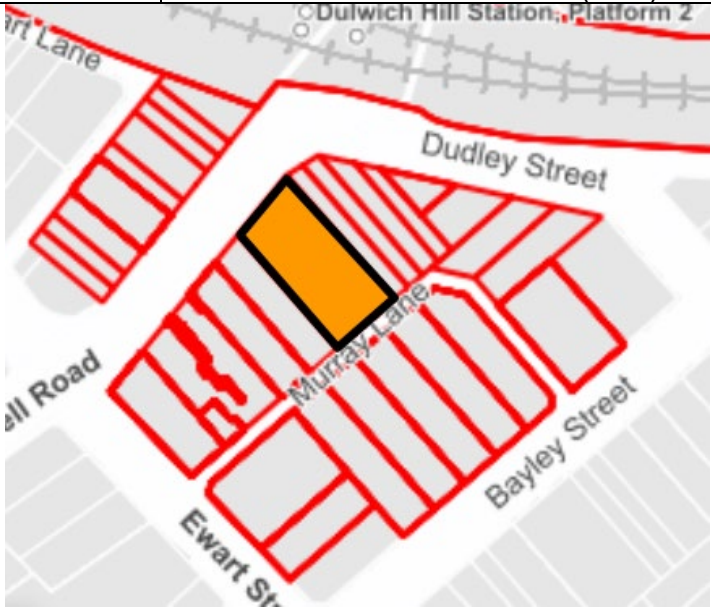




 DEVELOPMENT ASSESSMENT REPORT				
Application No.	DA/2021/0855			
Address	246-248 Wardell Road MARRICKVILLE NSW 2204			
Proposal	Demolition of existing structures and construction of shop top housing development with basement parking and associated works.			
Date of Lodgement	14 September 2021 with amended plans submitted 16 February 2022.			
Applicant	Urban Link Pty Ltd			
Owner	Wardell 246 Pty Ltd Fabrizia Sons Pty Ltd			
Number of Submissions	Initial: 0			
Value of works	\$9,983,812.00			
Reason for determination at Planning Panel	Clause 4.6 variation exceeds 10% SEPP 65 applicable			
Main Issues	Height of buildings development standard Non compliance with master plan controls Waste Management Lack of general terms of approval from Water NSW.			
Recommendation	Refusal			
Attachment A	Reasons for refusal			
Attachment B	Plans of proposed development			
Attachment C	Clause 4.6 Exception to Development Standards			
Attachment D	Without prejudice conditions of consent			
Attachment E	Architectural Excellence Panel (AEP) Minutes			
				
LOCALITY MAP				
Subject Site		Objectors		↑ N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for Demolition of existing structures and construction of shop top housing development with basement parking and associated works at 246 – 248 Wardell Road MARRICKVILLE NSW 2204.

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

The main issues that have arisen from the application include:

- 4.6 variation to the height of buildings development standard.
- Noncompliance with Master plan controls.
- Waste Management.
- Lack of general terms of approval from Water NSW.

The non-compliances are acceptable given that the development responds appropriately to the surrounding development. The application is recommended for approval.

2. Proposal

The proposal is for a mixed use development containing two shops, parking and services on the ground floor and shop top housing above. The proposal contains:

- 212sqm of GFA for shops (in two tenancies);
- 21 one bedroom units;
- 16 two bedroom units;
- 1 three bedroom unit;
- 33 carparking spaces;
- 27 bike spaces; and
- 2 motorcycle spaces.

3. Site Description

The subject site is located on the south eastern side of Wardell Road, between Dudley Street and Ewart Street. The site consists of 2 lots with a total area of 1,264.5sqm and is legally described as Lot 3 and 4, DP 4119.

The site has a frontage to Wardell Road of 24.77 metres and a secondary frontage of approximately 24.38 metres to Murray Lane.

The site currently contains a dwelling house, retail shops and a laundromat. The adjoining properties contain retail uses with either shop top housing or boarding houses above and residential flat buildings.

The site contains a number of trees and vegetation that require removal for the development to proceed.



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
DA200600396	246 Wardell Road MARRICKVILLE - To use the ground floor shop as a newsagency	Approved - 14 August 2006
DA200500807	246 Wardell Road MARRICKVILLE - To demolish part of the premises, carry out alterations and additions to the existing shops and construct five dwellings over basement car parking for seven vehicles	Deferred Commencement – 7 December 2005
DA200400622	246 Wardell Road MARRICKVILLE - to demolish the existing dwelling, to carry out alterations to the existing shops and construction of five dwellings with basement car parking for nine vehicles.	Refused 8 December 2004
DA200300665.01	246 Wardell Road MARRICKVILLE - Section 82A of the Environmental Planning and Assessment Act to modify Determination No. 200300665 to delete the requirement to provide disabled access to the shop.	Approved 4 August 2004

DA200300665	246 Wardell Road MARRICKVILLE - To use the ground floor shop as a bookshop.	Approved 1 December 2003
D399/95	246 Wardell Road MARRICKVILLE - one flush wall sign	Refused 15 November 1995

Surrounding properties

Application	Proposal	Decision & Date
DA201800134	244 Wardell Road MARRICKVILLE- to extend the operating hours of the existing café	Approval – 18 May 2018
DA201600206	244 Wardell Road MARRICKVILLE - Alterations and additions to approved boarding house.	Court approval via Section 34 Agreement – 22 November 2016
DA201400601	244 Wardell Road MARRICKVILLE - To carry out alterations and additions to the existing boarding house to construct a 5 storey addition to the rear containing 15 additional boarding rooms	Court approval via Section 34 Agreement – 19 June 2015
DA200600529	244 Wardell Road MARRICKVILLE - to erect two (2) x nine (9) bedroom boarding houses with each boarding house being erected in a previously approved lot	Approval 6 December 2016
DA201200536	250 Wardell Road MARRICKVILLE - to demolish the existing improvements and erect a five storey mixed use development over basement car parking containing 2 ground floor shops and 16 dwellings (1 x studio, 6 x 1 bed, 8 x 2 bed and 1 x 3 bed dwellings) with off street car parking for 17 vehicles	Approval 9 April 2013

4(b) Application history

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

Date	Discussion / Letter / Additional Information
7 January 2022	Request for amendments.
16 February 2022	Amendments provided.
16 March 2022	Applicant provided updated 4.6 Variation and detailed site investigation.
16 March 2022	Sydney Water Requested further information.

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 (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

The following provides further discussion of the relevant issues:

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

State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP RH) provides planning guidelines for remediation of contaminated land.

The site has been used in the past for activities which could have potentially contaminated. The site has been used as a laundromat. The Managing Land Contamination Planning Guidelines SEPP 55–Remediation of Land list dry cleaning establishments within table 1 as activities that can cause contamination. In consideration of clause 4.6(2) of *SEPP RH* the applicant has provided a Stage 2 detailed investigation.

Clause 4.6(1) of *SEPP RH* 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.”

The applicant has provided a Stage 2 detailed investigation that concludes:

“Based on the results of this investigation it is considered that the risks to human health associated with soil contamination at the site is negligible within the context of the proposed use of the site for a mixed-use commercial-residential building including single-level basement car parking. The site is therefore considered to be suitable for the proposed use.”

On the basis of this report the consent authority can be satisfied that the land will be suitable for the proposed use.

5(a)(ii) State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development

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

A statement from a qualified Architect was submitted with the application verifying that they designed, or directed the design of, the development. The statement also provides an explanation that verifies how the design quality principles are achieved within the development and demonstrates, in terms of the Apartment Design Guide (ADG), how the objectives in parts 3 and 4 of the guide have been achieved.

The application was referred to the Inner West Design Excellence Panel and the amendments suggested by the panel incorporated into the design (see consideration of clause 6.20 of *MLEP 2011*). The development is acceptable having regard to the nine design quality principles.

Apartment Design Guide

The Apartment Design Guide (ADG) contains objectives, design criteria and design guidelines for residential apartment development. In this regard the objectives, design criteria and design guidelines set out in Parts 3 and 4 of the ADG prevail.

The following provides further discussion of the relevant issues:

Communal and Open Space

The ADG prescribes the following requirements for communal and open space:

- Communal open space has a minimum area equal to 25% of the site.
- Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).

Comment: The proposed development includes 552sqm of communal open space which equates to 43.7% of the site area. Solar access is available to the entirety of the roof top communal open space.

Deep Soil Zones

The ADG prescribes the following minimum requirements for deep soil zones:

Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)
Less than 650m ²	-	7%
650m ² - 1,500m ²	3m	
Greater than 1,500m ²	6m	
Greater than 1,500m ² with significant existing tree cover	6m	

Comment: the proposed development has 7% (83sqm) of the site area provided as deep soil area. The deep soil areas are provided in part of the site where the dimensions exceed 3m.

Visual Privacy/Building Separation

The ADG prescribes the following minimum required separation distances from buildings to the side and rear boundaries:

Building Height	Habitable rooms and balconies	Non-habitable rooms
Up to 12 metres (4 storeys)	6 metres	3 metres
Up to 25 metres (5-8 storeys)	9 metres	4.5 metres
Over 25 metres (9+ storeys)	12 metres	6 metres

The ADG prescribes the following minimum required separation distances from buildings within the same site:

Up to four storeys/12 metres

Room Types	Minimum Separation
Habitable Rooms/Balconies to Habitable Rooms/Balconies	12 metres
Habitable Rooms to Non-Habitable Rooms	9 metres
Non-Habitable Rooms to Non-Habitable Rooms	6 metres

Five to eight storeys/up to 25 metres

Room Types	Minimum Separation
Habitable Rooms/Balconies to Habitable Rooms/Balconies	18 metres
Habitable Rooms to Non-Habitable Rooms	12 metres
Non-Habitable Rooms to Non-Habitable Rooms	9 metres

Comment: The proposal provides for largely 12m of separation up until level 4. At the level 5 and above the development provides for 18m of separation. The level of separation that is provided is considered to be appropriate noting the use of privacy mechanisms and the pattern of development in the surrounding buildings.

Solar and Daylight Access

The ADG prescribes the following requirements for solar and daylight access:

- Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9.00am and 3.00pm at mid-winter.
- A maximum of 15% of apartments in a building receive no direct sunlight between 9.00am and 3.00pm at mid-winter.

Comment: 74% (28 units) of units achieve the required level of direct solar access. All units achieve a degree of solar access within 9.00am and 3.00pm at mid-winter.

Natural Ventilation

The ADG prescribes the following requirements for natural ventilation:

- At least 60% of apartments are naturally cross ventilated in the first 9 storeys of the building. Apartments at 10 storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.
- Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.

Comment: 27 units (71%) are cross ventilated. No unit exceeds 18m to cross through.

Ceiling Heights

The ADG prescribes the following minimum ceiling heights:

Minimum Ceiling Height	
Habitable Rooms	2.7 metres
Non-Habitable	2.4 metres
For 2 storey apartments	2.7 metres for main living area floor 2.4 metres for second floor, where its area does not exceed 50% of the apartment area
Attic Spaces	1.8 metres edge of room with a 30 degree minimum ceiling slope
If located in mixed used area	3.3 for ground and first floor to promote future flexibility of use

Comment: The plans do not specify ceiling heights, however, the section demonstrate that the level to level height is 3.05m which should provide sufficient ceiling heights to achieve the required levels in the ADG. The ground floor commercial separation between levels (4.3m) is well above the required 3.3m.

Apartment Size

The ADG prescribes the following minimum apartment sizes:

Apartment Type	Minimum Internal Area
Studio apartments	35m ²
1 Bedroom apartments	50m ²
2 Bedroom apartments	70m ²
3 Bedroom apartments	90m ²

Note: The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.

Apartment Layout

The ADG prescribes the following requirements for apartment layout requirements:

- Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.
- Habitable room depths are limited to a maximum of 2.5 x the ceiling height.

- In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8 metres from a window.
- Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).
- Bedrooms have a minimum dimension of 3 metres (excluding wardrobe space).
- Living rooms or combined living/dining rooms have a minimum width of:
 - 3.6 metres for studio and 1 bedroom apartments.
 - 4 metres for 2 and 3 bedroom apartments.
- The width of cross-over or cross-through apartments are at least 4 metres internally to avoid deep narrow apartment layouts.

Comment: The apartment room sizes comply with the ADG minimum. Each habitable room has a window that is 10% of the floor area. The dimensions of the bedrooms and living rooms are notated on the plans and comply with the required areas. The width of cross through apartments exceeds 4m (at least in-part).

Private Open Space and Balconies

The ADG prescribes the following sizes for primary balconies of apartments:

Dwelling Type	Minimum Area	Minimum Depth
Studio apartments	4m ²	-
1 Bedroom apartments	8m ²	2 metres
2 Bedroom apartments	10m ²	2 metres
3+ Bedroom apartments	12m ²	2.4 metres

Note: The minimum balcony depth to be counted as contributing to the balcony area is 1 metres.

The ADG also prescribes for apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3 metres.

Comment: The proposed development complies with the required areas and depths for apartment balconies.

Common Circulation and Spaces

The ADG prescribes the following requirements for common circulation and spaces:

- The maximum number of apartments off a circulation core on a single level is 8.
- For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.

Comment: the number of apartments of a single core complies with the requirement and the total number of apartments is 38 with two lift cores.

Storage

The ADG prescribes the following storage requirements in addition to storage in kitchen, bathrooms and bedrooms:

Apartment Type	Minimum Internal Area
Studio apartments	4m ³
1 Bedroom apartments	6m ³
2 Bedroom apartments	8m ³
3+ Bedroom apartments	10m ³

Note: At least 50% of the required storage is to be located within the apartment.

Comment: The proposal provides for the required areas of storage within the apartments and an area of storage within the basement.

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

A BASIX Certificate was submitted with the application and will be referenced in any consent granted.

5(a)(iv) State Environmental Planning Policy (Transport and Infrastructure) 2021 ('SEPP TI')

Section 2.118 Development with frontage to classified road

The site has a frontage to Wardell Road, a classified road. Under section 2.118(2) of *SEPP TI*, 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.

The application provides for rear access via a lane and is considered acceptable with regard to section 2.118(2) of the *SEPP TI*.

Section 2.119 Impact of road noise or vibration on non-road development

Section 2.119(2) of the *SEPP TI* relates to the impact of road noise or vibration on non-road development on land in or adjacent to a road corridor or any other road with an annual average daily traffic volume of more than 20,000 vehicle. Under that clause, a development for the purpose of a building for residential use requires that appropriate measures are incorporated into such developments to ensure that certain noise levels are not exceeded.

The applicant submitted a Noise Assessment Report with the application that demonstrates that the development will comply with the LAeq levels stipulated in Clause 102 of the SEPP. Conditions are included in the recommendation.

5(a)(v) State Environmental Planning Policy (Biodiversity and Conservation) 2021 ('SEPP BC')

SEPP BC concerns the protection/removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of Council's DCP.

The application seeks the removal of vegetation from within the site and on Council land. The application was referred to Council's Tree Management Officer whose comments are summarised as follows:

“The proposal is not supported due to the canopy cover loss (approx. 160m²) and lack of any deep soil in which to plant replacement trees. Notwithstanding the previous comment conditions are provided in acknowledgement that the zoning may not require any deep soil.

An Arboricultural Impact Assessment report prepared by Jacksons Nature Works and dated 12 August 2021 has been submitted. Many trees that have been documented in the report are not subject to the tree management controls (due to their dimensions) and therefore have not been included in the conditions. Several trees that are documented as exempt are covered in the Tree Minor Works list and therefore do need to be included in the conditions.

The Landscape Plans do show some small trees on podiums however these will not replace the canopy to be removed.”

Subsequent to the referral, the applicant submitted amended plans. The following response in relation to the amended plans:

“Given the zoning and allowable built upon area the tree canopy to be removed cannot be replaced to the extent that 25% of the site is covered as is the target detailed in Part 1 of the DCP Tree Management Controls.

*The only deep soil is an area adjacent Murray Lane. The Landscape Plans show three (3) *Banksia integrifolia* in the deep soil however it is considered appropriate to condition two (2) larger canopy trees in the only area of deep soil.*

There are small trees shown on some of the upper level plans however these are located on slabs in planter boxes and are therefore likely to be constrained in their mature dimensions.

Six (6) conditions were provided under the previous referral - an addition condition has been added to that referral response requesting some changes to the Landscape Plan.”

5(a)(vi) *Marrickville Local Environment Plan 2011 (MLEP 2011)*

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

- Clause 1.2 - Aims of the Plan
- Clause 2.3 - Zone objectives and Land Use Table
- Clause 2.7 - Demolition
- Clause 4.3 - Height of buildings
- 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 6.2- Earthworks
- Clause 6.5 - Development in areas subject to aircraft noise
- Clause 6.6 - Airspace operations
- Clause 6.20 – Design Excellence

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

Standard	Proposal	non compliance	Complies
Height of Building Maximum permissible: 20m	23.64m	3.64m or 18.2%	No
Floor Space Ratio Maximum permissible: 2.40:1 or 3034.8 sqm	2.30:1 or 2,906sqm	N/A	Yes

Clause 2.3 Land Use Table and Zone Objectives

The site is zoned B1 under the *MLEP 2011*. The *MLEP 2011* defines the development as:

“shop means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop and neighbourhood supermarket, but does not include food and drink premises or restricted premises.”

And

“shop top housing means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.”

The development is permitted with consent within the land use table. The development is with the objectives of the B1 zone.

Clause 4.6 Exceptions to Development Standards

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

- Clause 4.3 - Height of buildings

The applicant seeks a variation to the height of buildings development standard under Clause 4.3 of the *Marrickville Local Environmental Plan 2011* by 18.2% (3.64m).

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 Clause 4.6 of the *Marrickville Local Environmental Plan 2011* below.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the *Marrickville Local Environmental Plan 2011*. In justifying the proposed contravention of the development standard which is summarised as follows:

- The proposal is consistent with the objectives of the zone in that:
 - It provides for small scale commercial uses;
 - It is compatible with the surrounding land uses;
 - The ground floor commercial uses are suitable to provide active street fronts.

- The objectives of the development standard are achieved in that;
 - The development is consistent with the existing character of the precinct;
 - The proposal provides access to the sky for the apartments within the development and does not result in significant overshadowing.
- Strict numeric compliance with the standard would be antipathetic to the objective “to ensure building height is consistent with the desired future character of an area”
- The standard has not been applied on the surrounding sites and it would be unreasonable to apply the standard strictly in this case.
- There are no adverse amenity impacts resulting from the variation.
- Non-compliance achieves and improved outcome in terms of SEPP 65 and the ADG,
- Compliance with the standard would result in a significant decrease in residential amenity by removing the rooftop communal areas.
- Strict compliance would undermine some objectives of the *EPA Act*, *SEPP 65*, *MLEP 2011*, and the *MDCP 2011*.

The applicant’s written rationale adequately demonstrates compliance with the development standard is unreasonable 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 B1, in accordance with Clause 4.6(4)(a)(ii) of the *Marrickville Local Environmental Plan 2011* for the following reasons:

The objective of the zone are;

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To provide for housing attached to permissible non-residential uses in development of a type and scale compatible with the surrounding neighbourhood.*
- *To provide for spaces, at street level, which are of a size and configuration suitable for land uses which generate active street-fronts.*
- *To enable a purpose built dwelling house to be used in certain circumstances as a dwelling house.”*

The development is considered to provide small-scale business activity with the two shop tenancies which will provide for the needs of people who live and work in the surrounding neighbourhood. The proposal provides for shop top housing that is attached to the permissible non-residential use and is of a size and scale that is compatible with the surrounding neighbourhood. The proposed restaurant use is of a size and configuration that is suitable for land uses that will generate active street frontages. The proposed development is considered to be consistent with the zone objectives for the B1 Zone within the *MLEP 2011*.

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

The objectives of the height of buildings development standard are:

- *“(a) to establish the maximum height of buildings,*
- *(b) to ensure building height is consistent with the desired future character of an area,*
- *(c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*
- *(d) to nominate heights that will provide an appropriate transition in built form and land use intensity.”*

The proposed building height is consistent with the existing character of the area and the desired future character as expressed by the consents that have been granted to the adjoining properties. The proposed development is not considered to result in significant overshadowing or significant impact exposure to the sky as a result of the non-compliance. The proposal provides a suitable transition to the lower density land uses to the rear.

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 the *Marrickville Local Environmental Plan 2011*. For the reasons outlined above, there are sufficient planning grounds to justify the departure from height of buildings development standard] and it is recommended the clause 4.6 exception be granted.

Clause 6.2- Earthworks

The application is supported by reports (Geotechnical and DIS) that allows the consent authority to achieve the requisite state of satisfaction in relation to clause 6.2 of *MLEP 2011*.

Clause 6.5 - Development in areas subject to aircraft noise

The application is supported by an acoustic report that allows the consent authority to achieve the requisite state of satisfaction in relation to clause 6.5 of *MLEP 2011*.

Clause 6.6 - Airspace operations

The proposal is below the obstacle limitation surface.

Clause 6.20 – Design Excellence

The proposal triggers the requirements for consideration of whether the development exhibits design excellence. The original application was referred to Council's Architectural Excellence Design Review Panel (AEDRP). A summary of the AEDRP assessment is provided as follows:

"Principle 1 – Context and Neighbourhood Character

1. The Panel supports the overall site planning and massing strategy that provides a 12m

separation between the 6-storey eastern and the western buildings.

2. In terms of the ground floor interface with the laneway, the Panel advises that there is a

compelling need for improvement of the laneway character through:

a. Provision of a single, consolidated point of vehicular access for both car and garbage vehicle entries, to reduce vehicular dominance within the public domain;

b. Removal of the of the at-grade visitor car spaces along the laneway interface and relocating these within the building;

c. Reconfiguration of the pedestrian entry and lobby to improve the presentation to the laneway; and

d. Introduction of street trees and landscaped areas along the laneway interface (Refer Principle 5 – Landscape for further details).

Principle 2 – Built Form and Scale

1. The Panel discussed that the applicant should consider further resolution with regards to the vertical alignment of building services within the proposal, including any required mechanical ventilation from the commercial levels to the roof.
2. Potential for improved articulation of the Wardell Road elevation is recommended through incorporation of a vertical recess at the junction with adjacent buildings.

Principle 3 – Density

Given the site location close to good public transport, the Panel recommends that the car parking provision is the minimum required and if possible, reconfigure the basement space for more efficient circulation and amenity, and landscaping potential in the rear lane.

Principle 4 – Sustainability

1. The Panel expects the proposal to be consistent with key targets established within the ADG for solar access and natural cross ventilation. Similarly, the Panel encourages the applicant to consider commitment to further sustainability targets for water, energy and waste efficiency.
2. Provision of ceiling fans is strongly encouraged in all habitable areas. Floor-to-floor and floor-to-ceiling heights should be detailed to permit the use of ceiling fans within the proposal.
3. Provision of a rainwater tank should be considered to allow water collection, storage and reuse within the subject site. The applicant should consider some type of irrigation system connected with the rainwater tank to water the plantation areas within the courtyard and the communal roof top garden.

Principle 5 – Landscape

1. The Panel notes that the current scheme does not offer significant deep soil zones for environmental benefits. The proposal should be consistent with the minimum 7% requirement as per the Part 3E-1 guidance offered within the ADG. Deep soil should be incorporated in the design, preferably within the central courtyard, and supporting new, large canopy trees and shrubs.
2. It is recommended that the design of the central courtyard should create a heavily landscaped buffer between the buildings to improve the residential amenity and outlook for the residents. Therefore, the Panel suggested that the active uses shown on the drawings be relocated to the roof terraces to remove the potential conflicts between private open spaces and the active communal activities proposed. The central courtyard can then be a green, passive space.
3. The Panel recommends provision of a unisex accessible toilet on the rooftop communal open spaces for both buildings.
4. The applicant should consider provision of street trees along the Wardell Road frontage. The outline of building awnings should allow adequate space for the street tree canopies to enable tree growth with a consistent form and be coordinated with the architectural drawings. Scope for tree planting should also be considered along the rear laneway with deep soil or appropriate sized planters integrated with a reconfigured basement noted above

Principle 6 – Amenity

- 1. The Panel discussed the internal amenity within apartments and recommends that the applicant should avoid provision of 'L' shaped kitchen layouts as this configuration would offer a limited storage above and below the kitchen counters. A linear wall kitchen with an appropriate length should be considered.*
- 2. The Panel offered suggestions for improving privacy of bedrooms and bathrooms within the apartments, which could be achieved by relocating doors to such private spaces to more discrete locations, so these doors avoid direct opening-up into living areas and corridors of the apartments.*

Principle 7 – Safety

- 1. The Panel requires the applicant to consider CPTED principles and a lighting strategy for safety, especially along the Laneway.*

Principle 8 – Housing Diversity and Social Interaction

No discussion.

Principle 9 – Aesthetics

- 1. The Panel recommends introduction of a vertical building indentation as a 'shadow-line' at the junction between the proposed and adjacent buildings along both – Wardell Road and the laneway frontage.*
- 2. The Panel strongly encourages use of self-finished materials (such as bricks, concrete) for the proposal. Rendered and painted surfaces should be avoided in favour of materials with an integral finish.*
- 3. Revised architectural drawings should confirm location of AC condenser units and other mechanical equipment. The Panel considers these should not be located within balconies (unless suitably screened visually and acoustically) or anywhere visually apparent from the surrounding public domain*
- 4. Revised architectural drawings should include details of the proposed design intent for key façade types in form of 1:20 sections indicating façade type, balustrade fixing, balcony edges, junctions, rainwater drainage system including any downpipes and similar details within the proposal*

Non SEPP 65 Matters:

None"

The amended plans provided an acceptable response to the issues raised. The considerations within Clause 6.20(4) have been considered. The proposal is considered to achieve design excellence and satisfy the requirements of clause 6.20 of *MLEP 2011*.

5(b) Draft Environmental Planning Instruments

Draft EPI's have been considered. The proposed development does not undermine the intent of any applicable draft EPI's.

5(c) 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 amended provisions contained in the Draft IWLEP 2020 are not relevant to the assessment of the application as the controls are broadly reflective of the existing provisions of the *MLEP 2011*. The intent of Draft IWLEP 2020 is not undermined by the proposed development.

5(d) Development Control Plans

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

MDCP 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	Yes
Part 2.6 – Acoustic and Visual Privacy	Yes
Part 2.7 – Solar Access and Overshadowing	Yes
Part 2.8 – Social Impact	Yes
Part 2.9 – Community Safety	Yes
Part 2.10 – Parking	Yes
Part 2.16 – Energy Efficiency	Yes – Application has a BASIX Certificate
Part 2.18 – Landscaping and Open Space	Yes
Part 2.20 – Tree Management	Yes
Part 2.21 – Site Facilities and Waste Management	Yes – with Conditions recommended by Waste Management officer
Part 2.24 – Contaminated Land	Yes
Part 2.25 – Stormwater Management	Yes
Part 5 – Commercial and Mixed Use Development	No – see discussion
Part 9 – Strategic Context 9.22 Dulwich Hill Station South	No – see discussion

The following provides discussion of the relevant issues:

Part 2.21 – Site Facilities and Waste Management

The initial application included private residential waste collection onsite. The plans were amended to provide for residential waste collection from the rear lane via Council waste services with a holding bay. The amended proposal didn't however update the waste management plans and the without prejudice conditions of consent require this to be provided prior to the issue of a construction certificate.

Part 5 – Commercial and Mixed Use Development

The proposal does not comply with control C2 in part 5.1.4.2 relating to the height of buildings, however, this is addressed by the clause 4.6 variation and the DCP cannot impose a more onerous test that the *MLEP 2011*.

The proposal does not comply with controls C7 and C11 in part 5.1.4.3. The site is subject to site specific massing controls within part 9.22.5 and in the event of any inconsistency between the controls the site specific controls apply.

The proposed development does not comply with the control C54 in part 5.1.6.1 of MDCP 2011 in relation to dwelling mix:

Size	DCP Control span	Proposal
Studio	5 - 20%	0 (0%)
1 bedroom	10 -40%	21 (55%)
2 bedroom	40 - 75%	16 (42%)
3 bedroom or bigger	10 – 45%	1 (3%)

The applicable objectives to consider a variation to this control are O54 – O56 in part 5.1.6.1 of MDCP 2011 which state:

*“O54 To provide choice of dwelling types to meet a range of housing demographics.
O55 To support social diversity of the community.
O56 To allow dwelling mix flexibility to respond to different residential building types, locations and markets”*

It is also appropriate to consider the ADG objective 4K-1 and the applicable design guidance in the objectives.

“Objective 4K-1

A range of apartment types and sizes is provided to cater for different household types now and into the future

Design guidance

A variety of apartment types is provided

The apartment mix is appropriate, taking into consideration:

- the distance to public transport, employment and education centres*
- the current market demands and projected future demographic trends*
- the demand for social and affordable housing*
- different cultural and socioeconomic groups*

Flexible apartment configurations are provided to support diverse household types and stages of life including single person households, families, multi-generational families and group households”

In considering the above, the proposed development provides a mixture of largely one and two bedroom apartments with a single three bedroom apartment. Within this neighbourhood centre there are significant number of boarding houses and on that basis, it is appropriate to seek to provide a greater percentage of single and two bedroom apartments in lieu of studio apartments. The site is located close to a train station and dwelling house and other dwelling types in the locality provide for three bedroom dwellings to accommodate the demographic.

The comments of the Inner West Design Excellence Panel are noted insofar of being generally supportive of the design and the applicant has made amendments to integrate the suggested design changes. The constraints of the site and its two towers on a plinth existing character of the area make achieving a compliant level of 3 bedroom apartments difficult while complying with the remainder of the DCP provisions based on the above and noting the provided dwelling mix the proposal is considered to be consistent with the objectives O54 – O56 in part 5.1.6.1 of MDCP 2011 and acceptable on merit.

Part 9 – Strategic Context - 9.22 Dulwich Hill Station South

The site is subject to a master plan and a series of controls within part 9.22.5.1 best expressed figure by figure 22.1b an extract of which is below:



Figure 22.1b Plan Diagram

In considering, a variation to the controls within part 9.22.5.1 do not contain any objectives however the desired future character objectives within part 9.22.2 of MDCP 2011 appear to be the applicable considerations for a variation.

In considering the desired future character statement the following is noted:

- The proposal protects and enhances the mixed residential character of the precinct.
- The proposal protects and enhances the character of the street and the public domain.
- The proposal facilitates renewal in an appropriate area and revitalises the Dulwich Hill Neighbourhood Centre.
- The proposal includes lot consolidation to ensure orderly development.
- The proposal has generally been supported as exhibiting design excellence and is of contemporary design.
- The proposal protects the amenity of the surrounding residents as far as practicable.
- The proposal located the vehicle access via the rear lane.
- The Master plan has not been consistently applied on the adjoining properties and the proposal is consistent with the pattern of development on the surrounding sites.

Given the above, the proposal is consistent with the desired future character statement and acceptable on merit.

5(e) The Likely Impacts

The impacts of the development have been considered. It is considered that the likely impacts on the amenity of the adjoining properties is not significant or unreasonable in the circumstances of the development controls.

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

The site is considered as suitable for the proposed redevelopment.

5(g) 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(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. This is achieved in this instance.

