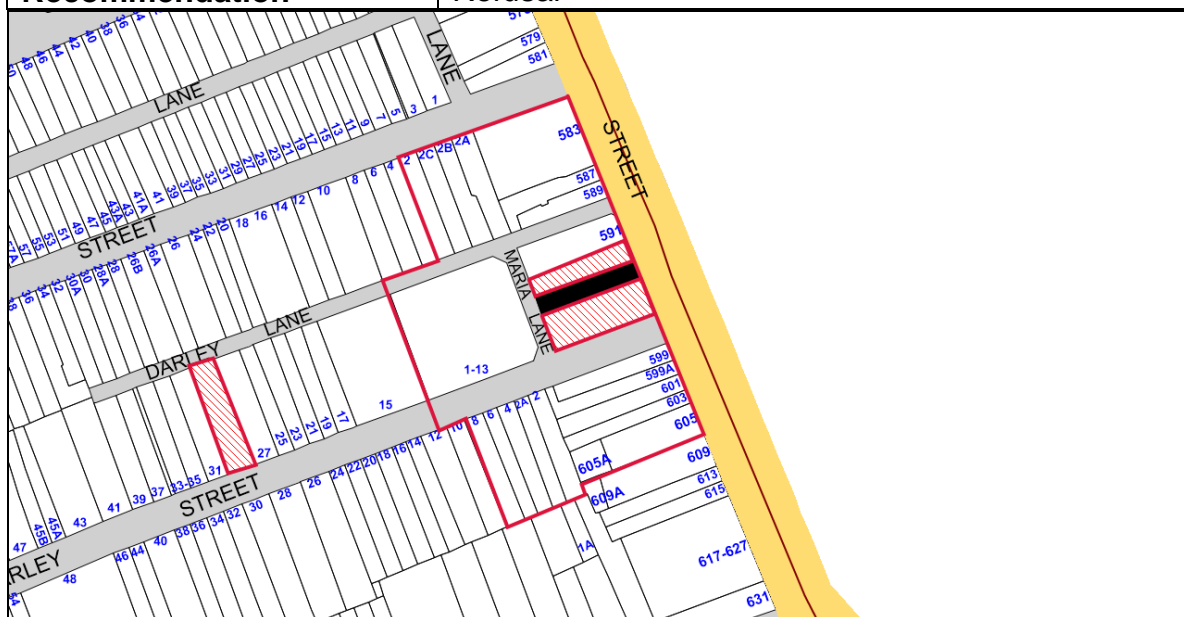







# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	DA201600565.01
<b>Address</b>	595 King Street, Newtown
<b>Proposal</b>	Section 82A review of Determination No. 201600565, dated 8 May 2017, to retain the front façade and ground floor shop and construct a 4 storey development comprising 1 commercial tenancy and 5 residential units
<b>Date of Lodgement</b>	12 July 2017
<b>Applicant</b>	JRU Partnership
<b>Owners</b>	JLV Properties Pty Ltd & Romeli Property Group Pty Ltd & Unicorn Projects Pty Ltd
<b>Number of Submissions</b>	46 submissions including a petition containing 3,871 signatures.
<b>Value of works</b>	\$1,495,000
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation to maximum floor space ratio development standard; number of submission received; and exceeds officer delegation as there is no substantial change to the recommendation of the review
<b>Main Issues</b>	Excessive floor space ratio
<b>Recommendation</b>	Refusal



<b>Subject Site:</b> 	<b>Objectors:</b> 
<b>Notified Area:</b> 	<i>Note: Some submissions were received from properties outside of the map area.</i>

## 1. Executive Summary

This report concerns a review request under Section 82A of the Environmental Planning and Assessment Act to review Determination No. 201600565, dated 8 May 2017, being a refusal of a development application to retain the front façade and ground floor shop and construct a 4 storey development comprising 1 commercial tenancy and 5 residential units.

The review request was notified in accordance with Council's Notification Policy and 46 submissions including a petition containing 3,871 signatures were received.

The proposal exceeds the maximum floor space ratio development standard contained in Marrickville Local Environmental Plan 2011 (MLEP 2011) by 104.3sqm or 30%. A written request under Clause 4.6 of MLEP 2011 has been submitted for the non-compliance however the justification provided is not considered to be well founded and worthy of support.

The proposal does not comply with the provisions of Marrickville Development Control Plan 2011 (MDCP 2011) in regards to the provision of car parking, rear building envelope and solar access.

The potential impacts to the surrounding environment have been considered as part of the assessment process. It is considered that the proposal represents an overdevelopment of the site due to the excessive visual bulk at the rear resulting from the FSR departure.

Furthermore, the Roads and Maritime Services (RMS) has not granted concurrence for the balcony overhanging the King Street road reserve.

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

## 2. Review Request

The applicant has requested that Council review Determination No. 201600565, dated 8 May 2017, being a refusal of a development application to retain the front façade and ground floor shop and construct a 4 storey development comprising 1 commercial tenancy and 5 residential units.

The works include the following:

- Partial demolition the King Street façade and reconstruction of verandah balcony to original detail;
- Ground floor containing 1 commercial tenancy, 1 accessible car parking space, loading/unloading area, toilets, 4 bicycle spaces and waste rooms;
- First floor level containing 1 x 1 bedroom dwelling and 1 x 2 bedroom dwelling;
- Second floor level containing 1 x 1 bedroom dwelling and 1 x 2 bedroom dwelling; and

- Third floor level containing 1 x 1 bedroom dwelling and communal open space.

### 3. Site Description

The site is located on the south western side of King Street, between Darley Lane and Darley Street, Newtown. The site is legally described as Lot B in Deposited Plan 443127, having a frontage of 7.24 metres to King Street, a depth of 30.095 metres and is approximately 229.5sqm in area.

The site contains a 2 storey shop top housing development. Vehicular access to the site is obtained from Maria Lane to the rear.

The surrounding streetscape contains predominantly mixed-use developments. The site is adjoined by No. 597 King Street to the south which contains a 2 storey pub and No. 593 King Street to the north which contains a 2 storey shop top housing development. To the south west (rear) of the site at No. 1-13 Darley Street is a single storey community centre.

### 4. Background

#### 4(a) Site history

Development Application No. 201600565 sought consent to retain the front façade and ground floor shop and construct a 4 storey development comprising 1 commercial tenancy and 5 residential units.

It was assessed that the proposal did not comply with the aims, objectives and design parameters contained in Marrickville Local Environmental Plan 2011 (MLEP 2011) and Marrickville Development Control Plan 2011 (MDCP 2011).

It was further assessed that the Clause 4.6 request for the FSR non-compliance did not provide sufficient environmental planning grounds to justify the non-compliance and insufficient information was provided with the application to enable a complete and proper assessment of the application in accordance with Section 79C of the Environmental Planning and Assessment Act 1979.

The application was refused under delegated authority by Determination No. 201600565, dated 8 May 2017, for the following reasons:

1. *Inadequate information was submitted with the application to undertake a complete and proper assessment of the application in accordance with Section 79C of the Environmental Planning and Assessment Act 1979, particularly in relation to the specific materials, colours and finishes for the restoration of the street front period building façade.*
2. *The development exceeds the Floor Space Ratio permitted on the land pursuant to Clause 4.4 of Marrickville Local Environmental Plan 2011. The Floor Space Ratio variation is not considered to be well founded and worthy of support pursuant to Clause 4.6 of Marrickville Environmental Plan 2011 in that*

*it results in a number of apartments with poor solar amenity and internal layouts.*

3. *The development is contrary to the Design Quality Principles prescribed under State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development particularly, Principle 6: Amenity, in that a number of the apartments have constrained living area widths and poor solar amenity.*
4. *The development fails to comply with the Solar Access objectives and standards for internal living areas and balconies prescribed under the Apartment Design Guide, pursuant to State Environmental Policy No. 65 - Design Quality of Residential Apartment Development.*
5. *The development accommodates constrained living area widths and is contrary to the Apartment Layout objectives and standards prescribed under the Apartment Design Guide, pursuant to State Environmental Policy No. 65 - Design Quality of Residential Apartment Development.*
6. *Inadequate information has been submitted regarding the conservation and restoration of the period building street front façade. Accordingly, the application is contrary to the Heritage Conservation development objectives and standards contained in Clause 5.10 of Marrickville Local Environmental Plan 2011 and the objectives and controls for Active street Frontage Uses and Shop Front Design pursuant to Part 5.1.4.2 of Marrickville Development Control Plan 2011.*
7. *The development is contrary to the desired future character of the King Street and Enmore Road Commercial Planning Precinct (Precinct 37) pursuant to Part 9.37 of Marrickville Development Control Plan 2011 in that the development does not demonstrate suitable amenity for the occupants of the development and does not adequately detail the restoration of the contributory building street front façade.*
8. *In view of the above, and given the substantiated issues raised in the resident submission, approval of the application would not be in the public interest.*

#### **4(b) Application history**

The following table outlines the relevant history of the subject Section 82A review request.

<b>Date</b>	<b>Discussion / Letter/ Additional Information</b>
7 July 2017	Subject application submitted to Council
7 September 2017	Additional information submitted to Council including additional solar access diagrams.

## 5. Assessment

The applicant has requested that Council review the determination under Section 82A of the Environmental Planning and Assessment Act, 1979. The following information has been submitted with the review request in support of the proposed development attempting to address the reasons for refusal:

- Amended Plans;
- Statement of Environmental Effects addressing the reasons for refusal of Determination No. 201600565, dated 8 May 2017;
- Written request in accordance with Clause 4.6 of MLEP 2011;
- Other associated documentation.

Below is an assessment of the additional information provided by the applicant in the Section 82A review request having regard to the grounds of refusal of the original development application:

- 1. Inadequate information was submitted with the application to undertake a complete and proper assessment of the application in accordance with Section 79C of the Environmental Planning and Assessment Act 1979, particularly in relation to the specific materials, colours and finishes for the restoration of the street front period building façade.**

### Comment:

The site is located within a Heritage Conservation Area under MLEP 2011 (Heritage Conservation Area C2 – King Street/Enmore Road). The site is also located adjacent to a Local Heritage Item at No. 597 King Street, being the Botany View Hotel (Item No. I158).

The original development application was referred to Council's Heritage and Urban Design Advisor who advised that a more detailed palette of materials, finishes and colours was required to undertake a complete and proper assessment of the restoration of the period façade of the building fronting King Street. The information was not provided to Council and the application was subsequently refused.

Additional information was submitted to Council as part of the subject review request. The review request was referred to Council's Heritage and Urban design Advisor who advised that the drawings provide sufficient detail to assess the heritage/architectural/urban design merits of the proposal. The applicant has incorporated the advice provided by Council which was absent from the original application, including:

- Heritage conservation and preservation to the front façade, heritage signage and trusses;
- Internal layout particularly of the units facing King Street;
- Contemporary interpretation of traditional shopfront; and
- The architectural quality of the new structure – side and rear elevations and finishes – these are positive outcomes.

Concurrence from the Roads and Maritime Services (RMS) was sought under Section 138 of the Roads Act for the reconstruction of the balcony overhanging the King Street road reserve. On 14 September 2017 RMS provided the following comments:

*“Roads and Maritime has reviewed the submitted application and notes that the proposed verandah and balcony extend beyond the freehold property boundary. Any improvements beyond the freehold boundary, other than standard pedestrian awnings, for private benefit are not supported by Roads and Maritime. As such, Roads and Maritime cannot provide concurrence with the proposed development's current design.*

The reconstruction of the balcony is a significant component of the proposal and given concurrence has not been provided the presentation of the development to King Street would need to be reconsidered.

The application is considered unsupportable and in view of the circumstances, refusal of the review request is recommended.

- 2. The development exceeds the Floor Space Ratio permitted on the land pursuant to Clause 4.4 of Marrickville Local Environmental Plan 2011. The Floor Space Ratio variation is not considered to be well founded and worthy of support pursuant to Clause 4.6 of Marrickville Environmental Plan 2011 in that it results in a number of apartments with poor solar amenity and internal layouts.**

Comment:

A maximum floor space ratio (FSR) of 1.5:1 applies to the land under MLEP 2011. The development proposed as part of the original development application and subsequently refused as part of Determination No. 201600565 had a gross floor area (GFA) of 448.57sqm which equated to a FSR of 1.95:1 on the 229.5sqm site, a departure of 103.32sqm or 30%.

