



# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	DA201900016
<b>Address</b>	11-13 Hunter Street Lewisham
<b>Proposal</b>	To demolish part of the premises and carry out ground and first floor alterations and additions to a boarding house
<b>Date of Lodgement</b>	16 January 2019
<b>Applicant</b>	MJ Hunter Enterprises Pty Ltd
<b>Owner</b>	MJ Hunter Enterprises Pty Ltd
<b>Number of Submissions</b>	Ten (10) submissions
<b>Value of works</b>	\$350,000
<b>Reason for determination at Planning Panel</b>	Floor Space Ratio variation exceeds staff delegation and number of submissions received
<b>Main Issues</b>	Internal Amenity Clause 4.6 for Floor Space Ratio
<b>Recommendation</b>	Refusal
<b>Attachment A</b>	Reasons for refusal
<b>Attachment B</b>	Conditions of consent
<b>Attachment C</b>	Plans of proposed development
<b>Attachment D</b>	Statement of Heritage Significance



### LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

Note: Due to scale of map, not all objectors could be shown.

## 1. Executive Summary

This report is an assessment of the application submitted to Council for to demolish part of the premises and carry out ground and first floor alterations and additions to an existing boarding house at 11-13 Hunter Street Lewisham. The application was notified to surrounding properties and ten submissions were received.

The proposal does not comply with the relevant aims, objectives and design parameters of Marrickville Local Environmental Plan 2011 (MLEP 2011) and Marrickville Development Control Plan (MDCP 2011). The proposal is also inconsistent with the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 (AHSEPP).

The proposal results in poor amenity for boarding house occupants, and substantially exceeds number of boarding rooms permitted under amendments to the AHSEPP. Insufficient and inadequate information has been provided to assess overshadowing, biodiversity and tree management. The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

## 2. Proposal

Approval is sought to demolish part of the premises and carry out ground and first floor alterations and additions to a boarding house. The applicant describes the proposal:

### Demolition

Demolition of single-storey brick and metal addition at rear of building (containing kitchenettes of existing Rooms 3 & 6); and demolition of single-storey fibro and metal outbuilding containing two toilets.

### Reconfiguration

Internal rearrangement of the ground floor of the two-storey metal hipped roofed section at rear of building to provide side entry hall, manager's bedroom, central hallway extension and common accessible WC for residents and guests.

### Construction

Construction of a two-storey addition extending from the existing two-storey hipped-roof section of the building.

#### *Ground floor*

- Kitchen and bathroom facilities for the manager's room;
- Extension of the central hallway terminating at a large common living room with kitchen facilities; accessible common WC with shower;
- A common laundry;
- Three new boarding rooms (4, 5 and 6) each with private bathroom & kitchenette facilities (Rooms 4 and 5 indicated as accessible); and
- Rear staircase to first floor of extension.

#### *First floor*

- Four new boarding rooms (Rooms 12, 13, 14 & 15), with private bathrooms & kitchenettes.

### External works

- Provision of turfed main communal recreation area on northern side of communal room and screened private courtyard for manager;
- Turf and screen planting in rear setback area;
- Renewed paving to southern side setback area and fit-out with 4 motorcycle parking spaces, 10 vertically wall-mounted lockable bicycle hooks, bin storage area, new accessible ramp to Hunter Street, external sensor light and refurbishment of existing turf and plantings in front setback area;
- Lapped and capped timber dividing fence sides and rear boundaries.

## 3. Site Description

The site is located on the north-eastern side of Hunter Street, Lewisham between Denison Road and The Boulevarde. The site is legally described as Lot 30 in Section 2 of Deposited Plan 275. The site is rectangular with a 15.24 metre frontage to both Hunter Street, and a depth of approximately 46 metres. The site has an area of 696.1sqm.

The site contains a two-storey boarding house of masonry construction and clad with roof tiles. The existing boarding house contains 12 boarding rooms, some with private kitchenette and bathroom facilities and some utilising shared bathrooms. Four of the rooms on the ground floor contain bathrooms; three of these rooms also contain kitchenettes. Two of the rooms on the first floor have private bathrooms. The plans depict a common bathroom on the ground floor as an accessible WC.

The site is adjoined by 9 Hunter Street to the north-west, which contains a single-storey dwelling house and 15 Hunter Street to the south-east, which also contains a single storey dwelling house. Single-storey dwelling houses are located on the opposite side of Chelmsford Street. The street consists of one and two storey dwelling houses and two and three storey residential flat buildings. Lewisham Railway Station and some commercial premises are located approximately 200m to the north-west and Petersham Primary School is located approximately 50m to the south-east.

## 4. Background

### 4(a) Site history

Council records indicate the following relevant records regarding the development history of the subject site:

- Council's boarding house register indicates that 11 - 13 Hunter Street were licensed as a "House Let In Lodgings" from 29 June 1970 until 4 April 1989, for a total of 10 persons and 9 rooms.
- Council's electronic records indicates that the last recorded license to be issued for the two properties as "house let in lodgings" was license 36.00425 issued on 1 July 1994.
- Annual boarding house inspections carried out by Council's Fire Safety Officer identify that the premise was licensed under Ordinance 42 as a 9 Room boarding house with 10 boarders. Inspection notes identify that the owner was provided with correspondence requiring them to provide evidence for the approval of 12 rooms within 60 days of the last inspection (18 May 2018) or cease using the unauthorised rooms/obtain approval for the use of the rooms via a Development Application.

Pre-Development Application Letter PDA201800052 advised that the following matters required addressing as part of any DA:

- The legality of the existing Boarding House;
- FSR breach;
- Heritage conservation;
- Poor connectivity to common rooms and areas;
- Lack of Bicycle/Motorcycle Parking;
- Potential impacts on prescribed trees;
- Lack of clarity relating to Boarding Manager’s facilities, rooms and facilities for disabled persons, overshadowing and landscaping;
- Poor amenity of Common Room and Communal Open Space; and
- Undersized boarding room.