5(j) Integrated development

The application requires general terms of approval from Water NSW under S90(2) *Water Management Act 2000*. Water NSW has made repeated requests for additional information and on 16 March 2022 requested the following:

“From the updated geotechnical report, I can see that the applicant is proceeding with a drained basement design.

WaterNSW and DPIE do not support the drained basement option for basements. However if the proponent is insistent on a drained basement alternative for the design of the basement, they will need to provide all the following additional data and modelling inputs to enable DPIE to undertake the necessary hydrogeological assessment.

#	Assessment Item
1	<i>The estimate volume of water take has been specified in the documentation supplied with the application (in megalitres).</i>
2	<i>Detailed explanation and supporting evidence have been provided to demonstrate the suitability of the volume estimation method (either description of numerical model used or analytical solution and source document).</i>
3	<i>The ground elevation across the site has been provided on an architectural plan or section or detailed in other supporting documents in a manner acceptable to WaterNSW and DPIE-Water.</i>
4	<i>A report outlining the geotechnical characterisation of the ground conditions, based on site-specific intrusive investigations that fully penetrate to a deep geological unit beneath the property that is identified in the geotechnical report as being consolidated or hard.</i>
5	<i>Frequently repeated water level measurements illustrating the natural range over at least three months (in metres below ground level)</i>
6	<i>The magnitude of required drawdown in water level to achieve dry conditions in the excavation has been identified (in metres).</i>
7	<i>The works proposed to be used for dewatering have been described in detail (number, spacing, depth, individual discharge rates, cumulative discharge rate) and illustrated on specific plan and section diagrams.</i>
8	<i>The base level of the aquifer has been identified or can it be determined from supplied bore logs (in metres below ground level).</i>
9	<i>Accurate excavation footprint dimensions (length, width, bulk excavation level) have been specified (in metres).</i>
10	<i>Field test results to determine the hydraulic conductivity of lithological units present beneath the site have been reported (in metres per day).</i>
11	<i>The anticipated duration of dewatering pumping has been specified (days or weeks or months).</i>
12	<i>The depth of piling embedment beneath the bulk excavation level has been specified (in metres).</i>

In the case of a drained basement, we request that the geotechnical report be updated accordingly and uploaded to the planning portal. Further information can also be found at <https://www.industry.nsw.gov.au/water/science/groundwater/aquifer-interference-activities>

A number of these elements appear to be missing from the geotechnical report. Without all the appropriate modelling, it is likely that the GTAs for a tanked basement will be issued as a minimal harm assessment cannot be conducted.

I can also see from the Geotechnical report that the applicants did not encounter groundwater during their field tests. As the basement is not due to be tanked, we may still require the consultation of DPE and thus we need the geotechnical report to be explicitly clear on whether or not dewatering will be required during construction.”

Sections 4.47(3) and 4.47(4) of the *EPA Act 1979* prevent Council issuing a development consent without the applicable general terms of approval. Council is advised that the applicant must conduct a further study that will take an additional 3 months to prepare. Given the delays in granting the General Terms of Approval and the Ministerial direction to determine applications within 180 days it is appropriate that the application be determined by way of refusal.

When the information required by Water NSW is prepared the applicant will then be in a position to lodge a review application and obtain development consent.

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.

- Architectural Excellence Panel
- Building Certification
- Development Engineering
- Environmental Health
- Urban Forests
- Waste Management

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.

- Water NSW – Integrated Development S90(2) *Water Management Act 2000*

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions 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 \$642,692.56 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 conditions of consent should the proposal be approved.

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 in the public interest.

However, in the absence of general terms of approval the consent authority has not power to issue a development consent and as a result the application must be refused.

9. Recommendation

- A. 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*, refuse Development Application No. DA/2021/0855 for Demolition of existing structures and construction of shop top housing development with basement parking and associated works. at 246 Wardell Road MARRICKVILLE NSW 2204 reasons listed in Attachment A below.

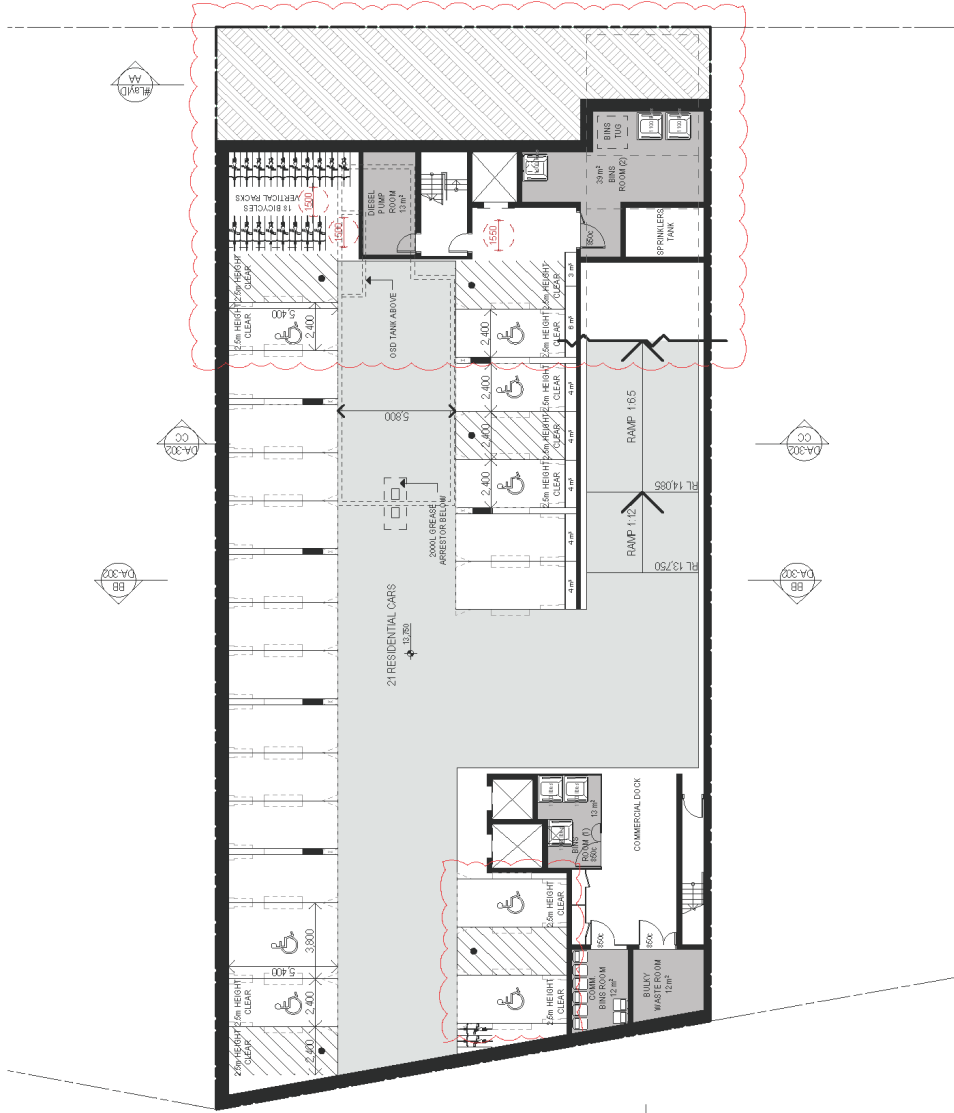
Attachment A – Reasons for Refusal

Attachment A – Recommended reasons for refusal

1. Water NSW has not granted general terms of approval to the application and the consent authority has no power to grant consent due to section 4.47 of the *EPA Act 1979*.

Attachment B – Plans of proposed development

CONTRACTOR TO VERIFY ALL DIMENSIONS AND SERVICES BEFORE COMMENCING ANY WORK. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.



Energy Rating

Overall Energy Rating: **5.3** stars

Minimum Energy Rating: **5.0** stars

Minimum Energy Rating for Commercial Buildings: **5.0** stars

Minimum Energy Rating for Residential Buildings: **5.0** stars

Minimum Energy Rating for Public Buildings: **5.0** stars

Minimum Energy Rating for Industrial Buildings: **5.0** stars

Minimum Energy Rating for Government Buildings: **5.0** stars

Minimum Energy Rating for Health Care Buildings: **5.0** stars

Minimum Energy Rating for Education Buildings: **5.0** stars

Minimum Energy Rating for Child Care Buildings: **5.0** stars

Minimum Energy Rating for Community Buildings: **5.0** stars

Minimum Energy Rating for Other Buildings: **5.0** stars

BASEMENT 01
SCALE 1:200

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Mandatory Architects:
Zita Baumhain Reg no 5005
Yousaf El Farahani Reg no 2833
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2.46-2.48 Wardell Road Marrickville NSW

Drawing Title
BASEMENT 01

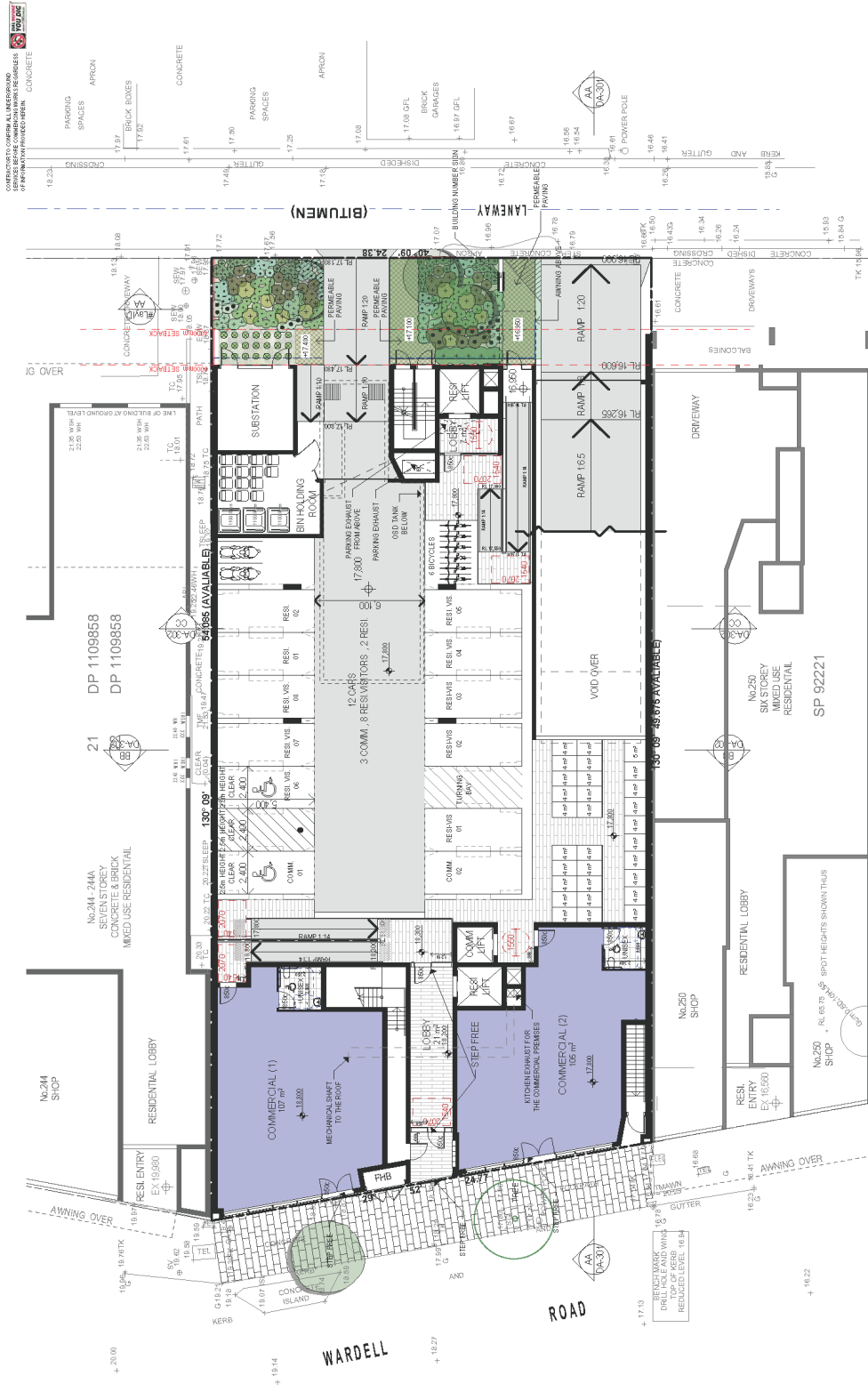
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Project Number
17-089

Drawing Number
DA-101

Revision
02





UNIVERSITY OF WOLLONGONG
 SERVICES BUILT FOR COMMUNITY IMPROVEMENT
 OF INFORMATION TECHNOLOGY
 CONCRETE

Project Number
DA-102
 Drawing Number
17-089
 Revision
02
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 Date
17/08/2011

Drawing Title
GROUND FLOOR PLAN



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Nominated Architects:
 Ziad Boumabrouh Reg no 6008
 Youssif El Khatib Reg no 3833
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GROUND FLOOR PLAN
 SCALE 1:200

CONSULTANTS: URBAN LINK ARCHITECTS
SERVICES: ARCHITECTURAL SERVICES
SERVICES: MECHANICAL SERVICES
SERVICES: ELECTRICAL SERVICES
SERVICES: PLUMBING SERVICES



- NATURALLY GROSS VENTILATED SATISFIES ADD REQUIREMENTS
- ALTERNATIVE MECHANICAL VENTILATION SYSTEM TO BE PROVIDED AT CC WHEN WINDOWS ARE CLOSED
- ACHIEVES 11 HOURS OF SUNLIGHT ON 85% OF JUNE BETWEEN 8AM-5PM TO SATISFY ADD REQUIREMENTS
- ACHIEVES 11 HOURS OF SUNLIGHT ON 85% OF JUNE BETWEEN 8AM-5PM TO SATISFY ADD REQUIREMENTS



Scale 1:200 @ 60mm Site
 Project Number 17-089
 Drawing Number DA-103
 Revision 02

Drawing Title LEVEL 01



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 Youssif El Khatib Reg no 3823
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LEVEL 01
 SCALE 1:200



- NATURALLY CROSS VENTILATED SATISFIES ADD REQUIREMENTS
- ALTERNATIVE MECHANICAL VENTILATION SYSTEM TO BE PROVIDED AT CC WHEN WINDOWS ARE CLOSED
- ACHIEVES 11 HOURS OF SUNLIGHT ON 21ST OF JUNE BETWEEN 9AM-3PM TO SATISFY ADD REQUIREMENTS
- ACHIEVES 11 HOURS OF SUNLIGHT ON 21ST OF JUNE BETWEEN 9AM-3PM TO SATISFY ADD REQUIREMENTS



Scale 1:200 @ A4 Sheet Size
 Project Number DA-104
 Revision 02

Drawing Title LEVEL 02



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LEVEL 02
 SCALE: 1:200



CONSULTANTS: GENERAL ALL SERVICES
SERVICES: GENERAL ARCHITECTURAL SERVICES
OF INFORMATION FOR THE CLIENT



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Project Number 17-089
Drawing Number DA-105
Revision 02

Drawing Title LEVEL 03



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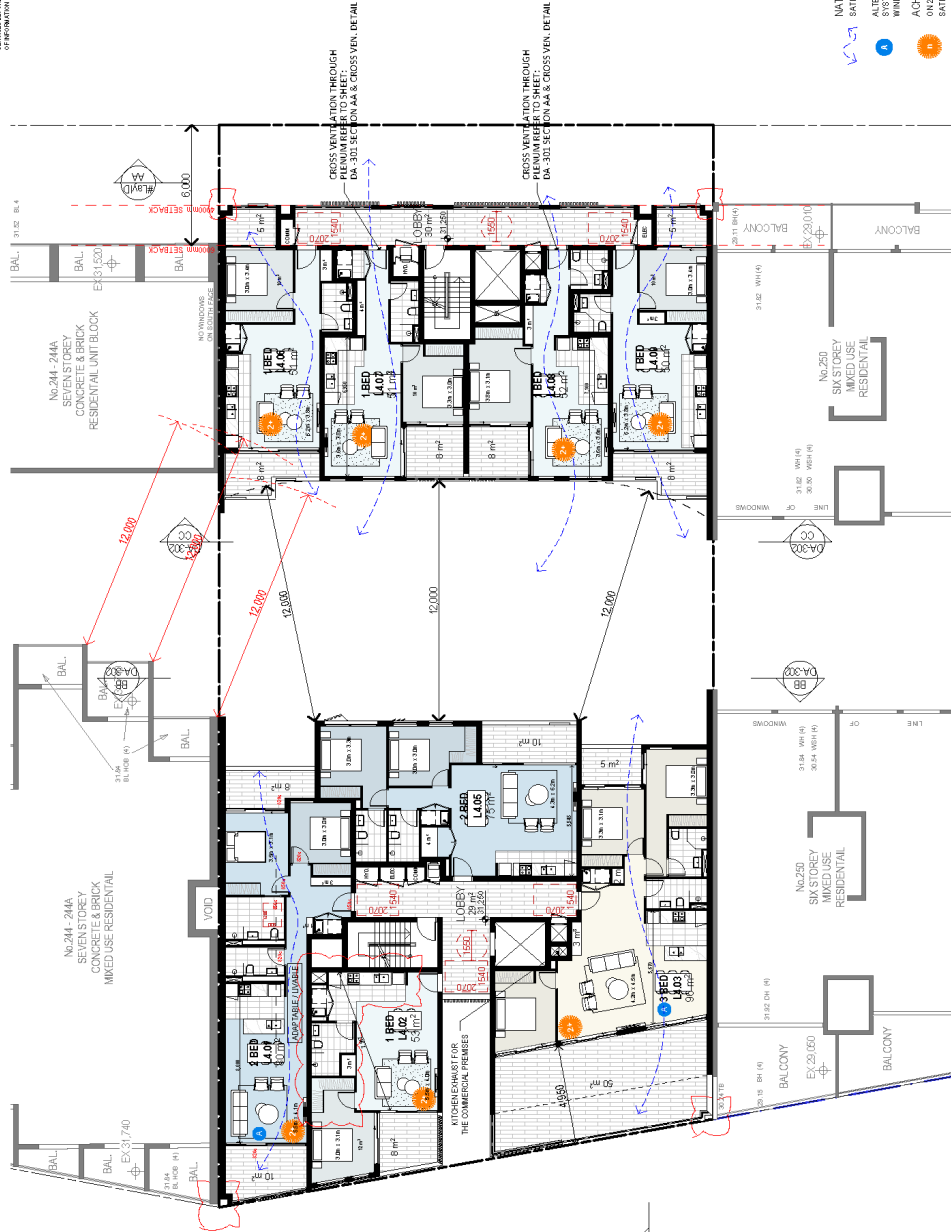
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LEVEL 03
SCALE: 1:200



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SERVICES BEFORE COMMENCING WORK TO AVOID
OF INFORMATION PROVIDED HEREIN.



- NATURALLY CROSS VENTILATED SATISFIES ADD REQUIREMENTS
- ALTERNATIVE MECHANICAL VENTILATION SYSTEM TO BE PROVIDED AT CC WHEN WINDOWS ARE CLOSED
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Drawing Number DA-106
Revision 02

Drawing Title
LEVEL 04



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LEVEL 04
SCALE: 1:200



- NATURALLY CROSS VENTILATED SATISFIES AOD REQUIREMENTS
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Drawing Title LEVEL 05



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LEVEL 05
 SCALE: 1:200



CONSULTANTS: URBAN LINK PTY LTD
 SERVICES: ARCHITECTURAL SERVICES
 PROJECT: 248 WARDLE ROAD MARRICKVILLE NSW



LEVEL 06
 SCALE: 1:200



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Drawing Title
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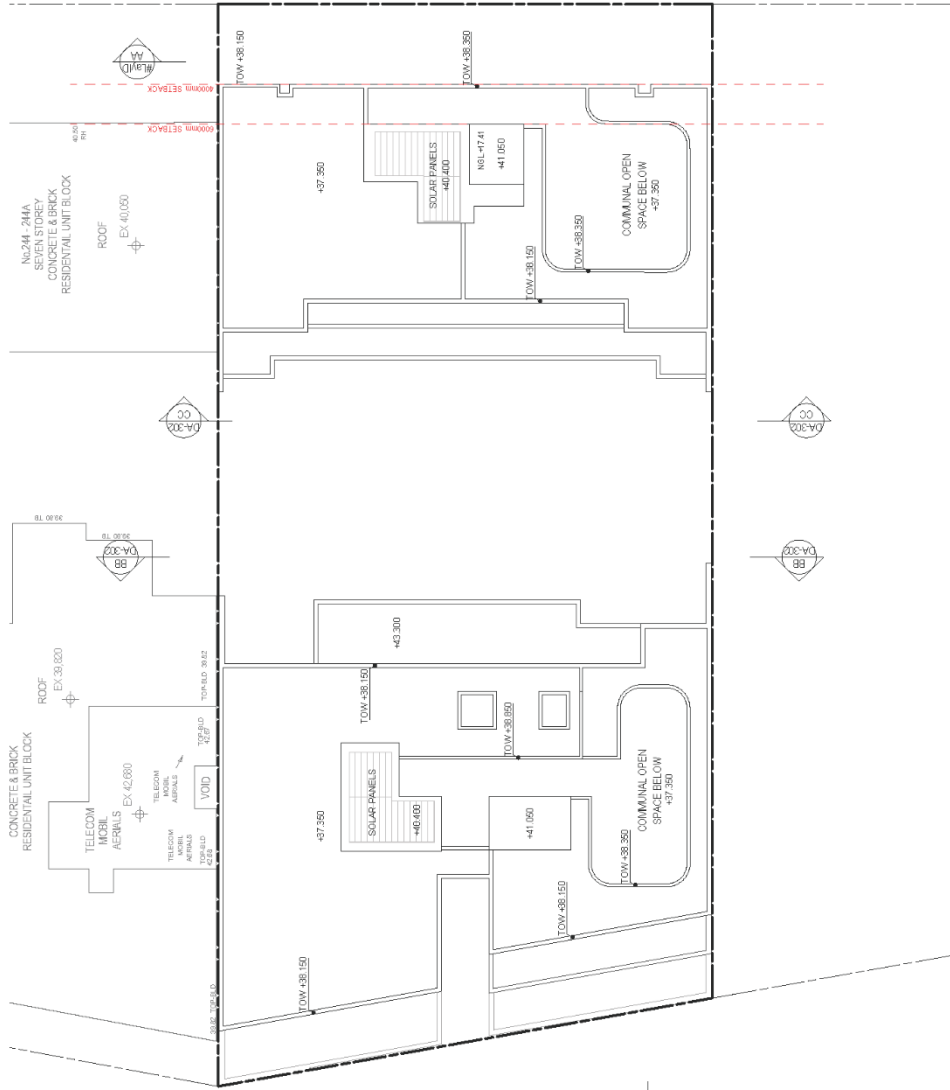
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Revision
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YUSEF EL-RIFAIIE
REGISTERED PROFESSIONAL ENGINEER
SERVICES ENGINEERING CONSULTANTS



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246-248 Warden Road Marrickville NSW

Nominated Architects:
Zaid Southern Architects Pty Ltd
Yusef El-Rifaie P Eng 1773833
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ROOF
SCALE 1:200

Drawing Title
ROOF PLAN

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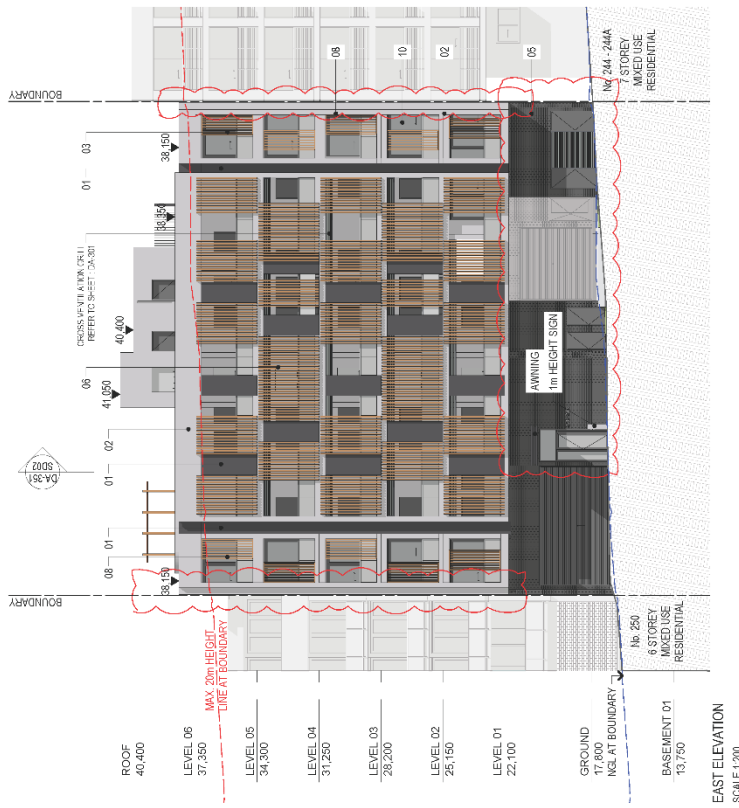
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Drawing Number
DA-109

Revision
02



CONCEPTUAL ARCHITECTURAL ELEVATIONS
 2D VISUAL REPRESENTATION OF THE PROPOSED DEVELOPMENT
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EXTERNAL FINISHES SCHEDULE

- 1 - DULLY PAINT WITH DARK GREY 'KLAVER' ON CONCRETE/HEBEL WALL
- 2 - DULLY PAINT WHITE 'MID WHITE' ON CONCRETE/HEBEL WALL
- 3 - POWDER COATING DULLY FINISH 'ZULES CHARCOAL' OR SIMILAR
- 4 - JAMES HARDIE AXON CLADDING - TIMBER LOOK WITH HAWKAW COLOUR 'GOL DUHN' OR SIMILAR
- 5 - BRICK PGT ALFRESCO ESPRESSO'
- 6 - ALUMINIUM BATTENS TIMBER LOOK WITH HAWKAW COLOUR 'GOL DUHN' OR SIMILAR
- 7 - GLASS BALUSTRADE CLEAR GLASS
- 8 - METAL LOUVER SYSTEM TIMBER LOOK
- 9 - GLASS (COMMERCIAL) G-JAMES - CLEAR GLASS OR SIMILAR
- 10 - GLASS (RESIDENTIAL) GREY GLASS

Normalized Architects
 2nd Bourke Street Reg no 8638
 Trawsart El Khatib Reg no 8833
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MIXED USE RESIDENTIAL
 246-248 Warrell Road Marrickville NSW

Energy Rating
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 4.5
 4.0
 3.5
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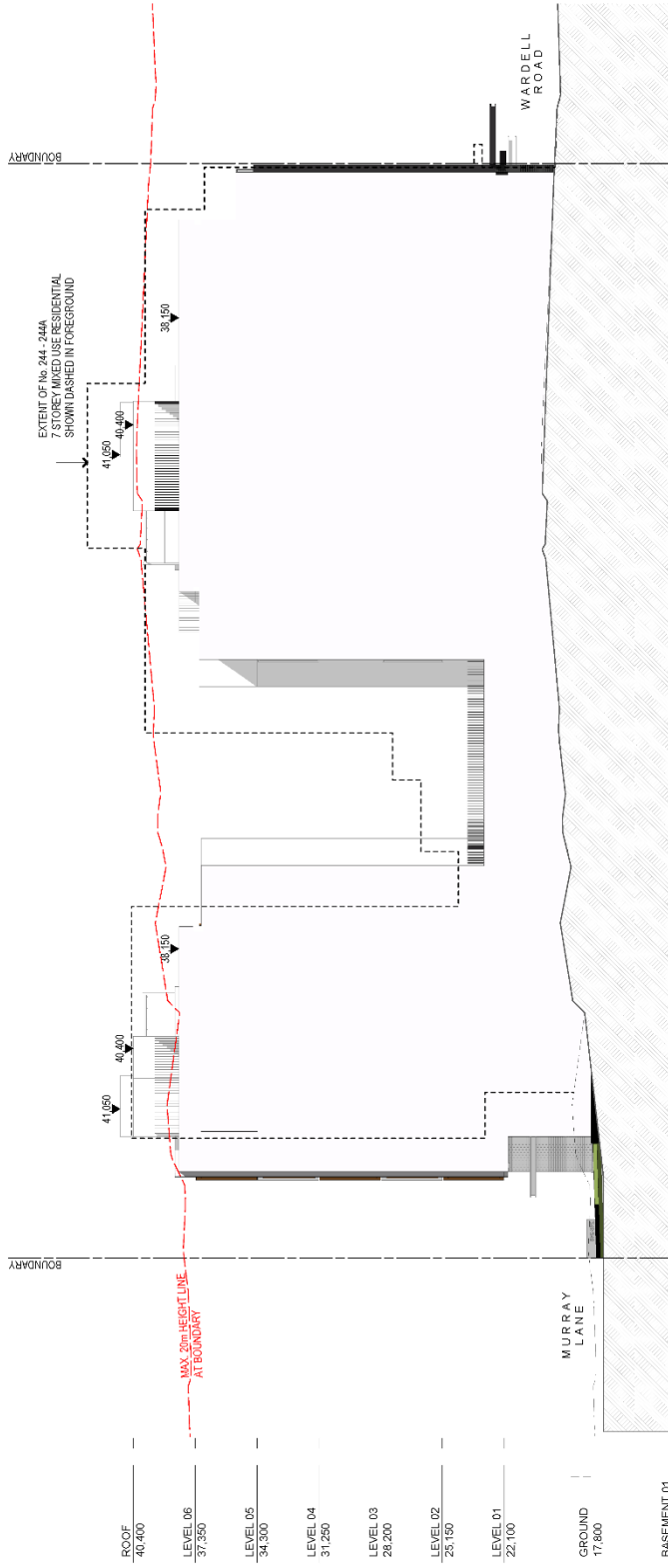
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Project Number
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Drawing Number
 DA-201

Revision
 02



BASEMENT 01
NORTH ELEVATION
SCALE 1:200

EXTERNAL FINISHES SCHEDULE

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- 2 - DULLY PAINT WITH 'MID WHITE' ON CONCRETE/HEBEL WALL
- 3 - POWDER COATING DULLY FINISHES "JULES CHARCOAL" OR SIMILAR
- 4 - JAMES HARDIE AXON GLADDING - TIMBER LOOK WITH NAWKAW COLOUR 'SOUL DUHNI' OR SIMILAR
- 5 - BRICK PGT ALFRESCO 'ESPRESSO'
- 6 - ALUMINIUM BATTENS TIMBER LOOK WITH NAWKAW COLOUR 'GOL DUHNI' OR SIMILAR
- 7 - GLASS BALUSTRADE CLEAR GLASS
- 8 - METAL LOUVER SYSTEM TIMBER LOOK
- 9 - GLASS (COMMERCIAL) G-JAMES - CLEAR GLASS OR SIMILAR
- 10 - GLASS (RESIDENTIAL) GREY GLASS



