






INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2022/0746
Address	31 Chalder Street MARRICKVILLE NSW 2204
Proposal	Restoration works and alterations and additions to a dilapidated warehouse building on Lot 2 in DP1275800
Date of Lodgement	07 September 2022
Applicant	Corona Projects Ptd Ltd
Owner	Anastasia Markakis, Dimitrios Markakis & Matthew J Markakis
Number of Submissions	0
Value of works	\$422,000.00
Reason for determination at Planning Panel	Section 4.6 variation exceeds 10%
Main Issues	Floor space ratio variation
Recommendation	Deferred commencement approval
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Section 4.6 Exception to Development Standards



LOCALITY MAP

Subject Site		Objectors		 N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for restoration works and alterations and additions to a dilapidated warehouse building located on Lot 2 in DP1275800 at 31 Chalder Street Marrickville.

The application was notified to surrounding properties and no submissions were received in response to the initial notification.

The main issue that has arisen from the application is:

- The application results in a FSR of 1.55:1 (376.26sqm), a variation of 134.16sqm or 55%.

The non-compliance is considered acceptable given:

- The existing site contains a heavily fire damaged and dilapidated two storey building which was historically used for the purpose of a factory unit/ warehouse. The proposal seeks to restore the existing ground floor of the building and reconstruct the existing first floor which results in no additional floor space to what was historically approved for the site.
- The existing development was approved and constructed prior to MLEP 2011 which allowed a maximum FSR of 1:1.
- The proposal seeks to restore and reconstruct the existing building on the site to a bulk and scale commensurate with the building prior to fire damage. The proposed height, scale and form is commensurate with the adjoining building on the site.

Accordingly, the application is recommended for a deferred commencement approval.

2. Proposal

The proposal seeks to restore the ground floor of the existing building and reconstruct a new first floor. Specifically, this involves the following works:

- Demolition and reconstruction of the front and rear staircase
- Demolition of the ground floor safe and bathroom and construction of a new kitchenette
- Reconstruction of the first floor including a new bathroom, water closet and kitchenette
- Construction of a new sawtooth roof.

3. Site Description

The subject site is located on the northern side of Chalder Street between Victoria Road and Chalder Lane. The site is generally rectangular shaped and consists of two (2) allotments. The westernmost lot subject to this application is legally described as Lot 2 in DP1275800. The site area is 242.1sqm and the site has a frontage to Chalder Street of 7.775 metres.

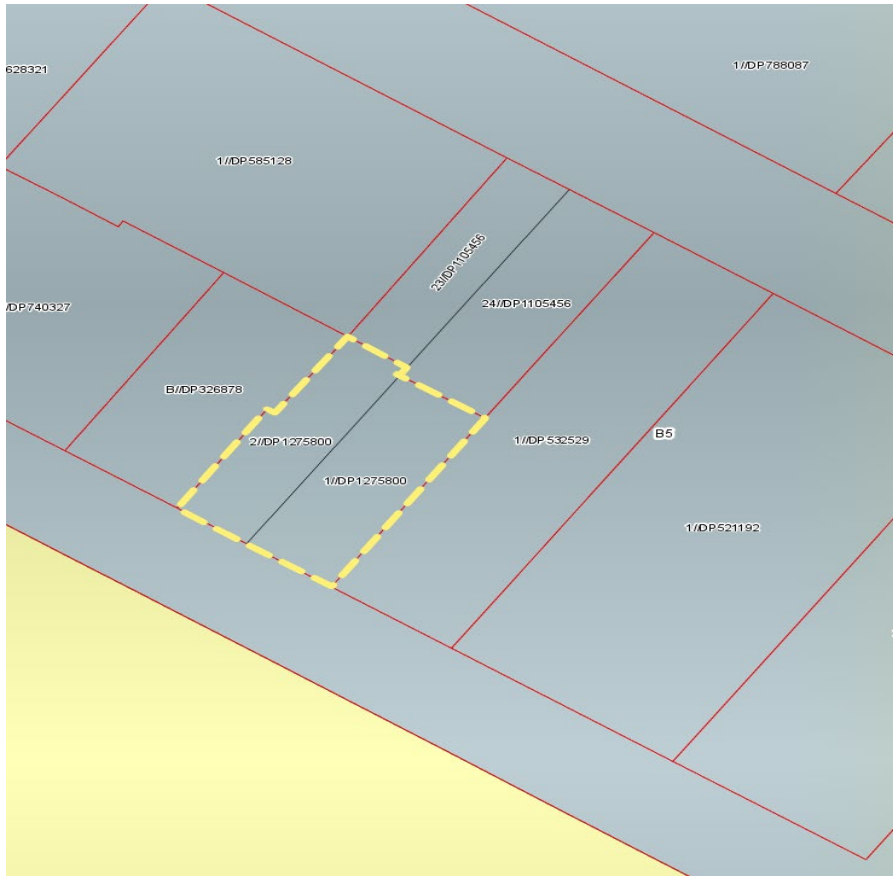


Figure 1: Lot boundary

An existing dilapidated warehouse building is located on the site. It is noted that the building is internally separated from the attached building located on Lot 1 in DP1275800. Surrounding uses includes one and two storey buildings which support commercial and light industrial uses. The site is zoned B5 – Business Development under the MLEP 2011.

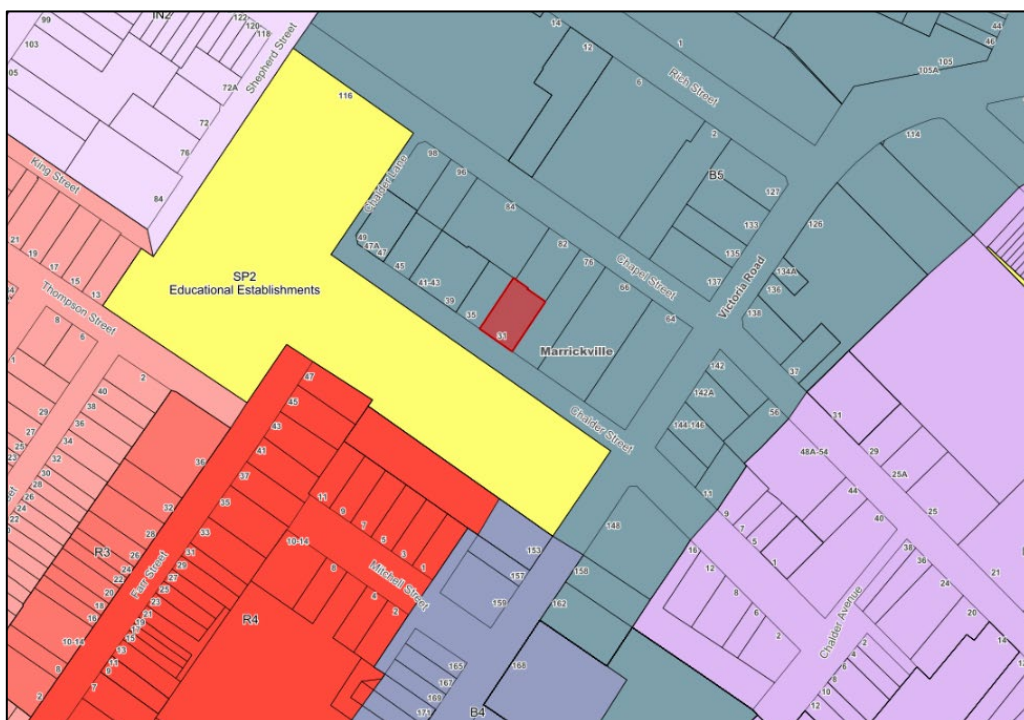


Figure 2: Excerpt of Zoning Map



Figure 3: The site as viewed from Chalder Street. Subject lot shown on left.



