

 DEVELOPMENT ASSESSMENT REPORT	
<b>Application No.</b>	DA201900446
<b>Address</b>	122 Crystal Street PETERSHAM NSW 2049
<b>Proposal</b>	To construct a four storey mixed use building comprising a retail tenancy at ground floor level, basement parking and twelve residential units above
<b>Date of Lodgement</b>	19 December 2019
<b>Applicant</b>	Primus Dms Pty Ltd
<b>Owner</b>	Mr Thomas Zahos Mrs Ann Zahos
<b>Number of Submissions</b>	1 submission
<b>Value of works</b>	\$3,109,747
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation exceeds 10% Development to which <i>State Environmental Planning Policy No 65</i> applies and is 4 storeys in height
<b>Main Issues</b>	Variation to Floor Space Ratio Vehicle Access
<b>Recommendation</b>	Deferred Commencement Approval with Conditions
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Clause 4.6 Exception to Development Standards
	
<b>LOCALITY MAP</b>	
Subject Site 	Objectors 
Notified Area 	Supporters 
 N	
Note: Objector did not provide specific address and cannot be mapped.	

## 1. Executive Summary

This report is an assessment of the application submitted to Council to construct a four storey mixed-use building comprising a retail tenancy at ground floor level, basement parking and twelve residential units above at 122 Crystal Street, Petersham. The application was notified to surrounding properties and 1 submission was received.

The main issues that have arisen from the application include:

- Breach to the Floor Space Ratio development standard of 89sqm or 11%; and
- Vehicle access requirements to Crystal Street, being a classified regional road.

Despite the non-compliances, the proposal generally complies with the aims, objectives and design parameters contained in the relevant State Environmental Planning Policies (SEPPs), *Marrickville Local Environmental Plan 2011* (MLEP 2011) and Marrickville Development Control Plan 2011 (MDCP 2011).

The potential impacts to the surrounding environment have been considered as part of the assessment process. Any potential impacts from the amended development are considered to be acceptable given the context of the site and the desired future character of the precinct. The application is suitable for Deferred Commencement approval subject to the imposition of appropriate terms and conditions.

The Deferred Commencement condition included in the recommendation addresses concerns raised by Transport for NSW and Council's Development Engineer in relation to vehicle access from Crystal Street.

## 2. Proposal

The proposal seeks consent to construct a four storey mixed use building comprising a retail tenancy at ground floor level, basement parking and twelve residential units above. Details of the proposal are as follows:

- Construction of a 4 storey, shop-top housing development, comprising a commercial use and 12 dwellings as follows:
  - **Basement:** Building services, comms room, unit storage areas, bicycle parking, 5 residential parking spaces, 1 commercial space and 1 visitor space;
  - **Level 1 (Ground):** Commercial tenancy fronting Crystal Street, 2 accessible car parking spaces for residential use, waste facilities, building services, lift and stairwell providing access throughout the building and an area of common open space to the rear;
  - **Level 2:** 4 residential apartments, including 3 x 1 bedroom apartments and 1 x 2 bedroom apartment, lift access, stairs, landing and an area of common open space;
  - **Level 3:** 4 residential apartments, including 3 x 1 bedroom apartments and 1 x 2 bedroom apartment, lift access, stairs and landing; and
  - **Level 4:** 4 residential apartments, including 3 x studio apartments, 1 x 1 bedroom apartment, lift access, stairs and landing.
- Landscaping and public domain works.

Note: Demolition of the existing structures on the site has been approved by a CDC. The use and fitout of the proposed commercial space, including any associated signage, will be subject to a future application. A condition to this effect is included in the recommendation.

### 3. Site Description

The subject site is located on the western side of Crystal Street, at the intersection of Crystal Street and Trafalgar Street. The site consists of 1 allotment and is generally rectilinear in shape with a total area of 475.6sqm and is legally described as Lot 2 in Deposited Plan 306891.

The site has a frontage to Crystal Street of 14.6 metres. The site supports a two storey dwelling house. The adjoining properties support a range of building types including a two storey mixed use development at 120 Crystal Street, a four storey mixed use development under construction at 124 Crystal Street and two storey dwellings to the rear of the site.

The site is located within the Petersham South Precinct under Part 9.6 of MDCP 2011. While this site is not within a master plan area within the precinct, this northern part of the precinct is currently transitioning from a lower density residential area with limited commercial uses to a medium to high density, mixed-use precinct. Sites further to the east of the site at Regent, Fisher and Trafalgar Street are in the process of redevelopment to accommodate multi-storey residential and shop-top housing developments.

The site is zoned B4 – Mixed Use under MLEP 2011.

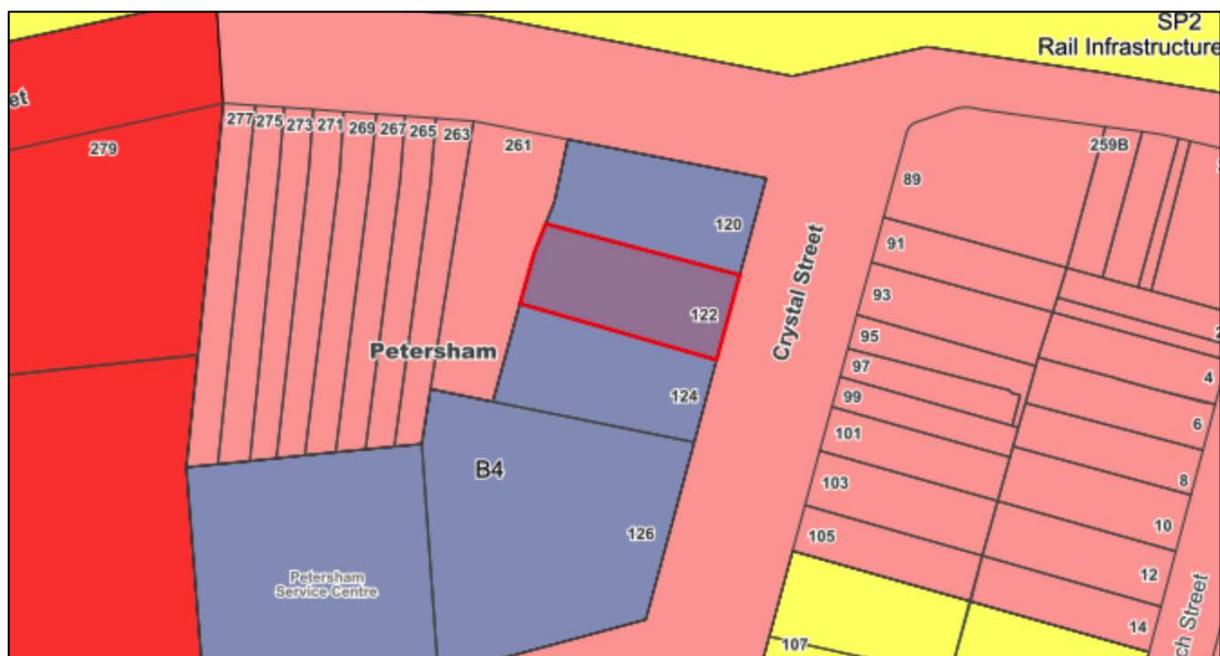


Image: Excerpt of Zoning Map (MLEP 2011)

### 4. Background

#### 4(a) Site history

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

**Subject Site**

Application	Proposal	Decision & Date
CDC201800135	Demolition of existing structure	Approved – 18 September 2018

**Surrounding properties**

Application & Address	Proposal	Decision & Date
LEC 1185 of 2017 124 Crystal Street Petersham	To demolish existing improvements and construct a 4 storey mixed use development with 1 commercial tenancy and car parking at basement and ground level and 12 dwellings above on the upper floors.	Approved – 10 April 2017

4(b) Application history

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

Date	Discussion / Letter / Additional Information
1 June 2020	<p>Council wrote to the applicant raising the following concerns and requesting additional information and amendments:</p> <ul style="list-style-type: none"> <li>a) The need for a Detailed Site Investigation (DSI) due to potential contamination.</li> <li>b) Breach of FSR and the need for a written Clause 4.6 objection.</li> <li>c) Lack of compliance with the solar access provisions of the ADG for the apartments proposed.</li> <li>d) Lack of compliance with the ventilation requirements of the ADG.</li> <li>e) The 1 bedroom apartments potentially being undersized.</li> <li>f) Visual privacy concerns between the proposed apartments and the central area of common open space.</li> <li>g) Lack of information surrounding the proposed apartment storage.</li> <li>h) The logistics of moving residential waste bins from the lower basement to the street.</li> </ul>
22 June 2020	<p>Amended plans and a Preliminary Site Investigation (PSI) were submitted. This information addressed a majority of design and ADG concerns but did not address the proposed variation to FSR or provide the DSI requested.</p> <p>It is noted that the applicant disagreed on the calculation of FSR. Council's position is that the central 'gallery' areas of the building on each floor form part of GFA being within the external walls of the building and being largely enclosed. The common vertical circulation (stairway and lift) are excluded. The applicant contended that the 'gallery' areas on each level should be excluded in their entirety, being external spaces subject to weather.</p>
24 July 2020	<p>Council wrote to the applicant raising the following concerns and requesting additional information and amendments:</p> <ul style="list-style-type: none"> <li>a) The need for a DSI due to potential contamination, as concluded by the PSI submitted.</li> <li>b) The need for a written objection under Clause 4.6 as the development breaches the FSR development standard in the opinion of Council.</li> <li>c) Dedicating the small area of common open space within the northern central courtyard as private open space for Unit 3 for reasons of functionality and privacy.</li> </ul>
31 July 2020	<p>Amended plans were submitted addressing the design concerns and a written objection under Clause 4.6 was provided.</p>

12 August 2020	A DSI was provided.
19 August 2020	Council wrote to the applicant to advise of Transport for NSW comments.
2 September 2020	Council wrote to the applicant requesting the submission of a Remediation Action Plan (RAP) as required by the DSI.
10 September 2020	RAP submitted.  The above package forms the basis for the current development application and assessment below. It generally addresses the concerns previously raised by Council. However, the matter of vehicle access design to Crystal Street remains outstanding. This matter is discussed further within this report and addressed via a recommended Deferred Commencement condition.

## 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 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*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Marrickville Local Environmental Plan 2011*

The following provides further discussion of the relevant issues:

#### 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. MDCP 2011 provides controls and guidelines for remediation works. *SEPP 55* requires the consent authority to be satisfied that “the site is, or can be made, suitable for the proposed use” prior to the granting of consent.

The site has not been used in the past for activities which could have potentially contaminated the site, however neighbouring sites have included potential contaminating uses. A Preliminary Site Investigation determined the site contains levels of contamination. It is considered that the site will require remediation in accordance with *SEPP 55*.

A Detailed Site Investigation (DSI) and Remedial Action Plan (RAP) have been provided to address the management of contaminated groundwater onsite and the treatment and/or disposal of any contaminated soils and contamination issues prior to determination. The contamination documents have been reviewed and found that the site can be made suitable for the proposed use after the completion of the RAP. To ensure that these works are undertaken, it is recommended that conditions are included in the recommendation in accordance with Clause 7 of *SEPP 55*.

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

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

A statement from a qualified Architect was submitted with the application verifying that they designed 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 acceptable having regard to the nine design quality principles.

*Apartment Design Guide (ADG)*

The Apartment Design Guide (ADG) contains objectives, design criteria and design guidelines for residential apartment development. In accordance with Clause 6A of the SEPP certain requirements contained within MDCP 2011 do not apply. In this regard the objectives, design criteria and design guidelines set out in Parts 3 and 4 of the ADG prevail.

The following provides further discussion of the relevant issues:

Communal and Open Space

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

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

**Comment:** The development does not strictly comply with the above requirements, however; is satisfactory on merit as follows:

*Minimum COS area:*

- The COS provided has a minimum area equal to 21% (100m<sup>2</sup>) of the site.
- The Level 2 gallery area adjoining the southern area COS could act (at times) as an extension of that area improving its usability.
- Given the limited lot size of the site, mixed use zoning and setting of the site on a busy arterial road, a high level of open space is difficult to achieve. In addition, alternative solutions such as a rooftop area, could not be employed due the OLS limitations of the site.
- The majority of apartments are provided with balconies with areas in excess of the minimum prescribed by the ADG, thereby assisting in supplementing the variation.
- The subject site is located within walking distance of a variety of public open spaces, including the nearby Petersham Park, which will assist to offset the variation.

*Direct sunlight:*

- The rear area of COS will receive solar access for a minimum of 2 hours on June 21 to 50% of its surface which is considered acceptable given the limited site area, orientation of the site and scale of adjoining development.

It is noted that plans provided indicate numerical compliance with the minimum COS area. However, this includes the gallery area at Level 2, which is an access way to higher levels and some apartments and as such is not considered to form part of the usable COS. Despite this, the level of COS provided is considered acceptable.

Deep Soil Zones

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

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

Achieving the design criteria may not be possible on some sites including where:

- The location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres).
- There is 100% site coverage or non-residential uses at ground floor level.

Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved and alternative forms of planting provided such as on structure.

**Comment:** The development provides for a minor amount of deep soil (2.3sqm approx.). Notwithstanding, the level of deep soil proposed in this instance is considered acceptable based on the following:

- Part 5 *Commercial and Mixed Use Development* and Part 9.6 *Petersham South Planning Precinct* of the MDCP 2011 encourages the subject site to adopt a desired future character that consists of commercial uses on the ground floor and residential dwellings above, which the proposal achieves. Further, the subject site’s B4 Mixed Use zone under the MLEP 2011 also encourages this built outcome. As a result, limited opportunities are afforded on the ground floor to provide deep soil.
- Notwithstanding the above, whilst it is acknowledged that limited deep soil is provided, it is considered the proposal effectively satisfies competing planning controls for the site, which restrict opportunities for greater deep soil provision. Further, the deep soil proposed is consistent with the deep soil provided by recent neighbouring development.
- The site frontage, where deep soil landscaping might ordinarily be located to enhance the presentation of the building, is also required to accommodate difficult vehicular access to the busy roadway on Crystal Street.
- The proposal provides supplementary planting throughout the building to offset the variation, including in the southern and rear areas of COS.

