







INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	D/2019/113
Address	145 Darling Street, BALMAIN NSW 2041
Proposal	Alterations and additions to the existing building and change of use to a boarding house with ground floor cafe
Date of Lodgement	25 March 2019
Applicant	Boston Blyth Fleming Town Planners
Owner	Insurance Direct Pty Ltd
Number of Submissions	20 in objection
Value of works	\$3,313,539.00
Reason for determination at Planning Panel	Clause 4.6 variation/ Exceeds officer delegation / Number of submissions / FSR breach
Main Issues	<ul style="list-style-type: none"> • FSR Breach • Height • Heritage Conservation • Parking shortfall • Commercial Use • Acoustic privacy • Visual Privacy
Recommendation	Refusal
Attachment A	Reasons for refusal
Attachment B	Plans of proposed development
Attachment C	Operational Plan of Management
Attachment D	Clause 4.6 Exception to Development Standards



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

Note: Due to scale of map, not all objectors could be shown.

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions, change of use and the addition of an additional storey of an existing building located in a residential zone for a boarding house and basement car park at 145 Darling Street, Balmain. The application was notified to surrounding properties and twenty (20) submissions were received.

The main issues that have arisen from the application include:

- Non-compliance with the FSR development standard;
- Inadequate Clause 4.6 request;
- Amenity impacts on neighbouring properties;
- Inadequate internal amenity;
- Inadequate parking;
- Inadequate boarding house facilities; and
- Height, bulk and scale of the development in a predominately residential area.

The non-compliances and planning issues arising from the proposal are considered significant and are not acceptable. The application is recommended for refusal.

2. Proposal

The proposal involves the addition of a storey on top of the existing structure with a partial effective height of four (4) storeys to Cooper Street and effective height of three (3) storeys to Darling Street.

The boarding house has 18 rooms; commercial tenancy; roof top amenity including pool, terrace, gym, and communal office space with separate printer room.

The existing partial basement car park is accessed from Cooper Street and includes nine (9) car spaces (inclusive of one (1) disabled parking space, six (6) motorcycle spaces and bicycle space, as well as a bin storage area (commercial and residential) and communal laundry and drying area.

The proposal involves significant changes to the existing building including (but not limited to) the height, gross floor area, setbacks, built form, roof form and new openings.

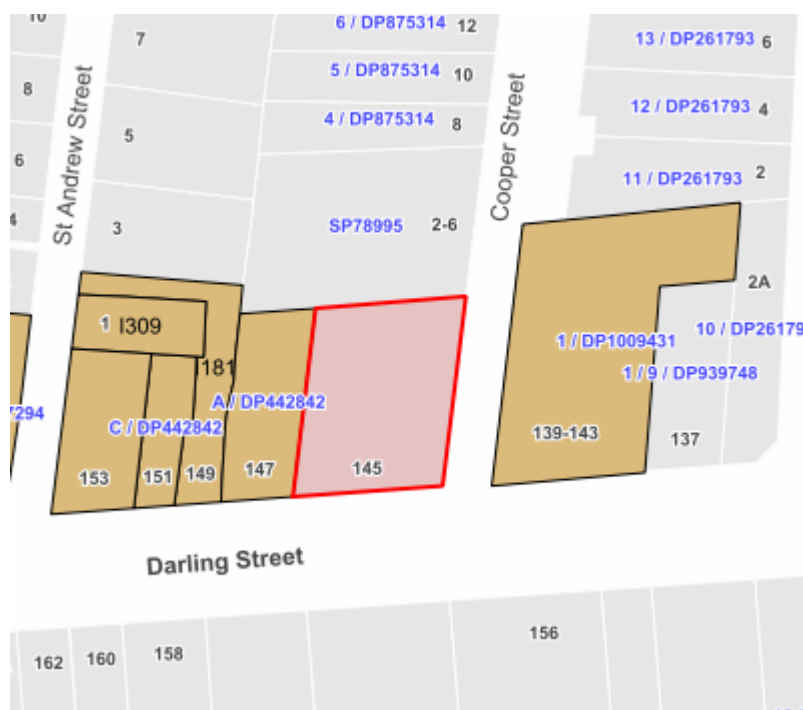
3. Site Description

The site is rectangular in shape (oblique corners) with an area of approximately 469sqm. It is located on the northern side of Darling Street, and has a primary street frontage to Darling Street as well as a secondary frontage to Cooper Street to the west.

Currently the site is occupied by a partial two/three storey commercial building with vehicle access from Cooper Street. The building is a commercial typology. The site is bounded by predominate single and double storey residential dwellings, including heritage items and is adjacent to Balmain Bowling Club to the South.

The site is not identified as containing a Heritage item however is located within a heritage conservation area. Heritage Items to the East and West of the site include, but not limited to:

- 139-143 Darling Street to the east.
- 147, 149, 151 and 153 Darling Street to the West



4. Background

4(a) Site history

The following section outlines the relevant development history of the subject site and any relevant applications on surrounding properties.

Subject Site

Application	Proposal	Decision & Date
PREDA/2018/192	Alterations and Additions to the existing building and change of use to boarding house with ground floor cafe	Issued – 25/9/2019
CCP/2016/298	Enclosure of the loading dock and use of the existing building as office premises.	Approved (private) – 9/8/2016
M/2015/28	Modification of Development Consent D/2014/372 which approved enclosure of the loading dock and use of the existing building as an office premises. Modifications include the amendment of complying and non-complying air conditioning units located on the roof, additional acoustic measures in the basement and on the roof, the deletion of Condition 13 which requires all plant and associated equipment to be located within the approved building envelope, and ground floor changes to the Darling Street elevation.	Operational consent – 2/7/2015
D/2014/372	Enclosure of the loading dock and use of the existing building as office premises. Variation to Floor Space Ratio development standard.	Operational Consent – 2/7/2015

BA/280/1991	Industrial/Commercial – Use of premises for packaging, mail distribution and refurbish façade.	Approved – 12/11/1991
-------------	--	-----------------------

4(b) Application history

The following table outlines the relevant history of the subject application.

Date	Discussion / Letter/ Additional Information
31 May 2019	<p>A letter to the applicant requesting the application be withdrawn was issued on the 31 May 2019. The request required significant changes to address concerns that were not satisfied under the initial PREDA.</p> <p>Items included, not it limited too:</p> <ul style="list-style-type: none"> • Reduction in height • Increased third level setback to Darling Street • Amenity of rooms and excessive recreation amenity not consistent with a low cost boarding house • Compliance with parking <p>The response from the applicant was he would contact the owners. No further correspondence was received in the matter.</p>

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979.

5(a) Environmental Planning Instruments

The application has been assessed against the relevant Environmental Planning Instruments listed below:

- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy (Affordable Rental Housing) 2009
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Leichhardt Local Environmental Plan 2013

The following provides further discussion of the relevant issues:

5(a)(i) State Environmental Planning Policy No 55—Remediation of Land—

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. LDCP 2013 provides controls and guidelines for remediation works. SEPP 55 requires that remediation works must be carried out in accordance with a Remediation Action Plan (RAP) as approved by the consent authority and any guidelines enforced under the Contaminated Land Management Act 1997.

The site has not been used in the past for activities which could have potentially contaminated the site. It is considered that the site will not require remediation in accordance with SEPP 55.

5(a)(ii) *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*

A BASIX Certificate was submitted with the application.

5(a)(iii) *State Environmental Planning Policy (Affordable Rental Housing) 2009*

State Environmental Planning Policy (Affordable Rental Housing) 2009 (the SEPP ARH) provides guidance for design and assessment of boarding house developments. The SEPP, which commenced operation on 31 July 2009, provides controls relating to various matters including height, floor space ratio, landscaped area, solar access and private open space requirements. The main design parameters are addressed below:

(i) Standards that cannot be used to refuse consent (Clause 29)

Clause 29 of the ARH SEPP prescribes that a consent authority must not refuse consent to a development application for a boarding house development if the development satisfies the following numerical controls:

(a) Density - Floor Space Ratio (Clause 29(1))

“A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:

- (a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or*
- (b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or*
- (c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register - the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus:*
 - (i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or*
 - (ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.”*

Under the Interpretation provisions in Clause 4 of the SEPP existing maximum floor space ratio means as follows:

“existing maximum floor space ratio means the maximum floor space ratio permitted on the land under an environmental planning instrument or development control plan applying to the relevant land, other than this Policy or State Environmental Planning Policy No 1 - Development Standards.”

The site is zoned R1 – General Residential under the LEP. A boarding house is permissible within the zone with the consent from Council.

Under the LEP, the maximum floor space ratio (FSR) permitted on the land is 0.7:1 for a site over 450sqm. Whilst the site does not contain a heritage item that is identified in an Environmental Planning Instrument, interim heritage order, or the State Heritage Register, as residential flat buildings are permitted on the land an additional FSR of 0.5:1 under Clause 29(1)(c)(i) would apply to the development. Consequently the maximum allowable FSR for the site for a boarding house development under the Affordable Rental Housing SEPP would be 1.2:1.

The development has a gross floor area (GFA) of 743.9sqm which represent a FSR of 1.61:1.

The proposal does not comply with the floor space ratio requirements of the SEPP. The Clause 4.6 objection is not supported.

(b) Building Height (Clause 29(2)(a))

“If the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land.”

The drawings indicate that the proposal has a maximum height of 12.9 metres above existing ground level, at the highest point. The site does not have a prescribed minimum or maximum height nominated under the LEP or DCP, however in comparison to the immediate adjoining buildings it is higher, up to two storeys, which is considered inconsistent with the surrounding street scape.

(c) Landscaped Area (Clause 29(2)(b))

“If the landscape treatment of the front setback area is compatible with the streetscape in which the building is located.”

The existing building has a nil front & secondary setback as it is an existing building with no change to its footprint.

The proposal seeks to maintain a nil front setback which is considered reasonable in this instance.

(d) Solar Access (Clause 29(2)(c))

“Where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9.00am and 3.00pm in mid-winter.”

In principle the communal living room on the upper floor consists of an outdoor terrace, swimming pool, active spaces (gym) and communal office, and are not considered a ‘living room’, therefore cannot comply with the requirements.

In addition, there is a communal area in the entrance foyer that South facing and provided nil amenity.

(e) Private Open Space (Clause 29(2)(d))

“If at least the following private open space areas are provided (other than the front setback area):

- (i) *one area of at least 20 square metres with a minimum dimension of 3 metres is provided for the use of the lodgers;*
- (ii) *if accommodation is provided on site for a boarding house manager - one area of at least 8 square metres with a minimum dimension of 2.5 metres is provided adjacent to that accommodation.”*

The proposal includes 109sqm of private open space on a roof top level that included active and passive (work) spaces. The minimum area and dimension is met, however is not supported due to amenity impact to surrounding residential dwellings. The proposal provides adequate private open space, in principle, in accordance with the SEPP.

(f) Parking (Clause 29(2)(e))

“If:

- (i) *in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and*
- (ii) *in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and*
- (iia) *in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and*
- (iii) *in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,*

The development is not carried out by or on behalf of a social housing provider; as such at least 0.5 parking spaces are required for each boarding room. The development has 19 boarding rooms and therefore generates the requirement of 10 parking spaces. 9 parking spaces are provided in the proposed basement level. This does not comply with the suggested car parking rates. The applicant was required to fully comply as there is a commercial shop as part of the proposal, and although the site is serviced by buses on Darling Street, the predominant area has restricted residential parking and the site has the ability to comply with the provision, but either reducing the number of boarding rooms or deleting the commercial component (as per the PRED Advice).

(g) Accommodation Size (Clause 29(2)(f))

“If each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:

- (i) *12 square metres in the case of a boarding room intended to be used by a single lodger, or*
- (ii) *16 square metres in any other case.”*

There are 12 rooms under 16sqm. Each of these rooms indicates a double bed. Although the applicant has stated they are all single rooms, the amenity of each room with a double bed accessible by either two or even as little as one side and elevated provide poor amenity and usability. It is considered the rooms do not meet the minimum requirement for non-single sized rooms.

(ii) Standards for Boarding Houses (Clause 30)

Clause 30 of the SEPP prescribes that a consent authority must not consent to a development to which this Division applies unless it is satisfied of each of the following:

- (a) *a boarding house has 5 or more boarding rooms, at least one communal living room will be provided.*

A communal living room provided on the ground floor is inadequate. The communal space on the roof top is either active or business centric passive. The clause is not satisfied.

- (b) *no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres.*

No room exceeds 25sqm (excluding private kitchens and bathrooms).

(c) *no boarding room will be occupied by more than 2 adult lodgers.*

All rooms can accommodate either one or two lodgers.

(d) *adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger.*

Adequate bathroom facilities are provided within each boarding room. There is not specified detail of refrigeration, dry store, cooking facilities and sink shown on the plan for the kitchen. Several of the kitchen had a dimension of less than 2.5m, which would be inadequate for basic dimensions of fixed and loose appliances as mentioned above. Therefore are considered inadequate.

(e) *if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager.*

One boarding room has been provided for a boarding house manager on the ground floor.

(f) *if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use.*

N/A

(g) *at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.*

6 motorcycle and 8 bicycle spaces are provided for 19 boarding rooms. The proposal provides sufficient motorcycle parking.

(iii) Character of Local Area (Clause 30A)

Under the provisions of Clause 30A of the ARH SEPP, applications for new boarding houses must satisfy a local character test which seeks to ensure developments proposed under the SEPP are consistent with the design of the area.

The immediate area is largely characterised by single, double and triple storey residential dwelling houses, detached and attached.

The area is characterised by diverse building types, and scales, however the predominate single and double storey sandstone heritage listed dwellings the east and the west of the site are to be considered. Although the part three storey commercial building is existing, the addition of another level would be uncharacteristic. Is not supported by Council Heritage Advice, as the setback is not great enough to ensure it sits subserviently into the street scape.

The proposed land use is not inconsistent with the existing character of the area. However as discussed in this report, the proposal, particularly in terms of its built form and resulting amenity impacts, is not consistent with the desired future character of the area outlined under the distinctive neighbourhood controls of LDCP2013.

▪ *5(a)(iv) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*

An assessment has been made of the matters set out in Clause 20 of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. It is considered that the carrying out of the proposed development is not consistent with the objectives of the Plan and would have an adverse effect on environmental heritage, the visual environmental, the natural environment and open space and recreation facilities for the following reasons:

- The height, elevation, setback and use of the part third level for the use of passive and active private open space within close proximity of residential use would have a significant negative impact as proposed.

5(a)(v)Leichhardt Local Environment Plan 2013 (LLEP 2013)

The application was assessed against the following relevant clauses of the Leichhardt Local Environmental Plan 2013:

- Clause 1.2 – Aims of the Plan
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.7 – Demolition Requires Development Consent
- Clause 4.3A(3)(a) – Landscaped Area for residential development in Zone R1
- Clause 4.3A(3)(b) – Site Coverage for residential development in Zone R1
- Clause 4.4 – Floor Space Ratio
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards
- Clause 5.10 – Heritage Conservation
- Clause 6.1 – Acid Sulphate Soils
- Clause 6.4 – Stormwater management
- Clause 6.10 – Use of existing buildings in Zone R1
- Clause 6.11 – Adaptive reuse of existing non-residential buildings in Zone R1
- Clause 6.13 – Diverse housing

The following table provides an assessment of the application against the development standards:

Standard (maximum)	Proposal	% of non compliance	Compliances
Floor Space Ratio Required: 0.7:1 Additional bonus for affordable housing 0.5:1 Total allowable 1.2:1	1.61:1	34%	No
Landscape Area 20%	0%	100%	No
Site Coverage 60%	100%	66%	No

The following provides further discussion of the relevant issues:

Clause 4.6 Exceptions to Development Standards

As outlined in table above, the proposal results in a breach of the following development standard/s:

- Clause 4.3A(3)(a) – Landscaped Area for residential development in Zone R1
- Clause 4.3A(3)(b) – Site Coverage for residential development in Zone R1
- Clause 4.4 – Floor Space Ratio

The applicant has only applied for Clause 4.6 for the breach in FSR.

Clause 4.6(2) specifies that Development consent may be granted for development even though the development would contravene a development standard.

1. *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
2. *Development consent may be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.*
3. *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment: In this instance the additional storey and its active use for affordable boarding house has amenity impacts that cannot be supported. The objection is not well founded and is not supported.

