
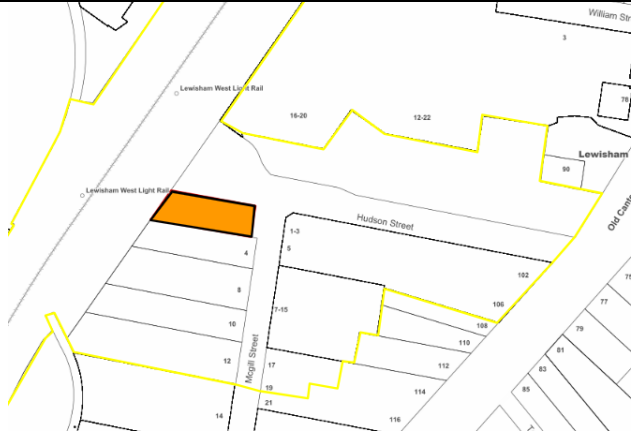







|  DEVELOPMENT ASSESSMENT REPORT | |
|---|--|
| Application No. | MOD/2023/0082 |
| Address | 2 McGill Street LEWISHAM NSW 2049 |
| Proposal | Section 4.55(2) application to modify Determination DA201700611 dated 7 May 2019, to delete the deferred commencement condition, imposed by the Inner West Local Planning Panel, and extension of the basement lift wall by 400mm. |
| Date of Lodgement | 24 March 2023 |
| Applicant | Jimmy Yan |
| Owner | Mr De M Chen |
| Number of Submissions | Initial: 0 After Renotification: 0 |
| Value of works | \$6,694,026.00 |
| Reason for determination at Planning Panel | Deletion of condition imposed by the Planning Panel |
| Main Issues | Parking |
| Recommendation | Approved with Conditions |
| Attachment A | Recommended amendments to conditions of consent |
| Attachment B | Plan of proposed development and Traffic Engineering Assessment |
| Attachment C | Assessment Report and Panel Minutes for DA201700611 |
|  <p>Figure 1: Locality Map</p> | |
| Subject Site  | Objectors   N |
| Notified Area  | Supporters  |

3. Site Description

The site is known as 2 McGill Street, Lewisham and is located on the south western corner of Hudson Street and McGill Street. The site is legally described as Lot 1 in Deposited Plan 535963. The site has a frontage of 11.45 metres to McGill Street to the east, a frontage of 31.36 metres to Hudson Street to the north, a frontage of 12.68 metres to the light rail corridor to the west and is 384sqm in area.

The site contains an existing single storey warehouse building. Vehicular access to this property is provided by an existing vehicular crossing from Hudson Street.

The area is generally characterised by high density residential development and forms part of the McGill Street Masterplan area. To the west of the site is a light rail corridor and Lewisham west light rail stop.

The site is adjoined by No. 4-12 McGill Street to the south, which contains a group of single storey warehouse buildings, which have been approved for redevelopment into a mixed use development containing 2 buildings with a height ranging from 6 to 8 storeys. To the north of the site at No. 78-90 Old Canterbury Road is the 'Luna' development, which contains a mixed use development comprising of 7 buildings with a height ranging from 4 to 10 storeys.

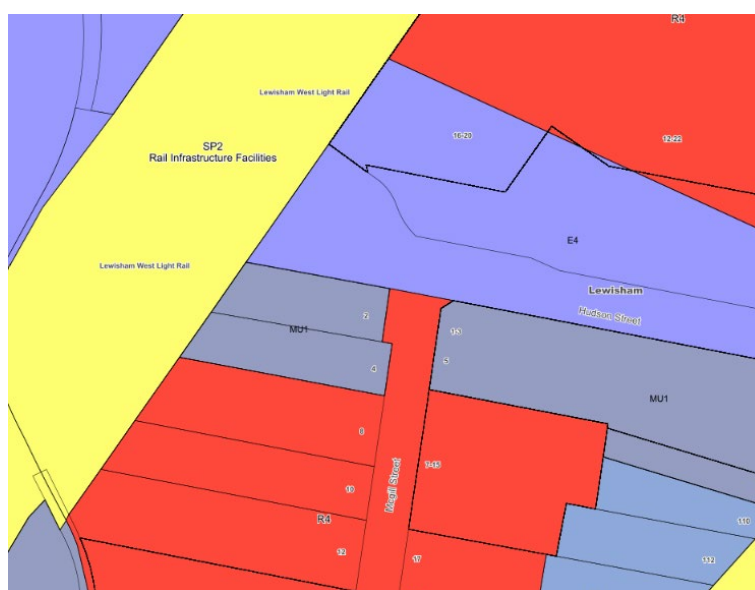


Figure 3: Zoning Map

4. Background

4(a) Site history

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

Subject Site

A deferred commencement consent was granted by the IWLPP on 7 May 2019 for DA201700611 proposing “to demolish existing improvements and construct a 6 storey mixed use development comprising 2 levels of basement parking, 2 commercial tenancies on the ground floor with 20 residential dwellings over 5 levels and a communal roof terrace”.

On 3 March 2023, the applicant requested a deferred commencement document review to activate the consent. Council advised the applicant that, while the submitted plans would be consistent with the deferred commencement conditions imposed by the IWLPP, the amendments would have ramifications on other conditions of consent and, to address this issue, an application under section 4.55 of the Environmental Planning and Assessment Act 1979 would be required.

On 24 March 2023, the applicant lodged the subject (section 4.55(2)) application (MOD/2023/0082) to modify Determination DA201700611 dated 7 May 2019, including the addition of a driveway and car lift to the basement parking to respond to the imposed deferred commencement condition.

Council’s development engineer advised that the proposed amendments could not be supported for, *inter alia*, the following reasons:

- loss of 2 off street car spaces.
- The vehicle crossing associated with the car lift is in a prohibited location.
- Sight lines have not been provided to pedestrians.
- There has been no queueing space provided on the site.
- Due to the size of the car lift, it encroaches within the aisle of the carpark. No swept paths have been provided detailing that manoeuvring for a B85 vehicle and confirm that vehicles are able to satisfactory access and manoeuvre into the car spaces and/or into and out of the lift.
- No details have been provided of the actual car lift to be used such as manufacturers specifications with detailed dimensions, operational details such as cycle times etc, maintenance schedules and warranties.

Council contacted the applicant advising that the subject application could not be supported as lodged; however, advised that alternative solutions could be considered.

After discussions with Council, the applicant sought an extension of time (DAEX/2023/0001) to satisfy the deferred commencement conditions, which was approved on 1 May 2023. As a result of this approval, the lapsing period of DA201700611 has been extended for one year, from 7 May 2023 to 7 May 2024.

As outlined in detail elsewhere in this report, it is considered that compliance with the deferred commencement (DC) condition 1(a) cannot be achieved without substantial impact on the public domain and other conditions of consent.

Further, as the development at No. 4-12 McGill Street had not been started at the time of the determination of the DA for the subject site, it is considered that “Demonstration of legal **and actual physical** access to the basement via the basement of 4-12 McGill” was onerously imposed as it requires the completion of the development at No. 4-12 McGill Street prior to being able to satisfy this condition.

Surrounding properties

4-12 McGill Street

| Application | Proposal | Decision & Date |
|-------------|--|--|
| DA201700310 | To demolish existing improvements and construct a mixed use development consisting of a 6 storey building (Building A) fronting McGill Street and a 8 storey building (Building B) fronting the light rail line containing a total of 88 dwellings and 1 | Deferred Commencement Consent issued on 23 March 2018 Operative consent issued 7 January 2019 |

| | | |
|--|---|--|
| | <p>commercial tenancy within Building A for use as art education and café space with 2 basement car parking levels and associated landscape works.</p> <p><u>Note:</u> Condition 147 imposed on this consent reads as follows:</p> <p style="text-align: center;"><i>Before the issue of the Occupation Certificate a right of way shall be provided on the property to allow for vehicular access to future basement carparks at 2 McGill Street, Petersham upon redevelopment of that site.</i></p> | |
|--|---|--|

4(b) Application history

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

| Date | Discussion / Letter / Additional Information |
|----------------------------|--|
| 12/04/2023 – 26/04/2023 | Notification |
| 27/06/2023 | Council officers met with the applicant to discuss the application and issues regarding the deferred commencement condition outlined in section 4(a) of this report, including impacts to streetscape and public domain, road safety, and traffic issues (e.g., queuing on street to access basement). |
| 2/07/2023 | Council requested additional information to address the above-mentioned issues. |
| 9/8/2023 | The applicant submitted additional information and an amended basement 2 plan, proposing to increase the length of a lift wall by 400mm. This increase has no implications on the streetscape, public domain, or manoeuvrability within the carpark and no concerns are raised. |
| 23/8/2023 – 6/9/2023 | Renotification |

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.55 and 4.15 of the *Environmental Planning and Assessment Act 1979 (EPA Act 1979)*.

5(a) Section 4.55 Modification Provisions

Section 4.55(2) of the *EPA Act 1979* allows a consent authority to modify a development consent granted by it, if:

- “(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and
- (c) it has notified the application in accordance with—
 - (i) the regulations, if the regulations so require, or

- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.”

In considering the above:

- The essence of the development, as modified, is substantially the same as the original consent.
- The application did not require concurrence or GTAs from other approval bodies.
- No submissions were received during the required notification period.

The development, as proposed to be modified, is substantially the same development as the development for which consent was originally granted. No authorities or bodies were required to be consulted. The application was notified in accordance with the regulations and Council's Community Engagement Strategy. No submissions were received in response and the relevant considerations under section 4.15 of the Act have been taken into consideration, as outlined in detail below.

In consideration of Section 4.55(3) of the *EPA Act 1979* the development assessment report, endorsed by the Inner West Local Planning Panel (IWLPP) concluded that the development was acceptable for the following reasons –

The proposal generally complies with the aims, objectives and design parameters contained in State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development and Marrickville Local Environmental Plan 2011 (MLEP 2011) with the exception that the proposal exceeds the maximum floor space ratio development standards. The proposal is generally consistent Marrickville Development Control Plan 2011. The development will not result in any significant impacts on the amenity of adjoining premises and the streetscape. The application is suitable for approval subject to conditions.

The IWLPP resolved that the application be approved as per the recommendation contained in the assessment report, subject to the imposition of the deferred commencement condition, which is proposed to be deleted under the subject application.

In addition, the IWLPP resolved to delete the recommended condition 23, and to replace it with the following condition:

All hydrant booster pump and fire service equipment shall be housed in a recessed enclosure within an external wall (with doors suitable to screen the installation from public view) and not located in footway areas likely to be used by the public.

Details of this enclosure are to be assessed by an accredited fire safety engineer, comply with the requirements of the BCA and be shown on the plans submitted to Council and the Certifying Authority for approval prior to the release of a Construction Certificate.

The applicant does not seek to modify this condition

It is considered that the modified proposal has adequately considered those reasons that the original development consent was granted.

5(b) Environmental Planning Instruments

5(b)(i) State Environmental Planning Policies (SEPPs)

The following SEPPs are applicable:

- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy No. 65—Design Quality of Residential Apartment Development*
- *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 proposed modifications do not alter the outcome of the assessment conducted during the DA assessment in relation to the above SEPPs and it is recommended that conditions imposed on the DA consent remain in force with any consent granted.

5(b)(ii) Inner West Local Environmental Plan 2022 (IWLEP 2022)

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

- Section 1.2 - Aims of Plan
- Section 2.3 - Land Use Table and Zone Objectives
- Part 4 – Principal development standards
 - Section 4.3 – Height of buildings
 - Section 4.4 – Floor space ratio
 - Section 4.4A – Exception to maximum floor space ratio for active street frontages
 - Section 4.5 – Calculation of floor space ratio and site area
 - Section 4.6 – Exceptions to development standards
- Section 6.2 – Earthworks
- Section 6.4 – Terrestrial biodiversity
- Section 6.8 – Development in areas subject to aircraft noise
- Section 6.9 – Design excellence
- Section 6.13 – Residential accommodation in business zones

The proposal only seeks to delete the deferred commencement condition imposed by the IWLPP. No changes are proposed with regard to building design, internal amenity and the proposal would not result in amenity impacts to surrounding sites.

(i) Section 1.2 – Aims of Plan

The modified proposal is consistent with the relevant aims as follows:

- (a) The development complies with BASIX requirements and, hence, demonstrates efficient and sustainable use of energy. The proposal, as approved conditioned, will not result in adverse economic, environmental, or social impacts.
- (d) The proposal is close to public transport, increases density and, hence, encourages walking, cycling and use of public transport.
- (e) The proposal facilitates economic growth and employment opportunities within Inner West.
- (f) The development provides diverse housing to meet the needs of, and enhance amenity for, Inner West residents.
- (g) No change is proposed to the massing or design of the building and the approved development creates a high quality urban place through the application of design excellence.

- (h) The proposal would not result in adverse social, economic and environmental impacts on the local character of Inner West.
- (i) The development would not result in adverse social, economic and environmental impacts, including cumulative impacts.

(ii) Section 2.3 – Land Use Table and Zone objectives

The property is zoned MU1 – Mixed Use Direction under the provisions of the *IWLEP 2022*. No change is proposed to the permissible use (i.e., shop top housing) and the development is consistent with the zone objectives.

With regard to zone objectives, it is considered that the proposed deletion of the deferred commencement condition results in an improvement to the streetscape and better street activation as a vehicular crossing, driveway and garage door would not be required.

(iii) Part 4 – Principal development standards Section

The proposal does not result in changes to the approved floor space ratio and height of the building, noting that the basement, until parking can be provided, would not include habitable rooms (i.e., the floor area in the basement, as approved and proposed, is excluded from the gross floor area).

(iv) Section 6.2 – Earthworks and Section 6.4 Terrestrial Biodiversity

No additional earthworks proposed, and the proposal will not alter the assessment of the DA regarding impacts on native fauna and flora or ecological processes.

(v) Section 6.8 – Development in areas subject to aircraft noise

It is recommended that conditions imposed on the DA consent remain in force to ensure compliance with this section and relevant Australian Standards concerned with the impacts of aircraft noise.

(vi) Section 6.9 – Design excellence

No change proposed to the approved building design.

(vii) Section 6.13 – Residential accommodation in business zones

No change proposed to the approved building design and use (i.e., mixed use development). Deleting DC condition 1(a) (i.e., not requiring vehicular access to the building provided through the subject site) results in a development that improves street activation (compared with the conditioned development) and that is consistent with the desired future character (DFC) of the area.

5(c) **Development Control Plans**

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

| Part of MDCP 2011 | Compliance |
|---|---------------------|
| Part 2.1 – Urban Design | No change |
| Part 2.3 – Site and Context Analysis | No change |
| Part 2.5 – Equity of Access and Mobility | No – see discussion |
| Part 2.6 – Acoustic and Visual Privacy | No change |
| Part 2.7 – Solar Access and Overshadowing | No change |

| Part of MDCP 2011 | Compliance |
|--|----------------------|
| Part 2.8 – Social Impact | No change |
| Part 2.9 – Community Safety | Yes |
| Part 2.10 – Parking | No – see discussion |
| Part 2.13 – Biodiversity | No change |
| Part 2.17 – Water Sensitive Urban Design | No change |
| Part 2.18 – Landscaping and Open Space | No change |
| Part 2.20 – Tree Management | No change |
| Part 2.21 – Site Facilities and Waste Management | No change |
| Part 2.24 – Contaminated Land | No change |
| Part 2.25 – Stormwater Management | No change |
| Part 3 – Subdivision | No change |
| Part 5 – Commercial and Mixed Use Development | No change |
| Part 9.45 – McGill Street (Precinct 45) | Yes – see discussion |

The following provides discussion of the relevant issues:

(i) Part 2.5 – Equity of Access and Mobility

Except a minor non-compliance with minimum required accessible parking provisions of this part, which is discussed in detail below, the proposal, as approved, complies with this part and no change is proposed. While the deletion of the deferred commencement condition would result in the development, for a period of time, not providing any on-site car parking, including accessible spaces, as outlined elsewhere in this report, this is considered acceptable in this instance as that the proposal complies with Part 9.45 of the MDCP 2011, which prescribes the proposed basement access arrangements (i.e., providing vehicular access from No. 4-12 McGill Street).

(ii) Part 2.10 – Parking

The proposal, as approved, does not comply with the minimum parking requirements, which was supported when determining the original DA.

The following conditions were imposed on the DA:

A total of 14 off-street car parking spaces must be provided and maintained at all times in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 - Parking. The parking must be allocated as follows:

- a) 5 spaces being allocated to the 2 bedroom dwellings;*
- b) 7 spaces being allocated to the 1 bedroom dwellings; and*
- c) 2 accessible car parking spaces, 1 accessible car space per adaptable dwelling;*

12 off-street bicycle parking spaces must be provided and maintained at all times in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 - Parking.

All parking spaces and turning area thereto being provided in accordance with the design requirements set out within Part 2.10 of Marrickville Development Control Plan 2011 - Parking, and must be used exclusively for parking and not for storage or any other purpose.

Notwithstanding, given that the deletion of the deferred commencement condition would result in a development that does not provide parking for an unknown period of time, the following is noted.

Amending the plans to comply with DC condition 1(a), which was previously proposed, as outlined in the submitted Traffic Engineering Assessment, would result in the proposal not complying with the aforementioned conditions. In addition, it is considered that the provision of vehicular access, including a car lift that complies with the design requirements of the MDCP 2011 and relevant Australian standards, would result in the vehicular access arrangements dominating the streetscape and significantly impact the public domain. In addition, reducing additional (approved) parking spaces would be required.

Council's Development Engineer has reviewed the proposal and submitted information, and supports the proposal, noting the following:

- *No objection to the deletion of the deferred commencement condition. It is clear from the information provided in the Traffic Engineering Assessment by Genesis Traffic that the proposal for a car lift is not practicable and results in other non-compliances.*
- *As the proposed development has good access to public transport, both light and heavy rail, bus services and access to carshare vehicles in close proximity, I have no objection with the development operating without car parking until such time as the physical and legal vehicle access to the basements is obtained and becomes available from 4-12 McGill Street.*
- *The following additional condition shall be imposed on the consent:*

Legal and actual physical vehicle access to the basements must be provided (and demonstrated to Council) via the basements of 4-12 McGill Street, Lewisham within 1 month of an Occupation Certificate being issued for the development at 4-12 McGill Street, Lewisham.

As outlined previously, DA201700310 (4-12 McGill Street) included a condition requiring that a right of way shall be provided on the property to allow for vehicular access to future basement carpark at No. 2 upon redevelopment of the site. Further, while acknowledged that there will be some time where the basements of the subject site are not accessible if the subject site is developed before No. 4-12 McGill Street, given the comments provided above, and given that the access arrangements are in accordance with Part 9.45 of the MDCP 2011, the proposed deletion of the deferred commencement conditions, subject to recommended conditions, is considered reasonable.

(iii) Part 9.45 – McGill Street (Precinct 45)

Except the deletion of the deferred commencement condition (and minor extension of the lift wall in basement 2), no change is proposed.

The extension of the basement wall poses no impact to adjoining development or the functionality of the site itself.

The development, as previously proposed, and proposed to be modified, complies with the traffic and access strategy within Part 9.45.6 of the MDCP 2011 (Figure 4).

9.45.6 Traffic and access

- C2 Development within the precinct should generally conform to the traffic and access strategy (Figure 45.2).
- C3 A shared zone adjacent to the GreenWay must be incorporated into proposed new development.
- C4 New streets must be created and existing streets extended as the precinct redevelops and development applications are lodged.



Figure 4: Traffic and access strategy

In addition to the above, the development, without providing vehicular access from Hudson Street, is consistent with the key features of the traffic and access strategy for the precinct as follows:

- It helps to minimise traffic volume and speed near the park,
- It increases pedestrian safety,
- It provides improved street activation, and
- It provides (once access is provided via 4-12 McGill Street) access to car parking from a secondary street.

Further, the development, as proposed to be modified, prioritises walking by enhancing the public domain, which is consistent with control C5 in Part 9.45.7 (Public domain strategy).

5(d) The Likely Impacts

The assessment of the section 4.55(2) application demonstrates that, subject to the recommended conditions, the proposal will have minimal impact in the locality.

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

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

5(f) Any submissions

The application was notified (twice) in accordance with the Community Engagement Strategy for a period of 14 days to surrounding properties.

No submissions were received.

5(g) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

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

- Development Engineer
- Urban Design

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions are payable for the proposal and a condition was imposed on the DA consent. The proposed modification does not alter the fees payable.

8. Conclusion

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

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

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

9. Recommendation

That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to approve Application No MOD/2023/0082 under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* to modify Determination No. DA201700611 dated 07 May 2019, to delete the deferred commencement condition, imposed by the Inner West Local Planning Panel, and extension of the basement lift wall by 400mm at 2 Mcgill Street LEWISHAM , subject to the amendments listed in Attachment A below.

Attachment A – Recommended amendments to conditions of consent

Delete the following conditions:

~~PART A – DEFERRED COMMENCEMENT CONSENT~~

~~This Consent will not operate and it may not be acted upon until the Council or its delegate is satisfied as to the following matter(s):~~

~~1. Documentation being submitted to the satisfaction of Council indicating:~~

- ~~a) Providing a car lift or similar mechanical access for vehicles to the basement with limited impact on the public domain; or~~
- ~~b) Demonstration of legal and actual physical access to the basement via the basement of 4-12 McGill Street~~

~~Evidence of the above matter(s) must be produced to Council or its delegate within two years of the date of the Determination otherwise the Consent will lapse.~~

~~(Deleted – MOD/2023/0082 – 10 October 2023)~~

Amend the following condition as follows:

1. The development must be carried out in accordance with plans and details listed below:

| Plan and Revision No. | Plan Name | Date Issued | Prepared by | Date Submitted |
|-----------------------|------------------------------------|--------------------------|----------------|--------------------------|
| DA 010 2 | Basement Floor Plan 2 | 30 May 2018 | BKA | 2 August 2018 |
| DA 010 4 | Basement 2 | 8 August 2023 | BKA | 9 August 2013 |
| DA 020 2 | Basement Floor Plan 1 | 30 May 2018 | BKA | 2 August 2018 |
| DA 100 7 | Ground Floor Plan | 20 July 2018 | BKA | 2 August 2018 |
| DA 101 3 | Levels 1-5 Plan | 22 June 2018 | BKA | 2 August 2018 |
| DA 102 1 | Roof Plan | 9 November 2017 | BKA | 2 August 2018 |
| DA 200 4 | North Elevation/Materials Schedule | 22 June 2018 | BKA | 2 August 2018 |
| DA 201 4 | East Elevation | 22 June 2018 | BKA | 2 August 2018 |
| DA 202 4 | Hudson Street Elevation | 22 June 2018 | BKA | 2 August 2018 |
| DA 203 4 | South Elevation | 22 June 2018 | BKA | 2 August 2018 |

| | | | | |
|---------------------|-----------------------------|-----------------|---------------------------|-----------------|
| DA 204 4 | West Elevation | 22 June 2018 | BKA | 2 August 2018 |
| DA 300 3 | Sections 1 | 22 June 2018 | BKA | 2 August 2018 |
| DA 301 2 | Sections 2 | 30 May 2018 | BKA | 2 August 2018 |
| DA 302 1 | Balcony Section | 22 June 2018 | BKA | 2 August 2018 |
| 17/1953 Sheet 1/2 B | Landscape Site Plan | 3 August 2018 | Paul Scrivener | 11 March 2019 |
| 17/1953 Sheet 2/2 B | Public Domain Concept | 3 August 2018 | Paul Scrivener | 11 March 2019 |
| E23849.E02_ Rev1 | Detailed Site Investigation | 8 March 2019 | EI Australia | 11 March 2019 |
| E23849.E10_ Rev0 | Hazardous Materials Survey | 28 August 2018 | EI Australia | 5 October 2018 |
| 855198M | BASIX Certificate | 3 November 2017 | Planning & Infrastructure | 8 December 2017 |
| 21335/7906C | Geotechnical Report | February 2017 | STS | 8 December 2017 |
| TJ541-01D02 Rev 1 | Acoustic Assessment | 12 May 2017 | Renzo Tonin & Associates | 8 December 2017 |

and details submitted to Council on 8 December 2017, 2 August 2018, 5 October 2018 and 11 March 2019, **and 9 August 2023** with the application for development consent and as amended by the following conditions.

Reason: To confirm the details of the application submitted by the applicant.

NOTE: in Part B Condition 1 needs to be amended to include the matters referred to in Part A.

(Amended – MOD/2023/0082 – 10 October 2023)

Add the following condition:

33.A Vehicle access to the basements

Legal and actual physical vehicle access to the basements must be provided (and demonstrated to Council) via the basements of 4-12 McGill Street, Lewisham within 1 month of an Occupation Certificate being issued for the development at 4-12 McGill Street, Lewisham.

(Amended – MOD/2023/0082 – 10 October 2023)



Reference: EW23066

17 July 2023

Mr. De Ming Chen
C/- BKA
Jimmy Yan
Email: jimmy.y@bka.com.au

Dear Jimmy,

Re: 2 McGill Street, Lewisham – Traffic Engineering Assessment

Background

Consent (DA 201700611) was granted for a proposal to demolish existing improvements and construct a six-storey mixed-use development comprising two levels of basement parking, two commercial tenancies on the ground floor with 20 residential dwellings over five levels and a communal roof terrace relating to property situated at 2 McGill Street, Lewisham.

It is advised that the proposal is subject to a deferred commencement consent (1) requiring one of the two following conditions to be met prior to the building's occupation:

- a. *Providing a car lift or similar mechanical access for vehicles to the basement with limited impact on the public domain; or*
- b. *Demonstration of legal and actual physical access to the basement via the basement of 4-12 McGill Street.*

I understand that part (b) is not attainable due to reasons beyond the proponent's control. Instead, project architects BKA developed an alternative scheme that contemplates mechanical access as per part (a).

The purpose of this submission is to assess the adequacy of the proposed mechanical access arrangement. In the event of an adverse assessment outcome, identify a suitable interim arrangement.

Site Context

The site is Lot 1 DP 535963 located at 2 McGill Street, Lewisham (Figure 1). It occupies a relatively small area 384m², has a some 15m frontage to Hudson Street, a dead-end road with a roundabout turning provision to the north, and 11m to McGill Street, a some 4.5m wide access roadway to the east. Lewisham Light Rail station adjoins to the west.

Supporting Positive Developments

Document Set ID: 38087751
Version: 1, Version Date: 13/09/2023

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Suite 3, 53 Grandview Street, Pymble NSW 2073



Figure 1 Site Context



Source: Metromap

Approved Development Scheme

The proposal involves a six storey mixed-use development comprising:

- 20 x residential dwellings
- 2 x commercial tenancies on the ground floor
- 2 x levels of basement parking

There will be 14 resident parking spaces accommodated in the basement, including 2 accessible spaces. In addition, 12 bicycle spaces will be accommodated in the basement. Vehicle access for the car and bicycle parking facilities is to be facilitated by establishing a right of way in the basement in conjunction with the construction of the adjoining site 4-12 McGill Street.

Details of the approved development scheme are provided in **Attachment 1** for reference.