#### 4(b) Application history

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

Table 1: Application History

Date	Discussion / Letter / Additional Information
1 March 2019	An inspection of the subject site and surrounding area was carried out
15 March 2019	A request for additional information advised the applicant that that additional information was required regarding the Legal Status of the Boarding House, FSR Development Standard Variation, Internal Floor Layout and Plan of Management
26 March 2019	Correspondence and amended plans received from the applicant attempting to respond to additional information requirements

### 5. Assessment

The following is a summary of the assessment of the application in accordance with Section 1415 of the *Environmental Planning and Assessment Act 1979*.

#### 5(a) Environmental Planning Instruments

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

- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- State Environmental Planning Policy (Affordable Rental Housing) 2009
- Marrickville Local Environmental Plan 2011
- Draft Marrickville Local Environmental Plan 2011 (Amendment 4)
- Marrickville Development Control Plan 2011

The following provides further discussion of the relevant issues:

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

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 concerns the protection/removal of vegetation identified under Marrickville Development Control Plan 2011 (MDCP 2011). There are a number of trees located on properties adjacent to the subject site and street trees protected by MDCP 2011. The issues are discussed later in Section 5(c) of this report under the provisions of Part 2.20 of MDCP 2011.

#### **5(a)(ii) State Environmental Planning Policy (Affordable Rental Housing) 2009**

State Environmental Planning Policy (Affordable Rental Housing) 2009 (the AHSEPP) provides guidance for design and assessment of boarding house developments. The SEPP, which commenced operation on 31 July 2009, provides controls relating to various matters including height, floor space ratio, landscaped area, solar access and private open space requirements. The AHSEPP was amended on 28 February 2019, with such legislative changes affecting Division 4 [Boarding Houses].

The development application was lodged prior to the amendment of the AHSEPP. Sub-Clause 54C(1) [Savings and transitional provisions—2019 amendment] therefore applies. Recent, relevant local Land and Environment Court cases indicate that the amending legislation carries considerable weight because it had undergone public exhibition and was imminent and certain at the time of DA lodgement [Lizard Apple Pty Ltd v Inner West Council [2019] NSWLEC 1146] and therefore is a matter for consideration in this application.

The main design parameters of the AHSEPP are addressed below:

#### **Division 4 – Boarding Houses**

##### **Clause 29 - Standards that cannot be used to refuse consent**

Clause 29 of the AHSEPP prescribes that a consent authority must not refuse consent to a development application for a boarding house development if the development satisfies the following numerical controls:

##### **Clause 29(1) - Density - Floor Space Ratio**

*“A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:*

- (a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or*
- (b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or*
- (c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register - the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus:*
  - (i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or*
  - (ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.”*

Under the Interpretation provisions in Clause 4 of the SEPP existing maximum floor space ratio means as follows:

*“existing maximum floor space ratio means the maximum floor space ratio permitted on the land under an environmental planning instrument or development control plan applying to the relevant land, other than this Policy or State Environmental Planning Policy No 1 - Development Standards.”*

The land is zoned R2 - Low Density Residential under the zoning provisions of MLEP 2011. Boarding houses are permitted with consent within the Zone R2 Low Density Residential.

Under MLEP 2011, the maximum floor space ratio (FSR) permitted for any form of residential accommodation permitted on the land is 0.6:1 as indicated on the Floor Space Ratio Map.

The application argues that a 0.5:1 FSR bonus (i.e. – above the allowable 0.6:1) is applicable in accordance with clause 29(1)(c) of the ARHSEPP 2009. It is acknowledged that residential flat buildings are not explicitly prohibited in the R2 – Low Density Zone. However, clause 6.9 of MLEP 2011 establishes that development consent cannot be granted to a residential flat building in the R2 zone unless the development relates to a building that was designed and constructed for an industrial or warehouse purpose and was erected before the commencement of the LEP. This is reflected in the R2 zone objectives which states:

*“To provide for multi dwelling housing and residential flat buildings but only as part of the conversion of existing industrial and warehouse buildings.”*

The subject site does not accommodate an existing industrial or warehouse building and in view of the above, Council cannot lawfully consent to a residential flat building development on the subject site. In any case, Draft Marrickville Local Environmental Plan Amendment No.4 seeks to include “residential flat buildings” in the land use table for the R2 – Low Density Residential zone in Part 4 Prohibited Development. 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 allowable FSR the site would therefore be 0.6:1. The development has a gross floor area (GFA) of approximately 519sqm and the site has a site area of approximately 696.1sqm, which would result in a FSR of 0.75:1. The development exceeds the density provisions prescribed by the ARHSEPP 2009.

The proposed variation to the FSR development standard is not supported. In addition, the application was not accompanied by a clause 4.6 exception and as such, the Council has no legislative power to consent to the application. This matter is discussed in greater detail in the Marrickville LEP 2011 section of this report.

#### Clause 29(2)(a) - Building Height

*“If the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land.”*

A maximum building height of 9.5 metres applies to the site as indicated on the Height of Buildings Map that accompanies MLEP 2011. The development has a maximum building height of approximately 6.8 metres, which complies with the maximum building height permitted under the Affordable Rental Housing SEPP (The existing building is approximately

8.6 metres in height). The height of the development is discussed later in this report under the heading "Marrickville Local Environmental Plan 2011".

Clause 29(2)(b) - Landscaped Area

*"If the landscape treatment of the front setback area is compatible with the streetscape in which the building is located."*

The proposal includes upgrading of the existing landscaping arrangements in the front setback. The development is considered consistent with Clause 29(2)(b) of the AHSEPP

Clause 29(2)(c) - Solar Access

*"Where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9.00am and 3.00pm in mid-winter."*

The development contains a single common room which faces north-north/west and is setback approximately 4 metres from the boundary. This room contains a window and a double glass sliding door. A one part two-storey dwelling house located on the adjoining property is orientated to the N-NW of the development and setback from the boundary. It is evident that solar access to the space will meet the prescribed criteria.

