



# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	D/2018/24
<b>Address</b>	The Institute Arcade, 332 Darling Street, Balmain
<b>Proposal</b>	Alterations and additions to existing building with new attic/roof top level and use of attic/roof top level for restaurant/bar
<b>Date of Lodgement</b>	18 January 2018
<b>Applicant</b>	Quattro Leoni Holding Pty Ltd
<b>Owner</b>	Quattro Leoni Holdings Pty Ltd
<b>Number of Submissions</b>	Four (4) objections
<b>Main Issues</b>	<ul style="list-style-type: none"> <li>• Heritage impacts</li> <li>• Parking</li> <li>• Acoustic impacts</li> <li>• Stormwater management</li> <li>• Lack of relevant documentation</li> </ul>
<b>Recommendation</b>	Refusal



### 1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to an existing building with new attic/roof top level and use of attic/roof top level for restaurant/bar at the Institute Arcade, 332 Darling Street, Balmain. The application was notified to surrounding properties and four (4) submissions were received in opposition.

The main fundamental issues that have arisen from the application include:

- Heritage impacts
- Intensification of the use and parking implications
- Acoustic impacts to neighbouring residential properties
- Stormwater not sufficiently managed on the site (On Site Detention required)
- Inadequate supporting documentation and information on plans

The above non-compliances are not supported for the reasons outlined in this report, and therefore, the application is recommended for refusal

## 2. Proposal

The application seeks approval for alterations and additions to the existing building with new attic/roof top level and use of attic/roof top level for restaurant/bar. Detailed description of the proposal is provided as follows;

- Removal of the existing residential dwelling on the third storey of the existing building.
- Removal of the existing mezzanine level on the second storey in order to reinstate the original floor layout.
- Roof top addition to replace the existing residential dwelling on the third storey. The roof top addition will be used for the purposes of a licensed premises by way of a restaurant.
- Alterations and additions to the existing first and second floors to the rear of the building including the provision of a lift core to enhance access and provision of an awning structure.
- Reconfiguration of the internal building layout.
- The proposed operational hours for the proposed restaurant will be 7am to 12am (midnight), Monday to Sunday.
- The proposed use seeks a capacity for 60 patrons and 6 staff.

## 3. Site Description

The site is located on the southern side of Darling Street. The site is a generally square shaped allotment with a total area of 644.2 m<sup>2</sup> and is legally described as Lots 12 and 14, Section A, DP 77.

The site is located on the southern side of Darling Street to which it has a frontage of 21.955m and a secondary frontage of approximately 21.94m to Little Darling Street.

The site supports a two and three storey brick mixed use building addressing Darling Street and an ancillary detached one and two storey brick building to the rear of the site fronting Little Darling Street. Between the two buildings is a paved courtyard, covered by a glass awning. A combined off-street car space/service area is provided off Little Darling Street.

Various commercial tenancies occupy the existing buildings, in addition to a residential dwelling located on the third floor. The ground floor is occupied by numerous cafés, a hairdresser and restaurant. The second floor which includes a mezzanine level is occupied by an office premise. The third floor contains a 3-bedroom residential apartment.

To the rear of the site, is a free-standing brick building adjoining Little Darling Street. The building contains a mezzanine level and is currently used as a restaurant.

The adjoining properties support one and two storey brick commercial and mixed use buildings, with residential properties to the rear (south), adjacent to Little Darling Street.

The site is listed as a heritage item (Item I196) of Local Significance pursuant to the Leichhardt Local Environmental Plan 2013, known as the "Former Working Men's Institute" and includes the buildings interiors. The property is also located within a conservation area.

The site is not identified as flood prone. The site does not support any significant trees.

## 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
D/1998/144	Amalgamate existing shop as seating area for cafe, demolish partition wall	Approved 17.12.1998
D/2002/207	Change of use to internet cafe	Refused 13.06.2002
D/2002/818	Alterations to two existing shop tenancies including fit-out for proposed internet cafe.	Approved 26.03.2003
D/2010/127	Painting of facade of building	Approved 06.05.2010
D/2013/127	Transparent roof structure over existing courtyard	Approved 19.04.2013

### 4(b) Application history

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

Date	Discussion / Letter/ Additional Information
13 April 2018	<p>Letter recommending withdrawal of application sent to the Applicant due to fundamental issues raised with the application summarised as follows;</p> <ul style="list-style-type: none"> <li>• Adverse impact to heritage item; loss of roof form and form of proposed additions</li> <li>• Intensification of use on the site demanding more car parking spaces than is able to be provided on the site</li> <li>• Acoustic impacts to neighbouring properties</li> <li>• Inadequate Acoustic Report provided</li> <li>• A Plan of Management not submitted</li> <li>• A detailed kitchen plan / fit out and proposed food to be served not provided</li> <li>• Waste management not addressed</li> </ul>
1 May 2018	<p>Meeting held with the applicant and their representatives to discuss withdrawal letter. Applicant was advised that change of use from the existing dwelling to a restaurant could be considered with changes to non-original fabric/form but not the building works proposed and not as part of the current application.</p> <p>The application was not withdrawn within the prescribed time period and thus the proposal is assessed in its current form, with a recommendation for refusal, given the above unresolved issues.</p>

## 5. Assessment

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

### 5(a) Environmental Planning Instruments

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

- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 64 – Advertising and Signage
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- 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) 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 2.7 – Demolition Requires Development Consent
- Clause 4.4 – Floor Space Ratio
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards
- Clause 5.10 – Heritage Conservation
- Clause 6.1 – Acid Sulphate Soils
- Clause 6.4 – Stormwater management

The following provides further discussion of the relevant issues:

##### Clause 1.2 – Aims of the Plan

Due to heritage, streetscape and amenity concerns raised further in this report, the proposal is inconsistent with the following aims of the LLEP 2013:

- (b) *minimise land use conflict and the negative impact of urban development on the natural, social, economic, physical and historical environment,*
- (c) *identify, protect, conserve and enhance the environmental and cultural heritage of Leichhardt,*
- (d) *promote a high standard of urban design in the public and private domains,*
- (e) *protect and enhance the amenity, vitality and viability of Leichhardt for existing and future residents, and people who work in and visit Leichhardt,*
- (f) *maintain and enhance Leichhardt's urban environment,*
- (l) *to ensure that development is compatible with the character, style, orientation and pattern of surrounding buildings, streetscape, works and landscaping and the desired future character of the area,*
- (o) *to prevent undesirable incremental change, including demolition, that reduces the heritage significance of places, conservation areas and heritage items.*

### 2.3 – Zone objectives and Land use Table

Due to the heritage and amenity concerns and breaches to the controls as detailed in this report, Council is not satisfied that the proposal has demonstrated compliance with the objectives of the B2 (Local Centre) Zone prescribed in this Clause, specifically those objectives listed below:

- *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*
- *To protect and enhance the amenity of existing and future residents and the neighbourhood*

### Clause 4.4 – Floor Space Ratio (FSR)

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

Standard (maximum)	Proposal	Compliance	% of non compliance
<b>Floor Space Ratio</b> Required: [1:1]	1.76:1 or 1,135m <sup>2</sup> *	No *	76.19 *

\* Note: Reduction in FSR compared to existing

A Clause 4.6 Exception to the FSR development standard has been provided by the applicant and discussed below.

### Clause 4.6 Exceptions to Development Standards

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

- Clause 4.4 – Floor Space Ratio

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: In accordance with Clause 4.4A of LLEP 2013, the site is subject to a maximum FSR of 1:1 (or 644.2m<sup>2</sup>). The proposal, albeit technically resulting in a net reduction of Gross Floor Area (GFA) on the site, comprises a total GFA of 1,135m<sup>2</sup> (or 1.76:1) which is non-compliant with the maximum permissible FSR standard, and represents a breach of 490.8m<sup>2</sup> (or 76.19%). Having regard to this variation, an exception has been sought under clause 4.6 of the Leichhardt LEP 2013.

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: A written request has been submitted by the applicant outlining the following key reasons in seeking to justify the contravention of the standard:

- *The proposed built form and scale is consistent with the local context and the acceptable form of buildings within the local area;*
  - *The proposal will result in a net reduction of GFA in the order of 19m<sup>2</sup> when compared to the existing GFA of the building;*
  - *The proposal will not negatively impact upon the heritage significance of the existing building and will result in the restoration of the original floor layout.*
  - *The proposed variation of the development standard will not result in adverse overshadowing or undue impacts on the amenity of neighbouring residential properties to the south;*
  - *The variation does not diminish the development potential or impact upon the orderly development of adjacent land;*
  - *The development provides all necessary supporting facilities and infrastructure within the site; and*
  - *The proposed development, notwithstanding the variation to the FSR will make a positive contribution to the vitality of the commercial strip along Darling Street.*
- (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, however it is not considered to be well founded in this instance.

The proposal will result unacceptable impacts to the heritage listed building and streetscape context within the heritage conservation area. The alterations and additions, which by their intrusive scale; form; and unsympathetic materials and finishes, would have an overbearing visual impact on the heritage item and would set an undesirable precedent for works to heritage items within the heritage conservation area.

Furthermore, the proposal will also result in an intensification of the use of the site and put further strain on on-street parking in the area. The rooftop balcony serving the restaurant, combined with the proposed hours of operation, would also result in unreasonable acoustic impacts to neighbouring residential properties.

Accordingly, the proposal is not in the public interest and does not satisfy the objectives of the development standard and B2 Local Centre Zoning and the departure from the FSR development standard is not supported in this instance.

The proposed variation to the development standard will compromise the long term strategic outcomes of the planning controls to the extent that a negative public benefit will result. In this regard, there is material public benefit to the enforcing of the development standards in this instance.

The proposal is recommended for refusal.

#### Clause 5.10 – Heritage Conservation

The subject property is located within The Valley (Rozelle and Balmain) Conservation Area. The subject property is also a heritage item; the following statement of significance for the place has been reproduced from Leichhardt Council's Heritage inventory sheet:

*The Institute Arcade at No. 332 Darling Street is of high local historic, aesthetic and social significance as a purpose built Working Men's Institute building constructed in the Free Classical style as part of the late Victorian period of the development of the local area. Initially constructed in c. 1887 it was the focus of the Institute's activities for over 90 years. The subsequent additions and alterations and change of use reflect the growth and development of Balmain and changing requirements of the local community. Despite some recent additions and change of use, the building retains its original scale and character and evidence of its development and details including highly decorative front façade, rendered mouldings, banded pilasters, pediments, string and cornice lines, pattern of openings, pediments and high parapet, side facades, roof and chimneys. Also the rear south eastern wing and detached structure constructed along Little Darling Street. The buildings make a positive contribution to the Darling and Little Darling Street streetscapes.*

Provided below are responses to the various aspects of the proposal in relation to whether they can be supported on heritage grounds (with or without amendments):

<i>Component of the proposal:</i>	<i>Whether this aspect of the proposal can be supported on heritage grounds (with or without amendments – to be specified below):</i>
A. Ground floor Toilet refurbishments.	Alteration of modern fabric - no heritage objections, in principle.
B. Ground floor passenger lift	Discussed below as part of upper floor level changes. (However at ground floor level it is noted that the proposed lift would involve the loss of some of the original 1887 fabric as identified from the phases of construction diagram – Figure 2.3 on page 12 of the submitted Heritage Impact Statement).
C. Intermediate level works	Intermediate level – Toilets on western side are to occur in areas previously modified with modern fabric. Comments on lift to be provided with comments on upper floor level changes.
D. First Floor Level.	Demolition of likely original/early internal fabric to create lounge area/open style staircase/ and lift unsupportable on heritage grounds.
E. Mezzanine Level	Demolition of likely original/early internal/external fabric; dramatically (adversely) altering the original built form of the heritage item as viewed from the rear; installation of a large suspended awning to the rear which is considered to be an intrusive form within its historic built context; dark metallic materials and finishes would be intrusive within their historic built context.
F. Attic level to main commercial building	Loss of original (modified) main roof form and internal external fabric unsupportable on heritage grounds and contrary to Leichhardt DCP/LEP/ Distinctive Neighbourhood

	Requirements; The historic character and form of the building would be irrevocably altered by this work as seen from the round; intrusive built form of the attic level addition and dark metallic and heavily glazed aspects of the proposal would have an overbearing visual impact upon this heritage item and set an undesirable precedent for other future development works within the historically significant Balmain shopping strip.
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Summary of additional key heritage discussion points mentioned during a recent meeting with the property owners and their consultants:

- Consideration could be given to altering the modern accretions to the building to be more sympathetic to the existing historic character and form of the building i.e. rear stairway; dormer windows to the attic level; and
- Any proposed lift should be located to the rear, away from the main historic form of the building and should have a minimal scale - i.e. not include a combined stairwell.

Overall general comments:

Given the extent of undesirable changes required to the historic form and fabric of this heritage item it is considered that the proposed additional use for the site "[A]... *single destination family restaurant with multiple bars and restaurant experiences*" in the identified portions of the building is not an appropriate adaptive use for the upper levels of the building given the extent of adverse modifications required to this heritage item to facilitate that combined use. The applicant is encouraged to explore potentially accommodating the proposed use within the existing tenancies of the structure to minimise altering the historic form and fabric of the heritage item.

The development application, as a whole, would represent an undesirable incremental change to this heritage item and within The Valley (Balmain and Rozelle) Conservation Area, which, through its stated 'Aims' Leichhardt Local Environmental Plan 2013, seeks to avoid.

The proposed alterations and additions to the heritage listed building within the heritage conservation area would not comply with the following aims and objectives of C5.10:

- 1a *to conserve the environmental heritage of Leichhardt*
- 1b *to conserve the heritage significance of heritage conservation areas, including associated fabric, settings and view.*

Clause 6.4 – Stormwater management

The objective of this clause is to minimise the impacts of urban stormwater on land, adjoining properties and local water catchment areas. Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- a) *is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
- b) *includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
- c) *avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

The proposed development requires On Site Detention (OSD) or On Site Retention (OSR) facilities to be implemented on the site, neither of which has been provided.



### 5(b) Draft Environmental Planning Instruments

There are no relevant Draft Environmental Planning Instruments that apply to the proposal.

### 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
B2.1 Planning for Active Living	Yes
B3.1 Social Impact Assessment	N/A
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
<b>Part C</b>	
C1.0 General Provisions	No
C1.1 Site and Context Analysis	No
C1.2 Demolition	No
C1.3 Alterations and additions	No
C1.4 Heritage Conservation Areas and Heritage Items	No
C1.5 Corner Sites	N/A
C1.6 Subdivision	N/A
C1.7 Site Facilities	No
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	No
C1.12 Landscaping	N/A
C1.13 Open Space Design Within the Public Domain	N/A
C1.14 Tree Management	N/A
C1.15 Signs and Outdoor Advertising	N/A
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	N/A
C1.18 Laneways	N/A
C1.19 Rock Faces, Rocky Outcrops, Cliff Faces, Steep Slopes and Rock Walls	N/A
C1.20 Foreshore Land	N/A
C1.21 Green Roofs and Green Living Walls	N/A
<b>Part C: Place – Section 2 Urban Character</b>	
Suburb Profile	
C2.2.2.1 Darling Street (Balmain) Distinctive Neighbourhood & C2.2.2.1(b) Balmain Village Sub Area	No
<b>Part C: Place – Section 3 – Residential Provisions</b>	<b>N/A</b>
<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	
C4.1 Objectives for Non-Residential Zones	No
C4.2 Site Layout and Building Design	No

C4.3 Ecologically Sustainable Development	Yes
C4.4 Elevation and Materials	No
C4.5 Interface Amenity	No
C4.6 Shopfronts	N/A
C4.7 Bulky Goods Premises	N/A
C4.8 Child Care Centres	N/A
C4.9 Home Based Business	N/A
C4.10 Industrial Development	N/A
C4.11 Licensed Premises	No
C4.12 B7 Business Park Zone	N/A
C4.13 Markets	N/A
C4.14 Medical Centres	N/A
C4.15 Mixed Use	N/A
C4.16 Recreational Facility	N/A
C4.17 Sex Services Premises	N/A
C4.18 Vehicle Sales or Hire Premises And Service Stations	N/A
C4.19 Vehicle Repair Station	N/A
C4.20 Outdoor Dining Areas	N/A
C4.21 Creative Industries	N/A
<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
D2.3 Residential Development	N/A
D2.4 Non-Residential Development	Yes
D2.5 Mixed Use Development	N/A
<b>Part E: Water</b>	
Section 1 – Sustainable Water and Risk Management	
E1.1 Approvals Process and Reports Required With Development Applications	Yes
E1.1.1 Water Management Statement	Yes
E1.1.2 Integrated Water Cycle Plan	N/A
E1.1.3 Stormwater Drainage Concept Plan	Yes
E1.1.4 Flood Risk Management Report	N/A
E1.1.5 Foreshore Risk Management Report	N/A
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	No
E1.2.3 On-Site Detention of Stormwater	No
E1.2.4 Stormwater Treatment	Yes
E1.2.5 Water Disposal	No
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	Yes
E1.3 Hazard Management	N/A
E1.3.1 Flood Risk Management	N/A
E1.3.2 Foreshore Risk Management	N/A
<b>Part F: Food</b>	
Section 1 – Food	N/A
F1.1 Food Production	N/A
F1.1.3 Community Gardens	N/A

<b>Part G: Site Specific Controls</b>	N/A
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The following provides discussion of the relevant issues:

#### C1.0 General Provisions

Concern is raised that the proposal will result in adverse acoustic impacts to neighbouring residential properties along the northern side of Darling Street as result of the new rooftop balcony, combined with the proposed hours of operation, which will not achieve objective O4: *Amenable: places and spaces provide and support reasonable amenity, including solar access, privacy in areas of private open space, visual and acoustic privacy, access to views and clean air.*

Furthermore, due to form and appearance concerns raised in the heritage assessment earlier in this report, the proposal has not demonstrated compliance with the objective O6 of the Clause, as it does not contain, or respond to, the essential elements that make up the character of the surrounding area and the desired future character and is not responsive to the heritage significance of the heritage conservation area.

#### C1.1 Site and Context Analysis

The proposal is not considered to adequately address impacts of the use to surrounding residential properties including in relation to acoustic privacy and on-street parking impacts Objective O1(d) - potential for amenity. Furthermore, the issues raised in regards to form and appearance of the development do not meet the objective O1(f) - context including urban design, streetscape and heritage considerations.

#### C1.2 Demolition

The proposed demolition of the original heritage fabric of the heritage item will not achieve the following objectives of the Clause;

- O2 *To ensure that heritage items or buildings in a Heritage Conservation Area are only demolished where they cannot be reasonably retained or conserved.*
- O3 *To ensure that where demolition of a Heritage Item or buildings in a Heritage Conservation Area is deemed appropriate, that the replacement building:*
  - a. *meets the desired future character of the area;*
  - b. *is compatible with the apparent subdivision pattern; and*
  - c. *is consistent with the objectives contained in the Leichhardt Local Environmental Plan 2013 and this Development Control Plan.*
- O4 *To retain existing buildings that contribute to the desired future character of the area.*

#### C1.3 Alterations and Additions and C1.4 Heritage Conservation Areas and Heritage Items

The development proposal would not conform to the objectives and controls of Part C1.3 – Alterations and Additions where it would result in the proposed unacceptable loss of historic fabric; alterations and additions which by their intrusive scale; form; and unsympathetic materials and finishes would have an overbearing visual impact on the heritage item and would set an undesirable precedent for works to heritage items within the Darling Street – Balmain Village heritage conservation area.