MIXED USE RESIDENTIAL
246-248 Wardeell Road Marrickville NSW

Named Architects
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Fouad El Khatib Reg no 8833
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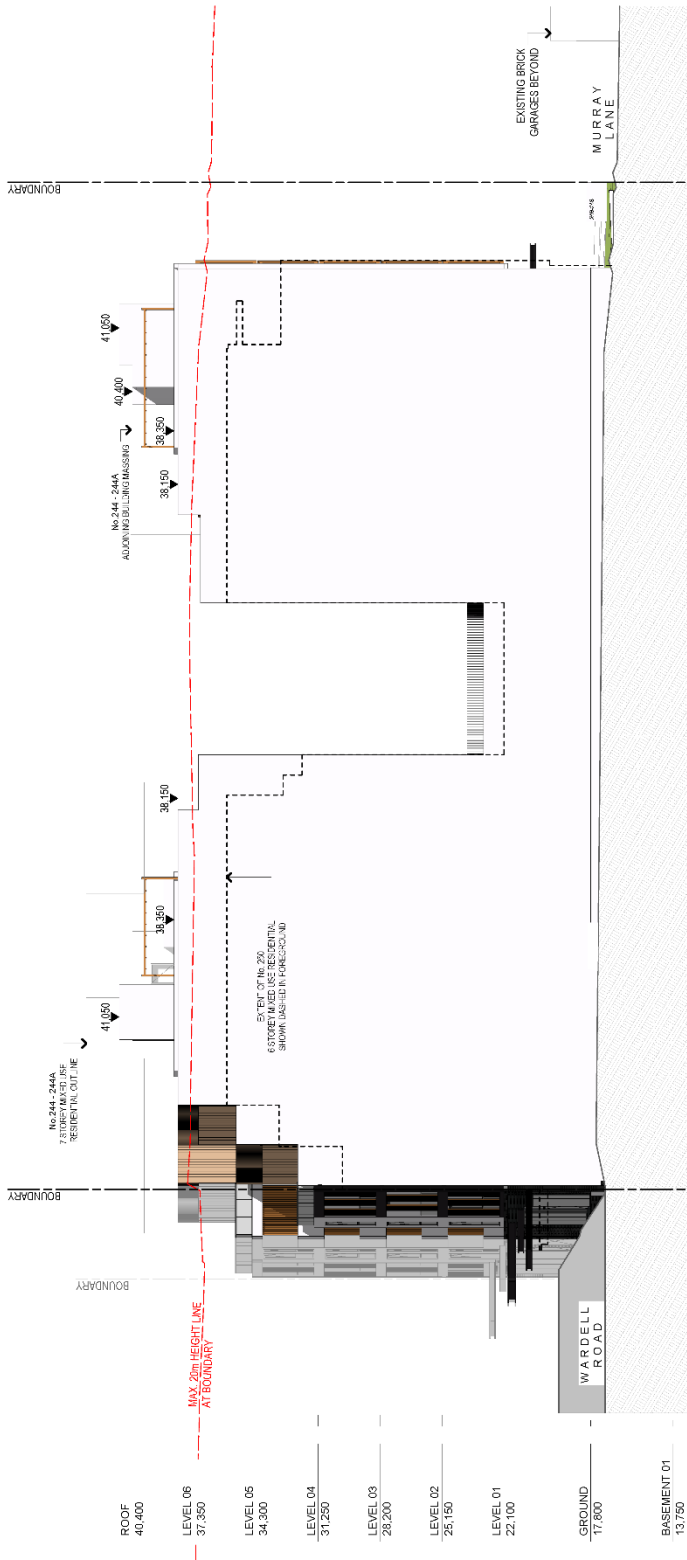
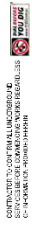
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Project Number
17-089

Drawing Number
DA-202

Revision
02



SOUTH ELEVATION

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LEVEL 05	34.300
LEVEL 04	31.250
LEVEL 03	28.200
LEVEL 02	25.150
LEVEL 01	22.100
GROUND	17.800
BASEMENT 01	13.750

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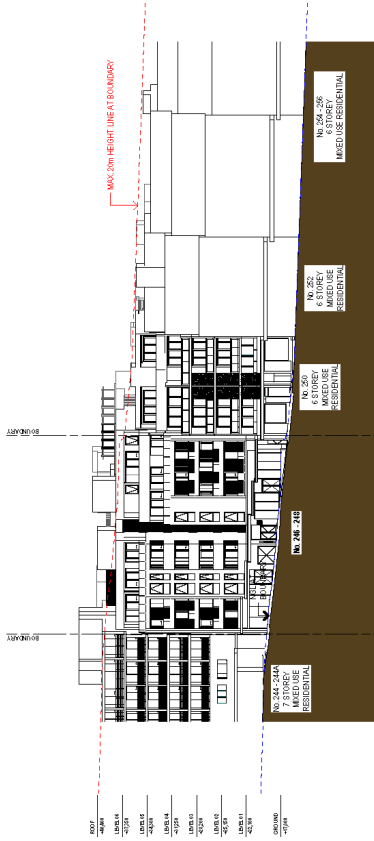
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- 3 - POWDER COATING DULUX DULUX 'TRUES CHARCOAL' OR 'JAMES' SIMILAR
- 4 - JAMES HARDIE AXON CLADDING - TIMBER LOOK WITH 'MILKMAW' COLOUR 'GOL DUHNI' OR SIMILAR
- 5 - BRICK PGT ALFRESCO ESPRESSO'
- 6 - ALUMINIUM BATTENS TIMBER LOOK WITH 'MILKMAW' COLOUR 'GOL DUHNI' OR SIMILAR
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- 9 - GLASS (COMMERCIAL) G-JAMES - CLEAR GLASS OR SIMILAR
- 10 - GLASS (RESIDENTIAL) GREY GLASS



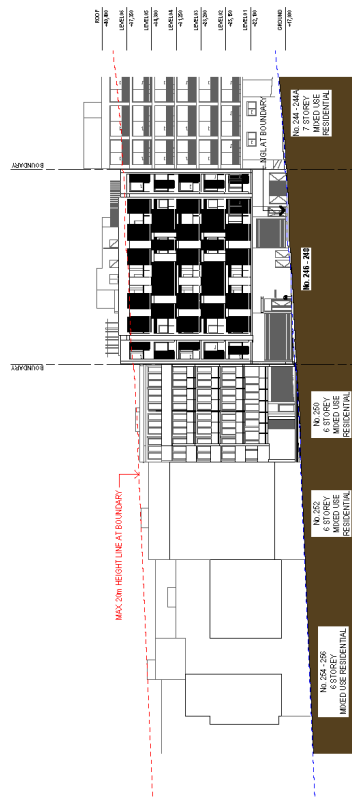
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 Revision: **02**
 Mixed Use Residential
 246-248 Wardell Road Murrumbidgee NSW
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 Nominal Architects
 2nd Bourke Street Reg no 8638
 Tarragone El Kinnear Reg no 8833



NO.	REVISION	DATE	BY	CHKD.
01	ISSUED FOR TENDERS	15/01/2014
02	FOR INFORMATION	15/01/2014
03	FOR INFORMATION	15/01/2014
04	FOR INFORMATION	15/01/2014
05	FOR INFORMATION	15/01/2014
06	FOR INFORMATION	15/01/2014
07	FOR INFORMATION	15/01/2014
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STREETSCAPE - WARDELL ROAD ELEVATION
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STREETSCAPE - MURRAY LN ELEVATION
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Drawing Title
STREETSCAPE

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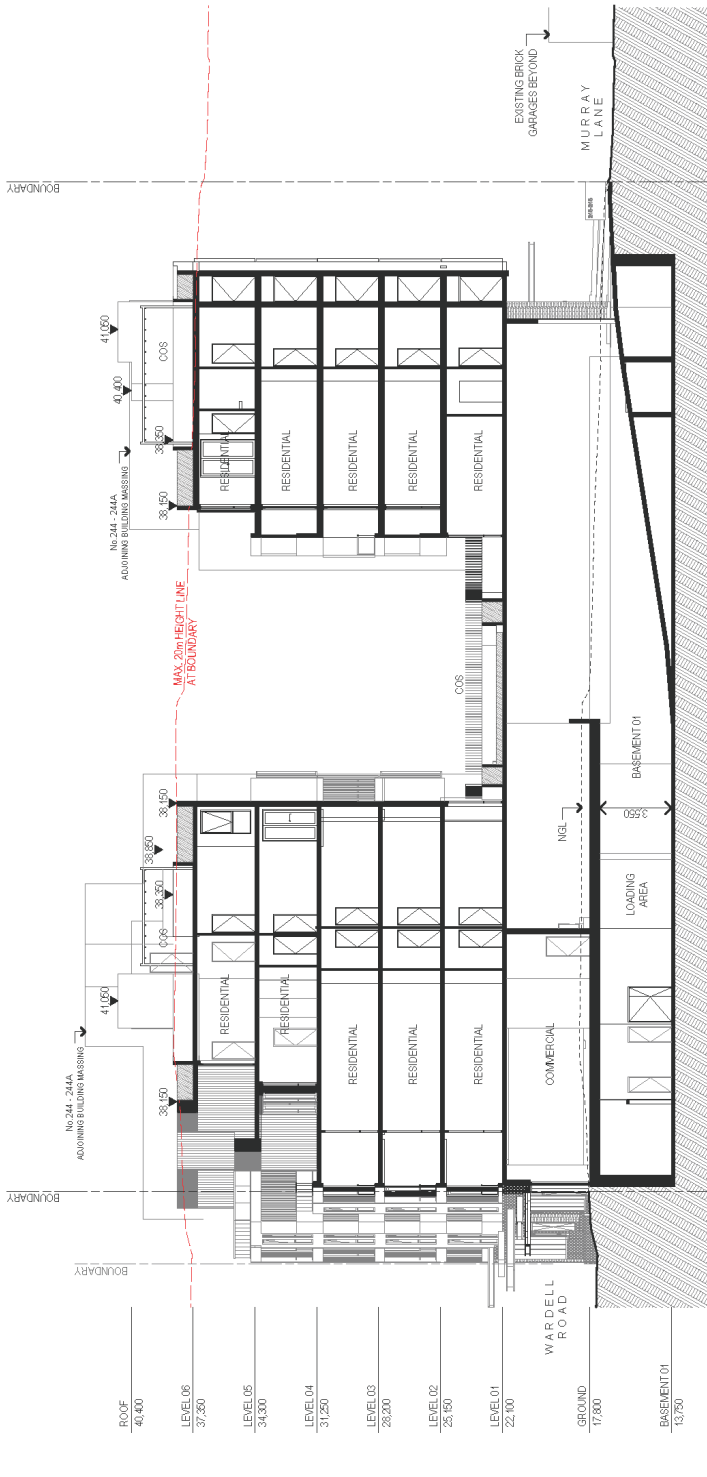
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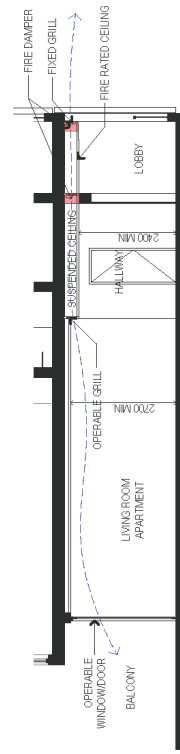
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Revision
02





SECTION AA
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Cross Ventilation Detail
SCALE 1:100



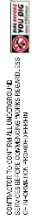
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Drawing Number **47-089**
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Revision **02**

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EXTERNAL FINISHES SCHEDULE

- 1 - DULUX PAINT WITH HAWKAW DARK GERRY KLAIVER ON CONCRETE/HEBEL WALL
- 2 - DULUX PAINT WITH HAWKAW WHITE 'VIVID WHITE' ON CONCRETE/HEBEL WALL
- 3 - POWDER COATING DULUX DURATEC ZURES CHARCOAL OR SIMILAR
- 4 - JAMES HARBIE NYON GLAZING TIMBER LOOK WITH HAWKAW COLOUR GOLDUHN OR SIMILAR
- 5 - BRICK PGT ALFRESCO ESPRESSO
- 6 - ALUMINIUM BATTENS TIMBER LOOK WITH HAWKAW COLOUR GOLDUHN OR SIMILAR
- 7 - GLASS BALUSTRADE CLEAR GLASS
- 8 - METAL LOUVER SYSTEM TIMBER LOOK
- 9 - GLASS (COMMERCIAL) G-JAMES - CLEAR GLASS OR SIMILAR
- 10 - GLASS (RESIDENTIAL) GREY GLASS



Drawing Title: **SECTION BB & CC**
 Project Number: **17-089**
 Drawing Number: **DA-302**
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 Revision: **02**

Drawing Title: **MIXED USE RESIDENTIAL**
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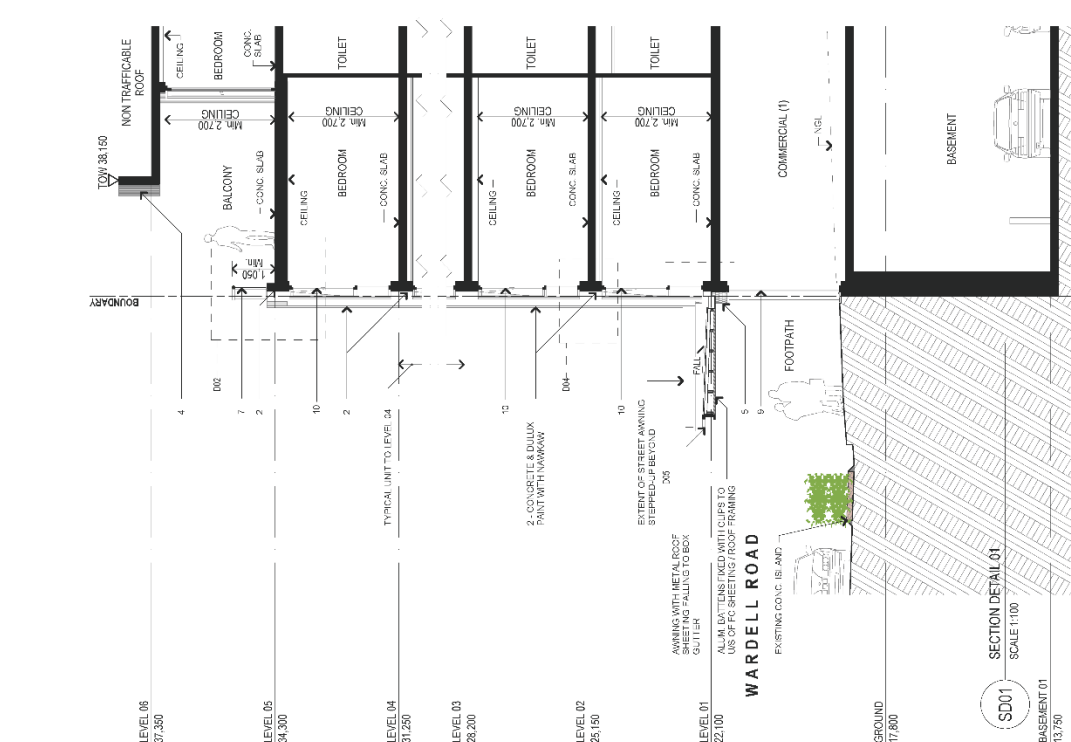
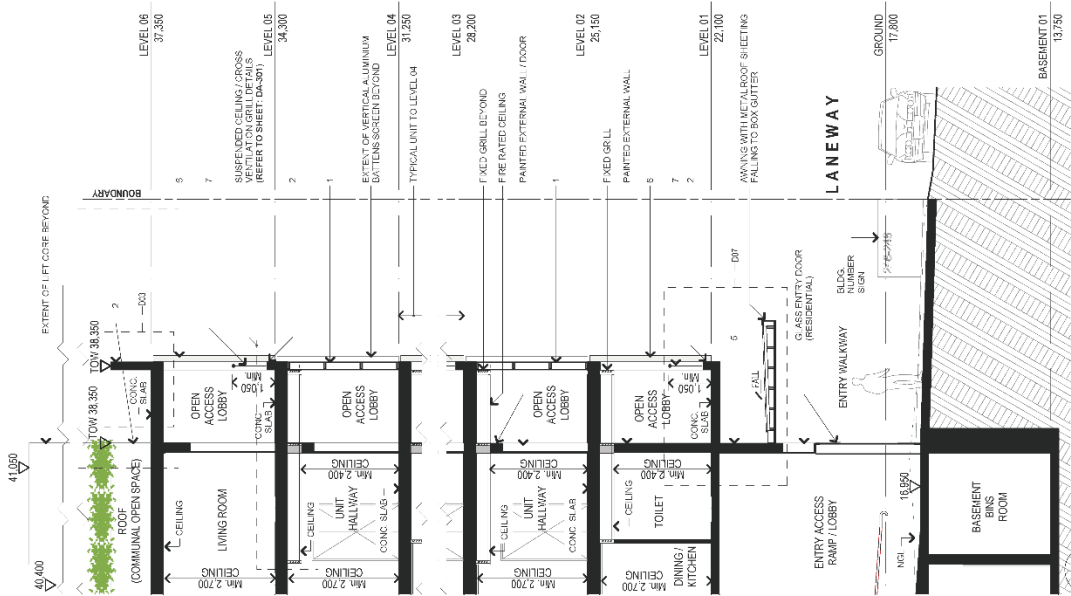
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WHITE / MID WHITE
ON CONCRETE / REBEL WALL
- 3. FUMES COATING
7 LINES (1) 'ASCAR' OR
SIMILAR
- 4. JAMES HARBIE
TIMBER
LOOK WITH NAWKAW
COLOUR / COLOUR OR
SIMILAR
- 5. BRICK
FBI 'ALFREDO' ESPRESSO
- 6. ALUMINIUM BATTENS
TIMBER LOOK WITH NAWKAW
COLOUR / COLOUR OR
SIMILAR
- 7. GLASS BALUSTRADE
CLEAR GLASS
- 8. METAL LOUVER
SYSTEM
TIMBER LOOK
- 9. GLASS
(COMMERCIAL)
JAMES - CLEAR GLASS OR
SIMILAR
- 10. GLASS
(RESIDENTIAL)
GREY GLASS



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Drawing Number DA-351
Project Number 17-089

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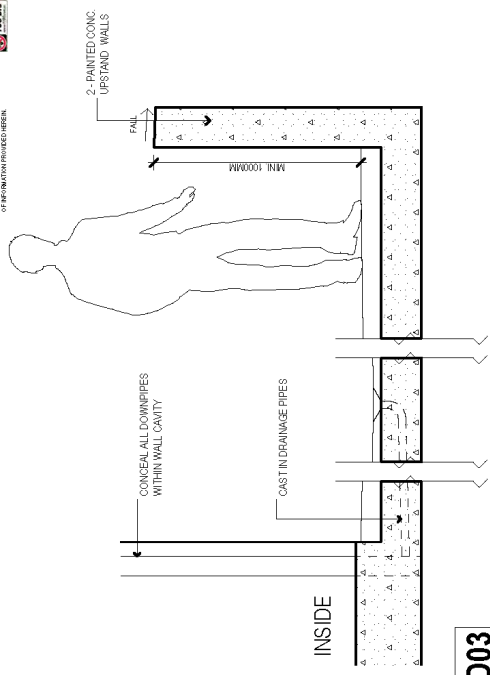
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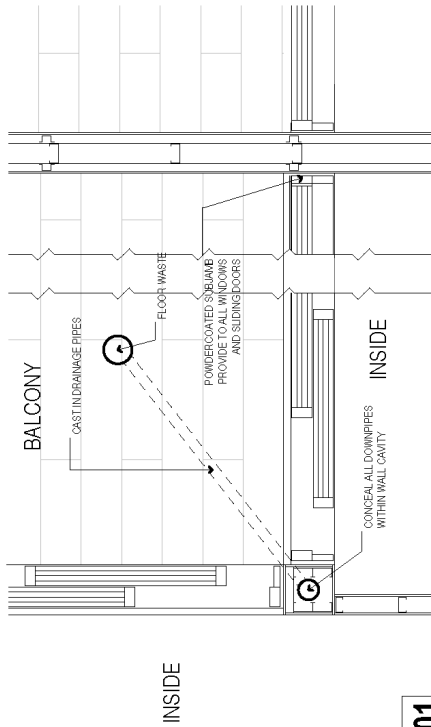


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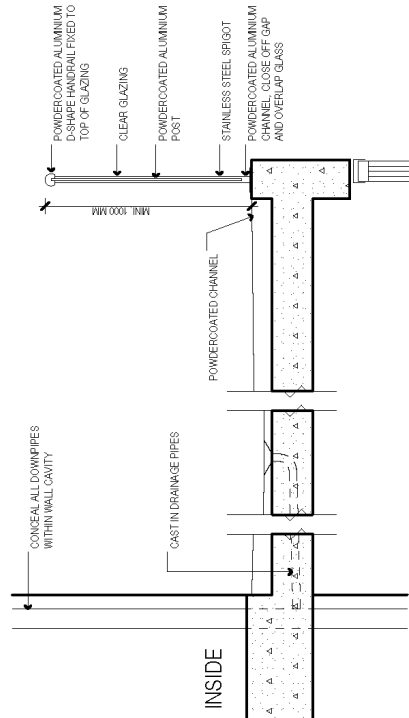
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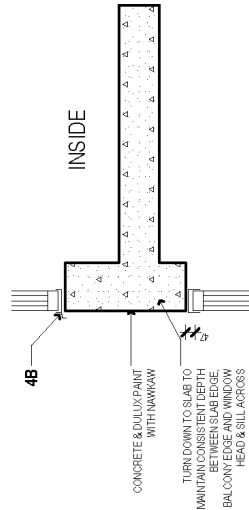
TYPICAL BALCONY PLAN

NOTE: PLEASE REFER TO LEVEL 02 FOR THE DETAIL EXACT LOCATION



D02

TYPICAL BALCONY SECTION (GLASS HANDRAIL)



D04

TYPICAL SLAB EDGE WHERE WINDOWS STACKED SECTION



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 Drawing Number DA-352
 Revision 01

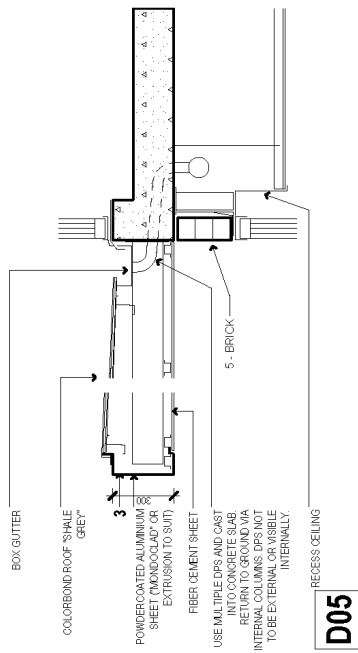
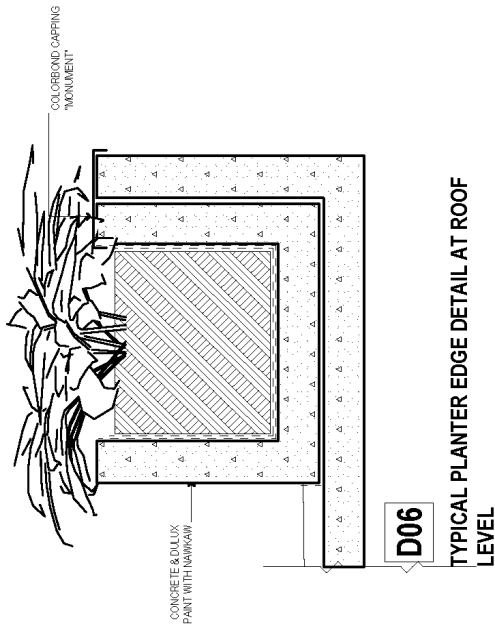
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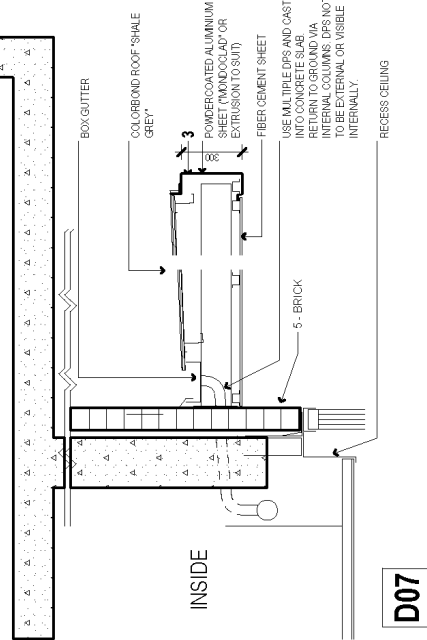
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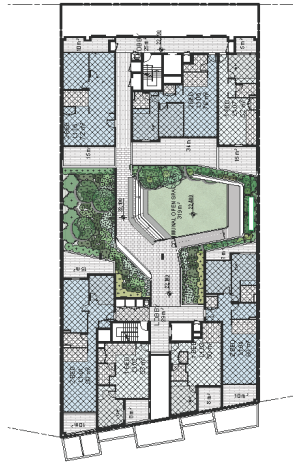
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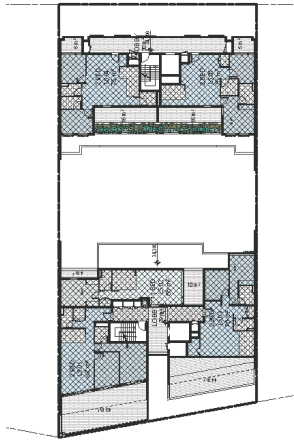
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 Drawing Number: **DA-353**
 Revision: **01**



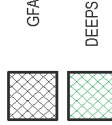
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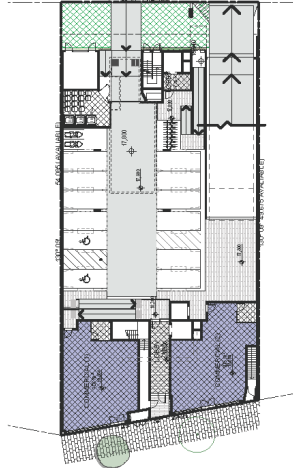
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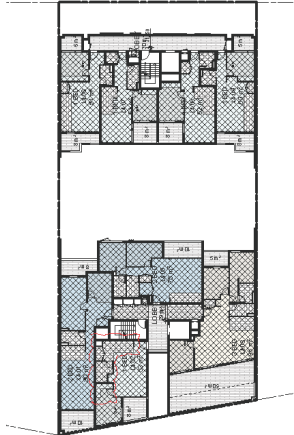
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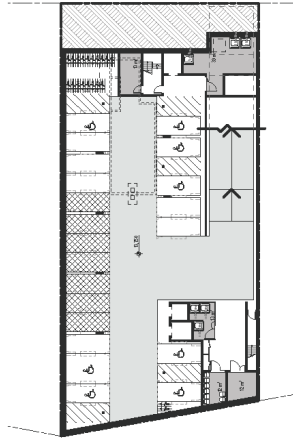
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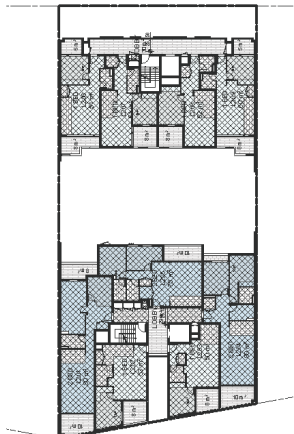
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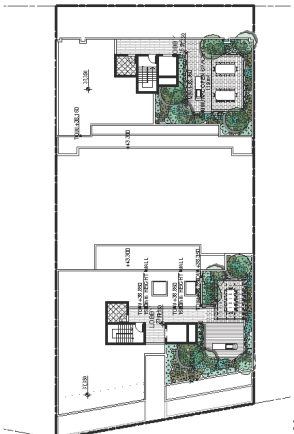
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BASEMENT 01
SCALE 1:500



LEVEL 02-03
SCALE 1:500



LEVEL 06
SCALE 1:500

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Project Number 17-089
Drawing Number DA-1401
Revision 02

Drawing Title
GFA & DEEPSOIL DIAGRAMS

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Attachment C- Clause 4.6 Exception to Development Standards



Statement of Environmental Effects

Project Number: 833

Site: 246-248 Wardell Road, Marrickville NSW 2204

Proposal: Shop Top High Density Transit Oriented Development

Client: Wardell Developments Pty Ltd

Date: 15 March 2022 (Revision in response to Council's RFI)



WARDELL ROAD PHOTOMONTAGE

Figure 1 - Project Image

Daintry Associates Pty Ltd ABN 66 159 957 712

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To the extent that any matters arise that require further clarification or addition information that clarification or additional information will be provide during the statutory assessment process or in any other process or appeal.

1 Purpose

This Statement of Environmental Effects ("SEE") has been prepared for submission with the development application (DA) as required by Schedule 1, Part 1, Section 2 (1)(c) of the *Environmental Planning & Assessment Regulation 2000* ("Regulation") in accordance with the *Environmental Planning and Assessment Act 1979* ("Act").

Schedule 1, Part 2(4) of the Regulation provides:

"A statement of environmental effects referred to in subclause (1) (c) must indicate the following matters:

- a) the environmental impacts of the development,*
- b) how the environmental impacts of the development have been identified,*
- c) the steps to be taken to protect the environment or to lessen the expected harm to the environment,*
- d) any matters required to be indicated by any guidelines issued by the Director-General for the purposes of this clause."*

This SEE does not purport to be an assessment under section 4.15 and limits itself to the requirements of the Regulation. This SEE relies in good faith upon the plans provided by the architect and a range of consult experts as is necessary and reasonable, subject to section 10.6 of the Act.

This revision A of the SEE reflects the responses to the Council's RFI and the amended DA Package and supporting list of changes from the Architects dated 8 February 2022.

We note that the most significant consolidation of the SEPPs since 1978 occur and these commenced 1 March 2022 along with a revised *Environmental Planning and Assessment Regulation 2021*.

With respect to the *Environmental Planning and Assessment Regulation 2021* we note that the statutory requirements for a Statement of Environmental Effects remain unchanged. There is no equivalent requirement as set out by the repealed Regulation, but it is compulsory when lodging a DA to lodge a Statement of Environmental Effects on the planning portal.

With respect to the SEPPs, we ask that the Council ensure that these now final and certain SEPPs be considered, but also note that the SEPPs as in force at the date of the lodgement of this DA are subject to Savings and Transitional Provisions and that determinative weight must be given to the repealed SEPPs.

2 Statement of Environmental Effects (SEE)

2.1 The description of the proposal

The proposal includes the following and any ancillary works required to undertake the proposal:

- Demolition of Existing Houses
- Construction of a Mixed-Use Development (Shop top Housing), Commercial Retail at the ground floor Wardell Road frontage and Residential above with basement carparking and ancillary facilities.

The proposal is in urban planning terms, a **transit-oriented development (TOD)** being a type of urban development that maximizes the amount of residential, business and leisure space within walking distance of public transport. It promotes a symbiotic relationship between dense, compact urban form and public transport use. Please refer to clause 3.8 of this SoEE which details Transport Accessibility.

2.2 Impacts of the development

The major impacts are the loss of some but not all solar access to neighbours.

This loss of solar access is the strategically planned and inevitable consequence of this last consolidated site achieving the desired future character of this B1 - Neighbourhood Centre as shaped by existing and neighbouring approved development, that is development not only in the immediate vicinity of the site (the visual catchment) but existing and directly abutting buildings.