Figure 4: Internal ground floor view of subject site (No 33, Chalder Street) looking towards rear (Corona Projects 2021)



Figure 5: First floor of subject site facing towards the rear (Corona Projects 2021)

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 (Lot 2 in DP1275800)

It is understood that the building on the site was constructed prior to 1960 and has occupied various commercial, warehousing and factory uses up until sometime in the 1990's when the building on Lot 2, previously known as 33 Chalder Street burnt down.

Council records show the following applications applicable to the site:

- Development Application No, 125/92 dated 31 March 1992 granted consent to use the factory building for the assembling, storage and distribution of clothing on the site.

Surrounding Properties

DA200200153 dated 24 July 2002 granted consent for the site identified as 31 Chalder Street to carry out restoration works to the fire damaged building relating to property.

4(b) Application history

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

Date	Discussion / Letter / Additional Information
15 September 2022	Application lodged
28 September 2022 – 12 October 2022	Application notified

7 December 2022	Additional information requested by Council
20 December 2022	Additional information provided
16 January 2023	Amended first floor plan and updated Cl. 4.6 provided following a request from Council on 12 January 2023.

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 (EPA Act 1979)*.

5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*

The following provides further discussion of the relevant issues:

5(a)(i) *State Environmental Planning Policy (Resilience and Hazards) 2021*

Chapter 4 Remediation of land

Section 4.16 (1) of the SEPP requires the consent authority not consent to the carrying out of any development on land unless:

*“(a) it has considered whether the land is contaminated, and
 (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
 (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.”*

In considering the above, there is no evidence of contamination on the site.

While the site has been used for a number of commercial and industrial purposes prior to the fire damage, none of those uses are identified in Table 1 having regard to the contaminated land planning guidelines.

Furthermore, the building has a concrete slab over the entire site which is existing and not proposed to be altered by the proposal.

Having regard to the above, the land will be suitable for the proposed use as there is no indication of contamination.

The application involves does not involve category 1 remediation under *SEPP (Resilience and Hazards) 2021*.

5(a)(ii) *State Environmental Planning Policy (Transport and Infrastructure) 2021*

Chapter 2 Infrastructure

Development likely to affect an electricity transmission or distribution network

The proposed development meets the criteria for referral to the electricity supply authority within Section 2.48 of *SEPP (Transport and Infrastructure) 2021* and has been referred for comment for 21 days. Ausgrid has provided a response to the application which did not raise any objections to the proposal.

5(a)(iii) *Inner West Local Environmental Plan 2022 (IWLEP 2022)*

The application was assessed against the following relevant sections of the *Inner West Local Environmental Plan 2022*:

- Section 1.2 - Aims of Plan
- Section 2.3 - Land Use Table and Zone Objectives
- Section 2.7 – Demolition requires development consent
- Section 4.3 – Height of buildings
- Section 4.4 – Floor space ratio
- Section 4.5 – Calculation of floor space ratio and site area
- Section 4.6 – Exceptions to development standards
- Section 6.1 – Acid sulfate soils
- Section 6.3 – Stormwater management
- Section 6.8 – Development in areas subject to aircraft noise
- Section 6.29 – Development on land at Victoria Road, Marrickville—concurrence of Planning Secretary

Section 2.3 Land Use Table and Zone Objectives

The site is zoned B5 Business Development under the *IWLEP 2022*. The proposal is for alterations and additions to an existing warehouse building, including reconstruction works.

The development is permitted with consent within the land use table. The development is consistent with the objectives of the B5 zone.

It is noted that the proposal does not propose any specific use of the building, only physical works for the reconstruction of the fire damaged industrial building. As such, a condition is included in the recommendation requiring the future use of the building to be subject to a future development application or complying development certificate.

Section 4 Principal Development Standards

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

Standard	Proposal	Non compliance	Complies
Height of Buildings Maximum permissible: 20 m	9m	N/A	Yes

Floor Space Ratio	1.55:1 or	134.16sqm	No
Maximum permissible: 1:1 or 242.1 sqm	376.26sqm	or 55%	

Section 4.6 Exceptions to Development Standards

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 Inner West Environmental Plan 2022 by 55% (134.16sqm).

Clause 4.6 allows Council 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 numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Section 4.6 of the *IWLEP 2022* below.

A written request has been submitted to Council in accordance with Section 4.6(4)(a)(i) of the *IWLEP 2022* justifying the proposed contravention of the development standard which is summarised as follows:

- The proposed warehouse building will not alter the established character of the area, nor will it introduce an undesirable precedent to the locality. The building will maintain a simple design that is not overbearing and compatible with the architectural style of the industrial area.
- The proposal complies with the maximum height prescribed for the site and is consistent with the predominant setback pattern of the locality. The proposed development will not contribute to unnecessary bulk and scale as the resultant building will be of similar bulk and scale to the adjoining site at 31 Chalder Street. As such the new restoration will not dominate the streetscape any more than the surrounding development.
- The proposed restoration works will return the building close to its original form and significantly increase the usability of the site. The proposal will partially reinstate a portion of pre-existing first floor area that was present prior to the fire damage.
- A compliant proposal would unreasonably prevent the restoration of the building back to its original two-storey form. The proposal will reinstate the pre-existing historical floor area and density that was present prior to the fire damage. The development will also upgrade the presentation of the site to the street and improve aesthetic quality of the streetscape
- Notwithstanding the FSR exceedance, the development achieves a compliant solar access to the adjoining industrial sites as stipulated in the Marrickville DCP 2011. No adverse impacts in regard to acoustic or visual privacy are anticipated to arise.

The applicant's written rationale adequately demonstrates compliance with the development standard is unreasonable and or 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 B5 Business Development zone, in accordance with Section 4.6(4)(a)(ii) of the *IWLEP 2022*. The relevant objectives of the zone are as follows:

- *To enable a mix of business and warehouse uses, and specialised retail premises that require a large floor area, in locations that are close to, and that support the viability of, centres.*
- *To encourage development that achieves high architectural, urban design and landscape standards.*
- *To provide a buffer between urban development and residential areas.*
- *To encourage businesses that are compatible with the desired future character of the locality.*

The proposal is consistent with the objectives of the zone as it seeks to restore and reconstruct an existing warehouse building on the site which is heavily dilapidated to a similar form, height, bulk and materiality as the adjoining building identified as 31 Chalder Street located on the site.

