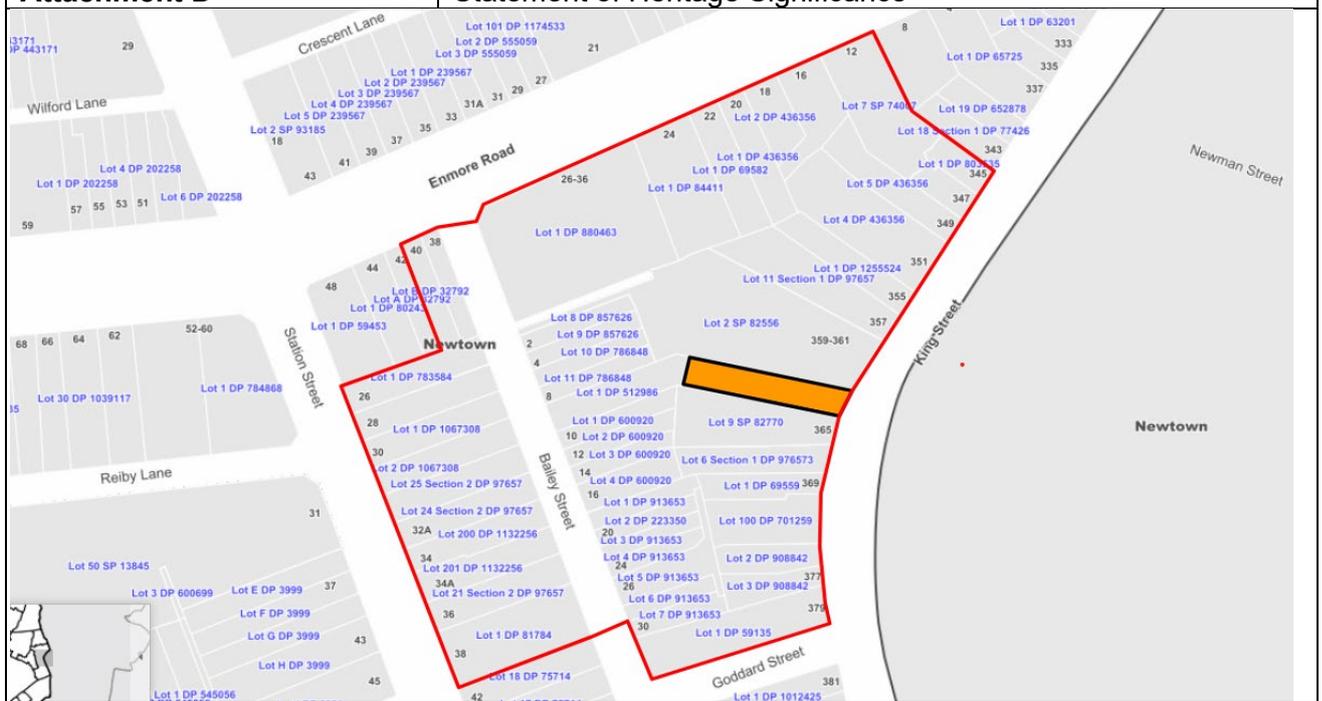


INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2020/0867
Address	363 King Street NEWTOWN NSW 2042
Proposal	To demolish part of the premises and carry out alterations and additions for a mixed use development
Date of Lodgement	9 November 2020
Applicant	CMT Architects
Owner	Mr Sammy Tsatsoulis Mrs Christina Tsatsoulis
Number of Submissions	Initial: 0
Value of works	\$1,471,609.00
Reason for determination at Planning Panel	SEPP 65 applicable development
Main Issues	Floor Space Ratio
Recommendation	Approval with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards
Attachment D	Statement of Heritage Significance



LOCALITY MAP

Subject Site		Objectors Nil	
Notified Area		Supporters Nil	

1. Executive Summary

This report is an assessment of the application submitted to Council to demolish part of the premises and carry out alterations and additions for a mixed use development at 363 King Street Newtown.

The application was notified to surrounding properties and no submissions were received in response to the initial notification. Amended plans and documents were submitted to Council on 5 May 2021 in response to Council's request for additional information however the amended plans were not required to be re-notified in accordance with Council's policy.

The development generally complies with the provisions of *State Environmental Planning Policy No. 65—Design Quality of Residential Apartment Development and Marrickville Local Environmental Plan 2011 (MLEP 2011)*. Notwithstanding, the development involves a variation from the maximum floor space ratio development standard prescribed by Clause 4.4 of MLEP 2011. The development results in a variation of 17sqm (5.4%) from the floor space ratio development standard. A written request in accordance with Clause 4.6 of MLEP 2011 was submitted with the application and the request is considered worthy of support.

The proposal generally complies with the objectives and controls contained in Marrickville Development Control Plan 2011 (MDCP 2011) and is consistent with the desired future character objectives for the King Street and Enmore Road Commercial Planning Precinct.

The proposal will not result in any significant impact on the streetscape or the amenity of the adjoining premises subject to conditions of consent.

The application is considered suitable for approval subject to the imposition of appropriate conditions.

2. Proposal

The application seeks development consent to demolish part of the premises and carry out alterations and additions for a mixed-use development.

Specifically, the following works are proposed:

- Substantially conserve the existing shop top housing building at the front of the site, including the main body of the building containing a ground floor commercial tenancy, and the dwelling on the first floor and attic levels with a reconstructed balcony;
- Construct a new 4 storey building at the rear of the site, including ground floor servicing and 3 levels above containing a dwelling on each level;
- Associated landscaping.

3. Site Description

The subject site is located on the western side of King Street, between the intersection with Enmore Road and Goddard Street, Newtown. The site is legally described as Lot 1 in Deposited Plan 512986, having a frontage of 4 metres to King Street and a narrow access handle to Bailey Street at the rear of the site. The site has an area of 208.2sqm.

The site currently contains a 2 storey shop top housing development with attic level. No vehicular access is provided to the site. The site is identified as a contributory building in the King Street/Enmore Road Heritage Conservation Area (HCA 2) under MLEP 2011.

The site is adjoined by Nos. 359 and 365 King Street which contain a 4 storey and 3 storey shop top housing development respectively.



4. Background

4(a) Site history

The following application outlines the relevant development history of the subject site:

Application	Proposal	Decision & Date
DA201800278	To demolish part of the premises and construct a 4 storey mixed use building comprising 2 commercial tenancies on the ground floor with 6 residential units above and a rooftop terrace	Withdrawn – 11 December 2018

4(b) Application history

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

Date	Discussion / Letter / Additional Information
9 November 2020	Application lodged with Council
19 November 2020 to 10 December 2021	Public notification
19 January 2021	Request for additional information sent to applicant
12 February 2021	Additional information received
15 March 2021	Additional heritage documentation submitted
5 May 2021	Amended plans and Clause 4.6 provided

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. 65—Design Quality of Residential Apartment Development*

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- Marrickville Local Environmental Plan 2011 (MLEP 2011)

The following provides further discussion of the relevant issues:

5(a)(i) State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development

The development is subject to the requirements of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65). SEPP 65 prescribes nine design quality principles to guide the design of residential apartment development and to assist in assessing such developments. The principles relate to key design issues including context and neighbourhood character, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction and aesthetics.

The development is acceptable having regard to the nine design quality principles.

Apartment Design Guide

A statement from a qualified Architect was submitted with the application verifying that they designed, or directed the design of, the development. The statement also provides an explanation that verifies how the design quality principles are achieved within the development and demonstrates, in terms of the Apartment Design Guide (ADG), how the objectives in Parts 3 and 4 of the guide have been achieved.

The development acceptable having regard to the nine design quality principles. The following provides further discussion of the relevant provisions of the ADG:

Communal and Open Space

The ADG prescribes the following requirements for communal and open space:

- Communal open space has a minimum area equal to 25% of the site.
- Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).

The development provides 2 areas on the ground floor level as common open space totalling 45sqm in area. This equates to 21% of the site area. Whilst not complying with the numerical requirements, the variation is acceptable given the business zoning of the site.

Deep Soil Zones

The ADG prescribes the following minimum requirements for deep soil zones:

Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)
Less than 650m ²	-	7%
650m ² - 1,500m ²	3m	
Greater than 1,500m ²	6m	
Greater than 1,500m ² with significant existing tree cover	6m	

It is unclear from the landscape plans provided whether the rear and internal courtyard common open space areas provide deep soil zones. There is potential to provide for a

minimum of 7% of the site area as deep soil planting and a condition is included in the recommendation requiring the landscape plans to indicate a minimum of 15sqm in deep soil area at the rear of the site to comply with the requirement.

Visual Privacy/Building Separation

The development is built to both side boundaries in accordance with the requirements of MDCP 2011 and is consistent with the commercial main street nature of the site and the adjoining sites.

The proposal does not result in any unreasonable visual and acoustic privacy impacts on adjoining properties and is therefore considered acceptable having regard to the ADG.

Solar and Daylight Access

The ADG prescribes the following requirements for solar and daylight access:

- Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9.00am and 3.00pm at mid-winter.
- A maximum of 15% of apartments in a building receive no direct sunlight between 9.00am and 3.00pm at mid-winter.

All dwellings in the development are deemed to receive adequate solar access.

Natural Ventilation

The ADG prescribes the following requirements for natural ventilation:

- At least 60% of apartments are naturally cross ventilated in the first 9 storeys of the building.
- Overall depth of a cross-over or cross-through apartment does not exceed 18 metres, measured glass line to glass line.

All dwellings in the development are deemed to be cross ventilated.

Ceiling Heights

The ADG prescribes the following minimum ceiling heights:

Minimum Ceiling Height	
Habitable Rooms	2.7 metres
Non-Habitable	2.4 metres
For 2 storey apartments	2.7 metres for main living area floor 2.4 metres for second floor, where its area does not exceed 50% of the apartment area
Attic Spaces	1.8 metres edge of room with a 30 degree minimum ceiling slope
If located in mixed used area	3.3 for ground and first floor to promote future flexibility of use

The development provides 3 metre floor-to-floor heights throughout the development which would allow for minimum 2.7 metre floor to ceiling heights for all habitable rooms.

Apartment Size

The ADG prescribes the following minimum apartment sizes:

Apartment Type	Minimum Internal Area
Studio apartments	35m ²
1 Bedroom apartments	50m ²
2 Bedroom apartments	70m ²

The development provides dwellings that achieve the minimum sizes as outlined above.

Apartment Layout

The ADG prescribes the following requirements for apartment layout requirements:

- Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.
- Habitable room depths are limited to a maximum of 2.5 x the ceiling height.
- In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8 metres from a window.
- Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).
- Bedrooms have a minimum dimension of 3 metres (excluding wardrobe space).
- Living rooms or combined living/dining rooms have a minimum width of:
 - 3.6 metres for studio and 1 bedroom apartments.
 - 4 metres for 2 and 3 bedroom apartments.

All dwellings in the development are deemed to provide appropriate apartment layouts compliant with the prescribed criteria.

Private Open Space and Balconies

The ADG prescribes the following sizes for primary balconies of apartments:

Dwelling Type	Minimum Area	Minimum Depth
Studio apartments	4m ²	-
1 Bedroom apartments	8m ²	2 metres
2 Bedroom apartments	10m ²	2 metres

The development provides dwellings that achieve the minimum balcony sizes in accordance with the ADG.

Storage

The ADG prescribes the following storage requirements in addition to storage in kitchen, bathrooms and bedrooms:

Apartment Type	Minimum Internal Area
Studio apartments	4m ³
1 Bedroom apartments	6m ³
2 Bedroom apartments	8m ³

The development provides appropriate storage for each dwelling in accordance with the above.

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

A BASIX Certificate was submitted with the application and will be referenced in any consent granted.

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

Clause 45 - Determination of development applications - other development

The application was referred to Ausgrid under clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007.

Ausgrid requires that due consideration be given to the compatibility of proposed development with existing Ausgrid infrastructure, particularly in relation to risks of electrocution, fire risks, Electric & Magnetic Fields (EMFs), noise, visual amenity and other matters that may impact on Ausgrid or the development.

A referral was received by Ausgrid raising no concern with the development subject to the imposition of appropriate conditions which are included in the recommendation.

Clause 101 - Development with frontage to classified road

The site has a frontage to King Street, a classified road. Under Clause 101 (2) of *SEPP Infrastructure 2007*, 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 is considered acceptable with regard to Clause 101 of the *SEPP Infrastructure 2007* in that:

- There is no vehicular access provided to the land;
- The safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development; and
- The development is appropriately located and designed, and includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

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

Clause 102 of the *SEPP Infrastructure 2007* 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 20,000 vehicles. 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.

King Street has an annual average daily traffic volume of more than 20,000 vehicles. The applicant submitted a Noise Assessment Report with the application that demonstrates that the development can comply with the LAeq levels stipulated in Clause 102 of the SEPP. Conditions are included in the recommendation to ensure compliance with the recommendations of that report.

5(a)(iv) **State Environmental Planning Policy (Vegetation in Non-Rural Areas) (Vegetation SEPP)**

Vegetation SEPP concerns the protection/removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of Council's DCP.

The application involves development that may impact on trees on a neighbouring site that are protected under Council's DCP. The application was referred to Council's Tree Management Officer who raised no concern with the works subject to appropriate tree protection conditions which are included in the recommendation.

5(a)(v) **Marrickville Local Environment Plan 2011 (MLEP 2011)**

- Clause 1.2 - Aims of the Plan
- Clause 2.3 - Zone objectives and Land Use Table
- Clause 2.7 - Demolition
- Clause 4.3 - Height of buildings
- Clause 4.4 - Floor space ratio
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 5.10 - Heritage Conservation
- Clause 6.5 - Development in areas subject to aircraft noise
- Clause 6.20 - Design Excellence

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

Standard	Proposal	Variation	Complies
Height of Building Maximum permissible: 14m	12.16m	N/A	Yes
Floor Space Ratio Maximum permissible: 1.5:1 or 312.3 sqm	1.58:1 or 329.3 sqm	5.4% or 17 sqm	No

(i) Aims of the Plan (Clause 1.2)

Clause 1.2 prescribes the following aims of MLEP 2011:

- i. to support the efficient use of land, vitalisation of centres, integration of transport and land use and an appropriate mix of uses,*
- ii. to increase residential and employment densities in appropriate locations near public transport while protecting residential amenity,*
- iii. to protect existing industrial land and facilitate new business and employment,*
- iv. to promote sustainable transport, reduce car use and increase use of public transport, walking and cycling,*
- v. to promote accessible and diverse housing types including the provision and retention of affordable housing,*
- vi. to ensure development applies the principles of ecologically sustainable development,*
- vii. to identify and conserve the environmental and cultural heritage of Marrickville,*
- viii. to promote a high standard of design in the private and public domain.*

The proposal is generally considered to be consistent with the above aims of MLEP 2011. The development is considered to provide for increased residential density while protecting the

amenity of the adjoining residential development. The proposal conserves the environmental and cultural heritage of Marrickville and promotes a high standard of design.

(ii) Clause 2.3 - Land Use Table and Zone Objectives

The site is zoned B2 Local Centre under *MLEP 2011*. The development is permitted with consent within the zone and is consistent with the objectives of the B2 Local Centre zone.

One of the objectives of the zone is *to provide for spaces, at street level, which are of a size and configuration suitable for land uses which generate active street-fronts*. It is considered that the front portion of the development provides for a reasonably sized commercial tenancy that will generate an active street front and is therefore acceptable.

(iii) Clause 4.3 - Height

The site is located in an area where the maximum height of buildings is 14 metres as indicated on the Height of Buildings Map that accompanies MLEP 2011.

The development has a maximum height of 12.16m which complies with the development standard prescribed by Clause 4.3 of MLEP 2011.

(iv) Clause 4.4 - Floor Space Ratio

The Floor Space Ratio Map accompanying MLEP 2011 specifies a maximum floor space ratio on the site as 1.5:1.

The development has a floor space ratio of 1.58:1, which exceeds the floor space ratio development standard. The development results in a 17sqm (5.4%) variation to the development standard prescribed by Clause 4.4 of MLEP 2011.

A written request in accordance with Clause 4.6 of MLEP 2011 was submitted with the application and discussed further below under the provisions of Clause 4.6.

(v) Clause 4.5 - Calculation of floor space ratio and site area

The application was accompanied by a GFA calculations plan which indicates that the floor space ratio of 1.58:1 has been calculated in accordance with Clause 4.5 of MLEP 2011.

(vi) Clause 4.6 - Exceptions to Development Standards

As discussed above, the proposal results in a variation to the floor space ratio development standard prescribed by Clause 4.4 of MLEP 2011. The applicant seeks a variation to the development standard of 17sqm (5.4%).

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 or unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of MLEP 2011 below.

A written request has been submitted to Council in accordance with Clause 4.6(3) of Marrickville Local Environmental Plan 2011 justifying the proposed contravention of the development standard which is summarised as follows:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case for the following reasons:*

The written request argues that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because the development is consistent with the objectives of Clause 4.4 in the following manner:

- *The proposed non-compliance exceeds the total permissible GFA on the site by less than 10%, this equates to an exceedance in the GFA of 17.06sqm.*
- *The amount of noncompliance is not visible from King Street, does not generate any adverse environmental impacts, generates a mass that has a scale less than the permissible 14 metre building height control and generates a mass that has a scale that is consistent in height with the adjoining development to the north of the subject site.*
- *The proposal does not have any adverse environmental impacts as a result of the noncompliance and the mass/bulk that is generated.*
- *The proposal is consistent with the desired future character of the area in that it is consistent with Part 9.37 of MDCP 2011 – King Street and Enmore Road Planning Precinct (Commercial Precinct 37).*

(b) *that there are sufficient environmental planning grounds to justify contravening the development for the following reasons:*

- *It is evident from the shadow diagrams and aerial images that the proposal has no adverse overshadowing impact on adjoining properties;*
- *The development is not out of character and not inconsistent with proposed future desired character of the area, and clearly meets the objectives of the development standard and land use zone.*
- *In relation to visual impacts, the rear component of the proposal is not visible from King Street, and therefore has no impact on the visual character of the streetscape.*
- *The location and orientation of the proposal ensures that it does not have any adverse impacts on the residential amenity and existing views enjoyed by residents in adjoining properties to the north and south of the subject site.*

The applicant's written rationale adequately demonstrates 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.

