfies provisions pertaining to design excellence.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 26, Section 2 in DP 2269 and is commonly known as 40 Princess Avenue, Rosebery.
2. The site is rectangular in shape and has an area of 146.3sqm. It has a primary street frontage 4.57m in length to Princess Avenue and a secondary frontage 4.57m in length to Salisbury Lane. It is located approximately 100m north of the intersection of Princess Avenue and Queen Street. A two-storey terrace house with an attic is contained within the site.
3. Adjacent to the north at 38 Princess Avenue, is a two-storey residential dwelling house. On 18 March 2020 the Local Planning Panel granted deferred commencement consent to application D/2019/1168 for demolition of the existing two-storey residential dwelling and construction of two new two-storey dwellings including rear lane garages with attic studios above at 38 Princess Avenue.
4. To the south and west are residential dwellings. On the opposite side of Salisbury Lane to the east is a residential development comprising fifty-one, three-storey town house dwellings at 50-86 Dunning Avenue, Rosebery. Many of these townhouses address Salisbury Lane.
5. The site does not contain a heritage item, is not in the vicinity of a heritage item and is not located within a heritage conservation area.
6. A site visit was carried out by staff on 13 November 2019. Photos of the site and surrounds are provided below.



Figure 1: Aerial image of subject site and surrounding area.



Figure 2: Site viewed from Princess Avenue.



Figure 3: Existing roller door and gate to site's Salisbury Lane frontage.



Figure 4: Salisbury Lane frontage of townhouse development at 50-86 Dunning Avenue.



Figure 5: View to roller door from rear yard of subject site.



Figure 6: View north along Salisbury Lane.



Figure 7: View south along Salisbury Lane.

History Relevant to the Development Application

History of approvals pertaining to the subject site

7. On 3 July 2008, development consent (D/2008/594) was granted for alterations and additions to a single storey dwelling house including demolition of the existing rear wing and construction of a second storey and attic addition and dual car parking space / rear courtyard and associated landscaping.
8. On 5 May 2009, approval (D/2008/594/A) was granted to modify the consent to amend plans to include a dormer window in the front elevation to the approved attic space.

History of approvals pertaining to the adjacent site at 38 Princess Avenue

9. On 21 December 2016, deferred commencement consent (D/2016/648) was granted for demolition of all existing structures and construction of two dwellings on the site each with a two-storey building adjacent to the lane with garage and studios above.
10. On 14 June 2018, approval (D/2016/648/A) was granted to modify the consent to delete references to 'studios' and replace any such references with 'secondary dwellings' and which will only be able to operate in conjunction with the main dwellings on site.
11. On 21 December 2018, the deferred commencement consent (D/2016/648/A) lapsed as the VPA pertaining to the site had not been executed.
12. On 18 March 2020, deferred commencement consent (D/2019/1168) was granted for demolition of an existing two-storey residential dwelling and construction of two new two-storey dwellings including rear lane garages with attic studios above. The development relied on community infrastructure floor space with a monetary contribution to community infrastructure secured in a VPA associated with the DA.
13. Images of the approved plans from the relevant report to the Local Planning Panel (LPP) are provided below. These plans illustrate the approved laneway development adjoining the subject site.

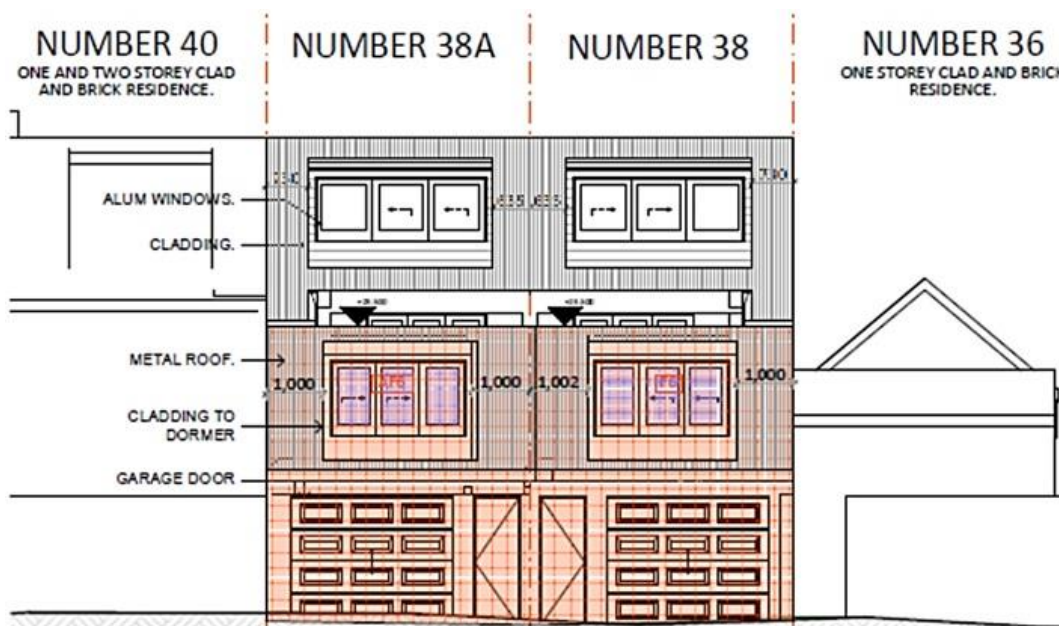


Figure 8: Salisbury Lane elevation of garage/studio buildings approved at 38 Princess Avenue.

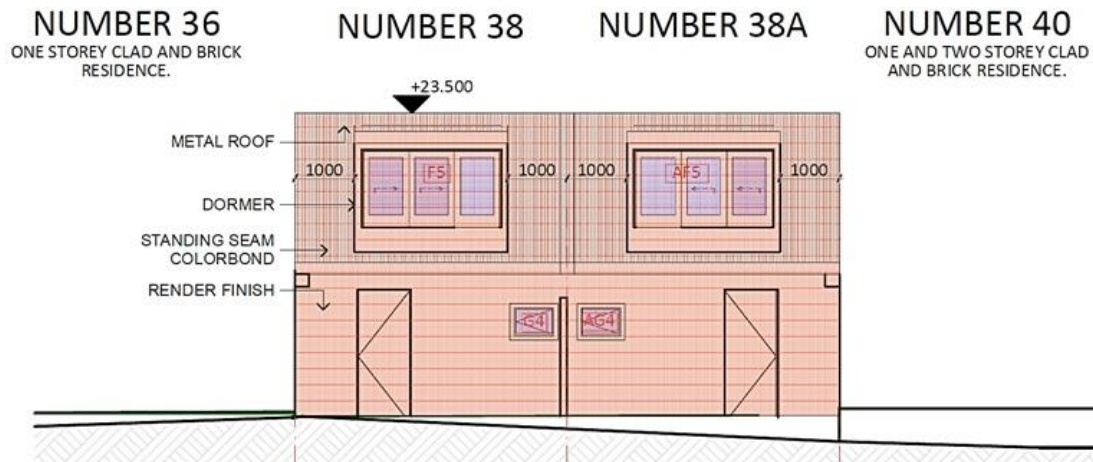


Figure 9: Internal elevation of garage/studio buildings approved at 38 Princess Avenue.

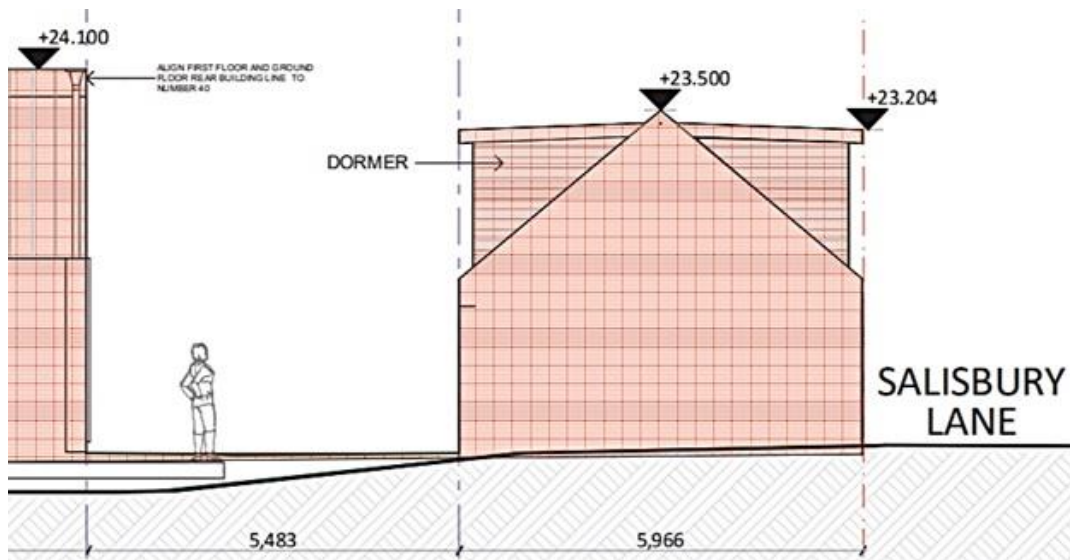


Figure 10: South elevation of garage/studio buildings approved at 38 Princess Avenue.

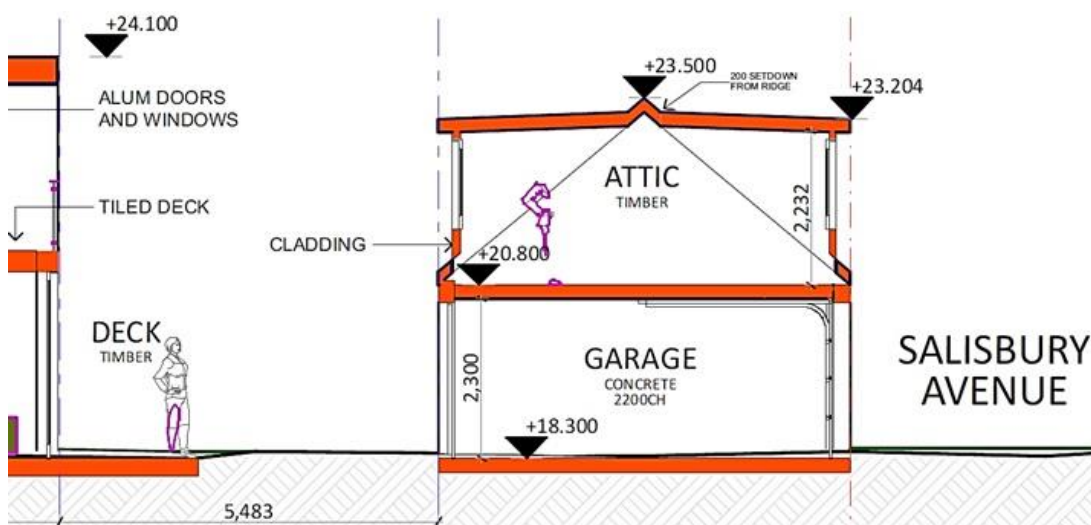


Figure 11: Section of garage/studio buildings approved at 38 Princess Avenue.

History of the subject application

14. The subject application was lodged on 6 September 2019.
15. As shown in the figures below, the original proposal was for a two-storey laneway building comprising a garage at ground level, with vehicle access from Salisbury Lane and a secondary dwelling at the first-floor level.
16. The original proposal was not supported as it presented as a two storey building to the laneway. The original proposal was contrary to the design intent of the relevant DCP controls and departed from the character of the compliant laneway building design approved by the LPP on the adjoining site at 38 Princess Avenue under application D/2019/1168.
17. The original proposal failed to comply with planning requirements in the following ways:
 - (a) exceeded the 5.4m height control set out under provision 4.1.6 of the Sydney Development Control Plan 2012 (the DCP);
 - (b) reduced the area of the rear courtyard to 14sqm and failed to provide the minimum 16sqm of private open space required under DCP provision 4.1.3.5;
 - (c) did not include a public benefit offer to utilise additional community infrastructure floor space pursuant to clause 6.14 of the Sydney Local Environmental Plan 2012 (the LEP); and
 - (d) exceeded the 1:1 floor space ratio (FSR) control pursuant to LEP clause 4.4 and did not include a written request pursuant to LEP clause 4.6 to justify non-compliance with the FSR control.



Figure 12: Original proposal - Salisbury Lane elevation. Including a non-compliant two storey presentation to the laneway.

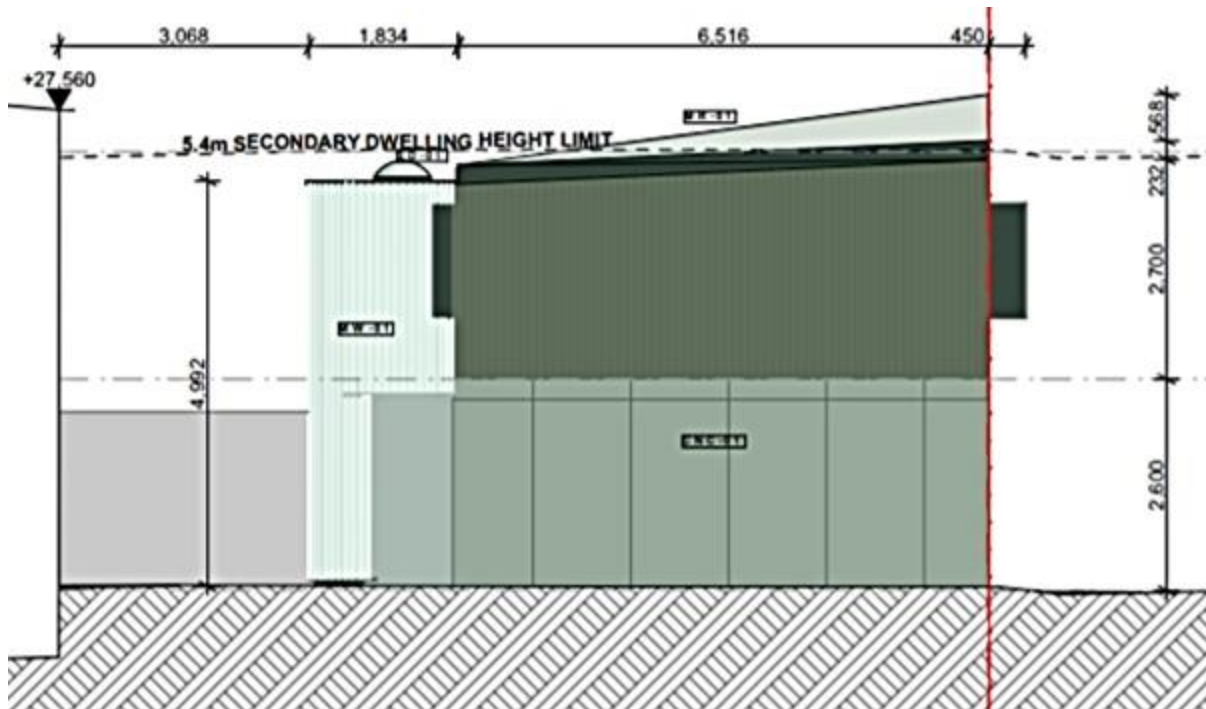


Figure 13: Original proposal - south elevation. Two storey form exceeds the DCP 5.4m height control.

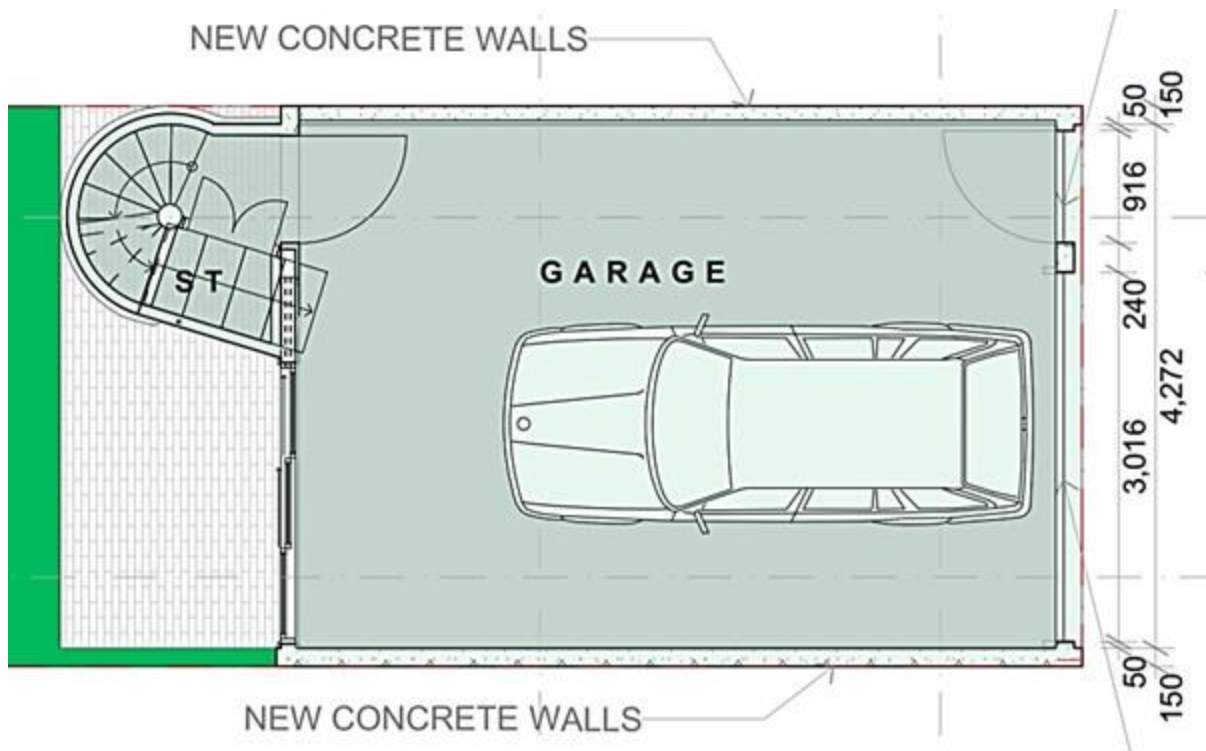


Figure 14: Original proposal - ground level plan.

