

 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2022/0149
Address	845 New Canterbury Road DULWICH HILL NSW 2203
Proposal	Demolition of existing structures and construction of mixed use development, comprising 2 buildings over basement car parking. Building A containing shop top housing with 6 residential units and 1 commercial tenancy and Building B containing a residential flat building consisting of 8 residential units
Date of Lodgement	8 March 2022
Applicant	Christiane Hall
Owner	Ten41 Pty Ltd
Number of Submissions	Nil
Value of works	\$4,420,913.00
Reason for determination at Planning Panel	SEPP 65 Development; variation exceeds delegation
Main Issues	Permissibility, solar access to COS; building separation, Height variation
Recommendation	Deferred commencement approval
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Section 4.6 Exception to Development Standards – Height
	
LOCALITY MAP	
Subject Site	   N
Notified Area	 
	Objectors
	Supporters

1. Executive Summary

This report is an assessment of the application submitted to Council for the demolition of existing structures and construction of a mixed use development, comprising of two buildings with basement car parking below at 845 New Canterbury Road, Dulwich Hill. Building A which fronts New Canterbury Road includes one commercial tenancy at the ground floor with six residential units. Building B which is located at the rear of the site includes a residential flat building for 8 residential units. The application was notified to surrounding properties and no submissions were received in response to the notification.

The proposal, as amended, generally complies with the aims, objectives, and design parameters contained in the relevant State Environmental Planning Policies, Marrickville Local Environmental Plan 2011, and Marrickville Development Control Plan 2011. The potential impacts to the surrounding environment have been considered as part of the assessment process. Any potential impacts from the development are considered to be acceptable, given the context of the site and the desired future character of the precinct. The application is therefore recommended for a deferred commencement approval subject to the recommended conditions of consent.

2. Proposal

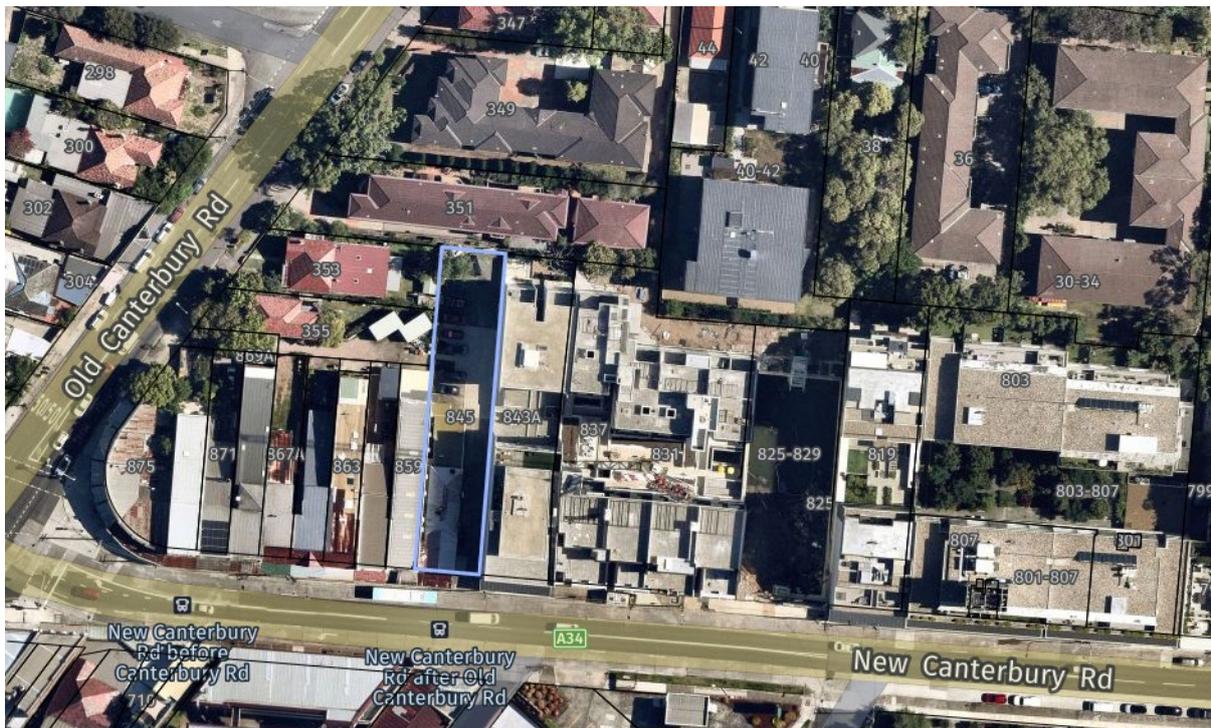
The proposal seeks consent for the demolition of existing structures and the construction of a four storey mixed use development comprising of two buildings, basement carparking with 14 residential units and retail commercial space at the ground floor. Specifically the works are as follows:

- Demolition of all existing structures;
- Remediation of the site;
- Retention of the existing vehicular crossover;
- Basement carparking to include 13 x car spaces, 2 x motorcycle parking, 8 x bicycle parking, storage cages for the residential units;
- Construction of two buildings, one fronting New Canterbury Road and the other located at the rear. Details of each building are as follows:
 - Building A:
 - Ground floor to comprise of retail space with accessible WC, garbage store room and part of the split level 3 bedroom unit above located a RL above street level
 - Level 1 to comprise of the remainder of the 1 x 3 bedroom unit and 1 x 2 bedroom unit;
 - Level 2 to comprise of 2 x 2 bedroom units;
 - Level 3 to comprise of 1 x 2 bedroom unit; and part of 1 x 3 bedroom split unit; and
 - Level 4 to comprise of the remainder of the split 3 bedroom unit.
 - Building B:
 - Ground floor to comprise of 1 x 1 bedroom unit and 1 x 2 bedroom unit;
 - Level 1 floor to comprise of 2 x 2 bedroom unit;
 - Level 2 to comprise of 2 x 2 bedroom unit; and
 - Level 3 to comprise of 2 x 2 bedroom unit.
- Deep soil landscaping to be located within the rear setback; and
- Communal open space to be centrally located within the site between Building A and B.

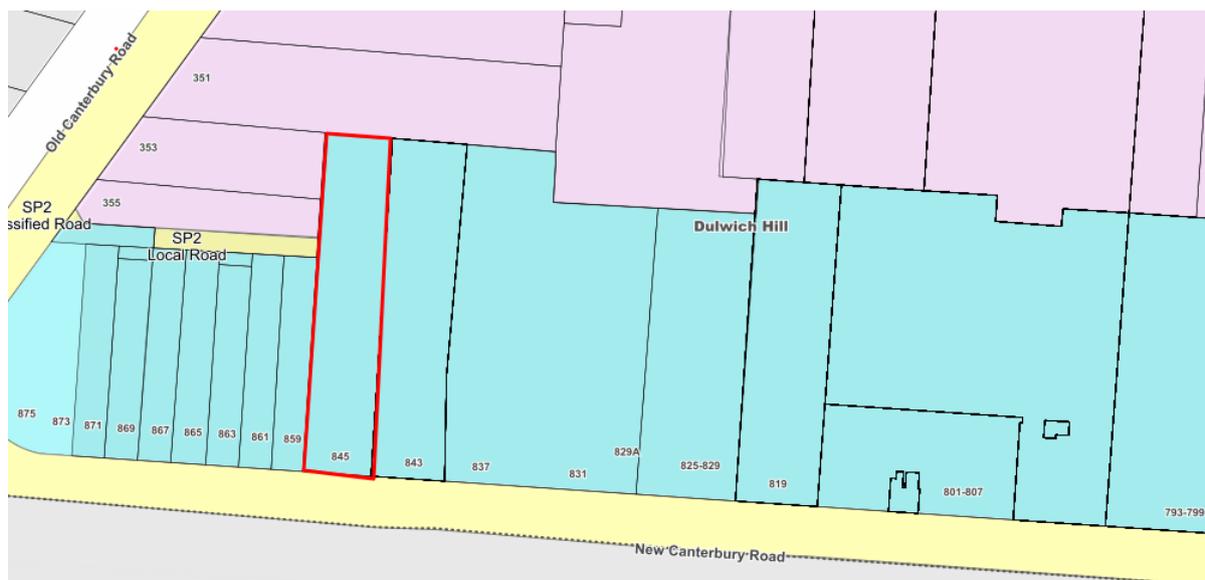
3. Site Description

The subject site is located on the northern side of New Canterbury Road, between Old Canterbury Road and Ross Street. The site consists of a single allotment and is rectilinear in shape with a with a total area of 770.67sqm.

The site has a frontage to New Canterbury Road of 12.27m. The site supports a single storey commercial building with vehicular access available via the eastern side setback, additionally there is a bus stop immediately in front of the existing building. The adjoining properties to the west include single storey commercial buildings whilst to the east consist of consist of four storey mixed use development all with commercial uses on the ground floor. The mixed-use developments to the south of the subject site are generally split into two towers, with one being at the front and the rear of the site respectively.



