




 DEVELOPMENT ASSESSMENT REPORT				
<b>Application No.</b>	DA201900412			
<b>Address</b>	255 King Street NEWTOWN			
<b>Proposal</b>	To fitout the rear of the ground floor tenancy to be used in association with the restaurant			
<b>Date of Lodgement</b>	29 November 2019			
<b>Applicant</b>	Patrick Lebon			
<b>Owner</b>	New Era Investwell Pty Ltd			
<b>Number of Submissions</b>	None			
<b>Value of works</b>	\$54,450.00			
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation exceeds officer delegations			
<b>Main Issues</b>	Floor Space Ratio			
<b>Recommendation</b>	Approval with Conditions			
<b>Attachment A</b>	Recommended conditions of consent			
<b>Attachment B</b>	Plans of proposed development			
<b>Attachment C</b>	Clause 4.6 Exception to Development Standards			
<b>Attachment D</b>	Statement of Heritage Significance			
				
LOCALITY MAP				
Subject Site		Objectors		↑ N
Notified Area		Supporters		

## 2. Executive Summary

This report is an assessment of the application submitted to Council to fit out the rear of the ground floor tenancy to be used in association with the existing restaurant at 255 King Street Newtown.

The main issues that have arisen from the application include:

- The proposal results in an increase to the Floor Space Ratio as a result of removing a car parking space which results in a breach to the development standard.

The non-compliance is acceptable given the additional floor area does not result in any appreciable change in the building envelope and a Clause 4.6 variation request was submitted that is considered worthy of support and justifies the breach to the development standard. Therefore, the application is recommended for approval.

## 2. Proposal

The application seeks development consent to fit out the rear of the ground floor tenancy to be used in association with the existing restaurant.

Specifically, the following works/ uses are proposed:

- Extension of the commercial kitchen within an existing car parking space and storage area to the rear of the site;
- New internal wall to create a walkway for access to the first floor;
- Demolition of the existing roller door and construction of a new rear wall and door; and
- For the rear of the site to be a pickup point for delivery drivers Fridays to Sundays from 5.30pm to 11.00pm which is during the operating hours of the existing restaurant.

## 3. Site Description

The subject site is located on the northern side of King Street, close to the intersection of Church Street. The site area is approximately 142sqm with a primary frontage to King Street and a rear access to an unnamed laneway and a Council carpark.

An existing 2 part 3 storey mixed use building is located on the site. The ground floor tenancy of the building accommodates a restaurant known as "The Italian Bowl". This tenancy is the subject of this application.

The tenancy in question spans two sites, being the subject site of 255 King Street and the neighbouring site of 253 King Street. While the tenancy spans both sites, each site contains a separate building. It is noted that the works proposed under this application are wholly located within 255 King Street.

Surrounding land uses are predominantly commercial uses. The site is zoned B2 – Local Centre under the Marrickville Local Environmental Plan 2011 (MLEP 2011).



Image 1: Extract of Zoning Map

## 4. Background

### 4(a) Site history

The following application outlines the relevant development history of the subject site and any relevant applications on surrounding properties.

#### Subject Site

Application	Proposal	Decision & Date
DA201500322	To demolish part of the premises and to fit out and use the ground floor level at 253-255 King Street as one tenancy for a restaurant	Approval – 28 August 2015

### 4(b) Application history

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

Date	Discussion / Letter / Additional Information
11 February 2020	Additional information requested to address increase in FSR and breach to the development standard.
2 March 2020	Applicant submitted additional information including FSR calculation diagrams and a written objection under Clause 4.6 to address the breach to the FSR development standard.

## 5. Assessment

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

### 5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy (Infrastructure) 2007*
- *Marrickville Local Environmental Plan 2011 (LLEP 2011)*

The following provides further discussion of the relevant issues:

#### 5(a)(vii) *State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure 2007)*

##### *Development with frontage to classified road (Clause 101)*

The site has a frontage to King Street, a classified road. Under Clause 101 (2) of SEPP Infrastructure 2007, the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that the efficiency and operation of the classified road will not be adversely affected by the development.

Vehicular access to the property is provided from the rear unnamed laneway and as such is provided by a road other than the classified road. It is considered that the proposed development would not affect the safety, efficiency and ongoing operation of the classified road.

#### 5(a)(viii) *Marrickville Local Environmental Plan 2011 (MLEP 2011)*

The application was assessed against the following relevant clauses of the *Marrickville Local Environmental Plan 2011*:

- Clause 2.3 - Zone objectives and Land Use Table
- Clause 2.7 - Demolition
- Clause 4.4 - Floor space ratio
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 5.10 - Heritage Conservation

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

Standard	Proposal	non compliance	Complies
<b>Floor Space Ratio</b> Maximum permissible: 1.5:1 or 213sqm	1.86:1 or 263.5sqm	50.5 sqm or 23%	No

#### (iv) Land Use Table and Zone Objectives (Clause 2.3)

The property is zoned B2 – Local Centre under the provisions of Marrickville Local Environmental Plan 2011 (MLEP 2011). The development is permissible with consent under the zoning provisions applying to the land.

The development is acceptable having regard to the objectives of the B2 - Local Centre zone.

(v) Demolition (Clause 2.7)

Clause 2.7 of MLEP 2011 states that the demolition of a building or work may be carried out only with development consent. The application seeks consent for demolition works. If approved, Council's standard conditions relating to demolition works are included in the recommendation.

(vi) Floor Space Ratio (Clause 4.4)

A maximum floor space ratio (FSR) of 1.5:1 applies to the land as indicated on the Floor Space Ratio Map that accompanies MLEP 2011.

The development has a gross floor area (GFA) of 263.5sqm which equates to a FSR of 1.86:1 on the 142sqm site, which contravenes the FSR development standard.

It is noted that the existing floor area of the building currently breaches the FSR development standard. The existing building has a GFA of 233.5sqm which equates to a FSR of 1.64:1 and represents a 9.6% (20.5sqm) breach to the development standard. The proposal furthers this breach as a result of the conversion of a 31.5sqm car parking and storage area into a kitchen.

The application was accompanied by a written submission in relation to the contravention of the FSR development standard in accordance with Clause 4.6 (Exceptions to Development Standards) of MLEP 2011. The submission is discussed in the section below.

(vii) Exceptions to Development Standards (Clause 4.6)

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

- Clause 4.4 - Floor space ratio

The applicant seeks a variation to the floor space ratio development standard under Clause 4.4 of the MELP 2011 by 23% (50.5sqm).

Clause 4.6 allows the consent authority to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

In order to demonstrate whether strict compliance is unreasonable or unnecessary in this instance, the proposal has been assessed against the objectives and provisions of Clause 4.6 of Marrickville Local Environmental Plan 2011 below.

A written request has been submitted to Council in accordance with Clause 4.6(3) of Marrickville Local Environmental Plan 2011 in justification of the proposed contravention of the development standard which is summarised as follows:

- The subject site has an existing FSR being 1.64:1 which already contravenes FSR development standard. It is therefore not possible for any development within the subject building to comply with the FSR development standard given the pre-existing non-compliance without demolition and removal of part of the existing building.
- The proposed development will maintain the existing built form and scale and only seeks to increase the existing GFA by 30sqm as the result of converting previous "non-GFA" (loading area and car parking space) into GFA (commercial

kitchen). The additional 30sqm to the existing GFA of 233.5sqm is considered acceptable given the overall footprint of the building remains unchanged.

- The proposal will enhance the internal function and usability of the existing restaurant through a high quality design.
- The proposed internal refurbishment will not result in any visual impact given the proposed works will be undertaken entirely within the subject building.

The applicant's written rationale adequately demonstrates compliance with the development standard is unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is in the public interest because it is consistent with the objectives of the B2 Local Centre zone, in accordance with Clause 4.6(4)(a)(ii) of Marrickville Local Environmental Plan 2011 for the following reason:

- The proposed use of part of the site for a commercial kitchen providing food for delivery service only and associated installation and fit out meets the objectives of the B2 Local Centre Zone by providing a new commercial kitchen which will serve the needs of residents, workers and visitors and support the viability of Newtown as a commercial precinct.

It is considered the development is in the public interest because it is consistent with the objectives of the floor space ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of Marrickville Local Environmental Plan 2011 for the following reasons:

- The proposal relates to an internal increase in GFA by converting the existing loading area and car parking space to a commercial kitchen that has no impact to the overall built density and bulk in relation to the site area.
- The proposal will preserve the character of the locality on the basis the proposed internal works are not visible externally from the site.
- The proposed development is entirely within the perimeter of the existing building and as such there will be no tangible change to the existing building envelope nor will it impact the appearance of the existing building.
- The minor increase in FSR will improve the useability of part of the existing building and provide a high quality designed commercial kitchen and will minimise any adverse impacts on the amenity of the Newtown locality.
- The additional GFA and increased FSR will not increase the built upon area of the subject building as it is the result of converting existing non-GFA (loading area and car parking space) to GFA (commercial kitchen) such that there will be minimal adverse impacts on the building itself, the surrounding public domain and the locality overall.

The concurrence of the Planning Secretary may be assumed for matters dealt with by the Local Planning Panel.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of Marrickville Local Environmental Plan 2011. For the reasons outlined above, there are sufficient planning environmental planning grounds to justify the departure from Floor Space Ratio and it is recommended the Clause 4.6 exception be granted.

(viii) Heritage Conservation (Clause 5.10)

The site is located within a Heritage Conservation Area under MLEP 2011 (Heritage Conservation Area C2 – King Street and Enmore Road).

The proposal has been adequately designed to conserve the heritage significance of the heritage conservation area and includes only internal alterations to the existing building

which will not impact the heritage significance of the area or any contributory features of the existing building. The alteration in rear lane presentation from a roller door to a wall also has a neutral impact.

Overall, the development does not have any significant impacts on the heritage item / the nearby heritage item / the heritage conservation area.

### 5(b) Draft Environmental Planning Instruments

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

- Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 and accordingly is a matter for consideration in the assessment of the application under *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979*.

The Draft IWLEP 2020 contains provisions for the inclusion of amended clauses, including Clause 1.2 – Aims of Plan and Clause 2.3 – Zone objectives and Land use Table, which requires consideration of amended aims of the plan and new objectives in the B2 zone. As the subject site is zoned B2 and was within the former Marrickville LGA under MLEP 2011, these provisions must be considered.

The development is for minor alterations and additions to an existing restaurant and remains consistent with the amended aims of the draft plan and minor changes to the zone objectives for the B2 zone under Draft IWLEP 2020.

The development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

### 5(c) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Marrickville Development Control Plan 2011.

Part of MDCP 2011	Compliance
Part 2.3 – Site and Context Analysis	Yes
Part 2.5 – Equity of Access and Mobility	Yes
Part 2.6 – Acoustic and Visual Privacy	Yes – see discussion
Part 2.10 – Parking	No – see discussion
Part 2.21 – Site Facilities and Waste Management	Yes
Part 5 – Commercial and Mixed Use Development	Yes – see discussion
Part 8 – Heritage	Yes
Part 9 – Strategic Context	Yes

The following provides discussion of the relevant issues:

#### (i) Part 2.6 – Acoustic and Visual Privacy

The proposal will have a satisfactory impact on visual and acoustic levels of the surrounds in accordance with Part 2.6 as follows:

- The development is for an extension of the existing kitchen facilities of the approved restaurant which currently operates within the relevant acoustic criteria;

- Conditions are imposed to ensure compliance with the relevant acoustic noise criteria;
- The proposal includes appropriate management techniques to limit acoustic impacts to nearby/adjoining residents;
- The proposed hours of operation are reasonable to limit acoustic impacts to nearby/adjoining residents; and
- The application was referred to Council's Environmental Health Officer who raised no concerns with regard to environmental protection, subject to the imposition of appropriate conditions.

(ii) Part 2.10 – Parking

The site is located in Parking Area 1 under Part 2.10 of MDCP 2011. The site and associated uses require the provision of 2 car parking spaces. The proposal provides 1 parking space. The proposal therefore does not comply with this requirement.

However, the non-compliance is considered acceptable for the following reasons:

- The existing car parking space is currently used for storage and is undersized and would not comply with the Australian Standards;
- The tenancy retains 1 car parking space on the neighbouring site of 253 King Street which is suitable to serve the site given parking is not accessible by customers;
- The site is well served by public transport; and
- The application was referred to Council's Development Engineer who raised no concerns with the loss of on-site carparking in this instance.

