




	
DEVELOPMENT ASSESSMENT REPORT	
<b>Application No.</b>	DA/2023/0322
<b>Address</b>	47 Darling Street BALMAIN EAST NSW 2041
<b>Proposal</b>	Alterations and additions of an existing 2 storey terrace including the addition of a third level with deck, reconfiguration of external windows and internal renovation of the existing house.
<b>Date of Lodgement</b>	15 May 2023
<b>Applicant</b>	Emily Sunman
<b>Owner</b>	Ms Emily J Peters
<b>Number of Submissions</b>	6
<b>Value of works</b>	\$1,295,250.00
<b>Reason for determination at Planning Panel</b>	Section 4.6 variation exceeds 10% (FSR/landscaping)
<b>Main Issues</b>	Heritage impacts, FSR breach
<b>Recommendation</b>	Approved with Conditions
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Section 4.6 Exception to Development Standards
<b>Attachment D</b>	Heritage Impact Statement
	
LOCALITY MAP	
<b>Subject Site</b> 	<b>Objectors</b> 
<b>Notified Area</b> 	<b>Supporters</b> 

## 1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to an existing two storey terrace including the addition of a third level with deck, reconfiguration of external windows and internal renovation of the existing house at 47 Darling Street, Balmain East.

The application was notified to surrounding properties and 6 submissions were received in response to the notification.

The main issues that have arisen from the application include:

- Heritage impacts
- Amenity (views/privacy) impacts
- FSR breach
- Landscaping breach

Amended plans were submitted during the assessment of the application in response to a request from Council, which are the subject of this assessment report. Subject to recommended design change conditions in relation to the proposed roof terrace and skillion dormer, the non-compliances are considered acceptable. Therefore, the application is recommended for approval.

## 2. Proposal

The proposal seeks approval for alterations and additions to an existing two storey semi-detached dwelling, with the proposed works including:

- Partial demolition of the existing dwelling, including various internal walls and the openings to the rear courtyard;
- Internal layout changes, with kitchen/dining room swapped with sitting room, refurbished WC, enlarged bathroom and new ensuite at first floor;
- Construction of skillion dormer window, with roof terrace, at the second floor level. The attic comprises a bedroom, ensuite and walk in robe;
- External landscaping works within existing courtyard, to widen the strip of boundary landscaping.

## 3. Site Description

The subject site is located on the northern side of Darling Street, between Nicholson Street and Gallimore Avenue. The site consists of a generally rectangular shaped allotment with a total area of 156.8sqm and is legally described as 47 Darling Street Balmain East NSW 2041 (Lot 1 in DP 572843). The site has a frontage to Darling Street of 7.12 metres.

The site supports a two storey semi-detached dwelling, which is a pair with No. 45 Darling Street. The adjoining property No. 45 Darling Street supports a dwelling of a similar appearance and scale. Other surrounding properties are generally between two and three storeys and are dominated by residential uses.

The property is located within the Balmain East Heritage Conservation Area and is in close proximity to several items of local heritage significance.



Figure 2: IWLEP Zoning Map – Subject Site outlined in red (Source: Intramaps 2023)

DISCLAIMER: This map has been compiled from various sources and the publisher and/or contributors accept no responsibility for any injury, loss or damage arising from its use or errors or omissions therein. While all care is taken to ensure a high degree of accuracy users are invited to notify any map discrepancies.

**INNER WEST**

## 4. Background

### 4(a) Site history

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

#### Subject Site

Application	Proposal	Decision & Date
TREE/2022/0420	Tree approval application (default category)	Approved 10/05/2022
D/2009/300	Alterations and additions to an existing dwelling, comprising an attic level addition with rear balcony.	Approved 01/12/2009 (subject to deletion of balcony)
M/2007/336	Section 96 modification of development consent D/2006/331 which approved alterations and additions to existing dwelling to erect new attic level bedroom and ensuite and demolition of the rear chimney. Modification of first floor windows to rear of property.	Approved 12/02/2008
D/2006/331	Alterations and additions to existing dwelling to erect new attic level bedroom and ensuite and demolition of the rear chimney	Approved 15/05/2007

It is noted that the approved Development Application on the subject site (D/2009/300) was for a similar attic addition, with a deck. This application was approved subject to design change conditions, namely Condition 2(d) which required deletion of the deck off the attic (see Figure 3 on the following page).

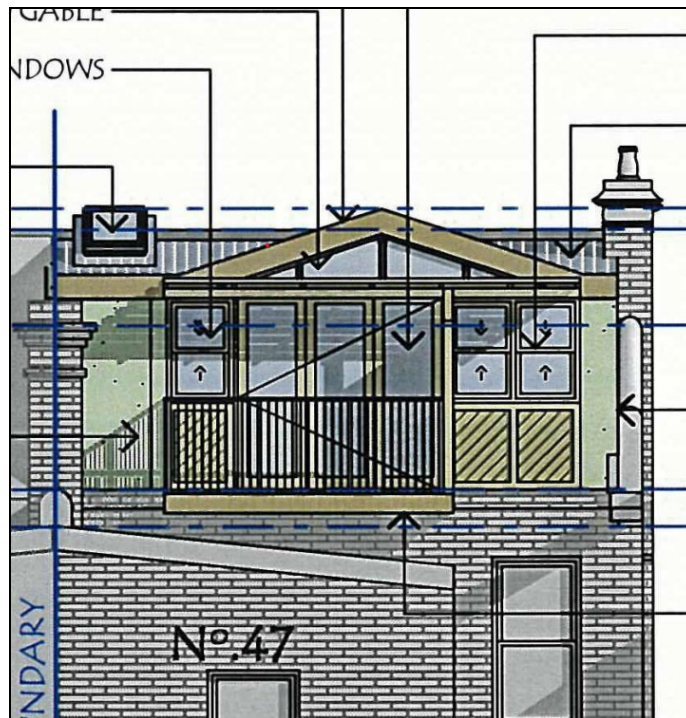


Figure 3: Rear Elevation of 47 Darling Street, as per D/2009/300  
(subject to deletion of deck)

### Surrounding properties

#### No. 49 Darling Street

Application	Proposal	Decision & Date
D/2018/515	Alterations and additions to existing two storey mixed use building, including renovation of first floor dwelling and a new second floor including a lift.	Refused (LPP) 11/12/2018

### 4(b) Application history

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

Date	Discussion / Letter / Additional Information
07/06/2023	A Request for Information letter was issued to the applicant.
04/07/2023	The applicant provided a response to the request for additional information.
24/07/2023	An email was sent to the applicant, requesting a Clause 4.6 Variation to address the Landscaped Area breach.
27/07/2023	The applicant provided amended plans.

The matters within the Request for Information letter and the applicant's actions are summarised below:

**Item 1:** Amended shadow diagrams required

**Applicant Response:** Provided.

**Item 2:** BASIX Certificate invalid

**Applicant Response:** Provided.

**Item 3:** Heritage impacts, requiring the following design amendments:

- Deletion of the proposed deck from Bedroom 1
- Skillion dormer to be redesigned as follows:
  - Set a minimum 300mm below the ridgeline;
  - Set a minimum of 500mm from the side walls and chimneys; and
  - Set a minimum of 200mm up from the rear wall plate.
- Finishes and materials schedule to be updated as follows:
  - Metal cladding proposed to the dormer window must be replaced with timber weatherboards or FC sheeting.
  - Greys and blacks are not acceptable and must be avoided. Light, warm, earthy, tones are to be used.
  - A pre-coloured traditional corrugated steel shall be used for the roofing, finished in a colour equivalent to Colorbond colours “Windspray” or “Wallaby”.

**Applicant Response:** Design amended as follows:

- Dormer cladding replaced with FC sheet, roofing shown as Colorbond ‘Windspray’, black paint substituted with warm earthy tones.
- Dormer has been set 500mm from the side walls/chimneys, 200mm from rear wall plane.
- Proposed deck off dormer window has not been deleted or altered from the initially lodged design.

**Item 4:** Amended Clause 4.6 FSR required

**Applicant Response:** Provided.

## 5. Assessment

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

### 5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *Inner West Local Environmental Plan (IWLEP) 2022*

#### 5(a)(i) *State Environmental Planning Policy (Resilience and Hazards) 2021*

##### Chapter 4 Remediation of land

Section 4.6 (1) of the SEPP requires the consent authority not consent to the carrying out of any development on land unless:

“(a) it has considered whether the land is contaminated, and  
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and

*(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.”*

In considering the above, there is no evidence of contamination on the site.

There is also no indication of uses listed in Table 1 of the contaminated land planning guidelines within Council's records. The land will be suitable for the proposed use as there is no indication of contamination.

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

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

**5(a)(iii) State Environmental Planning Policy (Biodiversity and Conservation) 2021**

**Chapter 6 Water Catchments**

The subject site is located within the Sydney Harbour Catchment. Section 6.6 under Part 6.2 of the SEPP provides matters for consideration which apply to the subject development proposal. The proposal is acceptable in relation to these matters.

**5(a)(iv) Inner West Local Environmental Plan 2022 (IWLEP 2022)**

The application was assessed against the following relevant sections of the *Inner West Local Environmental Plan 2022*:

- Section 1.2 - Aims of Plan
- Section 2.3 - Land Use Table and Zone Objectives
- Section 2.7 – Demolition requires development consent
- Section 4.3C – Landscaped areas for residential accommodation in Zone R1
- Section 4.4 – Floor space ratio
- Section 4.5 – Calculation of floor space ratio and site area
- Section 4.6 – Exceptions to development standards
- Section 5.10 – Heritage conservation
- Section 6.1 – Acid sulfate soils
- Section 6.2 – Earthworks
- Section 6.3 – Stormwater management

**Section 2.3 Land Use Table and Zone Objectives**

The subject site is zoned R1 General Residential. The objectives of the R1 General Residential Zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

- *To provide residential development that maintains the character of built and natural features in the surrounding area.*

The proposal is consistent with the objectives of the zone, as follows:

- The proposal will provide an additional bedroom, which will provide for the housing needs of the community.
- The alterations and additions to the existing dwelling will provide a four bedroom house, which will support a variety of housing types within the zone.
- The proposed development generally maintains the character of the built and natural features of the surrounding area. A redesign of the proposed roof terrace off the dormer window is recommended by way of condition of consent, to ensure that the proposed development minimises impacts on the rear roof plane and amenity impacts.

#### Section 4 Principal Development Standards

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

Standard	Proposal	Non compliance	Complies
<b>Floor Space Ratio</b> Maximum permissible: 0.9:1 or 141.12sqm	1.05:1 or 166 sqm	24.88 sqm or 17%	No
<b>Landscape Area</b> Minimum permissible: 15% or 23.52 sqm	Existing: 0% or 0sqm Proposed: 9.8% or 15.4sqm	8.12sqm or 34%	No
<b>Site Coverage</b> Maximum permissible: 60% or 94.08 sqm	59% or 93.1sqm	N/A	Yes

#### Section 4.6 Exceptions to Development Standards

As outlined in table above, the applicant seeks a variation to the FSR development standard under Section 4.4 of the *IWLEP 2022* by 32% or 28.1sqm. The applicant also seeks a variation to the landscape area development standard under Section 4.3C of the *IWLEP 2022* by 34% or 8.12sqm.

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

Each request will be considered separately below.

#### **Clause 4.4: Floor Space Ratio**

A written request has been submitted to Council in accordance with Section 4.6(4)(a)(i) of the *IWLEP 2022* justifying the proposed contravention of the development standard by 32% or 28.1sqm which is summarised as follows:

- Compliance is unreasonable and unnecessary as the proposed building bulk is an appropriate form and scale and is compatible with surrounding development and the desired future character for the locality.
- The proposal represents a sympathetic addition to the existing building. The front of the dwelling is retained and the works are located to the rear of the site, subservient to the form of the existing dwelling.

- The FSR non-compliance will not be visible from the streetscape and will be indiscernible from surrounding properties.
- The proposed rear dormer is compatible in scale with the existing dwelling.
- The proposal will retain the existing landscaped front garden area.
- The proposal has articulated facades to avoid a bulky appearance.
- The exceedance of the FSR control results from the proposed attic level and associated dormer window. This structure will not create additional bulk that results in unreasonable amenity impacts.
- There are sufficient environmental planning grounds in that the proposed FSR can be achieved without adverse impacts on amenity for adjoining properties and will provide a consistent scale with surrounding developments. The FSR non-compliance will not be visible from the streetscape.

The applicant's written rational adequately demonstrates compliance with the development standard is unreasonable in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is in the public interest because it is consistent with the objectives of the R1 zone, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

*Objective:* To provide for the housing needs of the community.

**Response:** The proposal will provide an additional bedroom at the second floor level and extended ground level living areas. These changes to the existing building will provide for the housing needs of the community.

*Objective:* To enable other land uses that provide facilities or services to meet the day to day needs of residents.

**Response:** N/A

*Objective:* To provide for a variety of housing types and densities.

**Response:** The proposal will provide an additional bedroom to the existing dwelling house, with a similar to existing external bulk. The proposed alterations and additions will continue to provide for an appropriate housing density within the context.

*Objective:* To provide residential development that maintains the character of built and natural features in the surrounding area.

**Response:** The proposal will continue to provide a residential use, with the extensions to the existing dwelling generally not discernible from the public domain. The proposal will also increase on-site landscaping. The proposed development maintains the character of the built and natural features of the surrounding area.

It is also considered the development is in the public interest because it is consistent with the objectives of the FSR development standard, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022* for the following reasons:

*Objective (a):* To establish a maximum floor space ratio to enable appropriate development density.

**Response:** The proposed additions have been sited to the rear of the existing dwelling, which maintains the existing bulk and scale when viewed from Darling Street. The proposal will also retain a similar visual bulk when viewed from Nicholson Street. Additional bulk when

viewed from neighbouring properties has been minimised, ensuring the proposal retains an appropriate density.

*Objective (b): To ensure development density reflects its locality.*

**Response:** Notwithstanding the proposed increase in FSR, the proposal will maintain the existing two storey appearance to Darling Street, with a two storey rear extension. The proposal remains a development density that reflects its locality.

*Objective (c): To provide an appropriate transition between development of different densities.*

**Response:** The subject site is zoned R1 General Residential and adjoins the E1 Local Centre zone. The proposal will maintain a similar external envelope to the existing dwelling and will continue to provide an appropriate transition between development of different densities.

*Objective (d): To minimise adverse impacts on local amenity.*

**Response:** Local amenity comprises visual and acoustic privacy, views and solar access. Though the proposal minimises adverse impacts on solar access, the proposed dormer window and roof terrace will result in adverse impacts on visual privacy and views, particularly for the neighbouring property at No. 49 Darling Street. To alleviate impacts on the heritage contribution of the subject property to the Balmain East HCA, a separate design change condition is recommended to reduce the extent of the roof terrace, in turn minimising adverse impacts on local amenity while maintaining the proposed FSR.

*Objective (e): To increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.*

**Response:** The proposal will increase on-site landscaping, expanding the size of the existing garden bed within the existing courtyard, which will support improved canopy cover and the use and enjoyment of the courtyard space.

The concurrence of the Planning Secretary may be assumed for matters dealt with by the Local Planning Panel. The proposal thereby accords with the objective in Section 4.6(1)(b) and requirements of Section 4.6(3)(b) of the *IWLEP 2022*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the FSR development standard and it is recommended the Section 4.6 exception be granted.

The proposal thereby accords with the objective in Section 4.6(1)(b) and requirements of Section 4.6(3)(b) of the *Inner West Local Environmental Plan 2022*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from FSR development standard and it is recommended the Section 4.6 exception be granted.

## **Landscape Area**

In consideration of the existing site conditions, there is currently 0sqm of landscaping when considering the requirements of Section 4.3C of the *IWLEP*. The submitted design seeks to widen the existing garden bed along the western side boundary, resulting in 15.4sqm of landscape area.

A written request has been submitted to Council in accordance with Section 4.6(4)(a)(i) of the *IWLEP 2022* justifying the proposed contravention of the development standard by 34 or 8.12sqm which is summarised as follows:

- The proposal allows for adequate landscaped area on the site. The proposed landscaped area provides sufficient open space for recreation use, adequate deep soil area to support the planting of mature trees and considerable opportunities for onsite stormwater retention.
- The proposal will increase the existing landscaped area on the site.
- The proposal does not include tree removal.
- The proposal has a consistent footprint with neighbouring development.
- The proposal will provide a suitable design and of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act.

The applicant's written rational adequately demonstrates compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is in the public interest because it is consistent with the objectives of the R1 zone, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022*, inter alia:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide residential development that maintains the character of built and natural features in the surrounding area.*
- The proposal will continue to provide for the housing needs of the community as a dwelling house.
- The proposed development will increase the number of bedrooms within the dwelling, which will provide for a variety of housing types and densities.
- The proposed development has been designed to minimise visibility of the proposed additions from the public domain, while increasing the provision of on-site landscaping within the rear courtyard. This ensures that the proposed development maintains the character of the built environment and natural features within the locality.

It is considered the development is in the public interest because it is consistent with the objectives of the Landscape Area development standard, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022*, inter alia:

- (a) *to provide landscaped areas for substantial tree planting and for the use and enjoyment of residents,*
- (b) *to maintain and encourage a landscaped corridor between adjoining properties,*
- (c) *to ensure that development promotes the desired character of the neighbourhood,*
- (d) *to encourage ecologically sustainable development,*
- (e) *to control site density,*
- (f) *to provide for landscaped areas and private open space.*

- The proposal will increase the width of existing garden beds on the site, which will be capable of supporting additional tree planting;
- The proposal will improve the existing landscape corridor between properties;
- The proposed development will maintain a similar to existing external appearance, which promotes the desired future character of the neighbourhood;
- The proposal encourages ecologically sustainable development through the provision of additional landscaping;
- The proposal is of an appropriate site density and complies with site coverage;
- The proposal will maintain ample private open space.

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

The proposal thereby accords with the objective in Section 4.6(1)(b) and requirements of Section 4.6(3)(b) of the *IWLEP 2022*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from landscape area and it is recommended the Section 4.6 exception be granted.

#### Section 5 Miscellaneous Provisions: Section 5.10 Heritage Conservation

The subject site is a contributory building within the Balmain East Heritage Conservation Area (HCA) pursuant to Schedule 2 of the *IWLEP*. The proposal has been considered by Council's heritage advisor, who indicated the proposal to be acceptable, subject to several design amendments which were requested as part of a Request for Information (see section 2 for further explanation). These included changes to the dormer, deck, openings and finishes and materials schedule.

The amended design has generally responded to the comments of Council's heritage advisor, though the design of the dormer has remained largely unchanged. The applicant has provided further modelling of the proposed dormer, to demonstrate visibility from Nicholson Street. Given the existing rear terrace structure on No. 49 Darling Street, only glimpses of the dormer are available from the public domain, minimising potential adverse heritage impacts on the HCA and surrounding items.

Based on this, the amended design is considered to preserve the heritage significance of the Balmain East HCA and the Inner West more broadly.

#### 5(d) Development Control Plans

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

<b>LDCP2013</b>	<b>Compliance</b>
<b>Part A: Introductions</b>	
Section 3 – Notification of Applications	Yes
<b>Part B: Connections</b>	
B1.1 Connections – Objectives	Yes
B2.1 Planning for Active Living	Yes

B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
<b>Part C</b>	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	N/A
C1.3 Alterations and additions	Yes
C1.4 Heritage Conservation Areas and Heritage Items	Yes – see discussion in previous section
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	N/A
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	N/A
C1.12 Landscaping	Yes
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	Yes
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	N/A
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	N/A
<b>Part C: Place – Section 2 Urban Character</b>	
C2.2.2.1 Darling Street Distinctive Neighbourhood	Yes – see discussion
C2.2.2.1(c) Darling Street East Sub Area	
<b>Part C: Place – Section 3 – Residential Provisions</b>	
C3.1 Residential General Provisions	Yes (subject to recommended conditions)
C3.2 Site Layout and Building Design	Yes
C3.3 Elevation and Materials	Yes
C3.4 Dormer Windows	Yes
C3.5 Front Gardens and Dwelling Entries	Yes
C3.6 Fences	Yes
C3.7 Environmental Performance	Yes
C3.8 Private Open Space	Yes
C3.9 Solar Access	Yes
C3.10 Views	No – see discussion
C3.11 Visual Privacy	No – see discussion
C3.12 Acoustic Privacy	Yes
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A

<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	N/A
<b>Part D: Energy</b>	
Section 1 – Energy Management	
Section 2 – Resource Recovery and Waste Management	
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.3 Residential Development	Yes
D2.4 Non-Residential Development	N/A
D2.5 Mixed Use Development	N/A
<b>Part E: Water</b>	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	N/A
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	N/A
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	N/A
E1.2.4 Stormwater Treatment	N/A
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	N/A
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	N/A
E1.3.2 Foreshore Risk Management	N/A
<b>Part F: Food</b>	N/A
<b>Part G: Site Specific Controls</b>	N/A

The following provides discussion of the relevant issues:

#### Darling Street East Sub Area

The subject site is located within the Darling Street East Sub Area, as within the Darling Street Distinctive Neighbourhood, as such the controls under Section C2.2.2.1(c) apply to the proposed development. The proposed design does not comply with Control C13, inter alia:

*C13 Preserve the view lines to the water along the eastern end of Darling Street.*

Design change conditions are recommended, to amend the proposed roof terrace. This is further discussed below.

#### Visual Privacy

Section C3.11 of the LDCP contains provisions relating to visual privacy. Given the location and scale of the proposed terrace off bedroom 1, Control C4 applies to the proposal and indicates roof terraces will be considered where they do not result in adverse privacy

impacts to surrounding properties. As previously indicated, the proposed terrace will result in sightlines across the western side boundary to the neighbouring dwelling at No. 49 Darling Street. This includes sightlines to the living room/kitchen of that property, within 6m (see Figure 4).

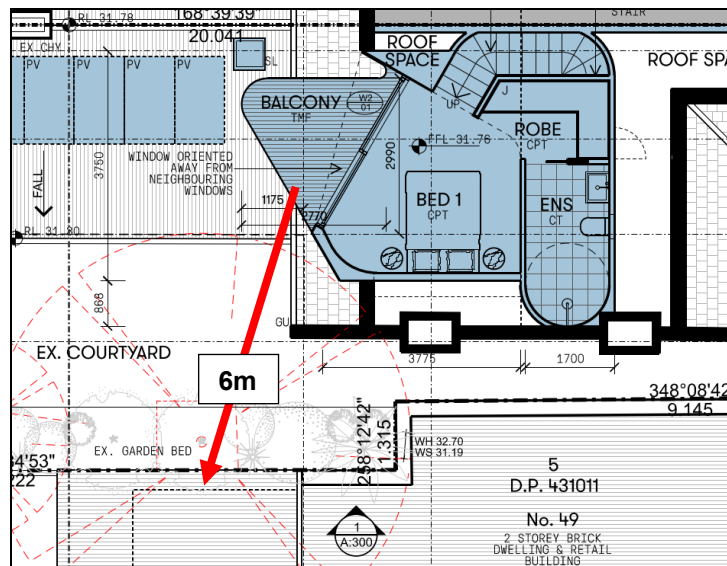


Figure 4: Sightlines from proposed terrace to No. 49 Darling Street

As the proposed roof terrace will result in adverse privacy impacts to No. 49 Darling Street, the proposed design is not an acceptable amenity outcome. Furthermore, it is noted that the terrace does not comply with the maximum depth and width requirements of Control C9. Were a privacy screen to be erected at the western elevation, this would result in iconic view loss and is therefore not acceptable to ameliorate the privacy impact.

A design change condition is recommended to reduce the depth of the balcony, limiting potential sightlines to the living areas of No. 49 Darling Street (see Figure 5). This would still allow a modest balcony off bedroom 1.

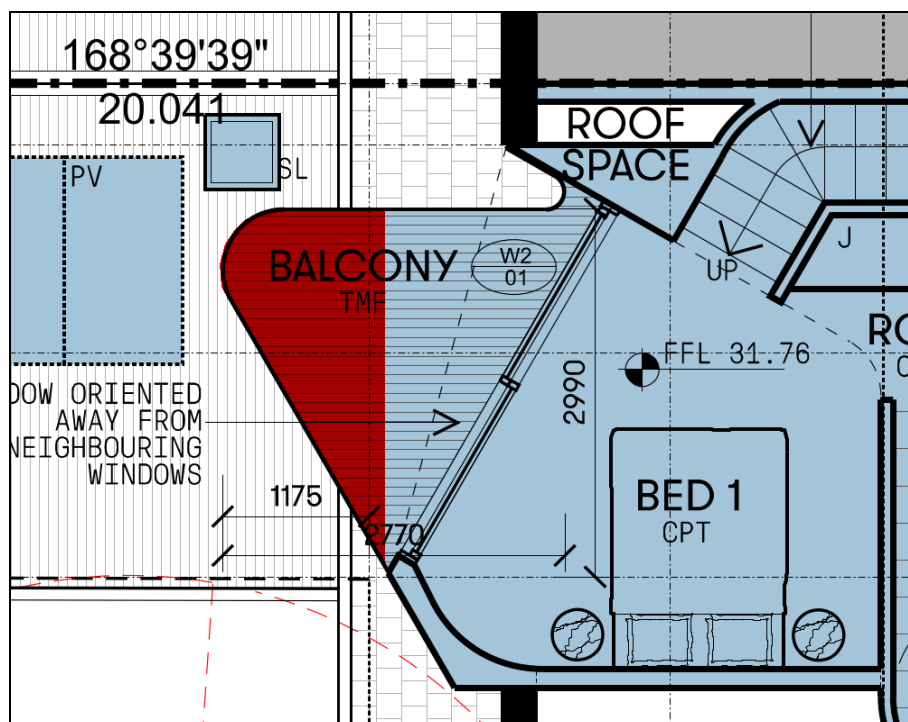


Figure 5: Proposed roof terrace with recommended condition of consent reduction in red

### Views

Section C3.10 of the LDCP contains provisions relating to views and given the extent of views available from surrounding properties, is applicable in this instance. The applicant has submitted a view study prepared utilising photographs taken by Council, from the neighbouring property No. 49 Darling Street. Council considers the Tenacity Planning Principle (Tenacity Consulting v Warringah Council [2004] NSWLEC 140) steps in its assessment of reasonable view sharing. A view sharing assessment under *Tenacity* is undertaken as follows:

#### **Step 1: Assessment of the views to be affected**

The views from No. 49 Darling Street include:

- Iconic Sydney Harbour Bridge views, including roadway accessing bridge from the south. This view is partially obscured by existing chimney on subject site and distant trees;
- Panoramic water and land water interface views of Sydney Harbour;
- Views of North Sydney CBD skyline; and
- Glimpses of Sydney CBD skyline.

The potentially affected views are those of the Sydney Harbour Bridge and Sydney CBD skyline (see below). These are further considered in the following steps.



Figure 6: View corridor from No. 49 Darling St



Photo 1: Existing view from No. 49 Terrace, standing



Photo 2: Proposed view from No. 49 Terrace, standing



Photo 3: Existing view from No. 49 Kitchen, standing



Photo 4: Proposed view from No. 49 Kitchen, standing

**Step 2: Consideration of what part of the property the views are obtained.**

The views in question are available across a side boundary, which are considered more difficult to protect than those available across a front or rear boundary. The views are obtainable from both a standing and seated position.

The Sydney Harbour Bridge views are available from the kitchen and rear terrace of No. 49 Darling Street, at the east elevation of the corner property. The views are available from the first floor only. Glimpses of the CBD skyline are available from the rear terrace only, over the front roof plane of the subject site.

**Step 3: Assessment of the extent of the impact.**

As a result of the proposed roof terrace, standing views of part of the southern piers and roadway accessing the Sydney Harbour Bridge will be lost from the kitchen of No. 49 Darling Street. Given the iconic nature of this view and the fact that these views are only obtainable from the kitchen and rear terrace of this property, the nature of the impact is considered severe. There will be no view affectation to the Sydney Harbour Bridge views from the rear terrace.

The proposed dormer window will result in the loss of Sydney CBD skyline glimpses from the rear terrace. Notwithstanding that, given these views are oblique, obtainable across a side boundary and are from an external rear terrace, which is less utilised compared to an internal living area, the view impact is considered moderate.

**Step 4: Assessment of the reasonableness of the proposal that is causing the impact.**

As indicated, the proposed development includes several non-compliances, namely an FSR breach and roof terrace non-compliance. The latter contributes to visual privacy impacts, as well as severe view impacts to the kitchen of No. 49 Darling Street. The design, in its current format, is not considered to be skilful, given a compliant design would not result in the extent of view affectation.

Subject to the recommended design change condition to reduce the depth of the roof terrace, the proposal may be considered a skilful design. This amendment would enable retention of the iconic Sydney Harbour Bridge views.

The proposed dormer results in the loss of the oblique Sydney CBD skyline glimpses from No. 49 Darling Street. The dormer includes floor to ceiling heights of 2.56m, which may be lowered considering the proposed bedroom use. A condition is recommended, to lower the floor to ceiling heights at the dormer to 2.4m. The design is therefore considered skilful given the bulk and scale of the dormer has been appropriately minimised.

Subject to the above, the proposed design is considered skilful and the view sharing outcome acceptable.

**5(e) The Likely Impacts**

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

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

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

**5(g) Any submissions**

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties. 6 submissions were received in response to the notification.

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

- FSR development standard breach – see Section 5(a)(iv)
- Landscaped area development standard breach – see Section 5(a)(iv)
- Heritage – see Section 5 (a)(iv)
- View impacts – see Section 5(d)

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

Issue: Privacy implications from the proposed dormer/deck to the POS surrounding properties.

Comment: Privacy impacts from the proposed roof terrace to the POS of No. 49 Darling Street have been considered at Section 5(d). Due to the existing rear extension on the subject site and scale of development on surrounding properties, there are no further visual privacy impacts from the proposed roof terrace/dormer.

Issue: Dormer width exceeding 25% of the roof width.

Comment: The DCP provision in question generally relates to gable ended dormer windows, while the proposal is for a skillion roofed dormer to the rear roof plane. The proposed dormer is of an acceptable width.

Issue: Shadow impacts on No. 5A Lookes Avenue inconclusive.

Comment: The submitted shadow diagrams indicate no impact from the proposal to No. 5A Lookes Avenue, due to the relative north location of that property.

Issue: What acoustic assessment has been undertaken for proposed third storey?

Comment: The acoustic privacy impacts of the proposal are considered against Section C3.12 of the LDCP. The proposed dormer and terrace addition will include a bedroom with walk in wardrobe and ensuite, which are less utilised compared to living areas and therefore result in comparatively minor noise generation impacts. The proposal is acceptable from an acoustic privacy perspective.

Issue: Noise from proposed bathroom to adjoining dwelling.

Comment: The proposed ensuite at the first floor level, from bedroom 2, has been acceptably located and will not result in unreasonable noise impacts to neighbouring properties.

Issue: Light spill concern from external lighting.

Comment: Given the minor increase of glazed areas proposed and retention of the existing courtyard space, the proposal is not anticipated to result in light spill from external lighting to neighbouring properties.

Issue: Requested Dilapidation Report.

Comment: A standard condition of consent is recommended for dilapidation reports for potentially affected neighbouring properties.

Issue: Precedent

Comment: Concerns that the approval of the development would set an undesirable precedent are noted, however as outlined within this report the proposal is considered acceptable on its merits subject to the design change conditions discussed in the report.

## 5(h) The Public Interest

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

The proposal is not contrary to the public interest.

## 6 Referrals

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

- Development Engineering
- Heritage

## 7. Section 7.12 Levy

Section 7.12 levies are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$12,953.00 would be required for the development under Inner West Infrastructure Contributions Plan 2022. A condition requiring that contribution to be paid is included in the recommendation.

## 8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Inner West Local Environmental Plan 2022* and *Leichhardt Development Control Plan 2013*.