The proposed demolition would also not comply with the following objectives and controls of the Clause C1.4 - Heritage Conservation Areas and Heritage Items which requires:

- Sympathetic alterations and additions to a building (C1.4 O1 a.)
- Development to conform to the Burra Charter (C1.4 O1 d.)

- The conservation and enhancement of the fabric and detail of a building that contributes to the *cultural significance* of the building in its setting (C1.4 O1 e.),
- The protection and enhancement of views of the existing building from the public domain (C1.4 O1 h.),
- The fabric of an existing building is to be the subject of appropriate *conservation* practices including *conservation* of original elements and *reconstruction* or *restoration* of original elements where deemed appropriate (C1.4 C2 b. & c.)
- the retention where possible whole roof forms and for roofs of additions to be subservient to the main roof (in *scale*, form, location & materials), changes to the form of the existing roof or extension of the ridge cannot be supported (C1.4 C6)

#### C1.11 Parking

The proposal results in an intensification of the use (i.e. change of use from a residential unit to a licensed restaurant accommodating 60 patrons). One parking/loading space is currently provided on the site (accessed from Little Darling Street). It is noted that there is already a substantial shortfall in parking on the site, exacerbated by the proposed change of use from a dwelling which generates 1 space to a restaurant which generates 1 space per 80sqm. The proposal will not meet the parking rates required by this Clause, and this non-compliance has not been adequately addressed in the accompanying Traffic and Parking Assessment Report.

#### C2.2.2.1 Darling Street (Balmain) Distinctive Neighbourhood

The proposed alterations and additions to the building is not considered complimentary to the existing heritage curtilage and results in the loss of the original (albeit modified) main roof form and internal external fabric which is not supportable on heritage grounds and contrary to the Distinctive Neighbourhood requirements including the following controls;

- C1 *Preserve and enhance the existing streetscape with special consideration for the remaining Colonial and Victorian buildings.*
- C2 *Allow for contemporary redevelopment where it is complementary to the existing heritage streetscapes and character/scale of the neighbourhood.*

#### C4.1 Objectives for Non-Residential Zones

The proposal results in the unacceptable loss of historic fabric; alterations and additions which by their intrusive scale; form; and unsympathetic materials and finishes would have an overbearing visual impact on the heritage item and would set an undesirable precedent for works to heritage items within the Darling Street – Balmain Village. Accordingly, the proposal does not meet the following objectives of the B2 Local Centre Zone:

- O2 *To respect the values of Heritage Items, including fabric and setting.*
- C2 *Allow for contemporary redevelopment where it is complementary to the existing heritage streetscapes and character/scale of the neighbourhood.*
- O9 *To achieve a high quality urban environment where buildings make a positive contribution to the function and visual quality of the public domain and streetscape.*

#### C4.2 Site Layout and Building Design

The proposal does not achieve the following objectives and controls where it provides an addition which is not compatible with the existing building or surrounding heritage conservation area and does not demonstrate that it can provide for adequate provision for waste management on site:

- O1 *Development is sited and designed to be compatible with the prevailing character of the neighbourhood whilst not overburdening infrastructure.*

- C7 *Development bulk is compatible with the prevailing width and depth of buildings within the streetscape*
- C15 *Development will be designed to ensure the incorporation of essential site facilities, such as:*
- c. waste storage and garbage collection areas*

#### C4.4 Elevation and Materials

The proposed replacement of the existing attic level – dormers within the original roof plane with a modern glazed structure and the installation of a large suspended awning to the rear are considered to be intrusive forms within its historic built context and the dark metallic and glazed materials and finishes would be intrusive within their historic built context. Accordingly, the proposal does not comply with the following objectives and controls:

- O1 *To ensure that development incorporates building elevations and materials that:*
- a. complement the prevailing character of the neighbourhood, in particular responding to the vertical and horizontal rhythm of the streetscape;*
  - b. achieve a balanced composition and human site facilities proportion;*
  - c. provide a high level of architectural quality, visual interest and articulation; and*
  - d. provide a high level of engagement between the public and private realm, in particular activating the street level public realm.*
- C3 *Where for a development in a Heritage Conservation Area, development maintains or restores primary defining elements such as:*
- a. parapets profiles and details*
- C6 *Colour schemes are compatible with those prevailing in the street.*
- C7 *Materials and finishes are compatible with those prevailing in the streetscape*

#### C4.5 Interface Amenity

Concerns are raised that due to the elevated nature of the rooftop deck serving the proposed restaurant combined with the hours of operations sought (7am - 12am Monday to Sunday), the proposal will have unreasonable impacts upon surrounding residential properties in terms of noise which characteristically transmits further at higher elevations.

The proposed roof top deck, by virtue of the elevated position, constitutes a substantial elevated entertaining area which will likely result in acoustic disturbance to neighbouring properties, and therefore are inconsistent with the relevant objectives and controls under this Clause as follows;

- O1 *To ensure that development does not impact the surrounding area or cause unreasonable nuisance to any other use by way of:*
- a. noise*
- C4 *Noise generating activities are located within buildings.*
- C5 *Noise generating activities are located and oriented away from residential uses or other sensitive receiving environments.*
- C6 *Noise generating activities are screened from residential uses or other sensitive receiving environments by acoustic barriers such as solid walls or acoustic fencing.*

Furthermore, the proposal was referred to Council's Environmental Health Officer who raised concerns with respect to the submitted Environmental Noise Impact Assessment report

prepared by Acoustic Logic which lacks detail and does not adequately address the potential acoustic impacts of the proposed use. It is noted that a Plan of Management has not been provided to support the application which would ordinarily incorporate the acoustic consultant's recommendations.

#### C4.11 - Licensed Premises

The proposed licensed restaurant will not meet the following objectives and relevant controls of the Clause;

- O1 *To ensure that development, including the cumulative impact of development:*
- a. *is compatible with the distinct village character of Leichhardt's centres;*
  - b. *is of a scale, form and design that is compatible with the character of the neighbourhood;*
  - c. *ensures a high level of safety and security;*
  - d. *does not have significant adverse amenity impacts on the neighbourhood, considering:*
    - i. *location and context of the premises, including proximity to sensitive and residential land uses;*
    - ii. *primary and secondary uses of the premises and the proposed hours of operation;*
    - iii. *surrounding business uses and the predominant business hours of the area;*
    - iv. *size and capacity of the premises;*
    - v. *operation of the premises during day time hours;*
    - vi. *strength of the plan of management and its ability to manage potential impacts on surrounding areas;*

As previously noted, a Plan of Management (PoM) has not been submitted to support the proposal as required by C2 of the Clause.

#### E1.2.2 Managing Stormwater within the Site, E1.2.3 On-Site Detention of Stormwater & E1.2.5 Water Disposal

An overland flow path is proposed through the covered pathway along the eastern boundary from the central courtyard to Darling Street. There are multiple entries into the building off this pathway that appear to be at the same level. A slight ramp up from external central courtyard to covered corridor appears to currently exist likely to prevent water flowing along this pathway to Darling Street. This arrangement should be maintained and pipe sized for 100 year flows rather than direct flows along this corridor as proposed.

On Site Detention (OSD) is also required to be provided on the site pursuant to Clause E1.2.3 and E1.2.5 and this has not been proposed.

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

The site is zoned B2 Local Centre. It is considered that the proposal will have an adverse impact on the heritage building and surrounding heritage conservation area and therefore it is considered that the site is unsuitable to accommodate the proposed development.

### 5(e) Any submissions

The application was notified for a period of 14 days to surrounding properties. A total of 4 submissions were received.

The submissions raised the following concerns which are discussed under the respective headings below:

#### Amenity impacts to neighbouring residential properties (noise, visual privacy)

As discussed under Part 5(c) above, the proposal is not supported as it is assessed that due to the elevated nature of the rooftop deck and hours of operations sought (7am - 12am Monday to Sunday), the proposal will have unreasonable impacts upon surrounding residential properties in terms of noise. It is further assessed that the potential noise impacts have not been adequately addressed in the acoustic report submitted with the application, nor has a Plan of Management been submitted which demonstrates measures to mitigate noise impacts to surrounding properties.

In terms of overlooking, it is not considered that the proposed roof top deck will result in adverse visual privacy impacts where it is located in excess of 20m from the closest residential dwelling to the northern side of Darling Street.

#### Bulk and scale

The proposed alterations and additions to the heritage building are not supported on heritage grounds where they are not considered sympathetic to the heritage curtilage of the building and surrounding heritage conservation area. Refer to Part 5(c) C1.3 Alterations and Additions and C1.4 Heritage Conservation Areas and Heritage Items and Part 5(a) Clause 5.10 – Heritage Conservation of the report.

#### Parking

It is agreed that the proposed use would impact on parking in the immediate area and that the provision of on-site parking is not sufficient. The proposal results in an intensification of the use (i.e. from residential to a licensed restaurant) which has not been addressed in the accompanying traffic and parking assessment report. Refer to C1.11 Parking under Part 5(c) and Engineering referral under Part 6(a) of the report.

#### Disruption of trade

Although disruption to surrounding uses during construction could be reasonably and appropriately managed by way of standard conditions, the proposal is not supported for reasons discussed elsewhere in the report and thus is recommended for refusal.

### 5(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. The proposal is contrary to the public interest.

## 6 Referrals

### 6(a) Internal

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

#### Heritage

The application is not supported for the following reasons:

1. The development proposal would not conform to the objectives and controls of Part C1.3 – Alterations and Additions and Part C1.4 Heritage Conservation and Heritage Conservation Areas and Heritage Items of Leichhardt Development Control Plan 2013 ; via the proposed unacceptable loss of historic fabric; alterations and additions which by their intrusive scale; form; and unsympathetic materials and finishes would have an overbearing visual impact on the heritage item and would set an undesirable precedent for works to heritage items within the Darling Street – Balmain Village;
2. As a result of the abovementioned non-compliances, the contribution that the subject building makes aesthetically and historically to the surrounding heritage conservation area and wider district; and its heritage significance, would be adversely impacted by the proposed works, and
3. The development application, as a whole, would represent undesirable incremental change to this heritage item and within The Valley (Balmain and Rozelle) Conservation Area, which, through its stated 'Aims' Leichhardt Local Environmental Plan 2013, seeks to avoid.

#### Engineer

Parking does not meet DCP requirements. One off-street carpark at rear of property accessed via Darling Lane. The traffic report does not address increased demand for parking due to intensification of use on the site through the change of use.

Further information required regarding waste management including storage areas and collection frequency noting the substantial increase in waste generation.

OSD required.

Overland flow path is proposed through covered pathway along eastern boundary from central courtyard to Darling Street. There are multiple entries into the building off this pathway that appear to be at the same level. A slight ramp up from external central courtyard to covered corridor appears to currently exist likely to prevent water flowing along this pathway to Darling Street. This arrangement should be maintained and pipe sized for 100 year flows rather than direct flows along this corridor as proposed.

#### Health

The following issues are raised in response to the proposal:

- The Environmental Noise Impact Assessment report prepared by Acoustic Logic lacks detail and does not seem to reflect the proposed use.
- A detailed kitchen plan / fit out and proposed food to be served is to be submitted to Council.



## 6(b) External

As the proposal seeks a licence premises, the application was referred to NSW Police for comment. No response from the NSW Police was provided at the time of reporting.

## 7. Section 7.11 Contributions

Section 7.11 contributions are generated by the proposal. The carrying out of the proposed development would result in an increased demand for public amenities and public services within the area. Contributions should be imposed on any consent granted.

## 8. Conclusion

The proposal does not comply with the aims, objectives and design parameters contained in Leichhardt Local Environmental Plan 2013 and Leichhardt Development Control Plan 2013. The development will result in any significant impacts on the amenity of adjoining premises, the heritage listed building and the streetscape. The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

## 9. Recommendation

- A. The variation to Clause 4.4 Floor Space Ratio of Leichhardt Local Environmental Plan 2013 is not supported under the provisions of Clause 4.6 exceptions to development standards.
- B. That the Panel, as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, refuse the Development Application No. D/2018/24 for alterations and additions to the existing building with new attic/roof top level and use of attic/roof top level for restaurant/bar for the following reasons:
  1. The proposal does not satisfy the following Clauses of the Leichhardt Local Environmental Plan 2013 pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979:
    - i) Clause 1.2 – Aims of plan
    - ii) Clause 2.3 – Zone objectives and Land Use Table
    - iii) Clause 4.4 – Floor Space Ratio
    - iv) Clause 4.6 – Variations to development standards
    - v) Clause 5.10 – Heritage Conservation
    - vi) Clause 6.4 – Stormwater management
  2. The proposal does not satisfy the following Parts of the Leichhardt Development Control Plan 2013, pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979:
    - i) Part C – Section 1 – C1.0 General Provisions
    - ii) Part C – Section 1 – C1.1 Site and Context Analysis
    - iii) Part C – Section 1 – C1.3 Alterations and additions
    - iv) Part C – Section 1 – C1.4 Heritage Conservation Areas and Heritage Items
    - v) Part C - Section 1 - C1.7 Site Facilities
    - vi) Part C - Section 1 - C1.11 Parking
    - vii) Part C – Section 2 – C2.2.2.1 Darling Street Distinctive Neighbourhood
    - viii) Part C - Section 4 - C4.1 Objectives for Non-Residential Zones
    - ix) Part C - Section 4 - C4.2 Site Layout and Building Design
    - x) Part C - Section 4 - C4.4 Elevation and Materials
    - xi) Part C - Section 4 - C4.5 Interface Amenity
    - xii) Part C - Section 4 - C4.11 Licensed Premises

- xiii) Part E - Section 1 - E1.2.2 Managing Stormwater within the Site
  - xiv) Part E - Section 1 - E1.2.3 On-Site Detention of Stormwater
  - xv) Part E - Section 1 - E1.2.5 Water Disposal
3. The proposal will result in adverse built environment impacts pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
  4. The proposal is not considered suitable for the site pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
  5. The proposal is not considered to be in the public interest pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

## Attachment A – Conditions of Consent in the circumstance the application is approved

### CONDITIONS OF CONSENT

1. Development must be carried out in accordance with Development Application No. D/2018/24 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Site Plan DA06-A	Urbanistica	13/11/17
Demolition Plans DM01-A to DM06-A inclusive	Urbanistica	2/11/2017
Proposed Ground Floor Plan DA01-A	Urbanistica	13/11/17
Proposed Intermediate Floor Plan DA02-A	Urbanistica	13/11/17
Proposed First Floor Plan DA03-A	Urbanistica	13/11/17
Proposed Mezzanine Floor Plan DA04-A	Urbanistica	13/11/17
Proposed Attic Floor Plan DA05-A	Urbanistica	13/11/17
Northern elevation DA07-A	Urbanistica	13/11/17
Southern elevation DA08-A	Urbanistica	13/11/17
Southern (Little Darling Street) elevation DA08-B	Urbanistica	13/11/17
Western elevation DA09-A	Urbanistica	13/11/17
Eastern elevation DA09-B	Urbanistica	13/11/17
Section AA DA10-A	Urbanistica	13/11/17
Section BB DA11-A	Urbanistica	13/11/17
Document Title	Prepared By	Dated
Materials and Colours Schedule D03-A, D03-B and D03-C	Urbanistica	13/11/17
Environmental Noise Impact Assessment	Acoustic Logic	18/12/2017

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.

2. In order to ensure consistency of design quality:
  - a) The approved design (including an element or detail of that design) or materials, finish or colours of the building must not be changed so as to affect the internal layout or external appearance of the building without the approval of Council.
  - b) In the event that the approved plans incorporate inconsistencies of detail between the relevant plans and elevations, the details shown in the elevations shall take precedence.

- c) In order to ensure the design quality excellence of the development is retained:
  - i) the design architect is to have direct involvement in the design documentation contract documentation and construction stages of the project;
  - ii) the design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
  - iii) evidence of the design architect's commission is to be provided to the Council prior to release of the Construction Certificate.
- d) The design architect of the project is not to be changed without prior notice and approval of the Council.

### **PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

- 3. 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.

- 4. An Access Management Plan must be provided by an Accredited Access Consultant prior to the issue of a Construction Certificate. Details of the Access Management Plan must include:
  - a) Confirmation whether the Disability (Access to Premises – Buildings) Standards 2010 is applicable to the development, in particular whether an upgrade of the 'Affected part' is required
  - b) Proposed requirements for access to the building or part of building for people with a disability in accordance with Part D3 of Building Code of Australia.
  - c) Conduct an assessment and identify any non-compliances with the Disability Standards 2010 and/or the Building Code of Australia where applicable and provide recommendations to achieve compliance with the relevant performance requirements.
  - d) If the building is located within a heritage conservation area or is a heritage item, any changes required to the external fabric of the building that are outside the approved works will require additional development consent from the consent authority. If the building is a listed heritage item, any works outside the approved works (external, internal etc) will require development consent from Council.

- e) Accessible carparking spaces should be provided, where applicable, in accordance with Part D3.5 of Building Code of Australia.
- 5. 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

- 6. 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.
- 7. An experienced suitably qualified & experienced Heritage Architect must be commissioned to assist and to provide advice on the approved development and to oversee the construction works for the duration of the project:

Details of the engagement of the experienced Heritage Architect in accordance with this condition are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Prior to the issue of an Occupation Certificate the Heritage Architect is to certify that the works have been carried out in accordance with these requirements.

Details of the engagement of the experienced Heritage Architect & copy of the certification in accordance with this condition are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

- 8. Prior to the issue of a Construction Certificate, the Certifying Authority must be satisfied that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of other premises and adjacent dwellings and that the outdoor lighting complies with the relevant provisions of Australian Standard AS 1158.3:2005 *Pedestrian area (Category P) lighting – Performance and design requirements* and Australian Standard AS 4282:1997 *Control of the obtrusive effects of outdoor lighting*.
- 9. The following requirements are to be detailed on the Construction Certificate plans and provided prior to the issue of a Construction Certificate:
  - a) Bulk insulation and reflective insulation shall be incorporated into walls ceilings and roofs of the new work to achieve combined 'R' value of R2.5 for roofs and ceilings and R1.5 for walls;
  - b) Lighter colours are used for external walls consistent with the approved external materials and finishes and plans.
  - c) Timber used for building materials shall be sourced from Forest Stewardship Council (FSC) certified plantation or regrowth areas; grown in Australia, or recycled and not sourced from rainforest or old growth forests.

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

10. A contribution pursuant to the provisions of Section 7.11 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:

Column A	Column B
In lieu of adequate parking	\$13,200
<b>Total Contribution</b>	<b>\$13,200</b>

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 7.11 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 Customer Service counter 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.

11. A Building Code of Australia audit is to be carried out. The audit must cover all clauses within Section C, D and E of the Building Code of Australia.

The results of the audit are to be incorporated into a report and strategy to overcome the non-compliant provision either by alternate solution or adherence to deemed-to-satisfy provision by satisfying the performance requirements of Sections C, D and E of the Building Code of Australia.

