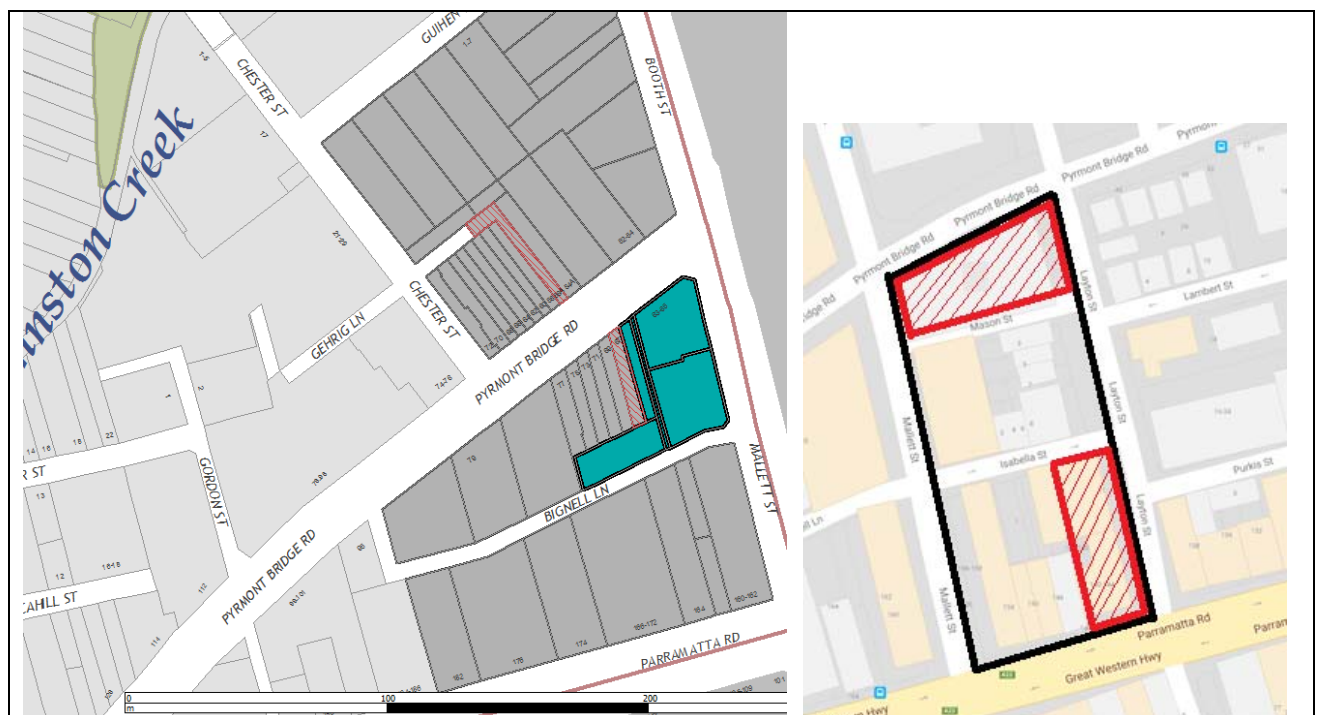




# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	D/2017/637
<b>Address</b>	63-65 Pymont Bridge Road, Annandale
<b>Proposal</b>	Alterations and additions to existing warehouse building and change of use to fitness centre with hours of operation of 4:30am-10:00pm Monday to Friday, 5:30am to 7:00pm Saturday, and 7:00am-1:00pm Sunday.
<b>Date of Lodgement</b>	5 December 2017
<b>Applicant</b>	M Wood
<b>Owner</b>	Wilga St Properties Pty Ltd
<b>Number of Submissions</b>	Six letters of support and four objections
<b>Value of works</b>	\$2.25 million
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation exceeds officer delegation
<b>Main Issues</b>	<ul style="list-style-type: none"> <li>• Car parking</li> <li>• Interface Amenity</li> <li>• FSR non-compliance</li> </ul>
<b>Recommendation</b>	Deferred Commencement Consent



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

Note: Due to scale of map, not all objectors could be shown.

## 1. Executive Summary

This report is an assessment of an application submitted to Council for alterations and additions to an existing warehouse building and change of use to a fitness centre with hours of operation of 4:30am-10:00pm Monday to Friday, 5:30am-7:00pm Saturday, and 7:00am-1:00pm Sunday at 63-65 Pyrmont Bridge Road, Annandale. The application was notified to surrounding properties and six letters of support and four objections were received.

The main issues that have arisen from the application include:

- Car parking
- Interface Amenity
- FSR non-compliance

The application was supported by a Noise Impact Assessment Report and a Traffic Impact Assessment Report which concluded that premises can operate without causing unacceptable impacts on the surrounding area.

While varying from the maximum FSR development standard applying to the site, the additional Gross Floor Area (GFA) is contained within the existing building envelope and the applicant has submitted a Clause 4.6 written request which is considered to be well founded and worthy of support.

Given the conclusions of the Traffic Impact Assessment Report are reliant on the gross floor area (GFA) of the premises being restricted to 2,911sqm, the application is recommended for approval by way of Deferred Commencement Consent with an appropriate condition that ensures the GFA of the approved development does not exceed 2,911sqm.

## 2. Proposal

The proposal involves internal alterations and additions to the existing building to accommodate the relocated fitness centre. The works will involve:

- Construction of an internal floor at Level 1;
- Construction of an internal mezzanine floor at Level 2;
- A total of 46 car parking spaces consisting of:
  - Retention of 10 car parking spaces located on the existing Lower Ground car park;
  - Construction of an additional car parking area consisting of 36 car parking spaces on Ground Floor;
- A total of 46 bicycle parking spaces
- A total of 4 motorcycle parking spaces
- Vehicular access consisting of:
  - Lower Ground Floor via the two existing driveway accesses on Bignell Lane
  - Ground Floor access via Mallett Street (Left Turn Entry Only) and Bignell Lane (Egress Only).

The application seeks consent for operating hours as follows:

- 4.30am - 10pm Monday to Friday

- 5.30am - 7pm Saturday
- 7am - 1 pm Sunday

The occupant of the proposed development will be Camperdown Fitness (which is currently operating at 166-172 Parramatta Road) given their existing site is being acquired by RMS as part of the WestConnex project.

The applicant submitted a Plan of Management as part of the subject development application which indicates that there will be up to 10 staff on the premises at any one time and that the number of patrons will vary where there may be occasions when 100 persons are present.

### 3. Site Description

The property is located on the corner of Pymont Bridge Road and Mallett Street, Annandale. The property comprises:

- Lot 1 in Deposited Plan 135205
- Lot 1 in Deposited Plan 126586
- Lot 1 in Deposited Plan 719887
- Lot 7 in Deposited Plan 211235
- Lot 1 in Deposited Plan 961083

The site has an area of 2,109.7sqm and frontages to Pymont Bridge Road of about 30.5m and to Mallett Street of about 55m. Vehicular access to the rear of the site is available from Bignell Lane.

The existing structure on the site comprises two buildings:

- A large building with frontage to Pymont Bridge Road, Mallett Street and Bignell Lane with an internal height of 11.5m from ground level to ridge line.
- A smaller 2 storey warehouse facing Bignell Lane.

The existing buildings have been used for various bulky goods retailing purposes (bathroom supplies, household furniture) over the years with the last approvals were granted in 1989 for a warehouse/showroom. There is no record of any recent development consent for the building.

The surrounding development along Pymont Bridge Road is a mix of large industrial and commercial buildings and some dwellings. There are groups of terrace houses at 67-77 and 54-72 Pymont Bridge Road. The subject site and surrounding sites are zoned IN2 Light Industrial and the adjoining dwellings are relying on existing use rights.

There are two x 5 storey warehouse buildings on the opposite side of Mallett Street that have been converted to residential units. The land use to the rear of the site along Bignell Lane is commercial.

## 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
BA 89/173	Details of firewall to Mezzanine/showroom, additional exits and fire upgrading in connection with alterations and additions to existing warehouse premises consisting of the construction of two (2) mezzanine levels, car parking area, loading bay, workshops and other internal modifications and alterations.	Approved 28.3.89
BA 89/689	Erection of an awning over Council's footway to entrance area and decorative brickwork to front facade of a commercial and warehouse building.	Approved 9.10.89

#### Surrounding properties

Application	Proposal	Decision & Date
D/2000/233	<u>67 Pyrmont Bridge Road</u> Ground and first floor alterations and additions to the rear of existing dwelling.	04-Oct-2000

### 4(b) Application history

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

Date	Discussion / Letter/ Additional Information
6 February 2018	Sent request for additional information in relation to acoustic impacts to adjoining residential properties
19 February 2018	Sent request for additional information in relation to flooding and parking
7 March 2018	Additional information provided.

The amended design includes the provision of additional parking at ground floor level (and thereby reduces the floor area available to be used as part of the gym) which is considered to result in a lesser development to the development originally notified and therefore the amended design is not required to be notified.

## 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 (Infrastructure) 2007
- State Environmental Planning Policy (State and Regional Development) 2011
- 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) State Environmental Planning Policy No 55—Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. LDCP 2013 provides controls and guidelines for remediation works. SEPP 55 requires that remediation works must be carried out in accordance with a Remediation Action Plan (RAP) as approved by the consent authority and any guidelines enforced under the Contaminated Land Management Act 1997.

The site has not been used in the past for activities which could have potentially contaminated the site. It is considered that the site will not require remediation in accordance with SEPP 55.

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

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

- Clause 1.2 – Aims of the Plan
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.7 – Demolition Requires Development Consent
- Clause 4.4 – Floor Space Ratio
- Clause 4.4A – Floor Space Incentives for active street frontages
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards
- Clause 6.1 – Acid Sulphate Soils
- Clause 6.2 – Earthworks
- Clause 6.3 – Flood Planning
- Clause 6.4 – Stormwater management

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

Standard (maximum)	Proposal	% of non compliance	Compliances
<b>Floor Space Ratio</b> Required: 1:1	1.42:1 2,911sqm	42%	No

The following provides further discussion of the relevant issues:

#### Clause 4.4 – Floor Space Ratio

It should be noted that the amended traffic report referenced a gross floor area (GFA) of 2,911sqm which is different to that calculated by the assessing officer at approximately 3,140sqm. To ensure that GFA of the proposal does not exceed 2,911sqm, a deferred commencement condition is recommended that requires the proposal to be amended to have a maximum gross floor area of 2,911sqm and this is to be achieved by reducing the storage area at the mezzanine level.

#### Clause 4.6 Exceptions to Development Standards

The proposal results in a breach of the following development standards:

- Clause 4.4 – Floor Space Ratio (1:1)

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: The formal request to vary the abovementioned development standard claim that these objectives are satisfied despite the numerical non-compliance.

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

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

Comment: The applicant has submitted a request for an exception to the maximum FSR standard which contains the following justification for the proposed breach:

- *The additional floor area is contained within the existing building which is a building that is characteristic of this light industrial zone.*
- *Adequate provision is made for off-street parking as demonstrated in the Traffic and Parking report.*

- *There are several other large non-residential buildings nearby that also have an FSR that exceeds 1:1. These large buildings have established the industrial character of the area.*
  - *Many other large warehouse buildings have been converted to self-storage purposes which is a very passive land use that does not create employment or local commercial character. A fitness centre is one of the few types of activities that is appropriate for an industrial area but still serves the local community.*
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 Director-General has been obtained.*

Comment: The justification provided in the applicant's written request is considered to be well founded and worthy of support. It is assessed that subject to the imposition of appropriate conditions, the proposal will not result in detrimental impacts and can satisfy the objectives of the development standard as demonstrated below:

- The building remains compatible with its immediate context in relation to building bulk, form and scale as the additional floor area is contained within the existing building envelope;
- Subject to conditions to reduce the GFA to a maximum of 2,911sqm by reducing the mezzanine storage area, the proposal will provide adequate on-street parking for the proposed use;
- Subject to conditions, the proposal will comply with the relevant noise criteria;
- Subject to conditions, the proposal will not result in any adverse amenity impacts to the adjoining properties.