The proposal the subject of this review request seeks consent for the same departure from the maximum FSR development standard. A written request, in relation to the development's non-compliance with the FSR development standard in accordance with Clause 4.6 (Exception to Development Standards) of MLEP 2011, was submitted with the review request.

The applicant considers compliance with the maximum FSR development standard to be unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The applicant makes additional comments which have been paraphrased and reproduced below:

- The proposal represents a scale appropriate to the desired future character of the area as identified by MLEP 2011 and MDCP 2011 by maintaining the majority of the external envelope of the existing building;

- The proposal complies with the maximum height of building development standard set at 14 metres;
- The building has been well articulated in its design, minimising the perceived bulk of the development when viewed from the public domain;
- Attention to detail has been given to the design as the building sits beside a heritage item and is located within a heritage conservation area;
- A high level of internal amenity is proposed acknowledging that each of these units meet adaptable unit requirements and are capable of providing for sufficient internal circulation to suit the needs of future residents;
- The design of the units achieves natural cross ventilation and solar access;
- The size of the 1 bedroom units and balconies exceed the requirements of the ADG; and
- The size of the living spaces exceeds the requirements of the ADG providing a high quality and functional living space.

The applicant considers that there are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:

- The revised proposal will provide a better planning outcome on the site reflecting both the desired future character sought by the B2 Local Centre zoning and the heritage conservation principles driven by Part 9.37 of MDCP 2011;
- The design of the 1 bedroom dwellings and the private open space exceed the requirements of the ADG and the proposed area of communal open space will ensure excellent solar access for future occupants; and
- The applicant considers that the variation is in the public interest.

The justification provided in the applicant's written submission is not considered to be well founded and worthy of support. It is considered that insufficient justification has been provided to demonstrate that compliance with the development standard is unreasonable or and unnecessary in this particular circumstance based on the outcomes of planning law precedents such as those contained in *Wehbe v Pittwater Council* [2007] NSWLEC827, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC90, *Moskovich v Waverley Council* [2016], *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386 and *Zhang and anor v Council of the City of Ryde* [2016] NSWLEC 1179.

The application has not proven that the development achieves a better outcome pursuant to Clause 4.6(b) with the FSR non-compliance as the development:

- Fails to achieve compliance with the solar access controls prescribed by Objective 4A-1 of the ADG;
- Does not achieve compliance with the rear building envelope and number of storeys prescribed by Control C13 in Part 5.1.3.3 of MDCP 2011 which results in significant visual bulk at the rear of the site;
- The 4 storey rear building form results in significant visual bulk when viewed from the public domain and would result in an undesirable precedent for the locality;



- Given the non-compliances with the abovementioned controls and the significant number of submissions received raising objection to the proposal, it is considered that contravention of the development standard would not be in the public interest.

In view of the above circumstances, it is considered that the non-compliance with the FSR development standard is not warranted. Insufficient justification has been provided to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.

Accordingly, the variation to the FSR development Standard contained in MLEP 2011 is not supported as the development has not demonstrated that a better planning outcome is achieved as a result of the FSR variation pursuant to Clause 4.6(1)(b) of MLEP 2011 and it has not demonstrated that the proposed bulk and density achieves the future desired character of the area under Clause 4.4(1)(b) of MLEP 2011.

It is also noted that the RMS has not granted concurrence to the reconstruction of the front balcony that projects over the King Street road reserve. This is a significant component of the proposal and given concurrence has not been provided the presentation of the development to King Street would need to be reconsidered.

The application is considered unsupportable and in view of the circumstances, refusal of the review request is recommended.

- 3. The development is contrary to the Design Quality Principles prescribed under State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development particularly, Principle 6: Amenity, in that a number of the apartments have constrained living area widths and poor solar amenity.**

Comment:

The development is subject to the requirements of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65). SEPP 65 prescribes 9 design quality principles to guide the design of residential apartment development and to assist in assessing such developments. The principles relate to key design issues including context and neighbourhood character, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction and aesthetics.

The development refused as part of Determination No. 201600565, dated 8 May 2017, failed to provide dwellings with satisfactory amenity and thus failed to demonstrate consistency with Principle 6: Amenity of the 9 design quality principles for the following reasons:

- The rear facing dwellings had poor solar amenity due to the depth and location of the balconies and rear facing bedrooms.



- The rear facing dwellings (Apartments 01, 03 and 05) had constrained combined living/dining areas that did not conform to the ADG guidelines for living/dining area widths.

### Solar amenity

Objective 4A-1 of the ADG prescribes the following for solar and daylight access:

- “1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area*
- 3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter”*

The development as originally proposed included 3 x 2 bedroom dwellings located at the rear portion of the building. Those dwellings were provided with bedrooms and balconies located along the western elevation of the building. Due to the location of the living spaces of those dwellings, those units were unlikely to receive adequate solar access. Consequently only 2 of the 5 dwellings in the development, being those located on the eastern side of the building, were likely to receive a minimum 2 hours of direct solar access between 9:00am and 3:00pm at mid-winter. This resulted in only 40% of apartments in the development receiving adequate solar access and the application was therefore refused.

Amended plans were submitted with the subject review request modifying those dwellings to be 3 x 1 bedroom dwellings. The dwellings have fluid living/dining spaces and a balcony accessible off the dining and living spaces orientated west. Additional documentation was provided to Council indicating that the west facing dwellings receive direct solar access between 1:16pm and 3:00pm in mid-winter. Whilst it is acknowledged that the proposal only falls marginally short of the required 2 hours of direct solar access prescribed by Objective 4A-1 of the ADG, it is considered that the excessive GFA proposed contributes that the inability of the development to achieve the required level of solar access. The deletion of Unit 5 for example could provide Unit 3 with sufficient solar access by way of skylights or relocation of the balcony, thus providing 75% of dwellings with the required solar access. This arrangement would result in the proposed development complying with the ADG objectives in relation to solar amenity.

### Apartment layouts

Objective 4D-3 of the ADG prescribes the following for apartment layouts:

- “3. Living rooms or combined living/dining rooms have a minimum width of:*
  - *3.6m for studio and 1 bedroom apartments*
  - *4m for 2 and 3 bedroom apartments”*

The development as originally proposed included 3 x 2 bedroom dwellings located at the rear portion of the building. Those dwellings contained minimum living area widths of approximately 2.5 metres which did not comply with the minimum 4 metres

for 2 bedroom apartments prescribed by the ADG. The application was therefore refused.

Amended plans were submitted with the subject review request modifying those dwellings to be 3 x 1 bedroom dwellings. The dwellings now have separated living and dining spaces, with the living spaces now complying with the minimum widths prescribed by the ADG.

- 4. The development fails to comply with the Solar Access objectives and standards for internal living areas and balconies prescribed under the Apartment Design Guide, pursuant to State Environmental Policy No. 65 - Design Quality of Residential Apartment Development.**

Comment:

This matter is discussed under reason 3 above. The matter of solar access has not been satisfactorily addressed as part of the subject review request. The application is considered unsupportable and in view of the circumstances, refusal of the review request is recommended.

- 5. The development accommodates constrained living area widths and is contrary to the Apartment Layout objectives and standards prescribed under the Apartment Design Guide, pursuant to State Environmental Policy No. 65 - Design Quality of Residential Apartment Development.**

Comment:

This matter is discussed under reason 3 above and the subject application is considered acceptable in this regard.

- 6. Inadequate information has been submitted regarding the conservation and restoration of the period building street front façade. Accordingly, the application is contrary to the Heritage Conservation development objectives and standards contained in Clause 5.10 of Marrickville Local Environmental Plan 2011 and the objectives and controls for Active street Frontage Uses and Shop Front Design pursuant to Part 5.1.4.2 of Marrickville Development Control Plan 2011.**

Comment:

This matter is discussed under reason 1 above and the subject application is considered acceptable in relation to the documentation provided.

Notwithstanding, as pointed out above the RMS did not grant concurrence to the reconstruction of the front balcony that projects over the King Street road reserve. This is a significant component of the proposal and given concurrence has not been provided the presentation of the development to King Street would need to be reconsidered.

7. **The development is contrary to the desired future character of the King Street and Enmore Road Commercial Planning Precinct (Precinct 37) pursuant to Part 9.37 of Marrickville Development Control Plan 2011 in that the development does not demonstrate suitable amenity for the occupants of the development and does not adequately detail the restoration of the contributory building street front façade.**

In assessing the original development application, the proposal was found to be contrary to the desired future character of the King Street and Enmore Road Commercial Planning Precinct (Precinct 37) pursuant to Part 9.37 of MDCP 2011 in that:

- Inadequate information had been provided to demonstrate that the contributory building façade fronting King Street would be adequately restored to complement the King Street/Enmore Road Heritage Conservation Area; and
- The development did not demonstrate suitable amenity for the occupants of the development, accommodating apartments with poor solar amenity within living areas and balconies and constrained living area widths.

Sufficient documentation has been provided as part of the review request to indicate that the contributory building façade fronting King Street could be adequately restored to complement the King Street/Enmore Road Heritage Conservation Area. Notwithstanding, as discussed earlier in this report, concurrence from RMS under Section 138 of the Roads Act has not been provided and thus reconstruction of the original balcony to King Street cannot be undertaken.

No site specific planning controls relate to the site under Part 9.37 of MDCP 2011 and thus the development is to be assessed against the provisions of Part 5 – Commercial and Mixed-Use Development of MDCP 2011. Control C13 of Part 5.1.3.3 prescribes the following:

**“C13** *Where the rear boundary adjoins a lane:*

- I. The rear building envelope must be contained within the combination of the rear boundary plane and a 45 degree sloping plane from a point 7.5 metres vertically above the lane ground level, measured at the rear boundary, and contain a maximum of two storeys on the rear most building plane;*
- II. Notwithstanding point i., building envelopes may exceed the above building envelope control where it can be demonstrated that any rear massing that penetrates above the envelope control will not cause significant visual bulk or amenity impacts on neighbouring properties to the rear;*
- III. The rear building envelope must contribute positively to the visual amenity of the laneway, and encourage rear laneway activation through measures such as providing appropriate lighting and opportunities for passive surveillance.”*

As indicated in the image below, the development has a maximum height at the rear boundary of 12.2 metres and four storeys. This is a significant breach of the rear building envelope controls. Whilst it is acknowledged that there are examples of rear building envelopes in the locality that do exceed the 2 storey limit, the 4 storeys proposed is considered to be excessive and out of character with the locality and results in significant visual bulk to the low density streetscape to the west. The four

storey form does not contribute positively to the visual amenity of the laneway and will be highly visible from the public domain along Darley Street to the south west.

