



INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA201800448
Address	155 Illawarra Road Marrickville
Proposal	To demolish part of the premises and carry out ground and first floor alterations and additions so as to provide a commercial tenancy on the ground floor to be used as an architect's office and to provide 2 dwellings and a double garage at the rear of the site
Date of Lodgement	1 November 2018
Applicant	H Pronk, N Mackenzie, T Hume and J Tarr
Owner	H Pronk, N Mackenzie, T Hume and J Tarr
Number of Submissions	1 submission (in support)
Value of works	\$230,000
Reason for determination at Planning Panel	Breach to development standard
Main Issues	FSR; Existing Use Rights; Flooding
Recommendation	Deferred Commencement Consent
Attachment A	Recommended conditions of Consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Statement FSR
Attachment D	Statement regarding existing use rights



Subject Site:		Submitters:	
Notified Area:			

1. Executive Summary

This report is an assessment of the application submitted to Council to demolish part of the premises and carry out ground and first floor alterations and additions so as to provide a commercial tenancy on the ground floor to be used as an architect's office and to provide 2 dwellings and a double garage at the rear of the site at 155 Illawarra Road, Marrickville.

The application was notified to surrounding properties and 1 submission was received in support of the proposal.

The main issues that have arisen from the application include:

- A portion of the development is not permissible under the zoning provision applying to the land and this portion of the proposal relies on existing use rights;
- The development represents a 13.7% breach to the FSR development standard; and
- The ground floor residential portion of the development is below the flood planning level applicable to the site and the applicant contends it is unreasonable for Council to request the floor level be raised in this circumstance.

The proposal does not comply with the flood planning requirements set out in Part 2.22 of the Marrickville Development Control Plan 2011 as the ground floor residential portion of the development is below the flood planning level applicable to the site. However, there is scope within the current design to achieve compliance to ensure the residential portion of the development is not susceptible to inundation during a flood event.

With the exception of flood management, the proposal generally complies with the aims, objectives and design parameters contained in the relevant State Environmental Planning Policies (SEPPs), Marrickville Local Environmental Plan 2011 (MLEP 2011) and Marrickville Development Control Plan 2011 (MDCP 2011).

The potential impacts to the surrounding environment have been considered as part of the assessment process. Any potential impacts from the 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 consent to address the flood planning requirements.

The application represents a breach of more than 10% to the FSR development standard. While a portion of the development is subject to existing use rights and therefore not strictly subject to the development standards applicable to the site, the FSR of the proposal is still a consideration in assessing the suitability of the development. In the circumstances, having regard to the development as a whole, it is unclear if staff have delegation to determine the application and subsequently the application is put to the Panel for determination so as to err on the side of caution.

2. Proposal

Approval is sought to demolish part of the premises and carry out ground and first floor alterations and additions so as to provide a commercial tenancy on the ground floor to be used as an architect's office and to provide 2 dwellings and a double garage at the rear of the site and includes the following:

- Demolition of the rear wall and room at the rear of the building;
- Demolition of windows and doors within the building façade;
- Demolition of some internal walls including on the southern side of the building to create a lightwell;

- Demolition of the double carport and concrete areas at the rear of the site;
- Internal reconfiguration and extension to the rear of the ground floor of the building providing a residential use to the southern side and a commercial tenancy to the northern side of the building;
- Construction of a new first floor addition providing a new residential unit above the commercial premises and a first floor to the residential portion of the ground floor;
- Construction of two landscaped areas in the middle of the site, one serving the two storey residential unit and one serving the commercial tenancy;
- Construction of a new double garage to the rear of the site accessible from Le Clos Lane;
- Improvements to the façade of the building including new windows and tiling and restoration of period features;
- Removal of an existing redundant vehicle crossing serving the site from Sydenham Road and reinstatement of the footpath and kerb; and
- Use of the commercial tenancy as an architect's office with operating hours of Monday to Friday 8.00am to 7.00pm and Saturdays from 9.00am to 12.00pm.

3. Site Description

The subject site is located on the southern side of the intersection of Illawarra Road and Sydenham Road, Marrickville. The site consists of 1 allotment that is irregular in shape. The site has a total area of 246.1sqm and is legally described as Lot 287 of DP 740295.

The site has primary a frontage to Illawarra Road of 12.22 metres and a secondary frontage to Sydenham Road of approximate 28.26 metres.

The site supports a single storey mixed use building which contains a dwelling to the southern side of the building and a corner shop to the northern side of the building. A double carport is at the rear of the site and vehicle access is obtained from Le Clos Lane.

The adjoining properties generally support single and two storey dwelling houses. The properties adjacent to the site presenting to the intersection generally support buildings of slightly greater scale including 132-134 Illawarra Road to the west of the site which supports mixed use building with commercial on the ground floor and residential above and 151 Illawarra Road to the north of the site which supports a three storey residential flat building.

The subject site is considered a period building under the MDCP 2011 and is identified as a flood prone lot.



Image 1: Site as viewed from Illawarra Road



Image 2: Site as viewed from Sydenham Road

4. Background

4(a) Site history

The following application outlines the relevant development history of the subject site.

Application	Proposal	Decision & Date
DA 454/98	To use the premises for the retail of auto spare parts and mobile motor mechanic office and to erect associated signs	Approval – 22 September 1998
DA 432/82	To use the existing shop premises for sewing and pressing operation	Approval – 8 December 1982
Permit 7630	Installation of a take-away food bar in the existing mixed business	Approval – 21 June 1979

4(b) Application history

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

Date	Discussion / Letter/ Additional Information
20 March 2019	Letter to applicant requesting additional information to address claim to existing use rights and a Clause 4.6 objection due to breach of FSR development standard and some minor amendments to address urban design comments.
29 March 2019	Email to applicant outlining concerns raised by Council's Development Engineer in relation to flooding and requesting the floor level of the ground floor residential component is raised by approximately 400mm to comply with the flood planning level.
5 April 2019	Statement submitted by applicant disputing the need to raise the floor level to comply with flood planning requirements based on a precedent of recent additions in the area that have been provided a concession in such matters and potential amenity and heritage impacts as a result of the changed floor level.
12 April 2019	Submission of amended plans, a statement regarding existing use rights and supporting documentation and a written Clause 4.6 objection in response to the matters raised in the letter dated 20 March 2019. These amended plans and documents are the subject of this assessment report.

5. Assessment

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

5(a) Existing Use Rights

5(a)(i) *Environmental Planning and Assessment Act 1979*

The property is zoned B1 – Neighbourhood Centre under the zoning provision applying to the land. The commercial premises is permitted with consent under the zoning provisions. However, within the B1 zone the only residential accommodation permitted with consent are *dwelling houses* and *shop top housing*. These uses are defined as follows:

“dwelling house means a building containing only one dwelling”

“shop top housing means one or more dwellings located above ground floor retail premises or business premises”

The development provides a building which contains a commercial tenancy and two dwellings. As such the development cannot be considered a dwelling house. One of the proposed dwellings meets the definition of shop top housing being wholly located above the ground floor business premises. However, the dwelling in the southern part of the building extends over 2 floors resulting in a residential use on the ground floor with a first floor above. As this dwelling is not located above a ground floor retail or business premises, it cannot be considered shop top housing and is prohibited in the B1 zone and therefore not permissible under the zoning provisions applicable to the land.

Notwithstanding, there is currently a ground floor residence at the site and this portion of the development relies on existing use rights which are examined below.

Division 4.11 (Part 4.65 – 4.68) of the Environmental Planning and Assessment Act 1979 contains provisions that provide a framework for the definition of an 'existing use' and provides further limitations and regulation for the continuation and development of existing uses.

Firstly, Part 4.65 of the Act provides a definition of an existing use. In plain terms an existing use is defined in the following manner:

- It is a use that was lawfully commenced
- It is a use that is currently prohibited
- It is a use that has not been abandoned since the time that it became a prohibited use

The applicant has supported the application with discussion and documentation to demonstrate the site benefits from existing use rights and that the use has not been abandoned. The main points are summarised below:

- Research of the property history indicates a long use as a shop and residence with several owners living and working at the site in the late 1800s and early 1900s according to the Sands Directory;
- Under the previous environmental planning instruments applying to the land, being the County of Cumberland Planning Scheme Ordinance, the Marrickville Planning Scheme Ordinance and the Marrickville Local Environmental Plan 2001, residential uses on the ground floor were permissible at the site;
- The Marrickville Local Environmental Plan 2011 came into force in 2011, at which time the ground floor residential use became prohibited and became an existing use;
- Building and development approvals issued in 1979, 1982 and 1998 all provide evidence the site was used as a shop and residence;
- DA 454/98 approved the use of the commercial premises for the purpose of retail sale of auto parts under the Marrickville Local Environmental Plan 2001 and included plans which confirm the ground floor residence was in existence at that time and being used for residential purposes; and
- The applicant provided a statutory declaration from the previous property owner who owned the site from 2008 to 2018 confirming that the site was continuously used as a residence and shop since 2011 when the ground floor residential use became prohibited.

Given the above, it is considered that the ground floor residential use of the premises is a use that was lawfully commenced on the site which is prohibited under the current planning controls and has not been abandoned since 2011 when the use became prohibited.

It is noted that Part 4.67(3) of the Act specifies that:

“An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force”.

As such, the provisions contained in MLEP 2011 do not apply to the portion of the development subject to existing use rights, being the two storey dwelling to the south of the building. Rather, Division 4.11 of the Act services to enable the continuation of an existing use and refers to the relevant regulations (Environmental Planning and Assessment Regulation 2000) with respect to the premises being enlarged, expanded or intensified; or being altered or extended for the existing use.

5(a)(ii) Environmental Planning and Assessment Regulation 2000

Clauses 41-43 of the EP&A Regulations 2000 are relevant to the development as they set out the matters for consideration for enlargement, expansion or intensification of existing uses and the consent requirements for alterations and additions to an existing use.

The proposal involves alterations to the ground floor residential portion of the building which is permitted by Clause 41(1) of the EP&A Regulations 2000.

The existing use will undergo alterations and additions which result in an increase in floor area within this portion of the building including an increase to the ground floor residential use and a new first floor and therefore constitutes an expansion of the existing use. It is therefore considered that the proposal does result in an enlargement, expansion or intensification of the existing use. This enlargement, expansion or intensification relates to the existing use being carried out only on the land to which the use applies and Clause 42 is therefore satisfied.

The proposed works would be for the existing residential use of the ground floor of the building, thereby satisfying Clause 43(2) of the EP&A Regulations 2000.

5(a)(iii) Land and Environment Court Planning Principles – Existing Use Assessments

In Land and Environment Court proceedings *Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71* at 17, Senior Commissioner Roseth established a planning principle for the assessment of existing use rights. The 'Redevelopment – existing use rights and merit assessment' Planning Principle developed as a result of that judgement is used below to assess the merits of the development, specifically paragraph 17 which is reproduced below:

“17 Four questions usually arise in the assessment of existing use rights developments, namely:”

- 1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?*

Height

A maximum building height of 9.5 metres applies to the land and the immediately adjoining sites under Clause 4.3 of MLEP 2011. The proposal has a maximum height of approximately 7 metres, therefore complying with the building height limit. The proposed building is consistent with the height anticipated under the planning controls within MLEP 2011.

FSR

The site is afforded an FSR of 0.85:1 in accordance with Clause 4.4 in MLEP 2011.

Surrounding sites generally have a maximum permissible FSR of 0.6:1. However, it is noted that surrounding development is on land labelled "F" on the Floor Space Ratio Map and in accordance with Clause 4.4(2A) in MLEP 2011, should the development constitute only a dwelling house, the allowable FSR would be between 0.5:1 and 1.1:1 at neighbouring sites, depending on allotment size.

The proposed FSR is 0.97:1 (238sqm) which exceeds the maximum allowable FSR of 0.85:1 (209sqm). The extent of the breach is 29sqm. The proposed FSR is supported. Refer to detailed discussion later in this report under the provisions of Marrickville Local Environmental Plan 2011 in Section (b)(iii).

Setbacks

The setbacks proposed are generally consistent with the building setbacks of surrounding development. The proposal largely retains the existing building at the site and therefore maintains the existing nil front and side setbacks at the northern, southern and western elevations on the ground floor. The first floor additions to the building are setback a minimum of 1.5 metres from the northern and eastern boundaries, 750mm from the northern side boundary and 11 metres from the rear property boundary.

These building setbacks are considered acceptable to ensure neighbours retain adequate access to sunlight, to allow view sharing, to preserve established tree and vegetation corridors and provide adequate separation between buildings to maintain privacy. The proposed building setbacks are consistent with the objectives for building setbacks within MDCP 2011.

2. *What is the relevance of the building in which the existing use takes place?*

The existing building on site contains a shop with an attached ground floor dwelling. The development would continue to be used as a mixed use building with a commercial premises and attached dwellings. While the development would result in an expansion of the existing building, the building remains of a scale and form that is consistent with surrounding development.

3. *What are the impacts of the development on adjoining land?*

The development has no significant adverse impacts on adjoining land. The requirements of MDCP 2011 do not strictly apply to the development. Despite this, the proposal is generally compliant with the relevant provisions of MDCP 2011 relating to privacy, overshadowing, visual bulk and general amenity, which is discussed later in this report.

4. *What is the internal amenity?*

The development incorporates suitably sized internal spaces, facilities, open space and a number of window openings for each dwelling which is resultant in acceptable internal amenity for this use.

Conclusion

The proposal has been assessed against the four (4) planning principles established by the NSW Land and Environment Court in relation to existing use rights. The proposal is unlikely to have any unreasonable impacts upon adjoining properties and/or the streetscape.

It is noted that given the proposal has established existing use rights for the two storey dwelling to the south of the building comprising of residential on the ground floor with further

residential above, there is no requirement for this portion of the development to strictly comply with any requirements of MLEP 2011 and MDCP 2011.

Notwithstanding, the provisions contained within MLEP 2011 and MDCP 2011 are relevant to the application in that they provide guidelines to ensure the proposal is suitable with regard to bulk and scale, environmental considerations and amenity. An assessment of the development as a whole having regard to the provisions of the relevant controls is provided below.