- Subject to conditions, it is considered the proposal will be satisfactory in terms of stormwater management.

Visual Privacy/Building Separation

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

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

In addition, sites which adjoining a different zone with a lower density are to add 3 metres to the minimum separation requirements.

Site and building design elements are to increase privacy without compromising access to light and air and to balance outlook and views from habitable rooms and private open space.

**Comment:** Although the development does not strictly comply with the above requirements, it is satisfactory on merit as follows:

- Having regard to the site’s commercial context, being located in a B4 Mixed Use zone, the proposed building is built to the front and side boundaries, which is consistent with the desired future character provisions under the MLEP 2011, Part 5 *Commercial and Mixed Use Development* and Part 9.6 *Petersham South Planning Precinct* of the MDCP 2011.
- Voids are proposed centrally and adjacent to side boundaries are provided to allow for improved access to sunlight and ventilation for the apartments, which can be repeated along the street upon redevelopment of the adjoining properties.
- The proposal does not provide 9m of separation to an adjoining site in a different zone with a lower density (261 Trafalgar Street – R2 Low Density Residential Zone). Notwithstanding, the variation is considered acceptable in this instance on the following grounds:
  - The proposed rear windows servicing living areas and balconies are separated from this property by approximately 4m and these elements overlook its roof and largely solid eastern side boundary wall, as opposed to habitable area or open space areas; and
  - The separation provided is consistent with the separation of neighbouring development from the same neighbouring property and zone.

Pedestrian access and entries

The ADG prescribes design guidance on the treatment and location of pedestrian entries:

- Building entries and pedestrian access connects to and addresses the public domain.
- Access, entries and pathways are accessible and easy to identify.

**Comment:** The development complies with the above requirements.

### Vehicle access

The ADG prescribes design guidance on the provision of vehicle access points:

- Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.

**Comment:** The development does not strictly comply with the above requirements as follows:

- The proposed vehicle access is located off Crystal Street, which is acceptable being the only access point to the site.
- However, the narrow design of the vehicle entry may result in adverse impacts to the operation of Crystal Street, a classified road and as such may not be designed to achieve complete safety.

To address the above, a Deferred Commencement condition has been included in the recommendation requiring amendments to the vehicle access design to address concerns of TfNSW and Council's Development Engineer.

### Bicycle and Car Parking

The ADG prescribes the following car parking rates dependent on the following:

- On sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area, the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant Council, whichever is less; and
- The car parking needs for a development must be provided off street.

**Comment:** The subject site is located 100 metres from Petersham train station. In this case, the parking rates under the MDCP 2011 are applicable to the development. This matter is addressed under Section 5(c) below.

### Solar and Daylight Access

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

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

**Comment:** Although the development does not strictly comply with the above requirements, it is satisfactory on merit as follows:

- Given the relatively small lot size, eastern to western orientation of the site and the scale of surrounding development, the site is highly constrained in relation to opportunities for solar access and high level of solar access is difficult to achieve.
- The mixed use zoning of the site encourages a high site coverage and nil side setbacks limiting the opportunities for building setbacks and any northern aspect windows or POS.
- A maximum of 8.3% (1) apartments receive no direct sunlight between 9.00am and 3.00pm at mid-winter.

- The POS areas of 66% (8) apartments receive a minimum of 2 hours direct sunlight between 9.00am and 3.00pm at mid-winter.
- The living rooms windows of 33% (4) apartments receive a minimum of 2 hours direct sunlight between 9.00am and 3.00pm at mid-winter. However, if secondary light sources such as skylights are taken into consideration, 58% (7) apartments receive a minimum of 2 hours direct sunlight between 9.00am and 3.00pm at mid-winter.
- The development is largely non-compliant with solar access requirements as all eastern oriented apartments cannot achieve 2 hours of solar access between 9.00am and 11.00am due to the orientation of the site. However, 5 of 6 eastern orientated apartments would receive solar access between 8.00am and 10.00am on June 21 thereby still receiving a suitable level of solar access. If the hour between 8.00am and 9.00am is considered, 75% (9) apartments receive a minimum of 2 hours direct sunlight at mid-winter without reliance on secondary skylights.
- Apartments with more limited solar access still receive a minimum of 1sqm of direct sunlight, measured at 1 metre above floor level, for at least 15 minutes, to maximise the benefit of the solar access attainable.
- The development has incorporated a number of design measure to maximise solar access as much as possible including:
  - Providing skylights/openings within the awnings above balconies to allow solar penetration to lower levels POS and living rooms.
  - Orientating the living room windows of some eastern facing apartments towards the north.
  - Maximising glazing to living areas orientated to the east and west to capture sunlight during mid-winter.
  - Providing openings within the core of the building at both the northern and southern sides to maximise daylight to the apartments.

#### 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.

**Comment:** The development complies with the above requirements as follows:

- At least 67% (8) of apartments are naturally cross-ventilated;
- The overall depths of cross-over or cross-through apartments do not exceed 18 metres, measured glass line to glass line.

Ceiling Heights

The ADG prescribes the following minimum ceiling heights:

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

**Comment:** The development complies with the above relevant requirements as follows:

- All habitable rooms have minimum floor to ceiling heights of 2.7 metres.
- All non-habitable rooms have floor to ceiling heights of at least 2.4 metres or greater.
- The floor to ceiling heights servicing the commercial floor space exceeds 3.3 metres.

Apartment Size

The ADG prescribes the following minimum apartment sizes:

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

**Note:** The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.

**Comment:** The development complies with and in some instances exceeds the above minimum 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 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space).
- Bedrooms have a minimum dimension of 3 metres (excluding wardrobe space).
- Living rooms or combined living/dining rooms have a minimum width of:

- 3.6 metres for studio and 1 bedroom apartments.
- 4 metres for 2 and 3 bedroom apartments.
- The width of cross-over or cross-through apartments are at least 4 metres internally to avoid deep narrow apartment layouts.

**Comment:** The development complies 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 <sup>2</sup>	-
1 Bedroom apartments	8m <sup>2</sup>	2 metres
2 Bedroom apartments	10m <sup>2</sup>	2 metres
3+ Bedroom apartments	12m <sup>2</sup>	2.4 metres

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

The ADG also prescribes for apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3 metres.

**Comment:** The proposal meets and in some instances exceeds the minimum area and depth requirements for balconies outlined above.

Common Circulation and Spaces

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

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

**Comment:** The development complies with the above relevant requirements as follows:

- The maximum number of apartments off a circulation core on a single level is 4.

Storage

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

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

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

**Comment:** The development complies with and in some instances exceeds the above minimum requirements.

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

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

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

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

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

The application was referred to Transport for NSW (TfNSW) for comment. TfNSW raised no particular objection to the proposal however made the following advisory comments for Council's consideration:

1. *The layout of the proposed car parking area associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, parking bay dimensions, internal heights/clearances) should be in accordance with AS 2890.1- 2004, AS2890.6-2009 and AS 2890.2-2018. Parking Restrictions may be required to maintain the required sight distances at the driveway;*
2. *All vehicles should be able to enter and exit in a forward direction;*
3. *Sight distances from the proposed vehicular crossing to vehicles on Crystal Street should be in accordance with the Austroads Guide to Road Design: Part 4A: Unsignalised and Signalised Intersections (Section 3 – Sight Distance) and AS 2890. Vegetation and proposed landscaping/fencing must not hinder sight lines to and from the vehicular crossings to motorists, pedestrians and cyclists;*
4. *Any drainage discharge to the Crystal Street drainage system should ensure that the discharge from the site post development is no greater than pre development for a 1 in 10 year storm event; and*
5. *TfNSW is supportive of a single access point being provided. This access should be designed to allow for the simultaneous entry and exit of a vehicle and not to compromise the efficiency and safety of the adjoining classified road/Crystal Street. As such, TfNSW is supportive of a driveway being provided that is a minimum of 5.5m wide from the kerb to 6m past the property boundary.*

The application was reviewed by Council's Development Engineer who agrees that the comments of TfNSW need to be addressed. While the development is readily capable of complying with a majority of the requirements, the vehicle access point will need to be widened which will result in amendments to the driveway crossing and ground floor façade of the building. In order to ensure the development does not impact the safety and ongoing operation

of the classified road, a Deferred Commencement condition is recommended addressing the comments of TfNSW. This will also require amendment to the ground floor commercial tenancy to accommodate the increased width required for vehicular access, hence the requirement for that information to be remitted to Council for a final review.

Subject to the imposition of appropriate conditions and submission of amendments as part of a deferred commencement, the application is considered acceptable with regard to Clause 101 of the *SEPP Infrastructure 2007*.

*Impact of road noise or vibration on non-road development (Clause 102)*

Clause 102 of the *SEPP Infrastructure 2007* relates to the impact of road noise or vibration on non-road development on land in or adjacent to a road corridor or any other road with an annual average daily traffic volume of more than 40,000 vehicles. Under that clause, a development for the purpose of a residential building requires that appropriate measures are incorporated into developments to ensure that set noise levels are not exceeded.

The applicant submitted a Noise Assessment Report with the application that demonstrates that the development has the ability to comply with the LAeq levels stipulated in Clause 102 of the SEPP. Appropriate conditions are included in the recommendation.

*5(a)(v) State Environmental Planning Policy (Vegetation in Non-Rural Areas) (Vegetation SEPP)*

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

The application seeks the removal of vegetation from within the site. The application was referred to Council's Tree Management Officer who supports the proposal given the level of landscaping achieved by the proposal. While the development lacks the required deep soil area for planting, this is considered reasonable given the mixed use zone and the limited ability to provide deep soil area in this circumstance.

Overall, the proposal is considered acceptable with regard to the *Vegetation SEPP* and Part 2.20 of MDCP 2011 subject to the imposition of conditions, which have been included in the recommendation of this report.

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

The property is zoned B4 Mixed Use under the MLEP 2011. The development is categorised as **Shop top housing** which is permissible with consent within the zone.

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

Standard	Proposal	Noncompliance	Complies
<b>Height of Building</b> Maximum permissible: 14 metres	13.7 metres	NA	Yes
<b>Floor Space Ratio</b> Maximum permissible: 1.5:1 or 713.4sqm	1.68:1 or 802.4 sqm	89sqm or 11%	No

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

Control	Proposed	Compliance
Clause 1.2 Aims of Plan	<p>The proposal is consistent with the relevant aims of the plan as follows:</p> <ul style="list-style-type: none"> <li>The proposal is an efficient use of land and will assist in the vitalisation of the B4 Mixed Use zone;</li> <li>The proposal assists in the provision of residential and employment densities within an appropriate location nearby to public transport, whilst protecting the residential amenity of the surrounds; and</li> <li>The design of the proposal is considered to be of a high standard and has a satisfactory impact on the private and public domain, given its bulk and scale, relationship with the public domain and materiality.</li> </ul>	Yes
Clause 2.3 Zone objectives and Land Use Table  <i>Zone: B4 Mixed Use</i>	<p>The proposal satisfies the clause as follows:</p> <ul style="list-style-type: none"> <li>The proposed development is consistent with the identified objectives of the B4 Mixed Use zone, as it integrates a mixture of land uses, (residential and commercial) within an accessible location close to public transport; and</li> <li>The proposal supports the renewal of the Petersham South Precinct by providing new services in a development which displays good design.</li> </ul>	Yes
Clause 2.7 Demolition requires development consent	The application does not seek demolition as part of this proposal as this has already been approved by way of a Complying Development Certificate	NA
Clause 4.3 Height of building (max. 14m)	The application proposes a compliant building height of 13.7m.	Yes
Clause 4.4 Floor space ratio (max. 1.5:1 (713.4m <sup>2</sup> ))	The application proposes a maximum floor space ratio of 1.68:1 (802.4m <sup>2</sup> ), which represents a 11% variation to the development standard. See below for discussion.	No
Clause 4.5	The site area and floor space ratio for the proposal has been calculated in accordance with the Clause.	Yes

Calculation of floor space ratio and site area		
Clause 4.6 Exceptions to development standards	The applicant has submitted a variation request in accordance with Clause 4.6 to vary Clause 4.4 – Floor Space Ratio.	See below
Clause 6.5 Development in areas subject to aircraft noise	The site is located within the ANEF 20-25 contour, and as such an Acoustic Report was submitted with the application. The proposal is capable of satisfying this clause as follows: <ul style="list-style-type: none"> <li>A condition has been included in the development consent to ensure that the proposal will meet the relevant requirements of Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2015, thereby ensuring the proposal's compliance with the relevant provisions Cl. 6.5 MLEP 2011 and Part 2.6 of the MDCP 2011, respectively.</li> </ul>	Yes, subject to condition.
Clause 6.6 Airspace operations	The proposal satisfies the clause as follows: <ul style="list-style-type: none"> <li>The Limitation or Operations Surface (OLS) at the site is 54 metres AHD and the development presents a maximum height of 56.3 metres AHD which penetrates the OLS.</li> <li>The application has been reviewed by the Department of Infrastructure, Transport, Regional Development and Communications who accept the breach subject to the imposition of conditions.</li> </ul>	Yes, subject to conditions.

(x) Clause 4.6 – Exceptions to Development Standards

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

- Clause 4.4 – Floor space ratio

The applicant seeks a variation to the floor space ratio development standard under Clause 4.4 of MLEP 2011 by 11% (89 sqm).

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

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the applicable local environmental plan below.