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*

Comment: The applicant has not addressed the matters required under Clause 4.6 Exceptions to development standards, and it is considered not to be well founded in this instance. The proposal will result in a detrimental impact on the public interest and cannot satisfy the objectives of the development standards and General Residential zoning as demonstrated below:

- The proposal is not compatible with the desired future character of the area in relation to building bulk, form and scale
- The proposal does not comply with the Floor Space Ratio, Landscaped Area or Site Coverage standards, and does not provide a suitable balance between landscaped areas and the built form
- The proposal results in any adverse amenity impacts to the surrounding properties.
- No Clause 4.6 objections were provided for the beach on site coverage and landscaped area.

The Secretary has provided concurrence.

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

The granting of concurrence to the proposed variation of the development standard will not raise any issues of state or regional planning significance.

(b) *the public benefit of maintaining the development standard, and*

The proposed variation to the development standard will compromise the long term strategic outcomes of the planning controls to the extent that a negative public benefit will result. In this regard, there is detrimental material public benefit to the enforcing of the development standards.

(c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The justification is not supported.

5(b) Draft Environmental Planning Instruments

There are no relevant Draft Environmental Planning Instruments.

5(c) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Leichhardt Development Control Plan 2013.

Part	Compliance
Part A: Introductions	
Section 3 – Notification of Applications	Yes
Part B: Connections	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	Yes
B3.1 Social Impact Assessment	Yes
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
Part C	
C1.0 General Provisions	No
C1.1 Site and Context Analysis	No
C1.2 Demolition	Yes
C1.3 Alterations and additions	No
C1.4 Heritage Conservation Areas and Heritage Items	No
C1.5 Corner Sites	No
C1.6 Subdivision	N/A
C1.7 Site Facilities	No
C1.8 Contamination	N/A
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	No
C1.12 Landscaping	No
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	N/A
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	Yes
C1.17 Minor Architectural Details	No
C1.18 Laneways	N/A
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A

C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	Yes
Part C: Place – Section 2 Urban Character	
Suburb Profile	
C2.2.2.1 Darling Street Distinctive Neighbourhood.	No
Part C: Place – Section 3 – Residential Provisions	
C3.1 Residential General Provisions	No
C3.2 Site Layout and Building Design	No
C3.3 Elevation and Materials	No
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	N/A
C3.6 Fences	N/A
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	No
C3.9 Solar Access	No
C3.10 Views	Yes
C3.11 Visual Privacy	No
C3.12 Acoustic Privacy	No
C3.13 Conversion of Existing Non-Residential Buildings	No
C3.14 Adaptable Housing	Yes
Part D: Energy	
Section 1 – Energy Management	
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	Yes
D2.5 Mixed Use Development	Yes
Part E: Water	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	Yes
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	N/A
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	N/A
E1.2.4 Stormwater Treatment	Yes
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	Yes
Part F: Food	
Part G: Site Specific Controls	
N/A	

The following provides discussion of the relevant issues:

C1.0 General Provisions

The proposed development is not considered to meet the objectives under the Clause as the buildings proposed height, bulk and scale in the conservation area is not compatible to the surrounding context. In addition the objective of amenability due to environmental impacts of visual and acoustic privacy cannot be met.

C1.4 Heritage Conservation Areas and Heritage Items

The applicant was asked to reduce the visual bulk and change materials for the third level to address the character of the area in the conservation area under the PREDA. This has not been address satisfactorily. The impact of material and finishes to the elevation and the setback cannot be conditioned; the applicant needs to respond to advice provided and redesign the building. After failing to withdraw the application at the request of Council, the implications to the heritage and conservation area in this instance can only result in a recommendation of refusal.

C1.5 Corner Sites

The proposal does not meet the objectives for the corner site as the applicant was asked to ensure the third level was recessive and had minimal visual impact to address the character and streetscape of the heritage conservation area.

C1.11 Parking

The applicant was asked in the PREDA to address the impacts of Parking. The shortfall of once space is not acceptable in this instance for the use and locale of the development is a built up residential area.

C3.1 Residential General Provisions

It is considered the development does not meet the objectives in terms of character and amenity in the locale and is therefore recommended for refusal.

C3.2 Site Layout and Building Design

The proposed third level, its siting and visual bulk is not characteristic the area and the applicant hasn't achieved a balance that can be accepted in this instance.

C3.3 Elevation and Materials

The materials and finishes and glass elevations, as per the heritage advice, are not acceptable and out of character with the locale. The objectives have not been met.

C3.11 Visual Privacy

The terrace and the western room verandas do not meet the objectives in terms of protection of privacy to adjacent dwelling POS and living areas, and cannot be supported.

C3.12 Acoustic Privacy

The impacts of a 19 room boarding house with a roof top terrace for active and passive uses on the third roof top level adjacent to single residential uses will have detrimental impacts and cannot be supported in this instance.

5(d) The Likely Impacts

The assessment of the Development Application demonstrates that the proposal will have an adverse impact on the locality

5(e) The suitability of the site for the development

The site is zoned R1 General Residential. It is considered that the proposal will have an adverse impact on the adjoining properties and therefore it is considered that the site is unsuitable to accommodate the proposed development.

5(f) Any submissions

The application was notified in accordance with LDCP2013 for a period of 14 days (3 April 2019 to 17 April 2019) to surrounding properties. A total of 20 submissions were received.

The following issues raised in submissions have been discussed in this report:

- The increase in visual bulk from the development – see Section 5(c)
- Privacy implications from the terrace level – see Section 5(c)
- Acoustic implications from the terrace level– see Section 5(c)
- Inadequate parking / traffic– see Section 5(c)
- Use – Boarding house and café (legitimacy) – see below
- Overshadowing– see Section 5(c)

In addition to the above issues, the submissions raised the following concerns which are discussed under the respective headings below:

Issue: The proposal is a hotel/Air BnB/ Backpackers

Comment: The application is for affordable boarding house accommodation. Council acknowledges the passive and active recreation uses on the additional level, and is not in support of these uses or levels due to environmental impacts as discussed in this report.

Issue: Safety and welfare from occupants of boarding house to residence

Comment: Occupants of Boarding house accommodate generally low economic waged professionals; mostly in services industries such as teachers and nurses for example. Council acknowledges concerns for public safety. In this instance, the issues of amenity impact, bulk and scale and heritage streetscape implications are not well founded and the application is not supported because of these reasons, as outlined in this report.

5(g) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

The proposal is contrary to the public interest.

6 Referrals

6(a) Internal

The application was referred to the following internal sections/officers and issues raised in those referrals have been discussed in section 5 above.

Heritage Officer

The application could be supported in regard to matters reviewed as part of these comments subject to further amendments to increase the setback of the third level to ensure minimum visibility from the public domain.

Development Engineer

A preliminary assessment of the development application has indicated that the additional details related to access, parking and stormwater drainage provided to Council appear to be inadequate.

Building Surveyor

The application could be supported in regard to matters reviewed as part of these comments subject to further information.

Health Officer

The application is supported in regard to matters reviewed as part of these comments subject to conditions.

Property Officer

No objection was raised as the existing veranda encroaches public land.

7. Section 7.11 Contributions

Section 7.11 contributions are payable for the proposal.

The carrying out of the proposed development would result in an increased demand for public amenities and public services within the area. A condition requiring that contribution to be paid should be imposed on any consent granted.

8. Conclusion

The proposal does not comply with the aims, objectives and design parameters contained in Leichhardt Local Environmental Plan 2013 and Leichhardt Development Control Plan 2013. The development will result in any significant impacts on the amenity of adjoining premises and the streetscape. The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

9. Recommendation

That Council, as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, refuse the Development Application No. D/2019/113 for Alterations and additions to the existing building and change of use to a boarding house with ground floor cafe at 145 Darling Street, BALMAIN NSW 2041 for the following reasons.

REASONS FOR REFUSAL

1. The applicant has made a written request pursuant to Clause 4.6 of the Leichhardt Local Environmental Plan 2013 to vary the development standard for Clause 4.4 Floor Space Ratio. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is NOT satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds, the proposed development will not be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
2. The proposal does not satisfy the following Clauses of the Leichhardt Local Environmental Plan 2013, pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979:
 - i) Clause 1.2 – Aims of Plan
 - ii) Clause 2.3 – Zone objectives and Land Use Table
 - iii) Clause 4.4 – Floor Space Ratio

- iv) Clause 4.5 – Calculation of floor space ratio and site area
 - v) Clause 4.6 – Exemptions to Development Standards
 - vi) Clause 5.10 – Heritage Conservation
3. The proposal does not satisfy the following Parts of the Leichhardt Development Control Plan 2013, pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979:
- i) Part C – Section 1 – C1.0 General Provisions
 - ii) Part C – Section 1 – C1.3 – Alterations and Additions
 - iii) Part C – Section 1 – C1.4 – Heritage Conservation Areas and Heritage Items
 - iv) Part C – Section 3 – C3.1 – Residential General Provisions
 - v) Part C – Section 3 – C3.1 – Site Layout and Building Design
 - vi) Part C – Section 3 – C3.3 – Elevations and Materials
 - vii) Part C – Section 3 – C3.11 – Visual Privacy
 - viii) Part C – Section 3 – C3.12 – Acoustic Privacy
4. The proposal is considered to result in adverse environmental impacts on the built environment pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
5. The proposal is not considered suitable for the site in its current form pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.

The proposal is not considered to be in the public interest pursuant to Section

- The proposal is considered not to meet the requirements under State Environmental Planning Policy (Affordable Rental Housing) 2009

Attachment A – Reasons for refusal

1. The applicant has made a written request pursuant to Clause 4.6 of the Leichhardt Local Environmental Plan 2013 to vary the development standard for Clause 4.4 Floor Space Ratio. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is NOT satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds, the proposed development will not be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
2. The proposal does not satisfy the following Clauses of the Leichhardt Local Environmental Plan 2013, pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979:
 - i) Clause 1.2 – Aims of Plan
 - ii) Clause 2.3 – Zone objectives and Land Use Table
 - iii) Clause 4.4 – Floor Space Ratio
 - iv) Clause 4.5 – Calculation of floor space ratio and site area
 - v) Clause 4.6 – Exemptions to Development Standards
 - vi) Clause 5.10 – Heritage Conservation
3. The proposal does not satisfy the following Parts of the Leichhardt Development Control Plan 2013, pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979:
 - i) Part C – Section 1 – C1.0 General Provisions
 - ii) Part C – Section 1 – C1.3 – Alterations and Additions
 - iii) Part C – Section 1 – C1.4 – Heritage Conservation Areas and Heritage Items
 - iv) Part C – Section 3 – C3.1 – Residential General Provisions
 - v) Part C – Section 3 – C3.1 – Site Layout and Building Design
 - vi) Part C – Section 3 – C3.3 – Elevations and Materials
 - vii) Part C – Section 3 – C3.11 – Visual Privacy
 - viii) Part C – Section 3 – C3.12 – Acoustic Privacy
4. The proposal is considered to result in adverse environmental impacts on the built environment pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
5. The proposal is not considered suitable for the site in its current form pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.

The proposal is not considered to be in the public interest pursuant to Section

The proposal is considered not to meet the requirements under State Environmental Planning Policy (Affordable Rental Housing) 2009

Attachment B – Plans of Proposed Development

DEVELOPMENT APPLICATION ISSUE A

AT 145 DARLING STREET, BALMAIN NSW 2041
 CLIENT INSURANCE DIRECT
 JOB NO. 1710

LOMBARDO DESIGN STUDIO

PO Box 126 Sunny Hills NSW 2010 t: 0404110648 e: info@lombardo.com.au

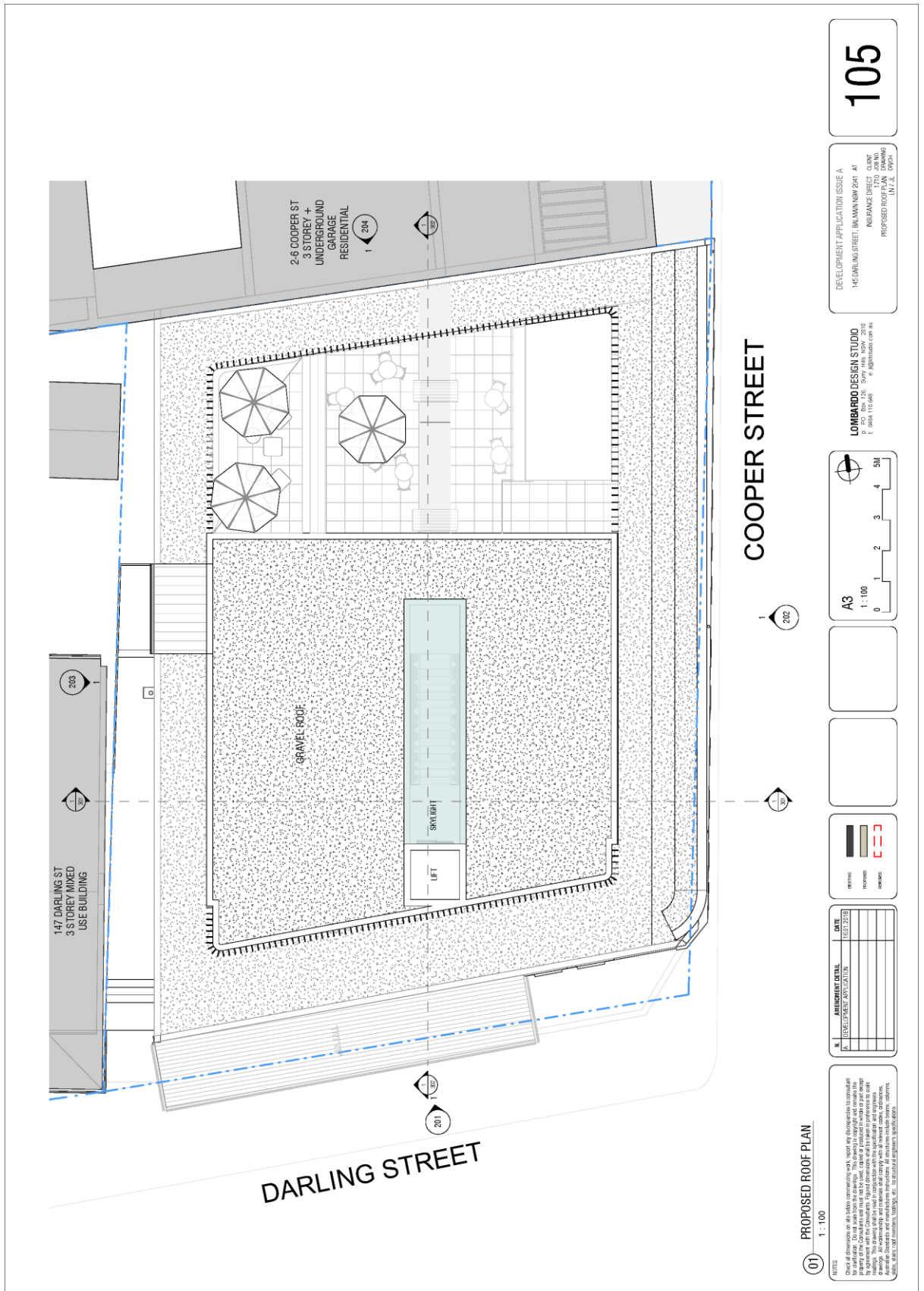
SHEET NUMBER	SHEET NAME	REVISION	REVISION DATE
001	TITLE PAGE & DRAWING SCHEDULE	A	16.01.2018
001	EXISTING DEMO BASEMENT	A	16.01.2018
002	EXISTING DEMO GROUND FLOOR	A	16.01.2018
003	EXISTING DEMO LEVEL 1	A	16.01.2018
004	EXISTING DEMO ROOF	A	16.01.2018
100	SITE PLAN ANALYSIS	A	16.01.2018
101	PROPOSED BASEMENT PLAN	A	16.01.2018
102	PROPOSED GROUND FLOOR	A	16.01.2018
103	PROPOSED LEVEL 1 PLAN	A	16.01.2018
104	PROPOSED ROOFTOP PLAN	A	16.01.2018
105	PROPOSED ROOF PLAN	A	16.01.2018
201	PROPOSED STREET ELEVATION - SOUTH	A	16.01.2018
202	PROPOSED STREET ELEVATION - EAST	A	16.01.2018
203	PROPOSED SIDE ELEVATION - WEST	A	16.01.2018
204	PROPOSED SIDE ELEVATION - NORTH	A	16.01.2018
301	SECTION AA	A	16.01.2018
302	SECTION BB	A	16.01.2018
701	FSR ANALYSIS	A	16.01.2018
901	WINDOW SCHEDULE	A	16.01.2018

