





|  DEVELOPMENT ASSESSMENT PANEL REPORT | |
|---|---|
| Application No. | DA/2024/0088 |
| Address | 10/91 Mort Street BALMAIN |
| Proposal | A minor internal fitout of an existing unit inside the historic Star Hotel unit block |
| Date of Lodgement | 14 February 2024 |
| Applicant | Edward Davis |
| Owner | Cherie Barber Superannuation Fund Pty Ltd |
| Number of Submissions | N/A |
| Cost of works | \$ 22,000.00 |
| Reason for determination at Planning Panel | Section 4.6 variation exceeds 10% |
| Main Issues | <ul style="list-style-type: none"> Heritage conservation Section 4.6 Exception to Floor Space Ratio Development Standards |
| Recommendation | Approved with Conditions |
| Attachment A | Recommended conditions of consent |
| Attachment B | Plans of proposed development |
| Attachment C | Section 4.6 Exception to Development Standards |
| Attachment D | Statement of Heritage Significance |
|  | |
| LOCALITY MAP | |
| Subject Site  |  N |

1. Executive Summary

This report is an assessment of the application submitted to Council for a minor internal fitout of an existing unit inside the historic Star Hotel unit block at 10/91 Mort Street Balmain.

The main issues that have arisen from the application include:

- 12.2% departure with the floor space ratio development standard pursuant to the Inner West Local Environmental Plan 2022
- Impact to Heritage Item

The departure from the Floor Space Ratio (FSR) development standard has been assessed to be acceptable as the proposal meets all heads of consideration under the provisions of Section 4.6 of the Inner West Local Environmental Plan 2022 (IWLEP) including the relevant zone and development standard objectives.

The proposal, subject to recommended conditions, generally complies with the provisions of Inner West Local Environmental Plan 2022 and Leichhardt Development Control Plan 2013.

With consideration of the above and other matters discussed in this assessment report, the application is recommended for approval.

2. Proposal

The proposal seeks approval for a minor internal fitout to an existing residential unit inside the historic Star Hotel, including relocation of kitchen, demolition and construction of new mezzanine level and staircase, and removal of existing dropped ceiling and construction of raked ceiling below original roof.

3. Site Description

The subject site is located on the south-eastern side of Mort Street, between Trouton Street and Cameron Street. The site consists of 1 allotment and is generally rectangular with an approximate total area of 584.38sqm and is legally described as LOT 10 in SP 50371.

The site has a frontage to Mort Street of 20 metres.

The site supports a two storey former public hotel. The adjoining properties support single and two storey dwelling houses.

The subject site is listed as a heritage item and is located within a conservation area. The property is identified as a flood prone lot.



Figure 1 - Zoning map



Figure 2 – Subject site

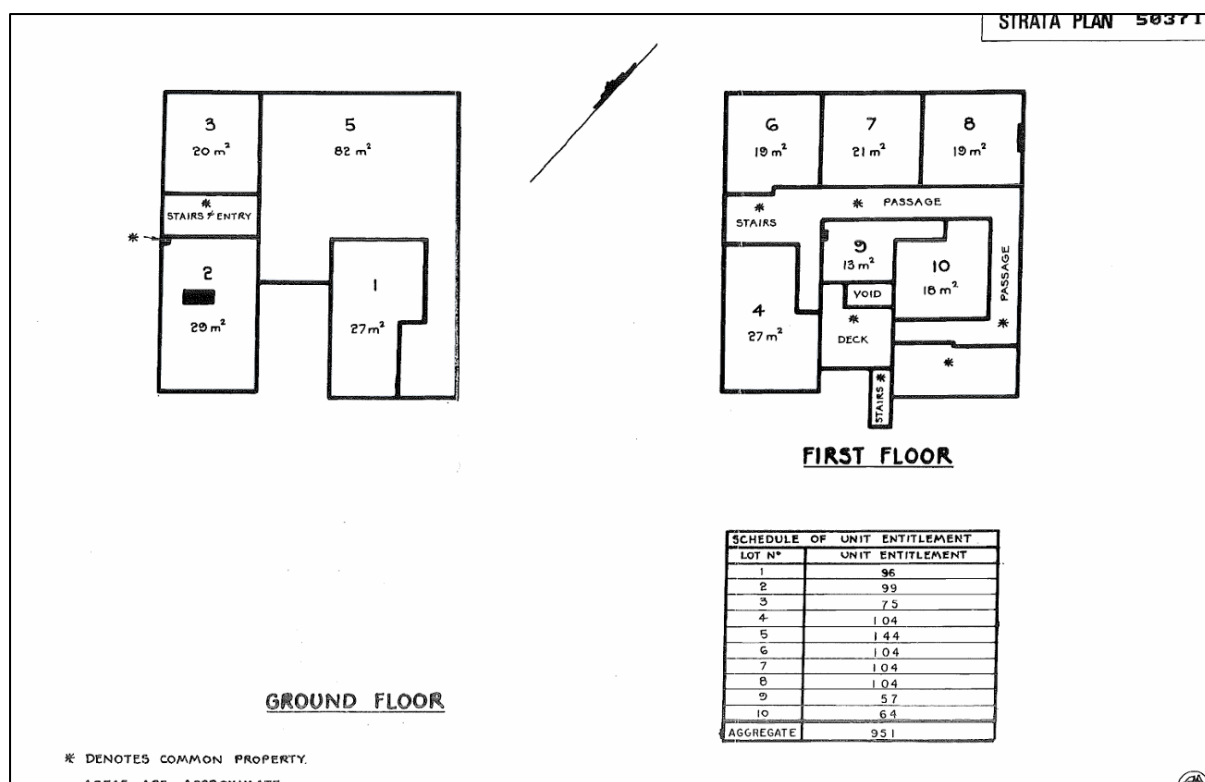


Figure 3: Strata Plan showing lot 10 on the first floor

4. Background

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 |
|-------------|---|----------------------|
| DA/59/1995, | Strata subdivision into 17 lots | Approved, 11/04/1995 |
| DA/14/1994 | Adaptive re-use of vacant public hotel to 11 residential apartment units. | Approved, 18/05/1994 |

Surrounding properties

7/91 Mort Street BALMAIN NSW 2041

| Application | Proposal | Decision & Date |
|-------------|---|---------------------|
| D/2015/366 | Alterations and additions to the existing mixed use building, including construction of a new second floor level associated with the existing residential Unit 7. | Refused, 14/10/2015 |

Application history

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

| Date | Discussion / Letter / Additional Information |
|-----------|--|
| 5/04/2024 | A request for further information was sent to the applicant requiring a Clause 4.6 Variation Request |
| 2/05/2024 | Supporting information was received. Renotification was not required in accordance with Council's Community Engagement Strategy. The supporting documentation is the subject of this report. |

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).

A. Environmental Planning Instruments

The application has been assessed and the following provides a summary of the relevant Environmental Planning Instruments.

State Environmental Planning Policies (SEPPs)

SEPP (Resilience and Hazards) 2021

Chapter 4 Remediation of land

Section 4.6(1) of the *Resilience and Hazards 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.

Inner West Local Environmental Plan 2022

The application was assessed against the following relevant sections of the *Inner West Local Environmental Plan 2022 (IWLEP 2022)*.

Part 1 – Preliminary

| Section | Proposed | Compliance |
|-----------------------------|--|------------|
| Section 1.2 Aims of Plan | The proposal satisfies the section as follows: <ul style="list-style-type: none"> The proposal conserves and maintains the natural, built and cultural heritage of Inner West, The proposal prevents adverse social, economic and environmental impacts on the local character of Inner West | Yes |

Part 2 – Permitted or prohibited development

| Section | Proposed | Compliance |
|--|--|----------------------------|
| Section 2.3 Zone objectives and Land Use Table Zone R1 General Residential | <ul style="list-style-type: none"> The application proposes the internal fitout to a residential unit in a mixed use development, which is permissible with consent in the R1 zone. The proposal is consistent with the relevant objectives of the zone, as it will assist to provide a variety of housing needs of the community that maintains the built and natural character of the surrounding area | Yes |
| Section 2.7 Demolition requires development consent | The proposal satisfies the section as follows: <ul style="list-style-type: none"> Demolition works are proposed, which are permissible with consent; and Standard conditions are recommended to manage impacts which may arise during demolition. | Yes, subject to conditions |

Part 4 – Principal development standards

| Section | Proposed | | Compliance |
|---|--|---------------------|-----------------------|
| Section 4.3C (3)(a) Landscaped Area | Minimum | 20% | No change to existing |
| | Proposed | No change | |
| | Variation | No change | |
| Section 4.3C (3)(b) Site Coverage | Maximum | 60% | No change to existing |
| | Proposed | No change | |
| | Variation | No change | |
| Section 4.4 Floor space ratio | Maximum | 0.7:1 or 408.8sqm | No |
| | Proposed | 0.79:1 or 458.74sqm | |
| | Variation | 12.2% or 49.94 | |
| Section 4.5 Calculation of floor space ratio and site area | The site area and floor space ratio for the proposal has been calculated in accordance with the section. | | Yes |

| Section | Proposed | Compliance |
|---|---|----------------------------|
| Section 4.6 Exceptions to development standards | <p>The applicant has submitted a variation request in accordance with Section 4.6 to vary Section 4.4- Floor space ratio of IWLEP 2022.</p> <p>The subject site also presently exceeds the Landscaped Area development standard. In <i>Landcorp Australia Pty Ltd v The Council of the City of Sydney</i> [2020] NSWLEC 174 [54]-[57] it was established a written Clause 4.6 variation is not required where a proposal exceeds a standard and the proposal does not alter that exceedance. Given the circumstances of this case, as it is not proposed to increase the extent of the existing exceedance to the Landscaped Area development standard, a Clause 4.6 variation is not required.</p> | See discussion below |

Section 4.6 – Exceptions to Development Standards

Section 4.4 Floor space ratio development standard

The applicant seeks a variation to the above mentioned under section 4.6 of the *IWLEP 2022* by 49.94sqm or 12.2%. Section 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Section 4.6 of the *IWLEP 2022* below. A written request has been submitted to Council in accordance with Section 4.6(3) of the *IWLEP 2022* justifying the proposed contravention of the development standard which is summarised as follows:

- *The proposed works will not vary bulk or scale of the building as it appears within the streetscape as additional floor area is entirely internal and will not be perceivable from any public domain*
- *The development is consistent with surrounding single and two storey residential properties*
- *The proposed development does not result in additional overshadowing, loss of privacy or view loss.*
- *The Proposal will improve the overall usability and functionality of housing stock on the site*

Whether compliance with the development standard is unreasonable or unnecessary

In *Wehbe* at [42] – [51], Preston CJ summarises the common ways in which compliance with the development standard may be demonstrated as unreasonable or unnecessary. This is repeated in *Initial Action* at [16]. In the Applicant's written request, the first method described

in *Initial Action* at [17] is used, which is that the objectives of the floor space ratio standard are achieved notwithstanding the numeric non-compliance.