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 Section 4.6(4)(a)(ii) of the *IWLEP 2022*. The objectives of the zone are as follows:

- *to establish the maximum floor space ratio,*
- *to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,*
- *to minimise adverse environmental impacts on adjoining properties and the public domain*

The proposal results in a floor space, bulk and scale which is commensurate with the existing dilapidated building on the site. The proposal seeks to restore and reconstruct the building to match the form, bulk, height and materiality of the adjoining building on the site identified as No. 31 Chalder Street. The proposal does not result in adverse solar impacts on adjoining properties or the public domain.

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 Section 4.6(1)(b) and requirements of Section 4.6(3)(b) of the *IWLEP 2022*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the Floor Space ratio standard and it is recommended the Section 4.6 exception be granted.

Section 6.29 Development on land at Victoria Road, Marrickville – concurrence of Planning Secretary

The site is located within Area 13 on the Key Sites Map. Part 5(b) notes that this clause does not apply if the development does not result in an increase in development for the purposes of residential accommodation, commercial premises or mixed use development. The proposal involves the restoration and reconstruction of the existing dilapidated building on the site and therefore does not result in an increase in development on the site. The proposal is acceptable with regard to Section 6.29 of the *IWLEP 2022* and no further consideration of this Clause is required.

5(b) 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 2.1 – Urban Design	Yes
Part 2.3 – Site and Context Analysis	Yes
Part 2.5 – Equity of Access and Mobility	No – see discussion
Part 2.6 – Acoustic and Visual Privacy	Yes
Part 2.7 – Solar Access and Overshadowing	Yes
Part 2.9 – Community Safety	Yes
Part 2.10 – Parking	No – see discussion
Part 2.21 – Site Facilities and Waste Management	Yes
Part 2.24 – Contaminated Land	Yes
Part 2.25 – Stormwater Management	Yes
Part 6 – Industrial Development	Yes
Part 9 – Strategic Context	Yes

The relevant matters are discussed below:

Part 2.5 – Equity of Access and Mobility

The existing building does not appear to be accessible, nor do the plans demonstrate that the proposed works involve making the building accessible. It is noted that a ramp is shown at the principal entrance to the building, however the specifications of this ramp have not been provided and there is no accessible bathroom proposed. Notwithstanding, the development has sufficient space to provide the accessible facilities required.

Part 2.5 of MDCP 2011 requires industrial development to provide access to all person via the principal entry, access to all facilities in the building and accessible sanitary facilities. As such, given the proposed building is capable of being accessible, a condition has been imposed to ensure adequate access to the ground floor is provided in accordance with Part 2.5 of MDCP 2011.

Part 2.10 – Parking

The subject site is located in Parking Area 2 under Part 2.10 of MDCP 2011. Based on the floor area of the development the provision of 2 car parking space is required under control C1. Additionally, the development is required to provide a loading dock/service area under control C24.

It is noted that previous approval on the site, Development Application No.125/92 dated 31 March 1992, required the site to maintain two (2) off-street car parking spaces within the building.

The proposal does not show any on site car parking or a loading area on the plans provided. Notwithstanding, given the size of the site it is considered that the building can accommodate the required car parking and loading dock area.

As such, a condition has been imposed to ensure 2 on site car parking spaces are provided within the building and a loading area to comply with Part 2.10 of MDCP 2011.

5(c) Other Matters

Whilst the proposal is considered acceptable, some integral information has not been provided. Whilst the front elevation, floor plans and roof plan have been provided, side and rear elevations of the development have failed to be provided. The front elevation depicts a reasonable height comparable with adjoining development, however the proposal does not contain sufficient detail for an active consent to be issued, as such a deferred commencement condition has been included in the recommendation requiring this information to be submitted to the satisfaction of Council prior to an operative consent being issued.

5(d) The Likely Impacts

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

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

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

5(f) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties. No submissions were received in response to the initial notification.

5(g) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

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

- Development Engineer
- Building Certification

A condition has been imposed to ensure that the proposal demonstrates compliance with the BCA/NCC including but not limited to; access, fire resistance and treatment of new openings near property boundaries.

6(b) External

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

- Ausgrid

7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$4,220 would be required for the development under Marrickville Section 94/94A Contributions Plan 2014. A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Inner West Local Environmental Plan 2022* and Marrickville Development Control Plan 2011.

The development will not result in any significant impacts on the amenity of the adjoining 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 of the *Inner West Local Environmental Plan 2022*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the Floor Space Ratio standard is unnecessary in the circumstance of the case and that there are sufficient environmental 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 a deferred commencement consent to Development Application No. DA/2022/0746 for restoration works and alterations and additions to a dilapidated warehouse building at 31 Chalder Street, Marrickville subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

The following is a Deferred Commencement condition imposed pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*. This Consent will not operate and may not be acted upon until the Council is satisfied as to the following matter(s):

A. Design Changes

- a. Side and rear elevations and sections to be provided of the building with accurate RLs depicting adjoining site context shall be provided.
- b. All new works shall be clearly coloured on all elevations, floor plan and roof plan

Evidence of the above matter(s) must be submitted to Council within 2 years otherwise the Consent will not operate.

DOCUMENTS RELATED TO THE CONSENT

1. 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
Sheet No. 1	Site Plan	December 2021	Corona Projects
Sheet No. 2	Floor Plan	December 2021	Corona Projects
Sheet No. 3	Floor Plan	December 2021	Corona Projects
Sheet No. 4	Floor Plan	December 2021	Corona Projects
Sheet No. 5	Elevation	December 2021	Corona Projects

Sheet No. 6	Roof Plan	December 2021	Corona Projects
Sheet No. 7	Demolishing Plan	December 2021	Corona Projects
(2 sheets)	Schedule of Colours and Materials Finishes	December 2022	Corona Projects

As amended by the conditions of consent.

DESIGN CHANGE

2. Design Change

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating the following:

- c. The provision of 2 car spaces within the building with minimum dimensions of 5.4 metres by 2.5 metres and in accordance with AS 2890.1-2004.
- d. The provision of a dedicated loading dock/service area within the building with minimum dimensions of 7.5 metres by 3 metres.
- e. The provision of an accessible principal entry allowing for access for all persons designed in accordance with the Access to Premises Standards.
- f. The provision of accessible bathroom facilities allowing for access for all persons designed in accordance with the Access to Premises Standards.

FEES

3. Security Deposit - Custom

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:	\$5600.00
Inspection Fee:	\$350.00

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

The inspection fee is required for 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 initial 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.

4. Section 7.12 (formerly section 94A) Development Contribution Payments

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that a monetary contribution to the Inner West Council has been paid, towards the provision of infrastructure, required to address increased demand for local services generated by additional development within the Local Government Area (LGA). This condition is imposed in accordance with Section 7.12 of the *Environmental Planning and Assessment Act 1979* and in accordance with *Marrickville Section 94/94A Contributions Plan 2014*.

Note: Copies of these contribution plans can be inspected at any of the Inner West Council Service Centres or viewed online at <https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

Payment amount*:

\$4,220

*Indexing of the Section 7.12 contribution payment:

The contribution amount to be paid to the Council is to be adjusted at the time of the actual payment in accordance with the provisions of the relevant contributions plan. In this regard, you are recommended to make contact with Inner West Council *prior to arranging your payment method* to confirm the correct current payment amount (at the expected time of payment).

