








# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	D/2019/219
<b>Address</b>	361 Parramatta Road, LEICHHARDT NSW 2040
<b>Proposal</b>	Demolition of existing building; and construction of a 3-5 storey mixed used development comprising tourist and visitor accommodation and an apartment with parking and associated works, including remediation of the site.
<b>Date of Lodgement</b>	11 June 2019
<b>Applicant</b>	Apst
<b>Owner</b>	Harmon International Holdings Pty Ltd and Hi Nini Pty Ltd
<b>Number of Submissions</b>	Nil
<b>Value of works</b>	\$4,160,506.90
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation exceeds officer delegation
<b>Main Issues</b>	Heritage; FSR; Residential accommodation in Zone B2; Amenity
<b>Recommendation</b>	Refusal
<b>Attachment A</b>	Draft conditions (if not refused)
<b>Attachment B</b>	Proposed Plans
<b>Attachment C</b>	Clause 4.6 request to vary FSR



LOCALITY MAP

Subject Site		Objectors		 N
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of the application submitted to Council for demolition of an existing building; and construction of a 3-5 storey mixed used development comprising tourist and visitor accommodation and an apartment with parking and associated works, including remediation of the site at 361 Parramatta Road, Leichhardt. The application was notified to surrounding properties and no submissions were received.

The main issues that have arisen from the application include:

- Heritage Conservation
- Floor Space Ratio and resultant scale
- Residential accommodation in Zone B2
- Flooding
- Traffic and Parking

The proposal results in excessive FSR and adverse heritage, streetscape, scale, flooding, and parking impacts. Therefore, the application is recommended for refusal.

## 2. Proposal

The proposal involves demolition of the existing building with retention of the existing façade and awning, and construction of a new 3 to 5 storey mixed use building comprising 1 studio unit, 12 hotel rooms, with associated office, reception, garage and waste room, bike storage and plant room.

One motorcycle space and one loading bay are proposed within the garage off Dot Lane. No parking is proposed for the studio unit or hotel visitors.

The hotel is proposed to operate with a self-check in facility via an automated and secured checking system. A housekeeper will attend the site between the hours of 11am and 2pm daily to service rooms, clean and check the premises and be available for guest enquiries. Services provided include cleaning, linen and towel changing and each room will be provided with a serviced mini-bar refreshed daily with snacks. The studio unit will not necessarily be associated with the operation of the hotel.

The overall height of the proposal is 15.6m based on an existing ground level of RL27.55.

## 3. Site Description

The subject site is located on the southern side of Parramatta Road, between Norton Street and Balmain Road. The site consists of one allotment and is irregular in shape with a total area of 238.3sqm and is legally described as Lot 1 DP 89488.

The site has a frontage to Parramatta Road of 6.14m and a rear frontage of 4.14m to Dot Lane.

The site supports a two-storey mixed use building. The adjoining properties support two-storey commercial buildings.

The subject site is not listed as a heritage item. The property is located within a Heritage Conservation Area and in the vicinity of the following heritage items:

- The Norton Hotel, including interiors at 391-393 Parramatta Road, Leichhardt (I686 in Schedule 5 of the Leichhardt Local Environmental Plan 2013)
- Bald Faced Stag Hotel, including interiors at 343-345 Parramatta Road, Leichhardt (I685 in Schedule 5 of the Leichhardt Local Environmental Plan 2013)
- The Clarence Hotel, including interiors at 450 Parramatta Road, Petersham (I210 in Schedule 5 of the Marrickville Local Environmental Plan 2011)

The land is identified as a flood prone lot. The land is zoned B2 Local Centre as shown in the figure below.

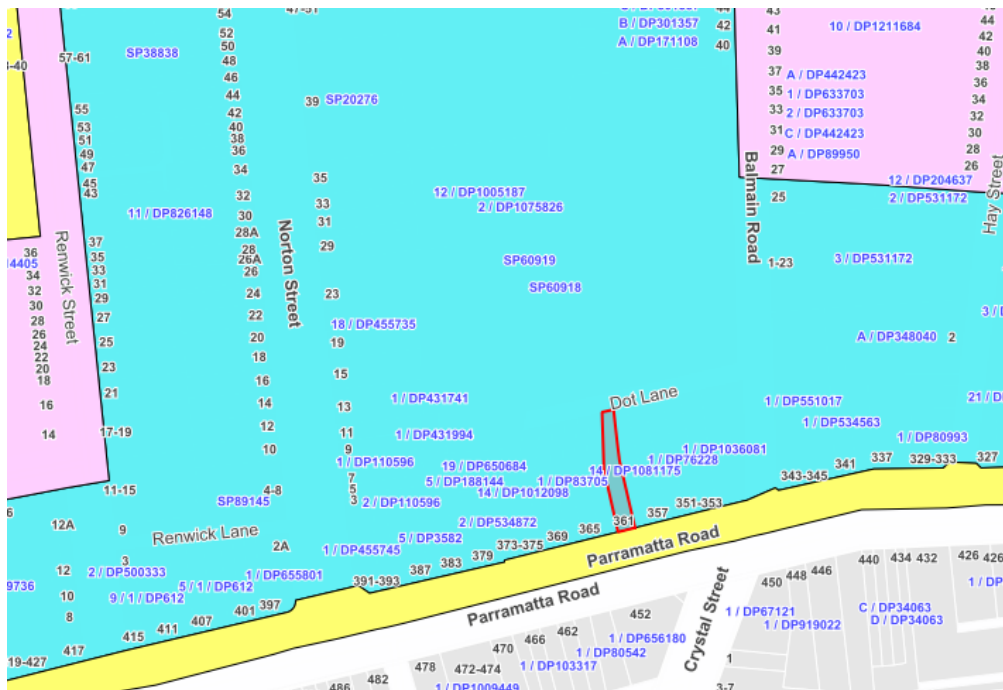


Figure 1: Zoning Map.



Figure 2: Aerial Photo at 361 Parramatta Road, Leichhardt.



Figure 3: Existing street view at 361 Parramatta Road, Leichhardt.

## 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

No relevant history.

#### Surrounding properties

No relevant history.

### 4(b) Application history

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

Date	Discussion / Letter/ Additional Information
28/10/2019	Council wrote to the applicant raising concerns in relation to heritage and streetscape impacts, non-compliant FSR/ scale, parking, flooding, stormwater management, waste management, amenity and security.
20/11/2019	Council called the applicant and left a message to call back.
25/11/2019	Council called the applicant and left a message to call back and sent an email to the applicant and owner advising that no response had been received to the request for information within the required timeframe and that the application would be determined based on the information submitted to date.
3/12/2019	Council received a call from the owner advising that a new architect would be engaged. Council called the new architect and sent an email to the architect and owner confirming that the DA would be determined based on the information submitted to date and that any re-designed proposal to address the issues raised would need to form part of a new DA.

## 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 (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Infrastructure) 2007
- 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 the consent authority to be satisfied that the site is, or can be made “suitable for the proposed use” prior to granting consent.

The site has been used in the past for activities which could have potentially contaminated the site. It is considered that the site will require remediation in accordance with SEPP 55.

A Detailed Site Investigation (DSI) and Remedial Action Plan (RAP) have been provided to address the treatment and/or disposal of any contaminated soils and contamination issues prior to determination. The contamination documents have been reviewed and found that the site can be made suitable for the proposed use after the completion of the RAP. To ensure that these works are undertaken, conditions must be imposed upon in a consent in accordance with Clause 7 of SEPP 55 if the application were approved.

Council’s Environmental Health section has reviewed the submitted DSI and RAP and raised no objections to the proposal subject to conditions to ensure the remediation works are undertaken in accordance with the RAP and a final Validation Report confirming the suitability of the site is submitted prior to Occupation Certificate.

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

The proposal was accompanied with a valid BASIX Certificate.

**5(a)(iii) State Environmental Planning Policy (Infrastructure) 2007**

Development with frontage to classified road (Clause 101)

The site has a frontage to Parramatta Road, a classified road. Under Clause 101 (2) of State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure), the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that the efficiency and operation of the classified road will not be adversely affected by the development.

The application was not referred to the RMS given access is proposed via the rear lane. Therefore, the proposal is considered to be acceptable with regard to Clause 101 of the SEPP Infrastructure.

Impact of road noise or vibration on non-road development (Clause 102)

Clause 102 of the SEPP Infrastructure relates to the impact of road noise or vibration on non-road development on land in or adjacent to a road corridor or any other road with an annual average daily traffic volume of more than 40,000 vehicle. Under that clause, a development for the purpose of a building for residential use requires that appropriate measures are incorporated into such developments to ensure that certain noise levels are not exceeded.

Parramatta Road has an annual average daily traffic volume of more than 40,000 vehicles. The applicant submitted a Noise Assessment Report with the application that demonstrates that the development will comply with the LAeq levels stipulated in Clause 102 of the SEPP.

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

The subject site is not within the Foreshores and Waterways Area.

**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 4.4 – Floor Space Ratio
- Clause 4.4A – Exception to maximum floor space ratio for active street frontages
- 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 Sulfate Soils
- Clause 6.2 – Earthworks
- Clause 6.3 – Flood Planning
- Clause 6.4 – Stormwater management
- Clause 6.8 – Development in areas subject to aircraft noise
- Clause 6.11A – Residential accommodation in Zone B1 and Zone B2

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

Standard	Proposal	% of non compliance	Compliance
<b>Floor Space Ratio</b> Maximum: 1:1 (238.3sqm)	1.78:1 (424.17sqm)	78%	No

The following provides further discussion of the relevant issues:

Clause 1.2 Aims of the Plan

By virtue of the excessive bulk and scale, and adverse heritage, streetscape, flooding and parking impacts, the proposal is considered to be inconsistent with the following aims of the Plan:

- (b) to minimise land use conflict and the negative impact of urban development on the natural, social, economic, physical and historical environment,*
- (c) to identify, protect, conserve and enhance the environmental and cultural heritage of Leichhardt,*
- (d) to promote a high standard of urban design in the public and private domains,*
- (e) to protect and enhance the amenity, vitality and viability of Leichhardt for existing and future residents, and people who work in and visit Leichhardt,*
- (f) to maintain and enhance Leichhardt’s urban environment*

- (l) to ensure that development is compatible with the character, style, orientation and pattern of surrounding buildings, streetscape, works and landscaping and the desired future character of the area,*
- (o) to prevent undesirable incremental change, including demolition, that reduces the heritage significance of places, conservation areas and heritage items,*
- (s) to ensure that development applies the principles of crime prevention through design to promote safer places and spaces,*
- (u) to promote energy conservation, water cycle management (incorporating water conservation, water reuse, catchment management, stormwater pollution control and flood risk management) and water sensitive urban design,*
- (v) to ensure that existing landforms and natural drainage systems are protected,*
- (w) to ensure that the risk to the community in areas subject to environmental hazards is minimised,*

### Clause 2.3 Zone objectives and Land Use Table

The site is zoned B2 Local Centre. The proposal, comprising both a dwelling and tourist and visitor accommodation, is permissible in the zone with consent. The proposal is not considered to be consistent with the following objectives of the B2 Local Centre zone (as discussed in detail below):

- *To ensure that development is appropriately designed to minimise amenity impacts.*
- *To allow appropriate residential uses to support the vitality of local centres.*

### Clause 4.4A Exception to maximum floor space ratio for active street frontages

Clause 4.4A(3) provides that despite the maximum Floor Space Ratio of 1:1 identified on the Floor Space Ratio (FSR) Map under Clause 4.4, a maximum FSR of 1.5:1 applies if the consent authority is satisfied that:

- (a) the building comprises mixed use development, including residential accommodation, and*
- (b) the building will have an active street frontage, and*
- (c) the building is compatible with the desired future character of the area in relation to its bulk, form, uses and scale.*

In this instance, the proposal maintains all floor space on the ground floor of the building facing the street for a purpose other than residential accommodation, and as such, the building has an active street frontage and comprises mixed use development.

However, given the proposed demolition of the existing contributory building forming part of a row of contributory two-storey commercial terrace buildings and the excessive height and bulk of the new 3 to 5 storey building, the proposal is considered to result in adverse heritage and streetscape impacts.

Therefore, it is considered that the proposal is not a 'building that is compatible with the desired future character of the area in relation to its bulk, form, uses and scale' and as such, fails to satisfy the pre-conditions of Clause 4.4A(3)(c) to apply a maximum FSR of 1.5:1.

### Clause 4.6 Exceptions to Development Standards

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



- Clause 4.4 – Floor Space Ratio

The applicant seeks a variation to the Floor Space Ratio development standard under Clause 4.4 of LLEP 2013 by 78% (185.87sqm).

Clause 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the applicable local environmental plan below.

A written request has been submitted to Council in accordance with Clause 4.6(3) of LLEP 2013 justifying the proposed contravention of the development standard which is summarised as follows:

#### Clause 4.4 – Floor Space Ratio

- Notwithstanding numerical non-compliance, the applicant contends that the proposed building satisfies the stated objectives given that:
  - *The proposed development remains consistent with the size and scale and is otherwise compatible with the desired future character of the locality.*
  - *To meet the FSR standard would require removal of units from the upper floor, or a reduction in building footprint which would result in no discernable reduction in the external appearance or bulk of the building when viewed from public places. The adoption of a significant setback at the upper floor and the retention of the existing building façade, the increased floor space delivers negligible contribution to the overall bulk of the building and will not impact upon the desired future character of the locality.*
  - *The proposal complies with other relevant developments standards and controls. That is, required setbacks have been observed.*
  - *The future character is guided by the LDCP 2013, particularly relevant are the setback and building height plane controls. This proposal complies with these controls.*
  - *The environmental planning grounds which support variation to the standard in this instance is that the particular design in the context of this particular site means that the non-complying building FSR is not perceivable from the public domain and therefore does not have any adverse effects on the streetscape or urban form otherwise anticipated by the controls.*
  - *As presented above, a contravention in development standards in this case does not undermine the objectives or reasons for the standards or zone objectives. The exceedance of floor space is not prominent and does not unreasonably contribute to building bulk when viewed from the public domain.*
  - *The natural conclusion of this particular site characteristic is that for a degree of non-compliance as that which is proposed, the subject site is particularly well suited to accommodate that noncompliance without imparting adverse impact as a consequence.*

The applicant's written rationale does not adequately demonstrate compliance with the development standard is unreasonable / unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard as demonstrated below.

- The proposal is not considered to be compatible with the desired future character of the area in relation to building bulk, form and scale.
- The siting of the built form is not within the building location zones, side setbacks, and envelope where it can be reasonably assumed development can occur.
- The proposal results in adverse heritage and streetscape impacts.

It is considered the development is not in the public interest because it is inconsistent with the following relevant objectives of the B2 Local Centre zone in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To ensure that development is appropriately designed to minimise amenity impacts.*
- *To allow appropriate residential uses to support the vitality of local centres.*
- *To ensure that uses support the viability of local centres.*
- *To provide a mixture of compatible land uses.*
- *To reinforce and enhance the role, function and identity of local centres by encouraging appropriate development to ensure that surrounding development does not detract from the function of local centres.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations.*

It is considered the development is not in the public interest because it is consistent with the following objectives of the Floor Space Ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan:

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

As such, the applicant's Clause 4.6 request is not recommended to the Panel for support and the application is recommended for refusal. A detailed discussion of the proposal's bulk and scale, and adverse heritage, streetscape, flooding and parking impacts is set out below.

The contravention of the development standard does not raise any matter of significance for State and Regional Environmental Planning. The concurrence of the Secretary may be assumed for matters to be determined by the Local Planning Panel.

#### Clause 5.10 Heritage Conservation

The subject property at 361 Parramatta Road, Leichhardt, is a contributory building located within the Parramatta Road Heritage Conservation Area (C2 in Schedule 5 of the Leichhardt LEP 2013). It is within the vicinity of the following heritage items:

- The Norton Hotel, including interiors at 391-393 Parramatta Road, Leichhardt (I686 in Schedule 5 of the Leichhardt Local Environmental Plan 2013)
- Bald Faced Stag Hotel, including interiors at 343-345 Parramatta Road, Leichhardt (I685 in Schedule 5 of the Leichhardt Local Environmental Plan 2013)
- The Clarence Hotel, including interiors at 450 Parramatta Road, Petersham (I210 in Schedule 5 of the Marrickville Local Environmental Plan 2011)

The statement of significance for the Parramatta Road conservation area states:

- *The Parramatta Road corridor, a mix of commercial / retail, factory / warehouse and residential development, has historical significance for its ability to demonstrate the changes in retail and commercial development along Sydney's oldest and most important transport route.*
- *Shops, commercial buildings and factory warehouses from major periods survive along the Parramatta Road corridor and contribute to the historic, aesthetic, and social values of the conservation area.*
- *Residential development, generally located away from the main arterial roadways, characterise the emerging suburbs.*
- *Parramatta Road Commercial corridor contains a variety of retail and commercial built forms.*
- *The built form provides evidence of the final subdivision pattern of the historic estates of Elswick, Hay Hill, Wheeler and McNamara, Redmond, North Annandale and Camperdown in the late nineteenth century as well as evidence of the effect of road widening on the built environment.*
- *Dating from the 1880s through to the beginning of World War II, the character and quality of buildings along the Parramatta Road commercial strip varies from high-quality to ordinary. Much of the heritage value is derived from its historic role as one of a major 19th and early 20th Century commercial areas lining one of Sydney's most important transport corridors.*
- *The Parramatta Road commercial corridor is historically significant for its ability to demonstrate changes along one of Sydney's major arterial roads and the ability to adapt to changing conditions and commercial needs.*
- *The collection of relatively intact facades above ground floor level, and the remaining primary intact forms, along the northern side of the road have aesthetic significance as an example of a commercial, predominantly late Victorian era main street that as a group forms a strong, continuous streetscape wall to Parramatta Road.*
- *Good examples of historic corner buildings include the Goodman's Building and Empire Hotel that mark the gateway to Annandale's main arterial road.*
- *The Parramatta Road commercial corridor contains a collection of notable public houses with historic and aesthetic significant for their ability to reflect in part some of the historic staging posts on the early main western land route into the colony and the development of the architectural styles of public houses in Sydney.*
- *The factories and warehouses are located in close proximity to the Parramatta Road corridor. Warehouse buildings date from the Federation and Inter-War periods, the robust character of this precinct contrasts with the finer-grain character of the commercial and residential buildings.*
- *A distinctive pattern of rear lanes used as loading docks form part of the character of the area.*
- *Residential development comprises intact examples of Late-Victorian boom period suburbs with rich architectural details enhanced by some verandah, balcony and awning reinstatement. Residences include a variety of two-storey and single-storey dwellings, single and double-fronted free-standing, semi-detached and terrace groups, dating from between 1871 and 1891 generally built in brick. There are pockets of infill flats (from one to three storeys) and bungalows that pre-date the Second World War.*
- *Victorian Italianate boom period villas with intact decorative detailing are generally located within Albion Street in close proximity to Johnston Street. Other residences range from small-scale workers cottages to larger dwellings. Corner stores are generally remnants.*
- *Street planting in road reserve of wider streets – in particular, plantings along Annandale Street.*

The subject site is part of a row of 5 two storey contributory commercial terraces facing Parramatta Road. The row originally contained 7 terraces, with the 2 most easterly having been demolished. Development in the vicinity is predominantly 2 storeys.

