

01 SITE PLAN
1:200

DATE: 1 OCT 2015
 DRAWING: SITE PLAN
 ISSUE: 5710
 JOB NO: B

DATE: 1 OCT 2015
 CHECKED 1: ET
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 DRAWING NO: DA - 1101
 DRAWN BY: ET/L

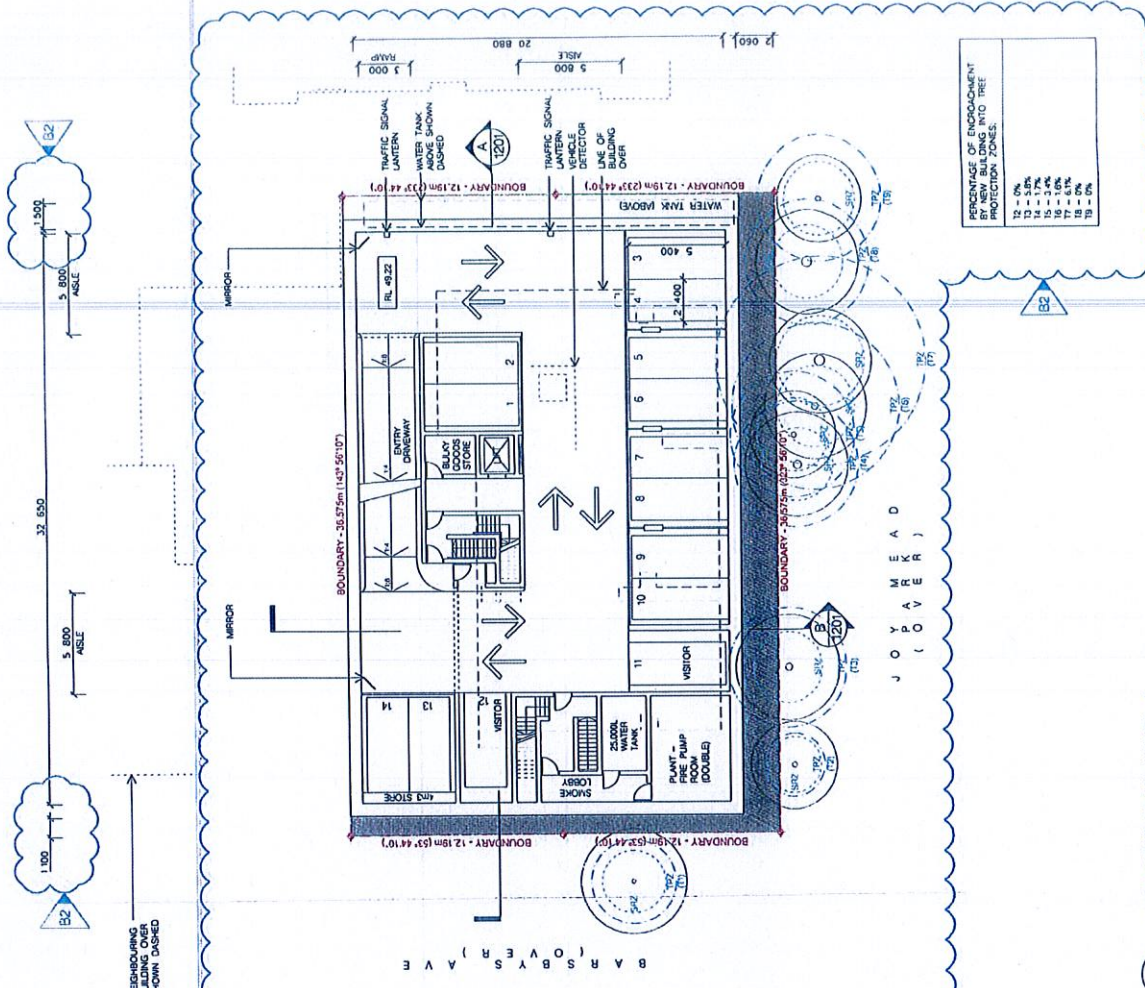


PROJECT: 4-6 BARSBY'S AVENUE ALLOWAH
 CLIENT: CUZENO PTY LIMITED
 SCALE: 1:200 @ A2