The **first objective of Section 4.4** is *“to establish a maximum floor space ratio to enable appropriate development density”*. The written request states the proposal is appropriate for the capacity of the locality. Given the proposed increase in GFA will not be visible in the public domain, it is considered to have negligible impact on the density of the surrounding area. Accordingly, the breach is consistent with the first objective.

The **second objective of Section 4.4** is *“to ensure development density reflects its locality”*. The written request states the proposal will not result in any changes to the bulk and scale of the building, which reflects the single and two storey density of the locality. It is considered the existing non-compliance of the building is consistent with densities in the surrounding area. Accordingly, the breach is consistent with the second objective.

The **third objective of Section 4.4** is *“to provide an appropriate transition between development of different densities”*. The written request states the proposal will not alter the bulk and scale of the existing building. Given the development proposes internal works only, the site will maintain an appropriate transition between surrounding densities. Accordingly, the breach is consistent with the third objective.

The **fourth objective of Section 4.4** is *“to minimise adverse impacts on local amenity”*. The written request states the proposal does not result in additional overshadowing, loss of privacy, and view loss. As no changes are proposed to the existing building envelope, it is considered the proposal will have a satisfactory impact to surrounding properties in terms of direct solar access, view sharing, visual and acoustic privacy, and visual bulk and scale. Accordingly, the breach is consistent with the fourth objective.

The **fifth objective of Section 4.4** is *“to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain”*. The written request states the proposal does not result in any loss to tree canopy. The proposed works are wholly contained within the existing building footprint and the proposal does not have the ability to provide for increased tree canopy however continues to protect the enjoyment of private properties and the public domain. Accordingly, the proposal is consistent with the fifth objective.

As the proposal achieves the objectives of the floor space ratio standard, compliance is considered unreasonable and unnecessary in this instance.

Whether there are sufficient environmental planning grounds to justify contravening the development standard

Pursuant to Section 4.6(3)(b), the Applicant advances nine (9) environmental planning grounds to justify contravening the floor space ratio development standard. Each will be dealt with in turn:

Environmental Planning Ground 1 – *The proposed increase in GFA is minor, resulting from the addition of a small mezzanine.* This environmental planning ground is accepted as the proposed works which are the subject of the application do not make a significant contribution to the site's non-compliance with the development standard.

Environmental Planning Ground 2 – *The proposal will provide increased internal amenity for occupants.* This environmental planning ground is accepted as the development facilitates upgrades that will improve the long-term usability of the unit for residents.

Environmental Planning Ground 3 – *The proposal will not be visible in the public domain or streetscape.* This environmental planning ground is accepted as the works proposed are wholly contained within the internal area of the unit.

Environmental Planning Ground 4 – *The proposal complies with relevant controls pertaining to building envelope, bulk and scale, and setbacks.* This environmental planning ground is accepted because the proposed development does not involve alterations to the bulk and scale of the existing building.

Environmental Planning Ground 5 – *The proposed exceedance is largely a result of the non-compliance of the existing building.* This environmental planning ground is accepted as the proposal involves a building originally constructed wholly for a purpose other than residential accommodation before the commencement of the *IWLEP 2022* and has not included any substantial increase to the original footprint of the building. The additional GFA that is proposed as part of the subject application is for internal works only and does not change the existing exceedance in terms of additional bulk and scale or amenity impacts.

Environmental Planning Ground 6 – *The proposal will not result in additional adverse impacts to the amenity of adjoining properties.* This environmental planning ground is accepted as the proposed works are wholly contained to the internal area of the unit.

Environmental Planning Ground 7 – *The proposal is consistent with the built character of the surrounding area.* This environmental planning ground is accepted as the proposal will maintain significant contributory elements and details of the heritage item to preserve the environmental heritage of the area.

Environmental Planning Ground 8 – *The proposal will not set an undesirable precedence to justify non-compliance with the development standard in the surrounding area.* This environmental planning ground is accepted given the unique circumstances of the proposed development and subject site.

Environmental Planning Ground 9 – *The scale of the proposed development is minor and will have negligible impacts to the surrounding area.* This environmental planning ground is accepted as it will not result in any additional amenity impacts to adjoining properties.

Cumulatively, the grounds are considered sufficient to justify contravening the development standard.

Whether the proposed development meets the objectives of the development standard, and of the zone

The objectives of the R1 zone under the *IWLEP 2022* 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 variation will satisfy these objectives as it will provide for the housing needs of smaller households residing in the community. It will improve the usable internal amenity and functionality of building types adapted for residential use, while preserving significant elements of the heritage-listed item with minimal impact to original fabric. The proposal will provide for additional space that will not result in any changes to the existing building envelope, and as such, maintain the prevailing built and natural character of the surrounding streetscape and Heritage Conservation Area. As indicated above, Council is satisfied that the development meets the objectives of the floor space ratio development standard. As the proposal is consistent with both the objectives of the zone and the standard, it is considered in the public interest.

The contravention of the development standard does not raise any matter of significance for State and Regional Environmental Planning.

For the reasons outlined above, it is recommended the section 4.6 exception be granted.

Part 5 – Miscellaneous provisions

| Section | Compliance | Compliance |
|---------------------------------------|---|------------|
| Section 5.10 Heritage conservation | <p>The subject site is a listed heritage item, namely Former Star Hotel, including interiors, Lots 1-10, CP/SP 50371 (Item No. 1592). The subject site is also a contributory building within the Town of Waterview Heritage Conservation Area (HCA).</p> <p>The proposal achieves the objectives of this section as follows:</p> <ul style="list-style-type: none"> • The development has been designed to respond to the significance of the conservation area and preserve contributory elements and fabric of the existing building, subject to the following condition: <ul style="list-style-type: none"> ○ During construction, the installation of the proposed raked ceiling must ensure that all original roof members are retained in situ and are not to be impacted by the removal of the existing dropped ceiling. | Yes |

| Section | Compliance | Compliance |
|--------------------------------|---|------------|
| | Given the above the proposal preserves the environmental heritage of the Inner West | |
| Section 5.21 Flood planning | The site is located in a flood planning area. The development is considered to be compatible with the flood function and behaviour on the land now and under future projections. The design of the proposal and its scale will not affect the floor affectation of the subject site or adjoining properties and is considered to appropriately manage flood risk to life and the environment. Conditions are recommended to ensure flooding is appropriately managed and mitigated. | Yes |

Part 6 – Additional local provisions

| Section | Proposed | Compliance |
|-----------------------------------|--|------------|
| Section 6.1 Acid sulfate soils | <ul style="list-style-type: none"> The site is identified as containing Class 5 acid sulfate soils. The proposal is considered to adequately satisfy this section as the application does not propose any works that would result in any significant adverse impacts to the watertable. | Yes |

B. Development Control Plans

Summary

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

| LDCP2013 | Compliance |
|---|----------------------|
| Part C | |
| C1.0 General Provisions | Yes |
| C1.1 Site and Context Analysis | Yes |
| C1.2 Demolition | Yes |
| C1.3 Alterations and additions | Yes |
| C1.4 Heritage Conservation Areas and Heritage Items | Yes – see discussion |
| | |
| Part C: Place – Section 2 Urban Character | |
| C2.2.2.5 – Mort Bay Distinctive Neighbourhood | Yes |
| | |
| Part C: Place – Section 3 – Residential Provisions | |
| C3.1 Residential General Provisions | Yes |
| C3.2 Site Layout and Building Design | Yes |
| C3.3 Elevation and Materials | Yes |
| C3.7 Environmental Performance | Yes |
| C3.9 Solar Access | Yes |
| C3.10 Views | Yes |
| C3.11 Visual Privacy | Yes |

| | |
|---|-----|
| C3.12 Acoustic Privacy | Yes |
| | |
| Part D: Energy | |
| Section 1 – Energy Management | Yes |
| Section 2 – Resource Recovery and Waste Management | |
| D2.1 General Requirements | Yes |
| D2.2 Demolition and Construction of All Development | Yes |
| | |
| Part E: Water | |
| Section 1 – Sustainable Water and Risk Management | |
| E1.1 Approvals Process and Reports Required With Development Applications | Yes |
| E1.2.2 Managing Stormwater within the Site | Yes |

The following provides discussion of the relevant issues:

C1.4 Heritage Conservation Areas and Heritage Items

The subject site is a listed heritage item, namely Former Star Hotel, including interiors, Lots 1-10, CP/SP 50371 (Item No. 1592). The subject site is also a contributory building within the Town of Waterview Heritage Conservation Area (HCA).

The proposed development retains original fabric, details, and finishes, and does not include the demolition of any internal walls, roof form, or chimneys.

C. The Likely Impacts

- These matters have been considered as part of the assessment of the development application. It is considered that the proposed development will not have significant adverse environmental, social or economic impacts upon the locality.

D. The Suitability of the Site for the Development

The proposal is of a nature in keeping with the overall function of the site. The premises are in a residential/commercial surrounding and amongst similar uses to that proposed.

E. Submissions

The application was not required to be notified in accordance with Council's Community Engagement Strategy.

F. 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.

This has been achieved in this instance.

6. Referrals

The following internal referrals were made, and their comments have been considered as part of the above assessment:

- Heritage Specialist;

7. 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 development will not result in any significant impacts on the amenity of the adjoining premises/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.