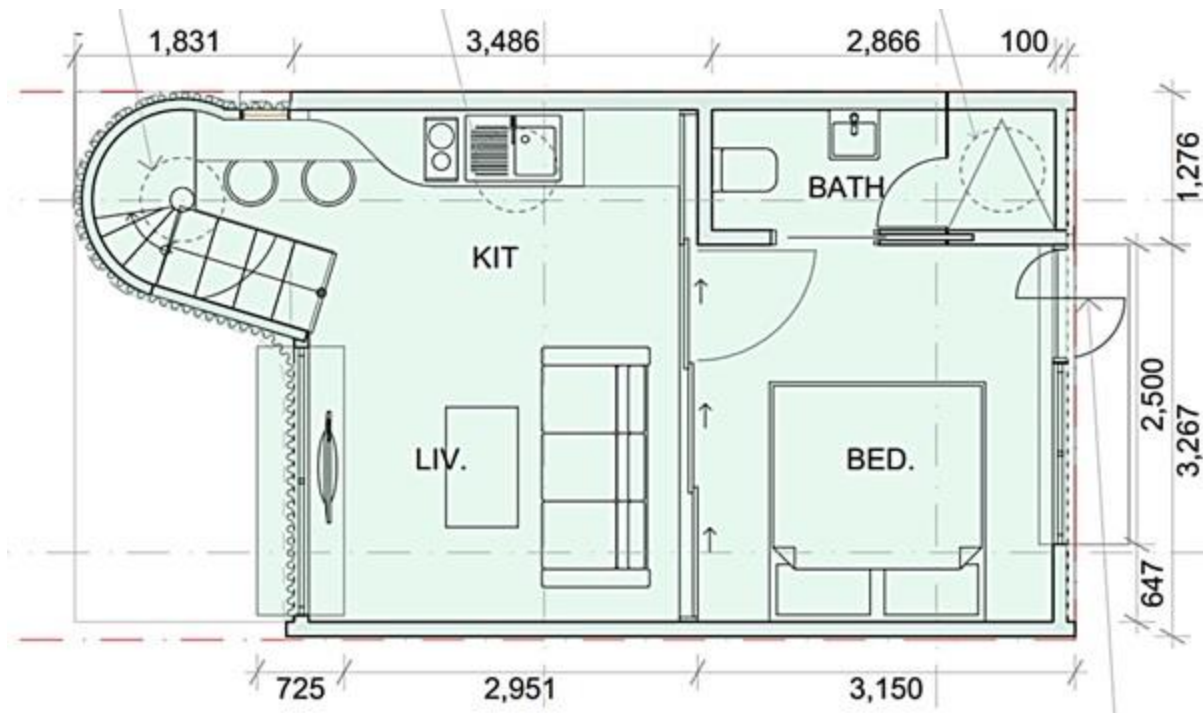


Figure 15: Original proposal - first floor level plan.

18. Over the course of the assessment four iterations of amended plans and additional information were submitted in response to Council officers' requests. The final submission of amended plans and additional information including a public benefit offer was made on 9 April 2020 and which are pictured under the Proposal heading below.
19. The final DA as per the various amendments summarised above is the subject of this assessment report.

Proposal

20. The application seeks consent for partial demolition of existing fences and landscape structures and construction of a laneway building. This will comprise a garage at ground level, with vehicle access from Salisbury Lane, a secondary dwelling contained within the attic space above and associated landscaping of the rear yard.
21. The owner of the site has made a formal offer to enter into a voluntary planning agreement (VPA) with Council for a monetary contribution towards infrastructure provision in Green Square in order to be eligible to utilise community infrastructure floor space under clause 6.14 of the LEP.

22. Drawings of the proposed development are provided below.

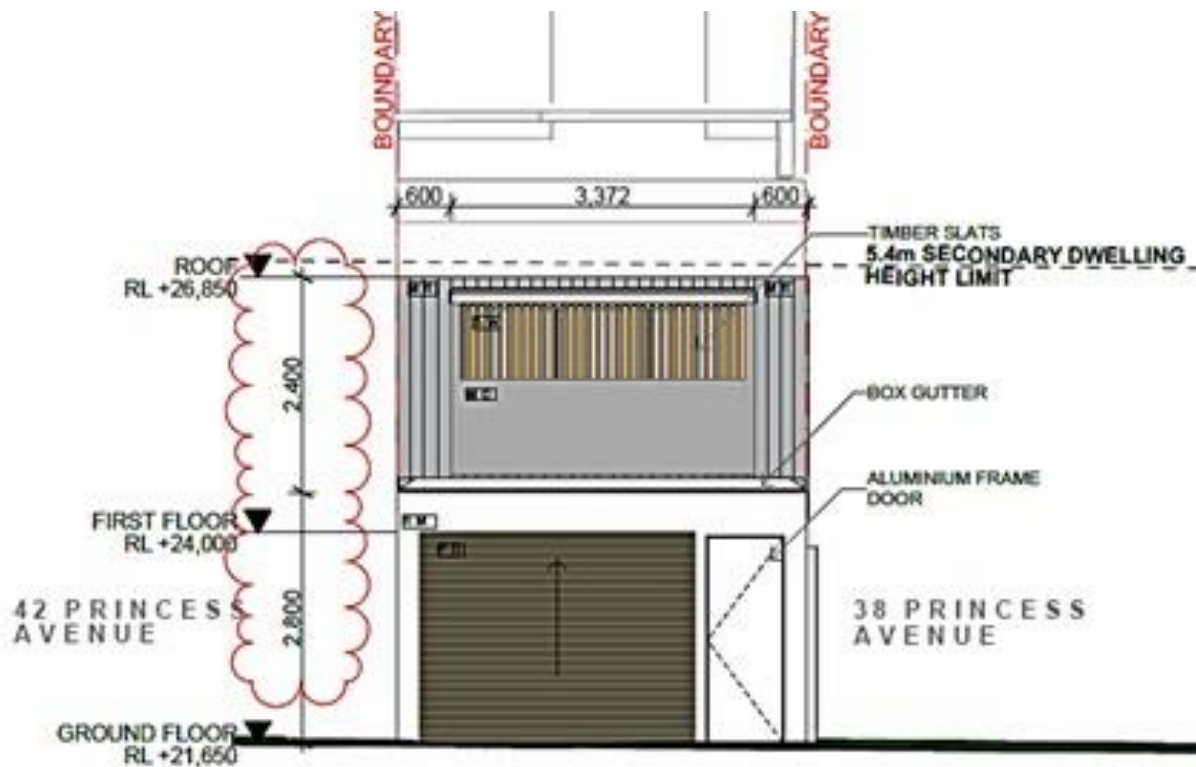


Figure 16: Amended proposal - Salisbury Lane elevation.

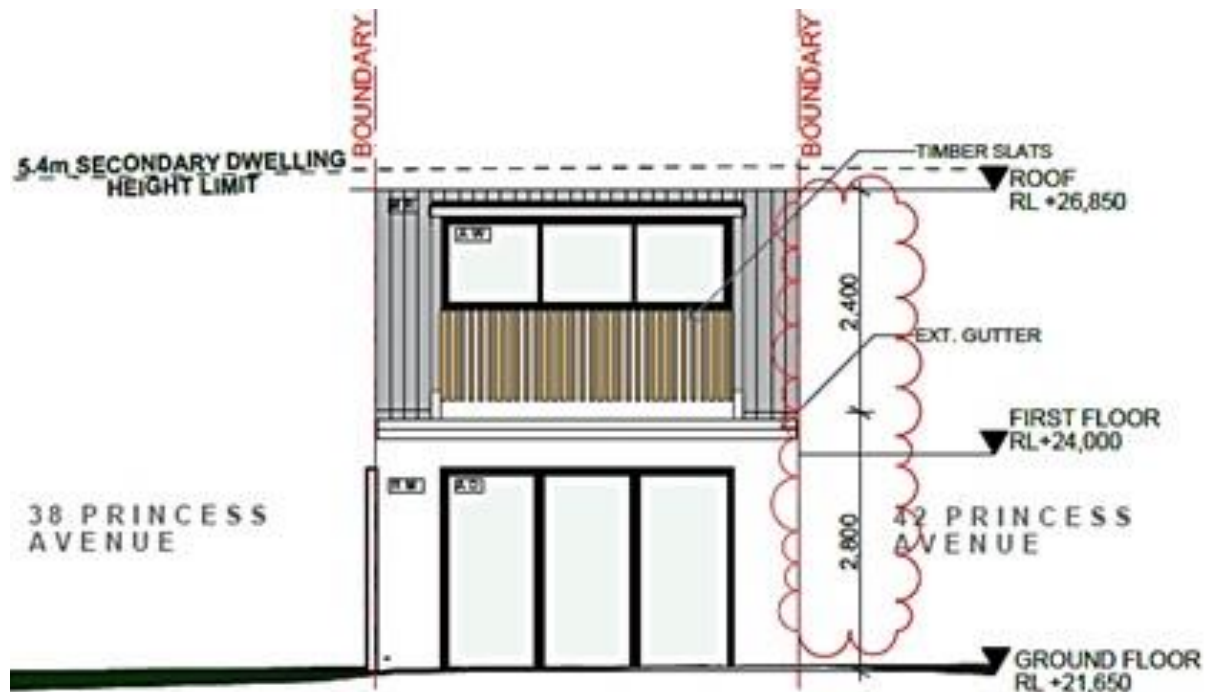


Figure 17: Amended proposal - internal rear yard elevation.

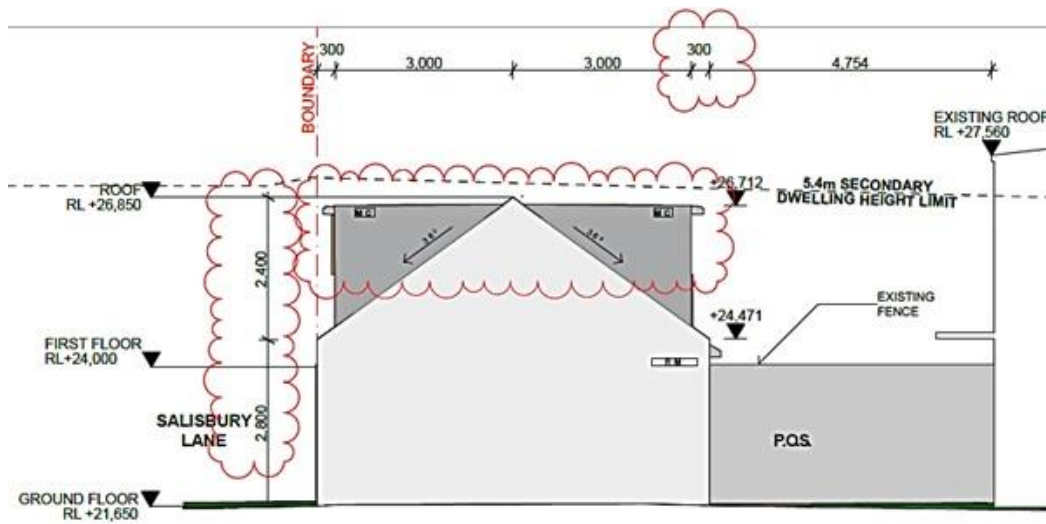


Figure 18: Amended proposal - north elevation.

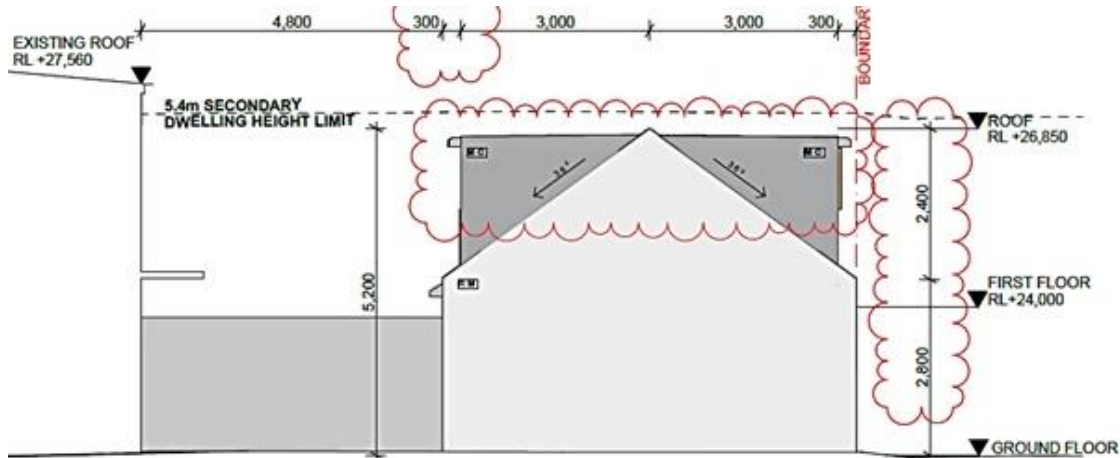


Figure 19: Amended proposal - south elevation.



Figure 20: Amended proposal - section (S01).

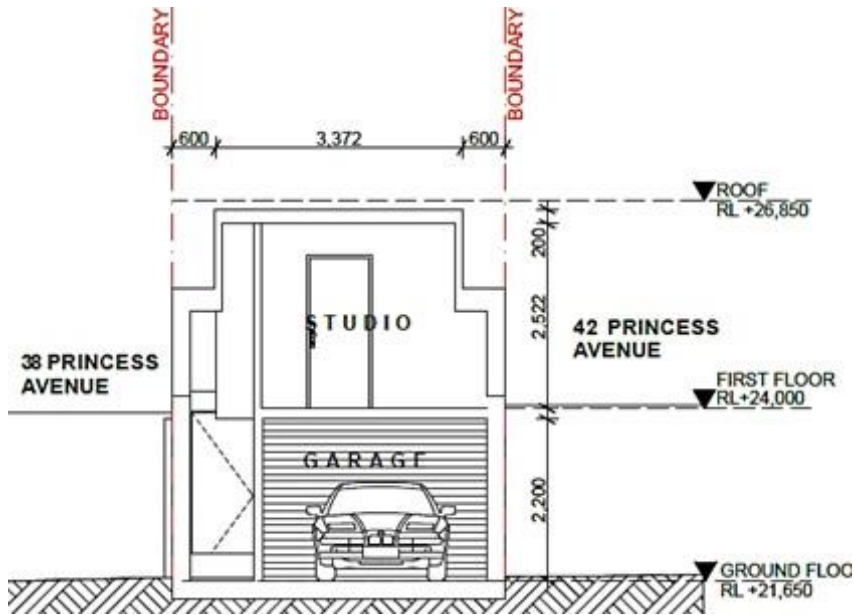


Figure 21: Amended proposal - section (S02).

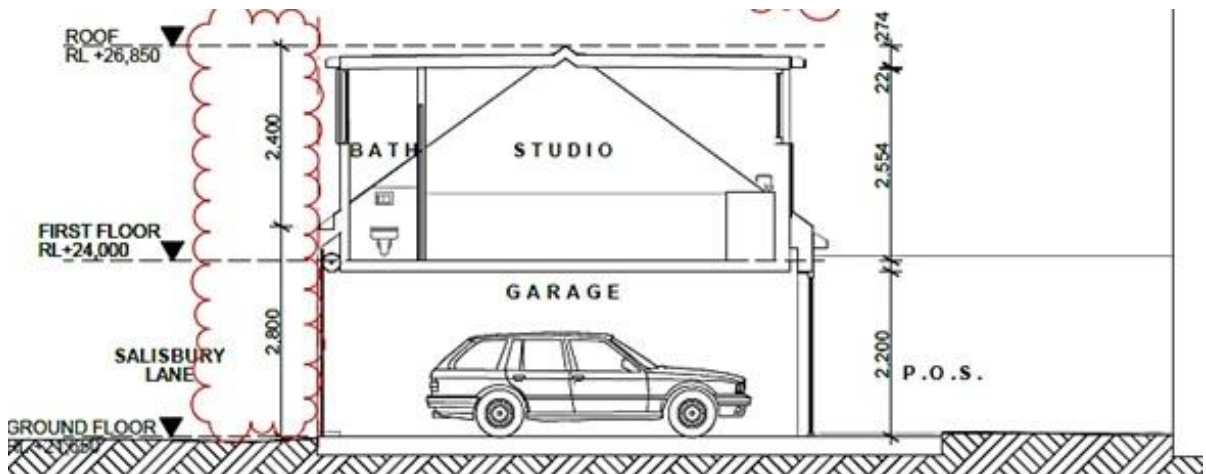


Figure 22: Amended proposal - section (S03).

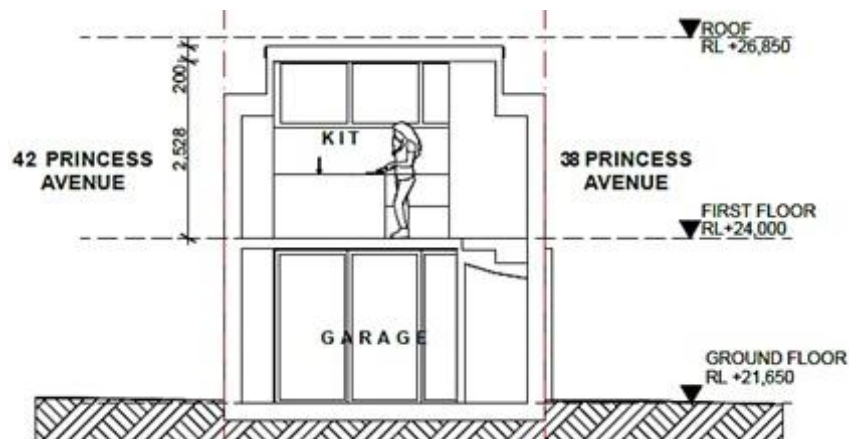


Figure 22: Amended proposal - section (S04).

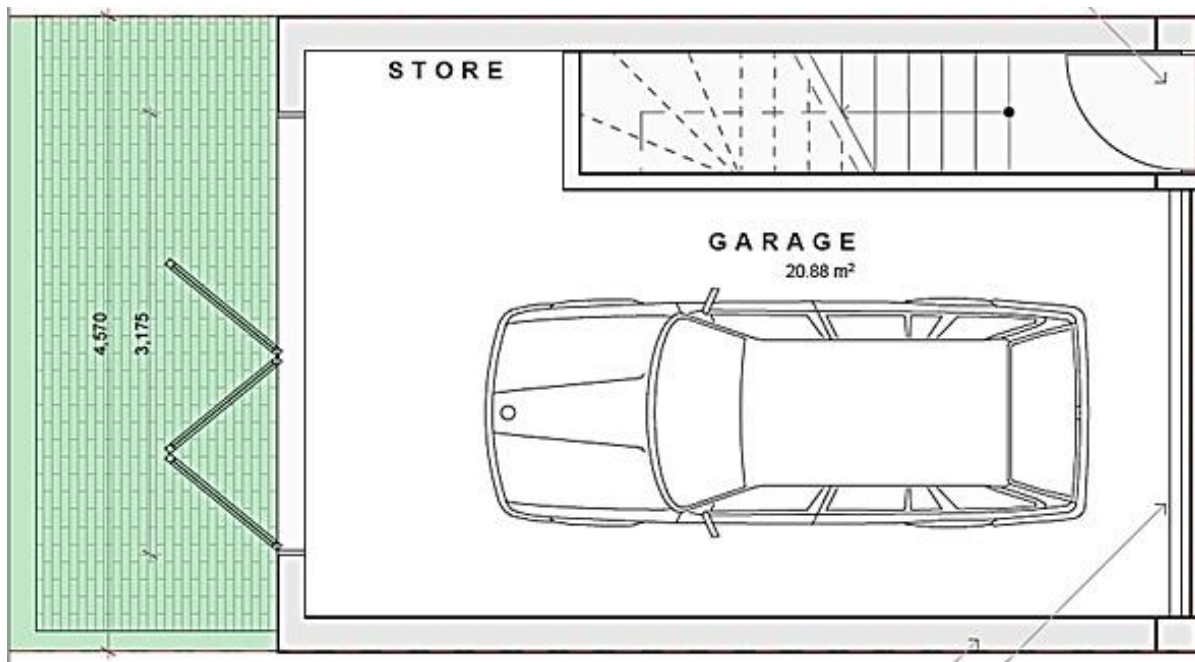


Figure 23: Amended proposal - ground level plan.