The subject terrace contributes to the heritage significance of the Parramatta Road HCA as it is part of a row of commercial buildings that survive along the Parramatta Road corridor and contribute to the historic, aesthetic, and social values of the HCA. The relatively intact first floor façade contributes to the aesthetic significance of the HCA as an example of a row of Victorian commercial terraces presenting to Parramatta Road.

The *Management of Heritage Values* contained in the *Heritage Assessment for the Parramatta Road Corridor* states that all pre-1939 buildings and structures must be retained because they are important to understanding the history of growth of the commercial corridor. It also states that infill residential development should be avoided that does not respect the heritage character of the area.

The proposal is not supported as it does not retain and enhance the heritage character and sense of place and setting within the streetscape (O1 of Section C4.6 of the DCP). Clause C1.4 of the DCP, seeks to *conserve and enhance... the fabric and detail of a building that contributes to the cultural significance of the building*.

This approach is aligned with the recommended management strategies for Heritage Conservation Areas contained with the former NSW Heritage Office (Now forms part of NSW Government Office of Environment and Heritage) Publication "*Conservation Areas – Guidelines for Managing Change in Heritage Conservation Areas*". The Guidelines caution against facilitating "*Facadism*" (the retention of only the facades of buildings) within Heritage Conservation Areas. The guidelines state "*At best the technique may retain the streetscape contribution of buildings which cannot be conserved as complete entities. At worst, the façade of a heritage building may remain as a token of its heritage value.*"

Based on the information submitted, there is no justification for demolition of a contributory building in the Heritage Conservation Area or any reason why the existing terrace cannot be retained and incorporated into the proposal. The height and bulk of the proposed development is not complementary to the established character of the streetscape, including the scale, form, siting, materials, colours and finishes. In addition, there is concern the excavation for the proposed basement will impact on the fabric of the row of terraces.

Therefore, the proposal is not supported on heritage grounds as it would adversely affect the heritage significance, fabric, settings and views of the conservation area and reduce the contribution of the row of Victorian terraces to the heritage significance of the Heritage Conservation Area.

#### Clause 6.11A Residential accommodation in Zone B1 and Zone B2

Clause 6.11A(3) states that development consent must not be granted for the purpose of residential accommodation on land within the B1 Neighbourhood Centre Zone unless the consent authority is satisfied that:

- (a) *the building comprises mixed use development, including residential accommodation, and*
- (b) *the building will have an active street frontage, and*
- (c) *the building is compatible with the desired future character of the area in relation to its bulk, form, uses and scale.*

In this instance, the proposal maintains the existing ground floor business premises and as such, the building has an active street frontage and comprises mixed use development.

However, as previously noted, it is considered that the bulk, height and siting of the proposed third storey rooftop addition will result in adverse impacts in terms of heritage conservation and the desired future character of the area.

Therefore, it is considered that the proposal does not satisfy the relevant criteria to permit development for the purpose of residential accommodation in the B2 Local Centre Zone and as such, consent cannot be granted.

### 5(b) Draft Environmental Planning Instruments

#### Draft State Environmental Planning Policy (Environment) 2018

The NSW government has been working towards developing a new State Environmental Planning Policy (SEPP) for the protection and management of our natural environment. The Explanation of Intended Effect (EIE) for the Environment SEPP was on exhibition from 31 October 2017 until 31 January 2018. The EIE outlines changes to occur, implementation details, and the intended outcome. It considers the existing SEPPs proposed to be repealed and explains why certain provisions will be transferred directly to the new SEPP, amended and transferred, or repealed due to overlaps with other areas of the NSW planning system.

This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland and Willandra Lakes World Heritage Property. Changes proposed include consolidating seven existing SEPPs including Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. The proposed development would be consistent with the intended requirements within the Draft Environment SEPP.

### 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
<b>Part A: Introductions</b>	
Section 3 – Notification of Applications	Yes
<b>Part B: Connections</b>	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	N/A
B3.1 Social Impact Assessment	No – the proposal was not accompanied with a Social Impact Statement as required
<b>Part C</b>	
C1.0 General Provisions	No – the proposal fails to achieve objective O6 Compatible in terms of the desired future character of the heritage conservation area

C1.1 Site and Context Analysis	No – the proposal fails to demonstrate compliance with objectives O1 f) in terms of consistency with the desired future character of the heritage conservation area
C1.2 Demolition	No – see below
C1.3 Alterations and additions	No – see below
C1.4 Heritage Conservation Areas and Heritage Items	No – the proposal fails to retain the existing contributory building and results in adverse heritage impacts to the significance of the Conservation Area in terms of fabric, setting and views
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	N/A
C1.8 Contamination	Yes
C1.9 Safety by Design	No – the proposal was not accompanied with a Plan of Management contrary to Control C2 and does not provide separate entry to the dwelling to encourage safe and secure environments for occupants and visitors contrary to objective O2
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	No – the proposal results in a shortfall of 3 car parking spaces and does not provide entry and exit in the forward direction, which is not considered to be acceptable by Council's Engineers
C1.12 Landscaping	N/A
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 – no signage is proposed
C1.16 Structures in or Over the Public Domain: Balconies, Verandahs and Awnings	N/A – no change is proposed to the existing awning

C1.17 Minor Architectural Details	N/A
C1.18 Laneways	No – the proposed 5 storey form facing Dot Lane fails to comply with the permitted 3.6m wall height and overall 6m building height under Control C6
<b>Part C: Place – Section 2 Urban Character</b>	
Suburb Profile	
C2.2.3.5, Leichhardt Commercial Distinctive Neighbourhood	No – the proposal fails to comply with Controls C1, C2, C4, and C13 in terms of consistency with the desired future character of the heritage conservation area and significantly breaches the permitted 3.6m building wall height
<b>Part C: Place – Section 3 – Residential Provisions</b>	
C3.1 Residential General Provisions	No – the proposal fails to achieve objectives O3, O4 and O5 in terms of compatibility with the desired future character and heritage significance of the place and consistency with the density of the local area
C3.2 Site Layout and Building Design	No – the proposal fails to comply with the required building envelope, Building Location Zone and side setbacks
C3.3 Elevation and Materials	No – the proposed elevations and materials are not sympathetic to those prevailing in the streetscape and heritage conservation area
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	Yes
C3.9 Solar Access	Yes

C3.10 Views	Yes
C3.11 Visual Privacy	Yes
C3.12 Acoustic Privacy	Yes
<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	
C4.1 Objectives for Non-Residential Zones	No – the proposal fails to achieve objective O6 in terms of compatibility with the character of the neighbourhood
C4.2 Site Layout and Building Design	No – the proposal fails to achieve development bulk that is compatible with the prevailing width and depth of buildings within the streetscape contrary to Control C7
C4.3 Ecologically Sustainable Development	Yes
C4.4 Elevation and Materials	Yes
C4.5 Interface Amenity	N/A – the site does not adjoin a residential zone
C4.15 Mixed Use	No – the proposal does not provide separate areas for business and resident access contrary to Control C5
<b>Part D: Energy</b>	
Yes	
<b>Part E: Water</b>	
No – the proposal was reviewed by Council's engineering section and is not considered to be acceptable in terms of flooding and stormwater management	

### 5(d) The Likely Impacts

The assessment of the application demonstrates that the proposal will have an adverse impact on the locality in terms of heritage and bulk and scale and impacts on the amenity of neighbouring private land.

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

The site is zoned B2 Local Centre and pursuant to Clause 6.11A of the Leichhardt LEP development for the purposes of residential accommodation is not permitted if the building is not compatible with the desired future character of the area in relation to its bulk, form, uses and scale. The design does not respond to the constraints and characteristics of the site and does not maximise opportunities to reduce its impact on neighbouring land. It is considered that the proposal will have adverse heritage and height, bulk and scale impacts, 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 Council's Policy for a period of 30 days to surrounding properties. No submissions were received.

#### 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. In this case, the consistent application of the planning controls and management of the impacts on the conservation area calls for the proposal to be refused in its current form.

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: Not supported due to adverse heritage impacts
- Building: Not supported due to concerns from new openings on boundary and structural stability of adjoining properties during excavation
- Development Engineer: Not supported due to flooding, parking and stormwater concerns
- Community Development: Not supported given no social impact statement and plan of management were submitted
- Waste Management: Not supported due to unacceptable waste management arrangements
- Environmental Health: No objections subject to conditions

#### 6(b) External

The application was referred to the following external bodies and issues raised in those referrals have been discussed in section 5 above.

- Ausgrid: No response was received.

## 7. Section 7.11 Contributions

Section 7.11 contributions are payable for the development if the proposal is determined by grant of consent.

## 8. Conclusion

This application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act, 1979 and is considered to be unsatisfactory. The proposal fails on key threshold issues and 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 adverse impacts in terms of heritage and bulk and scale. The application is considered unsupportable and refusal of the application is recommended.

## 9. Recommendation

That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, refuse the Development Application No. D/2019/219 for demolition of existing building; and construction of a 3-5 storey mixed use development comprising tourist and visitor accommodation and an apartment with parking and associated works, including remediation of the site at 361 Parramatta Road, Leichhardt for the following reasons.

1. The proposed development is inconsistent and / or has not demonstrated compliance with the Leichhardt Local Environmental Plan 2013, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979:
  - a) Clause 1.2 – Aims of the Plan;
  - b) Clause 2.3 – Zone Objectives and Land use Table;
  - c) Clause 4.4 – Floor Space Ratio;
  - d) Clause 4.4A – Exception to Maximum Floor Space Ratio for Active Street Frontages;
  - e) Clause 4.6 – Exceptions to Development Standards;
  - f) Clause 5.10 – Heritage Conservation; and
  - g) Clause 6.11A – Residential Accommodation in Zone B1 and Zone B2.
2. The proposed development cannot be approved as the Clause 4.6 request to vary the maximum FSR of 1:1 by 78% as stipulated by Clause 4.4 under Leichhardt Local Environmental Plan 2013 has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. Further, the proposal fails to achieve the precondition of Clause 4.4A(3)(c) under Leichhardt Local Environmental Plan 2013 to enable a FSR of 1.5:1 to be applied given the excessive FSR results in adverse heritage impacts and a building that is not compatible with the desired future character of the area in relation to its bulk, form, uses and scale.
3. The proposed development cannot be approved as it results in adverse heritage impacts on the conservation area in terms of fabric, setting and views contrary to Clause 5.10 under Leichhardt Local Environmental Plan 2013, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979.
4. The proposed development cannot be approved as it as it fails to achieve the precondition of Clause 6.11A(3)(c) under Leichhardt Local Environmental Plan 2013, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979.

5. The proposed development is inconsistent and / or has not demonstrated compliance with the following provisions of Leichhardt Development Control Plan 2013, pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979:
  - a) Clause B3.1 – Social Impact Assessment;
  - b) Clause C1.0 – General Provisions;
  - c) Clause C1.1 – Site and Context Analysis;
  - d) Clause C1.2 – Demolition;
  - e) Clause C1.3 – Alterations and Additions;
  - f) Clause C1.4 – Heritage Conservation Areas and Heritage Items;
  - g) Clause C1.9 – Safety By Design;
  - h) Clause C1.10 – Parking;
  - i) Clause C1.18 – Laneways;
  - j) Clause C2.2.3.5 – Leichhardt Commercial Distinctive Neighbourhood;
  - k) Clause C3.1 – Residential General Provisions;
  - l) Clause C3.2 – Site Layout and Building Design;
  - m) Clause C3.3 – Elevations and Materials;
  - n) Clause C4.1 – Objectives for Non-Residential Zones;
  - o) Clause C4.2 – Site Layout and Building Design;
  - p) Clause C4.15 – Mixed Use; and
  - q) Part E: Water.
6. The proposal will result in adverse environmental impacts in the locality, pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979.
7. The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979.
8. The approval of this application is considered contrary to the public interest, pursuant to Section 4.15 (1) (e) of the Environmental Planning and Assessment Act 1979.

## Attachment A – Draft conditions (if not refused)

### Conditions of Consent

#### Fees

##### 1. Section 7.11 (Former Section 94) Contribution

Prior to the issue of a Construction Certificate works written evidence must be provided to the Certifying Authority that a monetary contribution of \$12,107.99 in accordance with Leichhardt Developer Contributions Plan. The above contribution is the contribution applicable as at 24 October 2019.

The contribution payable has been calculated in accordance with the CP and relates to the following public amenities and/or services and in the following amounts:

Local Infrastructure Type:	Contribution \$
Open Space and Recreation	\$11,181.99
Community Facilities and Services	\$926.10
Bicycle Works	\$13.65
<b>TOTAL</b>	<b>\$12,107.99</b>

A copy of the CP can be inspected at any of the Inner West Council Services Centres or viewed online at:

<https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

The contribution must be paid either in cash, by unendorsed bank cheque (from an Australian Bank only), via EFTPOS (Debit only) or credit card\*.

\*NB A 0.75% credit card transaction fee applies to all credit card transactions.

##### 2. Long Service Levy

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more.

**3. Security Deposit - Custom**

Prior to the commencement of demolition works or prior to the issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit:	\$55,000
Inspection Fee:	\$230.65

Payment will be accepted in the form of cash, bank cheque, EFTPOS/credit card (to a maximum of \$10,000) or bank guarantee. Bank Guarantees must not have an expiry date.

The inspection fee is required for the Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.

Should any of Council’s property and/or the physical environment sustain damage during the course of the demolition or construction works, or if the works put Council’s assets or the environment at risk, or if any road, footpath or drainage works required by this consent are not completed satisfactorily, Council may carry out any works necessary to repair the damage, remove the risk or complete the works. Council may utilise part or all of the security deposit to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations.

A request for release of the security may be made to the Council after all construction work has been completed and a final Occupation Certificate issued.

The amount nominated is only current for the financial year in which the consent was issued and is revised each financial year. The amount payable must be consistent with Council’s Fees and Charges in force at the date of payment.

**General Conditions**

**4. Documents related to the consent**

The development must be carried out in accordance with plans and documents listed below:

<b>Plan, Revision and Issue No.</b>	<b>Plan Name</b>	<b>Date Issued</b>	<b>Prepared by</b>
DA2.02 Issue 1	Site Analysis/ Site Plan	10/4/2018	A Plus Design
DA2.03 Issue 1	Demolition Plan	10/4/2018	A Plus Design
DA 3.01 Issue 1	Lower Ground Floor Plan	10/4/2018	A Plus Design
DA 3.02 Issue 1	Ground Floor	10/4/2018	A Plus Design
DA 3.03 Issue 1	Level 1 Plan	10/4/2018	A Plus Design
DA 3.04 Issue 1	Level 2 Plan	10/4/2018	A Plus Design
DA 3.05 Issue 1	Level 3 Plan	10/4/2018	A Plus Design
DA 3.06 Issue 1	Roof Plan	10/4/2018	A Plus Design
DA 4.01 Issue 1	South Elevation	10/4/2018	A Plus Design
DA 4.02 Issue 1	North Elevation	10/4/2018	A Plus Design
DA 4.03 Issue 1	East Elevation	10/4/2018	A Plus Design
DA 4.04 Issue 1	West Elevation	10/4/2018	A Plus Design
DA 5.01 Issue 1	Section AA	10/4/2018	A Plus Design
DA 5.02 Issue 1	Section BB	10/4/2018	A Plus Design
DA 5.03 Issue 1	Section CC	10/4/2018	A plus Design
DA 6.01 Issue 1	Schedule of Materials & Finishes	10/4/2018	A Plus Design
968247M_03	BASIX Certificate	10/4/2018	A Plus Design
Drawing No. 000 Issue D	Coversheet	24/5/2019	AGA Consultants
Drawing No. 101 Issue D	Landscape Plan Ground Floor	24/10/2018	Site Image Landscape Architects
Drawing No. 102 Issue D	Landscape Plan Level 2	24/10/2018	Site Image Landscape Architects
Drawing No. 103 Issue D	Landscape Plan Ground Floor	24/10/2018	Site Image Landscape Architects
Drawing No. 104 Issue D	Landscape Plan Level 2	24/10/2018	Site Image Landscape Architects

Drawing No. 501 Issue D	Landscape Details	24/10/2018	Site Image Landscape Architects
Drawing No. C2.01 Issue C	Stormwater Management Plan and Civil Services	26/10/2018	ACOR Consultants Pty Ltd
20181395.1/0910A/R1/TA Revision 1	Development Application Acoustic Report	9/10/2018	Acoustic Logic
Revision: Final v2	Access Review	4/10/2018	Morris Goding Access Consultant
Ref: 18496	Traffic and Parking Assessment Report	24/10/2018	Varga Traffic Planning
Report No. E31889BTrpt2 Revision No: 0	Remediation Action Plan	29/5/2018	JK Environments
Report No 18062 Revision B	Operational Waste Management Plan	24/10/2018	Elephants Foot
SY180684 Version 1	Flood Risk Management Plan	10/10/2018	ACOR Consultants

As amended by the conditions of consent.

#### 5. Boundary Alignment Levels

Alignment levels for the site at the Parramatta Road frontage of the site must match the existing back of footpath levels at the boundary.

#### 6. Awnings with Lighting

The proposed awning must be of cantilever type and be set back at least 600mm from the kerb line. The awning must include pedestrian lighting (Category P3-AS1158) and must be maintained and owned by the property owner(s). The proposed awning must be designed to be easily removed if required in future. The owner must maintain, modify or remove the structure at any time if given notification by Council to do so. The lighting must be not be obtrusive and should be designed so that it does not shine into any adjoining residences.

#### 7. Dry-weather Flows

Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system. Alternatively, the basement or any below ground structure must be designed to be “tanked” preventing the ingress of seepage or groundwater.

#### **8. Rock Anchors**

This consent does not grant consent for any rock anchors on the road reserve or Council land.

#### **9. Hot Water Systems**

Where units or dwellings are provided with separate individual hot water systems, these must be located so they are not visible from the street.

#### **10. Air Conditioning Systems**

Where units or dwellings are provided with separate individual air conditioning systems, these must be located so they are not visible from the street.

#### **11. Waste Management Plan**

Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Development Control Plan.