It is considered the development is in the public interest because it is consistent with the objectives of the B2 Local Centre zone, in accordance with Clause 4.6(4)(a)(ii) of MLEP 2011 which are reproduced below:

- *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 provide housing attached to permissible non-residential uses which is of a type and scale commensurate with the accessibility and function of the centre or area.*
- *To provide for spaces, at street level, which are of a size and configuration suitable for land uses which generate active street-fronts.*
- *To constrain parking and reduce car use.*

It is considered the development is in the public interest because it is consistent with the objectives of the floor space ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of MLEP 2011 which are reproduced below:

(a) *to establish the maximum floor space ratio,*

- (b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,*
- (c) to minimise adverse environmental impacts on adjoining properties and the public domain.*

The concurrence of the Planning Secretary may be assumed for matters dealt with by the Local Planning Panel.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of Marrickville Local Environmental Plan 2011. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the development standard and it is recommended the Clause 4.6 exception be granted.

(vii) Clause 5.10 - Heritage Conservation

The subject site is identified as being a contributory building within the King Street/Enmore Road heritage Conservation Area (C2) under Schedule 5 of MLEP 2011.

A Heritage Impact Statement was submitted with the application which satisfies the requirements of Clause 5.10(5) of MLEP 2011.

The application was referred to Council's Heritage Specialist who advised that the proposal can be supported in heritage terms subject to additional information addressing the following:

- Further and better details of the proposed façade and shopfront works on the King Street frontage of the property to be provided, to the satisfaction of Council's heritage team, building upon further enquiries and evidence (to be demonstrated) of the façade presentation to King Street;
- Further and better details, to the satisfaction of Council's heritage team, of the significance and condition of those parts of the rear development of the property to be demolished, and of the new building that is to replace it;
- A schedule of conservation works for the existing building externally and internally; and
- A heritage colour scheme for the building, based if possible, upon evidence from the building itself.

A request for additional information was sent to the applicant on 19 January 2021 which required the above matters to be addressed.

Additional information, including amended plans, a schedule of conservation works and heritage colour scheme was submitted to Council on 15 March 2021. The amended documents were referred to Council's Heritage Specialist who advised the following:

A Schedule of Conservation Works and a colour scheme prepared by Heritage 21 have now been submitted. Having regard to the status of the building as contributory in a HCA and its condition, the Schedule - which is a broad document that for its efficacy will require reflection in a detailed works specification not forming part of this DA process - is indicative of intent and its use in the development, should form part of the conditions of consent - together with final certification of its realisation/completion by a heritage architect.

One element of the Schedule which is problematic is the nomination of Zinalume for replacement of the corrugated roofing on the building's King Street main roof and façade. If the roofing sheets are in poor condition and require replacement, and are not corrugated iron, but corrugated galvanised mild steel, then this is the material which should be used for their replacement - in the traditional "Custom Orb" profile sheeting. The sheet lengths and pattern upon the roof should be replicated. The roof is most likely to be painted and should be properly degreased, primed and painted with a micaceous

oxide roofing paint, in a suitably neutral "slate brown" colour such as "Jasper", or alternatively, in Red Oxide.

Zincalume would not be compatible with the lead flashings most likely to be encountered upon this building's roofing.

Having regard to the proposed colour scheme, the nomination of white for the doors and windows and in particular the shopfront door and window joinery, is not consistent with what is known about traditional joinery colours in such buildings, which were usually formal and dark. It is suggested that the nominated dark trim colour, BS 412 Dark Brown, should be used on the joinery of the front façade, including the shopfront."

As detailed above, Council's Heritage Specialist has raised no concern with the development subject to the imposition of appropriate conditions which are included in the recommendation. The development is considered to be acceptable having regard to the provisions of Clause 5.10 of MLEP 2011 and the relevant provisions of Part 8 of MDCP 2011.

(viii) Clause 6.5 - Development in areas subject to aircraft noise

The site is located within the ANEF 25-30 contour, and as such the proposal is likely to be affected by aircraft noise.

An Acoustic Report was submitted with the application that demonstrates that the proposal will meet the relevant requirements of Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2015, thereby ensuring the proposal's compliance with the relevant provisions Cl. 6.5 MLEP 2011 and Part 2.6 of the MDCP 2011 respectively.

(ix) Clause 6.20 – Design Excellence

MLEP 2011 prescribes a maximum building height that exceeds 14 metres, and as such the provisions of Clause 6.20 of MLEP 2011 must be considered. In considering whether the proposal exhibits design excellence, Council must consider the following:

- (a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
- (b) *whether the form and external appearance of the development will improve the quality and amenity of the public domain,*
- (c) *whether the development detrimentally impacts on view corridors and landmarks,*
- (d) *the requirements of the applicable Development Control Plan,*
- (e) *how the development addresses the following matters:*
 - (i) *the suitability of the land for development,*
 - (ii) *existing and proposed uses and use mix,*
 - (iii) *heritage issues and streetscape constraints,*
 - (iv) *the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
 - (v) *bulk, massing and modulation of buildings,*
 - (vi) *roof design,*
 - (vii) *street frontage heights,*
 - (viii) *environmental impacts such as sustainable design, overshadowing, visual and acoustic privacy, wind and reflectivity,*
 - (ix) *the achievement of the principles of ecologically sustainable development,*
 - (x) *pedestrian, cycle, vehicular and service access and circulation requirements, including the permeability of any pedestrian network,*
 - (xi) *impact on, and any proposed improvements to, the public domain,*
 - (xii) *appropriate ground level public domain interfaces,*

(xiii) *excellence and integration of landscape design.*

The development is considered to be consistent with the provisions of Clause 6.20 of MLEP 2011 and therefore achieves design excellence for the following reasons:

- A high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,
- The form and external appearance of the development will improve the quality and amenity of the public domain;
- The development achieves compliance with the requirements of Marrickville Development Control Plan 2011, and
- The development satisfactorily addresses the following matters:
 - the relationship of the development with other development (existing or proposed) on neighbouring sites in terms of separation, setbacks, amenity and urban form,
 - bulk, massing and modulation of the building,
 - environmental impacts such as sustainable design, overshadowing, visual and acoustic privacy, wind and reflectivity,
 - impact on, and any proposed improvements to, the public domain,

The application was referred to Council's Urban Design Advisor who raised a number of concerns, including in relation to deep spoil planting and the placement of windows. Amended plans were submitted to Council on 5 May 2021 that satisfactorily addressed those concerns.

The development is considered acceptable having regard to the provisions of Clause 6.20 of MLEP 2011.

5(b) Draft Environmental Planning Instruments

Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 and accordingly is a matter for consideration in the assessment of the application under *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979*.

The amended provisions contained in the Draft IWLEP 2020 are not particularly relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

5(d) Development Control Plans

Marrickville Development Control Plan 2011 (MDCP 2011)

The application has been assessed and the following provides a summary of the relevant provisions of Marrickville Development Control Plan 2011.

The following provides discussion of the relevant issues:

MDCP 2011 Part of MDCP 2011	Compliance
<i>Part 2.1 – Urban Design</i>	Yes
<i>Part 2.3 – Site and Context Analysis</i>	Yes
<i>Part 2.5 – Equity of Access and Mobility</i>	Yes
<i>Part 2.6 – Acoustic and Visual Privacy</i>	Yes
<i>Part 2.7 – Solar Access and Overshadowing</i>	Yes – see discussion
<i>Part 2.8 – Social Impact</i>	Yes
<i>Part 2.9 – Community Safety</i>	Yes
<i>Part 2.10 – Parking</i>	No – see discussion
<i>Part 2.16 – Energy Efficiency</i>	Yes
<i>Part 2.18 – Landscaping and Open Space</i>	Yes
<i>Part 2.20 – Tree Management</i>	Yes
<i>Part 2.21 – Site Facilities and Waste Management</i>	Yes
<i>Part 2.25 – Stormwater Management</i>	Yes
<i>Part 5 – Commercial and Mixed-Use Development</i>	Yes - see discussion
<i>Part 8 – Heritage</i>	Yes
<i>Part 9 – Strategic Context</i>	Yes

The following provides discussion of the relevant issues:

(i) Part 2.7 - Solar Access and Overshadowing

Control C2 of part 2.7.3 of MDCP 2011 prescribes the following controls in relation to overshadowing:

- C2** *Direct solar access to windows of principal living areas and principal areas of open space of nearby residential accommodation must:*
- I. Not be reduced to less than two hours between 9.00am and 3.00pm on 21 June; or*
 - II. Where less than two hours of sunlight is currently available on 21 June, solar access should not be further reduced. However, if the development proposal results in a further decrease in sunlight available on 21 June, Council will consider:*
 - a. The development potential of the site;*
 - b. The particular circumstances of the neighbouring site(s), for example, the proximity of any residential accommodation to the boundary, the resultant proximity of windows to the boundary, and whether this makes compliance difficult;*
 - c. Any exceptional circumstances of the subject site such as heritage, built form or topography; and*
 - d. Whether the sunlight available in March to September is significantly reduced, such that it impacts upon the functioning of principal living areas and the principal areas of open space. To ensure compliance with this control, separate shadow diagrams for the March/September period must be submitted in accordance with the requirements of C1;*

The amended plans submitted to Council on 5 May 2021 were accompanied by amended shadow diagrams. The diagrams show the impact of overshadowing caused by the proposal on 21 June and March/September on the development directly to the south of the site at No. 365 King Street. The development at No. 365 is a 3 storey shop top housing development containing 6 studio apartments with balconies at the rear (west) of the development and 2 units at the front (east) of the site. The subject development is only 3 storeys at the King Street

elevation and lower than No. 365, and therefore the only overshadowing cast by the subject site is as a result of the 4 storey rear building.

The rear balconies and windows to the studios will continue to receive a minimum 2 hours of direct solar access in mid-winter after midday given their orientation. The 2 units at the front of the site front King Street and have balconies and living areas that front King Street and the proposal therefore does not cast any shadow on those areas.

Given the above, the proposal is considered acceptable having regard to overshadowing.

(ii) Part 2.10 – Parking

The development provides 1 x studio dwelling, 2 x 1 bedroom dwellings, 1 x 2 bedroom dwelling and a commercial tenancy on the ground floor level. The development is located in Parking Area 1 and therefore required to provide 1 car parking space for the residential component and 1 car parking space for the commercial tenancy.

The site does not have vehicular access and no car parking is proposed on site. Part 2.10.4 of MDCP 2011 prescribes justification for providing car parking at a rate lower than prescribed by the DCP and the provision of no car parking on site is acceptable for the following reasons:

- Existing site and building constraints make provision of car parking impractical;
- The site is located adjacent to high-frequency public transport services;
- Development targeted to demographic sector with low car use/ownership; and
- Development contributes to heritage conservation of the building and setting.

Given the above, the development is considered acceptable having regard to Part 2.10 of MDCP 2011.

(iii) Part 5 – Commercial and Mixed-Use Development

The development has been assessed against the provisions of Part 5 of MDCP 2011 and is considered to generally comply with the objectives and controls contained therein, with the exception of floor space ratio and rear building envelope controls. Those matters are discussed below:

Floor Space Ratio

As discussed above under Clause 4.4 of MLEP 2011, the development exceeds the floor space ratio development standard by 17sqm or 5.4%. The application was accompanied by a written request under Clause 4.6 of MLEP 2011 and the variation is considered worthy of support. Whilst the proposal does not comply with the maximum FSR, the development achieves the following objectives of Part 5.4.1.1:

- O19** *To ensure the density of development is compatible with the future desired character of the relevant commercial centre.*
- O20** *To ensure the density of development is appropriate to the contextual constraints of the site.*

Rear Massing

Part 5.1.4.3 of MDCP 2011 prescribes the following controls for rear building envelopes:

- C14** *Where the rear boundary is a common boundary between properties:*
 - i. The rear building envelope must be contained within the combination of the rear boundary plane and a 45 degree sloping plane from a point 5 metres vertically*

above the ground level of the property being developed, measured at the rear boundary, and contain a maximum of one storey on the rear most building plane;

- ii. notwithstanding point i., building envelopes may exceed the above building envelope control where it can be demonstrated that any rear massing that penetrates above the envelope control will not cause significant visual bulk or amenity impacts on neighbouring properties to the rear.*

The development provides a minimum 4 metre rear boundary setback on all levels to the rear building alignment and 2.2 metres to the rear balcony balustrades. The rear building alignment is unusually close to the rear boundary; however the site is unusual in shape and is shorter than other sites fronting King Street. The adjoining lot to the rear is a particularly deep site containing a small electrical substation, and as such little if any impact is posed to this site as a result of the proposed setbacks.

The upper level of the development intrudes into the 45-degree angle building envelope. Notwithstanding, given the conservation of the original contributory building at the front of the site, site constraints result in increased built form at the rear of the site. The rear building envelope does not result in unreasonable amenity impacts on neighbouring properties to the rear with regard to overshadowing, privacy or bulk and scale, and is therefore considered acceptable.

Given the above, the development is considered acceptable having regard to the objectives and controls contained in part 5 of MDCP 2011.

5(e) The Likely Impacts

The assessment of the Development Application demonstrates that, subject to the recommended conditions, the proposal will have minimal impact in the locality.

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

Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

5(g) Any submissions

The application was notified in accordance with Marrickville Development Control Plan 2011 for a period of 14 days to surrounding properties. No submissions were received in response to the initial notification.

Amended plans were submitted to Council throughout the assessment period and the amended plans were not required to be re-notified in accordance with Council's policy as the impact of the amendment design was considered similar if not lesser in impact to the original proposal.

5(h) The Public Interest

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

The proposal is not considered 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.

- Development Engineer
- Heritage Specialist
- Resource Recovery
- Tree Management
- Urban Design
- Building Certification
- Environmental Health

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

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$44,361.89 would be required for the development under Marrickville Section 94/94A Contributions Plan 2014. A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

The development generally complies with the provisions of *State Environmental Planning Policy No. 65—Design Quality of Residential Apartment Development and Marrickville Local Environmental Plan 2011*

The proposal generally complies with the objectives and controls contained in Marrickville Development Control Plan 2011 (MDCP 2011) and is consistent with the desired future character objectives for the King Street and Enmore Road Commercial Planning Precinct.

The development will not result in any significant impacts on the amenity of the adjoining properties and the streetscape and is considered to be in the public interest.

The application is considered suitable for approval subject to the imposition of appropriate conditions.

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 to vary Clause 4.4 of the *Marrickville Local Environmental Plan 2011*. After considering the request, and assuming the concurrence of the Secretary, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.

- B. 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*, grant consent to Development Application No. DA/2020/0867 to demolish part of the premises and carry out alterations and additions for a mixed use development at 363 King Street NEWTOWN NSW 2042 subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

The following is a Deferred Commencement condition imposed pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*. This Consent will not operate and may not be acted upon until the Council is satisfied as to the following matter(s):

A. Easement - Over Downstream Landholders

The site drainage must be designed to drain under gravity. As the site falls to the rear an easement for drainage over downstream properties will be required to be created and/or legal rights to utilise any existing easement for drainage demonstrated. Written documentation of the creation of or legal agreement to create an easement for drainage or legal rights to utilise any existing easement for drainage must be submitted to Council.

Evidence of the above matter must be submitted to Council within 2 years otherwise the Consent will not operate.

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DA 0.9 D	Site Plan	6 May 2021	CMT Architects
DA 1.00 D	Ground Floor Plan	6 May 2021	CMT Architects
DA 1.1 D	First Floor Plan	6 May 2021	CMT Architects
DA 1.2 D	Second Floor Plan	6 May 2021	CMT Architects
DA 1.3 D	Third Floor Plan	6 May 2021	CMT Architects
DA 1.4 D	Roof Plan	6 May 2021	CMT Architects
DA 1.6 D	East Elevation	6 May 2021	CMT Architects
DA 1.7 D	South Elevation	6 May 2021	CMT Architects
DA 1.8 D	West Elevation	6 May 2021	CMT Architects
DA 1.9 D	North Elevation	6 May 2021	CMT Architects
L-C101 J	Landscape Render	6 May 2021	Site Image
L-500 J	Landscape Specifications & Detail	6 May 2021	Site Image
936405M_03	BASIX Certificate	2 October 2020	Building & Energy Consultants
34675502	Schedule of Finishes and Colours	15 March 2021	Heritage 21

As amended by the conditions of consent.

DESIGN CHANGE

2. Design Changes

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

- a. If replacement of the retained heritage building's roof sheeting is required, then corrugated galvanised mild steel should be used for such replacement – in the traditional "Custom Orb" profile sheeting. The sheet lengths and pattern upon the roof should be replicated. If installed the new roof should be properly degreased, primed and painted with a micaceous oxide roofing paint, in a suitably neutral "slate brown" colour such as "Jasper", or alternatively, in Red Oxide. Zincalume should not be used if replacement of the existing corrugated roofing is required.
- b. The nominated dark trim colour, BS 412 Dark Brown, should be used on the joinery of the front façade, including the shopfront, rather than the nominated white.
- c. The Landscape Plan must be amended to include the entire rear common area as deep soil planting and indicated on the plans as such, with the exception of any pathways for access.

FEES

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:	\$14,000.00
Inspection Fee:	\$236.70

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 initial 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.