Clause 29(2)(d) - Private Open Space

*"If at least the following private open space areas are provided (other than the front setback area):*

- (i) one area of at least 20 square metres with a minimum dimension of 3 metres is provided for the use of the lodgers;*
- (ii) if accommodation is provided on site for a boarding house manager - one area of at least 8 square metres with a minimum dimension of 2.5 metres is provided adjacent to that accommodation."*

Approximately 185sqm of private open space is provided and no part of this area has a dimension less than 3 metres. However, the plans identify 299sqm of common open space, yet part of this area includes the southern side setback which does not meet the minimum dimensions prescribed and is therefore not considered to form part of the common private open space. It is noted that having regard to the topography of the site, the area at the rear of the building is at a different level to that located within the northern side setback, and as such would not be accessible to all residents. The ground floor plan fails to identify levels on the plan however it is apparent the proposal seeks cut and fill to level the portion of open space located within the northern side boundary setback.

An area of approximately 14sqm is available for an on-site boarding house manager, no dimension of which is less than 2.5sqm.

Clause 29(2)(e) - Parking

- "If:*
- (i) in the case of development carried out by or on behalf of a social housing provider in an accessible area – at least 0.2 parking spaces are provided for each boarding room, and*
  - (ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area - at least 0.4 parking spaces are provided for each boarding room, and*
  - (iia) in the case of development not carried out by or on behalf of a social housing provider – at least 0.5 parking spaces are provided for each boarding room, and*

- (iii) *in the case of any development - not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site.*

An “accessible area” is defined in the SEPP as follows:

**“accessible area** means land that is within:

- (a) *800 metres walking distance of a public entrance to a railway station or a wharf from which a Sydney Ferries ferry service operates, or*
- (b) *400 metres walking distance of a public entrance to a light rail station or, in the case of a light rail station with no entrance, 400 metres walking distance of a platform of the light rail station, or*
- (c) *400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.*

The property is located in an accessible area being less than 200 metres walking distance to a railway station and bus stop used by a regular bus service. As described in Part 1 of this report [The Site and Surrounds], Lewisham Railway Station is located approximately 200m to the north-west. Bus stops are located close to the Railway Station and also on New Canterbury Road, which is less than 290m south-east of the subject site.

The development generates a demand for 9 car spaces plus an additional space for a caretaker, however does not propose any car parking spaces. The development proposes 4 motorcycle parking spaces and 10 bicycle parking spaces.

The development provides a 100% non-compliance in relation to car parking. It is acknowledged that there is no practical means to accommodate parking on the site without compromising the structural setting of the existing building and the landscaped setting of the front setback, and Council would not encourage on-site car parking in this location.

However, the significant non-compliance with the car parking provisions of the ARH SEPP indicates that the yield being sought is excessive and this is evidenced with the non-compliance with the prescribed FSR. The additional rooms would place further demands for on-street parking in the vicinity of the site relying entirely upon the availability of on-street parking spaces.

Clause 29(2)(f) - Accommodation Size

*“If each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:*

- (i) *12 square metres in the case of a boarding room intended to be used by a single lodger, or*
- (ii) *16 square metres in any other case.”*



The following table below provides a breakdown of the size of each of the boarding rooms in the proposal:

Table 2: Proposed Room Sizes

Ground Floor			First Floor		
Room No.	Room Size (GFA)	Complies?	Room No.	Room Size (GFA)	Complies?
1	15sqm	Yes	9	32sqm	Yes
2	13sqm	Yes	10	13sqm	Yes
3*	13sqm	Yes	11	13sqm	Yes
4	17sqm	Yes	12	13sqm	Yes
5	15sqm	Yes	13	15sqm	Yes
6	13sqm	Yes	14	16sqm	Yes
7	13sqm	Yes	15	12sqm	Yes
8	17sqm	Yes	16	14sqm	Yes
			17	13sqm	Yes
			18	32sqm	Yes

\* Indicates Manager's Room

All rooms within the boarding house comply with the minimum accommodation size requirements of the AHSEPP. Further discussion is provided under Part 4.3 of MDCP 2011-Boarding Houses regarding the appropriateness of room layouts and the functionality of some rooms.

Clause 30 - Standards for Boarding Houses

Clause 30 of the AHSEPP prescribes that a consent authority must not consent to a development to which this Division applies unless it is satisfied of each of the following:

- (a) *a boarding house has 5 or more boarding rooms, at least one communal living room will be provided.*

The boarding house contains 17 rooms, plus a Manager room and a communal living room. The inadequacy of living room having regard to its size and location discussed under section 5c in relation to Marrickville Development Control Plan 2011[Part 4.3.3.6: Communal Rooms and Facilities].

- (b) *no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres.*

The largest of the proposed new boarding rooms has a gross floor area of approximately 17sqm. Two existing boarding rooms on the first floor are approximately 32sqm in GFA. It is noted that having regard to the history of the site and unauthorised works that have been carried out to facilitate the provision of extra rooms, it is unclear which rooms were originally approved on the site, notwithstanding, this application would seek to legitimise those rooms in the existing front portion of the building.

- (c) *no boarding room will be occupied by more than 2 adult lodgers.*

No room is indicated for occupation by more than 2 adult lodgers.

- (d) *adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger.*

Ground Floor

Existing rooms contain a bathroom except for room 7. A common bathroom is located approximately 6 metres from room 7 adjacent to the hallway. All 'existing' rooms contain a kitchen, with the exception of rooms 7 and 8.

The new rooms (4, 5 and 6) each contain bathrooms and kitchens. The proposal also includes the provision of a kitchen located in the common living area located approximately 13 metres and 16 metres from rooms 7 and 8 respectively.