8. Recommendation

- A. The applicant has made a written request pursuant to Section 4.6 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 floor space ratio development standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2024/0088 for a minor internal fitout of an existing unit inside the historic Star Hotel unit block at 10/91 Mort Street Street, Balmain subject to the conditions listed in Attachment A below/for the following reasons

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

GENERAL CONDITIONS

| | Condition | | | | | | | | | | | | | | | | |
|---|--|------------------------------|------------------|------------------|-------------|-----|-----------------------|-----------|------------------|-----|---------------------------|-----------|------------------|-----|--------------------------------|-----------|------------------|
| 1. | Documents related to the consent | | | | | | | | | | | | | | | | |
| | The development must be carried out in accordance with plans and documents listed below: | | | | | | | | | | | | | | | | |
| | <table><tr><th>Plan, Revision and Issue No.</th><th>Plan Name</th><th>Date Issued</th><th>Prepared by</th></tr><tr><td>2.2</td><td>Demo Plan and Section</td><td>9/02/2024</td><td>Davis Architects</td></tr><tr><td>2.3</td><td>Proposed Plan and Section</td><td>9/02/2024</td><td>Davis Architects</td></tr><tr><td>2.4</td><td>Proposed Loft Plan and Section</td><td>9/02/2024</td><td>Davis Architects</td></tr></table> | Plan, Revision and Issue No. | Plan Name | Date Issued | Prepared by | 2.2 | Demo Plan and Section | 9/02/2024 | Davis Architects | 2.3 | Proposed Plan and Section | 9/02/2024 | Davis Architects | 2.4 | Proposed Loft Plan and Section | 9/02/2024 | Davis Architects |
| | Plan, Revision and Issue No. | Plan Name | Date Issued | Prepared by | | | | | | | | | | | | | |
| | 2.2 | Demo Plan and Section | 9/02/2024 | Davis Architects | | | | | | | | | | | | | |
| 2.3 | Proposed Plan and Section | 9/02/2024 | Davis Architects | | | | | | | | | | | | | | |
| 2.4 | Proposed Loft Plan and Section | 9/02/2024 | Davis Architects | | | | | | | | | | | | | | |
| As amended by the conditions of consent. | | | | | | | | | | | | | | | | | |
| Reason: To ensure development is carried out in accordance with the approved documents. | | | | | | | | | | | | | | | | | |
| 2. | Works Outside the Property Boundary | | | | | | | | | | | | | | | | |
| | <p>This development consent does not authorise works outside the property boundaries on adjoining lands.</p> <p>Reason: To ensure works are in accordance with the consent.</p> | | | | | | | | | | | | | | | | |
| 3. | Asbestos Removal | | | | | | | | | | | | | | | | |
| | <p>A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m2 of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).</p> <p>Removal of friable asbestos material must only be undertaken by a contractor that holds a current Class A Friable Asbestos Removal Licence.</p> <p>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</p> | | | | | | | | | | | | | | | | |

| | |
|----|--|
| | <p>remain in place until such time as all asbestos has been removed from the site to an approved waste facility.</p> <p>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.</p> <p>Reason: To ensure compliance with the relevant environmental legislation.</p> |
| 4. | <p style="text-align: center;">Original Roof Members</p> <p>During construction, the installation of the proposed raked ceiling must ensure that all original roof members are retained in situ and are not to be impacted by the removal of the existing dropped ceiling.</p> <p>Reason: To preserve the environmental heritage of the Inner West</p> |
| 5. | <p style="text-align: center;">Other Works</p> <p>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.</p> <p>Reason: To ensure compliance with legislative requirements.</p> |
| 6. | <p style="text-align: center;">National Construction Code (Building Code of Australia)</p> <p>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.</p> <p>Reason: To ensure compliance with legislative requirements.</p> |
| 7. | <p style="text-align: center;">Lead-based Paint</p> <p>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.</p> <p>Reason: To protect human health.</p> |

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

| | Condition |
|----|--|
| 8. | <p>Structural Certificate for retained elements of the building</p> <p>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.</p> <p>Reason: To ensure the structural adequacy of the works.</p> |
| 9. | <p>Sydney Water – Tap In</p> <p>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.</p> <p><i>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</i></p> <p>Reason: To ensure relevant utility and service providers' requirements are provided to the certifier.</p> |

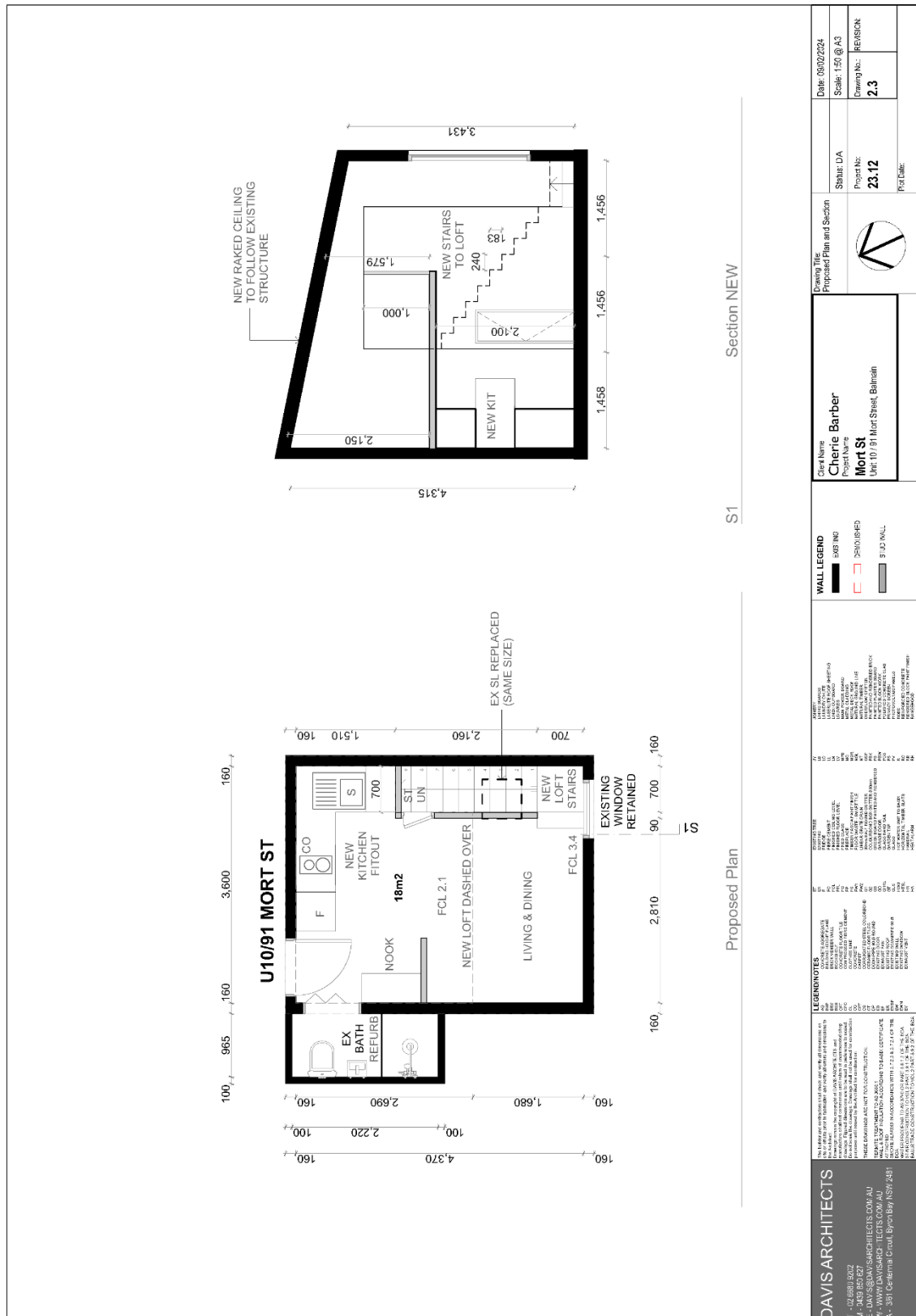
BEFORE BUILDING WORK COMMENCES

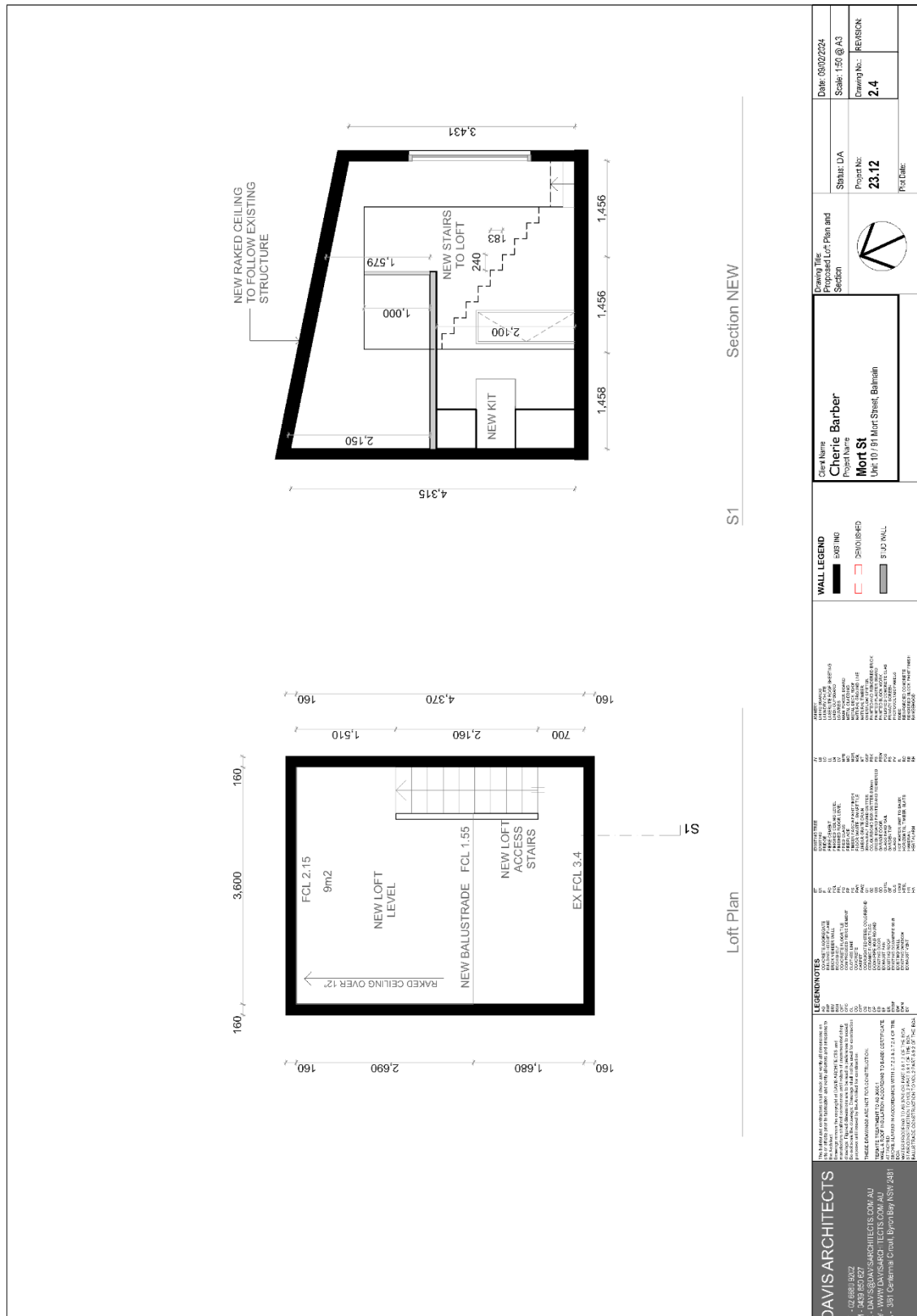
| | Condition |
|-----|---|
| 10. | <p>Waste Management Plan</p> <p>Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Development Control Plan.</p> <p>Reason: To ensure resource recovery is promoted and local amenity is maintained.</p> |