4. Section 7.11 (Former Section 94) Contribution

Prior to the issue of a Construction Certificate written evidence must be provided to the Certifying Authority that a monetary contribution of \$44,361.89 indexed in accordance with Marrickville Section 94/94A Contributions Plan 2014] ("CP") has been paid to the Council.

The above contribution is the contribution applicable as at 6 May 2021.

***NB** Contribution rates under Marrickville Section 94/94A Contributions Plan 2014 are indexed quarterly (for the method of indexation refer to Section 2.15 of the Plan). The indexation of the contribution rates occurs in the first week of the months of February, May, August and November each year, following the release of data from the Australian Bureau of Statistics.

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:

Public Amenities Type:	Contribution \$
Recreation Facilities	\$37,865.88
Community Facilities	\$4,911.26
Traffic Facilities	\$7,14.91
Plan Administration	\$869.84
TOTAL	\$44,361.89

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>

Payment methods:

The required contribution must be paid either **by BPAY (to a maximum of \$500,000); unendorsed bank cheque (from an Australian Bank only); EFTPOS (Debit only); credit card (Note: A 1% credit card transaction fee applies to all credit card transactions; cash (to a maximum of \$10,000).** It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions. **Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.**

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

5. 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.

GENERAL CONDITIONS

6. Tree Protection

No trees on public property (footpaths, roads, reserves etc.) are to be removed or damaged during works unless specifically approved in this consent or marked on the approved plans for removal.

Prescribed trees protected by Council's Management Controls on the subject property and/or any vegetation on surrounding properties must not be damaged or removed during works unless specific approval has been provided under this consent.

Any public tree within five (5) metres of the development must be protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

No activities, storage or disposal of materials taking place beneath the canopy of any tree (including trees on neighbouring sites) protected under Council's Tree Management Controls at any time.

7. 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.

8. Residential Flat Buildings – 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.

9. Residential Flat Buildings – 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.

10. 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.

11. 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.

12. Works Outside the Property Boundary

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

PRIOR TO ANY DEMOLITION

13. 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.

14. 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 Transport for NSW accreditation. The CTMP must be approved by the Certifying Authority 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.

15. 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. 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.

17. 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.

18. Resource Recovery and Waste Management Plan - Demolition and Construction

Prior to any demolition works, the Certifying Authority must be provided with a Resource Recovery and Waste Management Plan - Demolition and Construction that includes details of materials that will be excavated and their proposed destination or reuse.

PRIOR TO CONSTRUCTION CERTIFICATE

19. Stormwater Drainage System – Minor Developments (OSD is not required)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a. The design must generally be in accordance with the Stormwater Drainage Concept plan on Drawing Nos. D1, D1A, D2 & D3, Rev D prepared by LMW DESIGN GROUP P/L and dated 27 April 2020, as amended to comply with the following;
- b. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any rainwater tank(s), by gravity to the kerb and gutter of a public road;
- 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 to drain downpipes to the rainwater tank(s);
- e. To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, must be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Council's DCP. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled;
- f. The design plans must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;

- g. As there is no overland flow/flood path available from the rear and central courtyards to the King Street frontage, the design of the sag pit and piped drainage system is to meet the following criteria:
 - 1. 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;
 - 2. The maximum water level over the sag pit shall not be less than 150mm below the floor level or damp course of the building; and
 - 3. The design shall make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
- h. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands;
- i. No nuisance or concentration of flows to other properties;
- j. The design 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;
- k. 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 or sewer grade uPVC pipe with a maximum diameter of 100mm;
- l. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;
- m. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.

20. 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.

21. 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 13 20 92

22. 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.

23. Concealment of Plumbing and Ductwork

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans detailing the method of concealment of all plumbing and ductwork (excluding stormwater downpipes) within the outer walls of the building so they are not visible.

24. 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.

25. Bin Storage Area - Residential

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a report detailing the ongoing waste generation requirements of the development and demonstrate that the bin storage area is to be provided within the site that will fully accommodate the number of bins required for all waste generated by a development of this type and scale. The number of bins required must be calculated based on a weekly collection of garbage, and a fortnightly collection of recycling.

The area must also include 50% allowance for manoeuvring of bins. The bin storage area is to be located away from habitable rooms, windows, doors and private useable open space, and to minimise potential impacts on neighbours in terms of aesthetics, noise and odour.

The bin storage area is to meet the design requirements detailed in the Marrickville DCP 2011 and must include doorways/entrance points of 1200mm.

26. Bulky Waste Storage Area – Residential

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating that the bulky waste storage area must meet the floor area requirements as per the Marrickville DCP 2011 and have minimum doorways of 1200mm wide to accommodate large items.

27. Waste Transfer Route

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a plan demonstrating that the path of travel between the bin storage area/bulky waste storage area and the designated waste/recycling collection point is has a minimum 1200mm wall-to-wall clearance, be slip-proof, of a hard surface, be free of obstructions and at no point have a gradient exceeding 1:12.

28. Each Residential Level is to have Access to a Disposal Point for All Waste Streams

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a plan demonstrating that the disposal point is to be within 30m of the dwelling access (distance covered by lifts excluded). Any bins stored on residential floors are to have the capacity to store, at minimum, all waste generated by that floor over a 24 hour period.

DURING DEMOLITION AND CONSTRUCTION

29. Tree Protection

To protect the following tree/s, trunk protection must be installed prior to any works commencing in accordance with Council’s *Development Fact Sheet—Trees on Development Sites*:

Tree No.	Botanical/Common Name/Location
1	<i>Castanospermum australe</i> (Black Bean) Right of Way - Rear
2	<i>Radermachera sinica</i> (China Doll) Right of Way - Rear

30. Construction Hours – Class 2-9

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours:

- a. 7:00am to 6.00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b. 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and
- c. at no time on Sundays or public holidays.

Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc. and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.

In the case that a standing plant or special out of hours permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.

This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.

Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving must be limited to:

- a. 8:00am to 12:00pm, Monday to Saturday; and
- b. 2:00pm to 5:00pm Monday to Friday.

The person acting on this consent must not undertake such activities for more than three continuous hours and must provide a minimum of one 2 hour respite period between any two periods of such works.

“Continuous” means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.

31. Documentation of Demolition and Construction Waste

All waste dockets from the recycling and/or disposal of any demolition and construction waste generated from the works must be retained on site.

PRIOR TO OCCUPATION CERTIFICATE**32. 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.

33. Protect Sandstone Kerb

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

34. 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 suitably qualified Civil Engineer that:

- a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and
- b. Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed and stormwater quality improvement device(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.

35. 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 stormwater quality improvement devices. 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; and
- b. The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

36. 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. Easement for drainage of water;
- b. Restrictions on the Use of Land related to on Site stormwater quality improvement devices;
- c. Positive Covenant related to stormwater quality improvement devices.

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

37. Certification of Schedule of Conservation Works

Prior to the issue of an Occupation Certificate (whether an interim or final Occupation Certificate), the Principal Certifier must be provided with final certification by a heritage architect indicating the realisation/completion of the works outlined in the approved Schedule of Conservation Works.

38. 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*.

39. Smoke Alarms - Certification of upgrade to NCC requirements

Prior to the issue of any Occupation Certificate, the Principal Certifier is required to be satisfied the existing building has been upgraded to comply with the provisions of the National Construction Code (Building Code of Australia) in relation to smoke alarm systems.

40. Noise From Road, Rail & Aircraft – Compliance

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an acoustic report prepared by suitably qualified acoustic consultant, confirming that the development complies with the requirements of the:

- a. *State Environmental Planning Policy (Infrastructure) 2007*;
- b. NSW Planning, Development near Rail Corridors and Busy Roads – Interim Guideline;
- c. Australian Standard 2021-2000: Acoustics - Aircraft noise intrusion - Building siting and construction;
- d. conditions of development consent; and
- e. Recommendations of the Acoustical Report prepared by Koikas Acoustics dated 11 February 2021

ON-GOING**41. Tree Establishment**

The tree/s planted as part of this consent is/are to be maintained in a healthy and vigorous condition for 12 months from the issue of an Occupation Certificate. If any of the tree/s is/are found faulty, damaged, dying or dead within 12 months of the issue of an Occupation Certificate it/they must be replaced with the same species within one (1) month (up to 3 occurrences).

42. Bin Storage

All bins are to be stored within the site. All bins are to be returned to the storage area within the property boundary within 12 hours of having been emptied. If the bins are presented on King Street, they are to be returned to the storage area within 3 hours of having been emptied.

ADVISORY NOTES**Consent of Adjoining property owners**

This consent does not authorise the applicant, or the contractor engaged to do the tree works to enter a neighbouring property. Where access to adjacent land is required to carry out approved tree works, Council advises that the owner's consent must be sought. Notification is the responsibility of the person acting on the consent. Should the tree owner/s refuse access to their land, the person acting on the consent must meet the requirements of the *Access To Neighbouring Lands Act 2000* to seek access.

Arborists standards

All tree work must be undertaken by a practicing Arborist. The work must be undertaken in accordance with AS4373—*Pruning of amenity trees* and the Safe Work Australia Code of Practice—*Guide to Managing Risks of Tree Trimming and Removal Work*. Any works in the vicinity of the Low Voltage Overhead Network (including service lines—pole to house connections) must be undertaken by an approved Network Service Provider contractor for the management of vegetation conflicting with such services. Contact the relevant Network Service Provider for further advice in this regard.

Tree Protection Works

All tree protection for the site must be undertaken in accordance with Council's *Development Fact Sheet—Trees on Development Sites* and AS4970—*Protection of trees on development sites*.

Tree Pruning or Removal (including root pruning/mapping)

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and must be retained and protected in accordance with Council's *Development Fact Sheet—Arborist Reports*.

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; and
- 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.

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 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 SQIDS with finished surface levels, contours at 0.2-metre intervals and volume of storage available.
- b. Engineer's Certificate
A qualified practising Civil Engineer must certify on the completion of drainage works in respect of:
 - c. The emergency overflow system being in place;
 - d. The works being constructed in accordance with the Development Application Consent and Council's Stormwater Management DCP/Code;

- e. 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; and
 - f. 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 stormwater quality improvement device(s) (SQIDS). This is to ensure that works, which could affect the function of the 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.

Insurances

Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

Ausgrid Advisory Note

The design submission must comply with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets.

The "as constructed" minimum clearances to Ausgrid's infrastructure must not be encroached by the building development. It also remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.

Ausgrid's Network Standards can be sourced from Ausgrid's website, www.ausgrid.com.au.

Should you have any enquiries, please contact Ausgrid at Development@ausgrid.com.au

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;
or
- 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; and
- 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.

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.

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.

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 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
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	131441 www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406 www.foodnotify.nsw.gov.au
NSW Government	www.nsw.gov.au/fibro 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
Sydney Water	13 20 92 www.sydneywater.com.au
Waste Service - Environmental Solutions	SITA 1300 651 116 www.wasteservice.nsw.gov.au

Water Efficiency Labelling and Standards (WELS) www.waterrating.gov.au
WorkCover Authority of NSW 13 10 50
www.workcover.nsw.gov.au
Enquiries relating to work safety and asbestos removal and disposal.

Dial before you dig

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

Asbestos Removal

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m² 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 Class A 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 2014. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

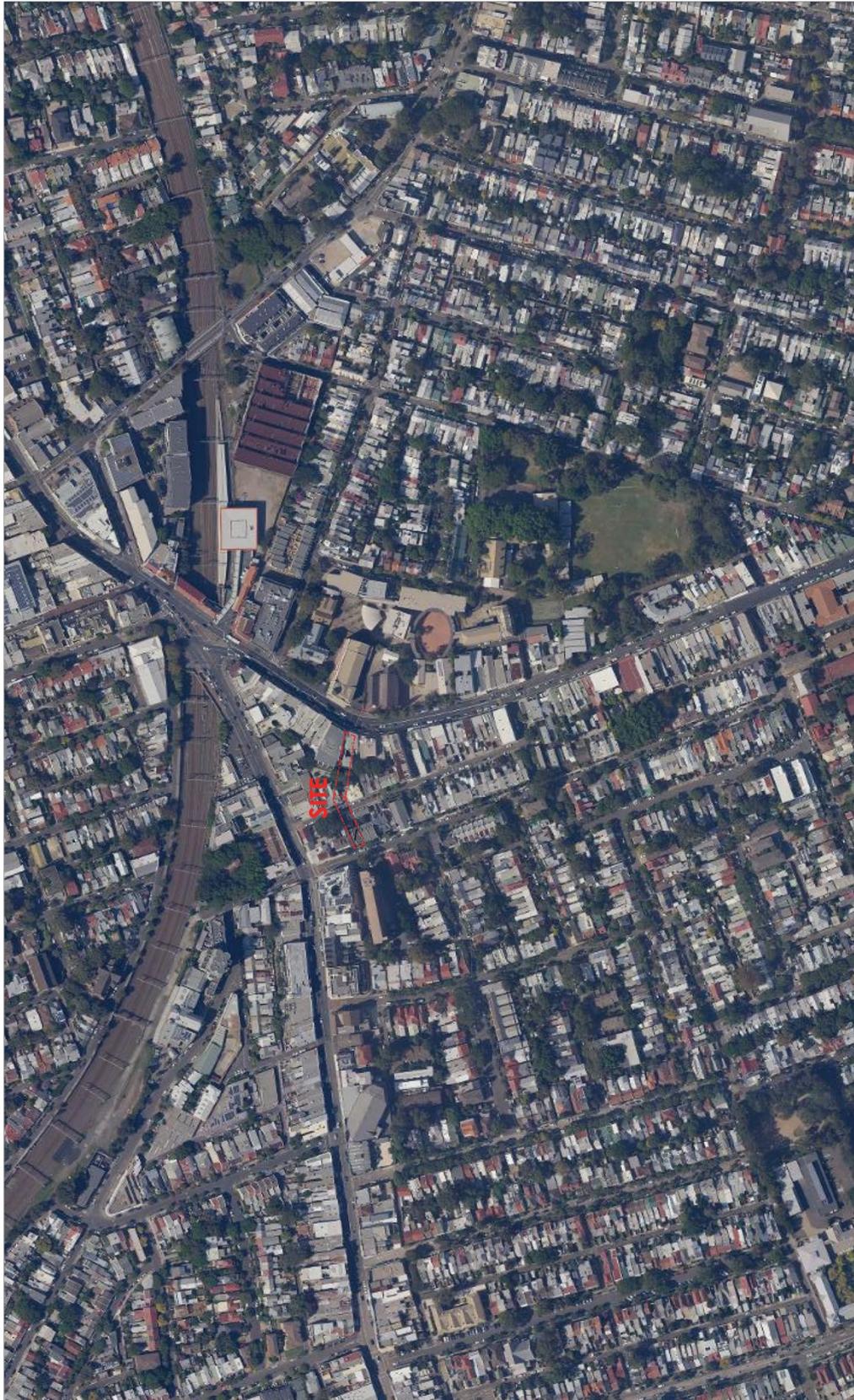
Notice to Council to deliver Residential Bins

Council should be notified of bin requirements three weeks prior to the occupation of the building to ensure timely delivery. Should the property manager elect to have 660L bins, then Council should be notified three months prior to occupation.

Council will place an order for the required bins. Delivery will occur once the applicant has completed a Request for New Service.

Recycling / Garbage / Organics Service Information and Education

The building manager / strata title manager or body corporate is responsible for ensuring all tenants are kept informed regarding Council's services, and best practice waste and recycling source separation.



DA SUBMISSION

Client: **SAM & CHRISTINE TSATSOUKIS**

Project: **SHOP - 363 KING ST NEWTOWN**

Design Title: **LOCATION PLAN**

Design No: **DA 0.5**

Design Date: **16/10/2021**

Design By: **CT**

Design Check: **D**

Design Drawn: **DA 0.5**

Design Date: **16/10/2021**

Design By: **CT**

Design Check: **D**

Design Drawn: **DA 0.5**

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CMT ARCHITECTS AUSTRALIA PTY LTD

Level 4, 81-85 Sydney Road, Newtown NSW 2207 Australia

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F: +61 2 9557 4330

E: info@cmtarchitects.com.au

ACN: 161 791 715

Site Details

Issue	Date	Description	By
C	27/10/2021	COUNCIL RECOMMENDATION & DA SUBMISSION	CT
A	15/11/2020	DA SUBMISSION	CT

Notes:

1. This plan is for use only for construction.

2. All work shall be done in accordance with the relevant codes of practice.

3. All work shall be done in accordance with the relevant codes of practice.

4. All work shall be done in accordance with the relevant codes of practice.

5. All work shall be done in accordance with the relevant codes of practice.

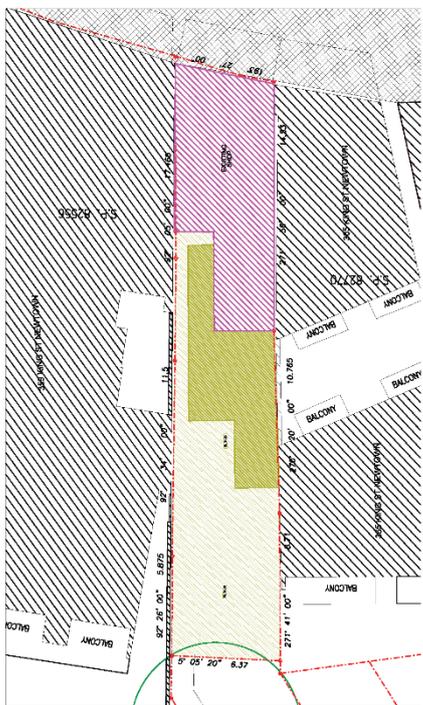
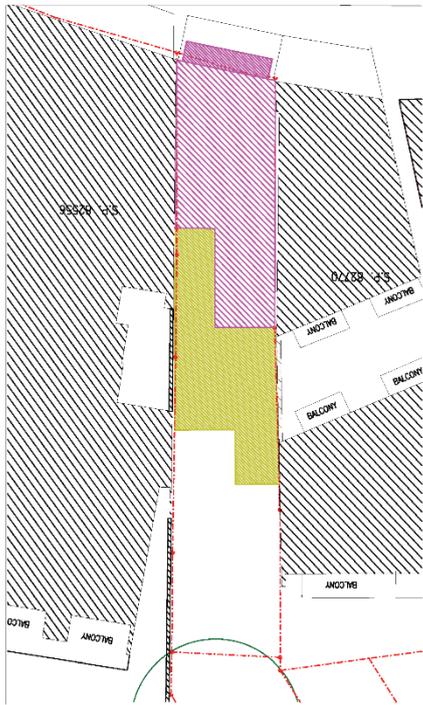
6. All work shall be done in accordance with the relevant codes of practice.