#### **12. Erosion and Sediment Control**

Prior to the issue of a commencement of any works (including any demolition works), the Certifying Authority must be provided with an erosion and sediment control plan and specification. Sediment control devices must be installed and maintained in proper working order to prevent sediment discharge from the construction site.

#### **13. Verification of Levels and Location**

Prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, the Principal Certifier must be provided with a survey levels certificate prepared by a Registered Surveyor indicating the level of the slab and the location of the building with respect to the boundaries of the site to AHD.



**14. Works Outside the Property Boundary**

This development consent does not authorise works outside the property boundaries on adjoining lands.

**15. Boundary Alignment Levels**

Alignment levels for the site at the Parramatta Road frontage of the site must match the existing back of footpath levels at the boundary.

**16. Awnings with Lighting**

The awning must be of cantilever type and be set back at least 600mm from the kerb line. The awning must include pedestrian lighting (Category P3-AS1158) and must be maintained and owned by the property owner(s). The proposed awning must be designed to be easily removed if required in future. The owner must maintain, modify or remove the structure at any time if given notification by Council to do so. The lighting must be not be obtrusive and should be designed so that it does not shine into any adjoining residences.

**Prior to any Demolition****17. Dilapidation Report**

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person.

The report is required to include colour photographs of all the adjoining properties to the Certifying Authority's satisfaction.

In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

**16. Hoardings**

The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.

Separate approval is required from the Council under the Roads Act 1993 to erect a hoarding or temporary fence or awning on public property.

#### **17. Construction Traffic Management Plan – Detailed**

Prior to Any Demolition, the Certifying Authority, must be provided with a detailed Construction Traffic Management Plan (CTMP), prepared by an appropriately qualified Traffic Management Consultant with RMS accreditation. The Certifying Authority must approved by the CTMP prior to the commencement of any works, including demolition. The Certifying Authority must ensure that the CTMP instructs vehicles to use State and Regional and Collector Roads to the maximum extent with the use of Local Roads as final approach to the development site via the most suitable direct route.

The following matters should be addressed in the CTMP (where applicable):

- a) Description of the demolition, excavation and construction works;
- b) Site plan/s showing the site, roads, footpaths, site access points and vehicular movements;
- c) Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site);
- d) Proposed route(s) from the arterial (state) road network to the site and the proposed route from the site back to the arterial road network;
- e) Impacts of the work and vehicular movements on the road network, traffic and pedestrians and proposed methods to safely manage pedestrians and construction related vehicles in the frontage roadways;
- f) Any Traffic Control Plans (TCP's) proposed to regulate traffic and pedestrian movements for construction activities (such as concrete pours, crane installation/removal etc.);
- g) Proposed hours of construction related activities and vehicular movements to and from the site;
- h) Current/proposed approvals from other Agencies and Authorities (including Roads and Maritime Services, Police and State Transit Authority);

- i) Any activities proposed to be located or impact upon Council's road, footways or any public place;
- j) Measures to maintain public safety and convenience;
- k) Any proposed road and/or footpath closures;
- l) Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
- m) Locations of work zones (where it is not possible for loading/unloading to occur on the site) in the frontage roadways accompanied by supporting documentation that such work zones have been approved by the Local Traffic Committee and Council;
- n) Location of any proposed crane and concrete pump and truck standing areas on and off the site (and relevant approvals from Council for plant on road);
- o) A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
- p) Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected;
- q) On-site parking area for employees, tradespersons and construction vehicles as far as possible;
- r) Proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period; and
- s) How it is proposed to ensure that soil/excavated material is not transported onto surrounding footpaths and roadways.
- t) Swept Paths for the proposed construction vehicles to demonstrate that the needed manoeuvres can be achieved without causing any nuisance.

#### **18. Dilapidation Report – Pre-Development**

Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report on the visible and structural condition of the following public infrastructure:

- a) Full width of Dot Lane, including road pavement, stormwater drainage infrastructure, kerb and gutter and footpath, between western end of Dot Lane and Balmain Road.
- b) Half-width of Parramatta Road adjacent the site, including road pavement, stormwater drainage infrastructure, kerb and gutter and footpath adjacent the Parramatta Road frontage of the site..

The dilapidation report is to be prepared by a suitably experienced Civil and/or Structural Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng).

**19. Advising Neighbors Prior to Excavation**

At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

**20. Construction Fencing**

Prior to the commencement of any works (including demolition), the site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property.

**Prior to Construction Certificate**

**21. Enclosure of Fire Hydrant**

Prior to the issue of a Construction Certificate, the Certifying Authority is to be provided with plans indicating that all fire hydrant and sprinkler booster valves and the like are enclosed in accordance with the requirements of AS 2419.1 2005.

**22. Changes to Levels**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans incorporating the following amendments:

- a) A 150mm step up must be provided between the finished surface level of the [external area] and the finished floor level of the [internal room].

**23. Flood Risk Management Plan**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Flood Risk Management Plan prepared and certified by a suitably qualified Civil Engineer. The Plan must be prepared/amended to make provision for the following:

- a) The plan must be generally in accordance with the recommendations of the Flood Risk Management Plan prepared by ACOR Consultants and dated 7/9/2018.
- b) Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development. Such recommendations must be consistent with the approved development. The flood impacts on the site must be assessed for the 100-year ARI and Probable Maximum Flood (PMF) storm events. The precautions must include but not be limited to the following:
  - i) Types of materials to be used to ensure the structural integrity of the building to immersion and impact of velocity and debris.
  - ii) Waterproofing methods, including electrical equipment, wiring, fuel lines or any other service pipes or connections.
  - iii) Flood warning signs/depth indicators for areas that may be inundated.
  - iv) A flood evacuation strategy.
  - v) On-site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood level.
- a) All works must be designed to comply with the Standard for Construction of Buildings in Flood Hazard Areas in accordance with Section 3.10.3 of the Building Code of Australia. Note that some terms defined in this standard have equivalent meaning to terms used in Council's Development Control Plan as listed below.
  - i. Building Code of Australia
  - ii. Defined flood level (DFL) 100-year Average Recurrence Interval flood level
  - iii. Defined flood event (DFE) 100-year Average Recurrence Interval flood
  - iv. Flood hazard level (FHL) Flood Planning Level (FPL)

**24. Amended Architectural Plans to Reflect Flood Risk Management Plan**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended architectural plans that incorporate the recommendations of the Flood Risk Management Plan. The design must be prepared to make provision for the following:

- a) Specification of materials.
- b) Waterproofing works, where applicable.

No changes to the external form or appearance of the development contrary to the approved plans must occur except as identified by this condition. Any changes to such must be subject to separate approval.

#### **25. Engineering Design - Structural Engineer Plans and Certification**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans prepared and certified by a suitably qualified Engineer that incorporate the following recommendations of the Flood Risk Management Plan prepared by ACOR Consultants and dated 7/9/2018.

The design must be prepared to make provision for the following:

- a) Structural integrity of all structures from immersion and/or impact of velocity and debris.
- b) Waterproofing works, where applicable.

#### **26. Stormwater Drainage System – Major Developments**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention and/or on site retention/ re-use facilities (OSR/OSD) and Stormwater Quality Improvement Devices (SQIDS), certified by a suitably experienced Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that the design of the site drainage system complies with the following specific requirements:

- a) The design must be generally in accordance with approved the stormwater drainage concept plan.
- b) Stormwater runoff from all surface areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together overflow pipelines from any rainwater tank(s) by gravity to the kerb and gutter of a public road/directly to Council's piped drainage system.
- c) Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP.

- d) Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than for the pump-out of subsurface flows and surface flows from the driveway from the basement.
- e) The Drainage Plan must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes.
- f) The plans, including supporting calculations, must demonstrate that the post development flows for the 100 year ARI storm are restricted to the pre development flows for the 5 year ARI storm event in accordance with Section E1.2.3 (C2 and C3) of Council's DCP2013 and the maximum allowable discharge to Council's street gutter limited to 15litres/second (100year ARI);
- g) OSD may be reduced or replaced by on site retention (OSR) for rainwater reuse in accordance with the relevant DCP that applies to the land.

Where this is pursued, the proposed on-site retention (OSR) tanks must be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks where the collected water is to be used to supply water inside the dwelling, such as for toilet flushing or laundry use. .

- h) Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows from the contributing catchment to the OSD/OSR tanks.
- i) Details of the 1 in 100-year ARI overflow route in case of failure\blockage of the drainage system must be provided.
- j) An overland flowpath must be provided from the OSD/OSR tank to the Albion Lane frontage. The overland flow path must be graded so that overflows from the OSD/OSR tank drain to Albion Lane.
- k) As there is no overland flow/flood path available from the rear and central courtyards to the Dot Lane frontage, the design of the sag pit and piped drainage system is to meet the following criteria:
  - a. Capture and convey the 100 year Average Recurrence Interval flow from the contributing catchment assuming 80% blockage of the inlet and 50% blockage of the pipe.

- b. The maximum water level over the sag pit shall not be less than 150mm below the floor level or damp course of the building
  - c. The design shall make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
- l) A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas.
- m) Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system. Alternatively, the basement must be fully “tanked” so as not to allow the ingress of seepage or groundwater.
- n) A pump-out system for drainage of surface flows from the basement ramp is permitted for the basement area only and must be designed in accordance with the following criteria:
- i. Comply with all relevant Australian Standards.
  - ii. An overflow, flashing light and audible alarm is to be provided to warn of pump failure.
  - iii. A maintenance regime for the pump system must be provided, including provision for regular maintenance and servicing at least every 6 months.
  - iv. The proposed pump system must consist of two (2) pumps, connected in parallel, with each pump being capable of emptying the holding tank at a rate equal to the rate of inflow for the one-hour duration, 100-year Average Recurrence Interval (ARI) storm event. The holding tank must be capable of holding one hour’s runoff from one-hour duration 20-year ARI storm event.
  - v. Where OSD facilities are required by this consent, the pump system must be discharged to the OSD storage tank.
  - vi. Subsurface flows must be collected at the point of ingress to the basement i.e. at the basement walls.
  - vii. The subsurface drainage system must have sufficient capacity to collect and convey all surface flows to the pump out system.
  - viii. Inlet pits and drains for subsurface drainage must be designed to minimise potential for pollutants from cars or other sources to enter the subsurface drainage system. e.g.. isolate any subsurface drains at boundary walls, inspection pits with solid covers, etc.
- o) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.



- p) No nuisance or concentration of flows to other properties.
- q) The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system.
- r) Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required.
- s) An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets.
- t) Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site.
- u) New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a maximum section height and width of 100mm.
- v) All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings.
- w) All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.
- x) Water quality filtration basket(s) with screening bag or similar primary treatment device(s) must be installed on the site stormwater drainage system such that all water entering the site stormwater drainage system is filtered by the device(s).

#### **27. Parking Facilities**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably experienced Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) demonstrating that the design of the vehicular access, off-street parking facilities and associated vehicle standing areas comply with Australian Standard AS/NZS 2890.1-2004 Parking Facilities: Off-street car parking, Australian Standard AS 2890.2-2018 Parking Facilities: Commercial vehicle facilities, AS/NZS 2890.3-2015 Parking facilities: Bicycle Parking, AS/NZS 2890.6-2009 Parking facilities: Off-street parking for people with disabilities and the following specific requirements:

- a) The internal vehicle hardstand area must be redesigned such that the level at the boundary must match the invert level of the adjacent gutter plus 110mm at both sides of the vehicle entry. This will require the internal garage slab or hard stand area to be adjusted locally at the boundary to ensure that it matches the above-issued alignment levels.

- b) The garage slab or driveway must rise within the property to be 170mm above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing.
- c) The longitudinal profile across the width of the vehicle crossing, vehicular access and any ramps within the parking facilities must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004 and AS 2890.2-2018 for a B99/SRV/MRV design vehicle.
- d) Minimum headroom of 2200mm must be provided throughout the access and parking facilities. Minimum headroom of 2500mm must be provided above any disabled parking space(s). Minimum headroom of [3500mm/4500mm] must be provided throughout the path of travel for a [SRV/MRV] utilising the loading bay
- e) The headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors. Headroom at a 'sag' type grade change must be measured in accordance with Figure 5.3 of AS/NZS 2890.1-2004.
- f) Longitudinal sections along each outer edge of the vehicular access and parking facilities and throughout the path of travel for a [SRV/MRV] utilising the loading bay, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements.
- g) The layout and minimum dimensions of any standing area comply with clause 2.4 of AS/NZS 2890.1-2004 such that:
  - i. Car spaces and aisles adjacent to walls or fences are increased in width by an additional 300mm;
  - ii. End spaces are provided with an additional 1m aisle extension; and
  - iii. The location of columns within the carpark complies with figure 5.1 of AS/NZS 2890.1-2004;
- h) The relative surface levels of the internal access from the road being controlled so that:
  - i. The surface levels at the property boundary match "alignment levels";
  - ii. The change in grade for any 2m length of access way does not exceed 1 in 8 (12.5%) unless suitable transitions are provided in accordance with AS2890.1;
  - iii. The maximum grade at any point does not exceed 1 in 5 (20%) or in the case of ramps greater than 20m in length 1 in 6 (16.7%); and
  - iv. The maximum grade at the property boundary does not exceed 1 in 20 (5%) within 6m of the property boundary;

- i) The vehicle egress is designed such that there are no obstructions to lines of sight, along with the footpath and the roadway for drivers of egressing vehicles.
- j) The curved section of the ramp is designed in accordance with AS/NZS 2890.1-2004 with grades measured along the inside radius.
- k) The vehicular access must be amended to provide clear sight lines (triangles) to pedestrians in Dot Lane in accordance with the requirements of Clause 3.2.4(b) of AS/NZS 2890.1-2004.
- l) All loading docks and parking bays are designed such that all vehicular movements to and from the proposed development are in a forward direction.
- m) The entry security door must be set back a minimum of 5500mm from the property boundary.
- n) Loading / unloading facilities must be provided on-site in accordance with the requirements of AS2890.2 – 2002.
- o) A bicycle storage area must be provided to accommodate the numerical requirements of DCP and be designed in accordance with relevant provisions of AS 2890.3-2015.
- p) The parking spaces allocated to the Hotel for pick-up / drop-off must be sized in accordance with the requirements of AS/NZS 2890.1-2004 for User Class 3A. The spaces must be located in close proximity to the entry with a minimum width of 2700mm and a corresponding aisle width of 6200mm.
- q) All loading docks and parking bays are designed such that all vehicular movements to and from the proposed development are in a forward direction.
- r) At the property boundary the access from the road to a standing area is (as near as practicable) perpendicular to the line of the adjacent road.

#### **28. Structural and Geotechnical Report**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an integrated structural and geotechnical report and structural plans that address the design of the proposed basement, prepared certified as compliant with the terms of this condition by a qualified practicing Structural and Geotechnical Engineer. The report and plans must be prepared/ amended to make provision for the following:

- a) The basement must be fully tanked to prevent the ingress of subsurface flows.
- b) Retaining walls must be entirely self-supporting in the event that excavation is undertaken within the road reserve adjacent to the property boundary to the depth of the proposed structure.

- c) Any existing or proposed retaining walls that provide support to the road reserve must be adequate to withstand the loadings that could be reasonably expected from within the constructed road and footpath area, including normal traffic and heavy construction and earth moving equipment, based on a design life of not less than 50 years.
- d) All components of the basement, including footings, must be located entirely within the property boundary.
- e) No adverse impact on surrounding properties including Council's footpath and road.
- f) The existing subsurface flow regime in the vicinity of the development must not be significantly altered as a result of the development.
- g) Recommendations regarding the method of excavation and construction, vibration emissions and identifying risks to existing structures or those on adjoining or nearby property.
- h) Provide relevant geotechnical/ subsurface conditions of the site, as determined by a full geotechnical investigation.

**29. Public Domain Works – Prior to Construction Certificate**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a public domain works design, prepared by a qualified practising Civil Engineer and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the *Roads Act 1993* incorporating the following requirements:

- a) The public domain along all frontages of the site inclusive of footpath paving, kerb, street trees, landscaping, street furniture, etc. must be reconstructed and upgraded in accordance with the Street Tree Master plan and the Public Domain Design Guide or scheme;
- b) The construction of heavy duty vehicular crossings to all vehicular access locations and removal of all redundant vehicular crossings to the site;
- c) New paver footpath along the Parramatta Road frontage of the site..
- d) New kerb and gutter and concrete footpath along the Albion Lane frontage of the site. The kerb type (concrete or stone) must be consistent with the majority of kerb type at this location as determine by the Council Engineer.
- e) Cross sections are to be provided at the boundary at a minimum distance of every 5m and at all pedestrian and vehicular access locations. Note, the cross fall of the footpath must be set at 2.5%. These sections will set the alignment levels at the boundary.

- f) The existing Council drainage system must be extended by an appropriately sized pipeline (minimum 375mm diameter) to the Albion Lane frontage of the site, where a kerb inlet pit (minimum 3m lintel) must be installed.
- g) The pipeline must be designed to have the capacity to convey flows that would be collected at that section of street as generated by a 20 year Average Recurrence Interval storm event. Pipes must be Class 4 Steel Reinforced Concrete Pipe or approved equivalent and Pits must be cast in-situ. Plans, longsections and details must be provided including location of utility services.
- h) Installation of a stormwater outlet to the kerb and gutter.

### **30. Party Walls**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with Architectural Plans accompanied by a Structural Certificate which verifies that the architectural plans do not rely on the Party Wall for lateral or vertical support and that additions are independently supported. A copy of the Certificate & plans must be provided to all owners of the party wall/s.

### **31. Structural Certificate for retained elements of the building**

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a Structural Certificate prepared by a practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction. The certificate must also include all details of the methodology to be employed in construction phases to achieve the above requirements without result in demolition of elements marked on the approved plans for retention.

### **32. Sydney Water – Tap In**

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

*Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 132092.*

**33. Acoustic Report – Aircraft Noise**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans detailing the recommendations of an acoustic report prepared by a suitably qualified Acoustic Engineer demonstrating compliance of the development with the relevant provisions of Australian Standard AS 2021:2015 Acoustics – Aircraft noise intrusion – Building siting and construction.

**34. Fibre-ready Facilities**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with evidence that arrangements have been made for:

- a) The installation of fibre-ready facilities to all individual lots and/or premises the development so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose.
- b) The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises the development demonstrated through an agreement with a carrier.

**35. Future Food Use - Mechanical Ventilation Provision**

Prior to the issue of a Construction Certificate, the mechanical exhaust systems and/or shafts must be designed to allow for the discharge of effluent air above roof level and must be designed with capacity to accommodate exhaust ducts and mechanical ventilation systems for all commercial tenancies proposed with the potential to become a food premises in future. Systems must be designed in accordance with AS1668.2 – The Use of Ventilation and Air-conditioning in Buildings – Mechanical Ventilation in Buildings, and AS1668.1 – The Use of Mechanical Ventilation and Air-Conditioning in Buildings – Fire and Smoke Control in Multi-compartment Buildings.