Supporting Positive Developments

Document Set ID: 38087751
Version: 1, Version Date: 13/09/2023

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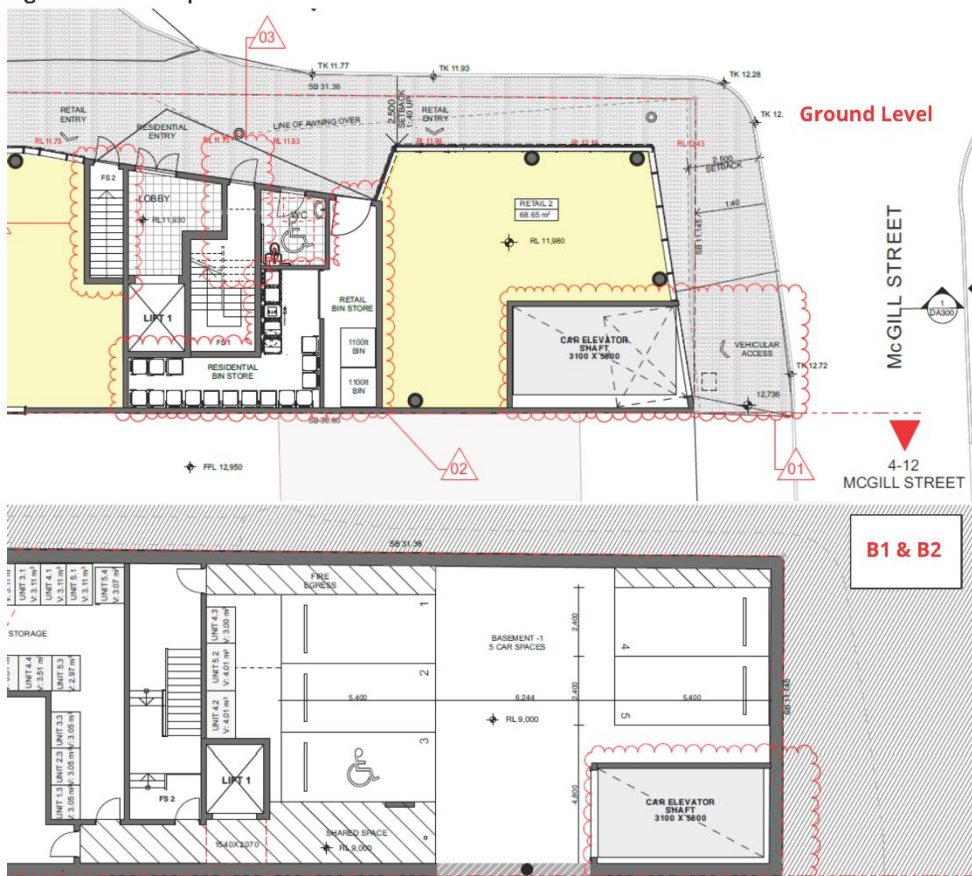


Proposed Car Lift Arrangement

It is understood that the projected completion date of 4-12 McGill Street will be delayed beyond the initially planned and coordinated timeline between the two parties. Consequently, it is anticipated that the establishment of the basement access connection between the two sites may not be achieved by the expected completion date of 2 McGill Street.

To address this situation, architects BKA have developed an alternative scheme (see Attachment 2) that uses mechanical means to access the basement. The proposed arrangement entails the installation of a car lift at the frontage of McGill Street (refer to Figure 2).

Figure 2 Proposed Car Lift Location



Source: BKA

Supporting Positive Developments

Document Set ID: 38087751
Version: 1, Version Date: 13/09/2023

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Suite 3, 53 Grandview Street, Pymble NSW 2073



Access & Circulation Movements

The assessment highlights that the proposed car lift arrangement will lead to the elimination of two parking spaces. An alternative access point at Hudson Street would result in the loss of at least four spaces in each basement, making it an unfeasible interim arrangement. It is important to note that relocating the car lift further north would encroach upon the 6m clearance requirement from the intersecting Hudson Street, as stated in Part 3.2.3 of AS2890.1.

As it currently stands, our assessment has identified several ways in which the proposed car lift arrangement contradicts Council's traffic engineering principles.

1. **Street Traffic Impact** – The proposed car lift access point is located near the site boundary and does not provide an adequate vehicle passing area on McGill Street. This is a particularly important consideration when proposing to use a car lift to access a car park. Occupants will be subject to some wait times upon arrival for the car lift to travel between floors and open. During this time, the occupant's vehicle must be able to stand at a location that does not impede traffic flow on public roadways. Under this arrangement, there will be no standing provision, and the occupant(s) must stand on McGill Street when waiting for the car lift (Figure 3).

Figure 3 Hypothetical Traffic Conflict



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We found the arrangement fails to meet the Council’s consent objective to limit vehicular access impact on the public domain. We also note that it does not comply with the minimum design requirement of Part 3.2.2 of the AS2890.1:2004 concerning vehicle passage.

- 2. **Internal Circulation** – To facilitate traffic safety along street frontages, vehicle access at medium to high density developments are to be designed to allow vehicles to enter and exit in a forward direction. To satisfy this objective, occupants must be able to position their vehicles to face McGill Street when leaving their car parking spaces. To assess the car park’s adequacy in this regard, we conducted a swept path analysis using AutoTurn on the basis of an AS2890-compliant design vehicle (B85).

Our assessment outcome, which is presented in **Attachment 3**, examined the parking spaces deemed most critical. It was found that each of these spaces requires more than three points of turning movements when attempting to enter and/or exit in a forward direction. This is in contradiction with the AS2890.1’s design objective (Part B4.8) to limit entry/exit movements of B85 (or smaller) to less than three movements. These inconveniences will be exacerbated in the case of a larger B99 vehicle (e.g. Toyota Hilux and the like). On this basis, we found the proposed access arrangement/circulation impractical and potentially unsafe.

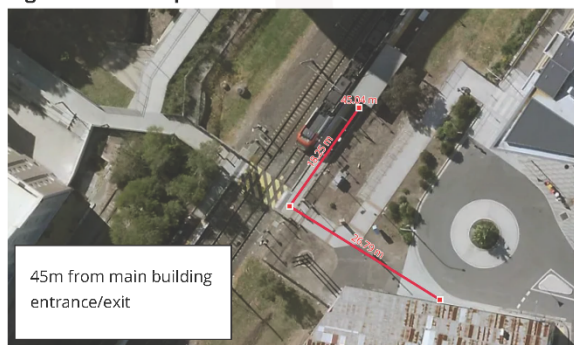
Alternative Interim Arrangement

Based on the information provided, we recommend that the proposal relies on establishing a right of way access with the neighbouring development, in accordance with the original development intent.

In the absence of a suitable alternative for vehicle access, the adequacy of the proposal was reevaluated with the assumption of no parking provision on an interim basis. The assessment takes into consideration the site’s accessibility to transport services and alternative transportation arrangements.

- 1. **Transport Services** - the site is adjacent to the Lewisham West Light Rail station (Figure 4).

Figure 4 Transport Service Access



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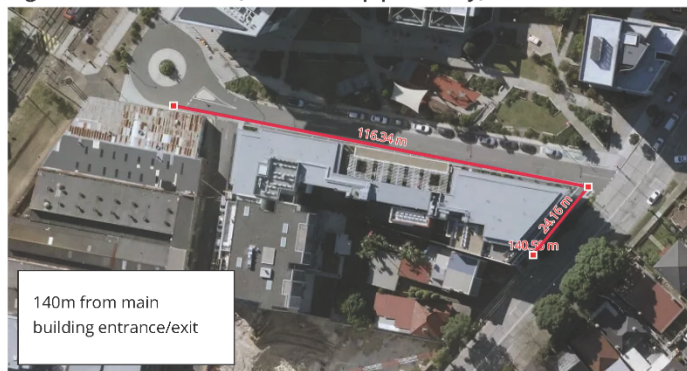
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The local Light Rail service operates on the Dulwich Hill line providing connection between Dulwich Hill and Central Sydney every 8 to 15 minutes (once every 8 minutes during the peak periods).

In addition to Light Rail, Sydney Buses No 413 which operates on Old Canterbury Road some 140m to the east (Figure 5) also connects the site between Pitt Street, CBD and Campsie up to four times per hour.

Figure 5 Bus Service (and Bus Stop proximity)



Source: Metromap

On the basis of the above, we found the site to be highly accessible by public transport services.

- 2. **Alternative to Private Vehicles** – In the event that building occupants require access to a vehicle, it is important to provide them with a viable and equitable alternative to private car ownership.

Car sharing is an established alternative mode of travel, where individuals become members of a car ownership club, choose a rate plan, and pay an annual fee. The fees cover fuel, insurance, maintenance, and cleaning. The car fleet primarily consists of sedans, hatchbacks, SUVs, station wagons, trays, and utility vans. Each vehicle has a designated home location, referred to as a "pod," situated in a parking lot or street, typically in a densely populated urban neighborhood. Members reserve a car using a mobile phone app and access the vehicle using a key card.

The assessment highlights the presence of two dedicated Car Share spaces near the site, located on Hudson Street near Old Canterbury Road (Figure 6).



Figure 6 Local Car Share Facility



Source: Metromap

Findings

Based on the assessment conducted above, we have reached the following conclusions in support of a proposed interim arrangement that does not include on-site parking:

- The proposed alternative vehicle access, which involves a car lift, does not comply with the design criteria specified in AS2890.1. As a result, it will negatively impact traffic flows on Hudson Street and McGill Street, contradicting fundamental traffic engineering principles as well as the objective stated in consent condition 1(a).
- The proposed car lift arrangement will lead to impractical vehicle manoeuvring in the two basement levels, potentially resulting in unsafe and inconvenient vehicle access.
- The site is conveniently situated in relation to a comprehensive public transport network, featuring high-frequency light rail and bus services within a 200m walking distance.
- Additionally, the site benefits from the presence of two Car Share spaces located within a 120m walking distance.

Recommendations

While the site benefits from excellent accessibility to alternative modes of transport and public transportation services/network, we recommend implementing the following provisions to ensure a comfortable living experience in the absence of private vehicles:

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- The basement car park should retain accessibility for the storage of goods and bicycles.
- During the interim period, the proponent should consider subsidising or partially subsidising occupants' membership to Car Share.

I trust the above is suitable for your requirements. Otherwise, please do not hesitate to contact me to discuss further.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Bernard Lo".

Bernard Lo BE (Civil), MTrans, PRE 0001491

Principal

Encl.



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Attachment 1

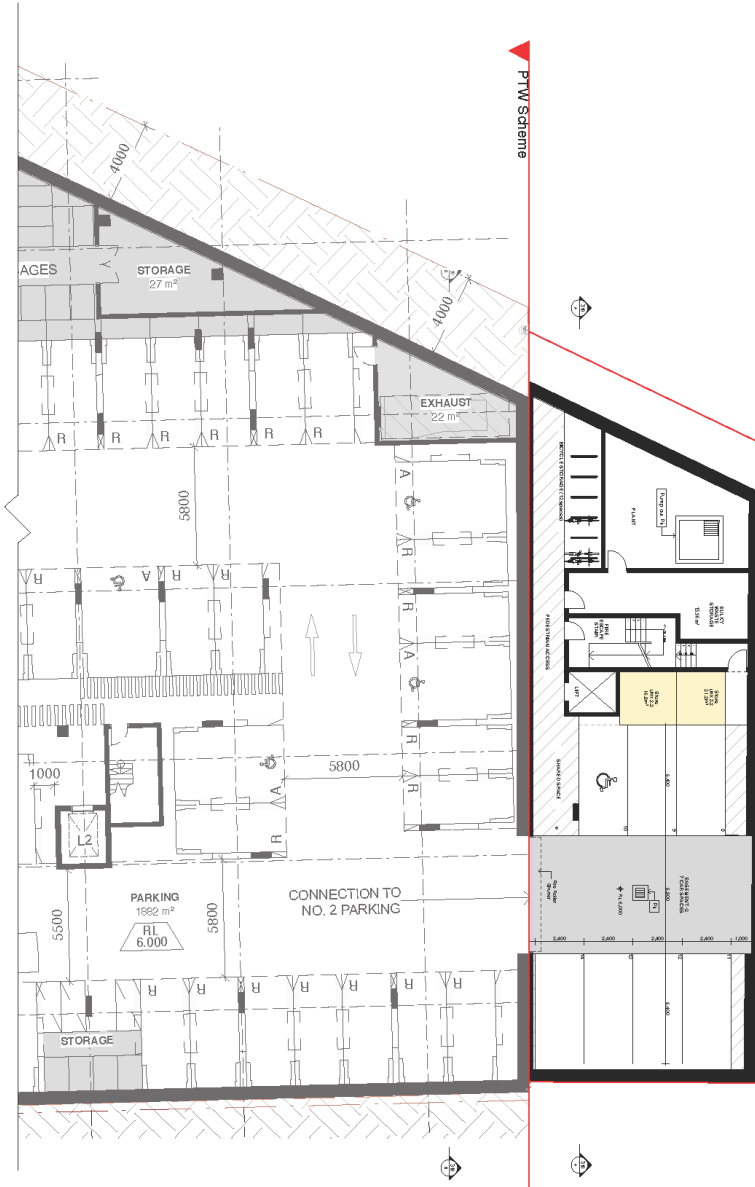
Approved Arrangement



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| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 |

2 McGill Street, Levensham
Mixed Use Development
 Dealing Plan
 Proposed Floorplan 2

DKA architecture
 1000 Bourke Street, Levensham
 NSW 2206
 Phone: (02) 9439 1000
 Email: info@dka.com.au
 Website: www.dka.com.au

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Attachment 2

Proposed Car Lift Arrangement



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Attachment 3

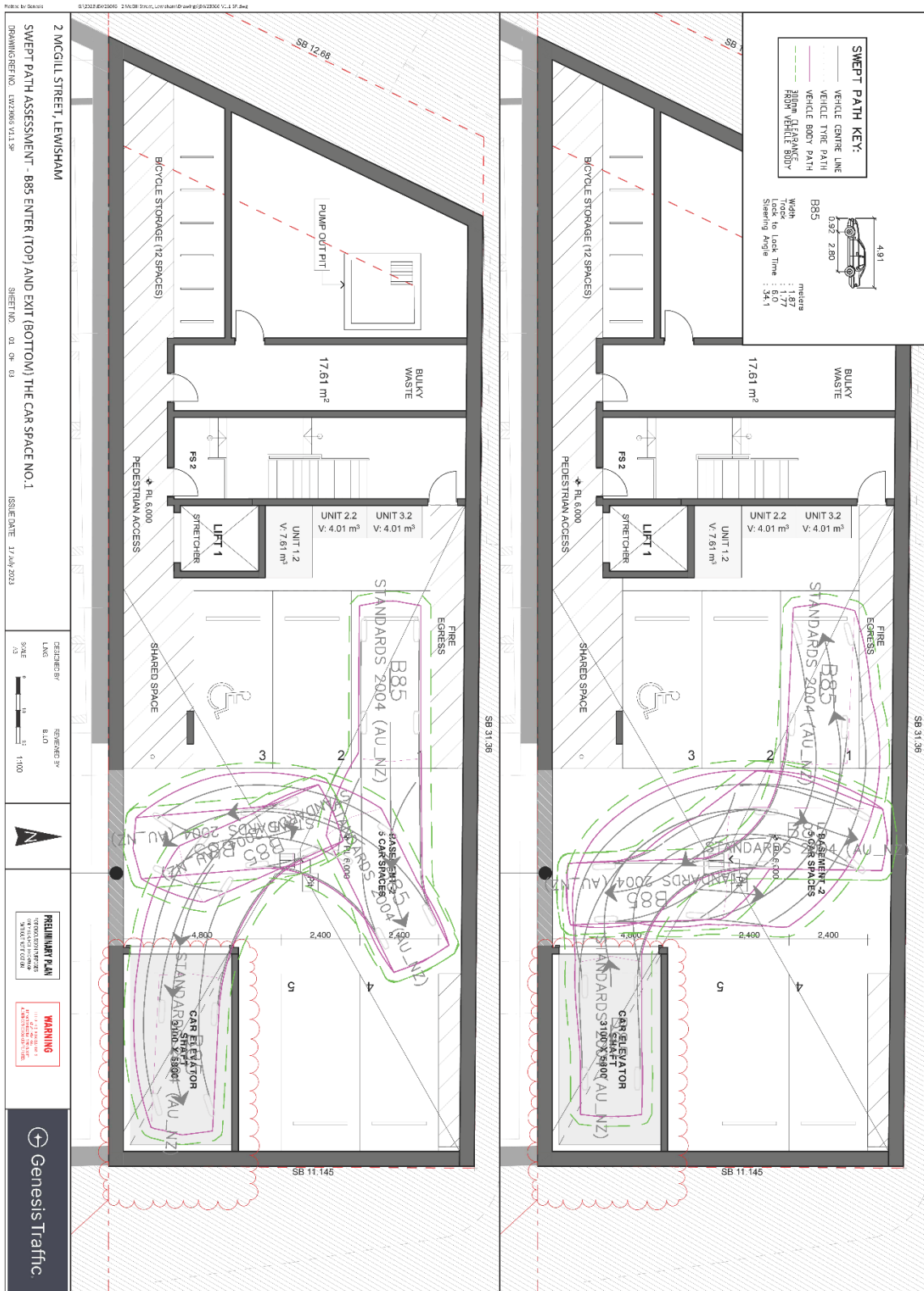
Swept Path Assessment Output



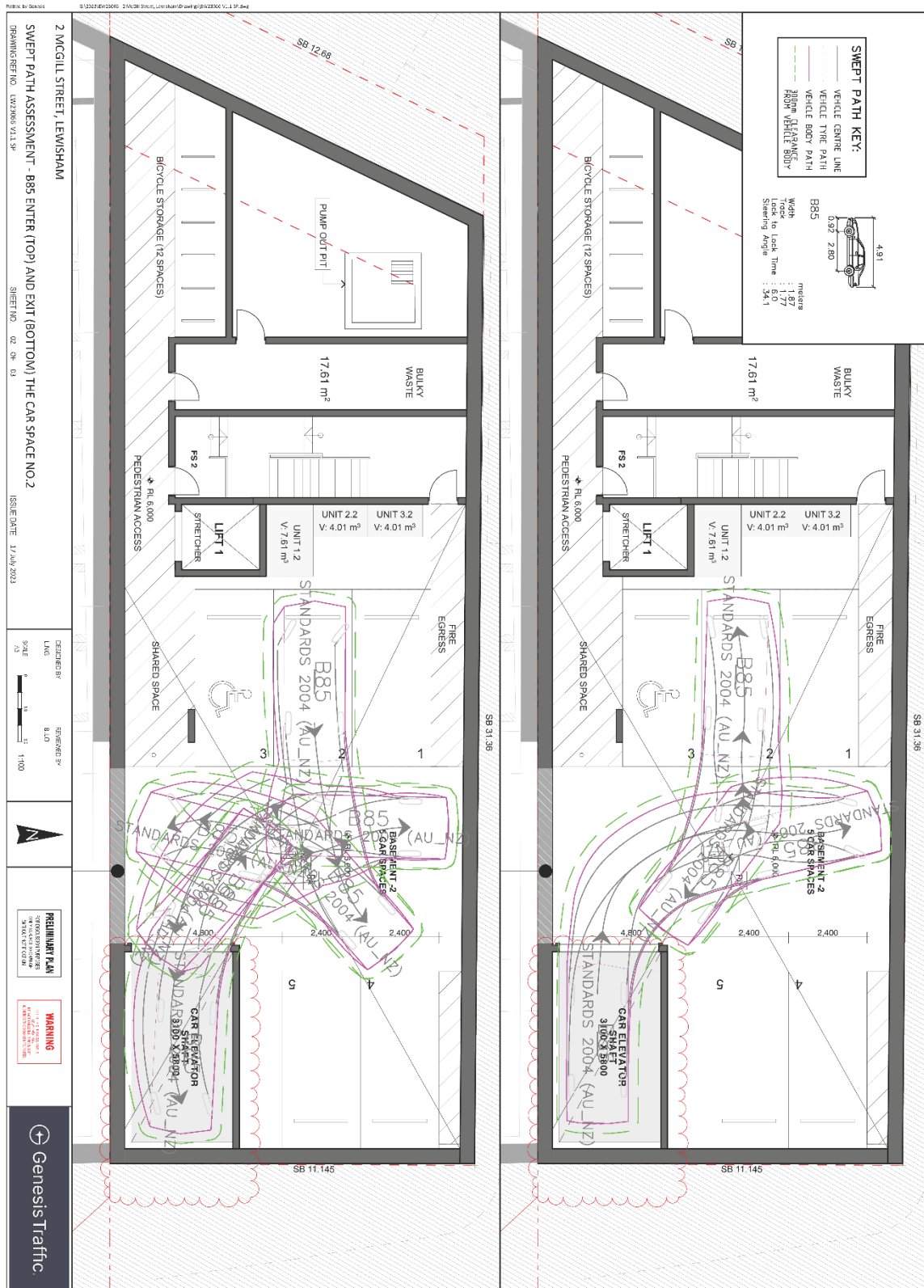
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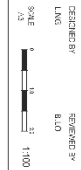
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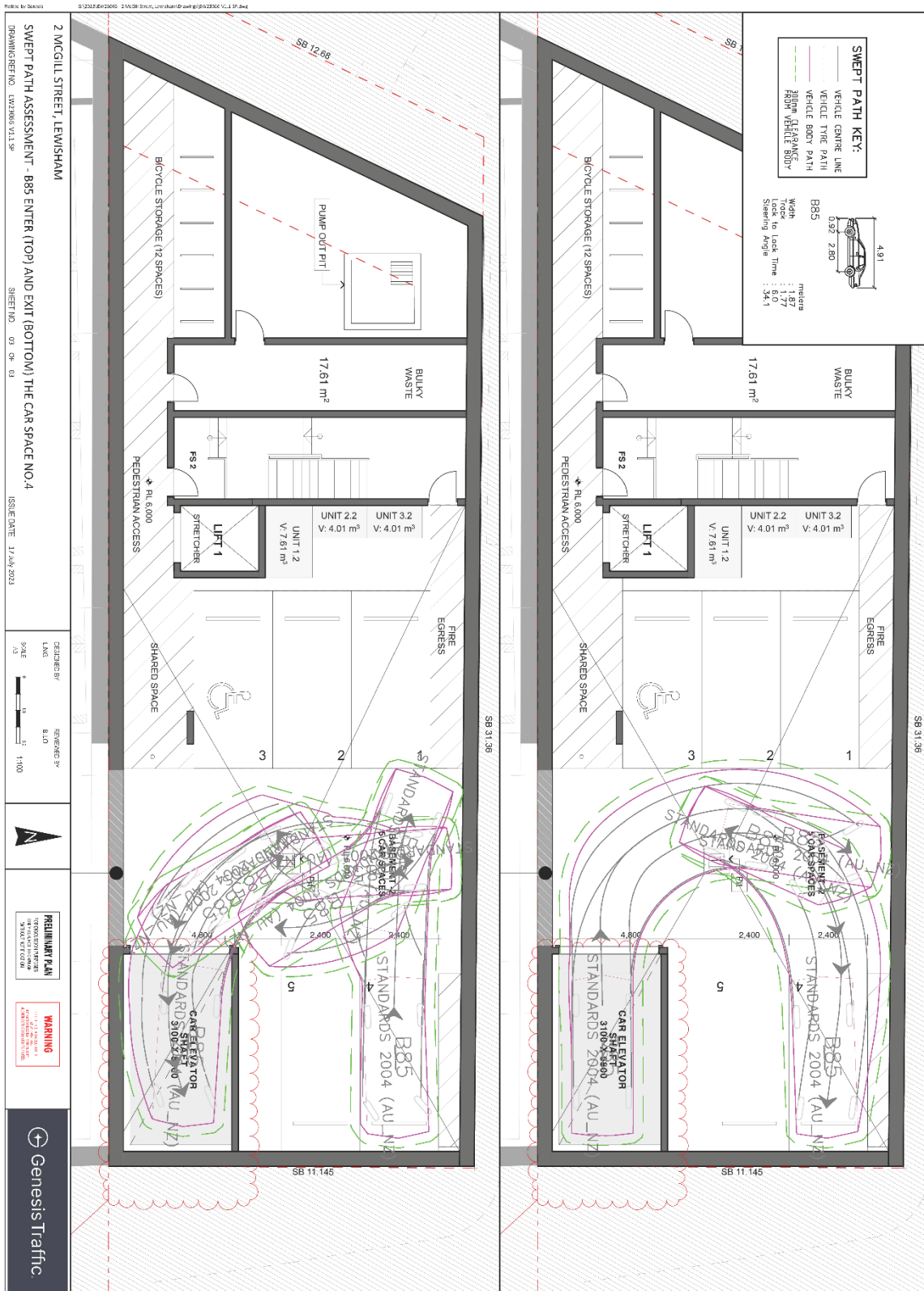
2 MCGILL STREET, LEWISHAM
 SWEEP PATH ASSESSMENT - B85 ENTER (TOP) AND EXIT (BOTTOM) THE CAR SPACE NO.2
 DRAWING REF NO: LV23066 V1.1P
 SHEET NO: 02 OF 03
 ISSUE DATE: 17 JAN 2023



PRELIMINARY PLAN
 CONSULTATIONS
 APPROVED FOR DEVELOPMENT


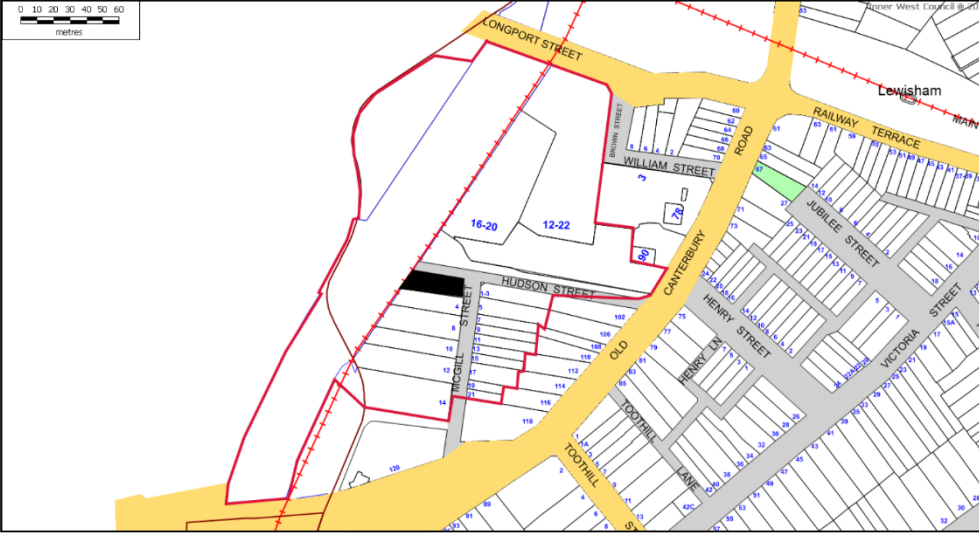



WARNING
 THIS PLAN IS A PRELIMINARY PLAN
 AND SHOULD NOT BE USED FOR CONSTRUCTION

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Attachment C- Report and Minutes for DA201700611 reviewed by IWLPP on 7 May 2019

| | |
|--|--|
|  <h1 style="display: inline;">INNER WEST COUNCIL</h1> | |
| DEVELOPMENT ASSESSMENT REPORT | |
| Application No. | DA201700611 |
| Address | 2 McGill Street, Lewisham |
| Proposal | To demolish existing improvements and construct a 6 storey mixed use development comprising 2 levels of basement parking, 2 commercial tenancies on the ground floor with 20 residential dwellings over 5 levels and a communal roof terrace |
| Date of Lodgement | 8 December 2017 |
| Applicant | BKA Architecture |
| Owner | De Ming Chen |
| Number of Submissions | No submissions |
| Value of works | \$6,694,026 |
| Reason for determination at Planning Panel | Departure from maximum floor space ratio standard exceeds 10% and development to which State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development applies |
| Main Issues | Floor space ratio variation |
| Recommendation | Consent subject to conditions |
| Attachment A | Recommended conditions of consent |
| Attachment B | Architectural Plans Attachment |
| Attachment C | Public Domain and Landscape Plans |
| Attachment D | Clause 4.6 written request |
|  | |
| Subject Site: |  - Nil |
| Notified Area: |  - Nil |
| Objectors: |  - Nil |

Inner West Local Planning Panel

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1. Executive Summary

This report concerns an application to demolish existing improvements and construct a 6 storey mixed use development comprising 2 levels of basement parking, 2 commercial tenancies on the ground floor with 20 residential dwellings over 5 levels and a communal roof terrace. The application was notified in accordance with Council's Notification Policy and no submissions were received.