(iii) Part 5.3.1.1 – Plan of Management

A Plan of Management (POM) was submitted with the application. The POM submitted is considered to be comprehensive and provides suitable management procedures to minimise potential amenity impacts to the surrounding locality. A condition is included in the recommendation requiring the operation of the premises to adhere to the POM submitted, as amended by any conditions of consent.

(iv) Part 5.3.1.4 – Hours of Operation

The application seeks approval for the following hours of operation:

- Fridays to Sundays from 5.30pm to 11.00pm

The proposal is satisfactory having regard to the relevant provisions of Part 5.3.1.4 as follows:

- The proposed hours of operation are comparative with restaurant business hours on King Street and within the approved operating hours of the existing restaurant; and
- The hours proposed are unlikely to result in any adverse amenity impacts to neighbouring properties and are generally consistent with the hours of operation of other business within the locality.

5(d) Other Matters

(i) Access from Rear of the premises

The proposal would allow the rear of the property to be used as a pickup point for delivery



drivers during the operation of the rear kitchen. The rear of the property adjoins a Council carpark. However, there is a small area to the rear of the property that would be able to accommodate small vehicles waiting to collect food orders for delivery. As such, the pickup is considered acceptable subject to conditions requiring management to ensure any delivery vehicles do not impede access to the car park or in any way impact the safe and ongoing operation of the adjacent carpark.

Additionally, while access for these deliveries will be provided at the rear of premises which could present safety concerns. However, the rear of the premises is well lit and a number of other business have a rear frontage to the car park, creating activation and passive observation of the laneway. There is also an IGA supermarket which has an entry/exit from the carpark in close proximity to the site which provides activation and surveillance of the car parking area later into the evening during the trading hours of the proposed rear kitchen. As such, deliveries from the rear are considered acceptable and in this instance.

(ii) Unauthorised Works

The plans submitted with the application identify some unauthorised works that have taken place at the site. These works include a cool room, freezer and doorway located in the portion of the restaurant on the 253 King Street side of the tenancy. These works cannot be approved by the Development Application and need to be certified by a Building Certificate. At the time of writing this report a Building Certificate has been received by Council and is under assessment. A condition is included in the recommendation requiring the Building Certificate to be obtained prior to the issue of a Construction Certificate.

5(e) The Likely Impacts

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

5(f) The suitability of the site for the development

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

5(g) Any submissions

The application was notified in accordance with Marrickville Development Control Plan 2011 for a period of 14 days to surrounding properties. No submissions were received.

5(h) The Public Interest

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

The proposal is not contrary to the public interest.

## 6 Referrals

6(a) Internal

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

- Engineering; and
- Environmental Health

## 7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies are not payable for the proposal.

## 8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Marrickville Local Environmental Plan 2011* and Marrickville Development Control Plan 2011.

The development will not result in any significant impacts on the amenity of the adjoining premises/properties and the streetscape and is considered to be in the public interest.

The application is considered suitable for approval subject to the imposition of appropriate conditions.

## 9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 to vary Clause 4.4 of the *Marrickville Local Environmental Plan 2011*. After considering the request, and assuming the concurrence of the Secretary, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental planning grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising, the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA201900412 for fit out of the rear of the ground floor tenancy to be used in association with the restaurant at 253 King Street Newtown subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

### Conditions of Consent

#### Fees

##### 1. Long Service Levy

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more.

##### 2. Security Deposit - Standard

Prior to the commencement of demolition works or prior to the issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit:	\$2,152.50
Inspection Fee:	\$230.65

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

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

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

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

The amount nominated is only current for the financial year in which the consent was issued and is revised each financial year. The amount payable must be consistent with Council's Fees and Charges in force at the date of payment.

#### General Conditions

##### 3. Documents related to the consent

The development must be carried out in accordance with plans and documents listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by

DA01 Rev D	Ground Floor Plan	18.11.2019	Building Studio
DA02 Rev D	Detailed Ground Floor Plan	18.11.2019	Building Studio
DA03 Rev D	Section	18.11.2019	Building Studio
DA04 Rev D	Rear Elevation	18.11.2019	Building Studio
-	Plan of Management	Nov 2019	Milestone (AUST) P/L

As amended by the conditions of consent.

#### **4. Existing Development Consent**

The operation of the existing restaurant at the premises must adhere to Modified Determination No. 201500322 dated 29 December 2015.

#### **5. Building Certificate**

The person acting on, or having benefit of this consent is required to obtain a Building Certificate from Council in order to regularise the unauthorised building and fit-out works undertaken at the existing premises within thirty (30) days of the date this Determination.

#### **6. Design Change**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended architectural plans detailing the proposed door adjacent to the commercial kitchen at the rear does not encroach upon the rear lane when open.

#### **7. Car Parking**

The development must provide and maintain within the site:

- a) 1 car parking spaces must be paved and line marked.

#### **8. Waste Management Plan**

Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Development Control Plan.

#### **9. Erosion and Sediment Control**

Prior to the issue of a commencement of any works (including any demolition works), the Certifying Authority must be provided with an erosion and sediment control plan and specification. Sediment control devices must be installed and maintained in proper working order.

#### **10. Works Outside the Property Boundary**

This development consent does not authorise works outside the property boundaries on adjoining lands.

#### **11. Boundary Alignment Levels**

Alignment levels for the site at all pedestrian and vehicular access locations must match the existing back of footpath levels at the boundary.

#### **12. Stormwater Drainage System – Simple**

Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines discharged to the existing site drainage system.

Any existing component of the stormwater system that is to be retained, including any absorption trench or rubble pit drainage system, must be checked and certified by a Licensed Plumber or qualified practising Civil Engineer to be in good condition and operating satisfactorily.

### Prior to any Demolition

#### **13. Dilapidation Report**

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining properties to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

#### **14. Advising Neighbors Prior to Excavation**

At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

#### **15. Construction Fencing**

Prior to the commencement of any works (including demolition), the site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property.

#### **16. Asbestos Survey**

Prior to any demolition or the issue of a Construction Certificate (whichever occurs first), the Certifying Authority must provide an asbestos survey to Council. The survey shall be prepared by a suitably qualified Occupational Hygienist and is to incorporate appropriate asbestos removal and disposal methods in accordance with the requirements of SafeWork NSW.

A copy of any SafeWork NSW approval documents is to be included as part of the documentation.

### Prior to Construction Certificate

#### **17. Structural Certificate for retained elements of the building**

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a Structural Certificate prepared by a practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction. The certificate must also include all details of the methodology to be employed in construction phases to achieve the above requirements without result in demolition of elements marked on the approved plans for retention.

#### **18. Sydney Water – Tap In**

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program 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.

*Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 132092.*

#### **19. Dilapidation Report – Pre-Development – Minor**

Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site.

**20. Light Spill**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with details demonstrating that any lighting of the premises complies with Australian Standard AS4282:1992: Control of Obtrusive Effects of Outdoor Lighting.

**During Demolition and Construction****21. Construction Hours – Class 2-9**

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours:

- a) 7:00am to 6.00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b) 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and
- c) at no time on Sundays or public holidays.

Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc. and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.

In the case that a standing plant or special out of hours permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.

This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.

Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving must be limited to:

8:00am to 12:00pm, Monday to Saturday; and  
2:00pm to 5:00pm Monday to Friday.

The person acting on this consent must not undertake such activities for more than three continuous hours and must provide a minimum of one 2 hour respite period between any two periods of such works.

“Continuous” means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.

**Prior to Occupation Certificate****22. Smoke Alarms - Certification of upgrade to NCC requirements**

Prior to the issue of any Occupation Certificate, the Principal Certifier is required to be satisfied the existing building has been upgraded to comply with the provisions of the National Construction Code (Building Code of Australia) in relation to smoke alarm systems.

**23. No Encroachments**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure that any encroachments on to Council road or footpath resulting from the building works have been removed, including opening doors, gates and garage doors with the exception of any awnings or balconies approved by Council.

**24. Noise – Acoustic Report**

Prior to the issue of an Occupation Certificate, the Certifying Authority must be provided with an acoustic report prepared by suitably qualified acoustic consultant which demonstrates and certifies that noise and vibration emissions from the development comply with the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority's Industrial Noise Policy and Noise Control Manual and conditions of Council's approval, including any recommendations of the acoustic report referenced in the conditions of the approval. The acoustic report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.

**25. Food Premises Grease Trap – Trade Waste Agreement**

Prior to the issue of an Occupation Certificate, the Certifying Authority must be provided with certification confirming that the grease trap has been installed to the premises in accordance with Australian Standard AS 3500 and the National Plumbing and Drainage Code. A copy of the Sydney Water Trade Waste Agreement must also accompany the certification.

**On-going****26. Hours of Operation**

The hours of operation of the rear kitchen and any delivery collections from the rear of the premises must not exceed the following:

Day	Hours
Fridays, Saturdays and Sundays	5.30pm to 11.00pm
Mondays to Thursdays	No Operation

**27. Noise General**

The proposed use of the premises and the operation of all plant and equipment must not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations, NSW EPA Noise Policy for Industry and NSW EPA Noise Guide for Local Government.

**28. Noise – Licensed Premises – Music/Gaming Machines**

There is to be no entertainment in the form of amplified music on any part of the rear commercial kitchen at any time.

**29. Licensed Premises – Plan of Management - Operation**

The operation of the premises complying at all times with the approved Plan of Management. The Plan of Management is not to be further amended without the prior written approval of the Council. If there is any inconsistency between the Plan of Management and the conditions of this consent, the conditions of consent shall prevail to the extent of that inconsistency.

**30. Commercial Waste/Recycling Collection**

The collection of waste and recycling must only occur between 7:00am and 8:00pm weekdays and 9:00am and 5:00pm weekends and public holidays, to avoid noise disruption on the surrounding area,

Garbage and recycling must not be placed on the street for collection more than one (1) hour before the scheduled collection time. Garbage bins and containers are to be removed from the street within one (1) hour after collection.

**31. Management of Delivery Collections**

- a) The management is responsible to ensure any vehicles attending the site to collect deliveries do so in a safe and orderly manner without resulting in an inconvenience to the public.
- b) Delivery vehicles and/or the queuing of delivery vehicles must not impede access to the adjacent Council carpark or compromise the safe and ongoing operation of the carpark and access laneway from Church Street.
- c) No deliveries from the rear of the site are permitted outside of the approved operating hours for the rear kitchen referenced in condition 27 of this Determination.

**Advisory notes****Prescribed Conditions**

This consent is subject to the prescribed conditions of consent within clause 98-98E of the *Environmental Planning and Assessment Regulations 2000*.

**Notification of commencement of works**

At least 7 days before any demolition work commences:

- a) the Council must be notified of the following particulars:
  - i. the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
  - ii. the date the work is due to commence and the expected completion date; and
- b) a written notice must be placed in the letter box of each directly adjoining property identified advising of the date the work is due to commence.

**Storage of Materials on public property**

The placing of any materials on Council's footpath or roadway is prohibited, without the prior consent of Council.

**Toilet Facilities**

The following facilities must be provided on the site:

- a) toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
- b) a garbage receptacle for food scraps and papers, with a tight fitting lid.

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

**Infrastructure**

The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones respectively to the property. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be undertaken before occupation of the site.

**Other Approvals may be needed**

Approvals under other acts and regulations may be required to carry out the development. It is the responsibility of property owners to ensure that they comply with all relevant legislation. Council takes no responsibility for informing applicants of any separate approvals required.



**Failure to comply with conditions**

Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.

**Other works**

Works or activities other than those approved by this Development Consent will require the submission of a new Development Application or an application to modify the consent under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

**Obtaining Relevant Certification**

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, such as (if necessary):

- a) Application for any activity under that Act, including any erection of a hoarding.
- b) Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*.
- c) Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*.
- d) Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed.
- e) Application for Strata Title Subdivision if strata title subdivision of the development is proposed.
- f) Development Application for demolition if demolition is not approved by this consent.
- g) Development Application for subdivision if consent for subdivision is not granted by this consent.

**Disability Discrimination Access to Premises Code**

The *Disability Discrimination Act 1992* (Commonwealth) and the *Anti-Discrimination Act 1977* (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.

**National Construction Code (Building Code of Australia)**

A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out. All building works approved by this consent must be carried out in accordance with the requirements of the National Construction Code.

**Notification of commencement of works**

Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the PCA (not being the council) has given the Council written notice of the following information:

- a) in the case of work for which a principal contractor is required to be appointed:
  - i. the name and licence number of the principal contractor, and
  - ii. the name of the insurer by which the work is insured under Part 6 of that Act,
- b) in the case of work to be done by an owner-builder:
  - i. the name of the owner-builder, and
  - ii. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

**Public Domain and Vehicular Crossings**

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

You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be at no cost to Council

Any damage caused during construction to Council assets on the road reserve or on Council or Crown land must be repaired at no cost to Council.

