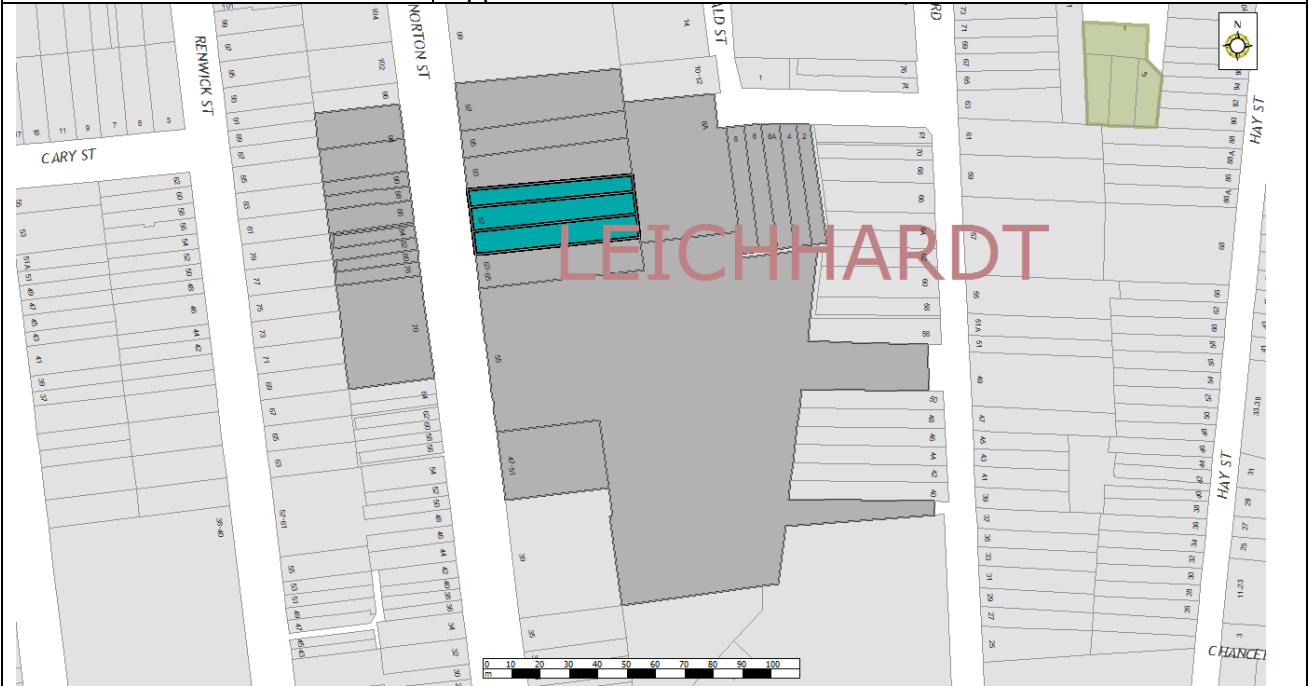




# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	D/2018/94
<b>Address</b>	67 Norton Street, LEICHHARDT NSW 2040
<b>Proposal</b>	Alterations and additions to existing building, including construction of a mezzanine level within existing building envelope.
<b>Date of Lodgement</b>	26 February 2018
<b>Applicant</b>	Joto Group
<b>Owner</b>	Co As It Italian Association of Assistance
<b>Number of Submissions</b>	Nil
<b>Value of works</b>	\$200,000
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation exceeds officer delegation
<b>Main Issues</b>	Floor Space Ratio
<b>Recommendation</b>	Approval



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to existing building, including construction of a mezzanine level within existing building envelope at 67 Norton Street, Leichhardt. The application was notified to surrounding properties and no submissions were received.

The main issue that has arisen from the assessment of the application involves:

- Floor Space Ratio

Notwithstanding the above non-compliance, the proposal is acceptable given the existing pattern of surrounding development and its acceptable amenity impacts, and therefore, the application is recommended for approval.

## 2. Proposal

The proposal involves internal alterations to accommodate a new 73sqm mezzanine level for additional office space associated with the existing office premises at the rear of the building used by the owner Co.As.It.

The mezzanine level has a finished floor level of RL37.95 with a 2.57m ceiling height for the office area and a 2.3m ceiling height for the ground floor circulation and toilets below. In order to provide natural light and ventilation to the mezzanine level, the enlargement of existing windows on the southern elevation is proposed to the underside of the first floor slab.

No changes are proposed to the existing child care centre premises located within the building.

Whilst the proposed additional floor space generates the need for one additional car space, no additional on-site car parking is proposed and a condition will be imposed requiring the payment of a contribution for off-site car parking in accordance with the 'Traffic and Transport Section 94 Contributions Plan'.

Extracts of the proposed plans are shown in the figures below.

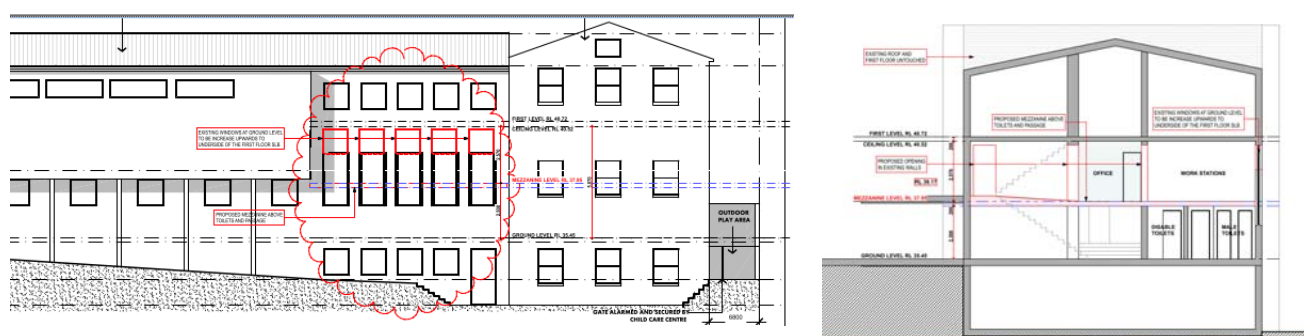


Figure 1: Elevation and section of mezzanine level at 67 Norton Street.

## 3. Site Description

The subject site is located on the eastern side of Norton Street, between Marion Street and Parramatta Road. The site consists of three allotments and is generally regular in shape with a total area of 1,313.45sqm and is legally described as Lot A in DP 312436 and Lots 5 and 6 in DP 303292.

The site has a frontage to Norton Street of approximately 22.7m.

The site supports an existing two to three storey commercial building. The adjoining properties support a mix of one to three storey commercial buildings to the north and south and a two and three storey residential apartment building to the east.

The subject site is not listed as a heritage item or located within a conservation area. The property is identified as a flood prone lot.

## 4. Background

### 4(a) Site history

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

#### Subject Site

Application	Proposal	Decision & Date
DA/589/1997	Conversion of existing building to Italian community centre.	Approved 30 January 1998.
M/2000/41	Modification to development consent DA 589/97 to delete condition 28 pertaining to a limitation on commercial use of the premises.	Approved 4 July 2000.
D/2013/433	Alterations to Existing Building for Part Use as a Child Care Centre (Long Day) for 90 Children.	Approved 20 March 2017.
PREDA/2017/308	Construct a mezzanine level to provide office space for CoAslt staff within rear section of the building.  The subject proposal is consistent with the advice letter issued.	Advice letter issued 5 December 2017.

#### Surrounding properties

Application	Proposal	Decision & Date
DA/518/1996	<u>63-65 Norton Street</u> Internal alterations to restaurant & erect storage shed in rear yard.	Approved 31 May 2001.
BA/1994/854	<u>8A McDonald Street</u> Erect 15 townhouses.	Approved 12 January 1995.

### 4(b) Application history

Not applicable

## 5. Assessment

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

### 5(a) Environmental Planning Instruments

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

- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Leichhardt Local Environmental Plan 2013

The following provides further discussion of the relevant issues:

#### 5(a)(i) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

#### 5(a)(ii) Leichhardt Local Environment Plan 2013 (LLEP 2013)

The application was assessed against the following relevant clauses of the Leichhardt Local Environmental Plan 2013:

- Clause 1.2 – Aims of the Plan
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 4.4 – Floor Space Ratio
- Clause 4.4A – Floor Space Incentives for active street frontages
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards
- Clause 6.3 – Flood Planning
- Clause 6.4 – Stormwater management
- Clause 6.8 – Development in areas subject to aircraft noise

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

Standard (maximum)	Proposal	% of non compliance	Compliances
<b>Floor Space Ratio</b> Required: [1:1] [GFA of 1,313.45sqm]	1.15:1 1,440sqm (existing) + 73sqm = 1,513sqm	15.19%	No

**Note: The existing building has a non-compliant FSR of 1.10:1 and the additional 73sqm of GFA is wholly contained within the existing building envelope.**

The following provides further discussion of the relevant issues:

#### Clause 4.6 Exceptions to Development Standards

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

- Clause 4.4 – Floor Space Ratio

Clause 4.6(2) specifies that Development consent may be granted for development even though the development would contravene a development standard.