During the assessment process the proposal was amended to address a number of concerns raised by Council officers relating to materials and finishes, public domain improvements, access and other matters. The amended proposal was not required to be re-notified in accordance with Council's Notification Policy.

The proposal generally complies with the aims, objectives and design parameters contained in State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development; State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55); State Environmental Planning Policy (Infrastructure) 2007; and Marrickville Local Environmental Plan 2011 (MLEP 2011) with the exception that the proposal exceeds the maximum floor space ratio development standard by 623sqm or 70.5%. A written request under Clause 4.6 of MLEP 2011 has been submitted by the applicant for the non-compliance and the request is considered to be well founded and worthy of support in light of the surrounding development.

The proposal is generally consistent with Marrickville Development Control Plan 2011 (MDCP 2011) and is considered to result in a form of development which is consistent with the surrounding mixed use developments and is consistent with objectives of the B4 Mixed use zone. The development is considered to satisfy the desired future character requirements of the McGill Street Planning Precinct (Precinct 45) and site-specific planning controls relating to the site as outlined in Part 9.45 of MDCP 2011.

The application was referred to Council's Architectural Excellence Panel (AEP) who are supportive of the development. Concurrence was granted by Sydney Trains on 21 December 2018.

The potential impacts to the surrounding environment have been considered as part of the assessment process. Any potential impacts from the development are considered to be acceptable given the context of the site.

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

2. Proposal

Approval is sought to demolish existing improvements and construct a 6 storey mixed use development comprising 2 levels of basement parking, 2 commercial tenancies on the ground floor with 20 residential dwellings over 5 levels and a communal roof terrace. The works include the following:

- Full demolition of the existing building on the site;
- 2 levels of basement accommodating 14 car parking spaces, 12 bicycle spaces, residential storage and utilities with vehicular access provided over a right of way from the basement of No. 4-12 McGill Street;

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- 2 commercial spaces on the ground floor level including public domain improvements and landscaping;
- 5 levels of residential accommodation with 1 x studio, 1 x 1 bedroom and 2 x 2 bedroom dwellings on each level; and
- Communal roof terrace with landscaping occupying the entire roof.

3. Site Description

The site is known as 2 McGill Street, Lewisham and is located on the south western corner of Hudson Street and McGill Street. The site is legally described as Lot 1 in Deposited Plan 535963. The site has a frontage of 11.45 metres to McGill Street to the east, a frontage of 31.36 metres to Hudson Street to the north, a frontage of 12.68 metres to the light rail corridor to the west and is 384sqm in area.

The site contains an existing single storey warehouse building. Vehicular access to this property is provided by an existing vehicular crossing from Hudson Street.

The area is generally characterised by high density residential development and forms part of the McGill Street Masterplan area. To the west of the site is a light rail corridor and Lewisham west light rail stop.

The site is adjoined by No. 4-12 McGill Street to the south which contains a group of single storey warehouse buildings which have been approved for redevelopment into a mixed use development containing 2 buildings with a height ranging from 6 to 8 storeys. To the north of the site at No. 78-90 Old Canterbury Road is the 'Luna' development which contains a mixed use development comprising of 7 buildings with a height ranging from 4 to 10 storeys.

4. Background

4(a) Site history

On 4 January 2017 a Pre-DA was submitted seeking advice on a proposal to demolish existing improvements and construct a 6 storey mixed use development comprising 2 levels of basement parking, 1 level of commercial space with 2 commercial tenancies on the ground floor and 5 residential floors above containing 20 dwellings. Council provided Pre-DA advice that raised a number of main concerns, namely the extent of the variation to the FSR development standard, vehicular access from the neighbouring site to the south, public domain and urban design matters.

On 8 December 2017 the subject development application was submitted to Council.

4(b) Application history

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

| Date | Discussion / Letter/ Additional Information |
|------------------|--|
| 8 December 2017 | Application submitted to Council. |
| 22 June 2018 | Amended plans submitted to Council indicating public domain works footpath works, additional detailed sections and elevations resolving AEP comments regarding materials and expression. |
| 5 October 2018 | Detailed Site Investigation and HAZMAT submitted to Council. |
| 21 December 2018 | Concurrence granted by Sydney Trains |
| 23 January 2019 | Updated Clause 4.6 written request for FSR submitted to Council. |

| | |
|---------------|--|
| 11 March 2019 | Addendum to Detailed Site Investigation submitted to Council |
|---------------|--|

5. Assessment

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

5(a) Environmental Planning Instruments

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

- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy No. 55 – Remediation of Land;
- State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; and
- Marrickville Local Environmental Plan 2011,

The following sections provide further discussion of the relevant issues:

5(a)(i) State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Infrastructure) 2007 (the Infrastructure SEPP) provides guidelines for development immediately adjacent to rail corridors.

Clause 85 - Development adjacent to rail corridors

The development includes the placing of a metal finish on a development that is adjacent to a rail corridor and thus the application was referred to Sydney Trains for comment. Sydney Trains provided a response on 12 December 2018 raising no concern over the development subject to the imposition of appropriate conditions and those conditions are included in the recommendation.

Clause 86 - Excavation in, above, below or adjacent to rail corridors

The application was referred to Sydney Trains for concurrence in accordance with Clause 86 of the Infrastructure SEPP. Sydney Trains granted concurrence to the development subject to conditions on 21 December 2018 and those conditions are included in the recommendation.

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

Clause 87 of the Infrastructure SEPP relates to the impact of rail noise or vibration on non-rail development, and for a development for the purpose of a building for residential use, requires appropriate measures are incorporated into such developments to ensure that certain noise levels are not exceeded. In this regard those measures are to ensure that the following LAeq levels are not exceeded:

- “(a) in any bedroom in the building - 35 dB(A) at any time between 10.00pm and 7.00am,*
- (b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway) - 40 dB(A) at any time.”*

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An acoustic report accompanied the application and assessed the potential acoustic impacts of rail noise on the proposed development. The report contains recommendations to be incorporated into the proposed development in order to mitigate acoustic impacts satisfying the criteria prescribed by the ISEPP 2007. Appropriate conditions are included in the recommendation.

5(a)(i) State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. Marrickville Development Control Plan 2011 (MDCP 2011) provides controls and guidelines for remediation works. SEPP 55 requires that the consent authority be satisfied that the site is, or can be made, suitable for the proposed use prior to the granting of consent.

The site has been used in the past for activities which could have potentially contaminated the site. A Detailed Site Investigation (DSI) was submitted with the application which concluded that the site can be made suitable for the proposed use and makes the following conclusion:

"EI concludes that significant contamination was not identified during the DSI. However, in light of the current investigation data gaps, further investigation will be required to satisfactorily characterise soils and groundwater before the site can be considered suitable for the proposal land use."

The application was referred to Council's Environmental Health Officer who advised that further investigation was required and made the following comments:

"The Detailed Site Investigation prepared by EI Australia does not conclude that the site is suitable for the proposed use; as such Council is unable to determine the site's suitability under SEPP 55."

Prior to determination, it is recommended that a further site investigation and assessment be carried out to close all identified data gaps and be accompanied with a Remediation Action Plan (if applicable)."

These additional investigations can be carried out by way of core drilling the existing concrete slab or a similar practice. Council does not agree with the Report's recommendation of additional investigations being carried out after building vacation or after site demolition. It would be considered irresponsible of Council to determine the application without these additional investigations being carried out."

An amended DSI was submitted to Council on 11 March 2019 which concludes that no significant contamination was identified and soil and groundwater is of suitable quality for the proposed use.

It is evident that the site can be made suitable for the proposed use after the completion of the works recommended by the DSI, in accordance with Clause 7 of SEPP 55 and appropriate conditions are included in the recommendation.

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 9 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 development is generally acceptable having regard to the 9 design quality principles.

Apartment Design Guide

The ADG contains objectives, design criteria and design guidelines for residential apartment development. In accordance with Clause 6A of the SEPP the requirements contained within MDCP 2011 in relation to visual privacy, solar and daylight access, common circulation and spaces, apartment sizes and layout, ceiling heights, private open space and balconies, natural ventilation and storage have no effect. In this regard the objectives, design criteria and design guidelines set out in Parts 3 and 4 of the ADG prevail.

The development has been assessed against the relevant design criteria within Part 3 and 4 of the ADG as follows:

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 9am and 3pm on 21 June (mid-winter).

The development provides a total area of 300sqm, being 78% of the total site area as communal open space in the form of a roof terrace. The common open space is considered to be of a sufficient size to promote active use by the residents of the development in addition to that provided by the private open space areas. Furthermore:

- Each apartment is provided with private open space generally compliant with the numerical requirements;
- Direct, equitable access is provided to the communal open space areas from common circulation areas, entries and lobbies; and
- The communal open space is consolidated into a well-designed, easily identified and usable area.

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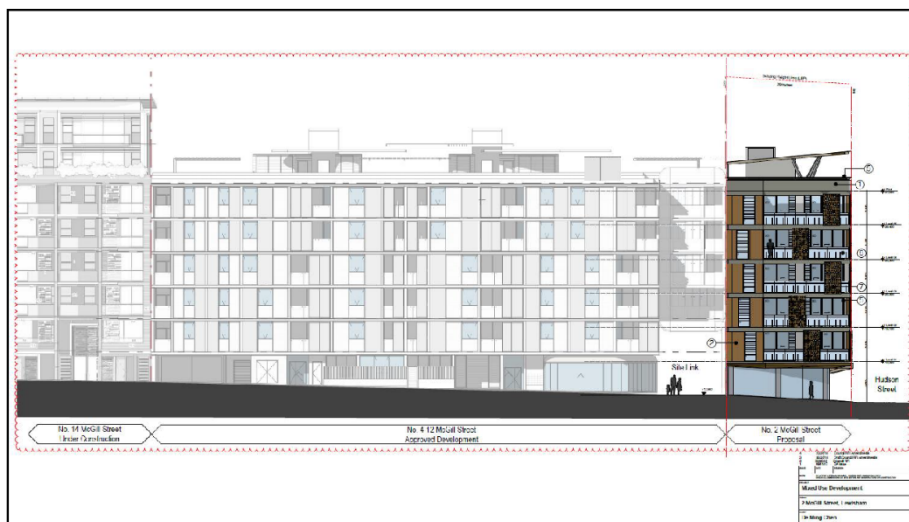
Sufficient solar access is provided to the communal open space in accordance with the above control.

Visual Privacy/Building Separation

The ADG prescribes the following minimum required separation distances from buildings on neighbouring sites 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 |

The development is built to all front, side and rear boundaries which is consistent with the street context. Given the separation of the development from adjoining sites to the north and east by existing roads, the development achieves sufficient separation. The site has a nil rear boundary setback to the development to the south at No. 4-12 McGill Street. The below streetscape elevation illustrates the relationship between the subject site and its relationship with the buildings to the south that front McGill Street. The nil southern boundary setback is appropriate in the context of the locality.



The southern elevation of the development provides only fire-rated splashback windows and windows to the common corridor which do not present any privacy concerns and therefore are acceptable. A condition was imposed on Determination No. 201700310 dated 23 March 2018 requiring an easement for light and air in favour of the subject site being provided to allow windows along the southern boundary of the subject site anticipating that the subject site would develop with a nil southern setback. The development is acceptable given the circumstances.

Inner West Local Planning Panel**ITEM 9**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.

75% of all dwellings within the development receive solar access in accordance with the above controls. All of the dwellings receive an appropriate level of solar access given the context and orientation of the site.

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 18 metres, measured glass line to glass line.

60% of dwellings within the development are naturally ventilated and no cross-through apartments are proposed.

Ceiling Heights

The development provides floor to ceiling heights in accordance with the ADG controls.

Apartment Size

All apartments within the development comply with the ADG minimum size requirements.

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.*

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The development provides apartments that comply with the above requirements.
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 |

All apartments are provided with primary balconies that comply with the minimum area and minimum depth as per above.

Common Circulation and Spaces

The ADG prescribes that the maximum number of apartments off a circulation core on a single level is 8. The maximum number of units accessible off a single level is 4 in accordance with ADG requirements.

Storage

The development provides sufficient storage within the apartments and basement levels complying with the minimum size as per the requirements of the ADG.

5(a)(iii) [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#)

A BASIX Certificate was submitted with the application indicating that the proposal achieves full compliance with the BASIX requirements. Appropriate conditions are included in the recommendation to ensure the BASIX Certificate commitments are implemented into the development.

5(a)(iv) [Marrickville Local Environment Plan 2011 \(MLEP 2011\)](#)

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

- (iv) Clause 1.2 - Aims of the Plan
- (v) Clause 2.3 - Land Use Table and Zone Objectives
- (vi) Clause 2.7 - Demolition
- (vii) Clause 4.3 - Height of Buildings
- (viii) Clause 4.4 - Floor Space Ratio
- (ix) Clause 4.6 - Exceptions to Development Standards
- (x) Clause 6.2 – Earthworks
- (xi) Clause 6.5 - Development in areas subject to Aircraft Noise

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

| Standard (maximum) | Proposal | % of non-compliance | Complies |
|---------------------------------|--------------|---------------------|----------|
| Floor Space Ratio 2.3:1 | 3.9:1 | 623.2sqm or 70.5% | No |
| Height of Building 29 metres | 23.55 metres | N/A | Yes |

The following provides further discussion of the relevant issues:

(xii) Aims of the Plan (Clause 1.2)

Clause 1.2 relates to the aims of the MLEP 2011. Aim 2(h) is to “promote a high standard of design in the private and public domain”.

The development application was referred to Council’s Architectural Excellence Panel (AEP) who provided the following comments in part:

“The Panel assessed the architectural and landscape concept drawings for the DA against the comments and recommendations provided at Pre-DA to provide the following comments:

1. *The Panel notes that the proposal seeks approval for a significant breach in FSR (3.8:1 instead of 2.3:1). This is a matter for Council’s planning officers to consider. The proposal generally complies with MLEP 2011 height in metres (29 metres) and MDCP 2011 height in storeys (6-storeys), although the rooftop communal open space, rooftop canopy and lift overrun exceed height in storeys, but not height in metres. Given the height of surrounding buildings under construction (4 storeys, 5 part 6-storeys and 9 storeys), the site’s location (a north-facing/corner lot fronting a public park and opposite to a light rail station) and the recent approval of the development at 4-12 McGill Street by the Sydney Eastern City Planning Panel, either a 5-storey building with a rooftop canopy or a 6-storey building with a rooftop canopy could be acceptable from an urban design perspective. A potential breach in FSR could be associated with significant public benefits (such as affordable housing and/or public domain improvements), sustainability measures and architectural and urban design excellence.*
2. *The basement levels, allowing for carpark access from the proposal at 4-12 McGill Street, and the above ground floor levels and the roof level balustrade appear to be aligned with the proposal at 4-12 McGill Street, which was assessed by the Panel in 15 August 2017. Based on the drawings for 4-12 McGill Street previously assessed by the Panel, there are differing levels along the common boundary between 2 and 4-12 McGill Street. Council’s planner should ensure that the levels align with the proposal at 4-12 McGill Street that was recently approved by the Sydney Eastern City Planning Panel.*
3. *Differing construction timeframes between 2 and 4-12 McGill Street may create problems for the development at 2 McGill Street, given the subject site depends on the property to the south for vehicle access to the basement levels. Perhaps the development at 4-12 McGill will require conditions to allow the development at 2 McGill Street to proceed.*

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4. *The materials for the balcony balustrades, windows and doors have not been included in the schedule of external finishes and are to be confirmed. A self-finished material that complies with the required fire safety standards should be used to the soffit of the rooftop canopy – information to be provided in the schedule of finishes.*
5. *The public ramp and stairwell facing the GreenWay is utilitarian, prevents a proper pedestrian path between 2 and 4-12 McGill Street to be provided and does not seem to achieve an acceptable outcome in relation to what has been approved at 4-12 McGill Street. This needs to be reconsidered. It is quite likely that the ramp and steps will be required to be further recessed in relation to the western boundary to achieve a more appropriate outcome.*
6. *It is apparent that some residential units and Ground Level open spaces at 4-12 McGill St will be overshadowed in the mornings throughout the year. Given the 'residential bridge' at 4-12 McGill Street was approved by the Sydney Eastern City Planning Panel, the apartments in that area would not be receiving much sun except in the middle of summer.*
7. *It is noted that the façade materials includes metal cladding. Recent changes to the BCA (12 March 2018) have introduced new requirements to be met for fire safety for external cladding materials and assemblies to comply with BCA, including construction details for the walls and insulation. This is a matter for Council to consider.*
8. *Council and the applicant should confirm whether the building facing the light rail corridor will be affected by RailCorp anti vandalism requirements (20m from the light rail corridor boundary). If so, the design should respond to these constraints and should be resolved prior to the determination of the DA or as a deferred commencement consent, given the balconies facing the GreenWay may need to be enclosed and thus the architectural expression and solid-to-void proportions would change or be diminished significantly."*

The AEP's comments have been incorporated into the design of the proposed development and given this a high standard of design is achieved. Additional details and amendments requested by the AEP have been provided to Council. Council's Architectural Excellence Panel (AEP) raised no further concern over the development subject to appropriate conditions which are included in the recommendation.

In response to point 1, the variation to the FSR development standard was considered by Council and is discussed in more detail later in this report under Section 5(a)(v)(vi). In accordance with the AEP advice, the applicant has demonstrated significant public domain improvements and architectural and urban design excellence. The public domain improvements include an entirely new footpath along the northern frontage of the site including that footpath being paved and provided with an awning, landscaping and tree planting directly adjacent to the site on Hudson and McGill Street, as well as a monetary contribution being paid for future upgrade works to the greenway directly to the west of the site.

In response to point 3, there are inherent concerns regarding the timing of the construction of the neighbouring development to the south of which the subject development relies on for vehicular access to the basement. It is noted that Determination No. 201700310 dated 23 March 2018 included a condition requiring that a right of way shall be provided on the property to allow for vehicular access to future basement car parks at No. 2 upon redevelopment of the site. The plans approved as part of that development illustrate indicative openings at both basement levels providing access. There are 2 current consents

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relating to No. 4-12, both requiring vehicular access to be provided to the basement of the subject site. Whilst it is acknowledged that there may be some time where the basements of the subject site are not accessible if the subject site is development before No. 4-12, this is largely unavoidable given that Part 9.45 of MDCP 2011 prescribes the approved access arrangements and no other vehicular access points are available given the site's location.

In response to point 8, confirmation as to the anti-vandalism requirements of Sydney Trains were provided to the applicant during the assessment process and appropriate screening was incorporated into the design of the development. The proposed screening was supported by Council's Urban Design Advisor.

(xiii) Land Use Table and Zone Objectives (Clause 2.3)

The property is zoned B4 – Mixed Use under the provisions of Marrickville Local Environmental Plan 2011 (MLEP 2011). Ground floor commercial premises and residential accommodation in the form of shop top housing is permissible under the zoning provisions applying to the land.

The development is acceptable having regard to the objectives of the B4 – Mixed Use zone.

(xiv) Demolition (Clause 2.7)

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

(xv) Height (Clause 4.3)

A maximum building height of 29 metres applies to the site under MLEP 2011.

The development has a maximum height of 23.55 metres which complies with the height of buildings development standard.

(xvi) Floor Space Ratio (Clause 4.4)

A maximum floor space ratio (FSR) of 2.3:1 applies to the land under MLEP 2011.

The development has a gross floor area (GFA) of 1,506.40sqm which equates to a FSR of 3.9:1 on the site which does not comply with the FSR development standard. The variation equates to 623sqm or 70.5%.

A written request, in relation to the development's non-compliance with the floor space ratio development standard in accordance with Clause 4.6 (Exception to Development Standards) of MLEP 2011, was submitted with the application. That request is discussed below under the heading "Exceptions to Development Standards (Clause 4.6)".

(xvii) Exceptions to Development Standards (Clause 4.6)

As detailed earlier in this report, the development exceeds the maximum floor space ratio development standard prescribed under Clause 4.4 of MLEP 2011. A written request in relation to the contravention to the floor space ratio development standard in accordance with Clause 4.6 (Exceptions to Development Standards) of MLEP 2011 was submitted with the application.

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A maximum floor space ratio of 2.3:1 applies to the site under Clause 4.4 of MLEP 2011. The development has an FSR of 3.9:1. The variation equates to 623sqm or 70.5%.

Clause 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. The proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of MLEP 2011. A written request to vary the standard has been submitted by the applicant in accordance with Clause 4.6(4) of MELP 2011 justifying the proposed contravention of the development standard.

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

For the purpose of this proposal, the written request provided by the applicant contends that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable. The request has been summarised as follows:

- Notwithstanding the variation, the proposal is consistent with the objectives of the FSR development standard
- Notwithstanding the proposed non-compliance, the proposal is consistent with the objectives of the B4 Mixed Use zone
- MLEP 2011 establishes the maximum FSR for the site however Council has consistently permitted variations to the FSR development standard throughout the McGill Street Precinct (Precinct 45 in the Marrickville DCP) such that it is considered that the FSR development standard has been abandoned.
- It is understood that the FSR development standard has been abandoned on at least nine (9) occasions on land within the immediate vicinity of the subject site, with variations ranging between 17% (at Nos. 4-12 McGill Street) to 80% (at No. 14 McGill Street which was determined by the Land & Environment Court).
- The proposed development seeks consent for a variation of 70.56% to the FSR standard, which is within the range of variations already approved within the precinct.
- The desired future character for the precinct is established by MLEP 2011 controls and supplemented by the McGill Street Precinct Masterplan controls contained in Part 9.45 of MDCP 2011. Furthermore, the future character of the locality is being determined with the ongoing approval of development on adjoining sites in the Precinct.
- The McGill Street precinct Masterplan envisages a locality which incorporates mixed use development of medium to high densities and scales and the precinct has evolved as a consequence, and incorporates high density residential and mixed use developments of between five (5) and ten (10) storeys.
- The proposed development has been amended since it was originally submitted, and now achieves an architectural and built form which responds more appropriately to the desired and actual emerging character of the precinct.
- The bulk and density of the precinct has emerged following the approval of several nearby developments, including No. 14 McGill Street and Nos. 4-12 McGill Street. The proposed development has been designed to integrate with the adjoining development at Nos. 4-12 McGill Street, with basement linkages along

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with a height and scale which is consistent with the approved form on the neighbouring site

- It is noted that the proposed development complies with the maximum 29 metre maximum height prescribed by Clause 4.3 of MLEP 2011 as well as the maximum number of storeys of 6 and the built form provisions prescribed by Part 9.45 of MDCP 2011. To this end, the development is consistent with that envisaged for the site by Council's planning controls.

The image below illustrates all approved development in the McGill Street Master Plan area, with the exception of 2 and 11, with 2 being the subject development:



| Site | Permissible FSR | Approved FSR | Variation | Consent authority |
|------------------------------------|-----------------|--------------|-----------|-------------------|
| 1. 14-18 McGill Street | 2.3:1 | 4.14:1 | 80% | LEC |
| 2. 118 Old Canterbury Road | 2.1:1 | 2.98:1 | 42% | Council |
| 3. 17 McGill Street | 2.1:1 | 2.83:1 | 35% | Council |
| 4. 1-3 McGill Street | 2.1:1 | 2.66:1 | 26% | Council |
| 5. 7 McGill Street | 2.1:1 | 2.54:1 | 21% | Council |
| 6. 22 Hudson Street (LUNA) | 1.7:1 | 1.99:1 | 17% | JRPP |
| 7. 120A & 120B Old Canterbury Road | 3:1 | 2.95:1 | N/A | Council |
| 9. 108-112 Old Canterbury Road | 2.1:1 | 2.73:1 | 30% | LEC |
| 10. 4-12 McGill Street | 2.3:1 | 2.7:1 | 17% | JRPP |

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As evident above, of the 11 development sites in the precinct, a total of 9 have been approved for development, with some having been completed. Out of the 9 approved, 8 of those have variations to the FSR development standard. As part of the consideration of the development to the south of the site at 4-12 McGill Street, the Sydney Eastern City Planning Panel determined that the FSR development standard had been abandoned or destroyed in the precinct due to Council's actions in granting consent. Whilst a number of those approvals were granted by other consent authorities, Council is of the opinion that the variation to the standard on this site has planning merit and warrants approval.

Images 1 below illustrates the approved massing of developments in the vicinity of the site and Images 2 and 3 illustrate the built form approved as part of the development to the south of the site at No. 4-12 McGill Street.



Image 1: Approved and/or constructed built form in McGill Street/Hudson Street area



Image 2: No. 4-12 McGill Street as viewed from McGill Street



Image 3: No. 4-12 McGill Street as viewed from the greenway corridor to the west of the sites

The following unique circumstances of the site have been taken into consideration:

- The development presents a building density and bulk that is consistent with the desired future character of the area as evident by compliance with the other key

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building envelope controls being the maximum height of buildings development standard prescribed by Clause 4.3 of MLEP 2011 and the Masterplan controls for the McGill Street Precinct prescribed by Part 9.45 of MDCP 2011 including a 6 storey height limit;

- The variation to FSR is largely a technical variation resulting from the site not being amalgamated as per the amalgamation controls contained in Part 9.45 of MDCP 2011. The isolation of the site is a result of the approved developments at Nos. 4-12 and 14-18 McGill Street developing independently.
- The development is an island site, being bounded to the north and east by roads, to the west by the light rail/greenway corridor and to the south by an approved development and the unique circumstances require 100% site coverage which contributes to the extent of GFA on each level. The built form is consistent with what was envisioned by the masterplan controls for the site;

It is considered the development is in the public interest because it is consistent with the objectives of the B4 Mixed Use, in accordance with Clause 4.6(4)(a)(ii) of MLEP 2011. The zone objectives are as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To support the renewal of specific areas by providing for a broad range of services and employment uses in development which display good design.*
- *To promote commercial uses by limiting housing.*
- *To enable a purpose built dwelling house to be used in certain circumstances as a dwelling house.*
- *To constrain parking and restrict car use.*

The development is considered to be consistent with the objectives of the B4 Mixed Use zone.

It is considered the development is in the public interest because it is consistent with the objectives of the floor space ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of MLEP 2011. The objectives of the development standard are as follows:

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

The development is considered to be consistent with the objectives of the development standard for the following reasons:

- The development presents a building density and bulk that is consistent with the desired future character of the area as evident by compliance with the other key building envelope controls being the maximum height of buildings development standard prescribed by Clause 4.3 of MLEP 2011 and the Masterplan controls for the McGill Street Precinct prescribed by Part 9.45 of MDCP 2011 including a 6 storey height limit; and

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- The development does not cause adverse environmental impacts on adjoining premises and the public domain.

The contravention of the development standard does not raise any matter of significance for State and Regional Environmental Planning. Council may assume the concurrence of the Director-General under the Planning Circular PS 18-003 issued in February 2018 in accordance with Clause 4.6(4)(b) of MLEP 2011.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the applicable local environmental plan. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the FSR development standard and it is recommended the Clause 4.6 exception be granted.