The alterations and additions are generally acceptable with regard to the heritage conservation area and subject to the recommended design changes relating to the reduction in depth of the proposed deck and floor to ceiling heights of the second floor, the development will not result in any significant impacts on the amenity of the adjoining properties and the streetscape and is considered to be in the public interest.

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

## 9. Recommendation

- A. The applicant has made written requests pursuant to Section 4.3C and 4.4 of the *Inner West Local Environmental Plan 2022*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standards is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variations. The proposed development will be in the public interest because the exceedance of the maximum floor space ratio and landscaped area is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2023/0322 for alterations and additions to an existing 2 storey terrace including the addition of a third level with deck, reconfiguration of external windows and internal renovation of the existing house at 47 Darling Street, Balmain East NSW 2041 subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

### 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
Dwg No. 050 Rev B	Demolition Plans	14/06/2023	Luke Moloney Architecture
Dwg No. 100 Rev C	Site / Roof Plan	26/07/2023	Luke Moloney Architecture
Dwg No. 101 Rev C	Ground Floor Plan	26/07/2023	Luke Moloney Architecture
Dwg No. 102 Rev C	First Floor Plan	26/07/2023	Luke Moloney Architecture
Dwg No. 103 Rev C	Loft Floor Plan	26/07/2023	Luke Moloney Architecture
Dwg No. 104 Rev C	Landscape Plan	26/07/2023	Luke Moloney Architecture
Dwg No. 300 Rev B	West Elevation	14/06/2023	Luke Moloney Architecture
Dwg No. 301 Rev B	North & South Elevation	14/06/2023	Luke Moloney Architecture
Dwg No. 302 Rev B	East Elevation	14/06/2023	Luke Moloney Architecture
Dwg No. 303 Rev B	Finishes and Materials	14/06/2023	Luke Moloney Architecture
Dwg No. 400 Rev B	Section AA	14/06/2023	Luke Moloney Architecture
Dwg No. 401 Rev B	Section BB	14/06/2023	Luke Moloney Architecture
Dwg No. 402 Rev B	Section CC	14/06/2023	Luke Moloney Architecture

SWDA 1.2 Rev 1	Stormwater Management Plan & General Notes	11/10/2022	Partridge Hydraulic Services
SWDA 1.3 Rev 1	Erosion & Sediment Control Plan & Details	11/10/2022	Partridge Hydraulic Services
SWDA 1.4 Rev 1	Existing & Proposed Site Plan and Impervious Areas	11/10/2022	Partridge Hydraulic Services
SWDA 1.5 Rev 1	Proposed Stormwater Drainage Ground Floor Layout and Details	11/10/2022	Partridge Hydraulic Services
Certificate No. A472611_03	BASIX Certificate	26/06/2023	Luke Moloney Architecture

As amended by the conditions of consent.

### **DESIGN CHANGE**

#### **2. Design Change**

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

- a. The depth of the proposed terrace on the second (loft) floor, is to be reduced to extend no further than the line of the dormer flank, to minimise adverse amenity impacts to neighbouring properties.
- b. The floor to ceiling heights within the proposed second floor level are to be reduced to a maximum of 2.4m above the Second Floor FFL (RL 31.76) and as such the overall height of the additions are to be reduced to no greater than RL 34.40

### **FEES**

#### **3. Security Deposit - Custom**

Prior to the commencement of demolition works or prior to the issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of

carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit:	\$12,952.50
Inspection Fee:	\$350.00

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

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

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

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

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

#### **4. 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 0.25% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$250,000 or more.

#### **5. Section 7.12 Development Contribution Payments**

In accordance with section 7.12 of the *Environmental Planning and Assessment Act 1979* and the Inner West Local Infrastructure Contribution Plan 2023 (the Plan), a monetary contribution of **\$12,953.00** shall be paid to Council for the purposes of the provision, extension or augmentation of local infrastructure identified in the Plan.

At the time of payment, the monetary contribution payable will be adjusted for inflation in accordance with indexation provisions in the Plan in the following manner:

$C_{\text{payment}} = C_{\text{consent}} \times (CPI_{\text{payment}} \div CPI_{\text{consent}})$

Where:

- $C_{\text{payment}}$  = is the contribution at time of payment
- $C_{\text{consent}}$  = is the contribution at the time of consent, as shown above
- $CPI_{\text{consent}}$  = is the Consumer Price Index (All Groups Index) for Sydney at the date the contribution amount above was calculated being [insert CPI value] for the [insert latest quarter and year].
- $CPI_{\text{payment}}$  = is the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics that applies at the time of payment

Note: The contribution payable will not be less than the contribution specified in this condition.

The monetary contributions must be paid to Council (i) if the development is for subdivision – prior to the issue of the subdivision certificate, or (ii) if the development is for building work – prior to the issue of the first construction certificate, or (iii) if the development involves both subdivision and building work – prior to issue of the subdivision certificate or first construction certificate, whichever occurs first, or (iv) if the development does not require a construction certificate or subdivision certificate – prior to the works commencing.

**It is the professional responsibility of the principal certifying authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.**

Council's Plan may be viewed at [www.innerwest.nsw.gov.au](http://www.innerwest.nsw.gov.au) or during normal business hours at any of Council's customer service centres.

Please contact any of Council's customer service centres on 9592 5000 or [council@innerwest.nsw.gov.au](mailto:council@innerwest.nsw.gov.au) to request an invoice confirming the indexed contribution amount payable. Please allow a minimum of 2 business days for the invoice to be issued.

Once the invoice is obtained, payment can be made via (i) BPAY (preferred), (ii) credit card / debit card (AMEX, Mastercard and Visa only; log on to [www.innerwest.nsw.gov.au/invoice](http://www.innerwest.nsw.gov.au/invoice); please note that a fee of 0.75 per cent applies to credit cards), (iii) in person (at any of Council's customer service centres), or (iv) by mail (make cheque payable to 'Inner West Council' with a copy of your remittance to PO Box 14 Petersham NSW 2049).

The invoice will be valid for 3 months. If the contribution is not paid by this time, please contact Council's customer service centres to obtain an updated invoice. The contribution amount will be adjusted to reflect the latest value of the Consumer Price Index (All Groups Index) for Sydney.

**GENERAL CONDITIONS****6. 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.

**7. 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 (RVMP) in accordance with the relevant Development Control Plan.

**8. 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.

**9. 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.

**10. Works Outside the Property Boundary**

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

**PRIOR TO ANY DEMOLITION****11. 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.

#### **12. 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.

#### **13. 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.

#### **14. 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**

#### **15. 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.

#### **16. 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 Stormwater Drainage Concept plan on Drawing No. SWDA 1.5 version (1) prepared by PARTRIDGE HYDRAULIC SERVICES and dated 4 May 2023, shall be 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; Minor roof and paved areas at the rear of the property that cannot reasonably be drained by gravity to the street may drained to an on-site dispersal system such as an absorption system or otherwise, subject to the roof areas being drained via a suitably sized rainwater tank, no nuisance or concentration of flows to other properties and the feasibility and design of the on-site dispersal system being certified by a suitably qualified and experienced practising Civil and/or Geotechnical Engineer;
- 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 other than to drain downpipes to the rainwater tank(s);
- 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. No nuisance or concentration of flows to other properties;
- i. Drainage pipes must be designed at a minimum grade of 1%. The pipe invert level and finished surface ground level must be shown on the plan.
- j. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system;
- k. 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;
- l. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;

- m. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- n. 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;
- o. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- p. No impact to street tree(s);

#### **17. Party Walls**

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

#### **18. 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.

#### **19. 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*

#### **DURING DEMOLITION AND CONSTRUCTION**

**20. Construction Hours – Class 1 and 10**

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5:00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.

**21. Survey Prior to Footings**

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

**PRIOR TO OCCUPATION CERTIFICATE****22. 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.

**ON-GOING****23. Bin Storage**

All bins are to be stored within the site.

**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 Sections 69-86 of the *Environmental Planning and Assessment Regulations 2021*.

#### **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.

**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*.

**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.

**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 <a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a>
Department of Fair Trading	13 32 20 <a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a> Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 <a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Payments Corporation	131441 <a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Food Authority	1300 552 406 <a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>

NSW Government	<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diysafe.nsw.gov.au">www.diysafe.nsw.gov.au</a> Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 <a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>
Sydney Water	13 20 92 <a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>
Waste Service - SITA Environmental Solutions	1300 651 116 <a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>
Water Efficiency Labelling and Standards (VELS)	<a href="http://www.waterrating.gov.au">www.waterrating.gov.au</a>
WorkCover Authority of NSW	13 10 50 <a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a> 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 10m<sup>2</sup> of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

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

**REASONS FOR REFUSAL**

# Sunman House

0300	Cover Sheet
0301	Site Analysis
0302	Loading Floor Plans
0303	Demolition Plans
0304	Site Plan / Roof Plan
0305	Second Floor Plan
0306	First Floor Plan
0307	Second Floor Plan
0308	Landscape Plan
0309	West Elevation
0310	North & South Elevation
0311	West Elevation
0312	Material Palette
0313	Section 01
0314	Section 02
0315	Section 03
0316	Shadows Barn
0317	Shadows Barn
0318	Shadows Barn
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0398	Shadows Barn
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0400	Shadows Barn

[illegible]






Brick wall  
 Existing wall retained  
 Wall to be demolished






Brick wall  
 Existing wall retained  
 Wall to be demolished






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 Wall to be demolished






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 Wall to be demolished





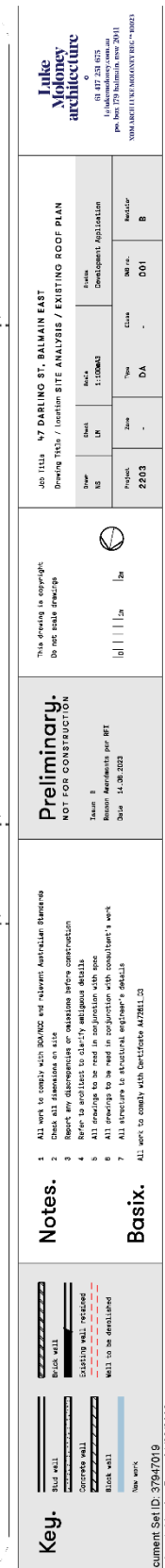
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2	Check all dimensions on site
3	Report any discrepancies or omissions before construction
4	Surve to establish to clarify ambiguous details
5	All drawings to be read in conjunction with spec
6	All drawings to be read in conjunction with consultant's work
7	All structure to structural engineer's details

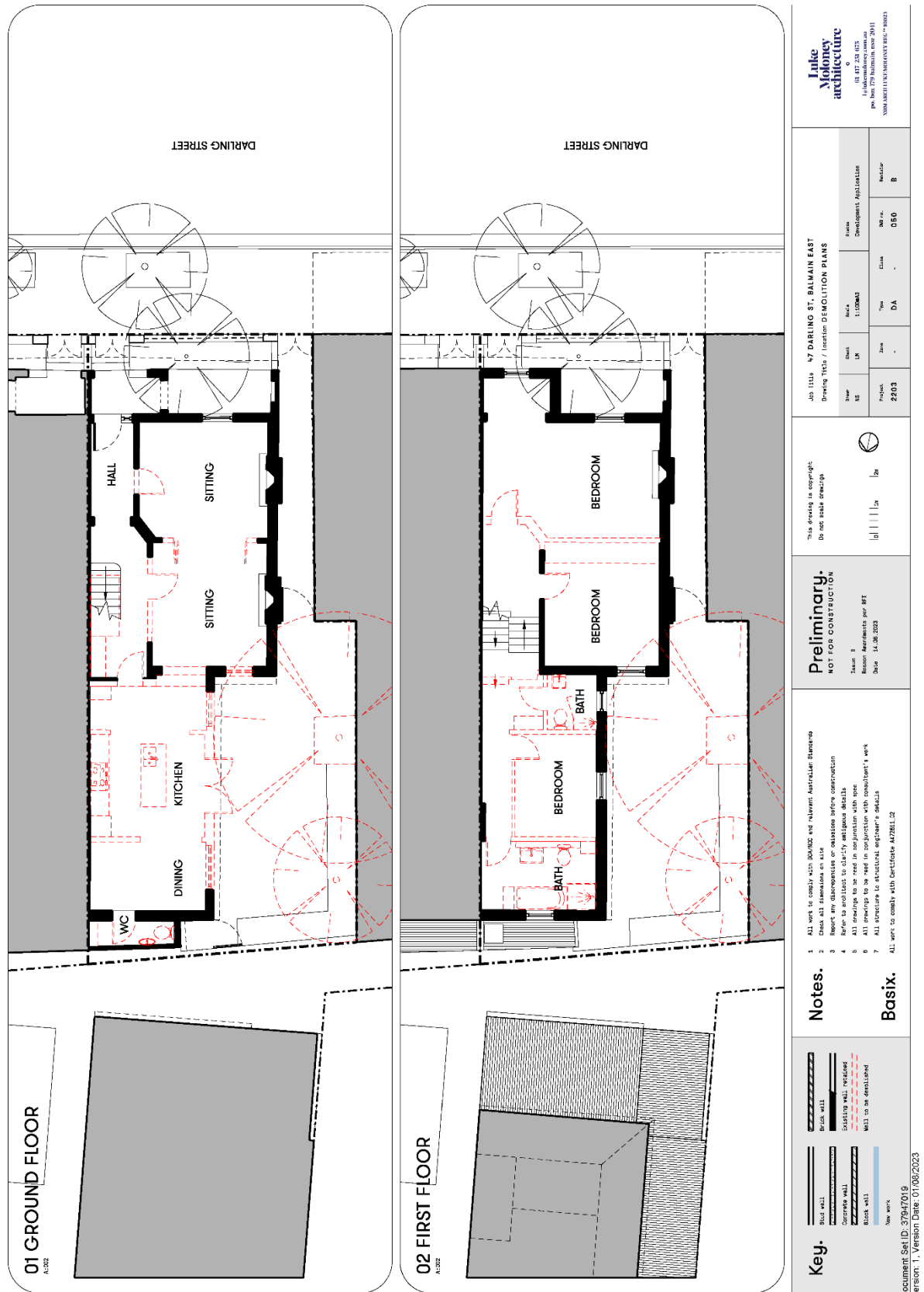
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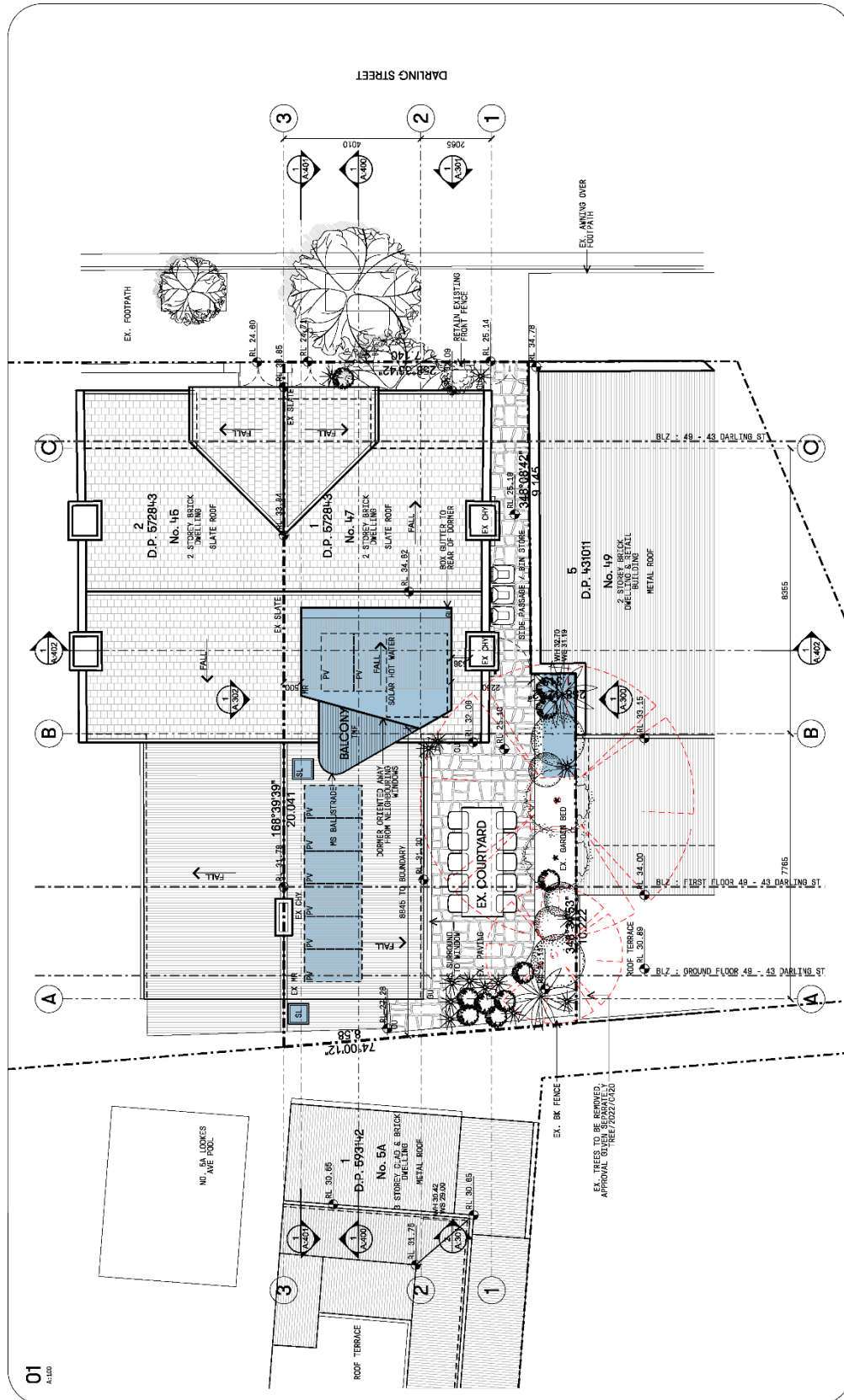
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Draper	Glass	Reactive
NS	LN	1:200wA3

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Moloney  
architecture**







**Key:**

- Red wall
- Brick wall
- Concrete wall
- Existing wall - retained
- Brick wall
- Wall to be demolished
- New work

**Notes:**

- All work to comply with Building and relevant Australian Standards
- Check all dimensions on site
- Report any discrepancies or omissions before construction
- Refer to architect to clarify ambiguous details
- All drawings to be used in conjunction with consultant's work
- All drawings to be used in conjunction with consultant's work
- All drawings to be used in conjunction with consultant's work
- All work to comply with Certificate M27811.03

**Basis:**

Document Set ID: 37947019  
Version 1.1, Version Date: 01/08/2023

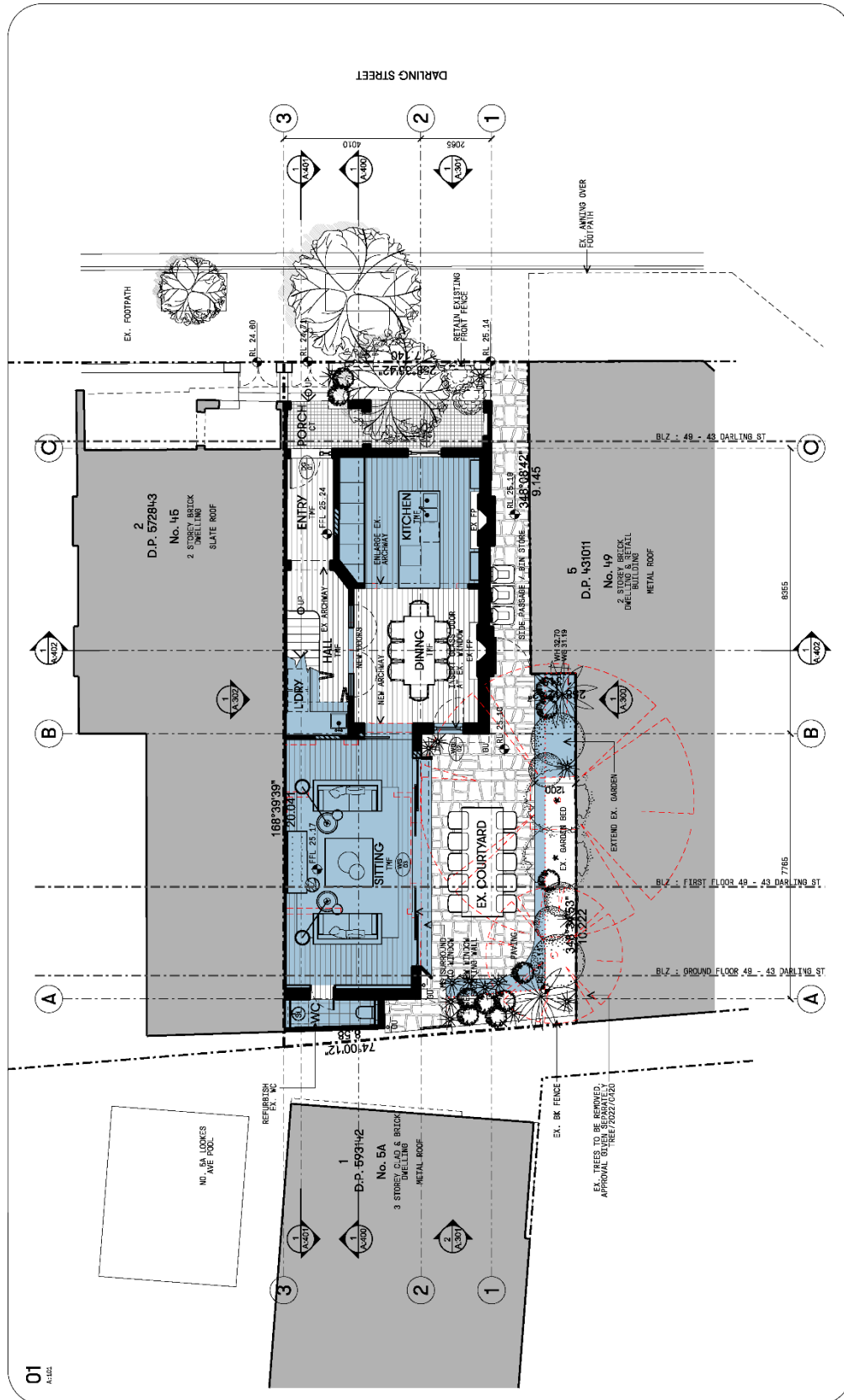
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Drawn: C  
Reviewed: J  
Date: 24.07.2023

**Job Title: 47 DARLING ST, BALMAIN EAST**  
Drawing Title: / Location SITE/ROOF PLAN

Sheet	Drawn	Check	Scale	Developer Application	DA	DA	DA
1	1	1	1:1000	1	100	100	100

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**Key.**

- Slab wall
- Brick wall
- Concrete wall
- Existing wall - retained
- Brick wall
- Wall to be demolished
- New work

**Notes.**

- All work to comply with Building and relevant Australian Standards
- Check all dimensions on site
- Report any discrepancies or omissions before construction
- Refer to architect to clarify ambiguous details
- All drawings to be used in conjunction with site plan
- All drawings to be used in conjunction with consultant's work
- All drawings to be used in conjunction with consultant's work
- All work to comply with Certificate of Development 407811.03

**Basix.**

Document Set ID: 37947019  
Version 1.1, Version Date: 01/08/2023

**Preliminary.**  
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Drawn: C  
Reviewed: J  
Date: 26.07.2023

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North Arrow

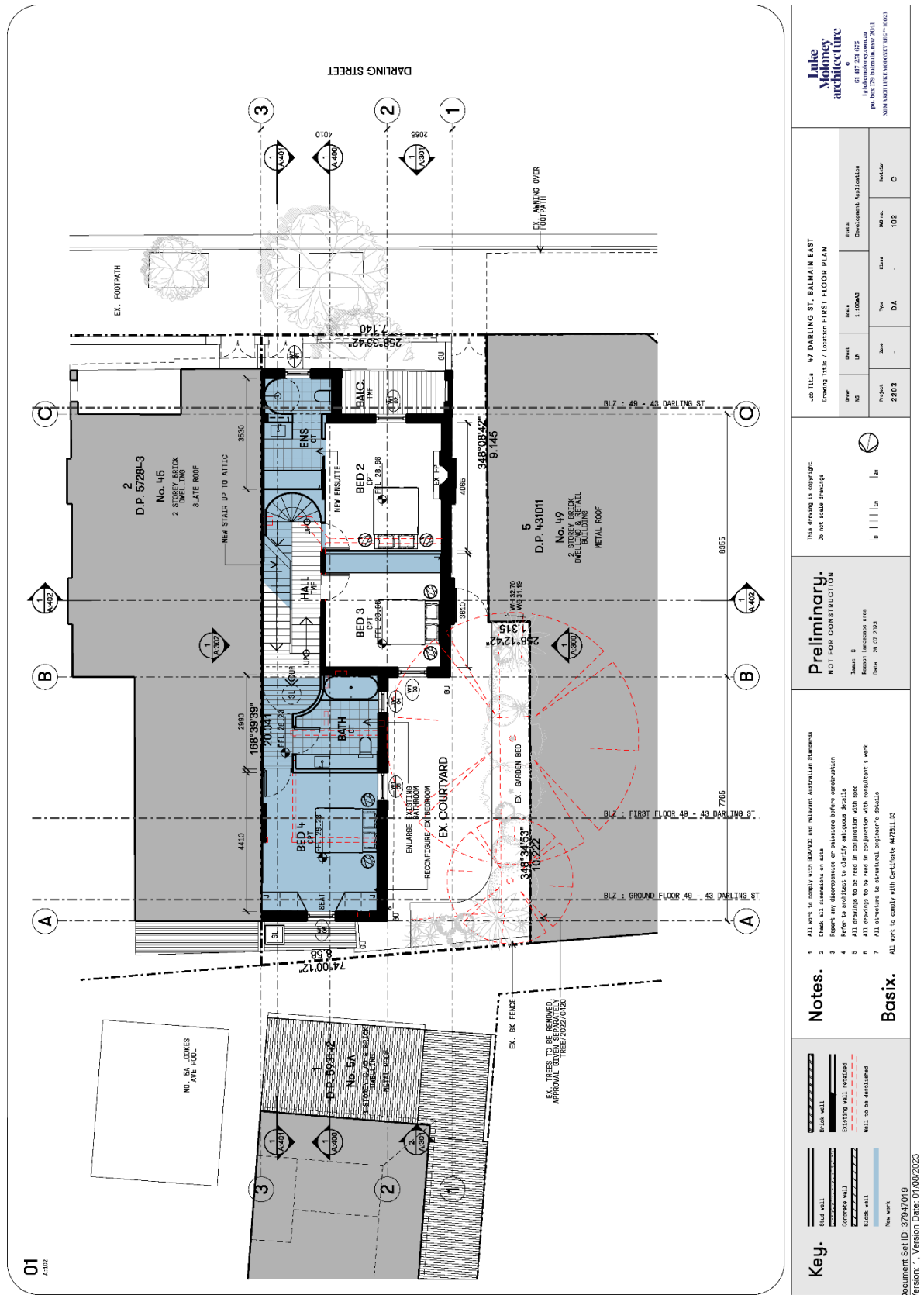
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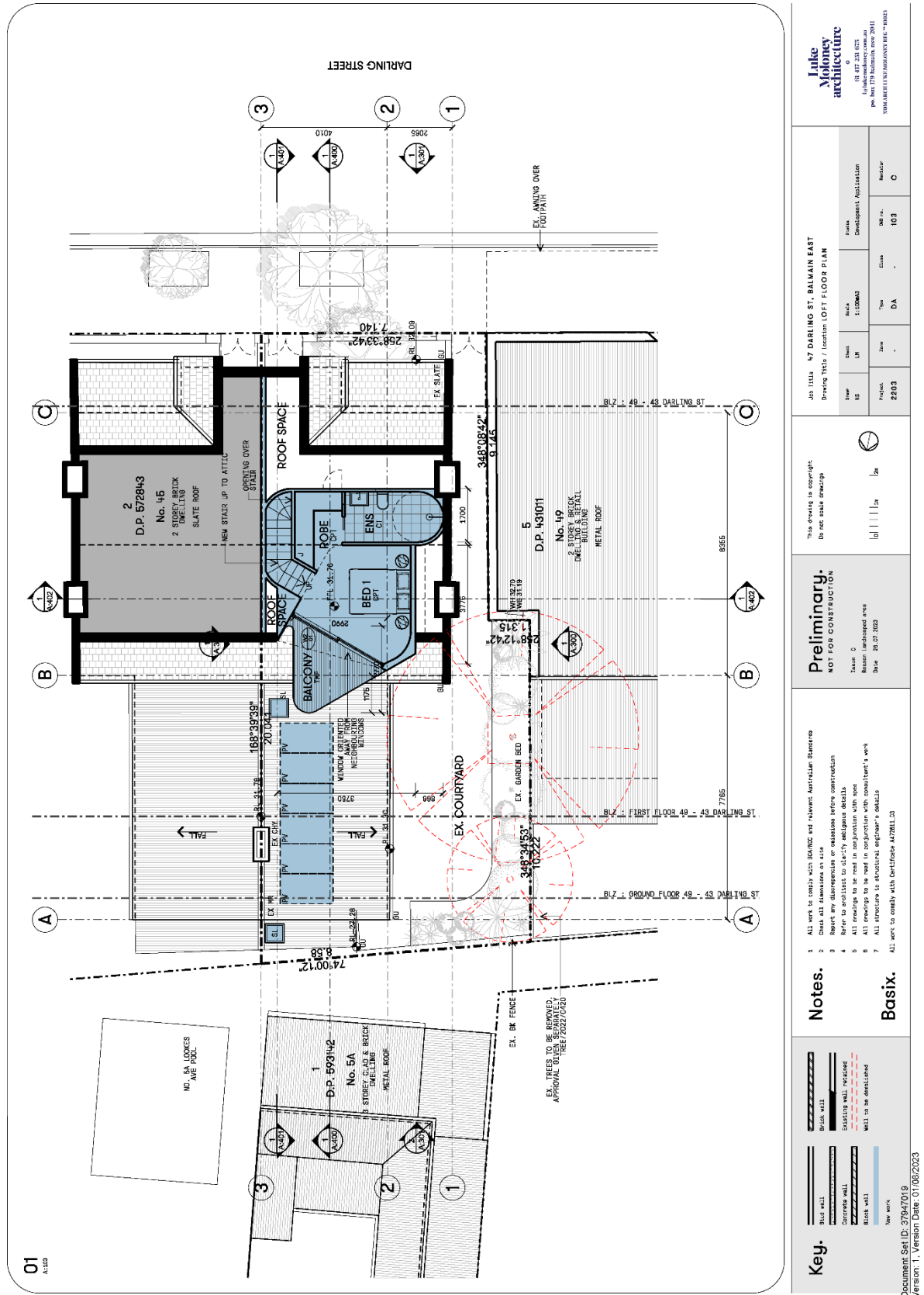
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**Drawing Title:** Location Ground Floor Plan