DURING BUILDING WORK

| | Condition |
|-----|--|
| 11. | Construction Hours – Class 1 and 10 |

| | |
|--|--|
| | <p>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.</p> <p>Reason: To protect the amenity of the neighbourhood.</p> |
|--|--|





Attachment C – Section 4.6 Exception to Development Standards



Clause 4.6 Variation Statement (Clause 4.4 Floor Space Ratio)

Alterations and additions to existing residential
flat building, Unit 10

UNIT 10, 91 MORT STREET, BALMAIN

April 2024

delivering above & beyond

Document Set ID: 39150542
Version: 1, Version Date: 06/05/2024

Sky Planning are an award-winning town planning company who provide a range of stakeholder and community engagement services to ensure everyone is engaged in the planning journey.

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We acknowledge the traditional owners of Country throughout Australia. We support a Country centred approach to urban planning, where humans support and respect the needs of all living and non-living entities in a balanced relationship with our own needs

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Proposal: Additions and alterations to existing residential flat building, Unit 10 to increase size of mezzanine (loft level)

Client: Cherie Barber

Applicant: Cherie Barber

Consent Authority: Inner West Council

Date: April 2024

Document Management

| | | | Draft | Final |
|-------------|-----------------|----|-------|-------|
| Prepared by | Jasmin Blazevic | JB | • | • |

Contact

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Supporting Documents

- Architectural Plans, *Davis Architects, dated 9/02/2024*
- Statement Of Environmental Effects, *Davis Architects, dated 30/11/2024*

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1 Introduction

This Clause 4.6 Variation Request supports a Development Application submitted to the Inner West Council, pursuant to the Environmental Planning and Assessment Act 1979 (EP&A Act).

The Development Application is seeking consent for proposed alterations and additions to an existing residential flat building, Unit 10 identified as Lot 10 SP 5037, known as 91 Mort Street, Balmain of the Inner West Council.

The alterations comprise of a new 10m² mezzanine level within the existing residential Unit No.10 which will replace a smaller mezzanine in this location. The new mezzanine would only increase the total floor area of the existing Unit by only 5m² (net).

This report has been prepared to request a variation to Clause 4.4 Floor Space Ratio of the *Inner West Local Environmental Plan 2022* in reference to the Davis Architects proposal plans, dated 9 February 2024 submitted under separate cover.

This Variation Request demonstrates that:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances as the Proposal achieves the objectives of the development standard in Clause 4.4 Floor Space Ratio notwithstanding the minor non-compliance.
- The proposed works will not vary bulk or scale of the building as it appears within the streetscape as additional floor area is entirely internal and will not be perceivable from any public domain.
- There are sufficient environmental planning grounds to justify contravening the development standard, in that there will be negligible environmental planning concerns that result from the minor increase to the floor area.
- The building exhibits an existing non-compliance with the Floor Space Ratio standard, which is further exacerbated by this minor increase to the mezzanine level of Unit 10.
- The Proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the R1 General Zone under the Inner West Local Environmental Plan 2022.

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2 Clause 4.6 Variation

The objectives of Clause 4.6 of the *Inner West Local Environmental Plan 2022* (IWLEP 2022) are to provide and allow an appropriate degree of flexibility in applying certain development standards in particular circumstances.

Clause 4.6 Subclause (3) states:

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

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

Note—

The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

Subclause (4) states:

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

This Variation Request has been prepared in accordance with the objectives contained within Clause 4.6 and the relevant development standard prescribed under IWLEP 2022. It considers various planning controls, strategic planning objectives and existing characteristics of the Site, and concludes that the Proposal, despite the non-compliance, is the best means of achieving the objectives of encouraging orderly development of the Site under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Clause 4.6(4)(a)(i) provides that the consent authority must be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3), as follows:

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- a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (CI 4.6(3)(a)); and
- b) that there are sufficient environmental planning grounds to justify contravening the development standard (CI 4.6(3)(b)). To this end the environmental planning grounds advanced in the written request must justify the contravention, not simply promote the benefits of carrying out the development as a whole: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

In the decision of *Rebel MH v North Sydney Council* [2019] NSWCA 130 (Rebel) Payne JA held (our emphasis added):

“Although it was unnecessary finally to decide the correct construction of cl 4.6(4) in Al Maha, I agree with the construction advanced in that case by Basten JA, with whom Leeming JA agreed, at [21]-[24]. Properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3). Clause 4.6(3) requires the consent authority to have “considered” the written request and identifies the necessary evaluative elements to be satisfied. To comply with subcl (3), the request must demonstrate that compliance with the development standard is “unreasonable or unnecessary” and that “there are sufficient environmental planning grounds to justify” the contravention. It would give no work to subcl 4.6(4) simply to require the consent authority to be satisfied that an argument addressing the matters required to be addressed under subcl (3) has been advanced.”

Accordingly, the consent authority must be satisfied that this Variation Request demonstrates that both compliance is unreasonable or unnecessary in the circumstances of the case and sufficient environmental planning grounds exist to justify the breach of the FSR control by the Proposal.

This Variation Request has been prepared in accordance with the objectives contained within Clause 4.6 and the relevant development standard prescribed under IWLEP 2022. It considers various planning controls, strategic planning objectives and existing characteristics of the Site, and concludes that the Proposal, despite the non-compliance, is the best means of achieving the objectives of encouraging orderly development of the Site under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The matters raised under the first section of Clause 4.6 request are addressed below within this variation.

3 Development Standard Being Varied

The proposed development involves removing an old mezzanine and adding in a new marginally larger loft in its place, resulting in a net increase of 5m² to the site. While the building's external structure remains unaltered, this is a request for flexibility in assessment under Clause 4.6 to address the Floor Space Ratio (FSR) breach of the numerical requirements under LEP.

Environmental planning instrument that applies to the land:

Inner West Local Environmental Plan 2022

Zoning of the land:

The subject size is zoned R1 General Residential

The development standard being varied:

Clause 4.4 2B (b) of the IWLEP 2022, which objectives state:

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

- (a) to establish a maximum floor space ratio to enable appropriate development density,*
- (b) to ensure development density reflects its locality,*
- (c) to provide an appropriate transition between development of different densities,*
- (d) to minimise adverse impacts on local amenity,*
- (e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.*

The Floor Space Ratio map under Clause 4.4 2B (b) specifies a numerical floor space ratio of 0.7:1 for a site area of 582 sqm. Due to the existing FSR non-compliance of the building, the proposed additional, whilst the works are minor, result in a non-compliant FSR of 0.79:1, equating to 458.74m² total GFA across the entire building.

The type of development standard being varied (numeric or non-numeric):

The development standard to be varied is numeric in accordance with Clause 4.4 2B (b) of the LEP.

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The proposed numeric value of the development standard in the development application:

0.7:1

The percentage variation (between the proposal and the environmental planning instrument):

12.2% variation, equating to 49.92sqm.

The objectives of the development standard:

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

- (a) to establish a maximum floor space ratio to enable appropriate development density,*
- (b) to ensure development density reflects its locality,*
- (c) to provide an appropriate transition between development of different densities,*
- (d) to minimise adverse impacts on local amenity,*
- (e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.*

The Clause 4.6 submission will demonstrate that the proposed development will continue to meet the objectives of the standard.

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4 Grounds for variation

4.1 Tests of Wehbe 1

New South Wales Land and Environment Court (NSW LEC) have supplemented the Clause 4.6 request with several key case laws that have refined the evolving method of planning principles and 'tests' in which variations to development standards are required to be approached. For the reasons outlined below, it is contended that compliance with the development standard in Clauses 4.4 of the LEP is unreasonable and unnecessary in the circumstances of the case as the Proposal achieves the objectives of the development standard notwithstanding the non-compliance (Wehbe Method 1).

What are the objectives of the development standard (FSR)?

The objectives of this clause are as follows—

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

Comment: The density of the Proposal is appropriate for the capacity of the locality in terms of infrastructure and services. The exceedance in floor space does not give rise to any impacts on the locality. The additional floor space above the 0.7:1 prescribed under Clause 4.4 is not discernible and would not be visible within the public domain therefore the minor increase had negligible impact on the locale.

In light of the above, the Proposal achieves objective (a) of the FSR development standard (test 1 in Wehbe).

(b) to ensure development density reflects its locality,

Comment: The density of the Proposal reflects the locality, in that the bulk and scale of the existing building will remain as is.