7. All work shall be done in accordance with the relevant codes of practice.

8. All work shall be done in accordance with the relevant codes of practice.

9. All work shall be done in accordance with the relevant codes of practice.

10. All work shall be done in accordance with the relevant codes of practice.



FIRST

GROUND



SECOND

Notes to the user are set for consultation.
 All dimensions are in metres, or any other unit, as appropriate to the work.
 All dimensions are given to the nearest millimetre, unless otherwise stated.
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EXTERNAL WORKS TO BE DEMOLISHED OR REMOVED
 STRUCTURE TO BE DEMOLISHED/REMOVED
 TO BE RETAINED

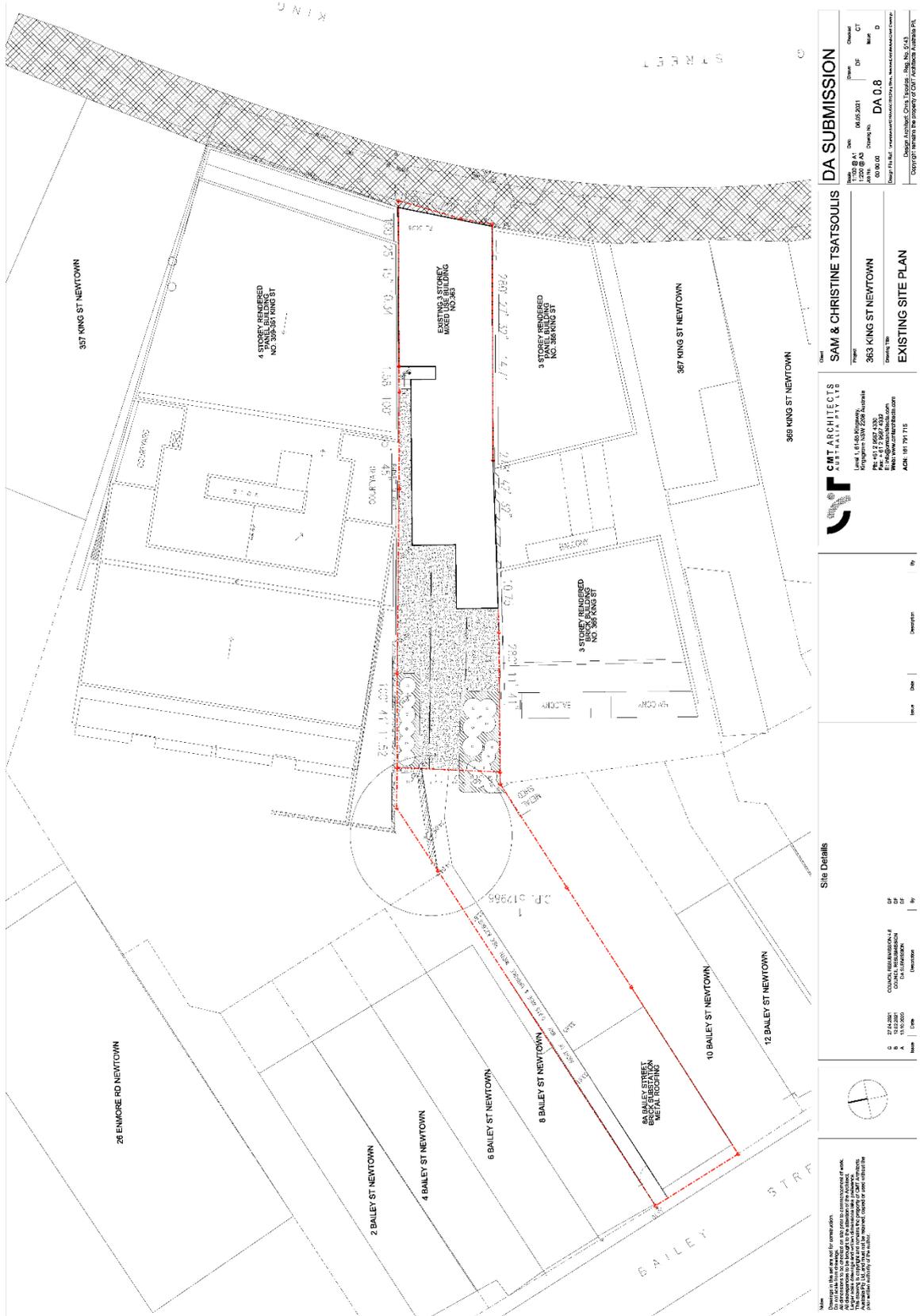
Site Details

NO	DESCRIPTION	DATE	BY
1	ISSUED FOR CONSULTATION	13/10/2021	DA
2	ISSUED FOR CONSULTATION	13/10/2021	DA

CMT ARCHITECTS AUSTRALIA PTY LTD
 Level 2, 41-42 Kingsway
 Kingsway NSW 2250 Australia
 Ph: +61 2 9297 4332
 Fax: +61 2 9297 4333
 Website: www.cmtarchitects.com.au
 A/CN: 981 781 716

Client: **SAW & CHRISTINE TSATSOLIS**
 Project: **363 KING ST NEWTOWN**
 Drawing Title: **PROPOSED DEMOLITION PLAN**

DA SUBMISSION
 Date: 03/05/2021
 Scale: DA 0.6
 Design: Chris Tsatsolis - Reg. No. 9453
 Checked: []
 Drawn: []
 Title: []



DA SUBMISSION

Client: **SAM & CHRISTINE TSATSOLIS**

Project: **363 KING ST NEWTOWN**

Design No: **DA 0.8**

Design File No: **TSATSOLIS/DA/08/01/2021**

Design Date: **01/05/2021**

Design Time: **01/05/2021**

Design File No: **TSATSOLIS/DA/08/01/2021**

Design Date: **01/05/2021**

Design Time: **01/05/2021**

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EXISTING SITE PLAN

Client: **SAM & CHRISTINE TSATSOLIS**

Project: **363 KING ST NEWTOWN**

Design No: **DA 0.8**

Design File No: **TSATSOLIS/DA/08/01/2021**

Design Date: **01/05/2021**

Design Time: **01/05/2021**

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CMT ARCHITECTS
 AUSTRALIA PTY LTD
 Level 4, 414 Broadway,
 Pyrmont NSW 2260 Australia
 Tel: 61 2 9557 4330
 Email: info@cmtarchitects.com.au
 Website: www.cmtarchitects.com.au
 A/CN 185 795 715

Site Details

Date	By	Description
07/02/2021	GP	CONCEPT DESIGN
13/02/2021	GP	CONCEPT DESIGN
13/02/2021	GP	CONCEPT DESIGN

Notes:

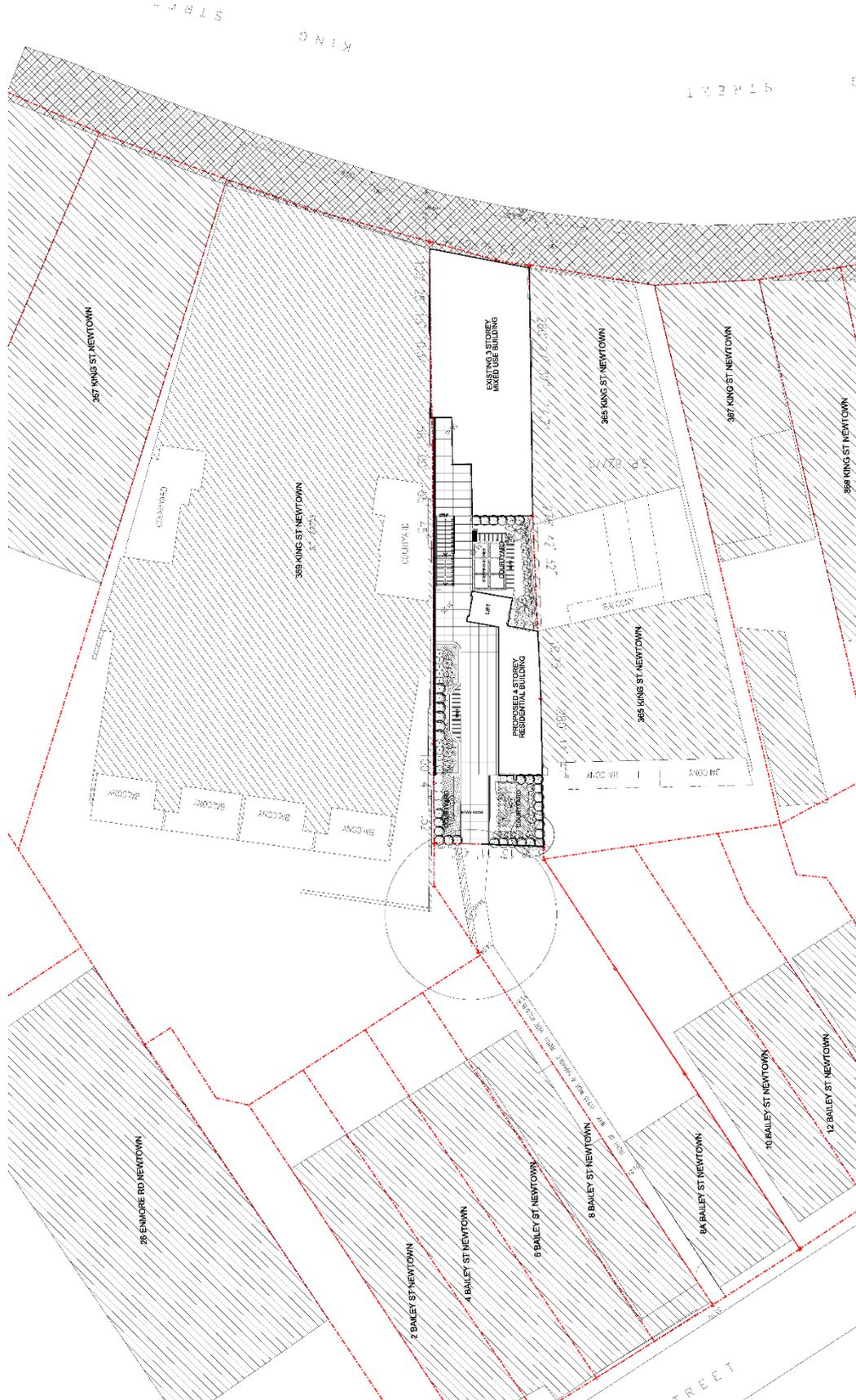
1. This site plan is for information only and is not to be used for construction of work.

2. All work to be done on this site must be done in accordance with the provisions of the relevant laws and regulations.

3. The site plan is subject to the provisions of the relevant laws and regulations.

4. The site plan is subject to the provisions of the relevant laws and regulations.

5. The site plan is subject to the provisions of the relevant laws and regulations.



DA SUBMISSION

DATE OF DA 06.05.2021
 DATE OF DA 06.05.2021
 PROJECT NO. DA 0.9
 DRAWING NO. 00.00.00
 SHEET NO. 01 OF 01
 DRAWN BY: [Name]
 CHECKED BY: [Name]

SAM & CHRISTINE TSAI SOULIS
 ARCHITECTS
 363 KING ST NEWTOWN
 PH: +61 2 9507 4300
 WWW.SAMANDCHRISTINE.COM.AU

PROPOSED SITE PLAN

NO.	DATE	DESCRIPTION	BY
1	06.05.2021	ISSUED FOR DA	[Name]

Site Details

C 27.04.2011
 A 13.04.2011
 B 13.04.2011

NO.	DATE	DESCRIPTION	BY
1	06.05.2021	ISSUED FOR DA	[Name]

Notes

1. This plan is to be used in conjunction with the DA submission.

2. All dimensions are in millimetres unless otherwise stated.

3. All dimensions are to the face of the wall unless otherwise stated.

4. All dimensions are to the face of the wall unless otherwise stated.

5. All dimensions are to the face of the wall unless otherwise stated.

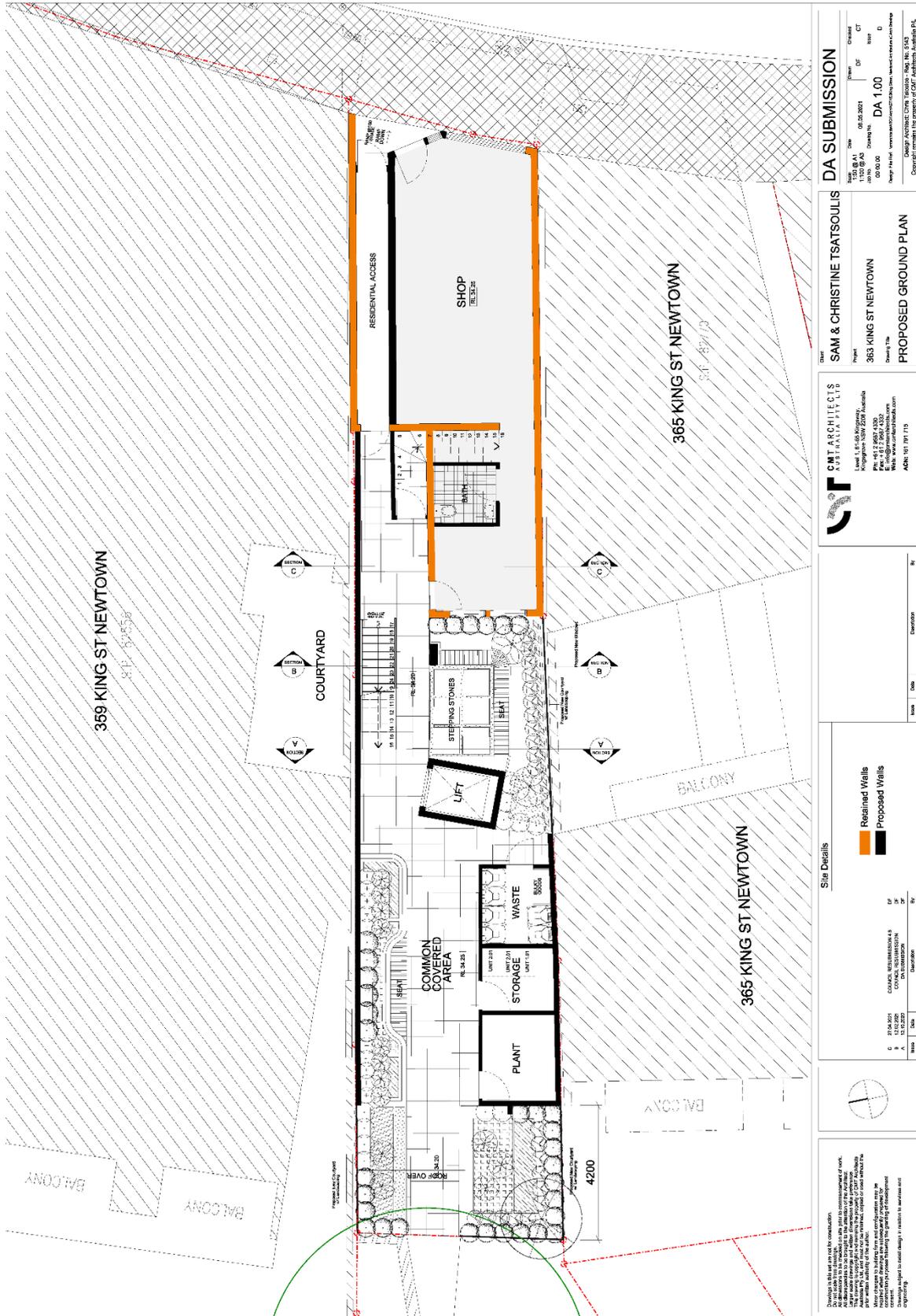
6. All dimensions are to the face of the wall unless otherwise stated.