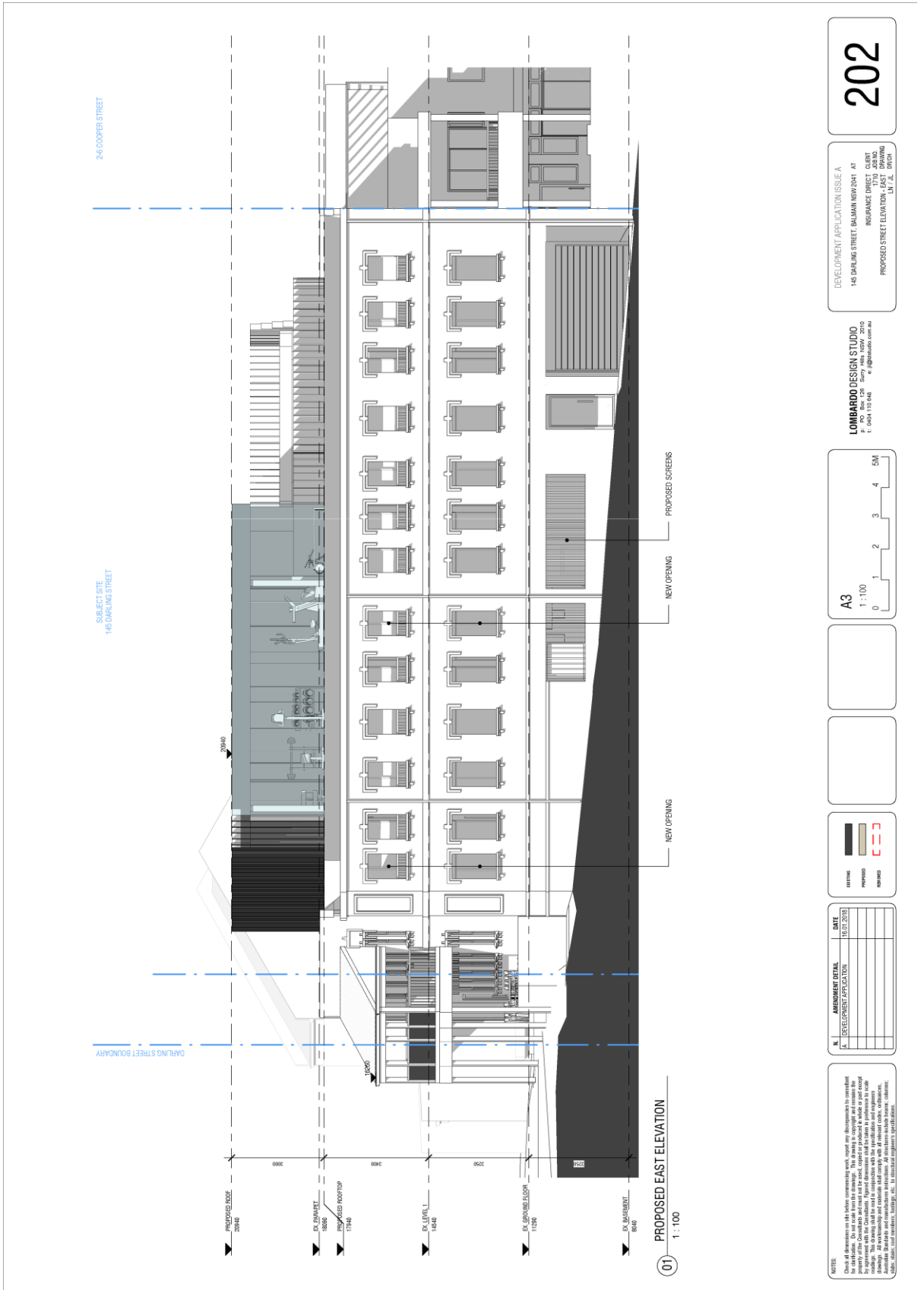
FSR ANALYSIS	
LEICHHART COUNCIL LEP 2013 MEASURED FROM INTERNAL FACE OF EXTERNAL WALLS	
FSR ANALYSIS - PROPOSED	FSR ANALYSIS - PROPOSED
SITE AREA	489 m ²
ALLOWABLE FSR	0.88 m ²
ALLOWABLE GFA	291.4 m ²
GF=380.1m/ L1=388.0m	772.0m ²
EXISTING GFA	1.861
EXISTING TER	
GROUND FLOOR	324.8m ²
LEVEL 1	310.7m ²
ROOFTOP	146.5m ²
TOTAL	744.5m ²
PROPOSED GFA	748.9m ²
PROPOSED FSR	1.56:1

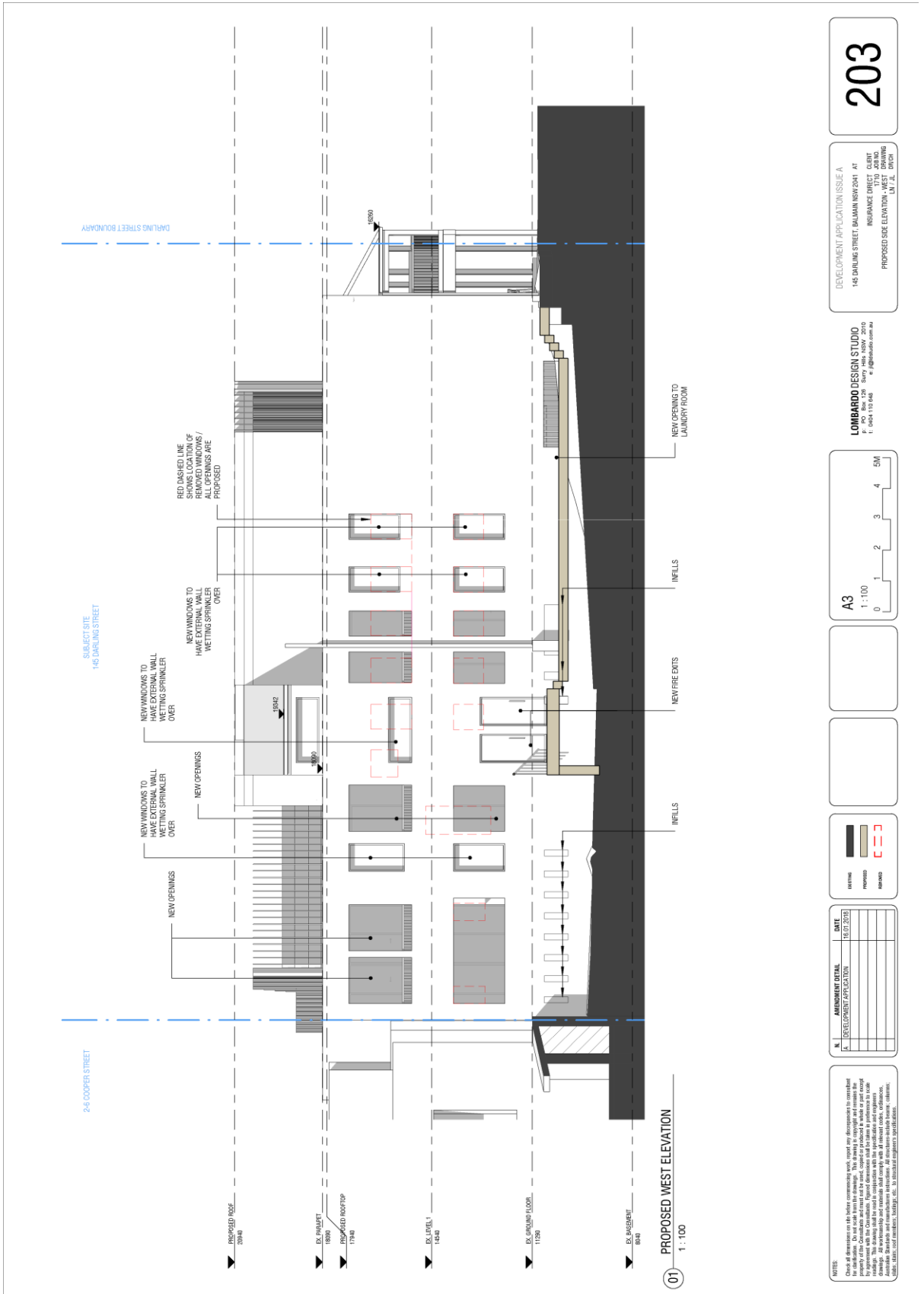
ROOM SIZE SCHEDULE

Room No.	Room (m ²)	Bathroom+ Kitchen (m ²)	Total (m ²)	Balcony (m ²)	Grand Total (m ²)
1	15.1	7.3	22.4	4.5	36.9
2	15.6	6.2	21.8	7.7	29.5
3	15.6	6.2	21.8	7.9	29.7
4	15.6	6.9	22.5	8.2	30.7
5	14.4	8	22.4	7.4	29.8
6 (pvd)	21.4	9.3	30.7	7.1	37.8
7	13.5	6.5	20	3.8	23.8
8	17.3	5.9	23.2	5.0	28.2
9	18.3	6.4	24.7	11.7	36.4
10	15.6	6.2	21.8	7.7	29.5
11	15.6	6.2	21.8	7.9	29.7
12	15.6	6.9	22.5	8.2	30.7
13	14.4	8	22.4	7.4	29.8
14 (pvd)	21.4	9.3	30.7	7.1	37.8
15	13.5	6.6	20.1	3.8	23.9
16	16	8.1	24.1	4.4	28.5
17	17.7	6	23.7	9.0	32.7
18	15.9	7.7	23.6	11.5	35.1

NOT FOR CONSTRUCTION







203

DEVELOPMENT APPLICATION ISSUE A
 145 DARLING STREET, BALMAIN NSW 2041 AT
 INSURANCE DIRECT CLIENT
 17/11/2019
 PROPOSED SIDE ELEVATION, N.T.S. OFFICE

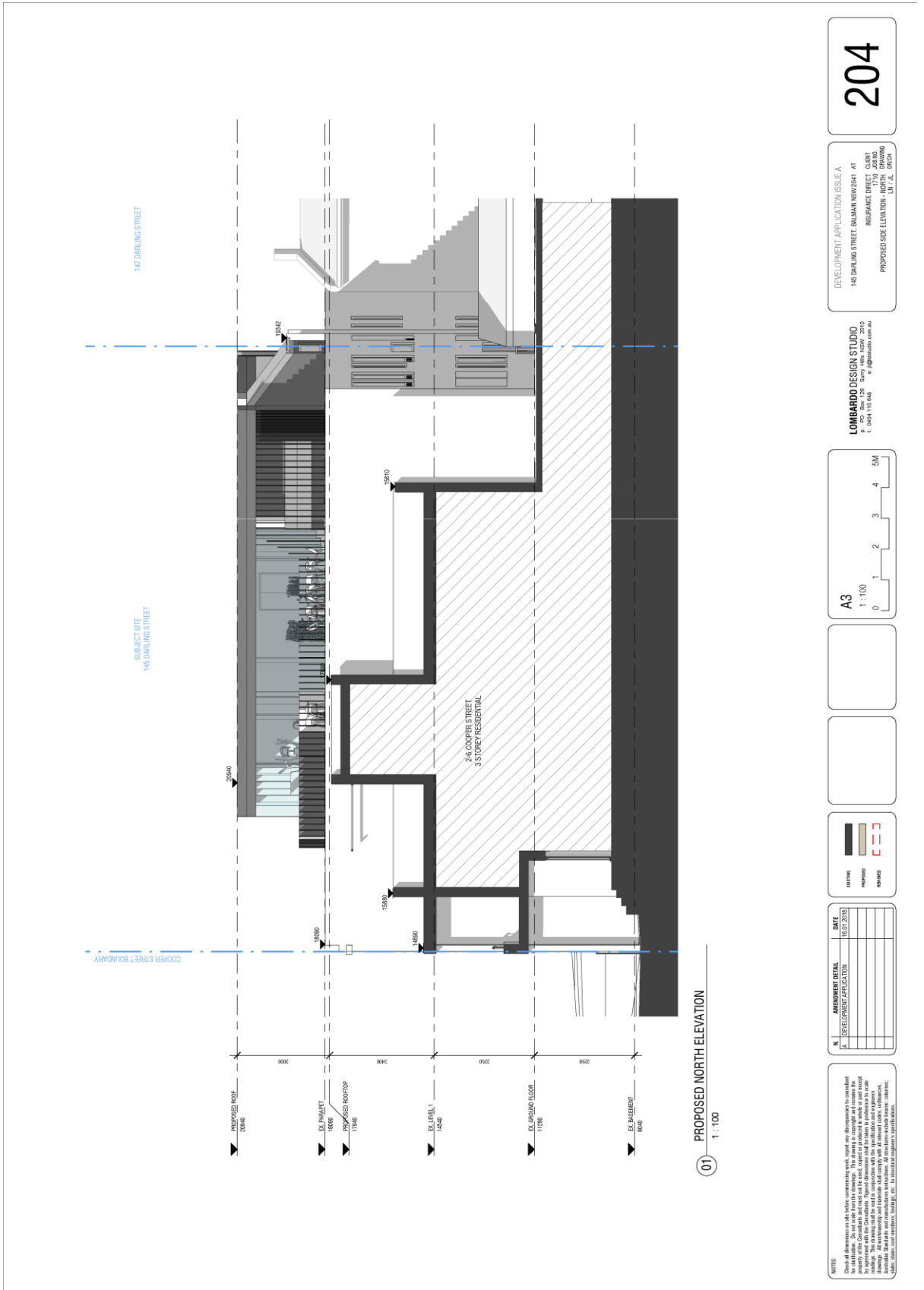
LOMBARDO DESIGN STUDIO
 1/201 Bay Street
 Sydney NSW 2000
 T: 0025 183 642 E: info@lombardodesign.com.au

A3
 1:100
 0 1 2 3 4 5M

EXISTING
 REMOVED
 PROPOSED

N	AMENDMENT DETAIL	DATE
A	DEVELOPMENT APPLICATION	16/07/2019

NOTE:
 Check all dimensions on all sheets, cross-check with overall site dimensions to ensure that all dimensions are correct. This drawing is copyright and remains the property of Lombardo Design Studio. It is to be used for the project for which it was prepared. Any reproduction or use of this drawing without the written consent of Lombardo Design Studio is prohibited. All dimensions are in millimeters unless otherwise stated. All dimensions are to face unless otherwise stated. All dimensions are to be taken from the center of the drawing unless otherwise stated. All dimensions are to be taken from the center of the drawing unless otherwise stated. All dimensions are to be taken from the center of the drawing unless otherwise stated.



NOTES:
 Check all dimensions on all sheets, connections with other drawings to be completed by the contractor. Do not scale from the drawings. This is a preliminary drawing and is not to be used for construction. All dimensions shall be taken to the center of the drawing. All measurements and materials shall comply with all relevant codes, standards, rules, laws and regulations. Liability, etc. in relation to projects, periods, etc.

