

Statement of Environmental Effects

**Continued use of existing outbuilding
associated with a dwelling**

**77 Lethbridge Street
Penrith**

June 2014

Client: Marie Gallagher

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This submission has been prepared by



Natasha Baker MPlA
Director

Author	Version	Date
NB	Client Review	030614
NB	Final	24 June 2014

This report dated June 2014 is provided to 'the client' exclusively. No liability is extended for any other use or to any other party. Whilst the report is derived in part from our knowledge and expertise, it is based on the conditions prevailing at the time of the report and upon the information provided by the client.

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1 Introduction

1.1 Background

Stimson & Baker Planning (SBP) has been engaged by Marie Gallagher to prepare a Statement of Environmental Effects to gain approval for the continued use of an existing outbuilding used in association with the dwelling on the property known as 77 Lethbridge Street, Penrith.

The site is zoned *2(d) Residential (Medium Density)* under *Penrith Urban Land Local Environmental Plan 1989*, outbuildings are permissible with consent.

The proposal is defined as *development* in Clause 4 of the EPA Act. Clause 76A of the EPA Act stipulates that the development must not be carried out on the subject site until consent has been obtained. Furthermore, the application does not trigger any of the 'integrated development' provisions of the Act and so no third party approvals are required.

This report describes the proposed development and subject site in detail and undertakes an assessment against the EP&A Act 1979 as well as the relevant aims, objectives and development provisions of Council's LEP and DCP.

1.2 Purpose and History of the Application

The purpose of this application is to seek approval for the continual use of the existing outbuilding on the property. In effect this is seeking a retrospective approval.

In 2012, the owner lodged an application (DA12/0626) seeking approval to use the existing outbuilding as a secondary dwelling. The building has been on the property since the 1950/1960s with no record of its approval. The proposal for the secondary dwelling was refused on 13 September 2012 primarily on the grounds of BCA compliance, design and landscaping. As a result of the refusal, the owner was issued with a Notice of Intention to Serve Order 2 dated 29 September 2012 (Appendix A) due to no record found regarding an approval for the outbuilding.

Further investigation has revealed that although the outbuilding can be modified to a habitable building to comply with the Building Code of Australia and could be improved by way of design and landscaping, the costs of the upgrading outweighs the benefit of its continued use as a secondary dwelling. The owner would like to get an approval for the outbuilding formalised for future sale of the property.

It is important to note, that although there is no record of the outbuilding approval, the building was recognised in the 1970s approval for the dwelling. This was noted in the Council officer's report dated 19 July 2012 for the secondary dwelling where it was

stated “A previous application in 1977 for another building on this land described the subject building as an existing garage. The building still has typical garage doors on the street elevation.” It can be implied that in the 1970s approval acknowledged the outbuilding, therefore you could assume that it was legally erected on the property, due to no further investigations being carried out.

1.3 Supporting Documentation

Accompanying the application is a survey plan and floor plan/elevation of the outbuilding.

2 The Site and Surrounds

2.1 The Subject Site

The site is described as Lot 15B, DP344265 and known as 77 Lethbridge Street, Penrith. It is a regular shaped lot with a total area of 557.79m² and dimensions of 23.165m to Lethbridge Street and a depth of 24.07m. The property is located on the northern side of Lethbridge Street with Doonmore St 30m to the east. The site slopes from the rear to the south western corner.



Figure 1: Subject Site

2.2 Existing Development

The site is located in an established residential area in short walking distance to the Penrith CBD. Development surrounding the site includes medium density development, schools, cemetery and medical practices. A fibro cottage with a metal roof, small shed and an outbuilding (subject to this application) of similar construction occupies the site. Fig 1 shows the location of the existing dwelling and outbuilding.

3 Development Proposal

3.1 Details of the Proposal

The development application is seeking the continued use of the existing outbuilding which has been located on the property prior to the Environmental Planning and Assessment Act 1979, and possibly prior to the Penrith Planning Scheme of 18 March 1960; and an awning that was erected in the last 10 years. There are no works required.