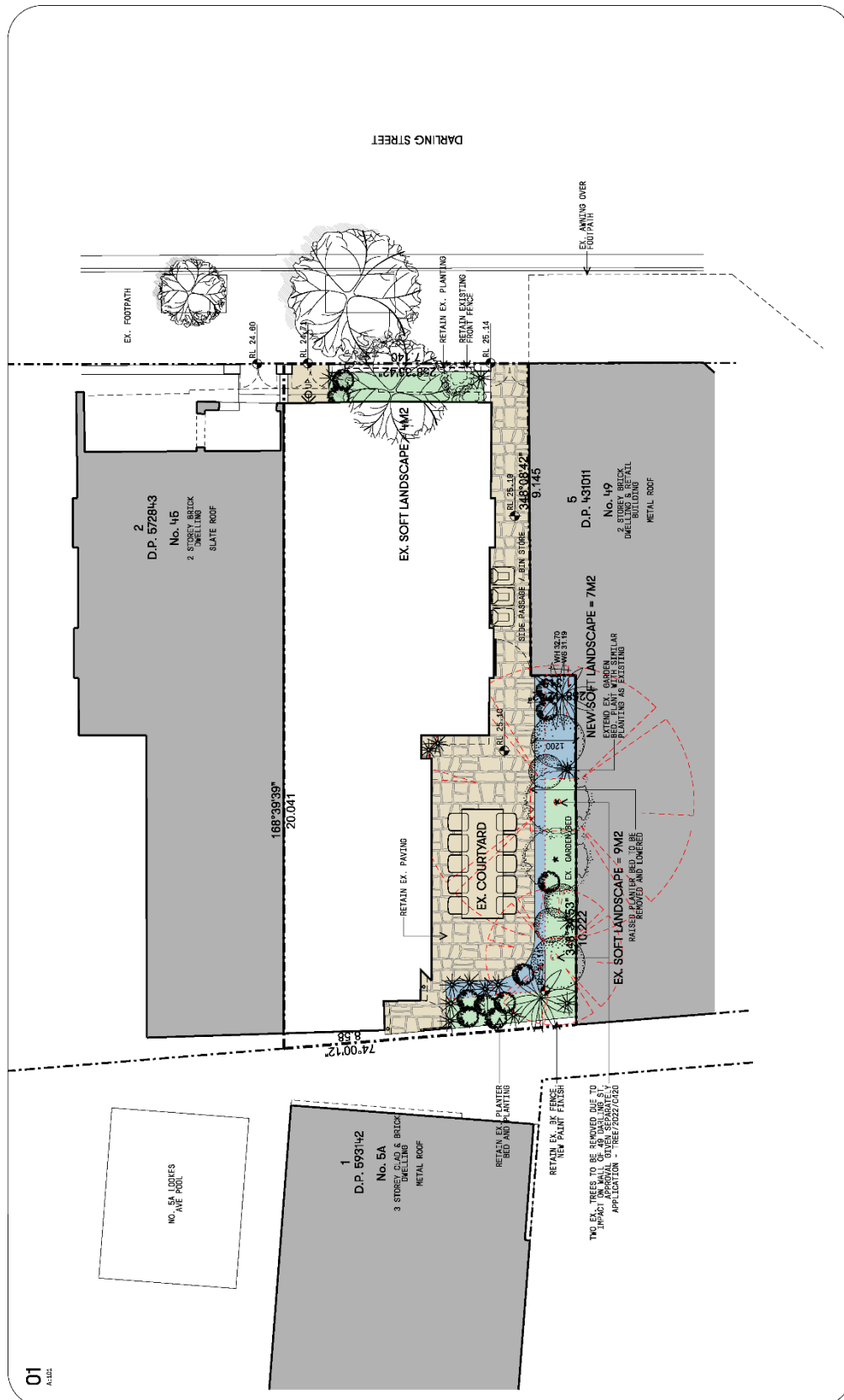
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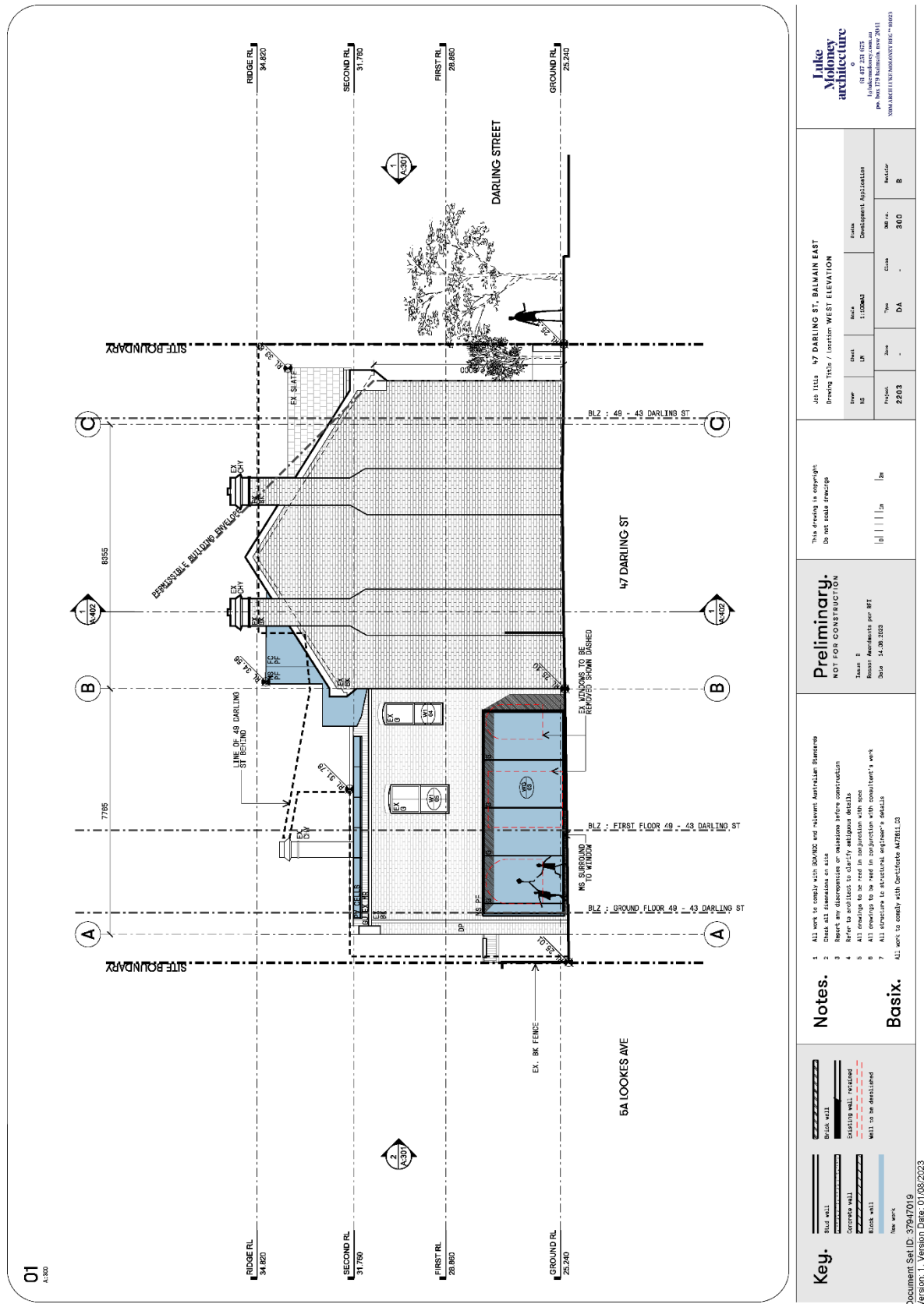
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Author: C

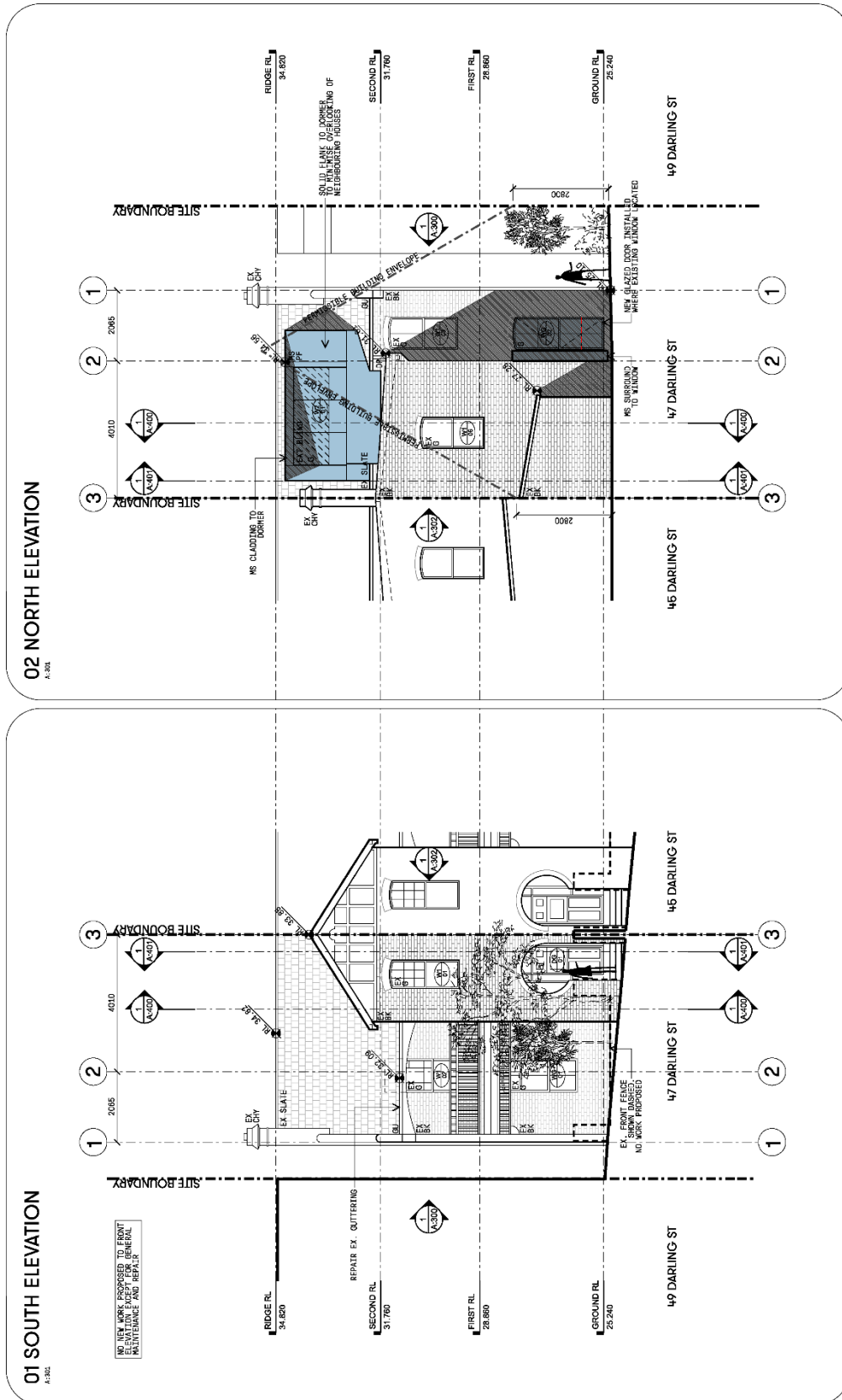
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[illegible]





#### Key.

	Solid wall
	Brick wall
	Concrete wall
	Existing wall - retained
	Brick wall
	New work

#### Notes.

- All work to comply with Building and relevant Australian Standards
- Check all dimensions on site
- Report any discrepancies or omissions before construction
- Refer to architect to clarify ambiguous details
- All drawings to be read in conjunction with these
- All drawings to be read in conjunction with consultant's work
- All structure to be constructed in accordance with the architect's details

**Basix.**

All work to comply with Certificate M27811.03

#### Preliminary.

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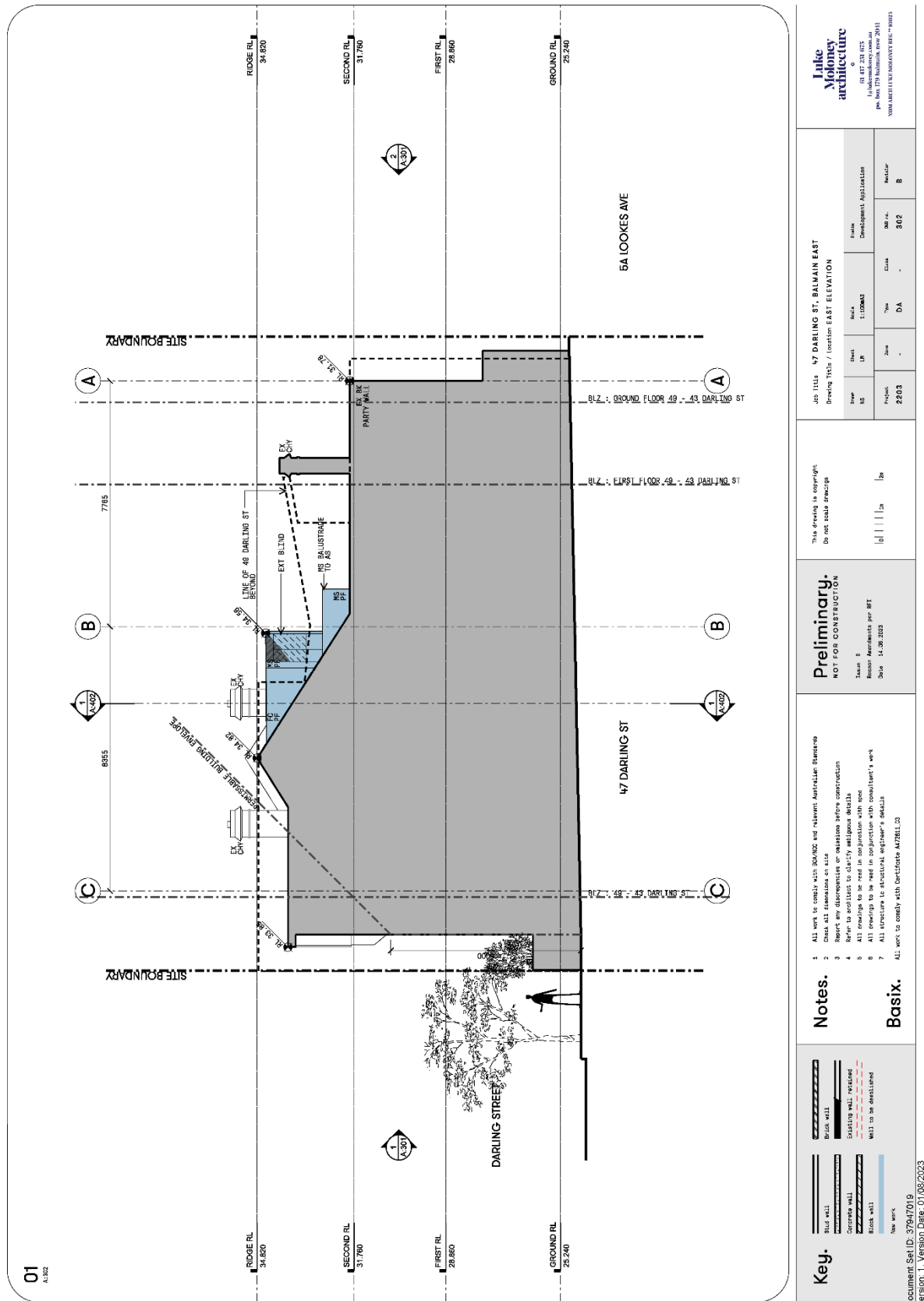
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Revised: 1  
Date: 14.08.2023

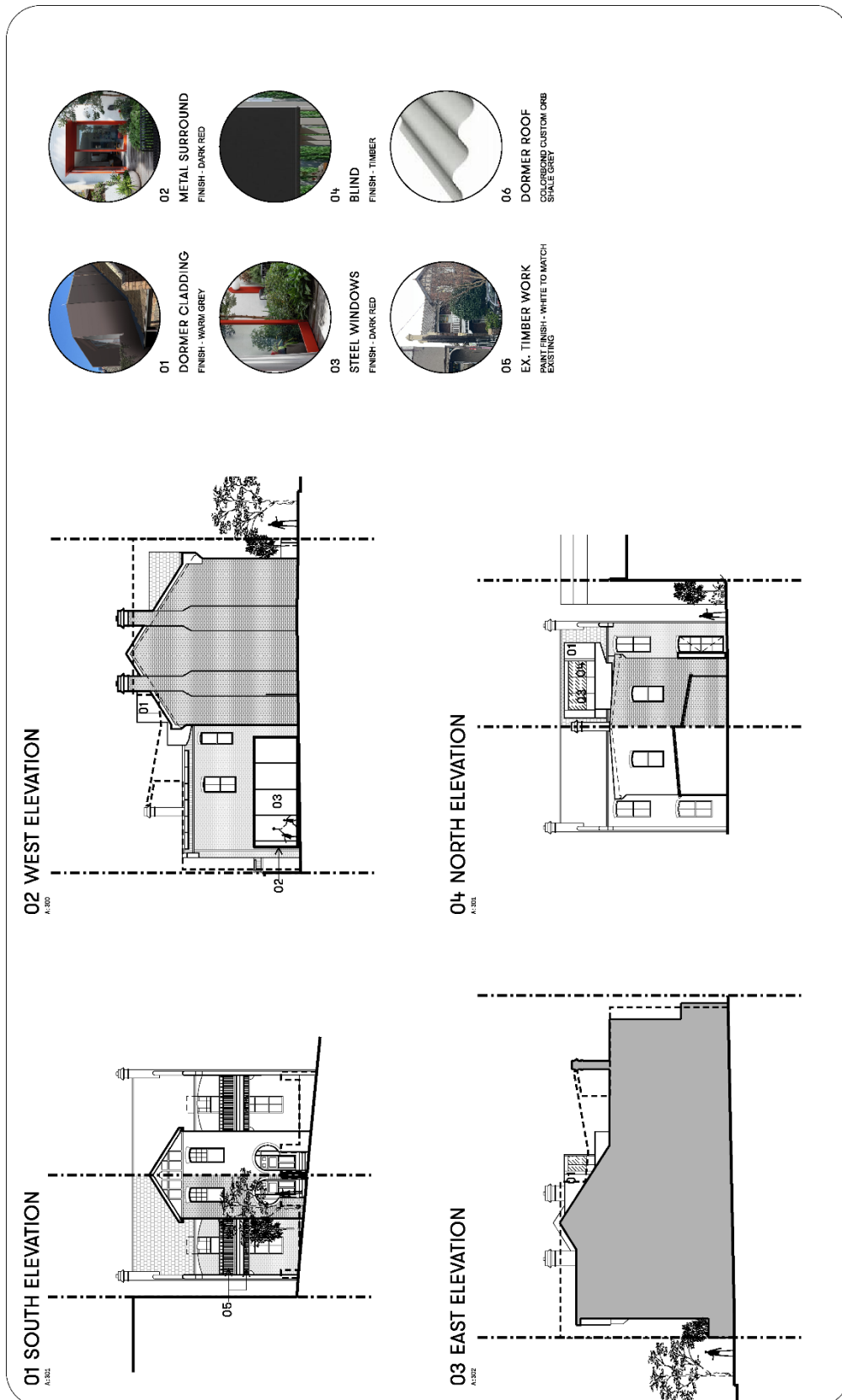
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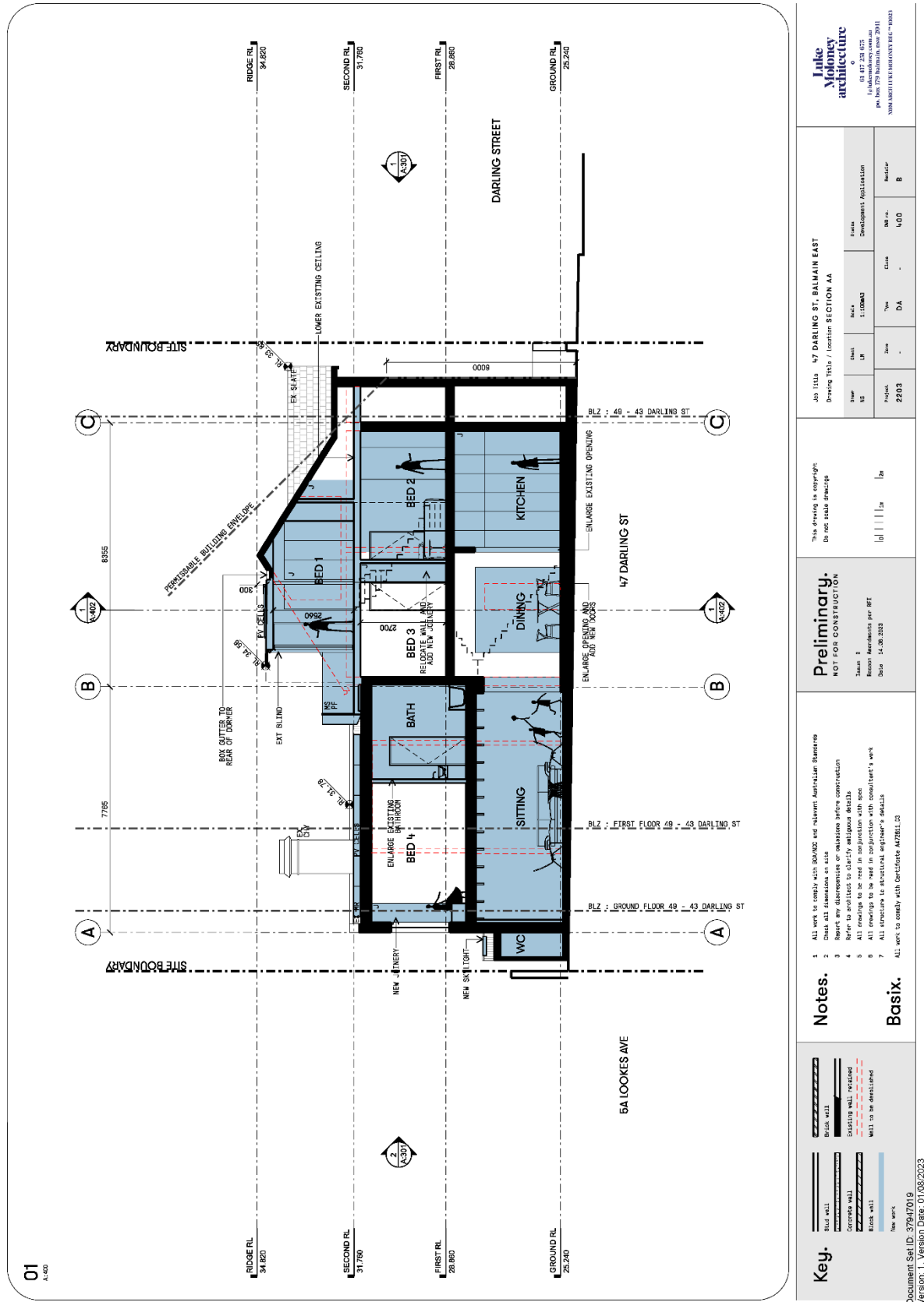
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				DA	301

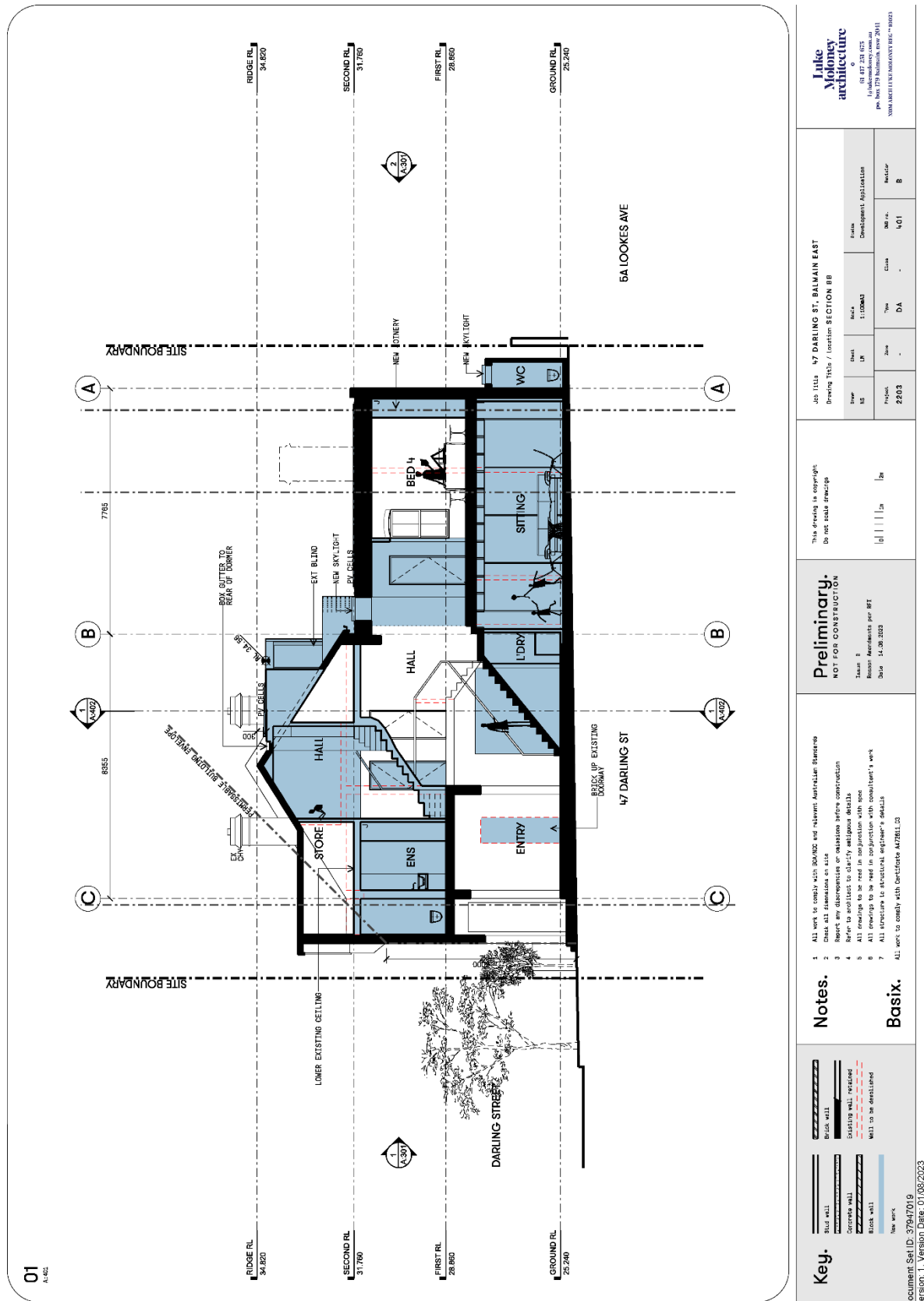
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 PO Box 179 Balmain NSW 2041  
 NOLA ARCHITECTURE & DESIGN

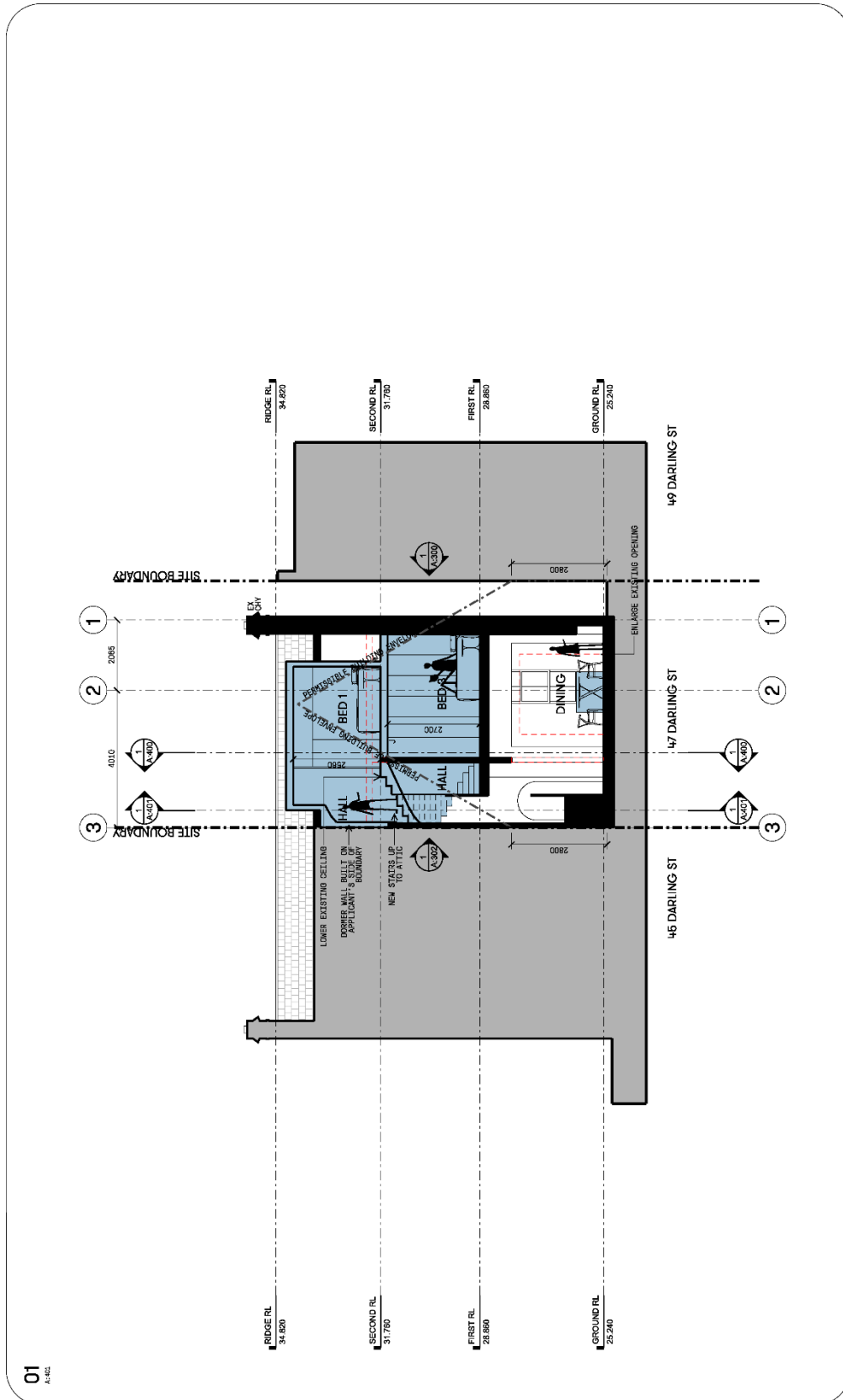
Document Set ID: 37947019  
 Version 1.1, Version Date: 01/08/2023



[illegible]







**Key.**

- Stud wall
- Brick wall
- Concrete wall
- Existing wall - retained
- Brick wall
- New work

**Notes.**

- All work to comply with Building and relevant Australian Standards
- Check all dimensions on site
- Report any discrepancies or variations before construction
- Refer to architect to clarify ambiguous details
- All drawings to be read in conjunction with notes
- All drawings to be read in conjunction with consultant's work
- All structure to be constructed in accordance with the architect's details

**Basix.**

**Preliminary.**  
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Drawn: P  
Reviewed: P  
Date: 14.08.2023

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Do not scale drawings

10 11 12 13

JOB 1118 47 DARLING ST, BALMAIN EAST  
Drawing Title / Location SECTION CC

Drawn	Check	Rev	Rev	Rev
NS	LP	1.1006A3	1.1006A3	1.1006A3

Project	Zone	Type	Class	Sub class	Module
2203	-	DA	-	402	B

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SYDNEY ARCHITECTURE

Document Set ID: 37947019  
Version: 1. Version Date: 01/08/2023

01  
A-02

Key.

Stucco wall

Concrete wall

Brick wall

New work

Brick wall

Existing wall - retained

Brick wall

Document Set ID: 37947019  
Version 1.1, Version Date: 01/08/2023

Notes.

1 All work to comply with SOURCE and relevant Australian Standards  
2 Check all dimensions on site  
3 Report any discrepancies or omissions before construction  
4 Refer to architect to clarify ambiguous details  
5 All drawings to be read in conjunction with consultant's work  
6 All drawings to be read in conjunction with consultant's work  
7 All drawings to be read in conjunction with consultant's work  
8 All work to comply with Certificate M27811.03

Basix.