All other impacts are demonstrably predictabilities and well managed by the design as detailed below.

2.3 Impact Identification

The environmental impacts have been identified by reference to:

- Relevant statutory requirements:
 - The Environmental Planning and Assessment Act 1979 (Act)
 - The Environmental Planning and Assessment Regulation 2000 (Regulation)
- Environmental Planning Instruments (EPI) including:
 - State Environmental Planning Policy (Affordable Rental Housing) 2009
 - **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

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- State Environmental Planning Policy (Concurrences and Consents) 2018
- State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017
- **State Environmental Planning Policy (Exempt and Complying Development Codes) 2008**
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- **State Environmental Planning Policy (Infrastructure) 2007**
- State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007
- State Environmental Planning Policy (Primary Production and Rural Development) 2019
- **State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**
- **State Environmental Planning Policy No 19—Bushland in Urban Areas**
- State Environmental Planning Policy No 21—Caravan Parks
- State Environmental Planning Policy No 33—Hazardous and Offensive Development
- State Environmental Planning Policy No 36—Manufactured Home Estates
- State Environmental Planning Policy No 50—Canal Estate Development
- **State Environmental Planning Policy No 55—Remediation of Land**
- State Environmental Planning Policy No 64—Advertising and Signage
- State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (and the Apartment Design Guide (ADG))
- State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)
- **Marrickville Local Environmental Plan 2011 (LEP)**

- **Marrickville Development Control Plan (DCP) with the most relevant Sections being:**

- 2.1 Urban Design
- 2.3 Site and Context Analysis
- 2.7 Solar Access and Overshadowing
- 2.10 Parking
- 5.1 General Commercial and Mixed-Use Development Controls
- 9.22 Dulwich Hill Station South (Precinct 22)

I note that many of the DCP's provision seek to duplicate the provisions of SEPP 65 and SEPP BASIX. To the extent of any inconsistency the achievement of the SEPP objectives prevails.

I also note that this site is the last site on the eastern side of Wardell Road precinct to be developed and the preceding developments have not strictly complied with the section 9.22 Dulwich Hill Station South (Precinct 22).

Therefore, in determining the desired future character, as articulated by Chief Justice Brian Preston in *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 at [63] matters other than the development standard needed to be considered.

His Honour noted that other provisions of the local environmental plan and other approved development that contravenes the development standard are both relevant to determining desired future character. This is discussed in far greater detail below and given prominence in the clause 4.6 justification for the lift overruns and fire stairs exceeding the HOB under clause 4.3 of the LEP.

Suffice to say, section 2.3 "Site and Context Analysis" of the DCP is critical to the determination of the appropriate built form as the development controls in the DCP and the controls in section 9.22 have been effectively abandoned by previous contemporary consents issued by the Court and Council.

The proposal must therefore respond to the context rather than the DCP controls, to be consistent with the SEPP 65, ADG, LEP and DCP objectives.

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The revised supporting plans and reports:

-  246 - 248 Wardell Rd, Marrickville - Access Report.pdf
-  246 - 248 Wardell Road, Marrickville - Acoustics Report.pdf
-  246-248 Wardell Rd Marrickville - Ausgrid letter.pdf
-  246-248 Wardell Rd Marrickville - CPTED.pdf
-  246-248 Wardell Road Marrickville - BASIX report.pdf
-  246-248 Wardell Road, Marrickville - Private waste Letter.PDF
-  246-248 Wardell Road, Marrickville - Cost Report.pdf
-  246-248 Wardell Street, Marrickville - DA 000 DATA.pdf
-  246-248 Wardell Street, Marrickville - Ausgrid Mini Chamber details.pdf
-  246-248 Wardell Street, Marrickville - DA 100 FLOOR PLANS.pdf
-  246-248 Wardell Street, Marrickville - DA 200 ELEVATIONS.pdf
-  246-248 Wardell Street, Marrickville - DA 300 SECTIONS.pdf
-  246-248 Wardell Street, Marrickville - DA 350 FACADE SECTIONS DETAILS.pdf
-  246-248 Wardell Street, Marrickville - DA 1400 COMPLIANCE.pdf
-  246-248 Wardell Street, Marrickville - DA-1600 3D MODEL.pdf
-  246-248 Wardell Street, Marrickville - DSI.pdf
-  246-248 Wardell Street, Marrickville - Geotechnical Report.pdf
-  246-248 Wardell Street, Marrickville - GFA Letter.pdf
-  246-248 Wardell Street, Marrickville - HAZMAT Report.pdf
-  246-248 Wardell Street, Marrickville - Landscape Report.pdf
-  246-248 Wardell Street, Marrickville - PSI.pdf
-  246-248 Wardell Street, Marrickville - RFI response Letter.pdf
-  246-248 Wardell Street, Marrickville - SEE.PDF
-  246-248 Wardell Street, Marrickville - Stormwater.pdf
-  246-248 Wardell Street, Marrickville - Survey.pdf
-  246-248 Wardell Street, Marrickville - Waste Management Plan.pdf
-  246-248 Wardell Street, Marrickville -Arborist Report.pdf
-  246-248 Wardell Street, Marrickville -Architect Verification.PDF
-  246-248 Wardell Street, Marrickville -Owner consent.pdf
-  246-248 Wardell Street, Marrickville -Traffic Report.pdf

2.4 Mitigation

The steps to be taken to protect the environment or to lessen the expected harm to the environment include:

- The building has been designed to transition in height from the higher building to its north to the lower building to its south.
- The disposition of not only comply gross floor area (GFA), but GFA that is less than the maximum permitted, maintains a central open garden and generous internal separation between an eastern and western building core. This is not only consistent with, but better than the built form to the north and the south.
- The design adopts the detailed Site and Context Analysis, rather than the built form at Figure 22.1b of Part 9.22 of the DCP. This better preserves reasonable solar access to the southern neighbours and unfettered ventilation to both the southern and northern neighbours.
- The achievement of the ADG's objectives applying the principles in SEPP 65, including the need to provide shaded (podium level) COS and two sunlit (roof top) COS with dignified and equitable lift access, and NCC-BCA compliant egress. This element is critical to the provision of high amenity outcomes for future occupants and underpins the environmental planning justification addressed under clause 4.6 of the LEP.
- The design provides two separated tower elements, narrow building depths and these as well as other design features ensure excellent cross ventilation (71%) and solar access (74%).
- The building demonstrates high quality urban design and amenity outcomes consistent with SEPP 65, the ADG, the LEP and DCP objectives.
- The quantum and quality of Common Open Space is high at 43.7% or 552m² shared between shaded a sunlit landscaped areas at level 1 and levels 6 on both tower element.

Compliance

CONTROL	REQUIREMENT	PROPOSED	COMPLIES
Floor Space Ratio	2.40 : 1 MAX	2.30 : 1	✓
Gross Floor Area	3,034.8 m ² MAX	2,906.0 m ²	✓
Building Height	20.00 m MAX	23.64 m	✗
Carparking (ADG)			
<i>Residential</i>	28.4 MIN	23.0	✗
<i>Residential Visitor</i>	7.6 MIN	8.0	✓
<i>Commercial</i>	2.2 MIN	2.0	✓
<i>Commercial Visitor</i>	0.0 MIN	0.0	✓
<i>Total</i>	39 MIN	33.0	✗
Carparking (DCP) <i>Total</i>	26 MIN	33.0	✓
Motorcycle Parking (1/20 units)	1.90 MIN	2.0	✓
Bicycle Parking	27.00 MIN	27.0	✓
Solar Access (> 2hours)	70% MIN	28 74%	✓
No Solar Access (< 15 mins)	15% MAX	5 13%	✓
Cross Ventilation (first 10 storeys)	60% MIN	27 71%	✓
Adaptable Units			
<i>Adaptable</i>	20% MIN	8 21%	✓
<i>Livable Housing Silver Level</i>	20% MIN	8 21%	✓
Communal Open Space (ADG)	25% MIN	552 m ² 43.7%	✓
Unit Storage	1Bed 6 m ³ MIN	6 m ³	✓
(min. half in unit, remaining in	2Bed 8 m ³ MIN	8 m ³	✓
basement)	3Bed+ 10 m ³ MIN	10 m ³	✓
Deep Soil (ADG)	7% MIN	83 m ² 7%	✓

Figure 2 - Compliance Table

2.5 Director Generals Guidelines

The Director General has not gazetted and guidelines under Schedule 1, Part 2(4)(d) of the Regulation. The format of this SEE and relevant content follows DoPI draft guidelines (un-published).

3 Executive Summary

3.1 The site

The site has a frontage of 24.77m to Wardell Road that falls from north to south by 24.38m across the frontage. The rear boundary of the site has a frontage to Murray Lane.

The site has a depth of 54.085m along the north boundary (high side) and 49.675m along the southern boundary. The site falls from RL19.41m (NW Corner) to (NE Corner) to 16.63m (SE Corner) with a relatively consistent cross falls NE to SW as well (please refer to the Warren Elderidge and Associates Detail Survey Plan).

The site area is 1,264.5m². There are two houses erected upon the existing site with other detached outbuildings including a garage.

There are six (6) trees that have negligible landscape or no biodiversity significance to be removed, including:

- 8m Camphor laurel (*Cinnamomum camphora*) considered a weed,
- 5m Macadamia (*Macadamia tetraphylla*),
- Small Lemon Tree (Eureka), and
- 8m Jacaranda (*mimosifolia*) and exotic.

3.2 The proposal

The proposal is to demolish two existing houses and all ancillary structures and to build a 38-apartment shop top housing development as defined by the LEP. Above two levels of basement that includes parking, loading dock, storage, and mechanical services.

The ground floor contains two shops with areas of 107m² and 105m² will provide active retail frontage to Wardell Road with separate street front entries.

Access to the residential portion is separate and well defined. The rear element of the ground floor contains commercial and residential and visitor parking, bicycle parking and motor bike parking as well as additional storage with two crossings from Murray Lane.

3.3 The locality

The existing character within the immediate vicinity (visual catchment of the site) is:

- Two seven (7) towers (HOB RL42.68m) and seven (7) storey (HOB RL40.05m) concrete and brick mixed use development to the northeast at No.244-244A Wardell Road
- A six (6) (HOB RL35.74) concrete and brick Mixed use RFB to the southwest at No.250 Wardell Road.

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Both the southern and northern neighbouring developments are characterised by two towers element one northwest facing Wardell Road and their internal COS and the other tower facing southeast to Murray Lane and northwest to the same COS.

This context is show in:

- Figure 3 - Aerial of Locality (Source Google Maps).
- Figure 4 - Murray Lane at the intersection of Ewart Street (Source: Google Street View)
- Figure 5 - Murray Lane - Site Centred (Source: Google Street View)
- Figure 6 - Wardell Road from Intersection Ewart Street (Source: Google Street View)A
- Figure 7 - Wardell Road Site Centred (Source: Google Maps)

The existing building are generally the same in there two tower and internal COS form from Ewart Street to Dudley Street between Wardell Road and Murray Lane.

This site is the last two remnant houses to be demolished to complete what is a relatively consistent, albeit completely different built form than that detailed by the DCP as discussed in more detail below.

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Figure 3 - Aerial of Locality (Source Google Maps)



Figure 4 - Murray Lane at the intersection of Ewart Street (Source: Google Street View)



Figure 5 - Murray Lane - Site Centred (Source: Google Street View)



Figure 6 - Wardell Road from Intersection Ewart Street (Source: Google Street View)



Figure 7 - Wardell Road Site Centred (Source: Google Maps)

3.4 The statutory controls

The core statutory controls under Marrickville Local Environmental Plan 2011 (the LEP) are:

- Land Zoning B1 - Neighbourhood Centre
- Height of Building 20 m
- Floor Space Ratio 2.4:1
- Minimum Lot Size N/A
- Heritage N/A
- Land Reservation Acquisition N/A
- Foreshore Building Line N/A
- Acid Sulphate Soils Class 5

3.5 Compliance with statutory controls

The proposal is permissible with consent in the B1 zone. The proposal seeks an exception to the HOB to attain equitable access and emergency egress to and from high amenity roof top COS and this is the environmental planning justification for the exception. **The GFA results in a total FSR 0.1:1 less than the maximum 2.4:1.** There is no need for an ASS Management Plan as the proposal is low risk class 5 and the Geotechnical Report finds "No groundwater was observed in the boreholes during the site drilling. Therefore, site development will not result in the lowering of the groundwater where nearby ASS may be present and exposing them to oxidation. Based on our onsite observations, it is our opinion that the proposed construction will not intercept any ASS in the area nor cause lowering of any groundwater."

3.6 Existing Character

The existing character is reflected above by the description of the locality.

3.7 Desired Future Character

The desired future character is a direct reflection of the as built character of the urban block defined by Wardell Road (northwest) Murray Lane (southeast) between Ewart Street and Dudley Street.

This site is the last consolidated site in this section of Wardell Road to be developed.

Whilst the desired future character articulated by the DCP is jarringly discordant from this proposal, the desired future character so articulated has been abandoned by previous consents of the Council and the Court.

This has been touched upon above at clause 2.3 of this SoEE and is addressed below in more detail under the DCP provisions.

To be clear, the desired future character reflects the contemporary development in the same precinct as defined above.

The land to the east of Murray Lane is Zone R4 High Density Residential.

3.8 Transport Accessibility

The following transport lines have routes that pass within Dulwich Hill:

- **Bus:** [418](#), [428](#), [445](#)
- **Train:** [I2](#), [I3](#)
- **Light rail:** [L1](#)

3.8.1 Rail

The site is an 81m or 1 minute walk to Dulwich Hill Railway Station, a development site that could not be closer to a station than few in Sydney.

Dulwich Hill to Central is an 18minute journey, well within the ideal 30-minute City being the Greater Sydney Commissions PI2: 30-minute city goal¹

This site achieves the Greater Sydney Commissions relevant measures:

- Percentage of dwellings within 30 minutes of a metropolitan or strategic centre using the Network Capability Tool (updated)

¹ <https://www.greater.sydney/pi-2-30-minute-city>

- Frequency of public transport services to metropolitan and strategic centres within 30 minutes (new)
- Frequency of public transport services to large local centres within 30 minutes (new)
- Percentage of job containment in strategic centres (new)

3.8.2 Light Rails

Dulwich Hill is at the terminus of the Inner West Light Rail line and is provided with an Interchange to the heavy railway station and buses as detailed below.

Dulwich Hill is a rare transport node reinforcing that the site can be properly characterised a transit-oriented development.



Figure 8 - Sydney Light Rail network (Source: www.sydney.com.au)

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3.8.3 Bus

The three bus routes servicing Dulwich Hill are:

- 418-Kingsford to Burwood via Mascot, Sydenham & Dulwich Hill with 60 stops including the Dacey Gardens stop allowing access to the light rail at Kingsford with access to the University of New South Wales and the Centennial Park and Sydney Stadium precincts.
- 428 Canterbury to Martin Place with 39 stops providing key access to the University of Sydney and UTS.
- 445 418-Kingsford to Burwood via Mascot, Sydenham & Dulwich Hill with 59 stops.

The extent of bus coverage and its interconnectivity to other modes of public transport and its east west connectivity is rare in Sydney.

3.8.4 Private Vehicles

Wardell Road connects to the South to Old canterbury Road providing vehicle links to southwest Sydney. The completion of the St Peters interchange and its myriad of linked roads provides access to all major access and egress routes in Sydney to the east of the site.

3.8.5 Car Share

The closest car share pod (GoGet) is a 200m walk to Bedford Crescent at the termination of the Light Rail. There are a further 4 within 800m of the site.

3.8.6 Bicycle

The proposal provides for excellent bicycle storage. Bicycle access to Central Station in the CBD is 8.4km and a 31-minute ride, reinforcing the Greater Sydney Commissions PI2: 30-minute city goal²

3.9 Essential Services

In summary, Potable water, Sewer, Electricity, Gas, and telecommunications services are all available to the site and will be connected.

² <https://www.greater.sydney/pi-2-30-minute-city>

4 The proposal in detail

The proposal is detailed by the plans and supporting reports submitted with the development application.

It is proposed to:

- Provide environmental controls and tree protection zones.
- Demolish the existing buildings in accordance Australian Standard AS 2601—1991: *The Demolition of Structures*, published by Standards Australia, and as in force on 1 July 1993.
- Remove and dispose of all demolition material consistent with the Waste Management Plan by Dickens Solutions.
- Carry out site works including all geotechnical work and precautions as recommended by STS Geotechnical Pty Ltd's Report No.21/1684, Project No.31212/516D-G dated June 2021
- Construct a new mixed-use commercial/residential flat building with basement parking, meeting the objectives of all relevant EPI and DCP, in accordance with development consent as detailed by the amended proposal responding to Council's RFI.
- Carry out landscaping works in accordance with development consent.
- Carry out required public domain works to the frontages of Wardell Road and Murray in accordance with relevant approvals under the Roads Act 1993.
- Strata subdivide the building under the *Strata Schemes (Freehold Development) Act 1973*.
- Occupy and use the building in accordance with development consent and relevant Occupation Certificate(s).

4.1 Demolition

Prior to the commencement of any demolition works a photographic archival record of the building and landscape elements to be demolished will be submitted to the satisfaction of Council. This will include a copy of the survey and site plan annexed to the development application, postcard sized high resolution photographs of:

- each elevation,
- each structure and landscape feature,

- internal or external details if nominated in Council's heritage officer's assessment, report; and
- views to the subject property from each street and laneway or public space.

This will be done to recording the existing character of the locality.

Consistent with clause 92 of the *Regulation* all demolition work will be carried out in accordance with Australian Standard AS 2601—1991: *The Demolition of Structures*, published by Standards Australia, and as in force on 1 July 1993, by a Workcover NSW licenced contract. Such contractors are bound by their licence conditions and Workcover NSW OH&S laws and requirement to identify asbestos, lead and other potentially harmful waste and ensure that it's demolition, temporary storage and removal comply with current OH&S and environmental standards.

4.2 Removal and Disposal of Demolition Waste

Section 143 of the *Protection of the Environment Operations Act 1997* requires waste to be transported to a place that can lawfully accept it. The owner of the waste and the transporter are legally responsible for proving the waste was transported to a lawful place.

Waste will be classified by the Licence Demolition Contractor(s), Excavators, and trades in accordance with the Environmental Protection Authority's Waste Classification Guidelines (ISBN 978 1 74359 798 9):

- Part 1: Classifying waste
- Part 2: Immobilising waste
- Part 4: Acid sulphate soils
- Addendum to Part 1: Classifying Waste

The hazardous material survey required by AS2601 will determine whether asbestos waste (special waste) exists and, if present, it will be classified and only removed by licensed contractors.

Most of the waste will be recycled general solid waste including virgin excavated natural material (VENM) and general *building and demolition waste*.

Building and demolition waste means unsegregated material (other than material containing asbestos waste or liquid waste) that results from:

- the demolition, erection, construction, refurbishment, or alteration of buildings other than
 - chemical works
 - mineral processing works
 - container reconditioning works

- waste treatment facilities
- the construction, replacement, repair, or alteration of infrastructure development such as roads, tunnels, sewage, water, electricity, telecommunications, and airports

and includes materials such as:

- bricks, concrete, paper, plastics, glass, and metal
- timber, including unsegregated timber, that may contain timber treated with chemicals such as copper chrome arsenate (CCA), high temperature creosote (HTC), pigmented emulsified creosote (PEC) and light organic solvent preservative (LOSP)

but does not include excavated soil (for example, soil excavated to level off a site prior to construction or to enable foundations to be laid or infrastructure to be constructed).

Absent any more detailed waste management plan *general solid waste* and VENM will be dealt with in accordance with the Waste Management Plan by Dickens Solutions Ref 21079, dated July 2021

4.3 Site Works

It is proposed to undertake environmental control and site works ordinarily ancillary to demolition and construction. These include but may not be necessarily limited to the following activities.

4.3.1 Tree protection zone

There no remnant trees to be retained and no TPZ is required on the site or near the site with the public domain.

4.3.2 Environmental Controls

The principal contractor will ensure that the following works, monitoring, measures, and controls are installed and maintained as required by any consent and other statute:

- Erosion and sediment controls,
- Dust controls,
- Filtering of dewatering discharges,
- Hours of work and Noise controls,
- Vibration monitoring and controls as recommended by the Geotechnical engineer,
- Ablutions,
- Site crane, and
- Site fences and hoardings.

4.3.3 Erosion and Sedimentation Controls

Erosion and sedimentation controls will be implemented under a soil and water management plan, provided at the Construction Certificate stage, complying with:

- "Managing Urban Stormwater - Soils and Construction" published by the NSW Department of Housing 4th Edition" (*The Blue Book*), and consistent with,
- "Do it Right On Site, Soil and Water Management for the Construction Industry" published by the Southern Sydney Regional Organisation of Councils, 2001.

A detailed soil and water management plan is attached to the development application.

The final erosion and sedimentation control work will be assessed and approved pursuant to clause 161(1)(a)(v) of the Regulation.

4.3.4 Archaeological excavation

Section 139 of the *Heritage Act 1977* that:

"139 Excavation permit required in certain circumstances

- (1) A person must not disturb or excavate any land knowing or having reasonable cause to suspect that the disturbance or **excavation** will or is likely to result in a relic being discovered, exposed, moved, damaged, or destroyed unless the disturbance or **excavation** is carried out in accordance with an **excavation** permit.
- (2) A person must not disturb or excavate any land on which the person has discovered or exposed a relic except in accordance with an **excavation** permit."

We do not know of and have no reasonable cause to suspect that excavation will or is likely to result in a relic being discovered, exposed, moved, damaged, or destroyed.

It is not considered reasonably necessary for the Applicant to seek or obtain an excavation permit under the Section 139 of the *Heritage Act 1977* in the circumstance of this proposal.

4.3.5 Geotechnical Works

Geotechnical recommendations will be implemented by the principal contractor to comply with Section 177 of the *Conveyancing Act 1919* which creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

Further, the Regulation contains prescribed conditions under clause 98E requiring " the person having the benefit of the development consent must, at the person's own expense: (a) protect and support the adjoining premises from possible damage from the excavation, and (b) where necessary, underpin the adjoining premises to prevent any such damage."

This condition is deemed whether incorporated into any consent.

4.4 Building Work

The building process will stage given site constraints. Building work will be approved under one or more Construction Certificates. It is likely that a construction certificate may be obtained for geotechnical works, bulk excavation and basement works. Further Construction Certificate(s) will be obtained for the remainder of the building works.

4.5 Commissioning

The commissioning of all building services including all essential fire safety measures detailed by the Construction Certificate(s) will be subject to formal commissioning and certification by relevant professional engineers.

The commissioning of all building services will be completed prior to the issue of any occupation certificate for each relevant part of the building.

4.6 Torrens Title Subdivision

There is no Torrens subdivision. The site will be consolidated under a new Strata Plan.

4.7 Stratum Subdivision

This consent does not seek to stratum subdivide the building. Should the Applicant decide to do so a separate development application will be submitted to Council with a Draft Stratum Plan and Stratum Management Plan.

4.8 Strata Subdivision

The development application does not seek development consent to Strata Subdivide the building under Strata Schemes (Freehold Development) Act 1973. The owners will seek a Strata Certificate under Part 2 Division 4 of the Strata Schemes (Freehold Development) Act 1973, when the proposed lots substantially correspond with parts of the building shown in the building plans accompanying the construction certificate and designated in those building plans as being intended for separate occupation under the Codes SEPP.

4.9 Occupation and Use

The occupation and use of the building will be in accordance with the development consent and relevant Occupation Certificate(s).

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This application seeks development consent for the use of the ground floor of the development for general retail uses (shops), such that the fit-out of these spaces for use as shops and offices ("the current use of the premises must be a lawful use"³), may proceed under Part 5 General Commercial and Industrial Code of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 and residential apartments for the remainder of the development.

4.9.1 Hours of use

The proposal seeks the following hours of use for the initial uses of the shops. Any change to the hours of use proposed by individual owner will be subject to separate applications.

- Retail 7am to 10pm
- Commercial 7am to 10pm

The Applicant wishes to discuss any proposed conditions relating to hours of use with Council staff prior to the finalisation of the staff's development assessment report for any delegated determination or LPP.

5 Development Standards and Controls

The relevant EPI development standards and DCP controls have been disclosed through access to numerous NSW Government, other regulatory authorities and agencies as well as the Council databases.

Any amendments to EPI, Draft EPI or DCP post 19 August 2021 have not been considered by this Statement of Environmental Effects.

If necessary, subject to consideration of any savings and transitional provision the Applicant may be required to provide an addendum to the SEE addressing subsequent changes.

To the extent that there are any such changes between the date of this Statement of Environmental Effects and the assessment of the application we rely upon the Council making all statutory considerations under section 4.15 of the EPA Act at that date.

The architects have provided the required DVS and statements that address the SEPP 65 design principle and the 80 ADG objectives.

³ Cause 5.2(a) of [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#)

5.1 State Environmental Planning Policies

The following SEPPs as in force at the date of lodgement are considered relevant to the proposal.

Note: On 1 March 2022 the largest single consolidation of SEPPs under the *Environmental Planning and Assessment Act 1979* was implemented by the NSW Government. Nevertheless, as the SEPPs as in force at the date of lodgement of this development application are subject to savings and transitional provisions, determinative weight must be given to the following SEPPs as relevant to this proposal.

Council must also consider the now final and certain SEPPs, as in force, as required by section 4.15(1)(a) (ii) of the *Environmental Planning and Assessment Act 1979* as a statutory pre-condition the grant of any development consent.

5.1.1 State Environmental Planning Policy (Aboriginal Land) 2019

N/A to this proposal.

5.1.2 State Environmental Planning Policy (Activation Precincts) 2020

N/A to this proposal.

5.1.3 State Environmental Planning Policy (Affordable Rental Housing) 2009

N/A to this proposal.

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

This Policy applied to:

BASIX affected building having the same meaning as it has in the Environmental Planning and Assessment Regulation 2000.

BASIX affected development having the same meaning as it has in the Environmental Planning and Assessment Regulation 2000.

The Regulation definitions are:

BASIX affected building means any building that contains one or more dwellings but does not include a hotel or motel.

BASIX affected development means any of the following development that is not BASIX excluded development:

- (a) development that involves the erection (but not the relocation) of a BASIX affected building,

- (b) development that involves a change of building use by which a building becomes a BASIX affected building,
- (c) development that involves the **alteration, enlargement or extension of a BASIX affected building**, where the estimated construction cost of the development is:
- (i) \$100,000 or more—in the case of development for which a development application or an application for a complying development certificate is made on or after 1 October 2006 and before 1 July 2007, or
 - (ii) \$50,000 or more—in the case of development for which a development application or an application for a complying development certificate is made on or after 1 July 2007,
- (d) development for the purpose of a swimming pool or spa, or combination of swimming pools and spas, that services or service only one dwelling and that has a capacity, or combined capacity, of 40,000 litres or more.

A BASIX Certificate (Certificate No. **1221792M**) is attached to the DA and makes relevant commitments. Should there be any amendments to the design it is likely that this will have to be reviewed.

To the extent that any other EPI or DCP provision is a competing provision it is not a relevant consideration for Council's assessment or determination.

5.1.5 State Environmental Planning Policy (Coastal Management) 2018

N/A to this proposal.

5.1.6 State Environmental Planning Policy (Concurrences and Consents) 2018

This is a procedural SEPP that provides the Planning Secretary with the power to act in the place of the person for the purposes of deciding whether to grant concurrence to the development.

5.1.7 State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

N/A to this proposal.

5.1.8 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

Where available to the Applicant, Owner and Principal Contractors works may be carried out subject to compliance with the relevant provisions of the Codes SEPP as either exempt or complying development.

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5.1.9 State Environmental Planning Policy (Gosford City Centre) 2018

This SEPP is not applicable to this proposal.

5.1.10 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

This SEPP is not applicable to this proposal.

5.1.11 State Environmental Planning Policy (Infrastructure) 2007

Rail and Road Noise

The site is development near but not immediately adjacent to the Rail Corridor.

Clause 87 of the SEPP provides that:

"87 Impact of rail noise or vibration on non-rail development

- (1) This clause applies to development for any of the following purposes that is on land in or adjacent to a rail corridor and that the consent authority considers is likely to be adversely affected by rail noise or vibration—
 - (a) residential accommodation,
 - (b) a place of public worship,
 - (c) a hospital,
 - (d) an educational establishment or centre-based childcare facility.
- (2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.
- (3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—
 - (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10.00 pm and 7.00 am,
 - (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom, or hallway)—40 dB(A) at any time."

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The annual average daily traffic volume on this road is assumed to trigger clause 102 of the ISEPP. The ISEPP is triggered by an annual average daily traffic volume of more than 40,000 vehicles.

The proposal requires consideration of Development Near Rail Corridors and Busy Roads – Interim Guideline ISBN 978-0-7347-5504-9. © The State Government of NSW through the Department of Planning 2008, DoP 08_048

See: http://www.planning.nsw.gov.au/planningsystem/pdf/guide_infra_devtrailroadcorridors_interim.pdf

The DA is supported by a Noise Report from Rodney Stevens Acoustics Report 210292R1 Revisions "Road and Aircraft Noise Impact Assessment, Proposed Mixed Use Development 246 - 248 Wardell Road, Marrickville".

This detailed report addresses all relevant noises issues for Council's consideration. Subject to the adoption of the recommendations of the report traffic noise impacts have been satisfactorily resolved.

As for the relevant rW assessments under the Building Code of Australia they are also addressed by the **Noise Impacts Assessment** by Rodney Stevens Acoustics.

Vehicular Access

Clause 101 is satisfied in that vehicular access to the land is provided by a road other than the classified road (**Murray Lane**).

Traffic Generating Development

Clause 104 Traffic Generating Development is triggered.

This traffic generating development is triggered by column 3 to Schedule 3 of the ISEPP:

Relevant uses from column 1 are:

- Apartment or residential flat building 75 or more dwellings (135 proposed)
- Shops and Commercial Premises 1,000m²

The proposal is **NOT** traffic generating development under clause 104 of the ISEPP.

5.1.12 State Environmental Planning Policy (Koala Habitat Protection) 2019

This SEPP is not applicable to this proposal.

5.1.13 State Environmental Planning Policy (Kosciuszko National Park—Alpine Resorts) 2007

This SEPP is not applicable to this proposal.

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5.1.14 State Environmental Planning Policy (Kurnell Peninsula) 1989

This SEPP is not applicable to this proposal.

5.1.15 State Environmental Planning Policy (Major Infrastructure Corridors) 2020

This SEPP is not applicable to this proposal.

5.1.16 State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

This SEPP is not applicable to this proposal.

5.1.17 State Environmental Planning Policy No 19—Bushland in Urban Areas

This SEPP is not relevant to this proposal as there is not remnant bushland nor any significant bush upon this site.

There are six (6) trees that have negligible landscape and no biodiversity significance to be removed, including:

- 8m Camphor laurel (*Cinnamomum camphora*) considered a weed,
- 5m Macadamia (*Macadamia tetraphylla*),
- Small Lemon Tree (Eureka), and
- 8m Jacaranda (*mimosifolia*) and exotic.

5.1.18 State Environmental Planning Policy No 21—Caravan Parks

This SEPP is not applicable to this proposal.