The contravention of the development standard does not raise any matter of significance for Statement and Regional Environmental Planning and there is no public benefit in maintaining strict compliance with the standard.

### 5(b) Draft Environmental Planning Instruments

There are no relevant Draft Environmental Planning Instruments.

### 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
Part A: Introductions	



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	Yes
B3.2 Events and Activities in the Public Domain (Special Events)	N/A
<b>Part C</b>	
C1.0 General Provisions	Yes
C1.1 Site and Context Analysis	Yes
C1.2 Demolition	N/A
C1.3 Alterations and additions	Yes
C1.4 Heritage Conservation Areas and Heritage Items	N/A
C1.5 Corner Sites	Yes
C1.6 Subdivision	N/A
C1.7 Site Facilities	Yes
C1.8 Contamination	Yes
C1.9 Safety by Design	Yes
C1.10 Equity of Access and Mobility	Yes
C1.11 Parking	Yes
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, no signage proposed as part of this application
C1.16 Structures in or over the Public Domain: Balconies, Verandahs and Awnings	N/A
C1.17 Minor Architectural Details	Yes
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	
C2.2.1.8 Camperdown Distinctive Neighbourhood	Yes
<b>Part C: Place – Section 3 – Residential Provisions</b>	
C3.1 Residential General Provisions	N/A
C3.2 Site Layout and Building Design	N/A
C3.3 Elevation and Materials	N/A
C3.4 Dormer Windows	N/A
C3.5 Front Gardens and Dwelling Entries	N/A
C3.6 Fences	N/A
C3.7 Environmental Performance	N/A
C3.8 Private Open Space	N/A
C3.9 Solar Access	N/A
C3.10 Views	N/A
C3.11 Visual Privacy	N/A
C3.12 Acoustic Privacy	N/A
C3.13 Conversion of Existing Non-Residential Buildings	N/A
C3.14 Adaptable Housing	N/A



<b>Part C: Place – Section 4 – Non-Residential Provisions</b>	
C4.1 Objectives for Non-Residential Zones	Yes
C4.2 Site Layout and Building Design	Yes
C4.3 Ecologically Sustainable Development	N/A
C4.4 Elevation and Materials	Yes
C4.5 Interface Amenity	Yes
C4.6 Shopfronts	Yes
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 and Small Bars	N/A
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	Yes
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	Yes
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	Yes
E1.1.5 Foreshore Risk Management Report	
E1.2 Water Management	Yes
E1.2.1 Water Conservation	Yes
E1.2.2 Managing Stormwater within the Site	Yes
E1.2.3 On-Site Detention of Stormwater	N/A
E1.2.4 Stormwater Treatment	N/A
E1.2.5 Water Disposal	Yes
E1.2.6 Building in the vicinity of a Public Drainage System	N/A
E1.2.7 Wastewater Management	N/A
E1.3 Hazard Management	Yes
E1.3.1 Flood Risk Management	Yes
E1.3.2 Foreshore Risk Management	N/A

<b>Part F: Food</b>	
Section 1 – Food	
F1.1 Food Production	N/A
F1.1.3 Community Gardens	N/A
<b>Part G: Site Specific Controls</b>	
Old Ampol land, Robert Street	N/A
Jane Street, Balmain	N/A
Old Balmain Power Station	N/A
Wharf Road Birchgrove	N/A
Anka Site – No 118-124 Terry Street Rozelle	N/A
233 and 233A Johnston Street Annandale	N/A

The following provides a discussion of the relevant issues:

#### C1.11 Parking

A Traffic Impact Assessment (TIA) prepared by Traffix Traffic & Transport Planners dated 4 December 2017 was submitted with the development application. The TIA was referred to Council's Engineering Section who provided the following comments:

- The number of parking spaces provided on site is not sufficient for the floor space area proposed. The Traffic Impact Assessment prepared by Traffix Traffic & Transport Planners dated 4 December 2017 indicates that number of spaces required has been calculated based on unchanged demand from the existing gym currently operating at smaller site on Parramatta Road.*

*It is noted that additional parking spaces have been provided above the current parking demand; however this would not fully address the parking shortfall if the proposed floor space was to be fully utilised, in accordance with the parking generation rates outlined in the Roads and Maritime Services Guide to Traffic Generating Developments.*

*The proposed floor area should be reduced, such that the potential parking demand is generally more consistent with the number of parking spaces that be accommodated on site.*

*Where there is any proposed shortfall in parking, the Traffic Impact Assessment Report must be amended to demonstrate that there is sufficient availability of on-street parking to accommodate the additional parking demand.*

*The report must be supported by a mode-split survey of existing patrons to the current gym and a Parking Occupancy Survey of the surrounding road network. The Survey must be undertaken at hourly intervals between 4am and 11pm on two weekdays (including a Friday) and between 5am and 8pm on a Saturday outside school holidays, and must include the following areas:*

- Pyrmont Bridge Road, between Gordon Street and Mallet Street*
- Pyrmont Bridge Road, between Mallet Street and Layton Street*
- Mallet Street, between Parramatta Road and Pyrmont Bridge Road*
- Mallet Street, between Pyrmont Bridge Road and Guihen Street*
- Chester Street*

- *Bignell Lane*
- *Mason Street*

2. *The design of the access and car parking facilities must comply with AS/NZS 2890.1: 2004 Parking Facilities Part 1: Off- street car parking, AS/NZS 2890.6-2009 Off-street parking for people with disabilities and AS 2890.3-1993 Parking Facilities - Bicycle parking facilities.*

*In this regard, the existing driveway access at the intersection of Bignell Lane and Mallet Street is not suitable for the proposed intensified use of the site, as there is limited manoeuvrability and restricted sightlines to pedestrians and vehicles. Similarly, the existing opening to Mallet Street is not considered a suitable entry or exit point as there are insufficient sightlines to pedestrians to provide for safe exit, and will likely to create queuing within the northbound and southbound lanes of Mallet Street if it was to be used as the primary site entry.*

*The existing openings cannot be suitably modified to achieve compliance due to the absence of a sightline splay within the building fabric and supports. The entry should be relocated / amended to provide all access via a dual-width opening to Bignell Lane, generally in the location of Parking Spaces 19 and 20, with the existing openings to be closed and amended to provide additional internal parking.*

*The design must be supported by swept path diagrams within the proposed access and adjacent laneway. The plan must be drawn at a 1:100 scale, demonstrating that vehicle manoeuvrability for entry and exit to the customer carpark complies with the AS/NZS 2890.1:2004. The plan must include any existing on street parking spaces.*

*It must be demonstrated that all parking spaces within the existing Lower Ground Floor Carpark comply with the current Australian Standards above. It is noted that the two parking at western wall do not appear to comply with regards to width, and would conflict with the door to the Emergency Exit adjacent. These spaces should be limited to a single space only.*

A request for additional information was sent to the applicant and in response to the issues raised above, the proposal was amended to provide additional parking area at ground floor level (thereby reducing the area to be used for the gym) and a response to the Inner West Council Request for Information prepared by Traffix dated 6 March was submitted for assessment.

The proposed floor area of the gym has been reduced thereby reducing the number of associated parking spaces required.

Though the total number of parking spaces remains short of the RMS Guide to Traffic Generating Developments for Gyms (3 spaces per 100m<sup>2</sup>), the revised proposal provides a parking rate that is consistent with the existing approval for this business at its current Parramatta Road address (1.5 spaces per 100m<sup>2</sup>).

It must be noted that the Response to the Inner West Council Request for Information prepared by Traffix dated 6 March relies on calculations based on a reduced GFA of 2,911sqm. The GFA of the amended design as calculated by the assessing officer is approximately 3,140sqm which in turn will result in the requirement of 47 spaces, therefore a deferred commencement condition is recommended that requires the GFA to be

reduced so that it does not exceed 2,911sqm. This can be achieved by reducing the amount of storage area at the mezzanine level.

Noting that the Statement of Environment Effects and the Traffic Report indicate that the number of patrons are not expected to increase with the proposed relocation, this provides an increase in the number of parking spaces provided to existing patrons and can be expected to accommodate future growth.

It is noted that the parking area has been redesigned to locate the exit away from the Bignell Lane / Mallet Street intersection; however concern remains regarding the proposed Mallet Street entrance as it does not provide sufficient sightlines to pedestrians, and will likely create queuing within the northbound and southbound lanes of Mallet Street due to vehicles waiting to enter the site via constrained opening.

The design must be amended to provide all access via a dual-width opening to Bignell Lane. This would require the proposed ramp to be widened to accommodate two vehicles passing side by side. The width could be narrowed at the top of the ramp where required to accommodate the circulation width for the parking area. Appropriate conditions to this effect are included in the recommendation.

Roads and Maritime Services were also notified of the application and provided the following comments:

*Roads and Maritime has reviewed the proposed development and has no objections to this application, subject to the following conditions being included in any consent issued by Council:*

- 1. The layout of the proposed basement car park area associated with the subject development should be in accordance with AS 2890.1 -2004 and AS2890.6 2009.*
- 2. All vehicles are to enter and exit the site in a forward direction.*
- 3. All vehicles are to wholly contained on site before being required to stop.*
- 4. Bicycle parking associated within the subject development should be in accordance with AS 2890.3 (Bicycle Parking Facilities).*
- 5. A Construction Pedestrian Traffic Management Plan (CPTMP) detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.*
- 6. A construction works zone will not be permitted on Pyrmont Bridge Road.*
- 7. A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Pyrmont Bridge Road or Parramatta Road during construction activities.*

These conditions have been included in the recommendation.

#### C4.5 Interface Amenity and C4.16 Recreational Facility

The following controls are applicable to the application under C4.5 Interface Amenity:

##### **General**

C1 Development complies with the *Protection of the Environment Operations Act 1997* and *Protection of the Environment Operations (Clean Air) Regulation 2010*.

##### **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.

The following controls are applicable to the application under C4.16 Recreational Facility:

**General**

*C1 Development does not significantly impact the amenity of the neighbourhood or create a nuisance by way of car parking, traffic generation, noise, vibration or any other emission.*

*C2 Hours of operation will be established considering the following:*

*a. proximity to the R1 Residential Zone;*

*b. impacts on amenity of surrounding areas, including noise and light;*

*c. intensity of the proposed use; and*

*d. accessibility, traffic and parking considerations.*

*Note: Council may consider extended hours, including for 24hr gyms, where it can be demonstrated that the objectives of this part will be satisfied, in particular that the impacts of the use are consistent with reasonable expectations for amenity in the neighbourhood.*

*C3 Adequate car and bicycle parking is provided on site in accordance with the provisions within Part C1.11 – Parking in this Development Control Plan.*

*C4 Where an application is made for development for the purpose of a Recreation Facility (Outdoors) or for any Recreation Facility with extended hours of operation, a detailed Plan of Management (POM) is to be submitted*

*C5 Where for a Recreation Facility (Outdoors), lights incorporate measures to ensure that light spill does not occur on adjoining or nearby land in a residential zone.*

*C6 Where otherwise prohibited, food and drink premises and retail premises are ancillary and subordinate to the primary use of the site for recreational activities.*

*C7 The floor area of the premises which can be used for food and drink premises or retail premises shall be no more than 5% of the gross floor area.*

A Management Plan was submitted as part of the subject development application that outlines the following key recommendations to mitigate amenity impacts:

- *There will be 2 staff members on the premises at all times when the centre is open to serve reception and provide general supervision throughout the building.*
- *Individual classes are supervised by the class supervisor.*
- *The building will be acoustically treated as recommended in the acoustic report.*
- *Plant will also be acoustically treated.*
- *There will be no external light spill.*
- *Any free weight area will be located away from the adjacent dwelling at 67 Pymont Bridge Road.*
- *There will be no classes with music after 7.30pm.*

The Management Plan is referenced in the recommended conditions of consent.