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

- The additional floor space comprises external galleries which link the residential units to the common vertical circulation. They are set back from the side boundaries and mimic the design and built form of the approved development adjoining at 124 Crystal Street.
- The proposal will have no adverse impact on adjoining properties with regard to solar access or overshadowing. The development has potential to only impact on solar access to windows and open space of the site to the rear at 261 Trafalgar Street and to the south at 124 Crystal Street, however overshadowing is compliant with the requirements of the ADG and DCP.
- The proposal will not result in any adverse impact on the adjoining properties with regard to overlooking or loss of privacy.
- The built form and massing of the development is consistent with the objectives of the DCP in relation to the B4 zone within this part of Petersham and is compatible with the approved built form of the development at 124 Crystal Street. This ensures a unified and coherent streetscape character which is consistent with Council's desired future character for the area.
- The proposed built form provides a suitable transition to the adjoining property to the north which is likely to undergo a similar transition to higher density development in the future.
- The proposal does not impact on views or outlook, and there are no significant adverse impacts to neighbouring properties.
- The variation enables the provision of lightweight, external galleries which will be open to the elements and used only for circulation purposes. Each dwelling is compliant with minimum space and balcony requirements and the galleries are designed to be spaces to move through, rather than to congregate.
- To require strict compliance would result in removal of the galleries and require reconfiguration of the common vertical circulation to provide two cores. This is an inefficient use of the space and would likely result in a reduction of commercial ground floor space and/or residential accommodation space. There would be no planning gain to this as the built form to both the front and rear of the site would remain unchanged and there would be no amenity benefits resulting from such a change.

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

It is considered the development is in the public interest because it is consistent with the objectives of the B4 Mixed Use zone, in accordance with Clause 4.6(4)(a)(ii) of Marrickville Local Environmental Plan 2011 for the following reasons:

- The development presents a mix of compatible land uses and supports renewal of this area of Petersham which is undergoing an increase in density and uses and is consistent with the desired future character of the area.
- The development is in an accessible area and provides suitable housing and a commercial use within walking distance of a range of public transport options.

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

- The development is of a bulk, scale and form generally consistent with the desired future character of this area within the Petersham South Precinct and given the zoning of the site.
- The development results in dwellings and a commercial space that generally comply with the relevant planning controls and exhibit suitable amenity given the constraints of the site, thereby being consistent with the desired future character of the area.
- Despite the FSR variation, the development does not result in any adverse amenity impacts to neighbouring properties (such as excessive overshadowing, privacy impacts or visual bulk impacts) and generally complies with the objectives and controls within the ADG and MDCP 2011 aiming to protect neighbouring amenity.
- While the development departs from some requirements of the ADG, most notably solar access achieved to the proposed apartments, this is not as a result of the proposed FSR variation and a reduction in the GFA and scale of the building to achieve strict compliance with the development standard and would not result in a greater ability to achieve compliance with other built form and amenity controls.
- The proposal is of a high quality design and form that will enhance the public domain in this portion of Crystal Street.

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

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of MLEP 2011. For the reasons outlined above, there are sufficient planning grounds to justify the departure from Clause 4.4 – Floor space ratio and it is recommended the Clause 4.6 exception be granted.

### 5(b) Draft Environmental Planning Instruments

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

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

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

The Draft IWLEP 2020 contains the following matters affecting the subject site:

#### B4 Mixed Use objectives

The following additional relevant objectives within the B4 Mixed Use zone:

- *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 without adversely impacting on the role or viability of nearby centres.*
- *To facilitate a high standard of urban design and pedestrian amenity that creates open and lively facades, contributes to achieving a sense of place for the local community and caters for the needs of all ages and abilities.*

**Comment:** The development complies with the above draft provisions as follows:

- The provision of the ground floor commercial space and residential apartments above, will assist to support and enhance the functions of the surrounding B4 Mixed Use zone;
- The site is in an accessible location within close proximity to public transport and integrates a suitable commercial and residential use into the area; and
- The proposal supports the renewal of the Petersham South Precinct and the modest commercial component of the development will not adversely impact the existing (and expanding) Petersham commercial centre.
- As detailed throughout this report, the proposal achieves a high standard of design and presents an active street presentation.

#### Clause 4.3 Height of buildings

The following additional relevant provisions of Clause 4.3 Height of buildings:

- (a) to ensure building height is consistent with the desired future character,*
- (b) to minimise adverse environmental and amenity impacts on adjoining properties, the public domain, heritage conservation areas and heritage items,*
- (c) to provide an appropriate transition in height to heritage items, heritage conservation areas and differing built forms.*

**Comment:** The development complies with the above draft provisions as follows:

- The proposed building height is under the current allowed building height development standard and is consistent with nearby, shop top housing developments;
- As detailed throughout this report, the proposal has acceptable amenity impacts on the built and natural environment and is considered compatible with the surrounding area; and
- The building height steps to the rear of the site to respect the adjoining lower density residential zone.

#### Clause 4.4 Floor space ratio

The following additional relevant provisions of Clause 4.4 Floor space ratio:

- (a) to appropriately regulate the density of development, built form and land use intensity based on the capacity and location of existing and planned infrastructure,*
- (b) to ensure that development is compatible with the desired future character,*
- (c) to provide an appropriate transition between development of different densities,*

- (d) to minimise adverse environmental and amenity impacts on adjoining properties, the public domain, heritage conservation areas and heritage items,*
- (e) to provide a suitable balance between landscaping, open space, and built form to increase the tree canopy and to protect the use and enjoyment of private properties and public domain.*

**Comment:** As detailed throughout this assessment report, it is considered the development will have an acceptable impact on the built and natural environments and provides an appropriate transition to lower density development, whilst achieving the desired future character of the B4 Mixed Use zone and the Petersham South Precinct. Also, as discussed under Section 5(a)(iv) above, while the proposal does not comply with the development standard, a variation is considered reasonable in the circumstances under Clause 4.6.

#### Clause 6.5 - Stormwater management

The following additional relevant provisions of Clause 6.5 Stormwater management:

- (1) The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters.*
- (2) This clause applies to all land in residential, business and industrial zones.*
- (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
  - (a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
  - (b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
  - (f) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

**Comment:** Subject to conditions, the proposal will appropriately manage stormwater.

#### Clause 6.16 - Residential accommodation in certain business zones

The following additional relevant provisions of Clause 6.16 Residential accommodation in certain business zones:

- (1) The objective of this clause is to control the location of residential accommodation permitted in the zones to which this clause applies to support the vitality of centres.*
- (2) This clause applies to land on land in the following zones:*
  - (a) Zone B1 Neighbourhood Centre,*
  - (b) Zone B2 Local Centre,*
  - (c) Zone B4 Mixed Use.*
- (3) Development consent must not be granted to development for the purpose of residential accommodation on land to which this clause applies unless the consent authority is satisfied that:*
  - (a) the building comprises mixed use development, including residential accommodation, and*
  - (b) the building will have an active street frontage, and*
  - (c) the building is compatible with the desired future character of the area in relation to its bulk, form, uses and scale.*
- (4) In this clause, a building has an **active street frontage** if all floor space on the ground floor of the building on the primary street frontage is used for a purpose other than residential accommodation (with the exception of areas for access or service purposes).*

**Comment:** The development complies with the above draft provisions as follows:

- The building is considered shop top housing, as it includes commercial floor space on the ground and subject to a future application, can readily be used for the purposes of a shop or food and drink premises, which will provide an active street frontage. In addition, residential accommodation in the form of apartments is provided directly above;
- The building will have an active street frontage facilitated by the proposed expanded commercial floor space, which occupies the primary frontage and is to be serviced by glazing; and
- The building is compatible with the desired future character of the area and nearby shop top housing developments in terms of its bulk, form and scale, which has been addressed within this report.

#### Clause 6.19 Design Excellence

The following additional relevant provisions of Clause 6.19 Design Excellence:

- (1) *The objective of this clause is to deliver the highest standard of architectural, urban and landscape design.*
- (2) *This clause applies to development involving the construction of a new building or external alterations to an existing building:*
  - (a) *on land where the maximum height shown for the land on the Height of Buildings Map is 14 metres ("N 14.0") or greater, or*
  - (b) *that is, or will be, at least 14 metres in height.*
- (3) *Development consent must not be granted to development to which this clause applies unless the consent authority is satisfied that the proposed development exhibits design excellence.*
- (4) *In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:*
  - (a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
  - (b) *whether the form and external appearance of the development will improve the quality and amenity of the public domain,*
  - (c) *whether the development detrimentally impacts on view corridors and landmarks,*
  - (d) *the requirements of the applicable Development Control Plan,*
  - (e) *how the development addresses the following matters:*
    - (i) *the suitability of the land for development,*
    - (ii) *existing and proposed uses and use mix,*
    - (iii) *heritage issues and streetscape constraints,*
    - (iv) *the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
    - (v) *bulk, massing and modulation of buildings,*
    - (vi) *roof design,*
    - (vii) *street frontage heights,*
    - (viii) *environmental impacts such as sustainable design, overshadowing, visual and acoustic privacy, wind and reflectivity,*
    - (ix) *the achievement of the principles of ecologically sustainable development,*

- (x) pedestrian, cycle, vehicular and service access and circulation requirements, including the permeability of any pedestrian network,
- (xi) impact on, and any proposed improvements to, the public domain,
- (xii) appropriate ground level public domain interfaces,
- (xiii) excellence and integration of landscape design.

(5) In this clause: applicable Development Control Plan means the Inner West Comprehensive Development Control Plan for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill; Leichhardt Development Control Plan 2013; or Marrickville Development Control Plan 2011 as relevant and in force on the commencement of this Plan.

**Comment:** The quality of the proposed design has been assessed in detail with respect to above provisions under Section 5(a)(iv) *Marrickville Local Environment Plan 2011* (MLEP 2011) and Section 5(c) Development Control Plans and overall is considered satisfactory in this regard.

### 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 (MDCP 2011):

Control	Proposed	Compliance
<i>Part 2 – Generic Provisions</i>		
Part 2.1 – Urban Design	The proposal has been designed having regard to the 12 relevant urban design principles outlined in Part 2.1 as follows: <ul style="list-style-type: none"> <li>• The proposal does not impact the definition between the public and private domain and is appropriate for the character of the locality given its form, massing, siting and detailing; and</li> <li>• The proposal enhances the existing character of the streetscape.</li> </ul>	Yes
Part 2.3 – Site and Context Analysis	The applicant submitted a site and context analysis as part of the application that satisfies the controls contained in Part 2.3 of MDCP 2011.	Yes
Part 2.5 – Equity of Access and Mobility	Refer to discussion below table.	No, but acceptable subject to conditions
Part 2.6 – Acoustic and Visual Privacy	<i>Residential</i> The proposal will have a satisfactory impact on visual and acoustic levels of the surrounds in accordance with Part 2.6 as follows: <ul style="list-style-type: none"> <li>• The proposal is built to each of the site’s respective side boundaries; treated by blank walls, with an open courtyard in its middle portion to facilitate light and cross ventilation for the dwellings, which are orientated internally. Therefore, views or</li> </ul>	Yes, subject to conditions.

	<p>overlooking across side boundaries will not be facilitated;</p> <ul style="list-style-type: none"> <li>The proposed rear separation distances are considered satisfactory relative to the surrounding context (refer to ADG discussion above); and</li> <li>The proposed balconies overlook the public domain and not the private domain of nearby properties.</li> </ul> <p><i>Commercial</i></p> <ul style="list-style-type: none"> <li>The use of the ground floor commercial floor space will be subject to a separate application; and</li> <li>It is considered the proposal as presented will not prevent the commercial floor space to be appropriately acoustically treated as required, depending on its intended use.</li> </ul>	
<p>Part 2.7 – Solar Access and Overshadowing</p>	<p>Refer to Section 5(a)(ii) above.</p>	<p>No, however, satisfactory on merit.</p>
<p>Part 2.9 – Community Safety</p>	<p>The development is reasonable having regard to community safety for the following reasons:</p> <ul style="list-style-type: none"> <li>The development has been designed to overlook the public domain and communal open spaces.</li> </ul>	<p>Yes</p>
<p>Part 2.10 – Parking</p> <p><i>Parking Area 2</i></p> <p><u>Residential parking</u></p> <ul style="list-style-type: none"> <li>6 car parking spaces</li> <li>1 visitors parking space</li> <li>2 adaptable parking spaces</li> <li>1 adaptable visitor parking space</li> <li>7 bicycle parking spaces</li> </ul> <p><u>Commercial parking</u></p> <ul style="list-style-type: none"> <li>1 car parking space</li> </ul>	<p>The proposal complies with the relevant provisions as follows:</p> <ul style="list-style-type: none"> <li>5 car parking spaces are provided.</li> <li>1 visitors' space is provided.</li> <li>2 adaptable parking spaces are provided.</li> <li>7 bicycle parking spaces are provided.</li> <li>1 commercial parking space is provided.</li> </ul> <p>The development represents a short fall of 1 residential parking space and 1 adaptable visitors' space. However, given 1 regular visitors space is provided, the development is capable of providing the 6 residential parking spaces needed. Therefore, the development effectively represents a shortfall of 2 visitors' spaces, 1 regular space and 1 adaptable. Given the small lot and narrow lot size, the ability to provide parking is limited.</p> <p>However, given the accessible location of the site, the site has good access to public transport, including buses along Crystal Street and</p>	<p><b>No</b>, however, satisfactory on merit.</p>