Any driveway crossovers or other works within the road reserve must be provided at no cost to Council.

No consent is given or implied for any Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, eaves, awnings, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever, including when open.

**Insurances**

Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

**Lead-based Paint**

Buildings built or painted prior to the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe. Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving the removal of lead based paints. Precautions should therefore be taken if painted surfaces are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned prior to occupation of the room or building.

**Health Premises Registration – Generic**

The premises are required to be registered with Council's Environment Health Team in accordance with the following relevant legislation:

- a) Food Shop - Food Act 2003

**Food Premises Certification**

The food premises design, construction and operation is in accordance with the:

- a) Food Act 2003
- b) Food Regulation 2010
- c) Australia and New Zealand Food Standards Code
- d) Australian Standard AS 4674 – 2004 (Design, construction and fit-out of food premises)
- e) Australian Standard AS 1668 Part 1 – 1998

**Dividing Fences Act**

The person acting on this consent must comply with the requirements of the *Dividing Fences Act 1991* in respect to the alterations and additions to the boundary fences.

**Noise**

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

**Amenity Impacts General**

The use of the premises must not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of plant and equipment must not give rise to the transmission of a vibration nuisance or damage other premises.

**Fire Safety Certificate**

The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:

- a) Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and
- b) Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).

Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Certificate for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Certificate must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

**Permits**

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the Local Government Act 1993 and/or Section 138 of the Roads Act 1993. Permits are required for the following activities:

- a) Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application.
- b) A concrete pump across the roadway/footpath
- c) Mobile crane or any standing plant
- d) Skip Bins
- e) Scaffolding/Hoardings (fencing on public land)
- f) Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.
- g) Awning or street veranda over the footpath
- h) Partial or full road closure
- i) Installation or replacement of private stormwater drain, utility service or water supply

If required contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. Applications for such Permits must be submitted and approved by Council prior to the commencement of the works associated with such activity.

- f) Australian Standard AS 1668 Part 2 – 2012; and

#### **Food Premises Waste Storage Area**

To ensure adequate storage and collection of waste from the food premises, all garbage and recyclable materials must be stored in a designated waste storage area. The designated waste storage area must be designed and constructed in accordance with the Australian Standard AS 4674 – 2004 (Design, construction and fit-out of food premises) and Australia and New Zealand Food Standards Code.

#### **Mechanical Ventilation System Certification**

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

- a) Australian Standard AS 1668 Part 1 – 1998,
- b) Australian Standard AS 1668 Part 2 – 2012,
- c) Australian Standard 3666.1 – 2011,
- d) Australian Standard 3666.2 – 2011; and
- e) Australian Standard 3666.3 - 2011.

The system must be located in accordance with the approved plans and/or within the building envelope, design and form of the approved building. Any modifications to the approved plans required to house the system must be the subject of further approval from Council.

#### **Asbestos Removal**

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m<sup>2</sup> of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

Removal of friable asbestos material must only be undertaken by a contractor that holds a current AS1 Friable Asbestos Removal Licence.

Demolition sites that involve the removal of asbestos must display a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent visible position on the site to the satisfaction of Council's officers. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos has been removed from the site to an approved waste facility.

All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2005. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

#### **Dial before you dig**

Contact "Dial Prior to You Dig" prior to commencing any building activity on the site.

#### **Useful Contacts**

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm <a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a>
Department of Fair Trading	13 32 20 <a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a> Enquiries relating to Owner Builder Permits and Home Warranty Insurance.

Dial Prior to You Dig	1100 <a href="http://www.dialprior.toyoudig.com.au">www.dialprior.toyoudig.com.au</a>
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441 <a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Food Authority	1300 552 406 <a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>
NSW Government	<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diySAFE.nsw.gov.au">www.diySAFE.nsw.gov.au</a> Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 <a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>
Sydney Water	13 20 92 <a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>
Waste Service - SITA Environmental Solutions	1300 651 116 <a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>
Water Efficiency Labelling and Standards (WELS)	<a href="http://www.waterrating.gov.au">www.waterrating.gov.au</a>
WorkCover Authority of NSW	13 10 50 <a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a> Enquiries relating to work safety and asbestos removal and disposal.

Attachment B – Plans of proposed development

ALTERATIONS  
TO  
EXISTING RESTAURANT  
'THE ITALIAN BOWL'  
 253-255 KING STREET,  
 NEWTOWN NSW

- DRAWING LIST:
- DA00 - COVER SHEET NTS
  - DA01 - GROUND FLOOR PLAN 1:100@A3
  - DA02 - GROUND FLOOR PLAN - REAR PART 1:50@A3
  - DA03 - SECTIONAL ELEVATION 'A' 1:50@A3
  - DA04 - REAR ELEVATION '01' 1:50@A3



AERIAL PHOTO NTS

LOCATION PLAN - 'THE ITALIAN BOWL'  
253-255 KING STREET, NEWTOWN NSW

**COVER & SITE ANALYSIS**

DA00 18/11/19

DA00  
www.ubuildingstudio.com

**DEVELOPMENT APPLICATION**

NTS@43

concept | architecture | design | interior  
U+I BUILDING STUDIO

Project & Address  
THE ITALIAN BOWL  
COMMERCIAL KITCHEN FITOUT EXTENSION  
253-255 KING STREET, NEWTOWN NSW

Scale  
NTS@43

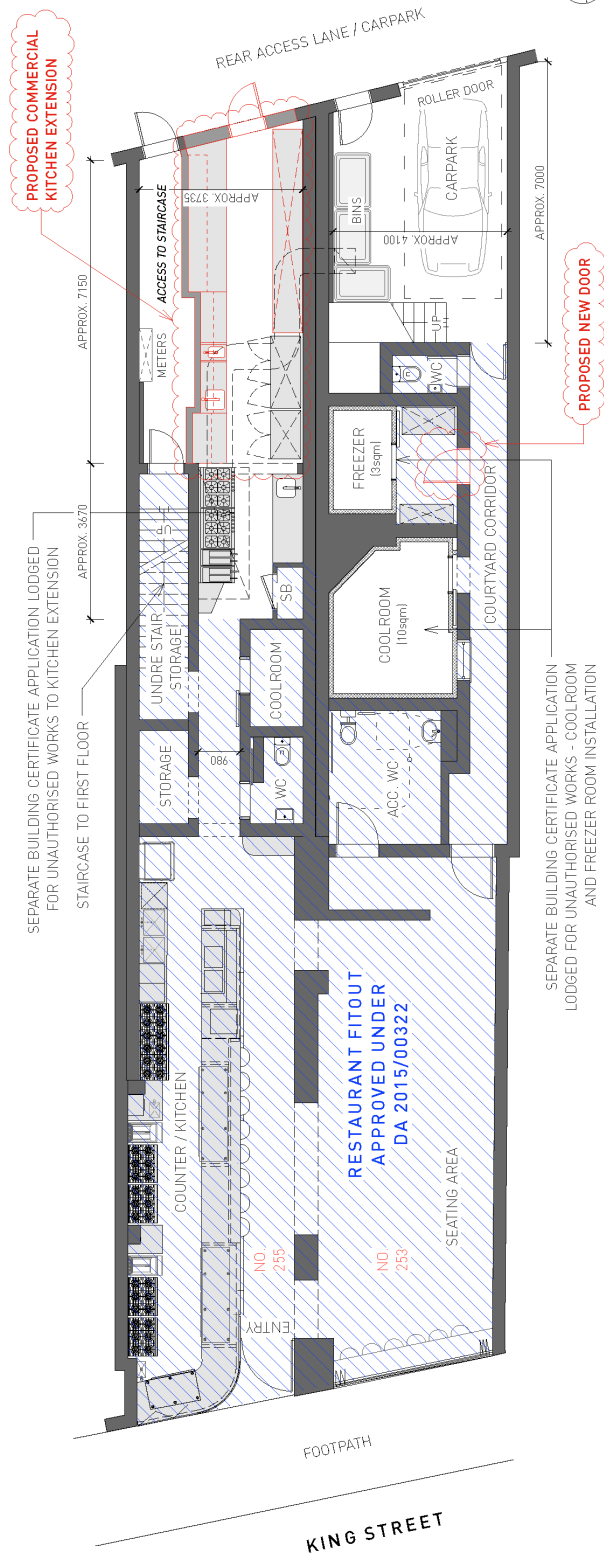
concept | architecture | design | interior  
U+I BUILDING STUDIO

Scale  
NTS@43

concept | architecture | design | interior  
U+I BUILDING STUDIO

Scale  
NTS@43

concept | architecture | design | interior  
U+I BUILDING STUDIO



**GENERAL NOTES:**

- 1. BUILDER TO MAINTAIN STRICT ACCORDANCE WITH COUNCIL CONDITIONS & REQUIREMENTS.
- 2. ALL WORKS SHOWN / INDICATED SHALL BE CARRIED OUT IN A TRADESMANLIKE MANNER AND SHALL COMPLY WITH THE BUILDING CODE OF AUSTRALIA, LOCAL GOVERNMENT BY-LAWS AND THE RELEVANT STANDARDS.
- 3. ALL DIMENSIONS ARE IN MILLIMETER. DIMENSIONS IN REFERENCE TO SCALE.
- 4. IT IS THE RESPONSIBILITY OF THE BUILDER / CONTRACTOR TO CHECK AND VERIFY ALL DIMENSIONS, HEIGHTS AND LEVELS PRIOR TO STARTING ANY CONSTRUCTION WHATSOEVER.
- 5. CHECK AND VERIFY ALL DIMENSIONS AND DETAILS ON SITE PRIOR TO THE COMMENCEMENT OF ANY WORKS, AND REPORT ANY DISCREPANCIES OR AMBIGUITIES TO THE SITE OFFICE FOR CLARIFICATION.
- 6. ALL WORKS SHALL BE COMPLETED IN ACCORDANCE WITH THE RELEVANT CODES OF PRACTICE OR ASSOCIATED CONSULTANT ENGINEERS PLANS, DETAILS AND SPECIFICATIONS.
- 7. ANY WORK SHOW/INDICATED ON PLAN BUT NOT IN SPECIFICATIONS OR VICE VERSA, AND ANY WORK NOT SHOWN IN EITHER PLAN OR SPECIFICATION BUT WHICH IS OBVIOUSLY NECESSARY AS PART OF PROPER BUILDING CONSTRUCTION AND/OR FINISH IS TO BE CONSIDERED AS SO SHOWN AND IS TO BE CARRIED OUT AS PART OF THE CONTRACT.
- 8. NO RESPONSIBILITY WILL BE ACCEPTED BY THE DESIGNER FOR BUILDER'S DETAILS, METHODS, SETOUT, DESIGN CONTRADICTIONS NOR COUNCIL VARIATIONS AND CONDITIONS.

**FOOD PREMISES:**

**ALL FITOUT WORKS TO BE IN ACCORDANCE WITH AS 4674-2004 'DESIGN, CONSTRUCTION AND FIT-OUT OF FOOD PREMISES'.**

- FLOORS SHALL BE FINISHED IN IMPERVIOUS MATERIALS TILES WITH EPOXY GROUT, EPOXY RESIN, POLYVINYL CHLORIDE WITH WELDED SEAMS, LAMINATED THERMOSETTING PLASTIC SHEETING, ETC) WITH COVING ALL AROUND.
- FLOORS SHALL BE DRAINED TO A FLOOR/WASTE, EVENLY GRADED, AT LEAST 1:100.
- WALLS SHALL BE OF SOLID CONSTRUCTION AND BE FINISHED IN IMPERVIOUS MATERIALS TILES WITH EPOXY GROUT, STAINLESS STEEL SHEETING, POLYVINYL SHEETING WITH WELDED SEAMS, LAMINATED THERMOSETTING PLASTIC SHEETING, ETC)
- CEILINGS SHALL BE NON-PERFORATED AND FINISHED FREE OF OPEN JOINTS, CRACKS, CREVICES.
- THE INTERSECTION OF WALLS AND CEILING SHALL BE TIGHT, JOINTED, SEALED AND DUST PROOF.
- CEILINGS IN FOOD PREPARATION AND STORAGE AREAS SHALL BE FINISHED WITH IMPERVIOUS SEALED MATERIALS.
- SERVICES PIPES, CONDUITS AND ELECTRICAL WIRINGS SHALL EITHER BE CONCEALED IN FLOORS, PLUMBING WALLS OR CEILINGS, OR EYED ON BRACKETS SO AS TO PROVIDE AT LEAST 25MM CLEARANCE BETWEEN PIPE AND VERTICAL SURFACE AND 100MM TO HORIZONTAL SURFACE.
- ALL PENETRATIONS SHALL BE SEALED.