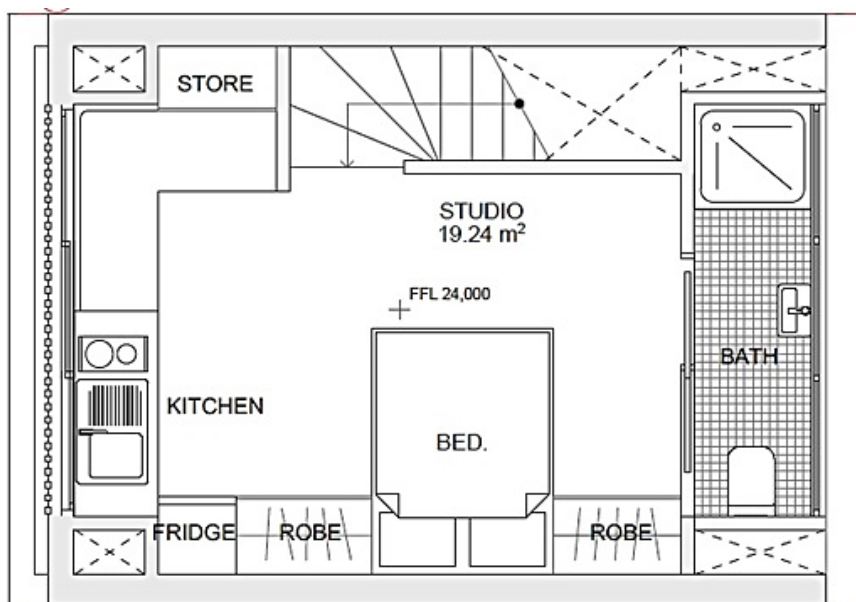


Figure 24: Amended proposal - attic level plan and which is like the attic level plan of the two new two-storey dwellings that were recently approved by the Local Planning Panel under application D/2019/1168 on the adjacent property at 38 Princess Avenue, Rosebery.

Economic/Social/Environmental Impacts

23. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
 - (a) Environmental Planning Instruments and DCPs.

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

24. A BASIX Certificate has been submitted which lists measures to satisfy BASIX requirements that have been incorporated into the proposed design. A condition is recommended requiring the measures detailed in the BASIX certificate to be implemented at construction.

Sydney Local Environmental Plan 2012

25. The site is located within the R1 General Residential Zone. The proposed development includes a secondary-dwelling, which is permitted with consent in the zone.
26. The relevant matters to be considered under Sydney Local Environmental Plan 2012 (the LEP) for the proposed development are outlined below.

Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	Yes	A maximum height of 9m is permitted. A height of 5.2m is proposed.
4.4 Floor Space Ratio 6.14 Community Infrastructure Floor Space at Green Square	Yes	LEP clause 4.4 stipulates a base floor space ratio (FSR) of 1:1. LEP clause 6.14 provides an opportunity for a further 0.25:1 FSR where community infrastructure is provided. As part of the subject application, the owner has made a formal offer to enter into a Voluntary Planning Agreement (VPA) with Council. This VPA is for a monetary contribution of \$8,018 for community infrastructure provision in Green Square. Considering all the relevant FSR provisions contained in the LEP, the maximum permitted FSR for the development is 1.25:1 (182.88sqm GFA). A FSR of 1.13:1 (164.89sqm GFA) is proposed.
5.4 Controls relating to miscellaneous permissible uses	Yes	The maximum permissible floor area for secondary dwelling uses is 60sqm. The proposed secondary dwelling has a floor area of 18.59sqm.

Development Control	Compliance	Comment
5.10 Heritage conservation	N/A	<p>The site does not contain a heritage item and is not in the vicinity of a heritage item and is not located within a heritage conservation area.</p> <p>The proposal has no adverse heritage impacts.</p>
6.21 Design excellence	Yes	<p>The proposed development complies with all the relevant planning controls. It provides an appropriate form that responds to its context. It has no unacceptable adverse amenity impacts. It satisfies the requirements of this provision.</p>
Division 1 Car parking ancillary to other development	Yes	<p>A maximum of 2 car parking spaces are permitted.</p> <p>The existing site contains a dual use rear courtyard / single car parking space.</p> <p>One (1) car parking space is proposed.</p>
7.13 Contribution for purpose of affordable housing	Yes	<p>Pursuant to LEP clause 7.13(2) the proposal is identified as excluded development and is not subject to an affordable housing levy contribution in this instance.</p> <p>See discussion under the Financial Implications heading in this report.</p>
7.14 Acid Sulphate Soils	Yes	<p>The site is identified as containing Class 5 Acid Sulphate Soils and is approximately 500m from areas containing Class 3 Acid Sulphate Soils.</p> <p>The proposed development is unlikely to reduce the water table in nearby Class 3 Acid Sulphate Soil areas.</p> <p>The proposal does not trigger any further requirements for the management of acid sulphate soils under this clause.</p>

Development Control	Compliance	Comment
7.15 Flood planning	Yes	The site is not flood prone. The proposed development does not pose a flood risk and is supported.
7.17 Development in areas subject to airport noise	N/A	The site is not located within the ANEF Contour 20 Zone and is not subject to the requirements of this clause.
7.19 Demolition must not result in long term adverse visual impact	Yes	The proposal is for development of the rear of the site and as such the demolition phase will be temporary and will have no permanent adverse impacts upon the streetscape of Salisbury Lane.

Sydney Development Control Plan 2012

27. The relevant matters to be considered under Sydney Development Control Plan 2012 (the DCP) for the proposed development are outlined below.

2. Locality Statements – Beaconsfield

The subject site is in the locality of Beaconsfield. The proposed development is in keeping with the character of the area and its design principles in that it contributes to the reinforcement of the character of existing built form patterns in the area.

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	Yes	No alterations are proposed to the street address of the principal dwelling. The proposed development provides a direct pedestrian entry to the secondary dwelling from Salisbury Lane. The proposed east-facing dormer window will improve opportunities for passive surveillance of the lane. The proposal satisfies the requirements of this provision.

3. General Provisions	Compliance	Comment
3.5 Urban Ecology	Yes	<p>A small Cocos Palm is contained within the adjacent property to the north at 38 Princess Avenue and is located approximately 1.5m from the boundary with the subject site.</p> <p>Removal of the Cocos Palm within the adjacent property to the north at 38 Princess Avenue has recently been approved by the Local Planning Panel under application D/2019/1168.</p> <p>The removal of the Cocos Palm is not necessitated by the subject application. As such, the proposed development is considered to have no adverse impacts upon the local urban ecology.</p>
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX requirements.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	<p>The proposed development does not include subdivision.</p> <p>A condition is recommended to ensure the proposed secondary dwelling is used in conjunction with the principal dwelling contained within the site.</p>
3.9 Heritage	N/A	<p>The site does not contain a heritage item and is not in the vicinity of a heritage item and is not located within a heritage conservation area.</p> <p>The proposal has no adverse heritage impacts.</p>
3.11 Transport and Parking	Able to comply	Conditions are recommended requiring the design of the single proposed garage car parking space to satisfy the relevant Australian standards.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.

3. General Provisions	Compliance	Comment
3.14 Waste	Able to comply	A condition is recommended requiring the proposed development to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

4. Development Types	Compliance	Comment
4.1 Single dwellings, terraces and dual occupancies		
4.1.1 Building height	Yes	A maximum of 2 storeys is permitted. The proposed development incorporates a one storey appearance by adopting an attic form.
4.1.2 Building setbacks	Yes	The proposal has a nil boundary setback from Salisbury Lane and which is consistent with the alignment of rear lane buildings approved by the Local Planning Panel on the adjacent property to the north at 38 Princess Avenue under application D/2019/1168.
4.1.3.1 Residential amenity - solar access	No, but acceptable	The proposed development will minimise overshadowing and maintain a reasonable level of amenity for the subject and neighbouring sites. For this reason, the proposal is consistent with DCP objectives for laneway buildings and a variation to the solar access controls is supported. Refer to the Issues section in this report.
4.1.3.3 Landscaping	Yes	The existing character of the rear yard as a paved and decked open space is to be maintained.
4.1.3.4 Deep Soil Planting	N/A	As the site is less than 150sqm in area the DCP's deep soil requirements are not applicable to the subject application.

4. Development Types 4.1 Single dwellings, terraces and dual occupancies	Compliance	Comment
4.1.3.5 Private Open Space	Yes	The proposed development provides private open space with an area of 21.65sqm with a minimum dimension of 4.57m and which satisfies the requirements of this control.
4.1.3.6 Visual Privacy	Yes	Proposed east and west facing dormer windows provide a sill height greater than 1.4m and which satisfy the requirements of this control.
4.1.4 Alterations and additions	Yes	The proposed rear lane building maintains the profile and form, including the roof form of the principal dwelling and allows the principal dwelling to be clearly discerned.
4.1.6 Secondary and laneway dwellings	Yes	<p>The proposed laneway building contains a garage at ground level and a secondary dwelling within the attic and is subject to the requirements of this control.</p> <p>The proposed development presents as a one storey building by incorporating an attic form and is 5.2m in height. It does not exceed the single-storey and 5.4m height restriction set out under this provision.</p> <p>As noted in the assessment against DCP provision 4.1.3.5 above, the proposal does not compromise the achievement of the DCP's minimum private open space requirements within the site.</p> <p>The roof pitch of the proposed laneway building does not exceed 40 degrees.</p> <p>The proposed laneway building is clearly secondary to the principal dwelling contained within the site.</p>

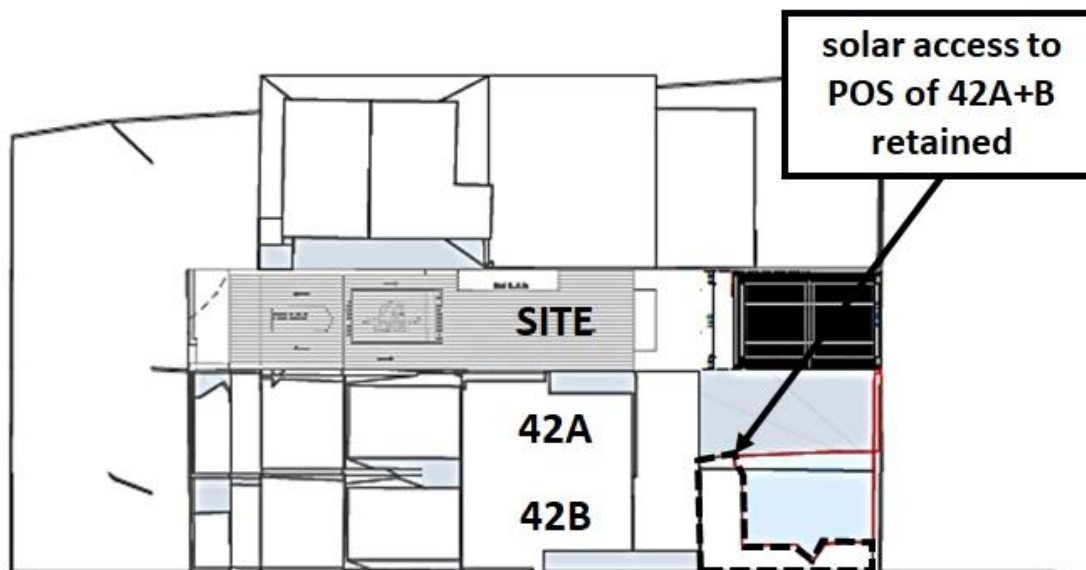
4. Development Types 4.1 Single dwellings, terraces and dual occupancies	Compliance	Comment
		<p>The proposal satisfies all the requirements of this provision and is supported.</p> <p>Refer to Issues section of this report for further discussion of the proposed design.</p>
4.1.7 Fences	N/A	The existing side fences that are outside the footprint of the new laneway building are to be retained and are not subject to the requirements of this provision.
4.1.9 Car parking	Yes	The proposed car parking space is accessed from Salisbury Lane and is consistent with the requirements of this provision.

5. Specific Areas 5.2 Green Square	Compliance	Comment
5.2.3 Community infrastructure	Yes	<p>The site owner has made a formal offer to enter into a Voluntary Planning Agreement (VPA) with Council. This VPA is for a monetary contribution of \$8,018 towards the provision of community infrastructure in Green Square.</p> <p>Subject to the execution and registration of the VPA on the land title, the proposed development is eligible for additional community infrastructure floor space under clause 6.14 of the LEP.</p> <p>The draft VPA has commenced its public exhibition period, which is for a duration of 28 days, in accordance with the requirements of the Environmental Planning and Assessment Act 1979.</p>

5. Specific Areas 5.2 Green Square	Compliance	Comment
		The proposed development and the associated VPA are considered to satisfy the requirements of this provision and are supported. Refer to the Issues section in this report.
5.2.9 Building design	Yes	The proposed development will respond sympathetically to its context and reinforce the character of the streetscape of Salisbury Lane.

Issues

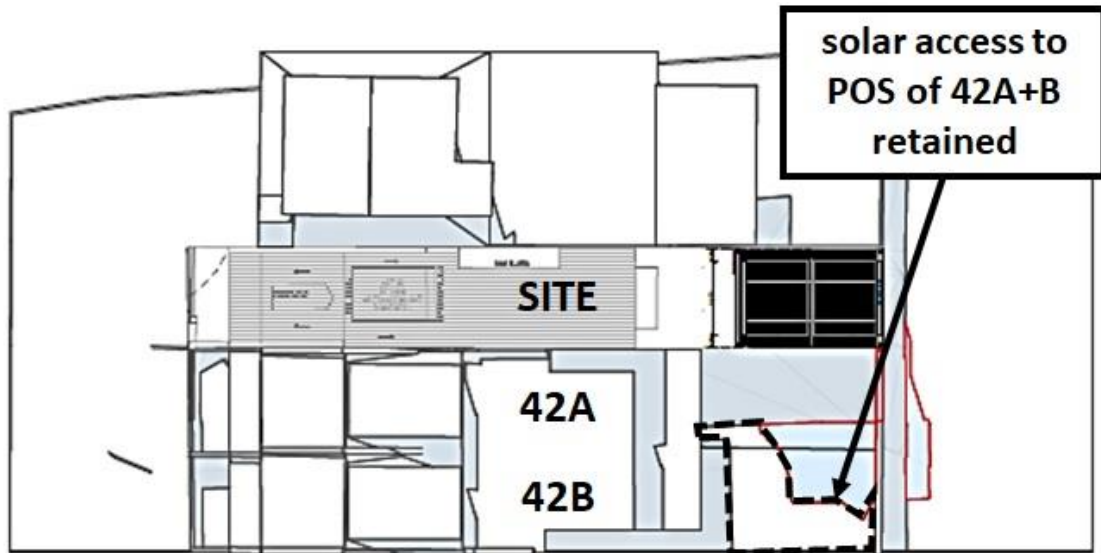
Overshadowing and Solar Access



11.00am June 2st shadows

■ EXISTING SHADOW □ OVERSHADOWING OF PROPOSAL

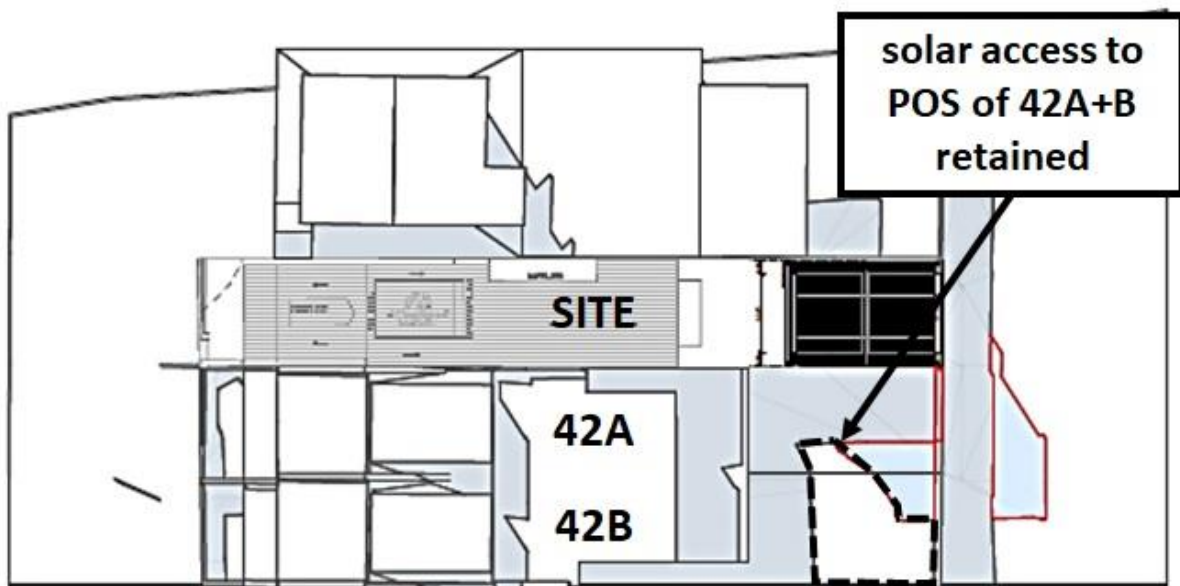
Figure 25: Shadow diagram illustrating solar access to area of POS of neighbouring properties at 42A and 42B Princess Avenue that is retained.