	<p>Trafalgar Street and the nearby Petersham train station, which will supplement the above variation.</p> <p>In light of the above, it is considered the proposal will have an acceptable impact in terms of traffic and parking.</p>	
Part 2.21 – Site Facilities and Waste Management	<p>The proposal satisfies the relevant provisions of Part 2.21 as follows:</p> <ul style="list-style-type: none"> <li>• The application was accompanied by a waste management plan in accordance with the Part;</li> <li>• Standard conditions are recommended to ensure the appropriate management of waste during the construction of the proposal;</li> <li>• Sufficiently sized areas for waste storage have been provided for both the residential and commercial components of the development; and</li> <li>• Standard conditions have been included to ensure access ways and gradients are satisfactory to facilitate the removal of waste.</li> </ul>	Yes, subject to conditions.
Part 2.24 – Contaminated Land	Refer to Section 5(a)(i). above.	Yes
Part 2.25 – Stormwater Management	<p>The development is capable of satisfying the relevant provisions of Part 2.25 as follows:</p> <ul style="list-style-type: none"> <li>• Standard conditions are recommended to ensure the appropriate management of stormwater.</li> </ul>	Yes, subject to conditions.
<i>Part 5 – Commercial and Mixed Use</i>		
Part 5.1.1 – General Objectives	<p>The proposal meets the relevant objectives of Part 5.1.1 as follows:</p> <ul style="list-style-type: none"> <li>• The proposed development responds to its context and is compatible with the surrounding built environment and public domain;</li> <li>• The proposal achieves a high quality of urban design;</li> <li>• The proposal assists in revitalising the surrounding business centre; and</li> <li>• Subject to Deferred Commencement condition, the proposal promotes an accessible and safe environment.</li> </ul>	Yes, subject to condition.
Part 5.1.4 – Building form	The development generally complies with the relevant provisions of Part 5.1.4 as follows:	<b>No</b> - partial compliance,

	<p><i>FSR &amp; Height</i></p> <ul style="list-style-type: none"> <li>• The proposal complies with the maximum building height development standard.</li> <li>• The proposed variation to FSR is acceptable having regard to provisions of Clause 4.4 and Clause 4.6.</li> <li>• The proposed density of the development is appropriate to the contextual constraints of the subject site and is consistent with nearby shop-top housing developments and the desired future character of the precinct.</li> </ul> <p><i>Front massing</i></p> <ul style="list-style-type: none"> <li>• The proposal is consistent with the front massing requirements, as its street front portion has a height below 12 metres and is generally a maximum of 3 storeys; and</li> <li>• The street front portion at ground level is built to the boundary, to reinforce the existing, continuous street edge.</li> </ul> <p><i>Upper level massing &amp; Rooftop level massing</i></p> <ul style="list-style-type: none"> <li>• Whilst level 4 encroaches into the required 6m setback for upper levels, the proposal is still considered satisfactory, as level 4 will still appear visually subservient and sympathetic to the predominant 3 storey street wall height being developed in this portion of Crystal Street.</li> <li>• Although the rooftop massing (level 4) contains a dwelling, it has an acceptable impact in terms of visual bulk, privacy and overshadowing on the surrounding built environment. In addition, as discussed above, given its setback and siting, it is considered to have an acceptable relationship with the predominant 3 storey, street wall height.</li> </ul> <p><i>Rear massing</i></p> <ul style="list-style-type: none"> <li>• Although the proposal does not comply with the rear massing requirement of being contained within a 45 degree sloping plane from a point 5 metres vertically above the ground level of the property being developed, measured at the rear boundary, the proposal is still considered acceptable, as the</li> </ul>	<p>however acceptable on merit.</p>
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	<p>encroachment is minor and the rear massing has an acceptable impact on the surrounds in terms of visual bulk, overshadowing and privacy impacts.</p> <ul style="list-style-type: none"> <li>In addition, the built form satisfactorily steps down to the rear of the site allowing for an appropriate transition to the adjoining lower density zone.</li> </ul> <p><i>Depth</i></p> <ul style="list-style-type: none"> <li>The proposal provides for satisfactory building depth, as central voids are proposed, which breaks up the building and provides all apartments with dual aspects, allowing them improved access to sunlight and ventilation.</li> </ul> <p><i>Building separation</i></p> <ul style="list-style-type: none"> <li>The proposal provides for satisfactory building separation. This matter is discussed in detail under Section 5(a)(ii) above.</li> </ul>	
<p>Part 5.1.5 – Building detail</p>	<p>The development generally complies with the relevant provisions of Part 5.1.5 as follows:</p> <p><i>Building frontages</i></p> <ul style="list-style-type: none"> <li>The proposal exhibits high quality contemporary architecture and an infill development that complements the surrounding buildings and streetscape.</li> <li>The building incorporates positive elements of the surrounding streetscape and desired future characteristics of this portion of the Petersham South Precinct in terms of building form, massing, materials and finishes.</li> </ul> <p><i>Active street frontage uses and shopfront design</i></p> <ul style="list-style-type: none"> <li>The proposed commercial occupancy will be less than 12m in width;</li> <li>The proposed shopfront levels satisfactorily relate to the existing levels of the footpath;</li> <li>The proposed commercial floor space is provided with appropriate facilities in terms of waste management, disabled access, sanitary requirements and vehicle parking/loading; and</li> <li>The active frontage component of the building is satisfactorily built to the street</li> </ul>	<p>Yes</p>

	<p>edge, contains a sufficient amount of clear glazing, is serviced by an awning and provides appropriately located entry points.</p>	
<p>Part 5.1.6 – Building use</p> <p><u>Dwelling mix</u></p> <p><i>i. Studio 5 – 20%</i>  <i>ii. 1 bedroom 10 – 40%;</i>  <i>iii. 2 bedroom 40 – 75%; and</i>  <i>iv. 3 bedroom or bigger 10 – 45%.</i></p>	<p>The proposal generally complies with the relevant provisions of Part 5.1.6, except for the dwelling mix requirements, as the following is proposed:</p> <ul style="list-style-type: none"> <li>• Studio: 3 or 25%</li> <li>• 1bd: 7 or 58.3%</li> <li>• 2bd: 2 or 16.6%</li> <li>• 3bd 0 or 0%</li> </ul> <p>The proposal does not meet the requirements, however, still meets the objectives; as it provides a choice of dwelling types, including 2 bedroom apartments, which are generally undersupplied in the locality.</p>	<p><b>No</b>, however acceptable on merit.</p>
<p>Part 5.1.7 – Vehicle access, parking, loading and services</p>	<p>The proposal complies with the relevant provisions of Part 5.17 as follows:</p> <ul style="list-style-type: none"> <li>• The proposed vehicle access is located from Crystal Street being the only place available for access.</li> <li>• Loading is possible from the rear of the ground level;</li> <li>• Building services are predominately located within the central portion of the development, thereby not affecting the provision of an active street frontage along Crystal Street;</li> <li>• Appropriate security measures are proposed from the rear to prevent public access into the parking/vehicle loading areas; and</li> <li>• The garage doors will not encroach over the footpath.</li> </ul> <p>The development does not provide a 6 metre vehicle access point as required. However, deferred commencement conditions are recommended to address this. See discussion at Section 5(a)(iv).</p>	<p>Yes, subject to conditions.</p>
<p><i>Part 9 – Strategic Context</i></p>		
<p>Part 9.6 – Petersham South Planning Precinct (Precinct 6)</p>	<p>The proposal is consistent with the desired future character provisions of the precinct as follows:</p> <ul style="list-style-type: none"> <li>• The proposal allows for greater scale of development, which is conveniently</li> </ul>	<p>Yes</p>

	<p>located to local shops, services and public transport;</p> <ul style="list-style-type: none"> <li>• The proposal complements the siting, scale, form, proportion, materiality and colour of the emerging mixed use streetscape;</li> <li>• The proposal facilitates urban renewal in an appropriately zoned mixed use location and allows for a substantial change to the streetscape while resulting in high quality public domain;</li> <li>• The proposed shopfront on the ground floor will provide for sufficient activation;</li> <li>• The proposal will have an acceptable impact on both the built and natural environments and will allow for satisfactory levels of amenity for future occupiers, which has been demonstrated throughout this report; and</li> <li>• The proposal provides efficient parking and loading areas for vehicles.</li> </ul>	
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The following provides discussion of the relevant issues:

(i) Part 2.5 - Equity of Access and Mobility

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
<b>Residential Component</b>		
For developments with five (5) or more dwellings, one adaptable dwelling per five or part thereof.	The proposed 12 dwellings require the provision of 3 adaptable dwellings. The proposal provides 2 accessible dwellings (apartments 11 and 12).	<b>No</b> (refer to discussion below table)
Appropriate access for all persons through the principal entrance of a building and access to any common facilities	Appropriate access is provided for all persons through the principal entrance to the premises.	Yes
One (1) accessible parking space for every adaptable dwelling	The proposal includes 2 accessible car parking spaces. A shortfall of 1 space	<b>No</b> (refer to discussion below table)

Commercial Component		
Appropriate access is provided for all persons through the principal entrance to the premises.	Access provided through the principal entry of each respective premises.	Yes
A continuous path of travel through the main entrance.	A level entrance is provided throughout.	Yes

The proposal provides 2 of the 3 prescribed adaptable dwellings.

It is considered that the proposal can accommodate an additional adaptable unit and therefore satisfy the requirements of MDCP 2011 for unit numbers but not for accessible car parking spaces. It is not important which level of the building the additional adaptable unit is on as the installation of the vertical lift will provide appropriate access.

It is therefore considered appropriate to require three (3) adaptable units to be provided but, for the reasons outlined below, it is not practicable to require one (1) disabled parking space to be allocated to each adaptable dwelling. To address this and meet the intent of the provisions of MDCP 2011, without expansion of the basement (as the additional unit will require the provision of an additional accessible parking space), it is considered that the third unit which is required to be adaptable, be a “Silver Standard Liveable” apartment. This ensures the unit meets the intent of the DCP provisions, yet does not require the stringent enforcement of parking amendments for an accessible space which would further eliminate parking spaces within an already constrained basement.

In this instance this outcome is considered acceptable given the site is in a highly accessible location nearby to Petersham Train Station and regular bus services along Crystal Street.

Having regard to the above a condition is included in the recommendation requiring the provision of a ‘liveable unit’ in addition to the proposed 2 adaptable units with plans being submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

Despite the above, the requirements of MDCP 2011 are effectively superseded by the introduction of the Premises Standards. An assessment of whether or not these aspects of the proposal fully comply with the requirements of relevant Australian Standards and the Premises Standards has not been undertaken as part of this assessment. That assessment would form part of the assessment under the Premises Standards at the Construction Certificate stage.

**5(d) The Likely Impacts**

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

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

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

**5(f) Any submissions**

The application was notified in accordance with Council’s Community Participation Plan for a period of 14 days to surrounding properties.

The following issues raised in submissions have been discussed in this report:

- Landscaping – see Section 5(a)(ii) and Section 5(c)
- Privacy – see Section 5(a)(ii) and Section 5(c)
- Built form / scale - see Section 5(c)

In addition to the above issues, the submissions raised the following concerns which are discussed below:

Concern	Comment
Demolition of existing building	The submission seeks the retention of the existing period dwelling on site due to its heritage value. The existing building on site is not protected from demolition under the relevant planning controls and is not heritage listed. Additionally, the site is within a B4 Mixed Use zone which would not envisage the retention of the existing building. It is also noted that a CDC has been obtained for the dwellings' demolition under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
Sustainability	Concern is raised regarding sustainable development. The proposal incorporates a reasonable level of landscaping and plantings and complies with BASIX requirements which is considered reasonable.

### 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 Engineering.
- Urban Forests.
- Commercial Waste.
- Architectural Excellence Panel.

### 6(b) External

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

- Australian Government – Department of Infrastructure, Transport, Regional Development and Communications.
- Transport for NSW (RMS).

## 7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$166,782.43 would be required for the development under Marrickville Section 94/94A Contributions Plan 2014. A condition requiring that contribution to be paid is included in the recommendation.

## 8. Conclusion

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

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

The application is considered suitable for the issue of a deferred commencement consent subject to the imposition of appropriate terms and conditions.

## 9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 of the *Marrickville Local Environmental Plan 2011* to vary Clause 4.4 of the LEP. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unreasonable in the circumstances of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant a deferred commencement approval to Development Application No. DA201900446 to construct a four storey mixed use building comprising a retail tenancy at ground floor level, basement parking and twelve residential units above at 122 Crystal Street, Petersham subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

### CONDITIONS OF CONSENT

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

#### A. Compliance with TfNSW requirements

This consent will not operate and it may not be acted upon until the Council or its delegate is satisfied that the following matters and amendments required by Transport for NSW (TfNSW) have been met:

1. The layout of the proposed car parking area associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, parking bay dimensions, internal heights/clearances) should be in accordance with AS 2890.1- 2004, AS2890.6-2009 and AS 2890.2-2018. Parking Restrictions may be required to maintain the required sight distances at the driveway.
2. All vehicles should be able to enter and exit in a forward direction.
3. Sight distances from the proposed vehicular crossing to vehicles on Crystal Street should be in accordance with the Austroads Guide to Road Design: Part 4A: Unsignalised and Signalised Intersections (Section 3 – Sight Distance) and AS 2890.1. Vegetation and proposed landscaping/fencing must not hinder sight lines to and from the vehicular crossings to motorists, pedestrians and cyclists.
4. Any drainage discharge to the Crystal Street drainage system should ensure that the discharge from the site post development is no greater than pre development for a 1 in 10 year storm event.
5. TfNSW is supportive of a single access point being provided. This access should be designed to allow for the simultaneous entry and exit of a vehicle so as not to compromise the efficiency and safety of the adjoining classified road/Crystal Street. As such, TfNSW is supportive of a driveway being provided that is a minimum of 5.5m wide from the kerb to 6m past the property boundary.

