




 DEVELOPMENT ASSESSMENT REPORT				
Application No.	DA/2021/0919			
Address	552 Parramatta Road PETERSHAM NSW 2049			
Proposal	To carry out alterations and additions to the existing building to create a 3 storey mixed use development comprising a commercial bakery on the ground floor and a boarding house containing 6 rooms			
Date of Lodgement	30 September 2021			
Applicant	Mr Joseph Panetta			
Owner	Mr Gianni Pattaro & Mrs Maria Pattaro			
Number of Submissions	Initial: 3			
Value of works	\$1,025,265.00			
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10%			
Main Issues	FSR, Heritage, Contamination, Noise, Amenity, Lack of information			
Recommendation	Refusal			
Attachment A	Reasons for refusal			
Attachment B	Plans of proposed development			
Attachment C	Clause 4.6 Exception to Development Standards			
Attachment D	Statement of Heritage Significance			
Attachment E	Draft conditions of consent in the event of approval by Panel			
				
LOCALITY MAP				
Subject Site		Objectors		↑ N
Notified Area		Supporters		
Note: 1 individual objection represents 9, 11, 17 and 19 Queen Street.				

1. Executive Summary

This report is an assessment of the application submitted to Council to carry out alterations and additions to the existing building to create a 3 storey mixed use development comprising a commercial bakery on the ground floor and a boarding house containing 6 rooms at 552 Parramatta Road, Petersham.

The application was notified to surrounding properties and 3 submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Non-compliance with Clause 4.4 – Floor Space Ration development standard
- Heritage impacts to a contributory building within the Parramatta Road Commercial Precinct Heritage Conservation Area
- Lack of contamination investigation to be satisfy the provisions of State Environmental Planning Policy No 55 – Remediation of Land
- Lack of acoustic investigation to demonstrate future residents would not be adversely impacted by the commercial operation, aircraft noise and road noise.
- Non-compliance with a number of boarding house standards and amenity provisions within State Environmental Planning Policy (Affordable Rental Housing) 2009 and Part 4.3 of the Marrickville Development Control Plan 2011.
- A lack of car parking and inadequacy of waste areas and management.
- The upper level massing of the building does not comply with setback provisions within Part 5 and 8 of the Marrickville Development Control Plan 2011.

Overall, the non-compliances are considered unacceptable having regard to the heritage, streetscape, amenity and parking impacts associated with the proposal. Given the substantial variations from Council's controls and the substantiated concerns raised in public submissions, the development is not considered to be in the public interest. The application is unsupportable and in view of the circumstances, refusal of the application is recommended

2. Proposal

The application involves alterations and additions to the existing building to create a 3 storey mixed use development comprising a commercial bakery on the ground floor and a boarding house containing 6 rooms.

The plans proposed the following:

Demolition works

- Demolition of roof, internal slabs, walls and stairs and rear elevation wall of existing building
- Demolition of existing wall and glazed openings on ground floor of front façade
- Retention of front façade of existing building on all levels and existing ground floor fronting Parramatta Road.

Lower Ground (Parramatta Road Street level)

- 108sqm commercial tenancy (bakery) with access from Parramatta Road, largely within the existing building
- New glazing to commercial shopfront
- New ambulant toilets and an extension of a stairway at the rear

Level 1 (Queen Street street level)

- 1 commercial car parking space
- 1 motorcycle space
- 1 bicycle space
- Pedestrian entrance to boarding house from Queen Street
- Commercial and residential waste areas
- A common room facing Parramatta Road
- Access corridor/breezeway to eastern side boundary with void above
- 1 accessible boarding room accessing light and air from the breezeway
- The lower level of 3 boarding rooms, accessing light and air from the breezeway

Level 2

- A deck and landscaping facing Parramatta Road, serving 1 boarding room
- The upper level of 3 boarding rooms
- 2 boarding rooms, one facing Queen Street and the other facing the eastern side boundary breezeway

Roof

- New sawtooth style roof containing high level windows.

3. Site Description

The subject site is located on the northern side of Parramatta Road, between Railway Street and Palace Street. The site consists of one allotment and is generally rectangular in shape with a total area of 188.6 sqm and is legally described Lot 13 on DP 69551, 552 Parramatta Road Petersham.

The site has a frontage to Parramatta Road of 6.13 metres and a secondary frontage of approximate 6.12 metres to Queen Street.

The site supports a two storey commercial building containing a commercial bakery on the ground floor. The adjoining properties support one, two and three storey mixed use buildings, generally containing commercial development on the ground floor fronting Parramatta Road. The properties to the rear of the site fronting Queen Street consist largely of dwelling houses.

The subject site is zoned B2 Local Centre and is a contributory building within the Parramatta Road Commercial Precinct Heritage Conservation Area.



Figure 1: Zoning Map

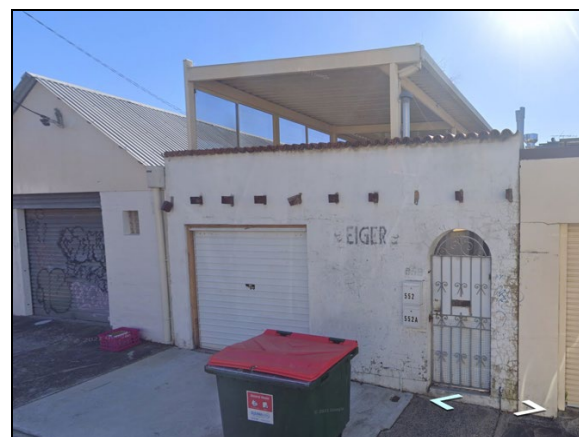
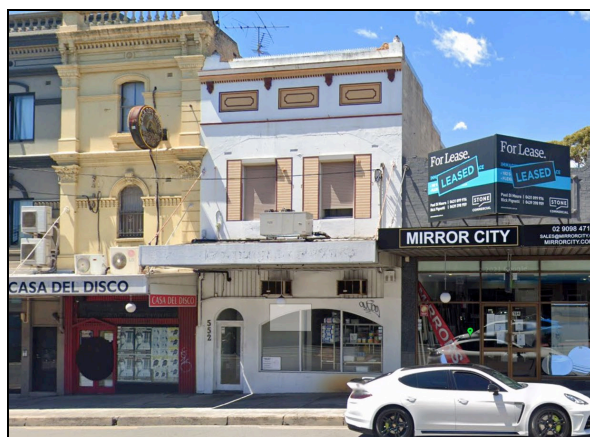


Figure 2: Front and Rear of Site

4. Background

4(a) Site history

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

Application	Proposal	Decision & Date
CDC201500151	Fit out and change of use of ground floor to bakery	Approved – 11 December 2015
PDA/2020/0412	Alterations and additions to the existing building for continued use of the ground floor as a bakery and construction of 9 boarding rooms over 3 levels above the bakery	Advice Issued – 16 December 2020

4(b) Application history

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

Date	Discussion / Letter / Additional Information
10 November 2021	Letter provided to applicant requesting withdrawal of the application due to the following concerns: <ul style="list-style-type: none"> • No Detailed Site Investigation being provided as recommended by the Preliminary Site Investigation submitted. • Lack of amenity to a number of boarding rooms due to a reliance on side boundary for light and air. • Non-compliance with a number of boarding house and amenity provisions. • Lack of complete acoustic testing to confirm the development could comply with acoustic requirements. • The lack of a 6 metre front setback to the upper level as required by the DCP and the resultant heritage and streetscape impacts. • A non-compliance with car parking. • A non-compliance with the provision of accessible rooms. • A lack of a bulky waste storage area and discrepancies in the waste management plan provided. • A lack of information generally, but particularly in relation to potential heritage impacts. • Non-compliance with FSR
18 November 2021	Council officers met with the applicant to discuss the concerns raised in the letter dated 10 November 2021.
14 – 16 December 2021	Further email correspondence with the applicant regarding potential withdrawal of the application

The applicant has not indicated they wish to withdraw the application and no additional information has been provided to address the issues raised.

5. Assessment

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

5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy No. 55—Remediation of Land*
- *State Environmental Planning Policy (Affordable Rental Housing) 2009*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *Marrickville Local Environmental Plan 2011 (MLEP 2011)*

The following provides further discussion of the relevant issues:

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

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. MDCP 2011 provides controls and guidelines for remediation works. *SEPP 55* requires the consent authority to be satisfied that “the site is, or can be made, suitable for the proposed use” prior to the granting of consent.

A Preliminary Site Investigation (PSI) completed by Soilsrock was provided with the application which states that given the site use as a commercial premises since 1965 and

the probable use as a motorcycle repair shop sometime in the past, the site has the following potential contamination sources:

- *Past building and alterations and additions building construction and maintenance have the potential to introduce contaminants to the site in the form of asbestos (as a construction material), pesticides (pest control) and heavy metals (paints, pest control).*
- *The interior of the building regarding the probable past use of motorcycle repair shop and recent garage may have previously used and stored fuel, oils or other chemicals, leading to hydrocarbon contamination. Lead based paints or PACM (potential asbestos containing material) may have been used during construction. The building and its alterations and additions may have been treated with pesticides and heavy metals for pest control.*
- *The activities of the motorcycle repair shop and garage could have the potential to introduce contaminants to the site as result of the related motorcycles and vehicles mechanical activities.*

Given the above, the report concludes that:

“Following the recommendations of the NSW OEH Guidelines for Consultants Reporting on Contaminated Sites from Office of Environment & Heritage (2011), and regarding the lack of available information for the site history, it is considered the present assessment to be incomplete.

Further to the above it is considered that a further intrusive sampling and chemical analyses should be undertaken and required under a Detailed Site Investigation (DSI) Stage 2.”

A Detailed Site Investigation (DSI) has not been provided with the application and having regard to the potential contaminants identified and the need for further testing, Council cannot be satisfied the development does not require remediation or that the site is suitable for the proposed use as required by SEPP 55.

As such, the application is recommended for refusal.

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

State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP) provides requirements for boarding house development and the relevant provisions are considered below.

It is noted that the subject application was lodged prior to the commencement of State Environmental Planning Policy (Housing) 2021 (Housing SEPP) on 26 November 2021 and due to the savings provisions the ARHSEPP is the applicable instrument. However, the Housing SEPP is considered under draft instruments later in this report.

Division 3 – Boarding Houses

Clause	Standard	Proposed	Compliance
26 - Zone	The site is zoned R1, R2, R3, R4, B1, B2, B4	The site is zoned B2	Yes
29 (1) - FSR	1.5:1 or 282.9sqm	1.7:1 or 321.2sqm	No, discussed below in further

			detail
29 (2)(a) Height	14m (LEP)	10.8m	Yes
29 (2)(b) Landscaped Area	Consistent with streetscape	The site has a nil setback to the front boundary, and this does not provide for landscaping. This is consistent with the streetscape.	Yes
29(2)(c) Solar Access	Min 3 hours direct sunlight between 9am-3pm for at least one communal living room	Insufficient information provided to demonstrate compliance	No, see discussion below
29 (2)(d) Private Open Space	At least one of the following is provided (not in the front setback): <ul style="list-style-type: none"> • 20sqm minimum dimension of 3 metres for use of lodgers • 8sqm minimum dimension of 2.5metres adjacent to managers room for manager 	<ul style="list-style-type: none"> • No private open space is provided for the use of all lodgers. • While no managers room is proposed, there is an 8.9sqm area of open space accessible from Room 4 on the upper most level 	No, discussed below in further detail
29 (2)(e) Parking	<ul style="list-style-type: none"> • 0.5 spaces per boarding room • 1 space for each on site boarding manager 	<ul style="list-style-type: none"> • 6 rooms = 3 spaces for boarding house component are required yet not provided • 1 car parking space is provided for the commercial component of the development only. 	No, discussed below in further detail
29 (2)(f) Accommodation Size	Excluding private kitchen and bathroom facilities each single lodger room is a minimum of 12sqm and 16sqm in any other case	6 double lodger rooms are proposed with a minimum area of 12sqm	Yes
30 (1)(a) Communal Room	If more than 5 rooms are proposed there is at least 1 common room	1 common room is provided	Yes
30 (1)(b) Maximum room sizes	No boarding room will have a gross floor area of more than 25sqm excluding private kitchen or bathrooms	Unclear, some of the rooms are shown on the plans as being 25.5sqm in area.	No, discussed below in further detail
30 (1)(c) Maximum occupation	No more than 2 adult lodgers with occupy each room	A maximum of 2 adult lodgers is proposed to occupy each room	Yes
30 (1)(d) Adequate facilities	Adequate bathroom and kitchen facilities are available for use of each lodger	Each lodger has been provided with their own private kitchen and bathroom	Yes
30 (1)(e) Manager	If there are more than 20 lodgers an on site dwelling must be provided for a boarding house manager	The proposal provides for a maximum of 12 lodgers and no manager is required.	Yes
30 (1)(f) Commercial Land	If the site is zones primarily for commercial purposes the ground floor cannot be used for residential uses	No residential use of the ground floor is proposed	Yes
30 (1)(h) Bicycle and Motorcycle parking	A minimum of 1 bicycle space and 1 motorcycle space is provided per 5 boarding	1 bicycle and 1 motorcycle space are for the 6 rooms proposed	Yes

	rooms		
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(i) Clause 29(1) – Floor Space Ratio

Clause 29(1) of the ARH SEPP reads as follows:

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

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

The maximum FSR applicable to the site is 1.5:1 under MLEP 2011. Residential flat buildings are prohibited in the B2 zone and as such no FSR bonus is afforded under Clause 29(1).

The application proposes a non-compliant FSR of 1.7:1 or 321.2sqm which represents a variation of 38.8sqm or 13.5%. Clause 29 provides for standards that cannot be used to refuse consent related to density and scale. In this case the development exceeds the maximum FSR for development on the land under MLEP 2011 and Clause 29(1) does not create any impediment to refusing consent on the grounds of density and scale. The variation to the development standard is discussed in further detail under Section 5(a)(v) of this report.

(i) Clause 29(2)(c) – Solar Access

The information submitted with the application lacks detail to determine whether the development would receive adequate solar access. The application was accompanied with shadow diagrams for 9am, 12pm and 3pm on June 21 which do not depict shadowing from surrounding buildings or identify the location of windows within the development.

The proposal includes 2 north facing windows fronting Parramatta Road that serve the communal room. However, while these windows are north facing, given the lack of solar access diagrams it is not possible to determine whether the development provides adequate solar access to the common room as envisaged by ARH SEPP.

Further matters regarding solar access and overshadowing are discussed in Part 5(c) of this report.

The application is recommended for refusal.

(ii) Clause 29(2)(d) – Private Open Space

The development provides no area of private open space accessible to all lodgers. Part 2.18 of MDCP 2011 requires boarding houses to provide an area of private open space of at least 20sqm, in line with the provisions of the ARH SEPP.

While the small and narrow size of the site is recognised as a constraint, the development provides a large area of private open space facing Parramatta Road on the upper level of the building that is only accessible by Room 4. Given the limited amenity of the boarding rooms (as most rely on a side boundary for light and air) the provision of a communal open space area is considered necessary to provide a reasonable level of amenity for any future occupants and could be reasonably accommodated on the site as evidenced by the private open space provided to the upper level.

Given the above, the development provides no communal open space for use of the lodgers nor provides an area for outdoor recreation for all occupants within the development, contrary to the objectives and controls with Part 2.18 and 4.3 of MDCP 2011 and as envisaged by ARH SEPP.

The application is recommended for refusal.

(iii) Clause 29(2)(e) – Parking

The development requires the provision of 3 car parking spaces for the boarding house under Clause 29(2)(e) of ARHSEPP. An additional car parking space for the commercial component of the development is required by Part 2.10 of MDCP 2011, for a total of 4 car parking spaces.

The development provides only 1 car parking space accessible from Queen Street which is allocated to the commercial component. However, the car parking area proposed does not conform to the minimum depth of 5.4 metres for off-street parking set out by Australian Standard AS 2890.1-2004. The stairway and proposed commercial waste area at the northern end of the space result in a space with a depth of 5.1 metres, as seen in the image below.

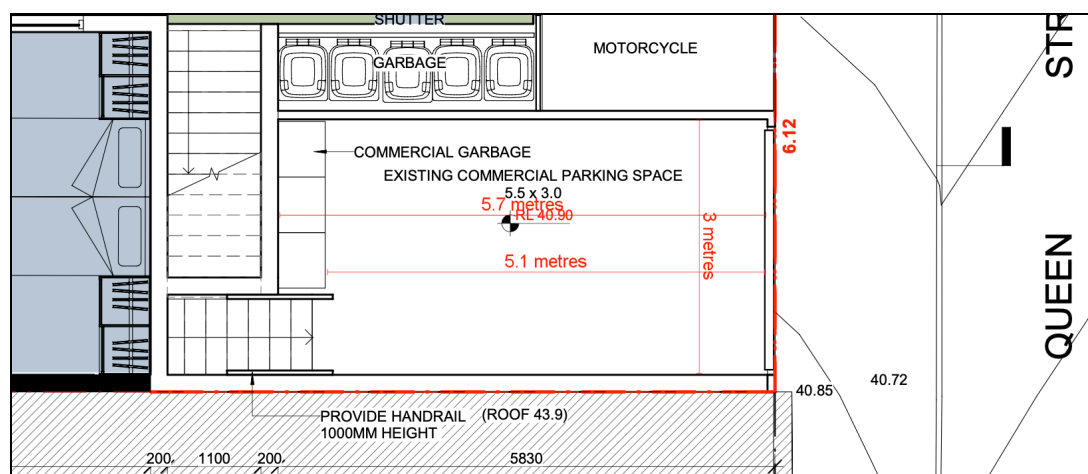


Figure 3: Measurement showing dimensions of parking space

Given the above, the development results in a shortfall of 4 parking spaces. While the site is in an accessible area and serviced by public transport, a complete lack of compliant and functional parking on site cannot be supported due to the limited availability of on street parking in the surrounding area. Additionally, the development does not attempt to off-set the shortfall of car parking through the provision of increased motorcycle and bicycle parking for

use by the lodgers, noting that the motorcycle and bicycle parking requirements are substantially increased by the recently gazetted Housing SEPP.

Additionally, given the parking space is dedicated to the commercial use, the propensity for this space to be used by service vehicles is quite high, and the small non-compliant space could not sufficiently cater to the site.

Given the above, the development does not provide the prescribed car parking required by the ARH SEPP or Part 2.10 of MDCP 2011 and the single car parking space provided is not functional due to non-compliance with AS 2890.1-2004. This lack of car parking is likely to result in adverse traffic, parking and amenity impacts within the locality and the development does not include any other mitigation measures to adequately address the car parking shortfall.

The application is recommended for refusal.

(iv) Clause 30(1)(b) – Maximum Room Sizes

The plans provided indicate the rooms 3 and 4 have an area (excluding kitchen and bathroom) of 25.5sqm which breaches the maximum room size of 25sqm. Additionally, the proposed room sizes are somewhat unclear as the application has not been supported with diagrams clearly calculating the area afforded to each room and the plans list multiple areas for each room.

Given the above, Council cannot be satisfied the area of each boarding room will not exceed 25sqm and cannot grant consent to the proposal having regard to Clause 30(1).

The application is recommended for refusal.

(v) Clause 30A – Character of the Local Area

Clause 30A of SEPP ARH states:

“A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.”

In considering the compatibility with the character of the area the applicable test is taken from the planning principal in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, discussed hereunder:

Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

The main impact to surrounding development is considered to be the effect of bulk and dominance of the building upon both the contributory façade being retained and the heritage conservation area. The lack of information surrounding the fabric of the existing building to be demolished and the minimal front setback of the upper level is unacceptable and presents adverse bulk to the neighbouring contributory buildings which is further exacerbated by a breach to the FSR development standard.

Additionally, the arrangement of the development and the reliance on the eastern side boundary for light, air and outlook for a majority of the boarding rooms has the potential to

impact the development potential of the neighbouring property as a result of the need to maintain a high level of amenity to a side boundary.

Is the proposal's appearance in harmony with the buildings around it and the character of the street

The appearance of the building to Parramatta Road and within the HCA would not be in harmony with surrounding buildings. The lack of an upper level setback would result in a prominent and highly visual upper level that imposes upon the contributory building façade and the adjoining contributory buildings within the HCA. The lack of an adequate setback to the side and front boundary to the retained façade results in the additions being highly visible to the Parramatta Road frontage, which is inconsistent with surrounding development and would impact the significance of the HCA and surrounding buildings. The development's visual bulk as a result of the upper level can be directly linked to the non-compliant gross floor area of the proposal which further adds to the lack of harmony with its surroundings.