1. *The objectives of this clause are as follows:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

2. *Development consent may be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.*

Comment: As discussed below in subclauses (3) and (4), it is considered that the contravention to the development standard is acceptable in this instance.

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.*

Comment::

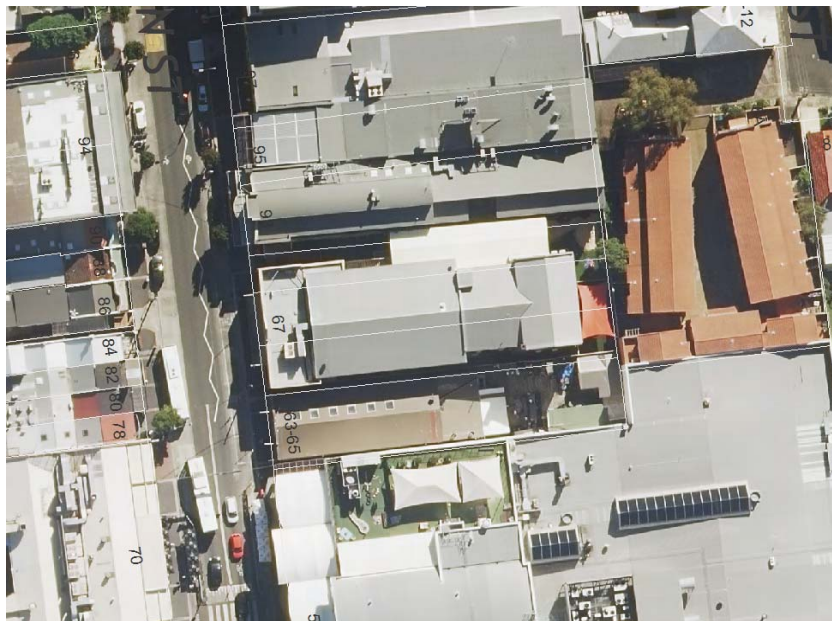
The subject site has an area of 1,313.45sqm and the proposed development seeks to provide a total FSR of 1.15:1 (or a commercial building of 1,513sqm), equating to a variation of 15.19% or 199.55sqm. Notwithstanding numerical non-compliance, the applicant contends that the proposed building satisfies the stated objectives given that:

- *The proposed additional gross floor area is contained within the existing building envelope and will not be visible from the public domain. The additions GFA will not alter the built form of the site and maintains the sites existing scale, noting the additional floor area does not result in a building that is out of context or beyond the capacity of the subject site. A 1.5:1 FSR is permissible in the locality for development containing an active street frontage and residential accommodation, therefore the proposed FSR is not uncharacteristic for the locality.*
  - *The additional floor space does not result in any negative amenity impacts to surrounding properties noting the additional gross floor area is contained within the existing building form and does not alter the height of the building or the existing building form.*
  - *The existing building does not meet the FSR development standard of 1:1. Further, the subject site has historically contained an FSR of 1.34:1 which has been reduced through historical internal modifications.*
  - *The variation to the FSR development standard is appropriate for the subject site. Allowing for flexibility in the application of the FSR to the building allows the floorplate of the existing building to be utilised without impacting on the built form or amenity of adjoining buildings.*
  - *The additional floor area is located within the existing building envelope and will not result in additional amenity impacts to adjoining properties or the public domain with regard to bulk and scale or setting within the public domain. The additional floor area provides for additional office space within the Leichhardt Commercial Neighbourhood.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

**Comment:** The applicant has addressed the matters required under Clause 4.6 Exceptions to development standards, and it is considered to be well founded in this instance. The proposal will not result in a detrimental impact on the public interest and can satisfy the objectives of the development standard/s and B2 Local Centre zoning as demonstrated below:

- The proposal is compatible with the existing character of the area in relation to building bulk, form and scale.
- The proposal results in additional office space within the B2 Local Centre zone, encouraging employment opportunities in accessible locations without any change to the existing site coverage or building envelope.
- The proposal does not result in any undue adverse amenity impacts to the surrounding properties.
- The FSR will be compatible with the FSR characteristic of adjoining commercial and mixed use development along this section of Norton Street as shown in the aerial photo below.



**Figure 2:** Aerial photo indicating existing pattern of development along this section of Norton Street

#### Clause 6.8 – Development in areas subject to aircraft noise

The subject site is located within the Australian Noise Exposure Forecast (ANEF) contour 25-30. An acoustic report has been submitted with the application demonstrating compliance with the requirements of AS 2021-2015, *Acoustics—Aircraft noise intrusion—Building siting and construction*. A condition will be imposed requiring the proposal to be designed and constructed in accordance with the recommendations of the acoustic report.

## 5(b) Draft Environmental Planning Instruments

### Draft State Environmental Planning Policy (Environment)

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

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

## 5(c) Development Control Plans

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

Part	Compliance
<b>Part A: Introductions</b>	
Section 3 – Notification of Applications	Yes
<b>Part B: Connections</b>	
B1.1 Connections – Objectives	Yes
<b>Part C</b>	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.3 Alterations and additions	Yes
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	No, however subject to condition for off-site parking contribution
<b>Part C: Place – Section 2 Urban Character</b>	
Suburb Profile	
C2.2.3.5(a) Norton Street – Entrata Sub Area, Leichhardt	Yes
<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	
C4.1 Objectives for Non-Residential Zones	Yes
C4.2 Site Layout and Building Design	Yes
C4.3 Ecologically Sustainable Development	Yes
C4.4 Elevation and Materials	Yes
C4.5 Interface Amenity	Yes
C4.8 Child Care Centres	Yes

<b>Part D: Energy</b>	
Section 1 – Energy Management	Yes
Section 2 – Resource Recovery and Waste Management	Yes
D2.1 General Requirements	Yes
D2.2 Demolition and Construction of All Development	Yes
D2.4 Non-Residential Development	Yes
<b>Part E: Water</b>	
Section 1 – Sustainable Water and Risk Management	Yes
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.4 Flood Risk Management Report	Yes
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.5 Water Disposal	Yes
E1.3 Hazard Management	Yes
E1.3.1 Flood Risk Management	Yes

The following provides discussion of the relevant issues:

#### C1.11 Parking

Based on the minimum car parking rate of 1 space per 100sqm for office premises, one additional car space is required for the net additional increase of floor space.

Given the existing site is unable to accommodate the required parking onsite, a levy of \$10,000 for 1 additional car space to be provided off-site is payable prior to any construction certificate in accordance with the Traffic and Transport Section 94 Contributions Plan.

#### E1.3.1 Flood Risk Management

While the site is identified as a Flood Control Lot under Part E of Leichhardt DCP 2013, the proposed mezzanine level is proposed above the flood planning level. It is noted that works were previously required to the ground floor level under previous development consent (D/2013/433) to mitigate the potential risk of floodwater entry to the site. Therefore, the proposal is considered satisfactory subject to conditions.

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

The site is zoned B2 Local Centre. 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(f) Any submissions

The application was notified in accordance with Council's Policy for a period of 14 days to surrounding properties. No submissions were received.



### 5(g) The Public Interest

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

The proposal is not contrary to the public interest.

## 6 Referrals

### 6(a) Internal

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

- Development Engineer
- Health
- Building

These Officers raised no objections to the proposal proceeding subject to conditions relating to flood risk management, acoustic mitigation, and accessibility and BCA compliance, which are recommended to be imposed on any consent granted.

### 6(b) External

The application was not required to be referred externally.

## 7. Section 7.11 Contributions

Section 7.11 contributions are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A financial contribution would be required for the development under Leichhardt Section 94 Contributions Plans as follows:

Column A	Column B
Open space and recreation	\$2,684.92
Community facilities and services	\$1,377.51
In lieu of adequate parking	\$10,000.00
Local area traffic management	\$216.91
Access to Balmain peninsula	-
Light rail access works	-
Leichhardt town centre improvements	\$3,696.03
<b>TOTAL</b>	<b>\$17,975.37</b>

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 Leichhardt Local Environmental Plan 2013 and Leichhardt Development Control Plan 2013. The development will not result in any significant impacts on the amenity of adjoining premises and the streetscape. The application is considered suitable for approval subject to the imposition of appropriate conditions.

## 9. Recommendation

- A. The variation to Clause 4.4 Floor Space Ratio of Leichhardt Local Environmental Plan 2013 be supported under the provisions of Clause 4.6 exceptions to development standards.
- B. That Council, as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application No: D/2018/94 for Alterations and additions to existing building, including construction of a mezzanine level within existing building envelope at 67 Norton Street, LEICHHARDT NSW 2040 subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

1. Development must be carried out in accordance with Development Application No. 2018/94 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
DA-1001, Ground Floor Plan, Rev. A	Uri T Design	21/2/2018
DA-1002, Mezzanine Plan, Rev. A	Uri T Design	26/2/2018
DA-1003, Section and South Elevation, Rev. A	Uri T Design	22/2/2018
DA-1004, Site Plan, Rev. A	Uri T Design	21/2/2018
DA-1005, Existing Lower Ground Floor Plan, Rev. A	Uri T Design	23/2/2018
DA-1006, Existing First Floor Plan, Rev. A	Uri T Design	23/2/2018
Document Title	Prepared By	Dated
Acoustic Report	Acoustic Directions	22/12/2017
Access Report	Consult Code Solutions	12/2/2018

In the event of any inconsistency between the approved plans and the conditions, the conditions will prevail.