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

### DOCUMENTS RELATED TO THE CONSENT

#### 1. Documents related to the consent

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DA101 Rev B	Site Plan	19.06.2020	Fuse Architecture

DA102 Rev B	Basement Level 1	19.06.2020	Fuse Architecture
DA103 Rev B	Ground Floor Plan (Level 1)	19.06.2020	Fuse Architecture
DA104 Rev C	Level 2 Floor Plan	29.07.2020	Fuse Architecture
DA105 Rev B	Level 3 Floor Plan	19.06.2020	Fuse Architecture
DA106 Rev B	Level 4 Floor Plan	19.06.2020	Fuse Architecture
DA107 Rev B	Roof Plan	19.06.2020	Fuse Architecture
DA201 Rev B	Elevations	19.06.2020	Fuse Architecture
DA202 Rev B	Elevations	19.06.2020	Fuse Architecture
DA203 Rev B	Elevations	19.06.2020	Fuse Architecture
DA204 Rev B	Elevations	19.06.2020	Fuse Architecture
DA301 Rev B	Sections	19.06.2020	Fuse Architecture
DA302 Rev C	Sections	29.07.2020	Fuse Architecture
DA303 Rev B	Sections	19.06.2020	Fuse Architecture
DA304 Rev C	Sections	29.07.2020	Fuse Architecture
1056420M_02	BASIX Certificate	12.11.2019	Credwell Energy
(1 sheet)	Schedule of Finishes	undated	Fuse Architecture
ES7754/4 Rev 0	Remediation Action Plan	08.09.2020	Aargus

As amended by the conditions of consent.

**FEES**

**2. Security Deposit - Custom**

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

<b>Security Deposit:</b>	\$32,400
<b>Inspection Fee:</b>	\$230.65

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

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

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

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

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

**3. Section 7.11 (Former Section 94) Contribution**

Prior to the issue of a Construction Certificate works written evidence must be provided to the Certifying Authority that a monetary contribution of \$166,782.43 indexed in accordance with Marrickville Section 94/94A Contributions Plan 2014 ("CP") has been paid to the Council.

The above contribution is the contribution applicable as at 7 September 2020.

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

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

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

Public Amenities Type:	Contribution \$
Recreation Facilities	142,144.73
Community Facilities	18,313.89
Traffic Facilities	3,053.57
Plan Administration	3,270.24
<b>TOTAL</b>	<b>166,782.43</b>

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

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

The contribution must be paid either in cash, by unendorsed bank cheque (from an Australian Bank only), via EFTPOS (Debit only) or credit card\*. Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.

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

**4. Long Service Levy**

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

**GENERAL CONDITIONS**

**5. Awnings with Lighting**

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

Additionally, all construction plans shall show the awning on the Crystal Street frontage to be setback around the street trees. The awning must be setback a minimum of 1200mm from the back of the kerb for a minimum distance of 1500mm either side of each tree location.

**6. Dry-weather Flows**

Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system.

Alternatively, the basement or any below ground structure must be designed to be “tanked” preventing the ingress of seepage or groundwater.

**7. Works to Trees**

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

Tree/location	Approved works
<i>Carya illinoensis</i> (Pecan Nut) - front side <i>Macadamia tetraphylla</i> (Macadamia) - rear side <i>Eriobotrya japonica</i> (Loquat) <i>Pyrus ussuriensis</i> (Manchurian Pear) - street tree	Removal

The removal of any street tree approved by Council must include complete stump removal (to a minimum depth of 400mm) and the temporary reinstatement of levels so that no trip or fall hazards exist until suitable replanting occurs. These works must be completed immediately following the tree/s removal.

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

**8. Car Parking**

The development must provide and maintain within the site:

- a. 6 residential car parking spaces must be paved and line marked;
- b. 1 commercial car parking space must be paved and line marked;
- c. 2 car parking spaces, for persons with a disability must be provided and marked as disabled car parking spaces; and
- d. 7 Bicycle storage capacity within the site.

**9. Residential Flat Buildings – Hot Water Systems**

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

**10. Residential Flat Buildings – Air Conditioning Systems**

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

**11. Residential Flat Buildings – Adaptable Dwellings**

Prior to the issue of a Construction Certificate, the Certifying Authority, must be provided with plans that demonstrate a minimum of two (2) adaptable units being provided in accordance with Part 2.5 of Marrickville Development Control Plan 2011 - Equity of Access and Mobility and one (1) Silver Standard Livable apartment must be provided in accordance with the Livable Housing Design Guidelines. One disabled parking space must be allocated to each adaptable dwelling (i.e. 2 disabled parking spaces).

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

#### **12. Waste Management Plan**

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

#### **13. Erosion and Sediment Control**

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

#### **14. Standard Street Tree Protection**

Prior to the commencement of any work, the Certifying Authority must be provided with details of the methods of protection of all street trees adjacent to the site during demolition and construction.

#### **15. Verification of Levels and Location**

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

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

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

#### **17. Use - Commercial Premises**

Separate Development Consent or Complying Development Certificate must be obtained for the use of the ground floor shop/commercial suite prior to the occupation of that part of the premises.

#### **18. Airspace - Operations Limitation Surface**

The development must comply with the following conditions of approval under The Airports (Protection of Airspace) Regulations 1996:

- a. The building must not exceed a maximum height of 56.3 meters AHD, this includes all lift overruns, vents, chimneys, aerials, antennas, lightening rods, any roof top garden plantings, exhaust flues, etc.

- b. Separate approval must be sought under the Regulations for any equipment (i.e. cranes) required to construct the building. Construction cranes may be required to operate as a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Regulations. Therefore, is it advisable that approval to operate construction equipment (i.e. cranes) be obtained prior to any commitment to construct.
- c. The Proponent must advise Airservices Australia at least three business days prior to the controlled activity commencing by emailing <ifp@airservicesaustralia.com> and quoting YSSY-CA-276.
- d. On completion of construction of the building, the Proponent must provide SASL with a written report from a certified surveyor on the finished height of the building.

#### **19. Separation of Commercial and Residential Waste and Recycling**

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

#### **20. Communal compost/worm farming area**

Within multi-unit residential developments, an area is required to be nominated onsite for communal composting. This area is to be incorporated in any submitted landscaping plans. The operation of this facility is to be the responsibility of the owner's corporation.

### **PRIOR TO ANY DEMOLITION**

#### **21. Hoardings**

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

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

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

#### **22. Construction Traffic Management Plan – Detailed**

Prior to Any Demolition, the Certifying Authority, must be provided with a detailed Construction Traffic Management Plan (CTMP), prepared by an appropriately qualified Traffic Management Consultant with Transport for NSW accreditation. The Certifying Authority must approved by the CTMP prior to the commencement of any works, including demolition. The Certifying Authority must ensure that the CTMP instructs vehicles to use State and Regional and

Collector Roads to the maximum extent with the use of Local Roads as final approach to the development site via the most suitable direct route.

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

- a. Description of the demolition, excavation and construction works;
- b. Site plan/s showing the site, roads, footpaths, site access points and vehicular movements;
- c. Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site);
- d. Proposed route(s) from the arterial (state) road network to the site and the proposed route from the site back to the arterial road network;
- e. Impacts of the work and vehicular movements on the road network, traffic and pedestrians and proposed methods to safely manage pedestrians and construction related vehicles in the frontage roadways;
- f. Any Traffic Control Plans (TCP's) proposed to regulate traffic and pedestrian movements for construction activities (such as concrete pours, crane installation/removal etc.);
- g. Proposed hours of construction related activities and vehicular movements to and from the site;
- h. Current/proposed approvals from other Agencies and Authorities (including Roads and Maritime Services, Police and State Transit Authority);
- i. Any activities proposed to be located or impact upon Council's road, footways or any public place;
- j. Measures to maintain public safety and convenience;
- k. Any proposed road and/or footpath closures;
- l. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
- m. Locations of work zones (where it is not possible for loading/unloading to occur on the site) in the frontage roadways accompanied by supporting documentation that such work zones have been approved by the Local Traffic Committee and Council;
- n. Location of any proposed crane and concrete pump and truck standing areas on and off the site (and relevant approvals from Council for plant on road);
- o. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
- p. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected;
- q. On-site parking area for employees, tradespersons and construction vehicles as far as possible;
- r. Proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period; and
- s. How it is proposed to ensure that soil/excavated material is not transported onto surrounding footpaths and roadways.
- t. Swept Paths for the proposed construction vehicles to demonstrate that the needed manoeuvres can be achieved without causing any nuisance.

### 23. Dilapidation Report

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining properties to the Certifying Authority's satisfaction. In the event that the consent of

the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

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

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

#### **25. Construction Fencing**

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

#### **26. Resource Recovery and Waste Management Plan - Demolition and Construction**

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

### **PRIOR TO CONSTRUCTION CERTIFICATE**

#### **27. Stormwater Drainage System – Major Developments**

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

- a. Stormwater runoff from all surface areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from any rainwater tank(s) by gravity to the kerb and gutter of a public road/directly to Council's piped drainage system via the OSD/OSR tanks;
- b. Comply with Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP.
- c. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage;
- d. The on-site detention system must be designed for all storm events from the 1 in 5 years to the 1 in 100 year storm event, with discharge to a Council controlled storm water system limited to pre-development conditions;
- e. Storage for the 1-year ARI storm event must be provided fully below ground;
- f. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows from the contributing catchment to the OSD/OSR tanks;

- g. OSD may be reduced or replaced by on site retention (OSR) for rainwater reuse in accordance with the relevant DCP that applies to the land. Where this is pursued, the proposed on-site retention (OSR) tanks must be connected to a pump system for internal reuse for laundry purposes, the flushing of all toilets and for outdoor usage such as irrigation. Surface water must not be drained to rainwater tanks where the collected water is to be used to supply water inside the dwelling, such as for toilet flushing or laundry use;
- h. Details of the 1 in 100-year ARI overflow route in case of failure/blockage of the drainage system must be provided;
- i. No nuisance or concentration of flows to other properties;
- j. A WSUD Strategy Report must be provided to ensure the treatment measures proposed to meet Council's water quality targets to comply with the requirements of Part 2.17 of Marrickville Development Control Plan 2011;
- k. A detailed WSUD maintenance plan outlining how all elements of the water quality treatment facility will be maintained and to record annual inspections/maintenance works to be undertaken; and
- l. Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system. Alternatively, the basement must be fully "tanked" so as not to allow the ingress of seepage or groundwater.
- m. No impact to street tree(s).

#### 28. Structural and Geotechnical Report

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

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

### 29. Public Domain Works – Prior to Construction Certificate

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a public domain works design, prepared by a qualified practising Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the *Roads Act 1993* incorporating the following requirements:

- a. The public domain along all frontages of the site inclusive of footpath paving, kerb and street trees must be reconstructed and upgraded in accordance with the Street Tree Master plan and the Public Domain Design Guide or scheme;
- b. The construction of heavy duty vehicular crossings to all vehicular access locations and removal of all redundant vehicular crossings to the site;
- c. New paved footpath and kerb along the frontage of the site including suitable transitions beyond the site. The kerb type (concrete or stone) must be consistent with the majority of kerb type at this location as determined by the Council Engineer;
- d. Cross sections are to be provided at the boundary at a minimum distance of every 5m and at both sides of all pedestrian and vehicular access locations. Note, the cross fall of the footpath must be set at 2.5%. These sections will set the alignment levels at the boundary; and
- e. In the event that the basement cannot be fully tanked the existing Council drainage system must be extended by an appropriately sized pipeline (minimum 375mm diameter) to the frontage of the site, where a kerb inlet pit (minimum 3m lintel) must be installed for direct connection of the site stormwater system.

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

### 30. Tree Planting in the Public Domain

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

- a. One (1) new tree shall be located within the footpath outside the subject property on Crystal Street. The species of tree selected shall be *Lophostemon confertus* (Brush Box);
- b. The tree is to be planted in a suitable location with appropriate setbacks vehicular crossovers, poles, pits and overhead service wires;
- c. The planting stock size shall be minimum 200 litres;
- d. The planting stock shall comply with AS 2303—*Tree Stock for Landscape Use*;
- e. The new tree shall be planted by a qualified horticulturist or arborist, with a minimum qualification of Certificate 3 in Horticulture or Arboriculture;
- f. The tree pit dimensions and staking detail shall be in accordance with Detail 6 on page 133 of the Marrickville Street Tree Master Plan (available online);
- g. The awning configuration must be detailed on the plan. All construction plans shall show the awning on the Crystal Street frontage to be setback around the street trees. The awning must be setback a minimum of 1200mm from the back of the kerb for a minimum distance of 1500mm either side of each tree location; and
- h. It must be demonstrated that adequate soil volume can be provided for the street tree. Tree planting details, soil specification and cell/vault construction details (in accordance with the manufacturer's specifications and details) must be submitted to the satisfaction of Council's Tree Assessment Officer before the issue of a Construction

Certificate. The plans must include dimensions for tree pits and details of a cell/vault style structure with a minimum of 20m<sup>3</sup> available soil volume for each tree. Refer to Appendix 6.6 (Detail 5) of the Marrickville Street Tree Master Plan 2014 for indicative detail, noting that structural soil is not approved in this case. Note: The soil vault may require a drainage system if the surrounding soil type will not naturally provide adequate drainage.

### 31. Light Spill

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

### 32. Enclosure of Fire Hydrant

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

### 33. Sydney Water – Tap In

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

*Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 13 20 92*

### 34. Acoustic Report – Aircraft & Road Noise

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans detailing the recommendations of an acoustic report prepared by a suitably qualified Acoustic Engineer demonstrating compliance of the development with the relevant provisions of Australian Standard AS 2021:2015 Acoustics – Aircraft noise intrusion – Building siting and construction, NSW Planning, Development near Rail Corridors and Busy Roads – Interim Guideline and State Environmental Planning Policy (Infrastructure) 2007.

### 35. Fibre-ready Facilities

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

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

**36. Concealment of Plumbing and Ductwork**

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

**37. Future Food Use - Mechanical Ventilation Provision**

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

**38. Bin Storage Area - Residential**

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

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

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

**39. Bulky Waste Storage Area – Residential**

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

**40. Commercial - Additional Storage Space**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating that an additional space is allocated on site for the storage of reusable items such as crates and pallets and/or compaction equipment.