Additionally, the application lacks sufficient detail regarding the proposed modifications to the façade of the building, what fabric is being retained and does not include any upgrades to the building as envisaged by the applicable heritage controls and the desired future character of the area. The appearance of the façade, high level of modification to the ground floor façade and lack of detail surrounding reinstatement of contributory features would be at odds with the other contributory buildings within the HCA which exhibit a high level of period detailing.

An overall assessment finds that the development is not considered to be compatible with the character of the area and as a result the application is not supported.

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

A BASIX Certificate was submitted with the application and the application is satisfactory in this regard.

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

Development with frontage to classified road (Clause 101)

The site has a frontage to Parramatta Road, a classified road. Under Clause 101 (2) of *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.

Vehicle access to the site is limited to Queen Street and will not impact the efficiency and operation of the classified road. The application is considered acceptable with regard to Clause 101 of the *SEPP Infrastructure 2007*.

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

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 40,000 vehicle. Under that clause, development for the purpose of a building for residential use requires that appropriate

measures are incorporated into such developments to ensure that certain noise levels are not exceeded.

Parramatta Road has an annual average daily traffic volume of more than 40,000 vehicles.

The applicant submitted a Noise Assessment Report with the application however the report submitted is inadequate as it does not address the cumulative impacts of noise sources resulting from the development. The report also notes that due to a lack of information regarding mechanical ventilation, the noise levels within the proposed boarding rooms could not be completely clarified. As a result, the development has not wholistically addressed noise impacts to the occupants from the classified road as required by State Environmental Planning Policy (Infrastructure) 2007.

Given the above, Council cannot be satisfied the development can comply with the relevant noise criteria as required by the Clause 102 of the Infrastructure SEPP. The application is recommended for refusal.

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

The application was assessed against the following relevant clauses of the *Marrickville Local Environmental Plan 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 6.1- Earthworks
- Clause 6.5 - Development in areas subject to aircraft noise
- Clause 6.15 – Location of boarding houses in business zones

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

Standard	Proposal	Non-compliance	Complies
Height of Building Maximum permissible: 14 metres	10.8 metres	N/A	Yes
Floor Space Ratio Maximum permissible: 1.5:1 or 282.9sqm	1.7:1 or 321.2sqm	38.3sqm or 13.5%	No

(i) Clause 1.2 – Aims of the Plan

Clause 1.2 prescribes the following aims of MLEP 2011:

- (a) *to support the efficient use of land, vitalisation of centres, integration of transport and land use and an appropriate mix of uses,*
- (b) *to increase residential and employment densities in appropriate locations near public transport while protecting residential amenity,*
- (c) *to protect existing industrial land and facilitate new business and employment,*

- (d) *to promote sustainable transport, reduce car use and increase use of public transport, walking and cycling,*
- (e) *to promote accessible and diverse housing types including the provision and retention of affordable housing,*
- (f) *to ensure development applies the principles of ecologically sustainable development,*
- (g) *to identify and conserve the environmental and cultural heritage of Marrickville,*
- (h) *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 with the exception of aims g) and h).

The development is considered to have adverse impacts on the Parramatta Road Commercial Precinct HCA, contrary to aim g), for the following reasons:

- The lack of a minimum 6 metre setback to the upper level of the building results in the new additions being highly visible from the streetscape which will overwhelm the existing façade and be an intrusive element in the streetscape.
- The application lacks sufficient detail with regard to the following;
 - Existing plans illustrating exactly what original fabric is being removed;
 - works to the façade of the building,
 - if any reinstatement of contributory elements are proposed ;and
 - materials and finishes proposed.

The development is not considered to promote a high standard of design, contrary to aim h), for the following reasons:

- The development relies on the eastern side boundary for light, air and outlook for a majority of the boarding rooms, resulting in rooms with reduced amenity.
- The development fails to protect the HCA, as demonstrated by the points above.
- The proposal lacks information on solar access received to the development and any overshadowing impacts to neighbouring properties.
- The proposal lacks information on acoustic impacts and could result in adverse acoustic impacts to surrounding properties as a result of the ground floor commercial use.
- Having regard to the above the proposal fails to provide a high standard of design resulting in adverse amenity impacts for occupants and adverse impacts to the public domain through the provision of a poor streetscape presentation

The development does not demonstrate consistency with the provisions of Clause 1.2 of MLEP 2011 and as such, the application is recommended for refusal.

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

The site is zoned B2 Local Centre under the *MLEP 2011*. The *MLEP 2011* defines the development as a *boarding house* and *commercial premises*. The development is permitted with consent within the land use table. The development is consistent with the objectives of the B2 zone.

(iii) Clause 4.5 – Calculation of floor space ratio and site area

It is noted there is a minor discrepancy between the calculation of FSR by the applicant and Council. The applicant contends that the FSR proposed is 1.68:1 or 317sqm. However, Council's Assessment Officer calculates the proposed FSR as 1.7:1 or 321.2sqm.

This discrepancy is primarily due to the incorrect exclusion by the applicant of the following areas:

- The 'foyer' area on the upper ground floor at the residential entrance from Queen Street.
- The corridor/landing to access rooms 5 and 6 on Level 1.

These areas are within the external walls of the building, are not subject to inclement weather (being completely covered by roof) and are not areas of common vertical circulation. As such, in accordance with Clause 4.5 these areas should form part of the calculation of FSR.

(iv) Clause 4.6 – Exceptions to Development Standards

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

- Clause 4.4 – Floor space ratio

The applicant seeks a variation to the floor space ratio development standard under Clause 4.6 of the *Marrickville Local Environmental Plan 2011* by 13.5% (38.3 sqm).

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

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the *Marrickville Local Environmental Plan 2011* below.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the *Marrickville Local Environmental Plan 2011*. In justifying the proposed contravention of the development standard which is summarised as follows:

- *The GFA proposed is contained wholly within the building footprint. The building comprises a stepped 2/3 storey form owing to the cross fall of the site which contributes to the heritage characteristics of the area. The additional GFA can be accommodated on the site without any additional impacts. The overall scale and massing is acceptable in this context.*
- *The development will not increase the height of the building beyond 10.59m above the site level. This sits well below the maximum 14m height limit permitted for the site under Cl. 4.3 of MLEP and ensures the building will continue to read as a half-storey lower than the neighbouring three storey row terrace shops to the east.*
- *The additional floor space provides for short-term affordable rental housing in the form of a 6-room new generation boarding house. As identified by Commissioner O'Neal the exceedance of height/FSR standards due to the provision of affordable housing is a recognised environmental planning ground which is worthy of support. The SIA demonstrates a strategic housing need for alternate forms of housing that is serviced by public transport and one which has access to goods and services.*
- *The site has additional capacity to support the modest breach in FSR. It is positioned on the southern side of the Parramatta Road in the heart of Sydney's inner west. The site has excellent direct access to regular public transport in the form of*

buses which operate along Parramatta Road connecting the site to the Sydney CBD in the east and Parramatta to the west. Heavy rail is accessible within a short 5 minute walk to the south and future planned Metro West services 10 minutes to the north will provide even greater connectivity to CBD and Parramatta. It is also situated within a short walking distance of a range of essential retail and community services as well as parks in the surrounding neighbourhoods of Petersham and Leichhardt. All of these features go to demonstrating the sites' capacity to support additional density which also underpins the concept of good transit-orientated developments (TODs) where residential densities are set closer to well-connected hubs. Therefore, this site is ideally located to support a new generation boarding house at the scale proposed.

- The additional GFA enables a stepped two/three storey building that fits well within the prevailing streetscapes and responds to the existing site layout. Important original features of the buildings' primary façade are to be maintained and the overall form of the existing building is to be kept intact, ensuring continued consistency with the desired and prevailing building character of the area. The upper level remains subservient to the existing height of the façade even with the additional GFA.
- ... there are no adverse environmental impacts directly attributable to the additional GFA proposed. The GFA is wholly contained within the existing building footprint and the density is within the environmental capacity of the site.
- The proposal retains and improves the active street edge to Parramatta Road and provide a viable and attractive essential service at the lower ground floor of the development.
- The mixed-use nature of the development is maintained under this proposal, providing compatible uses which can function harmoniously within the building with residential uses. The development therefore aligns with the mixed-use objectives of the B2 zone.
- Important original features of the buildings' façade to Parramatta Road are preserved including the decorative windows, shutters, upper parapet, roof feature and awning over the footpath. These features visually underpin the importance of the HCA and whilst the building is a lesser contributory item, the preservation of these façade elements will continue to read as part of the streetscape and exemplar items to the east.

The applicant's written rationale does not adequately demonstrate compliance with the development standard is unreasonable / unnecessary in the circumstances of the case, or that there are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:

- While the proposal seeks approval for the boarding house, boarding houses are not by nature affordable housing. Clause 6(1) of the ARH SEPP defines affordable housing to be housing that (a) has a gross income that is less than 120 per cent of the median household income for the time being for the Greater Sydney and pays no more than 30 per cent of that gross income in rent, or (b) is eligible to occupy rental accommodation under the National Rental Affordability Scheme and pays no more rent than that which would be charged if the household were to occupy rental accommodation under that scheme. There is no evidence to suggest that this development would rent out boarding rooms at an affordable rate or any suggestion that the development would be operated in an affordable manner. As such, the argument that the additional FSR is attributed to affordable housing is unsubstantiated.
- In demonstrating consistency with the objectives of Clause 4.4, the applicant's argument relies heavily on the proposed development integrating into the

existing/desired streetscape and maintaining the contributory heritage façade and other elements of the building. However, there is a significant lack of detailed information provided regarding what elements of the existing building are being retained or demolished and what works are proposed to the front façade above the ground floor shopfront. As such, the argument that the development maintains important original features of the building and is appropriate to the conservation area and desired future character of the area is not supported and not substantiated on the plans provided.

- Similarly, the development results in an upper level that is within close proximity to the street frontage, will be highly visible from the street both directly and from oblique side angles and has the ability to overwhelm the contributory building which is inconsistent with the setback and massing objectives and controls within Parts 5 and 8 of MDCP 2011. The proposal would have an adverse impact to the contributory building and is inconsistent with the desired future character of the area adversely impacting the public domain.
- The application lacks information relating to overshadowing and it is unclear if the proposed bulk and scale of the development results in additional shadowing impacts to neighbouring properties and the properties to the rear of the site on Queen Street. Given the lack of information regarding overshadowing, it cannot be established that the development minimises environmental impacts to surrounding properties and the argument that there are no adverse environmental impacts directly attributable to the additional GFA proposed is unsubstantiated.
- The reliance on accessing light and air via a side boundary results in poor amenity for future occupants and limits the development potential of the adjoining site.
- The proposal is contrary to not only the LEP controls but also DCP controls in relation to bulk, massing and form. It has not been demonstrated that a compliant development would therefore be unreasonable or unnecessary in the circumstances of the development.

It is considered the development is not in the public interest because it is inconsistent with the objectives of the floor space ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the *Marrickville Local Environmental Plan 2011* for the following reasons:

- The development results in an upper level massing that does not conform to the setback and massing requirements of Parts 5 and 8 of MDCP 2011, is in close proximity to the street, will be highly visible within the HCA and results in adverse impacts to the contributory building as a result of the additional upper level bulk which is inconsistent with the desired future character of the area.
- The development includes significant demolition of the contributory building to try and achieve 3 levels within the existing 2 storey building and lacks information on the full extent of works proposed to the front façade of the building and it is unclear whether the development is appropriate to the HCA which is inconsistent with the desired future character of the area and has the potential for adverse impacts to the public domain.
- The development lacks information on the overshadowing impacts to the surrounding properties and as such it is unclear if the bulk and scale of the proposal minimises adverse impacts on adjoining properties.

For the reasons outlined above, there are insufficient planning grounds to justify the departure from floor space ratio and it is considered the Clause 4.6 exception is not worthy of support.

(v) Clause 5.10 – Heritage Conservation

The subject site is located within the Parramatta Road Commercial Precinct Heritage Conservation Area (HCA) under MLEP 2011. The statement of significance for the HCA can be found at Attachment D and the subject site has been identified and mapped as a contributory building within the HCA within Part 8.4.2 of MDCP 2011.

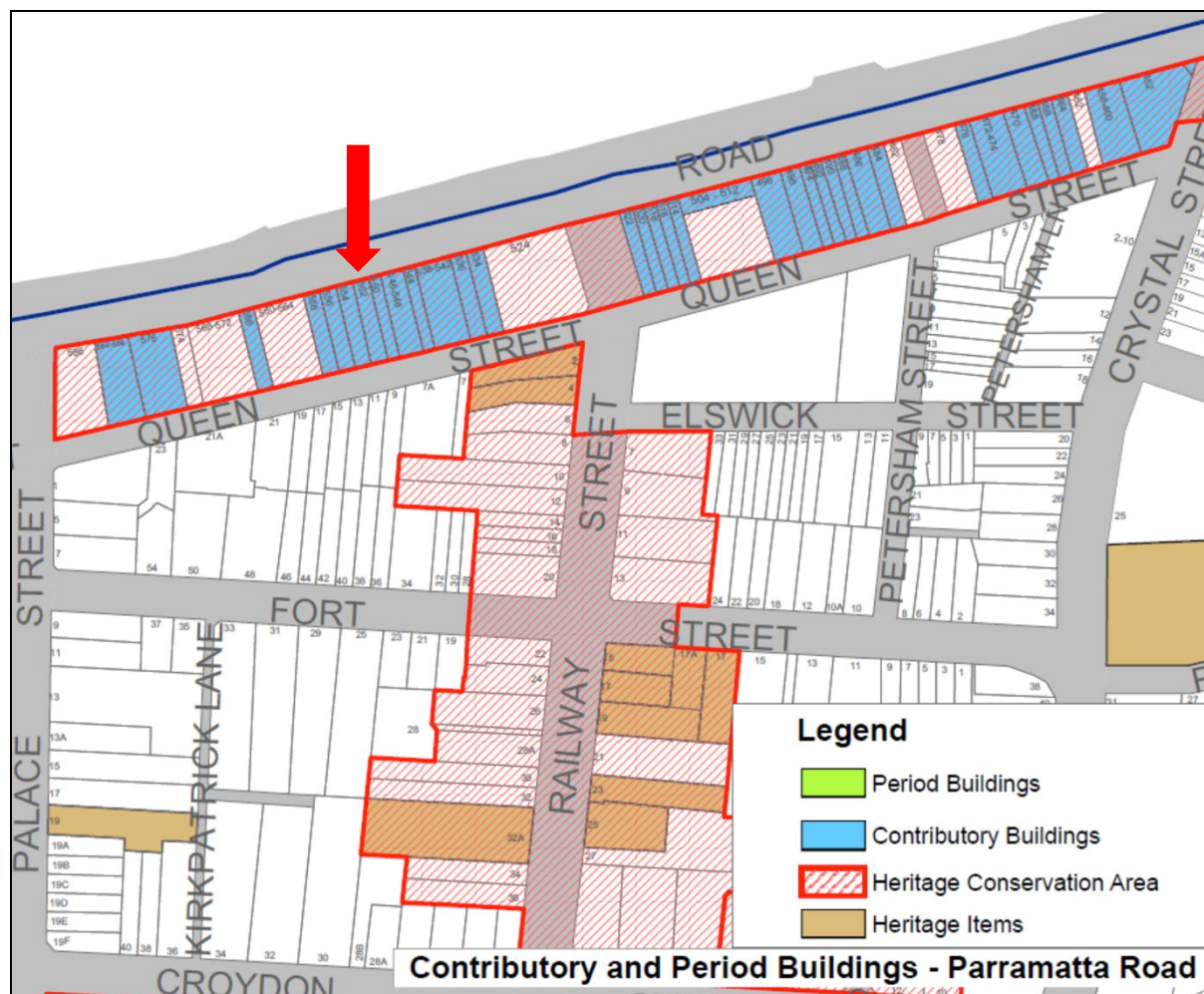


Figure 4: Excerpt of Contributory Building Map with location of site identified by red arrow

Principally, the application lacks information and detail to determine any potential impacts to the contributory building and wider HCA.

In this regard, the following advice was provided from Council’s Heritage Advisor:

- It is unclear from the plans provided what work is proposed to the building as there is no distinction between the existing and proposed fabric and no clear indication of changes to the front façade of the building.
- The Statement of Heritage Impact (SOHI) submitted with the application lacks any consideration of the impact on the fabric of the building.
- Given the lack of information provided and a lack of a complete assessment by the SOHI, it is not possible to determine the impact of the development on the HCA.

Further to the above, the development specifically lacks the following information to allow Council to undertake a full and proper assessment on heritage grounds:

- No existing building or demolition plans are provided and the original building fabric to be removed is unclear.

- The plans of the front façade give no indication (e.g. through colour coding or other mechanism) of what work is proposed, if any changes are being made to the façade above the shopfront, if any contributory detailing/building elements are being restored or reinstated and if any intrusive elements (such as air-conditioning units, conduits, etc.) are being removed.
- The Schedule of Materials and Finishes provided lacks detail and it is unclear if changes to the colour scheme of the building are proposed and what finishes/materials are proposed.
- The SOHI provides no assessment of the proposed interventions into the building, does not assess the loss of building fabric and does not provide any substantive comment on what impact the development will have on the significance of the contributory building within the HCA and why the proposed works are acceptable.

Additionally, Part 8.4 of MDCP 2011 set outs controls for retail streetscapes in HCAs. This includes the following controls relating to building heights:

- C8** *Alterations and additions to existing buildings must retain a minimum of 6 metres of the front bay of the building and be designed to minimise visibility of rear extensions as seen from the public domain at eye height at the front property boundary on the opposite side of the street.*
- C9** *First floor extensions to an existing building must be set back behind the parapet in a way that the new extension is not visible from the public domain.*

The development includes significant demolition within the front 6 metres of the contributory building behind the façade and this has not been adequately justified by the SOHI. The upper-level addition also sits above the parapet, will be visible from the street and has not been set back so as to minimise visibility from the public domain, contrary to the above controls. The controls within MDCP 2011 are designed to protect the heritage significance of HCAs and a lack of compliance with the above, without any justification for a variation, indicates the design of the proposal would have an adverse impact on the significance of the HCA.

Given the above, the proposal fails to conserve the environmental heritage of the area and heritage significance of the HCA, contrary to the objectives of Clause 5.10.

The application is recommended for refusal.

(vi) Clause 6.5 – Development in areas subject to aircraft noise

The site is located within the ANEF 20-25 contour.

The applicant submitted a Noise Assessment Report with the application however the report submitted is inadequate as it does not address the cumulative impacts of noise sources resulting from the development. The report also notes that due to a lack of information regarding mechanical ventilation, the noise levels within the proposed boarding rooms could not be completely clarified. As a result, the development has not wholistically addressed noise impacts to the occupants from aircraft noise as required by Clause 6.5 of MLEP 2011.

The development will result in an increase in the number of people affected by aircraft noise and, given the above, Council cannot be satisfied the development can comply with the relevant noise criteria as required by Clause 6.5. The application is recommended for refusal.

5(b) Draft Environmental Planning Instruments

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

- Draft State Environmental Planning Policy (Remediation of Land) 2018
- Draft Inner West Local Environmental Plan 2020
- *State Environmental Planning Policy (Housing) 2021* (draft at the time of lodgement of this application)

The following provides further discussion of the relevant issues:

5(b)(i) Draft State Environmental Planning Policy (Remediation of Land) 2018

As discussed earlier in this report in consideration of SEPP 55, the development has not provided adequate information in light of the potential contamination identified in the PSI submitted. Consequently, Council cannot be satisfied the development does not require remediation or that the site is suitable for the proposed use. As such, the development would be inconsistent with the draft SEPP.

5(b)(ii) Draft Inner West Local Environmental Plan 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 Draft IWLPP 2020 contains substantially the same provisions relating to floor space ratio, heritage conservation and aircraft noise as MLEP 2011 and as such the proposal would remain inconsistent with the objectives of these provisions for the reasons discussed earlier in this report.