Where there is an inconsistency between approved elevations and floor plan, the elevation shall prevail.

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

The existing elements (walls, floors etc) shown to be retained on the approved plans shall not be removed, altered or rebuilt without prior consent of the consent authority.

Note: Carrying out of works contrary to the above plans and/ or conditions may invalidate this consent; result in orders, on the spot fines or legal proceedings.

### PRIOR TO THE RELEASE OF A CONSTRUCTION CERTIFICATE

2. As the site where the property is identified as located within ANEF 20-25 or greater, the development approved under this consent must meet the relevant provisions of Australian Standard AS 2021:2015 Acoustics – Aircraft noise intrusion – Building siting and construction.

An acoustic report prepared by a suitably qualified person and accompanying plans demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

3. The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations.

In this regard, the operation of the premises and plant and equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background  $L_{A90, 15min}$  noise level, measured in the absence of the noise source/s under consideration by 5dB(A). The source noise level shall be assessed as an  $L_{Aeq, 15min}$  and adjusted in

accordance with the NSW Environment Protection Authority's Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance).

4. The LA10\* noise level emitted from the premises must not exceed the background noise level in any octave band centre frequency (31.5Hz– 8k Hz inclusive) by more than 5dB between 7:00 am and 12:00 midnight at the boundary of any affected residence.

The LA10\* noise level emitted from the premises must not exceed the background noise level in any octave band centre frequency (31.5Hz – 8k Hz inclusive) between 12:00 midnight and 7:00am at the boundary of any affected residence.

Notwithstanding compliance with the above, the noise from the premises must not be audible within any habitable room in any residence between the hours of 12:00 midnight and 7:00am.

\*For the purposes of this condition, the LA10 can be taken as the average maximum deflection of the noise emission from the licensed premises or restaurant.

Details of the acoustic measures to be employed to achieve compliance with this condition must be provided prior to the issue of a Construction Certificate. Such measures must be in accordance with the approved acoustic report and plans.

5. Any air conditioning unit on the site must be installed and operated at all times so as not to cause "Offensive Noise" as defined by the Protection of the Environment (Operations) Act 1997.

The system/s shall be operated as follows:

- a) Domestic air conditioners must not be audible in nearby dwellings between:
  - i) 10:00pm to 7:00am on Monday to Saturday: and
  - ii) 10:00pm to 8:00am on Sundays and Public Holidays.
- b) At any other time the systems and associated equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background  $L_{A90, 15min}$  noise level, measured in the absence of the noise source/s under consideration by 5dB(A).

The source noise level shall be assessed as an  $L_{Aeq, 15min}$  and adjusted in accordance with the NSW Environment Protection Authority's Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance).

Air conditioning units must be installed in accordance with plans referenced in condition 1 or to satisfy provisions of the State Environmental Planning Policy (Exempt & Complying Codes) 2008.

Details demonstrating compliance with the requirements of this condition and the acoustic measures to be employed to achieve compliance with this condition are to be submitted for approval to the Principal Certifying Authority prior to the issue of any Construction Certificate.

6. In accordance with the provisions of the *Environmental Planning and Assessment Act 1979* construction works approved by this consent must not commence until:
  - a) A Construction Certificate has been issued by Council or an Accredited Certifier. Either Council or an Accredited Certifier can act as the "Principal Certifying

Authority.”

- b) A Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment.
- c) At least two days notice, in writing has been given to Council of the intention to commence work.

The documentation required under this condition must show that the proposal complies with all Development Consent conditions and is not inconsistent with the approved plans, the Building Code of Australia and the relevant Australian Standards.

- 7. The following requirements are to be incorporated into the development detailed on the Construction Certificate plans and provided prior to the issue of a Construction Certificate:
  - a) No rainforest timbers or timbers cut from old growth forests are to be used in the construction of the development. Timbers to be used are to be limited to any plantation, regrowth or recycled timbers, or timbers grown on Australian Farms or State Forest Plantations.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

- 8. In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy at the prescribed rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more. The Long Service Levy is payable prior to the issue of a Construction Certificate.

Details demonstrating compliance are to be shown on the plans submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

- 9. Materials and finishes must be complementary to the predominant character and streetscape of the area, and any existing buildings & the period of construction of the buildings. New materials that are not depicted on the approved plans must not be used. Highly reflective wall or roofing materials and glazing must not be used. Materials must be designed so as to not result in glare (maximum normal specular reflectivity of visible light 20%) or that causes any discomfort to pedestrians or neighbouring properties. Details of finished external surface materials, including colours and texture must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority.
- 10. The existing unpainted brick surfaces are not to be painted, bagged or rendered but to remain as original brick work. The Construction Certificate plans must clearly depict all original brickwork with a notation that they are to remain unpainted to the satisfaction of the Principal Certifying Authority.
- 11. If any excavation extends below the level of the base of the footings of a building on an adjoining property, the person causing the excavation:
  - a) Must preserve and protect the adjoining building from damage
  - b) Must, at least seven (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.

- c) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this condition, the allotment of land includes public property.

12. A Certificate prepared by an appropriately qualified and 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 must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority. The certificate shall 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.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

13. A Soil and Water Management Plan must be provided prior to the issue of a Construction Certificate. The Soil and Water Management plan must be designed to be compatible with the document Planning for Erosion and Sediment Control on Single Residential Allotments or Managing Urban Stormwater–Soils & Construction Volume 1 (2004) available at [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au) and the Construction Management and Traffic Management Plan referred to in condition/s of this Development Consent and must address, but is not limited to the following issues:

- a) Minimise the area of soils exposed at any one time.
- b) Conservation of top soil.
- c) Identify and protect proposed stockpile locations.
- d) Preserve existing vegetation. Identify revegetation technique and materials.
- e) Prevent soil, sand, sediments leaving the site in an uncontrolled manner.
- f) Control surface water flows through the site in a manner that:
  - i) Diverts clean run-off around disturbed areas;
  - ii) Minimises slope gradient and flow distance within disturbed areas;
  - iii) Ensures surface run-off occurs at non erodable velocities;
  - iv) Ensures disturbed areas are promptly rehabilitated.
- g) Sediment and erosion control measures in place before work commences.
- h) Materials are not tracked onto the road by vehicles entering or leaving the site.
- i) Details of drainage to protect and drain the site during works.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

14. The approved plans must be submitted to a Sydney Water Quick Check agent 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. For Quick Check agent details please refer to the web site <http://www.sydneywater.com.au/SW/plumbing-building-developing/building/quick-check-agents/index.html>

The Principal Certifying Authority must ensure the Quick Check agent/Sydney Water has appropriately stamped the plans prior to the issue of a Construction Certificate.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

15. Prior to the issue of a Construction Certificate, the applicant must prepare a Construction Management and Traffic Management Plan. The following matters should be addressed in the plan (where applicable):
- a) A plan view of the entire site and frontage roadways indicating:
    - i) Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways.
    - ii) The locations of work zones (where it is not possible for loading/unloading to occur on the site) in the frontage roadways accompanied by supporting documentation that such work zones have been approved by the Local Traffic Committee and Council.
    - iii) Location of any proposed crane and concrete pump and truck standing areas on and off the site.
    - iv) A dedicated unloading and loading point within the site for construction vehicles, plant and deliveries.
    - v) The proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period.
  - b) Noise and vibration  
During excavation, demolition and construction phases, noise & vibration generated from the site must be controlled. Refer to other conditions of this consent. If during excavation, rock is encountered, measures must be taken to minimise vibration, dust generation and impacts on surrounding properties. Refer to Environmental Noise Management Assessing Vibration: a technical Guideline (Department of Environment and Conservation, 2006) [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au) for guidance and further information.
  - c) Occupational Health and Safety  
All site works must comply with the occupational health and safety requirements of the New South Wales Work Cover Authority.
  - d) Toilet Facilities  
During excavation, demolition and construction phases, toilet facilities are to be provided on the site, at the rate of one toilet for every twenty (20) persons or part of twenty (20) persons employed at the site. Details must be shown on the plan.
  - e) Traffic control plan(s) for the site  
All traffic control plans must be in accordance with the Roads and Maritime Services publication "Traffic Control Worksite Manual"

Approval is to be obtained from Council for any temporary road closures or crane use from public property. Applications to Council shall be made a minimum of 4

weeks prior to the activity proposed being undertaken.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

16. A Waste Management Plan (WMP) is to be provided in accordance with **Part D – Waste – Development Control Plan 2013**. The Plan must address all issues identified in the DCP including but not limited to:
- a) Estimated volume (m<sup>3</sup>) or weight (t) of materials that are reused, recycled or removed from site.
  - b) On site material storage areas during construction.
  - c) Material and methods used during construction to minimise waste.
  - d) Nomination of end location of all waste and recycling generated from a facility authorised to accept the material type for processing or disposal and retention of waste dockets to be made available to Council Officer on request
  - e) A clear statement within the Waste Management Plan of responsibility for the transferral of waste and recycling bins within the property and between floors where applicable to the collection point in accordance with DCP 2013.