**41. Waste Transfer Route**

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

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

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

**DURING DEMOLITION AND CONSTRUCTION****43. Contamination – New Evidence**

Any new information revealed during demolition, remediation or construction works that have the potential to alter previous conclusions about site contamination must be immediately notified to the Council and the Certifying Authority.

**44. Construction Hours – Class 2-9**

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

- a. 7:00am to 6:00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b. 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and
- c. at no time on Sundays or public holidays.

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

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

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

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

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

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

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

#### **45. Survey Prior to Footings**

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

#### **46. 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.

### **PRIOR TO OCCUPATION CERTIFICATE**

#### **47. Public Domain Works**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with written evidence from Council that the following works on the Road Reserve have been completed in accordance with the requirements of the approval under Section 138 of the *Roads Act 1993* including:

- a. Heavy duty concrete vehicle crossing(s) at the vehicular access location(s);
- b. The redundant vehicular crossing to the site must be removed and replaced by kerb and gutter and footpath. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb must also be in stone;
- c. The existing concrete footpath across the frontage of the site has been reconstructed in accordance with h approved public domain plans; and
- d. Other works subject to the *Roads Act 1993* approval.

All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications".

#### **48. No Encroachments**

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

#### **49. Protect Sandstone Kerb**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any damaged stone kerb has been replaced.

**50. Parking Signoff – Major Development**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification from a qualified practising Civil Engineer that the vehicle access and off street parking facilities have been constructed in accordance with the development consent and relevant Australian Standards and the following has been implemented within the property.

- a. The car park has been completed, line marked and all signage relating to car parking erected;

**51. Public Domain - Major Developments**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with the works-as-executed plan(s), certified by a Registered Surveyor, that show the as built details in comparison to those shown on the plans approved with the public domain and Roadworks Permit with all relevant levels and details indicated must be marked in red on a copy of the Council stamped plans.

**52. Dilapidation Report – Post-Development**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a second Dilapidation Report addressing the public infrastructure identified in approved predevelopment dilapidation report, including a photographic survey, structural condition and CCTV inspections which was compiled after the completion of works. As the report details public infrastructure, a copy is to be furnished to Council at the same time.

**53. Stormwater Drainage and Road Works – Certification**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that:

- a. All works required to be undertaken on public roads must be designed and constructed in accordance with Council's approved plans;
- b. Video inspection (CCTV) in accordance with WSA 05-2013 Conduit Inspection Reporting Code of Australia has been carried out of completed stormwater drainage works that are to revert to Council by an accredited operator;
- c. Full works-as-executed plans in PDF and CAD format (dwg or dxf files), prepared and signed by a Registered Surveyor have been submitted to Council; and
- d. Certification by a Registered Surveyor that the as-built Council Stormwater pipeline is located totally within the drainage easement.

**54. Works as Executed – Site Stormwater Drainage System**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a suitably qualified Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that:

- a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and
- b. Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed, OSD/OSR system

commissioned and stormwater quality improvement device(s) and any pump(s) installed in accordance with the approved design and relevant Australian Standards have been submitted to Council. The works-as-executed plan(s) must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped Construction Certificate plans.

#### **55. Operation and Management Plan**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with an Operation and Management Plan has been prepared and implemented for the on-site detention and/or on-site retention/re-use facilities and stormwater quality improvement device(s) and pump(s). The Plan must set out the following at a minimum:

- a. The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners; and
- b. The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

#### **56. Easements, Restrictions on the Use of Land and Positive Covenants**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with evidence that Easements, Restrictions on the Use of Land and Positive Covenants under Section 88B or 88E, whichever is relevant to the subject development, of the *Conveyancing Act 1919*, has been created on the title of the property detailing the following :

- a. Restrictions on the Use of Land related to on Site Stormwater Detention and/or /retention system and stormwater quality improvement devices
- b. Positive Covenant related to on-site stormwater detention and/or retention system and stormwater quality improvement devices; and
- c. The wording in the Instrument must be in accordance with Councils Standard wording.

#### **57. Basement/Retaining Wall Signoff – Major Development**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must be provided with certification from a suitably experienced structural and geotechnical engineer, who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng), that the basement and driveway has been constructed in accordance with the development consent and relevant Australian Standards and that the basement is fully tanked construction such that pump-out of subsurface flows is not required.

#### **58. Planting of Street Trees**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with written evidence from Council that the required street trees have been planted in accordance with the approved Street Tree planting Plan / Public Domain Plan.

#### **59. Contamination – Disposal of Soil**

Prior to the issue of an Occupation Certificate, the Certifying Authority must be provided with a validation report confirming that all off site disposal of soil has been classified, removed and

disposed of in accordance with the NSW DECC Waste Classification Guidelines, Part 1: Classifying Waste (EPA 2014), Protection of the Environment Operations (Waste) Regulation 2014 and the *Protection of the Environmental Operations Act 1997*.

#### **60. Contamination – Validation (No Site Audit Statement Required)**

Prior to the issue of an Occupation Certificate, the Certifying Authority and Council must be provided with a Site Validation Report prepared by a suitably qualified environmental consultant with experience in land contamination.

The Validation report must be prepared in accordance with relevant NSW Environment Protection Authority guidelines, including the guidelines *Consultants Reporting on Contaminated Sites* and must confirm that the site has been remediated in accordance with the Remedial Action Plan and clearly state that the site is suitable for the proposed use.

#### **61. Noise From Road & Aircraft – Compliance**

Prior to the issue of an Occupation Certificate, the Certifying Authority must be provided with an acoustic report prepared by suitably qualified acoustic consultant, confirming that the development complies with the requirements of the:

- a. State Environmental Planning Policy (Infrastructure) 2007
- b. NSW Planning, Development near Rail Corridors and Busy Roads – Interim Guideline
- c. Australian Standard 2021-2000: Acoustics - Aircraft noise intrusion - Building siting and construction

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

#### **62. Section 73 Certificate**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a Section 73 Certificate under the *Sydney Water Act 1994*.

### **ON-GOING**

#### **63. Operation and Management Plan**

The Operation and Management Plan for the on-site detention and/or on-site retention/re-use and/or stormwater quality improvement devices and/or Pump facilities, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

#### **64. Vehicles Leaving the Site**

All vehicles must enter and exit the site in a forward direction.

**65. Noise General**

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

**66. Bin Storage**

All bins are to be stored within the site. Bins are to be brought back on site within 12 hours of having been emptied.

**67. 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.

**ADVISORY NOTES****Rock Anchors**

If you are seeking to use temporary anchors, you must make a request for approval for a Permit under Section 138 of the Roads Act 1993. The submission would need to be supported by an engineering report prepared by a suitably qualified Structural Engineer, with supporting details addressing the following issues:

- a. Demonstrate that any structures within the road reserve are of adequate depth to ensure no adverse impact on existing or potential future service utilities in the road reserve. All existing services must be shown on a plan and included on cross-sectional details where appropriate.
- b. Demonstrate how the temporary anchors will be removed or immobilised and replaced by full support from structures within the subject site by completion of the works.
- c. The report must be supported by suitable geotechnical investigations to the efficacy of all design assumptions.

**Electrical Substations**

Should the proposed development require the provision of an electrical substation, such associated infrastructure must be incorporated wholly within the development site and may be the subject of an application for modification of consent.

**Permits**

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

- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;

- c. Mobile crane or any standing plant;
- d. Skip Bins;
- e. Scaffolding/Hoardings (fencing on public land);
- f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.;
- g. Awning or street veranda over the footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

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

#### Easement and Covenant Process

The following documents must be submitted to Council as part of the Easement and Covenant process and requirements, for the site on-site detention/on-site retention/reuse facilities (OSD/OSR) and stormwater quality improvement devices (SQIDS):

##### a. Work-As-Executed Plans

A "Work-as-Executed" plan prepared and signed by a Registered Surveyor must be submitted to the Council's Development Assessment Engineer at the completion of the works showing the location of the detention basin and SQIDS with finished surface levels, contours at 0.2-metre intervals and volume of storage available. Also, the outlet pipe from the detention basin to its connection to the Council's drainage system must be shown together with the following information: location; pipe diameter; gradient; pipe material, i.e. PVC or RCP etc.; pits sizes; orifice size; trash screen at orifice; emergency overflow dimensions and RL; all buildings (including floor levels) and finished ground and pavement surface levels and full details of SQIDS.

##### b. Engineer's Certificate

A qualified practising Civil Engineer must certify on the completion of drainage works in respect of:

- c. The soundness of the storage structure;
- d. The capacity of the detention storage;
- e. The emergency overflow system being in place;
- f. The works being constructed in accordance with the Development Application Consent and Council's Stormwater Management DCP/Code;
- g. The freeboard from maximum water surface level to the finished floor and garage levels are at or above the minimum required in Council's Stormwater Management DCP/Code;
- h. Basement car park pumps are class one zone two; and
- i. OSR pumps and SQIDS have been installed and commissioned.

##### c. Restriction-As-To-User

A "Restriction-as-to-User" must be placed on the title of the subject property to indicate the location and dimensions of the detention area and stormwater quality improvement device(s) (SQIDS). This is to ensure that works, which could affect the function of the stormwater detention system and SQIDS, must not be carried out without the prior consent in writing of the Council.

Such restrictions must not be released, varied or modified without the consent of the Council.

A typical document is available from Council's Development Assessment Engineer.

- d. A Maintenance Schedule.

#### **Subsurface drainage pump-out systems**

Where it is demonstrated by detailed geotechnical investigation that the groundwater flows are minimal or intermittent, a pump out system for groundwater may be considered. An application for modification of development consent with supporting documentation must be submitted. Where this option is to be pursued dry-weather flows of any seepage water will not be permitted through kerb outlets and must be connected directly to a Council stormwater system in accordance with Council requirements.

#### **Insurances**

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

#### **Consent of Adjoining property owners**

This consent does not authorise the applicant, or the contractor engaged to do the tree works to enter a neighbouring property. Where access to adjacent land is required to carry out approved tree works, Council advises that the owner's consent must be sought. Notification is the responsibility of the person acting on the consent. Should the tree owner/s refuse access to their land, the person acting on the consent must meet the requirements of the *Access To Neighbouring Lands Act 2000* to seek access.

#### **Arborists standards**

All tree work must be undertaken by a practicing Arborist. The work must be undertaken in accordance with AS4373—*Pruning of amenity trees* and the Safe Work Australia Code of Practice—*Guide to Managing Risks of Tree Trimming and Removal Work*. Any works in the vicinity of the Low Voltage Overhead Network (including service lines—pole to house connections) must be undertaken by an approved Network Service Provider contractor for the management of vegetation conflicting with such services. Contact the relevant Network Service Provider for further advice in this regard.

#### **Tree Pruning or Removal (including root pruning/mapping)**

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

**Mechanical Ventilation System Certification**

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

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

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

**Asbestos Removal**

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

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

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

All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2014. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

**Prescribed Conditions**

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

**Notification of commencement of works**

At least 7 days before any demolition work commences:

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

**Storage of Materials on public property**

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

**Toilet Facilities**

The following facilities must be provided on the site:

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

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

**Infrastructure**

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

**Other Approvals may be needed**

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

**Failure to comply with conditions**

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

**Other works**

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

**Obtaining Relevant Certification**

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

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

- g. Development Application for subdivision if consent for subdivision is not granted by this consent.

#### **Disability Discrimination Access to Premises Code**

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

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

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

#### **Notification of commencement of works**

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

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

#### **Dividing Fences Act**

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

#### **Permits from Council under Other Acts**

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

- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;
- c. Mobile crane or any standing plant;
- d. Skip bins;
- e. Scaffolding/Hoardings (fencing on public land);
- f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.;
- g. Awning or street verandah over footpath;

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

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

#### **Noise**

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

#### **Amenity Impacts General**

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

#### **Fire Safety Certificate**

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

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

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

#### **Construction of Vehicular Crossing**

The vehicular crossing and/or footpath works are required to be constructed by your own contractor. You or your contractor must complete an application for *Construction of a Vehicular Crossing & Civil Works* form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, prior to commencement of works.

#### **Lead-based Paint**

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

**Dial before you dig**

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

**Useful Contacts**

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm <a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a>
Department of Fair Trading	13 32 20 <a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a> Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 <a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Payments Corporation	131441 <a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Food Authority	1300 552 406 <a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>
NSW Government	<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diysafe.nsw.gov.au">www.diysafe.nsw.gov.au</a> Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 <a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>
Sydney Water	13 20 92 <a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>
Waste Service - SITA Environmental Solutions	1300 651 116 <a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>
Water Efficiency Labelling and Standards (WELS)	<a href="http://www.waterrating.gov.au">www.waterrating.gov.au</a>

WorkCover Authority of NSW 13 10 50

[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

Enquiries relating to work safety and asbestos removal and disposal.

**Street Numbering**

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

**Notice to Council to deliver Residential Bins**

Council should be notified of bin requirements three months prior to the occupation of the building to ensure timely delivery.

Council will place an order for the required bins. Delivery will occur once the applicant has completed a Request for New Service.