5.1.19 State Environmental Planning Policy No 33—Hazardous and Offensive Development

This SEPP is not applicable to this proposal.

5.1.20 State Environmental Planning Policy No 36—Manufactured Home Estates

This SEPP is not applicable to this proposal.

5.1.21 State Environmental Planning Policy No 47—Moore Park Showground

This SEPP is not applicable to this proposal.

5.1.22 State Environmental Planning Policy No 50—Canal Estate Development

This SEPP is not applicable to this proposal.

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5.1.23 State Environmental Planning Policy No 55—Remediation of Land

SEPP 55 applies to the land and pursuant to section 4.15 of the Act is a relevant consideration for the Council.

Clause 7 of the SEPP 55 provides:

- " (1) A consent authority must 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.
- (2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.
- (3) The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.
- (4) The land concerned is:
- (a) land that is within an investigation area,
 - (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,
 - (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational, or childcare purposes, or for the purposes of a hospital—land:
 - (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose

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referred to in Table 1 to the contaminated land planning guidelines has been carried out, and

- (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge)."

Contaminated land is land in, on or under which any substance is present at a concentration above that naturally present in, on or under the land and that poses, or is likely to pose, an immediate or long-term risk to human health or the environment.

Appendix A of the *Managing Land Contamination, Planning Guidelines, SEPP 55—Remediation of Land*, provides a list of land use activities, that through an investigation of "site history", if disclosed, would find reasonable ground to trigger the "site investigation process" entailing investigations beyond "preliminary investigation" of "site history".

The site is two pre-existing single dwelling houses. There is no evidence that any pre-existing uses on the site of neighbouring land included land use activities listed in the *Planning Guidelines* above.

It is my submission that Council can be satisfied that the site is suitable in its current state for the purpose for which the development is proposed to be carried out in accordance with clause 7 of the SEPP.

5.1.24 State Environmental Planning Policy No 64—Advertising and Signage

This SEPP is not applicable to this proposal.

5.1.25 State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

Clause 4 of the SEPP sets out the Application of Policy:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed-use development with a residential accommodation component if—

(a) the development consists of any of the following—

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
- (iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

(2) If particular development comprises development to which subclause (1) applies and other development, this Policy applies to the part of the development that is development to which subclause (1) applies and does not apply to the other part.

(3) To remove doubt, this Policy does not apply to a building that is a class 1a or 1b building within the meaning of the Building Code of Australia.

(4) Unless a local environmental plan states otherwise, this Policy does not apply to a boarding house or a serviced apartment to which that plan applies.

The proposal contains 3 or more storeys and 4 or more self-contained dwellings being class 2 building under the Building Code of Australia.

Schedule 1, Part 1, Clause 2(5) of the Regulation requires that in addition to a statement of environmental effects where SEPP 65 applies the following must be provided:

"In addition, a statement of environmental effects referred to in subclause (1)(c) or an environmental impact statement in respect of State significant development must include the following, if the development application relates to residential apartment development to which State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development applies—

(a) an **explanation of how**—

(i) the **design quality principles** are addressed in the development, and

(ii) in terms of the Apartment Design Guide, **the objectives of that guide have been achieved** in the development,

(b) drawings of the proposed development in the context of surrounding development, including the streetscape,

(c) development compliance with building heights, building height planes, setbacks and building envelope controls (if applicable) marked on plans, sections, and elevations,

(d) drawings of the proposed landscape area, including species selected and materials to be used, presented in the context of the proposed building or buildings, and the surrounding development and its context,

(e) if the proposed development is within an area in which the built form is changing, statements of the existing and likely future contexts,

(f) photomontages of the proposed development in the context of surrounding development,

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- (g) a sample board of the proposed materials and colours of the facade,
- (h) detailed sections of proposed facades,
- (i) if appropriate, a model that includes the context."

Explanation of the design in terms of the design quality principles

This is addressed by the Architect's DVS and statement addressing the 80 ADG objectives dated 4 August 2021.

This SoEE will not repeat any elements of the DVS or ADG Statement

5.1.26 State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)

This SEPP is not applicable to this proposal.

5.1.27 State Environmental Planning Policy (Penrith Lakes Scheme) 1989

This SEPP is not applicable to this proposal.

5.1.28 State Environmental Planning Policy (Primary Production and Rural Development) 2019

This SEPP is not applicable to this proposal.

5.1.29 State Environmental Planning Policy (State and Regional Development) 2011

This SEPP is not applicable to this proposal.

5.1.30 State Environmental Planning Policy (State Significant Precincts) 2005

This SEPP is not applicable to this proposal.

5.1.31 State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

This SEPP is not applicable to this proposal.

5.1.32 State Environmental Planning Policy (Sydney Region Growth Centres) 2006

This SEPP is not applicable to this proposal.

5.1.33 State Environmental Planning Policy (Three Ports) 2013

This SEPP is not applicable to this proposal.

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5.1.34 State Environmental Planning Policy (Urban Renewal) 2010

This SEPP is not applicable to this proposal.

5.1.35 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

There are six (6) trees that have negligible landscape and no biodiversity significance to be removed, including:

- 8m Camphor laurel (*Cinnamomum camphora*) considered a weed,
- 5m Macadamia (*Macadamia tetraphylla*),
- Small Lemon Tree (Eureka), and
- 8m Jacaranda (*mimosifolia*) and exotic.

5.1.36 State Environmental Planning Policy (Western Sydney Aerotropolis) 2020

This SEPP is not applicable to this proposal.

5.1.37 State Environmental Planning Policy (Western Sydney Parklands) 2009

This SEPP is not applicable to this proposal.

5.1.38 Sydney Regional Environmental Plan No 16—Walsh Bay

This SEPP is not applicable to this proposal.

5.1.39 Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997)

This SEPP is not applicable to this proposal.

5.1.40 Sydney Regional Environmental Plan No 24—Homebush Bay Area

This SEPP is not applicable to this proposal.

5.1.41 Sydney Regional Environmental Plan No 26—City West

This SEPP is not applicable to this proposal.

5.1.42 Sydney Regional Environmental Plan No 30—St Marys

This SEPP is not applicable to this proposal.

5.1.43 Sydney Regional Environmental Plan No 33—Cooks Cove

This SEPP is not applicable to this proposal.

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5.1.44 Sydney Regional Environmental Plan No 8 (Central Coast Plateau Areas)

This SEPP is not applicable to this proposal.

5.1.45 Sydney Regional Environmental Plan No 9—Extractive Industry (No 2—1995)

This SEPP is not applicable to this proposal.

5.1.46 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The site is not located within Sydney Harbour Catchment Map (Amendment 2016)⁴.

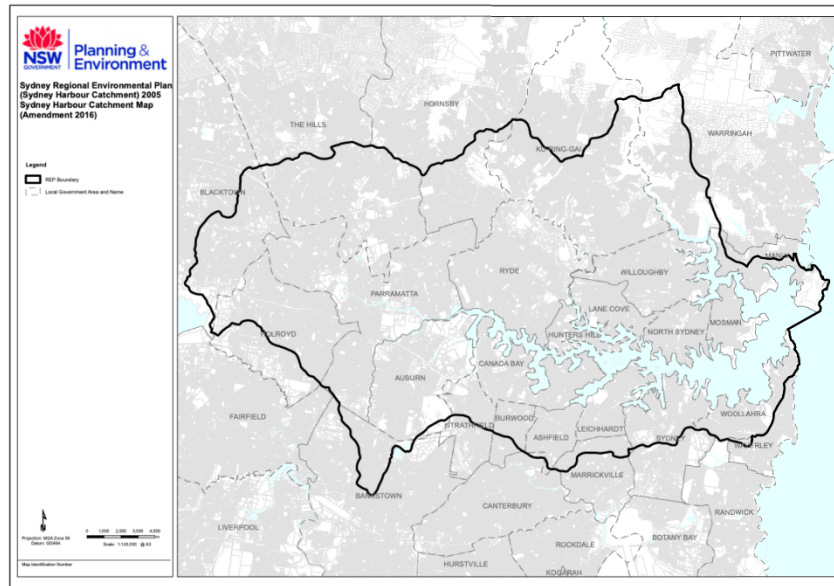


Figure 9 - Sydney Harbour Catchment Map (Amendment 2016)⁵

⁴ <https://www.planning.nsw.gov.au/-/media/Files/DPE/Maps/sydney-harbour-catchment-map-2016.pdf?la=en>

⁵ <https://www.planning.nsw.gov.au/-/media/Files/DPE/Maps/sydney-harbour-catchment-map-2016.pdf?la=en>

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The site drains to the Cooks River Catchment

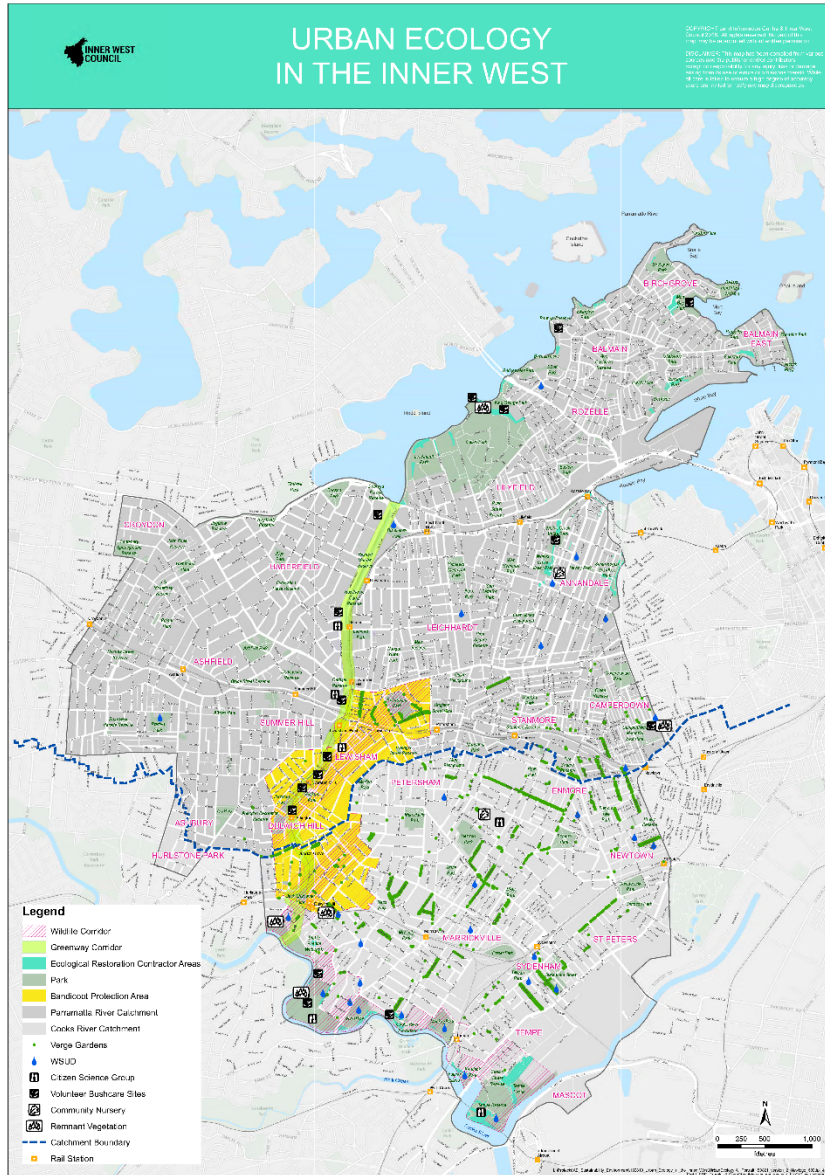


Figure 10 - Inner West Catchment Map

5.2 Draft State Environmental Planning Policies

Our search of the Department of Planning and Infrastructure's "on exhibition" disclosed any the following potentially relevant Draft SEPP that must be considered under section 4.15(1)(a)(ii) of the Act at the date of lodgement of the DA.

We note that on 1 March 2022 the NSW Government the repeal of the Environmental Planning and Assessment Regulation 2000 and its replacement with the Environmental Planning and Assessment Regulation 2021; and repealed of 43 state environmental planning policies (SEPPs) and the consolidation of their existing provisions into 11 new SEPPs.

To the extent they are relevant Council must consider, but given savings and transitional provisions, need not give determinative weight to the following SEPPs.

The new SEPPs (and the SEPPs that they replace) are listed below:

The State Environmental Planning Policy (Biodiversity and Conservation) 2021 will replace:

- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017;
- State Environmental Planning Policy (Koala Habitat Protection) 2020;
- State Environmental Planning Policy (Koala Habitat Protection) 2021;
- Murray Regional Environmental Plan No 2—Riverine Land;
- State Environmental Planning Policy No 19—Bushland in Urban Areas;
- State Environmental Planning Policy No 50—Canal Estate Development;
- State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011;
- Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997);
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;
- Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment; and
- Willandra Lakes Regional Environmental Plan No 1—World Heritage Property.

The State Environmental Planning Policy (Industry and Employment) 2021 will replace:

- State Environmental Planning Policy (Western Sydney Employment Area) 2009; and
- State Environmental Planning Policy No 64—Advertising and Signage.

The State Environmental Planning Policy (Planning Systems) 2021 will replace:

- State Environmental Planning Policy (State and Regional Development) 2011;

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- State Environmental Planning Policy (Aboriginal Land) 2019; and
- State Environmental Planning Policy (Concurrences and Consents) 2018.

The State Environmental Planning Policy (Primary Production) 2021 will replace:

- State Environmental Planning Policy (Primary Production and Rural Development) 2019; and
- Sydney Regional Environmental Plan No 8 (Central Coast Plateau Areas).

The State Environmental Planning Policy (Resilience and Hazards) 2021 will replace:

- State Environmental Planning Policy (Coastal Management) 2018;
- State Environmental Planning Policy No 33—Hazardous and Offensive Development; and
- State Environmental Planning Policy No 55—Remediation of Land.

The State Environmental Planning Policy (Resources and Energy) 2021 will replace:

- State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007; and
- Sydney Regional Environmental Plan No 9—Extractive Industry (No 2—1995).
- The State Environmental Planning Policy (Transport and Infrastructure) 2021 will replace:
 - State Environmental Planning Policy (Infrastructure) 2007;
 - State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017;
 - State Environmental Planning Policy (Major Infrastructure Corridors) 2020; and
 - State Environmental Planning Policy (Three Ports) 2013.

The State Environmental Planning Policy (Precincts—Central River City) 2021 will replace:

- Parts of the State Environmental Planning Policy (State Significant Precincts) 2005;
- Parts of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006;
- State Environmental Planning Policy (Kurnell Peninsula) 1989;
- Sydney Regional Environmental Plan No 24—Homebush Bay Area; and
- State Environmental Planning Policy (Urban Renewal) 2010.

The State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021 will replace:

- Parts of the State Environmental Planning Policy (State Significant Precincts) 2005;

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- Darling Harbour Development Plan No 1;
- Sydney Regional Environmental Plan No 26—City West;
- Sydney Regional Environmental Plan No 16—Walsh Bay;
- Sydney Regional Environmental Plan No 33—Cooks Cove; and
- State Environmental Planning Policy No 47—Moore Park Showground.

State Environmental Planning Policy (Precincts—Regional) 2021 will replace:

- Parts of the State Environmental Planning Policy (State Significant Precincts) 2005;
- State Environmental Planning Policy (Activation Precincts) 2020;
- State Environmental Planning Policy (Kosciuszko National Park—Alpine Resorts) 2007; and
- State Environmental Planning Policy (Gosford City Centre) 2018.

The State Environmental Planning Policy (Precincts—Western Parkland City) 2021 will replace:

- Parts of the State Environmental Planning Policy (State Significant Precincts) 2005;
- Parts of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006; State Environmental Planning Policy (Western Sydney Aerotropolis) 2020;
- State Environmental Planning Policy (Penrith Lakes Scheme) 1989;
- Sydney Regional Environmental Plan No 30—St Marys; and
- State Environmental Planning Policy (Western Sydney Parklands) 2009.

This Statement of Environmental Effects submits that the Draft SEPP (albeit they are final and certain as they have now commenced) should be given little weight as their provisions essentially replicate the pre-existing SEPP considerations address above by this SEE.

5.3 Marrickville Local Environmental Plan 2011 (LEP)

5.3.1 Clause 2.1

The proposed shop top housing is permissible with consent in the B1 zone.

The proposal is consistent with the zone objectives:

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.
- To provide for housing attached to permissible non-residential uses in development of a type and scale compatible with the surrounding neighbourhood.
- To provide for spaces, at street level, which are of a size and configuration suitable for land uses which generate active street-fronts.

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- To enable a purpose-built dwelling house to be used in certain circumstances as a dwelling house.

5.3.2 Clause 1.2

The proposal is also consistent with the following relevant aims of the LEP:

- (a) to support the efficient use of land, vitalisation of centres, integration of transport and land use and an appropriate mix of uses,
- (b) to increase residential and employment densities in appropriate locations near public transport while protecting residential amenity,
- (d) to promote sustainable transport, reduce car use and increase use of public transport, walking and cycling,
- (e) to promote accessible and diverse housing types including the provision and retention of affordable housing,
- (f) to ensure development applies the principles of ecologically sustainable development,
- (h) to promote a high standard of design in the private and public domain.

5.3.3 Clause 2.7 & Clause 5.10

This application seeks consent for demolition, and we note that the existing building are not within a NCA nor listed items in Schedule 5 of the LEP.

5.3.4 Clause 4.3

The proposal seeks an exception to the HOB to attain equitable access and emergency egress to and from high amenity roof top COS and this is the environmental planning justification for the exception. The amended proposal makes no change to the maximum HOB as the WC added do not exceed the maximum HOB originally proposed and subject to the Clause 4.6 exception sought below.

5.3.5 Clause 4.4

The GFA results in a total FSR 0.1:1 less than the maximum 2.4:1.

5.3.6 Clause 4.6

The exception to clause 4.3 is contained with the clause 4.6 Exception (Annexure 1) to this SoEE.

5.3.7 Clause 6.1

There is no need for an ASS Management Plan as the proposal is low risk class 5 and the Geotechnical Report finds "No groundwater was observed in the boreholes during the site drilling. Therefore, site development will not result in the lowering of the groundwater where nearby ASS may be present and exposing them to oxidation. Based on our onsite observations, it is our opinion that the proposed construction will not intercept any ASS in the area nor cause lowering of any groundwater."

5.3.8 Clause 6.2 Earthworks

The objectives of this clause are achieved. I also note that the geotechnical report makes relevant recommendations to ensure that section 177 of the *Coveyancing Act 1919* is complied with:

"a person has a duty of care not to do anything on or in relation to land (the supporting land) that removes the support provided by the supporting land to any other land (the supported land)."

The recommendations of the geotechnical engineer should be adopted in relevant development consent conditions.

5.3.9 Clauses 6.5 & 6.6

Aircraft Noise and Airspace Operations

Clauses 6.5 and 66 of the LEP applies to land near the Sydney Airport.

The Obstacle limitation surface (OLS) defines the airspace surrounding an airport that must be protected from obstacles to ensure aircraft flying in good weather during the initial and final stages of flight, or in the vicinity of the airport, can do so safely.

We note that the site is under the OLS (**Figure 11**) for Kingsford Smith/Sydney Airport.

See: <https://www.sydneyairport.com.au/corporate/planning-and-projects/airspace-protection-tile>

We note that with respect to aircraft noise the site is outside the ANEF contour, of 20 or greater, as detailed by the Sydney Airport 2039 ANEF Contours (**Figure 12**).

See: <https://aircraftnoise.sydneyairport.com.au/wp-content/uploads/2018/07/180824-ANEF-A1-Map-ENDORSED.pdf>

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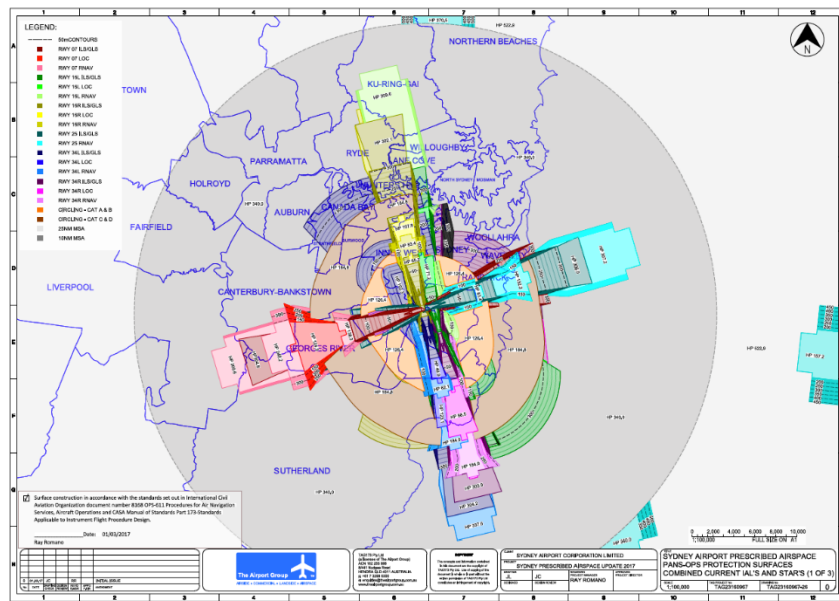


Figure 11 - Sydney Airport OLS

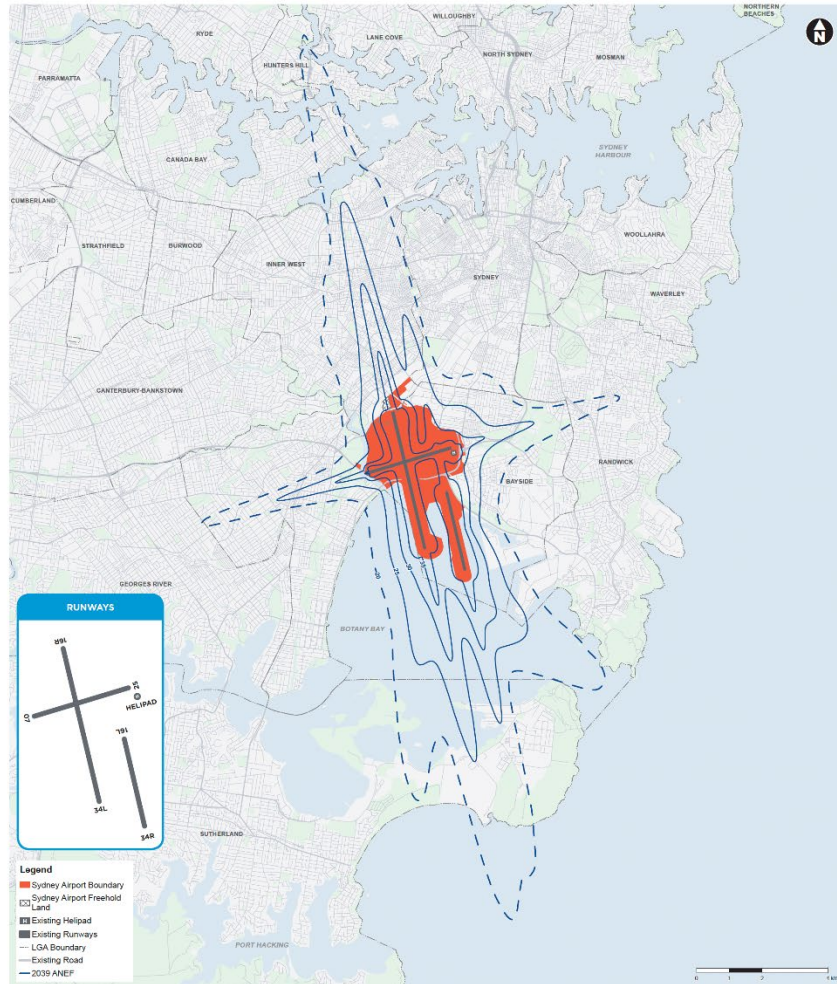


Figure 12 - Sydney Airport 2039 ANEF Contours

5.3.10 LEP Summary

To the extent that the above does not address other clauses of the LEP it is my opinion they are not relevant to this proposal.

The proposed exceedance of the HOB is the only real issue in contention. The clause 4.6 submission (**Annexure 1**) justifies the exceedance on the basis that the lift overruns and fire exits required to service high amenity roof top COS is necessary and reasonable to provide high amenity and equitable access outcomes for future occupants of the RFB component and that the negligible

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to minor additional shadows cast by the recessive element do not result in acceptable amenity outcomes for neighbours.

5.4 Draft LEP

A search of the Department of Planning, Infrastructure and Environment's LEP tracking system disclosed the following Draft LEPs as of 20 August 2021.

To the extent that any are relevant Draft EPI Council must take them into consideration in accordance with section 4.15(1)(a)(ii) of the EPA Act.

As of 20 August 2021, our review of the Council's website revealed no relevant Draft LEP relevant to this proposal.

Council have published the following statement:




















"Council is currently developing a new Local Environmental Plan (LEP) and Development Control Plan (DCP) for the Inner West, supported by a consolidated Developer Contributions Plan.

As required by a 2018 update to the Environmental Planning and Assessment Act 1979, Council has prepared and adopted a Local Strategic Planning Statement that will guide development and use of the LEP and DCP.

The new LEP and DCP will replace the planning frameworks used by the former Ashfield, Leichhardt, and Marrickville councils, which are still in use.

5.5 Marrickville Development Control Plan 2011 (DCP)

This SoEE has considered the following DCP chapters:

-  Marrickville DCP 2011 - 2.1 Urban Design.pdf
-  Marrickville DCP 2011 - 2.3 Site and Context Analysis.pdf
-  Marrickville DCP 2011 - 2.5 Equity of Access and Mobility.pdf
-  Marrickville DCP 2011 - 2.6 Acoustic and Visual Privacy.pdf
-  Marrickville DCP 2011 - 2.7 Solar Access and Overshadowing.pdf
-  Marrickville DCP 2011 - 2.9 Community Safety.pdf
-  Marrickville DCP 2011 - 2.10 Parking.pdf
-  Marrickville DCP 2011 - 2.11 Fencing.pdf
-  Marrickville DCP 2011 - 2.12 Signs and Advertising Structures.pdf
-  Marrickville DCP 2011 - 2.16 Energy Efficiency.pdf
-  Marrickville DCP 2011 - 2.17 Water Sensitive Urban Design.pdf
-  Marrickville DCP 2011 - 2.18 Landscaping and Open Spaces.pdf
-  Marrickville DCP 2011 - 2.20 Tree Management.pdf
-  Marrickville DCP 2011 - 2.22 Flood Management.pdf
-  Marrickville DCP 2011 - 2.23 Acid Sulfate Soils.pdf
-  Marrickville DCP 2011 - 2.24 Contaminated Land.pdf
-  Marrickville DCP 2011 - 2.25 Stormwater Management.pdf
-  Marrickville DCP 2011 - 5.0 Commercial and Mixed Use Development.pdf
-  Marrickville DCP 2011 - 9.22 Dulwich Hill Station South Precinct 22.pdf

5.5.1 Weight given to the Development Control Plan

The NSW Court of Appeal in *Zang v Canterbury City Council* [2001] NSWCA 167 found that a DCP is to be treated as a fundamental element in, or a focal point of, the decision-making process.

Based upon *Zang in Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472 at 86-88 and 89-93; revised - 01/10/2004 the Court clarified the weight to be afforded a DCP at par 87:

“91 In my opinion, the weight to be given to a detailed policy will depend upon a number of matters. If the policy has been generated with little, if any, public consultation and was designed to defeat a project which is known to be under consideration by a developer for a particular site, it may be given little weight. Of course, the intrinsic attributes of the policy may be given significant weight, but that weight is not dependent on then being included in a policy. It can be established in other ways. However, the position would be markedly different if the policy is the result of detailed consultation with relevant parties, including the community and the owners of affected land, and reflects outcomes which are within the range of sensible planning options.

92 To my mind, the matters which are relevant when determining the weight to be given to a planning policy adopted by a council are as follows:

- the extent, if any, of research and public consultation undertaken when creating the policy;
- the time during which the policy has been in force and the extent of any review of its effectiveness;
- the extent to which the policy has been departed from in prior decisions;
- the compatibility of the policy with the objectives and provisions of relevant environmental planning instruments and development control plans;
- the compatibility of the policy with other policies adopted by a council or by any other relevant government agency;
- whether the policy contains any significant flaws when assessed against conventional planning outcomes accepted as appropriate for the site or area affected by it."

The weight to be afforded a DCP has however shifted significantly as Moore then AJ in *Trinivass Pty Ltd v Council of the City of Sydney* [2015]NSWLEC15, at [68] found: *the effect of s79C(3A)(b) mandates taking a flexible approach to the matters in dispute between the parties and at 69 that this provision modifies the position that has followed since the decision in Zang V Canterbury City Council* [2001]NSWCA 167, so that **the issue is whether the objective of the development control is achieved** by the proposal.

In *Rose & Sanchez v Woollahra Municipal Council* [2016] NSWLEC 1348 the Court held that the effect of sub-s 79C(3A)(b) is to require a flexible approach to those standards, allowing alternative solutions that would achieve the objects of the relevant standards.

"20 The EPA Act, at s79C(3A)(b) outlines how consent authorities are to give weight to, an apply provisions of, the relevant development control plans as detailed below:

S79C(3A) Development control plans If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards-**is not to require more onerous standards** with respect to that aspect of the development, and
- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards - **is to be flexible in applying those**

provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and

(c) may consider those provisions only in connection with the assessment of that development application.

21 As was outlined by Moore AJ in *Trinvivass Pty Ltd v Council of the City of Sydney* [2015]NSWLEC151, at [68]: the effect of s79C(3A)(b) mandates taking a flexible approach to the matters in dispute between the parties and at 69 that this provision modifies the position that has followed since the decision in *Zang V Canterbury City Council* [2001]NSWCA 167, so that the issue is **whether the objective of the development control is achieved by the proposal**.

22 This approach was followed by Pearson C in *Kotronakis v Pittwater Council* [2015] NSWLEC1508 at [37] outlines the task for the consent authority to determine how the provisions of the DCP, which is a mandatory relevant consideration under s79C(1)(a)(iii) of the Act, should be applied to the development proposed.

23 I agree that the effect of sub-s 79C(3A)(b) is to require a flexible approach to those standards, allowing alternative solutions that would achieve the objects of the relevant standards."

Note: a reference to section 79C is a reference to section 4.15 of the amended Act.

This SoEE demonstrates how the design responds to the achievement of the objectives of the DCP.

5.5.2 DCP Chapter 2.1

This chapter replicates SEPP 65 and the ADG to a large extent and the DVS and statement of the Registered Architect addressing the 9 design principles and the 80 ADG objectives is consistent with the objectives of this chapter.

5.5.3 DCP Chapter 2.3 Site Context and Analysis

The architects have provided a detailed Site Context and Analysis please refer to drawings:

- DA-001 Site Analysis Sheet 1
- DA-002 Site Analysis Sheet 2
- DA-003 Site Plan
- DA-004 Demolition Plan

The central observation is that each new Shop Top Housing development in the Dulwich Hill Station South Precinct has a tower element with a hard edge to Wardell Road, central COS court yards and a rear tower element with a small setback to Murray Lane.

