

3 February 2021

At 5.00 pm

Local Planning Panel



Agenda

- 1. Disclosures of Interest**
- 2. Confirmation of Minutes**
- 3. Development Application: 2-12 Carrington St, Sydney - D/2020/959**
- 4. Development Application: 23 Hughes Street, Potts Point - D/2020/950**
- 5. Development Application: 397-399 Harris Street, Ultimo - D/2020/593**



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1. Register to speak by calling Secretariat on 9265 9702 or emailing secretariat@cityofsydney.nsw.gov.au before 10:00am on the day of the meeting.
2. Check the recommendation in the LPP 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.

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.

Item 1.

Disclosures of Interest

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.

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.

Item 2.

Confirmation of Minutes

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

Meeting of 16 December 2020

Item 3.**Development Application: 2-12 Carrington Street, Sydney - D/2020/959****File No.:** D/2020/959**Summary**

Date of Submission:	14 October 2020
Applicant:	Mike Russell, Brookfield Properties
Architect/Designer:	MAKE / Architectus
Developer:	Brookfield Properties
Owner:	Sovereign Wynyard Centre Pty Ltd
Planning Consultant	Ethos Urban
Heritage Consultant	GML Heritage
Cost of Works:	\$9,401,000
Zoning:	B8 Metropolitan Centre - The proposed development is defined as a food and drink premises (a pub operating as a restaurant/bar) which is permissible with consent in the zone.
Proposal Summary:	Use and fit-out of Ground Floor, Levels 09 and 10 of the existing 'Shell House' building as a food and drink premises (pub) with indoor and outdoor seating, and installation of awnings to the outdoor terrace at Level 09. Proposed hours of operation are 24 hours Mondays to Sundays for both the indoor and outdoor seating areas. Patron capacities of 275 (Ground Floor), 315 (level 9) and 295 (level 10) are sought (total 885). The premises will operate as a single tenancy with one operator.

During the assessment of the proposal, alterations to the design of the awnings to reduce the visual impact on the heritage item have been made. In addition, the Acoustic Report has been revised to include an assessment of a residential building at 2 York Street, Sydney, following the receipt of several submissions relating to the omission of this property, which is 58m from the subject site. As the revised Acoustic Assessment was considered acceptable, it was not considered necessary to require renotification.

The application was notified for 21 days from 26 October 2020 to 17 November 2020 with the incorrect proposed hours of operation. The application was renotified, with the correct proposed hours of operation for 21 days, between 28 October 2020 and 19 November 2020. 20 submissions were received, one (1) in support, and two (2) from the same objector. As such, 18 unique submissions are considered to have been made. Issues raised in the submissions have been addressed within this report, and it is considered the revised documentation and conditions of consent, where relevant, have adequately addressed the issues raised in all submissions.

Subject to conditions, the proposal is generally consistent with the objectives and applicable planning provisions in the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012. The site is considered an appropriate location for the proposed use, and the use is unlikely to have significant adverse impacts on the surrounding locality, as demonstrated in the accompanying Plan of Management and Acoustic Assessment.

As the application seeks to operate a new premises with a hotel liquor licence, it is required to be reported to the Local Planning Panel for determination.

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

Development Controls:

- (i) Environmental Planning and Assessment Act 1979;
- (ii) Sydney Local Environmental Plan 2012;
- (iii) Sydney Development Control Plan 2012;
- (iv) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;
- (v) Central Sydney Development Contributions Plan 2013

Attachments:

- A. Recommended Conditions of Consent
- B. Revised Acoustic Report
- C. Plan of Management
- D. Selected Drawings

Recommendation

It is resolved that consent be granted to Development Application No. D/2020/959 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 proposal is consistent with the objectives of the B8 Metropolitan Centre zone contained within the Sydney Local Environmental Plan 2012.
- (B) The proposal is consistent with the objective of conserving the heritage significance of the subject locally listed heritage item and demonstrates design excellence in accordance with Clause 5.10 and Clause 6.21 of the Sydney Local Environmental Plan 2012
- (C) Subject to conditions, the development is consistent with the objectives of the Sydney Development Control Plan 2012, in particular the Late Night Management area objectives.
- (D) Issues raised in submissions have been considered and where appropriate have been addressed in the amended Acoustic Assessment and the conditions of consent.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 10 DP 595978, and is known as 2-12 Carrington Street, Sydney. It is rectangular in shape with an area of approximately 1038sqm. It has a primary street frontage to the west of Carrington St and a secondary street frontage to the south of Margaret Street.
2. The site contains a building 'Shell House' and is within the Wynyard Place development ('One Carrington St') approved as a concept approval and State Significant Development. The Shell House site forms part of Stage 1 of the development.
3. The surrounding area is characterised by a mixture of land uses, primarily being commercial uses. The site is opposite Wynyard Train Station and various public bus stands.
4. The site is a local heritage item (I1691). It has aesthetic significance for its scale of city streetscape prior to the 'skyscraper era' and use of glazed tiles for external wall treatments during the Inter-war period.
5. The site is located within the 'Wynyard Park/Lang Park' Special Character Area.
6. A site visit was carried out on 23 October 2020. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site ('Shell House') and surrounds



Figure 2: Site viewed from corner Carrington St and Margaret Street



Figure 3: Site viewed from Margaret Street facing south



Figure 4: Site viewed from Carrington Street facing east

History Relevant to the Development Application

Development Applications

7. The site is subject to a concept approval and State Significant Development approval comprising two stages, outlined in summary in Figures 5, 6 and 7.
8. The site is also subject to recent City of Sydney development applications, including:
 - (a) D/2018/318 - On 21 June 2018, consent was granted for fitout of the part of the ground floor level to level 9 of the former Shell House and new 10 Carrington Street commercial development for a commercial office use. This application was modified on 24 June 2020 to amend the Carrington St entrance, café rearrangement, and internal wall relocation.

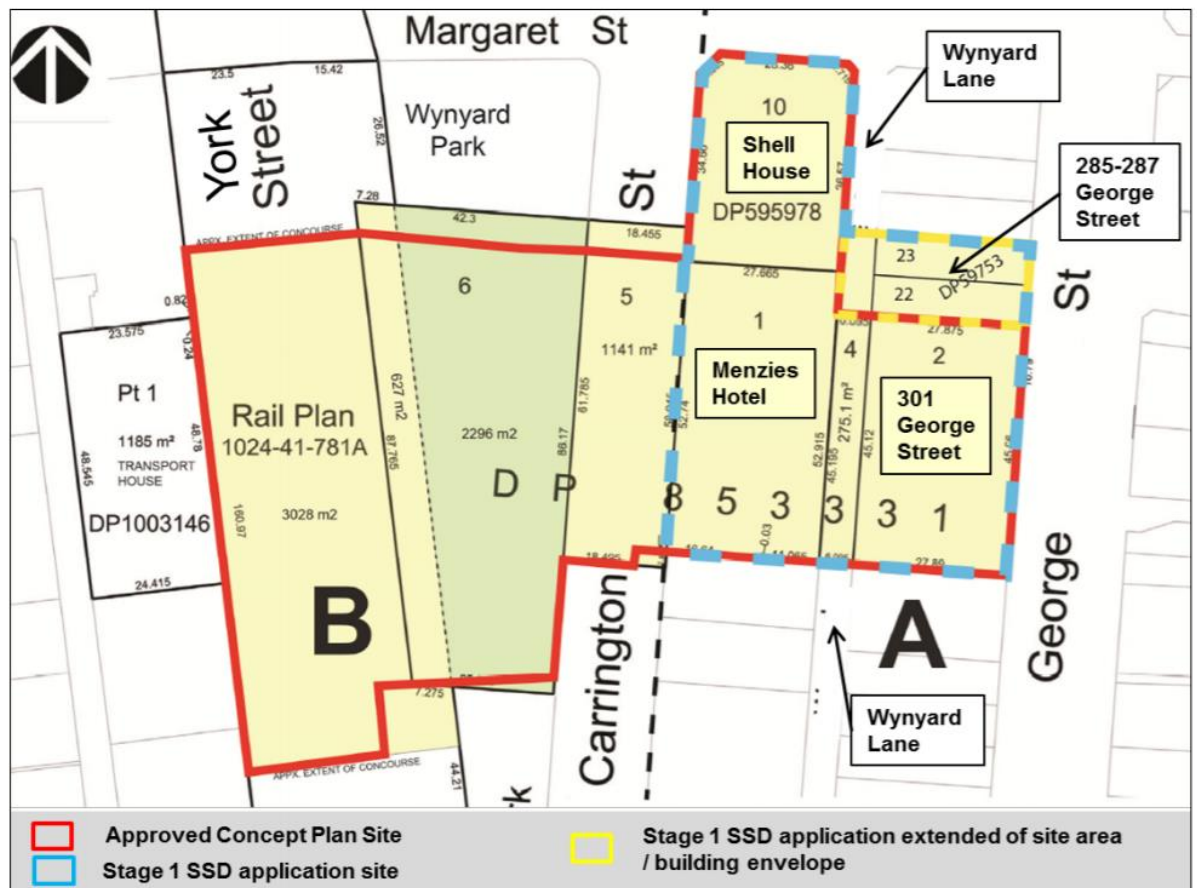


Figure 5: Existing site components and layout (source: SSD report for MP09_0076 mod 2)

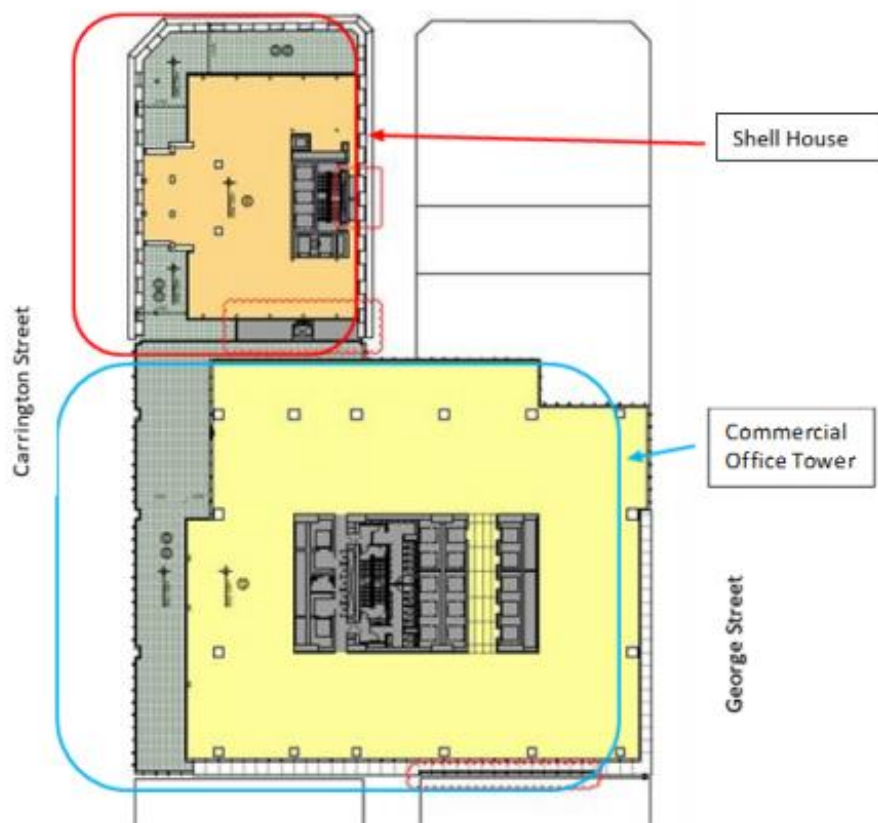


Figure 6: Stage 1 development of 'One Carrington St' - Shell House in context with tower at Wynyard Place (source: DPIE SSD 5824 Mod 8 Assessment Rpt)



Figure 7: Photomontage of approved development of Shell House (site) and tower under MP09_0076 and SSD 5824

9. The following State (DPIE) applications are relevant to the current proposal:
- **MP09_0076 'CityOne Development'** - On 3 April 2012, the Planning Assessment Commission (PAC) granted consent for a Concept Plan for various redevelopment of the site and surrounds including development of the former Shell House, including refurbishments for the purposes of commercial and retail use. The approval also included:
 - Use of site for a mixed use development including commercial offices, business premises, shops, general retail food and drink premises, health/medical centre, public amenities, transport facilities and tenant car parking;
 - A planning agreement between the proponent and Transport for NSW for the provision of a transit hall and through site link and associated public infrastructure works to an equivalent value of \$20 million and a payment of \$18.5 million towards works within the Wynyard Station Precinct.

- **SSD 5824 'One Carrington Street'** – On 25 September 2015, State Significant Development (SSD) consent was granted for the Stage 1 One Carrington Street concept approval, consisting of demolition of the Menzies Hotel, and 301 George Street, construction and use of a 27 storey commercial building on the land between Carrington Street and George Street and public domain works. The approval included refurbishment of 285-287 George Street and Shell House for commercial and retail uses.

Mod No.	Summary of modifications	Status
MOD 1	Design refinements	Granted 11 August 2016
MOD 2	Stratum subdivision	Granted 30 November 2016
MOD 3	Increase the extent of demolition works to Shell House	Granted 23 February 2017
MOD 4	Design refinements	Granted 31 March 2017
MOD 5	Administrative changes	Granted 28 October 2016
MOD 6	Inclusion of additional void zones within four levels of Shell House	Granted 22 May 2018
MOD 7	Amend the timing to establish the footpath alignment levels within the public domain plan	Withdrawn
MOD 8	Design refinements	Granted 27 June 2019
MOD 9	Design refinements and construction hours extension	Granted 19 December 2019
MOD 10	Design refinements and floor levels changes to support accessibility and servicing requirements	Granted 24 September 2019
MOD 11	Reconfiguration of the tower lobby including replacement of the previously approved stairs and ramp with a new revolving door; new awning; new sliding door at the entrance of Wynyard Lane bridge.	Granted 25 September 2019

Amendments

10. On 19 November 2020 a meeting was held with the applicant and City staff to discuss several items including the design of the roof terrace awnings and the items raised in the submissions received.
11. A revised Acoustic Assessment was received on 23 November 2020. See Discussion below.
12. On 21 December 2020, revised awning plans were submitted as discussed with Council's Heritage Specialist. This issue is discussed elsewhere in the report.

Proposed Development

13. The application seeks consent for the following:
 - use of the ground floor, Level 09 and 10 as a food and drink premises (pub) and associated fitout works including new retractable awnings to Level 09 terrace, internal kitchen, bar, coolrooms, and a new roof cowl over the level 10 kitchen exhaust;
 - outdoor seating to Levels 09 (112pp) and 10 (60 pp);
 - proposed hours of operation are 24 hours per day for both indoor and outdoor seating; and
 - proposed total capacity of 885 split up as follows: 275 (ground floor), 315 (level 09), 295 (level 10).

The applicant intends to use the existing hotel licence for the Menzies Hotel (14 Carrington St Sydney) which was modified in January 2020 to suit the subject application boundaries (See Discussion below).

14. Levels 09 and 10 of the pub are proposed to be accommodated within a 2 storey glazed addition approved under development consent SSD 5824 (see History below). No external works are proposed apart from the awnings in this application.
15. Plans and elevations of the proposed development are provided below.

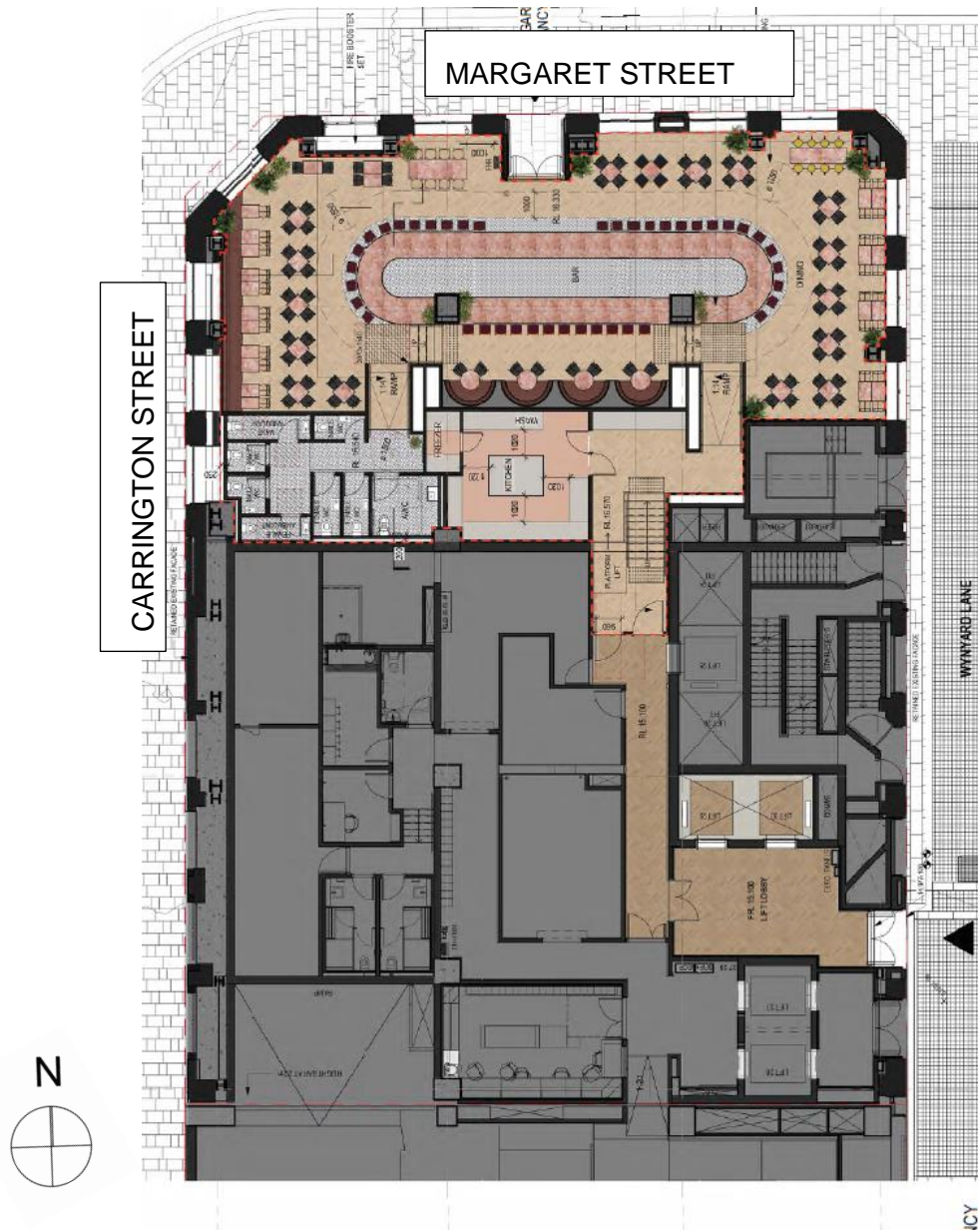
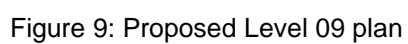


Figure 8: Proposed ground floor plan



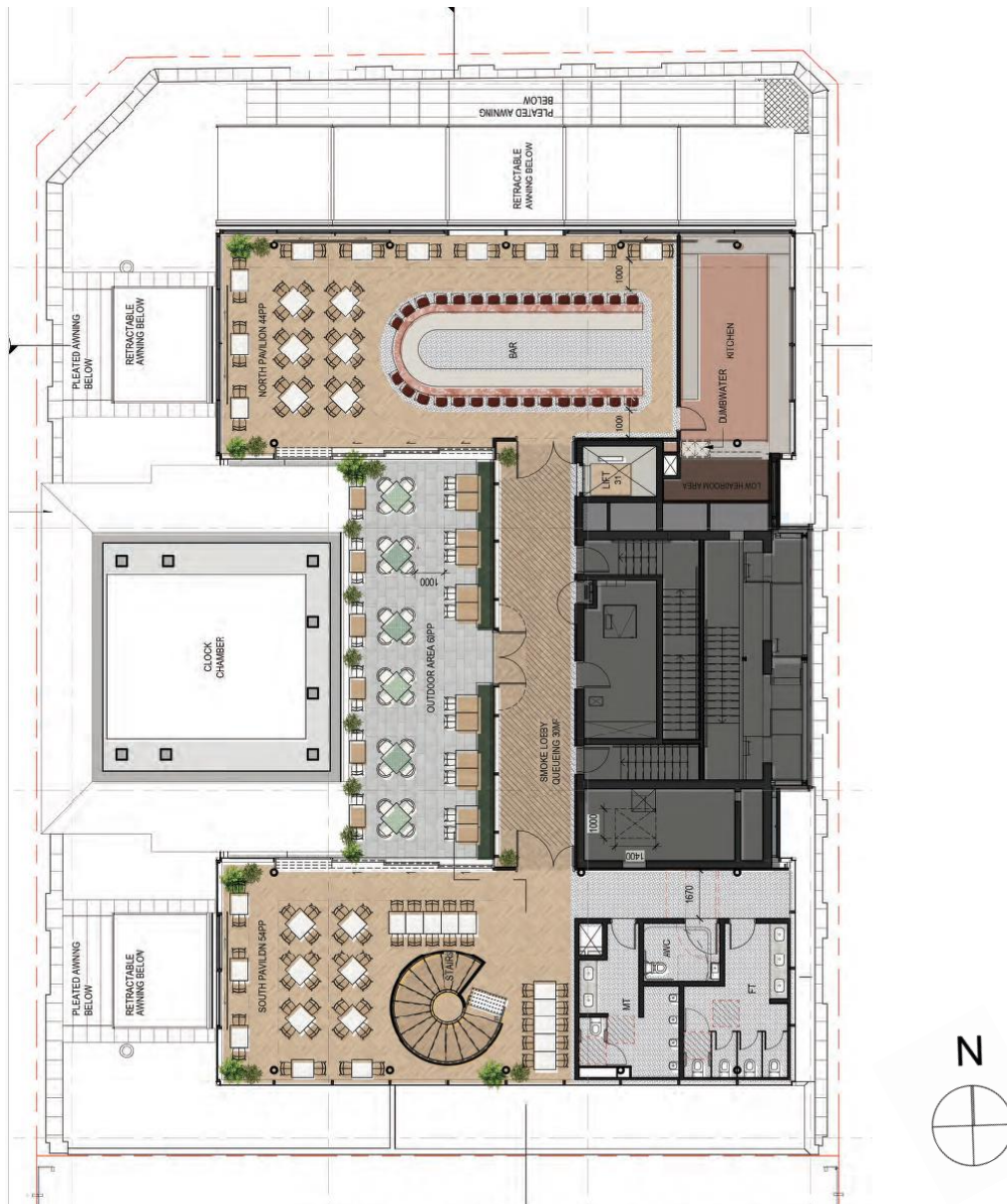


Figure 10: Proposed Level 10 plan

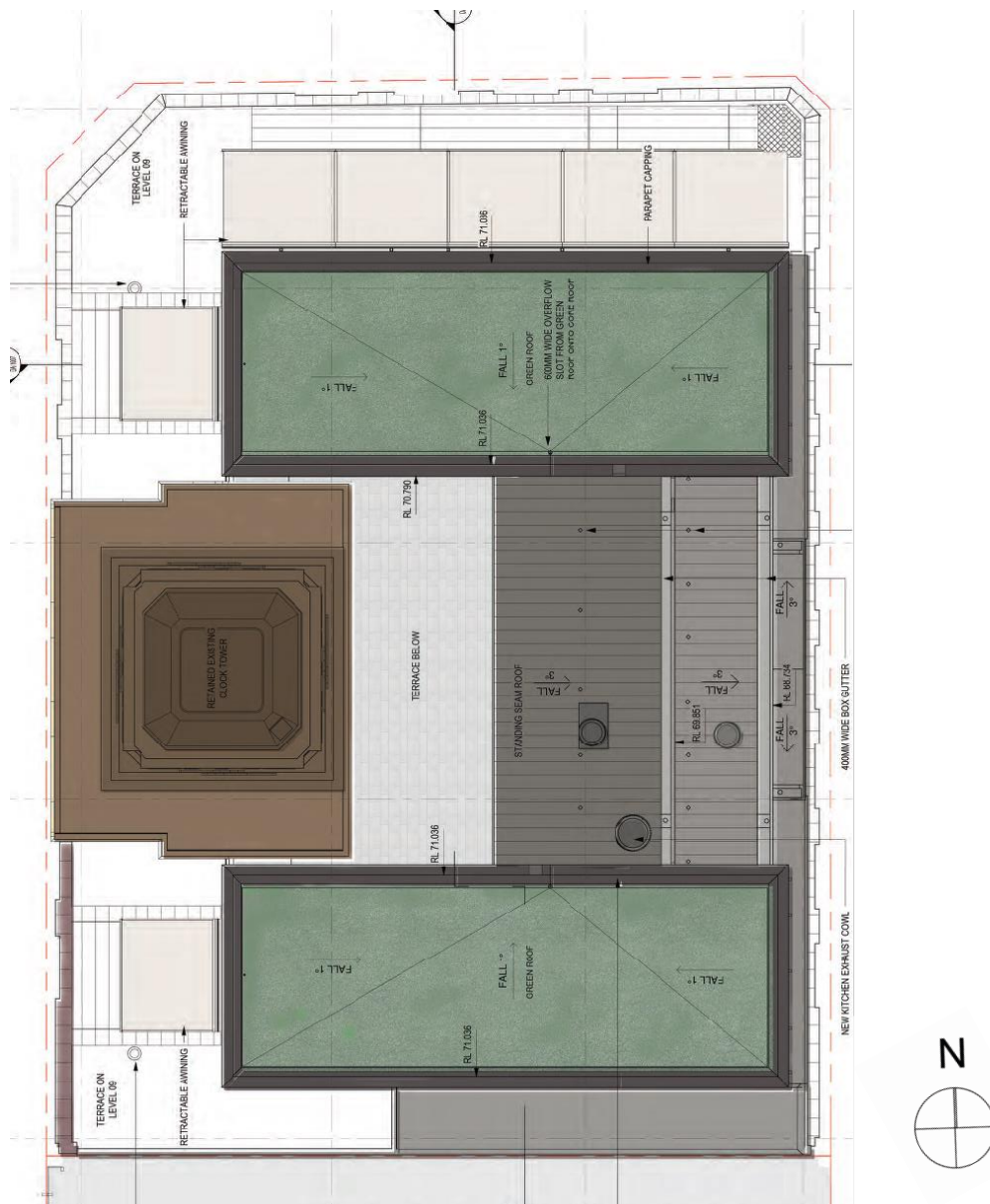


Figure 11: Proposed Roof Plan showing awnings to Level 9



Figure 12: Proposed section plan of top 2 floors



Figure 13: Proposed East Elevation on right (To Wynyard Lane) and West Elevation (to Margaret St) showing entries to premises



Figure 14: Proposed photomontage (revised awning design)

Assessment

16. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

State Environmental Planning Policies

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

17. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP. The SREP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
18. The site is within the Sydney Harbour Catchment and eventually drains into Sydney 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 within the deemed SEPP.

Local Environmental Plans

Sydney Local Environmental Plan 2012

19. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	<p>The site is located in the B8 Metropolitan Centre zone.</p> <p>The proposal seeks development consent as a food and drink premises (specifically defined as a 'pub' due to the nature of the existing liquor license (hotel license)) but will operate as a restaurant/bar.</p> <p>During the preliminary assessment, the use was clarified with the applicant, who confirmed the proposed use is a restaurant/bar but specifically will be defined as a pub as the use will utilise an existing hotel license. It is considered to generally align with the definitions of 'pub' in the SLEP 2012 as follows:</p> <p><i>'Pub' means licensed premises under the Liquor Act 2007, the principal purpose of which is the retail sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises.</i></p> <p>It is noted that the following uses were approved in the SSD application (SSD 5824) where it specifically noted the following uses to Shell House were approved:</p> <ul style="list-style-type: none"> - Retail at Carrington St; - 'Retail (restaurant/bar) within the rooftop pavilion (1037sqm) and - Commercial at levels two to ten. <p>The proposed development is defined as a pub but will operate as a restaurant/bar (food and drink premises) and is permissible with consent in the zone (both uses are permitted). The proposal generally meets the objectives of the zone.</p> <p>The use is generally consistent with the SSD approval and the provisions of the SLEP 2012.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	A maximum building height of 55m is permitted. The proposed awnings do not exceed the maximum height as they are proposed at a height of approximately 51m.
4.4 Floor space ratio	Yes	No additional floor space is sought. The proposed development complies with the maximum floor space ratio development standard.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is a local heritage item known as 'Former Shell House and Interiors' in the SLEP 2012. Works to the building were approved under the approved base building SSD, including the total removal of the concrete floor slabs due to significant deterioration whilst the building was used as a hotel. The SSD approval then granted consent for the reconstruction of the floors within the heritage building at a slightly different height to better respond to the floor levels within the new tower development. As such, the remaining significant heritage fabric is limited to the perimeter walls and clock tower.</p> <p>The proposed internal fitout works are considered to be sympathetic to the heritage fabric of Shell House and will not have an adverse impact on any remaining heritage fabric on the internal areas of the perimeter walls.</p> <p>The proposed awnings at Level 10 were reviewed with the City's Heritage Specialist and Urban Design Specialist. Concerns were raised with the original proposal due to the impact of the awning on the clock tower and appearance of the heritage building. Revised plans were received on 21 December 2020 which amended the design of the awnings.</p> <p>The revisions were reviewed by the City's Heritage Specialist. The proposal generally complies with the relevant aims, objectives and controls of the LEP and DCP, subject to conditions.</p>

Development Control Plans

Sydney Development Control Plan 2012

20. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

21. The site is located within the Wynyard Park and Lang Park Special Character Area. The proposed development is in keeping with the unique character and the design principles of the Wynyard Park/Lang Park special character area locality in that it is consistent with the strong commercial uses in the area, whilst respecting the historic significance of heritage buildings in their context.

Section 3 – General Provisions

Provision	Compliance	Comment
3.9 Heritage	Yes	The site is a heritage item. See Clause 5.10 of SLEP 2012 discussion above. Subject to conditions, the proposal adequately addresses the heritage provisions of the SDCP 2012.
3.11 Transport and Parking	Yes	<p>The provision of additional bike parking or car parking is not required by the SLEP 2012 or SDCP 2012. The site is easily accessible by public transport as it is opposite Wynyard Train Station, close to bus routes, and the light rail.</p> <p>In addition, the approved SSD application provides End of Trip facilities in the basement level of the base build with approximately 445 bicycle spaces and other locker and shower facilities for the use of the commercial tenants in the building, and car parking for 89 cars and seven service vehicle parking bays.</p>
3.12 Accessible Design	Yes	The building can provide for equitable access, as it contains lifts and adequate sanitary facilities. It is considered to be able to comply with the relevant BCA provisions.
3.13 Social and Environmental Responsibilities	Yes	The proposal is consistent with CPTED principles and has been accompanied by a Plan of Management outlining security and management processes to adequately minimise criminal behaviour at the premises, which is proposed to operate for 24 hours. Sight lines to the lifts are provided and the proposal is not considered to have adverse impacts on the community. The NSW Police commented on the proposal noting no objection subject to conditions, which have been included where relevant.

Provision	Compliance	Comment
3.14 Waste	Yes	A condition has been recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.15 Late Night Trading Management	Partial compliance	<p>The premises is located in a Late Night Management Area and the use is defined as a category A premises as the capacity of the licensed venue is over 200. The proposed trading hours are 24 hours Mondays to Sundays, indoor and outdoor.</p> <p>Indoor Trading Hours</p> <p>The base hours permitted for Category A premises are between 6am to 12am midnight for indoor seating. Hours can be extended (as a maximum) to 24 hours per day, for indoor seating only, on a trial basis.</p> <p>Clause 3.15.4(8) of the SDCP 2012 outlines that premises seeking extended trading hours may be permitted up to two additional operating hours per trial period if a previous trial period is considered by the Council to have been satisfactory. Clause 3.15.4(6) further notes that extended trading hours beyond base hours may be permitted at the initial application stage, but only where the Council has determined that the premises have been or will be well managed, including compliance with an approved Plan of Management.</p> <p>As an adequate Plan of Management and Acoustic Assessment have been submitted, there are no direct residents immediately adjacent, and it is considered there will be minimal adverse impacts as a result of the development, a trial period for indoor seating between 6am and 2.00am (the following day) is recommended. Following a 12 month trial period for these hours, an additional 2 hour extended operating period can be issued (i.e. until 4.00am) and if the premises can demonstrate good management, after 5 years, 24 hour trading can be granted.</p>

Provision	Compliance	Comment
		<p>Outdoor Trading Hours</p> <p>Provision 3.15 of the SDCP 2012 permits extended outdoor trading hours in the Late Night Management Area between 9am and 1am (the following day), in 2 hour increments, for a trial period of 12 months. Base hours permitted are 10am to 10pm. As such, 24 hour trading for the outdoor areas is not supported. A condition restricting the permitted hours of operation to align with the SDCP 2012 is recommended, with a trial period recommended between 9am to 12.00am midnight for a 12 month period.</p> <p>The recommended hours of operation for outdoor trading are 9.00am to 12.00am (midnight) and will be subject to a 12 month trial as per Clause 3.15.4(8) of the SDCP 2012. It is considered permitting outdoor hours at 9.00am is acceptable given it is not likely to have adverse noise impacts.</p>

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	The new awnings do not result in any significant overshadowing impacts to the public realm or any nearby residential properties.
4.2.3.5 Landscaping	Partial compliance	<p>The proposal does not entirely align with the approved SSD drawings in terms of landscaping, as the awning was not approved in the overarching base consent.</p> <p>To ensure no net loss of landscaping as per the approved terrace plans, a condition is recommended to require landscaping to the terrace levels in accordance with the SSD approved plans.</p> <p>See <i>Discussion</i></p>

4.2.3.11 Acoustic privacy	Yes	<p>An Acoustic Report was provided with the application. The proposal was referred to the City's Health Team who raised no concerns subject to conditions.</p> <p>Following receipt of a number of submissions noting the Acoustic Report failed to address the impacts of the use on the residential building at 2 York St ('Portico' building), the Acoustic Report was revised to include an assessment against the noise impacts to this building. The City's Health Team are satisfied that, subject to compliance with the acoustic report, the development will not result in adverse acoustic impacts to apartments at 2 York Street, which is located 58m away.</p> <p>See Discussion</p>
4.2.6 Waste and recycling Management	Yes	<p>A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>

4. Section 5 – Specific Areas

Provision	Compliance	Comment
Central Sydney	Yes	<p>Provision 5.1.2.1 of the SDCP 2012 requires new additions above a heritage item to be setback at least 10m from the street frontage. The SSD permitted a setback of 6m from the street frontage for the two storey addition to Shell House.</p> <p>During the assessment the applicant was requested to amend the awnings, which were proposed with a nil setback and with permanent posts that were within the 6m setback. The amended awning design addresses this provision - refer Discussion below.</p>

Discussion

Use and Noise Impacts

22. The proposed use is generally consistent with the SSD consent, where the use of Shell House as a restaurant/bar within the rooftop pavilion was approved. Retail uses were approved at the ground floor levels, and food and drink premises are a form of retail use as defined in the Sydney LEP 2012. The fitout and operation of the proposed restaurant/bar were to be the subject of separate future development applications.

23. The subject application was accompanied by an Acoustic Report. As discussed elsewhere in this report, the Acoustic Report did not originally highlight a residential building 58m from the site at 2 York Street. A revised Acoustic Report was submitted providing a noise assessment incorporating this property. The Acoustic Assessment confirms there would be no adverse noise impacts to this property, subject to conditions. The City's Health team have reviewed the Acoustic Report, application and accompanying documents, and support the proposal, subject to conditions.
24. Outdoor seating at Levels 9 and 10 was also approved with the SSD consent. Within the Secretary's Assessment Report dated September 2015 (Section 5.5.5) it was considered that there would not be undue noise nuisance as:
- (a) the terrace fronting Carrington/Margaret Street is located behind the existing sandstone parapet of Shell House, which will act as a buffer to noise;
 - (b) the terrace located behind the Shell House clock plinth is enclosed on all four sides, which will direct any noise upwards rather than outwards;
 - (c) the development will be operated in accordance with the Acoustic Assessment submitted with the application;
 - (d) there are no sensitive receivers (residential and the like) nearby the site; and
 - (e) potential noise impacts will be considered in detail as part of the future development application for the fit-out and operation of the roof top restaurant/bar.
25. Given the above has been adequately addressed within the application and/or through conditions of consent in relation to management and the like, the proposal, subject to a 12 month trial period for an extended two hour trading period (i.e. base hours plus two extended hours) is supported. This is consistent with the SDCP 2012 provisions for Late Night Trading Areas. Refer below.

Proposed Hours of Operation and Liquor Licencing

26. The proposed development includes licenced food/drink premise uses on Ground Floor, Level 09 and Level 10. The premises will operate as a single tenancy with one operator, the 'Point Group' who operate Bondi Icebergs and Bar in Bondi Beach as well as five other Sydney venues. However, the premises will provide three 'outlets' to patrons over the three levels.
27. Further assessment on the relevant aspects of the proposal are discussed below.

Hours of operation

28. As per Provision 3.15 of SDCP 2012 the proposal is a Category A - High Impact Premises and is within a Late Night Trading Area.
29. The application seeks consent to operate 24 hour both indoor and outdoor, with the outdoor seating contained to levels 09 and 10 only.

30. As a Category A premises, the base permitted indoor hours are 6am to midnight and extended indoor hours are 24 hours. The proposed hours comply with these provisions, subject to successful trial periods as outlined in Clause 3.15.4 of the SDCP 2012
31. Permitted base outdoor hours are 10am to 10pm and extended outdoor hours are 9am to 1am. The application seeks consent for 24 hour trading throughout the three levels including outdoor seating on Levels 09 and 10, comprising capacities of 102 patrons (level 09) and 60 patrons (level 10).
32. Though 24 hour trading is not consistent with what is permitted within the SDCP 2012 as a new premises, once adequate trial periods have been undertaken demonstrating good management, indoor 24 hour trading may be permitted with consent subject to an assessment of future Section 4.55 modification applications. Outdoor trading hours are recommended to be restricted to the base hours plus an earlier opening time (9am) and 2 hour trial for the evening hours to permit operating until 12am midnight, consistent with the context of the premises as a CBD business and given the Acoustic Report, reviewed by the City's Environmental Health team, raises no issues with the use operating at 24 hour trading.
33. Until such time the following condition is recommended for the hours of operation:
- (a) A trial period for indoor and outdoor seating is recommended for 12 months for the following hours;
 - (i) Indoor: 6.00am to 2.00am (the following day)
 - (ii) Outdoor: 9.00am to 12.00am (midnight)
34. The above hours are recommended as the surrounding context is suitable for such hours, and the hours align with the broader strategic objectives for the City of Sydney's late-night trading economy. In addition, a selection of nearby bars with approved trading hours beyond midnight include:
- (a) Pool Club – 320 George St - and Ivy Precinct – 330 George St**
 - (i) D/2005/1977/Q - Approval to operate until 4.00am (including the outdoor pool area) for trial period until 2025
 - (b) Angel Hotel - 125 Pitt St**
 - (i) D/2005/1670/D - 8.00am to 2.00am (following day) Mondays to Saturdays for trial period until 2025.
 - (c) York Lane – 56 Clarence St**
 - (i) D/2011/1932 – 10.00am to 1.00am the following day (internal) and 8.30am to 1.00am the following day (outdoors)
35. The proposal is therefore not inconsistent with the character of the surrounding area. Further, the application has submitted a Plan of Management and Acoustic Report which have been reviewed and supported by the City's Environmental Health and Licensed Premises teams with no major issues identified. Any renewal of extended hours will be assessed against the SDCP 2012 Clause 3.15.4(14) and (15).

Liquor Licence Type

36. The applicant has submitted a liquor licence in the name of 'Menzies Hotel' at 14 Carrington Street which was demolished as part of the SSD consent (see Figure 15 below). The liquor licence is a liquor-hotel (full hotel) licence and has 24 hour trading permitted to certain areas. The licensee is the name of the applicant/owner of the subject DA and site, Brookfield Commercial.
37. The use of the hotel licence for a restaurant/bar is acceptable and it has been clarified with the applicant and Liquor and Gaming NSW that the proposed areas for licencing can operate under the liquor licence subject to amendments with Liquor and Gaming NSW. It is proposed to extend the liquor license to include all three levels subject to approval from Liquor Gaming NSW.

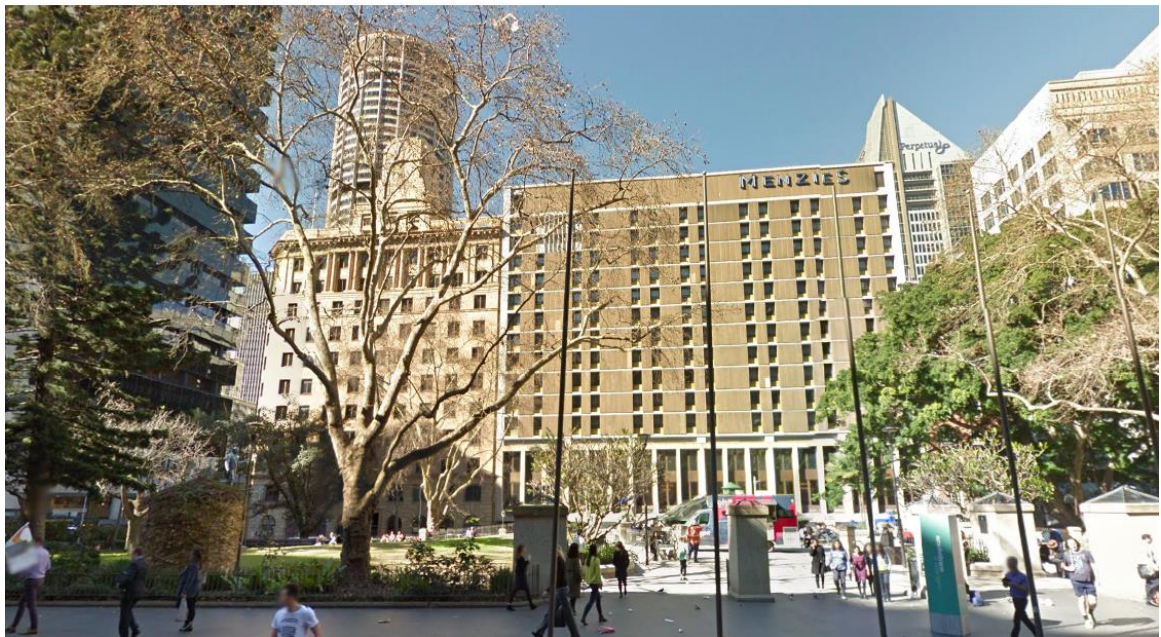


Figure 15: Menzies Hotel at 14 Carrington St prior to demolition (Source: Google)

38. The City's Licensed Premises team do not object to the proposal and noted correspondence from Liquor Gaming NSW confirming that 'licenses have been granted over multiple tenancies before, as long as the relevant development consent is in place'.
39. The proposal therefore complies with the provisions of the Liquor Act and the provisions of the Sydney CBD Entertainment legislation.

Awnings

40. The site is a locally listed heritage item as discussed above, with the SSD consent approving a two-storey glazed addition, setback 6m from the parapets.
41. Concerns were raised by the City's Urban Design and Heritage team in relation to the proposed awnings to the rooftop terrace (see figure 16 below). They were originally considered to have adverse impacts on the heritage item in respect of their length, which proposed a nil setback to the boundary. The applicant met with the City's Heritage and Urban Design team to discuss an amended proposal for the rooftop level.



Figure 16 - Original photomontage of awnings proposed (Superseded)

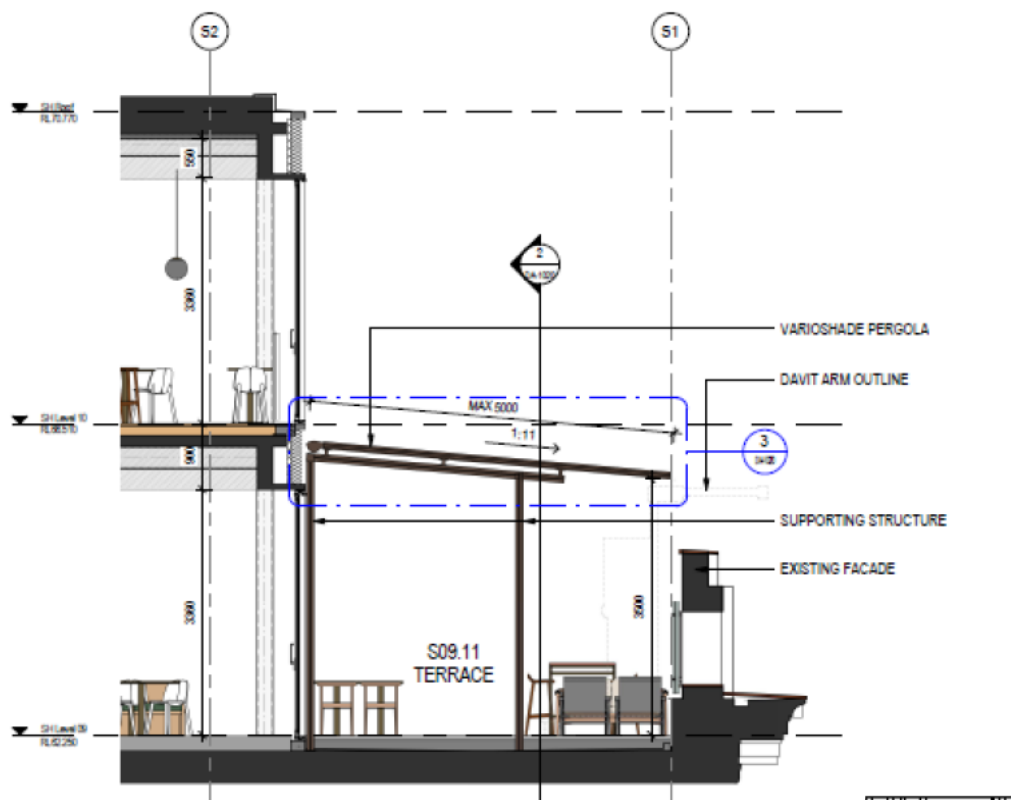


Figure 17 - Original section of awning design (Superseded)



Figure 18 - Revised pleated awning system to L09



Figure 19 - Revised awning system to L09

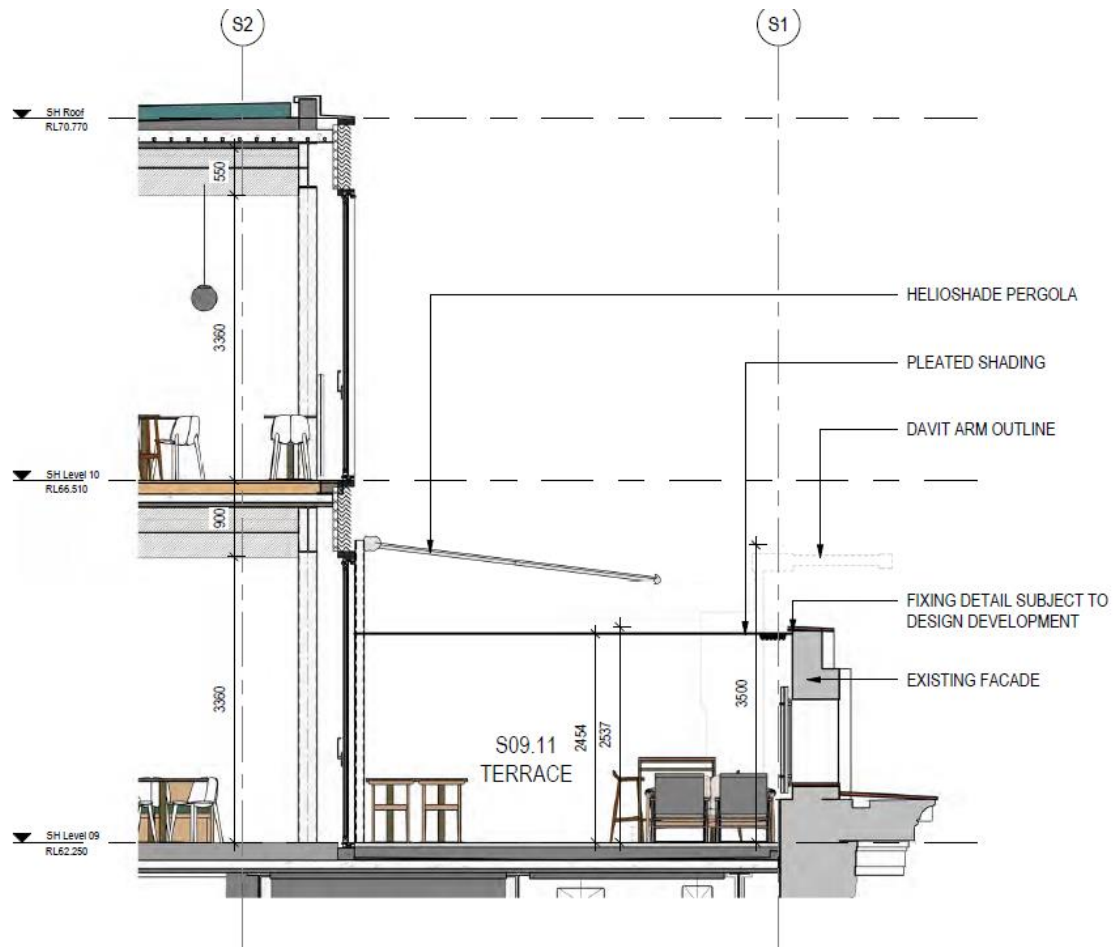


Figure 20 - Revised section plan of awning design

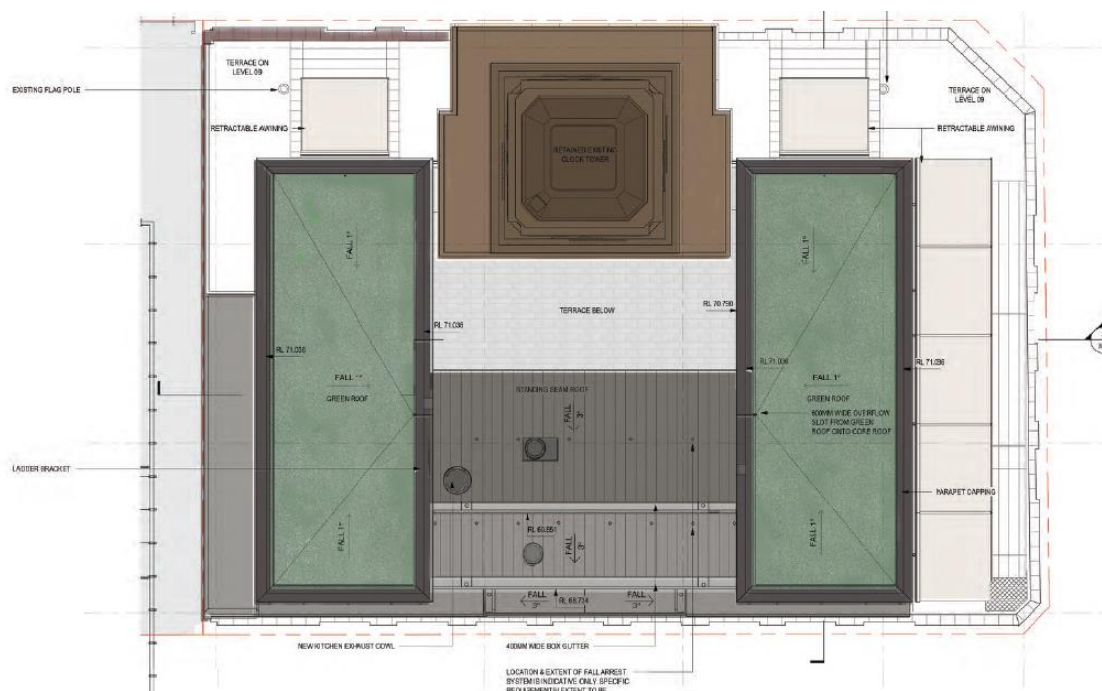


Figure 21 - Proposed roof plan showing awnings in full extension

42. The awnings have been amended with pleated shades and a retractable awning, proposed at a lower height, to improve the visual impact of the awnings as well as alleviate the need for the originally proposed permanent awning posts. The pleated shades cover approximately 50% of the outdoor area and are set in from the parapet by 2m (see Figure 21 above).
43. The awnings appear lightweight and subservient in the context of the new glazed addition and Shell House heritage item, and further, provide a more appropriate complement to the outdoor seating, rather than creating additional 'all weather' seating areas.
44. The proposal was referred to the City's Heritage team who noted they support the proposal subject to conditions, included in the conditions of consent.