- EQUIPMENT SHALL BE MOVABLE FOR CLEANING, BUILT INTO WALLS WITH ENCLOSURE COMPLETELY VERMIN PROOFED, BUTTET AGAINST WALLS OR OTHER EQUIPMENT AND JOINTS SEALED, INSTALLED WITH CLEARANCE, OR IF INSTALLED ON PLINTH, INSTALLED SUCH THAT IT OVERHANGS THE PLINTH.
- WHERE EQUIPMENT CANNOT BE MOVED EASILY, CLEARANCE SPACE SHALL BE PROVIDED SO THAT THE AREA SURROUNDING AND BENEATH CAN BE CLEANED WITHOUT MOVING IT.
- SUPPORTING LEGS SHALL BE METAL OR MOLDDED PLASTIC THAT WILL NOT BE CORRODED BY WATER OR CHEMICALS.
- BRACKETS SHALL BE METAL THAT WILL NOT BE CORRODED BY WATER OR CLEANING CHEMICALS.
- TUBULAR STEEL OPEN ENDS SHALL BE CAPPED OR SEALED.
- HANDBASINS SHALL BE PROVIDED ACCESSIBLE AND NO FURTHER THAN 5M FROM ANY PLACE WHERE FOOD HANDLERS ARE HANDLING OPEN FOOD.
- TAPS THAT OPERATE HAND-OPERATED FREE SHALL BE PROVIDED AT ALL HANDBASINS.
- HANDBASINS SHALL BE PROVIDED WITH SOAP DISPENSER, TOWEL DISPENSER, AND BIN.
- FACILITIES FOR STORING CLOTHING AND PERSONAL EFFECTS BELONGING TO STAFF SHALL BE PROVIDED OUTSIDE OF FOOD PREPARATION, FOOD PROCESSING, FOOD STORAGE AND UTENSIL WASHING AREAS.
- CLEANING CHEMICALS AND SIMILAR MATERIALS SHALL BE A ROOM DESIGNATED FOR THAT USE, OR ENCLOSED IN A CABINET WITH LOCKED ACCESS, AND BE KEPT SEPARATE FROM FOOD STORAGE AND DISPLAY AREAS AND NOT ABLE TO CONTAMINATE PERSONAL EFFECTS / CLOTHING.

**DEVELOPMENT APPLICATION**

Scale 1:1000/43

**Project & Address**

COMMERCIAL KITCHEN FITOUT EXTENSION  
253-255 KING STREET, NEWTOWN NSW

**Client**

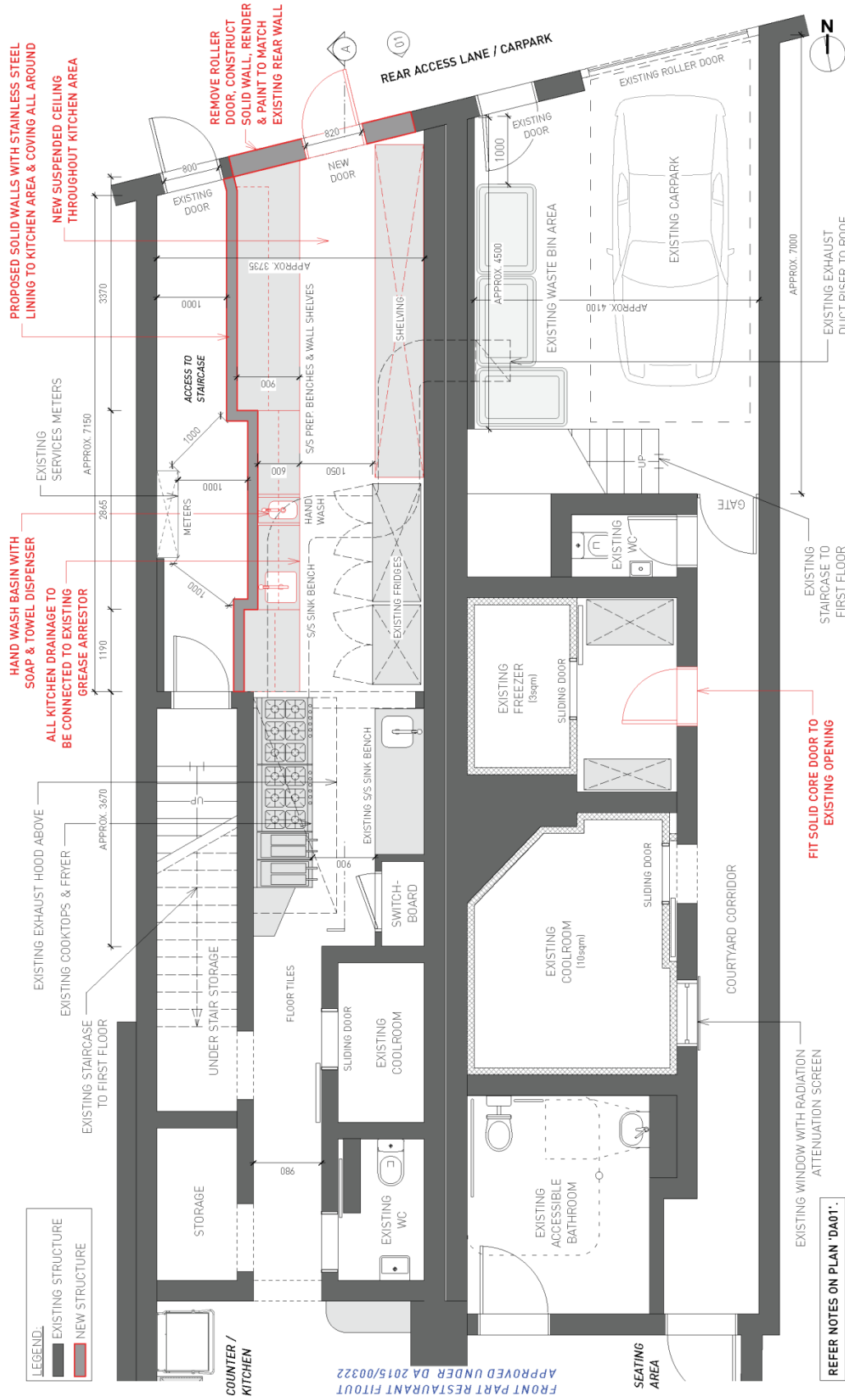
THE ITALIAN BOWL

**PROPOSED GROUND FLOOR PLAN**

Revision D Date 18/11/19

DA01

BUILDING STUDIO | concept | architecture | design | interior | U+ BUILDING STUDIO | E: info@buildingstudio.com | W: www.buildingstudio.com



PROPOSED GROUND FLOOR PLAN - REAR PART

DA02

18/11/19

www.u1buildingstudio.com

www.u1buildingstudio.com

THE ITALIAN BOWL

COMMERCIAL KITCHEN FITOUT EXTENSION

253-255 KING STREET, NEWTOWN NSW

interior design

concept architecture

concept architecture

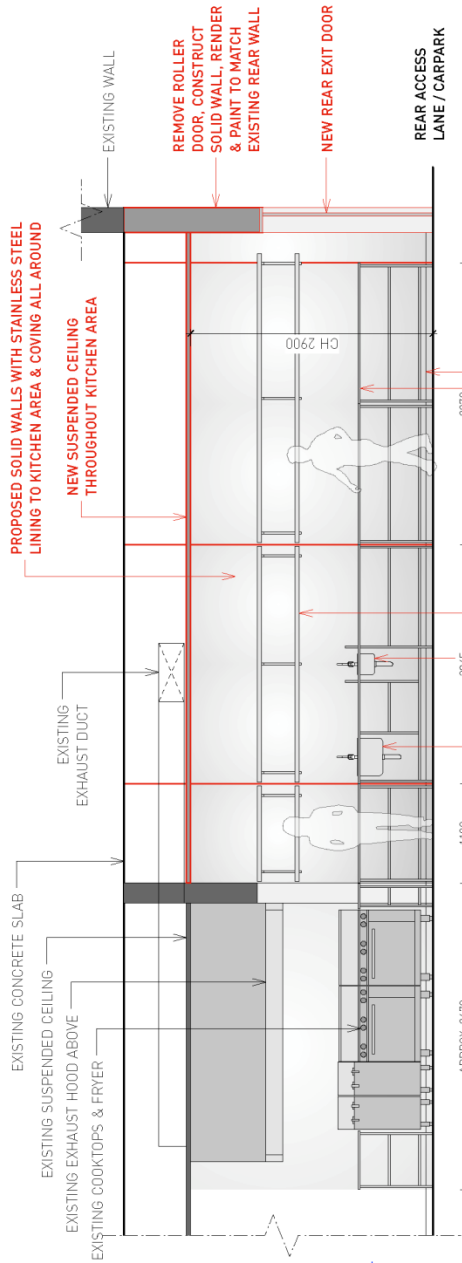
concept architecture

concept architecture

concept architecture

concept architecture





FRONT PART RESTAURANT FITOUT APPROVED UNDER DA 2015/00322

- PROPOSED SOLID WALLS WITH STAINLESS STEEL LINING TO KITCHEN AREA & COVING ALL AROUND
- REMOVE ROLLER DOOR, CONSTRUCT SOLID WALL, RENDER & PAINT TO MATCH EXISTING REAR WALL
- NEW REAR EXIT DOOR
- REAR ACCESS LANE / CARPARK
- EXISTING WALL
- EXISTING DUCT
- EXISTING CONCRETE SLAB
- EXISTING SUSPENDED CEILING
- EXISTING COOKTOPS & FRYER
- EXISTING EXHAUST HOOD ABOVE
- NEW SUSPENDED CEILING THROUGHOUT KITCHEN AREA
- PROPOSED COMMERCIAL KITCHEN EXTENSION
- PROPOSED STAINLESS STEEL SINK BENCH
- NOTE: ALL KITCHEN DRAINAGE TO BE CONNECTED TO EXISTING GREASE ARRESTOR
- PROPOSED STAINLESS STEEL WALL SHELVES
- HAND WASH BASIN WITH SOAP & TOWEL DISPENSER
- COVING AROUND
- PROPOSED STAINLESS STEEL BENCHES



**FOOD PREMISES:**  
**ALL FITOUT WORKS TO BE IN ACCORDANCE WITH AS 4674-2004 'DESIGN, CONSTRUCTION AND FIT-OUT OF FOOD PREMISES'.**