A schedule of existing and proposed essential fire safety measures, including their standard performance must be included in the strategy. The report, strategy and compliance certificate from a fire engineer must be provided prior to the issue of a Construction Certificate to the satisfaction of the Certifying Authority.

12. 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.

13. All plant and associated equipment must be located within the approved building envelope and is not be located on the roof. Details on the location of all plant and equipment must be consistent with the approved plans and provided 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.

14. A Plan of Management is to be submitted to and approved by Council prior to the issue of a Construction Certificate. The Plan of Management is to cover (but is not limited to) the following issues:

- Minimise the potential impact of the operation of the premises on nearby residents,
- Effectively minimise and manage anti-social behaviour,
- Minimise noise emissions and associated nuisances,
- Effectively manage and respond to resident complaints,
- Ensure responsible service of alcohol and harm minimisation, and
- Patron conductivity and security.

a) Security Management

The plan must specify security patrol, surveillance and other security and response methods and security management of the public and private domain within and surrounding the site.

b) Patron Management

Patrons must be prevented from removing glass, opened cans, bottles or alcohol from the premises.

Signs must be placed in clearly visible positions within the premises requesting patrons upon leaving to do so quickly and quietly, having regard to the amenity of the area.

A sign detailing the maximum number of persons permitted in the premises, in letters not less than 25mm, must be displayed at the main front entrance of the premises within the building.

The management/licensee is responsible for the control of noise and litter generated by patrons of the premises and must ensure that patrons leave the vicinity of the premises in an orderly manner to the satisfaction of Council. If so directed by Council, the management/licensee is to employ private security staff to ensure that this condition is complied with.

c) Recycling and Waste Collection

The sorting and/or collection of waste and recycling must only occur between 8.00am and 9.00pm daily. Glass sorting/breaking should not occur after 6pm unless it can be done in a manner that does not have adverse acoustic impacts on surrounding properties or tenancies.

15. 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.

16. The construction and fit out of the premises shall comply with the Smoke-free Environment Act 2000 and Smoke-free Environment Regulation 2000.

17. 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) Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site.
- 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.
- iv) Location of any proposed crane and concrete pump and truck standing areas on and off the site (and relevant approvals from Council for plant on road).
- v) A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries.
- vi) Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected.
- vii) An on-site parking area for employees, tradespersons and construction vehicles as far as possible.
- viii) 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.
- ix) How it is proposed to ensure that soil/excavated material is not transported onto surrounding footpaths and roadways.
- x) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed by a Chartered Civil Engineer, with National Professional Engineering Registration (NPER) in the construction of civil works or a survey company of Registered Surveyors with "preliminary accreditation" from the Institution of Surveyors New South Wales Inc. or an accredited certifier.

b) Noise & Vibration

During excavation, demolition and construction phases, noise & vibration generated from the site must be controlled. 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. Advice should be obtained from a suitably qualified Geotechnical Engineer. .



- 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 provided on 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" and prepared by a suitably qualified person (minimum 'red card' qualification). The main stages of the development requiring specific construction management measures are to be identified and specific traffic control measures identified for each stage.

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.

18. There are to be no emissions or discharges from the premises which will give rise to an offence under the *Protection of the Environment Operations Act 1997* and *Regulations*.

Emission control equipment shall be provided in the mechanical exhaust system serving the appliances, to effectively minimise the emission of odours, vapours and oils. Details of the proposed emission control equipment must be provided in the relevant plans and specifications for the Construction Certificate for the subject 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.

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.

19. 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.

20. Details and location of the proposed waste and recycling room(s)/ storage area(s) are to be provided prior to the issue of a Construction Certificate. Rooms used for the storage of waste and recycling and rooms used for the washing and storage of waste and recycling receptacles are to be constructed of solid material, cement rendered and trowelled to a smooth even surface and subject to the following requirements:

- a) The floor must be of impervious material coved at the intersection with the walls, graded and drained to an approved floor waste within the room.
- b) Waste/recycling rooms must be vented to the external air by natural or mechanical ventilation.
- c) Waste and recycling storage rooms/areas for all developments should be capable of accommodating Council's standard waste and recycling containers in accordance with Part D – Waste of Development Control Plan 2013
- d) Waste storage and recycling areas or rooms shall be flexible in design allowing for future changes of use or tenancy.

Any modifications required to address this condition externally or to the vehicle parking/manoeuvring areas must be the subject of further approval from Council under Section 96 of the Environmental Planning and Assessment Act 1979.

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.

21. The premises are to be designed, constructed and operated in accordance with the:

- Food Act 2003
- Food Regulation 2010
- Australia and New Zealand Food Standards Code
- Australian Standard AS 4674 – 2004 (Design, construction and fit-out of food premises)
- Australian Standard AS 1668 Part 1 – 1998
- Australian Standard AS 1668 Part 2 – 2012; and
- Building Code of Australia

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

22. To ensure that adequate provision is made for ventilation of the building, mechanical and/or natural ventilation shall be provided.

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

- The Building Code of Australia,
- Australian Standard AS 1668 Part 1 – 1998,

- Australian Standard AS 1668 Part 2 – 2012,
- Australian Standard 3666.1 – 2011,
- Australian Standard 3666.2 – 2011; and
- Australian Standard 3666.3 - 2011.

Details demonstrating compliance with the requirements of this condition are to be submitted to the Principal Certifying Authority prior to the release of a Construction Certificate. The system must be located in accordance with the approved plans and/or within the building envelope, design and form of the approved building. Any modifications to the approved plans required to house the system must be the subject of further approval from Council (the consent authority).

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.

23. Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent shall obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the Local Government Act 1993 and/or Section 138 of the Roads Act 1993. Permits are required for the following activities:
- a) Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application.
  - b) A concrete pump across the roadway/footpath
  - c) Mobile crane or any standing plant
  - d) Skip bins
  - e) Scaffolding/Hoardings (fencing on public land)
  - f) Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.
  - g) Awning or street verandah over footpath
  - h) Partial or full road closure
  - i) Installation or replacement of private stormwater drain, utility service or water supply

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities.

Applications for such Permits shall be submitted and approved by Council prior to the commencement of the works associated with such activity or issue of the 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.

24. A stormwater drainage design, incorporating on site stormwater detention and/or on site retention/ re-use facilities (OSR/OSD), prepared by a qualified practicing Civil Engineer must be provided prior to the issue of a Construction Certificate. The design must be prepared/amended to make provision for the following:

- a) Comply with Council's Stormwater Drainage Code.
- b) Site discharge must be connected directly to Council's piped drainage system. In this regard, the existing system must be extended by an appropriately sized pipeline (minimum 375mm diameter) to the frontage of the site, where a kerb inlet pit (minimum 3.0m lintel) must be installed.

The pipeline must be designed to have the capacity to convey flows that would be collected at that section of street as generated by a 20 year Average Recurrence Interval storm event.

- c) Charged or pump-out stormwater drainage systems are not permitted.
- d) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands. The design must include the collection of such waters and discharge to the Council drainage system.
- e) As the existing dwelling floor levels are not adequately raised above the overland flow/flood path from the rear courtyards to the Darling Street frontage, the design of the pit and piped drainage system for the rear courtyard is required to meet the following criteria:
  - i) Capture and convey the 100 year Average Recurrence Interval flow from the contributing catchment assuming 80% blockage of the inlet and 50% blockage of the pipe.
  - ii) The maximum water level over the sag pit shall not be less than 150mm below the floor level or damp course of the building
  - iii) The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
- f) All plumbing within the site must be carried out in accordance with Australian Standard *AS/NZS3500.3.2015 Plumbing and Drainage – Stormwater Drainage*.
- g) The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system.
- h) Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required.
- i) An inspection opening or stormwater pit must be installed inside the property adjacent to the boundary for all stormwater outlets.
- j) All redundant stormwater pipelines within the footpath area must be removed and the footpath and kerb reinstated.
- k) New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a section height of 100mm.
- l) Any proposed on-site retention tanks must be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks where the collected water is to be used to supply water inside the dwelling, such as for toilet flushing or laundry use.

- m) A trash screen, fitted with a handle, must be provided adjacent to the outlet in the OSD discharge control pit.
- n) Water quality filtration basket(s) with screening bag or similar primary treatment device(s) shall be installed on the site stormwater drainage system such that all water entering the site stormwater drainage system is filtered by the device(s).
- o) Calculations must be submitted in support of the flow rates and storage volumes proposed in accordance with Section E1.2.3 (C2 and C3) of Council's DCP2013.

The design must be certified as compliant with the terms of this condition by a suitably qualified Civil Engineer.

Details and plans demonstrating compliance are to be submitted and approved by Council prior to the issue of the Construction Certificate.

25. The vehicular crossing and driveway ramp to the site shall be reconstructed and designed to satisfy the ground clearance template (Figure C1) from AS/NZS 2890.1-2004 *Parking Facilities: Off-street car parking*. A long section, along both sides of the proposed vehicular crossing and ramp, drawn at a 1:20 natural scale, shall be submitted to and approved by Council before the issue of a Construction Certificate. The long section shall begin from the opposite kerb line of the adjacent road to a minimum of 3 metres into the property. The long section approved by Council shall define the Alignment Levels at the property boundary at the vehicular crossing.

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

26. A dilapidation report on the visible and structural condition of the following public infrastructure must be provided to the Principal Certifying Authority prior to the commencement of demolition or issue of a Construction Certificate (whichever occurs first).
- a) Half width of Darling Street, including road pavement, stormwater drainage infrastructure, kerb and gutter and footpath, between 328 Darling Street and 334 Darling Street.
  - b) Full width of Little Darling Street, including road pavement, stormwater drainage infrastructure, kerb and gutter and footpath, between the rear of 328 Darling Street and the rear of 334 Darling Street.

The dilapidation report is to be prepared by a practicing Structural/Civil Engineer agreed to by both the applicant and Council. All costs incurred in achieving compliance with this condition shall be borne by the applicant.

The liability of any damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded by the requirements of this condition will be borne by the applicant.

27. Prior to the commencement of demolition or any works or issue of a Construction Certificate (whichever occurs first), the Principal Certifying Authority shall be satisfied that an Archival Record has been completed of the areas affected by demolition works and 3 copies have been submitted to Council.

The report must be prepared by a suitably qualified and experienced heritage consultant, be consistent with the Heritage Office 'Photographic Recording Of Heritage Items Using Film Or Digital Capture' and must contain the following minimum requirements:

- a) Title page with subject, author, client, date, copyright etc.
- b) Statement of why the record was made
- c) Outline history of the item and associated sites, structures and people.
- d) Statement of heritage significance of the items in accordance with the Burra Charter and the Heritage Inventory.
- e) Inventory of archival documents related to the item and their location (eg company records, original drawings, photography), when available.
- f) Location plan showing relationship to surrounding geographical features, structures, roads etc. Include a north point.
- g) Floor plans/site plans cross-referenced to photographs and showing the order & orientation in which the photos were taken. Name the relevant features, structures and spaces. Show a north point.
- h) Photographic record, labelled and cross-referenced to floor / site plans and accompanied by informative catalogues and two copies of proof sheets. Images should include:
  - View to and from the site (possible from four compass points)
  - Views showing relationships to other relevant structures, landscape features and movable items.
  - All external elevations.
  - Views of all external and internal spaces (e.g. courtyards, rooms, roof spaces etc).
  - External and internal detail (e.g. joinery, construction joints, decorative features, paving types etc).

Selected prints to give an overall picture of the item may be required. They should be mounted and labelled.
- i) Colour slides/archival quality prints. One set of slides mounted in archival stable slide pockets or 10.5 x 14.8cm prints on archival quality paper and archivally stable inks, clearly labelled and cross-referenced to base plans. Images should include:
  - Views to and from the site and/or the heritage item.
  - Views and details of external and internal elements and colour schemes as appropriate.

Two (2) hard copies and one (1) electronic copy (including digital copies of images – not scanned copies) of the report must be submitted to Council; one of the hard copies shall contain negatives (if using film) or DVD with digital copies of photos (if using digital). A written acknowledgment from the Consent Authority (Leichhardt Council) must be obtained (attesting to this condition being appropriately satisfied) and submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or commencement of works (whichever occurs first).

28. Site cranes and hoists may be erected within the boundaries of the site subject to compliance with the relevant provisions of Australian Standard AS 1418:2005 *Crane, hoists and winches*, Australian Standard AS 2549:1996 *Cranes (including hoists and winches)* and Australian Standard AS 2550:2002 *Cranes, hoists and winches*.

Cranes must not swing or hoist over any public property unless the relevant approval under Local Government Act 1993, Crown Lands Act 1989, or the Roads Act 1993 has been obtained prior to the commencement of works.

The use of the cranes and hoists must comply with the approved hours of construction and/or Roads Act approval. The cranes must not be illuminated outside approved working hours other than safety beacons required by the Civil Aviation Safety Authority. No illuminated signs are to be erected upon or displayed upon any crane.

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 or works commencing (whichever occurs first).

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

29. 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.
30. 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.
31. 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.

32. 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.

33. Waste water arising from the use must be directed to the sewers of the Sydney Water Corporation under a Trade Waste License Agreement. The pre-treatment of wastewater may be a requirement of the Corporation prior to discharge to the sewer. Details of the Corporation's requirements must be obtained prior to the commencement of works and submitted to Council or the Principal Certifying Authority.
34. Underground assets may exist in the area that is subject to the approved development. In the interests of health and safety and in order to protect damage to third party assets contact Dial Before You Dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 prior to works commencing. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction. Care must be taken to ensure any identified assets are protected accordingly.

If the development is likely to disturb or impact upon telecommunications infrastructure, written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first.

35. A detailed Traffic Management Plan to cater for construction traffic shall be submitted to and approved by Council before commencement of works. Details shall include haulage routes, estimated number of vehicle movements, truck parking areas, work zones, crane usage, etc., related to demolition/construction activities.
36. The person acting on this consent shall apply for a Work Zone along the site frontage for construction vehicles. A minimum of 2 months should be allowed for the processing of the application.
37. Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands shall take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.
38. Prior to the commencement of demolition works or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit and inspection fee 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 and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit (FOOT)	\$51,503
Inspection fee (FOOTI)	\$225

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



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

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

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

The amount nominated is only current for the financial year in which the 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.

#### **DURING WORKS**

39. 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.

40. The site must be appropriately secured and fenced at all times during works.
41. 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.
42. 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.
43. 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.

44. 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.
45. The development site must be inspected at the following stages during construction:
  - a) after the commencement of the excavation for, and before the placement of, the first footing.
  - b) prior to covering any stormwater drainage connections, and
  - c) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
46. 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.
47. 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.

48. Where any works are proposed in the public road reservation, the following applications must be made to Council, as applicable:

- a) For installation or replacement of private stormwater drainage lines or utility services, including water supply, sewerage, gas, electricity, etc. an application must be made for a *Road Opening Permit*.
- b) For construction/reconstruction of Council infrastructure, including vehicular crossings, footpath, kerb and gutter, stormwater drainage, an application must be made for a *Roadworks Permit*.

Note: Private stormwater drainage is the pipeline(s) that provide the direct connection between the development site and Council's stormwater drainage system, or street kerb and gutter.

49. Construction material and vehicles shall not block or impede public use of footpaths or roadways.
50. Alignment levels for the site at all pedestrian locations shall match the existing back of footpath levels at the boundary.
51. The following works must be constructed:
- a) Light duty concrete vehicle crossing at the vehicular access location.
  - b) Concrete infill footpath across the Little Darling Street frontage of the site shall be constructed.
  - c) The existing damaged or otherwise defective kerb and gutter, footpath and/or road pavement adjacent to the site shall be restored.

All works shall be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications" before the issue of the Occupation Certificate and at no cost to Council.

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

52. 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.
53. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that the site stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards.

Works-as-executed plans of the site stormwater drainage system, certified by a Registered Surveyor, together with certification by a qualified practicing Civil Engineer to verify that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards, shall be submitted and accepted by Council prior to the issue of an Occupation Certificate.

The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifying Authority stamped Construction Certificate plans.

54. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that the vehicle access and off street parking facilities have been constructed in accordance with the approved design and relevant Australian Standards.

Certification by a qualified practicing Civil Engineer that the vehicular access and off street parking facilities have been constructed in accordance the development consent and with relevant Australian Standards must be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

55. All works required to be undertaken on public roads shall be designed and constructed in accordance with Council's standard plans and specifications. The works shall be supervised and certified by a qualified civil engineer who is listed under the Institution of Engineers, Australia "National Professional Engineers Register" (NPER) and shall state that the works have been constructed in accordance with the approved plans and specifications before the issue of the Occupation Certificate.

Video inspection (CCTV) shall be carried out of completed stormwater drainage works that are to revert to Council and a copy provided to and accepted by Council to support the certification of those works. The footage shall include images of the upstream and downstream stormwater pits and identify all defects.

In addition, full works-as-executed plans in PDF or CAD format (dwg or dxf files), prepared and signed by a registered surveyor including pit and pipe alignments, sizes, material and surface and invert levels shall be submitted to Council upon completion of the works.

Prior to issue of the Occupation Certificate the person acting on this consent shall obtain from Council a compliance Certificate(s) stating that all Road, Footpath, Vehicle Crossing and Public Domain Works on Council property required to be undertaken as a result of this development have been completed satisfactorily and in accordance with Council approved plans and specifications.

56. A second Dilapidation Report addressing the public infrastructure identified in Condition 26, including a photographic survey and structural condition, must be submitted after the completion of works. A copy of this Dilapidation Report must be lodged with Council and the Principal Certifying Authority before to the issue of an Occupation Certificate.

Any damage identified in the Dilapidation Report must be fully rectified by the applicant or owner at no cost to Council before to the issue of an Occupation Certificate.

57. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that an Operation and Management Plan has been prepared and implemented for the on site stormwater detention and/or on site retention/ re-use facilities (OSR/OSD). The Plan must set out the following at a minimum:

- a) The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners.
- b) The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

The Plan must be prepared by a suitably qualified professional and provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

58. Prior to the issue of an Occupation Certificate, a positive covenant must be created under Section 88E of the *Conveyancing Act 1919*, burdening the owner(s) with the requirement to maintain the on site stormwater detention and/or on site retention/ re-use facilities (OSD) on the property.

The terms of the 88E instrument with positive covenant shall include, but not be limited to, the following:

- a) The Proprietor of the property shall be responsible for maintaining and keeping clear all pits, pipelines, trench barriers and other structures associated with the on-site stormwater detention facilities ("OSD").
- b) The Proprietor shall have the OSD inspected annually by a competent person.
- c) The Council shall have the right to enter upon the land referred to above, at all reasonable times to inspect, construct, install, clean, repair and maintain in good working order all pits, pipelines, trench barriers and other structures in or upon the said land which comprise the OSD or which convey stormwater from the said land; and recover the costs of any such works from the proprietor.
- d) The registered proprietor shall indemnify the Council and any adjoining land owners against damage to their land arising from the failure of any component of the OSD, or failure to clean, maintain and repair the OSD.

The proprietor or successor must bear all costs associated in the preparation of the subject 88E instrument. Proof of registration with NSW Land and Property Information must be submitted to and approved by the Principal Certifying Authority prior to the issue of an Occupation Certificate.