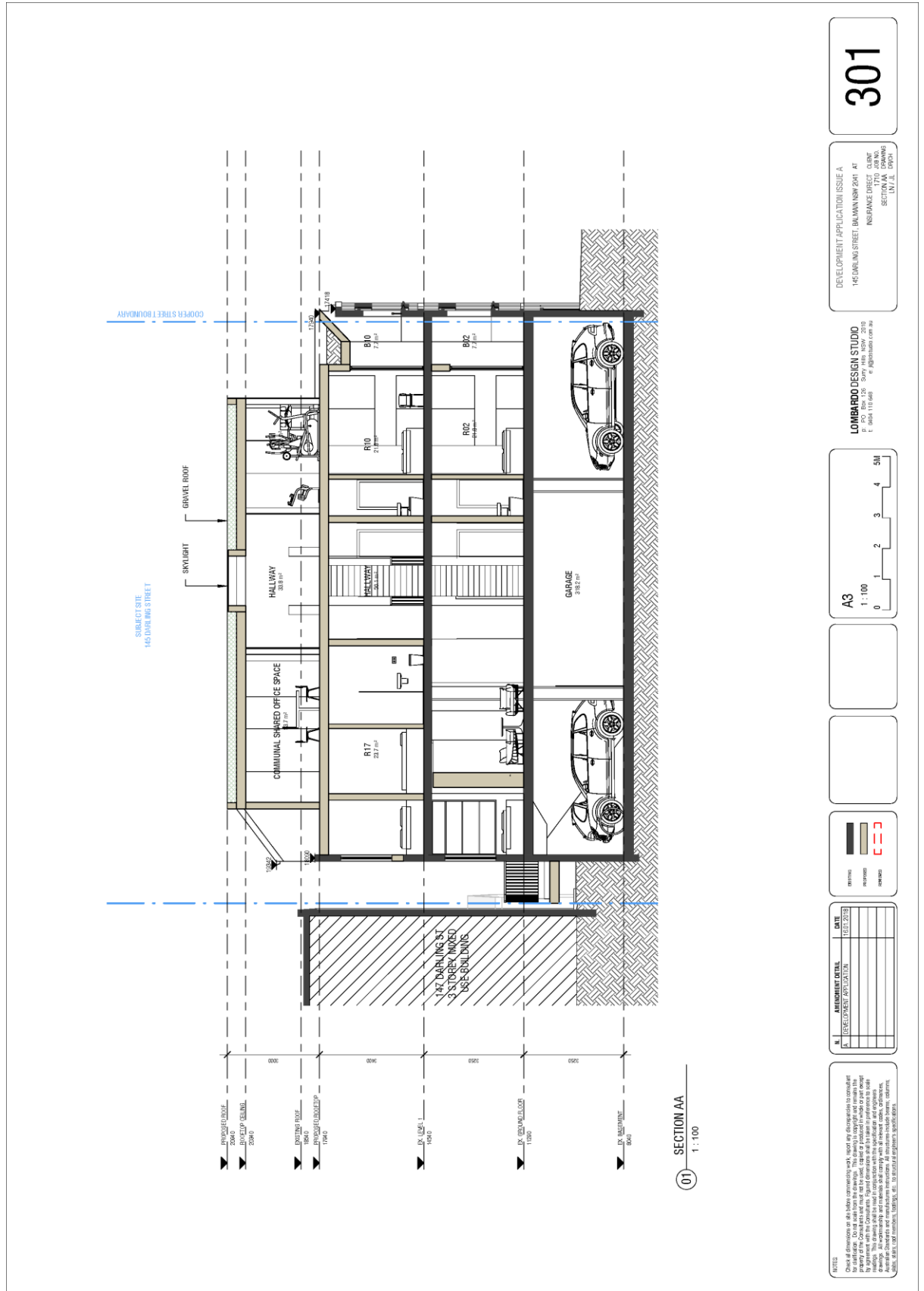
AMENDMENT DETAIL		DATE
A	DEVELOPMENT APPLICATION	16/07/2018

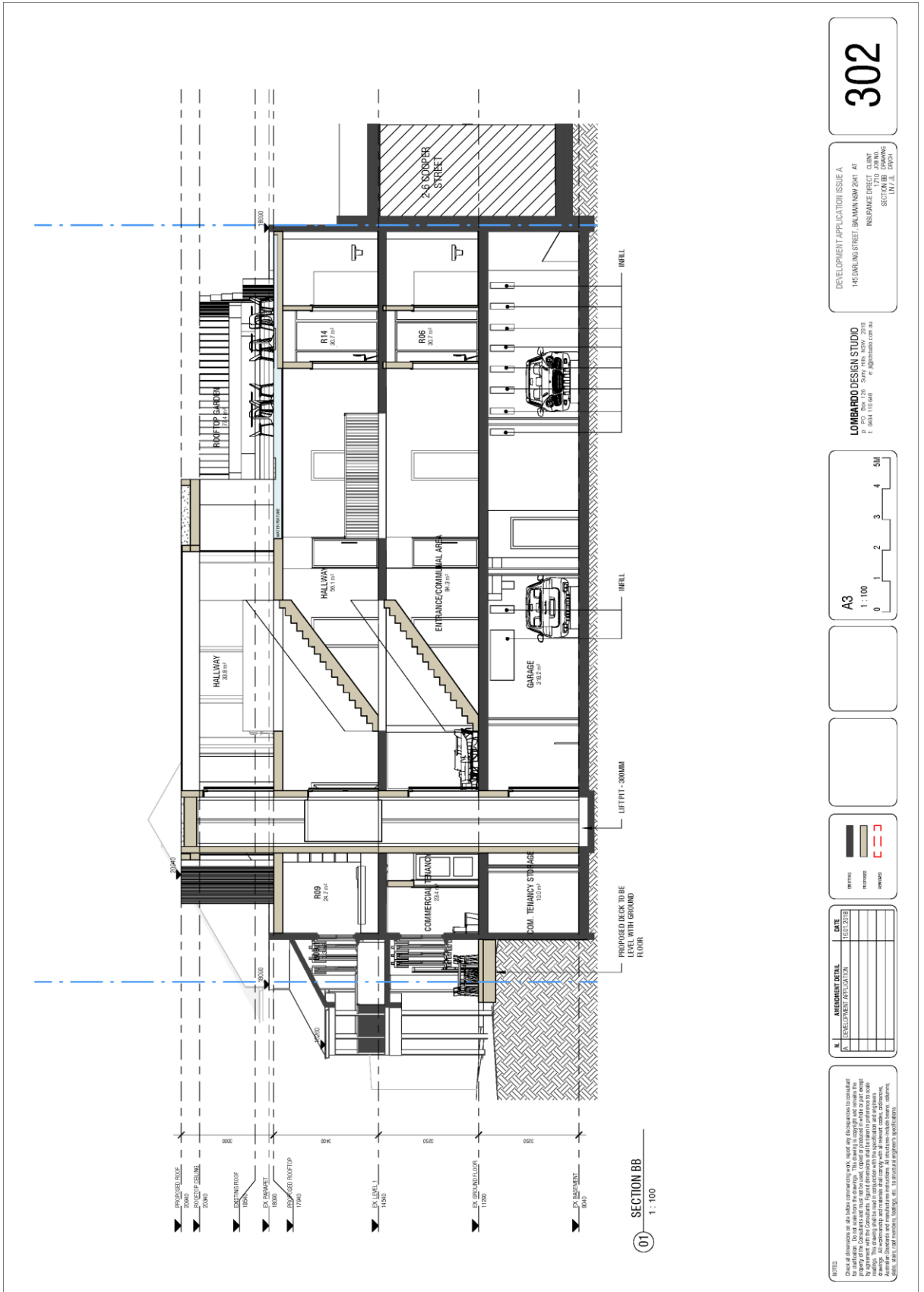


LOMBARDO DESIGN STUDIO
 1/2018 - 2019
 1/2018 - 2019
 1/2018 - 2019

DEVELOPMENT APPLICATION ISSUE A
 145 DARLING STREET, BALMAIN NSW 2041
 INSURANCE DIRECT CLIENT
 17th FLOOR
 PROPOSED SIDE ELEVATION - NOT A.I.C. OFFICE

204





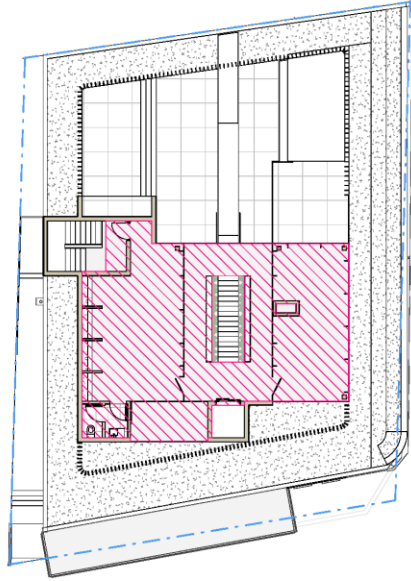
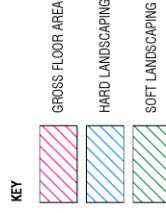
LEICHARDT COUNCIL LEP 2013
MEASURED FROM INTERNAL FACE OF EXTERNAL WALLS

FSR ANALYSIS - PROPOSED

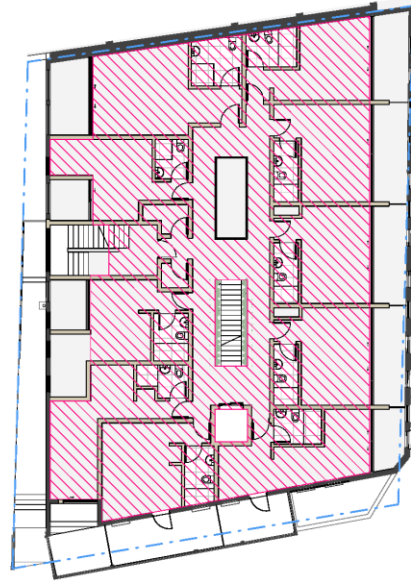
SITE AREA	469 m ²
ALLOWABLE FSR	0.6:1
ALLOWABLE GFA	281.4 m ²
GROUND FLOOR LEVEL 1	319.6 m ²
ROOFTOP	305.7 m ²
TOTAL	108.3 m ²
PROPOSED GFA	733.6 m²
PROPOSED FSR	1.56 : 1

LANDSCAPE ANALYSIS - PROPOSED

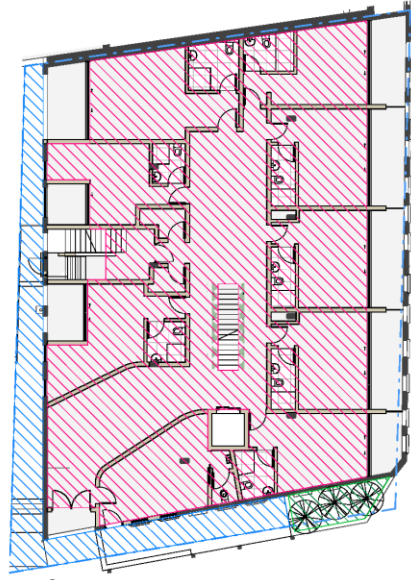
SITE AREA	469 m ²
HARD LANDSCAPING	48.9 m ²
SOFT LANDSCAPING (DEEP SOIL)	7.78 m ²
	0.00 m ²
	= 1.66%
TOTAL LANDSCAPING PERCENTAGE	56.68 m² 12.08%



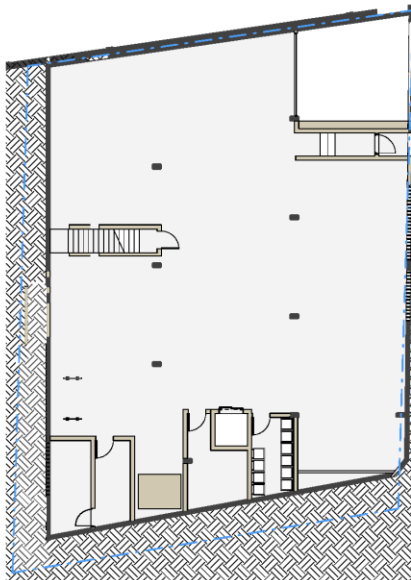
04 FSR ANALYSIS - ROOFTOP
1:200



03 FSR ANALYSIS - LEVEL 1
1:200



02 FSR ANALYSIS - GROUND FLOOR
1:200



01 FSR ANALYSIS - BASEMENT FLOOR
1:200

DEVELOPMENT APPLICATION ISSUE A
145 CARLING STREET, BALMAIN NSW 2041 AT
INSURANCE DIRECT CLIENT
1710 JORNA
FSR ANALYSIS
J.L./N. DPH

701

LOMBARDO DESIGN STUDIO
P. 02 9550 1235 Suny Hill NSW 2030
E. 02 9550 1235
47 Albionville Road

A3
1:200
0 2 4 6 8 10M

000000
000000
000000

N.	APPROVED PANEL	DATE
1	15/03/2018	
2		
3		
4		
5		

NOTES

Check all dimensions on this plan against the site plan and the site plan for consistency. Do not scale from this drawing. This drawing is for information only and does not constitute an offer of any services. It is intended for use by the client and is not to be used for any other purpose without the written consent of the architect. All dimensions are in millimeters unless otherwise stated. All dimensions are to the center of the object unless otherwise stated. All dimensions are to the center of the object unless otherwise stated.

GF WINDOW SCHEDULE						
LEVEL	PHASE CREATED	WINDOW NAME	FRAME WIDTH	FRAME HEIGHT	SILL HEIGHT	
EX. GROUND FLOOR	Existing	GF-X	800	1450	1120	
EX. GROUND FLOOR	Existing	GF-X	800	1450	1120	
EX. GROUND FLOOR	Existing	GF-X	800	1450	1120	
EX. GROUND FLOOR	Existing	GF-X	800	1450	1120	
EX. GROUND FLOOR	Existing	GF-X	800	1450	1120	
EX. GROUND FLOOR	Existing	GF-X	800	1450	1120	
EX. GROUND FLOOR	New Construction	GF-W07	800	1663	900	
EX. GROUND FLOOR	New Construction	GF-W08.1	820	1663	900	
EX. GROUND FLOOR	New Construction	GF-W08.2	820	1663	900	
EX. GROUND FLOOR	New Construction	GF-W08M1	800	1450	1120	
EX. GROUND FLOOR	New Construction	GF-W08M2	800	1450	1120	
EX. GROUND FLOOR: 10						
EX. LEVEL 1	Existing	L1-X	800	1250	740	
EX. LEVEL 1	Existing	L1-X	800	1250	740	
EX. LEVEL 1	Existing	L1-X	800	1250	740	
EX. LEVEL 1	Existing	L1-X	800	1250	740	
EX. LEVEL 1	Existing	L1-X	800	1250	740	
EX. LEVEL 1	New Construction	L1-W15	800	1830	900	
EX. LEVEL 1	New Construction	L1-W16	2120	150	900	
EX. LEVEL 1	New Construction	L1-W16.1	820	1663	1040	
EX. LEVEL 1	New Construction	L1-W16.2	820	1663	1040	
EX. LEVEL 1: 9						
EX. LEVEL 1	New Construction	L1-W17	2120	150	900	
EX. LEVEL 1	New Construction	L1-W18	900	1700	2100	
EX. LEVEL 1: 11						
EX. LEVEL 1	New Construction	L1-09	3076	3076	2100	
EX. LEVEL 1	New Construction	L1-10	4800	4800	2100	
EX. LEVEL 1	New Construction	L1-11	4800	4800	2100	
EX. LEVEL 1	New Construction	L1-12	4800	4800	2100	
EX. LEVEL 1	New Construction	L1-13	4142	4142	2100	
EX. LEVEL 1	New Construction	L1-14	3855	3855	2100	
EX. LEVEL 1	New Construction	L1-15	2020	2020	2100	
EX. LEVEL 1	New Construction	L1-16	1700	1700	2100	
EX. LEVEL 1	New Construction	L1-17	1700	1700	2100	
EX. LEVEL 1	New Construction	L1-099	900	900	2100	
EX. LEVEL 1	New Construction	L1-018	900	900	2100	
EX. LEVEL 1: 11						
EX. LEVEL 1	New Construction	L1-09	3076	3076	2100	
EX. LEVEL 1	New Construction	L1-10	4800	4800	2100	
EX. LEVEL 1	New Construction	L1-11	4800	4800	2100	
EX. LEVEL 1	New Construction	L1-12	4800	4800	2100	
EX. LEVEL 1	New Construction	L1-13	4142	4142	2100	
EX. LEVEL 1	New Construction	L1-14	3855	3855	2100	
EX. LEVEL 1	New Construction	L1-15	2020	2020	2100	
EX. LEVEL 1	New Construction	L1-16	1700	1700	2100	
EX. LEVEL 1	New Construction	L1-17	1700	1700	2100	
EX. LEVEL 1	New Construction	L1-099	900	900	2100	
EX. LEVEL 1	New Construction	L1-018	900	900	2100	
EX. LEVEL 1: 11						
EX. LEVEL 1	New Construction	L1-09	3076	3076	2100	
EX. LEVEL 1	New Construction	L1-10	4800	4800	2100	
EX. LEVEL 1	New Construction	L1-11	4800	4800	2100	
EX. LEVEL 1	New Construction	L1-12	4800	4800	2100	
EX. LEVEL 1	New Construction	L1-13	4142	4142	2100	
EX. LEVEL 1	New Construction	L1-14	3855	3855	2100	
EX. LEVEL 1	New Construction	L1-15	2020	2020	2100	
EX. LEVEL 1	New Construction	L1-16	1700	1700	2100	
EX. LEVEL 1	New Construction	L1-17	1700	1700	2100	
EX. LEVEL 1	New Construction	L1-099	900	900	2100	
EX. LEVEL 1	New Construction	L1-018	900	900	2100	
EX. LEVEL 1: 11						