However, the Draft IWLEP 2020 also contains provisions for the inclusion of amended/new clauses which are applicable to the proposal as discussed below:

(i) Clause 1.2 – Aims of the Plan

Clause 1.2 prescribes the following aims of Draft IWLEP 2020:

- to ensure development applies the principles of ecologically sustainable development,*
- to mitigate the impact of climate change and adapt to its impacts,*
- to protect, enhance and sustainably manage biodiversity, natural ecosystems, water resources, ecological processes and urban forest,*
- to ensure that the risk to the community in areas subject to urban and natural hazards is minimised,*
- to ensure that existing and future residents, visitors and workers have access to sustainable transport including walking and cycling, social and community infrastructure, services and public open space,*
- to retain, protect and increase industrial and employment land and enhance the function and vitality of centres,*
- to promote accessible and diverse housing types to support people at all stages of life, including the provision and retention of affordable housing,*
- to identify, protect and conserve environmental and cultural heritage and significant local character,*

- (i) *to achieve a high-quality urban form and open space in the public and private domain by ensuring new development exhibits architectural and urban design excellence,*
- (j) *to protect and enhance the amenity, vitality and viability of Inner West for existing and future residents, workers and visitors,*
- (k) *to protect and enhance significant views and vistas from the public domain and promote view sharing from and between private dwellings,*
- (l) *to prevent adverse social, economic and environmental impacts including cumulative impacts.*

The proposal is generally considered to be consistent with the above aims of Draft IWLPP 2020 with the exception of aims h), i) and j).

The development is considered to have adverse impacts on the Parramatta Road Commercial Precinct HCA, contrary to aim h), for the following reasons:

- The lack of a 6 metre setback to the upper level of the building results in the new additions being highly visible from the streetscape which will overwhelm the existing façade and be an intrusive element in the streetscape.
- The application lacks details and clarity on the works to the façade of the building, does not identify if any reinstatement of contributory elements are proposed nor the materials and finishes proposed.

The development is not considered to promote a high standard of design, contrary to aim i), for the following reasons:

- The development relies on the eastern side boundary for light, air and outlook for a majority of the boarding rooms, resulting in rooms with reduced amenity.
- The development does not respond well to the HCA, as demonstrated by the points above.
- The proposal lacks information on solar access received to the development and any overshadowing impacts to neighbouring properties.
- The proposal lacks information on acoustic impacts and could result in adverse acoustic impacts to surrounding properties as a result of the ground floor commercial use.

The development is not considered to protect and enhance the amenity for existing and future residents, workers and visitors, contrary to aim j), for the following reasons:

- The development relies on the eastern side boundary for light, air and outlook for a majority of the boarding rooms, results in rooms with poor amenity.
- The proposal lacks information on solar access received to the development and any overshadowing impacts to neighbouring properties.
- The proposal lacks car parking which has the potential to result in adverse traffic and parking impacts within the locality.
- The proposal lacks information on acoustic impacts and could result in adverse acoustic impacts to future residents of the development and surrounding properties as a result of the ground floor commercial use, road noise and aircraft noise.

The development does not demonstrate consistency with the provisions of Clause 1.2 of Draft IWLPP 2020 the provisions of which are considered imminent and certain as the draft instrument is awaiting ministerial consideration and gazettal. As such, the application is recommended for refusal.

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

The site is zoned B2 Local Centre under the *MLEP 2011*. The *MLEP 2011* defines the development as a *boarding house* and *commercial premises*. The development is permitted with consent within the land use table.

However, the draft B2 zone includes an additional objective which is as follows:

- *To generally conserve and enhance the unique sense of place of local centres by ensuring that new development displays architectural and urban design quality and integrates with the desired character and cultural heritage of these places.*

For the reasons discussed throughout this report in relation to consistency with the aims of the plans, floor space ratio and heritage conservation, the proposal is not considered to integrate with the desired future character of the area or the cultural heritage of the place. The development is inconsistent with this objectives of the B2 zone, the provisions of which are considered imminent and certain as the draft instrument is awaiting ministerial consideration and gazettal. As such, the application is recommended for refusal.

5(b)(iii) State Environmental Planning Policy (Housing) 2021

On 26 November 2021, the Housing SEPP was gazetted and came into force, repealing the ARH SEPP. However, at the time this development application was lodged, the Housing SEPP was in draft form only and due to the saving provisions within Schedule 7(2), the ARH SEPP remains the applicable instrument.

However, in accordance with *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979* the Housing SEPP is a matter for consideration as it was in a draft form at the time of lodgement of this application. The matters within the Housing SEPP are considered to have significant weight given the imminency and certainty of their ministerial consideration and adoption, having been gazetted during the assessment of this application. The relevant provisions are considered below.

Division 2 – Boarding houses

Clause	Standard	Proposed	Compliance
26 - Zone	May be carried out on land where boarding house permitted	Boarding house permitted with consent in B2 zone.	Yes
24(2)(a) - FSR	1.5:1 or 282.9sqm	1.7:1 or 321.2sqm	No, discussed in detail under ARHSEPP
24(2)(e) Solar Access	Min 3 hours direct sunlight between 9am-3pm for at least one communal living area	Inadequate information provided to demonstrate compliance	Unclear, discussed in detail under ARHSEPP
24(2)(f) Communal living area	For a boarding house containing 6 boarding rooms a total of at least 30sqm of communal living area, and minimum dimensions of 3m for each communal living area	Communal living area provided of 21.9sqm	No, see discussion below
24(2)(h) Communal open spaces	a total area of at least 20% of the site area, and each with minimum dimensions of 3m	No communal open space provided	No, discussed in detail under ARHSEPP
24(2)(i) Parking	0.2 spaces per boarding room	• 6 rooms = 1.2 spaces for	No, discussed in

	in accessible areas	boarding house component required <ul style="list-style-type: none"> 1 car parking space is provided for the commercial component of the development only. 	detail under ARHSEPP
25(1)(a) Maximum room sizes	No boarding room will have a gross floor area of more than 25sqm excluding private kitchen or bathrooms	Unclear, some of the rooms are shown on the plans as being 25.5sqm in area.	No, discussed in detail under ARHSEPP
25(1)(b) Maximum occupation	No more than 2 adult lodgers with occupy each room	A maximum of 2 adult lodgers are proposed to occupy each room	Yes
25(1)(c) Adequate facilities	Adequate bathroom and kitchen facilities are available for use of each lodger	Each lodger has been provided with their own private kitchen and bathroom	Yes
25(1)(e) Business zoned land	If the site is zones primarily for business purposes the ground floor cannot be used for residential uses	No residential use of the ground floor is proposed	Yes
25(1)(f) Communal Room	If at least 6 rooms are proposed there is at least 1 common room	1 common room is provided	Yes
25(1)(h) Accommodation Size	Excluding private kitchen and bathroom facilities each single lodger room is a minimum of 12sqm and 16sqm in any other case	6 double lodger rooms are proposed with a minimum area of 12sqm	Yes
25(2)(a) Compatibility with local and/or desired future character	The design of the boarding house will be compatible with the desirable elements of the character of the local area, or for precincts undergoing transition, the desired future character of the precinct	Development is inconsistent with existing and desired character of the area and HCA.	No, discussed in detail under ARHSEPP
25(2)(c) Building separation	If the boarding house has at least 3 storeys the building will comply with the minimum building separation distances specified in the Apartment Design Guide	The proposal would comply with ADG building separation	Yes
25(2)(d) Motorcycle Parking	At least 1 motorcycle parking space will be provided for every 5 boarding room	1 motorcycle parking space is provided	Yes
25(2)(e) Bicycle parking	At least 1 bicycle parking space will be provided for each boarding room	Only 1 bicycle parking space is provided	No, see discussion below
26(1) Must be used for affordable housing in perpetuity	Development consent must not be granted under this Division unless the consent authority is satisfied that from the date of the issue of the occupation certificate and continuing in perpetuity, the boarding house will be used for affordable housing, and, the boarding house will be managed by a registered	The development is not proposed to be affordable housing.	No, see discussion below

	community housing provider.		
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A number of provisions within the ARH SEPP and the Housing SEPP are similar and therefore the development remains non-compliant with a number of provisions including FSR, solar access, communal open space, car parking, maximum room sizes and compatibility with local and/or desired future character. These non-compliances are considered unacceptable for the reasons discussed earlier in this report in consideration of ARH SEPP.

However, the proposal is also inconsistent with additional measures within the Housing SEPP including an undersized communal living area and a further shortfall in bicycle parking. Additionally, the lack of bicycle parking combined with the proposed shortfall in car parking is likely to result in adverse impacts to the surrounding locality while removing the sustainable transport options for future residents.

In order to provide the amenity and services envisaged by the Housing SEPP the scale and form of the development would need to be substantially altered to achieve the prescribed communal open space, communal living area and parking required. The form of the development would also need to be altered considerably to ensure compatibility with the local and desired future character of the area. Given the small lot size, this may require the repositioning of bulk, changes in building height and amendments to the size and number of rooms. As such, in considering the case law in *Terrace Tower Holdings Pty Limited v Sutherland Shire Council [2003] NSWCA 289* it should be noted that the application is considered to undermine the intent of the instrument in a substantial way as the form of the development would be radically different to the proposed development.

Additionally, boarding houses under the Housing SEPP are required to be held as affordable housing in perpetuity and managed by a registered not for-profit community housing provider. The application is not proposed to be affordable housing as required by Clause 26(1). It is noted that this requirement would not alter the form and scale of the development. However, it would substantially alter the management and operation of the proposal and should the development not be affordable, the proposal would likely be considered a different form of development under the Housing SEPP, such as Co-Living. Notwithstanding this, the proposal would still not conform to the prescribed controls.

Having regard to the above, the proposed development is considered to be inconsistent with a number of provisions of the Housing SEPP and is therefore unsatisfactory.

5(c) Development Control Plans

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

Part of MDCP 2011	Compliance
Part 2.1 – Urban Design	No – see discussion under ARH SEPP and MLEP 2011
Part 2.3 – Site and Context Analysis	Yes
Part 2.5 – Equity of Access and Mobility	No – see discussion
Part 2.6 – Acoustic and Visual Privacy	No – see discussion

Part 2.7 – Solar Access and Overshadowing	No – see discussion
Part 2.8 – Social Impact	Yes
Part 2.9 – Community Safety	Yes
Part 2.10 – Parking	No – see discussion under ARH SEPP
Part 2.18 – Landscaping and Open Space	No – see discussion under ARH SEPP
Part 2.21 – Site Facilities and Waste Management	No – see discussion
Part 2.24 – Contaminated Land	No – see discussion under SEPP 55
Part 2.25 – Stormwater Management	Yes
Part 4.3 – Boarding Houses	No – see discussion
Part 5 – Commercial and Mixed Use Development	No – see discussion
Part 8 – Heritage	No – see discussion under MLEP 2011
Part 9 – Strategic Context	No – see discussion

The following provides discussion of the relevant issues:

(i) Part 2.5 – Equity of Access and Mobility

The proposal does not comply with the requirements of control C11 within Part 2.5 of the MDCP 2011 as only 1 accessible boarding room is provided. MDCP 2011 requires an accessible room for per 5 boarding rooms or part thereof, as such 2 boarding rooms are required.

The relevant objectives to consider in relation to the variation are objectives O1 and O3 as follows:

- O1** *To provide equitable access within all new development, and ensure substantial alterations to existing development, or an intensification of an existing land use, provides an improved level of access for all people.*
- O3** *To significantly increase the supply of adaptable housing.*

The development is considered inconsistent with the relevant objectives as:

- The development seeks to substantially intensify the land use yet represents a shortfall in accessible boarding rooms and no attempt has been made to justify the shortfall.
- The shortfall in accessible rooms does not provide an improved level of access for all people or increase the supply of adaptable housing.

The application is recommended for refusal.

(ii) Part 2.6 – Acoustic and Visual Privacy

The proposal does not comply with the requirements of control C7(viii) within Part 2.6 of the MDCP 2011 as the proposal contains a noise generating use adjacent to and within a building containing residential uses and the acoustic report provided with the application is inadequate.

The acoustic report submitted does not address the cumulative impacts of noise sources resulting from the development. The report also notes that due to a lack of information regarding mechanical ventilation, the noise levels within the proposed boarding rooms could

not be completely clarified. As a result, the development has not properly addressed noise impacts to the occupants and surrounding residents from the commercial bakery use.

The relevant objectives to consider in relation to the variation are objectives O3 as follows:

- O3** *To ensure new development does not unreasonably impact on the amenity of residential and other sensitive land uses by way of noise or vibration.*

The development is considered inconsistent with the relevant objectives as:

- The development has not demonstrated that the commercial bakery use will not adversely impact the amenity of the residential uses within the proposed building and surrounding buildings as a result of its operation.

The application is recommended for refusal.

(iii) Part 2.7 – Solar Access and Overshadowing

The proposal does not comply with the requirements of control C1 within Part 2.7 of the MDCP 2011 as the proposal lacks sufficient information and detail in order for Council to assess the solar access and overshadowing impacts of the proposal. Control C1 requires submission of shadow diagrams containing the following detail:

- C1** *Shadow diagrams must show the effect in plan and elevation view of existing and proposed overshadowing for June 21 at hourly intervals between 9.00am and 3.00pm. Shadow diagrams at only 9.00am, 12.00 noon and 3.00pm may be acceptable where it can be clearly demonstrated that any shadowing of a window, landscaped area or private open space of an adjoining building will receive solar access in accordance with Council requirements. The shadow diagrams must:*
- Be drawn to an appropriate scale (generally 1:100 or 1:200);*
 - Use different colours or style to clearly differentiate between existing and proposed shadows;*
 - Indicate the outline of neighbouring buildings impacted by existing and/or proposed shadowing, including the location of any windows, skylights, private open spaces, clothes drying areas, PV panels and/or solar hot water systems;*
 - Specify the use of the rooms that have windows or skylights that are impacted by the existing or proposed shadowing; and*
 - Indicate and use the true north point (not magnetic north).*

The shadow diagrams submitted with the application are not at hourly intervals, do not differentiate between existing and proposed shadowing, do not outline the neighbouring buildings or the location of windows and do not specify the use of rooms serving impacted windows. Furthermore, the diagrams do not include overshadowing from surrounding buildings or provide detail on the level of solar access received to the boarding house common areas or rooms.

As a result, Council is unable to undertake a full and proper assessment of overshadowing and solar access. In addition to the common room solar access requirements of the ARH SEPP, Council is unable to determine compliance with the following relevant controls:

- C2** *Direct solar access to windows of principal living areas and principal areas of open space of nearby residential accommodation must:*
- 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;*

Where less than two hours of sunlight is currently available on 21 June and the proposal is not reducing it any further, Council will still consider the merits of the case having regard to the above criteria described in points a to d.

C11 *At least 65% of habitable rooms within a boarding house, a hostel or a residential care facility must provide a window positioned within 30 degrees east and 20 degrees west of true north and allow for direct sunlight over minimum 50% of the glazed surface for at least two hours between 9.00am and 3.00pm on 21 June.*

C12 *Communal open space within a boarding house, a hostel or a residential care facility must receive a minimum two hours of direct sunlight over 50% of its finished surface between 9.00am and 3.00pm on 21 June.*

Given the above, Council cannot be satisfied that the development will result in adequate amenity for future occupants and surrounding dwellings in relation to solar access or that the development is consistent with the objectives of Part 2.7 of MDCP 2011.

Subsequently, the application is recommended for refusal.

(iv) Part 2.21 – Site Facilities and Waste Management

The proposal does not comply with the requirements of control C27 within Part 2.21 of the MDCP 2011 as a bulky waste storage area is not provided.

The relevant objectives to consider in relation to the variation are objectives O1 and O4 as follows:

O1 *To ensure adequate provision is made for site facilities.*

O4 *To ensure the design of waste and recycling storage/collection systems in buildings and land use activities are of an adequate size and are hygienic, accessible, safe to operate, quiet to operate, and visually compatible with their surroundings.*

The development is considered inconsistent with the relevant objectives as:

- The development does not provide a bulky waste store and therefore has not made adequate provision for site facilities.
- The lack of a bulky waste store area within the development means there is no access to a bulky waste collection system for future occupants.

Additionally, it is noted that the Waste Management Plan (WMP) submitted with the application states that bin collection will occur from the northern side of the site, which is Parramatta Road. Council does not undertake bin collection from Parramatta Road and as such the collection methods within the WMP have not been well considered.

The application is recommended for refusal.

(v) Part 4.3 – Boarding Houses

The objectives and controls within Part 4.3 of MDCP 2011 echo the requirements of the ARH SEPP and as such any non-compliances discussed within ARH SEPP section of this report are also non-compliances with Part 4.3, for example maximum room size, compatibility with local character and solar access.

However, proposal presents the following additional non-compliances with controls C13 and C18 within Part 4.3 of the MDCP 2011 as follows:

- The private open space area for room 4 exceeds the maximum of 6sqm and this is not considered acceptable given the boarding house lacks communal open space facilities.
- The plans provided indicate a height of 3 metres floor to floor which is generally insufficient height to achieve a 2.7 metre clear internal floor to ceiling height after accommodating floor widths and ducting/servicing

The relevant objectives to consider in relation to the variation are objectives O6 and O8 as follows:

- O6** *Boarding house rooms are adequate in size, configuration and facilities provided to accommodate residents' needs and provide a reasonable level of privacy and comfort.*
- O8** *Boarding house residents have access to a variety of spaces that provide relief from the confined space of their room.*

The development is considered inconsistent with the relevant objectives as:

- The development does not provide a communal open space area or ceiling heights that would provide a reasonable level of comfort, in addition to the other amenity concerns relating to solar access raised earlier in this report.
- The development has not been designed to provide a variety of spaces to residents given the lack of a communal open space area and the provision of private open space to only 1 room.

The application is recommended for refusal.

(vi) Part 5.1.4 – Building Form

The proposal does not comply with the requirements of controls C3, C4(i) and C11 within Part 5.1.4 of the MDCP 2011 which are as follows:

- C3** *Where whole existing contributory or period buildings or the street fronting portion of the existing contributory buildings are retained there must be no additions to the existing building mass within the front 6 metres of the building, except for 0.9 metres roof projection of the topmost dwelling occupancy level.*
- C4** *Development involving third storey alterations and additions to retained two storey contributory or period buildings:*
- i. Must not be visible when viewed from 1.8 metres above the footpath pavement on the edge of the road reserve on the opposite side of the street to the building or obliquely from 30 metres either side of the site ...*
- C11** *Upper levels above the street front portion of the building mass must be setback a minimum 6 metres from the street front of the building (required to both frontages when the site is located on the corner of two major streets), except for 0.9 metres roof projection of the topmost dwelling occupancy level.*

The proposal includes a third storey addition to the existing two storey contributory building that is setback only 4.2 metres from the parapet. This third storey addition would be visible when obliquely from the western side of the building and potentially from the opposite side of the road.

The relevant objectives to consider in relation to the variation are objectives O1 and O3 as follows:

- O23** *To preserve the prevailing building frontage edge of the streetscape.*

The development is considered inconsistent with the relevant objectives as:

- The development results in additional building mass within the front 6 metres of the building presenting to the street and this design response does not preserve the prevailing building frontage of the streetscape.

The application is recommended for refusal.

(vii) Part 5.3.1.4 – Hours of Operation

The proposal includes the provision of a commercial bakery to the ground floor of the building. The application is unclear as to whether this use will continue to operate under a previous consent for the site, CDC201500151 or if new or amended operational details are also proposed. The Statement of Environmental Effects submitted with the application does not specify any details regarding the continuation of the use. The Acoustic Report submitted states that no operational hours for the commercial building have been nominated.

Currently, it is assumed that the hours of operation for the bakery are 7.00am to 10.00pm Mondays to Saturdays and 7.00am to 8.00pm on Sundays or Public Holidays in accordance with comply development conditions within Schedule 8 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

While the hours of operation under the existing CDC are likely to be acceptable, it is unclear what the hours of operation of the proposed bakery are, whether those hours are acceptable in the context of the area and if those operating hours have an adverse acoustic impact as they have not been considered by the Acoustic Report.

As such, Council cannot be satisfied the hours of operation associated with the bakery are acceptable.

The application is recommended for refusal.