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

59. 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.
60. 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.
61. Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever shall not be permitted. Any encroachments on to Council road or footpath resulting from the building works will be required to be removed before the issue of the Occupation Certificate.
62. The Operation and Management Plan for the on-site detention and/or on-site retention/re-use facilities, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

63. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be satisfied that a Fire Safety Certificate for all essential fire or other safety measures has been completed.
64. Provision must be maintained for access to and within the building on the site for persons with a disability in accordance with the provisions of Australian Standard AS 1428.1:2001 *Design for access and mobility – General requirements for access – new building work* prior to the issue of an Occupation Certificate.
65. All letter boxes must be constructed and located in accordance with the relevant provisions of Australian Standard AS/NZS 4253:1994 *Mailboxes* and to Australia Post's satisfaction. Work is to be completed prior to the issue of any Occupation Certificate.

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

66. Food premises notification shall be obtained from the NSW Food Authority prior to commencement of business operations /issue of an Occupation Certificate and a copy of the notification shall be submitted to the Principal Certifying Authority. Notification can be completed on the NSW Health Department's website at [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au)

Prior to the commencement of business operations/issue of an Occupation Certificate the owner of the business is to complete and submit Council's food business registration form which can be obtained from Council's website at [www.leichhardt.nsw.gov.au](http://www.leichhardt.nsw.gov.au). Evidence of registration must be submitted to the Principal Certifying Authority.

Should Council be the nominated Principal Certifying Authority, then the applicant shall notify Council not less than forty-eight (48) hours prior to the proposed occupation of the premises to arrange for a final compliance inspection.

The applicant shall not operate the food premises until an Occupation Certificate has been issued.

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

67. A report prepared by a suitably qualified and experienced acoustic consultant shall be submitted to Council prior to an Occupation Certificate being issued for the development which demonstrates and certifies that noise and vibration emissions from the development comply with the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority's Industrial Noise Policy and Noise Control Manual and conditions of Council's approval, including any recommendations of the acoustic report referenced in the conditions of the approval.

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

68. Prior to the release of an Occupation Certificate, the Principal Certifying Authority must be satisfied that the development complies with:

- the approved plans;
- approved documentation (as referenced in this consent); and
- conditions of this consent.

69. A street / shop number must be clearly displayed at the ground level frontage of the building prior to the issue of an Occupation Certificate. A separate application must be made to Council if new street numbers or a change to street numbers is required.

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

70. 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.

71. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and plumbing section on the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Plumbing, building & developing".

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

72. The premise must be registered with Council's Environment Health Section in accordance with the following relevant legislation:

Food Shop - Food Act 2003

Details demonstrating compliance with the requirements of this condition is to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any interim / final occupation certificate.

73. To ensure that adequate provision is made for the treatment of waste water from the premises, floor plans accompanying the Construction Certificate application shall include provision for a Sydney Water approved grease trap.

The grease trap installation shall service all commercial sections of the development and be designed, constructed and operated in accordance with:

- Australian Standard AS 3500; and
- National Plumbing & Drainage Code

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

**ONGOING CONDITIONS OF CONSENT**

74. The premises shall not be used for any purpose other than that stated in the Development Application, i.e. restaurant/bar 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 a food and drink premises is defined under the *Leichhardt Local Environmental Plan 2013*.

75. All loading and unloading operations are to be carried out wholly within the site.
76. 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.
77. The premises including the outdoor area are only to be open for business and used for the purpose approved within the following hours.

<b>Trial Period</b>	<b>Indoor Area</b>	<b>Outdoor Area</b>
Monday to Wednesday	7 am to 12 am (midnight)	7 am to 11 pm
Thursday, Friday and Saturday	7 am to 12 am (midnight)	7 am to 11 pm
Sunday	7 am to 12 am (midnight)	7 am to 11 pm

The above operating hours are for a trial period of 12 months from the date of Occupation Certificate/date of this consent (whichever occurs later). At the cessation of the trial period the hours of operation are to be as follows.

<b>After Trial Period</b>	<b>Indoor Area</b>	<b>Outdoor Area</b>
Monday to Thursday	7 am to 11 pm	7 am to 10 pm
Friday and Saturday	7 am to 12 am (midnight)	7 am to 10 pm
Sunday	7 am to 11 pm	7 am to 10 pm

Set-up and clean-up operations must commence no earlier or later than 1 hour before opening and 1 hour after closing hours (as stipulated by this condition). All doors and windows must remain closed during set up and cleaning where possible.

Service is to cease 30 minutes before closing time.

In the event that the operator wishes to seek consent for permanent late trading hours or a further trial period a Section 4.55 application is to be lodged and approved by the consent authority. The application should seek to modify this condition accordingly and be accompanied by supporting documentation.

78. The  $L_{A10}$  noise level emitted from the premises, measured between the hours of **7am and 12 midnight**, is not to exceed the background noise level in any octave band frequency (centred on 31.5Hz to 8 kHz inclusive) by more than 5 dB, when measured at the boundary of any adjoining residence.

The  $L_{A10}$  noise level emitted from the premises, measured between the hours of **midnight and 7am**, is not to exceed the background noise level in any octave band



frequency (centred on 31.5Hz to 8 kHz inclusive), when measured at the boundary of any adjoining residence.

79. The Plan of Management required and approved under this consent must be complied with at all times. Any amendments to the Plan of Management must be subject to modifications to the plan must be subject to Council approval in accordance with Section 4.55 of the Environmental Planning and Assessment Act 1979. A copy of the Plan of Management must be displayed on site at all times and made available to all staff and or occupants.
80. To ensure minimal impacts on surrounding properties, commercial waste and recyclable material generated by the premises must be collected between the hours of 8.00am and 9.00pm, Monday to Saturday and between 8.00am and 10.00pm on Sundays and public holidays.
81. The seating capacity of the restaurant is restricted to a maximum of 60 patrons at any one time.

A notice is to be displayed in the premises stating that:

- a) The maximum total occupancy of the premises allowed by this consent is 60 persons / seats.
82. In accordance with Section 4.17 (10B) of the Environmental Planning and Assessment Act 1979 the condition setting out trial period hours of operation or maximum number of persons within the building can be reviewed by Inner West Council at any time during the trial period. In the case of a condition relating to maximum number of persons in the building, a review can be carried out anytime within 12 months of the determination. The outcome of such review may result in amendments to the reviewable condition.

## **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 4.55 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 the 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 Strata Title Subdivision if strata title subdivision of the development is proposed.

- e) Development Application for demolition if demolition is not approved by this consent.
  - f) Development Application for subdivision if consent for subdivision is not granted by this consent.
  - g) 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.
9. The person acting on this consent shall ensure the site is secured with temporary fencing prior to any works commencing.

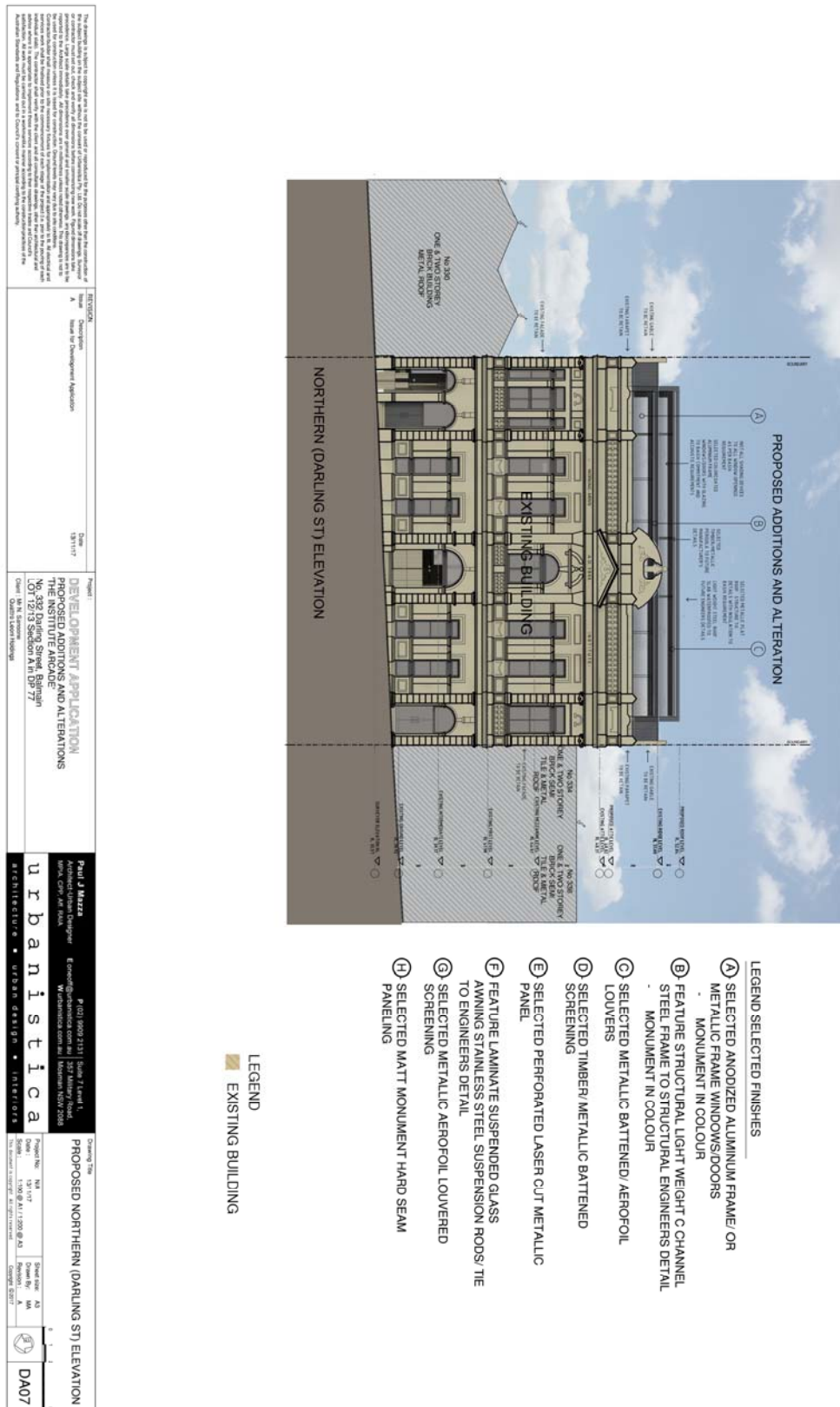
If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. 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 from Council 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.

1. **NEW VC – ADVISORY (new)**  
The vehicular crossing and/or footpath works are required to be constructed by your own contractor. You or your contractor must complete an application for 'Application for Construction of Vehicle Crossing and Public Domain Works – Step 2' form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, before commencement of works.

## Attachment B – Plans of proposed development



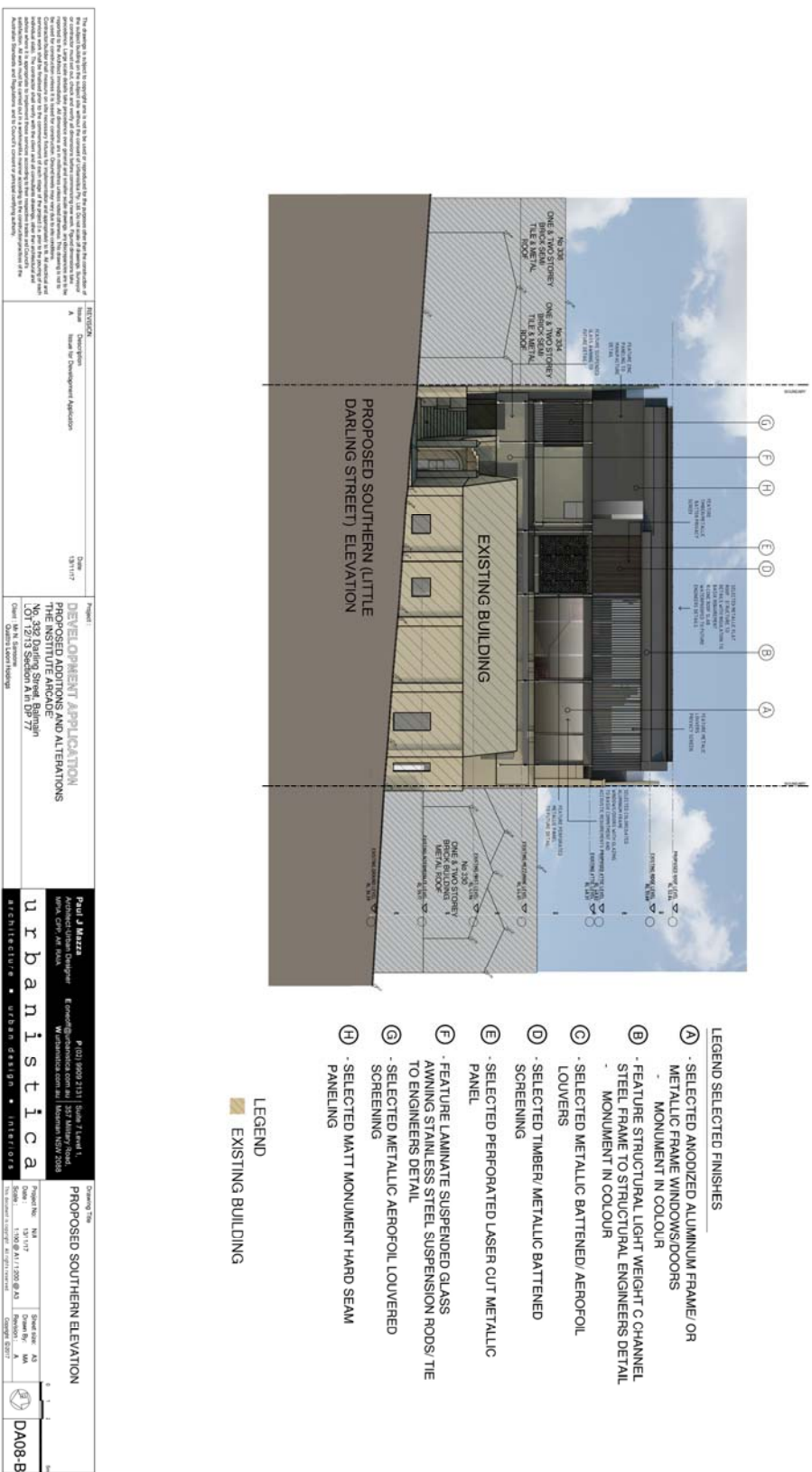


- LEGEND SELECTED FINISHES**
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     - MONUMENT IN COLOUR
  - (B)** - FEATURE STRUCTURAL LIGHT WEIGHT C CHANNEL STEEL FRAME TO STRUCTURAL ENGINEERS DETAIL  
     - MONUMENT IN COLOUR
  - (C)** - SELECTED METALLIC BATTENED /AERFOIL LOUVERS
  - (D)** - SELECTED TIMBER/ METALLIC BATTENED SCREENING
  - (E)** - SELECTED PERFORATED LASER CUT METALLIC PANEL
  - (F)** - FEATURE LAMINATE SUSPENDED GLASS AINING STAINLESS STEEL SUSPENSION RODS /TIE TO ENGINEERS DETAIL
  - (G)** - SELECTED METALLIC AERFOIL LOUVERED SCREENING
  - (H)** - SELECTED MATT MONUMENT HARD SEAM PANELING