Payment methods:

The required contribution must be paid either *by BPAY (to a maximum of \$500,000); unendorsed bank cheque (from an Australian Bank only); EFTPOS (Debit only); credit card (Note: A 1% credit card transaction fee applies to all credit card transactions; cash (to a maximum of \$10,000))*. It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions. Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.

5. 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.

GENERAL CONDITIONS

6. 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.

7. 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 to prevent sediment discharge from the construction site.

8. Verification of Levels and Location

Prior to the pouring of the ground floor slab or at dampcourse level, whichever is applicable or occurs first, the Principal Certifier must be provided with a survey levels certificate prepared by a Registered Surveyor indicating the level of the slab and the location of the building with respect to the boundaries of the site to AHD.

9. Works Outside the Property Boundary

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

10. Use of Premises

This application does not relate to the use of the premises. Any future use of the premises must be subject to a future approval under a Complying Development Certificate or Development Application.

11. Car Parking

The development must provide and maintain within the site:

- a. 2 car parking spaces must be paved and line marked; and
- b. 1 Loading dock/bay.

PRIOR TO ANY DEMOLITION**12. Hoardings**

The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.

Separate approval is required from the Council under the *Roads Act 1993* to erect a hoarding or temporary fence or awning on public property.

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 Neighbours 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.

PRIOR TO CONSTRUCTION CERTIFICATE**16. Stormwater Drainage System – Minor Developments (OSD is not required)**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a. The design must generally be in accordance with the Stormwater Drainage Concept plan on Drawing No. 2022-001/SW1-2 Rev A prepared by WATERDESIGN CIVIL ENGINEERS and dated 16.12.22, as amended to comply with the following;
- b. Stormwater runoff from all roof areas within the property being collected in a system of gutters, pits and pipeline and be discharged, together with overflow pipelines from any rainwater tank(s), by gravity to the kerb and gutter of a public road;
- c. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage;

- e. To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, must be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Council's DCP;
- f. The design plans must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;
- g. As there is no overland flow/flood path available from the rear to the Chalder Street frontage, the design of the sag pit and piped drainage system is to meet the following criteria:
 - 1. Capture and convey the 100 year Average Recurrence Interval flow from the contributing catchment assuming 80% blockage of the inlet and 50% blockage of the pipe;
 - 2. The maximum water level over the sag pit shall not be less than 150mm below the floor level or damp course of the building; and
 - 3. The design shall make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands.
- h. No nuisance or concentration of flows to other properties;
- i. The design plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required;
- j. A Silt Arrestor stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- k. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- l. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a maximum section height and width of 100mm or sewer grade uPVC pipe with a maximum diameter of 100mm;
- m. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings; and
- n. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.

17. 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.

18. 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.

19. 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 13 20 92

20. Acoustic Report – Aircraft Noise

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans detailing the recommendations of an acoustic report prepared by a suitably qualified Acoustic Engineer demonstrating compliance of the development with the relevant provisions of Australian Standard AS 2021:2015 Acoustics – Aircraft noise intrusion – Building siting and construction.

21. Concealment of Plumbing and Ductwork

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans detailing the method of concealment of all plumbing and ductwork (excluding stormwater downpipes) within the outer walls of the building so they are not visible.

22. BCA and Accessibility Compliance

Prior to the issue of a Construction Certificate, the Certifying Authority is to be provided with documentation to demonstrate compliance with the BCA/NCC including but not limited to the following:

- a. The Access to Premises standards, in particular the provision of an accessible sanitary facility and access compliance for the front entrance of the building.
- b. Methods of achieving fire resistance for new portions of the building, including rebuilt fire damaged areas.
- c. Treatment of new openings within 3 metres of the property boundary.

DURING DEMOLITION AND CONSTRUCTION**23. 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:

- a. 8:00am to 12:00pm, Monday to Saturday; and
- b. 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.

24. Survey Prior to Footings

Upon excavation of the footings and before the pouring of the concrete, the Certifying Authority must be provided with a certificate of survey from a registered land surveyor to verify that the structure will not encroach over the allotment boundaries.

PRIOR TO OCCUPATION CERTIFICATE**25. No Encroachments**

Prior to the issue of an Occupation Certificate, the Principal Certifier 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.

26. Protect Sandstone Kerb

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any stone kerb, damaged as a consequence of the work that is the subject of this development consent, has been replaced.

27. Aircraft Noise

Prior to the issue of any Occupation Certificate, the Principal Certifier must be provided with a report prepared and submitted by an accredited Acoustics Consultant certifying that the final construction meets AS2021-2015 with regard to the noise attenuation measures referred to in the "Before the Issue of a Construction Certificate" Section of this Determination. Such report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development.

Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a further certificate being prepared and submitted to the Principal Certifier in accordance with this condition.

ADVISORY NOTES

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; and
- 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.

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.

Prescribed Conditions

This consent is subject to the prescribed conditions of consent within Sections 69-86 of the *Environmental Planning and Assessment Regulations 2021*.

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;
or
- 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.

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.

Permits from Council under Other Acts

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 verandah over footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. A lease fee is payable for all occupations.

Noise

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997*.

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 Statement for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Statement must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

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.

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 www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441 www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406 www.foodnotify.nsw.gov.au
NSW Government	www.nsw.gov.au/fibro www.diysafe.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 www.environment.nsw.gov.au
Sydney Water	13 20 92 www.sydneywater.com.au

Waste Service - SITA 1300 651 116
Environmental Solutions www.wasteservice.nsw.gov.au

Water Efficiency Labelling and Standards (WELS) www.waterrating.gov.au

WorkCover Authority of NSW 13 10 50
www.workcover.nsw.gov.au

Enquiries relating to work safety and asbestos removal and disposal.

Asbestos Removal

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m² 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 Class A Friable Asbestos Removal Licence.