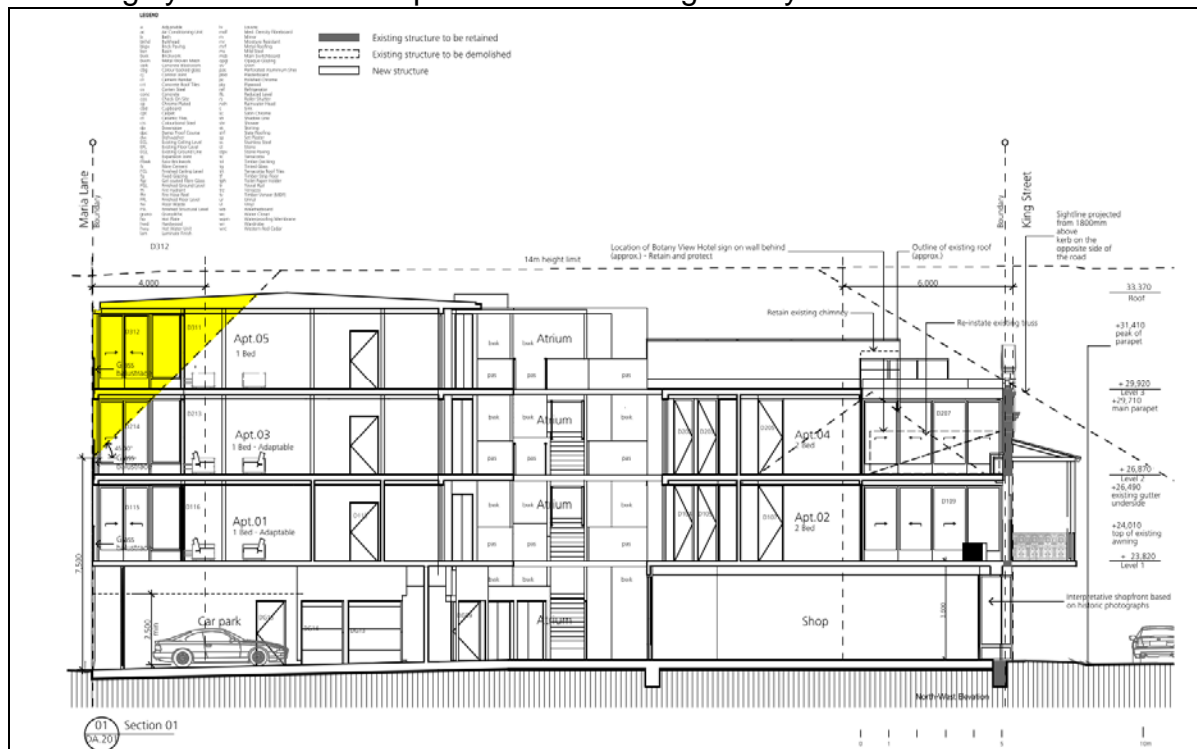


Image 1: Rear building envelope

As discussed in more detail earlier in this report, the applicant seeks a significant departure from the maximum FSR development standard contained in MLEP 2011 and the proposal fails to demonstrate suitable amenity for the occupants of the development accommodating apartments with poor solar amenity that does not meet the standards prescribed by the ADG. In addition, the RMS has not granted concurrence for the proposed balcony on the King Street façade which forms a significant component of the restoration of the contributory building street front façade.

Considering the matters raised above, the application is considered unsupportable and in view of the circumstances, refusal of the review request is recommended.

**8. In view of the above, and given the substantiated issues raised in the resident submission, approval of the application would not be in the public interest.**

The original development application was advertised in accordance with Council's Notification Policy and a total of 3 submissions were received. The matters raised in those submissions were addressed as part of the assessment of that application, and a number of those issues were considered to be unresolved including building height, bulk and scale, restoration of the contributory building façade and urban design/streetscape considerations.

The Section 82A review request was advertised, an on-site notice displayed on the property and residents/property owners in the vicinity of the property were notified of

the development in accordance with Council's Notification Policy. A total of 46 submissions including a petition containing 3,871 signatures were received.

The petition contains 3,871 signatures and generally raises concern over the impact that the development may have on the ongoing operations of the Botany View Hotel which is located directly to the south of the site at 597 King Street. The ground floor level of the premises hosts live music and the first floor level has a bistro and outdoor dining area. Concern is raised that the noise generated by the operation of the hotel may lead to complaints from the new occupants of the development which could subsequently impact on the operations of the hotel.

Section 79C of the Environmental Planning and Assessment Act requires Council to consider the likely impacts of that [development](#), including [environmental](#) impacts on both the natural and built [environments](#), and social and economic impacts in the locality. Whilst the site does permit residential development, it would be prudent that appropriate measures are introduced to the development to ensure the acoustic privacy of future occupants is maintained as well as to the extent that it is possible, not compromise the social and economic impacts to the locality generally.

Control C2 of Part 2.6.3 of MDCP 2011 prescribes the following in relation to acoustic privacy:

**“C2 General acoustic privacy**

- 1. New dwellings close to high noise sources such as busy roads, rail lines and industry must be designed to locate habitable rooms and private open spaces away from noise sources or protect those areas with appropriate noise shielding devices.”*

An Aircraft and Road Traffic Noise Intrusion report was submitted with the review request to demonstrate that the proposal could be noise attenuated from traffic and aircraft noise. However, the applicant has failed to consider that there is a potential high noise source located directly to the south of the subject site that could impact on the acoustic privacy of future occupants. As such, in the absence of any noise mitigation measures or design considerations, it is considered that approval of the development would not be in the public interest.

Considering the matters raised above, the application is considered unsupportable and in view of the circumstances, refusal of the review request is recommended.

## **6. Community Consultation**

The Section 82A review request was advertised, an on-site notice displayed on the property and residents/property owners in the vicinity of the property were notified of the development in accordance with Council's Notification Policy. A total of 46 submissions including a petition containing 3,871 signatures was received were received.

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

- Excessive departure from FSR development standard - See discussions in relation to reason for refusal 2;
- Heritage considerations - See discussions in relation to reason for refusal 1, 6 and 7;
- Amenity for proposed dwellings in relation to solar access and room sizes - See discussions in relation to reason for refusal 3;
- Impact of the development on the ongoing operations of the Botany View Hotel at No. 597 King Street – See discussions in relation to reason for refusal 8.

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

Issue: Development is of a poor quality and design and is out of character with the locality.

Comment: A number of submissions raise concern over the architectural quality of the building. The development was referred to Council's Heritage and Urban design Advisor who raised no concern over the development from an urban design and heritage perspective. Notwithstanding, as highlighted in the above assessment report, the FSR departure is not supported nor is the breach to the rear building envelope. Furthermore, the RMS has not granted concurrence to the proposed balcony on the King Street façade which forms a significant component of the restoration of the contributory building street front façade.

Issue: Inconsistency of documentation

Comment: Concern has been raised over inconsistency of some of the specialist reports accompanying the application. Particular concern is raised over the BASIX Certificate, Access Report, Noise Impact Assessment and Statement of Environmental Effects which describe the proposal as a development containing 6 dwellings. The original application containing 6 dwellings was refused as part of Determination No. 2201600565, dated 8 May 2017. It is apparent that some of the documentation has not been updated since that application was lodged.

Issue: Potential contamination of the site

Comment: Concern is raised that the application has not been accompanied by a Stage 1 Preliminary Site Assessment demonstrating that the site is suitable for the proposed use.

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. Marrickville Development Control Plan 2011 (MDCP 2011) provides controls and guidelines for remediation works. Under the provisions of the SEPP, Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated. There

is no evidence to suggest that any previous use of the land would result in contamination and therefore no further investigation is required.

Issue: Access to Maria Lane

Comment: Concern is raised regarding access to Maria Lane, particularly during construction. The application is recommended for refusal however appropriate conditions would be placed on any consent to ensure a construction management plan be submitted to the Council's satisfaction to ensure any construction impacts are minimised.

Issue: Inadequate parking – vehicular and bicycle

Comment: The application does not comply with the car parking rates in accordance with Part 2.10 of MDCP 2011 however it does comply with the bicycle rates. Given that the location of the site is within the King Street commercial precinct and is located within close proximity to services, shops, bus stops servicing King Street and a 230 metre walk to St Peters Station, the shortfall in 3 car parking spaces is considered reasonable. In view of the above, the variation to the car parking controls under MDCP 2011 can be supported in principle. However, in view of the outstanding planning issues discussed throughout the main body of this report, refusal of the review request is recommended.

All relevant matters raised in the submissions able to be considered under the provisions of Section 79C of the Environmental Planning and Assessment Act have been discussed in the report.

## 7. Referrals

### 7(a) Internal

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

- Development Engineer;
- Heritage and Urban Design Advisor; and
- Waste Management.

### 7(b) External

The application was referred to the Roads and Maritime Services (RMS) for concurrence under Section 138 of the Roads Act. As discussed throughout the main body of this report, concurrence has not been provided by RMS.

## 8. Conclusion

The proposal exceeds the maximum FSR development standard contained in Marrickville Local Environmental Plan 2011 (MLEP 2011) by 104.3sqm or 30%. A written request under Clause 4.6 of MLEP 2011 has been submitted for the non-



compliance however the justification provided is not considered well founded and worthy of support.

The proposal does not comply with the provisions of Marrickville Development Control Plan 2011 (MDCP 2011) in regards to the provision of car parking, rear building envelope and solar access.

It is considered that the proposal represents an overdevelopment of the site due to the excessive visual bulk at the rear resulting from the FSR departure.

Furthermore, concurrence from the Roads and Maritime Service for the balcony overhanging King Street road reserve has not been provided.

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

## 9. Recommendation

That Council as the consent authority pursuant to Section 82A of the Environmental Planning and Assessment Act, 1979 confirm the original determination of **refusal** for Development Application No. 201600565 for the following reasons:

1. The development exceeds the maximum Floor Space Ratio permitted on the land under Clause 4.4 of Marrickville Local Environmental Plan 2011 and the written request under Clause 4.6 of Marrickville Local Environmental Plan 2011 is not considered to be well founded and worthy of support.
2. The Roads and Maritime Services has not granted concurrence for the balcony proposed to overhang the King Street road reserve which forms a significant component of the restoration of the contributory building street front façade.
3. The development fails to comply with the Solar Access objectives prescribed under the Apartment Design Guide, pursuant to State Environmental Policy No. 65 - Design Quality of Residential Apartment Development.
4. The development is contrary to the desired future character of the King Street and Enmore Road Commercial Planning Precinct (Precinct 37) pursuant to Part 9.37 of Marrickville Development Control Plan 2011 in that the development does not demonstrate suitable amenity for the occupants of the development and the Roads and Maritime Services has not granted concurrence for the balcony overhanging the King Street road reserve which forms a significant component of the restoration of the contributory building street front façade.
5. The development is contrary to the rear building envelope control (C13) as contained in Part 5.1.3.3 of Marrickville Development Control Plan 2011.
6. In view of the above, and in the absence of any noise mitigation measures or design considerations to address the substantiated issues raised in the resident submissions regarding the operations of the hotel at No. 597 King Street, approval of the application would not be in the public interest.

## Attachment A - Conditions in the circumstance the application is approved

### PART A - DEFERRED COMMENCEMENT CONSENT

The consent will not operate and it may not be acted upon until the Council or its delegate is satisfied as to the following matters:

1. The person acting on this consent must obtain separate approval from RMS under Section 138 of the Roads Act, 1993 for the balcony over the King Street footpath. A copy of such approval must be submitted to Council.
2. Approval is obtained pursuant to Section 149 of the Roads Act, 1993 from the Director of the Department of Planning and Environment for the lease of the airspace above the King Street footpath in relation to the construction of balconies.

Evidence of the above matters must be produced to the Council or its delegate within 2 years of the date of this Determination otherwise the Consent will lapse.

### PART B - CONDITIONS OF CONSENT

Once operative the consent is subject to the following conditions:

#### GENERAL

1. The development must be carried out in accordance with plans and details listed below:

Plan and Issue No.	Plan Name	Date Issued	Prepared by	Date Submitted
DA.201 C	Ground Floor Plan	11 July 2017	Architectural Projects	12 July 2017
DA.202 C	First Floor Plan	11 July 2017	Architectural Projects	12 July 2017
DA.203 C	Second Floor Plan	11 July 2017	Architectural Projects	12 July 2017
DA.204 C	Third Floor Plan	11 July 2017	Architectural Projects	12 July 2017
DA.205 C	Roof Plan	11 July 2017	Architectural Projects	12 July 2017
DA.301 C	Section 01	11 July 2017	Architectural Projects	12 July 2017
DA.302 C	Sections 02 & 03	11 July 2017	Architectural Projects	12 July 2017
DA.401 C	Elevation – North East	11 July 2017	Architectural Projects	12 July 2017
DA.402 C	Elevation – South West	11 July 2017	Architectural Projects	12 July 2017
DA.403 C	Elevation – Internal East & West	11 July 2017	Architectural Projects	12 July 2017
DA.404 C	Elevation – South East	11 July 2017	Architectural Projects	12 July 2017
DA.405 C	Elevation – North West	11 July 2017	Architectural Projects	12 July 2017
16-3312 LO1	Landscape Plan	12 September 2017	Zenith Landscape Designs	12 July 2017
Project No. 1643	Heritage Impact Statement	July 2017	Architectural Projects	12 July 2017
16MB7261/	Erosion &	17 October	United Consulting	12 July

SW01 A	Sediment Control Plan	2016	Engineers Pty Ltd	2017
16MB7261/ D01 A	Concept Drainage Plan	17 October 2016	United Consulting Engineers Pty Ltd	12 July 2017
757478M	BASIX Certificate	22 September 2016	Planning & Infrastructure	12 July 2017
6056-1.1R	Aircraft and Road Traffic Noise Intrusion Assessment	22 September 2016	Day Design Pty Ltd	12 July 2017

and details submitted to Council on 12 July 2017 with the application for development consent as amended by the matter referred to in Part A of this Determination and the following conditions.

