

13 February 2019

At 5.00 pm



Local Planning Panel

Sydney 2030 Green Global Connected

city of villages

Agenda

- 1. Disclosures of Interest**
- 2. Confirmation of Minutes**
- 3. Development Application: 79-83 Abercrombie Street, Chippendale**
- 4. Development Application: 89-105 Kent Street, Millers Point**

Guidelines for Speakers at Local Planning Panels



As part of our democratic process, the City invites members of the community to speak directly to Members of the Local Planning Panel (LPP) about items on a meeting agenda.

To enable the LPP to hear a wide range of views and concerns within the limited time available, we encourage people interested in speaking at meetings to:

1. Register to speak by calling Council's Secretariat on 9265 9190 before 12.00 noon on the day of the meeting.
2. Check the recommendation in the agenda report before speaking, as it may address your concerns so that you just need to indicate your support for the recommendation.
3. Note that there is a three minute time limit for each speaker and prepare your presentation to cover your major points within that time.
4. Avoid repeating what previous speakers have said and focus on issues and information that the LPP may not already know.
5. If there is a large number of people interested in the same item as you, try to nominate three representatives to speak on your behalf and to indicate how many people they are representing.
6. Before speaking, turn on the microphone by pressing the button next to it and speak clearly so that everyone in the Council Chamber can hear.
7. Be prepared to quickly return to the microphone and respond briefly to any questions from LPP members, after all speakers on an item have made their presentations.

At the start of each LPP meeting, the Chair may re-order agenda items so that those items with speakers can be dealt with first.

LPP reports are on line at www.cityofsydney.nsw.gov.au, with printed copies available at Sydney Town Hall immediately prior to the meeting. Council staff are also available prior to the meeting to assist.

Item 1.

Disclosures of Interest

Pursuant to the provisions of Clause 15 of Schedule 4B of the Environmental Planning and Assessment Act 1979, members of the Local Planning Panel are required to disclose pecuniary interests in any matter on the agenda for this meeting of the Local Planning Panel.

Panel members are also required to disclose any non-pecuniary interests in any matter on the agenda for this meeting of the Local Planning Panel.

In both cases, the nature of the interest must be disclosed.

In accordance with section 4.9 of the Code of Conduct for Local Planning Panel Members, all Panel members are required to sign a declaration of interest in relation to each matter on the agenda.

Item 2.

Confirmation of Minutes

Minutes of the following meeting of the Local Planning Panel, which have been endorsed by the Chair, are submitted for noting:

Meeting of 30 January 2019

Item 3.

Development Application: 79-83 Abercrombie Street, Chippendale

File No.: D/2018/947

Summary

Date of Submission: 17 August 2018

Applicant: Collier International Project Management Pty Ltd

Architect: Tzannes

Owner: Chippendale Foundation Limited

Cost of Works: \$10,712,900

Zoning: The use is defined as an educational establishment and business premises which is permissible with consent in the B4 Mixed Use zone.

Proposal Summary: The application proposes alterations and additions to an existing mixed-use development including partial demolition, construction of a three storey side extension, and adaptive re-use of the existing heritage listed building for use as a multi-function venue containing offices and a lecture theatre.

The application is referred to the Local Planning Panel for determination as the proposal seeks to vary the floor space ratio and height development standards pursuant to Clause 4.6 of the Sydney LEP 2012 by more than 10%.

The development has a floor space ratio of 2.31:1 (31.5% over the standard) and building height of 14.2m (16.8% over the standard). A request to vary the standards has been made pursuant to Clause 4.6 of the Sydney LEP 2012. The variation to the standards is in the public interest and is supported.

The proposal has been considered by the City of Sydney Design Advisory Panel who recommended the applicant amend the design to improve the ground floor frontage, integrate the rooftop plant into the design of the building, consider changes to the heritage facade, and reduce the width of the building elements on the south elevation.

**Proposal Summary
(continued):**

The application was amended on 14 December 2018 following feedback from City staff. The amendments have adequately addressed the concerns raised.

The application was notified in accordance with Council's notification policy. Two submissions have been received relating to construction impacts.

Summary Recommendation:

The development application is recommended for approval, subject to conditions.

Development Controls:

- (i) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)
- (ii) State Environmental Planning Policy (Infrastructure) 2007
- (iii) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
- (iv) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Requests

Recommendation

It is resolved that

- (A) the variations sought to the height development standard under Clause 4.3 and the floor space ratio standard Clause 4.4 in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012 be supported in this instance; and
- (B) consent be granted to Development Application No. D/2018/947 subject to the conditions set out in **Attachment A** to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposed development is consistent with the objectives of the B4 Mixed Use zone.
- (B) The proposed development is consistent with the relevant objectives and controls outlined in the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012.
- (C) The variations to Clause 4.3 and Clause 4.4 of the Sydney Local Environmental Plan 2012 are consistent with the provisions of Clause 4.6 and are in the public interest.
- (D) The proposal is sympathetic to the heritage item on the site and the Chippendale Conservation Area (C9).
- (E) The built form and design of the addition responds appropriately to the scale and form of the heritage item on the site and of adjoining buildings.
- (F) The proposal is considered to utilise high quality materials and exhibits design excellence.
- (G) The proposal will not adversely impact on the amenity of the neighbouring properties.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 18 September 2018.
2. The site is rectangular with a splayed corner, with an area of approximately 393sqm. It is located on the north-western corner of Abercrombie Street and Myrtle Street with its primary frontage to Abercrombie Street.
3. The site comprises three allotments that were amalgamated in the mid-twentieth century and contains two separate buildings which have been altered to function as one mixed-use premises. The premises includes an office, meeting room and parking on the ground floor; an office, staff room, living rooms and bedroom on the first floor; and a studio and family room on the second floor. There are no records to suggest that the residential components of the premises have been previously rented or used as affordable rental housing. Therefore, the provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009 do not apply to this development.
4. The northernmost building (79 Abercrombie Street) comprises a three storey Victorian warehouse constructed in 1888 known as "JC Goodwin & Co" , while the adjoining building to the south (81-83 Abercrombie Street) comprises a three storey Victorian commercial building also dating from 1888. The building occupying 81 Abercrombie Street has undergone significant alterations, including the addition of a third storey and extensions to the southern boundary of the site in the 1990s.
5. Surrounding land uses are residential and commercial. The site is located at the end of the row of five terraces fronting Abercrombie Street. A three storey residential flat building neighbours the site to the west. The Chippendale Hotel is located opposite Myrtle Street to the south. A two storey commercial building and four storey residential flat building are located opposite on Abercrombie Street to the east.
6. The site is identified as a heritage item (I160) and is located within the Chippendale Conservation Area (C9).
7. Photos of the site and surrounds are provided below:

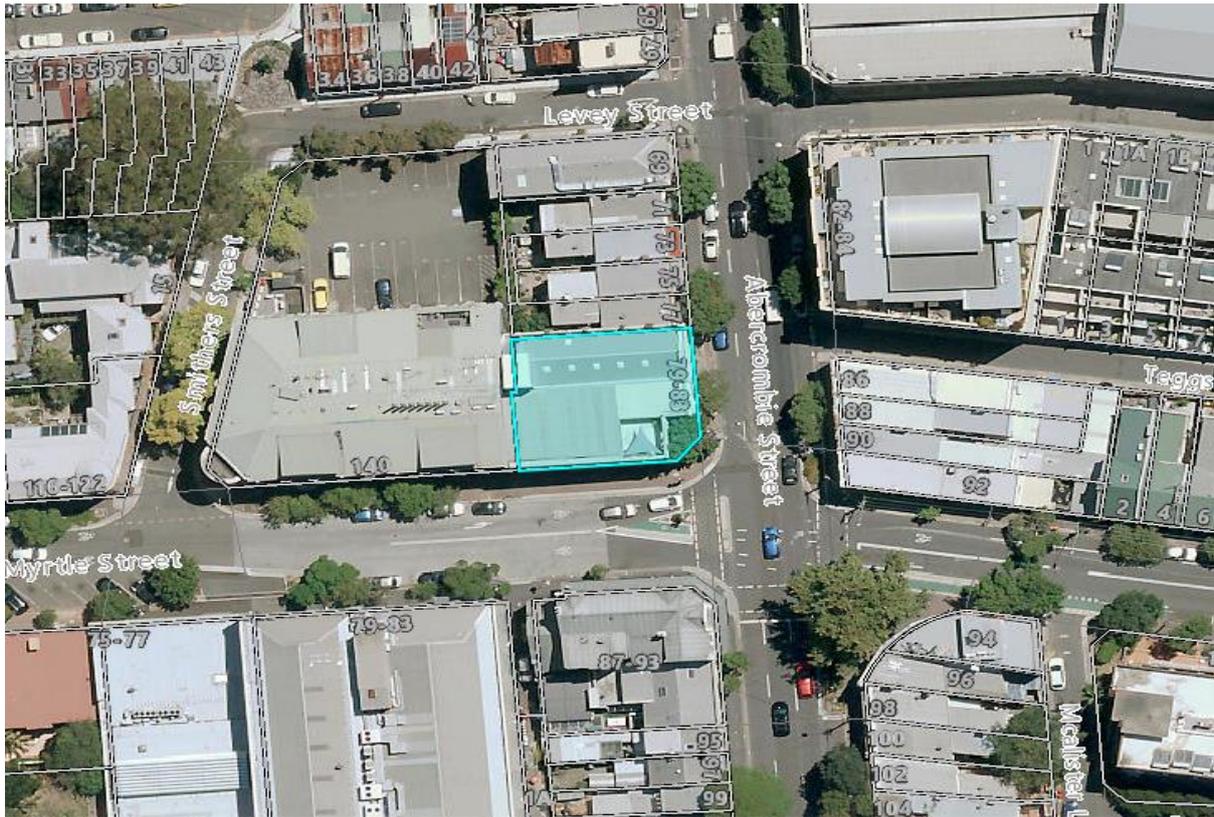


Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site viewed from Abercrombie Street



Figure 3: Site viewed from Myrtle Street



Figure 4: Site viewed the south-eastern corner of Abercrombie and Myrtle Streets



Figure 5: Looking south down Abercrombie Street towards the site



Figure 6: Abercrombie Street looking north

Proposal

8. The application seeks consent for alterations and additions to an existing mixed-use development including demolition of the building occupying the southern portion of the site (with the exception of the upper level Victorian facade), and replacement with a three storey side addition to the retained building at 79 Abercrombie Street, and use as a multi-function venue containing offices and a lecture theatre.
9. The proposal includes changes to the retained Victorian facades to Abercrombie Street including new shopfronts, glazing, enamel feature panel, awning and entry doors.
10. The works specific to each level are outlined below:

(a) Level 1 (Ground Floor)

- (i) removal of internal walls, stair, flooring and mezzanine;
- (ii) removal of external walls along the Myrtle Street frontage;
- (iii) addition of garage with parking for one vehicle and 10 bicycles;
- (iv) addition of storage room and bin room;
- (v) addition of 101 seat lecture theatre with demountable stage and storage room;
- (vi) addition of pre-lecture ante-room with bar;
- (vii) addition of three toilets; and
- (viii) addition of lift, stair and fire exit.

(b) Level 2 (First Floor)

- (i) removal of internal walls, stair and flooring;
- (ii) removal of external walls along the Myrtle Street frontage;
- (iii) addition of reception area, open plan office space with kitchen and five private offices, and board room; and
- (iv) addition of communications and security room, storage, and four toilets.

(c) Level 3 (Second Floor)

- (i) removal of internal walls, stair and flooring;
- (ii) removal of external walls along the Myrtle Street frontage;
- (iii) addition of open plan activity based office space with kitchen;
- (iv) addition of communal work room; and
- (v) addition of storage and four toilets.

11. The maximum capacity of each level is up to 104 persons on Level 1, 44 persons on Level 2 and 3 and up to 20 staff throughout the building, for a total of 168 persons.
12. The proposed hours of operation are from 7.00am to 6.00pm Monday to Sunday, with lecture presentations being held between 7.00am and 10.00pm Monday to Sunday.
13. Following preliminary assessment of the application by City staff and a presentation to the City of Sydney Design Advisory Panel, a request for amended plans was sent to the applicant on 31 October 2018. The applicant was required to address a number of issues, including:
 - (i) request to amend the design to better activate the street frontage;
 - (ii) request to reduce the visual prominence of the rooftop plant;
 - (iii) request to reduce the width of the garage door; and
 - (iv) request to consider removing the facade of 81 Abercrombie Street if a more appropriate addition to the main heritage elements/façade can be achieved.
14. The amended application was received on 14 December 2018 and forms the basis of this assessment.
15. Plans of the proposed development (as amended) are provided below.

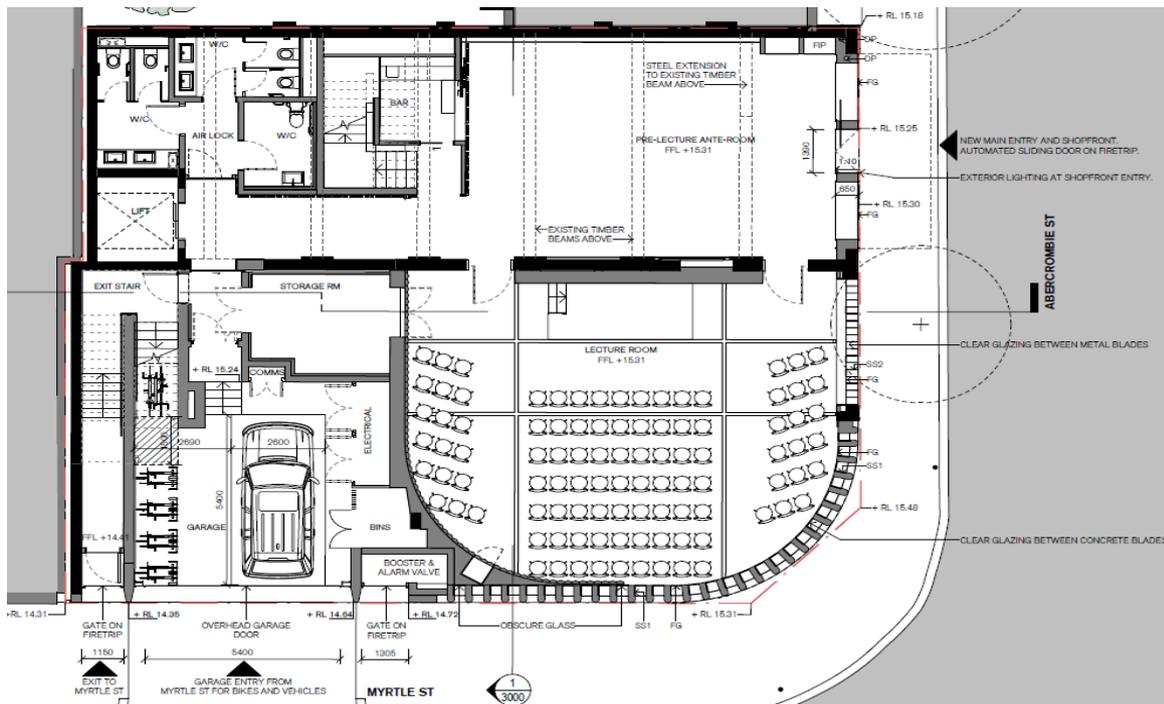


Figure 7: Level 1 Plan (Ground)

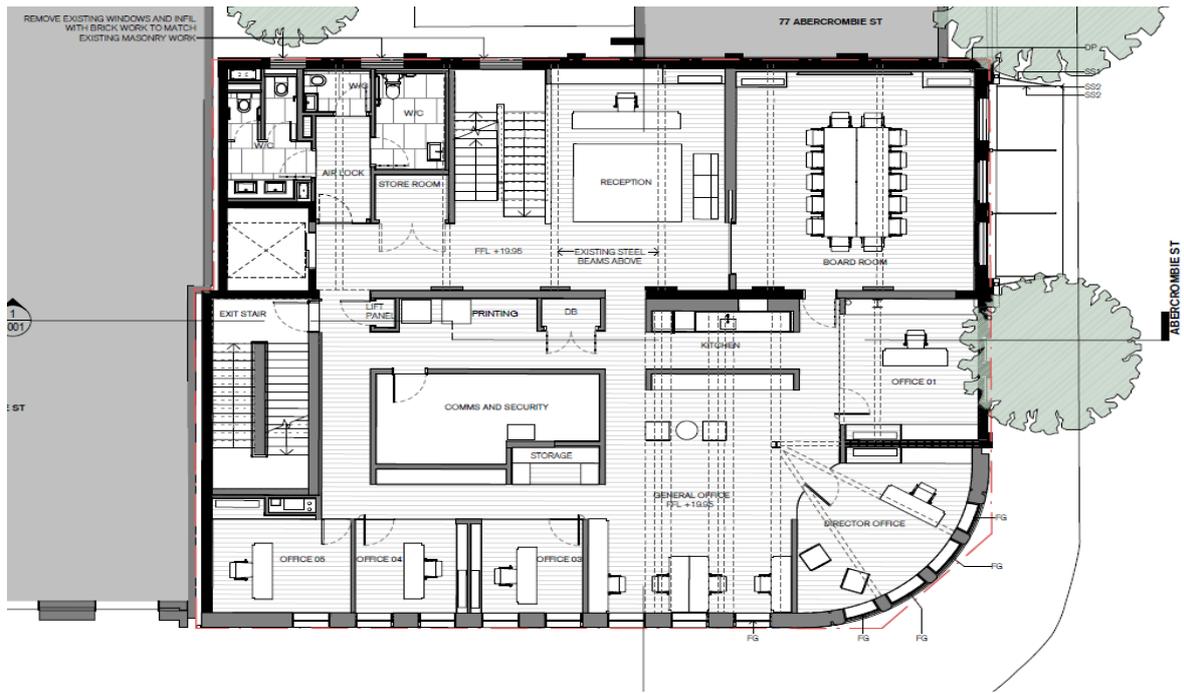


Figure 8: Level 2 Plan (First Floor)

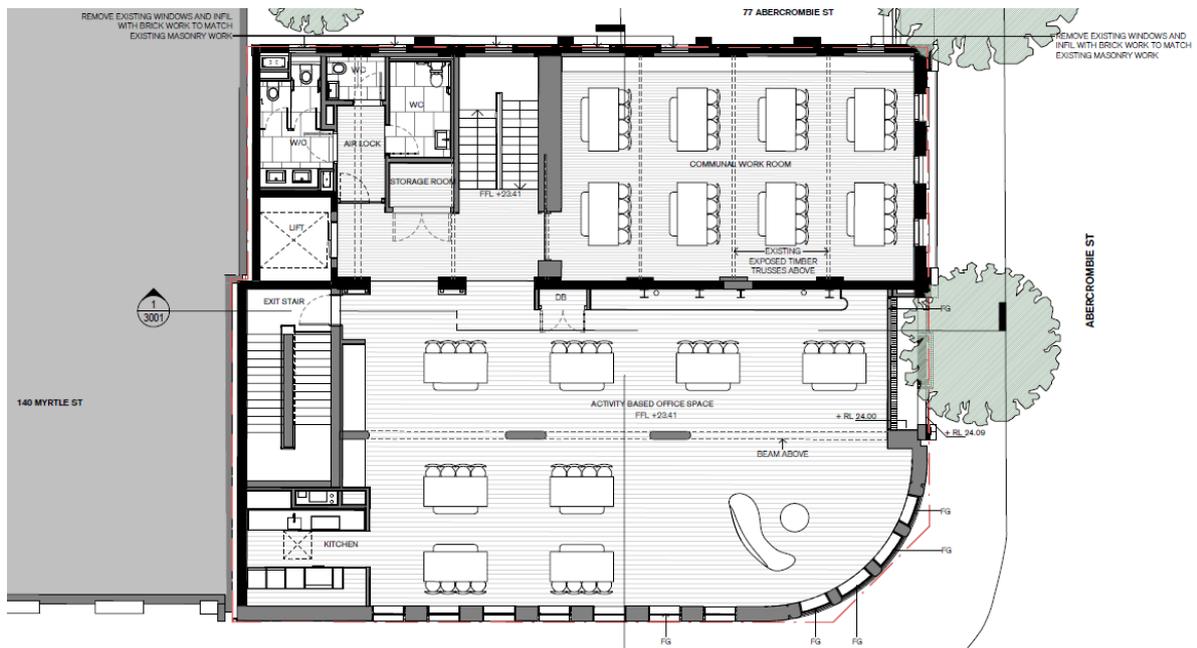


Figure 9: Level 3 Plan (Second Floor)

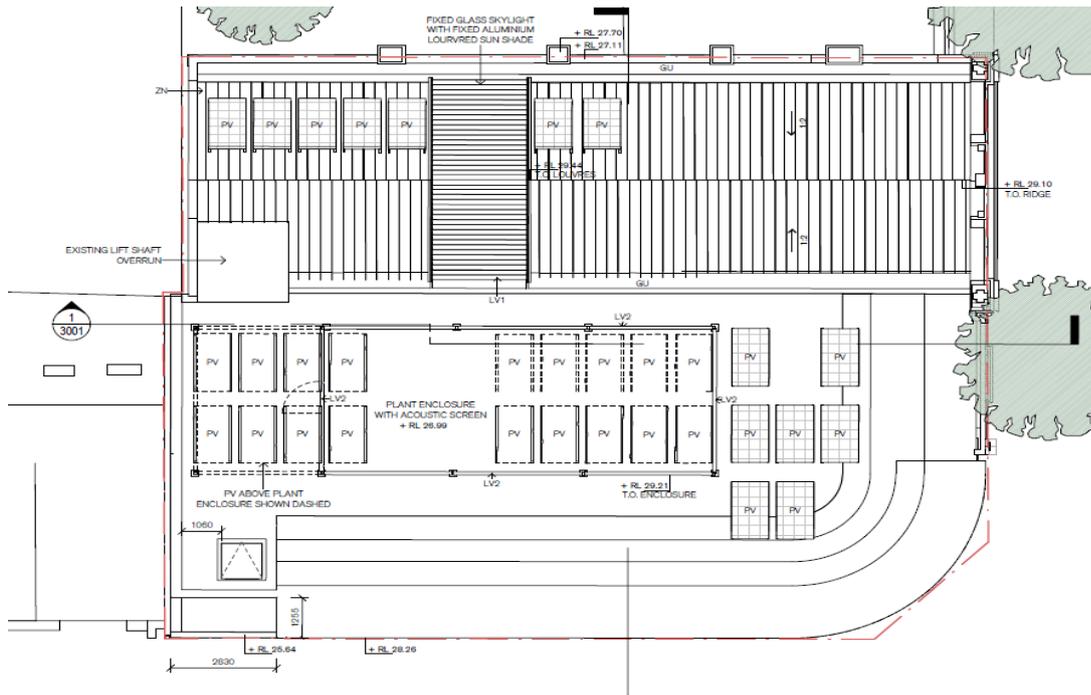


Figure 10: Roof Plan



Figure 11: North Elevation



Figure 12: South Elevation



Figure 13: East Elevation

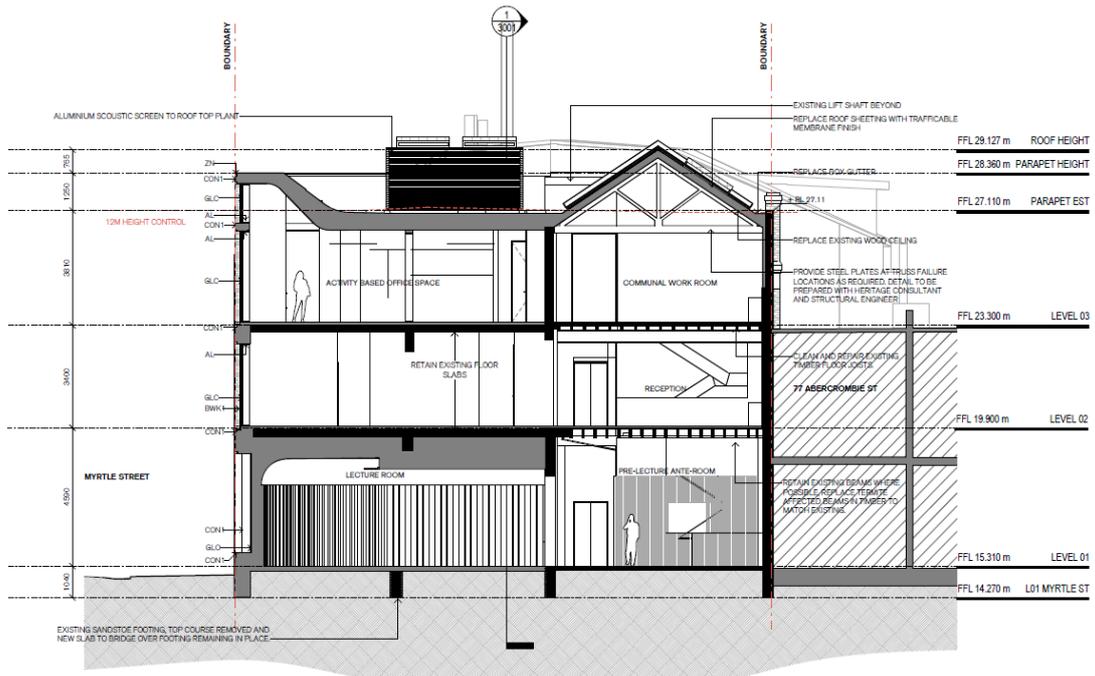


Figure 14: Section A

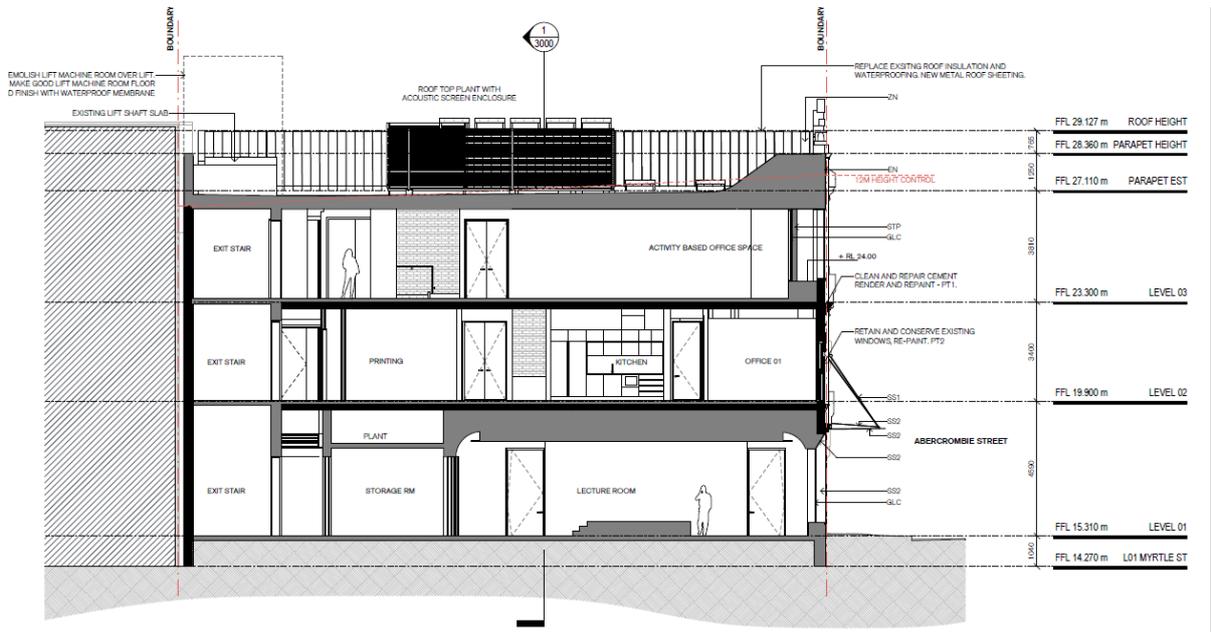


Figure 15: Section B

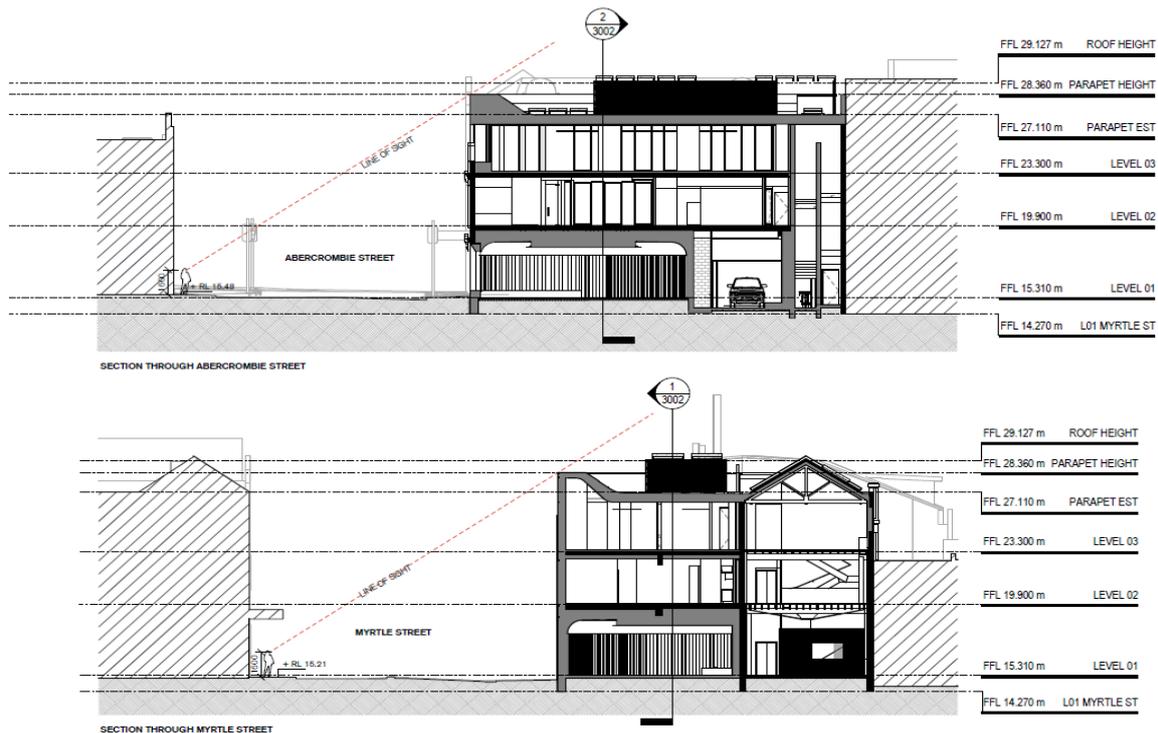


Figure 16: Section C

History Relevant to the Development Application

16. On 23 February 1990, D/1989/952 was approved for the addition of a two storey warehouse, office and showroom.

Economic/Social/Environmental Impacts

17. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
- Environmental Planning Instruments and DCPs.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)

18. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
19. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:
- protect and improve hydrological, ecological and geomorphologic processes;
 - consider cumulative impacts of development within the catchment;
 - improve water quality of urban runoff and reduce quantity and frequency of urban run-off; and

- (d) protect and rehabilitate riparian corridors and remnant vegetation.
20. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development. The development is consistent with the controls contained with the deemed SEPP.