DOOR SCHEDULE						
LEVEL	PHASE CREATED	WINDOW/DOOR NAME	WIDTH	HEIGHT		
EX. GROUND FLOOR	New Construction	GF-01	3100	2400		
EX. GROUND FLOOR	New Construction	GF-02	4800	2400		
EX. GROUND FLOOR	New Construction	GF-03	4800	2400		
EX. GROUND FLOOR	New Construction	GF-04	4142	2400		
EX. GROUND FLOOR	New Construction	GF-05	4142	2400		
EX. GROUND FLOOR	New Construction	GF-06	3842	2700		
EX. GROUND FLOOR	New Construction	GF-07	2018	2700		
EX. GROUND FLOOR	New Construction	GF-08	2800	2700		
EX. GROUND FLOOR	New Construction	GF-08	2800	2700		
EX. GROUND FLOOR	New Construction	GF-08	2800	2700		
EX. GROUND FLOOR	New Construction	GF-08	2800	2700		
EX. GROUND FLOOR	New Construction	GF-08	2800	2700		
EX. GROUND FLOOR: 10						
EX. LEVEL 1	New Construction	L1-09	3076	2100		
EX. LEVEL 1	New Construction	L1-10	4800	2100		
EX. LEVEL 1	New Construction	L1-11	4800	2100		
EX. LEVEL 1	New Construction	L1-12	4800	2100		
EX. LEVEL 1	New Construction	L1-13	4142	2100		
EX. LEVEL 1	New Construction	L1-14	3855	2100		
EX. LEVEL 1	New Construction	L1-15	2020	2100		
EX. LEVEL 1	New Construction	L1-16	1700	2100		
EX. LEVEL 1	New Construction	L1-17	1700	2100		
EX. LEVEL 1	New Construction	L1-099	900	2100		
EX. LEVEL 1	New Construction	L1-018	900	2100		
EX. LEVEL 1: 11						
EX. LEVEL 1	New Construction	L1-09	3076	2100		
EX. LEVEL 1	New Construction	L1-10	4800	2100		
EX. LEVEL 1	New Construction	L1-11	4800	2100		
EX. LEVEL 1	New Construction	L1-12	4800	2100		
EX. LEVEL 1	New Construction	L1-13	4142	2100		
EX. LEVEL 1	New Construction	L1-14	3855	2100		
EX. LEVEL 1	New Construction	L1-15	2020	2100		
EX. LEVEL 1	New Construction	L1-16	1700	2100		
EX. LEVEL 1	New Construction	L1-17	1700	2100		
EX. LEVEL 1	New Construction	L1-099	900	2100		
EX. LEVEL 1	New Construction	L1-018	900	2100		
EX. LEVEL 1: 11						

NOTE:
 GLASS WINDOW/WALL ON ROOFTOP TOP LEVEL ARE NOT PART OF THE WINDOW SCHEDULE. THESE ARE SHOWN ON THE SECOND FLOOR DIMENSIONS.

DOOR SCHEDULE ONLY SHOWS THE LOCATION AND SPACES FOR THE PURPOSE OF BASK INTERNAL DOOR NOT SHOWN

PROPOSED ROOFTOP	PROPOSED ROOFTOP: 1
	EXISTING
	NEW CONSTRUCTION

Check all dimensions on this plan against the relevant architectural drawings to verify the accuracy of the information provided. The drawings are copyright and remain the property of the architect. All dimensions are in millimetres unless otherwise stated. All dimensions are rounded to the nearest millimetre. All dimensions are in millimetres unless otherwise stated. All dimensions are rounded to the nearest millimetre.

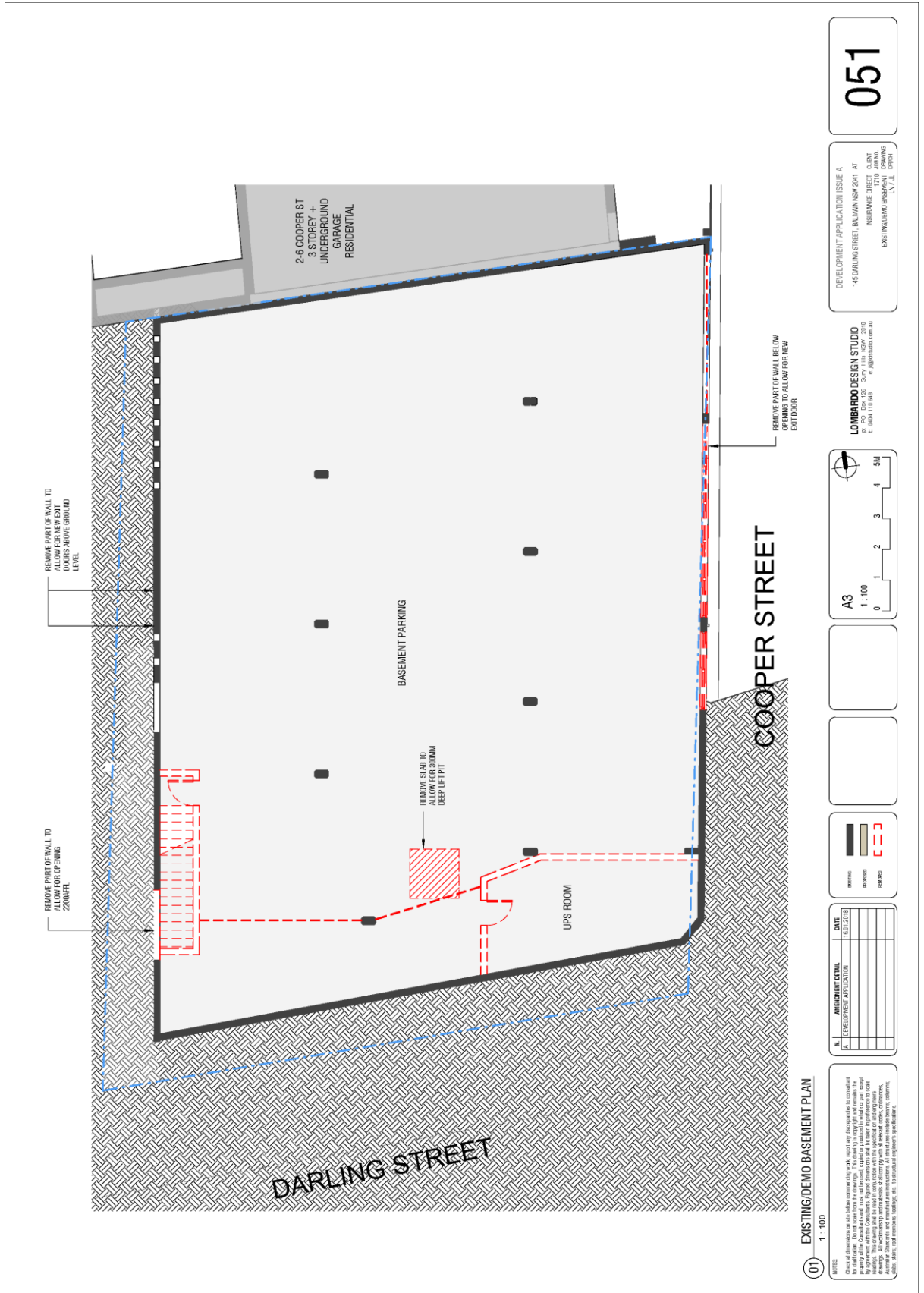
DATE	BY	REVISION
15.02.2023		



DEVELOPMENT APPLICATION ISSUE A
 145 CARLING STREET, BALMAIN NSW 2041 AT
 INSURANCE DIRECT CLIENT
 1770 JOHN MCG
 WINCOM STREET, UNILJ, DPHG

LOMBARD DESIGN STUDIO
 P. 02 9550 1235
 1/1511 1515/16
 47 RICHMOND ROAD

801



(01) EXISTING/DEMO BASEMENT PLAN
1 : 100

NOTES:
Check all dimensions on this plan against the architect's original architectural drawings for verification. Do not scale from the drawings. This drawing is copyright and remains the property of Lombardo Design Studio. It is to be used for the project it was prepared for and is not to be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of Lombardo Design Studio. All dimensions include beam, columns, and other structural elements, unless otherwise specified.

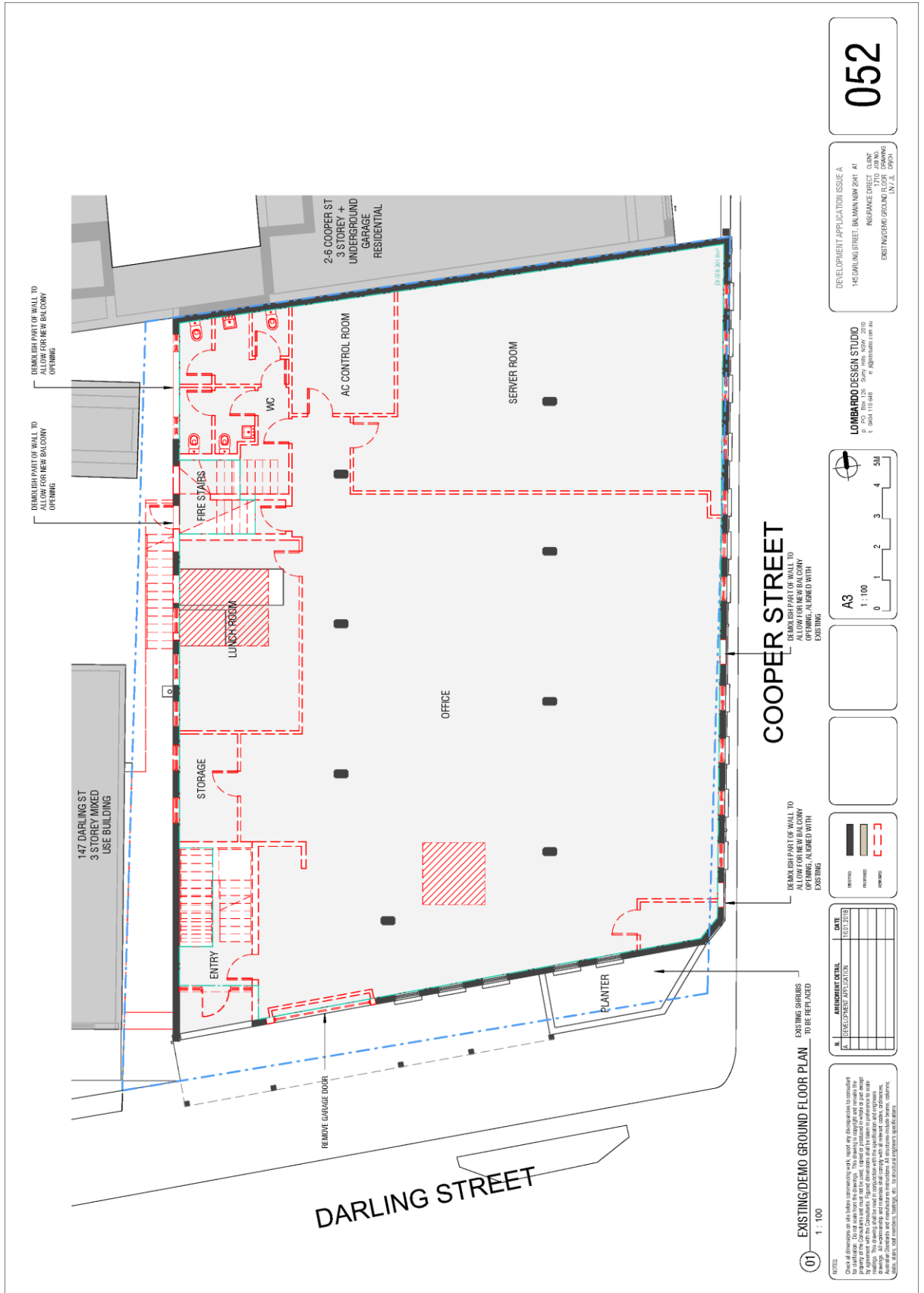
REVISIONS	
NO.	DATE
1	15/01/2018

EXISTING	
DEMOLITION	
CONCRETE	

SCALE	1 : 100
DATE	15/01/2018
PROJECT	145 CARLING STREET, BALMAIN NSW 2041
CLIENT	INSURANCE DIRECT
DESIGNER	Lombardo Design Studio
ARCHITECT	Lombardo Design Studio

051

DEVELOPMENT APPLICATION ISSUE A
145 CARLING STREET, BALMAIN NSW 2041 AT
INSURANCE DIRECT CLIENT
15/01/2018
Lombardo Design Studio
15/01/2018



01 EXISTING/DEMO GROUND FLOOR PLAN
1 : 100

EXISTING SURFACES TO BE REPLACED

DEMOLISH PART OF WALL TO ALLOW FOR NEW BALCONY OPENING, ALIGNED WITH EXISTING

DEMOLISH PART OF WALL TO ALLOW FOR NEW BALCONY OPENING, ALIGNED WITH EXISTING

DEMOLISH PART OF WALL TO ALLOW FOR NEW BALCONY OPENING, ALIGNED WITH EXISTING

EXISTING

REMOVED

DEMOLISHED

NO.	APPROVED PANEL	DATE
1	15/03/2019	

NOTES
Check all dimensions on this plan before construction. Verify any discrepancies for construction. Do not scale from the drawings. This drawing is copyright and remains the property of the architect. It is to be used for the project only and is not to be reproduced, stored, or transmitted in any form or by any means, including electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the architect. All dimensions include beams, columns, and other structural elements, unless otherwise specified. The architect shall be responsible for all construction details.