(viii) Part 9.35 – Parramatta Road (Commercial Precinct 35)

The site is located in the Parramatta Road (Commercial) precinct under Part 9.35 of MDCP 2011. Part 9.35.2 outlines the desired future character of the precinct. As outlined in this assessment report the proposed development fails to meet the desired future character for the following reasons:

- It fails to provide for sympathetic additions to the contributory building within the HCA.
- The development does not protect the identified values of the HCA.
- It is unclear if the development protects the residential amenity of adjoining and surrounding properties.
- It is unclear if the development ensures the new residential component has considered the amenity of residents in terms of noise and pollution generated by traffic volumes along Parramatta Road
- The development does not provide suitable amenity for the occupants of a higher density development.
- The car parking provision and design is not compliant with the required Australian Standards and is therefore considered unacceptable.

Part 9.35.4 provides precinct-specific planning controls, and the proposed massing, setback and scale of the development is not considered appropriate with regard to the applicable objectives and controls under Part 5 of MDCP 2011 and therefore fails to meet control C1 relating to the contributory building on the site. The works proposed to the original façade are unclear and therefore the proposal fails to comply with control C10 with regard to conserving original façade detail and façade repair.

5(e) The Likely Impacts

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

- The development would result in boarding rooms that have a compromised level of amenity, particularly with regard to noise, solar access and access to communal open space.
- The development exhibits inappropriate upper level setbacks and a lack detail regarding changes to the building façade and loss of building fabric which is inconsistent with the character of the area, impacts a contributory building within a heritage conservation area and impacts the heritage significance of a heritage conservation area.
- Without the provision of information to the contrary, it is assumed the development would result in adverse amenity impacts to surrounding properties by way of overshadowing and noise.

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

It is considered that the proposal will have an adverse impact on the adjoining properties, is inconsistent with the desired future character of the area and has not demonstrated the site is acceptable with regard to contamination and therefore it is considered that the site is unsuitable to accommodate the proposed development.

5(g) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties. 3 submissions were received in response to the initial notification.

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

- Noise and Acoustic Privacy Impacts – see Section 5(c)(ii)
- Floor Space Ratio – see Section 5(a)(v)(iv)
- Affordable Housing – see Section 5(a)(ii) & 5(a)(v)(iv)
- Lack of Parking – see Section 5(a)(ii)(iii)
- General lack of information/inadequacy of reports submitted – discussed throughout report
- Privacy implications from the new balcony – see Section 2. 3

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

Dumping and vandalism in Queen Street

Comment: Concern is raised that dumping and vandalism in Queen Street will increase as a result of the proposed development. There is no evidence that the proposal would increase this behaviour in the area purely as a result of a boarding house use. However, the application is not supported for other reasons.

Health concerns of short-term accommodation due to COVID-19

Comment: Concern is raised that the short-term nature of the accommodation will increase the transmission or exposure to COVID-19 in the area. A range of accommodation types are still required despite the current health concern and this is not considered a relevant planning consideration under s4.15 of the EP and A Act 1979. However, the application is not supported for other reasons.

Rear setback to Queen Street

Comment: Concern is raised regarding the rear nil rear setback of the development to Queen Street. The rear massing of the development complies with the relevant controls within Part 5 of MDCP 2011 and is acceptable. However, the application is not supported for other reasons.

Impacts of Construction

Comment: Concern is raised regarding construction noise, vibrations, dust and other impacts. Standard conditions to manage construction impacts would be included on any consent granted. Construction impacts are relatively short-term impacts and would not be an ongoing amenity concern.

Boarding houses in area

Comment: Concern is raised that a number of other boarding house have been approved within the vicinity of the site. Boarding houses are a permissible use in the B2 zone and as such must be considered on the merits of each application. However, the application is not supported for other reasons.

Visual Privacy

Comment: Concern is raised of overlooking to the adjacent Queen Street properties from the rear facing balcony serving room 5. The proposed balcony is very narrow and faces the front of adjacent properties and as such is unlikely to result in adverse visual privacy impacts and would be considered acceptable under Part 2.6 of MDCP 2011. However, the application is not supported for other reasons.

Waste Management

Comment: Concern is raised regarding the number of bins provided to the development and the impact presenting bins for collection to Queen Street will have on footpath access and parking. The development proposes a suitable number of waste bins for the size of the development. The number of additional bins on the street would be minor and only presenting to the street on collection days, which is considered acceptable and not an adverse impact to the street. Given the limited size of the development, on site collection is not viable or required. However, the application is not supported for other reasons including other waste management issues.

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 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.

- Urban Design
- Heritage
- Engineering
- Environmental Health
- Waste Management

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

Section 7.11 contributions are payable for the proposal.

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

8. Conclusion

The proposal does not comply with the aims, objectives and design parameters contained in the relevant State Environmental Planning Polices, *Marrickville Local Environmental Plan 2011* and Marrickville Development Control Plan 2011.

The development would result in significant impacts on the amenity of the adjoining premises/properties and the streetscape, would result in poor amenity for future occupants and is not considered to be in the public interest.

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of the *Marrickville Local Environmental Plan 2011* to vary Clause 4.4 of the LEP. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is not satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are insufficient environmental grounds to support the variation. The proposed development would not be in the public interest because the exceedance is inconsistent with the objectives of the standard.
- 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, refuse Development Application No. DA/2021/0919 to carry out alterations and additions to the existing building to create a 3 storey mixed use development comprising a commercial bakery on the ground floor and a boarding house containing 6 rooms at 552 Parramatta Road Petersham subject to the reasons for refusal listed in Attachment A.

Attachment A – Recommended conditions of consent

REASONS FOR REFUSAL

1. The development is inconsistent with Clause 7 of *State Environmental Planning Policy - No. 55* in that the Preliminary Site Investigation details potential contaminants that require further investigation and this has not been provided with the application. Therefore Council cannot be satisfied the land is suitable for the use proposed.
2. The proposed development is inconsistent with the following Clauses of *State Environmental Planning Policy (Affordable Rental Housing) 2009*, pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*:
 - a. The proposal exceeds the floor space ratio development standard under Clause 29(1) of *State Environmental Planning Policy (Affordable Rental Housing) 2009* and Clause 4.4 of *Marrickville Local Environmental Plan 2011*. The proposed development is inconsistent with the stated objectives of the development standard.
 - b. Clause 29(2) (c) and (d)(i) - the proposal fails to demonstrate the level of solar access received by the common room and no private communal open space is provided.
 - c. Clause 30(f) - Standards for boarding houses, in that some rooms breach the maximum room size.
 - d. Clause 30A - Character of local area, the design of the boarding house is incompatible with the character of the local area.
3. The development is inconsistent with Clause 102 of *State Environmental Planning Policy (Infrastructure) 2007* in that the Acoustic Report submitted does not adequately assess cumulative noise impacts to future occupants and Council cannot be satisfied the development can comply with the relevant noise criteria and that future residents will not be adversely impacted by road noise.
4. The proposed development is inconsistent with the following Clauses of *Marrickville Local Environmental Plan 2011* and *draft Inner West Local Environmental Plan 2020*, pursuant to Section 4.15 (1)(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979*:
 - a. Clause 1.2(g) and (h) (MLEP 2011) and Clause 1.2(h)(i) and (j) (draft IWLEP 2020) - Aims of the Plan, as the proposal fails to preserve the cultural heritage of the area and promote a high standard of design in the public and private domain or protect residential amenity for existing and future residents.
 - b. Clause 2.3 (draft IWLEP 2020) - Land Use Table and Zone Objectives, in that the development does not display a design quality that integrates with the desired future character or cultural heritage of the place and is inconsistent with the objectives of the B2 Local Centre zone.
 - c. Clause 4.4 - Floor Space Ratio, as the development exceeds the maximum floor space ratio applicable to the site.
 - d. Clause 4.6 - Exceptions to Development Standards, as the requirements of the standard have not been found to be unreasonable or unnecessary and the proposal is inconsistent with the objectives of the floor space ratio development standard.
 - e. Clause 5.10 - Heritage Conservation, the extent of works to the contributory building are unclear and the alterations and additions, particularly to the

- upper level, would adversely impact the significance of the Parramatta Road Commercial Precinct Heritage Conservation Area.
- f. Clause 6.5 - Development in areas subject to aircraft noise, in that the Acoustic Report submitted does not adequately assess the cumulative impacts of noise on the development and Council cannot be satisfied the development can comply with the relevant acoustic criteria regarding aircraft noise.
5. The proposed development is inconsistent with the following Clauses of *State Environmental Planning Policy (Housing) 2021*, pursuant to Section 4.15 (1)(a)(ii) of the *Environmental Planning and Assessment Act 1979*:
 - a. Clause 24 - Non-discretionary development standards, in that the development exceeds the allowable floor space ratio, is unclear on the level of solar access achieved, the communal living area is undersized, no communal open space is provided and there is a shortfall of car parking.
 - b. Clause 25 - Standards for boarding houses, in that some boarding rooms exceed the maximum room size, the development is not compatible with the local and desired future character and there is a shortfall of bicycle parking.
 - c. Clause 26 - Must be used for affordable housing in perpetuity, in that the boarding house is not proposed to be used for the purpose of affordable housing.
 6. The proposed development does not comply with the following Parts of Marrickville Development Control Plan 2011, pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*:
 - a. Part 2.1 - Urban Design, as the development is inconsistent with urban design principles; 4, 5 and 9 as the density, form and character of the proposal are at odds with the prevailing character of the conservation area and adjoining development.
 - b. Part 2.5 - Equity of Access and Mobility, as the premises does not provide the required number of accessible rooms.
 - c. Part 2.6 - Acoustic and Visual Privacy, as the development has not demonstrated through submission of suitable acoustic testing and management techniques that the proposed use will not result in acoustic impacts to residents or that the proposed occupancies will be adequately protected from road and aircraft noise or from the use of the commercial tenancy.
 - d. Part 2.7 - Solar Access and Overshadowing, as the application has not been supported by adequate shadow diagrams to demonstrate the development protects solar access to surrounding properties or that the development itself receives adequate solar access.
 - e. Part 2.10 - Parking, as the development does not provide the required number of parking spaces and the car parking space proposed does not comply with minimum dimensions prescribed by AS2890:2004.
 - f. Part 2.18 - Landscaping and Open Space, as the development fails to provide an area of communal open space for tenants.
 - g. Part 2.21 - Waste Management, as the development provides no bulky waste storage area and the Waste Management Plan is unclear on bin collection locations and procedures.

- h. Part 4.3 - Boarding Houses, the development does not comply with the design requirements in terms of room sizes, provision of communal open space and ceiling heights.
 - i. Part 5.1.4 - Building Form, as the development includes additions within the front 6 metres of the contributory building and the upper level addition does not preserve the building frontage as it would be visible from the street.
 - j. Part 8.4 - Heritage, as the proposal would diminish the significance of the contributory building due to the inadequate setback of the proposed additions and the insufficient information with the application fails to demonstrate which significant elements are to be retained and/or restored thereby compromising the significance of the heritage conservation area.
 - k. Part 9.35 - Parramatta Road (Commercial Precinct 35), as the proposal is inconsistent with the desired future character of the area, does not preserve the contributory building and the works to the original facade are unclear.
7. The proposal has not provided adequate information to demonstrate it will not result in adverse environmental impacts in the locality, pursuant to Section 4.15 (1)(b) of the *Environmental Planning and Assessment Act 1979* in that:
- a. An adequate Acoustic Report has not been submitted.
 - b. A Detailed Site Investigation has not been submitted.
 - c. Shadow diagrams in accordance with the requirements of control C1 within Part 2.7 of the Marrickville Development Control Plan 2011.
 - d. An adequate Statement of Heritage Impact completed in accordance with NSW Heritage guidelines.
 - e. Details regarding the proposed/continuation of the commercial bakery use.
8. The application as submitted has not provided adequate information in order to undertake a full and proper assessment of the application in accordance with the *Environmental Planning & Assessment Act 1979* in that the following has not been provided with the application:
- a. Plans, elevations and sections of the existing building.
 - b. Demolition plans clearly showing the building fabric proposed for demolition.
 - c. Plans clearly showing the proposed works to the building façade including elements to be removed, reinstated or repaired.
 - d. A detailed Schedule of Materials and Finishes indicating finishes to all parts of the building and upper portion of the front facade.
 - e. Details of mechanical ventilation and other related food use equipment.
 - f. Diagrams demonstrating the level of solar access achieved to the common room and boarding rooms.
9. The adverse environmental impacts of the proposal demonstrate that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15 (1)(c) of the *Environmental Planning and Assessment Act 1979*.
10. The proposal will significantly impact on the amenity of the adjoining premises and streetscape and given the substantiated issues raised in submissions, pursuant to the provisions of Section 4.15(1)(d)(e) of the *Environmental Planning and Assessment Act 1979*, it is considered that the proposal would not be in the public interest.

Attachment B – Plans of proposed development

Sheet List	
Sheet Name	Sheet Number
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SITE PLAN	A102
SITE ANALYSIS PLAN	A103
LOWER GROUND FLOOR	A104
UPPER GROUND FLOOR	A105
LEVEL 1	A106
ROOF PLAN	A107
ELEVATIONS	A108
SECTION 1	A109
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WINTER SHADOW DIAGRAM	A111
CALCULATION SHEET (GFA - FSR)	A112
MATERIAL AND SCHEDULES	A113
CPTED ASSESSMENT PLAN	A114
DEMOLITION PLAN	A115
NOTIFICATION PLAN	A116

habitation
Design + Interiors

12/12-12/13, 12/14-12/15
12/16-12/17, 12/18-12/19
12/20-12/21, 12/22-12/23
12/24-12/25, 12/26-12/27
12/28-12/29, 12/30-12/31

Member
Australian Institute
of Architects
No. 123456789
10/1/2018 to 31/12/2020
Estate 123456

REVISION

NO.	DATE	DESCRIPTION	BY	CHKD BY
1	20/08/2020	FOR DEVELOPMENT APPLICATION SUBMIT	MR. J. PATTARO	MR. J. PATTARO

COVER PAGE
PRELIMINARY
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PROPOSAL MIXED USE DEVELOPMENT
ALTERATIONS + ADDITIONS

CLIENT: **MIR. J. PATTARO**
ADDRESS: **562 PARRAMATTA ROAD, PETERSHAM**

SCALE 1:200
DRAWN BY: **M.S.**
DATE: **15/08/2021**

CHECKED BY: **J.P.**
PROJECT NUMBER: **20160**
A100

BASIX Certificate
Building Sustainability Index (BASIX) Certificate No. 2321734

Multi Dwellling
Certificate Number: 2321734

1. The BASIX certificate is issued to the BASIX participant in recognition of their compliance with the BASIX requirements for the BASIX participant's BASIX project.

2. The BASIX participant must ensure that the BASIX project is completed in accordance with the BASIX requirements.

3. The BASIX participant must ensure that the BASIX project is completed in accordance with the BASIX requirements.

4. The BASIX participant must ensure that the BASIX project is completed in accordance with the BASIX requirements.

5. The BASIX participant must ensure that the BASIX project is completed in accordance with the BASIX requirements.

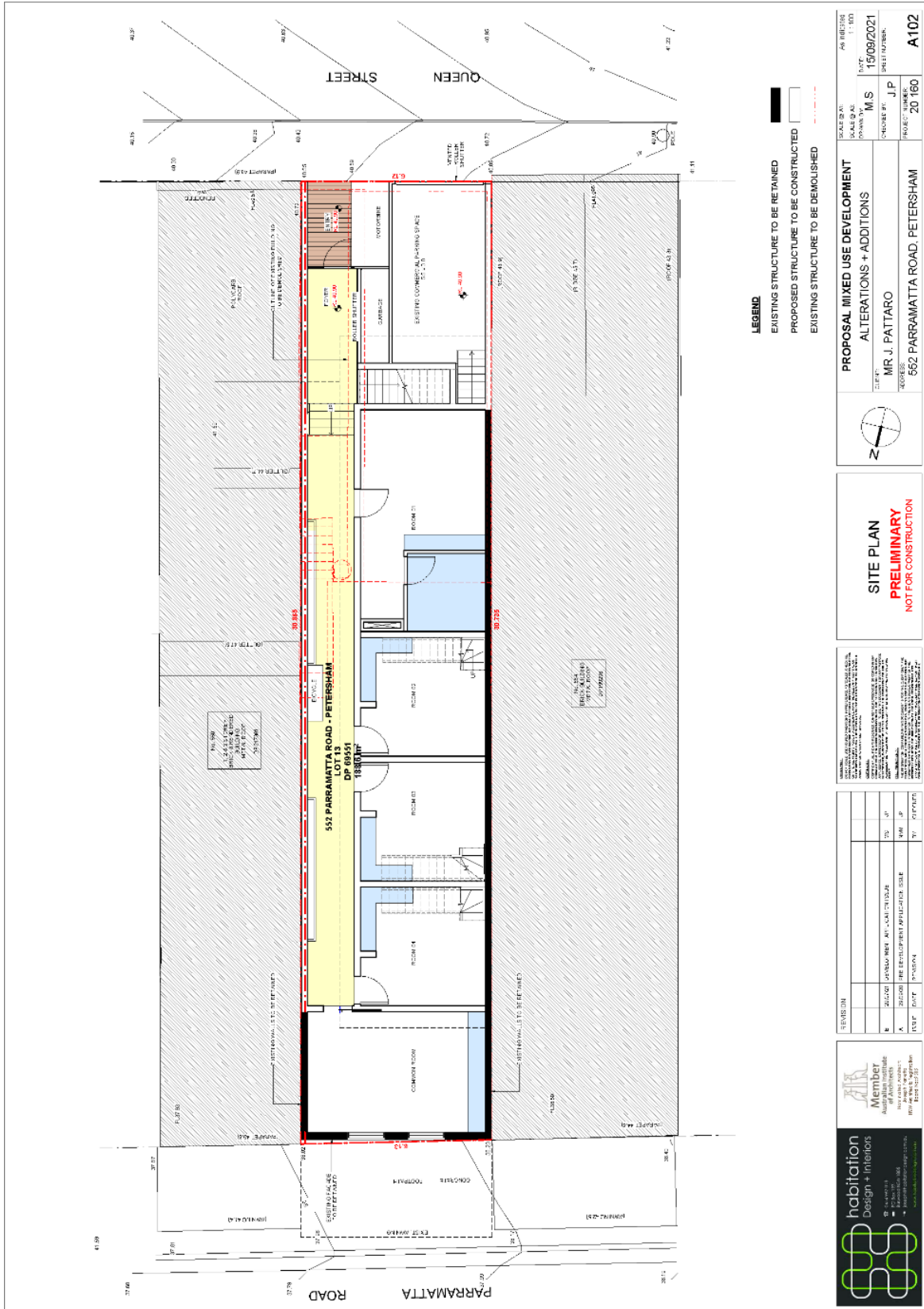
Project Summary

Project Name	Address	Project Type	Project Status	Project Date
Multi Dwellling	552 Parramatta Road, Parramatta NSW 2150	Multi Dwellling	Completed	13/09/2021

Continue Provided by

Project Address	Project Name	Project Type	Project Status	Project Date
552 Parramatta Road, Parramatta NSW 2150	Multi Dwellling	Multi Dwellling	Completed	13/09/2021

Residential ten buildings - Buildings 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 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LEGEND

- EXISTING STRUCTURE TO BE RETAINED
- PROPOSED STRUCTURE TO BE CONSTRUCTED
- EXISTING STRUCTURE TO BE DEMOLISHED

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REVISION

NO.	DESCRIPTION	DATE
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2	ISSUED FOR PERMIT	15/09/2021
3	ISSUED FOR PERMIT	15/09/2021