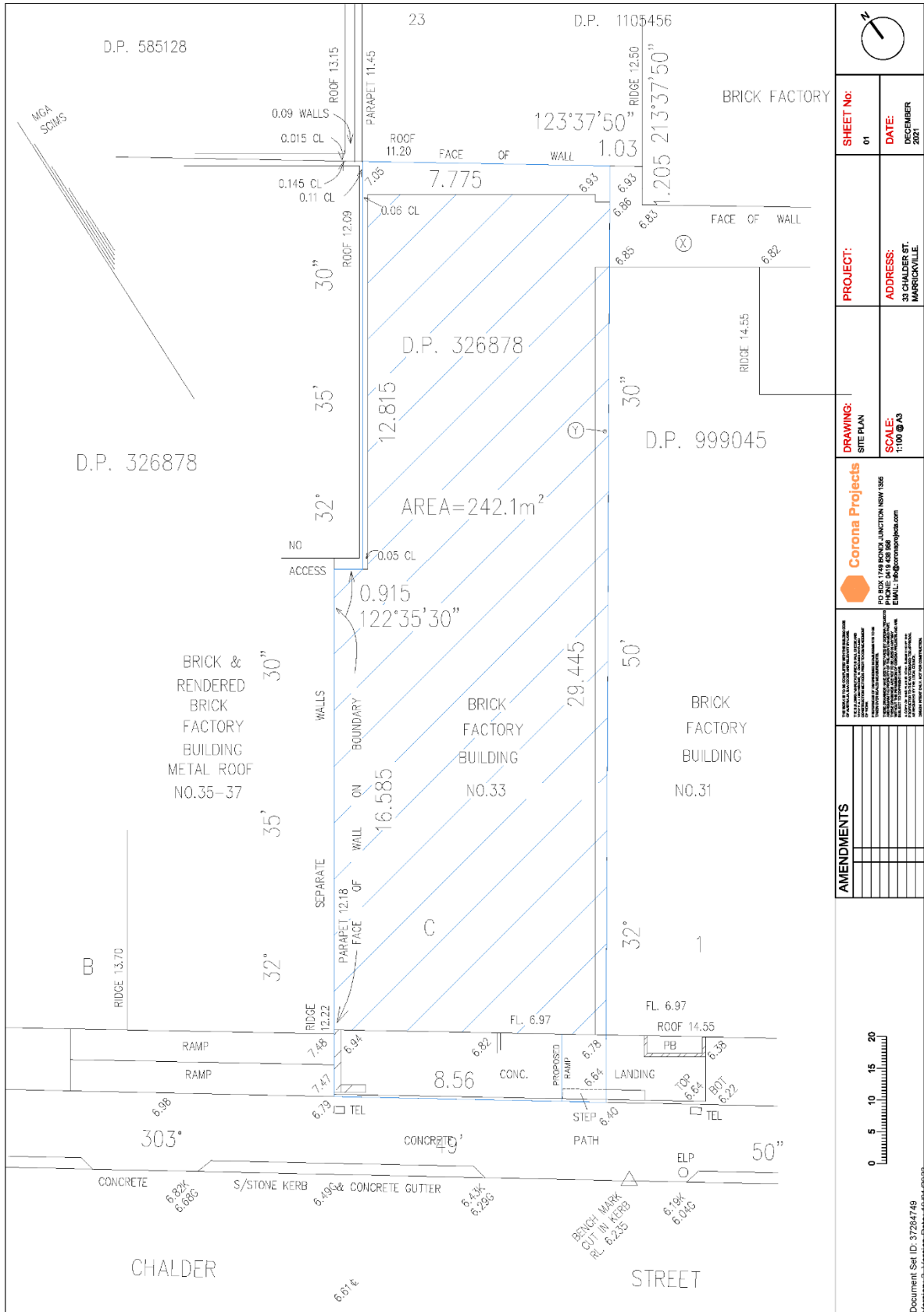
Demolition sites that involve the removal of asbestos must display a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent visible position on the site to the satisfaction of Council's officers. 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 2014. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

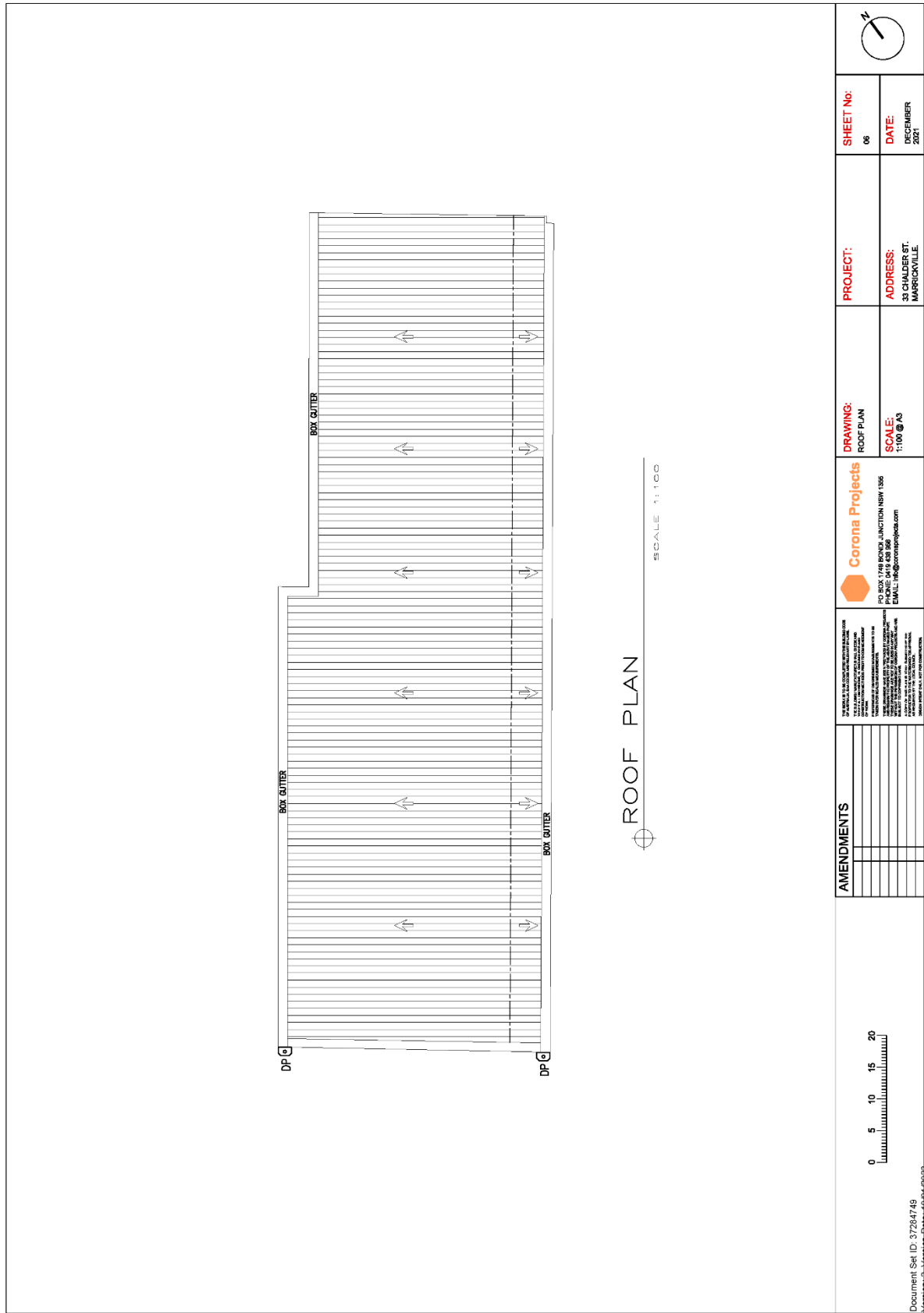
Street Numbering

If any new street numbers or change to street numbers (this includes unit and shop numbers) are required, a separate application must be lodged with and approved by Council's GIS Team before being displayed.