2. Where any plans and/or information forming part of a construction certificate issued in relation to this consent are inconsistent with:

- (a) the plans and/or information approved under this consent; or
- (b) any relevant requirements of this consent,

the plans, information and/or requirements of this consent (as the case may be) shall prevail to the extent of the inconsistency.

All development approved under this consent shall be carried out in accordance with the plans, information and/or requirements of this consent taken to prevail by virtue of this condition.

3. In order to ensure the architectural and urban design excellence of the development is retained:
  - a) The design architect is to have direct involvement in the design documentation, contract documentation and construction strategies of the project;
  - b) The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
  - c) Evidence of the design architect's commission is to be provided to the Council prior to the release of the construction certificate.
  - d) The design architect of the project is not to be changed without prior notice and approval of the Council.
4. The materials and finishes of the building constructed pursuant to this consent must be strictly in accordance with the materials and finishes identified in Materials Board dated 11 July 2017, prepared by Architectural Projects (Dwg. No. DA.702, Project No. 1643, Revision C). No changes may be made to these drawings except by way of an application under section 96 of the *Environmental Planning and Assessment Act 1979*.
5. Where units or dwellings are provided with separate individual hot water systems, these must be located within the internal area of the unit/dwelling and not on any balcony or terrace. No air conditioning units are to be installed on the King Street frontage of the development without the prior approval of Council.
6. Separate Development Consent or Complying Development Certificate must be obtained for the use of the ground floor shops/commercial suites prior to the occupation of that part of the premises.

7. Each dwelling must be used exclusively as a single dwelling and not be adapted for use as backpackers' accommodation, serviced apartments or a boarding house and not be used for any industrial or commercial purpose.
8. A minimum of 1 adaptable dwelling must be provided in accordance with Part 2.5 of Marrickville Development Control Plan 2011 - Equity of Access and Mobility.
9. A total of 1 accessible off-street car parking space must be provided, paved and maintained at all times in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 - Parking. All parking spaces and turning area thereto being provided in accordance with the design requirements set out within Part 2.10 of Marrickville Development Control Plan 2011 - Parking, and must be used exclusively for parking and not for storage or any other purpose.
10. No injury must be caused to the amenity of the neighbourhood by the emission of noise, smoke, smell, vibration, gases, vapours, odours, dust, particular matter, or other impurities which are a nuisance or injurious or dangerous or prejudicial to health, the exposure to view of any unsightly matter or otherwise.
11. The use of the premises, including any plant and equipment, must not give rise to:
  - a) transmission of unacceptable vibration to any place of different occupancy;
  - b) a sound pressure level at any affected premises that exceeds the background (LA90) noise level in the absence of the noise under consideration by more than 5dB(A). The source noise level shall be assessed as an LAeq,15min and adjusted in accordance with Environment Protection Authority guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content as described in the NSW Environment Protection Authority's Environmental Noise Control Manual and Industrial Noise Policy 2000 and The Protection of the Environment Operations Act 1997 (NSW).
12. Noise and vibration from the use and operation of any plant and equipment and/or building services associated with the premises must not give rise to "offensive noise" as defined by The Protection of the Environment Operations Act 1997 (NSW). In this regard the roller door to the car parking entry is to be selected, installed and maintained to ensure their operation does not adversely impact on the amenity of the surrounding neighbourhood.
13. All building work must be carried out in accordance with the provisions of the National Construction Code (Building Code of Australia).
14.
  - a) The owners of the property appointing a designated person(s) responsible for moving waste bins from their usual storage spaces to the collection point for the storage of domestic bins being in accordance with details to be submitted to Council's satisfaction;
  - b) The domestic bins only being placed in the approved collection point after 7.00pm on the day prior to collection and are to be returned to their storage location within the building within 2 hours of the bins being collected by Council.
15. Compliance with all of Council's conditions of Consent under Section 138 of the Roads Act, 1993.
16. The balcony shall be fully maintained by the applicant, or any person entitled to act upon this consent, to the satisfaction of Council.
17. The removal of the balcony structure and all associated works shall be at the applicant's cost, in the event that the consent under Section 138 of the Roads Act, 1993 is revoked.
18. The proposed balcony shall be of cantilever type and be set back at least 600mm from the kerb line. The balcony shall be designed so as to be easily removed if required in future. The

owner shall maintain, modify or remove the structure at any time if given notification by Council or the RMS to do so. All works shall be at no cost to Council or the RMS.

19. Owners and occupants of the proposed building shall not be eligible to obtain parking permits under any existing or future resident parking scheme for the area. The person acting on this consent shall advise any purchaser or prospective tenant of this condition. In addition the by-laws of any future residential strata plans created for the property shall reflect this restriction.
20. All stormwater drainage being designed in accordance with the provisions of the Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2003 'Stormwater Drainage' and Marrickville Council Stormwater and On Site Detention Code. Pipe and channel drainage systems shall be designed to cater for the twenty (20) year Average Recurrence Interval (A.R.I.) storm in the case of low and medium residential developments, the twenty (20) year A.R.I. storm in the case of high density residential development and commercial and/or industrial developments and the fifty (50) year A.R.I. storm in the case of heavy industry. In all cases the major event surface flow paths shall be designed to cater for the one hundred (100) year A.R.I. storm.
21. Should the proposed development require the provision of an electrical substation, such associated infrastructure shall be incorporated wholly within the development site. Before proceeding with your development further, you are directed to contact Ausgrid directly with regard to the possible provision of such an installation on the property.
22. Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system. Alternatively the water may be stored separately on site and reused for the watering of landscaped areas.

#### **BEFORE COMMENCING DEMOLITION, EXCAVATION AND/OR BUILDING WORK**

For the purpose of interpreting this consent, a Principal Certifying Authority (PCA) means a principal certifying authority appointed under Section 109E(1) of the Environmental Planning and Assessment Act 1979. Pursuant to Section 109E(3) of the Act, the PCA is principally responsible for ensuring that the works are carried out in accordance with the approved plans, conditions of consent and the provisions of the National Construction Code (Building Code of Australia).

23. No work must commence until:
  - a) A PCA has been appointed. Where an Accredited Certifier is the appointed, Council shall be notified within 2 days of the appointment; and
  - b) A minimum of 2 days written notice given to Council of the intention to commence work.
24. A Construction Certificate must be obtained before commencing building work. Building work means any physical activity involved in the construction of a building. This definition includes the installation of fire safety measures.
25. Sanitary facilities must be provided at or in the vicinity of the work site in accordance with the WorkCover Authority of NSW, Code of Practice 'Amenities for Construction'. Each toilet must be connected to the sewer, septic or portable chemical toilet before work commences.

Facilities must be located so that they will not cause a nuisance.

26. All demolition work must:

- a) Be carried out in accordance with the requirements of Australian Standard AS 2601 'The demolition of structures' and the Occupational Health and Safety Act and Regulations; and
  - b) Where asbestos is to be removed it must be done in accordance with the requirements of the WorkCover Authority of NSW and disposed of in accordance with requirements of the Department of Environment, Climate Change and Water.
27. Where any loading, unloading or construction is to occur from a public place, Council's Infrastructure Services Division must be contacted to determine if any permits or traffic management plans are required to be obtained from Council before work commences.
28. All services in the building being partially demolished must be disconnected in accordance with the requirements of the responsible authorities before work commences.
29. The site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property, before work commences.
30. A rigid and durable sign must be erected in a prominent position on the site, before work commences. The sign must be maintained at all times until all work has been completed. The sign is to include:
- a) The name, address and telephone number of the PCA;
  - b) A telephone number on which Principal Contractor (if any) can be contacted outside working hours; and
  - c) A statement advising: 'Unauthorised Entry To The Work Site Is Prohibited'.
31. A Soil and Water Management Plan must be prepared in accordance with Landcom Soils and Construction, Volume 1, Managing Urban Stormwater (Particular reference is made to Chapter 9, "Urban Construction Sites") and submitted to and accepted by the PCA. A copy of this document must be submitted to and accepted by PCA before work commences. The plan must indicate:
- a) Where the builder's materials and waste are to be stored;
  - b) Where the sediment fences are to be installed on the site;
  - c) What facilities are to be provided to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way; and
  - d) How access to the site will be provided.
- All devices must be constructed and maintained on site while work is carried out.
32. The person acting on this consent is responsible for arranging and meeting the cost of a dilapidation report prepared by a suitably qualified person. The report is to include colour photographs and must be submitted to the Certifying Authority's satisfaction, with a colour copy being provided to Council and the property owner of the identified property, before work commences, on the buildings on the adjoining properties to the north and south (namely Nos. 597 and 593 King Street), if the consent of the adjoining property owner can be obtained. In the event that the consent of the adjoining property owner cannot be obtained copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the PCA before work commences.
33. Before commencing works the person acting on this consent must provide a contact number for a designated person to be available during the demolition and construction for residents to contact regarding breaches of consent or problems relating to the construction.
34. The person acting on this consent shall apply as required for all necessary permits including crane permits, road opening permits, hoarding permits, footpath occupation permits and/or any other approvals under Section 68 (Approvals) of the Local Government Act, 1993 or Section 138 of the Roads Act, 1993.

35. Where it is proposed to carry out works in public roads or Council controlled lands, a road opening permit shall be obtained from Council before the carrying out of any works in public roads or Council controlled lands. Restorations shall be in accordance with Marrickville Council's Restorations Code. Failure to obtain a road opening permit for any such works will incur an additional charge for unauthorised works as noted in Council's adopted fees and charges.
36. The person acting on this consent shall provide details of the means to secure the site and to protect the public from the construction works. Where the means of securing the site involves the erection of fencing or a hoarding on Council's footpath or road reserve the person acting on this consent shall submit a hoarding application and pay all relevant fees before commencement of works.
37. A detailed Traffic Management Plan to cater for construction traffic shall be submitted to and approved by Council before commencement of works. Details shall include proposed truck parking areas, construction zones, crane usage, truck routes etc.
38. The person acting on this consent shall submit a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site before commencement of works.

#### BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE

For the purpose of interpreting this consent the Certifying Authority (Council or an Accredited Certifier) is that person appointed to issue the Construction Certificate.

39. a) This condition is imposed in accordance with Section 94 of the Environmental Planning and Assessment Act 1979.
- b) Before the issue of a Construction Certificate, the Council must be paid a monetary contribution of \$68,076.30 indexed in accordance with Marrickville Section 94/94A Contributions Plan 2014 ("CP").

The above contribution is the contribution applicable as at 22 September 2017.

**\*NB** Contribution rates under Marrickville Section 94/94A Contributions Plan 2014 are indexed quarterly (for the method of indexation refer to Section 2.15 of the Plan).

The indexation of the contribution rates occurs in the first week of the months of February, May, August and November each year, following the release of data from the Australian Bureau of Statistics.

#### **(CONTRIBUTION PAYMENT REFERENCE NO. DC002049)**

- c) The contribution payable has been calculated in accordance with the CP and relates to the following public amenities and/or services and in the following amounts:
 

Community Facilities	\$7,534.06
Plan Administration	\$1,334.84
Recreation Facilities	\$58,279.88
Traffic Facilities	\$927.52
- d) A copy of the CP can be inspected at Council's offices at 2-14 Fisher Street, Petersham or online at <http://www.marrickville.nsw.gov.au>.
- e) The contribution must be paid either in cash, by unendorsed bank cheque (from an Australian Bank only), via EFTPOS (Debit only) or credit card\*.