Landscaping / Outdoor seating

45. The terrace plans approved under the SSD 5824 consent show trees and planting in the outdoor seating areas (see Figure 21). No awning structures were approved in this consent.
46. To ensure no net loss of landscaping to the terraces, the proposal is supported subject to a condition to this effect.

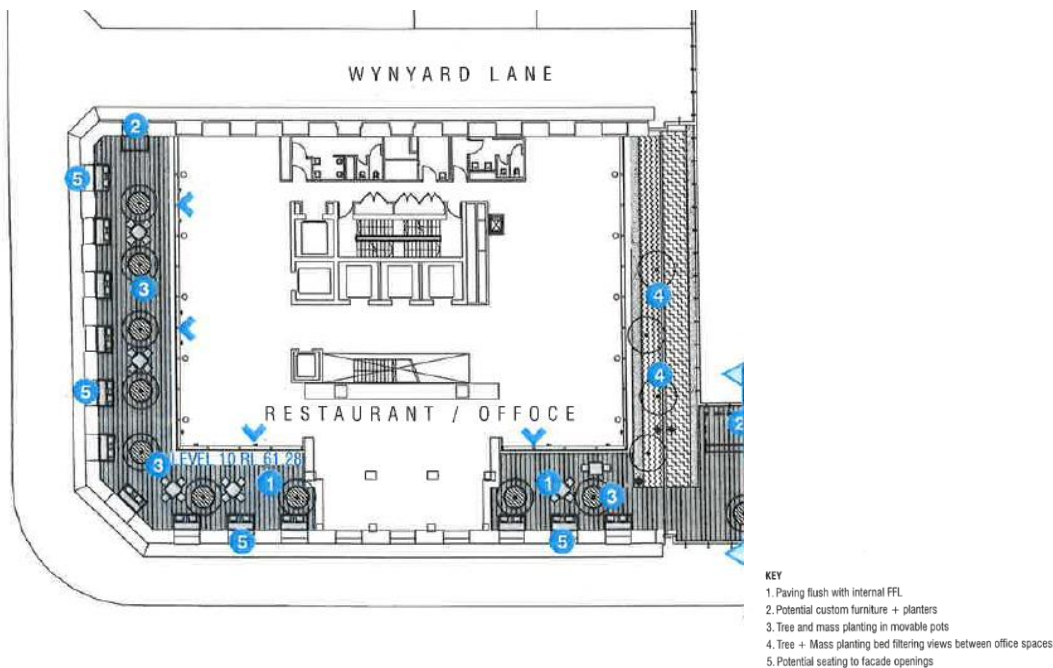


Figure 22 - Approved landscape plan for terrace level 09 (Source: SSD 5824 Mod 4)

47. The approved plan for Level 10 shows outdoor seating to the indicated area proposed in this application (see Figure 23).

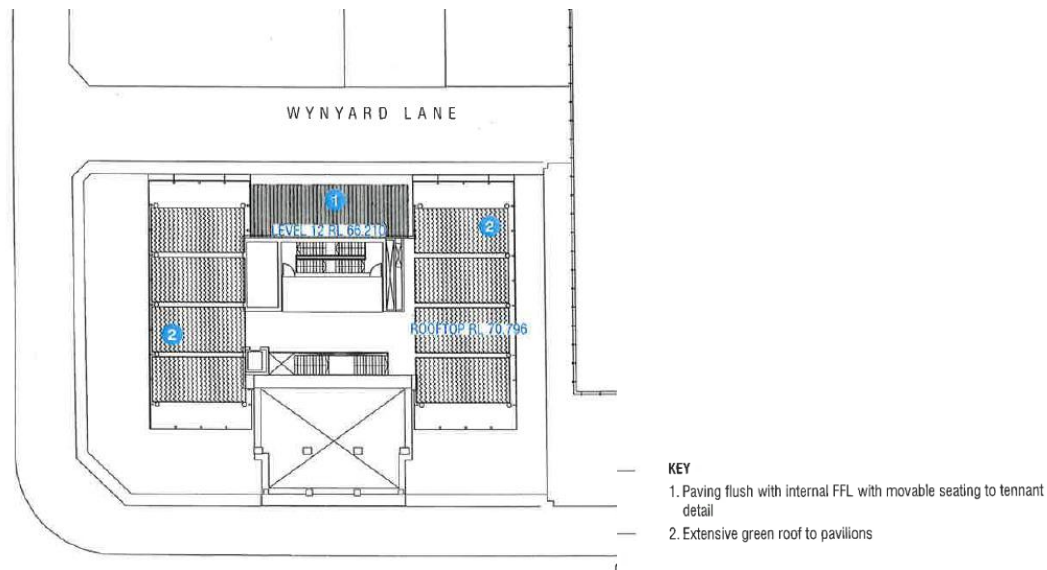


Figure 23 - Approved landscape plan for terrace level 10 (Source: SSD 5824 Mod 4)

Consultation

Internal Referrals

48. The application was discussed with the following internal units:

(a) Council's Building Services Unit:

(i) ***No issues raised noting the BCA report relates to the base building SSD consent which would address relevant fire-safety compliance.***

(b) Environmental Health Unit;

(i) ***The first referral noted no objection subject to recommended conditions including standard food premises conditions and a condition for the proposal to comply with the acoustic report.***

(ii) ***After submissions raised the issue of omitting the residential building at 2 York St Sydney ('Portico' units), discussions with the relevant health officer were undertaken. Whilst generally not considered a major issue, the officer recommended the applicant revise the Acoustic Report to include this residential building, located 58m away. A second referral was sent following the receipt of the revised Acoustic Report. Again, no objection was raised, subject to the inclusion of the recommended conditions and the 'Noise - Entertainment' condition.***

(c) Licenced Premises;

(i) ***No objection subject to recommended conditions of consent***

(d) Heritage and Urban Design

(i) ***As discussed above, the awning design as revised addresses heritage concerns raised. No further concerns subject to conditions;***

(e) Waste Management unit

- (i) ***The Waste Management team raised concerns with the proposal as there was limited information on the larger scale waste strategies, as the tenancy is part of a larger scale development with an approved Waste Mgmt Plan as part of the base consent. Separate conditions of consent on the base DA cover the waste management strategies, locations and loading docks. Subject to standard conditions it is considered that the building will operate waste collection through the broader SSD consents and loading dock for the site as a whole.***

External Referrals

NSW Police

49. The application was referred to NSW Police for comment.
50. A response was received raising no objections to the proposed development subject to conditions, though it was noted the comment related to the original notification which had the incorrect hours of operation (see Summary on Page 1 above).
51. A follow up email was sent on December 2, 2020, confirming the hours of operation of 24 hour trading, and further asking if any issues were raised. No response was received. It is presumed no further objection/conditions are recommended.
52. The original conditions recommended by NSW Police have been included in the Recommended Conditions of Consent.

Advertising and Notification

53. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 21 days between 26 October 2020 and 17 November 2020, and again between 28 October 2020 and 19 November 2020 following an error in the hours of operation in the notification as discussed above. A total of 570 properties were notified and 20 submissions were received. Two submissions were from the same person, and one was in support. Therefore, a total of 18 objections were received.
54. The submissions raised the following issues, listed in order of number of mentions:
- Issue: ***Noise impacts and 24 hour trading. The permitted hours should be as per 'City Living Area'. A trial period should be imposed***

Response: The Acoustic Report was referred to the City's Environmental Health team who raised no concerns subject to conditions. On 23 November 2020 a revised Acoustic Report was submitted (prepared by Acoustic Logic dated 23/11/2020 V 10) which outlines an assessment of the impacts to the residential property at 2 York St (noted as R7 on Page 7). The revised report notes that subject to the inclusion of various building and management controls including façade glazing, internal music noise and management controls, outdoor speaker limits, waste removals and delivery conducted from the basement, and vibration isolating of the speakers and other noise generating equipment, the proposal can comply with the relevant noise legislation and criteria. The revised report was reviewed by the City's Environmental Health team who recommended approval subject to conditions. It is considered overall that the imposition of the noise mitigation strategies in the Acoustic Report and the conditions of consent imposed on the application would work in conjunction to mitigate any noise impacts from the proposal. The site is in a commercial/CBD context, in character with the surroundings, and is consistent with the objectives of the Late Night Management Area provisions contained within the SDCP 2012. It is not within a City Living Area therefore the permitted hours of operation are not required to meet these controls. The recommended hours of operation of the base permitted hours, plus two extended hours, is recommended for approval within the conditions of consent. The trial period will enable Council to review the management of the premises and if necessary, revert the hours of operating back to the base permitted under the SDCP 2012.

- Issue: **Noise impacts to Portico Apartments (2 York Street) are not outlined in the Acoustic Report, the SEE or EIS.**

Response: In regard to the omission of the subject property (2 York St) from the Acoustic Report, the City's Environmental Health Officer noted the property was over 50m away from the site however for clarity the applicant was requested to include this property in the Acoustic Assessment as discussed above. The additional noise measurement carried out by Acoustic Logic at the boundary of the proposed site to the relevant residence at 2 York Street shows that the predicted noise level is satisfactory. This was reviewed by the City's Environmental Health Officer and considered acceptable subject to standard noise conditions which have been imposed on the recommended conditions of consent.

As this issue has since been rectified, the concern has been addressed. Amendments to the SEE and EIS are not required prior to consent being issued.

- Issue: **The entry and exits of all these venues should have security to ensure that patrons entering or exiting are monitored; a 24 hr contact number of any operator should be supplied to local residents; 3 operators for each venue could be an issue.**

Response: Appropriate conditions of consent are recommended to address security concerns including a requirement to comply with the Plan of Management submitted, which provides relevant information to address these issues. The applicant has advised there will be one operator for the premises. The Plan of Management was reviewed by the City's Licensed Premises team with no major concerns noted subject to standard conditions relating to CCTV, security, neighbourhood amenity, and recording of incidents. As also noted earlier, NSW Police have not raised any significant concerns with the proposal subject to conditions.

- Issue: ***Community consultation has not been undertaken by the applicant. The notification time of 3 weeks is too short.***

Response: There is no legislative requirement for community consultation to be undertaken by the. The 3 week notification period is determined by the Community Participation Plan 2019 and there is no requirement to notify for longer. The City of Sydney notified the proposal correctly to residents/owners of properties within a 50m radius.

- Issue: ***Our heritage listed building (2 York St) cannot install double glazing to the first 6 floors for sound attenuation to deal with noise impacts.***

Response: The Acoustic Assessment confirms that subject to conditions the proposal will not have an unacceptable noise impact, including to this residential building. There are no specific City of Sydney policies to restrict double glazing, and the City's Heritage Specialist advises that double glazing may be permitted with consent, unless the Conservation Management Plan for the building specifically prohibits it.

- Issue: ***Concern the application proposes a different use of the Ground Floor of Shell House from the use previously approved by the City of Sydney for gallery and community use as part of the office fitout for NAB (D/2018/318).***

Response: The subject application is for the fit out and use of the Margaret Street Ground Floor tenancy and L09 and 10 of Shell House which are outside of the approved tenancy plans in D/2018/318. Due to the slope of the site, the gallery use is the level above Upper Ground level (entry from Carrington St). The Ground Floor in this application is accessed from Margaret St and is a different level, approved for use as a restaurant in the SSD application. Refer Figure 24 and 25 below where the RL's for the subject site entry are 16.330 and the approved RL for the gallery is 19.680 (approximately 3.3m above). Also see Figure 8 above for the elevations where the entry door to Carrington St is demonstrated as being a level up from the entry door to Margaret St.

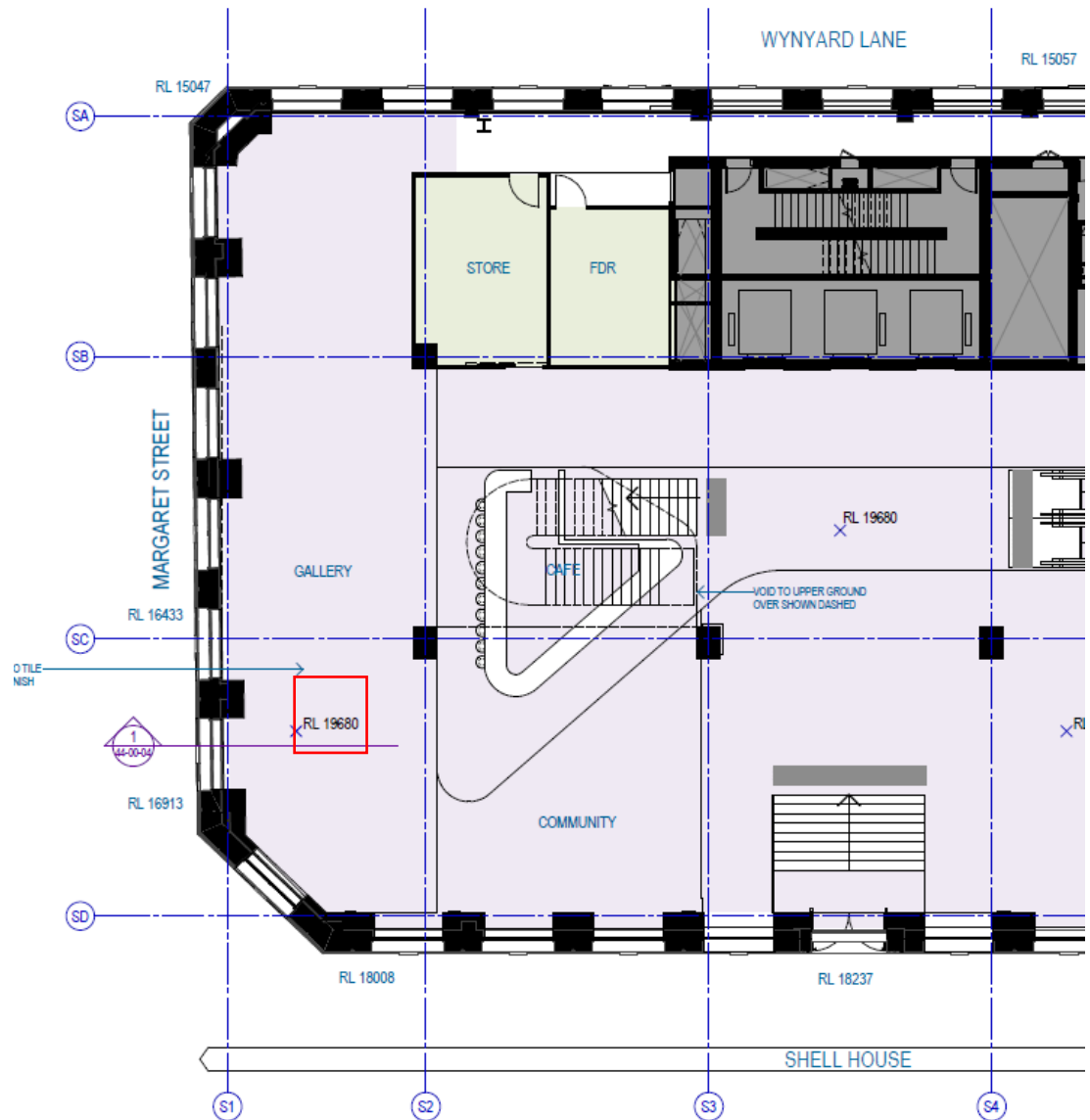


Figure 24: Extract from Floor Plan – Carrington St – approved in D/2018/318 - note RL in red box

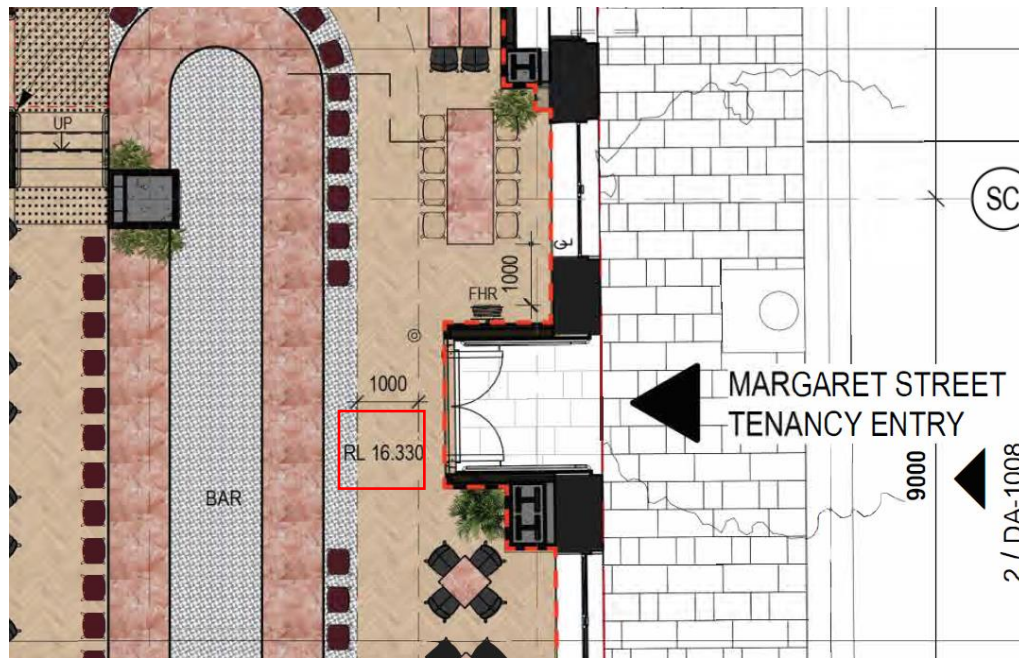


Figure 25: Proposed ground floor RL's

- Issue: ***The thickest glazing should be required for all external windows on the rooftop walls.***

Response: The recommended glazing for the façade as outlined in the Acoustic Report will be required to be installed as a condition of consent.

- Issue: ***Pokies machines and a 24 hour venue would be detrimental to the neighbourhood.***

Response: The application makes no reference to gaming machines and there are none shown on the application drawings.. Regardless, the City has no jurisdiction over gaming machines as they are approved by Liquor and Gaming NSW.. A response to the proposed operating hours is provided above.

- Issue: ***Proposal goes against the 'agent of change' principle***

Response: The proposal is for a pub, to operate as a food and drink (restaurant/bar) premises, which has been approved in principle by the Department of Planning, Industry and Environment in the SSD consents. The 'agent of change' principle requires new development to consider existing land uses. It asks new development to manage noise impacts through the design and construction of the building or the operations in the building. It is considered the application has done this through the submission of the revised Acoustic Assessment, Plan of Management and the conditions of consent which relate to noise and amenity impacts. In addition, the CBD location of the venue, in the B8 Metropolitan Centre zone, is considered to provide justification for the use and hours of operation. The site is not within a residential area. The proposal is in line with the City's CBD 24 hour economy objectives outlined in 'OPEN Sydney Strategy and Action Plan 2013-2030'.

- Issue: ***The Menzies Hotel is a different location and there are inconsistencies with the liquor licence.***

Response: The proposal intends to utilise the liquor licence for the Menzies Hotel, at 14 Carrington St, demolished as part of the broader SSD consent to which this site falls within. The relevant liquor licence was amended on 7 January 2020 to change the boundaries and minors area authorisation. A copy has been provided to the City of Sydney.

The applicant has advised:

- Menzies Hotel incorporated the properties from 2-28 Carrington St, however commonly was referred to as 14 Carrington St; and
- Brookfield are seeking to amend the liquor licence to have the Margaret St and rooftop venues specifically referenced in the licence.

This will be undertaken as an application to Liquor and Gaming NSW. Discussions with Liquor and Gaming NSW have been undertaken where it is noted that the extension of the liquor licence to the rooftop levels can be undertaken subject to a relevant planning consent. The City's Licensed Premises team support the application subject to conditions.

- Issue: ***The proposal will have lighting impacts in terms of amenity***

Response: Standard lighting emissions in association with the venue would not be unreasonable in this instance, nor would this be a reason for refusal.

Financial Contributions

Levy under Section 61 of the City of Sydney Act 1988

55. The cost of the development is in excess of \$200,000. The development is therefore subject to a levy under the Central Sydney Development Contributions Plan 2013.
56. A condition relating to this levy has been included in the recommended conditions of consent in the Notice of Determination. The condition requires the contribution to be paid prior to the issue of a construction certificate.

Conclusion

57. The application proposes a fitout and use of three levels of the existing heritage item known as 'former Shell House' at 2-12 Carrington Street, as a pub, operating as a licensed restaurant/bar. Outdoor seating is proposed to the roof terrace levels.
58. The proposal subject to conditions is generally consistent with the objectives and provisions of the Sydney LEP 2012 and Sydney DCP 2012. Instances where the proposal varies with DCP controls have been assessed as acceptable subject to conditions, including restricting hours of operation as per the provisions of the SDCP 2012 for Late Night Management Areas.
59. The proposed outdoor terrace awnings design have been revised to sympathetically address the heritage item and visual impacts and are supported subject to conditions.

60. The premises is of a scale suitable to the B8 Metropolitan Centre zone and Late Night Management Area; and subject to conditions will not cause adverse impacts on the amenity of the surrounding area. The applicant has adequately addressed noise impacts to the residential apartments discussed in the submissions in the revised Acoustic Assessment.
61. The proposal is in the public interest and is recommended for approval subject to conditions.

ANDREW THOMAS

Executive Manager Development

Amy-Grace Douglas, Senior Planner

Attachment A

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/2020/959 dated 14 October 2020 and the following drawings prepared by Architectus:

Drawing Number	Drawing Name	Date
DA-1002 Issue 8	Margaret Street Tenancy Plan	10.09.2020
DA-1003 Issue 6	Margaret Street Retail Sections	10.09.2020
DA-1004 Issue 9	Pavilion – Level 9 Plan	16.12.2020
DA-1005 Issue 9	Pavilion – Level 10 Plan	16.12.2020
DA-1006 Issue 3	Pavilion – Roof Plan	16.12.2020
DA-1007 Issue 9	Pavilion – Sections	16.12.2020
DA-1008 Issue 7	Shell House Facades	16.12.2020
DA-1009 Issue 7	3D Images – Street Level	16.12.2020
DA-1020 Issue 3	Pavilion - Pergola Details	16.12.2020

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) STAGED OCCUPATION

The occupation of the development may be carried out in stages, with the relevant conditions being satisfied prior to the issue of an Occupation Certificate where specified in the conditions of consent for each stage as detailed below:

(3) <u>Stage</u>	(4) <u>Occupation Certificate Area</u>
(5) Stage 1	(6) Ground Floor
(7) Stage 2	(8) Levels 09 and 10

(9) INDOOR HOURS OF OPERATION - SENSITIVE USES

The indoor hours of operation are regulated as follows:

- (a) The indoor hours of operation must be restricted to between 6.00am and 12.00am midnight Monday to Sunday.
- (b) Notwithstanding (a) above, the use may operate (indoors) between 6.00am and 2.00am the following day for a trial period of 12 months from the date of issue of the first Occupation Certificate. Council's Health and Building Unit is to be informed in writing of the date of commencement of the trial hours. Email notification is to be sent to liquor@cityofsydney.nsw.gov.au
- (c) A further application may be lodged to continue the operating hours outlined in (b) above not less than 30 days before the end of the trial period. Council's consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, any substantiated complaints received and any views expressed by the Police.

(10) OUTDOOR HOURS OF OPERATION - SENSITIVE USES

The outdoor hours of operation are regulated as follows:

- (a) The outdoor hours of operation must be restricted to between 10.00am and 10.00pm Monday to Sunday.
- (b) Notwithstanding (a) above, the use may operate (outdoors) between 9.00am and 12.00am (midnight) for a trial period of 12 months from the date of issue of the first Occupation Certificate. Council's Health and Building Unit is to be informed in writing of the date of commencement of the trial hours. Email notification is to be sent to liquor@cityofsydney.nsw.gov.au
- (c) A further application may be lodged to continue the operating hours outlined in (b) above not less than 30 days before the end of the trial period. Council's consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other

things, the performance of the operator in relation to the compliance with development consent conditions, any substantiated complaints received and any views expressed by the Police.

(11) COMPLIANCE WITH BASE BUILDING CONSENT

Unless otherwise approved, all fitout and construction works approved in this consent must be in accordance with all relevant approvals for the refurbishment of Shell House as approved by the NSW Department of Planning, Industry and Environment in application SSD MP11_0076 and SSD 5824.

(12) SECTION 61 CONTRIBUTIONS PAYABLE - REGISTERED QUANTITY SURVEYOR'S DETAILED COST REPORT - SUBMITTED AND VERIFIED PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

A cash contribution comprising 1% of the total cost of the development is payable to the City of Sydney pursuant to section 61 of the *City of Sydney Act 1988* and the *Central Sydney Development Contributions Plan 2013* in accordance with the following:

- (a) Prior to a Construction Certificate being issued, evidence must be provided of Council's written verification of the amount of the contribution as required in (b) below, and then that the levy has been paid to the Council in accordance with this condition. Payment may be by EFTPOS (debit card only), CASH or a BANK CHEQUE made payable to the City of Sydney. Direct debit, personal or company cheques will not be accepted.
- (b) The contribution must not be paid to the City of Sydney until it is accompanied by separate written verification by the City of Sydney of the specific amount payable. In order to obtain such verification, the "City of Sydney Registered Quantity Surveyor's Detailed Cost Report" indicating the itemised cost of the development must be completed and submitted to Council by the Accredited Certifier, together with copies of the plans the subject of the application for the Construction Certificate. A copy of the required format for the "City of Sydney Registered Quantity Surveyor's Detailed Cost Report" may be obtained from the City of Sydney One Stop Shop, any of the Neighbourhood Service Centres and the City of Sydney's website (www.cityofsydney.nsw.gov.au).
- (c) The Council will consider the documentation submitted under subclause (b) and determine the cost of the proposed development having regard to the information submitted and to such other matters as it considers appropriate and will notify the Accredited Certifier accordingly.
- (d) The items to be included in the calculation of the cost of development are demolition works, site remediation including decontamination, excavation and site preparation, construction costs, fit out, professional fees as part of the design (including design competitions) documentation and implementation process, fixed building machinery, equipment and appliances, kitchens and bar areas, car parking, air conditioning plant and equipment, services (fire, mechanical ventilation, electrical, hydraulic), ceilings, fire protection devices, installation of services (power, water, sewer, telephone), lifts and other essential machinery, floor coverings, *Building Code of Australia* compliance works, replacement of existing

materials, fixtures and fittings, construction related insurance, assessment and construction related fees, charges and GST and any other matter not expressly excluded in (e) below. Any item for which an exemption has been granted is still to be included in the total cost of development, together with an itemised value to enable the City to calculate the value of the exemption.

- (e) The items to be excluded in the calculation of the cost of development are the cost of land, marketing expenses (excluding display suites etc), finance and interest, building insurance after practical completion, drapery, commercial stock inventory, loose furniture, loose equipment, loose electrical appliances, minor maintenance of existing retained fixtures (patching, repainting) and stamp duty.

Please contact Council's Planning Administration staff at Planningsystemsadmin@cityofsydney.nsw.gov.au to confirm the amount payable, prior to payment.

(13) AWNING DESIGN

- (a) The outer edges of the proposed retractable awnings must be set back from the inner face of the heritage parapet by no less than 2m;
- (b) The fixing of the proposed pleated shading to the heritage parapet must minimize its impact on the heritage fabric and structure. Any embedded fixings or anchors must use stainless steel to avoid corrosion.
- (c) Materials for making good to the parapet must match existing.

(14) MAXIMUM CAPACITY OF PERSONS

- (a) The maximum number of persons (including staff, patrons and performers) permitted in the premises at any one time is 885, split into the following areas:
 - (i) Ground Floor = 275 persons;
 - (ii) Level 09 = 315 persons (maximum 156 outdoors)
 - (iii) Level 10 = 295 persons (maximum 74 outdoors)
- (b) The capacity for each area shall not exceed the maximum numbers at any given time.
- (c) The manager/licensee is responsible for ensuring the number of persons in the premises does not exceed that specified above.
- (d) A sign in letters not less than 25mm in height must be fixed at the main entry point to the premises alongside the Licensee's name stating the maximum number of persons, as specified in the development consent, that are permitted in the building. Details are to be provided to the satisfaction of the Principal Certifier prior to issue of a Construction Certificate.

Note: Clause 98D of the *Environmental Planning and Assessment Regulation 2000* requires a sign specifying maximum number of persons permitted in the building to be displayed in a prominent position for the following types of premises:

- (i) entertainment venue,
- (ii) function centre,
- (iii) pub,
- (iv) registered club,
- (v) restaurant.

(15) COPIES OF CONSENTS AND MANAGEMENT PLANS

A full and current copy of all current development consents for the operation of the licensed premises, and the Plan of Management and the Security Management Plan must be kept on-site and made available to Police or Council Officers, or Special Investigator upon request.

(16) PLAN OF MANAGEMENT

The use must always be operated / managed in accordance with the Plan of Management V02, prepared by Michael Rowe and dated December 2020 that has been approved by Council. In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management.

(17) SECURITY AND QUEUING – CATEGORY A LICENSED PREMISES

- (a) Security guards are to be provided at the premises on Fridays and Saturdays from 8pm at a minimum ratio of 1 security staff member to 100 patrons or part thereof.
- (b) Security personnel shall remain at the premises for at least 30 minutes after closing and shall assist in ensuring that patrons leave quietly.
- (c) All licensed security officers whilst employed at the premises are to wear clearly identifiable security attire at all times, with the word “SECURITY” clearly identifiable in bold print at least 100mm high, on the front and back.
- (d) Management staff at the venue shall ensure that a clear footway width of 1.5m is maintained at all times along all footpaths immediately adjoining the premises. Patrons waiting to enter the premises shall queue along the immediate frontage of the premises. The queue must not obstruct any fire exit of any building or entrance to any other premises.
- (e) When more than one security guard is on duty, security officers and management shall communicate by hand held radios at all times.

(18) INCIDENTS – RECORDING AND NOTIFICATION

The manager/licensee must ensure that all incidents involving staff members (including security personnel) are recorded in the incident register maintained on site, including incidents involving physical contact between staff and patrons, physical restraint of patrons and/or the ejection of patrons from the premises.

(19) SURVEILLANCE CAMERAS

- (a) CCTV surveillance cameras shall be strategically installed, operated and maintained throughout the premises with particular coverage to:
 - (i) principal entrance/s and exits;
 - (ii) all areas within the premise occupied by the public (excluding toilets);
 - (iii) staircases in multilevel premises; and
 - (iv) the area within a 10m radius external to the public entrance(s) to the premise.
- (b) Suitable and clearly visible signage shall be displayed at the principal entrance(s) to the premise and in a prominent position on each floor accessible to the public, in lettering not less than 50mm in height with the words "Closed Circuit Television in use on these premises".
- (c) All CCTV recording equipment and cameras shall be of high grade digital quality capable of establishing the population and identification of patrons, offenders and incidents within the depth of field view of the cameras. In this respect each surveillance camera shall be capable of recording a minimum rate of 10 frames per second and at high resolution.
- (d) CCTV recording discs or hard drive recordings shall be retained for 28 days before being re-used, destroyed or deleted. Time and date shall be auto recorded on the disc or hard drive. The CCTV recording equipment shall be capable of reproducing a CD, DVD, USB or other appropriate digital copy of recorded footage on demand of Council or Police Officers either immediately or within 12 hours of the request being made. Copy discs must be handed to Council, Police Officer or Special Inspectors as required.
- (e) All CCTV recording devices and cameras shall be checked daily to ensure the equipment is operating correctly. The Licensee shall record this daily checking activity in the security/incident register book that meets the standards required by the Licensing Police and Council. If it is discovered at any time that the equipment is not in full operating order all reasonable steps must be taken to repair the system as soon as practicable. Where the system will not be functioning in full operating order for a period of longer than 24 hours the manager/licensee is to notify the relevant Local Area Commander of the NSW Police.
- (f) All CCTV recording devices and cameras shall be operated at all times when the premises are open to the public and, where premises do not operate 24 hours a day, continuously for at least 1 hour prior to opening and closing times of the premises.

- (g) The CCTV recording device shall be secured within the premises and only be accessible to senior management personnel so as to maintain the integrity of the recorded footage. When the premises is operating there must be at least one staff member present at the premises who is authorised to access the CCTV system and able to immediately review recordings and produce copies.
- (h) Camera views are not to be obstructed by temporary or permanent structures, signage or other impediments.

(20) NO SPRUICKING NOISE

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

(21) 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.

(22) GLASS CRUSHER

All glass bottles and other glass waste must be reduced to glass shards (by way of a glass crusher located inside the premises) prior to the removal of such waste from the premises.

(23) REMOVAL OF GLASS

Patrons must be prevented from removing glasses, opened cans, bottles or alcohol from the premises (except from any approved bottle shop area) or approved outdoor dining area included in the boundaries of the licensed premises.

(24) NEIGHBOURHOOD AMENITY

- (a) Signs must be placed in clearly visible positions within the licensed premises 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.

(25) NSW POLICE REQUIREMENTS

In the interest of public safety the following NSW Police requirements must be adhered to:

- (a) **Crime Scene** - Immediately after the person in charge of the Licensed Premises become aware of an incident involving an act of violence causing an injury to a person on the premises, the person must: i. Take all practical steps to preserve and keep intact the area where the act of violence occurred ii. Retain all materials and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police iii. Make direct and personal contact with the Police Area Commander or his/her delegate and advise the Commander or delegate of the incident and Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.
- (b) **Security** - On Friday and Saturday nights, one (1) security person will be provided at the hotel from 8:00 pm until 30 minutes after close of restaurant / bar area's. Notwithstanding the above, whenever liquor is available at a function after 8:00pm on Friday or Saturday nights, security will be engaged at a ratio of 1:100 function patrons.

A Security guard will be provided on Level 9/10 after 8pm until 30 minutes after close on Friday and Saturday nights when liquor is served or supplied to that area by hotel staff.

- (c) **Development Consent** - A copy of the relevant development consent is to be kept on the premises and made available for inspection on the request of a police officer, council officer, Liquor & Gaming inspector, or any other person authorised by the Independent Liquor & Gaming Authority.
- (d) **Incident Register** - The licensee must ensure that an incident register is kept on the premises and; any incident involving any staff member and/or security personnel; the physical contact and/or physical restraint; the ejection of a member of the public from the premises; or when a patron, staff member or security personnel is injured as a result of an assault; is recorded in this register. The licensee must ensure the incident register recorded the full names of the staff involved in the incident and produce the register immediately upon request by members of the NSW Police Force, or authorised officers of Liquor and Gaming NSW.
- (e) **Neighbourhood Amenity** - The management of the premises:
 - (i) shall ensure patrons do not crowd or loiter in the vicinity of the premises in such manner that pedestrian movement is obstructed or hindered;
 - (ii) shall ensure that the manner in which the business of the premises is conducted and/or the behaviour of persons entering and leaving the premises does not cause undue disturbance to the amenity of the neighbourhood. In this regard, the management shall be responsible for the control of noise and litter generated by persons and/or premises operations. If so directed by Council, the Management is to

employ private security staff to ensure that this condition is complied with;

- (iii) shall record in an Incident Register full details of any disturbance complaints made by a person to management or staff in respect to the manner in which the business of the premises is conducted and/or the behaviour of persons entering or leaving the premises. Such recording will include time, date, nature of the complaints and any complainant details if provided; and
- (iv) shall respond to any disturbance complaints in a timely and effective manner. All actions undertaken by management / staff to resolve such complaints shall be recorded in the Register.

(f) **Lighting**

- (i) Adequate lighting must be provided to all entrances and exits of the premises, to ensure the safety of all staff and visitors as they arrive, use and leave the premises.

(26) NOISE - ENTERTAINMENT

- (a) The $L_{A10, 15 \text{ minute}}$ noise level emitted from the use must not exceed the background noise level ($L_{A90, 15 \text{ minute}}$) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 5dB between the hours of 7.00am and 12.00 midnight when assessed at the boundary of any affected residence.
- (b) The $L_{A10, 15 \text{ minute}}$ noise level emitted from the use must not exceed the background noise level ($L_{A90, 15 \text{ minute}}$) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) between the hours of 12.00 midnight and 7.00am when assessed at the boundary of any affected residence.
- (c) Notwithstanding compliance with (a) and (b) above, noise from the use when assessed as an $L_{A10, 15 \text{ minute}}$ enters any residential use through an internal to internal transmission path is not to exceed the existing internal $L_{A90, 15 \text{ minute}}$ (from external sources excluding the use) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) when assessed within a habitable room at any affected residential use between the hours of 7am and 12midnight. Where the $L_{A10, 15 \text{ minute}}$ noise level is below the threshold of hearing, T_f at any Octave Band Centre Frequency as defined in Table 1 of International Standard ISO 226 : 2003- Normal Equal-Loudness-Level Contours then the value of T_f corresponding to that Octave Band Centre Frequency shall be used instead.
- (d) Notwithstanding compliance with (a), (b) and (c) above, the noise from the use must not be audible within any habitable room in any residential use between the hours of 12.00 midnight and 7.00am.
- (e) The $L_{A10, 15 \text{ minute}}$ noise level emitted from the use must not exceed the background noise level ($L_{A90, 15 \text{ minute}}$) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 3dB when assessed indoors at any affected commercial premises.

Note: The $L_{A10, 15 \text{ minute}}$ noise level emitted from the use is as per the definition in the Australian Standard AS1055-1997 Acoustics – Description and measurement of environmental noise. The background noise level $L_{A90, 15 \text{ minute}}$ is to be determined in the absence of noise emitted by the use and be representative of the noise sensitive receiver. Background noise monitoring must be carried out in accordance with the long-term methodology in Fact Sheet B of the NPfI unless otherwise agreed by the City's Area Planning Manager.

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

- (a) All relevant performance parameters (including but not limited to requirements, engineering assumptions and recommendations) in the DA Acoustic Report prepared by Acoustic Logic ref 20191184.1 titled 'Environmental Noise Impact Assessment - Council Ref 2020/528193 must be implemented in the development prior to the commencement of its use.
- (b) Prior to the issue of any relevant Construction Certificate, the final construction drawings and final construction methodology must be submitted to Councils Area Planning Manager for approval, assessed and reported to be in accordance with the requirements of the DA Acoustic Report in (a) above, with reference to relevant documentation. This must be carried out by a Suitably Qualified Acoustic Consultant* (see definition below).
- (c) Prior to the issue of any Occupation Certificate, a Suitably Qualified Acoustic Consultant* is to provide a written Acoustic Verification Report to the satisfaction of the Principal Certifier 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.

- (d) All physical aspects of the building's structure installed in order to meet performance parameters in accordance with this condition must be maintained at all times.

(28) 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 \(NPfI\)](#) 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 NPfI 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 NPfI are applicable to relevant noise from the development measured in accordance with this condition, however duration corrections are excluded from commercial noise.

SCHEDULE 1B

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

(29) LANDSCAPING OF THE SITE

- (a) A detailed landscape plan of the roof terraces, drawn to scale, by a qualified landscape architect or landscape designer, must be submitted to and approved by Council's Area Coordinator Planning Assessments prior to the issue of a Construction Certificate for above ground building works. The plan must include:

- (i) location of existing and proposed structures on the site, including any existing landscaping if already installed under SSD Consents;
- (ii) details of earthworks and soil depths including mounding and retaining walls and planter boxes (if applicable). The minimum soil depths for planting on slab must be 1000mm for trees, 450mm for shrubs and 200mm for groundcovers;
- (iii) location, numbers, type and supply of plant species, with reference to NATSPEC (if applicable);
- (iv) details of planting procedure and maintenance; and
- (v) details of drainage, waterproofing and watering systems.

The amount of soft landscaping (trees, mass planting, planters) provided to the terraces must be generally the same as that within SSD 5824 approved plan L09/10 Terraces Rev G dated 23.09.2016 to the satisfaction of the City of Sydney.

- (b) Prior to the issue of a Construction Certificate, a maintenance plan is to be submitted to and approved by the Accredited Certifier. The maintenance plan is to be complied with during occupation of the property.
- (c) All landscaping in the approved plan is to be completed prior to any Occupation Certificate being issued.

(30) CONSTRUCTION AND FITOUT OF FOOD PREMISES

The construction, fitout and finishes of the food premises must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code under the *Food Act 2003* and AS 4674 – 2004 Design, Construction and Fitout of Food Premises.

Note: Copies of AS 4674-2004 may be obtained from the Standards Australia Customer Service on telephone 1300 65 46 46 or by visiting the website www.standards.com.au.

Copies of the Food Standards Code (Australia) may be obtained by contacting the Food Standards Australia and New Zealand Authority on telephone (02)

6271 2222, email info@foodstandards.gov.au or by visiting the website www.foodstandards.gov.au.

(31) COOLROOMS

Coolrooms, refrigerated chambers and strong-rooms must be constructed in accordance with G 1.2 of the *Building Code of Australia*, and:

- (a) The floor of the coolroom must be graded to the door and a floor trapped waste outlet must be located outside the coolroom as near as possible to the door opening.
- (b) All proposed shelving in the coolroom must be free-standing, constructed of galvanised steel angle section or other approved material with the lowest shelf at least 150mm clear of the floor.
- (c) The floor of the coolroom must be constructed of impermeable concrete or coated, topped or otherwise finished with an impervious material to a smooth even surface and coved at the intersections with the walls to a minimum radius of 25mm.
- (d) Must be fitted with a door that can be opened at all times from inside without a key.
- (e) An approved audible alarm device must be located outside the coolroom(s) but controllable only from within the coolroom(s) and must be able to achieve a sound pressure level outside the chamber or coolroom(s) of 90 dB(A) when measured 3 metres from a sounding device.

(32) FOOD PREMISES – DETAILED PLANS

- (a) Detailed and scaled plans of all kitchen, bar, food preparation, waste and storage areas, food handler toilets and all areas associated with the food business must be prepared in accordance with the *Australia New Zealand Food Standards Code – 3.2.3 – Food Premises and Equipment* under the *Food Act 2003* and *AS 4674 - Design, Construction and Fit-out of Food Premises*.
- (b) Prior to the issue of a Construction Certificate the plans required by (a) of this condition must be submitted to and approved in writing by the Accredited Certifier.

(33) GREASE AND LIQUID WASTE TRAPS

- (a) A grease trap if required by Sydney Water must be installed in accordance with Sydney Water requirements and:
 - (i) must be installed by a suitably qualified and licensed plumber in accordance with the *Plumbing Code of Australia*;
 - (ii) the grease trap must not be located in any kitchen, food preparation or food storage area;

- (iii) be suitably constructed and installed in a location which allows it to be easily and effectively cleaned and emptied; and
 - (iv) be suitably constructed and located as not to encourage the harbourage of pests and be effectively pest proofed.
- (b) In-sink and in-floor waste bucket traps must be installed in all sinks and floor wastes in all commercial kitchens and food preparation areas and must be carried out by a suitably qualified and licensed plumber in accordance with the *Plumbing Code of Australia*.

(34) HOT WATER SERVICE

The capacity of the hot water service must ensure that a constant supply of hot water is provided to the premises at all times for all sinks and basins including hand wash basin/s. The temperature of the hot water provided to the sinks must be in accordance with *AS4674 – Design, Construction and Fit-out of Food Premises* and the *Australia New Zealand Food Standards Code 3.2.2 - Food Safety Practices* and general requirements.

(35) NOTIFICATION OF CONDUCT OF FOOD BUSINESS

- (a) The use shall not commence until the food business has notified Council with their food business details in accordance with the *Food Act 2003* and *The Australia New Zealand Food Standards Code – 3.2.2 – Food Safety Practices and General Requirements, Clause 4*.
- (b) An Occupation Certificate must not be issued until such notification has been received by Council in accordance with Clause (a) of this condition.

Note: Registration forms are available on Council's website www.cityofsydney.nsw.gov.au.

(36) PERSONAL LOCKERS

Clothing lockers or change rooms for male and female staff must be provided in the premises or a dedicated, separate and isolated space for personal items must be provided in a separate location to the food handling and storage areas, in accordance with *AS4674 - Design, Construction and Fit out of Food Premises*.

(37) SANITARY FACILITIES – FOOD PREMISES

The sanitary facilities must be separated from all food handling areas via an airlock, self-closing door or mechanical ventilation in accordance with the provisions of the *Building Code of Australia*, Part F 3.1, 4.8 and 4.9.

(38) TOILETS FOR FOOD HANDLERS

- (a) Adequate toilet facilities must be available for food handlers working for the food business. Toilets and associated facilities must be provided in accordance with *AS4674 – Design, Construction and Fit-out of Food*

Premises and the Australia New Zealand Food Standards Code, 3.2.3 - Food Premises and Equipment.

- (b) Details of the location of toilets which are provided exclusively for the use of food handlers and staff working at the business must be submitted for the approval of the Accredited Certifier prior to the issue of a Construction Certificate.
- (c) The toilet(s) must be provided with a hand wash basin, with hot and cold running water mixed through a common spout, hand wash soap, hygienic hand drying facilities and hands-free taps.

(39) WASTE STORAGE AREA

- (a) To ensure the adequate storage and collection of waste from the food premises, all garbage and recyclable materials emanating from the premises must be stored in a designated waste storage area. The waste storage area must be designed and constructed in accordance with *AS 4674 – Design, Construction and Fit-out of Food Premises, Australia New Zealand Food Standards Code 3.2.3 – Food Premises and Equipment* and comply with the *Council Policy for Waste Minimisation in New Developments*, and must be:
 - (i) provided with a hose tap connected to the water supply;
 - (ii) paved with impervious floor materials;
 - (iii) coved at the intersection of the floor and walls;
 - (iv) graded and drained to a waste disposal system in accordance with the requirements of the relevant regulatory authority (Sydney Water);
 - (v) adequately ventilated (mechanically or naturally) so that odour emissions do not cause offensive odour or air pollution as defined by the *Protection of the Environment Operations Act 1997* or a nuisance;
 - (vi) fitted with appropriate interventions to meet fire safety standards in accordance with the *Building Code of Australia*;
 - (vii) provided with the appropriate number and size of bins adequate for the storage of waste generated by the business, including recycling; and
 - (viii) appropriately managed so that it does not attract pests or create litter.
- (b) Detailed plans and specifications for the construction of the waste storage area must be submitted to and approved by the Accredited Certifier prior to the issue of the Construction Certificate and must be constructed in accordance with such plans and specifications prior to the issuance of any Occupation Certificate.

(40) MECHANICAL VENTILATION

- (a) The premises must be ventilated in accordance with the *Building Code of Australia* and *AS1668.1 and AS1668.2 - 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 AS1668.2 - 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 and certified in accordance with Clause A5.2(1)(e) of the *Building Code of Australia*, to the satisfaction of the Accredited Certifier prior to the issue of a Construction Certificate.
- (c) Prior to issue of any 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 A5.2(1)(e) of the *Building Code of Australia*, must be submitted to the Principal Certifier.

(41) FOOD PREMISES – ADDITIONAL MECHANICAL VENTILATION REQUIREMENTS

- (a) The cooking appliances require an approved air handling system designed in accordance with *AS1668.1 - The Use of Ventilation and Air-conditioning in Buildings – Fire and Smoke Control in Buildings* and *AS1668.2 - The Use of Ventilation and Air-conditioning in Buildings – Mechanical Ventilation in Buildings*, and must incorporate the following:
 - (i) The discharge exhaust air must be directed in a vertical, or near vertical direction above the roof, and
 - (ii) The cooking appliances must not burn any charcoal, wood or other solid fuel.
- (b) Details of the proposed system must be submitted to and approved by Council's Health and Building Unit in writing prior to the issue of a Construction Certificate.

(42) ACCESS AND FACILITIES FOR PERSONS WITH DISABILITIES

The building must be designed and constructed to provide access and facilities for people with a disability in accordance with the *Building Code of Australia*.

If, in complying with this condition, amendments to the development are required, the design changes must be submitted to and approved by Council prior to a Construction Certificate being issued.

(43) 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 Coordinator Planning Assessments / Area Planning Manager prior to issue of any Construction Certificate.

(44) WORKS REQUIRING USE OF A PUBLIC PLACE

Where construction/building works require the use of a public place including a road or footpath, a separate application under Sections 138/139 of the *Roads Act 1993* must be submitted to and approved by 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.

(45) APPLICATION FOR HOARDINGS AND SCAFFOLDING INSTALLED ON OR ABOVE A PUBLIC ROAD AND OPERATING HOISTING DEVICES INCLUDING BUILDING MAINTENANCE UNITS OVER A PUBLIC ROAD

- (a) Where a hoarding and/or scaffolding (temporary structures) are proposed to be installed on or above a road reservation (footway and/or roadway), a separate application under Section 68 of the *Local Government Act 1993* and Sections 138/139 of the *Roads Act 1993* must be submitted to and approved by Council for such structures.
- (b) Where an approval (Permit) is granted allowing the placement of temporary structures on or above a public road the structures must comply fully with Council's *Hoarding and Scaffolding Policy; Guidelines for Hoardings and Scaffolding*; and the conditions of approval (Permit) granted including:
 - (i) maintaining a current and valid approval for the full duration that the temporary structure/s is in place;
 - (ii) maintaining temporary structure/s in a structurally sound and stable condition for the full duration of installation (Clause 2.11.1);
 - (iii) bill posters and graffiti being removed within 24 hours of their placement (Clause 2.11.2);
 - (iv) maintaining temporary structures and the public place adjoining the work site in a clean and tidy condition including repainting and/or repair of graphics (Clauses 2.11.1, 2.11.4, 2.14.1 and 3.9.3);
 - (v) maintaining a watertight deck (Type B hoardings) to prevent liquids including rainwater, falling onto the footway/roadway surfaces (Clauses 3.9.1 and 3.9.4);
 - (vi) approved site sheds on the decks of a Type B hoarding being fully screened from the public place (Clause 3.9.5);
 - (vii) material and equipment not being placed or stored on the deck of Type B hoardings, unless specifically approved by Council (Clause 3.9.4);

- (viii) providing and maintaining operational artificial lighting systems under Type B hoardings including at high-bay truck entry points (Clause 3.9.9); and
- (ix) ensuring all required signage, artwork or historic images are provided and fully maintained to the City's requirements (Clauses 3.4, 3.9.3, 3.9.6, 3.9.8, 3.10.1 and 4.2).