It is noted that there is no maximum height of buildings development standard prescribed by IWLEP 2022, and therefore the reference to density relates solely to the amount of floor space provided, in this case. The Proposal's density reflects its locality because the development:

- Retains the height and bulk of the building which is two storeys which is consistent with surrounding single and two storey residential properties.

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- Involves a minor non-compliance with the FSR standard of 12.2%, resulting from an existing non-compliance.

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

Comment: The Proposal will not alter the developments bulk and scale.

(d) to minimise adverse impacts on local amenity,

Comment: The proposed development does not result in additional overshadowing, loss of privacy or view loss. The minor addition to the floor area of Unit 10 is within the existing footprint of the unit.

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

Comment: The proposed development does not result in any loss to tree canopy or green spaces.

What are the objectives of the R1 General Residential Zone?

- *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.*

Comment: It is considered that the proposed development, despite the minor non-compliance meets the objectives of Zone R1 Low Density Residential. This opinion is justified on the basis that the works are contained within the existing building which is an older two storey residential flat building. The building's overall design, appearance, and scale remain unchanged. It's important to highlight that this slight increase in the allowable FSR won't lead to added density in terms of more occupants.

Additionally, the zone permits Residential Flat Buildings (RFBs), enabling ancillary works or enhancements to the building. The work will align with the contemporary requirements of its occupants, offering upgrades amenities to fulfill the day-to-day needs of residents. By leveraging flexibility through the Clause 4.6 request, this will enable upgrades to the building.

The proposed development has been designed in a sympathetic manner to fit contextually with the surrounding building as it maintains a consistent bulk and scale for the zone while allowing improvements to the internal design.

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The works proposed will not have any significant impact on the character of the streetscape and the built form will continue to complement the neighbouring dwellings, manor houses and hotel/pubs along Mort Street.

The Proposal will improve the housing stock consistent with the character of the residential environment and improve the overall usability and functionality with no detrimental environmental or planning outcomes. Rather, the merit-based justification provided in this request provides strong evidence that the FSR variation would have clear positive outcome of the occupants, and no perceivable impact to the environment or the streetscape.

The public benefit would be best served by approval of the development application under consideration, given the absence of any demonstrable adverse impacts resulting from the proposal.

How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

As outlined above, the development meets the objectives of the development standard notwithstanding the non-compliance, and therefore strict compliance with the development standard would be unreasonable and unnecessary.

The non-compliance is a result of the existing dwelling which maintains its non-compliant floor space ratio of 0.79:1, a variation of 12.2%. The Proposal would increase the internal amenity of the existing unit by providing extra area (5m² extra) to accommodate a more functional mezzanine level, which is considered minor in respect of the entire building.

The underlying object of the development would be thwarted if compliance were required in that the existing building already exceeds the allowable floor space ratio and no further improvements to the older building could be made.

It has therefore demonstrated that strict compliance to the development standard appears impractical or unnecessary given that the building exhibits an existing non-compliance, therefore total compliance for any additional floor area would result in a further non-compliance.

Despite this minor non-compliance, the objectives of the development standard are met, affirming the reasonableness of the non-compliance in this specific instance.

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4.2 Sufficient environmental planning grounds

As well as compliance with the floor space ratio requirement being unreasonable and unnecessary for the reasons set out in Section 4.1 above, there are sufficient environmental planning grounds that justify contravening the development standard.

The following environmental planning grounds justify varying the development standard under Clause 4.6:

- The FSR non-compliance is considered minor at 12.2%, when considering the net increase in GFA to only be 5m² of added mezzanine floor level to Unit 10.
- The proposal is an important addition to the site in that it promotes a more functional and upgraded unit which produces a greater level of amenity for its occupants.
- The proposed design is not perceivable from the streetscape or the public domain from any viewpoint.
- All other LEP and DCP controls that limit bulk and scale are maintained, therefore demonstrating that this is a modest addition to the residential unit.
- The minor departure from the FSR requirement is solely a result of an existing non-compliance of the entire building across the site.
- The proposed works will not result in any significant adverse impact upon the amenity of the adjoining neighbours in terms of overshadowing, loss of privacy or views.
- The proposal is consistent with the objectives of the R1 zone and consistent with the typology of buildings within the Inner West locale.
- No undesirable precedence will be set that would allow unjustified non-compliance with the standard in future applications.
- The development has negligible consequences as a result of this minor, existing non-compliance.

4.3 Development in the Public Interest

The development is in the public interest because it is consistent with the objectives of the Height of Buildings development standard, as demonstrated in Section 4.1

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above, and the objectives for the zone in which the development is proposed to be carried out.

Strict compliance with Clause 4.4 of IWLEP 2022 will result in:

- Reduce or limit any opportunities to upgrade the site to fulfill modern living standards. The existing FSR will undermine the functionality of the development and hinder the efficient use of the floor space of the building which serves the community of the Inner West LGA
- Not meet the operational requirements of modern industrial development. This is evident in the FSR controls prescribed by the environmental planning instruments in other LGAs where there is no FSR limit prescribed for industrial zoned land.

Further to the above, in the event the development standard was maintained, the resulting benefits to the adjoining properties and wider public would be nominal. It is noted that strict compliance with clause 4.4 would inhibit the development from operating at its full capacity, by not facilitating the needs of modern day living in providing functional living spaces for its occupants. As such, it has been demonstrated that the additional FSR is reasonable and necessary to support the usage of the RFB and residential land uses in the Inner West LGA. Accordingly, there is no genuine or identifiable public benefit in maintaining this strict FSR control in the context of this case.

How would strict compliance hinder the attainment of the objects specified in Section 1.3(a) and (c) [previously s5(a)(i) and (ii)] of the Act.

1.3 (a) To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources.

1.3 (c) To promote the orderly and economic use and development of land.

Comment: The proposed dwelling is a well-designed and orderly development providing a desirable and improved housing situation for the residents while maintaining the residential character of the built environment.

The proposal is a more efficient and orderly development on the land that is of high-quality architectural design that maximises the sites development potential along with providing improved housing stock for the community in this location.

As such strict compliance in this regard would not be possible as it is an existing building, and the above objectives are fully attained despite the non-compliance.

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5 Conclusion

This Clause 4.6 contravention request to Clause 4.4 – Floor Space Ratio of IWLEP 2022 should be supported on the basis that strict application of the development standard is unnecessary and unreasonable given that:

- a) The development meets the stated objectives of Clause 4.4, specifically:
 - That it maintained an appropriate density, despite the numerical non-compliance.
 - That the density reflects the locality and other structures in the vicinity.
 - It does not have any adverse impact on local amenity.
- b) The development meets the zone objectives of the General Residential zone, specifically:
 - To provide for the housing needs of the community within a residential environment.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
 - To maintain high level of amenity for occupants and neighbours.
- c) There are sufficient environmental planning grounds to justify contravening the development standard, specifically that it would result in:
 - The FSR non-compliance is considered minor at 12.2%, when considering the net increase in GFA to only be 5m² of added mezzanine floor level to Unit 10.
 - The proposal is an important addition to the site in that it promotes a more functional and upgraded unit which produces a greater level of amenity for its occupants.
 - The proposed design is not perceivable from the streetscape or the public domain from any viewpoint.
 - All other LEP and DCP controls that limit bulk and scale are maintained, therefore demonstrating that this is a modest addition to the residential unit.

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- The minor departure from the FSR requirement is solely a result of an existing non-compliance of the entire building across the site.
- The proposed works will not result in any significant adverse impact upon the amenity of the adjoining neighbours in terms of overshadowing, loss of privacy or views.

For the reasons set out above, the development may be granted consent notwithstanding the contravention of the development standard in respect of landscaped area in Clause 4.4 Floor Space Ratio of IWLEP 2022.

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Attachment D – Statement of Heritage Significance

**Andrew Starr and Associates Heritage Consultants
For
Cherie Barber

Heritage Impact Assessment**



**10/91 Mort Street Balmain
Prepared by Andrew Starr and Associates Heritage
Consultants
December 2023
Phone 9360 6540 astarr@bigpond.net.au**

10/91 Mort Street Balmain
Heritage Impact Assessment

December 2023

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1.0

Introduction

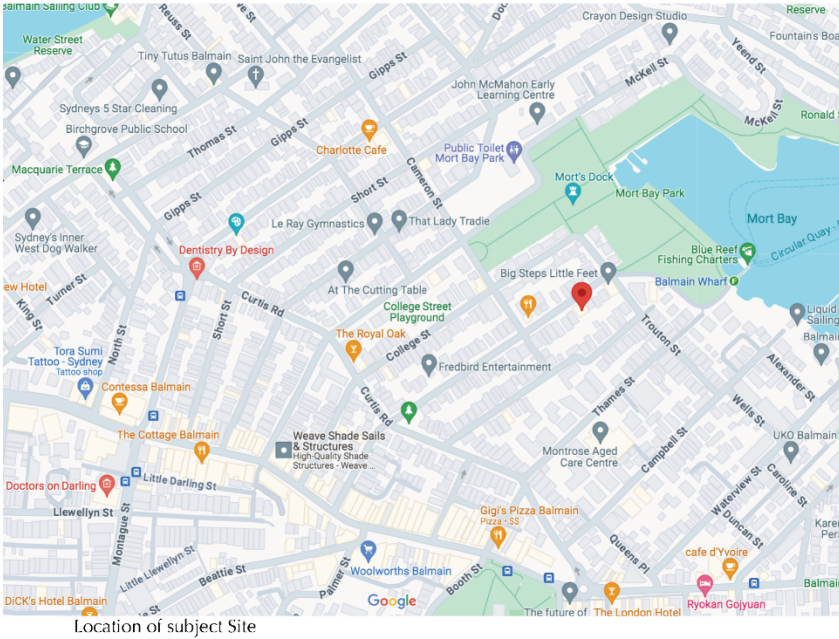
1.1 Background

Andrew Starr and Associates has been engaged by Cherie Barber to prepare the following Heritage Impact Statement. It is proposed to make alterations to the existing studio apartment at No. 91 Mort Street, Balmain. The existing studio is a converted hotel room in the former Star Hotel. The hotel closed many years ago and has been converted to apartments.

| Listing Name | Listing Title | Listing Number | Gazette Date | Gazette No. | Gazette Page. |
|------------------------------|--|--------------------------------|------------------------------|-----------------------------|-------------------------------|
| Local Environmental Plan | Inner West Local Environmental Plan 2022 | 1592 | 23/12/2013 | | |

1.2 Site Location

The subject site is in No. 91 Mort Street a former hotel. It is at the northern end of Mort Street near the harbour and a public reserve. The unit No 10 is located at the rear of the hotel.