\*NB A 1% credit card transaction fee applies to all credit card transactions.

40. Evidence of payment of the building and construction industry Long Service Leave Scheme must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate. (The required payment can be made at the Council Offices).

**NOTE:** The required payment is based on the estimated cost of building and construction works and the long service levy rate, set by the Long Service Payments Corporation. The rate set by the Long Service Payments Corporation is currently of 0.35% of the cost of the building and construction work.

For more information on how to calculate the amount payable and where payments can be made contact the Long Services Payments Corporation.  
<http://www.lspc.nsw.gov.au>.

41. The approved plans must be submitted to a Sydney Water Quick Check agent to determine whether the development will affect any Sydney Water wastewater and water mains, stormwater drains and/or easement, and if any requirements need to be met. Plans will be appropriately stamped.

Please refer to the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- Quick Check agents details - see Plumbing, building and developing then Quick Check agents and
  - Guidelines for Building Over/Adjacent to Sydney Water Assets – see Plumbing, building and developing then Plan submissions
- or telephone 13 20 92.

The stamped plans must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

42. A statement from a qualified Architect, verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design principles set out in Schedule 1 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
43. All plumbing and ductwork including stormwater downpipes must be concealed within the outer walls of the building so they are not visible. Plans and elevations detailing the method of concealment must be submitted to and approved by Council before the issue of a Construction Certificate. Any variation to this requirement requires Council approval.
44. Letterboxes and mail collection facilities must be provided and adequately protected in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
45. Lighting details of the pedestrian areas, parking areas and all entrances must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
46. Plans fully reflecting the selected commitments listed in BASIX Certificate submitted with the application for development consent must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

**NOTE:** The application for the Construction Certificate must be accompanied by either the BASIX Certificate upon which development consent was granted or a revised BASIX Certificate (Refer to Clause 6A of Schedule 1 to the Regulation).

47. Noise attenuation measures must be incorporated into the development complying with Australian Standard 2021:2000, State Environmental Planning Policy (Infrastructure) 2007 and with the Department of Planning and Infrastructure's Development Assessment

Guideline titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines" in relation to interior design sound levels and in accordance with details being submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate together with certification by a suitably qualified acoustical engineer that the proposed noise attenuation measures satisfy the requirements of Australian Standard 2021:2000, State Environmental Planning Policy (Infrastructure) 2007 and with the Department of Planning and Infrastructure's Development Assessment Guideline titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines".

48. Before the issue of the Construction Certificate the Owner(s) must enter into a suitable licence with Council for the construction, use and maintenance of the posted verandah and balconies by the Owners at a lease payment based on Council's adopted fees and charges for Long Term Lease of Airspace above Council's footpath. The lease document will stipulate that the lease payments are to be adjusted annually in accordance with Council's adopted Fees and Charges. All costs arising from the preparation of the licence and the associated lease shall be at the applicant's expense and at no cost to Council.
49. The balcony shall be designed as follows:
  - i) Be set back 600mm from the kerb line;
  - ii) The total width of the balcony that extends beyond the road alignment shall not exceed 3600mm.
  - iii) The balcony shall be engineered to be cantilevered; and
  - iv) The verandah and balcony be designed such that it can be removed without affecting the structural stability of the building.

Amended plans and details shall be submitted to and approved by Council before the issue of the Construction Certificate.

50. The person acting on this consent shall provide to Council a bond in the amount of \$11,892.40 and pay the related Section 138 (Roads Act) inspection fee of \$206.00 (GST inclusive) before the issue of a Construction Certificate to ensure the proper completion of the footpath and/or vehicular crossing works required as a result of this development.
51. Before the issue of a Construction Certificate the owner or builder shall sign a written undertaking that they shall be responsible for the full cost of repairs to footpath, kerb and gutter, or other Council property damaged as a result of construction of the proposed development. Council may utilise part or all of any Building Security Deposit (B.S.D.) or recover in any court of competent jurisdiction, any costs to Council for such repairs.
52. The applicant shall obtain confirmation from Ausgrid that sufficient clearance to the balconies has been provided from the overhead power lines in King Street. A copy of Ausgrid's confirmation shall be submitted to Council for its information before the issue of the Construction Certificate.

#### SITE WORKS

53. All excavation, demolition, construction, and deliveries to the site necessary for the carrying out of the development, must be restricted to between 7.00am to 5.30pm Mondays to Saturdays, excluding Public Holidays. Notwithstanding the above no work being carried out on any Saturday that falls adjacent to a Public Holiday.
54. During any construction works and activities, no injury must be caused to the amenity of the neighbourhood by the emission of noise, smoke, smell, vibration, gases, vapours, odours, dust, particular matter, or other impurities which are a nuisance or injurious or dangerous or prejudicial to health, the exposure to view of any unsightly matter or otherwise.

55. The area surrounding the building work must be reinstated to Council's satisfaction upon completion of the work.
56. The placing of any materials on Council's footpath or roadway is prohibited, without the consent of Council. The placement of waste storage containers in a public place requires Council approval and must comply with Council's Policy - 'Placement of Waste Storage Containers in a Public Place'.
57. All demolition work must be carried out in accordance with the following:
- a) compliance with the requirements of Australian Standard AS 2601 'The demolition of structures' with specific reference to health and safety of the public, health and safety of the site personnel, protection of adjoining buildings and protection of the immediate environment;
  - b) all works involving the demolition, removal, transport and disposal of asbestos cement must be carried out in accordance with the 'Worksafe Code of Practice for Removal of Asbestos' and the requirements of the WorkCover Authority of NSW and the Department of Environment, Climate Change and Water;
  - c) all building materials arising from the demolition must be disposed of in an approved manner in accordance with Part 2.21 of Marrickville Development Control Plan 2011 – Site Facilities and Waste Management and any applicable requirements of the Department of Environment, Climate Change and Water;
  - d) sanitary drainage, stormwater drainage, water, electricity and telecommunications must be disconnected in accordance with the requirements of the responsible authorities;
  - e) the generation of dust and noise on the site must be controlled;
  - f) the site must be secured to prohibit unauthorised entry;
  - g) suitable provision must be made to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way;
  - h) all trucks and vehicles associated with the demolition, including those delivering to or removing material from the site, must only have access to the site during work hours nominated by Council and all loads must be covered;
  - i) all vehicles taking materials from the site must be loaded wholly within the property unless otherwise permitted by Council;
  - j) no waste collection skips, spoil, excavation or demolition material from the site must be deposited on the public road, footpath, public place or Council owned property without the approval of Council; and
  - k) the person acting on this consent must ensure that all contractors and sub-contractors associated with the demolition are fully aware of these requirements.
58. The works are required to be inspected at critical stages of construction, by the PCA or if the PCA agrees, by another certifying authority. The last inspection can only be carried out by the PCA. The critical stages of construction are:
- a) At the commencement of the building work;
  - b) For Class 2, 3 and 4 buildings, prior to covering waterproofing in any wet areas (a minimum of 10% of wet areas within a building);
  - c) Prior to covering any stormwater drainage connections, and after the building work has been completed and prior to any occupation certificate being issued in relation to the building; and
  - d) After the building work has been completed and prior to any Occupation Certificate being issued in relation to the building.

You are advised to liaise with your PCA to establish if any additional inspections are required.

59. If it is necessary to excavate below the level of the base of the footings of a building on the adjoining allotments, including a public place such as footways and roadways, the person acting on this consent must ensure:

- a) At least 7 days' notice is given to the owners of the adjoining land of the intention to excavate below the base of the footings. The notice is to include complete details of the work; and
- b) That any building is preserved and protected from damage.

Where a dilapidation report has not been prepared on any building adjacent to the excavation, the person acting on this consent is responsible for arranging and meeting the cost of a dilapidation report prepared by a suitably qualified person. The report is to be submitted to and accepted by the PCA before works continue on site, if the consent of the adjoining property owner can be obtained. Copies of all letter/s that have been sent via registered mail to the adjoining property owner and copies of any responses received must be forwarded to the PCA before work commences.

60. All vehicles carrying materials to, or from the site must have their loads covered with tarpaulins or similar covers.
61. Satisfactory methods and/or devices must be employed on the site to prevent the tracking of mud/dirt onto the surrounding streets from vehicles leaving the site.
62. A certificate of survey from a registered land surveyor must be submitted to the PCA upon excavation of the footings and before the pouring of the concrete to verify that the structure will not encroach on the allotment boundaries.
63. A clear unobstructed path of travel of not less than 1,000mm must be provided to all exits and paths of travel to exits.
64. Alignment levels for the site at all pedestrian and vehicular access locations shall match the existing back of footpath levels at the boundary. For vehicular access off rear laneways the level at the boundary shall match the invert level of the adjacent gutter plus 150mm at both sides of the vehicle entry. **Note:** This may require the internal site levels to be adjusted locally at the boundary to ensure that they match the issued alignment levels. Failure to comply with this condition will result in vehicular access being denied.
65. All roof and surface stormwater from the site and any catchment external to the site that presently drains to it, shall be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a Council controlled stormwater drainage system in accordance with the requirements of Marrickville Council Stormwater and On Site Detention Code.
66. The site stormwater drainage shall be constructed generally in accordance with Stormwater Drainage Plan 16MB7261/D01 by United Consulting Engineers Pty Ltd. Please note that stormwater outlets through the stone kerbs must be core drilled.

#### **BEFORE OCCUPATION OF THE BUILDING**

67. You must obtain an Occupation Certificate from your PCA before you occupy or use the building. The PCA must notify the Council of the determination of the Occupation Certificate and forward the following documents to Council within 2 days of the date of the Certificate being determined:
  - a) A copy of the determination;
  - b) Copies of any documents that were lodged with the Occupation Certificate application;
  - c) A copy of Occupation Certificate, if it was issued;
  - d) A copy of the record of all critical stage inspections and any other inspection required by the PCA;
  - e) A copy of any missed inspections; and
  - f) A copy of any compliance certificate and any other documentary evidence relied upon in issuing the Occupation Certificate.