- FLOORS SHALL BE FINISHED IN IMPERVIOUS MATERIALS (TILES WITH EPOXY GROUT, EPOXY RESIN, POLYVINYL SHEETING WITH WELDED SEAMS, LAMINATED THERMOSETTING PLASTIC SHEETING, ETO) WITH COVING ALL AROUND
- FLOORS SHALL BE DRAINED TO A FLOOR WASTE, EVENLY GRADED, AT LEAST 1:100
- WALLS SHALL BE OF SOLID CONSTRUCTION AND BE FINISHED IN IMPERVIOUS MATERIALS (TILES WITH EPOXY GROUT, STAINLESS STEEL SHEETING, POLYVINYL SHEETING WITH WELDED SEAMS, LAMINATED THERMOSETTING PLASTIC SHEETING, ETC)
- CEILINGS SHALL BE NON-PERFORATED AND FINISHED FREE OF OPEN JOINTS, CRACKS, GROUTS
- THE INTERSECTION OF WALLS AND CEILINGS SHALL BE TIGHT JOINTED, SEALED AND IMPROOVISED MATERIALS
- CEILINGS IN FOOD PREPARATION AND STORAGE AREAS SHALL BE FINISHED WITH IMPERVIOUS SEALED MATERIALS
- SERVICES PIPES, CONDUITS AND ELECTRICAL WIRING SHALL EITHER BE CONCEALED IN FLOORS, PLINths, WALLS OR CEILING OR BE AT LEAST 25MM CLEARANCE BETWEEN PIPE AND VERTICAL SURFACE AND 100MM TO HORIZONTAL SURFACE
- ALL PENETRATIONS SHALL BE SEALED
- EQUIPMENT SHALL BE MOVABLE FOR CLEANING, BUILT INTO WALLS WITH ENCLOSURE COMPLETELY VERMIN PROOFED, BUTTED AGAINST WALLS OR OTHER EQUIPMENT AND JOINTS SEALED, INSTALLED WITH CLEARANCE, TO ALLOW FOR CLEANING AND MAINTENANCE
- WHERE EQUIPMENT CANNOT BE MOVED EASILY, CLEARANCE SPACE SHALL BE PROVIDED SO THAT THE AREA SURROUNDING AND BENEATH CAN BE CLEANED WITHOUT MOVING IT
- SUPPORTING LEGS SHALL BE METAL OR MOULDED PLASTIC THAT WILL NOT BE CORRODED BY WATER OR CLEANING CHEMICALS
- BRACKET'S SHALL BE METAL, THAT WILL NOT BE CORRODED BY WATER OR CLEANING CHEMICALS
- TUBULAR STEEL OPEN ENDS SHALL BE CAPPED OR SEALED
- HANDBASINS SHALL BE PROVIDED ACCESSIBLE AND NO FURTHER THAN 5M FROM ANY PLACE WHERE FOOD HANDLERS ARE HANDLING OPEN FOOD
- TAPS THAT OPERATE HANDS FREE SHALL BE PROVIDED AT ALL HANDBASINS
- HANDBASINS SHALL BE PROVIDED WITH SOAP DISPENSER, TOWEL DISPENSER AND BIN.
- FACILITIES FOR STORING CLOTHING AND PERSONAL EFFECTS BELONGING TO STAFF SHALL BE PROVIDED OUTSIDE OF FOOD PREPARATION, FOOD PROCESSING, FOOD STORAGE AND UTENSIL WASHING AREAS.
- CLEANING CHEMICALS AND SIMILAR MATERIALS SHALL BE A ROOM DESIGNATED FOR THAT USE, OR ENCLOSED CUPBOARD DEDICATED OR THAT USE, LOCATED AWAY FROM FOOD PREPARATION, FOOD STORAGE AND DISPLAY AREAS AND NOT ABLE TO CONTAMINATE PERSONAL EFFECTS / CLOTHING

**DEVELOPMENT APPLICATION** Scale 1:500A3

**PROJECT & ADDRESS** THE ITALIAN BOWL  
 COMMERCIAL KITCHEN FITOUT EXTENSION  
 2532-255 KING STREET, NEWTOWN NSW

**CLIENT** U+ BUILDING STUDIO | interior | design | architecture | concept

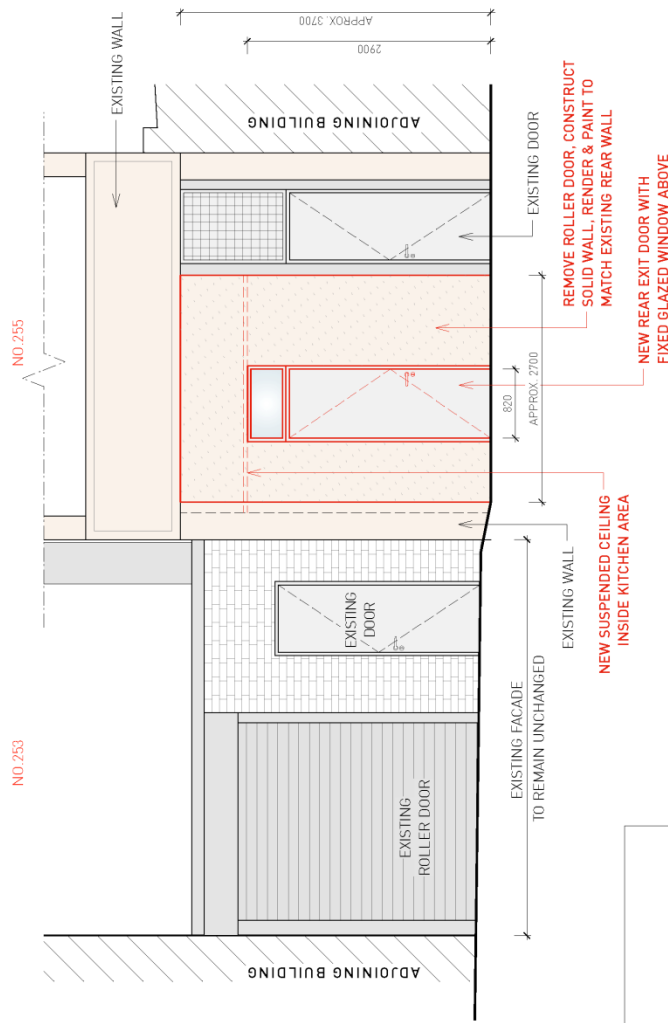
**DWG No** DA03

**Revision** D 18/11/19

**Scale** 1:500A3

**Logo** U+ BUILDING STUDIO

**Contact** E: info@ubuildingstudio.com | W: www.ubuildingstudio.com



DOOR & FRAME COLOUR: GREY TO MATCH EXISTING DOOR



RENDER & PAINT COLOUR: BEIGE TO MATCH EXISTING WALL

**GENERAL NOTES:**

- 1. BUILDER TO MAINTAIN STRICT ACCORDANCE WITH COUNCIL CONDITIONS & REQUIREMENTS.
- 2. ALL WORKS SHOWN / INDICATED SHALL BE CARRIED OUT IN A TRADESMANLIKE MANNER AND SHALL COMPLY WITH THE BUILDING CODE OF AUSTRALIA, LOCAL GOVERNMENT BY-LAWS AND THE RELEVANT STANDARDS.
- 3. ALL DIMENSIONS ARE IN MILLIMETER. DIMENSIONS IN REFERENCE TO SCALE.
- 4. ALL DIMENSIONS TO BE CHECKED ON SITE PRIOR TO ANY PRODUCTIONS.
- 5. IT IS THE RESPONSIBILITY OF THE BUILDER / CONTRACTOR TO CHECK AND VERIFY ALL DIMENSIONS, HEIGHTS AND LEVELS PRIOR TO STARTING ANY CONSTRUCTION WHATSOEVER.
- 6. CHECK AND VERIFY ALL DIMENSIONS AND DETAILS ON SITE PRIOR TO THE COMMENCEMENT OF ANY WORKS, AND REPORT ANY DISCREPANCIES OR ANOMALIES TO THE SITE OFFICE FOR CLARIFICATION.
- 7. IT IS THE RESPONSIBILITY OF THE BUILDER / CONTRACTOR TO READ THIS PLAN IN CONJUNCTION WITH ASSOCIATED CONSULTANT ENGINEERS PLANS, DETAILS AND SPECIFICATIONS.
- 8. ANY WORK SHOWN/INDICATED ON PLAN BUT NOT IN SPECIFICATIONS OR VICE VERSA, AND ANY WORK NOT SHOWN IN EITHER PLAN OR SPECIFICATION BUT WHICH IS OBVIOUSLY NECESSARY AS PART OF PROPER BUILDING CONSTRUCTION AND/OR FINISH IS TO BE CONSIDERED AS SHOWN AND IS TO BE CARRIED OUT AS PART OF THE CONTRACT.
- 9. NO RESPONSIBILITY WILL BE ACCEPTED BY THE DESIGNER FOR BUILDER'S DETAILS, METHODS, SETOUT, DESIGN CONTRADICTIONS NOR COUNCIL VARIATIONS AND CONDITIONS.

**LEGEND:**

- EXISTING STRUCTURE
- NEW STRUCTURE

DEVELOPMENT APPLICATION

Scale 1:500A3

Project & Address: COMMERCIAL KITCHEN FITOUT EXTENSION 253-255 KING STREET, NEWTOWN NSW

Client: THE ITALIAN BOWL

U+I BUILDING STUDIO | interior | design | architecture | concept

Building Studio logo

www.uibuildingstudio.com | E: info@uibuildingstudio.com

PROPOSED REAR ELEVATION '01'

DA04

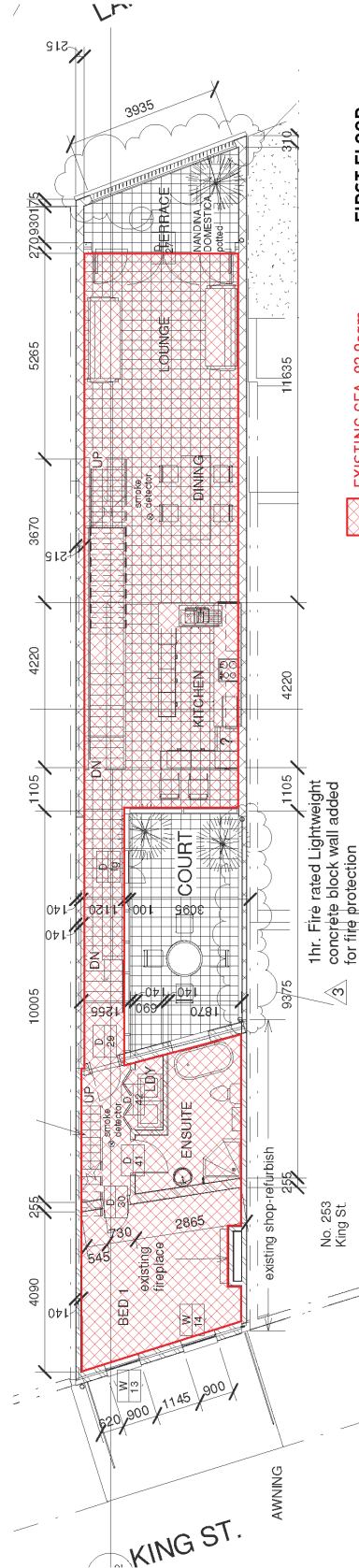
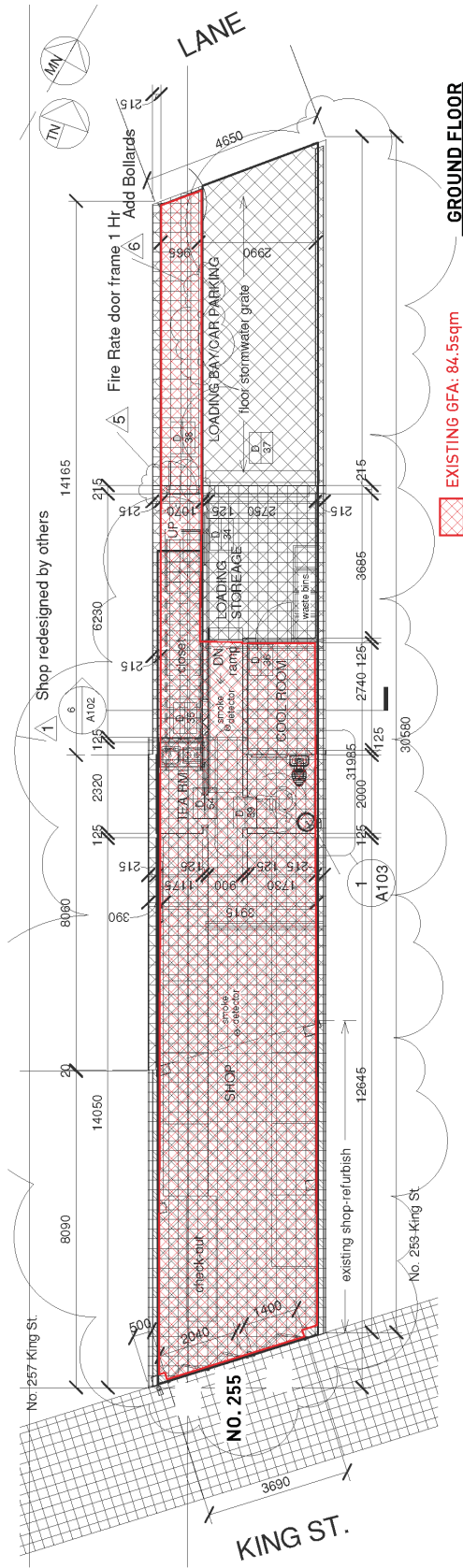
Revision: D 18/11/19