7. All dimensions are to the face of the wall unless otherwise stated.

8. All dimensions are to the face of the wall unless otherwise stated.

9. All dimensions are to the face of the wall unless otherwise stated.

10. All dimensions are to the face of the wall unless otherwise stated.



DA SUBMISSION

Title: 150 DA 1
 Date: 08.05.2023
 Drawing No: DA 1.00
 Design: CT
 Issue: D
 Design Architect: CMT Architects
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SAM & CHRISTINE TSATSOLIS

Project: 363 KING ST NEWTOWN
 Drawing No: PROPOSED GROUND PLAN

CMT ARCHITECTS AUSTRALIA PTY LTD

Level 4, 41-42 King Street
 Kingsgrove NSW 2208 Australia
 Phone: +61 2 9567 4322
 Email: info@cmtarchitects.com.au
 Website: www.cmtarchitects.com.au
 ADRN: 101 701 170

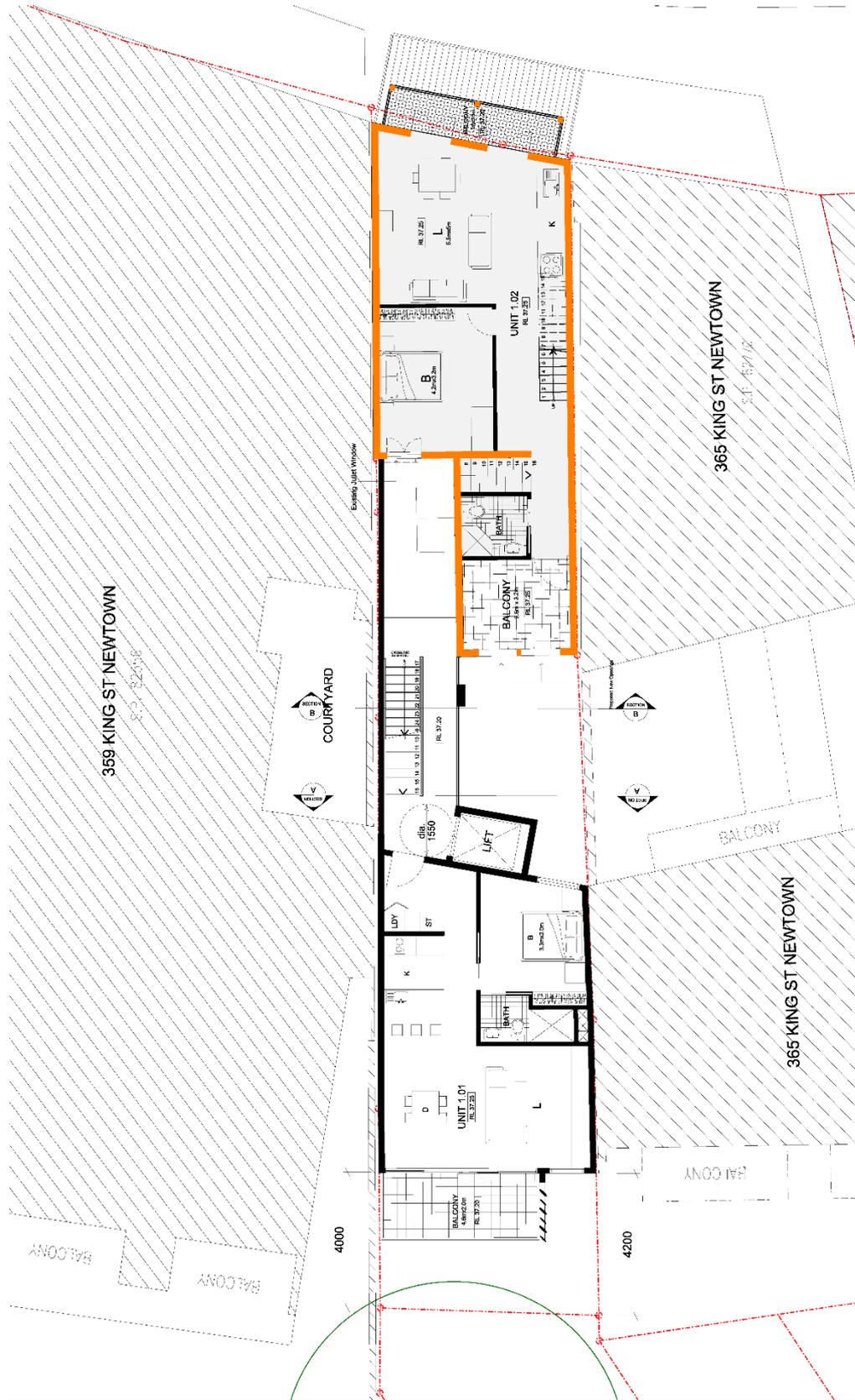
Site Details

Area	Code	Description	SI
Retained Walls	█		
Proposed Walls	█		

Area	Code	Description	SI
1	150 DA 1	PROPOSED GROUND PLAN	DA
2	150 DA 1	PROPOSED GROUND PLAN	DA
3	150 DA 1	PROPOSED GROUND PLAN	DA

Area	Code	Description	SI
4	150 DA 1	PROPOSED GROUND PLAN	DA
5	150 DA 1	PROPOSED GROUND PLAN	DA
6	150 DA 1	PROPOSED GROUND PLAN	DA

Drawings shall not be used for construction without the written consent of CMT Architects. All dimensions are in millimetres unless otherwise stated. This drawing is a site plan and does not show the proposed building footprint. The proposed building footprint is shown in grey. The proposed walls are shown in black. The retained walls are shown in white. The proposed walls are shown in black. The retained walls are shown in white. The proposed walls are shown in black. The retained walls are shown in white.



DA SUBMISSION

DA 1.1

DA 1.1

DA 1.1

DA SUBMISSION

DA 1.1

DA 1.1

DA 1.1

PROPOSED FIRST FLOOR PLAN

365 KING ST NEWTOWN

DA SUBMISSION

DA 1.1

DA 1.1

DA 1.1

Site Details

Retained Walls

Proposed Walls

DA SUBMISSION

DA 1.1

DA 1.1

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Site Details

Retained Walls

Proposed Walls

DA SUBMISSION

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DA 1.1

Site Details

Retained Walls

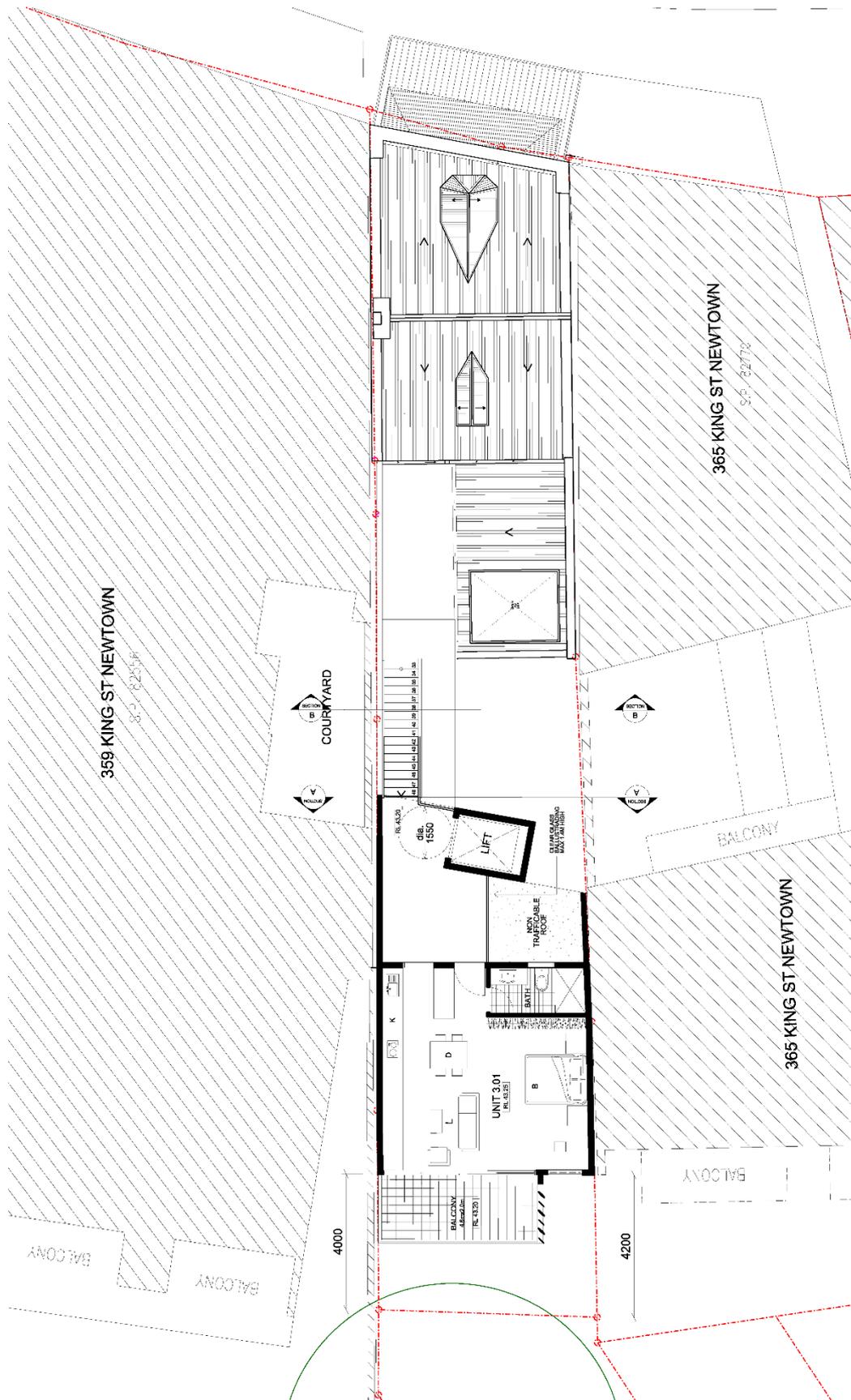
Proposed Walls

DA SUBMISSION

DA 1.1

DA 1.1

DA 1.1



DA SUBMISSION

Client: SAM & CHRISTINE TSATSOUKIS
Project: 363 KING ST NEWTOWN
Design No.: DA 1.3

DA SUBMISSION

Drawn: [Signature]
Checked: [Signature]
Date: 06.05.2021
Scale: 1:100
Sheet No.: 01 OF 01
Project No.: 15/13/2015
Design No.: DA 1.3

PROPOSED THIRD FLOOR PLAN

Site Details

Retained Walls (indicated by orange hatching)
Proposed Walls (indicated by black hatching)

Legend:

- Orange hatching: Retained Walls
- Black hatching: Proposed Walls

Scale: 1:100

North Arrow

Notes:

1. This plan is for construction purposes only. It is not to be used for any other purpose without the consent of the architect.

2. All dimensions are to the face of the work unless otherwise indicated.

3. The client is responsible for ensuring that the proposed work complies with all applicable laws, regulations, and codes of practice.

4. The architect is not responsible for any errors or omissions in this plan.

5. The client is responsible for obtaining all necessary permits and approvals.

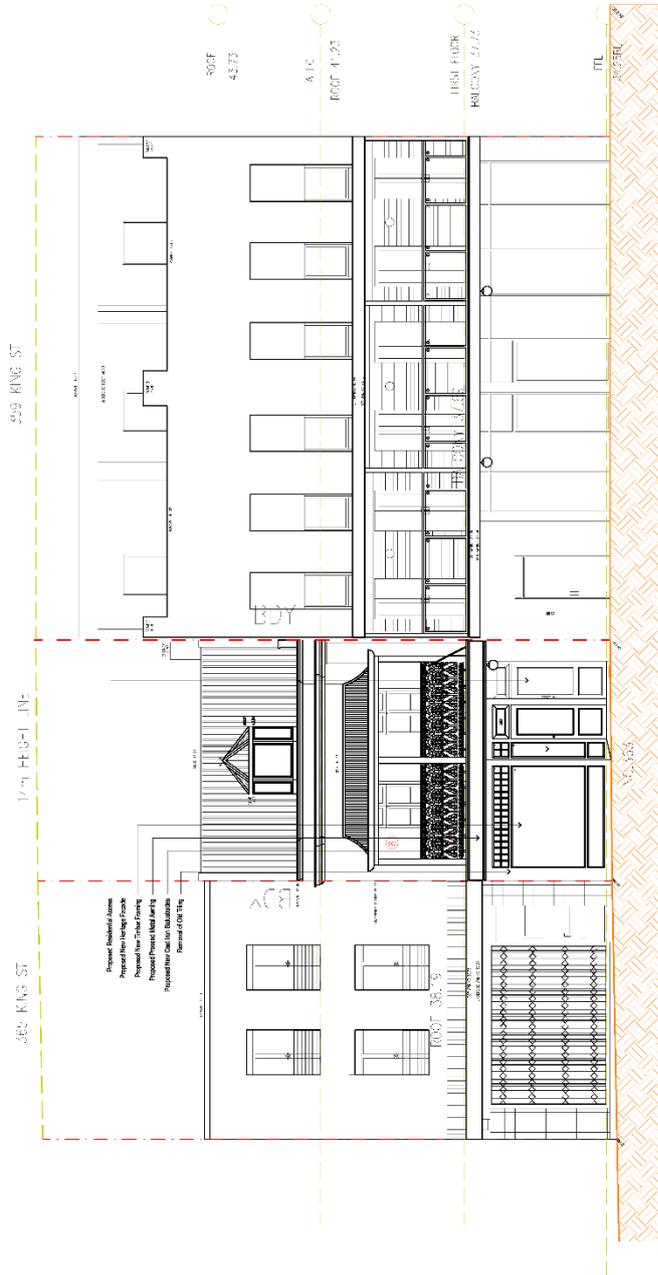
6. The architect is not responsible for any delays or costs incurred by the client.

7. The architect is not responsible for any damage to the property or any other loss.

8. The architect is not responsible for any liability.

9. The architect is not responsible for any other matter.

10. The architect is not responsible for any other matter.



DA SUBMISSION

Date: 06/06/2021
 Drawing No: DA 16
 Drawn By: [Name]
 Checked By: [Name]
 Date: 06/06/2021
 Drawing No: DA 16
 Drawn By: [Name]
 Checked By: [Name]

Client: **SAM & CHRISTINE TSATSOLIS**

Project: **363 KING ST NEWTOWN**

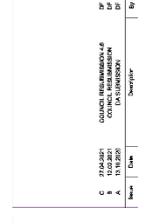
Drawn by: **The PROPOSED EAST ELEVATION**

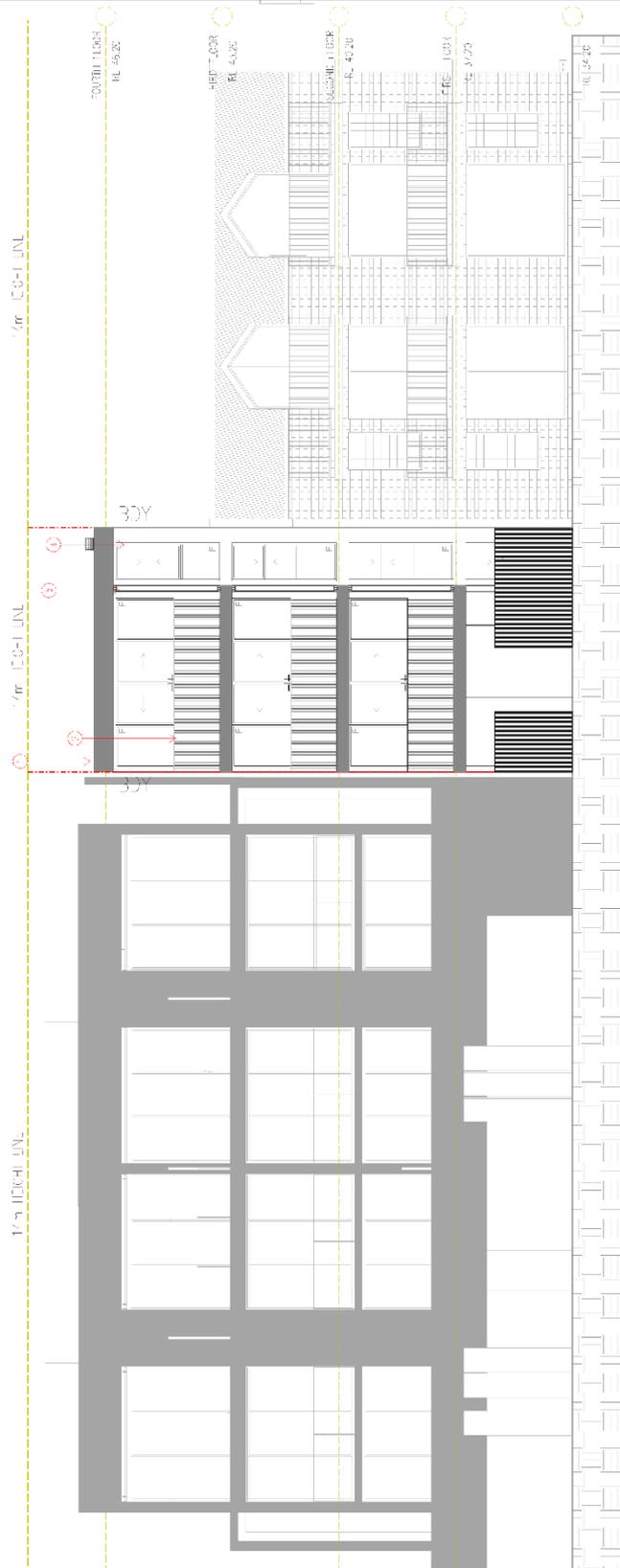
CMT ARCHITECTS
 CONSULTANTS
 1/11 HEROLD AVE
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Site Details

No	Date	Description	By
1		CONDUCT CONSULTATION & COMMUNICATIONS	DF
2		PRODUCTION	DF
3		ISSUE FOR PERMIT	DF
4		CONDUCT CONSULTATION & COMMUNICATIONS	DF

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Item	Date	Description	By	Check	Date	Description	By
C	15/08/2021	CONCEPT DEVELOPMENT & PRELIMINARY DESIGN	CP				
A	15/08/2021	CONCEPT DEVELOPMENT & PRELIMINARY DESIGN	CP				

DA SUBMISSION

Client: **SAM & CHRISTINE TSATSOUKIS**

Project: **383 KING ST NEWTOWN**

Proposal No: **DA 1.8**

Issue: **1**

Issue Date: **08/05/2021**

Issue By: **CP**

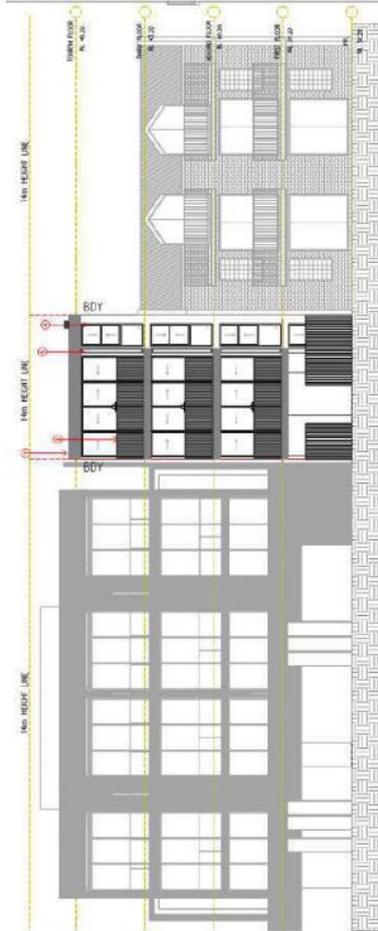
Issue For: **DA 1.8**

Issue By: **D**

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Schedule of Materials & Finishes

363 King St, Newtown



1	CONCRETE TO ENGINEER'S SPECS Grey	
2	POWDER COATED METAL BALLUSTRADE Charcoal	
3	GLASS PANNELLING Transparent	
4	ALUMINIUM FRAMING Dark Grey	
5	ANODISED ALUMINIUM LOUVRES Dark Grey	
6	CAST IRON BALLUSTRADE Dark Grey	

	DULUX "DOMINO" #GR10 R: 60, G: 62, B: 63
	DULUX "MUSING" #GR3 R: 190, G: 187, B: 192
	DULUX "WIND WHITE" #1W R: 247, G: 248, B: 244



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SECTION A-A

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Site Details

Code	Description	DF	DP	DR
C	20/0/2021			
B	15/03/2021			
A	15/03/2021			
Rev	Date	Drawn	Check	By

Site Details

Client: **SAM & CHRISTINE TSATSOUKIS**

Project: **363 KING ST NEWTOWN**

Drawn By: **INTERNAL WEST SECTION**

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Drawn: **DA 2.0**

Check: **CT**

Date: **05.03.2021**

Issue No: **DA 2.0**

Sheet No: **DA 2.0**

Project No: **DA 2.0**

Design Architect: **CSA Architects Pty Ltd**

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365 COURTYARD EAST ELEVATION

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Drawings are used to detail design in relation to services and fittings.