If it is proposed to operate a hoisting device including a building maintenance unit above a public road which swings, hoists material/equipment and/or slews/wind vanes any part of the device over the public road, a separate application under Section 68 of the *Local Government Act 1993* and Sections 138/139 of the *Roads Act 1993* must be made to Council to obtain approval.

Note: 'Building maintenance unit' means a power-operated suspended platform and associated equipment on a building specifically designed to provide permanent access to the faces of the building for maintenance (*Work Health and Safety Regulation 2017*).

(46) 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.

(47) WASTE AND RECYCLING MANAGEMENT - COMMERCIAL

- (a) The Waste and Recycling Management Plan accompanying this Development Application has not been approved by this consent.
- (b) A Waste and Recycling Management Plan is to be approved by the Accredited Certifier prior to a Construction Certificate being issued. The plan must comply with the Council's *Guidelines for Waste Management in New Developments 2018*. All requirements of the approved Building Waste and Recycling Management Plan must be implemented during construction of the development.
- (c) Dedicated space to be provided within the development for the storage and recycling of bulky waste, problem waste, strip out and food waste.

UPON COMPLETION OF THE DEVELOPMENT

- (d) Prior to any Occupation Certificate being issued or the use commencing, whichever is earlier, the Principal Certifier must ensure that waste handling works have been completed in accordance with: the Waste and Recycling Management Plan; other relevant development consent conditions; and Council's *Guidelines for Waste Management in New Developments 2018*.

(48) WASTE AND RECYCLING COLLECTION CONTRACT

Prior to any Occupation Certificate being issued and/or commencement of the use, whichever is earlier, the building owner must ensure that there is a contract

with a licensed contractor for the removal of **all waste**. No garbage is to be placed on the public way, e.g. footpaths, roadways, plazas, reserves, at any time.

(49) SYDNEY WATER CERTIFICATE (TAP-IN)

- (a) The approved plans must be submitted to Sydney Water's "Tap-in" online service to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Sydney Water's "Tap-in" online service is available at www.sydneywater.com.au, (see Plumbing, Building & Development and then Sydney Water "Tap-in").
- (b) The Consent Authority or a Principal Certifier must ensure that Sydney Water has appropriately stamped the plans before the commencement of work.

SCHEDULE 1C

DURING CONSTRUCTION/PRIOR TO OCCUPATION/COMPLETION

(50) 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.

(51) HOURS OF WORK AND NOISE – CBD

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

- (a) All work, including demolition, excavation and building 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 7.00am and 7.00pm on Mondays to Fridays, inclusive, and 7.00am and 5.00pm on Saturdays, 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*.

(52) LOADING AND UNLOADING DURING CONSTRUCTION

The following requirements apply:

- (a) All loading and unloading associated with construction activity must be accommodated on site, where possible.
- (b) If, it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.

- (c) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.
- (d) Where hoisting activity over the public place is proposed to be undertaken including hoisting from a Works Zone, a separate application under Section 68 of the Local Government Act 1993 and Sections 138/139 of the Roads Act 1993 must be submitted to and approved by Council.

(53) 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.

(54) USE OF MOBILE CRANES

The following requirements apply:

- (a) Mobile cranes operating from the road must not be used as a method of demolishing or constructing a building.
- (b) 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, permits must be obtained from Council for the use of a mobile crane. The permits must be obtained 48 hours beforehand for partial road closures which, in the opinion of Council will create minimal traffic disruptions and 4 weeks beforehand in the case of full road closures and partial road closures which, in the opinion of Council, will create significant traffic disruptions.
- (c) 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 approved hours of construction can occur, subject to a separate application being submitted to and approved by Council under Section 68 of the Local Government Act 1993 and Sections 138/139 of the Roads Act 1993.

(55) USE OF HIGH NOISE EMISSION APPLIANCES / PLANT

- (a) The operation of high noise emission appliances, plant and/or machinery such as pile – drivers, rock breakers and hydraulic hammers and those which are not listed in Groups B, C, D, E or F of Schedule 1 of 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* is restricted to the hours of (EHO to specify hours)

- (b) All reasonable and feasible steps must be undertaken to ensure that the work, including demolition, excavation and building complies 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*.

(56) ENCROACHMENTS – NEIGHBOURING PROPERTIES

No portion of the proposed structure shall encroach onto the adjoining properties.

(57) 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.

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

Revised Acoustic Assessment

Wynyard Place, Maragret Street Tenancy and Level 9 and 10
(Shell House) Development Application

Environmental Noise Impact Assessment

SYDNEY
9 Sarah St
MASCOT NSW 2020
(02) 8339 8000

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Attention To	Brookfield Properties

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6	10/03/2020	20191184.1/1003A/R6/GW	GW		GW
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1 INTRODUCTION

This report presents our assessment of the potential noise impacts associated with the proposed Restaurants & Bars at Margaret Street Tenancy and Level 9 and 10 (Shell House).

In this report, we will:

- Identify noise sources associated with the use of the indoor and outdoor areas;
- Assess the potential operational noise impacts based on requirements by NSW Office Liquor and Gaming and City of Sydney Council DCP; and
- If necessary, recommend management controls and building treatments to ensure noise emissions will comply with these guidelines.

2 SITE DESCRIPTION AND MAJOR ACOUSTIC ISSUES

The proposed restaurants and Bars are on Ground Floor (Margaret St); Level 9 and 10 (Shell House), Wynyard Place. The tenancy will cater for up to 230 patrons across the external terrace areas as detailed in Figures below.

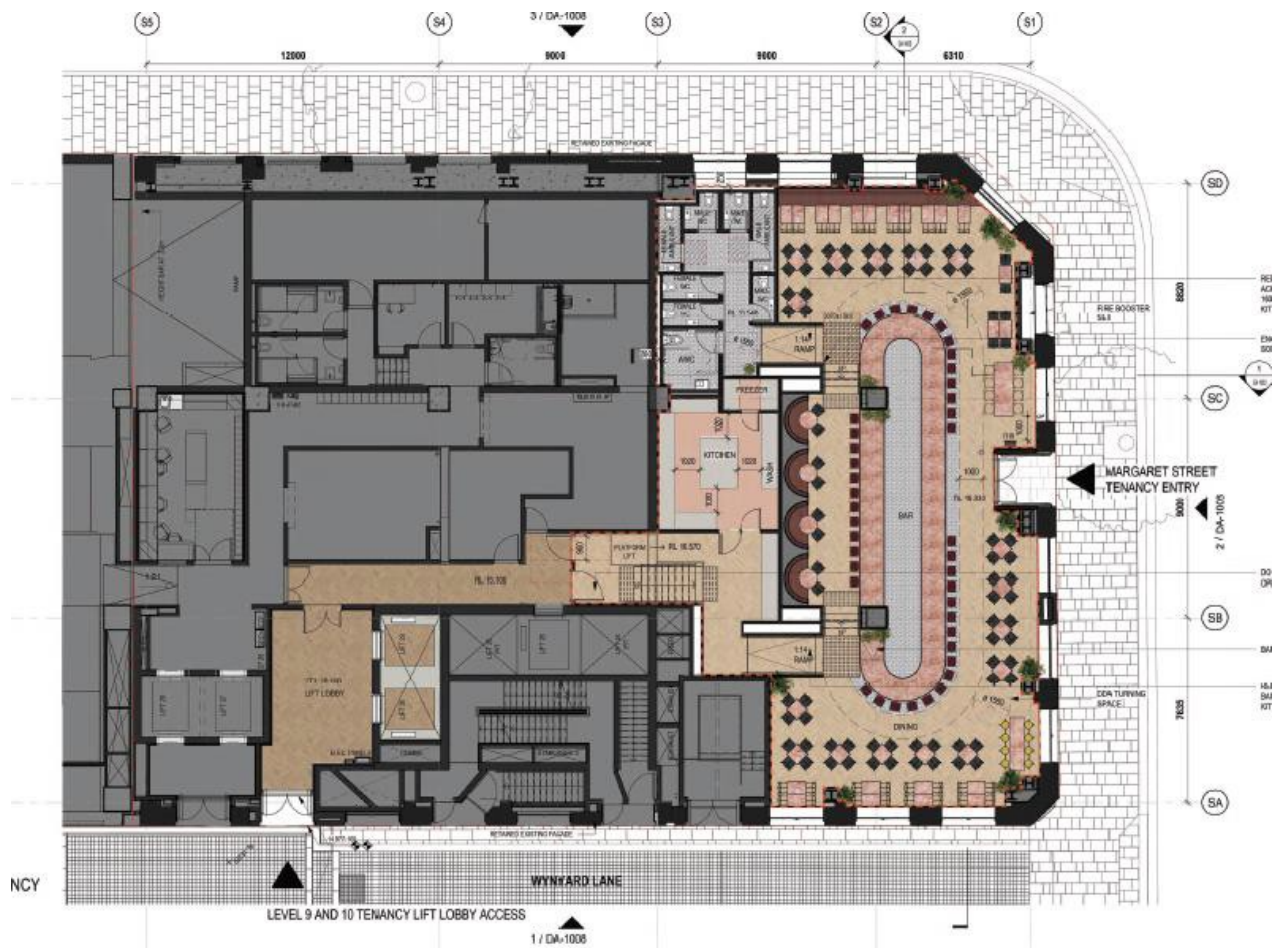


Figure 1 Margaret Street

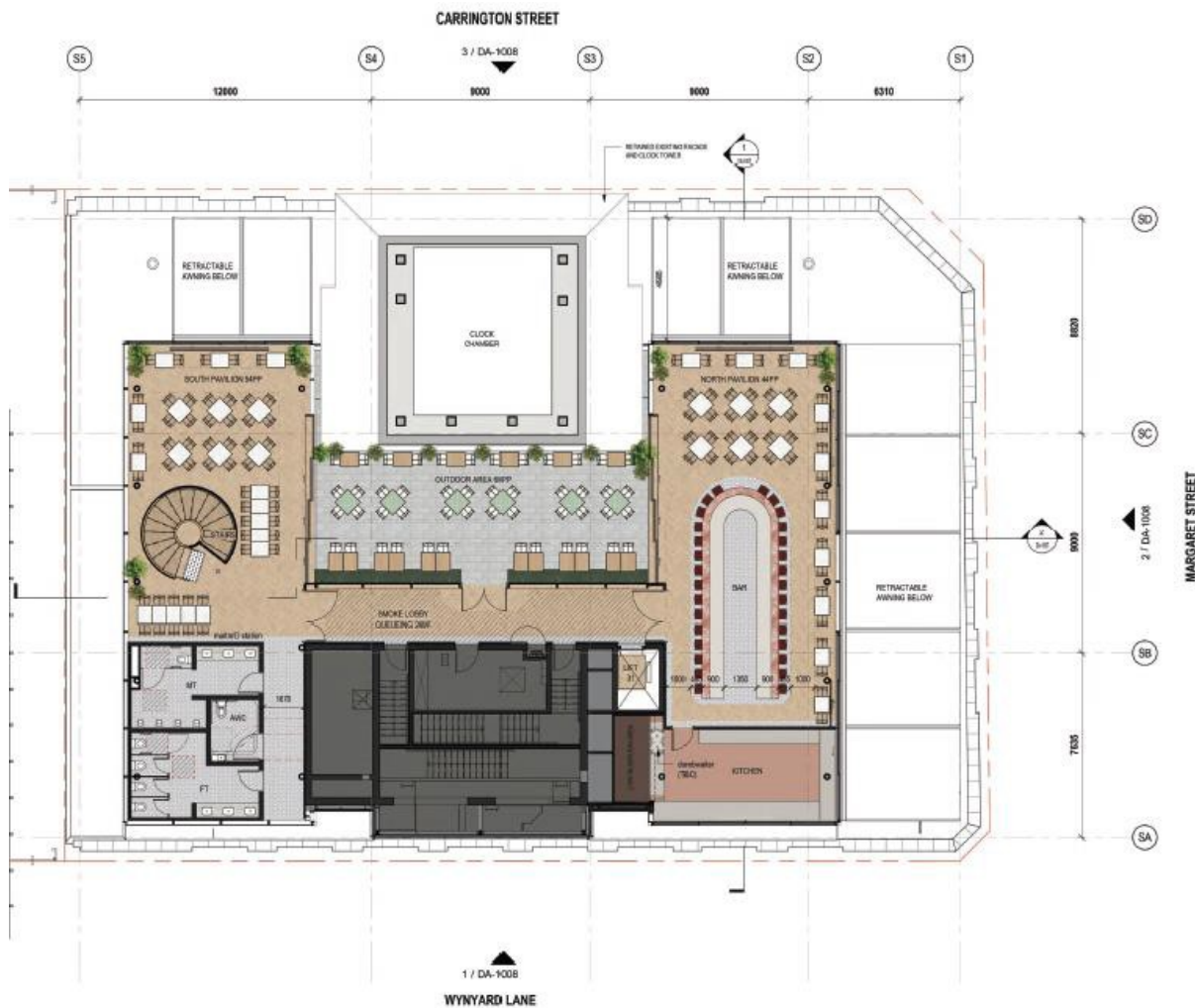


Figure 3 Level 10

Site investigation indicates that the nearest noise receivers are below:

- Receiver 1 (R1)- Travelodge Hotel with fixed facade at corner of York St and Margaret St.
- Receiver 2 (R2)- Amora Hotel with fixed facade located at 19 Jamison St.
- Receiver 3(R3)- Residential / commercial mixed-use development (under construction) at 280 George St. The horizontal distance is approximate 52m to the project boundary.
- Receiver 4 (R4)- Commercial office building located across Margaret St.
- Receiver 5 (R5)- Commercial office building located across Wynyard Lane (275 George St).
- Receiver 6 (R6)- Commercial office located directly underneath the terrace.
- Receiver 7 (R7)- Residential /commercial mixed use building at 44 Margaret St/2 York St. The horizontal distance is approximate 58m distance to the project boundary.
- Receiver 8 (R8)- Residential /commercial mixed use building (Mantra) at 254 George St. The horizontal distance is approximate 96m to the project boundary.

Detail site map is below:

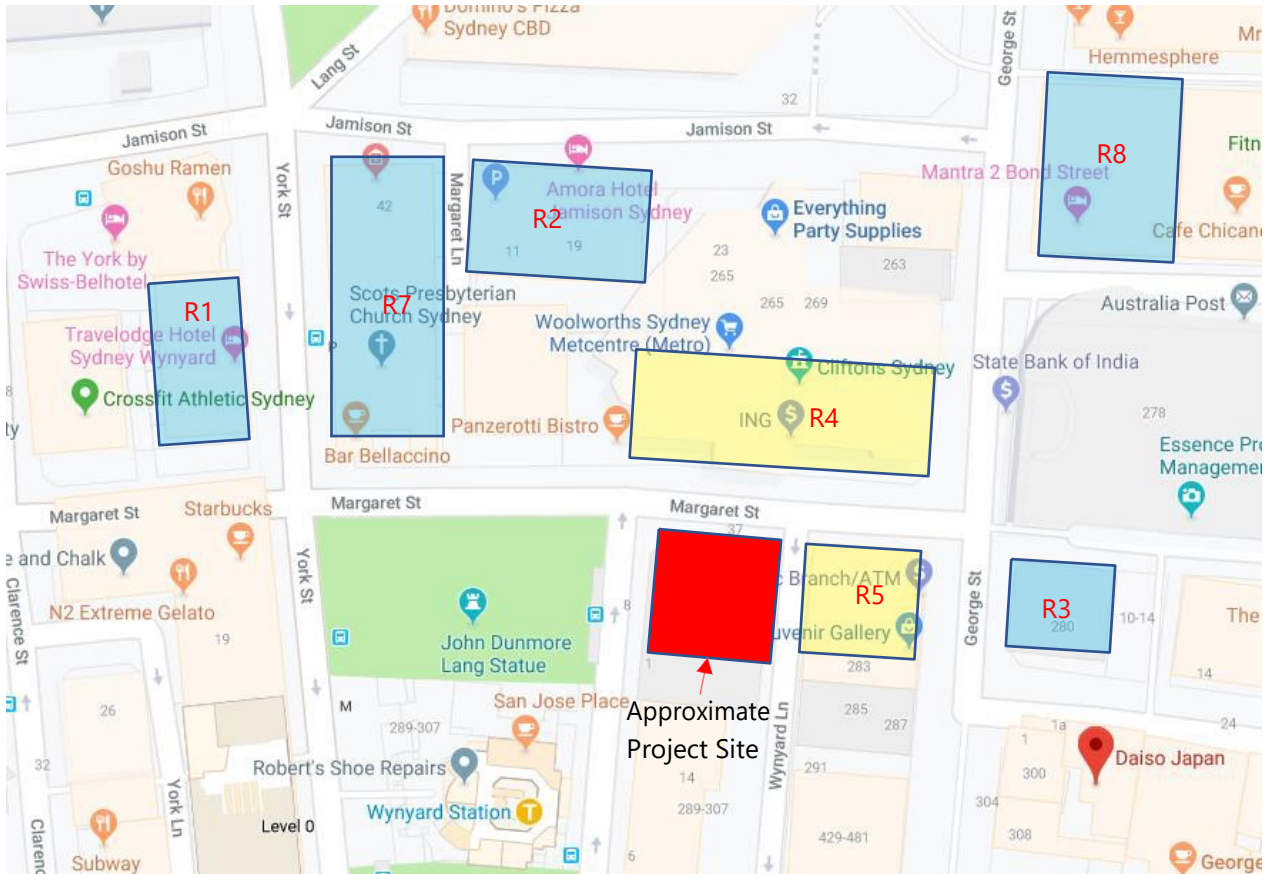


Figure 4 Site Map and Noise Receiver Location

The major noise issues related to the proposed development is below:

- Outdoor patron noise emissions
- Noise emission from the patron's talking and background music on terrace.
- Noise emission from plant service project building.
- Indoor music and patron noise emissions.

Detailed operation is below:

Table 1 – Operation Information

Location	Noise Source
Margaret St	BG music +265 Patrons
Level 9 Out Door	BG music +156 Patrons
Level 9 Indoor	Loud music (from 5pm) +139 Patrons
Level 10 Outdoor	BG music +74 Patrons
Level 10 Indoor	Loud music + 211 Patrons

3 NOISE DESCRIPTORS

Environmental noise constantly varies in level, due to fluctuations in local noise sources including noise from nearby road traffic on surrounding roadways. Accordingly, a 15 minute measurement interval is normally utilised. Over this period, noise levels are monitored on a continuous basis and statistical and integrating techniques are used to determine noise description parameters.

In the case of environmental noise three principle measurement parameters are used, namely L_{A10} , L_{A90} and L_{Aeq} .

The L_{A10} and L_{A90} measurement parameters are statistical levels that represent the average maximum and average minimum noise levels respectively, over the measurement intervals.

The L_{A10} parameter is commonly used to measure noise produced by a particular intrusive noise source since it represents the average of the loudest noise levels produced by the source.

Conversely, the L_{A90} level (*which is commonly referred to as the background noise level*) represents the noise level heard in the quieter periods during a measurement interval. The L_{A90} parameter is used to set the allowable noise level for new, potentially intrusive noise sources since the disturbance caused by the new source depends on how audible it is above the pre-existing noise environment, particularly during quiet periods, as represented by the L_{A90} level.

The L_{Aeq} parameter represents the average noise energy during a measurement period. This parameter is derived by integrating the noise levels measured over the measurement period. L_{Aeq} is important in the assessment of traffic noise impacts as it closely corresponds with human perception of a changing noise environment; such is the character of industrial noise.

4 NOISE EMISSION CRITERIA

4.1 REQUIREMENTS BY COUNCIL AND NSW OFFICE OF LIQUOR AND GAMING

Standard Condition from City of Sydney is below, we use this requirements for both activities' noise and plant service project site:

(1) 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 (NPfI) 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 NPfI 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 LAeq,15 minute (noise level) emitted from the development must not exceed the LA90, 15 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 NPfI are applicable to relevant noise from the development measured in accordance with this condition, however duration corrections are excluded from commercial noise.*

(61) NOISE - LICENSED PREMISES

- (a) The L_{A10} noise level emitted from the use must not exceed the background noise level (L_{A90}) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 5dB between the hours of 7.00am and 12.00 midnight when assessed at the boundary of any affected residence.
- (b) The L_{A10} noise level emitted from the use must not exceed the background noise level (L_{A90}) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) between the hours of 12.00 midnight and 7.00am when assessed at the boundary of any affected residence.
- (c) Notwithstanding compliance with (a) and (b) above, the noise from the use must not be audible within any habitable room in any residential property between the hours of 12.00 midnight and 7.00am.
- (d) The L_{10} noise level emitted from the use must not exceed the background noise level (L_{90}) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 3dB when assessed indoors at any affected commercial premises.
- (e) The use of the premise must be controlled so that any emitted noise is at a level so as not to create an "offensive noise" as defined in the *Protection of the Environment Operations Act 1997* to any affected receiver.

4.2 TO RESIDENTIAL RECEIVERS R3/R7/R8 BOUNDARY

This office has been engaged to prepare DA application of residential /commercial mixed-use development at 280 George St and the following noise emission criteria has been detailed in DA report (reference number: 20151562.1/2511A/R1/TA)

Table 2 – Noise Emission Criteria to R3

Time of Day	31Hz	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	A-Wt.
Day (7am-6pm)	72	71	70	68	66	63	59	52	41	68
Evening (6pm-10pm)	70	69	68	66	64	61	57	50	39	66
Before Mid Night (10pm-Midnight)	68	66	65	63	61	58	54	47	36	63
After Midnight	65	63	62	60	58	55	51	44	33	60

4.3 TO RECEIVER R1 & R2

4.3.1 Internal background noise level

No access to the R1 & R2 is available, however noise measurement has been carried out within the Castlereagh Boutique Hotel by this office previously which have been used as the bases of this assessment.

The recorded background noise level within the hotel room detailed in the table below.

Table 3 - Measured Hotel Background Noise Level

Location	Frequency (Hz) dB									
	31.5Hz	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	A-Weight
Hotel Guest Room	41	41	35	34	32	27	23	21	18	33

4.3.1.1 To Hotel Indoor Space (R1 & R2)

Before Midnight

Table 4 – Criteria for Hotel Receivers – Acoustic Objectives dB(A)L_{10(15minutes)} Internally Before Midnight

F (Hz)	31.5Hz	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	A-wt
dB	44	44	38	37	35	30	26	24	21	36

After Midnight

Table 5 – Criteria for Hotel Receivers – Acoustic Objectives dB(A)L_{10(15minutes)} Internally After Midnight

F (Hz)	31.5Hz	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	A-wt
dB	41	41	33	34	32	27	23	21	18	33

4.4 TO COMMERCIAL RECEIVERS (R4 R5 & R6)- INDOOR SPACE

Table 6 – Criteria for Commercial Receivers Above – Acoustic Objectives dB(A)L_{10(15minutes)} Internally

Location	Time Period	31.5Hz	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	A-wt
Commercial Receivers	Day Time	51	51	45	44	42	37	33	31	28	43

Criteria for the office space above is based on the measured internal background noise level of the office space conducted by Acoustic Logic Consultancy for similar project with AC turned on. The background noise levels are also equal to recommended criteria for office space based on Australian Standard AS2107-2016.

5 NOISE EMISSION ASSESSMENT

5.1 ACTIVITY NOISE

Primary noise sources associated with the proposed terrace, with the potential to cause impacts on surrounding sensitive receivers are;

- Vocal noise of patrons within the terrace which will include up to 238 patrons across the external terrace areas as detailed in Figure 1 above.
- The expected noise level from atmosphere within the facility includes the playing of recorded amplified music.

5.1.1 Outdoor Sitting Noise

Typical patrons' noise within reverberate space has been measured by this office and detailed below:

Table 7 – L₁₀ Sound Power Level of a Patron outdoors

Noise Level dB – Frequency (Hz)									
31.5	63	125	250	500	1k	2k	4k	8k	A-wt
66	66	73	74	79	76	72	63	51	81

For the purpose of this assessment the following assumptions have been included in our assessment:

- The tenancy will be filled to capacity at any time of the proposed operational times.
- Acoustic treatments and management controls recommended in section 7 below.

5.1.2 Background Music Noise

Typical background music within outdoor space has been measured by this office as below:

Table 8 – L₁₀ Sound Pressure Level of BG Music

Noise Level dB – Frequency (Hz)									
31.5	63	125	250	500	1k	2k	4k	8k	A-wt
52	69	79	67	72	73	69	64	59	74

5.1.3 Internal Loud Music + Patrons' Noise

The internal loud music and patrons' noise measured within Northies Cronulla have been adopted to simulate the operational noise levels within the proposed indoor areas. The sound pressure level is below.

Table 9 – L₁₀ Sound Power Level of Internal Loud Music and Patron Noise

Noise Level dB – Frequency (Hz)									
31.5	63	125	250	500	1k	2k	4k	8k	A-wt
85	103	105	99	94	92	90	86	86	98

6 NOISE PREDICTION

6.1 PREDICTED NOISE LEVELS TO INTERNAL SPACE OF R1

Minimum 6mm thick glazing has been assumed for the facade of receiver, the predicted internal noise levels are below.

6.1.1 Before Midnight

Table 10 – Predicted Noise Level to R1 dBL₁₀ Before Midnight

Item	31Hz	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	A-Wt.
Predicted Combined Noise Level	34	34	29	24	24	15	15	<10	<10	24
Criteria	44	44	38	37	35	30	26	24	21	36
Comply ?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	

6.1.2 After Midnight

Table 11 – Predicted Noise Level to R1 dBL₁₀ After Midnight

Item	31Hz	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	A-Wt.
Predicted Combined Noise Level	34	34	27	13	<10	<10	<10	<10	<10	< 20
Criteria	41	41	33	34	32	27	23	21	18	33
Comply ?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	

6.2 PREDICTED NOISE LEVELS TO INTERNAL SPACE OF R2

Minimum 6mm thick glazing has been assumed for the facade of receiver, the predicted internal noise levels are below.

6.2.1 Before Mid Night

Table 12 – Predicted Noise Level to R2 dBL₁₀

Item	31Hz	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	A-Wt.
Predicted Combined Noise Level	36	36	31	25	26	16	16	<10	<10	26
Criteria	44	44	38	37	35	30	26	24	21	36
Comply ?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	

6.2.2 After Midnight

Table 13 – Predicted Noise Level to R2 dBL₁₀ After Midnight

Item	31Hz	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	A-Wt.
Predicted Combined Noise Level	35	35	28	15	<10	<10	<10	<10	<10	< 20
Criteria	41	41	33	34	32	27	23	21	18	33
Comply ?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	

6.3 PREDICTED NOISE LEVEL TO RECEIVER 3 (R3) FACADE

6.3.1 Before Midnight

Table 14 – Predicted Noise Level to R3 dBL₁₀

Item	31Hz	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	A-Wt.
Predicted Combined Noise Level	52	52	52	51	55	52	49	39	28	57
Criteria (Night)	68	66	65	63	61	58	54	47	36	63
Comply ?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	

6.3.2 After Midnight

Table 15 – Predicted Noise Level to R3 dBL₁₀

Item	31Hz	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	A-Wt.
Predicted Combined Noise Level	52	52	49	38	30	26	23	< 10	< 10	36
Criteria (Night)	65	63	62	60	58	55	51	44	33	60
Comply ?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	

6.4 PREDICTED NOISE LEVEL TO R4 INTERNAL SPACE

Minimum 6mm thick glazing has been assumed for the facade of receiver, the predicted internal noise levels are below.

Table 16 – Predicted Noise Level to R4 dBL₁₀

Item	31Hz	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	A-Wt.
Predicted Combined Noise Level	49	49	44	39	40	30	30	14	< 10	39
Criteria	51	51	45	44	42	37	33	31	28	43
Comply ?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	

6.5 PREDICTED NOISE LEVEL TO R5 INTERNAL SPACE

Minimum R_w 35 glazing has been specified for the facade of receiver, the predicted internal noise levels are below.

Jockey sash windows for Level 9 & Level 10 are required with additional 10.38mm glazing fixed internally.

Table 17 – Predicted Noise Level to R5 dBL₁₀

Item	31Hz	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	A-Wt.
Predicted Combined Noise Level	51	51	42	36	36	30	24	< 10	< 10	37
Criteria	51	51	45	44	42	37	33	31	28	43
Comply ?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	

6.6 PREDICTED NOISE LEVEL TO R6 INTERNAL SPACE

Minimum 150mm concrete slab and jockey sash glazing have been used to receiver, the predicted internal noise levels are below.

Table 18 – Predicted Noise Level to R6 dBL₁₀

Item	31Hz	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	A-Wt.
Predicted Combined Noise Level	42	42	47	36	37	28	27	13	< 10	37
Criteria	51	51	45	44	42	37	33	31	28	43
Comply ?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	

6.7 PREDICTED NOISE LEVEL TO RECEIVER 7 (R7) FACADE

6.7.1 Before Midnight

Table 19 – Predicted Noise Level to R7 dBL₁₀

Item	31Hz	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	A-Wt.
Predicted Combined Noise Level	52	52	52	50	55	52	48	39	27	56
Criteria (Night)	68	66	65	63	61	58	54	47	36	63
Comply ?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	

6.7.2 After Midnight

Table 20 – Predicted Noise Level to R7 dBL₁₀

Item	31Hz	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	A-Wt.
Predicted Combined Noise Level	51	51	48	38	30	25	23	<10	<10	35
Criteria (Night)	65	63	62	60	58	55	51	44	33	60
Comply ?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	

6.8 PREDICTED NOISE LEVEL TO RECEIVER 8 (R8) FACADE

6.8.1 Before Midnight

Table 21 – Predicted Noise Level to R8 dBL₁₀

Item	31Hz	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	A-Wt.
Predicted Combined Noise Level	47	47	47	46	51	48	44	35	23	52
Criteria (Night)	68	66	65	63	61	58	54	47	36	63
Comply ?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	

6.8.2 After Midnight

Table 22 – Predicted Noise Level to R8 dBL₁₀

Item	31Hz	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	A-Wt.
Predicted Combined Noise Level	47	47	44	33	25	21	19	<10	<10	31
Criteria (Night)	65	63	62	60	58	55	51	44	33	60
Comply ?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	

7 RECOMMENDATIONS FOR DESIGN & MANAGEMENT

The following building and management controls are recommended;

- Glazing on facades

Table 23 – Glazing Facades

Level	Facade	Glazing Details with seals
Ground	All	6mm
L9 Indoor	North/ South	9.14mm/12mm air gap/ 9.14mm
	East	6mm /12mm air gap/13.52mm
	West	6mm + Jockey Sash + 6mm
L10 Indoor	North/ South	9.14mm/12mm air gap/ 9.14mm
	East	6mm /12mm air gap/13.52mm
	West	6mm + Jockey Sash + 6mm

- Internal Music Noise Controls:

Table 24 – Recommended Internal Music Noise Limit

Level	Time	Music Noise Limit
Ground	Before Midnight	74 dB(A) _{L₁₀}
	After Midnight	74 dB(A) _{L₁₀}
Level 9 Indoor	Before Midnight	95 dB(A) _{L₁₀}
	After Midnight	85 dB(A) _{L₁₀}
Level 10 Indoor	Before Midnight	95 dB(A) _{L₁₀}
	After Midnight	85 dB(A) _{L₁₀}

- Management controls should be utilised to manage patron departure particularly at night and at closing times to ensure that patrons leaving development in a prompt and orderly manner.
- Outdoor speakers can play background music only with maximum Sound Pressure Level 74 dB(A) at 1m distance from the surface of speakers, the speakers should be positioned facing project site only.
- Management control will be carried out by the tenant to ensure that the operational noise to any residential receivers satisfies the requirements by NSW Office Liquor and Gaming and City of Sydney Council DCP at any time.
- All waste removal and deliveries will be considered in the existing waste management plan for the site and can be conducted via the existing basement area.
- All speakers and other noise generating equipment are to be vibration isolated from the building structure using Embelton NR or Supershear Flex mounts.

- Slab thickness shall be minimum 150mm, the tiled or timber floor finish shall achieve impact rating of L_{nTw} 55. Footing of all furniture shall be isolate by rubber mounts. Kitchen bench should be isolated by two layers of waffle pads with metal shim in between.
- New plant service project building shall be assessed at CC stage to ensure that the overall noise emissions satisfy the requirements in Section 4.

8 CONCLUSION

Noise emissions have been predicted and assessed against requirements adopted by the City of Sydney Council for the proposed Restaurants and Bars at Margaret Street Tenancy and Level 9 and 10 (Shell House).

Subject to the implementation of the acoustic mitigations in Section 7 of this report being adopted there is no unacceptable noise impact associated with the proposed development in this report and the noise emissions from the use will comply with the requirements of City of Sydney Council and NSW Office of Liquor and Gaming.

We trust this information is satisfactory. Please contact us should you have any further queries.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'George Wei', is positioned above a horizontal line.

Acoustic Logic Consultancy Pty Ltd
George Wei

Associate Director, MAAS

Attachment C

Plan of Management

Shell House Operational Plan of Management

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INTRODUCTION

1.0 PURPOSE

The purpose of this Operational Plan of Management (*the Plan*) is to establish performance criteria for the operations of Shell House, having regard to the relevant matters under the *Environmental Planning and Assessment Act 1979* and the *Liquor Act 2017* (*the Liquor Act*) and any relevant Regulation under that legislation.

The Licensee must maintain an Operational Plan of Management.

The Operational Plan of Management should be systems based and address:

- Licence conditions and liquor laws compliance
 - Responsible service of alcohol
 - Management of patrons and minimising disturbance to the neighbourhood
 - Effective management and deployment of venue staff particularly addressing security and patron safety, inductions and training
 - Effective management of responses to any concerns raised
- 1) A copy of the current Operational Plan of Management will be maintained at the licensed premises and made available for immediate inspection by members of the NSW Police Force or Inspectors of the Office of Liquor Gaming and Racing.
 - 2) The provisions of this Plan must be adhered to at all times during the execution of the duty of all members of staff and security. Disregarding the provision of this Plan may lead to on-the-spot dismissal.
 - 3) Reference in this Plan to the **Licensee** is a reference to the most senior management person on duty, even in the absence of the Licensee.
 - 4) Reference in this Plan to the **Security Manager** is a reference to the most senior security person on duty, unless the role of Security Manager has been delegated by the Licensee.
 - 5) An obligation or responsibility under this Plan assigned to a Duty or Security Manager may be undertaken by another member of staff, as delegated by the relevant manager.

1.1 LOCATION

Shell House is located above Wynyard Station, one of the country's busiest transport interchanges and occupies a key city block along George Street in Sydney's CBD.

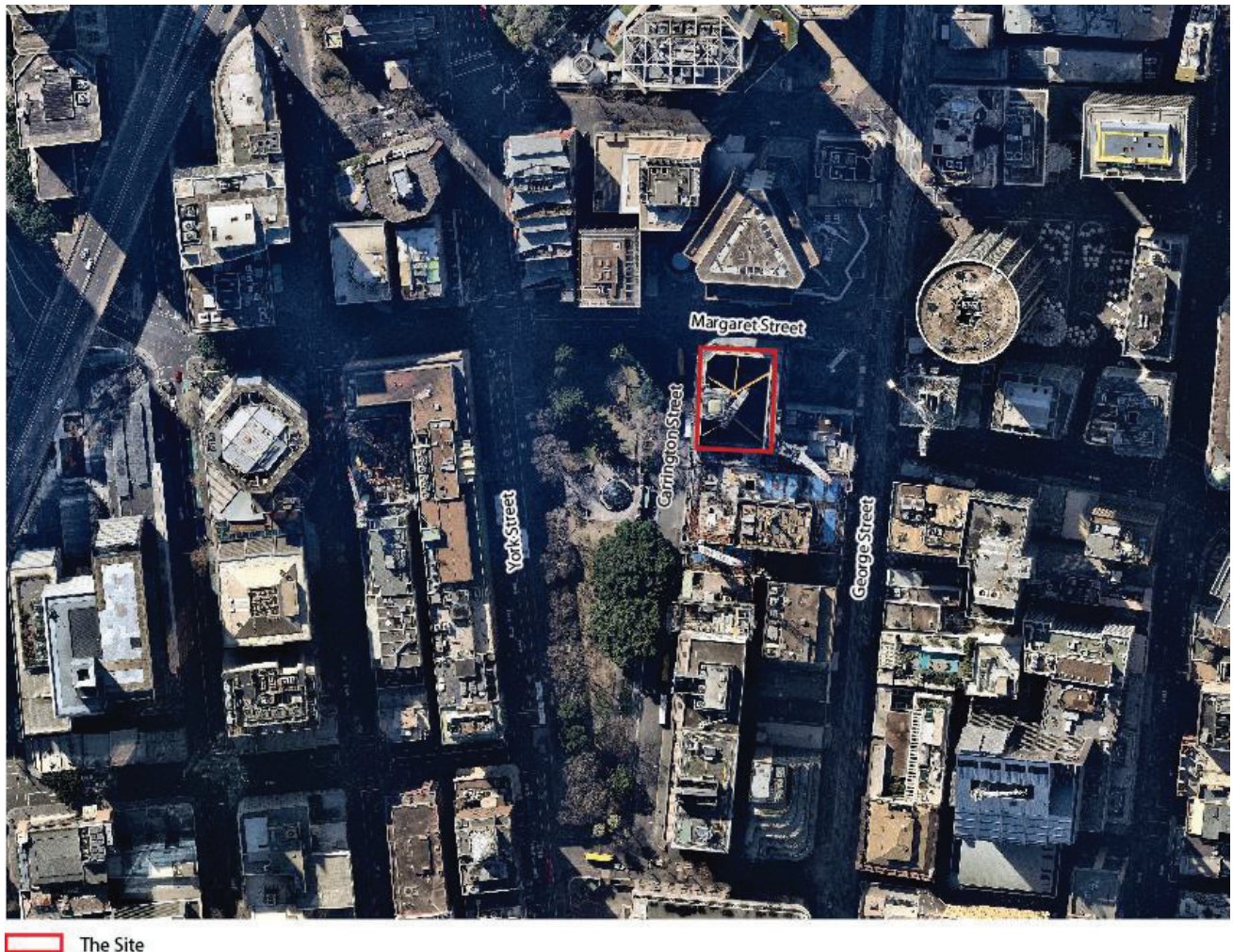


Figure 1 Shell House location

It is proposed that a single operating licensed restaurant and bar will be established within the two-level rooftop pavilion and ground floor levels of Shell House.

1.2 COMPANY OVERVIEW

We have brought together a globally experienced and qualified team comprised of The Point Group with our deep knowledge of hospitality in Sydney heritage settings, the ground-breaking design of Sydney architects Architectus and Woods Bagot, and one of the nation's foremost heritage architects GML Heritage.

The Point Group has five venues currently trading in Sydney and two restaurants in Bali. We have an intimate knowledge of hospitality, most notably operating the Icebergs Dining Room and Bar in Bondi Beach for the past 17 years. We also own and operate two freehold, heritage listed hotels in Surry Hills – The Dolphin Hotel on Crown Street and Hotel Harry on the corner of Wentworth Avenue and Goulburn Street. Both have undergone significant heritage restoration work and our team operate and maintain these buildings successfully.

We are highly motivated by this opportunity to make a significant contribution to conserving and enhancing one of Sydney's newest developments.

2.0 OPERATIONAL DETAILS

The Shell House is to operate as a single tenancy by a single operator with one management team, providing three outlets for patrons to provide a range of experiences.

2.1 HOURS OF OPERATION

Shell House will be open on a daily basis, serving patrons for lunch, dinner and drinks.

Shell House will operate 24 hours, 7 days a week in accordance with the Liquor Licence.

It is intended that Shell House will operate 52 weeks of the year, every day of the year, except for Christmas Day.

2.2 CAPACITY

There is a maximum capacity of 275 @ Margaret Street Level, 315 @ Level 9 and 295 @ Level 10 inclusive of staff, security, entertainers and patrons.

2.3 PUBLIC TRANSPORT

The site's central location and range of public transport options lends itself to travel by public transport and foot. The restaurant / bar will contain maps that show the proximity of key destinations and the area's transport hubs for patrons who may wish to visit using public transport.

2.4 CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The PoM is consistent with the principles of Crime Prevention Through Environmental Design (CPTED) by creating environmental and social conditions that:

- Maximise risk to offenders (increasing the likelihood of detection, challenge and apprehension);
- Maximise the effort required to commit crime (increasing the time, energy and resources required to commit crime);
- Minimise the actual and perceived benefits of crime (removing, minimising or concealing crime attractors and rewards); and
- Minimise excuse-making opportunities (removing condition that encourage/ facilitate rationalisation of inappropriate behaviour).

The safety and security issues addressed in this PoM are consistent with current policies that ensure the quiet amenity of neighbouring properties is maintained at all times during the operation of the premises. All staff, as part of the induction process, are required to be familiar with this PoM.

3.0 MANAGEMENT MEASURES

3.1 GENERAL AMENITY

- 1) The Licensee shall consider the amenity of neighbours and shall take all reasonable measures to ensure the conduct of Shell House does not impact adversely on the surrounding area.
- 2) Levels 9 & 10 will have a designated smoking area; smoking will *not* be allowed anywhere else in the tenancy.
- 3) The Licensee will take all reasonable measures to ensure that the behaviour of staff and patrons when entering or leaving the premises does not detrimentally affect the amenity of the surrounding area.
- 4) Access to the site will be provided by Wynyard Lane and will be clearly designated through signage as part of a future development application.

3.2 THE RESPONSIBLE SERVICE OF ALCOHOL

- 1) The sale and supply of liquor shall be exercised – at all times – in accordance with the provisions of the Liquor Act and Regulation and the Restaurant Licence (**Appendix A**).
- 2) The following operational policies for the Responsible Service of Alcohol shall apply at all times:
 - I. All staff are to be trained with regards to the obligations, practices and procedures of the restaurant / bar with regards to Responsible Service of Alcohol.
 - II. The management does not serve liquor to intoxicated patrons. As well, intoxicated patrons are not allowed to remain on the premises, and due to the nature of the area, this is, and will continue to be tightly controlled by management.
 - III. Management refuses entry to intoxicated persons coming from other venues in order to reduce incidences.
 - IV. All staff, as part of the induction process, are fully briefed on how they should address and caution potentially inebriated or unusually vocal customers in order to minimise the likelihood of disturbing the quiet and good order of the neighbourhood.
 - V. Customers making any noise are asked to leave quietly and quickly and any customers loitering are asked to move on.
 - VI. Additionally, the safety and security issues addressed in this PoM have been devised to ensure the quiet amenity of neighbouring properties is maintained at all times during the operation of the premises.
 - VII. Staff are encouraged to assist with passive surveillance of all areas of the development. Staff will be encouraged to call their Supervisor or Manager if any difficulties arise to quickly "intercept" any potentially noisy, rowdy or abusive patrons to attempt to calm them down as much as possible as they leave.

3.3 COMPLAINTS AND THE INCIDENT REGISTER

- 1) The Licensee shall ensure that details of the following are recorded in the Shell House Incident Register at all times:
 - I. Any incident involving anti-social behaviour occurring in Shell House;
 - II. Any incident that results in a patron of the Shell House requiring medical assistance;
 - III. Any incident that occurred on the Shell House, which involved the intervention of security;
 - IV. Any complaints made directly to the management or staff of the Shell House by local residents, about the operation of the Shell House or the behaviour of its patrons; and
 - V. Any visit by any NSW Police Officer or L&G Special Inspector noting their agency or department, reason for the visit and result of the visit.
- 2) The Incident Register entry is to note under which of the above reasons the entry is being made, including the details of any incidents, what action was taken by security, the level of intoxication of any patrons involved and whether the Police were called.
- 3) The Licensee shall make the Incident Register available to any NSW Police Officer or Liquor & Gaming Special Inspector on request.
- 4) The following details of complaints made to the Shell House are to be recorded in the Incident Register:
 - I. Date and time of the incident that led to the complaint;
 - II. Nature of the complaint;
 - III. Address and contact details of the complainant;
 - IV. Any actions proposed to deal with the complaint; and
 - V. The actions taken and the time and date when that was reported to the complainant.
 - VI. The Incident Register is to be reviewed regularly by the Licensee to ensure that complaints, where possible, are being dealt with appropriately and that sufficient details in relation to incidents are being recorded.

3.4 TECHNICAL NOISE CRITERIA AND NOISE CONTROLS

The new restaurant / bar will be managed to minimise the potential of causing a nuisance. In accordance with the Environmental Noise Impact Assessment prepared by Acoustic Logic and dated 5 November 2019, the following measures will be implemented:

- Glazing on all facades in accordance with the glazing specifications recommended by Acoustic Logic;
- Management controls to manage patron departures particularly at night and at closing times to ensure patrons leave in a prompt and orderly manner;
- Outdoor speakers to play music with a maximum Sound Pressure Level 74 dB(A) at 1m distance from the surface of speakers, the speakers should be positioned facing the project site only;
- All waste removal and deliveries will be considered in the existing waste management plan for the site and can be conducted via the existing basement area;
- Management control will be carried out by the tenant to ensure that the operational noise to any residential receivers satisfies the requirements by NSW Office Liquor and Gaming, and the City of Sydney Council DCP after midnight;
- Speakers and other noise generating equipment are to be vibration isolated from the building structure in locations advised by Acoustic Logic using mounts specified by Acoustic Logic;
- Floor slabs should be the appropriate thickness and achieve the appropriate impact rating and footings of all furniture shall be isolated by rubber mounts. The kitchen bench should also be isolated by two layers of waffle pads with metal shim in between; and
- New plant services should be assessed at the Construction Certificate stage to ensure the overall noise emissions satisfy the specified noise emission criteria provided by Acoustic Logic.

Staff will be encouraged to minimise noise whilst on site and always report any negative behaviour. Reports of all noise complaints will be documented in a register and kept on site. Staff will be encouraged to ensure that customers behave in an appropriate manner whilst on the site and do not disturb the neighbourhood when exiting the premises late at night.

In addition, the premises will be operated in accordance with noise conditions imposed by local authority as part of any development approval as well as any requirements of the relevant licensing authority. All sound emissions and noise management practices will comply with Council's requirements, the Protection of the Environment (Operations) Act 1997 and NSW Office of Liquor, Gaming and Racing (OLGR).

Key initiatives to minimise noise on terraces during normal hours and after hours include:

- Management and staff intervention;
- Installation of noise locks on doors to the terraces / balconies which

- can be used as required;
- Management control will be carried out by the tenant to ensure that the operational noise not be audible to any residential receivers satisfies the requirements by NSW Office Liquor and Gaming, and the City of Sydney DCP after midnight;
- Noise limiting applications on sound systems and equipment;
- Passive Design noise barriers including screens and curtains.

3.5 SIGNAGE

- 1) The Licensee shall be responsible to ensure all signage required under the Liquor Act and Regulation, is displayed and maintained in a prominent position, in accordance with those legislative requirements.

3.6 DELIVERIES

All food and beverage will be delivered via the existing basement area. The basement area will be capable of receiving all goods and managing the waste collection process.

The basement is directly connected to the Back-of-House amenities of Wynyard Place which enables a direct pathway for deliveries, storage and preparation. Ad-hoc event equipment will be managed to ensure minimal disruption.

3.7 WASTE MANAGEMENT

All waste managing will be in accordance with the Waste Management Plan prepared for the proposed development. Waste collection, storage and removal from the site will be managed in accordance with the following principles:

- 1) All waste is to be stored on site in the designated internal waste area;
- 2) Staff will empty bins on a daily basis. Waste will then be collected from the garbage room by a private contractor 7 days per week.
- 3) Waste removal trucks will access the site from the Wynyard Lane level and travel down one level to the loading bays and central waste store areas. The contractors will move the general waste bins or the recyclable waste bins to the loading bays;
- 4) The waste management strategy for the development will be continually evaluated by Building Management, to improve the service provided and to achieve the NSW Government's domestic and commercial waste reduction targets;
- 5) Any rubbish spillage outside the garbage area is to be cleaned immediately by the party responsible.
- 6) The management will ensure that areas surrounding the premises are monitored on a continual basis to ensure that all fire escapes and stairways are kept clear of objects at all times.
- 7) At the start and completion of each business day, a complete patrol will be conducted of the immediate area surrounding the premises to ensure premises is secure, all rubbish is cleared, and the loading dock area is clear and clean.
- 8) As per Sydney City Council's policy the areas will comply with Council's Policy

for Waste Minimisation in New Developments 2005, which requires facilities to minimise and manage waste and recycling generated by the proposal.

3.8 CLEANING & MAINTENANCE

- 1) The Licensee shall ensure Shell House is cleaned daily after close or more frequently as the need arises.
- 2) Cleaning and maintenance regimes to protect and monitor the heritage fabric will be guided by the Tenant Management outline determined in collaboration with OEH and included here.

3.9 MONEY HANDLING

Management will remove money from cash points periodically as appropriate.

All appropriate safety alarms will be installed including back to base security which involves the burglar alarm system being linked to the security company.

3.10 SUSTAINABILITY MEASURES

A full outline of sustainable operational practices that will be employed by the Shell House are summarised in the Development Application.

3.11 STAFF INDUCTION & TRAINING

All staff will be inducted via an online training and induction platform, which records their satisfactory completion of all mandatory modules prior to commencing employment.

All relevant floor staff will have completed a valid RSA certificate prior to commencing employment at Shell House.

Regular staff briefings will be held to discuss the operations of the venue and service of alcohol at Shell House.

As part of the Venue training all staff members are required to read and refer back to the following documents, which will be located within the Back of House.

Staff and Management to be aware of acceptable proof of age documents- NSW Proof of Age Card, Drivers Licence, Passport, NSW Photo Card (or equivalent interstate/ overseas documents).

Shell House Dining is committed to ongoing training of all staff in relation to RSA information, updated venue procedures, initiatives, liquor laws and the significance and history of the site.

RSA on the Frontline refresher training held frequently for all team members to assist in compliance.

Managers and relevant staff members will be made aware of all requirements of the

liquor license, council approvals and the Alcohol Management Plan

Security Staff present must hold a valid RSA certificate and when present are required to carry the valid RSA certificate on themselves.

Managers and Security staff are required to hold a briefing prior to any events to discuss the protocols of handling RSA within the venue.

4.0 SECURITY MEASURES

Please note a full security management plan will be drawn up once pertinent operational details are attained.