(xviii) Earthworks (Clause 6.2)

Clause 6.2 of MLEP 2011 requires the consent authority to have regard to certain matters where earthworks that require development consent are proposed. The applicant has submitted a Preliminary Geotechnical Investigation Report which addresses excavation.

The development includes excavation for 2 basement levels, which subject to conditions included in the recommendation, is unlikely to have a detrimental impact on environmental functions or processes, neighbouring sites, cultural or heritage items or features of the surrounding land.

(xix) Flood Planning (Clause 6.3)

The site is identified as land that is shown as "Flood planning area" on the MLEP 2011 Flood Planning Area Map. The application was referred to Council's Development Engineer who provided the following comments:

"The site is subject to flooding during a 1 in 100 year storm event as determined by the Hawthorne Canal Flood Study (2017 flood model review). The 1 in 100 year flood planning level for the site has been established to be at RL 11.84m AHD (500mm freeboard). The plans have been designed reflect the flood planning levels and therefore the proposal is acceptable in terms of floor level flood protection."

The proposal is considered satisfactory having regard to the provisions of Clause 6.3 of MLEP 2011.

(xx) Terrestrial Biodiversity (Clause 6.4)

The land is identified as "Biodiversity" on the MLEP 2011 Natural Resource - Biodiversity Map. The site is located in the Bandicoot Protection Area and Wildlife Corridor as identified in the Biodiversity Map contained in Appendix 3 of Part 2.13 of MDCP 2011.

Notwithstanding, the site is comprised entirely of hardstand concrete and is less than 450sqm in area and therefore is not required to submit an Assessment of Significance and no further action is required. The development is considered to be acceptable having regard to the provisions of Clause 6.4 of MLEP 2011 and Part 2.13 of MDCP 2011.

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5(b) Draft Environmental Planning Instruments

5(b)(i) Draft Marrickville Local Environment Plan 2011 (Amendment 4)

Draft Marrickville Local Environmental Plan 2011 (Amendment 4) (the Draft LEP Amendment) was placed on public exhibition commencing on 3 April 2018 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 LEP Amendment contains an additional Clause in the LEP to be known as Clause 6.19 – Design Excellence which aims to deliver the highest standard of architectural, urban and landscape design in the LGA. The clause would be applicable to the development site as it has a maximum permitted building height of more than 14 metres and requires an assessment of whether the proposal exhibits design excellence. The quality of the proposed design has been assessed under Section 5(a)(v)(i) Clause 1.2 of MLEP 2011 as part of this assessment.

5(c) Development Control Plans

5(c)(i) Marrickville Development Control Plan 2011

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

| Part | Compliance |
|--|----------------------|
| Part 2.5 Equity of Access and Mobility | No – see discussion |
| Part 2.6 Visual and Acoustic Privacy | Yes – see discussion |
| Part 2.7 Solar Access and Overshadowing | Yes – see discussion |
| Part 2.9 Community Safety | Yes – see discussion |
| Part 2.10 Parking | No – see discussion |
| Part 2.13 Biodiversity | Yes |
| Part 2.16 Energy Efficiency | Yes |
| Part 2.18 Landscaping and Open Spaces | Yes – see discussion |
| Part 2.21 Site Facilities and Waste Management | Yes – see discussion |
| Part 2.24 Contaminated Land | Yes |
| Part 2.25 Stormwater Management | Yes |
| Part 5 Commercial and Mixed Use Development | Yes – see discussion |
| Part 9 Strategic Context | Yes – see discussion |

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The following provides discussion of the relevant issues:

PART 2 – Generic Provisions

(i) Equity of Access and Mobility (Part 2.5)

Part 2.5 of MDCP 2011 specifies the minimum access requirements including the following accessible facilities in accordance with the relevant Australian Standards:

| MDCP 2011 Requirement | Proposed | Consistency |
|---|--|-------------|
| Residential Component | | |
| For developments with five (5) or more dwellings, one adaptable dwelling per five or part thereof. | The proposed 20 dwellings require the provision of five (5) adaptable dwellings. | Yes |
| Appropriate access for all persons through the principal entrance of a building and access to any common facilities | A level entry of sufficient width has been provided. | Yes |
| One (1) accessible parking space for every adaptable dwelling | 2 accessible parking spaces servicing 5 adaptable dwellings | No |
| One (1) accessible visitor's parking space for every four accessible parking spaces or part thereof, designed in accordance with relevant Australian Standards. | The development provides 2 accessible parking spaces and 0 accessible visitor parking spaces are provided. | No |
| Commercial Component | | |
| A continuous path of travel through the main entrance | A level entrance is provided throughout. | Yes |
| At least one (1) accessible space in car parks of 10 or more car spaces | The car park supports 14 spaces and nil of those spaces are provided for the commercial tenancy. | No |

Table 1 - Assessment of proposal against Part 2.5

Based on the assessment provided in Table 1 above, the proposal satisfies the relevant provisions of Part 2.5 of MDCP 2011, with the exception of accessible car parking and visitor spaces. The matter of car parking is discussed in more detail later in this report under Section 5(c)(v).

(ii) Acoustic and Visual Privacy (Part 2.6)

The development maintains adequate levels of acoustic and visual privacy for the surrounding residential properties and ensures an adequate level of acoustic and visual privacy for future occupants of the development.

The development has 4 frontages providing windows and balconies:

- The eastern elevation fronts McGill Street and provides balconies and windows to Unit 4 on each level. These windows and balconies face towards development to the east of the site on the opposite side of McGill Street however the street provides sufficient separation and no concern is raised over these windows;
- The northern elevation fronts Hudson Street and provides windows to Units 2 and 4 on each level, and provides windows and balconies to Unit 3 on each level. Hudson Street provides approximately a 25 metre buffer from the Luna

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development to the north and no concern is raised over these windows and balconies;

- The western elevation fronts the light rail/greenway corridor and provides balconies to Unit 11 and 2 on each level and therefore no concern is raised over these balconies;
- The southern elevation is built with a nil setback to the development to the south at No. 4-12 McGill Street. The development consent relating to 4-12 provides an easement for light and air for the subject site, and fire-rated windows are provided along this elevation for additional light and ventilation to Units 1 and 4 on each level as well as the common corridor. No concern is raised over these windows.

Given the above the development is reasonable having regard to the objectives and controls relating to visual and acoustic privacy as contained in MDCP 2011.

(iii) Solar Access and Overshadowing (Part 2.7)

Overshadowing

The shadow diagrams submitted with the application illustrate the extent of overshadowing as a result of the development. The development will result in increased overshadowing over the development to the south of the site at No. 4-12 McGill Street, as well as additional shadows over the greenway corridor and some additional shadow over the development to the east of the site on the opposite side of McGill Street.

The development to the south provides an area of common open space at ground level located centrally within the site and landscaping which will be significantly overshadowed between 9:00am and 3:00pm in mid-winter, which is inevitable due to the orientation of the site and the permitted scale of development on the subject site. Notwithstanding, the development at No. 4-12 provides a significant area of common open space on the roof top level of Building A fronting McGill Street measuring 713.2sqm which will continue to receive direct solar access over at least 50% of the surface area in mid-winter in accordance with Council's controls.

The development at No. 4-12 provides all areas of private open space either facing towards the front or rear of the site, being east or west respectively. As such, the development of the subject site will have minimal impact on the solar access received to those areas.

Considering the above, the development is considered acceptable having regard to Part 2.7 of MDCP 2011.

Solar Access

The plans and shadow diagrams submitted with the application illustrate that the development complies with Council's solar access controls in that at least 65% of dwellings provide living area windows positioned within 30 degrees east and 20 degrees west of true north and allow for direct sunlight for at least two hours over a minimum of 50% of the glazed surface between 9.00am and 3.00pm on 21 June.

(iv) Community Safety (Part 2.9)

Part 2.9 of MDCP 2011 contains objectives and controls relating to community safety. The Statement of Environmental Effects submitted with the application demonstrates the way in which consideration has been made of the four CPTED principles contained in Section 2.9.3.

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The proposal is considered acceptable having regard to community safety in that:

- The principal entrance to the building is visible from Hudson Street and is in a prominent position being well lit and signposted;
- The development has been designed to overlook and provide passive surveillance over Hudson Street, McGill Street and the greenway corridor;
- Principal pedestrian access to the car park is provided internally and security arrangements have been incorporated to ensure all vehicles in the parking area and all entrances and exits to and from the communal parking area are secure and only authorised users have access; and
- No roller shutters are provided that are visible from the street.

A condition is included in the recommendation requiring the entrance to the premises being well lit and to comply with the relevant Australian Standard to avoid excessive light spillage. The development satisfies Part 2.9 of MDCP 2011.

(v) Parking (Part 2.10)

Car, Bicycle and Motorcycle Parking Spaces

The site is located in Parking Area 2 under Part 2.10 of MDCP 2011. The following table summarises the car, bicycle and motorcycle parking requirements for the development:

| Component | Control | Required | Proposed | Complies? |
|---------------------------------|---|---|------------------|-----------|
| Car Parking | | | | |
| Resident Car Parking | 0.4 car parking space per studio | 5 x studio units = 2 spaces | | |
| | 0.5 car parking spaces per 1 bedroom unit | 5 x 1 bed unit = 2.5 spaces | | |
| | 1 car parking spaces per 2 bedroom unit | 12 x 2 bed units = 12 spaces | | |
| | Total required: | 16.5 spaces | | |
| Accessible Resident Car Parking | 1 car parking space per 1 adaptable dwelling | 5 adaptable dwellings = 5 accessible spaces | 2 spaces | No |
| Residential Visitor Parking | 0.1 space per unit | 20 units = 2 spaces | 0 spaces | No |
| Accessible Visitor Parking | 0.25 space per adaptable unit | 5 adaptable units = 1.25 accessible visitor space | 0 spaces | No |
| Commercial Car Parking | 1 space per 80sqm GFA for customers and staff | 190sqm GFA = 2 spaces | 0 spaces | No |
| Bicycle Parking | | | | |
| Resident Bicycle Parking | 1 bicycle parking space per 2 units | 20 units = 10 spaces | 12 spaces total | |
| Visitor Bicycle Parking | 1 bicycle parking space per 10 units | 20 units = 2 spaces | | |
| Commercial Bicycle Parking | 1 per 300sqm GFA for staff | 190sqm GFA = 1 space | | |
| | Total required: | 13 spaces | 12 spaces | No |

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| Component | Control | Required | Proposed | Complies? |
|---------------------------|---|---|-----------------|-----------|
| Motorcycle Parking | | | | |
| Motorcycle Parking | 5% of the total car parking requirement | 23 car parking spaces required = 1.1 spaces | | |
| Total required: | | 1 space | 0 spaces | No |

Assessment of proposal against Part 2.10 of MDCP 2011

The development provides 2 levels of basement car parking. It is noted that access to the subject basement is highly constrained and is required to be provided via the basement of the development directly to the south at No. 4-12 McGill Street. That development provides 2 levels of basement car parking for 97 vehicles. Given that No. 4-12 provided sufficient car parking, it was not practical to require them to provide further parking in a third basement level, and therefore only 2 basement levels are practical on the subject site.

Determination No. 201700310 dated 23 March 2018 included a condition requiring that a right of way shall be provided on the property to allow for vehicular access to future basement car parks at No. 2 upon redevelopment of the site. Whilst it is acknowledged that there may be some time where the basements of the subject site are not accessible if the subject site is development before No. 4-12, this is largely unavoidable given that Part 9.45 of MDCP 2011 prescribes the approved access arrangements.

As detailed in the table above, the development does not comply with Council's parking controls. The development provides 14 car parking spaces and results in a shortfall of 13 car parking spaces. Notwithstanding, the shortfall is acceptable given the following:

- The site is located within walking distance of Lewisham Railway Station as well as high frequency bus services to and from the CBD;
- The site is located less than 20 metres from the entrance to Lewisham West Light Rail station.
- The site is quite constrained in area limiting its ability to provide the prescribed parking, including that no access could be achieved to a third basement level given the access constraints;
- The development provides a large proportion of smaller dwelling types which generally result in a reduced demand for car parking.

The development provides 5 adaptable dwellings and is therefore required to provide a total of 6 accessible car parking spaces, including 5 for residents and 1 visitor car parking space. The development provides 2 accessible car parking spaces which represents a shortfall of 4 accessible car parking spaces. The provision of further accessible car parking spaces in a significantly constrained basement would be difficult and would reduce the provision of regular car parking spaces twofold. Given the circumstances outlined above, the variation is acceptable.

Of the 14 car parking spaces provided in the basement, it is recommended that the spaces be allocated as follows:

- 12 car parking spaces be allocated to the 1 and 2 bedroom dwellings; and
- 2 accessible car parking spaces be allocated to 2 of the 5 adaptable dwellings.

(vi) Landscaping and Open Spaces (Part 2.18)

2.18.11.7 *Mixed use development*

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Part 2.18.11.7 of MDCP 2011 provides the following controls for mixed use development:

"C25 Landscaped area

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.

C26 Private open space

Each dwelling in a mixed use development must have a private open space in the form of a deck or balcony accessible from the principal living area of the dwelling with a minimum area of 8m² and a minimum width of 2 metres."

Landscaped area

The development has a frontage to Hudson Street and McGill Street and is required to provide a nil front boundary setback. As such, it is not appropriate to provide pervious landscaping within the front setback of the development on ground floor level.

Considering the context of the site, being within a business centre, the development is assessed as providing sufficient private open space and a large landscaped common open space for use by the occupants of the development and is a significant improvement on the nil landscaping/open space currently existing on the site. A landscape plan and maintenance schedule was submitted with the application and is acceptable.

Private open space

All apartments are provided with primary balconies that comply with or exceed the minimum area and minimum depth as per above. Furthermore, all balconies comply with the minimum requirements of the ADG which prevails over MDCP 2011.

Communal open space

The development provides a large area of communal open space on the roof level with total measurement of 300sqm, being 78% of the total site area. The proposed common open space is considered to be of a sufficient size to promote recreation and active use by the residents of the development in addition to that provided by the private open space areas.

2.18.11.12 Development within Business Centres

The site has a frontage to Hudson Street and McGill Street. It is considered that 1 new tree should be planted and located within the existing landscaped area outside the subject property within the public domain, being an *Angophora costata* (Sydney red Gum) with a mature height of up to 25 metres. The Landscape/Public Domain Plans submitted with the application indicate the planting location.

Furthermore, a condition is included in the recommendation requiring the provision of a monetary contribution so as to facilitate planting in the greenway corridor directly adjacent to the site once that land becomes under the management of Council. The applicant has agreed to the provision of this contribution.

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(vii) Tree Management (Part 2.20)

There are no trees on the site covered by and protected under MDCP 2011.

There is 1 tree on the adjacent Greenway corridor that is protected. Conditions are included in the recommendation requiring protection for the eucalypt on the adjacent Greenway corridor.

A Landscape Plan was submitted with the application which includes extensive planting on the rooftop level as well as the provision of a new street tree in the public domain, being an *Angophora costata* (Sydney red Gum) with a mature height of up to 25 metres. Conditions are included in the recommendation regarding the provision and maintenance of new street tree.

(viii) Site Facilities and Waste Management (Part 2.21)*2.21.2.1 Recycling and Waste Management Plan*

A Recycling and Waste Management Plan (RWMP) in accordance with Council's requirements was submitted with the application and is considered to be adequate.

2.21.2.5 Residential Waste

The development includes 20 units and would generate 1,440L of waste based on the calculation of 72L per dwelling. A minimum of 12 x 240L recycling, 6 x 240L general waste bins and an appropriate number of green waste bins are required to be provided for the development.

A total of 21 x 240L bins are provided in the waste storage area in the basement. There is considered to be a sufficient quantity of waste bins to accommodate the required recycling and general waste under Part 2.21. Conditions are included in the recommendation regarding the collection of waste and all waste is required to be presented to Hudson Street for collection by Council.

Control C15 requires that for buildings that are 4 or more storeys high must provide waste chutes or interim holding rooms on each level. The development provides a waste chute and interim waste holding area on each residential level, thus satisfying the requirements of Control C15.

Control C25 specifies that space must be provided for communal compost facilities for residential flat buildings. There is sufficient space on the roof top level for communal composting to be provided.

Control C27 requires that for residential flat buildings a dedicated room or caged area of at least 12cbm must be provided for the temporary storage of discarded bulky items which are awaiting removal. A 15sqm area has been provided for bulky items on the basement level which is sufficient.

The plans submitted with the application indicate a waste compactor in the residential bin storage room. Council does not permit the compaction of waste. A condition is included in the recommendation requiring that amended plans be submitted indicating the deletion of the waste compactor. Subject to satisfaction of this condition, the development is acceptable having regard to the provisions of Part 2.21 of MDCP 2011.

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2.21.2.6 Commercial Waste

The commercial tenancies have a combined area of 190sqm of which the proposed use is to be the subject of a separate application. A bin storage area is proposed on the ground floor level of the development with a capacity to accommodate 2 x 1100L bins. Any application for the use of the ground floor tenancies will need to demonstrate that sufficient services are provided for recycling and general waste under Part 2.21 of MDCP 2011.

PART 5 – Commercial and Mixed Use Development

The land is located in the McGill Street Planning Precinct (Precinct 45) under Part 9.45 of MDCP 2011. Part 9.45 of MDCP 2011 prescribes site specific Masterplan Area (MA 45.3) controls to achieve the desired future character for the McGill Street Planning Precinct. The controls contained in Part 9.45 generally prevail over Part 5 given the master plan context of the site.

Notwithstanding, Part 5 of MDCP 2011 contains controls for mixed use developments and the relevant provisions are discussed below:

(ix) Building Use (Part 5.1.5)

5.1.5.1 Mixed Use Development

The development is considered acceptable having regard to the control in Part 5.1.5.1 of MDCP 2011 in the following ways:

- The proposal encourages a mixed use development that is compatible with the role and character of the commercial centre;
- The future ground floor commercial use will provide an active street frontage and predominantly accommodate commercial uses;
- The proposed residential dwellings above the ground floor level will complement the role of the commercial centre; and
- A condition is included in the recommendation requiring provision to be made for mechanical exhaust should the ground floor commercial tenancies be used for a retail use that requires that.

5.1.5.2 Dwelling Mix

The residential component of the development includes the following dwelling mix:

| | | Required | Proposed |
|--------------|------------|-----------|----------|
| Dwelling Mix | Studios | 5% - 20% | 4 (20%) |
| | 1 bedroom | 10% - 40% | 4 (20%) |
| | 2 bedroom | 40% - 75% | 12 (60%) |
| | 3+ bedroom | 10% - 45% | 0 (0) |

The development generally complies with the dwelling mix control, with the exception to the provision of no 3 bedroom dwellings. Despite being contrary to the above dwelling mix, the mix of apartment sizes in this instance is considered acceptable as the development:

- Provides a range of dwelling types and sizes to meet the needs of the community; and

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- The development results in an oversupply of 2 bedroom dwellings including single and dual bathroom options.

PART 9 - STRATEGIC CONTEXT(x) McGill Street (Part 9.45)

The land is located in the McGill Street Planning Precinct (Precinct 45) under Part 9.45 of MDCP 2011. Part 9.45 of MDCP 2011 prescribes site specific Masterplan Area (MA 45.3) controls to achieve the desired future character for the McGill Street Planning Precinct. The following discussion relates specifically to the site specific Masterplan Area controls:

(xi) Desired Future Character (Part 9.45.3)

Part 9.45.3 prescribes the desired future character of the McGill Street Precinct. As discussed elsewhere in this report, the development generally complies with the provisions of MLEP 2011 with the exception of the variation to the floor space ratio development standard. Notwithstanding the numerical variation, as evident throughout the following discussion the development is consistent with the desired future character for the area as prescribed by Part 9.45 of MDCP 2011 with regard to traffic and access, public domain, land use and built form.

The development is consistent with the following desired future character objectives:

1. *To ensure a diversity of uses (retail, commercial, employment and residential), housing types (affordability, configuration and style), building and architecture, and landscape and open space.*
3. *To provide community facilities and local employment to support local people and businesses.*
4. *To provide public open space which serves as an important gathering place and focal point for informal leisure and recreation.*
7. *To ensure that higher density development demonstrates good urban design and environmental sustainability and provide suitable amenity for occupants of those developments.*
8. *To ensure that the design of higher density development protects the residential amenity of adjoining and surrounding properties*

(xii) Masterplan Area (Part 9.45.5)

The development is consistent with the objective and control contained in Part 9.45.5 of MDCP 2011 in the following manner:

- The development provides an appropriate upgrade of the public domain surrounding the site;
- The development integrates appropriately with the Greenway corridor to the west of the site including a contribution for future planting;

(xiii) Traffic and Access (Part 9.45.6)

The development provides 2 levels of basement car parking which are accessed via the basement of the development to the south of the site at No. 4-12 McGill Street. This demonstrates compliance with the McGill Street Precinct Masterplan traffic and access strategy and reduces the need for an additional vehicular crossing over the footpath.

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Determination No. 201700301 dated 23 March 2018 includes a condition requiring a right of way being provided on the property to allow for vehicular access to future basement carparks at 2 McGill Street, Petersham upon redevelopment of that site. If the subject development is realised before the neighbour providing that access at No. 4-12 McGill Street, there may be some period of time whereby vehicular access to that basement is not available. Notwithstanding, vehicular access to the basement will continue to be available and whilst parking may not be accessible, this is not detrimental to the day to day use of the development.

The development is acceptable having regard to traffic and access.

(xiv) Public Domain Strategy (Part 9.45.7)

The subject building on the site occupies the entire site footprint and no public footpath is available in this location. The development provides for a minimum 2.5 metre wide continuous footpath along the southern side of Hudson Street to allow pedestrian access to the light rail and Greenway which is a significant public domain improvement. The development provides a wide footpath to allow continuous pedestrian access from Old Canterbury Road through to the light rail station.

(xv) Future Land Use (Part 9.45.8)

Part 9.45.7 encourages mixed use development on the site with ground floor commercial uses and residential above. The development is consistent with the future land use diagram and is acceptable.

(xvi) Site Amalgamation (Part 9.45.8)

Control C9 in Part 9.45.8 of MDCP 2011 prescribes the following site amalgamation pattern as shown in the plan diagram below:



Figure 4: Site Amalgamation Diagram

The development does not comply with the amalgamation pattern indicated in Figure 45.5 from Part 9.45.8 reproduced above. The site is required to be amalgamated with Nos. 4-12 and 14-18 McGill Street to form 'Site 2' with a total area of 4,288sqm. This application proposes to depart from the required amalgamation pattern by developing the site in isolation.

A planning principle has been established by the NSW Land and Environment Court to deal with amalgamation of development sites. The general questions that need to be answered when dealing with amalgamation of sites or when a site is to be isolated through redevelopment are:

- Firstly, is amalgamation of the sites feasible?
- Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?

Evidence was submitted with the application approved as part of Determination No. 201500682 dated 2 August 2016 for the adjoining site at No. 4-12 McGill Street that indicates 3 attempts being made by the applicant to purchase or amalgamate the subject property through letters of offer in order to develop the sites concurrently. The offers were based on an independent valuation that was obtained by the applicant and provided a valuation value for the land 'as is' and as part of an amalgamated site. No response was received from the subject owners in writing. The letters of offer are considered to generally

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satisfy the site isolation planning principle. Given that No. 4-12 McGill Street and No 14-18 McGill Street both benefit from recent development consents to develop in isolation, with the latter having been recently completed, it is considered that the site is suitable to be developed in isolation, particularly as there is no alternative having regard to the adjoining site being subject to a separate development consent.

Council also needs to be satisfied that both sites are able to achieve a development of appropriate urban form and with an acceptable level of amenity.

It is considered that given No. 4-12 McGill Street and No 14-18 McGill Street both benefit from recent development consents to develop in isolation, with the latter having been recently completed, and given the discussion throughout this report on the application's merits, the subject development can be developed in isolation whilst achieving an appropriate urban form with an acceptable level of amenity. Furthermore, it is noted that the approval of the adjacent site to the south at No. 4-12 provided the following components to the benefit of the subject site:

- The provision of a common substation;
- Sharing vehicular access from McGill Street via a right of way through the basement of No. 4-12;
- Sharing the semi-public open space area to the south of the subject site as envisaged in the masterplanned area with provision made for alternative entrances to the commercial tenancies on the subject site; and
- Allowing an easement for light and air over the common boundary to allow windows and fire egress.

Whilst the proposal does not adhere with the amalgamation controls contained within Part 9.45.8 of MDCP 2011, given the circumstances the proposed development is acceptable.

(xvii) Built Form (Part 9.45.10)

Floor Space Ratio

Control C14 prescribes the maximum FSR to be consistent with the FSR standards described within the MLEP 2011. As discussed under the provisions of Clause 4.4 of MLEP 2011, the proposal exceeds the maximum floor space ratio development standard by 623sqm or 70.5%. Therefore the development does not comply with the provisions of Control C14 of Part 9.45.10.1 of MDCP 2011. The matter of FSR is discussed earlier in this report under Section 5(a)(v) and is considered to be acceptable.

Height

Controls C15-17 prescribes a maximum height in storeys for the amalgamated Site 2, indicating an 8 storey form to No. 14-18, a 2 storey form to No. 6-12 fronting McGill Street and 2 storeys fronting the Greenway, and a 6 storey form to Nos. 2 & 4 as indicated below:



Figure 5: Height of buildings diagram

The development proposes a 6 storey form with a lightweight roof terrace canopy. The development is consistent with the height of buildings diagram above.

The site is adjoined by No. 4-12 McGill Street to the south which has been approved for a 6 storey form to McGill Street (Building A) and an 8 storey form to the Greenway (Building B). The court approval at No. 14-18 McGill Street allows for an 8 storey development in accordance with the Masterplan.

Whilst the development represents a significant departure from the FSR development standard prescribed by Clause 4.4 of MLEP 2011, the development is consistent with the desired future character for the area as identified by the 29 metre height development standard and the 6 storey control prescribed.

Public domain interface

The control diagram prescribes an active frontage along the northern, eastern and western boundaries of the site. The development provides shop front glazing to the entire northern, eastern and western frontage of the site with the exception of the residential lobby which is considered satisfactory. Furthermore, the development provides an active frontage to the southern boundary where it adjoins the public thoroughfare approved through the development at No. 4-12 McGill Street.

The development provides a 3.8 metre setback along the western boundary where the development adjoins the greenway corridor to provide a consistent setback with the development to the south. The development demonstrates a good outcome having regard to Part 9.45.10.3 and is supported.

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Private open space and building depth

Part 9.45.10.4 of MDCP 2011 prescribes controls relating to building depth and communal open space. The development provides a building depth of approximately 11 metres which is consistent with the prescribed controls.

5(d) The Likely Impacts

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

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

The site is zoned B4 Mixed Use under MLEP 2011. Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

5(f) Any submissions

The application was advertised, an on-site notice displayed on the property and residents/property owners in the vicinity of the property were notified of the development in accordance with Council's Notification Policy and no submissions were received.

During the assessment process the proposal was amended to address a number of concerns raised by Council officers relating to materials and finishes, public domain improvements, access and other matters. The amended proposal was not required to be re-notified in accordance with Council's Notification Policy.

5(g) The Public Interest

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

The development is consistent with the aims, and design parameters contained in State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development, Marrickville Local Environmental Plan 2011 and Marrickville Development Control Plan 2011 and other relevant Environmental Planning Instruments. As discussed throughout this report, the development will not result in any significant impacts on the amenity of adjoining premises and the streetscape and thus the development is considered to be in the public interest.