	JUN 9AM	JUN 12PM	JUN 3PM		SEP/MAR 9AM	SEP/MAR 12PM	SEP/MAR 3PM
EXISTING							
PROPOSED							
EXISTING							
PROPOSED							

DA SUBMISSION

Client: SAM & CHRISTINA TSATSOUJIS

Project: PROPOSED SHADOW DIAGRAMS

Drawing Title: SHADOW DIAGRAMS

Date:	08.05.2021	Drawn:	CT
Job No.:	DA 2.2	DF:	D

Design Architect: Chris Tabezon - Reg. No. 8143
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No.	Date	Description	By
C	27.04.2021	COUNCIL INSTRUMENTATION & CONSTRUCTION	DF
A	15.04.2021	DA SUBMISSION	DF

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365 COURTYARD WEST ELEVATION

	JUN 9AM	JUN 12PM	JUN 3PM
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PROPOSED			
	SEP/MAR 9AM	SEP/MAR 12PM	SEP/MAR 3PM
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PROPOSED			

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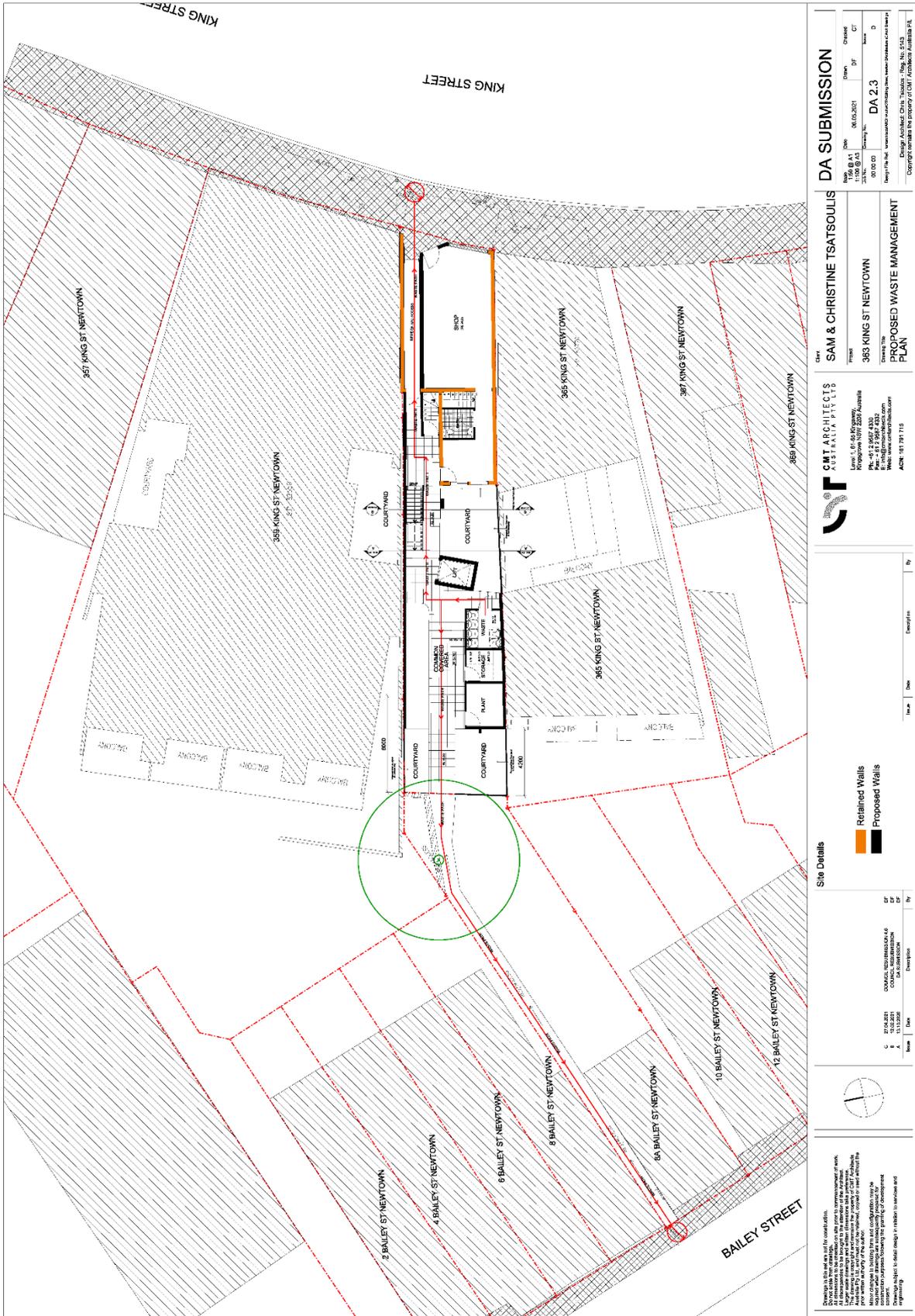
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DA SUBMISSION
 SAM & CHRISTINA TSATSOLIS

SHADOW DIAGRAMS

Scale	1:100	Date	08/06/2011	Drawn	CT
Client	DA 2.2	Check		Scale	D
Project	DA 2.2	Drawn		Scale	D
Drawn		Check		Scale	D

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PERSPECTIVE 1



PERSPECTIVE 2

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Site Details

C	27/02/2021	CONTRACT ADMINISTRATION	D	
A	10/10/2020	CONTRACT ADMINISTRATION	D	

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 Newbury Title
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DA SUBMISSION

DATE	DATE	DATE	DATE
17/02/2021	08/08/2021	15/08/2021	08/08/2021
DA NO.	DA NO.	DA NO.	DA NO.
DA 2.4	DA 2.4	DA 2.4	DA 2.4
DA 2.4	DA 2.4	DA 2.4	DA 2.4

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Attachment C- Clause 4.6 Exception to Development Standards

Clause. 4.6 of the
Marrickville Local Environmental Plan 2011
Request to Vary the Maximum Floor Space Ratio
Development Standard

Proposed Shop Top Housing Development
363 King Street, Newtown



Prepared by
TUDOR PLANNING AND DESIGN



April 2021

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Signed:



Date:

26 April 2021

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1 Introduction

1.1 Overview

This Clause 4.6 the *Marrickville Local Environmental Plan 2011* (LEP) exceptions to development standard report (**Clause 4.6 Report**), requests a variation to the maximum floor space ratio (FSR) development standard of 1.5:1, for the proposed development located at 363 King Street, Newtown (**Site**).

This Clause 4.6 Report supports the Statement of Environmental Effects (**SEE**) report, which has been prepared on behalf of CMT Architects (Australia) Pty Ltd (**CMT**).

This Clause 4.6 Report and SEE include an assessment of the proposed works in terms of the matters for consideration as listed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (NSW) (**the Act**) and Clause 50 of the *Environmental Planning and Assessment Regulation 2000* (NSW) (**the Regulations**).

The preparation of this Clause 4.6 Report and supporting SEE, has relied upon the adequacy and accuracy of supporting architectural plans prepared by CMT in support of the development.

1.2 Clause 4.6 of the Growth Centres SEPP

Clause 4.6 of the LEP provides the mechanism to vary development standards, which states:

"4.6 Exceptions to development standards

- (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 Planning Secretary has been obtained.*
 - (5) *In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.*
 - (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note—*
- When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.*
- (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,*
 - (ca) *clause 6.9, 6.17 or 6.18,*
 - (cb) *clause 6.21(4)."*

2 The Site

The site is located at 363 King Street, Newtown. Refer to Figure 1 for the site's local context.

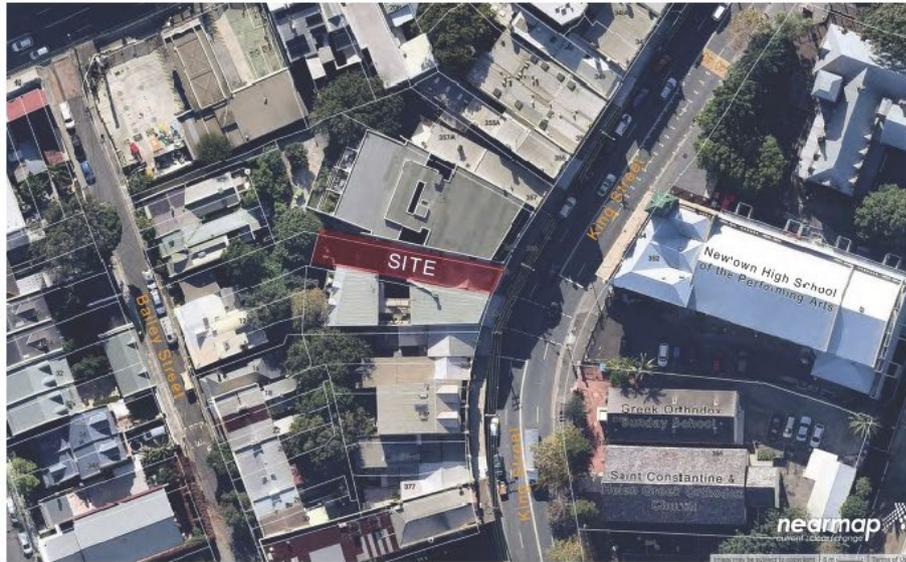


Figure 1. Subject Site

Table 1 provides additional details of the site.

Table 1. Site Description

Property	Details
Legal Description	Lot 1 in DP1045074
Site Area	208.21 sqm
King Street Frontage Width	4.00 metres
Rear Site Width	6.38 metres
Site Length	Approx. 44.00 metres

3 The Proposal

The proposed development is for a shop top housing development. Generally, the following works are proposed:

- Demolition, as required;
- Renovation of existing building on the site to allow provide a ground level shop and residential use above;
- Construction of a rear shop top housing building three residential units above services and waste collection area associated with the renovated shop fronting King Street;
- Associated civil engineering works; and
- Associated landscaping works.

4 Development Standards

The key environmental planning instrument (EPI) that applies to the site is the *Marrickville Local Environmental Plan 2011 (LEP)*. In accordance with Clause 4.4 of the LEP the maximum floor space ratio is 1.5:1.

5 Proposed Variation

The proposed development seeks an exception to the maximum floor space ratio of 1.5:1 in the LEP.

Table 2 below identifies the degree of exceedance of the FSR development standard.

Table 2. FSR Variation Summary

Site Area	FSR Development Standard	Maximum Permissible GFA
208.21sqm	1.5:1	312.31sqm
	Proposed FSR	Total Proposed GFA
	1.58:1	329.37sqm
TOTAL ADDITIONAL GFA		17.06sqm
TOTAL PERCENTAGE DIFFERENCE		5.4%

Refer to architectural design package for design details. Given that the variation is less than 10% of the total permissible GFA and given that the amount of non-compliance does not generate any adverse environmental impacts, it is considered that the non-compliance is acceptable for the site.

6 Justification for Request

This Clause 4.6 Report seeks a relaxation of the development standards in Clause 4.4 of the LEP in support of the proposal.

6.1 Clause 4.6 Assessment

For development consent to be granted to a non-complying development, Council must be satisfied that the provisions of Clause 4.6(3)-(5) of the LEP have been satisfied. The proposed development has been assessed under these provisions, having regard to the application of these provisions established by the NSW Land and Environment Court in:

- *Wehbe v Pittwater Council* [2007] NSW LEC 82;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3'); and
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Accordingly, the following assessment is made.

6.1.1 Clause 4.6(3)

Clause 4.6(3), stipulates that development consent will not be granted to a non-complying development unless it can be demonstrated that:

- (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.*

Clause 4.6(3)(a) - Unreasonable or Unnecessary Assessment

Preston CJ in *Wehbe v Pittwater Council* [2007] NSW LEC 827 outlined five criteria which may demonstrate that compliance with a development standard is "unreasonable or unnecessary".¹ The criteria are articulated as follows:

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

¹ *Wehbe v Pittwater Council* [2007] NSW LEC 827, [42]-[49].

² *Ibid.*

An assessment of the above criteria in relation to the subject development is outlined below:

(i) The objectives of the standard are achieved notwithstanding non-compliance with the standard

The development is consistent with the objectives of the standard and does not create any adverse environmental impacts. Consequently, strict compliance with the development standard is unnecessary as the development meets the objectives of the LEP. It is also unreasonable, in that no purpose would be served through strict compliance by the proposed development. As such, it is unreasonable and unnecessary in this circumstance to comply with the development standard.

Refer to the table below the assessment of the development standard objectives.

Table 3. Assessment of Development Standard Objectives

Property	Details
<p><i>"4.4 Floor Space Ratio</i> <i>(1) The objectives of this clause are as follows—</i></p>	
<p><i>(a) to establish the maximum floor space ratio</i></p>	<p>The proposed non-compliance exceeds the total permissible GFA on the site by less than 10%, this equates to an exceedance in the GFA of 17.06sqm. The amount of non-compliance is not visible from King Street, does not generate any adverse environmental impacts, generates a mass that has a scale less than the permissible 14 metre building height control and generates a mass that has a scale that is consistent in height with the adjoining development to the north of the subject site. Refer to Figure 2 in this report that shows the rear elevation of the proposal in context of the adjoining developments to the north and south of the subject site. In the circumstance the non-compliance is considered to be acceptable for the site.</p>
<p><i>(b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas</i></p>	<p>The proposal does not have any adverse environmental impacts as a result of the non-compliance and the mass/bulk that is generated. In accordance with the Marrickville Development Control Plan 2011 the site is located within the King Street and Enmore Road (Commercial) Precinct, also known as Precinct 37. Some of the key desired future character objectives of the Precinct includes,</p> <ul style="list-style-type: none"> • protect and preserve contributory and period buildings within the precinct and require their sympathetic alteration or restoration; • protect and enhance the character of

Property	Details
	<p>streetscapes and public domain elements within the precinct including prevailing subdivision patterns;</p> <ul style="list-style-type: none"> • ensure that buildings provide strong definition to the street through retention of the existing nil building setbacks; and • ensure that the design of higher density development protects the residential amenity of adjoining and surrounding properties. <p>The proposal clearly meets that the desired future character of the area by renovating the existing development located to the front of the property on King Street, therefore retaining the heritage character of the streetscape and respecting the principles of the heritage conservation area. Moreover, the proposed renovation of the existing building on the site ensure that the ongoing retail use on the ground level and continual activation to the street. Further, the additional residential development does not generate any adverse impacts on adjoining and surrounding properties and protects the residential amenity to those properties. Moreover, the character of the additional residential component of the proposal is consistent with the contemporary architectural design style of adjoining properties. Therefore, it is abundantly clear that the proposal meets this objective of the development standard.</p>
<p><i>(c) to minimise adverse environmental impacts on adjoining properties and the public domain.</i></p>	<p>The proposal does not generate any adverse environmental impacts on adjoining properties and the public domain. The proposal is not visible from King Street, the proposal does not generate any overshadowing that diminishes solar access to adjoining properties and the proposal does not have any visual impacts or obstruct views currently enjoyed by adjoining residents to the local area or any significant views.</p>

(ii) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

Not applicable. The underlying objective or purpose of the standard is relevant to the development and is achieved as outlined in (i) above.

(iii) The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

Not applicable.

(iv) The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable

Not applicable.

(v) The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Not applicable.

The Clause 4.6 exception to development standard request appropriately addresses *Wehbe v Pittwater Council [2007] NSW LEC 827*, therefore the proposed variation satisfies cl 4.6(3)(a) and is well founded.