4.1 GENERAL MEASURES

- 1) The Security Manager shall require all security personnel employed at Shell House to:
 - I. Be dressed in readily identifiable uniform so that they may be clearly visible to patrons and displaying identification as a security guard.
 - II. Report to the Security Manager and Licensee to obtain a briefing on any specific duties to be addressed before commencing duty.
 - III. Monitor Patrons and bring any issues of note to the Licensee or Management Team.
 - IV. Prevent patrons from removing glass or alcohol from the Shell House.
 - V. Prevent patrons entering the Shell House with alcoholic drinks.
 - VI. In the event of an incident, clearly identify themselves as security belonging to the Shell House and attempt to rectify the problem.

4.2 SECURITY STAFF

Once best practice operational security staffing is confirmed, schedule of security staffing will be implemented in accordance with the Security Management Plan.

4.3 CRIME SCENE PRESERVATION

- 1) Immediately after the person in charge of the licensed premises becomes aware of an incident involving an act of violence causing an injury to a person on the premises or in the immediate vicinity, the person must:
 - I. Take all practical steps to preserve and keep intact the area where the act of violence occurred, retain all material and implements associated with the act of violence in accordance with the Crime Scene Preservation Guidelines issued by the NSW Police; and
 - II. Make direct and personal contact with the Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident; and
 - III. Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

4.4 CLOSED CIRCUIT TELEVISION (CCTV)

- 1) CCTV cameras must be placed throughout the Shell House, comprising both public and back of house areas. In general, the camera coverage is intended to specifically record images of the following areas:
 - I. all public entrances and exits, whether or not in use at the time;

- II. all public accessible areas within the Shell House excluding toilets;
- 2) The correct time, date and camera identification must be automatically embedded on all recordings and be able to be read when the image is played back on a different system.
- 3) Recordings must be retained for a period of 30 days before being reused or destroyed. The Licensee shall ensure that no person is able to delete or alter any recordings within the 30 day period.
- 4) Immediate access to the CCTV system and the ability to review recordings on the system is to be granted to NSW Police, OLGR Inspectors and other regulatory officers upon request.

4.5 Building Design and Safety Procedures

The building has been designed to ensure the enjoyment and safety of guests. The base build design including lifts and fire stairs will allow patrons to travel between floors as required. Sprinkler protection of common areas will also be in place. All building emergency systems will be periodically tested including lighting and smoke detectors, sprinkler systems and air conditioning systems as part of normal operational procedures.

A range of measures have been implemented into the design to minimise the impact of noise from adjoining neighbours within the building and to surrounding land uses. From an operational perspective, all patron behaviour will be supervised by management and integrated security.

5.0 OTHER RELEVANT MATTERS

Other relevant matters we encounter as we proceed will be included here.

5.1 FIRE SAFETY AND ESSENTIAL SERVICES

- 1) The Licensee shall ensure that all essential services installed at Shell House are certified annually and shall ensure that they remain in good working order at all times.
- 2) In the event of any malfunctioning of any essential service the Licensee shall ensure that it is rectified as quickly as soon as possible.
- 3) The Licensee shall ensure that lists of telephone numbers of all relevant emergency agencies shall be kept in the office.
- 4) In the event of an emergency on the Shell House we will invoke the specific Shell House Evacuation Plan.

Please refer to the BCA Performance Solution Plan & Fire Emergency Plan for further details.

5.2 AMENDMENT TO THIS PLAN

- 1) If, in circumstances where better management or improved amenity outcomes can be achieved by amendments to this Plan such amendments can be made.
- 2) This Plan and its attachments are also subject to legislative changes to the Liquor Act 2007 and Liquor Regulation 2008. Where the publications of L&G are revised or withdrawn from its website or where legislative changes occur from time to time, the Plan is to be taken to reflect those changes.

Version: 2.0

Dated: December 2020

Attachment D

Proposed Drawings

issue	reason for issue	date	checked
	FOR CLIENT REVIEW	14.02.2020	DC
2	DRAFT ISSUE 1	20.02.2020	DS
3	DRAFT ISSUE	20.03.2020	DC
4	DRAFT ISSUE	20.05.2020	DC
5	DRAFT ISSUE	28.07.2020	DS
6	DRAFT ISSUE	05.08.2020	DS
7	DRAFT ISSUE	17.08.2020	DC
8	DA ISSUE	10.09.2020	DC

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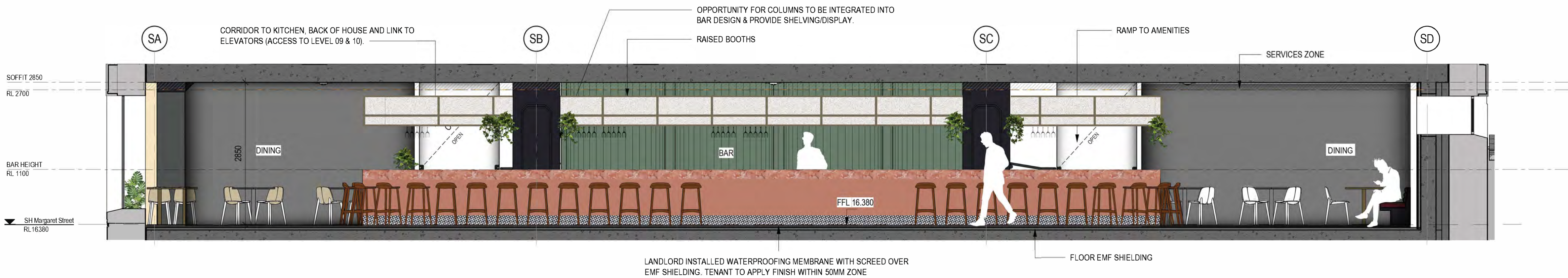
drawing Margaret Street Plan

scale	1 : 100	drawing no.	
drawn	AC	DA-1002	
paper size	A1		
checked	DC	issue	
project no	m: 958 a: 120298.00		8





1 MARGARET STREET SECTION 1
Scale: 1 : 50



2 MARGARET STREET SECTION 2
Scale: 1 : 50

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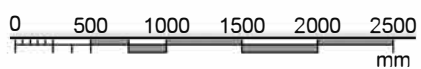
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11. Installation of systems and proprietary products to be strictly in accordance with manufacturers recommendations.
12. Reduced levels (RL) datum is Australian height datum (AHD) co-ordinates are to Australian map grid (MGA).



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1	FOR CLIENT REVIEW	14.02.2020	DC
2	DRAFT ISSUE 1	20.02.2020	DS
3	DRAFT ISSUE	20.03.2020	DC
4	DRAFT ISSUE	20.05.2020	DC
5	DRAFT ISSUE	05.08.2020	DS
6	FINAL DRAFT	10.09.2020	DC

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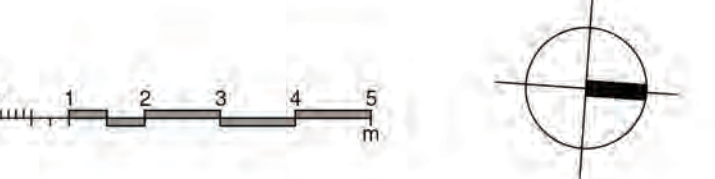
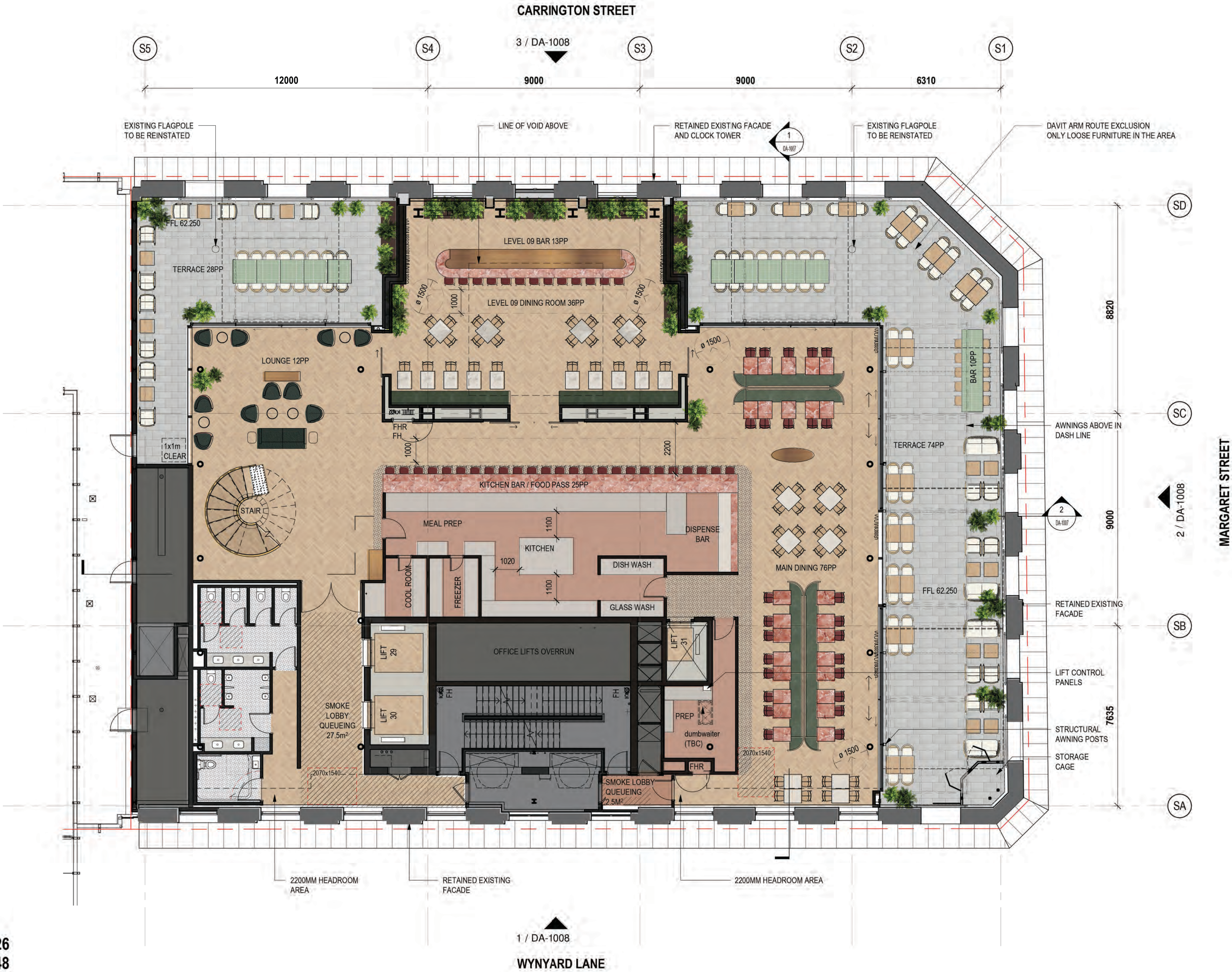
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project Wynyard Place

drawing Margaret Street Retail Sections

scale	1 : 50	drawing no.	DA-1003
drawn	AC		
paper size	A1		
checked	DC	issue	
project no.	m: 958 a: 120298.00		6



issue	reason for issue	date	checked
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2	DRAFT ISSUE 1	20.02.2020	DS
3	DRAFT ISSUE	20.03.2020	DC
4	DRAFT ISSUE	20.05.2020	DC
5	DRAFT ISSUE	28.07.2020	DS
6	DRAFT ISSUE	05.08.2020	DS
7	DRAFT ISSUE	17.08.2020	DC
8	DA ISSUE	10.09.2020	DC
9	DA ISSUE	16.12.2020	DC

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project	Wynyard Place		
drawing	Pavilion - Level 09 Plan		
scale	1 : 100	drawing no.	DA-1004
drawn	AC		
paper size	A1		
checked	DC	issue	
project no	m: 958 a: 120298.00	9	

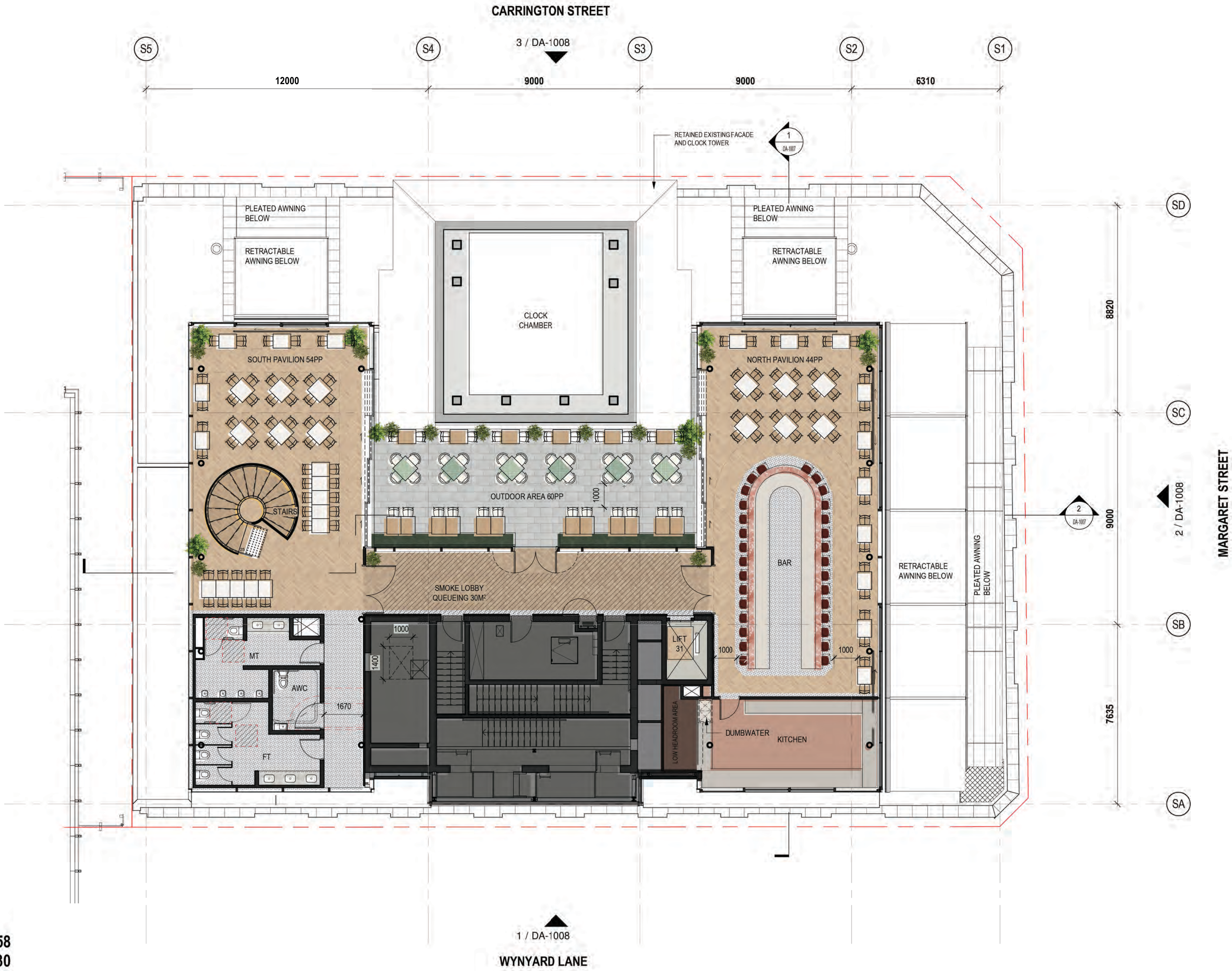
LEVEL 9 TENANCY

DINING 226
BAR SEATING 48
BAR STANDING 21

STAFF 20

TOTAL 315

LEVEL 10 TENANCY	
DINING	158
BAR SEATING	30
BAR STANDING	97
STAFF	10
TOTAL	295



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7	DRAFT ISSUE	17.08.2020	DC
8	DA ISSUE	10.09.2020	DC
9	DA ISSUE	16.12.2020	DC

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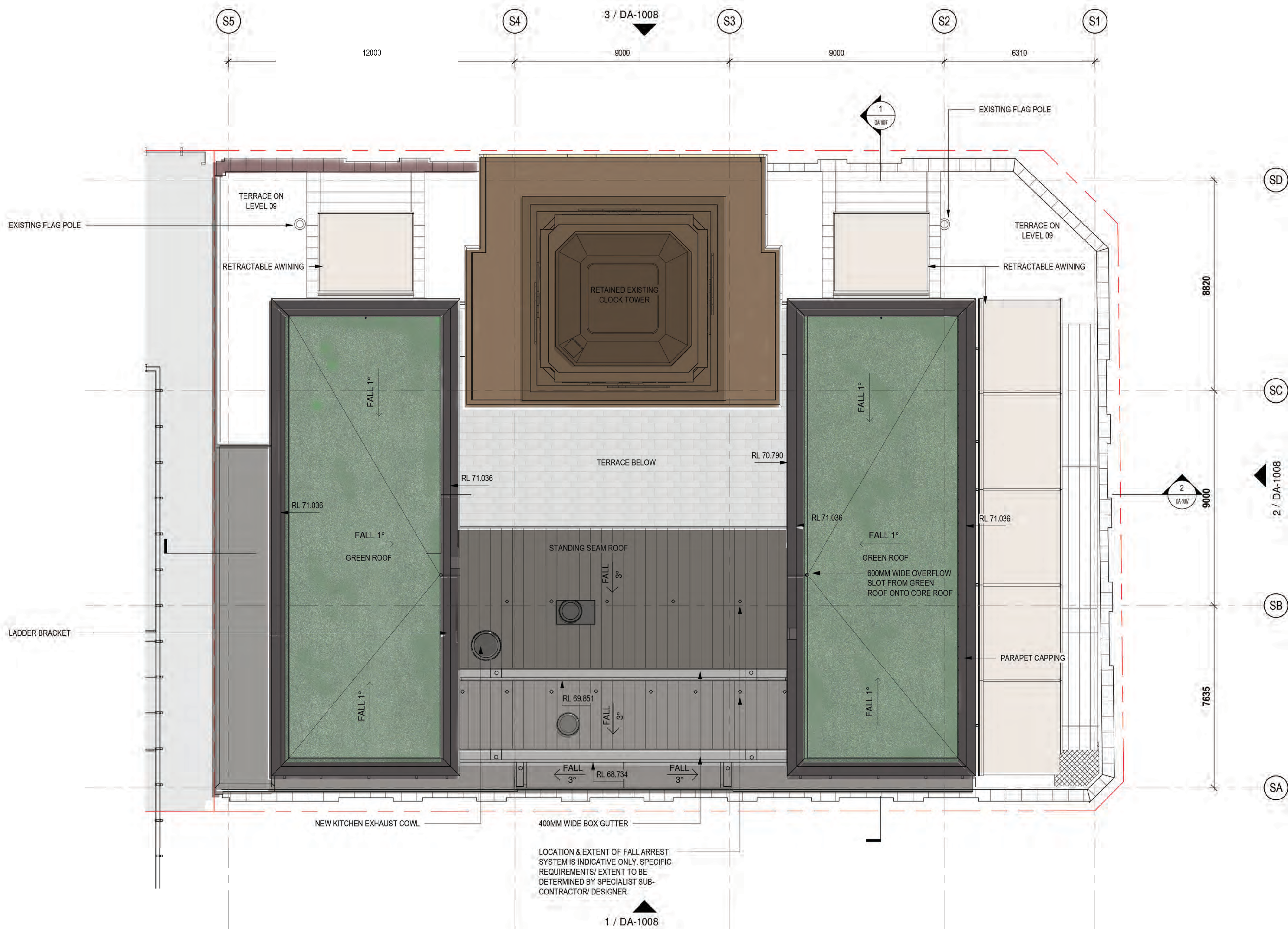
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project Wynyard Place

drawing Pavilion - Level 10 Plan

scale	1 : 100	drawing no.	DA-1005
drawn	AC		
paper size	A1		
checked	DC	issue	9
project no.	m: 958 a: 120298.00		



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issue	reason for issue	date	checked
1	DRAFT ISSUE	28.07.2020	DS
2	DA ISSUE	10.09.2020	DC
3	DA ISSUE	16.12.2020	DC

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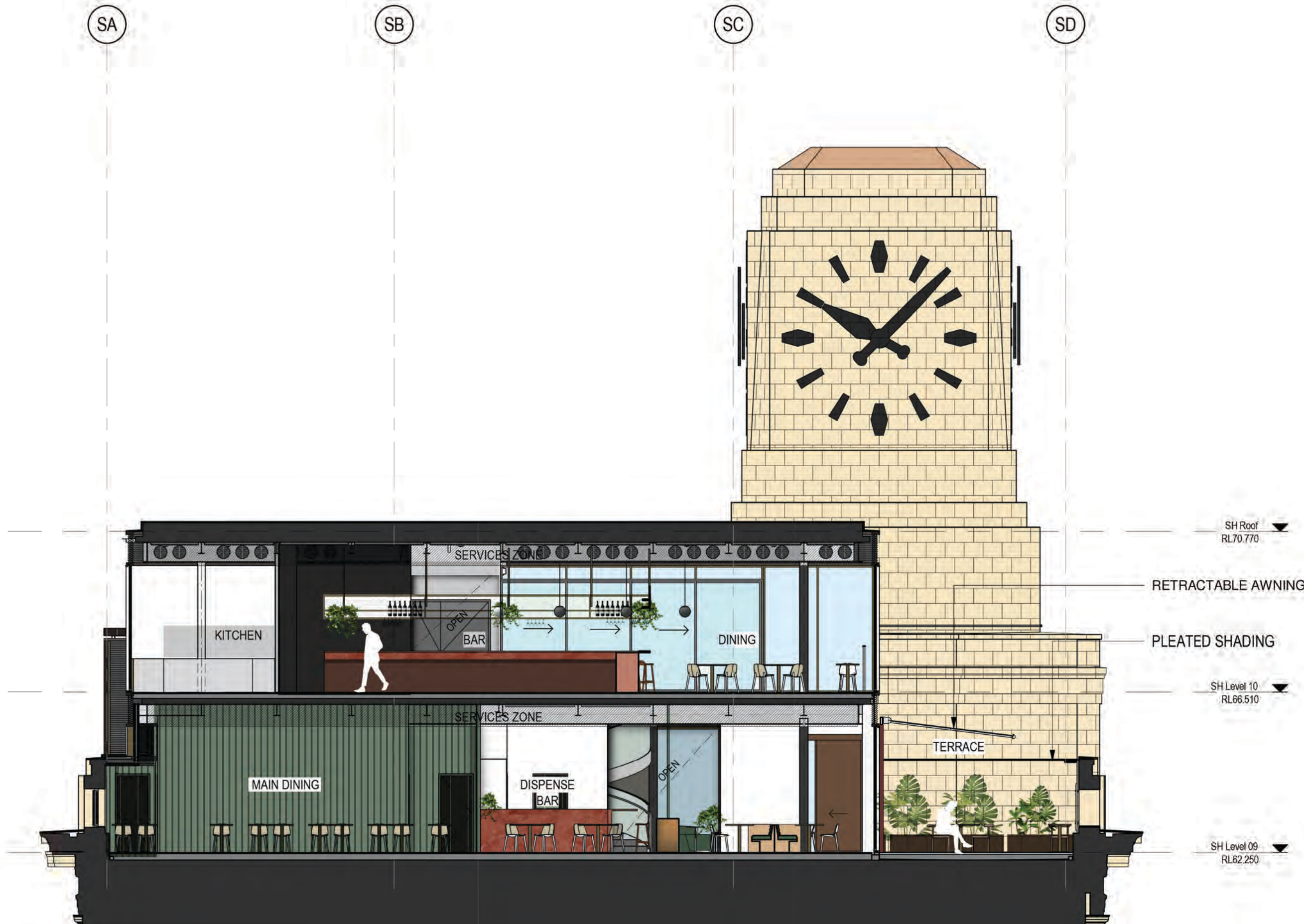
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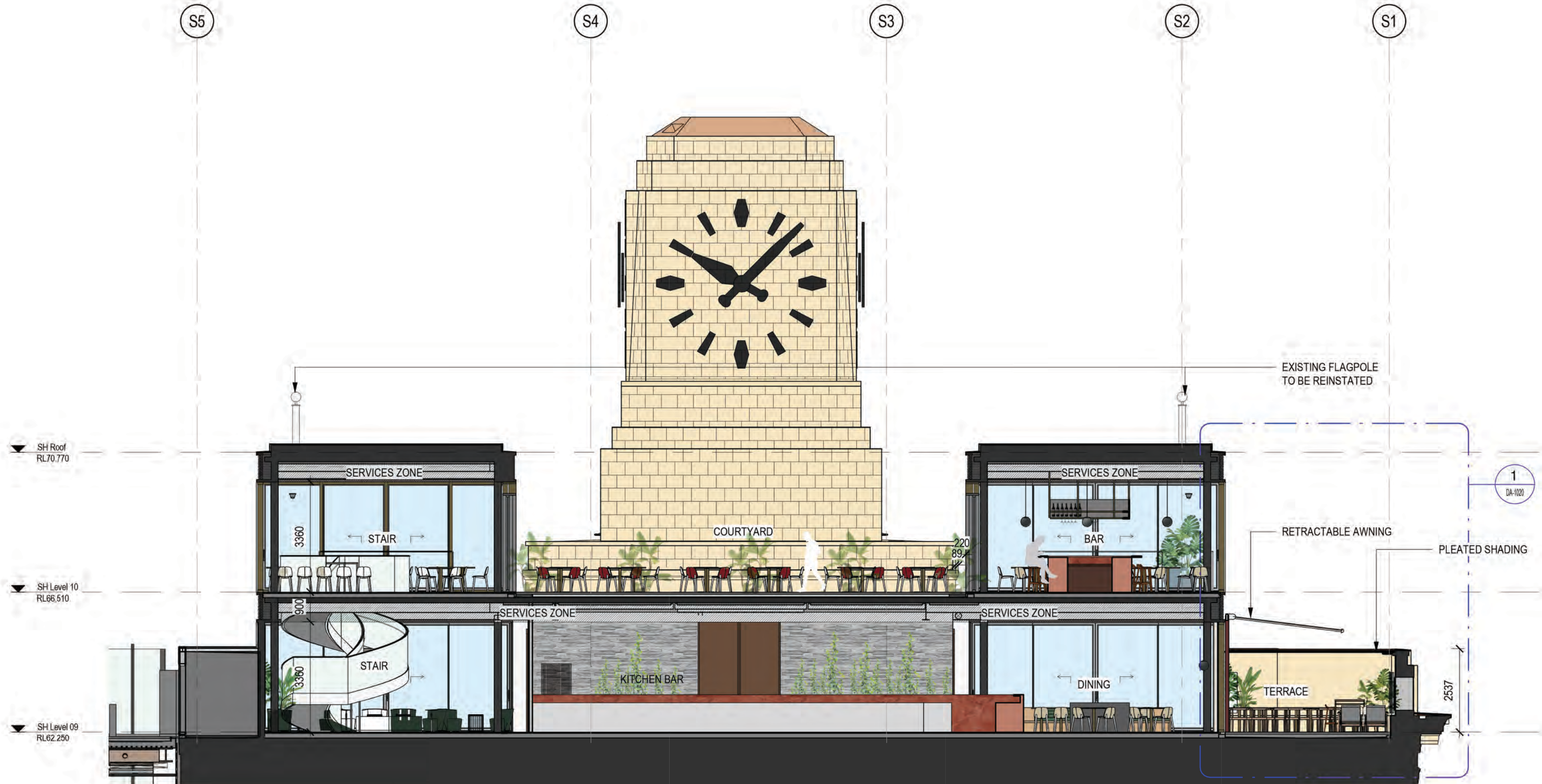
project: Wynyard Place

drawing: Pavilion - Roof Plan

scale	1 : 100	drawing no	DA-1006
drawn	Author		
paper size	A1		
checked	Checker	issue	3
project no	m: 958 a:120298.00		



1 PAVILION CROSS SECTION
Scale: 1 : 100



2 PAVILION LONG SECTION
Scale: 1 : 100

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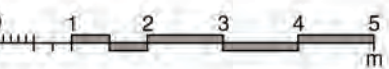
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12. Reduced levels (RL) datum is Australian height datum (AHD) co-ordinates are to Australian map grid (MGA).



issue	reason for issue	date	checked
1	FOR CLIENT REVIEW	14.02.2020	DC
2	DRAFT ISSUE 1	20.02.2020	DS
3	DRAFT ISSUE	20.03.2020	DC
4	DRAFT ISSUE	20.05.2020	DC
5	DRAFT ISSUE	28.07.2020	DS
6	DRAFT ISSUE	05.08.2020	DS
7	DRAFT ISSUE	17.08.2020	DC
8	DA ISSUE	10.09.2020	DC
9	DA ISSUE	16.12.2020	DC

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project	Wynyard Place		
drawing	Pavilion - Sections		
scale	1 : 100	drawing no.	DA-1007
drawn	AC		
paper size	A1		
checked	DC	issue	
project no.	m: 958 a: 120298.00		

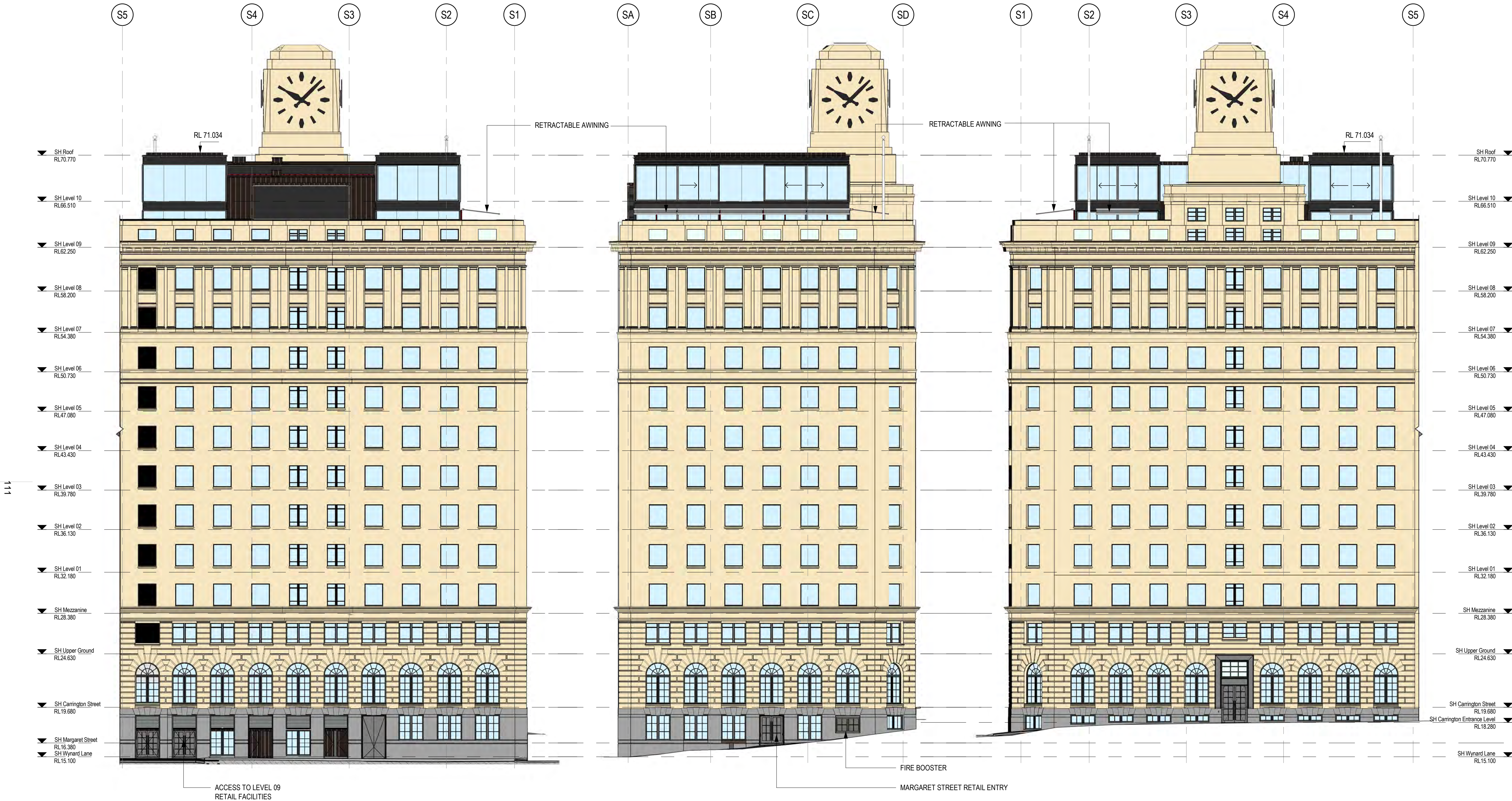
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1 WYNYARD LANE (EAST) ELEVATION
Scale: 1 : 200

2 MARGARET STREET (NORTH) ELEVATION
Scale: 1 : 200

3 CARRINGTON STREET (WEST) ELEVATION
Scale: 1 : 200

issue	reason for issue	date	checked
1	FOR CLIENT REVIEW	14.02.2020	DC
2	DRAFT ISSUE 1	20.02.2020	DS
3	DRAFT ISSUE	20.03.2020	DC
4	DRAFT ISSUE	20.05.2020	DC
5	DRAFT ISSUE	17.08.2020	DC
6	DA ISSUE	10.09.2020	DC
7	DA ISSUE	16.12.2020	DC

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ABN 90 131 246 684

project	Wynyard Place
drawing	Shell House Facades
scale	1 : 200
drawn	DS
paper size	A1
checked	DC
project no	m: 958 a: 120298.00
scale	1 : 200
drawn	DS
paper size	A1
checked	DC
project no	m: 958 a: 120298.00

DA-1008

7



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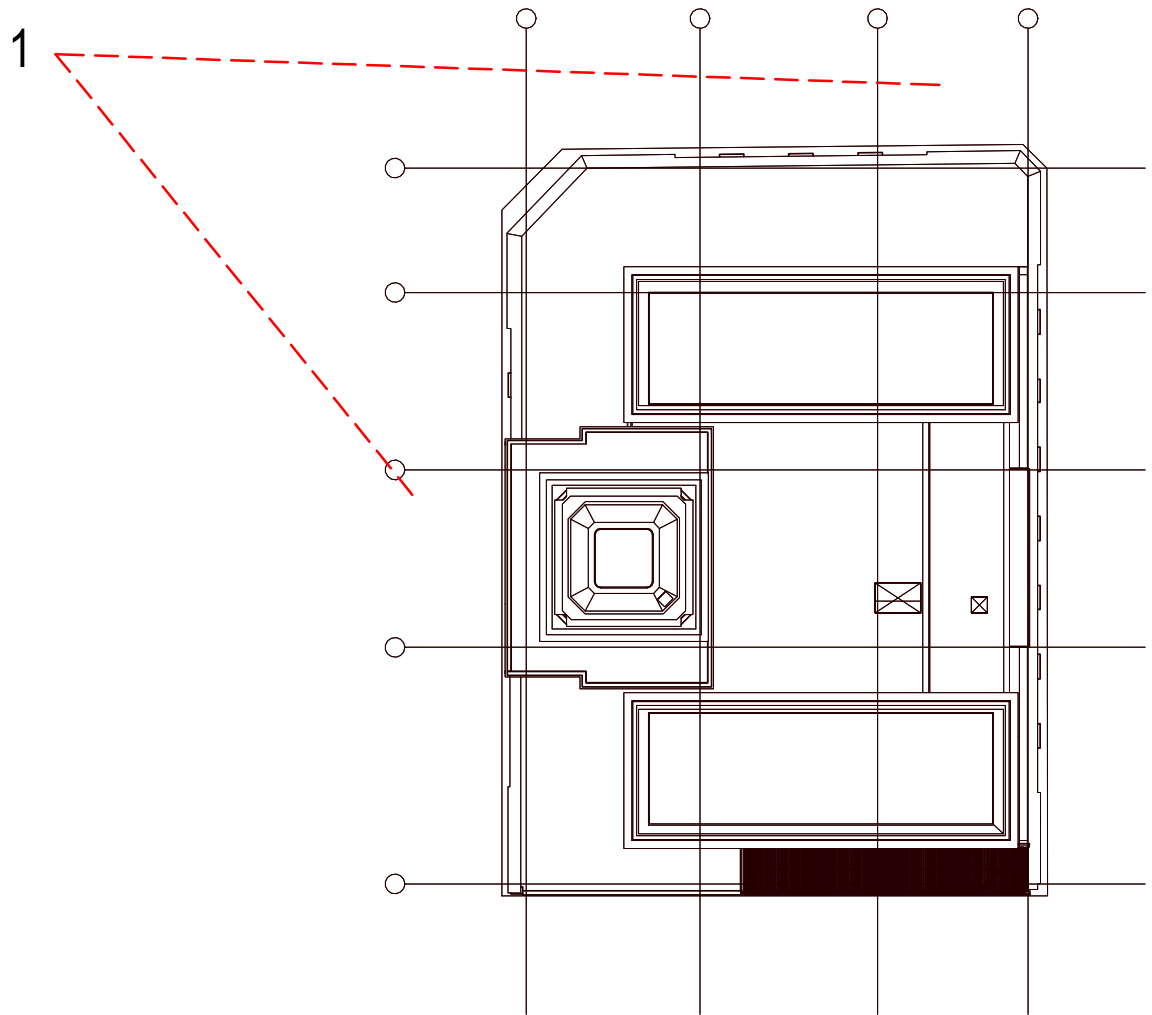
3D Images - Street Level

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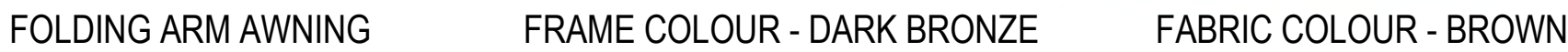
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project		Wynyard Place	
drawing no.			
drawing			
Pavilion - Pergola Details			
scale		drawing no.	
1 : 50		DA-1020	
drawn		DS	
paper size		A1	
checked		DC issue	
project no		3	
m: 958 a: 120298.00			

Item 4.**Development Application: 23 Hughes Street, Potts Point - D/2020/950****File No.:** D/2020/950**Summary**

Date of Submission:	18 September 2020
Applicant:	Australian Urban Projects Pty Ltd
Architect/Designer:	CK Design Group
Owner:	The Trustee for the Bart Grandchildren Family Trust
Planning Consultant	Myriad Planning
Heritage Consultant	Urbis
Cost of Works:	\$2,662,000
Zoning:	The site is located in the R1 General Residential zone. The proposed development is defined as a Boarding House and is permissible with consent in the zone.
Proposal Summary:	<p>Approval is sought for the substantial demolition of an existing contributory building, including all internal floors and walls, to facilitate re-construction of the building for use as a 20-bedroom boarding house. The proposal seeks to retain only the north elevation of the building fronting Hughes Street - with changes to window and door openings - and front sections of the side walls and roof.</p> <p>The proposal includes a 4-storey rear addition built to the boundary of the right-of-way passage to the south of the site off Hughes Place and reconstruction of all internal areas and floors. The proposal will convert the site to a 20-bedroom boarding house accommodating 33 lodgers, with a separate manager's room; internal amenities, including a new lift; and landscaping works within the front setback, involving the removal of 5 existing trees.</p> <p>The application is reported to the Local Planning Panel as it seeks to vary the motorcycle parking standards under State Environmental Planning Policy (Affordable Rental Housing) 2009 by more than 10%.</p>

The proposal will not provide any motorcycle parking spaces. The Affordable Rental Housing SEPP 2009 requires four motorcycle spaces to be provided. A request to vary the standard has been made pursuant to Clause 4.6 of Sydney LEP 2012, which is not supported.

The subject development proposal was previously subject to Pre-DA discussions (PDA/2020/44) in May 2020, where it was advised that the substantial demolition of a contributory building would not be supported.

The current development proposal has been scaled down from the proposal presented at Pre-DA stage, however the application continues to propose substantial demolition and fails to address the principal issue of the loss of heritage fabric, whilst proposing unsympathetic additions which are inconsistent with the existing character and heritage context.

Moreover, it is considered that the proposal represents overdevelopment of the site which consequently results in unacceptable and inadequate level of amenity for future occupants. In doing so, the development fails to achieve the objectives of the R1 - General Residential zone as it represents poor quality residential accommodation which fails to provide for the housing needs of the community.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) State Environmental Planning Policy (Affordable Rental Housing) 2009
- (iv) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

Attachments:

- A. Selected Drawings
- B. Clause 4.6 Variation Request - Motorcycle Parking

Recommendation

It is resolved that consent be refused for Development Application No. D/2020/950 for the following reasons:

(A) **No BASIX Certificate**

The proposal is considered to be BASIX affected development in accordance with the definition outlined under the Environmental Planning and Assessment Regulation 2000.

The provisions of SEPP (BASIX) 2004 Clause(6)(1)(a) requires a BASIX Certificate to accompany a development application for proposed BASIX affected development.

Council Officers informed the applicant that a BASIX Certificate should be submitted on lodgement during Pre-DA discussions (PDA/2020/44) in May 2020.

The applicant has not submitted a BASIX Certificate and contends that one is not required. Council does not support the applicant's assertion that a BASIX Certificate is not required.

(B) **Inconsistent with zone objectives**

The proposed development will provide an unacceptable level of residential amenity for future occupants and is therefore inconsistent with dot one objective of the R1 - General Residential zone in that it does not provide for the housing needs of the community.

The proposed development is non-compliant with multiple residential amenity controls of the Sydney DCP and results in poor quality residential accommodation with an inadequate level of residential amenity which therefore fails to meet a housing need.

(C) **Fails to achieve Design Excellence**

The proposed development fails to achieve the principles of Design Excellence in accordance with Clause 6.21 of the Sydney LEP and fails to adequately address the following provisions:

- (4)(d)(ii) any heritage issues and streetscape constraints;
- (4)(d)(v) the bulk, massing and modulation of buildings;
- (4)(d)(vii) environmental impacts, such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity;
- (4)(d)(viii) the achievement of the principles of ecologically sustainable development;
- (4)(d)(xii) achieving appropriate interfaces at ground level between the building and the public domain; and

- (4)(d)(xiii) excellence and integration of landscape design.

(D) **Heritage impact**

The proposed development is inconsistent with the provisions of Clause 5.10 of the Sydney LEP, as it will result in the substantial demolition of a contributory building which will have an adverse impact upon the significance of the heritage conservation area.

The application is inconsistent with Section 3.9.7 of the Sydney DCP and does not justify the substantial demolition of a contributory building.

The proposed additions are non-compliant with the provisions of Section 3.9.7(3)(a) of the Sydney DCP as they are unsympathetic and do not respect the original or characteristic built form.

(E) **Unacceptable level of residential amenity**

The design of the development restricts natural ventilation and is non-compliant with Section 4.2.3.9 of the Sydney DCP. A number of the bedrooms are deep, single aspect rooms with fixed windows and will therefore have no access to natural ventilation.

12 of the 20 bedrooms have been measured to be undersized as such the proposed development does not comply with Section 4.4.1.2 of the Sydney DCP.

The proposed development offers an inadequate provision of communal indoor living space and a poorly designed communal open space as such the proposed development does not comply with Section 4.4.1.4 of the Sydney DCP.

The proposed stairs and lift lobbies have no access to daylight and the lift lobbies are non-compliant with the 2m width requirement as such the proposed development does not comply with Section 4.2.3.3 of the Sydney DCP.

(F) The proposed development offers an inadequate provision of communal laundry and drying facilities to serve the proposed number of residents of the boarding house space as such the proposed development does not comply with Section 4.4.1.5 of the Sydney DCP **Clause 4.6 - Motorcycle Parking**

The proposed development is non-compliant with Clause 30(1)(h) of the Affordable Rental Housing SEPP 2009 which requires the provision of one motorcycle space every five boarding rooms. The proposed development provides no motorcycle parking representing a 100% departure from the development standard.

The Clause 4.6 request to vary the standard is not supported as the development is inconsistent with the objectives of the R1 - General Residential Zone and therefore the request cannot be supported as it does not comply with the provisions of Clause 4.6(4)(a)(ii).

(G) **Waste**

The proposal to situate a bin storage area within the landscaped front setback will have an adverse impact upon the streetscape as such the proposed development does not comply with Section 3.14 of the Sydney DCP.

(H) Tree management

The proposed removal of Tree 1 and Tree 5 is not supported as they are identified as trees of moderate to high landscape which make a positive contribution to the streetscape, as such the proposed development does not comply with Section 3.5.3 of the Sydney DCP.

(I) Inadequate information for assessment

The applicant has provided inadequate information to facilitate thorough assessment of the development proposal and its impacts, as follows:

- A BASIX Certificate has not been provided, nor has any other details of sustainability commitments, to determine the development's compliance with Section 3.6 of the Sydney DCP.
- The applicant has not undertaken an assessment of the development's impact upon constraining solar access to the lightwell benefitting 25 Hughes Street to determine whether the proposal will conflict with the provisions of Section 4.2.3.2 of the Sydney DCP.
- The applicant has not submitted any information or analysis of view loss to determine the extent of any impact in accordance with Section 4.2.3.10 of the Sydney DCP.

(J) Public interest

The proposed development will adversely impact upon the heritage significance of the site and proposes unsympathetic additions, whilst providing an unacceptable level of amenity to future occupants and constraining the existing level of amenity to neighbouring properties, and is therefore not in the public interest.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 8 DP 10682, known as 23 Hughes Street, Potts Point. It is rectangular in shape with area of approximately 287.5sqm. It has a primary street frontage to Hughes Street and a secondary street frontage to a right of way off Hughes Place. The site is located close to the intersection of Hughes Street and Tusculum Street.
2. The site contains a three-storey brick building containing 12 bedrooms and provides backpacker accommodation for up to 56 guests plus one on site manager. A communal kitchen/dining room and outdoor terrace are located on the ground floor. A right of way and easement measuring 1.5m in width extends across the rear of the site.
3. The subject site can be characterised as an Inter-War residential flat building with later non-original rear additions visible from Hughes Place.
4. The surrounding area is characterised by a mixture of land uses, primarily being residential, with higher concentrations of commercial uses situated towards Macleay Street and Kings Cross to the east of the site.
5. The site is not a heritage item but it is located within the Potts Point Heritage Conservation Area (CA51). The site is identified as a contributing building.
6. The site is not identified as being subject to flooding.
7. A site visit was carried out on 3 December 2020 and photos of the site and surrounds are provided below:



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Hughes Street



Figure 3: Site viewed from Hughes Place with later additions to the rear visible



Figure 4: Existing right of way passage fenced off from Hughes Place



Figure 5: Residential uses to the rear along Hughes Place



Figure 6: View looking west from the rear of the site down Hughes Place



Figure 7: View looking west from the front of the site down Hughes Street



Figure 8: View from the front of the site looking towards the adjacent residential flat building to the east of the site (25 Hughes Street)

History Relevant to the Development Application

Development Applications

8. The following applications are relevant to the current proposal:
- **D/2013/1110** – Development consent was refused on 29 May 2014 for alterations and additions to existing backpacker accommodation, including excavation to create a new basement, attic extension and construction of a new roof terrace.

Pre-DA Advice

9. The subject development proposal was previously subject to Pre-DA discussions (PDA/2020/44) in May 2020, where it was noted that the proposed development exceeded the LEP and DCP height controls.

10. The Pre-DA advice provided by Council Officers concluded that the development as proposed:

“Is intrusive to the contributory building. The whole of the existing roof form should be retained and additions confined to the rear and be sympathetic to the building. A three-storey rear addition with a communal roof terrace above may be the limit of the development potential for the site.”

11. Whilst it is acknowledged that the development proposal presented at Pre-DA has now been scaled down and is compliant with the relevant height controls, the above comments remain pertinent with regards to the site's limited development potential.

Current Development Application

12. On 4 December 2020, a letter was sent to the applicant outlining Council officers' concerns with regards to the proposed development. In this correspondence the applicant was informed that the application was not supported in its current form and it was recommended that the application be withdrawn.
13. Due to the significant and substantial issues associated with the proposed development it was considered that any genuine attempt to address them would likely result in a significantly different development proposal. As such the applicant was invited to withdraw the application, with any unused application fees returned, and to resubmit a new application which more adequately responds to and addresses the issues raised during pre-application discussions (PDA/2020/44).
14. On 8 December 2020, the applicant wrote to Council stating they will not be withdrawing the application and requested Council to finalise the assessment and determine the application based upon current documentation.

Proposed Development

15. Approval is sought for the following:
 - Substantial demolition of the existing building including all internal floors and walls;
 - Retention of existing north frontage facing Hughes Street with changes to window and door openings;
 - Part-retention of front section of side walls and roof section towards Hughes Street;
 - Construction of new 4-storey rear addition built to the boundary of the right-of-way passage to the south of the site off Hughes Place;
 - Reconstruction of 3-storey internal areas and floors at the front of the building with retained external walls;
 - Construction of 20 boarding house rooms, and new internal boarding house amenities including new bathroom and kitchen fit-outs and lift;
 - Indoor communal living area and communal kitchen at ground floor level;

- Managers room and private open space at ground floor level;
- Landscaped communal open space to replace existing front courtyard;
- Refurbishment of existing front fence, including paint removal from brickwork and new balustrade; and
- Removal of 5 trees

16. Operational aspects of the boarding house include:

- 7 single rooms and 13 double rooms for a total of 33 lodgers.
- On-site manager.
- Outdoor communal area used only between 8am and 8pm (AEST) and 7am and 9pm (AEDT).
- Visitors to the premises will only permitted until 10pm.
- No alcohol consumption will be permitted in the communal areas of the building.
- Smoking will not be permitted indoors.
- No amplified music will be permitted at any time within the outdoor communal areas.
- Recorded and/or amplified music permissible indoors during daylight hours between 8:00am and 8:00pm Monday to Thursday and between 8:00am and 10:00pm Friday to Sunday.
- No pets will be allowed within the premises at any time.