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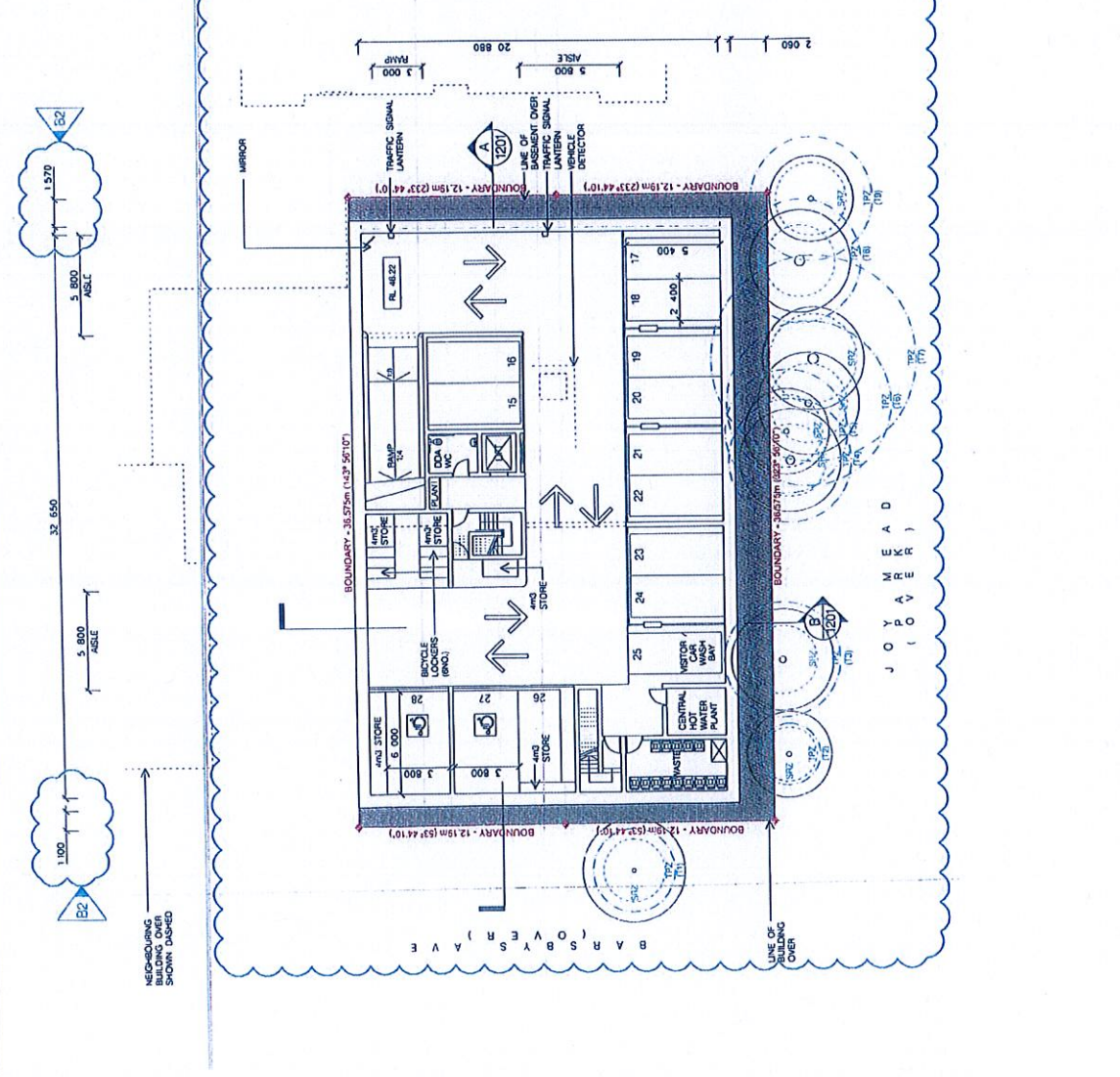
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| 1 | 15/10/15 | ISSUE FOR DA | ET | L |
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02 BASEMENT PLAN LEVEL 1
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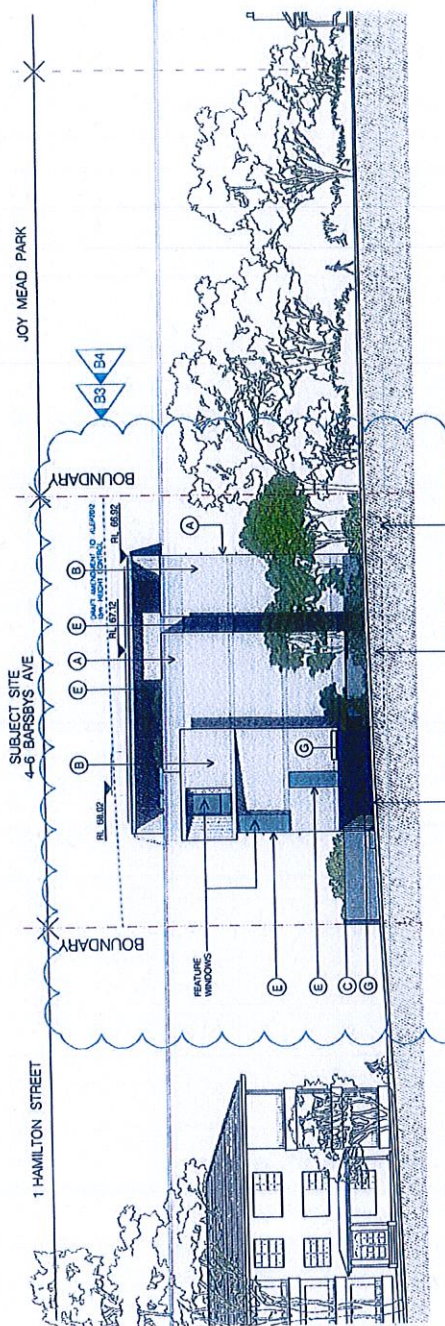
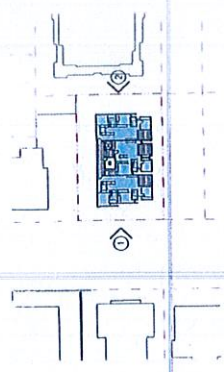