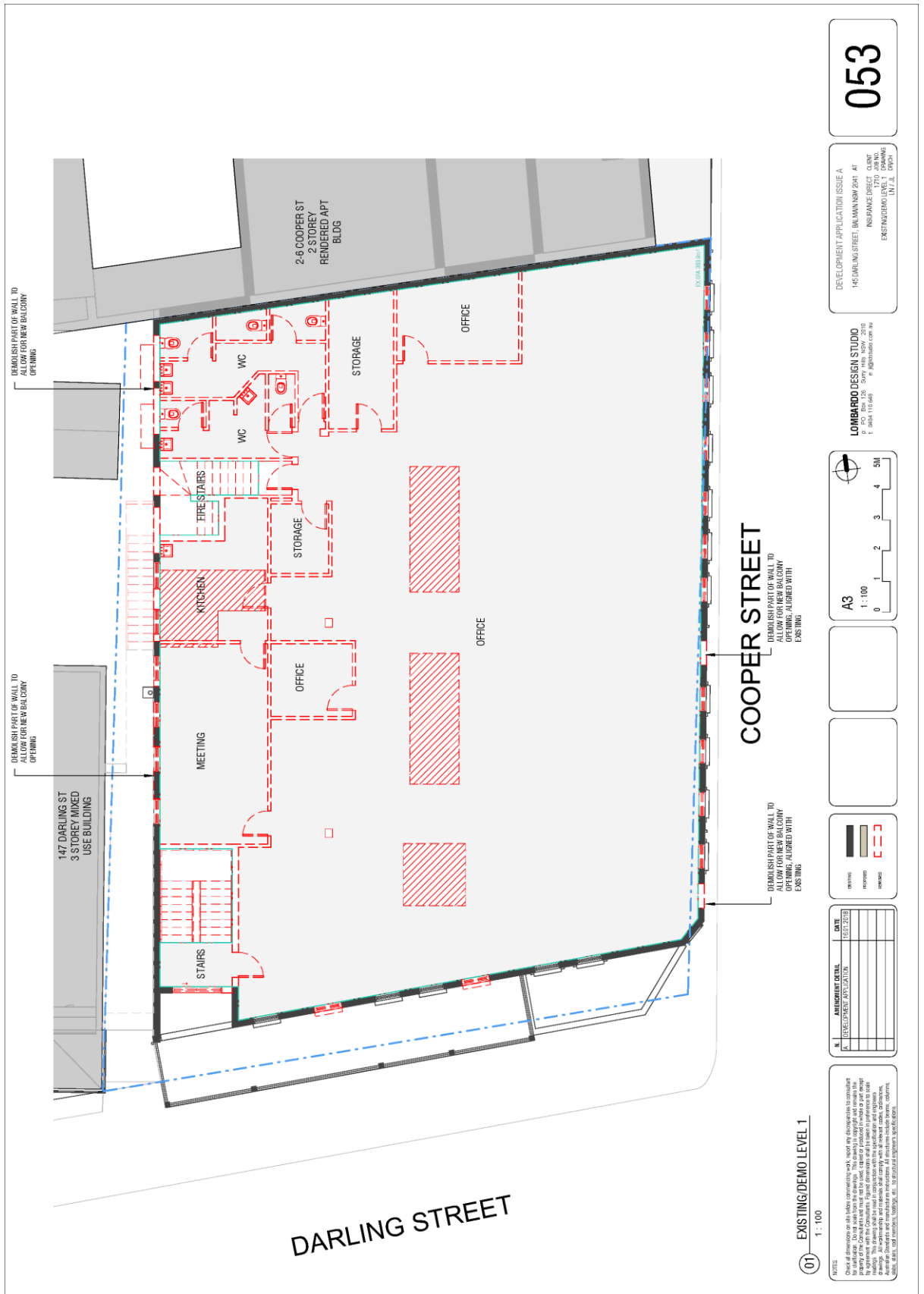
A3
1 : 100

0 1 2 3 4 5M

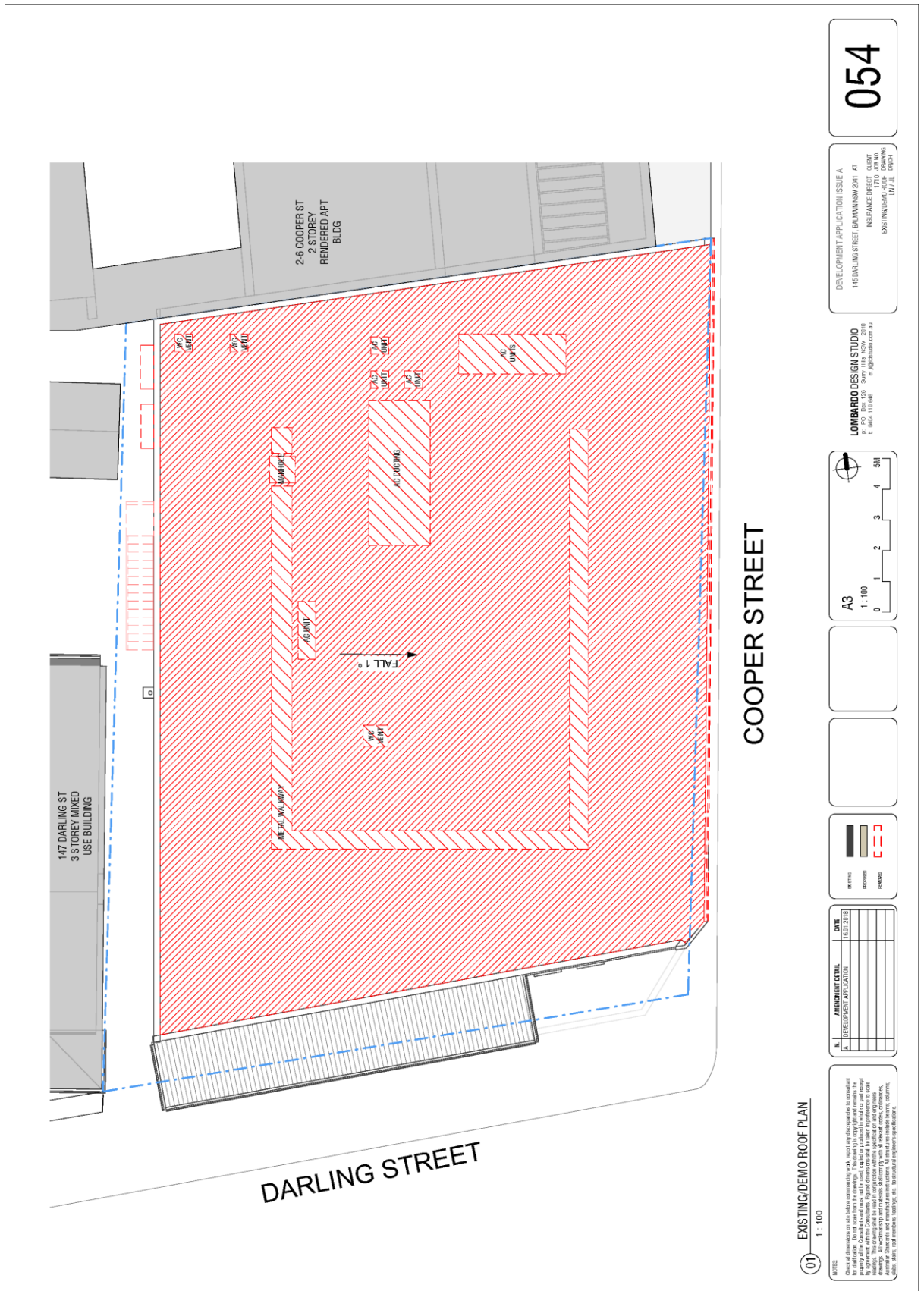
LOMBARD DESIGN STUDIO
P. 00 1505 2551
E. 0011 1505 2551
1505 2551

DEMOLITION APPLICATION ISSUE A
145 DARLING STREET, BALMAIN NSW 2041
INSURANCE DIRECT CLIENT
17/11/2019
EXISTING/DEMO GROUND FLOOR PLAN

052



053



054

DEVELOPMENT APPLICATION ISSUE A
 145 DARLING STREET, BALMAIN NSW 2041 AT
 INSURANCE DIRECT CLIENT
 EXISTING/DEMOS I.V.I. DPH

LOMBARDO DESIGN STUDIO
 P. 03 935 1200 Suny Hill NSW 2039
 E. info@lombardodesign.com.au
 1/100/1/100/1/100/1/100

A3
 1:100
 0 1 2 3 4 5M

NO.	DESCRIPTION	DATE

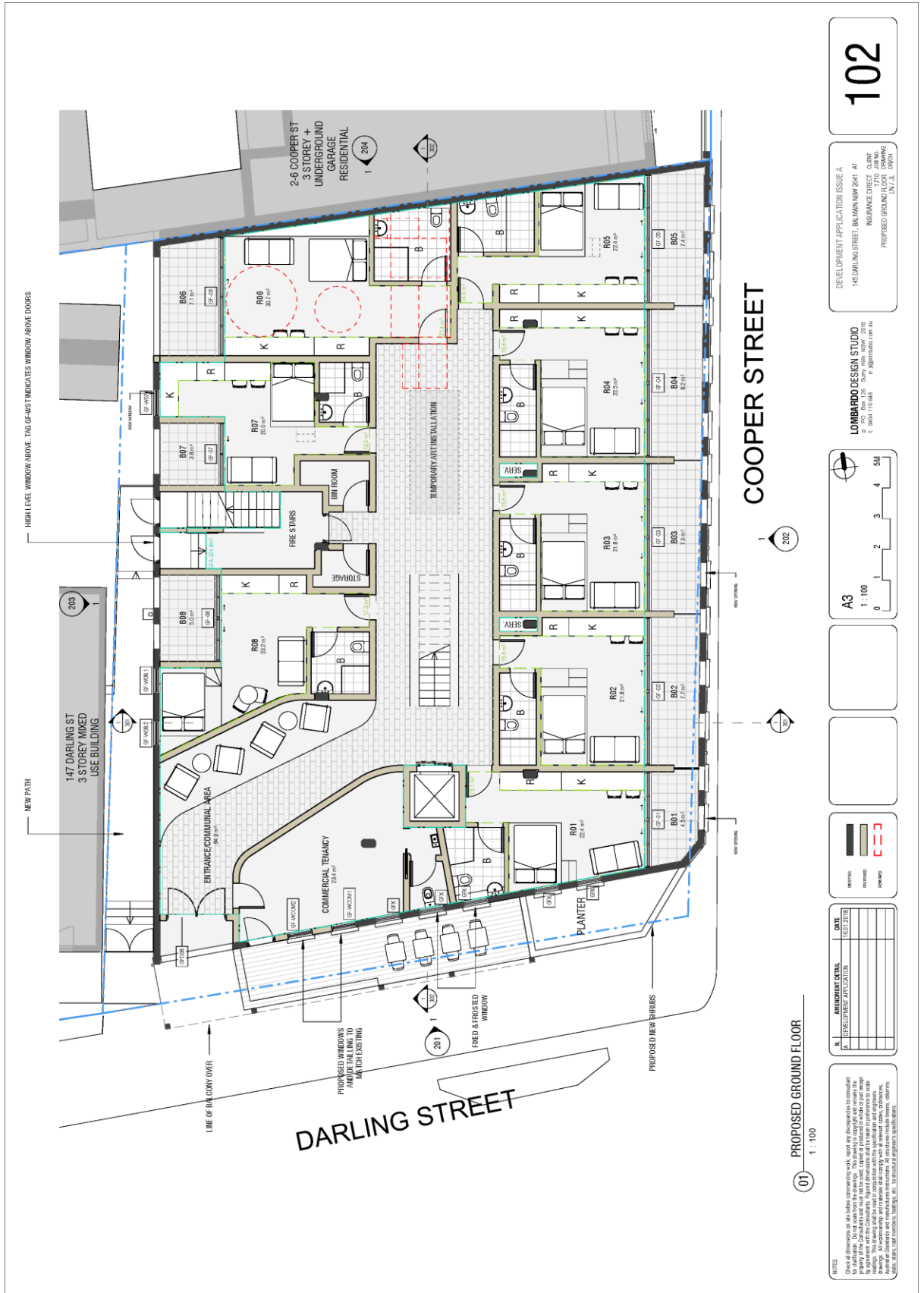
EXISTING
 DEMOS
 DEMOS

NO.	DESCRIPTION	DATE

01 EXISTING/DEMO ROOF PLAN
 1:100

Check all dimensions on this plan against the site plan and the site plan. Do not scale from the drawings. This drawing is copyright and remains the property of Lombardo Design Studio. It is to be used for the project only and is not to be reproduced, stored, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of Lombardo Design Studio. All dimensions include beams, columns, and other structural elements unless otherwise specified.





102

DEVELOPMENT APPLICATION ISSUE A
 145 DARLING STREET, BALMAIN NSW 2041
 INSURANCE DIRECT CLIENT
 1770 JOHNS ROAD
 PROPOSED GROUND FLOOR
 UN/L/A/DPH

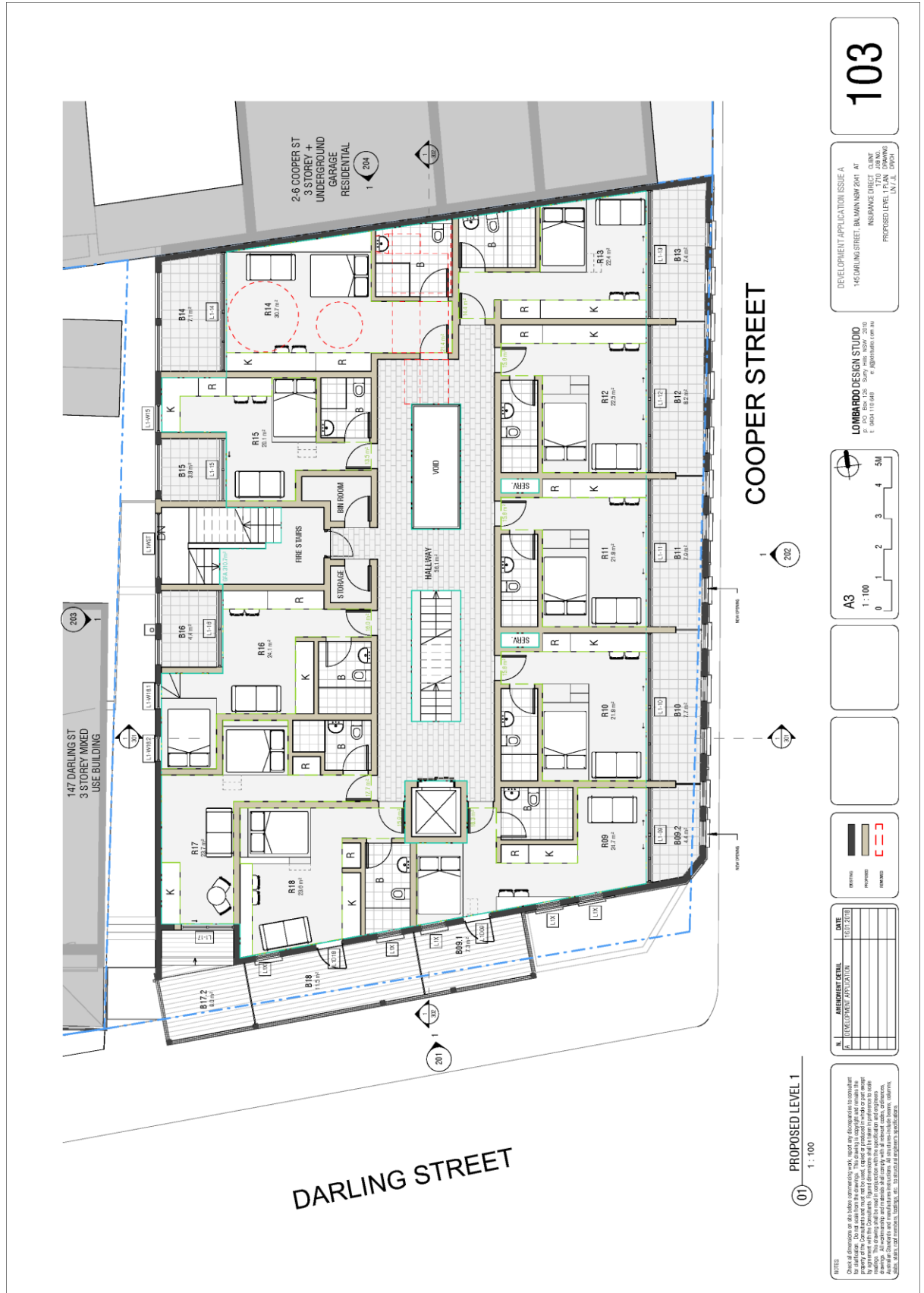
LOMBARD DESIGN STUDIO
 P. PO. 105/106 Sunny Hill NSW 2019
 T. 02 9411 1144
 www.lombarddesign.com.au

A3
 1:100
 0 1 2 3 4 5M

NO.	REVISION	DATE
1	ISSUED FOR PERMIT APPLICATION	15.02.2018

NOTES:
 Check all dimensions on site before construction. All measurements to be taken to the face of the work unless otherwise stated. This drawing is copyright and remains the property of Lombard Design Studio. It is to be used only for the project and site specified. It is not to be used for any other project without the written consent of Lombard Design Studio. All dimensions include beams, columns, slabs, etc. unless otherwise stated. All dimensions are in millimetres unless otherwise stated.