**During Demolition and Construction****36. Construction Hours – Class 1 and 10**

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5.00pm, Mondays to Saturdays (inclusive) with no

works permitted on, Sundays or Public Holidays.

### **37. Survey Prior to Footings**

Upon excavation of the footings and before the pouring of the concrete, the Certifying Authority must be provided with a certificate of survey from a registered land surveyor to verify that the structure will not encroach over the allotment boundaries.

### **Prior to Occupation Certificate**

### **38. Aircraft Noise –Alterations and Additions**

Prior to the issue of an Occupation Certificate (whether an interim or final Occupation Certificate), the Principal Certifier must be provided with a report from a suitably qualified person demonstrating that each of the commitments listed in Aircraft Noise Assessment Report required by this consent has been satisfied.

Or for all other ANEF affected developments

Prior to the issue of any Occupation Certificate, the Principal Certifier must be provided with a report prepared and submitted by an accredited Acoustics Consultant certifying that the final construction meets AS2021-2015 with regard to the noise attenuation measures referred to in the “Prior to the Issue of a Construction Certificate” Section of this Determination. Such report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development.

Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a further certificate being prepared and submitted to the Principal Certifier in accordance with this condition.

### **39. Public Domain Works**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with written evidence from Council that the following works on the Road Reserve have been completed in accordance with the requirements of the approval under Section 138 of the *Roads Act 1993* including:

- a) The public domain along all frontages of the site inclusive of footpath paving, kerb, street trees, landscaping, street furniture, etc. must be reconstructed and upgraded in accordance with the Street Tree Master plan and the Public Domain Design Guide or scheme;
- b) The construction of heavy duty vehicular crossings to all vehicular access locations and removal of all redundant vehicular crossings to the site;
- c) New paver footpath along the Parramatta Road frontage of the site..
- d) New kerb and gutter and concrete footpath along the Albion Lane frontage of the site. The kerb type (concrete or stone) must be consistent with the majority of kerb type at this location as determine by the Council Engineer.
- e) Cross sections are to be provided at the boundary at a minimum distance of every 5m and at all pedestrian and vehicular access locations. Note, the cross fall of the footpath must be set at 2.5%. These sections will set the alignment levels at the boundary.
- f) The existing Council drainage system must be extended by an appropriately sized pipeline (minimum 375mm diameter) to the Albion Lane frontage of the site, where a kerb inlet pit (minimum 3m lintel) must be installed.
- g) The pipeline must be designed to have the capacity to convey flows that would be collected at that section of street as generated by a 20 year Average Recurrence Interval storm event. Pipes must be Class 4 Steel Reinforced Concrete Pipe or approved equivalent and Pits must be cast in-situ. Plans, longsections and details must be provided including location of utility services.
- h) Installation of a stormwater outlet to the kerb and gutter.
- i) Other works subject to the Roads Act 1993 approval.

All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications".

#### **40. No Encroachments**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any encroachments on to Council road or footpath resulting from the building works have been removed, including opening doors, gates and garage doors with the exception of any awnings or balconies approved by Council.

#### **41. Protect Sandstone Kerb**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any damaged stone kerb has been replaced.



**42. Parking Signoff – Major Development**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification from a qualified practising Civil Engineer that the vehicle access and off street parking facilities have been constructed in accordance with the development consent and relevant Australian Standards and the following has been implemented within the property.

- a) The car park has been completed, line marked and all signage relating to car parking erected.
- b) A notice has been clearly displayed at the Parramatta Road frontage to indicate that visitor parking is available within the property with access from Albion Lane.
- c) Sign(s) have been erected that clearly indicate(s) to the drivers of vehicles both on and off the property which driveway they are to use to enter or leave the subject land.
- d) Sign(s) have been erected that clearly indicate to the drivers of vehicles both on and off the property the location and means of access to the car parking area(s).

**43. Basement Signoff – Major Development**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with certification from a suitably experienced structural and geotechnical engineer, who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng), that the basement and driveway has been constructed in accordance with the development consent and relevant Australian Standards and that the basement is fully tanked construction such that pump-out of subsurface flows is not required.

**44. Public Domain – Major Development**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with the works-as-executed plan(s), certified by a Registered Surveyor, that show the as built details in comparison to those shown on the plans approved with the public domain and Roadworks Permit with all relevant levels and details indicated must be marked in red on a copy of the Council stamped plans.

**45. Dilapidation Report – Post-Development**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a second Dilapidation Report addressing the public infrastructure identified in approved

predevelopment dilapidation report, including a photographic survey, structural condition and CCTV inspections which was compiled after the completion of works. As the report details public infrastructure, a copy is to be furnished to Council at the same time.

#### **46. Flood Risk Management Plan – Certification**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a qualified practising Civil Engineer that all aspects of the flood risk management plan have been implemented in accordance with the approved design, conditions of this consent and relevant Australian Standards.

#### **47. Stormwater Drainage and Road Works – Certification**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a qualified Civil Engineer with Chartered Engineer of Institution of Engineers Australia (CPEng) or Registered Professional Engineer of Professionals Australia (RPEng) qualifications that:

- a) All works required to be undertaken on public roads must be designed and constructed in accordance with Council's approved plans.
- b) Video inspection (CCTV) in accordance with WSA 05-2013 Conduit Inspection Reporting Code of Australia has been carried out of completed stormwater drainage works that are to revert to Council by an accredited operator.
- c) Full works-as-executed plans in PDF and CAD format (dwg or dxf files), prepared and signed by a Registered Surveyor have been submitted to Council.

#### **48. Works as Executed – Site Stormwater Drainage System**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a qualified Civil Engineer with Chartered Engineer of Institution of Engineers Australia (CPEng) or Registered Professional Engineer of Professionals Australia (RPEng) qualifications that:

- a) The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards.
- b) Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSD/OSR system commissioned and stormwater quality improvement device(s) and any pump(s) installed in accordance with the

approved design and relevant Australian Standards have been submitted to Council. The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped Construction Certificate plans.

#### **49. Operation and Management Plan**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an Operation and Management Plan has been prepared and implemented for the on-site detention and/or on-site retention/re-use facilities and stormwater quality improvement device(s) and pump(s). The Plan must set out the following at a minimum:

- a) The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners.
- b) The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

#### **50. Easements, Restrictions on the Use of Land and Positive Covenants**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with evidence that Easements, Restrictions on the Use of Land and Positive Covenants under Section 88B or 88E, whichever is relevant to the subject development, of the *Conveyancing Act 1919*, has been created on the title of the property detailing the following :

- a) Restrictions on the Use of Land related to on Site Stormwater Detention System or stormwater quality improvement devices;
- b) Positive Covenant related to on-site stormwater detention and/or retention system;
- c) Positive Covenant related to stormwater quality improvement devices;

The wording in the Instrument must be in accordance with Councils Standard wording.

#### **51. Section 73 Certificate**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a Section 73 Certificate under the *Sydney Water Act 1994*.

### On-going

#### **52. Hotel**

The use of the premises as a hotel must comply at all times with the following:

- a) The use must comply at all times with the approved Plan of Management referred to in condition above and as amended by the conditions in this Determination;
- b) A copy of the Plan of Management and House Rules must be annexed to each and every tenancy/occupation agreement for a room;
- c) A copy of the approved Plan of Management and House Rules must be clearly displayed within every common room in the building at all times;
- d) The Plan of Management must not be amended without the prior consent of Council and must be made available to Council officers and the Police upon request;
- e) All tenancy/occupation agreements for rooms within the premises must be for a maximum period of three (3) months;
- f) All common rooms/areas and recreation rooms/areas must be maintained at all times for the use of the lodgers; and
- g) Each self-contained room and shared kitchen must be fitted out with washing up facilities, a cooktop, oven, fridge and storage space with such utilities being maintained in working order at all times.

#### **53. Flood Risk Management Plan**

The Flood Risk Management Plan approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

#### **54. Operation and Management Plan**

The Operation and Management Plan for the on-site detention and/or on-site retention/re-use and/or stormwater quality improvement devices and/or Pump facilities, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

#### **55. Vehicles Leaving the Site**

All vehicles must enter and exit the site in a forward direction.

#### **56. Waste Bin Storage**

All bins are to be stored within the site.

#### **57. Loading/unloading on site**

All loading and unloading are to be conducted within the site at all times. Any designated loading bay/dock area is to remain available for loading/unloading purposes at all times. No storage of goods or parking of cars is to be carried out in these areas.

### **Advisory notes**

#### **Prescribed Conditions**

This consent is subject to the prescribed conditions of consent within clause 98-98E of the *Environmental Planning and Assessment Regulations 2000*.

#### **Notification of commencement of works**

At least 7 days before any demolition work commences:

- a) the Council must be notified of the following particulars:
  - i. the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
  - ii. the date the work is due to commence and the expected completion date; and
- b) a written notice must be placed in the letter box of each directly adjoining property identified advising of the date the work is due to commence.

#### **Storage of Materials on public property**

The placing of any materials on Council's footpath or roadway is prohibited, without the prior consent of Council.

#### **Toilet Facilities**

The following facilities must be provided on the site:

- a) toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
- b) a garbage receptacle for food scraps and papers, with a tight fitting lid.

Facilities must be located so that they will not cause a nuisance.

#### **Infrastructure**

The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones respectively to the property. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be undertaken before occupation of the site.

#### **Other Approvals may be needed**

Approvals under other acts and regulations may be required to carry out the development. It is the responsibility of property owners to ensure that they comply with all relevant legislation. Council takes no responsibility for informing applicants of any separate approvals required.

#### **Failure to comply with conditions**

Failure to comply with the relevant provisions of *the Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.

#### **Other works**

Works or activities other than those approved by this Development Consent will require the submission of a new Development Application or an application to modify the consent under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

#### **Obtaining Relevant Certification**

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, such as (if necessary):

- a) Application for any activity under that Act, including any erection of a hoarding.
- b) Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*.
- c) Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*.

- d) Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed.
- e) Application for Strata Title Subdivision if strata title subdivision of the development is proposed.
- f) Development Application for demolition if demolition is not approved by this consent.
- g) Development Application for subdivision if consent for subdivision is not granted by this consent.

#### **Disability Discrimination Access to Premises Code**

The *Disability Discrimination Act 1992* (Commonwealth) and the *Anti-Discrimination Act 1977* (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.

#### **National Construction Code (Building Code of Australia)**

A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out. All building works approved by this consent must be carried out in accordance with the requirements of the National Construction Code.

#### **Notification of commencement of works**

Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the PCA (not being the council) has given the Council written notice of the following information:

- a) in the case of work for which a principal contractor is required to be appointed:
  - i. the name and licence number of the principal contractor, and
  - ii. the name of the insurer by which the work is insured under Part 6 of that Act,
- b) in the case of work to be done by an owner-builder:
  - i. the name of the owner-builder, and

- ii. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

#### **Permits from Council under Other Acts**

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the *Local Government Act 1993* and/or Section 138 of the *Roads Act 1993*.

Permits are required for the following activities:

- a) Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application.
- b) A concrete pump across the roadway/footpath
- c) Mobile crane or any standing plant
- d) Skip bins
- e) Scaffolding/Hoardings (fencing on public land)
- f) Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.
- g) Awning or street verandah over footpath
- h) Partial or full road closure
- i) Installation or replacement of private stormwater drain, utility service or water supply

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. A lease fee is payable for all occupations.

#### **Noise**

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

#### **Electrical Substations**

Should the proposed development require the provision of an electrical substation, such associated infrastructure must be incorporated wholly within the development site and may be the subject of an application for modification of consent.

#### **Permits**



Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the Local Government Act 1993 and/or Section 138 of the Roads Act 1993. Permits are required for the following activities:

- a) Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application.
- b) A concrete pump across the roadway/footpath
- c) Mobile crane or any standing plant
- d) Skip Bins
- e) Scaffolding/Hoardings (fencing on public land)
- f) Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.
- g) Awning or street veranda over the footpath
- h) Partial or full road closure
- i) Installation or replacement of private stormwater drain, utility service or water supply

If required contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. Applications for such Permits must be submitted and approved by Council prior to the commencement of the works associated with such activity.

#### **Rock Anchors**

If you are seeking to use temporary anchors, you must make a request for approval for a Permit under Section 138 of the Roads Act 1993. The submission would need to be supported by an engineering report prepared by a suitably qualified Structural Engineer, with supporting details addressing the following issues:

- a) Demonstrate that any structures within the road reserve are of adequate depth to ensure no adverse impact on existing or potential future service utilities in the road reserve. All existing services must be shown on a plan and included on cross-sectional details where appropriate.
- b) Demonstrate how the temporary anchors will be removed or immobilised and replaced by full support from structures within the subject site by completion of the works.
- c) The report must be supported by suitable geotechnical investigations to the efficacy of all design assumptions.

#### **Vehicular Crossings**

The vehicular crossing and/or footpath works are required to be constructed by your contractor. You or your contractor must complete an application for 'Design of Vehicle Crossing and Public Domain Works – Step 1' form and 'Construction of Vehicle Crossing and Public Domain Works – Step 2' form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, before commencement of works.

You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be at no cost to Council

Any damage caused during construction to Council assets on the road reserve or on Council or Crown land must be repaired at no cost to Council.

Any driveway crossovers or other works within the road reserve must be provided at no cost to Council.

No consent is given or implied for any Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, eaves, awnings, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever, including when open.

#### **Easement and Covenant Process**

The following documents must be submitted to Council as part of the Easement and Covenant process and requirements, for the site on-site detention/on-site retention/reuse facilities (OSD/OSR) and stormwater quality improvement devices (SQIDS):

a) **Work-As-Executed Plans**

A "Work-as-Executed" plan prepared and signed by a Registered Surveyor must be submitted to the Council's Development Assessment Engineer at the completion of the works showing the location of the detention basin and SQIDS with finished surface levels, contours at 0.2-metre intervals and volume of storage available. Also, the outlet pipe from the detention basin to its connection to the Council's drainage system must be shown together with the following information: location; pipe diameter; gradient; pipe material, i.e. PVC or RCP etc.; pits sizes; orifice size; trash screen at orifice; emergency overflow dimensions and RL; all

buildings (including floor levels) and finished ground and pavement surface levels and full details of SQIDS.

b) Engineer's Certificate

- i. A qualified practising Civil Engineer must certify on the completion of drainage works in respect of:
- ii. the soundness of the storage structure;
- iii. the capacity of the detention storage;
- iv. the emergency overflow system being in place;
- v. the works being constructed in accordance with the Development Application Consent and Council's Stormwater Management DCP/Code;
- vi. the freeboard from maximum water surface level to the finished floor and garage levels are at or above the minimum required in Council's Stormwater Management DCP/Code;
- vii. basement car park pumps are class one zone two;
- viii. OSR pumps and SQIDS have been installed and commissioned.

c) Restriction-As-To-User

A "Restriction-as-to-User" must be placed on the title of the subject property to indicate the location and dimensions of the detention area and stormwater quality improvement device(s) (SQIDS). This is to ensure that works, which could affect the function of the stormwater detention system and SQIDS, must not be carried out without the prior consent in writing of the Council.

Such restrictions must not be released, varied or modified without the consent of the Council.

A typical document is available from Council's Development Assessment Engineer

d) A Maintenance Schedule

**Amenity Impacts General**

The use of the premises must not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of

plant and equipment must not give rise to the transmission of a vibration nuisance or damage other premises.

#### **Fire Safety Certificate**

The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:

- a) Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and
- b) Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).

Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Certificate for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Certificate must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

#### **Construction of Vehicular Crossing**

The vehicular crossing and/or footpath works are required to be constructed by your own contractor. You or your contractor must complete an application for 'Construction of a Vehicular Crossing & Civil Works' form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, prior to commencement of works.

#### **Lead-based Paint**

Buildings built or painted prior to the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe. Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving the removal of lead based paints. Precautions should therefore be taken if painted surfaces are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned prior to occupation of the room or building.

#### **Asbestos Removal**

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m<sup>2</sup> of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

Removal of friable asbestos material must only be undertaken by a contractor that holds a current AS1 Friable Asbestos Removal Licence.

Demolition sites that involve the removal of asbestos must display a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent visible position on the site to the satisfaction of Council's officers. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos has been removed from the site to an approved waste facility.

All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2005. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

**Dial before you dig**

Contact "Dial Prior to You Dig" prior to commencing any building activity on the site.

**Useful Contacts**

BASIX Information 1300 650 908 weekdays 2:00pm - 5:00pm

[www.basix.nsw.gov.au](http://www.basix.nsw.gov.au)

Department of Fair Trading 13 32 20

[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

Enquiries relating to Owner Builder Permits and Home Warranty Insurance.

Dial Prior to You Dig 1100

[www.dialprior toyoudig.com.au](http://www.dialprior toyoudig.com.au)

Landcom 9841 8660

To purchase copies of Volume One of “Soils and Construction”

Long Service Payments Corporation 131441

[www.lspc.nsw.gov.au](http://www.lspc.nsw.gov.au)

NSW Food Authority 1300 552 406

[www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au)

NSW Government

[www.nsw.gov.au/fibro](http://www.nsw.gov.au/fibro)

[www.diySAFE.nsw.gov.au](http://www.diySAFE.nsw.gov.au)

Information on asbestos and safe work practices.