Aerial of the subject site (outlined in blue) and immediate context



MLEP 2011 Land Zoning map extract, subject site outlined in red

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
PDA/2021/0429	Demolition of existing structures and construction of a mixed use development comprising residential flat building and a shop	21 December 2021, advice issued

Surrounding properties

843 New Canterbury Road, Dulwich Hill

Application	Proposal	Decision & Date
DA201600564	To demolish existing improvements and construct a mixed use development containing 1 x 5 storey building fronting New Canterbury Road and 1 x 4 storey building towards the rear of the site comprising a total of 1 commercial tenancy and 20 dwellings with basement car parking	Approved, 21/07/2017

4(b) Application history

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

Date	Discussion / Letter / Additional Information
16/08/2022	Concurrence clarification provided by Transport NSW to Council
15/09/2022	Request for additional information sent to the applicant requesting the following: <ul style="list-style-type: none"> - Urban design matters previously identified by the AEDRP under PDA/2021/0429; - Design amendments to address matters raised by Transport NSW; - Contamination clarification; - Reconfiguration of the commercial waste; - Stormwater matters; and - Awning and lighting details.
27/10/2022	Draft issue of design amendments provided to Council for preliminary review
3/11/2022	Additional information provided by the applicant
16/11/2022	Amended Plan fee paid by applicant
17/01/2023	Correspondence received from Transport NSW advising that concurrence has not been provided
18/01/2023	Concurrence clarification requested to Transport NSW from Council
19/01/2023	Concurrence clarification provided by Transport NSW
20/01/2023	Applicant advised that concurrence has not been provided by Transport NSW and given this the application is recommended to be withdrawn and relogged once this matter has been resolved.
23/01/2023	Applicant contacted Transport NSW directly with supporting documentation to resolve the outstanding concurrence matter
3/02/2023	Concurrence provided by Transport NSW
8/03/2023	Correspondence between Council and TfNSW confirming that concurrence has been provided on the proposal retaining the existing driveway

5. Assessment

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

5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy No. 65—Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*

The following provides further discussion of the relevant issues:

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

Chapter 4 Remediation of land

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

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

In considering the above, there is evidence of contamination on the site.

The applicant has prepared a preliminary site investigation, detailed site investigation and remedial action plan. The remedial action plan provided with the application concludes:

“The site is proposed to be redeveloped into a multi-storey mixed use unit type building with one level basement and deep soil garden area on the ground floor. The remediation goal is to render the site suitable for the proposed development upon completion of the remediation and validation works. This would be achieved by remediating the:

- The area of impact includes borehole locations BHS & BH8 at a depth of (0.2- 0.3m) and the COPC is PAH. These impacts are located within the upper fill soil profile.*
- The delineation of the impacted fill at the following locations (BHS & BH8) is proposed to be completed as part of the remediation works (Refer to Section 8.2).*

Therefore, it is considered that the site will be made suitable for the proposed development, subject to the implementation of the remediation and validation works in accordance with this RAP. No recommendations for further works are proposed pending successful implementation of the RAP.

The following assumptions have been utilised in concluding the site will be considered suitable:

- Removal of impacted fill material from the areas of concern and dispose of appropriately.”*
- Collection of validation samples from the areas of concern.*
- Contaminant concentrations in the validation samples are shown to be below the adopted site validation criteria.*
- Data collected and generated during the project is considered appropriate to allow decisions to be made with confidence. Specific limits for the project have been applied in accordance with the appropriate guidance documents from the NSW EPA, NEPM 2013, appropriate indicators of data quality (DQIs used to assess quality assurance / quality control) and standard operating FES procedures for field sampling and handling”*

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

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/directed the design of the development. The statement also provides an explanation that verifies how the design quality principles are achieved within the development and demonstrates, in terms of the Apartment Design Guide (ADG), how the objectives in Parts 3 and 4 of the guide have been achieved.

The development is acceptable having regard to the nine design quality principles.

Apartment Design Guide

The Apartment Design Guide (ADG) contains objectives, design criteria and design guidelines for residential apartment development. In accordance with Section 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 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 is required to accommodate 192.1sqm of communal open space. Approximately 218sqm of communal open space is proposed, which is approximately 28.2% of the site area. The communal open space does not receive sunlight on 21 June, contrary to the ADG requirements.

The non-compliance with the communal open space standards under the ADG is reasonable for the following reasons:

- Whilst there is COS located within the rear setback of the site, the majority of the COS area is centrally located within the subject site, this being between Building A and B, therefore making compliance difficult.
- The geographical constraints of the site this being located within a relatively dense and built up mixed-use/commercial area limits the locational options for the communal open space.
- The north and south buildings require building separation of at least 12 meters under the ADG (habitable rooms/balconies to habitable rooms/balconies) to enable adequate solar access, natural ventilation and privacy for the residents of the site. The provision of communal open space at the centre of the site (between the north and south

building) is therefore a suitable location for visual aesthetic outcomes (enabling a landscaped courtyard within view of the apartments located adjacent to the central core of the development), convenience of access for residents to utilise the common open space, storm water drainage and rainwater infiltration.

- The location of the COS is consistent with the established pattern of development to the east of the subject site; and
- The proposal achieves the minimum solar access standards for POS under the ADG.

Deep Soil Zones

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

Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)
650m ² - 1,500m ²	3m	7% or 54sqm

Comment: 63sqm of deep soil planting is proposed within the rear setback of the subject site thereby complying with the prescribed requirement.

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

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

Up to four storeys/12 metres

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

Comment: Building B is setback minimum 14.1m from the rear of Building A in compliance with the applicable provisions.

The development contains rear balconies that are setback 6m from the rear boundary, and as such do not achieve the required 12m building separation from the adjacent residential building at the rear at 351 Old Canterbury Road. This non-compliance is supported on the basis that:

- The proposal is, for the most part, compliant with Council’s rear building envelope controls;
- There are no adverse amenity impacts in terms of overshadowing, given the northerly orientation towards the rear boundary;
- The proposal is consistent with the established pattern of development to the east of the subject site whereby balconies to the rear are approximately setback 6m from the boundary;
- The long term re-development of sites are generally anticipated to share the building separation (i.e. – 6m each), which the proposal does.

Additionally, the proposal includes adjoining balconies at the rear elevation of Building A and B that have a separation distance ranging from 1.6m to 3.2m (as they are located adjacent to one another), and as such do not achieve the required 12m building separation. This non-compliance are supported on the basis that:

- The balconies impacted include visual privacy mitigation measures such as solid walls or visual privacy screens to adjoining openings to prevent direct overlooking into each other POS areas.

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: The living rooms and private open spaces of all units in the development will receive a minimum of 2 hours of direct solar access between 9:00am and 3:00pm on 21 June which complies with the ADG standard.

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: All the units are naturally cross ventilated which complies with the ADG requirement.

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
If located in mixed used area	3.3 for ground and first floor to promote future flexibility of use

Comment: The ceiling heights comply under the provisions of this part.

Apartment Size

The ADG prescribes the following minimum apartment sizes:

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

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

Apartment Layout

The ADG prescribes the following requirements for apartment layout requirements:

- Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.
- Habitable room depths are limited to a maximum of 2.5 x the ceiling height.
- In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8 metres from a window.
- Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).
- Bedrooms have a minimum dimension of 3 metres (excluding wardrobe space).
- Living rooms or combined living/dining rooms have a minimum width of:
 - 3.6 metres for studio and 1 bedroom apartments.
 - 4 metres for 2 and 3 bedroom apartments.
- The width of cross-over or cross-through apartments are at least 4 metres internally to avoid deep narrow apartment layouts.

Comment: The apartment sizes and dimensions comply with the provisions under this part.

Private Open Space and Balconies

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

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

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

Comment: The POS sizes and dimensions comply with the provisions under this part.

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 common circulation and spaces comply with the provisions under this part.

Storage

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

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

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

Comment: The storage facilities included as part of the proposal comply with the provisions of this part.

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

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

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

Chapter 2 Infrastructure

Development likely to affect an electricity transmission or distribution network

The proposed development meets the criteria for referral to the electricity supply authority within Section 2.48 of *SEPP (Transport and Infrastructure) 2021* and has been referred for comment for 21 days. Ausgrid raised no objection to the proposed development.

Development with frontage to classified road

In considering Section 2.118(2) and Section 2.119 of *SEPP (Transport and Infrastructure) 2021*:

The existing single lane vehicular crossing at New Canterbury Road is to be retained and utilised to provide access to the new basement car parking proposed. The vehicular access arrangement from New Canterbury Road is considered practical and safe. The design will not adversely impact the safety, efficiency, and ongoing operation of the classified road and bus stop immediately adjacent to the site.

The impacts of traffic noise or vehicle emissions have been considered and the application was accompanied by an acoustic report addressing noise impacts to the residential

component of the development with the report concluding that the development can comply with the prescribed noise criteria to mitigate any potential amenity impacts to residents.

5(a)(v) Local Environmental Plans

Inner West Local Environmental Plan 2022

The *Inner West Local Environmental Plan 2022 (IWLEP 2022)* was gazetted on 12 August 2022. As per Section 1.8A – Savings provisions, of this Plan, as the subject application was made before the commencement of this Plan, the application is to be determined as if the *IWLEP 2022* had not commenced.

Section 4.15(1)(a)(i) of the *EPA Act 1979* requires consideration of any Environmental Planning Instrument (EPI), and Section 4.15(1)(a)(ii) also requires consideration of any EPI that has been subject to public consultation. The subject application was lodged on 8 March 2022, on this date, the *IWLEP 2022* was a draft EPI, which had been publicly exhibited and was considered imminent and certain.

The draft EPI contained the following amended provisions:

- Amendments to the B2 Local Centre zone objectives;
- Amendments to the objectives of Clause 4.3 Height of building; and,
- Amendments to the objectives of Clause 4.4 Floor space ratio.

Having regard to the above, the development is considered generally acceptable having regard to the provisions of the Draft *IWLEP 2020*.

Marrickville Local Environmental Plan 2011 (MLEP 2011)

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

- Section 1.2 - Aims of the Plan
- Section 2.3 - Zone objectives and Land Use Table
- Section 2.5 - Additional permitted uses for land
- Section 2.7 - Demolition
- Section 4.3 - Height of buildings
- Section 4.4 - Floor space ratio
- Section 4.5 - Calculation of floor space ratio and site area
- Section 4.6 - Exceptions to development standards
- Section 5.3 – Development near zone boundaries
- Section 6.1 – Earthworks
- Section 6.5 - Development in areas subject to aircraft noise
- Section 6.12 – Business and office premises in certain zones
- Section 6.20 – Design Excellence

Section 2.3 Land Use Table and Zone Objectives

The site is zoned B2 – Local Centre under the MLEP 2011. The proposal seeks to include a split level 3 bed unit at the rear of Building A, with a bedroom, bathroom and balcony being located on the ground floor immediately to the rear of the driveway crossing entry to the basement carpark below. The MLEP 2011 defines shop top housing as “*one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities*”, with the inclusion of a bedroom on the ground floor, Building A does not satisfy the definition of shop top housing in its entirety and as such is not permissible. It is recommended on any consent issued, that no floor area on the ground floor of Building A to be used for residential purposes. The ground floor bedroom

and stair access are to be deleted from the proposal with this area to be reconfigured to accommodate one of the following or similar to:

- Building services, plant and/or waste storage area
Noting that the existing garbage area may be utilised as a store area for the retail shop.