A Noise Assessment Report prepared by Wilkinson Murray dated December 2017 and a Traffic Impact Assessment prepared by Traffix Traffic & Transport Planners dated 4

December 2017 were submitted with the development application and these matters in relation to noise and traffic/parking were referred to Council's Health Compliance and Engineering section for comments respectively.

### **Noise generation**

Given the early hours of operation proposed, the application was referred to Council's Health Compliance Section who raised the following concerns:

- Acoustics – The noise impact statement prepared by Wilkson Murray dated December 2017 did not assess the noise impact for the full time operation of the fitness centre, i.e. 4.30am to 10pm.
- A supplementary acoustic report is required to address the full time operation of the fitness centre. A noise logger is to be installed to monitor the current ambient background on an hourly basis for a period of 2 weeks.
- Following the noise readings being collected, the report is to be amended to ensure that the operation of the development as a whole does not exceed 5dba above ambient background noise at any point.
- The conclusions of the acoustic report fail to adequately stipulate that the proposed development will be compliant with the relevant criteria.

In response to the matters raised, the applicant provided an Acoustic Report (Version B) prepared by Wilkinson Murray dated February 2018. The report recommended the following noise mitigation measures:

- The roof should have a minimum acoustic performance of  $R_w + C_{tr}44$  to be verified at design stage in conjunction with the required music spectrum in the spin class room;
- Noise levels in the mezzanine level exercise rooms should be limited to 95dBA;
- Activities and equipment should be designed so that the common wall with 67 Pymont Bridge Road is not touched;
- Free weights and exercise machines near the common wall may require vibration isolating floor mats.
- Mechanical services design upgrades should be verified at detailed design stage.

The amended report was reviewed by Council's Health Compliance Section and who advised that the updated report had addressed the issues raised above.

Appropriate conditions are included in the recommendation of this report, including a condition requiring a report prepared by a suitably qualified and experienced acoustic consultant to be submitted to Council prior to the issue of any Occupation Certificate 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. The recommended conditions of consent also require additional acoustic testing to be conducted within the first 60 days of trading to ensure that once the new use is in operation, the noise emanating from the premises complies with the noise criteria.

The proposal will also be subject to a 6 month trial period for the proposed extended hours of operation. In the event that the operator wishes to seek consent for permanent extended trading hours or a further trial period a modification application is to be submitted to and approved by Council. If a modification application is not approved, the hours of operation will revert to 6.00am–9.00pm Monday to Thursday, 7.00am–5.00pm on Saturdays and 8.30am–1.00pm on Sundays.

A recommended condition of consent also requires the new door on the northern elevation closest to the adjoining residential dwellings to be used as a fire exit door only.

### **Parking**

The GFA of the amended design (as calculated by the assessing officer), is approximately 3,140sqm which in turn will result in the requirement of 47 spaces, therefore a condition of consent is recommended to ensure the GFA does not exceed 2,911sqm which was referenced in the traffic response prepared by Traffix dated 6 March 2018. This can be achieved by reducing the amount of storage area at the mezzanine level.

#### **E1.3.1 Flood Risk Management**

The proposal was considered to be satisfactory subject to standard conditions and the Preliminary Flood Risk Management Report prepared by Burrell Threlfo Pagan Pty Ltd and dated 5 March 2018 updated with information from the Flood Certificate dated 9 March 2018. The updated Flood Risk Management report prepared by Burrell Threlfo Pagan Pty Ltd and dated 12 March 2018 had included the abovementioned information from the Flood Certificate and therefore will be included as a stamped document in the conditions of consent.

### **5(d) The Likely Impacts**

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

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

The site is zoned IN2 Light Industry. Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

### **5(f) Any submissions**

The application was notified in accordance with Leichhardt DCP 2013 for a period of 21 days to surrounding properties. A total of 6 letters of support and 4 objections were received.

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

- Issues in relation to impacts to car parking – see Section 5(c) – C1.11 Parking
- Issues in relation to hours of operation, noise generated from the use – see Section 5(c) - C4.5 Interface Amenity and C4.16 Recreational Facility.

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



There is already a gym directly next door to this property, namely Camperdown Fitness, as well as a number of gyms within 1km distance from this site, being Anytime Fitness, Fitness Factory, Sydney Strength Training, F45 Training, HIPE Athletic and believe the suburb is amply supported and doesn't need another gym...

**Comment:** The occupant of the proposed development will be Camperdown Fitness (which is currently operating at 166-172 Parramatta Road), as their existing site is being acquired by RMS as part of the WestConnex project.

The existing buildings on the notification map are marked incorrectly.

**Comment:** The notification map is generated from Council's GIS system and it was confirmed that the information on the notification map is correct.

When the notice of development was posted and our household received a letter notifying us in the mail, we went to the owner of the Camperdown gym (which is the gym proposing to move from its current location to 63-65 Pyrmont Bridge Road) to enquire about the proposal in regards to the noise. The owner proceeded to tell us that he will try and keep it to a minimum and if we are not happy with that he stated that he would get in contact with our landlord and offer him double whatever we are paying to get us out.

**Comment:** This is not relevant in the assessment of the application.

Lastly, Establishment of the fitness centre joining 67 Pyrmont Bridge Road will severely decrease the value of the house and it will become very difficult to rent it out because of the noise factor.

**Comment:** The proposed and adjoining sites are located in the IN2 – Light Industry zoning (where the dwellings are relying on existing use rights). The fitness centre, being a recreational facility (indoor), is a permissible use within the zoning and meets the key objective of the zoning which is to encourage employment opportunities and to support the viability of centres. It is further assessed that subject to the imposition of conditions, the proposed gym will not result in unacceptable impacts for residents of adjoining properties.

## 5(g) The Public Interest

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

The proposal is not contrary to the public interest.

## 6 Referrals

### 6(a) Internal

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

- Development and Traffic Engineers
- Environmental Health Officers

## 6(b) External

The application was referred to the following external bodies and issues raised in those referrals have been discussed in section 5 above.

- Roads and Maritime Services

## 7. Section 7.11 Contributions

Section 7.11 contributions are payable for the proposal.

The previous approved use of the site is for warehouse/showroom with a gross floor area of approximately 2500m<sup>2</sup>, given that council record suggests that alterations and additions to the existing building were approved in 1989, the best fit under the contributions plan for the development would be a Modern Industrial Building used for Wholesale/retail. The current proposed use is for a recreational facility with a GFA of 2911 m<sup>2</sup> as amended and its best fit is Modern Industrial Building used for Financial/Property/Business Services.

Note that Business premises are defined in Leichhardt LEP 2013 as:

*business premises means a building or place at or on which:*

- (a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or*
- (b) a service is provided directly to members of the public on a regular basis,*

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

### *Open Space & Recreation*

- |   |                    |
|---|--------------------|
| • Modern Industrial building for financial / property / business services:<br>2911sqm | \$58,130.71        |
| • Less modern industrial building for Wholesale/Retail:<br>2500 sqm                   | -\$22112.77        |
| <b>Total</b>  | <b>\$36,017.93</b> |

### *Community Facilities & Services*

- |   |                        |
|---|------------------------|
| • Modern Industrial building for financial / property / business services:<br>2911sqm | \$29824.36             |
| • Less modern industrial building for storage: 1921sqm                                | \$11345.11             |
| <b>Total</b>  | <b>\$18,479.25</b>     |
|   | <b>NET \$54,497.18</b> |

## 8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in Leichhardt Local Environmental Plan 2013 and Leichhardt Development Control Plan 2013. The development will not result in any significant impacts on the amenity of adjoining premises and the streetscape. The application is considered suitable

for the issue of a deferred commencement consent subject to the imposition of appropriate terms and conditions.

## 9. Recommendation

- A. The variation 4.4 Floor Space Ratio of Leichhardt Local Environmental Plan 2013 be supported under the provisions of Clause 4.6 exceptions to development standards.
- B. That the Panel, as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, grant deferred commencement consent to Development Application No: D/2017/637 for alterations and additions to existing warehouse building and change use to fitness centre at 63-65 Pymont Bridge Road, Annandale to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

### DEFERRED COMMENCEMENT

The following deferred commencement conditions must be complied with to the satisfaction of Council, prior to the issue of an operational Development Consent.

1. Amended plans and adequate details being submitted to council's satisfaction indicating the following design changes:
  - a) The design being amended to achieve a maximum gross floor area of 2,911sqm. This is to be achieved by reducing the size of storage area on the mezzanine level.
  - b) The Mallet Street entry must be deleted with all vehicle access/egress to be limited to Bignell Lane.
  - c) The proposed Bignell Lane vehicle exit to the primary car park must be widened to a dual width ramp to accommodate both entry and exit of vehicles. The ramp and door opening to Bignell Lane must have a minimum width of 6000mm.
  - d) The motorcycle parking spaces located adjacent to Space 36 must be set back towards Stair 03 to accommodate the above ramp.

The operational Development Consent will be issued by Council (in writing) after the applicant provides sufficient information to satisfy Council in relation to the conditions of the deferred commencement consent.

If the applicant fails to satisfy Council as to the above matters within 2 years from the date of determination this consent will lapse.

### CONDITIONS OF CONSENT

2. Development must be carried out in accordance with Development Application No. D/2017/637 and the following plans and supplementary documentation, except where amended by the conditions of this consent.

Plan Reference	Drawn By	Dated
Revision B, DA-01 - SITE AND LOCATION PLAN	Unknown	09.03.18
Revision B, DA-02 - LOWER GROUND FLOOR PLAN	Unknown	09.03.18
Revision B, DA-03 - PART GROUND FLOOR PLAN	Unknown	09.03.18
Revision B, DA-04 - PART GROUND FLOOR PLAN	Unknown	09.03.18
Revision B, DA-05 - LEVEL 01 FLOOR PLAN	Unknown	09.03.18
Revision B, DA-06 - LEVEL 02 FLOOR PLAN	Unknown	09.03.18
Revision B, DA-07 - NORTH ELEVATION - PYRMONT BRIDGE ROAD & SOUTH ELEVATION - BIGNELL LANE	Unknown	09.03.18

Revision B, DA-08 - EAST ELEVATION - MALLET STREET & WEST ELEVATION	Unknown	09.03.18
Revision B, DA-09 – CROSS SECTION	Unknown	09.03.18
Revision B, DA-10 – ROOF PLAN	Unknown	09.03.18
<b>Document Title</b>	<b>Prepared By</b>	<b>Dated</b>
Reference:P20170102 - Building Code of Australia Compliance Report	VAST Certification Pty Ltd	4 December 2017
Management Plan (located within Statement of Environmental Effects	Burrell Threlfo Pagan Pty Ltd	December 2017
Job No: 217289, Statement of Compliance Access for People with a Disability	Accessible Building Solutions	01-12-2017
REPORT NO. 17398, VERSION B – Noise Assessment for DA	Wilkinson Murray	26 February 2018
Additional information and Flood Risk Management Report (updated)	Burrell Threlfo Pagan Pty Ltd	12 March 2018
Response to the Inner West Council Request for Information	Traffix traffic & transport planners	6 March 2018

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

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

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

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

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

3. Consent is granted for the demolition of the following currently existing on the property, subject to strict compliance with the following conditions:

Elements	Location
Structures associated with the existing warehouse	As indicated on the approved drawings

- a) The adjoining residents must be notified seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence, site contact details/person, elements to be demolished and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side, immediately at the rear of and directly opposite the demolition site.
- b) Written notice is to be given to the Principal Certifying Authority for inspection prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours and contact telephone number and licence number of the demolisher. The following building inspections must be undertaken by the Principal Certifying Authority:
  - i) A *pre commencement* inspection when all the site works are installed on the site and prior to demolition commencing.
  - ii) A *final* inspection when the demolition works have been completed.