State Environmental Planning Policy (Infrastructure) 2007

21. The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application.

Clause 101

22. The application is subject to Clause 101 of the SEPP as the site has frontage to Abercrombie Street, which is a classified road. The application is considered to satisfy Clause 101 of the Infrastructure SEPP subject to conditions of consent, as it does not provide access to the site from the classified road and appropriate acoustic conditions have been included within the recommended Conditions of Consent to ensure that potential traffic noise is ameliorated.

Sydney LEP 2012

23. The site is located within the B4 Mixed Use zone. The proposed use is defined as an educational establishment and business premises and is permissible in the B4 Mixed use zone
24. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Tables

| Development Control | Compliance | Comment |
|----------------------------|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.3 Height of Buildings | No | <p>A maximum height of 12m is permitted.</p> <p>The existing building at 79 Abercrombie Street has a maximum height of 14.8m to the top of the parapet. The proposed new works have a maximum height of 14.2m to the top of the rooftop plant, exceeding the development standard by 16.8%.</p> <p>See discussion on Clause 4.6 under the heading Issues.</p> |

| Development Control | Compliance | Comment |
|-----------------------------------------|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.4 Floor Space Ratio | No | <p>A maximum FSR of 1.75:1 is permitted.</p> <p>The existing building has a floor space ratio of 2.21:1 and currently exceeds the development standard. The proposal includes an additional 36.09qm of floor space resulting in a further exceedance of the floor space ratio of 2.31:1, exceeding the standard by 31.5%.</p> <p>See discussion on Clause 4.6 under the heading Issues.</p> |
| 4.6 Exceptions to development standards | Yes | <p>A written request has been submitted seeking to vary the development standards prescribed under Clause 4.3 and Clause 4.4.</p> <p>See discussion on Clause 4.6 under the heading Issues.</p> |
| 5.9 Preservation of trees or vegetation | Yes | <p>The site includes three <i>Brachychiton acerifolius</i> (Illawarra Flame) trees located in a shallow garden bed at the south-eastern corner of the site that are proposed to be removed. Two of the trees are 12m in height and have canopy spreads of approximately 3m. The trees partially suppress each other and a significant area of the canopies are within 1m of the building facade.</p> <p>The long term viability of the trees is reduced as a result of the limited soil volume and limited space for the canopies to develop. As the trees are not likely to be viable in the long term, their removal is supported by the City's Tree Management Officer.</p> <p>A condition of consent has been included for a <i>Corymbia eximia</i> (Yellow Bloodwood) street tree to be planted in Myrtle Street to replace the canopy which will be lost from the removal of the three trees.</p> |

| Development Control | Compliance | Comment |
|----------------------------|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5.10 Heritage conservation | Yes | <p>The site is identified as a heritage item (I160) and is located within the Chippendale Conservation Area (C9).</p> <p>The northernmost building (79 Abercrombie Street) comprises a three storey Victorian warehouse constructed in 1888 known as "JC Goodwin & Co", while the adjoining building to the south (81-83 Abercrombie Street) comprises a three storey Victorian commercial building also dating from 1888. The building at 81 Abercrombie Street has undergone significant alterations, including the addition of a third storey and extensions to the southern boundary of the site in the 1990s.</p> <p>The application is accompanied by a Heritage Impact Statement. Council officers consider the proposed development to be sympathetic to the heritage significance of the site and of the heritage conservation area.</p> <p>See discussion under the heading Issues.</p> |

| Part 6 Local Provisions - Height and Floor Space | Compliance | Comment |
|---------------------------------------------------------|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Division 4 Design excellence | Yes | <p>The application proposes to utilise high quality materials and detailing on the new addition, including a visually recessive façade with intricate brickwork, off-form concrete, glazing, and concrete and metal blades.</p> <p>The application will conserve the original Victorian façade to 79 Abercrombie Street, including cleaning and repair and replacement of the doors, windows and awnings.</p> <p>During the assessment of the application, the design of the shorter facade to 81 Abercrombie Street has been amended to include glazing behind metal fins at the ground and second level facades and addition of an enamel panel on the second level façade to reference the existing signage on the building. These changes better activate the street frontage and provide a more appropriate transition between old and new.</p> <p>The proposal satisfies the requirements of this provision.</p> |

| Part 7 Local Provisions - General | Compliance | Comment |
|-------------------------------------------------------|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Division 1 Car parking ancillary to other development | Yes | <p>The site is identified as a Category A site under the Land Use and Transport Integration Map, the highest category identified in the LEP with regards to the site's accessibility to public transport. The site is located within 500m of Central and Redfern Railway Stations and is proximate to various bus routes.</p> <p>The existing building includes a garage with three car parking spaces accessed from Myrtle Street. The proposal retains one car parking space at the ground floor within the reduced and reconfigured garage.</p> |

Sydney DCP 2012

25. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below.

2. Locality Statements – Chippendale locality

The subject site is located in the Chippendale locality. The proposal is considered to be in keeping with the unique character of the area and design principles in that it retains and conserves intact significant heritage fabric, and provides a built form that responds to and complements the character of the conservation area in terms of height, design, scale and massing.

| 3. General Provisions | Compliance | Comment |
|--------------------------------|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.2 Defining the Public Domain | Yes | <p>The proposal will make a positive contribution to the public domain through excellence in design and high quality materials. The proposal presents an appropriate frontage to the street in terms of scale, finishes and architectural character.</p> <p>The proposal includes the replacement of the existing awning above the main entry of the northernmost building (79 Abercrombie Street), which was added in the 1950s. The new awning is thin and lightweight and responds positively to the architectural character and features of the building.</p> <p>Clause 3.2.4 of the DCP stipulates awnings are to have a minimum setback of 1m from the face of a kerb. The proposed awning maintains the existing awning's 0.4m setback to the kerb. Given the narrow footpath, the non-compliance is considered appropriate.</p> <p>The Abercrombie Street frontage is subject to the active frontage controls in Section 3.2.3.</p> <p>See discussion under the heading Issues.</p> |

| 3. General Provisions | Compliance | Comment |
|-----------------------|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.5 Urban Ecology | Yes | <p>As discussed above, the proposal involves the removal of three <i>Brachychiton acerifolius</i> (Illawarra Flame) trees at the front of the site. The application has been reviewed by the City's Tree Management Officer, and the removal of the three trees is supported. A condition of consent has been recommended for a <i>Corymbia eximia</i> (Yellow Bloodwood) street tree to be planted on the Myrtle Street frontage.</p> |
| 3.9 Heritage | Yes | <p>The site is identified as a heritage item (I160) and is located within the Chippendale Conservation Area (C9).</p> <p>The northernmost building (79 Abercrombie Street) comprises a three storey Victorian warehouse constructed in 1888 known as "JC Goodwin & Co" , while the adjoining building to the south (81-83 Abercrombie Street) comprises a three storey Victorian commercial building also dating from 1888. The building occupying 81 Abercrombie Street has undergone significant alterations, including the addition of a third storey and extensions to the southern boundary of the site in the 1990s.</p> <p>A Heritage Impact Statement has been submitted with the application. The application has been reviewed by the City's Heritage Specialist, and is supported, subject to recommended conditions.</p> <p>See discussion under the heading Issues.</p> |

| 3. General Provisions | Compliance | Comment |
|-----------------------------------------------|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.10 Significant Architectural Building Types | Yes | <p>The site contains two buildings that are older than 50 years, and as such, are subject to the provisions of Clause 3.10 of the DCP.</p> <p>The DCP requires alterations and additions to warehouse buildings to maintain significant fabric and building elements.</p> <p>The proposed alterations, additions and adaptive re-use of the northernmost building maintains the legibility of the historic use. The side addition is sympathetic in scale and style to the existing building to be retained, and will be integrated with the retained Victorian façade of 81 Abercrombie Street.</p> <p>During the assessment of the application, the applicant was encouraged to improve the interface between the retained building and new addition. The design was amended to include a higher parapet to the new addition and alterations to the shorter facade bay of 81 Abercrombie Street. The alterations are visually recessive and readily distinguished as new work. The new works complement the materials and articulation of the existing building.</p> <p>See discussion under heading Issues.</p> |
| 3.11 Transport and Parking | Yes | <p>The DCP requires six parking bicycle spaces for staff and two bicycle spaces for visitors.</p> <p>The proposal includes 10 bicycle spaces within the garage with access from Myrtle Street.</p> |
| 3.12 Accessible Design | Yes | <p>A condition has been recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.</p> |

| 3. General Provisions | Compliance | Comment |
|------------------------------------------------|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.13 Social and Environmental Responsibilities | Yes | The proposal has been amended to provide adequate passive surveillance and is generally designed in accordance with the CPTED principles. |
| 3.14 Waste | Yes | A condition has been recommended to ensure the development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Developments 2018. |

| 4. Development Types | Compliance | Comment |
|--------------------------------------------------------------------|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.2 Residential flat, commercial and mixed use developments | | |
| 4.2.1 Building height | Yes | <p>The site is subject to a three storey height control. The proposal is three storeys in height.</p> <p>The DCP requires a minimum floor to floor height of 4.5m for the ground floor, and 3.6m for each storey above.</p> <p>The proposal includes a floor to floor height of 4.59m on the ground floor, 3.4m on the first floor and 3.81m on the second floor. Given the floor levels are consistent with the floor levels of the retained heritage item, the non-compliance is considered minor and is acceptable. Adequate internal amenity is provided for the occupants of all floors of the development.</p> |
| 4.2.2 Building setbacks | Yes | <p>A street frontage height is not prescribed for this site under the DCP.</p> <p>The existing rear and side setback alignments are maintained, which is consistent with the adjoining buildings.</p> |

| 4. Development Types 4.2 Residential flat, commercial and mixed use developments | Compliance | Comment |
|-----------------------------------------------------------------------------------------------|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.2.3 Amenity | Yes | <p>Solar Access</p> <p>New development must not create any additional overshadowing onto neighbouring dwellings where that dwelling currently receives less than two hours direct sunlight to habitable rooms and 50% of the private open space between 9.00am and 3.00pm on 21 June.</p> <p>The shadow diagrams submitted with the application show some additional overshadowing on the commercial building at 79-83 Myrtle Street at 9.00am, the Chippendale Hotel at 87-93 Abercrombie Street at 12.00 noon, the mixed commercial/residential building at 94 Abercrombie Street at 3.00pm and the public domain in mid-winter. It is noted that the extent of additional shadows cast by the proposal is minor, and that the affected properties maintain a minimum of two hours solar access, as per DCP requirements. As such the proposal is not considered to result in significant adverse impacts in relation to solar access.</p> <p>Acoustic Privacy</p> <p>The proposal includes mechanical plant on the roof of the heritage building to support the lecture theatre and office uses. An acoustic report was submitted to address potential impacts on the acoustic privacy of surrounding residential development. The City's Environmental Health Unit have reviewed the acoustic report and assessed it as acceptable. Appropriate conditions relating to noise have been included in the consent. The use of the lecture theatre will be restricted to 10.00pm in the evening period to ensure there are no unreasonable impacts on neighbourhood amenity.</p> |

| 4. Development Types 4.2 Residential flat, commercial and mixed use developments | Compliance | Comment |
|-----------------------------------------------------------------------------------------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.2.4 Fine grain, architectural diversity and articulation | Yes | The site features a variety of facades, articulation, massing and architectural character, which will create visual interest. |
| 4.2.5 Types of development | Yes | The site has a frontage to Abercrombie Street, an RMS classified road, which carries more than 20,000 vehicles per day. The acoustic report submitted with the application included an evaluation of noise intrusion from traffic. A condition of consent is included to ensure compliance with the acoustic report. |
| 4.2.6 Waste minimisation | Partial compliance | The proposal includes a 3.1sqm waste room on the ground floor, partially below the 4sqm required for non-residential development. The use is not considered to be a large generator of waste, so the minor non-compliance is considered acceptable. Sufficient storage space for bins/waste within the offices and kitchens is provided on the other levels of the building. |

| 4. Development Types 4.2 Residential flat, commercial and mixed use developments | Compliance | Comment |
|-----------------------------------------------------------------------------------------|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.2.9 Non-residential development in the B4 Mixed Use zone | Yes | <p>The objectives of this clause are to ensure non-residential development is compatible with, and does not detract from, the amenity of residential development within the B4 Mixed Use zone.</p> <p>The site is located adjacent to residential development along Abercrombie Street and Myrtle Street.</p> <p>The proposal is not considered likely to have adverse impacts on surrounding residential uses. The application has identified that lectures may occur until 10.00pm. Refer to issues section below.</p> <p>Operating until 10.00pm is not considered to have an adverse impact considering the mix of uses in the surrounding area, particularly the Chippendale Hotel.</p> <p>The proposal is not considered to result in a significant increase in vehicular traffic. The site is located in close proximity to Central and Redfern Railway Stations. The increase in pedestrian activity is unlikely to impact on residential amenity.</p> <p>A Plan of Management has been submitted with the application to address the operational and security measures of the site.</p> |

Issues

Clause 4.6 Variation to Height Development Standard

26. The site is subject to a maximum height control of 12m. The proposed development has a height of 15m.

27. The existing building at 79 Abercrombie Street has a maximum height of 14.8m to the top of the parapet at the front. This building is being retained. The proposed addition has a maximum height of 14.2m to the top of the rooftop plant. The variation to the height control results in an exceedance to the development standard by 2.2m (or a 16.8% variation). The red arrow in Figure 17 indicates the 12m height control.
28. During the assessment of the application, an electronic model of the site prepared by City staff found that the rooftop plant would be visible from the street. The applicant was encouraged to raise the height of the parapet of the addition in order to conceal the rooftop plant. The raising of the parapet also provided a more sympathetic transition from the new addition to that of the existing building which is being retained. The parapet as originally proposed showed a maximum height of 12.6m at the south-western corner of the building (4.8% over the standard). The amendments requested by City staff have resulted in the parapet having a maximum height of 13.7m at the south-western corner of the building (13.2% variation to the control).



Figure 17: South elevation with the 12m height limit plane indicated by the red arrow

29. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the height of buildings development standard by demonstrating:
- that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
 - that there are sufficient environmental planning grounds to justify contravening the standard.
30. A copy of the applicant's written request is provided at Attachment C.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

31. The applicant seeks to justify the contravention of the height development standard to permit a maximum height of 14.2m to the top of the rooftop plant on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The existing building exhibits a height above what is permitted on the site under the Sydney LEP 2012. The existing building is heritage-listed and contributes to the heritage conservation area. The preservation of the building (and thereby the maintenance of the height non-compliance) is therefore required from a heritage perspective. By contrast, the demolition of the building (which would be required to rectify the height non-compliance) would be unreasonable.
 - (ii) The proposal generally maintains the existing building height, and accordingly, the density and scale of the built form would remain generally consistent with the established building on the site, ensuring the development effectively integrates with the streetscape and character of the area.
 - (iii) Through maintaining and replicating the existing building height on the site, the built form relationship of the site with adjoining built form, the streetscape and surrounding area, would remain consistent with the existing situation. The height of the Myrtle Street façade is consistent with the directly-adjointing building on the neighbouring site, thereby contributing to a coherent streetscape and consistent roofline.
 - (iv) The new façade and parapet to the new addition would align with the primary parapet of the heritage building. The consistent height and architectural design of the facades contributes to greater unity, visual cohesion and continuity of the streetscape around the street corner. Simultaneously, the new façade and parapet design effectively conceals the rooftop plant from the street, with further contributes to a positive visual outcome.
 - (v) The built form character of the surrounding conservation area is generally defined by two and three storey buildings, therefore the three storey form of the development is reflective of this context.
 - (vi) The development would protect neighbouring amenity. On the basis that the proposed additions would be consistent with the existing building height, together with the maintenance of the existing building footprint and envelope (with the exception of the south-eastern corner), the proposal would generally maintain existing levels of solar access, privacy, views/outlook and sense of enclosure.
 - (vii) Maintaining the existing building height is key to also creating an internal building environment that delivers the space and level of amenity required to support the operations of the future tenant and thereby the productive use of the site.
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard:

- (i) The proposal is consistent with the objective and purpose of the height development standard and the objectives of the Sydney LEP 2012 for the B4 Mixed Use zone.
- (ii) The proposal generally maintains the height of the existing heritage building on the site, with the extent of additional height being limited to the acoustic plant screen and parapet. The plant screen will not be visible from an observer on the street. The plant screen will assist in protecting the acoustic amenity of the surrounding area, thereby achieving the public interest.
- (iii) The proposed alterations and additions, including those relating to sections of the building above the height limit, would uplift the visual character of the site as viewed from the public domain.
- (iv) The new facade and parapet of the addition would align with the primary parapet of the heritage building. The consistent height and architectural design of the facades contributes to greater unity, visual cohesion and continuity of the streetscape around the street corner. Simultaneously, the new facade and parapet design effectively conceals the rooftop plant from the street, with further contributes to a positive visual outcome.
- (v) The proposal effectively supports the conservation of significant heritage features whilst enabling the adaptive re-use of the building.
- (vi) As the maximum building height of the new addition remains consistent with the existing heritage building, the building as altered and added to would integrate with its context. The relationship of the building with surrounding development, with respect to height, would remain consistent with the existing situation.
- (vii) Three storey built form is reflective of the character of the heritage conservation area of which the site forms a part.
- (viii) The development would maintain neighbourhood amenity as well as the amenity of the public domain.
- (ix) The proposal will support the productive economic use of a site that is ideally located within a mixed-use precinct and in close proximity of major commercial centres and public transport networks.

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

32. Development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
 - (b) 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.

Does the written request adequately address those issues at clause 4.6(3)(a)?

33. The applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the development satisfies the objectives of the standard notwithstanding the non-compliance. The development is consistent with the objectives of the standard as its density is in keeping with the surrounding built form elements, it provides appropriate height transitions, and it does not impact on views.

Does the written request adequately address those issues at clause 4.6(3)(b)?

34. The development reflects the existing conditions of the site and its context, is a positive heritage and streetscape outcome, and will not result in any unreasonable impacts on the neighbouring properties or public domain.
35. The facade and parapet design, as amended, effectively conceals the rooftop plant from the street. This results in an improved heritage and streetscape outcome. Accordingly, it is considered that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify the contravention of the standard.

Is the development in the public interest?

36. The objectives of the height development standard include:
- (a) To ensure the height of the development is appropriate to the condition of the site and its context.
 - (b) To ensure appropriate height transitions between new development and heritage items.
 - (c) To promote the sharing of views.
37. The design and form of the new addition is appropriate to the site and its context and provides an appropriate transition to the heritage building on the site. The parapet to the new addition matches the parapet height of the heritage building and steps down to match the parapet height of the residential flat building to the rear on Myrtle Street. The proposal will not obstruct views from or to highly utilised areas of the public domain.
38. The objectives of the B4 Mixed Use zone include:
- (a) To provide a mixture of compatible land uses.
 - (b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
 - (c) To ensure uses support the viability of centres.
39. The application proposes a multi-function venue containing offices and a lecture theatre. This use is consistent with the mixed-use nature of Chippendale. The proposal also encourages the adaptive re-use of heritage buildings. The proposal is located in close proximity to public transport and includes bicycle parking on-site for staff and visitors.

40. The proposal is in the public interest because it is consistent with both the objectives of the height development standard and the objectives of the B8 Metropolitan Centre zone.

Conclusion

41. For the reasons provided above the requested variation to the height development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney LEP 2012 and the proposed development would be in the public interest because it is consistent with the objectives of the height development standard and the B4 Mixed Use zone.

Clause 4.6 Variation to Floor Space Ratio Development Standard

42. The site is subject to a floor space ratio of 1.75:1. The proposed development has a floor space ratio of 2.31:1.
43. The existing building has a gross floor area of 872.04sqm and a floor space ratio of 2.21:1 which presently exceeds the maximum floor space control. The proposal includes the provision of an additional 36.09sqm of floor space which results in a variation to the floor space ratio control of 31.5%.
44. The proposal includes the demolition of the building occupying the southern portion of the site (with the exception of the upper level Victorian facade), and replacement with a three storey building that will be located to the side of the retained building at 79 Abercrombie Street. The applicant attributes the non-compliant gross floor area to minor changes made to the building footprint, which include the infill of the existing landscaped area of the splayed corner of the site. The proposed addition incorporates well-articulated facades and a mix of materials to provide visual interest on the prominent street corner.



Figure 18: The applicant's GFA diagrams with the additional floor space indicated by the red dotted lines

45. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
 - that there are sufficient environmental planning grounds to justify contravening the standard.
46. A copy of the applicant's written request is provided at Attachment C.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

47. The applicant seeks to justify the contravention of the floor space ratio development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The existing building comprises a quantity of gross floor area above what is permitted on the site under the Sydney LEP 2012. The existing building is heritage-listed and contributes to the heritage conservation area. The preservation of the building (and thereby the maintenance of the floor space ratio non-compliance) is therefore required from a heritage perspective. By contrast, the demolition of the building (which would be required to rectify the floor space ratio non-compliance) would be unreasonable.
 - (ii) The proposal generally maintains the existing building footprint and envelope, except at the south-eastern corner of the site where the building has been extended over the small area of the existing planter. Accordingly, the density and scale of the built form would remain generally consistent with the established building on the site, ensuring the development effectively integrates with the streetscape and character of the area.
 - (iii) The remodelling of the building corner described above has been designed to better address the street corner and both street frontages. The treatment of the street and building corner responds to the surrounding context and the building's unique function, through geometry, glazed bricks and glazed elements.
 - (iv) The development would protect neighbouring amenity. On the basis that the established building footprint and envelope would be generally retained (with the exception of the south-eastern corner), the proposal would generally maintain existing levels of solar access, privacy, views/outlook and sense of enclosure. Any potential impacts associated with the operation of the premises would be mitigated through the implementation of the measures within the Plan of Management.
 - (v) The additional gross floor area proposed for the site is partly attributable to the internal alterations that are proposed. The proposal would make efficient use of the internal spaces of an existing building, thereby supporting the productive use of a strategically-located site.
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The proposed development is entirely consistent with the underlying objectives and purpose of the floor space ratio standard and the B4 Mixed Use zone.

- (ii) The additional floor space ratio results from the infill of the landscaped area at the south-eastern corner of the building. The remodelling of the building corner would reinforce the street corner and better address both street frontages. The building corner infill would make efficient use of the existing building, thereby supporting the productive use of a strategically located site.
- (iii) Excepting the remodelled street corner, the proposed alterations and additions to the existing building on the site would generally preserve the existing building footprint and building envelope.
- (iv) Accordingly, the density of development and scale of the built form would remain generally consistent with the established building on the site. This would ensure the development effectively integrates with the streetscape and character of the area.
- (v) The proposal effectively supports the conservation of significant heritage features whilst enabling the adaptive re-use of the existing building and its long term conservation. The detail, scale and materials for the new internal and external additions have been designed to sympathetically integrate with the heritage value of the site and conservation area.
- (vi) The footprint, envelope, density and scale of the development on the site would remain generally consistent with the existing heritage building, and thereby the building as altered and added to would integrate with its context.
- (vii) The design of the alterations and additions, including the remodelling of the street corner, respond to the characteristics and heritage fabric of the existing building, adjoining buildings, the streetscape, and wider heritage conservation area.
- (viii) The development would maintain neighbouring amenity as well as the amenity of the public domain.
- (ix) The proposal will support the productive economic use of a site that is ideally located within a mixed-use precinct and in proximity of major commercial centres and public transport networks.

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

48. Development consent must not be granted unless the consent authority is satisfied that:

- (a) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
- (b) 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.

Does the written request adequately address those issues at clause 4.6(3)(a)?

49. The applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the development satisfies the objectives of the standard notwithstanding the non-compliance. The alterations and additions appropriately address each street frontage and the proposal is contextually appropriate in terms of bulk and scale, and resulting in a sympathetic response to the streetscape and the character of the heritage conservation area.
50. The development generally maintains the existing built form, with a minor change to the building footprint at the corner of Abercrombie and Myrtle Street. The density and scale of the built form would remain generally consistent with the established buildings on the site, and adjoining development.
51. The additional floor space does not result in any adverse environmental impacts to surrounding properties and the public domain, and as such, compliance with the standard is unreasonable and unnecessary.
52. The development will be suitably serviced by existing infrastructure, including public transport, cycling, pedestrian and road networks, and will not result in a significant increase in pedestrian and vehicle traffic or intensification of the site. The nature and intensity of the proposed development are not inconsistent with the capacity of planned infrastructure.

Does the written request adequately address those issues at clause 4.6(3)(b)?

53. The applicant's written request has adequately addressed that there are sufficient environmental planning grounds to justify contravening the development standard as the development responds appropriately to the bulk and scale of the heritage item being retained and surrounding development and improves the site's relationship with the public domain through design excellence, which contributes to street activation on the prominent corner.
54. Given the existing building exceeds the maximum floor space ratio for the site, compliance with the standard would not result in a better urban outcome. The density, scale and intensity of the development are generally consistent with the existing development on the site, and with existing and planned infrastructure. The development will not result in adverse impacts on amenity or generate significant pedestrian or vehicular traffic.

Is the development in the public interest?

55. The objectives of the floor space ratio development standard include:
 - (a) To provide sufficient floor space to meet anticipated development needs for the foreseeable future.
 - (b) To regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic.
 - (c) To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.
 - (d) To ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.

56. The density and built form of the proposed alterations and additions are generally consistent with the existing building being retained and with surrounding development, with a minor change to the building footprint to extend over the splayed corner. The retention and adaptive re-use of the northernmost building at 79 Abercrombie Street, and parts of the Victorian facade of 81 Abercrombie Street reflects the desired future character of the area. The proposal positively addresses all frontages, including the splayed corner, reduces the extent of the driveways to Myrtle Street and improves passive surveillance and activation of the ground floor frontages, resulting in a positive contribution to the streetscape.
57. The proposal seeks to reduce the number of off-street car parking spaces by two and provide 10 bicycle spaces. The site is located in close proximity to Central and Redfern Railway Stations and various bus routes, which will ensure there is no significant increase in vehicle traffic arising from the development. As the site has a capacity of 168 persons, an increase in pedestrian activity in the locality is anticipated. Given the walkability of this area of Chippendale, there is considered to be adequate existing infrastructure to support the increase. It is noted that the use rather than the further non-compliance with the standard is responsible for the increase.
58. The City of Sydney Development Contributions Plan 2015 does not require monetary contributions toward the cost of public amenities, such as open space, community facilities, traffic and transport, and stormwater drainage, as it does not consider the development to result in a significant intensification of the site. The proposed office and educational use replaces a residential use within the existing building, which generally requires more public amenities.
59. The objectives of the B4 Mixed Use zone include:
 - (a) To provide a mixture of compatible land uses.
 - (b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
 - (c) To ensure uses support the viability of centres.
60. The application proposes a multi-function venue containing offices and a lecture theatre. This use is consistent with the mixed-use nature of Chippendale. The proposal also involves the adaptive re-use of the heritage building. The site is located in close proximity to public transport and includes bicycle parking on-site for staff and visitors.
61. The proposal is in the public interest because it is consistent with both the objectives of the floor space ratio development standard and the objectives of the B8 Metropolitan Centre zone.