With this design change recommendation considered Building A (front) is best defined as *shop top housing* and is permissible within the B2 – Local Centre Zone, whilst Building B (rear) is best defined as a *residential flat building* which is prohibited in the zone. The site adjoins the R1 General Residential Zone to the north of the site, within which *residential flat buildings* are permissible. *Clause 5.3 Development near zone boundaries* of the *MLEP 2011* allows flexibility in the zoning provisions applying to the land and the proposed use of Building B is supported.

Subject to compliance with the recommended conditions, the proposed mixed-use development is consistent with the identified objectives of the B2 Local Centre zone providing for a range of unit sizes and layouts to meet the needs of future community while providing a well located and planned retail space that will meet needs of residents and commuters.

Section 4 Principal Development Standards

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

Standard	Proposal	non compliance	Complies
Height of Building Maximum permissible: 14m	Building A (front building): • Main parapet: 14.5m • Upper roof: 16.0m Building B (rear building): • Main parapet: 14.6m • Lift overrun: 15.2m	500mm (3.6%) 2m (14.3%) 600mm (4.3%) 1.2m (8.6%)	No
Floor Space Ratio Maximum permissible: 1.74:1 or 1,343sqm	1.74:1 or 1,343sqm	-	Yes

Section 4.6 Exceptions to Development Standards

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

- Section 4.3 - Height of buildings

The applicant seeks a variation to the Height of Buildings development standard under Section 4.3 of the *Marrickville Local Environmental Plan 2011* by 14.3% or 2m.

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

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Section 4.6 of the *Marrickville Local Environmental Plan 2011* below.

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

- *The height is generally compliant at the street boundary but a minor non-compliance result from the fall of the land to the east.*
- *The small structure on Level 4 of Building A represents the greatest non-compliance with the lift overrun and general parapet of Building B being marginally non-compliant. This is a result of the adoption of a level ground floor throughout the site to improve accessibility combined with the natural fall of the land to the rear.*
- *The proposal would achieve better outcomes for the development as the contravention would permit a level ground floor and the better utilisation of the roof area of Building A, a development consistent with adjacent development at 843 New Canterbury Road; and a development that is consistent with the broader streetscape.*
- *The height standard is directed at providing a scale of four storeys in the street. The proposal achieves this as the fifth storey would not be visible from street level.*
- *The contravention would not impact solar access onto surrounding properties or the site as any resultant shadows would be cast primarily of over the rooftop area or the rooftops of adjacent development.*
- *The contravention would not impact the provision of a shop on the ground floor. It may, however, marginally increase population density and provision greater variety of housing types in proximity to employment and retail facilities.*
- *The contravention would not result in an inappropriate relationship between the residential uses and the accessibility and function of the centre or not compromise the provision of an active street front.*

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

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

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
Comment: The proposal includes a retail shop at the ground floor of Building A, this will serve the local residents in the area.
- *To encourage employment opportunities in accessible locations.*
Comment: The proposal includes a retail shop at the ground floor of Building A, this will provide local employment opportunities, and is of a scale comparable to other neighbourhood shops and businesses in the centre.
- *To maximise public transport patronage and encourage walking and cycling.*
Comment: The development will maximise public transport patronage and encourage walking and cycling by being located within proximity to nearby public transport, including bus stops located on New Canterbury Road that provide direct access to the Sydney Central Business District (CBD) and other local centres. Additionally, the site includes the provision for bicycle parking and is within close proximity to Hurlstone Park train station.
- *To provide housing attached to permissible non-residential uses which is of a type and scale commensurate with the accessibility and function of the centre or area.*
Comment: The proposal includes a range of residential unit sizes to cater to a variety of housing needs.
- *To provide for spaces, at street level, which are of a size and configuration suitable for land uses which generate active street-fronts.*

Comment: The proposal includes a retail shop at the ground floor of Building A, the size and configuration of this tenancy is consistent with the pattern of development to the east of the subject site.

- *To constrain parking and reduce car use.*

Comment: Whilst the proposal is within close proximity to public transport, the proposal include adequate car parking to service the needs of the residents.

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

- *(a) to establish the maximum height of buildings,*

Comment: The height and number of storeys in the building would be consistent with the development approved and constructed to the east of the subject site.

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

Comment: The proposal generally provides an acceptable scale of development in the context of surrounding development and would not pose adverse amenity impacts to neighbouring properties.

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

Comment: The additional floor space provided above the height of building control is positioned and designed on the site in a manner which will not result in unreasonable adverse impacts upon adjacent properties or the public realm by way of overshadowing, visual massing, view loss or visual and acoustic privacy impacts.

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

Comment: The height and scale of the proposal has been suitably designed to provide an appropriate transition with the established pattern of development to the east of the site along New Canterbury Road in addition to the low density residential to the rear.

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

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

Section 5.3 Development Near Zone Boundaries

The property is zoned B2 Local Centre under the provisions of the MLEP 2011 with Building B within the development is classified as a residential flat building. Residential flat buildings are not permissible with Council's consent under the zoning provisions applying to the land. However, the site adjoins the R1 General Residential Zone to the north of the site, within which residential flat buildings are permissible.

Clause 5.3 provides a zone of flexibility within 25 metres of the zone. The building located at the rear of the site and the ground floor residential components within it are proposed to be located within 25m of the R1 Residential zone in accordance with Clause 5.3(2).

Clause 5.3 (4) lists matters to be considered by the consent authority. The consent authority must be satisfied that:

- *The development is not inconsistent with the objectives for development in both zones; and*
- *The carrying out of the development is desirable due to compatible land use planning, infrastructure capacity and other planning principles relating to the efficient and timely development of land.*

The following comments are made:

- The allotments facing New Canterbury Road are relatively deep blocks. It is economically prohibitive to provide retail uses at the ground floor for the full extent of the site given the lot depth;
- Smaller retail uses are better suited to activate and revitalise New Canterbury Road rather than large deep tenancies occupying the entire allotment depth;

It is considered that the proposal is consistent with the objectives of the B2 Local Centre zone given that:

- The development as a whole proposes commercial and residential opportunities which will provide local services as well as housing stock to the community;
- The provision of commercial space on the ground floor fronting New Canterbury Road encourages employment opportunities in accessible locations;
- The development will maximise public transport patronage and encourage walking and cycling by being located within close proximity to Hurlstone Park Railway Station and Dulwich Grove light railway station;
- The type and scale of the permissible non-residential uses is considered to be appropriate given the site's layout and location;
- The proposed parking is generally in accordance with Council's controls. The site is located near rail and bus transport links facilitating public transport use.

It is considered that the proposal is consistent with the objectives of the R1 General Residential zone given that:

- The development responds to housing demand by proposing 14 residential units onsite;
- The development provides a variety of housing types ranging from 1 to 3 bedroom apartments which are generally in accordance with ADG and Council's dwelling mix controls; and
- The provision of commercial space on the ground floor of the building facing New Canterbury Road will still encourage other development for day to day needs of residents.

It is considered that the development has demonstrated that it is able to meet the objectives of both the B2 Local Centre zone and the R1 General Residential zone. The use of the rear building as a residential flat building provides a natural transition between the business and residential zones at the rear of the site. The development has demonstrated compatible land use planning and it is considered to be appropriate to utilise the provisions contained within Clause 5.3 of MLEP 2011

6.20 Design Excellence

A similar scheme to that proposed under PDA/2021/0429 was referred to the Architectural Excellence Design Review Panel (AEDRP) for comment. Council's Urban Designer concluded that the subject application was not required to be re-referred to the AEDRP in this instance noting the similarities between the PDA proposal and that of the subject application. The following recommendations remained outstanding from the AEDRP as part of the initial design:

1. *The top level of Northern building (Building B) suggested to be expressed in a mansard roof form, to improve built form transition to the low-density dwelling houses to the west.*
2. *The northern building recommended to be provided with a second lift access from the basement, and the panel would support a non-compliance with parking.*
3. *The vehicular driveway entry width should be limited to a 3 to 3.6m single width, and subsequent entry foyer width to be increased.*
4. *Provision of ceiling fans to all habitable areas.*
5. *Further plantation of large canopy trees within the rear deep soil area.*

The amended plans received were subsequently reviewed by Council's Urban Designer for comment:

1. *Building Services Integration: Ground floor configuration needs to demonstrate that building servicing requirements for 2 x 4 storey buildings including – fire hydrant booster valve, pump room, fire indicator panel, meters panel, main switchboard, communications room and other technical requirements could be incorporated without compromising amenity and quality of the ground floor spaces.*
Planner Comment: Acceptable. The proposal includes the provision for plant and equipment within the ground floor. It is noted that the level of detail for building servicing requirements is not required at the Development Application Stage.
2. *Noise Attenuation: It is recommended that balconies and fenestrations addressing the internal courtyard should be provided with appropriate architectural features that mitigate noise attenuation – e.g. sound absorption blades or treatment within the balcony soffits.*
Planner Comment: Acceptable. Suitable conditions are recommended to ensure that the proposal complies with the necessary Australian standards and NCC requirements for noise attenuation.
3. *Ceiling Fans: Provision of ceiling fans to all living areas is noted as a positive addition. The applicant should further encouraged to include ceiling fans to the bedrooms, as a low energy alternative within each dwelling.*
Planner Comment: Acceptable.
4. *P/V Cells: Installation of photovoltaic solar panels on the roof is also recommended, for power to common areas within the proposal.*
Planner Comment: Acceptable. Whilst the inclusion of solar panels is encouraged, this is not required under any applicable planning instruments. Furthermore, should the applicant wish to include solar panels, this can be done in the future under a separate application if required.
5. *Large Canopy Trees: The 6m deep soil area within the northern setback should be provided with large canopy trees, to improve privacy and enhance outlook of neighbours within the adjoining apartment building to the north. The landscape plan should nominate the proposed species for these large canopy trees.*
Planner Comment: Acceptable: The rear setback is to be suitably landscaped utilising appropriate planting so as not to adversely impacts any new structures proposed and provide amenity to the future residents.
6. *Screening of A/C condensers: The A/C condensers located in the balconies should be provided with suitable visual and acoustic screens, to improve the quality of outlook and amenity for the residents*
Planner Comment: Acceptable. The noise attenuation associated with A/C condensers would form part of the consideration of the Construction Certificate documentation required to satisfy specified acoustic measures.
7. *Design Intent – 1:20 Sections: Revised drawings should include details of the proposed design intent forrainwater drainage system including any downpipes and similar details within the proposal.*

Planner Comment: Acceptable. It is noted that conditions are include in the recommendation requirement the concealment of downpipes.