*All requirements of the approved Waste Management Plan must be implemented during the demolition, excavation and construction of the development.*

17. A Flood Risk Management Plan, prepared by a qualified practicing Civil Engineer must be prepared prior to the issue of a Construction Certificate. The Plan must be prepared to make provision for the following:
- a) Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development. Such recommendations must be consistent with the approved development. The flood impacts on the site shall be assessed for the 100 year ARI and Probable Maximum Flood (PMF) storm events. The precautions shall include but not be limited to the following:
    - i) Types of materials to be used to ensure the structural integrity of the building to immersion and impact of velocity and debris.
    - ii) Waterproofing methods, including electrical equipment, wiring, fuel lines or any other service pipes or connections.
    - iii) Flood warning signs/depth indicators for areas that may be inundated
    - iv) A flood evacuation strategy.
    - v) On site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood level.

All works must be designed to comply with the Standard for Construction of Buildings in Flood Hazard Areas in accordance with Section 3.10.3 of the Building Code of Australia. Note that some terms defined in this standard have equivalent meaning to terms used in Council's Development Control Plan as listed below.



<b>Building Code of Australia</b>	<b>Development Control Plan 2013</b>
<i>Defined flood level (DFL)</i>	<i>100 year Average Recurrence Interval flood level</i>
<i>Defined flood event (DFE)</i>	<i>100 year Average Recurrence Interval flood</i>
<i>Flood hazard level (FHL)</i>	<i>Flood Planning Level (FPL)</i>

- b) Specify the architectural and structural plans upon which the above recommendations have been incorporated.

The Flood Risk Management Plan must be submitted to and approved by Council before the issue of a Construction Certificate.

- 18. The approved Architectural plans shall be amended to incorporate the recommendations of the Flood Risk Management Plan prepared in accordance with the requirements of Condition 17. The plans addressing the requirements of this condition must be provided prior to the issue of a Construction Certificate. The design must be prepared to make provision for the following:

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

No changes to the external form or appearance of the development contrary to the approved plans shall occur except as identified by this condition. Any changes to such must be subject to separate approval in accordance with Section 4.55 of the Environmental Planning and Assessment Act.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

- 19. The following building matters shall be addressed:
  - The protection of openings less than 3 metres to the boundary and internal protection to the glazed wall between the different occupancies.
  - Overall occupation level of the building should be assessed and the differing tenancies and interrelationship will need to be assessed for fire safety and egress from the building alternative engineered solutions will need to address the whole of the building as the tenancies have an interrelationship.
  - Location of air conditioning and location of artificial lighting units where there is a restricted ceiling height of 2.5 metres.

Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

- 20. A contribution pursuant to the provisions of Section 94 of the *Environmental Planning and Assessment Act 1979* for the services detailed in column A and for the amount detailed in column B must be made to Council prior to the issue of a Construction Certificate:

<b>Column A</b>	<b>Column B</b>
Open space and recreation	\$2,684.92
Community facilities and services	\$1,377.51

In lieu of adequate parking	\$10,000.00
Local area traffic management	\$216.91
Access to Balmain peninsula	-
Light rail access works	-
Leichhardt town centre improvements	\$3,696.03

**The total contribution is: \$17,975.37**

Payment will only be accepted in the form of cash, bank cheque or EFTPOS /Credit Card (to a maximum of \$10,000). It should be noted that personal cheques or bank guarantees cannot be accepted for Section 94 Contributions. Contribution Plans may be inspected on Council’s website [www.leichhardt.nsw.gov.au](http://www.leichhardt.nsw.gov.au) or a copy purchased at the Citizen Service in Council’s Administration Centre, 7-15 Wetherill Street, Leichhardt, during business hours.

A receipt demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

**PRIOR TO WORKS COMMENCING OR ISSUE OF A CONSTRUCTION CERTIFICATE (WHICHEVER OCCURS FIRST)**

- 21. Prior to the commencement of demolition works on the subject site or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit and inspection fee as detailed below must be 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.

Security Deposit (FOOT)	\$2,100.00
Inspection fee (FOOTI)	\$225.00

Payment will be accepted in the form of cash, bank cheque or 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 Council to determine the condition of the adjacent road reserve & footpath prior to & 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, Council may carry out any works necessary to repair the damage and/or remove the risk. The cost of these works will be deducted from the security deposit.

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

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

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

22. Should works require any of the following on public property (footpaths, roads, reserves), an application shall be submitted and approved by Council prior to the commencement of the works associated with such activity or the Construction Certificate (whichever occurs first)
- a) Work/Construction zone (designated parking for construction vehicles). – A Work Zone application
  - b) A concrete pump across the roadway/footpath. – A Standing Plant permit
  - c) Mobile crane or any standing plant – A Standing Plant Permit
  - d) Skip bins other than those authorised by Leichhardt Council – Skip Bin Application
  - e) Scaffolding/Hoardings (fencing on public land) – Scaffolding and Hoardings on Footpath Application
  - f) Road works including vehicle crossing/kerb & guttering, footpath, stormwater provisions etc – Road works Application
  - g) Awning or street verandah over footpath. – Road works Application
  - h) Installation or replacement of private stormwater drain, utility service or water supply – Road Opening Permit

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

#### **PRIOR TO THE COMMENCEMENT OF WORKS**

23. The proposed structure(s) to be erected must stand wholly within the boundaries of the subject site. No portion of the proposed structure, including gates and doors during opening and closing operations, shall encroach onto adjoining properties or upon public property.

To ensure that the location of the building satisfies the provision of the approval, the footings and walls within one (1) metre of the property boundaries must be set out by or the location certified by a registered surveyor in accordance with the approved plans, prior to the commencement of works.

To ensure that the location of the building satisfies the provision of the approval, a check survey certificate shall be submitted to the Principal Certifying Authority either prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, indicating the:

- a) location of the building with respect to the boundaries of the site.

24. The site must be 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 property 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. Additionally an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property, where necessary.

Separate approval is required under the *Roads Act 1993* to erect a hoarding or temporary fence or awning on public property. Approvals for hoardings, scaffolding on public land must be obtained and clearly displayed on site for the duration of the works.

Any hoarding, fence or awning is to be removed when the work is completed and must be maintained clear of any advertising.

25. The *Home Building Act 1989* requires that insurance must be obtained from an insurance company approved by the Department of Fair Trading prior to the commencement of works approved by this Development Consent.

A copy of the certificate of insurance must be submitted to the Certifying Authority prior to the works commencing.

If the work is to be undertaken by an owner-builder, written notice of their name and owner-builder permit number must be submitted to the Certifying Authority.

In all other cases, written notice must be given to the Certifying Authority of:

- a) the name and licence number of the principal contractor; and
- b) reasons why a certificate of insurance is not required.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

26. Any person or contractor undertaking works on public property must take out Public Risk Insurance with a minimum cover of ten (10) million dollars in relation to the occupation of, and approved works within public property. The Policy is to note, and provide protection for Leichhardt 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.
27. Prior to the commencement of works, the Principal Certifying Authority shall be notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
28. At least forty-eight (48) hours prior to the commencement of works, a notice of commencement form (available on Council's web page) and details of the appointed Principal Certifying Authority shall be submitted to Council.
29. Prior to the commencement of works, a sign must be erected in a prominent position on the site (for members of the public to view) on which the proposal is being carried out. The sign must state:
- a) Unauthorised entry to the work site is prohibited.
  - b) The name of the principal contractor (or person in charge of the site) and a telephone number at which that person may be contacted at any time for business purposes and outside working hours.
  - c) The name, address and telephone number of the Principal Certifying Authority for the work.

Any such sign must be maintained while the work is being carried out, but must be removed when the work has been completed.

Photographic evidence demonstrating compliance with the requirements of this condition is to be submitted to the satisfaction of the Principal Certifying Authority and Council for records purposes prior to the commencement of any onsite work.

**DURING WORKS**

30. Building materials and machinery are to be located wholly on site unless separate consent (Standing Plant Permit) is obtained from Council/ the roads authority. Building work is not to be carried out on the footpath.

Construction materials and vehicles shall not block or impede public use of the footpath or roadway.

31. All excavations and backfilling associated with the development must be executed safely, properly guarded and protected to prevent them from being dangerous to life or property and in accordance with the design of a suitably qualified structural engineer.

If excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must:

- a) Preserve and protect the building from damage.
- b) If necessary, underpin and support the building in an approved manner.
- c) Give at least seven (7) days notice to the adjoining owner before excavating, of the intention to excavate within the proximity of the respective boundary.

Any proposed method of support to any excavation adjacent to adjoining properties or any underpinning is to be designed by a Chartered Civil Engineer, with National Professional Engineering Registration (NPER) in the construction of civil/structural works. Copies of the design plans must be provided to the relevant adjoining property owner/s prior to commencement of such works. Prior to backfilling, any method of support constructed must be inspected by the designing Engineer with certification provided to all relevant parties.

32. The site must be appropriately secured and fenced at all times during works.
33. Unless otherwise approved by Council, excavation, demolition, construction or subdivision work shall only be permitted during the following hours:
- a) 7:00 am to 6.00 pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
  - b) 8:00 am to 1:00 pm on Saturdays with no demolition works occurring during this time; and
  - c) at no time on Sundays or public holidays.