17. Plans and elevations of the proposed development are provided below.

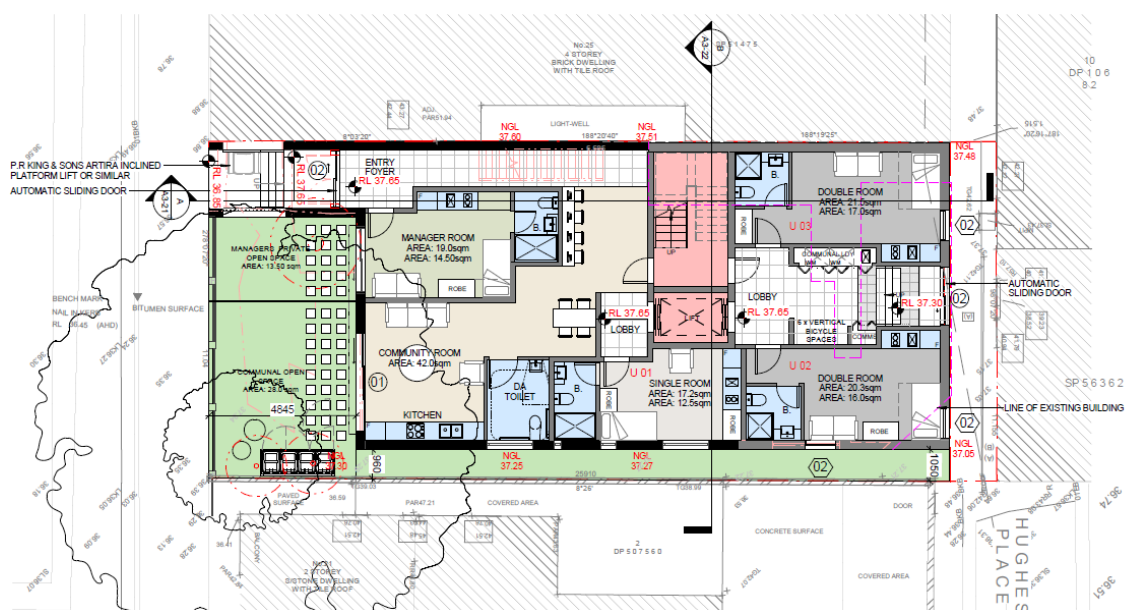


Figure 9: Proposed Ground Floorplan

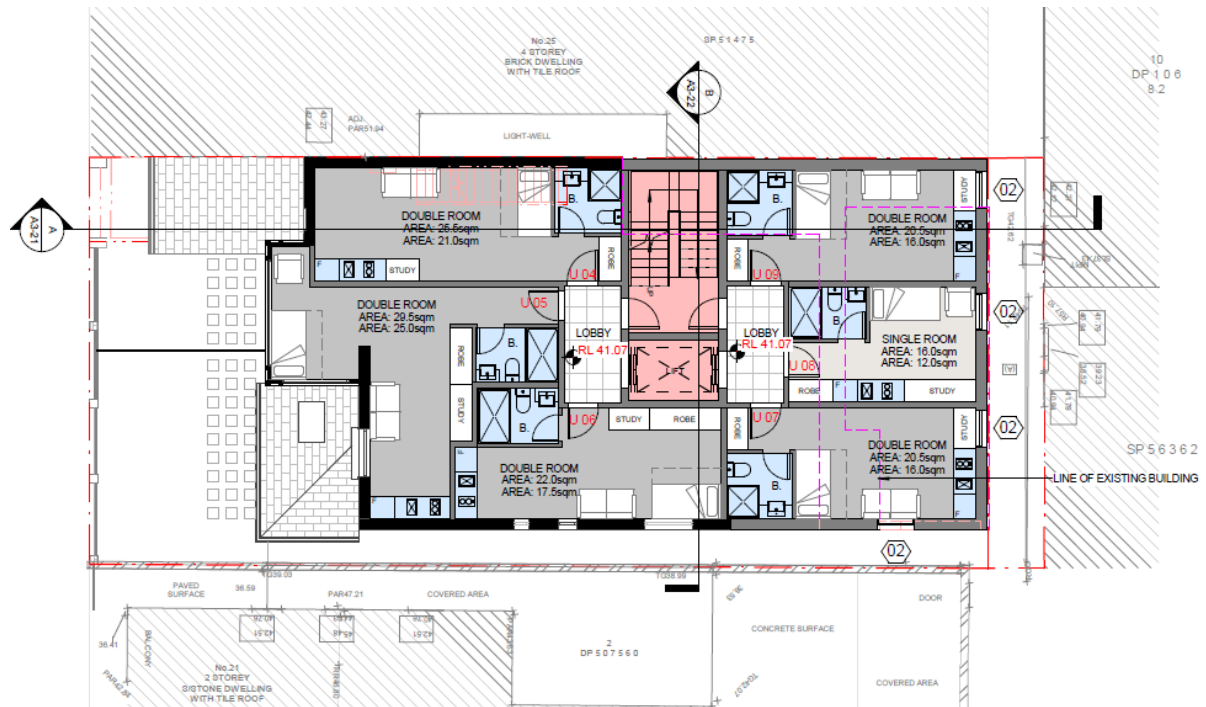


Figure 10: Proposed First Floorplan

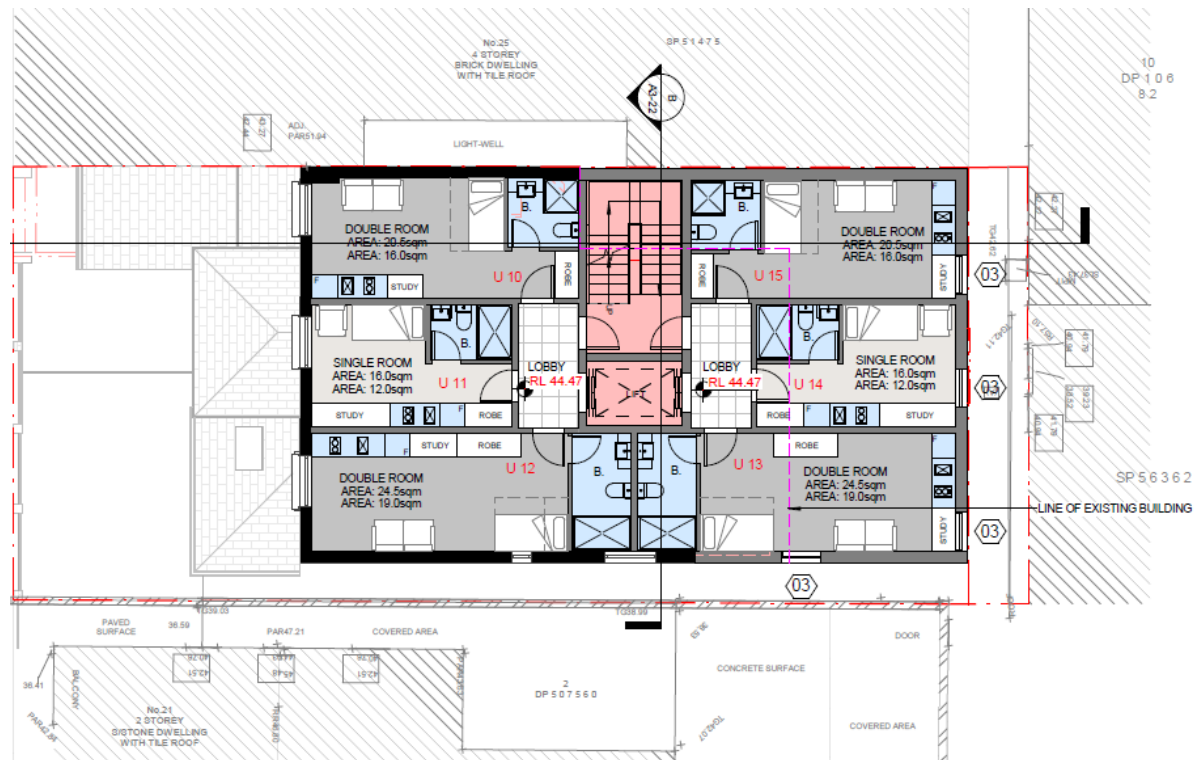


Figure 11: Proposed Second Floorplan

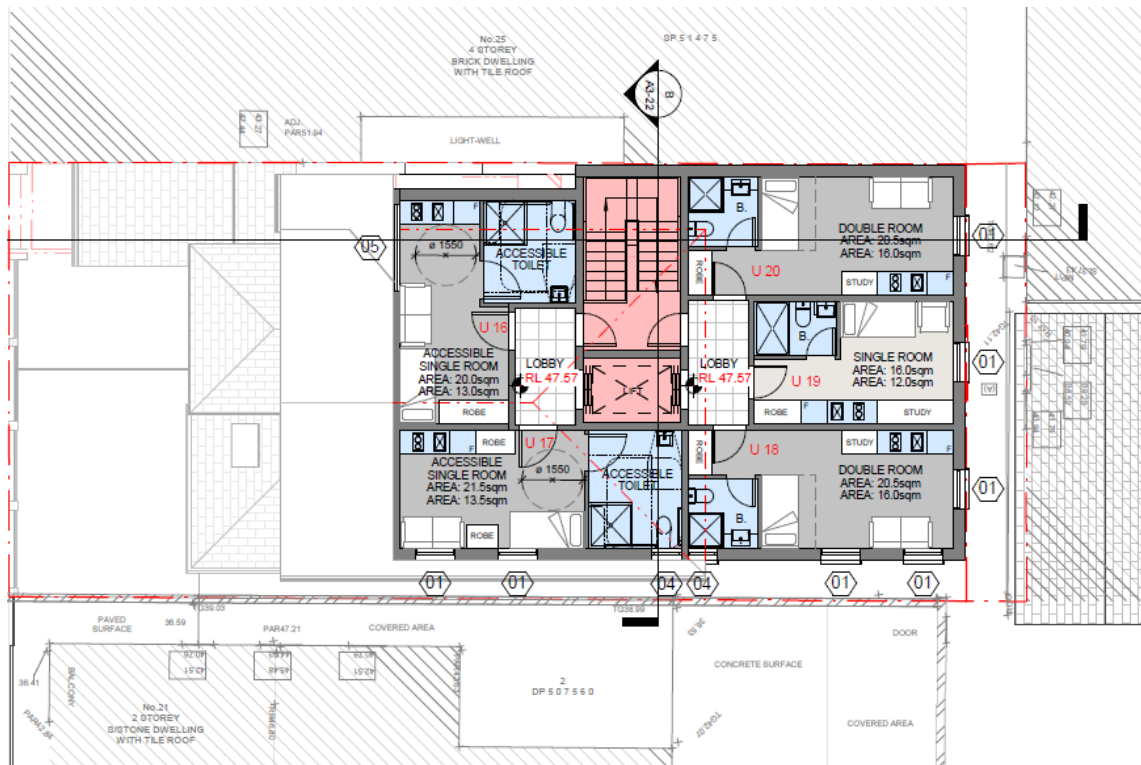


Figure 12: Proposed Third Floorplan

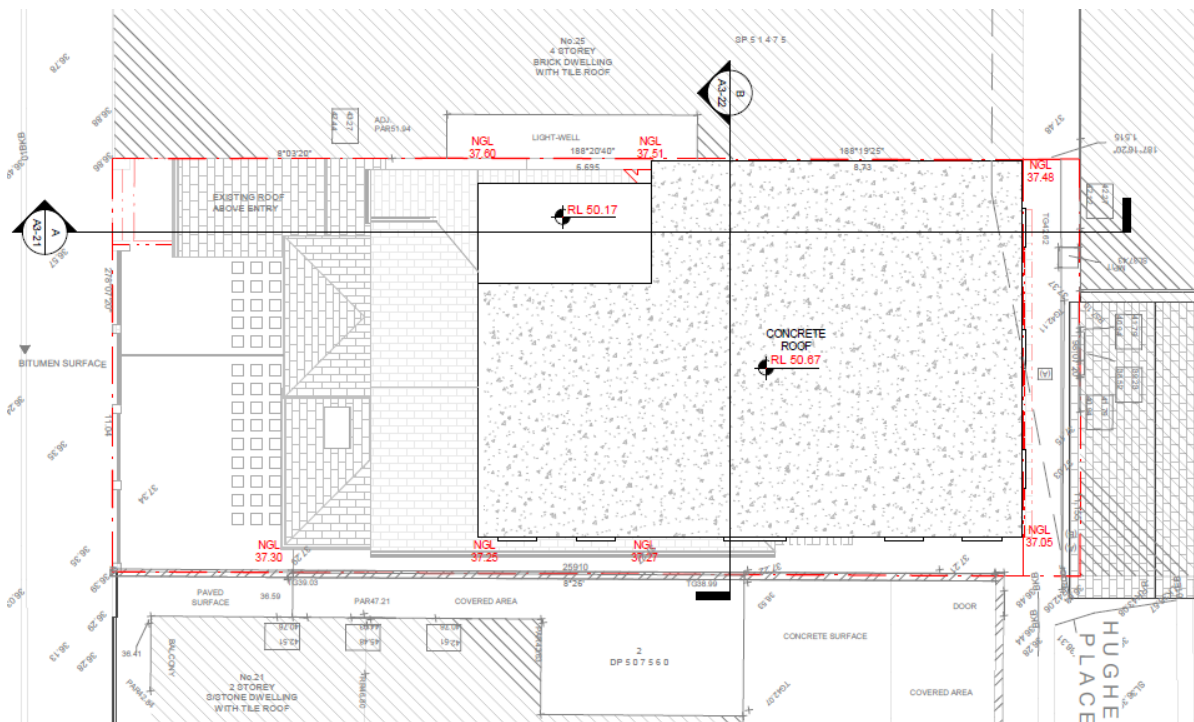


Figure 13: Proposed Roof Plan

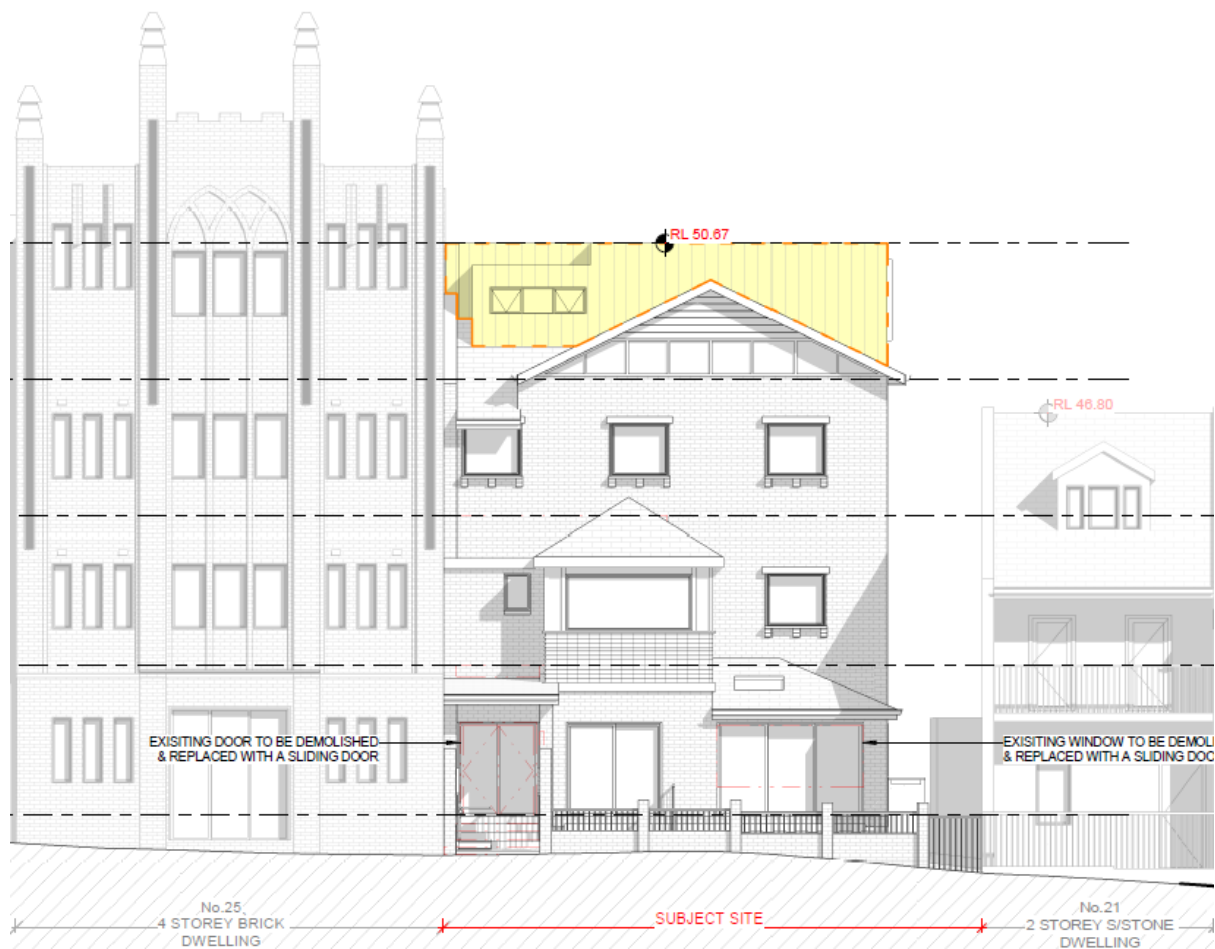


Figure 14: Proposed North Elevation

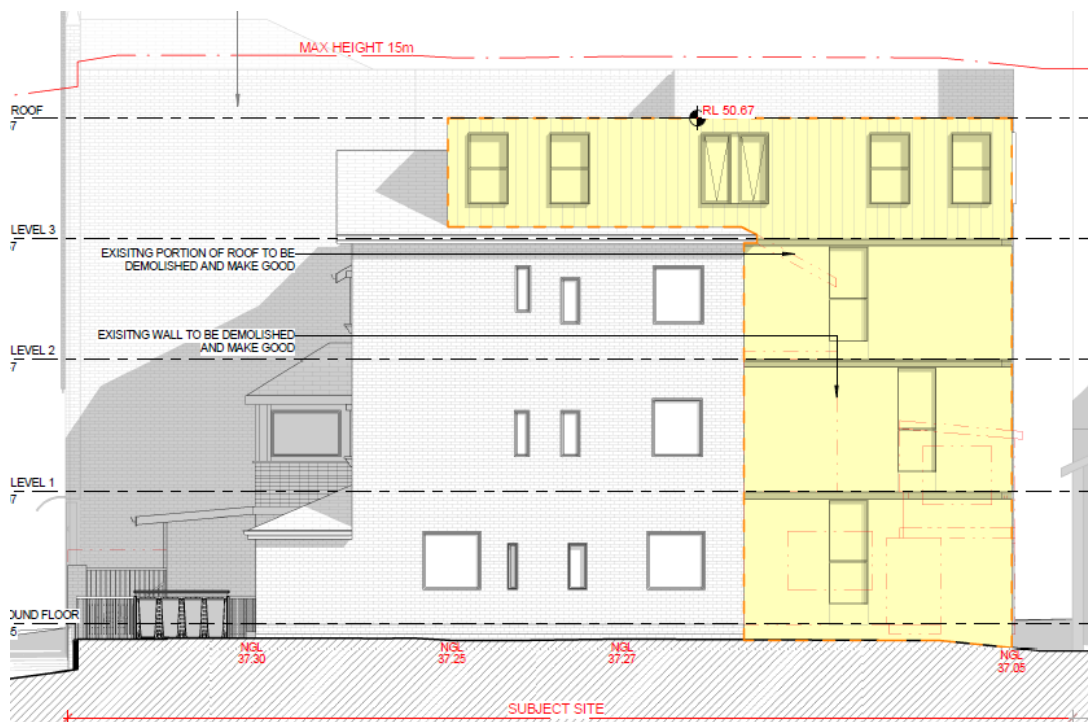


Figure 15: Proposed West Elevation

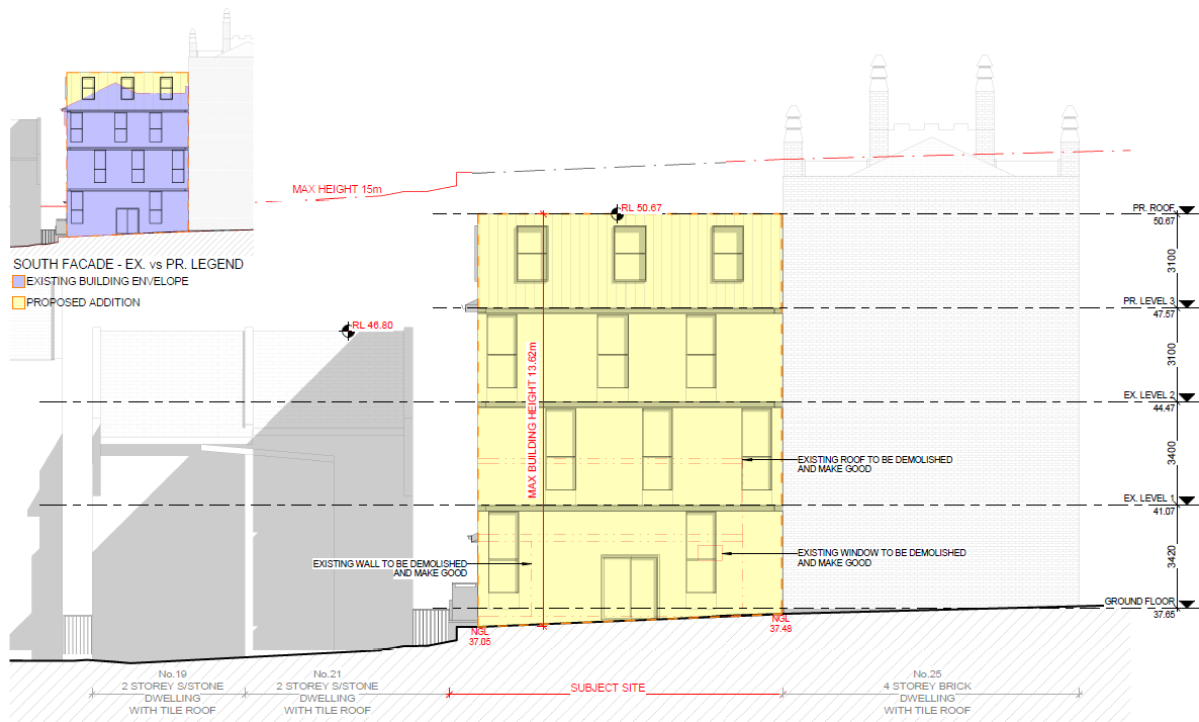


Figure 16: Proposed South Elevation



Figure 17: Proposed Side Section



Figure 18: Proposed Rear Section



Figure 19: Development viewed from Hughes Street



Figure 20: Development viewed from Hughes Place

Assessment

18. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

State Environmental Planning Policies

State Environmental Planning Policy (Affordable Rental Housing) 2009

19. The aim of State Environmental Planning Policy (SEPP) (Affordable Rental Housing) is to provide a consistent planning regime for the provision and maintenance of affordable rental housing and to facilitate the delivery of new affordable rental housing.

Division 3: Boarding Houses

20. Under Clause 29, compliance with any of the following standards must not be used to refuse consent for a boarding house. An assessment of the proposed boarding house against each standard is provided in the table below.

Clause 29 – Standards that cannot be used to refuse a boarding house

Provision	Compliance	Comment
1 Density and scale expressed as floor space ratio An FSR of up to 2.5:1 plus 0.5:1 is permitted.	Yes	The application proposes a floor space ratio of 1.95:1 and complies.
2(a) Building height The proposed building height must not exceed the maximum building height of 15m permitted under the Sydney LEP 2012.	Yes	The development will not exceed the maximum building height of 15m.
2(b) Landscaped area The front setback is to be compatible with the streetscape.	Partial compliance	<p>The front setback is retained however the proposed development involves the removal of existing trees in the front setback to create a communal living space and a managers private open space which will be separated by fencing, in addition to a proposed bin storage area.</p> <p>It is considered that the proposed changes to the front setback will have an adverse impact upon the streetscape presentation of the building.</p> <p>The applicant has submitted an Arborist Report and Landscape Plan which provides details of trees identified for retention and those proposed for removal within the front setback. See further details in 'Discussion' section below.</p>

Provision	Compliance	Comment
<p>2(d) Private open space</p> <p>At least the following private open space areas are to be provided (other than the front setback):</p> <p>(i) One area of at least 20sqm with a minimum dimension of 3m is provided for lodgers.</p> <p>(ii) If accommodation is provided for an onsite manager, one area of at least 8sqm with a minimum dimension of 2.5m, adjacent to the accommodation.</p>	No	<p>The only private open space provision is in the front setback which is not supported.</p> <p>See further details under the 'Discussion' section below.</p>
<p>2(e) Parking</p> <p>(i) 0.2 parking spaces provided for each boarding house room for sites in an accessible area.</p> <p>(ii) 0.4 parking spaces provided for each boarding house room for sites not in an accessible area.</p> <p>(iii) Not more than 1 parking space for the on-site manager.</p>	No, but acceptable	<p>The proposal does not involve the provision of any car parking.</p> <p>Notwithstanding the above, the site is situated in an accessible location and proposals for car-free developments are supported by the City within such areas of the LGA.</p>
<p>2(f) Accommodation size</p> <p>(i) Rooms intended to be used by a single lodger are to have a minimum GFA of 12sqm.</p> <p>(ii) Rooms intended to be used more than one person are to have a minimum GFA of 16sqm.</p> <p>(excluding any area used as a private kitchen/ bathroom)</p>	No	<p>Excluding kitchens and bathrooms, the application proposes the following room sizes (the numbers in bold are rooms that do not comply):</p> <p>Boarding room 1 single – 11.8sqm</p> <p>Boarding room 2 double – 15.4sqm</p> <p>Boarding room 3 double – 16.5sqm</p> <p>Boarding room 4 double – 20.2sqm</p> <p>Boarding room 5 double – 25sqm</p> <p>Boarding room 6 double – 17sqm</p> <p>Boarding room 7 double – 15.4sqm</p>

Provision	Compliance	Comment
		Boarding room 8 single – 11.2sqm Boarding room 9 double – 15.5sqm Boarding room 10 double – 15.6sqm Boarding room 11 single – 11.4sqm Boarding room 12 double – 18.1sqm Boarding room 13 double – 18.3sqm Boarding room 14 single – 11.2sqm Boarding room 15 double – 15.2sqm Boarding room 16 single – 12.5sqm Boarding room 17 single – 12.8sqm Boarding room 18 double – 15.5sqm Boarding room 19 single – 11.2sqm Boarding room 20 double – 15.3sqm

21. The proposed development does not comply with the relevant provisions of clause 29.
22. Clause 30 states that a consent authority must not grant development consent to which Division 3 applies unless it is satisfied of each of the following provisions.

Clauses 30 – Standards for boarding house

Provision	Compliance	Comment
1(a) At least one communal living room is to be provided.	Yes	A communal living room has been provided.
1(b) No boarding room is to have a gross floor area (excluding private kitchen or bathroom facilities) of more than 25m ²	Yes	All boarding rooms are less than 25sqm.
1(c) No boarding room to be occupied by more than 2 adult lodgers	Yes	The submitted Plan of Management restricts the number of lodgers to no more than 2 adult lodgers per room.

Provision	Compliance	Comment
1(d) Adequate bathroom and kitchen facilities available for use of each lodger	Yes	The boarding house provides adequate bathroom and kitchen facilities for each lodger in accordance with Section 4.4.1 of the Sydney DCP 2012.
(1e) A boarding room or on-site dwelling to be provided for a boarding house manager if boarding house has a capacity of 20 or more lodgers	Yes	The proposed development includes a manager's room on the ground floor for an on-site manager.
1(g) If the boarding house is zoned primarily for commercial purposes, no part of the ground floor that fronts a street will be used for residential purposes except where permitted under an EPI.	Yes	The land is zoned primarily for residential development.
1(h) At least 1 bicycle and 1 motorcycle parking space to be provided for every 5 rooms.	No	<p>The proposed development includes the provision of 6 bicycle spaces which is consistent with the requirement based on the proposed number of lodgers.</p> <p>No motorcycle parking spaces are provided. A Clause 4.6 variation to the motorcycle parking standard has been submitted but is not supported.</p> <p>See further details in the 'Discussion' section below.</p>

23. The proposed development complies with the relevant provisions of clause 30.

Clause 30A – Character of the local area

24. Clause 30A states that a consent authority must not consent to development for a boarding house unless it has taken into consideration whether the design of the development is compatible with the character of the local area.
25. The site is located within a residential area and the proposed boarding house use is a recognised form of residential accommodation representing a permissible use, however the design of the development is not compatible with the character of the locality and is not supported. Refer to discussion section below.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

26. The proposal is defined as a BASIX affected development and therefore a BASIX Certificate is required to be submitted. A BASIX Certificate has not been submitted with the development application.
27. See further details under sub-heading 'Sustainability' of 'Discussion' section below.

Local Environmental Plans**Sydney Local Environmental Plan 2012**

28. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	No	<p>The site is located in the R1 General Residential zone. The proposed use is defined as a Boarding House and is permissible with consent in the zone.</p> <p>Notwithstanding the above, the proposed development is inconsistent with the objectives of the zone in providing for the housing needs of the community, as it will result in an unacceptable level of amenity for future occupants of the development.</p> <p>The proposed development is non-compliant with multiple residential amenity controls of the Sydney DCP and results in poor quality residential accommodation with an inadequate level of residential amenity which therefore fails to meet a housing need. See further details in the 'Discussion' section below.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	<p>A maximum building height of 15m is permitted.</p> <p>A height of 13.7m is proposed.</p> <p>The proposed development complies with the maximum height of buildings development standard.</p>
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 2.5:1 or 718.75sqm is permitted.</p> <p>A floor space ratio of 1.95:1 or 561sqm is proposed.</p> <p>The proposed development complies with the maximum floor space ratio development standard.</p>
4.6 Exceptions to development standards	No	<p>The proposal seeks to vary the Motorcycle Parking development standard under Clause 30(1)(h) of the ARHSEPP. The request to vary the standard is not supported.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	No	<p>The site is identified as a contributory building and is situated within the Potts Point Conservation Area (CA51).</p> <p>The proposed development will have a detrimental impact on the heritage significance of the contributory building and heritage conservation area.</p> <p>See further details in the 'Discussion' section below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	No	The proposed development does not demonstrate design excellence. See further details in the 'Discussion' section below.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.

Development Control Plans**Sydney Development Control Plan 2012**

29. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

30. The site is located within the Kings Cross locality. The proposed development is not in keeping with the unique character and the design principles of the locality as it represents unsympathetic alterations and additions to a heritage item which will have an adverse impact upon the streetscape.

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	No	The proposed development will have an impact on existing trees within the front setback of the site, with 5 trees proposed for removal.

Provision	Compliance	Comment
		<p>The proposed scope of works and their impacts have been reviewed by Council's Tree Management Unit and the removal of Tree 1 and 5 is not supported.</p> <p>See further details in the 'Discussion' section below.</p>
3.6 Ecologically Sustainable Development	No	<p>A BASIX Certificate has not been submitted with the development application and no detail of sustainability commitments have been provided.</p> <p>See further details under sub-heading 'Sustainability' of 'Discussion' section below.</p>
3.9 Heritage	No	<p>The site is identified as a contributory building and is situated within the Potts Point Conservation Area (CA51).</p> <p>The proposed development will have a detrimental impact on the heritage significance of the contributory building and heritage conservation area.</p> <p>See further details in the 'Discussion' section below.</p>
3.12 Accessible Design	Yes	<p>The proposed boarding house provides 2 accessible rooms and is capable of providing access for persons with disabilities in accordance with the provisions of the BCA.</p> <p>Compliance would be assessed by the appointed certifier at CC stage if approval was recommended.</p>
3.14 Waste	No	<p>The development proposes to locate the bin storage area adjacent to the communal outdoor living area to the front of the premises, which will have an adverse impact upon the enjoyment of this amenity space and is therefore not supported.</p>

Provision	Compliance	Comment
		<p>The City's Guidelines for Waste Management in New Developments requires waste storage areas to be located so as to minimise odour and noise. The proposed waste storage area at the front of the premises is inconsistent with the Guidelines.</p> <p>The proposal offers no provision for bulky waste storage as required by the DCP.</p> <p>See further details in the 'Discussion' section below.</p>

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Yes	<p>The site is permitted a maximum building height of 4 storeys with a maximum street frontage height of 3 storeys.</p> <p>The proposed development is 4 storeys in height with a street frontage height of 3 storeys and complies.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	No	<p>The proposed development achieves the minimum floor to floor height of 2.7m on all levels, aside from the accessible single rooms at the front of the building on Level 3 (Units 16 and 17). These accessible rooms have a floor to ceiling height of 2.4m at the front of the building.</p> <p>A minimum 2.7m floor to ceiling height is required for all habitable rooms and therefore the development is non-compliant with the control.</p>

Provision	Compliance	Comment
4.2.3 Amenity		
4.2.3.1 Solar access	Partial compliance	<p>The applicant has submitted shadow diagrams and view from the sun diagrams to assess solar access.</p> <p>These diagrams demonstrate that the proposed development will maintain at least 2 hours direct sunlight to affected windows and private open space areas of neighbouring properties to the south of site.</p> <p>The diagrams also demonstrate that the proposal will achieve at least 2 hours direct sunlight to the living room windows and communal open space areas at the front of the subject development.</p> <p>Notwithstanding the above, the proposed development will part-enclose an existing lightwell which provides solar access to residential units within the neighbouring property at 25 Hughes Street and is the only source of daylight to living rooms within the building.</p> <p>The DCP requires that daylight access is to be addressed where the consent authority considers that the level of daylight access to living rooms may be inadequate, as is the case in this instance.</p> <p>The applicant has not provided a Daylight Report to determine the extent of impact to the living room windows of apartments within 25 Hughes Street.</p>
4.2.3.2 Lightwells	No	<p>Lightwells are to be open to the sky and provide a reasonable outlook from residential flat buildings.</p>

Provision	Compliance	Comment
		<p>The proposed development will increase the length and height of the wall located on the boundary adjacent to the lightwell on the east side boundary of the site which provides solar access to apartments within the neighbouring residential flat building of 25 Hughes Street.</p> <p>The lightwell is the only source of daylight and solar access to living rooms within 7 units of 25 Hughes Street.</p> <p>A Daylight Report to assess the extent of impact to the living room windows of apartments within 25 Hughes has not been submitted by the applicant.</p>
4.2.3.3 Internal common areas	No	<p>Internal common areas, corridors and lift lobbies are to have access to daylight and an outlook. Common corridors are to be at least 2m wide in front of lifts.</p> <p>The proposed stairs and lift lobbies have no access to daylight and the lift lobbies are a non-compliant 1.5 in width on each level.</p>
4.2.3.5 Landscaping	No	<p>A Landscaping Plan has been submitted which has been reviewed by the City's Landscape Unit and is not supported.</p> <p>See further details in the 'Discussion' section below.</p>
4.2.3.6 Deep Soil	Yes	<p>The development is required to provide a minimum of 10% of its site area to deep soil, which equates to 28.7sqm.</p> <p>The proposed development indicates 38.5sqm will be provided for deep soil provision and complies.</p>
4.2.3.9 Ventilation	No	<p>The DCP requires adequate natural ventilation be provided.</p>

Provision	Compliance	Comment
		<p>The proposed development provides inadequate natural ventilation with many of the boarding house rooms deep, single aspect rooms with fixed windows due to BCA fire separation requirements as windows are situated within 3m of the boundary. Consequently, these bedrooms will have no natural ventilation. The proposed configuration of the rooms will significantly constrain the level of amenity they offer.</p> <p>See further details in the 'Discussion' section below.</p>
4.2.3.10 Outlook	No	<p>The proposed development involves near full site coverage in a highly dense urban area.</p> <p>The only window openings to Units 03, 08, 09, 14, 15, 19 and 20 are setback by 1.57m to the rear boundary. These bedrooms will have no outlook as the adjacent building at 26 Orwell Street, to the south, is built to the boundary and therefore the windows will directly face a blank wall.</p> <p>It is considered that this is further representation of the overdevelopment of the site.</p>
4.2.3.11 Acoustic privacy	Yes	<p>A Noise Impact Assessment has been submitted by the applicant and reviewed by the City's Environmental Health Unit.</p> <p>The findings are the Noise Impact Assessment are supported and a condition requiring compliance with the report is recommended, should the development application be granted approval.</p>

4.4 Other Development Types and Uses

4.4.1 Boarding houses and student accommodation

Provision	Compliance	Comment
4.4.1.2 Bedrooms	No	<p>Excluding kitchens and bathrooms, the application proposes the following room sizes (the numbers in bold are rooms that do not comply):</p> <p>Boarding room 1 single – 11.8sqm</p> <p>Boarding room 2 double – 15.4sqm</p> <p>Boarding room 3 double – 16.5sqm</p> <p>Boarding room 4 double – 20.2sqm</p> <p>Boarding room 5 double – 25sqm</p> <p>Boarding room 6 double – 17sqm</p> <p>Boarding room 7 double – 15.4sqm</p> <p>Boarding room 8 single – 11.2sqm</p> <p>Boarding room 9 double – 15.5sqm</p> <p>Boarding room 10 double – 15.6sqm</p> <p>Boarding room 11 single – 11.4sqm</p> <p>Boarding room 12 double – 18.1sqm</p> <p>Boarding room 13 double – 18.3sqm</p> <p>Boarding room 14 single – 11.2sqm</p> <p>Boarding room 15 double – 15.2sqm</p> <p>Boarding room 16 single – 12.5sqm</p> <p>Boarding room 17 single – 12.8sqm</p> <p>Boarding room 18 double – 15.5sqm</p> <p>Boarding room 19 single – 11.2sqm</p> <p>Boarding room 20 double – 15.3sqm</p> <p>See further details in the 'Discussion' section below.</p>

Provision	Compliance	Comment
4.4.1.3 Communal kitchen areas	No, but acceptable	<p>A communal kitchen is to be provided measuring a minimum of 6.5sqm with one sink for every 6 people and one stove top cooker for every 6 people.</p> <p>The proposed communal kitchen area only measures approximately 2.3sqm with 2x sinks and 1x 4-burner stove top cooker which is insufficient for the proposed resident population of the boarding house.</p> <p>Notwithstanding the above, the proposed boarding houses offers a kitchenette in each bedroom and therefore a smaller communal kitchen is considered acceptable in this instance.</p>
4.4.1.4 Communal living areas and open space	No	<p>The proposed development offers an inadequate provision of communal indoor living space and a poorly designed communal open space. This is a poor amenity outcome and is not supported.</p> <p>See further details in the 'Discussion' section below.</p>
4.4.1.5 Bathroom, laundry and drying facilities	No	<p>The proposed development offers an inadequate provision of communal laundry and drying facilities to serve the proposed number of residents of the boarding house.</p> <p>See further details in the 'Discussion' section below.</p>
4.4.1.6 Amenity, safety and privacy	No	<p>The proposed boarding house is non-compliant with multiple controls as outlined above and consequently will result in a poor level of resident amenity.</p> <p>See further details in the 'Discussion' section below.</p>

Provision	Compliance	Comment
4.4.1.7 Plan of Management	Yes	<p>A preliminary POM has been submitted with this application with the objective to maintain a high level of amenity for neighbouring properties and for all the residents living in the premises. The POM details the responsibilities of management and boarding house rules. All noise complaints are to be handled and recorded by the onsite manager.</p> <p>The POM has been reviewed by Council's Environmental Health Unit and is acceptable.</p>

Discussion

Clause 4.6 Request to Vary a Development Standard - Motorcycle Parking

31. Clause 30(1)(h) of the Affordable Rental Housing SEPP 2009 requires the provision of one motorcycle space every five boarding rooms. The development includes twenty boarding rooms and as such four motorcycle spaces are required.
32. The proposal provides for no motorcycle spaces, representing a 100% departure from the standard.
33. 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 motorcycle development standard by demonstrating:
 - (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard;

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

34. The applicant seeks to justify the contravention of the motorcycle parking 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 applicant's statement refers to the first of the five tests established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the objectives of the standard are achieved notwithstanding non-compliance with the numerical standard.

- (ii) As the Affordable Rental Housing SEPP 2009 does not list specific planning objectives for the motorcycle development standard in question, the applicant's statement provides an assessment against the overall aims of the SEPP pursuant to Clause 3. A summary of the applicant's assessment against the aims of the SEPP are below:
- The aims of the policy pertain to the provision, delivery and retention of affordable housing. The proposal will contribute to meeting the high demand for affordable housing in the area by providing 20 new boarding house rooms.
 - While the Affordable Housing SEPP does not contain specific aims or objectives relating to motorcycle parking, the SEPP is geared toward reducing reliance on cars, and encouraging use of bicycles, motorbikes and public transport.
 - The proposal includes bicycle parking in excess of the SEPP requirement.
 - It is considered that the site is located in an 'accessible area' for the purposes of the ARH SEPP, being less than 400m from a bus stop. The nearest bus stop is located less than 100m away on Macleay Street and the nearest train station, Kings Cross Train Station, being located less than 500m away.
 - Furthermore, the site is within walking distance of a variety of shops, restaurants, educational institutions and residential support services.
 - Accordingly, the site is in an ideal location for boarding house and will enhance the efficiency of existing transport infrastructure and services.
 - On the basis of the site's connectivity to public transport, and the provisions for bicycle parking, residents of the proposed boarding house will have adequate transport options available.
- (iii) The statement also considers the provisions of the Sydney LEP 2012 which outlines maximum rather than minimum car parking provisions, with the underlying objective of reducing car dependency and encouraging the use of public transport. The subject site is ideally located near existing public transport networks and provides compliant bicycle spaces. Providing motorcycle spaces when car spaces are discouraged would thwart the underlying objective of encouraging public and active transport.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The applicant's statement contends that there are a number of environmental planning grounds that justify not providing motorcycle parking on the site in this instance, as outlined below.
 - (ii) As outlined above, the proposal is consistent with the objectives of the Affordable Housing SEPP, which is the provision and retention of affordable rental housing.
 - (iii) The site is also within an area that is highly connected by public transport and is within close proximity to a range of businesses.

- (iv) The proposal complies with the bicycle parking requirements and will encourage active and public transport usage.
 - (v) the site is located within the Potts Point Heritage Conservation Area and the proposal seeks to retain as much of the existing building fabric as possible. Any attempt to provide motorcycle parking would require the demolition of parts of the original building, contrary to the heritage conservation provisions.
 - (vi) The shortfall does not result in significant adverse impacts on adjoining development or the locality in general.
 - (vii) Overall, it is considered that the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard, as required in Clause 4.6(3)(b).
- (c) That the proposed development is consistent with the objectives of the R1 General Residential zone, as follows:
- To provide for the housing needs of the community.

The proposed boarding house development will provide more affordable housing options in the Potts Point locality and provide for the high housing needs of the community in a highly sought after area in close proximity to a number of services, public transport options and the Sydney CBD.
 - To provide for a variety of housing types and densities.

The proposal will add to the variety of housing types in the area and will be below the maximum permissible FSR and height for the site. The proposal will provide a type of transition from the higher density residential flat building further up Hughes Street to the terrace style housing further down Hughes Street.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Not applicable.
 - To maintain the existing land use pattern of predominantly residential uses.

The proposal will not alter the existing land use pattern and will add to the type of and nature of residential uses in the area.

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

35. 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)?

- 36. The applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.
- 37. The applicant's submission seeks to justify the provision of no motorcycle parking by assessing the development against the objectives of the Affordable Housing SEPP 2009. In this regard, Section 3(a) of the SEPP states that the aim of the policy is to provide a consistent planning regime for the provision of affordable rental housing.
- 38. The SEPP then goes on to outline standards for boarding houses, of which Section 30(1)(h) states that a consent authority must not consent to development unless at least one motorcycle space will be provided for every 5 boarding rooms.
- 39. The proposed development's provision of no motorcycle parking is inconsistent boarding house standards under Section 30 of the SEPP and by virtue presents a development which is inconsistent with the planning regime for the provision of affordable rental housing which the SEPP aims to put forward.

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

- 40. The applicant has not adequately demonstrated that there are sufficient environmental planning grounds to justify the contravention of the standard.
- 41. The applicant's assertion that any attempt to provide motorcycle parking would require demolition of large parts of the building and would be contrary to the heritage conservation provisions is not justified.
- 42. The existing building has a garage with access to Hughes Place, whilst the application already proposes substantial demolition of the existing building, including all internal areas.
- 43. The level of demolition proposed is separately not supported, however the applicant's written justification is inconsistent with the scope of works proposed under the application in this regard.

Is the development in the public interest?

- 44. The provisions of Clause 4.6(4)(a)(ii) requires that development consent must not be granted for a development that contravenes a development standard unless 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.
- 45. In this regard, the dot one objective of the R1 - General Residential zone is to provide for the housing needs of the community.
- 46. The proposed development does not provide for the housing needs of the community as it would deliver a poor standard of residential accommodation with an unacceptable level of amenity for future occupants.

Conclusion

47. For the reasons provided above the requested variation to the motorcycle parking standard is not supported as the applicant's written request has not adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would not be in the public interest because it is inconsistent with the objectives of SEPP.
48. As outlined above, the proposed development is not considered to be consistent with the objectives of the R1 General Residential Zone and contravenes the provisions of Clause 4.6(4)(a)(ii).
49. Consequently development consent cannot be granted for the proposal as it contravenes the motorcycle parking development standard and the applicant's written request for variation to the standard is not supported.

Design Excellence

50. The proposed development fails to achieve the principles of Design Excellence in accordance with Clause 6.21 of the Sydney LEP and fails to address the following provisions:
 - (4)(d)(ii) any heritage issues and streetscape constraints;
 - (4)(d)(v) the bulk, massing and modulation of buildings;
 - (4)(d)(vii) environmental impacts, such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity;
 - (4)(d)(viii) the achievement of the principles of ecologically sustainable development;
 - (4)(d)(xii) achieving appropriate interfaces at ground level between the building and the public domain; and
 - (4)(d)(xiii) excellence and integration of landscape design.
51. It is considered that the proposed development and extent of proposed demolition will have an adverse impact upon the building's existing contribution to the heritage conservation area, whilst proposing unsympathetic additions which fail to respect the original form and character of the building.
52. The applicant has not submitted a BASIX certificate and the application provides no detail of sustainable commitments or measures to demonstrate how the proposed development will achieve the principles of sustainable development.
53. The proposed development involves changes to the front entry and openings on the front façade, as well as landscaping changes within the front setback, which will adversely impact upon the building's interface with the public domain and its contribution to the local streetscape.
54. The development's failure to achieve Design Excellence is explored further under the focus sub-headings below.

Heritage

55. The proposed development involves substantial demolition of a contributory building within the Potts Point Heritage Conservation Area (CA51), with only the front facade and front section of the gabled roof and side walls retained. The demolition of all walls and floors is proposed.
56. The extent of demolition proposed is evidenced the proposed demolition plans for ground floor and at roof level, as shown by Figure 21 and Figure 22 below.

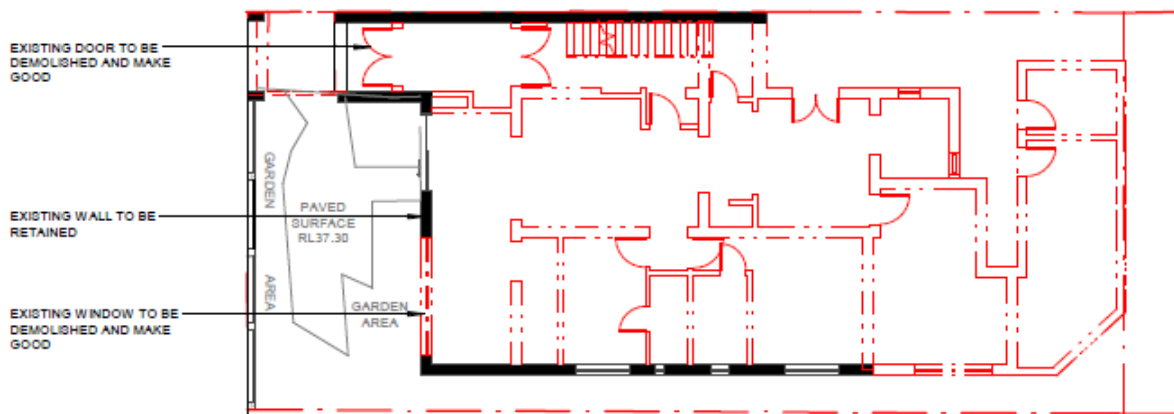


Figure 21: Proposed Ground Floor Demolition Plan

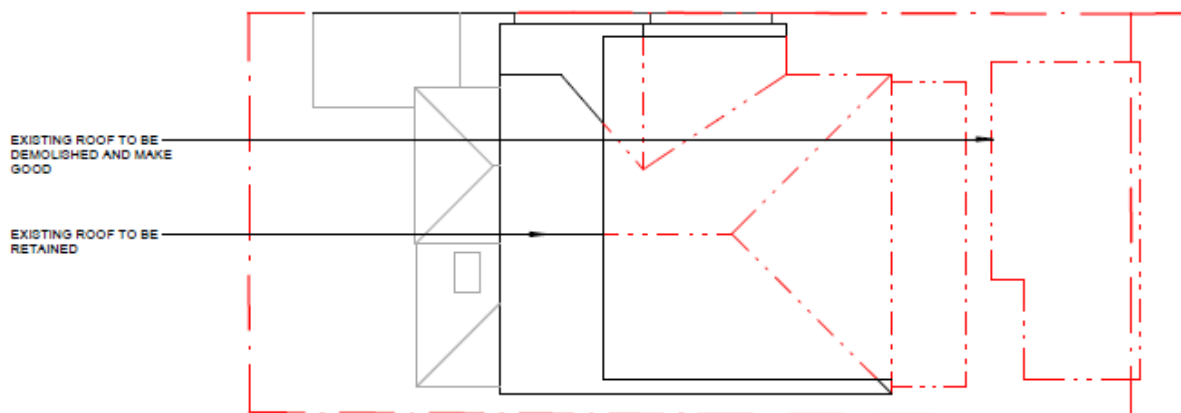


Figure 22: Proposed Roof Plan

57. Section 3.9.7 of the Sydney DCP recognises contributory buildings for the important and significant impact to the character and significance of the heritage conservation area.
58. Section 3.9.7 of the Sydney DCP also confirms that contributory buildings are to be retained unless it is determined that the replacement is justified in exceptional circumstances, whilst alterations and additions to contributory buildings are to respect the original or characteristic built form and not alter their appearance, except to remove detracting elements.

59. In this regard, the proposed scope of works represents substantial demolition rather than limited to alterations and additions to the existing building, whilst the lack of the retention of original fabric has not been justified.
60. Section 3.9.6(1) of the Sydney DCP requires that where a development application proposes the full or substantial demolition of a contributory building, the Heritage Impact Statement (HIS) is to demonstrate why the building is not capable for retention or re-use.
61. The submitted HIS does not identify demolition of two thirds of the original roof form of the contributory building in the description of the proposal and concludes that the retention of the gable roof line on the front elevation is supported. The HIS does not give any regard to the existing east-west ridgeline of the roof and does not justify the arbitrary front setback provided for the top floor. The HIS does not assess the impact of the addition on the roof form of the contributory building. This amount of roof demolition is not supported.
62. Similarly, the HIS does not assess the impact of the new addition on the roof form of the contributory building.
63. The overbearing top floor addition does not respect the roof form of the contributory building and it is not sympathetic or compatible with the existing building form.
64. The complete internal demolition of the contributory building resulting in facade retention is not supported. Insufficient information has been provided demonstrating that the demolition works and new additions will not impact upon the structural integrity of the existing fabric to be retained, namely, the facades and the existing roof.
65. Section 3.9.7 of the Sydney DCP requires alterations and additions to respect the pattern, style and dimensions of original windows and doors.
66. The proposed development involves changes to the original front façade and changes to door and window openings which are not supported.
67. In summary, the proposed development represents substantial demolition of a contributory building and unsympathetic additions which will have an adverse impact upon the building's contribution to the heritage conservation area. Therefore the proposal is not supported and is recommended for refusal.

Residential Amenity

68. The proposed development has been assessed against the boarding house control provisions of the Sydney DCP and the Affordable Rental Housing SEPP (2009) related to residential amenity and is non-compliant in relation to the following:

Bedrooms

69. The development proposes a 20-bedroom boarding house, of which 12 bedrooms have been measured to be undersized in accordance with Section 4.4.1.2.
70. The only window openings to Units 03, 08, 09, 14, 15, 19 and 20 are setback by 1.57m to the rear boundary. The BCA report concludes that these windows must be fixed shut for fire separation as they are located within 3m of the boundary, and therefore these rooms will not be naturally ventilated.