It is considered that the proposal as amended and conditioned satisfies the provisions of Clause 6.20 of the MLEP 2011 for design excellence.

5(d) Development Control Plans

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

The following provides discussion of the relevant issues:

ZDCP 2011 Part of MDCP 2011	Compliance
Part 2.1 – Urban Design	Yes – see discussion below
Part 2.3 – Site and Context Analysis	Yes
Part 2.5 – Equity of Access and Mobility	Yes
Part 2.6 – Acoustic and Visual Privacy	Yes
Part 2.7 – Solar Access and Overshadowing	Yes
Part 2.9 – Community Safety	Yes
Part 2.10 – Parking	Yes – see discussion below
Part 2.16 – Energy Efficiency	Yes
Part 2.17 – Water Sensitive Urban Design	Yes
Part 2.18 – Landscaping and Open Space	Yes
Part 2.21 – Site Facilities and Waste Management	Yes
Part 2.24 – Contaminated Land	Yes
Part 2.25 – Stormwater Management	Yes subject to condition-see discussion
Part 5 – Commercial and Mixed Use Development	Yes – see discussion below
Part 9 – Strategic Context	Yes – see discussion below

The following provides discussion of the relevant issues:

Part 2.1 – Urban Design

The proposal assists to improve the urban structure and is considered well connected to nearby transport and services;

- Subject to conditions recommended within this report, including the deletion of the bedroom on the ground floor of Building A, the proposal provides for satisfactory access arrangements, including in terms of facilities and general access;
- The proposal provides for a complementary mix of uses and spaces;
- The proposal provides for an appropriate level of density relative to the development standards prescribed for the site and the desired future character of the zone;
- The proposal provides for an urban form that clearly defines public and private spaces and that are appropriate for the function of the locality;
- The proposal provides for satisfactory legibility to assist with wayfinding within the site and building;
- The proposed built form, materiality and design of the building recognises and enhances the character of the nearby commercial precinct; and
- Given the surrounding context, the proposal will have an acceptable impact on the built form transition along New Canterbury Road as well as the low density residential development to the rear.

Part 2.10 – Parking

The site is located within ‘Parking Area 1’ under Part 2.10 in MDCP 2011. With the recommended design change condition as detailed within this report considered, the following table includes the parking requirements under this Part for the proposal

Component	Control	Required	Proposed	Complies
MDCP 2011 Car Parking				
Resident Car Parking	0.5 per 1br unit (non adaptable)	1 x 1 bed units = 1 X space	10 Spaces	Yes
	1 per 2br unit (nonadaptable)	9 x 2 bed unit = 5 X spaces		
	1.2 per 3+br unit (non adaptable)	1 x 3 bed unit = 1 X spaces		
	1 mobility space per 1br, 2br or 3+br unit (adaptable)	3 x 2 bed unit = 3 X spaces		
	Total:	10 spaces*		
Visitor Car Parking	0.1 car parking space per unit	14 units = 1 space	2 spaces	Yes
	1 accessible visitor’s car parking space per 4 accessible car parking spaces	3 accessible spaces provided = 1 accessible visitor space		
	Total:	2 spaces*		
Business premises; retail premises; shops	1 per 80sqm GFA for customers & staff	72sqm GFA = 1 required	1 space	Yes
Bicycle Parking				
Resident Bicycle Parking	1 bicycle parking space per 2 units	14 units = 7 spaces	8 spaces	Yes
		14 units = 1 spaces		Yes
Visitor Bicycle Parking	1 bicycle parking space per 10 units	14 units = 1 spaces		
	Total	8 spaces*		
Motorcycle Parking				
Motorcycle Parking	5% of the total car parking requirement	15 car parking spaces required = 1 space	2 spaces	Yes

The car parking requirements prescribed by the MDCP 2011 generates a lesser demand than the of the RMS Guide and as such the MDCP2011 provisions apply to the site in this instance. The proposal as reinforced is via conditioned will comply with the numerical car parking provisions.

Part 2.25- Stormwater Management

Having regard to the provisions of Part 2.25 of MDCP 2011, the site drainage must be designed to drain under gravity. As the site falls to the rear an easement for drainage over downstream properties will be required to be created and/or legal rights to utilise any existing easement for drainage demonstrated. Written documentation of the creation of or legal agreement to create an easement for drainage or legal rights to utilise any existing easement for drainage must be submitted to Council. A deferred commencement condition is included in the recommendation to this effect.

Part 5 – Commercial and Mixed Use Development

Front Massing for infill development

Control C7 requires the street front portion of the building mass to have a nil setback to the street up to a height of 12m and contain a maximum of 3 storeys. The proposal seeks a street wall height of 13.7m and contains 4 storeys fronting New Canterbury Road which is a non-compliance with the front massing control.

The variation to the maximum number of storeys at the street frontage is considered reasonable. The established pattern of development to the east of the subject site at 843 New Canterbury Road, 801-807 New Canterbury Road, 819 New Canterbury Road and 825 – 829 New Canterbury Road all contain a 4 storey height for the street front portion of the buildings.

The southern side of New Canterbury Road (which within the Canterbury Bankstown LGA) has a maximum building height limit of 18m (4-6 storeys) and the development will therefore be consistent with the envisaged future urban design character of the precinct as a whole

It is considered that the building's façade design and materials will contribute positively to the existing streetscape character of the locality. The building reinforces the building frontage edge of the streetscape within the immediate visual catchment of the site along New Canterbury Road.

Control C8 requires a zero front setback to the street front boundary and Control C9 requires zero side setbacks in the front portion of the building to reinforce the street edge. Building A provides a nil front setback and nil side setbacks which reinforces a continuous street frontage along New Canterbury Road.

Upper level massing

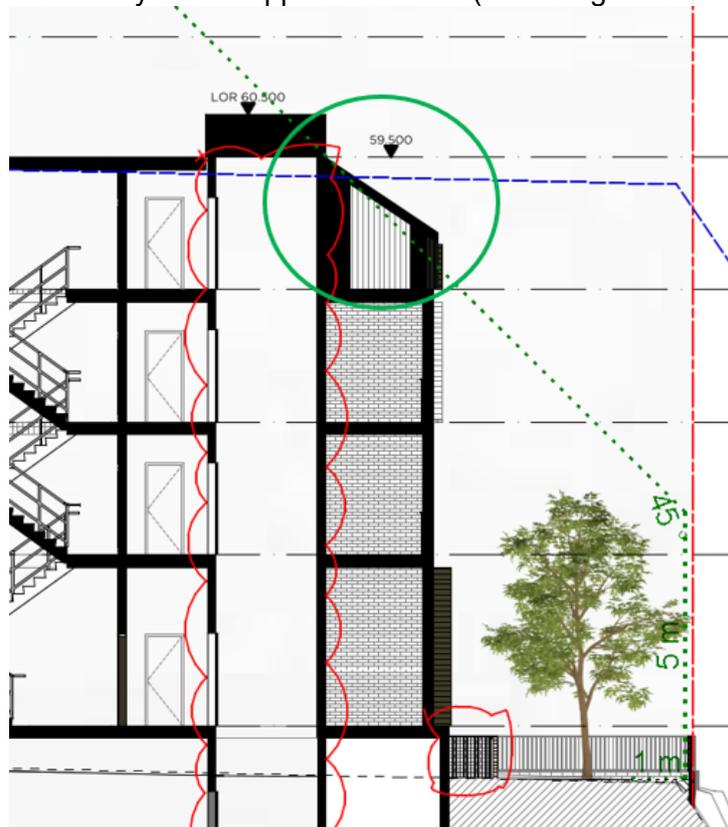
The front elevation of the fifth storey (Level 4) of the development contains a 5.7m building setback from the street front of the building which satisfies the intent of the Control C11, Part 5.1.3.3 of MDCP 2011, which is to allow an upper level addition which is visually subservient to the street front portion of the building when viewed from the streetscape. The fifth storey will be a visually subordinate element of the building when viewed from the surrounding streetscape.

Rear Massing

The development does not comply with the rear building envelope controls contained in Control C14 in that the rear building envelope is not contained within the combination of the rear boundary plane and 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.

Notwithstanding the above, Control C14(ii) prescribes that building envelopes may exceed the above building envelope control where it can be demonstrated that any rear massing that penetrates above the envelope control will not cause significant visual bulk or amenity impacts

on neighbouring properties to the rear. As discussed in the main body of the report, the rear Building B adopts a mansard roof for the top floor and as such will not cause significant visual bulk or amenity impacts on neighbouring properties to the north, east and west of the site having regard to overshadowing, visual/acoustic privacy and visual bulk. The extent of the non-compliance is generally considered to be minor as it is limited to a small portion of the side walls of the rear balcony on the upper most level (circle in green below), see below:



Dwelling mix (Part 5.1.5.2)

With the recommended design change condition as detailed within this report considered, Part 5.1.5.2 of MDCP 2011 prescribes the following dwelling mix requirements for mixed use developments containing 6 or more dwellings:

Unit Type	Required	Proposed	Complies
Studio	5% - 20% (1-3 units)	Nil	No
1 bedroom	10% - 40% (1-6 units)	1 unit (14%)	Yes
2 bedroom	40% - 75% (6-11 units)	12 units (85%)	No
3 bedroom or bigger	10% - 45% (1-6 units)	1 unit (14%)	Yes

The table above demonstrates that the development does not comply with the dwelling mix controls in that there are no studios provided and a surplus of 2 bedroom units. Notwithstanding this, the development provides for a range of unit layouts and types that contribute to housing range and mix consistent with the intent of the control.