The outbuilding was previously used as a garage prior to its use as a secondary dwelling. There is evidence of a layback, which would indicate that it served the building as a garage. The building is in a good condition and given its age, it is intended to retain the structure due to its function and the cost to demolish. It is intended to revert the unauthorised secondary dwelling to use the building as storage or other non-habitable uses. The kitchen and showering/laundry facilities will be removed.

The existing outbuilding has an area of 58m² and awning of approximately 11.85m². The outbuilding is also setback 1.62m from the front boundary and 1.17m from the eastern boundary, however there has been a fence constructed between the structure and the true eastern boundary line (Figure 3).

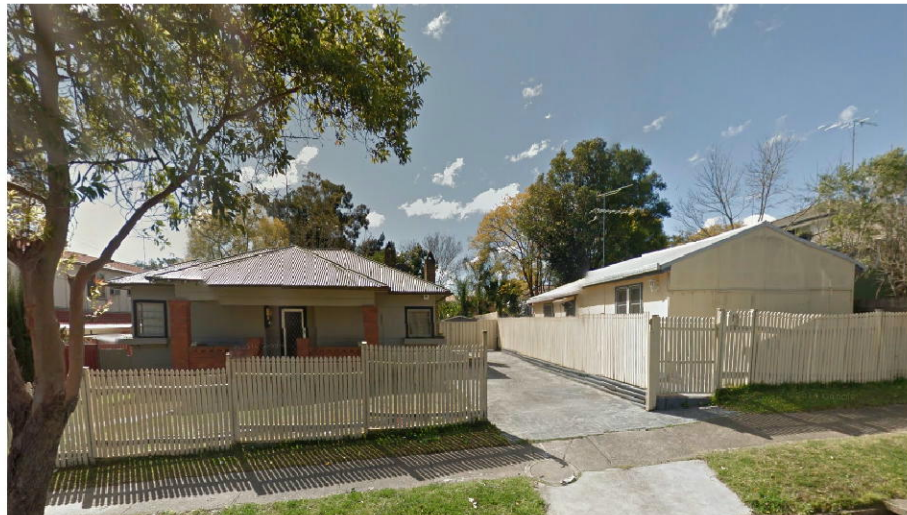


Figure 2: Streetview of outbuilding

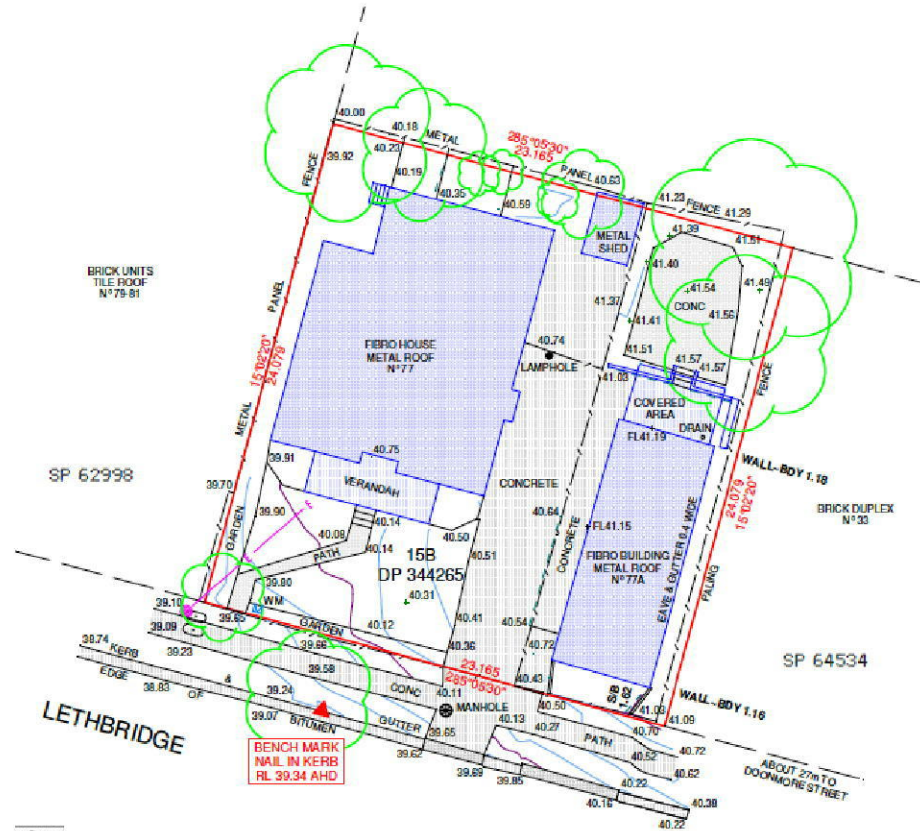


Figure 3: Survey and location of outbuilding

4 Statutory Context

4.1 Planning Controls

4.1.1 Sydney Regional Environmental Plan No 20 – Hawkesbury Nepean River

The aim of SREP 20 is to protect the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.

There are no works related to this application, therefore it is unlikely the proposal will impact on the health of the river system.

4.1.2 Penrith Local Environmental Plan 1998 (Urban Lands)

The Penrith Local Environmental Plan 1998 (LEP) is the primary environmental planning instrument relating to the proposed development. The proposal is minor and ancillary to the dwelling and does not compromise the objectives of the LEP

The subject site is zoned *No.2 (d) Residential (Medium Density)*. The objectives of the 2(d) zone listed in the LEP are:

- (a) *to reinforce the importance of natural landscape settings and areas with heritage conservation value, and*
- (b) *to protect the character of traditional cottage development and streetscapes, and*
- (c) *to consolidate population and housing densities, and*
- (d) *to expand housing choices by allowing multi-unit housing up to a two storey appearance, and*
- (e) *to promote a variety of housing types or forms upon each site, and*
- (f) *to allow a range of compatible non-residential uses.*

The proposal is generally consistent with the objectives, and more specifically with the character of the traditional cottage development and streetscape as described below. The garage has been part of the urban fabric in Lethbridge Street for the past 50 or 60 years.

The Land Use Table of the LEP nominates *buildings or other structures ordinarily associated with dwelling houses* as a permissible form of development in the zone, with the definition:

building or structure ordinarily associated with a dwelling house means a garage, carport, pergola, swimming pool or the like, and includes alterations and additions to an existing dwelling house.