**NOTE:** If Council is nominated as your Principal Certifying Authority 24 - 48 hours notice to carry out inspections is required. Arrangement for inspections can be made by phoning 9367 9222.

- c) Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher's name, licence number, contact phone number and site address.
- d) Prior to demolition, the applicant must erect a 2.4m high temporary fence, hoarding between the work site and any public property (footpaths, roads, reserves etc). Access to the site must be restricted to authorised persons only and the site must be secured against unauthorised entry when work is not in progress or the site is otherwise unoccupied.
- e) The demolition plans must be submitted to the appropriate Sydney Water Quick Check agent for a building plan approval.
- f) Demolition is to be carried out in accordance with the relevant provisions of Australian Standard 2601:2001: *Demolition of structures*.
- g) The hours of demolition work are limited to between 7:00am and 6.00pm on weekdays. No demolition work is to be carried out on Saturdays, Sundays and public holidays.
- h) Hazardous or intractable wastes arising from the demolition process must be removed and disposed of in accordance with the requirements of WorkCover New South Wales and the Environmental Protection Authority.
- i) Demolition procedures must maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.
- j) During demolition, public property (footpaths, roads, reserves etc) must be clear at all times and must not be obstructed by any demolished material or vehicles. The footpaths and roads must be swept (not hosed) clean of any material,

including clay, soil and sand. On the spot fines may be levied by Council against the demolisher and/or owner for failure to comply with this condition.

- k) All vehicles leaving the site with demolition materials must have their loads covered and vehicles must not track soil and other materials onto public property (footpaths, roads, reserves etc) and the footpaths must be suitably protected against damage when plant and vehicles access the site.
- l) The burning of any demolished material on site is not permitted and offenders will be prosecuted.
- m) Care must be taken during demolition to ensure that existing services on the site (ie, sewer, electricity, gas, phone) are not damaged. Any damage caused to existing services must be repaired by the relevant authority at the applicant's expense. Dial before you dig [www.1100.com.au](http://www.1100.com.au) should be contacted prior to works commencing.
- n) Suitable erosion and sediment control measures in accordance with the Soil and Water Management Plan must be erected prior to the commencement of demolition works and must be maintained at all times.
- o) Prior to demolition, a Work Plan must be prepared and submitted to the Principal Certifying Authority in accordance with the relevant provisions of Australian Standard 2601:2001 *Demolition of structures* by a person with suitable expertise and experience. The Work Plan must identify hazardous materials including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.
- p) If the property was built prior to 1987 an asbestos survey prepared by a qualified occupational hygienist is to be undertaken. If asbestos is present then:
  - i) A WorkCover licensed contractor must undertake removal of all asbestos.
  - ii) During the asbestos removal a sign "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400 mm x 300 mm is to be erected in a visible position on the site to the satisfaction of Council.
  - iii) Waste disposal receipts must be provided to Council / Principal Certifying Authority as proof of correct disposal of asbestos laden waste.
  - iv) All removal of asbestos must comply with the requirements of WorkCover and Leichhardt Council.
  - v) An asbestos clearance certificate prepared by a qualified occupation hygienist must be provided at the completion of the demolition works.

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

4. Noise attenuation measures must be incorporated into the development complying with recommendations contained in the Noise Assessment Report prepared by Wilkinson Murray, (Report No. 17398 Version B).



Plans fully reflecting the selected commitments must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

The acoustic consultant must certify that the detailed design drawings will ensure that the proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations.

In this regard, the operation of the premises and plant and equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background  $L_{A90, 15min}$  noise level, measured in the absence of the noise source/s under consideration by 5dB(A). The source noise level shall be assess as an  $L_{Aeq, 15min}$  and adjusted in accordance with the NSW Environment Protection Authority's Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance).

5. A Flood Risk Management Plan, prepared by a qualified practicing Civil Engineer must be provided prepared / prior to the issue of a Construction Certificate. The Plan must be prepared / amended to make provision for the following:
  - a) The plan must be generally in accordance with the recommendations of the Additional information and Flood Risk Management Report prepared by Burrell Threlfo Pagan and dated 12 March 2018.
  - b) Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development. Such recommendations must be consistent with the approved development. The flood impacts on the site shall be assessed for the 100 year ARI and Probable Maximum Flood (PMF) storm events. The precautions shall include but not be limited to the following:
    - i) Types of materials to be used to ensure the structural integrity of the building to immersion and impact of velocity and debris.
    - ii) Waterproofing methods, including electrical equipment, wiring, fuel lines or any other service pipes or connections.
    - iii) A flood evacuation strategy.
    - iv) On site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood level.

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

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

Flood hazard level (FHL)	Flood Planning Level (FPL)
--------------------------	----------------------------

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

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

6. The approved Architectural plans shall be amended to incorporate the recommendations of the Flood Risk Management Plan approved under Condition 5. The plans addressing the requirements of this condition must be provided prior to the issue of a Construction Certificate. The design must be prepared to make provision for the following:
- a) Specification of materials
  - b) Waterproofing works, where applicable.

No changes to the external form or appearance of the development contrary to the approved plans shall occur except as identified by this condition. Any changes to such must be subject to separate approval in accordance with Section 96 of the Environmental Planning and Assessment Act.

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

7. The vehicular crossing and driveway ramp to the site shall be 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 centreline 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.
8. The design of the vehicular access and off street parking facilities must be amended to address the relevant provisions of Australian Standards, including but not limited to AS/NZS 2890.1-2004 *Parking Facilities - Off-Street Car Parking*, AS/NZS 2890.6-2009 *Off-street parking for people with disabilities* and AS 2890.3-1993 *Parking Facilities - Bicycle parking facilities*. The following specific issues must be addressed in the design:
- a) The floor/finished levels within the property must be adjusted to ensure that the levels at the boundary comply with the Alignment Levels issued with this consent.
  - b) The Bignell Lane exit must be widened to accommodate both entry and exit of vehicles. The ramp and opening to Bignell Lane must have a minimum width of 6000mm.
  - c) The Mallet Street entry must be deleted. An additional parking space may be provided in this location.

- d) The motorcycle parking spaces located adjacent to Space 36 must be set back towards Stair 03 to accommodate the above ramp.
- e) The vehicular access ramp must comply with the ramp grade requirements of Section 3.3 of *AS/NZS2890.1-2004*.
- f) The longitudinal profile of the access and any ramps within the parking facilities must comply with the Ground Clearance requirements of *AS/NZS 2890.1-2004* for a B99 design vehicle.
- g) Longitudinal sections must be provided along each outer edge of all ramps within the parking facilities demonstrating compliance with the above requirements. The longitudinal sections at the entry/exit access ramp(s) must extend to the centreline of the connecting road carriageway.
- h) Minimum headroom of 2200mm must be provided throughout the access and parking facilities. Minimum headroom of 2500mm must be provided above any dedicated accessible parking space(s) and adjacent Shared Area(s). Note that the headroom must be measured to the lowest projection from the ceiling, such as lighting fixtures, sprinklers, services, ducts, etc. The headroom at any door opening must be measured to the lowest point of the open door.

Headroom at a 'sag' type grade change must be measured in accordance with Figure 5.3 of *AS/NZS 2890.1-2004*.

- i) The car parking facilities must be appropriately line marked and signposted in accordance with the requirements of Section 4 of *AS/NZS2890.1-2004*.
- j) Bicycle parking facilities must be provided in accordance with the numerical and dimension requirements of Sections C1.11 Parking and C1.11.3 & C1.11.6 tables within DCP 2013.
- k) The external form & height of the approved structures must not be altered from that depicted on the approved plans to address this condition. If the applicant seeks a design that would require such, the approved plans must be modified in accordance with Section 4.55 of the Environmental Planning and Assessment Act 1979.

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

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

The design must be certified by a suitably qualified Civil Engineer and provided to the Principal Certifying Authority prior to the issue of the issue of a Construction Certificate.

9. The following conditions are imposed by Roads and Maritime Services.

- a) The layout of the proposed basement car park area associated with the subject development should be in accordance with AS 2890.1 -2004 and AS2890.6 2009.
- b) All vehicles are to enter and exit the site in a forward direction.
- c) All vehicles are to wholly contained on site before being required to stop.
- d) Bicycle parking associated within the subject development should be in accordance with AS 2890.3 (Bicycle Parking Facilities).
- e) A Construction Pedestrian Traffic Management Plan (CPTMP) detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.
- f) A construction works zone will not be permitted on Pymont Bridge Road.
- g) A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Pymont Bridge Road or Parramatta Road during construction activities.

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

10. The person acting on this consent shall submit to the Principal Certifying Authority a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site before the issue of a 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. 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.

13. 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

14. 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:

<b>Column A</b>	<b>Column B</b>
Open space and recreation	\$36,017.93
Community facilities and services	\$18,479.25
<b>Total Contribution</b>	<b>\$54,497.18</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.

15. The approved plans must be checked online with Sydney Water Tap In to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. A copy of this approval must be supplied with the Construction Certificate application. Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 132092.

The Certifying Authority must ensure that the appropriate approval has been provided prior to the issue of a Construction Certificate.

16. 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.
  - iii) 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.
  - v) A dedicated unloading and loading point within the site for construction vehicles, plant and deliveries.
  - vii) The proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period.
- b) Noise and vibration  
During excavation, demolition and construction phases, noise & vibration generated from the site must be controlled. Refer to other conditions of this consent. If during excavation, rock is encountered, measures must be taken to minimise vibration, dust generation and impacts on surrounding properties. Refer to Environmental Noise Management Assessing Vibration: a technical Guideline (Department of Environment and Conservation, 2006) [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au) for guidance and further information.
- c) Occupational Health and Safety  
All site works must comply with the occupational health and safety requirements of the New South Wales Work Cover Authority.
- d) Toilet Facilities  
During excavation, demolition and construction phases, toilet facilities are to be provided on the site, at the rate of one toilet for every twenty (20) persons or part of twenty (20) persons employed at the site. Details must be shown on the plan.
- e) Traffic control plan(s) for the site  
All traffic control plans must be in accordance with the Roads and Maritime Services publication "Traffic Control Worksite Manual"

Approval is to be obtained from Council for any temporary road closures or crane use from public property. Applications to Council shall be made a minimum of 4 weeks prior to the activity proposed being undertaken.

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

17. 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.

18. 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.

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

19. 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)	\$ 17,100.00
Inspection fee (FOOTI)	\$ 225.00

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

The inspection fee is required for 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.