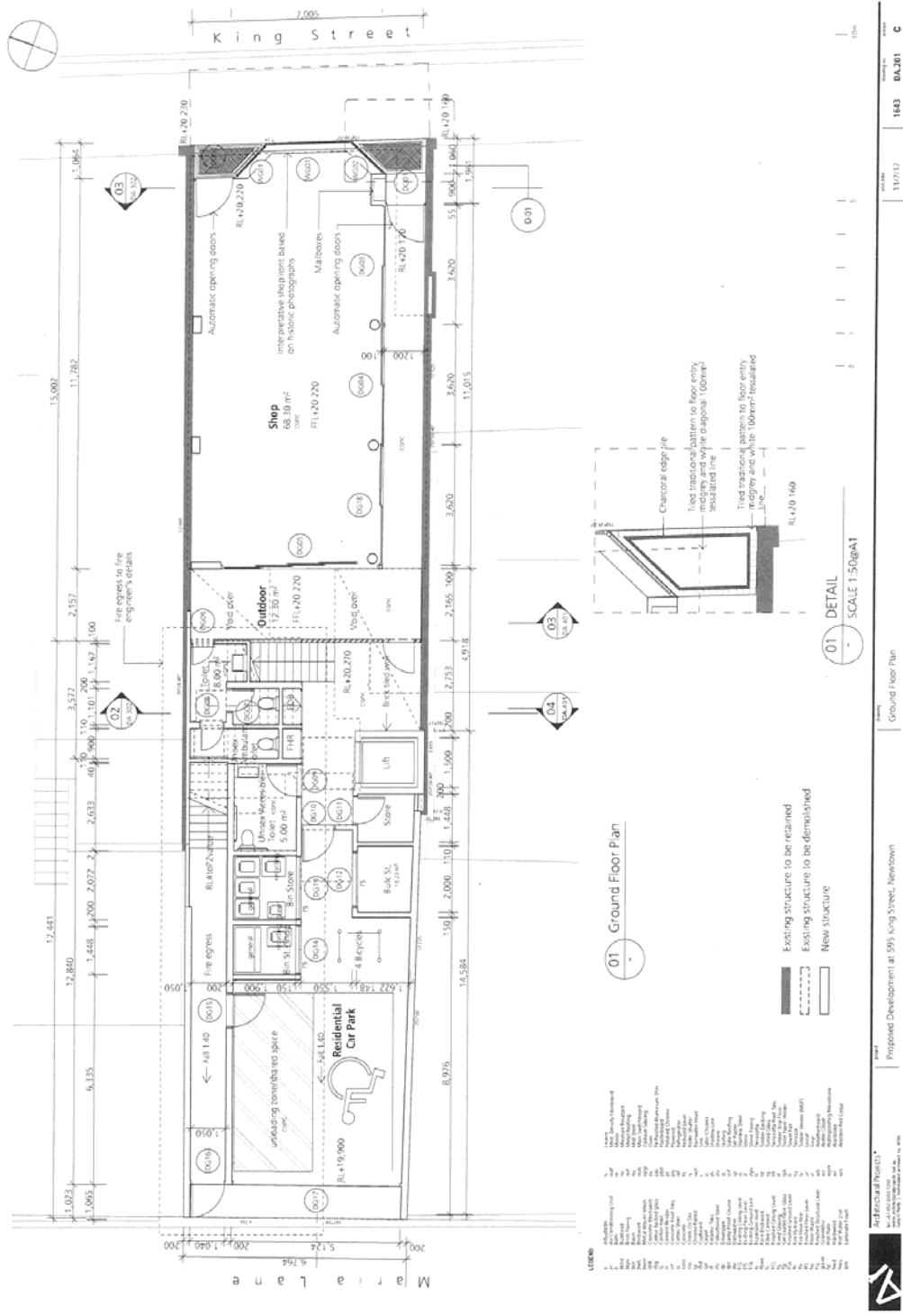
68. Occupation of the building must not be permitted until such time as:
- a) All preconditions to the issue of an Occupation Certificate specified in this development consent have been met;
  - b) The building owner obtains a Final Fire Safety Certificate certifying that the fire safety measures have been installed in the building and perform to the performance standards listed in the Fire Safety Schedule; and
  - c) An Occupation Certificate has been issued.
69. The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:
- a) Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and
  - b) Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).
- Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Certificate for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Certificate shall be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.
70. The Section 73 Certificate must be submitted to the Principal Certifying Authority before the issue of an Occupation Certificate.
- a) A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Make early application for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.
  - b) Application must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Plumbing, building and developing > Providers > Lists or telephone 13 20 92.
71. Upon completion of the development, a statement from a qualified Architect, verifying that the development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design principles set out in Schedule 1 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development must be submitted to the Certifying Authority's satisfaction before the issue of an Occupation Certificate.
72. The Certifying Authority must be satisfied that each of the commitments listed in BASIX Certificate referred to in this Determination have been fulfilled before the issue of an Occupation Certificate (whether an interim or final Occupation Certificate).
73. The Certifying Authority must apply to the Director-General for a BASIX Completion Receipt within 2 days of the issue of a final Occupation Certificate. Completion Receipts can be applied for at [www.basix.nsw.gov.au](http://www.basix.nsw.gov.au).
74. a) Upon completion of the required noise attenuation measures referred to in the "Before the Issue of a Construction Certificate" Section of this Determination and before the issue of an Occupation Certificate (whether an interim or final Occupation Certificate), a report must be prepared and submitted to the Certifying Authority's satisfaction by an accredited Acoustics Consultant, certifying that the final construction meets Australian Standard 2021:2000, State Environmental Planning Policy (Infrastructure) 2007 and with the Department of Planning and Infrastructure's Development Assessment Guideline titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines" as set down in the subject condition of this consent. Such report must include external and internal noise levels to ensure that the external noise levels during

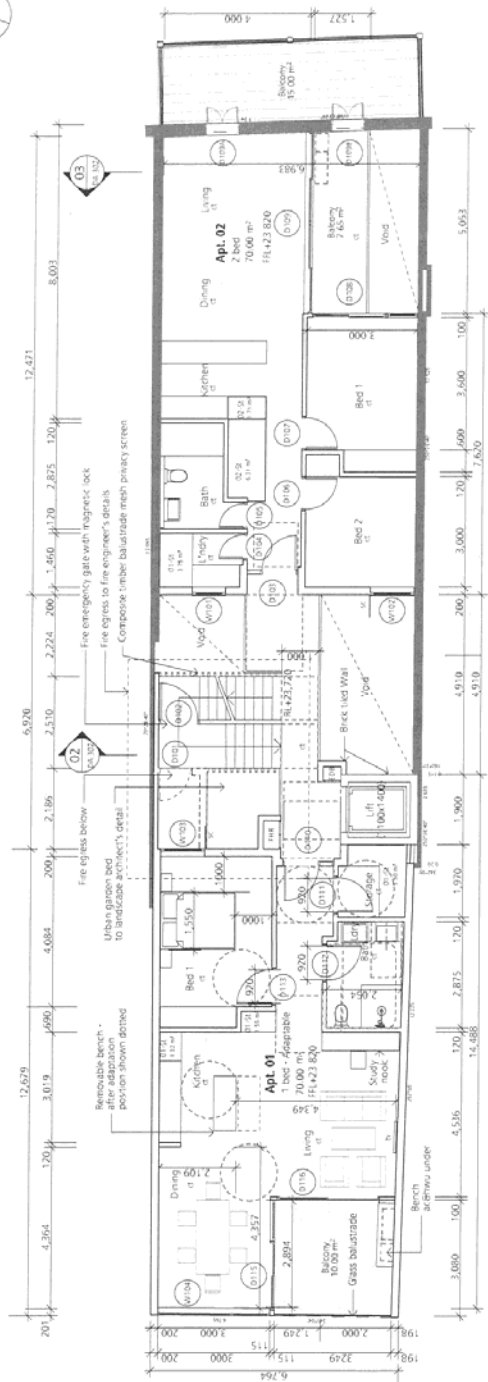
- the test are representative of the typical maximum levels that may occur at this development; and
- b) Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a further certificate must be prepared and submitted to Council in accordance with the requirements as set down in Part a) of this condition.
75. Before the issue of an Occupation Certificate (whether interim or final), the Certifying Authority must be satisfied that all works, including the restoration of the King Street facade, have been undertaken in accordance with the approved plan and conditions of consent.
76. Before the issue of an Occupation Certificate (interim or final) the person acting on this consent must contact Council's Coordinator, Resource Recovery to arrange the appropriate number of bins in relation to the residential component of the approved development.
77. All works required to be carried out in connection with drainage, crossings, alterations to kerb and guttering, footpaths and roads resulting from the development shall be completed before the issue of the Occupation Certificate. Works shall be in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications".
78. 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.
79. No encroachments (other than the approved balcony) onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever shall not be permitted. Any encroachments on to Council road or footpath resulting from the building works will be required to be removed before the issue of the Occupation Certificate.
80. 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. Any proposed stormwater outlets through the stone kerb shall be core drilled.
81. Before the issue of the Occupation Certificate the applicant shall provide evidence that a suitable formal lease with Council to lease the air rights over the footpath in King Street in respect of the balcony has been entered into.
82. The design and construction of the balcony over the King Street footpath must certified by an appropriately qualified structural engineer who is listed under the Institution of Engineers, Australia "National Professional Engineers Registers No. 3 (NPER3). Certification shall state that the works have been designed and constructed in accordance with the appropriate Australian Standards. Final certification shall be provided to Council before the issue of the Occupation Certificate.
83. Under awning" lighting, to match the existing whiteway lighting scheme in the area must be installed before the issue of an Occupation Certificate. All works required to install and connect the system (including the need to install a "special small service") the internal mains power supply being at no cost to Council
84. Heavy duty concrete vehicle crossings, in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications" shall be constructed at the vehicular access locations before the issue of the Occupation Certificate and at no cost to Council.

85. The existing damaged or otherwise defective kerb and gutter, footpath and/or road pavement adjacent to the site shall be restored in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications", at no cost to Council and before the issue of the Occupation Certificate.
86. Before occupation of the site written verification from a suitably qualified professional civil engineer, stating that all stormwater drainage and related work has been and constructed in accordance with the approved plans being submitted to and accepted by Council. In addition, full works-as-executed plans, prepared and signed by a registered surveyor, shall be submitted to Council. These plans must include levels for all drainage structures, buildings (including floor levels), finished ground levels and pavement surface levels.
87. 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 and Civil 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.  
Reason: To ensure that all Road, Footpath and Civil Works required to be undertaken as a result of this development have been completed satisfactorily.



Attachment B – Plans of Proposed Development



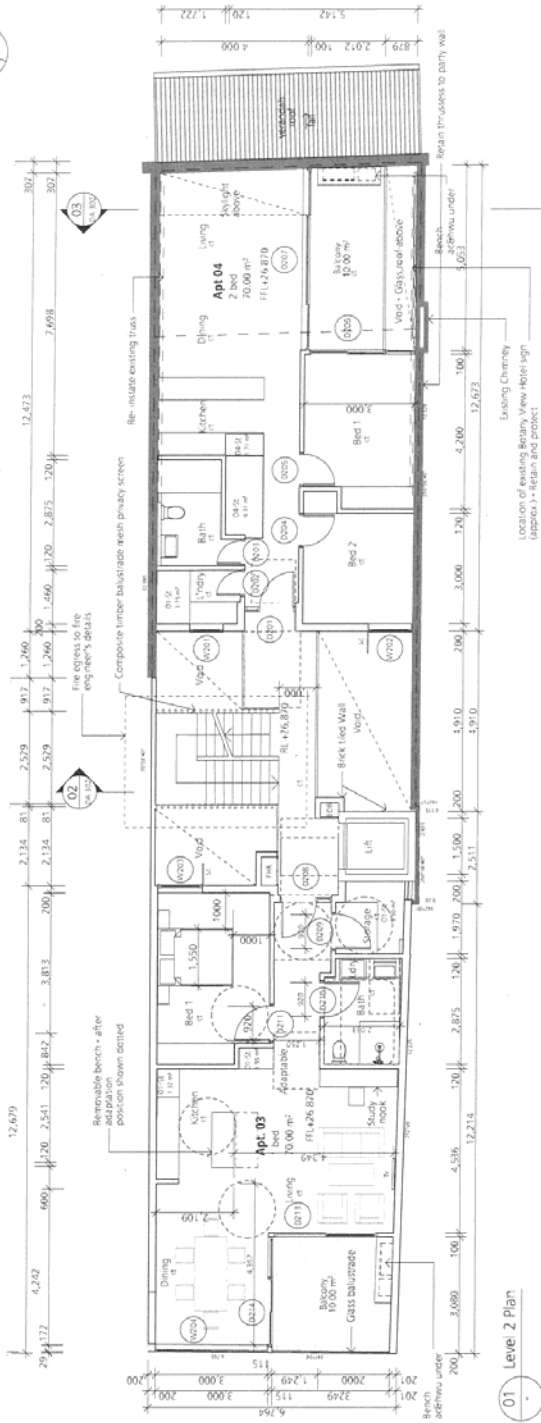


02 Level 1 Plan

- LEGEND**
- 1000 Existing Structure
  - 1001 New Structure
  - 1002 Existing Structure to be retained
  - 1003 Existing Structure to be demolished
  - 1004 New Structure