The following relevant clauses have also been considered in respect of this development proposal.

Penrith Local Environmental Plan 1998 (Urban Lands)	
Standard	Comment
<p>Clause 12 Building Envelopes, heights, landscaped areas and rear boundary setbacks for development that requires consent</p> <p><i>(7) Despite any other provision of this clause, the council may consent to the erection of a non-habitable building or structure ordinarily associated with a dwelling-house that does not comply with the requirements of this clause if, in the council's opinion, the proposed building or structure will have a minimal adverse impact on the subject site and any adjoining site.</i></p>	<p>The proposal can rely on this clause of the LEP given the outbuilding has been part of the streetscape for the last 50-60 years. The surrounding area has evolved in an eclectic manner given its location between a medical precinct and the CBD. There is no clear theme or intended streetscape character for this area. A more defined character will emerge with the changes to the Penrith planning controls to up zone this area to a High Density zone at the end of the year. The site has potential in the future to be consolidated with other properties to realise the higher density provisions. In this regard it is considered that the proposed outbuilding has minimal adverse impacts on the site or adjoining site.</p>
<p>Clause 14 Provisions for design principles in development generally</p> <p>The council must not consent to development unless the council is of the opinion that the proposed development has taken into account the following:</p> <ul style="list-style-type: none"> (a) reinforcement and protection of local topography and setting, (b) reflection of the forms, features or qualities of traditional residential neighbourhoods across Penrith local government area, (c) consistency or compatibility with the scale, design and amenity of neighbouring development, (d) contribution to attractive streetscapes through the diversity of building forms and landscaped areas that can be seen from any public place nearby, (e) provision for contemporary standards of amenity within each dwelling and the associated private open space, (f) preservation and enhancement of any significant vista that currently might be available from a public place nearby. 	<p>The building already exists and is of an age that may pre-date requiring an approval, does not adversely impact the local topography and setting; is consistent with the existing traditional neighbourhood in relation to scale, design and amenity; contributes to the streetscape as it reflects the emerging nature of the area and its position in the CBD; and does not impact on any important vistas or views from nearby public places. Given the above, Council can form the opinion that there are minimal impacts from the proposal in its current form.</p>

There are no other clauses relevant to the proposal.