71. These bedrooms will also have no outlook as the adjacent building of 26 Orwell Street to the south is built to the boundary and therefore the windows will directly face a blank wall - as illustrated by Figure 23 below showing the narrowness of the right of way passage.



Figure 23: Existing right of way passage fenced off from Hughes Place and proximity to the blank wall of 26 Orwell Street (right)

72. The poor level of amenity to bedrooms with fixed shut windows is not supported and represents a poor development outcome.
73. The under sizing of bedrooms and lack of ventilation, due to bedroom windows proximity to side and rear boundaries, are considered representative of the overdevelopment of the site and will have an adverse impact upon the level of amenity for future occupants.

Communal Living Space

74. Section 4.4.1.3 of the Sydney DCP requires the development to provide 41.25sqm of communal indoor living space based on a resident population of 33 lodgers, with a minimum width of 3m.
75. The Statement of Environmental Effects indicates that the development provides 42sqm of indoor communal living space, however the communal living space is non-compliant with an area of only approximately 33sqm based upon the proposed ground floor plan.
76. Further to the above, the irregular arrangement of the communal living space presents multiple areas with a width of less than 3m and is therefore inconsistent with the design controls outlined above and will restrict the usability and enjoyment of the proposed living space.

Communal Open Space

77. The communal open space is situated at the front of the property adjacent to Hughes Street and does not provide adequate privacy or separation from the streetscape. It must also be screened from the public domain in accordance with Section 4.4.1.4 of the Sydney DCP.
78. The proposed location of the bin storage in the communal open space area represents a poor amenity outcome and is not supported.
79. The site has capacity to house an internal bin storage room which would be screened from the public domain. Any bin enclosure should be located to the rear and accessed off Hughes Place.
80. The proposed privacy screen within the front yard to separate the two open spaces is not supported as it will have an adverse impact upon the heritage conservation area.
81. The communal open space should be designed with more fixed amenity, including seating and a table as a minimum. A screened area for clothes drying should be considered somewhere within the development, whilst ensuring no detrimental impact on streetscape.

Laundry

82. Laundry facilities are to be provided and include one 5kg capacity washing machine and one domestic dryer for every 12 residents, which equates to three of each facility in accordance with Section 4.4.1.5 of the Sydney DCP.
83. A laundry area is shown on plan which appears to show one washer and one dryer, however no details have been provided to confirm the laundry provision.

84. Drying facilities, such as clothes lines located in a communal open space, are to be located to maximise solar access and ensure that the usability of the space is not comprised. No details have been provided of drying facilities.

Summary

85. In summary, the proposed development will provide an unacceptable level of amenity to future occupants, is non-compliant with a number of amenity criteria controls of the Sydney DCP and is therefore recommended for refusal.

Impact to neighbouring residential flat building

86. The proposed development will increase the length and height of the wall adjacent to the existing lightwell to the east of site associated with 25 Hughes Street which is a residential flat building, as highlighted on Figure 23 below.



Figure 23: Aerial photo with impacted lightwell highlighted in red

87. The lightwell is the only source of daylight and solar access to living rooms within 7 units of 25 Hughes Street. It is considered that the proposal has not been sensitively designed to minimise amenity impacts to the neighbouring residential flat building.
88. Windows reliant upon solar access from the lightwell associated with 25 Hughes Street are shown by Figure 24 below.



Figure 24: Windows facing lightwell associated with 25 Hughes Street

View Loss

89. Concerns are raised that the development as proposed could result in view loss from the adjacent rooftop area of 25 Hughes Street towards views of the city skyline, as illustrated by Figure 25 below.
90. The applicant has not submitted any information or analysis of view loss to determine the extent of any impact.



Figure 25: Existing view of the city skyline from 25 Hughes Street looking west towards proposed development

Landscaping and Tree Management

91. The proposed development involves landscape works in the front setback of the subject site for purposes of converting the area to a separate communal and managers private open space, with a bin storage area situated within the communal open space along the west side boundary.
92. The applicant has submitted an Arborist Report and Landscape which provide details of the proposed landscaping works and trees proposed for retention and removal.
93. These 2 documents have been reviewed by the City's Landscape and Tree Management Units who have flagged discrepancies in the proposed removal of trees on site.

94. The retention of Tree 5, a Bangalow Palm, and Tree 1, a moderate to high landscape value Royal Palm, is detailed within the provided Arborist Report. However, they are shown for removal on the submitted Landscape Plan. This appears to be due to the impacts from a dedicated bin area and the installation soft landscaping.
95. Independent of the above point, the proposed bin storage within the front setback and within the communal open space area will have an adverse impact upon both the streetscape and level of amenity to future occupants and is therefore not supported.
96. Tree 2, a Dypsis palm, Tree 3, a Date Palm, and Tree 4, a Bird of Paradise, are proposed for removal by the Arborist due to landscape works. These small trees of low landscape value and should not be considered a constraint on the development.
97. Inadequate detail of landscaping works has been provided with a greater diversity of planting and greater provision of fixed amenity within the communal open space required.
98. The configuration of landscaping works and tree removal as currently proposed is not supported as it will have an adverse impact upon the streetscape, urban ecology and will offer a poor level of amenity for future occupants.

Sustainability

99. The applicant has not submitted a BASIX certificate with the application and contends that the development should be assessed against the Section J requirements of the BCA at Construction Certification stage.
100. Advice submitted by the applicant's BCA consultant contends that the proposed development is not suitable to be assessed against BASIX provisions since it relates to conversion of an existing building to a boarding house, rather than a new building.
101. The applicant's assertion is not supported as it is considered that the proposed development should be treated as a new building due to the extent of demolition and reconstruction proposed to convert the existing building to a boarding house.
102. The Environmental Planning and Assessment Regulation 2000 includes the following definitions:
 - (a) BASIX affected building means any building that contains one or more dwellings, but does not include a hotel or motel.
 - (b) A dwelling, in relation to a BASIX affected building, means a room or suite of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used, as a separate domicile.
103. The proposal is consistent with the definition for a BASIX affected building, and the application is recommended for refusal as a BASIX certificate has not been provided.

Consultation

Internal Referrals

104. The application was discussed with Council's Building Services Unit; Environmental Health Unit; Heritage and Urban Design Unit; Transport and Access Unit; Tree Management Unit; Landscape Unit; Public Domain Unit and the Waste Management Unit.
105. Issues raised by internal referral comments are discussed under the Assessment section above.

Advertising and Notification

106. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 17 November 2020 and 9 December 2020. A total of 384 properties were notified and 17 submissions were received.

107. The submissions raised the following issues:

- **Issue:** Objections related to existing issues of noise and disturbance of residential amenity related to the existing backpacker's accommodation.
- **Response:** The subject of this assessment report is related to the proposed development for use as a boarding house. In general, boarding houses generally result in fewer disturbances of residential amenity than backpackers accommodation.

A Plan of Management has been submitted with the application to ensure the effective management protocols are put in place prevent adverse impacts upon the locality. The submitted POM has been reviewed by the City's Environmental Health Unit and is to be considered generally in accordance with the POM provisions of the Sydney DCP.

The proposed development is recommended for refusal, however appropriate conditions of consent, including adherence to the provisions of a supported POM would accompany any consent to guide the use and safeguard residential amenity.

- **Issue:** Objections related to the proposed development's impact upon view loss from the rooftop area of 25 Hughes Street towards the city skyline.

Response: It is noted that the rooftop area of 25 Hughes Street provides a rooftop amenity space which benefits all residents of the residential building, with valued views towards the city skyline. The applicant has not submitted information to assess the impact of view loss as a result of the development proposal, however the development is not supported in its current form. A thorough assessment loss is required for all developments proposals which may have an impact upon view loss. See further discussion under sub-heading 'View Loss' above.

- **Issue:** Objections related to enclosure of the lightwell associated with 25 Hughes Street.
- **Response:** Council has reviewed the impact of the proposed development in part-enclosing the existing lightwell located adjacent to the east side boundary associated with 25 Hughes Street. It is noted that 7 apartments within 25 Hughes Street benefit from solar access and ventilation provided by the lightwell, and that for some apartments the lightwell is the only source of light to living room windows.

The applicant has not provided sufficient information to determine the extent of impact in constraining solar access and ventilation to these apartments, however the impact is acknowledged and the development is not supported in its current form.

See further discussion under sub-heading 'Solar Access and Ventilation' above.

- **Issue:** Concerns related to inadequate information provided.
- **Response:** The applicant has not provided insufficient information to adequately address Council's concerns and facilitate thorough assessment. The proposed development is recommended for refusal.
- **Issue:** The proposed development will have an adverse impact upon the heritage significance of the locality and the streetscape.
- **Response:** See discussion under sub-heading 'Heritage' above.
- **Issue:** Communal facilities appear to indicate a continuation of backpacker type accommodation.
- **Response:** Provision of communal facilities are a requirement for boarding houses under the provisions of the Sydney DCP.
- **Issue:** The proposal provides inadequate detail of waste arrangements.
- **Response:** The waste arrangements are not supported as proposed and the development is recommended for refusal.
- **Issue:** Objections related to communal living space at the front of the property and associated noise impacts.
- **Response:** See discussion under sub-heading 'Communal Open Space' above.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

108. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
109. Credits have been applied for the most recent approved use of the site, being a 12-bedroom backpackers' accommodation.

110. A condition relating to this development contribution would be included in the recommended conditions of consent in the Notice of Determination, if the development application was recommended for approval.

Relevant Legislation

111. Environmental Planning and Assessment Act 1979.

Conclusion

112. Having regard to all of the above matters, the proposed development will result in adverse impacts on both the natural and built environment and the locality, is not suitable for the site, and is not in the public interest.
113. The proposed development fails to achieve the relevant design excellence requirements and will result in a development which will significantly diminish the building's existing contribution to the heritage conservation area, whilst proposing unsympathetic additions out of character with the surroundings and existing context.
114. The proposal as a whole represents overdevelopment of the site which consequently results in unacceptable and inadequate level of amenity for future occupants of the development. In doing so, the development fails to achieve the objectives of the R1 - General Residential zone as it represents poor quality residential accommodation which fails to provide for the housing needs of the community.
115. The proposed development does not satisfy the relevant provisions of the applicable State Environmental Planning Instruments including the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 and is not acceptable.
116. Issues raised in all submissions have been taken into account in the assessment.

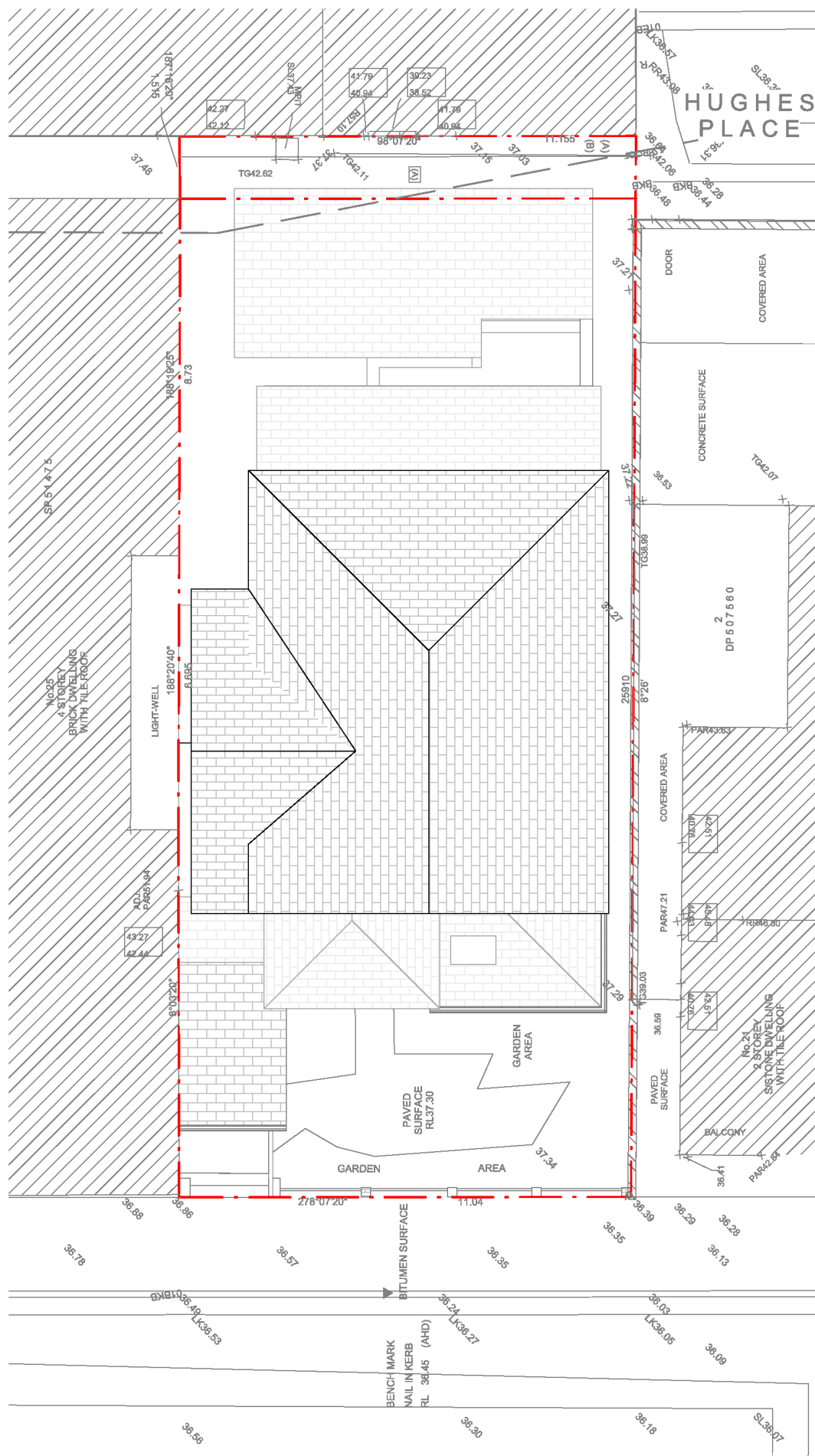
ANDREW THOMAS

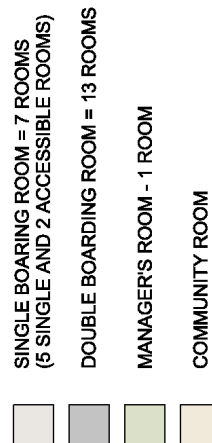
Executive Manager Development

Daniel Stanley, Planner

Attachment A




Selected Drawings

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NOTE:

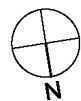
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2. ALL WINDOWS AND DOOR SIZES TO BE CONFIRMED ONSITE PRIOR TO MANUFACTURING AND INSTALLATION
3. REFER TO SECTION J REPORT FOR ALL WINDOW AND DOOR SPECIFICATION AND RATINGS
4. ALL START THREADS AND NUTS STRIP TO COMPLY WITH AS 4686-2003 AND TABLE D2.13 OF BCA
5. ALL SMOKE ALARMS ARE TO BE INTERCONNECTED

 EXISTING TO BE RETAINED
 EXISTING TO BE DEMOLISHED
 PROPOSED WALLS

DEVELOPMENT APPLICATION
NEW GENERATION BOARDING

CLIENT: **CK DESIGN**

ADDRESS: **23 HUGHES ST, POTTS POINT**



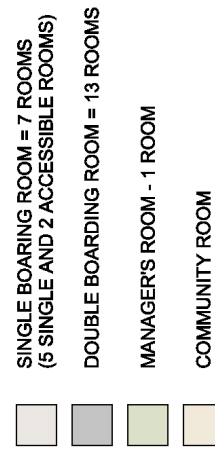
PR. GROUND PLAN

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No.	Description	Date
A	AMENDMENTS AS PER BCA CAPABILITY STATEMENT	27-07-20
B	ISSUED FOR DA	11-08-20

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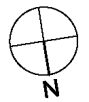
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

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Project number	19037-14		
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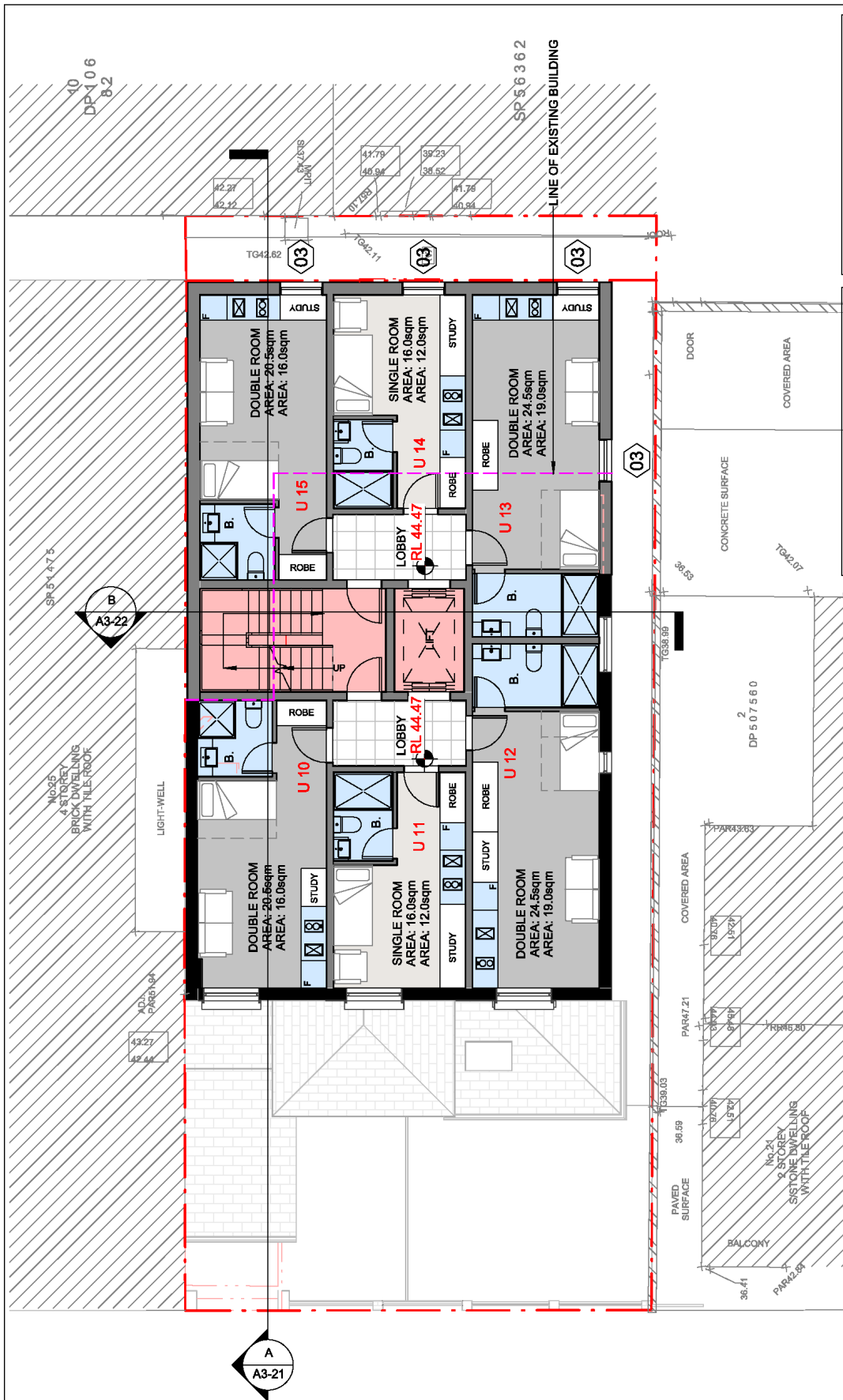
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01	1000	1800
02	1000	2700
03	1000	2450
04	750	1800
05	2200	600
Grand total: 21		

Door Schedule		
Mark	Width	Height
01	3300	2100
02	1900	2100
Grand total: 3		

NOTE:

1. ALL WINDOWS 2.0m ABOVE GROUND LEVEL ARE REQUIRED TO HAVE A BARRIER DEVICE TO LIMIT THE WINDOW OPENING TO NO MORE THAN 125mm IN ACCORDANCE WITH CLAUSE D2.24 OF BCA
2. ALL WINDOWS AND DOOR SIZES TO BE CONFIRMED ON SITE PRIOR TO MANUFACTURING AND INSTALLATION
3. REFER TO SECTION J REPORT FOR ALL WINDOW AND DOOR SPECIFICATION AND RATINGS
4. ALL STAIR TREADS AND NOSING STRIP TO COMPLY WITH AS 4686-2013 AND TABLE D2.13 OF BCA
5. ALL SMOKE ALARMS ARE TO BE INTERCONNECTED

 EXISTING TO BE RETAINED
 EXISTING TO BE DEMOLISHED
 PROPOSED WALLS



**SINGLE BOARING ROOM = 7 ROOMS
(5 SINGLE AND 2 ACCESSIBLE ROOMS)**

DOUBLE BOARDING ROOM = 13 ROOMS

MANAGER'S ROOM - 1 ROOM

COMMUNITY ROOM

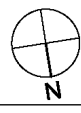
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PR. LEVEL 2

PRELIMINARY NOT FOR CONSTRUCTION



DEVELOPMENT APPLICATION

NEW GENERATION BOARDING HOUSE

CLIENT:
CK DESIGN

ADDRESS:
23 HUGHES ST, POTTS POINT

Window Schedule			
Mark	Width	Height	Count
01	1000	1800	7 New Construction
02	1000	2700	7 New Construction
03	1000	2450	4 New Construction
04	750	1800	2 New Construction
05	2200	800	1 New Construction
Grand total: 21			

Door Schedule			
Mark	Width	Height	Count
01	3300	2100	Exterior 1
02	1900	2100	Exterior 2
Grand total: 3			

NOTE: 1. ALL WINDOWS 2.0m ABOVE GROUND LEVEL ARE REQUIRED TO HAVE A BARRIER DEVICE TO LIMIT THE WINDOW OPENING TO NO MORE THAN 125mm IN ACCORDANCE WITH CLAUSE 22.4 OF BCA

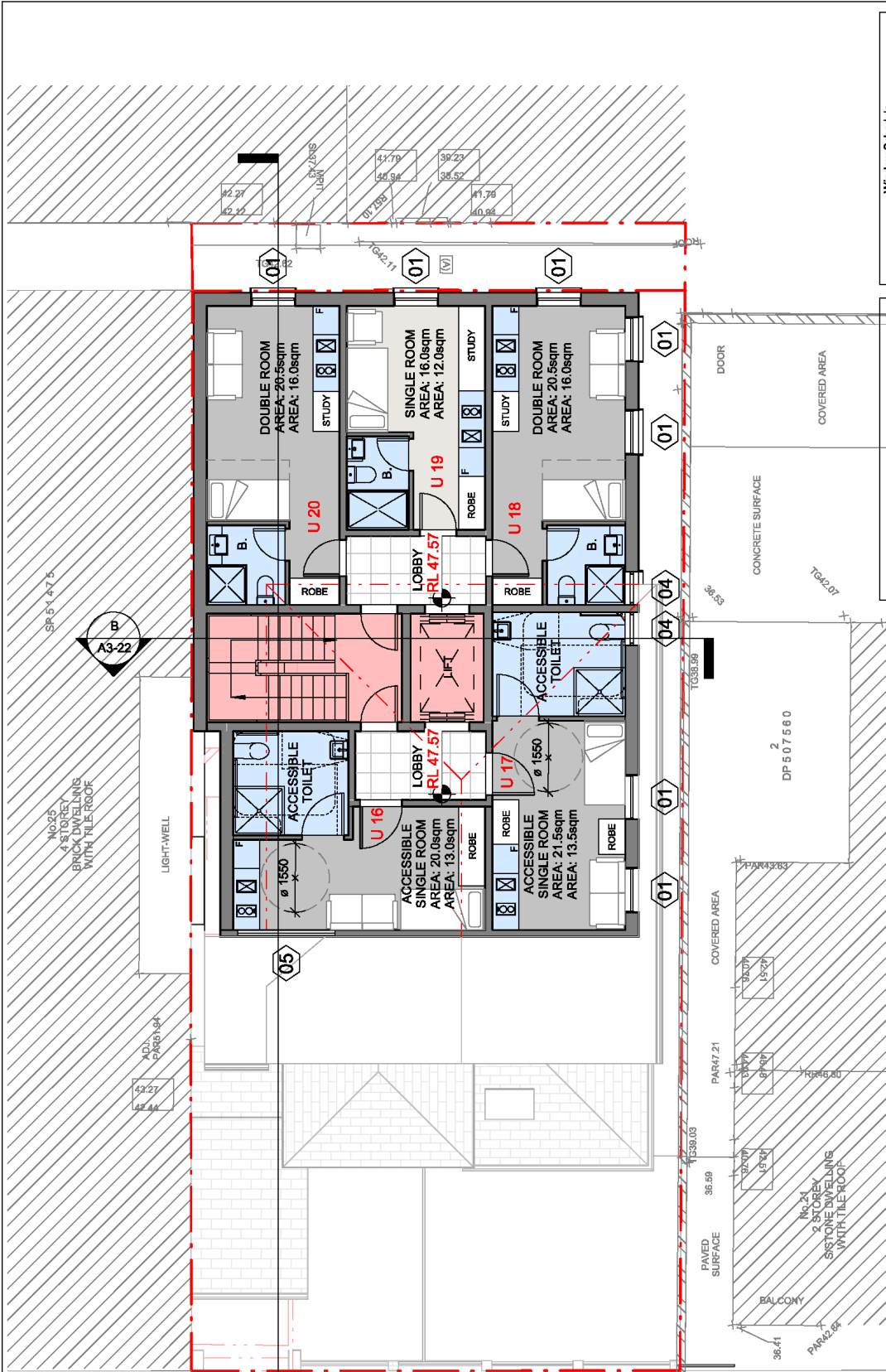
2. ALL WINDOWS AND DOOR SIZES TO BE CONFIRMED ON SITE PRIOR TO MANUFACTURING AND INSTALLATION

3. PROVIDE AN ANNUAL PERFORMANCE REPORT FOR ALL WINDOWS AND DOOR SPECIFICATION AND RATINGS

4. ALL STAIR TREADS AND NOSING STRIP TO COMPLY WITH AS 4586-2013 AND TABLE D2.13 OF BCA

5. ALL SMOKE ALARMS ARE TO BE INTERCONNECTED

EXISTING TO BE RETAINED
EXISTING TO BE DEMOLISHED
PROPOSED WALLS



Window Schedule			
Mark	Width	Height	Count
01	1000	1800	7
02	1000	2700	7
03	1000	2450	4
04	750	1800	2
05	2200	600	1
Grand total: 21			

Door Schedule			
Mark	Width	Height	Count
01	3300	2100	1
02	1900	2100	2
Grand total: 3			

NOTE:
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2. ALL WINDOWS AND DOOR SIZES TO BE CONFIRMED ON SITE PRIOR TO MANUFACTURING AND INSTALLATION
3. REFER TO SECTION J REPORT FOR ALL WINDOW AND DOOR SPECIFICATION AND RATINGS
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EXISTING TO BE RETAINED
EXISTING TO BE DEMOLISHED
PROPOSED WALLS

SINGLE BOARDING ROOM = 7 ROOMS
(5 SINGLE AND 2 ACCESSIBLE ROOMS)

DOUBLE BOARDING ROOM = 13 ROOMS

MANAGER'S ROOM - 1 ROOM

COMMUNITY ROOM

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Description

Date

A

AMENDMENTS AS PER BCA CAPABILITY STATEMENT

27-07-20

B

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11-08-20

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JB

Checked by

CK

Project number

19037-14

Development Application

NEW GENERATION BOARDING HOUSE

Client

CK DESIGN

Address

23 HUGHES ST, POTTS POINT

Sheet number

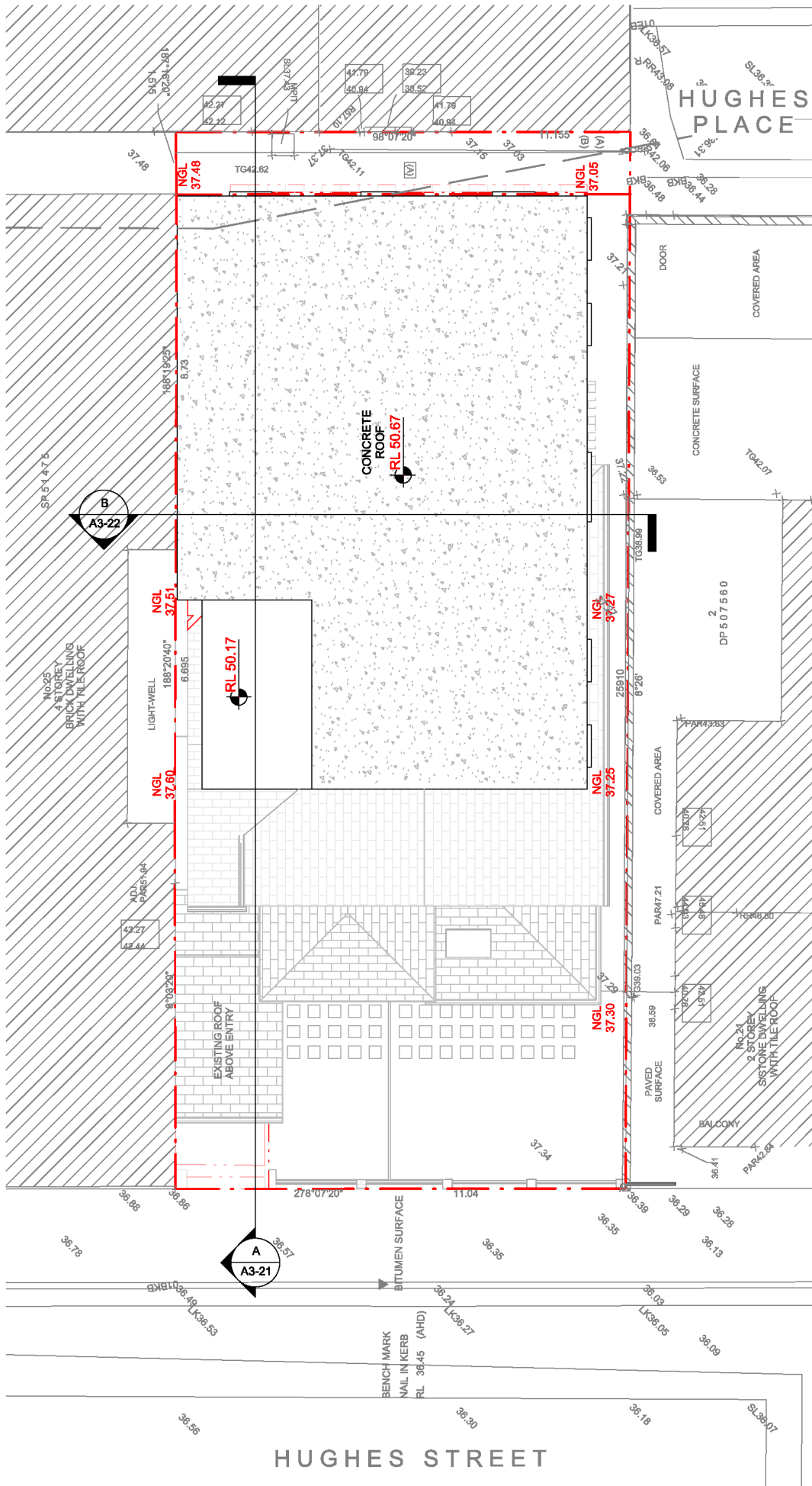
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PR. ROOF PLAN
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DEVELOPMENT APPLICATION
NEW GENERATION BOARDING HOUSE

CLIENT:
CK DESIGN

ADDRESS:
23 HUGHES ST, POTTS POINT

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Project number: 19037-14

Date: NOV 19

Sheet number: A3-16

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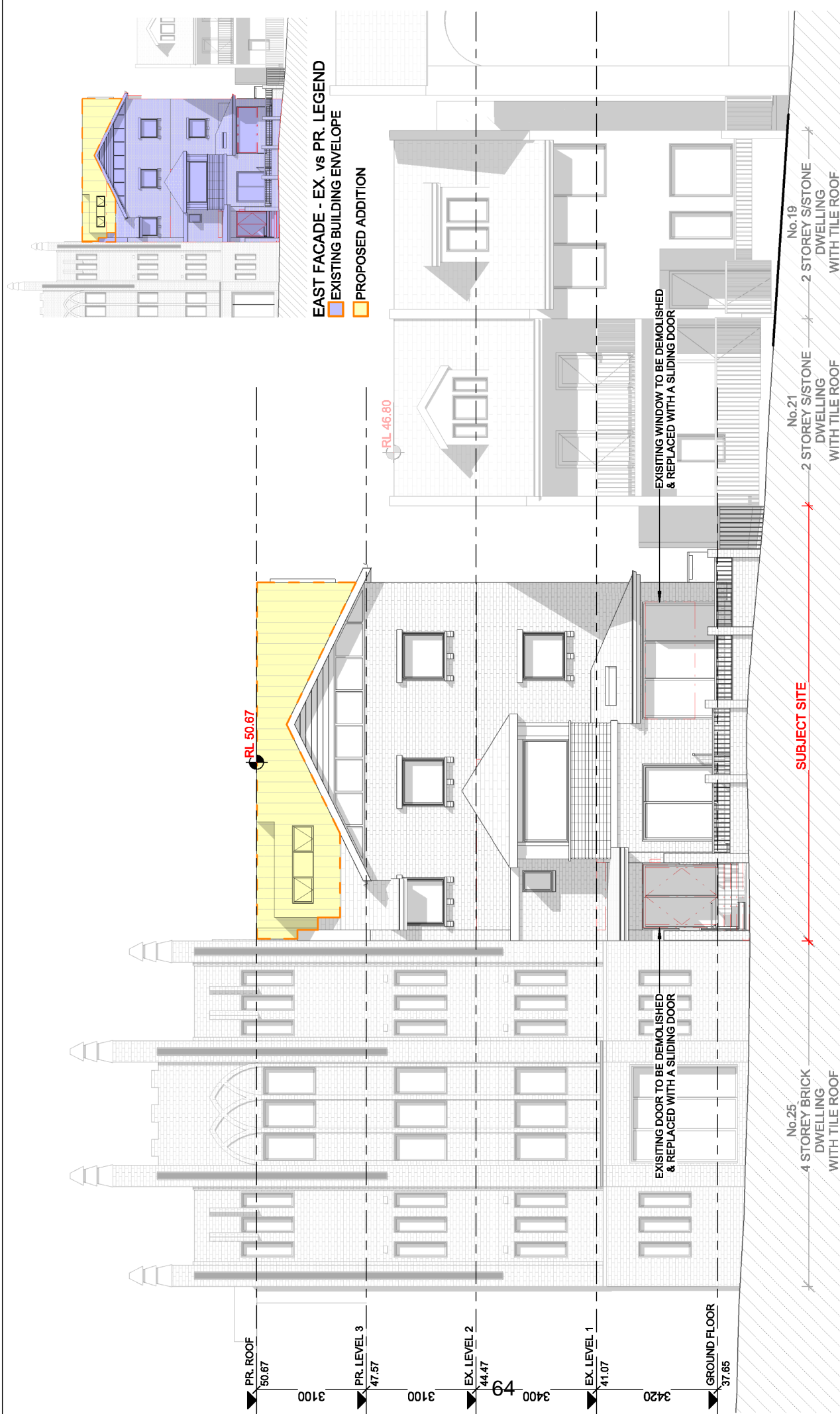
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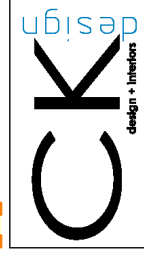
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PROPOSED BUILDING

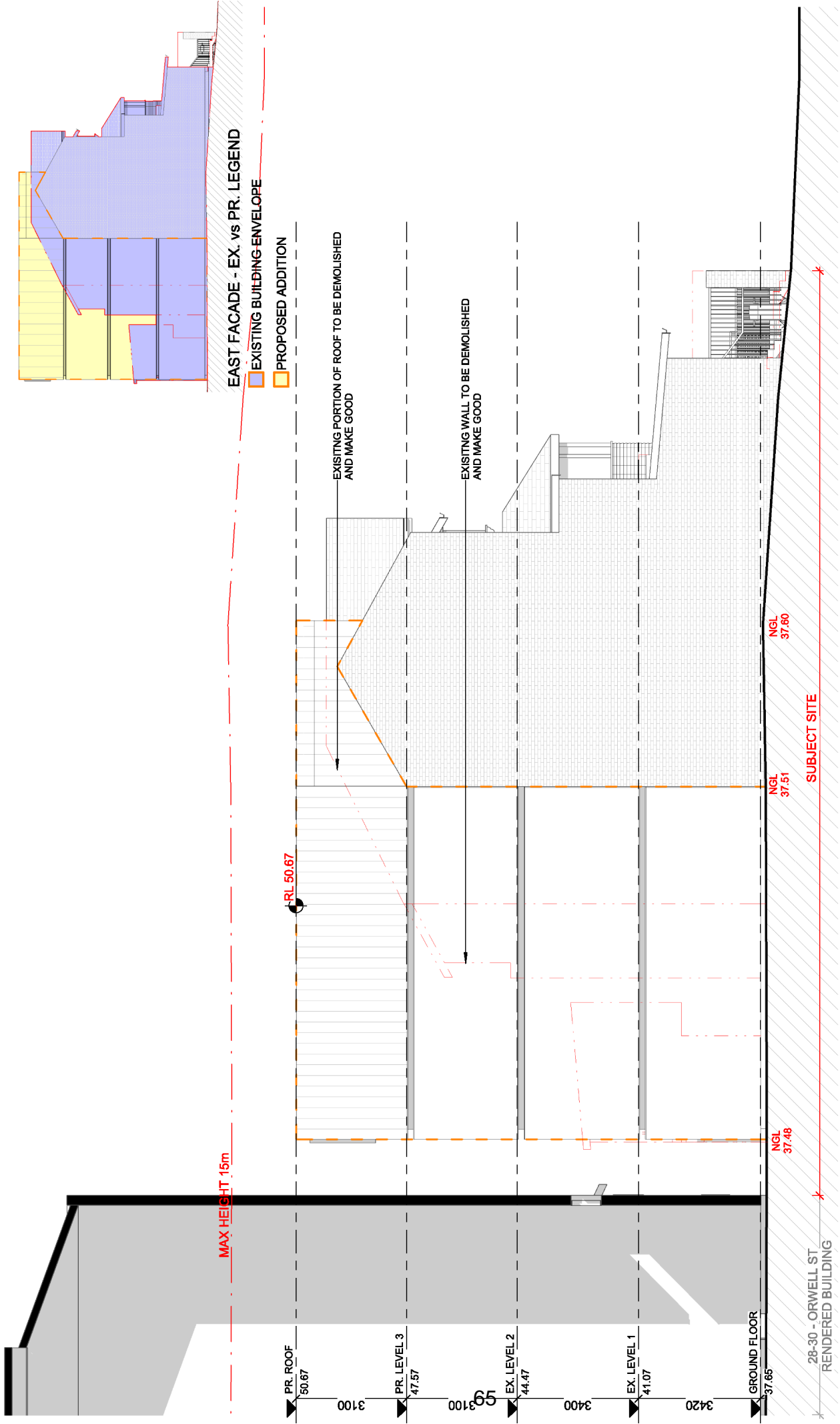


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PR. NORTH ELEVATION
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NEW GENERATION BOARDING HOUSE		Drawn by	As Indicated
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ADDRESS: 23 HUGHES ST, POTTS POINT		Project number	19037-14
		Sheet number	A3-17



EAST FACADE - EX. vs PR. LEGEND

- EXISTING BUILDING ENVELOPE
- PROPOSED ADDITION

EXISTING PORTION OF ROOF TO BE DEMOLISHED AND MAKE GOOD

EXISTING WALL TO BE DEMOLISHED AND MAKE GOOD

MAX HEIGHT 15m

RL 50.67

PR. ROOF 50.67

PR. LEVEL 3 47.57

EX. LEVEL 2 44.47

EX. LEVEL 1 41.07

GROUND FLOOR 37.65

NGL 37.48

NGL 37.51

NGL 37.60

28-30 - ORWELL ST
RENDERED BUILDING

SUBJECT SITE

PROPOSED BUILDING

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PR. EAST ELEVATION

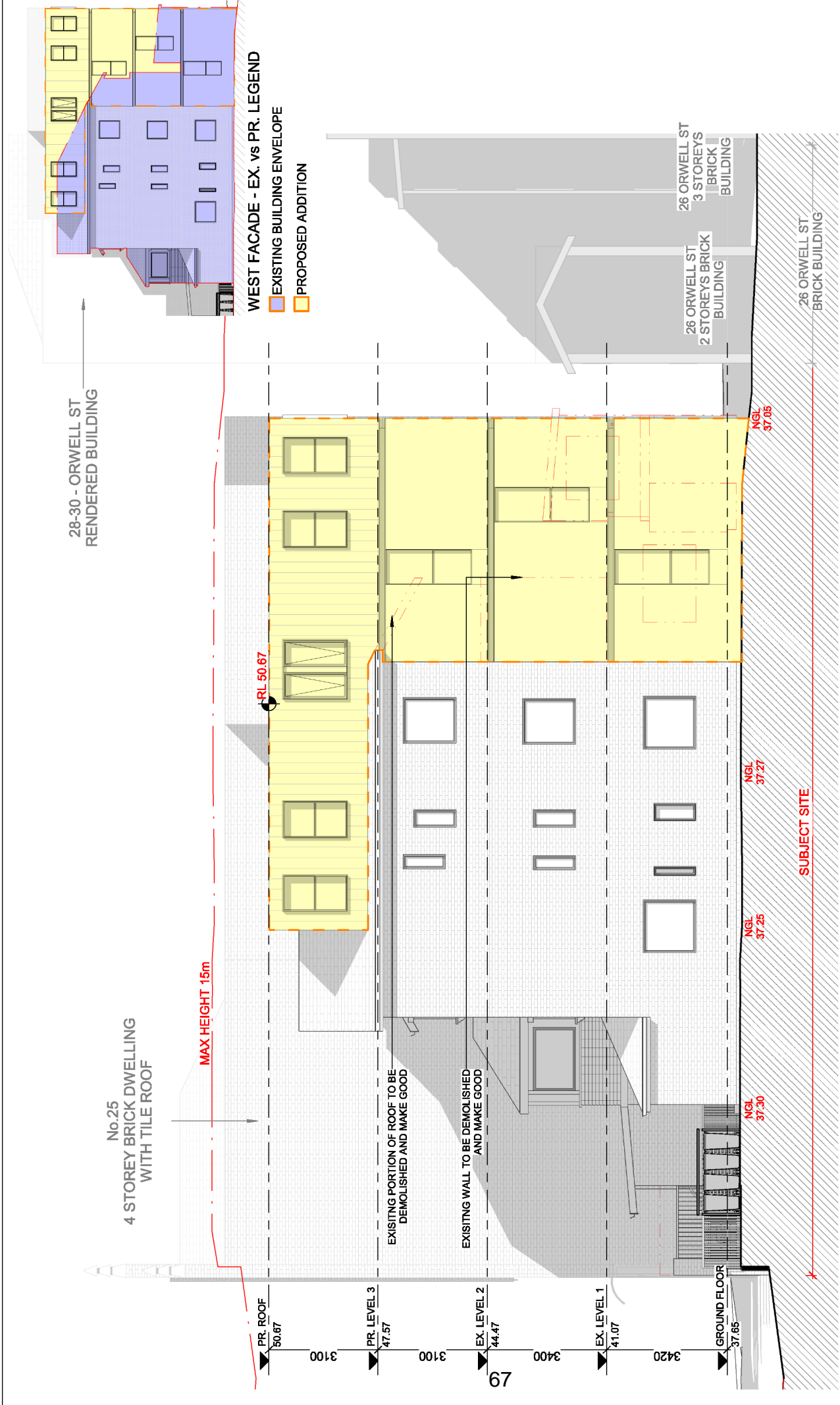
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DEVELOPMENT APPLICATION
NEW GENERATION BOARDING HOUSE

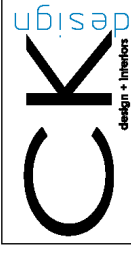
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Checked by: CK
Project number: 19037-14

Date: NOV 19
Sheet number: A3-18



PROPOSED BUILDING



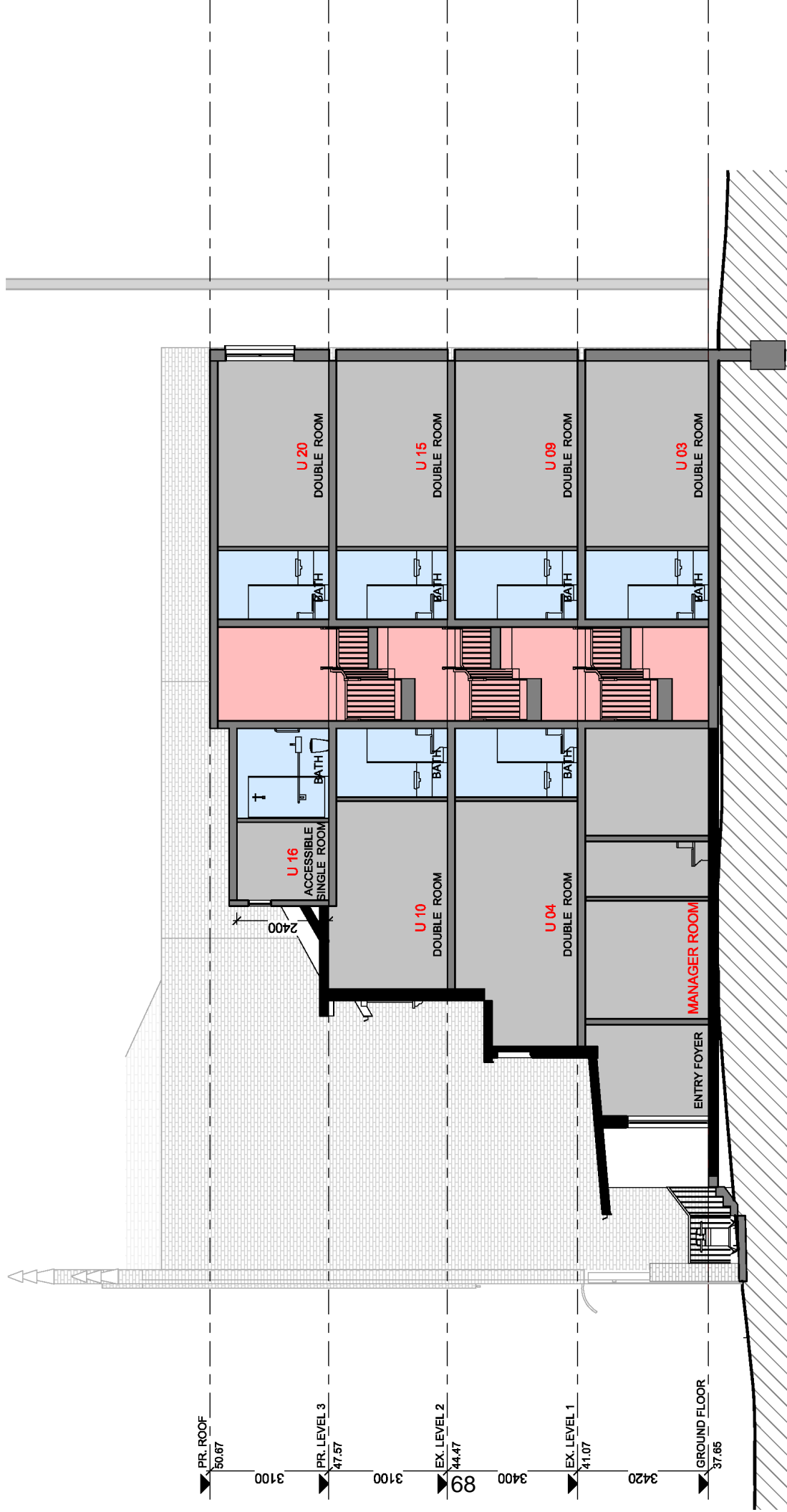
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PR. WEST ELEVATION
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DEVELOPMENT APPLICATION		Scale	
NEW GENERATION BOARDING HOUSE		Drawn by	As Indicated
CLIENT: CK DESIGN		Checked by	Date
ADDRESS: 23 HUGHES ST, POTTS POINT		Project number	Sheet number
		19037-14	NOV 19
		A3-20	



SECTION A
A3 1 : 100

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LEVEL 2, 240 CHURCH ST.
PARRAMATTA NSW 2150
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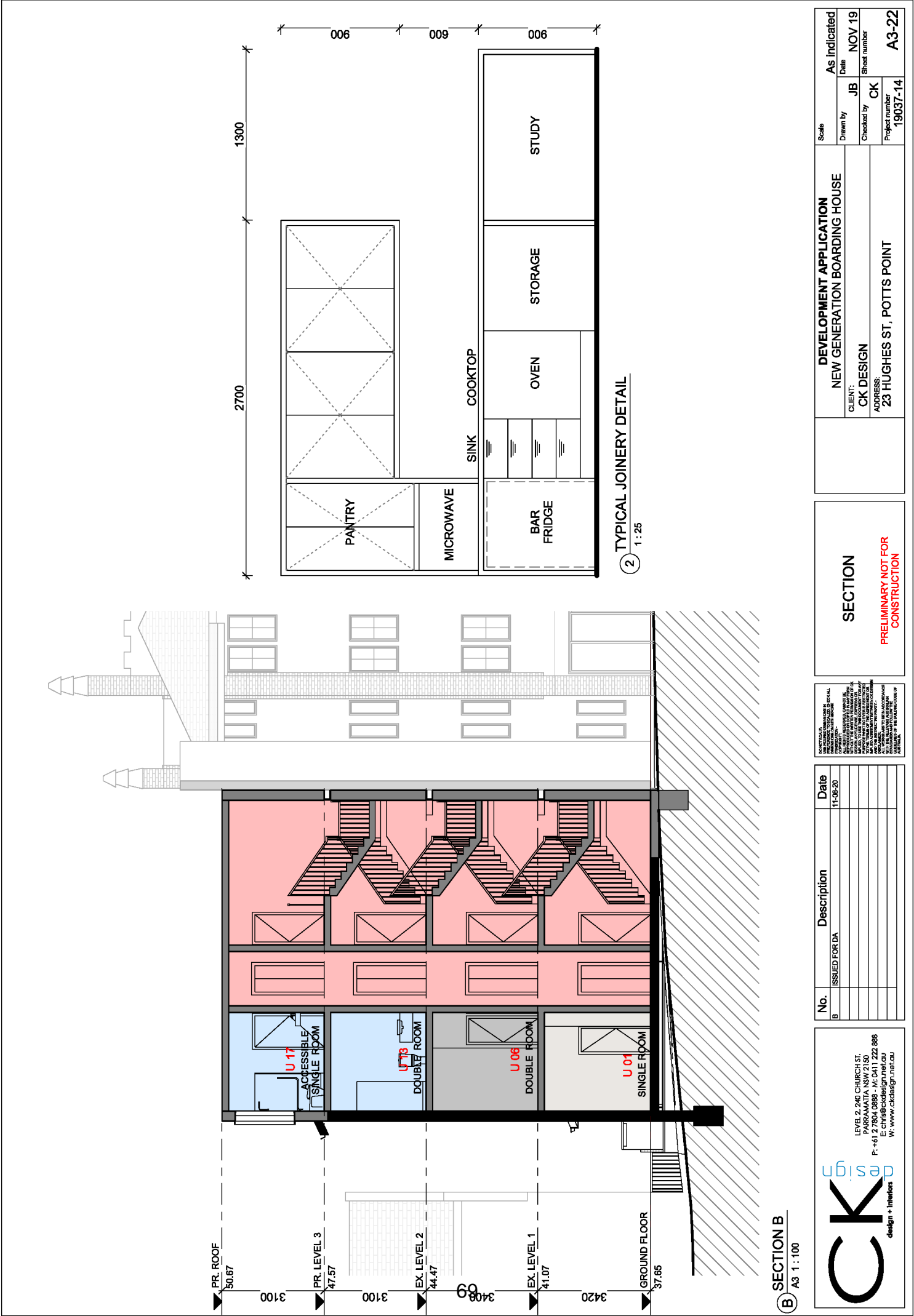
SECTION
PRELIMINARY NOT FOR CONSTRUCTION

Scale		A3 1 : 100
Drawn by	JB	Date
Checked by	CK	Sheet number
Project number	19037-14	A3-21

DEVELOPMENT APPLICATION
NEW GENERATION BOARDING HOUSE

CLIENT:
CK DESIGN

ADDRESS:
23 HUGHES ST, POTTS POINT



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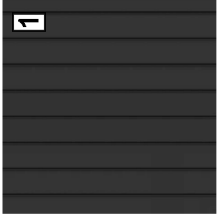
No.	Description	Date
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SECTION
PRELIMINARY NOT FOR CONSTRUCTION

Scale		As Indicated	
NEW GENERATION BOARDING HOUSE		Drawn by	Date
CLIENT: CK DESIGN		JB	NOV 19
ADDRESS: 23 HUGHES ST, POTTS POINT		Checked by	Sheet number
		CK	
		Project number	A3-22
		19037-14	



STANDING SEAM CLADDING -
MONIUM MATT (NON-
COMBUSTIBLE TO AS 1530.1)



OFF-FORM CONCRETE
WALL



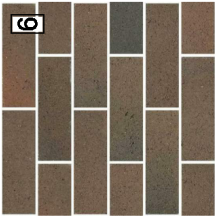
WINDOW AND DOOR
FRAMES POWDERCOATED
WHITE (NON-COMBUSTIBLE
TO AS 1530.1)



WINDOW AND DOOR
FRAMES POWDERCOATED
CHARCOAL (NON-
COMBUSTIBLE TO AS 1530.1)



STEEL BEAMS & PALISADE
GATES POWDERCOATED
CHARCOAL (NON-
COMBUSTIBLE TO AS 1530.1)



EXISTING BRICKWORK
TO BE RETAINED

No.	Description	Date
B	ISSUED FOR DA	11-08-20

SCHEDULE OF FINISHES
PRELIMINARY NOT FOR CONSTRUCTION

DEVELOPMENT APPLICATION		Scale		N.T.S	
NEW GENERATION BOARDING HOUSE		Drawn by	TA	Date	NOV 19
CLIENT: CK DESIGN		Checked by	CK	Sheet number	A3-30
ADDRESS: 23 HUGHES ST, POTTS POINT		Project number	19037-14		



No.	Description	Date
B	ISSUED FOR DA	11-08-20

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3D IMAGE - HUGHES STREET
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DEVELOPMENT APPLICATION			
NEW GENERATION BOARDING HOUSE		Scale	
CLIENT:	CK DESIGN	Drawn by	JB
ADDRESS:	23 HUGHES ST, POTTS POINT	Checked by	CK
		Project number	19037-14
		Date	NOV 19
		Sheet number	A3-31

Attachment B

<p>Clause 4.6 Variation Request – Motorcycle Parking</p>

19 August 2020

Ref: 2019137 (Version: 1.0)

General Manager
City of Sydney
GPO Box 1591
Sydney NSW 2001

CLAUSE 4.6 VARIATION (MOTORCYCLE PARKING) IN RELATION TO THE CO-LIVING (BOARDING HOUSE) DEVELOPMENT AT 23 HUGHES STREET, POTTS POINT

1. INTRODUCTION

The following Clause 4.6 Variation request has been prepared on behalf of Australian Urban Projects Pty Ltd in support of the proposed variation to motorcycle parking requirements pursuant to Clause 30(1)(h) of State Environmental Planning Policy (Affordable Rental Housing) 2009 in relation to the proposed co-living (boarding house) development at 23 Hughes Street, Potts Point.