5(b) Environmental Planning Instruments

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

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Infrastructure) 2007; and
- Marrickville Local Environmental Plan 2011.

The following provides further discussion of the relevant issues:

5(b)(i) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

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

5(b)(ii) State Environmental Planning Policy (Infrastructure) 2007

Development with frontage to classified road (Clause 101)

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

Vehicular access to the property is provided from Le Clos Lane and as such is provided by a road other than the classified road. It is considered that the proposed development would not affect the safety, efficiency and ongoing operation of the classified road.

5(b)(iii) State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 concerns the protection of trees identified under Marrickville Development Control Plan 2011.

The application would require the pruning of a street tree that is protected under MDCP 2011. The issue of tree management is discussed later in this report under the provisions of MDCP 2011 in Section 5(c)(iv).

5(b)(iv) Marrickville Local Environmental Plan 2011 (MLEP 2011)

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

- Clause 2.3 – Land Use Table and Zone objectives;
- Clause 2.7 – Demolition;
- Clause 4.3 – Height of buildings;
- Clause 4.4 – Floor space ratio;
- Clause 4.5 – Calculation of floor space ratio and site area;
- Clause 4.6 – Exception to development standards;
- Clause 6.1 – Acid sulfate soils;
- Clause 6.2 – Earthworks;
- Clause 6.3 – Flood planning; and
- Clause 6.5 – Development in areas subject to aircraft noise.

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

Standard (maximum)	Proposal	% of noncompliance	Compliances
Floor Space Ratio Required: 0.85:1 209sqm	0.97:1 238sqm	13.8% (29sqm)	No
Height of Building Required: 9.5 metres	7 metres	NA	Yes

The following provides further discussion of the relevant issues:

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

The property is zoned B1 – Neighbourhood Centre under the provisions of Marrickville Local Environmental Plan 2011 (MLEP 2011).

The component of the development comprising a commercial premises with a dwelling above is permissible with consent under the zoning provisions applying to the land and is acceptable having regard to the objectives for development in the zone under MLEP 2011.

The component of the development comprising a two storey dwelling with residential accommodation on the ground floor is prohibited under the zoning provisions applying to the land. However, the site benefits from existing use rights under Division 4.11 of the Environmental Planning and Assessment Act 1979 and is acceptable in this regard.

(x) Floor Space Ratio (Clause 4.4)

A maximum floor space ratio (FSR) of 0.85:1 applies to the land as indicated on the Floor Space Ratio Map that accompanies MLEP 2011.

The development has a gross floor area (GFA) of 238sqm which equates to a FSR of 0.97:1 on the 246.1sqm site which does not comply with the FSR development standard. The application was accompanied by a written submission in relation to the contravention of the FSR development standard in accordance with Clause 4.6 of MLEP 2011.

(xi) Exceptions to Development Standards (Clause 4.6)

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

- Floor Space Ratio – Clause 4.4 of MLEP 2011

The applicant seeks a variation to the floor space ratio development standard under Clause 4.4 of Marrickville Local Environmental Plan 2011 by 13.8% (29 sqm).

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

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

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

- The breach to the floor space ratio development standard is minor, being only 29sqm, and despite this breach the proposal presents a building form that is compatible in scale with surrounding development and commensurate with a corner shop style development which are generally two storey;
- The development provides a suitable level of commercial and residential uses which is compatible with the objectives of the zone;
- The built form and resultant floor space ratio is acceptable in the context of surrounding development and numerically commensurate with the floor space ratio that may be applicable to some surrounding sites which could be afforded a floor space ratio of 1:1 on a 200sqm lot;
- The built form and scale of the development is commensurate with the recently approved development at 2 Silver Street (to the east of the site) and is generally consistent in scale with recent proposals in the area; and
- The development results in no adverse amenity or streetscape impacts as a result of the built form proposed and generally complies with the relevant controls with MDCP 2011.

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

It is considered the development is in the public interest because it is consistent with the objectives of the B1 – Neighbourhood Centre zone, in accordance with Clause 4.6(4)(a)(ii) of Marrickville Local Environmental Plan 2011 for the following reasons:

- The development provides a small-scale business premises which will serve the needs of people in the surrounding community;
- The development provides housing attached to a permissible non-residential use and is of a type and scale compatible with the surrounding area; and
- The development provides a shop front which is a suitable size to generate an active street frontage.

It is considered the development is in the public interest because it is consistent with the objectives of the floor space ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

- The proposal presents a bulk and scale to the streetscape and neighbouring buildings that is consistent with the scale and form of surrounding development being low scale two storey dwellings houses and mixed use buildings;
- The development exhibits a density and bulk in relation to the site area that is consistent with surrounding development and in particular, is commensurate in scale to the other corner sites fronting the Illawarra Road and Sydenham Road intersection; and
- The development does not result in any adverse environmental or amenity impacts to the public domain or neighbouring developments and generally complies with the relevant planning controls designed to minimise any such impact.

The contravention of the development standard does not raise any matter of significance for State and Regional Environmental Planning.

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

(xii) Flood Planning (Clause 6.3)

The land is identified as land that is shown as “Flood planning area” on the Flood Planning Area Map within Part 2.22 of MDCP 2011 and is affected by overland flows as identified in the Marrickville Valley Flood Study and is subject to flooding in a 1 in 100 year storm event.

Clause 6.3(2) of MLEP 2011 applies to any land at or below the flood planning level. The maximum flood planning level at the site has been determined to be RL 6.66m AHD and as such any floor levels of the development must be set at RL 6.96m AHD (flood planning level plus 300mm freeboard) in accordance with Part 2.22 of MDCP 2011.

The ground floor of the development has a floor level of RL 6.57m AHD and is 390mm below the required floor level given the flood planning level applicable to the site.

During the assessment process, Council’s Development Engineer reviewed the application and determined that a floor level of RL 6.57m AHD is suitable for the commercial component of the development as this is an existing commercial space that is not being extensively altered by the proposal and would not present an unacceptable risk to life given the limited use of the space as an office.

However, a floor level of RL 6.57m AHD within the ground floor residential component of the development is not suitable and presents adverse risk to life given the use of the area as a dwelling and such the proposed floor level would leave the dwelling susceptible to water inundation during a flood event. The development involves substantial alterations in this location, including altering the roof and several walls and rooms within the space and requiring a change in floor level is not considered onerous given the scope of work being undertaken.

As such, during the assessment process Council requested the applicant submit amended plans raising the floor level to the ground floor residence to RL 6.96m AHD to comply with flood planning requirements.

Amended plans were submitted during the assessment process but the floor level was not amended and remains proposed at RL 6.57m AHD. Control 8 within Part 2.22 of MDCP 2011 allows minor additions of habitable floor area of up to 30sqm at or below the flood planning level if the applicant can demonstrate there are no practical alternatives for constructing the extensions above the flood planning level. The development provides an extension of approximately 5sqm at the ground floor and based on this the applicant contends that the development does not have to adhere to the flood planning level requirements in accordance with MDCP 2011.

The applicant submitted a written document outlining the possible impacts of raising the floor level and disputing the need to increase the floor level for the reasons summarised below:

- Such a change in floor level would result in poor amenity for the dwelling due to the need to have multiple floor levels throughout the site and providing an awkward entry to the dwelling as steps would need to be introduced;
- The change in floor level would impact the usability of the private open space as stairs would need to be introduced and the increase rear level could result in privacy impacts to neighbouring properties;
- Raising the floor level at the front of the ground floor dwelling would impact the existing window at this location resulting in an impact to the period features of the building;
- A nearby development at 2 Silver Street (DA201700154) adjacent to the east of the site was approved with a ground floor level below the flood planning level applicable to that site; and
- A nearby development at 159 Illawarra Road (DA201600635) to the south of the site was approved with a ground floor level below the flood planning level applicable to that site.

Overall, the applicant contends that the ground floor additions are minor and that this constitutes an exemption to the flood planning requirements in relation to floor levels. The applicant contends a precedent has been set in the area where Council has not required internal floor levels to be raised to comply with the flood planning level and that no practical alternatives exist due to the impacts raising the floor level would have on the internal amenity of the proposed dwelling.

Council's Development Engineer reviewed the applicant's written response and retains the position that the floor level should be raised to comply with the flood planning level for the reasons summarised below:

- Both nearby developments referenced by the applicant were first floor additions to dwelling houses and while these proposals did include minor ground floor increases in habitable floor area, in both circumstances the ceilings of the dwelling were largely maintained and there was limited practical scope for the ground floor levels to be increased to adhere to flood planning levels and maintain a BCA compliant floor to ceiling height;
- Additionally, in both nearby developments there was no practical way to protect the properties from inundation during a flooding event by raising a portion of the floor level;
- In contrast, the proposed development includes complete demolition of the existing ceiling and roof of the building and as such has a much greater scope to comply with the flood planning requirements than other nearby developments which were smaller scale alterations and additions to dwelling houses; and
- In this circumstance there is a practical solution to comply with the flood planning level as raising the floor level within the front portion of the ground floor

residence will protect the house from inundation during a flooding event and as such the exemptions afforded by Control 8 within Part 2.22 of MDCP 2011 do not apply to the development.

In light of the above comments, Council's Development Engineer has provided the following solution to ensure compliance with Part 2.22 of MDCP 2011 which addresses the concern raised by the applicant.

The 1 in 100-year flood level for the site has been determined to be RL 6.66m AHD at the front of the property (Illawarra Road), and RL 6.13m AHD at the back of the property. The freeboard required is 300mm. Therefore, the finished floor level shall be RL 6.96m AHD at the front of the property (Illawarra Road), and RL 6.43m AHD at the back of the property.

The proposed finished floor level is RL 6.57m AHD. Therefore protection of the rear has been satisfied and there is no need to amend the floor levels in this location, removing the need for additional stairs to the rear private open space and eliminating possible usability and privacy concerns in this area.

To protect the building at the front the floor levels would need to be raised to the required RL 6.96m AHD in the area shown in red below. Image 3 also includes the possible location of stairs.

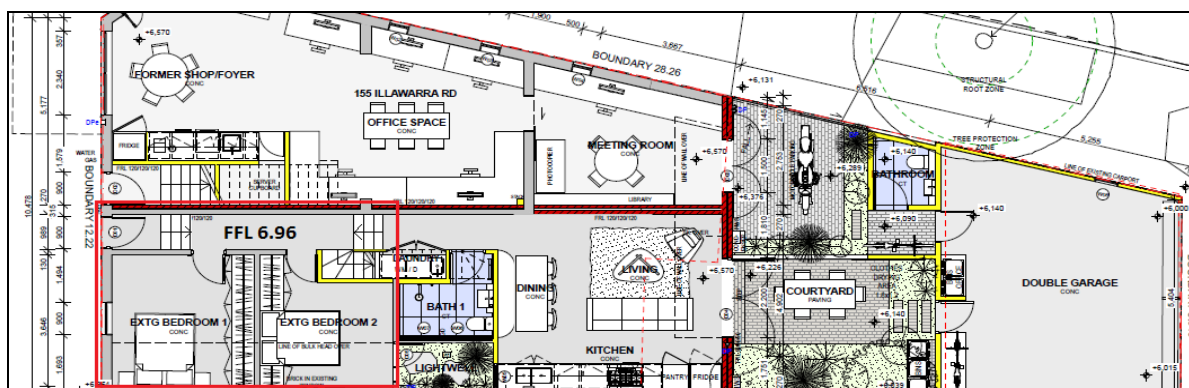


Image 3: Extract from ground floor plan showing floor area to be raised to RL 6.96m AHD

Raising the internal floor level of bedrooms 1 and 2 and part of the hallway at the front of ground floor residence would protect the property from inundation during a flooding event with minimal impacts to internal amenity and is considered a practical solution to comply with flood planning requirements.

Furthermore, given the internal floor to ceiling height proposed on the ground floor, an increase in floor level to RL 6.96m AHD could be accommodated without altering the proposed ceiling height or the overall height of the proposal. This is illustrated in Image 4 below.

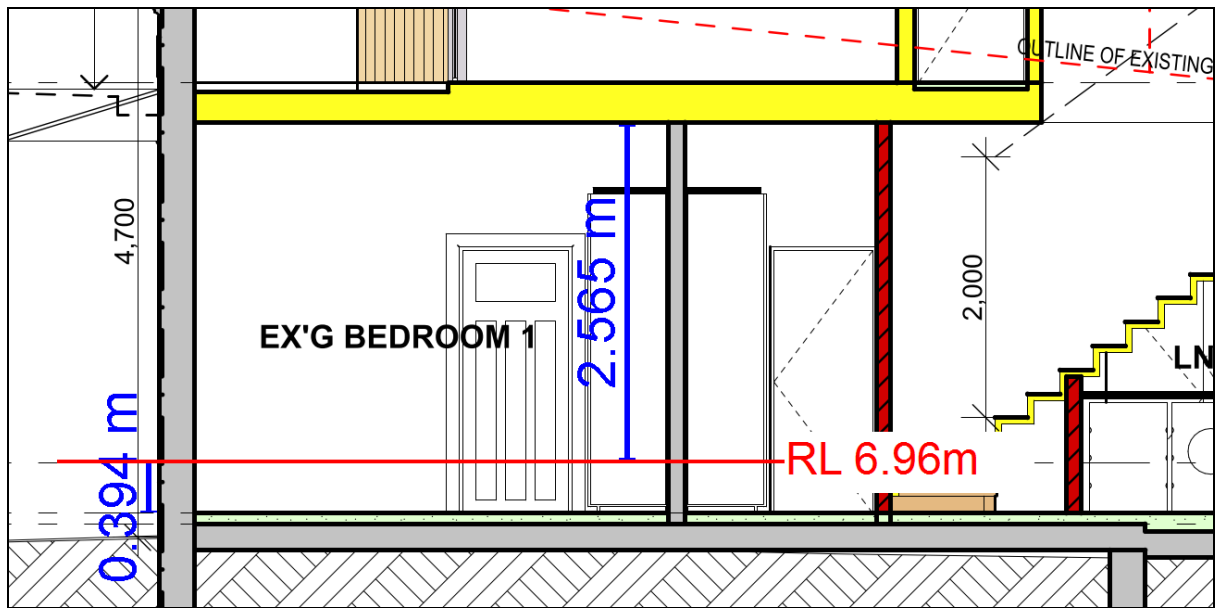


Image 4: Extract from section showing internal ceiling height in relation to required floor level

Additionally, raising the floor level in this location would have no impacts on the bedroom window fronting Illawarra Road which could be retained and would remain a usable window. The required floor level of RL 6.96m AHD is 390mm above the current proposed floor level of RL 6.57m AHD. The existing window would be a minimum of 200mm clear of the required internal floor level and would act as a full length window serving the room with a person of average height still able to access the window for outlook. This is demonstrated in the image below. Should privacy be a concern given the windows location on the street, the bottom pane of the window can be fixed and frosted to mitigate privacy concerns.