- 20. A dilapidation report including a photographic survey of the following adjoining properties must be provided to Principal Certifying Authority prior to any demolition or works commencing on the site or the issue of a Construction Certificate (whichever comes first). The dilapidation report must detail the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property	Structures / Area
67 Pymont Bridge Rd	Dwelling House

If excavation works are proposed the dilapidation report must report on the visible and structural condition of neighbouring structures within the zone of influence of the excavations. This zone is defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

The dilapidation report is to be prepared by a practising Structural Engineer. All costs incurred in achieving compliance with this condition shall be borne by the applicant. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written correspondence from the owners of the affected properties or other evidence must be obtained and submitted to the Principal Certifying Authority in such circumstances that demonstrates such documentation has been received. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

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

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

21. 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.
22. 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.

23. 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.
24. 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.
25. 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.

26. The location and facilities for the collection, storage and disposal of waste generated within the premises shall be submitted to and approved by Council prior to the commencement of works.

#### **DURING WORKS**

27. Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines discharged by gravity to the kerb and gutter of a public road.

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

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

28. 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.

29. Any new information revealed during development works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.
30. The site must be appropriately secured and fenced at all times during works.
31. 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.
32. 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.

33. 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.
  
34. 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.
  
35. 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.

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

36. 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.

37. Prior to the release of an Occupation Certificate, the Principal Certifying Authority must be satisfied that the development complies with:
  - the approved plans;
  - BASIX certificate (where relevant),
  - approved documentation (as referenced in this consent); and
  - conditions of this consent.
  
38. Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority and Leichhardt Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

Document Title	Prepared By	Dated
Reference:P20170102 - Building Code of Australia Compliance Report	VAST Certification Pty Ltd	4 December 2017

Management Plan (located within Statement of Environmental Effects	Burrell Threlfo Pagan Pty Ltd	December 2017
Job No: 217289, Statement of Compliance Access for People with a Disability	Accessible Building Solutions	01-12-2017
REPORT NO. 17398, VERSION B – Noise Assessment for DA	Wilkinson Murray	26 February 2018
Preliminary Flood Risk Management Report	Burrell Threlfo Pagan Pty Ltd	9 March 2018
Response to the Inner West Council Request for Information	Traffix traffic & transport planners	6 March 2018
Reference:P20170102 - Building Code of Australia Compliance Report	VAST Certification Pty Ltd	4 December 2017
Management Plan (located within Statement of Environmental Effects	Burrell Threlfo Pagan Pty Ltd	December 2017

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

39. A second Dilapidation Report including photos of any damage evident at the time of inspection must be submitted after the completion of works. A copy of this Dilapidation Report must be given to the property owners referred to in this Development Consent. The report must:
- Compare the post construction report with the pre-construction report required by these conditions,
  - Clearly identify any recent damage and whether or not it is likely to be associated with the development works including suggested remediation methods.

A copy must be lodged with Council and 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

40. 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.
41. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that all aspects of the flood risk management plan have been implemented in accordance with the approved design, conditions of this consent and relevant Australian Standards.

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

42. 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 development consent and relevant Australian Standards and the following has been implemented within the property, where applicable:
- a) The car park has been completed, line marked and all signage relating to car parking erected.
  - b) A notice has been clearly displayed at the Pymont Bridge Road and Mallet Street frontage to indicate that visitor parking is available within the property with access from Bignell Lane.
  - c) Sign(s) have been erected that clearly indicate to the drivers of vehicles both on and off the property the location and means of access to the car parking area(s).

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

43. 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.

44. The following works must be constructed:

- a) The redundant vehicle crossings to the site at the Mallet Street frontage and the Mallet Street / Bignell Lane intersection shall be removed and replaced by kerb and gutter and footpath consistent with existing footpath adjacent. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb shall also be in stone.
- b) The existing damaged vehicle crossing at the western end of the Bignell Lane frontage must be reconstructed.

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.

45. 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.
46. You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity,



Street lighting and Telecommunications required as a result of the development shall be at no cost to Council and undertaken before the issue of an Occupation Certificate.

47. 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.

48. 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.

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

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

In this regard, the operation of the premises and plant and equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background  $L_{A90, 15min}$  noise level, measured in the absence of the noise source/s under consideration by 5dB(A). The source noise level shall be assessed as an  $L_{Aeq, 15min}$  and adjusted in accordance with the NSW Environment Protection Authority's Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance).

Noise levels in the mezzanine level exercise rooms must not 95dBA at any time.

50. During the first sixty (60) days of trading the following acoustic measures must be undertaken:
- a) A suitably qualified acoustic consultant must be appointed to:
    - i) measure and verify the noise emanating from the premises; and
    - ii) if necessary, make recommendations to ensure that the noise emanating from the premises complies with the noise criteria.
  - b) The noise measurements must be:
    - i) taken on at least three (3) different occasions on three (3) different days of the week and must include the peak periods namely Saturday morning and during weekday morning and afternoon classes.
    - ii) submitted to Council within seven (7) days of testing.
  - c) If the acoustic consultant recommends that additional treatment or works be undertaken those recommendations must be:
    - i) submitted to Council with the noise measurements; and

- ii) implemented to the acoustic consultant's satisfaction before the end of the first sixty (60) days of public entertainment provided on the premises.

51. A maximum of 10 employees being located on the premises at any given time.
52. The use of the premises shall not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the Protection of the Environment Operations Act 1997 and Regulations. The use of the premises and the operation of plant and equipment shall not give rise to the transmission of a vibration nuisance or damage other premises.
53. The premises 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>
Monday to Friday	4.30am – 10.00pm
Saturday	5.30am – 7.00pm
Sunday	7.30am – 1.00pm

The above operating hours are for a trial period of 6 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>
Monday to Thursday	6.00am – 9.00pm
Saturday	7.00am – 5.00pm
Sunday	8.30am – 1.00pm

In the event that the operator wishes to seek consent for permanent extended 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.

54. The Plan of Management approved under this consent must be complied with at all times.
55. To ensure minimal impacts on surrounding properties commercial waste and recyclable material generated by the premises must not be collected between the hours 10pm and 7am.
56. The door on the northern elevation closest to the adjoining residential dwellings to be used as a fire exit door only.

## **PRESCRIBED CONDITIONS**

### **A. BASIX Commitments**

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

accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

In this condition:

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

## **B. Building Code of Australia**

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

## **C. Home Building Act**

- 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given Leichhardt Council written notice of the following:
  - a) in the case of work for which a principal contractor is required to be appointed:
    - i) the name and licence number of the principal contractor, and
    - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or
  - b) in the case of work to be done by an owner-builder:
    - i) the name of the owner-builder, and
    - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- 2) If arrangements for doing residential building work are changed while the work is in progress so that the information submitted to Council is out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

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

## **D. Site Sign**

- 1) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
  - a) stating that unauthorised entry to the work site is prohibited;
  - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and

- c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- 2) Any such sign must be maintained while to building work or demolition work is being carried out, but must be removed when the work has been completed.

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

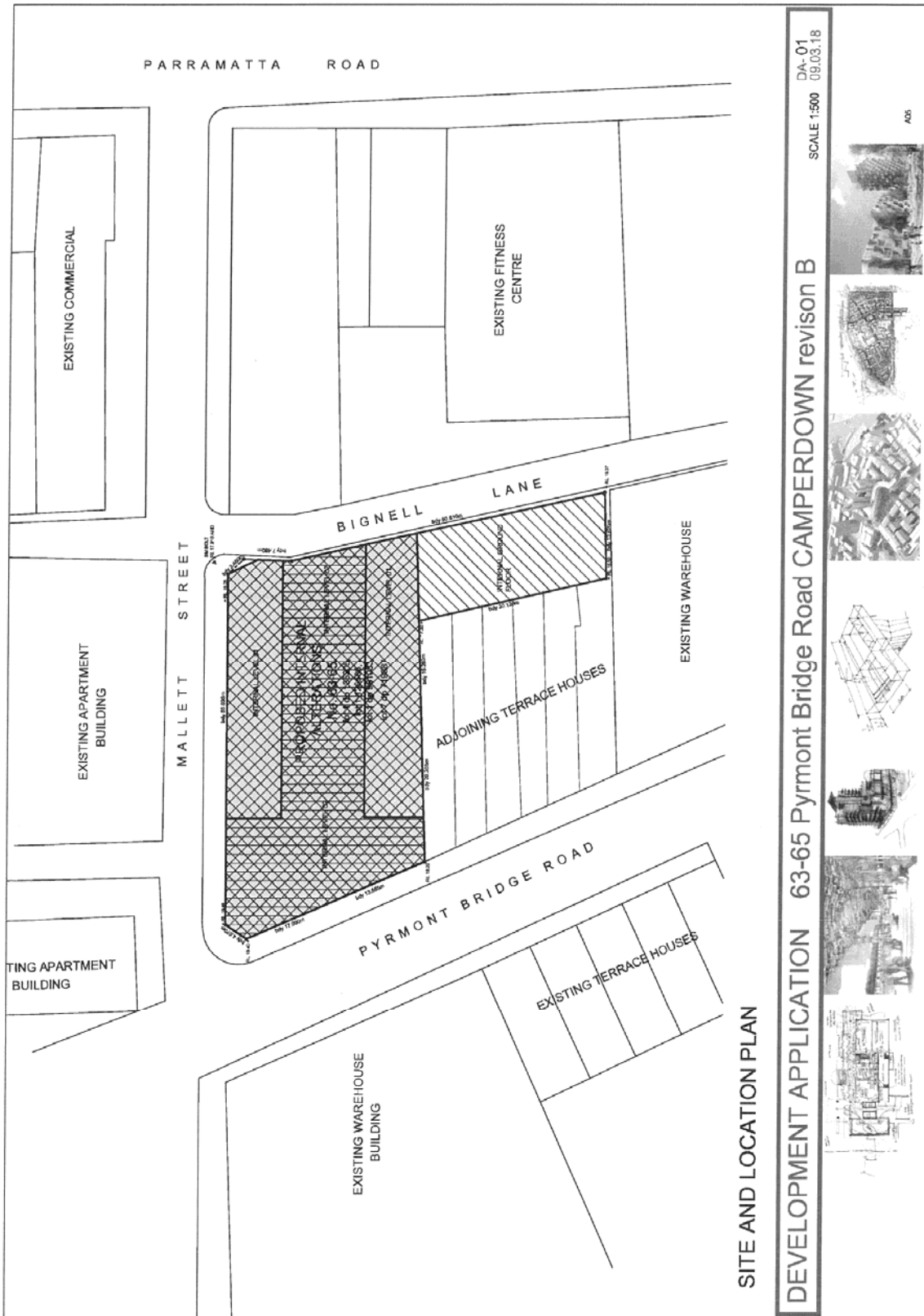
- (1) For the purposes of section 4.17(11) of the Act, it is a prescribed condition of development consent that if the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent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