First Floor

'Existing' rooms contain a bathroom, except for rooms 10, 11, 16 and 17; a bathroom adjacent to the hallway is in close proximity to these rooms. A kitchen is not available for use by occupants of rooms 9, 10, 11, 16, 17 and 18 on the first floor, these occupants would need to use the common kitchen on the ground floor.

The new rooms (12, 13, 14 and 15) each contain bathrooms and kitchens.

Having regard to a number of rooms not containing any kitchen facilities (9), there is a need to ensure that the communal kitchen is of a size and is adequately located to serve those rooms. The proposed common kitchen does not contain cooking facilities, is 2.2sqm in area, and not considered commensurate for a boarding house of this size. Therefore the proposal does not adequately satisfy 30d of the SEPP.

- (e) *if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager.*

The proposed (18 room) boarding house has the capacity to accommodate 23 lodgers and provides a room designated for the use of a Boarding House Manager.

- (g) *if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use.*

The property is zoned R2 - Low Density Residential under MLEP 2011, and as such the land is not zoned primarily for commercial purposes and consequently, the provisions contained in the above sub clause are not applicable to the proposal.

- (h) *at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.*

A minimum of four bicycle and motorcycle parking spaces are required for 18 rooms. The plans indicate the provision of 4 motorcycle parking spaces and 10 bicycle parking spaces.

- (i) Character of Local Area (Clause 30A)

Under the provisions of Clause 30A of the AHSEPP, applications for new boarding houses must satisfy a local character test, which seeks to ensure developments proposed under the AHSEPP are consistent with the design of the area.

The area is characterised by a mixture of residential building types, but largely comprises single storey and 2 storey detached and attached contributory dwelling houses. Single storey dwelling houses are located on either side of the subject site (9 and 15 Hunter Street).

The allotment known as 9 Hunter Street has a site of area of approximately 558qm, and 15 Hunter Street has a site area of approximately 303sqm.

Council records indicate that the approved dwelling house at 9 Hunter Street has a GFA of approximately 125sqm, which equates to an FSR of 0.22:1 on the 558sqm allotment. Council records further indicate that the dwelling house at 15 Hunter Street has a GFA of approximately 92sqm, which equates to an FSR of 0.30:1 on the 303sqm allotment. The proposed FSR of 0.75:1 is clearly out of character with the FSR of adjoining properties.

When reviewing the character of the area, it is important to consider the adjoining context and the potential development yield attainable on those sites. When reviewing the lot sizes adjoining the development site, it is quite clear, that the adjoining properties will not be able to achieve the 0.75:1 FSR sought on the subject site. The built form proposed would far exceed the development potential of adjoining lots.

The intensification of the existing Boarding House in the R2 – Low Density Residential Zone is not considered to conform to the local character test and therefore does not meet the objective 30A under the AHSEPP. This matter is addressed further below in relation to the assessment of the proposal in accordance with the provisions of MLEP 2011 and MDCP 2011 in Sections 5(a)(iii) and 5(b) of this report.

The site is unable to accommodate on-site parking due to the existing building footprint and the development does not satisfy the FSR development standards prescribed for the site indicates that the site cannot reasonably accommodate for the scale of development proposed. The proposed FSR is more than twice that of the FSR of the developments on either side of the subject site further indicates overdevelopment of the site. The provision of an 18 room boarding house is considered to be an overdevelopment of the site and deleterious to the character of the locality.

#### Clause 30AA - Boarding houses in Zone R2 Low Density Residential

On 28 February 2019 the ARH SEPP was amended to include Clause 30AA which prescribes the following;

*A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.*

This amendment is subject to a transitional arrangement ensuring that the applications submitted before 28 February 2019 but not finally determined must be treated as if the amendment to the SEPP was a draft instrument.

In accordance with *Terrace Tower Holdings Pty Ltd v Sutherland Shire Council* (2003) 129 LGERA 195 and *Maygood Australia v Willoughby City Council* [2013] NSWLEC 142 , Council must consider the application of the amendment as imminent and certain and under the heads of consideration 4.15 (a)(ii) draft EPI and 4.15 (e) public interest.

The subject application was lodged with Council on 16 January 2019, whereby the gazettal of the changes to the SEPP were imminent and a matter for consideration.

Clause 30AA of the AHSEPP prevents a consent authority from granting development consent to a boarding house on land within Zone R2 Low Density Residential unless it is satisfied that the boarding house has no more than 12 boarding rooms.

It is noted that a review of the site history indicates that the premises has an approval for 9 rooms. However has operated for a considerable number of years with 12 rooms without

development consent. The proposal seeks to increase the quantum of rooms to 18 inclusive of a manager room.

Having regard to the lack of amenity afforded to the communal room, rooms which do not comply with DCP requirements by locating kitchens within corridors and the non-compliance with the prescribed FSR, it is evident the proposal is an overdevelopment of the site and thereby clearly inconsistent with Clause 30AA of the AHSEPP. The bulk sought by the proposal cannot be achieved on adjoining sites having regard to FSR constraints and therefore considered to be out of character for the locality.

The applicant has not considered the amendments to the SEPP in the proposal thereby failing to consider any draft EPIs relevant to the proposal.