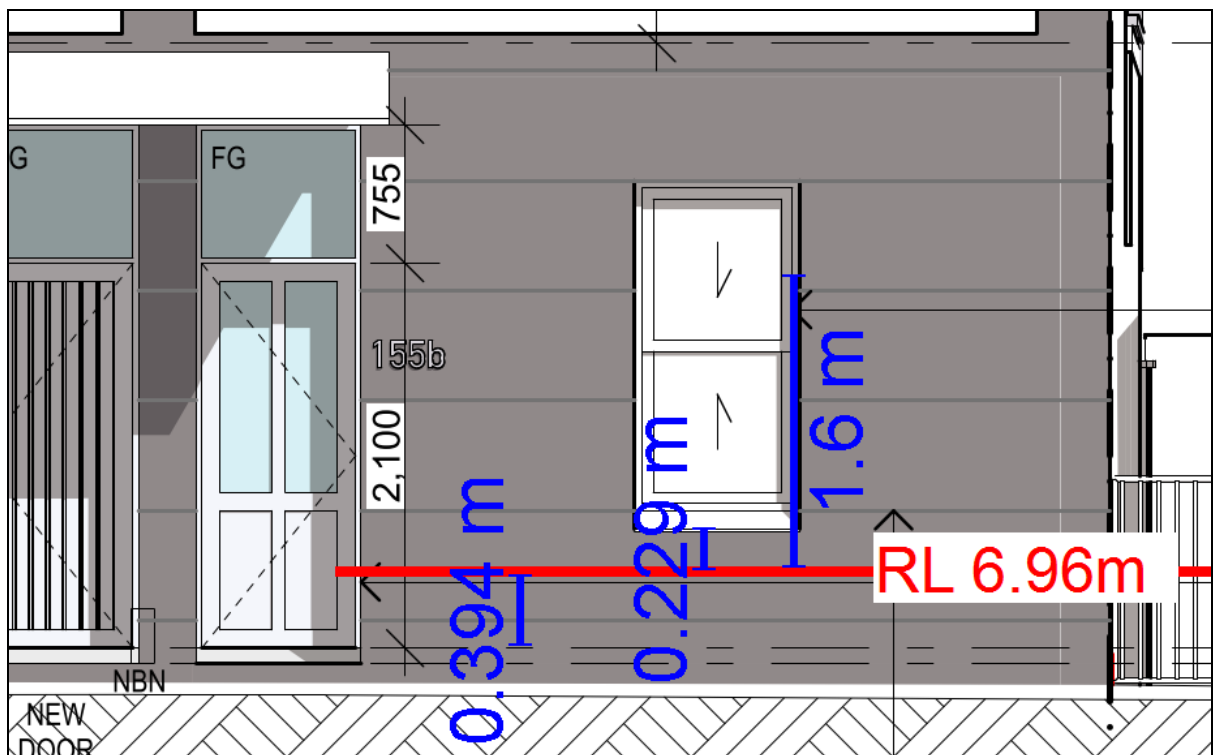


Image 5: Extract from elevation showing location of window in relation to required floor level

Given the above, it is considered that the development must comply with flood planning requirements and a portion of the floor level of the residential ground floor should be raised to RL 6.96m AHD in order for Council to be satisfied the development is not susceptible to flood risk having regard to the flood hazard of the land whereby the proposal incorporates appropriate measures to manage risk to life in accordance with Clause 6.3(3) of MLEP 2011.

There is scope to increase the floor level of ground floor residents without altering the proposed ceiling heights or overall height of the proposal or resulting in adverse amenity impacts to the original window fronting Illawarra Road, in contrast to the arguments put forward by the applicant.

Therefore, it is considered acceptable to impose a Deferred Commencement condition of consent requiring the submission of amended plans prior to the issue of any active consent to ensure compliance with flood planning requirements. The recommended conditions are included in Attachment A.

5(c) Draft Environmental Planning Instruments

Draft Marrickville Local Environmental Plan 2011 (Amendment 4) (the Draft LEP Amendment) was placed on public exhibition commencing on 3 April 2018 and accordingly is a matter for consideration in the assessment of the application under Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979.

The amended provisions contained in the Draft LEP Amendment are not relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft LEP Amendment.

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.

Part	Compliance
Part 2.1 – Urban Design	Yes
Part 2.3 – Site and Context Analysis	Yes
Part 2.5 – Equity of Access and Mobility	No but acceptable – see discussion below
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 – subject to conditions
Part 2.16 – Energy Efficiency	Yes
Part 2.18 – Landscaping and Open Spaces	No but acceptable – see discussion below
Part 2.20 – Tree Management	Yes – subject to conditions
Part 2.21 – Site Facilities and Waste Management	Yes

Part	Compliance
Part 2.22 – Flood Management	Yes subject to the imposition of deferred commencement conditions – see discussion above in Section 5(b)(iv)(viii)
Part 2.23 – Acid Sulfate Soils	Yes
Part 2.25 – Stormwater Management	Yes
Part 5 – Commercial and Mixed Use Development	Yes – subject to conditions
Part 9 – Strategic Context	Yes

The following provides discussion of the relevant issues:

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

Part 2.5 of MDCP 2011 requires consideration to be given to accessibility before granting development consent.

For the commercial component of the development Part 2.5 of MDCP 2011 requires the following:

- Appropriate access for all persons through the principal entrance of a building and a continuous accessible path of travel (CAPT), designed in accordance with the National Construction Code (Building Code of Australia) and relevant Australian Standards; and
- General access for all persons to appropriate sanitary facilities and other common facilities including kitchens, lunch room, shower facilities and outdoor recreational facilities.

The existing commercial premise is not accessible and no works are proposed to make the commercial tenancy accessible. While this is contrary to MDCP 2011, the proposal largely maintains the existing commercial tenancy and includes limited work to the commercial area being only a small rear extension and internal fitout. As such, it considered onerous to require the development to upgrade the commercial premises to provide accessibility.

Additionally, any accessible upgrade that would be required to the principal entrance of the commercial tenancy would compromise the period shopfront and doorway which is a positive element of the building and streetscape and severely limit the functionality of the internal space given any ramp would occupy a substantial amount of floor area.

The applicant has submitted a Statement of Unjustified Hardship within the Statement of Environmental Effects in accordance with the requirements of MDCP 2011 requesting an exemption from the accessibility requirements which is supported for the reasons discussed above.

Given the circumstances, the proposed development is considered reasonable having regard to the accessibility and a variation to the requirements of Part 2.5 of MDCP 2011 is considered acceptable.

Despite the above, the requirements of MDCP 2011 are effectively superseded by the introduction of the Premises Standards. An assessment of whether or not these aspects of the proposal fully comply with the requirements of relevant Australian Standards and the

Premises Standards has not been undertaken as part of this assessment. That assessment would form part of the assessment under the Premises Standards at the Construction Certificate stage of the proposal.

(ii) Parking (Part 2.10)

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

Component	Control	Required	Proposed	Complies?
Car Parking				
Dwellings	0.25 per studio or 1br unit + 0.5 per 2 or 3+br unit for residents	1br unit + 3br unit = 1 space	2 spaces	Yes
Commercial tenancy	1 per 80sqm GFA for customers & staff	69sqm = 1 space		
TOTAL REQUIRED : 2 spaces				

Bicycle Parking				
Dwellings	1 per 2 units for residents + 1 per 10 units for visitors	2 units = 2 spaces	2 bicycle racks	Yes
Commercial tenancy	1 per 300sqm GFA for staff + 1 per 500sqm GFA for customers if premises over 1000sqm GFA	69sqm GFA = 0 spaces		
TOTAL REQUIRED: 2 Spaces				

The development provides two car parking spaces within the garage at the rear of the site and 2 bicycle parking spaces on site. As such, the development complies with the parking provisions of MDCP 2011. A condition is included in Attachment A requiring one car parking space to be allocated to the larger dwelling and one car parking space be allocated to the commercial tenancy.

(iii) Landscaping and Open Spaces (Part 2.18)

Part 2.18.11.7 of MDCP 2011 requires mixed use developments to provide each dwelling with an area of private open space in the form of a deck or balcony accessible from the principal living area of the dwelling with a minimum area of 8sqm and a minimum width of 2 metres. The landscaped areas for mixed use developments are assessed on merit.

The development provides the larger two storey unit with an outdoor courtyard accessible from the principal living area of approximately 20sqm with and minimum width of 3.9 metres which complies with Part 2.18 of MDCP 2011.

However, the development provides the single shop top unit with a balcony/terrace accessible from the principal living area of approximately 6.6sqm with a width of 1.95 metres to 1.3 metres which does not comply with Part 2.18 of MDCP 2011. An extract of the terrace with dimensions is below.

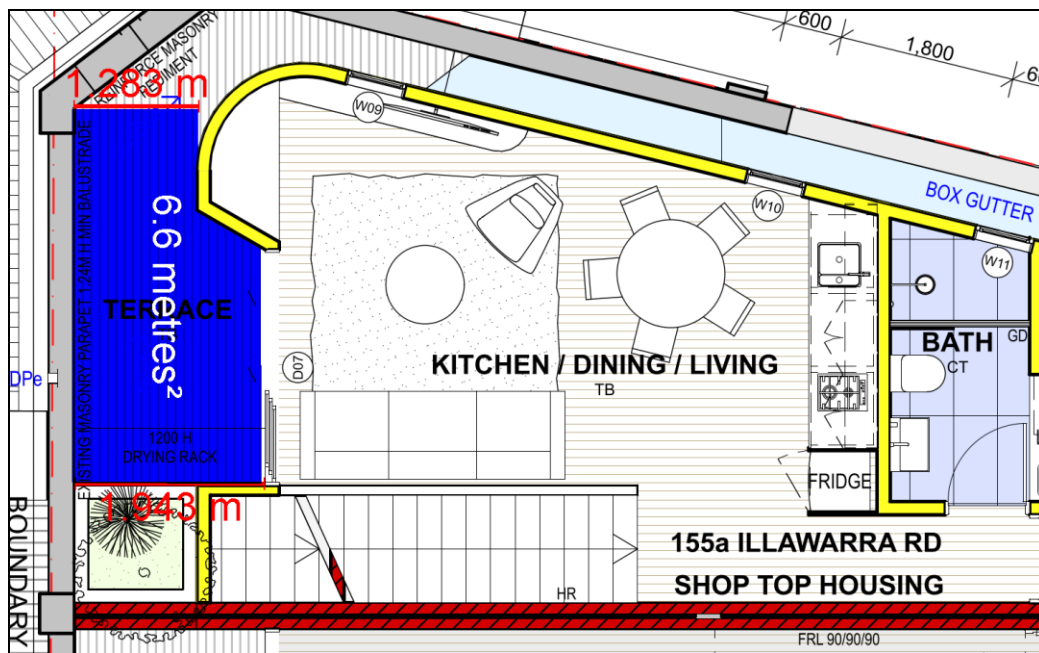


Image 6: Extract showing private open space of shop top dwelling

While the proposal does provide an area of private open space for the shop unit, this area does not strictly comply with the dimension and size requirements of MDCP 2011, however the private open space is considered acceptable for the following reasons:

- The unit proposed is a modest one bedroom unit and the terrace area proposed is considered a suitable size to provide an area of outdoor recreation for any future occupants;
- The terrace area has been well designed as an extension of the living area and can be used interchangeably with the indoor space; and
- The terrace has been orientated to achieve a high level of solar access and provide suitable amenity to the unit.

Given the size of the proposed unit and the high quality design of the private open space area proposed, the development is considered acceptable for the reasons discussed above and a variation to the requirements of Part 2.18.11.7 of MDCP 2011 is acceptable.

(iv) Tree Management (Part 2.20)

The proposal will impact a street tree on Sydenham Road adjacent to the site and pruning of the tree will be required to facilitate the development.

The application was referred to Council's Tree Management Officer who provided the following comments:

"There are no trees located on the site. There is a Callistemon viminalis (Weeping Bottlebrush – street tree) located within the footpath on the Sydenham Road frontage of the site.

A small portion of the canopy overhangs the subject site and minor pruning will be required to clear the garage roofline if the application is supported. Condition provided. It is likely that the existing garage slab has limited (if not excluded) tree roots from entering the site however this is not certain.

Conditions have been provided to mitigate impacts to the tree if roots have entered the site.”

Council’s Tree Management Officer has agreed to the proposal from the site subject to the imposition of appropriate tree management conditions which are included in Attachment A.

(v) Hours of Operation (Part 5.3.1.4)

The proposal seeks to use the commercial premises as an architect’s office. The hours of operation proposed are 8.00am to 7.00pm Mondays to Fridays and 9.00am to 12.00pm Saturdays.

The site is located within a small commercial neighbourhood centre at the intersection of Illawarra Road and Sydenham Road. While there is residential accommodation within close proximity of the site the hours of operation proposed are within traditional business hours and are unlikely to result in any adverse impacts. The use of the premises as a small office is a use that is unlikely to result in adverse amenity impacts by way of noise, patrons or deliveries and the hours of operation proposed are acceptable.

A condition is included in Attachment A restricting the hours of operation to the hours proposed.