6. Referrals**6(a) Internal**

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

- Development Engineer
- Tree Management Officer
- Waste Management

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- Environmental Services – Contamination
- Environmental Services – Biodiversity
- Architectural Excellence Panel (AEP)

6(b) External

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

- Sydney Trains

7. Section 7.11 Contributions

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 \$338,065.70 would be required for the development under Marrickville Section 94 Contributions Plan 2014. A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development and Marrickville Local Environmental Plan 2011 (MLEP 2011) with the exception that the proposal exceeds the maximum floor space ratio development standards. The proposal is generally consistent Marrickville Development Control Plan 2011. The development will not result in any significant impacts on the amenity of adjoining premises and the streetscape. The application is suitable for approval subject to conditions.

9. Recommendation

- A. That the variation to Clause 4.4 Floor Space Ratio development standard of Marrickville Local Environmental Plan 2011 be supported under the provisions of Clause 4.6 exceptions to development standards.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application No.201700611 to demolish existing improvements and construct a 6 storey mixed use development comprising 2 levels of basement parking, 2 commercial tenancies on the ground floor with 20 residential dwellings over 5 levels and a communal roof terrace at 2 McGill Street, Lewisham subject to the conditions listed in Attachment A below.

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Attachment A – Recommended conditions of consent

GENERAL

1. The development must be carried out in accordance with plans and details listed below:

| Plan and Revision No. | Plan Name | Date Issued | Prepared by | Date Submitted |
|-----------------------|------------------------------------|-----------------|---------------------------|-----------------|
| DA 010 2 | Basement Floor Plan 2 | 30 May 2018 | BKA | 2 August 2018 |
| DA 020 2 | Basement Floor Plan 1 | 30 May 2018 | BKA | 2 August 2018 |
| DA 100 7 | Ground Floor Plan | 20 July 2018 | BKA | 2 August 2018 |
| DA 101 3 | Levels 1-5 Plan | 22 June 2018 | BKA | 2 August 2018 |
| DA 102 1 | Roof Plan | 9 November 2017 | BKA | 2 August 2018 |
| DA 200 4 | North Elevation/Materials Schedule | 22 June 2018 | BKA | 2 August 2018 |
| DA 201 4 | East Elevation | 22 June 2018 | BKA | 2 August 2018 |
| DA 202 4 | Hudson Street Elevation | 22 June 2018 | BKA | 2 August 2018 |
| DA 203 4 | South Elevation | 22 June 2018 | BKA | 2 August 2018 |
| DA 204 4 | West Elevation | 22 June 2018 | BKA | 2 August 2018 |
| DA 300 3 | Sections 1 | 22 June 2018 | BKA | 2 August 2018 |
| DA 301 2 | Sections 2 | 30 May 2018 | BKA | 2 August 2018 |
| DA 302 1 | Balcony Section | 22 June 2018 | BKA | 2 August 2018 |
| 17/1953 Sheet 1/2 B | Landscape Site Plan | 3 August 2018 | Paul Scrivener | 11 March 2019 |
| 17/1953 Sheet 12/2 B | Public Domain Concept | 3 August 2018 | Paul Scrivener | 11 March 2019 |
| E23849.E02_Rev1 | Detailed Site Investigation | 8 March 2019 | EI Australia | 11 March 2019 |
| E23849.E10_Rev0 | Hazardous Materials Survey | 28 August 2018 | EI Australia | 5 October 2018 |
| 855198M | BASIX Certificate | 3 November 2017 | Planning & Infrastructure | 8 December 2017 |
| 21335/7906C | Geotechnical Report | February 2017 | STS | 8 December 2017 |
| TJ541-01D02 Rev 1 | Acoustic Assessment | 12 May 2017 | Renzo Tonin & Associates | 8 December 2017 |

and details submitted to Council on 8 December 2017, 2 August 2018, 5 October 2018 and 11 March 2019 with the application for development consent and as amended by the following conditions.

Reason: To confirm the details of the application submitted by the applicant.

2. Where any plans and/or information forming part of a construction certificate issued in relation to this consent are inconsistent with:
- the plans and/or information approved under this consent; or
 - any relevant requirements of this consent,

the plans, information and/or requirements of this consent (as the case may be) shall prevail to the extent of the inconsistency.

All development approved under this consent shall be carried out in accordance with the plans, information and/or requirements of this consent taken to prevail by virtue of this condition.

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3. In order to ensure the architectural and urban design excellence of the development is retained:
 - a) The design architect is to have direct involvement in the design documentation, contract documentation and construction strategies of the project;
 - b) The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
 - c) Evidence of the design architect's commission is to be provided to the Council prior to the release of the construction certificate.
 - d) The design architect of the project is not to be changed without prior notice and approval of the Council.
4. Where units or dwellings are provided with separate individual hot water systems and/or air conditioning units, these must not be located on any balcony or terrace or any place visible from the public domain.
5. Separate Development Consent or Complying Development Certificate must be obtained for the use of the ground floor shops/commercial suites prior to the occupation of that part of the premises.
6. Each dwelling must be used exclusively as a single dwelling and not be adapted for use as backpackers' accommodation, serviced apartments or a boarding house and not be used for any industrial or commercial purpose.
7. A minimum of 5 adaptable dwellings must be provided in accordance with Part 2.5 of Marrickville Development Control Plan 2011 - Equity of Access and Mobility.
8. A total of 14 off-street car parking spaces must be provided and maintained at all times in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 - Parking. The parking must be allocated as follows:
 - a) 5 spaces being allocated to the 2 bedroom dwellings;
 - b) 7 spaces being allocated to the 1 bedroom dwellings; and
 - c) 2 accessible car parking spaces, 1 accessible car space per adaptable dwelling;
9. 12 off-street bicycle parking spaces must be provided and maintained at all times in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 - Parking.
10. All parking spaces and turning area thereto being provided in accordance with the design requirements set out within Part 2.10 of Marrickville Development Control Plan 2011 - Parking, and must be used exclusively for parking and not for storage or any other purpose.
11. A total of 20 storage cages must be maintained in accordance with the plans approved under Part B Condition 1. The distribution of storage cages must ensure that all units are provided with a storage cage consistent with the unit size in accordance with the provisions of the Residential Flat Design Code.
12. The use of the premises shall 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 shall not give rise to the transmission of a vibration nuisance or damage other premises.
13. To ensure minimal impacts on surrounding properties commercial waste and recyclable material generated by the premises must not be collected between the hours 9:00pm and 8:00am.

14. The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations.

In this regard, the operation of the premises and plant and equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background $L_{A90, 15min}$ noise level, measured in the absence of the noise source/s under consideration by 5dB(A). The source noise level shall be assessed as an $L_{Aeq, 15min}$ and adjusted in accordance with the NSW Environment Protection Authority's Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance).

15. Separate Development Consent or Complying Development Certificate must be obtained prior to the erection of any advertisements or advertising structures. The shop windows must not be painted with advertisements and no flashing lights are to be installed on the premises.
16. All machinery must be installed in accordance with the manufacturer's specifications and must be maintained at all times if in use.
17. It may be necessary for the installation of a suitable electrical sub-station for the distribution of electrical power in this area to be located on the land, and that an area of land suitable for Ausgrid to provide such an installation be set aside for this purpose. Before proceeding with your development further, you are directed to contact the General Manager of Ausgrid, George Street, Sydney, with respect to the possible need for such an installation immediately or in the future.
18. 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.
19. Should the development require the provision of an electrical substation, such associated infrastructure must be incorporated wholly within the development site. Before proceeding with your development further, you are directed to contact Ausgrid directly with regard to the possible provision of such an installation on the property.
20. All trade waste must be stored within the site boundaries and contained in such a manner so as not to cause a nuisance.
21. All building work must be carried out in accordance with the provisions of the National Construction Code (Building Code of Australia).
22. Owners and occupants of the proposed building shall not be eligible to obtain parking permits under any existing or future resident parking scheme for the area. The person acting on this consent shall advise any purchaser or prospective tenant of this condition. In addition the by-laws of any future residential strata plans created for the property shall reflect this restriction.
23. Should the proposed development require the provision of an electrical substation, such associated infrastructure shall be incorporated wholly within the development site. Before proceeding with your development further, you are directed to contact Ausgrid directly with regard to the possible provision of such an installation on the property.
24. **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 additional, 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.

25. **Bin Storage Areas are to meet design requirements as per MDCP 2011.**

All bin storage areas must fully accommodate the number of bins required for all waste generated by a development of this type and scale. The areas must also include 50% allowance for manoeuvring of bins.

All bin storage areas are 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 areas are to meet the design requirements detailed in the Inner West DCP, and must include doorways/entrance points of 1200mm.

There must be adequate bin storage allocation in the commercial bin storage area to accommodate the generation of all waste streams from all the businesses on site.

26. **Residential - Bulky Waste Storage Area**

The bulky waste storage area must meet the floor area requirements as per the Inner West Council DCP. Doorways are to be a minimum of 1200mm wide to accommodate large items

27. **Commercial - Additional Storage Space**

There must be additional space allocated on site for the storage of reusable items such as crates and pallets and/or compaction equipment.

28. **Transfer route**

The path of travel between the bin storage areas/bulky waste storage areas and the designated waste/recycling collection point is to have a minimum 1200mm wall-to-wall clearance, be slip-proof, of a hard surface, be free of obstructions and at no point have a gradient exceeding 1:12. The use of a lift is permitted, but consideration should be given to the inclusion of a service lift in this instance.

29. **Compaction**

No compaction of waste or recyclable material is permissible in residential developments.

30. **Each residential level is to have access to a disposal point for all waste streams.**

The development must include the recycling bin storage cupboards on each residential floor as shown in the plans. These recycling bins are to have the capacity to store, at minimum, all waste generated by that floor over a 24 hour period.

31. **All bins are to be brought back inside within 12 hours of being emptied**

32. **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.

33. **Residential development - Recycling/garbage/organics service information and education**

The building manager/strata title manager or body corporate is responsible for ensuring all residential tenants are kept informed regarding Council's services, and best practice waste and recycling source separation.

BEFORE COMMENCING DEMOLITION, EXCAVATION AND/OR BUILDING WORK

34. An Asbestos Survey prepared by a suitably qualified Occupational Hygienist shall be prepared for the premises. The Survey is to incorporate appropriate Asbestos removal and disposal methods in accordance with the requirements of WorkCover NSW, NSW Environmental Planning and Assessment Amendment (Asbestos) Regulation 2009 and NSW Environment Protection Authority, Safe Removal of Asbestos 2nd Edition [NOHSC: 2002 (2005)] and conditions of this consent.

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

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to any works on site commencing or the issue of the Construction Certificate (whichever occurs first).

35. No work must commence until:

- a) A PCA has been appointed. Where an Accredited Certifier is the appointed, Council shall be notified within 2 days of the appointment; and
- b) A minimum of 2 days written notice given to Council of the intention to commence work.

Reason: To comply with the provisions of the Environmental Planning and Assessment Act.

36. A Construction Certificate must be obtained before commencing building work. Building work means any physical activity involved in the construction of a building. This definition includes the installation of fire safety measures.

Reason: To comply with the provisions of the Environmental Planning and Assessment Act.

37. Sanitary facilities must be provided at or in the vicinity of the work site in accordance with the WorkCover Authority of NSW, Code of Practice 'Amenities for Construction'. Each toilet must be connected to the sewer, septic or portable chemical toilet before work commences.

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

Reason: To ensure that sufficient and appropriate sanitary facilities are provided on the site.

38. All demolition work must:

- a) Be carried out in accordance with the requirements of Australian Standard AS 2601 'The demolition of structures' and the Occupational Health and Safety Act and Regulations; and
- b) Where asbestos is to be removed it must be done in accordance with the requirements of the WorkCover Authority of NSW and disposed of in accordance with requirements of the Department of Environment, Climate Change and Water.

39. Where any loading, unloading or construction is to occur from a public place, Council's Infrastructure Services Division must be contacted to determine if any permits or traffic management plans are required to be obtained from Council before work commences.

40. All services in the building being demolished must be disconnected in accordance with the requirements of the responsible authorities before work commences.

41. 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, before work commences.

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42. A rigid and durable sign must be erected in a prominent position on the site, before work commences. The sign must be maintained at all times until all work has been completed. The sign is to include:
- The name, address and telephone number of the PCA;
 - A telephone number on which Principal Contractor (if any) can be contacted outside working hours; and
 - A statement advising: 'Unauthorised Entry To The Work Site Is Prohibited'.
43. A Soil and Water Management Plan must be prepared in accordance with Landcom Soils and Construction, Volume 1, Managing Urban Stormwater (Particular reference is made to Chapter 9, "Urban Construction Sites") and submitted to and accepted by the PCA. A copy of this document must be submitted to and accepted by PCA before work commences. The plan must indicate:
- Where the builder's materials and waste are to be stored;
 - Where the sediment fences are to be installed on the site;
 - What facilities are to be provided to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way; and
 - How access to the site will be provided.

All devices must be constructed and maintained on site while work is carried out.

44. Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent shall 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:
- 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.
 - A concrete pump across the roadway/footpath
 - Mobile crane or any standing plant
 - Skip bins
 - Scaffolding/Hoardings (fencing on public land)
 - Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.
 - Awning or street verandah over footpath
 - Partial or full road closure
 - 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.

Applications for such Permits shall be submitted and approved by Council prior to the commencement of the works associated with such activity

45. The person acting on this consent shall submit to the Principal Certifying Authority a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site before the issue of a Construction Certificate.
46. The person acting on this consent shall 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. Additionally an awning is to be

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erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property, where necessary.

Separate approval is required from Council under the Roads Act 1993 to erect a hoarding or temporary fence or awning on public property. Approvals for hoardings, scaffolding on public land must be obtained and clearly displayed on site for the duration of the works.

Any hoarding, fence or awning is to be removed when the work is completed and must be maintained clear of any advertising.

47. A detailed Traffic Management Plan to cater for construction traffic shall be submitted to and approved by Council before commencement of works. Details shall include haulage routes, estimated number of vehicle movements, truck parking areas, work zones, crane usage, etc., related to demolition/construction activities.
48. Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands shall 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.
49. All works are to be undertaken in accordance with the details, methodology, advice, undertakings and recommendations as detailed in the following documents:
 - Geotechnical Investigation Report E23849.G03 Original Report prepared by EI Australia dated 7 September 2018
 - Engineering Report Project 00013460 Revision A prepared by Lindsay Dynan, dated 14 September 2018

The measures detailed in the documents approved/ certified by Sydney Trains under this Condition are to be incorporated into the construction drawings and specifications prior to the issuing of a Construction Certificate by the Principal Certifying Authority. Prior to the commencement of works the Principal Certifying Authority is to provide verification to Sydney Trains that this condition has been complied with.

50. If required by Sydney Trains or the Light Rail Operator, prior to the commencement of works, prior to the issue of the Occupation Certificate, or at any time during the excavation and construction period deemed necessary by Sydney Trains or Light Rail Operator, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains, Light Rail Operator and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report will be required unless otherwise notified by Sydney Trains or Light Rail Operator.
51. Prior to the commencement of works appropriate fencing is to be in place along the rail corridor to prevent unauthorised access to the rail corridor during construction. Details of the type of fencing and the method of erection are to be to the satisfaction of Sydney Trains or the Light Rail Operator prior to the fencing work being undertaken.
52. Prior to the commencement of works the Applicant shall peg-out the common property boundary with RailCorp's land. This work is to be undertaken by a registered surveyor.
53. If the developer requires track possessions (the stopping of trains running on adjacent tracks) and/or power outages (shutting of power to Sydney Trains facilities) to undertake works, Sydney Trains Engineering & Maintenance Interface and the Light Rail Operator (Transdev) should be consulted and approval obtained prior to the commencement of works.

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54. Prior to commencement of any excavation, demolition or construction work, all workers on the work site are to be made aware of the potential presence of Long-nosed Bandicoots as part of the site induction (including what they look like).;

Note: To the untrained eye, a Long-nosed Bandicoot may be mistaken for a rodent.

55. The young eucalypt on the adjacent light rail corridor shall be enclosed within at least 3 panels of a minimum 1.6 metre high construction style fence from prior to the commencement of works until the completion of works. The tree shall be protected and managed in accordance with the Australian Standard *Protection of Trees on Development Sites* AS 4970—2009.

56. **Resource Recovery and Waste Management Plan - Demolition and Construction**
Prior to any demolition works occurring 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.

Where asbestos is present during demolition work, the work must be carried out in accordance with the guidelines for asbestos work published by Safework NSW.

All asbestos wastes must be disposed of at a landfill facility licensed by the New South Wales Environmental Protection Authority to receive that waste. Copies of the disposal dockets must be retained by the person performing the work for at least 3 years and be submitted to Council on request.

BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE

57. a) This condition is imposed in accordance with Section 7.11 of the Environmental Planning and Assessment Act 1979.
- b) Before the *issue of a Construction Certificate, the Council must be paid a monetary contribution of \$338,085.70 indexed in accordance with Marrickville Section 94/94A Contributions Plan 2014 ("CP").

The above contribution is the contribution applicable as at 02 April 2019.

***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.

(CONTRIBUTION PAYMENT REFERENCE NO. DC002557)

- c) 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:
- | | |
|-----------------------|--------------|
| Community Facilities | \$35,205.10 |
| Plan Administration | \$6,628.72 |
| Recreation Facilities | \$288,931.57 |
| Traffic Facilities | \$7,300.30 |
- d) A copy of the CP can be inspected at Council's offices at 2-14 Fisher Street, Petersham or online at <http://www.marrickville.nsw.gov.au>.
- e) The contribution must be paid either in cash, by unendorsed bank cheque (from an Australian Bank only), via EFTPOS (Debit only) or credit card*.

*NB A 1% credit card transaction fee applies to all credit card transactions.

58. Evidence of payment of the building and construction industry Long Service Leave Scheme, must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate. (The required payment can be made at the Council Offices).

NOTE: The required payment is based on the estimated cost of building and construction works and the long service levy rate, set by the Long Service Payments Corporation. The rate set by the Long Service Payments Corporation is currently of 0.35% of the cost of the building and construction work.

For more information on how to calculate the amount payable and where payments can be made contact the Long Services Payments Corporation.
<http://www.lspc.nsw.gov.au>.

59. The approved plans must be submitted to the Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.
60. Prior to the issue of the Subdivision or Construction Certificate in connection with a development, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:
- (i) the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project 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.
 - (ii) the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.
61. A statement from a qualified Architect, verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design principles set out in Schedule 1 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
Reason: To comply with the requirements under State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.
62. All plumbing and ductwork including stormwater downpipes must be concealed within the outer walls of the building so they are not visible. Plans and elevations detailing the method of concealment must be submitted to and approved by Council before the issue of a Construction Certificate. Any variation to this requirement requires Council approval..
63. Bicycle storage with the capacity to accommodate a minimum of 12 bicycles must be provided in accordance with the requirements set out within Part 2.10 of Marrickville Development Control Plan 2011 - Parking, in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
64. Letterboxes and mail collection facilities must be provided and adequately protected in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
65. Lighting details of the pedestrian areas, parking areas and all entrances must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

- 66. Plans fully reflecting the selected commitments listed in BASIX Certificate submitted with the application for development consent must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

NOTE: The application for the Construction Certificate must be accompanied by either the BASIX Certificate upon which development consent was granted or a revised BASIX Certificate (Refer to Clause 6A of Schedule 1 to the Regulation).

- 67. Noise attenuation measures must be incorporated into the development complying with Australian Standard 2021:2015, State Environmental Planning Policy (Infrastructure) 2007 and with the Department of Planning and Infrastructure's Development Assessment Guideline titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines" in relation to interior design sound levels and in accordance with details being submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate together with certification by a suitably qualified acoustical engineer that the proposed noise attenuation measures satisfy the requirements of Australian Standard 2021:2015, State Environmental Planning Policy (Infrastructure) 2007 and with the Department of Planning and Infrastructure's Development Assessment Guideline titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines".
- 68. Prior to the commencement of demolition works or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit and inspection fee must be 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 | \$55,000 |
| Inspection fee | \$461.30 |

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 Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.

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

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

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

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

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69. In order to provide satisfactory vehicular and pedestrian access, drainage, landscaping and aesthetic improvements to the public domain adjacent to the site, the following works shall be undertaken at no cost to Council:
- The public domain along all frontages of the site inclusive of footpath paving, kerb, street trees, landscaping, street furniture, etc. shall be reconstructed and upgraded in accordance with the Street Tree Masterplan and the Neighbourhood Palette for Lewisham as detailed in Marrickville Public Domain Design Guide;
 - The construction of heavy duty vehicular crossings to all vehicular access locations and removal of all redundant vehicular crossings to the site;
 - New kerb and gutter along the frontage of the site shall be constructed as sandstone kerb with concrete gutter; and
 - 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 shall be set at 2.5%. These sections will set the alignment levels at the boundary.

Full detailed construction plans and specifications shall be submitted to Council for approval under Section 138 of the Roads Act 1993 before the issue of a Construction Certificate with all works completed before to the issue of an Occupation Certificate.

70. The stormwater drainage plans 2017868 Sheets 1 to 3 (Issue 1 dated 5/11/17) submitted by MBC Engineering P/L shall be amended or additional information provided before the issue of a Construction Certificate as follows;
- Details of the 1 in 100 year overflow route in case of failure/blockage of the drainage system shall be provided;
 - The proposed stormwater being discharged to the Hawthorne Canal in accordance with Sydney Water requirements;
 - A copy of the MUSIC model (.sqz file) shall be provided to ensure the treatment measures proposed meet are satisfactory;
 - A Copy of Sydney Water approvals must be submitted to Council for its information; and
 - All plumbing and ductwork including stormwater downpipes must be concealed within the outer walls of the building so they are not visible. Plans and elevations detailing the method of concealment must be submitted to and approved by Council.

The above additional information shall be shall be submitted to and approved by Council before the issue of a Construction Certificate.

71. As identified in the Hawthorne Canal Flood Study (2017 flood model review) the site is subject to flooding during a 1 in 100 year storm event. The Flood Planning Level for the site has been determined to be of RL 11.84m AHD while the PMF level is RL 13.97m AHD. The following additional information/flood protection measures shall be undertaken as follows:
- All structures below RL 11.84m AHD shall be constructed from flood compatible materials;
 - The applicant shall also demonstrate that the building will be able to withstand the forces of flood water, debris and buoyancy up to the PMF flood; and
 - All electrical equipment and wiring shall be waterproofed or installed above RL 11.84m AHD.

Detailed plans and specification of the above requirements shall be submitted to and approved by Council before the issue of a Construction Certificate.

72. A Flood Emergency Response Plan for the site in accordance with Part 2.22 of Marrickville Development Control Plan 2011 – Flood Management must be submitted to Council's satisfaction before the issue of a Construction Certificate. The Plan shall address both the 1 in 100 year and the PMF Flood Level. If refuge on site is proposed then suitable assessable areas must be provided for this purpose.

73. The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations.

In this regard, the operation of the premises and plant and equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background $L_{A90, 15min}$ noise level, measured in the absence of the noise source/s under consideration by 5dB(A). The source noise level shall be assessed as an $L_{Aeq, 15min}$ and adjusted in accordance with the NSW Environment Protection Authority's Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance).

An acoustic report prepared by a suitably qualified and experienced acoustic consultant shall be provided to the satisfaction of the Principal Certifying Authority demonstrating that noise and vibration from the operation of the premises including the use, plant and equipment will satisfy the stipulated criteria above and relevant provisions of the Protection of the Environment Operations Act 1997 and Regulations and relevant state and local policies and guidelines. Recommendations must be consistent with the approved plans.

Details demonstrating compliance with the requirements of this condition are to be submitted to the Principal Certifying Authority for approval prior to the issue of any Construction Certificate.

74. To minimise the impact of noise from the adjoining major road and / or rail corridor on the occupants, the Construction Certificate plans shall incorporate and the building constructed in accordance with the recommendations of the following acoustic report approved as part of this application.

| Prepared by | Dated | Reference |
|--------------------------|-------------|-------------|
| Renzo Tonin & Associates | 12 May 2017 | TJ541-01F02 |

Details demonstrating compliance with the requirements of this condition are to be detailed on the plans and accompanying documentation submitted to satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

75. To ensure that adequate provision is made for ventilation of the building, mechanical and/or natural ventilation shall be provided.

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

- The Building Code of Australia,
- Australian Standard AS 1668 Part 1 – 1998,
- Australian Standard AS 1668 Part 2 – 2012,
- Australian Standard 3666.1 – 2011,
- Australian Standard 3666.2 – 2011; and
- Australian Standard 3666.3 - 2011.

Details demonstrating compliance with the requirements of this condition are to be submitted to the Principal Certifying Authority prior to the release of a Construction Certificate. 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 (the consent authority).

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

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76. An acoustic assessment is to be submitted to Council before the issue of a Construction Certificate demonstrating how the proposed development will comply with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads- Interim Guidelines".
77. Prior to the issue of a Construction Certificate the Applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The Applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principal Certifying Authority with the application for a Construction Certificate.
78. The design, installation and use of lights, signs and reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor must limit glare and reflectivity to the satisfaction of Sydney Trains or the Light Rail Operator. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
79. Prior to the issue of a Construction Certificate a Risk Assessment/Management Plan and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to Sydney Trains and the Light Rail Operator for review and comment on any potential impacts on or from the rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
80. If required, before the issue of a Construction Certificate the Applicant is to contact Sydney Trains Engineering Management Interfaces to determine the need for public liability insurance cover. If insurance cover is deemed necessary this insurance be for sum as determined by Sydney Trains and shall not contain any exclusion in relation to works on or near the rail corridor, rail infrastructure. The Applicant is to contact Sydney Trains Engineering Management Interfaces to obtain the level of insurance required for this particular proposal. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written proof of this insurance in conjunction with Sydney Trains written advice to the Applicant on the level of insurance required.
81. No work is permitted within the rail corridor, or its easements, at any time unless prior approval or an Agreement has been entered into with Sydney Trains and the Light Rail Operator. Where the Applicant proposes to enter the rail corridor, the Principal Certifying Authority shall not issue a Construction Certificate until written confirmation has been received from Sydney Trains confirming that its approval has been granted.
82. If required, before the issue of a Construction Certificate the Applicant is to contact Sydney Trains Engineering Management Interfaces to determine the need for the lodgement of a Bond or Bank Guarantee for the duration of the works. The Bond/Bank Guarantee shall be for the sum determined by Sydney Trains. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written advice from Sydney Trains confirming the lodgement of this Bond/Bank Guarantee.
83. Sydney Trains, the Light Rail Operator or Transport for NSW (TfNSW), and persons authorised by those entities for the purpose of this condition, are entitled to inspect the site of the development and all structures to enable it to consider whether those structures have been or are being constructed and maintained in accordance with the approved plans and these conditions of consent, on giving reasonable notice to the principal contractor for the development or the owner or occupier of the part of the site to which access is sought.
84. Before the issue of a Construction Certificate the Applicant is to submit to Sydney Trains and the Light Rail Operator a plan showing all craneage and other aerial operations for the development and must comply with all Sydney Trains and the Light Rail Operator

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requirements. If required by Sydney Trains or the Light Rail Operator, the Applicant must amend the plan showing all craneage and other aerial operations to comply with all Sydney Trains or the Light Rail Operator requirements. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied.