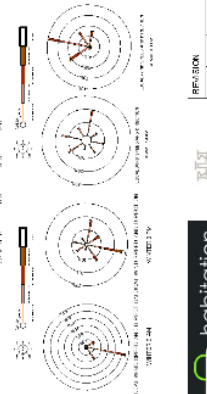
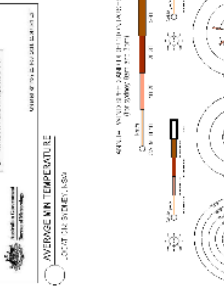
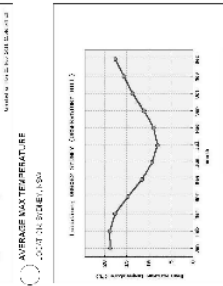
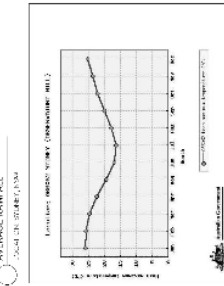
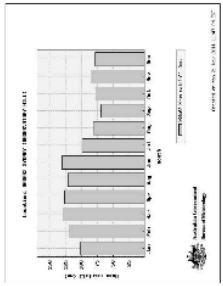
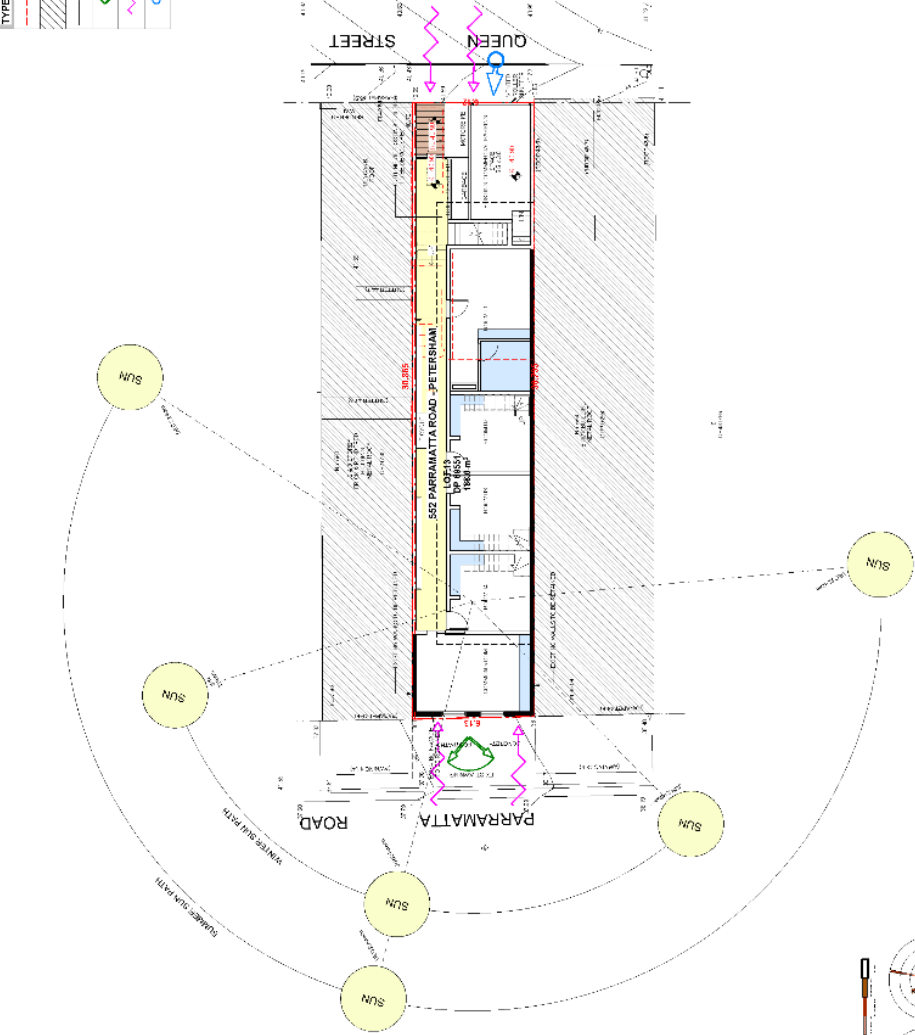
PROPOSAL MIXED USE DEVELOPMENT
ALTERATIONS + ADDITIONS

CLIENT: MR. J. PATTARO
ADDRESS: 552 PARRAMATTA ROAD, PETERSHAM

SCALE: 1:100
DATE: 15/09/2021
DRAWN BY: M.S.
CHECKED BY: J.P.
PROJECT NUMBER: 20160
A102

SITE PLAN
PRELIMINARY
NOT FOR CONSTRUCTION

LEGEND	TYPE
	EXISTING BUILDINGS TO BE DEMOLISHED
	NEIGHBOURHOOD BUILDINGS
	SITE BOUNDARIES
	KEY HURKS
	NOISE SOURCE FEATURE
	PROPOSED VEGETATION ACCESS POINT
	DEVELOPMENT ENTRY/EXIT



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REVISIONS

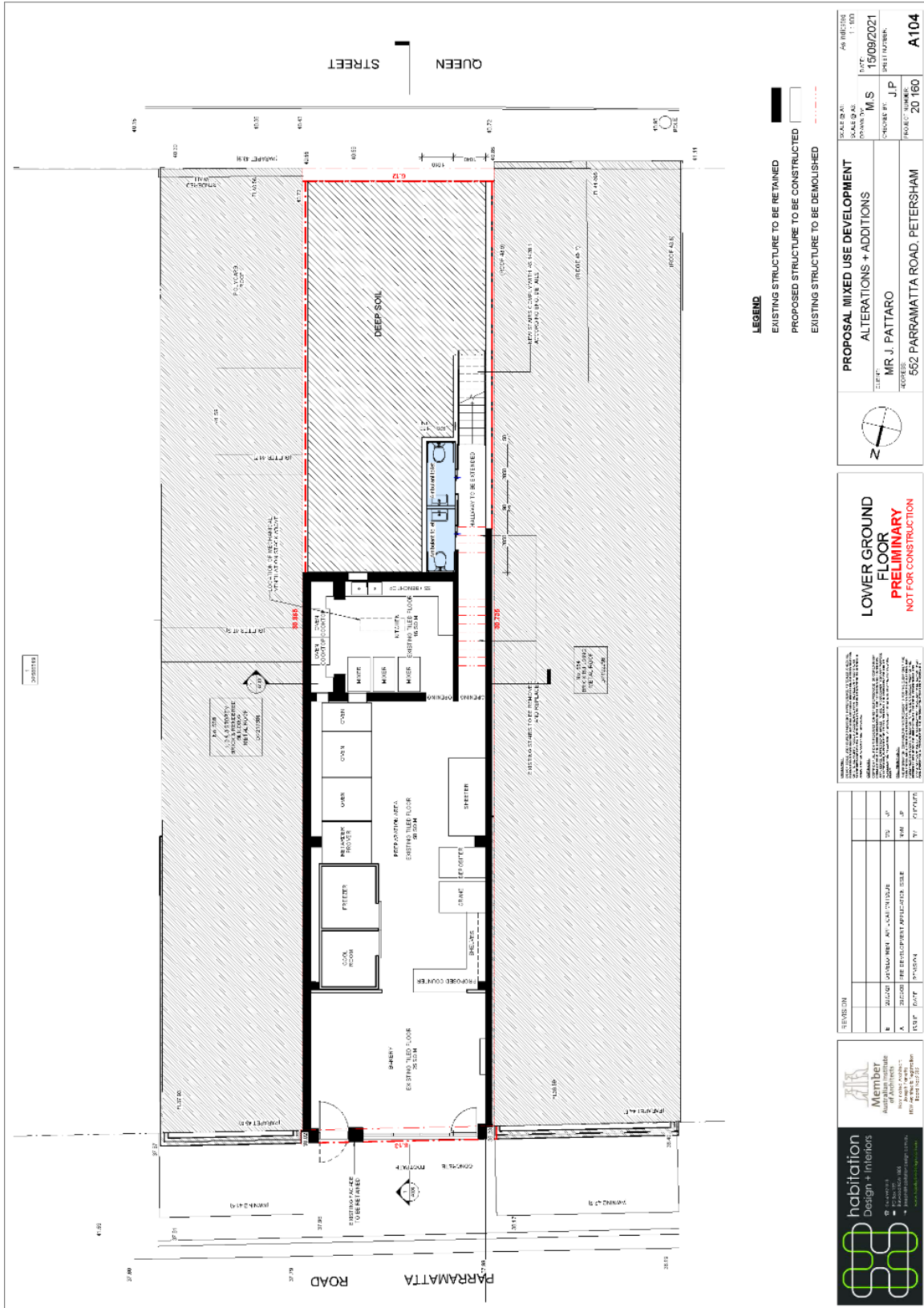
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2	REVISIONS TO TENDERS	15/09/2021	MR J. PATTARO	MR J. PATTARO
3	REVISIONS TO TENDERS	15/09/2021	MR J. PATTARO	MR J. PATTARO
4	REVISIONS TO TENDERS	15/09/2021	MR J. PATTARO	MR J. PATTARO
5	REVISIONS TO TENDERS	15/09/2021	MR J. PATTARO	MR J. PATTARO

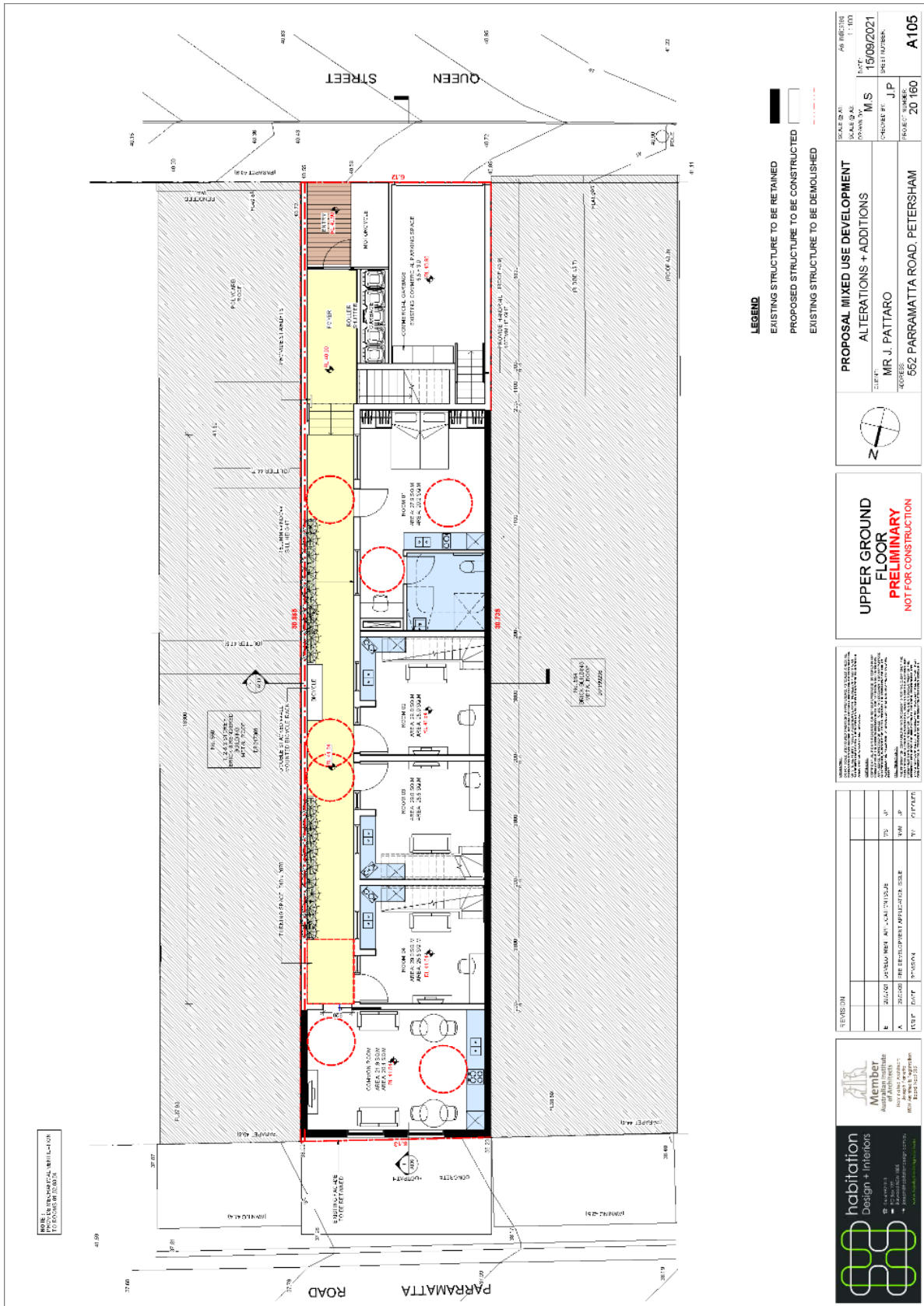
SITE ANALYSIS PLAN
PRELIMINARY
NOT FOR CONSTRUCTION

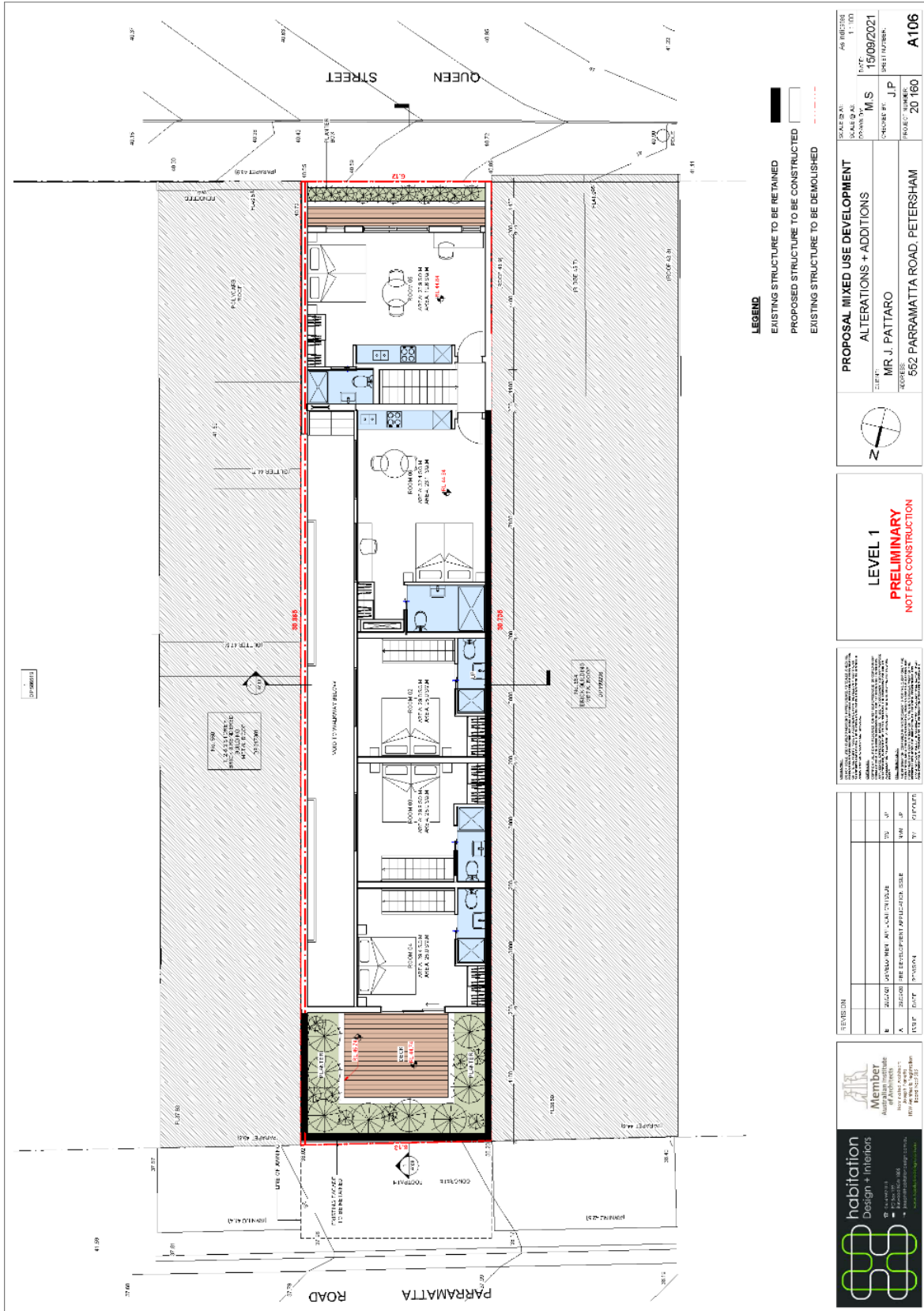
PROPOSAL MIXED USE DEVELOPMENT
ALTERATIONS + ADDITIONS

SUBJECT: MR J. PATTARO
ADDRESS: 552 PARRAMATTA ROAD, PETERSHAM

DATE PLAN: 15/09/2021
SCALE: M.S.
DRAWN BY: J.P.
CHECKED BY: J.P.
PROJECT NO: 20160
A103

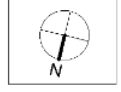






LEGEND
 EXISTING STRUCTURE TO BE RETAINED
 PROPOSED STRUCTURE TO BE CONSTRUCTED
 EXISTING STRUCTURE TO BE DEMOLISHED

SCALE 20:1
 SCALE 20:1
 DATE 15/09/2021
 DRAWN BY J.P.
 CHECKED BY J.P.
 PROJECT NUMBER 20 150
 A106

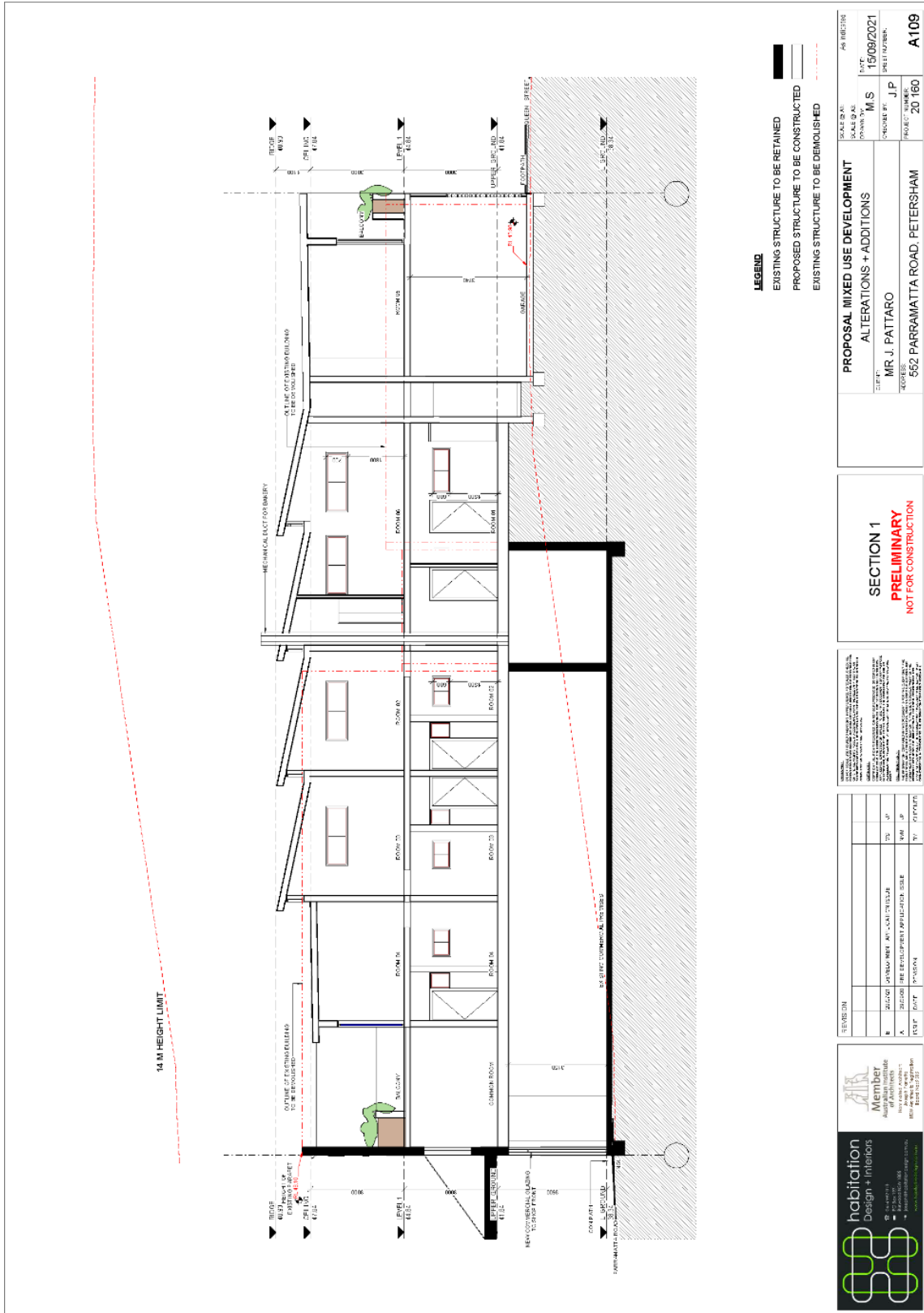


LEVEL 1
PRELIMINARY
 NOT FOR CONSTRUCTION

PROPOSAL MIXED USE DEVELOPMENT
 ALTERATIONS + ADDITIONS
 MR J. PATTARO
 562 PARRAMATTA ROAD, PETERSHAM

REVISION	NO.	DATE	BY	DESCRIPTION
A	1	15/09/2021	J.P.	ISSUED FOR DEVELOPER APPROVAL
B	2	15/09/2021	J.P.	ISSUED FOR DEVELOPER APPROVAL