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**

The site is zoned B1 – Neighbourhood Centre and although a portion of the development is not permissible in the zone, the development benefits from existing use rights and is generally acceptable having regard to the incorporated provisions. 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 MDCP 2011 for a period of 14 days to surrounding properties. 1 submission was received in support of the proposal and raised no concerns.

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.

- Heritage Officer (for urban design comment);
- Development Engineer; and
- Tree Management Officer

7. Section 7.11 Contributions

Section 7.11 contributions are payable for the proposal. The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$16,435.51 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 and while a portion of the development is not permissible under the zoning provisions applying to the land, existing use rights have been established and the development is consistent with the incorporated provisions.

Notwithstanding, the residential accommodation on the ground floor is below the flood planning level which is contrary to the flood planning requirements and leaves the property susceptible to inundation in a flood event. There is scope to raise the internal floor level without requiring an increase in the height of the development and it is considered this issue could be resolved through the submission of amended plans as part of a deferred commencement.

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

9. Recommendation

- A. THAT the Inner West Local Planning Panel approve a variation to the floor space ratio prescribed by Clause 4.4 in the Marrickville Local Environmental Plan 2011, as it is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and objectives for development within the zone
- 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 for Development Application No. 201800448 to demolish part of the premises and carry out ground and first floor alterations and additions so as to provide a commercial tenancy on the ground floor to be used as an architect's office and to provide 2 dwellings and a double garage at the rear of the site at 155 Illawarra Road Marrickville subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

Attachment A – Recommended conditions of consent

- A. THAT the development application to demolish part of the premises and carry out ground and first floor alterations and additions so as to provide a commercial tenancy on the ground floor to be used as an architect's office and to provide 2 dwellings and a double garage at the rear of the site be **APPROVED** and a **DEFERRED COMMENCEMENT CONSENT** be issued subject to the following terms and conditions:

PART A - DEFERRED COMMENCEMENT CONSENT

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

1. Amended plans being submitted for the ground floor residence demonstrating the provision of a finished floor level of RL 6.96m AHD to bedroom 1 and 2 and the adjacent hallway at the front portion to comply with flood planning requirements. Such amendments should not alter the proposed ceiling heights or overall height of the development.
2. Amended plans being submitted showing the window on the ground floor western elevation serving bedroom 1 of the ground floor residents having a fixed and frosted lower pane to mitigate possible privacy concerns due to the floor level changes required by Part A Condition 1.

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

PART B - CONDITIONS OF CONSENT

Once operative the consent is subject to the following conditions:

GENERAL

- ~ The development must be carried out in accordance with plans and details listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by	Date Submitted
DA01 Rev 01	Site Plan	12.04.2019	Mackenzie Pronk Architects	12.04.2019
DA02 Rev 01	Demolition Plan	12.04.2019	Mackenzie Pronk Architects	12.04.2019
DA05 Rev 01	Ground Floor Plan	12.04.2019	Mackenzie Pronk Architects	12.04.2019
DA06 Rev 01	First Floor Plan	12.04.2019	Mackenzie Pronk Architects	12.04.2019
DA07 Rev 01	Roof Plan	12.04.2019	Mackenzie Pronk Architects	12.04.2019
DA09 Rev 01	Elevations	12.04.2019	Mackenzie Pronk Architects	12.04.2019
DA10 Rev 01	Elevations	12.04.2019	Mackenzie Pronk Architects	12.04.2019
DA11 Rev 01	Schedule of Materials and Finishes	12.04.2019	Mackenzie Pronk Architects	12.04.2019
DA12 Rev 01	Sections	12.04.2019	Mackenzie Pronk Architects	12.04.2019

DA13 Rev 01	Sections	12.04.2019	Mackenzie Pronk Architects	12.04.2019
A331443_02	BASIX Certificate	22.10.2018	Certified Energy	01.11.2018
970442S	BASIX Certificate	19.10.2018	Certified Energy	01.11.2018
-	Aircraft Noise Assessment Report	13.09.2018	Acoustica	01.11.2018

and details submitted to Council on 1 November 2018 and 12 April 2019 with the application for development consent and as amended by the matters referred to in Part A of this Determination and the following conditions.

~ Where any plans and/or information forming part of a Construction Certificate issued in relation to this consent are inconsistent with:

- a) the plans and/or information approved under this consent; or
- b) any relevant requirements of this consent,

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

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

~ The area to be used for an office must be restricted to northern ground floor tenancy.

~ The shop window display area must be maintained at all times with no roller shutters being installed across the shopfront.

~ 2 off-street car parking space must be provided, paved and maintained at all times in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 – Parking with 1 space being allocated to the southernmost dwelling and one space being allocated to the commercial tenancy.

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

~ No injury must be caused to the amenity of the neighbourhood by the emission of noise, smoke, smell, vibration, gases, vapours, odours, dust, particular matter, or other impurities which are a nuisance or injurious or dangerous or prejudicial to health, the exposure to view of any unsightly matter or otherwise.

~ The use of the premises must not give rise to:

- a) transmission of unacceptable vibration to any place of different occupancy;
- b) a sound pressure level at any affected premises that exceeds the background (LA90) noise level in the absence of the noise under consideration by more than 5dB(A). The source noise level shall be assessed as an LAeq,15min and adjusted in accordance with Environment Protection Authority guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content as described in the NSW Environment Protection Authority's Environmental Noise Control Manual and Industrial Noise Policy 2000 and The Protection of the Environment Operations Act 1997 (NSW).

~ A separate application must be submitted to, and approved by, Council prior to the erection of any advertisements or advertising structures.

~ No storage of goods or equipment external to any building on the site being permitted.

- ~ No signs or goods must be displayed for sale or stored on the footpath in front of the premises at any time without the prior approval of Council.
- ~ All loading and unloading in connection with the use must be carried out during the approved hours of operation in such a manner as not to cause inconvenience to the public.
- ~ The hours of operation of the commercial tenancy must be restricted to between the hours of 8.00am to 7.00pm Mondays to Fridays and 9.00am to 12.00pm Saturdays.
- ~ 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.
- ~ All building work must be carried out in accordance with the provisions of the National Construction Code (Building Code of Australia).
- ~ Pruning of the following tree located on Council's nature strip to clear the garage roofline shall be undertaken at no cost to Council by an experienced tree removal contractor/arborist holding public liability insurance amounting to a minimum cover of \$10,000,000.

Tree/location
<i>Callistemon viminalis</i> (Weeping Bottlebrush) / Sydenham Road frontage

The arborist undertaking the work shall have a minimum qualification of AQF Level 3 and the work is to be undertaken in accordance with AS4373 'Pruning of amenity trees'. Branches up to 60mm in diameter at point of attachment are approved for removal with no more than 5% total canopy to be pruned. Only those branches that are directly in conflict with the approved structures are approved for removal. The pruning shall be undertaken after the issue of the Construction Certificate and prior to work commencing on site.

- ~ The canopy replenishment trees required by this consent are to be maintained in a healthy and vigorous condition until they attain a height of 6 metres whereby they will be protected by Council's Tree Management Controls. Any of the trees found faulty, damaged, dying or dead shall be replaced with the same species within 2 months.
- ~ The existing awning shall remain of cantilever type and set back at least 600mm from the kerb line. The proposed awning shall be designed so as to be easily removed if required in future. The awning shall include pedestrian lighting (Category P3-AS1158) and shall be maintained and owned by the property owner(s). The owner shall maintain, modify or remove the structure at any time if given notification by Council to do so. All works shall be at no cost to Council.

BEFORE COMMENCING DEMOLITION, EXCAVATION AND/OR BUILDING WORK

- ~ No work must commence until:
 - a) A PCA has been appointed. Where an Accredited Certifier is the appointed, Council must be notified within 2 days of the appointment; and
 - b) A minimum of 2 days written notice given to Council of the intention to commence work.
- ~ A Construction Certificate must be obtained before commencing building work. Building work means any physical activity involved in the construction of a building. This definition includes the installation of fire safety measures.

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

Facilities must be located so that they will not cause a nuisance.
- ~ All demolition work must:
 - a) Be carried out in accordance with the requirements of Australian Standard AS 2601 'The demolition of structures' and the Occupational Health and Safety Act and Regulations; and
 - b) Where asbestos is to be removed it must be done in accordance with the requirements of the WorkCover Authority of NSW and disposed of in accordance with requirements of the Department of Environment, Climate Change and Water.
- ~ Where any loading, unloading or construction is to occur from a public place, Council's Infrastructure Services Division must be contacted to determine if any permits or traffic management plans are required to be obtained from Council before work commences.
- ~ All services in the building being demolished must be disconnected in accordance with the requirements of the responsible authorities before work commences.
- ~ The site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property, before work commences.
- ~ A rigid and durable sign must be erected in a prominent position on the site, before work commences. The sign must be maintained at all times until all work has been completed. The sign must include:
 - a) The name, address and telephone number of the PCA;
 - b) A telephone number on which Principal Contractor (if any) can be contacted outside working hours; and
 - c) A statement advising: 'Unauthorised Entry To The Work Site Is Prohibited'.
- ~ A Soil and Water Management Plan must be prepared in accordance with Landcom Soils and Construction, Volume 1, Managing Urban Stormwater (Particular reference is made to Chapter 9, "Urban Construction Sites") and submitted to and accepted by the PCA. A copy of this document must be submitted to and accepted by PCA before work commences. The plan must indicate:
 - a) Where the builder's materials and waste are to be stored;
 - b) Where the sediment fences are to be installed on the site;
 - c) What facilities are to be provided to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way; and
 - d) How access to the site will be provided.
All devices must be constructed and maintained on site while work is carried out.
- ~ Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent shall obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the Local Government Act 1993 and/or Section 138 of the Roads Act 1993. Permits are required for the following activities:
 - 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
- 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.

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

- ~ If a new street number or a change to the street number (this includes unit and shop numbers) is required, a separate application must be made to and approved by Council prior to that street number being displayed.
- ~ To preserve the following tree no work shall commence until the trunks /branches are protected (in accordance with AS4970-*Protection of trees on development sites*) by the placement of 2 metres lengths of 50 x 100mm timbers spaced at 150mm centres and secured by wire/hoop strap over suitable protective padding material (i.e. underlay or carpet). The trunk/branch protection shall be maintained intact until the completion of all work on site. Tree protection shall be installed and removed by an Arborist with a minimum qualification of AQF Level 3.

Tree/Location
<i>Callistemon viminalis</i> (Weeping Bottlebrush)

Details demonstrating compliance with the requirements of this condition are to be submitted by the Arborist to the satisfaction of the Principal Certifying Authority prior to any work commencing on the site.

- ~ The person acting on this consent shall submit to the Principal Certifying Authority a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site before the issue of a Construction Certificate.
- ~ Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands shall take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE

- ~ a) This condition is imposed in accordance with Section 7.11 of the Environmental Planning and Assessment Act 1979.
- b) Before the issue of a Construction Certificate, the Council must be paid a monetary contribution of \$16,435.51 indexed in accordance with Marrickville Section 94/94A Contributions Plan 2014 ("CP").

The above contribution is the contribution applicable as at 28 May 2019.

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

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

(CONTRIBUTION PAYMENT REFERENCE NO. DC002608)

- c) The contribution payable has been calculated in accordance with the CP and relates to the following public amenities and/or services and in the following amounts:
- | | |
|-----------------------|-------------|
| Community Facilities | \$1,645.84 |
| Plan Administration | \$322.26 |
| Recreation Facilities | \$14,005.73 |
| Traffic Facilities | \$461.68 |

- d) A copy of the CP can be inspected at Council's offices at 2-14 Fisher Street, Petersham or online at <http://www.marrickville.nsw.gov.au>.
- e) The contribution must be paid either in cash, by unendorsed bank cheque (from an Australian Bank only), via EFTPOS (Debit only) or credit card*.

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

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

NOTE: The application for the Construction Certificate must be accompanied by either the BASIX Certificate upon which development consent was granted or a revised BASIX Certificate issued no earlier than 3 months before the date of lodgement of the application for the Construction Certificate. (Refer to Clause 6A of Schedule 1 to the Regulation).

- ~ Noise attenuation measures must be incorporated into the development complying with Australian Standard 2021-2015 in relation to interior design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction), in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate together with certification by a suitably qualified acoustical engineer that the proposed noise attenuation measures satisfy the requirements of Australian Standard 2021-2015.

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

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

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

- ~ Prior to the commencement of demolition works or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit and inspection fee must be paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the

works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit	\$8,517.52
Inspection fee	\$230.65

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

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

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

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

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

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

- ~ Before the issue of a Construction Certificate, the Principal Certifying Authority shall be satisfied that no proposed underground services (i.e. water, sewerage, drainage, gas or other service) unless previously approved by conditions of consent, are located beneath the canopy of any tree protected under State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, located on the subject allotment and adjoining allotments including the street tree.

A plan detailing the routes of these services and trees protected under the State Environmental Planning Policy shall be prepared. Details demonstrating compliance are to be shown on the plans submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

- ~ The canopy replenishment tree must be planted with a minimum of 1 x 75 litre size, which will attain a minimum mature height of 6 metres. The tree shall be planted in a suitable location within the property at a minimum of 1.5m from any boundary or structure. The tree is to conform to AS2303—Tree stock for landscape use.

Details of the species and planting location of the tree shall be included on the landscape plan or site plan if no Landscape Plan required. The plan shall be approved by Council's Tree Management Officer prior to the issue of the Construction Certificate.

If the replacement tree is found to be faulty, damaged, dying or dead within twelve (12) months of planting it must be replaced with the same species. If the tree is found dead before it reaches a height where it is protected by Council's Tree Management Controls, it must be replaced with the same species.