**Recycling / Garbage / Organics Service Information and Education**

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















PROJECT	DATE	SCALE	PROJECT NO.	CONCEPT APPLICATION	PROJECT NO.	REVISION
PP19/01466	18/09/20	1:400	19/01466	19/01466	19/01466	1
PP19/01466	18/09/20	1:400	19/01466	19/01466	19/01466	1

DATE: 18/09/20  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 PROJECT NO: 19/01466  
 CONCEPT APPLICATION NO: 19/01466

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 PROJECT NO: 19/01466  
 CONCEPT APPLICATION NO: 19/01466





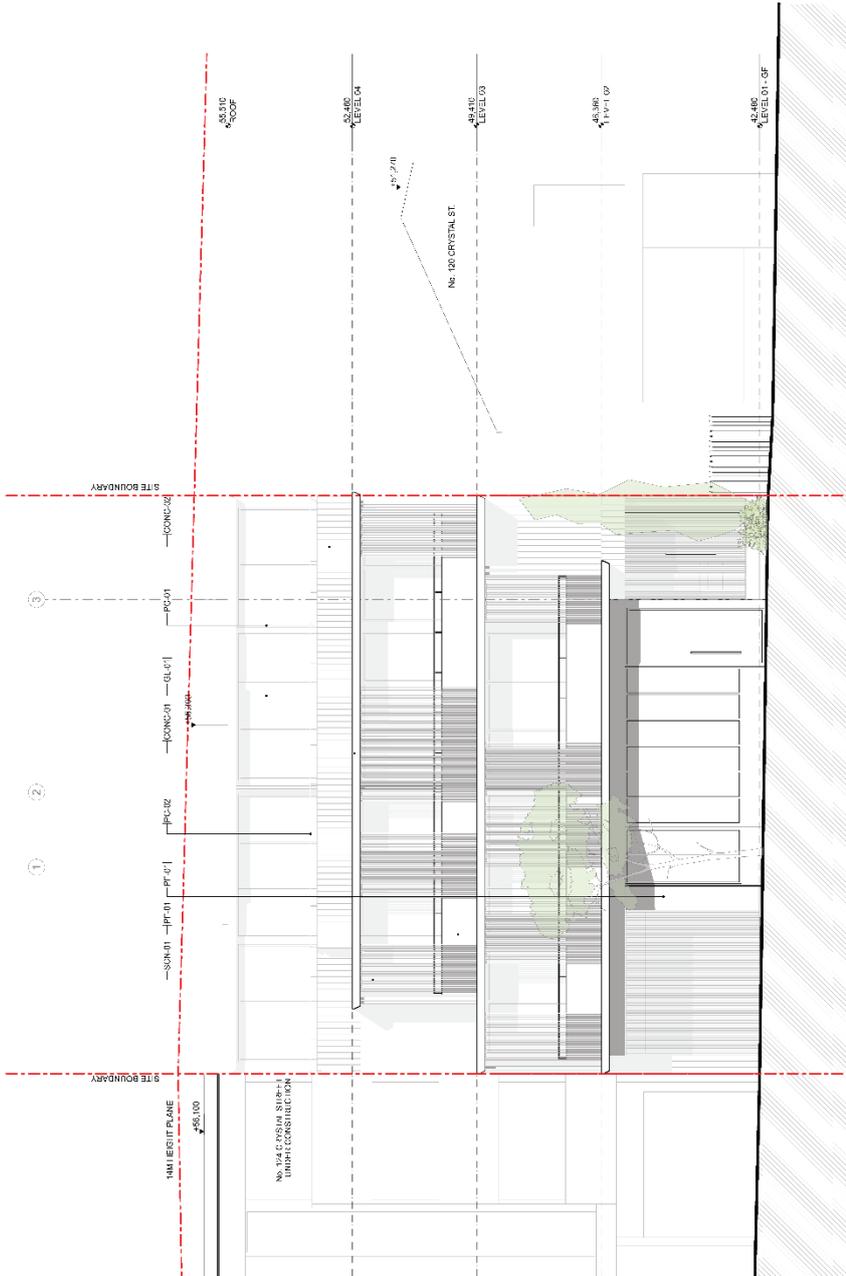








- LEGEND**
- CONC-01 CONCRETE WITH REINFORCING BARS
  - CONC-02 CONCRETE WITH REINFORCING BARS WITH COMBRIE AND FINISH (OTE INLAY)
  - CONC-03 CONCRETE WITH REINFORCING BARS WITH COMBRIE AND FINISH (OTE INLAY) COLOR BARK GREY
  - CONC-04 CONCRETE WITH REINFORCING BARS WITH COMBRIE AND FINISH (OTE INLAY) COLOR BARK GREY
  - CONC-05 CONCRETE WITH REINFORCING BARS WITH COMBRIE AND FINISH (OTE INLAY) COLOR BARK GREY
  - CONC-06 CONCRETE WITH REINFORCING BARS WITH COMBRIE AND FINISH (OTE INLAY) COLOR BARK GREY
  - CONC-07 CONCRETE WITH REINFORCING BARS WITH COMBRIE AND FINISH (OTE INLAY) COLOR BARK GREY
  - CONC-08 CONCRETE WITH REINFORCING BARS WITH COMBRIE AND FINISH (OTE INLAY) COLOR BARK GREY
  - CONC-09 CONCRETE WITH REINFORCING BARS WITH COMBRIE AND FINISH (OTE INLAY) COLOR BARK GREY
  - CONC-10 CONCRETE WITH REINFORCING BARS WITH COMBRIE AND FINISH (OTE INLAY) COLOR BARK GREY
  - CONC-11 CONCRETE WITH REINFORCING BARS WITH COMBRIE AND FINISH (OTE INLAY) COLOR BARK GREY
  - CONC-12 CONCRETE WITH REINFORCING BARS WITH COMBRIE AND FINISH (OTE INLAY) COLOR BARK GREY
  - CONC-13 CONCRETE WITH REINFORCING BARS WITH COMBRIE AND FINISH (OTE INLAY) COLOR BARK GREY
  - CONC-14 CONCRETE WITH REINFORCING BARS WITH COMBRIE AND FINISH (OTE INLAY) COLOR BARK GREY
  - CONC-15 CONCRETE WITH REINFORCING BARS WITH COMBRIE AND FINISH (OTE INLAY) COLOR BARK GREY
  - CONC-16 CONCRETE WITH REINFORCING BARS WITH COMBRIE AND FINISH (OTE INLAY) COLOR BARK GREY
  - CONC-17 CONCRETE WITH REINFORCING BARS WITH COMBRIE AND FINISH (OTE INLAY) COLOR BARK GREY
  - CONC-18 CONCRETE WITH REINFORCING BARS WITH COMBRIE AND FINISH (OTE INLAY) COLOR BARK GREY
  - CONC-19 CONCRETE WITH REINFORCING BARS WITH COMBRIE AND FINISH (OTE INLAY) COLOR BARK GREY
  - CONC-20 CONCRETE WITH REINFORCING BARS WITH COMBRIE AND FINISH (OTE INLAY) COLOR BARK GREY



PROJECT: PETERSONS  
 SITE: 100 CRYSTAL ST  
 DATE: 18/09/20  
 PROJECT NO: 100 CRYSTAL ST  
 CONSULTANT: PETERSONS ARCHITECTS  
 DRAWING NO: 100 CRYSTAL ST - 01  
 SHEET NO: 100 CRYSTAL ST - 01  
 SCALE: 1:100  
 EAST ELEVATION  
 PROJECT NO: 100 CRYSTAL ST  
 CONSULTANT: PETERSONS ARCHITECTS  
 DRAWING NO: 100 CRYSTAL ST - 01  
 SHEET NO: 100 CRYSTAL ST - 01

















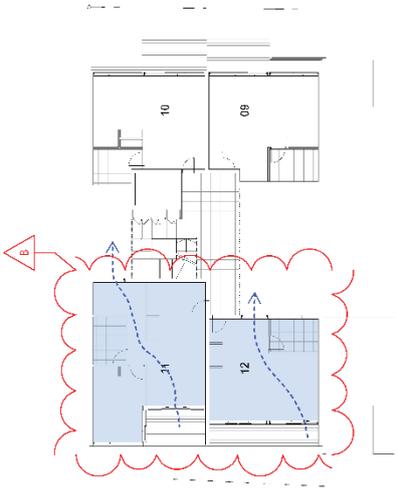
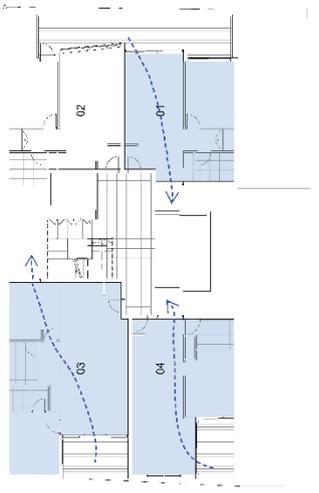
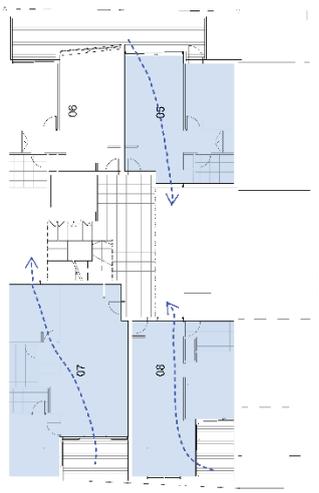




APARTMENTS ACHIEVING CROSS VENTILATION

LEVEL	NATURAL VENTILATION
LEVEL 02	3
LEVEL 03	3
LEVEL 04	2
<b>TOTAL</b>	<b>8</b>
	<b>67%</b>

**NATURAL CROSS VENTILATION**  
 8/10 = 87%  
 MINIMUM REQUIRE: 60% = 7.2 UNITS



- AMENDMENTS IN ISSUE**
- STORAGE ALLOCATED TO APARTMENT
  - WINDOWS AMENDED TO HIGH LEVEL FOR IMPROVED UNIT PRIVACY
  - GLAZING TO LIVING ANGLED - APARTMENT AREA AMENDED
  - SKYLIGHT ADDED
  - WINDOVS AMENDED - WINDOW ADDED FOR IMPROVED CROSS VENTILATION
  - SUN EYE VIEW GASRAM AMENDED
  - GFA CALCULATION AMENDED
  - WASTE ROOM RELOCATED TO GROUND FLOOR + WRECKROOMS NOW PRINTED TO DESCEND
  - CUT OUT TO SEAS VOIDED TO IMPROVED LIGHT AMPHITHE

NO.	AMENDMENTS IN ISSUE	DATE	SCALE	PROJECT NO.	CONSULTANT APPLICATION	DATE	REVISION
1	STORAGE ALLOCATED TO APARTMENT	15/07/2018	1:1	18/020	18/020	15/07/2018	1
2	WINDOWS AMENDED TO HIGH LEVEL FOR IMPROVED UNIT PRIVACY	17/12/18	1:1	18/020	18/020	17/12/18	2
3	GLAZING TO LIVING ANGLED - APARTMENT AREA AMENDED	17/12/18	1:1	18/020	18/020	17/12/18	3
4	SKYLIGHT ADDED	17/12/18	1:1	18/020	18/020	17/12/18	4
5	WINDOVS AMENDED - WINDOW ADDED FOR IMPROVED CROSS VENTILATION	17/12/18	1:1	18/020	18/020	17/12/18	5
6	SUN EYE VIEW GASRAM AMENDED	17/12/18	1:1	18/020	18/020	17/12/18	6
7	GFA CALCULATION AMENDED	17/12/18	1:1	18/020	18/020	17/12/18	7
8	WASTE ROOM RELOCATED TO GROUND FLOOR + WRECKROOMS NOW PRINTED TO DESCEND	17/12/18	1:1	18/020	18/020	17/12/18	8
9	CUT OUT TO SEAS VOIDED TO IMPROVED LIGHT AMPHITHE	17/12/18	1:1	18/020	18/020	17/12/18	9
10							

**CLIENT**  
 PETERSON DEVELOPMENT PTY LTD  
 1/100 WILSON ROAD, SYDNEY NSW 1585  
 PH: 02 9550 1234  
 FAX: 02 9550 1234  
 WWW.PETERSONDEV.COM.AU

**PROJECT NO.**  
 18/020

**DATE**  
 17/12/18

**SCALE**  
 1:1

**PROJECT NO.**  
 18/020

**CONSULTANT APPLICATION**  
 18/020

**DATE**  
 17/12/18

**REVISION**  
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 1:1

**PROJECT NO.**  
 18/020

**CONSULTANT APPLICATION**  
 18/020

**DATE**  
 17/12/18

**REVISION**  
 8







01 02 03 04 05 06 07

MATERIALS AND FINISHES SCHEDULE

122 Crystal St  
**FUSE**  
 ARCHITECTS  
 122 CRYSTAL ST  
 SYDNEY NSW 2000  
 TEL: 02 9550 1234  
 WWW.FUSEARCHITECTS.COM.AU

01 | CTW - DARK CERAMIC TILE EAST ELEVATION, EXTERNAL WALL BELOW RETAIL WINDOW SILL  
 02 | BCON-01 - ALUMINIUM SCREEN WHITE OR SIMILAR SLIDING SCREEN TO EAST FACADE  
 03 | PC-01 - POWDERCOAT DARK GREY OR SIMILAR SECONDARY BALUSTRADE/ALUMINIUM WINDOW FRAME  
 04 | PC-02 - POWDERCOAT RED/BROWN OR SIMILAR ALUMINIUM VERTICAL GATE/FENCE/BALUSTRADE  
 05 | CONC-02 - FLUTED CONCRETE WITH RED/BROWN KEIM CONCRETE LAISUR FINISH OR SIMILAR SPANDRELS AS NOTED ON ELEVATIONS  
 06 | PFC-01 - DARK PAINT FINISH SOLID BALUSTRADES, CLADDING FINISH VARIOUS LOCATION  
 07 | CONC-01 - OFF FORM CONCRETE WITH LIGHT GREY KEIM CONCRETE LAISUR FINISH OR SIMILAR SLAB EDGES AND SOFFITS

01 04 05 06 07

02 05 07

03

## Attachment C- Clause 4.6 Exception to Development Standards



### CLAUSE 4.6 VARIATION STATEMENT – FSR

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Construction of a four storey mixed use development comprising ground floor retail, basement car parking and residential accommodation above.