Part 9 – Strategic Context

The property is located in the New Canterbury Road West Planning Precinct (Precinct 17) under Marrickville Development Control Plan 2011.

The site is not located within a Heritage Conservation Area or within a Master Plan Site. The development generally meets the desired future character of the planning precinct in that the development:

- Protects and enhances the character of the streetscape and public domain elements of New Canterbury Road;
- Provides strong definition to the street through retention of the existing nil building setbacks;
- Complements the siting, scale, form, proportion, rhythm, pattern, detail, material, colour, texture, style and general character of the commercial streetscape;
- Provides an active street front to New Canterbury Road;
- Considers the amenity of residents from noise;
- Demonstrates good urban design and environmental sustainability;
- Ensures that the design of higher density development protects the residential amenity of adjoining and surrounding properties; and
- Ensures that the provision and design of parking and access for vehicles is appropriate for the location, efficient, minimises impact to streetscape appearance and maintains pedestrian safety and amenity.

5(e) The Likely Impacts

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

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

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

5(g) Any submissions

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

5(h) The Public Interest

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

- Urban design;
- Development Engineering
- Urban Forest
- Waste

6(b) External

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

- Ausgrid
- Transport for NSW

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 \$256,789.98 would be required for the development under Marrickville Section 94 Contributions Plan 2014. A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

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

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

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

9. Recommendation

- A. The applicant has made a written request pursuant to Section 4.3 Height of Buildings *Marrickville Local Environmental Plan 2011*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.

- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant a deferred commencement consent to Development Application No. DA/2022/0149 for demolition of existing structures and construction of mixed use development, comprising 2 buildings over basement car parking. Building A containing shop top housing with 6 residential units and 1 commercial tenancy and Building B containing a residential flat building consisting of 8 residential units at 845 New Canterbury Road, DULWICH HILL NSW 2203 subject to the conditions listed in Attachment A.

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:

A. Easement - Over Downstream Landholders

The site drainage must be designed to drain under gravity. As the site falls to the rear an easement for drainage over downstream properties will be required to be created and/or legal rights to utilise any existing easement for drainage demonstrated. Written documentation of the creation of or legal agreement to create an easement for drainage or legal rights to utilise any existing easement for drainage must be submitted to Council.

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
DA-0003, Rev B	Site Plan	27/10/22	Urban Link
DA-0004, Rev B	Demolition Plan	27/10/22	Urban Link
DA-0101, Rev B	Basement Plan 01	27/10/22	Urban Link
DA-0102, Rev B	Ground Floor Plan	27/10/22	Urban Link

DA-0103, Rev B	Level 1 Plan	27/10/22	Urban Link
DA-0104, Rev B	Level 2 Plan	27/10/22	Urban Link
DA-0105, Rev B	Level 3 Plan	27/10/22	Urban Link
DA-0106, Rev B	Roof Plan	27/10/22	Urban Link
DA-0201, Rev B	Elevations Building A - South & North	27/10/22	Urban Link
DA-0202, Rev B	Elevations Building B - North, South & C-Section	27/10/22	Urban Link
DA-0203, Rev B	Elevations - East & West	27/10/22	Urban Link
DA-0301, Rev B	Sections - A & B	27/10/22	Urban Link
E2925-3	Remedial Action Plan	28/10/2022	Foundation Earth Sciences
G605-1	Geotechnical Investigation Report	20/10/2022	Foundation Earth Sciences
E2929-2	Hazardous Materials Assessment	20/10/2022	Foundation Earth Sciences
1275170M	Basix Certificate	22/02/2022	Villa Doe Pty Ltd
1022004	Acoustic report	18/02/2022	Acoustic Works
22010 DA1, DA2, Rev A	Landscape Concept Plans	7/02/2022	Landscape Concept Plan

As amended by the conditions of consent.

DESIGN CHANGE

2. Design Change

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating the ground floor bedroom and stair access within Building A are to be deleted from the proposal, with this area to be reconfigured to accommodate one of the following or similar to:

- a. Building services, plant and/or waste storage area. No residential accommodation is to be located in this space.

Noting that the existing garbage area may be utilised as a store area for the retail space

FEES

3. 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 0.25% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$250,000 or more.

4. 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 \$256,789.98 indexed Marrickville Section 94/94A Contributions Plan 2014] ("CP") has been paid to the Council.

The above contribution is the contribution applicable as at 2 March 2023.

***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:

Marrickville delete if not applicable

Public Amenities Type:	Contribution \$
Recreation Facilities	\$224,764.17
Community Facilities	\$26,711.17
Traffic Facilities	\$279.55
Plan Administration	\$5,035.10
TOTAL	\$256,789.98

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

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

Payment methods:

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

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

5. Security Deposit - Custom

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

Security Deposit:	\$39,400.00
Inspection Fee:	\$350.00

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

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

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

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

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

GENERAL CONDITIONS

6. Contamination – Remedial Action Plan (No Site Auditor Engaged)

The site is to be remediated and validated in accordance with the recommendations set out in the Remedial Action Plan, prepared by Foundation Earth Sciences, reference E2925-3 dated October 2022, the *Contaminated Land Management Act 1997* and Chapter 4 - Remediation of Land of the *State Environmental Planning Policy (Resilience and Hazards) 2021*.

7. Hazardous Materials Survey

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

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

8. Transport for NSW Conditions

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with:

- a. The design and construction of the kerb and gutter crossing on New Canterbury Road shall be in accordance with TfNSW requirements. Details of these requirements should be obtained by email to developerworks.sydney@transport.nsw.gov.au. Detailed design plans of the proposed gutter are to be submitted to TfNSW for approval prior to the issue of a construction certificate and commencement of any road works. Please send all documentation to development.sydney@transport.nsw.gov.au. A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by TfNSW.
- b. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au. A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.
- c. Vehicles are to enter and exit the site in a forward direction.

- d. Vehicles are to be wholly contained on site before being required to stop.
- e. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on New Canterbury Road during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>.
- f. Given that the site is situated approximately 80 meters away from the traffic signals of Old Canterbury Road with a bus zone in the immediate vicinity. TfNSW recommends the usage of convex mirrors to improve visibility and safety at an already busy street frontage.

9. Noise – Consultant’s Recommendations

All performance parameters, requirements, engineering assumptions and recommendations contained in Acoustic report prepared by Acoustic Works dated 18 February 2022 (ref: 1022004 R01C 845-847 New Canterbury Road Dulwich Hill RTN ENV.docx) must be implemented.

10. 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.

11. Works Outside the Property Boundary

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

12. 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.

13. 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.

14. 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.

15. Waste Management Plan

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

16. Residential Flat Buildings – Adaptable Dwellings

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

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

17. 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.

18. 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.

19. Car Parking

The development must provide and maintain within the site:

- a. 13 car parking spaces must be paved and line marked in total;
- b. 4 car parking spaces, for persons with a disability must be provided and marked as disabled car parking spaces;
- c. 3 visitor car parking spaces must be provided and marked as visitor car parking spaces. A sign legible from the street must be permanently displayed to indicate that visitor parking is available on site;
- d. 2 off-street motorcycle parking spaces must be provided, paved, line marked and maintained at all times;
- e. 8 Bicycle storage capacity within the site;

20. 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.

21. Rock Anchors

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

22. Awnings with Lighting

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

23. Works to Trees

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

Tree/location	Approved works
<i>Schinus molle</i> var. areira (Peruvian Pepper Tree)	Removal

PRIOR TO ANY DEMOLITION

24. 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.

25. Advising Neighbours Prior to Excavation

At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining

allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

26. 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, this being 873 and 837 New Canterbury Road, 353 and 351 Old Canterbury Road 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.

27. 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.

28. 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.

29. 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.

PRIOR TO CONSTRUCTION CERTIFICATE

30. Future use of Mixed-Use Building for Commercial Tenancy

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with details demonstrating that the building design must incorporate measures to enable the installation of appropriate mechanical ventilation systems that comply with relevant Australian Standards including AS1668 and can accommodate any exhaust/ventilation requirements for ground floor commercial units in particular food premises. If a food premises requires a mechanical exhaust system for charcoal cooking purposes, separate consent is required as additional filtration systems and odour assessment will be necessary.

31. Parking Facilities – Major (including basement)

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

- a. The driveway must rise within the property to be a minimum 170mm above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing. The longitudinal profile across the width of the vehicle crossing must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004;
- b. A minimum of 2200mm headroom must be provided throughout the access and parking facilities. Note that the headroom must be measured at the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors;
- c. Headroom at a 'sag' type grade change must be measured in accordance with Figure 5.3 of AS/NZS 2890.1-2004;
- d. Minimum headroom of 2500mm must be provided above any disabled parking space(s);
- e. The longitudinal profile of the access and any ramps within the parking facilities must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004 for a B99

- design vehicle. Longitudinal sections must be provided along each outer edge of all ramps;
- f. The layout and minimum dimensions of any standing area comply with clause 2.4 of AS/NZS 2890.1-2004 such that:
 - i. Car spaces adjacent to walls or fences are increased in width by an additional 300mm;
 - ii. End spaces are provided with an additional 1m aisle extension; and
 - iii. The location of columns within the carpark complies with figure 5.1 of AS/NZS 2890.1-2004.
 - g. At the property boundary the access from the road to a standing area is (as near as practicable) perpendicular to the line of the adjacent road;
 - h. The relative surface levels of the internal access from the road being controlled so that:
 - i. The change in grade for any 2m length of access way does not exceed 1 in 8 (12.5%) unless suitable transitions are provided in accordance with AS2890.1;
 - ii. The maximum grade at any point does not exceed 1 in 5 (20%) or in the case of ramps greater than 20m in length 1 in 6 (16.7%); and
 - iii. The maximum grade at the property boundary does not exceed 1 in 20 (5%) within 6m of the property boundary.
 - i. The vehicle egress is designed such that there are no obstructions to lines of sight, along with the footpath and the roadway for drivers of egressing vehicles;
 - j. All parking bays are designed such that all vehicular movements to and from the proposed development are in a forward direction;
 - k. The entry security door must be set back a minimum of 5500mm from the property boundary;
 - l. A bicycle storage area must be provided to accommodate a minimum of 10 bicycles and be designed in accordance with relevant provisions of AS 2890.3-2015; and
 - m. Convex mirrors are to be provided within the site to improve visibility and safety at the street frontage.