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

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

- Clause 1.2 - Aims of the Plan
- Clause 2.3 - Zone objectives and Land Use Table
- Clause 2.5 - Additional permitted uses for land
- Clause 2.7 - Demolition
- Clause 4.3 - Height of buildings
- Clause 4.4 - Floor space ratio
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 5.4 - Controls relating to miscellaneous permissible uses
- Clause 5.7 - Development below mean high water mark
- Clause 5.10 - Heritage Conservation
- Clause 6.2- Earthworks
- Clause 6.4 - Terrestrial biodiversity
- Clause 6.5 - Development in areas subject to aircraft noise

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

*Table 3: Development Standards*

Standard (maximum)	Proposal	non compliance	Compliance
<b>Height of Building</b> Required: 9.5 m	6.8 m	NIL	Yes
<b>Floor Space Ratio</b> Required: 0.60:1 (418sqm)	0.75:1 (525sqm)	26% (107sqm)	No, refer to assessment below

The following is a discussion of the matters of particular relevance:

Clause 1.2 – Aims of the Plan

MLEP2011 aims to make local environmental planning provisions for land in that part of Inner West local government area to which this Plan applies (in this Plan referred to as Marrickville) in accordance with the relevant standard environmental planning instrument under section 33A of the Act. Sub-clause 2 specifies the particular aims of this Plan:

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

The proposal results in poor residential amenity for the occupants of the boarding house. This has been demonstrated through non-compliances with several of the controls in the Marrickville Development Control Plan 2011, having particular regard to the Boarding House Controls [refer Part 5(c)]. It is unclear as to whether the development results in the provision of affordable housing, particularly as a number of rooms will now contain new facilities potentially increasing rentals and displacing former residents, with no evidence to demonstrate the contrary. Concerns with regard to impacts upon bandicoots and trees have not been adequately qualified and the proposal fails to reinstate a contributory building in the HCA.

Having regard to the above, the proposal is contrary to Clause 1.2 (2) b, e, g and h of Marrickville Local Environmental Plan 2011.

#### Clause 2.3 - Land Use Table and Zone Objectives

The property is zoned R2 – Low Density Residential under the provisions of MLEP 2011. Boarding houses are permissible with Council's consent under the zoning provisions applying to the land. The development is considered acceptable having regard to the objectives of the R2 – Low Density Residential zone.

#### Clause 4.4 - Floor Space Ratio

A maximum floor space ratio (FSR) of 0.60:1 applies to the site as indicated on the Floor Space Ratio Map that accompanies MLEP 2011. The development has a gross floor area (GFA) of 519sqm which equates to a FSR of 0.75:1 on the 696.1sqm which exceeds the FSR development standard by 102sqm (26%).

The applicant contends that the 0.6:1 FSR standard contained in MLEP 2011 is not relevant because of application of FSR bonus from the AHSEPP. However, the FSR bonus does not apply as residential flat buildings are only permissible where the development involves the conversion of existing industrial or warehouse buildings.

The development does not comply with the FSR development standard.

A written request, in relation to the development's non-compliance with the FSR development standard in accordance with Clause 4.6 (Exception to Development Standards) of MLEP 2011 was not submitted with the application. Accordingly, Council (or in this case, the Local Planning Panel) does not have a proper statutory power to consent to the development application. Nevertheless, the application is considered to be inconsistent with

the objectives of clause 4.4 and clause 4.6 of MLEP 2011. The following observations are made in this respect:

- The proposal is inconsistent with the stated objectives in Clause 4.4(1) of MLEP 2011. In particular:
  - (i) Objective (b) as the proposal does not control building density and bulk in relation to the site area and is inconsistent with the desired future character for the area; and
  - (ii) Objective (c) as the proposal does not minimise adverse environmental impacts on adjoining properties and the public domain. The extent of gross floor area proposed is at the expense of suitable building setbacks from the side boundaries which results in unreasonable impacts for neighbouring properties and possibly to trees on neighbouring sites. Further, the additional gross floor area above the FSR control directly contributes to increased overshadowing for the adjoining residential property. Therefore, the proposed development does not *minimise* adverse environmental impacts as explicitly required by this objective.
  
- In view of the above, the proposal is inconsistent with both objectives of Clause 4.6 of MLEP 2011:
  - (i) Objective (a) as the proposal does not provide an appropriate degree of flexibility in applying the FSR development standard to the proposal; and
  - (ii) Objective (b) as the proposal will not achieve better outcomes for and from development by allowing flexibility in this circumstance.

#### Clause 5.10 - Heritage Conservation

The site is located within a Heritage Conservation Area under MLEP 2011 (Heritage Conservation Area C26 - Lewisham Estate). The statement of heritage significance of the Lewisham Estate is reproduced in Attachment C of this report.

The application was referred to Council's Heritage and Urban Design Advisor who advised that the proposal is unsupportable due to unclear impacts upon the existing building and unspecified cladding arrangements and utilitarian window design. Comments by Council's Heritage and Urban Design Advisor are provided below;

*"No. 11-13 Hunter Street are two storey brick Victorian Italianate buildings with rendered brick walls and tiled main roof. Their front palisade fences appears extant however in some need of repair. The front street facing verandahs have been enclosed on the first floor using timber shingles whilst matching balustrades have been added on the ground floor.*

*I have reviewed drawings by Archi Build International (ref Sheet 1 - 6 issue B) and Heritage Impact Statement report by Archnex Designs (dated July 2018) with consideration of the Marrickville Local Environmental Plan 2011 & Development Control Plan 2011....*

*With regards to the pre-DA the following heritage related matters were raised:*

8. *The proposal does not meet the objectives in MDCP 2011 Part 8.5.1 **O1** To retain and if possible enhance the contribution of the property to the streetscape; **O2** To ensure any change in the HCA is sympathetic to the Victorian Italianate or Victorian Filigree style values of the property and its ability to contribute to the identified heritage values of the area; **O5** To retain or reinstate front facade proportions, materials and open verandahs and*

- balconies; and **O6** To protect, maintain and recover original details of the house, front yard and fence.
9. *As stated in the Heritage Assessment Report prepared by Paul Davis in 2009, elements that detract from the heritage significance of the area are removal of original detailing, alterations to fenestration patterns and removal/replacement of timber windows with aluminium windows. There have been several intrusive alterations to the original Victorian terraces that detract from the heritage significance of the area. These architectural elements should be removed and replaced with elements that are in keeping with the Victorian style.*
10. *There is a risk that internal alterations to the main portion of the building under the primary hip roof be undertaken as a complying development certificate. If this occurs, the proposal would further erode the contribution that the property makes to the HCA and would be contrary to the applicable conservation controls in MDCP 2011 Part 8.2.28.6 which states that 'the core period of heritage significance is 1880- 1940. Any building or significant elements of the fabric from this or any earlier period must be retained and maintained.'*