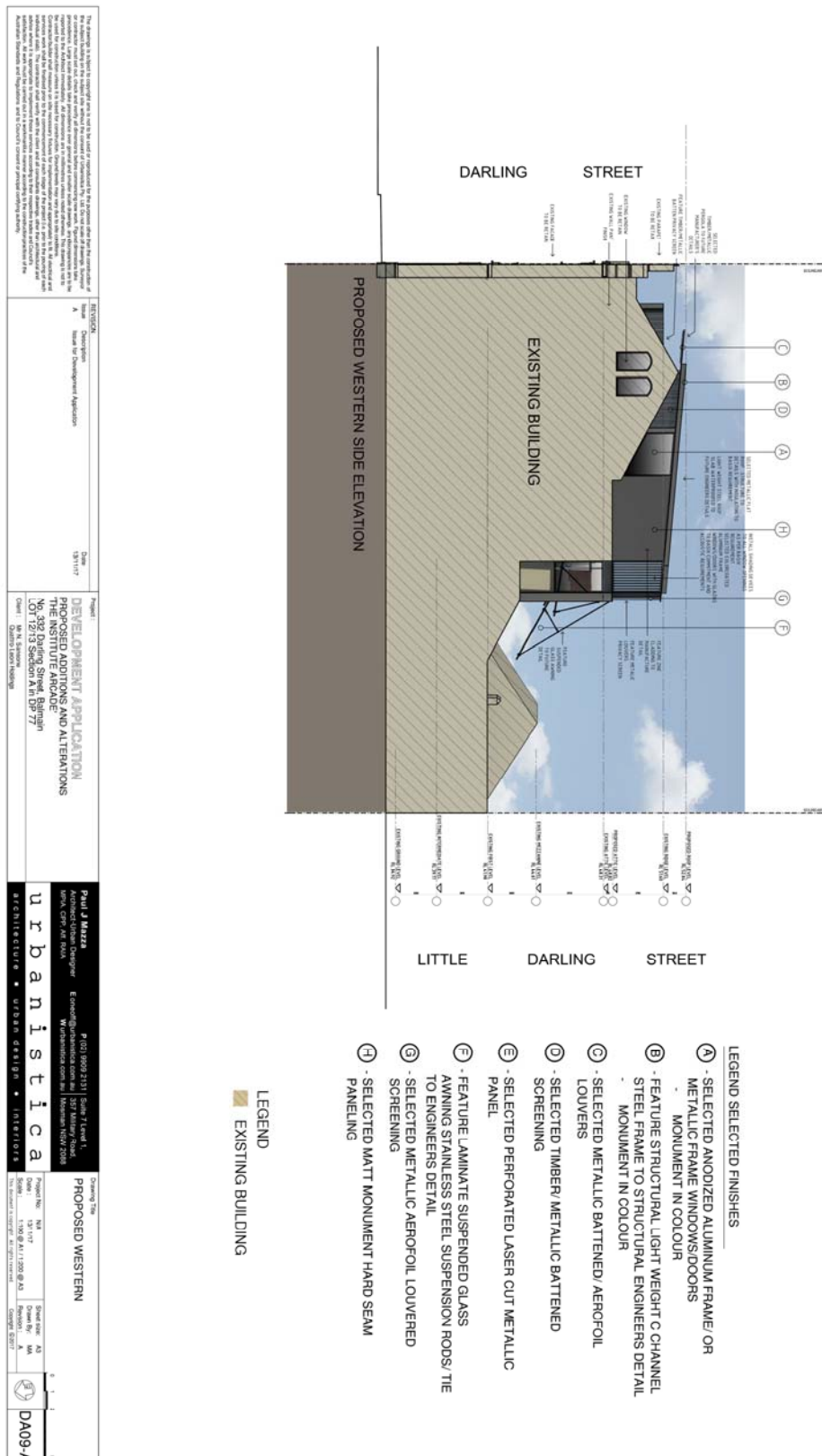
### LEGEND

EXISTING BUILDING

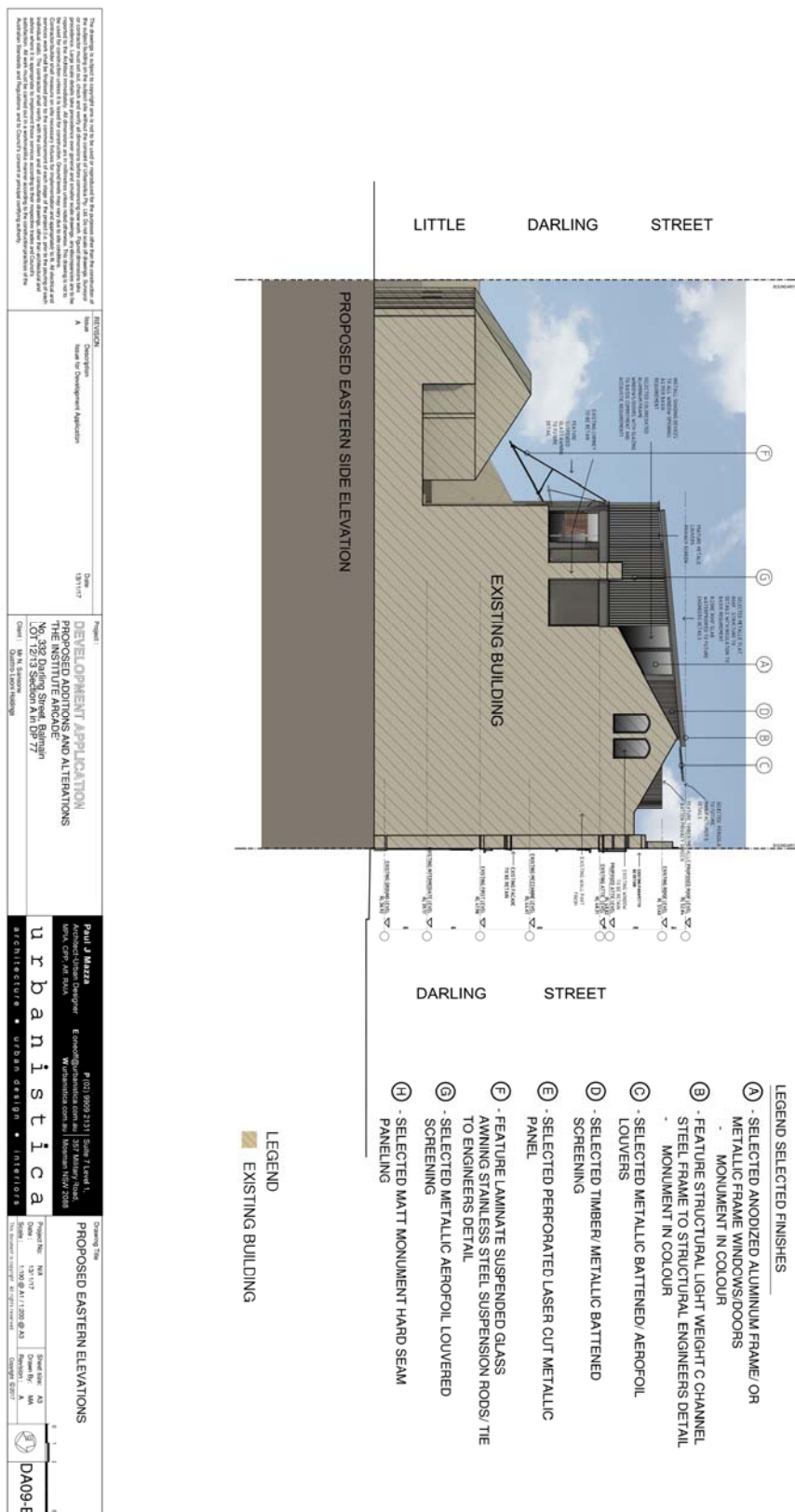
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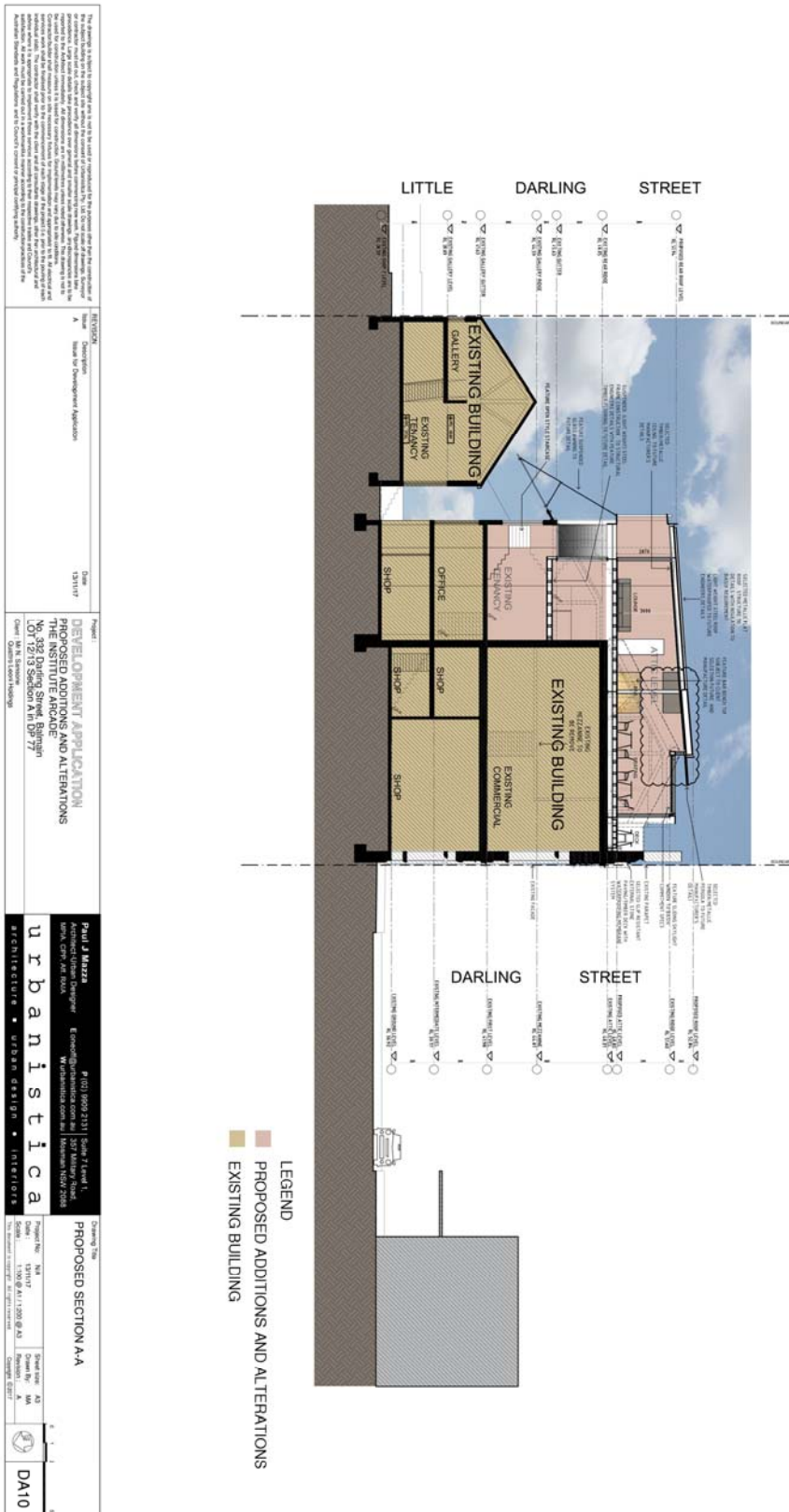