32. Noise From Road, Rail & Aircraft – Compliance

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

1. *State Environmental Planning Policy (Transport and Infrastructure) 2021*;
2. NSW Planning, Development near Rail Corridors and Busy Roads – Interim Guideline;
3. Australian Standard 2021-2000: Acoustics - Aircraft noise intrusion - Building siting and construction;
4. conditions of development consent;

33. 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.

34. 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.

35. 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

36. Provision of an Amended Operational Waste Management Plan

Prior to the issue of a construction certificate the certifying authority is to be provided with an amended operational waste management plan that:

- Is amended to provide residential waste collection via Council services collected on the property frontage on New Canterbury Road
- Is amended to reflect Council collection of recycling on a fortnightly basis
- Is amended to reflect that unwanted bulky items will be stored by residents in their individually allotted storage cages in lieu of a communal bulky waste storage area

The amended Waste Management plan is to form part of the construction certificate documents.

37. Each Residential Unit 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).

38. 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.

39. Bin Storage Area - Residential

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

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

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

40. 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 AS4282:2019: Control of Obtrusive Effects of Outdoor Lighting.

41. Future Food Use - Mechanical Ventilation Provision

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

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

42. Dilapidation Report – Pre-Development – Minor

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

43. Public Domain Works – Prior to Construction Certificate

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

- a. The public domain along all frontages of the site inclusive of footpath paving, kerb, street furniture, etc. must be reconstructed and upgraded in accordance with the Street Tree Master plan and the Public Domain Design Guide or scheme;
- b. The construction of heavy duty vehicular crossings to all vehicular access locations and removal of all redundant vehicular crossings to the site;
- c. Design and construction of the kerb and gutter crossing on New Canterbury Road shall be in accordance with TfNSW requirements. Detailed design plans of the proposed gutter are to be submitted to TfNSW for approval;
- d. Details of any changes required to the existing Bus Zone and Bus Zone signage;
- e. New concrete footpath and kerb and gutter along the frontage of the site. The kerb type (concrete or stone) must be consistent with the majority of kerb type at this location as determine by the Council Engineer.; and
- f. Cross sections are to be provided at the boundary at a minimum distance of every 5m and at all pedestrian and vehicular access locations. The cross fall of the footpath must be set at 2.5%. These sections will set the alignment levels at the boundary.

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

44. 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. The design must be generally in accordance with the stormwater drainage concept plan on Drawing No. 22-012/D6 Rev B prepared by Soliman Hanna & Associates and dated 15/02/22, as amended to comply with the following;
- b. 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;
- c. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP.
- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than for the pump-out of subsurface flows and surface flows from the driveway from the basement;
- e. The Drainage Plan must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;
- f. 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 with the maximum allowable discharge to Council's street gutter limited to 25 litres/second (20 years ARI/100years ARI);
- g. Details of the Height vs Storage and Height vs Discharge relationships must be submitted.
- h. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows from the contributing catchment to the OSD/OSR tanks;
- i. 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;
- j. 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;
- k. Details of the 1 in 100-year ARI overflow route in case of failure/blockage of the drainage system must be provided;
- l. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas except where a reduced step is permitted under Section 3.1.2.3 (b) of the Building Code of Australia for Class 1 buildings;
- m. A pump-out system for drainage of surface flows from the basement ramp is permitted for the basement area only and must be designed in accordance with the following criteria:

1. Comply with all relevant Australian Standards;
 2. An overflow, flashing light and audible alarm is to be provided to warn of pump failure;
 3. A maintenance regime for the pump system must be provided, including provision for regular maintenance and servicing at least every 6 months;
 4. The proposed pump system must consist of two (2) pumps, connected in parallel, with each pump being capable of emptying the holding tank at a rate equal to the rate of inflow for the one-hour duration, 100-year Average Recurrence Interval (ARI) storm event. The holding tank must be capable of holding one hour's runoff from one-hour duration 20-year ARI storm event;
 5. Where OSD facilities are required by this consent, the pump system must be discharged to the OSD storage tank;
 6. Subsurface flows must be collected at the point of ingress to the basement i.e. at the basement walls;
 7. The subsurface drainage system must have sufficient capacity to collect and convey all surface flows to the pump out system; and
 8. Inlet pits and drains for subsurface drainage must be designed to minimise potential for pollutants from cars or other sources to enter the subsurface drainage system. e.g.. isolate any subsurface drains at boundary walls, inspection pits with solid covers, etc.
- n. Details of external catchments currently draining to the site must be included on the plans. Existing natural overland flows from external catchments may not be blocked or diverted, but must be captured and catered for within the proposed site drainage system. Where necessary an inter-allotment drainage system must be incorporated into the design;
 - o. No nuisance or concentration of flows to other properties;
 - p. Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required;
 - q. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for all stormwater outlets;
 - r. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
 - s. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a maximum section height and width of 100mm or sewer grade uPVC pipe with a maximum diameter of 100mm;
 - t. All stormwater outlets through sandstone kerbs must be carefully core drilled in accordance with Council standard drawings;
 - u. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated;

- v. Water quality filtration basket(s) with screening bag or similar primary treatment device(s) must be installed on the site stormwater drainage system such that all water entering the site stormwater drainage system is filtered by the device(s); Stormwater quality improvement devices must be installed such that stormwater flows leaving the site meet the following environmental targets:

w.

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

- x. A water balance model must be submitted to accompany the water re-use proposal;
- y. A WSUD Strategy Report must be provided to ensure the treatment measures proposed to meet Council's water quality targets;
- z. 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
- aa. No impact to street tree(s).

DURING DEMOLITION AND CONSTRUCTION

45. 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.

46. Imported Fill Materials

All imported fill on the site shall be validated as Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM), in accordance with NSW Environment Protection Authority guidelines, 'Consultants Reporting on Contaminated Sites' (August 2011) to ensure the imported fill is suitable for the proposed land use.

All fill imported onto the site shall be validated by either one or both of the following methods:

- a. Imported fill be accompanied by documentation from the supplier which certifies that the material is not contaminated based upon analyses of the material for the known past history of the site where the material is obtained; and/or
- b. Sampling and analysis of the fill material be conducted in accordance with NSW Environment Protection Authority's Sampling Design Guidelines (September 1995).

47. Documentation of Demolition and Construction Waste

All waste docketts from the recycling and/or disposal of any demolition and construction waste generated from the works must be retained on site.

48. 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.

49. 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.

PRIOR TO OCCUPATION CERTIFICATE

50. Noise – Acoustic Report

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

51. Contamination – Disposal of Soil

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with a validation report confirming that all off site disposal of soil has been classified, removed and disposed of in accordance with the NSW DECC Waste Classification Guidelines, Part 1: Classifying Waste (EPA 2014), Protection of the Environment Operations (Waste) Regulation 2014 and the *Protection of the Environmental Operations Act 1997*.

52. Contamination – Validation (No Site Audit Statement Required)

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

53. Noise From Road, Rail & Aircraft

Prior to the issue of any Occupation Certificate, the Principal Certifier must be provided with a report prepared and submitted by an accredited Acoustics Consultant certifying that the final construction meets AS2021-2015, *State Environmental Planning Policy (Transport and Infrastructure) 2021* and NSW Planning, Development near Rail Corridors and Busy Roads – Interim Guideline with regard to the noise attenuation measures referred to in the "Before the Issue of a Construction Certificate" Section of this Determination. Such report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development.

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

54. Smoke Alarms - Certification of upgrade to NCC requirements

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

55. No Weep Holes

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with evidence that any weep holes to Council road or footpath resulting from the building works have been removed.

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. Easement for drainage of water;
- b. Restrictions on the Use of Land related to on Site Stormwater Detention System or stormwater quality improvement devices;
- c. Positive Covenant related to on-site stormwater detention and/or retention system; and
- d. Positive Covenant related to stormwater quality improvement devices.

The wording in the Instrument must be in accordance with Councils Standard wording.

57. 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). 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.

58. 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) 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.

59. 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.

60. Parking Signoff – Major Development

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

- a. The car park has been completed, line marked and all signage relating to car parking erected; and
- b. Sign(s) have been erected that clearly indicate to the drivers of vehicles both on and off the property the location and means of access to the car parking area(s).

61. Undergrounding Power – Major development

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that the existing overhead power cables along New Canterbury Road frontage of the site have been relocated underground with appropriate street lighting and new steel standard poles. The street lighting must be designed in accordance with Australian Standard AS1158-Road Lighting and the Network Standards of Ausgrid and must meet the lighting category required by Council and RMS. In addition the design must also comply with AS4282 to ensure that no injury is caused to the amenity of the surrounding area by light overspill or obtrusive light.

62. Whiteway Lighting - New

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that the Under awning lighting matches the existing Whiteway lighting scheme in the area.

63. 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.

64. 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 at the vehicular access location;
- b. The existing concrete footpath across the frontage of the site must be reconstructed;
- c. Details of any changes required to the existing Bus Zone and Bus Zone signage; 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".

65. Certification of Tree Planting

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with evidence certified by a person holding a minimum qualification of AQF3 Certificate of Horticulture or Arboriculture that:

A minimum of three (3) x 75 litre size additional trees, which will attain a minimum mature height of eight (8) metres, must be planted on the property at rear. They should not be planted less than 2.5m from the building, and may not be planted less than 1m from other structures or services, allowing for future tree growth. The trees are to conform to AS2303—*Tree stock for landscape use*. Tree species listed on C7 Tree Minor Works, Palms, fruit trees and species recognised to have a short life span will not be accepted as suitable replacements.