Further Discussion of Unreasonable or Unnecessary Assessment

The proposal including the non-compliant amount of the gross floor area generates a bulk and scale to the rear component of the proposal, that is less than the LEP building height development standard. Moreover, the scale of the proposal and its non-compliant floor space is consistent in scale with the adjoining development at 359 King Street, to the north of the subject site. Refer to the figure below that shows the scale of the rear component of the proposal development on context of the adjoining properties.

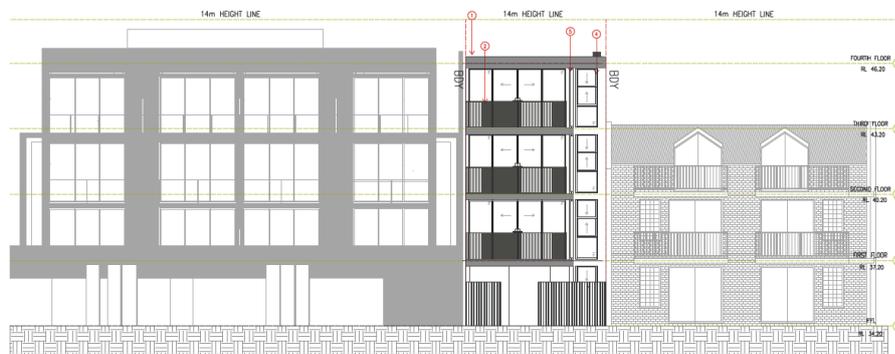


Figure 2. Western elevation proposed development with existing adjoining properties

Table 2 in this report, clearly demonstrates that the maximum FSR non-compliance exceeds the LEP FSR development standard by less than 10%. Additionally, the non-complying amount of floor space contributes to achieving a skilful design outcome in balance of the site's constraints by:

- Providing varying sized units within the property;
- Retains the shopfront and ensures the continual activation of King Street;
- Ensures that residential amenity is retained to adjoining and surrounding properties;
- Ensures that the large tree located to the rear of the site within the right of way is retained;
- Ensures that views enjoyed by the residents of the adjoining properties located on the northern and southern boundary of the subject site are retained and not obstructed;
- The proposal has no material environmental impact with respect to overshadowing on adjoining and surrounding properties;
- Ensures that future residents of the proposal achieve a high quality residential amenity; and
- Ensures the most efficient use of land.

Given this it is considered that the non-compliance is acceptable for the site. Hence, compliance with the development standard is unreasonable and unnecessary as the impact generated is not greater or worse than if the proposal complied with the development standard.

Clause 4.6(3)b) - Environmental Planning Grounds

Clause 4.6(3)(b) requires sufficient environmental planning grounds to be demonstrated to justify a contravention of the development standard.

The proposed development is non-compliant with the LEP FSR development standard by 5.4%, which equates to 17.06sqm more floor space than the permissible amount of floor space. The bulk and scale of the proposal generated by the non-compliance can create two issues of concern:

- Potential excessive and unacceptable overshadowing as a result of the additional bulk and scale; and
- View obstruction.

Overshadowing

As demonstrated in Figures 3 to 4 of this report, the shadow cast by the proposal in mid-winter between 9am and 3pm mainly falls on the roof of the property to the south. A small amount of shadow is cast by the proposal between 9am and 11am on mainly the roof of the property at 16 Bailey Street, which is located to the southwest of the subject site. The rear of the property of 16 Bailey Street is currently also overshadowed by the surrounding large trees to its rear. Refer to Figures 5 to 11 in this report that shows the surrounding vegetation and the various shadows cast in approximately mid-winter and the equinox on the surrounding area, and in particular to the property at 16 Bailey Street.

Currently the cumulative shadow cast by existing developments at 359 King Street and 365 King Street already cast a large shadow on properties located to the west and south west of the subject site. This is a result of the orientation of the properties at 359 King Street and 365 King Street and the nature of the surrounding urban pattern, including varying lot shapes and sizes.

It is evident from the shadow diagrams and aerial images that the proposal has no adverse overshadowing impact on adjoining properties.

Further, the development is not out of character and not inconsistent with proposed future desired character of the area, and clearly meets the objectives of the development standard and land use zone.

363 SHADOW DIAGRAM JUNE EXISTING + PROPOSED

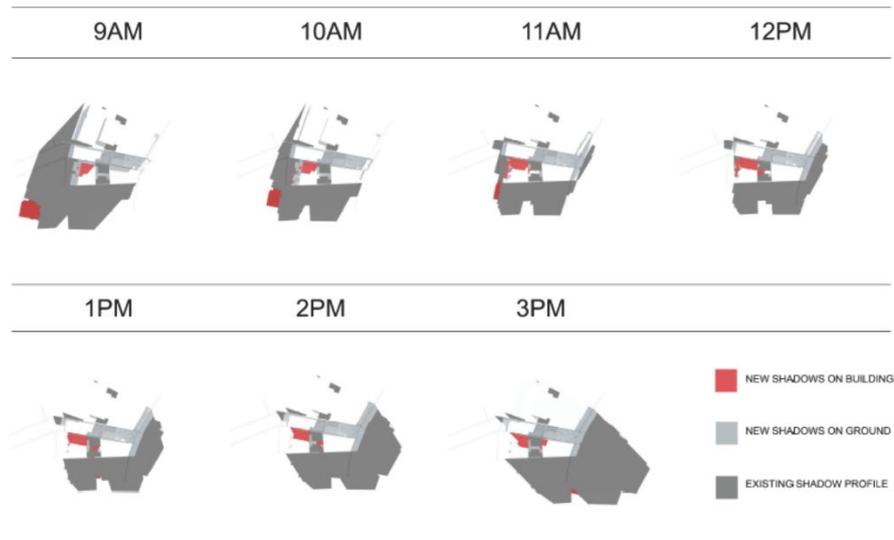


Figure 3. Shadow analysis mid-winter 21st June 9am – 3pm

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363 SHADOW DIAGRAM SEP/MARCH

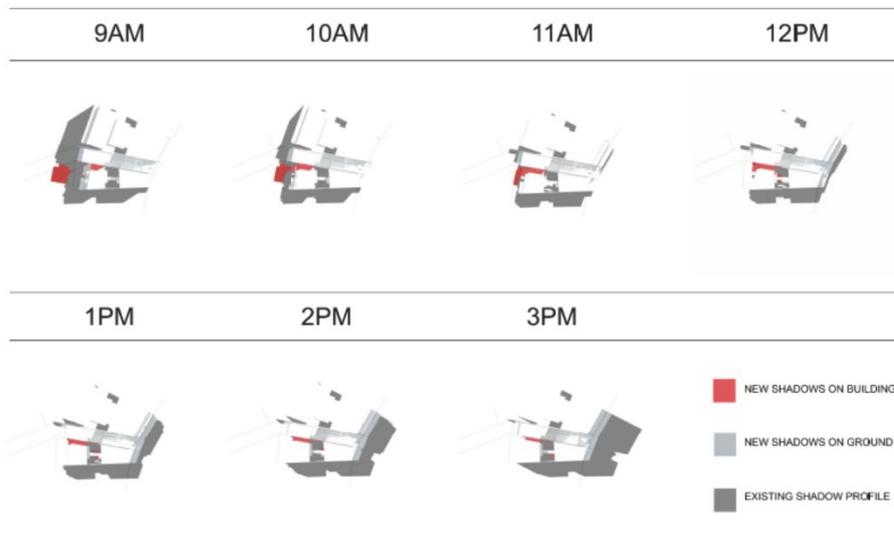


Figure 4. Shadow analysis equinox 23rd September/20th March 9am – 3pm

14

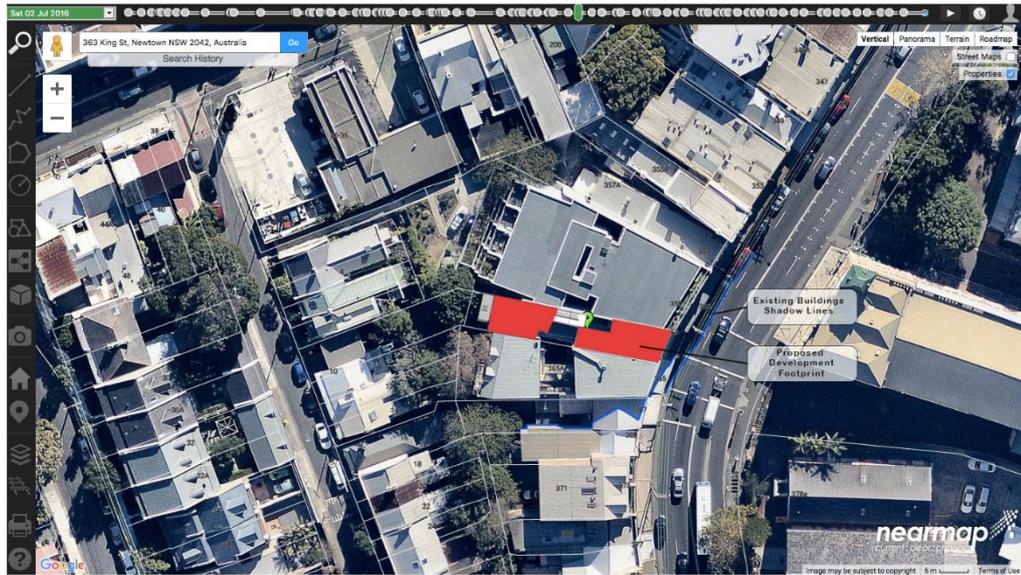


Figure 5. Existing approx. 11am shadow with proposed development footprint (base map: Nearmap dated 1 July 2016)

15

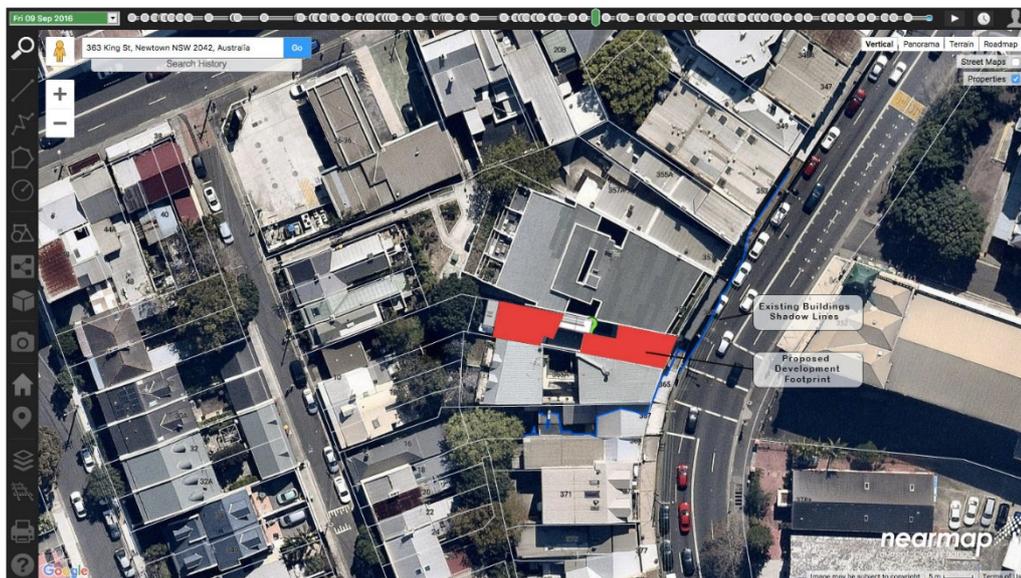


Figure 6. Existing approx. 12pm shadow with proposed development footprint (base map: Nearmap dated 9 September 2016)

16



Figure 7. Existing approx. 1pm shadow with proposed development footprint (base map: Nearmap dated 1 June 2020)

17

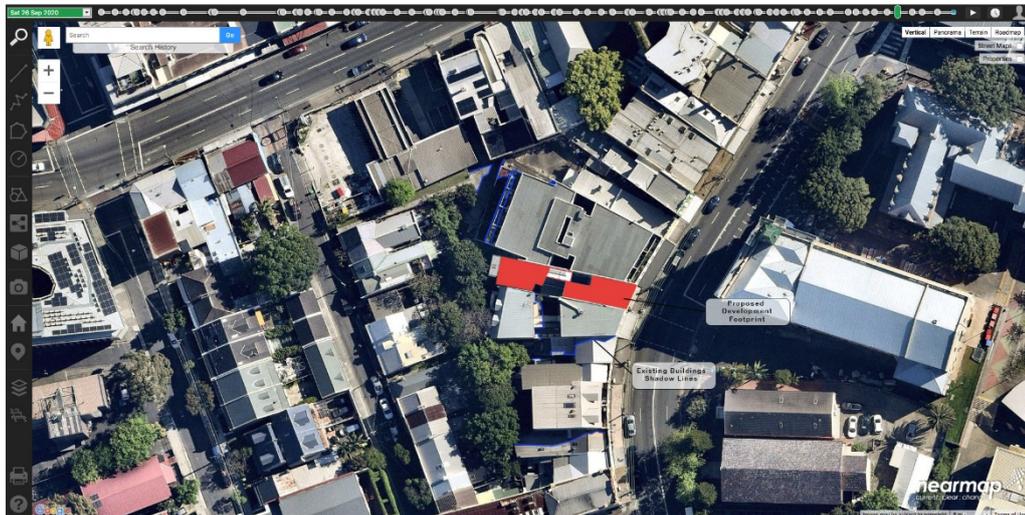


Figure 8. Existing approx. 9am shadow with proposed development footprint (base map: Nearmap dated 26 September 2020)

18



Figure 9. Existing approx. 10am shadow with proposed development footprint (base map: Nearmap dated 6 December 2020)

19



Figure 10. Existing approx. 11am shadow with proposed development footprint (base map: Nearmap dated 24 January 2021)

20

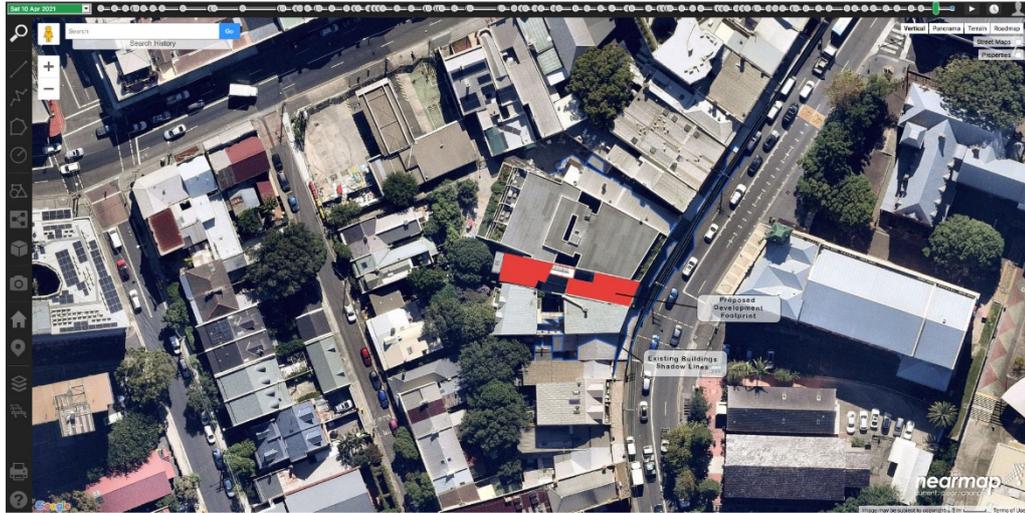


Figure 11. Existing approx. 11am shadow with proposed development footprint (base map: Nearmap dated 10 April 2021)

Visual Impacts

In relation to visual impacts, the rear component of the proposal is not visible from King Street, and therefore has not impact on the visual character of the streetscape.

The development is not out of character and not inconsistent with future desired character of the area, as well as adjoining development. The location and orientation of the proposal ensures that it does not have any adverse impacts on the residential amenity and existing views enjoyed by residents in adjoining properties to the north and south of the subject site.

As such, it is considered that strict compliance with the development standard is unnecessary in the circumstances of the case, as the proposal generates no adverse impacts in with regards to visual impacts.

Neutral and Beneficial Effect

Pursuant to the decision in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 it need not be demonstrated that the non-complying development has a "neutral or beneficial effect relative to a compliant development."³ Should the design be amended to comply, it would cause an inferior design and planning outcome with no better environmental outcome. Accordingly, the proposal is optimal as it stands.

Furthermore, in *Initial Action*, at [23], Preston CJ held:

"... The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purposes of the EPA Act, including the objects in Section 1.3 of the EPA Act."

An assessment of the Objects Section 1.3 of the Act is provided in the table below. The assessment found that the proposal does offend any of the Objects of the Act.

Table 4. Section 1.3 of the Act Assessment

Objects under Section 1.3 of the Act	Assessment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	Not applicable. The proposal does impact any of the State's natural and other resources.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	<p>The proposal meets the objectives of the B2 Zone and Council's inherent desired future character for the area. The proposal is considered suitable for the site and that it meets this object because,</p> <ul style="list-style-type: none"> • It does not generate any adverse environmental impacts; • Provides housing in a local centre in close proximity to employment and uses/services/functions, while contributing the to economic role of the

³ *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, [86].