Preliminary.  
NOT FOR CONSTRUCTION

Issue 1  
Revised for RPT  
Date 14.08.2023

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Do not scale drawings

10m  
5m  
2m  
1m

Job Title: 47 DARLING ST, BALMAIN EAST  
Drawing Title: Location View Study - EXISTING SITE OVERLOOKING

Drawn: NS  
Checked: LP  
Project: 2203

Scale: 1:1000A3  
Zone: -  
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Issue: Development Application  
Date: 14.08.2023

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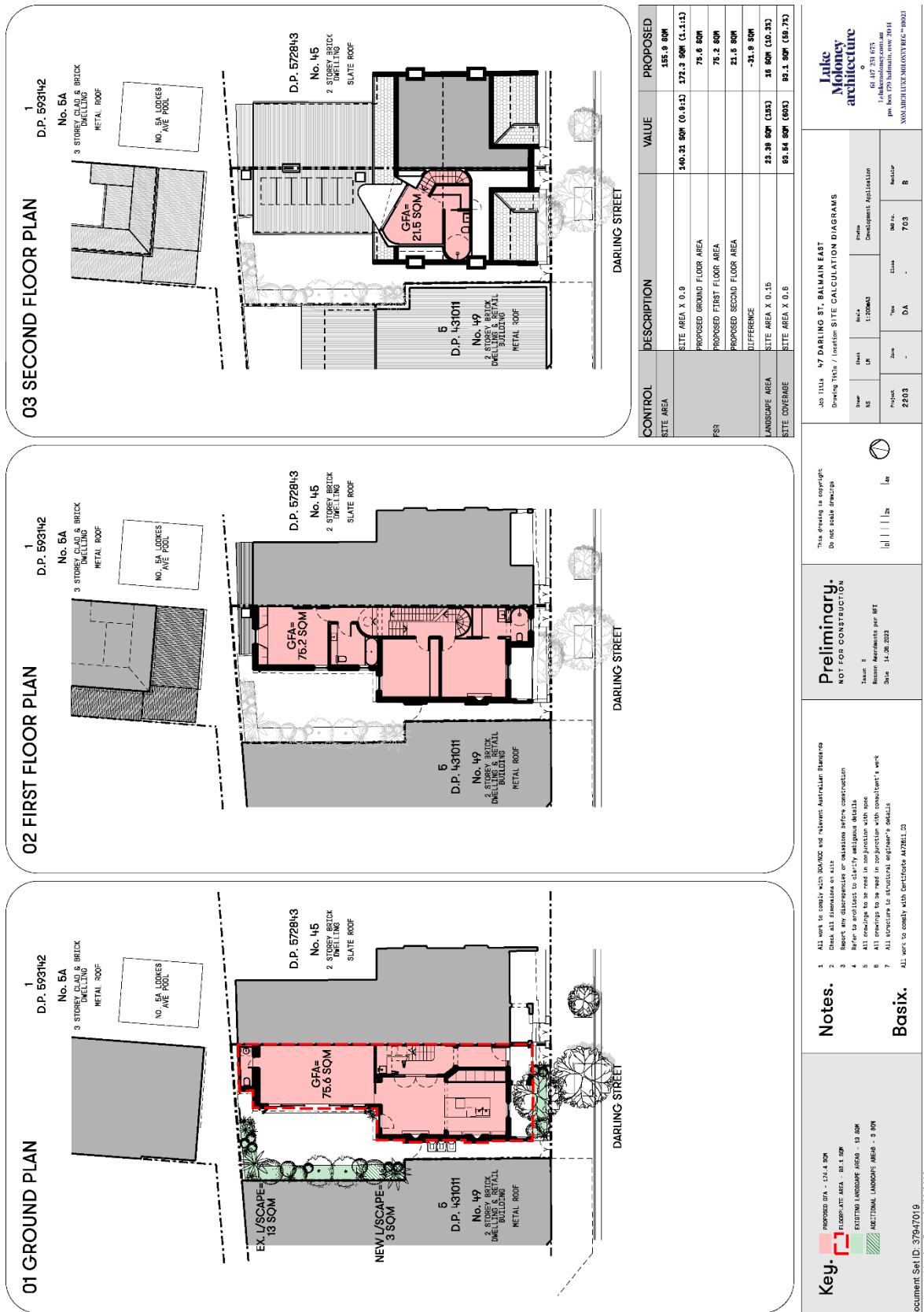
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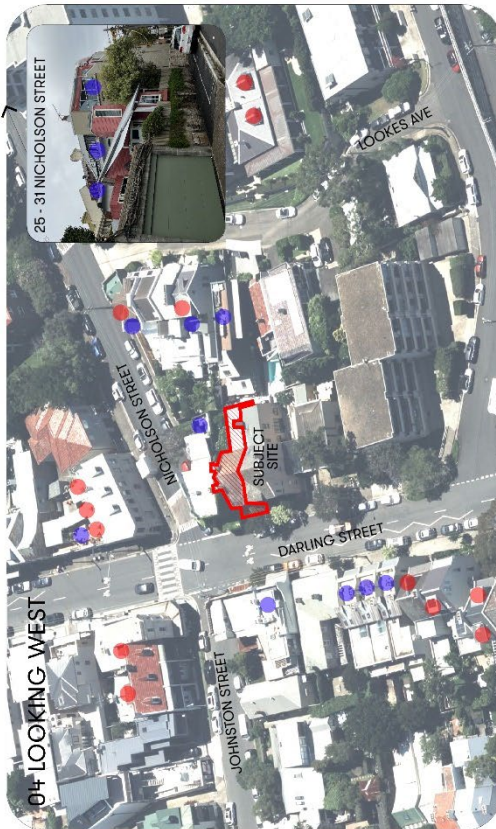
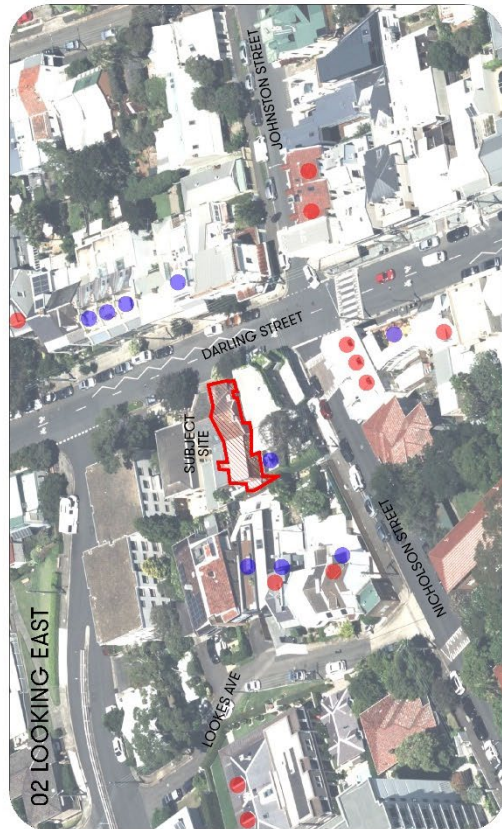
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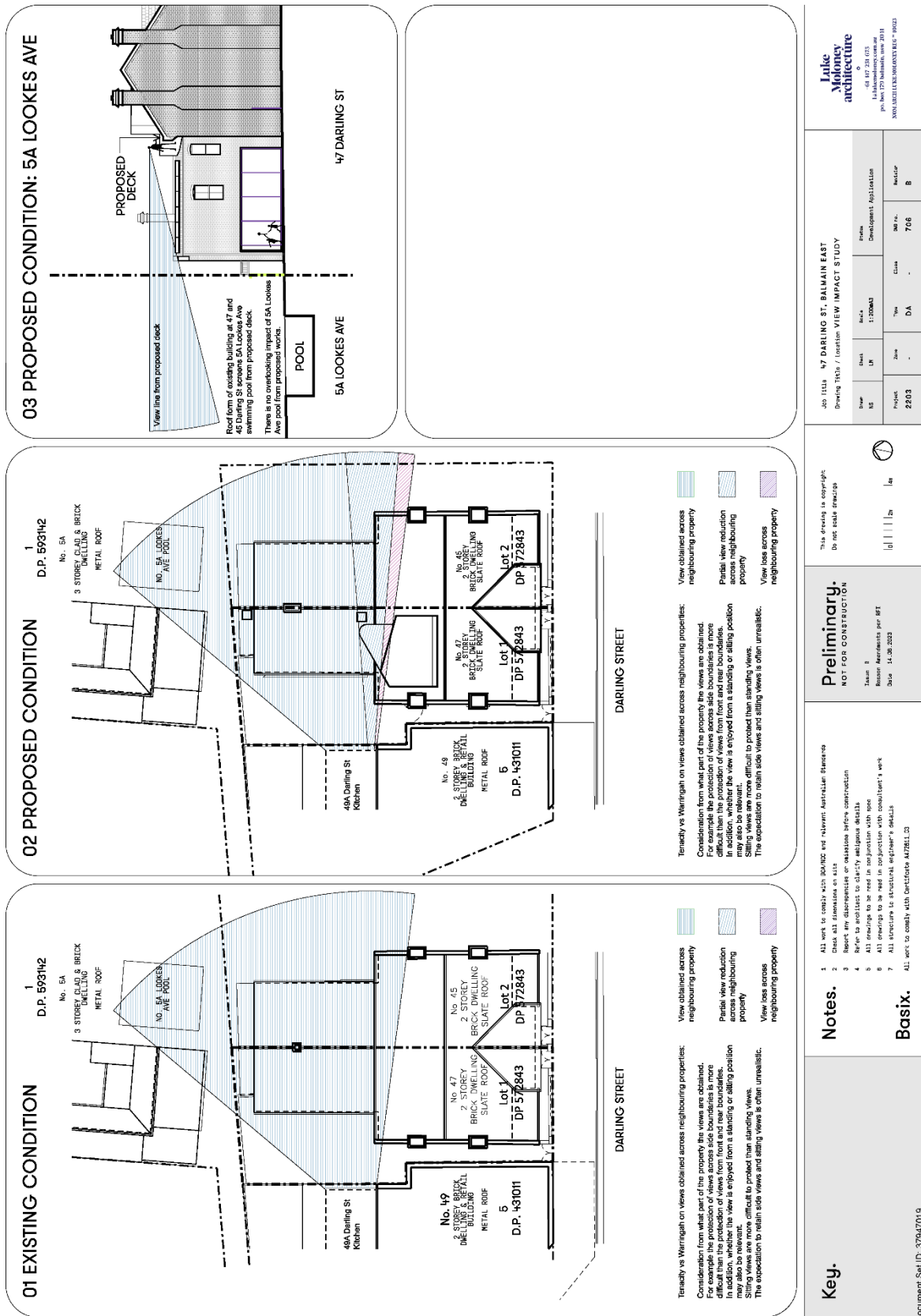
(02) 477 238 4725  
l.moloney@luke-moloney.com.au  
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NOMA ARCHITECTURE BALMAIN EAST - 2023

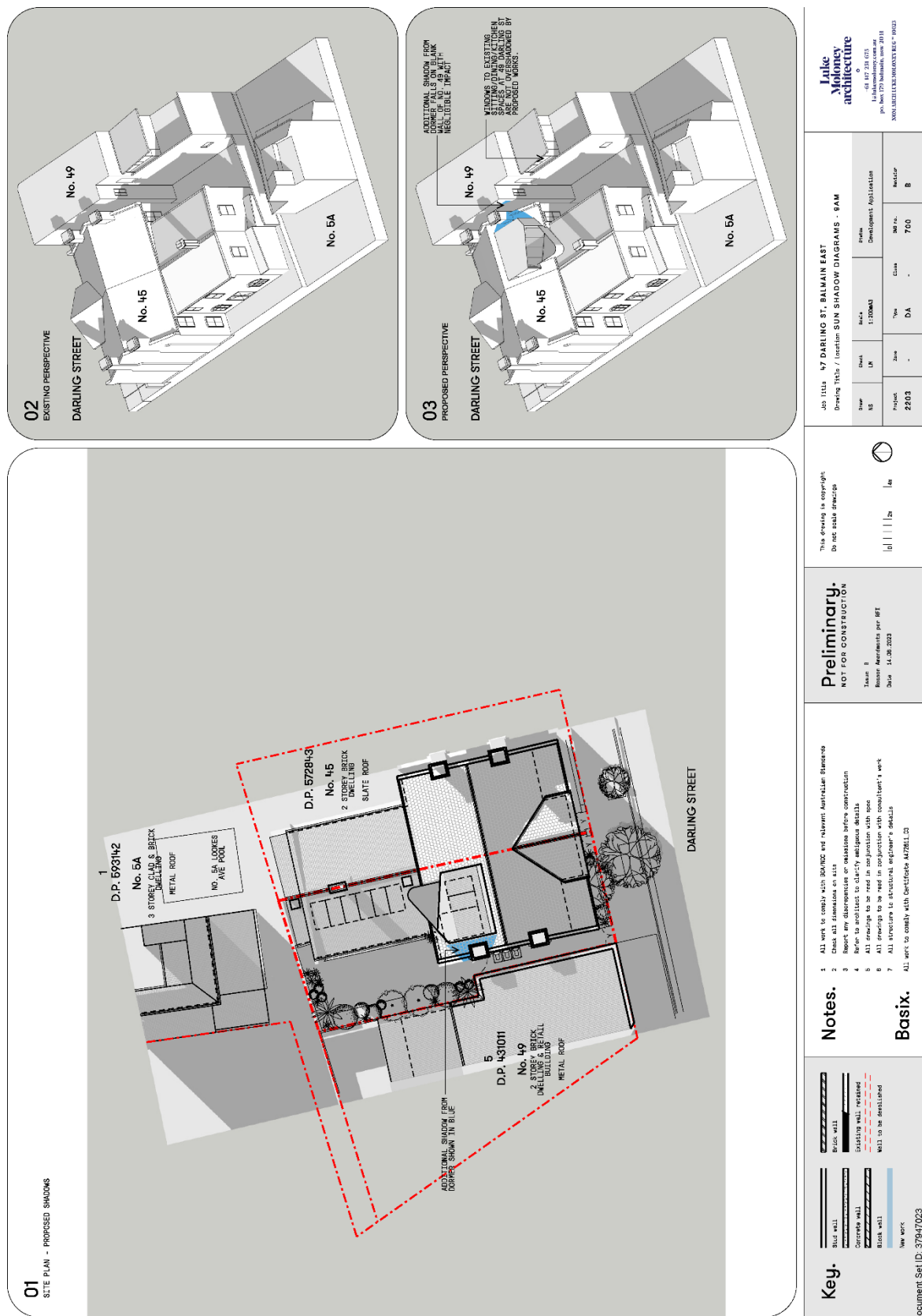
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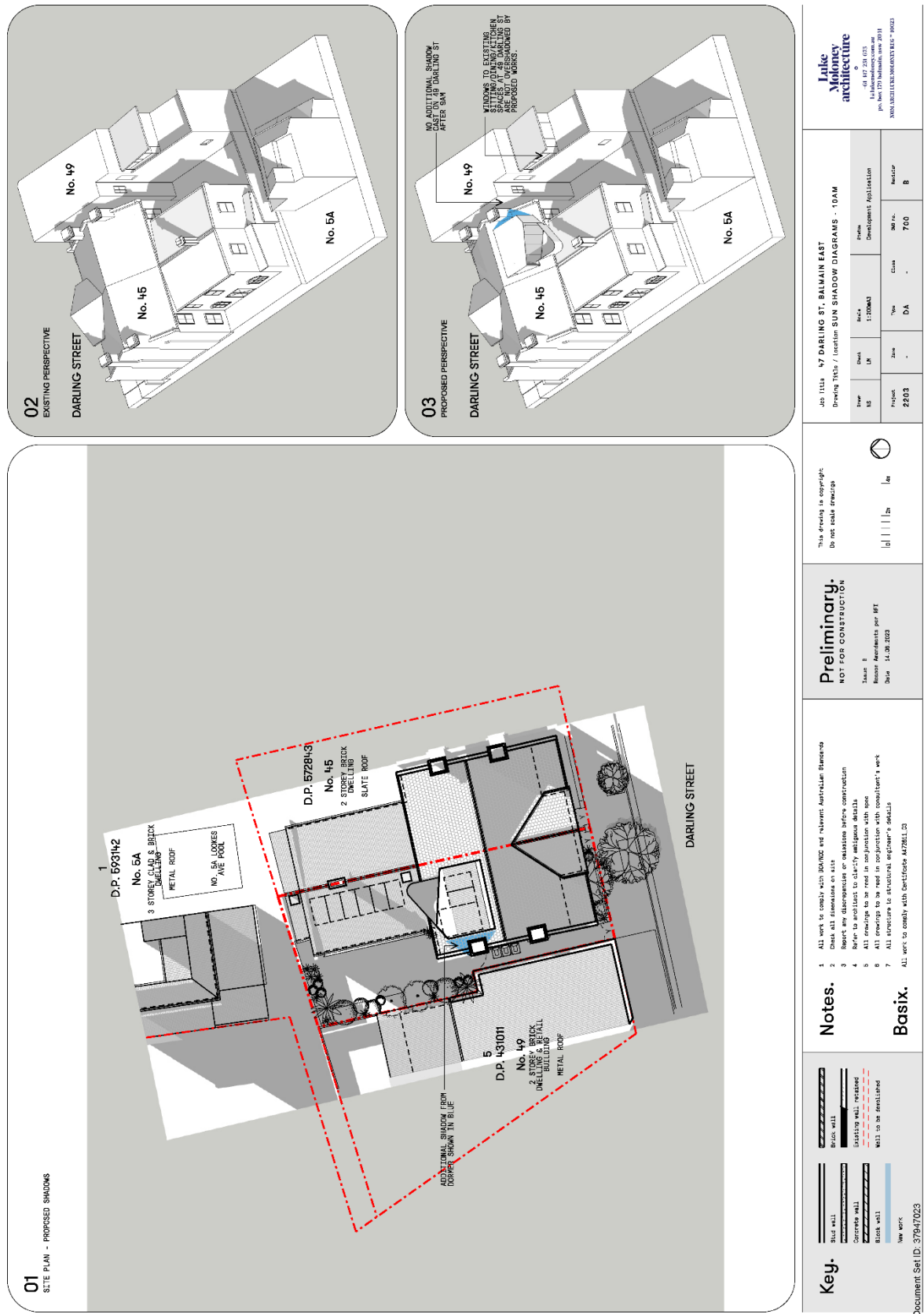
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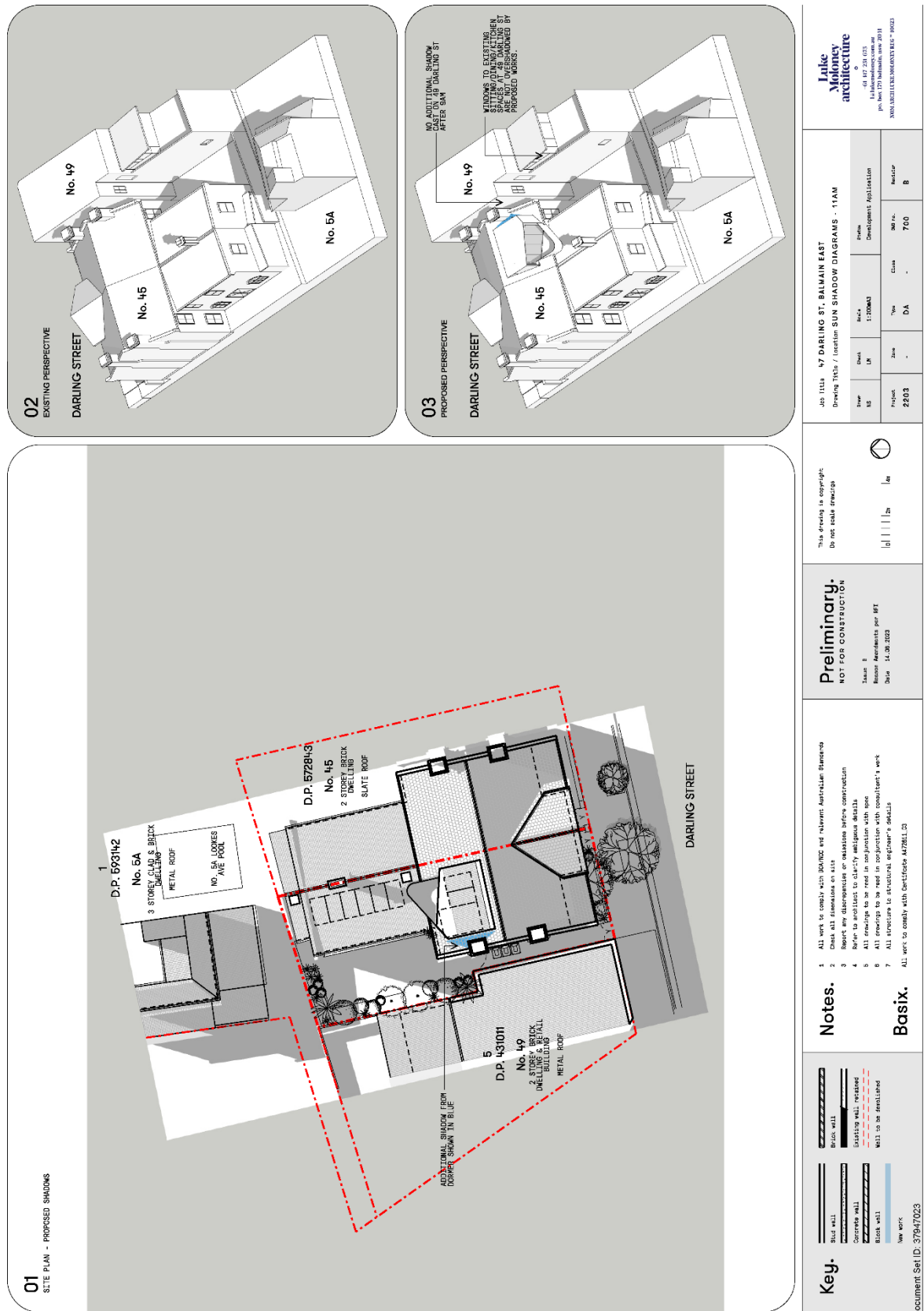


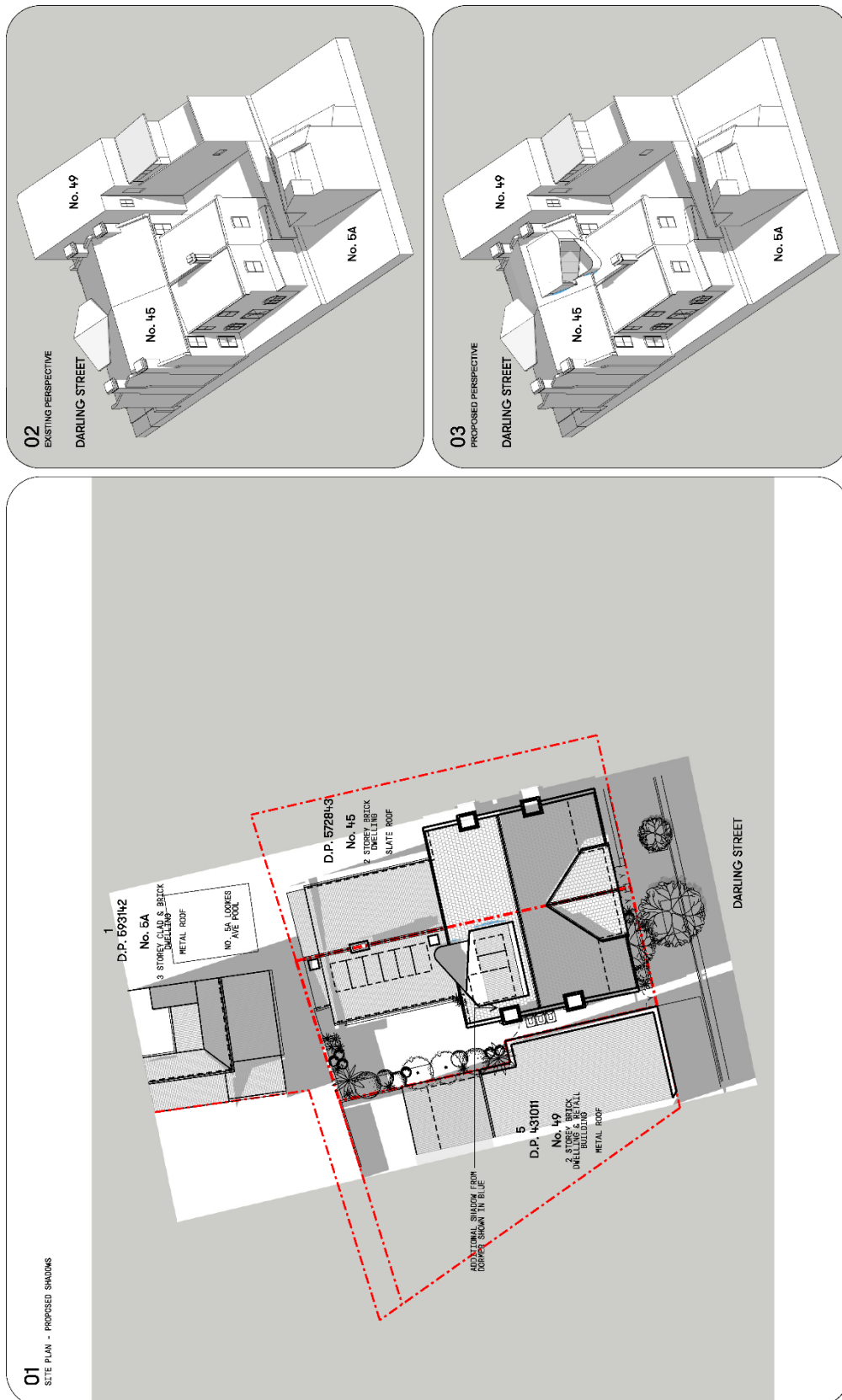
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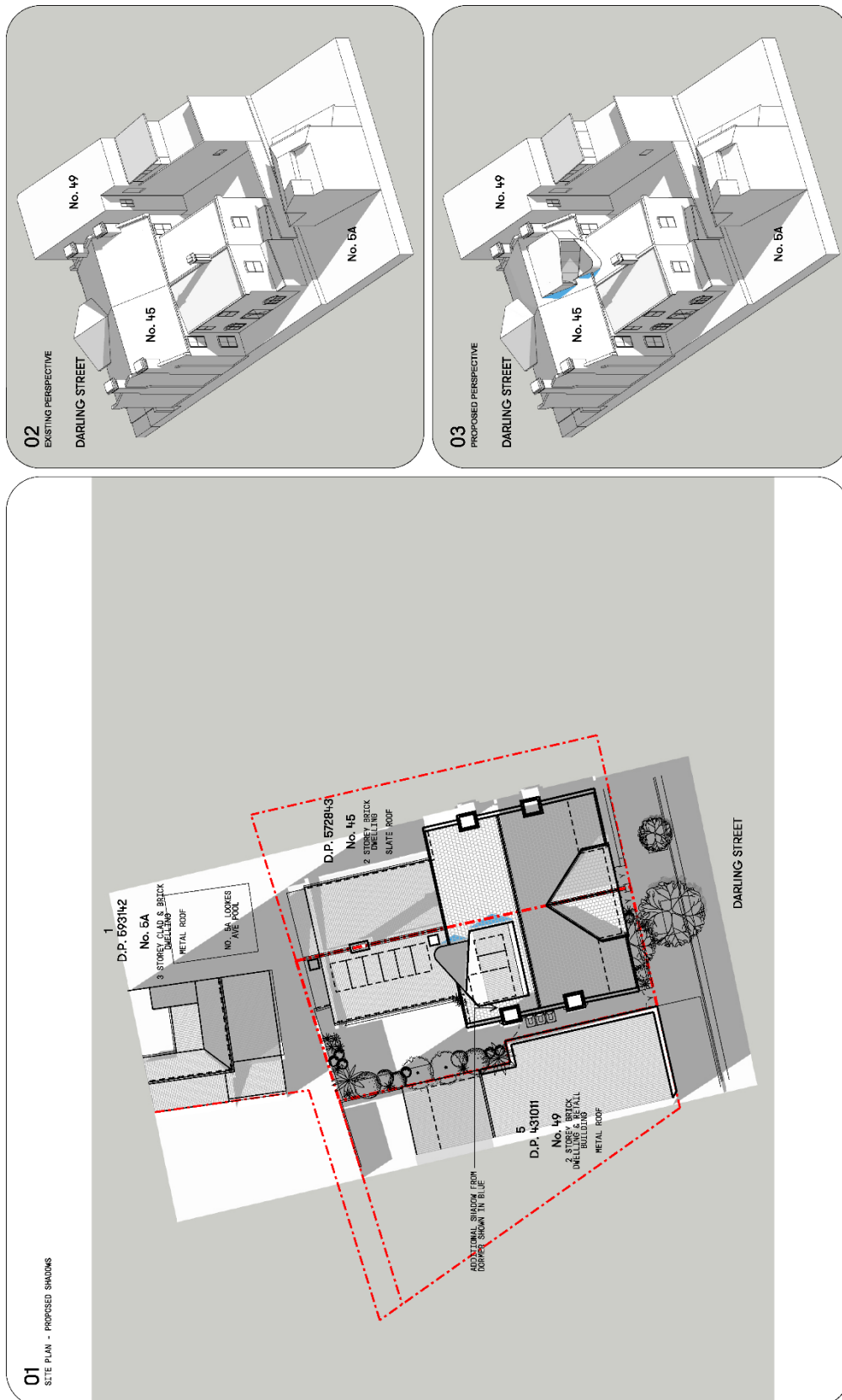