As the sites rise from Ewart Street to Dudley Street, the building height increase along with the topography.

The design responds to these core contextual realities.

5.5.4 DCP Chapter 2.5 Equity of Access and Mobility

The proposal is supported by an Accessibility Compliance Report by Access Link Report No.21-050 Issue C dated 20 July 2021. Compliance with the report basis will be achieved and equable and dignified access for all users of the building/facility will be provided.

It is critical to note that lift access is required and provided to every level of the building including the roof top COS on both tower elements.

5.5.5 DCP Chapter 2.6 Acoustic and Visual Privacy

The application is supported by a detailed acoustic report by Rodney Stevens 210292R1 Revision 1 19 July 2021. This deal with Road and Aircraft Noise and addresses in addition to the DCP the requirements of SEPP (Infrastructure) 2007.

As noted above in under clauses 6.5 and 6.6 of the LEP, the site falls outside the Sydney Airport 2033 ANEF 20 contour, and this is repeated at page5 of the Acoustic Report.

As the site is affected by both road and rail noise with road noise considered more significant, the acoustic report applies accordance with the SEPP (Infrastructure) 2007, Table 3.1 of the NSW Department of Planning and Infrastructure's "Development near Rail Corridors and Busy Roads - Interim Guideline" (the DP&I Guideline) of December 2008 in setting noise criteria for residential and non-residential buildings. These criteria are of the report summarized in 4-2.

The report details the building envelope construction requirements that must be detailed at the Construction Certificate stage. This is consistent with clause 54(4) of the Regulation which provides that:

"the information that a consent authority may request does not include, in relation to building or subdivision work, the information that is required to be attached to an application for a construction certificate".

Acoustic construction detail is information required to be attached to an application for a construction certificate and development consent condition must require the CC drawings to detail compliance with the building envelope construction requirements detailed by the acoustic report by Rodney Stevens 210292R1 Revision 1 19 July 2021.

5.5.6 DCP Chapter 2.7 Solar Access and Overshadowing

The proposal is supported by the following drawings that allow for a clear understanding of the solar access to the apartments which exceeds 70% under the ADG.

The shadows that will be cast to the south-western and south-eastern neighbours (within the yet not redeveloped R4 high density residential zone) is the inevitable consequence of achieving the zone objectives.

The following drawings (views from the sun) are the most useful tool for understanding the solar access and shadow impacts, in addition to plan view shadow diagrams.

- Drawing DA-1404 : 9am, 9:30am, 10am, 10:30am
- Drawing DA-1405 : 11am, 11:30am, 12pm, 12:30pm
- Drawing DA-1406 : 1pm, 1:30pm, 2pm, 2:30pm
- Drawing DA-1407 : 3pm

Critically important to the clause 4.6 exception is that areas south of the lift overrun and COS pergola, being the elements exceeding the HOB, have a negligible to minor impact upon shadows cast to the south and southeast.

The morning shadows from these elements fall upon the roofs of the southwestern neighbouring shop top housing development.

There is unfettered solar access to the south-eastern neighbouring R4 zoned land and existing houses and smaller RFB.

The loss of sun in the PM period is predominantly the impact of the built form created by elements of the proposal that comply with the HOB and the FSR for the site and existing neighbouring shop top housing in the Dulwich Hill Station South Precinct.

These elements are consistent with the existing context discussed in detail within the context analysis and as detailed by:

- DA-001 Site Analysis Sheet 1
- DA-002 Site Analysis Sheet 2

The objectives of the DCP are achieved by the proposal and the shadowing impacts are the strategically planned consequence of achieving the desired future character consistent with the existing character outcome derived from numerous contemporary and immediately adjoining development in the Dulwich Hill Station South Precinct.

Existing and future dwellings to the southeast will maintain reasonable solar access at the winter solstic consistent with the 20m HOB, and the small footprint of the lift overrun, and fire exist (recessive in it roof top position) is a

fast-moving shadow and restrained in its contribution to shadows beyond HOB 20m.

5.5.7 DCP Chapter 2.9 Community Safety

The proposal will provide a significant increase in casual surveillance of both Wardell Street and Murray Lane. The internal COS is also overlooked by most of the apartments.

The proposal will result in a significant improvement in natural surveillance and territorial reinforcement of the public domain and secured access and casual surveillance of the podium level COS is excellent.

There is direct line of sight to the lift core at the Wardell Road residential entry and each of the two shop fronts activate and have direct access from Wardell Road.

The community safety objectives are achieved by the proposal.

5.5.8 DCP Chapter 2.10 Parking

The proposal is supported by a Traffic and Parking Assessment Report by Varga Traffic Engineers Ref 21251 dated 16 July 2021.

The parking assessment from page 17 of the report concludes that the development proposal yields an off-street car parking requirement of 26 spaces.

Clause 30 of SEPP 65 applies as well and by reference to clause 3J of the ADG and the RMS Guidelines as interpreted in accordance with the Technical Note of the NSW Department of Planning Dulwich Hill is a Metropolitan Sub-Regional Centre.

Application of the above parking rates from the RMS Guidelines to the development proposal yields an off-street parking requirement of 36 spaces comprising 36 residential spaces (including 8 visitor spaces) plus 2 spaces for the café/restaurant component (i.e., total 38 spaces).

The proposed development makes provision for a total of 38 car spaces, thereby satisfying both Council and SEPP65 car parking code requirements.

There is no excess parking that would be then attributed to GFA.

5.5.9 DCP Chapter 2.11 Fencing

There are no proposed dividing fences. Internally there is balustrading rather than fencing to maintain safety and some higher elements of balustrade (e.g., at the roof COS areas to restrict overlooking).

Fence objectives are achieved.

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5.5.10 DCP Chapter 2.12 Signs and Advertising Structures

This proposal does not seek consent for any signage. All new signage will comply with the Codes SEPP or be subject to separate development applications.

5.5.11 DCP Chapter 2.16 Energy Efficiency

The proposal is subject to SEPP (BASIX). To the extent that these provisions compete with BASIX, BASIX prevails.

5.5.12 DCP Chapter 2.17 Water Sensitive Urban Design

The proposed GFA is 2,802m² and applying Table 1 at Clause 2.17.2 of the DCP (noting that water conservation targets are a competing provision with BASIX and don't apply), the relevant controls are C4 and C5 and the information required to be submitted is detailed by Control 7.

2.17.4 Stormwater Quality

Urban development increases the pollution load entering local waterways. To address the impacts of urban development, the following pollution load reductions have been established for Marrickville Council.

C4 For all development types identified in Table 1, stormwater quality load reduction controls are:

- i. 90% reduction in the post development mean annual load of Gross Pollutants (greater than 5mm).
- ii. 85% reduction in the post development mean annual load of Total Suspended Solids (TSS).
- iii. 60% reduction in the post development mean annual load of Total Phosphorus (TP).
- iv. 45% reduction in the post development mean annual load of Total Nitrogen (TN).

C5 Modelling for the determination of the pollution load reductions must be undertaken in MUSIC (the Model for Urban Stormwater Improvement Conceptualisation) and in accordance with *Marrickville Council's WSUD Reference Guideline*.

The application is accompanied by a stormwater plans and a WSUD Strategy including a MUSIC Model by SGC Engineers Reference 20210126.

5.5.13 DCP Chapter 2.18 Landscaping and Open Space

Consistent with clause 2.18.4 and other controls are three (3) generously proportioned COS area as detailed by the Landscape Plans and Architectural Plan DA1408:

- 83m² (7%) deep soil at the Ground Floor Level adjoining the Lane
- 319m² at Level 1
- 114m² northwest roof
- 119m² southeast roof

The DCP states at clause 2.18.11.7 Control 25 that:

“Landscape areas for mixed use developments will be determined on merit and depend on the overall streetscape and the desired future character for the area/precinct.”

None of the contemporary development have any deep soil landscaping in the small and well-defined Dulwich Hill Station South Precinct.

The extent of landscaping detailed by the Landscape Plans is both quantitatively and qualitative far superior to its neighbours in the Dulwich Hill Station South Precinct.

The extent of quality on-structure planting is better than the existing built character which is for all intent and purpose the desired future character for the precinct.

The objectives are achieved and again SEPP 65 and the ADG are otherwise applied.

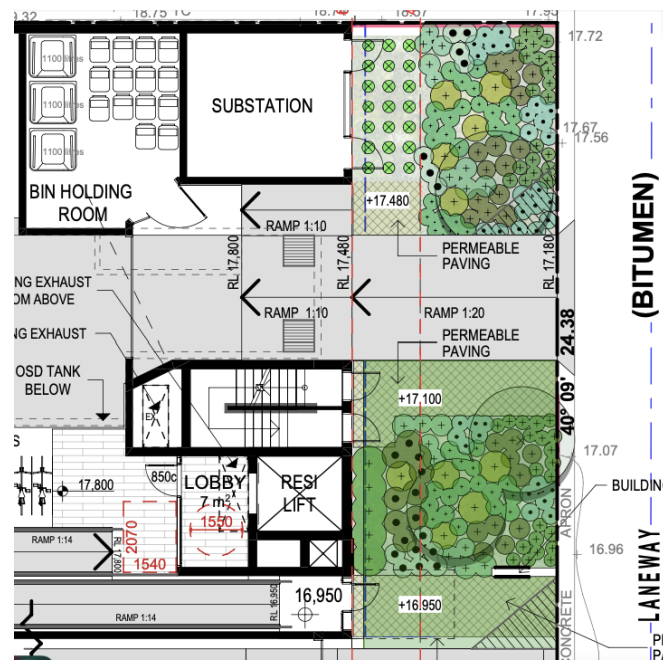


Figure 13 - Landscape Frontage to Lane



Figure 14 - Extract Landscaped Areas - Drawing DA-1408

5.5.14 DCP Chapter 2.20 Tree Management

The proposal being is a B1 Zone with a full site coverage will not retaining any existing site vegetation. Therefore, there is no necessity for any TPZ on the site.

Seven (7) significant trees will be planted in the Podium Level COS, with additional on-structure planting at the roof top COS.

It is submitted that the proposed landscape outcomes are better than existing and better than outcomes on other neighbouring sites in the Dulwich Hill Station South Precinct.

The detailed planting schedule is:

PLANTING SCHEDULE

ID	Botanical Name	Common Name	Scheduled Size
Trees			
Ban-int	Banksia integrifolia	Coastal Banksia	45L
EE	Elaeocarpus eumundi	Smoothed leaved Quandong	45L
M'LG"	Magnolia 'Little Gem'	Magnolia	45L
PObtu	Plumeria obtusa	Frangipani	45L
Shrubs			
Bux-bal	Buxus balls	Littleleaf Boxwood, English Boxwood	200mm
car "DS'	Carissa 'Desert Star'	Dwarf Natal Plum	200mm
Lig-ren	Ligularia reniformis	Tractor Seat Plant	200mm
Phi-ro-con	Philodendron 'Rojo Congo'	Rojo Congo	200mm
Phi-xan	Philodendron 'Xanadu'	Winterborn Philodendron	200mm
Pit-tob-mm	Pittosporum tobira 'Miss Muffet'		200mm
Rap-ind-op	Raphiolepis indica 'oriental pearl'	Indian Hawthorn	300mm
rap-exc	Raphis excelsa	Lady Palm	300mm
Vib-odo	Viburnum odoratissimum	Viburnum	200mm
Ground Covers			
Aga-gem	Agave geminiflora	agave	200 mm
Aic-div	Alcantarea imperialis Rubra	Red Bromiliad	150mm
Alp-nut	Alpinia nutans	False Cardemon	150mm
cas'ci'	Casuarina "Cousin It'	Casuarina "Cousin It'	140mm
Cra bl 'jp'-1	Crassula 'Blue Bird'	mini jade	150mm
Dic-rep	Dichondra repens	Kidney Weed	150mm
Epi-aure	Epipremnum aureum 'Marble Queen'	Marble Queen	150mm
sen-ma	Senecio mandraliscae	Blue Chalk Sticks	150mm
tra-asi	Trachelospermum asiaticum	Star Jasmine	150mm
zam-fu	Zamia furfuracea	Cardboard Plant	150mm
Grasses			
Lir-mus'eg'	Liriope muscari 'Evergreen Giant'	Evergreen Giant Lilyturf	200mm
Neo-cae	Neomarica caerulea	Brazilian Walking Iris	200mm
poa 'esk'	Poa labillardieri 'ESKDALE'	lion's tail	150mm

Figure 15 - Planting Schedule

A TPZ will be retained to the single street tree on the Wardell Road footpath and the Landscape Plan proposes a further street tree be planted see Landscape Plan L02C.

5.5.15 DCP Chapter 2.22 Flood Management

The site is not flood affected by reference to LEP 5200.COM.FLD.002.010.20111124

5.5.16 DCP Chapter 2.23 Acid Sulphate Soils

The site is not affected, and this is addressed under clause 6.1 of the LEP above.

5.5.17 DCP Chapter 2.24 Contaminated Land

The site is no considered to be affected and this is addressed under SEPP 55 above.

5.5.18 DCP Chapter 2.25 Stormwater Management

The application is accompanied by a stormwater plans and a WSUD Strategy including a MUSIC Model by SGC Engineers Reference 20210126.

5.5.19 DCP Chapter 5.0 Commercial and Mixed-Use Development

To a large extent these provisions duplicate the nine (9) SEPP 65 principles and the eight (80) ADG objectives. The built form controls in this part does not apply in the Dulwich Hill Station South Precinct which has its own provisions in Chapter 9.22.

5.5.20 DCP Chapter 9.22 Dulwich Hill Station South Precinct.

The site is located on the eastern side of Wardell Road as part of the Masterplan Sites (Figure 16 - Extracts Map of Precinct Clause 9.22 of the DCP).

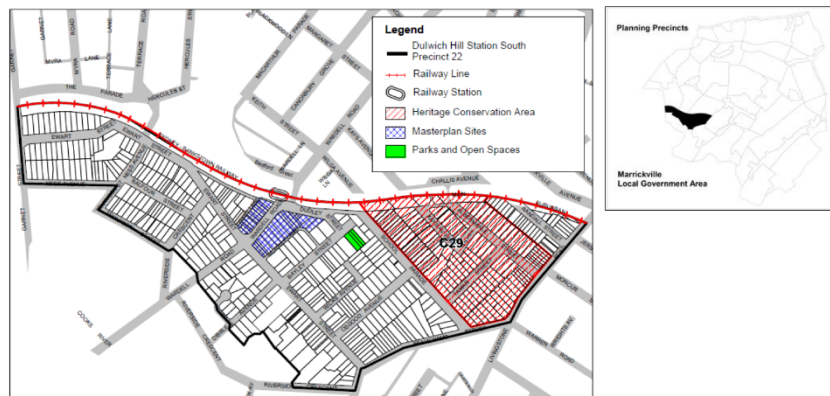


Figure 16 - Extracts Map of Precinct Clause 9.22 of the DCP

The existing character under clause 9.22.1 of the DCP is irrelevant, as near all the sites on the eastern side of Wardell Road, but for the subject site have now been developed under the 2011 LEP and DCP.

As for the desired future character, despite the massing diagram (Figure 17 - Extract Figure 22.1b of Chapter 9.22 of the DCP), articulating 'U shaped' building masses with 12m separation in bays along Murray Lane, all the

existing new mixed uses developments granted development consent have abandoned this urban form.



Figure 22.1b Plan Diagram

Figure 17 - Extract Figure 22.1b of Chapter 9.22 of the DCP

Put succinctly the DCP's desired future character articulated by Figure 17 - Extract Figure 22.1b of Chapter 9.22 of the DCP has been abandoned and any attempt to implement the planning logic in this DCP is a barren exercise that would result in perverse built form outcomes with significant adverse urban form and amenity impacts.

The urban form and massing approved and built is a northeast oriented internalised COS area running from NE in the centre of each site from 254 Wardell Road to the rear of Dudley Street (Figure 18 - Building Mass Outcomes).

Therefore, applying the Land and Environment Court's logic, in now numerous contemporary judgements, but best summed up in *Abrams v The Council of the City of Sydney (No 2)* [2018] NSWLEC 85, Robson J, concluded that the previous development consents were relevant instruments to be considered for the purpose of s 39(4) of the *Land and Environment Court Act 1979*.

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Robson J held that: prior consents on the same site or in the locality **'may be instructive for the purpose of an 'abandonment' argument or in informing the desired character or future streetscape of a locality'**.

Whilst this must be assessment under section 4.15 of the Act, the design directly responds to the existing consents and their outcomes in setting the **'desired character and streetscape of this locality'**.

The northeast aligned central COS areas at podium level dominate this precinct as shown in Figure 18 - Building Mass Outcomes



Figure 18 - Building Mass Outcomes

5.5.21 DCP Summary

The proposal is consistent with the DCP's objectives and applying *Rose & Sanchez v Woollahra Municipal Council* [2016] NSWLEC 1348 should receive Council's favourable consideration.

The effect of sub-s 4.15(3A) (b) of the Act is to require a flexible approach to those standards, allowing alternative solutions that would achieve the objects of the relevant standards.

The built form prescribed by DCP Chapter 9.22 Dulwich Hill Station South Precinct has been abandoned in the Dulwich Hill Station South Precinct.

The DCP control diagram (Figure 17 - Extract Figure 22.1b of Chapter 9.22 of the DCP) is not relevant as the desired future character is defined by the contemporary developments within the Dulwich Hill Station South Precinct (Figure 18 - Building Mass Outcomes).

When one looks at the merit impacts, they are the genuine consequence of providing infill development consistent with the existing and desired future character and arises from the inevitable outcomes of the completing the development of this infill site and objectives in the B1 zone.

The proposal provides high density transit-oriented development that neighbours the R4 high density residential zone to the east of the Dulwich Hill Station South Precinct. The impacts are cumulatively reasonable and acceptable.

Among the most important outcomes is the provision of the podium level COS (oriented to the northeast) and the two roof top COS areas.

To ensure compliance with DCP Chapter 2.5 Equity of Access and Mobility providing disabled access to all areas of COS and NCC_BCA compliant egress from the COS, the lift overruns and the fire stairs exceed the HOB under the LEP.

The exceedance of the HOB is resolved by the exception justified by the clause 4.6 submission (Annexure 1), but it must be reinforced that minor impacts caused by exceeding the HOB are considered both necessary and reasonable to ensure that the amenity for future occupants is acceptable and to ensure that the objectives of DCP Chapter 2.5 Equity of Access and Mobility are achieved.

Finally, the landscape outcomes are demonstrably better than neighbouring buildings and the building make a positive contribution to a cohesive streetscape in both Wardell Road and Murray Lane.

5.6 Draft DCP

A Draft DCP is a relevant consideration under section 4.15(1)(e), *ibid Terrace Tower Holdings v Sutherland Shire Council* (2003) 129 LGERA 195; [2003] NSWCA 289.

The weight to be afforded a Draft DCP is dependent upon how final and certain the Draft DCP is but ultimately a Draft DCP is no more than a draft council "policy".

The Court's relevant planning principle addressing to policies which had been adopted by councils although not embodied in DCPs is *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472 at 86-88 and 89-93; revised - 01/10/2004.

A Draft DCP is no more than a draft policy as at par [91-92] in *Stockland* the Court held:

“91 In my opinion, the weight to be given to a detailed policy will depend upon a number of matters. If the policy has been generated with little, if any, public consultation and was designed to defeat a project which is known to be under consideration by a developer for a particular site, it may be given little weight. Of course, the intrinsic attributes of the policy may be given significant weight, but that weight is not dependent on then being included in a policy. It can be established in other ways. However, the position would be markedly different if the policy is the result of detailed consultation with relevant parties, including the community and the owners of affected land, and reflects outcomes which are within the range of sensible planning options.

92 To my mind, the matters which are relevant when determining the weight to be given to a planning policy adopted by a council are as follows:

- the extent, if any, of research and public consultation undertaken when creating the policy;
- the time during which the policy has been in force and the extent of any review of its effectiveness;
- the extent to which the policy has been departed from in prior decisions;
- the compatibility of the policy with the objectives and provisions of relevant environmental planning instruments and development control plans;
- the compatibility of the policy with other policies adopted by a council or by any other relevant government agency;
- whether the policy contains any significant flaws when assessed against conventional planning outcomes accepted as appropriate for the site or area affected by it.”

As of 20 August 2021, our review of the Council's website revealed no relevant Draft DCP.

Council have published the following statement:

“Council is currently developing a new Local Environmental Plan (LEP) and Development Control Plan (DCP) for the Inner West, supported by a consolidated Developer Contributions Plan.

As required by a 2018 update to the Environmental Planning and Assessment Act 1979, Council has prepared and adopted a Local Strategic Planning Statement that will guide development and use of the LEP and DCP.

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The new LEP and DCP will replace the planning frameworks used by the former Ashfield, Leichhardt, and Marrickville councils, which are still in use."

To the extent that any Draft exists applying *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472 it must be given no determinative weight.

6 Statement of Environmental Effects

6.1 Impacts of the development

The negative effects are:

- Negligible to minor additional shadows cast by the lift overruns and fire exits at the roof level.
- The overshadowing to the southeast in the PM is the result of a predominantly compliant HOB elements of the building.

The positive effects are numerous and include:

- A true Transit Oriented Development (TOD):
 - 81m or 1 minute walk to Dulwich Hill Railway Station
 - at the terminus of the Inner West Light Rail line
 - a bus rail interchange serviced by three (3) high volume high frequency bus routes
 - access to car share services in the vicinity of the site
- A positive contribution to the achievement of the h District Plan's aims and objectives, as well as its jobs and dwellings target.
- Mixed use development providing appropriate ground floor shops that activate the street frontage and will provide local services in the B1 zone.
- High amenity naturally cross ventilated and sunlight apartments exceed the minimum standards in the ADG.
- Increased housing choice through an appropriate apartment mix.
- Mix of low levels shaded (summer) and elevated high (winter) amenity highly valued roof top common open space and amenities.

6.2 Impact Identification

The environmental impacts have been identified by reference to:

- The Act and the Regulation.

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- Locality and Site Inspections
- Section 149 Certificate 35331 dated 19 February 2016
- Relevant Environmental Planning Instruments – www.legislation.nsw.gov.au
- Draft Environmental Planning Instruments – www.planning.nsw.gov.au
- Marrickville Development Control Plan 2011 (DCP)

6.3 Mitigation

The design adopts a building footprint that preserves the approved and built central courtyard to the south and to the north of the site. This approach to the design reserves reasonable levels of solar access to the southern neighbours and respects the existing character locked in by the approvals to the north and south that have stepped away, if not abandoned, the DCP envelope controls.

The need to provide quality COS is achieved by the provision of podium level, and roof level options. The podium providing shade in summer and the roof top COS sun in winter, as well as district views.

Access from the rear lane ensures an active streetscape to Wardell and the principal entry to the residential component is well defined and provided with high levels of natural surveillance consistent with CPTED principles.

The implementation of the numerous recommendations of the expert reports addresses all other potential impacts for and from the proposed building and with respect to its use as a mixed-use development.

The design as detailed by the plans, DVS and ADG objectives addressed by the Architects is wholly consistent with the relevant objectives.

7 Conclusion

This SEE details as required by Schedule 1, Part 2(4) of the Regulation:

- a) *the environmental impacts of the development,*
- b) *how the environmental impacts of the development have been identified,*
- c) *the steps to be taken to protect the environment or to lessen the expected harm to the environment,*
- d) *any matters required to be indicated by any guidelines issued by the Director-General for the purposes of this clause."*

Subject to my review of any submissions the Applicant may seek to provide additional and more detail statements with respect to views, privacy or other issues raised by neighbours, as well as respond to any Council requests for additional information.

I close by submitting that Council should give favourable consideration to the proposal and that it worthy of Council's support.



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Annexure 1 – Clause 4.6 Exception to HOB (Clause 4.3)

8 Annexure 1 – Clause 4.6 Exception to HOB under Clause 4.3

I have been instructed by the Applicant to provide written justification for an exception to clause 4.3 of the LEP (HOB) pursuant to clause 4.6(3) of the LEP.

I rely upon:

1. The architectural plans and all other supporting documents for the proposal.
2. PS 18-003 – Department of Planning and Environment (Revokes PS17-006 (December 2017))
3. Varying Development Standards: A Guide August 2011 - NSW Department of Planning & Infrastructure.
4. Guidance provided by judgments of the Land & Environment Court (the Court) detailed by the methodology below.

The Site

The site is detailed by the Statement of Environmental Effects above.

Overall approach

This clause 4.6 request seeks to demonstrate that:

1. the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)),
2. the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)),
3. compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a) and cl 4.6(4)(a)(i)), and
4. there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Methodology

Guidance as to the proper clause 4.6 methodology is provided by judgments of the Land & Environment Court (LEC) and Court of Appeal (NSWCA) detailed by the methodology below, including:

- a. *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115, (SJD) an appeal under s 56A of the Land and Environment Court Act 1979 ("the Court Act") with respect to

⁶ Wehbe [42-51] – 5 Tests but not exclusive tests

- SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112
- b. *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, (*RebelMH*)
 - c. *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 (*Baron*)
 - d. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 (*Al Maha*)
 - e. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*) an appeal under s 56A of the Land and Environment Court Act 1979 ("the Court Act") with respect to *Initial Action Pty Ltd v Woollahra Council* [2017] NSWLEC 1734
 - f. *Gejo Pty Ltd v Canterbury-Bankstown Council* [2017] NSWLEC 1712 (*Gejo*)
 - g. *Randwick City Council v Micaul Holdings Pty Ltd* 225 LGERA 94; [2016] NSWLEC 7 (*Micaul*)
 - h. *Moskovich v Waverley Council* [2016] NSWLEC 1015 (*Moskovich*)
 - i. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 (*Four2Five*)
 - j. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 (*Four2Five*)
 - k. *Wehbe v Pittwater Council (2007)* 156 LGERA 446; [2007] NSWLEC 827 (*Webhe*)

With respect to the guidance provided by the Courts above, there was apparent tension between the approach adopted by *Al Maha* and *Initial Action*. *RebelMH* and *Baron* further clarified the requirements for clause 4.6 requests and sought to unify the approaches in *Initial Action* and *Al Maha*.

It now appears settled, at [51] in *RebelMH* 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))."

Arising from *Initial Action*, in the second class 1 appeal in *Initial Action Pty Ltd v Woollahra Municipal Council* [2019] NSWLEC 1097 decided 12 March 2019.

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Further the recent judgement in *Big Property Pty Ltd v Randwick City Council* [2021] (**Big Property**), and *HPG Mosman Projects Pty Ltd v Mosman Municipal Council* [2021] (**HPG**), both provide guidance and flexibility in terms of how to properly assess the '**desired future character**' of an area.

This clause 4.6 submission specifically responds to the above guidance of the LEC and demonstrates it is also the public interest to support the exception.

The Objectives of Clause 4.6

The objective of Clause 4.6(1) of the LEP are as follows:

- (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.

Preston CJ clarified the correct approach to the consideration of clause 4.6 requests including that clause 4.6 does not require that a development that contravenes a development standard must have a *neutral or better* environmental planning outcome than one that does not. (*Initial Action*)

In *Al Maha*:

21. "A consideration of legal error should start by identifying the criterion as to which the Commissioner was to be satisfied. On a literal reading, subcl (4)(a)(i) merely required that she be satisfied that the applicant had taken two steps, namely, that it had, first, made a written request to be excused compliance with the development standard and, secondly, "adequately addressed" the matters set out in subcl (3). On that (narrow) reading, the Commissioner did not need to form any view herself about the justification for failing to comply with the development standard.
22. The alternative reading is that the matters would not be "adequately" addressed unless they in fact justified the non-conformity. In other words, the Commissioner had to be satisfied that there were proper planning grounds to warrant the grant of consent, and that the contravention was justified.
23. The second reading is attractive for three reasons. First, in its terms, it gives work to the evaluative requirement implicit in the need to be satisfied that certain matters have been "adequately" addressed. Secondly, this is not a gateway provision prior to public consultation or further assessment; it is a criterion for the ultimate grant of consent. Thirdly, the narrow approach fails to give separate work to subcl (3) and (4). Thus, subcl (3) requires the consent authority to have

⁷ Compare s 75H(2) (repeated in 2011) using a similar criterion with respect to an environmental assessment prior to public release.

"considered" the written request and identifies the necessary evaluative elements to be satisfied. That is, to comply with subcl (3), the request must demonstrate that compliance with the development standard is "unreasonable or unnecessary" and that "there are sufficient environmental planning grounds to justify" the contravention. It would give no work to subcl (4) to simply require the Commissioner to be satisfied that the demonstration required under subcl (3) had occurred. The additional step is that the request satisfied the Commissioner that it should be granted.

24. However, it is not necessary to resolve this issue in this case, because it should be accepted that the Commissioner did not form either state of satisfaction. Further, it is not appropriate to determine the issue in the absence of submissions as to the purpose and extent of the departures of the language of cl 4.6 from its predecessor, State Environmental Planning Policy No 1—Development Standards, cll 7 and 8."

The Court of Appeal decision in *RebelMH* and Preston CJ's decision in *Baron* support Al Maha and Initial Action. *Gejo Pty Ltd v Canterbury-Bankstown Council* [2017] NSWLEC 1712 (at [27-29]), suggested the following approach:

27. Clause 4.6 of the CLEP 2012 [a standard instrument LEP] allows development standards to be applied flexibly in certain circumstances. In *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, Preston CJ found that in applying the provisions of cl 4.6, the power to allow an exception to a development standard can be exercised where the Commissioner is satisfied that:
5. the proposed development will be consistent⁸ with the objectives of the zone (cl 4.6(4)(a)(ii)) (at [7]),
 6. the proposed development will be consistent⁹ with the objectives of the standard in question (cl 4.6(4)(a)(ii)) (at [7]),
 7. the written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary¹⁰ in the

⁸ *Moskovich v Waverley Council* [2016] NSWLEC 1015 at 53:

53. The threshold of "**consistency**" is different to that of "**achievement**". The term "consistent" has been considered in judgements of the Court in relation to zone objectives and has been interpreted to mean "**compatible**" or "**capable of existing together in harmony**" (*Dem Gillespies v Warringah Council* (2002) 124 LGERA 147; *Addenbrooke Pty Ltd v Woollahra Municipal Council* [2008] NSWLEC 190) or "**not being antipathetic**" (*Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGERA 21). Whichever interpretation is adopted the test of "**consistency**" is less onerous than that of "**achievement**".

⁹ *Ibid* [3].

¹⁰ *Ibid* Wehbe [42-51] and noting that in Initial Action [22] "These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way."

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circumstances of the case (cl 4.6(3)(a) and cl 4.6(4)(a)(i)) (at [38]), and

8. the written request adequately demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)) (at [38]).

[underlining added]

28. Clause 4.6(4)(a)(ii) presumes that if the proposed development is consistent [emphasis added] with the objectives of the zone and of the standard (i.e., meets (1) and (2) above), then it is in the public interest. I also note that nothing in cl 4.6 requires the consistency with the objectives to be established in or by the written request.
29. Further, in outlining (3) and (4) above, regarding the requirements for the written request, Preston CJ stated that the Court need not be directly satisfied that compliance is unreasonable or unnecessary and sufficient environmental planning grounds exist, but rather "only indirectly by being satisfied that the applicant's written request has adequately addressed" those matters.