Clause 30(1)(h) of the ARH SEPP relates to provision of bicycle and motorcycle parking. The clause requires the provision of one bicycle and one motorcycle space per five boarding rooms.

The proposed twenty room boarding house development generates demand for five bicycle and five motorcycle spaces. The development provides six bicycle spaces and complies with the ARH SEPP in this regard, however no motorcycle spaces are provided, which contravenes the development standard.

The proposal seeks flexibility in the application of the motorcycle parking development standard to the development in the circumstance of this particular case as the subject site is exceptionally well serviced by public and active transport networks.

The site is located within the Potts Point Heritage Conservation Area and, in order to retain as much existing building fabric as possible, motorcycle parking cannot be provided on the site.

The proposal provides much needed affordable housing near the Sydney CBD and utilising the site efficiently for accommodation is considered more desirable than motorcycle spaces.

It is noted that no car spaces are required as Council is trying to reduce vehicle dependency.

This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law and in our opinion, the variation achieves the objectives of the zone, the Council parking requirements and the Affordable Housing SEPP provisions, and has demonstrated there are sufficient environmental planning grounds.

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in these circumstances; and there are sufficient environmental planning grounds to justify the non-compliance.

2. CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

Clause 4.6 Exceptions to Development Standards of the SLEP 2012 provides a mechanism by which a development standard can be varied.

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development.

In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (Initial Action), Preston CJ notes at [87] and [90]:

Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.

The objectives of this clause as outlined in Clause 4.6(1) are:

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

Clause 4.6(2) provides consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.

The NSW Land and Environment Court decisions of *Wehbe v Pittwater Council* (2007) LGERA 446; and *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 provide assistance on the approach to justifying a contravention to a development standard.

3. CLAUSE 4.6(3)(A): UNREASONABLE OR UNNECESSARY

The case of *Wehbe* provides examples of how a variation to a development standard can be shown to be unreasonable or unnecessary (as required by clause 4.6(3)(a). In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

Although this case related to a variation of development standards under SEPP 1, it has been adopted as being of continuing relevance to variations under clause 4.6.

The examples provided in *Wehbe* are:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

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

3.1 The Objectives of the Standard are Achieved Notwithstanding Non-compliance with the Standard

The standard the applicant seeks to vary is Clause 30(1)(h) in State Environmental Planning Policy (Affordable Rental Housing) 2009.

Clause 30 Standards for boarding houses states:

30 Standards for boarding houses

- (1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following—
 - (a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,
 - (b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres,
 - (c) no boarding room will be occupied by more than 2 adult lodgers,
 - (d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,
 - (e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,
 - (f) (Repealed)
 - (g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,
 - (h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.
- (2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.

The Affordable Housing SEPP does not contain specific objectives relating to the provision of motorcycle parking. The aims of the Affordable Housing SEPP are also not considered to be directly relevant to the provision of motorcycle parking.

The aims of the policy pertain to the provision, delivery and retention of affordable housing. The proposal will contribute to meeting the high demand for affordable housing in the area by providing 20 new boarding house rooms.

While the Affordable Housing SEPP does not contain specific aims or objectives relating to motorcycle parking, the SEPP is geared toward reducing reliance on cars, and encouraging use of bicycles, motorbikes and public transport.

The proposal includes bicycle parking in excess of the SEPP requirement.

It is considered that the site is located in an 'accessible area' for the purposes of the ARH SEPP, being less than 400m from a bus stop. The nearest bus stop is located less than 100m away on Macleay Street and the nearest train station, Kings Cross Train Station, being located less than 500m away.

Furthermore, the site is within walking distance of a variety of shops, restaurants, educational institutions and residential support services.

Accordingly, the site is in an ideal location for student accommodation and will enhance the efficiency of existing transport infrastructure and services.

On the basis of the site's connectivity to public transport, and the provisions for bicycle parking, residents of the proposed boarding house will have adequate transport options available.

3.2 The Underlying Objective or Purpose would be Defeated or Thwarted if Compliance was Required and Therefore Compliance is Unreasonable

While the Affordable Housing SEPP does not contain specific aims or objectives relating to motorcycle parking, the SEPP is geared toward reducing reliance on cars, and encouraging use of bicycles, motorbikes and public transport, ultimately providing affordable housing options in accessible location.

Enforcing strict compliance would require substantial demolition of the original heritage significant building and an extensive redesign of the existing building.

The financial burden of undertaking these works would make the provision of a boarding house unviable and thwart the underlying objective of providing affordable accommodation.

In addition, the design parameters are constrained by the existing building, requiring substantial demolition. This would be inconsistent with the objectives of the Potts Point Heritage Conservation Area and the current attempt to retain as much of the existing built form as possible.

The Sydney LEP 2012 also provides maximum rather than minimum car parking provisions, with the underlying objective of reducing car dependency and encouraging the use of public transport. The subject site is ideally located near existing public transport networks and provides compliant bicycle spaces. Providing motorcycle spaces when car spaces are discouraged would thwart the underlying objective of encouraging public and active transport.

3.3 Consistency with the Zone Objectives

The proposed building form is consistent with the objectives of the R1 General Density Residential zone, as follows:

- To provide for the housing needs of the community.

The proposed boarding house development will provide more affordable housing options in the Potts Point locality and provide for the high housing needs of the community in a highly sought after area in close proximity to a number of services, public transport options and the Sydney CBD.

- To provide for a variety of housing types and densities.

The proposal will add to the variety of housing types in the area and will be below the maximum permissible FSR and height for the site. The proposal will provide a type of transition from the higher density residential flat building further up Hughes Street to the terrace style housing further down Hughes Street.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Not applicable.

- To maintain the existing land use pattern of predominantly residential uses.

The proposal will not alter the existing land use pattern and will add to the type of and nature of residential uses in the area.

4. 4.6(3)(B): SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY THE CONTRAVENTION

There are a number of environmental planning grounds that justify not providing motorcycle parking on the site in this instance.

As previously outlined, the proposal is consistent with the objectives of the Affordable Housing SEPP, which is the provision and retention of affordable rental housing.

The site is also within an area that is highly connected by public transport and is within close proximity to a range of businesses.

The proposal complies with the bicycle parking requirements and will encourage active and public transport usage.

In addition, the site is located within the Potts Point Heritage Conservation Area and the proposal seeks to retain as much of the existing building fabric as possible. Any attempt to provide motorcycle parking would require the demolition of parts of the original building, contrary to the heritage conservation provisions.

The objects identified correlate to Objects 1.3(c) and (d) in the current EPA Act which state:

- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,

The shortfall does not result in significant adverse impacts on adjoining development or the locality in general

Overall, it is considered that the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard, as required in Clause 4.6(3)(b).

5. 4.6(4)(A)(II): THE PUBLIC INTEREST

Clause 4.6(4)(a)(ii) requires that consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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”.

The proposed development is consistent with the objectives of the Affordable Housing SEPP development standard, and the objectives of the zone, for the reasons discussed above.

6. 4.6(1): OBJECTIVES OF CLAUSE 4.6

The proposed variation to the motorcycle parking standard, for the reasons explained above, is clearly consistent with the objectives of clause 4.6, which are:

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

7. SECRETARY’S CONCURRENCE

Clause 4.6(4)(b) of the SLEP 2012 requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary’s concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. Since the conditions in the table do not apply in this case, the concurrence of the Secretary can be assumed.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (Fast Buck\$ v Byron Shire Council (1999) 103 LGERA 94 at [100] and Wehbe at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

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

The proposal is not considered to raise any matter of significance for State or regional environmental planning.

The motorcycle parking non-compliance will facilitate an enhanced design and encourage the use of public and active transport, without adversely impacting neighbouring properties.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will be well serviced by existing public and active transport networks.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

There are no other relevant matters required to be taken into account by the Secretary.

8. CONCLUSION

This written request has adequately demonstrated 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 development standard.

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the Affordable Housing SEPP and the development objectives of the R1 General Residential zone pursuant to the SLEP 2012.

On that basis, the request to vary Clause 30(1)(h) of the Affordable SEPP should be upheld.

Should you have any queries or require clarification on any matters please do not hesitate to contact me on 0414402203.

Yours sincerely,



Craig Schulman
Director

Master of Urban and Regional Planning
Bachelor of Science (Resource and Environmental Management)

Item 5.**Development Application: 397-399 Harris Street, Ultimo - D/2020/593****File No.:** D/2020/592**Summary**

Date of Submission:	1 July 2020, amended plans received 6 November and 23 December 2020
Applicant:	J Uzabeaga
Architect/Designer:	Beta Solutions Architects
Owner:	C Uzabeaga, J Uzabeaga
Planning Consultant	GSA Planning
Heritage Consultant	Heritage 21
DAPRS	15 September 2020
Cost of Works:	\$367,400.00
Zoning:	B4 Mixed Use, proposal permissible with consent
Proposal Summary:	<p>The application proposes alterations to an existing two storey building and use for a nine bedroom boarding house over two levels.</p> <p>The application includes a proposed variation to the motorcycle parking development standard contained in State Environmental Planning Policy (Affordable Rental Housing) 2009. The application proposes no motorcycle parking rather than the required two spaces and is therefore referred to the Local Planning Panel for determination.</p> <p>The application was notified between 8 July 2020 and 30 July 2020. No submissions were received in response.</p>

The application was considered by the Design Advisory Panel Residential Subcommittee on 15 September 2020. The panel made recommendations to improve the amenity of boarding rooms and common areas. The proposal was amended to address issues raised by the panel and Council staff with amended plans received on 6 November 2020 and 23 December 2020. The amended plans are considered to have addressed the key issues raised except in relation to the poor amenity of room 4 on the ground floor. To address this an additional amendment is recommended to improve the amenity of the ground floor dining / kitchen area with the deletion of room 4 on the ground floor boarding room due to poor amenity.

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

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) State Environmental Planning Policy No. 55 - Remediation of Land
- (iv) State Environmental Planning Policy (Affordable rental Housing) 2009
- (v) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (vi) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Motorcycle Parking

Recommendation

It is resolved that:

- (A) the variation requested to the motorcycle parking development standard required under State Environmental Planning Policy (Affordable Housing) 2009 in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) consent be granted to Development Application No. D/2020/593 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 proposal is consistent with the objectives of the B4 Mixed Use Zone.
- (B) The proposal generally satisfies the relevant controls relating to boarding houses.
- (C) The proposal, subject to conditions, satisfies the provisions of clause 6.21 of Sydney LEP 2012.
- (D) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the motorcycle parking development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 30 (1)(H) of SEPP Affordable Rental Housing 2009; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the B4 Mixed Use zone and the motorcycle parking development standard.

Background

The Site and Surrounding Development

1. The site is identified as being part of Lot 101 in DP 736009 and is located at 397-399 Harris Street, Ultimo. Lot 101 includes the building at 397-399 Harris Street and the adjoining building (an existing boarding house) at 401-403 Harris Street. The site has a combined area of 371sqm. The subject building has a frontage of approximately 10.4m to Harris Street, a side frontage to Fig Street of 18.7m and a site coverage of 193.7sqm.
2. The site contains, at 397-399 Harris Street, a two storey commercial building built to boundary. The frontage of the building has been modified with ground floor openings that reflect a previous shop use. At 401-403 Harris Street is a two storey commercial building with an approved boarding house use. The building has a similar appearance at the street frontage.
3. The surrounding area is characterised by a mix of uses and building forms. To the north the site adjoins Fig Street, an elevated pedestrian walkway and the Western Distributor overpass. To the east across Harris Street at 390-422 Harris Street is located a six storey commercial building. To the south the site adjoins a row of two storey terrace buildings including both residential and commercial uses. To the west at 8-14 Ada Place is a three to four storey residential flat building.
4. The site is located within the Ultimo Heritage Conservation Area.
5. A site visit was carried out on 25 August 2020. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Harris Street looking west.



Figure 3: Site viewed from Harris Street looking south.



Figure 4: Site viewed from elevated pedestrian walkway along Fig Street.



Figure 5: Internal views of existing building.

History Relevant to the Development Application

Development Applications

6. The following applications are relevant to the current proposal:
- **D/2007/851** – Development consent was granted on 11 July 2007 for 'Alterations and additions to the existing building to create an additional dwelling and convert the existing retail space into three retail units' for 397-399 and 401-403 Harris Street, Ultimo. The approved plans for 397-399 Harris Street are for two commercial tenancies fronting to Harris Street and a residence at the rear ground floor with four bedrooms on the first floor. The existing site conditions within the subject building largely reflect these approved plans.
 - **D/2011/1055** – Development consent was granted on 19 September 2011 for 'Conversion of an existing dwelling to an eight room boarding house for a maximum of 11 occupants. Undertake internal and external alterations' for 401-403 Harris Street, Ultimo (adjoining building on the same allotment). It is understood that this use is currently operating.
 - **D/2013/1634** – Development consent was granted on 24 April 2014 for 'Alterations and additions to construct an additional storey to an existing two storey building for use as a boarding house and a café at ground level' for 397-399 Harris Street, Ultimo. It is understood this consent was not activated and lapsed.

Compliance Action

7. The site has previously been subject to compliance action in July 2019 where orders were given to cease using the site as a boarding house and the use ceased.

Amendments

8. The application was considered by the Design Advisory Panel Residential Subcommittee (DAPRS) on 15 September 2020. The key recommendations from the Panel were:
- (a) The planning layout and circulation provide poor amenity, in particular for the kitchen and laundry on the ground floor;
 - (b) The extent of roof cover to the courtyard should be reduced;
 - (c) A new opening to the northern wall of the courtyard would improve ventilation and light;
 - (d) The amenity of ground floor Room 4 is unsatisfactory in terms of size, configuration, ventilation and privacy;
 - (e) Overlooking and privacy between the common area and boarding rooms needs to be addressed;

- (f) The first floor study room is a habitable space and requires source of natural light and ventilation; and
 - (g) BCA compliance should be confirmed.
9. Amendments in response to the DAPRS comments and Council staff feedback were received on 6 November 2020. Following further feedback from Council staff, further amendments to plans were received on 23 December 2020. Room 4 was retained in the amendments which did not address the above recommendations.

Proposed Development

10. The application seeks consent for the following:
- (a) Alterations to the existing two storey building including reinstatement of traditional features to the front face;
 - (b) Internal alterations and fit out works for a boarding house containing nine boarding rooms. Parking provided for two bicycles.
11. Plans and elevations of the proposed development are provided below.

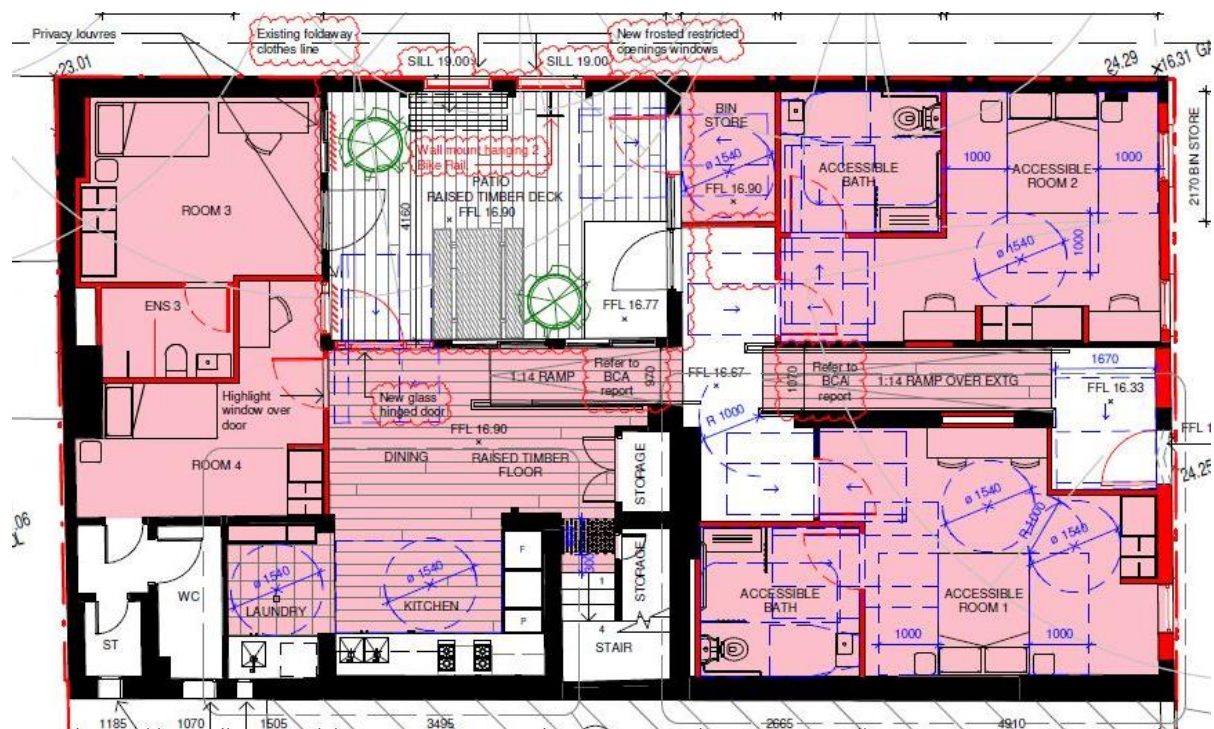


Figure 6: Proposed ground floor plan

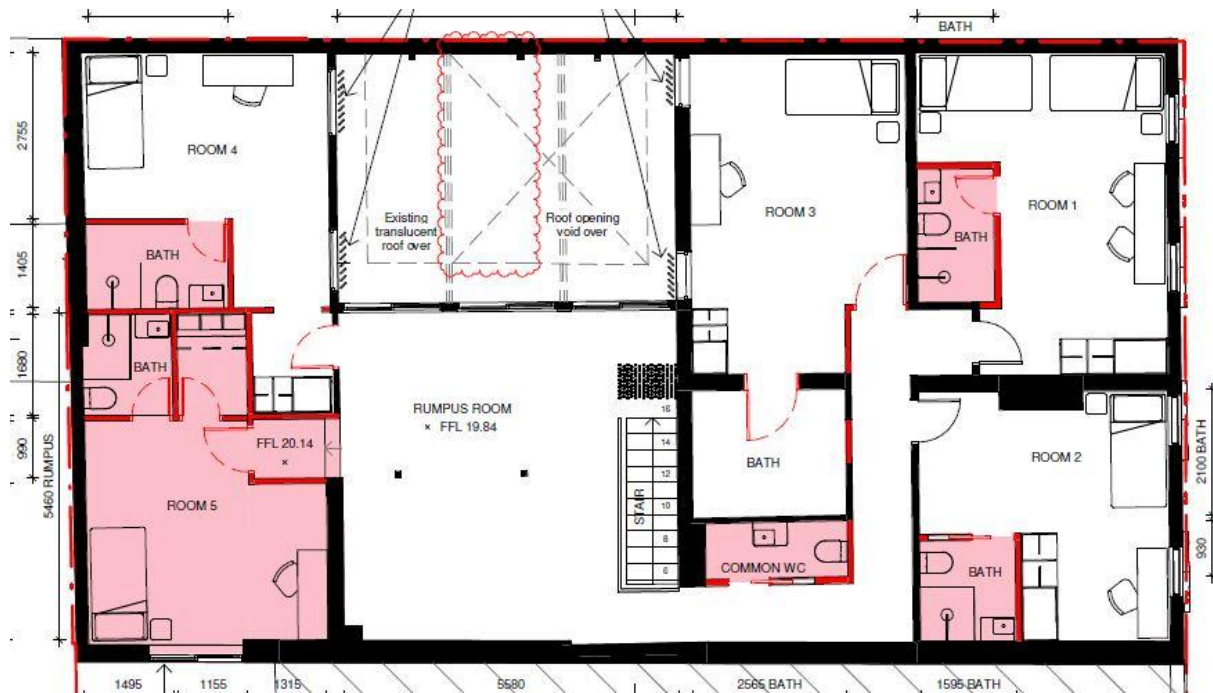


Figure 7: Proposed first floor plan

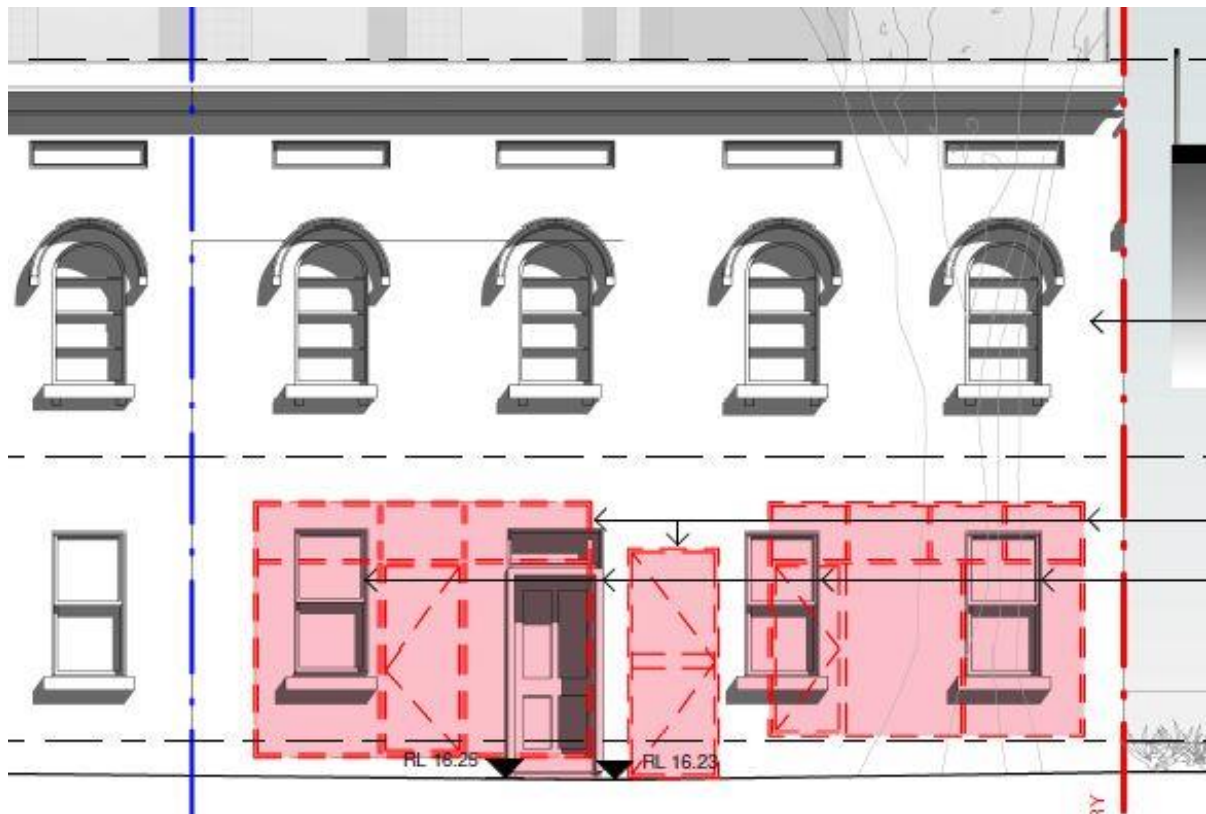


Figure 8: Proposed front elevation plan

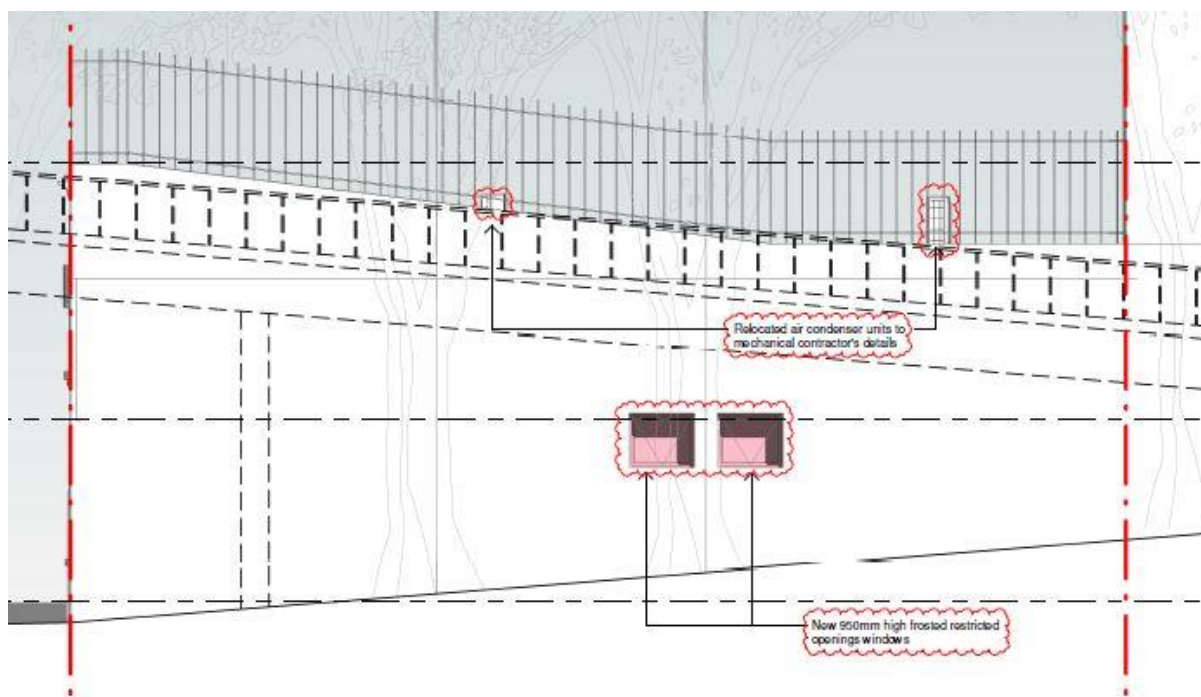


Figure 9: Proposed north elevation

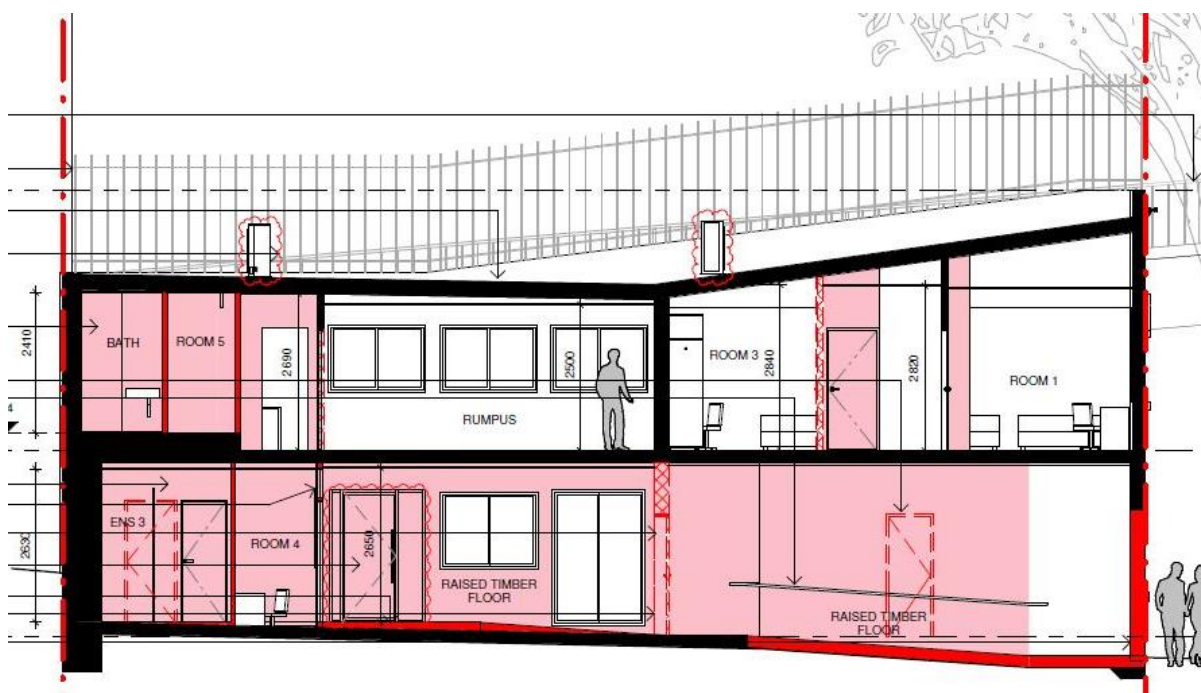


Figure 10: Proposed section plan

Assessment

12. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

State Environmental Planning Policies

State Environmental Planning Policy No 55 - Remediation of Land

13. The aim of State Environmental Planning Policy (SEPP) No 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
14. The proposed works include alterations to the existing commercial building with previous residential uses and approvals for the site. The site is considered to be suitable for the proposed use subject to routine investigations for any hazardous materials during construction.

State Environmental Planning Policy (Affordable Rental Housing) 2009

15. The aim of State Environmental Planning Policy (SEPP) (Affordable Rental Housing) is to provide a consistent planning regime for the provision and maintenance of affordable rental housing and to facilitate the delivery of new affordable rental housing.

Division 3: Boarding Houses

16. Under Clause 29, compliance with any of the following standards must not be used to refuse consent for a boarding house. An assessment of the proposed boarding house against each standard is provided in the table below.

Clause 29 – Standards that cannot be used to refuse a boarding house

Provision	Compliance	Comment
1 Density and scale expressed as floor space ratio An FSR of up to 1.5 plus 0.5:1 is permitted.	Yes	The application proposes a floor space ratio of 1.54:1.
2(a) Building height The proposed building height must not exceed the maximum building height of 9m permitted under the Sydney LEP 2012.	Yes	Existing building height 8m retained.
2(b) Landscaped area The front setback is to be compatible with the streetscape.	Yes	The predominant character of the buildings along the western side of Harris Street in this location is nil street setbacks with no front landscaping.

Provision	Compliance	Comment
2(c) Solar access If more than one communal living area is provided, at least one of the rooms is to receive a minimum of 3 hours direct sunlight between 9:00am and 3:00pm in mid-winter.	No	Due to the existing building configuration, the proposed communal living areas on the ground and first floors will not receive the required solar access, being located behind an existing two storey boundary wall. The amenity to the provided communal living area on the ground floor is recommended to be improved Clause 29(4) notes the consent authority may consent to the development whether or not the development complies with the standards in clause 29(2).
2(d) Private open space (i) One area of at least 20sqm with a minimum dimension of 3m is provided for lodgers. (ii) If accommodation is provided for an onsite manager, one area of at least 8sqm with a minimum dimension of 2.5m, adjacent to the accommodation.	Yes	An outdoor space of 23.5sqm with a minimum dimension of greater than 3m is provided. No onsite manager proposed or required.
2(e) Parking (i) 0.2 parking spaces provided for each boarding house room for sites in an accessible area. (ii) 0.4 parking spaces provided for each boarding house room for sites not in an accessible area. (iii) Not more than 1 parking space for the on-site manager.	No	Five spaces allowed, no spaces provided. Clause 29(4) notes the consent authority may consent to the development whether or not the development complies with the standards in clause 29(2). The reduced provision of no parking is supported.
2(f) Accommodation size (i) Rooms intended to be used by a single lodger are to have a minimum GFA of 12sqm.	Yes	Proposed single rooms are greater than 12sqm. Double rooms are greater than 16sqm.

Provision	Compliance	Comment
(ii) Rooms intended to be used more than one person are to have a minimum GFA of 16sqm. (excluding any area used as a private kitchen/ bathroom)		

17. Clause 30 states that a consent authority must not grant development consent to which Division 3 applies unless it is satisfied of each of the following provisions.

Clauses 30 – Standards for boarding house

Provision	Compliance	Comment
1(a) At least one communal living room is to be provided.	Yes	Communal living rooms provided on ground and first floor.
1(b) No boarding room is to have a gross floor area (excluding private kitchen or bathroom facilities) of more than 25m ²	Yes	All boarding rooms are less than 25sqm.
1(c) No boarding room to be occupied by more than 2 adult lodgers	Yes	Rooms are designed as single and double rooms. The submitted Plan of Management restricts the number of lodgers to no more than 2 adult lodgers per room.
1(d) Adequate bathroom and kitchen facilities available for use of each lodger	Yes	The boarding house provides adequate bathroom and kitchen facilities for each lodger.
(1e) A boarding room or on-site dwelling to be provided for a boarding house manager if boarding house has a capacity of 20 or more lodgers	Yes	The boarding house will have fewer than 20 lodgers, therefore manager's room not required or provided.

Provision	Compliance	Comment
1(g) If the boarding house is zoned primarily for commercial purposes, no part of the ground floor that fronts a street will be used for residential purposes except where permitted under an EPI.	Yes	The land is zoned mixed use and residential use is permitted on the ground floor.
1(h) At least 1 bicycle and 1 motorcycle parking space to be provided for every 5 rooms.	No	<p>Two bicycle parking spaces are required and provided.</p> <p>Two motorcycle spaces are required, no motorcycle parking is proposed.</p> <p>A request to vary the standard pursuant to cl 4.6 has been submitted to justify the variation and is discussed within the report under the heading 'Discussion'.</p>

Clause 30A – Character of the local area

18. Clause 30A states that a consent authority must not consent to development for a boarding house unless it has taken into consideration whether the design of the development is compatible with the character of the local area.
19. The site is located within an area that contains a range of uses and building forms including other approved boarding houses. The proposed boarding house is compatible with the character of the surrounding area and is consistent with clause 30A.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

20. A BASIX Certificate has been submitted with the development application.
21. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

State Environmental Planning Policy (Infrastructure) 2007

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

Division 17, Subdivision 2: Development in or adjacent to road corridors and road reservations

Clause 101 – Development with frontage to classified road

23. The application is subject to Clause 101 of the SEPP as the site has frontage to Harris Street, which is a classified road.

24. The proposed development satisfies the provisions of Clause 101 subject to conditions of consent, as access to the site is not provided from the classified road and the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development, subject to the recommended conditions of consent.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

25. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP. The SREP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
26. The site is within the Sydney Harbour Catchment and eventually drains into Sydney 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 within the deemed SEPP.

Local Environmental Plans

Sydney Local Environmental Plan 2012

27. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the B4 Mixed Use zone. The proposed development is defined as a boarding house and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	A maximum building height of 9m is permitted. The existing building height of 8m is retained.

Provision	Compliance	Comment
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 1.5:1 is permitted under the LEP.</p> <p>A floor space ratio of 1.54:1 is proposed and permitted in accordance with the 0.5 SEPP bonus that applies and prevails over the LEP standard.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the motorcycle parking standard prescribed under SEPP Affordable Housing 2009. A request to vary the standard pursuant to cl 4.6 has been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is located within the Ultimo Heritage Conservation Area.</p> <p>The application as amended includes works to the building façade as recommended by Council's Heritage Specialist to reinstate traditional door and window openings that match the works done to the adjacent building at 401-403 Harris Street.</p> <p>The works will conserve the significance of the heritage conservation area.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>Subject to conditions to address the recommendations of DAPRS the proposal addresses the relevant provisions.</p> <p>See further details in the 'Discussion' section below regarding design.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.

Development Control Plans**Sydney Development Control Plan 2012**

28. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

29. The site is located within the Ultimo locality. The proposed development is in keeping with the unique character and the design principles of the locality. The proposed two storey building form is retained with restoration works to the building frontage that will improve the relationship within the heritage conservation area.

Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	The proposed works to the frontage façade will improve the public domain relationship.
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.7 Water and Flood Management	Yes	The site is not identified as being subject to flooding.

Provision	Compliance	Comment
3.8 Subdivision, Strata Subdivision and Consolidation	N/A	<p>Subdivision is not proposed as part of the subject application.</p> <p>No strata subdivision of boarding houses is permitted under SEPP Affordable Housing 2009.</p>
3.9 Heritage	Yes	<p>The site is located within the Ultimo Heritage Conservation Area. The building is identified as a contributing building.</p> <p>The proposal includes works to the front building façade as recommended by Council's Heritage Specialist to reinstate traditional door and window openings that match the works done to the adjacent building at 401-403 Harris Street.</p> <p>The works are supported as they remove previous unsympathetic alterations and reinstate traditional building openings.</p>
3.11 Transport and Parking	Yes	Bicycle parking is provided on the ground floor.
3.12 Accessible Design	Yes	Compliant access to be provided.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Partial compliance	<p>The proposal includes a dedicated bin area for waste and recycling.</p> <p>Council's waste unit recommends additional space be provided as well as a dedicated area for bulky goods waste.</p> <p>As part of the recommendation to delete Bedroom 4 on the ground floor for amenity reasons, additional space would be available for a bulky waste area at the rear of the building. A condition is recommended to require these amendments.</p>

Section 4 – Development Types

4.4 Other Development Types and Uses

4.4.1 Boarding houses and student accommodation

Provision	Compliance	Comment
4.4.1.1 Subdivision	Yes	No strata subdivision proposed or permitted.
4.4.1.2 Bedrooms	Yes	One ensuite 2sqm, all others 3sqm or larger. All rooms sized 15sqm (single), 18sqm (double) or larger.
4.4.1.3 Communal kitchen areas	Yes	A communal kitchen area is provided on the ground floor sized approx. 9sqm adjacent to a communal living/dining area.
4.4.1.4 Communal living areas and open space	Partial compliance	Indoor: Indoor communal area of 12.5sqm required. Communal area on ground floor sized 10.5sqm provided (excluding access ramp). Communal area on first floor sized 25sqm provided. The communal area on the ground floor is adjacent to the kitchen and entry to the outdoor common space. A large proportion of the space would be used as a thoroughfare. It was recommended by DAPRS to delete Room 4 which would provide additional communal area in this space. This is included as a recommended condition. Outdoor: An outdoor space sized 23.5sqm with a minimum dimension of greater than 3m is provided. The area has some weather protection.

Provision	Compliance	Comment
		<p>The area is located behind an existing two storey north boundary wall and would not receive two hours of solar access to 50% of the area midwinter.</p> <p>DAPRS recommended that additional openings be provided to the wall to improve sunlight and ventilation to this space. These recommendations have been included as part of the amended plans.</p> <p>Given the existing building configuration the variation is considered to be acceptable.</p> <p>Private open space:</p> <p>No private open space provided rather than required 30%. Given the existing building configuration within the heritage conservation area the variation is considered to be acceptable.</p>
4.4.1.5 Bathroom, laundry and drying facilities	Yes	1 washing machine and 1 dryer required and provided.
4.4.1.6 Amenity, safety and privacy	Yes	The building including communal areas are secure.
4.4.1.7 Plan of Management	Yes	<p>An operational plan of management has been submitted.</p> <p>The plan addressed the key required items and should be kept on site at all times to be implemented and updated as required.</p>

Discussion

Clause 4.6 Request to Vary a Development Standard

30. The development is subject to a minimum motorcycle parking standard under Environmental Planning Policy (Affordable Rental Housing) 2009. A minimum of 2 motorcycle parking spaces are required under clause 30(1)(h) of the SEPP. The proposal does not provide any motorcycle parking spaces.

31. 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:
- a. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - b. that there are sufficient environmental planning grounds to justify contravening the standard;
 - c. the proposed development will be consistent with the objectives of the zone; and
 - d. the proposed development will be consistent with the objectives of the standard.

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

32. The applicant seeks to justify the contravention of the motorcycle parking 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 objectives of the standard are achieved notwithstanding non-compliance with the standard;
 - ii. The SEPP does not state specific objectives relating to the provision of motorcycle parking, however the overall objectives of the SEPP are to reduce reliance on car use by encouraging the use of bicycles, motorcycles and public transport;
 - iii. The proposal is consistent with this objective providing space for bicycle parking and being located near to public transport including buses and the light rail;
 - iv. The site is located within walking distance of a variety of shops, restaurants and education institutions;
 - v. The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
 - vi. The underlying objective of the SEPP is to provide affordable housing in accessible locations;
 - vii. The proposal achieves this objective being in a highly accessible location. The additional cost of providing motorcycle parking within the existing building would increase the cost and make the proposal unviable; and

- viii. Requiring strict compliance would require significant building interventions to the existing building which would not be in keeping with the desired character of the heritage conservation area.
- b. That there are sufficient environmental planning grounds to justify contravening the standard:
 - i. The site is located in a highly accessible location with good access to public transport;
 - ii. Bicycle parking is provided for the development;
 - iii. The existing constraints of the site do not readily allow for the provision of onsite motorcycle parking. This includes the proximity to the intersection of Harris and Fig Streets including the pedestrian overpass; the change in levels along Fig Street; and the existing building configuration not allowing for an additional separate entry point. Any design for motorcycle entry would not meet the requirement for good design and amenity of the built environment;
 - iv. There are examples of variations to the control for other similar developments within the local area including the adjoining existing boarding house at 401-403 Harris Street; and
 - v. Providing motorcycle parking within the site in such a small development would result in a loss of amenity for residents.
- c. The proposed development will be consistent with the objectives of the zone;
 - i. The proposal contributes to the mixture of land uses within the mixed use zone;
 - ii. The proposal is in an accessible location within walking distance of shops, restaurants and educational uses and public transport options; and
 - iii. The proposal will contribute economically to the local area.
- d. The proposed development will be consistent with the objectives of the standard
 - i. Whilst the standard does not have specific objectives, the proposal achieves the overall objectives of providing affordable accommodation in accessible locations.

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

33. 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)?

34. The submitted request is considered to demonstrate that compliance with the development standard is unreasonable or unnecessary in the particular circumstances of this case. The motorcycle parking standard does not include specific objectives, however the written request has demonstrated that the overall aims of the SEPP are achieved. The proposal provides onsite bicycle parking and is located in an accessible location close to public transport and a range of shops and services

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

35. The applicant's written request has adequately demonstrated there are sufficient environmental planning grounds to contravening the development standard. The written request and advice from Council's Heritage Specialist and Transport Unit has confirmed that providing onsite motorcycle parking is not readily feasible for the subject building given its location within a heritage conservation area and the local street network

Is the development in the public interest?

36. The proposal is considered to be in the public interest as it is consistent with the objectives of the SEPP (Affordable Rental Housing) 2009 and the objectives of the B4 Mixed Use Zone.
37. The proposal provides a permissible boarding house use that is compatible with the mix of uses in the locality and the B4 Mixed Use Zone. The site is located in an accessible location and includes the provision of bicycle parking on the site to promote both walking and cycling. The use will contribute to the viability of nearby shops and services

Conclusion

38. For the reasons provided above the requested variation to the motorcycle parking 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 Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of the standard and the SEPP and the B4 Mixed Use Zone.

Design

39. The application was considered by the Design Advisory Panel Residential Subcommittee (DAPRS) on 15 September 2020. The key recommendations from the panel in response to the proposal were:
- (a) The planning layout and circulation provide poor amenity, in particular for the kitchen and laundry on the ground floor;
 - (b) The extent of roof cover to the courtyard should be reduced;
 - (c) A new opening to the northern wall of the courtyard would improve breezes and light;
 - (d) The amenity of ground floor Room 4 is unsatisfactory in terms of size, configuration, ventilation and privacy;
 - (e) Overlooking and privacy between the common area and boarding rooms needs to be addressed;
 - (f) The first floor study room is a habitable space and requires a source of natural light and ventilation; and
 - (g) BCA compliance should be confirmed for proposal.
40. Amendments in response to the DAPRS comments and Council staff feedback were received on 6 November 2020. Following further feedback from Council staff, further amendments to plans were received on 23 December 2020. The amended plans include the following changes:
- (a) revised front façade to Harris Street with door and window positions to match those at 401-403 Harris Street;
 - (b) reduction in extent of existing roof cover;
 - (c) new openings provided to northern wall for light and ventilation;
 - (d) privacy louvres provided to boarding room windows orientated towards the internal outdoor common area;
 - (e) study room located on first floor deleted and area available as internal common space; and
 - (f) BCA compliance report provided.
41. The revised plans have been assessed by Council staff including Heritage and Urban Design specialists. The amended plans and information are considered to address a number of the above issues. The amended plans retain Room 4 on the ground floor which is considered to result in both a boarding room of low amenity and a constricted communal living area and dining space within the kitchen area. An extract from the ground floor plan is shown below:

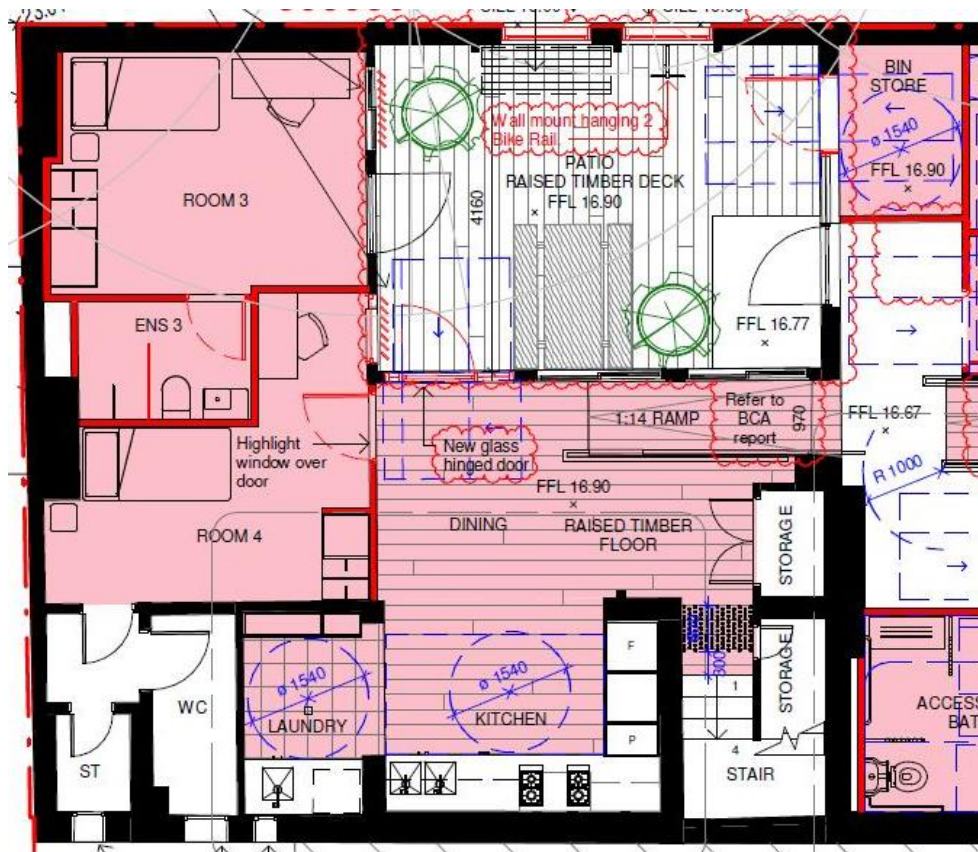


Figure 11: Extract of ground floor plan

42. Room 4 is considered to provide poor amenity in terms of configuration, natural light, and ventilation; and the provided dining area would primarily serve as a thoroughfare to the kitchen and stairs. It is recommended that Room 4 be deleted and the area be reconfigured as additional communal living/dining space and to provide a bulky goods storage space as recommended to be provided by the City's Waste Unit. This recommended design amendment is included as part of the conditions in Attachment A.