Conclusion

62. For the reasons provided above the requested variation to the floor space ratio standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney LEP 2012 and the proposed development would be in the public interest because it is consistent with the objectives of the floor space ratio standard and the B4 Mixed Use zone.

Heritage and Streetscape Presentation

63. The site is identified as a heritage item (I160) and is located within the Chippendale Conservation Area (C9).
64. The northernmost building (79 Abercrombie Street) comprises a three storey Victorian warehouse constructed in 1888 known as "JC Goodwin & Co" , while the adjoining building to the south (81-83 Abercrombie Street) comprises a three storey Victorian commercial building also dating from 1888. 81 Abercrombie Street has undergone significant alterations, including the addition of a third storey and extensions to the southern boundary of the site in the 1990s.
65. The proposal includes the demolition of the later extensions to the southern part of the site and construction of a three storey side addition to the retained building occupying the northern part of the site. The addition is contemporary in appearance with a mix of high quality materials. The addition includes an infill of the landscaped area on the south-eastern corner of the site with a curved wall.
66. The Abercrombie Street frontage is subject to the active frontage controls of Section 3.2.3 of the Sydney DCP 2012. The objectives of these controls are to ensure ground floor frontages are pedestrian orientated and of high design quality to add vitality to streets.
67. The original proposal included glazed bricks along the curved wall of the new extension and enclosure of two of the windows on the heritage building. Concern was raised with the applicant that given the site's location on a prominent corner, the frontage failed to satisfy the active frontage controls in terms of minimising blank walls, incorporating glazing, and providing elements of visual interest. The applicant was also encouraged to reduce the extent of the building elements on the south elevation.
68. In response to this, the applicant submitted amended plans detailing clear glazing along the curved wall between concrete blades which enable passive surveillance to the street. The shorter façade bay of the heritage building has also been amended to provide clear glazing between metal blades. The addition of the glazing is consistent with the active frontage controls and represents a good streetscape outcome. The width of the garage door has been reduced from 6m to 5.4m.
69. The original proposal included rooftop plant with an aluminium acoustic screen, which was over 2m in height. Concern was raised that the rooftop plant was not integrated into the design of the building and would be visible from street level. The applicant was encouraged to provide a continuation of the higher parapet into the new addition, which would enable the concealment of the rooftop plant.
70. In response to this, the applicant submitted amended plans detailing the extension of the higher parapet along the full extent of the new addition until it steps to match the height of the neighbouring building to the west. The higher parapet allows for further articulation to the façade, improves the relationship between the new extension and the heritage building, and conceals the rooftop plant. The upper section of the shorter façade bay of the heritage building has also been re-designed to include an enamel panel (to reference the enamel sign on the heritage building) and a glazed wall behind dark metal fins set back 1m from the heritage façade. This enables the parapet and its ornamental features to be discerned.

71. The proposal includes changes to the main facade bay of the heritage building including replacement of the 1950s awning with a contemporary awning, removal of the existing windows and entry doors with a frameless glass shopfront, and the cleaning and repair of the cement render and enamel signage. These changes are sympathetic to the heritage item.



Figure 19: Photomontage of the proposed development

Use and Working Hours

72. The application proposes to establish a multi-function venue containing offices and a lecture theatre.
73. The maximum capacity of each level is: up to 104 persons on Level 1, 44 persons on Level 2 and 3 and up to 20 staff throughout the building, resulting in a total of 168 persons.
74. The hours of operation of the offices will typically be between 7.00am and 6.00pm Monday to Sunday, but will be available 24 hours per day. The lecture presentations will be held between 7.00am and 10.00pm Monday to Sunday. In order to protect neighbourhood amenity, a condition of consent is recommended to restrict the hours of the lecture presentations to between 7.00am and 10.00pm Monday to Sunday.
75. The application was accompanied by a Plan of Management, which outlines the operational and security requirements of the building. The Plan of Management states that management and staff will be responsible for ensuring all reasonable measures are taken to ensure that patron behaviour does not result in significant noise or disturbance to the locality. The staff will establish and manage any external complaints through a complaints management register, include signage reminding patrons to leave quietly, and enact risk management processes. The premises will be fitted with CCTV equipment.

76. The City's Environmental Health Unit have reviewed the proposal and assessed it as acceptable. Appropriate noise restriction conditions have been included in the consent.

Other Impacts of the Development

77. The proposed development is capable of complying with the BCA.
78. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

Suitability of the site for the Development

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

Internal Referrals

80. The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; Environmental Health Unit; Public Domain; Transport and Access; Tree Management; and Waste Management; who advised that the proposal is acceptable subject to the recommended conditions.

External Referrals

81. The application was referred to RMS as the site is located on a classified road. RMS raised no objection to the proposal subject to the submission of a Construction Traffic Management Plan prior to the issue of a Construction Certificate.

Notification, Advertising and Delegation

82. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified. As such the application was notified for a period of 28 days between 14 September 2018 and 13 October 2018. As a result of this notification there were three submissions received, including one submission of support and two submissions of objection. The issues raised in the submissions are outlined below.

- (a) Construction impacts such as increased traffic and lack of parking and vibrations on the neighbouring terraces.

Response - Standard conditions have been recommended to ensure that construction impacts are managed appropriately. A Construction Traffic Management Plan will be required to be submitted prior to the issue of a Construction Certificate. The applicant will be required to prepare a dilapidation report for affected properties.

83. In accordance with Section 1.3 in Schedule 1 of the City's Notification Policy, the proposal was not required to be re-notified as the amendments are not considered to result in significant additional environmental impacts to the neighbouring properties or public domain or exacerbate issues raised in relation to construction impacts. The amendments were the result of negotiations with the applicant for an improved streetscape and heritage outcome, which it achieves.

Public Interest

84. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

S7.11 Contribution

85. The development is exempt from the provisions of the City of Sydney Development Contributions Plan 2015 as it will not increase the need for additional services. As discussed above, the proposed office and educational use replaces a residential use within the existing building, which generally requires more public amenities.

Relevant Legislation

86. The Environmental Planning and Assessment Act 1979, Heritage Act 1977.

Conclusion

87. The application proposes alterations and additions to an existing mixed-use development including partial demolition, construction of a three storey side extension, and adaptive re-use of the existing heritage building for use as a multi-function venue containing offices and a lecture theatre.
88. Amended plans have been submitted in response to concerns raised by City staff during the assessment relating to heritage and streetscape presentation.
89. The applicant has submitted Clause 4.6 variations to the height and floor space ratio development standards under the Sydney LEP 2012. The variation to the standards is supported.
90. Overall, the amended proposal is generally consistent with the objectives, standards, and guidelines of the relevant planning controls.
91. The proposal, as conditioned, will result in acceptable residential amenity.

GRAHAM JAHN

Director City Planning, Development and Transport

Zeb McInnes, Planner

Attachment A

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|------------------------------------------|
| Recommended Conditions of Consent |
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CONDITIONS OF CONSENT

SCHEDULE 1A

APPROVED DEVELOPMENT/DESIGN MODIFICATIONS/COVENANTS AND CONTRIBUTIONS/USE AND OPERATION

Note: Some conditions in Schedule 1A are to be satisfied prior to issue of a Construction Certificate and some are to be satisfied prior to issue of Occupation Certificate, where indicated.

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2018/947 dated 16 August 2018 and the following drawings prepared by Tzannes:

| Drawing Number | Drawing Name | Date |
|----------------|-----------------------------|------------------|
| 0003 Rev I | Site Plan | 14 December 2018 |
| 0099 Rev E | Materials | 14 December 2018 |
| 1001 Rev I | Level 1 Plan – Demolition | 14 December 2018 |
| 1002 Rev H | Mezzanine Plan – Demolition | 14 December 2018 |
| 1003 Rev H | Level 2 Plan – Demolition | 14 December 2018 |
| 1004 Rev I | Level 3 Plan – Demolition | 14 December 2018 |
| 1005 Rev I | Level 4 Plan – Demolition | 14 December 2018 |
| 1101 Rev M | Level 1 Plan | 14 December 2018 |
| 1102 Rev L | Level 2 Plan | 14 December 2018 |
| 1103 Rev K | Level 3 Plan | 14 December 2018 |
| 1104 Rev K | Roof Plan | 14 December 2018 |
| 2000 Rev H | North Elevation | 14 December 2018 |
| 2001 Rev H | South Elevation | 14 December 2018 |
| 2002 Rev H | East Elevation | 14 December 2018 |
| 3000 Rev K | Section A | 14 December 2018 |
| 3001 Rev G | Section B | 14 December 2018 |
| 3002 Rev C | Section C | 14 December 2018 |

and as amended by the conditions of this consent.

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

(2) DESIGN MODIFICATIONS

The materials schedule is to be updated to provide details on the building element marked 'EN' on 81 Abercrombie Street. The schedule must be submitted for approval by Council's Area Planning Manager prior to the issue of a Construction Certificate.

(3) HOURS OF OPERATION - MINOR DEVELOPMENT

The hours of operation of the lecture theatre are restricted to between 7.00am and 10.00pm Monday to Sunday.

(4) MAXIMUM CAPACITY OF PERSONS

The maximum number of persons (including staff and patrons) permitted in the premises at any one time is 168 persons. Any increase in capacity must gain approval from Council prior to the implementation of the increase.

(5) NO SPEAKERS OR MUSIC OUTSIDE

Speakers and/or noise amplification equipment must not be installed and music must not be played in any of the outdoor areas associated with the premises including the public domain. Speakers located within the premises must not be placed so as to direct the playing of music towards the outdoor areas associated with the premises.

(6) PLAN OF MANAGEMENT

The use must always be operated/managed in accordance with the Plan of Management, dated 8 August 2018, Council ref 2018/435319, which has been approved by Council. In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management.

(7) NOISE – COMMERCIAL PLANT / INDUSTRIAL DEVELOPMENT

- (a) Noise from commercial plant and industrial development must not exceed a project amenity/intrusiveness noise level or maximum noise level in accordance with relevant requirements of the NSW EPA [Noise Policy for Industry 2017 \(NPfl\)](#) unless agreed to by the City's Area Planning Manager. Further:
- (i) Background noise monitoring must be carried out in accordance with the long-term methodology in [Fact Sheet B](#) of the NPfl unless otherwise agreed by the City's Area Planning Manager.
 - (ii) Commercial plant is limited to heating, ventilation, air conditioning, refrigeration and energy generation equipment.
- (b) An $L_{Aeq,15 \text{ minute}}$ (noise level) emitted from the development must not exceed the $L_{A90, 15 \text{ minute}}$ (background noise level) by more than 3dB when assessed inside any habitable room of any affected residence or noise sensitive commercial premises at any time. Further:
- (i) The noise level and the background noise level shall both be measured with all external doors and windows of the affected residence closed.
 - (ii) Background noise measurements must not include noise from the development but may include noise from necessary ventilation at the affected premise.
- (c) Corrections in [Fact Sheet C](#) of the NPfl are applicable to relevant noise from the development measured in accordance with this condition, however duration corrections are excluded from commercial noise.

(8) COMPLIANCE WITH THE ACOUSTIC REPORT PRIOR TO CONSTRUCTION AND OR OCCUPATION CERTIFICATES

- (a) All performance parameters, requirements, engineering assumptions and recommendations contained in the acoustic report prepared by Acoustic Logic, titled, '79-83 Abercrombie Street, Chippendale DA acoustic assessment,' 7 August 2018 revision 2, reference 20180843.1/0708A/R2/RL Trim reference 2018/435311 must be implemented as part of the detailed design assessment and implemented into the design drawings prior to the commencement of the use of the premises in accordance with the requirements of (b) and (c) below and to the satisfaction of the certifying authority.
- (b) Prior to the issue of a Construction Certificate, the construction drawings and construction methodology must be assessed and certified by a suitably qualified acoustic consultant* (see definition below) to be in accordance with the requirements of the DA acoustic report prepared by Acoustic Logic, titled, '79-83 Abercrombie Street, Chippendale DA acoustic assessment,' 7th August 2018 revision 2, reference 20180843.1/0708A/R2/RL Trim reference 2018/435311.
- (c) Prior to the issue of an Occupation Certificate, a suitable qualified acoustic consultant is to provide a written Acoustic Verification Report to the satisfaction of the PCA that the development complies with the requirements set out in the Report and in (a) and (b) above.

Note: Suitably qualified Acoustic Consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member.

(9) DEMOLITION, EXCAVATION AND CONSTRUCTION NOISE AND VIBRATION MANAGEMENT PLAN

A site specific noise management plan shall be submitted to the Council for comment and approval prior to issue of any Construction Certificate. The Plan must be prepared by a suitably qualified person who possesses the qualifications to render them eligible for membership of the Australian Acoustic Society, Institution of Engineers Australia or the Australian Association of Acoustic Consultants. The plan must include but not be limited to the following:-

- (a) identification of noise sensitive receivers near to the site.
- (b) A prediction as to the level of noise impact likely to affect the nearest noise sensitive receivers from the use and proposed number of high noise intrusive appliances intended to be operated onsite. A statement should also be submitted outlining whether or not predicted noise levels will comply with the noise criteria stated within the *City of Sydney Construction Hours /Noise Code of Practice 1992* for the typical construction hours of 07.00am to 7.00pm. Where resultant site noise levels are likely to be in exceedance of this noise criteria then a suitable proposal must be given as to the duration and frequency of respite periods that will be afforded to the occupiers of neighbouring property.
- (c) A representative background noise measurement ($L_{A90, 15 \text{ minute}}$) should be submitted, assessed in the vicinity of any potentially affected receiver locations and measured in accordance with

AS 1055:1.2.1997.(d) Confirmation of the level of community consultation that has/is and will be undertaken with Building Managers/ occupiers of the main adjoining noise sensitive properties likely to be most affected by site works and the operation of plant/machinery particularly during the demolition and excavation phases.(e) Confirmation of noise monitoring methodology that is to be undertaken during the main stages of work at neighbouring noise sensitive properties in order to keep complaints to a minimum and to ensure that noise from site works complies with the noise criteria contained within City's Construction Noise Code.(f) What course of action will be undertaken following receipt of a complaint concerning offensive noise.(g) Details of any noise mitigation measures that have been outlined by an acoustic consultant or otherwise that will be deployed on site to reduce noise impacts on the occupiers of neighbouring noise sensitive property to a minimum.(h) What plant and equipment is to be used on site, the level of sound mitigation measures to be undertaken in each case and the criteria adopted in their selection taking into account the likely noise impacts on the occupiers of neighbouring property and other less intrusive technologies available.

(10) COMPLIANCE WITH DEMOLITION, EXCAVATION & CONSTRUCTION NOISE AND VIBRATION MANAGEMENT PLAN

- (a) All works conducted on site which form part of this development must be carried out in accordance with the submitted and written approved Demolition, Excavation and Construction Management Plan.
- (b) Where all such control measures have been implemented and the resultant noise and/ or vibration levels at any sensitive receiver still exceed the council's applicable criteria stated in the Construction Hours/Noise Code 1992 and are giving rise to sustained complaints then the contractor must provide regular, appropriate and sustained periods of respite in consultation with Council's Health and Building unit. Approval to vary the authorised noise and vibration levels must be received in writing by the proponent from Council prior to activities being undertaken that exceed sanctioned emission levels. (Use where respite periods not specified under the approved DEC NMP)

Such periods must be set and agreed to by Council's Health and Building Unit.

(11) MATERIALS AND SAMPLES SCHEDULE

A physical material sample board which specifies all proposed materials, finishes and colours (including plant enclosures, visible rainwater goods, and services), must be submitted to and approved by Council's Area Planning Manager prior to a Construction Certificate being issued. The materials and samples board must not include generic material or colour descriptions, or use terminology such as 'or similar'.

(12) WASTE AND RECYCLING MANAGEMENT - MINOR

The proposal must comply with the relevant provisions of Council's *Guidelines for Waste Management in New Developments 2018* which requires facilities to minimise and manage waste and recycling generated by the proposal.

SCHEDULE 1B

PRIOR TO CONSTRUCTION CERTIFICATE/COMMENCEMENT OF WORK/HEALTH AND BUILDING

(13) GENERAL HERITAGE

- (a) The proposed works are to be carried out in a manner that minimises demolition, alterations and new penetrations/fixings to the significant fabric of the existing building which is listed as a Heritage Item.
- (b) The fabric and features to be retained by the proposal must be properly protected during the process of demolition and construction. The protection measures are to be specified in the construction management plan.
- (c) All conservation and adaptation works are to be in accordance with the Articles of the Australian ICOMOS Burra Charter 2013.
- (d) New services are to be surface mounted rather than chased-in to existing walls to minimise impact on heritage fabric.
- (e) Appropriately qualified tradespersons (as appropriate) are to be commissioned who are skilled in traditional building and engineering trades to carry out the proposed scope of works.
- (f) The face brickwork/stone/tiles must not be rendered, painted or coated.

(14) HERITAGE INTERPRETATION PLAN

- (a) An interpretation plan for the archaeological feature and retained buildings must be submitted to and approved by Council's Area Planning Manager prior to a Construction Certificate being issued. The plan is to be prepared by a suitably qualified and experienced heritage practitioner or historian.
- (b) The interpretation plan must detail how information on the history and significance of the archaeological feature at No. 83 and buildings at No.79 and No. 81 will be provided for the public and make recommendations regarding public accessibility, signage and lighting. Public art, details of the heritage design, the display of selected artefacts are some of the means that can be used.
- (c) The plan must specify the location, type, making materials and contents of the interpretation device being proposed.
- (d) Prior to occupation certificate being issued, the approved interpretation plan must be implemented to the satisfaction of Council's Area Planning Manager.

(15) USE OF HERITAGE CONSULTANT

A heritage consultant experienced in heritage restoration and renovation works is to be commissioned to work with the consultant team throughout the design development, contract documentation and construction stages of the project. The heritage consultant is to be involved in the resolution of all matters where existing

significant fabric and spaces are to be subject to preservation, restoration, reconstruction, adaptive reuse, recording and demolition. The heritage consultant is to be provided with full access to the site and authorised by the applicant to respond directly to Council where information or clarification is required regarding the resolution of heritage issues throughout the project.

Evidence and details of the above commission on the above terms are to be provided to Council's Urban Design and Heritage Manager prior to commencement of work on site. The heritage consultant must sign off the completed project and submit a final report to Council's Urban Design and Heritage Manager specifying how the heritage conditions are satisfied prior to the issue of an Occupation Certificate or the commencement of the use, whichever is earlier.

(16) BUILDING WORKS TO COMPLY WITH BCA – HERITAGE BUILDINGS OR BUILDINGS WITHIN CONSERVATION AREA

Any building works required to ensure compliance with the BCA or new building standards not specified in the submitted/approved plan must not damage existing fabric and building features. If such upgrading works have impact or potentially have impact on existing fabric and features, details of the works must be submitted and approved by Council's Area Planning Manager prior to issue of any Construction Certificate.

(17) MATERIALS FOR MAKING GOOD

New materials for making good and repairs, are to match the existing in terms of colours, finishes, sizes, profile and properties.

(18) PHOTOGRAPHIC ARCHIVAL DOCUMENTATION (MINOR WORKS)

Prior to a Construction Certificate being issued, an archival photographic recording of the existing building is to be prepared to Council's satisfaction. The recording is to be in digital form, or a combination of both, prepared in accordance with the NSW Heritage Division of the Department of Environment and Heritage guidelines titled "Photographic Recording of Heritage Items using Film or Digital Capture". One copy of the record is to be submitted to Council to be lodged with Council's Archives.

The form of the recording is to be as follows:

- (a) The Development Application number must be noted on the submitted information.
- (b) Include a summary report detailing the project description, date and authorship of the photographic record, method of documentation and limitations of the photographic record.
- (c) Include written confirmation, issued with the authority of both the applicant and the photographer that the City of Sydney is granted a perpetual non-exclusive licence to make use of the copyright in all images supplied, including the right to make copies available to third parties as though they

were Council images. The signatures of both the applicant and the photographer must be included.

- (d) The report is to be submitted on a USB, CD or DVD, in PDF/A format, (created directly from the digital original), with the digital catalogue of images containing the following data for each: DOS title, image subject/description and data photograph was taken.
- (e) The electronic images are to be taken with a minimum 8 megapixel camera, saved as JPEG TIFF or PDF files with a size of approximately 4-6MB, and cross referenced to the digital catalogue sheets and base plans. Choose only images that are necessary to document the process, and avoid duplicate images.

(19) SALVAGE, REUSE AND RECYCLING OF TRADITIONAL BUILDING MATERIALS

Stone, bricks, roof tiles, joinery and decorative architectural elements to be demolished, which include stairs, windows and doors, chimney pieces and ceiling roses must be salvaged and where possible reused on the project.

Salvaged building materials surplus to the project must either be stored on site for future reuse, or transferred to an established second building material dealer for recycling.

(20) ALIGNMENT LEVELS – MINOR DEVELOPMENT

- (a) Where ground floor levels of existing buildings are being retained, alignment levels for the buildings and site frontages of those buildings must be submitted to and approved by Council prior to a Construction Certificate being issued for public domain works or above ground building works, whichever is earlier. The submission must be prepared by a Registered Surveyor or suitably qualified engineer and must be submitted with a completed Footpath Levels and Gradients Approval Application form (available on the City's website).
- (b) If a *Public Domain Plan* condition applies to the development consent the *Public Domain Plan* submission must incorporate the approved Alignment Levels. If the proposed detailed design of the public domain requires changes to any previously approved Alignment Levels, then an amended Alignment Levels submission must be submitted to and approved by Council to reflect these changes prior to a Construction Certificate being issued for public domain work.

(21) PHOTOGRAPHIC RECORD / DILAPIDATION REPORT - PUBLIC DOMAIN

Prior to an approval for demolition being granted or a Construction Certificate being issued, whichever is earlier, a photographic recording of the public domain site frontages is to be prepared and submitted to Council's satisfaction.

The recording must include clear images of the building facade adjoining the footpath, the footpath, nature strip, kerb and gutter, driveway crossovers and

laybacks, kerb ramps, road carriageway, street trees and plantings, parking restriction and traffic signs, and all other existing infrastructure along the street.

The form of the recording is to be as follows:-

- (a) A PDF format report containing all images at a scale that clearly demonstrates the existing site conditions;
- (b) Each image is to be labelled to identify the elements depicted, the direction that the image is viewed towards, and include the name of the relevant street frontage;
- (c) Each image is to be numbered and cross referenced to a site location plan;
- (d) A summary report, prepared by a suitable qualified professional, must be submitted in conjunction with the images detailing the project description, identifying any apparent existing defects, detailing the date and authorship of the photographic record, the method of documentation and limitations of the photographic record;
- (e) Include written confirmation, issued with the authority of both the applicant and the photographer that the City of Sydney is granted a perpetual non-exclusive license to make use of the copyright in all images supplied, including the right to make copies available to third parties as though they were Council images. The signatures of both the applicant and the photographer must be included.

Any damage to the public way including trees, footpaths, kerbs, gutters, road carriageway and the like must immediately be made safe and functional by the applicant. Damage must be fully rectified by the applicant in accordance with the City's standards prior to a Certificate of Completion being issued for Public Domain Works or before an Occupation Certificate is issued for the development, whichever is earlier.

(22) PUBLIC DOMAIN PLAN

- (a) A detailed Public Domain Plan must be prepared by a suitably qualified architect, urban designer, landscape architect or engineer and must be lodged with Council's Public Domain Section and be approved by Council prior to a Construction Certificate being issued for public domain work or above ground building work, whichever is later.
- (b) The Public Domain Plan must document all works required to ensure that the public domain complies with the City of Sydney's *Public Domain Manual*, *Sydney Streets Code* and *Sydney Streets Technical Specification*, including requirements for road pavement, traffic measures, footway pavement, kerb and gutter, drainage, vehicle crossovers, pedestrian ramps, lighting, street trees and landscaping, signage and other public domain elements. If an Alignment Levels condition applies to the development, the Public Domain Plan submission must incorporate the approved Alignment Levels. If the proposed detailed design of the public domain requires changes to any previously approved Alignment Levels, then an amended Alignment Levels submission must be submitted to and approved by Council to reflect these changes prior to a Construction Certificate being issued for public domain work.

- (c) The works to the public domain are to be completed in accordance with the approved Public Domain Plan and Alignment Levels plans and the *Public Domain Manual* before any Occupation Certificate is issued in respect of the development or before the use commences, whichever is earlier.
- (d) A Public Domain Works Deposit will be required for the public domain works, in accordance with the City of Sydney's adopted fees and charges and the *Public Domain Manual*. The Public Domain Works Deposit must be submitted as an unconditional bank guarantee in favour of Council as security for completion of the obligations under this consent.
- (e) Council's Public Domain section must be contacted to determine the guarantee amount prior to lodgement of the guarantee. The guarantee must be lodged with Council prior to a Construction Certificate being issued.
- (f) The Bank Guarantee will be retained in full until all Public Domain works are completed and the required certifications, warranties and works-as-executed documentation are submitted and approved by Council in writing. On satisfying the above requirements, 90% of the total securities will be released. The remaining 10% will be retained for the duration of the specified Defects Liability Period.

(23) PUBLIC DOMAIN WORKS - HOLD POINTS AND HANDOVER

- (a) Prior to a Construction Certificate being issued for public domain work, including civil, drainage and subsurface works, , a set of hold points for approved public domain, civil and drainage work is to be determined with and approved by the City's Public Domain section in accordance with the City of Sydney's *Public Domain Manual* and *Sydney Streets Technical Specification*.
- (b) Prior to a Certificate of Completion being issued for public domain works and before the issue of any Occupation Certificate for the development or before the use commences, whichever is earlier, electronic works-as-executed (as-built) plans and documentation, certified by a suitably qualified, independent professional must be submitted to and accepted by Council for all public domain works. Completion and handover of the constructed public domain works must be undertaken in accordance with the City of Sydney's *Public Domain Manual* and *Sydney Streets Technical Specification*, including requirements for as-built documentation, certification, warranties and the defects liability period.

(24) STORMWATER AND DRAINAGE - MAJOR DEVELOPMENT

- (a) Prior to an approval or Construction Certificate being issued for excavation, civil construction, drainage or building work (whichever is earlier), excluding approved preparatory or demolition work a detailed drainage engineering design, calculations and design for the stormwater overland flow path for the development must be:
 - (i) prepared by a suitably qualified hydraulic or civil engineer to show the proposed method of collection and disposal of stormwater; and

- (ii) prepared in accordance with the City of Sydney's *Stormwater Drainage Manual*, technical specifications, standards and policies, as amended from time to time; and
 - (iii) submitted to and be approved by the City of Sydney and a copy of the City's letter of approval must be provided to the Principal Certifying Authority.
- (b) For approval of a connection into the City of Sydney's drainage system an "Application for Approval of Stormwater Drainage Connections" must be submitted to the City, together with an application fee in accordance with the City of Sydney's adopted Schedule of Fees and Charges.
- (i) The application must be approved by the City of Sydney prior to an approval or Construction Certificate being issued for excavation, civil construction, drainage or building work (whichever is earlier), excluding approved preparatory or demolition work.
 - (ii) All proposed connections to the City's underground drainage system require the owner to enter into a Deed of Agreement with the City of Sydney and obtain registration on Title of a Positive Covenant prior to an Occupation Certificate being issued, including an Interim Occupation Certificate.

On-site Detention

- (c) The requirements of Sydney Water with regard to the on-site detention of stormwater must be ascertained and complied with.
- (i) Evidence of the approval by Sydney Water of the detailed design of the on-site detention must be submitted to and be accepted by the City of Sydney and a copy of the City's letter of acceptance must be provided to the Principal Certifying Authority prior to a Construction Certificate being issued, excluding for any approved preparatory, demolition or excavation works.
 - (ii) Prior to the issue of an Occupation Certificate, including an Interim Occupation Certificate, a Positive Covenant must be registered on the property title for all drainage systems involving On-Site Detention (OSD) to ensure maintenance of the approved OSD system regardless of the method of connection.

Stormwater Quality Assessment

- (d) Prior to a Construction Certificate being issued for any excavation, civil construction, drainage or building work (whichever is earlier), but excluding approved preparatory or demolition work, a stormwater quality assessment must be undertaken and must be approved by City of Sydney and a copy of the City's letter of approval must be provided to the Principal Certifying Authority.

A stormwater quality assessment must be undertaken by a suitably qualified drainage engineer to demonstrate how the development will be designed to ensure that the flow of post-development pollutants from the site due to stormwater will be reduced. The water quality assessment must be

submitted to and be approved by the City of Sydney and a copy of the City's letter of approval must be provided to the Principal Certifying Authority prior to a Construction Certificate being issued for any excavation, civil construction, drainage or building work (whichever is earlier), excluding approved preparatory or demolition work.