- ~ A plan detailing the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes, and proposed site levels together with hydrologic and hydraulic calculations being submitted to and accepted by Council before the issue of a Construction Certificate.
- ~ The site has been identified as being subject to flooding during a 1 in 100-year storm event in the Marrickville Valley Flood Study. The 1 in 100-year flood level for the site has been determined to be RL 6.66m AHD at the front of the property (Illawarra Road), and RL 6.13m AHD at the back of the property. The freeboard required is 300mm. Therefore, the FFL shall be RL 6.96m AHD at the front of the property (Illawarra Road), and RL 6.43m AHD at the back of the property. The following flood protection measures shall be undertaken:
 - i. All habitable floor levels and protection to the underground carpark shall be set at RL 6.96m AHD (flood level plus 500mm freeboard).
 - ii. All new structures below RL 6.96m AHD shall be constructed from flood compatible materials;
 - iii. All electrical equipment and wiring shall be waterproofed or installed at or above RL 6.96m AHD;

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

- ~ The vehicular crossing and driveway ramp to the site shall be designed to satisfy the ground clearance template (Figure C1) from Australian Standard AS/NZS 2890.1-2004 *Parking Facilities: Off-street car parking*. A long section, along both sides of the proposed vehicular crossing and ramp, drawn at a 1:20 natural scale, shall be submitted to and approved by Council before the issue of a Construction Certificate. The long section shall begin from the centreline of Le Clos Lane to 3 metres past the bottom of the boundary.
- ~ The internal vehicle hardstand area shall be redesigned such that the level at the boundary shall match the invert level of the adjacent gutter plus 150mm at both sides of the vehicle entry. This will require the internal garage slab or hard stand area to be adjusted locally at the boundary to ensure that it matches the above issued alignment levels. Amended plans shall be submitted to and approved by Council before the issue of the Construction Certificate.

SITE WORKS

- ~ Unless otherwise approved by Council, excavation, demolition, construction or subdivision work shall only be permitted during the following hours:
 - a) 7:00 am to 6.00 pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
 - b) 8:00 am to 1:00 pm on Saturdays with no demolition works occurring during this time; and
 - c) at no time on Sundays or public holidays.

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

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

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

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

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

The Proponent shall not undertake such activities for more than three continuous hours and shall provide a minimum of one 2 hour respite period between any two periods of such works.

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

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

- ~ The area surrounding the building work must be reinstated to Council's satisfaction upon completion of the work.
- ~ The placing of any materials on Council's footpath or roadway is prohibited, without the consent of Council. The placement of waste storage containers in a public place requires Council approval and must comply with Council's Policy - 'Placement of Waste Storage Containers in a Public Place'.
- ~ All demolition work must be carried out in accordance with the following:
 - a) compliance with the requirements of Australian Standard AS 2601 'The demolition of structures' with specific reference to health and safety of the public, health and safety of the site personnel, protection of adjoining buildings and protection of the immediate environment;
 - b) all works involving the demolition, removal, transport and disposal of asbestos cement must be carried out in accordance with the 'Worksafe Code of Practice for Removal of Asbestos' and the requirements of the WorkCover Authority of NSW and the Department of Environment, Climate Change and Water;
 - c) all building materials arising from the demolition must be disposed of in an approved manner in accordance with Part 2.21 of Marrickville Development Control Plan 2011 – Site Facilities and Waste Management and any applicable requirements of the Department of Environment, Climate Change and Water;
 - d) sanitary drainage, stormwater drainage, water, electricity and telecommunications must be disconnected in accordance with the requirements of the responsible authorities;
 - e) the generation of dust and noise on the site must be controlled;
 - f) the site must be secured to prohibit unauthorised entry;
 - g) suitable provision must be made to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way;
 - h) all trucks and vehicles associated with the demolition, including those delivering to or removing material from the site, must only having access to the site during work hours nominated by Council and all loads must be covered;
 - i) all vehicles taking materials from the site must be loaded wholly within the property unless otherwise permitted by Council;
 - j) no waste collection skips, spoil, excavation or demolition material from the site must be deposited on the public road, footpath, public place or Council owned property without the approval of Council; and
 - k) the person acting on this consent must ensure that all contractors and sub-contractors associated with the demolition are fully aware of these requirements.
- ~ The works must be inspected at critical stages of construction, by the PCA or if the PCA

agrees, by another certifying authority. The last inspection can only be carried out by the PCA. The critical stages of construction are:

- a) At the commencement of the building work;
- b) For Class 2, 3 and 4 buildings, prior to covering waterproofing in any wet areas (a minimum of 10% of wet areas within a building);
- c) Prior to covering any stormwater drainage connections, and after the building work has been completed and prior to any occupation certificate being issued in relation to the building; and
- d) After the building work has been completed and prior to any Occupation Certificate being issued in relation to the building.

You are advised to liaise with your PCA to establish if any additional inspections are required.

~ If it is necessary to excavate below the level of the base of the footings of a building on the adjoining allotments, including a public place such as footways and roadways, the person acting on this consent must ensure that:

- a) At least 7 days' notice is given to the owners of the adjoining land of the intention to excavate below the base of the footings. The notice must include complete details of the work; and
- b) Any building is preserved and protected from damage.

Where a dilapidation report has not been prepared on any building adjacent to the excavation, the person acting on this consent is responsible for arranging and meeting the cost of a dilapidation report prepared by a suitably qualified person. The report must be submitted to and accepted by the PCA before works continue on site, if the consent of the adjoining property owner can be obtained. Copies of all letter/s that have been sent via registered mail to the adjoining property owner and copies of any responses received must be forwarded to the PCA before work commences.

~ All vehicles carrying materials to, or from the site must have their loads covered with tarpaulins or similar covers.

~ A certificate of survey from a registered land surveyor must be submitted to the PCA upon excavation of the footings and before the pouring of the concrete to verify that the structure will not encroach on the allotment boundaries.

~ A clear unobstructed path of travel of not less than 1,000mm must be provided to all exits and paths of travel to exits.

~ Fixtures for bathroom and kitchen taps, showerheads, dishwashers, toilet cisterns and urinals must have a minimum 3 Star WELS rating for the commercial premises.

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

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

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

~ No mechanical excavation (for garage slab) being undertaken within the specified radius of the trunk of the following tree until excavation and root pruning by hand along the perimeter line of such works is completed:

Schedule

Tree/location	Radius in metres
<i>Callistemon viminalis</i> (Weeping Bottlebrush)	5 m

Details demonstrating compliance with the requirements of this condition are to be submitted by the Arborist undertaking the works to the satisfaction of the Principal Certifying Authority.

- ~ If tree roots are required to be severed for the purposes of constructing the approved works, they shall be cut cleanly using a sharp and *fit for purpose tool*. The pruning must be undertaken by a minimum Level 3 (AQF 3) qualified Arborist.

No tree roots greater than 50mm in diameter are to be pruned without prior written approval from Council's Tree Management Officer.

Details demonstrating compliance with the requirements of this condition are to be submitted by the Arborist undertaking the works to the satisfaction of the Principal Certifying Authority

- ~ No activities, storage or disposal of materials taking place beneath the canopy of any tree protected under Council's Tree Management Controls at any time.
- ~ Alignment levels for the site at all pedestrian and vehicular access locations shall match the existing back of footpath levels at the boundary. For vehicular access off rear laneways the level at the boundary shall match the invert level of the adjacent gutter plus 150mm at both sides of the vehicle entry.
- ~ To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, shall be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Marrickville Council Stormwater and On Site Detention Code. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled.
- ~ All stormwater drainage being designed in accordance with the provisions of the Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2015 'Stormwater Drainage' and Marrickville Council Stormwater and On Site Detention Code. Pipe and channel drainage systems shall be designed to cater for the twenty (20) year Average Recurrence Interval (A.R.I.) storm in the case of low and medium residential developments, the twenty (20) year A.R.I. storm in the case of high density residential development and commercial and/or industrial developments and the fifty (50) year A.R.I. storm in the case of heavy industry. In all cases the major event surface flow paths shall be designed to cater for the one hundred (100) year A.R.I. storm.

BEFORE OCCUPATION OF THE BUILDING

- ~ You must obtain an Occupation Certificate from your PCA before you occupy or use the building. The PCA must notify the Council of the determination of the Occupation Certificate and forward the following documents to Council within 2 days of the date of the Certificate being determined:
 - a) A copy of the determination;
 - b) Copies of any documents that were lodged with the Occupation Certificate application;
 - c) A copy of Occupation Certificate, if it was issued;
 - d) A copy of the record of all critical stage inspections and any other inspection required by the PCA;
 - e) A copy of any missed inspections; and
 - f) A copy of any compliance certificate and any other documentary evidence relied upon in issuing the Occupation Certificate.

- ~ Occupation of the building must not be permitted until such time as:
 - a) All preconditions to the issue of an Occupation Certificate specified in this development consent have been met;
 - b) The building owner obtains a Final Fire Safety Certificate certifying that the fire safety measures have been installed in the building and perform to the performance standards listed in the Fire Safety Schedule; and
 - c) An Occupation Certificate has been issued.

- ~ The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:
 - a) Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and
 - b) Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).

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

- ~
 - a) Upon completion of the required noise attenuation measures referred to in the "Before the Issue of a Construction Certificate" Section of this Determination, and prior to the occupation of the development a report must be prepared and submitted to the Certifying Authority's satisfaction by an accredited Acoustics Consultant certifying that the final construction meets AS2021-2015 as set down in the subject condition of this consent. Such report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development; and
 - b) Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a further certificate being prepared and submitted to Council in accordance with the requirements as set down in Part a) of this condition.

- ~ The Certifying Authority must be satisfied that each of the commitments listed in BASIX Certificate referred to in this Determination have been fulfilled before the issue of an Occupation Certificate (whether an interim or final Occupation Certificate).

- ~ The Certifying Authority must apply to the Director-General for a BASIX Completion Receipt within 2 days of the issue of a final Occupation Certificate. Completion Receipts can be applied for at www.basix.nsw.gov.au.

- ~ All works required to be carried out in connection with drainage, crossings, alterations to kerb and guttering, footpaths and roads resulting from the development shall be completed before the issue of an Occupation Certificate. Works shall be in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications".

- ~ Light duty concrete vehicle crossings, in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications" must be constructed at the vehicular access locations before the issue of the Occupation Certificate and at no cost to Council.

- ~ All redundant vehicular crossings to the site shall be removed and replaced by kerb and gutter and footpath paving in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications" before the issue of the Occupation Certificate and at no cost to Council. Where the kerb in the vicinity of the

redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb shall also be in stone.

- ~ Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever shall not be permitted. Any encroachments on to Council road or footpath resulting from the building works will be required to be removed before the issue of the Occupation Certificate.
- ~ You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development shall be at no cost to Council and undertaken before the issue of an Occupation Certificate.
- ~ The existing stone kerb adjacent to the site is of local heritage value and is to be preserved at no cost to Council. Any damage to the stone kerb will require the replacement of the damaged individual stone units before the issue of the Occupation Certificate. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled. Non-compliance with this condition will result in loss of your security deposit.
- ~ The existing damaged or otherwise defective kerb and gutter, footpath and/or road pavement adjacent to the site shall be restored in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications", at no cost to Council and before the issue of the Occupation Certificate.
- ~ The existing whiteway lighting scheme and any existing meter box being maintained and incorporated into the design of the development. Any defects (including the need to install a "special small service") in the system shall be repaired at no cost to Council and before the issue of the Occupation Certificate.
- ~ Before the issue of an Occupation Certificate, a street number and identifier of separate occupancies (if applicable) must be clearly displayed in a readily visible location (numbers having a height of not less than 75mm). If any new street numbers or change to street numbers (this includes unit and shop numbers) are required they must have the prior approval of Council before being displayed.
- ~ The landscaping of the site must be carried out prior to occupation or use of the premises in accordance with the approved plan, and must be maintained at all times to Council's satisfaction.
- ~ Prior to the issue of any Occupation Certificate, the Principal Certifying Authority is to be satisfied that all landscape works, including tree planting, have been undertaken in accordance with the approved plan(s) and conditions of consent.

ADVISORY NOTES

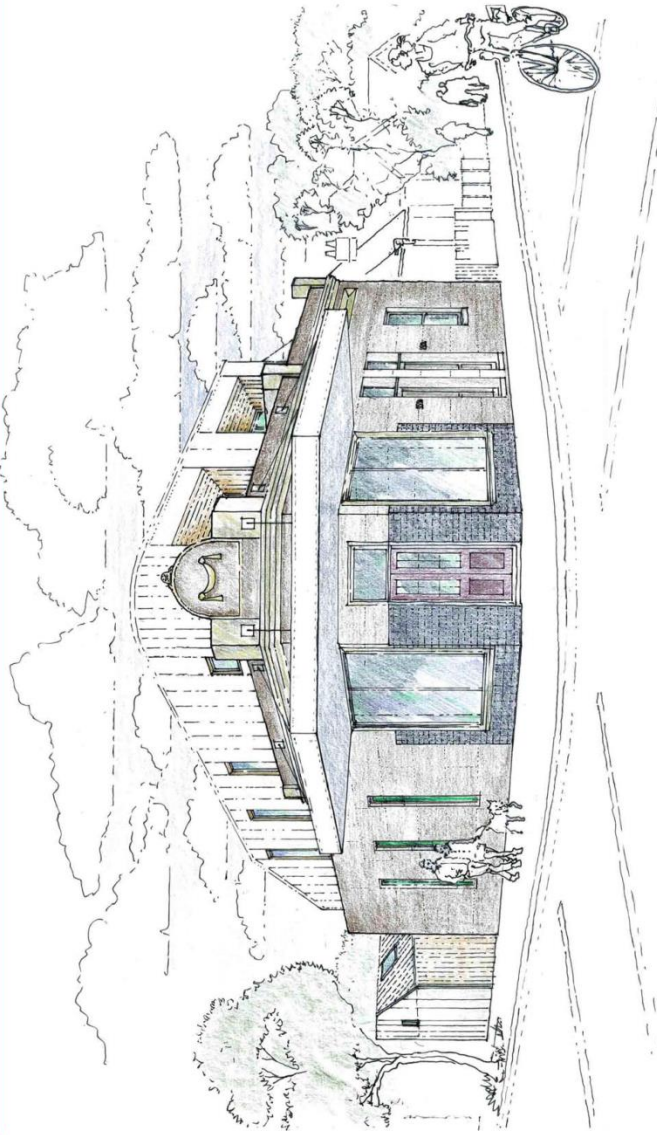
- The Disability Discrimination Act 1992 (Commonwealth) and the Anti-Discrimination Act 1977 (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.
- A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out.
- Contact "Dial Before You Dig" before commencing any building activity on the site.