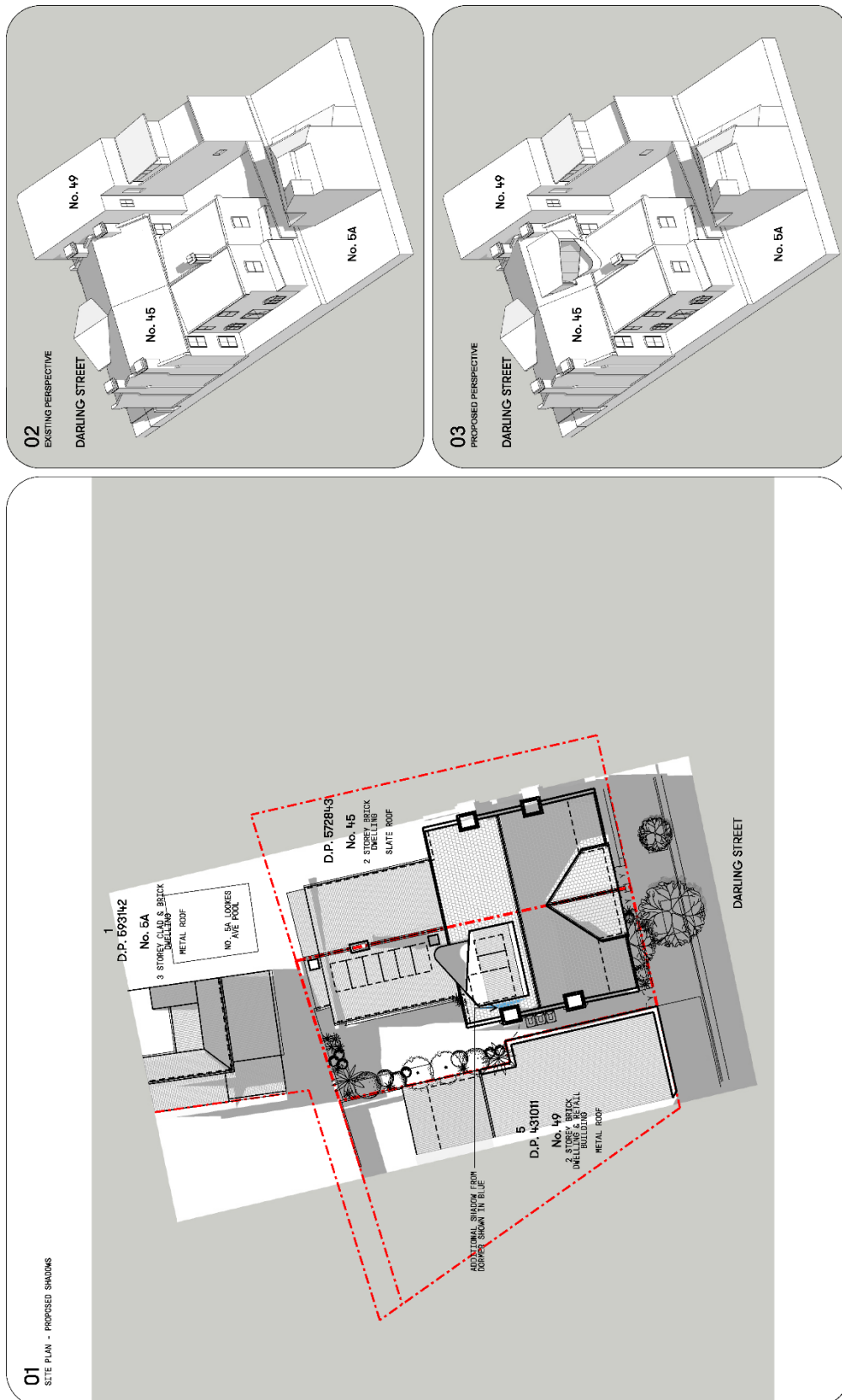


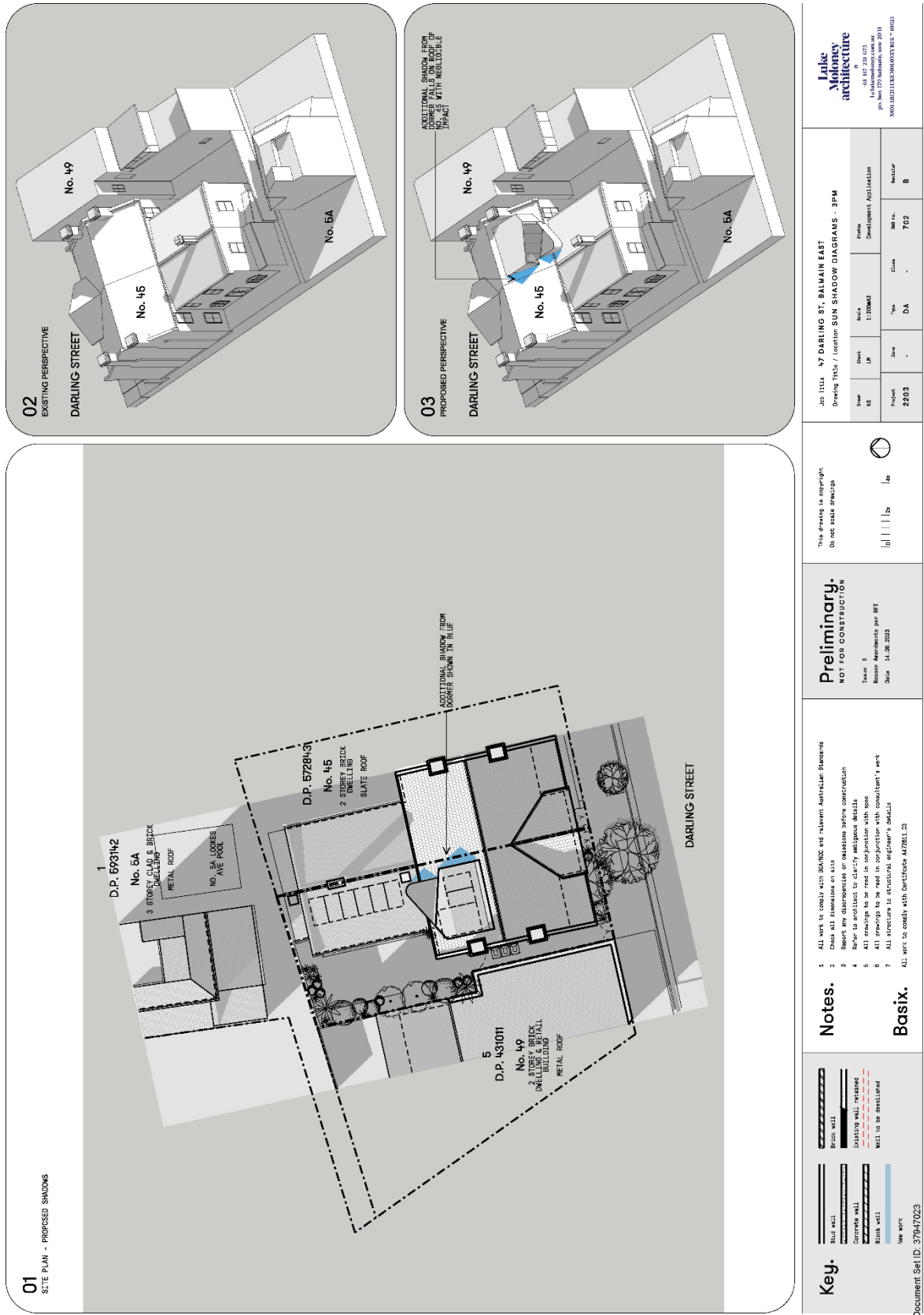




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# View Impact Studies

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Document Set ID: 37947018  
Version: 1, Version Date: 01/08/2023



## Sunman House.

View Studies

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### Rooftop amenity precedents on immediate neighbours.



### Notes.

1. 1 Lookes Avenue roof balcony overlooks subject site - view from subject site kitchen window.
2. 49 Darling St kitchen window and roof deck overlooks subject site. View from subject site bedroom 3 window.
3. 5 Lookes Avenue roof balcony and 5A Lookes Avenue roof terrace (right) overlook the subject site. View from subject site bedroom 3 window. Numerous apartments at 9 Nicholson St (tower block) overlook the subject site. These views are intended to demonstrate that overlooking of some houses by other houses is a latent condition in this part of Balmain East. The proposed dormer and roof balcony would not diminish existing privacy conditions in the setting, but would bring the amenity of the subject site into line with that already enjoyed by neighbouring dwellings.

Page  
3

## Sunman House.

View Studies

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### View from No.49 balcony looking east, standing.

Photo supplied by Inner West Council 30.6.2023



### Notes.

1. Existing condition
2. Proposed condition

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Version 1.1, Version Date: 01/08/2023

## Sunman House.

View Studies

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architecture

### View from No.49 deck looking east, standing - privacy screen added

Photo supplied by Inner West Council 30.6.2023



### Notes.

1. Existing condition
2. Proposed condition showing notional inclusion of a privacy screen. This could be added to improve visual privacy between the proposed balcony at 47 Derling St and the existing deck / kitchen at 49 Derling St.

Document Set ID: 37947018  
Version 1. Version Date: 01/08/2023

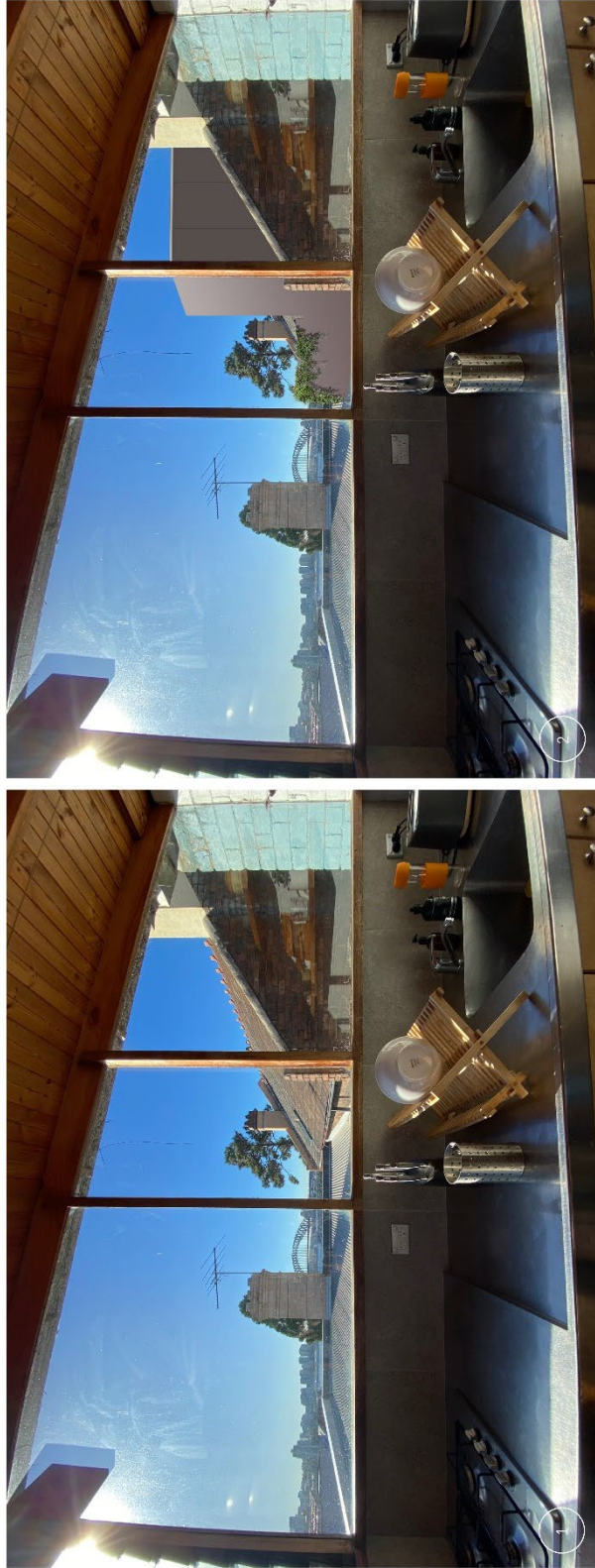
## Sunman House.

View Studies

### View from No.49 kitchen looking east, seated.

Photo supplied by Inner West Council 30.6.2023

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architecture



### Notes.

1. Existing condition.
2. Proposed condition.

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Version 1.1, Version Date: 01/08/2023

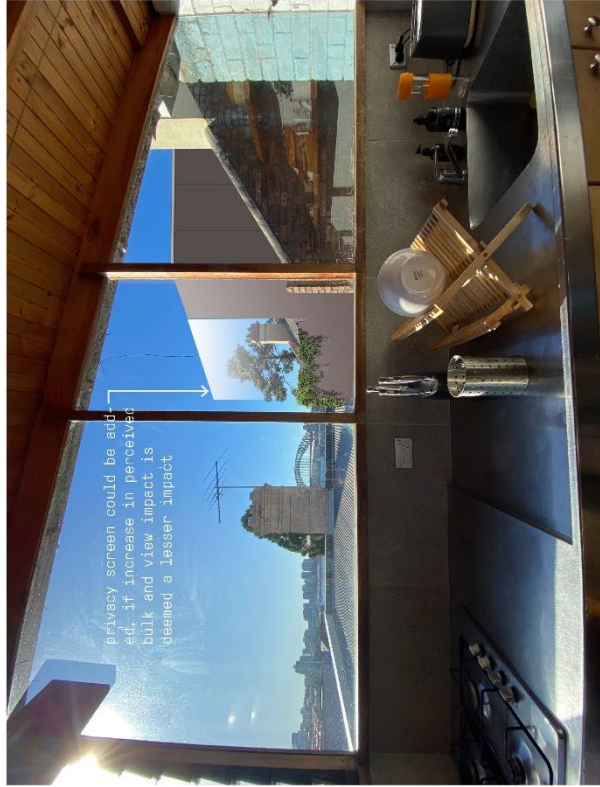
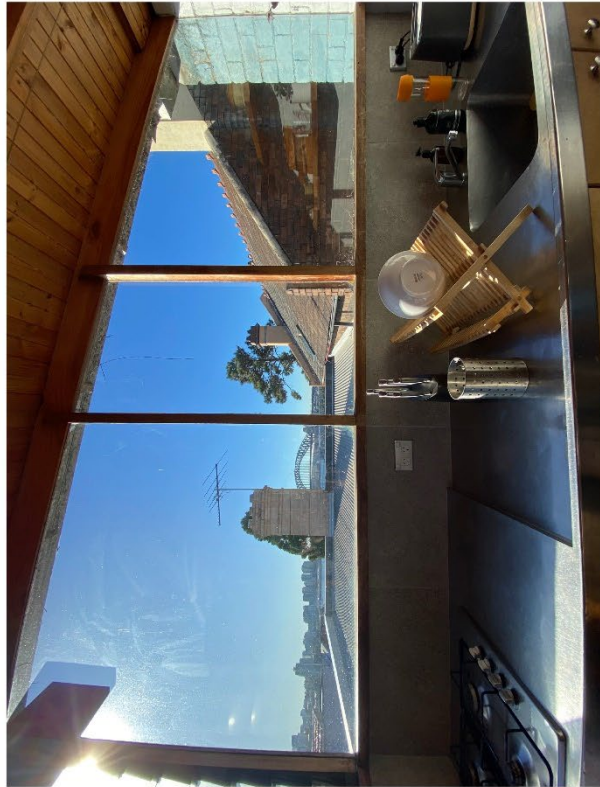
## Sunman House.

View Studies

### View from No.49 kitchen looking east, seated.

Photo supplied by Inner West Council 30.6.2023

Luke  
Moloney  
architecture



## Notes.

1. Existing condition.
2. Proposed condition showing notional inclusion of a privacy screen. This could be added to improve visual privacy between the proposed balcony at 47 Darling St and the existing deck / kitchen at 49 Darling St.

Document Set ID: 37947018  
Version 1. Version Date: 01/08/2023

## Sunman House.

View Studies

Luke  
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### View from No.49 kitchen looking east, standing.

Photo supplied by Inner West Council 30.6.2023



### Notes.

1. Existing condition.
2. Proposed condition.

Document Set ID: 37947018  
Version 1. Version Date: 01/08/2023

## Sunman House.

View Studies

Luke  
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architecture

### View from No.49 kitchen looking east, standing.

Photo supplied by Inner West Council 30.6.2023



### Notes.

1. Existing condition.
2. Proposed condition showing notional inclusion of a privacy screen. This could be added to improve visual privacy between the proposed balcony at 47 Darling St and the existing deck / kitchen at 49 Darling St.

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Version 1. Version Date: 01/08/2023

## Sunman House.

View Studies – Nicholson Street and Lookes Avenue, looking south east

### View from Lookes Avenue/Nicholson Street, looking east.

The subject site has intentionally not been marked to emphasise the minimal visual impact of the proposed works.



## Notes.

1. Existing View looking south east.
2. Proposed view looking south east.

The proposed roof addition is partially visible from the public domain on Nicholson Street.  
The impact of the proposed roof addition on the public domain is demonstrably minimal – it is screened by the upper floor of 49 Derling Street.

The general streetscape character of the conservation area is unaffected by the proposed works.

[illegible]

## Attachment C- Section 4.6 Exception to Development Standards



**47 Darling Street, Balmain East**

### **REQUEST FOR VARIATION TO FLOOR SPACE RATIO DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3) OF INNER WEST LEP 2022**

#### **Clause 4.4 – Floor Space Ratio**

This Clause 4.6 variation relates to a proposal for alterations and additions to the existing semi-detached dwelling on the subject site.

It is proposed to undertake alterations and additions to the existing 2-storey semi-detached dwelling, including the following:

- Reconfiguring the Ground Floor to accommodate an open plan kitchen and dining area, sitting room, laundry and WC
- Reconfiguring the First Floor to accommodate 3 bedrooms and a bathroom
- Constructing an Attic Level with a rear dormer to comprise of a bedroom with ensuite and walk-in-robe and rear facing balcony

#### **Clause 4.4 – Floor Space Ratio**

Clause 4.4(2B)(b) of the Inner West LEP 2022 prescribes a FSR of 0.9:1 for development for the purpose of residential accommodation on a lot with an area of between 150m<sup>2</sup> and 300m<sup>2</sup>. The subject site has an area of 155.9m<sup>2</sup>. The proposed alterations and additions will result in the site having an FSR of 1.1:1 (GFA: 174.4m<sup>2</sup>), providing a non-compliance with this control. The percentage variation is 24.3% (34.1m<sup>2</sup>).

The proposal therefore seeks to vary the FSR development standard as a result of the proposed attic level.

The objectives of Clause 4.4 are as follows:

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

---

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telephone: 02 9360 0989 | [www.a2p.com.au](http://www.a2p.com.au)

- (ii) *provides a suitable balance between landscaped areas and the built form, and*
  - (iii) *minimises the impact of the bulk and scale of buildings, to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale.*
- (b)

The zoning of the land is R1 General Residential. The objectives of the R1 zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide residential development that maintains the character of built and natural features in the surrounding area.*

#### **Clause 4.6 – Exceptions to Development Standards**

Clause 4.6 of the Inner West Local Environmental Plan 2022 allows for exceptions of Development Standards. The objectives of this Clause 4.6 are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The clause goes on to state:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is*

*unreasonable or unnecessary in the circumstances of the case, and*

- (b) that there are sufficient environmental planning grounds to justify contravening the development standard*
- (4) 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.*

This document constitutes the written request referred to in Clause 4.6(3) in relation to the proposal's breach of the FSR development standard.

The NSW Department of Planning and Infrastructure (DP&I) provides guidance on how to prepare Clause 4.6 variations; 'Varying development standards: A Guide' (August 2011). This written request to vary the standards is based on the DP&I's Guide.

#### **Clause 4.6(3)**

The proposal is considered against the four matters required to be established under Clause 4.6.

#### **1. Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:**

In order to assess whether strict compliance with the development standard is unreasonable or unnecessary, a proposal is considered against the following five ways<sup>1</sup>:

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<sup>1</sup> see *Wehbe v Pittwater Council* [2007] NSWLEC 827

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

These five ways were re-emphasised by the Court<sup>2</sup>. Each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in a particular circumstance<sup>3</sup>. All tests are separate and not all tests may not be applicable in each case. Therefore, not all tests need to be met.

The most common way of establishing that compliance with a standard is unreasonable and unnecessary is to establish that the objectives of the standard are met, even though the standard is not complied with<sup>4</sup>. This objection relies on this method. Compliance with the objectives of the FSR standard is addressed under **Point 4 below**.

The following points are raised:

- Compliance with the development standard is unreasonable and unnecessary as the proposed building height and bulk is of an appropriate form and scale and is compatible with surrounding development and the desired future character for the locality.
- The proposal represents a sympathetic addition to the existing building. The majority of the proposed works are internal and located at the rear of the site and are subservient to the form of the existing dwelling. The front of the existing dwelling is retained.

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<sup>2</sup> *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386

<sup>3</sup> *Mecone Pty Limited v Waverley Council* [2015] NSWLEC 1312

<sup>4</sup> *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245

- The FSR non-compliance will not be visible from the streetscape and will be indiscernible from surrounding properties.
- The proposal will result in a 2-storey dwelling with Attic Level, which is consistent with the 2-storey scale of the existing dwelling and surrounding dwellings.
- The proposed rear dormer at the Attic Level is compatible in scale with the existing dwelling. The dormer has been designed to comply with the BCA in terms of ceiling height. It is noted that a rear dormer was previously approved under D/2009/300. Moreover, there are large rear dormers in the surrounding area as shown in the Context Analysis Diagram submitted with this application. The extract of a series of before and after photomontages is provided below which highlights that the proposed rear dormer at the Attic Level is not readily visible from the key surrounding vantage points.



**Figure 1. Before and after photomontages highlighting that the proposed rear dormer at the Attic Level is not readily visible from the key surrounding vantage points**

- The proposal will not alter the setbacks of the existing dwelling.
- Adjoining the site to the east at 45 Darling Street is a semi-detached dwelling, which forms a pair with the semi-detached dwelling on the subject site. The proposed works are carefully integrated with the existing dwelling and complement the adjoining semi-detached dwelling to the east.

- The proposal maintains the integrity of the streetscape and the heritage conservation area. Refer to the Heritage Impact Statement prepared by Urbis submitted with this application.
- The dwelling has articulated facades to avoid a bulky appearance and to create proportions consistent within the streetscape.
- The proposal will retain the existing street tree at the front of the site. The proposal will retain the existing landscaped front garden area.
- Exceedance of the FSR control results from the proposed attic level and associated dormer window. This structure will not create additional building bulk that results in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this bulk would not create additional benefit for adjoining properties or the locality.
- The proposed rear dormer of the Attic Level has been positioned away from the adjoining properties to not cause unreasonable privacy impacts.
- The proposed rear dormer of the Attic Level has been positioned and designed to not cause unreasonable overshadowing to the adjoining properties. As demonstrated in the Shadow Diagrams submitted with this application, the proposed development does not result in any unreasonable shadows to the adjoining properties. Minimal additional shadow will be cast from the proposed Attic Level rear dormer on the roof of 45 Darling Street in the afternoon only and on the blank wall of 49 Darling Street in the morning only, with no impact on existing glazing. These overshadowing impacts are considered to be negligible. The living areas and private open space areas of 45 and 49 Darling Street will not be overshadowed by the proposed development.
- The proposal development will not result in unreasonable view loss impacts to the neighbouring properties, as illustrated in the view analysis. This analysis confirms that the dormer window associated with the additional GFA proposed, will not impact on the view of the Harbour Bridge from the adjoining property at 49 Darling Street.

**Clause 4.6(3)(b)****2. There are sufficient environmental planning grounds to justify contravening the development standard:**

Given the consistency of the proposal against the zone objectives and FSR objectives (see **Point 4 below regarding both**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard<sup>5</sup>.

The components proposed above the FSR control are:

- 34.1m<sup>2</sup> of GFA

There are sufficient environmental planning grounds that the proposed FSR can be achieved without adverse impacts for the following reasons:

- The proposal will not result in unreasonable loss of views from surrounding development;
- The proposal will not result in unreasonable overshadowing of adjoining properties;
- The proposal will provide a development, which has been designed to ensure that the visual and acoustic privacy of adjoining properties is maintained, noting that the dormer window (GFA component) has been orientated to ensure no overlooking of adjoining properties;
- The proposal will provide a development, which is consistent with the scale of the adjoining developments and is of an appropriate visual bulk for the locality; and
- The FSR non-compliance will not be visible from the streetscape and will be indiscernible from surrounding properties and will not result in a change of building footprint.

The proposal will provide a suitable design and of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979) and the building envelope and design of the proposal responds appropriately to the unique opportunities and constraints of the site.

The aspect of the development that breaches the FSR control can be justified as the proposal provides a consistent scale with neighbouring development and provides an envelope which is comparable with the existing building

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<sup>5</sup> see *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [90]

envelope. This can be described as an environmental planning ground because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome<sup>6</sup>.

**Clause 4.6(4)(a)(i)**

**3. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3):**

The written request adequately addresses the matters referred to above by Clause 4.6(3).

**Clause 4.6(4)(a)(ii)**

**4. 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:**

**Objectives of the Standard**

The proposal will be in the public interest as it meets the objectives of the FSR development standard as follows:

**Objective (a)** seeks to establish a maximum floor space ratio to enable appropriate development density,

*Comment:* The proposed FSR and built form is compatible with the character of the local area.

The proposal is not an overdevelopment of the site and achieves an appropriate correlation between height and density.

The proposal represents a sympathetic addition to the existing building. The majority of the proposed works are internal and located at the rear of the site and are subservient to the form of the existing dwelling. The front of the existing dwelling is retained.

The FSR variation will be indiscernible from the streetscape and surrounding properties.

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<sup>6</sup> *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 1097 at [42]

The proposal will result in a 2-storey dwelling with Attic Level, which is consistent with the 2-storey scale of the existing dwelling and surrounding dwellings.

The proposed rear dormer at the Attic Level is compatible in scale with the existing dwelling. The dormer has been designed to comply with the BCA in terms of ceiling height. It is noted that a rear dormer was previously approved under D/2009/300. Moreover, there are large rear dormers in the surrounding area as shown in the Context Analysis Diagram submitted with this application. The extract of a series of before and after photomontages is provided below which highlights that the proposed rear dormer at the Attic Level is not readily visible from the key surrounding vantage points.

**Objective (b)** seeks to ensure development density reflects its locality,

*Comment:* The proposal will result in a 2-storey dwelling with Attic Level, which is consistent with the 2-storey scale of the existing dwelling and surrounding dwellings.

The FSR non-compliance will not be visible from the streetscape and will be indiscernible from surrounding properties.

The proposal will not alter the setbacks of the existing dwelling.

Adjoining the site to the east at 45 Darling Street is a semi-detached dwelling, which forms a pair with the semi-detached dwelling on the subject site. The proposed works are carefully integrated with the existing dwelling and complement the adjoining semi-detached dwelling to the east.

The proposal maintains the integrity of the streetscape and the heritage conservation area. Refer to the Heritage Impact Statement prepared by Urbis submitted with this application.

**Objective (c)** seeks to provide an appropriate transition between development of different densities,

*Comment:* The existing dwelling on the subject site is 2-storeys. Adjoining the subject site to the east is a 2-storey semi-detached dwelling at 45 Darling Street, which forms a pair with the semi-detached dwelling on the subject site. Adjoining the subject site to the west is a 2-storey mixed use building at 49 Darling Street. The proposal will result in a 2-storey dwelling with Attic Level.

The proposed built form and scale will sit comfortably in the low density zoned area and is consistent with the form of development anticipated in the R1 General Residential zone.

**Objective (d)** seeks to minimise adverse impacts on local amenity,

*Comment:* Exceedance of the FSR control will not create additional building bulk that results in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this bulk would not create additional benefit for adjoining properties or the locality.

The proposal will provide a development, which has been designed to ensure that the visual and acoustic privacy of adjoining properties is maintained, noting that the dormer window (GFA component) has been orientated to ensure no overlooking of adjoining properties.

The proposed rear dormer of the Attic Level has been positioned and designed to not cause unreasonable overshadowing to the adjoining properties. As demonstrated in the Shadow Diagrams submitted with this application, the proposed development does not result in any unreasonable shadows to the adjoining properties. Minimal additional shadow will be cast from the proposed Attic Level rear dormer on the roof of 45 Darling Street in the afternoon only and on the blank wall of 49 Darling Street in the morning only and will not impact existing glazing. These overshadowing impacts are considered to be negligible. The living areas and private open space areas of 45 and 49 Darling Street will not be overshadowed by the proposed development.

The proposal development will not result in unreasonable view loss impacts to the neighbouring properties, as illustrated in the submitted view analysis with the view of the Harbour Bridge from the adjoining property at No. 49 Darling Street not impacted.

**Objective (e)** seeks to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.

*Comment:* The proposal will retain the existing street tree at the front of the site. The proposal will retain the existing landscaped front garden area.

Exceedance of the FSR control will not create additional building bulk that results in unreasonable environmental amenity impacts of private properties and the public domain.

**Objectives of the Zone**

The zoning of the land is R1 General Residential. The objectives of the R1 zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide residential development that maintains the character of built and natural features in the surrounding area.*

The proposal is consistent with the objectives of the R1 zone as follows:

- The proposed FSR variation will provide for a built form that will sit comfortably in its context. The FSR variation will be indiscernible from the streetscape and surrounding properties.
- The proposal will retain the existing residential use of the site and continue to provide for housing needs in the area.
- The proposed height, bulk and scale is compatible with the character of surrounding development.
- The proposal will not inhibit other land uses to be provided in the area that provide facilities or services to meet the day to day needs of residents.

As demonstrated above, the proposed development will be in the public interest because it is consistent with the objectives of the FSR development standard and the objectives of the R1 zone.

The above demonstrates that compliance with the control is unreasonable and unnecessary in the circumstances of this case.

**Clause 4.6(4)(b) and Clause 4.6(5)**

Concurrence of the Planning Secretary is taken to have been obtained as a result of written notice dated 5 May 2020 attached to the Planning Circular PS 20-002.

In the context of the requirements of Clause 4.6(5), it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

### Conclusion

The consistency of the development with the zone objectives and the objectives of the FSR standard together with the absence of adverse impacts arising establish that there are sufficient grounds to support the variation from the development standard and confirm that it is unreasonable and unnecessary for the development to comply. This therefore demonstrates sufficient environmental planning grounds to justify contravening the standard.

In addition, the resultant development will be in the public interest as it complies with the objectives of the zone and the objectives of the development standard.

Despite the breach with the standard, the proposal is consistent with the objects of Section 1.3 of the EP&A Act, 1979, which are to encourage development that promotes the social and economic welfare of the community and a better environment, to promote and coordinate orderly and economic use and development of land, to promote good design and amenity of the built environment and to protect the heritage of the built environment.

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to support the variation.



Jennie Askin  
Director  
aSquare Planning Pty Ltd

Date: 3 July 2023



**47 Darling Street, Balmain East**

**REQUEST FOR VARIATION TO LANDSCAPED AREA DEVELOPMENT  
STANDARD PURSUANT TO CLAUSE 4.6(3) OF INNER WEST LEP 2022**

**Clause 4.3C – Landscaped Areas for Residential Accommodation in Zone  
R1**

Clause 4.3C(3)(a)(i) of Inner West LEP 2022 requires where the lot size is less than 235m<sup>2</sup> for 15% of the site area to be landscaped (23.39m<sup>2</sup>). The proposal will result in a landscaped area equivalent to 10.3% of the site area (16m<sup>2</sup>), providing a non-compliance with this control. The percentage variation is 31.6% (7.39m<sup>2</sup>).

The proposal therefore seeks to vary the landscaped area development standard.

The objectives of Clause 4.3C are as follows:

- (a) to provide landscaped areas for substantial tree planting and for the use and enjoyment of residents,*
- (b) to maintain and encourage a landscaped corridor between adjoining properties,*
- (c) to ensure that development promotes the desired character of the neighbourhood,*
- (d) to encourage ecologically sustainable development,*
- (e) to control site density,*
- (f) to provide for landscaped areas and private open space.*

The zoning of the land is R1 General Residential. The objectives of the R1 zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide residential development that maintains the character of built and natural features in the surrounding area.*

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**Clause 4.6 - Exceptions to Development Standards**

Clause 4.6 of the Inner West Local Environmental Plan 2022 allows for exceptions of Development Standards. The objectives of this Clause 4.6 are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The clause goes on to state:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard*
- (4) *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.*

This document constitutes the written request referred to in Clause 4.6(3) in relation to the proposal's breach of the landscaped area development standard.

The NSW Department of Planning and Infrastructure (DP&I) provides guidance on how to prepare Clause 4.6 variations; 'Varying development standards: A Guide' (August 2011). This written request to vary the standards is based on the DP&I's Guide.

#### **Clause 4.6(3) and 4.6(4)**

The proposal is considered against the four matters required to be established under Clause 4.6.

#### **1. Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:**

In order to assess whether strict compliance with the development standard is unreasonable or unnecessary, a proposal is considered against the following five ways<sup>1</sup>:

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

These five ways were re-emphasised by Commissioner Morris<sup>2</sup>. Each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in a particular circumstance<sup>3</sup>. All tests are separate and not all

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<sup>1</sup> see *Wehbe v Pittwater Council* [2007] NSWLEC 827

<sup>2</sup> *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386

<sup>3</sup> *Mecone Pty Limited v Waverley Council* [2015] NSWLEC 1312

tests may not be applicable in each case. Therefore, not all tests need to be met.

This objection relies on the first method set out above, that compliance with a standard is unreasonable and unnecessary given that the objectives of the standard are met even though the standard is not complied with<sup>4</sup>.

Compliance with the objectives of the landscaped area standard is addressed under **Point 4 below**.

In addition, the following points are raised:

- Compliance with the landscaped area development standard is unreasonable and unnecessary as the proposal allows for adequate landscaped area on the site. The proposed landscaped area on the site provides sufficient open space for recreation use, adequate deep soil area to support the planting of mature trees and considerable opportunities for onsite stormwater retention.
- The proposal will increase the existing landscaped area on the site. The existing landscape area is 13m<sup>2</sup> (8.3%). The proposed landscaped area is 16m<sup>2</sup> (10.3%).
- The proposal has a shortfall of 7.39m<sup>2</sup> of landscaped area from the landscaped area control. This non-compliance will be indescribable from the subject site, streetscape and surrounding properties.
- The proposal does not include tree removal. Refer to the Landscape Plan prepared by Luke Moloney Architecture submitted with this application. The landscaping makes a positive contribution to streetscape quality and softens the visual impact of the built form.
- The proposal provides a consistent footprint with neighbouring development and complies with the LEP site coverage development standard.