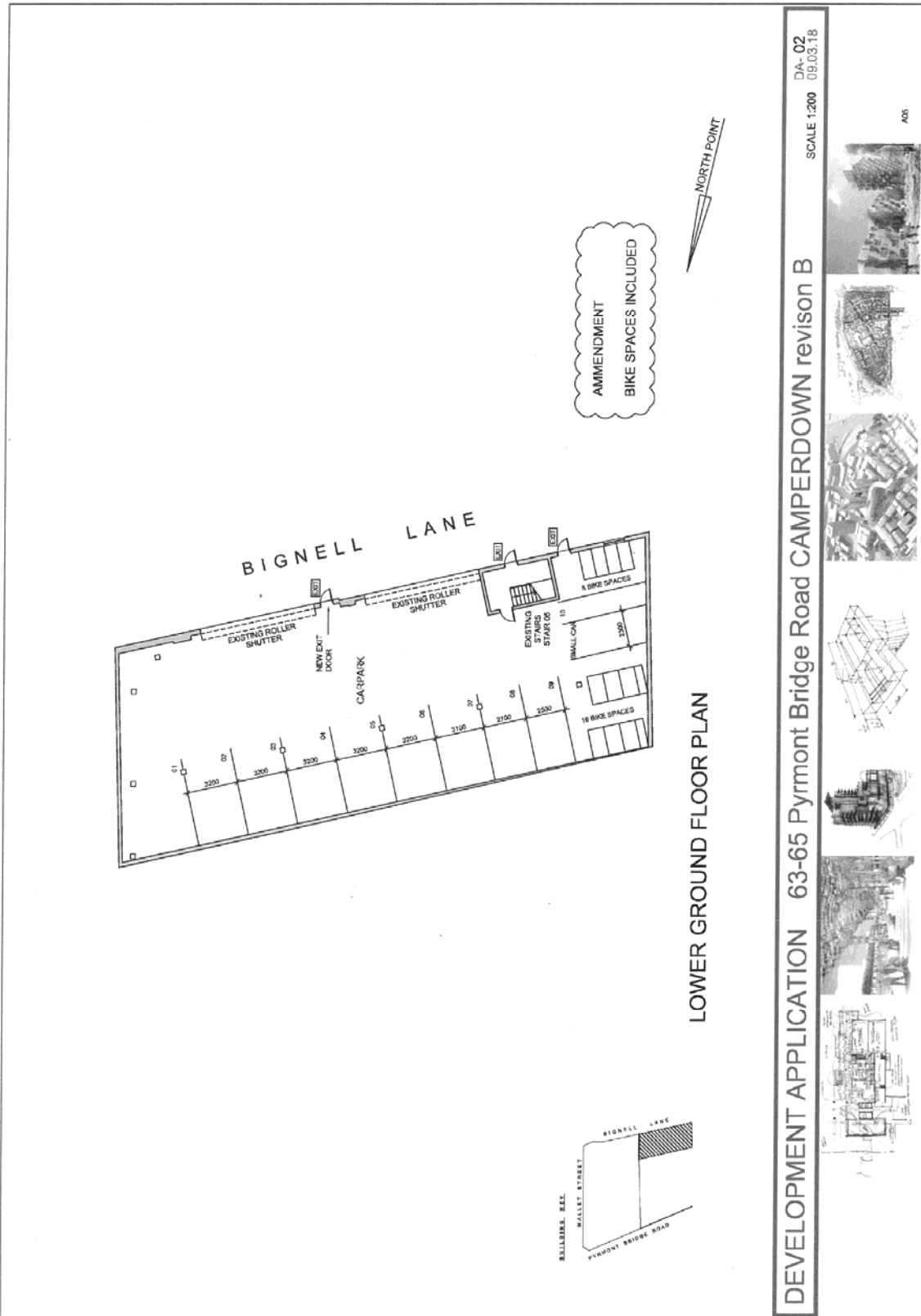
**NOTES**

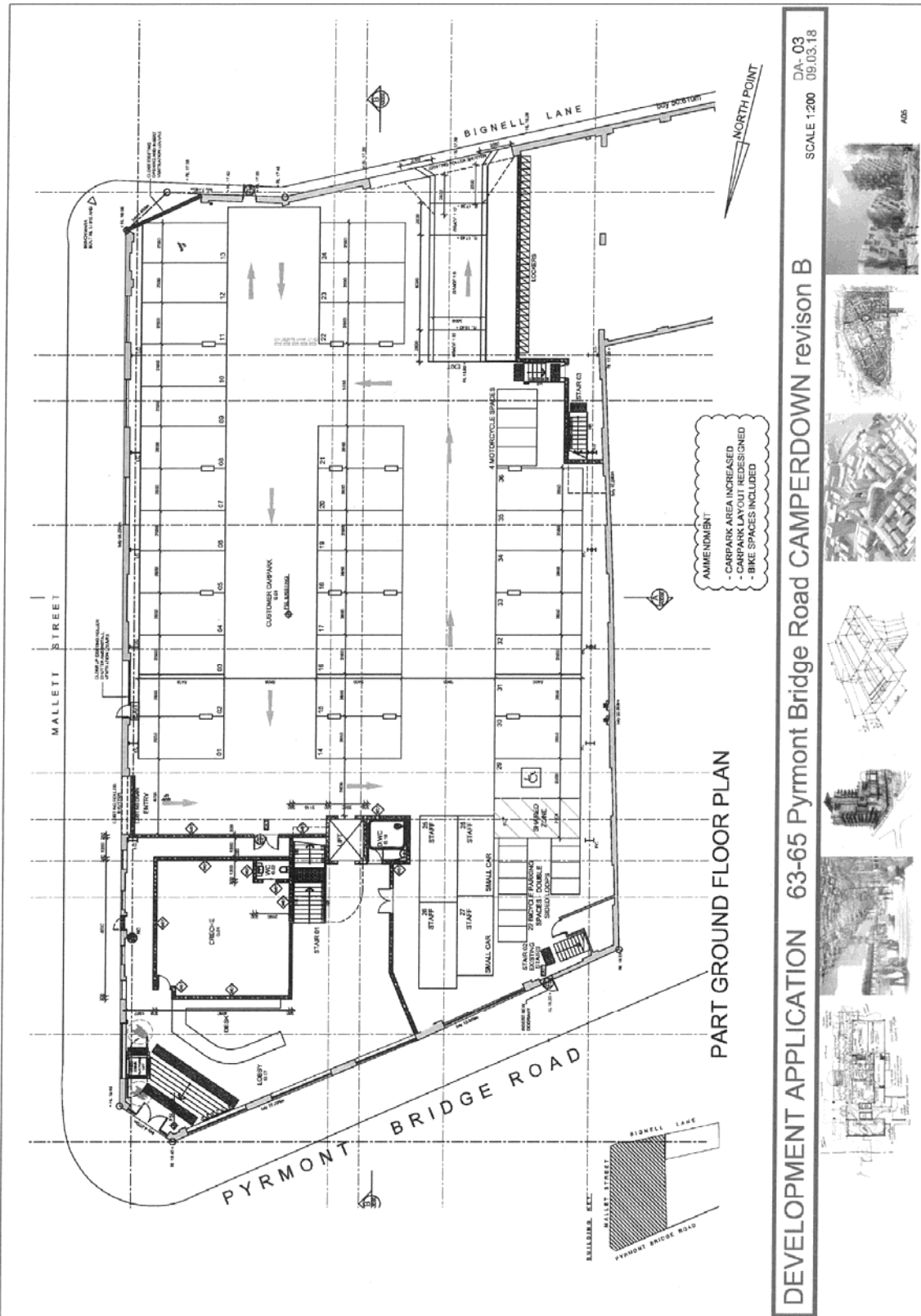
- 1. This Determination Notice operates or becomes effective from the endorsed date of consent.
- 2. Section 8.2 of the *Environmental Planning and Assessment Act 1979* provides for an applicant to request Council to review its determination. This does not apply to applications made on behalf of the Crown, designated development or a complying development certificate. The request for review must be made within six (6) months of the date of determination or prior to an appeal being heard by the Land and Environment Court. Furthermore, Council has no power to determine a review after the expiration of these periods. A decision on a review may not be further reviewed under Section 8.2.
- 3. If you are unsatisfied with this determination, Section 8.7 of the *Environmental Planning and Assessment Act 1979* gives you the right of appeal to the Land and Environment Court within six (6) months of the determination date.
- 4. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.
- 5. Works or activities other than those approved by this Development Consent will require the submission of a new development application or an application to modify the consent under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.
- 6. This decision does not ensure compliance with the *Disability Discrimination Act 1992*. Applicants should investigate their potential for liability under that Act.
- 7. This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, such as (if necessary):
  - a) Application for any activity under that Act, including any erection of a hoarding.
  - b) Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*.

- c) Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*.
  - d) Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed.
  - e) Application for Strata Title Subdivision if strata title subdivision of the development is proposed.
  - f) Development Application for demolition if demolition is not approved by this consent.
  - g) Development Application for subdivision if consent for subdivision is not granted by this consent.
  - h) An application under the Roads Act 1993 for any footpath / public road occupation. A lease fee is payable for all occupations.
8. Prior to the issue of the Construction Certificate, the applicant must make contact with all relevant utility providers (such as Sydney Water, Energy Australia etc) whose services will be impacted upon by the development. A written copy of the requirements of each provider, as determined necessary by the Certifying Authority, must be obtained.

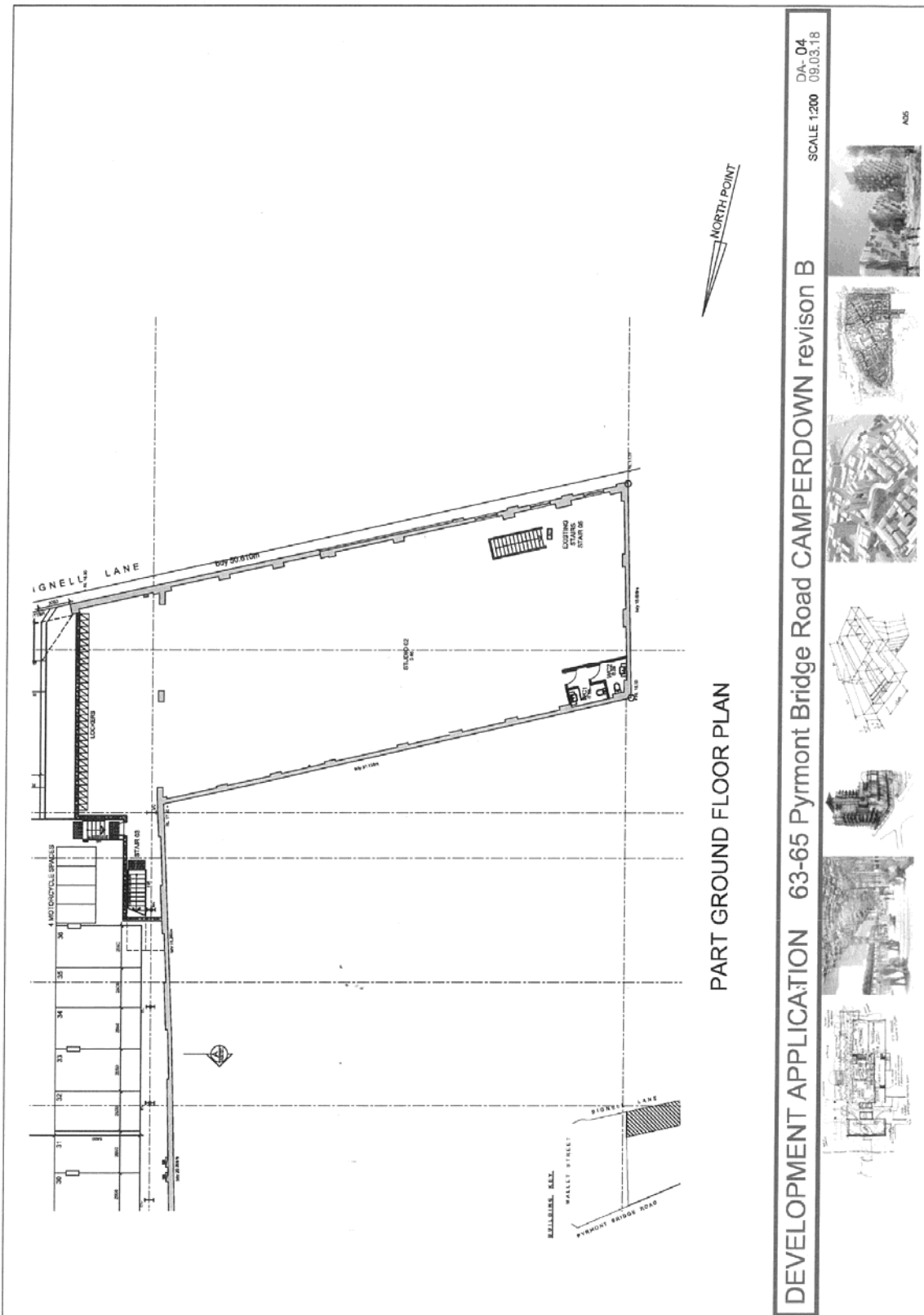
Attachment B – Plans of proposed development