We note that the above observation at [29] has been further clarified by *RebelMH* and *Baron*.

The most recent guidance of the LEC arises from *SJD* where Preston CJ held:

46. "... the provisions of a development control plan cannot be used to interpret the provisions of a local environmental plan unless the provisions of the local environmental plan expressly refer to the provisions of the development control plan for that purpose. ..."

47. "The fact that the principal purpose of a development control plan is to provide guidance on certain matters referred to in s 3.42(1) of the EPA Act does not make it permissible to construe the provisions of a local environmental plan by reference to a development control plan.

49." So understood, the Commissioner did not err on a question of law by not construing the "desired future character" in the objectives of the height and development standards in cl 4.3 and cl 4.4 and the objective of the B2 zone of WLEP by reference to the desired future character provisions of WDCP."

As at the date of writing this clause 4.5 submission I note that Inner West Council have not resolved to make any amendments to the LEP to expressly refer to the provisions of the development control plan for the purpose of "desired future character" under the LEP.

Therefore, this clause 4.6 will limit itself to the express objectives of the zone and development standard.

I note that Clay AC, in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112, accepted the Applicant's position and found that the adjacent buildings which also exceeded the height controls should be considered when determining desired future character. Importantly, the Commissioner found that it is possible to meet the objectives of the height and FSR controls even if there is a breach of those controls. Commissioner Clay also clearly supported the use of clause 4.6 requests and said as follows:

"It should be noted cl4.6 of WLEP is as much a part of WLEP as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome."

In the Big Property case Commissioner O'Neil **held that the desired future character of an area is not determined solely by the development standards that control building envelopes for the area.** Commissioner O'Neil specifically referenced SJD and further held:

"The presumption that the development standards that control building envelopes determine the desired future character of an area is based upon a false notion that those building envelopes represent, or are derived from, a fixed three-dimensional masterplan of building envelopes for the area and the realisation of that masterplan will achieve the desired urban character. Although development standards for building envelopes are mostly based on comprehensive studies and strategic plans, they are frequently generic, as demonstrated by the large areas of a single colour representing a single standard on Local Environmental Plan maps, and they reflect the zoning map. As generic standards, they do not necessarily account for existing and approved development, site amalgamations, the location of heritage items or the nuances of an individual site. Nor can they account for provisions under other EPLs that incentivise particular development with GFA bonuses or other mechanisms that intensify development. All these factors push the ultimate contest for evaluating and determining a building envelope for a specific use on a site to the development application stage. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality" [at44]"

In the more recent HPG case Commissioner O'Neil held

"The desired future character of the locality can be evaluated by reference to matters other than the development standards that determine the building envelope for the site, including the existing development that forms the built context of the site (Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 (SJD DB2) at [54]). The desired future character of an area is not determined and fixed by the applicable development standards for height and FSR,

because they do not, alone, fix the realised building envelope for a site. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality (SJD DB2 at [62]-[63]). Development standards that determine building envelopes can only contribute to shaping the character of the locality (SJD DB2 at [53]-[54] and [59]-[60])."

It was again also important that 'desired future character' was not defined in the LEP itself. Indeed, the Council sought to define the 'desired future character' by reference not even to a DCP, but to the 'Mosman Local Housing Strategy', a document which the Court noted 'postdates' the LEP and could not therefore be relied upon to define terms used in the LEP.

Finally, the consent authority retains a very broad discretion under clause 4.6 and there are no numerical limits placed upon the dispensing power, either by clause 4.6 or by the interpretation of clause 4.6 by the Courts.

The Facts

1. What is the name of the environmental planning instrument that applies to the land?

Marrickville Local Environmental Plan 2011 (LEP)

2. What is the zoning of the land?

Zone B1 - Neighbourhood Centre

3. What are the objectives of the zone?

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.
- To provide for housing attached to permissible non-residential uses in development of a type and scale compatible with the surrounding neighbourhood.
- To provide for spaces, at street level, which are of a size and configuration suitable for land uses which generate active street-fronts.
- To enable a purpose-built dwelling house to be used in certain circumstances as a dwelling house.

4. What is the development standard being varied?

Height of Building (HOB)

5. Under what clause is the development standard listed in the environmental planning instrument?

Clause 4.3

6. What are the objectives of the development standard?
 - (a) to establish the maximum height of buildings,
 - (b) to ensure building height is consistent with the desired future character of an area,
 - (c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,
 - (d) to nominate heights that will provide an appropriate transition in built form and land use intensity,
7. What is the numeric value of the development standard for **FSR** in the environmental planning instrument?

20m
8. What is proposed numeric value of the development standard in your development application?

The maximum HOB is to the eastern lift overrun at 23.64m. This is a 3.64m exceedance of the 20m HOB.

The full extent of the areas exceeding the HOB are shown upon Drawing DA-1411 in perspective and DA=1412 in plan view.

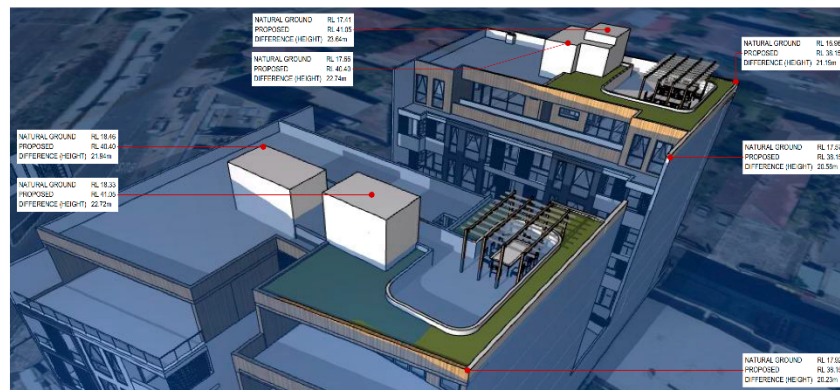


Figure 19 - Extract Drawing DA1411

9. What is the percentage variation (between the proposal and the environmental planning instrument)?

18.2%

Submission

1. The proposed development will be consistent with the objectives of the zone (clause 4.6(4)(a)(ii)) on the following basis:

- a. To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.

Submission: The two 105m² and 107m² shop will make a positive contribution to small-scale retail activating the Wardell Road streetscape.

- b. To provide for housing attached to permissible non-residential uses in development of a type and scale compatible with the surrounding neighbourhood.

Submission: The proposal is of a type and scale compatible with the surrounding neighbourhood, being the contemporary developments within the Dulwich Hill Station South Precinct. The existing and contemporary character is jarringly discordant from the character articulated by DCP Chapter 9.22 Dulwich Hill Station South Precinct.

The envelopes proposed by the DCP have not been achieved by existing neighbouring developments and the DCP has been abandoned by these contemporary approvals. Applying the above methodology (SJD, Big Property and HPG) the character in these circumstances is not derived from the DCP. The desired future character is a consequence of the type and scale existing in the surrounding neighbourhood, within the immediate vicinity of the site and its visual catchment.

The type and scale are compatible with the surrounding neighbourhood.

- c. To provide for spaces, at street level, which are of a size and configuration suitable for land uses which generate active street-fronts.

Submission: The two 105m² and 107m² shop will make a positive contribution to small-scale retail activating the Wardell Road streetscape.

- d. To enable a purpose-built dwelling house to be used in certain circumstances as a dwelling house.

Submission: N/A The proposal is shop top housing.

2. The proposed development will be consistent with the objectives of the development standard (clause 4.6(4)(a)(ii)) on the following basis:

- a. to establish the maximum height of buildings,

Submission: The standard establishes the maximum height subject to the flexibility provided by clause 4.6.

- b. to ensure building height is consistent with the *desired future character* of an area,

Submission: Applying the above methodology (SJD, Big Property and HPG) the character in these circumstances is not derived from the DCP.

The desired future character is a consequence of the existing contemporary neighbouring buildings in the B1 zone and more specifically in the Dulwich Hill Station South Precinct a narrowly defined geographic precinct being, the immediate vicinity of the site and its visual catchment.

The proposal is consistent with the desired future character and is a direct design response to not only the existing contemporary character of the Dulwich Hill Station South Precinct, but a design response to the SEPP 65 principles and ADG objectives which in turn goes to the environmental planning justification below

- c. to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,

Submission: The proposal is supported by the following drawings that allow for a clear understanding of the solar access to the apartments which exceeds 70% under the ADG.

The shadows that will be cast to the south-western and south-eastern neighbours (within the yet no redeveloped R4 high density residential zone) is the inevitable consequence of achieving the zone objectives.

The following drawings (views from the sun) are the most useful tool for understanding the solar access and shadow impacts, in addition to plan view shadow diagrams.

- Drawing DA-1404: 9am, 9:30am, 10am, 10:30am
- Drawing DA-1405 :11am, 11:30am, 12pm, 12:30pm
- Drawing DA-1406: 1pm, 1:30pm, 2pm, 2:30pm
- Drawing DA-1407: 3pm

Critically important to the clause 4.6 exception is that areas south of the lift overrun and COS pergola, being the elements exceeding the HOB, have a negligible to minor impact upon shadows cast to the south and southeast.

The morning shadows from these elements fall upon the roofs of the southwestern neighbouring shop top housing development.

There is unfettered solar access to the south-eastern neighbouring R4 zoned land and existing houses and smaller RFB.

The loss of sun in the PM period is predominantly the impact of the built form created by elements of the proposal that comply with the HOB and the FSR for the site and existing neighbouring shop top housing in the Dulwich Hill Station South Precinct.

These elements are consistent with the existing context discussed in detail within the context analysis and as detailed by:

- DA-001 Site Analysis Sheet 1
- DA-002 Site Analysis Sheet 2

The objectives of the DCP are achieved by the proposal and the shadowing impacts are the strategically planned consequence of achieving the desired future character consistent with the existing character outcome derived from numerous contemporary and immediately adjoining development in the Dulwich Hill Station South Precinct.

Existing and future dwellings to the southeast will maintain reasonable solar access at the winter solstic consistent with the 20m HOB, and the small footprint of the lift overrun, and fire exist (recessive in it roof top position) is a fast-moving shadow and restrained in its contribution to shadows beyond HOB 20m.

- d. to nominate heights that will provide an appropriate transition in built form and land use intensity,

Submission: The proposal is consistent in is parapet HOB with its south-western and north-eastern neighbours, Murray Lane being the zone boundary to the R4 High Density Residential Zone to the southeast of the site. Murray Lane provides significant separation and the HOB proposed will provide a contextually consistent transition to the R4 zone.

The proposal is consistent with the development standard and zone objectives.

3. Compliance with the development standard is unreasonable or unnecessary ¹¹ in the circumstances of the case (clause 4.6(3)(a)) on the following basis:

¹¹ Ibid [5].

- a. the objectives of the development standard are achieved notwithstanding non-compliance with the standard as detailed above: **1st Wehbe** test at [42] and [43]

Submission: The objectives of the development standard are achieved as demonstrated above.

- b. the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: **2nd Wehbe** test at [45].

Submission: This is not argued the objectives are clear and the proposal is consistent with the objectives.

- c. the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: **3rd Wehbe** test at [46].

Submission: Requiring strict numeric compliance would be antipathetic to the core objectives "to ensure building height is consistent with the *desired future character* of an area".

- d. the development standard has been virtually abandoned or destroyed: **4th Wehbe** test at [46].

Submission: In *Abrams v The Council of the City of Sydney (No 2)* [2018] NSWLEC 85, Robson J, on appeal, concluded that the previous development consents were relevant instruments to be considered for the purpose of s 39(4) of the *Land and Environment Court Act 1979*. Robson J held that **prior consents on the same site or in the locality 'may be instructive for the purpose of an 'abandonment' argument or in informing the desired character or future streetscape of a locality'**.

Firstly, one must define the relevant locality as being clearly defined and constrained to the Dulwich Hill Station South Precinct. I submit it is irrelevant to look beyond the context within the immediate vicinity and wholly within this precinct of the B1 zone.

A finding that a development standard has been abandoned requires evidence of a '*pattern of abandonment*' such that the development standard can no longer be said to represent the existing and/or desired character of the locality would mean that the development standard had been "virtually abandoned or destroyed.... It will be a matter of fact and degree in the circumstances of each case.'

The small area of the Dulwich Hill Station South Precinct is the properly considered area within which a 'pattern of abandonment' is to be established. I point to the immediate neighbour to the northeast at 244-224A Wardell Road being a seven (7) storey

building achieving a significantly greater HOB than the subject site proposes, and sites further south achieve.

The development standard to the northeast has been abandoned and the exception sought will not abandon but rather act as a logical transitional form between the higher HOB to the northeast and low HOB to the southwest.

Whether one argues abandonment or context, the existing HOB to the northeast, supports my contention that is unreasonable or unnecessary, in the circumstances of the case, to strictly apply the HOB given that the proposal a transition between higher and lower heights in this well-defined precinct.

- e. the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: **5th Wehbe** at [48]. I don't press this test; the zoning is generally appropriate.
- f. In circumstances where there are no significant adverse impacts resulting from the variation, it is unreasonable and unnecessary to require strict compliance (given that strict compliance would be antipathetic to the core objectives "to ensure building height is consistent with the desired future character of an area" and to deliver high amenity outcomes under SEPP 65 and the ADG).
- g. The burden placed on the residents of the development in the loss of high amenity roof top COS (by requiring strict compliance with the development standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences (limited additional shadows) attributable to the proposed non-compliant development (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).
- h. If strict compliance was required, it would undermine important statutory objectives that are relevant to the consideration of this matter, namely:

The Act

- i. Section 1.3(a) of the Act: '[T]o promote the social and economic welfare of the community ...'.
- ii. Section 1.3(b) of the Act: '[T]o facilitate ecologically sustainable development by integrating relevant economic, environmental, and social considerations in decision-making about environmental planning and assessment (bold added)'.

- iii. Section 1.3(g) of the Act: '[T]o promote the proper construction and maintenance of buildings'.

SEPP 65

- iv. Clause 2(3)(c) of SEPP 65: '[T]o better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities (bold added)'. The lift overrun and fire exit are required to access and provide NCC_BCA complying egress for the provision of the roof top COS.
- v. Clause 2(3)(d) of SEPP 65: '[T]o maximise amenity, safety, and security for the benefit of its occupants and the wider community (bold added)'. The roof top COS is a reasonably necessary and high amenity design element.

The LEP

- vi. Clause 1.2(of the LEP):
- (a) the proposal supports the efficient use of land, vitalisation of centres, integration of transport and land use and an appropriate mix of uses,
 - (b) the proposal increases residential and employment densities in appropriate locations near public transport while protecting residential amenity,
 - (d) the proposal promotes sustainable transport, reduce car use, and increase use of public transport, walking and cycling,
 - (e) the proposal promotes accessible and diverse housing types including accessibility to the roof top COS which is a reasonable and essential component of the proposal with the lift overrun and fire stairs exceeding HOB.
 - (f) the proposal applies the principles of ecologically sustainable development including that resident have access to a diverse range of COS the roof providing winter access to direct sunlit COS.
 - (h) the proposal promotes a high standard of design in the private domain as the roof top COS provides a very high amenity COS option in addition to the podium COS which provides a shaded COS option, the design outcome is not achievable without and exception in the HOB for equitable lift access and NCC_BCA comply fire stairs.

The DCP

vii. The roof top COS and equitable access to it is supported by the following DCP provisions:

- DCP Chapter 2.5 Equity of Access and Mobility as the lift access and NCC_BCA compliant fire escapes are required for access and egress and these are the primary elements that exceed the HOB, albeit limited in their footprint and setback from the build façade.
- DCP Chapter 5.0 Equity of Access and Mobility. Objective 34 - To provide for open space with appropriate size and proportion for recreational activities for building occupants

i. Additionally, the 39m HOB and the 4.5:1 FSR were both exceeded on the adjoining site to the east.

In *Abrams v The Council of the City of Sydney (No 2)* [2018] NSWLEC 85, Robson J, on appeal, concluded that the previous development consents were relevant instruments to be considered for the purpose of s 39(4) of the *Land and Environment Court Act 1979*.

The Court held that prior consents on the same site or in the locality 'may be instructive for the purpose of an 'abandonment' argument or in informing the desired character or future streetscape of a locality'. In this case the latter applies.

That is, development consent has been granted for buildings that exceed the HOB in the immediate vicinity.

A finding that a development standard has been abandoned requires evidence of a 'pattern of abandonment such that the development standard can no longer be said to represent the existing and/or desired character of the locality would mean that the development standard had been "virtually abandoned or destroyed.... It will be a matter of fact and degree in the circumstances of each case.'

4. The proposal demonstrates why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

5. Sufficient "environmental planning grounds"¹² to justify contravening the development standard (clause 4.6(3)(b)) are found on the following basis.

¹² *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26] and "that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act".

- a. **Context** - The proposal provides a built form that steps, within this narrowly defined precinct, from South to North, that is wholly consistent with the existing character which is effectively the desired future character as this site is the last two lots to be consolidated in this precinct.
- b. **Context** - The buildings to the north remains higher both topographically and in their built form outcomes so the proposed height remains an acceptable transition between them and the southern neighbours, that sit at a lower HOB and topographically lower as building step down and away from the railway station.
- c. **Equitable Access and NCC-BCA Egress** - The lift overrun access to the roof top common open space on both tower elements is reasonably necessary to provide equitable access consistent with the Access Code and the Disability Discrimination Act 1992 (CTH). The NCC_BCA complying fire egress is also necessary.
- d. **Aims of the LEP** - The proposal is consistent with the aims of the LEP, in particular:
- (a) to support the efficient use of land, vitalisation of centres, integration of transport and land use and an appropriate mix of uses,
 - (b) to increase residential and employment densities in appropriate locations near public transport while protecting residential amenity,
 - (d) to promote sustainable transport, reduce car use and increase use of public transport, walking and cycling,
 - (e) to promote accessible and diverse housing types,
 - (f) to ensure development applies the principles of ecologically sustainable development,
 - (h) to promote a high standard of design in the private and public domain.
- e. **Amenity** – The roof top common open space in addition to the podium level COS provides a better amenity outcome for future occupants.

The proposal provides "sufficient environmental planning grounds" to justify contravening the development standard.

6. The concurrence of the Secretary of the Department can be assumed under clause 4.6(4)(b). This is because:

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- a. Concurrence may be assumed by written notice given to the consent authority (as per clause 64(1) of the *Environmental Planning and Assessment Regulation 2000*).
 - b. Such written notice was given by means of planning circular PS 18-003 'Variations to development standards' dated 21 February 2018.
7. In any event (when considering the factors set out in clause 4.6(5):
- a. the contravention of the development standard does not raise any matter of significance for State or regional environmental planning.
 - b. there is no public benefit in ensuring strict compliance in the circumstance of this case, and the environmental planning grounds demonstrated above outweighs the benefit of maintaining the development standard.

See: PS 18-003 – Department of Planning and Environment (Revokes PS17-006 (December 2017)).

Conclusion

The proposal demonstrates and this written (clause 4.6(3)) request for an exception to the development standard justifies:

1. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)).
2. sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)).
3. that the exception is in the public interest because it is consistent¹³ with the objectives of the development standard and the objectives of the zone (clause 4.6(4)(a)(ii)), as detailed above.
4. We have assumed the Council continue to have assumed concurrence. The Court on appeal have assumed concurrence. (Clause 4.6(4)(b)).

The proposal is consistent with the existing and desired future character providing sufficient environmental planning grounds to justify contravening the development standard. The proposed development is compatible with the bulk, scale, streetscape, and existing character of the locality.

The adjoining buildings, when viewed from every elevation are of similar or greater height and bulk than the proposal, as are number of other buildings within the locality.

¹³ Ibid [3].

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246-248 Wardell Road, Marrickville

The proposed front and rear setbacks and the separation distances between buildings are compatible with both adjoining properties and other buildings within the locality.

The exception is in the public interest because it is consistent¹⁴ with the objectives of the development standard and the objectives of the zone (clause 4.6(4)(a)(ii)), as detailed above.

We submit that this clause 4.6 exception should prevail to the extent that it allows a merit assessment to proceed as this clause 4.6 the consent authority can be satisfied that there are proper planning grounds to warrant the grant of consent, and that the contravention is justified.

Yours faithfully,



Brett Daintry, MPA, MAIBS, MEHA, MEPLA
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¹⁴ Ibid [3].

Attachment D – Without prejudice conditions

Attachment D – Without prejudice conditions

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
DA-000 - DA-005, DA-101 - DA-109, DA201 - DA210, DA301 - DA302 Revision 2 DA351 - DA353 Revision 1	Architectural Plans	11/2/2021	Urban Link
L-01 C - L-11 C	Landscape Plan	9/7/2021	Site Design Studios
21/1684/A	Geotechnical Investigation	February 2022	SDS Geotechnical
21079	Waste Management Plan	July 2021	Dickens Solutions
833	Statement of Environmental Effects	15 March 2022	Daintry Associates Pty Ltd
1221792M	BASIX Certificate	23/8/2021	
ES8260 Revision 0	Detailed Site Investigation	10 August 2021	Aargus

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 (Landscape Plan by Site Design, Rev E and dated 16/02/22 to be amended) demonstrating the following:

- a. The *Banksia integrifolia* (Coast Banksia) located in the deep soil area adjacent Murray Lane must be replaced with a minimum of two (2) large broad domed canopy trees such as *Corymbia eximia*, *Angophora costata* or *Angophora floribunda*. The trees must be in 200 litre containers at planting. One tree is to be planted on either of the ramp at a minimum distance of 2.5m from the rear building alignment and at a suitable setback from the ramp.
- b. The soil depth for planters containing trees must be 800mm (excluding drainage cells).

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:	\$70,000.00
Inspection Fee:	\$241.50

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. 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.

5. Section 7.11 (Former Section 94) Contribution

Prior to the issue of a Construction Certificate/ before commencing works written evidence must be provided to the Certifying Authority that a monetary contribution of \$648,692.56 indexed in accordance with Marrickville Section 94/94A Contributions Plan 2014 ("CP") has been paid to the Council.

The above contribution is the contribution applicable as at 5/1/2022

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

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

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

Public Amenities Type:	Contribution \$
Recreation Facilities	\$551,265.93
Community Facilities	\$70,007.48
Traffic Facilities	\$8,817.34

Plan Administration	\$12601.81
TOTAL	\$642,692.56

A copy of the CP can be inspected at any of the Inner West Council Services Centres or viewed online at:

<https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

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.**

*NB A 0.75% credit card transaction fee applies to all credit card transactions.

GENERAL CONDITIONS

6. Tree Protection

No trees on public property (footpaths, roads, reserves etc.) are to be removed or damaged during works unless specifically approved in this consent or marked on the approved plans for removal.

Prescribed trees protected by Council's Management Controls on the subject property and/or any vegetation on surrounding properties must not be damaged or removed during works unless specific approval has been provided under this consent.

Any public tree within five (5) metres of the development must be protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

No activities, storage or disposal of materials taking place beneath the canopy of any tree (including trees on neighbouring sites) protected under Council's Tree Management Controls at any time.

7. Works to Trees

Approval is given for the following works to be undertaken to trees on the site after the issuing of a Construction Certificate:

Tree	Approved works
Tree 1B - <i>Schefflera actinophylla</i> (Umbrella Tree) Tree 7 - <i>Cinnamomum camphora</i> (Camphor Laurel) Tree 8 - <i>Mangifera indica</i> (Mango) Tree 9 - <i>Diospyros kaki</i> (Persimmon) Tree 12 - <i>Jacaranda mimosifolia</i> (Jacaranda) Note - Many other trees on site are not subject to the tree management controls and therefore have not been included in this condition.	Removal

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and shall be retained and protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

8. Awnings with Lighting

The proposed awning must be of cantilever type and be set back at least 600mm from the kerb line. The awning must include pedestrian lighting (Category P3-AS1158) and must be maintained and owned by the property owner(s). The proposed awning must be designed to be easily removed if required in future. The owner must maintain, modify or remove the structure at any time if given notification by Council to do so. The lighting must not be obtrusive and should be designed so that it does not shine into any adjoining residences.

9. Dry-weather Flows

Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system. Alternatively, the basement or any below ground structure must be designed to be "tanked" preventing the ingress of seepage or groundwater.

10. Rock Anchors

This consent does not grant consent for any rock anchors on the road reserve or Council land.

11. Car Parking

The development must provide and maintain within the site:

- a. 33 car parking spaces must be paved and line marked;
- b. 10 car parking spaces, for persons with a disability must be provided and marked as disabled car parking spaces;
- c. 8 visitor car parking spaces must be provided and marked as visitor car parking spaces. A sign legible from the street must be permanently displayed to indicate that visitor parking is available on site;
- d. 2 off-street motorcycle parking spaces must be provided, paved, line marked and maintained at all times;
- e. 27 Bicycle storage capacity within the site;
- f. 1 Carwash bays; and
- g. 1 Loading docks/bays.

12. Residential Flat Buildings – Hot Water Systems

Where units or dwellings are provided with separate individual hot water systems, these must be located so they are not visible from the street.

13. Residential Flat Buildings – Air Conditioning Systems

Where units or dwellings are provided with separate individual air conditioning systems, these must be located so they are not visible from the street.

14. Residential Flat Buildings – Adaptable Dwellings

Prior to the issue of a Construction Certificate, the Certifying Authority, must be provided with plans that demonstrate 8 units are Adaptable units.

No works are to occur to the premises that would prevent the Adaptable units from being adapted for persons with a disability.

15. 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.

16. 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.

17. 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.

18. Works Outside the Property Boundary

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

19. Separation of Commercial and Residential Waste and Recycling

The waste and recycling handling and storage systems for residential waste and commercial waste (including waste originating from retail premises) are to be separate and self-contained. Commercial and retail tenants must not be able to access residential waste storage area/s, or any storage containers or chutes used for residential waste and recycling.

20. Waste Management Plan

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with an updated Waste Management Plan

The previously submitted Waste Management Plan is to be amended to reflect the following:

- a. Council will provide waste and recycling collection services
- b. The service will be provided from the rear lane
- c. The interim bin storage area will be no more than 10m walking distance from the door of this interim storage area to the collection truck
- d. All doorways and widths of passages along the route of transfer of bins is to be a minimum of 1200mm
- e. The gradient on the route of transfer from the interim bin storage area to the truck is to be no greater than 1:12
- f. Council crew will provide a wheel-out/wheel-in service
- g. Delete all references to 1100L bins - the largest bin Council provides is 660L (as per the Marrickville DCP, 2.21)
- h. Council collects landfill (red lid bins) on a weekly basis and recycling/garden organics on a fortnightly basis. The amendments are to reflect this.

- i. Waste and recycling generation rates: As per Table 1 in the Marrickville DCP, 2.21, residential flat dwellings are to be provided with 120L landfill capacity per dwelling in 240L bins (1 bin shared between 2 units). This equates to landfill generation of 4,560L (38x120L) which can be managed in 240L or 660L bins.
- j. No compaction permitted as this results in excessive bin damage.
- k. A bin tug is to be provided to move bins up the ramp

21. Noise – Consultant’s Recommendations

All performance parameters, requirements, engineering assumptions and recommendations contained in Aircraft and Road Noise Impact Assessment report prepared by Rodney Stevens Acoustics Pty Ltd dated 19 July 2021 (ref: 210292R1) must be implemented.

22. Hazardous Materials Survey

Prior to any demolition or the issue of a Construction Certificate (whichever occurs first), the Certifying Authority must provide a hazardous materials survey to Council. The survey shall be prepared by a suitably qualified Occupational Hygienist and is to incorporate appropriate hazardous material 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 ANY DEMOLITION

23. 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.

24. Construction Traffic Management Plan – Detailed

Prior to Any Demolition, the Certifying Authority, must be provided with a detailed Construction Traffic Management Plan (CTMP), prepared by an appropriately qualified Traffic Management Consultant with Transport for NSW accreditation. The CTMP must be approved by the Certifying Authority prior to the commencement of any works, including demolition. The Certifying Authority must ensure that the CTMP instructs vehicles to use State and Regional and Collector Roads to the maximum extent with the use of Local Roads as final approach to the development site via the most suitable direct route.

The following matters should be addressed in the CTMP (where applicable):

- a. Description of the demolition, excavation and construction works;
- b. Site plan/s showing the site, roads, footpaths, site access points and vehicular movements;
- c. Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site);
- d. Proposed route(s) from the arterial (state) road network to the site and the proposed route from the site back to the arterial road network;
- e. Impacts of the work and vehicular movements on the road network, traffic and pedestrians and proposed methods to safely manage pedestrians and construction related vehicles in the frontage roadways;
- f. Any Traffic Control Plans (TCP's) proposed to regulate traffic and pedestrian movements for construction activities (such as concrete pours, crane installation/removal etc.);
- g. Proposed hours of construction related activities and vehicular movements to and from the site;
- h. Current/proposed approvals from other Agencies and Authorities (including Roads and Maritime Services, Police and State Transit Authority);
- i. Any activities proposed to be located or impact upon Council's road, footways or any public place;
- j. Measures to maintain public safety and convenience;
- k. Any proposed road and/or footpath closures;
- l. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
- m. Locations of work zones (where it is not possible for loading/unloading to occur on the site) in the frontage roadways accompanied by supporting documentation that such work zones have been approved by the Local Traffic Committee and Council;
- n. Location of any proposed crane and concrete pump and truck standing areas on and off the site (and relevant approvals from Council for plant on road);

- o. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
- p. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected;
- q. On-site parking area for employees, tradespersons and construction vehicles as far as possible;
- r. Proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period; and
- s. How it is proposed to ensure that soil/excavated material is not transported onto surrounding footpaths and roadways.
- t. Swept Paths for the proposed construction vehicles to demonstrate that the needed manoeuvres can be achieved without causing any nuisance.

25. 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.

26. 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.

27. 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.

28. Resource Recovery and Waste Management Plan - Demolition and Construction

Prior to any demolition works, the Certifying Authority must be provided with a Resource Recovery and Waste Management Plan - Demolition and Construction that includes details of materials that will be excavated and their proposed destination or reuse.

PRIOR TO CONSTRUCTION CERTIFICATE**29. Tree Planting in the Public Domain**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Public Domain/Street Tree Planting Plan and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the *Roads Act 1993* incorporating the following requirements:

- a. One (1) new tree shall be located within the footpath outside the subject property on Wardell Road Road. The species of tree selected shall be *Angophora costata* (Sydney Red Gum) in accordance with the Marrickville Street Tree Master Plan;
- b. The trees are to be planted at appropriate spacings from adjacent trees and structures and avoiding overhead power lines above;
- c. All planting stock size shall be minimum 200 litres;
- d. The planting stock shall comply with AS 2303—*Tree Stock for Landscape Use*. A compliance certificate from the supplier must be submitted to Council prior to planting being undertaken ;
- e. The new tree shall be planted by a qualified horticulturist or arborist, with a minimum qualification of Certificate 3 in Horticulture or Arboriculture. The plan must be clearly annotated with this requirement;
- f. The tree pit dimensions and staking detail shall be generally in accordance with Detail 3 on page 130 of the Marrickville Street Tree Master Plan (available online) with the pit dimension being 1500mm x 1000mm and the tree setback 600mm from the back of the kerb;
- g. The awning configuration must be detailed on the plan. All construction plans shall show the awning on the Wardell Road frontage to be setback a minimum of 1500mm from the back of the kerb.