Client: THE ITALIAN BOWL

U+I BUILDING STUDIO | interior | design | architecture | concept

Building Studio logo

www.uibuildingstudio.com | E: info@uibuildingstudio.com



**FLOOR PLANS - GFA CALCULATION**

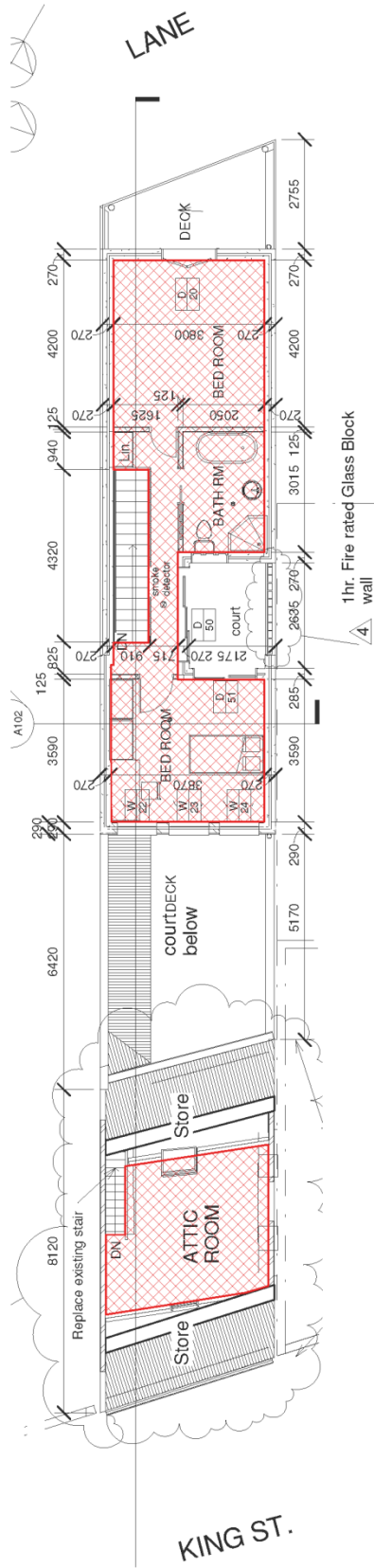
Draw No.	Client	Date
E01	THE ITALIAN BOWL	17/02/20
B		

Project & Address: THE ITALIAN BOWL  
 SHOP FITOUT 'THE ITALIAN BOWL'  
 255 KING STREET, NEWTOWN NSW

Scale: 1:1000@A3  
 0 1 2 3 4 5m

Development Application  
 U+1 BUILDING STUDIO | interior | design | architecture | concept

U+1 BUILDING STUDIO | www.u1buildingstudio.com | info@u1buildingstudio.com



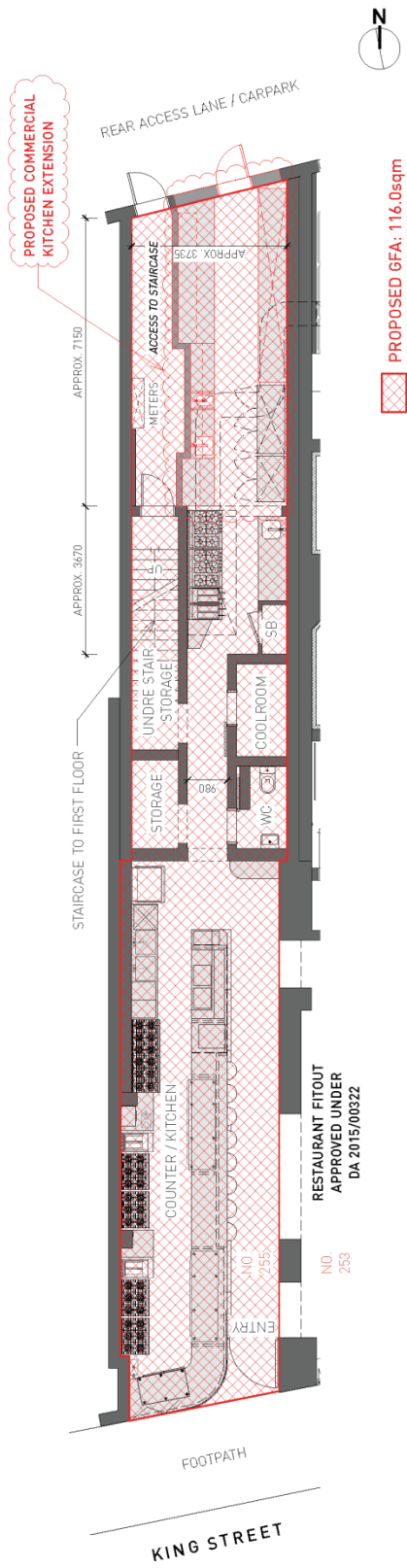
255 KING ST NEWTOWN

EXISTING GFA	
GROUND FLOOR:	84.5sqm
FIRST FLOOR:	92.0sqm
SECOND FLOOR:	57.0 sqm
TOTAL:	233.5sqm

FLOOR PLANS - GFA CALCULATION

**DEVELOPMENT APPLICATION** | Scale: 1:1000A3 | **U+1 BUILDING STUDIO** | concept | architecture | design | interior | Shop Fitout 'THE ITALIAN BOWL' | 255 KING STREET, NEWTOWN NSW | "THE ITALIAN BOWL" | Client: "THE ITALIAN BOWL" | Date: 17/02/20

**BUILDING STUDIO** | www.u1buildingstudio.com | E: info@u1buildingstudio.com | W: www.u1buildingstudio.com | U+1 BUILDING STUDIO



PROPOSED GFA: 116.0sqm

255 KING ST NEW TOWN

PROPOSED GFA	
GROUND FLOOR:	116.0sqm
FIRST FLOOR:	90.5sqm
SECOND FLOOR:	57.0 sqm
TOTAL:	263.5sqm
PROPOSED FSR 1.86:1	

EXISTING GFA	
GROUND FLOOR:	84.5sqm
FIRST FLOOR:	92.0sqm
SECOND FLOOR:	57.0 sqm
TOTAL:	233.5sqm
EXISTING FSR 1.64:1	

SITE AREA:  
APPROX. 142sqm

NOTE:  
UPPER FLOORS TO REMAIN  
UNCHANGED.

**DEVELOPMENT APPLICATION**

Scale: 1:100BAG

Project & Address: COMMERCIAL KITCHEN FITOUT EXTENSION  
255-255 KING STREET, NEWTOWN NSW  
interior

Client: THE ITALIAN BOWL  
E: info@ubuildingstudio.com | W: www.ubuildingstudio.com

DA10

U+I BUILDING STUDIO

PROPOSED GROUND FLOOR PLAN - GFA CALCULATION

DWG No: DA10  
Revision: C  
Date: 17/02/20

0 1 2 3 4 5m

BUILDING STUDIO

## Attachment C- Clause 4.6 Exception to Development Standards



### CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS - MARRICKVILLE LOCAL ENVIRONMENTAL PLAN 2011

#### DEVELOPMENT APPLICATION TO USE PART OF THE EXISTING "ITALIAN BOWL" RESTAURANT SITE AS A COMMERCIAL KITCHEN FOR DELIVERY SERVICE ONLY AND ASSOCIATED INSTALLATION AND FITOUT

#### 253-255 KING STREET, NEWTOWN (LOTS 1 & 2 DP 61728 & 930236)

#### FEBRUARY 2020

#### 1. Introduction

The site is located at 253-255 King Street, Newtown and legally known as Lot 1 DP 61728 and Lot 2 DP 930236. The site has a total area of 279m<sup>2</sup>. This Clause 4.6 Exceptions to Development Standards refers to the building located at 255 King Street, Newtown (subject site) only as no change to the existing Gross Floor Area (GFA) of the building located at 253 King Street, Newtown is proposed as part of the Development Application (DA). The site area of 255 King Street, Newtown is 142m<sup>2</sup>.

This Clause 4.6 Exceptions to Development Standards request accompanies a Development Application (DA) to Inner West Council (Council) (DA201900412) for the proposed use part of the existing "Italian Bowl" restaurant site as a commercial kitchen for delivery service only and associated installation and fitout and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Milestone dated 21 November 2019. This Clause 4.6 Exceptions to Development Standards Variation Request relates to:

- Clause 4.4 Floor Space Ratio (FSR) within Marrickville Local Environmental Plan 2011 (LEP 2011).

This Development Standard Variation Request has been prepared in accordance with the NSW Department of Planning, Industry and Environment's *"Varying development standards: A Guide"* (August 2011) and relevant decisions in the New South Wales Land and Environment Court (Court). The following two recent Court judgements provide a clear outline of the matters required to be addressed under to Clause 4.6, including the structure of such requests:

- *Brigham v Canterbury - Bankstown Council [2018] NSWLEC 1406*; and
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*.

The Court has established principles that are to be addressed in relation to whether a development standard variation should be approved by a consent authority. The relevant tests to be considered are set out in the judgement of Justice Lloyd in *Winton Property Group Ltd v North Sydney Council [2001] 130 LGERA 79*. The relevant tests were revisited by Chief Justice Preston in the decision of *Wehbe v Pittwater Council [2007] NSW LEC 827 (Wehbe)*. Although the Winton Property Group and Wehbe judgement refer to variations to development standards submitted under *State Environmental Planning Policy 1 - Development Standards (SEPP 1)* the principles and tests contained therein remain applicable to Clause 4.6 of the Standard Instrument as confirmed by the Court in the following judgements:

- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (Four2Five)*;
- *Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386*;
- *Moskovich v Waverley Council [2016] NSWLEC 1015*; and
- *SARM Architects Pty Ltd v Wollongong City Council [2015] NSWLEC 1101*.

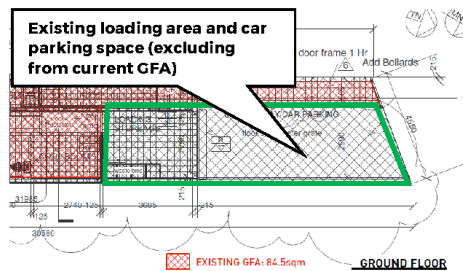
It has been established in case law that the quantum of the numerical variation does not form part of the tests required to be conducted under Clause 4.6. For instance, the Court's decisions with regard to *Moskovich v Waverley Council* (65% exceedance of FSR) and *Micaul Holdings Pty Limited v Randwick City Council* (55% exceedance of height and 20% exceedance of FSR) attest to this.

#### 2. Details of Current and Proposed FSR

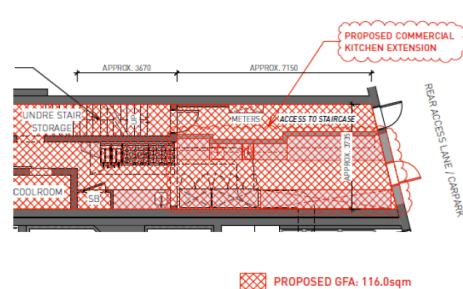
A maximum floor space ratio of 1.5:1 applies to the site under Clause 4.4 of LEP 2011.

The proposed FSR will be 1.86:1. The current existing FSR of the subject site is 1.64:1.

In accordance with the GFA Calculation undertaken by Building Studio (Architects), the existing building located at 255 King Street, Newtown has an FSR of 1.64:1. The proposed conversion of the existing internal loading area and car parking space at the rear of the ground floor within the subject building to commercial kitchen increases the building GFA by 30m<sup>2</sup>. The proposed development will have an FSR of 1.86:1. Refer to **Photos 1 and 2**.



**Photo 1: Existing Ground Floor Plan**



**Photo 2: Proposed Ground Floor Plan**

The proposal enhances the internal function of the building and contributes to the diversity of commercial uses and access to freshly cooked food in Newtown (commercial kitchen). It is an equitable, efficient use of highly accessible commercial land and will contribute positively to the public domain through the provision of a high-quality commercial kitchen. The site is located close to public transport, public recreation areas and retail shops and commercial services.

This proposal results in variations of the LEP 2011 development standard relating to the maximum FSR standard required by Clause 4.4. In response to the proposed non-compliance, the following Clause 4.6 Variation Request is provided.

This Variation is well founded and is worthy of support by Council Officers. An assessment of the proposed variation against the requirements of Clause 4.6 is provided below.

**3. What are the Objectives of Clause 4.6 and Is the proposal consistent with them?**

The objectives of Clause 4.6 of LEP 2011 are:

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

As outlined in the assessment below, that the proposed variation is consistent with the objectives of Clause 4.6 of LEP 2011. This variation allows flexibility in the application of the maximum FSR development standard by allowing the proposed minor yet important internal building refurbishment to provide a high quality designed commercial kitchen.

**4. Are the standards to be varied Development Standards to which Clause 4.6 applies?**

Clause 4.4 are in Part 4 "Principal Development Standards" of LEP 2011. The wording of Clause 4.4 is consistent with previous decisions of the Court in relation to matters which constitute development standards. It is noted that Clause 4.6 does not contain a provision which specifically excludes Clause 4.4 from being able to be varied. On this basis Clause 4.4 are development standard for which Clause 4.6 applies.