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1.3 Methodology

This Heritage Impact Statement has been prepared in accordance with the NSW Heritage Manual 'Statements of Heritage Impacts' and 'Assessing Heritage Significance' guidelines. The philosophy behind this report has been guided by the Australia ICOMOS Burra Charter 1999. The report has also been prepared in accordance with Leichhardt's Council's guidelines on documentation accompanying development applications involving heritage items and conservation areas. The subject site has been assessed in relation to the controls and provisions contained in the Leichhardt Council's Local Environment Plan 2013 and Leichhardt DCP 2013.

This report considers the heritage significance of 91 Mort Street, Balmain and the impact of the proposed alterations at Unit 10 upon this significance. The purpose of this report is to:

- Outline the historical background of the site.
- Describe the locality and its significance.
- Describe the building's fabric and its condition.
- Assess the heritage significance of the building.
- Assess the impact of the proposed works upon the heritage significance of the site.

1.4 Author identification

This report is prepared by Andrew Starr, Heritage Consultant, Graduate of the University of Sydney, Master of Arts with Merit and PhD candidate University of New South Wales. Andrew Starr is registered with the New South Wales Heritage Office as a Generalist Consultant.

1.5 Limitations

- This SOHI is based upon an assessment of the heritage issues only and does not purport to have reviewed or in any way endorsed decisions or proposals of a planning or compliance nature. It is assumed that compliance with non-heritage aspects of Council's planning instruments, the BCA and any issues related to services, contamination, structural integrity, legal matters or any other non-heritage matter is assessed by others.
- This SOHI relies solely on secondary sources. Primary research has not been included in this report, other than the general assessment of the physical evidence on site.
- It is beyond the scope of this report to address Indigenous associations with the subject site.
- It is beyond the scope of this report to locate or assess potential or known archaeological sub-surface deposits on the subject site or elsewhere.
- It is beyond the scope of this report to assess items of movable heritage.
- Andrew Starr and associates Heritage Consultants has only assessed aspects of the subject building/place that were visually apparent and not blocked or closed or to which access was barred, obstructed or unsafe on the day of the arranged inspection.

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2.0 ITEM DESCRIPTION AND CONTEXT

2.1 Item Description

No. 91 Mort Street Balmain is a Victorian Hotel.
re by R. Apperly, R. Irving and P. Reynolds:

Description on NSW Heritage Database

Physical Description

Two storey painted and rendered brick former Hotel building (not on corner) with high parapet wall. The ground floor has commercial use and the front façade consists of painted rendered walls, timber doors and windows with highlights over. The first floor has residential use and the façade consists of French doors opening out onto a wide balcony with sloping corrugated iron roof supported by timber posts with a cast iron balustrade. The balcony extends over the footpath and is supported by timber posts.

The front façade is located on the street boundary. The rear wing is setback from the street. There is a driveway and a rear open sealed car parking area .

Physical Condition and/or Archaeological Potential
Good Condition

Modifications & Dates

1920 - Alterations and additions-wide balcony added.

1994 - Alterations and Additions (93/1012)

Current Use/ Commercial/Residential
Former Use/ Hotel

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Fig.1 The Star Hotel street façade.



Fig.2 Street and south facades.

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Fig.3 Unit 10 a studio apartment to be renovated. Mezzanine loft



Fig.4 Mezzanine loft

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Fig.5 Stairs to Mezzanine



Fig.6 Skylight

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Fig.7 Window



Fig.8 Utilities



Fig. 9 Shower



Fig.10 WC

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Fig.11 Mezzanine



Fig.12 Stairs to Mezzanine

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Fig.13 Utilities



Fig. 14 Window



Fig.15 Entrance

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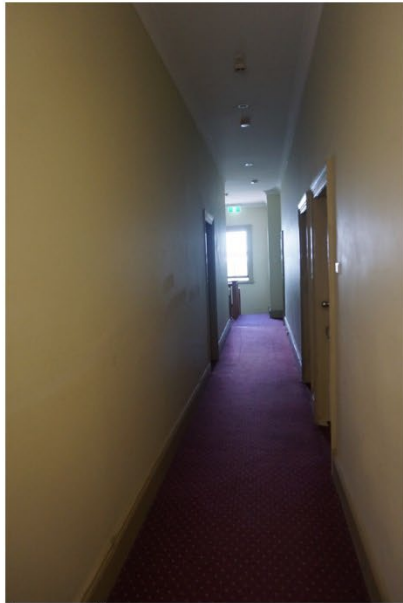


Fig.16 Hallway



Fig.17 Hallway

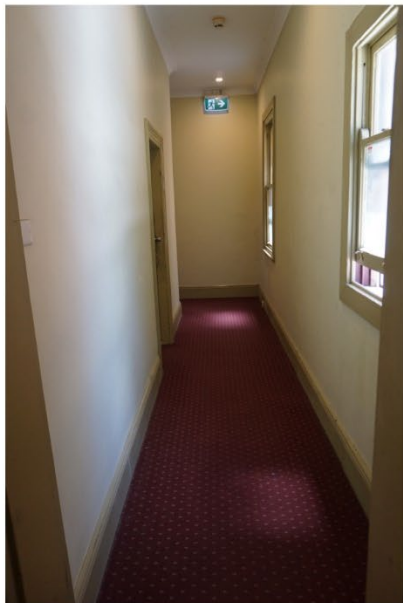


Fig. 18 Hallway



Fig.19 Hallway

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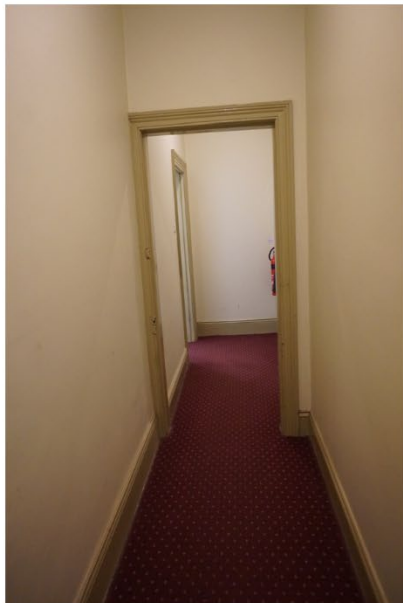


Fig.20 Hallway



Fig.21 Window from the rear porch



Fig.22 Window from the rear porch and entrance to hallway

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Fig.23 Rear façade



Fig.24 Rear façade

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2.3 SITE CONTEXT

The site is a former hotel room of the Star Hotel. This work is restricted to an interior fit-out. There are no changes to any façade detail. The Star Hotel was associated with the Mort Drydock and factories as a recreational facility for workers. It closed many years ago and has been used as a mix of commercial and residential since. The area is close to a park near the Thames Bay Ferry Wharf. This is a very pleasing area of Balmain with a great variety of building styles.

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3.0 Historical Development of the Site

3.1 Historical Context

Prior to European settlement, the area was inhabited by indigenous Aboriginal Australian, Gadigal and Wangal people. Stories from early settlers in the area tell of how the local indigenous people used to hunt kangaroo by driving them through the bushy peninsula, down the hill to Peacock Point at the east end, where they were killed.

The area now known as Balmain was part of a 550-acre (2.2 km²) grant to colonial surgeon William Balmain (1762–1803) made in 1800 by Governor John Hunter. A year later, Balmain transferred his entire holding to settle a debt to John Borthwick Gilchrist before returning to Scotland. The legality of the land transfer from Balmain to Gilchrist for only 5 shillings was challenged by Balmain's descendants and further development of the area was blocked. The area subsequently became known as Gilchrist's place, though court documents refer to the area as the Balmain Estate.

During the many years of legal challenges, the land was leased for farming and cattle purposes. In 1814 the adjacent homestead of Birchgrove was sold to Roland Warpole Loane, a merchant and settler descended from a family of English landlords. One hundred acres on the adjoining Balmain estate were leased to Loane.^[3]

In 1833, Gilchrist transferred power of attorney to Frederick Parbury. When Loane's lease finally expired in 1836 and the land retrieved from his possession, Parbury commissioned surveyor John Armstrong to sub-divide the land into six parcels. Three parcels were sold to Thomas Hyndes in 1837. The area was rapidly sub-divided and developed during the 1840s and by 1861 had been divided into the well populated eastern suburb of Balmain and the sparsely populated western area, extending to the gates of Callan Park, known as Balmain West.

Industry

The peninsula changed rapidly during the 1800s and became one of the premier industrial centres of Sydney. Industries clustered around Mort Bay included shipbuilding, a metal foundry, engineering, boilermaking and the Mort's Dock & Engineering Company works which opened in 1855—in 1958 Mort's Dock closed and is the site of Mort Bay Park.^[4] Increasing industrialisation at Balmain created a demand for cheap housing. This was satisfied by the dock owners selling small blocks of land to entrepreneurs who then built tiny cottages and rented them to the workers. The Balmain Reservoir was built in 1915.

Gentrification

Gentrification of Balmain began in the 1960s as industry waned. Balmain's desirability to the middle class was due in part to its waterfront location and proximity to Sydney's CBD. The Balmain Association was formed in 1965.^[14]

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Increasing property values and waterfront development continued to push the suburb's remaining industry out. In 1996, the Lever Brothers site became a series of apartment complexes with a handful of original buildings preserved. The power station was demolished in 1998 to make way for apartments. However, many aspects of Balmain's industrial past have been retained as heritage.