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

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

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

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

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

The Proponent shall not undertake such activities for more than three continuous hours and shall provide a minimum of one 2 hour respite period between any two periods of such works.

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

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

34. In addition to meeting the specific performance criteria established under this consent, the Applicant shall implement all reasonable and feasible measures to prevent and/or minimise any harm to the environment that may result from the demolition, construction or operation/use of the development.
35. Any new information revealed during development works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.
36. The development must be inspected at the following stages by the Principal Certifying Authority during construction:
  - a) after excavation for, and prior to the placement of, any footings, and
  - b) prior to pouring any in-situ reinforced concrete building element, and
  - c) prior to covering of the framework for any floor, wall, roof or other building element, and
  - d) prior to covering waterproofing in any wet areas, and
  - e) prior to covering any stormwater drainage connections, and
  - f) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
37. A copy of the approved plans and this consent must be kept on site for the duration of site works and in the case of any commercial or industrial premise for the duration of the use/trading. Copies shall be made available to Council Officer's upon request.
38. Sedimentation controls, tree protection measures and safety fencing (where relevant) shall be maintained during works to ensure they provide adequate protection during the course of demolition, excavation and construction works. Materials must be stored in a location and manner to avoid material being washed to drains or adjoining properties.

The requirements of the Soil and Water Management Plan must be maintained at all times during the works and shall not be removed until the site has been stabilised to the Principal Certifying Authority's satisfaction.

Material from the site is not to be tracked onto the road by vehicles entering or leaving the site. At the end of each working day any dust/dirt or other sediment shall be swept off the road and contained on the site and not washed down any stormwater pit or gutter.

The sediment and erosion control measures are to be inspected daily and defects or system failures are to be repaired as soon as they are detected.

39. Vibration caused by excavation and construction at any residence or structure outside the site must be limited to:
- a) for structural damage vibration, German Standard DIN 4150 Part 3 Structural Vibration in Buildings. Effects on Structures; and
  - b) for human exposure to vibration, the evaluation criteria set out in the Environmental Noise Management Assessing Vibration: a Technical Guideline (Department of Environment and Conservation, 2006).

Vibratory compactors must not be used in the vicinity of residential buildings unless vibration monitoring confirms compliance with the vibration criteria specified above.

40. Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines discharged by gravity to the existing site drainage system.

Any existing component of the stormwater system that is to be retained must be checked and certified by a Licensed Plumber or qualified practicing Civil Engineer to be in good condition and operating satisfactorily.

If any component of the existing system is not in good condition and /or not operating satisfactorily, it must be upgraded.

#### **PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

41. An Occupation Certificate must be obtained prior to any use or occupation of the development or part thereof. The Principal Certifying Authority must ensure that all works are completed in accordance with this consent including all conditions.
42. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that all works have been completed in accordance with the approved Waste Management Plan referred to in this development consent.

Proof of actual destination of demolition and construction waste shall be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

43. A report prepared by a suitably qualified Acoustic Consultant shall be submitted to Council certifying that the development complies with the requirements of (as relevant):
- State Environmental Planning Policy (Infrastructure) 2007
  - ANEF - the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021—2000
  - conditions of development consent.
44. The existing stone kerb adjacent to the site is of local heritage value and is to be preserved at no cost to Council. Any damage to the stone kerb will require the replacement of the damaged individual stone units before the issue of the Occupation Certificate.
45. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that all aspects of the flood risk management plan have been implemented in accordance with the approved design, conditions of this consent and relevant Australian Standards.

Certification by a qualified practicing Civil Engineer this condition has been complied with must be provided to the Principal Certifying Authority prior to the issue of an Occupation

Certificate.

46. You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development shall be at no cost to Council and undertaken before the issue of an Occupation Certificate.
47. Prior to the release of an Occupation Certificate, the Principal Certifying Authority must be satisfied that the development complies with:
  - the approved plans;
  - BASIX certificate (where relevant),
  - approved documentation (as referenced in this consent); and
  - conditions of this consent.

#### **ONGOING CONDITIONS OF CONSENT**

48. The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within seventy-two (72) hours of its application.
49. The Flood Risk Management Plan approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.
50. The use of the premises shall 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 shall not give rise to the transmission of a vibration nuisance or damage other premises.
51. The use of the premises and the operation of plant and equipment shall not give rise to the transmission of a vibration nuisance or damage to other premises as defined in the Environment Protection Authority's Technical Guidelines for Assessing Vibration.
52. To ensure minimal impacts on surrounding properties commercial waste and recyclable material generated by the premises must not be collected between the hours 10pm and 7am.
53. Any lighting of the premises shall be installed and maintained in accordance with Australian Standard AS 4282-1997: *Control of the Obtrusive Effects of Outdoor Lighting* so as to avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads. The intensity, colour or hours of illumination of the lights shall be varied at Council's discretion if in the opinion of an Authorised Council Officer it is considered there to be have adverse effects on the amenity of the area.
54. The premises shall not be used for any purpose other than that stated in the Development Application, i.e. office premises without the prior consent of the Council unless the change to another use is permitted as exempt or complying development under *Leichhardt Local Environment Plan 2013* or *State Environmental Planning policy (Exempt and Complying Codes) 2008*.

The use of the premises as an office premises, is defined under the *Leichhardt Local Environmental Plan 2013*.



**PRESCRIBED CONDITIONS****A. BASIX Commitments**

Under clause 97A of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the development are fulfilled. The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

In this condition:

- a) Relevant BASIX Certificate means:
  - (i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
  - (ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and
- b) BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000.

**B. Building Code of Australia**

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

**C. Home Building Act**

- 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given Leichhardt Council written notice of the following:
  - 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, or
  - 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.
- 2) If arrangements for doing residential building work are changed while the work is in progress so that the information submitted to Council is out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

**D. Site Sign**

- 1) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
  - a) stating that unauthorised entry to the work site is prohibited;
  - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
  - c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- 2) Any such sign must be maintained while building work or demolition work is being carried out, but must be removed when the work has been completed.

**E. Condition relating to shoring and adequacy of adjoining property**

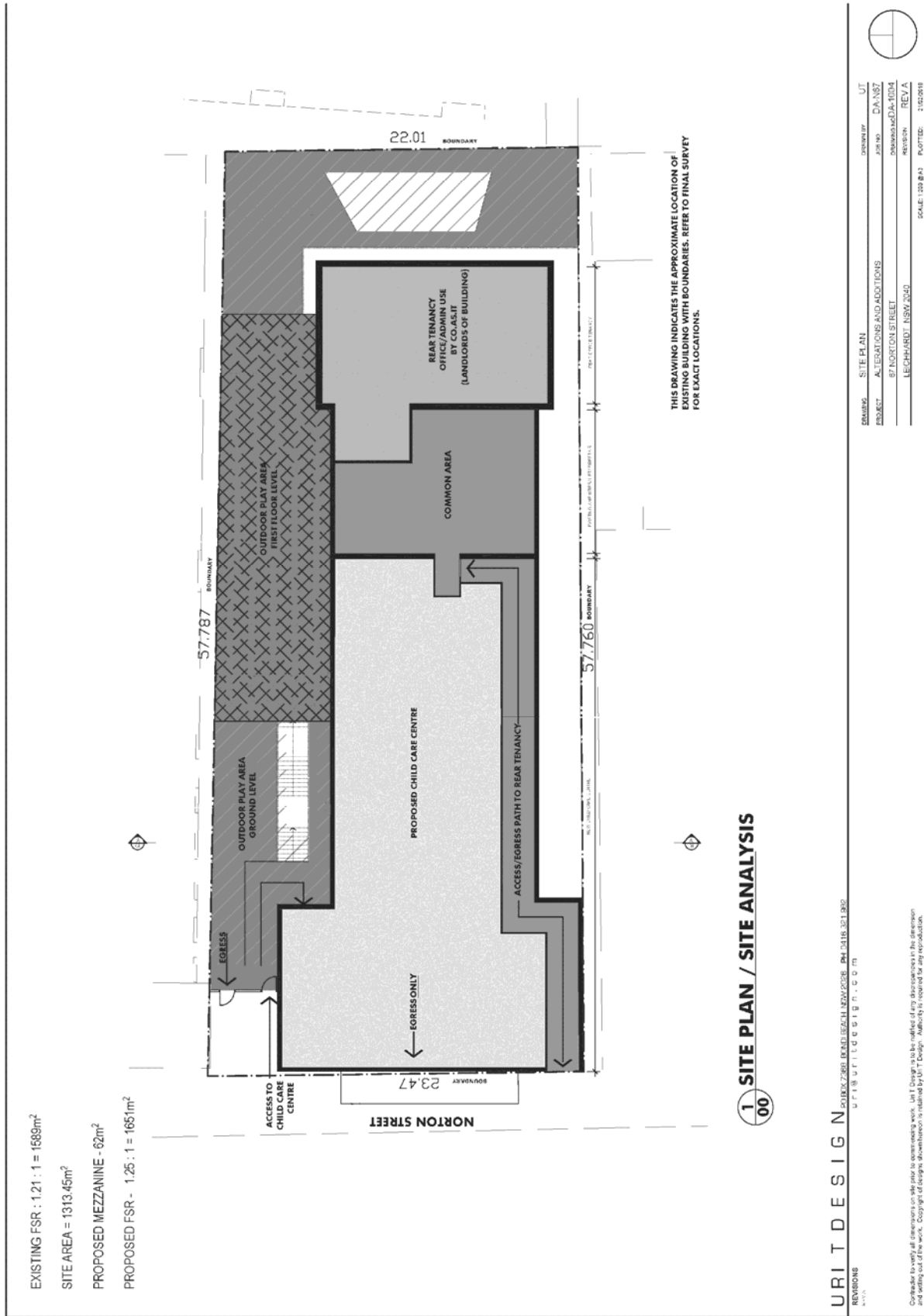
- (1) For the purposes of section 4.17(11) of the Act, it is a prescribed condition of development consent that if the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (a) protect and support the adjoining premises from possible damage from the excavation, and
  - (b) where necessary, underpin the adjoining premises to prevent any such damage.
- (2) The condition referred to in subclause (1) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