**5. Is compliance with the Development Standards unreasonable or unnecessary in the circumstances of this case?**

The Court's decision in the Wehbe case provides guidance by nominating the five separate methods in which compliance to a development standard can be demonstrated as being unreasonable and unnecessary subject to a variation request. The five methods specified in the Wehbe case include the following:

- Method No. 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard.
- Method No. 2: The underlying objective or purpose of the standard is not relevant to the development with the consequence that compliance is unnecessary.
- Method No. 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
- Method No. 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.
- Method No. 5: "The zoning of the particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning is also unreasonable and unnecessary as it applied to that land" and hence compliance with the standard would be unreasonable or unnecessary (i.e. the subject allotment should not have been included in the zone it is located in).

This Development Standard Variation Request will rely upon Method No.1 as set out the Wehbe case.

Method Nos. 2, 3, 4 and 5 are not considered relevant to the current proposal and therefore this Development Standard Variation Request relies upon Method No. 1 in *Wehbe*, only. This approach is consistent with the findings of Dixon SC in *Brigham v Canterbury - Bankstown Council [2018] NSWLEC 1406* who notes 'you do not need to list all five tests from *Wehbe* if the first test is relied upon and said to be satisfied'.

On the basis of the above, compliance with the requirements of Clause 4.4 "FSR" is both unreasonable and unnecessary in the circumstances of this case for the following reasons:

- The subject site has an existing FSR being 1.64:1 which contravenes FSR development standard. It is therefore not possible for any development within the subject building to comply with the FSR development standard given the pre-existing non-compliance without demolition and removal of part of the existing building.
- The proposed development will maintain the existing built form and scale and only seeks to increase the existing GFA by 30m<sup>2</sup> as the result of converting previous non-GFA (loading area and car parking space) into GFA (commercial kitchen). The additional 30m<sup>2</sup> to the existing GFA of 233.5m<sup>2</sup> is considered acceptable given the overall physical footprint of the subject building remains unchanged.
- The proposal will enhance the internal function and usability of the existing restaurant through a high quality design.
- The proposed internal refurbishment will not result in any visual impact given the proposed works will be undertaken entirely within the subject building.

There are no unreasonable environmental or amenity impacts on any nearby properties which will arise as a result of the maximum FSR being exceeded in this case.

#### **6. Are there sufficient environmental planning grounds to justify contravening the Development Standard?**

The decision in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* indicates that merely showing that the development achieves the objectives of the development standard will be insufficient to justify that a development is unreasonable or unnecessary in the circumstances of the case for the purposes of an objection under Clause 4.6.

The case also demonstrates that the requirement in Clause 4.6(3)(b) of LEP 2011 to justify that there are sufficient environmental planning grounds for the variation, requires identification of grounds particular to the circumstances of the proposed development and not simply grounds that apply to any similar development on the site or in the vicinity. In the *Four2Five* case, the Court found that the environmental planning grounds presented by the applicant in a Clause 4.6 variation request must be specific to the circumstances of the proposed development on that site.



In this instance, there are sufficient environmental planning and design grounds to justify the continued contravention of the maximum FSR development standard as it relates to the proposed development in context to the existing building.

There are particular constraints that affect the subject site which inhibit the development's ability to achieve strict compliance with the maximum FSR standard and a contravention of the relevant development standard is justified on environmental planning grounds on the consideration of the following:

- The FSR exceeding the maximum requirement of Clause 4.4 is an existing situation of the subject site. Given the proposed commercial kitchen is located internally within the subject building and is proposed to a building already exceeding the FSR control, it is unreasonable and impractical for the proposal to achieve compliance with the relevant development standard. The proposal seeks to slightly increase the FSR as a result of converting the existing non-CFA (loading area and car parking space) to CFA (commercial kitchen).
- The proposed works provides a high quality designed commercial kitchen for the delivery of food to the local community. There is no on-site intensification in terms of customers and customer vehicles.
- The proposed development whilst non-compliant with the Council's numerical maximum FSR control, achieves compliance with the objectives of Clause 4.4.
- There are no adverse amenity impacts on the neighbouring properties as a result of this non-compliance. The proposal has no impacts on the visual privacy, acoustic privacy, solar access and views on any neighbouring retail tenancies or the surrounding properties in the area.
- Maintaining this development standard would result in the existing inferior design outcome to persist. The current loading area and car parking space within the building (at 255 King Street) can be better used by the restaurant operators as a commercial kitchen and in context with the other commercial premises within the area. The proposal presents an opportunity to convert the existing internal loading area and car parking space to commercial kitchen that will service the workforce and residents of the surrounding area with a high quality delivered food without impacting the extent of usage of the remaining restaurant area.
- The existing car space/loading and unloading space at 253 King Street will be retained by the proposal and is sufficient for the ongoing operation of the restaurant.
- To not allow variation to the relevant FSR clauses would deprive the operator of the subject restaurant the opportunity to provide a high quality designed commercial kitchen.

Given the proposal will not result in any significant adverse impacts to surrounding development, is consistent with the envisaged built form of the locality and will provide a high quality designed commercial kitchen, the proposed development is considered to have sufficient planning grounds to justify a minor variation to the maximum FSR development standard.

**7. Is the proposed development 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?**

**7.1 B2 Local Centre Zone Objectives**

The proposal is consistent with the objectives of the development standard in LEP 2011 and for development in the B2 Local Centre Zone under LEP 2011. The proposed development is in the public interest as it is compliant with the zone objectives and the objectives of the particular development standard (Clause 4.4 in LEP 2011).

The objectives of the B2 Local Centre Zone are:

- *"To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide housing attached to permissible non-residential uses which is of a type and scale commensurate with the accessibility and function of the centre or area.*
- *To provide for spaces, at street level, which are of a size and configuration suitable for land uses which generate active street-fronts.*
- *To constrain parking and reduce car use."*

The proposed use of part of site for a commercial kitchen providing food for delivery service only and associated installation and fitout meets the objectives of the B2 Local Centre Zone by providing a new commercial kitchen which will serve the needs of residents, workers and visitors and support the viability of Newtown as a commercial precinct. The proposal will bring the tenancy to a high standard fitout and provide new employment opportunities on a site which is well serviced by public transport (buses and trains).

The proposal is permissible with the development consent of Council.

## **7.2 Clause 4.4 FSR Objectives**

Clause 4.4 outlines the following relevant objectives for the FSR controls in LEP 2011:

*(a) to establish the maximum floor space ratio,*

The proposal directly supports the above objective by establishing the floor space ratio for the subject site.

*(b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,*

The proposal relates to an internal increase in GFA by converting the existing loading area and car parking space to a commercial kitchen that has no impact to the overall built density and bulk in relation to the site area. The proposal will preserve the character of the locality on the basis the proposed internal works are not visible externally from the site.

*(c) to minimise adverse environmental impacts on adjoining properties and the public domain*

The proposed development is considered to have minimal environmental impacts on adjoining properties and the public domain. The proposed development is entirely within the perimeter of the host building and as such there will be no tangible change to the existing building envelope nor will it impact the appearance of the existing building. The minor increase in FSR will improve the useability of part of the existing building and provide a high quality designed commercial kitchen and will minimise any adverse impacts on the amenity of the Newtown locality.

The additional GFA and increased FSR will not increase the built upon area of the subject building as it is the result of converting existing non-GFA (loading area and car parking space) to GFA (commercial kitchen) such that there will be no adverse impacts on the building itself, the surrounding public domain and the locality overall. The proposed development achieves the objective of Clause 4.4 of LEP 2011 in relation to FSR, as outlined in the preceding assessment of Clause 4.4 of LEP 2011.

## **8. Secretary's Concurrence**

Under Clause 4.6(5) of LEP 2011, the Secretary's concurrence is required prior to any variation being granted, however it is noted under Planning Circular PS 18-003 "Variations to development standards" dated 21 February 2018 that the Secretary's concurrence is assumed by a delegate of Council if:

- the development contravenes a numerical standard by less than 10%; and
- the variation is a numerical standard.

Pursuant to the Minister's Direction under Section 9.1 of the Environmental Planning and Assessment Act 1979 dated 23 February 2018, the relevant Local Planning Panel is to determine development "that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards".

In light of the above criteria, the Inner West Local Planning Panel is able to determine the DA with the proposed FSR as outlined in this Clause 4.6 submission. Notwithstanding the above, the following section provides a response to those matters set out in Clause 4.6(5) of the LEP 2011 which must be considered by the Secretary, and by extension, the delegate of Council.

### 8.1 Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The proposed variation of the maximum FSR development standard will not be inconsistent with any objectives within State or Regional Planning policies. The proposal is consistent with the current metropolitan plan for Sydney including the *Greater Sydney Region Plan: A Metropolis of Three Cities* and the Eastern District Plan in that it:

- contributes to the development of a more accessible and walkable city;
- supports the economic sectors that contribute to investment and construction; and
- promotes walkable neighbourhoods.

### 8.2 The public benefit of maintaining the development standard

It is considered that there is no public benefit in strictly applying FSR standards to the proposed development.

Council's refusal to permit the proposed variation to the maximum FSR in this instance would not be in the public interest given the absence of any significant detrimental environmental impacts attributable to the proposed non-compliance. Additionally, it is noted that the site is able to support a minor internal alteration as proposed internal works at the rear of the ground level that would otherwise not be suitable at upper levels of the subject building due to no available space for the proposed commercial kitchen. The proposed development will benefit the public in that:

- Respects the architectural integrity of the host building.
- Is designed to not have any impact to the subject building's existing contribution to the public realm, and the character of the surrounding neighbourhood.
- The extent of the proposed variation will be imperceptible from the public domain in particular with regard to the surrounding road and footpaths in the vicinity of the site
- It maintains the heritage significance of surrounding heritage items and Heritage Conservation Area by maintaining the overall visual character of the host building and not resulting in any view or overshadowing impacts on the surrounding area.
- The existing building is non-compliant in regards to FSR, and the proposal results in a relatively minor increase in FSR with no change to the overall floor space of the subject building. Accordingly the extent of the non-compliance presented in this variation request, does not result in an over intensification of the site.
- It will not deprive the ability of the operator of the restaurant to undertake a minor yet important internal refurbishment of the subject restaurant to better use the existing internal floor space as a commercial kitchen where it is demonstrated the proposal has no adverse environmental impacts as assessed under Part 4 of the Environmental Planning and Assessment Act 1979.
- It delivers a development that positively responds to the streetscape and is compatible with surrounding developments.
- Maintains the site's high level of access to existing infrastructure such as rail and bus networks. Existing car parking within the site at the rear of 253 King Street will be retained.

## 9. Conclusion

Based upon the preceding assessment contained in this submission, a variation of the maximum FSR controls as required by Clause 4.4 of the Marrickville LEP 2011 is acceptable and strict adherence to a maximum FSR of 1.5:1 is not reasonable nor necessary in the circumstances and that the justification is well founded. The variation sought allows for the orderly and economic use and development of the land in an appropriate manner, maintains the architectural design integrity of the host building, and allows for a better outcome for the subject restaurant in planning and design terms.

Variation to the development standard is therefore considered to be acceptable on planning merit and environmental planning grounds under Clause 4.6 of LEP 2011 for the following reasons:

- Is consistent with the objectives of the B2 Local Centre Zone and FSR development standard in LEP 2011.

- Is compatible with the scale and varied character of this area of Newtown and the surrounding site context.
- Will not have any adverse amenity, visual bulk and imposition, acoustic and visual privacy, view or solar access impacts on the surrounding land uses or development.
- Is minor in scale and it will be located entirely within the host building.
- Will facilitate the orderly and economic use and development of the land.
- Is in the public interest as the proposal remains consistent with the applicable land use zone and development standard and will provide a minor yet important internal building refurbishment to provide a high quality designed commercial kitchen and delivered food to the local community.
- Allows restaurant operators to improve their tenancy, from time to time, with internal additions and alterations to better use of internal floor space where such development is demonstrated to have no adverse impacts on neighbouring properties or a locality, as is the case in this Development Application.

For the reasons set out in this Development Standard Variation Request we have no hesitation in recommending the development should be approved with the variations as proposed, pursuant to Clause 4.6 of LEP 2011.