Prior to the issue of an Occupation Certificate, maintenance schedules of the proposed water sensitive urban design and drainage measures must be submitted to and be approved by the Principal Certifying Authority and a copy provided to the City of Sydney.

Completion / Works-as-Executed Documentation

- (e) Prior to a Certificate of Completion being issued by the City of Sydney for stormwater drainage works:
 - (i) All works for the disposal of stormwater and drainage are to be implemented in accordance with the approved plans, City of Sydney technical specifications. Standards and policies, approval letters and the requirements of this consent.
 - (ii) A Works-As-Executed survey, prepared, signed and dated by a Registered Surveyor, must be submitted to and be accepted by the City of Sydney. The plan must be overlaid on a copy of the approved stormwater drainage plans issued with the Construction Certificate, with variations to locations, dimensions, levels and storage volumes clearly marked.
 - (iii) Electronic works-as-executed (as-built) details, certifications, warranties, inspection reports (including Closed Circuit Television reports) and associated documentation for the completed work must be prepared and certified by a suitably qualified hydraulic engineer, in accordance with the requirements of the City of Sydney's technical specifications, the *Public Domain Manual*, the *Stormwater Drainage Manual*, the conditions of this consent and all letters of approval issued by the City of Sydney for works in the public domain, and must be submitted to and be accepted by the City of Sydney.

- (f) Prior to the issue of the first Occupation Certificate, including an Interim Occupation Certificate, or before the use commences (whichever is earlier):
 - (i) A copy of the City's Certificate of Completion for all stormwater and drainage work undertaken in the public domain must be provided to the Principal Certifying Authority;
 - (ii) a Works-As-Executed survey, must be prepared, signed, dated and certified by a Registered Surveyor and must be submitted to and be accepted by the Principal Certifying Authority. The Works-as-Executed plan must be overlaid on a copy of the approved stormwater drainage plans issued with the Construction Certificate, with variations to locations, dimensions, levels and storage volumes clearly marked;
 - (iii) a Hydraulic Compliance Certificate and Calculation Sheet must be prepared by a suitably qualified hydraulic engineer (minimum NER),

showing approved versus installed hydraulic calculations, and must be submitted to and be accepted by the Principal Certifying Authority;

- (iv) evidence of Sydney Water's acceptance of the Works-As-Executed documentation, certification and Hydraulic Compliance Certificate and Calculation Sheet must be provided to the Principal Certifying Authority;
- (v) The Principal Certifying Authority must submit a copy of the Works-As-Executed plans, certifications, Hydraulic Compliance Certificate and Calculation Sheet to the City of Sydney.

(25) DEFECTS LIABILITY PERIOD – PUBLIC DOMAIN WORKS

All works to the City's public domain, including rectification of identified defects, are subject to a 12 month defects liability period from the date of final completion. The date of final completion will be nominated by Council on the Certificate of Completion for public domain works.

(26) PROTECTION OF STONE KERBS

- (a) The existing stone kerbs on the Abercrombie Street frontage of the site are to be retained and properly protected during excavation and construction works.
- (b) To avoid damage to stone kerbs during excavation and construction works for the development, temporary removal and storage of the stone kerbs may be approved by Council. Removed, serviceable stone kerbs (i.e. those that are in good condition as agreed by Council officers) must be re-installed in accordance with the City of Sydney's standard details and specifications after the construction works have been completed. Note: A temporary concrete kerb will need to be constructed to retain the footpath until the stone kerbs can be reinstalled. The removed stone kerbs are to be reinstalled prior to the issue of an Occupation Certificate. Note: all costs associated with the works are to be at no cost to the Council.
- (c) Damaged kerbs are to be replaced to match existing to Council's satisfaction or as otherwise advised by Council officers.
- (d) Where new crossings or temporary crossings are to be constructed to access the property, the affected kerb stones should be salvaged and reused wherever possible.
- (e) All new driveway laybacks and kerbs are to be constructed with stone kerbs to match existing stones or as specified by City officers. All unused stone kerbs are to be salvaged and returned to the City's store.
- (f) Council approval is required before kerbs are removed.
- (g) Council approval is required prior to the cutting of existing stone kerbs for stormwater kerb outlets.

(27) PUBLIC DOMAIN DAMAGE DEPOSIT

A Public Domain Damage Deposit calculated on the basis of 23 lineal metres brick paver site frontage for Myrtle Street and 2 lineal metres brick paver site frontage for Abercrombie Street must be lodged with Council in accordance with the City of Sydney's adopted Schedule of Fees and Charges. The Public Domain Damage Deposit must be submitted as an unconditional bank guarantee in favour of Council as security for repairing any damage to the public domain in the vicinity of the site.

The guarantee must be lodged with Council prior to an approval for demolition being granted or a Construction Certificate being issued, whichever is earlier.

The Bank Guarantee will be retained in full until the final Occupation Certificate has been issued and any rectification works to the footway and Public Domain are completed to Council's satisfaction. On satisfying the above requirements 90% of the total securities will be released, with the remaining 10% to be retained for the duration of the 12 months Defect Liability Period.

(28) PUBLIC DOMAIN LIGHTING

- (a) Prior to a Construction Certificate for public domain works or above ground building works being issued, whichever is later, a detailed Public Domain Lighting Plan for pedestrian and street lighting in the public domain must be prepared by a suitably qualified, practicing lighting engineer or lighting designer and must be submitted to and approved by Council. The Lighting Plan must be prepared in accordance with the City of Sydney's Sydney Lights Design Code, Sydney Streets Code, *Sydney Streets Technical Specification* and *Public Domain Manual* and must include the following:
- (i) Vertical and horizontal illuminance plots for the public domain lighting design to demonstrate compliance with all relevant Australian Standards and to meet the lighting categories and requirements specified by the City;
 - (ii) The location, type and category of existing and proposed lights, including details of luminaire specifications, required to ensure compliance with City policies and Australian Standards;
 - (iii) Footing locations and structural details;
 - (iv) Location and details of underground electrical reticulation, connections and conduits;
 - (v) Certification by a suitably qualified, practicing lighting engineer or lighting designer to certify that the design complies with City policies and all relevant Australian Standards including AS 1158, AS 3000 and AS4282;
 - (vi) Structural certification for footing designs by a suitably qualified, practicing engineer to certify that the design complies with City of Sydney policies and Australian Standards.
- (c) The public domain lighting works are to be completed in accordance with the approved plans and the City of Sydney's *Public Domain Manual* before any

Occupation Certificate is issued in respect of the development or before the use commences, whichever is earlier.

(29) CONSTRUCTION TRAFFIC MANAGEMENT PLAN – RMS CONDITION

A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control is to be submitted to Council prior to a Construction Certificate.

(30) ASBESTOS REMOVAL WORKS

- (a) All works removing asbestos containing materials must be carried out by a suitably licensed asbestos removalist duly licensed with Safework NSW, holding either a Friable (Class A) or a Non- Friable (Class B) Asbestos Removal Licence which ever applies.

A copy of the relevant licence shall be made available to any authorised Council officer on request within 24 hours.

- (b) Five days prior to the commencement of licensed asbestos removal, Safework NSW must be formally notified of the works. All adjoining properties and those opposite the development must be notified in writing of the dates and times when asbestos removal is to be conducted. The notification must identify the licensed asbestos removal contractor and include a contact person for the site together with telephone number and email address.
- (c) All work must be carried out in accordance with the *Work Health and Safety Regulation 2011* and the NSW Government and Work Cover document entitled *How to manage and control asbestos in the work place: Code of Practice (Safework NSW) December 2011* and the *City of Sydney Managing Asbestos Policy dated 21 October 2013 and associated guidelines*.
- (d) The asbestos removalist must use signs and barricades to clearly indicate the area where the asbestos removal work is being performed. Signs must be placed in positions so that people are aware of where the asbestos removal work area is and should remain in place until removal is completed and clearance to reoccupy has been granted. Responsibilities for the security and safety of the asbestos removal site and removal must be specified in the asbestos removal control plan (where required). This includes inaccessible areas that are likely to contain asbestos.
- (e) Warning signs must be placed so they inform all people nearby that asbestos removal work is taking place in the area. Signs must be placed at all of the main entry points to the asbestos removal work area where asbestos is present. These signs must be weatherproof, constructed of light-weight material and adequately secured so they remain in prominent locations. The signs must be in accordance with AS 1319 -1994 *Safety Signs for the Occupational Environment* for size, illumination, location and maintenance.
- (f) Asbestos waste must only be transported and disposed of at an EPA licensed waste facility.

- (g) No asbestos products are to be reused on the site (i.e. packing pieces, spacers, formwork or fill etc).
- (h) No asbestos laden skips or bins are to be left in any public place without the written approval of Council.
- (i) A site notice board must be located at the main entrance to the site in a prominent position and must have minimum dimensions of 841mm x 594mm (A1) with any text on the notice to be a minimum of 30 point type size.

The site notice board must include the following:

- (i) contact person for the site;
- (ii) telephone and facsimile numbers and email address; and
- (iii) site activities and time frames.

(31) MECHANICAL VENTILATION

- (a) The premises must be ventilated in accordance with the *Building Code of Australia* and *AS1668.1 and 2 - 2012. The Use of Ventilation and Air-Conditioning in Buildings - Mechanical Ventilation in Buildings*.
- (b) Details of any mechanical ventilation and/or air conditioning system complying with *AS1668.1 and 2 – 2012 The Use of Ventilation and Air-Conditioning in Buildings - Mechanical Ventilation in Buildings*, the *Building Code of Australia* and relevant Australian Standards must be prepared by a suitably qualified person and certified in accordance with Clause A2.2 (a) (iii) of the *Building Code of Australia*, to the satisfaction of the Principal Certifier prior to the issue of a Construction Certificate.
- (c) Prior to issue of an Occupation Certificate and following the completion, installation, and testing of all the mechanical ventilation systems, a Mechanical Ventilation Certificate of Completion and Performance in accordance with Clause A2.2 (a) (iii) of the *Building Code of Australia*, must be submitted to the Principal Certifier.

(32) BCA COMPLIANCE - ALTERATIONS AND ADDITIONS - UPGRADE OF BUILDING IS REQUIRED

- (a) Pursuant to Clause 94 of the Environmental Planning and Assessment Regulation 2000, the whole building must comply with the *Building Code of Australia* (BCA) including:
 - (i) Structural provisions - Part B1;
 - (ii) Fire resistance and stability - Part C1;
 - (iii) Compartmentation and separation - Part C2;
 - (iv) Protection of openings - Part C3;
 - (v) Provision for escape - Part D1;

- (vi) Construction of exits - Part D2;
- (vii) Access for people with disabilities - Part D3;

Note: Compliance with the access provisions of Part D3 may necessitate design modifications prior to a Construction Certificate being issued.

- (viii) Fire fighting equipment - Part E1;
- (ix) Smoke hazard management - Part E2;
- (x) Lift installations - Part E3;
- (xi) Visibility in an emergency, exit signs and warning systems - Part E4;
- (xii) Damp and weatherproofing - Part F1;
- (xiii) Sanitary and other facilities - Part F2;

Note: For restaurants, cafes, bars and the like, sanitary facilities must be provided for patrons if the total number of persons (patrons and staff) accommodated including the number of persons (seats) for any future proposed footway dining, is more than 20.

- (xiv) Room heights - Part F3;
- (xv) Light and ventilation - Part F4;
- (xvi) Sound transmission and insulation - Part F5;
- (xvii) Minor structures and components – Part G1;
- (xviii) Boilers, pressure vessels, heating appliances, fireplaces, chimneys and flues - Part G2;
- (xix) Atrium construction - Part G3;
- (xx) Entertainment venues other than temporary structures and drive-in theatres - NSW Part H101;
- (xxi) Energy Efficiency – Part J0;
- (xxii) Building Fabric - Part J1;
- (xxiii) Glazing - Part J2;
- (xxiv) Building sealing - Part J3;
- (xxv) Air-conditioning and ventilation systems - Part J5;
- (xxvi) Artificial lighting and power - Part J6;
- (xxvii) Heated water supply and swimming pool and spa pool plant - Part J7;

(xxviii) Facilities for energy monitoring - Part J8;

- (b) If compliance with the conditions listed in (a) above cannot be achieved through the deemed-to-satisfy pathway, an alternative solution in accordance with Part A0 of the BCA must be prepared and submitted to the Principal Certifier illustrating how the relevant performance provisions are to be satisfied, and must form part of the approval prior to a Construction Certificate being issued.

(33) STRUCTURAL CERTIFICATION FOR EXISTING BUILDING – ALTERATIONS AND ADDITIONS

A qualified practising certified structural engineer must provide structural certification to Council (where Council is the Principal Certifier) verifying that the existing structure can adequately support the proposed new loads and the structural design complies with the Structural Provisions of Part B1 (Vol 1) and Part 2.1 (Vol 2) of the *Building Code of Australia* prior to a Construction Certificate being issued. The proposed additional loads and/or alterations must not cause a decrease in the existing structural performance of the building including its performance under earthquake actions (AS1170.4).

(34) EXTERNAL WALLS AND CLADDING FLAMMABILITY

The external walls of the building including attachments must comply with the relevant requirements of the *National Construction Code (NCC)*. Prior to the issue of a Construction Certificate and Occupation Certificate the Principal Certifier must:

- (a) Be satisfied that suitable evidence is provided to demonstrate that the products and systems proposed for use or used in the construction of external walls including finishes and claddings such as synthetic or aluminium composite panels comply with the relevant requirements of the NCC; and
- (b) Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.

(35) ANNUAL FIRE SAFETY STATEMENT FORM

An annual Fire Safety Statement must be given to Council and the NSW Fire Brigade commencing within 12 months after the date on which the initial Interim/Final Fire Safety Certificate is issued or the use commencing, whichever is earlier.

(36) WORKS REQUIRING USE OF A PUBLIC PLACE

Where construction/building works require the use of a public place including a road or footpath, approval under Section 138 of the *Roads Act 1993* is to be obtained from Council prior to the commencement of work. Details of any barricade construction, area of enclosure and period of work are required to be submitted to the satisfaction of Council.

(37) TREES APPROVED FOR REMOVAL

- (a) All trees detailed in Table 1 below are approved for removal. Tree removal must not occur until the Construction Certificate has been issued.

Table 1 – Tree Removal:

| Tree No: | Botanical Name / Common Name | Location |
|----------|------------------------------------------------------------|----------------------|
| 1-3 | <i>Brachychiton acerifolius</i> / Illawarra Flame Trees | South eastern corner |

Note - Tree numbers and locations are consistent with the Arboricultural Impact Assessment Report prepared by Tree iQ and dated July 2018.

(38) TREES THAT MUST BE RETAINED

- (a) The existing trees detailed in Table 2 below must be retained and protected in accordance with the conditions of consent throughout the construction and development.

Table 2 – Tree Retention:

| Tree No | Botanical/Common Name | Location |
|---------|--------------------------------------------|-------------------------------------|
| A | <i>Fraxinus griffithii</i> / Evergreen Ash | Street tree – Abercrombie Street |

Note - Tree numbers and locations are consistent with the Arboricultural Impact Assessment Report prepared by Tree iQ and dated July 2018.

(39) STREET TREE PROTECTION

Street trees must be protected in accordance with the Australian Standard 4970 Protection of Trees on Development Sites. All street trees must be protected prior to the commencement of works and during the construction works as follows:

- (a) Tree trunk protection shall be undertaken prior to the issuing of the Construction Certificate. The protection shall be installed by a qualified Arborist (AQF 2 or 3) and must include;
- (i) An adequate clearance, minimum 250mm, must be provided between any structure and tree branches, limbs and trunk at all times,
 - (ii) Tree trunk/s and major branches must be protected by wrapped hessian or similar material to limit damage, and
 - (iii) Timber planks (50mm x 100mm or similar) shall be placed around tree trunk. The timber planks shall be spaced at 100mm intervals, and must be fixed against the trunk with tie wire, or strapping. The hessian and timber planks must not be fixed to the tree in any instance, or in any fashion.

- (iv) Tree trunk and major branch protection is to remain in place for the duration of construction and development works, and shall be removed at the completion of the project.
- (b) All hoarding support columns are to be placed a minimum of 300mm from the edge of the existing tree pits/setts, so that no sinking or damage occurs to the existing tree setts. Supporting columns must not be placed on any tree roots that are exposed.
 - (i) Materials or goods, including site sheds, must not be stored or placed:
 - (ii) Around or under the tree canopy; or
- (c) Within two (2) metres of the trunks or branches of any street trees.
 - (i) Any damage sustained to street trees as a result of the erection of hoardings, scaffolding, or due to the loading/unloading of vehicles adjacent the site, must be immediately reported to the Council's Street Tree Contract Coordinator on 9265 9673, in order to determine the appropriate action for maintaining the health and structural integrity of any damaged street tree.
 - (ii) Any trenching works for services / hydraulics / drainage etc. must not be undertaken within 3 metres of any street tree. Alternative installation methods for services, such as directional boring/drilling, or redirection of services shall be employed where large woody roots greater than 20mm diameter are encountered during the installation of any services.

(40) STREET TREE PLANTING AND MAINTENANCE

- (a) One (1) new street tree must be planted in Myrtle Street in association with the development prior to the issuing of the Occupation Certificate. The new street tree must be included on the Public Domain Plans required to be submitted under condition tilted 'Public Domain Plan', and in accordance with the following:
 - (i) Street trees must be located and planted in accordance with the City's Street Tree Master Plan.
 - (ii) The replacement street tree species must be *Corymbia eximia* (Yellow Bloodwood). Please note that substitutes will not be accepted.
 - (iii) The tree must be grown to the Australian Standard 2303:2015 'Tree stock for landscape use' to ensure quality trees and more successful establishment.
 - (iv) The new street trees must be a minimum container size of 200 litres and a minimum height of 3 metres.
 - (v) The street tree must be planted by a qualified Arborist or Horticulturist (AQF Level 3); and
- (b) The tree pit must be inspected by Council's Tree Management Officer before and after planting.

- (c) All newly planted street trees must be maintained by a qualified Horticulturist or Arborist (AQF Level 2 or 3) for a minimum period of twelve (12) months commencing on the planting date. Maintenance includes, but is not limited to, watering, weeding, removal of rubbish from tree base, pruning, fertilizing, pest and disease control and any other operations to maintain a healthy robust tree.
- (d) At the end of the twelve (12) month maintenance period, written approval must be obtained from Council before hand-over of any street tree to Council.
- (e) If a street tree has been replaced due to maintenance deficiencies during the twelve (12) month maintenance period, the twelve (12) month maintenance period will start again from the date that the street tree is replaced.

SCHEDULE 1C

DURING CONSTRUCTION/PRIOR TO OCCUPATION/COMPLETION

(41) HOURS OF WORK AND NOISE – OUTSIDE CBD

The hours of construction and work on the development must be as follows:

- (a) All work, including building/demolition and excavation work, and activities in the vicinity of the site generating noise associated with preparation for the commencement of work (eg. loading and unloading of goods, transferring of tools etc) in connection with the proposed development must only be carried out between the hours of 7.30am and 5.30pm on Mondays to Fridays, inclusive, and 7.30am and 3.30pm on Saturdays, with safety inspections being permitted at 7.00am on work days, and no work must be carried out on Sundays or public holidays.
- (b) All work, including demolition, excavation and building work must comply with the City of Sydney Code of Practice for Construction Hours/Noise 1992 and Australian Standard 2436 - 2010 Guide to Noise Control on Construction, Maintenance and Demolition Sites.
- (c) Notwithstanding the above, the use of a crane for special operations, including the delivery of materials, hoisting of plant and equipment and erection and dismantling of on site tower cranes which warrant the on-street use of mobile cranes outside of above hours can occur, subject to a permit being issued by Council under Section 68 of the Local Government Act 1993 and/or Section 138 of the Roads Act 1993.

Note: Works may be undertaken outside of hours, where it is required to avoid the loss of life, damage to property, to prevent environmental harm and/or to avoid structural damage to the building. Written approval must be given by the Construction Regulation Unit, prior to works proceeding

The *City of Sydney Code of Practice for Construction Hours/Noise 1992* allows extended working hours subject to the approval of an application in accordance with the Code and under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

(42) COVERING OF LOADS

All vehicles involved in the excavation and/or demolition process and departing the property with demolition materials, spoil or loose matter must have their loads fully covered before entering the public roadway.

(43) HAZARDOUS AND INDUSTRIAL WASTE

Hazardous and/or industrial waste arising from the demolition/operational activities must be removed and/or transported in accordance with the requirements of the NSW Work Cover Authority pursuant to the provisions of the following:

- (a) *Protection of the Environment Operations Act 1997*

- (b) *Protection of the Environment Operations (Waste) Regulation 2005*
- (c) *Waste Avoidance and Resource Recovery Act 2001*
- (d) *Work Health and Safety Act 2011*
- (e) *Work Health and Safety Regulation 2011.*

(44) OCCUPATION CERTIFICATE TO BE SUBMITTED

An Occupation Certificate must be obtained from the Principal Certifier and a copy submitted to Council prior to commencement of occupation or use of the whole or any part of a new building, an altered portion of, or an extension to an existing building.

(45) ENCROACHMENTS – PUBLIC WAY

No portion of the proposed structure, including gates and doors during opening and closing operations, shall encroach upon Council's footpath area.

(46) NO OBSTRUCTION OF PUBLIC WAY

The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances. Non-compliance with this requirement will result in the issue of a notice by Council to stop all work on site.

SCHEDULE 2

PRESCRIBED CONDITIONS

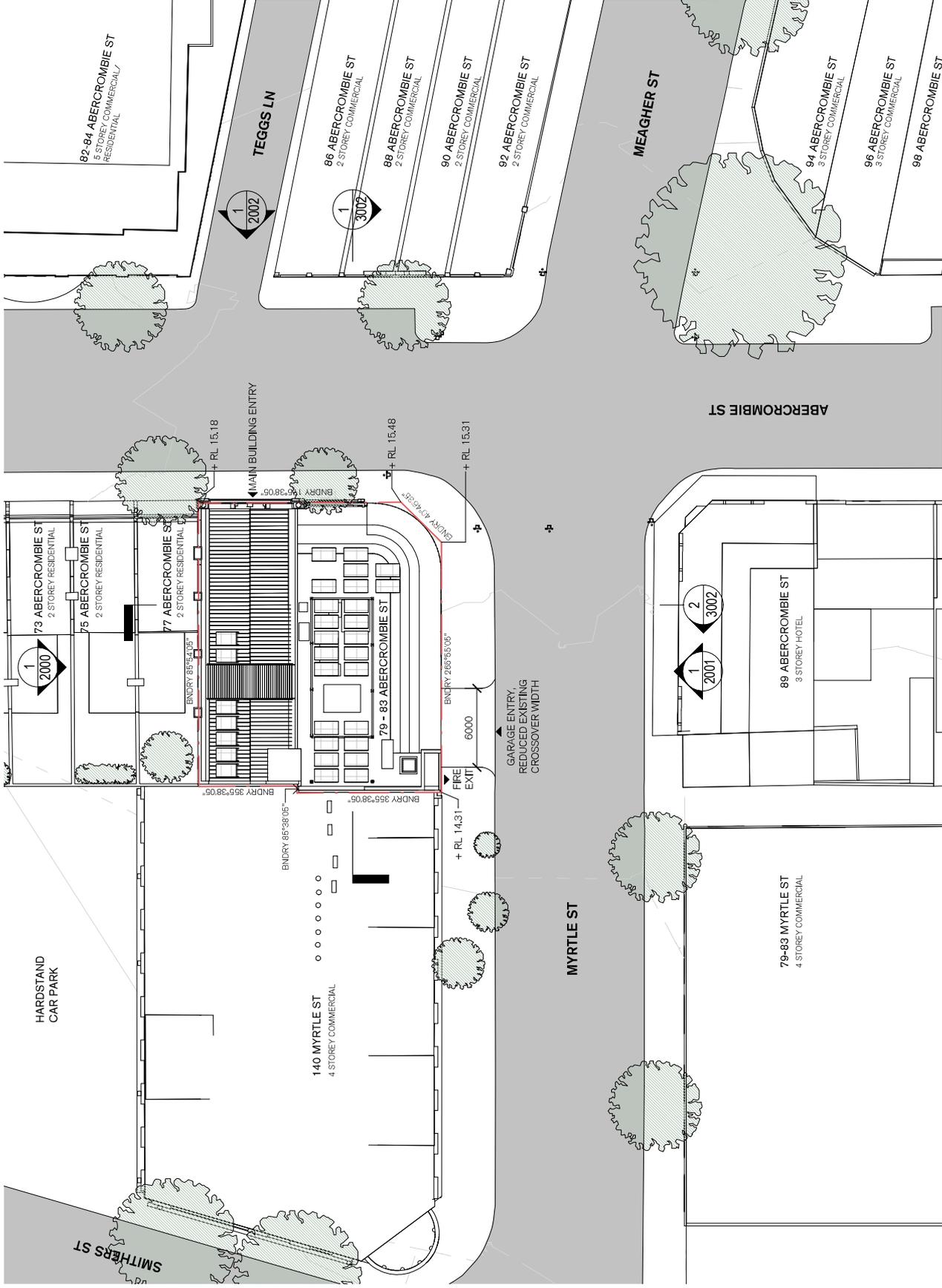
The prescribed conditions in accordance with Division 8A of the *Environmental Planning and Assessment Regulation 2000* apply:

- Clause 98 Compliance with *Building Code of Australia* and insurance requirements under the *Home Building Act 1989*
- Clause 98A Erection of signs
- Clause 98B Notification of *Home Building Act 1989* requirements
- Clause 98C Conditions relating to entertainment venues
- Clause 98D Conditions relating to maximum capacity signage
- Clause 98E Conditions relating to shoring and adequacy of adjoining property

Refer to the NSW State legislation for full text of the clauses under Division 8A of the *Environmental Planning and Assessment Regulation 2000*. This can be accessed at: <http://www.legislation.nsw.gov.au>

Attachment B

Selected Drawings



| | |
|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
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| | | |
|------------|-------------|---------------------|
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| B | 18/07/20 | FOR COORDINATION |
| C | 18/07/20 | DRAFT DA |
| D | 18/08/20 | FOR DA |
| E | 18/08/20 | FOR DA |
| F | 18/08/20 | FOR DA |
| G | 18/08/20 | FOR DA |
| H | 18/12/20 | FOR DA COORDINATION |
| I | 18/12/24 | FOR DA |

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| Structural Engineer | Acot Consultants 02 94438 5098 clendene@acot.com.au |

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| Acoustic Consultant | Acoustic Logic hamandelle@acousticlogic.com.au |
| Traffic Engineer | GTA Traffic 02 8448 1800 brett.maynard@gtat.com.au |

| | |
|---------------------|------------------------------------------|
| Scale | 1:300 @ A3 |
| North | North |
| Address | 79-83 Abercrombie St Chippendale, NSW |
| Project | Abercrombie St |
| Drawing | SITE PLAN |
| Date Created | 22/06/18 MG |
| Drawn | MG |
| Checked | TZ |
| Project No. | 18010 |
| Revision | 0003 |
| Status | NOT FOR CONSTRUCTION |

| | |
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| | | |
|------------|-------------|---------------------|
| Rev | Date | For |
| B | 18/07/20 | FOR COORDINATION |
| C | 18/07/20 | DRAFT DA |
| D | 18/08/20 | FOR DA |
| E | 18/08/20 | FOR DA |
| F | 18/08/20 | FOR DA |
| G | 18/08/20 | FOR DA |
| H | 18/12/20 | FOR DA COORDINATION |
| I | 18/12/24 | FOR DA |

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BWK - BRICKWORK
LONG FORMAT BRICK, 400MM X 50MM X 110MM (OR SIMILAR)
GREY COLOUR, RAKED HORIZONTAL MORTAR JOINT, FLUSH VERTICAL JOINT.



SS3 - METAL WOVEN MESH
METAL MESH DOORS AT L01 ON MYRTLE STREET ALLOWING PASSIVE VENTILATION.



STP - METAL PLATE
METAL PLATE, POWDERCOATED IN OFF-BLACK COLOUR



PT1 - PAINT ON CEMENT RENDER
ABERCROMBIE STREET WALLS OF HERITAGE BUILDING.



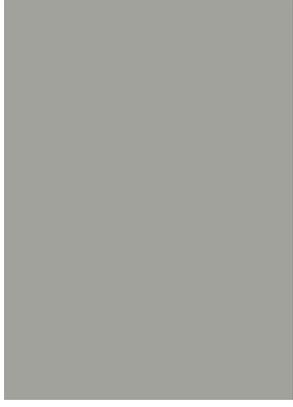
SS1 - METAL MIRROR POLISH TO METAL PLATE AT SHOPFRONT ON L01 ABERCROMBIE STREET.



SS2 - GLASS BEAD BLASTED METAL
GLASS BEAD BLASTED METAL PLATE AT AWNING ON ABERCROMBIE STREET.