**NOTES**

1. This Determination Notice operates or becomes effective from the endorsed date of consent.
2. Section 8.2 of the *Environmental Planning and Assessment Act 1979* provides for an applicant to request Council to review its determination. This does not apply to applications made on behalf of the Crown, designated development or a complying development certificate. The request for review must be made within six (6) months of the date of determination or prior to an appeal being heard by the Land and Environment Court. Furthermore, Council has no power to determine a review after the expiration of these periods. A decision on a review may not be further reviewed under Section 8.2.
3. If you are unsatisfied with this determination, Section 8.7 of the *Environmental Planning and Assessment Act 1979* gives you the right of appeal to the Land and Environment Court within six (6) months of the determination date.
4. 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.
5. 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*.
6. This decision does not ensure compliance with the *Disability Discrimination Act 1992*. Applicants should investigate their potential for liability under that Act.
  7. This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, such as (if necessary):
    - a) Application for any activity under that Act, including any erection of a hoarding.
    - b) Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*.
    - c) Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*.
    - d) Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed.
    - e) Application for Strata Title Subdivision if strata title subdivision of the development is proposed.
    - f) Development Application for demolition if demolition is not approved by this consent.
    - g) Development Application for subdivision if consent for subdivision is not granted by this consent.
    - h) An application under the Roads Act 1993 for any footpath / public road occupation. A lease fee is payable for all occupations.
  8. Prior to the issue of the Construction Certificate, the applicant must make contact with all relevant utility providers (such as Sydney Water, Energy Australia etc) whose services will be impacted upon by the development. A written copy of the requirements of each provider, as determined necessary by the Certifying Authority, must be obtained.

Attachment B – Plans of proposed development

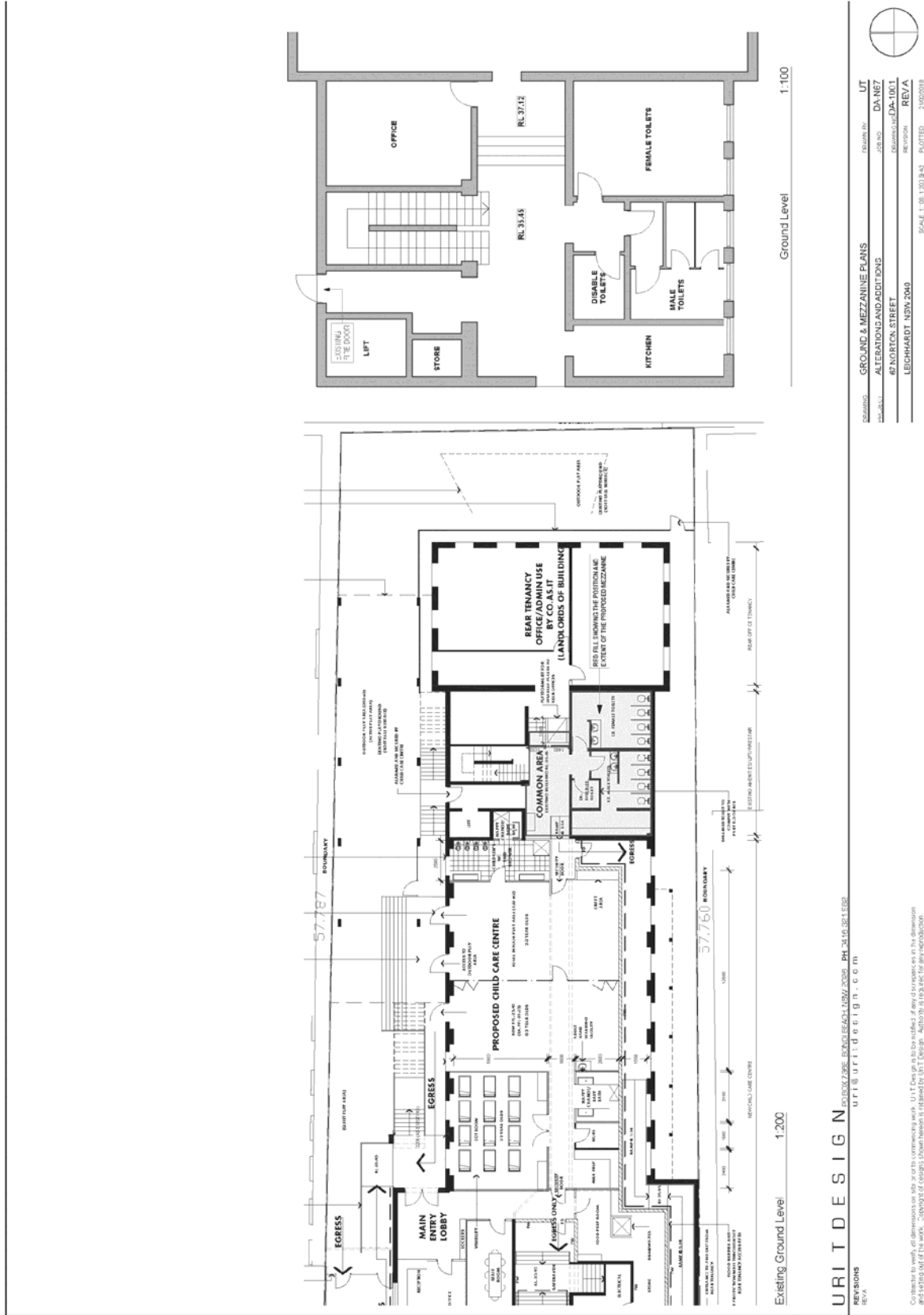


1 SITE PLAN / SITE ANALYSIS

URI T D E S I G N  
 U R I @ U R I D E S I G N . C O M

DRAWING	SITE PLAN	DATE	UT
PROJECT	ALTERATIONS AND ADDITIONS	DATE	DA NSG
	87 NORTON STREET		DA NSG/DA-1004
	LEICHHARDT, NSW 2040	REVISION	REV A
		SCALE	1:200 (B-1)
		PLOTTED	21/02/2018

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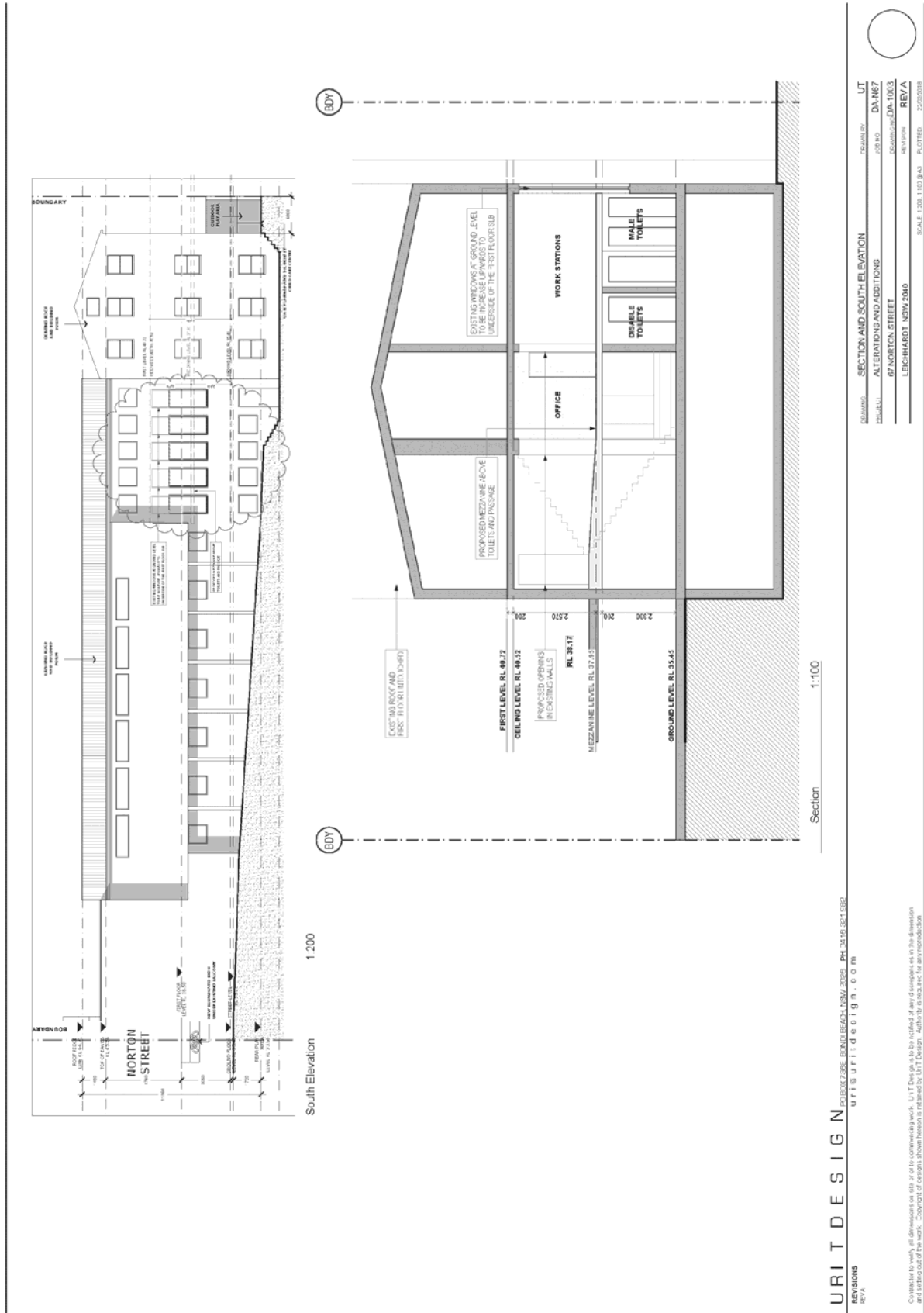