12.00pm June 21st shadows

■ EXISTING SHADOW □ OVERSHADOWING OF PROPOSAL

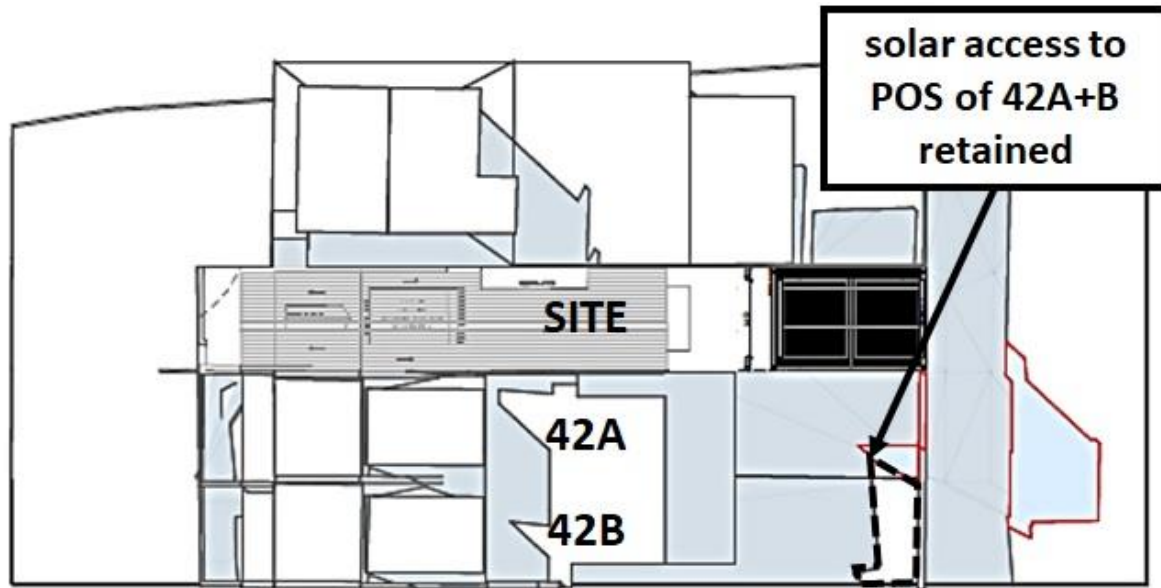
Figure 26: Shadow diagram illustrating solar access to area of POS of neighbouring properties at 42A and 42B Princess Avenue that is retained.



01.00pm June 21st shadows

■ EXISTING SHADOW □ OVERSHADOWING OF PROPOSAL

Figure 27: Shadow diagram illustrating solar access to area of POS of neighbouring properties at 42A and 42B Princess Avenue that is retained.



02.00pm June 21st shadows

■ EXISTING SHADOW □ OVERSHADOWING OF PROPOSAL

Figure 28: Shadow diagram illustrating solar access to area of POS of neighbouring properties at 42A and 42B Princess Avenue that is retained.

28. The submitted shadow diagrams, including those shown in **Figures 25 to 28** above do not accurately show shadows from some existing structures such as fences.
29. Notwithstanding these shortcomings Council's planning officer's analysis of the submitted shadow diagrams is as follows:
 - (a) As shown in **Figures 25 to 28** above, under existing conditions the dwelling immediately adjacent to the south at no. 42A Princess Avenue does not receive the minimum amount of sunlight to its private open space (POS) at midwinter.
 - (b) The proposed development results in a relatively minor increase in overshadowing to this property at no. 42A, but solar access to a small area of its POS will be maintained.
 - (c) As shown in **Figures 25 to 28** above, under existing conditions the neighbouring dwelling further to the south at no. 42B Princess Avenue has a rear courtyard that does not receive the minimum amount of sunlight to its POS at midwinter.
 - (d) The proposed development results in a significant increase in overshadowing to this property at no. 42B, but solar access to a useable area of its POS will be maintained.
30. As detailed elsewhere in this report, the proposed development complies with the LEP height and FSR controls and the built form controls for laneway buildings as set out under DCP provision 4.1.6. As such and despite increased overshadowing as described above, the proposal is considered to minimise overshadowing and to maintain a reasonable level of amenity to the subject and neighbouring sites.

31. For these reasons the proposal is considered to be consistent with DCP objectives for secondary dwellings and a variation to the solar access controls is supported.

Laneway Building Design

32. Since lodgement of the final iteration of amended plans, the landowner has made a written submission to Council's planning officers expressing his preference for the two-storey form of the original design and also to point out other two-storey laneway buildings in the area.

Other two-storey buildings in the area

33. As shown in **Figures 29 to 30** below, there is a two-storey laneway building at number 46 Princess Avenue and a two-storey warehouse building at number 48 Princess Avenue, located approximately 18.5m south of the subject site.
34. The laneway building at number 46 Princess Avenue accommodates a residential use. The warehouse building at number 48 Princess Avenue is used for commercial-warehousing purposes.



Figure 29: View to nos. 46 and 48 Princess Avenue further south along Salisbury Lane.



Figure 30: Salisbury Lane frontages of two-storey laneway building at no. 46 Princess Avenue and commercial warehouse at no. 48 Princess Avenue.

35. As shown in **Figures 31 to 32** below, there is a two-storey laneway building at number 18 Princess Avenue and a two-storey warehouse building at number 16 Princess Avenue, located approximately 55m north of the subject site.



Figure 31: View to nos. 16 and 18 Princess Avenue further north along Salisbury Lane.



Figure 32: Salisbury Lane frontages of two-storey laneway building at no. 18 and warehouse at no. 16 Princess Avenue.

36. The laneway building at number 18 Princess Avenue accommodates a residential use. The warehouse building at number 16 Princess Avenue has been adaptively reused for a live / work dwelling and studio.
37. As shown in **Figure 33** below, on the opposite side of Salisbury Lane to the east is a residential development comprising fifty-one, three-storey town house dwellings at 50-86 Dunning Avenue, Rosebery. Many of these townhouses address Salisbury Lane and are setback from the new footpath that was provided as part of the development.



Figure 33: Salisbury Lane frontages of three-storey town house dwellings at 50-86 Dunning Avenue, Rosebery.

38. DCP objectives for secondary dwellings built next to laneways are to:
 - (a) ensure such laneway buildings activate lanes and address the public domain;
 - (b) maintain a reasonable level of amenity to the principal dwelling, the site, surrounding properties and to the lane; and
 - (c) ensure the scale and type of development is compatible with the width of the lane.
39. The DCP sets out built form controls to support these objectives including that secondary dwellings built next to laneways are permitted to be single storey structures with an attic above, provided the building height does not exceed 5.4m and amenity to adjacent sites is maintained.

40. Building typologies other than secondary dwellings built next to laneways, such as the warehouses at 16 and 48 Princess Avenue or the multi-dwelling housing on the opposite eastern side of Salisbury Lane are not subject to these controls. Furthermore, the multi-dwelling housing on the opposite side of Salisbury Lane is subject to a different zoning (B4 Mixed Use) and height control (12m) under the Sydney LEP 2012.
41. The DCP does allow for variations to these controls where the existing pattern of development is characterised by buildings greater than one-storey in height. However, in this case the western side of Salisbury Lane is clearly characterised by a predominance of single storey garages, walls and fences with roller doors.
42. The desired future character for development fronting the western side of the laneway was reconfirmed by the Local Planning Panel's recent approval of two new laneway buildings on the adjacent site to the north at 38 Princess Avenue, under application D/2019/1168. These recently approved laneway buildings were initially proposed to be two-storey structures before undergoing design amendments to bring their design in line with DCP requirements prior to determination.

Maintaining reasonable levels of amenity

43. Aside from objectives that go to character, the DCP provisions for laneway buildings are also about maintaining residential amenity.
44. As discussed at paragraphs 28 to 31 above, the proposed laneway building design, which complies with the relevant DCP controls, has significant overshadowing impacts. The non-compliant height and form of the original design scheme as shown in **Figures 34** and **35** below, would result in increased overshadowing impacts.
45. In addition to increased overshadowing, a two-storey form built to the boundary could be overbearing to the already confined private open spaces of the narrow terrace lots adjacent to the subject site.



Figure 34: Original proposal - Salisbury Lane elevation. Including a non-compliant two storey presentation to the laneway.

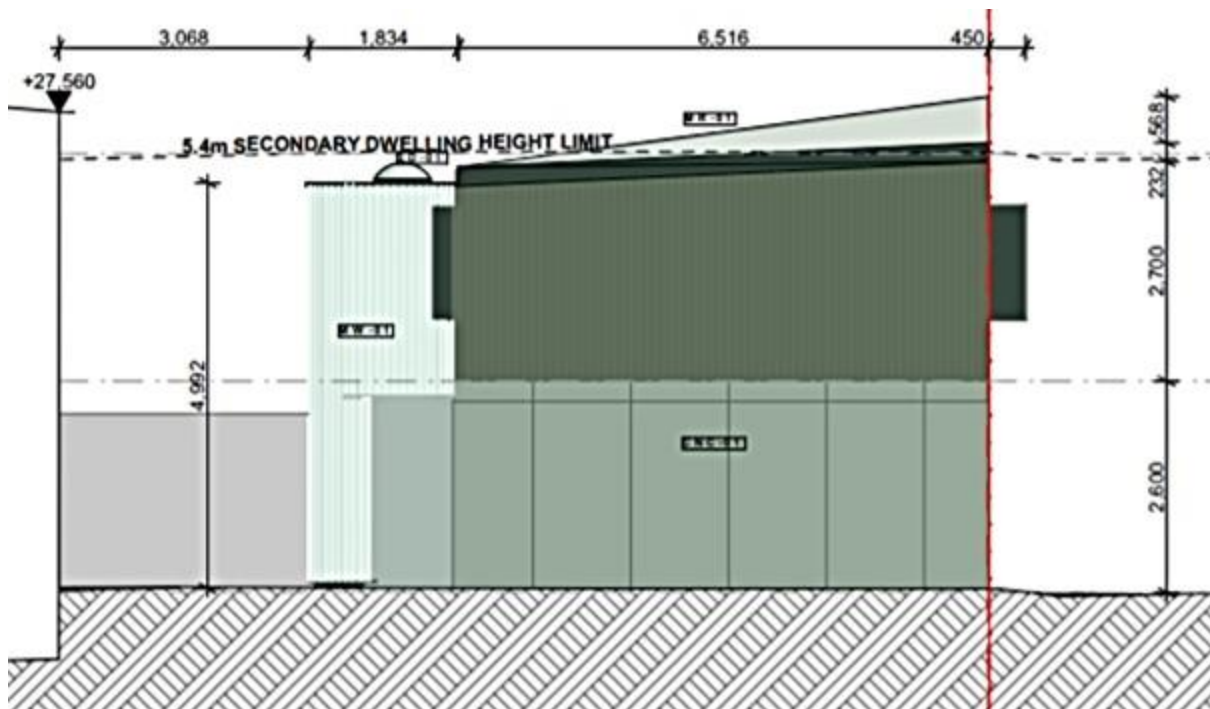


Figure 35: Original proposal - south elevation. Two storey form exceeds the DCP 5.4m height control.

46. The one-and-a-half-storey laneway building at no. 46 Princess Avenue shown at **Figure 30** above, departs from the one-storey and an attic requirement of the DCP's built form controls. However, it is located to the north of the much larger warehouse building at 48 Princess Avenue and has no overshadowing or overbearing impacts as a result.
47. The two-storey laneway building at no. 18 Princess Avenue shown at **Figure 32** above, also departs from the DCP's built form controls. However, it is located south of and to a large extent within the shadow footprint of the bigger warehouse building at 16 Princess Avenue.
48. For these reasons:
 - (a) the landowner's submission that other two-storey laneway buildings in the area establish a suitable precedent to justify a two-storey design scheme on the subject site is not supported; and
 - (b) the original two-storey design scheme is not supported on environmental planning grounds.

Voluntary Planning Agreement

49. In correspondence dated 9 April 2020 the owner of the site made a written offer to Council to enter into a Voluntary Planning Agreement (VPA) for a monetary contribution of \$8,018 towards infrastructure provision in Green Square in accordance with section 5.2.3 and schedule 10 of the DCP.
50. The draft VPA will undergo a 28-day public exhibition period in accordance with the requirements of section 7.5 of the Environmental Planning and Assessment Act 1979. The public exhibition period has commenced, however at the time of preparing this report no submissions had been received.

51. Subject to there being no unresolvable objection to the draft VPA, it is recommended that authority be delegated to the Chief Executive Officer (CEO) to determine the application, following the conclusion of the public exhibition of the VPA and considering any public submissions received in response. Consideration should be given to granting deferred commencement development consent subject to the recommended conditions requiring the VPA to be executed prior to the consent becoming operative. This will ensure that the consent cannot be acted upon without assurance that the public benefits will be delivered in accordance with the provisions of this agreement.

Other Impacts of the Development

52. The proposed development is capable of complying with the BCA.
53. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

Suitability of the site for the Development

54. The proposal is suitable for the site.

Internal Referrals

55. The assessment process has been informed by advice from Council's Specialist Surveyor, Building Surveyor, Urban Design Specialist, Transport Planner and VPA Coordinator.
56. Where appropriate, conditions recommended by these referrals have been included for imposition on any consent given.

External Referrals

Notification and Advertising

57. In accordance with the Community Participation Plan 2019 the subject application was notified for a period of 14 days between 30 September 2019 and 15 October 2019. As a result of this notification a total of 37 properties were notified and one submission was received in support of the proposal.

Public Interest

58. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

S7.11 Contribution

59. The development is subject to a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015. This contribution is calculated on the basis of the net increase in resident population arising from the development, being an additional one-bedroom secondary dwelling to be contained within the site.

60. The following monetary contribution is required towards the cost of public amenities:

(a) Open Space	\$10,693.26
(b) Community Facilities	\$2,129.35
(c) Traffic and Transport	\$2,715.59
(d) Stormwater Drainage	\$1,073.84
Total	\$16,612.05

Affordable Housing Contribution

61. The site is located within the Green Square affordable housing contribution area and is subject to the requirements of clause 7.13 of the LEP.

62. The proposed development has total floor area as defined at LEP clause 7.13 of less than 200sqm and as such is identified as excluded development.

63. Pursuant to LEP clause 7.13(2) excluded development is not to be included in calculating the applicable affordable housing levy contribution. For this reason, no such levy is to be applied in this instance.

Delegation

64. As the application is subject to an associated VPA, it is to be determined by the Local Planning Panel in accordance with the Minister's local planning panels direction dated 23 February 2018.

Relevant Legislation

65. Environmental Planning and Assessment Act 1979.

Conclusion

66. The subject application seeks consent for demolition of existing fences and landscape structures and construction of a laneway building. This will comprise a garage at ground level, with vehicle access from Salisbury Lane, a secondary dwelling contained within the attic space above and associated landscaping of the rear yard.
67. The owner of the site has made a formal offer to enter into a voluntary planning agreement (VPA) with Council for a monetary contribution of \$8,018 towards infrastructure provision in Green Square.
68. The draft VPA has commenced its public exhibition period, which is for a duration of 28 days, in accordance with the requirements of the Environmental Planning and Assessment Act 1979.
69. Subject to the execution and registration of the VPA on the title of the land, the proposed development is eligible for additional community infrastructure floor space under clause 6.14 of the LEP.
70. Considering all the relevant floor space provisions contained within LEP clauses 4.4 and 6.14, the maximum permitted floor space ratio for the site is 1.25:1. The proposed development has a FSR of 1.13:1 and complies with these FSR controls.
71. The proposed laneway building is a single storey with an attic, to a maximum height of 5.2m and which complies with the LEP height control of 9m and the DCP height control of 5.4m for laneway dwellings.
72. The proposed development complies with all the relevant planning controls. It provides an appropriate form that responds to its context, including the new secondary / laneway dwellings, approved by the Local Planning Panel on the neighbouring site to the north at 38 Princess Avenue, Rosebery under application D/2019/1168. It has no unacceptable adverse amenity impacts and exhibits design excellence.
73. It is recommended that authority be delegated to the Chief Executive Officer (CEO) to determine the application, following the conclusion of the public exhibition of the VPA and considering any public submissions received in response. Consideration should be given to granting deferred commencement development consent subject to the recommended conditions requiring the VPA to be executed prior to the consent becoming operative.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Ben Chamie, Senior Planner

Attachment A

Recommended Conditions of Consent
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PART A - DEFERRED COMMENCEMENT CONDITIONS

SCHEDULE 1

(A) The consent is not to operate until the following condition is satisfied:

(1) VOLUNTARY PLANNING AGREEMENT

(a) The Voluntary Planning Agreement between the COUNCIL OF THE CITY OF SYDNEY and NIALL GERALD DOLAN and JANE BERNADETTE MURPHY both of 40 Princess Avenue, Rosebery NSW 2018 (the Developer) shall be executed and submitted to Council; and

(b) The payment of the monetary contribution must be provided to Council in accordance with the Voluntary Planning Agreement.

(B) Evidence that will sufficiently enable Council to be satisfied as to those matters identified in deferred commencement conditions, as indicated above, must be submitted to Council within **24 months** of the date of determination of this deferred commencement consent, failing which this deferred development consent will lapse pursuant to section 4.53(6) of the Environmental Planning and Assessment Act 1979.

(C) The consent will not operate until such time that the Council notifies the Applicant in writing that deferred commencement consent conditions, as indicated above, have been satisfied.

(D) Upon Council giving written notification to the Applicant that the deferred commencement conditions have been satisfied, the consent will become operative from the date of that written notification, subject to the conditions of consent, as detailed in Part B Conditions of Consent (once the consent is operational).

PART B – CONDITIONS OF CONSENT

SCHEDULE 1A

APPROVED DEVELOPMENT/DESIGN MODIFICATIONS/COVENANTS AND CONTRIBUTIONS

Note: Some conditions in Schedule A are to be satisfied prior to issue of a Construction Certificate and some are to be satisfied prior to issue of Occupation Certificate, where indicated.

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2019/996 dated 6 September 2019 and the following drawings prepared by Bureau SRH Architecture:

Drawing Number	Drawing Name	Date
DA04, 04	Proposed Roof Plan	04/03/2020
DA05, 04	Proposed Ground & First Floor Plans	04/03/2020
DA06, 04	Proposed Elevations	04/03/2020
DA07, 04	Proposed Sections	04/03/2020

and as amended by the conditions of this consent.

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

(2) COMPLIANCE WITH VOLUNTARY PLANNING AGREEMENT

The terms of the planning agreement entered into in accordance with Part A, Schedule 1, Condition (1) VOLUNTARY PLANNING AGREEMENT are to be complied with.

(3) SECONDARY DWELLING ANCILLARY TO PRINCIPAL DWELLING

The secondary dwelling is:

- (a) To be established in conjunction with the principal dwelling contained within the lot; and
- (b) To remain within the same lot as the principal dwelling.