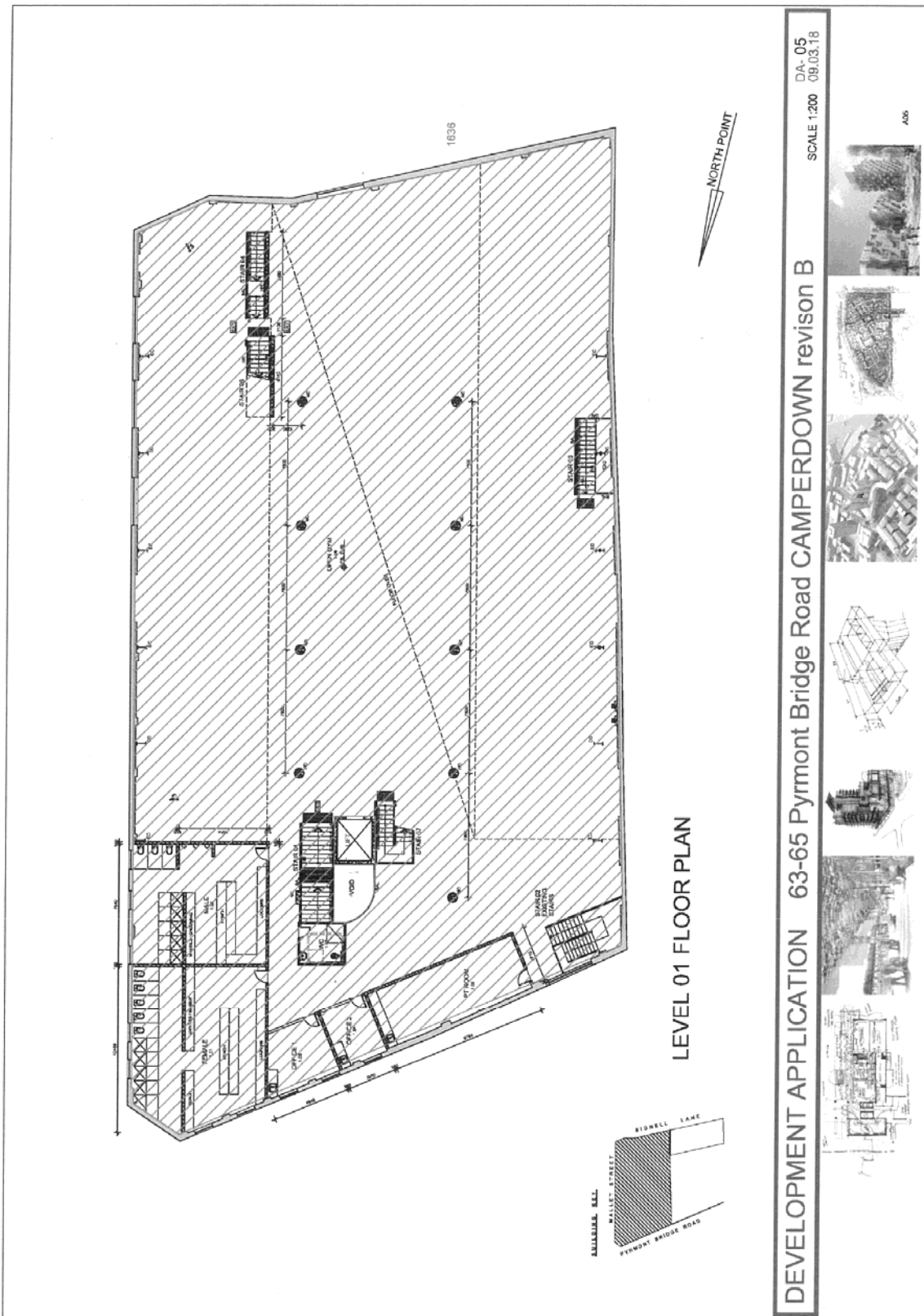






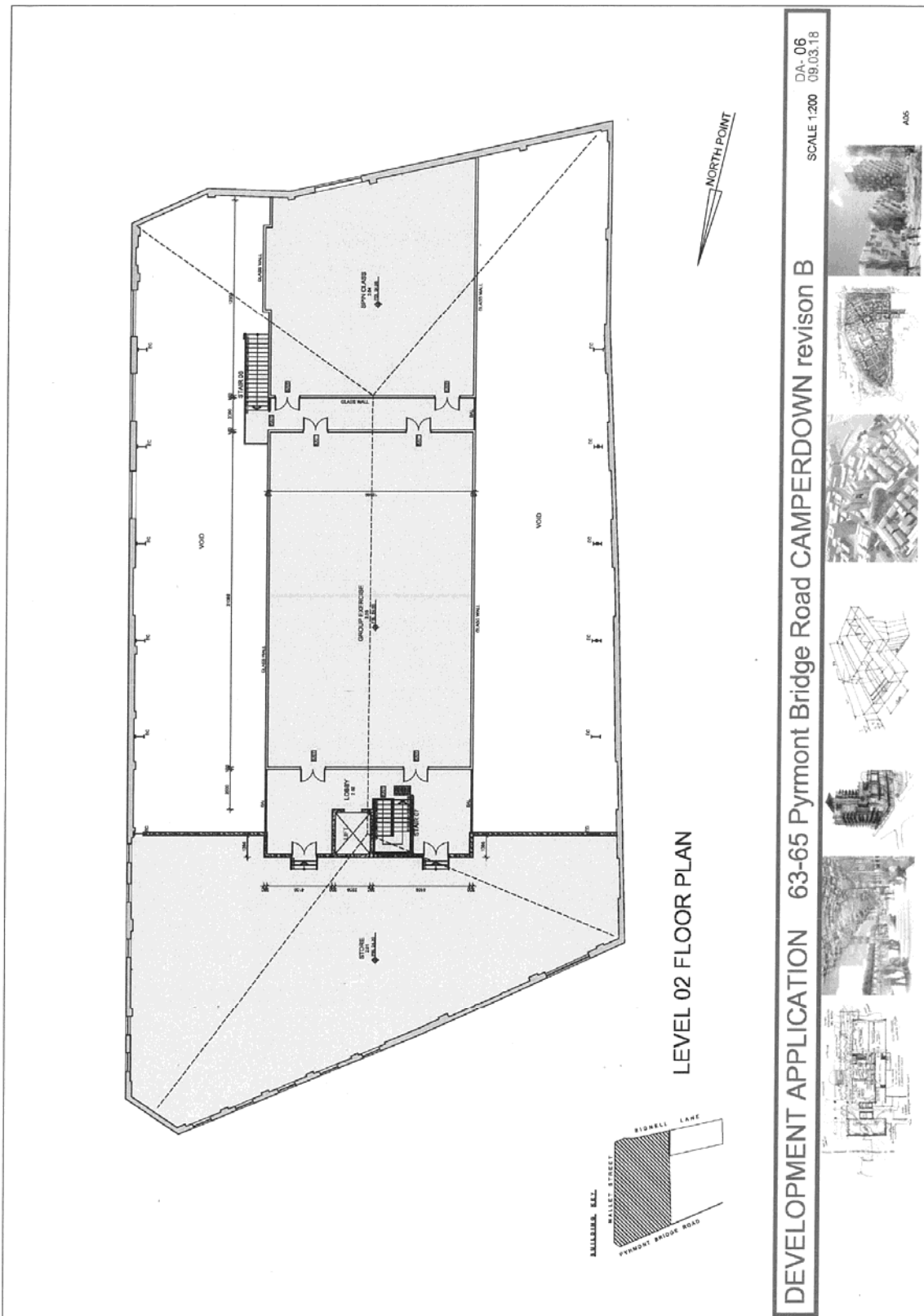






LEVEL 01 FLOOR PLAN

DEVELOPMENT APPLICATION 63-65 Pyrmont Bridge Road CAMPERDOWN revision B  
DA-05 08.03.18  
SCALE 1:200