Proposed Development at 595 Long Street, Newtown

11/1/12 143 DA202 C



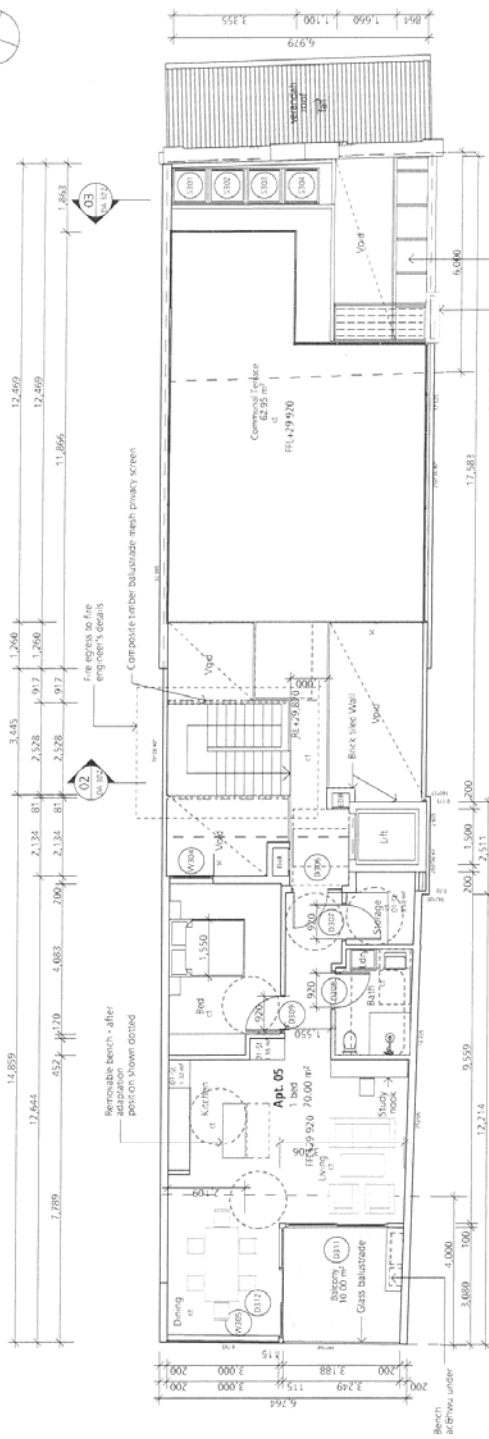
01 Level 2 Plan

**LEGEND**

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Existing structure to be retained  
 Existing structure to be demolished  
 New structure

Proposed Development at 595 King Street, Newtown  
 Level 2 Plan  
 11/07/17  
 1643 BA.203 C



02 Level 3 Plan

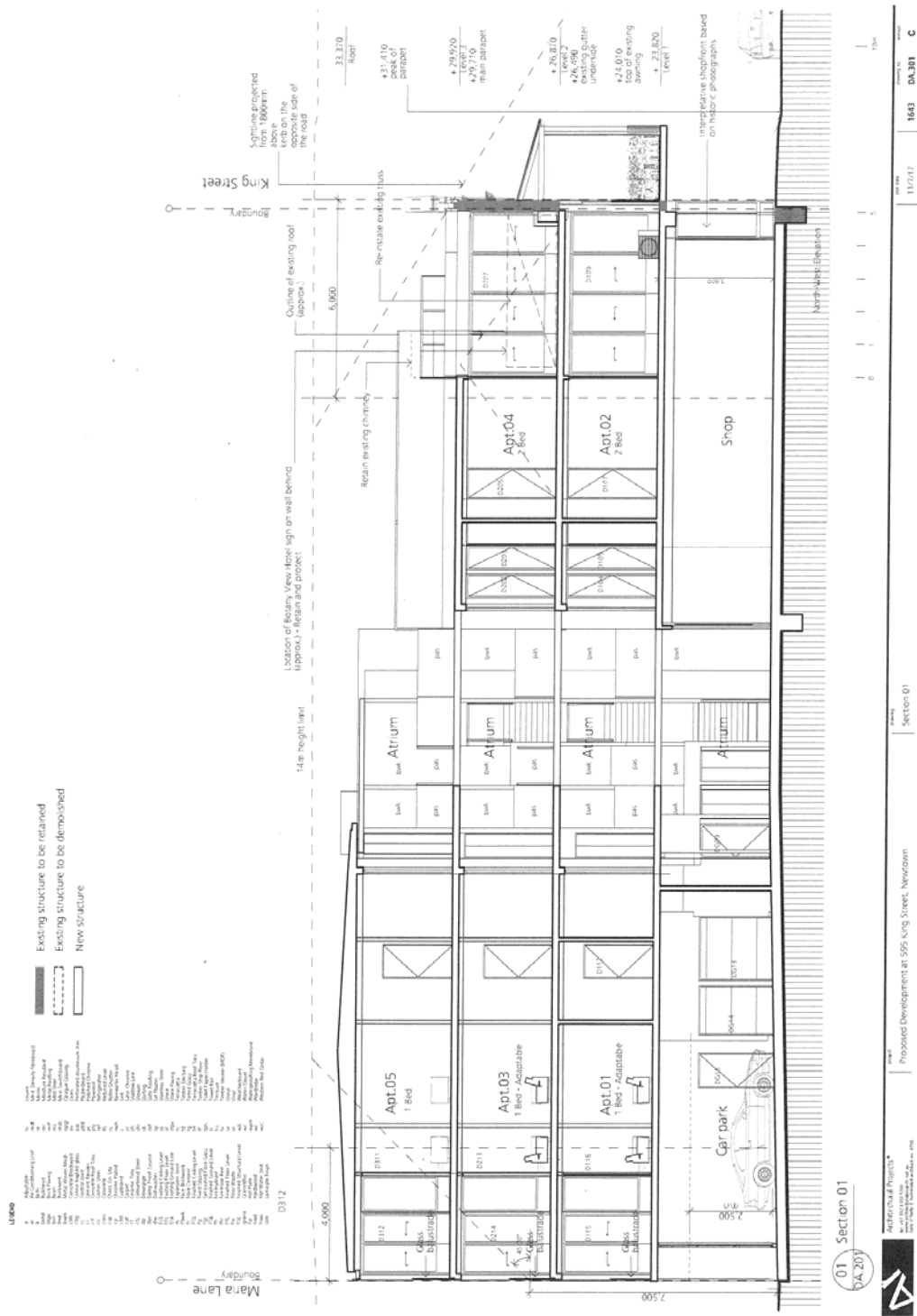
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- Existing structure to be retained
- Existing structure to be demolished
- New structure