Attachment B – Plans of proposed development



	SHEET No:	01
	DATE:	DECEMBER 2021
PROJECT:	ADDRESS: 38 CHALDER ST. MARRICKVILLE	
DRAWING:	SCALE: 1:100 @ A3	
	Corona Projects 1/80 BOX 1748 MURDOCH JUNCTION NSW 1586 PHONE: 02 9390 9000 EMAIL: info@coronaprojects.com	
<p><small>THIS PLAN IS TO BE USED IN CONNECTION WITH THE PROPOSAL FOR DEVELOPMENT OF THE LAND SHOWN HEREON AND IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE PROPOSAL IS SUBJECT TO THE APPROVAL OF THE LOCAL COUNCIL AND THE STATE GOVERNMENT. THE PROPOSAL IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE PROPOSAL IS NOT TO BE USED FOR ANY OTHER PURPOSE.</small></p>		




		SHEET No: 06	DATE: DECEMBER 2021
DRAWING: ROOF PLAN		PROJECT:	ADDRESS: 33 CHALDER ST. MARRICKVILLE.
Corona Projects PO BOX 1748 BONDI JUNCTION NSW 1586 PHONE: 02 9550 9999 EMAIL: info@coronaprojects.com		SCALE: 1:100 @ A3	
<p style="font-size: 8px; margin: 0;"> THIS DRAWING IS THE PROPERTY OF CORONA PROJECTS PTY LTD. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED IN THE TITLE BLOCK. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF CORONA PROJECTS PTY LTD. </p>			
AMENDMENTS			
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Document Set ID: 37264748 Version: 2; Version Date: 19/11/2023			

Schedule of Colours and Material Finishes

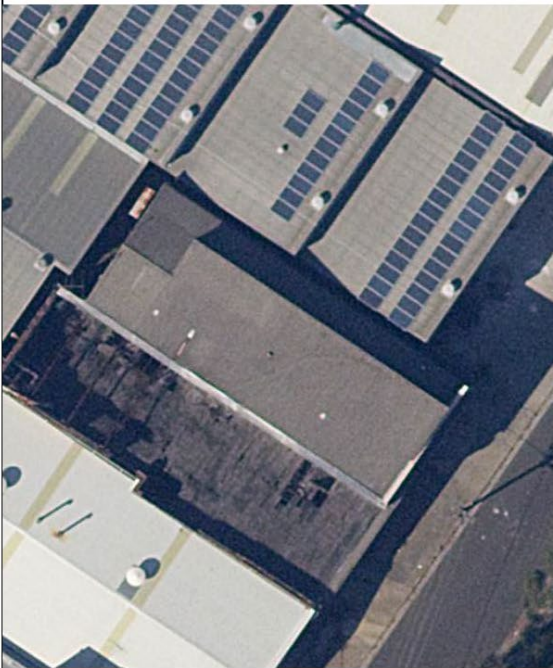
Property Address: 33 Chalder Street, Marrickville

Application: Restoration works to a dilapidated warehouse building

Item	Material	Colour	Photo	Description
Front Façade and Walls	Brick	To match existing face brick.		Colour to match the existing ground floor brick work.
Windows	Aluminum framed windows	To match existing ground floor windows.		To match existing ground floor windows.

20 December 2022

Document Set ID: 37284749
Version: 2, Version Date: 19/01/2023

<p>Sawtooth Roof</p>	<p>Colorbond corrugated metal</p>	<p>To match the roof of No. 31 Chalder St in terms of colour.</p>		<p>To match the roof of No. 31 Chalder Street in terms of materiality and colour.</p>
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20 December 2022

Document Set ID: 37284749
 Version: 2, Version Date: 19/01/2023

Attachment C- Section 4.6 Exception to Development Standards



DEVELOPMENT APPLICATION CI4.6 VARIATION REQUEST

Restoration works to a dilapidated warehouse building

33 Chalder Street Marrickville

December 2022

Corona Projects Pty Ltd | ABN 33 122 390 023 | Suite 106, Level 1, 35 Spring Street, Bondi Junction NSW 2022 | info@coronaprojects.com.au

Document Set ID: 37284750
Version: 1, Version Date: 16/01/2023

33 Chalder Street Marrickville – Cl4.6 Variation Request Report – FSR

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33 Chalder Street Marrickville – Cl4.6 Variation Request Report – FSR

PROJECT DETAILS

Client: Matthew Markakis
 Subject land: 33 Chalder Street Marrickville
 Lot Description: Lot 2 / - / DP1275800
 Proposed development: Restoration works to a dilapidated warehouse building


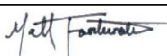
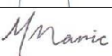
The report is prepared by Lauren McNamara
 Bachelor of Planning (WSU)

The report is reviewed by Mathew Fortunato
 Bachelor of Architecture and Environment (USYD)

I certify that the contents of the Clause 4.6 Variation request to the best of my knowledge, has been prepared as follows:

- In accordance with Section 4.12 of the Environmental Planning and Assessment Act 1979 and Clause 24 of the Environmental Planning and Assessment Regulation 2021;
- The statement contains all available information that is relevant to the environmental impact assessment of the proposed development;
- To the best of my knowledge the information contained in this report is neither false nor misleading.

Quality Management

	Name	Date	Signature
Prepared by	Lauren McNamara	14.12.2022	
Checked by	Mathew Fortunato	16.12.2022	
Approved for issue by	Madeline Maric	20.12.2022	

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1.0 BACKGROUND

This Clause 4.6 variation is a written request to vary a development standard to support a development application for the restoration works to a dilapidated warehouse building at 33 Chalder Street Marrickville. The proposal is in response to the building suffering significant fire damage and being in a heavily dilapidated state at current. The design is commensurate in scale, bulk, site coverage, and materiality to many of the warehouse buildings located in the immediate locality.

The proposed works include:

- Demolition and reconstruction of the front and rear staircase;
- Demolition of the safe and bathroom;
- Reconstruction of the first floor;
- New bathroom, water closet, and kitchenette on both the ground and first floors; and
- New sawtooth roof.

Clause 4.4 of Inner West Local Environmental Plan (LEP) 2022 relates to the maximum **floor space ratio** requirements and states that “the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map”. The floor space ratio map stipulates that the maximum floor space ratio for 33 Chalder Street Marrickville is 1:1.

The architectural plans submitted with the Development Application at 33 Chalder Street Marrickville for the “restoration works to a dilapidated warehouse building” indicate that the proposed development has an FSR of 1.55:1. This results in a 55% variation to the development standard and non-compliance of 134.16 m².

The proposal is of a reasonable scale and provides a high quality and durable warehouse building which will assist to meet the high demand for buildings such as the resultant development in the Marrickville locality. The development is commensurate in scale and character with other properties in the streetscape, measuring two stories and complies with the maximum height prescribed for the site. The variation results in the substantial increase in amenity for the subject site without producing any adverse impacts on the privacy, views, solar access and overall amenity of surrounding properties.