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 15/09/2021



LEGEND
 EXISTING STRUCTURE TO BE RETAINED
 PROPOSED STRUCTURE TO BE CONSTRUCTED
 EXISTING STRUCTURE TO BE DEMOLISHED

SCALE: 1:50 DRAWN BY: M.S.	DATE: 15/08/2021 SHEET NUMBER: J.P.
PROJECT: PROPOSAL MIXED USE DEVELOPMENT ALTERATIONS + ADDITIONS	
CLIENT: MR. J. PATTARO	
ADDRESS: 552 PARRAMATTA ROAD, PETERSHAM	
PROJECT NO: 20160	SHEET NO: A109

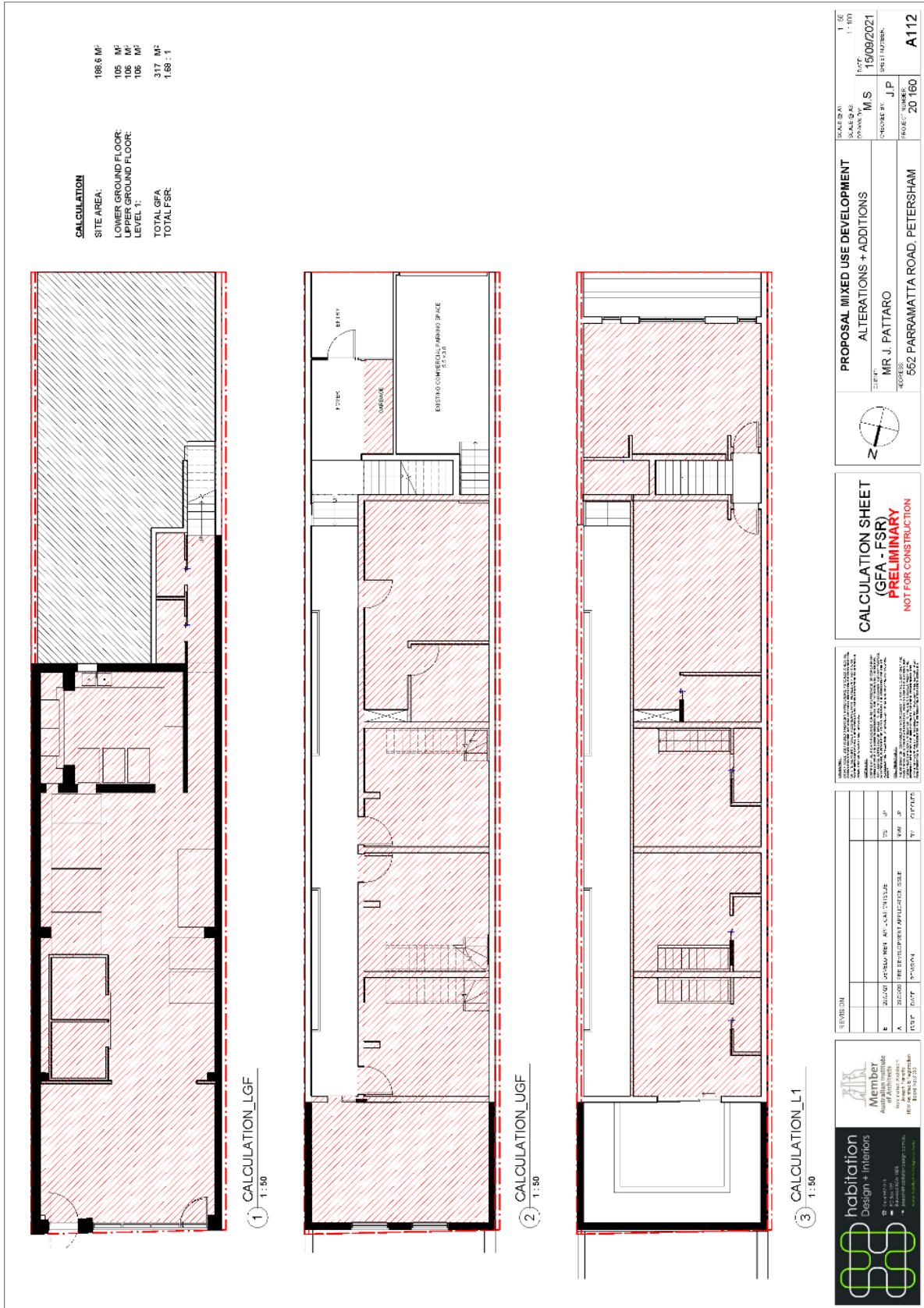
SECTION 1
PRELIMINARY
 NOT FOR CONSTRUCTION

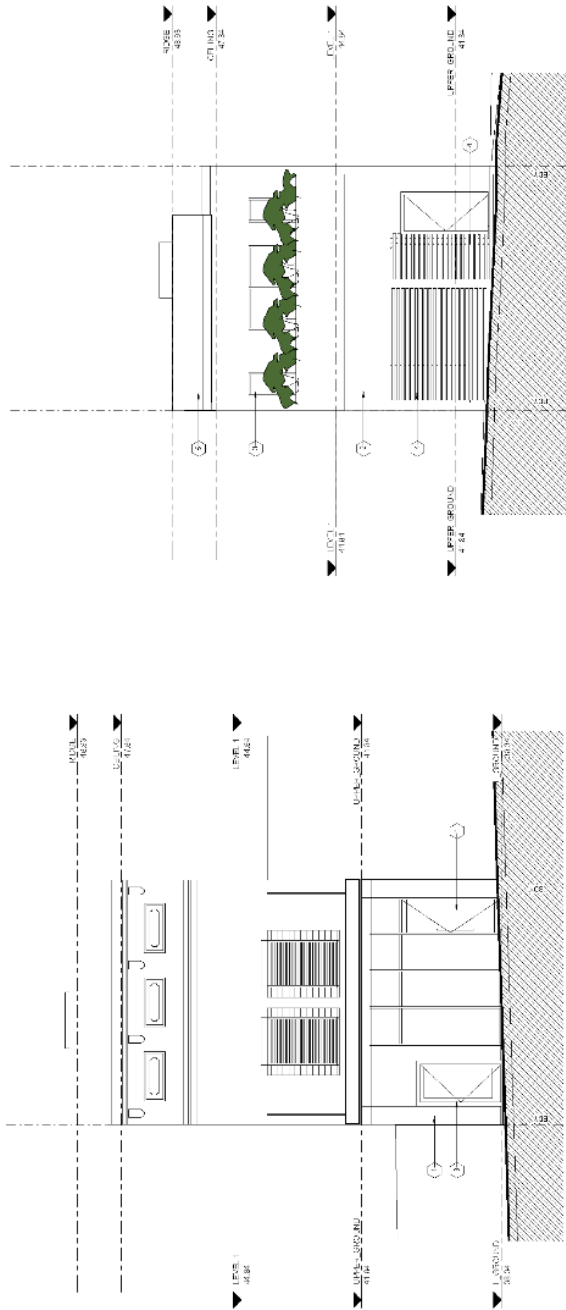
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REVISION	DATE	BY	DESCRIPTION
1	15/08/2021	M.S.	ISSUE FOR PERMIT
2	15/08/2021	J.P.	ISSUE FOR PERMIT
3	15/08/2021	J.P.	ISSUE FOR PERMIT

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 15/08/2021

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 15/08/2021
 15/08/2021





AREA: BASE WALLS
FINISH: MASONRY TO BE PAINTED
DETAIL: DULUX 'GREY PAL'

AREA: BASE WALLS
FINISH: MASONRY TO BE PAINTED
DETAIL: DULUX 'CHARCOAL GREY'

AREA: DOOR AND WINDOW FRAMES
FINISH: POWDERCOATED ALUMINIUM
DETAIL: COLORBOND 'MONUMENT'

AREA: ROLLER DOOR - ENTRY DOOR
FINISH: HORIZONTAL TIMBER PANNELLING SLATS
DETAIL: NATURAL HARDWOOD

AREA: ROOFING
FINISH: METAL 'WIDE PAN', ROOF SHEETING
DETAIL: 'COLORBOND MONUMENT'

NOTE: ALL FINISHES ARE SUBJECT TO AVAILABILITY

SCALE: 1:50

DATE: 15/09/2021

DRAWN BY: M.S.

CHECKED BY: J.P.

PROJECT NAME: 20/160

PROJECT NO: A 113

PROPOSAL MIXED USE DEVELOPMENT ALTERATIONS + ADDITIONS

CLIENT: MR J. PATTARO

ADDRESS: 552 PARRAMATTA ROAD, PETERSHAM

MATERIAL AND SCHEDULES PRELIMINARY NOT FOR CONSTRUCTION

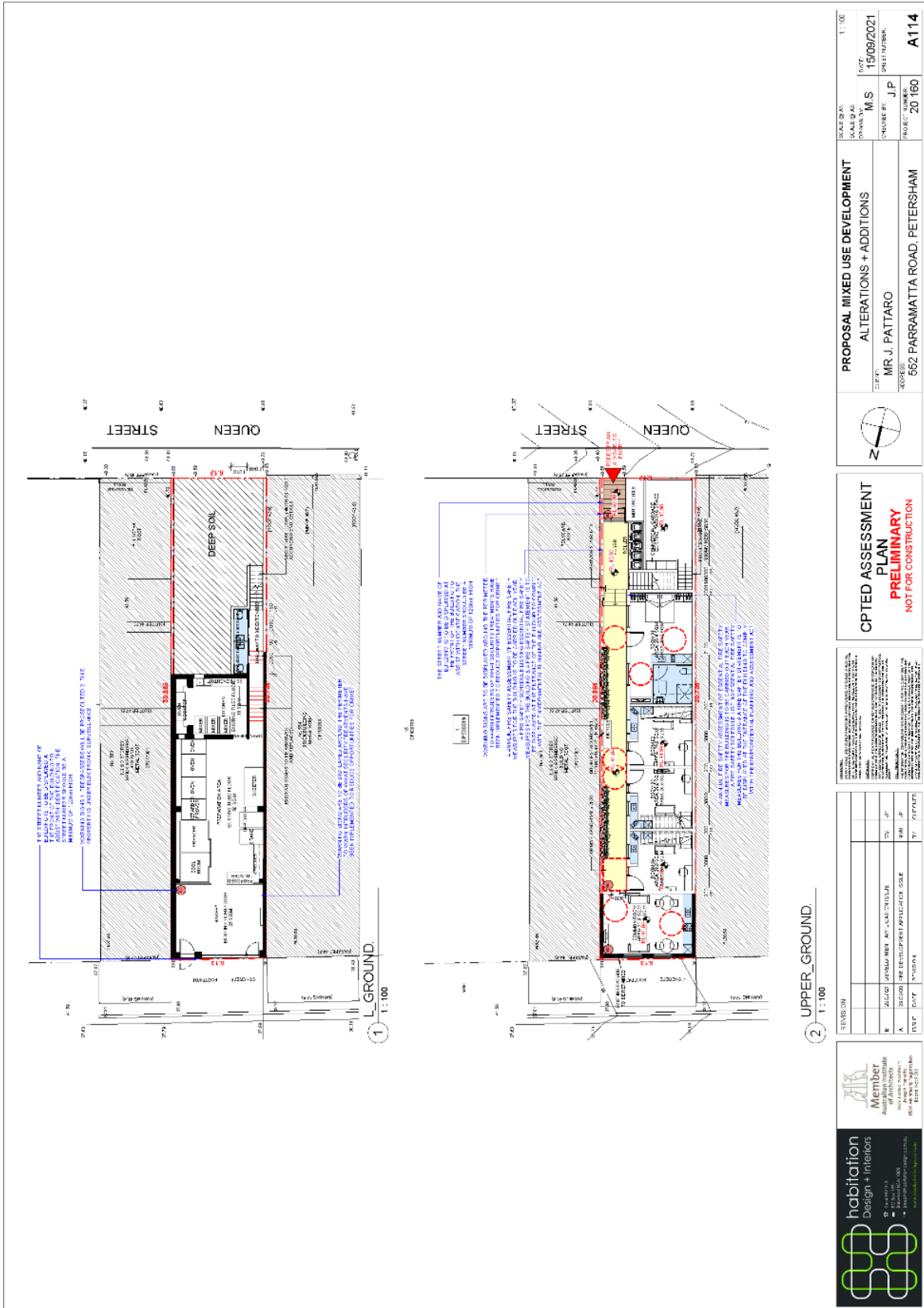
REVISION

NO.	DATE	DESCRIPTION
1		
2		
3		
4		
5		

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REGISTERED ARCHITECT



SCALE AS SHOWN	SCALE AS SHOWN	SCALE AS SHOWN	SCALE AS SHOWN
TOWN	TOWN	TOWN	TOWN
M.S.	M.S.	M.S.	M.S.
15/09/2021	15/09/2021	15/09/2021	15/09/2021
J.P.	J.P.	J.P.	J.P.
20160	20160	20160	20160
A114	A114	A114	A114

PROPOSAL MIXED USE DEVELOPMENT
ALTERATIONS + ADDITIONS

MR. J. PATTARO
552 PARRAMATTA ROAD, PETERSHAM

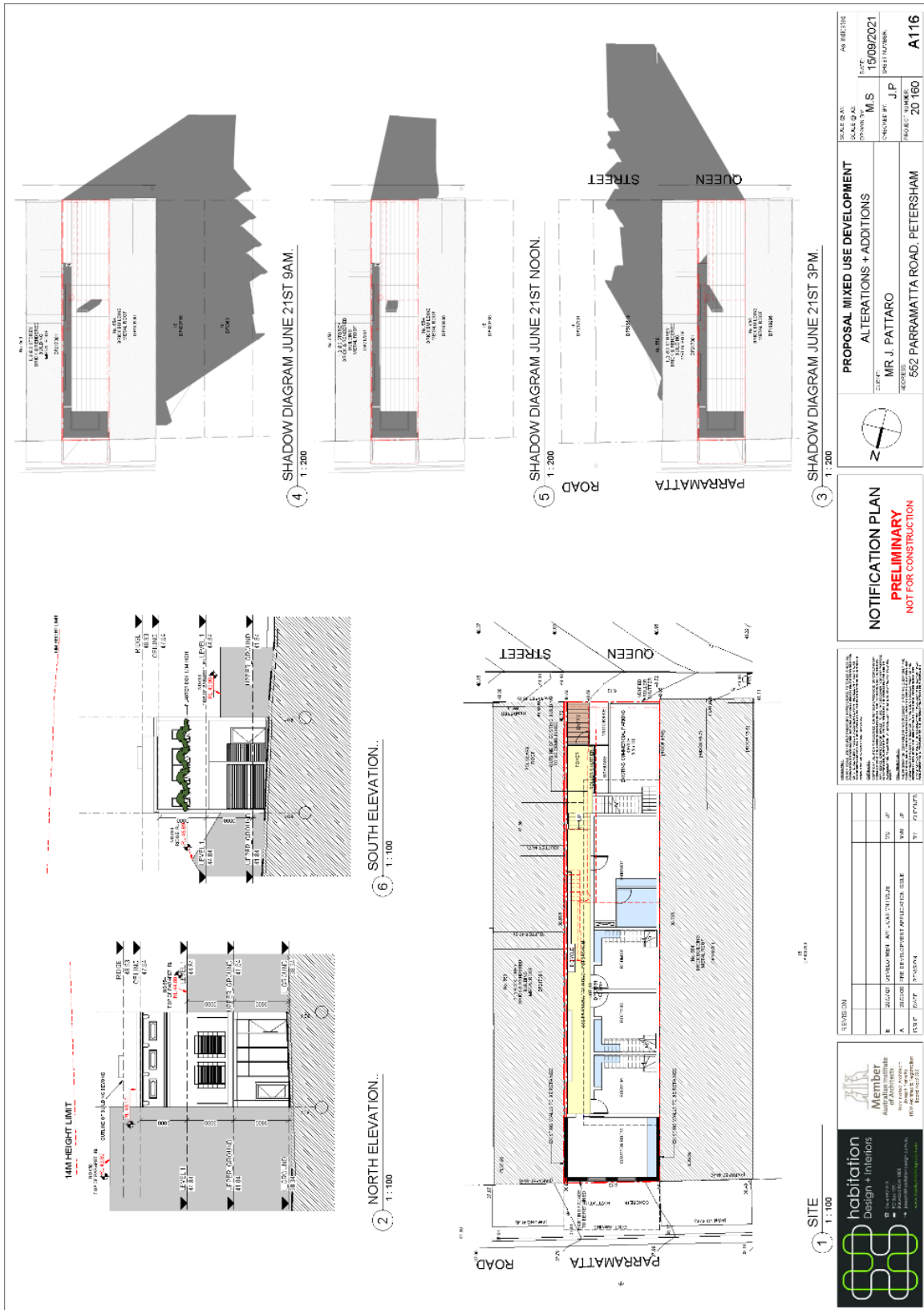
CPTED ASSESSMENT
PLAN
PRELIMINARY
NOT FOR CONSTRUCTION

REVISION	DATE	BY	DESCRIPTION
B	20/09/2021	J.P.	ISSUE FOR PERMIT
X	15/09/2021	J.P.	ISSUE FOR PERMIT
1	15/09/2021	J.P.	ISSUE FOR PERMIT

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15/09/2021
J.P.



**PROPOSAL MIXED USE DEVELOPMENT
ALTERATIONS + ADDITIONS**

CLIENT: MR. J. PATTARO
ADDRESS: 652 PARRAMATTA ROAD, PETERSHAM

SCALE 2/3
SCALE 2/4
DRAWN BY: M.S.
CHECKED BY: J.P.

DATE: 15/09/2021
SHEET NUMBER: A116

PROJECT NUMBER: 20160

NOTIFICATION PLAN
PRELIMINARY
NOT FOR CONSTRUCTION

NOTICE: THIS PLAN IS A PRELIMINARY NOTIFICATION PLAN. IT IS NOT TO BE USED FOR CONSTRUCTION. THE FINAL DESIGN SHALL BE DETERMINED BY THE LOCAL COUNCIL. THE DESIGNER ACCEPTS NO LIABILITY FOR ANY ERRORS OR OMISSIONS IN THIS PLAN. THE DESIGNER'S LIABILITY IS LIMITED TO THE DESIGN SERVICES PROVIDED. THE DESIGNER IS NOT RESPONSIBLE FOR ANY DELAYS OR COSTS INCURRED BY THE CLIENT DUE TO CHANGES OR VARIATIONS TO THIS PLAN. THE DESIGNER'S LIABILITY IS LIMITED TO THE DESIGN SERVICES PROVIDED. THE DESIGNER IS NOT RESPONSIBLE FOR ANY DELAYS OR COSTS INCURRED BY THE CLIENT DUE TO CHANGES OR VARIATIONS TO THIS PLAN.