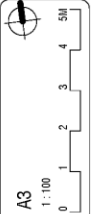
01 PROPOSED GROUND FLOOR 1:100



103

DEVELOPMENT APPLICATION ISSUE A
145 DARLING STREET, BALMAIN NSW 2041
INSURANCE DIRECT CLIENT
1770 JOHNS ROAD
PROPOSED LEVEL 1, 1/1, 1/1, 1/1

LOMBARDO DESIGN STUDIO
P. 02 9593 1235 Suny Hill, NSW 2039
1. 0000 100000 47 Albionville Road

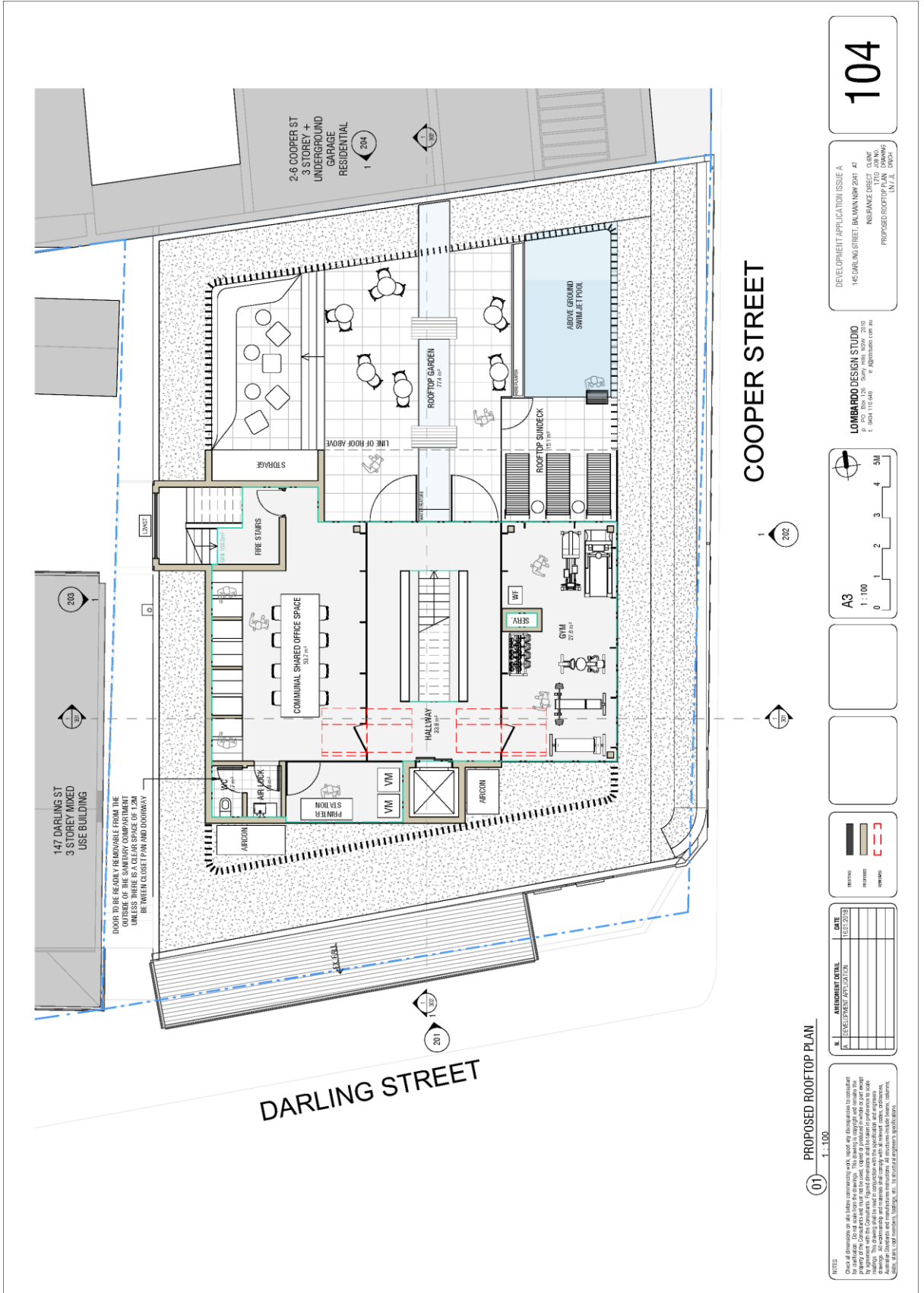


NEW	EXISTING	REMOVE	REWORK
-----	----------	--------	--------

W	WATER SUPPLY	100.00
K	KITCHEN CUPBOARD/STOVE	100.00

01	PROPOSED LEVEL 1	1:100
----	------------------	-------

Check all dimensions on site before construction. Refer to site plan for location of all dimensions to be used for construction. Do not scale from the drawings. This drawing is copyright and remains the property of Lombardo Design Studio. All rights reserved. No part of this drawing may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of Lombardo Design Studio. All dimensions include beams, columns, and other structural elements, unless otherwise specified. All dimensions are in millimeters.



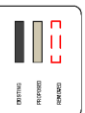
104

DEVELOPMENT APPLICATION ISSUE A
145 DARLING STREET, BALMAIN NSW 2041 AT
INSURANCE DIRECT CLIENT
1770 JOHNS ROAD, NEWCASTLE NSW 2056
PROPOSED ROOFTOP PLAN
UN/1.1

LOMBARD DESIGN STUDIO
P. JO. 02 9574 1200
T. 02 9574 1200
E. info@lombardstudio.com.au



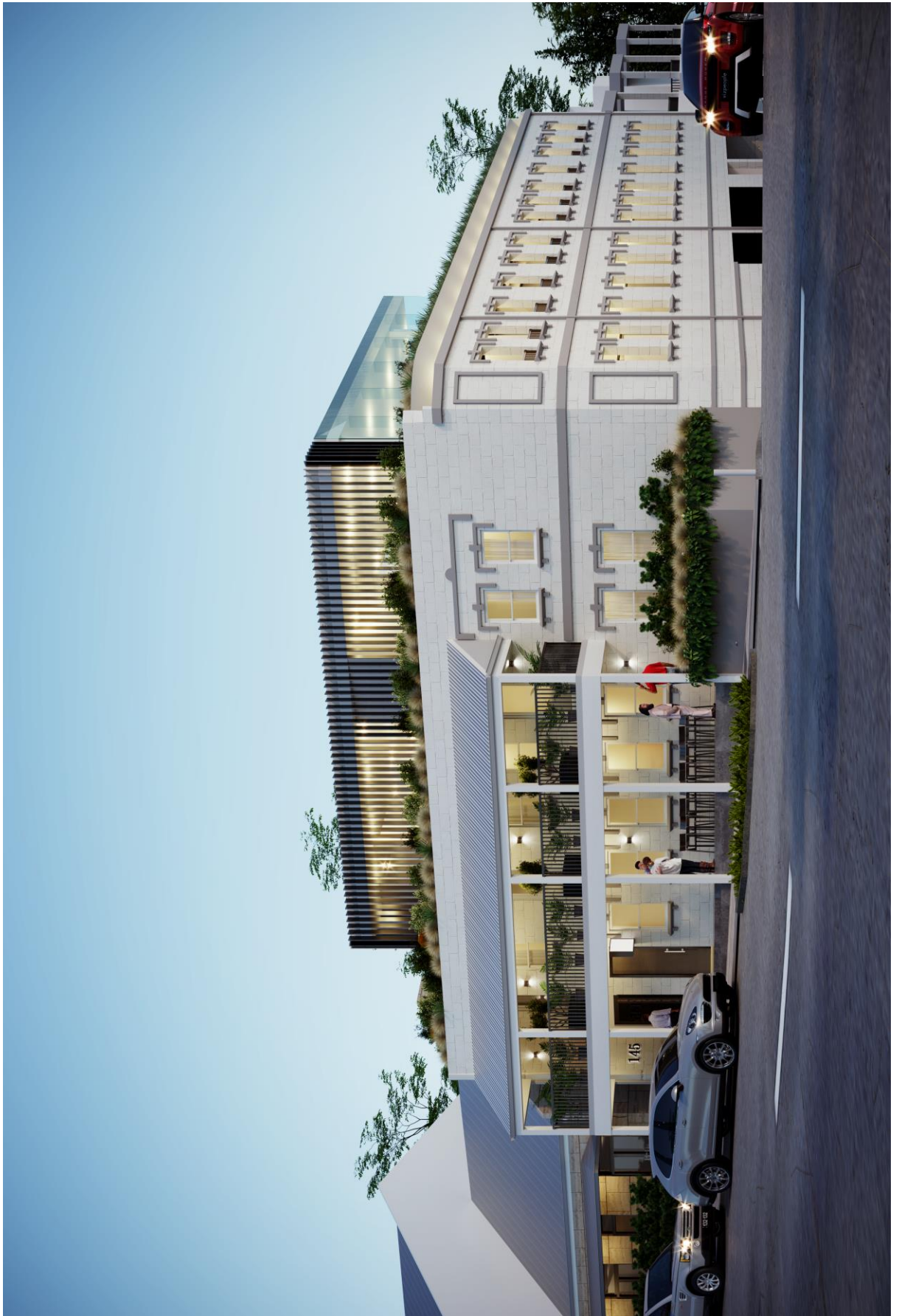
A3
1:100



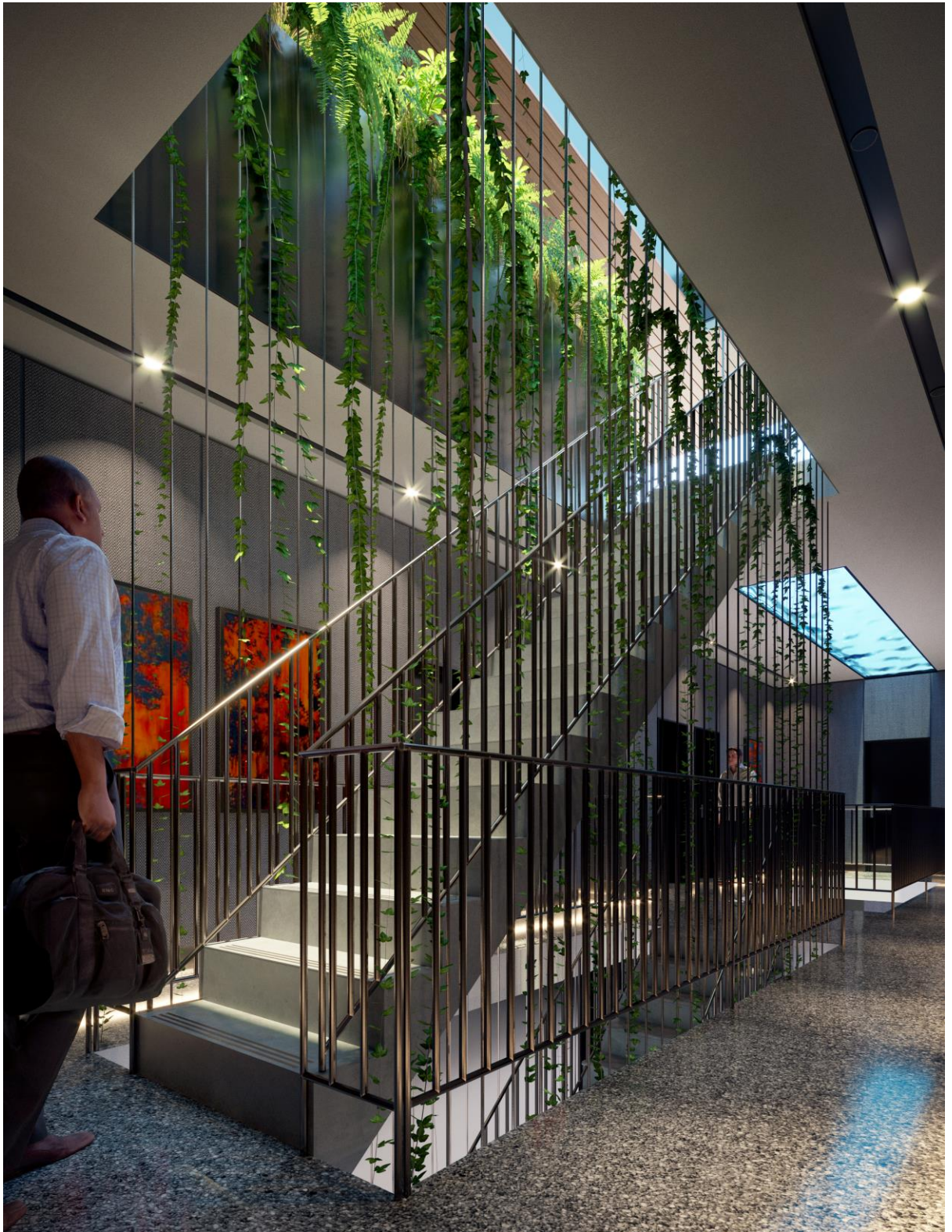
NO.	APPROVED PANEL	DATE
1	DESIGN CONSULTANT	15/07/2018
2		
3		

01 PROPOSED ROOFTOP PLAN
1:100

NOTES:
Check all dimensions on all files, components, etc. before developing for construction.
Do not scale from the drawing. This drawing is copyright and remains the property of Lombard Design Studio. It is to be used only for the project and may not be reproduced without the written consent of Lombard Design Studio.
This drawing is to be used for information only and does not constitute a contract. It is to be used in conjunction with the contract. It is to be used in conjunction with the contract. It is to be used in conjunction with the contract.
All dimensions are in meters. All dimensions are in meters. All dimensions are in meters.







Attachment C– Operational Plan of Management

OPERATIONAL PLAN OF MANAGEMENT

Affordable Rental Housing - Boarding House

145 Darling Street, Balmain

Lot 1, DP100458

The contact persons in respect of all enquiries or public complaints in relation to this plan or the operation of the premises are:

Name: *****
Position: *****
Phone Number: *****

1 Premises to Which this Plan Applies

It is legally described as Lot 1 in Deposited Plan 100458. This plan applies to the Boarding House at 145 Darling Street, Balmain.

1.1 Objectives

The primary purpose of this plan is to ensure the boarding house maintains a high level of amenity for neighbouring properties and for all lodgers residing in the premises. To achieve this, the following matters have been considered:

- Site management
- Amenity of occupants
- Amenity of adjoining neighbours
- House rules
- Internal and external cleanliness and appearance, including communal areas and individual units
- Maintenance of a Complaints register

A full and current copy of all current development consents for the operation of the premises and the boarding house management plan will be kept on-site and made available to Police or Council Officers upon request.

The Applicant will accept compliance with this Plan of Management as a condition of Development Consent.

1.2 Uses to Which this Plan Applies

This plan applies to the Boarding House uses on the site.

1.3 Applicable Development Consents

This plan has been prepared as a component of the following Development Consents:

Development Consent **** - Boarding House

2 Rooms and Occupation

The facility will provide fully-furnished rooms and a choice of single or double rooms.

The facility will provide a lease per furnished room for a minimum 3-month period.

Each room will be fitted with a meter for the separate measurement of electricity, gas and water used to align with the period of the resident's occupation.

3 Management on-site

An experienced on-site manager who will reside on the premises will oversee the day-to-day operations of the Boarding House including matters such as general maintenance and cleanliness of common areas, observance by residents of house rules, and services.

The on-site manager will be assisted by additional non-resident staff as required, with responsibilities including cleaning and maintenance.

The operation of the Boarding House will be further overseen by an off-site Managing Agent experienced in the operation of multiple occupancy residential development (the "Managing Agent").

3.1 Responsibilities of Onsite Manager

Provide a point of contact for residents, neighbours, and emergency services in respect to the operation of the Boarding House.

Keep a list of maintenance requirements identified by residents and pass any maintenance requirements to the Managing Agent promptly for engagement of relevant tradespersons if required.

Maintain a record of resident complaints and incidents (noise etc) and notify the Managing Agent of these.

Oversee the maintenance of grounds, common areas and facilities in a clean and tidy manner, with assistance from non-resident staff as required.

4 Resident Information Brochure

The Resident Information Brochure (“the Brochure”) will contain the house rules that residents must abide by and will be provided with by the Managing Agent in conjunction with the lease.

Each occupant is to be provided with a copy of the Brochure upon commencement of his or her occupation.

4.1 The Brochure will cover at least the following:

Maximum number of two (2) residents per double room and one (1) resident per single room;

Registration of all visitors with no overnight stay permitted;

Respect for other residents and neighbours by keeping noise to a minimum;

Responsibility to maintain the room in a clean and tidy manner;

Use of communal facilities;

Dress code in communal areas;

Zero tolerance of drug use or other illegal activities within the premises;

General cleanliness in common rooms and on grounds; and

Contact details for the on-site manager, Managing Agent and emergency services.

A copy of the Brochure will be attached to the wall of each entry foyer, common rooms and within each of the rooms.

5 Common Area

5.1 Internal Communal Spaces

These areas will be available at all times for the use by residents and their registered visitors. Access will be available via their security key/swipe.

Noise is to be kept to a minimum at all times. The on-site manager is authorised to ask residents and their registered visitors to vacate the communal rooms at any time if the level of noise or behaviour is deemed unacceptable, or house rules as outlined in the Brochure are breached.

5.2 Communal Terrace and Swimming Pool

The communal terrace and swimming pool will not be used after 10.00pm on any night. Access will be available via resident's security key/swipe.

The on-site manager is authorised to ask residents and registered visitors to vacate the communal space at any time if the level of noise or behaviour is deemed unacceptable, or house rules as outlined in the Brochure are breached.

The use of outdoor / open air common areas is not permitted between 10:00pm and 7:00am, seven days per week.

No amplified music is permitted at any time within the outdoor communal areas.