30. Direct Waste Collection from Basement

A design certificate and detailed plans are to accompany the Construction Certificate application that confirms that the waste can be directly collected from the basement as detailed in the Waste Management Plan. The design certificate is to confirm that:

- a. Waste collection vehicle can access the basement, adequately manoeuvre into position, load bins and exit basement
- b. Adequate vertical clearance is provided along the route of travel to/from external entry/exit points to collection area
- c. The collection vehicle must be able to manoeuvre in the basement with limited need for reversing
- d. The grades of the entry/exit must not exceed the capabilities of the waste collection vehicle

- e. The floor of the basement has been designed to carry the load of the vehicle.

31. Stormwater Drainage System – Major Developments

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site stormwater detention and/or on site retention/ re-use facilities (OSR/OSD) and Stormwater Quality Improvement Devices (SQIDS), certified by a suitably experienced Civil Engineer that the design of the site drainage system complies with the following specific requirements:

- a. Stormwater runoff from all surface areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from any rainwater tank(s) by gravity to the kerb and gutter of a public road/directly to Council's piped drainage system via the OSD/OSR tanks;
- b. 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.
- c. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than for the pump-out of subsurface flows and surface flows from the driveway from the basement;
- d. The Drainage Plan must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;
- e. The on-site detention system must be designed for all storm events from the 1 in 5 years to the 1 in 100 year storm event, with discharge to a Council controlled storm water system limited to fully pervious (state of nature) conditions with the maximum allowable discharge to Council's street gutter limited to 25 litres/second (20 years ARI/100years ARI);
- f. Details of the Height vs Storage and Height vs Discharge relationships must be submitted;
- g. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows from the contributing catchment to the OSD/OSR tanks; OSD may be reduced or replaced by on site retention (OSR) for rainwater reuse in accordance with the relevant DCP that applies to the land. Where this is pursued, the proposed on-site retention (OSR) tanks must be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks where the collected water is to be used to supply water inside the dwelling, such as for toilet flushing or laundry use;
- h. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows from the contributing catchment to the OSD/OSR tanks;
- i. Details of the 1 in 100-year ARI overflow route in case of failure/blockage of the drainage system must be provided;

- j. A pump-out system for drainage of surface flows from the basement ramp is permitted for the basement area only and must be designed in accordance with the following criteria:
 - 1. Comply with all relevant Australian Standards;
 - 2. An overflow, flashing light and audible alarm is to be provided to warn of pump failure;
 - 3. A maintenance regime for the pump system must be provided, including provision for regular maintenance and servicing at least every 6 months;
 - 4. The proposed pump system must consist of two (2) pumps, connected in parallel, with each pump being capable of emptying the holding tank at a rate equal to the rate of inflow for the one-hour duration, 100-year Average Recurrence Interval (ARI) storm event. The holding tank must be capable of holding one hour's runoff from one-hour duration 20-year ARI storm event;
 - 5. Where OSD facilities are required by this consent, the pump system must be discharged to the OSD storage tank;
 - 6. Subsurface flows must be collected at the point of ingress to the basement i.e. at the basement walls;
 - 7. The subsurface drainage system must have sufficient capacity to collect and convey all surface flows to the pump out system; and
 - 8. Inlet pits and drains for subsurface drainage must be designed to minimise potential for pollutants from cars or other sources to enter the subsurface drainage system. e.g.. isolate any subsurface drains at boundary walls, inspection pits with solid covers, etc.
- k. Details of external catchments currently draining to the site must be included on the plans. Existing natural overland flows from external catchments may not be blocked or diverted, but must be captured and catered for within the proposed site drainage system. Where necessary an inter-allotment drainage system must be incorporated into the design;
- l. No nuisance or concentration of flows to other properties;
- m. 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;
- n. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
- o. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- p. 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;
- q. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;

- r. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;
- s. Water quality filtration basket(s) with screening bag or similar primary treatment device(s) must be installed on the site stormwater drainage system such that all water entering the site stormwater drainage system is filtered by the device(s);
- t. Stormwater quality improvement devices must be installed such that stormwater flows leaving the site meet the following environmental targets:

Pollutant	Baseline Pollution (kg/ha/yr)	Annual Load	Retention Criteria
Gross Pollutants, including trash, litter and vegetation matter greater than 5mm	500		90% reduction of average annual load
Total Suspended solids, including sediment and other fine material less than 5mm	900		85% reduction of average annual load
Total Phosphorous	2		65% reduction of average annual load
Total Nitrogen	15		45% reduction of average annual load
Hydrocarbons (Oil and Grease)			90% reduction of average annual load – no visible discharge
Toxicants			100% containment of toxicants

- u. A water balance model must be submitted to accompany the water re-use proposal;
- v. A WSUD Strategy Report must be provided to ensure the treatment measures proposed to meet Council's water quality targets. For sites with a GFA greater than 2000sqm a MUSIC model (including .sqz file) must be included with the report;
- w. A detailed WSUD maintenance plan outlining how all elements of the water quality treatment facility will be maintained and to record annual inspections/maintenance works to be undertaken.
- x. Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council

- stormwater system. Alternatively, the basement must be fully “tanked” so as not to allow the ingress of seepage or groundwater; and
- y. No impact to street tree(s).

32. Structural and Geotechnical Report

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an integrated structural and geotechnical report and structural plans that address the design of the proposed basement, prepared certified as compliant with the terms of this condition by a qualified practicing Structural and Geotechnical Engineer(s) who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng). The report and plans must be prepared/ amended to make provision for the following:

- a. The basement must be fully tanked to prevent the ingress of subsurface flows;
- b. Retaining walls must be entirely self-supporting in the event that excavation is undertaken within the road reserve adjacent to the property boundary to the depth of the proposed structure;
- c. Any existing or proposed retaining walls that provide support to the road reserve must be adequate to withstand the loadings that could be reasonably expected from within the constructed road and footpath area, including normal traffic and heavy construction and earth moving equipment, based on a design life of not less than 50 years;
- d. All components of the basement, including footings, must be located entirely within the property boundary;
- e. No adverse impact on surrounding properties including Council’s footpath and road;
- f. The existing subsurface flow regime in the vicinity of the development must not be significantly altered as a result of the development;
- g. Recommendations regarding the method of excavation and construction, vibration emissions and identifying risks to existing structures or those on adjoining or nearby property; and
- h. Provide relevant geotechnical/ subsurface conditions of the site, as determined by a full geotechnical investigation.

33. Public Domain Works – Prior to Construction Certificate

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a public domain works design, prepared by a qualified practising Civil Engineer and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the *Roads Act 1993* incorporating the following requirements:

- a. The public domain along all frontages of the site inclusive of footpath paving, kerb, street trees, landscaping, etc. must be reconstructed and upgraded in accordance with the Street Tree Master plan and the Public Domain Design Guide or scheme;

- b. The construction of heavy duty vehicular crossings to all vehicular access locations and removal of all redundant vehicular crossings to the site;
- c. New concrete footpath and kerb and gutter along the frontage of the site. The kerb type (concrete or stone) must be consistent with the majority of kerb type at this location as determine by the Council Engineer;
- d. Cross sections are to be provided at the boundary at a minimum distance of every 5m and at all pedestrian and vehicular access locations. Note, the cross fall of the footpath must be set at 2.5%. These sections will set the alignment levels at the boundary; and
- e. Installation of a stormwater outlet to the kerb and gutter.

All works must be completed prior to the issue of an Occupation Certificate.

34. Parking Facilities – Major (including basement)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with plans certified by a suitably qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) demonstrating that the design of the vehicular access, off-street parking facilities and associated vehicle standing areas comply with Australian Standard AS/NZS 2890.1-2004 Parking Facilities: Off-street car parking, Australian Standard AS 2890.2-2018 Parking Facilities: Commercial vehicle facilities, AS/NZS 2890.3-2015 Parking facilities: Bicycle Parking, AS/NZS 2890.6-2009 Parking facilities: Off-street parking for people with disabilities and the following specific requirements:

- a. The garage slab or driveway must rise within the property to be 150mm above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004;
- b. A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors;
- c. Headroom at a 'sag' type grade change must be measured in accordance with Figure 5.3 of AS/NZS 2890.1-2004;
- d. Minimum headroom of 2500mm must be provided above any disabled parking space(s);
- e. The longitudinal profile of the access and any ramps within the parking facilities must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004 for a B99 design vehicle. Longitudinal sections must be provided along each outer edge of all ramps;
- f. Longitudinal sections must be provided along both sides of the vehicular access ramp(s) and throughout the path of travel for a SRV utilising the loading bay. The sections must demonstrate that minimum headroom of 3500mm is provided;

- g. The layout and minimum dimensions of any standing area comply with clause 2.4 of AS/NZS 2890.1-2004 such that:
 - i. Car spaces adjacent to walls or fences are increased in width by an additional 300mm;
 - ii. End spaces are provided with an additional 1m aisle extension; and
 - iii. The location of columns within the carpark complies with figure 5.1 of AS/NZS 2890.1-2004.
- h. At the property boundary the access from the road to a standing area is (as near as practicable) perpendicular to the line of the adjacent road;
- i. The relative surface levels of the internal access from the road being controlled so that:
 - i. The surface levels at the property boundary match "alignment levels"
 - ii. The change in grade for any 2m length of access way does not exceed 1 in 8 (12.5%) unless suitable transitions are provided in accordance with AS2890.1;
 - iii. The maximum grade at any point does not exceed 1 in 5 (20%) or in the case of ramps greater than 20m in length 1 in 6 (16.7%); and
 - iv. The maximum grade at the property boundary does not exceed 1 in 20 (5%) within 6m of the property boundary.
- j. The vehicle egress is designed such that there are no obstructions to lines of sight, along with the footpath and the roadway for drivers of egressing vehicles;
- k. The curved section of the ramp is designed in accordance with AS/NZS 2890.1-2004 with grades measured along the inside radius;
- l. All loading docks and parking bays are designed such that all vehicular movements to and from the proposed development are in a forward direction;
- m. The entry security door must be set back a minimum of 5500mm from the property boundary;
- n. Loading / unloading facilities must be provided on-site in accordance with the requirements of AS2890.2 – 2002; and
- o. A bicycle storage area must be provided to accommodate bicycles and be designed in accordance with relevant provisions of AS 2890.3-2015.

35. Enclosure of Fire Hydrant

Prior to the issue of a Construction Certificate, the Certifying Authority is to be provided with plans indicating that all fire hydrant and sprinkler booster valves and the like are enclosed in accordance with the requirements of AS 2419.1 2005.

36. 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

37. 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.

38. Fibre-ready Facilities

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with evidence that arrangements have been made for:

- a. The installation of fibre-ready facilities to all individual lots and/or premises the development so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose.
- b. The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises the development demonstrated through an agreement with a carrier.

39. Consolidation of Lots

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with evidence that the separate lots comprising the development have been consolidated into one lot and under one title and registered at NSW Land Registry Services.

40. 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.

41. Future Food Use - Mechanical Ventilation Provision

Prior to the issue of a Construction Certificate, the mechanical exhaust systems and/or shafts must be designed to allow for the discharge of effluent air above roof level and must be designed with capacity to accommodate exhaust ducts and mechanical ventilation systems for all commercial tenancies proposed with the potential to become a food premises in future. Systems must be designed in accordance with AS1668.2 – The Use of Ventilation and Air-conditioning in Buildings – Mechanical Ventilation in Buildings, and AS1668.1 – The Use of

Mechanical Ventilation and Air-Conditioning in Buildings – Fire and Smoke Control in Multi-compartment Buildings.

42. Bin Storage Area - Residential

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a report detailing the ongoing waste generation requirements of the development and demonstrate that the bin storage area is to be provided within the site that will fully accommodate the number of bins required for all waste generated by a development of this type and scale. The number of bins required must be calculated based on a weekly collection of garbage, and a fortnightly collection of recycling.

The area must also include 50% allowance for manoeuvring of bins. The bin storage area is to be located away from habitable rooms, windows, doors and private useable open space, and to minimise potential impacts on neighbours in terms of aesthetics, noise and odour.

The bin storage area is to meet the design requirements detailed in the Marrickville DCP 2011 and must include doorways/entrance points of 1200mm.

43. Bulky Waste Storage Area – Residential

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating that the bulky waste storage area must meet the floor area requirements as per the Marrickville DCP 2011 and have minimum doorways of 1200mm wide to accommodate large items.

44. Waste Transfer Route

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a plan demonstrating that the path of travel between the bin storage area/bulky waste storage area and the designated waste/recycling collection point is has a minimum 1200mm wall-to-wall clearance, be slip-proof, of a hard surface, be free of obstructions and at no point have a gradient exceeding 1:12.

45. Each Residential Level is to have Access to a Disposal Point for All Waste Streams

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a plan demonstrating that the disposal point is to be within 30m of the dwelling access (distance covered by lifts excluded). Any bins stored on residential floors are to have the capacity to store, at minimum, all waste generated by that floor over a 24 hour period.

46. Noise General – Acoustic Report

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an acoustic report demonstrating that noise and vibration from the operation of the premises will satisfy the relevant provisions of the *Protection of the Environment Operations Act 1997* and Regulations and relevant state and local policies and guidelines. 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.

47. Aircraft Noise – Acoustic Report (ANEF20-25 or Greater)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with an acoustic report that meets the relevant provisions of Australian Standard AS 2021:2000 Acoustics – Aircraft noise intrusion – Building siting and construction. The recommendations of the report are to be indicated on the architectural plans and / or specifications.

DURING DEMOLITION AND CONSTRUCTION

48. Canopy and Root Pruning

Canopy pruning of the following trees which is necessary to accommodate the approved building works must be undertaken by a qualified Project Arborist.

Tree No.	Botanical/Common Name
-	<i>Tristaniopsis laurina</i> (Water Gum) / street tree

The person acting on this consent has approval under Council's Tree Management Controls to prune the tree as detailed in the Arboricultural Impact Assessment report prepared by Jacksons Nature Works and dated 12 August 2021. No additional pruning can be undertaken including for scaffolding - branches for scaffolding to be tied back by an Arborist or additional pruning must be approved by Council. Scaffolding and Hoarding must be designed in liaison with an AQF Level 5 Arborist to have minimal impact on street trees.

49. Tree Protection

To protect the following tree, trunk and branch protection must be installed prior to any works commencing in accordance with the approved *Tree Protection Plan* and/or with Council's *Development Fact Sheet—Trees on Development Sites*:

Tree No.	Botanical/Common Name/Location
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-	<i>Tristaniopsis laurina</i> (Water Gum) / street tree
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50. 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.

51. 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.

52. Documentation of Demolition and Construction Waste

All waste docketts from the recycling and/or disposal of any demolition and construction waste generated from the works must be retained on site.

53. Contamination – New Evidence

Any new information revealed during demolition, remediation or construction works that have the potential to alter previous conclusions about site contamination must be immediately notified to the Council and the Certifying Authority.

54. Imported Fill Materials

All imported fill on the site shall be validated as Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM), in accordance with NSW Environment Protection Authority guidelines, 'Consultants Reporting on Contaminated Sites' (August 2011) to ensure the imported fill is suitable for the proposed land use.

All fill imported onto the site shall be validated by either one or both of the following methods:

- a. Imported fill be accompanied by documentation from the supplier which certifies that the material is not contaminated based upon analyses of the material for the known past history of the site where the material is obtained; and/or
- b. Sampling and analysis of the fill material be conducted in accordance with NSW Environment Protection Authority's Sampling Design Guidelines (September 1995).

PRIOR TO OCCUPATION CERTIFICATE**55. Planting of Street Trees**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with written evidence from Council that the required street tree has been planted in accordance with the approved Public Domain/Street Tree Plan.

56. Public Domain Works

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with written evidence from Council that the following works on the Road Reserve have been completed in accordance with the requirements of the approval under Section 138 of the *Roads Act 1993* including:

- a. Heavy duty concrete vehicle crossing(s) at the vehicular access location(s);
- b. The redundant vehicular crossing to the site must be removed and replaced by kerb and gutter and footpath. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb must also be in stone;
- c. The existing concrete footpath across the frontage of the site must be reconstructed; and
- d. Other works subject to the *Roads Act 1993* approval.

All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications".

57. 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.

58. 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.

59. Whiteway Lighting - New

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that the Under awning lighting matches the existing Whiteway lighting scheme in the area.

60. Parking Signoff – Major Development

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification from a qualified practising Civil Engineer that the vehicle access and off street parking facilities have been constructed in accordance with the development consent and relevant Australian Standards and the following has been implemented within the property.

- a. The car park has been completed, line marked and all signage relating to car parking erected;
- b. Sign(s) have been erected that clearly indicate(s) to the drivers of vehicles both on and off the property which driveway they are to use to enter or leave the subject land;
- c. Sign(s) have been erected that clearly indicate to the drivers of vehicles both on and off the property the location and means of access to the car parking area(s).

61. Public Domain - Major Developments

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with the works-as-executed plan(s), certified by a Registered Surveyor, that show the as built details in comparison to those shown on the plans approved with the public domain and Roadworks Permit with all relevant levels and details indicated must be marked in red on a copy of the Council stamped plans.

62. Dilapidation Report – Post-Development

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a second Dilapidation Report addressing the public infrastructure identified in approved predevelopment dilapidation report, including a photographic survey, structural condition and CCTV inspections which was compiled after the completion of works. As the report details public infrastructure, a copy is to be furnished to Council at the same time.

63. Works as Executed – Site Stormwater Drainage System

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a suitably qualified Civil Engineer that:

- a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and
- b. Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSD/OSR system commissioned and stormwater quality improvement device(s) and any pump(s) installed in accordance with the approved design and relevant Australian Standards have been submitted to Council. The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped Construction Certificate plans.

64. Operation and Management Plan

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an Operation and Management Plan has been prepared and implemented for the on-site

detention and/or on-site retention/re-use facilities and stormwater quality improvement device(s) and pump(s). The Plan must set out the following at a minimum:

- a. The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners; and
- b. The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

65. Easements, Restrictions on the Use of Land and Positive Covenants

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with evidence that Easements, Restrictions on the Use of Land and Positive Covenants under Section 88B or 88E, whichever is relevant to the subject development, of the *Conveyancing Act 1919*, has been created on the title of the property detailing the following :

- a. Restrictions on the Use of Land related to on Site Stormwater Detention System or stormwater quality improvement devices;
- b. Restrictions on the Use of Land related to Stormwater Surface Flow Paths;
- c. Positive Covenant related to on-site stormwater detention and/or retention system; and
- d. Positive Covenant related to stormwater quality improvement devices.

The wording in the Instrument must be in accordance with Councils Standard wording.

66. Basement/Retaining Wall Signoff – Major Development

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with certification from a suitably experienced structural and geotechnical engineer, who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng), that the basement and driveway has been constructed in accordance with the development consent and relevant Australian Standards and that the basement is fully tanked construction such that pump-out of subsurface flows is not required.

67. Section 73 Certificate

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a Section 73 Certificate under the *Sydney Water Act 1994*.

68. Noise – Acoustic Report

Prior to the issue of an Occupation Certificate, the Principal Certifier 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 Noise Policy for Industry 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.

69. Noise From Road, Rail & Aircraft – Compliance

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an acoustic report prepared by suitably qualified acoustic consultant, confirming that the development complies with the requirements of the:

- a. *State Environmental Planning Policy (Infrastructure) 2007*;
- b. NSW Planning, Development near Rail Corridors and Busy Roads – Interim Guideline;
- c. Australian Standard 2021-2000: Acoustics - Aircraft noise intrusion - Building siting and construction;
- d. conditions of development consent; and
- e. Recommendations

70. Contamination – Disposal of Soil

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a validation report confirming that all off site disposal of soil has been classified, removed and disposed of in accordance with the NSW DECC Waste Classification Guidelines, Part 1: Classifying Waste (EPA 2014), Protection of the Environment Operations (Waste) Regulation 2014 and the *Protection of the Environment Operations Act 1997*.

PRIOR TO SUBDIVISION CERTIFICATE

71. Section 73 Certificate

Prior to the issue of a Subdivision Certificate, the Certifying Authority must be provided with the Section 73 Certificate. A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation.

ON-GOING

72. Documentation of Businesses Waste Services

All businesses must have written evidence of all valid and current contracts and/ or tip dockets for the disposal and/ or processing of all waste streams generated from the site.

73. Commercial Bin and Re-usable Item Storage

All commercial bins and re-usable items such as crates and pallets are to be stored within the site.

74. Operation and Management Plan

The Operation and Management Plan for the on-site detention and/or on-site retention/re-use and/or stormwater quality improvement devices and/or Pump facilities, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

75. Vehicles Leaving the Site

All vehicles must enter and exit the site in a forward direction.

76. Loading/unloading on site

All loading and unloading are to be conducted within the site at all times. Any designated loading bay/dock area is to remain available for loading/unloading purposes at all times. No storage of goods or parking of cars is to be carried out in these areas.

77. Hours of Operation

The hours of operation of the shops must not exceed the following:

Day	Hours
Monday-Saturday	7:00am-10:00pm
Sundays and Public Holidays	8:00am-9:00pm

78. Bin Storage

All bins are to be stored within the site. Bins are to be returned to the property within 12 hours of having been emptied.

79. 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.

80. 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.

ADVISORY NOTES**Rock Anchors**

If you are seeking to use temporary anchors, you must make a request for approval for a Permit under Section 138 of the Roads Act 1993. The submission would need to be supported by an engineering report prepared by a suitably qualified Structural Engineer, with supporting details addressing the following issues:

- a. Demonstrate that any structures within the road reserve are of adequate depth to ensure no adverse impact on existing or potential future service utilities in the road reserve. All existing services must be shown on a plan and included on cross-sectional details where appropriate.
- b. Demonstrate how the temporary anchors will be removed or immobilised and replaced by full support from structures within the subject site by completion of the works.
- c. The report must be supported by suitable geotechnical investigations to the efficacy of all design assumptions.

Electrical Substations

Should the proposed development require the provision of an electrical substation, such associated infrastructure must be incorporated wholly within the development site and may be the subject of an application for modification of consent.

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.

Easement and Covenant Process

The following documents must be submitted to Council as part of the Easement and Covenant process and requirements, for the site on-site detention/on-site retention/reuse facilities (OSD/OSR) and stormwater quality improvement devices (SQIDS):

- a. Work-As-Executed Plans

A "Work-as-Executed" plan prepared and signed by a Registered Surveyor must be submitted to the Council's Development Assessment Engineer at the completion of the works showing the location of the detention basin and SQIDS with finished surface levels, contours at 0.2-metre intervals and volume of storage available. Also, the outlet pipe from the detention basin to its connection to the Council's drainage system must be shown together with the following information: location; pipe diameter; gradient; pipe material, i.e. PVC or RCP etc.; pits sizes; orifice size; trash screen at orifice; emergency overflow dimensions and RL; all buildings (including floor levels) and finished ground and pavement surface levels and full details of SQIDS.

- b. Engineer's Certificate

A qualified practising Civil Engineer must certify on the completion of drainage works in respect of:

- c. The soundness of the storage structure;
 - d. The capacity of the detention storage;
 - e. The emergency overflow system being in place;
 - f. The works being constructed in accordance with the Development Application Consent and Council's Stormwater Management DCP/Code;
 - g. The freeboard from maximum water surface level to the finished floor and garage levels are at or above the minimum required in Council's Stormwater Management DCP/Code;
 - h. Basement car park pumps are class one zone two; and
 - i. OSR pumps and SQIDS have been installed and commissioned.
- c. Restriction-As-To-User
- A "Restriction-as-to-User" must be placed on the title of the subject property to indicate the location and dimensions of the detention area and stormwater quality improvement device(s) (SQIDS). This is to ensure that works, which could affect the function of the stormwater detention system and SQIDS, must not be carried out without the prior consent in writing of the Council.
- Such restrictions must not be released, varied or modified without the consent of the Council.
- A typical document is available from Council's Development Assessment Engineer.
- d. A Maintenance Schedule.

Subsurface drainage pump-out systems

Where it is demonstrated by detailed geotechnical investigation that the groundwater flows are minimal or intermittent, a pump out system for groundwater may be considered. An application for modification of development consent with supporting documentation must be submitted. Where this option is to be pursued dry-weather flows of any seepage water will not be permitted through kerb outlets and must be connected directly to a Council stormwater system in accordance with Council requirements.

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 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;
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.

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* 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 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.

Construction of Vehicular Crossing

The vehicular crossing and/or footpath works are required to be constructed by your own contractor. You or your contractor must complete an application for *Construction of a Vehicular Crossing & Civil Works* form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, prior to commencement of works.

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 Payments Corporation	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 Environmental Solutions	1300 651 116	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.

Notice to Council to deliver Residential Bins

If 660L bins are required, Council should be notified three months prior to the occupation of the building to ensure timely delivery.

Council will place an order for the required bins. Delivery will occur once the applicant has completed a Request for New Service.

Recycling / Garbage / Organics Service Information and Education

The building manager / strata title manager or body corporate is responsible for ensuring all tenants are kept informed regarding Council's services, and best practice waste and recycling source separation.

Mechanical Ventilation System Certification

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

- 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.

Storage of Hazardous and Dangerous Goods

Dangerous and hazardous goods must be stored in accordance with NSW WorkCover requirements and AS1940-2004, The Storage and Handling of Flammable and Combustible Liquids.

Transport and Disposal of Hazardous and Dangerous Goods

Hazardous and industrial waste arising from the use must be removed and / or transported in accordance with the requirements of the NSW Environment Protection Authority (EPA) and the New South Wales WorkCover Authority.

Attachment E – Architectural Excellence Panel (AEP Minutes)



**Architectural Excellence & Design Review Panel
Meeting Minutes & Recommendations**

Site Address:	246 Wardell Road Marrickville
Proposal:	A 6 storey shop top housing proposal over a basement carpark
Application No.:	DA/2021/0855
Meeting Date:	30 November 2021
Previous Meeting Date:	-
Panel Members:	Jon Johannsen – chair, Diane Jones and Tony Caro
Apologies:	-
Council staff:	Vishal Lakhia
Guests:	-
Declarations of Interest:	None
Applicant or applicant’s representatives to address the panel:	Urban Link – Architect for the project

Background:

The Architectural Excellence & Design Review Panel reviewed the architectural drawings and discussed the proposal with the applicant through an online conference.

Discussion & Recommendations:

Principle 1 – Context and Neighbourhood Character

“Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area’s existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.”

1. The Panel supports the overall site planning and massing strategy that provides a 12m separation between the 6-storey eastern and the western buildings.
2. In terms of the ground floor interface with the laneway, the Panel advises that there is a compelling need for improvement of the laneway character through:
 - a. Provision of a single, consolidated point of vehicular access for both car and garbage vehicle entries, to reduce vehicular dominance within the public domain;
 - b. Removal of the of the at-grade visitor car spaces along the laneway interface and relocating these within the building;

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- c. Reconfiguration of the pedestrian entry and lobby to improve the presentation to the laneway; and
- d. Introduction of street trees and landscaped areas along the laneway interface (Refer Principle 5 – Landscape for further details).

Principle 2 – Built Form and Scale

"Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings."

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook."

1. The Panel discussed that the applicant should consider further resolution with regards to the vertical alignment of building services within the proposal, including any required mechanical ventilation from the commercial levels to the roof.
2. Potential for improved articulation of the Wardell Road elevation is recommended through incorporation of a vertical recess at the junction with adjacent buildings.

Principle 3 – Density

"Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population."

Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment."

Given the site location close to good public transport, the Panel recommends that the car parking provision is the minimum required and if possible, reconfigure the basement space for more efficient circulation and amenity, and landscaping potential in the rear lane.

Principle 4 – Sustainability

"Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation."

1. The Panel expects the proposal to be consistent with key targets established within the ADG for solar access and natural cross ventilation. Similarly, the Panel encourages the applicant to consider commitment to further sustainability targets for water, energy and waste efficiency.
2. Provision of ceiling fans is strongly encouraged in all habitable areas. Floor-to-floor and floor-to-ceiling heights should be detailed to permit the use of ceiling fans within the proposal.
3. Provision of a rainwater tank should be considered to allow water collection, storage and reuse within the subject site. The applicant should consider some type of irrigation system connected with the rainwater tank to water the plantation areas within the courtyard and the communal roof top garden.

Principle 5 – Landscape

"Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood"

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management."

1. The Panel notes that the current scheme does not offer significant deep soil zones for environmental benefits. The proposal should be consistent with the minimum 7% requirement as per the Part 3E-1 guidance offered within the ADG. Deep soil should be incorporated in the

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design, preferably within the central courtyard, and supporting new, large canopy trees and shrubs.

2. It is recommended that the design of the central courtyard should create a heavily landscaped buffer between the buildings to improve the residential amenity and outlook for the residents. Therefore, the Panel suggested that the active uses shown on the drawings be relocated to the roof terraces to remove the potential conflicts between private open spaces and the active communal activities proposed. The central courtyard can then be a green, passive space.
3. The Panel recommends provision of a unisex accessible toilet on the rooftop communal open spaces for both buildings.
4. The applicant should consider provision of street trees along the Wardell Road frontage. The outline of building awnings should allow adequate space for the street tree canopies to enable tree growth with a consistent form and be coordinated with the architectural drawings. Scope for tree planting should also be considered along the rear laneway with deep soil or appropriate sized planters integrated with a reconfigured basement noted above.

Principle 6 – Amenity

"Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being."

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility."

1. The Panel discussed the internal amenity within apartments and recommends that the applicant should avoid provision of 'L' shaped kitchen layouts as this configuration would offer a limited storage above and below the kitchen counters. A linear wall kitchen with an appropriate length should be considered.
2. The Panel offered suggestions for improving privacy of bedrooms and bathrooms within the apartments, which could be achieved by relocating doors to such private spaces to more discrete locations, so these doors avoid direct opening-up into living areas and corridors of the apartments.

Principle 7 – Safety

"Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety."

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose."

1. The Panel requires the applicant to consider CPTED principles and a lighting strategy for safety, especially along the Laneway.

Principle 8 – Housing Diversity and Social Interaction

"Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets."

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents."

No discussion

Principle 9 – Aesthetics

"Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures."

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape."



1. The Panel recommends introduction of a vertical building indentation as a 'shadow-line' at the junction between the proposed and adjacent buildings along both – Wardell Road and the laneway frontage.
2. The Panel strongly encourages use of self-finished materials (such as bricks, concrete) for the proposal. Rendered and painted surfaces should be avoided in favour of materials with an integral finish.
3. Revised architectural drawings should confirm location of AC condenser units and other mechanical equipment. The Panel considers these should not be located within balconies (unless suitably screened visually and acoustically) or anywhere visually apparent from the surrounding public domain
4. Revised architectural drawings should include details of the proposed design intent for key façade types in form of 1:20 sections indicating façade type, balustrade fixing, balcony edges, junctions, rainwater drainage system including any downpipes and similar details within the proposal.

Non SEPP 65 Matters:

None

Conclusion:

The Panel recommends the proposal should only be supported once it satisfactorily demonstrates improved design quality in-line with the recommendations provided in this Architectural Excellence & Design Review Panel Report.