4.1.3 Penrith Development Control Plan 2006

Development Control Plans contain finer grain planning controls in respect of specific development types. There are no specific controls for outbuildings in residential areas, however the most relevant is *Part 4 Section 4.2 Residential – Single Dwellings* with the following specific clauses:

5.3 Front, Side and rear Setbacks

C5. Garages and parking spaces are not permissible within the front setback, other than stacked parking or driveways leading to a garage.

6.3 Building Design

B. Mandatory Controls

I. To reduce the visual impact of dwellings and garages:

- a. maximum permitted external wall height is 6.5m;*
 - b. maximum permitted overall height above natural ground level is 10m;*
 - c. double garages should have two doors separated by a pier or column;*
 - d. garages should be set back further than the front setback of the dwelling;*
 - e. lowest floor level shall be no higher than 1 metre above natural ground level;*
- and*
- f. cut and fill is restricted to a maximum of 1 metre.*

Comment: Although these controls relate to new buildings it is important to note that the proposed outbuilding (previously used as a garage) is located forward of the building line. However, the building was located on the property when the dwelling was approved in the 70s and constructed behind the garage building line. There was no requirement to demolish this building or acknowledgement that it was illegally built on the premises.

Given that the structure is not a new building and has been located on the property for the last 50-60 years, the above controls are provided as a guide for assessment.

5 Section 79C Assessment

An assessment of the proposal has been undertaken in accordance with the statutory requirements of the EPA Act. The following assessment against Section 79C of the EPA Act has been undertaken.

5.1 Section 79C(1)(a)(i) – Any Environmental Planning Instruments

The relevant environmental planning instruments have been considered earlier in this report.

The proposal is permissible with consent and is considered satisfactory when assessed against the relevant requirements.

5.2 Section 79C(1)(a)(ii) – Any Draft Environmental Planning Instrument

The draft Penrith LEP 2010 (Stage 2) applies to the site and proposes a *R4 High Density Zone*. Ancillary structures to dwellings are permissible within the zone with consent. There is no impact on the proposal as a result of any objectives or provisions in the draft LEP.

There are no other clauses relevant to the proposal.

5.3 Section 79C(1)(a)(iii) – Any Development Control Plan

Compliance against the relevant DCP's has been considered earlier in this report.

5.4 Section 79C(1)(a)(iiia) – Any Planning Agreement or Draft Planning Agreement entered into under Section 93f

There are no known planning agreements that apply to the site or development.

5.5 Section 79C(1)(a)(iv) – The Regulations

There are no sections of the regulations that are relevant to the proposal at this stage.

5.6 Section 79C(1)(b) – The Likely Impacts of the Development

The following impacts have been considered in the preparation of this development proposal. Given there are no works proposed there is minimal impacts anticipated in relation to flora and fauna, stormwater and flooding, erosion and sediment control, traffic generation and parking, heritage, noise and waste management and services to the site. Consideration of the visual impacts is provided below:

5.6.1 Visual Impact



Figure 4: Streetscape

Consideration is given to the visual impact of the existing outbuilding due to the reasons detailed in the Order which include in summary that:

- the development would present a negative impact on the amenity of the area,
- it was forward of the building line, and
- it was not in keeping with the existing development in the surrounding area.

As discussed above (4.1.3), there is no clear streetscape character in this area. As demonstrated in Figure 4, there are structures forward of the building line on either side, varying and inconsistent building setbacks, including dense landscaping, which minimises the impact of the existing outbuilding on the streetscape. If required, there is sufficient room within the setback to introduce some landscaping to provide some level of screening, but this is not considered necessary.

Given the above, it is unreasonable to require demolition on the grounds that the outbuilding will impact on the amenity of the property, adjoining properties and the streetscape.