SEALING: GROUND & MEZZANINE PLANS  
 DRAWING NO: UT  
 PROJECT NO: DA 167  
 DRAWING NO: DA-101  
 REVISION: REVA  
 LEICHHARDT NSW 2000  
 SCALE 1 OF 100 (9.4) PLOTTED: 21/02/2018

URIT DESIGN  
 5/2002/0206 BRUNNENBACHWAY/2006 PH 02 936 8215  
 11/11/16 06 19 n - 0 0 m

Contractor verify all dimensions on site or to its commencing work. U-T Design is to be notified of any of its responses in the dimension and setting out of the work. Copyright of designs shown herein is retained by U-T Design. Authorise use by any person.





**URIT DESIGN**  
URITDESIGN.COM

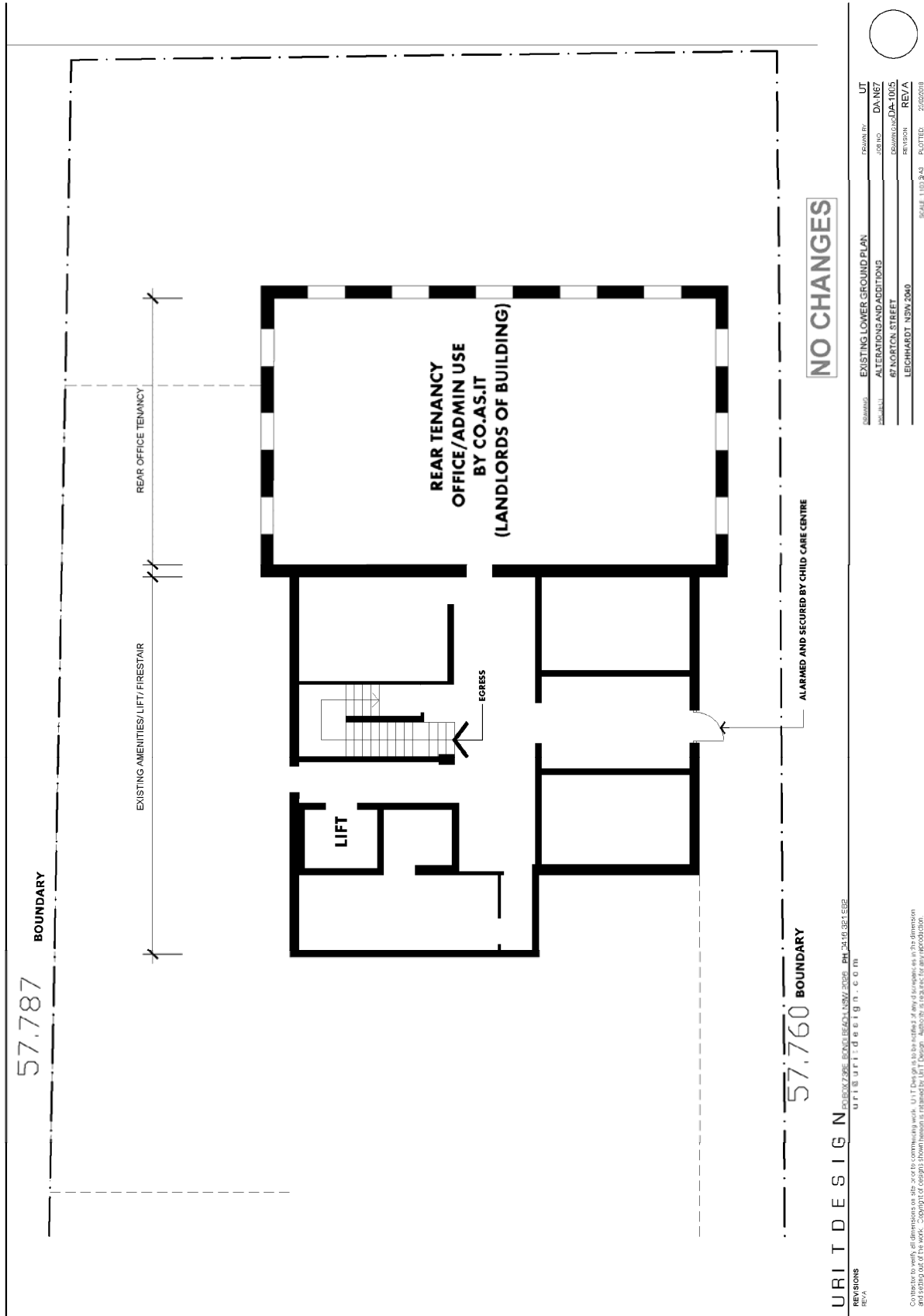
PROJECT: 2506/2506 - BUNDEGOCH NSW 2206 PH: 2510 3215 PB

REVISIONS: REV A

SECTION AND SOUTH ELEVATION  
ALTERATIONS AND ADDITIONS  
#NORTON STREET  
LEIGHARDT NSW 2200

DESIGNED BY: UT  
DRAWN BY: DANIEL  
JOB NO: 2506/2506-DA-1003  
REVISION: REV A  
SCALE: 1:200, 1:100, 3/40  
PLOTTED: 22/02/2018

Contractor to verify all dimensions on site against connecting works. URT Design is to be notified of any discrepancies in the drawings and pricing out of the work. COPYRIGHT of copyright shown herein is retained by URT Design. All rights reserved for any reproduction.



**NO CHANGES**

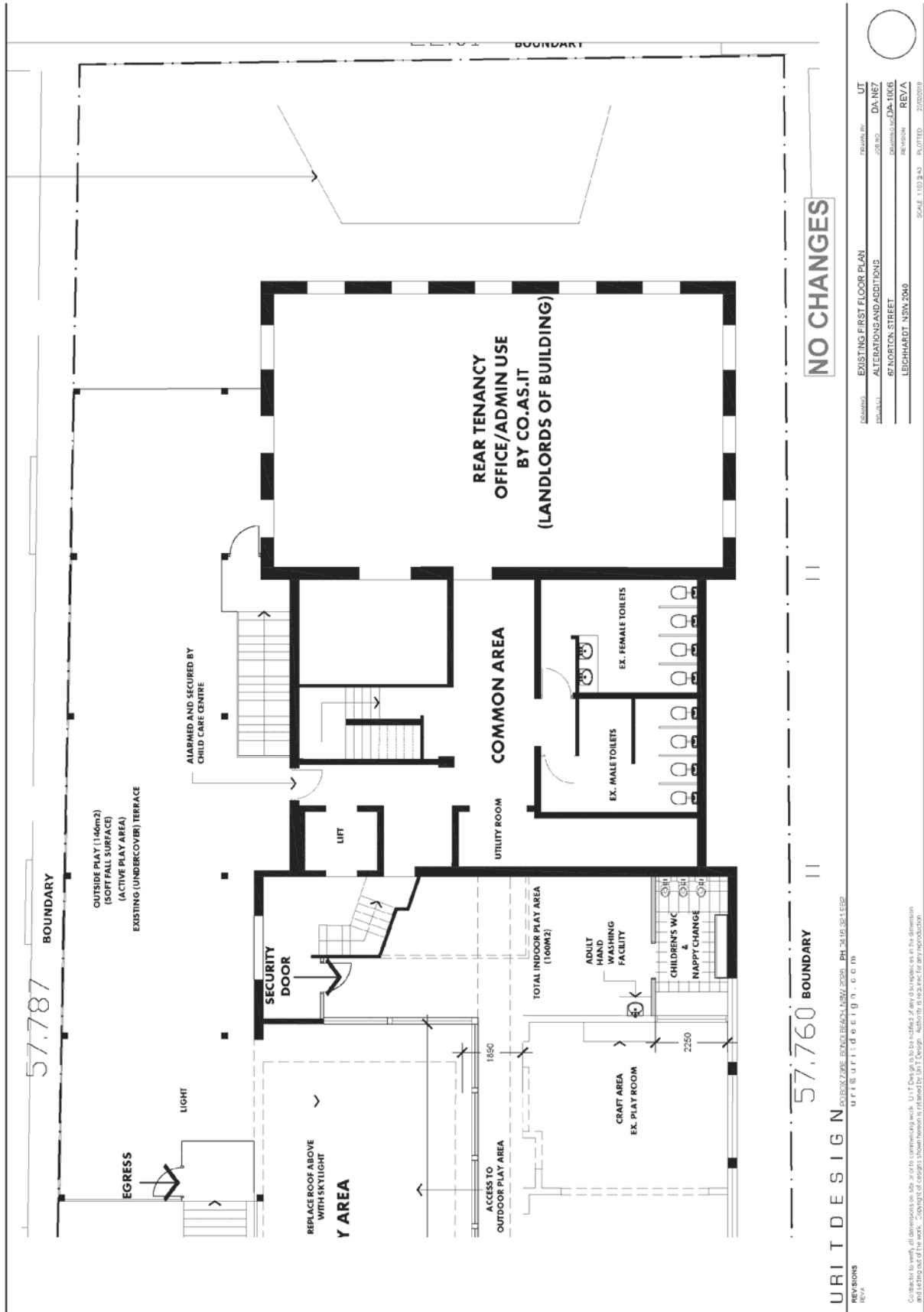
DESIGNED	EXISTING LOWER GROUND PLAN	DESIGNED BY	UT
DRAWN	ALTERATIONS AND ADDITIONS	JOB NO.	DA-NET
CHECKED	#7 NORTON STREET	DESIGNED BY	DA-1005
DATE	LEICHHARDT NSW 2040	REVISION	REV/A
		PLOTTED	20/02/2018
		SCALE	1:100 (A3)