85. Copies of any certificates, drawings, approvals/certification or documents endorsed by, given to or issued by Sydney Trains must be submitted to Council for its records before the issue of a Construction Certificate.
86. Given the possible likelihood of objects being dropped, thrown or blown onto the rail corridor from balconies, windows and other external features (e.g. roof terraces and external fire escapes) that face the rail corridor, the Applicant is required to install measures (e.g. awning windows, louvres, enclosed balconies etc.) which prevent the throwing of objects onto the rail corridor. The Principal Certifying Authority shall not issue the Construction Certificate until it has confirmed that these measures are to be installed and have been indicated on the Construction Drawings.
87. Where a condition of consent requires Sydney Trains, the Light Rail Operator or Transport for NSW endorsement the Principal Certifying Authority is not to issue a Construction Certificate or Occupancy Certificate, as the case may be, until written confirmation has been received from those entities that the particular condition has been complied with. The issuing of staged Construction Certificates dealing with specific works and compliance conditions can be issued subject to written agreement from those entities to which the relevant conditions applies.
88. Before the issue of a Construction Certificate, a contribution in the manner of \$12,000.00 must be paid to Council for future works to the Greenway corridor directly adjacent the site for public domain improvements.
89. Before the issue of a Construction Certificate, amended plans must be submitted to the Certifying Authority's satisfaction indicating the garbage compactor being deleted from the residential waste storage room.
90. Before the issue of a Construction Certificate, amended plans must be submitted to the Certifying Authority's satisfaction indicating the provision for mechanical exhaust for any future use of the ground floor commercial tenancies.

SITE WORKS

91. Any new information revealed during development works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.
92. Unless otherwise approved by Council, excavation, demolition, construction or subdivision work shall only be permitted during the following hours:
 - a) 7:00 am to 6:00 pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
 - b) 8:00 am to 1:00 pm 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.

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In the case that a standing plant or special 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 shall be limited to:

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

The Proponent shall not undertake such activities for more than three continuous hours and shall 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.

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.

93. During any construction works and activities, no injury must be caused to the amenity of the neighbourhood by the emission of noise, smoke, smell, vibration, gases, vapours, odours, dust, particular matter, or other impurities which are a nuisance or injurious or dangerous or prejudicial to health, the exposure to view of any unsightly matter or otherwise.
94. The area surrounding the building work must be reinstated to Council's satisfaction upon completion of the work.
95. The placing of any materials on Council's footpath or roadway is prohibited, without the consent of Council. The placement of waste storage containers in a public place requires Council approval and must comply with Council's Policy - 'Placement of Waste Storage Containers in a Public Place'.
96. All demolition work must be carried out in accordance with the following:
 - a) compliance with the requirements of Australian Standard AS 2601 'The demolition of structures' with specific reference to health and safety of the public, health and safety of the site personnel, protection of adjoining buildings and protection of the immediate environment;
 - b) all works involving the demolition, removal, transport and disposal of asbestos cement must be carried out in accordance with the 'Worksafe Code of Practice for Removal of Asbestos' and the requirements of the WorkCover Authority of NSW and the Department of Environment, Climate Change and Water;
 - c) all building materials arising from the demolition must be disposed of in an approved manner in accordance with Part 2.21 of Marrickville Development Control Plan 2011 – Site Facilities and Waste Management and any applicable requirements of the Department of Environment, Climate Change and Water;
 - d) sanitary drainage, stormwater drainage, water, electricity and telecommunications must be disconnected in accordance with the requirements of the responsible authorities;
 - e) the generation of dust and noise on the site must be controlled;
 - f) the site must be secured to prohibit unauthorised entry;
 - g) suitable provision must be made to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way;

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- h) all trucks and vehicles associated with the demolition, including those delivering to or removing material from the site, must only have access to the site during work hours nominated by Council and all loads must be covered;
 - i) all vehicles taking materials from the site must be loaded wholly within the property unless otherwise permitted by Council;
 - j) no waste collection skips, spoil, excavation or demolition material from the site must be deposited on the public road, footpath, public place or Council owned property without the approval of Council; and
 - k) the person acting on this consent must ensure that all contractors and sub-contractors associated with the demolition are fully aware of these requirements.
97. The works are required to be inspected at critical stages of construction, by the PCA or if the PCA agrees, by another certifying authority. The last inspection can only be carried out by the PCA. The critical stages of construction are:
- a) At the commencement of the building work;
 - b) For Class 2, 3 and 4 buildings, prior to covering waterproofing in any wet areas (a minimum of 10% of wet areas within a building);
 - c) Prior to covering any stormwater drainage connections, and after the building work has been completed and prior to any occupation certificate being issued in relation to the building; and
 - d) After the building work has been completed and prior to any Occupation Certificate being issued in relation to the building.
- You are advised to liaise with your PCA to establish if any additional inspections are required.
98. If it is necessary to excavate below the level of the base of the footings of a building on the adjoining allotments, including a public place such as footways and roadways, the person acting on this consent must ensure:
- a) At least 7 days' notice is given to the owners of the adjoining land of the intention to excavate below the base of the footings. The notice is to include complete details of the work; and
 - b) That any building is preserved and protected from damage.
- Where a dilapidation report has not been prepared on any building adjacent to the excavation, the person acting on this consent is responsible for arranging and meeting the cost of a dilapidation report prepared by a suitably qualified person. The report is to be submitted to and accepted by the PCA before works continue on site, if the consent of the adjoining property owner can be obtained. Copies of all letter/s that have been sent via registered mail to the adjoining property owner and copies of any responses received must be forwarded to the PCA before work commences.
99. All vehicles carrying materials to, or from the site must have their loads covered with tarpaulins or similar covers.
100. Satisfactory methods and/or devices must be employed on the site to prevent the tracking of mud/dirt onto the surrounding streets from vehicles leaving the site.
101. A certificate of survey from a registered land surveyor must be submitted to the PCA upon excavation of the footings and before the pouring of the concrete to verify that the structure will not encroach on the allotment boundaries.
102. A clear unobstructed path of travel of not less than 1,000mm must be provided to all exits and paths of travel to exits.
103. Fixtures for bathroom and kitchen taps, showerheads, dishwashers, toilet cisterns and urinals must have a minimum 3 Star WELS rating for the commercial premises.

NOTE: Information on the star rating scheme, and all 'star' rated products are available to view at the Water Efficiency Labelling and Standards (WELS) website: www.waterrating.gov.au.

104. New or replacement toilets must have a minimum 3 Star WELS rating and being 6/3 litre dual flush or more efficient for the commercial premises.

NOTE: Information on the star rating scheme, and all 'star' rated products are available to view at the Water Efficiency Labelling and Standards (WELS) website: www.waterrating.gov.au.

105. The applicant shall, within fourteen (14) days of notification by Council, execute any and all maintenance works required by Council. In the event that the applicant fails to undertake such work, Council may undertake the required maintenance works, utilising part or all of the maintenance security bond and Council may recover any costs in excess of the security from the applicant.
106. Unless advised by Sydney Trains in writing, all excavation, shoring and piling works within 25m of the rail corridor are to be supervised by a geotechnical engineer experienced with such excavation projects.
107. No rock anchors/bolts are to be installed into RailCorp / Sydney Trains property or easements.
108. The developer shall make provision for easy and ongoing access by rail vehicles, plant and equipment to support maintenance and emergency activities.
109. Given the development site's location next to the rail corridor, drainage from the development must be adequately managed/ disposed of and not allowed to be discharged into the corridor (and its easements) unless prior approval has been obtained from Sydney Trains.
110. Excess soil is not allowed to enter, be spread or stockpiled within the rail corridor (and its easements) and must be adequately managed/ disposed of.
111. During all stages of the development, environmental legislation and regulations will be complied with.
112. During all stages of the development extreme care shall be taken to prevent environmental harm within the railway corridor. Any form of environmental harm to areas within the railway corridor or legislative non-compliance that arises as a consequence of the development activities shall remain the full responsibility of the Applicant.
113. During all stages of the development, extreme care shall be taken to prevent any form of pollution entering the railway corridor. Any form of pollution that arises as a consequence of the development activities shall remain the full responsibility of the Applicant.
114. Any conditions issued as part of Sydney Trains or the Light Rail Operator approval/certification of any documentation for compliance with the Sydney Trains conditions of consent, those approval/certification conditions will also form part of the consent conditions that the Applicant is required to comply with.
115. To ensure that graffiti can be easily removed, the Applicant is to ensure that fencing along the rail corridor is coated with anti-graffiti paint or other coating.
116. No scaffolding or hoarding is to be used facing the rail corridor unless prior written approval has been obtained from Sydney Trains and the Light Rail Operator. To obtain approval the proponent will be required to submit details of the scaffolding and hoarding, the means of erecting and securing this scaffolding, the material to be used, and the type of screening to be installed to prevent objects falling onto the rail corridor. Unless agreed to by Sydney Trains in writing, scaffolding shall not be erected without isolation and protection panels.

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117. During excavation, demolition or construction work, all holes (eg created for footings etc.), machinery and construction material stockpiles are to be inspected daily prior to commencing work to ensure no Long-nosed Bandicoots are sheltering in these areas. In case one is found, no work shall proceed until the bandicoot has been safely vacated from the works area.
118. The following steps should be taken if a Bandicoot is found on site:
1. **All work on site must stop.** There must be no attempt to harm or remove the Bandicoot. Removal of the bandicoot from the site can only be undertaken by a trained wildlife carer.
 2. Immediately contact WIRES (1300 094 737) or Sydney Wildlife (9413 4300) to arrange for a trained wildlife carer to safely remove the Bandicoot from the site.
 3. Council's Team Leader – Biodiversity (9335 2254) must also be contacted to report that a Bandicoot has been found on site.
 4. **No work shall proceed until the Bandicoot has been safely removed from the work site by a trained wildlife carer.**
119. All stormwater drainage being designed in accordance with the provisions of the Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2015 'Stormwater Drainage' and Marrickville Council Stormwater and On Site Detention Code. Pipe and channel drainage systems shall be designed to cater for the twenty (20) year Average Recurrence Interval (A.R.I.) storm in the case of low and medium residential developments, the twenty (20) year A.R.I. storm in the case of high density residential development and commercial and/or industrial developments and the fifty (50) year A.R.I. storm in the case of heavy industry. In all cases the major event surface flow paths shall be designed to cater for the one hundred (100) year A.R.I. storm.
120. 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 shall be design to be "tanked" preventing the ingress of seepage or groundwater.
121. The person acting on this consent must plant 1 new tree in accordance with the following criteria.
- a) One (1) new tree shall be located within the existing landscaped area outside the subject property. The species of tree selected shall be *Eucalyptus Paniculata*.
 - b) All planting stock size shall be minimum 1,000 litres.
 - c) The planting stock shall comply with Australian Standard Tree stock for landscape use AS 2303—2015.
 - d) The new tree shall be planted by a qualified horticulturist or arborist, with a minimum qualification of Certificate 3.
 - e) The tree pit dimensions and staking detail shall be in accordance with Detail 1 of the Marrickville Street Tree Master Plan 2014 (Page 128)
 - f) The new street trees shall be maintained in a healthy and vigorous condition during an establishment period of 12 months.
 - g) If any tree dies or is removed during the establishment period it shall be replaced with the same species tree in accordance with these conditions at the expense of the applicant.
 - h) Upon completion of planting the applicant shall arrange an inspection by Council's Public Tree Coordinator (call 8595 2432) to approve the installation. If trees are unsatisfactory and not in accordance with conditions they will be rejected and replaced at the expense of the applicant
122. **Documentation of Demolition and Construction Waste**
All waste dockets from the recycling and/or disposal of any demolition and construction waste generated from the works must be retained on site.

BEFORE OCCUPATION OF THE BUILDING

123. You must obtain an Occupation Certificate from your PCA before you occupy or use the building. The PCA must notify the Council of the determination of the Occupation Certificate and forward the following documents to Council within 2 days of the date of the Certificate being determined:
- A copy of the determination;
 - Copies of any documents that were lodged with the Occupation Certificate application;
 - A copy of Occupation Certificate, if it was issued;
 - A copy of the record of all critical stage inspections and any other inspection required by the PCA;
 - A copy of any missed inspections; and
 - A copy of any compliance certificate and any other documentary evidence relied upon in issuing the Occupation Certificate.
124. Occupation of the building must not be permitted until such time as:
- All preconditions to the issue of an Occupation Certificate specified in this development consent have been met;
 - The building owner obtains a Final Fire Safety Certificate certifying that the fire safety measures have been installed in the building and perform to the performance standards listed in the Fire Safety Schedule; and
 - An Occupation Certificate has been issued.
125. The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:
- 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
 - Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).
- Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Certificate for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Certificate shall be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.
126. The Section 73 Certificate must be submitted to the Principal Certifying Authority before the issue of an Occupation Certificate.
- A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Make early application for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.
 - Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, building and developing > Providers > Lists or telephone 13 20 92.
127. The landscaping of the site must be carried out prior to occupation or use of the premises in accordance with the approved details and must be maintained at all times to Council's satisfaction.
128. A statement from a qualified Architect, verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design principles set out in Schedule 1 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development must be submitted to the Certifying Authority's satisfaction before the issue of an Occupation Certificate.

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Reason: To comply with the requirements under State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.

129. The Certifying Authority must be satisfied that each of the commitments listed in BASIX Certificate referred to in this Determination have been fulfilled before the issue of an Occupation Certificate (whether an interim or final Occupation Certificate).
130. The Certifying Authority must apply to the Director-General for a BASIX Completion Receipt within 2 days of the issue of a final Occupation Certificate. Completion Receipts can be applied for at www.basix.nsw.gov.au.
131. a) Upon completion of the required noise attenuation measures referred to in the "Before the Issue of a Construction Certificate" Section of this Determination and before the issue of an Occupation Certificate (whether an interim or final Occupation Certificate), a report must be prepared and submitted to the Certifying Authority's satisfaction by an accredited Acoustics Consultant, certifying that the final construction meets Australian Standard 2021:2015, State Environmental Planning Policy (Infrastructure) 2007 and with the Department of Planning and Infrastructure's Development Assessment Guideline titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines" as set down in the subject condition of this consent. Such report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development; and
- b) Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a further certificate must be prepared and submitted to Council in accordance with the requirements as set down in Part a) of this condition.
132. A report prepared by a suitably qualified and experienced acoustic consultant shall be submitted to Council prior to an Occupation Certificate being issued for the development which demonstrates and certifies that noise and vibration emissions from the development comply with the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority's Industrial Noise Policy and Noise Control Manual and conditions of Council's approval, including any recommendations of the acoustic report referenced in the conditions of the approval.

Details demonstrating compliance with the requirements of this condition is to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Occupation Certificate.

133. An Environmental Management Plan (EMP) shall be prepared for the approved development before commencing work.

The plan shall be prepared by a suitably qualified person and shall be to the satisfaction of Council and shall address:

Risk assessment of all Environmental Aspects and impacts to site and other potentially impacted properties

The impacts must at minimum consider the following areas:

- Hazardous Substances
- Water
- Air
- Noise
- Vibration
- Waste & Litter
- Land
- Community

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- Environmental Protection objectives and control strategies
- Environmental conditions using measurable indicators and standards
- Emergency Response Plan
- Environmental monitoring and reporting plan

The plan must be submitted to Council and correspondence obtained stating that the plan satisfies the condition obtained by Council, prior to the release of an Occupation Certificate.

134. Prior to the issue of any interim / final Occupation Certificate, certification from an appropriately qualified environmental consultant is to be provided stipulating that the requirements of the Detailed Site Investigation, Golden Commercial Laundry, 2 McGill Street Lewisham NSW prepared by EI Australia and dated 8 March 2019 have been complied with throughout excavation, demolition & development work stages. The certification shall also include:
- a) A validation and site monitoring report prepared in accordance with relevant guidelines issued under the Contaminated Land Management Act 1997 must be submitted to the Council within one month from completion of the remediation work.
 - b) A detailed survey of all sites used for landfill disposal must be prepared within one month from completion of the remediation work, and submitted to Council.
 - c) Identification of the extent and depth of all fill material in relation to existing roadways and buildings. The survey must also include a detailed survey of all site used as landfill disposal pits, identifying boundaries and depth of disposal pits in relation to existing roadways and buildings.

Details demonstrating compliance with the requirements of this condition is to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any interim / final occupation certificate.

135. Any soil proposed to be disposed off-site must be classified, removed and disposed of in accordance with the *EPA Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes 1999* and the *Protection of the Environmental Operations Act 1997*.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Occupation Certificate.

136. All works required to be carried out in connection with drainage, crossings, alterations to kerb and guttering, footpaths and roads resulting from the development shall be completed before the issue of an Occupation Certificate. Works shall be in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications".
137. All redundant vehicular crossings to the site shall be removed and replaced by kerb and gutter and footpath paving in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications" before the issue of the Occupation Certificate and at no cost to Council. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb shall also be in stone.
138. Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever shall not be permitted. Any encroachments on to Council road or footpath resulting from the building works will be required to be removed before the issue of the Occupation Certificate.

139. You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and

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Telecommunications required as a result of the development shall be at no cost to Council and undertaken before the issue of an Occupation Certificate.

140. The existing stone kerb adjacent to the site is of local heritage value and is to be preserved at no cost to Council. Any damage to the stone kerb will require the replacement of the damaged individual stone units before the issue of the Occupation Certificate. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled. Non-compliance with this condition will result in loss of your security deposit.
141. The existing unsatisfactory road pavement in McGill Street shall be repaired using a 40mm Mill and Fill treatment for half the road width for the full frontage of the site. Any failed section shall be boxed out and replaced with deeplift asphalt before the Mill and Fill treatment is installed.
142. Before the issue of the Occupation Certificate written verification from a suitably qualified competent person, stating that all stormwater drainage, re-use and quality measures have been constructed in accordance with the approved plans shall be submitted to and accepted by Council. In addition, full works-as-executed plans, prepared and signed by a registered surveyor, shall be submitted to Council. These plans must include levels for all drainage structures, buildings (including floor levels), finished ground levels and pavement surface levels.
143. With the regard to the Stormwater Treatment Facilities a Positive Covenant shall be placed on the Title in favour of Council before issue of the Occupation Certificate. The Positive Covenant shall include the following:
 - a) The proprietor of the property shall be responsible for maintaining the stormwater treatment facility in accordance with the approved plans;
 - b) The Proprietor shall have the stormwater quality treatment facilities inspected annually (minimum) by a competent person and must provide the WSUD maintenance plan approved under this Consent to competent person to record the annual inspections.
 - c) The Council shall have the right to enter upon the land referred to above, at all reasonable times to inspect, construct, install, clean, repair and maintain in good working order all elements of the stormwater quality treatment facilities to ensure that the water quality targets provided in the design of the system are achieved; and recover the costs of any such works from the proprietor.
144. All instruments under Section 88B of the Conveyancing Act used to create positive covenants, easements or right-of-ways shall include the condition that such easements or right-of-ways may not be varied, modified or released without the prior approval of Inner West Council.
145. All works required to be undertaken on public roads shall be designed and constructed in accordance with Council's standard plans and specifications. The works shall be supervised and certified by a qualified civil engineer who is listed under the Institution of Engineers, Australia "National Professional Engineers Register" (NPER) and shall state that the works have been constructed in accordance with the approved plans and specifications before the issue of the Occupation Certificate. In addition, full works-as-executed plans in PDF or CAD format (dwg or dxf files), prepared and signed by a registered surveyor, shall be submitted to Council upon completion of the works.
146. The pedestrian path (right-of-way) within the under croft area of the building shall include pedestrian lighting (Category P3-AS1158) and shall be maintained and owned by the property owner(s).
147. The applicant shall provide security, in a manner satisfactory to Council for the proper maintenance of the public domain works in an amount of \$6,000 for a period of twelve (12) months from the date of completion of the public domain works as surety for the proper maintenance of these works.

148. A second Dilapidation Report addressing the public infrastructure identified in pre-work Dilapidation Report including a photographic survey and structural condition must be submitted after the completion of works. A copy of this Dilapidation Report must be lodged with Council and the Principal Certifying Authority before the issue of an Occupation Certificate. Any damage identified in the Dilapidation Report must be fully rectified by the applicant or owner at no cost to Council before the issue of an Occupation Certificate.
149. Before the issue of the Occupation Certificate the person acting on this consent shall obtain from Council a compliance Certificate(s) stating that all Road, Footpath and Public Domain Works on Council property required to be undertaken as a result of this development have been completed satisfactorily and in accordance with Council approved plans and specifications.
150. The Principal Certifying Authority shall certify before the occupation certificate is issued that the eucalypt on the adjacent light rail corridor has been protected in accordance with these conditions and with the Australian Standard Protection of Trees on Development Sites AS 4970—2009.
151. Before the issue of an Occupation Certificate the Applicant is to submit as-built drawings to Sydney Trains, the Light Rail Operator and Council. The as-built drawings are to be endorsed by a Registered Surveyor confirming that there has been no encroachment into RailCorp/ Sydney Trains property or easements, unless agreed to be these authorities. The Principal Certifying Authority is not to issue the final Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied
152. The development shall have appropriate fencing fit for the future usage of the development site to prevent unauthorised access to the rail corridor by future occupants of the development. Prior to the issuing of an Occupation Certificate the Applicant shall liaise with Sydney Trains and the Light Rail Operator regarding the adequacy of any existing fencing along the rail corridor boundary. Details of the type of new fencing to be installed and the method of erection are to be to the satisfaction of Sydney Trains and the Light Rail Operator prior to the fencing work being undertaken.
153. Before the issue of an Occupation Certificate, the Certifying Authority must be satisfied that all street tree planting works have been undertaken in accordance with the approved plan and conditions of consent.
154. A public right-of-way (minimum 1.8m wide) for pedestrian access shall be created on the property for the full length of the walkway along Hudson Street before the issue of the Occupation Certificate. In addition a Positive Covenant shall be placed on the title in favour of Council to ensure that the public right-of-way is maintained to a satisfactory standard.
155. **Council should be notified of bin requirements three months prior to the occupation of the residential component of a development 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. This development will require 6x240L landfill (red lid) and 6x240L recycling bins OR 3 x 660L landfill and 3 x 660L recycling bins.

ADVISORY NOTES

- 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.
- A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out.
- The approved plans must be submitted to the Customer Centre of any office of Sydney Water before the commencement of any work to ensure that the proposed work meets the requirements of Sydney Water. Failure to submit these plans before commencing work may result in the demolition of the structure if found not to comply with the requirements of Sydney Water.
- 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, before commencement of works.
- Any natural light or ventilation gained by windows within 900mm of the boundary will not be taken into consideration in the event that the adjoining property owner makes application to Council to carry out building works on their property. The window has been consented to on the basis that alternative sources of light and ventilation are available to the room.
- Buildings built or painted before 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 before occupation of the room or building.
- Contact "Dial Before You Dig" before commencing any building activity on the site.
- The enclosed Fact Sheet on Long-nosed Bandicoots should be read before commencing any works on site, including site preparation works.
- 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 Before You Dig 1100
www.dialbeforeyoudig.com.au

Landcom 984 18660
 To purchase copies of Volume One of "Soils and Construction"

Long Service Payments 131441

| | |
|---|--|
| Corporation | www.lspc.nsw.gov.au |
| NSW Food Authority | <input type="checkbox"/> 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 | <input type="checkbox"/> 131 555 www.environment.nsw.gov.au |
| Sydney Water | <input type="checkbox"/> 13 20 92 www.sydneywater.com.au |
| Waste Service - SITA Environmental Solutions | <input type="checkbox"/> 1300 651 116 www.wasteservice.nsw.gov.au |
| Water Efficiency Labelling and Standards (WELS) | www.waterrating.gov.au |
| WorkCover Authority of NSW | <input type="checkbox"/> 13 10 50 www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal. |

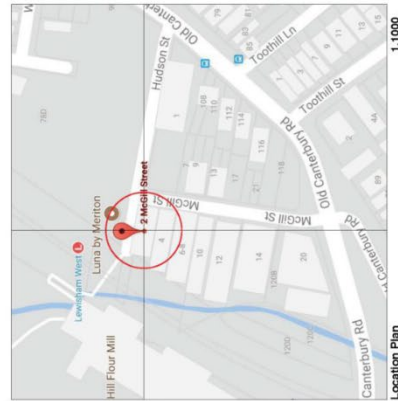
- X. THAT the Department of Planning and Environment be advised, as part of the quarterly review of the monitoring of Clause 4.6 of Marrickville Local Environmental Plan 2011 - Exceptions to Development Standards, that Council has agreed to the variation of the following development standard:

| | |
|---|--|
| <u>Premises:</u> | 2 McGill Street LEWISHAM |
| <u>Applicant:</u> | De Ming Chen |
| <u>Proposal:</u> | To demolish existing improvements and construct a 6 storey mixed use development comprising 2 levels of basement parking, 2 commercial tenancies on the ground floor with 20 residential dwellings over 5 levels and a communal roof terrace |
| <u>Determination:</u> | Consent subject to conditions |
| <u>DA No:</u> | 201700611 |
| <u>Lot and DP:</u> | 1/535963 |
| <u>Category of Development:</u> | Marrickville Local Environmental Plan 2011 |
| <u>Environmental Planning Instrument:</u> | Mixed Use |
| <u>Zoning of Land:</u> | Floor Space Ratio |
| <u>Development Standard(s) varied:</u> | Consistent with desired future character, complies with height development standard, unreasonable/unnecessary given the circumstances |
| <u>Justification of variation:</u> | 623sqm or 70.5% |
| <u>Extent of variation:</u> | Council under assumed concurrence of the Secretary |
| <u>Concurring Authority:</u> | Department of Planning and Environment |
| <u>Date of Determination:</u> | |

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Attachment B – Architectural Plans Attachment



| Architectural Drawing List | |
|----------------------------|-------------------------------------|
| DA-000 | Cover Page |
| DA-001 | Site Analysis Plan |
| DA-010 | Basement Floorplan - 2 |
| DA-100 | Ground Floorplan - 1 |
| DA-101 | Ground Floorplan - 2 |
| DA-101 | Level 1 - 5 Floorplan |
| DA-102 | Floor Plan |
| DA-200 | North Elevation / Material Schedule |
| DA-201 | East Elevation |
| DA-202 | South Elevation |
| DA-203 | South West Elevation |
| DA-204 | West Elevation |
| DA-300 | Sections - Sheet 1 |
| DA-301 | Sections - Sheet 2 |
| DA-302 | Basement Section |
| DA-701 | Area Calculations |
| DA-800 | Shadow Diagrams |
| DA-800 | Notification Plan |
| NTS @ A1 | |
| 1:250 @ A1 | |
| 1:100 @ A1 | |
| 1:100 @ A1 | |
| 1:100 @ A1 | |
| 1:100 @ A1 | |
| 1:100 @ A1 | |
| 1:100 @ A1 | |
| 1:100 @ A1 | |
| 1:200 @ A1 | |
| 1:100 @ A1 | |
| 1:100 @ A1 | |
| 1:100 @ A1 | |
| 1:100 @ A1 | |
| 1:100 @ A1 | |
| 1:300 @ A1 | |
| @ A4 | |

| Calculations Summary | |
|----------------------|-------|
| Total Units | 20 |
| Total Car Parks | 14 |
| GFA | 3.8 1 |
| Cross Vent | 60% |
| Solar | 75% |
| Adaptable | 25% |

(Site calculations sheet for more exact details)

Mixed Use Development
2 McGill Street, Lewisham

Da Ming Chen
Cover Page

BKA architecture
BKA Architecture Pty Ltd
150/152 St Leonards Road, St Leonards, NSW 1587
Tel: 02 9439 5555
www.bka.com.au

DA000

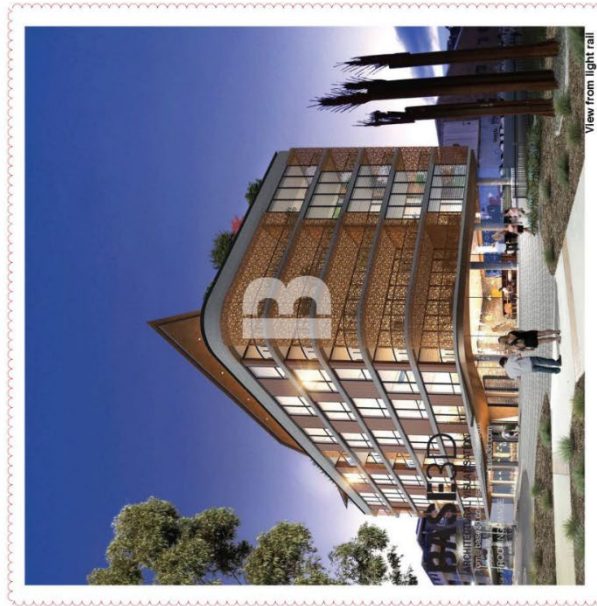
2 McGill Street, Lewisham Development Application

Project Description

2 McGill Street is a narrow isolated site, which adjoins No. 4 - 12 McGill Street. The neighbouring site has approval, with Tony Owen's architectural drawings. A new scheme however by PTW, has been lodged and is yet to be approved.