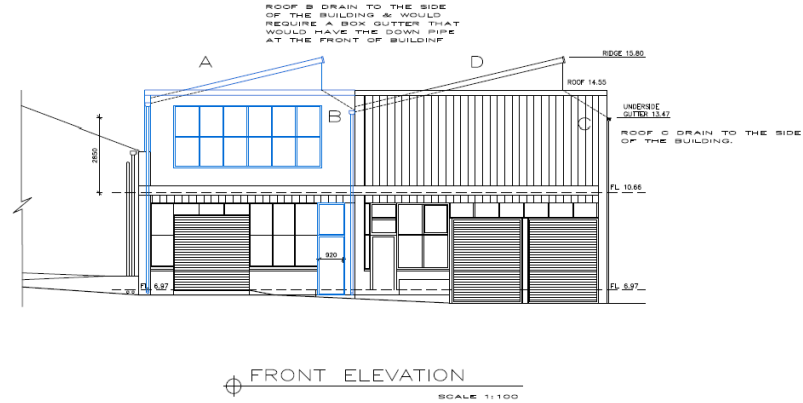


Figure 1: Proposed front elevations of the subject site (Corona Projects 2022)

Environmental Planning Grounds Relied Upon

The term ‘environmental planning grounds’ is not defined and may be interpreted with wide scope as has been the practice of the Land and Environment Court. The environmental planning grounds supporting variation are on the basis of: -

- Compatibility with the character and amenity of the area. The proposed warehouse building will not alter the established character of the area, nor will it introduce an undesirable precedent to the locality. This is as the area is already dominated with two storey warehouse buildings, see No’s. 29, 31, 37, 41 to 45 Chalder Street. The building will maintain a simple design that is not overbearing and compatible with the architectural style of the industrial area.
- Achievement of an appropriate and supportable bulk and scale for the building. The proposal fully complies with the maximum height prescribed for the site, additionally the proposal also follows the predominant setbacks found within the locality. Furthermore, the proposed development will not contribute to unnecessary bulk and scale as the resultant building will be of similar bulk and scale to the adjoining site at 31 Chalder Street. As such the new restoration will not dominate the streetscape any more than the surrounding development.

- The proposed variation does not result in any unreasonable adverse environmental impacts to surrounding properties. Notwithstanding the FSR exceedance, the development achieves a compliant solar access to the adjoining industrial sites as stipulated in the Marrickville DCP. No adverse impacts in regard to acoustic or visual privacy are anticipated to arise.
- Appropriate restoration of the significantly depilated building and streetscape. The proposed restoration works will return the building close to its original form and significantly increase the usability of the site. The proposal will partially reinstate a portion of pre-existing first floor area that was present prior to the fire damage. See figure 2 below depicting the extent of the previous floor area. The development will also upgrade the presentation of the site to the street and improve the aesthetic quality of the streetscape.



Figure 2: Aerial view of the dilapidated site (Matthew Markakis, 2021)

For the reasons detailed in this request, I am of the opinion that Council may form the necessary opinion of satisfaction that there are sufficient environmental planning grounds to support a variation.

By contrast, a compliant proposal would not allow the substantial upgrade in residential amenity in the manner intended.

The request will now further expand on the identified environmental planning grounds.

2. IS THE STANDARD A DEVELOPMENT STANDARD?

Subject to Clause 4.4 of the Inner West Local Environmental Plan 2022 (LEP 2022), Clause 4.4 provides:

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

A development standard is defined in Section 1.4 of the Environmental Planning and Assessment Act 1979 ("EPA Act") to mean:

"Provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- b) the proportion or percentage of the area of a site which a building or work may occupy,
- c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
- d) the cubic content or floor space of a building,
- e) the intensity or density of the use of any land, building or work,
- f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
- g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- h) the volume, nature and type of traffic generated by the development,
- i) road patterns,
- j) drainage,
- k) the carrying out of earthworks,
- l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- m) the provision of services, facilities and amenities demanded by development,
- n) the emission of pollution and means for its prevention or control or mitigation, and
- o) such other matters as may be prescribed."

The floor space ratio control falls under subsection (d); therefore, the control is a development standard and Clause 4.6 of the Inner West Local Environmental Plan 2022 is applicable.

3. CLAUSE 4.6 OF THE INNER WEST LOCAL ENVIRONMENTAL PLAN 2022

The Standard Instrument LEP contains its own variations clause (Clause 4.6) to allow the variation of development standards. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1; however, the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) and case law suggests a similar approach to SEPP 1 may be taken in part.

There is abundant judicial guidance on how variations under Clause 4.6 variations should be assessed. Some of these cases are taken into consideration in this request for variation.

While it is not necessary to refer to case law, we do so as it has become customary in sustaining requests under Clause 4.6.

4. THE ONUS ON THE APPLICANT

Under Clause 4.6(3)(a), it is the onus of the applicant to demonstrate: -

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

In the case of *Samadi v Council of the City of Sydney* [2014] NSWLEC 1199.

Paragraph 27 of the judgement states: -

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied

that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The land is located in the B5 – Business Development zone. The objectives of the B5 zone are: -

- To enable a mix of business and warehouse uses, and specialised retail premises that require a large floor area, in locations that are close to, and that support the viability of, centres.
- To encourage development that achieves high architectural, urban design and landscape standards.
- To provide a buffer between urban development and residential areas.
- To encourage businesses that are compatible with the desired future character of the locality.

The proposed development will serve to reinstate the prior condition of the warehouse building and thereby restore the existing streetscape and character of Chalder Street. The proposal will not interfere with adjoining land uses nor will it impact upon the public domain. The proposal will not change the current land use, nor will it introduce an incompatible land use into the locality. The exceedance to the maximum FSR will not dominate the street as the development adheres to established building setbacks found within the locality, maximum prescribed height, and display similar FSR to that of warehouse buildings within the streetscape, thus resulting in a building that is compatible with the character of the locality.

The variation to the maximum FSR does not render the development incompatible with the zone objectives, in accordance with the approach of the former Chief Judge, Justice Pearlman in *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21, in Paragraph [27]:

‘The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.’

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.4 are articulated at Clause 4.4(1): -

The objectives of this clause are as follows—

- (a) to establish a maximum floor space ratio to enable appropriate development density,
- (b) to ensure development density reflects its locality,
- (c) to provide an appropriate transition between development of different densities,
- (d) to minimise adverse impacts on local amenity,
- (e) to increase the tree canopy and to protect the use and enjoyment of private properties and the public domain.

Objective (a) & (b) are concerned with appropriate density within the locality. In this regard it can be noted that whilst the proposal exceeds the maximum floor space ratio it remains a similar density to majority of the surrounding two-story warehouse buildings. Furthermore, the proposed development will not contribute to unnecessary bulk and scale as the resultant building will be of the same bulk and scale as the adjoining site at 31 Chalder Street. As the density of the surrounding buildings is similar to the development site, the building will be visually compatible with the existing streetscape and therefore fit the desired density of the locality.

Objective (c) is concerned with providing an appropriate transition between development of different densities. Within Chalder Street, the resultant development would be of a similar density, if not identical, to the immediately adjoining property at 31 Chalder Street, thus, the proposed development will not introduce an incompatible transition of densities into the locality but will match the prevalent built form.