VERSION	DATE	BY	APP
A	20/09/2021	J.P.	APP
B	15/09/2021	M.S.	APP

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TEL: 02 9550 1234
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Attachment C- Clause 4.6 Exception to Development Standards



**CLAUSE 4.6 REQUEST FOR VARIATION TO
CLAUSE 4.4 (2) (FLOOR SPACE RATIO) OF
MARRICKVILLE LOCAL ENVIRONMENTAL PLAN
2011 (MLEP)**

**552 PARRAMATTA ROAD,
PETERSHAM**

September 2021



Clause 4.6 Variation to FSR – September 2021
552 Parramatta Road, Petersham
Alterations and additions for a new mixed use development retaining lower
ground level bakery and 6-room new generation boarding house above



1.0 Introduction

- This is a request to vary a development standard pursuant to the provisions of Clause 4.6 of Marrickville Local Environmental Plan 2011 (MLEP 2011), the relevant clause being Clause 4.4(2) (Floor Space Ratio) (FSR).
- This written variation request has been provided to support the proposed alterations and additions for a new mixed use development with existing lower ground level bakery and 6-room new generation boarding house above.
- The development comprises three levels contained within the existing outline/footprint on the site, 552 Parramatta Road, Petersham. The building is not heritage listed but is located within a heritage conservation area.
- The proposed total gross floor area (GFA) of the development is 317sqm.
- The relevant plans relied upon are those identified as the plans prepared by Habitation Design + Interiors Architecture **dated 15.09.2021**.
- The relevant maximum FSR for the site is **1.5:1**. The requested FSR variation is **0.18:1** based on a total FSR of **1.68:1**.
- The FSR control is a *development standard* for the purposes of the *EP&A Act 1979*.
- This request to vary the FSR development standard considers the judgment in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ("Initial Action"), *Wehbe v Pittwater Council*, *Big Property Pty Ltd v Randwick City Council [2021]* and *SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2)*. The provision of affordable housing is an environmental planning ground as established in *Big Property v Randwick*.
- The request addresses those relevant provisions of Clause 4.6 under MLEP 2011 and sets out the reasons for why strict application of the FSR standard in this instance is unreasonable and unnecessary. Further, it details numerous sufficient environmental planning grounds to support the variation sought.

2.0 Development Standard to be Varied – Floor Space Ratio

The relevant *development standard* to be varied is the 1.5:1 FSR control under Clause 4.4(2). Clause 4.4 of MLEP relevantly provides:

4.4 Floor space ratio

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

- (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.*

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

The relevant FSR map is identified below:

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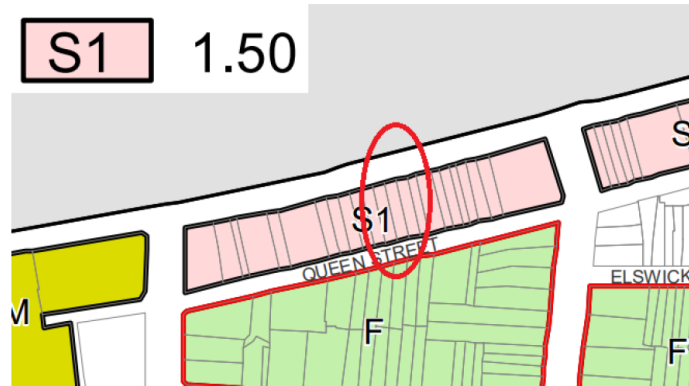


Figure 1: FSR under MLEP (Source: FSR_003 MLEP)

The subject site is mapped “S1” – 1.5:1 (max).

3.0 Nature of Variation Sought

The requested variation is as follows:

The proposal has a permitted FSR as follows:

Site Area: **188.6sqm**

MLEP FSR = **1.5:1**

An FSR of **1.5:1** equates to a total permissible GFA of **282.9sqm**.

The proposal has a total gross floor area (GFA) of **317sqm**. This is equal to a FSR of **1.68:1**, a **0.18:1** breach.

The development comprises three levels contained within the existing building shell. The distribution of the proposed GFA across the development is summarised as follows:

- Lower ground floor – 105sqm
- Upper ground floor – 106sqm
- Level 1 – 106sqm

4.0 Floor Space Ratio – Development Standard

A development standard is defined in S1.4 of the *Environmental Planning and Assessment Act 1979* (“EPA Act”) to mean:

“provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:
 (a) *the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*

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-
- (b) the proportion or percentage of the area of a site which a building or work may occupy,
 - (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
 - (d) the cubic content or floor space of a building,
 - (e) the intensity or density of the use of any land, building or work,
 - (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
 - (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
 - (h) the volume, nature and type of traffic generated by the development,
 - (i) road patterns,
 - (j) drainage,
 - (k) the carrying out of earthworks,
 - (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
 - (m) the provision of services, facilities and amenities demanded by development,
 - (n) the emission of pollution and means for its prevention or control or mitigation, and
 - (o) such other matters as may be prescribed."

The **1.5:1** maximum floor space ratio standard is a *development standard* as defined under the *EP&A Act 1979*.

5.0 Clause 4.6 of Marrickville Local Environmental Plan 2011

The following provides a response to relevant Clause 4.6 provisions:

Clause 4.6(2) provides that:

- (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.*

The FSR development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify the contravention of a development standard and states:

- (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.*

The proposed development does not comply with the FSR development standard pursuant to cl4.4 of the MLEP 2011. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed further in this written request.

Sufficient environmental planning grounds exist to justify contravening the development standard as detailed in Section 8.

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Clause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

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

Sections below of this written request address the matters required under cl4.6(4)(a) of the MLEP 2011 and cl4.6(4)(b).

Clause 4.6(5) provides that:

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

Sections below of this written request addresses the matters required under cl4.6(5) of the MLEP.

Clauses 4.6(6) and (8) are not relevant to the proposed development.

Cl 4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

6.0 Relevant Decisions

Initial Action

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard. The relevant test is whether the environmental planning grounds relied upon and identified in the written request are "sufficient" to justify the non-compliance sought.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "*better environmental planning outcome*" relative to a development that complies with the

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development standard. There is no provision in MLEP clause 4.6 that requires a development that contravenes a development standard to achieve better outcomes.

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2).

This appeal sought consent for the construction of a six-storey Shop top housing development at 28-34 Cross Street Double Bay (**the DA**). The Court approved the proposed development, having a height of 21.21m where the control was 14.7m – representing a maximum variation of approximately **44%** (or 6.51m) – and a floor space ratio (**FSR**) of 3.54:1 where the control was 2.5:1 – representing a variation of approximately **41%**.

The Court drew from the decisions in *Initial Action* and *RebelMH* in the *SJD DB2* judgment, and noted that although there are a number of ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, it may be sufficient to establish only one way (at [35].) In considering the clause 4.6 variation requests submitted by the Applicant, the Court considered that they could be treated together, as the breaches they related to were fundamentally related, as where there is greater building form with additional height, so too is there greater floor area (at [63].)

Acting Commissioner Clay makes it clear in his judgment, 'cl 4.6 is as much a part of [an LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome' (at [73]).

Big Property Pty Ltd v Randwick (Big Property)

The appropriate determination of desired future character was dealt with in the recent case of *Big Property Pty Ltd v Randwick City Council* [2021] (herein '*Big Property*'). This decision was also followed by *HPG Mosman Projects Pty Ltd v Mosman Municipal Council* [2021] (herein '*HPG*').

Big Property resulted in a decision of Commissioner O'Neill which was an appeal by Big Property against the refusal of a development application for alterations and additions to an approved residential flat building, including the provision of additional affordable rental housing units and the construction of an additional storey.

The proposal exceeded the height and FSR development standards and Council contended that the clause 4.6 request was not well founded because the proposal was incompatible with the local character of the area, primarily due to its bulk and scale. In *Big Property* the Applicant claimed that the height and FSR exceedances were a justified response to the provision of two additional affordable housing units.

In considering the clause 4.6 request and desired future character, Commissioner O'Neill held that the desired future character of an area is not determined solely by the development standards that control building envelopes for the area. Commissioner O'Neill held that development standards for building envelopes are frequently generic standards which do not account for existing and approved development, site amalgamations, SEPP allowances, heritage issues or the nuances of an individual site. The Commissioner expressly referenced *SJD*, and went on to hold that:

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"The presumption that the development standards that control building envelopes determine the desired future character of an area is based upon a false notion that those building envelopes represent, or are derived from, a fixed three-dimensional masterplan of building envelopes for the area and the realization of that masterplan will achieve the desired urban character. Although development standards for building envelopes are mostly based on comprehensive studies and strategic plans, they are frequently generic, as demonstrated by the large areas of a single colour representing a single standard on Local Environmental Plan maps, and they reflect the zoning map. As generic standards, they do not necessarily account for existing and approved development, site amalgamations, the location of heritage items or the nuances of an individual site. Nor can they account for provisions under other EPs that realisation of particular development with GFA bonuses or other mechanisms that intensify development. All these factors push the ultimate contest for evaluating and determining a building envelope for a specific use on a site to the development application stage. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality" [at44]

Commissioner O'Neill found that the exceedance of height/FSR standards due to the provision of affordable housing units was an environmental planning ground and thus the clause 4.6 request was a well-founded request. Commissioner O'Neill also expressly referenced the fact that some State Environmental Planning Instruments, such as that for Affordable Rental Housing, "incentivise the provision by the private sector of in-fill affordable housing by providing additional GFA above the otherwise applicable development standards that determine the building envelope for a particular site". This too must be factored into any consideration of what constitutes the 'desired future character' of an area.

7.0 **Clause 4.6(3)(a): Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case**

In dealing with the "unreasonable and unnecessary" Preston CJ identifies and validates the 5 options available to an applicant in *Wehbe v Pittwater Council* which can be adopted in dealing with the *unreasonable and unnecessary* test under Cl. 4.6(3)(a).

Preston CJ at states as follows:

"As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Based on the above the following identifies the first method identified in *Wehbe*:

"Ways of establishing that compliance is unreasonable or unnecessary

*42 An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the **objectives of the development standard are achieved notwithstanding non-compliance with the standard**: (our emphasis)*

Clause 4.6(3)(a) – UNREASONABLE AND UNNECESSARY

This clause 4.6 responds to the matters required to be demonstrated by sub-clause 4.6(3) namely:

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- *that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, and*
- *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Having considered the above the Applicant relies upon the first method demonstrating that compliance is *unreasonable and unnecessary* because the objectives of the development standard are achieved notwithstanding a variation to the standard.

In dealing with the control it is necessary to identify the purpose of the FSR control and then progress to dealing with the consistency or otherwise with the FSR objectives. The first consideration relates to overall scale of a building given that both FSR and height determines the scale of a building to another building or natural feature. In this instance, the proposal is contained wholly within the existing footprint of the building which sits well below the applicable maximum height limit under Cl. 4.3 of MLEP of 14m at 10.59m. The existing building has an envelope which fills the entirety of the site which is consistent with other buildings located along the southern edge of Parramatta Road in the *Parramatta Road Commercial Precinct Heritage Conservation Area*. The proposal provides a suitable bulk and scale that transitions from the 3 storey terrace row.

The **0.18:1** variation to the maximum 1.5:1 FSR is not visually discernible in the creation of additional bulk, scale or building height which would be otherwise inconsistent with the prevailing built form character of the area and adjoining sites (see Figure 2 below).



Figure 2: View of the existing building within the Parramatta Road streetscape

Further insight into the purpose of the standard can be obtained by investigating the objectives of the standard. The objectives in this case include both built form and amenity having regard to solar, visual and privacy impacts. When considered within the framework of the objectives the purpose of the FSR control requires the development to achieve an appropriate built form and provide reasonable amenity impacts as a result of the bulk and scale.

The following justification is provided.

(a) to establish the maximum floor space ratio

The proposal seeks to vary the FSR development standard due to the site-specific circumstances of this case. The existing footprint is to be retained and internally

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reconfigured to accommodate a new bakery and boarding house comprising 6 rooms. The additional bulk and scale is very much limited to the 2 levels fronting Queen Street and provides a very domestic scale of 2 storeys. The development is very modest in its' overall scale and will not contribute to inappropriate bulk and scale as it will be contained within the existing floor plate and a tow storey form where the height control can potentially facilitate 4 storeys with a pitched roof. To this end, the proposal introduces a new upper level which will be contained within the height of the existing street wall parapet to Parramatta Road and street wall to Queen Street, avoiding any creation of any significant traditional height when viewed from the respective streetscapes.

(b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas

As per the above discussion, the proposed development seeks to introduce new floor space within the confines of the existing façade as viewed from Parramatta Road and Norton Street. The provision of additional floor space in this particular instance does not contribute to any additional bulk, scale or real perception of increased density when viewed from the public domain.

The site is not a heritage listed item but is located within a heritage conservation area (HCA), the *Parramatta Road Commercial Precinct*. A key feature of the HCA is the 3 storey form of row terrace shops and stylistic features of buildings, including the subject building, although better examples exist directly to the east. The desired future character of the area is exemplified by these remnant examples of three storey row terraces which are built to the site boundaries, are abutting to each other with zero setbacks and comprise 3 storey forms along Parramatta Road with decorative parapets and facades.

The proposal upholds the fundamental character elements of the area by preserving and improving the visual quality of the buildings' façade to Parramatta Road without any projection above the top finished RL level of the parapet. It maintains the decorative upper level windows and shutters, awning over the walkway and parapet, whilst replacing the ground level entrance with a modern powder coat framed doorway which is compatible with neighbouring sites.

The overall building density is also deemed to be appropriate having regard to the fact that the floor space is wholly contained within the existing vertical envelope of the building. At 10.59m in height the building is shorter than its' neighbouring three storey terraces to the east and well below the maximum MLEP height limit of 14m.

This objective is reasonably satisfied.

(c) to minimise adverse environmental impacts on adjoining properties and the public domain

The proposal minimises impacts on private property and the public domain by managing the overall bulk, scale and height of the building so that it is compatible with the Parramatta Road built form as well as Queen Street and adjoining residential forms. No significant additional adverse impacts to neighbouring properties will be incurred in relation to privacy, overshadowing, solar access or visual fit.

Boarding houses provide short-term affordable rental housing for lodgers and are best suited close to regularly accessible public transport, amenities and services in urban areas.

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In this instance, the neighbouring properties to the east and west will continue to benefit from solid boundary walls which will provide sufficient acoustic attenuation to boarding rooms and the proposed common room. No windows, balconies or common areas will directly overlook any neighbouring residential or business premises. The overall density of the boarding house proposed at 6 rooms is very modest and entirely capable of being contained on the site without placing unreasonable pressures on neighbouring properties or the surrounding area by way of parking, noise, loitering, or other nuisance disturbance.

This objective is satisfied.

8.0 4.6(3)(b) – SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

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

The variation relates to FSR and as such calls upon those matters considered to be environmental planning grounds relevant to the subject matter. Justification provided for the variation applies to this particular application and not environmental planning grounds that could apply to all lands zoned B2 Local Centre.

The environmental planning grounds justification for the FSR variation is provided as follows:

- The GFA proposed is contained wholly within the building footprint. The building comprises a stepped 2/3 storey form owing to the cross fall of the site which contributes to the heritage characteristics of the area. The additional GFA can be accommodated on the site without any additional impacts. The overall scale and massing is acceptable in this context.
- The development will not increase the height of the building beyond 10.59m above the site level. This sits well below the maximum 14m height limit permitted for the site under Cl. 4.3 of MLEP and ensures the building will continue to read as a half-storey lower than the neighbouring three storey row terrace shops to the east.
- The additional floor space provides for short-term affordable rental housing in the form of a 6-room new generation boarding house. As identified by Commissioner O'Neal the exceedance of height/FSR standards due to the provision of affordable housing is a recognised environmental planning ground which is worthy of support. The SIA demonstrates a strategic housing need for alternate forms of housing that is serviced by public transport and one which has access to goods and services.
- The site has additional capacity to support the modest breach in FSR. It is positioned on the southern side of the Parramatta Road in the heart of Sydney's inner west. The site has excellent direct access to regular public transport in the form of busses which operate along Parramatta Road connecting the site to the Sydney CBD in the east and Parramatta to the west. Heavy rail is accessible within a short 5 minute walk to the south and future planned Metro West services 10 minutes to the north will provide even greater connectivity to CBD and Parramatta. It is also situated within a short walking distance of a range of essential retail and community services as well as parks in the surrounding neighbourhoods of Petersham and Leichhardt. All of these features go to demonstrating the sites' capacity to support additional density which also underpins the concept of good transit-orientated developments (TODs) where residential densities are set closer to well-connected hubs.

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Therefore, this site is ideally located to support a new generation boarding house at the scale proposed.

- The additional GFA enables a stepped two/three storey building that fits well within the prevailing streetscapes and responds to the existing site layout. Important original features of the buildings' primary façade are to be maintained and the overall form of the existing building is to be kept intact, ensuring continued consistency with the desired and prevailing building character of the area. The upper level remains subservient to the existing height of the façade even with the additional GFA.
- As discussed in Section 7 there are no adverse environmental impacts directly attributable to the additional GFA proposed. The GFA is wholly contained within the existing building footprint and the density is within the environmental capacity of the site.
- The proposal retains and improves the active street edge to Parramatta Road and provide a viable and attractive essential service at the lower ground floor of the development.
- The mixed-use nature of the development is maintained under this proposal, providing compatible uses which can function harmoniously within the building with residential uses. The development therefore aligns with the mixed-use objectives of the B2 zone.
- Important original features of the buildings' façade to Parramatta Road are preserved including the decorative windows, shutters, upper parapet, roof feature and awning over the footpath. These features visually underpin the importance of the HCA and whilst the building is a lesser contributory item, the preservation of these façade elements will continue to read as part of the streetscape and exemplar items to the east.

In dealing with the sufficient environmental planning grounds Preston CJ in Initial Action considers that it is available to the applicant to also deal with the Objectives of the Act under S1.3 in order to demonstrate that grounds exist to warrant a variation to FSR. Clause 1.3 of the *EP&A Act 1979* relevantly provides:

"1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

- (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,***
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,***
- (c) to promote the orderly and economic use and development of land,***
- (d) to promote the delivery and maintenance of 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,***
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),***
- (g) to promote good design and amenity of the built environment,***

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(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment. (emphasis added)

A development that complies with the landuse zoning of the site (B2 Local Centre) satisfies the objectives of under S1.3 EP&A Act 1979.

The plans by Habitation Design & Interiors Architecture, **dated 15.09.2021** and specifically the FSR variations satisfy the objectives in bold given that:

- The development provides mixed land use (retail/residential) in line with Council's strategic planning intent and the MLEP 2011.
- The development assists in achieving a co-ordinated and timely outcome for the site based on the outcomes under the HCA and neighbourhood provisions which affects the subject site.
- The development of a modestly sized new-generation boarding house in this location is a positive social outcome as it delivers short-stay affordable housing in a highly accessible location.
- The development offers better and proper management of the State's land resources by providing a more efficient use of private land that is well positioned to take advantage of its proximity to public transport, jobs, services and local and regional leisure, recreation, retail and cultural activities.
- The additional FSR sought contributes towards the provision of short-stay affordable housing on a site which has the capacity to support the proposed densities.
- The proposal will not cause adverse environmental impacts to neighbouring properties as outlined in Section 7 and detailed in the Statement of Environmental Effects.
- The development maintains original features of the buildings' façade which underpin the heritage significance of the HCA.
- The proposal exhibits an acceptable standard of internal and external amenity for future lodgers and represents a considered in-fill development which fits well within the urban context.
- The development will be constructed to relevant Australian Standards and provisions under the Building Code of Australia.

Based on the above the consent authority can be satisfied that there are sufficient environmental planning grounds to warrant the FSR variation.

Clause 4.6(4)(a)(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.

Consistency with the Zone Objectives

An enquiry is now made in relation to the ability of the proposal and the identified variation, as one departing from the FSR standard, to reasonably satisfy the stated objectives of the zone.

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Zone B2 Local Centre

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.*
- *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.*

The following provides a review of the zone objectives:

- ***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 development includes a new generation boarding house above a bakery with an active frontage to Parramatta Road. The uses proposed provide for the retail needs of those who live, work and visit the locality in conjunction with housing opportunities.

- ***To encourage employment opportunities in accessible locations.***

The bakery will continue to provide employment opportunities for full and part time staff. The boarding house will generate jobs associated with waste collection (private contractors), cleaning and maintenance of the facility.

- ***To maximise public transport patronage and encourage walking and cycling.***

The development is a good example of transit-orientated development (TOD) which situates short-stay affordable housing in a highly accessible location. Together with the active bakery frontage to Parramatta Road the proposal will maximise public transport patronage and encourage additional pedestrian and cycle trips to and from the site. The proposal also achieves this objective by providing for only one on-site parking space for commercial GFA, 3 bicycle spaces and 1 motorcycle space, thereby incentivising pedestrian trips over private vehicles.

- ***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 6-room boarding house is provided above an active retail frontage to Parramatta Road. The scale of the operations are compatible and capable of being accommodated wholly within the confines of the site without adversely affecting the surrounding area. The density of development is of a type and scale which is commensurate with the accessibility and function of the mixed use strip fronting Parramatta Road in proximity to Norton Street.