6 Noise Minimisation

Noise from the boarding house is best controlled using a combination of physical mitigation measures as well as noise management measures which can be implemented and enforced by the onsite Manager. The following key aspects are noted:

- External areas should not be used after 10.00pm at night on weekdays and not after midnight on Friday or Saturday.
- No external speakers for music should be installed in the rear garden / communal terrace area.
- Signage shall be erected in the communal outdoor area clearly displaying the time restrictions and to encourage quiet behaviour of boarders.
- Window and door openings to the common room at ground floor level of the premises will be closed after 10.00pm each night.
- Any cleaning of the premises, internal or external and including garden maintenance, shall take place between 8am and 6pm Monday to Friday and 10am to 5pm on weekends and public holidays.

7 Waste Management and Cleaning

Waste will be separated into separate bins for general waste and recycling including plastics, glass, paper and green waste.

Waste will be moved to/from the bin storage area to the curb for collection by Council or a private contractor on a weekly basis, or as required.

Arrangements will be established and maintained for the transfer of bins to the street in time for the nominated collection day, and the return of the bins to the storage area soon after collection occurs. The Onsite Manager will be responsible for undertaking these operations (or overseeing these tasks by the commissioned caretaker).

Empty bins will be washed regularly to maintain appropriate levels of hygiene.

8 Complaints Register

The Managing Agent will be available between the hours 9:00am to 6:00pm, Monday to Saturday, to deal with any complaints or incidents that occur on the premises. The register will contain: -

- Complaint/Incident date and time
- Name of person/police/council making the complaint or notifying of the incident
- Contact details
- Nature of the complaint/incident
- Action taken (by whom and when)
- Indication of what was occurring at the time the noise was happening (if applicable)
- Outcome and/or further action required
- Summary of feedback to the complaint

All complaints shall be dealt with by management with 24 hours of notification.

The complaints register is to be made available to Council, Police or a other authorised person upon formal request.

9 Security and Safety

9.1 General provisions

Each accommodation room entry door will feature a lock (with key or swipe card), and a viewing peep hole.

Common entrances to the Boarding House will only be accessible via key/swipe, unless the on-site manager is in attendance at the front office.

9.2 Evacuation Plan

Building layout indicating, position of lodger rooms relative to the rest of the development, location of fire exits and fire fighting equipment and emergency evacuation procedures shall be displayed in all rooms and common areas.

9.3 Maintenance

Emergency systems are maintained as part of a maintenance contract by a qualified company. All equipment will be tested and checked in accordance with the relevant Australian Standards. Any faults are documented and rectified immediately. These checks take place, weekly, monthly, bi-annually or annually depending on the required frequency.

9.4 Annual Certification

Annual certification of Fire Safety Equipment to be carried out by a fire consultant.

Attachment D – Clause 4.6 Exception to Development Standards

ANNEXURE 1 – CLAUSE 4.6 EXCEEDANCE TO A DEVELOPMENT STANDARD – FLOOR SPACE RATIO 4.4 OF THE LEP

1 Annexure 1 – Clause 4.6 exceedance to a development standard – Floor Space Ratio 4.4 of the LEP

1.1 4.6 exceedance – Floor space ratio clause 4.4 of the LEP

Clause 4.6 of Leichhardt Local Environmental Plan 2013 provides a mechanism to allow an exception to a development standard.

Clause 4.4 is titled 'Floor space ratio' and is a development standard.

Clause 4.2 (2) states:

- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The permissible FSR for the site is 0.7:1. However, an additional 'bonus' 0.5:1 (FSR) is available above the LEP pursuant to the ARH SEPP. Therefore, the applicable FSR is 1.2:1.

The existing building has an FSR of 1.65:1.

The proposed development has an FSR of 1.59:1 representing a non-compliance of 32.5%.

It is noted that there is actually a decrease in gross floor area under the current proposal when compared to the existing building as the areas which are converted from general use to balconies are excluded from the gross floor area calculation.

As required by clause 4.6 (3) the following is a written request for the proposed development to exceed the development standard for the consent authority's consideration.

1.2 Clause 4.6

Relevant to the subject matter, Clause 4.6 states:

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority*

ANNEXURE 1 – CLAUSE 4.6 EXCEEDANCE TO A DEVELOPMENT STANDARD – FLOOR SPACE
RATIO 4.4 OF THE LEP

has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Secretary has been obtained.*

1.3 Context and Format

This “written request” has been prepared having regard to “Varying development standards: A Guide” (August 2011), issued by the former Department of Planning, and relevant principles identified in the following judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;*
- *Moskovich v Waverley Council [2016] NSWLEC 1015; and*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.*

“Varying development standards: A Guide” (August 2011) outlines the matters that need to be considered in DA’s involving a variation to a development standard. The Guide essentially adopts the views expressed by Preston CJ, in *Wehbe v Pittwater Council [2007] NSWLEC 827* to the extent that there are effectively five (5) different ways in which compliance with a development standard can be considered unreasonable or unnecessary as follows:

1. The objectives and purposes of the standard are achieved notwithstanding non-compliance with the development standard.

ANNEXURE 1 – CLAUSE 4.6 EXCEEDANCE TO A DEVELOPMENT STANDARD – FLOOR SPACE
RATIO 4.4 OF THE LEP

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
4. The development standard has been 'virtually abandoned or destroyed' by the Councils own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

As Preston CJ, stated in *Wehbe*, the starting point with a SEPP No. 1 objection (now a Clause 4.6 variation) is to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances. The most commonly invoked 'way' to do this is to show that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard.

In that regard, Preston CJ, in *Wehbe* states that "... *development standards are not ends in themselves but means of achieving ends*". Preston CJ, goes on to say that as the objectives of a development standard are likely to have no numerical or qualitative indicia, it logically numbered 1 to 5, and referred to above. This is a common misconception. If the objection satisfies one of the tests, then it may be upheld by a Council, or the Court standing in its shoes. Irrespective, an objection can also satisfy a number of the referable tests.

In *Wehbe*, Preston CJ, states that there are three (3) matters that must be addressed before a consent authority (Council or the Court) can uphold an objection to a development standard as follows:

1. The consent authority needs to be satisfied the objection is well founded;
2. The consent authority needs to be satisfied that granting consent to the DA is consistent with the aims of the Policy; and
3. The consent authority needs to be satisfied as to further matters, including non-compliance in respect of significance for State and regional planning and the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

Further, it is noted that there is a not uncommon view that any variation to a development standard greater than 10% cannot be approved under Clause 4.6. This is not correct, and the consent authority has the power to grant consent to a variation to a development standard, irrespective of the numerical extent of variation (subject to some limitations not relevant to the present matter).

The relatively recent decision of Paine J, in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* suggests that demonstrating that a development satisfies the objectives of the development standard is not necessarily sufficient, of itself, to justify a variation, and that it may be necessary to identify reasons particular to the circumstances of the proposed development on the subject site.

ANNEXURE 1 – CLAUSE 4.6 EXCEEDANCE TO A DEVELOPMENT STANDARD – FLOOR SPACE
RATIO 4.4 OF THE LEP

Irrespective, a more recent decision of Preston CJ, in *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* involved relatively substantial variations to the applicable building height (55%) and floor space ratio (20%) controls.

Preston CJ, found that “*the Commissioner did not need to be directly satisfied that compliance with each development standard is unreasonable*” follows that the test is a qualitative one, rather than a quantitative one. As such, there is no numerical limit which a variation may seek to achieve.

The above notion relating to ‘numerical limits’ is also reflected in Paragraph 3 of Circular B1 from the former Department of Planning which states that:

As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small in others it may be numerically large, but nevertheless be consistent with the purpose of the standard.

It is important to emphasise that in properly reading *Wehbe*, an objection submitted does not necessarily need to satisfy all of the tests or *unnecessary in the particular circumstances of the case, but only indirectly by being satisfied that the applicant’s written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary*”.

Further, Commissioner Tuor, in *Moskovich v Waverley Council [2016] NSWLEC 1015*, considered a DA which involved a relatively substantial variation to the FSR (65%) control. Some of the factors which convinced the Commissioner to uphold the Clause 4.6 variation request were the lack of environmental impact of the proposal, the characteristics of the site such as its steeply sloping topography and size, and its context which included existing adjacent buildings of greater height and bulk than the proposal.

The decision suggests that the requirement that the consent authority be satisfied the proposed development will be in the public interest because it is “*consistent with*” the objectives of the development standard and the zone, is not a requirement to “*achieve*” those objectives. It is a requirement that the development be ‘compatible’ with them or ‘capable of existing together in harmony’. It means “*something less onerous than ‘achievement’*”.

Finally, in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ found that it is not necessary to demonstrate that the proposed development will achieve a “*better environmental planning outcome for the site*” relative to a development that complies with the development standard.

1.4 Assessment

What is the underlying object or purpose of the standard?

(a) to ensure that residential accommodation:

- (i) is compatible with the desired future character of the area in relation to building bulk, form and scale, and
- (ii) provides a suitable balance between landscaped areas and the built form, and
- (iii) minimises the impact of the bulk and scale of buildings,

ANNEXURE 1 – CLAUSE 4.6 EXCEEDANCE TO A DEVELOPMENT STANDARD – FLOOR SPACE
RATIO 4.4 OF THE LEP

(b) to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale.

In response to these objectives:

- The proposed development is an adaptive reuse of an existing building.
- The existing building already exceeds the FSR development standard and there is no exacerbation of the existing non-compliance.
- There is no increase in the existing building footprint and no change proposed to the existing landscaped area on the site.
- The height, bulk and scale of the development is consistent with the existing character of the area.
- The overall height, bulk and scale of the development is consistent with the objectives for FSR.
- The proposal will not result in additional adverse privacy, view or overshadowing impacts.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings when viewed from the public domain and surrounding residential properties.

Having regard to the matter of Veloshin v Randwick City Council [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design.

In the recent 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

In this regard, we have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation mainly being that the building is existing, the proposal is for the adaptive reuse of the existing building, and the proposal complies with the objectives of the FSR standard. Although not itself determinative, the general paucity of adverse environmental impacts also gives weight to the acceptability of the minor variation sought.

A better environmental planning and urban design outcome is achieved through the adaptive reuse of the existing building.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The Department of Planning published "Varying development standards: A Guide" (August 2011), to outline the matters that need to be considered in Development Applications involving a variation to a development standard. The Guide essentially

ANNEXURE 1 – CLAUSE 4.6 EXCEEDANCE TO A DEVELOPMENT STANDARD – FLOOR SPACE
RATIO 4.4 OF THE LEP

adopts the views expressed by Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 to the extent that there are five (5) different ways in which compliance with a development standard can be considered unreasonable or unnecessary.

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;

The proposed development is generally consistent with, or not antipathetic to, the objectives of the FSR control, notwithstanding the numerical variation.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

The objectives of the FSR control remain relevant, and the proposed development is generally consistent with, or not antipathetic to, the objectives of the FSR control, notwithstanding the numerical variation.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The proposed development is generally consistent with, or not antipathetic to, the objectives of the FSR control, notwithstanding the numerical variation.

Further, the proposed development will provide additional residential accommodation within an established residential environment, offering a good level of internal amenity without imposing any significant or adverse impacts on the amenity of the surrounding land.

In the circumstances, strict compliance with the FSR control would be unreasonable and unnecessary to the extent that the site would be unable to accommodate a form of development that is consistent with the overarching objectives of the SEPP, in circumstances where the building form does not impose any significant or adverse impacts on the amenity of the surrounding land.

4. The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

The FSR control has not specifically been abandoned or destroyed by the Council's actions. Irrespective, Council has historically adopted a relatively flexible approach to the implementation of development standards in circumstances where the objectives of the control are achieved, notwithstanding a minor numerical non-compliance.

5. Compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

Strict compliance with the FSR control would be unreasonable and unnecessary to the extent that the site would be unable to accommodate a form of development that is consistent with the overarching objectives of the SEPP, in circumstances where the building form does not impose any significant or adverse impacts on the amenity of the surrounding land.

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

The proposed variation to the FSR control is reasonable and appropriate in the particular circumstances on the basis of the following considerations:

ANNEXURE 1 – CLAUSE 4.6 EXCEEDANCE TO A DEVELOPMENT STANDARD – FLOOR SPACE
RATIO 4.4 OF THE LEP

- The extent of proposed development is compatible to that accommodated on adjoining and nearby properties.
- The proposed exceedance does not result in an excessive visual building bulk or scale, maintaining an appropriate building presentation to the street frontage and neighbouring properties.
- The proposed variation in FSR is minor in its extent that it would not be perceivable in the visual presentation of the property to surrounding properties.
- The proposed extent of FSR will not significantly alter the spatial characteristics of the existing property.
- The proposed development is capable of being accommodated on the site without imposing any significant or adverse impacts on the amenity of the surrounding land, or the scenic quality of the wider locality.
- The proposed development displays a high level of design quality.
- The proposed development will not result in unreasonable or excessive physical impacts on the neighbouring properties or the streetscape quality.
- The proposed development will improve the existing visual quality of the property to the betterment of the surrounding amenity.
- The proposed development will afford higher levels of amenity for building occupants.
- Strict compliance with the FSR control would be unreasonable and unnecessary to the extent that the site would be unable to accommodate a form of development that is consistent with the overarching objectives of the SEPP, in circumstances where the building form does not impose any significant or adverse impacts on the amenity of surrounding land.
- The proposed development is consistent with, or not antipathetic to, the objectives of the R1 – General Residential zone.
- The proposed development is generally consistent with, or not antipathetic to, the objectives of the FSR control, notwithstanding the numerical variation.
- Noting these characteristics, the proposed variation is assessed as minor and satisfactory in meeting the objectives of the control.

Are there any matters of State or regional significance?

- The proposed variation to the FSR control does not raise any matters of State or regional significance.

What is the public benefit of maintaining the standard?

- The proposed development is generally consistent with, or not antipathetic to, the assumed objectives of the FSR control, notwithstanding the minor numerical variation. In the circumstances, the proposed development does not affect the public benefit of maintaining the FSR control in other instances.

Any other matters?

- There are no further matters of relevance to the proposed variation to the FSR control.

ANNEXURE 1 – CLAUSE 4.6 EXCEEDANCE TO A DEVELOPMENT STANDARD – FLOOR SPACE
RATIO 4.4 OF THE LEP

Zone Objectives and the Public Interest

The proposed development will be in the public interest because it is consistent with the objectives for development within the R1 General Residential zone in which the development is proposed to be carried out. These are stated as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To improve opportunities to work from home.*
- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To provide landscaped areas for the use and enjoyment of existing and future residents.*
- *To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.*
- *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

In response, the proposed development meets the relevant zone objectives by providing affordable accommodation that meets the needs of the community within a general residential setting. Its intent is to provide greater housing choice especially more affordable rental accommodation. The proposed café use will provide for the day to day needs of residents.

The proposed development is of a bulk and scale that is compatible with surrounding building form, streetscape and local character.

In relation to compatibility of uses, the accompanying Operational Management Plan contains management procedures, complaints reporting and resolution mechanisms to ensure the protection of appropriate residential amenity.

Accordingly, Council can be satisfied that the proposed development is permissible with consent and consistent with the zone objectives. There is no statutory impediment to the granting of consent.

The proposed development is permissible on the site pursuant to the provisions of the LEP and the State Environmental Planning Policy (Affordable Rental Housing) 2009 (the SEPP), and the SEPP prevails to the extent of any inconsistency with the LEP.

In that context, the proposed development is not antipathetic to the objectives of the zone on the basis that the building will provide for the housing needs of the community, the existing built form (amenity and safety) will be enhanced, the existing landscaped area will be enhanced, it will contribute to the variety of housing types in the zone, it will protect and enhance the amenity of existing and future residents, and the amenity of the surrounding properties will be substantially maintained, including the existing public and private views.

ANNEXURE 1 - CLAUSE 4.6 EXCEEDANCE TO A DEVELOPMENT STANDARD - FLOOR SPACE
RATIO 4.4 OF THE LEP

Further, the proposed development serves the public interest by providing additional residential accommodation within an established residential environment, offering a good level of internal amenity without imposing any significant or adverse impacts on the amenity of surrounding land.

Finally, the minor variation to the Landscaped Area control does not raise any significant matters of public interest.

1.5 Conclusion

The purpose of this submission is to formally request a variation to the FSR control incorporated in Clause 4.4 of the LEP.

The proposed variation is acceptable and strict compliance with the control is unreasonable on the basis that the objectives are achieved anyway, and unnecessary on the basis that no beneficial planning purpose would be served.

In the circumstances, there are sufficient environmental planning grounds to justify the variation to the FSR control.