5.7 Section 79C(1)(c) – The Suitability of the Site

The proposal is generally consistent with the planning controls that apply in this zone. Moreover, the objectives of the zone have been satisfied, the outbuilding has been part of the urban fabric and streetscape in this area of Penrith for the past 50-60 years.

For the reasons outlined in this report the site is considered suitable for this development proposal.

5.8 Section 79C(1)(d) – Any Submission Made

Council will undertake a notification process in accordance with its controls and policies. We welcome the opportunity to provide additional information in response to those if required.

5.9 Section 79C(1)(e) – The Public Interest

Given the type of development, its general compliance with the planning controls, how the objectives are satisfied and the suitability of the site it is considered that the public interest would not be jeopardised as a result of this development.

5.10 Section 79C(3A) – Development Control Plans

Section 79C(3A) has been considered in respect of this application. The proposal cannot meet the requirements of the DCP in regards to being located behind the building line given the circumstances of the date of construction, however assessment against the LEP provisions and how it fits into the streetscape should bear more weight in its consideration. Given these circumstances, Council will undertake its assessment accordingly and assess the proposal on its merit.

6 Conclusion and Recommendation

The proposed development has been assessed against the requirements of the Penrith LEP and DCP and is considered to represent a form of development that is acceptable.

The proposed building would not result in any unacceptable impact on the locality. The outbuilding has been part of the urban fabric and streetscape in this area of Penrith for the past 50-60 years, therefore the site is considered quite suitable for a use of this nature and is considered consistent with nearby and adjoining development and the existing and established streetscape.

An assessment against section 79C of the EPA Act has not resulted in any significant issues arising.

Accordingly it is recommended that the proposed outbuilding be approved.

Appendix A

Council Letter

Our Ref: LV: IMS: 3694077
Contact: Miss Laura Vella
Telephone: (02) 4732 7515

28 September 2012

Marie A Gallagher
PO Box 1921
PENRITH NSW 2751

Dear Mrs Gallagher,

Section 121B Environmental Planning & Assessment Act 1979
NOTICE OF INTENTION TO SERVE ORDER 2
Premises: Lot 15B DP 344265 77 Lethbridge Street PENRITH NSW 2750

Penrith Council has determined to refuse to grant consent to the subject Development Application for the existing second dwelling at the above premises as resolved in the determination given by Council for DA12/0626 (dated 13th September, 2012).

Additionally, Council's investigations have confirmed that this structure has no record of consent according to Council records.

As such, please find attached the terms of a proposed Order. It is recommended that you consider the information provided and, within **twenty-one (21) days** from the date of this notice, make representations to Council as to why the Order should not be given or as to the terms of or period for compliance with the Order.

Representations may be made orally or in writing or both by you or on your behalf either:

1. Directly at Council's Civic Centre, 601 High Street, Penrith; or,
2. In writing to: The General Manager, PO Box 60, PENRITH 2751

Any representations that you make will be considered prior to the issuing of the Order. This may result in modification of the terms of the Order, or in the matter not progressing to the service of the Order.

Yours faithfully,



Laura Vella
Environmental Compliance Officer
Development Compliance Unit

Note: This Notice has been prepared in accordance with the requirements of Section 121(h) of the Environmental Planning and Assessment Act, 1979 and relates to an order in Table 121(b) of that Act

PROPOSED TERMS OF ORDER 2

Section 121B Environmental Planning & Assessment Act 1979

Order 2: To demolish or remove a building. The building is erected without prior development consent where development consent was required.

<u>Proposed terms of Order</u>	<i>Timeframe</i>
1. Demolish the structure located along the eastern boundary measured at 12m by 5.5m (approximately).	<i>Within 40 days of the date of the Order</i>
2. Remove all demolition materials from the land to an approved waste management facility, or building material recycler	<i>Within 40 days of the date of the Order</i>
3. Restore the land to its original condition before the unauthorised works were carried out.	<i>Within 40 days of the date of the Order</i>