AL - ALUMINIUM - EPOXY PAINT FINISH
WINDOW SUBROUNDS AT L02 AND L03 ON MYRTLE ST AND THE ABERCROMBIE STREET INTERSECTION. INTERPON EPOXY PAINT IN NICKEL FINISH OR SIMILAR.



PT2 - PAINT ON CEMENT RENDER
ABERCROMBIE STREET HERITAGE CORBELING AND CORNICE DETAILING.



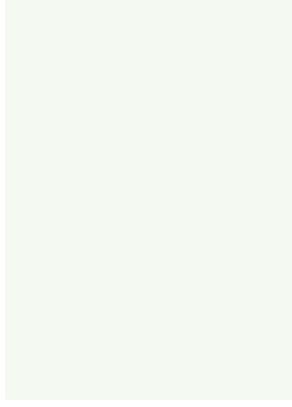
CON1 - OFF FORM CONCRETE
CONCRETE STRUCTURE ON MYRTLE AND ABERCROMBIE STREET.



BKG - GLAZED BRICK
GLAZED BRICK IN WHITE ON L01, L02 AND L03.



MS - CORRUGATED METAL SHEETING
ROOF SHEETING ON HERITAGE ROOF AT 79 ABERCROMBIE ST. LIGHT COLOUR.



PT3 - PAINT ON WINDOW FRAMES OF HERITAGE BUILDINGS
WINDOW FRAMES PAINTED, WINDOWS ON NORTH AND EAST FACADES.



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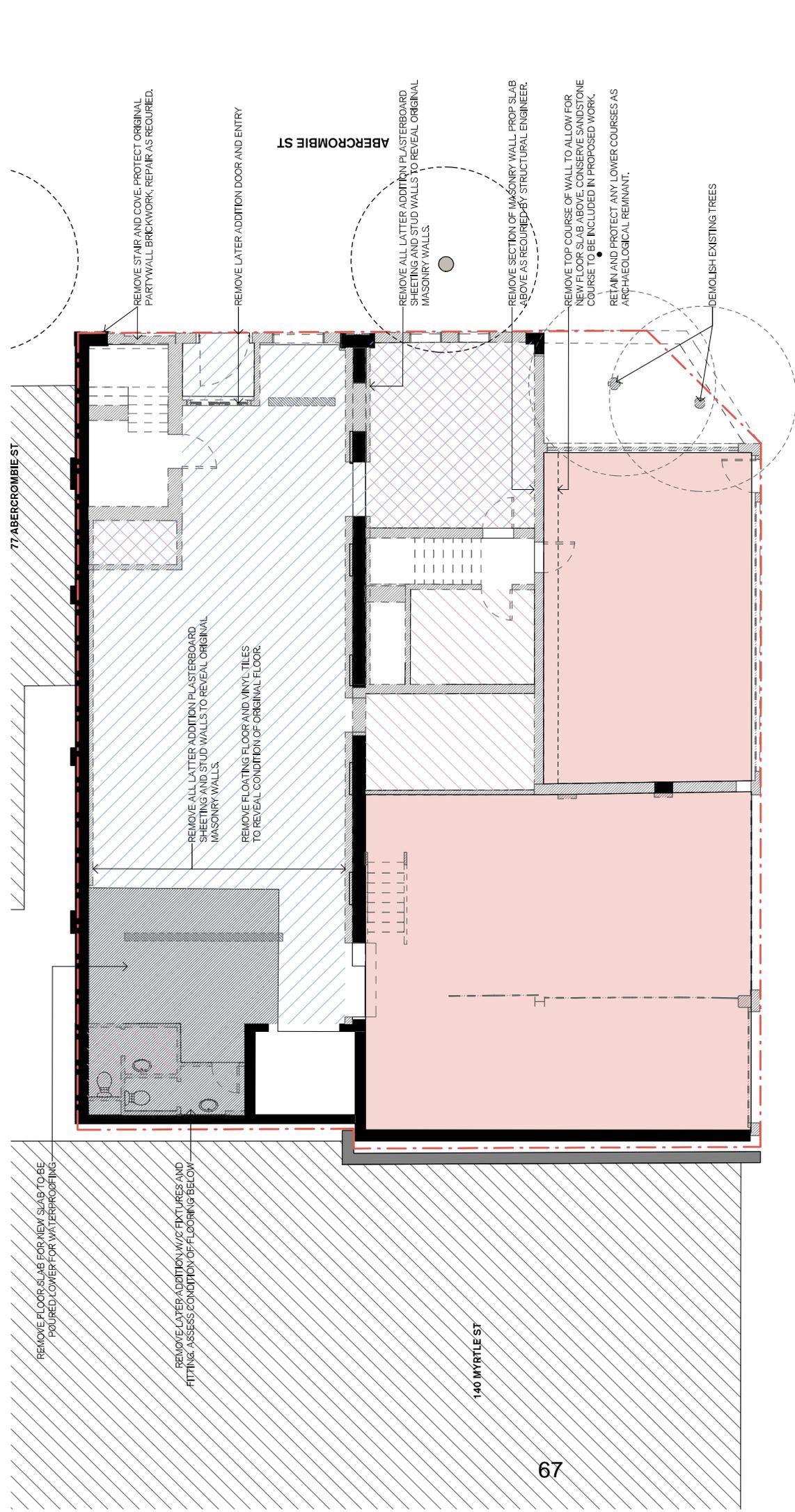
Nominated Architects
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Ch. Mellam 7754

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| Rev | Date | For | Legend |
|-----|----------|---------------------|--------|
| A | 18/07/27 | DRAFT DA | |
| B | 18/08/03 | FOR DA | |
| C | 18/08/13 | FOR DA | |
| D | 18/12/13 | FOR DA COORDINATION | |
| E | 18/12/14 | FOR DA | |

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|-------------------------------------------------------------------------------------------|------------------------------------------------------------|---------------------------------------------|-----------------------------------------------------------------------------------|----------------------------------------------------------|
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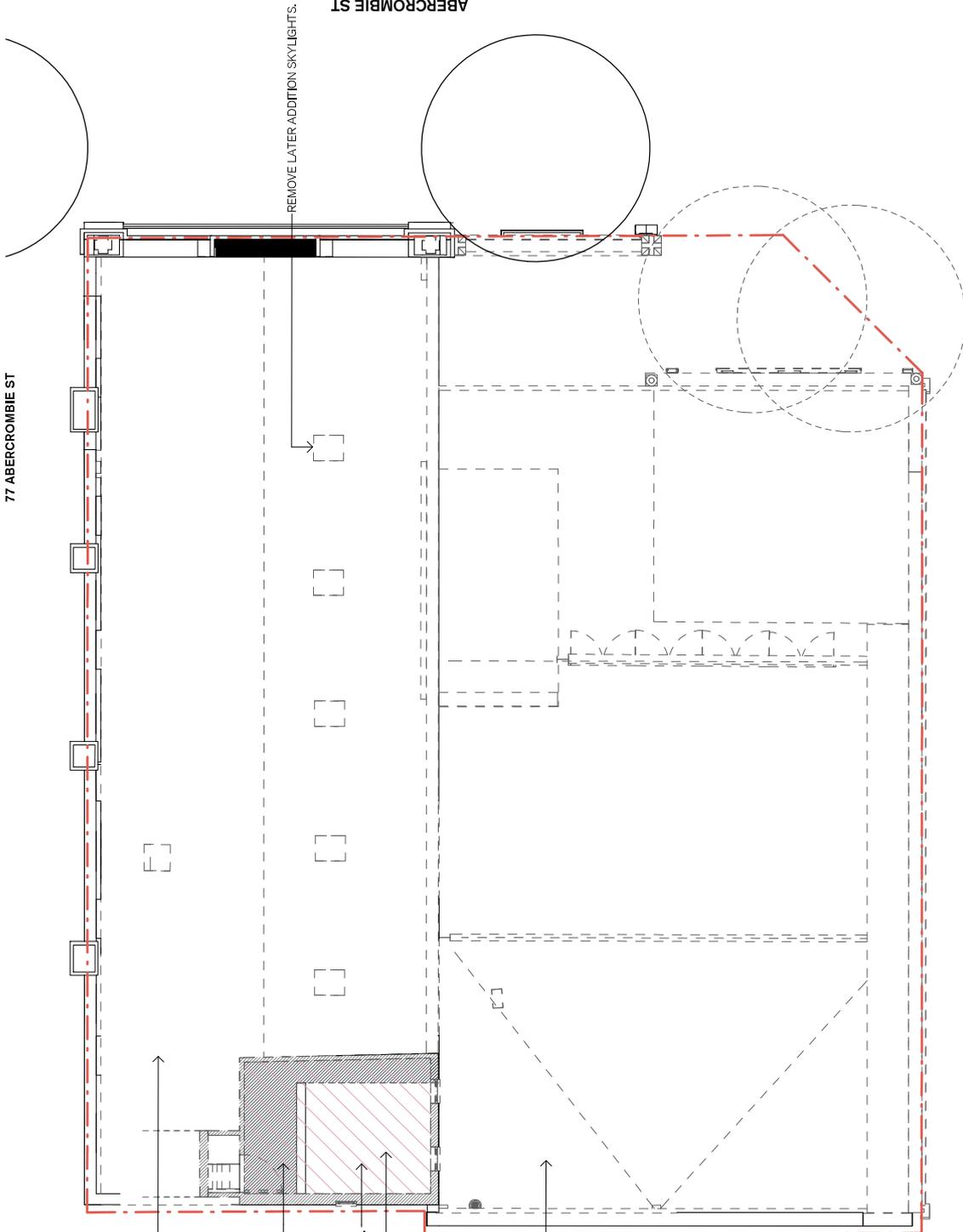
| Project | Drawing | Date Created | Drawn | Checked |
|------------------------------------------|-------------|--------------|----------|---------|
| Abercrombie St | MATERIALS | 07/12/18 | MG | TZ |
| Address | | | | |
| 79-83 Abercrombie St Chippendale, NSW | | | | |
| North | | | | |
| Status | Project No. | Drawing No. | Revision | |
| NOT FOR CONSTRUCTION | 18010 | 0099 | E | |



MYRTLE ST

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| | | | | | | | | | |

77 ABERCROMBIE ST



EXISTING ROOF TRUSS FRAMING TO BE RETAINED. ROOF FRAMING, SHEETING, WATERPROOFING, GUTTERING AND INSULATION TO BE REPLACED.

THE CONCRETE FLOOR, WALLS, WINDOWS, DOOR AND ROOF OF LIFT MACHINE ROOM TO BE DEMOLISHED.

THE CONCRETE FLOOR OVER LIFT SHAFT TO BE RETAINED. STRIP HAZMAT WALL AND CEILING LININGS INCLUDING INSULATION WITH MASONITE BACKING.

REMOVE LATER ADDITION LIGHTWEIGHT ROOF ADDITION

140 MYRTLE ST

MYRTLE ST

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Verify dimensions on site prior to construction. Check existing RLs on site. Advise Architect of any discrepancies. Advise Architect of any adjustments to suit discrepancies. Comply with relevant authorities requirements. Comply with Building Standards for relevant Australian States, Territories, and Northern Territory. Do not scale from drawings.

| Rev | Date | For |
|-----|----------|---------------------|
| B | 12/06/18 | FOR CONSULTANT |
| C | 18/06/22 | FOR PRE-DA MEETING |
| D | 18/07/26 | FOR COORDINATION |
| E | 18/07/27 | DRAFT DA |
| F | 18/08/03 | FOR DA |
| G | 18/08/13 | FOR DA |
| H | 18/12/18 | FOR DA COORDINATION |
| I | 18/12/14 | FOR DA |

| Legend | Description |
|---------------|------------------------|
| [Red Box] | DEMOLISH ASPHALT FLOOR |
| [White Box] | DEMOLISH CEILING |
| [Blue Box] | DEMOLISH FLOOR FINISH |
| [Hatched Box] | TO DEMOLISH |
| [Black Box] | EXISTING |

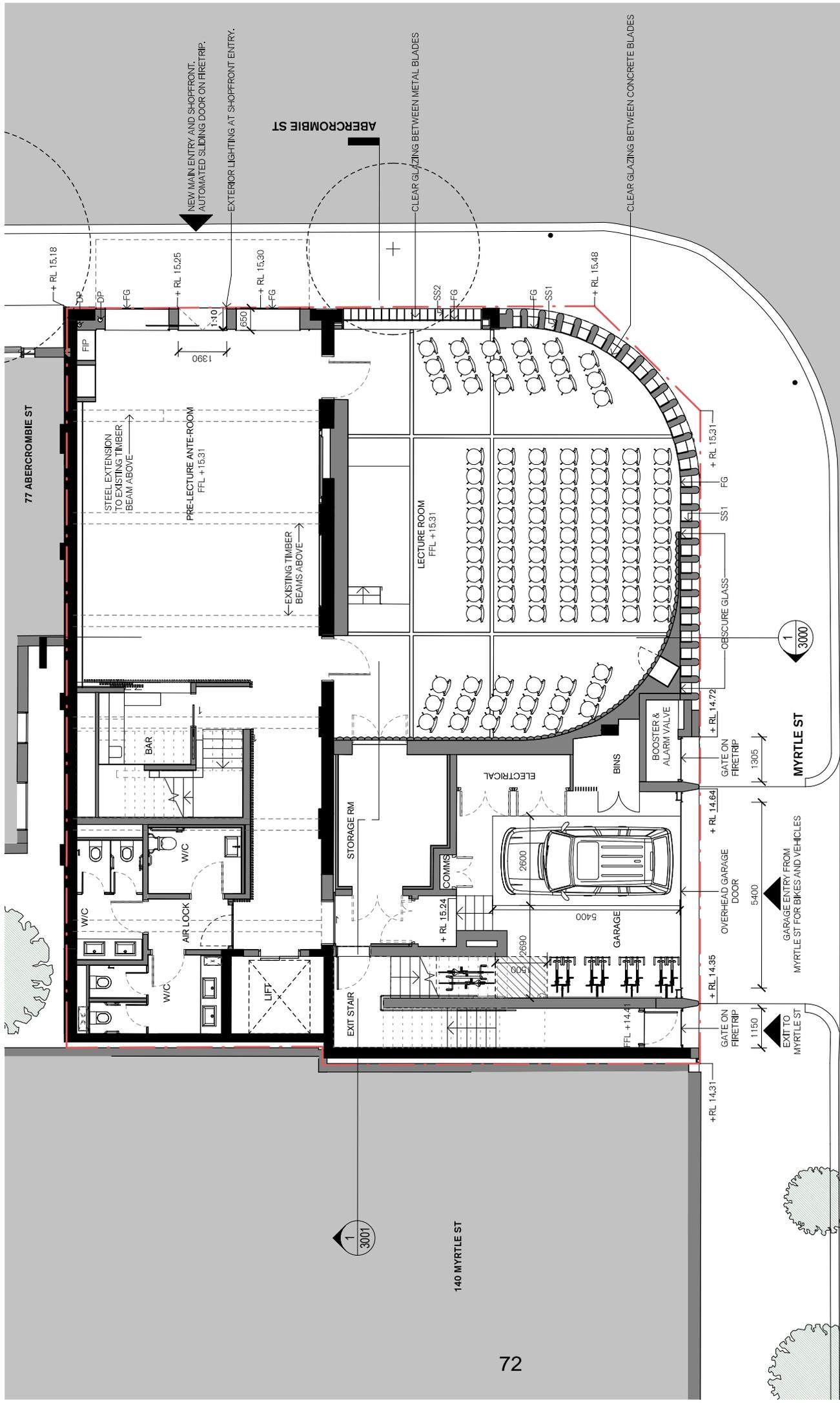
| Client | Hydraulic Engineer | Heritage Consultant | Scale |
|-----------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|------------------------------------------------------------------------------|------------|
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| Project | North |
|-----------------------------------------------------|-------|
| Abercrombie St | North |
| Address 79-83 Abercrombie St Chippendale, NSW | |
| Status NOT FOR CONSTRUCTION | |

| Drawing | Date Created | Drawn | Checked |
|-----------------------|--------------|-------------|---------|
| L04 PLAN - DEMOLITION | 05/30/18 | MG | TZ |
| Project No. | 18010 | Drawing No. | 1005 |
| Revision | | | 1 |

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Rev **Date** **For**

| | | |
|---|----------|---------------------|
| F | 18/07/26 | FOR COORDINATION |
| G | 18/07/27 | DRAFT DA |
| H | 18/08/03 | FOR DA |
| I | 18/08/13 | FOR DA |
| J | 18/08/14 | FOR DA |
| K | 18/12/11 | FOR DA COORDINATION |
| L | 18/12/13 | FOR DA COORDINATION |
| M | 18/12/14 | FOR DA |

Legend

- PROPOSED
- EXISTING

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Traffic Engineer
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Scale
1:100 @ A3

Project
Abercrombie St

Address
79-83 Abercrombie St
Chippendale, NSW

Drawing
LO1 PLAN

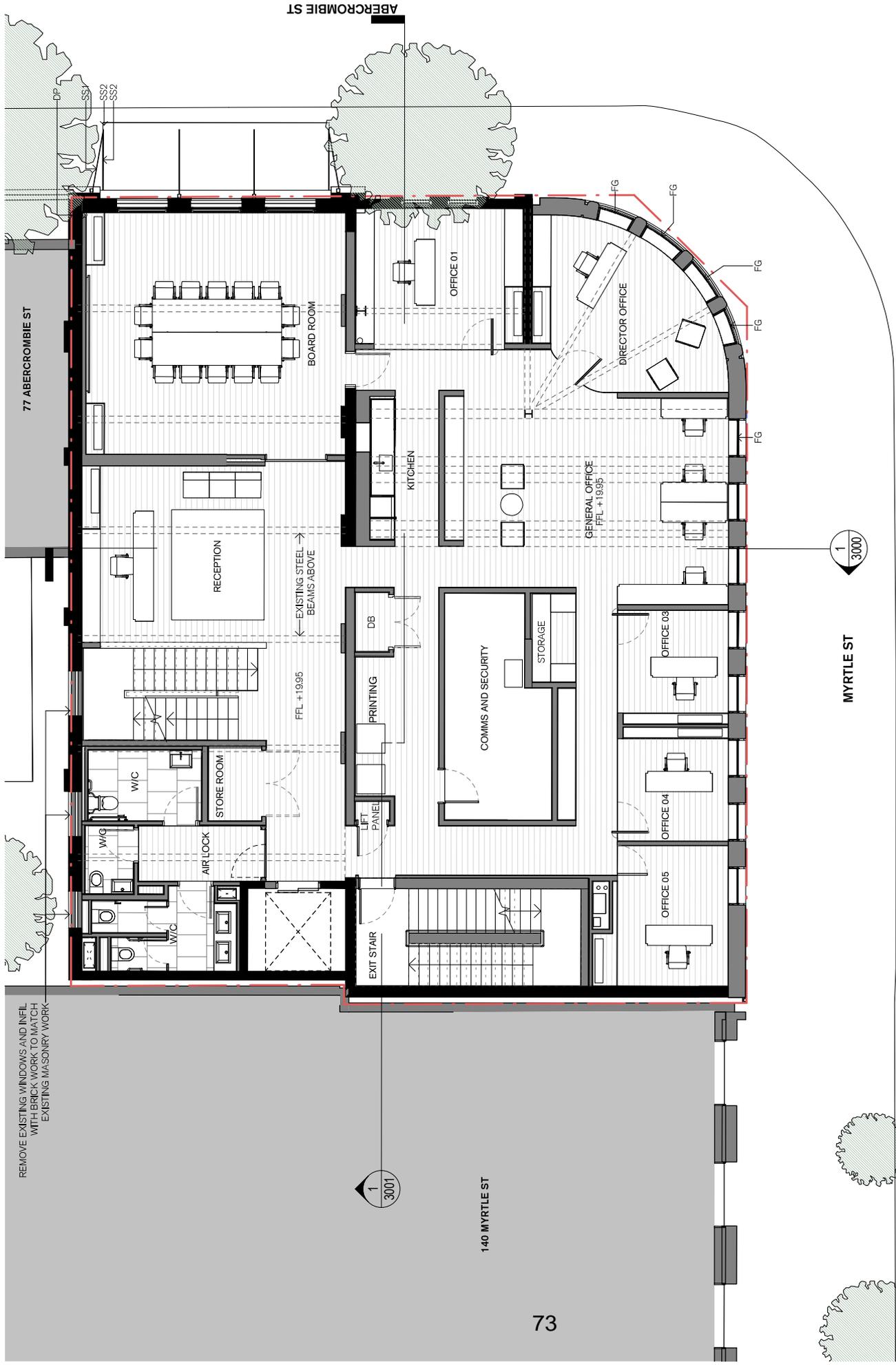
Date Created
12/20/17 MG

Checked
TZ

Project No.
18010

Drawing No.
1101

Status
NOT FOR CONSTRUCTION



REMOVE EXISTING WINDOWS AND INFILL WITH BRICK WORK TO MATCH EXISTING MASONRY WORK

ABERCROMBIE ST

77 ABERCROMBIE ST

140 MYRTLE ST

MYRTLE ST

1
3000

1
3000

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 Verify dimensions on site prior to construction. Check for any discrepancies with the existing RLs on site. Advise the Architect of any discrepancies for unauthorised use in the user's risk and without limiting Tzannes' rights the user releases and indemnifies Tzannes from and against all loss or injury.
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 Jordan Evans 661 63
 Ben Green 7096
 Ch. Mellam 7754
 Do not scale from drawings.

Legend

| | |
|----------|----------|
| PROPOSED | EXISTING |
|----------|----------|

Rev Date For

| | | |
|---|----------|---------------------|
| E | 18/07/20 | FOR COORDINATION |
| F | 18/07/20 | FOR COORDINATION |
| G | 18/07/27 | DRAFT DA |
| H | 18/08/03 | FOR DA |
| I | 18/08/13 | FOR DA |
| J | 18/12/11 | FOR DA COORDINATION |
| K | 18/12/13 | FOR DA COORDINATION |
| L | 18/12/14 | FOR DA |

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Project
 Abercrombie St

Address
 79-83 Abercrombie St
 Chippendale, NSW

Scale
 1:100 @ A3

North

Drawing
 L02 PLAN

Date Created
 05/30/18 MG

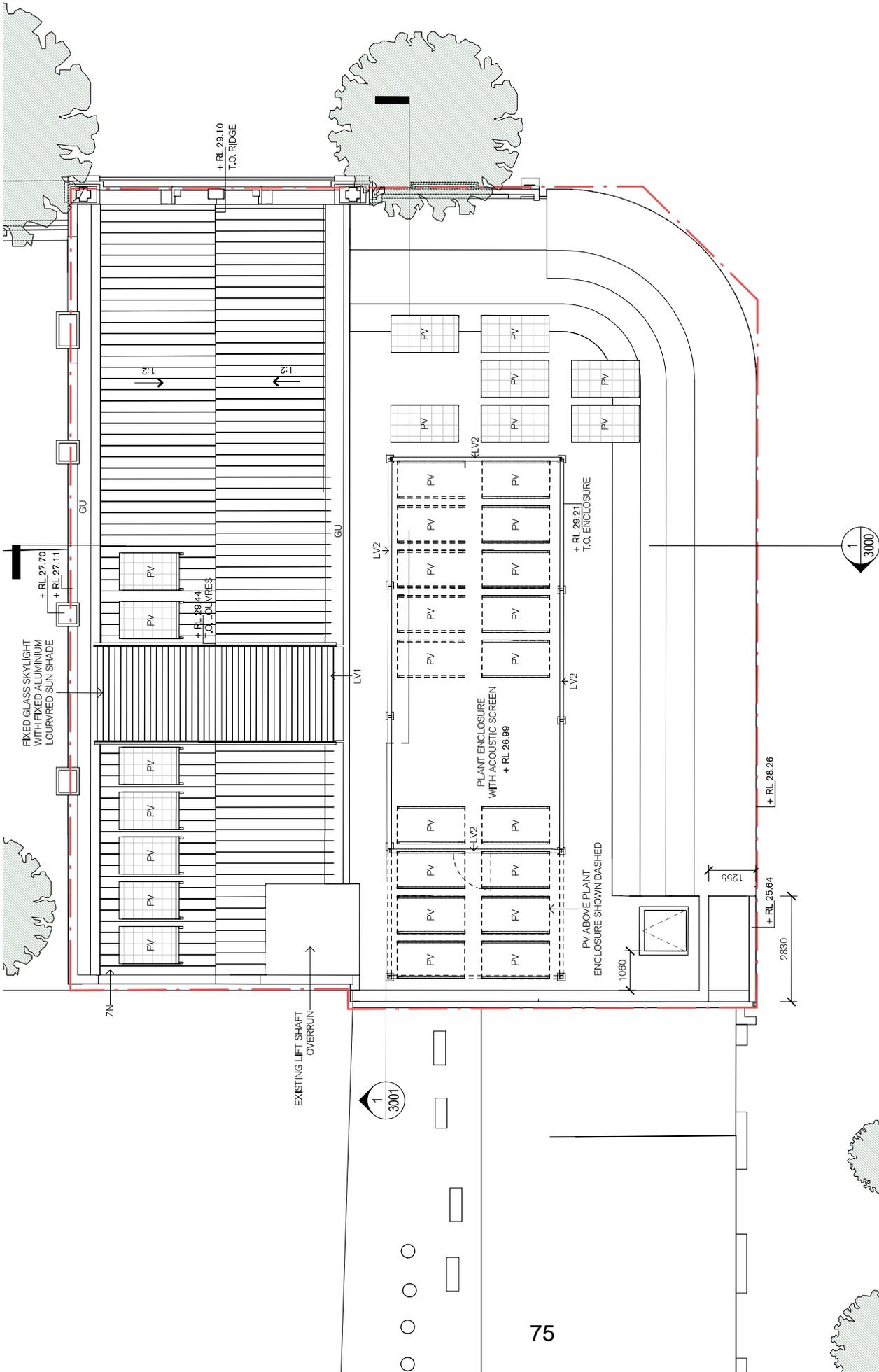
Checked
 TZ

Project No.
 18010

Drawing No.
 1102

Status
 NOT FOR CONSTRUCTION

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Legend

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| | EXISTING |

Rev. Date For

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| D | 18/07/26 | FOR COORDINATION |
| E | 18/07/27 | DRAFT DA |
| F | 18/08/03 | FOR DA |
| G | 18/08/13 | FOR DA |
| H | 18/08/14 | FOR DA |
| I | 18/12/11 | FOR DA COORDINATION |
| J | 18/12/13 | FOR DA COORDINATION |
| K | 18/12/14 | FOR DA |

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Project
Abercrombie St

Address
79-83 Abercrombie St
Chippendale, NSW

Scale
1:100 @ A3

North

Status
NOT FOR CONSTRUCTION

Drawing
ROOF PLAN

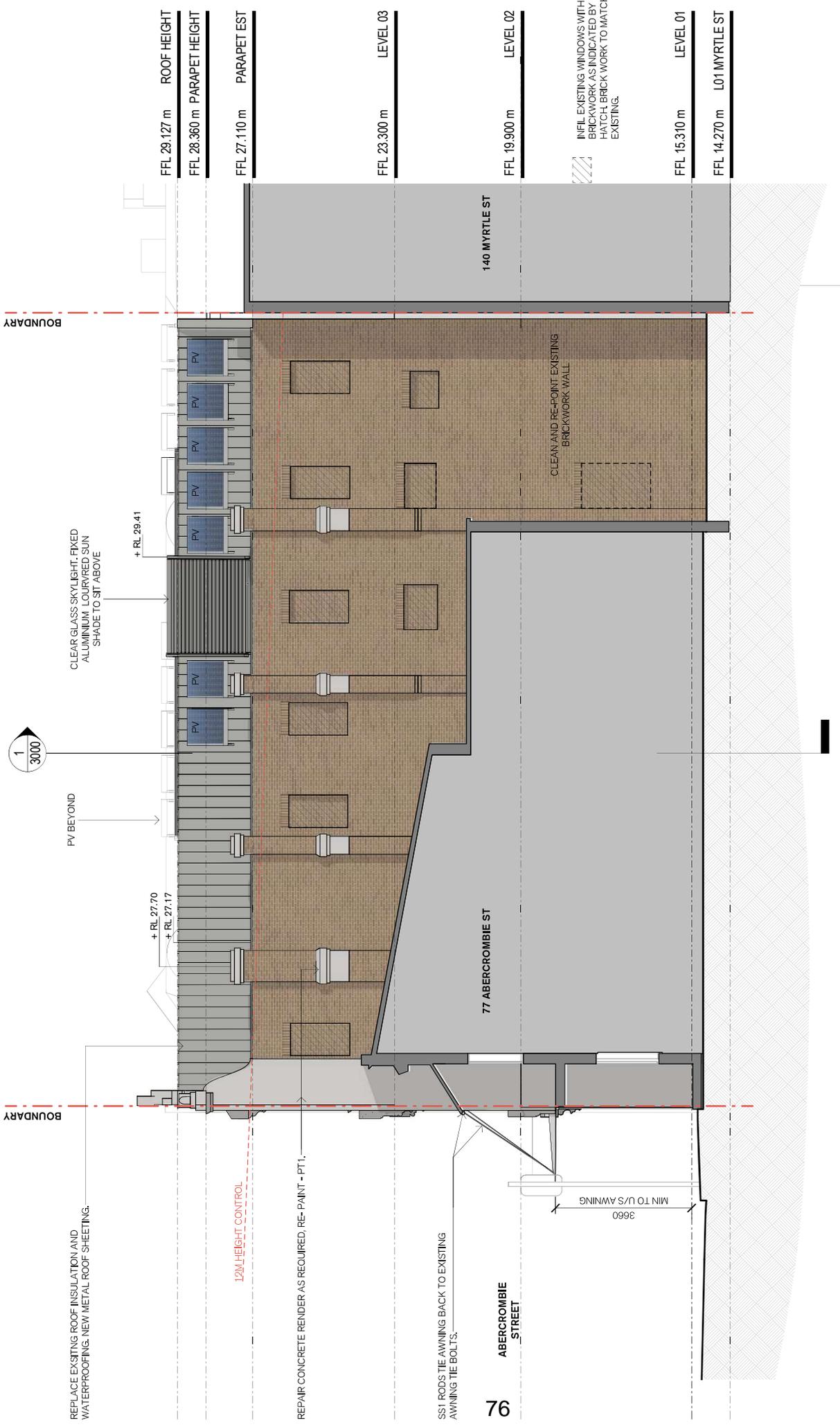
Date Created
05/30/18 MG

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TZ

Project No.
18010

Drawing No.
1104

Revision
K



REPLACE EXISTING ROOF INSULATION AND WATERPROOFING. NEW METAL ROOF SHEETING.