## **2. There are sufficient environmental planning grounds to justify contravening the development standard:**

The area below the landscaped area control is:

- 7.39m<sup>2</sup>

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<sup>4</sup> *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245

Given the consistency of the proposal against the zone objectives and landscaped area objectives (see **Point 4 below regarding both**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard.

In addition, there are sufficient environmental planning grounds that the proposed landscaped area can be achieved without adverse impacts for the following reasons:

- The proposal will increase the existing landscaped area on the site. The existing landscape area is 13m<sup>2</sup> (8.3%). The proposed landscaped area is 16m<sup>2</sup> (10.3%).
- The proposal does not include tree removal. Refer to the Landscape Plan prepared by Luke Moloney Architecture submitted with this application.
- The landscaping makes a positive contribution to streetscape quality and softens the visual impact of the built form.
- The proposed landscaped area non-compliance will not create additional unreasonable environmental amenity impacts for the subject site or adjoining properties.
- The proposed landscaped area on the site provides sufficient open space for recreation use, adequate deep soil area to support the planting of mature trees and considerable opportunities for onsite stormwater retention.

The proposal will provide a suitable design and of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979) and the building envelope and design of the proposal responds appropriately to the unique opportunities and constraints of the site, with the proposal increasing the landscaped area within the site.

The proposed landscaped area non-compliance can be justified as the proposal provides a consistent footprint with neighbouring development and complies with the LEP site coverage development standard.

An increase in the landscaped area will not result in significant improved amenity for the subject site and adjoining properties. The lack of impact on adjoining properties in terms of solar access, privacy, view loss and visual bulk establishes sufficient planning grounds<sup>5</sup>.

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<sup>5</sup> *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [94(c)] and *Randwick City Council v Micaul Holdings Pty Ltd* at [34]

**3. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3):**

The written request adequately addresses the matters referred to above by Clause 4.6(3).

**4. 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:**

**Objectives of the Standard**

The proposal will be in the public interest as it meets the objectives of the landscaped area development standard as follows:

**Objective (a)** seeks to provide landscaped areas for substantial tree planting and for the use and enjoyment of residents,

*Comment:* The proposed landscaped area on the site provides sufficient open space for recreation use, adequate deep soil area to support the planting of mature trees and considerable opportunities for onsite stormwater retention.

**Objective (b)** seeks to maintain and encourage a landscaped corridor between adjoining properties,

*Comment:* The landscaped areas at the front of the site and rear of the site align with the front and rear landscaped areas of the adjoining dwellings.

The proposal does not include tree removal. The proposal will retain the existing landscaping and trees on the site and retain the existing street tree at the front of the site. Refer to the Landscape Plan prepared by Luke Moloney Architecture submitted with this application. The landscaping makes a positive contribution to streetscape quality and softens the visual impact of the built form.

**Objective (c)** seeks to ensure that development promotes the desired character of the neighbourhood,

*Comment:* The proposal will increase the existing landscaped area on the site. The existing landscape area is 13m<sup>2</sup> (8.3%). The proposed landscaped area is 16m<sup>2</sup> (10.3%).

The proposal has a shortfall of 7.39m<sup>2</sup> of landscaped area from the landscaped area control. This non-compliance will be indescribable from the subject site, streetscape and surrounding properties.

The proposal does not include tree removal. The proposal will retain the existing street tree at the front of the site. Refer to the Landscape Plan prepared by Luke Moloney Architecture submitted with this application. The landscaping makes a positive contribution to streetscape quality and softens the visual impact of the built form.

**Objective (d)** seeks to encourage ecologically sustainable development,

*Comment:* The proposal will increase the existing landscaped area on the site. The existing landscape area is 13m<sup>2</sup> (8.3%). The proposed landscaped area is 16m<sup>2</sup> (10.3%).

The proposed landscaped area on the site allows for the retention and absorption of surface drainage water on site and minimises obstruction to the underground flow of water.

**Objective (e)** seeks to control site density,

*Comment:* The proposal provides a consistent footprint with neighbouring development and complies with the LEP site coverage development standard, demonstrating that the proposal is not an over-development of the site. The proposal will not alter the setbacks of the existing dwelling.

**Objective (f)** seeks to provide for landscaped areas and private open space.

*Comment:* The proposed landscaped area on the site provides sufficient open space for recreation use, adequate deep soil area to support the planting of mature trees and considerable opportunities for onsite stormwater retention.

The proposed alterations and additions will not alter the existing private open space area at the rear of the site.

The private open space area is of a size and dimensions that are useable and capable of accommodating a range of private recreation needs of residents. The rear private open space area is integrated with and capable of serving as an outdoor extension of the dwelling's main living area on the Ground Floor.

#### **Objectives of the Zone**

The zoning of the land is R1 General Residential. The objectives of the R1 zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide residential development that maintains the character of built and natural features in the surrounding area.*

The proposal is consistent with the objectives of the R1 zone as follows:

- The proposed landscaped area variation will be indiscernible from the streetscape and surrounding properties.
- The proposal will retain the existing residential use of the site and continue to provide for housing needs in the area.
- The proposed height, bulk and scale is compatible with the character of surrounding development.
- The proposal will not inhibit other land uses to be provided in the area that provide facilities or services to meet the day to day needs of residents.

As demonstrated above, the proposed development will be in the public interest because it is consistent with the objectives of the landscaped area development standard and the objectives of the R1 zone.

In addition, the above demonstrates that compliance with the control is unreasonable and unnecessary in the circumstances of this case.

#### **Clause 4.6(4)(b) and Clause 4.6(5)**

Concurrence of the Planning Secretary is taken to have been obtained as a result of written notice dated 5 May 2020 attached to the Planning Circular PS 20-002.

In the context of the requirements of Clause 4.6(5), it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

#### **Conclusion**

The consistency of the development with the zone objectives and the objectives of the landscaped area and the lack of impact arising is sufficient grounds to support that breach and confirms the lack of necessity for the development to comply. This therefore demonstrates sufficient environmental

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planning grounds to justify contravening the standard.

In addition, the resultant development will be in the public interest as it complies with the objectives of the zone and the objectives of the development standard.

Despite the breach with the standard, the proposal is consistent with the objects of Section 1.3 of the EP& A Act, 1979, which are to encourage development that promotes the social and economic welfare of the community and a better environment, to promote and coordinate orderly and economic use and development of land and promote good design and amenity of the built environment.

In the context of other requirements of Clause 4.6, it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to support the variation.



Clare Findlay  
Consultant Town Planner  
aSquare Planning Pty Ltd

Date: 21 October 2022

## Attachment D –Heritage Impact Statement

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# HERITAGE IMPACT STATEMENT

47 Darling Street, Balmain  
East

Prepared for  
**LUKE MOLONEY ARCHITECTURE**  
31 March 2023

Document Set ID: 37947022  
Version: 1, Version Date: 01/08/2023

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	03	13/10/2022	Final
	04	31/03/2023	Final for Lodgement

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## EXECUTIVE SUMMARY

Urbis have been engaged by Luke Moloney Architecture to prepare the following Heritage Impact Statement for 47 Darling Street, Balmain East (hereafter known as 'the site' or 'the subject site'). This Heritage Impact Statement (HIS) provides an assessment of the proposed alterations and additions to the site.

The subject site is one of a pair of semi-detached Federation terrace dwellings located at 45 and 47 Darling Street. Balmain East is located within the Inner West Local Government Area (LGA) and is administered under the provisions of the *Inner West Local Environmental Plan (LEP) 2022*. The subject site is not a locally listed heritage item under Schedule 5, Part 1 of the Inner West LEP 2022; however, it is located within the 'Balmain East Heritage Conservation Area' (HCA) (C3) listed under Schedule 5, Part 2 of the Inner West LEP 2022. The site is also located in proximity to several locally listed heritage items under the LEP.

Urbis understands that a Development Application (DA) (D/2009/300) for alterations and additions, including a rear dormer extension, was approved by the former Leichhardt Council in 2009 and has now lapsed. New plans by Luke Moloney Architecture propose internal alterations to the subject site and a rear dormer addition to the roof. The proposed works would be undertaken to ensure that the existing dwelling can continue to be used as a family home suited to contemporary living. This HIS has been prepared to determine the potential heritage impact of the proposed works on the Balmain East Heritage Conservation Area and vicinity heritage items.

A detailed impact assessment of the proposed works has been undertaken in Section 5 of this report. The proposed works are considered acceptable from a heritage perspective and would not result in adverse impacts to the heritage significance of the subject site or the Balmain East Heritage Conservation Area.

Key aspects of the proposal are as follows:

- The proposed works would retain the significance of the subject site and have no adverse impacts on the Balmain East HCA. The proposed works are largely confined to the interiors and rear roof of the subject site and would not result in any visual impacts to the Darling Street streetscape or the HCA.
- The proposed works would retain the Darling Street façade, including key characteristics which contribute to the Balmain East Heritage Conservation Area, such as the original roof and gable, timber sash windows, timber balcony details and lead lighting details. No modifications to the Darling Street façade are proposed, allowing the continued interpretation of the dwelling as a transitional Federation/Victorian terrace and the reading of Nos. 47 and 45 as a pair. This would maintain the contribution of the dwelling to the Balmain East Heritage Conservation Area.
- There are minor changes to rear plane of the primary roof form, with no changes to the front plane or the ridgeline of the subject dwelling as part of the proposed works. No changes would be visible when viewed from Darling Street. The proposed rear dormer extension and deck would be strategically positioned below the ridgeline when viewed from the rear, with appropriate setbacks on the main roof and from the adjacent terrace. The scale and form of the proposed rear dormer extension and deck would be subservient to the main roof and function as an intermediary form between the ground floor roof and main roof.
  - The proposed rear dormer extension and deck have been sympathetically designed to respond to the existing form of the subject dwelling through the use of traditional proportions which would ensure that the dormer is seen as recessive and subservient to the primary roof form.
  - The dormer window would also respond to the wider context of the HCA, where rear dormer extensions and terraces are present in close proximity to the subject site. The form of the rear dormer extension is articulated so as to retain the overall presentation of the building when viewed from Nicholson Avenue or in the context of the heritage items on Lookes Avenue, noting that only minor obscured views are available of the site from these vantage points. Therefore, the rear dormer would not result in any adverse visual impact to the dwelling or Balmain East HCA from any vistas towards the subject site.
  - Furthermore, the materiality of the proposed rear dormer extension and deck is clearly contemporary, comprising metal cladding, surround and steel windows in a recessive and sympathetic oxblood coloured finish. The proposed materials, finishes and colours are complementary to the existing roofing tiles in a dark colour scheme and would be recessive within the wider Balmain East HCA. The use of contemporary materiality furthermore ensures legibility of the original roof form.
- The proposal involves rear façade works to areas which have been previously modified. This would include demolition of the non-original ground floor French doors, which would be replaced with contemporary large, glazed steel-framed doors. The rear façade works would also include the

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replacement of a rear sash window with a glazed door. These proposed works are located in modified spaces that do not contribute to the Balmain East Heritage Conservation Area and these proposed alterations would not adversely affect the overall significance or reading of the dwelling.

- The proposed internal alterations would retain the configuration and spatial volumes of the two principal rooms, being the proposed kitchen and proposed dining room. The proposal includes the removal of the extant non-original tri-fold doors between the two rooms and would retain the nibs in a reduced capacity. The existing original door into the proposed kitchen (extant living room) would be retained but sealed to enable the installation of reversible cabinetry within the principal room. This would not include the removal of any significant or original heritage fabric and would have no adverse impact on the significance of the dwelling.
- The proposed alterations to the ground and first floor rooms would involve partial demolition of walls within the non-principal rooms. This would include reconfiguration of the extant bedroom (B1) wall to allow for a new ensuite, the lowering of the first floor ceiling and enlargement of the extant living room opening at the ground floor. The nibs of all walls will be retained, allowing the original layouts of the rooms to remain legible and enabling this work to be reversible. The nibs of the ground floor opening between the proposed kitchen and proposed dining room will be retained in a reduced capacity which would not affect the legibility of the original layout of the rooms. These changes will not be visible from the exterior of the subject site, with no impacts to the streetscape or the heritage significance of the Balmain East HCA.
- There is relatively limited original fabric within the dwelling, including ceiling roses, picture rails, skirting, fireplaces and staircase. The proposed alterations of the ground and first floor rooms would involve removal of some original joinery such as skirting boards, cornices and fanlights however there is opportunity to reuse these original features elsewhere within the dwelling. All other original features, including the ceiling roses, fireplaces and cornices on the ground and first floor hallways and bedrooms, would be retained within the proposal. The ceiling roses and cornices on the first floor would be removed, safely stored and reinstalled in their original positions following the lowering of the ceiling.
- The proposed establishment of a new bedroom and ensuite within the converted habitable roof space would not result in adverse impacts to any original or significant fabric. The proposed addition of a new staircase from the first floor to the attic level would furthermore not result in any adverse visual or direct impacts. As above, the proposed decking area at the attic/roof level would not result in direct impacts to significant fabric and would not result in any adverse visual impact through the use of sympathetic materials, colours and finishes, and would not be visible from any vistas to the rear elevation of the subject site. Therefore, the proposed dormer and deck would have no impact to the significance of the Balmain East HCA.

For the reasons above, this project is recommended for approval from a heritage perspective.

## RECOMMENDATIONS

Urbis recommends the following be incorporated into the proposal:

- Original joinery and details such as fanlights, cornices or skirting boards should be carefully removed where required for new openings or walls and should be reused elsewhere throughout the dwelling where possible. Excess joinery should be donated to heritage fabric recycling or conservation companies. Where additional skirting is required, new joinery should be matched like-for-like.

## 1. INTRODUCTION

### 1.1. BACKGROUND

Urbis have been engaged by Luke Moloney Architecture to prepare the following Heritage Impact Statement for 47 Darling Street, Balmain East (hereafter known as 'the site' or 'the subject site'). This Heritage Impact Statement (HIS) provides an assessment of the proposed alterations and additions to the site.

The subject site is one of a pair of semi-detached Federation terrace dwellings located at 45 and 47 Darling Street. Balmain East is located within the Inner West Local Government Area (LGA) and is administered under the provisions of the *Inner West Local Environmental Plan (LEP) 2022*. The subject site is not a locally listed heritage item under Schedule 5, Part 1 of the Inner West LEP 2022; however, it is located within the 'Balmain East Heritage Conservation Area' (HCA) (C3) listed under Schedule 5, Part 2 of the Inner West LEP 2022. The site is also located in proximity to several locally listed heritage items under the aforementioned instrument.

Urbis understands that a Development Application (DA) (DI/2009/300) for alterations and additions, including a rear dormer extension, was approved by the former Leichhardt Council in 2009 and has now lapsed. New plans by Luke Moloney Architecture propose internal alterations to the subject site and a rear dormer addition to the roof. The proposed works would be undertaken to ensure that the existing dwelling can continue to be used as a family home suited to contemporary living. This HIS has been prepared to determine the potential heritage impact of the proposed works on the Balmain East Heritage Conservation Area and vicinity heritage items.

### 1.2. SITE LOCATION

The subject site is located at 47 Darling Street, Balmain East on Wangal Country. The site, legally described as Lot 1 Deposited Plan 572843, is one of a pair of semi-detached Federation terrace dwellings. The site is located on the northern side of Darling Street, in close proximity to the junction of Darling and Nicholson Streets. The location of the subject site is shown below.

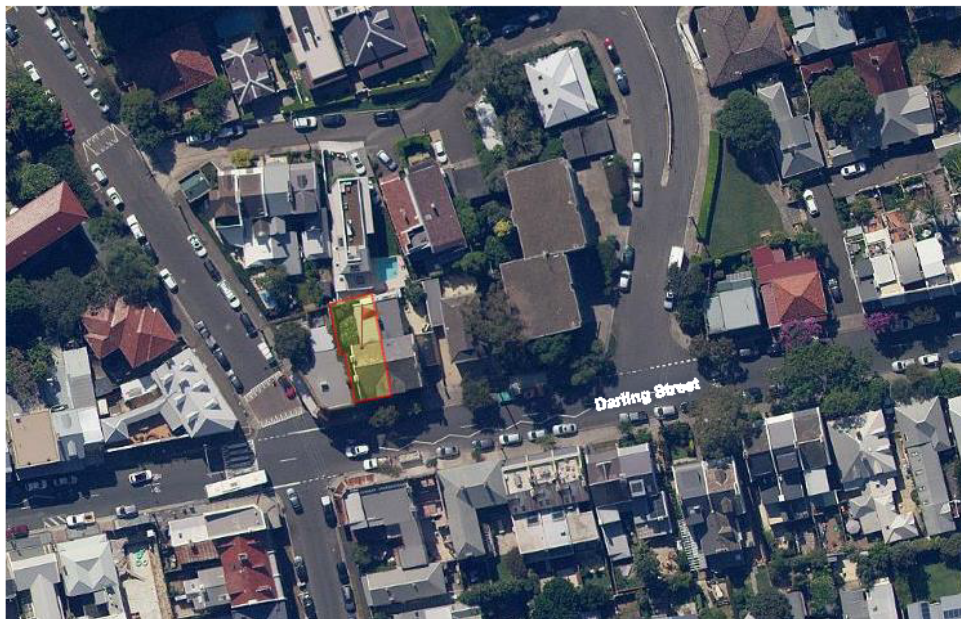


Figure 1 – Location of the subject site indicated in red

Source: SixMaps

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### 1.3. METHODOLOGY

This Heritage Impact Statement has been prepared in accordance with the NSW Heritage Division guidelines 'Assessing Heritage Significance', and 'Statements of Heritage Impact'. The philosophy and process adopted is that guided by the Australia ICOMOS Burra Charter 1999 (revised 2013).

Site constraints and opportunities have been considered with reference to relevant controls and provisions contained within the Inner West LEP 2022 and the *Leichhardt Development Control Plan (DCP) 2013*.

### 1.4. AUTHOR IDENTIFICATION

The following report has been prepared by Darrienne Wyndham (Heritage Consultant) and Sarah Hawkins (Senior Heritage Consultant). This report has been reviewed by Allie Cornish (Associate Director).

Unless otherwise stated, all drawings, illustrations and photographs are the work of Urbis.

### 1.5. THE PROPOSAL

Urbis understands that a DA (D/2009/300) for alterations and additions, including a rear dormer extension, was lodged and approved by Council in 2009. As this DA has lapsed, new designs by Luke Moloney Architecture have been proposed for the subject site. The proposed works are as summarised hereunder:

#### External Works

- Construction of a rear dormer addition with associated timber deck and box gutter

#### Ground Floor

- Reconfiguration of existing kitchen and living room, including:
  - Demolition of existing kitchen fittings and installation of new kitchen fitout in extant living room
  - Enlargement of existing archway between extant living room and dining room
  - Enclosure of hallway door into extant living room.
- Reconfiguration of existing dining room, including:
  - Demolition of existing tri-fold doors between existing dining room and extant kitchen
  - Installation of new internal doors in existing dining room
  - Replacement of existing rear window with glass door to courtyard
- Opening of walls between new sitting room and courtyard, including:
  - Removal of existing non-original windows and door
  - New window in existing wall
  - New glazed doors
- Refurbishment of rear bathroom and addition of skylight
- Addition of laundry area under existing hallway stairs
- Extension of existing garden bed in courtyard.

#### First Floor

- Reconfiguration of bedrooms and bathrooms, including:
  - Demolition of walls in rear bedroom (B4) and bathroom
  - Demolition of archway in front bedroom
  - New bathroom fitout
  - Lowering of ceiling to aid head height in attic, including removal, safe storage and reinstallation of ceiling roses and cornices.
- Construction of new front bedroom and associated ensuite walls with provision of new door
- New stair to attic
- New skylight to rear hallway.

#### Attic/Roof Level

- Conversion of extant attic space into habitable space with bedroom, ensuite and deck.

It is noted that mature trees in the rear of the site have been approved for removal under a separate DA.

The table below provides the relevant plans by Luke Moloney Architecture received by Urbis which form the base of this assessment.

Table 1 – Details of drawings supplied October 2022

Drawing	Date
A:000 Cover Sheet, Issue A	11 October 2022
A:001 Site Analysis, Issue A	11 October 2022
A:002 Existing Floor Plans, Issue A	11 October 2022
A:100 Site Plan/Roof Plan, Issue A	11 October 2022
A:101 Ground Floor Plan, Issue A	11 October 2022
A:102 First Floor Plan, Issue A	11 October 2022
A:103 Second Floor Plan, Issue A	11 October 2022
A:104 Landscape Plan, Issue A	11 October 2022
A:300 West Elevation, Issue A	11 October 2022
A:301 North and South Elevation, Issue A	11 October 2022
A:302 West Elevation, Issue A	11 October 2022
A:303 Materials Palette, Issue A	11 October 2022
A:400 Section 01, Issue A	11 October 2022
A:401 Section 02, Issue A	11 October 2022
A:402 Section 03, Issue A	11 October 2022
A: Photomontages	11 October 2022

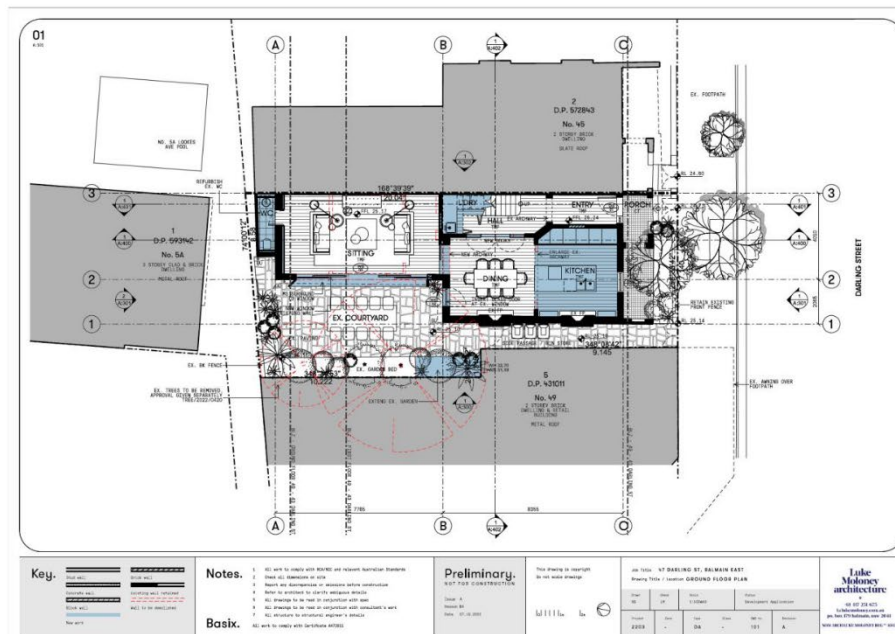


Figure 2 – Proposed ground floor plan.

Source: Luke Moloney Architecture

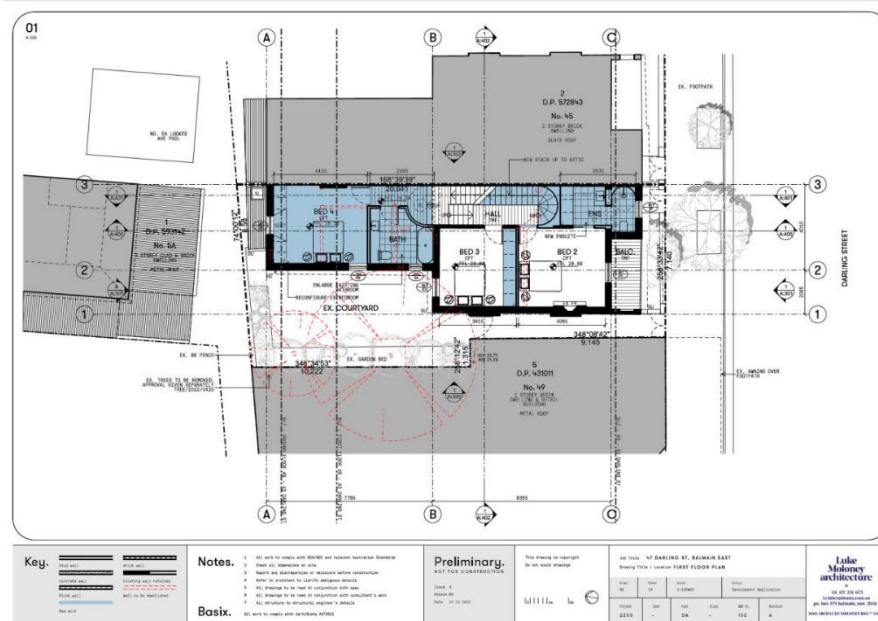


Figure 3 – Proposed first floor plan.

Source: Luke Moloney Architecture

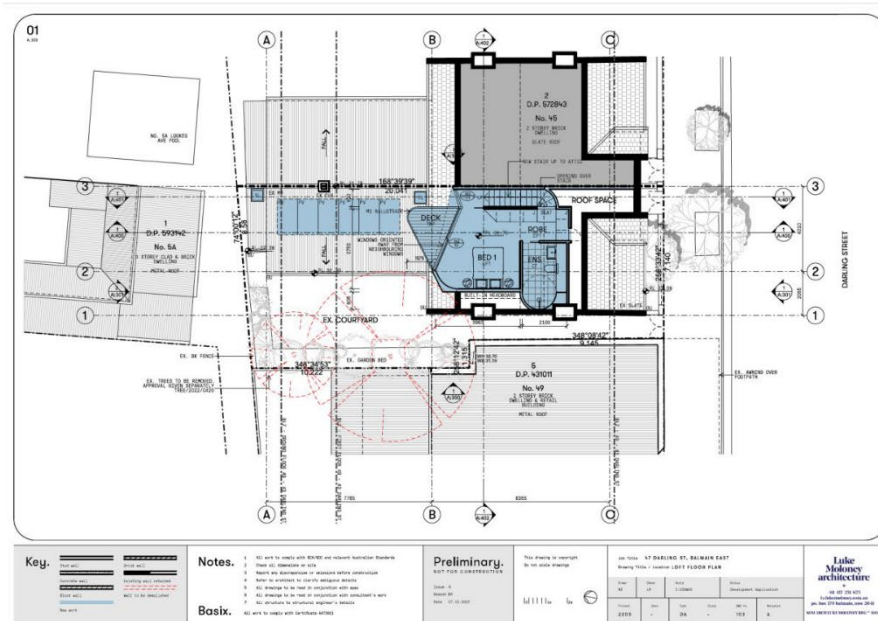


Figure 4 – Proposed loft and dormer addition plan.

Source: Luke Moloney Architecture

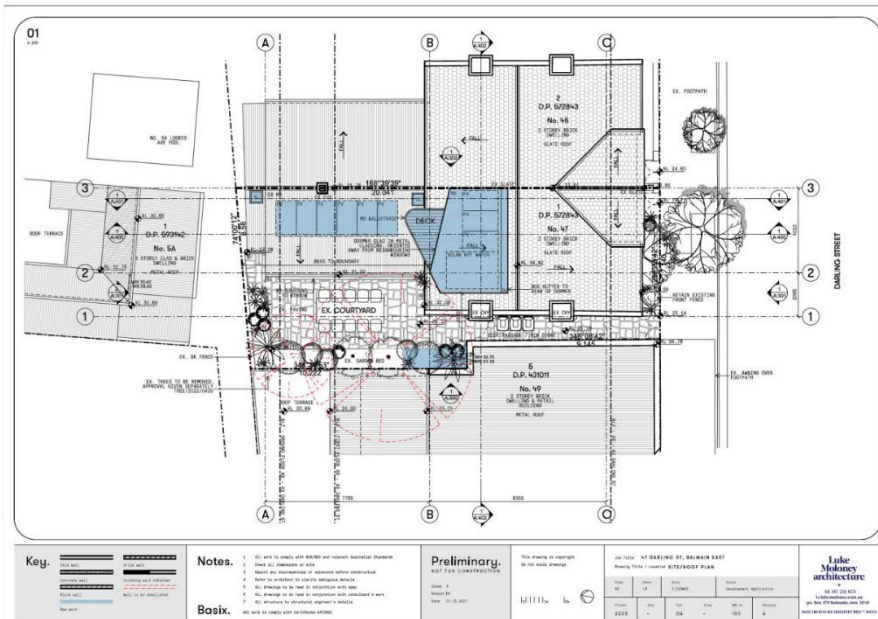


Figure 5 – Proposed roof plan.

Source: Luke Moloney Architecture

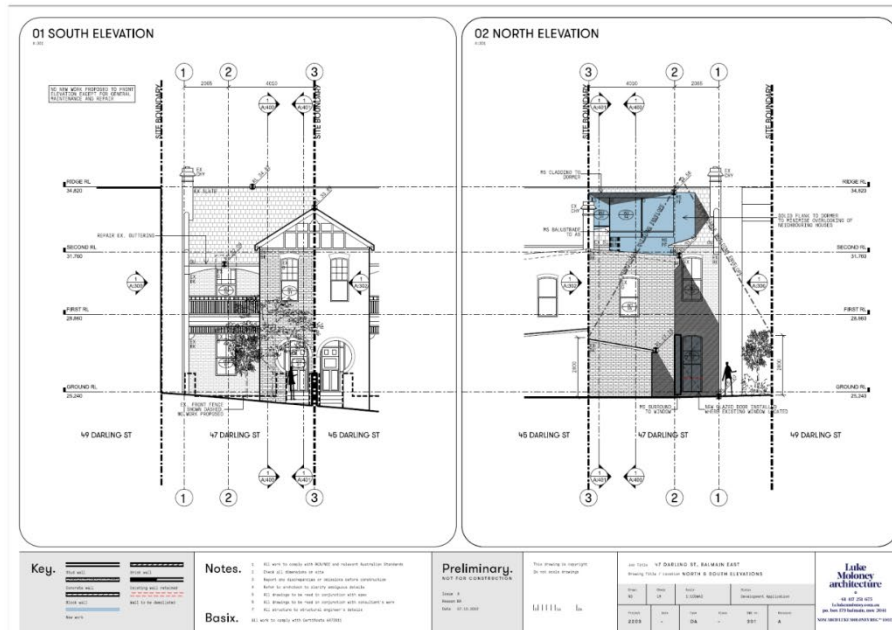


Figure 6 – Proposed dormer extension plan from south and north elevations.

Source: Luke Moloney Architecture

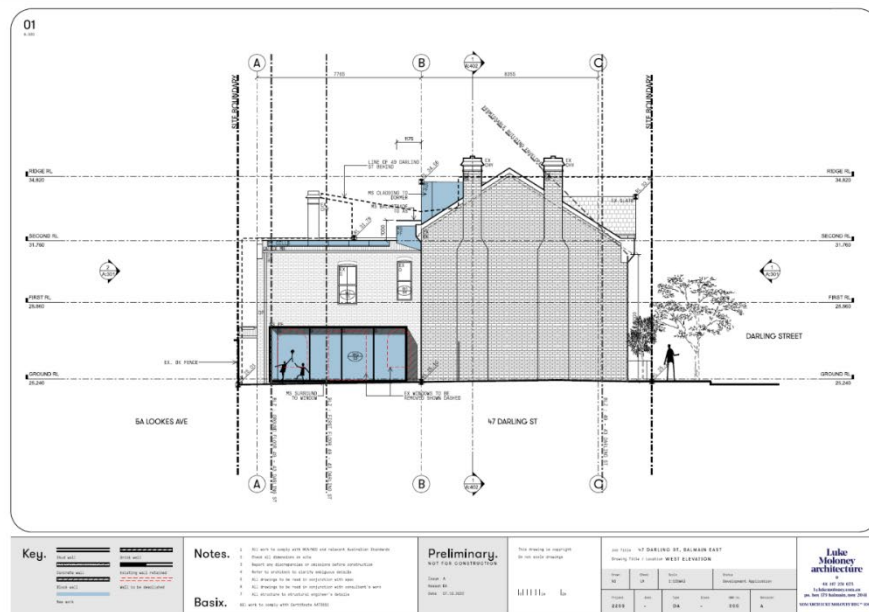


Figure 7 – Proposed dormer extension plan from west elevation.