01 BASEMENT PLAN LEVEL 2
1:200

DRAWING: 5710
 BASEMENT PLANS
 LEVEL B2 AND B1
 DATE: 1 OCT 2016
 CHECKED 1: EF
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 DRAWN BY: DA - 1102
 PROJECT: 4-6 BARSBYS AVENUE ALLOWAYH
 CLIENT: CUZENO PTY LIMITED
 SCALE: 1:200 @ A2
 ARCHITECT: CANDALEPAS ASSOCIATES + WENDY LEWIN
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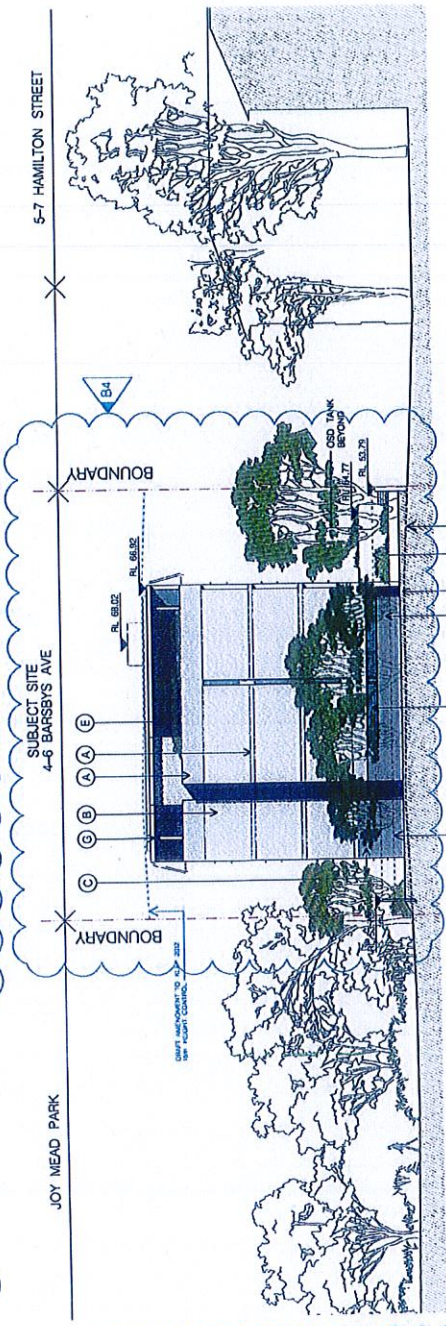
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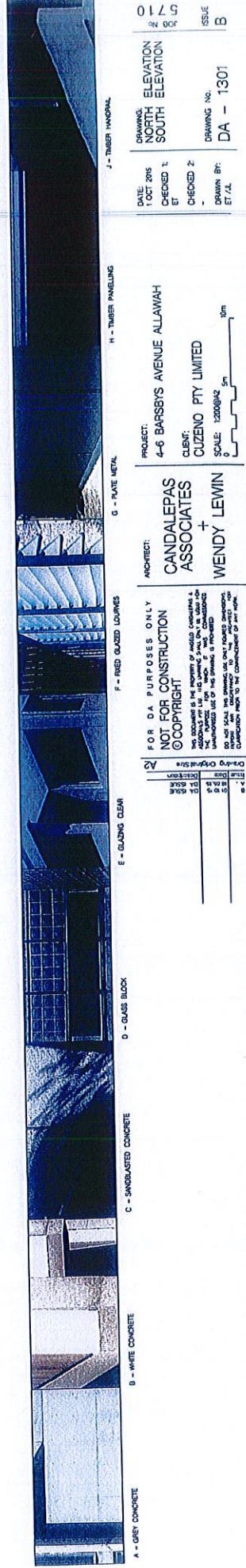
01 NORTH ELEVATION
1:200