(4) SECTION 7.11 CONTRIBUTIONS PAYABLE - CONTRIBUTION TOWARDS PUBLIC AMENITIES – CITY OF SYDNEY DEVELOPMENT CONTRIBUTIONS PLAN 2015 – SOUTH PRECINCT

Council has identified the development will increase demand for public amenities and facilities. Pursuant to Section 7.11 of the Environmental Planning and Assessment Act, 1979 (as amended), and the City of Sydney Development Contributions Plan 2015 the following monetary contributions are required towards the cost of public amenities.

<u>Contribution Category</u>	<u>Amount</u>
Open Space	\$10,693.26
Community Facilities	\$2,129.35
Traffic and Transport	\$2,715.59
Stormwater Drainage	\$1,073.84
Total	\$16,612.05

The City of Sydney will index the above contribution for inflation at the time of payment using the following formula.

$$C_{\text{payment}} = C_{\text{consent}} \times (CPI_{\text{payment}} \div CPI_{\text{consent}})$$

Where:

C_{payment} = Is the contribution at time of payment;

C_{consent} = Is the contribution at the time of consent, as shown above;

CPI_{payment} = Is the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics that applies at the time of payment; and

CPI_{consent} = Is the Consumer Price Index (All Groups Index) for Sydney at the date the contribution amount above was calculated being – 108.3 for Mar 2020.

The contribution must be paid prior to the issue of any Construction Certificate in relation to this development.

Please contact Council's Planning Administration staff at planningsystemsadmin@cityofsydney.nsw.gov.au to request a letter confirming the indexed contribution amount payable.

Once the letter confirming the indexed contribution is obtained, payment may be made at any of the City's Neighbourhood Service Centres or the One Stop Shop at Town Hall House. Acceptable payment methods are EFTPOS (debit card only), cash (up to 10K only), Credit Card (up to 50K only) or a bank cheque made payable to the City of Sydney. Personal or company cheques will not be accepted.

(5) ALLOCATION OF PARKING

The number of car parking spaces to be provided for the development shall comply with the table below. Details confirming the parking numbers shall be submitted to the satisfaction of the Principal Certifier prior to the issue of a Construction Certificate.

Car Parking Type	Number
Residential spaces	1

(6) ASSOCIATED ROADWAY COSTS

All costs associated with the construction of any new road works including kerb and gutter, road pavement, drainage system and footway shall be borne by the developer. The new road works must be designed and constructed in accordance with the City’s “Sydney Streets Technical Specification” including amendments and “Sydney Streets Design Code”.

(7) CHANGES TO KERB SIDE PARKING RESTRICTIONS

A separate submission must be made to the Local Pedestrian, Cycling and Traffic Calming Committee via the City Infrastructure and Traffic Operations Unit seeking the City’s approval for any changes to kerb side parking arrangements. There is no guarantee kerb side parking will be changed, or that any change will remain in place for the duration of the development use.

The submission must include two plans. One showing the existing kerb side parking restriction signs and stems, the second showing the proposed kerb side parking restriction signs and stems. Both plans must include chainages to all signs and stems from the kerb line of the nearest intersection.

All costs associated with the parking proposal will be borne by the developer.

Note: As parking in the LGA is at a premium, it is recommended that the applicant should approach the Area Traffic Engineer to discuss the proposal before making a submission.

(8) COST OF SIGNPOSTING

All costs associated with signposting for any kerbside parking restrictions and traffic management measures associated with the development shall be borne by the developer.

(9) VEHICLE FOOTWAY CROSSING

A separate application is to be made to, and approved by, Council for the construction of any proposed vehicle footway crossing or for the removal of any existing crossing and replacement of the footpath formation where any such crossings are no longer required.

All disused or redundant vehicle crossings and laybacks must be removed and footway, kerb, gutter and road restoration reinstated in accordance with Council’s standards, to suit the adjacent finished footway and edge treatment materials, levels and details, or as otherwise directed by Council officers. All

construction and replacement works are to be completed in accordance with the approved plans prior to the issue of any Occupation Certificate.

Note: In all cases the construction materials should reinforce the priority of pedestrian movement over that of the crossing vehicle.

SCHEDULE 1B

PRIOR TO CONSTRUCTION CERTIFICATE/COMMENCEMENT OF WORK

(10) ASBESTOS

All works removing asbestos containing materials must be carried out by a suitably licensed asbestos removalist duly licensed with Safework NSW, holding either a Friable (Class A) or a Non- Friable (Class B) Asbestos Removal Licence, whichever applies.

(11) BASIX CERTIFICATE – DETAILS TO BE LODGED WITH A CC

A copy of the required completed BASIX certificate accepted as part of this Development Consent with respect to the proposed residential building works, must be lodged with an application for a construction certificate and the items nominated as part of the subject BASIX certificate must be specified on the plans submitted with the construction certificate application. – See Note.

IMPORTANT NOTE:

Any requirement detailed in the accompanying BASIX Certificate, MUST be included as a specific notation or inclusion on any future Construction Certificate plans and specification in accordance with Part 3 of Schedule 1 of the Environmental Planning & Assessment Regulation 2000.

(12) FLASHINGS TO BOUNDARY WALLS

A flashing must be provided to prevent water entering between the proposed and existing external boundary walls of the adjoining properties.

Note: Attachments or connections to party walls may require the consent of the adjoining property owner/s.

(13) CONSTRUCTION TRAFFIC MANAGEMENT PLAN

A Construction Traffic Management Plan must be submitted to and approved by Council prior to a Construction Certificate being issued.

(14) EROSION AND SEDIMENT CONTROL - LESS THAN 250SQM

Where less than 250 square metres are being disturbed, no formal plan is required however, the site is to be provided with sediment control measures and these must be implemented so that sediment, including soil, excavated material, building material or other materials cannot fall, descend, percolate, be pumped, drained, washed or allowed to flow to the street, stormwater system or waterways.

(15) STORMWATER AND DRAINAGE - MINOR DEVELOPMENT

- (a) The drainage system is to be constructed in accordance with the City's standard requirements as detailed in the City of Sydney's Stormwater Drainage Manual, as amended from time to time.

The development is to be designed so that the flow of pollutants from the site due to stormwater is reduced.

(16) WORKS REQUIRING USE OF A PUBLIC PLACE

Where construction/building works require the use of a public place including a road or footpath, approval under Section 138 of the *Roads Act 1993* is to be obtained from Council prior to the commencement of work. Details of any barricade construction, area of enclosure and period of work are required to be submitted to the satisfaction of Council.

(17) SYDNEY WATER CERTIFICATE (TAP-IN)

- (a) The approved plans must be submitted to Sydney Water's "Tap-in" online service to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Sydney Water's "Tap-in" online service is available at www.sydneywater.com.au, (see Plumbing, Building & Development and then Sydney Water "Tap-in").
- (b) The Consent Authority or a Principal Certifier must ensure that Sydney Water has appropriately stamped the plans before the commencement of work.

(18) WASTE AND RECYCLING MANAGEMENT - MINOR

The proposal must comply with the relevant provisions of Council's *Guidelines for Waste Management in New Developments 2018* which requires facilities to minimise and manage waste and recycling generated by the proposal.

SCHEDULE 1C

DURING CONSTRUCTION/PRIOR TO OCCUPATION/COMPLETION

(19) OCCUPATION CERTIFICATE TO BE SUBMITTED

An Occupation Certificate must be obtained from the Principal Certifier and a copy submitted to Council prior to commencement of occupation or use of the whole or any part of a new building, an altered portion of, or an extension to an existing building.

(20) HOURS OF WORK AND NOISE – OUTSIDE CBD

The hours of construction and work on the development must be as follows:

- (a) All work, including building/demolition and excavation work, and activities in the vicinity of the site generating noise associated with preparation for the commencement of work (eg. loading and unloading of goods, transferring of tools etc) in connection with the proposed development must only be carried out between the hours of 7.30am and 5.30pm on Mondays to Fridays, inclusive, and 7.30am and 3.30pm on Saturdays, with safety inspections being permitted at 7.00am on work days, and no work must be carried out on Sundays or public holidays.
- (b) All work, including demolition, excavation and building work must comply with the City of Sydney Code of Practice for Construction Hours/Noise 1992 and Australian Standard 2436 - 2010 Guide to Noise Control on Construction, Maintenance and Demolition Sites.
- (c) Notwithstanding the above, the use of a crane for special operations, including the delivery of materials, hoisting of plant and equipment and erection and dismantling of on-site tower cranes which warrant the on-street use of mobile cranes outside of above hours can occur, subject to a permit being issued by Council under Section 68 of the Local Government Act 1993 and/or Section 138 of the Roads Act 1993.

Note: Works may be undertaken outside of hours, where it is required to avoid the loss of life, damage to property, to prevent environmental harm and/or to avoid structural damage to the building. Written approval must be given by the Construction Regulation Unit, prior to works proceeding.

The *City of Sydney Code of Practice for Construction Hours/Noise 1992* allows extended working hours subject to the approval of an application in accordance with the Code and under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

(21) BASIX

All commitments listed in each relevant BASIX Certificate for the development must be fulfilled prior to an Occupation Certificate being issued.

(22) ENCROACHMENTS – NEIGHBOURING PROPERTIES

No portion of the proposed structure shall encroach onto the adjoining properties.

(23) ENCROACHMENTS – PUBLIC WAY

No portion of the proposed structure, including gates and doors during opening and closing operations, shall encroach upon Council's footpath area.

(24) SURVEY

All footings, walls and floor slabs adjacent to a boundary must be set out by a registered surveyor. On commencement of brickwork or wall construction a survey and report, prepared by a Registered Surveyor, must be submitted to the Principal Certifier indicating the position of external walls in relation to the boundaries of the allotment. Any encroachments by the subject building over adjoining boundaries or roads must be removed prior to continuation of building construction work.

(25) SURVEY CERTIFICATE AT COMPLETION

A Survey Certificate prepared by a Registered Surveyor must be submitted at the completion of the building work certifying the location of the building in relation to the boundaries of the allotment.

(26) COVERING OF LOADS

All vehicles involved in the excavation and/or demolition process and departing the property with demolition materials, spoil or loose matter must have their loads fully covered before entering the public roadway.

(27) VEHICLE CLEANSING

Prior to the commencement of work, suitable measures are to be implemented to ensure that sediment and other materials are not tracked onto the roadway by vehicles leaving the site. It is an offence to allow, permit or cause materials to pollute or be placed in a position from which they may pollute waters.

(28) CONSTRUCTION ACCESS DRIVEWAYS TO BE CONSTRUCTED

Approved driveways are to be constructed for all vehicular access to the construction site in accordance with the requirements of Council's "Driveway Specifications" to the satisfaction of Council.

(29) LOADING AND UNLOADING DURING CONSTRUCTION

The following requirements apply:

- (a) All loading and unloading associated with construction activity must be accommodated on site, where possible.
- (b) If it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.
- (c) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least eight weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed

periodically for any adjustment necessitated by the progress of the construction activities.

- (d) Where hoisting activity over the public place is proposed to be undertaken including hoisting from a Works Zone, a separate approval under Section 68 of the Local Government Act 1993 must be obtained.

(30) NO OBSTRUCTION OF PUBLIC WAY

The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances. Non-compliance with this requirement will result in the issue of a notice by Council to stop all work on site.

(31) USE OF MOBILE CRANES

The following requirements apply:

- (a) Mobile cranes operating from the road must not be used as a method of demolishing or constructing a building.
- (b) For operations warranting the on-street use of mobile cranes (such as delivery of materials, hoisting of plant/equipment, erection and dismantling of onsite tower cranes, etc), permits must be obtained from Council for the use of a mobile crane. The permits must be obtained 48 hours beforehand for partial road closures which, in the opinion of Council will create minimal traffic disruptions and four weeks beforehand in the case of full road closures and partial road closures which, in the opinion of Council, will create significant traffic disruptions.
- (c) Special operations and the use of mobile cranes must comply with the approved hours of construction. Mobile cranes must not be delivered to the site prior to 7.30am without the prior approval of Council.

SCHEDULE 2

PRESCRIBED CONDITIONS

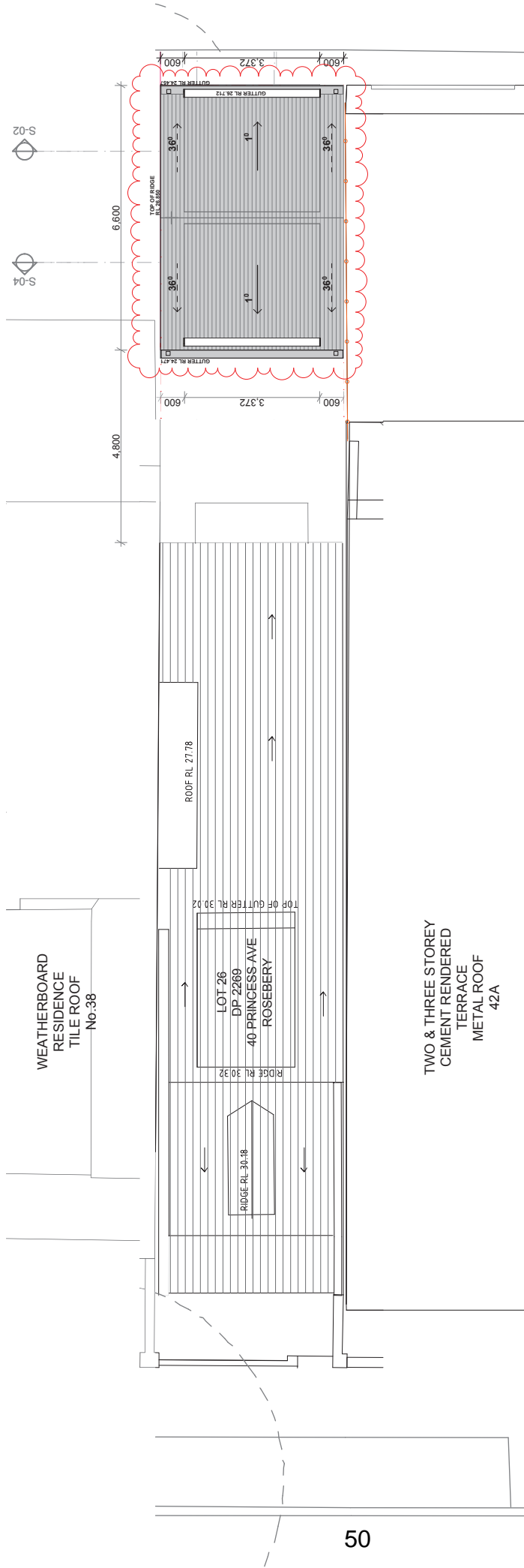
The prescribed conditions in accordance with Division 8A of the *Environmental Planning and Assessment Regulation 2000* apply:

- Clause 98 Compliance with *Building Code of Australia* and insurance requirements under the *Home Building Act 1989*
- Clause 98A Erection of signs
- Clause 98B Notification of *Home Building Act 1989* requirements
- Clause 98C Conditions relating to entertainment venues
- Clause 98D Conditions relating to maximum capacity signage
- Clause 98E Conditions relating to shoring and adequacy of adjoining property

Refer to the NSW State legislation for full text of the clauses under Division 8A of the *Environmental Planning and Assessment Regulation 2000*. This can be accessed at: <http://www.legislation.nsw.gov.au>

Attachment B

Selected Drawings



50

ROOF PLAN

NOT FOR CONSTRUCTION

BUREAU SRH | architecture STUDIO 3 | 2 VIRGINIA STREET | ADOURINGTON | NSW | 2021 | AUSTRALIA |
 PH: 02 9399 4666 | WWW.BUREAUARCHITECTURE.COM