NSW Office of Environment and Heritage 131 555

[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

Sydney Water 13 20 92

[www.sydneywater.com.au](http://www.sydneywater.com.au)

Waste Service - SITA Environmental Solutions 1300 651 116

[www.wasteservice.nsw.gov.au](http://www.wasteservice.nsw.gov.au)

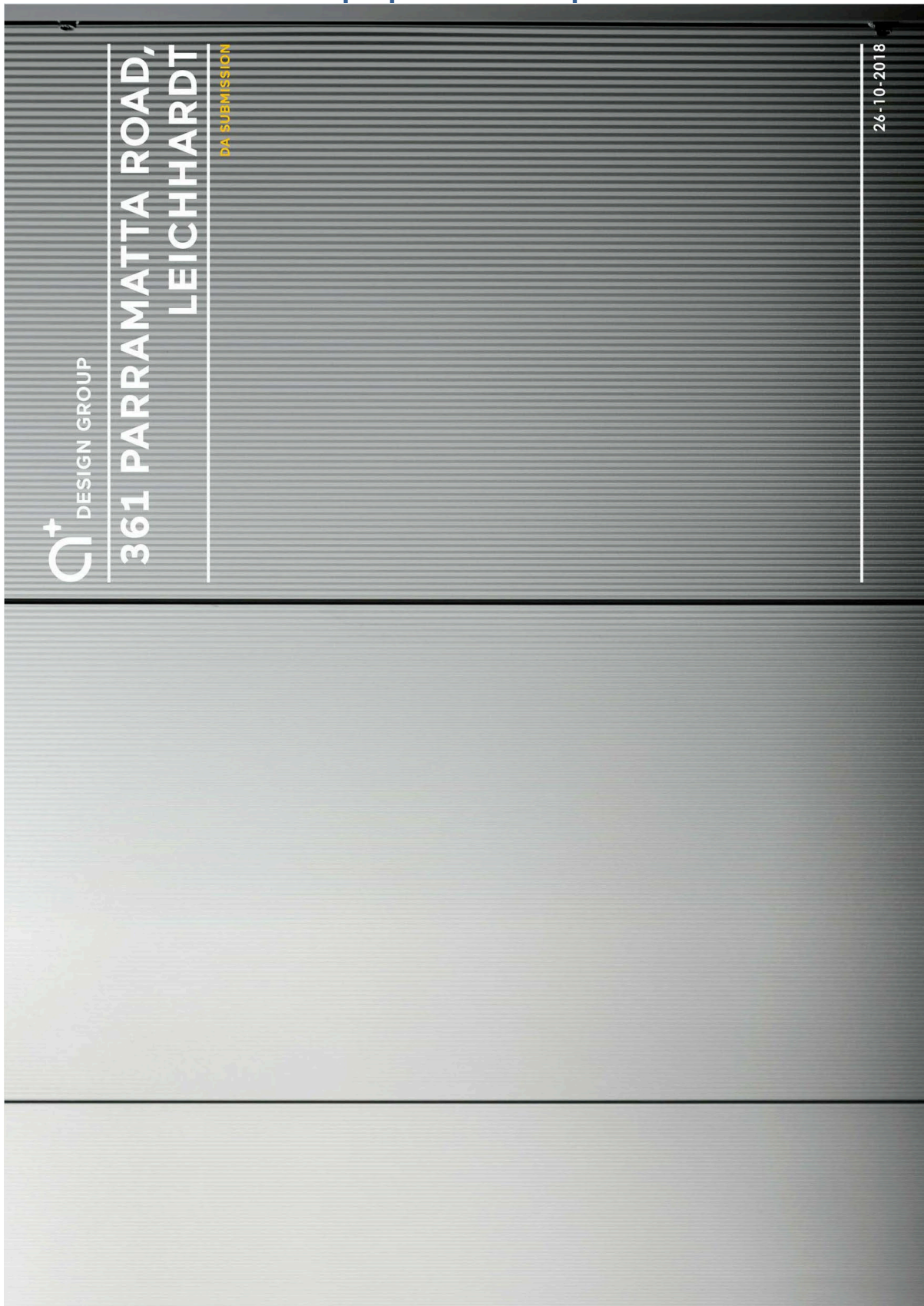
Water Efficiency Labelling and [www.waterrating.gov.au](http://www.waterrating.gov.au)  
Standards (WELS)

WorkCover Authority of NSW 13 10 50

[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

Enquiries relating to work safety and asbestos  
removal and disposal.

Attachment B – Plans of proposed development



**G+** DESIGN GROUP

**361 PARRAMATTA ROAD,  
LEICHHARDT**

DA SUBMISSION

26-10-2018



# DRAWING LIST

Sheet No.	Rev	Sheet Name
A1.01	1	Drawing List
A1.02	1	Development Summary
A2.01	1	Location Plan
A2.02	1	Site Analysis / Site Plan
A2.03	1	Demolition Plan
A3.01	1	Lower Ground
A3.02	1	Ground Level
A3.03	1	Level 1
A3.04	1	Level 2
A3.05	1	Level 3
A3.06	1	Roof Plan
A4.01	1	South Elevation
A4.02	1	North Elevation
A4.03	1	East Elevation
A4.04	1	West Elevation
A4.05	1	Parramatta Street Wall Elevation
A5.01	1	Section AA'
A5.02	1	Section BB'
A5.03	1	Section CC'
A6.01	1	Schedule of Materials and Finishes
A7.01	1	Shadow Analysis
A8.01	1	FSR Calculation



www.aplustg.com.au  
 PH: 1300 383 788  
 88 CHANCOS STREET,  
 ST LEONARDS, NSW 2060  
 10MINNIEBARTHCAPTIONENGINEERING1133

Rev: 1  
 Description: DA Submission  
 Date: 10 Oct 19

Client Name: Lighthouse Property Trust  
 Project Name: 361 Parramatta Road, Leichhardt

Drawing Title: Drawing List  
 SCALE: A1:01  
 Date: 26.10.18  
 Drawing no: A1.01  
 Project No.: a18063  
 ISSUE: 1

## BASIX THERMAL COMFORT

### NATHERS Thermal Performance Specifications (BASIX Thermal Comfort) Unit 1, 361 Parramatta Road, Leichhardt

These are the Specifications upon which the NatHERS assessment is based. If details included in these Specifications vary from other drawings or written specifications, these Specifications shall take precedence. If only one specification option is detailed for a building element, that specification must apply to all instances of that element for the project.

Windows	Glass	Frame	U value	SHGC	Detail
Default	Double glazed low e, high solar gain	Aluminium thermally broken	3.1	0.49	All glazing
Skylights	No skylights				
External walls	Construction Added Insulation Detail				
Brick Veneer	R 2.5				
Internal walls	Construction Added Insulation Detail				
Hebel + stud Plasterboard on studs	R 1.0 Walls to common lobby None Within units				
Floors	Construction Added Insulation Detail				
Concrete	R 1.5				
Ceilings	Construction Added Insulation Detail				
Plasterboard	See roof detail below				
Roof	Construction Added Insulation Detail				
Concrete	R 1.0				
Other Requirements	All exhaust fans and downlights (if installed) to be sealed to prevent air-infiltration				



Certificate no.: 000228552  
 Assessor Name: Robert Mellindine  
 Accreditation no.: VIC/BDVA/12/1475  
 Certification date: 25 Oct 2018  
 Dwelling Address: 1, 361 Parramatta Road  
 Leichhardt, NSW 2040  
[www.nathers.gov.au](http://www.nathers.gov.au)



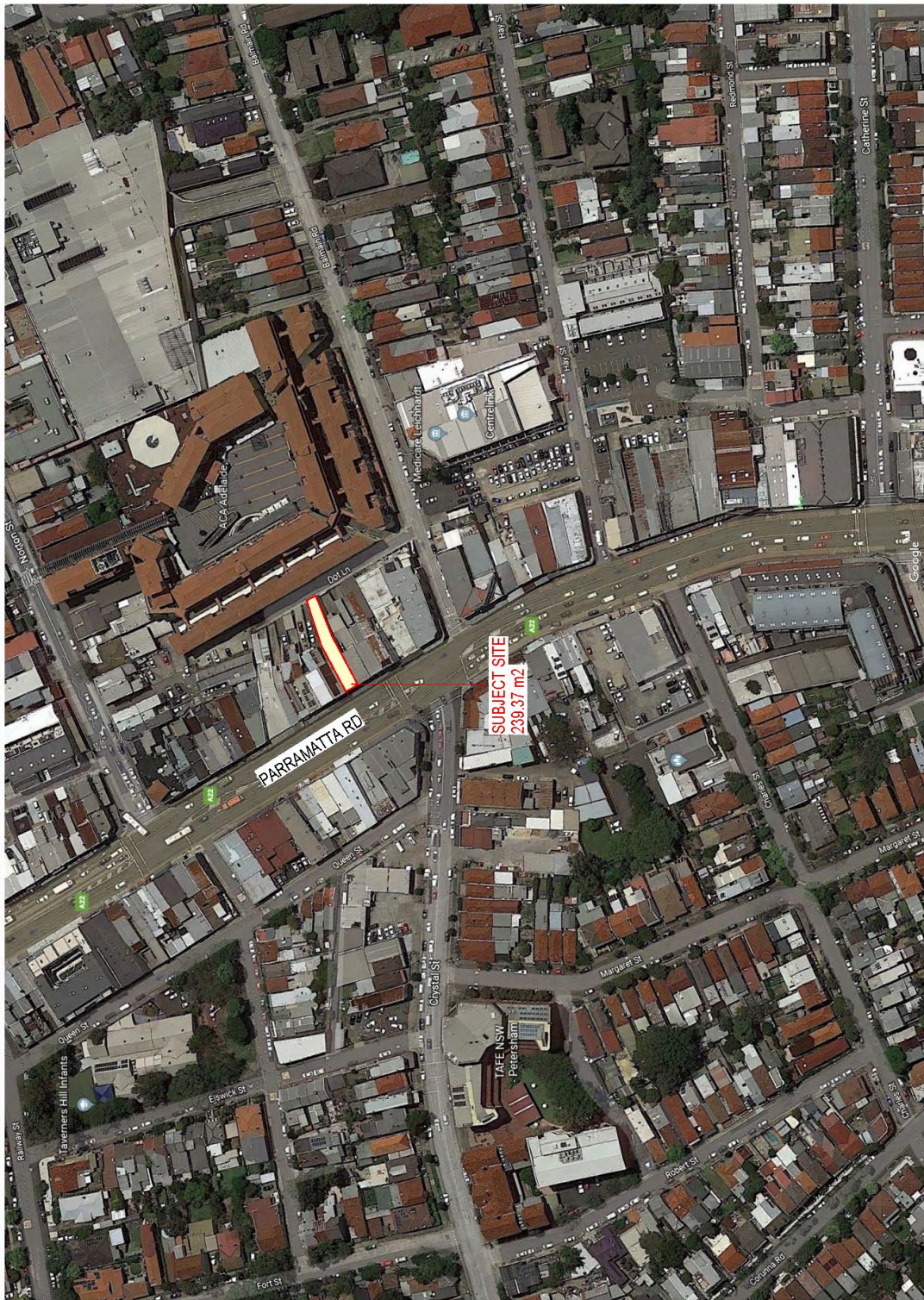
## DEVELOPMENT SUMMARY

Site Area (sqm)	239.37 sqm	
<b>GFA Gross Floor Area</b>		
Level	Proposed Gross Floor Area	
Lower Ground		
Ground	118 sqm	
Level 1	111 sqm	
Level 2	111 sqm	
Level 3	85 sqm	
<b>Total</b>	<b>426 sqm</b>	
<b>FSR</b>	<b>1.78 :1</b>	
<b>Schedule of Hotel Rooms</b>		
Level	No. of Rooms	
Ground	1	
Level 1	4	
Level 2	4	
Level 3	3	
<b>Total</b>	<b>12</b>	
<b>Schedule of Residential Unit</b>		
Level	Studio	
Ground	1	
<b>Schedule of Carparking</b>		
Carparking	Min No. of Spaces Required	Spaces Proposed
Residential	Max. Parking Rate	
	Nil spaces per dwelling	0
	0.125 space per 11 dwellings	0.1
		0
Hotel Accommodation	Max. Parking Rate	Spaces Proposed
	1 space per 5 staff	0.3
	1 space per 5 bedrooms	3
		1 (Service bay)
<b>Bicycle Parking</b>		
Hotel		
Employees	1 Space per 10 staff	1
Customers	1 Space per 20 rooms	1
<b>Unit</b>		
Residents	1 Space per 2 dwellings	1
Visitors	1 Space per 10 dwellings	1
<b>Total</b>		<b>4 bicycle parking</b>

Client Name  
**Lighthouse Property Trust**  
 Project Name  
**361 Parramatta Road, Leichhardt**

Rev 1 Description DA Submission Date 10 Oct 19

[www.aphusidg.com.au](http://www.aphusidg.com.au)  
 PH 1300 388 788  
 89 CHANDOS STREET,  
 SYDNEY NSW 1585  
 SUITE 101/102/103/104/105/106/107/108/109/110/111/112/113/114/115/116/117/118/119/120/121/122/123/124/125/126/127/128/129/130/131/132/133/134/135/136/137/138/139/140/141/142/143/144/145/146/147/148/149/150/151/152/153/154/155/156/157/158/159/160/161/162/163/164/165/166/167/168/169/170/171/172/173/174/175/176/177/178/179/180/181/182/183/184/185/186/187/188/189/190/191/192/193/194/195/196/197/198/199/200/201/202/203/204/205/206/207/208/209/210/211/212/213/214/215/216/217/218/219/220/221/222/223/224/225/226/227/228/229/230/231/232/233/234/235/236/237/238/239/240/241/242/243/244/245/246/247/248/249/250/251/252/253/254/255/256/257/258/259/260/261/262/263/264/265/266/267/268/269/270/271/272/273/274/275/276/277/278/279/280/281/282/283/284/285/286/287/288/289/290/291/292/293/294/295/296/297/298/299/300/301/302/303/304/305/306/307/308/309/310/311/312/313/314/315/316/317/318/319/320/321/322/323/324/325/326/327/328/329/330/331/332/333/334/335/336/337/338/339/340/341/342/343/344/345/346/347/348/349/350/351/352/353/354/355/356/357/358/359/360/361/362/363/364/365/366/367/368/369/370/371/372/373/374/375/376/377/378/379/380/381/382/383/384/385/386/387/388/389/390/391/392/393/394/395/396/397/398/399/400/401/402/403/404/405/406/407/408/409/410/411/412/413/414/415/416/417/418/419/420/421/422/423/424/425/426/427/428/429/430/431/432/433/434/435/436/437/438/439/440/441/442/443/444/445/446/447/448/449/450/451/452/453/454/455/456/457/458/459/460/461/462/463/464/465/466/467/468/469/470/471/472/473/474/475/476/477/478/479/480/481/482/483/484/485/486/487/488/489/490/491/492/493/494/495/496/497/498/499/500/501/502/503/504/505/506/507/508/509/510/511/512/513/514/515/516/517/518/519/520/521/522/523/524/525/526/527/528/529/530/531/532/533/534/535/536/537/538/539/540/541/542/543/544/545/546/547/548/549/550/551/552/553/554/555/556/557/558/559/560/561/562/563/564/565/566/567/568/569/570/571/572/573/574/575/576/577/578/579/580/581/582/583/584/585/586/587/588/589/590/591/592/593/594/595/596/597/598/599/600/601/602/603/604/605/606/607/608/609/610/611/612/613/614/615/616/617/618/619/620/621/622/623/624/625/626/627/628/629/630/631/632/633/634/635/636/637/638/639/640/641/642/643/644/645/646/647/648/649/650/651/652/653/654/655/656/657/658/659/660/661/662/663/664/665/666/667/668/669/670/671/672/673/674/675/676/677/678/679/680/681/682/683/684/685/686/687/688/689/690/691/692/693/694/695/696/697/698/699/700/701/702/703/704/705/706/707/708/709/710/711/712/713/714/715/716/717/718/719/720/721/722/723/724/725/726/727/728/729/730/731/732/733/734/735/736/737/738/739/740/741/742/743/744/745/746/747/748/749/750/751/752/753/754/755/756/757/758/759/760/761/762/763/764/765/766/767/768/769/770/771/772/773/774/775/776/777/778/779/780/781/782/783/784/785/786/787/788/789/790/791/792/793/794/795/796/797/798/799/800/801/802/803/804/805/806/807/808/809/810/811/812/813/814/815/816/817/818/819/820/821/822/823/824/825/826/827/828/829/830/831/832/833/834/835/836/837/838/839/840/841/842/843/844/845/846/847/848/849/850/851/852/853/854/855/856/857/858/859/860/861/862/863/864/865/866/867/868/869/870/871/872/873/874/875/876/877/878/879/880/881/882/883/884/885/886/887/888/889/890/891/892/893/894/895/896/897/898/899/900/901/902/903/904/905/906/907/908/909/910/911/912/913/914/915/916/917/918/919/920/921/922/923/924/925/926/927/928/929/930/931/932/933/934/935/936/937/938/939/940/941/942/943/944/945/946/947/948/949/950/951/952/953/954/955/956/957/958/959/960/961/962/963/964/965/966/967/968/969/970/971/972/973/974/975/976/977/978/979/980/981/982/983/984/985/986/987/988/989/990/991/992/993/994/995/996/997/998/999/1000/1001/1002/1003/1004/1005/1006/1007/1008/1009/1010/1011/1012/1013/1014/1015/1016/1017/1018/1019/1020/1021/1022/1023/1024/1025/1026/1027/1028/1029/1030/1031/1032/1033/1034/1035/1036/1037/1038/1039/1040/1041/1042/1043/1044/1045/1046/1047/1048/1049/1050/1051/1052/1053/1054/1055/1056/1057/1058/1059/1060/1061/1062/1063/1064/1065/1066/1067/1068/1069/1070/1071/1072/1073/1074/1075/1076/1077/1078/1079/1080/1081/1082/1083/1084/1085/1086/1087/1088/1089/1090/1091/1092/1093/1094/1095/1096/1097/1098/1099/1100/1101/1102/1103/1104/1105/1106/1107/1108/1109/1110/1111/1112/1113/1114/1115/1116/1117/1118/1119/1120/1121/1122/1123/1124/1125/1126/1127/1128/1129/1130/1131/1132/1133/1134/1135/1136/1137/1138/1139/1140/1141/1142/1143/1144/1145/1146/1147/1148/1149/1150/1151/1152/1153/1154/1155/1156/1157/1158/1159/1160/1161/1162/1163/1164/1165/1166/1167/1168/1169/1170/1171/1172/1173/1174/1175/1176/1177/1178/1179/1180/1181/1182/1183/1184/1185/1186/1187/1188/1189/1190/1191/1192/1193/1194/1195/1196/1197/1198/1199/1200/1201/1202/1203/1204/1205/1206/1207/1208/1209/1210/1211/1212/1213/1214/1215/1216/1217/1218/1219/1220/1221/1222/1223/1224/1225/1226/1227/1228/1229/1230/1231/1232/1233/1234/1235/1236/1237/1238/1239/1240/1241/1242/1243/1244/1245/1246/1247/1248/1249/1250/1251/1252/1253/1254/1255/1256/1257/1258/1259/1260/1261/1262/1263/1264/1265/1266/1267/1268/1269/1270/1271/1272/1273/1274/1275/1276/1277/1278/1279/1280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Project No. at 8063  
ISSUE 1