If the replacement trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species (up to 3 occurrences). If the trees are found dead before they reach a height where they are protected by Council's Tree Management Controls, they must be replaced with the same species.

ON-GOING

66. Commercial Bin and Re-usable Item Storage

All commercial bins and re-usable items such as crates and trays are to be stored within the site.

67. 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.

68. Commercial Waste/Recycling Collection

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

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

69. 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.

70. Use of Premises

Any future use of the commercial premises must be subject to a future approval under a Complying Development Certificate or Development Application.

71. Bin Storage

All bins are to be stored within the site. Bins are to be returned to the property within 12 hours of having been emptied.

72. Vehicles Leaving the Site

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

73. 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, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

ADVISORY NOTES

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 10m² of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

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

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

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

Ausgrid

Safe work NSW Document – Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances

be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.

The "as constructed" minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual.

This document can be sourced from Ausgrid's website, www.ausgrid.com.au

It remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.

"Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost.

It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected be entering and leaving the site."

Notice to Council to deliver Residential Bins

Council should be notified of bin requirements three weeks 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.

Street Numbering

If there are any changes to the number of occupancies including any additional occupancies created, a street numbering application must be lodged and approved by Council's GIS team before any street number is displayed. Link to [Street Numbering Application](#)

Useful Contacts

BASIX Information

1300 650 908 weekdays 2:00pm - 5:00pm

		www.basix.nsw.gov.au
Department of Fair Trading	13 32 20	
		www.fairtrading.nsw.gov.au
		Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100	
		www.dialprior toyoudig.com.au
Landcom	9841 8660	
		To purchase copies of Volume One of "Soils and Construction"
Long Service Payments Corporation	131441	
		www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406	
		www.foodnotify.nsw.gov.au
NSW Government		www.nsw.gov.au/fibro
		www.diyasafe.nsw.gov.au
		Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555	
		www.environment.nsw.gov.au
Sydney Water	13 20 92	
		www.sydneywater.com.au
Waste Service - SITA Environmental Solutions	1300 651 116	
		www.wasteservice.nsw.gov.au

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

WorkCover Authority of NSW 13 10 50

www.workcover.nsw.gov.au

Enquiries relating to work safety and asbestos removal and disposal.

Dial before you dig

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

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.

Fire Safety Certificate

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

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

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

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.

Noise

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

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.

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.

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.

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.

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.

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.

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*.

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 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.

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.

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.

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.

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.

Prescribed Conditions

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

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.

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.

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.

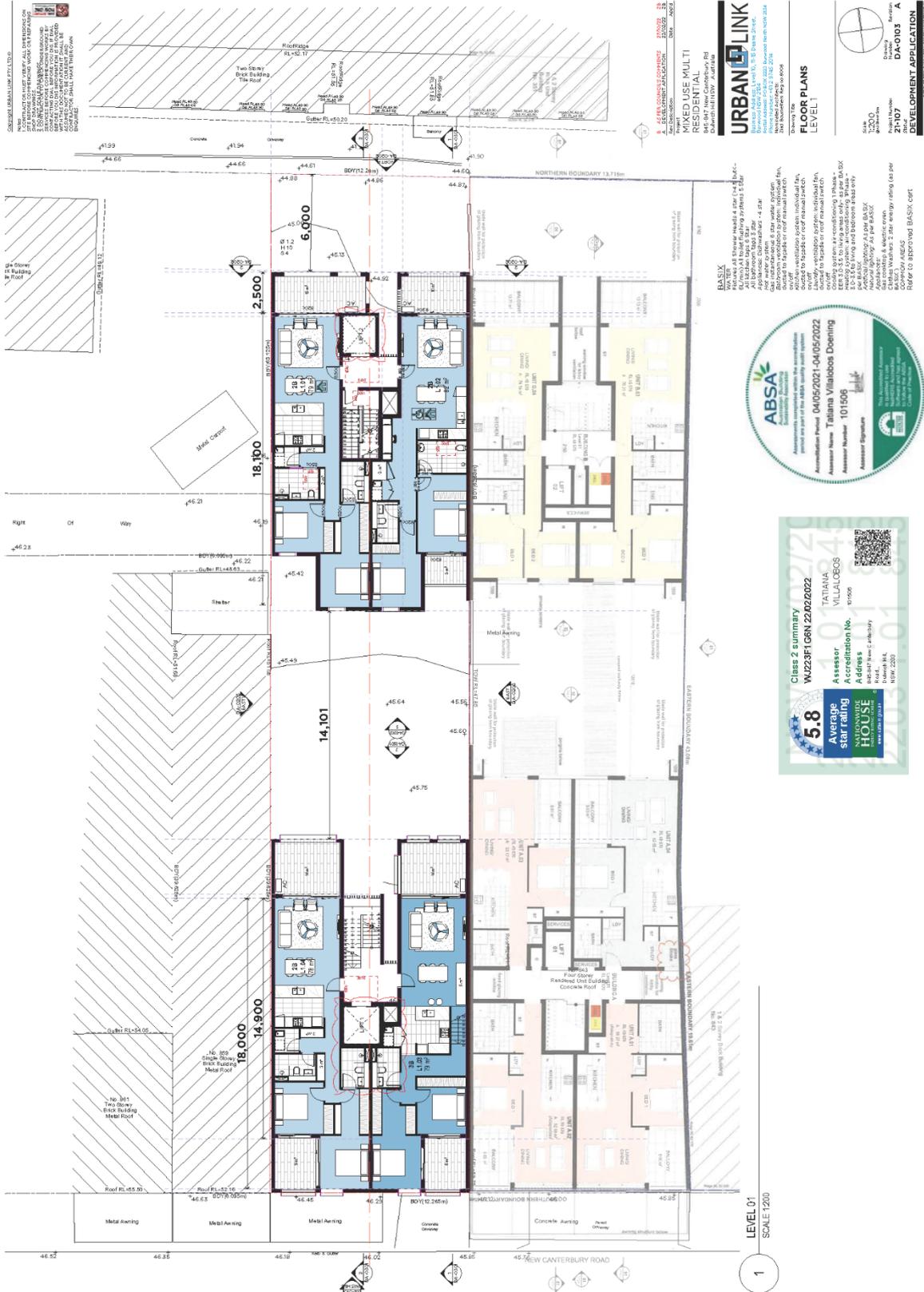
Electrical Substations

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.

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.



CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND LOCATIONS OF ALL SERVICES AND UTILITIES PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL COUNCIL AND ANY OTHER RELEVANT AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL COUNCIL AND ANY OTHER RELEVANT AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL COUNCIL AND ANY OTHER RELEVANT AGENCIES.

MIXED USE MULTI RESIDENTIAL DEVELOPMENT
 1. DEVELOPMENT APPLICATION NUMBER: 2022/00000
 2. DEVELOPMENT APPLICATION NUMBER: 2022/00000
 3. DEVELOPMENT APPLICATION NUMBER: 2022/00000
 4. DEVELOPMENT APPLICATION NUMBER: 2022/00000

URBAN LINK
 URBAN LINK
 100/102 NEW CANTERBURY ROAD
 SYDNEY NSW 1585
 PH: 02 9550 1000
 WWW.URBANLINK.COM.AU

FLOOR PLANS LEVEL 1
 Scale: 1:200
 Date: 04/05/2022
 Drawing No: 2022/00000-01
 Revision: A
 DEVELOPMENT APPLICATION
 2022/00000

BASEX WATER
 All water services to be installed in accordance with the relevant standards and specifications. All water services to be installed in accordance with the relevant standards and specifications. All water services to be installed in accordance with the relevant standards and specifications. All water services to be installed in accordance with the relevant standards and specifications.



Class 2 summary
 WJ223F1GRN2202022
 Assessor: TALLIANA VILLALOBOS DOWNING
 Address: 100/102 NEW CANTERBURY ROAD, SYDNEY NSW 1585
 Average star rating: 5.8
 NATIONAL HOUSE ENERGY RATING SCHEME
 www.nher.gov.au

1 LEVEL 01
 SCALE 1:200



Attachment C- Section 4.6 Exception to Development Standards

REQUEST TO CONTRAVENE A DEVELOPMENT STANDARD UNDER CLAUSE 4.6

Cl 4.3, Marrickville LEP 2011: Height of Buildings



845 New Canterbury Road, Dulwich Hill NSW

Demolition of existing structures and construction of a mixed use development comprising shop top housing and a residential flat building

15 February 2022 | P497

**Weir
Phillips**
Heritage
and Planning

Level 19, 100 William Street, Sydney, NSW 2011
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Report Preparation	
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www.weirphillipsheritage.com.au

1.0 INTRODUCTION

This request to contravene a development standard in respect of height under Clause 4.3 of Marrickville LEP 2011 is submitted to accompany a development application for:

demolition of existing structures and construction of a mixed-use development comprising shop top housing and a residential flat building

at 845 New Canterbury Road, Dulwich Hill NSW.

It has been prepared with particular reference to the decisions of the Court in respect of:

- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;
- Four2Five Pty Limited v Ashfield Council [2015] NSWLEC 90;
- Wehbe v Pittwater Council [2007] NSWLEC 827;

and other relevant case law.

2.0 THE DEVELOPMENT STANDARD

2.1 The applicable planning instrument which specifies the development standard:

Marrickville Local Environmental Plan 2011 (MLEP 2011)

2.2 The number of the relevant clause:

Clause 4.3 – Height of buildings.

2.3 The provisions of the relevant clause:

Clause 4.3 – Height of buildings.

The development standard to which this request for contravention relates is Clause 4.3(2) of MLEP 2011 – Height of buildings, which specifies that:

The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The height shown on the Height of Buildings Map is 14m.

3.0 THE CONTRAVENTION SOUGHT:

3.1 Description of the contravention:

The proposed development would contravene the development standard as follows:

3.1.1 Maximum height of building:

14m.