REASON FOR PROPOSED ORDER

1. An application was refused due to numerous non-compliances, to grant consent to the subject Development Application for the existing second dwelling at the above premises as resolved in the determination given by Council for DA12/0626 (dated 13th September, 2012).
2. On 30th May 2012, a site inspection was conducted at 77 Lethbridge Street, Penrith. At the time of the inspection Council Officer Laura Vella was met on site by the property owner Marie Gallagher and an individual by the name of Charlie.
3. No record can be located of any original approval to the building which appears to be a minimum of 50-60 years old. A previous application in 1977 for another building on this land described the subject building as an existing garage. The building still has typical garage doors on the street elevation. The building has been altered internally and is currently occupied as a dwelling without Consent.
4. Development consent was required prior to the construction of the structure under Section 76A of the Environmental Planning and Assessment Act 1979;
5. The construction of buildings or other structures ordinarily associated with dwelling houses is permitted only with development consent under Penrith Local Environmental Plan 1998 (Urban Land); and

6. The development is considered to have a negative impact on the amenity of the area and the use of the structure as a second occupancy may attract additional traffic impacts and other issues associated with additional occupants at the premises.
7. The structure is situated forward of the building line (approximately 1.62 meters from the front boundary), and is not in keeping with existing development in the surrounding area. The development does not comply with various other requirements of both current and pre-existing state and local planning instruments.

Please note it is your responsibility to contact Council for a reinspection once the required works are complete.

FAILURE TO COMPLY WITH AN ORDER

Your attention is drawn to the following sections of the *Environmental Planning & Assessment Act, 1979* concerning non-compliance with this order:

126 Penalties

- (1) A person guilty of an offence against this Act shall, for every such offence, be liable to the penalty expressly imposed and if no penalty is so imposed to a penalty not exceeding 1,000 penalty units (\$110,000) and to a further daily penalty not exceeding 100 penalty units (\$11,000).
- (2) A person guilty of an offence against the regulations is liable to a penalty not exceeding 100 penalty units (\$11,000).

121ZK Appeals concerning orders

- (1) A person on whom an order is served may appeal against the order to the Land & Environment Court.
- (3) The appeal must be made within 28 days after the service of the order on the person.