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| FFL 67.12 | PARAPET |
| FFL 64.02 | LEVEL 4 |
| FFL 61.12 | LEVEL 3 |
| FFL 58.22 | LEVEL 2 |
| FFL 55.32 | LEVEL 1 |
| FFL 52.42 | GROUND FLOOR |



02 SOUTH ELEVATION
1:200

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| FFL 67.12 | PARAPET |
| FFL 64.02 | LEVEL 4 |
| FFL 61.12 | LEVEL 3 |
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| FFL 55.32 | LEVEL 1 |
| FFL 52.42 | GROUND FLOOR |



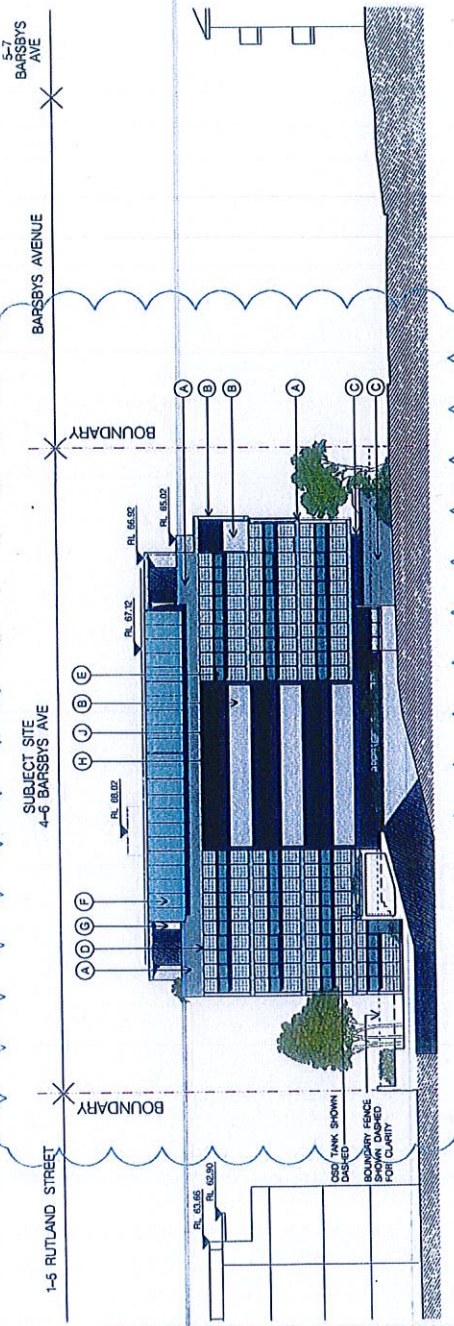
DATE: 1 OCT 2015
DRAWING: NORTH ELEVATION
CHECKED 1: ET
CHECKED 2: -
DRAWN BY: ET/JL
ISSUE: B