3.1.2 Proposed height of building:

- Building A (front building):
 - Main parapet: 14.5m
 - Upper roof: 16.0m
- Building B (rear building):
 - Main parapet: 14.6m
 - Lift overrun: 15.2m

3.1.3 Extent of proposed contravention:

- Building A (front building):
 - Main parapet: 0.5m
 - Upper roof: 2.0m

- Building B (rear building):
 - Main parapet: 0.6m
 - Lift overrun: 1.2m

3.1.4 Causes of the contravention:

The contravention would result from:

- Building A (front building):
 - Main parapet: A wedge shaped portion of the rear parapet
 - Upper roof: the majority of Level 4.

It is generally a result of providing:

- a rooftop terrace;
- a lift overrun; and
- a bedroom, ensuite and sitting area associated with the Unit below (L3.04).

- Building B (rear building):
 - Main parapet: The rear parapet
 - Lift overrun: the lift overrun.

It is generally a result of providing:

- Level ground floor access to the rear to avoid step or ramps.

3.1.5 Summary:

The height is generally compliant at the street boundary but a minor non-compliance results from the fall of the land to the east.

The small structure on Level 4 of Building A represents the greatest non-compliance.

The lift overrun and general parapet of Building B are marginally non-compliant as a result of a the adoption of a level ground floor throughout the site to improve accessibility combined with the natural fall of the land to the rear.

4.0 PROVISIONS OF CLAUSE 4.6

4.1 Cl. 4.6(1): Objectives

Clause 4.6 seeks to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. The objectives of Clause 4.6 are as follows:

Cl. 4.6(1) Objectives of Clause		
Clause	Control	Justification
(1)(a)	to provide an appropriate degree of flexibility in applying certain development standards to particular development	The proposal contravenes the standard which sets a maximum height of building. It seeks to utilise this clause to provide appropriate flexibility in application of the standard to permit approval.
(1)(b)	to achieve better outcomes for and from development by allowing flexibility in particular circumstances	The proposal would achieve better outcomes: <ul style="list-style-type: none"> • For the development: The contravention would permit: <ul style="list-style-type: none"> ○ A level ground floor; and ○ Better utilisation of the roof area of Building A. • From the development: The contravention would result in:

Cl. 4.6(1) Objectives of Clause		
Clause	Control	Justification
		<ul style="list-style-type: none"> ○ A development consistent with adjacent development at 843 New Canterbury Road; and ○ Consistent with the broader streetscape.

4.2 **Cl. 4.6(3): Justification of the Contravention of the Development Standard**

Under the provisions of clause 4.6(3) – Exceptions to development standards of MLEP 2011, the consent authority must consider a written request from the applicant that seeks to justify the contravention of the development standard. This justification is summarised in the table below:

Cl. 4.6(3) Justification of Contravention		
Clause	Control	Justification
4.6(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:	This written request addresses this clause.
4.6(3)(a)	That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	<p>Compliance with the development standard is unnecessary given that:</p> <ul style="list-style-type: none"> • The objectives of the development standard are met (see below); and • The objectives of the zone are met; notwithstanding the non-compliance. <p>Compliance with the development standard is unreasonable given that:</p> <ul style="list-style-type: none"> • The contravention results, in part, from the natural fall of the land. <p>Also see assessment under Wehbe in Section 4.2.1 below.</p>
4.6(3)(b)	That there are sufficient environmental planning grounds to justify contravening the development standard.	<ul style="list-style-type: none"> • Contravention of the development standard is justified on the following environmental planning grounds:
	As established in Initial Action [23], 'environmental planning grounds' refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act. These are as follows:	-
1.3(b)	to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The contravention would enable more ecologically sustainable development by more efficiently utilising land within an existing urban area serviced by existing utilities thereby taking pressure off development on the urban fringe.
1.3(c)	to promote the orderly and economic use and development of land,	The contravention is required to develop the land to the maximum density permitted Marrickville LEP 2011 which provides for a more economic use of the land and its associated infrastructure including utilities, public transport.
1.3(d)	to promote the delivery and maintenance of affordable housing,	N/A

Cl. 4.6(3) Justification of Contravention		
Clause	Control	Justification
1.3(e)	to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	The contravention would marginally lessen the incentive for new development on the urban fringe and the associated impacts upon natural environments.
1.3(f)	to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	The contravention would enable a built form more consistent with the existing development on the adjacent site at No. 843.
1.3(g)	to promote good design and amenity of the built environment,	The contravention would: <ul style="list-style-type: none"> • enable use of the rooftop; • planting on the roof area; and • the associated environmental benefits.
1.3(h)	to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The contravention (in respect of building B) would allow level access to the rear building.

4.2.1 The Five Part Test

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. These are examined below:

The Five Part Test: (in accordance with Preston CJ in <i>Wehbe v Pittwater Council</i> [2007] NSW LEC 827)		
Part	Test	Discussion
1.	The objectives of the standard are achieved notwithstanding non-compliance with the standard.	The objectives of the development standard are achieved. See discussion under 4.3 below.
2.	The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.	The objectives of the standard are relevant to the proposal and an assessment of compliance is provided above. It is considered that the objectives of the standard are achieved more satisfactorily than maintaining the existing subdivision pattern.
3.	The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.	The underlying object of the development would not be thwarted if compliance were required.
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	The adjacent development consent at No. 543 New Canterbury Road contravenes the development standard to a similar degree and in a similar manner.
5.	the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.	Not applicable. The zoning of the land is considered appropriate.

4.3 Cl. 4.6(4)(a): Objectives of the Zone & Development Standard

Under the provisions of clause 4.6(4) – Exceptions to development standards of MLEP 2011, the consent authority must be satisfied that contraventions of development standards are consistent with the objectives of both the development standard itself and the zone in which the development is proposed. This assessment is summarised in the table below:

Cl. 4.6(4): Justification of contravention against development standard and zone objectives		
Clause	Objectives	Justification
4.3(2)	Height	
(a)	to establish the maximum height of buildings,	Noted.
(b)	to ensure building height is consistent with the desired future character of an area,	The height standard is directed at providing a scale of four storeys in the street. The proposal achieves this as the fifth storey would not be visible from street level.
(c)	to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,	The contravention would not impact solar access onto surrounding properties or the site as any resultant shadows would be cast primarily of over the rooftop area or the rooftops of adjacent development.
(d)	to nominate heights that will provide an appropriate transition in built form and land use intensity.	Given that the contravening height is located in the centre of the front building, it would not impact the scale relationship (created by the rear building) with adjacent lower density and height zone to the rear.
2.3	Zone B2 Local Centre	
	To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.	The contravention would not impact the provision of a shop on the ground floor
	To encourage employment opportunities in accessible locations.	The contravention would not impact the provision of a shop on the ground floor. It may, however, marginally increase population density and provision greater variety of housing types in proximity to employment and retail facilities.
	To maximise public transport patronage and encourage walking and cycling.	The maximisation of the FSR associated with the contravention would permit optimal residential population in close proximity to public transport and other facilities within walking distance.
	To provide housing attached to permissible non-residential uses which is of a type and scale commensurate with the accessibility and function of the centre or area. To provide for spaces, at street level, which are of a size and configuration suitable for land uses which generate active street-fronts.	The contravention would not result in an inappropriate relationship between the residential uses and the accessibility and function of the centre or not compromise the provision of an active street front.
	To constrain parking and reduce car use.	The contravention would not result in non-compliance with car parking requirements.

4.4 cl. 4.6(4)(b): Concurrence

Under the provisions of clause 4.6(4)(b) – Exceptions to development standards of MLEP 2011, the consent authority must be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained before it can exercise the power to grant development consent for development that contravenes the development standard.

Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to

development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

4.5 Cl. 4.6(5): Criteria for Concurrence

Under the provisions of clause 4.6(5) – Exceptions to development standards of MLEP 2011, the Council or the Secretary, as the concurrence authority, is required to consider the following matters:

Cl. 4.6(5) Criteria for Concurrence		
Clause	Control	Justification
(a)	whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and	The contravention of the development standard is not associated with state or regional development. It would not alter the number of dwellings on the site or the visible external form of the proposal or amenity impacts upon surrounding properties. As such, it would not raise any matter of significance for State or regional environmental planning.
(b)	the public benefit of maintaining the development standard, and	There would be no particular benefit achieved by maintaining the development standard.
(c)	any other matters required to be taken into consideration by the Secretary before granting concurrence.	The matters requiring consideration are addressed above.

5.0 CONCLUSION

This Clause 4.6 contravention request to clause 4.3 – Height of buildings of Marrickville LEP 2011 should be supported on the basis that strict application of the development standard is unnecessary and unreasonable given that:

- a) The development meets the stated objectives of clause 4.3, specifically:
 - a) to establish the maximum height of buildings,
 - b) to ensure building height is consistent with the desired future character of an area,
 - c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,
 - d) to nominate heights that will provide an appropriate transition in built form and land use intensity.
- b) The development meets the zone objectives of the B2 Local Centre zone, specifically:
 - To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
 - To encourage employment opportunities in accessible locations.
 - To maximise public transport patronage and encourage walking and cycling.
 - To provide housing attached to permissible non-residential uses which is of a type and scale commensurate with the accessibility and function of the centre or area.
 - To provide for spaces, at street level, which are of a size and configuration suitable for land uses which generate active street-fronts.
 - To constrain parking and reduce car use.
- c) There are sufficient environmental planning grounds to justify contravening the development standard, specifically that the contravention would:
 - Provide a built form more consistent with adjacent recent development in particular the adjacent development at No. 843;
 - Provide a useable rooftop private open space and landscaped area;
 - Allow more efficient utilisation of a site in close proximity to public transport and other amenities;
 - Provide a more satisfactory relationship between indoor space and the rooftop open space; and
 - Provide for level access to Building B and the associated accessibility benefits.

For the reasons set out above, the development may be granted consent notwithstanding the contravention of the development standard in respect of height of buildings in clause 4.3 of MLEP 2011.