*The DA plans do not appear to have considered the previous pre-DA comments (noted above in italics). Whilst it is agreed that the proposal does not meet Part 8.5.1 of the Marrickville DCP my reasons for not supporting the application in its current form go beyond this and are outlined below*

*The application is not acceptable as it currently stands from a heritage point of view, the reasons for which are outlined below.*

*Not acceptable for the following reasons:*

- a. *Existing floor plans and demolition plans (on separate sheets) need to be provided to allow for adequate assessment of the application.*
- b. *Clarification is sought on whether changes to the front (street facing) windows are proposed. The plans (sheet 4) have the first floor windows highlighted in orange suggesting some changes are proposed, whereas the front elevation (sheet 5) states that the existing elevation is to be retained.*
- c. *The colour of the roof sheeting to the new addition shall be amended to colour 'Colorbond Windspray' or similar.*
- d. *New roof tiles have not been identified in the Schedule and should do so.*
- e. *To ensure consistency with Part 8.5.1.1 of the DCP it is encouraged that the front elevation is restored by way of removing later addition fabric and opening up the front first floor verandahs consistent with Part 8.5.1.2 O1, O2, O5, O6 of the DCP.*
- f. *The window arrangement on the submitted elevations to the original part of the building appears to be different to that on site.*
- g. *The proposed windows to the new part of the building appear utilitarian in design. New windows should enhance the character of the original building and should ensure that size, location and proportions reflect traditional vertical sash arrangements."*

Having regard to the above, insufficient and inadequate information has been provided to justify the proposal with regard to the provisions of Clause 5.10 of MLEP 2011 and Part 8 of MDCP 2011. The proposed scheme makes no attempt to restore the existing building, and having regard to the extent of works proposed and additional number of boarding rooms sought, reinstatement of the building along with the provision of sympathetic additions are considered important in satisfying the prescribed heritage provisions/requirements.

(xiii) Earthworks (Clause 6.2)

The application proposes cut and fill earthworks to provide for disabled access to the site within the side setbacks. Levels are not provided on the ground floor plan to ascertain what impacts this has for not only the subject site, but also for adjoining development. In this regard to the proposal fails to satisfy the provisions of Clause 6.2 of MLEP 2011.

Clause 6.4 - Terrestrial Biodiversity

Clause 6.4 of MLEP 2011 requires consideration be given to conservation of biodiversity as is of relevance to the application and applies to land identified as “Biodiversity” on the Natural Resource - Biodiversity Map that accompanies MLEP 2011 [Long- Nosed Bandicoots].

The land is located within the area identified as a potential habitat for the Long-nosed Bandicoot as identified in the MLEP 2011 Natural Resource – Biodiversity Map and has a site area which is greater than 450sqm.

An Assessment of Significance for Long-nosed Bandicoots Report was submitted with the application. The application was referred to Council’s Senior Technical Advisor for Urban Ecology who provided the following comments;

*Documentation accompanying the Development Application must address impacts on biodiversity as required by the Biodiversity Conservation Act 2016 (BC Act). The impacts of any development proposal on threatened species, populations and ecological communities and their habitats are to be addressed by documentation accompanying the development application. That documentation must provide an indication as to whether the proposed development is likely to significantly affect those threatened species, populations and ecological communities and be assessed in accordance with the Biodiversity Conservation Act 2016.*

*Specifically, that documentation must identify whether the proposal:*

- 1. Is being carried out in an Area of Outstanding Biodiversity Value;*
- 2. Exceeds the Biodiversity Offset Scheme threshold; or*
- 3. Is likely to significantly affect threatened species, ecological communities or their habitat according to the Test of Significance (s7.3 BC Act).*

*The Biodiversity Report does not demonstrate sufficient survey effort to thoroughly assess impact on the Long-nosed Bandicoot population. The Test of Significance must be carried out by a suitably qualified ecologist. The consultant must provide the appropriate evidence of this.*

Having regard to the above, the proposal fails to satisfy the provisions of Clause 6.4 of MLEP 2011 and Part 2.13 of MDCP 2011.

Clause 6.5 - Development in areas subject to Aircraft Noise

Clause 6.5 applies to development on that that (in part) is in an ANEF contour of 20 or greater, and the consent authority considers is likely to be adversely affected by aircraft noise. The site is located within the 20-25 Australian Noise Exposure Forecast (2033) Contour. The development is likely to be affected by aircraft noise. Clause 6.5(3) of MLEP 2011 reads as follows:

- “(3) Before determining a development application for development to which this clause applies, the consent authority:*



- (a) *must consider whether the development will result in an increase in the number of dwellings or people affected by aircraft noise, and*
- (b) *must consider the location of the development in relation to the criteria set out in Table 2.1 (Building Site Acceptability Based on ANEF Zones) in AS 2021:2015, and*
- (c) *must be satisfied the development will meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2015.”*

The carrying out of development would result in an increase in the number of people affected by aircraft noise. The development would need to be noise attenuated in accordance with AS2021:2015. An Acoustic Report did not accompany the application. The development could potentially be noise attenuated from aircraft noise to meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2000.

### 5(b) 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 following assessment considers the development having regard to the amended provisions contained in the Draft LEP Amendment that are of relevance in the assessment of the application:

Draft Marrickville Local Environmental Plan Amendment No.4 seeks to include “*residential flat buildings*” in the land use table for the R2 – Low Density Residential zone as Prohibited. This is of relevance to the assessment of the proposed development insofar as the applicant relies on the permissibility of residential flat buildings in the R2 – Low Density Residential zone to receive an FSR bonus under the provisions with SEPP (Affordable Rental Housing) 2009. The Draft LEP amendment would preclude this bonus from being available. The application is assessed on the basis of a maximum allowable FSR of 0.6:1 as previously discussed within this report.