CLEAR GLASS SKYLIGHT. FIXED ALUMINUM LOUVRED SUN SHADE TO SIT ABOVE

PV BEYOND

+ RL 29.41

+ RL 27.70

+ RL 27.17

12M HEIGHT CONTROL

REPAIR CONCRETE RENDER AS REQUIRED. RE-PAINT - PT1.

SS1 RODS TIE AWNING BACK TO EXISTING AWNING TIE BOLTS.

MIN TO U/S AWNING
3660

CLEAN AND RE-POINT EXISTING BRICKWORK WALL

INFILL EXISTING WINDOWS WITH BRICKWORK AS INDICATED BY HATCH. BRICK WORK TO MATCH EXISTING.

76

ABERCROMBIE STREET

77 ABERCROMBIE ST

140 MYRTLE ST

FFL 23.300 m LEVEL 03

FFL 19.900 m LEVEL 02

FFL 15.310 m LEVEL 01

FFL 14.270 m L01 MYRTLE ST

FFL 29.127 m ROOF HEIGHT

FFL 28.360 m PARAPET HEIGHT

FFL 27.110 m PARAPET EST

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| Rev | Date | For |
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| A | 18/05/22 | FOR PRE-DA MEETING |
| B | 18/07/26 | FOR COORDINATION |
| C | 18/07/27 | DRAFT DA |
| D | 18/08/03 | FOR DA |
| E | 18/08/13 | FOR DA |
| F | 18/12/11 | FOR DA COORDINATION |
| G | 18/12/13 | FOR DA COORDINATION |
| H | 18/12/14 | FOR DA |

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Tzannes

Project
Abercrombie St

Address
79-83 Abercrombie St
Chippendale, NSW

North

Scale
1:100 @ A3

Drawing
NORTH ELEVATION

Date Created
12/20/17 MG

Checked
TZ

Project No.
18010

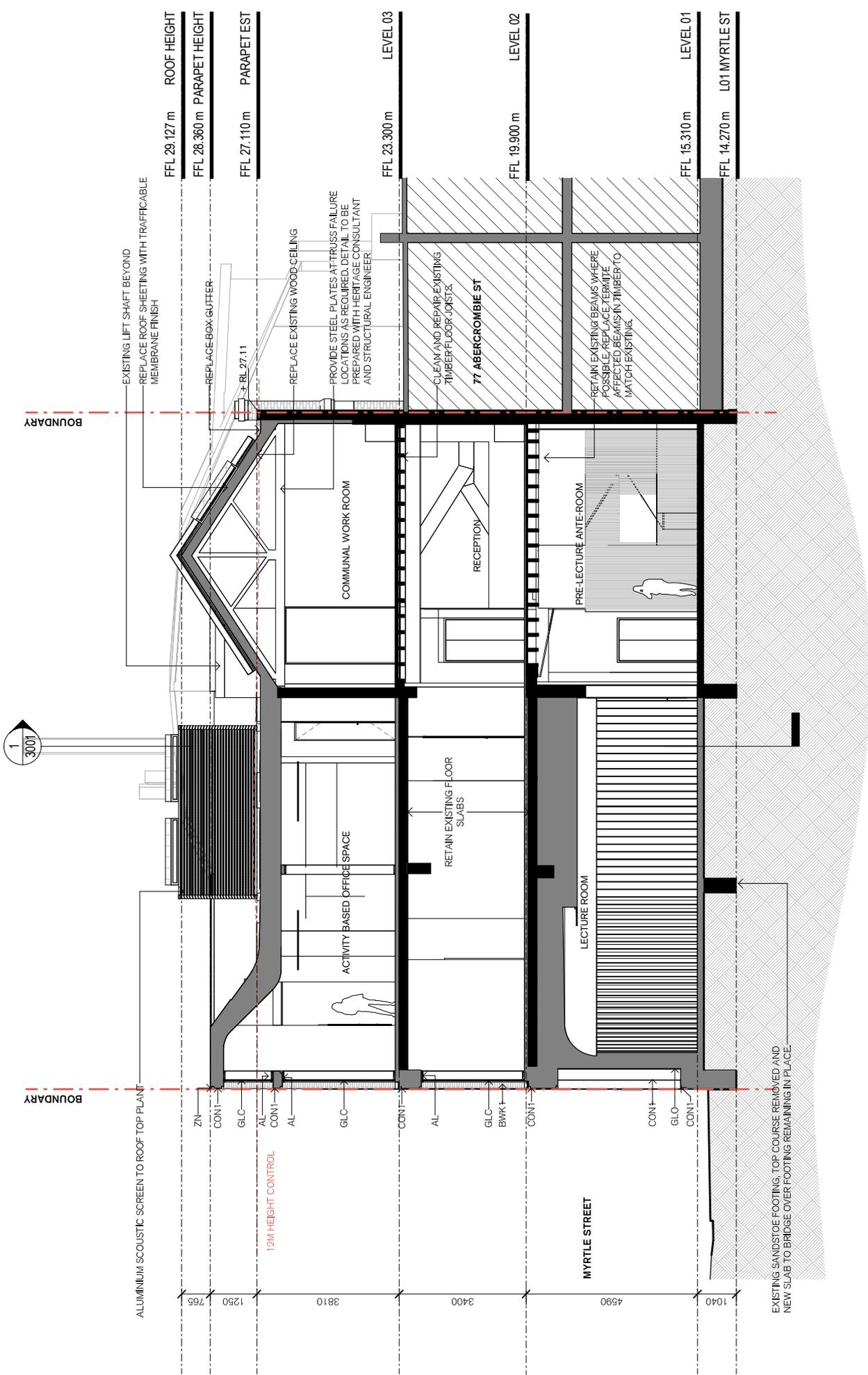
Drawing No.
2000

Status
NOT FOR CONSTRUCTION

Revision
H

Tzannes

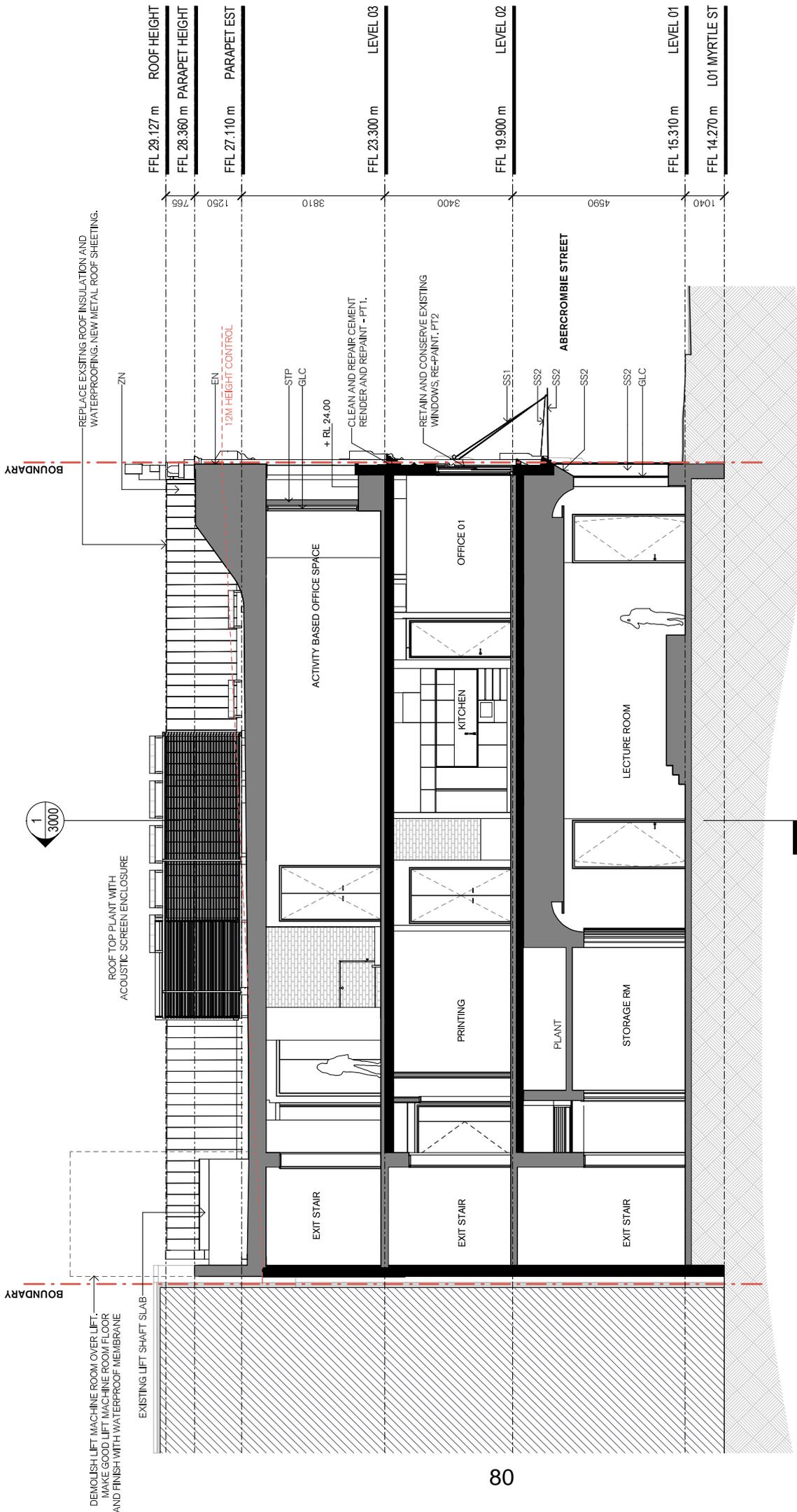
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1
3000

DEMOLISH LIFT MACHINE ROOM OVER LIFT. MAKE GOOD LIFT MACHINE ROOM FLOOR AND FINISH WITH WATERPROOF MEMBRANE

ROOF TOP PLANT WITH ACOUSTIC SCREEN ENCLOSURE

REPLACE EXISTING ROOF INSULATION AND WATERPROOFING. NEW METAL ROOF SHEETING.

EXISTING LIFT SHAFT SLAB

ZN

EN

STP

GLC

+ RL 24.00

CLEAN AND REPAIR CEMENT RENDER AND REPAIR - PT 1.

RETAIN AND CONSERVE EXISTING WINDOWS, RE-PAIN, PT2

SS1

SS2

SS2

SS2

SS2

GLC

FFL 29.127 m ROOF HEIGHT

FFL 28.360 m PARAPET HEIGHT

FFL 27.110 m PARAPET EST

FFL 23.300 m LEVEL 03

FFL 19.900 m LEVEL 02

FFL 15.310 m LEVEL 01

FFL 14.270 m L01 MYRTLE ST

765

1560

3810

3400

4590

1040

ABERCROMBIE STREET

LECTURE ROOM

OFFICE 01

KITCHEN

PRINTING

PLANT

STORAGE RM

ACTIVITY BASED OFFICE SPACE

EXIT STAIR

EXIT STAIR

EXIT STAIR

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Legend

Rev Date For
A 18/07/20 FOR COORDINATION
B 18/07/27 DRAFT DA
C 18/08/03 FOR DA
D 18/08/13 FOR DA
E 18/12/11 FOR DA COORDINATION
F 18/12/13 FOR DA COORDINATION
G 18/12/14 FOR DA

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Scale

1:100 @ A3

Address

79-83 Abercrombie St
Chippendale, NSW

Project

Abercrombie St

Drawing

SECTION B

Date Created

06/05/18 MG

Checked

TZ

Project No.

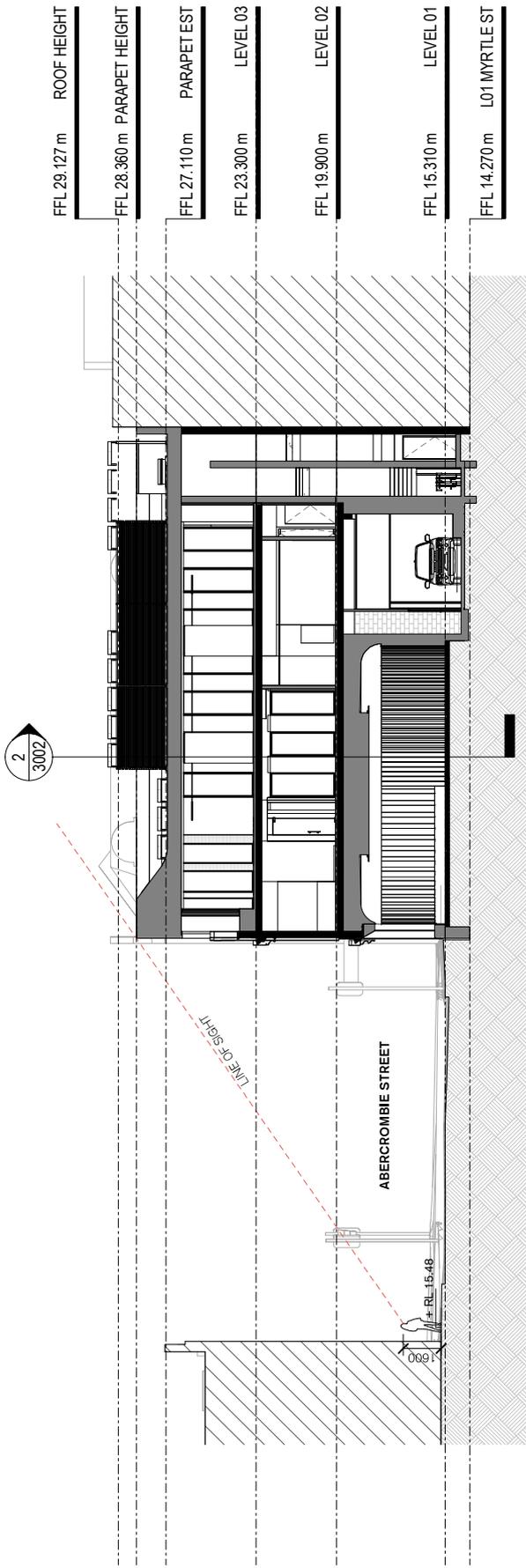
18010

Revision

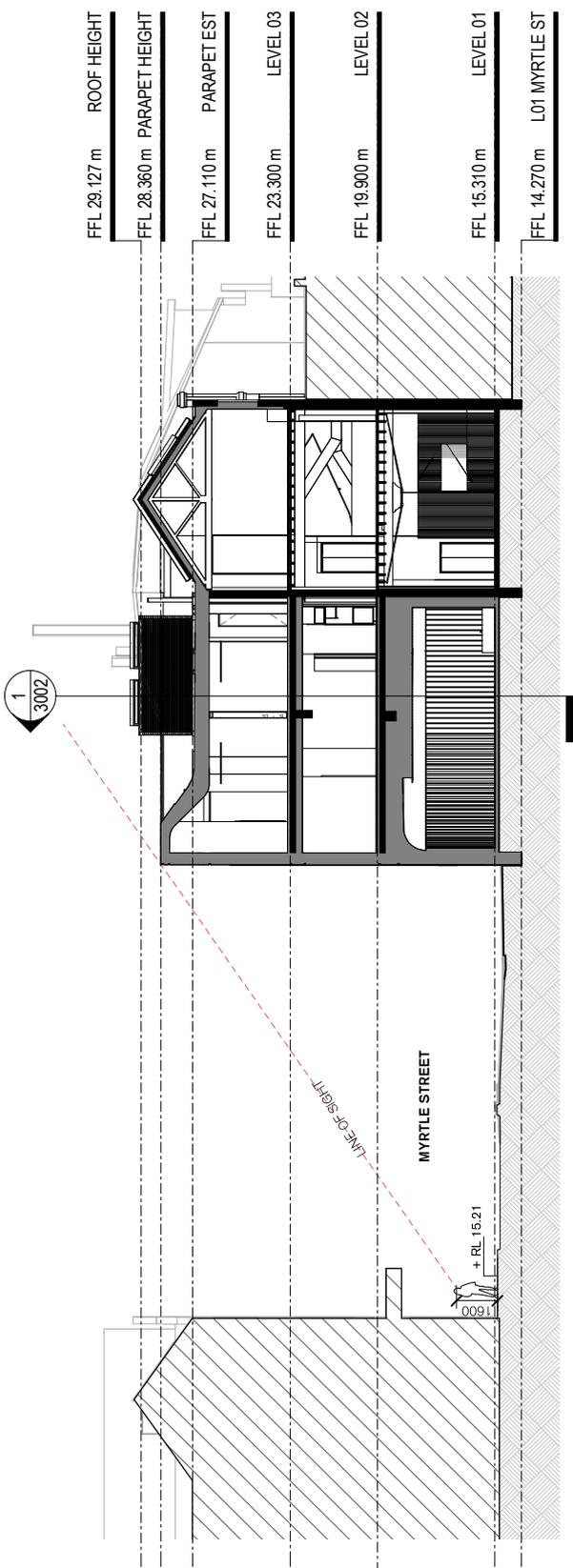
G



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SECTION THROUGH ABERCROMBIE STREET



SECTION THROUGH MYRTLE STREET

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| Rev | Date | For | Legend |
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| A | 18/08/15 | FOR DA | |
| B | 18/12/18 | FOR DA COORDINATION | |
| C | 18/12/18 | FOR DA | |

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| | | | |
|----------------|------------------------------------------|---------------------|-------------|
| Project | Abercrombie St | Drawing | SECTION C |
| Address | 79-83 Abercrombie St Chippendale, NSW | Date Created | 07/12/18 MG |
| North | | Drawn | TZ |
| Status | NOT FOR CONSTRUCTION | Project No. | 18010 |
| | | Drawing No. | 3002 |
| | | Revision | C |

Attachment C

| |
|--------------------------------------|
| Clause 4.6 Variation Requests |
|--------------------------------------|



Clause 4.6 Variation – Height of Buildings (Clause 4.3)

Alterations and Additions to Heritage Building for Commercial Offices and Ancillary Lecture Room

79-83 Abercrombie Street, Chippendale

Lot 16 DP 740281

**Prepared by Willowtree Planning on behalf of
Colliers International**

December 2018

CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)

Alterations and Additions to Heritage Building for Commercial Offices and Ancillary Lecture Room
79-83 Abercrombie Street, Chippendale (Lot 16 DP 740281)

PART A PRELIMINARY

1.1 INTRODUCTION

This Clause 4.6 Variation request has been prepared in support of the development application (DA) for the proposed alterations and additions to the heritage building at 79-83 Abercrombie Street, Chippendale (Lot 16 DP 740281).

This Clause 4.6 Variation has been submitted to assess the non-compliance of the development with *Clause 4.3 Height of Buildings of Sydney Local Environmental Plan 2012* (SLEP2012). This Clause 4.6 Variation has been prepared in accordance with the requirements of Clause 4.6 of SLEP2012 which has the following aims and objectives:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The proposed variation relates to *Clause 4.3 Height of Buildings* of SLEP2012. In summary, the following variations are proposed:

| SLEP2012 Clause | SLEP2012 Development Standard | Proposed Development Non Compliance | Percentage of Variation |
|--------------------------------|--------------------------------------|-----------------------------------------------------------------------------|--------------------------------|
| Clause 4.3 Height of Buildings | Maximum 12m building height | The proposal seeks development consent for a 15.06m maximum building height | 25.5% |

In accordance with Clause 4.6 of SLEP2012 Council is required to consider the following:

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.*

This request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standard.

CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)

Alterations and Additions to Heritage Building for Commercial Offices and Ancillary Lecture Room
79-83 Abercrombie Street, Chippendale (Lot 16 DP 740281)

PART B THE STANDARDS BEING OBJECTED TO

2.1 CLAUSE 4.3 (HEIGHT OF BUILDINGS) OF SYDNEY LOCAL ENVIRONMENTAL PLAN 2012

The development standard requested to be varied is *Clause 4.3 Height of Buildings* of SLEP2012 which provides as follows:

4.3 Height of Buildings

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

- (a) to ensure the height of development is appropriate to the condition of the site and its context,*
- (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*
- (c) to promote the sharing of views,*
- (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,*
- (e) in respect of Green Square:*
 - (i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and*
 - (ii) to ensure the built form contributes to the physical definition of the street network and public spaces.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

Note. No maximum height is shown for land in Area 3 on the Height of Buildings Map. The maximum height for buildings on this land are determined by the sun access planes that are taken to extend over the land by clause 6.17.

(2A) Despite any other provision of this Plan, the maximum height of a building on land shown as Area 1 or Area 2 on the Height of Buildings Map is the height of the building on the land as at the commencement of this Plan.

The SLEP2012 map referred to in subclause (2) above, identifies the site as being subject to a 12m maximum building height. The site is not identified in Area 1 or Area 2 and therefore subclause (2A) is not applicable.

Pursuant to Clause 4.6, the proposed development seeks exception to the 12m building height standard prescribed by Clause 4.3.

The site is zoned B4 Mixed Use under the provisions of SLEP2012 where Commercial Premises (including Office Premises), being the proposed use of the site, are permitted with development consent.

This DA therefore relies upon what is reasonably concluded to be the underlying objectives of the standard and the B4 zone.

CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)

Alterations and Additions to Heritage Building for Commercial Offices and Ancillary Lecture Room
79-83 Abercrombie Street, Chippendale (Lot 16 DP 740281)

2.2 THE OBJECTIVES/UNDERLYING PURPOSE OF THE CLAUSE

A key determination of the appropriateness of a variation to a development standard is the proposal's compliance with the underlying objectives and purpose of the development standard. Therefore, while there is a specified numerical control for maximum building height, the objectives and underlying purpose behind the development standard are basic issues for consideration in the development assessment process.

Part C of this Clause 4.6 Variation addresses the proposed variation to the Clause 4.3 development standard.

2.3 PROPOSED VARIATION TO STANDARDS

The proposed development seeks alterations and additions to the heritage building at 79-83 Abercrombie Street, Chippendale. The proposed development will result in a building exhibiting a maximum building height of 15.06m. The proposed 15.06m building height represents a breach of 3.06m under Clause 4.3 of SLEP2012.

CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)

Alterations and Additions to Heritage Building for Commercial Offices and Ancillary Lecture Room
79-83 Abercrombie Street, Chippendale (Lot 16 DP 740281)

PART C PROPOSED VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

Pursuant to Clause 4.6 of SLEP2012, exception is sought from the 12m height of buildings standard applicable to the site pursuant to Clause 4.3 of SLEP2012. Clause 4.6(4)(a)(ii) requires that such a request must establish that the proposed contravention is consistent with the objectives of the standard and the zone.

3.1 OBJECTIVES OF THE STANDARD

The objectives of the standard as stated in SLEP2012 are:

(a) to ensure the height of development is appropriate to the condition of the site and its context,

The proposal would generally maintain the existing building height, as achieved through the conservation of the heritage façade (79 Abercrombie Street) and the design of the new façade (81 and 83 Abercrombie Street) and street corner to relate to the scale, massing and architecture of the existing building. Whilst the existing roof height of the building would be generally retained, the proposed acoustic screen enclosing the rooftop plant would exceed the existing maximum roof height by 0.203m.

Through maintaining and replicating the existing building height on the site (excepting the minor intrusion of the acoustic plant screen), the built form relationship of the site with adjoining built form, the streetscape and the surrounding area, would remain consistent with the existing situation.

Also of note, the built form character of the surrounding conservation area is generally defined by two (2) and three (3) storey buildings, and therefore the three (3) storey form of the development is reflective of this context.

Accordingly, the height of the development is highly appropriate for the site and its context.

(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,

The existing building on the site is identified as a heritage item and the site is also situated within a heritage conservation area.

The proposal would generally maintain the existing building height, which is an essential and inevitable outcome of conserving the significant heritage façade. The exception would be limited to the acoustic plant screen which would exceed the roof height by a minor 0.203m only.

Through the preservation of the heritage-listed Abercrombie Street façade (79 Abercrombie Street), and the design of the new building corner and façade (81 and 83 Abercrombie Street) to relate to the scale, massing and architecture of the existing building, the proposal would retain the established height relationship/transition between the subject and surrounding sites.

(c) to promote the sharing of views,

The existing height of the building would be generally maintained as a result of the proposal, and thereby no view impact would arise.

Only the acoustic plant screen exceeds the existing roof height, and this is by 0.203m only. Given the minor amount of additional height proposed, limited area of the plant screen (to which the additional height is isolated), and centralized location of the plant screen on the roof, no adverse amenity or noteworthy visual impacts would result. This is confirmed in the 'Line of Sight' drawings (refer **Appendix 2**) which clearly demonstrate that the plant screen would not be visible from an observer on the street.

CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)

Alterations and Additions to Heritage Building for Commercial Offices and Ancillary Lecture Room
79-83 Abercrombie Street, Chippendale (Lot 16 DP 740281)

(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,

The site is located to the south-west of Central Sydney and north-west of Green Square, within a heritage conservation area that also forms a mixed use precinct. The surrounding context is generally characterized by two (2) and three (3) storey built form.

The proposal would retain the three (3) storey form and corresponding height of the existing heritage building on the site, which is commensurate with the character of the surrounding area. The development therefore provides an appropriate height within its context.

(e) in respect of Green Square:

(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and

(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.

The site is not located within Green Square and therefore Objective (e) is not relevant.

3.2 OBJECTIVES OF THE ZONE

The site is zoned B4 Mixed Use under SLEP2012, and Commercial Premises (including Office Premises), being the proposed use of the site, are permitted with development consent.

The proposal is consistent with the B4 zone objectives in that:

- *To provide a mixture of compatible land uses.*

The proposal provides commercial office premises (incorporating an ancillary lecture room for occasional lecture presentations) on the site, which is highly compatible with the range of land uses in the surrounding area. Together with the diversity of commercial spaces, shops, restaurants, cafes and residential accommodation, that are already established in the area, the proposed adaptive re-use of the site would positively contribute to the desired mixed use character.

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

The proposal provides commercial office premises (with an ancillary lecture room) in a location that is highly accessible by active transport modes.

The site is serviced by an extensive public transport system, including bus stops along Cleveland Street (180m from the site) and Broadway (350m from the site) as well as Central train station (900m from the site). Formal pedestrian pathways are provided along most streets in the vicinity of the site, and numerous strategic and local cycling routes are located in proximity of the site. Ten (10) bicycle spaces are proposed for the site.

The use of public transport, cycling and walking by staff and guests to access the site would therefore be encouraged.

- *To ensure uses support the viability of centres.*

By supporting the productive use of the site, the proposal would support the viability of centres. As described above, the provision of commercial office premises (incorporating an ancillary lecture room

CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)

Alterations and Additions to Heritage Building for Commercial Offices and Ancillary Lecture Room
79-83 Abercrombie Street, Chippendale (Lot 16 DP 740281)

for occasional lecture presentations) on the site would positively contribute to the desired mixed use character of the area.

3.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR NECESSARY

Compliance with the standard would be unreasonable and unnecessary given that the proposal generally maintains the height of the existing heritage building on the site (with the minor exception of the acoustic plant screen). The non-compliance arises primarily as a result of the existing heritage building exhibiting a height that already exceeds the SLEP2012 standard.