122 Crystal Street  
Petersham

Prepared for: Primus DMS Pty Ltd

REF: M190356  
DATE: 31 July 2020





## Clause 4.6 Variation Statement – FSR (Clause 4.4 of ALEP 2013)

### 1. Introduction

This Variation Statement has been prepared in accordance with Clause 4.6 of Marrickville Local Environmental Plan 2011 (MLEP 2011) to accompany a development application to Inner West Council in respect of No.122 Crystal Street, Petersham. The subject Development Application seeks consent for construction of a four storey mixed use development comprising ground floor retail, basement car parking and residential accommodation above.

The development proposes external galleries which link each unit to the lift and stairwell. These elements are not within the internal faces of the external walls and will be open to the elements, it is therefore our opinion that they do not constitute GFA as defined by MLEP 2011. Nonetheless, Council has advised that it is of the opinion that these external areas contribute to the GFA of the building. As such, Council consider there is an FSR variation.

Council have estimated that the FSR of the proposed development is 1.68:1. This is an 89m<sup>2</sup> (11.1%) variation above the permitted 1.5:1 FSR.

In order to address Council's concern we provide this precautionary Clause 4.6 variation request, in the interests of abundant caution.

### 2. Proposed variation to the Exceptions to FSR Standard

Clause 4.4 of the LEP provides a maximum FSR for the site of 1.5:1 (GFA – 713.4m<sup>2</sup>).

Floor space ratio is defined in MLEP 2011 as:

*"(2) Definition of "floor space ratio"*

*The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area"*

Council consider that the total proposed FSR for the site is 1.68:1 (GFA 802m<sup>2</sup>) which equates to a variation of 89m<sup>2</sup> or 11.1%.

The floor space ratio control is a "development standard" to which exceptions can be granted pursuant to clause 4.6 of the LEP.

### 3. Clause 4.6 to Marrickville LEP 2011

The exceptions to FSR standard is a "development standard" to which exceptions can be granted pursuant to clause 4.6 of the LEP.

The objectives and provisions of clause 4.6 are as follows:

*(1) The objectives of this clause 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.*



(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless—

(a) the consent authority is satisfied that—

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning Secretary 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 Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
- (c) clause 5.4,
- (ca) clause 6.17 or 6.18,
- (cb) clause 6.21(4).

The development standard in clause 4.4 is not "expressly excluded" from the operation of clause 4.6.

Objective 1(a) of clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of subclauses 4.6(3) and (4). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in subclause 4.6(6).

As previously noted Clause 4.4 of the LEP permits an overall FSR of 1.5:1. It is hereby requested that an exception to this development standard be granted pursuant to clause 4.6 so as to permit an overall FSR for the site of 1.68:1 which equates to a variation of 89m<sup>2</sup> or 11.1%.

#### 4. Compliance with the standard is unreasonable or unnecessary

Clause 4.6(3)(a) requires that the written request to vary a development standard demonstrate that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case.

In regards to Clause 4.6(3)(a), in *Wehbe v Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

*"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."*

The judgement goes on to state that:

*"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."*

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

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

For an objection to be well-founded it is only necessary for an applicant to demonstrate that any one of these five different ways is applicable. In the present case, it is the first method that is relied upon, namely that the objectives of the standard are achieved notwithstanding non-compliance with the standard as outlined in this statement.

Having regard to all of the above, it is our opinion that compliance with the FSR development standard is unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone. In addition, requiring strict compliance with the standard is unreasonable or unnecessary because:

- The development is consistent with the standard and zone objectives, even with the proposed variation;
- There are no significant adverse impacts arising from the proposed non-compliance;
- Important planning goals are better achieved by the approval of the variation.

In terms of the last point, the relevant planning goals are set out below.

Clause 1.2(2) of MLEP 2011 sets out the plan's aims. Clause 1.2(2) provides the aims for the plans, the relevant aims in this instance are:

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

The B4 – Mixed Use zone objectives are better achieved by allowing the variation (as set out in Section 8 below).

Approval of the variation will give better effect to the aims of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65). In particular:

- The proposed variation will provide more sustainable housing in social and environmental terms and better achieve urban planning policies (clause 2(3)(a)(i)).
- Approval of the proposed variation will provide an extended mix of dwelling types to meet population growth (clause 2(3)(f)).
- Approval of the proposed variation will support housing affordability by providing a well-located compact housing that will be a better choice for families (clause 2(3)(g)).

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of clause 4.6(3) are satisfied and Council has the power to grant variation to the FSR development standard as proposed.



#### 5. Sufficient environmental planning grounds

Clause 4.6(3)(b) requires that the written request to vary a development standard demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard. In order to demonstrate that there are sufficient environmental planning grounds to justify varying the development standard, all of the points set out in Section 4 are relevant as well.

There is no planning purpose to be served by limiting the residential FSR to the maximum allowable given the absence of significant or unreasonable amenity related impacts, and compliance with the objectives of the development standard and zone. In addition, the FSR variations relates only to external walkways which link the dwellings to the common vertical circulation.

The non-compliance will have no adverse impact on adjoining properties with regard to visual impacts or overshadowing. To require strict compliance would not result in any real planning benefit and would in fact be counterproductive as it would result in the loss of additional high quality. To insist on strict compliance would thwart and preclude the redevelopment of the land to a reasonable standard, and not allow the site to reach its full development potential.

To not provide additional residential accommodation in this growing area, which has been identified by Inner West Council as capable of increased density, would represent a suboptimal outcome. The avoidance of this suboptimal outcome is, in itself, a sufficient environmental planning ground to justify contravening the development standard, given that the adverse impacts of the proposed development would be materially the same as a compliant development.

The proposed additional FSR is considered acceptable on "planning grounds" and meets objective 1(b) of clause 4.6 in that allowing flexibility in the particular circumstances of this development it will achieve "a better outcome for and from development" because:

- The additional floor space comprises external galleries which link the residential units to the common vertical circulation. They are set back from the side boundaries and mimic the design and built form of the approved development adjoining at No.124 Crystal Street. That development was tested in court and the external galleries were in our opinion correctly excluded from the GFA calculation;
- The varied FSR will have no adverse impact on adjoining properties with regard to solar access or overshadowing. The development has potential to only impact on solar access to windows and open space of the site to the rear at No.261 Trafalgar Street and to the south at No.124 Crystal Street.

No.261 Trafalgar Street will see no additional shadow cast by the proposed development after 12pm.

The approved development at No.124 Crystal Street, has been designed such that its principal windows and open space face to the front or rear of the development. As such, there is no overshadowing of windows at No.124 caused by the proposed development. There will be no additional overshadowing to the rear communal open space at No.124 Crystal Street from 12pm onwards.

This is consistent with the requirements of the ADG and DCP;

- The varied FSR will not result in any adverse impact on the adjoining properties with regard to overlooking or loss of privacy. All residential windows are orientated to the front and rear of the site, or into the internal courtyard space. The external galleries are set back approximately 5.1m from the southern boundary with No.124 Crystal Street and 2.6m from the northern boundary with No.120 Crystal Street. Where they face the southern boundary they look onto communal open space and similar external communal walkways at the approved neighbouring development. Where they face the northern boundary the galleries are provided with full height privacy screening;





- Despite the variation, the built form and massing of the development is consistent with the objectives of the DCP in relation to the B4 zone within this part of Petersham, and is compatible with the approved built form of the development at No.124 Crystal Street. This ensures a unified and coherent streetscape character which is consistent with Council's desired future character for the area;
- The variation and proposed built form provides a suitable transition to the adjoining property to the north which is likely to undergo a similar transition to higher density development in the future;
- The variation does not impact on views or outlook, and there are no significant adverse impacts to neighbouring properties;
- The variation enables the provision of lightweight, external galleries which will be open to the elements and used only for circulation purposes. Each dwelling is compliant with minimum space and balcony requirements and the galleries are designed to be spaces to move through, rather than to congregate; and,
- To require strict compliance would result in removal of the galleries and require reconfiguration of the common vertical circulation to provide two cores. This is an inefficient use of the space and would likely result in a reduction of commercial ground floor space and/or residential accommodation space. There would be no planning gain to this as the built form to both the front and rear of the site would remain unchanged and there would be no amenity benefits resulting from such a change. Strict compliance would therefore be counterproductive as it would result in the loss of additional high quality accommodation and/or commercial floorspace within the locality. To insist on strict compliance would thwart and preclude the redevelopment of the land to a reasonable standard, and not allow the site to reach its full development potential;

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

*86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*

*87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

In short, we consider that there are sufficient environmental planning grounds to justify the applicant's proposed variation to the FSR standard.

The merits of the proposal on "environmental planning grounds" needs to be balanced with the burden that strict compliance places on the site and whether strict compliance will result in a sufficient outcome. The development has been designed to provide a high quality urban outcome, with the additional levels having no adverse impact on the





views, privacy and amenity of neighbouring properties. The non-compliance has no perceptible impact on the streetscape and is within the building envelope set by the applicable height standard and the relevant DCP controls.

The proposed FSR will enable the orderly and economic redevelopment of the subject site in accordance with the intentions of the Environmental Planning and Assessment Act, 1979. There is no planning purpose to be served by limiting the FSR strictly to the maximum allowable given the absence of amenity related impacts. There will be no significant or unreasonable additional shadow, no obstruction of views and no opportunities for overlooking to habitable space resulting from the proposed external galleries.

To require strict compliance would therefore result in a burden on the development with no demonstrable built form or amenity benefits, particularly given the development directly response to desired future character sought for the area by Inner West Council and is it has drawn heavily on the design and massing of the approved building at No.124 Crystal Street. As such the proposal results in a high quality mixed use development which is suited to the site and its context and broader strategy based controls.

#### 6. Clause 4.6(4)(A)

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in 7a below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in sections 7 and 8 below.

#### 7. Objectives of the standard

Clause 4.6(4) requires the consent authority to be satisfied that the objectives of the standard are met.

The objectives of clause 4.4 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.*

In order to address the requirements of subclause 4.6(4)(a)(ii), each of the relevant objectives of clause 4.3 are addressed in turn below.

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





This objective merely supports the maximum FSR of the site, which is noted as 1.5:1. Clause 4.4 is a standard which can be varied pursuant to Clause 4.6, which is the purpose of this statement.

Accordingly, whilst proposing to vary the maximum the standard the proposal is not antipathetic to Objective A.

**Objective (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 built form is compliant with the LEP height standard and consistent with the DCP objectives in relation to setbacks and general built form.

The development has drawn on design, scale and general built form of the approved development at No.124 Crystal Street which ensures a coherent and consistent streetscape emerges in the B4 zone. This is consistent with Council's desired future character for the area.

Accordingly, the proposal satisfies Objective (b) of the floor space ratio standard.

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

As has been noted, there are no significant adverse amenity impacts resulting from the variation to the FSR standard. Solar Access and overshadowing to adjoining properties is minimal, and is compliant with applicable ADG and DCP controls.

There is no overlooking or loss of privacy to habitable rooms resulting from the variation as all residential windows face to either the front, rear or internal courtyard. The proposed external galleries are provided with full height privacy screens to the north, and only look onto similar features and communal open space at the adjoining development to the south.

There are no known or identified views to, from or across the site. As such, the proposed variation has no adverse impact on views.

The proposed built form has been established by the suite of controls applicable pursuant to the ADG, LEP and DCP, and by the approved built form at No.124 Crystal Street. As such, any minor environmental and amenity impacts which may result from the proposed development have been envisaged by the controls and do not result in an unacceptable adverse impact.

Accordingly, the proposal satisfies Objective (c) of the floor space ratio standard.

#### 8. Objectives of the Zone

Clause 4.6 (4) also requires consideration of the relevant zone objectives. 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.*
- *To enable a purpose built dwelling house to be used in certain circumstances as a dwelling house.*
- *To constrain parking and restrict car use.*





Each of these objectives is addressed as follows:

- *To provide a mixture of compatible land uses.*

The proposed residential and retail/commercial floorspace are permissible in the zone and therefore 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.*

As above. In addition the site is within close proximity to Petersham station and is therefore a highly accessible location. It is likely that both residents and customers will make use of public transport and cycling options.

- *To support the renewal of specific areas by providing for a broad range of services and employment uses in development which display good design.*

The development is consistent with the desired future character for the B4 zone in this part of the Petersham, and it provided a retail/commercial space which will provide services and employment. The design of the building is high quality and compatible with the streetscape character.

- *To promote commercial uses by limiting housing.*

Commercial space is provided at ground floor level which is considered appropriate given the nature of the area, which is unlikely to support significant multi-level commercial retail spaces. In this instance shop-top housing, as proposed, is considered the most appropriate built form and use for the site.

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

The development is not a purpose built dwelling house. Therefore, this objective is not relevant.

- *To constrain parking and restrict car use.*

Parking provision is compliant with the ADG and DCP requirements.

#### 9. Secretary's Concurrence

The issue of the concurrence of the Secretary of the Department of Planning and Environment is dealt with by Planning Circular PS 18-003 'Variations to development standards', dated 21 February 2018. This circular is a notice under 64(1) of the Environmental Planning and Assessment Regulation 2000. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The circular provides for assumed concurrence.

Concurrence cannot be assumed for a request for a variation to a numerical standard by more than 10 per cent if the function is to be exercised by a delegate of the consent authority. This restriction does not apply to decisions made by local planning panels, who exercise consent authority functions on behalf of councils but are not legally delegates of the council. The subject variation exceeds 10% and will be subject to Local Planning Panel determination.

The Secretary can be assumed to have given concurrence to the variation.

#### 10. Matters of State or Regional Environmental Planning

Pursuant to Clause 4.6(5)(a), contravention of the maximum floor space ratio standard proposed by this application does not raise any matter of significance for State or regional environmental planning.





11. Public Benefit of Maintaining the Development Standard

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the FSR development standard. As such there is no public benefit in maintaining strict compliance with the development standard. Whilst the proposed overall FSR will exceed the standard by 11.1% the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

12. Conclusion

Having regard to all of the above, it is our opinion that compliance with the FSR development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach. Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis the requirements of Clause 4.6(3) are satisfied and the variation supported.