PROJECT: 4-6 BARSBYS AVENUE ALLOWAH
CLIENT: CUZENO PTY LIMITED
SCALE: 1:200 @ 5m 10m

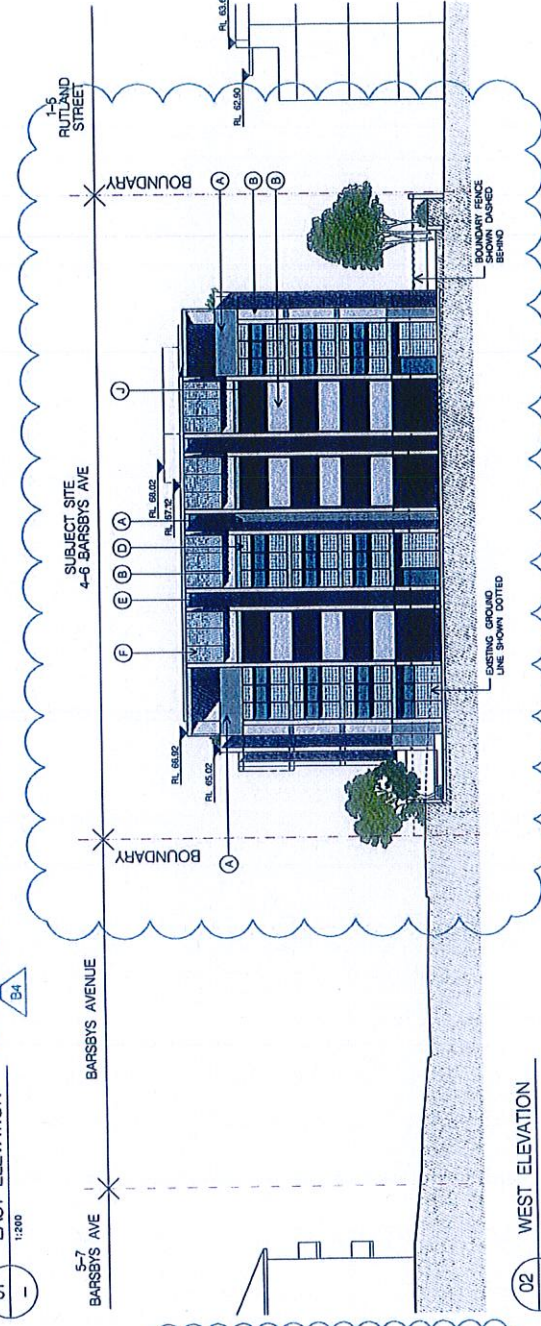
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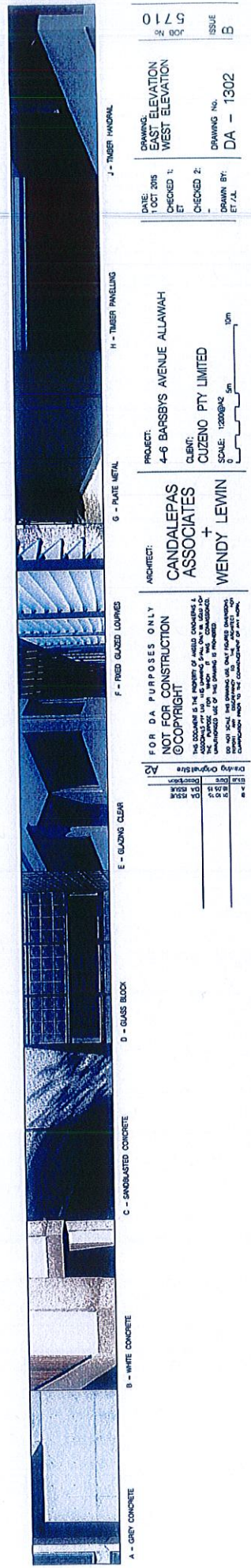
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| DATE | 1 OCT 2015 |
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| CHECKED 1 | ET |
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| PROJECT | 4-6 BARSBYS AVENUE ALLOWAH |
| CLIENT | CUZENO PTY LIMITED |
| SCALE | 1:200 @ 5m 10m |



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| FFL 67.12 | PARAPET |
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| FFL 52.42 | GROUND FLOOR |



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| FFL 67.12 | PARAPET |
| FFL 64.02 | LEVEL 4 |
| FFL 61.12 | LEVEL 3 |
| FFL 58.22 | LEVEL 2 |
| FFL 55.32 | LEVEL 1 |
| FFL 52.42 | GROUND FLOOR |



DRAWING: EAST ELEVATION
 WEST ELEVATION
 DATE: 1 OCT 2018
 CHECKED 1: ET
 CHECKED 2: -
 DRAWN BY: ET, J.L.
 ISSUE B
 JOB NO. 5710
 DRAWING NO. DA - 1302

PROJECT: 4-6 BARSBYS AVENUE ALLAWAH
 CLIENT: CUZENO PTY LIMITED
 ARCHITECT: CANDALEPAS ASSOCIATES + WENDY LEWIN
 SCALE: 1:200@A2
 0 5m 10m

ARCHITECT: CANDALEPAS ASSOCIATES + WENDY LEWIN
 PROJECT: 4-6 BARSBYS AVENUE ALLAWAH
 CLIENT: CUZENO PTY LIMITED
 SCALE: 1:200@A2