Land Titles Office

Sydney Suburbs

Leichhardt Council Website

Picman NSW Library Digital Photography Archive

A Pictorial Guide To Identifying Australian Architecture Richard Apperly, Robert Irving & Peter Reynolds

The Illustrated Burra Charter ICOMOS Sand's Directory 1854-1933

Sydney Book of Suburbs Francis Pollon

Leichhardt: on the margins of the City Max Solling and Peter Reynolds

Leichhardt an era in pictures Barry Groom and Warren Wickham

"Leichhardt Historical Journal No 12 1983"

3.2 Specific History of Site

Historical Notes or Provenance

Surgeon William Balmain was granted 550 acres and most of the area now encompassing Balmain in 1800. In 1801 the entire grant was transferred to fellow surgeon John Gilchrist. Gilchrist never actually lived in NSW and advertised the land for sale in 1823. However, the sale was not a success. He gave power of attorney to his Sydney-based agent and merchant, Frank Parbury, who commissioned Surveyor John Armstrong to subdivide part of the land. In 1836 22, 2-4 acres lots mostly about Balmain East were auctioned for sale by Parbury on behalf of the absentee landowner, Gilchrist.

One of the first persons to acquire an interest in the Balmain estate was George Cooper, Comptroller of Customs, who initially purchased 23 acres of the choicest land fronting the deep water of Waterview Bay. The land generally extended between Campbell and Mort Streets.

By 1840 Cooper had acquired 30 acres around the Bay. He also purchased Waterview House and associated 10 acre estate to the east of his initial purchase. However, his changing situation forced him to sell the 23 acres in 1840. Cooper later fell victim to the crash of the early 1840s and in 1842 was declared bankrupt. The Waterview Estate was subsequently divided into modest building allotments with very narrow streets (leaving as much land for development) leading down to the bay with its slipway and wharves.

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The 23 acres was subdivided into 4 large sections. The subject site is part of 7 acres of the land purchased by P. Hayes, merchant, in 1840 and subsequently subdivided into a number of allotments along Mort Street.

Built in 1866 as the Star Hotel by James Fortune on land leased from Thomas Mort. Fortune died soon after and his wife held the licence until 1872. In 1887 the name was changed to the Fire Brigade Hotel until 1903 when the pub was bought by Tooth and Co. who renamed it the Star. The pub was remodelled in 1920 and a wide verandah was added. The pub played a central role and was a significant part of the life of local workers on the wharves in Mort Bay.

The Star was closed in 1930 and the licence was transferred to the new Star Hotel at 456 Darling Street, Balmain which changed its name to the Cat and Fiddle Hotel in the late 1960s-early 1970s.

The building itself gained publicity in 1950 when it became involved in an attempted armed payroll robbery at Mort's Dock. In 1994 the building was redeveloped as a commercial/residential building.

The building is shown on a Sydney Water plan dating from the late 1880s (Balmain Sheet No. 14) revised in the 1890s.

Evaluation

Of Historical significance in its role as a former hotel. The site had associations as a hotel serving workers of Morts Dock and industrial complex.

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Statement of Heritage Significance

4.1 Assessment Criteria

The following assessment of significance addresses the criteria endorsed by the NSW Heritage Council, and is in accordance with the *NSW Heritage Manual* 'Assessing Heritage Significance' guidelines. The assessment is based upon the limited historical information, and the inspection of the fabric of the item and the surrounding area.

a) An item is important in the course, or pattern, of the local area's cultural or natural history.

The site and building is of local historic significance as part of an early land purchase and subdivision and hotel initially constructed in the 1866. The subsequent changes to the building represent the growth and development and changing requirements in the local area.

b) An item has strong or special associations with the life or works of a particular person, or group of people, of importance in the local area's cultural and natural history

Associated with the community and former industry of nearby Mort Bay.

c) An item is important in demonstrating aesthetic characteristics and/ or a high degree of creative achievement in the local area.

The building is of local aesthetic significance as an example of a hotel, not on a corner, initially constructed in 1866. Despite additions and alterations and change of use, the building retains a sense of its original scale and fabric. The building retains its balcony and details.

d) An item has strong or special association with a particular community or cultural group in the local area for social, cultural or spiritual reasons.

The site is now of some social significance as a former corner hotel that served a local workforce and residents until 1930.

e) An item has potential to yield information that will contribute to an understanding of the local area's cultural or natural history

The building may reveal some information about early stone construction techniques. The rear lane access also remains and indicates the early sanitary practices.

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- f) **An item possesses uncommon, rare or endangered aspects of the local area's cultural or natural history**

The site does not meet this criterion.

- g) **An item is important in demonstrating the principal characteristics of a class of the local area's**
- **cultural or natural places; or**
 - **cultural or natural environments**

The site is now of some social significance as a former corner hotel that served a local workforce and residents until 1930.

Integrity-Intactness

Medium

4.2 Statement of Significance

No. 91 Mort Street is of local historic, aesthetic and social significance as a good representative example of former Hotel building (not on a corner) that appears to have been initially constructed in late 1866. Despite additions and alterations and change of use, the building retains a sense of its original scale and fabric and evidence of its original design indicated by its high rendered parapet wall, open balcony, pattern of openings and associated details. The building is a key townscape element that makes a positive contribution to the Mort Street streetscape.

4.3 Curtilage

The unit to be changed is a former hotel room converted to a studio apartment. Work is interior only and there is no impact on the curtilage of the hotel. Nor any changes to any façade detail.

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The Proposal

The existing unit was created from a former hotel room. This change left no original details of the room. It is a small studio apartment with an ensuite bathroom. Proposed is stripping the room of existing detail, and a refit of the room with new decoration and appliances.

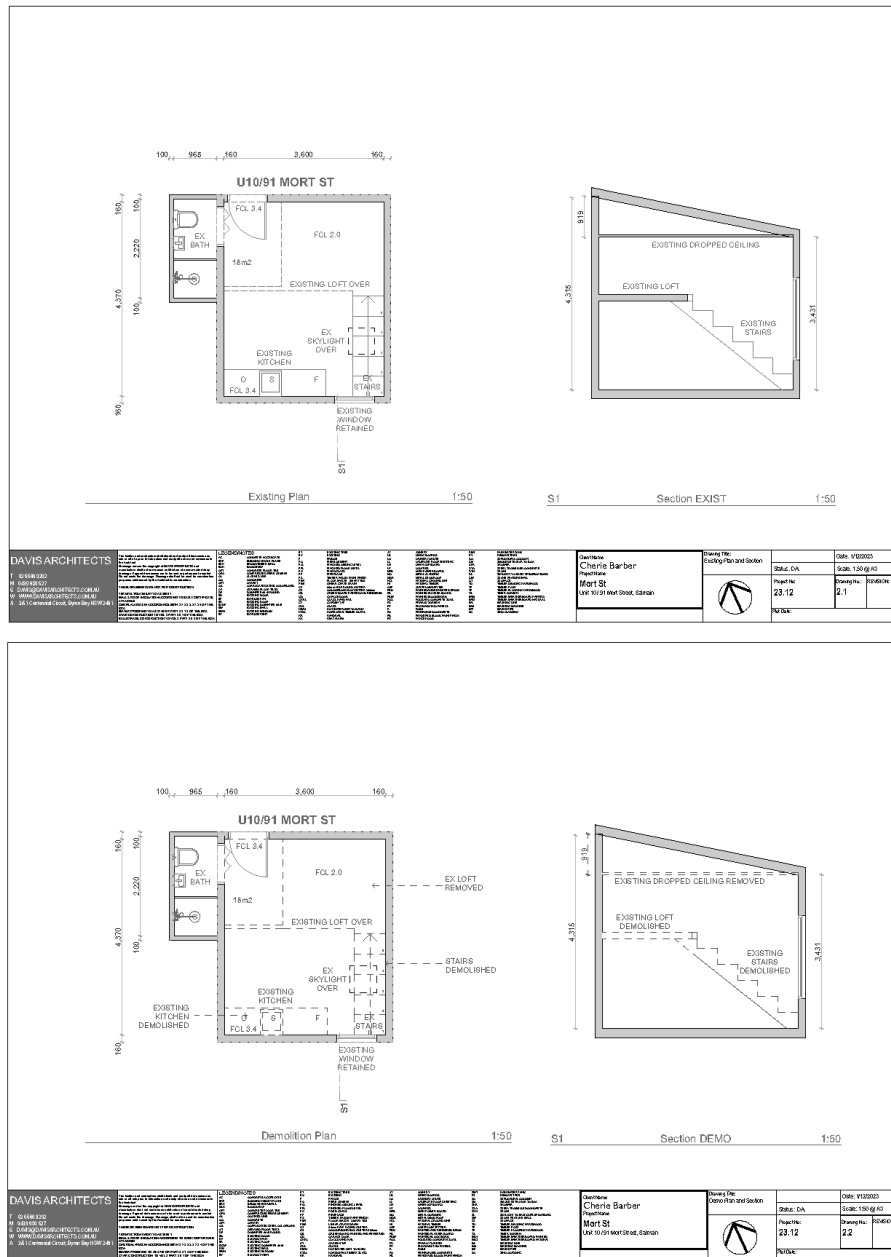
Public enjoyment of this heritage asset is retained.

Recommended management of this building from a previous study found on the NSW Heritage database suggests.

It is recommended that: - the existing two storey with attic scale and form of the building including main gable roof form, party walls and chimney and secondary rear wing should be retained and conserved; - the existing rendered stone facades should also be retained and conserved. Painted surfaces such as render and timberwork should continue to be painted in appropriate colours.; - the front fence and small setback should be retained and conserved; - the front verandah and first floor balcony should remain open and features including the dressed stone verandah floor, end party walls and cast iron lace balustrade and skillion roof should be retained and conserved; - no new openings should be made in the front facade; - any additions and alterations should be confined to the rear of the building; -the open passage along the western site boundary should also be retained. The development meets these recommendations.