### 5(c) Development Control Plans

Table 4 provides a summary of the relevant provisions of Marrickville Development Control Plan 2011, with matters of particular relevance ameliorated further thereunder.

Table 4: Development Controls

Part	Compliance
<b>Development Application Guidelines</b>	
A.1.6 – Plan of Management	Yes
<b>Part 1: Statutory Information</b>	
A.2.6 – Plan of Management	Yes
<b>Part 2: Generic Provisions</b>	
2.3: Site and Context Analysis	Yes
2.5: Equity of Access and Mobility	No
2.6: Acoustic and Visual Privacy	No
2.7: Solar Access and Overshadowing	No
2.9: Community Safety	Yes
2.10: Car parking	No see discussion under

	Part 5a(ii)
2.11: Fencing	Yes
2.13: Biodiversity	No – see discussion under Part 5a(iii)
2.18: Landscaping and Open Spaces	No – see discussion
2.20: Tree Management	No – see discussion
2.21: Site Facilities and Waste Management	Yes
2.25: Stormwater management	Yes
<b>Part 4.1: Low Density Residential Development</b>	
4.1.6.2: Building Setbacks	No – see discussion
4.1.6.3: Site Coverage	No – see discussion
<b>Part 4.3: Boarding Houses</b>	
4.3.3.1: Character and Amenity of the Local Area	No – see discussion
4.3.3.2: Boarding House Capacity	Yes
4.3.3.3: Location	Yes
4.3.3.4: Management	Yes
4.3.3.5: Boarding Rooms	No – see discussion
4.3.3.6: Communal Rooms and Facilities	No – see discussion
4.3.3.7: Communal Laundry	Yes
4.3.3.8: Landscaped Area and Common Open pace	Yes

The following provides discussion of the relevant issues:

Part 2.5 - Equity of Access and Mobility

Part 2.5 of MDCP 2011 requires consideration of equity of access and mobility before granting development consent.

Table 5 summarises the minimum access requirements with regard to accessible facilities, dwelling and parking requirements as prescribed by Part 2.5.10 of MDCP 2011 and the proposal’s compliance with those requirements:

*Table 5: Equity of Access and Mobility Compliance Table*

<b>Control</b>	<b>Standard</b>	<b>Required</b>	<b>Proposed</b>	<b>Complies?</b>
Accessible Rooms	1 accessible bedroom for every 5 guest/tenant rooms or part thereof	5 accessible rooms	2 accessible rooms	No – see discussion
Access and Mobility	Access for all persons through the principal entrance and access to any shared laundries, kitchens, sanitary and other common facilities	All areas of the proposed development accessible by persons with a disability	All areas and shared facilities accessible by persons with a disability	Yes
Accessible Car Parking	1 accessible parking space for every 10 bedrooms	2 spaces for 18 boarding rooms*	No accessible car parking spaces	No

\* The on-site manager’s room has not been included in the calculation of the required accessible car parking spaces. This is due to the requirement for on-site managers to be able bodied in order to ensure that they can appropriately manage the premises. The proposal results in the following variations to Part 2.5 of MDCP 2011:

1. Five accessible rooms are required and only two are proposed; and
2. Two accessible parking spaces are required and none are proposed.

The existing arrangements do not include accessible rooms or accessible parking, and the proposal is a fundamental improvement upon this situation due to the provision of two accessible rooms. As discussed previously the application does not propose the provision of car parking due to existing site constraints.

The provision of an access ramp with lighting along the wall is also an improvement upon the existing situation. However, the proposal is inconsistent with Part 2.5 of MDCP 2011 for the following reasons:

- The proposal represents a substantial alteration to an existing development with increased intensification of an existing land use, but fails to provide the minimum of five accessible rooms; and
- The development results in poor internal amenity for residents, as the common area does not meet the design requirements contained in Part 4.3.3.6 of MDCP 2011, nor does the communal area comply with the provision of Part 2.18 of MDCP 2011.

#### Part 2.6 - Visual and Acoustic Privacy

Submissions refer to potential overlooking and reduced privacy due to windows, and concern is raised that arrangements for open space and clothes drying arrangements could result in adverse privacy impacts.

Evaluation of potential privacy impacts from the proposed development has occurred with regard to objectives and controls contained in Part 2.6 of MDCP 2011.

The proposed first floor windows have a minimum sill height of 1.5 metres, thereby protecting the visual privacy of neighbouring development.

The proposal seeks to locate the communal open space within the northern side setback of the development. This has the potential to create amenity impacts, particularly having regard to the number of occupants of the subject site. Part 2.18 of MDCP 2011 prescribes that communal open space areas should be located within the rear setback.

It is considered that the layout and design of the development does have the potential to impact on the acoustic privacy currently enjoyed by residents of the adjoining residential property at 9 Hunter Street due to the location of the proposal communal open space area.

#### Part 2.7 - Solar Access and Overshadowing

##### *Overshadowing*

The shadow diagrams submitted with the application illustrate the extent of overshadowing on adjacent residential properties and demonstrate that the development generally complies with Council's overshadowing controls. The following is a specific assessment:

##### 8 The Boulevard

Shadow diagrams indicate that sunlight is retained to the open space for at least 2 hours in June (9.30am-11.30am).

15 Hunter Street

The shadow diagrams indicate that two hours sunlight is not currently available to open space in June; and details indicate that there is no adverse impact in September. Insufficient and inadequate information has been provided to determine impacts to internal living areas.