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| DATE | 1 OCT 2018 |
| SCALE | 1:200@A2 |
| PROJECT | 4-6 BARSBYS AVENUE ALLAWAH |
| CLIENT | CUZENO PTY LIMITED |
| ARCHITECT | CANDALEPAS ASSOCIATES + WENDY LEWIN |

A - GREY CONCRETE
 B - WHITE CONCRETE
 C - SANDBLASTED CONCRETE
 D - GLASS BLOCK
 E - GLAZING CLEAR
 F - FIXED GLAZED LOUVER
 G - PAINT METAL
 H - TIMBER PANELLING
 I - TIMBER HANDRAIL

Attachment 9: Clause 4.6 Statement – Minimum Site Area



Clause 4.6 – Exceptions to Development Standards – Minimum Lot Size

Address: 4 – 6 Barsbys Avenue, Allawah– Proposed Residential Flat Building

1. Introduction

This is an application to vary a development standard under Clause 4.6 – Exceptions to Development Standards, of the Kogarah Local Environmental Plan 2012 (KLEP 2012). The development standard for which the variation is sought is Clause 4.1A minimum lot sizes for residential flat buildings under the KLEP 2012.

The variation relates to DA for a proposed residential flat building located at 4-6 Barsbys Avenue, Allawah. The development contains 14 dwellings and is five (5) storeys in height.

The site fronts Barsbys Avenue to the north and the site is zoned R3 Medium Density Residential under the KLEP 2012.

This application has been prepared in accordance with the NSW Department of Planning and Infrastructure (DP&I) guideline "Varying development standards: A Guide, August 2011".

It is noted that Clause 4.6 also requires the concurrence of the Director-General to be obtained prior to the granting of consent for development that contravenes a development standard unless, concurrence from the Director-General to vary the development standard has been delegated to the Council.

2. Description of the planning instrument, development standard and proposed variation

2.1 What is the name of the environmental planning instrument that applies to the land?

The Kogarah Local Environmental Plan 2012 (KLEP2012).

2.2 What is the zoning of the land?

The zoning of the land is R3 Medium Density Residential zone.

2.3 What are the Objectives of the zone?

The objectives of the R3 Medium Density Residential zone are:

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

2.4 What is the development standard being varied?

The development standard being varied is the minimum lot size for residential flat buildings in the R3 Medium Density Residential Zone development standard.

2.5 Is the development standard a performance based control?

No. The minimum lot size development standard is a numerical control.

2.6 Under what Clause is the development standard listed in the environmental planning instrument?

The development standard is listed under clause 4.1A of the KLEP2012.

2.7 What are the objectives of the development standard?

The objective of clause 4.1A are as follows:

- *The objective of this clause is to achieve planned residential density in certain zones.*

2.8 What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.1A establishes a minimum lot size for certain types of residential development in certain zones.

In the case of residential flat buildings in the R3 Medium Density residential Zone, Clause 4.1A establishes a minimum lot size of 1,000m².

2.9 What is the proposed numeric value of the development standard in the development application?

The proposed development is for a residential flat building in the R3 zone on a development site with an area of 891.9m².

2.10 What is the percentage variation (between the proposal and the environmental planning instrument)?

The percentage of the variation is 10.8%.

3. Assessment of the Proposed Variation

3.1 Overview

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan.

Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

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

In addition, the 4.6(4)(i) requires that development consent must not be granted for a development that contravenes a development standard unless the:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and..

An assessment of the minimum lot size variation is provided below in accordance the requirements of Clause 4.6. In addition, this variation has also been prepared in accordance with the Guidelines, which identifies matters to be addressed in an application to vary a development standard. The matters identified in the Guideline are consistent with the SEPP 1 objection principles identified in the decision of Justice Lloyd in *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46* outlined below:

1. Is the planning control in question a development standard;
2. What is the underlying object or purpose of the standard;
3. Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act 1979;
4. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case;
5. Is a development which complies with the development standard unreasonable or unnecessary; and
6. Is the objection well founded.