- B. THAT the person who lodged a submission in respect to the proposal be advised of the Council's determination of the application.
- C. THAT the Department of Planning and Environment be advised, as part of the quarterly review of the monitoring of Clause 4.6 of Marrickville Local Environmental Plan 2011 - Exceptions to Development Standards, that Council has agreed to the variation of the following development standard:

<u>Premises:</u>	155 Illawarra Road MARRICKVILLE
<u>Applicant:</u>	HA Pronk, Mr NA Mackenzie, Mr TM Hume, Ms J Tarr
<u>Proposal:</u>	To demolish part of the premises and carry out ground and first floor alterations and additions so as to provide a commercial tenancy on the ground floor to be used as an architect's office and to provide 2 dwellings and a double garage at the rear of the site
<u>Determination:</u>	Deferred Commencement
<u>DA No:</u>	201800448
<u>Lot and DP:</u>	Lot 287 DP 740295
<u>Category of Development:</u>	9: Mixed
<u>Environmental Planning Instrument:</u>	Marrickville Local Environmental Plan 2011
<u>Zoning of Land:</u>	B1 – Neighbourhood Centre
<u>Development Standard(s) varied:</u>	Clause 4.4 – Floor space ratio
<u>Justification of variation:</u>	There are sufficient planning grounds to justify the departure from floor space ratio in that the built form of the development is commensurate with surrounding development and does not result in amenity of streetscape impacts.
<u>Extent of variation:</u>	13.8% (29sqm)
<u>Concurring Authority:</u>	Council under assumed concurrence of the Secretary of the Department of Planning and Environment
<u>Date of Determination:</u>	

Attachment B – Plans of proposed development

DEVELOPMENT APPROVAL REV 1
COMMERCIAL SPACE, RESIDENCE AND SHOP TOP HOUSING
155 ILLAWARRA ROAD FOR CROSSROADS PARTNERS
155 ILLAWARRA ROAD
MARRICKVILLE NSW 2204



PROPOSED VIEW FROM THE CORNER OF ILLAWARRA ROAD AND SYDENHAM ROAD



EXISTING VIEW FROM SYDENHAM ROAD

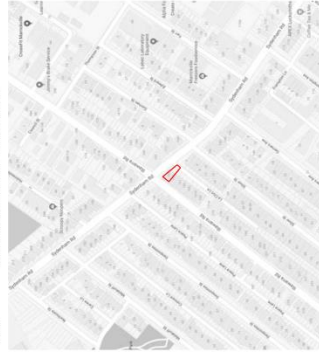


EXISTING VIEW FROM ILLAWARRA ROAD AND SYDENHAM ROAD



EXISTING VIEW FROM SYDENHAM ROAD

DRAWING No.	DESCRIPTION
DA00	TITLE PAGE
DA01	SITE PLAN
DA02	EXISTING & DEMOLITION PLAN
DA03	EROSION & SEDIMENT CONTROL + SITE MANAGE...
DA04	SITE ANALYSIS PLAN
DA05	GROUND FLOOR & LANDSCAPE PLAN
DA06	FIRST FLOOR PLAN
DA07	ROOF & CONCEPT DRAINAGE PLAN
DA08	AREAS PLAN
DA09	ELEVATIONS
DA10	ELEVATIONS
DA11	COLOUR MATERIALS AND FINISHES SCHEDULE
DA12	SECTIONS
DA13	SECTIONS
DA14	21 JUNE SHADOW DIAGRAMS
DA15	NOTIFICATION PLAN - SITE PLAN
DA16	NOTIFICATION PLAN - ELEVATIONS
DA17	NOTIFICATION PLAN - ELEVATIONS



LOCATION MAP - NOT TO SCALE

CROSSROADS

PARTNERS

REV	DESCRIPTION	DATE	BY	PROJECT LEGEND	NEW ADDITIONS	PROJECT LEGEND	DATE	BY	PROJECT LEGEND	DATE	BY
00	FOR SUBMISSION TO COUNCIL	20/01/19	JT	EXISTING WALL	NEW WALL	EXISTING WALL	20/01/19	JT	EXISTING WALL	20/01/19	JT
01	ADDITIONAL INFORMATION TO COUNCIL			NEW TYPED FRAME WALL	NEW TYPED FRAME WALL	NEW TYPED FRAME WALL			NEW TYPED FRAME WALL		
				EXISTING GLAZING	EXISTING GLAZING	EXISTING GLAZING			EXISTING GLAZING		
				NEW GLAZING	NEW GLAZING	NEW GLAZING			NEW GLAZING		
				NEW DOOR	NEW DOOR	NEW DOOR			NEW DOOR		
				NEW WINDOW	NEW WINDOW	NEW WINDOW			NEW WINDOW		
				NEW ROOF	NEW ROOF	NEW ROOF			NEW ROOF		
				NEW FLOOR	NEW FLOOR	NEW FLOOR			NEW FLOOR		
				NEW FINISH	NEW FINISH	NEW FINISH			NEW FINISH		
				NEW LANDSCAPE	NEW LANDSCAPE	NEW LANDSCAPE			NEW LANDSCAPE		
				NEW PLANTING	NEW PLANTING	NEW PLANTING			NEW PLANTING		
				NEW PAVING	NEW PAVING	NEW PAVING			NEW PAVING		
				NEW FENCE	NEW FENCE	NEW FENCE			NEW FENCE		
				NEW SIGNAGE	NEW SIGNAGE	NEW SIGNAGE			NEW SIGNAGE		
				NEW LIGHTING	NEW LIGHTING	NEW LIGHTING			NEW LIGHTING		
				NEW UTILITIES	NEW UTILITIES	NEW UTILITIES			NEW UTILITIES		
				NEW OTHER	NEW OTHER	NEW OTHER			NEW OTHER		

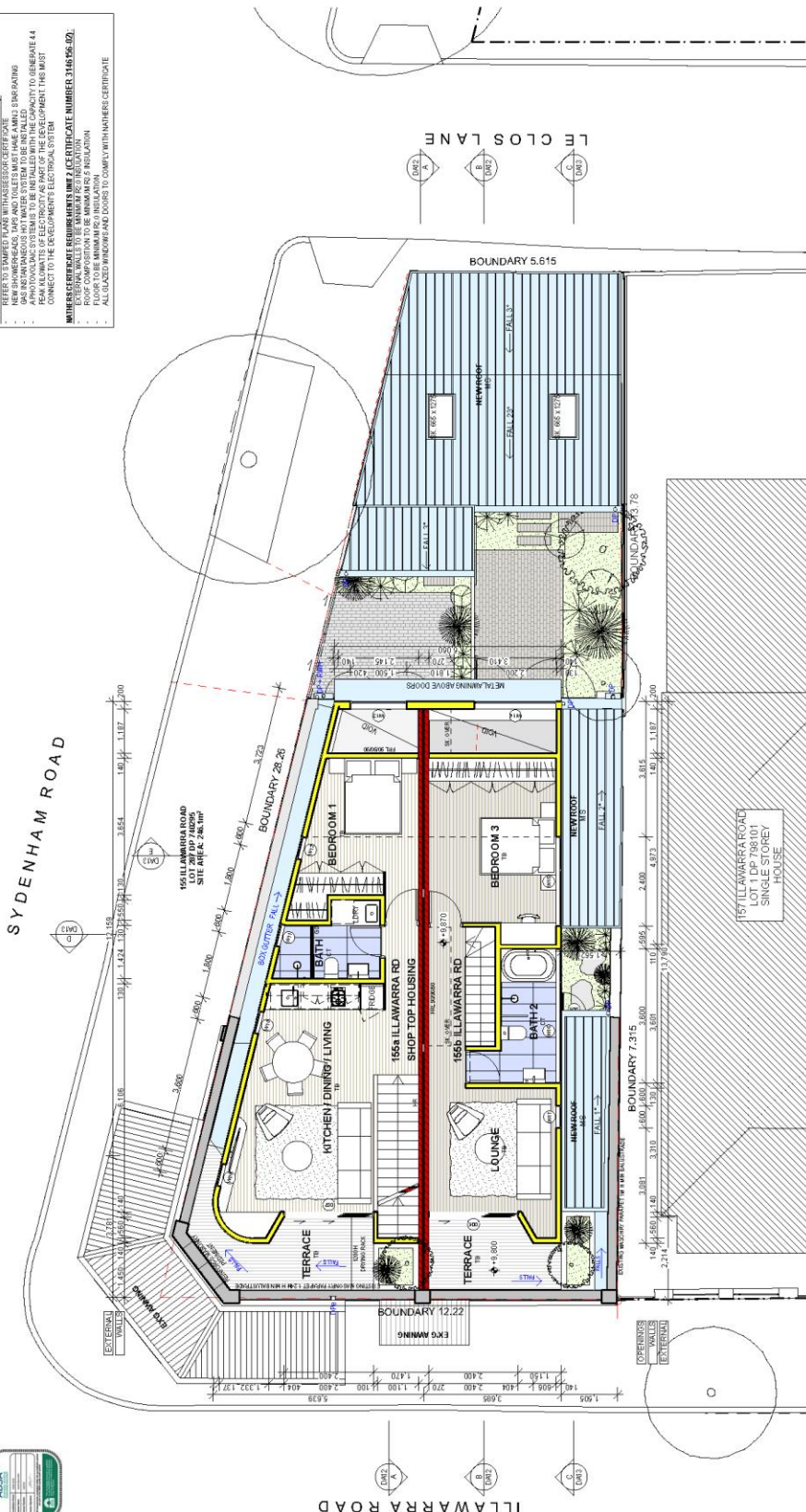
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3

CLIENT	CROSSROADS PARTNERS
PROJECT	155 ILLAWARRA ROAD MARRICKVILLE NSW 2204
DATE	20/01/19
SCALE	NM 1/10 JT
DRAWING NO.	DA00
TITLE PAGE	
FILE	155 ILLAWARRA ROAD - 150323.dwg

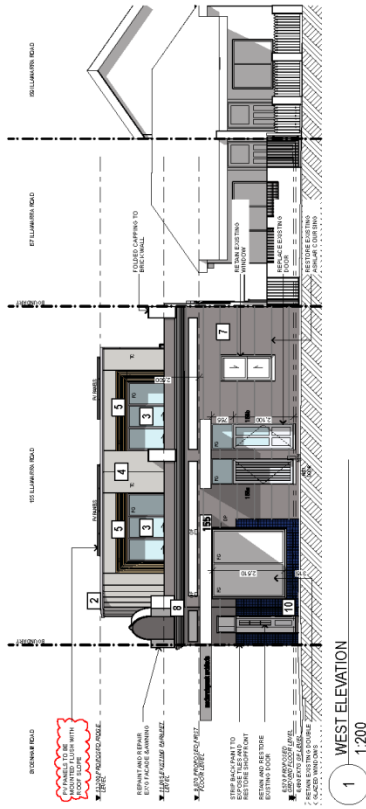
mackenziegroark architects
 2/111 ILLAWARRA ROAD MARRICKVILLE NSW 2204
 T: 02 9559 4595 E: info@mackenziegroark.com.au
 www.mackenziegroark.com.au

- BASIS FOR MINIMUM UNIT 1 CERTIFICATE NUMBER 314856-001**
- MINIMUM OF 20% OF NEW LOCAL LIGHT FIXTURES TO BE FITTED WITH FLUORESCENT COMPACT FLUORESCENT OR LED LAMP
- ALL LIGHT FIXTURES TO BE INSTALLED TO THE RECOMMENDED HEIGHT
- GAS INSTANTANEOUS HOT WATER SYSTEM TO BE INSTALLED
- WATER SAVING DEVICES TO BE INSTALLED TO ALL TOILETS AND SHOWER
- ROOFING TO BE INSTALLED TO BE RESEARCHED AND SPECIFIED
- ALL GLAZED WINDOWS AND DOORS TO COMPLY WITH BASIS CERTIFICATE
- BASIS FOR MINIMUM UNIT 2 CERTIFICATE NUMBER 314856-002**
- REFER TO STAMPED PLANS WITH SIGNATURE OF CERTIFICATE
- GAS INSTANTANEOUS HOT WATER SYSTEM TO BE INSTALLED
- WATER SAVING DEVICES TO BE INSTALLED TO ALL TOILETS AND SHOWER
- ROOFING TO BE INSTALLED TO BE RESEARCHED AND SPECIFIED
- ALL GLAZED WINDOWS AND DOORS TO COMPLY WITH BASIS CERTIFICATE
- CONNECT TO THE DEVELOPER'S ELECTRICAL SYSTEM
- WATERS CERTIFICATE REQUIREMENTS UNIT 2 CERTIFICATE NUMBER 314856-002**
- EXTERNAL WALLS TO BE MINIMUM R20 INSULATION
- ROOFING TO BE RESEARCHED AND SPECIFIED
- FLOOR TO BE MINIMUM R2.0 INSULATION
- ALL GLAZED WINDOWS AND DOORS TO COMPLY WITH WATERS CERTIFICATE