Source: Luke Moloney Architecture

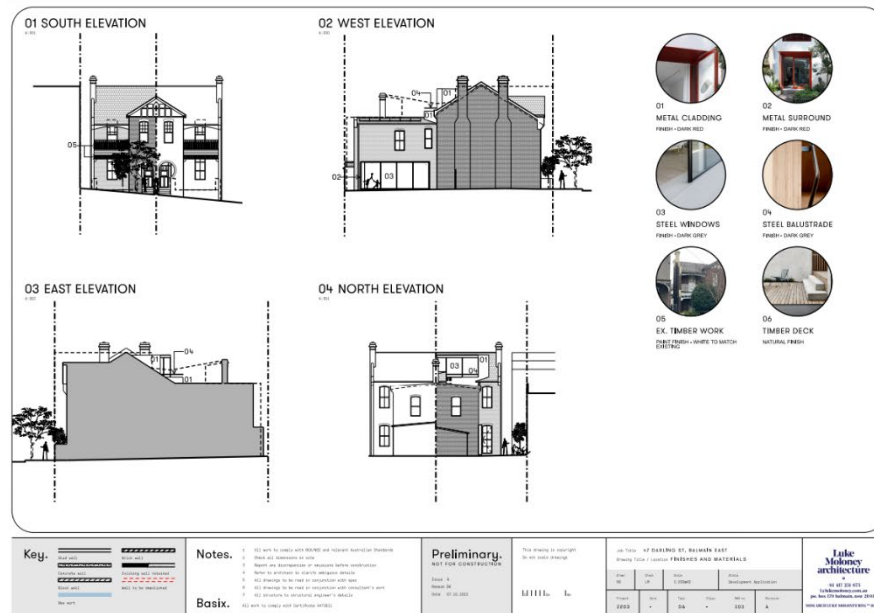


Figure 8 – Proposed materials schedule.

Source: Luke Moloney Architecture

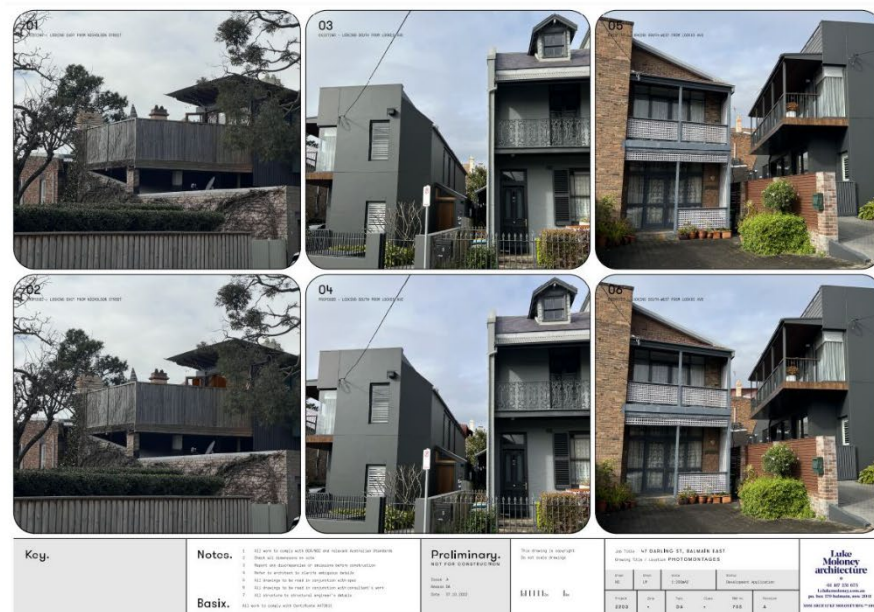


Figure 9 – Photomontage of proposal as seen from Lookes Avenue.

Source: Luke Moloney Architecture

## 2. SITE DESCRIPTION

### 2.1. SITE SETTING

The subject site is located at 47 Darling Street, Balmain East, within the Local Government Area (LGA) of the Inner West. The subject site is located on the northern side of Darling Street approximately two hundred metres east of the Balmain East headland and ferry stop. The subject site is one of a pair of semi-detached Federation terrace dwellings, with the second terrace located east of the site at No. 45 Darling Street.

The subject site is located within the Balmain East HCA. This HCA reflects the growth of Sydney's early suburbs, with a mixture of Victorian sandstone villas, Federation sandstone, weatherboard and brick cottages and terraces and corner store structures, with some early-1800s timber and stone buildings. The character of the HCA developed in response to the topography of the Balmain East headland, which slopes down sharply towards the harbour providing water views. The HCA is also characterised by vibrant mature tree plantings and small pocket parks off Darling Street.

The mixed character of the Balmain East HCA is evident in the vicinity of the subject site. A group of Victorian terraces are located adjacent to the rear of the site on Lookes Avenue, while a contemporary two-storey dwelling backs onto rear of the site. Several of these buildings have been modified to include dormer extensions, with rear roof terraces also present at Nos 5, 5A and 7D Lookes Avenue. To the west, the subject site borders an established group of Federation shop-top buildings grouped around the Darling Street and Nicholson Street junctions including a locally listed heritage shop-top building. The adjacent property, No.49 Darling Street, is a Federation shop-top parapeted building with iron skillion roof and was built at the same time as Nos. 45-47. The southern side of Darling Street primarily comprises modified Victorian terrace style housing, with multiple rear and front dormer extensions present in terraces east of the subject site. The northern side of Darling Street comprises a modified Interwar flat building and a c.1990s flat building on the corner of Darling Street and Gallimore Avenue.

The following images provide a visual overview of the immediate surrounds of the subject site and the adjacent heritage item.



Figure 10 – Location of the subject site indicated in red

Source: SixMaps



Figure 11 – View of subject site and neighbouring shop-top building.



Figure 12 – View west towards heritage item and shop group west of the subject site.



Figure 13 – View east of subject site towards Balmain East headland.



Figure 14 – View east of subject site towards Balmain East headland.



Figure 15 – View of shop-top intersection facing east towards the subject site (indicated with red arrow).



Figure 16 – View of the subject site and No.45 Darling Street facing north-west.

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Figure 17 – View of subject site from Nicholson Avenue, facing south-east. Chimney of No.47 Darling Street is indicated with a red arrow.



Figure 18 – View of the subject site from heritage terraces on Lookes Avenue, facing south. The chimney of No.47 Darling Street is indicated with a red arrow.

## 2.2. THE SUBJECT SITE AND STRUCTURES

The subject site is situated on the northern side of Darling Street in the block bound by Nicholson Street to the west, Darling Street to the south, Gallimore Avenue to the east and Lookes Avenue to the north. The site is occupied by a two storey semi-detached dwelling constructed in 1903. The semi-detached dwellings display characteristics of the Victorian/Federation transition period, with lead-lighting and timber detailing to the front balconies.

The dwelling is set approximately four metres back from the front boundary of the site. The front yard features mature shrub growth, with a tiled front porch and footpath. The front boundary of the property features a brick and iron paling fence. The site also features a rear courtyard with concrete tiles, with vegetation and some mature trees in the northern corners of the courtyard area. A concrete footpath and gate in the western portion of the site connects the courtyard to the front boundary.

The dwelling is constructed of liver coloured brick and features a hipped roof clad with slate and decorative terracotta ridgeline ornamentation and a dark brick string line detail on the second floor. Two original brick chimneys are located on the north and south planes of the roof, and on the ridgeline between the dwelling and the adjacent dwelling. The external façade of the dwelling is intact.

The front façade features two original balconies with timber detailing and timber sash windows. The second-floor timber balcony with timber detailing faces the Darling Street boundary, accessed by a large timber sash window with lead lighting. This balcony is currently in poor condition and considered unsafe to access. During the site inspection it was noted that the timber flooring across the boundary has rotted and requires replacement to be made safe and accessible.

Internally, the building is a single residential dwelling divided into two floors. The ground floor comprises a living, dining, kitchen, family room and laundry connected by a hallway on the eastern side of the dwelling. The front door features extensive lead lighting, all likely original.

The front rooms of the ground floor are currently used as a living room and a dining room which are connected by concertina doors in an opening which was likely created in the late 20<sup>th</sup> century as part of previous renovations. The front rooms feature original hardwood timber floorboards, skirting boards and plaster cornices throughout. The living room features a window timber sash window and timber door with fanlight, both likely original. The living room also features a highly intact marble fireplace with original cast iron detailing and decorative tiles and an iron ceiling rose with modern chandelier fitting. Timber concertina doors connect the living room to the dining room, which also features an original ceiling rose with modern chandelier fitting. A timber sash window with internal shutters is located at the north side of the dining room and looks into the rear courtyard area, and an original timber door with fanlight connects the dining room to the hallway.

The rear kitchen and family area is a step lower than the hallway. The kitchen has been remodelled from the original structure, with openings to two party walls made to create a larger kitchen/family area. The kitchen

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area has been substantially modified with contemporary fittings, including new timber floorboards and new skirting boards. Any previous original fabric such as cornices or ceiling roses have been removed as part of the previous renovations. A contemporary French door connects the courtyard and the kitchen. The remains of an arched brick lintel is visible above the existing (contemporary) door lintel, showing that this opening previously included what was likely a traditional double-hung timber sash window, with the opening widened to include the French doors as part of a late 20<sup>th</sup> century renovation. The French doors are bound on either side by two arched timber windows in the kitchen and family area. While these arched reveals may be original, the window frames themselves appear to be a later addition as they are not constructed in a traditional style common to Federation and Victorian architecture. Close review of the brickwork surrounding these arched windows suggests that these reveals potentially housed former doorways, as the brickwork below the windows changes in both colour and horizontal alignment. The inaccurate colour matching of the darker original brick and new redder brick – as well as the misalignment of the brick rows – is particularly evident beneath the southern window on the western courtyard elevation. Beneath the northern window on the same elevation, there is a clear distinction between the original mortar and pointing on the original and unmodified parts of the dwelling when compared with the more recently repointed mortar beneath the window, showing that this window was also a former door which was infilled and replaced with the extant window.

A timber staircase with turned timber detailing and central carpet strip connects the two floors. The timber staircase features a split level and landing, with a shorter upper staircase leading to the principal bedroom. The second floor comprises three bedrooms and two bathrooms connected by an eastern hallway, which features chamfered plaster archway details and original ceiling roses with contemporary chandelier fittings. The rooms on the second floor are primarily carpeted, with presumably original timber floorboards beneath (excluding the bathroom which is on a concrete slab).

The principal bedroom (B1) features an original door with timber architrave and fanlight, skirting board and cornice with ceiling rose, as well as an original, highly intact marble fireplace with original cast iron detailing and decorative tiles. There is some water damage present in the cornice and ceiling above this fireplace. The large, floor to ceiling timber sash window features original lead light detailing and internal shutters. A curved timber alcove frames a second front timber sash window. The secondary bedroom (B2) features original doors with fanlights, cornices and skirting boards, with timber sash windows and small ceiling rose. Another secondary bedroom (B3) features a contemporary door with original cornices, skirting boards, timber sash windows and small ceiling rose. Two bathrooms with modern fitouts are also present on the second floor, both with an original timber door and fanlight.



Figure 19 – Front façade of subject dwelling.



Figure 20 – View of original fireplace in living room.



Figure 21 – View of concertina doors between living and dining rooms.

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Figure 22 – View of parapet and second bedroom window, looking east.



Figure 23 – View of dining room window, looking east.



Figure 24 – View of existing French doors and modern window additions between kitchen and courtyard.



Figure 25 – View of modern window addition in kitchen/family area.

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Figure 26 – View of original door and fanlight in living room.



Figure 27– View of original door and fanlight in dining room.



Figure 28 – View of second floor hallway, arched details and original ceiling rose.

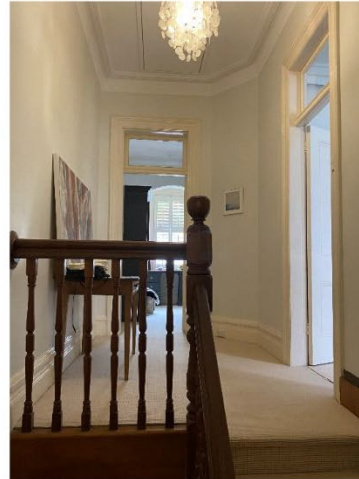


Figure 29 – View of second floor hallway towards principal bedroom (B1) and secondary bedroom (B2).

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Figure 30 – View of principal bedroom layout (B1).



Figure 31 – View of original fireplace and fittings in B1.



Figure 32 – View of original lead lighting and large sash window in B1.



Figure 33 – View of timber archway detail in B1.

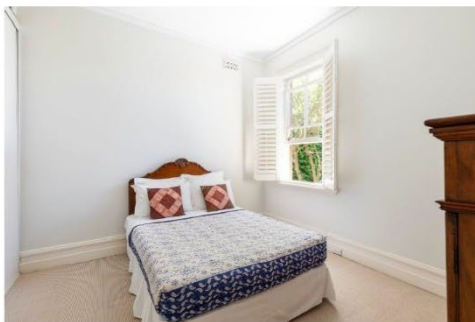


Figure 34 – View of secondary bedroom (B2).



Figure 35 – View of rear bathroom.

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### 3. HISTORICAL OVERVIEW

#### 3.1. AREA HISTORY

The Balmain peninsula is the traditional country of the Birrabirrigal and/or Wangal people, both groups belonging to the Dharug language group and who are estimated to have lived in the Sydney basin for over 10,000 years. Prior to the European occupation, the area was a prominent rocky sandstone peninsula with vistas across the harbour. It was also used for hunting, particularly of kangaroos. Aboriginal archaeological sites, notably midden mounds along foreshore areas, remain important evidence of Aboriginal occupation and land use of the area.

The first mention of the Balmain peninsula dates to the earliest days of the colony, when First Lieutenant William Bradley of the HMS *Sirius* made mention in his journal of an area "up the Harbour" known as "Major Ross' Garden" in 1788.<sup>1</sup> The same area was marked as "Ross' Farm" in a contemporary survey chart. Major Robert Ross, Lieutenant Governor of the Colony and Commandant of the Marine Detachment, arrived in the Colony in 1788 aboard the HMS *Scarborough*. Ross's connection to the subject site is hazy in the historical record, with no documents relating to registered grants being made to Ross; his transfer to Norfolk Island in March 1790 and subsequent return to England resulted in the land becoming free relatively swiftly.

In 1800, the subject site and "Ross' Garden" were granted by Governor Hunter to Dr William Balmain, Principal Surgeon of the Colony of New South Wales. Balmain's land grant comprised 550 acres (222 hectares) of the peninsula. Balmain did not occupy the grant for long, transferring the property in its entirety to an old school friend, Professor John Hay Borthwick Gilchrist, for the sum of five shillings. Gilchrist, an Assistant Surgeon in the Royal Navy, was posted to Calcutta (today's Kolkata, India) and never saw his grant or travelled to New South Wales.<sup>2</sup>

The property was known interchangeably as Gilchrist's Place and the Balmain Estate. In the 1820s and 1830s, Gilchrist attempted to sell off parts of his land with varying levels of success. Assigning Sydney-based agent Frederick Parbury to the sale in 1833, legal issues with several squatters on the land delayed the progress of sales until the late 1830s. While the trials were undertaken, surveyor John Armstrong was commissioned to lay out a subdivision of the land in preparation for sale. Armstrong initially laid out twenty-two lots, with a lengthy 50 ft wide slice of land reserved to connect the lots to Parramatta Road. This reserve would become Darling Street.

Parbury won his case in 1836, but was further delayed by Walter Gilchrist Wicker, a relation of Gilchrist who claimed to be the heir-at-law of John Gilchrist and resented the sale of the estate. Whicker filed a suit in the English courts claiming he was heir-at-law to John Gilchrist and challenging the land sales at Balmain. To strengthen his claim, Whicker travelled to New South Wales in 1837.<sup>3</sup>

Gilchrist made a new will in 1840, decreeing that his estate would not pass to Wicker but to his executors and trustees who must invest the proceeds in charitable causes.<sup>4</sup> Gilchrist died in January 1841. Meanwhile, the legal case between the Gilchrist Trustees and Wicker continued until 1852, when a court found in favour of the trustees. An unsuccessful appeal was filed in 1853.

When sales in John Gilchrist's 222-hectare grant resumed in 1852, surveyor Charles Langley subdivided the remaining land into forty-six (later forty-seven) sections, using existing routes such as Darling Street and other contour-hugging tracks such as Beattie and Mullen Streets to delineate the parcels. The sections were purchased over the next thirty years by wealthy investors, local speculators and builders.<sup>5</sup>

<sup>1</sup> Young, Eric. 2014. 'Rowland Walpole Loane Esq at Balmain – The Genesis of Birch Grove House and Waterview House', in *Leichhardt Historical Journal* 24.

<sup>2</sup> Ibid.

<sup>3</sup> Reynolds, Peter. 2014. 'The Waterview Estate, Balmain – Part 3' in *Leichhardt Historical Journal* 24.

<sup>4</sup> Reynolds, Peter, 2003. *William Balmain (1762-1803) and John Gilchrist (1759-1841) family and property*,

<sup>5</sup> NBRS Architecture, October 2017. *Statement of Heritage Impact – Datchett Street Reserve, East Balmain – Incinerator*.



Figure 36 – Detail from Plan of the Balmain Estate, 1852 / C E Langley, Surveyor. The approximate location of the subject site is circled in red.

Source: NLA, MAP F 535

### 3.2. SITE HISTORY

The subject site was offered for sale several times by Gilchrist, with a successful sale made by agent John Parbury in 1836. Lots 7 and 8 of the subdivision were purchased by Captain W. Adam on 24 October 1836, with the thin strip of land stretching east from today's Nicholson Street to the waterfront.<sup>6</sup> Adam sold the property to Sydney merchant firm Griffiths, Fanning & Co in 1850.

A year later, butcher James Beattie purchased part of the property, including the subject site, at the corner of Nicholson Road and Darling Street. Beattie built a house and shop complex on the corner site, which ran successfully as a butchery business throughout the 1860s. Moving to a more lucrative location in central Balmain in the late 1860s, Beattie sold the subject site to Captain John Lyons in 1875. Lyons, a mariner and bank director who lived on Johnston Street, utilised the subject site as an investment property in the local shopping village until his death in 1901.<sup>7</sup>

Joseph Looke purchased the lot behind the subject site from Captain John Roach in the late 1830s, constructing a house there in 1840. Looke, an estate agent, established a slipway and boat building yard on the Balmain Peninsula and a row of houses on his allotment closer to Nicholson Avenue. The three terrace houses still extant on today's Lookes Avenue, Nos. 1, 3 and 5, were constructed by Looke in 1867.<sup>8</sup>

<sup>6</sup> Reynolds, Peter. 1983. 'From Darling St Wharf to Simmons Point' in *Leichhardt Historical Journal* No. 12.

<sup>7</sup> PERSONAL. (1901, March 22). *The Daily Telegraph* (Sydney, NSW: 1883 - 1930), p. 4. Retrieved September 16, 2022, from <http://nla.gov.au/nla.news-article240132920>

<sup>8</sup> Ibid.

The general layout of the subject site and surrounding areas prior to 1901 can be seen in a water board plan from 1888, where a corner structure is present on the corner of Nicholson Avenue and Darling Street, alongside several outbuildings. All of these buildings were demolished by Jane Lyons, the daughter and executrix of Captain Lyons, who inherited the title of the subject site upon his death in March 1901.

Jane Lyons oversaw the construction of a two storey brick shop and two adjoining two-storey terrace houses on the subject site in 1903. Initially, the houses were numbered 51 and 49 Darling Street respectively. The shop was occupied by William and Jane Adams from 1903-1929, when the publication of the Sands Directory ceased. The subject site was occupied by various tenants in the early 1900s, as recorded in the Sands Directory, including a Mr Horton Ryder (1904), Mrs Mary Doherty (1908), and Mr Andrew Anderson (1921).<sup>9</sup>

The subject site has remained substantially intact since its construction in 1903. Aerial photographs of the site in 1943 and 1961 show no changes in the site or neighbouring sites; later photographs show that substantial flat buildings were constructed east of the site by 1978. A review of the aerial imagery shows that the footprint of the building has remained consistent with its original design, however it is evident that late 20<sup>th</sup> century internal alterations to the dwelling have been undertaken.

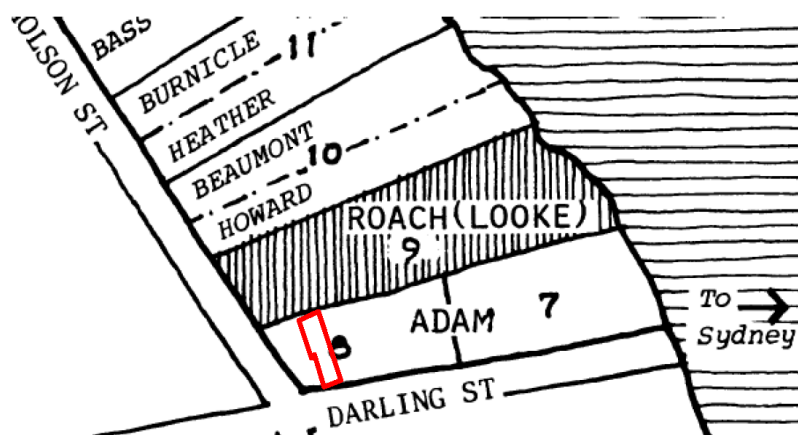


Figure 37 – Detail of Darling Street and Adam's lot in the 1840s. The approximate location of the subject site is indicated in red.

Source: *Leichhardt Historical Journal*

<sup>9</sup> Reynolds, Peter. 1983. 'From Darling St Wharf to Simmons Point' in *Leichhardt Historical Journal* No. 12.

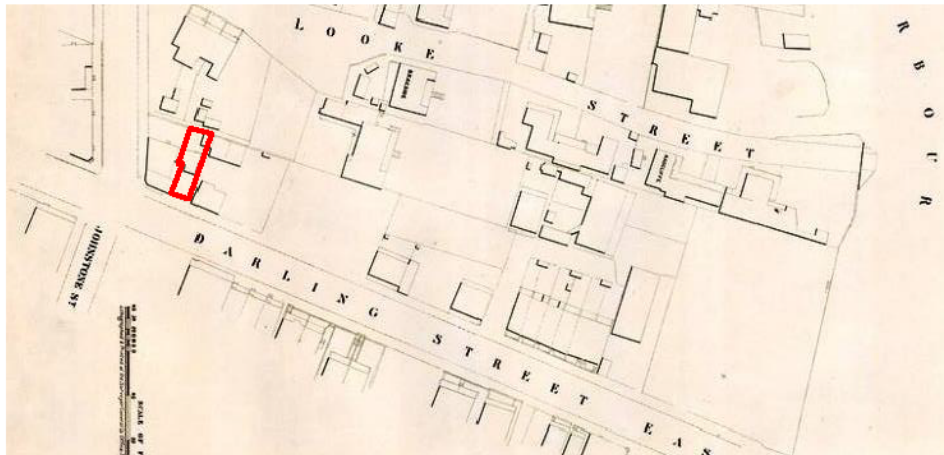


Figure 38 – Detail of Balmain Water Board plan, 1888. The approximate location of the subject site is indicated in red.

Source: Balmain Water Board Plan No 20

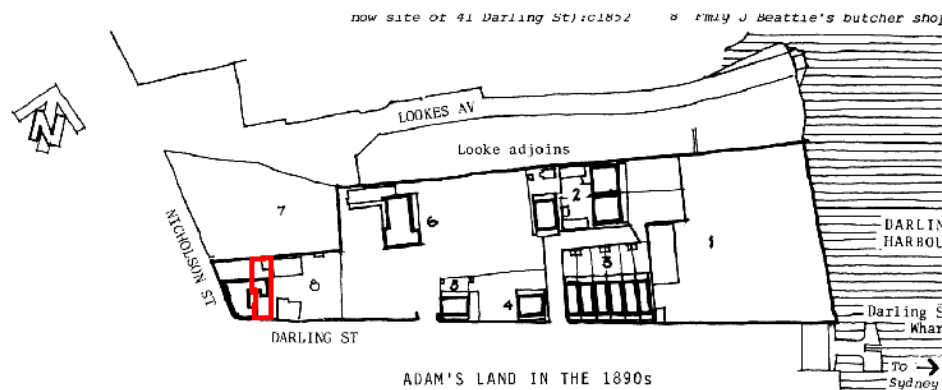


Figure 39 – Detail of Darling Street and adjoining areas in 1890s. The approximate location of the subject site is indicated in red.

Source: Leichhardt Historical Journal

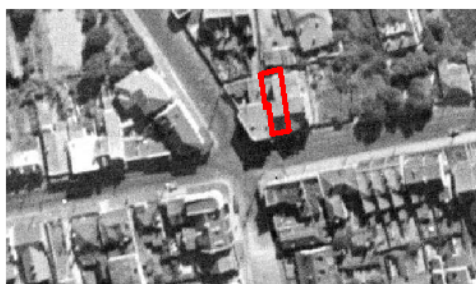


Figure 40 – 1943 aerial photograph of the site.

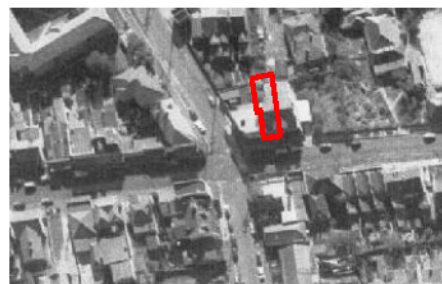


Figure 41 – 1961 aerial photograph of the site.

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Figure 42 – 1978 aerial photograph of the site.



Figure 43 – 1986 aerial photograph of the site.

### 3.2.1. Alterations

In the late 20<sup>th</sup> century several alterations were undertaken to the building, particularly within its interior. This included the demolition of part of the wall between the two principal rooms and the installation of a concertina door in this place. This also involved the presumed demolition of a wall in the rear portion of the dwelling and the demolition of the original doors and windows on the western courtyard wall, which were subsequently replaced with contemporary doors and windows. These works also included the renovation of the kitchen and bathrooms, which are each contemporary and likely date to the early 21<sup>st</sup> century. CoreLogic RP Data records show that these works were certainly undertaken prior to 2011 when the dwelling was up for sale.

## 4. HERITAGE SIGNIFICANCE

### 4.1. WHAT IS HERITAGE SIGNIFICANCE?

Before making decisions to change a heritage item, an item within a heritage conservation area, or an item located in proximity to a heritage listed item, it is important to understand its values and the values of its context. This leads to decisions that will retain these values in the future. Statements of heritage significance summarise the heritage values of a place – why it is important and why a statutory listing was made to protect these values.

### 4.2. HERITAGE LISTING

The subject site is not listed as a local heritage item, however, is located in the Balmain East HCA (C29) as listed under Schedule 5 of the Inner West LEP 2022. As outlined in the Balmain East HCA controls, structures constructed prior to 1939 within this HCA are considered contributory buildings; therefore, the subject site is considered contributory to the overall significance of the conservation area.

The subject site is within close proximity to a number of locally listed heritage items, as follows:

- 'Former Unity Hall Hotel, including interiors', 51 Darling Street, (Item No. I711)
- 'Terrace, including interiors', 1 Lookes Avenue, (Item No. I778)
- 'Terrace, including interiors', 3 Lookes Avenue, (Item No. I780)
- 'Terrace, including interiors', 5 Lookes Avenue, (Item No. I781)
- 'House, "Cahermore", including interiors', 50 Darling Street, (Item No. I710).

The subject site and its relationship with the surrounding heritage items are shown below.



Figure 44 – Extract of heritage map with the subject site outlined in blue, other heritage items are shaded in ochre and the Balmain East HCA is hatched in red.

Source: Inner West LEP 2022, Heritage Map HER\_007E

### 4.3. SIGNIFICANCE ASSESSMENT

The Heritage Council of NSW has developed a set of seven criteria for assessing heritage significance, which can be used to make decisions about the heritage value of a place or item. There are two levels of heritage significance used in NSW: state and local. The following assessment of heritage significance has been prepared in accordance with the 'Assessing Heritage Significance' guides.

Table 2 – Assessment of Heritage Significance

Criteria	Significance Assessment
<b>A – Historical Significance</b>  <i>An item is important in the course or pattern of the local area's cultural or natural history.</i>	<p>The subject dwelling, as a transitional Federation/Victorian dwelling constructed in 1903, is not one of the older residences within the Balmain East HCA associated with the subdivision of Gilchrist Place. The subject site reflects a secondary phase of development in Balmain East in the early twentieth century. The transitional Federation/Victorian dwelling is part of a semi-detached pair of terraces constructed in 1903 alongside the adjacent shop-top building, following the purchase of the subject site by Jane Lyons, and the demolition of the earlier dwellings on the site in c.1903. Both terraces are substantially intact and can be read as a pair, contributing to the character of Darling Street.</p> <p>The subject site does not reach the threshold of local significance under this criterion, however contributes to the Darling Street streetscape and the Balmain East HCA.</p>
<b>B – Associative Significance</b>  <i>An item has strong or special associations with the life or works of a person, or group of persons, of importance in the local area's cultural or natural history.</i>	<p>The subject site has no known significant associations. Although the site was associated with various individuals throughout its history, historical research has not indicated that any of the owners or occupiers of the site were identified as people of historical note.</p> <p>The subject site does not meet the threshold for heritage listing under this criterion.</p>
<b>C – Aesthetic Significance</b>  <i>An item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in the local area.</i>	<p>The building at the subject site is a transitional Federation/Victorian residence which is part of a semi-detached identical pair. The characteristic detailing on the exterior of the dwelling, including timber details and lead lighting, is substantially intact and the terraces can clearly be read as a pair. The terrace form, shared gable, slate roofing, eaves with exposed rafter beams, and double-hung timber sash windows are common architectural features of the transition between Victorian and Federation architecture, all of which are seen at the subject site. The subject site contributes to the Darling Street streetscape and the wider Balmain East HCA.</p> <p>Internally, some original elements remain, including timber floorboards, timber skirting boards, doors and</p>

Criteria	Significance Assessment
	<p>windows, ceiling roses and cornices and original fireplace mantles and inserts. These elements are all typical features of the period and architectural style and while characteristic, are not exceptional or particularly decorative examples. Some walls and original room configurations and fittings have been modified, notably in the kitchen and bathroom areas. The principal rooms have also been modified through the establishment of an opening between the extant living and dining rooms and the subsequent installation of concertina doors.</p> <p>The subject site meets the threshold for heritage listing under this criterion, however this significance is primarily associated with the external façade.</p>
<p><b>D – Social Significance</b></p> <p><i>An item has strong or special association with a particular community or cultural group in the local area for social, cultural or spiritual reasons.</i></p>	<p>The subject site has been used as a residence since its construction in 1903. Historical research has not indicated that any significant social associations exist within the subject property. Due to this, the property does not have any demonstrated cultural value to the community.</p> <p>The subject site does not meet the threshold for heritage listing under this criterion.</p>
<p><b>E – Research Potential</b></p> <p><i>An item has potential to yield information that will contribute to an understanding of the local area's cultural or natural history.</i></p>	<p>The subject dwelling is a substantially intact Federation/Victorian residence constructed in 1903. Only minor modifications have been made to the internal and external aspects of the building. The original dwelling along with later additions were all constructed using typical techniques and do not contain any rare or technically innovative features.</p> <p>The existing dwelling is the second substantial building to have been constructed on the site, with a butcher's shop and residence constructed by James Beattie demolished in 1903. Notwithstanding the above, it is beyond the scope of this report to assess the archaeological potential of the place.</p> <p>The subject site does not meet the threshold for heritage listing under this criterion.</p>
<p><b>F – Rarity</b></p> <p><i>An item possesses uncommon, rare or endangered aspects of the local area's cultural or natural history.</i></p>	<p>The subject dwelling was part of the general residential development occurring within the existing Balmain East HCA during the early 1900s and is part of a continuum of residential housing in that area. The subject dwelling is a later development than other structures within the HCA, which are primarily Victorian. However, terrace houses and Victorian/Federation transitional dwellings are</p>

Criteria	Significance Assessment
	<p>numerous throughout the suburb of Balmain and the broader Inner West LGA. Therefore, the subject dwelling is not regarded as uncommon or rare within the residential and heritage context of Balmain East.</p> <p>The subject site does not meet the threshold for heritage listing under this criterion.</p>
<p><b>G – Representative</b></p> <p><i>An item is important in demonstrating the principal characteristics of a class of NSWs (or the local area's):</i></p> <ul style="list-style-type: none"> <li>▪ <i>cultural or natural places; or</i></li> <li>▪ <i>cultural or natural environments.</i></li> </ul>	<p>The subject dwelling is a substantially intact two storey residential dwelling, one of a pair of semi-detached terraces at Nos. 47 &amp; 45 Darling Street built in 1903. While the dwelling demonstrates many of the architectural characteristics of the transitional Federation/Victorian style and contributes to the streetscape character of Darling Street and the Balmain East HCA, it is not a particularly fine example of a terrace house and has experienced past alterations to key spaces including the principal rooms, which has somewhat reduced the integrity of the dwelling.</p> <p>The subject site does not meet the threshold for heritage listing under this criterion however makes a substantial contribution to the Balmain East HCA.</p>

#### 4.4. STATEMENT OF SIGNIFICANCE – 47 DARLING STREET, BALMAIN EAST

From the historical research and above significance assessment, Urbis have prepared the following brief statement of significance for the subject site:

The subject site, located at 47 Darling Street, Balmain East, is associated with the later development of Balmain East following the successive release of the subdivisions of Gilchrist Place in the nineteenth century. Constructed in 1903, the dwelling is part of a semi-detached pair of terraces featuring intact transitional Federation/Victorian characteristics. The dwelling exterior, alongside No.45 Darling Street, is substantially intact and can be read as a pair. The dwelling, alongside No.45 Darling Street and the shop-top building on the corner of Nicholson and Darling Streets, were constructed simultaneously by Jane Lyons, and together contribute to the understanding of the ongoing phases of development and layers of architectural styles along the Darling Street streetscape and at the Nicholson/Darling Street junction.