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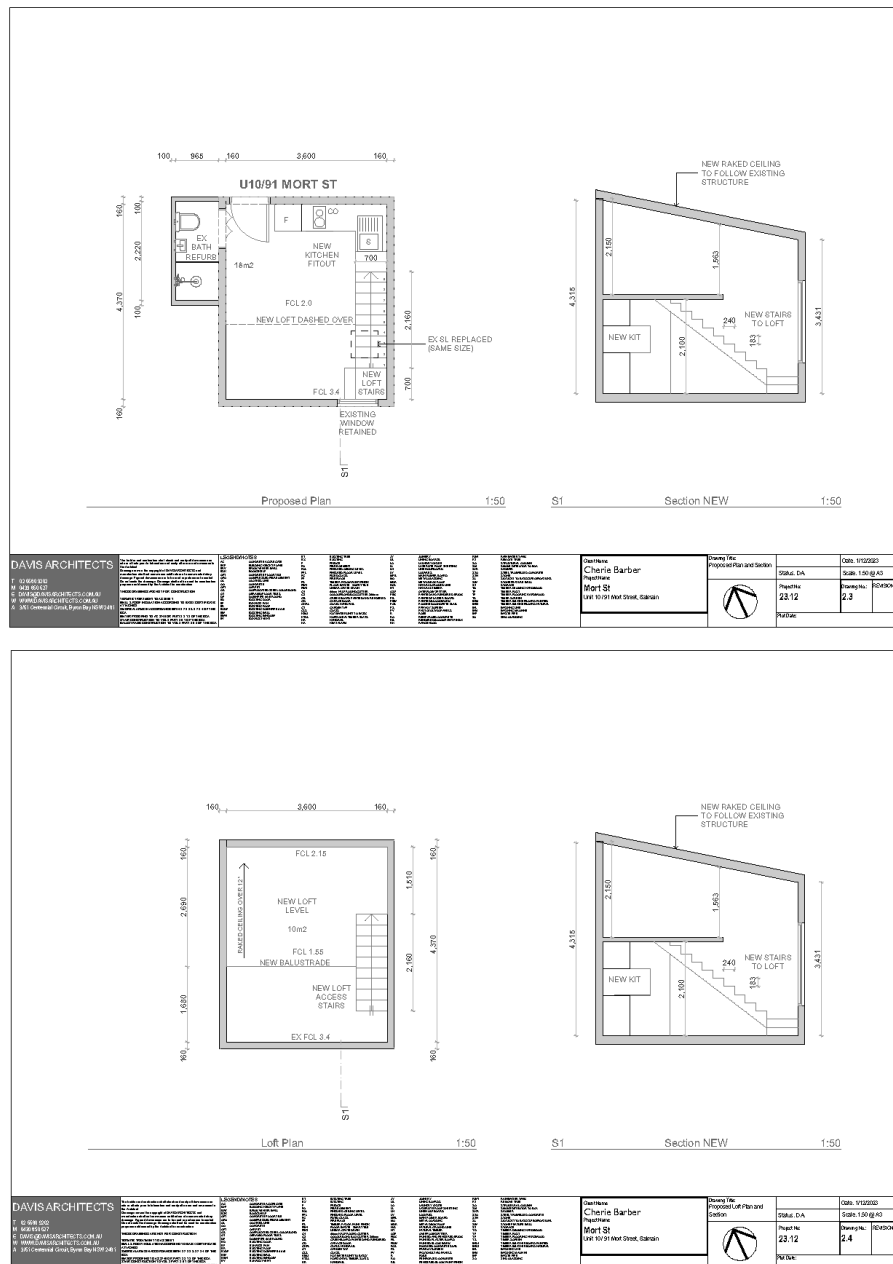


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6.0 Heritage Impact Assessment

6.1 Statutory Controls

The subject building is listed as a local heritage item (built) but is part of a conservation area under the Leichhardt LEP 2013. The subject proposal will be discussed under the relevant Leichhardt Shire Council planning controls and provisions.

6.2 Assessment of Impacts

6.2.1 Leichhardt Council LEP 1998

5.10 Heritage conservation

Note.

Heritage items (if any) are listed and described in Schedule 5. Heritage conservation areas (if any) are shown on the [Heritage Map](#) as well as being described in Schedule 5.

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

- (a) to conserve the environmental heritage of Leichhardt,
 - (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
 - (c) to conserve archaeological sites,
 - (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.
- (2) Requirement for consent Development consent is required for any of the following:
- (a) 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) a heritage item,
 - (ii) an Aboriginal object,
 - (iii) a building, work, relic or tree within a heritage conservation area,
 - (b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,
 - (c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
 - (d) disturbing or excavating an Aboriginal place of heritage significance,
 - (e) erecting a building on land:
 - (i) on which a heritage item is located or that is within a heritage conservation area, or
 - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,
 - (f) subdividing land:
 - (i) on which a heritage item is located or that is within a heritage conservation area, or
 - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.
- (3) When consent not required However, development consent under this clause is not required if:
- (a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development:
 - (i) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and

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- (ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area, or
- (b) the development is in a cemetery or burial ground and the proposed development:
 - (i) is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and
 - (ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to an Aboriginal place of heritage significance, or
- (c) the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or
- (d) the development is exempt development.
- (4) Effect of proposed development on heritage significance 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 management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).
- (5) Heritage assessment The consent authority may, before granting consent to any development:
 - (a) on land on which a heritage item is located, or
 - (b) on land that is within a heritage conservation area, or
 - (c) on land that is within the vicinity of land referred to in paragraph (a) or (b),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.
- (6) Heritage conservation management plans The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.
- (7) Archaeological sites The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the [Heritage Act 1977](#) applies):
 - (a) notify the Heritage Council of its intention to grant consent, and
 - (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.
- (8) Aboriginal places of heritage significance The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:
 - (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and
 - (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.
- (9) Demolition of nominated State heritage items The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item:
 - (a) notify the Heritage Council about the application, and
 - (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.
- (10) Conservation incentives The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:
 - (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and

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- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.

This report is generated because the building is listed as a heritage item and is within a conservation area.

6.2.2 Leichhardt Council Heritage Development Control Plan

C1.4 HERITAGE CONSERVATION AREAS AND HERITAGE ITEMS

Background

This element outlines objectives and controls for the development and conservation of buildings within Heritage Conservation Areas and Heritage Items.

Objectives

O1 Development:

- a. does not represent an unsympathetic alteration or addition to a building;
- b. encourages the protection, restoration, continued use and viability of buildings for their original purpose;
- c. encourages the removal of unsympathetic elements;
- d. is compatible with the setting or relationship of the building with the Heritage Conservation Area in terms of scale, form, roof form, materials, detailing and colour of the building and conforms with the Burra Charter (Refer to: <http://australia.icomos.org/publications/charters/>);
- e. conserves and enhances the fabric and detail of a building that contributes to the cultural significance of the building in its setting;
- f. maintains the visual unity of groups of buildings, in particular semi-detached and attached terraces;
- g. makes an appropriate visual and physical distinction between the existing building and new parts of the building;

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- h. protects and enhances views of the existing building from the public domain;
and
- i. new buildings are sympathetic in scale, form, architectural detail, fenestration and siting to the Heritage Conservation Area or Heritage Item and conforms with the Burra Charter.

Response

- a. The alteration is confined to an interior fitout of the unit. It is already compromised by removal of all original detail of the hotel room.
- b. Residential use of the building is retained. There is no change to the existing floorplan.
- c. The unit has previously been altered.
- d. Existing facades are unaltered by the proposed works.
- e. The main façade key of the building which is the key public asset is preserved.
- f. Visual unity of the former hotel is preserved.
- g. Alterations will not be confused with original fabric.
- h. Public enjoyment of the heritage item is retained.
- i. No change in envelope. No change to facades. No change to footprint.

Controls**General**

- . 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.
- . C2 The fabric of an existing building is to be the subject of appropriate conservation practices including:
 - a. retention of original detail and finishes such as:
 - i. original face brick which should not be painted over or rendered;
 - ii. original decorative joinery and iron work which is not to be removed;
 - b. conservation of original elements;
 - c. reconstruction or restoration of original elements where deemed appropriate;
 - d. retention of the original cladding material of original roofs where viable;

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- e. consideration of suitable replacement materials should be based on original material, and where a property is part of a group or row, replacement materials should have regard to the integrity of the group.
- . C3 Development of dwellings within Heritage Conservation Areas must:
 - a. not include the demolition of the internal walls and roof form, including any existing chimneys, of the front two rooms of the dwelling;
 - b. retain the major form, scale and materials of the existing structure as described in (a);
 - 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; and
 - d. retain significant, established gardens and plantings including early fences.
- . C4 Demolition of dwellings in Heritage Conservation Areas or Heritage Items is subject to the provisions of Part C Section 1.2 – Demolition within this Development Control Plan.

Response

C1 The 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.

C2 a The proposal retains all surviving heritage.

C3 No internal walls are to be demolished. The pPublic will not see any changes to the rear of the hotel.

6.2.2 'Questions to be Answered' from the 'Statements of Heritage Impact' Guidelines of NSW Heritage Manual

Has the advice of a heritage consultant /specialist been sought? Have the consultant's recommendations been implemented?

Andrew Starr and Associates Heritage Consultants were engaged by the owners of the subject property to comment on the proposal. After consideration, our

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opinion was that the proposal would be appropriate within the existing context of this section of East Balmain and the conservation area.

How is the impact of the new development on the heritage significance of the area to be minimised?

The proposed alterations are confined to a refit of Unit 10. No other area of the building is affected. The alterations are situated at the rear of the former hotel. The alterations is not visible from Mort Street.

Can the additional area be located within the existing structure? If not, why not?

It is the only area where the structure could be located.

Are the additions sited on any known, or potentially significant archeological deposits? If so, have any alternative positions for the additions been considered?

The site has no archeological potential.

Is the new development sympathetic to the conservation area? In what way (e.g. form, proportions, design)?

This is a refit of a room already compromised by previous work. The unit is not visible to the public.

Has the advice of a heritage consultant /specialist been sought? Have the consultant's recommendations been implemented?

Andrew Starr and Associates Heritage Consultants were engaged by the owners of the subject property to comment on the proposal. After consideration, our opinion was that the proposal would be appropriate within the existing context of this section of Mort Street and the Balmain Conservation area.

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7.0

Conclusion – Conservation Principles

The proposed work on No. 91 Mort Street is sympathetic to the heritage item and the conservation area. Work is screened from public view reducing any impact on the public enjoyment of the heritage asset.

I have no hesitation in recommending the proposed alterations to Unit 10/ 91 Mort Street Balmain. The alterations are an example of sympathetic development desired in the Balmain Conservation Area. The additions are clearly contemporary and will not be confused with the original fabric.

Materials and finishes are appropriate to the context of the site.

It is considered that the proposed renovations to the rear of 91 Mort Street will not result in a loss of the cultural, historical, aesthetic, social or technical significance of the area.

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