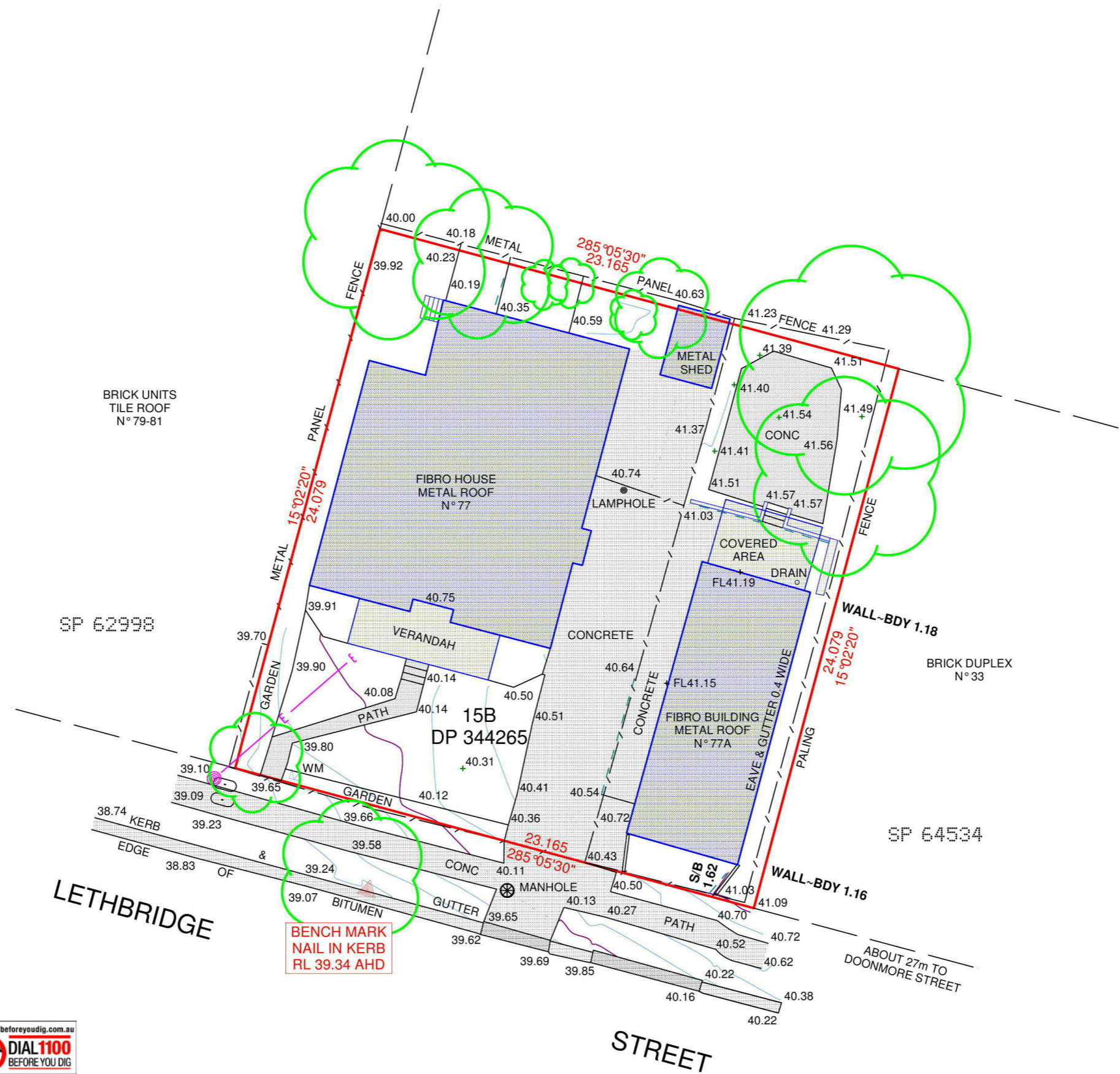
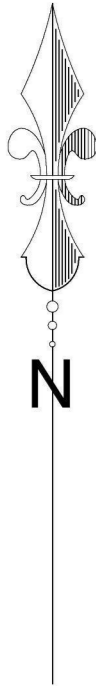
Yours faithfully



Laura Vella
Environmental Compliance Officer
Development Compliance Unit

Appendix B

Survey



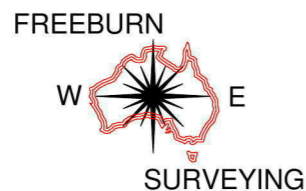
NOTES:

- * Levels based on PM 12644 RL 42.155 AHD
- * The position of features are indicative only.
- * Services shown hereon have been located where possible by field survey. Prior to any excavation or construction on the site, the relevant authority should be contacted for possible location of any other services including those which may be underground.
- * 40.50 indicates natural surface level.
- * Contours shown depict the general topography. They do not represent exact levels other than at spot levels shown.
- * Relationship of improvements to boundaries is diagrammatic only. Where offsets are critical they should be confirmed by further survey.
- * Bearings and distances are by title only. No boundary investigation has been carried out.
- * The shapes, sizes, position, heights and species of trees are approximate only. Further field inspection should be carried out where tree details are considered to critically affect design.



PLAN SHOWING DETAIL, LEVELS & CONTOURS OVER LOT 15B IN DP 344265 KNOWN AS N° 77 LETHBRIDGE STREET, PENRITH

Client:
MARIE GALLAGHER
 PO BOX 1921
 PENRITH



MATTHEW FREEBURN
 LAND, ENGINEERING & MINING SURVEYOR
 SUITE 2, 1st FLOOR, "SURVEYOR HOUSE"
 2 CASTLEREAGH STREET
 PENRITH 2750

Telephone 02 4721 2289
 Fax 02 4721 5646
 email
 matthew@freeburnsurveyors.com

Date: 22/05/2012	Ref: 33347	Sheet 1 of 1
Scale 1: 200	Datum: AHD	Contour: 0.2m
Surveyor: TB/DC	Drawn By: TB/ML	Checked: MF
CC6 - SURVEY 4 - DWG 33347		A3 SHEET

Appendix C

Plans