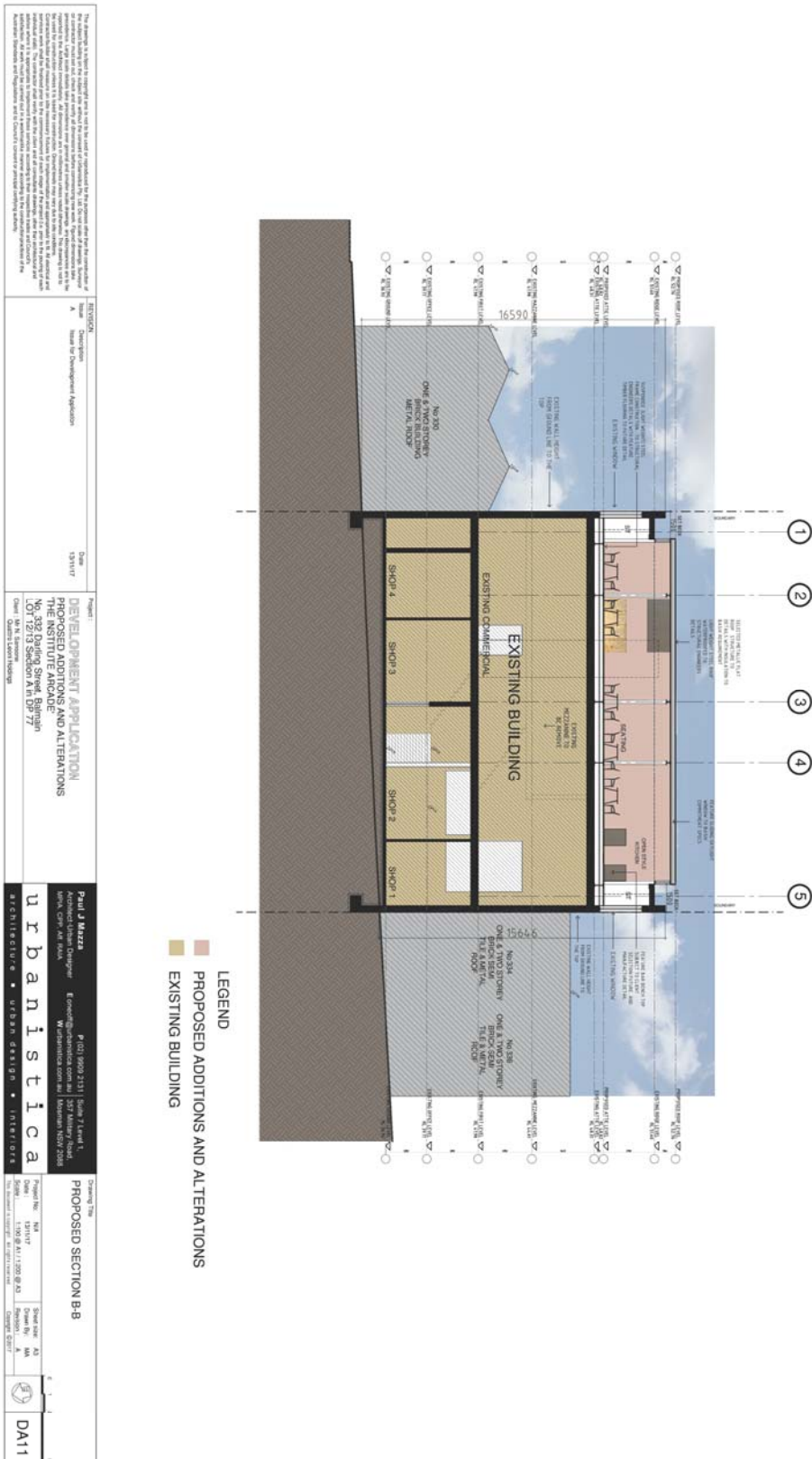








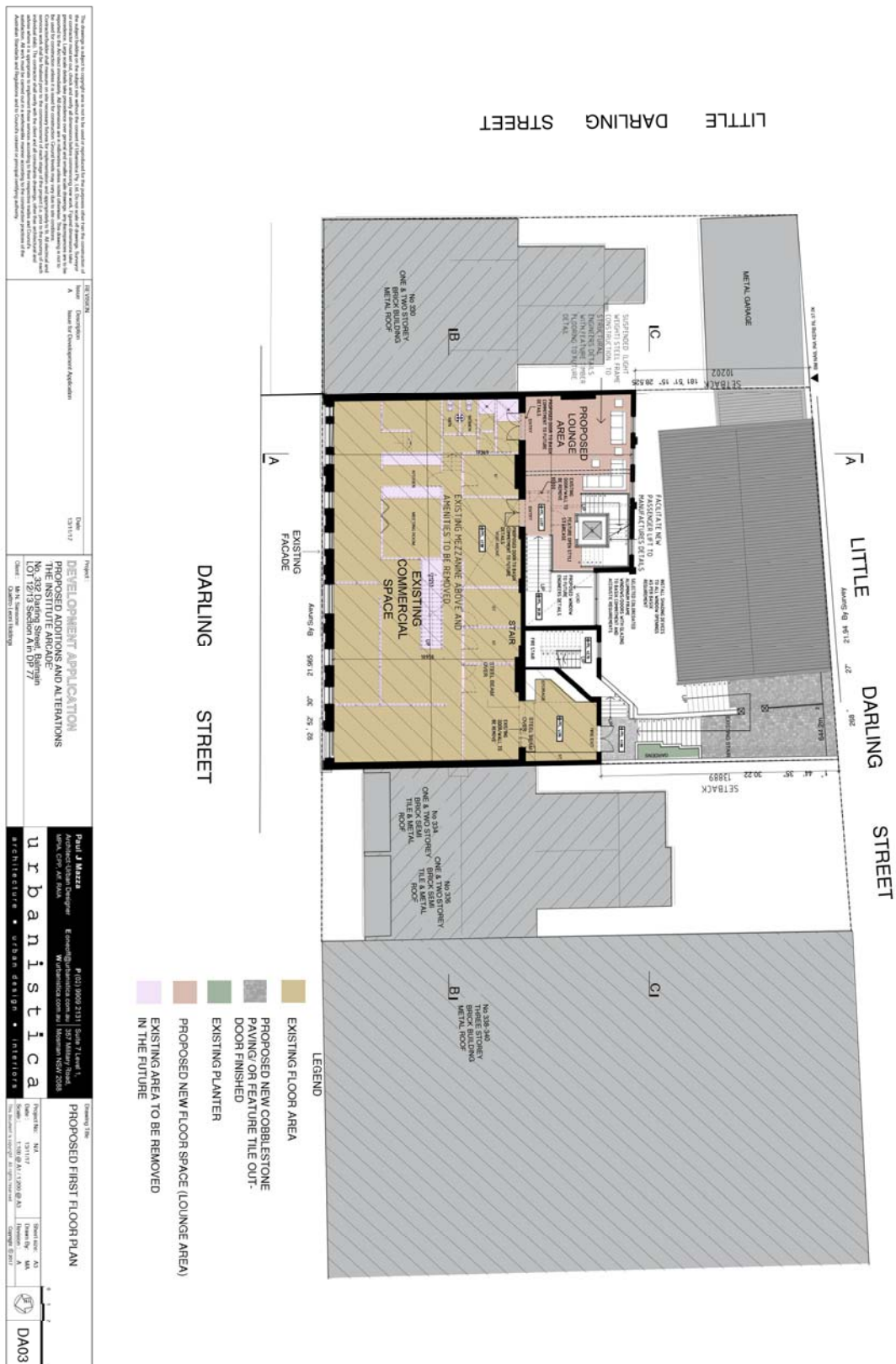


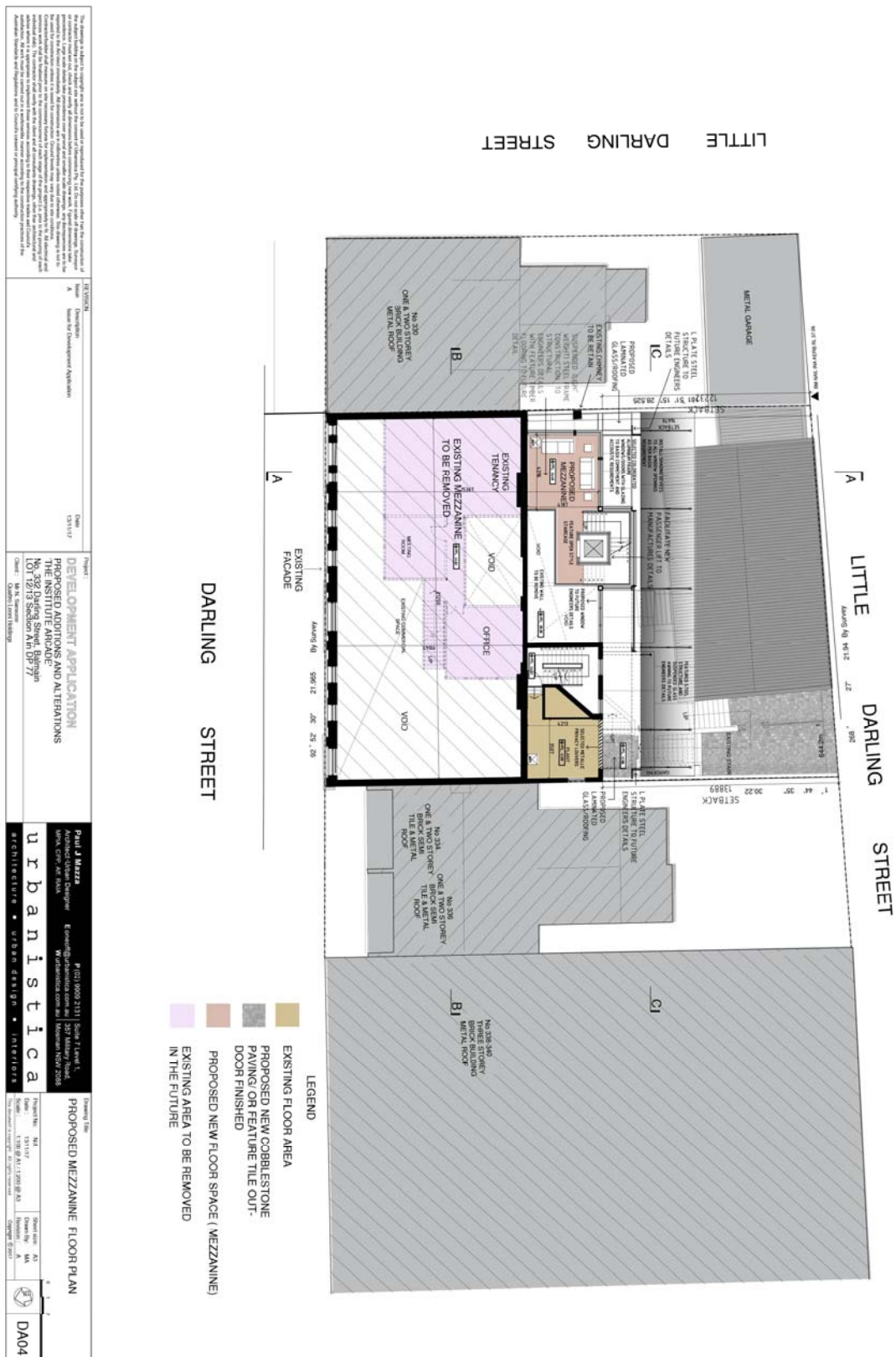




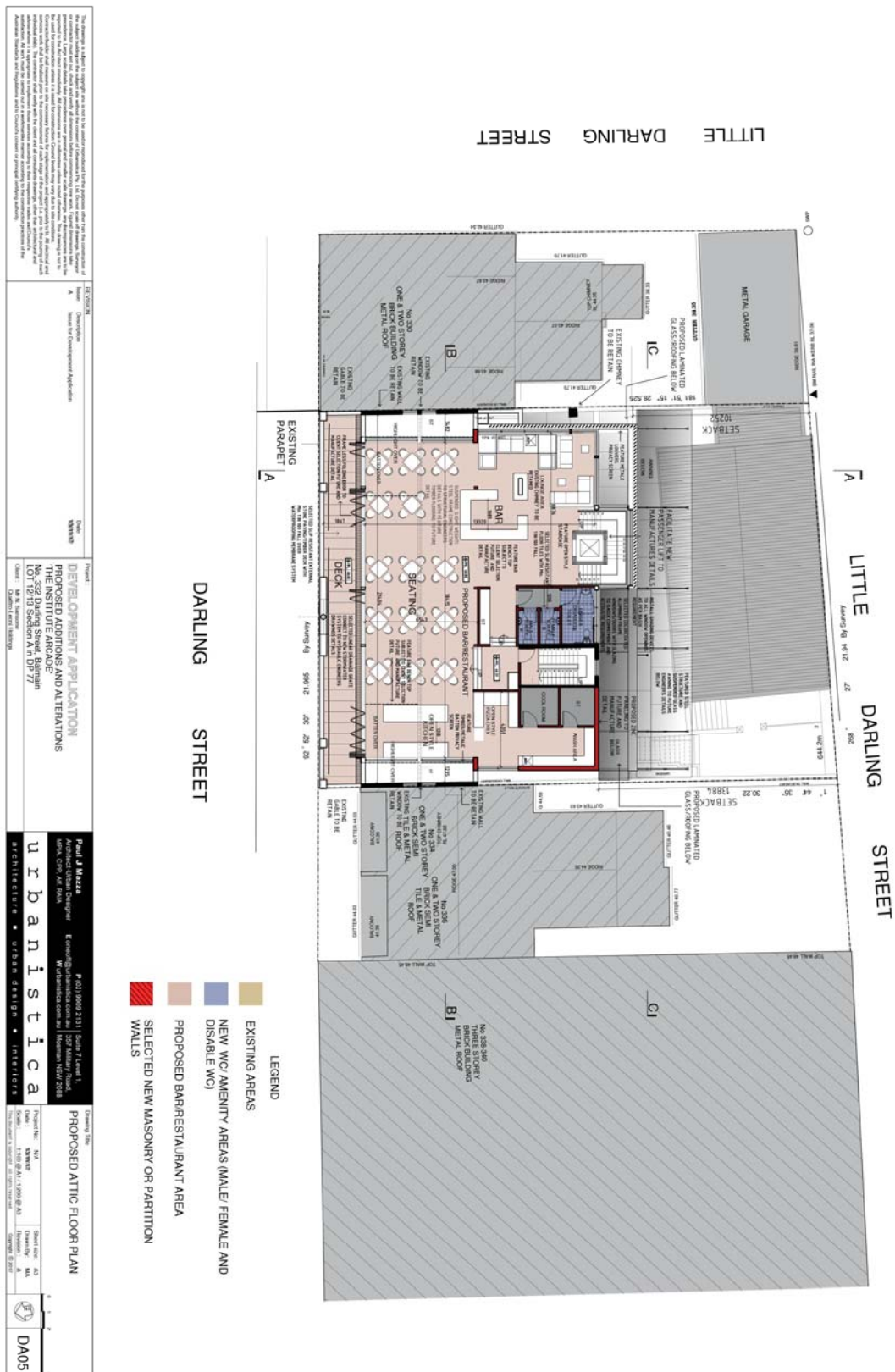




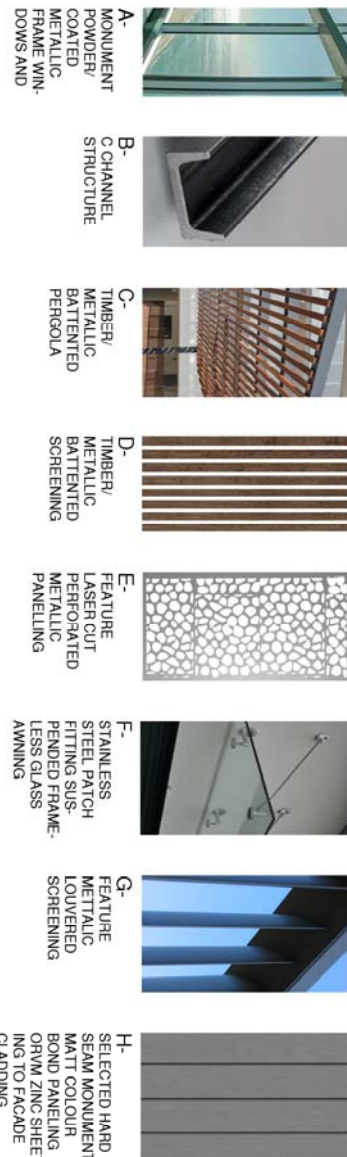




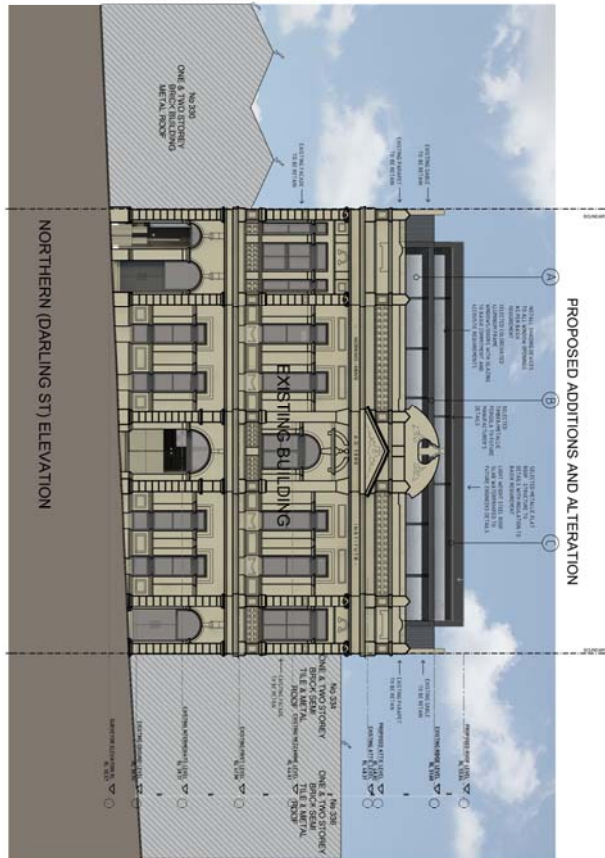








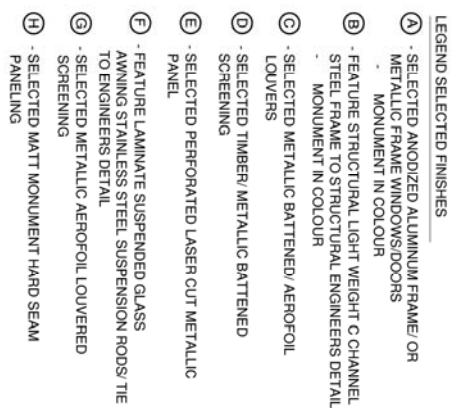
## PROPOSED ADDITIONS AND ALTERATION



#### LEGEND SELECTED FINISHES

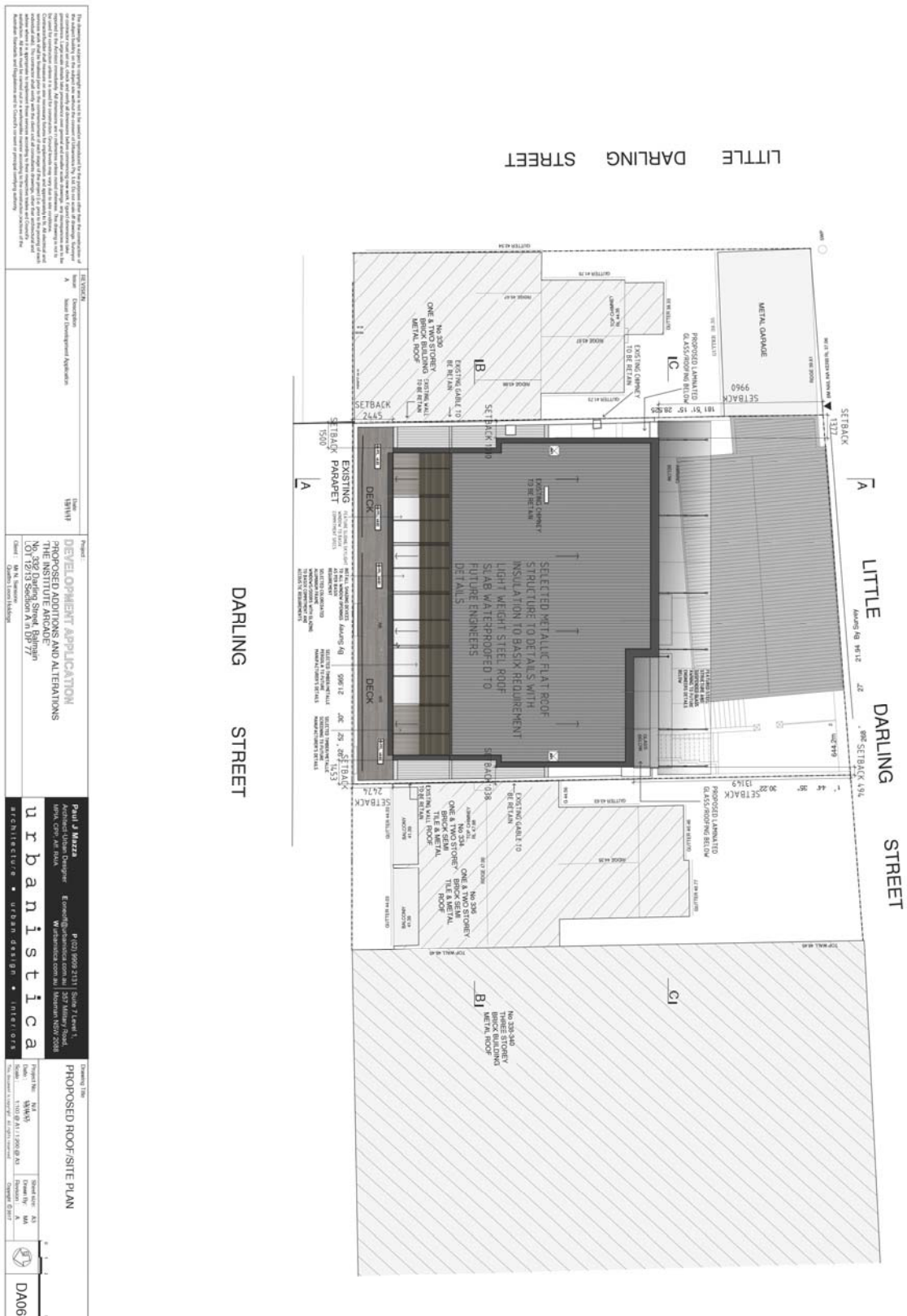
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- (B) - FEATURE STRUCTURAL LIGHT WEIGHT C CHANNEL STEEL FRAME TO STRUCTURAL ENGINEERS DETAIL MONUMENT IN COLOUR
- (C) - SELECTED METALLIC BATTENED AEROFOL LOUVERS
- (D) - SELECTED TIMBER/ METALLIC BATTENED SCREENING
- (E) - SELECTED PERFORATED LASER CUT METALLIC PANEL
- (F) - FEATURE LAMINATE SUSPENDED GLASS AINING STAINLESS STEEL SUSPENSION RODS THE TO ENGINEERS DETAIL
- (G) - SELECTED METALLIC AEROFOL LOUVERED SCREENING
- (H) - SELECTED MATT MONUMENT HARD SEAM PANELING

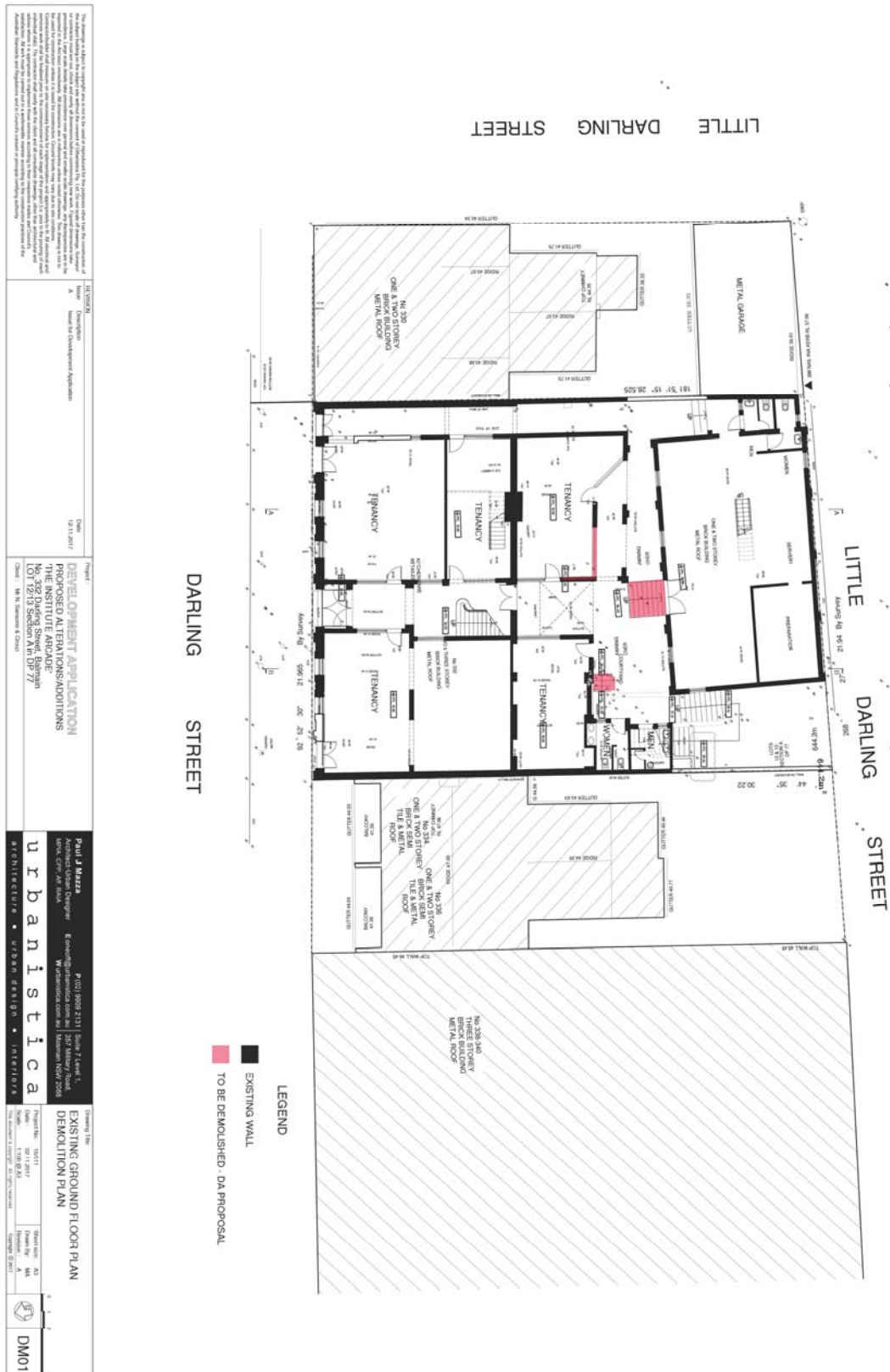
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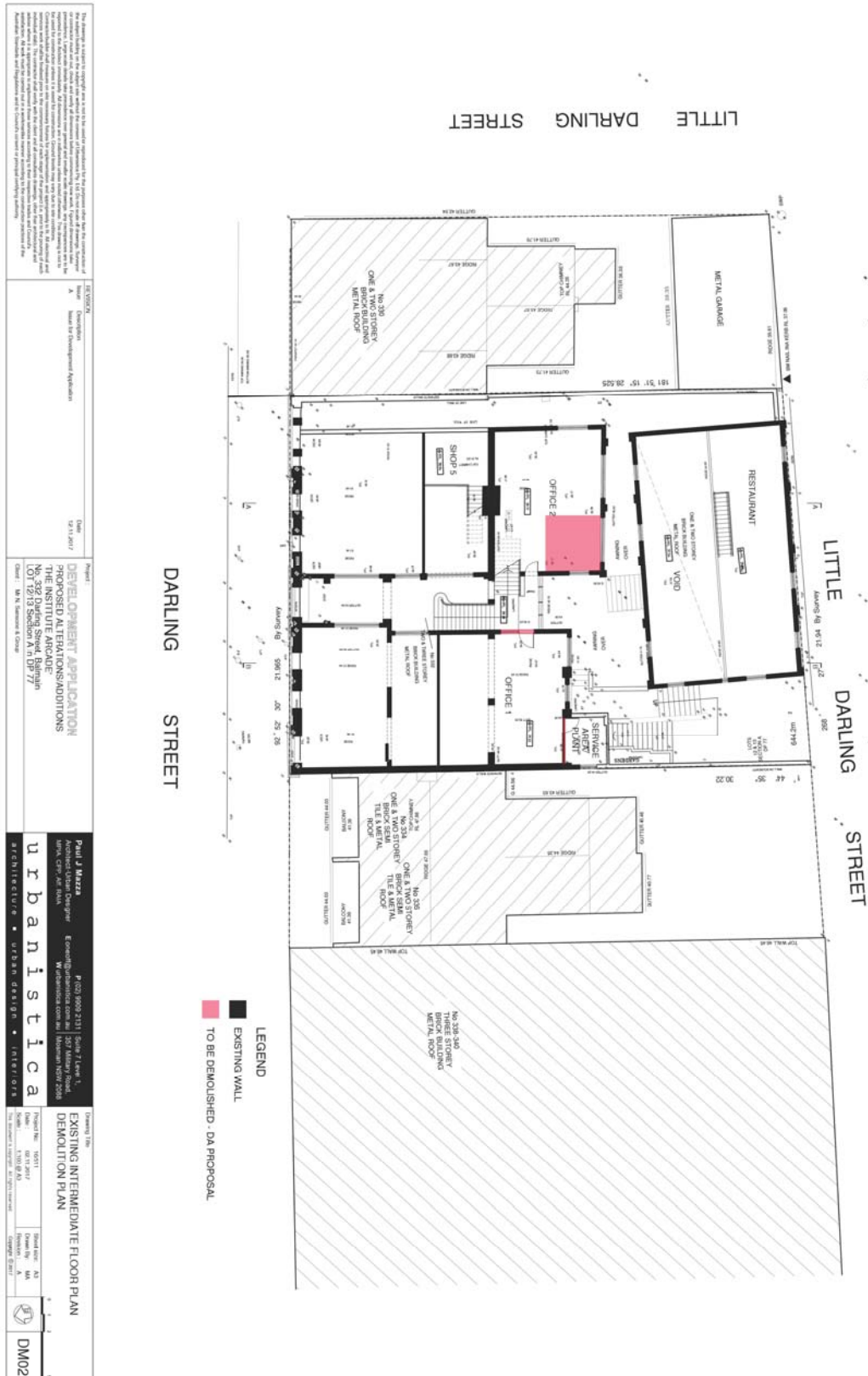
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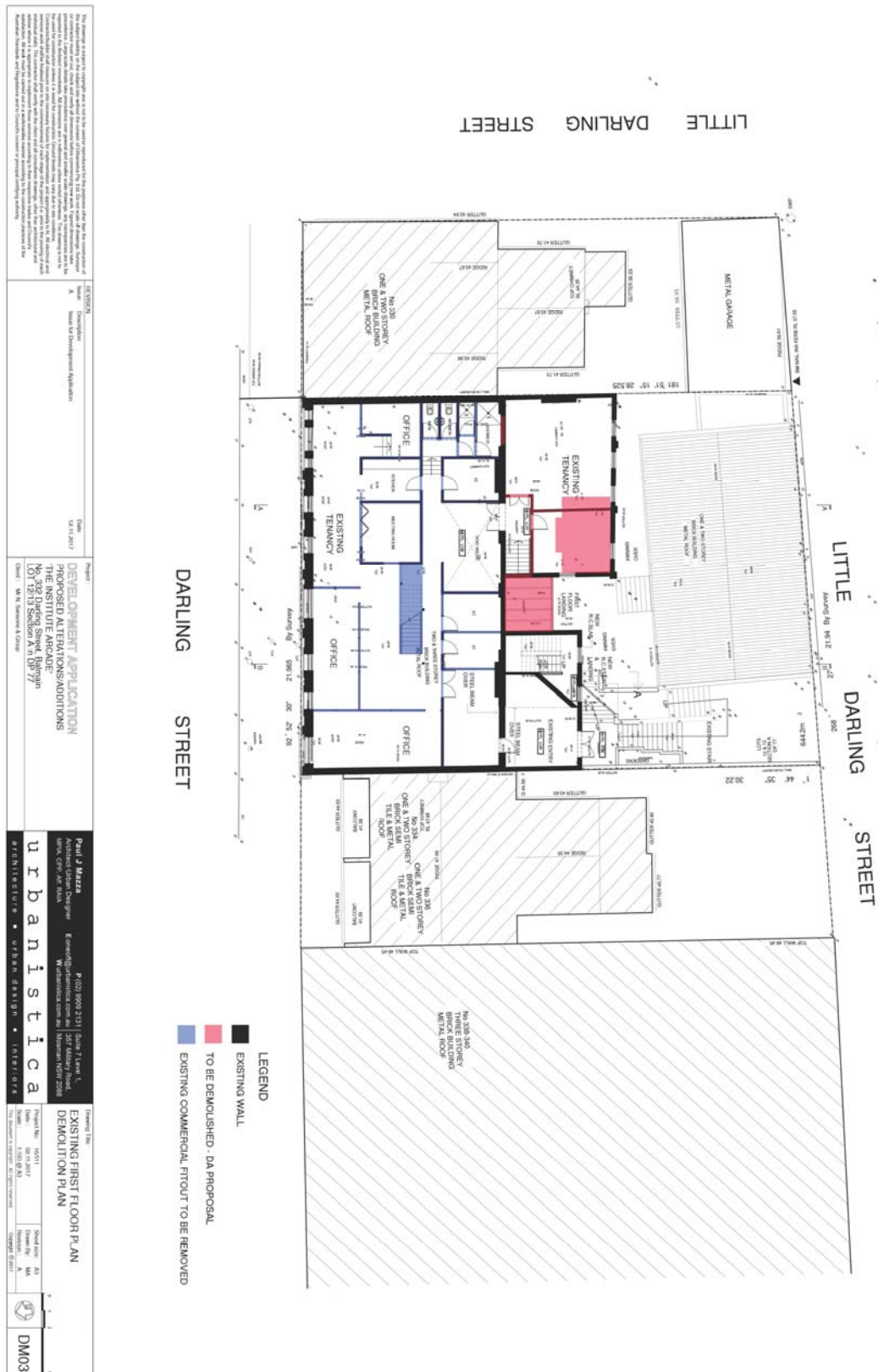
PAGE 268