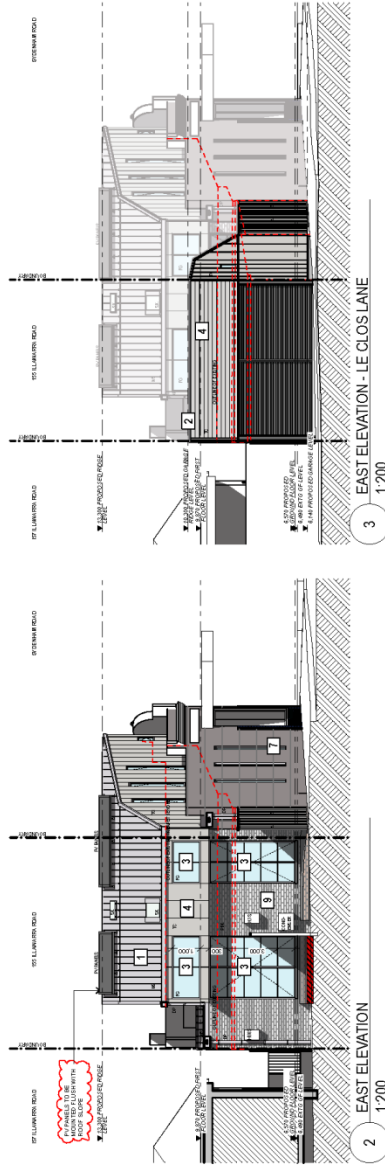


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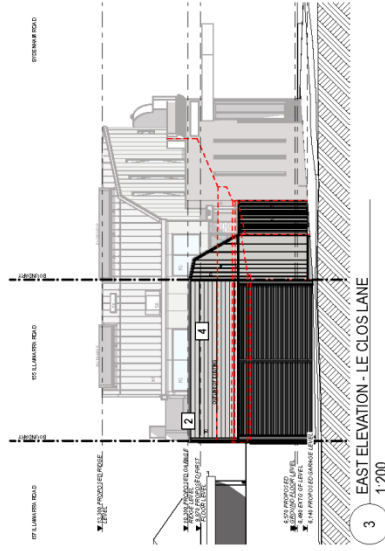
NOT FOR CONSTRUCTION		PROJECT LEGEND		PROJECT LEGEND		PROJECT LEGEND		PROJECT LEGEND		PROJECT LEGEND	
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07	GLAZING	08	ROOFING	09	LANDSCAPE	10	MECHANICAL	11	ELECTRICAL	12	PLASTER BOARD
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595	CONCRETE	596	PAVING	597	CONCRETE	598	PAVING	599	CONCRETE	600	



1 WEST ELEVATION
1:200



2 EAST ELEVATION - LE CLOS LANE
1:200



3 EAST ELEVATION - LE CLOS LANE
1:200

1	COLORBOND (MID GREY) ROOF SHEETING	10	EXISTING THROUGH-TILE TO BE RESTORED WALL TILES AROUND CORNER ENTRY
2	COLORBOND (MID GREY) FLASHING DOWNPIPES	9	WHITE PAINTED BRICK BRICK WALL
3	ANODIZED ALUMINIUM WINDOW AND DOOR FRAMES	8	WHITE COLOUR EXISTING DECORATIVE HERITAGE DETAILS PAINTED
4	GREY CLADDING WALL CLADDING	7	CHARRED TIMBER WALL CLADDING
5	HARDWOOD TIMBER FENCE	6	WARM GREY COLOUR EXISTING RENDERED WALLS PAINTED
6	GREY CLADDING WALL CLADDING	5	SCOTTED BROWN PAINTED
7	HARDWOOD TIMBER FENCE	4	SCOTTED BROWN PAINTED
8	GREY CLADDING WALL CLADDING	3	SCOTTED BROWN PAINTED
9	WHITE PAINTED BRICK BRICK WALL	2	SCOTTED BROWN PAINTED
10	EXISTING THROUGH-TILE TO BE RESTORED WALL TILES AROUND CORNER ENTRY	1	SCOTTED BROWN PAINTED

NOT FOR CONSTRUCTION

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PROJECT LEGEND

EXISTING (Blue outline)
PROPOSED (Red outline)
REMOVED (Green outline)
EXISTING TO REMAIN (Yellow outline)
EXISTING TO BE RESTORED (Red outline with diagonal lines)
EXISTING TO BE REPLACED (Red outline with diagonal lines)
EXISTING TO BE DEMOLISHED (Red outline with diagonal lines)
EXISTING TO BE REPAIRED (Red outline with diagonal lines)
EXISTING TO BE REFINISHED (Red outline with diagonal lines)
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EXISTING TO BE REPAINTED AND REFINISHED AND REPAIRED (Red outline with diagonal lines)
EXISTING TO BE REPAINTED AND REFINISHED AND REPAIRED AND REFINISHED (Red outline with diagonal lines)

PROJECT LEGEND

EXISTING (Blue outline)
PROPOSED (Red outline)
REMOVED (Green outline)
EXISTING TO REMAIN (Yellow outline)
EXISTING TO BE RESTORED (Red outline with diagonal lines)
EXISTING TO BE REPLACED (Red outline with diagonal lines)
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PROJECT LEGEND

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NOTIFICATION PLAN - ELEVATIONS

DATE: 12/01/2019
 DRAWN BY: J. PRANK
 CHECKED BY: J. PRANK
 PROJECT NO.: 155 LLAWARRA ROAD
 MARRICKVILLE NSW 2204
 DRAWING NO.: 1.02.008.002
 SCALE: 1:200
 PROJECT: 155 LLAWARRA ROAD
 CLIENT: SSCROADS PARTNERS

mackenzieprank architects
 248 Longstone Road Murrumbidgee NSW 2517
 Phone: 02 6338 4002
 Email: info@mackenzieprank.com.au
 Website: www.mackenzieprank.com.au

Attachment C – Clause 4.6 statement, FSR



EXEMPTION TO A DEVELOPMENT STANDARD
S4.6 SUBMISSION – FLOOR SPACE RATIO

Burrell Threlfo Pagan Pty Ltd TOWN PLANNING CONSULTANTS

FOR ALTERATIONS & ADDITIONS TO EXISTING
TO CORNER SHOP & NEW SHOP TOP HOUSING
FOR 155 Illawarra Rd Marrickville
Crossroads Partners

SKETCH VIEW OF PROPOSAL FROM SYDENHAM ROAD



DATE FROM SEE October 2018
PREPARED BY EXERPT Resubmitted March 2019
Neil Mackenzie / Heidi Pronk / Jos Tarr & Tom Hume
S4.6 SUBMISSION – FLOOR SPACE RATIO
Text by Burrell Threlfo Pagan Pty Ltd Town Planning Consultants

mackenzie pronk architects
www.mackenziepronk.com.au
249 Livingstone Rd Marrickville NSW 2204
T: 02 95594595 F: 02 95584582
Nominated Architect Neil Mackenzie (NSW Reg. No. 6512)
Nominated Architect Heidi Pronk (NSW Reg. No. 7208)

Clause 4.6 Submission - Exception to development standard

FLOOR SPACE RATIO

There is a minor non-compliance with the FSR standard.

Criteria

Clause 4.6 allows consent to be granted for development that would contravene a development standard if

- the applicant has made a written request seeking to justify the contravention and
- the consent authority is satisfied that the written request has adequately addressed the matters required to be addressed by subclause (3); that is
 - (3)(a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard and*

the consent authority is satisfied that

- (4)(a)(ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- the concurrence of the Director-General has been obtained

In accordance with the guidelines provided by decisions of the Land and Environment Court and in particular the judgments in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386 and *Moskovich v Waverley Council* [2016] NSWLEC 1015, the submission in this Statement addresses the requirements of clause 4.6 in turn.

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

The judgment in *Wehbe v Pittwater Council* [2007] NSWLEC 827 identified five ways of establishing under *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1) that compliance is unreasonable or unnecessary. The subsequent cases referred to above have confirmed that these ways are equally applicable under the clause 4.6 regime. The 5 matters to consider are whether:

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
2. *The objective is not relevant to the development.*
3. *The objective would be defeated or thwarted if compliance was required.*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard.*
5. *The zoning of the land is unreasonable or inappropriate.*



These 5 matters are discussed below.

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The objectives of the FSR development standard are

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

These objectives are achieved despite the con-compliance with the numerical control because:

- The additional floor area is only 29m² over the standard. The resulting built form is suitable for a corner shop type building which is commonly a two storey building.
- Council has rezoned the site from residential to neighbourhood business in 2011. This established the desired future character to be low scale business. The proposal will provide for an architect's office to accommodate an existing Marrickville practice. Providing attached residential accommodation is consistent with this character.
- The built form is of the proposed building is suitable to the immediate locality. The adjoining residential lots have areas that are less than 200m². The applicable FSR standard for these properties is 1:1. Therefore, the proposal is consistent with the desired future character of the surrounding residential properties.
- The built form is similar to the recently approved development at 2 Silver Street on the other side of the rear lane.
- There are no adverse impacts on the adjoining property. The design provides a suitable presentation to the public domain.

2. *The objective is not relevant to the development.*

This contention is not applicable to the proposal.

3. *The objective would be defeated or thwarted if compliance was required.*

This contention is not applicable to the proposal.

4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard.*

This contention is not applicable to the proposal.

5. *The zoning of the land is unreasonable or inappropriate.*

This contention is not applicable to the proposal.

Compliance with the development standard is unreasonable or unnecessary in the circumstances because

- The adjoining residential lots have areas that are less than 200m². The applicable FSR standard for these properties is 1:1. Therefore, the FSR standard is rather low compared to the applicable FSR standard for nearby properties.
- The proposed FSR of 0.97:1 complies with the FSR standard that applies to the surrounding properties.



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

The cases referred to above have established that the environmental planning grounds must be particular to the circumstances of the proposed development on its site. The following environmental planning grounds are relevant:

- The building bulk, form and scale of the proposed building will be consistent with the traditional character of a corner shop with attached residence.
- The first floor addition is a suitable contemporary addition to a traditional building.
- There are no significant impacts from the bulk and scale of the proposed dwelling on neighbouring properties.

Will the proposed development be in the public interest because it is consistent with the objectives of the development standard?

The objectives of the FSR standard have been addressed above. The proposal is consistent with the objectives. Further, strict compliance is considered to be unreasonable in the circumstances.

Will the proposed development be in the public interest because it is consistent with the objectives of the zone?

The objectives for the B1 zone are

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

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

The proposal will provide for an architect's office to accommodate an existing Marrickville practice.

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

The proposed FSR of 0.97:1 complies with the FSR standard that applies to the surrounding properties.

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

The active street frontage will be rejuvenated by the proposed office use.

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

The retention and extension of the existing dwelling is consistent with this objective.

Concurrence of the Director-General

The concurrence of the Director-General may be assumed by Council.



Council must also consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning*
- (b) the public benefit of maintaining the development standard*

Any matter of significance for State or regional environmental planning

There are no matters of significance for State or regional environmental planning

Public interest

The proposal is considered to be neutral in terms of the public interest.

Attachment D – Statement regarding existing use rights

Burrell Threlfo Pagan Pty Ltd TOWN PLANNING CONSULTANTS

48 Victoria Road Rozelle NSW 2039
 phone: 9818 8333 fax: 9818 8356 e-mail: bruce@btplan.com.au
 ABN 55 078 022 447
 27 March 2019

155 Illawarra Road Marrickville

SITE HISTORY

The property has a long history as a shop and residence that dates back to the mid 1880's.

The early history has been researched by Julie Mackenzie, heritage consultant.

The information from the Sands directory includes the following references.

1882 vacant land
 1890 Edward Maynard, greengrocer
 1895 Edward Maynard, greengrocer
 1900 A Jackson, greengrocer
 1905 Thomas E Freeman, greengrocer
 1910 Thomas E Freeman, greengrocer
 1915 Alexander J Cameron, greengrocer
 1920 Mrs Maud Gilroy
 1925 OC Carlton, greengrocer
 1930 N Chambers, fruiterer
 1933 J O'Brien, mix business

The Sands Directory listed the occupant of the property and the occupation of the occupant if that occupation was carried on at the property. This listing was compiled annually before telephone directories came into use up until 1933.

These records indicate that the building was constructed sometime in the 1880's and was built as a residence (because a person is listed as living there) and a corner shop (because the listed occupation was a greengrocer). The building was still being used as a residence and shop when the Sands Directory ceased being published in 1933.

The internal and external walls of the building are quite old and would mostly date to the original construction in the 1880.s. There is a separate door to the residential part of the building that is obviously the original opening.

The registered owners from land title records were:

Year	Owner
Pre 1905	Fanny Patterson
1905	Edith Ruth Freeman (appears to match Sands Directory below)
1948	Clarice Edith Smith (inherited)
1958	David Henry Bersten (matches 1955 rates record)
1964	Select Credits Pty Ltd
1964	Panagiotis Stavrogeanopoulos
1967	Georgios Konistis and Anthanasios Konistis
1983	Con Prodromakis and Maria Prodromakis
1986	Sorted out boundaries and made Lot 287 DP 740295
2008	Phillip Barry Stack
2018	Mackenzie, Pronk, Tarr, Hume

The starting date for existing use rights is usually taken to be 1951 when the County of Cumberland Planning Scheme commenced operation. Our office holds a copy of the book by Dennis Winston titled "Sydney's Great Experiment – The Progress of the Cumberland County Plan", published in 1957. The book includes "The County of Cumberland Planning Scheme Ordinance" (the County Scheme) and the related zoning map. The Ordinance introduced land use zoning controls.

The property was zoned "Living Area" under the County Scheme (map attached). The Ordinance allowed existing buildings and works to continue to be used for the purpose for which they were being used before the appointed day. Thus the shop and residence could continue to be used for those purposes without the need for a development consent.

Council's rates records of 1955 (attached) describe the building as "shop and cottage".

The real estate plan (attached) from 2008 shows the building as a shop and residence. The layout of the residence on that plan is the same as the existing layout.

Based on the documentary records and physical condition of the building the existing residence has had a physical form as a dwelling (a suite of rooms constructed to be used as a separate domicile) since the 1880's.

The Marrickville Planning Scheme Ordinance was introduced in 1968. Our office holds a copy of the 1991 version of the ordinance but no zoning maps.

The most recent approval was BA 454/98 which apparently approved the retail sale of auto parts (as advised by Council customer service). A copy of the consent and the floor plans from Council's file are attached. The floor plan clearly shows the dwelling. Condition 2 of the consent makes specific reference to the existing dwelling to remain in use as a single dwelling.

The Marrickville Planning Scheme Ordinance was replaced by Marrickville Local Environmental Plan 2001 in 2001. The property was zoned residential 2(A) under Marrickville LEP 2001. Our office holds a copy of the planning instrument and zoning map.

It is logical to assume that the property was zoned for residential purposes from 1968 to 2001, to explain the 2(A) Residential zoning under MLEP 2001.

The property was sold in 2008 to Phillip Barry Stack. The real estate plan from 2008 shows the building as a shop and residence.