**MILESTONE (AUST) PTY LIMITED**

## Attachment D- Statement of Heritage Significance

26/03/2020

King Street and Enmore Road Heritage Conservation Area | NSW Environment, Energy and Science

[NSW Department of Planning, Industry and Environment](#)

Home > Topics > Heritage places and items > [Search for heritage](#)

# King Street and Enmore Road Heritage Conservation Area

### Item details

<b>Name of item:</b>	King Street and Enmore Road Heritage Conservation Area
<b>Other name/s:</b>	King Street/Enmore Road Heritage Conservation Area - HCA 2
<b>Type of item:</b>	Conservation Area
<b>Group/Collection:</b>	Urban Area
<b>Category:</b>	Townscape
<b>Primary address:</b>	King Street, Newtown, NSW 2042
<b>Local govt. area:</b>	Marrickville

### All addresses

Street Address	Suburb/town	LGA	Parish	County	Type
King Street	Newtown	Marrickville			Primary Address
Enmore Road	Newtown	Marrickville			Alternate Address
Enmore Road	Enmore	Marrickville			Alternate Address

### Statement of significance:

The King Street and Enmore Road retail strip is of state historical, social and aesthetic significance as it provides an evocative physical record of significant historical phases which shaped the "New Town" from the late 19th to the early 20th Century, and has high regard in the community. The retail strip provides evidence of the economic boom of the late 1870s/1880s, exemplified by the quality and quantity of late-Victorian period building stock. Many of the buildings are impressive reminders of the area's role as a civic, retail and entertainment hub. The continuous 2 and 3 storey facades and the general uniformity of scale in King Street and Enmore Road create a distinct visual impression and outstanding townscape qualities. The consistency and relative intactness of the late 19th and early 20th century building stock is unique in the Sydney region and the State as a whole. A large number of Art Deco and Interwar period hotels demonstrate the highly populated, working class nature of the suburb in the early 20th century. The streetscapes of King Street and Enmore Road have high aesthetic value which is enhanced by the closed vistas created by street curves and by the views over the surrounding areas afforded by the alignment following the ridge line. Mixed retail uses, including delicatessens, and changes to shopfronts dating from the 1950s and 1960s reflect the strong influence of post-war migrants on the area. The area has social significance due its high regard in the community arising from its vibrant mix of retail and community uses.

**Date significance updated:** 16 Jan 12

*Note: The State Heritage Inventory provides information about heritage items listed by local and State government agencies. The State Heritage Inventory is continually being updated by local and State agencies as new information becomes available. Read the [OEI copyright and disclaimer](#).*

26/03/2020

King Street and Enmore Road Heritage Conservation Area | NSW Environment, Energy and Science

**Description****Construction years:**

1870-1930

**Physical description:**

LOCATION: Enmore Road and the section of King Street which lies within Marrickville LGA, both extend southwest from Newtown Bridge.

KEY PERIOD OF SIGNIFICANCE: 1870s to 1930

**DESCRIPTION:**

King Street and Enmore Road are dominated by two and occasionally three storey commercial/retail buildings of the late 19th and early 20th centuries, built to the street alignment, with awnings over the footpaths. Facades above awnings are largely intact and highly detailed, particularly to parapets. The continuous 2 and 3 storey facades and the general uniformity of scale in these streetscapes create outstanding townscape qualities. Art Deco style buildings (eg. Enmore Theatre, Enmore Road) and inter war period hotels (eg. Sandringham Hotel in King Street)) also contribute to the mix of buildings. The townscape qualities are enhanced by closed vistas created by street curves. Mixed retail uses including delicatessens and post WW II changes to ground floor shopfronts reflect the strong influence of post WW II migration.

Precinct Three follows King Street from the Newtown Railway Bridge to its intersection with the Princes Highway at St Peters. The buildings are still predominantly late Victorian to early Federation.

**VIEWS**

Closed vistas along King Street and Enmore Road created by street curves. District views from some intersections due to King Street and Enmore Road following ridgelines.

The tall chimney stacks of the former Brickworks in Sydney Park remain a significant landmark at the southern end of King Street.

**CONTRIBUTORY ELEMENTS**

- intact first and second floor facades
- intricate façade detail to first and second floors including parapet decoration, statuary, stucco urns
- shopfronts with original splayed, setback entries
- trachyte kerb and guttering

**NON CONTRIBUTORY ELEMENTS**

- Late 20th century infill sites, including several on Enmore Road between Newtown Bridge and Reiby Street including a service station.
- modern shopfronts involving extensive use of glazing

**Physical condition and/or Archaeological potential:**

Generally good condition, however many facades are in need of repainting.

**Date condition updated:** 12 Jun 09

**Modifications and dates:**

The section of Enmore Road between Newtown Bridge and Reiby Street features a number of intrusive elements such as a service station, and a number of unsympathetic infill

<https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=2030501>

2/5

26/03/2020

King Street and Enmore Road Heritage Conservation Area | NSW Environment, Energy and Science

buildings. The removal of 1st and 2nd floor balconies since WWII to many buildings is the only major loss of original and fabric and detailing to most buildings.

## History

### Historical notes:

The original owners of the land within the Marrickville Council area were the Cadigal and Wangal clans of the coastal Eora people. They spoke Eora, which may have been a dialect of the Dharug (Darug) language, though sources differ on this point. With the establishment of the penal colony at Sydney Cove in 1788 the dispossession of the original inhabitants was begun. In 1789 a smallpox plague decimated the Aboriginal population, though descendants of the Cadigal and Wangal people still reside within the Sydney metropolitan area.

The King Street/Enmore Road Heritage Conservation Area formed part of the land grants offered by Governor Phillip between 1793 and 1810. The largest owners of the lands that are part of the conservation area are Nicholas Devine and Thomas Rowley. Originally granted 100 acres in 1793, Rowley's grant, known as Kingston Farm, was enlarged twice, in 1800 and 1803, to 240 acres. By July 1841 Kingston Farm was being subdivided, when Samuel Lyons advertised a portion of the estate, the house "erected thereon, together with the several detached buildings, namely, Cooking-house, Servants' Rooms, Gig-house, Stables, &Co." (Sydney Gazette, 20 July 1841, p. 3). This area was north of Enmore Road. In 1854 a portion of Kingston Farm, south of the proposed railway line from Sydney to Parramatta and close to the site of Newtown Railway Station, was purchased by Thomas Holt, Thomas Ware Smart, Thomas Sutcliffe Mort and George Wigram Allen. The railway opened in September 1855 and in 1857 the land was subdivided into 370 allotments as the Kingston South Estate. The subdivision was not a great success and in 1861, after four years, only 16 lots had been sold and the unsold lots were distributed among the partners. It was then re-subdivided in 1863 and became the first subdivision under the provisions of the Real Property Act of 1862 (now known as Torrens Title) on 24 December 1863 as 'Holt, Smart and Mort's Subdivision of South Kingston', Deposited Plan 1.

The early surveyors used the ridgeline as the boundary between grants and their point of convergence is now the open space at Newtown Bridge.

From the 1830s onwards many wealthy families moved to the suburb of "New Town" to build large villas and estates. Among those in this area were Mary Reiby's 1840s "Reiby House" and the 1835 John Verge-designed villa of Captain Sylvester Browne (best known as the father of novelist T.A. Browne, "Rolf Boldrewood") called "Enmore House". Both of these villas were just south of Enmore Road. A later owner of Enmore House estate, Isaac Simmons, subdivided part of the property as the "Beautiful Village of Enmore" in about 1841. In about 1847 "Stanmore House" (between Simmons Street and Reiby Street), probably designed by architect Henry Robertson, was also built for Mary Reiby.

"Enmore Road was an Aboriginal walking track and was known as Josephson's Track in the 1850s. Enmore Ward was created in 1862; the name is taken from the estate owned by Captain Sylvester Brown from 1835 and the Josephsons from 1838 to 1883. Enmore is the name of a small millennium-old town in Somerset near Cornwall; Brown took the name of his employer's estate in British Guiana or Barbados in the West Indies. Following the renaming of a section of Cooks River Road as King Street in 1877, Alderman Melville proposed that Enmore Road be renamed Chelsea Street and Alderman Cozens recommended Queen Street instead. Queen Street was used from 1879 until after 1880." (Newtown Project website "Streets/Enmore Road notes": [http://cityofsydney.nsw.gov.au/newtownproject/History\\_of\\_the\\_Streets\\_of\\_Newt/history\\_of\\_the\\_streets\\_of\\_newt.html](http://cityofsydney.nsw.gov.au/newtownproject/History_of_the_Streets_of_Newt/history_of_the_streets_of_newt.html))

"King Street (see Cooks River Road) was also called 'the Newtown Road' in the 1870s; the section between Bligh Street and Parramatta Road was named City Road in the 1920s. Cooks River Road extended from Parramatta Road to Cooks River. It was previously known as Bulanaming Road until the 1820s and informally known as Newtown Road in the latter half of the 19th century. The section between Bligh Street and St. Peters Station was renamed as King Street in October 1877." Newtown Project website "Streets/King Street notes": [http://cityofsydney.nsw.gov.au/newtownproject/History\\_of\\_the\\_Streets\\_of\\_Newt/history\\_of\\_the\\_streets\\_of\\_newt.html](http://cityofsydney.nsw.gov.au/newtownproject/History_of_the_Streets_of_Newt/history_of_the_streets_of_newt.html))

The introduction of the railway line in 1855 with a railway station at Newtown led to increased urban development of the area. The King Street/Enmore Road area became a commercial and retail hub with increasing development from the 1860s. The 1879 Sand's Directory still shows vacant sites along Enmore Road, however by 1880 all sites are built on, generally with retail buildings but with some residences. The residences are gradually replaced after 1880 with new retail buildings.

<https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=2030501>

3/5

26/03/2020

King Street and Enmore Road Heritage Conservation Area | NSW Environment, Energy and Science

Development continued into the 20th century with construction of a few interwar buildings such as the Enmore Theatre, and later infill development (particularly between Reiby Street and Newtown Bridge on Enmore Road).

Historic themes

Australian theme (abbrev)	New South Wales theme	Local theme
3. Economy-Developing local, regional and national economies	Commerce-Activities relating to buying, selling and exchanging goods and services	(none)-

Assessment of significance


**SHR Criteria a)** [Historical significance] The area holds a significant record of important historical phases associated with the expansion of Sydney during the mid to late 19th century brought on by the introduction of the railway line in 1855 and tramway services in the 1880s, and the economic and immigration flux triggered by the gold rushes in the 1850s and 1860s. The high quality and quantity of commercial and retail buildings demonstrate the economic boom of the 1880s. The surviving garages dating from the 1920s and 30s also reflect the importance of King Street as a major traffic route. The number of hotels along the length of King Street shows evidence of the working class nature of the area. The post war migrant influx into Australia and influence on Newtown is reflected in the mixed retail uses, including delicatessens, and shopfronts introduced in the 1950s and 1960s.

**SHR Criteria c)** [Aesthetic significance] The retail strip of King St and Enmore Rd exemplifies the economic boom of the 1870s and 1880s. The continuous two and three storey decorative stucco facades, create a distinct visual impression and demonstrate positive landmark qualities as a remarkable collection of buildings through almost the whole streetscape. This is enhanced by the curved nature of the streets, narrow building allotments and the ridgeline topography. Collectively the buildings are a fine representative example of late Victorian and early Federation period commercial design, which have largely retained their form and original features.

The quantity and quality of building stock is unique in the Sydney Metropolitan Area and the state of NSW

**SHR Criteria d)** [Social significance] The local community’s esteem for the area is reflected in the high level of original building fabric remaining in the area and their involvement in planning for the future in the area, particularly through the South Sydney and Marrickville Heritage Societies. The area is also classified by the National Trust and is identified in the Register for the National Estate..

**SHR Criteria g)** [Representativeness] The consistency and relative intactness of the late Victorian and early Federation building stock is unique in the Sydney Metropolitan area and the whole of the State.

**Assessment criteria:** Items are assessed against the  **State Heritage Register (SHR) Criteria** to determine the level of significance. Refer to the Listings below for the level of statutory protection.

Listings

Heritage Listing	Listing Title	Listing Number	Gazette Date	Gazette Number	Gazette Page
Local Environmental Plan	Marrickville LEP 2011	C2	12 Dec 11	2011/645	
Local Environmental Plan					
Heritage study					

References, internet links & images

<https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=2030501>

4/5



26/03/2020

King Street and Enmore Road Heritage Conservation Area | NSW Environment, Energy and Science

None

Note: internet links may be to web pages, documents or images.

---

### Data source

The information for this entry comes from the following source:

**Name:** Local Government

**Database number:** 2030501

[Return to previous page](#)

---

Every effort has been made to ensure that information contained in the State Heritage Inventory is correct. If you find any errors or omissions please send your comments to the [Database Manager](#).

All information and pictures on this page are the copyright of the Heritage Division or respective copyright owners.