The standard is unreasonable and unnecessary in the circumstances of the case on the following basis:

- The proposal relates to an existing building that exhibits a height above what is permitted on the site under the current SLEP2012 height standard. The existing building is heritage-listed and forms a contributory item to the significance of the heritage conservation area within which it is situated. The preservation of the building (and thereby the maintenance of the height non-compliance) is therefore required from a heritage perspective. By contrast, the demolition of the building (which would be required to rectify the height non-compliance) would be unreasonable.
- The proposal generally maintains the existing building height and, accordingly, the density and scale of the built form would remain generally consistent with the established building on the site, ensuring the development effectively integrates with the streetscape and character of the area.
- Through maintaining and replicating the existing building height on the site (excepting the acoustic plant screen), the built form relationship of the site with adjoining built form, the streetscape and the surrounding area, would remain consistent with the existing situation. The height of the Myrtle Street façade is consistent with the directly-adjoining building on the neighbouring site, thereby contributing to a coherent streetscape and consistent roofline.
- The new façade and parapet for 81 and 83 Abercrombie Street would align with the height of the primary parapet of 79 Abercrombie Street, being the heritage-listed building. The consistent height and architectural design of the facades contributes to greater unity, visual cohesion and continuity in the streetscape and around the street corner. Simultaneously, the new façade and parapet design effectively conceals the rooftop plant from the street, which further contributes to a positive visual outcome.
- The 'Line of Sight' drawings (refer **Appendix 2**) clearly demonstrate that the plant screen would not be visible from an observer on the street.
- The built form character of the surrounding conservation area is generally defined by two (2) and three (3) storey buildings, and therefore the three (3) storey form of the development is reflective of this context.
- The development would protect neighbouring amenity. On the basis that the proposed additions would be consistent with the existing building height, together with the maintenance of the existing building footprint and envelope (with the exception of the south-eastern corner), the proposal would generally maintain existing levels of solar access, privacy, views/outlook and sense of enclosure.
- Maintaining the existing building height is key to also creating an internal building environment that delivers the space and level of amenity required to support the operations of the future tenant and thereby the productive use of the site.

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Overall, the above justifications demonstrate that compliance with the standard would be unreasonable and unnecessary. The proposed variation is therefore well-founded and acceptable.

3.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The variation to the development standard for building height (Clause 4.3) is considered well-founded, having sufficient environmental planning grounds to justify contravening the development standard.

In *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, the Land and Environment Court (LEC) addressed the 'sufficiency' of environmental planning grounds:

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248* at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* at [31].*

In *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, the LEC found that the environmental ground advanced by the applicant in the Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. In this regard, the proposed variation is particular to the circumstances of the proposed development on the site for the following reasons:

- The proposed development is entirely consistent with the underlying objective or purpose of the building height standard, as demonstrated in **Section 3.1**.
- The proposed development fully achieves the objectives of SLEP2012 for the B4 Mixed Use zone, as described in **Section 3.2**.
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 3.3**.
- The proposal generally maintains the height of the existing heritage building on the site, with the extent of additional height being limited to the acoustic plant screen.
- The acoustic plant screen will assist in protecting the acoustic amenity of the surrounding area, thereby achieving the public interest.
- The 'Line of Sight' drawings (refer **Appendix 2**) clearly demonstrate that the plant screen would not be visible from an observer on the street.
- The proposed alterations and additions, including those relating to sections of the building above the height limit, would uplift the visual character of the site as viewed from the public domain.
- The new façade and parapet for 81 and 83 Abercrombie Street would align with the height of the primary parapet of 79 Abercrombie Street, being the heritage-listed building. The consistent

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height and architectural design of the facades contributes to greater unity, visual cohesion and continuity in the streetscape and around the street corner. Simultaneously, the new façade and parapet design effectively conceals the rooftop plant from the street, which further contributes to a positive visual outcome.

- The proposal effectively supports the conservation of significant heritage features whilst enabling the adaptive re-use of the existing building.
- As well as supporting the future use of the building for offices and lecture presentations, the proposed alterations and additions have been designed to stabilise the heritage fabric and thereby support its long-term conservation. Subject to staged Construction Certificates (CCs), non-heritage components of the building would be sensitively removed and heritage fabric stabilized, prior to the 'main works' component of the alterations and additions being completed. The detail, scale and materials for new internal and external additions have been designed to sympathetically integrate with the heritage value of the place.
- As the maximum building height of development on the site would generally remain consistent with the existing heritage building, the building as altered and added to would integrate with its context. The relationship of the building with surrounding development, with respect to height, would remain consistent with the existing situation.
- Three (3) storey built form is reflective of the character of the heritage conservation area of which the site forms a part.
- The development would maintain neighbouring amenity as well as the amenity of the public domain.
- The proposal will support the productive economic use of a site that is ideally located within a mixed use precinct and in proximity of major commercial centres and public transport networks.

For the reasons outlined above, it is considered that the proposed variation to the building height control is entirely appropriate and can be clearly justified having regard to the matters listed within SLEP2012 Clause 4.6.

3.5 PUBLIC INTEREST

Four2Five Pty Ltd v Ashfield Council emphasised that it is for the proponent to demonstrate that the proposed non-compliance with the development standard is in the public interest. Subclause 4.6(4)(a)(ii) requires the proposed development 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.

Section 3.1 and **Section 3.2** have already demonstrated how the proposed development is consistent with the objectives of both Clause 4.3 and the B4 Zone under SLEP2012.

The public advantages of the proposed development are as follows:

- The amenity of the surrounding development and the public domain will not be unreasonably impacted, including with respect to overshadowing and views.
- The *additional* height proposed relates to the acoustic plant screen, which will assist in protecting the acoustic amenity of the surrounding area.

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- Heritage will be conserved as a result of the proposal; the maintenance of the pre-existing height non-compliance is a 'side effect' of preserving the heritage building on the site.
- The proposed alterations and additions, including those relating to sections of the building above the height limit, would uplift the visual character of the site as viewed from the public domain.
- The new façade and parapet for 81 and 83 Abercrombie Street would align with the height of the primary parapet of 79 Abercrombie Street, being the heritage-listed building. The consistent height and architectural design of the facades contributes to greater unity, visual cohesion and continuity in the streetscape and around the street corner. Simultaneously, the new façade and parapet design effectively conceals the rooftop plant from the street, which further contributes to a positive visual outcome.

There are no significant public disadvantages which would result from the proposed development.

The proposed development is therefore considered to be justified on public interest grounds.

CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)

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PART D CONCLUSION

It is requested that Council supports the proposed variation to *Clause 4.3 Height of Buildings* of SLEP2012 for the following reasons:

- Consistency with the objectives of the standard and zone is achieved.
- Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.
- There are sufficient environmental planning grounds to justify contravening the development standard.
- No unreasonable environmental impacts are introduced as a result of the proposal.
- There is no public benefit in maintaining strict compliance with the standard.

Given the justification provided above, this Clause 4.6 Variation is well founded and should be favorably considered by Council. As each of the relevant considerations are satisfied for the reasons outlined elsewhere in this report, concurrence can be assumed under Clause 4.6(5).



Clause 4.6 Variation – Floor Space Ratio (Clause 4.4)

Alterations and Additions to Heritage Building for Commercial Offices and Ancillary Lecture Room

79-83 Abercrombie Street, Chippendale

Lot 16 DP 740281

**Prepared by Willowtree Planning on behalf of
Colliers International**

December 2018

CLAUSE 4.6 VARIATION – FLOOR SPACE RATIO (CLAUSE 4.4)

Alterations and Additions to Heritage Building for Commercial Offices and Ancillary Lecture Room
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PART A PRELIMINARY

1.1 INTRODUCTION

This Clause 4.6 Variation request has been prepared in support of the development application (DA) for the proposed alterations and additions to the heritage building at 79-83 Abercrombie Street, Chippendale (Lot 16 DP 740281).

This Clause 4.6 Variation has been submitted to assess the non-compliance of the development with *Clause 4.4 Floor Space Ratio* of *Sydney Local Environmental Plan 2012* (SLEP2012). This Clause 4.6 Variation has been prepared in accordance with the requirements of Clause 4.6 of SLEP2012 which has the following aims and objectives:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The proposed variation relates to *Clause 4.4 Floor Space Ratio* of SLEP2012. In summary, the following variations are proposed:

| SLEP2012 Clause | SLEP2012 Development Standard | Proposed Development Non Compliance | Percentage of Variation |
|------------------------------|----------------------------------------|---------------------------------------------------------|--------------------------------|
| Clause 4.4 Floor Space Ratio | Maximum 1.75:1 Floor Space Ratio (FSR) | The proposal seeks development consent for a 2.31:1 FSR | 32% |

In accordance with Clause 4.6 of SLEP2012 Council is required to consider the following:

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.*

This request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standard.

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PART B THE STANDARDS BEING OBJECTED TO

2.1 CLAUSE 4.4 (FLOOR SPACE RATIO) OF SYDNEY LOCAL ENVIRONMENTAL PLAN 2012

The development standard requested to be varied is *Clause 4.4 Floor Space Ratio* of SLEP2012 which provides as follows:

4.4 Floor Space Ratio

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

- (a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,*
- (b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,*
- (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,*
- (d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.*

(2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

The SLEP2012 map referred to in subclause (2) above, identifies the site as being subject to a 1.75:1 maximum FSR.

Pursuant to Clause 4.6, the proposed development seeks exception to the 1.75:1 FSR standard prescribed by Clause 4.4.

The site is zoned B4 Mixed Use under the provisions of SLEP2012 where Commercial Premises (including Office Premises), being the proposed use of the site, are permitted with development consent.

This DA therefore relies upon what is reasonably concluded to be the underlying objectives of the standard and the B4 zone.

2.2 THE OBJECTIVES/UNDERLYING PURPOSE OF THE CLAUSE

A key determination of the appropriateness of a variation to a development standard is the proposal's compliance with the underlying objectives and purpose of the development standard. Therefore, while there is a specified numerical control for maximum FSR, the objectives and underlying purpose behind the development standard are basic issues for consideration in the development assessment process.

Part C of this Clause 4.6 Variation addresses the proposed variation to the Clause 4.4 development standard.

2.3 PROPOSED VARIATION TO STANDARDS

The proposed development seeks alterations and additions to the heritage building at 79-83 Abercrombie Street, Chippendale. The proposed development will result in a building exhibiting an FSR of 2.31:1 based on a total site area of 393.4m² and a total proposed gross floor area (GFA) of 908.13m². The proposed FSR of 2.31:1 represents a breach of 0.56:1 under Clause 4.4 of SLEP2012.

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PART C PROPOSED VARIATION TO CLAUSE 4.4 FLOOR SPACE RATIO

Pursuant to Clause 4.6 of SLEP2012, exception is sought from the 1.75:1 FSR standard applicable to the site pursuant to Clause 4.4 of SLEP2012. Clause 4.6(4)(a)(ii) requires that such a request must establish that the proposed contravention is consistent with the objectives of the standard and the zone.

3.1 OBJECTIVES OF THE STANDARD

The objectives of the standard as stated in SLEP2012 are:

- (a) *to provide sufficient floor space to meet anticipated development needs for the foreseeable future,*

The proposed development seeks to provide commercial floor space to enable the establishment on the site of the headquarters of a new philanthropic institution dedicated to the advancement of investigative journalism (refer Client Statement at **Appendix 23**). Through adaptive re-use, the building would be sympathetically reconfigured to facilitate commercial office use and ancillary lecture presentations.

The proposed development is therefore key to providing the floor space required to support the adaptive re-use of the existing building for commercial use and to enable the establishment of an important journalistic institution on the site.

- (b) *to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,*

The proposed alterations and additions to the existing building on the site would generally preserve the existing building footprint and building envelope. The exception relates solely to the south-eastern corner of the building, where it is proposed to remodel the building corner to better address the street corner and both street frontages. This would involve the infill of the small planter (comprising three (3) trees only) that is currently situated in this corner of the site.

Accordingly, the density of development and scale of the built form would remain generally consistent with the established building on the site. This would ensure the development effectively integrates with the streetscape and character of the area.

Additionally, the adaptive re-use of the heritage building for commercial offices and ancillary lecture presentations, is considered to be commensurate with the 'land use intensity' of other sites within the surrounding area, the capabilities of the heritage building, and the capacity of infrastructure systems servicing the site. The future operations of the building would be managed in accordance with the Plan of Management at **Appendix 5** to underpin the efficient functioning of the premises and effectively safeguard neighbouring amenity.

As described in the Traffic Impact Assessment (**Appendix 8**), the anticipated traffic generated by the proposed development (including office and lecture components) is considered minor. The proposal provides only one (1) on-site car parking space and time-unrestricted on-street parking is limited and in high demand. Therefore it is expected that most employees would travel to the site via public transport. Accordingly, it is estimated that the site would generate up to one (1) vehicle movement in the AM and PM peak hours. There is also likely to be some pick-up and drop-off activity (taxis, ride share and private vehicles), however a significant proportion of any such traffic would be linked/pass-by or diverted trips (as opposed to new trips on the road). As such, the anticipated traffic generation from the office use is expected to have a negligible impact on the surrounding road network.

Further to the above, trips to the site would primarily be via active transport modes that would be accommodated by existing infrastructure. The site is serviced by an extensive public transport system,

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including bus stops along Cleveland Street (180m from the site) and Broadway (350m from the site) as well as Central train station (900m from the site). Formal pedestrian pathways are provided along most streets in the vicinity of the site, and numerous strategic and local cycling routes are located in proximity of the site. Ten (10) bicycle spaces are proposed for the site.

The proposal would therefore not give rise to any unacceptable levels of traffic generation.

(c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,

The proposed alterations and additions do not represent any significant intensification of development on the site. The proposed use for commercial offices and ancillary lecture presentations represents a relatively low-intensive use that is compatible with the conservation of the significant heritage features of the building.

On this basis, the development is also considered to be commensurate with the capacity of the infrastructure that already services the site. This includes transport infrastructure.

As described above and in the Traffic Impact Assessment (**Appendix 8**), the anticipated traffic generated by the proposed development (including office and lecture components) is considered minor. The proposal provides only one (1) on-site car parking space and time-unrestricted on-street parking is limited and in high demand. Therefore it is expected that most employees would travel to the site via public transport. Accordingly, it is estimated that the site would generate up to one (1) vehicle movement in the AM and PM peak hours. There is also likely to be some pick-up and drop-off activity (taxis, ride share and private vehicles), however a significant proportion of any such traffic would be linked/pass-by or diverted trips (as opposed to new trips on the road). As such, the anticipated traffic generation from the office use is expected to have a negligible impact on the surrounding road network.

Further to the above, trips to the site would primarily be via active transport modes that would be accommodated by existing infrastructure. The site is serviced by an extensive public transport system, including bus stops along Cleveland Street (180m from the site) and Broadway (350m from the site) as well as Central train station (900m from the site). Formal pedestrian pathways are provided along most streets in the vicinity of the site, and numerous strategic and local cycling routes are located in proximity of the site. Ten (10) bicycle spaces are proposed for the site.

The proposal would therefore be suitably serviced by existing infrastructure, including public transport, cycling, pedestrian and road networks.

Development contributions in accordance with Council's relevant contributions plan would contribute to funding any other public amenities for which demand is generated by the development.

This assessment is in accordance with the Land and Environment Court (LEC) judgement *Baron Corporation Pty Ltd v The Council of the City of Sydney [2018] NSWLEC 1552* in which it was found that Section 7.11 contributions will accommodate any additional demand for infrastructure given the correlation between the increased intensity, increased demand for infrastructure and increase in contributions.

(d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.

The proposed alterations and additions preserve the Abercrombie Street heritage façade and similarly conserve other heritage features of the building. The new additions have been designed to relate to the heritage components of the building with respect to scale, massing, architectural design and materiality. The design of additions also responds to other nearby heritage items, the streetscape and the heritage conservation area.

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Accordingly, the development reflects the desired character of the locality, being a heritage conservation area. This is supported by the Heritage Impact Statement (**Appendix 6**) which provides that the proposed development would:

- *Retain and conserve features, fabric, spaces and elements of high heritage significance.*
- *The proposed new building addresses the detailing, scale and proportions of the heritage facades and interiors that form part of the context of the site.*
- *Proposed materials for the new building include glazed tile and face brickwork which would ensure a fine-grained quality to the building. The vertical proportions of proposed windows are in keeping with the character of the conservation area and the adjoining heritage items that date to the Victorian period.*
- *The proposed design has architectural merit and would provide a sympathetic yet distinctive building within the Chippendale Conservation Area which has been revitalised by recent high-quality architectural design while being sympathetic to the heritage values of the place.*

Overall, the proposal is therefore considered to offer a positive contribution toward the heritage significance of the site and surrounding conservation area.

With respect to amenity, the development would not give rise to any adverse impacts. On the basis that the established building footprint and envelope would be generally retained (excepting the infill of the planter adjacent to the street corner), the proposal would generally maintain existing levels of solar access, privacy, views/outlook and sense of enclosure. Any potential impacts associated with the operation of the premises would be mitigated through the implementation of the measures within the Plan of Management at **Appendix 5**.

3.2 OBJECTIVES OF THE ZONE

The site is zoned B4 Mixed Use under SLEP2012, and Commercial Premises (including Office Premises), being the proposed use of the site, are permitted with development consent.

The proposal is consistent with the B4 zone objectives in that:

- *To provide a mixture of compatible land uses.*

The proposal provides commercial office premises (incorporating an ancillary lecture room for occasional lecture presentations) on the site, which is highly compatible with the range of land uses in the surrounding area. Together with the diversity of commercial spaces, shops, restaurants, cafes and residential accommodation, that are already established in the area, the proposed adaptive re-use of the site would positively contribute to the desired mixed use character.

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

The proposal provides commercial office premises (with an ancillary lecture room) in a location that is highly accessible by active transport modes.

The site is serviced by an extensive public transport system, including bus stops along Cleveland Street (180m from the site) and Broadway (350m from the site) as well as Central train station (900m from the site). Formal pedestrian pathways are provided along most streets in the vicinity of the site, and numerous strategic and local cycling routes are located in proximity of the site. Ten (10) bicycle spaces are proposed for the site.

The use of public transport, cycling and walking by staff and guests to access the site would therefore be encouraged.

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- *To ensure uses support the viability of centres.*

By supporting the productive use of the site, the proposal would support the viability of centres. As described above, the provision of commercial office premises (incorporating an ancillary lecture room for occasional lecture presentations) on the site would positively contribute to the desired mixed use character of the area.

3.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR NECESSARY

Compliance with the standard would be unreasonable and unnecessary given that the proposal generally preserves the footprint and envelope of the existing heritage building on the site. The non-compliance arises as a result of the existing heritage building exhibiting an FSR that already exceeds the SLEP2012 standard. The relatively minor increase in GFA and FSR results from internal reconfiguration and from the remodeling of the south-eastern corner of the building.

The standard is unreasonable and unnecessary in the circumstances of the case on the following basis:

- The proposal relates to an existing building that comprises a quantity of GFA that exceeds that permitted on the site under the current SLEP2012 FSR standard. The existing building is heritage-listed and forms a contributory item to the significance of the heritage conservation area within which it is situated. The preservation of the building (and thereby the maintenance of the FSR non-compliance) is therefore required from a heritage perspective. By contrast, the demolition of the building (which would be required to rectify the FSR non-compliance) would be unreasonable.
- The proposal generally maintains the existing building footprint and envelope, excepting at the south-eastern corner of the site where the building has been extended over the small area of the existing planter. Accordingly, the density and scale of the built form would remain generally consistent with the established building on the site, ensuring the development effectively integrates with the streetscape and character of the area.
- The remodeling of the building corner described above has been designed to better address the street corner and both street frontages. The treatment of the street and building corner responds to the surrounding context and the building's unique function, through geometry, glazed bricks and glazed elements.
- The development would protect neighbouring amenity. On the basis that the established building footprint and envelope would be generally retained (with the exception of the south-eastern corner), the proposal would generally maintain existing levels of solar access, privacy, views/outlook and sense of enclosure. Any potential impacts associated with the operation of the premises would be mitigated through the implementation of the measures within the Plan of Management at **Appendix 5**.
- The additional GFA proposed for the site is partly attributable to the *internal* alterations that are proposed. The proposal would make efficient use of the internal spaces of an existing building, thereby supporting the productive use of a strategically-located site.

Overall, the above justifications demonstrate that compliance with the standard would be unreasonable and unnecessary. The proposed variation is therefore well-founded and acceptable.

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3.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The variation to the development standard for FSR (Clause 4.4) is considered well-founded, having sufficient environmental planning grounds to justify contravening the development standard.

In *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, the LEC addressed the 'sufficiency' of environmental planning grounds:

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248* at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* at [31].*

In *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, the LEC found that the environmental ground advanced by the applicant in the Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. In this regard, the proposed variation is particular to the circumstances of the proposed development on the site for the following reasons:

- The proposed development is entirely consistent with the underlying objective or purpose of the FSR standard, as demonstrated in **Section 3.1**.
- The proposed development fully achieves the objectives of SLEP2012 for the B4 Mixed Use zone, as described in **Section 3.2**.
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 3.3**.
- The additional FSR results from the infill of the planter at the south-eastern corner of the building and the enclosure of the outdoor terrace. The remodelling of the building corner would reinforce the street corner and better-address both street frontages. Together, the building corner infill and terrace enclosure would make efficient use of the internal spaces of an existing building, thereby supporting the productive use of a strategically-located site.
- Excepting the remodelled building corner, the proposed alterations and additions to the existing building on the site would generally preserve the existing building footprint and building envelope.
- Accordingly, the density of development and scale of the built form would remain generally consistent with the established building on the site. This would ensure the development effectively integrates with the streetscape and character of the area.
- The proposal effectively supports the conservation of significant heritage features whilst enabling the adaptive re-use of the existing building.

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- As well as supporting the future use of the building for offices and lecture presentations, the proposed alterations and additions have been designed to stabilise the heritage fabric and thereby support its long-term conservation. Subject to staged Construction Certificates (CCs), non-heritage components of the building would be sensitively removed and heritage fabric stabilized, prior to the 'main works' component of the alterations and additions being completed. The detail, scale and materials for new internal and external additions have been designed to sympathetically integrate with the heritage value of the place.
- The footprint, envelope, density and scale of development on the site would remain generally consistent with the existing heritage building, and thereby the building as altered and added to would integrate with its context.
- The design of the alterations and additions, including the remodelling of the street corner, respond to the characteristics and heritage fabric of the existing building, adjoining buildings, the streetscape and the wider heritage conservation area.
- The development would maintain neighbouring amenity as well as the amenity of the public domain.
- The proposal will support the productive economic use of a site that is ideally located within a mixed use precinct and in proximity of major commercial centres and public transport networks.

For the reasons outlined above, it is considered that the proposed variation to the FSR control is entirely appropriate and can be clearly justified having regard to the matters listed within SLEP2012 Clause 4.6.

3.5 PUBLIC INTEREST

Four2Five Pty Ltd v Ashfield Council emphasised that it is for the proponent to demonstrate that the proposed non-compliance with the development standard is in the public interest. Subclause 4.6(4)(a)(ii) requires the proposed development 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.

Section 3.1 and **Section 3.2** have already demonstrated how the proposed development is consistent with the objectives of both Clause 4.4 and the B4 Zone under SLEP2012.

The public advantages of the proposed development are as follows:

- The amenity of the surrounding development and the public domain will not be unreasonably impacted.
- The additional FSR proposed relates to the infill of the planter at the south-eastern corner of the building and the enclosure of the outdoor terrace. Whilst generally preserving the existing building footprint and building envelope, the additional FSR would provide the internal building spaces required to support the economic use of the site.
- The density and scale of the built form would remain generally consistent with the established building on the site, ensuring the development effectively integrates with the streetscape and character of the area.
- Heritage will be conserved as a result of the proposal; the maintenance of the pre-existing FSR non-compliance is a 'side effect' of preserving the heritage building on the site.

CLAUSE 4.6 VARIATION – FLOOR SPACE RATIO (CLAUSE 4.4)

Alterations and Additions to Heritage Building for Commercial Offices and Ancillary Lecture Room
79-83 Abercrombie Street, Chippendale (Lot 16 DP 740281)

- The proposed alterations and additions, including the remodelling of the corner and enclosure of the terrace, would uplift the visual character of the site as viewed from the public domain.

There are no significant public disadvantages which would result from the proposed development.

The proposed development is therefore considered to be justified on public interest grounds.

CLAUSE 4.6 VARIATION – FLOOR SPACE RATIO (CLAUSE 4.4)

Alterations and Additions to Heritage Building for Commercial Offices and Ancillary Lecture Room
79-83 Abercrombie Street, Chippendale (Lot 16 DP 740281)

PART D CONCLUSION

It is requested that Council supports the proposed variation to *Clause 4.4 Floor Space Ratio* of SLEP2012 for the following reasons:

- Consistency with the objectives of the standard and zone is achieved.
- Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.
- There are sufficient environmental planning grounds to justify contravening the development standard.
- No unreasonable environmental impacts are introduced as a result of the proposal.
- There is no public benefit in maintaining strict compliance with the standard.

Given the justification provided above, this Clause 4.6 Variation is well founded and should be favorably considered by Council. As each of the relevant considerations are satisfied for the reasons outlined elsewhere in this report, concurrence can be assumed under Clause 4.6(5).

Item 4.**Development Application: 89-105 Kent Street, Millers Point****File No.: D/2018/1008****Summary**

| | |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Date of Submission: | 29 August 2018 |
| Applicant: | Brooke Bailey of Gallagher Jeffs |
| Designer: | Wilson Associates |
| Developer: | The Langham |
| Owner: | City of Sydney |
| Cost of Works: | \$17,735.05 |
| Zoning: | R1 - General Residential: development is permissible with consent |
| Proposal Summary: | <p>Use part of the public footway on Kent Street for outdoor seating in association with the licensed hotel 'The Langham'.</p> <p>Proposed hours of use are 6.30am to 12.00 midnight, Thursdays to Saturdays inclusive, and 6.30am to 11.00pm, Sundays to Wednesdays inclusive.</p> <p>Footway Application FA/2018/155 is being assessed concurrently.</p> <p>This application is Integrated Development requiring the approval of the NSW Heritage Council under the Heritage Act 1977. The Heritage Council has issued General Terms of Approval for the proposal. The application is reported to the Local Planning Panel as the proposal is located on a footway owned by the City of Sydney.</p> <p>It is recommended that approval be issued for the use of the outdoor dining area subject to conditions that ensure that a clear path of pedestrian travel is maintained and reduced operating hours.</p> |

- Proposal Summary (continued):** It is recommended that the size of the outdoor dining area be reduced to 12sqm and operating hours be reduced to between 7.00am and 10.00pm daily.
- Summary Recommendation:** The development application is recommended for approval, subject to conditions.
- Development Controls:**
- (i) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
 - (ii) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)
 - (iii) City of Sydney Outdoor Dining Policy and Guidelines
- Attachments:**
- A. Recommended Conditions of Consent
 - B. Selected Drawings

Recommendation

It is resolved that consent be granted to Development Application No. D/2018/1008 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposed development is consistent with section 4.15 of the Environmental Planning and Assessment Act 1979, in that it satisfies the provisions of Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 and for the reasons outlined in the report submitted to the Local Planning Panel.
- (B) Conditions are recommended that reduce the size of the outdoor dining area to ensure a clear path of travel is provided and the hours of operation of the outdoor area are restricted to 10pm daily to ensure that the use of the footway area is only possible in association with the consumption of food.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 11 September 2018.
2. The site in which the outdoor seating area is associated is rectangular, with an area of approximately 2,307sqm. It has a primary street frontage to Kent Street and secondary street frontages to High Street and High Lane. A four storey building, known as 'The Langham', is contained within the site.
3. Surrounding land uses are predominantly residential, with some restaurants, cafes, and licensed premises. The site is not a heritage item but is located within the State Heritage listed Millers Point and Dawes Point Village Precinct Conservation Area (SHR: 1682). The site is also located in the Millers Point/Dawes Point Conservation Area (C35) under the Sydney LEP 2012.
4. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site viewed from Kent Street



Figure 3: Looking north along Kent Street



Figure 4: Pedestrian crossing at site



Figure 5: Corner of Kent Street and High Street



Figure 6: Looking south along Kent Street

Proposal

5. The application seeks consent to use part of the Kent Street footway outside the Langham Hotel for outdoor dining.
6. The proposal is to use 27.8sqm of the footway of Kent Street so that seven outdoor tables, 14 outdoor chairs, 9nine decorative planter boxes, and five outdoor heat lamps are provided.
7. The proposed hours of operation of the outdoor dining area are 6.30am to 12.00 midnight Thursday to Sunday and 6.30am to 11.00pm Sunday to Wednesday.
8. Development consent is required for the use of the footway for outdoor dining purposes as the existing bar/restaurant operates under a hotel licence.
9. The proposed outdoor dining area is outlined in dotted line below:

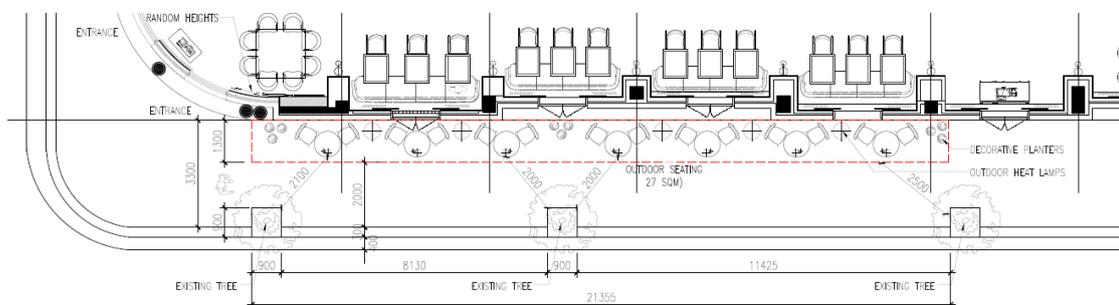


Figure 7: Proposed footway area to be used

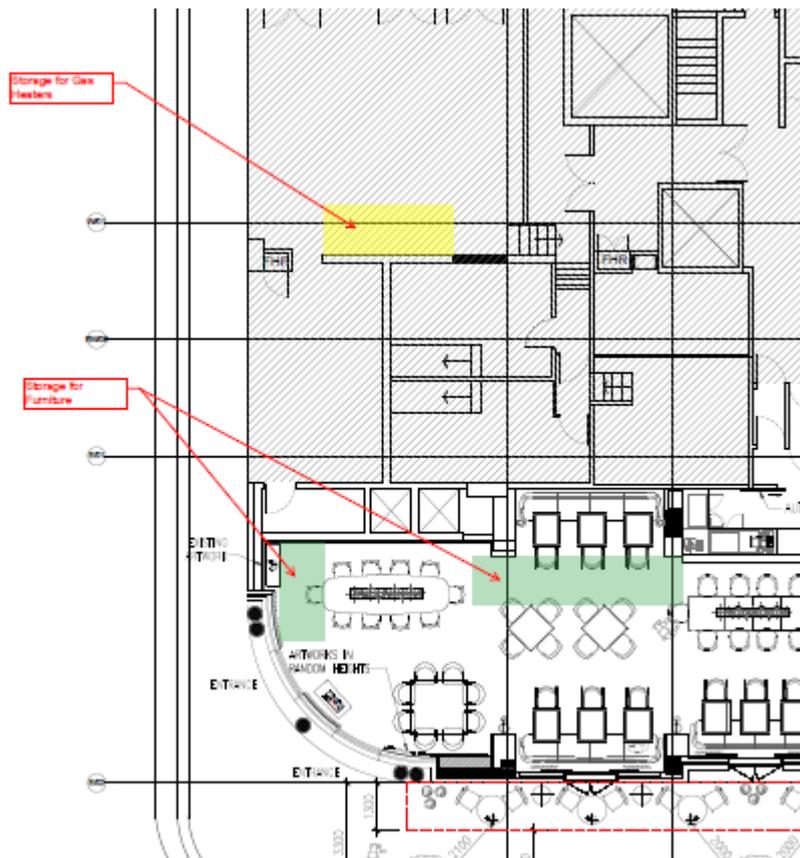


Figure 8: Proposed outdoor furniture storage areas (marked in green and yellow)

Heritage Act 1977

10. The proposal is integrated development under the Heritage Act 1977, as the subject site is located within the State Heritage listed Millers Point and Dawes Point Village Precinct Conservation Area (SHR: 1682).
11. A copy of the application was referred to the Heritage Council on 29 August 2018 in accordance with Clause 66 of the Environmental Planning and Assessment Regulation 2000.
12. On 27 November 2018, the Heritage Council of NSW issued General Terms of Approval subject to the recommended conditions, which have been included in the determination (Schedule 3).