Proposed Development at 595 King Street, Newtown

11/17/17 1643 DA/201 C

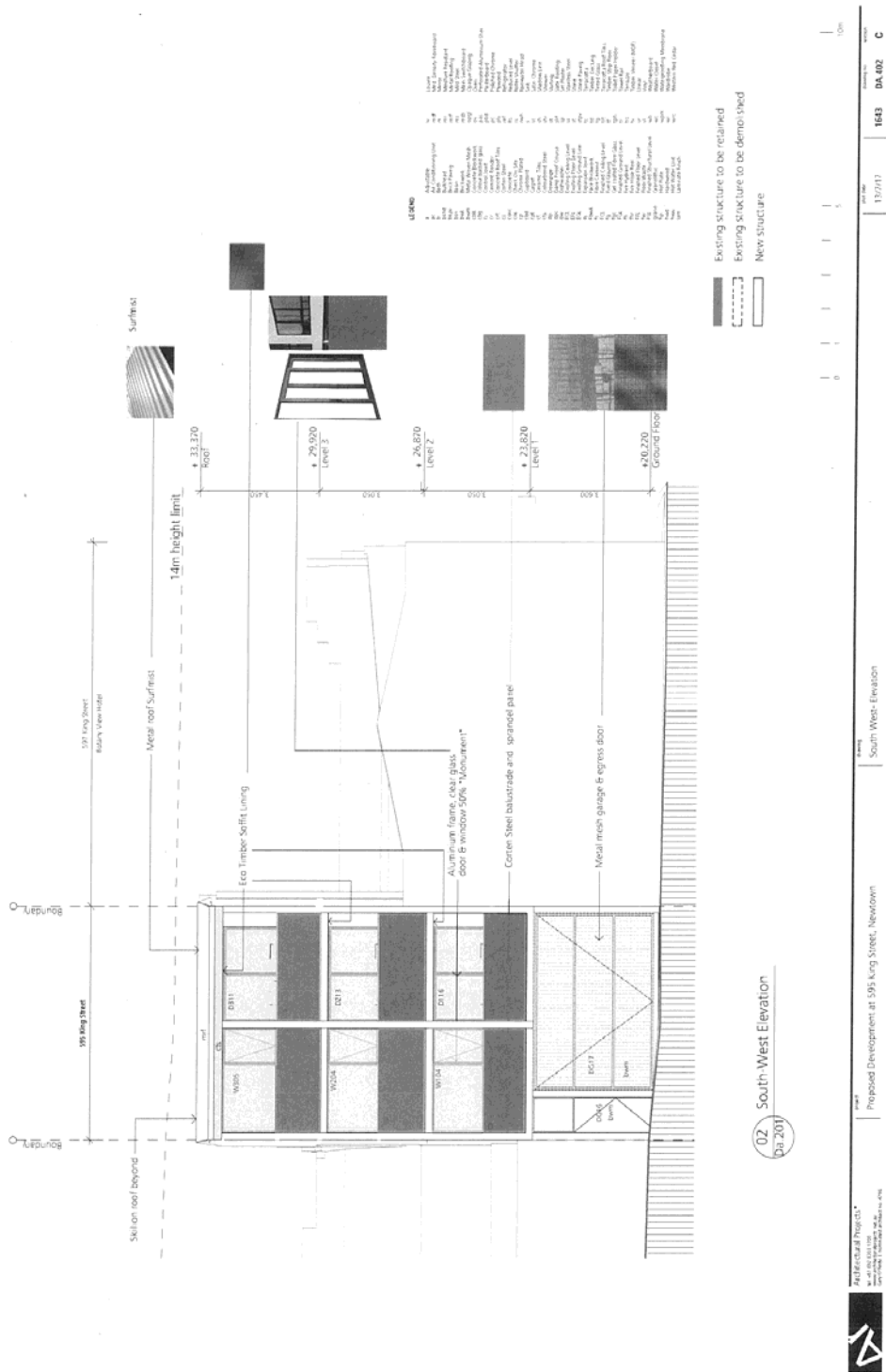


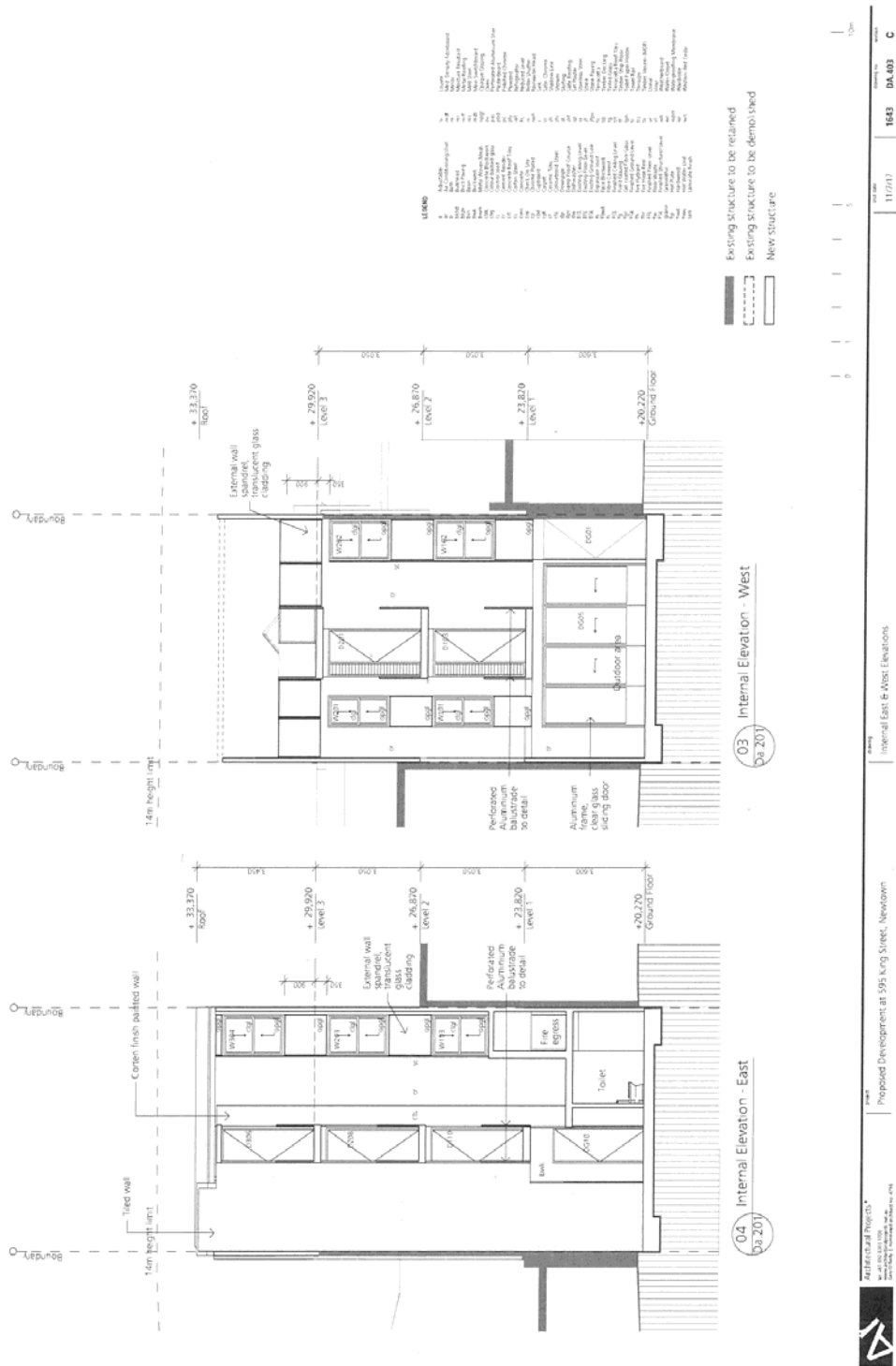




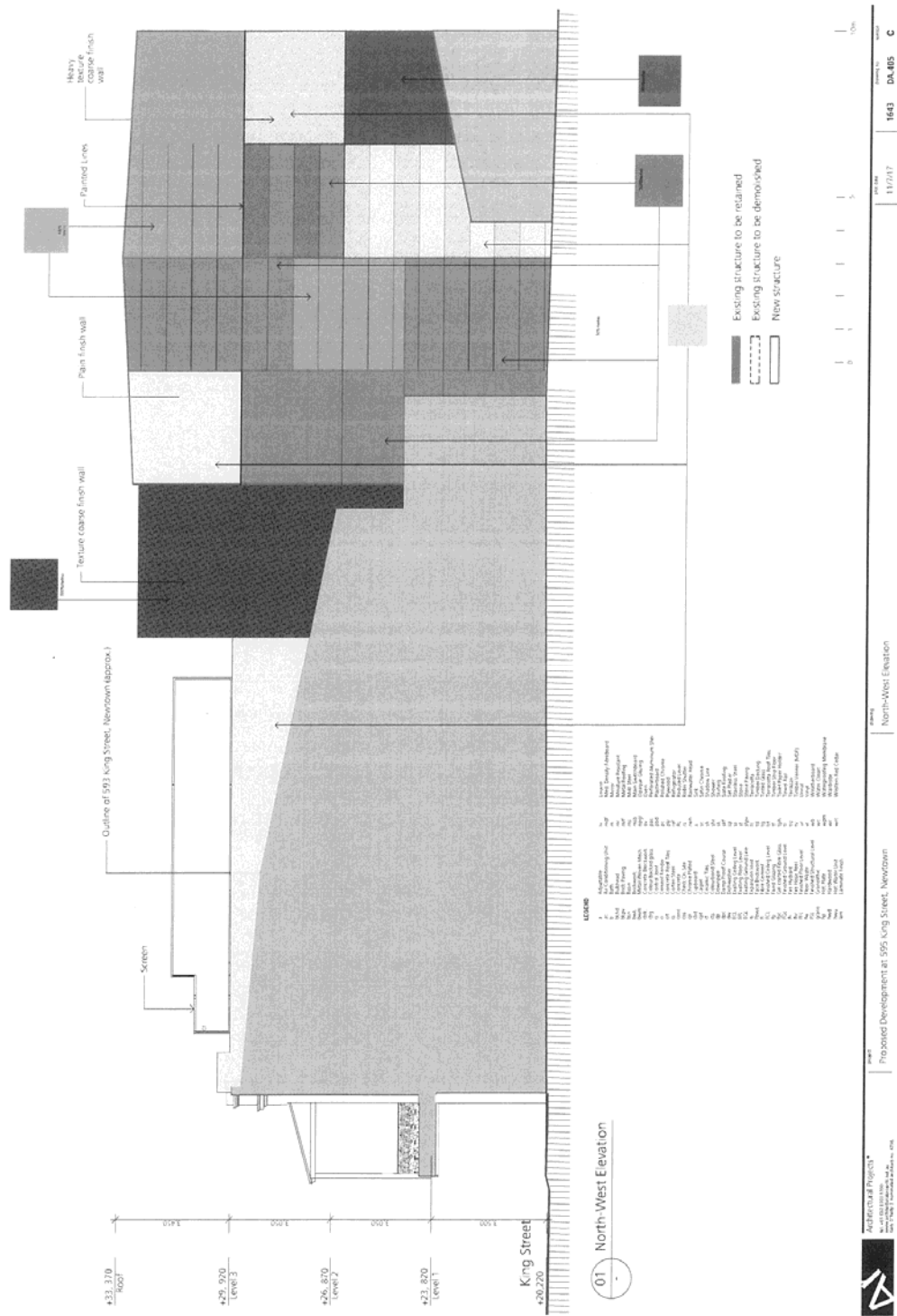
















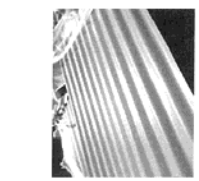
6. To be completed by the applicant, or their agent, and submitted with the application for development consent. It is the responsibility of the applicant to ensure that the information provided is true and correct. The applicant is advised that the Council may require the applicant to provide further information or evidence to support the application.

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_  
 State: \_\_\_\_\_  
 Postcode: \_\_\_\_\_  
 Date: \_\_\_\_\_

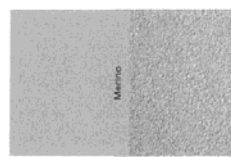
Proposed Development at:  
 252 Argyle Street, Newtown  
 NSW 1505

Applicant: \_\_\_\_\_  
 Contact: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Email: \_\_\_\_\_

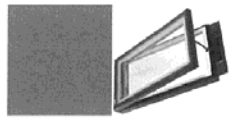
1643 DA-702 C



Metal Roof Surfing



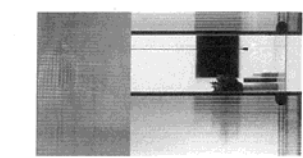
Concrete render paint as specified



Aluminium frame skylights



Restore and maintain original bodony View Hotel sign to existing party wall



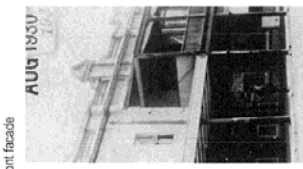
Transparent window & facade panel



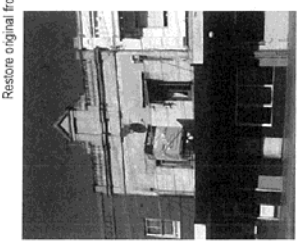
Aluminium handrail



Terraces with balconies



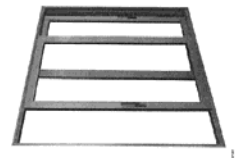
Restore original front facade



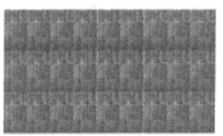
Aluminium frame doors and windows



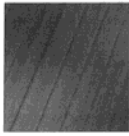
Aluminium frame doors and windows



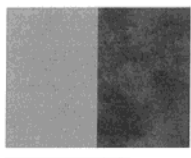
Metal mesh gate and door



Wall tiles



Eco Timber Soffit



Corten steel



Typical shopfronts

DEVELOPMENT APPLICATION NOT FOR CONSTRUCTION

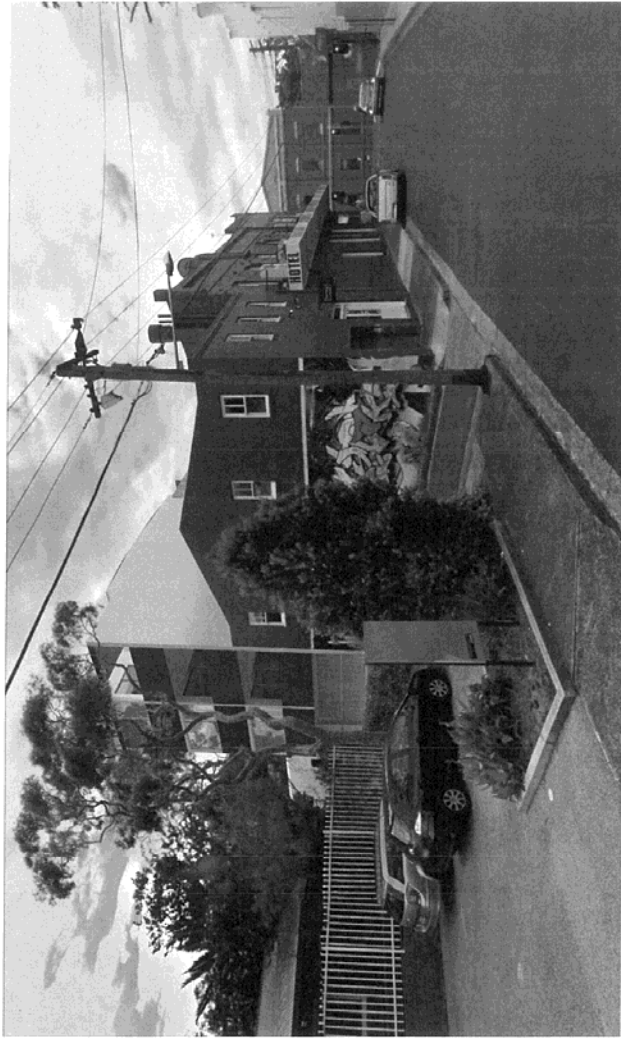


1. The applicant must be a natural person, a company or a partnership.  
 2. The applicant must be a resident of the City of Sydney.  
 3. The applicant must be a resident of the City of Sydney for a period of 12 months immediately preceding the date of the application.  
 4. The applicant must be a resident of the City of Sydney for a period of 12 months immediately preceding the date of the application.  
 5. The applicant must be a resident of the City of Sydney for a period of 12 months immediately preceding the date of the application.  
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 9. The applicant must be a resident of the City of Sydney for a period of 12 months immediately preceding the date of the application.  
 10. The applicant must be a resident of the City of Sydney for a period of 12 months immediately preceding the date of the application.

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Proposed Development at  
 1643 DA.800 C  
 City of Sydney  
 1643 DA.800 C  
 City of Sydney  
 1643 DA.800 C  
 City of Sydney



1643 DA.800 C - View from South West

DEVELOPMENT APPLICATION  
 NOT FOR CONSTRUCTION



1. The applicant must be a natural person, a company or a partnership.

2. The applicant must be a resident of the Council's area.

3. The applicant must be a resident of the Council's area at the time of the application.

4. The applicant must be a resident of the Council's area at the time of the development.

5. The applicant must be a resident of the Council's area at the time of the development.

6. The applicant must be a resident of the Council's area at the time of the development.

7. The applicant must be a resident of the Council's area at the time of the development.

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9. The applicant must be a resident of the Council's area at the time of the development.

10. The applicant must be a resident of the Council's area at the time of the development.

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Proposed Development at  
257 King Street, Bondi Junction

1643 DA.805 C



Architectural rendering of the proposed development.

DEVELOPMENT APPLICATION  
NOT FOR CONSTRUCTION