**URIT DESIGN**  
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**NO CHANGES**

DESIGNED BY	UT
EXISTING FIRST FLOOR PLAN	
ALTERATIONS AND ADDITIONS	DA-NEZ
PROJECT NO.	67NORTON STREET
REVISION	REVA
DATE	LEICHHARDT NSW 2040
SCALE	1:100 3/43 PLOTTED 2/08/2018

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## Attachment C – Clause 4.6 – Exceptions to Development Standards

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### **Clause 4.6 Variation to Development Standard**

**Property Description:** 67 Norton Street, Leichhardt

**Development:** Alterations and Additions to Commercial Building

**Development Standard:** Floor Space Ratio

#### **Introduction**

This is a clause 4.6 variation to support the plans submitted with the development application for alterations and additions to existing commercial building involving the construction of a new mezzanine level at 67 Norton Street, Leichhardt.

The gross floor area (GFA) calculation is shown on plan DA-1004 and confirms the following:

- Existing: GFA 1589m<sup>2</sup> and 1.21:1.
- Proposed: GFA 1651m<sup>2</sup> and 1.25:1.

In accordance with the above the proposed alterations and additions to existing commercial building seeks variation to the floor space ratio (FSR) development standard contained in clause 4.4 – Floor Space Ratio of the Leichhardt LEP 2013.

The application to vary the development standard – FSR incorporates the relevant principles in the following judgements:

1. *Winten Property Group Limited v North Sydney Council (2001) 130 LGERA 79*
2. *Wehbe v Pittwater Council (2007) 156 LGERA 446, and*
3. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009.*

The commercial building has a gross floor area (GFA) of 1651m<sup>2</sup>. The site area is 1313.45m<sup>2</sup> with the floor space ratio (FSR) calculation being 1.25:1. The site has a permissible GFA – 1313.45m<sup>2</sup> and FSR of 1:1.

It is noted that the existing commercial building on the subject site has a GFA of 1589m<sup>2</sup> and FSR of 1.21:1 approved under D/2013/433. The existing building does not comply with the FSR control and the proposed additional GFA is contained within the existing building envelope.

Further, it is noted that the subject site has historically contained an FSR of 1.34:1 which has been reduced through historical internal modifications.

**What are the objectives of Clause 4.6?**

The objectives of clause 4.6 – Exceptions to development standards 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 proposed variation to the FSR development standard is consistent with the objectives of clause 4.6 as follows:

**Objective (a):** The proposed building confirms an appropriate degree of flexibility can be applied based on the following assessment:

The proposed additional gross floor area is contained within the existing building envelope and will not be visible from the public domain. The additions GFA will not alter the built form of the site and maintains the sites existing scale, noting the additional floor area does not result in a building that is out of context or beyond the capacity of the subject site. A 1.5:1 FSR is permissible in the locality for development containing an active street frontage and residential accommodation, therefore the proposed FSR is not uncharacteristic for the locality.

**Objective (b):** The proposed alterations and additions to the existing commercial building are within the existing building footprint.

The additional floor space does not result in any negative amenity impacts to surrounding properties noting the additional gross floor area is contained within the existing building form and does not alter the height of the building or the existing building form. It is noted that the subject site has historically contained an FSR of 1.34:1 which has been reduced through historical internal modifications.

It is of the opinion the variation to the FSR development standard is appropriate for the subject site. Allowing for flexibility in the application of the FSR to the building allows the floorplate of the existing building to be utilised without impacting on the built form or amenity of adjoining buildings.

**Compliance with the development standard is unreasonable or unnecessary in this particular case?**

Pursuant to clause 4.6(3)(a) of the LEP the variation to the FSR development standard is acceptable in the circumstances of this case and compliance with the development standard is considered unreasonable and unnecessary because it meets the objective of the FSR standard even though it does not strictly comply.

The objectives of the development standard are at clause 4.4(1) of the Leichhardt LEP 2013 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*
  - (ii) *provides a suitable balance between landscaped areas and the built form, and*
  - (iii) *minimises the impact of the bulk and scale of buildings,*
- (b) *to ensure that non-residential development is compatible with the desired future character of the area in relation to building bulk, form and scale.*

The commercial building meets the relevant objectives of the FSR development standard based on the following assessment:

- **Objective (a):** Technically not applicable to proposal given applies to residential accommodation.
- **Objective (b):** The additional floor area is located within the existing building envelope and will not result in additional amenity impacts to adjoining properties or the public domain with regard to bulk and scale or setting within the public domain. The additional floor area provides for additional office space within the Leichhardt Commercial Neighbourhood.

**Are there sufficient environmental planning grounds to justify contravening the development standard?**

Pursuant to clause 4.6(3)(b) of the LEP the environmental planning grounds contained in this application are sufficient to justify the variation to the FSR control because:

- The additional floor area is located within the existing building envelope. The additional floor area does not alter the existing form and scale of development on the site and is compatible with development in the locality.

- The existing building on the subject site has a GFA of 1589m<sup>2</sup> and an FSR of 1.21:1. The existing building does not meet the FSR development standard of 1:1. Further, the subject site has historically contained an FSR of 1.34:1 which has been reduced through historical internal modifications.
- The additional floor area is located within the existing building form and will not be visible from the public domain. Accordingly, the proposed additional floor area is suitable for the subject site and is compatible with development in the locality.

**Is the proposed Development in the public interest?**

Clause 4.6(4)(ii) of the LEP states:

*Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and  
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Secretary has been obtained.*

The objectives of the B2 – Local Centre zone are:

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

The proposed alterations and additions meet the relevant objectives for development within the Local Centre zone based on the following assessment:

- The mezzanine level provides additional office space within the Leichhardt commercial precinct.
- The office space will provide employment opportunities within the Leichhardt local centre.
- The site is located within close proximity to public transport, including bus stops along Norton Street.
- The proposed alterations and additions are internal and will not have any amenity impacts on adjoining properties.

Further, in relation to clause 4.6(a)(ii) of the LEP, the proposed mezzanine level is in the public interest because it is consistent with the objectives of the applicable FSR standard and the objectives for development in the B2 – Local Centre zone for the following reasons:

- The proposed additional floor area does not alter the existing building form or scale, noting the proposed additional floor area is located within the existing building envelope.
- The proposed building form continues to present as 2 storey building to Norton Street and additional floor area does not alter the existing building form remaining consistent with the objectives of the Leichhardt LEP, the B2 – Local Centre zone and the floor space ratio development standard.

### **Conclusion**

The development proposal satisfies the criteria for allowing a variation of the FSR development standard contained in Clause 4.4 of the Leichhardt LEP 2013.

The proposed additional floor area is located within the existing building envelope and will not alter the the maximum height of the existing building or setbacks. The development retains the existing bulk and scale of the building and the additional floor area is appropriate for the subject site and consistent with the development in the immediate locality.

It is of the opinion, the application to vary the FSR development standard is well founded and, as addressed, the proposed alterations and additions to existing commercial building meets the objectives of the FSR development standard, achieving a better development outcome for the subject site that is in the public interest. In this case in accordance with the environmental planning grounds

addressed in this application, the variation to the FSR for the proposed building can be supported.

Chapman Planning Pty Ltd