The subject dwelling is not known to be associated with any significant historical figures or groups and is not identified as having social significance. The substantially intact façade is considered a good representation of a transitional Federation/Victorian dwelling, with aesthetic significance primarily demonstrated by the external façade. Though internal features are present, such as ceiling roses, cornices, floorboards and fireplaces, the dwelling has been modified in the rear ground floor and features contemporary bathroom and kitchen fitouts. The subject building is a later development than other structures within the Balmain East HCA, which are primarily Victorian and it is not regarded as uncommon or rare within the residential and heritage context of Balmain East. Notwithstanding, the dwelling represents the varied layers of development within Darling Street and contributes to the Balmain East HCA and streetscape.

## 4.5. HCA AND VICINITY HERITAGE ITEMS

In order to assess the potential heritage impact of the proposal on the heritage significance of the Balmain East HCA and the vicinity heritage items located in the vicinity of the subject site, it is necessary to understand their significance.

### 4.5.1. Balmain East HCA

The statement of significance for the Balmain East HCA (C29), as extracted from the Inner West LEP 2022 area controls, is as follows:

*One of a number of conservation areas which collectively illustrate the nature of Sydney's early suburbs and Leichhardt's suburban growth particularly between 1871 and 1891, with pockets of infill up to the end of the 1930s (i.e. prior to World War II). The earliest developments here predate Leichhardt's main suburban growth with marine villas and cottages from the 1840s to modest-scale housing from 1870s through to the 1930s, and industry. It is significant for its surviving development from these periods.*

*Demonstrates through the siting of recent public parks, the location of former waterfront industries. Through these parks and its remaining waterfront activities East Balmain can interpret Sydney's port history from the early 1840s, and the role of Balmain's deep water frontages in that story.*

*Demonstrates through the line of its narrow streets the earliest subdivision sections of the large 550-acre Balmain grant.*

*Demonstrates through its steps and cuttings the way in which early roads and pedestrian routes were forged out of the sandstone bedrock.*

*Demonstrates through its mixture of sandstone villas and timber and brick cottages the major themes that formed this suburb — marine villa development and investment, port and waterfront activities, and the continuing layering of these developments.*

*Through its remaining timber buildings it continues to demonstrate the nature of that major construction material in the fabric of early Sydney suburbs, and the proximity of the timber yards around the Balmain waterfront.*

*It is of aesthetic significance for its dramatic sandstone landscape, closely related to the harbour, and clearly revealed below the modest scale of its nineteenth century and early twentieth century buildings. It stands in contrast with the nearby city where twentieth-century technology has forged an equally dramatic but very different man-made landscape.<sup>10</sup>*

### 4.5.2. Former Unity Hall Hotel

The statement of significance for the 'Former Unity Hall Hotel, including interiors' (Item No. I711) as extracted from the State Heritage Inventory, is as follows:

*No. 51 Darling Street is of local historic and aesthetic significance as a good and largely intact larger scale former early hotel building with Georgian details constructed in the early 1840s. The building is associated with the Balmain Manchester Unity Independent Order of Oddfellows who met in the building and Aiton family. Despite changes of use and additions to the west, the building retains its original scale, form and character, occupies a prominent corner site and makes a positive contribution to the streetscape. It is part of a group of sandstone buildings which add to the character of this section of Darling Street.<sup>11</sup>*

<sup>10</sup> GML, n.d. Balmain East Heritage Conservation Area. Inner West LEP 2022.

<sup>11</sup> State Heritage Inventory, n.d. 'Former Unity Hall Hotel, including interiors', accessed: <https://www.hms.heritage.nsw.gov.au/App/Item/ViewItem?itemId=1940403>

#### 4.5.3. Terrace, including interiors, 1 Lookes Avenue

The statement of significance for the 'Terrace, including interiors' (Item No. I778) as extracted from the State Heritage Inventory, is as follows:

*No. 1 Lookes Avenue is of local historic and aesthetic significance as a terrace house erected in c. 1866-68 and during the last phase of Joseph Looke's development activities in the local area. Despite extensive alterations and additions to the building it still retains its original terrace form but has lost some integrity due to the unsympathetic design of the additions.<sup>12</sup>*

#### 4.5.4. Terrace, including interiors, 3 Lookes Avenue

The statement of significance for the 'Terrace, including interiors' (Item No. I780) as extracted from the State Heritage Inventory, is as follows:

*No. 3 Lookes Avenue is of local historic and aesthetic significance as a terrace house erected in c. 1866-68 and during the last phase of Joseph Looke's development activities in the local area. Despite the front facade modifications to the building it still retains the original terrace form but has lost some integrity due to the enclosed balcony.<sup>13</sup>*

#### 4.5.5. Terrace, including interiors, 5 Lookes Avenue

The statement of significance for the 'Terrace, including interiors' (Item No. I781) as extracted from the State Heritage Inventory, is as follows:

*No. 5 Lookes Avenue is of local historic and aesthetic significance as a terrace house erected in c. 1866-68 and during the last phase of Joseph Looke's development activities in the local area. The building still retains its original terrace form, scale and details.<sup>14</sup>*

#### 4.5.6. House, "Cahermore", including interiors

The statement of significance for "House, "Cahermore", including interiors' (Item No. I710) as extracted from the State Heritage Inventory, is as follows:

*No. 50 Darling Street is of local historic and aesthetic significance as a good and largely intact larger scale former commercial stone building with Georgian details constructed in the early 1840s. Despite changes of use, the building retains its original scale, form and character and makes a positive contribution to the streetscape. It is part of a group of sandstone buildings which add to the character of this section of Darling Street.<sup>15</sup>*

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<sup>12</sup> State Heritage Inventory, n.d. 'Terrace, including interiors', accessed:  
<https://www.hms.heritage.nsw.gov.au/App/Item/ViewItem?itemId=1940473>

<sup>13</sup> State Heritage Inventory, n.d. 'Terrace, including interiors', accessed:  
<https://www.hms.heritage.nsw.gov.au/App/Item/ViewItem?itemId=1940474>

<sup>14</sup> State Heritage Inventory, n.d. 'Terrace, including interiors', accessed:  
<https://www.hms.heritage.nsw.gov.au/App/Item/ViewItem?itemId=1940475>

<sup>15</sup> State Heritage Inventory, n.d. "House, "Cahermore", including interiors' accessed:  
<https://www.hms.heritage.nsw.gov.au/App/Item/ViewItem?itemId=1940402>

## 5. IMPACT ASSESSMENT

Below, the potential impact of the proposal is assessed against the applicable heritage-related statutory and non-statutory planning controls which relate to the site and the proposed development.

### 5.1. STATUTORY CONTROLS

#### 5.1.1. Inner West Local Environmental Plan 2022

The table below provides an assessment of the proposal against the relevant provision for heritage conservation as found in the Inner West LEP 2022.

Table 3 – Assessment against Inner West Local Environmental Plan 2022.

Clause	Discussion
<p><b>(1) Objectives</b></p> <p><i>The objectives of this clause are as follows:</i></p> <p>(a) <i>to conserve the environmental heritage of Inner West,</i></p> <p>(b) <i>to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,</i></p> <p>(c) <i>to conserve archaeological sites,</i></p> <p>(d) <i>to conserve Aboriginal objects and Aboriginal places of heritage significance</i></p>	<p>The proposed works are in accordance with the objectives set out in the Inner West LEP 2022, as discussed below.</p> <p>The subject site is not identified as a heritage item under Part 1, Schedule 5 of the Inner West LEP 2022, however, it is located within the Balmain East HCA under Part 2, Schedule 5 of the Inner West LEP 2022. The subject site is also located in the vicinity of locally listed heritage items.</p>
<p><b>(2) Requirement for consent</b></p> <p><i>Development consent is required for any of the following:</i></p> <p>(a) <i>demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):</i></p> <p>(i) <i>a heritage item,</i></p> <p>(ii) <i>an Aboriginal object,</i></p> <p>(iii) <i>a building, work, relic or tree within a heritage conservation area,</i></p>	<p>The subject site is located within the Balmain East HCA, listed on the Inner West LEP 2022.</p> <p>The proposed works would involve the construction of a rear dormer extension, deck and connecting staircase, as well as internal changes to the building, including the reconfiguration of interior walls.</p> <p>The proposal would not involve excavation that would disturb archaeological remains or Aboriginal places.</p> <p>Therefore, Development Consent is required. This HIS will be submitted to the Inner West Council with a Statement of Environmental Effects (SEE) for the Development Application for the project.</p>
<p><b>(4) Effect of proposed development on heritage significance</b></p> <p><i>The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage</i></p>	<p>The proposed works would retain the significance of the subject site and have no adverse impacts to the Balmain East HCA. The proposed works are largely contained to the interiors and rear roof of the subject site and would not result in any visual impacts to the Darling Street streetscape or the</p>

management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).	Balmain East HCA. The rear dormer extension and deck are sympathetic and recessive, designed in a distinctly contemporary style that would not be visually prominent when viewed from Darling Street, Nicholson Street or the heritage items at Lookes Avenue. No modifications to the Darling Street façade are proposed, with No.47 and No.45 remaining an identical pair when viewed from the street.
<p><b>(5) Heritage assessment</b></p> <p>The consent authority may, before granting consent to any development:</p> <p>(a) on land on which a heritage item is located, or</p> <p>(b) on land that is within a heritage conservation area, or</p> <p>(c) on land that is within the vicinity of land referred to in paragraph (a) or (b),</p> <p>require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.</p>	<p>This HIS has been prepared to assess the proposal with regard to its potential impact of the Balmain East HCA and the vicinity heritage items. This heritage impact statement has been prepared to assist the Inner West Council with their determination.</p> <p>This HIS has determined that the project would not result in adverse impacts to the Balmain East HCA or the heritage significance of the vicinity heritage items.</p>

### 5.1.2. Leichhardt Development Control Plan 2013

The table below assesses the proposal against the relevant objective and provisions for heritage conservation as found in the Leichhardt DCP 2013.

Table 4 – Assessment against the Leichhardt DCP 2013

Clause	Discussion
<b>General Controls</b>	
C1) Development maintains the characteristics and is consistent with the objectives and controls for the relevant building type contained in Appendix B – Building Typologies of this Development Control Plan.	The proposed works comply with the objectives and controls set out in Appendix B of the Leichhardt DCP 2013. See below for this discussion.
<p>C2) The fabric of an existing building is to be the subject of appropriate conservation practices including:</p> <p>a) Retention of original detail and finishes such as:</p> <p>I. original face brick which should not be painted over or rendered</p> <p>II. ii. original decorative joinery and iron work which is not to be removed.</p>	<p>The proposed works do not include the painting over or rendering of any original face brick or the removal of original decorative joinery or ironwork on the external façade of the subject site.</p> <p>The proposed alterations throughout the ground and first floor rooms would involve impacts to some original joinery such as skirting boards and cornices however there may be opportunity to reuse skirting or architraves elsewhere in the dwelling. Impacts to existing internal fanlights are also proposed however these fanlights may</p>

	<p>be reused above the relocated internal doors. All other original features, including the ceiling roses, fireplaces and cornices on the ground and first floor hallways and bedrooms, would be retained within the proposal. The ceiling roses and cornices on the first floor would be removed, safely stored and reinstalled in their original positions following the lowering of the ceiling.</p>
<i>C2) b) Conservation of original elements</i>	<p>As above, the proposed works would retain original fabric such as fireplaces, ceiling roses and cornices. The ceiling roses and cornices on the first floor would be removed, safely stored and reinstalled in their original positions following the lowering of the ceiling. Patch-repairing, make good works, and conservation of original elements, including the first floor ceiling roses and cornices, will be undertaken where required. There are no additional conservation works proposed for the subject site as part of the proposed works.</p>
<i>C2) c) Reconstruction or restoration of original elements where deemed appropriate.</i>	<p>This HIS has not identified any appropriate areas for restoration within the subject site.</p>
<p><i>C3) Development of dwellings within Heritage Conservation Areas must:</i></p> <p>a) <i>Not include the demolition of the internal walls and roof form, including any existing chimneys, of the front two rooms of the dwelling</i></p>	<p>The proposed works do not include the demolition of any existing chimneys within the subject site or the demolition of the shared chimney and ridgeline with the adjacent terrace.</p> <p>The proposed alterations of the layout of the two front rooms through the partial demolition of the extant bedroom (B1) wall and enlargement of the extant living room opening would not be considered to have an adverse heritage impact. The proposed works would be undertaken to ensure that the existing dwelling can continue to be used as a family home suited to contemporary living.</p> <p>The front room of the ground floor has already undergone modifications, with a large opening previously established between the living and dining rooms. This opening is proposed to be enlarged very slightly, with nibs of this wall retained in a reduced capacity. The only other change to the overall layout of the front room involves the permanent closure of the original door.</p> <p>The front room of the first floor (B1) will be reconfigured to incorporate an ensuite bathroom, including the removal of three walls and existing decorative timber archway within the bedroom. The nibs of these walls will be retained, allowing the original layout of this room to remain legible and enabling this work to be reversible in future, if desirable. These changes will not be visible from the exterior of the subject site, with no impacts to the</p>

	streetscape or the heritage significance of the Balmain East HCA.
<i>C3) b) Retain the major form, scale and materials of the existing structure as described in (a)</i>	The development of this dwelling within the Balmain East HCA retains the major form, scale and materials of the existing structure, as discussed above.
<i>C3) c) Be for a rear addition which does not dominate the existing building or substantially change the relationship of the building to the street when viewed from the street</i>	<p>The proposed rear dormer addition and deck is confined to the rear roof area, with appropriate setbacks within and below the ridgeline of the main slate roof. The ridgeline of the main roof and features including the gutter line, chimneys and terracotta ornamentation, will not be physically impacted or visually obscured by the rear dormer extension. The dormer would be recessive due to the sympathetic size, which has been designed to be proportionate to the rear roof plane.</p> <p>The proposed rear dormer extension and deck have been sympathetically designed to respond to the existing form of the subject dwelling and the wider context of the HCA, where rear dormer extensions and terraces are present in close proximity to the subject site.</p> <p>The proposed dormer and deck do not obscure key architectural details. The form is articulated so as to not dominate the overall the roof form when viewed from Nicholson Avenue or the heritage items at Lookes Avenue, noting that only minor obscured views are available of the site from these vantage points. The existing height of the dwelling obscures the proposed extension completely from Darling Street. Overall, the proposed rear dormer extension will not be visible from the streetscape and will have no adverse impacts on the Balmain East HCA.</p>
<i>C3) d) Retain significant, established gardens and plantings including early fences.</i>	No early fences are proposed for removal as part of the proposed works. Some remodelling of the rear garden, including the lowering and extension of garden beds, are proposed to improve the amenity and overall aesthetics of the courtyard area. Though it is noted that the garden beds are not considered significant, no works are proposed in areas of established mature garden beds as part of this development application.
<b>Roof forms and materials</b>	
<i>C5) Consideration of roofing materials for additions should have regard for compatibility with the original roof, as well as for the context of the setting (such as if a dwelling is part of a group of similar dwellings)</i>	The materiality of the proposed rear dormer extension and deck is clearly contemporary, comprising metal cladding, surround and steel windows in an oxblood coloured cladding. While modern, these materials, finishes and colours would be recessive and neutral in colour, avoiding a strong or unsympathetic contrast with

	<p>the subject dwelling and wider Balmain East HCA and are complementary to the existing roofing tiles in a dark colour scheme. Furthermore, the cladding would be in a matte and non-reflective finish which would not detract from the HCA, as evident in the photomontages at Figure 9, which show the proposed addition would be recessive within its surrounds and context.</p>
<p><i>C6) Within Heritage Conservation Areas, whole roof forms should be retained where possible and roofs of additions should be subservient to the main roof (in scale, form, location and materials). Changes to the form of the existing roof or extension of the ridge cannot be supported.</i></p>	<p>There are minor changes to rear plane of the primary roof form, with no changes to the front plane or the ridgeline of the subject dwelling as part of the proposed works. No changes would be visible when viewed from Darling Street. The proposed rear dormer extension and deck would be strategically positioned below the ridgeline when viewed from the rear, with appropriate setbacks on the main roof and from the adjacent terrace. The scale and form of the proposed rear dormer extension and deck would be subservient to the main roof and function as an intermediary form between the ground floor roof and main roof.</p> <p>The proposed rear dormer extension is considered an appropriate design response to the dwelling and the wider context of the HCA, where rear dormer extensions and roof terraces are present in close proximity to the subject site.</p>
<b>Building typologies – semi-detached house</b>	
<b>Objectives</b>	
<p><i>O3) To facilitate development that is compatible with this Building Typology.</i></p>	<p>The proposed works are compatible with the building typology of the subject site as a semi-detached house, allowing the continued interpretation of the dwelling as a transitional Federation/Victorian terrace and the reading of Nos. 47 and 45 as a pair. It is noted that the subject site is not a heritage item but is identified as a contributory item within the Balmain East HCA. The proposed works are consistent with the statutory controls for the Inner West LGA and the Balmain East HCA.</p> <p>The proposed works would entirely retain the Darling Street façade, including key characteristics such as the street-facing windows, timber balcony details and lead lighting details.</p> <p>The rear works are proposed to areas already previously modified, such as the rear ground floor French doors, or in areas that do not affect the overall reading of the dwelling, such as the replacement of a rear sash window with a glazed door.</p>

	<p>Internally, key significant elements of the rear façade would be retained, including all original fireplaces, ceiling roses, extent floorboards, and the majority of the skirting boards and cornices. The ceiling roses and cornices on the first floor would be removed, safely stored and reinstalled in their original positions following the lowering of the ceiling. Minor demolition to internal walls in on the ground and first floors would alter the existing floorplan, though it is noted that the interior layout of the ground floor has been previously modified. The first floor walls proposed for relocation will retain the wall nibs, allowing the original layout to be read and the work to be reversible. Overall, the proposed internal alterations will enable the dwelling to function as a contemporary family residence.</p> <p>As discussed above, the proposed rear dormer extension is considered an appropriate design response to the dwelling and the wider context of the HCA, where rear dormer extensions and terraces are present in close proximity to the subject site. The materials, while clearly contemporary, would be recessive and avoid strong contrast with the subject dwelling and wider Balmain East HCA and are complementary to the existing roofing tiles in a dark colour scheme.</p> <p>These modifications are considered acceptable from a heritage perspective as the building is not a listed heritage item but is regarded as contributory to the Balmain East HCA. The proposed works will not result in an adverse impact on the HCA or the heritage character of the Balmain East HCA.</p>
<p><i>C1) Development shall:</i></p> <p>a) <i>Retain the curtilage and setting of the pair;</i></p>	<p>The proposed works would not affect the curtilage or setting of the pair of semi-detached terraces at Nos. 45 and 47 Darling Street.</p>
<p><i>C1) b) Retain the presentation of the building to the street including the single storey scale, roof form, building massing and façade proportions;</i></p>	<p>The proposed works would not include any external works to the front façade of the existing dwellings. Minor maintenance and repair will be undertaken as needed to retain the presentation of the building to the street.</p> <p>The proposed dormer extension and deck are located in the rear roof of the subject dwelling and would not be visible from Darling Street. The form of the rear dormer is would not detract from the appreciation of the rear façade from within the subject site, rear courtyard, or when viewed from Nicholson Avenue or Lookes Avenue, noting that only minor obscured views are available of the site from these vantage points.</p>

C1) c) <i>Maintain the original symmetrical character and appearance of pairs of houses where it is still evident;</i>	As above, the proposed works would not include any external works to the front façade. The proposed works allow the continued interpretation of the dwelling as a transitional Federation/Victorian terrace and the reading of Nos. 47 and 45 as a pair.
C1) d) <i>Protect the amenity of each house and its neighbours;</i>	The proposed works comply with this requirement.
C1) e) <i>Restore/reconstruct original forms, finishes and details.</i>	<p>The proposal retains key internal finishes and details, including cornices, ceiling roses and skirting boards on the ground and second floors. The ceiling roses and cornices on the first floor would be removed, safely stored and reinstalled in their original positions following the lowering of the ceiling. The key architectural external forms and external street facing façade are not proposed to be altered as part of the proposed works.</p> <p>This HIS has not identified any appropriate areas for restoration or reconstruction within the subject site, however make good and conservation works, including patch-repairing of original elements to be retained will be undertaken on an as-needs basis.</p>
<p>C2) <i>Alterations and additions to either house are:</i></p> <p>a) <i>To be subordinate to the main form of the pair such that they do not dominate one or both houses;</i></p>	The proposed rear dormer extension and deck have been sympathetically designed and appropriately setback to ensure they do not dominate one or both rear roof forms, functioning as an intermediary form between the ground floor roof and main roof of the subject site. The proposed addition and deck would be positioned below the ridgeline when viewed from the rear, with appropriate setbacks on the main roof and from the adjacent dwelling. This ensures that the dormer would be subservient to the primary roof form, maintaining an appropriate hierarchy of forms on the rear elevation. The extension and deck would not be visible from Darling Street and there are no proposed impacts to the shared front gable form, ensuring the terraces can be appropriately read as a pair.
C2) b) <i>Not to compromise the symmetry and/or proportions and massing of the pair; and</i>	As discussed above, the proposed works do not compromise the symmetry and overall proportions of the pair when seen from Darling Street, Nicholson Street or Lookes Avenue. There are no proposed alterations to the front roof form including shared gable. When viewed from these streets, the profile and massing of the pair would appear unchanged. The rear dormer extension, while extending the subject site to the north, has been appropriately articulated and setback, responding to the existing roof form of the pair.

C2) c) <i>Not to incorporate materials and finishes on the front elevation which could detract from or dominate the appearance of the other.</i>	As discussed above, the proposed rear dormer extension and deck comprise contemporary materials. These materials, including metal cladding and steel windows in an oxblood coloured finish, are distinguishable as modern material but are a sympathetic response to the subject dwelling, the pair of terraces at Nos. 45 and 47 and the overall Balmain East HCA.
C3) <i>Rear additions to either dwelling are to be carefully sited and designed to:</i>  a) <i>optimise daylight and natural ventilation to both dwellings of the pair;</i>	The proposed rear dormer extension would optimise the sun access to the subject dwelling, with complementary skylights in the ground floor roof and utilisation of glazed windows and doors to optimise sunlight throughout the movement of the day. The existing ventilation of the pair will not be affected as a result of the proposed works.
C4) <i>Side setbacks are to be maintained.</i>	The proposed works, including the proposed rear dormer extension, respect the existing front and side setbacks of the subject site and main roof form. There are no proposed alterations to the overall form and footprint of the dwelling and as such the existing side setbacks will not be altered.

## 5.2. HERITAGE DIVISION GUIDELINES

The proposed works are addressed in relation to relevant questions posed in the Heritage Division's 'Statement of Heritage Impact' guidelines.

Table 5 – Heritage Division Guidelines

Clause	Discussion
The following aspects of the proposal respect or enhance the heritage significance of the item or conservation area for the following reasons:	<p>The proposed works would respect the heritage significance of the Balmain East HCA and would not result in an adverse impact to the character of Darling Street or the wider HCA.</p> <p>The proposed works would be undertaken to ensure that the existing dwelling can continue to be used as a family home suited to contemporary living.</p> <p>The proposed works include primarily internal works which would not be visible from the streetscape. This includes the retention of the principal room spaces in their current form (albeit with the permanent closure of the ground floor doorway into the living room) and retention of significant original fabric throughout the dwelling, notably including the original roof form (including original slate roof cladding); original stair; fireplaces; decorative features such as ceiling roses; and retention of joinery including skirting boards.</p>

<p>The following aspects of the proposal could detrimentally impact on heritage significance.</p> <p>The reasons are explained as well as the measures to be taken to minimise impacts:</p>	<p>No aspects of the proposal would have a detrimental impact on the subject site or the significance of the Balmain East HCA. The proposed works would largely be constrained to the building interior and the rear and would therefore have no visual impact on the Balmain East HCA.</p>
<p>The following sympathetic solutions have been considered and discounted for the following reasons:</p>	<p>The proposed design has been reviewed by Urbis as a sympathetic scheme for the subject site.</p>

## 6. CONCLUSIONS

This HIS has been prepared to determine the potential heritage impact of the proposed works on the subject site, the Balmain East Heritage Conservation Area, and the nearby heritage items.

A detailed impact assessment of the proposed works has been undertaken in Section 5 of this report. The proposed works would be considered acceptable from a heritage perspective and would not result in adverse impacts to the heritage significance of the subject site or the Balmain East Heritage Conservation Area.

Key aspects of the proposal are as follows:

- The proposed works would retain the significance of the subject site and have no adverse impacts on the Balmain East HCA. The proposed works are largely contained to the interiors and rear roof of the subject site and would not result in any visual impacts to the Darling Street streetscape or the HCA.
- The proposed works would retain the Darling Street façade, including key characteristics which contribute to the Balmain East Heritage Conservation Area, such as the original roof and gable, timber sash windows, timber balcony details and lead lighting details. No modifications to the Darling Street façade are proposed, allowing the continued interpretation of the dwelling as a transitional Federation/Victorian terrace and the reading of Nos. 47 and 45 as a pair. This would maintain the contribution of the dwelling to the Balmain East Heritage Conservation Area.
- There are minor changes to rear plane of the primary roof form, with no changes to the front plane or the ridgeline of the subject dwelling as part of the proposed works. No changes would be visible when viewed from Darling Street. The proposed rear dormer extension and deck would be strategically positioned below the ridgeline when viewed from the rear, with appropriate setbacks on the main roof and from the adjacent terrace. The scale and form of the proposed rear dormer extension and deck would be subservient to the main roof and function as an intermediary form between the ground floor roof and main roof.
  - The proposed rear dormer extension and deck have been sympathetically designed to respond to the existing form of the subject dwelling through the use of traditional proportions which would ensure that the dormer is seen as recessive and subservient to the primary roof form.
  - The dormer window would also respond to the wider context of the HCA, where rear dormer extensions and terraces are present in close proximity to the subject site. The form of the rear dormer extension is articulated so as to retain the overall presentation of the building when viewed from Nicholson Avenue or in the context of the heritage items on Lookes Avenue, noting that only minor obscured views are available of the site from these vantage points. Therefore, the rear dormer would not result in any adverse visual impact to the dwelling or Balmain East HCA from any vistas towards the subject site.
  - Furthermore, the materiality of the proposed rear dormer extension and deck is clearly contemporary, comprising metal cladding, surround and steel windows in a recessive and sympathetic oxblood coloured finish. The proposed materials, finishes and colours are complementary to the existing roofing tiles in a dark colour scheme and would be recessive within the wider Balmain East HCA. The use of contemporary materiality furthermore ensures legibility of the original roof form.
- The proposal involves rear façade works to areas which have been previously modified. This would include demolition of the non-original ground floor French doors, which would be replaced with contemporary large, glazed steel-framed doors. The rear façade works would also include the replacement of a rear sash window with a glazed door. These proposed works are located in modified spaces that do not contribute to the Balmain East Heritage Conservation Area and these proposed alterations would not adversely affect the overall significance or reading of the dwelling.
- The proposed internal alterations would retain the configuration and spatial volumes of the two principal rooms, being the proposed kitchen and proposed dining room. The proposal includes the removal of the extant non-original tri-fold doors between the two rooms and would retain the nibs in a reduced capacity. The existing original door into the proposed kitchen (extant living room) would be retained but sealed to enable the installation of reversible cabinetry within the principal room. This would not include the removal of any significant or original heritage fabric and would have no adverse impact on the significance of the dwelling.
- The proposed alterations to the ground and first floor rooms would involve partial demolition of walls within the non-principal rooms. This would include reconfiguration of the extant bedroom (B1) wall to allow for a new ensuite, the lowering of the first floor ceiling and enlargement of the extant living room opening at the ground floor. The nibs of all walls will be retained, allowing the original layouts of the rooms to remain legible and enabling this work to be reversible. The nibs of the ground floor opening between the proposed kitchen and proposed dining room will be retained in a reduced capacity which

would not affect the legibility of the original layout of the rooms. These changes will not be visible from the exterior of the subject site, with no impacts to the streetscape or the heritage significance of the Balmain East HCA.

- There is relatively limited original fabric within the dwelling, including ceiling roses, picture rails, skirting, fireplaces and staircase. The proposed alterations of the ground and first floor rooms would involve removal of some original joinery such as skirting boards, cornices and fanlights however there is opportunity to reuse these original features elsewhere within the dwelling. All other original features, including the ceiling roses, fireplaces and cornices on the ground and first floor hallways and bedrooms, would be retained within the proposal. The ceiling roses and cornices on the first floor would be removed, safely stored and reinstalled in their original positions following the lowering of the ceiling.
- The proposed establishment of a new bedroom and ensuite within the converted habitable roof space would not result in adverse impacts to any original or significant fabric. The proposed addition of a new staircase from the first floor to the attic level would furthermore not result in any adverse visual or direct impacts. As above, the proposed decking area at the attic/roof level would not result in direct impacts to significant fabric and would not result in any adverse visual impact through the use of sympathetic materials, colours and finishes, and would not be visible from any vistas to the rear elevation of the subject site. Therefore, the proposed dormer and deck would have no impact to the significance of the Balmain East HCA.

For the reasons above, this project is recommended for approval from a heritage perspective.

## 6.1. RECOMMENDATIONS

Urbis recommends the following be incorporated into the proposal:

- Original joinery and details such as fanlights, cornices or skirting boards should be carefully removed where required for new openings or walls and should be reused elsewhere throughout the dwelling where possible. Excess joinery should be donated to heritage fabric recycling or conservation companies. Where additional skirting is required, new joinery should be matched like-for-like.

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