Consultation

Internal Referrals

43. The application was discussed with Council's Building Services Unit, Heritage and Urban Design Unit, Transport and Access Unit, Waste Management Unit, and Landscaping Unit. The provided advice is discussed within the assessment above and recommended conditions are included in Attachment A.

Advertising and Notification

44. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 21 days between 8 July 2020 and 30 July 2020. A total of 492 properties were notified, and no submissions were received.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

45. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015. The calculated contributions is \$50,495.34. Credits have been applied for the most recent approved use of the site, under D/2007/851.
46. A condition relating to this development contribution has been included in the recommended conditions of consent in the Notice of Determination. The condition requires the contribution to be paid prior to the issue of a construction certificate.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

47. The site is located within the Ultimo/Pymont affordable housing contribution area. As the proposed development includes additional floor space, a contribution is required at a rate of \$31.90 per square metre of total residential floor area 358.9 sqm totalling \$11,448.91. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

Relevant Legislation

48. Environmental Planning and Assessment Act 1979.

Conclusion

49. The application for alterations to the existing two storey commercial building for use as a nine room boarding house at 309-399 Harris Street, Ultimo has been assessed against the relevant planning controls.

50. The application includes a proposed variation to the motorcycle parking development standard contained in State Environmental Planning Policy (Affordable Rental Housing) 2009. The application proposes no motorcycle parking rather than the required two spaces. A written request pursuant to cl 4.6 of SLEP 2012 has been considered and is supported in the circumstances of the application.
51. The proposal was considered by the Design Advisory Panel Residential Subcommittee and amended in response to the feedback of the panel and Council Staff. The amended plans are considered to have addressed the key issues raised, with an additional amendment recommended to improve the amenity of the ground floor dining / kitchen area with the deletion of one ground floor boarding room (Room 4) with low amenity (resulting in an 8 room boarding house). This area would be available for additional useable communal living/dining and storage area improving the overall amenity and functionality of the boarding house use. This is included as part of the recommended conditions for approval of the proposal

ANDREW THOMAS

Executive Manager Development

Shannon Rickersey, Senior Planner

Attachment A

Recommended Conditions of Consent
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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/2020/593 dated 1 July 2020 and the following drawings prepared by Beta Solutions Architects:

Drawing Number	Drawing Name	Date
DA005 Rev B	External Finishes Schedule	14.12.20
DA100 Rev C	Site Plan	14.12.20
DA101 Rev C	Existing Ground Floor Plan	14.12.20
DA102 Rev C	Existing First Floor Plan	14.12.20
DA103 Rev C	Proposed Ground Floor Plan	14.12.20
DA104 Rev C	Proposed First Floor Plan	14.12.20
DA201 Rev B	Proposed East Elevation	27.10.20
DA202 Rev C	Proposed North Elevation	14.12.20
DA301 Rev C	Proposed Section A	14.12.20
DA302 Rev C	Proposed Section B	14.12.20
DA500 Rev B	Typical Room and Communal Kitchen and Laundry	27.10.20
DA600 Rev B	Proposed Landscape Plan	14.12.20

and as amended by the conditions of this consent.

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

(2) DESIGN MODIFICATIONS

The design of the building must be modified as follows:

- (a) Room 4 on the ground floor is to be deleted and the area is to be combined with the adjoining communal living/dining area.

- (b) A bulky goods storeroom is to be provided on the ground floor.

The modifications are to be submitted to and approved by Council's Area Planning Manager prior to the issue of a Construction Certificate.

(3) AFFORDABLE HOUSING CONTRIBUTION - ULTIMO PYRMONT - PAYMENT IN LIEU OF FLOOR SPACE CONTRIBUTION

The Affordable Housing Contribution is as follows:

- (a) Prior to a Construction Certificate being issued and pursuant to *Sydney LEP 2012* and the adopted City West Affordable Housing Program, the applicant must pay a monetary contribution towards the provision of affordable housing. The contribution is \$11,448.91. If the contribution is paid after 30 June of the year in which this consent is granted, the amount of the contribution must be indexed in accordance with the adopted City West Affordable Housing Program.
- (b) To make payment contact Councils Planning Assessment Unit email: planningsystemsadmin@cityofsydney.nsw.gov.au who will index the amount, then provide you with written confirmation of the amount payable and details of how to make the payment at the NSW Department of Planning, Industry and Environment.
- (c) Payment can be made either by bank cheque to the value of the required contribution (made in favour of City West Housing Pty Ltd) or alternatively a satisfactory bank guarantee is to be provided to the value of the required contribution. Evidence of payment or lodgement of a bank guarantee must be provided to the Accredited Certifier prior to issue of a construction certificate.
- (d) Prior to issue of any Occupation Certificate being issued or the use commencing, whichever is earlier, the applicant must provide evidence to the Principal Certifier that the bank guarantee referred to in (c) above has been redeemed as payment of the contribution.

Note: All affordable housing contribution payments (and lodgement of bank guarantees) for Ultimo-Pyrmont are paid at the NSW Department of Planning, Industry and Environment.

(4) SECTION 7.11 CONTRIBUTIONS PAYABLE - CONTRIBUTION TOWARDS PUBLIC AMENITIES – CITY OF SYDNEY DEVELOPMENT CONTRIBUTIONS PLAN 2015 – WEST PRECINCT

Council has identified the development will increase demand for public amenities and facilities. Pursuant to Section 7.11 of the Environmental Planning and Assessment Act, 1979 (as amended), and the City of Sydney Development Contributions Plan 2015 the following monetary contributions are required towards the cost of public amenities.

<u>Contribution Category</u>	<u>Amount</u>
Open Space	\$37, 939.32
Community Facilities	\$12,479.36

Traffic and Transport	\$76.66
Stormwater Drainage	\$0.00
Total	\$50,495.34

The City of Sydney will index the above contribution for inflation at the time of payment using the following formula.

$$C_{\text{payment}} = C_{\text{consent}} \times (CPI_{\text{payment}} \div CPI_{\text{consent}})$$

Where:

C_{payment} = Is the contribution at time of payment;

C_{consent} = Is the contribution at the time of consent, as shown above;

CPI_{payment} = Is the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics that applies at the time of payment; and

CPI_{consent} = Is the Consumer Price Index (All Groups Index) for Sydney at the date the contribution amount above was calculated being – 116.8 for Sep 2020.

The contribution must be paid prior to the issue of any Construction Certificate in relation to this development.

Please contact Council's Planning Administration staff at planningsystemsadmin@cityofsydney.nsw.gov.au to request a letter confirming the indexed contribution amount payable.

Once the letter confirming the indexed contribution is obtained, payment may be made at any of the City's Neighbourhood Service Centres or the One Stop Shop at Town Hall House. Acceptable payment methods are EFTPOS (debit card only), cash (up to 10K only), Credit Card (up to 50K only) or a bank cheque made payable to the City of Sydney. Personal or company cheques will not be accepted.

(5) COMPLIANCE WITH SUBMITTED MATERIALS AND SAMPLES BOARD

The design details of the proposed building facade including all external finishes, colours and glazing must be in accordance with the materials schedule and sample board, and specifications prepared by Beta Solutions Architects dated December 2020.

(6) 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.

(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 \(NPfI\)](#) 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 NPfI 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 NPfI are applicable to relevant noise from the development measured in accordance with this condition, however duration corrections are excluded from commercial noise.

(8) RESTRICTION ON STRATA SUBDIVISION

In accordance with the provisions of Clause 52 of the *State Environmental Planning Policy (Affordable Rental Housing) 2009* and the *Sydney Development Control Plan 2012*, the student accommodation boarding house cannot be strata subdivided.

(9) RESTRICTION ON BOARDING HOUSE

The building must be used as a boarding house only.

(10) BOARDING HOUSE - USE AND OPERATION

The use and operation of the premises must comply with the requirements of Schedule 2 (Standards for Places of Shared Accommodation) of the Local Government (General) Regulation, 2005 under the Local Government Act 1993, the Public Health Act, 2010, the Boarding Houses Act 2012 and regulations thereunder and the *Sydney Development Control Plan 2012 – 4.4.1*.

(11) PLAN OF MANAGEMENT

- (a) Prior to the issue of any occupation certificate, the Plan of Management prepared by GSA Planning Ref: 20057, dated June 2020, is to be updated

to reflect the development as approved and submitted to Council's Area Planning Manager for approval.

- (b) The use must always be operated / managed in accordance with the approved Plan of Management in part (a) above. In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management. A copy of the plan is to be kept on site by the site manager.

(12) ACCOMMODATION - REGISTRATION AND CARETAKER

Prior to the issuing of an Occupation Certificate or occupation with an Interim Occupation Certificate (whichever is earlier), Council's Health and Building Unit must be advised in writing of the business name, address, owner or company name, 24 hour contact details for the site manager, and the number of occupants approved for the premises. A caretaker/manager must be contactable 24 hours a day.

(13) SIGNS - SEPARATE DA REQUIRED

A separate development application for any proposed signs additional to those approved as part of this consent (other than exempt or complying signs) must be submitted to and approved by Council prior to the erection or display of any such signs.

(14) NO AIR CONDITIONING UNITS TO FACADE OF BUILDING

Approval is not granted for the installation of individual air conditioning units to the facade of the building.

(15) COST OF SIGNPOSTING

All costs associated with signposting for any kerbside parking restrictions and traffic management measures associated with the development shall be borne by the developer.

(16) ASSOCIATED ROADWAY COSTS

All costs associated with the construction of any new road works including kerb and gutter, road pavement, drainage system and footway shall be borne by the developer. The new road works must be designed and constructed in accordance with the City's "Sydney Streets Technical Specification" including amendments and "Sydney Streets Design Code".

SCHEDULE 1B

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

(17) HERITAGE CONSERVATION WORKS

- (a) Prior to the issue of the Construction Certificate, a schedule of conservation works for the front building facade to be undertaken concurrent with the works is to be submitted to Council's Area Planning Manager for approval.
- (b) The schedule is to be supported by detailed architectural sections, elevations and plans at 1:10 for the door and windows. The details should incorporate any structural and/or building services design for the building.

(18) BASIX CERTIFICATE – DETAILS TO BE LODGED WITH A CC

A copy of the required completed BASIX certificate accepted as part of this Development Consent with respect to the proposed residential building works, must be lodged with an application for a construction certificate and the items nominated as part of the subject BASIX certificate must be specified on the plans submitted with the construction certificate application. – See Note.

IMPORTANT NOTE:

Any requirement detailed in the accompanying BASIX Certificate, MUST be included as a specific notation or inclusion on any future Construction Certificate plans and specification in accordance with Part 3 of Schedule 1 of the EP&A Regulation, 2000.

(19) BICYCLE PARKING AND END OF TRIP FACILITIES

The minimum number of bicycle parking spaces and end of trip facilities to be provided for the development must comply with the table below.

User	Number of bicycles to be accommodated	Requirements
Boarding House	2	Class B bicycle parking facility in accordance with AS2890.3

The layout, design and security of bicycle facilities must comply with *Australian Standard AS 2890.3:2015 Parking Facilities Part 3: Bicycle Parking Facilities and Council DCP*. The details must be submitted to and approved by the Certifying Authority confirming prior to the Construction Certificate being issued.

(20) CONSTRUCTION TRAFFIC MANAGEMENT PLAN

- (a) A Construction Traffic Management Plan must be submitted to and approved by Council prior to a Construction Certificate being issued.

Construction Traffic and Pedestrian Management Plans are to be prepared in accordance with Standard Requirements for Construction Traffic Management Plan on the City's website

<http://www.cityofsydney.nsw.gov.au/business/business-responsibilities/traffic-management/construction-traffic-management-plans>

(21) DILAPIDATION REPORT – MINOR

Subject to the receipt of permission of the affected landowner, dilapidation report/s of adjoining buildings are to be prepared by an appropriately qualified practising structural engineer and submitted for the approval of the Accredited Certifier:

- (a) prior to the commencement of demolition/excavation works; and
- (b) on completion of construction demolition/excavation works.

(22) EROSION AND SEDIMENT CONTROL - LESS THAN 250SQM

Where less than 250 square metres are being disturbed, no formal plan is required however, the site is to be provided with sediment control measures and these must be implemented so that sediment, including soil, excavated material, building material or other materials cannot fall, descend, percolate, be pumped, drained, washed or allowed to flow to the street, stormwater system or waterways.

(23) SYDNEY WATER CERTIFICATE (TAP-IN)

- (a) The approved plans must be submitted to Sydney Water's "Tap-in" online service to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Sydney Water's "Tap-in" online service is available at www.sydneywater.com.au, (see Plumbing, Building & Development and then Sydney Water "Tap-in").
- (b) The Consent Authority or a Principal Certifier must ensure that Sydney Water has appropriately stamped the plans before the commencement of work.

(24) CLASSIFICATION OF WASTE

Prior to the exportation of waste (including fill or soil) from the site, the waste materials must be classified in accordance with the provisions of the Protection of the *Environment Operations Act 1997* and the *NSW DECC Waste Classification Guidelines, Part1: Classifying Waste (July 2009)*. The classification of the material is essential to determine where the waste may be legally taken. The *Protection of the Environment Operations Act 1997* provides for the commission of an offence for both the waste owner and the transporters if the waste is taken to a place that cannot lawfully be used as a waste facility for the particular class of waste. For the transport and disposal of industrial, hazardous or Group A liquid waste advice should be sought from the EPA.

(25) TREES ON NEIGHBOURING LAND THAT MUST BE PROTECTED

- (a) The existing trees detailed in Table 1 below must be protected in accordance with the conditions of consent throughout the construction and development.

Table 1 – Trees to be protected:

Tree No	Botanical/Common Name	Location
1	Platanus acerifolia/Plane Tree	Street Tree on Harris Street

(26) TREE PROTECTION PLANS

- (a) All detailed architectural, building, engineering (structural, stormwater and drainage services) and landscape documentation submitted for the Construction Certificate shall clearly show on all drawings the retention of trees as required by these conditions of consent, the position of their trunks, full diameter of their canopies, Structural Root Zones (SRZs) and Tree Protection Zones (TPZs).

(27) STREET TREE PROTECTION

All street trees directly outside the site must be retained and protected in accordance with the Australian Standard 4970 Protection of Trees on Development Sites. All street trees must be protected during the construction works as follows:

- (a) Tree trunk and major limb protection must be undertaken prior to the commencement of any works. The protection must be installed and certified by a qualified Arborist (AQF level 3) and must include:
 - (i) An adequate clearance, minimum 250mm, must be provided between the structure and tree branches, limbs and trunks at all times;
 - (ii) Tree trunk/s and/or major branches, must be protected by wrapped hessian or similar material to limit damage, and
 - (iii) Timber planks (50mm x 100mm or similar) must be placed around tree trunk/s. The timber planks must 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 must 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.
- (c) Young street trees shall be protection by installing three (3) wooden takes around the edge of the tree pit. Hessian shall be wrapped around the stakes. If existing stakes are already in place, these shall suffice as tree protection.
- (d) Temporary signs, or any other items, shall not be fixed or attached to any street tree.

- (e) Materials or goods, including site sheds, must not be stored or placed:
 - (i) around or under the tree canopy; or
 - (ii) within two (2) metres of tree trunks or branches of any street trees.
- (f) Any excavation within in any area known to, or suspected of having street tree roots greater than 40mm diameter must be undertaken by hand.
- (g) Any trenching works for services / hydraulics / drainage etc must not be undertaken within four 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 40mm diameter are encountered during the installation of any services.
- (h) Existing sections of kerbs adjacent to any street tree must not be removed without approval from the Council's Tree Management Officer.
- (i) Any damage sustained to street tree/s as a result of construction activities (including demolition) must be immediately reported to the Council's Tree Management Officer on 9265 9333. Any damage to street trees as a result of construction activities may result in a prosecution under the Local Government Act 1993 and the Environmental Planning and Assessment Act 1979.

(28) STREET TREE PRUNING

- (a) The consent from Council's Tree Management Officer must be obtained prior to the undertaking of any street tree pruning works including tree roots greater than 40mm diameter. Only minor pruning works will be approved by Council.
- (b) Any pruning that has been approved by Council, must be carried out by a qualified Arborist (AQF3), and must be in accordance with AS4373 Australian Standards 'Pruning of Amenity Trees'.

(29) WASTE AND RECYCLING MANAGEMENT

- (a) The Waste and Recycling Management Plan accompanying this Development Application has not been approved by this consent.
- (b) A Waste and Recycling Management Plan is to be submitted to and approved by Council's Area Coordinator Planning Assessments / Area Planning Manager prior to a Construction Certificate being issued. The plan must comply with the Council's *Guidelines for Waste Management in New Developments 2018*. All requirements of the approved Waste and Recycling Management Plan must be implemented during construction of the development.
- (c) The building must incorporate designated areas or separate garbage rooms constructed in accordance with Council's *Guidelines for Waste Management in New Developments 2018*, to facilitate the separation of commercial waste and recycling from residential waste and recycling.

- (d) The path of travel between the bin storage areas and the designated waste/recycling collection point is to have a minimum 1200mm wall-to-wall clearance, be slip-proof, of a hard surface, be free of obstructions and at no point have a gradient exceeding 1:14. The maximum travel distance between the storage point and collection point shall be no more than 10 metres.

UPON COMPLETION OF THE DEVELOPMENT

- (e) Prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, the Principal Certifier must ensure that waste handling works have been completed in accordance with: Waste and Recycling Management Plan; other relevant development consent conditions; and *Council's Guidelines for Waste Management in New Developments 2018*.

(30) WASTE/RECYCLING COLLECTION

- (a) The collection of waste and recycling must only occur during the designated zone collection times to avoid noise disruption to the surrounding area.
- (b) Residential and commercial waste and recycling bins and bulky waste must not be placed on the street for collection, services must be conducted as wheel-out/wheel back service from the bin holding room. Commercial waste storage and service collections arrangements must be conducted in accordance with the City's *Waste Policy – Local Approvals Policy for Managing Waste in Public Places (2017)*.

(31) WASTE AND RECYCLING MANAGEMENT – GENERAL

The proposal must comply with the relevant provisions of Council's *Guidelines for Waste Management in New Developments 2018* which requires facilities to promote the efficient storage, separation, collection and handling of waste to maximise resource recovery and provide safe and healthy spaces for people to live and work in.

SCHEDULE 1C

DURING CONSTRUCTION/PRIOR TO OCCUPATION/COMPLETION

(32) BASIX

All commitments listed in each relevant BASIX Certificate for the development must be fulfilled prior to any Occupation Certificate being issued.

(33) LANDSCAPING

Tree planting within the property must be undertaken in accordance with the approved plans and following conditions prior to the issuing of the Occupation Certificate:

- (a) One small tree is to be planted within a large pot within the common courtyard space, and one other planting within a pot outside the window of Room 3 at the completion of all construction works;
- (b) The large pot size is to be sized at least: diameter 600mm, height 1000mm
- (c) Any newly planted tree that fails to establish within 2 years of the initial planting date must be replaced with a tree of comparable qualities.

(34) 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 Team, 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*.

(35) 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.

(36) 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.

(37) LOADING AND UNLOADING DURING CONSTRUCTION

The following requirements apply:

- (a) All loading and unloading associated with construction activity must be accommodated on site, where possible.
- (b) If it is not feasible for loading and unloading to take place on site a Works Zone on the street may be considered by Council.
- (c) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.
- (d) Where hoisting activity over the public place is proposed to be undertaken including hoisting from a Works Zone, a separate approval under Section 68 of the Local Government Act 1993 and Section 138 of the Roads Act 1993 must be obtained.

(38) 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

EXTERNAL FINISHES SCHEDULE

The following plate is representative of the proposed exterior materials.
The graphic representation is indicative only.

- Rendered walls
- Paint finish
 - Similar to Dulux 'Ticking' to match façade of adjacent building



- Nominated wooden heritage door
- Paint finish
 - Similar to Dulux 'Black' to match door of adjacent building



- Window glass
- Clear glass
 - Thickness as recommended by fabricator



- Frosted window glass
- Frosted glass
 - Thickness as recommended by fabricator



- Window wooden frame - Single hung & frosted restricted openings windows
- Paint finish
 - Similar to Dulux 'Black' to match windows of adjacent building



IMPORTANT NOTES:

- Do not scale from drawings.
- Check dimensions of materials on site before commencement of work.
- Check dimensions of materials to the attention of the Project Construction Architect.
- Check dimensions of materials to the attention of the Project Construction Architect.
- Check dimensions of materials to the attention of the Project Construction Architect.
- This drawing is copyright and the property of the author. It is not to be used for any other purpose without the express authority of Project Construction Architect.

PROJECT NORTH

REVISION	DATE	DESCRIPTION	BY
A	27.10.2020	Amended as per Council requirements	JZ
B	14.12.2020	Amended as per Council requirements	GU

PROJECT

PROPOSED BOARDING HOUSE.
ADDITIONS AND ALTERATIONS TO
EXISTING COMMERCIAL BUILDING

CLIENT

Jorge Uzabaza

ARCHITECTS

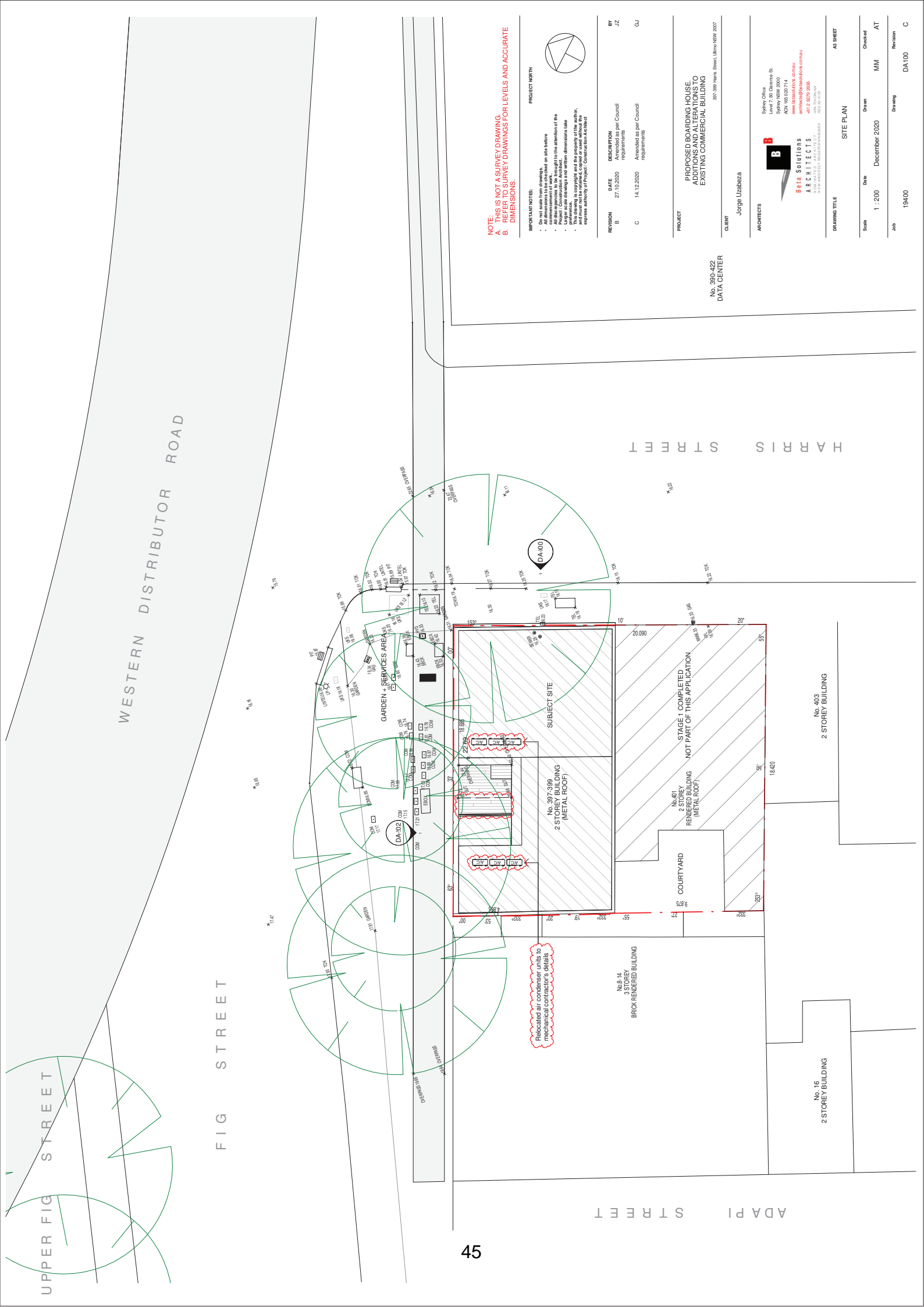
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10/100 MARKET STREET, SYDNEY
NSW 2000, AUSTRALIA

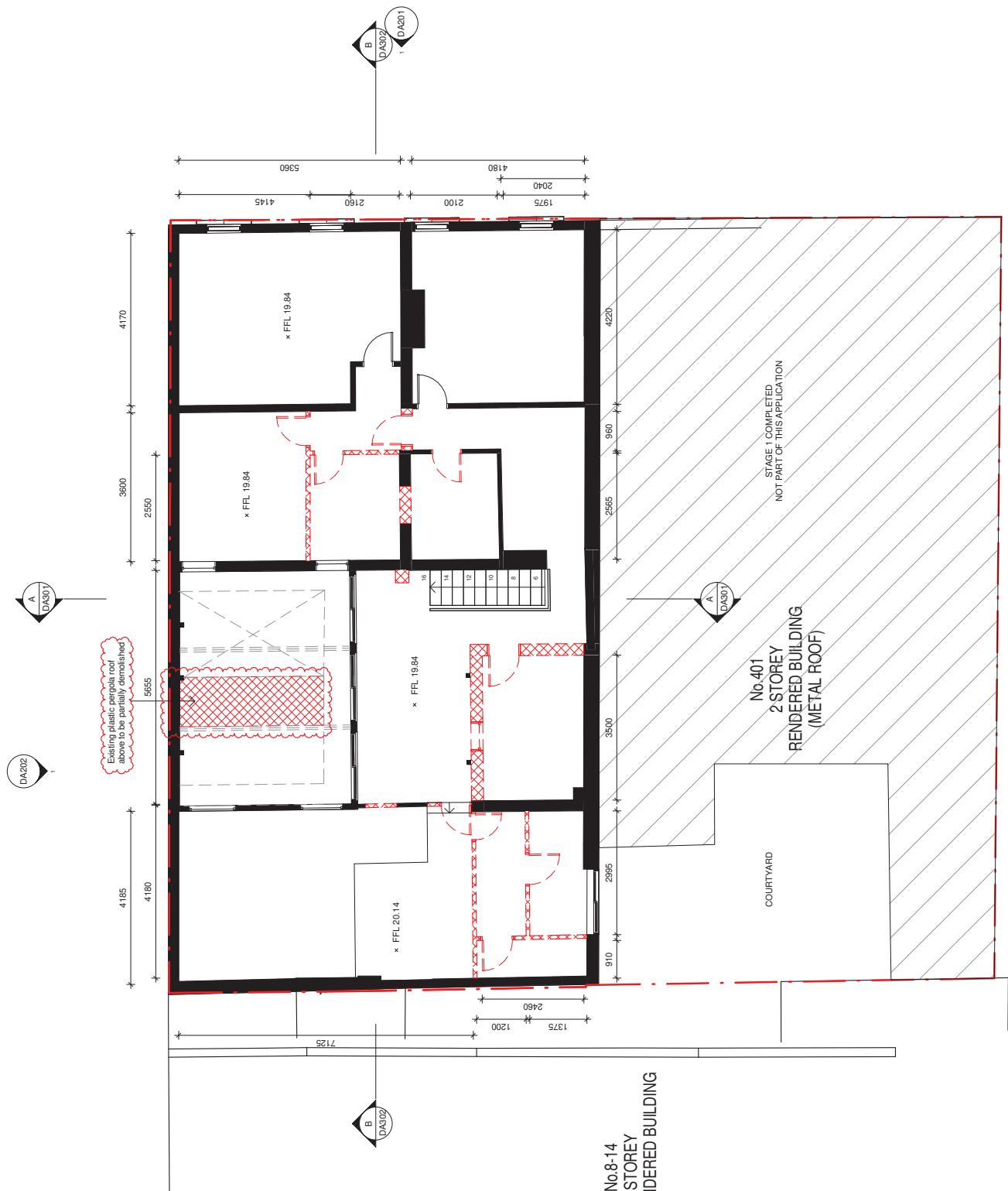
DRAWING TITLE

EXTERNAL FINISHES SCHEDULE

AS SHEET

397-599 Hans Sheet, Lismo NSW 2007





LEGEND

- Boundary Line
- Existing
- Proposed demolition
- Proposed new wall/slab
- Obstacle-free area
- Existing room
- Proposed new room

IMPORTANT NOTES:

- Do not scale from drawings.
- Check all dimensions and levels on site before commencement of work.
- Refer to the site plan for the location of the project.
- Refer to the drawings and written dimensions for all work.
- This drawing is copyright and the property of the author.
- No part of this drawing may be reproduced without the express authority of Project Construction Architect.

PROJECT NORTH

REVISION	DATE	DESCRIPTION
B	27.10.2020	Amended as per Council requirements
C	14.12.2020	Amended as per Council requirements

PROJECT
PROPOSED BOARDING HOUSE,
ADDITIONS AND ALTERATIONS TO
EXISTING COMMERCIAL BUILDING

CLIENT
Jorge Uzabaza

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DRAWING TITLE	EXISTING FIRST FLOOR	AS SHEET
Scale	1 : 100	Drawn
Date	December 2020	Checked
Job	194/00	MM
		AT
		Revision
		DA102
		C



REVISION	DATE	DESCRIPTION	BY
B	27.10.2020	Amended as per Council requirements	UZ
C	14.12.2020	Amended as per Council requirements	GU

PROJECT

PROPOSED BOARDING HOUSE.
ADDITIONS AND ALTERATIONS TO
EXISTING COMMERCIAL BUILDING

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DRAWING TITLE

PROPOSED GROUND FLOOR

AS SHEET

Scale

1 : 100

Date

December 2020

Drawn

MM

Checked

AT

Job

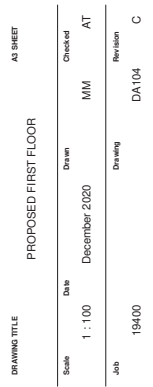
19400

Drawing

DA103

Revision

C





IMPORTANT NOTES:

- Do not scale from drawing.
- All dimensions to be checked on site before commencement of work.
- All discrepancies to be brought to the attention of the Project / Construction Architect.
- Larger scale drawings and written dimensions take precedence.
- The architect is copyright and the property of the author, and must not be retained, copied or used without the express authority of Project / Construction Architect.

REVISION	DATE	DESCRIPTION	BY
A	27.02.2020	Issued for DEVELOPMENT APPLICATION	MM
B	27.10.2020	Amended as per Council	JZ

PROPOSED BOARDING HOUSE.
ADDITIONS AND ALTERATIONS TO
EXISTING COMMERCIAL BUILDING

387, 388 Harris Street | Mirro NSW 2007

Jorge Uzabeza

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 **Betta Solutions**
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DRIVING TITLE	Scale	Date	Drawn	Checked	AT	A3 SHEET
PROPOSED EAST ELEVATION	1 : 100	December 2020				
Job	19400		Drawing		Revision	B
						DA201



<div><div></div><div>Existing</div></div>		<div><div></div><div>Obstacle-free area</div></div>	
<div><div></div><div>Proposed demolition</div></div>		<div><div></div><div>Existing room</div></div>	
<div><div></div><div>Proposed new wall/slab</div></div>		<div><div></div><div>Proposed new room</div></div>	

IMPORTANT NOTES:

- Do not scale from drawings.
- All dimensions to be checked on site before construction.
- All dimensions to be brought to the attention of the client and approved in writing.
- Refer to the project brief for all materials and finishes.
- Refer to the project brief for all structural requirements.
- Refer to the project brief for all environmental requirements.
- Refer to the project brief for all accessibility requirements.
- Refer to the project brief for all safety requirements.
- Refer to the project brief for all other requirements.

REVISION	DATE	DESCRIPTION	BY	UJ	GU
B	27.10.2020	Amended as per Council requirements			
C	14.12.2020	Amended as per Council requirements			

PROJECT

**PROPOSED BOARDING HOUSE.
ADDITIONS AND ALTERATIONS TO
EXISTING COMMERCIAL BUILDING**

CLIENT

ARCHITECTS

DRAWING TITLE

Scale

Date

Drawn

Checked

Job

Drawing

Revision

Architectural floor plan of the proposed first floor of a building at 53 Harris Street. The plan shows a central RUMPUS area with three windows, flanked by ROOM 1, ROOM 3, ROOM 4, ROOM 5, and a BATH. A RAISED TIMBER FLOOR is indicated on the right side. The plan includes dimensions, room numbers, and a list of notes.

Notes:

- Existing overpass shown indicatively
- Existing rolling shown indicatively
- Existing metal roof shown indicatively
- Replaced air condense units to mechanical contractor's details
- WC. Existing wall positions maintained.
- Door deminished
- Accessible 1:14 timber finish ramp. Handrail to both sides as shown in the proposed floor plans
- WC. Wall and door deminished
- High light window over door
- Door and wall to be deminished
- Existing sliding door to be replaced with a timber door
- RAISED TIMBER FLOOR
- Door. Min. 850 clearances
- Previous entry door to be reinstated. Min. 850 clearance width to comply with AS1428.1

100

IMPROVING YARN MOVEMENT

OBJECT NORTH

REVISION	DATE	DESCRIPTION	BY
B	27.10.2020	Amended as per Council requirements	JZ
C	14.12.2020	Amended as per Council requirements	GU

PROJECT

907-500 Marie Street | Birron NSW 2007

Jorge Uzabeza

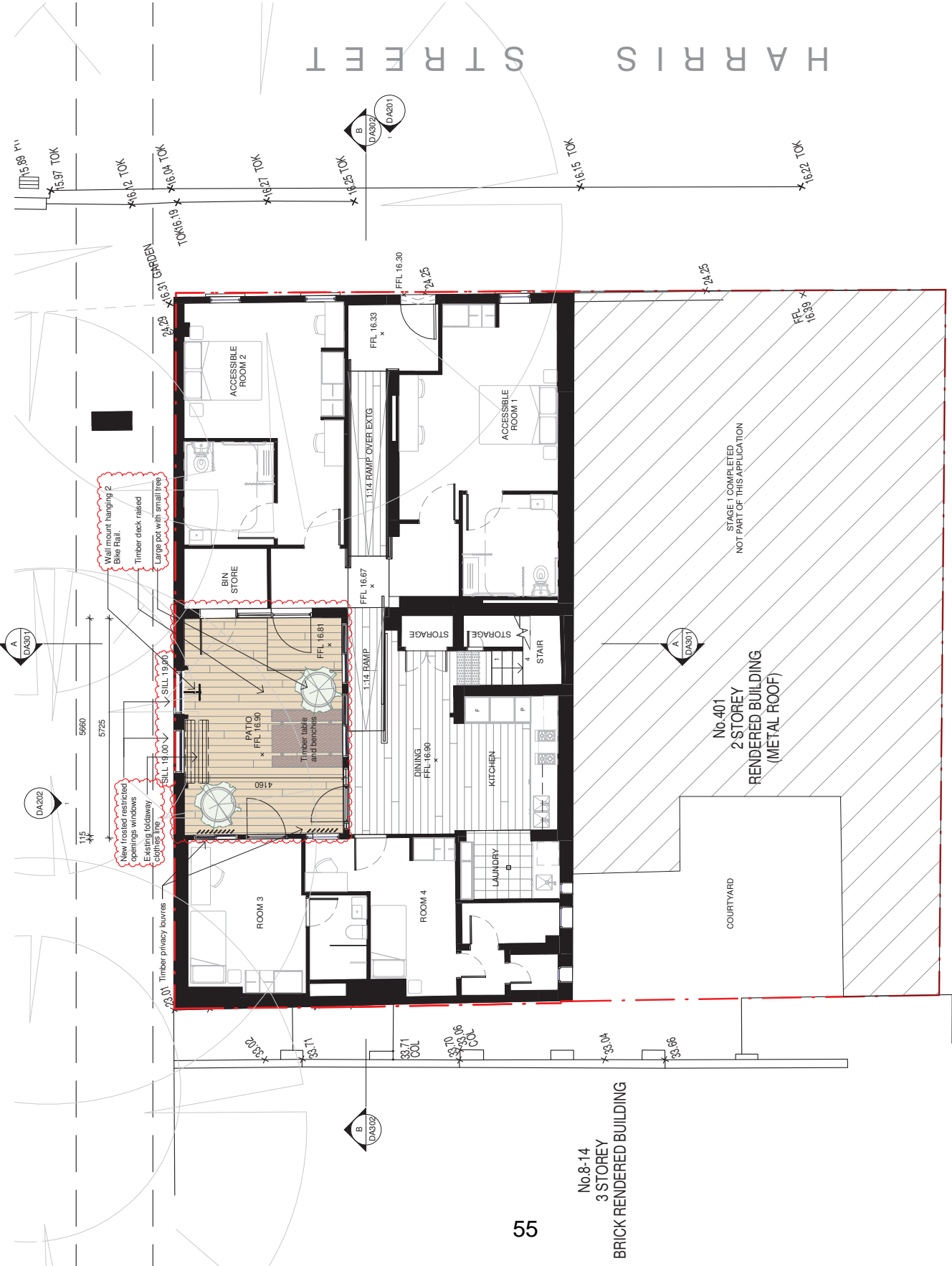
B

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ARCHITECTS

NSW ARCHITECTS ASSOCIATION
MEMBER SINCE 1997

DRAWING TITLE	PROPOSED SECTION B			AS SHEET
Scale	Date	Drawn	Checked	
1 : 100	December 2020	MM	AT	
Job	Drawing	Revision		
19400		DA302	C	



LANDSCAPE PALETTE



Large pot with small trees



Timber decking



Timber vertical louvre screens



Timber table and benches

IMPORTANT NOTES:

- Do not scale from drawings.
- Check all dimensions and levels on site before commencement of work.
- Refer to the site plan for the location of the Project Construction Access.
- Refer to the site plan for the location of the Project Construction Access.
- This drawing is copyright and the property of the author. It is to be used for the purpose of the Project and no other use without the express authority of Project Construction Architect.

PROJECT NORTH



REVISION	DATE	DESCRIPTION	BY
A	27.10.2020	Amended as per Council requirements	JZ
B	14.12.2020	Amended as per Council requirements	GU

PROJECT

PROPOSED BOARDING HOUSE.
ADDITIONS AND ALTERATIONS TO
EXISTING COMMERCIAL BUILDING

CLIENT

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NO. 10614

DRAWING TITLE

PROPOSED LANDSCAPE PLAN

A3 SHEET

Scale	Date	Drawn	Checked
1:100	December 2020	JZ	AT
Job	19400	Drawing	Revision
		DA600	B

Attachment C

<p>Clause 4.6 Variation Request – Motorcycle Parking</p>

**SEPP (AFFORDABLE
RENTAL HOUSING) 2009
Clause 4.6 Exceptions to
Development Standards –
Motorcycle Parking**

Proposed nine room boarding house development at

**Nos. 397-399 Harris
Street, Ultimo**

Prepared for:

Edsring Property Maintenance Pty Ltd
Suite 232, 1 Katherine Street
Chatswood NSW 2067

Prepared by:

GSA PLANNING

Urban Design, Environmental & Traffic Planners
(A.B.N 18 003 667 963)

95 Paddington Street, Paddington NSW 2021

p: 02 9362 3364

e: info@gsaplanning.com.au

JOB NO. 20057

June 2020

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STATE ENVIRONMENTAL PLANNING POLICY (AFFORDABLE RENTAL HOUSING) 2009
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

APPLICANT'S NAME: Edsring Property Maintenance Pty Ltd

SITE ADDRESS: Nos. 397-399 Harris Street, Ultimo

PROPOSAL: Nine room boarding house development

1. (i) Name of the applicable planning instrument which specifies the development standard:

State Environmental Planning Policy (Affordable Rental Housing) 2009 ('ARH SEPP')

(ii) The land is zoned:

B4 Mixed Use under the Sydney Local Environmental Plan (LEP) 2012

(iii) The number of the relevant clause therein:

Clause 30(1)(h) is stated as follows:

(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning

2. Overview

This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law and in our opinion, the variation achieves the objectives of the zone and the ARH SEPP, and has demonstrated there are sufficient environmental planning grounds

3. Specify the nature of Development Standard sought to be varied and details of variation:

Clause 30(1)(h) of the ARH SEPP relates to provision of bicycle and motorcycle parking. The clause requires the provision of one bicycle and one motorcycle space per five boarding rooms. The proposed nine room boarding house development generates demand for two bicycle and two motorcycle spaces.

The development provides two bicycle spaces and complies with the ARH SEPP in this regard, however no motorcycle spaces, which contravenes the development standard.

4. Applicability of Clause 4.6

Clause 4.6(2) of the LEP states that it is applicable to a development standard "imposed by this or any other environmental planning instrument". The ARH SEPP is an environmental planning instrument and therefore Clause 30(1)(h) is a development standard which can be varied pursuant to Clause 4.6 of the LEP.

5. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

The proposal seeks flexibility in the application of the motorcycle parking development standard to the development in the circumstance of this particular case as the subject site is exceptionally well serviced by public and active transport networks. The site is located within the Ultimo Heritage Conservation Area (HCA) and, in order to retain as much existing building fabric as possible, motorcycle parking cannot be provided on the site. The proposal provides much needed affordable housing near the Sydney CBD, and utilising the site efficiently for accommodation is considered more desirable than motorcycle spaces. It is noted that no car spaces are required as Council is trying to reduce vehicle dependency. The proposal provides compliant bicycle parking spaces.

6. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in these circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

6.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development

standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

It is our opinion that the proposal satisfies a number of the five tests established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant tests will be considered below.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;

The ARH SEPP does not contain specific objectives relating to the provision of motorcycle parking. The aims of the ARH SEPP are also not, in our opinion, directly relevant to the provision of motorcycle parking. The aims of the policy pertain to the provision, delivery and retention of affordable housing. The proposal will contribute to meeting the high demand for affordable housing in the area by providing 9 boarding house rooms catering for 12 lodgers.

While the ARH SEPP does not contain specific aims/objectives pertaining to motorcycle parking, the SEPP is geared toward reducing reliance on cars, and encouraging use of bicycles, motorbikes and public transport. The proposal includes bicycle parking, which complies with the ARH SEPP, and in our opinion satisfies the demand. The site is located in an 'accessible area' for the purposes of the ARH SEPP, being less than 400m from a bus stop. The nearest bus stop is located directly across the road on Harris Street and services route No. 501 providing regular access to Central Station. This provides access to the wider Sydney train network. It is also noted that the likely demographic should be comfortable utilising these public transport links.

Furthermore, the site is within walking distance of a variety of shops, restaurants, educational institutions and residential support services. This includes a variety of commercial and retail services along Harris Street. Accordingly, the site is in an ideal location for student accommodation and will enhance the efficiency of existing transport infrastructure and services. On the basis of the site's connectivity to public transport, and the provisions for bicycle parking, residents of the proposed boarding house will have adequate transport options available.

Test 3 - The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

While there are no objectives for the motorcycle parking development standard, in our opinion, the underlying purpose of the ARH SEPP generally, and the standard specifically, is to provide affordable house in accessible locations.

Enforcing strict compliance would require a substantial redesign of the existing building. The financial burden of undertaking these works would make the provision of a boarding house unviable and thwart the underlying objective of providing affordable accommodation.

In addition, the design parameters are constrained by the existing building. In order to provide motorcycle parking which does not require access through the pedestrian accessway, a substantial

redesign would be necessary. This would be inconsistent with the objectives of the Ultimo Heritage Conservation Area and the current attempt to retain as much of the existing built form as possible.

The Sydney Development Control Plan (DCP) 2012 provides maximum rather than minimum car parking provisions, with the underlying objective of reducing car dependency and encouraging the use of public transport. The subject site is ideally located near existing public transport networks and provides compliant bicycle spaces. Providing motorcycle spaces when car spaces are discouraged would thwart the underlying objective of encouraging public and active transport.

6.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

There are several environmental planning grounds that justify not providing motorcycle parking in this instance. As discussed, the proposal is consistent with the primary objective of the ARH SEPP which is the provision and retention of affordable rental housing. The subject site is also within an area that is highly connected by public transport and is within close proximity to a range of businesses that provide support services to residential development. The proposal complies with the bicycle parking requirements and will encourage active and public transport usage. Further environmental planning grounds include an improved design outcome and maintaining amenity for neighbours. These will now be discussed.

The site constraints prevent the provision of additional street access. These constraints include the proximity to the intersection, the speed of traffic along Harris Street and the change in levels along Fig Street. As additional street openings are not possible, any motorcycle parking would need to utilise the same access corridor as will be used by lodgers, which could have adverse safety and amenity implications. Accordingly, to enforce motorcycle parking would compromise access throughout the development, and would be inconsistent with Object (g) of the EPA Act which is promote good design and amenity of the built environment. As the development is located within a Heritage Conservation Area (HCA) and the proposal seeks to retain as much of the existing building fabric as possible, there are less opportunities for a redesign to accommodate motorcycle parking.

Council has granted numerous consents for boarding house developments without motorcycle parking, especially in well-connected localities. In particular, Council has approved a previous 12-room boarding house development on the subject site without a motorcycle space (D/2013/1634). The eight room boarding house development operating next door at Nos. 401-403 Harris Street (D/2011/1055) also does not provide any motorcycle parking. This was addressed in the Council Officer's Report as follows:

The lack of provision for motorcycle parking is acceptable given the small scale nature of this boarding house.

The proposal is for only one more room and one more lodger than the operational boarding house next door. Accordingly, this assessment remains valid.

It is our opinion that the shortfall in motorcycle spaces is the result of improving operational provisions of the site within a limited area, including accessibility and waste management and improving amenity on the site. Providing motorcycle parking under the ARH SEPP would impact on the provision of amenity/operational components of the development. In any event, on-street parking is available in the direct vicinity of the site.

The Council Officer's Report for the approved boarding house development on the site (D/2013/1634) also indicated that, despite a shortfall in motorcycle parking, the boarding house use was consistent with other objects of the EPA Act as follows:

Parking is not a requirement of Council instead it promotes and engages with more sustainable transit, including walking. The SEPP 1 objection [for motorbike parking] is approved on the basis that it is consistent with the aims of the policy set out in Clause 3 and it is unreasonable given there is no parallel Council requirement and that the application is consistent with Objects 5(i) and 5(ii) of the Environmental Planning and Assessment Act 1979.

This assessment remains valid as the proposal is for the same use and also retains as much of the existing building as possible. The objects identified correlate to Objects 1.3(c) and (d) in the current EPA Act which state:

- (c) *to promote the orderly and economic use and development of land,*
- (d) *to promote the delivery and maintenance of affordable housing,*

The shortfall does not result in significant adverse impacts on adjoining development. In fact, a reduction in vehicular noise down a driveway (or pedestrian walkway) in close proximity to residential developments is desirable in respect of aural privacy.

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard, as required in Clause 4.6(3)(b).

7. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this request, and having regard to the site and locality.

In our opinion, the proposal is consistent with the underlying objective of the ARH SEPP (in lieu of any specific development standard objectives), as already demonstrated; and the B4 Mixed Use Zone, as discussed below:

Objective: *To provide a mixture of compatible land uses.*

Response: The proposal contributes to the mixture of land uses within the mixed use zone. The proposal adjoins another boarding house and is therefore a compatible use. Other uses in the mixed use zone include retail, business and residential. The land use can be provided, notwithstanding the shortfall in motorcycle spaces.

Objective: *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.*

Response: The subject site is ideally located for a boarding house use, being within walking distance of a number of shops, educational institutions, restaurants and services.

There is a bus stop across the road providing access to Central Station and the wider Sydney Train network. The proposal will also provide compliant bicycle parking which will encourage active transport, with designated cycle paths in the vicinity. The subject site complies with the accessibility provisions of the ARH SEPP. The absence of motorcycle parking is only likely to further encourage use of more sustainable modes of transport.

Objective: *To ensure uses support the viability of centres.*

Response: The proposal will revitalise the subject site and provide accommodation for up to 12 lodgers. This is likely to bring a social and economic benefit to the area, contributing to the ongoing viability of the mixed use area. The shortfall in motorcycle spaces will not affect the viable of centres.

From this, we consider the proposal is in the public interest and should be supported.

8. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. Since the conditions in the table do not apply in this case, the concurrence of the Secretary can be assumed.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

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

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The motorcycle parking non-compliance will facilitate an enhanced design and encourage the use of public and active transport, without adversely impacting neighbouring properties. The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will be well serviced by existing public and active transport networks.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

9. Conclusion

This written request has adequately demonstrated 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 development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see Table 1 on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the ARH SEPP and the development objectives of the B4 Mixed Use Zone pursuant to the LEP. On that basis, the request to vary Clause 30(1)(h) of the ARH SEPP should be upheld.

Table 1: Compliance Matrix

Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 30(1)(h) of the ARH SEPP	
12	What is the control	1 & 2	One bicycle and motorcycle space per five boarding rooms	
14	First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	1st Positive Opinion – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	6	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	First Aspect is Clause 4.6(3)(a) – That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	6.1	The proposal satisfies Tests 1 and 3 of <i>Wehbe</i> : <ul style="list-style-type: none"> The objectives of the standard are achieved notwithstanding the non-compliance with the standard; The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable; 	YES
23-24	Second Aspect is Clause 4.6(3)(b) – 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 Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: <ol style="list-style-type: none"> The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus 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. 	6.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> The proposal remains consistent with the underlying aims and objectives of the ARH SEPP; The subject site is well located near public and active transport networks; The proposal complies with the bicycle parking provisions; The site is located within an HCA, making large scale works to the existing building undesirable; The small scale of the proposed operation; The proposal provides an improved design, amenity and safety outcome for lodgers; and The shortfall in motorcycle parking will not result in amenity impacts for neighbouring developments. 	YES
26-27	2nd Positive Opinion – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.	7	There are no objectives for the motorcycle parking development standard. The proposal is also consistent with the objectives of the B4 Mixed Use Zone.	YES

28-29	Second Precondition to Enlivening the Power – That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.	8	As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council can grant development consent.	YES
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