PROJECT No. 15116

DRAWING No. DA004

DRAWING TITLE: PROPOSED ROOF PLAN

REVISION: 0 4

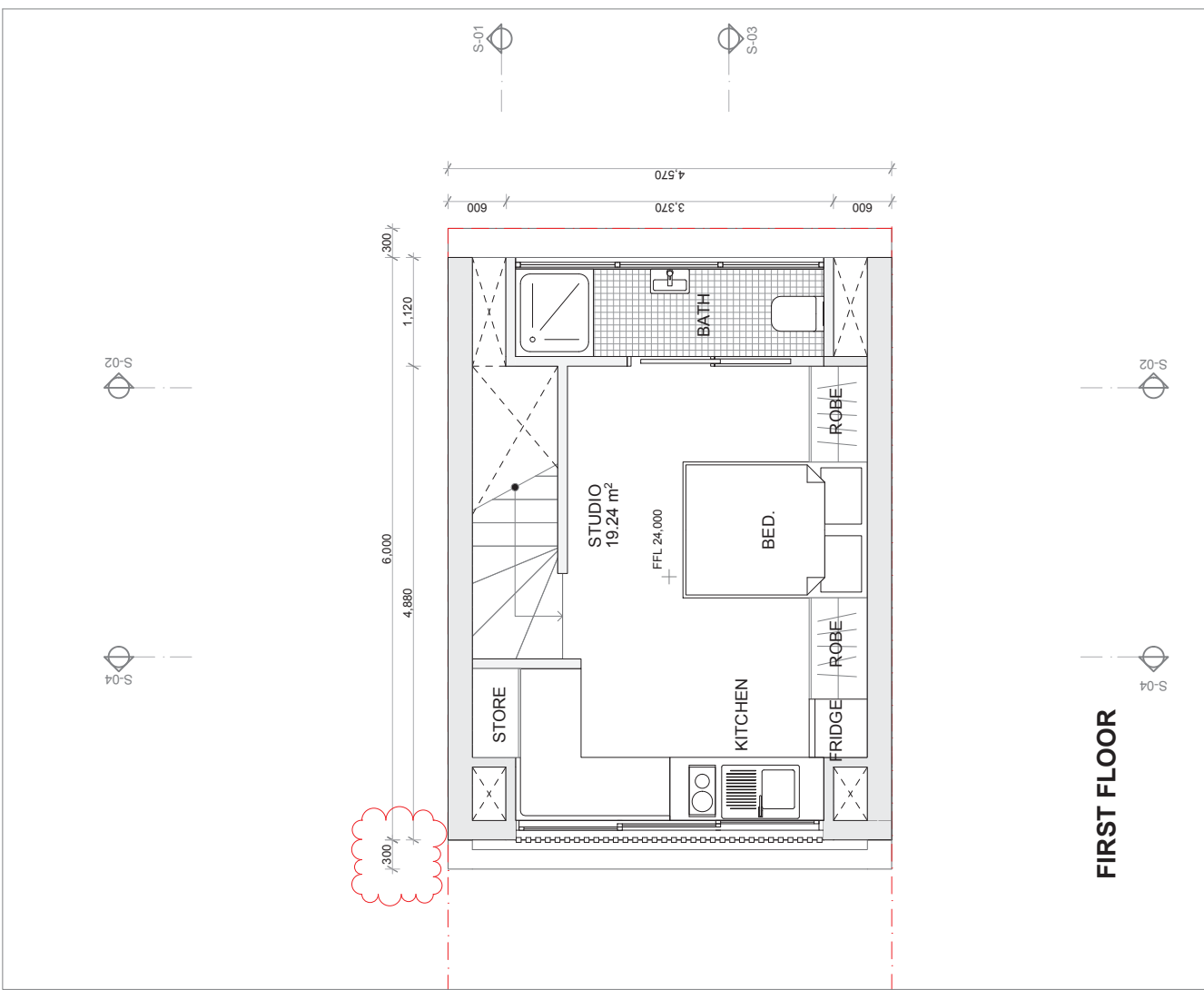
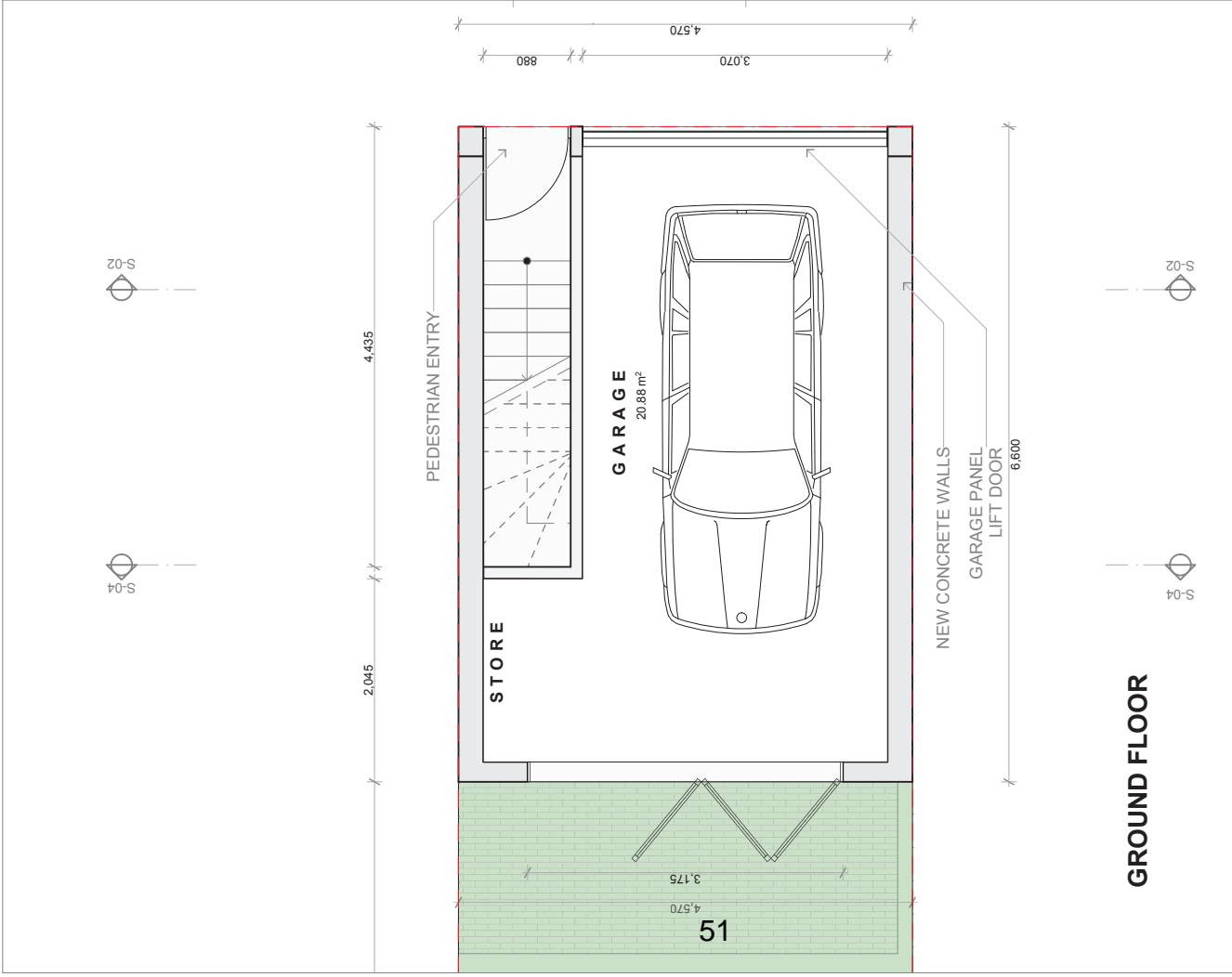
REV	DATE	NAME
01	19/3/2019	Issup
02	12/13/2019	GENERAL AMMENDMENTS
03	12/13/2020	GENERAL AMMENDMENTS
04	4/3/2020	RFT - ROOF PITCH & DORMERS AMENDED, BASIC COMMITMENTS ADDED

CLIENT: #Client Company
 DRAWN: AP
 CHECKED: HHH
 APPROVED: SRH

SCALE @ A3: 1:100

LEGEND:

NOMINATED ARCHITECT: SIMON HANSON #6739
 OTHER CONSULTANTS: CONSULTANT ENGINEERS & SPECIFICATIONS & WITH SUCH OTHER WRITTEN INSTRUCTIONS OR NOTES AS MAY BE ISSUED DURING THE COURSE OF THE CONTRACT | NOTIFY ARCHITECT OF ANY DISCREPANCIES BEFORE PROCEEDING WITH WORK | MATERIALS & WORKMANSHIP SHALL BE IN ACCORDANCE WITH THE SPECIFICATION, CURRENT S.A.A CODES, BUILDING REGULATIONS, THE SITE AND NOTIFY ARCHITECT OF ANY DISCREPANCIES | USE FIGURED DIMENSIONS ONLY | COPYRIGHT, ALL RIGHTS RESERVED | THIS DRAWING IS COPYRIGHT AND CONFIDENTIAL, ABSTAIN FROM ANY FAIR DEALINGS AS PERMITTED UNDER COMMON LAW AND STATUTE | THIS DRAWING IS NOT TO BE USED IN ANY MANNER PREJUDICIAL TO THE INTERESTS OF THAT COMPANY | THIS DRAWING AND ATTACHED SHEET REMAIN THE PROPERTY OF BUREAU SRH PTY LTD.



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 PHONE: 08 8358 9884 | TEL: 08 8358 9888 | admin@bureau.srh.com

40 PRINCESS AVEROSEBERY

PROJECT No: **15116**

STAGE: **DA**

DRAWING No: **DA005**

DRAWING TITLE: **PROPOSED GROUND & FIRST FLOOR PLANS**

SCALE @ A3: **1:50**

CLIENT: **Client Company**

CHECKED: **HHH**

APPROVED: **SRH**

REVISION: **0 4**

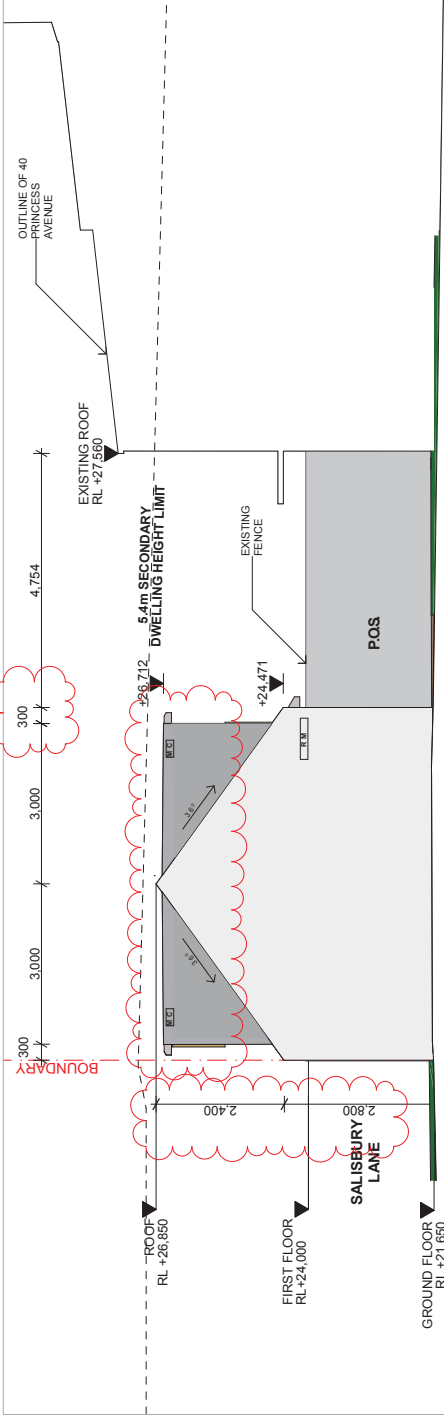
REV	DATE	NAME
01	19/03/2019	Issue
02	12/13/2019	GENERAL AMENDMENTS
03	31/03/2020	RFI - ROOF PITCH & DORMERS AMENDED, BASIC COMMITMENTS ADDED
04	4/3/2020	RFI - ROOF PITCH & DORMERS AMENDED, BASIC COMMITMENTS ADDED

LEGEND:

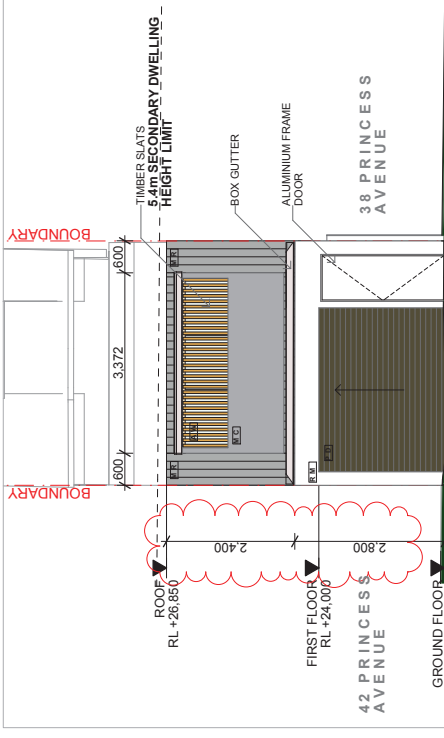
NOMINATED ARCHITECT: SIMON HANSON #6739

OTHER ARCHITECTS: A CONSULTANT ARCHITECTS & SPECIFICATIONS WITH SUIC ON-DESIGN INSTRUCTIONS FOR CONTRACTORS AS MAY BE ISSUED DURING THE COURSE OF THE CONTRACT | NOTIFY ARCHITECT OF ANY DISCREPANCIES BEFORE PROCEEDING WITH WORK | MATERIALS & WORKMANSHIP SHALL BE IN ACCORDANCE WITH THE SPECIFICATION, CURRENT S.A.C.C. BUILDING REGULATIONS & THE SITE AND NOTIFY ARCHITECT OF ANY DISCREPANCIES | USE FIGURED DIMENSIONS ONLY | COPYRIGHT: ALL RIGHTS RESERVED | THIS DRAWING IS COPYRIGHT AND CONFIDENTIAL, ABSTAIN FROM ANY FAIR DEALINGS AS PERMITTED UNDER COMMON LAW AND INTELLECTUAL PROPERTY LAWS | THIS DRAWING AND ATTACHED SHEETS ARE THE PROPERTY OF BUREAU SRH PTY LTD

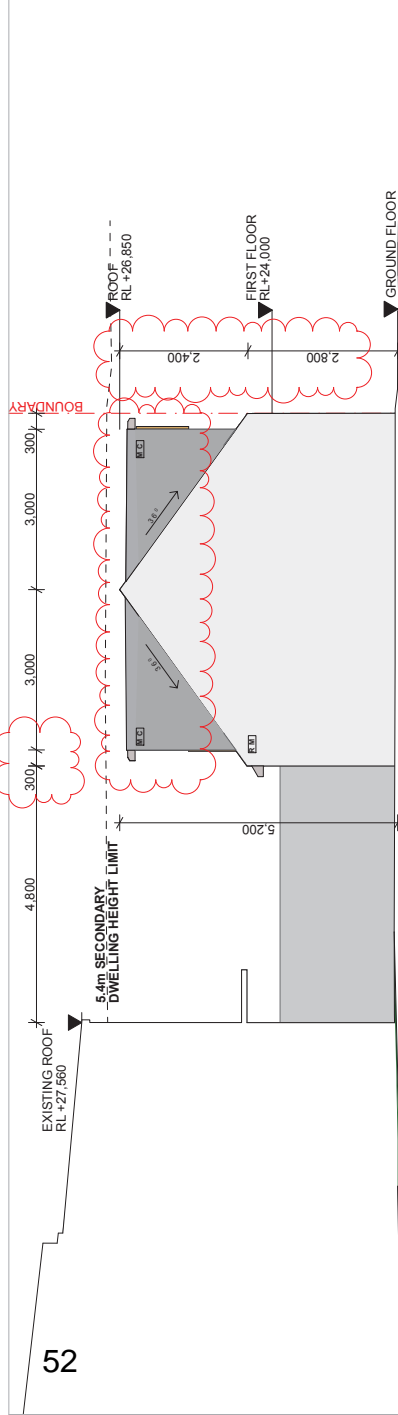
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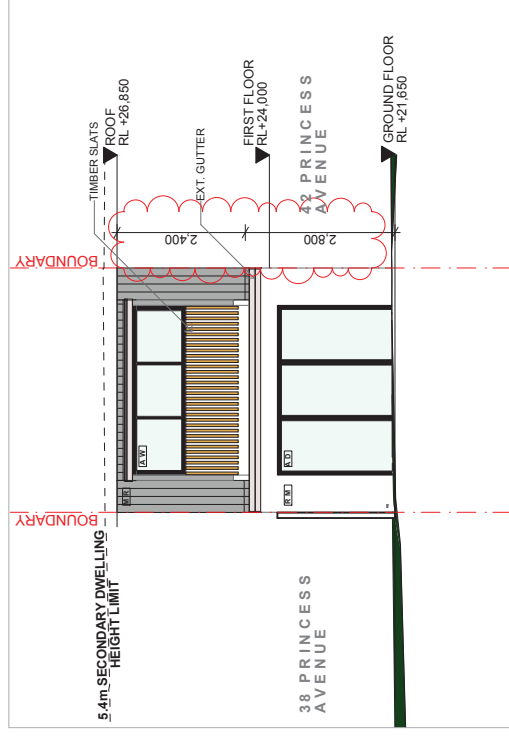
NORTH ELEVATION



EAST LANEWAY ELEVATION



SOUTH ELEVATION



WEST ELEVATION

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GARAGE AND STUDIO

REV	DATE	NAME
01	19/3/2019	Issue
02	12/13/2019	GENERAL AMENDMENTS
03	31/03/2020	RFI
04	4/3/2020	RFI - ROOF PITCH & DORMERS AMENDED, BASIC COMMITMENTS ADDED

LEGEND

- MC METAL CLADDING
- MR CORRUGATED SHEET ROOFING
- RM RENDERED MASONRY
- AW ALUMINIUM FRAME WINDOW
- AD ALUMINIUM FRAME DOOR
- PD PANEL GARAGE DOOR

NOMINATED ARCHITECT: SIMON HANSON #6739 | OTHER ARCHITECTS: A CONSULTANT ARCHITECTS & SPECIFICATIONS | WITH SUCH OTHER WRITTEN INSTRUCTIONS OR NOTES AS MAY BE ISSUED DURING THE COURSE OF THE CONTRACT | NOTIFY ARCHITECT OF ANY DISCREPANCIES BEFORE PROCEEDING WITH WORK | MATERIALS & WORKMANSHIP SHALL BE IN ACCORDANCE WITH THE SPECIFICATION, CURRENT S.A.A CODES, BUILDING REGULATIONS, THE SITE AND NOTIFY ARCHITECT OF ANY DISCREPANCIES | USE FIGURED DIMENSIONS ONLY | COPYRIGHT, ALL RIGHTS RESERVED | THIS DRAWING IS COPYRIGHT AND CONFIDENTIAL, ABSTAIN FROM ANY FAIR DEALINGS AS PERMITTED UNDER THE COPYRIGHT ACT 1969 | THIS DRAWING IS NOT TO BE USED IN ANY MANNER PREJUDICIAL TO THE INTERESTS OF THAT COMPANY | THIS DRAWING AND ATTACHED SHEET REMAIN THE PROPERTY OF BUREAU SRH PTY LTD.