In accordance with the Guideline, the assessment also addresses the 'five part test' established by the NSW Land and Environment Court. The five part test was established in the decision of Justice Preston in *Wehbe V Pittwater [2007] NSW LEC 827* to determine whether compliance with a development standard is unreasonable or unnecessary based on the following:

1. Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives;
 2. Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard is unnecessary;
 3. Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;
 4. Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable; or
 5. Is the "zoning of particular land" unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.
- 3.2 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

In the circumstances of this case, the provision of strict numerical compliance would be unreasonable due to the following:

1. The proposal remains consistent with the objectives of the R3 Medium Density zone, despite the non-compliance with the minimum lot size control as demonstrated in the assessment of the objectives in Table 1 below:

| Objective | Comment |
|--|---|
| <i>To provide for the housing needs of the community within a medium density residential environment</i> | The proposed residential flat building will increase the supply of quality housing within the Kogarah |

| Objective | Comment |
|---|---|
| <i>To provide a variety of housing types within a medium density residential environment.</i> | Local Government Area. The development will not result in the creation of any isolated lots. The proposal will provide a mixture of housing varieties which respond to the varied needs of the community, including a mixture of two (2) and three (3) bedroom apartments, in close proximity to the Allawah Railway Station and bus services on Railway Parade. |
| <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> | The proposed development will not inhibit the development of adjacent properties for other land uses that may provide facilities or services to meet the day to day needs of residents. |

Table 1: Compliance with Objectives

2. The proposal remains consistent with the objective of the Minimum Lot Size standard outlined in subclause 4.1A despite the non-compliance demonstrated in Table 2 below:

| Objective | Comment |
|---|---|
| <i>The objective of this clause is to achieve planned residential density in certain zones.</i> | <p>The density of the proposed development is considered appropriate for the site considering the scale of development within the immediate vicinity of Barsbys Avenue, which predominantly contains medium density residential flat buildings that range in height from three (3) to five (5) storeys. The proposal is therefore consistent with the scale of development within the surrounding built environment.</p> <p>The subject site is capable of providing a residential flat building that is an appropriate scale for the site, which does not significantly affect the residential amenity of adjoining properties.</p> <p>The scale and type of development proposed is considered appropriate and responds to the site's location, in close proximity to the Allawah Railway Station and the prevailing urban context which is dominated by residential flat buildings.</p> <p>The proposal is considered to be of high architectural quality as it successfully responds to the character of surrounding development and the existing streetscape along Barsbys Avenue.</p> <p>There is no opportunity to increase the area of the development site through further amalgamation as it is constrained by Joy Mead Park to the west and an existing residential flat building to the east.</p> <p>The suitability of the proposal is further demonstrated with the compliance of the proposed FSR standard of 1.5:1 proposed for the site.</p> |

Table 2: Compliance with Development Standard Objective

3.3 How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?

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

“to encourage:

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

Compliance with the standard would not hinder the attainment of the objects of section 5(a)(i) and (ii) of the Act, which are to encourage development that promotes the social and economic welfare of the community and a better environment, and to promote and coordinate orderly and economic use and development of land.

Strict compliance with the development standard would not result in discernible benefits to the amenity of adjoining sites or the public. Further, the proposal satisfies the zone and development standard, and principally maintains the scale and density of recently approved buildings. The development as proposed is consistent with the provisions of orderly and economic development. Strict compliance with the standard is not required in order to achieve compliance with the objectives.

3.4 Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?

A development that strictly complies with the minimum lot size standard is unreasonable or unnecessary in this circumstance for the following reasons:

- The level of non-compliance with the minimum lot size control is consistent with the degree of variations contemplated and accepted by Council with respect to development in similar situations;
- The site is of a size and shape that is suitable for a residential flat building development and is similar to the size and shape of other lots which have been readily able to accommodate residential flat building developments. The proposal will not set a precedent in that regard;
- The proposed residential flat building is arranged on the site in a manner that is unlikely to result in significant adverse impacts upon adjacent properties or the public realm by way of overshadowing, visual massing or visual privacy;
- One of the aims of minimum lot size standards in the R3 zone is to realise the amalgamation of lots into larger parcels of land and thereby realise larger medium density developments with appropriate building separations and good levels of residential amenity. In the circumstances of the development, there is no opportunity to increase the area of the development site through further amalgamation as the site is constrained by Joy Mead Park to the west and existing, already amalgamated sites to the east and south which contain residential flat buildings;
- Notwithstanding the numerical non-compliance, the site is large enough and of a shape that will allow good building separation and good residential amenity to be achieved. The proposal is considered to be of high architectural quality as it successfully responds to the character of surrounding development and the existing streetscape along Barsbys Avenue;
- Removing the non-compliance would not significantly alter the perceived scale and density of the proposed development when viewed from the public domain or surrounding development; and
- There is minimal difference in the impacts between a building that strictly complies with minimum lot size control including:

- Visual and acoustic privacy impacts: The building achieves appropriate building separation, is arranged on the site in a manner with appropriate screening and vegetation to mitigate privacy impacts to the neighbouring properties.
- Visual impacts: The building is appropriately setback from the front and rear boundaries and there is a nominal difference in visual impacts between the proposed building and a complying building.
- Overshadowing impacts: Due to existing building siting and lot orientation, the difference in shadow impacts on adjacent sites of a compliant development compared to the proposed building are minimal. Importantly the proposal complies with Council's controls for solar access for adjacent properties.