The zoning was changed from 2(A) Residential to B1 Neighbourhood Centre in 2011 upon the gazettal of Marrickville LEP 2011. The new LEP adopted this definition of shop top housing:

'shop top housing means one or more dwellings located above ground floor retail premises or business premises.'

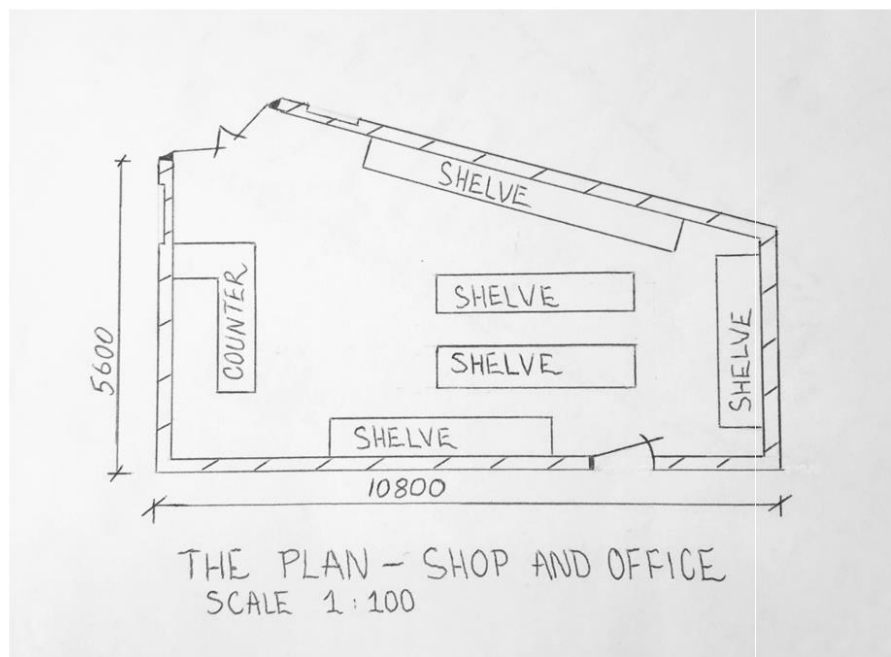
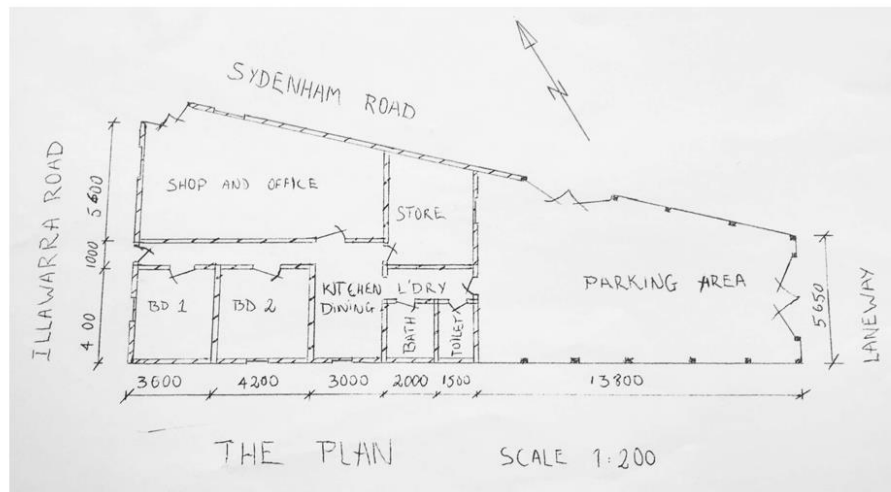
Therefore as a consequence the ground floor dwelling became a prohibited use and hence became an existing use.

Note that there is no need to establish a continuity of use as a dwelling prior to 2011. The continuity of use only becomes a matter for consideration after the dwelling became an "existing use".

The previous owner has provided a statutory declaration stating "*I was the owner and occupant of the building at 155 Illawarra Road Marrickville from 2008 until the recent sale in September 2018. I used the residential part of the premises as my permanent residence*" (attached). Hence the existing use rights as a dwelling established when the zoning changed in 2011 have been continuous and have not been abandoned.


Yours Faithfully
Bruce Threlfo

Copy of documents from Council file for DA 454/98



ADMINISTRATIVE CENTRE
2-14 FISHER STREET, PETERSHAM

TEL: (02) 9335.2000
FAX: (02) 9335.2029
TTY: (02) 9335.2025
EMAIL: council@marrickville.nsw.gov.au
DA454/98 BSM:AF



P O BOX 14 PETERSHAM 2049
DX 3910 - ANNANDALE

ALL CORRESPONDENCE
TO BE ADDRESSED TO
THE GENERAL MANAGER

OUR REF: 22 September, 1998

YOUR REF: **DETERMINATION NO 17851**

Michael Dinh
300 Illawarra Road
MARRICKVILLE NSW 2204

Dear Mr Dinh

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 ("THE ACT")
NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION**

Pursuant to Section 81 of the Act, notice is hereby given of the determination by the Council of **Development Application No 454/98** to use the premises for the retail of auto spare parts and a mobile motor mechanic office and to erect associated signs relating to property situated at:

155 ILLAWARRA ROAD, MARRICKVILLE

Building Code of Australia Building Classification: 6 & 4

In determining this application, the Council considered all matters listed under Section 79C of the Act that were relevant to the Development Application.

The Development Application was determined on 22 September, 1998 by the granting of **CONSENT** subject to the following conditions:

1. The development being carried out substantially in accordance with the Plan and details submitted to Council on 17 August 1998 with the application for development consent and as amended by the following conditions.
Reason: To confirm the details of the application as submitted by the applicant.
2. The area to be used for the retail of auto spare parts being restricted to the shop and storeroom located on the northern half of the building, with the remainder of the premises being used solely as a single dwelling with the entire premises being used as a single occupancy.
Reason: To ensure that the retail of auto parts is confined to the shop area and that the premises are used as a single occupancy.
3. No motor vehicle repairs or servicing being carried out from the property or the adjoining streets/footpaths.
Reason: To ensure that the property is not used for vehicle repairing.
4. Two (2) off-street car parking spaces being provided, paved, linemarked and maintained at all times to Council's satisfaction and in accordance with the standards contained within Marrickville Development Control Plan No.19 -Parking Strategy. Access and egress to and from the parking spaces is to occur from the rear lane.

- Reason: To ensure practical off-street car parking is available for the use of the premises and that the entrance from Sydenham Road is not used for access or egress purposes.
5. Council waiving the requirement of one (1) off-street car parking space required for the development.
Reason: No intensification of usage of the premises is proposed.
 6. No injury being caused to the amenity of the neighbourhood by the emission of noise, smoke, smell, vibration, gases, vapours, odours, dust, particular matter, or other impurities which are a nuisance or injurious or dangerous or prejudicial to health, the exposure to view of any unsightly matter or otherwise.
Reason: To ensure the operation of the premises does not affect the amenity of the neighbourhood.
 7. No storage of goods or equipment external to any building on the site being permitted.
Reason: To ensure the premises are kept in a neat and tidy manner.
 8. All materials and equipment associated with the use being stored on the premises in a neat and tidy manner to Council's satisfaction behind the existing fence and not being visible external to the site.
Reason: To ensure that the premises are kept in a neat and tidy manner and to ensure that the use does not cause injury to the visual amenity of the surrounding area.
 9. No signs or goods to be displayed for sale or stored on the footpath in front of the premises at any time without the prior approval of Council.
Reason: To prevent the public footpath from being obstructed.
 10. All loading and unloading in connection with the use being carried out wholly within the property with all vehicles entering and exiting the property via the rear lane.
Reason: To ensure that the loading and unloading does not cause a traffic hazard on adjoining street or obstruct the adjacent public thoroughfares.
 11. The size of delivery vehicles associated with the use being restricted to small vans.
Reason: To ensure that delivery vehicles can access the property and do not interfere with the amenity of the surrounding neighbourhood.
 12. The hours of operation being restricted to between the hours of 8.30am to 5.30pm Mondays to Saturdays and 9.00am to 5.00pm Sundays and Public Holidays.
Reason: To confirm the hours of operation as requested.
 13. No machinery being installed on the premises without the prior approval of Council.
Reason: To advise the applicant of the necessity to obtain Council approval prior to the installation of any machinery.
 14. The signs being limited to a painted fascia sign on the shop awning and a painted window sign. The painted window sign being limited to the window facing Sydenham Road, with the window facing Illawarra Road being left unpainted.
Reason: To ensure that the signs are appropriate for the building and character of the surrounding area.

- 15. All trade waste being stored within the site boundaries and contained in such a manner so as not to cause a nuisance.
Reason: To provide for correct storage of wastes.
- 16. Adequate facilities being provided for the covered storage of garbage and recyclable materials.
Reason: To provide for adequate storage of wastes.

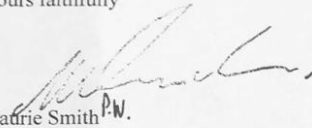
This consent is effective and operates from 22 September, 1998. The consent will lapse unless the proposed development is commenced in accordance with Section 95 of the Act.

Under Section 82A of the Act you may, within twenty eight (28) days of receipt of this notice, request Council to review this determination.

Under Section 97 of the Act you may, within twelve (12) months of receipt of this notice, appeal to the Land and Environment Court if you are dissatisfied with the Council's determination.

All conditions imposed by the Council must be observed. Breach of a condition is a breach of the Act and may also constitute an offence.

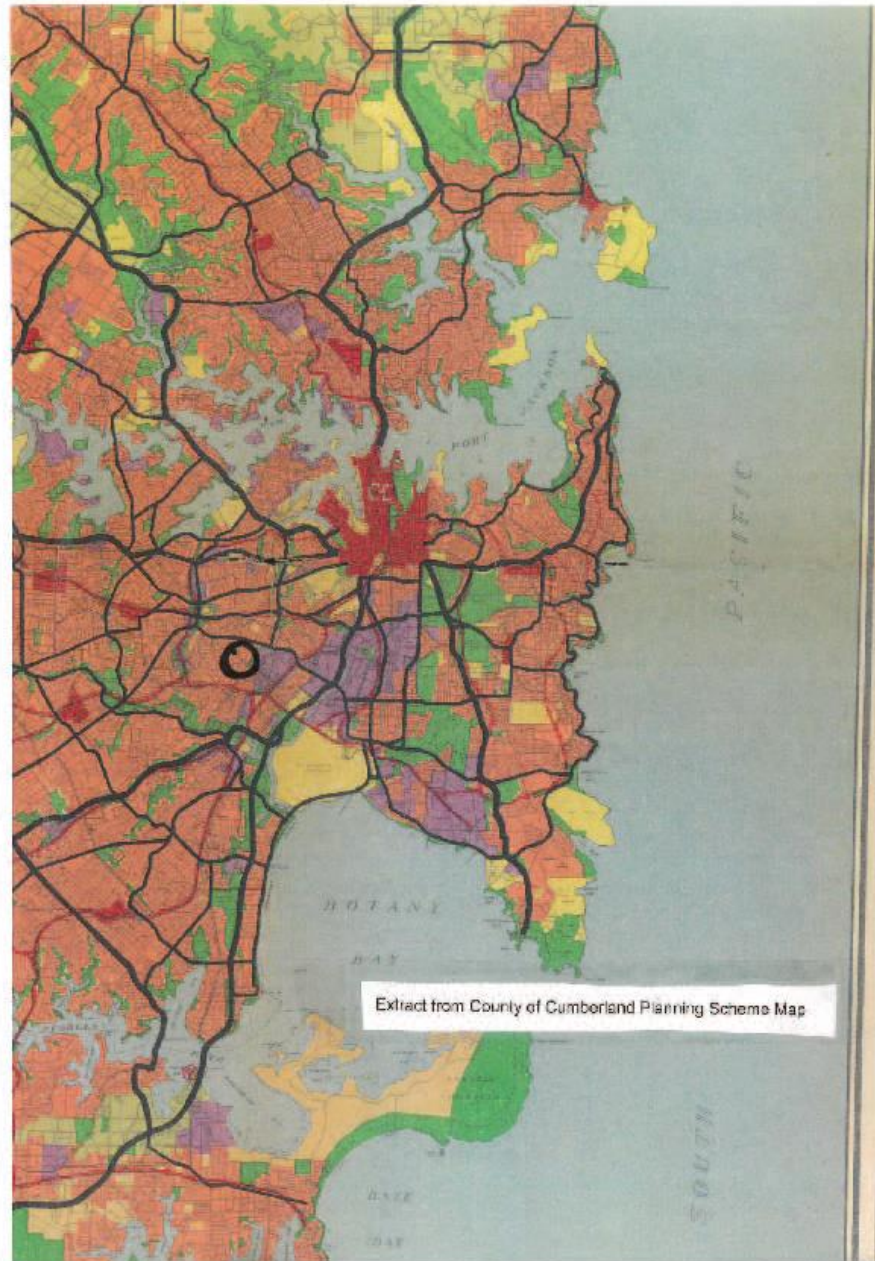
Yours faithfully



Mairie Smith ^{P.W.}
Director, Development & Environmental Services

Enquiries: Mr D. Kettle on 9335.2264

Ref: **D1** Da454-98cor



Copy of 1955 rates extract

DEPARTMENT OF THE VALUER GENERAL, N.S.W.—VALUATION LIST

1097
MARRICKVILLE EAST

OWNER'S NAME: **CLARENCE BEAVER**
 ADDRESS: **110 VICTORIA AVE., CHARLEWOOD NSW 411**

OCCUPATION: **MANAGER**

VALUATION NO: **1117**

PROPERTY: **ILLAWARRA RD.**

PARISH: **DUNLINGTON**

AREA OR DIMENSIONS: **40' x 90'**

UNIMPROVED VALUE: **630**

IMPROVED VALUE: **3050**

TOTAL VALUE: **3680**

REMARKS: **Shop & Office on Victoria Ave. No. 110**

DATE OF VALUATION: **1955**

VALUER: **DAVID HENRY**

Copy of real estate floor plan dated 2008 from Core Logic