History Relevant to the Development Application

13. On 26 November 1990, development consent D/1990/346 was granted for the construction of a four storey hotel with two basement levels, including 100 hotel rooms, cafe, restaurant, bar, office space and staff facilities.

Economic/Social/Environmental Impacts

14. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:

- (a) Environmental Planning Instruments and DCPs.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)

15. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.

16. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:

- (a) protect and improve hydrological, ecological and geomorphologic processes;
- (b) consider cumulative impacts of development within the catchment;
- (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off; and
- (d) protect and rehabilitate riparian corridors and remnant vegetation.

17. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development. The development is consistent with the controls contained with the deemed SEPP.

Roads Act 1993

18. The proposal is consistent with the requirements for footway restaurants under the Road Act 1993. Subject to conditions, the provision of outdoor dining will not result in unreasonable impacts on adjoining roadway users or the public domain.

Smoke-Free Environment Act 2000

19. Under the Smoke-Free Environment Act 2000 and associated regulations, smoking is not permitted in outdoor areas which are available to be used for dining. If an area is to be used for smoking, signage must be provided to indicate that no food is allowed to be consumed in that area.

20. As approvals under Section 125 of the Roads Act 1993 relate specifically to the use of footways for restaurant purposes, footway dining areas approved under that legislation must be available for dining at all times and cannot be used for smoking.

City of Sydney Outdoor Dining Policy and Guidelines

21. The proposal is generally consistent with the requirements for outdoor dining under the Outdoor Dining Guidelines 2016.

22. The application proposes an outdoor dining area 27.8m² in area (21.36m in length and 1.3m in width) along the building line. The footway upon which the outdoor dining is proposed has trees adjacent the road and provides access to a pedestrian crossing.

23. As per Provision 3.2 of the guidelines, a 2m clear path of travel is required for streets. The proposed outdoor dining does not fully comply with this requirement. Certain sections of the footway are landscaped with trees. The clear path of travel space between the proposed outdoor dining area and trees is 1.4m, which is noncompliant with the City of Sydney's Outdoor Dining Guidelines. In sections which are not affected by trees a clear path of travel of 2.7m is maintained. To address this noncompliance it is recommended the size of the outdoor dining area be reduced, so that no outdoor dining is adjacent to existing landscaping / street trees and a minimum clear path of travel for pedestrians of 2m is maintained.
24. The pedestrian crossing is pictured in Figure 4 and is located at the green line shown in Figure 9. Provision 3.3 of the guidelines states in areas of high pedestrian volume, Council may not allow outdoor dining if not suitable. As per the guidelines, it is important to maintain safe, dignified and equitable access to the pedestrian crossing for all pedestrians and other uses travelling along the street.
25. It is recommended approval is not given for outdoor dining located adjacent the pedestrian crossing as there is not adequate space for pedestrians. Reducing the proposed outdoor dining area will ensure an unobstructed path of travel from the footway to the crossing for all pedestrians, including pram-users or disabled pedestrians. The amendment of the outdoor dining area to ensure a consistent, 2m clear path of travel, is also supported by Council's Public Domain unit.

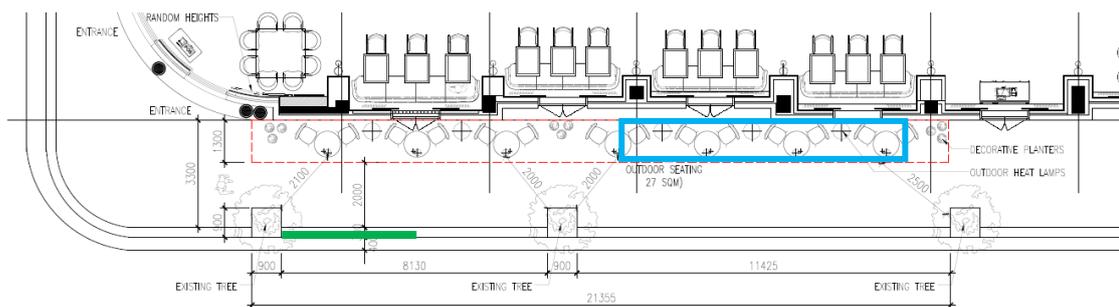


Figure 9: Amended outdoor dining area

26. The outdoor seating is located next to a taxi zone. The proposed outdoor dining is located 2m from the curb. This is considered an appropriate amount of space to ensure taxis can be accessed. This complies with the kerb clearances as per Provision 4.5 and is considered an appropriate.
27. The location of the outdoor dining area adjacent to the building line is consistent with other outdoor dining approvals along Kent Street, including seating outside 127-153 Kent Street, Millers Point (FA/2017/219) and 33-35 Kent Street, Millers Point (FA/2017/233).

Draft Sydney Development Control Plan - Late Night Trading 2018

28. A draft-late night trading development control plan is currently on exhibition. As a draft DCP amendment, this is a consideration for the subject development proposal. The intended outcome of this amendment is to assist in encouraging diverse late night trading in the city to meet the social and cultural needs of the community, while managing the effects of these uses on the neighbourhoods in which they are located.

29. Under the draft DCP, the subject site is located in a New City Living Area. The draft DCP suggests that this area will have base trading hours between 10.00am to 8.00pm, with extended hours between 9.00am to 10.00pm. These proposed DCP trading hours have been considered in the assessment of this application.

Sydney LEP 2012

30. The site is located within the R1 - General Residential zone. The proposed use is defined as outdoor dining associated with a 'hotel' / 'food and drink premises' and is permissible.
31. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Tables

| Development Control | Compliance | Comment |
|----------------------------|------------|------------------------------------------------------------------------------------------------------------------|
| 5.10 Heritage conservation | Yes | The subject site is located within a heritage conservation area. See discussion under the heading Issues. |

Sydney DCP 2012

32. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below.

| 2. Locality Statements – Millers Point |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The subject site is located in the Millers Point locality. The proposed outdoor dining is considered to be in keeping with the unique character of the area and design principles in that it retains and conserves the heritage significance of the area, and building, and maintains existing views and vistas into and out of the precinct. |

| 3. General Provisions | Compliance | Comment |
|----------------------------|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.1 Public Domain Elements | Yes | Adequate space for pedestrian use can be provided, subject to conditions. |
| 3.9 Heritage | Yes | The existing building is located within a heritage conservation area. See discussion under the heading Issues. |
| 3.14 Waste | Yes | A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development. |

| 3. General Provisions | Compliance | Comment |
|------------------------------------|------------|------------------------------------------|
| 3.15 Late Night Trading Management | Yes | See discussion under the heading Issues. |

Issues

Heritage

33. The site is located within a Conservation Area, the State Heritage listed Millers Point and Dawes Point Village Precinct Conservation Area (SHR: 1682) and is therefore subject to the heritage provisions of the City of Sydney Local Environmental Plan (LEP) 2012 and Development Control Plan (DCP) 2012. The site is also located in the Millers Point/Dawes Point Conservation Area (C35) under the Sydney LEP 2012.
34. The proposal generally complies with the relevant aims, objectives and controls of the LEP and DCP. The outdoor seating is temporary and removable, and will not have a detrimental effect on the heritage significance of the area.
35. The application proposes outdoor chairs, tables, decorative planter boxes, and heat lamps. The Heritage Council, in their General Terms of Approval, conditioned the installation of moveable chairs and tables is permitted but "*additional elements like movable heaters and umbrellas*" are not. As such, the proposed outdoor heat lamps and decorative planters will not be approved.

Late night trading

36. The proposed hours of operation for the outdoor dining area are 6.30am to 12.00 midnight, Thursday to Saturday and 6.30am to 11.00pm, Sunday to Wednesday.
37. The premises is a Category A premises, operating under a hotel licence with a capacity of over 120 persons. The site is not located in a late night trading area but the matters for consideration, under Section 3.15.3, are relevant to the proposal.
38. There are several outdoor dining approvals located within the vicinity of the subject site. The trading hours of surrounding outdoor dining areas range from 7.00am to 11.00pm.

| Application | Outdoor dining location | Outdoor dining approved hours |
|-------------|----------------------------------------------------------|-----------------------------------------------------------------|
| FA/2017/219 | 'The Local Eatery', 127-153 Kent St, Millers Point | 7.00am – 10.00pm Monday to Sunday |
| FA/2017/233 | 'Captain Cook Hotel', 33-35 Kent St, Millers Point | 8.00am – 11.00pm Monday to Saturday 10.00am – 10.00pm Sunday |
| FA/2017/158 | 'Argyle Street Patisserie', 21-29 Kent St, Millers Point | 7.00am – 9.00pm Monday to Sunday |

| | | |
|-----------------------------|--------------------------------------------|---------------------------------------------------------------|
| FA/2017/208 & D/2016/1115/A | 'Argyle Bar', 1-7 Argyle Pl, Millers Point | 7.00am – 10.00pm Monday to Saturday 7.00am – 9.00pm Sunday |
|-----------------------------|--------------------------------------------|---------------------------------------------------------------|

39. The local area is close to the CBD but predominantly residential, with some restaurants, cafes, and licensed premises located nearby. The provision of outdoor dining is thus compatible with the character of the area.
40. The Plan of Management demonstrates acceptable protocols will be put in place to mitigate noise exceedances generated by patrons of the outdoor dining area. These measures together with the recommended conditions that reduce the size of the outdoor area from 27sqm to 12sqm and restricting the operating hours to between 7.00am to 10.00pm daily will ensure that there are no unacceptable impacts.
41. The chairs and tables will need to be placed inside the building at 10.00pm by staff from the Langham and will be stored within the south eastern corner of the ground floor as shown on the plan titled "*F&B Area - Ground Floor*" (refer to Attachment B Selected Drawings).

Other Impacts of the Development

42. The proposed development is capable of complying with the BCA.
43. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

Suitability of the site for the Development

44. The proposal is of a nature in keeping with the overall function of the site. The premises are in a commercial/residential surrounding.

Internal Referrals

45. The conditions of other sections of Council have been included in the proposed conditions.
46. The application was discussed with the Heritage Specialist; Building Services Unit; Environmental Health; Licenced Premises; and Public Domain; who advised that the proposal is acceptable subject to the recommended conditions.

Notification, Advertising and Delegation

47. The application constitutes integrated development and as such the application was notified and advertised for 30 days between 10 September 2018 and 11 October 2018 in accordance with the provisions of Environmental Planning and Assessment Regulations 2000. As a result of this notification a total of seven submissions were received raising the following issues:
 - (a) Outdoor dining hours from 6.30am until midnight does not suit the residential area and will result in noise at unreasonable times. Builders cannot start work until 7.00am so a café should be subject to the same restrictions.

- (b) A fixed set of hours, seven days per week, 8.00am to 10.00pm, should apply to the outdoor dining to be consistent with other outdoor dining areas along Kent Street. While the Captain Cook Hotel has Council approval for longer hours they have elected to close at 10.00pm and open at 8.00am which has been appreciated by the community.
- (c) Considering the strategic residential location, permitted hours should be reduced to between 8.00am and 9.00pm. This is supported by the Noise Impact Assessment, which predicts noise exceedance.
- (d) Noise from patrons of The Langham, using outdoor seating on the public footpath on Kent Street, will result in neighbouring resident's loss of amenity, sleep, right to privacy and quiet enjoyment of one's home.
- (e) NSW Legislation states noise from parties cannot be heard in adjoining properties. Intoxicated people will not respect noise restrictions.
- (f) There will be an increase in noise from patrons leaving The Langham. There are already noise issues with patrons returning from other hotels in the area. A venue cannot control patrons once they leave a premises.
- (g) The Langham is trying to capitalise on patrons leaving the hotels closing earlier in the area. These people will be rowdy and disturb the quiet area.

Response - The objections are noted. Allowing 12sqm for outdoor dining, as opposed to the proposed 27.8sqm of space, is not considered to generate an unacceptable amount of noise.

The acoustic report prepared by JHA Consulting Engineers, Titled '*Langham Hotel Restaurant Outdoor Eating Area*' and dated 21/08/18, concludes that the City of Sydney and Liquor and Gaming NSW noise level criteria will be met in scenarios where patrons are talking with 'normal' and 'raised' vocal effort. In the situation where patrons are talking with 'loud' vocal effort, the noise level criteria will be exceeded. In these situations, as described in the Plan of Management, action will be taken to mitigate the situation.

Council's Licensed Premises Specialist and Environmental Health Specialist consider the Plan of Management acceptable. The operation of the outdoor dining area is to comply with several conditions including noise conditions, compliance with the Plan of Management, and compliance with the Acoustic Report. Additionally, a condition of consent requires management to ensure the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood. Noise impacts are also mitigated by the amended outdoor dining area, which reduces the proposal from 27.8sqm to 12sqm of outdoor dining space.

The hours of operation that have been recommended (7.00am to 10.00pm) are consistent with the operating hours of neighbouring premises and the context of the area, which has a mix of residential, food and drink, and retail uses. Patrons leaving other premises in the area will only be able to use the Langham's outdoor dining area until 10.00pm.

Finally, there will be ability under the footway dining permit (FA/2018/155) to rescind the lease if management are unable to appropriately manage any issues causing significant detrimental impact to the amenity of residents and businesses in the area.

- (h) The outdoor dining area will leave very little space for pedestrian travel. It is already difficult to get past the Langham hotel with visitors and staff waiting or mingling around the hotel entrance.
- (i) Waiting staff servicing the outdoor dining area will cause inconvenience.
- (j) It is hard enough getting past 'The Local Eatery', without having to do the same past The Langham.
- (k) The outdoor dining would be inappropriate as there is a taxi rank outside the entrance of the hotel.

Response - In Council's assessment of the footway, it was recognised the outdoor dining area did not maintain a 2m clear path of travel, as required under City of Sydney's Outdoor Dining Guidelines. Consequently, the proposed outdoor dining area is amended. The area has been reduced to 12sqm. This provides over the requisite 2m of space for pedestrians and leaves adequate space for the taxi rank.

Subject to compliance with the conditional consent, it is considered there is sufficient space, visibility, and clearance so the outdoor dining area will not be a safety issue for patrons, staff, and pedestrians.

The proposed outdoor dining area is located adjacent to the building line. This is consistent with other outdoor dining along Kent Street, ensuring a consistent path of travel for pedestrians.

- (l) Considering the width of the footpath, a maximum of two persons per table should be the necessary requirement. Outdoor seating should be conditioned to limit the area to 14 persons.

Response - Furniture must be within the recommended 12sqm space, as per the Outdoor Dining Guidelines and recommended conditions.

- (m) The restaurant inside The Langham is usually empty and there is no internal demand from The Langham guests for this space.
- (n) There are many food and drink premises in the area, use of the footway for this purpose is not necessary.

Response - Whilst there are several food and drink premises in the area, and the applicant may have a large amount of dining space inside the premises, the applicant still has the right to apply for outdoor dining on the footway area.

- (o) The applicant will want to install umbrellas for inclement weather.

Response - Umbrellas are refused under the NSW Heritage Council's General Terms of Approval.

- (p) There is a wind tunnel along Kent Street.

Response - The proposed outdoor dining is unlikely to exacerbate this issue.

- (q) The Langham has not tried to engage with affected neighbours to try and mitigate negative impacts of the proposal.

Response -Public consultation has been undertaken by the City of Sydney in accordance with Schedule 1 of Sydney Development Control Plan 2012.

- (r) The development will attract more people to the area and put more pressure on limited street parking, which is also going to be affected by the Barangaroo development.

Response - The objection is noted. The availability of street parking is not a matter for consideration. The application does not propose a significant increase of patrons for the premises.

- (s) Residents should be put before the demands of large corporations.

Response - The objection is noted.

Public Interest

48. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

S61 Contribution

49. The cost of the development is under \$200,000 and the development is therefore not subject to a levy pursuant to the Central Sydney (Section 61) Contributions Plan 2003.

Relevant Legislation

50. The Environmental Planning and Assessment Act 1979.
51. The Heritage Act 1977.

Conclusion

52. The proposal is to use 27.8sqm of footway on a daily basis between 6.30am and 12.00 midnight, Thursdays to Saturdays, and 6.30am to 11.00pm, Sundays to Wednesdays.
53. The proposal is recommended to be amended to address concerns raised by Council staff regarding a clear path of pedestrian travel and hours of operation. This involves reducing the proposed outdoor dining area to 12sqm and limiting the hours of operation to between 7.00am and 10.00pm daily.
54. The amended proposal is generally consistent with the objectives, standards and guidelines of the relevant planning controls. Conditions of consent are recommended to address any potential impact from the uses on surrounding residential amenity.

55. Accordingly, the development application is recommended for approval, subject to conditions.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Rose Pardey, Cadet Planner

Attachment A

| |
|------------------------------------------|
| Recommended Conditions of Consent |
|------------------------------------------|

CONDITIONS OF CONSENT

SCHEDULE 1A

APPROVED DEVELOPMENT/DESIGN MODIFICATIONS/COVENANTS AND CONTRIBUTIONS/USE AND OPERATION

Note: Some conditions in Schedule 1A are to be satisfied prior to issue of a Construction Certificate and some are to be satisfied prior to issue of Occupation Certificate, where indicated.

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2018/1008 dated 29 August 2018 and the following drawings:

| Drawing Number | Drawing Name | Date |
|----------------|-------------------------------|-----------------|
| 4847 | F&B Area – Ground Floor | 27 April 2018 |
| ID000.0.0.0 | Ground Level Overall Key Plan | 29 January 2018 |

and as amended by the conditions of this consent.

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

(2) DESIGN MODIFICATION

The use of the Kent Street footway shall be reduced to 12m² (1.3m deep x 9.2m width) in accordance with the plan marked as 4847 F&B Area – Ground Floor dated 27 April 2018. The use of the footway shall be restricted to tables and chairs only, with no heat lamps or heaters, umbrellas, and planter boxes. Amended details are to be submitted to Council's Director City Planning, Development and Transport prior to the determination of the concurrent Footway Application.

(3) FOOTWAY SEATING

The following conditions apply to footway seating:

- (a) The use of the subject area for outdoor seating is only permitted in conjunction with the provision of a food service from the associated approved hotel use that is operating from the restaurant known as The Langham.
- (b) The management/licensee/owner of the property must apply for and be granted a footway approval by Council under section 125(1) of the Roads Act 1993 for the use of the subject area of the footway with all legal costs associated with the preparation of the licence being borne by the management/licensee/owner. The approval must be issued by Council prior to the use of the footway for seating.

Note: Should the operator of the premises change at any time, the footway approval is required to be renewed under the name of the new operator.

- (c) The use of the footway may be suspended to facilitate Council approved special events to be held in the street or for road and services works. No claim for compensation is entitled under such circumstances.
- (d) In addition to Council's daily street sweeping and cleansing operations, the operator of the hotel must ensure that the surrounds of the building including pavements and gutters are to be kept clean and free of litter at all times.
- (e) Approval is granted for the use of an area measuring 12m² on the footway of Kent Street adjoining The Langham in accordance with the plan marked as 4847 and as amended.
- (f) All furniture must be kept strictly within the boundaries of the area defined on the approved drawing 4847 and as amended.
- (g) All outdoor furniture and planting must be maintained at all times in a physically sound condition and of an appearance that is deemed to be acceptable by Council.
- (h) No furniture or other structure is to be fixed to the pavement, without the consent of Council.
- (i) The chairs should be able to be stacked or folded for storage when not in use with a furniture storage area being provided within the premises.
- (j) The use of disposable tableware at the footway cafe is not permitted at any time.
- (k) Portable signs or goods for sale or display must not be placed on the footway or other public areas without the consent of Council.
- (l) All outdoor furniture and the footway are to be kept clean and free of food scraps.
- (m) A separate development application for any proposed signs which are either externally fitted or applied must be submitted to and approved by Council prior to the erection or display of any such signs.

(4) HOURS OF OPERATION – OUTDOOR SEATING

The hours of operation must be restricted to between 7.00am and 10.00pm Monday to Sunday.

(5) COMPLIANCE WITH ACOUSTIC REPORT

All performance parameters, requirements, engineering assumptions and recommendations contained in the acoustic report prepared by JHA Consulting Engineers, Titled 'Langham Hotel Restaurant Outdoor Eating Area', dated 21/08/18, Council Reference; 2018/456721 must be implemented.

(6) NEIGHBOURHOOD AMENITY

- (a) Signs must be placed in clearly visible positions within the hotel requesting patrons upon leaving the premises to do so quickly and quietly, having regard to maintaining the amenity of the area. The signage shall be in bold letters not less than 25mm in height on a contrasting background.
- (b) The management/licensee must ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood.

(7) NO SPEAKERS OR MUSIC OUTSIDE

Speakers and/or noise amplification equipment must not be installed and music must not be played in any of the outdoor areas associated with the premises including the public domain. Speakers located within the premises must not be placed so as to direct the playing of music towards the outdoor areas associated with the premises.

(8) NO SPRUIKING NOISE

No persons (such as those commonly known as spruikers) or recordings or other devices which have the effect of spruiking are to be located on Council owned property. Furthermore, the sound level of any spruiking generated within privately owned land must not be audible on any adjacent property with a shared boundary.

(9) NOISE FROM GLASS REMOVAL

Glass must not be emptied or transferred from one receptacle to another anywhere in a public place. All glass must be emptied / transferred inside of the building on the premises and removed in containers.

(10) PLAN OF MANAGEMENT

The use must always be operated / managed in accordance with the Plan of Management, prepared by Gallagher Jeffs, April 2018 and the Plan of Management Addendum, December 2018 that has been approved by Council. In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management.

(11) WASTE AND RECYCLING MANAGEMENT - MINOR

The proposal must comply with the relevant provisions of Council's *Guidelines for Waste Management in New Developments 2018* which requires facilities to minimise and manage waste and recycling generated by the proposal.

SCHEDULE 2

PRESCRIBED CONDITIONS

The prescribed conditions in accordance with Division 8A of the *Environmental Planning and Assessment Regulation 2000* apply:

- Clause 98 Compliance with *Building Code of Australia* and insurance requirements under the *Home Building Act 1989*
- Clause 98A Erection of signs
- Clause 98B Notification of *Home Building Act 1989* requirements
- Clause 98C Conditions relating to entertainment venues
- Clause 98D Conditions relating to maximum capacity signage
- Clause 98E Conditions relating to shoring and adequacy of adjoining property

Refer to the NSW State legislation for full text of the clauses under Division 8A of the *Environmental Planning and Assessment Regulation 2000*. This can be accessed at: <http://www.legislation.nsw.gov.au>

SCHEDULE 3

TERMS OF APPROVAL

The Terms of Approval for Integrated Development as advised by *NSW Heritage Division* are as follows:

APPROVED DEVELOPMENT

1. Development must be in accordance with:
 - a) Architectural drawings The Langham Hotel, prepared by Wilson Associates, dated 27 April 2018, as listed in the table below:

| Dwg No. | Dwg Title | Date | Rev |
|---------|------------------------------------------|---------------|-----|
| | Project Name: The Langham Hotel, Sydney | | |
| 4847 | F&B Area – Ground Floor – All day dining | 27 April 2019 | - |

- b) Heritage Impact Statement titled “The Langham Hotel, 89-105 Kent Street, Millers Point”, prepared by Urbis, 28 August 2018.
 - c) Acoustic Report “Langham Hotel, Restaurant outdoor eating area, 89-105 Kent Street, Sydney”, prepared by JHA consulting Engineers, dated 21 August 2018, Rev D.

EXCEPT AS AMENDED by the conditions of this approval:

WORKS PROPOSED

2. Installation of movable chairs and tables is approved provided installation of additional elements like moveable heaters and umbrellas is not required. If this application is required to be amended in future to include such elements, the Heritage Council reserves its right to reassess this approval on the basis of the overall cumulative impact.

Reason: To avoid visual impact to the Public Domain of the Conservation Area.

SPECIALIST TRADESPERSONS

3. All works to, or affecting, significant fabric shall be carried out by suitably qualified tradespersons with practical experience in conservation and restoration of similar heritage structures, materials and construction methods.

Reason: So that the construction, conservation and repair of significant fabric follows best heritage practice.

HERITAGE CONSULTANT

4. A suitably qualified and experienced heritage consultant must be nominated for this project. The nominated heritage consultant must provide input into the detailed design, provide heritage information to be imparted to all tradespeople during site inductions, and oversee the works to minimise impacts to heritage values. The nominated heritage consultant must be involved in the selection of appropriate tradespersons and must be satisfied that all work has been carried out in accordance with the conditions of this consent.

Reason: So that appropriate heritage advice is provided to support best practice conservation and ensure works are undertaken in accordance with this approval.

SITE PROTECTION

5. Significant built and landscape elements are to be protected during site preparation and the works from potential damage. Protection systems must ensure significant fabric, including landscape elements, is not damaged or removed.

Reason: To ensure significant fabric including vegetation is protected during construction.

COMPLIANCE

6. If requested, the applicant and any nominated heritage consultant may be required to participate in audits of the Heritage Council of NSW approvals to confirm compliance with conditions of consent.

Reason: To ensure that the proposed works are completed as approved.

SECTION 60 APPLICATION

7. An application under section 60 of the *Heritage Act 1977* must be submitted to, and approved by, the Heritage Council of NSW (or delegate), prior to work commencing.

Reason: To meet legislative requirements

ADVICE

Section 148 of the Heritage Act 1977 (the Act), allows people authorised by the Minister to enter and inspect, for the purposes of the Act, with respect to buildings, works, relic, moveable objects, places or items that is or contains an item of environmental heritage. Reasonable notice must be given for the inspection.

Attachment B

Selected Drawings