Drawing title Location Plan  
SCALE  
Date 26/10/18  
Drawing no. A2.01

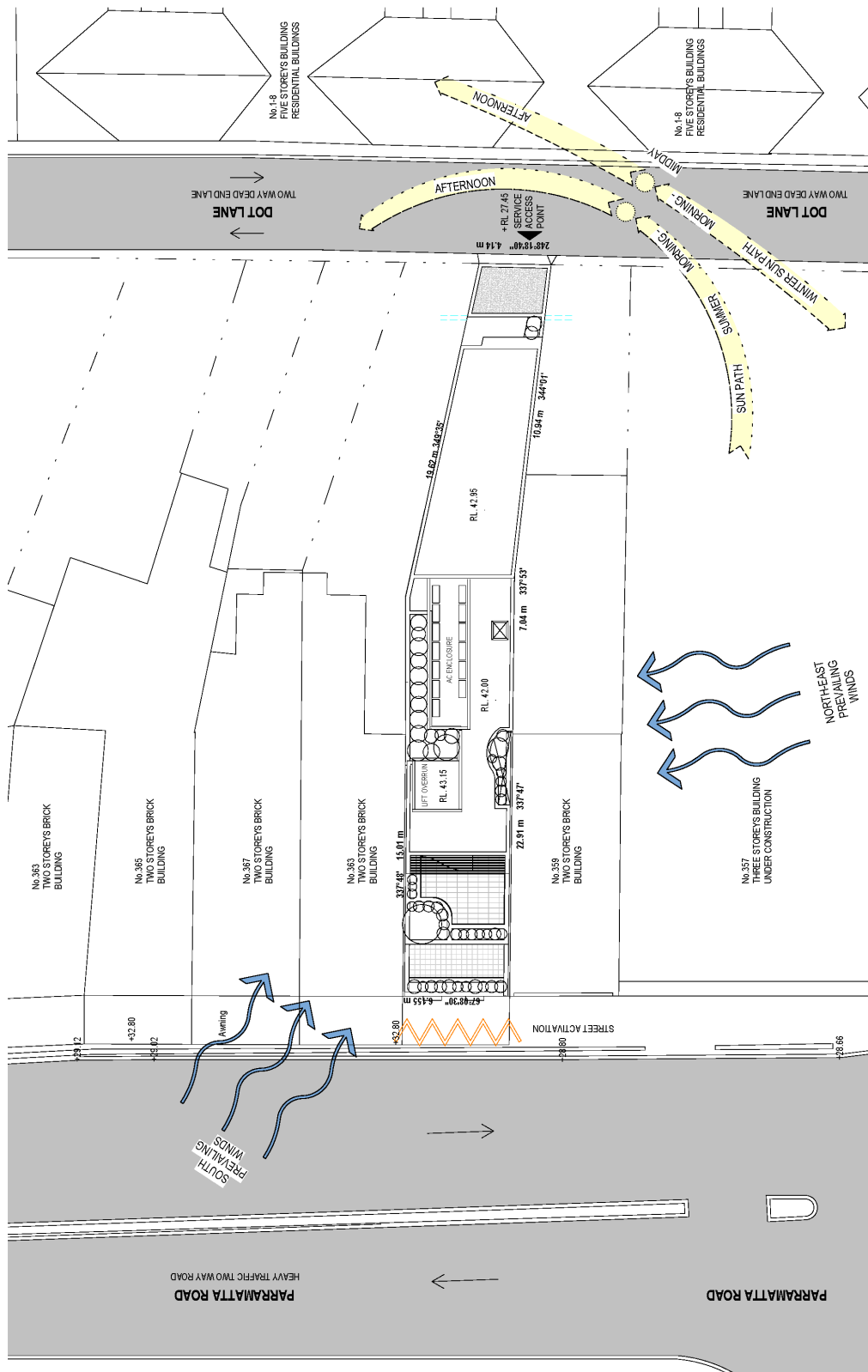



Client Name Lighthouse Property Trust  
Project Name 381 Parramatta Road, Leichhardt

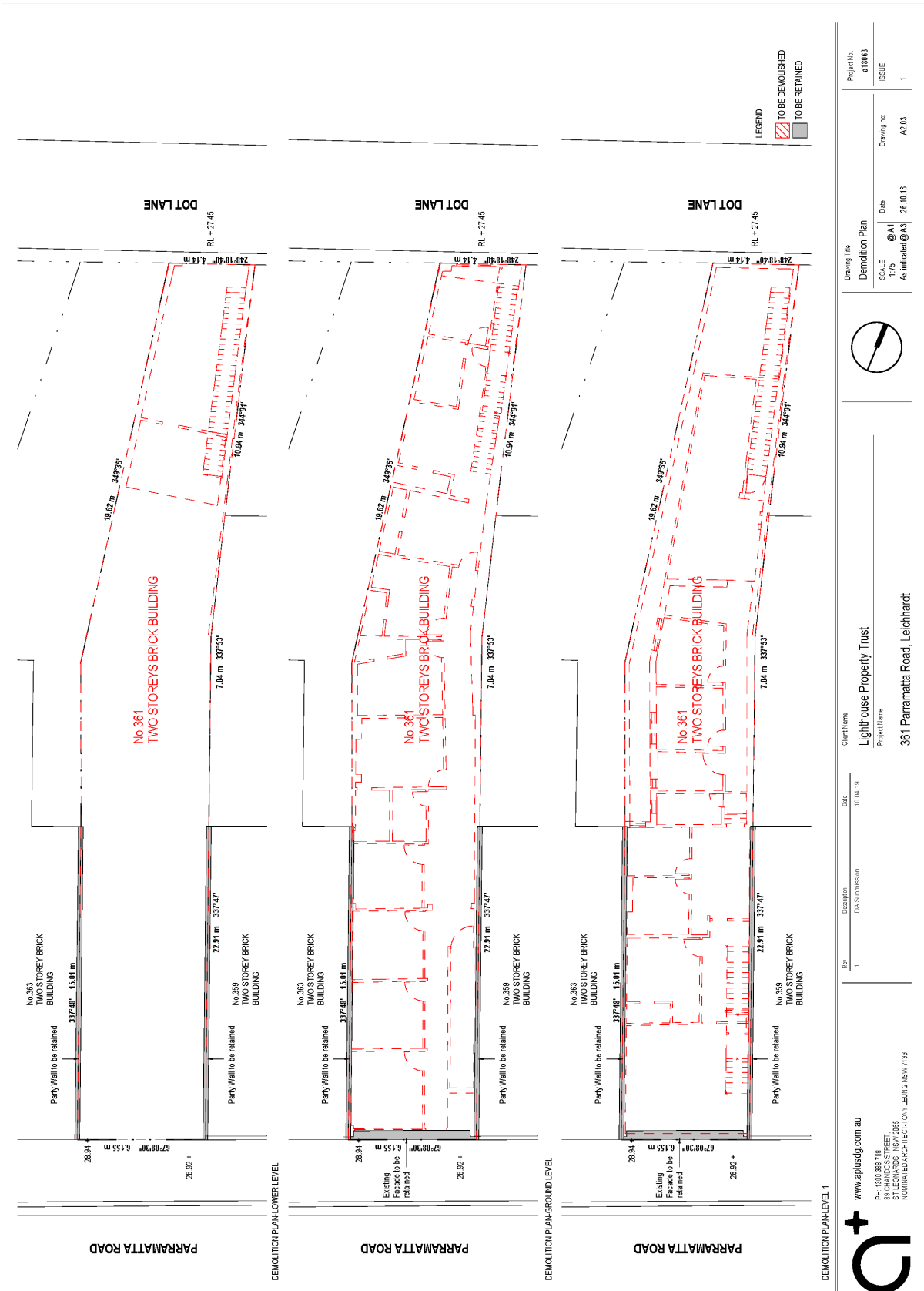
Rev 1  
Description DA Submission  
Date 10 Oct 18

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LICENSATED ARCHITECT (NSW) LIC 15018 7133





	Drawing Title <b>Site Analysis / Site Plan</b>	Project No. at 8063
	Scale 1:100 @ A1 1:200 @ A3	Drawing no. A202
Client Name <b>Lighthouse Property Trust</b>	Date 26.10.18	
Project Name 361 Parramatta Road, Leichhardt		
Rev 1	Description CA Submission	Date 10.04.19
www.aplusdg.com.au PH 1300 383 788 88 CHANCOS STREET ST LEONARDS, NSW 1585 (02) 9439 4000		



LEGEND  
 [Hatched Box] TO BE DEMOLISHED  
 [Solid Box] TO BE RETAINED

Client Name: Lighthouse Property Trust  
 Project Name: 361 Paramatta Road, Leichhardt

Drawing Title: Demolition Plan  
 SCALE: 1:25  
 As indicated @ A3

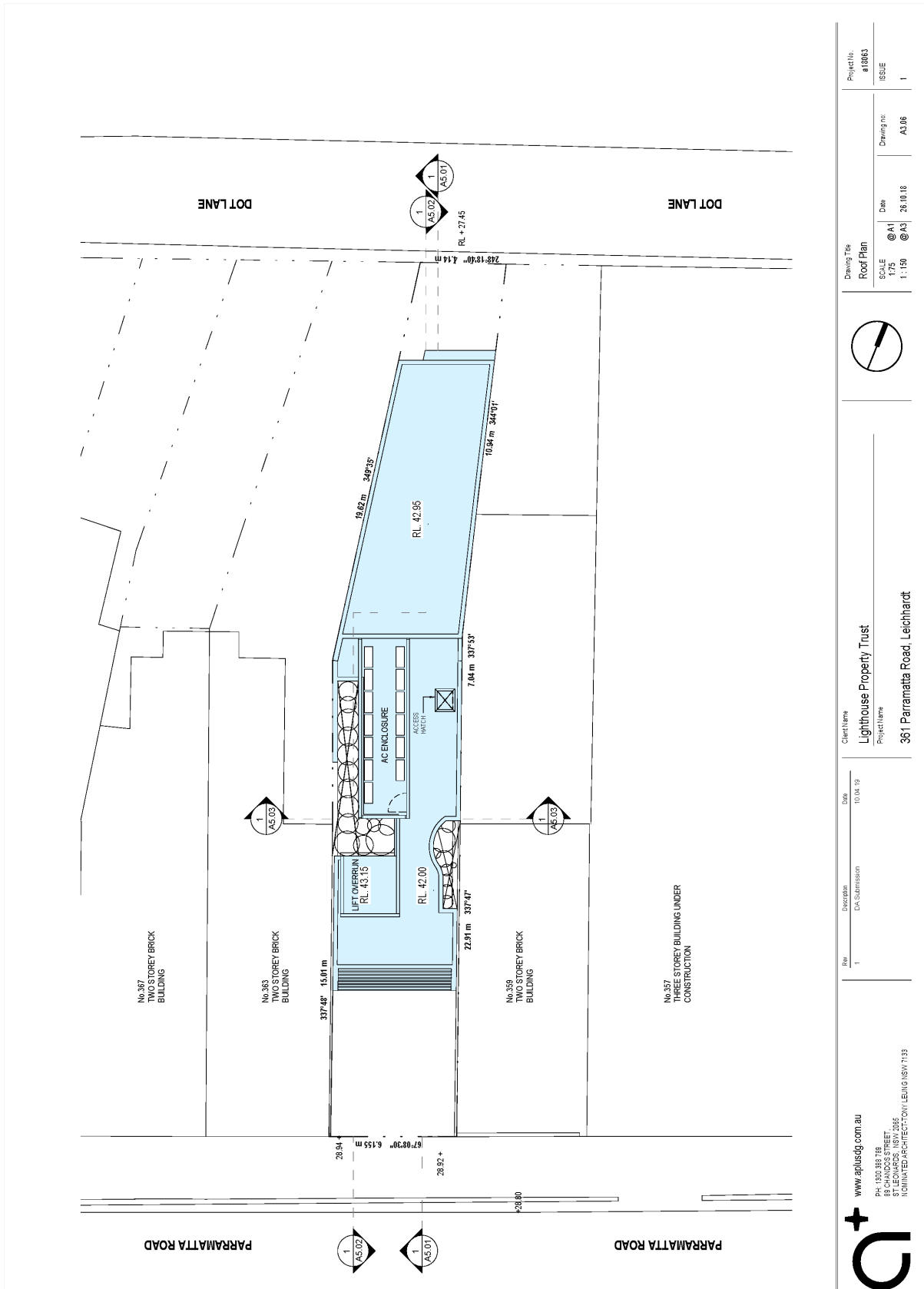
Project No.: 18063  
 ISSUE

Date: 26.10.18  
 Drawing no: A2.03  
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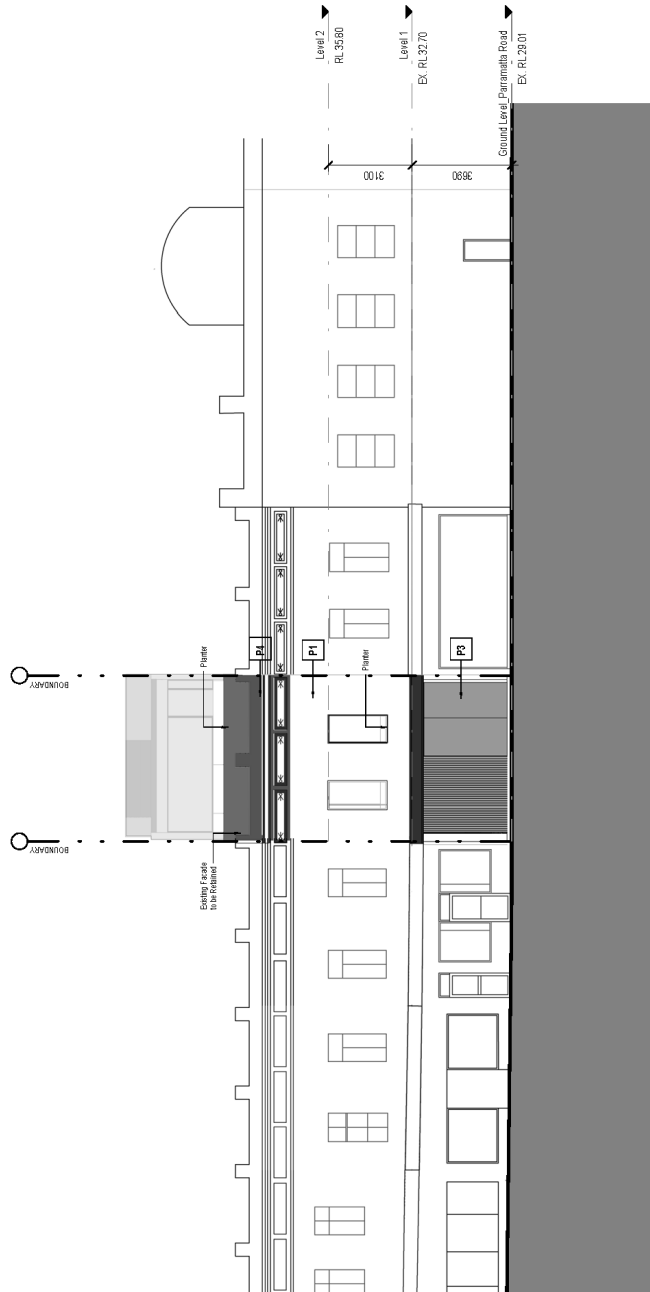
Rev: 1  
 Description: CA Submission  
 Date: 10.04.19

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**+**  
**D**



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	Date: 26.10.18 26.10.18	Drawing no: A3.06 A3.06	Project No.: a18063 ISSUE 1	Drawing no: A3.06 A3.06	Project No.: a18063 ISSUE 1

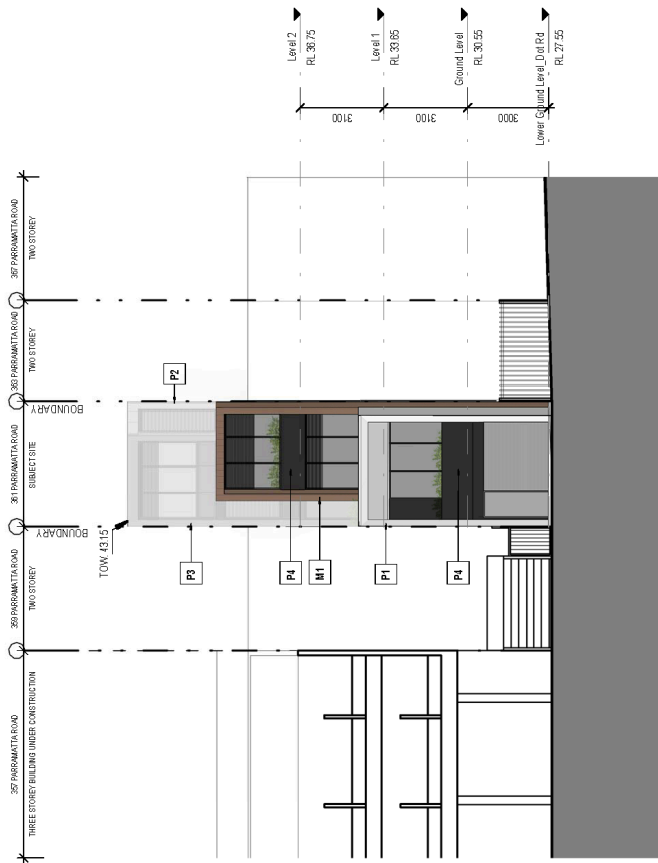


- FINISH LEGEND:**
- M1 TIMBER LOOK METAL CLADDING
  - P1 WHITE PAINT
  - P2 LIGHT GREY
  - P3 GREY
  - P4 DARK GREY

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		Drawing Title <b>South Elevation</b>	Date 28.10.18	Drawing Issue AA.01	Project Issue 1		