STAGE: **DA**

DRAWING TITLE: **PROPOSED ELEVATIONS**

CLIENT: **McClient Company**

SCALE: @A3

1:100

CHECKED: **HHH**

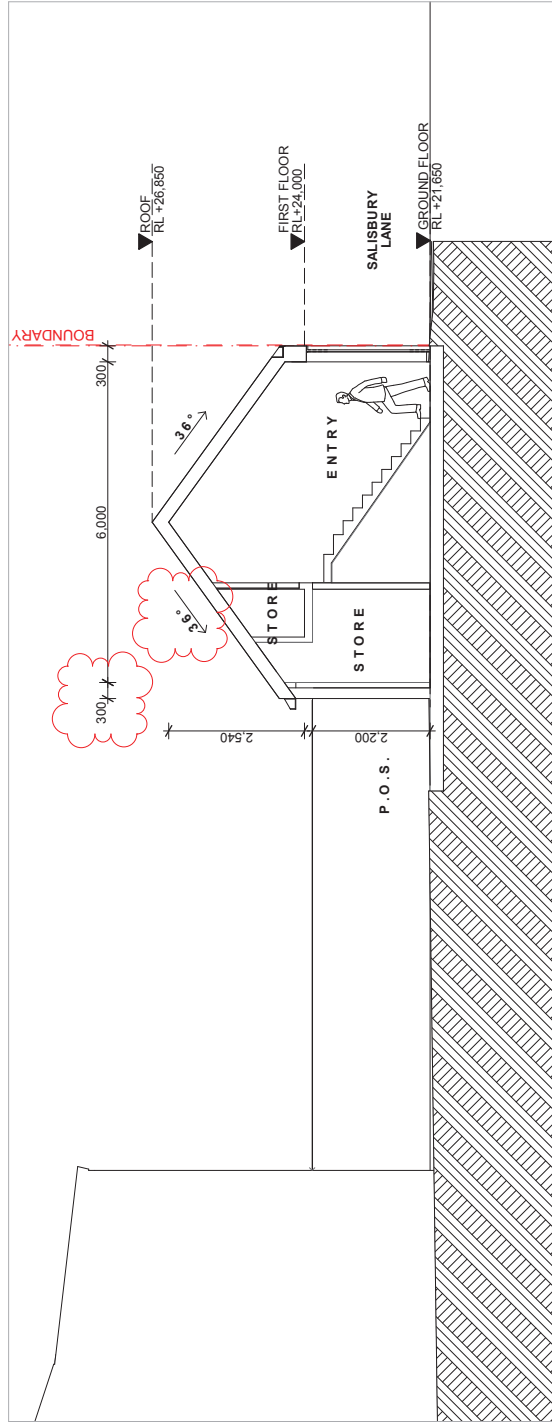
APPROVED: **SRH**

PROJECT NO: **15116**

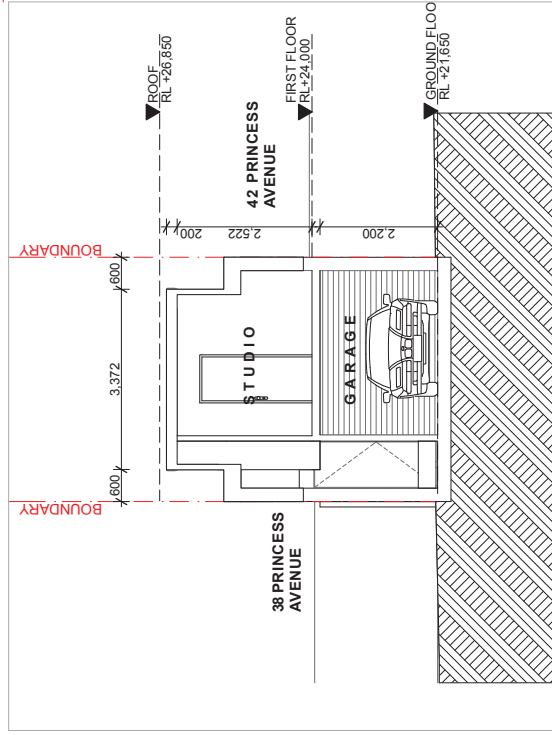
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REVISION: **0 4**

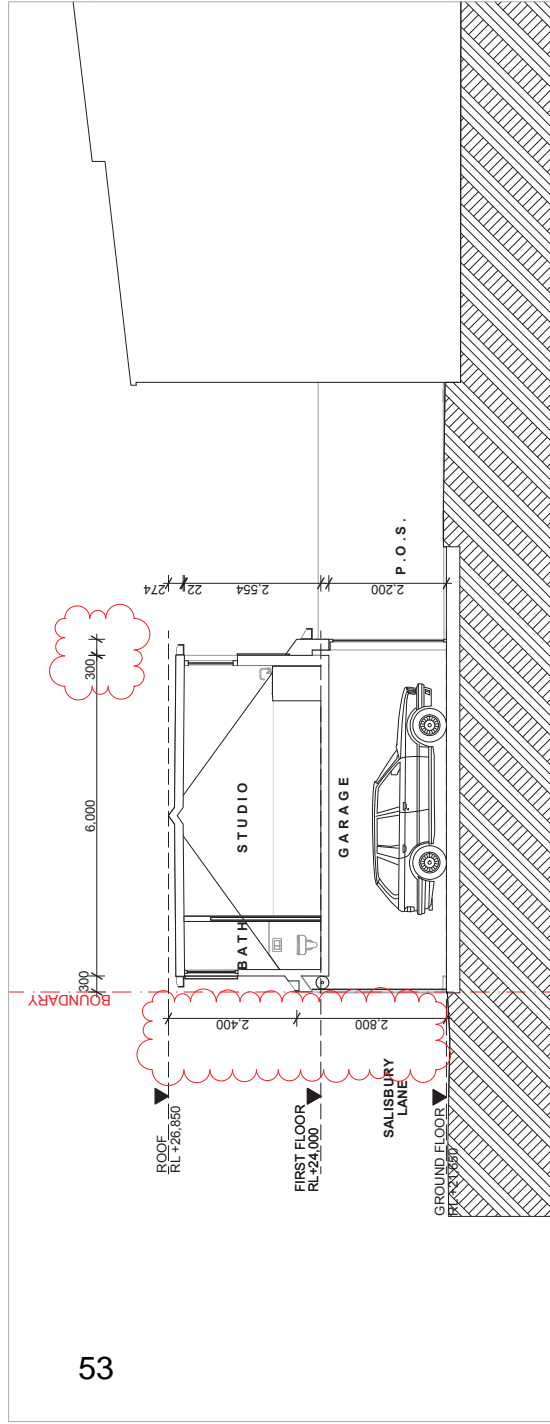
NOT FOR CONSTRUCTION



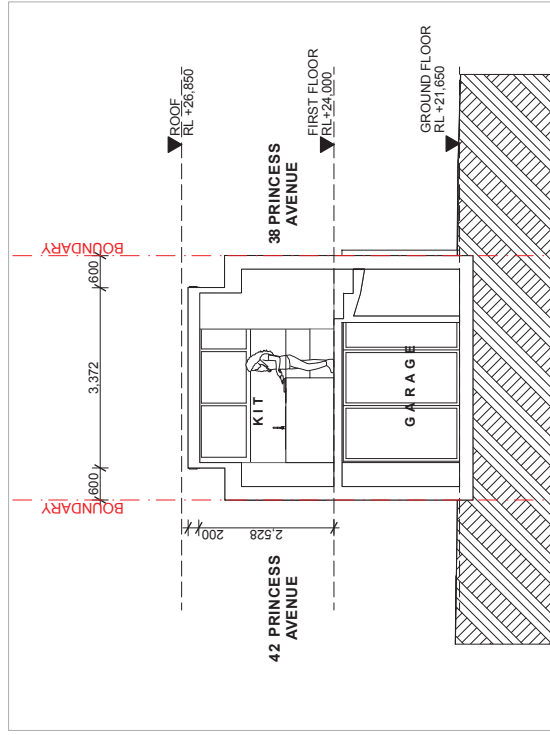
S-01 Building Section



S-02 Building Section



S-03 Building Section



S-04 Building Section

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GARAGE AND STUDIO PROJECT NO: 15116

DA007 DRAWING NO: PROPOSED SECTIONS

STAGE: DA

CLIENT: iClient Company

SCALE: @A3

1:100

REVISION: 0 4

CHECKED: HHH

APPROVED: SRH

LEGEND:

NOMINATED ARCHITECT: SIMON HANSON #6739

OTHER DESIGNERS: A CONSULTANT ENGINEERS & SPECIFICATIONS AND SURVEYOR. INSTRUCTIONS AND SERVICES AS MAY BE SCHEDULED DURING THE COURSE OF THE CONTRACT | NOTIFY ARCHITECT OF ANY DISCREPANCIES BEFORE PROCEEDING WITH WORK | MATERIALS & WORKMANSHIP SHALL BE IN ACCORDANCE WITH THE SPECIFICATION, CURRENT NSW CODES, BUILDING REGULATIONS, THE SITE AND NOTIFY ARCHITECT OF ANY DISCREPANCIES | USE FIGURED DIMENSIONS ONLY | COPYRIGHT, ALL RIGHT RESERVED | THIS DRAWING IS COPYRIGHT AND CONFIDENTIAL PROPERTY OF BUREAU SRH. DEALINGS AS PERMITTED UNDER THIS AGREEMENT ARE NOT TO BE USED IN ANY MANNER PREJUDICIAL TO THE INTERESTS OF THAT COMPANY | THIS DRAWING AND ATTACHED SHEET IS THE PROPERTY OF BUREAU SRH PTY LTD.

REV	DATE	NAME
01	19/03/2019	Issup
02	12/13/2019	GENERAL AMENDMENTS
03	31/03/2020	RFI
04	4/3/2020	RFI - ROOF PITCH & DORMERS AMENDED, BASIC COMMITMENTS ADDED

Attachment C

Draft Voluntary Planning Agreement

Planning Agreement

The Council of the City of Sydney

And

Niall Gerald Dolan and Jane Bernadette Murphy

For 40 Princess Avenue, Rosebery NSW 2018

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THIS PLANNING AGREEMENT is made on

2020.

BETWEEN:

- (1) **The Council of the City of Sydney ABN 22 636 550 790** of Town Hall House, 456 Kent Street, SYDNEY NSW 2000 (the **City**); and
- (2) **Niall Gerald Dolan and Jane Bernadette Murphy** both of 40 Princess Avenue, ROSEBERY NSW 2018 (the **Developer**).

BACKGROUND

- (A) The Developer is the owner of the Land and intends to undertake the Development on the Land.
- (B) The Developer has offered to enter into this document with the City to provide the Public Benefits on the terms of this document.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Authorisation means:

- (a) an approval, authorisation, consent, declaration, exemption, permit, licence, notarisation or waiver, however it is described, and including any condition attached to it; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.

City's Representative means the person named in Item 3 of Schedule 1 or his/her delegate.

Corporations Act means the *Corporations Act 2001* (Cth).

Costs means the amount stated in Item 7 of Schedule 1 (being the reasonable costs and expenses associated with the preparation and giving of public notice of this document and the explanatory note prepared in accordance with the Regulation and for any consent the City is required to provide under this document).

Dealing means selling, transferring, assigning, novating, mortgaging, charging, or encumbering and, where appearing, **Deal** has the same meaning.

Developer's Representative means the person named in Item 4 of Schedule 1 or his/her delegate.

Development means the development of the Land by the Developer described at Item 2 of Schedule 1.

Development Application means the development application identified in Item 5 of Schedule 1 and includes all plans, reports models, photomontages, material boards (as amended supplemented) submitted to the consent authority before the determination of that Development Application.

Development Consent means the consent granted to the Development Application for the Development and includes all modifications made under section 4.55 of the Act.

Dispute means any dispute or difference between the parties arising out of, relating to or in connection with this document, including any dispute or difference as to the formation, validity, existence or termination of this document.

Environmental Laws means all laws and legislation relating to environmental protection, building, planning, health, safety or work health and safety matters and includes the following:

- (a) the *Work Health and Safety Act 2011* (NSW);
- (b) the *Protection of the Environment Operations Act 1997* (NSW); and
- (c) the *Contaminated Land Management Act 1997* (NSW).

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

Gross Floor Area has the meaning given to that term in the *Sydney Local Environment Plan* in effect at the date of this document.

GST means the same as in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Land means the land described in Item 1 of Schedule 1 of this document.

Laws means all applicable laws, regulations, industry codes and standards, including all Environmental Laws.

Monetary Contribution means the amount specified in Item 6 of Schedule 1 that comprises the Public Benefits to be paid by the Developer to the City in accordance with this document.

Personal Information has the meaning set out in the *Privacy Act 1988* (Cth).

Personnel means the Developer's officers, employees, agents, contractors or subcontractors.

Public Benefits means the provision of benefits to the community by the Developer comprised of the Monetary Contribution.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Tax means a tax, levy, duty, rate, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.

- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to **including** means “including, without limitation”.
- (g) A reference to **dollars** or **\$** is to an amount in Australian currency.
- (h) A reference to **this document** includes the agreement recorded by this document.
- (i) Words defined in the GST Act have the same meaning in clauses about GST.
- (j) This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

2. **APPLICATION OF THE ACT AND THE REGULATION**

2.1 **Application of this document**

This document is a planning agreement within the meaning of section 7.4 of the Act and applies to:

- (a) the Land; and
- (b) the Development.

2.2 **Application of sections 7.11, 7.12 and 7.24 of the Act**

The application of sections 7.11, 7.12 and 7.24 of the Act are excluded to the extent set out in Schedule 2 to this document.

2.3 **City rights**

This document does not impose an obligation on the City to:

- (a) grant Development Consent for the Development; or
- (b) exercise any function under the Act in relation to a change to an environmental planning instrument, including the making or revocation of an environmental planning instrument.

2.4 **Explanatory note**

The explanatory note prepared in accordance with clause 25E of the Regulation must not be used to assist in construing this document.

3. **OPERATION OF THIS PLANNING AGREEMENT**

3.1 **Commencement**

This document will commence on the date of execution of this document by all parties to this document.

3.2 **Entire agreement**

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.

4. **WARRANTIES**

4.1 **Mutual warranties**

Each party represents and warrants that:

- (a) (**power**) it has full legal capacity and power to enter into this document and to carry out the transactions that it contemplates; and
- (b) (**corporate authority**) it has taken all corporate action and holds each Authorisation that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated.

5. **PUBLIC BENEFITS**

5.1 **Public Benefits to be made by Developer**

This clause 5 sets out the details of the:

- (a) Public Benefits to be delivered by the Developer;
- (b) time or times by which the Developer must deliver the Public Benefits; and
- (c) manner in which the Developer must deliver the Public Benefits.

5.2 **Developer to provide Public Benefits**

The Developer must, at its cost and risk, provide the Public Benefits to the City in accordance with this document.

5.3 **Payment of Monetary Contribution**

The Developer must pay the Monetary Contribution to the City on the date of this document in cash or by unendorsed bank cheque.

5.4 **Expenditure by the City**

- (a) The City will use the Monetary Contribution to achieve the public benefit of community infrastructure in Green Square.
- (b) The City is not required to separately account for the Monetary Contribution, report to the Developer regarding expenditure of the Monetary Contribution or comply with any request by the Developer to trace the Monetary Contribution.

5.5 **Enforcement**

The parties agree that a form of security is not required to be provided by the Developer in circumstances where the Monetary Contribution is payable on the date of execution of this document.

6. **REGISTRATION**

6.1 **Registration of this document**

The parties acknowledge and agree that this document is not required to be registered at the NSW Land Registry Services on the relevant folio for the Land in the Register.

7. **DISPUTE RESOLUTION**

7.1 **Application**

Any Dispute must be determined in accordance with the procedure in this clause 7.

7.2 **Negotiation**

- (a) If any Dispute arises, a party to the Dispute (**Referring Party**) may by giving written notice to the other party or parties to the Dispute (**Dispute Notice**) refer the Dispute to the Developer's Representative and the City's Representative for resolution.
- (b) The Dispute Notice must:
 - (i) state that it is given pursuant to this clause 7; and
 - (ii) include or be accompanied by reasonable particulars of the Dispute.
- (c) Within 10 Business Days of the Referring Party issuing the Dispute Notice (**Resolution Period**), the Developer's Representative and the City's Representative must meet at least once to attempt to resolve the Dispute.
- (d) The Developer's Representative and the City's Representative may meet more than once to resolve a Dispute.

7.3 **Condition precedent to litigation**

Subject to clause 7.4, a party must not commence legal proceedings in respect of a Dispute unless the Resolution Period has expired.

7.4 **Summary or urgent relief**

Nothing in this clause 7 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

8. TAXES

8.1 Responsibility for Taxes

- (a) The Developer is responsible for any and all Taxes and other like liabilities which may arise under any Commonwealth, State or Territory legislation (as amended from time to time) as a result of or in connection with this document or the Public Benefits.
- (b) The Developer must indemnify the City in relation to any claims, liabilities and costs (including penalties and interest) arising as a result of any Tax or other like liability for which the Developer is responsible under clause 8.1(a).

9. GST

9.1 GST free supply

To the extent that Divisions 81 and 82 of the GST Law apply to a supply made under this document:

- (a) no additional amount will be payable by a party on account of GST; and
- (b) no tax invoices will be exchanged between the parties.

9.2 Supply subject to GST

To the extent that clause 9.1 does not apply to a supply made under this document, this clause 9.2 will apply.

- (a) If one party (**Supplying Party**) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (**Receiving Party**) must also pay an amount (**GST Amount**) equal to the GST payable in respect of that supply.
- (b) Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the consideration.
- (c) If one party must indemnify or reimburse another party (**Payee**) for any loss or expense incurred by the Payee, the required payment does not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but will be increased under clause 9.2(a) if the payment is consideration for a taxable supply.
- (d) If an adjustment event arises in respect of a taxable supply made by a Supplying Party, the GST Amount payable by the Receiving Party under clause 9.2(a) will be recalculated to reflect the adjustment event and a payment will be made by the Receiving Party to the Supplying Party, or by the Supplying Party to the Receiving Party, as the case requires.
- (e) The Developer will assume the City is not entitled to any input tax credit when calculating any amounts payable under this clause 9.2.

- (f) In this document:
 - (i) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and
 - (ii) in addition to the meaning given in the GST Act, the term "GST" includes a notional liability for GST.

10. **DEALINGS**

10.1 **Dealing by the City**

- (a) The City may Deal with its interest in this document without the consent of the Developer if the Dealing is with a Government Agency. The City must give the Developer notice of the Dealing within five Business Days of the date of the Dealing.
- (b) The City may not otherwise Deal with its interest in this document without the consent of the Developer, such consent not to be unreasonably withheld or delayed.

10.2 **Dealing by the Developer**

- (a) The Developer may Deal with this document without the consent of the City only as a result of the sale of the whole of the Land (without subdivision) to a purchaser of the Land.
- (b) The Developer must not otherwise Deal with this document to a third party that is not a purchaser of the whole or any part of the Land without:
 - (i) the prior written consent of the City; and
 - (ii) the City, the Developer and the third party the subject of the Dealing entering into a deed of consent to the Dealing on terms acceptable to the City.
- (c) The Developer must pay the City's costs and expenses relating to any consent or documentation required due to the operation of this clause 10.2.

11. **TERMINATION**

- (a) The City may terminate this document by notice in writing to the Developer if the Development Consent lapses or is surrendered by the Developer.
- (b) If the City terminates this document then:
 - (i) the rights of each party that arose before the termination or which may arise at any future time for any breach or non-observance of obligations occurring prior to the termination are not affected; and
 - (ii) the Developer must take all steps reasonably necessary to minimise any loss the each party may suffer as a result of the termination of this document.

12. **NOTICES**

- (a) A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email. If it is sent by mail, it is taken to have been received 5 Business Days after it is posted. If it is sent by email, it is taken to have been received the same day the email was sent, provided that the sender has not received a delivery failure notice (or similar), unless the time of receipt is after 5:00pm in which case it is taken to be received on the next Business Day.
- (b) A person's address and email address are those set out in Schedule 1 for the City's Representative and the Developer's Representative, or as the person notifies the sender in writing from time to time.

13. **GOVERNING LAW**

- (a) This document is governed by the laws of New South Wales.
- (b) Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

14. **ACCESS TO INFORMATION**

In accordance with section 121 of the *Government Information (Public Access) Act 2009* (NSW), the Developer agrees to allow the City immediate access to the following information contained in records held by the Developer:

- (a) information that relates directly to the delivery of the Public Benefits by the Developer;
- (b) information collected by the Developer from members of the public to whom the Developer provides, or offers to provide, services on behalf of the City; and
- (c) information received by the Developer from the City to enable the Developer to deliver the Public Benefits.