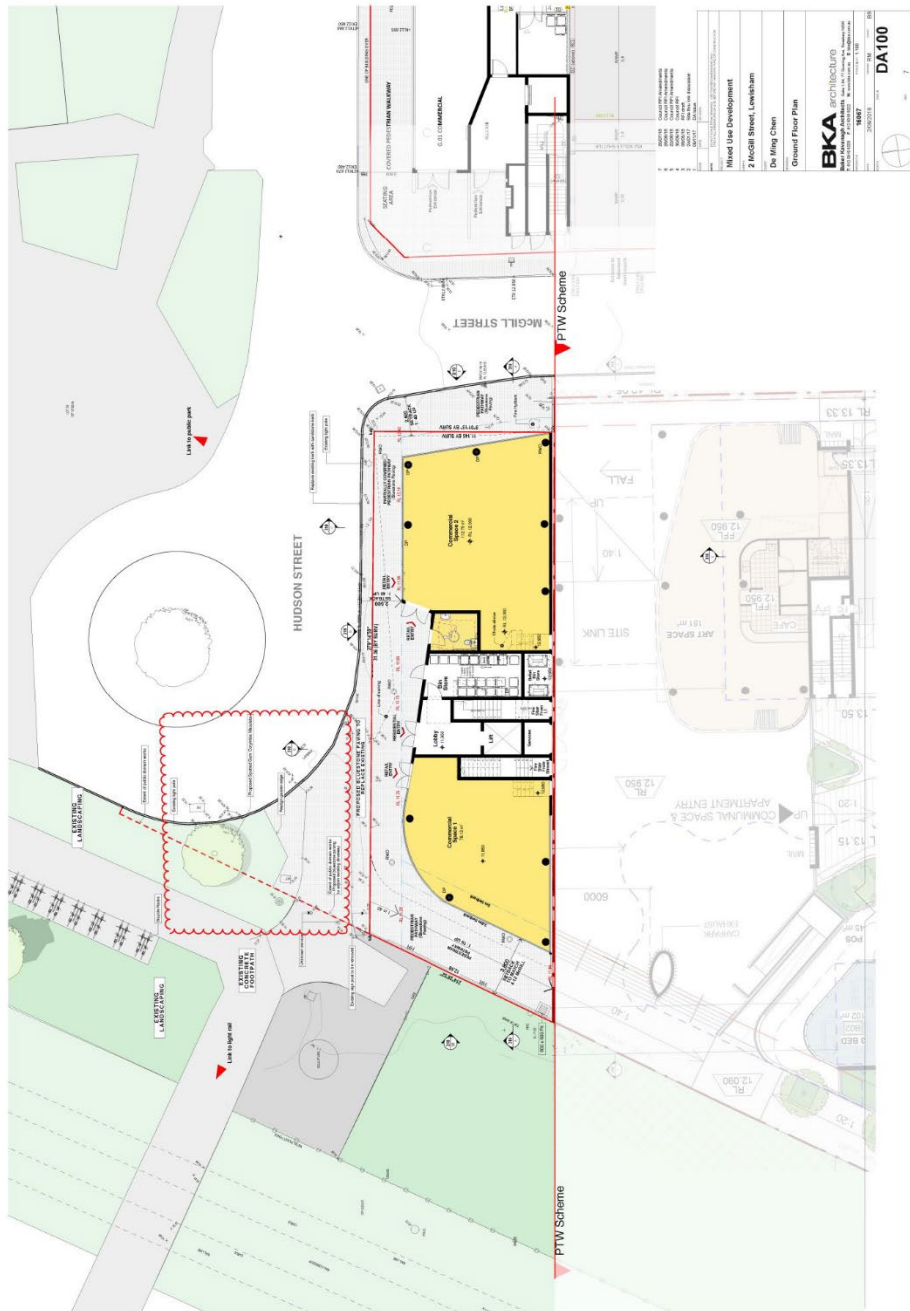
This proposal works with drawings provided by BKA by PTW. A 6 - storey mixed use development is proposed for 2 McGill, consisting of 1 level of commercial, 5 levels of residential and 2 stores of basement car parking. The mix includes 2 large commercial spaces at ground level, and 20 spaces below ground level, accessed via the open path or green corridor. The 14-car space basement is accessed via the neighbouring No. 4 - 12 driveway, as conditioned in the approval.

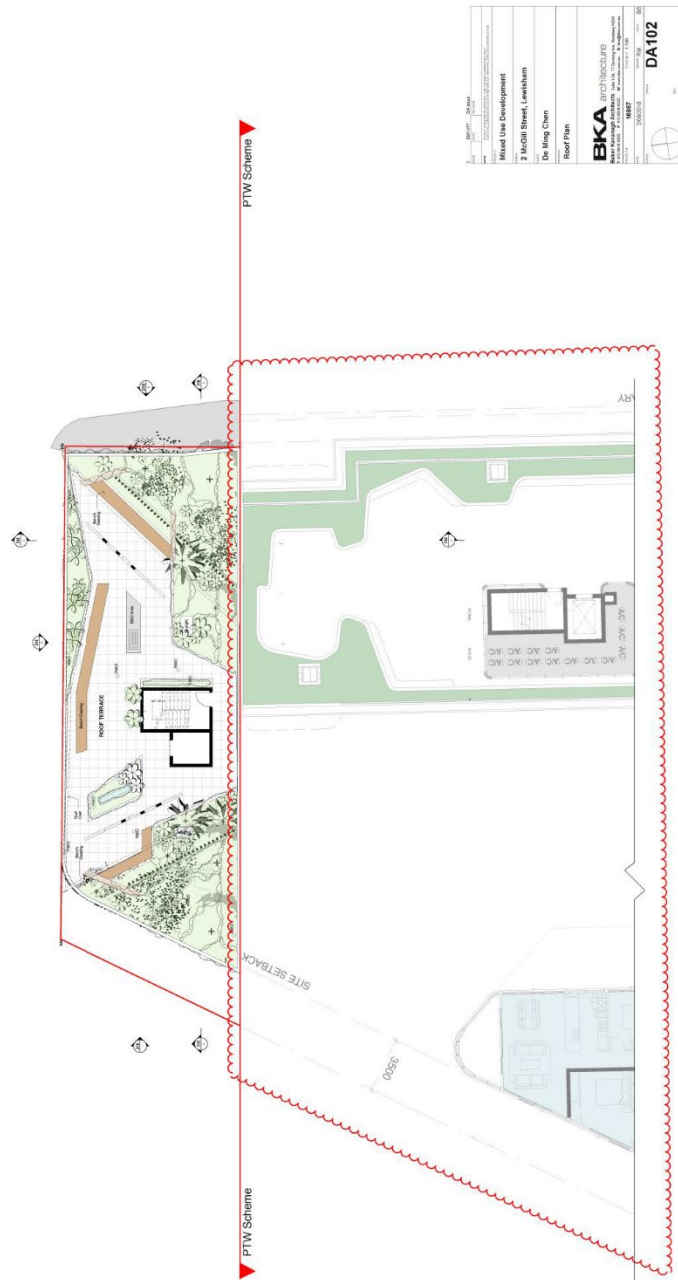
This site responds to the McGill Street Strategic context, and should be read in conjunction with the PTW plans. The PTW scheme consists of two podiums, one on the east side of McGill Street and one on the west side. The PTW scheme also includes a green corridor, which provides pedestrian access throughout the site. Development on 2 McGill has the opportunity to further activate this plaza, by opening retail space onto it, in addition to opening onto McGill and Hudson street. This strategy is beneficial in creating attractive social spaces, encouraging interactions and increasing the vibrancy of the street. The PTW scheme also includes a green corridor, which provides pedestrian access throughout the site. This allows residents to connect with their surrounding community. Overall, the ideal outcome is that the two sites are seamless.

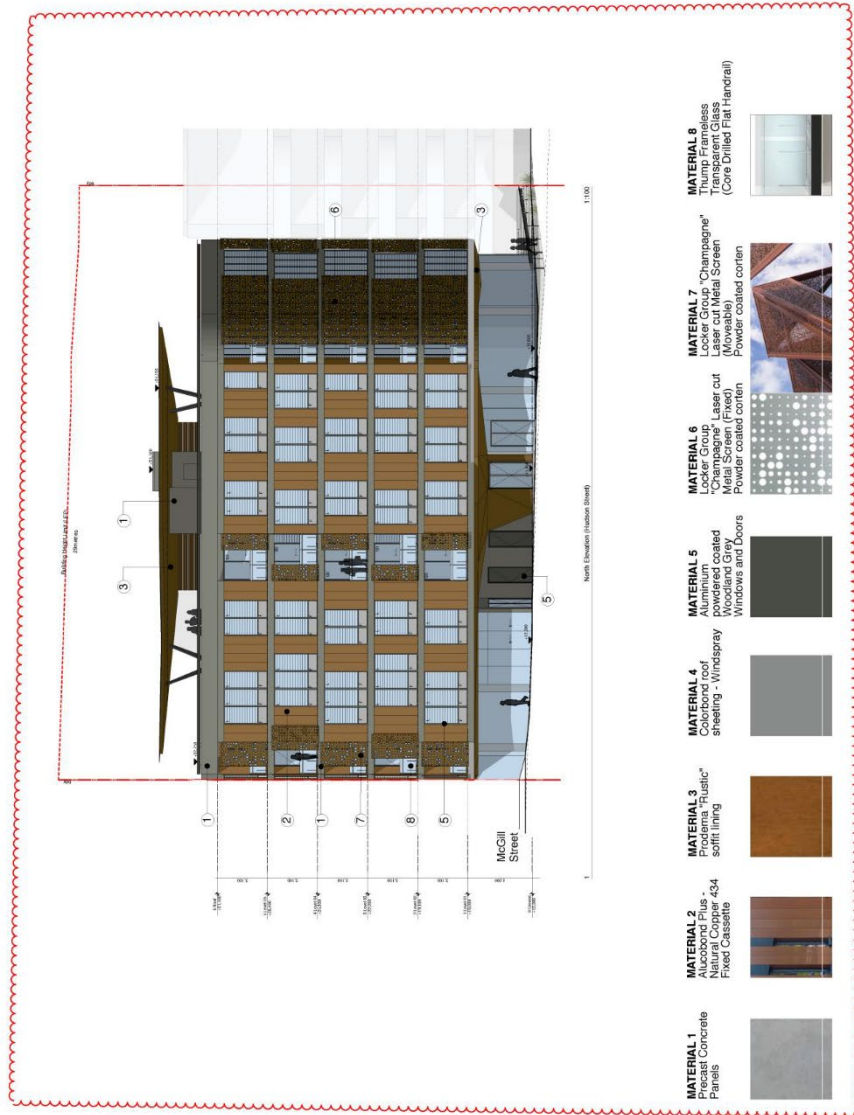


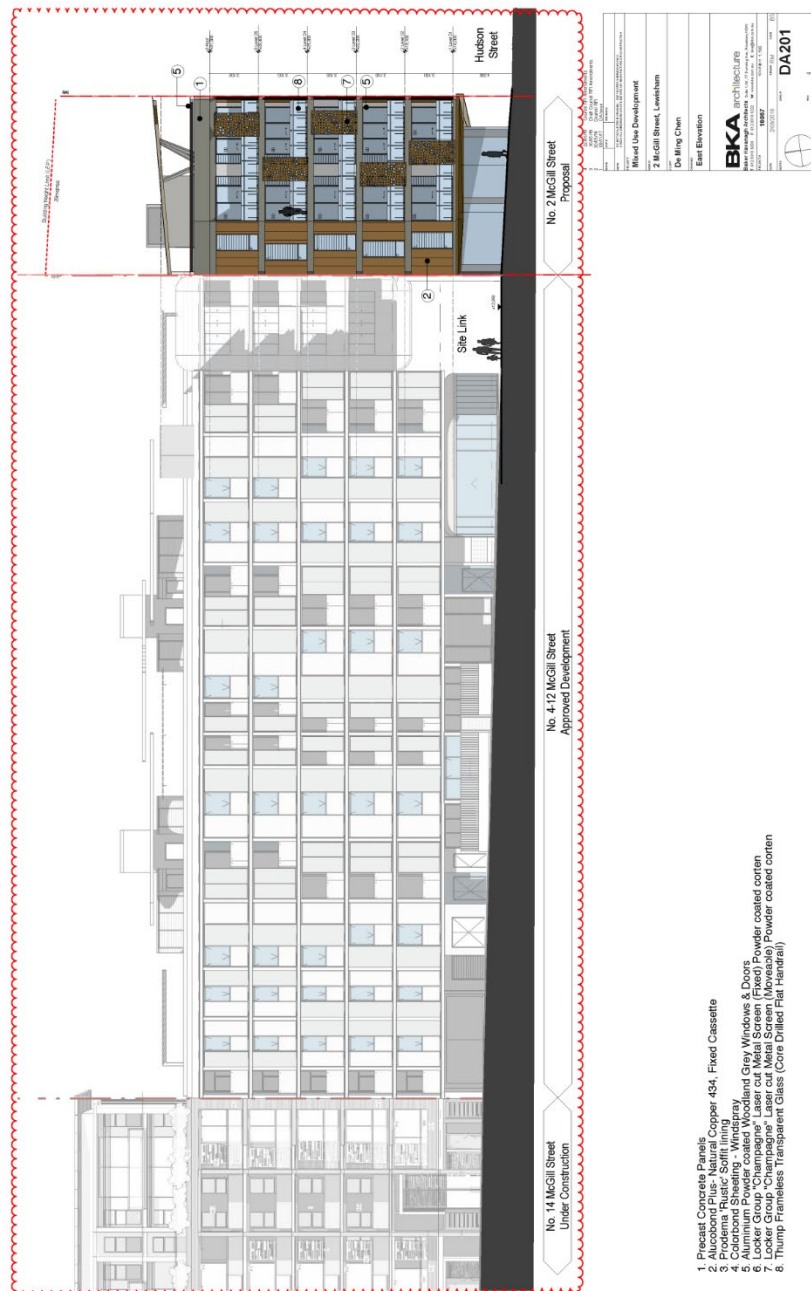


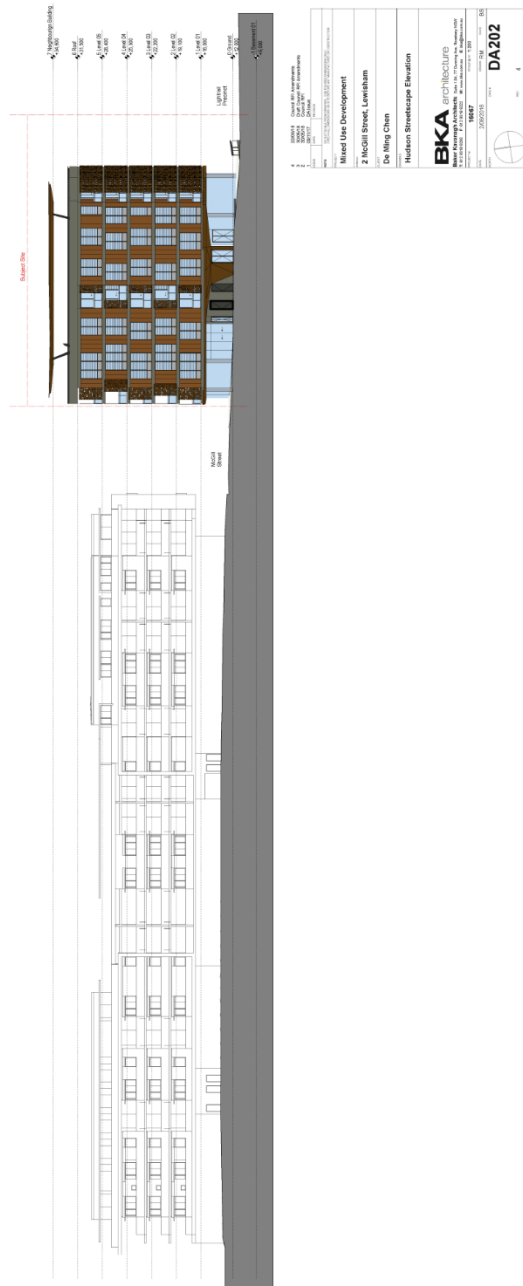


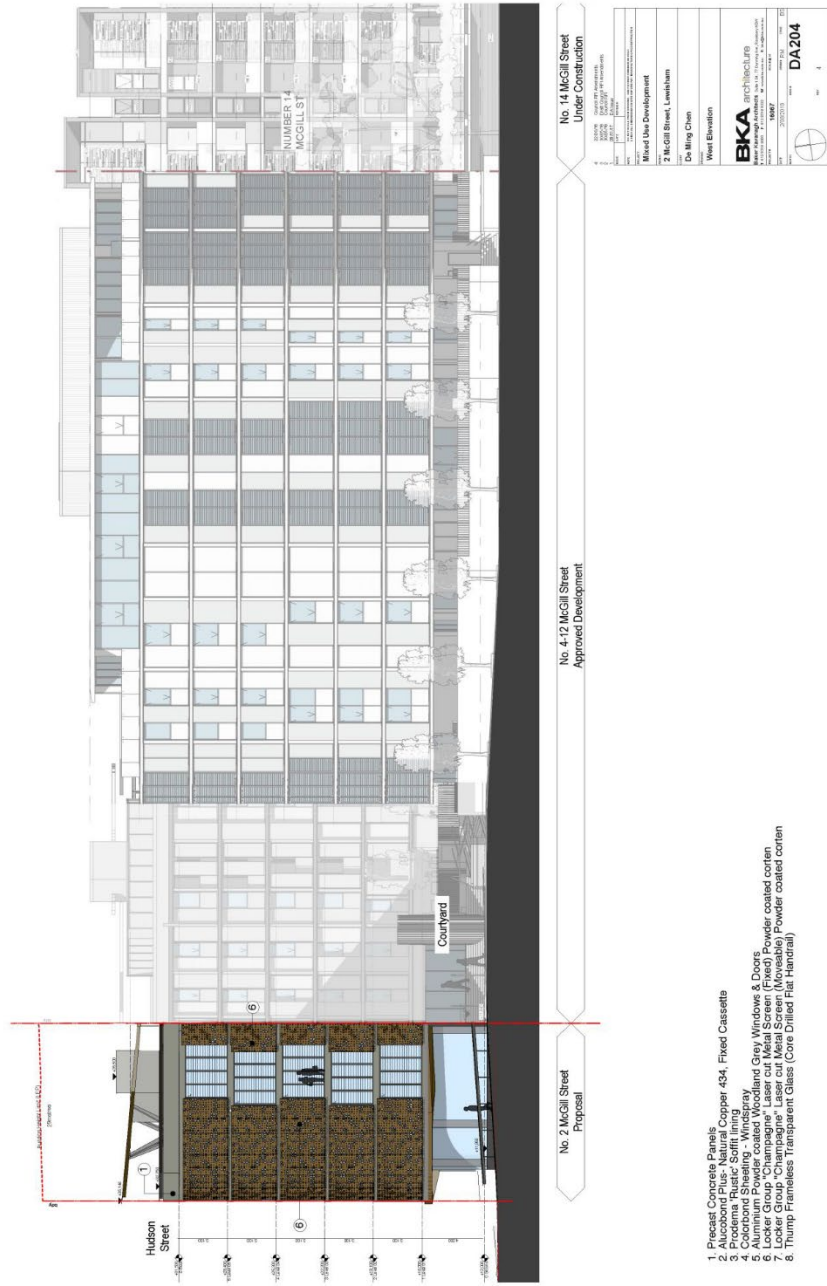






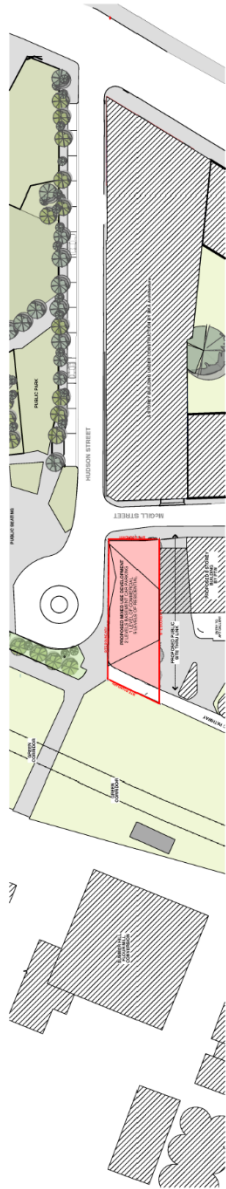






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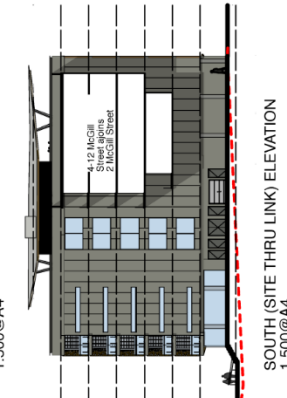
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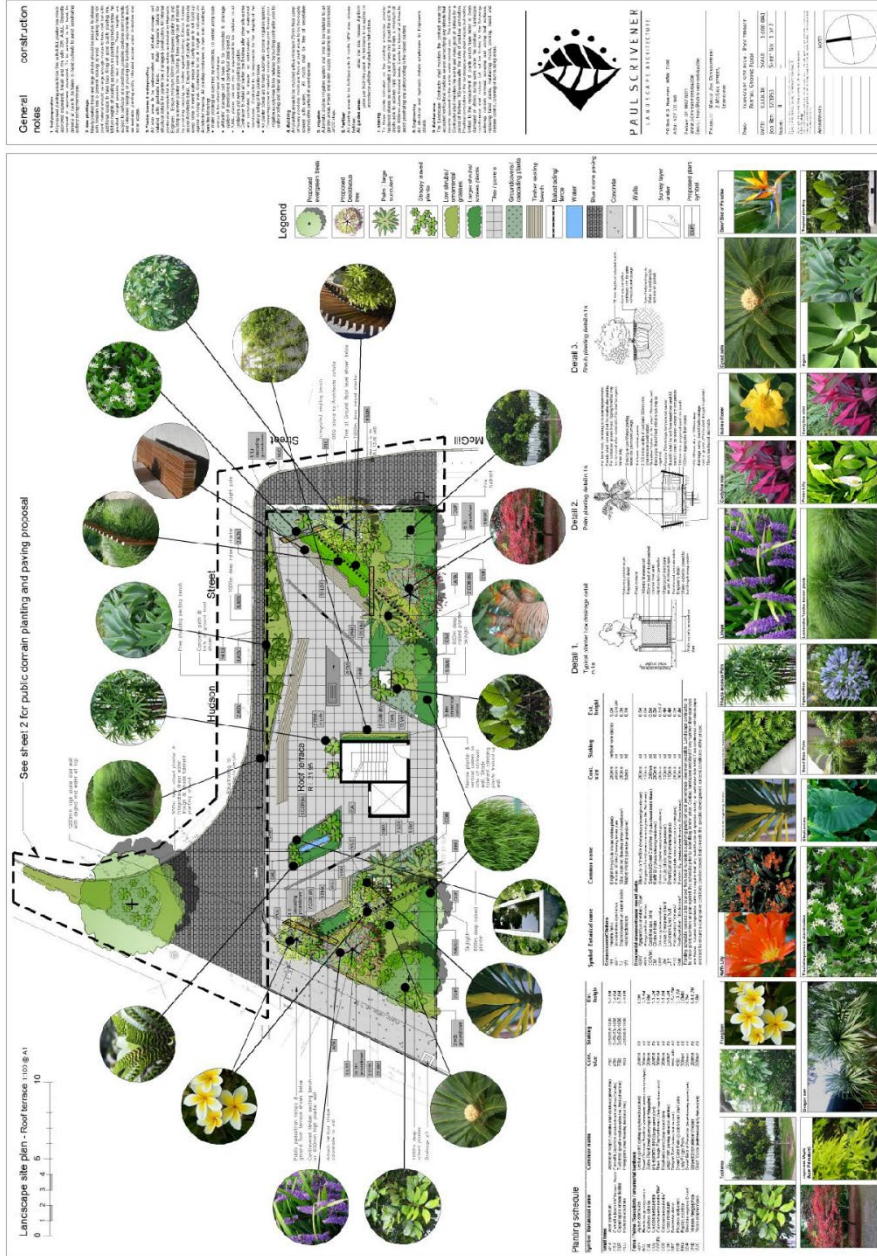
PROJECT: 2 McGill St, Lewisham - Mixed Use Development

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NORTH



Attachment C – Public Domain and Landscape Plans



Attachment D – Clause 4.6 Written Request

**REQUEST PURSUANT TO CLAUSE 4.6, FOR EXCEPTION TO COMPLIANCE WITH CLAUSE 4.4(2) OF MARRICKVILLE LOCAL ENVIRONMENTAL PLAN 2011****1.0 INTRODUCTION**

This is a written request to seek an exception to a development standard pursuant to Clause 4.6 – Exceptions to Development Standards of the Marrickville Local Environmental Plan 2011 (MLEP 2011). The development standard for which the variation is sought is Clause 4.4(2) of MLEP 2011 – Floor Space Ratio.

This written request has been prepared in accordance with the NSW Department of Planning and Environment (DP&E) guideline *Varying development standards: A Guide*, August 2011, and has incorporated as relevant principles identified in the following judgements:

- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7; and*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.*

2.0 THE SITE & SURROUNDS**2.1 The site**

The site is located on the western side of McGill Street at its intersection with Hudson Street, in Lewisham (see **Figures 1** and **2** below).