DOT LANE STREET SCAPE VIEW - THERE IS NO SURROUNDING PREVAILING STREETWALL HEIGHT



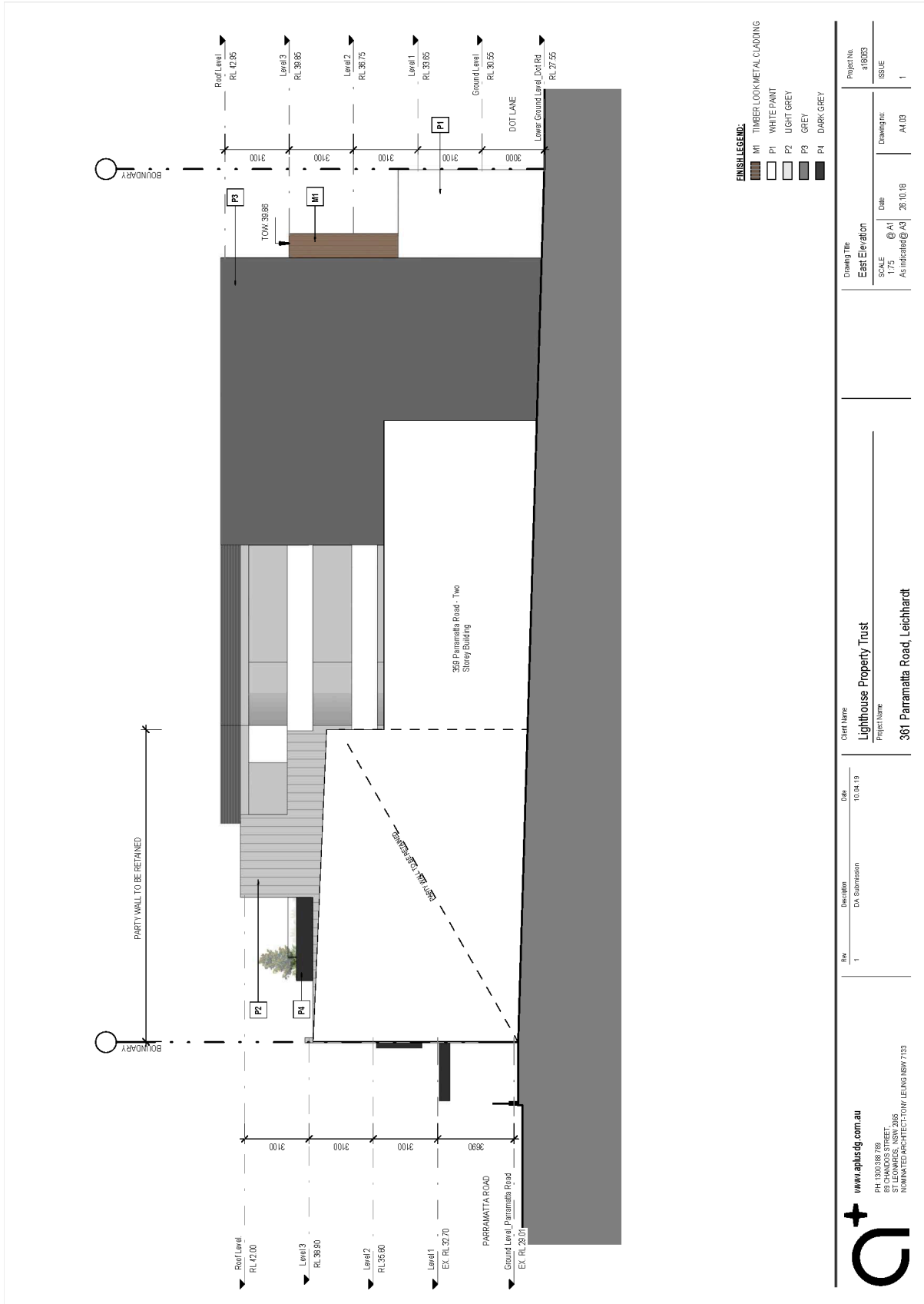
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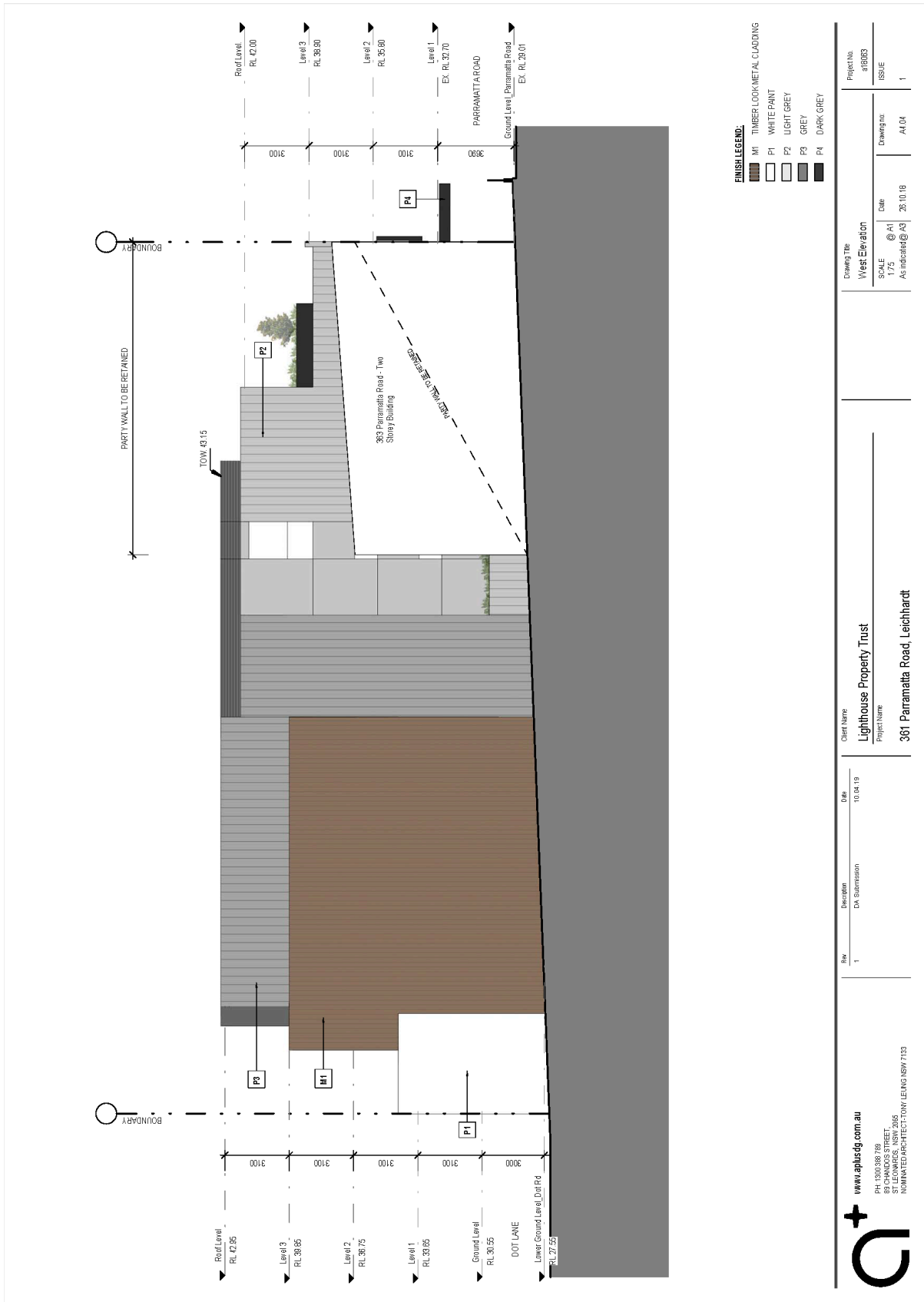
Project No.	a18063
Issue	1
Client Name	Lighthouse Property Trust
Project Name	361 Parramatta Road, Leichhardt
Drawing No.	AA.02
Date	28.10.18
Scale	As indicated @ A3
North Elevation	
Scale	1:75
AS indicated @ A3	

Rev	Description	Date
1	DA Submission	10.04.19


  
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Project No. a18003  
ISSUE 1

Drawing Title  
Parramatta Street Wall Elevation

SCALE 1:75  
1:150

Date 28.10.18

Drawing No. AA.05

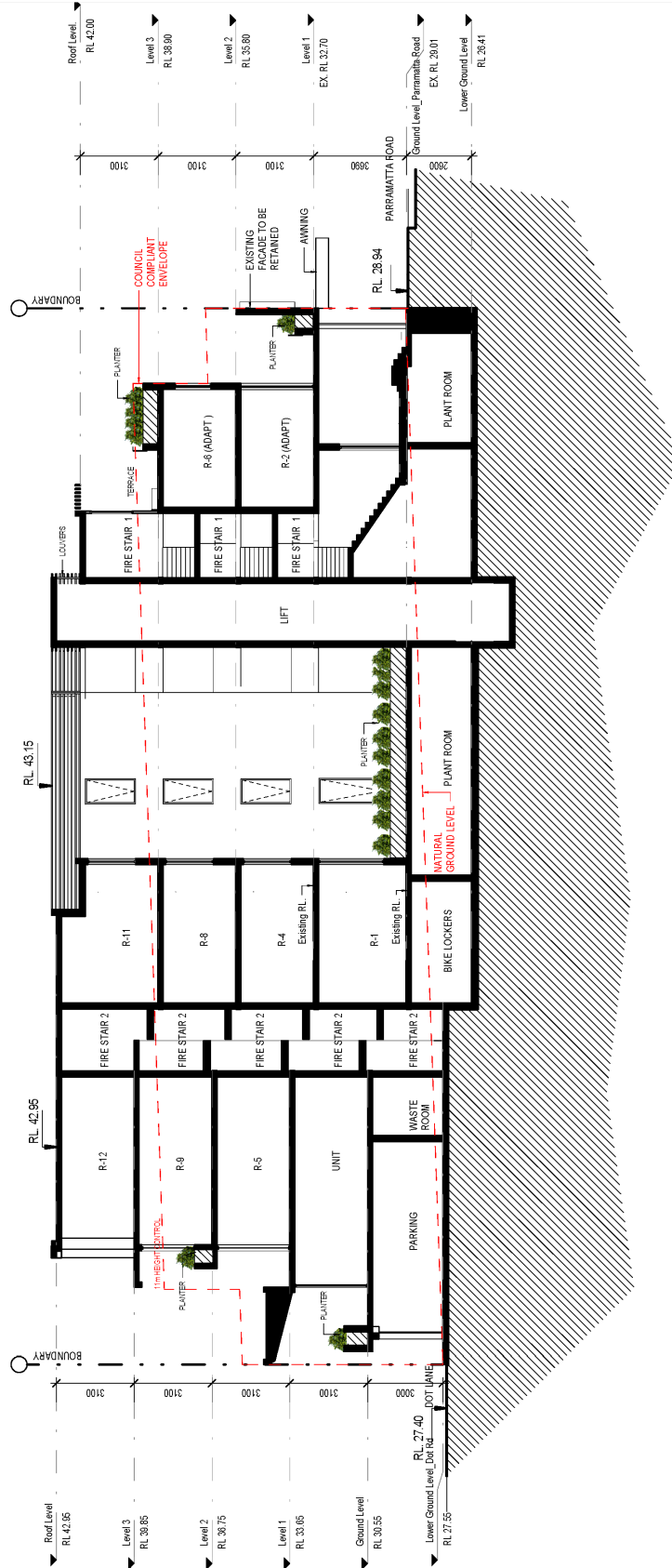
Client Name  
Lighthouse Property Trust  
Project Name  
361 Parramatta Road, Leichhardt

Rev 1  
Description DA Submission  
Date 10.04.19

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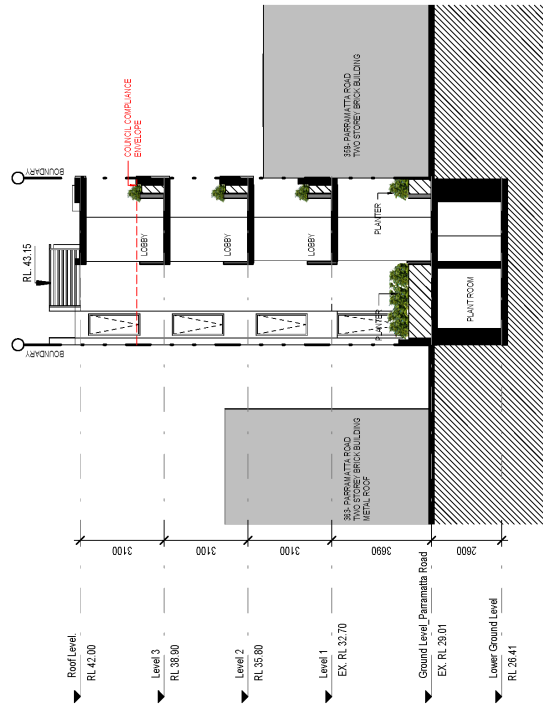


Drawing Title		Project No.	
Section BE		a 8003	
SCALE	Date	Drawing No.	ISSUE
1:75	@ A1	AS102	1
1:150	@ A3		

Client Name	
Lighthouse Property Trust	
Project Name	
361 Parramatta Road, Leichhardt	

Rev	Description	Date
1	DA Submission	10.04.19


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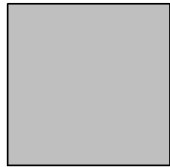
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 Description: DA Submission  
 Date: 10 Oct 18

Client Name: Lighthouse Property Trust  
 Project Name: 361 Paramatta Road, Leichhardt

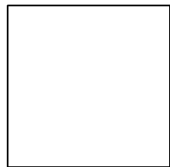
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 SCALE: 1:75  
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 Drawing no: AS103  
 Date: 26/10/18  
 Project No.: a18003  
 ISSUE: 1



3 - RENDERED PAINT GREY



2 - RENDERED PAINT LIGHT GREY



1 - RENDERED PAINT WHITE



6 - ALUMINUM FRAMED GLAZING



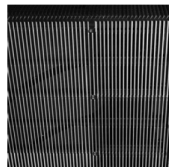
5 - METAL CLADDING WITH TIMBER LOOK



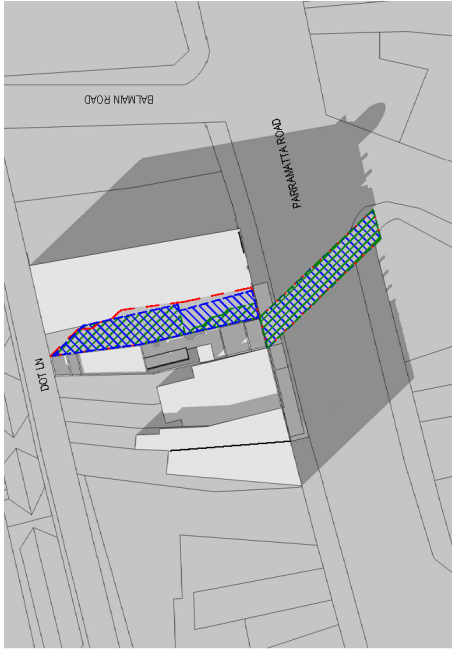
4 - RENDERED PAINT DARK GREY



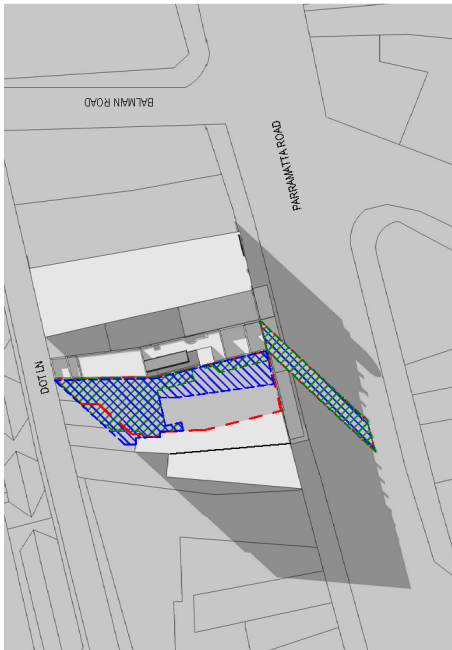
8 - GARAGE DOOR



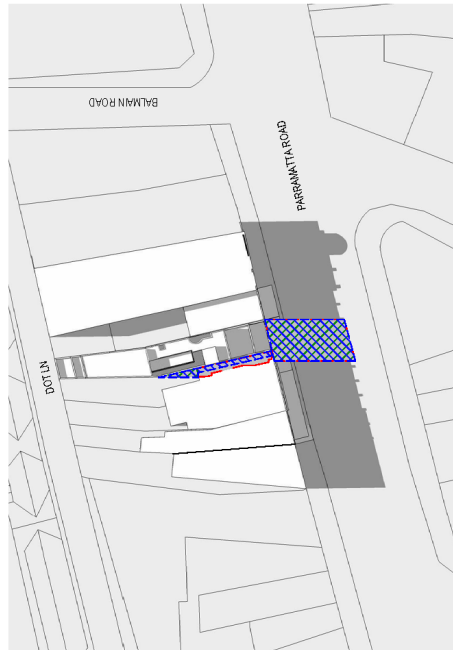
7 - HORIZONTAL RETRACTABLE LOUVRES



SHADOW 21 JUNE 3pm



SHADOW 21 JUNE 9am



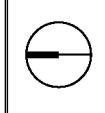
SHADOW 21 JUNE 12 noon

- SHADOW OUTLINE OF PROPOSED ENVELOPE
- ▨ SHADOW OUTLINE OF EXISTING ENVELOPE
- ▨ SHADOW OUTLINE OF COMPLIANT ENVELOPE


  
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 PH 1300 388 788
   
 89 CHANDOS STREET,
   
 NORTH RYDE NSW 1585
   
 NORTH RYDE ARCHITECTURE LEVING NSW 7133

Rev	Description	Date
1	DA Submission	10.04.19

Client Name  
**Lighthouse Property Trust**  
 Project Name  
**381 Parramatta Road, Leichhardt**



Drawing Title	Scale	Date	Drawing No.	Project No.
Shadow Analysis	SCALE	28.10.18	A7.01	a18003
				ISSUE
				1









Project No.	a18063
Issue	ISSUE
Drawing no.	A3102
Date	26.10.18
Scale	@ A1
As indicated @ A3	



Client Name  
**Lighthouse Property Trust**  
 Project Name  
**361 Parramatta Road, Leichhardt**

Rev 1  
 Description CA Submission  
 Date 10.04.19

www.aplusdg.com.au  
 PH 1300 388 788  
 88 CHANCOS STREET,  
 ST LEONARDS, NSW 1585  
 (02) 9438 2000









## Attachment C – Clause 4.6 request to vary FSR

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### 9 Appendix 2 - Request for a variation in floor space ratio pursuant to Clause 4.6 of the Leichhardt Environmental Plan 2013

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#### 1 Introduction

This report has been prepared as the Applicant's Written Request for Variation to Development Standard and is made in accordance with the provisions of clause 4.6 of *Leichhardt Local Environmental Plan 2013* ("LLEP2013")

The Request for Variation is made in respect of a Development Application for the demolition of existing structures (retention of existing façade) and construction of a mixed use building development comprising:

- Ground floor hotel reception lobby, office and residential apartment; and,
- First, second and third floor hotel accommodation.

The subject site is officially described as Lot 1, DP. 89488, 361 Parramatta Road, Leichhardt.

The site of the development is shown in figure 1 having a total site area is 239.37sqm.

The total gross floor area of the proposed development is 426sqm, resulting in a floor space ratio of 1.78:1. That is, the proposed development exceeds the floor space ratio control by 0.28:1.

The subject site is located on the northern side of Parramatta and enjoys vehicular access Dot Lane at the rear. The site has street frontages approximately of approximately six (6) metres in length to Parramatta Road frontage and approximately 4 metres in length to Dot Lane.

The site is currently developed with a two-storey mixed use building with approximately 180sqm of ground floor commercial space. Off-street parking is currently accommodated in a vehicle garage at the rear of the building with access off Dot lane.