15. **LIABILITY FOR EXPENSES**

The Developer must pay:

- (a) its own expenses incurred in negotiating, executing, registering, releasing, administering and enforcing this document; and
- (b) the Costs on the date of this document.

16. **RELATIONSHIP OF PARTIES**

- (a) Nothing in this document creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties.
- (b) Nothing in this document creates any form of trust arrangement or fiduciary duty between the City and the Developer.
- (c) No party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

17. **SEVERANCE**

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this document without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

18. **PRESERVATION OF EXISTING RIGHTS**

The expiration or termination of this document does not affect any right that has accrued to a party before the expiration or termination date.

19. **WAIVER OF RIGHTS**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

20. **NO FETTER**

Nothing in this document in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.

SCHEDULE 1

Agreement Details

ITEM	TERM	DESCRIPTION
1.	Land	Folio Identifier 26/2/2269, known as 40 Princess Avenue, Rosebery NSW 2018
2.	Development	Construction of a new dwelling and associated rear yard works at 40 Princess Avenue, Rosebery. The total Gross Floor Area of the Development on the Land is 163.2 square metres.
3.	City's Representative	Name: Director, Planning, Development and Transport Address: Level 1, 456 Kent Street, Sydney NSW 2000 Email: planningsystemsadmin@cityofsydney.nsw.gov.au
4.	Developer's Representative	Name: Mount Land Pty Ltd Attention: Andrew Lu Address: Suite 5, 171-173 Kingsgrove Road, Kingsgrove NSW 2208 Email: niall@npdconstructions.com.au
5.	Development Application	D/2019/996
6.	Monetary Contribution	\$8,018.00
7.	Costs	\$1,432.50

SCHEDULE 2

Requirements under the Act and Regulation (clause 2)

The below table summarises how this document complies with the Act and Regulation.

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
1.	<p>Planning instrument and/or development application (section 7.4(1) of the Act)</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a Development Application; or</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes</p> <p>(c) No</p>
2.	<p>Description of land to which this document applies (section 7.4(3)(a) of the Act)</p>	Item 1 of Schedule 1.
3.	<p>Description of change to the environmental planning instrument to which this document applies and/or the development to which this document applies (section 7.4(3)(b) of the Act)</p>	The Development as described in Item 2 of Schedule 1.
4.	<p>The nature and extent of the provision to be made by the Developer under this document, the time or times by which the provision is to be made and the manner in which the provision is to be made (section 7.4(3)(c) of the Act)</p>	Clause 5

5.	Whether this document excludes (wholly or in part) of does not exclude the application of section 7.11, 7.12 or 7.24 to the development (section 7.4(3)(d) of the Act)	Section 7.11 not excluded Section 7.12 not excluded Section 7.24 not excluded
6.	Applicability of section 7.11 of the Act (section 7.4(3)(e) of the Act)	The application of section 7.11 of the Act is not excluded in respect of the Development and contributions (if any) under section 7.11 will be required to be paid.
7.	Consideration of benefits under this document if section 7.11 applies (section 7.4(3)(e) of the Act)	Benefits are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.
8.	Mechanism for Dispute Resolution (section 7.4(3)(f) of the Act)	Clause 7
9.	Enforcement of this document (section 7.4(3)(g) of the Act)	Clause 5.5
10.	No obligation to grant consent or exercise functions (section 7.4(9) of the Act)	Clause 2.3
11.	Registration of this document (section 7.6 of the Act)	Registration is not required
12.	Whether certain requirements of this document must be complied with before a construction certificate is issued (clause 25E(2)(g) of the Regulation)	Yes. Monetary Contribution to be paid by Developer to the City on the date of this document.
13.	Whether certain requirements of this document must be complied with before a subdivision certificate is issued (clause 25E(2)(g) of the Regulation)	Yes. Monetary Contribution to be paid by the Developer to the City on the date of this document.
14.	Whether certain requirements of this document must be complied with before an occupation certificate is issued	Yes. Monetary Contribution to be paid by the Developer to the City on the date of this document.

	(clause 25E(2)(g) of the Regulation)	
15.	Whether the explanatory note that accompanied exhibition of this document may be used to assist in construing this document (clause 25E(7) of the Regulation)	Clause 2.4

DRAFT

EXECUTED as a deed.

Signed, sealed and delivered for
**THE COUNCIL OF THE CITY OF
SYDNEY** (ABN 22 636 550 790) by
its duly authorised officer, in the
presence of:

Signature of officer

Signature of witness

Name of officer

Name of witness

Position of officer

456 Kent Street, Sydney NSW 2000
Address of witness

Executed by **Niall Gerald Dolan** in the
presence of:

Signature of Witness

Signature of **Niall Gerald Dolan**

Name of Witness

Address of Witness

Executed by **Jane Bernadette Murphy**
in the presence of:

Signature of Witness

Signature of **Jane Bernadette
Murphy**

Name of Witness

Address of Witness

DRAFT

Item 4.

Report to the Local Planning Panel - Status of Applications

File No: X019228

Summary

The purpose of this report is to inform members of the Local Planning Panel (LPP) of the applications that are to be reported to the Local Planning Panel; applications that have been subject to modification applications and appeals of applications determined by the Local Planning Panel.

Attachment A contains a list of applications due to be determined by the Local Planning Panel. The list includes the application's reference number, address of the proposal, the description of the proposal, the target meeting date and the reason why the application is referred to the Local Planning Panel for determination.

Attachment B contains a summary of Land and Environment Court appeal information relating to applications determined by the Local Planning Panel or appeals related to deemed refusals of applications that would have been determined by the Local Planning Panel.

Attachment C contains a list of applications for modification lodged in third quarter 2019/20 on previous Local Planning Panel approvals.

Recommendation

It is resolved that the subject report be received and noted.

Attachments

- Attachment A.** Applications to be Reported to the Local Planning Panel
- Attachment B.** Appeals Related to the Local Planning Panel
- Attachment C.** List of Modification Applications Related to the Local Planning Panel Approvals

Background

1. There are currently 23 development applications lodged with the City that are to be considered and determined by the Local Planning Panel (as at 25 May 2020). The application list is sorted by target meeting date. The list is provided in Attachment A.
2. Details of new Land and Environment Court appeals that relate to Local Planning Panel decisions or applications that were due to be determined by the Local Planning Panel but were subject of a deemed refusal appeal are provided in Attachment B. Additionally, on-going or completed matters will have the status or outcome listed in the table (as at 14 May 2020).
3. There were four modifications lodged in the third quarter of 2019/20 related to Local Planning Panel approvals. One remains under assessment. This list is provided in Attachment C.

Relevant Legislation

4. Environmental Planning and Assessment Act 1979.

GRAHAM JAHN AM

Director City Planning, Development and Transport

James Farrar, Administration Officer

Attachment A

**Applications to be Reported to the Local
Planning Panel**

Applications to be reported to the Local Planning Panel

Application number	Address	Description	Meeting target	Reason for LPP determination
D/2019/1082	1049 Bourke Street WATERLOO NSW 2017	Concept DA seeking in principle approval for demolition and for a concept building envelope to a height of approximately 22m, with indicative basement car-parking, ground level retail, servicing and accommodation entries and boarding rooms on upper levels. This application is for Integrated Development requiring the approval of Water NSW under the Water Management Act 2000.	01/07/2020	Sensitive development. VPA
D/2020/18	160B Glebe Point Road GLEBE NSW 2037	Change of use of an existing dwelling to a six room boarding house and associated works, including demolition, alterations and additions and fit-out.	01/07/2020	Departure from development standards
D/2019/1470	274-276 Glebe Point Road GLEBE NSW 2037	Change of use of the existing building to a boarding house and associated alterations and additions	01/07/2020	Contentious development
D/2019/1159	94-104 Epsom Road ZETLAND NSW 2017	Tree removal, excavation, remediation, shoring and piling to facilitate the future construction of three 4 to 14 storey mixed use buildings with 2 basement levels proposed under Development Application D/2019/976 and which is being assessed at the same time. This application is for Integrated Development and requires the approval of Water NSW under the Water Management Act 2000.	01/07/2020	Conflict of Interest
D/2020/55	29-41 Hutchinson Street SURRY HILLS NSW 2010	Alterations and additions to an existing commercial building, including construction of two additional levels and internal alterations to provide five commercial office tenancies, car parking, motorcycle parking and end of trip facilities.	01/07/2020	Contentious development

Application number	Address	Description	Meeting target	Reason for LPP determination
D/2019/1485	40 Forbes Street NEWTOWN NSW 2042	Site boundary realignment and consolidation of existing 4 Torrens title lots into 3 Torrens title lots; alterations to existing 2 storey dwelling; demolition of existing garage.	01/07/2020	Contentious development
D/2019/880	1-3 Goddard Street ERSKINEVILLE NSW 2043	Construction of a 4 storey boarding house containing 35 double boarding rooms (70 residents) inclusive of an on-site managers room, new basement level, with associated site works and landscaping. The internal communal rooms have been redesigned, landscaping changes have been made and the south-western corner of the building is set further back to minimise tree pruning.	22/07/2020	Contentious development
D/2019/665	21C Billyard Avenue ELIZABETH BAY NSW 2011	Alterations and additions to an existing residential flat building at 10 Onslow Avenue, comprising an additional level to create a new living space and outdoor terrace to apartment No. 11.	22/07/2020	Departure from development standards
D/2019/811	385 Wattle Street ULTIMO NSW 2007	Demolition of existing building and construction of new part four / part five storey mixed use building comprising ground floor retail and student accommodation on all levels (72 boarding rooms total). The proposal includes excavation, remediation, the construction of one basement level providing 18 car parking spaces and bike parking, and landscaping of the site.	22/07/2020	Departure from standard and Sensitive development VPA
D/2020/192	17-17A Hickson Road DAWES POINT NSW 2000	Use of shop 3 as a licensed cafe known as 'Bar Cycle' and bike boutique (14 internal patrons and 34 external patrons). Proposed internal and external trading hours of 7:00am-11pm Monday-Sundays inclusive. Use of mechanical exhaust fan and installation of grease trap.	22/07/2020	Contentious development

Application number	Address	Description	Meeting target	Reason for LPP determination
D/2019/1277	327-329 George Street SYDNEY NSW 2000	Demolition of existing building and construction of a 15 storey commercial building including a single level basement and a loading bay accessible from Wynyard Lane. Proposed hours of operation are 7.00am – 10.00pm Monday to Sunday.	22/07/2020	Departure from development standard
D/2019/1410	140-144 Parramatta Road CAMPERDOWN NSW 2050	Demolition of existing commercial buildings and construction of a mixed use development comprising 2 retails premises and 30 dwellings over 1 level of basement car parking, accessed from Isabella Street via the common basement to be shared with the existing serviced apartment.	22/07/2020	Sensitive development SEPP 65
D/2019/578	22-28 Mandible Street ALEXANDRIA NSW 2015	Concept development application for a 35 metre high commercial building comprising indicative ground floor retail and parking, and indicative office use above.	22/07/2020	Sensitive development VPA
D/2020/297	1-11 Oxford Street PADDINGTON NSW 2021	Partial demolition of existing structures, retention of existing facades, supporting walls and foyer stairs, and construction of a 6 storey mixed use development with two basement levels. The application also includes a signage strategy, landscape works including the removal of trees, and associated public domain works. The proposed uses include 101 hotel rooms, a medical facility, a basement entertainment venue, a ground floor restaurant/cafe, and a rooftop restaurant/bar. The application is integrated development requiring the approval of the NSW Heritage Council under the Heritage Act 1977 and the Roads and Maritime Services under the Roads Act 1993	22/07/2020	Contentious development. Sensitive development

Application number	Address	Description	Meeting target	Reason for LPP determination
D/2019/854	171A Euston Road ALEXANDRIA NSW 2015	Modifications to existing concrete batching plant including increase in annual total production from 450,000 to 525,000 tonnes per year (5,000 tonnes per day), construction of a two storey truck parking lot, additional batching house and other alterations within the site. The proposed upgrade is to operate 24/7 (as per DU/1999/798/A for a trial period). The proposal is Designated Development under the Environmental Planning and Assessment Regulations 2000, and is Integrated Development under the Protection of the Environmental Operations Act 1997 and Water Management Act 2000, requiring a licence and approval from the NSW Environment Protection Authority, and approval from Water NSW.	12/08/2020	Sensitive development. Designated development
D/2019/1249	59-99 Belmont Street ALEXANDRIA NSW 2015	Demolition of existing building excluding the front facade, tree removal and construction of a new 4 storey residential development with 23 apartments, basement parking, communal rooftop open space and landscaping. The application is Integrated Development requiring the approval of Water NSW under the Water Management Act 2000.	12/08/2020	Sensitive development SEPP 65 & VPA
D/2020/51	172 Redfern Street REDFERN NSW 2016	Partial demolition of existing buildings, and construction of mixed use development with basement parking, ground floor retail space and 13 residential dwellings.	12/08/2020	Sensitive development SEPP 65
D/2020/65	6-8 Orwell Street POTTS POINT NSW 2011	Alterations and additions to an existing 3 storey building and conversion into a 6 storey affordable housing residential flat building with 16 x 1 bedroom units, a communal lobby, bicycle storage and landscaped rooftop terrace. The site also has frontages to Hughes Lane and Hughes Place.	12/08/2020	Sensitive development. SEPP 65

Application number	Address	Description	Meeting target	Reason for LPP determination
D/2020/350	7 Layton Street CAMPERDOWN NSW 2050	Demolition of existing building and construction of 6 level boarding house comprised of 25 rooms with a cafe on the ground level.	12/08/2020	Departure from development standards
D/2020/20	503-505 Elizabeth Street SURRY HILLS NSW 2010	Demolition of existing buildings and construction of a new 7 storey mixed use development comprising 1 basement level, ground floor commercial use and 11 residential units above.	02/09/2020	Sensitive development. SEPP 65
D/2018/1581	135-139 McEvoy Street ALEXANDRIA NSW 2015	Proposed demolition of existing building and construction of 6 storey building to McEvoy Street, and a 4 storey building to the rear comprising 34 residential apartments, ground floor commercial tenancy and 2 levels of basement car parking accessed from McEvoy Street. The proposal is Integrated Development under the Water Management Act 2000, requiring the approval of Water NSW.	02/09/2020	Sensitive development VPA
D/2020/244	24 Hardie Street , DARLINGHURST NSW 2010	Alterations and additions to six terraces including rear five storey addition and basement level for use as a hotel with 69 rooms. Includes tree removal and lot consolidation. The site has a rear frontage to Hayden Place.	02/09/2020	Contentious development
D/2020/405	18 Oxley Street GLEBE NSW 2037	Alterations to unit 7 of the Bridge Water residential flat building to provide a retractable sun shading structure to the existing roof terrace.	02/09/2020	Departure from development standards

As at 25 May 2020.

Attachment B

Appeals Related to the Local Planning Panel

Appeals Related to the Local Planning Panel

Application number	Address	Description	Appeal date	Status
Lodged in current reporting quarter				
D/2019/1135	13-15 Kellett Street POTTS POINT	Use of the ground level as a restricted premises (adult entertainment premises) in conjunction with the existing licensed bar and restaurant known as 'Dollhouse Nightspot', with hours of operation of 24 hours, 7 days per week. The application includes alterations to the external rear courtyard wall to provide emergency egress.	14/02/2020 Appealed 9 days after determination	24/4/20 - Listed for online Court on 22/5/20. Listed for hearing on 21/10/20.
Lodged prior to current reporting quarter				
D/2019/120	810-812A George Street HAYMARKET	Partial demolition of existing building, retention of George Street facade, excavation for one basement level, and construction of 15 storey building for use as backpackers accommodation. The proposal includes 291 dorm beds and 4 double private rooms providing for a maximum of 299 guests, a cafe, bar, pool, terrace, communal facilities and services. The building has been reduced by a storey and reduced the maximum occupancy by 12 people.	19/07/2019 Appealed 2 days after determination	s34 conference to resume on 21/05/2020
D/2019/136	127-131 Macquarie Street SYDNEY	Two illuminated top of building 'Crescent Wealth' business signs to be installed on the north and west elevations of existing roof structure	07/05/2019 Appeal on day 77 of assessment	Deemed refusal appeal Listed for hearing on 10-11/11/20.

Application number	Address	Description	Appeal date	Status
D/2017/1332	278 Palmer Street DARLINGHURST	Alterations and additions to the existing building including a part one and part two storey addition, new basement for storage and services, and change of use to a residential flat building containing 10 apartments and a rooftop terrace.	27/11/2018 Appeal 20 days after determination	Appeal from decision of Land and Environment Court listed on 15/7/20
D/2017/1606	42 Hardie Street DARLINGHURST	Alterations and additions to the existing building for the construction of a part-4, part-5 and part-6 storey mixed-use development containing basement storage and services; ground floor retail space and an apartment; and aboveground apartments. Seven apartments are proposed. Pedestrian access is proposed from Hardie Street. No car parking is proposed.	29/05/2018 Appeal on day 191 of assessment	Hearing on 18/3/20. Judgment reserved as of 14/3/20
Completed appeals in current reporting quarter				
D/2018/335	400/65 Cowper Wharf Roadway WOOLLOOMOOLOO	Alterations and additions to an existing mixed-use building to include a green roof for the Level 4, Penthouse apartment.	12/11/2018 Appeal 33 days after determination	Appeal dismissed 26/02/2020
D/2018/525	137-153 Crown Street DARLINGHURST	Alterations and additions to existing commercial premises including construction of fourth floor and internal alterations and change of use of ground floor to retail. Proposed trading hours are 7.00am – 6.00pm, Mondays to Sundays inclusive.	15/10/2018 Appeal on day 150 of assessment	S34 agreement 6/03/2020

As at 14 May 2020.

Attachment C

**List of Modification Applications Related to
Local Planning Panel Approvals**

List of Modification Applications lodged on Local Planning Panel Approvals

Application number	Address	Description	Lodgement date	Status
D/2018/360/B	29-33 Bourke Road ALEXANDRIA	Section 4.55 (1) - Various errors	21/01/2020	Approved
D/2018/222/C	11 Gadigal Avenue WATERLOO	Section 4.55(1A) to enclose balconies and reconfigure internal layouts of 10 apartments to achieve Liveable Housing Australia Platinum accreditation.	12/02/2020	Approved
D/2019/623/A	140 Commonwealth Street SURRY HILLS	S 4.55 (1) To remove condition 18b as it was a council error.	03/03/2020	Approved
D/2017/240/B	444-450 Gardeners Road ALEXANDRIA	Section 4.55(1A) - Delete deferred commencement conditions 1(b) and 2. Modify conditions 1 and 15 to reflect the introduction of plenums and the subsequent reduced ceiling heights.	10/03/2020	Under Assessment