Objective (d) is concerned with the disruption of surrounding local amenity. The proposed works do not interfere with local amenity in terms of shadow impact, privacy or overlooking, or unreasonable bulk and scale. Additionally, the proposed building envelope shares similar dimensions to that of nearby developments, and as such the proposal is directly in line with the established amenity and characteristics of the streetscape.

Objective (e) is concerned with protecting the use and enjoyment of private properties and the public domain. The proposal will not have any adverse effects on the existing use and enjoyment of private and public space.

For the above reasons, I am of the view that the variation requested, and the resultant development is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted. Consequently, I conclude that strict compliance with the development standard is unreasonable and unnecessary.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is the onus of the Council to form an opinion of satisfaction that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

According to the relevant case law, there are other common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised in *Wehbe v Pittwater Council (2007)*.

The five tests under *Wehbe* are tabulated below. Only one of the tests needs to be satisfied. Consideration of a variation is not limited to these tests – they are simply the most common ways invoked in considering whether compliance is unreasonable or unnecessary.

Test	Comments
1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.	The objectives of the development standard are satisfied. Refer to discussion under Precondition 2. The objectives of the standard are concerned with the achievement of compatibility with the density and amenity of the area. I conclude that the proposed floor space ratio is appropriate as it results in a density that is compatible with the character, amenity, and landform area.

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	The application demonstrates that objectives of the standard are achieved through the qualitative design outcomes rather than a strict numerical approach.
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;	The objective of the development standard is considered to be relevant to the development however the objective is achieved and strict compliance is unreasonable and unnecessary.
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;	Not applicable — Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development and prevent the site to better meet the zoning objectives as discussed in part 4 of this document.
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;	Not applicable — the development standards of maximum FSR cover a wide area and whilst they are not appropriate to this site, they are appropriate to other sites elsewhere in the locality. There are numerous instances where consents departing from the standard have been approved and others where the standards have been upheld. This is more an indication of the inappropriateness of particular standards to some sites rather than a comment on Council’s actions. The development standard has not been abandoned.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.	The zoning of the land is appropriate.

Further, given that the development satisfies the objectives of the zone and the development standard, numerical compliance is considered unreasonable and unnecessary in the circumstances of the case.

Precondition 4 – To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

According to recent caselaw, Council is required to be satisfied that there are sufficient environmental planning grounds to support a variation to a development standard. Satisfaction as to sufficient environmental planning grounds is a matter for the Council to determine and need not be site specific. The term ‘environmental planning grounds’ is not defined and may be interpreted with wide scope.

In addition to the environmental planning grounds detailed under Preconditions 1 and 2, I provide the following comments: -

- Notwithstanding the breach in the prescribed floor space ratio the development will integrate seamlessly with the immediate locality which is heavily dominated by 2 storey warehouse buildings. The proposed warehouse building will not alter the established character of the area, nor will it introduce an undesirable precedent to the locality.
- The proposal achieves an appropriate and supportable bulk and scale for the building. The proposal fully complies with the maximum height prescribed for the site, additionally the proposal also follows the predominant setbacks found within the locality. Furthermore, the additional GFA is located within the existing building footprint, as such the new restoration will not dominate the streetscape any more than the surrounding development.
- A compliant proposal would unreasonably prevent the restoration of the building back to its original two-storey form. The proposal will reinstate the pre-existing historical floor area and density that was present prior to the fire damage. The development will also upgrade the presentation of the site to the street and improve aesthetic quality of the streetscape.
- The proposal has been skilfully designed and undergone many revisions to mitigate any adverse environmental impacts on surrounding properties whilst still capturing the desired residential amenity that the site is entitled to.

For the above reasons, it is considered there are sufficient environmental planning grounds to justify a variation to the floor space ratio development standard.

In the 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C, outlined in her judgement that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard" is something that can be assessed on a case-by-case basis and is for the consent authority to determine for itself.

The more recent appeal of Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February 2017, the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the Four2Five v Ashfield decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means (emphasis added):

"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

However, in the judgement of *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, there was further clarification of the construction of Clause 4.6. The Court asserted that:-

“... in order for a consent authority to be satisfied that an applicant’s written request has “adequately addressed” the matters required to be demonstrated by cl 4.6(3), the consent authority needs to be satisfied that those matters have in fact been demonstrated. It is not sufficient for the request merely to seek to demonstrate the matters in subcl (3) (which is the process required by cl 4.6(3)), the request must in fact demonstrate the matters in subcl (3) (which is the outcome required by cl 4.6(3) and (4)(a)(i)).”

This is consistent with a previous judgment in *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, where on appeal of a commissioner’s decision, the Court affirmed at [78] that “The request cannot ‘adequately’ address the matters required to be demonstrated by cl 4.6(3) if it does not in fact demonstrate the matters”.

Accordingly, regarding the proposed variation to the building floor space ratio, it is considered that this Clause 4.6 request has in fact demonstrated that there are sufficient environmental planning grounds for Council to be satisfied that the request is adequate and to allow appropriate flexibility.

There is also no requirement under Clause 4.6 or case law that a non-compliant development must demonstrate a better planning outcome. (*Initial Action Pty Ltd v Woollahra Municipal Council* (2018). Refer also to Section 5 below.

Additionally, under (*Initial Action Pty Ltd v Woollahra Municipal Council* (2018) at [24], the Chief Judge stated that “The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole”. It is considered that this request is consistent with this aspect of the judgment as it does not rely on promotion of the benefits of the development.

5. THE ONUS ON THE CONSENT AUTHORITY

Pursuant to Cl.4.6(4)(a), the Council must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by Clause 4.6(3)(a) and (b) and that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. (*Initial Action Pty Ltd v Woollahra Municipal Council (2018)*).

In assisting the consent authority in forming its opinion of satisfaction as to the public interest test under Cl.4.6(4)(a)(ii), I refer to the discussion concerning objectives for development within the zone in which the development is proposed to be carried out. The objectives and comments are provided under Precondition 2 at Page 6.

The resulting development continues to improve the amenity for the residents in a medium-density residential environment and the built form is compatible with established local character and amenity.

We maintain that the variation to the building floor space ratio does not result in development that is incompatible with the environmental character of the locality. The proposal demonstrates harmony with the relevant zone objectives, the objectives of the standard and satisfies the public interest test.

6. CONCLUSION

The purpose of the application is to allow for restoration of the existing building to bring it back to its original nature and functionality, while increasing the amenity and presentation of the site. The nature of the proposal necessitates a FSR increase beyond the prescribed 1:1, however, the proposal will be commensurate in bulk and siting to surrounding development within the locality.

As development standards tend to be strictly numerical in nature, they fail to take into consideration the nature of the development, any site constraints, or qualitative aspects of the development or of the particular circumstances of the case. Clause 4.6 of the standard instrument LEP allows such an analysis to be carried out.

It has been demonstrated in this request that strict compliance with the development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to allow Council to form the opinion of satisfaction that this written request has adequately addressed the matters required to be demonstrated by Cl.4.6(3)(a) and (b).

Therefore, I request that council support the variation on the basis that this Clause 4.6 variation demonstrates that strict compliance with the development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify a variation to the development standard.



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