Objects under Section 1.3 of the Act	Assessment
	centre; and <ul style="list-style-type: none"> Provides additional housing choice in the area, while also providing housing in proximity to public transport, which achieves the objectives of the land use zone.
(c) to promote the orderly and economic use and development of land,	The proposal achieves an orderly and economic use of the land. Refer to above assessment under Object (b).
(d) to promote the delivery and maintenance of affordable housing,	The proposal does not include affordable housing and there is no requirement or mechanism under Council's to provide affordable housing.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	Not applicable. The site does not include any threatened and other species of native animals and plants, ecological communities and their habitats.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	Not applicable. The site does not include any built and cultural heritage, including Aboriginal cultural heritage.
(g) to promote good design and amenity of the built environment,	The proposal is considered to be a high quality design outcome for the site, as it achieves a high quality residential amenity for future residents, while also enhancing the streetscape by way of renovating the existing building locate on King Street. As such, the proposal also enhances the pedestrian experience to the street, hence promoting good pedestrian amenity within the built environment.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposal seeks to achieve the proper construction and maintenance of the building. Any development consent would be subject to strict Conditions of Consent that the developer and building contractor would need to adhere to and demonstrate compliance with relevant Council requirements, National Construction Code requirements and Australian Standards.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	The proposal achieves the NSW State Government's core aim under the Greater Sydney Region Plan to deliver a '30-minute city' by locating housing close to strategic centres and employment.

Objects under Section 1.3 of the Act	Assessment
	This is reinforced by the proposal meeting the objectives of the B2 Zone and Council's inherent desired future character for the area.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The proposal is subject to standard planning process for development consent. The proposal has been publicly exhibited and received no community submissions.

As such, given the assessment of the Objects of the Act and assessment of potential environmental impacts, there is sufficient justification for the proposal on environmental planning grounds, which are particular to the subject site, to allow for the contravention of the development standard.⁴

6.1.2 Clause 4.6(4)(a)(i)

Clause 4.6(4)(a)(i) requires that the consent authority be satisfied that this request to vary the maximum floor space ratio control has adequately addressed the matters required to demonstrate subclause (3). The assessment of the non-compliance and justification for the request is presented in above sections of this report. The assessment and justification is well founded on the basis of the proposal's ability to meet the objectives of the maximum floor space ratio development standard, justification that compliance is unnecessary in the circumstance and that there are sufficient environmental planning grounds to justify the contravention. Refer to assessment and justification in the above sections of this report.

6.1.3 Clause 4.6(4)(a)(ii)

Clause 4.6(4)(a)(ii) requires that a consent authority must be satisfied that the proposed development is in the public interest because it is consistent with the objectives of the development standard and of the particular land use zone. Refer to Table 3 of this report for an assessment of the maximum floor space ratio development standard objectives. The assessment found that the proposal satisfies the relevant objectives.

In relation to the land use zone objectives, the subject site is zoned as B2 Local Centre (B2 Zone) under the LEP. An assessment of the B2 Zone objectives is provided in Table 5 of this report. The assessment found that the proposal satisfies the relevant land use zone objectives.

⁴ *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, [60]; *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90,[29].

Table 5. Assessment of B2 Land Use Zone Objectives

Property	Details
(1) Objectives of Zone	
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.	The proposal retains the shop located on King Street. The proposal includes the renovation of the shop and existing building on King Street, ensuring the continual street activation and streetscape character to King Street.
To encourage employment opportunities in accessible locations.	The site is located with 200 metres of the Newtown Train Station and continues the retail use on the site, hence the site will continue offering employment within an accessible location.
To maximise public transport patronage and encourage walking and cycling.	The proposal does not include car parking and promotes the uses of public transport being located within 200 metres of the Newtown Train Station and numerous bus services.
To provide housing attached to permissible non-residential uses, which is of a type and scale commensurate with the accessibility and function of the centre or area.	The proposal provides residential housing in a local centre attached to retail ground level uses. The residential housing is of a scale and character consistent with adjoining development.
To provide for spaces, at street level, which are of a size and configuration suitable for land uses which generate active street-fronts.	The proposal ensures the continual street activation of King Street while also enhancing the aesthetic quality of the existing building, respecting the heritage character of the area and therefore enhancing the design quality of the streetscape.
To constrain parking and reduce car use.	The proposal does not include car parking and promotes the uses of public transport being located within 200 metres of the Newtown Train Station and numerous bus services.

6.1.4 Clause 4.6(5)

The NSW Department of Planning and Environment (DP&E) has issued a Planning Circular (PS20-002) dated 5 May 2020 which provides guidance with respect to assumed concurrence of the Secretary when determining a development application that is supported by a Clause 4.6 request. The Planning Circular outlines Secretary's concurrence cannot be assumed for development that contravenes a development standard by more than 10%. However, because this proposal is in the NSW Land and Environment Court (LEC), Section 39(6) of the *Land and Environment Court Act 19179* (LEC Act) is relevant and provides:

- (6) *Notwithstanding any other provision of this Section, if an appeal relates to an application made to a council within the meaning of the Local Government Act 1993 or a consent authority within the meaning of the Environmental Planning and Assessment Act 1979 and that council or consent authority may not approve of, consent to, or deal with, or grant a permission in respect of, the application except after consultation with, or with the concurrence or approval of, any person or body—*
- (a) *the Court may determine the appeal whether or not the consultation has taken place and whether or not the concurrence or approval has been granted, and*
 - (b) *in a case where the concurrence or approval has been granted—the Court may vary or revoke any conditions imposed by that person or body or may impose any conditions that could have been imposed by that person or body.*

An assessment of the above criteria in relation to the subject development is outlined below:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

The proposed non-compliance with the maximum floor space ratio development standard does not raise any matters of significance for State or regional environmental planning. The contravention only relates to a local environmental planning matter and control.

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

Should the proposal comply with the maximum floor space ratio development standard, it would result in a less optimal proposal while not generating any further benefit with respect to overshadowing and visual impacts. The proposal does not generate any adverse environmental impacts with respect to the non-compliance with the maximum floor space ratio development standard as assessed and demonstrated in the previous sections of this report. Therefore, there is no extra merit for providing a compliant scheme.

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

There are no other matters to be taken into consideration by the Secretary before granting concurrence. The proposal results in an orderly and economic development for the site.

7 Conclusion

In conclusion the consent authority can be satisfied that:

- (a) This Clause 4.6 request adequately addressed the matters required to be demonstrated in Clause 4.6(3) in that:
 - (i) It demonstrates that compliance with the floor space ratio development standard in clause 4.4 of the LEP is unreasonable or unnecessary in the circumstances of the case, and
 - (ii) It demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard,
- (b) The proposed development will be in the public interest because:
 - (i) It is consistent with the objectives of the floor space ratio development standard, as set out in Section 6.1.1 of this report, and
 - (ii) It is consistent with the objectives of the B2 Zone, as set out in Section 6.1.3 of this report.

TUDOR PLANNING AND DESIGN

PO Box 357, Bondi Junction NSW 1355
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Attachment D – Statement of Heritage Significance

13/05/2021

King Street and Enmore Road Heritage Conservation Area | Heritage NSW

King Street and Enmore Road Heritage Conservation Area

Item details

Name of item:

King Street and Enmore Road Heritage Conservation Area

Other name/s:

King Street/Enmore Road Heritage Conservation Area - HCA 2

Type of item:

Conservation Area

Group/Collection:

Urban Area

Category:

Townscape

Primary address:

King Street, Newtown, NSW 2042

Local govt. area:

Inner West

All addresses

Street Address	Suburb/town	LGA	Parish	County	Type
King Street	Newtown	Inner West			Primary Address
Enmore Road	Newtown	Inner West			Alternate Address
Enmore Road	Enmore	Inner West			Alternate Address

Statement of significance:

The King Street and Enmore Road retail strip is of state historical, social and aesthetic significance as it provides an evocative physical record of significant historical phases which shaped the "New Town" from the late 19th to the early 20th Century, and has high regard in the community. The retail strip provides evidence of the economic boom of the late 1870s/1880s, exemplified by the quality and quantity of late-Victorian period building stock. Many of the buildings are impressive reminders of the area's role as a civic, retail and entertainment hub. The continuous 2 and 3 storey facades and the general uniformity of scale in King Street and Enmore Road create a distinct visual impression and outstanding townscape qualities. The consistency and relative intactness of the late 19th and early 20th century building stock is unique in the Sydney region and the State as a whole. A large number of Art Deco and Interwar period hotels demonstrate the highly populated, working class nature of the suburb in the early 20th century. The streetscapes of King Street and Enmore Road have high aesthetic value which is enhanced by the closed vistas created by street curves and by the views over the surrounding areas afforded by the alignment following the ridge line. Mixed retail uses, including delicatessens, and changes to shopfronts dating from the 1950s and 1960s reflect the strong influence of post-war migrants on the area. The area has social significance due its high regard in the community arising from its vibrant mix of retail and community uses.

Date significance updated: 16 Jan 12

Note: The State Heritage Inventory provides information about heritage items listed by local and State government agencies. The State Heritage Inventory is continually being updated by local and State agencies as new information becomes available. Read the Department of Premier and Cabinet [copyright](#) and [disclaimer](#).

Description

Construction years:

1870-1930

Physical description:

LOCATION: Enmore Road and the section of King Street which lies within Marrickville LGA, both extend southwest from Newtown Bridge.

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King Street and Enmore Road Heritage Conservation Area | Heritage NSW

KEY PERIOD OF SIGNIFICANCE: 1870s to 1930

DESCRIPTION:

King Street and Enmore Road are dominated by two and occasionally three storey commercial/retail buildings of the late 19th and early 20th centuries, built to the street alignment, with awnings over the footpaths. Facades above awnings are largely intact and highly detailed, particularly to parapets. The continuous 2 and 3 storey facades and the general uniformity of scale in these streetscapes create outstanding townscape qualities. Art Deco style buildings (eg. Enmore Theatre, Enmore Road) and inter war period hotels (eg. Sandringham Hotel in King Street)) also contribute to the mix of buildings. The townscape qualities are enhanced by closed vistas created by street curves. Mixed retail uses including delicatessens and post WW II changes to ground floor shopfronts reflect the strong influence of post WW II migration.

Precinct Three follows King Street from the Newtown Railway Bridge to its intersection with the Princes Highway at St Peters. The buildings are still predominantly late Victorian to early Federation.

VIEWS

Closed vistas along King Street and Enmore Road created by street curves. District views from some intersections due to King Street and Enmore Road following ridgelines. The tall chimney stacks of the former Brickworks in Sydney Park remain a significant landmark at the southern end of King Street.

CONTRIBUTORY ELEMENTS

- intact first and second floor facades
- intricate façade detail to first and second floors including parapet decoration, statuary, stucco urns
- shopfronts with original splayed, setback entries
- trachyte kerb and guttering

NON CONTRIBUTORY ELEMENTS

- Late 20th century infill sites, including several on Enmore Road between Newtown Bridge and Reiby Street including a service station.
- modern shopfronts involving extensive use of glazing

Physical condition and/or**Archaeological potential:**

Generally good condition, however many facades are in need of repainting.

Date condition updated: 12 Jun 09

Modifications and dates:

The section of Enmore Road between Newtown Bridge and Reiby Street features a number of intrusive elements such as a service station, and a number of unsympathetic infill buildings. The removal of 1st and 2nd floor balconies since WWII to many buildings is the only major loss of original and fabric and detailing to most buildings.

History

Historical notes:

The original owners of the land within the Marrickville Council area were the Cadigal and Wangal clans of the coastal Eora people. They spoke Eora, which may have been a dialect of the Dharug (Darug) language, though sources differ on this point. With the establishment of the penal colony at Sydney Cove in 1788 the dispossession of the original inhabitants was begun. In 1789 a smallpox plague decimated the Aboriginal population, though descendants of the Cadigal and Wangal people still reside within the Sydney metropolitan area.

The King Street/Enmore Road Heritage Conservation Area formed part of the land grants offered by Governor Phillip between 1793 and 1810. The largest owners of the lands that are part of the conservation area are Nicholas Devine and Thomas Rowley. Originally granted 100 acres in 1793, Rowley's grant, known as Kingston Farm, was enlarged twice, in 1800 and 1803, to 240 acres. By July 1841 Kingston Farm was being subdivided, when Samuel Lyons advertised a portion of the estate, the house "erected thereon, together with the several detached buildings, namely, Cooking-house, Servants' Rooms, Gig-house, Stables, &Co." (Sydney Gazette, 20 July 1841, p. 3). This area was north of Enmore Road. In 1854 a portion of Kingston Farm, south of the proposed railway line from Sydney to Parramatta and close to the site of Newtown Railway Station, was purchased by Thomas Holt, Thomas Ware Smart,

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Thomas Sutcliffe Mort and George Wigram Allen. The railway opened in September 1855 and in 1857 the land was subdivided into 370 allotments as the Kingston South Estate. The subdivision was not a great success and in 1861, after four years, only 16 lots had been sold and the unsold lots were distributed among the partners. It was then re-subdivided in 1863 and became the first subdivision under the provisions of the Real Property Act of 1862 (now known as Torrens Title) on 24 December 1863 as 'Holt, Smart and Mort's Subdivision of South Kingston', Deposited Plan 1.

The early surveyors used the ridgeline as the boundary between grants and their point of convergence is now the open space at Newtown Bridge.

From the 1830s onwards many wealthy families moved to the suburb of "New Town" to build large villas and estates. Among those in this area were Mary Reiby's 1840s "Reiby House" and the 1835 John Verge-designed villa of Captain Sylvester Browne (best known as the father of novelist T.A. Browne, "Rolf Boldrewood") called "Enmore House", Both of these villas were just south of Enmore Road. A later owner of Enmore House estate, Isaac Simmons, subdivided part of the property as the "Beautiful Village of Enmore" in about 1841. In about 1847 "Stanmore House" (between Simmons Street and Reiby Street), probably designed by architect Henry Robertson, was also built for Mary Reiby. "Enmore Road was an Aboriginal walking track and was known as Josephson's Track in the 1850s. Enmore Ward was created in 1862; the name is taken from the estate owned by Captain Sylvester Brown from 1835 and the Josephsons from 1838 to 1883. Enmore is the name of a small millennium-old town in Somerset near Cornwall; Brown took the name of his employer's estate in British Guiana or Barbados in the West Indies. Following the renaming of a section of Cooks River Road as King Street in 1877, Alderman Melville proposed that Enmore Road be renamed Chelsea Street and Alderman Cozens recommended Queen Street instead. Queen Street was used from 1879 until after 1880." (Newtown Project website "Streets/Enmore Road notes:

http://cityofsydney.nsw.gov.au/newtownproject/History_of_the_Streets_of_Newt/history_of_the_streets_of_newt.html)

"King Street (see Cooks River Road) was also called 'the Newtown Road' in the 1870s; the section between Bligh Street and Parramatta Road was named City Road in the 1920s. Cooks River Road extended from Parramatta Road to Cooks River. It was previously known as Bulanaming Road until the 1820s and informally known as Newtown Road in the latter half of the 19th century. The section between Bligh Street and St. Peters Station was renamed as King Street in October 1877." Newtown Project website "Streets/King Street notes:

http://cityofsydney.nsw.gov.au/newtownproject/History_of_the_Streets_of_Newt/history_of_the_streets_of_newt.html)

The introduction of the railway line in 1855 with a railway station at Newtown led to increased urban development of the area. The King Street/Enmore Road area became a commercial and retail hub with increasing development from the 1860s. The 1879 Sand's Directory still shows vacant sites along Enmore Road, however by 1880 all sites are built on, generally with retail buildings but with some residences. The residences are gradually replaced after 1880 with new retail buildings.

Development continued into the 20th century with construction of a few interwar buildings such as the Enmore Theatre, and later infill development (particularly between Reiby Street and Newtown Bridge on Enmore Road).

Historic themes

Australian theme (abbrev)	New South Wales theme	Local theme
3. Economy-Developing local, regional and national economies	Commerce-Activities relating to buying, selling and exchanging goods and services	(none)

Assessment of significance

SHR Criteria a)

[Historical significance]

The area holds a significant record of important historical phases associated with the expansion of Sydney during the mid to late 19th century brought on by the introduction of the railway line in 1855 and tramway services in the 1880s, and the economic and immigration flux triggered by the gold rushes in the 1850s and 1860s. The high quality and quantity of commercial and retail buildings demonstrate the economic boom of the 1880s. The surviving garages dating from the 1920s and 30s also reflect the importance of King Street as a major traffic route. The number of hotels along the length of King Street shows evidence of the working class nature of the area. The post war migrant influx into Australia and influence on Newtown is reflected in the mixed retail uses, including delicatessens, and shopfronts introduced in the 1950s and 1960s.

SHR Criteria c)

[Aesthetic significance]

The retail strip of King St and Enmore Rd exemplifies the economic boom of the 1870s and 1880s. The continuous two and three storey decorative stucco facades, create a distinct visual impression and demonstrate positive landmark qualities as a remarkable collection of buildings through almost the whole

<https://apps.environment.nsw.gov.au/dpcheritageapp/ViewHeritageItemDetails.aspx?ID=2030501>

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streetscape. This is enhanced by the curved nature of the streets, narrow building allotments and the ridgeline topography. Collectively the buildings are a fine representative example of late Victorian and early Federation period commercial design, which have largely retained their form and original features.

The quantity and quality of building stock is unique in the Sydney Metropolitan Area and the state of NSW

SHR Criteria d)

[Social significance]

The local community's esteem for the area is reflected in the high level of original building fabric remaining in the area and their involvement in planning for the future in the area, particularly through the South Sydney and Marrickville Heritage Societies. The area is also classified by the National Trust and is identified in the Register for the National Estate..

SHR Criteria g)

[Representativeness]

The consistency and relative intactness of the late Victorian and early Federation building stock is unique in the Sydney Metropolitan area and the whole of the State.

Assessment criteria:

Items are assessed against the  [State Heritage Register \(SHR\) Criteria](#) to determine the level of significance.

Refer to the Listings below for the level of statutory protection.

Listings

Heritage Listing	Listing Title	Listing Number	Gazette Date	Gazette Number	Gazette Page
Local Environmental Plan	Marrickville Local Environmental Plan 2011	C2	12 Dec 11	2011/645	
Local Environmental Plan					
Heritage study					

References, internet links & images

None

Note: internet links may be to web pages, documents or images.

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