The subject site is located within a B2 Local Centre zone within a shopping strip with predominantly a mix of retail land uses. Evidence of redevelopment has occurred in the locality and continues. The existing is in relatively poor condition and is in need of renewal.

The request for variation relates to clause 4.4A(3) Floor Space Ratio, of LLEP2013, which sets a maximum FSR of 1.5:1 to the relevant lot subject to this request for variation.

In preparing this Request for Variation, the requirements of clause 4.6 of the LLEP 2013 have been strictly met.

The Request for Variation has been generally set out in accordance with the structure recommended by the Department of Planning in its publication entitled *Varying Development Standards – A Guide*.

In brief terms, this variation request says that:

- The height of the proposed development is generally consistent with recent development in the locality, noting that the LLEP 2013 does not adopt a height of buildings standard;

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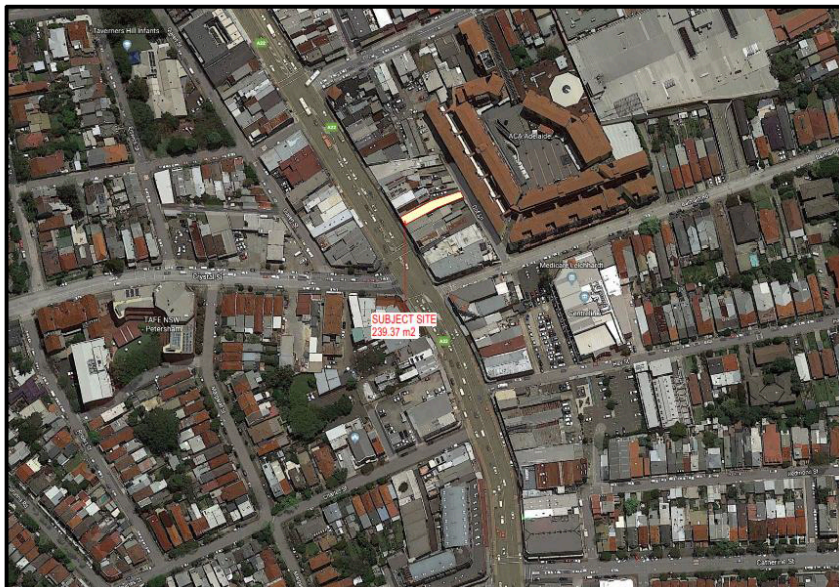
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- The proposal reflects the desired future character of the area —in terms of the design quality sought by the Council via its *Development Control Plan*.
- The setbacks and design characteristics of the proposal coordinate to manage bulk, scale and other visual impact impacts even with an exceedance in FSR.
- The proposed development is in the public interest because it is consistent with:
  - the objectives of the FSR development standard; and
  - the objectives for development within the zone in which the development is proposed to be carried out.
- Requiring strict compliance with the FSR control is unnecessary in the circumstances of the case. The increased GFA as proposed over the subject site delivers a building with overall bulk and scale that is acceptable in the context.
- There are sufficient environmental planning grounds to justify contravening the FSR control. That is, the increase in FSR provides the incentive and makes it economic feasible to redevelop an aged building that contributes little to the aesthetic of the locality.
- The contravention of the development standard does not raise any matter of significance for State or regional environmental planning.
- There is no public benefit of maintaining the development standard in the present circumstances (and there is public benefit in varying the standard).

Reference should be made to **Figure 1** which provides an aerial view of the subject site.



**Figure 1:** Subject site



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## 2 Clause 4.6 Request for Variation

Clause 4.6 of LLEP2013 allows for variation to development standards.

Components of Clause 4.6 relevant to the preparation of a Request for Variation are:

- (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 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.*
- (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*
  - (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6)

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(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
- (c) clause 5.4,

#### 2.1 What is the development standard being varied?

The subject Request for Variation relates to the maximum floor space ratio standard pursuant to clause 4.4A(3) of the LLEP2013.

#### 2.2 Under what clause is the development standard listed in the environmental planning instrument?

The development standards are contained within clause 4.4A(3)

#### 2.3 Does clause 4.6 permit variation to the development standards contained within clause 4.4A(3)?

Clause 4.6(8) itemises those clauses for which contravention of a development standard is not allowed to be made under clause 4.6. Clause 4.4A(3) is not included within that list.

Clause 4.6 allows for variation to development standards other than those excluded under clause 4.6(8). "Development Standard" is defined at Section 4 of the EP&A Act 1979 as:

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

(a)-(b)...

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

(d)-(o) ...

Clause 4.4A(3) sets a requirement in relation to the maximum floor space ratio and is therefore a development standard pursuant to item (c) of the definition. Since clause 4.4A(3) is not excluded under clause 4.6(8) a request for variation is able to be made to the standard.

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#### 2.4 What is the zoning of the Land?

The subject site is zoned B2 – Local Centre.

#### 2.5 What are the objectives of the zone?

The objectives of the zone are contained within Part 2 of the LLEP2013. The objectives of the zone are:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To ensure that development is appropriately designed to minimise amenity impacts.
- To allow appropriate residential uses to support the vitality of local centres.
- To ensure that uses support the viability of local centres.
- To provide a mixture of compatible land uses.
- To reinforce and enhance the role, function and identity of local centres by encouraging appropriate development to ensure that surrounding development does not detract from the function of local centres.
- To integrate suitable business, office, residential, retail and other development in accessible locations.

The proposed development achieves all the relevant objectives of the zone. Detailed analysis of the proposed FSR exceedance relative to the objectives of the zone is provided at Section 2.11 of this request.

#### 2.6 What are the objectives of the development standard?

The objective of clause 4.4A – Exception to maximum floor space ratio for active street frontages is:

- (1) The objective of this clause is to provide floor space incentives for mixed use development that incorporates active street frontages at ground floor level in Zone B1 Neighbourhood Centre or Zone B2 Local Centre.

However, it is considered essential that the objectives of the parent FSR clause at 4.4 – Floor Space Ratio also be considered.

(1) The objectives of this clause are as follows:

- (a) to ensure that residential accommodation:

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- (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**,

Terms considered particularly relevant to this request have been identified in **bold** text.

It is argued that the objective at 4.4A(3) and objectives of 4.4 operate together and need to be considered collectively. Hence, the relevant objectives relate to the:

- encouragement of mixed use development with active street frontages;
- minimisation of building impact in terms of bulk, form and scale.

The proposed development achieves all the relevant objectives of the development standard. That is, this proposal is a mixed use development with an active street frontage and while there is an exceedance in FSR, the bulk and scale of the proposal remains compatible with the character of the locality.



Figure 2: Proposal – Parramatta Road frontage

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

Clause 4.4A(3), together with the Floor space ratio Map, prescribes a maximum FSR of 1.5:1.

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**What is the numeric value of the development standard in the development application?**

The application proposes a floor space ratio of 1.78:1 as shown in architectural plans submitted with the application.

**2.8 What is the percentage variation between the proposal and the environmental planning instrument?**

The application proposes a FSR of 1.78:1, 0.28:1 over the standard which represents a 18.6% variation.

It is argued that Clause 4.6 of the LEP is similar to the long-standing *State Environmental Planning Policy No 1 — Development Standards* ("SEPP 1").

From its earliest days it was established that SEPP 1 may be applied to vary development standards even when the variation could not be regarded as minor: *Michael Projects v Randwick Municipal Council* (1982) 46 LGRA 410, 415).

The Court of Appeal considered the issue in *Legal and General Life v North Sydney Municipal Council* (1990) 69 LGRA 201. In that matter North Sydney Council had approved a SEPP 1 objection and the decision was subject to third party legal challenge.

The applicable floor space ratio control was 3.5:1, but — as a consequence of upholding the SEPP 1 objection — the approved floor space ratio was 15:1 (a variation to floor space of 329 per cent). The applicable height control was five storeys whereas the approved height was 17 storeys (an variation of 240 per cent).

The Court approved the following statement by the then Chief Judge of the Land and Environment Court (in *Legal and General Life v North Sydney Council* (1989) 68 LGRA 192, 203):

The discretion vested in councils under SEPP No 1 is wide and, subject to limitations found in the instrument itself and its relation to the *Environmental Planning and Assessment Act 1979*, is unconfined.

The Court upheld the validity of the Council's decision.

Clause 4.6 of the LEP is in similar terms to SEPP 1. Relevantly, like SEPP 1, there are no provisions that make necessary for a consent authority to decide whether the variation is minor. This makes the Court of Appeal's decision in *Legal and General Life* equally applicable to clause 4.6. This means that there is no constraint on the degree to which a consent authority may depart from a numerical standard.

Some examples that illustrate the wide range of commonplace numerical variations to development standards under clause 4.6 (as it appears in the Standard Instrument) are as follows:

- (a) In *Baker Kavanagh Architects v Sydney City Council* [2014] NSWLEC 1003 the Land and Environment Court granted a development consent for a three storey shop top housing development in Woolloomooloo. In this decision, the Court, approved a floor space ratio variation of 187 per cent.
- (b) In *Amarino Pty Ltd v Liverpool City Council* [2017] NSWLEC 1035 the Land and Environment Court granted development consent to a mixed use development on the basis of a clause 4.6 request that sought a 38 per cent height exceedance over a 15-metre building height standard.

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- (c) In *Auswin TWT Development Pty Ltd v Council of the City of Sydney* [2015] NSWLEC 1273 the Land and Environment Court granted development consent for a mixed use development on the basis of a clause 4.6 request that sought a 28 per cent height exceedance over a 22-metre building height standard.
- (d) In *Season Group Pty Ltd v Council of the City of Sydney* [2016] NSWLEC 1354 the Land and Environment Court granted development consent for a mixed use development on the basis of a clause 4.6 request that sought a 21 per cent height exceedance over a 18-metre building height standard.

In short, clause 4.6 is a performance-based control so it is possible (and not uncommon) for large variations to be approved in the right circumstances.

## 2.9 Floor Space Ratio objectives

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.

This section deals with the FSR standard —the section that follows (section 2.11) deals with the zone objectives.

### 4.4A Exception to maximum floor space ratio for active street frontages

*(1) The objective of this clause is to provide floor space incentives for mixed use development that incorporates active street frontages at ground floor level in Zone B1 Neighbourhood Centre or Zone B2 Local Centre.*

This proposal satisfies this objective by providing a mix of land uses being by providing for hotel accommodation and a residential apartment. Furthermore, the street frontage comprises hotel entrance and lobby and access for fire services.

## 4.4 Floor space ratio

*(1) The objectives of this clause are as follows:*

*(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*

**Comment:** It is argued that the objective of the clause aims to ensure the bulk and scale of development is compatible with the character of a locality. The future character is guided by the LDCP 2013, particularly relevant are the setback and building height plane controls. This proposal complies with these controls.

*(ii) provides a suitable balance between landscaped areas and the built form, and*

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**Comment:** This objective is not relevant to this proposal. That is, this proposal is located within a town centre, business zone context where development extending to all boundaries is the norm. Hence landscaped areas are not provided.

*(iii) minimises the impact of the bulk and scale of buildings,*

**Comment:** Such an objective seeks to ensure that development does not adversely impact upon the amenity of adjoining properties, particularly in regards to building bulk and scale. The proposed FSR delivers a built form that minimizes impact in building bulk and scale by adopting a significant upper floor building setback so that the uppermost floor is not visually prominent when viewed from the street as shown in diagrams below.

*(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.*

**Comment:** As noted above, it is argued that the objective of the clause aims to ensure the bulk and scale of development is compatible with the character of a locality. The future character is guided by the LDCP 2013, particularly relevant are the setback and building height plane controls. This proposal complies with these controls.

## 2.10 Zone objectives

As explained in the preceding section, 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. The section deals with the zone objectives.

The objectives of the B2 Local Centre zone are:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To ensure that development is appropriately designed to minimise amenity impacts.
- To allow appropriate residential uses to support the vitality of local centres.
- To ensure that uses support the viability of local centres.
- To provide a mixture of compatible land uses.
- To reinforce and enhance the role, function and identity of local centres by encouraging appropriate development to ensure that surrounding development does not detract from the function of local centres.
- To integrate suitable business, office, residential, retail and other development in accessible locations.

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It is considered that the proposed development satisfies relevant zone objectives. That is, this proposal will

- include floor space the support business uses that serve the needs of people who live in, work in and visit the local area.
- provide for the employment of persons and the premises is located in an accessible location.
- maximise public transport patronage and encourage walking and cycling by limiting on site car parking, but providing facilities for cyclists and being in close proximity to public transport services.
- ensure that amenity is preserved through excellent design and consistency with existing and approved building envelopes.
- provide a residential component which will support the vitality of local centres.
- add a hotel land use that will attract visitors to the locality and hence support the viability of local centres.
- adds to the mix of compatible land uses.
- reinforce and enhance the role, function and identity of local centres. It is considered to be an appropriate development for a local centre and will not be vulnerable to surrounding development impacting on the function of the local centres.
- enable the integration of business, residential, retail and other development in accessible locations.

There is no doubt that this proposal satisfies all of the B2 zone objectives.

#### 2.11 Compliance is unreasonable or unnecessary

The development standard is unreasonable or unnecessary in the circumstances of this case.

**Reason for Variation – The proposed development remains consistent with the size and scale and is otherwise compatible with the desired future character of the locality**

To meet the FSR standard would require removal of units from the the upper floor, or a reduction in building footprint which would result in no discernable reduction in the external appearance or bulk of the building when viewed from public places. The adoption of a significant setback at the upper floor and the retention of the existing building façade, the increased floor space delivers negligible contribution to the overall bulk of the building and will not impact upon the desired future character of the locality.

The proposal complies with other relevant developments standards and controls. That is, required setbacks have been observed.

For the above reasons, strict compliance with the standard is considered to be unreasonable and unnecessary in the circumstances of the case.

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## 2.12 Sufficient environmental planning grounds to justify contravening the development standard

The term "environmental planning grounds" is not defined in LCLEP2009 nor any other environmental planning instrument. It is also not defined in the Department of Planning's Guide to Varying Development Standards

Nevertheless, given that demonstration of sufficient environmental planning grounds is a separate test under clause 4.6(3) to the test of "unreasonable or unnecessary in the circumstances of the case"; and that case law relevant to SEPP 1 such as *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007) and *Winten Property v North Sydney* (2001) 130 LGERA 79 deal with demonstration of "unreasonable and unnecessary in the circumstances of the case, it must therefore be concluded that "environmental planning grounds" are a different test which cannot necessarily rely on the same methodology as laid down in SEPP 1 relevant Court decisions.

The matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (30 January 2015) provides some helpful guidance on the subject of "environmental planning grounds", however it is in fact limited to defining some factors which are not environmental planning grounds. Paragraph 60 of Commissioner Pearson's decision states:

*The environmental planning grounds identified in the written request are the public benefits arising from the additional housing and employment opportunities that would be delivered by the development, noting (at p 5) the close proximity to Ashfield railway station, major regional road networks and the Ashfield town centre; access to areas of employment, educational facilities, entertainment and open space; provision of increased employment opportunities through the ground floor retail/business space; and an increase in the available housing stock. I accept that the proposed development would provide those public benefits, however any development for a mixed use development on this site would provide those benefits, as would any similar development on any of the sites on Liverpool Road in the vicinity of the subject site that are also in the B4 zone. **These grounds are not particular to the circumstances of this proposed development on this site.** To accept a departure from the development standard in that context would not promote the proper and orderly development of land as contemplated by the controls applicable to the B4 zoned land, which is an objective of the Act (s 5(a)(ii)) and which it can be assumed is within the scope of the "environmental planning grounds" referred to in cl 4.6(4)(a)(i) of the LEP. (emphasis added)*

30. On Appeal in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 (3 June 2015), the Court considered whether the Commissioner had erred in law in confining environmental planning grounds to those particular to a site or proposed development. The Court held at [29] and [30] that this was a matter which the Commissioner was entitled to consider in her exercising of discretion:

*Turning to the first ground of appeal, it refers to a finding of the Commissioner at [60] in relation to the environmental planning grounds identified in the written request, as required by cl 4.6(3)(b). The Commissioner concluded that the grounds referred to were not particular to the circumstances of the proposed development on the particular site. Firstly, it is debatable that this ground of appeal couched as the misconstruction of subclause (4)(a)(i) does identify a question of law. The Commissioner's finding, that the grounds relied on in the written report were not particular to the circumstances of the proposed development on this particular site, is one of fact. That informed her finding of whether the grounds put forward were sufficient environmental planning grounds.*

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*To the extent the issue raised can be described as a question of mixed fact and law, the Commissioner is exercising a discretion under subclause (4)(a)(i) in relation to the written report where the terms in subclause (3)(b) of sufficient environmental planning grounds are not defined and have wide import,*

From this we interpret that particular circumstances of the site or development is an appropriate (although not exclusive) filter through which to view the sufficiency of environmental planning grounds.

In the absence of a legislative or other definition we adopt a definition for "environmental planning grounds" as 'any matter arising from consideration of either Section 4.15 of the EP&A Act 1979 or its Objectives which in the circumstances of the particular development on the particular site, warrants variation from the development standard'.

Based on that methodology, the environmental planning grounds which support variation to the standard in this instance is that the particular design in the context of this particular site means that the non-complying building FSR is not perceivable from the public domain and therefore does not have any adverse effects on the streetscape or urban form otherwise anticipated by the controls.

As presented above, a contravention in development standards in this case does not undermine the objectives or reasons for the standards or zone objectives. The exceedance of floor space is not prominent and does not unreasonably contribute to building bulk when viewed from the public domain.

The natural conclusion of this particular site characteristic is that for a degree of non-compliance as that which is proposed, the subject site is particularly well suited to accommodate that non-compliance without imparting adverse impact as a consequence.

#### **2.13 State or regional environmental planning?**

Contravention of the development standard does not raise any matters of significance for State or regional environmental planning.

#### **2.14 Public benefit of maintaining the standard**

It is argued that there is no benefit in maintaining the FSR development standard as the proposed development achieves an excellent design. This proposal presents well to Parramatta Road and encourages street level activation. Furthermore, this proposal is consistent with recently approved development in terms of FSR.

The building form and scale will not present unacceptable bulk and scale to the public domain having the uppermost floor stepped back from the front boundary. Such setback results in the upper floor not being visually obtrusive.

Having regard to the specific circumstances of the subject site, the proposed development and the fact that the non-compliant FSR is balanced with good building design, compliance with the LDGP 2013, it is considered that there is no public benefit in maintaining strict compliance with the standard in this instance. On the contrary, to do so would undermine several important public benefit outcomes, particularly those associated with maximising public transport patronage and urban renewal.

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Additionally, and as demonstrated in this request, the proposed exceedance of the maximum floor space ratio standard in this instance will not derogate from the attainment of the objectives of the zone objectives or the objectives of clause 4.4 clause 4.4A of LLEP 2013.

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