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- **To provide for spaces, at street level, which are of a size and configuration suitable for land uses which generate active street-fronts.**

The proposed lower ground level bakery space is sufficient to support a sizeable local operation with expansive preparation, cold and hot stores and in-house dining space. The bakery maintains the sites' current active frontage to Parramatta Road which will help rejuvenate the quality of the streetscape in this location once building works are completed and boarding rooms are occupied.

- **To constrain parking and reduce car use.**

As above, only the single on-site parking space is proposed to be retained for commercial use thus ensuring independent car use is reduced.

8.0 Other Matters For Consideration

Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl. 64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the ALEP.

The Court has power to grant development consent to the proposed development even though it contravenes the FSR development standard, without obtaining or assuming the concurrence of the Secretary by reason of s39(6) of the *Land and Environment Court Act 1979* (the Court Act).

Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that in deciding whether to grant concurrence, the Secretary must consider:

- whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- the public benefit of maintaining the development standard, and*
- any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The proposed contravention of the FSR development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development for this particular site. It is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;
- As indicated in Section 7 and Section 8, the proposed contravention of the development standard is considered to be in the public interest because it is

Clause 4.6 Variation to FSR – September 2021
552 Parramatta Road, Petersham
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ground level bakery and 6-room new generation boarding house above



consistent with the objectives of the zone and the objectives of the development standard.

The proposed development contravenes the FSR development standard under cl4.4 of MLEP 2011 and the FSR control under cl4.4 of the MLEP is a development standard and is not excluded from the application of cl4.6.

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the MLEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to cl4.4 of the MLEP 2011 and is consistent with the relevant objectives of the B2 Local Centre zone and therefore, the proposed development is in the public interest;
- Notwithstanding the contravention of the development standard, the proposed development will not result in adverse environmental harm in that the amenity of neighbouring properties and the surrounding area will be reasonably maintained.

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the **FSR** development standard, including:

- The GFA proposed is located over the existing building footprint of the existing building. The additional GFA is capable of being accommodated within the existing building footprint and is justified as it will not contribute to the creation of any additional, potentially inappropriate bulk, scale or perception of increased density.
- The building height of the development at 10.59m is well short of the maximum permitted under Cl.4.3 of MLEP at 14m. A 14m height control facilitates 4 storeys.
- The additional floor space provides for short-term affordable rental housing which is worthy of support in this location and is required within the Inner West LGA as confirmed within Councils housing strategy.
- The site has additional capacity to support the modest breach in FSR given its highly accessible location within walking distance to essential retail and community services, recreational areas and public transport.
- The additional GFA enables a stepped two/three storey building that fits well within the prevailing streetscapes and responds to the existing site layout and constraints.
- Important original features of the buildings' façade are to be maintained and the overall form of the existing building is to be kept intact, ensuring continued consistency with the desired and prevailing building character of the area and important heritage features of the HCA.

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- There are no adverse environmental impacts directly attributable to the additional GFA over the standard. The density proposed is entirely compatible with the site's capacity and location.
- The proposal retains and improves the active street edge to Parramatta Road.
- The mixed-use nature of the development is maintained under this proposal, providing compatible uses which can function harmoniously within the building. The development therefore satisfies the mixed-use objectives of the B2 zone.

A handwritten signature in black ink, appearing to read 'A Martin'.

Andrew Martin *MPIA*
Planning Consultant

Attachment D – Statement of Heritage Significance



8.2.7 Parramatta Road Commercial Precinct Heritage Conservation Area – HCA 5

Section 8.2.7 of this DCP applies to the Parramatta Road Commercial Precinct Heritage Conservation Area (HCA 5) (Figure 1).

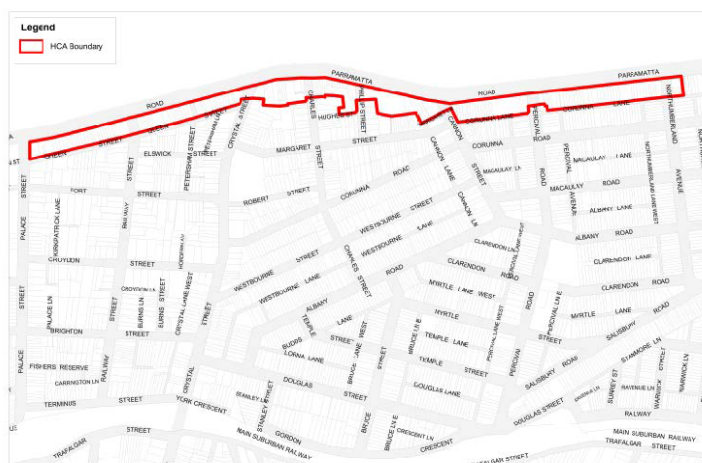


Figure 1: Parramatta Road Commercial Precinct Heritage Conservation Area – HCA 5

8.2.7.1 Statement of heritage significance

The Parramatta Road Commercial Precinct Heritage Conservation Area is of historical significance as it demonstrates the changing role and expectations of retail and commercial development of land adjoining Sydney’s main arterial corridors since Colonial settlement. The HCA includes a variety of retail and commercial built forms, some of which – such as the former drive-under petrol station – are now rare in the Sydney Metropolitan area. Its built form provides evidence of the final subdivision of the South Annandale Estate in 1906 as well as evidence of the effect of later road widening on the built environment.

The aesthetic significance of the Parramatta Road Commercial Precinct HCA is derived from its ability to demonstrate the changing role of retail centres along major arterial roads and the ability of those buildings to adapt to the changing needs and commercial imperatives. The buildings are predominantly representative of the period 1906 to 1940 and include some rare examples of their type. The streetscape of shops has retained its original configuration with individual bays presenting glazed shopfronts with direct access to the public footpath. Upper levels are used for commercial or residential purposes although high levels of traffic noise and pollution have affected the desirability of premises.

8.2.7.2 Summary of core heritage values

- i. The HCA demonstrates a historical continuity of retail and commercial land uses lining one of the most important transport corridors in NSW. Shops and buildings from each major period of retailing have survived and continue to contribute to the aesthetic, historic and social values of the HCA.
- ii. The HCA provides very clearly expressed examples of the retail shopping strip typology through its built form, streetscapes and public domain improvements.

8.2 Heritage Conservation Areas (HCAs) Directions and Controls

Attachment E - Draft conditions of consent in the event of approval by Panel

CONDITIONS OF CONSENT

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
A102 Rev B	Site Plan	20.07.2021	Habitation Design + Interiors
A104 Rev B	Lower Ground Floor Plan	20.07.2021	Habitation Design + Interiors
A105 Rev B	Upper Ground Floor Plan	20.07.2021	Habitation Design + Interiors
A106 Rev B	Level 1 Plan	20.07.2021	Habitation Design + Interiors
A107 Rev B	Roof Plan	20.07.2021	Habitation Design + Interiors
A108 Rev B	Elevations	20.07.2021	Habitation Design + Interiors
A109 Rev B	Section 1	20.07.2021	Habitation Design + Interiors
A110 Rev B	Section 2	20.07.2021	Habitation Design + Interiors
A113 Rev B	Materials and Finishes	20.07.2021	Habitation Design + Interiors
A115 Rev B	Demolition Plan	20.07.2021	Habitation Design + Interiors
-	Plan of Management	September 2021	Applicant
LDA 101, 201 & 301 Rev 1	Landscape Plan	05.09.2021	Studio 151
1233173M	BASIX Certificate	02.09.2021	EPS

As amended by the conditions of consent.

FEES

2. 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:	\$2254.00
Inspection Fee:	\$241.50

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.

3. Section 7.11 (Former Section 94) Contribution

Prior to the issue of a Construction Certificate works written evidence must be provided to the Certifying Authority that a monetary contribution of \$100,000.00 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 11 January 2022.

***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	87,149.32
Community Facilities	11,074.70
Traffic Facilities	-184.81
Plan Administration	1,960.78
TOTAL	100,000.00

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.

4. 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

5. Boundary Alignment Levels

Alignment levels for the site at all pedestrian and vehicular access locations must match the existing back of footpath levels at the boundary.

6. Stormwater Drainage System – Simple

Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, down pipe, pits and pipelines discharged by gravity to the kerb and gutter of a public road. Stormwater runoff from proposed new or altered roof areas may be discharged to the existing site drainage system.

Any existing component of the stormwater system that is to be retained, including any absorption trench or rubble pit drainage system, must be checked and certified by a Licensed Plumber or qualified practising Civil Engineer to be in good condition and operating satisfactorily.

If any component of the existing system is not in good condition and /or not operating satisfactorily and/or impacted by the works and/or legal rights for drainage do not exist, the drainage system must be upgraded to discharge legally by gravity to the kerb and gutter of a public road. Minor roof or paved areas that cannot reasonably be drained by gravity to a public road may be disposed on site subject to ensuring no concentration of flows or nuisance to other properties.

7. Car Parking

The development must provide and maintain within the site:

- a. 1 car parking spaces must be paved and line marked;
- b. 1 off-street motorcycle parking spaces must be provided, paved, line marked and maintained at all times; and
- c. 6 Bicycle storage capacity within the site.

8. Boarding House

The development must provide and maintain:

- a. A minimum of 2 Accessible boarding rooms; and
- b. All rooms within the boarding house must be connected to a centralised electricity, water and gas (if installed) service.

9. Waste Management Plan

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

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. Standard Street Tree Protection

Prior to the commencement of any work, the Certifying Authority must be provided with details of the methods of protection of all street trees adjacent to the site during demolition and construction.

12. 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.

13. Works Outside the Property Boundary

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

14. Hazardous Materials Survey

Prior to any demolition or the issue of a Construction Certificate (whichever occurs first), the Certifying Authority must provide a hazardous materials survey to Council. The survey shall be prepared by a suitably qualified Occupational Hygienist and is to incorporate appropriate hazardous material removal and disposal methods in accordance with the requirements of SafeWork NSW.

A copy of any SafeWork NSW approval documents is to be included as part of the documentation.

PRIOR TO ANY DEMOLITION**15. 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.

16. 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 Certifying Authority must approved by the CTMP prior to the commencement of any works, including demolition. The Certifying Authority must ensure that the CTMP instructs vehicles to use State and Regional and Collector Roads to the maximum extent with the use of Local Roads as final approach to the development site via the most suitable direct route.

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

- a. Description of the demolition, excavation and construction works;
- b. Site plan/s showing the site, roads, footpaths, site access points and vehicular movements;
- c. Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site);
- d. Proposed route(s) from the arterial (state) road network to the site and the proposed route from the site back to the arterial road network;
- e. Impacts of the work and vehicular movements on the road network, traffic and pedestrians and proposed methods to safely manage pedestrians and construction related vehicles in the frontage roadways;
- f. Any Traffic Control Plans (TCP's) proposed to regulate traffic and pedestrian movements for construction activities (such as concrete pours, crane installation/removal etc.);
- g. Proposed hours of construction related activities and vehicular movements to and from the site;
- h. Current/proposed approvals from other Agencies and Authorities (including Roads and Maritime Services, Police and State Transit Authority);
- i. Any activities proposed to be located or impact upon Council's road, footways or any public place;
- j. Measures to maintain public safety and convenience;
- k. Any proposed road and/or footpath closures;
- l. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
- m. Locations of work zones (where it is not possible for loading/unloading to occur on the site) in the frontage roadways accompanied by supporting documentation that such work zones have been approved by the Local Traffic Committee and Council;
- n. Location of any proposed crane and concrete pump and truck standing areas on and off the site (and relevant approvals from Council for plant on road);
- o. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
- p. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected;
- q. On-site parking area for employees, tradespersons and construction vehicles as far as possible;
- r. Proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period; and
- s. How it is proposed to ensure that soil/excavated material is not transported onto surrounding footpaths and roadways.
- t. Swept Paths for the proposed construction vehicles to demonstrate that the needed manoeuvres can be achieved without causing any nuisance.

17. Dilapidation Report

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining properties to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

18. Advising Neighbours 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.

19. Construction Fencing

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

PRIOR TO CONSTRUCTION CERTIFICATE**20. Dilapidation Report – Pre-Development – Minor**

Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site.

21. 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 No. 21MB8974/D01 and 21MB8974/D02 prepared by United Consulting Engineers, Issue "A" and dated 3/9/2021, 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. Pipe and channel drainage systems must be designed to cater for the twenty (20) year Average Recurrence Interval (ARI) storm in the case of low and medium residential developments, the twenty (20) year ARI Storm in the case of high-density residential development and commercial and/or industrial developments and the fifty (50) year ARI Storm in the case of heavy industry. In all cases, the major event surface flow paths must be designed to cater for the one hundred (100) year ARI Storm;
- e. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage;
- f. 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;
- g. 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;
- h. As there is no overland flow/flood path available from the rear and central courtyards to the Parramatta Road and Queen 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.
- i. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas;

- j. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands;
- k. No nuisance or concentration of flows to other properties;
- l. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- m. 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;
- n. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- o. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- p. 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;
- q. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;
- r. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;

22. Public Domain Works – Prior to Construction Certificate

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a public domain works design, prepared by a qualified practising Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the *Roads Act 1993* incorporating the following requirements:

- a. The public domain along all frontages of the site inclusive of footpath paving, street trees, street furniture, etc. must be reconstructed and upgraded in accordance with the Street Tree Master plan and the Marrickville Public Domain Design Guide or scheme;
- b. The re-construction of light duty vehicular crossings to the vehicular access locations in Queen Street;
- c. Cross sections are to be provided at the boundary at a minimum distance of every 5m and at all pedestrian and vehicular access locations. Note, the cross fall of the footpath must be set at 2.5%. These sections will set the alignment levels at the boundary.
- d. All works must be completed prior to the issue of an Occupation Certificate.

23. 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.

24. 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

25. Acoustic Report – Aircraft Noise

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

26. 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.

27. Food Premises – Additional Sinks and Hand Wash Basins

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended scale plans confirming the position of all sinks and hand wash basins within the food premises in accordance with Australian Standard AS 4674 – 2004 (Design, construction and fit-out of food premises) and Australia and New Zealand Food Standards Code.

28. Food Premises – Odour Emission Control

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with details demonstrating that emission control equipment has been provided in the mechanical exhaust system that effectively minimises the emission of odours, vapours and oils.

29. Noise General – Acoustic Report

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an acoustic report demonstrating that noise and vibration from the operation of the premises will satisfy the relevant provisions of the *Protection of the Environment Operations Act 1997* and Regulations and relevant state and local policies and guidelines. The acoustic report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.

30. Shared Accommodation / Boarding House – Plan Of Management

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Plan of Management demonstrating compliance with operation and maintenance standards set out in the *Local Government (General) Regulation 2005*.

DURING DEMOLITION AND CONSTRUCTION

31. 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.

32. Survey Prior to Footings

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

33. Contamination – New Evidence

Any new information revealed during demolition, remediation or construction works that have the potential to alter previous conclusions about site contamination must be immediately notified to the Council and the Certifying Authority.

PRIOR TO OCCUPATION CERTIFICATE

34. Public Domain Works

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

- a. Light/Heavy duty concrete vehicle crossing(s) at the vehicular access location(s);
- b. The redundant vehicular crossing to the site must be removed and replaced by kerb and gutter and footpath. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb must also be in stone;
- c. The existing concrete footpath across the frontage of the site must be reconstructed; and
- d. Other works subject to the *Roads Act 1993* approval.

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

35. 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.

36. Whiteway Lighting - Existing

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that the Whiteway lighting scheme and any existing meter box being maintained and any defects (including the need to install a "special small service") in the system are repaired.

37. Parking Signoff – Minor Developments

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

38. 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 who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that:

- a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and

39. Aircraft Noise –Alterations and Additions

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

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

40. 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.

41. 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*.

42. Noise – Acoustic Report

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an acoustic report prepared by suitably qualified acoustic consultant which demonstrates and certifies that noise and vibration emissions from the development comply with the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority's Noise Policy for Industry and Noise Control Manual and conditions of Council's approval, including any recommendations of the acoustic report referenced in the conditions of the approval. The acoustic report is to be prepared by a suitably qualified and

experienced acoustic consultant and any recommendations must be consistent with the approved plans.

43. 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 2021-2015: Acoustics - Aircraft noise intrusion - Building siting and construction; and
- d. conditions of development consent.

ON-GOING

44. Documentation of Businesses Waste Services

All businesses must have written evidence of all valid and current contracts and/ or tip dockets for the disposal and/ or processing of all waste streams generated from the site.

45. Commercial Bin and Re-usable Item Storage

All commercial bins and re-usable items such as pallets, bread crates must be stored on site.

46. Boarding House

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

- a. The use must comply at all times with the Plan of Management as amended by the conditions in this Determination;
- b. A copy of the Plan of Management and House Rules must be annexed to each and every tenancy/occupation agreement for a room;
- c. A copy of the approved Plan of Management and House Rules must be clearly displayed within every common room in the building at all times;
- d. The Plan of Management must not be amended without the prior consent of Council and must be made available to Council officers and the Police upon request;
- e. All tenancy/occupation agreements for rooms within the premises must be for a minimum period of three (3) months;
- f. The premises must be used exclusively as a boarding house containing a maximum total of 6 lodger's rooms with not more than 12 adult lodgers residing in the premises at any one time;
- g. Not more than 2 lodgers must occupy each boarding room;
- h. The premises must not be adapted for use as backpacker's accommodation, serviced apartments or a residential flat building;
- i. All common rooms/areas and recreation rooms/areas must be maintained at all times for the use of the lodgers; and
- j. Each self-contained room and shared kitchen must be fitted out with washing up facilities, a cooktop, oven, fridge and storage space with such utilities being maintained in working order at all times.

47. Noise General

The proposed use of the premises and the operation of all plant and equipment must not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations, NSW EPA Noise Policy for Industry and NSW EPA Noise Guide for Local Government.

48. Commercial Waste/Recycling Collection

The collection of waste and recycling must only occur between 7:00am and 8:00pm weekdays and 9:00am and 5:00pm weekends and public holidays, to avoid noise disruption on the surrounding area.

Garbage and recycling must not be placed on the street for collection more than one (1) hour before the scheduled collection time. Garbage bins and containers are to be removed from the street within one (1) hour after collection.

ADVISORY NOTES**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.

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.

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.

Dividing Fences Act

The person acting on this consent must comply with the requirements of the *Dividing Fences Act 1991* in respect to the alterations and additions to the boundary fences.

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 Statement for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Statement must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

Boarding House – Registration with Fair Trading

Boarding houses with two or more residents who have additional needs or five or more residents who do not have additional needs are required to register with the Department of Fair Trading.

Construction of Vehicular Crossing

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

Lead-based Paint

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

Dial before you dig

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

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
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 Payments 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 - SITA Environmental Solutions	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.

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.

Street Numbering

If any new street numbers or change to street numbers (this includes unit and shop numbers) are required, a separate application must be lodged with and approved by Council's GIS Team before being displayed.

Health Premises Registration – Generic

The premises are required to be registered with Council's Environment Health Team in accordance with the following relevant legislation:

- Food Shop - Food Act 2003;*
- Hairdressing Salon / Barber - Public Health Act 2010 and the Local Government (General) Regulation 2005;*
- Skin Penetration - Public Health Regulation 2012;*
- Cooling Tower / Warm Water System - Public Health Act 2010 and Public Health Regulation 2012; and*

- e. Boarding House / Shared Accommodation - *Boarding Houses Act 2012* and the *Local Government (General) Regulation 2005*.

Food Premises Waste Storage Area

To ensure adequate storage and collection of waste from the food premises, all garbage and recyclable materials must be stored in a designated waste storage area. The designated waste storage area must be designed and constructed in accordance with the Australian Standard AS 4674 – 2004 (Design, construction and fit-out of food premises) and Australia and New Zealand Food Standards Code.

Mechanical Ventilation System Certification

The mechanical ventilation systems are to be designed, constructed and operated in accordance with the following:

- a. Australian Standard AS 1668 Part 1 – 1998;
- b. Australian Standard AS 1668 Part 2 – 2012;
- c. Australian Standard 3666.1 – 2011;
- d. Australian Standard 3666.2 – 2011; and
- e. Australian Standard 3666.3 - 2011.

The system must be located in accordance with the approved plans and/or within the building envelope, design and form of the approved building. Any modifications to the approved plans required to house the system must be the subject of further approval from Council.

Storage of Hazardous and Dangerous Goods

Dangerous and hazardous goods must be stored in accordance with NSW WorkCover requirements and AS1940-2004, The Storage and Handling of Flammable and Combustible Liquids.