3.5 Are there sufficient environmental planning grounds to justify contravening the development standard?

Yes. In the circumstances of the case, there are sufficient planning grounds to justify contravening the development standard being:

- The site is zoned to accommodate medium density residential development and the lot size of the development site is considered appropriate to accommodate a residential flat building of a scale and density as that which is proposed.
- The minimum lot size control is a 'blunt' numerical tool used to assist in achieving lot amalgamations and appropriate building separation and residential amenity in the R3 zone. In this instance, however, there is no opportunity, nor need, to achieve any greater amalgamation of lots as all adjacent sites are already amalgamated to compliant sizes, and or have been developed for the purpose of residential flat buildings. The site to the west is RE1 Public Recreation Zone land and cannot be amalgamated.
Additionally, the proposal demonstrates that appropriate building separation and residential amenity is achieved and therefore strict compliance is not necessary.
- The proposal demonstrates consistency with the zone objectives and the objective of the Minimum Lot Size standard as described in Section 3.2 above.
- The non-compliance with the standard does not result in a building that is out of character with the surrounding development, rather the proposal will result in a development that is consistent with the residential flat building character of the locality.
- The proposal will achieve a positive urban design outcome and will improve the streetscape through contemporary architecture styling, appropriate articulation and use of interesting and varying materials and finishes.
- Council would not be setting a precedent by varying the minimum lot size control as proposed. It is understood that Council has varied the control to similar degrees.
- The non-compliance with the standard does not contribute to adverse environmental impacts in terms of overshadowing, visual impacts or view loss.
- The development will result in public benefit through:
 - the positive urban design outcomes for the street;
 - the addition of a residential flat building of high architectural merit; and
 - the provision of additional housing stock with good residential amenity and within walking distance to good public transport services.
- The development as proposed is consistent with the provisions of orderly and economic development.

3.6 Is the variation well founded?

Yes. For reasons outlined in the preceding sections of this submission, the variation to the minimum lot size control is well founded as compliance with the standard is unreasonable as the development does not contravene the objects specified within 5(a)(i) and (ii) of the Act and B2 Local Centre zone.

A development that strictly complies with the standard is unnecessary in this circumstance as no appreciable benefits would result by restricting the building to absolute numerical compliance.

3.7 Clause 4.6(5)

Clause 4.6(5) states:

- (5) In deciding whether to grant concurrence, the Director-General must consider:*
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

The requested variation to the minimum lot size standard does not raise any matter of significance for State or regional environmental planning. The consideration of the variation is a purely local matter relating to the distribution and accommodation of permitted building volume on the site in a manner that more skilfully integrates the building into the streetscape.

There is no discernible public benefit in maintaining a strict application of the numerical limit in this instance. Despite the variation to the development standard, the proposal generally complies with the SEPP 65 design principles, setback controls and amenity controls applicable to the development.

The variation to the control delivers a public benefit in facilitating a residential flat building of design excellence which responds to the existing urban context of the locality while providing additional housing stock within an area identified for medium density residential development and within walking distance to established public transport (i.e. the Allawah train station).

4. Conclusion

Development standards are a means of implementing planning purposes for a development or area.

The size of the development site for the purpose of a residential flat building is considered appropriate to the context and circumstances of the locality, and does not result in a scale of development that is out of character with the streetscape and the surrounding character of the locality.

Contextually, the proposal will provide a development of a scale, form and density that responds appropriately to the predominant form of medium density residential development in the locality. On an urban design basis, the outcome will be entirely appropriate to the locality.

The proposal does not represent an overdevelopment of the site and the height and proposed intensity (density) is consistent with the strategic vision for the locality and its evolving urban context.

The proposal will result in considerable public benefit through the provision of well-designed residential dwellings of high amenity within walking distance of several train stations.

The site is within a locality which has appropriate service capacity to readily accommodate development of the density and scale proposed.

This submission satisfies the provisions of 4.6(3)(a), 4.6(3)(b) and 4.6(4)(a)(i) of the KLEP 2012 as it has been demonstrated that compliance with the minimum lot size development standard is both unnecessary and unreasonable in the circumstances of this case and there is sufficient planning grounds to justify contravening the standard.