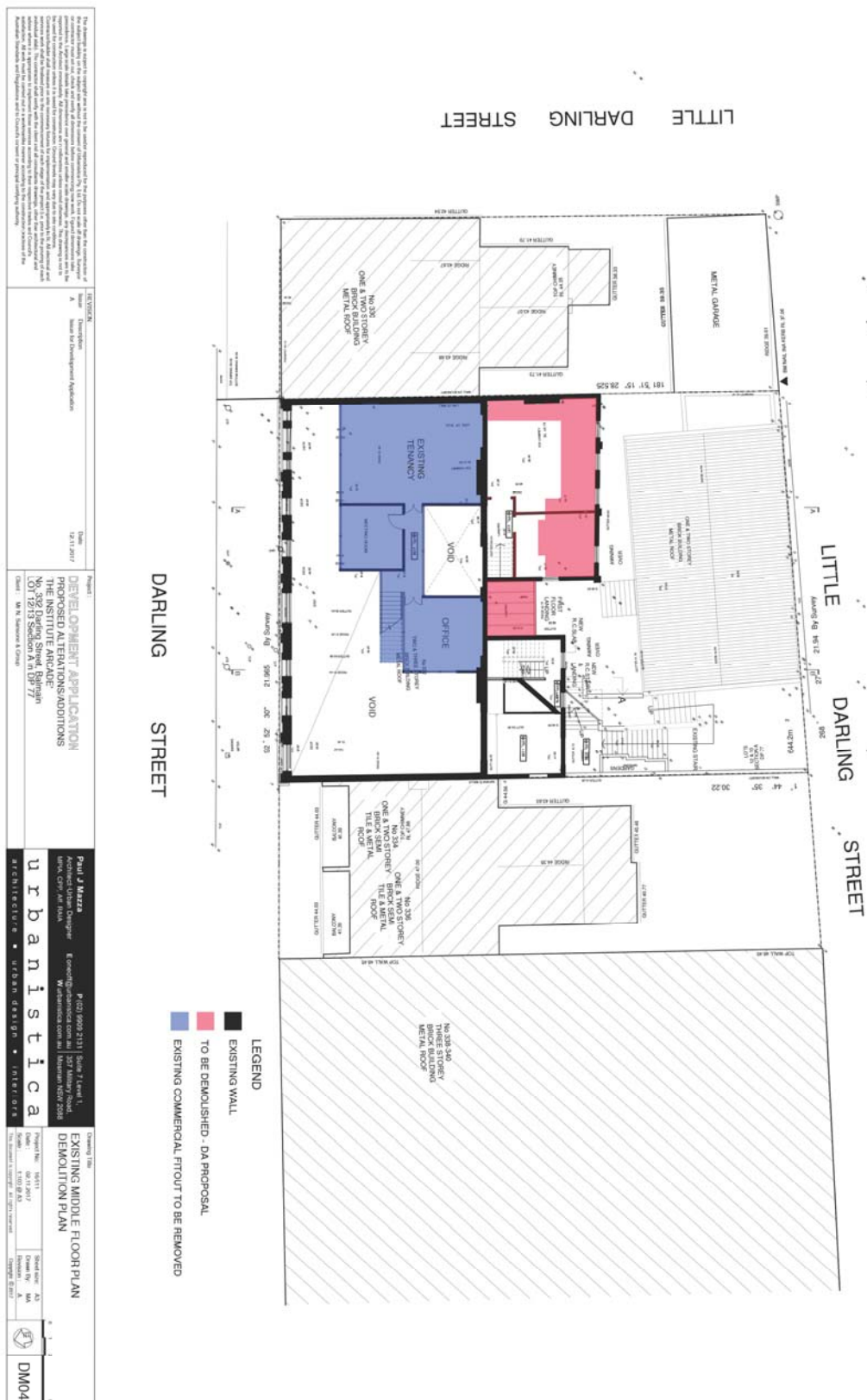




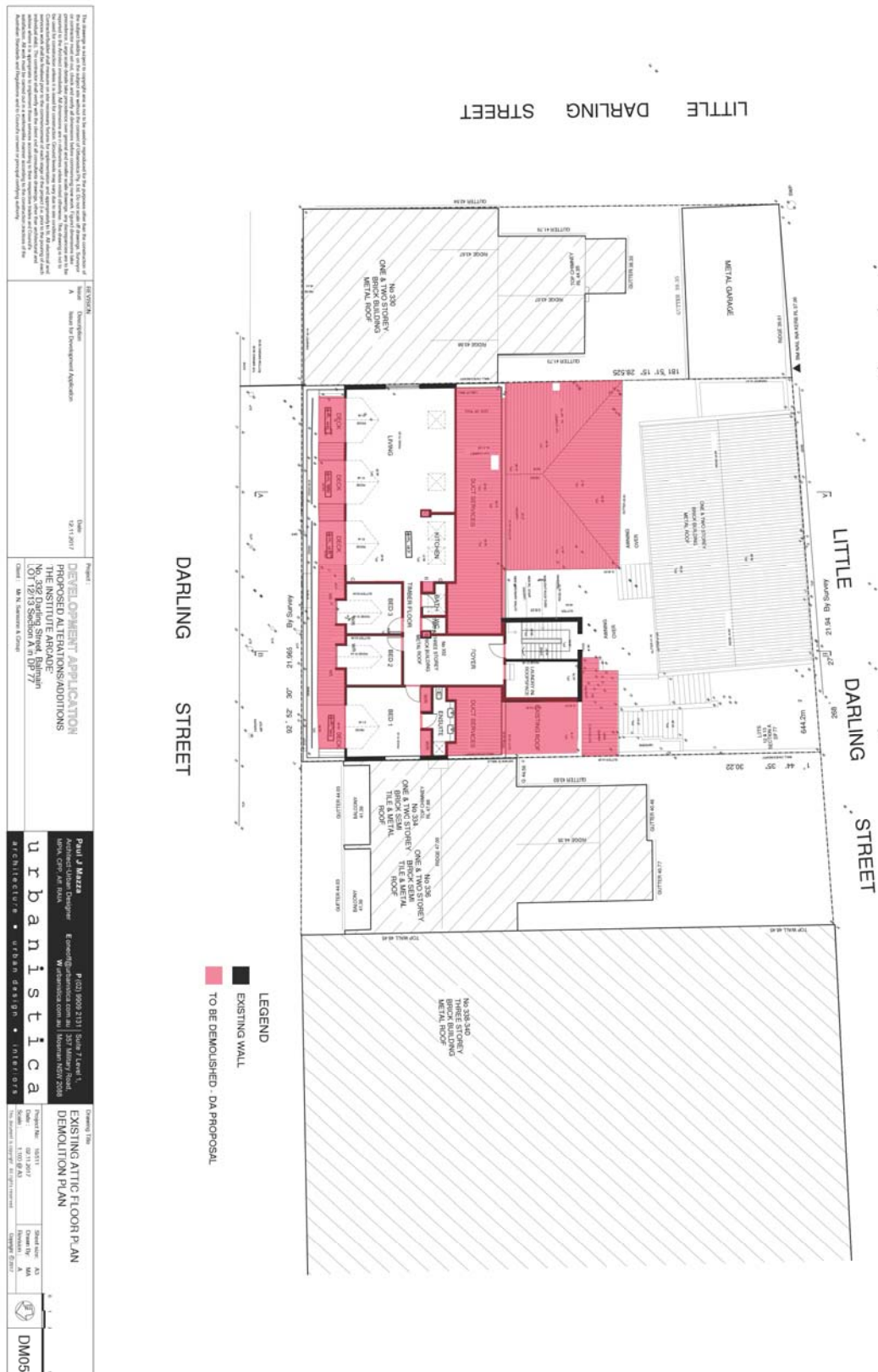


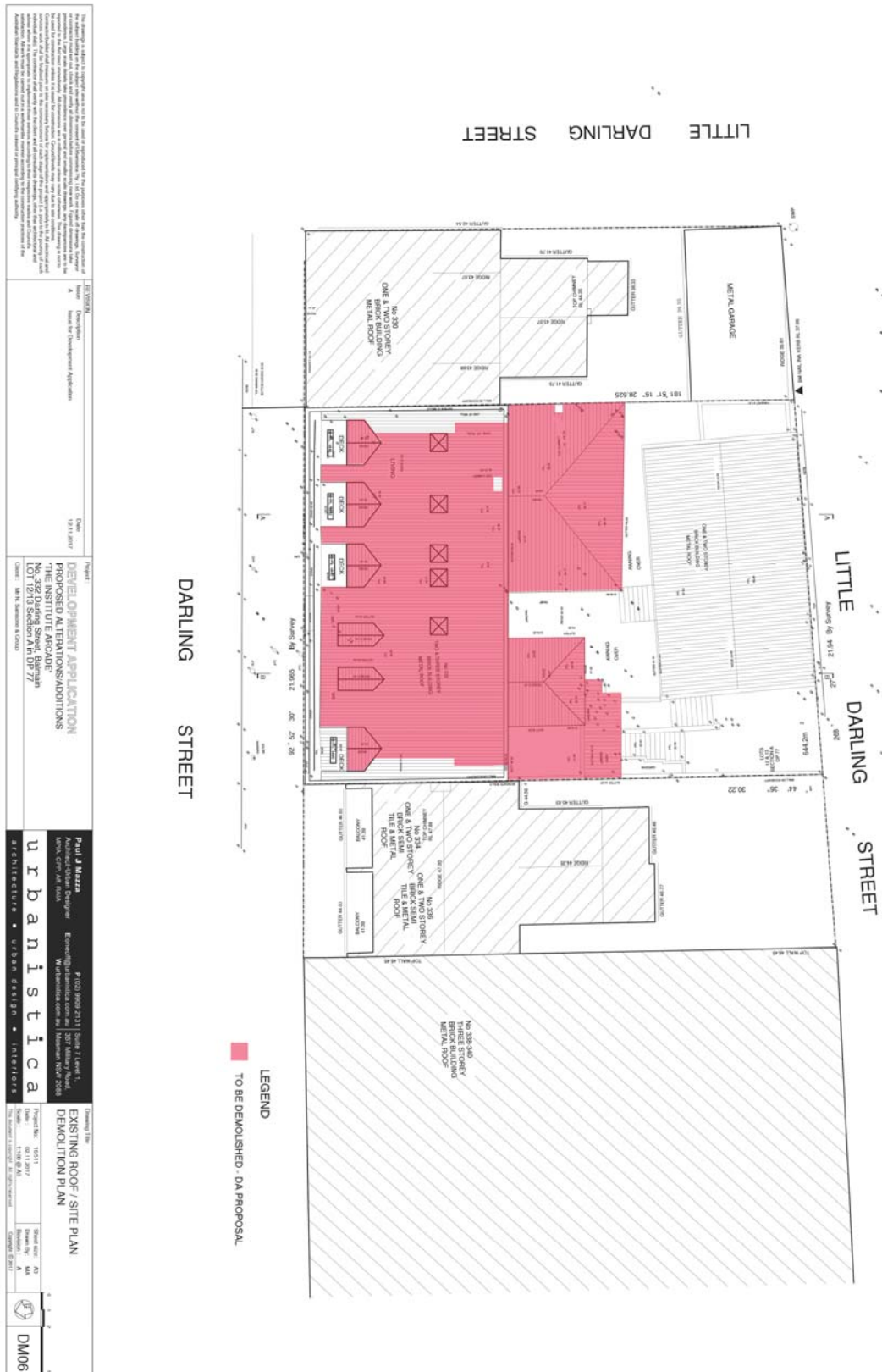












## Attachment C – Clause 4.6 Exceptions to Development Standard

**ETHOS  
URBAN**

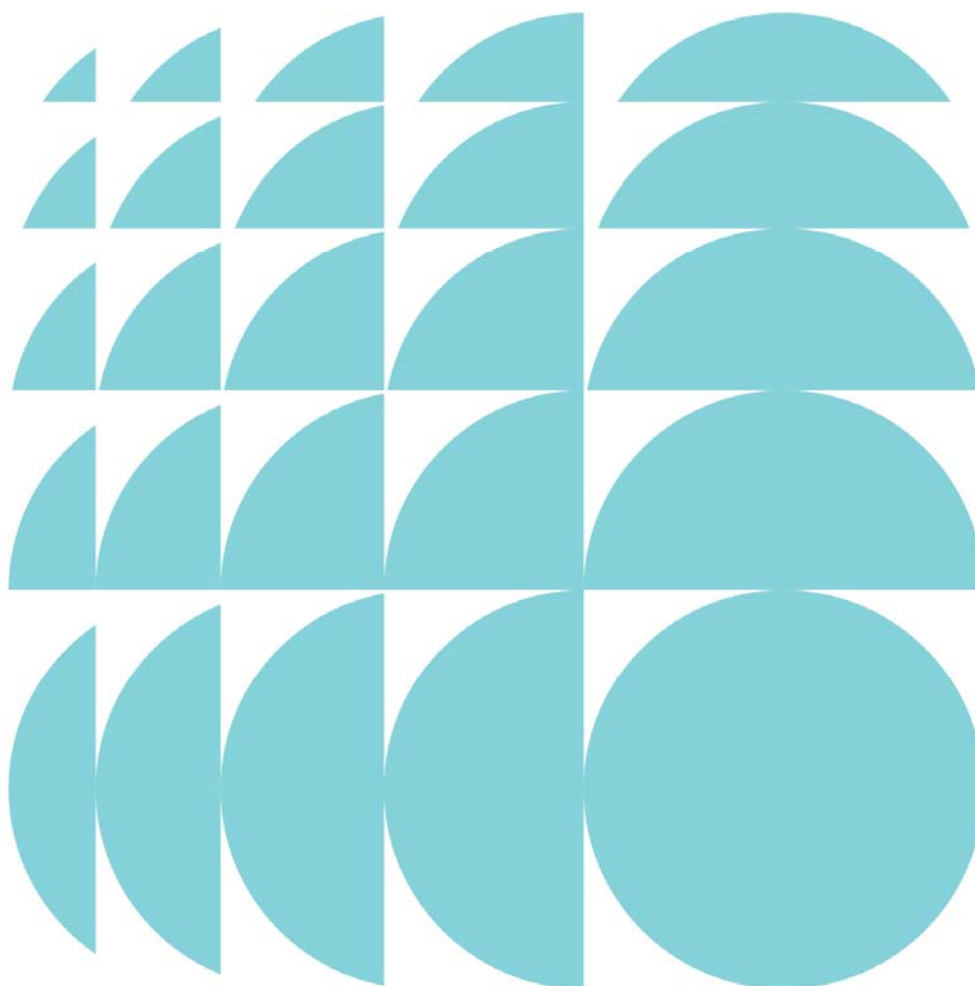
### **Clause 4.6 Variation**

332 Darling Street, Balmain

Alterations and additions to an existing heritage building

Submitted to Inner West Council  
On behalf of Quattro Leoni Holdings

20 December 2017 | 17309



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**CONTACT**

Clare Swan Director

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This document has been prepared by:

This document has been reviewed by:

James McBride

20/12/17

Clare Swan

20/12/17

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**VERSION NO.****DATE OF ISSUE****REVISION BY****APPROVED BY**

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Ethos Urban Pty Ltd  
ABN 13 615 087 931  
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173 Sussex Street, Sydney  
NSW 2000 t 61 2 9956 6952

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Ethos Urban

## Contents

1.0	Request to Vary a Development Standard	2
1.1	Development Standard to be Varied	2
1.2	Extent of the Variation Sought	3
1.3	Justification for Contravention of the Development Standard	3
1.4	Other Matters for Consideration	11
1.5	Summary	11

### Figures

Figure 1 – FSR Map	3
Figure 2 – Existing Front and Rear Elevation	6
Figure 3 – Proposed Front and Rear Elevation	6
Figure 4 – Photomontage from Darling Street	7
Figure 5 – Building Typologies	8
Figure 6 – Approved Elevation Plan for 2A Rowntree Street and Photo taken from the roof of 332 Darling Street.	8

### Tables

Table 1 – Existing and Proposed GFA/FSR	3
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## ETHOS URBAN

### 1.0 Request to Vary a Development Standard

Clause 4.6 of LEP 2013 allows Council to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

This clause 4.6 variation request:

- Relates to the development standard for maximum floor space ratio (FSR) under clause 4.4 of the LEP 2013;
- Should be read in conjunction with the Statement of Environmental Effects prepared by Ethos Urban

This clause 4.6 variation request demonstrates that compliance with the maximum floor space ratio (FSR) development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard.

This clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the FSR development standard, the proposed development:

- Achieves the objectives of Clause 4.4 of the LEP;
- Satisfies the objectives of the B2 Local Centre zone;
- Will result in a net reduction of GFA in the order of 19m<sup>2</sup> when compared to the existing GFA of the building;
- Will have negligible impact on the existing bulk and scale of the building.
- Will not negatively impact upon the heritage significance of the existing building and will result in the restoration of the original floor layout.
- Will not result in any adverse environmental impacts as a result of the variation to the maximum FSR; and
- Is considered to be in the public interest.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the LEP.

#### 1.1 Development Standard to be Varied

This clause 4.6 variation request seeks to justify contravention of the development standard set out in clause 4.4 of the LEP. Clause 4.4 of the Leichardt LEP is reproduced below in its entirety and an extract of the Floor Space Ratio Map, to which that clause applies, is reproduced in **Figure 1**.

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

*(a) to ensure that residential accommodation:*

- (i) is compatible with the desired future character of the area in relation to building bulk, form and scale, and*
- (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.*

*(Our emphasis)*

Smart People,  
People Smart

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Sydney NSW 2000

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13 615 087 931

332 Darling Street, Balmain | 20 December 2017



Figure 1 – FSR Map

Source: Leichardt LEP / Ethos Urban

## 1.2 Extent of the Variation Sought

The proposed development will comprise a total GFA of 1135m<sup>2</sup> which represents an FSR of 1.76:1:1 as detailed in **Table 1**. The proposed FSR represents a net reduction in GFA of approximately 19m<sup>2</sup> when compared to the existing GFA of the building. Whilst the proposed GFA is being reduced, the proposed FSR will exceed the maximum FSR development standard by 0.76:1 which equates to a variation of 76%.

Table 1 – Existing and Proposed GFA/FSR

Component	Existing	Proposed
Site Area	644.2m <sup>2</sup>	644.2m <sup>2</sup>
Gross Floor Area	1154m <sup>2</sup>	1135m <sup>2</sup>
Floor Space Ratio	1.79:1	1.76:1

It is noted that it is well established in case law that the extent of the numerical variation does not form part of the test required to be exercised under clause 4.6. Recent decisions in respect of *Micaul Holdings P/L v Randwick City Council* (55% exceedance of height and 20% exceedance of FSR) and *Moskorich v Waverley Council* (65% exceedance of FSR) reinforce this position.

## 1.3 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Leichardt LEP provides that:

### 4.6 Exceptions to development standards

...

(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



332 Darling Street, Balmain | 20 December 2017

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

Further, clause 4.6(4)(a) of the Leichardt LEP provides that:

- (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.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court and the NSW Court of Appeal in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827; and
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009.

The relevant matters contained in clause 4.6 of the Leichardt LEP, with respect to the FSR development standard, are each addressed below, including with regard to these decisions.

### **1.3.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

In *Wehbe v Pittwater Council* [2007] NSW LEC 827, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 (see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 at [61] and [62]).

The five methods outlined in *Wehbe* include:

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

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the first and third method.



### 1.3.2 The underlying objectives or purposes of the development standard

The objectives of the development standard are:

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

(a) *to ensure that residential accommodation:*

- (i) *is compatible with the desired future character of the area in relation to building bulk, form and scale, and*
- (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.**

**(our emphasis)**

The general underlying intent of the clause as it relates to non-residential development is to ensure that the bulk, form and scale should respect local character and is consistent with the desired future character of the area.

### 1.3.3 The objectives of the standard are achieved notwithstanding non-compliance with the standard

The proposed development will maintain an appropriate visual relationship between new development in the area and the existing character of the area, having regard to the compatibility of its bulk and scale with the neighbourhood, and its appropriate transition with existing development in the streetscape, as discussed below.

The existing locality including the visual catchment along Darling Street is generally characterised by commercial development which generally comprise of buildings that are two to three storeys in scale and have continuous street walls with parapet fronts and projecting awnings. Specifically:

- Darling Street is characterised predominately by two to three storey commercial buildings with varying architectural styles including both Victorian and Colonial buildings. Buildings generally align directly to the street boundary with active street frontages however the adjoining building to the west at 334-336 Darling Street is recessed and setback from Darling Street. Directly to the east at 328 Darling Street comprises a two-storey commercial building with a dominant parapet. The site to the immediate north on the opposite side of Darling Street and located on the corner of Church Street contains a four-storey commercial building constructed in the late 20<sup>th</sup> century.
- On the southern side of Little Darling Street comprise a mix of two to four storey terrace style houses which have frontage to Llewellyn Street.

In this regard, given the context of established built form, the proposal is not incompatible with the existing and desired character of the locality in relation to bulk and scale, for the reasons set out below.

First, 'compatible' does not mean the same. In *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 at paragraphs 22-30, Senior Commissioner Roseth stated:

*22 There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.*

Secondly, the proposed development generally reflects the height and form of the existing building. This is illustrated in **Figures 2 and 3**, which provide comparisons between the existing building and proposed development. Despite the marginal increase to building height (refer to the SEE for more detail), the proposal results in a reduction to the existing GFA of the site and will result in a bulk and scale which is similar to that of the existing building.

332 Darling Street, Balmain | 20 December 2017

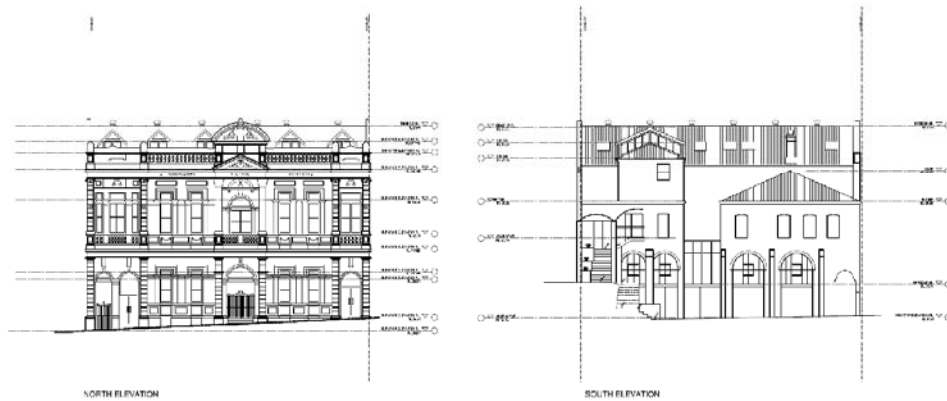


Figure 2 – Existing Front and Rear Elevation

Source: Urbanistica



Figure 3 – Proposed Front and Rear Elevation

Source: Urbanistica

The proposed addition will incorporate a simple roof form and will not interrupt a clear view of the skyline above the parapet when viewed from Darling Street, and will retain the integrity of the original elevation treatment and roof form as prescribed by the DCP. This has been achieved by adopting a setback from the parapet of the front façade which allows for the proposed addition to be recessed and setback so as to minimise the visual appearance from Darling Street.

Furthermore, the rooftop addition has also been offset from each boundary to preserve the wall heights and to minimise the visual appearance of the addition. The skillion roof form has been designed with a pitch that falls towards Little Darling Street. These measures are a recommendation of the Heritage Impact Statement to ensure the heritage façade and parapet remain a strong feature of the streetscape. **Figure 4** depicts a photomontage from the northern side of Darling Street which illustrates that the proposed addition will be imperceptibly visible from the streetscape. The partial incursion of the proposed roof form is considered to be acceptable given its minor nature.

332 Darling Street, Balmain | 20 December 2017



**Figure 4 – Photomontage from Darling Street**

Source: Urbanistica

Moreover, the rear elevation has been designed to minimise the apparent bulk and scale of the building when viewed from Little Darling Street to the rear. This is achieved by adopting an upper level setback that is consistent with the existing rear building line of the primary building. The bulk and scale of the proposed development to Little Darling Street will not be significantly altered when compared to the existing rear elevation for the following reasons:

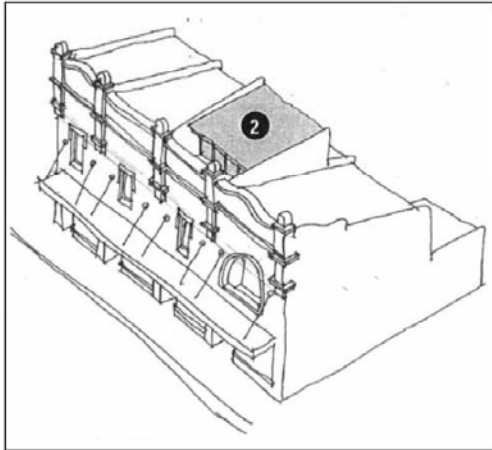
- The main building is positioned lower than Little Darling Street which minimises the perception of bulk and scale particularly given that the existing outbuilding will visually shield much of the rear elevation of the main building from Little Darling Street.
- The proposed rear building line at the upper levels is consistent with the rear building line of the existing building and will maintain appropriate separation to Little Darling Street.
- The proposed material and colour selection will integrate effectively to the existing building and will provide the appearance of a lightweight structure to ensure the proposal does not appear to be 'top heavy'.

Thirdly, the proposed development will not constitute an abrupt change in the scale of development in the streetscape which is characterised by two to four storey buildings. The proposed development will integrate with the existing built form established within the visual catchment of the site. Most notably, the following established buildings comprise of a built form and scale that will provide a transition to the proposed development:

- The existing building to the west at 340 Darling Street is a three storey building with a continual building wall height to the rear boundary of Little Darling Street. The rear interface of the building immediately adjoins Little Darling Street comprising of a three-storey built form interface with minimal articulation. The building provides a transition from the western side of Darling Street.
- The existing building to the north at 323A Darling Street is a four and part five storey building which provides a built form transition from the northern side of Darling Street.

The methodology to the design of the proposed rooftop addition is contemplated by the DCP and in line with the recommended design approach in Appendix B – Building Typologies as depicted in the DCP diagram in **Figure 5**.

332 Darling Street, Balmain | 20 December 2017



**Figure 5 –Building Typologies**

Source: Leichardt Development Control Plan

It is critical to note that the recommended design approach has been endorsed by Council in the recent development consent for 2A Rowntree Street, Balmain located approximately 150 metres to the north-west of the site. The consent allowed for a rooftop addition behind the façade parapet and a variation of 56% to the maximum floor space ratio standard. The form of this development is comparable to the proposed development albeit of a considerably larger scale. The approved street elevation plan and photo of the building taken from the subject site are depicted in **Figure 6**.



**Figure 6 – Approved Elevation Plan for 2A Rowntree Street and Photo taken from the roof of 332 Darling Street.**

Source: Ross Howieson Architects

The proposed built form and FSR therefore maintains an appropriate visual relationship between new development and the existing character of the area by providing an appropriate streetscape transition. In this respect, the proposed development is considered to be compatible with the desired character of the locality given it will not present as a three-storey development, particularly when viewed from Darling Street. Furthermore, the design approach is consistent with the recommended building typologies for rooftop additions as prescribed by the DCP, which further reinforces the compatibility of the proposed development with the desired character of the locality.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191*

332 Darling Street, Balmain | 20 December 2017

*'I have formed the considered opinion that most observers would not find the proposed development by virtue of its FSR offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment'.*

Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings.

#### **1.3.4 Conclusion on clause 4.6(3)(a)**

In the decision of Wehbe, the Chief Justice expressed the view that there are five different methods in which an objection to a development standard might be shown as unreasonable or unnecessary and is therefore well founded. Of relevance in this instance is the first method, which is:

1. *the objectives of the standard are achieved notwithstanding noncompliance with the standard;*

As detailed in the section above, the proposed development satisfies the floor space ratio objectives notwithstanding the proposed variation. The proposed development will facilitate development that will continue to achieve the objectives of the standard and will provide for a development that is compatible with the desired character of Balmain Village Sub Area. As the objectives of the development standard are met notwithstanding the breach, the first method is satisfied.

Having regard to the above, in our view it would be unreasonable and unnecessary to enforce strict compliance with the maximum floor space ratio development standard contained within Clause 4.4 of the LEP.

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

Clause 4.6(3)(b) of the LEP requires the departure from the development standard to be justified by demonstrating:

*that there are sufficient environmental planning grounds to justify contravening the development standard.*

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. There are sufficient environmental planning grounds to justify contravention of the floor space ratio development standard in this specific instance.

The proposed development provides the following environmental planning grounds to justify contravening the development standard:

- The proposed built form and scale is consistent with the local context and the acceptable form of buildings within the local area;
- The proposal will result in a net reduction of GFA in the order of 19m<sup>2</sup> when compared to the existing GFA of the building;
- The proposal will not negatively impact upon the heritage significance of the existing building and will result in the restoration of the original floor layout.
- The proposed variation of the development standard will not result in adverse overshadowing or undue impacts on the amenity of neighbouring residential properties to the south;
- The variation does not diminish the development potential or impact upon the orderly development of adjacent land;
- The development provides all necessary supporting facilities and infrastructure within the site; and
- The proposed development, notwithstanding the variation to the FSR will make a positive contribution to the vitality of the commercial strip along Darling Street.

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. In this instance,



332 Darling Street, Balmain | 20 December 2017

there are constraints that affect the site which justify the proposed variation to the development standard. These are detailed below.

- The existing building already exceeds the maximum floor space ratio applicable to the site. The proposed development will result in a net reduction to the overall GFA thereby reducing FSR.
- The existing building is an item of local heritage significance. The proposed development will enhance the significance of the heritage building through the restoration of a large part of the original internal layout.
- Compliance with the standard could never be achieved as it would result in an outcome that would detrimentally affect the heritage significance of the building and the economic viability of the site.

The proposed development and the technical non-compliance to FSR, will not adversely impact the heritage significance of the existing building, heritage items in the vicinity of the site and that of the conservation area in which it is located.

Furthermore, pursuant with the third method, the underlying purpose would be defeated or thwarted if compliance with the development standard was required. In order for the building to comply with the development standard of 1:1, the proposal would be required to remove 510m<sup>2</sup> of gross floor area which would detrimentally affect the heritage significance of the building through the removal of original building components and will therefore result in a building outcome that is incompatible with the existing built form context.

Sufficient site specific environmental planning grounds exist to justify the variation sought, including the preservation of the heritage façade and built form context which enables the proposed development and FSR, albeit a net reduction from the existing building, without adverse streetscape, residential amenity or heritage conservation consequences. Compliance with the objectives of the standard and the absence of environmental impact also give weight to the acceptability of the variation sought.

#### **1.3.6 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard**

##### **1.3.7 Consistency with objectives of the development standard**

The proposed development is consistent with the objectives of the maximum floor space ratio development standard, for the reasons discussed in this report.

##### **1.3.8 Consistency with objectives of the zone**

The proposed development is consistent with the objectives of the B2 Local Centre Zone, as demonstrated below.

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To 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 proposal in its entirety satisfies the B2 Local Centre zone objectives for the following reasons:

332 Darling Street, Balmain | 20 December 2017

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- The proposed variation to the floor space ratio, albeit a technical non-compliance, will ensure that the function of the building will predominately cater to retail, leisure and employment uses thereby providing a mix of compatible land uses commensurate with the zone objective.
- The proposed variation to the floor space ratio development standard will facilitate a development that will harness the locational attributes of the site to maximise public transport patronage and encourage walking and cycling.
- The proposed built form will not result in adverse overshadowing or undue impacts on the amenity of neighbouring residential properties to the south.
- The proposed development, notwithstanding the variation to the FSR will make a positive contribution to the vitality of the commercial strip along Darling Street and will reinforce the identity of the Balmain Village Sub Area as a local centre.

#### 1.4 Other Matters for Consideration

Clause 4.6(5) of the LEP requires the following additional matters to be considered.

(5) *In deciding whether to grant concurrence, the Secretary must consider:*

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

These matters are addressed in detail below.

##### 1.4.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation of the floor space ratio development standard does not raise any matter of significance for State or regional planning. It is the benefit of the State to maintain the existing building and its floorspace/form.

##### 1.4.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

As demonstrated above, there is no public benefit in maintaining the development standard in terms of State and regional planning objectives. As noted in the preceding sections, the floor space is a net reduction to the existing floor space of the building, and the proposed variation will provide a built form that is compatible to its context and would not give rise to any adverse environmental impacts.

##### 1.4.3 Clause 4.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.

To our knowledge here are no other matters that the Secretary is required to take into consideration when granting concurrence to this Clause 4.6 variation request.

#### 1.5 Summary

The assessment above demonstrates that compliance with the maximum floor space ratio development standard contained in clause 4.4 of the Leichardt LEP is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. The variation is a procedural requirement due to the technical non-compliance of the existing building relating to FSR. The proposal will result in a net reduction in the overall GFA of the site. In this respect, it is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the maximum floor space ratio development standard, the proposed development:



332 Darling Street, Balmain | 20 December 2017

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- the proposed flexible application of controls achieves better planning outcomes than would be achievable by strict adherence to the controls across the development site;
- it is in the public interest as the proposal is consistent with the applicable land use zones and development standards and retains/enhances a significant heritage building;
- the variation to floor space is a technical non-compliance and will result in the overall reduction of GFA when compared with the existing building. The SEE has found that the proposal is compatible with the scale and character of the area. Nor will it result in additional adverse amenity or environmental impacts;
- the non-compliance with the development standard does not raise any matters of State and regional planning significance other than to preserve and enhance heritage values;
- there is no public benefit in maintaining the FSR development standard adopted by the environmental planning instrument for this site and indeed it would be against the public interest to remove significant portions of the building to comply with the 1:1 FSR standard; and
- legal precedent has been addressed as part of this clause 4.6 variation request, and concludes the unique circumstances of this Site and the development proposal are such that they and this justification cannot be replicated.

For the reasons set out in this written request, the proposed development should be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the LEP.

NOTES