**NORTH ELEVATION - PYRMONT BRIDGE ROAD**

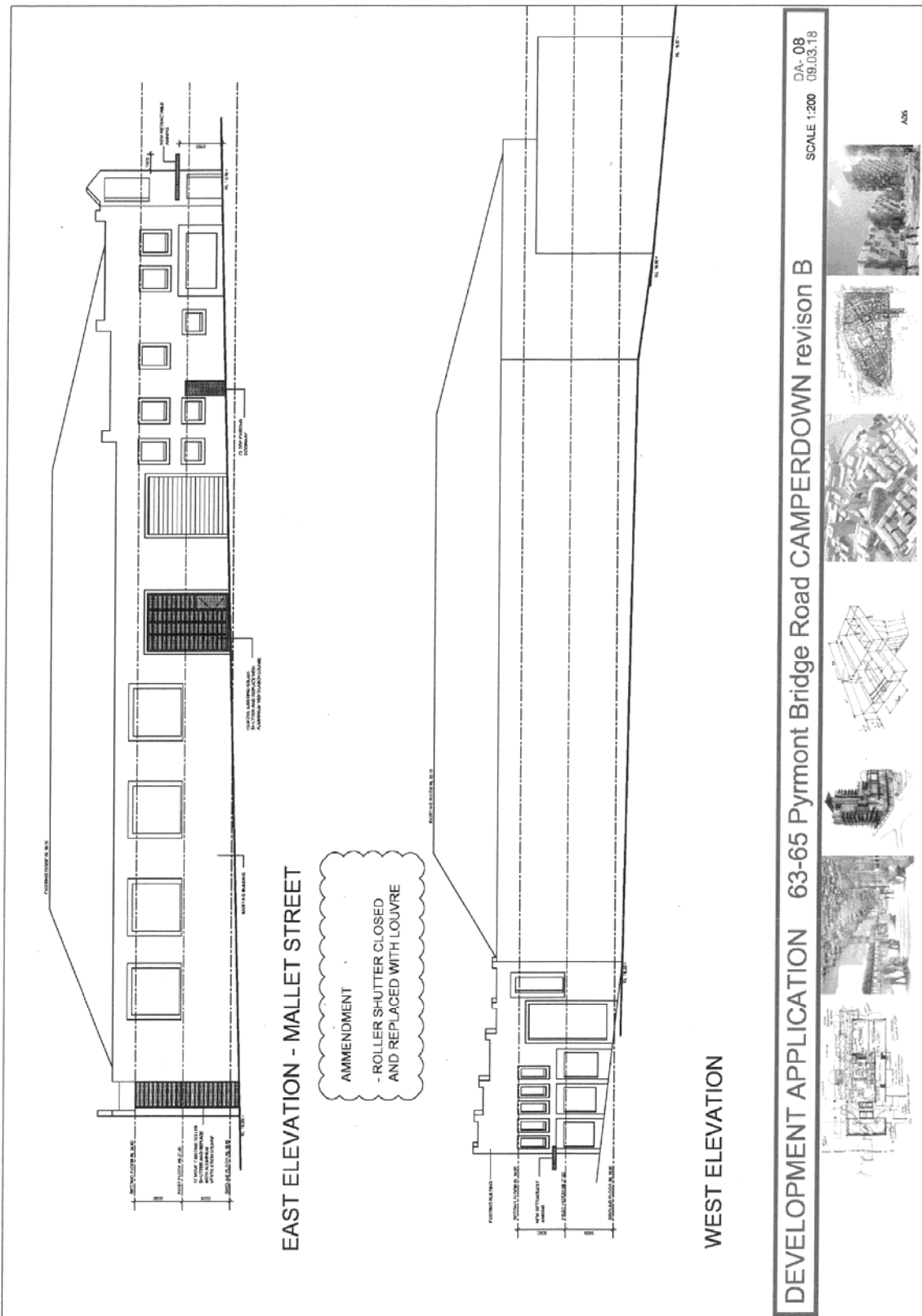
**SOUTH ELEVATION - BIGNELL LANE**

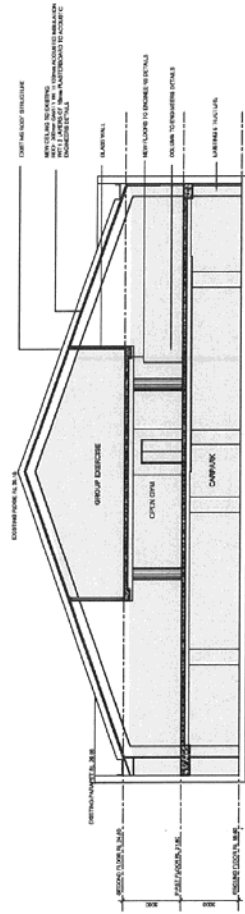
**AMMENDMENT**  
- ROLLER SHUTTER CLOSED AND REPLACED WITH LOUVRE

**DEVELOPMENT APPLICATION 63-65 Pyrmont Bridge Road CAMPERDOWN revison B**

DA-07 09.03.18  
SCALE 1:200

Architectural drawings showing the North and South elevations of a building. The North Elevation (top) shows a long, low profile with a gabled roof on the left side, multiple windows, and a roller shutter. The South Elevation (bottom) shows a similar profile with a different window arrangement and a roller shutter. A callout box indicates an amendment: 'AMMENDMENT - ROLLER SHUTTER CLOSED AND REPLACED WITH LOUVRE'. The title block at the bottom contains project information: 'DEVELOPMENT APPLICATION 63-65 Pyrmont Bridge Road CAMPERDOWN revison B', drawing number 'DA-07', date '09.03.18', and scale 'SCALE 1:200'. To the right of the title block are several small images: a site plan, a street view, a 3D perspective rendering, and a floor plan.





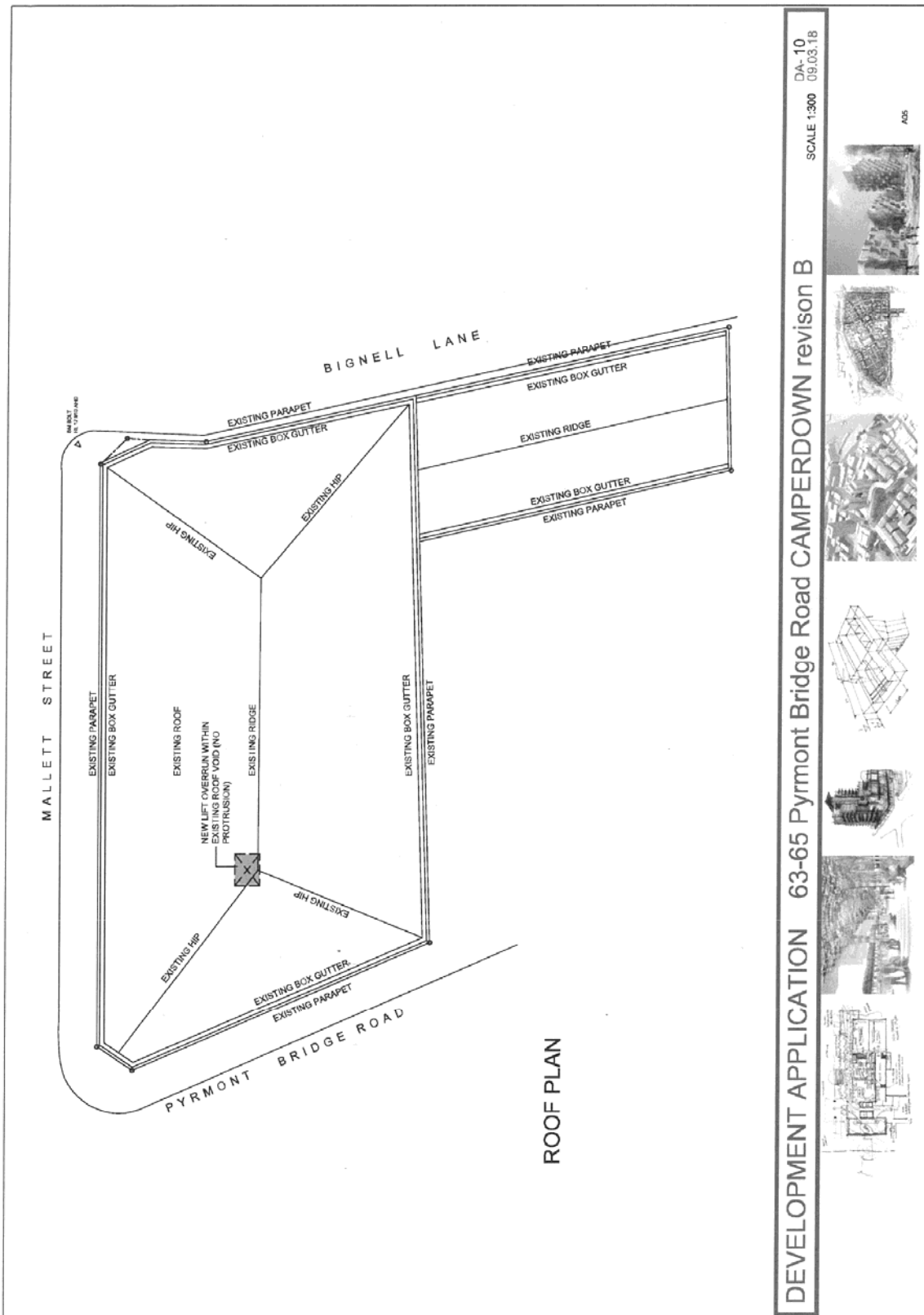
CROSS SECTION

DEVELOPMENT APPLICATION 63-65 Pyrmont Bridge Road CAMPERDOWN revision B

DA-09  
09.03.18  
SCALE 1:200



A05



ROOF PLAN





## Attachment C – Clause 4.6 Written Request

63-65 Pyrmont Bridge Road, Annandale – Statement of Environmental Effects

### **EXCEPTION TO DEVELOPMENT STANDARD (FLOOR SPACE RATIO)**

Clause 4.6 allows consent to be granted for development that would contravene a development standard if

the applicant has made a written request seeking to justify the contravention and

- the consent authority is satisfied that the written request has adequately addressed the matters required to be addressed by subclause (3); that is
  - (3)(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 and*

the consent authority is satisfied that

- (4)(a)(ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

the concurrence of the Director-General has been obtained

The FSR control in clause 4.4 is a development standard that is not subject to any of the specified exclusions from the operation of clause 4.6.

In accordance with the guidelines provided by decisions of the Land and Environment Court and in particular the judgments in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386 and *Moskovich v Waverley Council* [2016] NSWLEC 1015, the submission in this Statement addresses the requirements of clause 4.6 in turn.

### Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The judgment in *Wehbe v Pittwater Council* [2007] NSWLEC 827 identified five ways of establishing under *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1) that compliance is unreasonable or unnecessary. The subsequent cases referred to above have confirmed that these ways are equally applicable under the clause 4.6 regime. The 5 matters to consider are whether:

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
2. *The objective is not relevant to the development.*
3. *The objective would be defeated or thwarted if compliance was required.*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard.*
5. *The zoning of the land is unreasonable or inappropriate.*

63-65 Pyrmont Bridge Road, Annandale – Statement of Environmental Effects

These 5 matters are considered below.

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

Clause 4.4 of Leichhardt LEP 2013 states (emphasis added):

**4.4 Floor space ratio**

**(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.**

Objective (b) is satisfied because:

- The additional floor space is contained within the existing building. The building has a bulk, form and scale that are characteristic of the warehouse buildings in the locality. The additional floor area is completely consistent with this relevant objective.
- The consideration of the Desired Future Character controls for the Camperdown Distinctive Neighbourhood in S5 indicates that the proposed work and use will be consistent with objective (b).

2. *The objective is not relevant to the development.*

This matter is not relied upon.

3. *The objective would be defeated or thwarted if compliance was required.*

This matter is not relied upon.

4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard.*

This matter is not relied upon.

5. *The zoning of the land is unreasonable or inappropriate.*

This matter is not relied upon.

Compliance with the development standard is **unreasonable or unnecessary** in the circumstances because the proposal will accommodate an existing and successful local business that serves the local community, which is being forced to relocate. There are very few buildings in the locality that have the capacity to accommodate the business. Many other large buildings have been converted to residential use (in the City of Sydney Council area).

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

The cases referred to above have established that the environmental planning grounds must be particular to the circumstances of the proposed development on its site. The following environmental planning grounds are relevant:

- The additional floor area is contained within the existing building which is a building that is characteristic of this light industrial zone.
- Adequate provision is made for off-street parking as demonstrated in the Traffic and Parking report.
- There are several other large non-residential buildings nearby that also have an FSR that exceeds 1:1. These large buildings have established the industrial character of the area.
- Many other large warehouse buildings have been converted to self-storage purposes which is a very passive land use that does not create employment or local commercial character. A fitness centre is one of the few types of activities that is appropriate for an industrial area but still serves the local community.

Will the proposed development be in the public interest because it is consistent with the objectives of the development standard?

The objective of the development standard for non-residential FSR has been addressed above. The proposal is in the public interest because it contributes to the local community.

Will the proposed development be in the public interest because it is consistent with the objectives of the zone?

The objectives for the IN2 Light Industrial Zone are:

*1 Objectives of zone*

- *To provide a wide range of light industrial, warehouse and related land uses.*
- *To encourage employment opportunities and to support the viability of centres.*
- *To minimise any adverse effect of industry on other land uses.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To support and protect industrial land for industrial uses.*
- *To retain existing employment uses and foster a range of new industrial uses to meet the needs of the community.*
- *To ensure the provision of appropriate infrastructure that supports Leichhardt's employment opportunities.*
- *To retain and encourage waterfront industrial and maritime activities.*
- *To provide for certain business and office premises and light industries in the arts, technology, production and design sectors*

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The proposal is consistent with these objectives and in the public interest because:

- The fitness centre is a permitted use in the IN2 zone.
- The centre provides full and part time employment for about 20 persons, many of whom live locally.
- The proposal is an existing business and will not affect any other local industry.
- Local workers can use the fitness centre. They offer short lunch time classes.

Concurrence of the Director-General

The concurrence of the Director-General may be assumed by Council.

Any matter of significance for State or regional environmental planning

There are no matters of significance for State or regional environmental planning

Public interest

The proposal is considered to be positive in terms of the public interest.

**Acid Sulphate Soils**

Consent is required for works on land with a class 5 acid sulphate soil designation where:

*Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.*

The site has a datum of about RL 18. There is no excavation or disturbance of soil. The works will not affect the water table on any class 1, 2, 3 or 4 land