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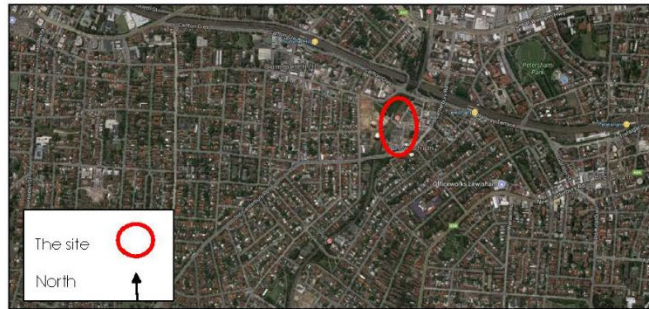


Figure 1: Location plan (© www.google.com.au)

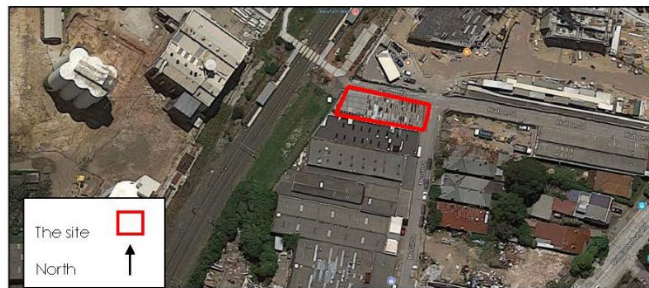


Figure 2: Aerial view of the site in its immediate context (© www.google.com.au)

The site is legally referred to as Lot 1 DP 535963, and is commonly known as No. 2 McGill Street, Lewisham (the site). The site is irregular in shape, with frontages of 11.145m to McGill Street and 31.36m to Hudson Street. The site has a total area of approximately 384m² and contains a single storey brick warehouse building which is built to all four (4) property boundaries.

2.2 Surrounding development

2.2.1 To the west

The site is adjoined to the immediate west by public domain areas and the light rail corridor.

2.2.2 To the east

The site is adjoined to the immediate east by McGill Street. On the opposite side of McGill Street is a five (5) storey mixed-use development currently under construction.

2.2.3 To the south

The site is adjoined to the south by a development site known as Nos. 4-12 McGill Street, which is currently occupied by a series of industrial buildings. The site is the subject of a DA approval (DA201500682), which permitted the demolition of existing improvements and construction of a mixed use development consisting of a 6 storey building (Building A) fronting McGill Street and a 5 storey building (Building B) fronting the light rail line containing a total of 80 dwellings and 1 commercial tenancy within Building B for use as art education and café space with 2 basement car parking levels and associated landscape works.

A further DA was approved for the site (DA201700310) which permitted demolition of existing improvements and tree removal and construction of a mixed use development consisting of a 8 storey building (Building A) fronting McGill Street and a 8 storey building (Building B) fronting the light rail line containing a total of 92 dwellings and 1 commercial tenancy within Building A for use as art education and café space with 2 basement car parking levels and associated landscape works.

2.2.4 To the north

The site is adjoined to the immediate north by a roundabout on Hudson Street. On the opposite side of Hudson Street is a recently completed ten (10) storey mixed-use building and several other multi-storey buildings.

2.3 Local streetscape and context

The site is located in Lewisham, an established residential suburb of Sydney's inner west. The site is located within a precinct which is presently transitioning from light industrial uses to contemporary, higher density residential and mixed-use developments.

This precinct is bordered by Old Canterbury Road, Longport Street and the recently completed Dulwich Hill Light Rail Line and is subject to specific development controls as part of the McGill Street precinct masterplan which is contained within Marrickville Council's planning instruments.

Adjoining the subject site to the south is Nos. 4-12 McGill Street, which is the subject of a DA approval permitting two (2) x eight (8) storey mixed-use buildings. Further south is No. 14 McGill Street which is presently under construction. This development application was approved in the Land and Environment Court on 8th April 2016 for 67 apartments across 8 storeys. It was approved with a FSR of 4.14:1 and a height of between 26 and 29 metres when directly adjoining 12 McGill Street.

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Further to the north of the subject site, the Meriton 'Luna' development, comprising approximately 300 residential units across buildings of between 4-10 storeys in height as well as neighbourhood shops and public parkland has recently been completed.

Additional developments have been approved and are either under construction or have been fully constructed at the following sites:

- No. 7 McGill Street (Residential Flat Building);
- Nos. 17-21 McGill Street and 114-116 Old Canterbury Road (Mixed Use Development);
- No. 118 Old Canterbury Road (Mixed Use Development);
- No. 20 McGill Street (Mixed Use Development); and
- Nos. 1-5 McGill Street, Lewisham (Mixed Use Development).

3.0 THE PROPOSAL

The DA which this document accompanies seeks consent for the demolition of the existing structures at the site, and construction of a new mixed-use development containing:

- two (2) basement parking levels;
- two (2) ground floor level commercial tenancies;
- twenty (20) residential apartments; and
- a communal roof terrace.

4.0 DESCRIPTION OF THE PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

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

Marrickville Local Environmental Plan 2011 (MLEP 2011) applies to the site.

4.2 What is the zoning of the land?

The land is zoned B4 Mixed Use.

4.3 What are the objectives of the zone?

The objectives of the B4 Mixed Use zone are as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To support the renewal of specific areas by providing for a broad range of services and employment uses in development which display good design.*
- *To promote commercial uses by limiting housing.*

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- To enable a purpose built dwelling house to be used in certain circumstances as a dwelling house.
- To constrain parking and restrict car use."

4.4 What is the development standard being varied?

It is proposed to vary Clause 4.4(2) of MLEP 2011 which states the following:

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

The FSR map referred to by Clause 4.4(2) of MLEP 2011 permits a maximum FSR of 2.3:1 at the site.

4.5 Is the development standard a performance based control? Give details.

No. The development standard being varied is a numerical control.

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

The development standard is listed under Clause 4.4 Floor Space Ratio of MLEP 2011.

4.7 What are the objectives of the development standard?

The objectives of the development standard at Clause 4.4 of MLEP 2011 are contained in Subclause 4.4(1), and are as follows:

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

4.8 What is the numeric value of the development standard in the environmental planning instrument?

The FSR map referred to by Clause 4.4(2) of MLEP 2011 permits a maximum FSR of 2.3:1 at the site (refer to **Figure 3** below).

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Figure 3: Extract from MLEP 2011 FSR map

4.9 What is the proposed numeric value of the development standard in the development application?

The proposed development incorporates an FSR of 3.9:1.

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

The proposed development incorporates a Gross Floor Area (FA) of 1,506.4m² which represents an FSR of 3.9:1. The percentage variation between the FSR standard of 2.3:1 permitted by MLEP 2011 is 623.2m² or 70.56%.

5.0 ASSESSMENT OF PROPOSED VARIATION

5.1 Overview

Clause 4.6 establishes the framework for varying development standards applying under an EPI.

Objectives to Clause 4.6 at 4.6(1) 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."

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

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

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless the:

- a) *"the consent authority is satisfied that:*
 (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and"*

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained and Clause 4.6(5) requires the Secretary in deciding whether to grant concurrence must consider:

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

This request has been prepared having regard to the latest authority on Clause 4.6, contained in the following guideline judgements:

- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7; and*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.*

5.2 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

5.2.1 Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?

Compliance with Objectives of the Standard

Notwithstanding the proposed non-compliance, the proposal is consistent with the objectives of the FSR development standard, as specified in MLEP 2011 as discussed below.

"(a) to establish the maximum floor space ratio"

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MLEP 2011 establishes the maximum FSR for the site, however, as discussed below in Section 5.2.4, Council has consistently permitted variations to the FSR development standard throughout the McGill Street Precinct (Precinct 45 in the Marickville DCP – refer to Figure 4) such that it is considered that the FSR development standard has been abandoned.



Figure 4: McGill Street Precinct Masterplan

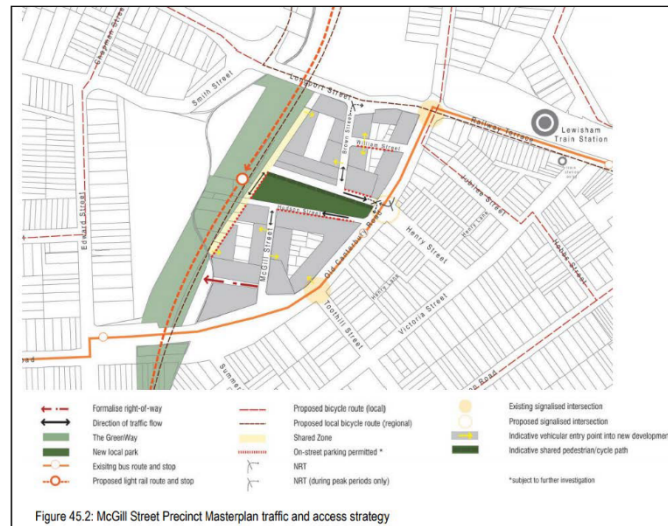


Figure 5: McGill Street Precinct Masterplan traffic and access strategy

It is understood that the FSR development standard has been abandoned on at least nine (9) occasions on land within the immediate vicinity of the subject site, with variations ranging between 17% (at Nos. 4-12 McGill Street) to 80% (at No. 14 McGill Street which was determined by the Land & Environment Court).

It is therefore clearly evident that the FSR control has been consistently abandoned by approved development within the McGill Street Precinct. The proposed development seeks consent for a variation of 70.56% to the FSR standard, which is within the range of variations already approved within the precinct.

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

The desired future character for the precinct is established by MLEP 2011 controls and supplemented by the the McGill Street Precinct Masterplan. Furthermore, the future character of the locality is being determined with the ongoing approval of development on adjoining sites in the Precinct.

The McGill Street precinct masterplan envisages a locality which incorporates mixed use development of medium to high densities and scales and the

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precinct has evolved as a consequence, and incorporates high density residential and mixed use developments of between five (5) and ten (10) storeys.

The proposed development has been amended since it was originally submitted, and now achieves an architectural and built form which responds more appropriately to the desired and actual emerging character of the precinct.

The bulk and density of the precinct has emerged following the approval of several nearby developments, including No. 14 McGill Street and Nos. 4-12 McGill Street. The proposed development has been designed to integrate with the adjoining development at Nos. 4-12 McGill Street, with basement linkages along with a height and scale which is consistent with the approved form on the neighbouring site (see **Figure 6** below).



Figure 6: Photomontage showing the proposed development as viewed from the nearby light rail station

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“(c) to minimise adverse environmental impacts on adjoining properties and the public domain.”

Overshadowing

In order to quantify the impacts of the proposed development, BKA Architecture has prepared shadow diagrams, demonstrating the overshadowing impacts of the proposal.

The diagrams show that the neighbouring property to the south (Nos. 4-12 McGill Street), will be affected by overshadowing, however, the western part of the public piazza area will achieve solar access for approximately 3 hours on 21 June, achieving a satisfactory level of amenity.

It is noted that the proposed development complies with the maximum 29m height control in LEP 2011 as well as the maximum number of storeys in DCP 2011 (i.e. 6) and the built form provisions of the Masterplan. To this end, the development is consistent with that envisaged for the site by Council's planning controls and the resultant overshadowing impacts are also anticipated by the DCP.

Visual bulk, massing and streetscape

The overall height of the proposal complies with the maximum 29m height building height control in LEP 2011. The built form of the proposed development is the result of detailed site analysis, which has taken into consideration the site's contextual relationship to adjacent properties, its proximity to public transport and the need to protect the amenity of both existing future residents within existing and potential future buildings that are located in the vicinity of the site.

Key design issues are addressed in the Design Verification Statement prepared by Baker Kavanagh Architecture and are discussed further below.

Site layout

Figure 4 shows the McGill Street Precinct Masterplan. **Figure 5** shows the traffic and access strategy.

The proposed arrangement of development at the site is consistent with the principles of the McGill Street Precinct Masterplan, as can be seen in **Figure 7** below.

The proposal incorporates a building mass and layout consistent with that envisaged in the Masterplan. It provides a northern "bookend" to the consolidated site to the south (Nos. 4-12 McGill Street), which is the subject of a separate approval.

The proposed building has been designed to provide both physical and visual links with the adjoining development, to achieve consistency and amenity in both streetscape/architecture and amenity terms.

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The proposed integration of ground level commercial tenancies will enable activation of the spaces around the site and encourage the public to explore the site, the adjoining property to the south and to use the landscaped area adjoining the greenway. The external areas around the site at ground floor level will be open 24 hours and will encourage use of the site as a thoroughfare through to the Lewisham West light rail station to the north west.

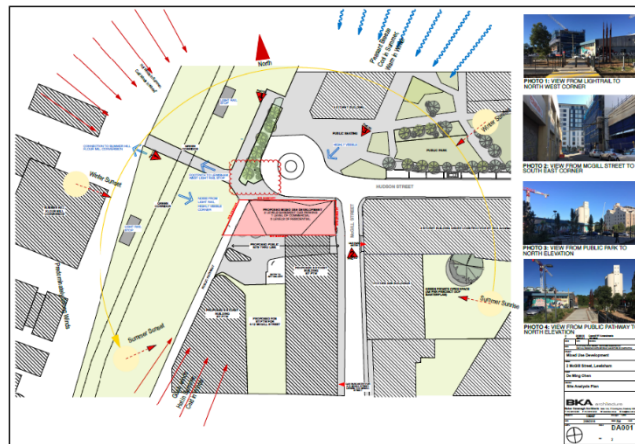


Figure 7: Extract from the Site Analysis Plan prepared by Baker Kavanagh Architecture, demonstrating consistency with the Masterplan and relationship with the development proposed at Nos. 4-12 McGill Street to the south

Along the site's western boundary, the proposal has retained a pedestrian shared zone adjacent to the 'greenway' in lieu of a vehicular shared zone. This is considered to be preferable as the approved/proposed development at Nos. 4-12 McGill Street does not adopt vehicular access as a single, consolidated basement ramp for the site and Nos. 4-12 McGill Street is proposed.

On this basis, it is considered that there is no need for a vehicular link along the Greenway as it does not service any development or connect with Old Canterbury Road as originally envisaged by the Masterplan.

On the whole, it is considered that the proposed site layout is consistent with the intent of the McGill Street Precinct Masterplan.

Future land use

Figure 8 shows the Future Land Use map from the McGill Street Precinct Masterplan. The map shows the site as having ground floor level retail/commercial uses with residential above. The proposal is consistent with the Masterplan in this regard.



Figure 8: McGill Street Masterplan Land Use plan

Built form

Figure 9 below specifies a maximum of six (6) storeys at the site while Control C17 of the Masterplan specifies a maximum height of 23m (NB LEP 2011 permits a maximum building height of 29m at the site).



Figure 9: McGill Street Masterplan Height of Buildings plan

As discussed above, the proposal incorporates six (6) storeys with a maximum height of:

- 20.89m to the roof terrace balustrade;
- 23.28m to the roof over the communal roof terrace; and
- 23.64m to the top of the lift overrun.

To this end, the proposal is well within the maximum 29m permitted by MLEP 2011.

Visual & acoustic privacy

The proposal will have an acceptable impact on the visual privacy of neighbouring properties for the following reasons:

- proposed landscaping has been arranged around the south western and south eastern corners of the proposed communal roof terrace to minimise opportunities for direct downward viewing into Nos. 4-12 McGill Street to the south;
- the southern elevation has minimal fenestration (associated with a kitchen and corridor), which will have limited opportunities for overlooking to the south. Furthermore, the windows are separated from the building proposed on the site to the south by in excess of 20m;
- balconies are primarily oriented to the north and north east/north west, away from nearby residential properties;
- proposed apartment layouts have been designed to minimise noise transmission between adjoining dwellings;

- the proposed development will comprise adequate insulation so as to comply with the BCA in relation to noise transmission; and
- an Acoustic Report, prepared by Renzo Tonin accompanied this DA, and Council can impose appropriate conditions of consent requiring compliance with the recommendations of the report.

Views

The proposal will not have an adverse impact upon any known significant views.

Heritage

The proposal has no impacts on any nearby heritage items or heritage conservation areas.

Traffic generation and parking

The proposal complies with the numeric requirements of SEPP 65 in relation to the provision of car parking and as outlined in the Traffic and Parking Assessment accompanying this DA, the proposal will have a minimal and acceptable impact on traffic and car parking in the vicinity of the site.

Furthermore, the site is very well-located in relation to public transport, with light rail, heavy rail and bus services all available within easy walking distance of the site, to minimise the demand for parking associated with the proposed development.

In this regard, the proposal meets the objectives of Clause 4.3 of LEP 2011, despite the non-compliance.

5.2.2 Is the underlying objective or purpose of the standard not relevant to the development?

The underlying objective or purpose of the FSR standard is to control bulk and scale in order to ensure appropriate relationships with the existing and likely future streetscapes and to minimise adverse amenity impacts in relation to nearby properties and the streetscape. The underlying objective or purpose of the standard are relevant to the proposal and addressed above.

5.2.3 Would the underlying objective or purpose be defeated or thwarted if compliance was required?

The underlying objective or purpose of the development standard would not be defeated or thwarted if compliance was required.

5.2.4 Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?

Yes.

As discussed above, it is understood that the FSR development standard has been abandoned on at least nine (9) occasions on land within the immediate vicinity of the subject site, with variations ranging between 17% (at Nos. 4-12 McGill Street) to 80% (at No. 14 McGill Street which was determined by the Land & Environment Court).

The form and scale of development, including patterns of amalgamation, which has taken place varies from that envisaged in the masterplan for the precinct. Given the variations in site amalgamation from that envisaged in the masterplan, the precinct being developed in a manner that is denser than the FSR development standard and taller than the DCP masterplan (while generally complying with the maximum building height permitted in MLEP 2011).

In granting several previous approvals within the precinct which vary from the number of storeys and site amalgamation controls, it is considered that Council has largely abandoned these DCP controls. As a consequence of these approvals, it has become evident that there is a discrepancy between the LEP height and FSR standards.

The FSR standard contained in Clause 4.4 of MLEP 2011 does not permit buildings to be developed to the height envisaged by the LEP. It appears that Council (and the Land and Environment Court) has addressed this discrepancy by approving development that exceeds the maximum permitted FSR but achieves compliance with the MLEP 2011 height control so as to achieve a form and scale which responds to the desired future character of the precinct. Council's merit-based approach to assessing development in the locality therefore acknowledges that while they do not strictly comply with the FSR control, the approved developments continue to meet the desired future character objectives for this precinct.

Development at the McGill Street precinct differs from what was originally anticipated by Council's controls and having largely abandoned the site amalgamation pattern and FSR controls, Council has acknowledged that the precinct is suitable for development which is more dense than anticipated by Clause 4.4 of MLEP 2011.

The proposed development, despite exceeding the FSR development standard, will achieve a built form on this prominent and isolated site, which is consistent with the desired future character of the precinct. By permitting the proposed FSR variation, consistency would be achieved with other previous approvals in the precinct, including that immediately adjacent to the site at Nos. 4-12 McGill Street. On the basis that it is considered that the FSR development standard has been abandoned, and given the precedent set by other approvals and that the site is "isolated", it would be unreasonable to require strict compliance with the development standard.

5.2.5 Is the zoning of the land unreasonable or inappropriate?

The land zoning is appropriate for the site.

5.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed GFA in excess of that permitted by MLEP 2011, provides public benefits as:

- the additional GFA (i.e. the non-compliant portion of the proposal) represents approximately three (3) levels of the building. These levels contribute to the achievement of a built form which sits comfortably at the site, which has a prominent corner setting. If the proposal were to comply with the FSR standard, the form of the building would be only three (3) storeys, which would have an adverse streetscape and visual amenity outcome, particularly given the scale of development approved on nearby and adjoining sites; and
- the additional GFA maximises the provision of residential accommodation within the immediate vicinity of the Lewisham Light Rail Station, which has obvious benefits in terms of locating population near public transport.

To this end, the non-compliant elements provide for public benefits which contribute to justifying contravention of the FSR standard.

5.4 Is the proposed development in the public interest because it is consistent with the objectives for development in the zone?

The site is located within zone B4 Mixed Use under MLEP 2011. The objectives of the B4 zone are as follows:

- *"To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To support the renewal of specific areas by providing for a broad range of services and employment uses in development which display good design.*
- *To promote commercial uses by limiting housing.*
- *To enable a purpose built dwelling house to be used in certain circumstances as a dwelling house.*
- *To constrain parking and restrict car use."*

The proposed development, incorporating demolition of all structures and construction of a new mixed use development is permissible with consent in the B4 zone, and is consistent with the abovestated zone objectives, as follows:

- the proposal provides ground floor commercial uses with residential accommodation above, as is envisaged for the location;
- the site is extremely well-located in relation to public transport services and bicycle/pedestrian networks, thereby ensuring that residents and workers of the site will have maximum opportunities to travel to and from the site by means other than the private vehicle;

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- the proposal incorporates two (2) ground level commercial tenancies; and
- the proposal provides sufficient car parking as to meet the numeric requirements of SEPP 65, noting that the provision of parking has been minimised due to the site's highly accessible location.

As can be seen above, the proposal is consistent with the objectives of the zone despite the non-compliance with the FSR development standard.

5.6 Whether contravention of the development stand raises any matter of significance for the State or regional Environmental Planning?

The contravention is a local matter and does not raise any matter of state or regional significance.

Inner West Council and associated Planning Panel can assume the Secretary's concurrence under Planning Circular PS 18-003 issued on 21 February 2018.

5.6 How would strict compliance hinder the attainment of the objects specified in Section 1.3 (a), (b) and (c) of the Act?

The objects set down in Section 1.3 (a), (b), and (c) are as follows:

| OBJECT | COMMENT |
|---|---|
| <i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources.</i> | <p>The proposed development will promote the social and economic welfare of the locality through the provision of a new mixed-use development with a form and scale which is consistent with the emerging character of the locality, as displayed by a number of recently approved developments in the immediate vicinity of the site.</p> <p>The proposed development of the isolated site will result in a density of residential development on the site which is comparable to other recent developments, within the immediate vicinity of the Lewisham Light Railway Station, so as to encourage future residents to travel by public transport rather than private motor vehicle. This has obvious positive outcomes in terms of minimising resource consumption and traffic generation, to the benefit of the community and environment.</p> |
| <i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.</i> | The proposal demonstrates ecologically sustainable development as it incorporates a range of design measures (i.e. provision of solar access, natural ventilation and thermal mass), along with minimising resource waste by proposing |

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| OBJECT | COMMENT |
|---|---|
| <i>(c) to promote the orderly and economic use and development of land.</i> | <p>development in the immediate vicinity of the Lewisham Light Railway Station.</p> <p>The proposal promotes the orderly and economic use of land by incorporating development which meets the intent of MLEP 2011 and DCP 2011 in terms of built form, with an FSR that is commensurate with others in the immediate vicinity. The proposal complies with the maximum number of storeys and building height controls and the proposed form and scale is compatible with the development approved on the adjoining site at Nos. 4-12 McGill Street. Indeed, the form and density of the proposal is consistent with numerous other developments which have been approved in the locality.</p> |

5.7 Is there public benefit in maintaining the development standard?

There is public benefit in maintaining development standards. In this case, however, it is considered that the standard has been abandoned by Council and that the non-compliance will result in public benefits, as discussed above, such that the non-compliance is warranted.

The proposal could be amended to comply with the FSR Development Standard, however such a design change is considered to result in an inferior planning outcome, for the following reasons:

- the proposal complies with the maximum 29m height control which applies to the site under MLEP 2011;
- the proposal complies with the maximum six (6) storey built form envisaged for the site by the McGill Street Precinct Masterplan and is only marginally higher than the maximum 23m height control specified in this document, primarily as a result of raising the building to provide flood protection to the ground floor level;
- the proposal complies with the built form, siting and setback controls specified for the site in the McGill Street Precinct Masterplan;
- the proposal is consistent with the relevant provisions of SEPP 65 and the ADG;
- the proposal has been designed to minimise adverse amenity impacts in relation to neighbouring properties, as discussed above;
- the bulk and scale of the proposal is commensurate with several other recently approved DAs in the immediate vicinity, such that the resultant form at the site will sit comfortably within the transforming streetscape and make a positive contribution to the locality in terms of its form and streetscape presentation;
- the proposed FSR is consistent with that of several other recently approved developments in the immediate locality; and
- the FSR achievable on the site would be less if the site were not isolated and was able to be developed as part of a larger site. Given

that the site is isolated, with the sites to the south the subject of separate DAs, it is appropriate to consider the site as an infill "bookend" site and apply the Masterplan controls to the site in its own right.

To this end, it is considered that there would be no public benefit arising from requiring compliance with Clause 4.4(2) of LEP 2011 and on this basis, the public benefit is considered to have been met regardless of the non-compliance, as the vision of the McGill Street Precinct Masterplan as it relates to the site, will be achieved as a result of the proposal.

5.8 Is the objection well founded?

Yes.

The proposal is consistent with the objectives of the zone and the FSR standard and the non-compliance enables the provision of a new mixed-use development which provides a public benefit and displays a form, scale and density which is consistent with that approved in the immediate vicinity. On this basis this objection is considered to be well-founded.

6.0 CONCLUSION

The proposed variation is a response to the fact that the site is isolated and having regard to at least nine (9) recent approvals in the immediate vicinity, which exceed the maximum FSR permitted by MLEP 2011. As discussed throughout this document, it is considered that Council has abandoned the FSR development standard at Clause 4.4 of MLEP 2011 and has adopted a merit-based approach to the assessment of DAs for development in the locality, so as to ensure that development achieves the objectives and intent of MLEP 2011 and MDCP 2011 in relation to development of the McGill Street Precinct.

The proposed development is permissible with consent and consistent with the objectives of the B4 Mixed Use zone and the FSR development standard pursuant to MLEP 2011. The proposal is also generally consistent with the relevant provisions of the MLEP 2011 and SEPP 65.

The proposed development, despite the non-compliance, achieves a high quality built form, which will make a positive contribution to the local streetscape and economy, along with public benefits arising from the non-compliant floorspace, as discussed herein.

The proposal seeks to develop a site in a way that will have an acceptable impact on adjoining sites while allowing for consistent architectural and urban design approach across the emerging precinct. It is therefore requested that Council recommends approval of the proposed development despite the proposed contravention of the FSR development standard imposed by MLEP 2011.

| | |
|-------------------------------------|---|
| IWLPP704/19 <i>Agenda Item 9</i> | DA201700611 |
| Address: | 2 McGill Street, Lewisham |
| Description: | To demolish existing improvements and construct a 6 storey mixed use development comprising 2 levels of basement parking, 2 commercial tenancies on the ground floor with 20 residential dwellings over 5 levels and a communal roof terrace. |
| Applicant: | BKA Architecture |

The following people addressed the meeting in relation to this item:

- David Rollinson
- Bruna Souto
- Genevieve Slattery
- Rhiannon McDermot

DECISION OF THE PANEL

Item 9 was adjourned at 3:51pm

The meeting resumed at 4:15pm

The Panel supports the findings contained in the Assessment Report and resolves that the application be approved as per the recommendation contained in that report, subject to the following changes:

Imposition of a deferred commencement conditions as follows;

PART A – DEFERRED COMMENCEMENT CONSENT

The consent will not operate and it may not be acted upon until the Council or its delegate is satisfied as to the following matters:

1. Documentation being submitted to the satisfaction of Council indicating:
 - a) Providing a car lift or similar mechanical access for vehicles to the basement with limited impact on the public domain; or
 - b) Demonstration of legal and actual physical access to the basement via the basement of 4-12 McGill Street

Evidence of the above matters must be produced to the Council or its delegate within 2 years of the date of this Determination otherwise the consent will lapse.

PART B – CONDITIONS OF CONSENT

Once operative the consent is subject to the following conditions:

NOTE: in Part B Condition 1 needs to be amended to include the matters referred to in Part A.

Delete condition 23 and insert the following at Condition 23
All hydrant booster pump and fire service equipment shall be housed in a recessed enclosure within an external wall (with doors suitable to screen the installation from public view) and not located in footway areas likely to be used by the public.

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Details of this enclosure are to be assessed by an accredited fire safety engineer, comply with the requirements of the BCA and be shown on the plans submitted to Council and the Certifying Authority for approval prior to the release of a Construction Certificate.

The decision of the panel was unanimous.