*Solar Access*

Although the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 include provisions relating to solar access requirements for communal living areas in boarding house developments, those provisions do not specify any solar access requirements for the individual rooms within a boarding house. In this regard, control C11 of MDCP 2011 requires that:

***“C11 At least 65% of habitable rooms within a boarding house, a hostel or a residential care facility must provide a window positioned within 30 degrees east and 20 degrees west of true north and allow for direct sunlight over minimum 50% of the glazed surface for at least two hours between 9.00am and 3.00pm on 21 June.”***

The plans and shadow diagrams submitted with the application illustrate that the development complies with Council’s solar access controls above. Twelve of the eighteen habitable rooms (Rooms 2, 3, 4, 5, 9, 10, 11, 13, 14, 15, and 18 and the common room) contain windows positioned within 30 degrees east and 20 degrees west of true north and allow direct sunlight as required; this represents 12 out of the 18 rooms which is 67% of the habitable rooms.

Regarding the assessment of Solar Access for PV cells, clause 2.7.4 of MDCP 2011 states:

***C7 PV panels and solar hot water systems must receive a minimum four hours of direct sunlight between 9.00am and 3.00pm during midwinter.***

A submission from the owner of 15 Hunter Street has raised concerns with overshadowing of PV cells.

Insufficient and inadequate information has been provided to enable an assessment of the impact upon solar panels at 15 Hunter Street, however, having regard to the proposed addition and location of the PV cells, it is quite apparent that the proposal would impact 15 Hunter Street adversely.

Having regard to the above, insufficient and inadequate information has been provided to determine compliance with Part 2.7 of MDCP 2011.

Part 2.8 - Social Impact Assessment

Part 2.8 of MDCP 2011 requires that development for the purpose of boarding houses with capacity to accommodate up to 19 residents require a Social Impact Comment (SIC). The applicant, on page 17 of the SEE, contends that ‘*no negative impacts have been identified*’ and that the development will have the following positive social impacts:

- *providing additional low cost accommodation at a time of acute shortage in the inner west area;*
- *providing 2 accessible rooms in a building where none previously existed;*
- *improving the amenity of lodgers by increasing the amount of communal facilities provided and providing a general upgrade of the property.*

Contrary to the above, the proposal has not been justified in terms of Social Impact. There are no details to support the assertion that the proposal provides low cost accommodation. Contrary to the applicant's assertion, assessment as provided in this report indicates that the proposal results in poor amenity for occupants of the boarding house and may result in a displacement of existing low-cost housing tenants.

#### Part 2.10 - Parking

##### *Car, Bicycle and Motorcycle Parking Spaces*

The site is located in Parking Area 2 under Part 2.10 of MDCP 2011. MDCP 2011 prescribes car, bicycle and motorcycle parking. However, the AHSEPP also contains car parking, bicycle and motor cycle spaces parking rates for boarding house developments, which prevail over the parking rates prescribed in MDCP 2011. This matter has been considered in Section 5(a)(ii) of this report.

#### Part 2.18- Landscaping and Open Spaces

##### (xi) Landscaping and Open Spaces (Part 2.18)

Part 2.18.11.4 of MDCP 2011 prescribes controls for private open space and landscaping within the front setback for boarding houses which prevail over the provisions of the MDCP 2011.

Notwithstanding this, Part 2.18 provides provisions which ensure the location of the proposed private open space affords the best amenity for future occupants. In particular Control 18(iv) prescribes that communal open space should be provided within rear setback. The proposal locates the communal open space within the side setback which has the potential to impact on the acoustic amenity of neighbouring development. Having regard to the levels on the site, only the side setback would be accessible to all residents for use. As discussed previously in this report, having regard to the earthworks proposed, it is unclear what implications the level of cut and fill proposed to facilitate level access within the side setback will have for neighbouring development.

#### Part 2.20 – Tree Management

The application, including an Arboricultural Impact Assessment (AIA), was referred to Council's Tree Management Officer who advised that some trees on adjacent sites, close to common boundaries, have not been assessed in the AIA. It is noted that these trees were identified in pre-DA correspondence and the subject development application fails to address this.

Council's Tree Management Officer has also identified that the arborist report and corresponding Landscape Plan, Stormwater Plan and Architectural Plans lack sufficient detail to ascertain the impacts the proposal would have on trees. The referral identifies that there are level changes (excavation) and stormwater lines proposed through tree protection zones and possibly structural root zones.

Having regard to the above, insufficient and inadequate information has been provided to justify the proposal with regard Part 2.20 of MDCP 2011.

#### PART 4 - RESIDENTIAL DEVELOPMENT

The property is located on land in a Low Density residential zone. Development applications for boarding houses in the Low Density Residential Zone are assessed in accordance with the relevant controls in Part 4.1 of this DCP relating to Low Density Residential building and

the relevant objectives and controls in Part 4.3 of MDCP 2011 which relate specifically to boarding houses.

Part 4.1 - Low Density Residential Development

Part 4.1.6.2 - Building Setbacks

As previously discussed through this report, there is a lack of information to assess the impacts of the proposal associated with overshadowing, biodiversity and tree management. The application therefore contains insufficient and inadequate information to justify the adequacy of the proposed building setbacks.

Part 4.1.6.3 - Site Coverage

The proposal results in 43% site coverage (313sqm), which complies with the maximum permissible site coverage of 45% for the 696.1sqm site. However, the proposal results in unqualified impacts associated with overshadowing, biodiversity and tree management. The proposal therefore has not been justified in terms of the objectives and controls relating to site coverage contained in MDCP 2011.

Part 4.3 – Boarding Houses

Part 4.3.3.1: Character and Amenity of the Local Area

As discussed in Section 4 (iii) of this report under the provisions of Clause 30A of the ARH SEPP, applications for new boarding houses must satisfy a local character test, which seeks to ensure developments proposed under the SEPP are consistent with the built forms and desired future character of the area.

Control C1 states:

*The design of a boarding house is to be compatible with the character of the local area, and ensure there are no negative impacts on the amenity of the local area. The Planning Context identifies what matters will be considered in the assessment of a boarding house, in addition to the following, to achieve compatibility with the character of the local area and minimise negative impact on amenity.*

As identified in Part 5(a)(ii) of this report , the intensification of the use is not considered to conform to the local character test and therefore does not meet the objective 30A under the AHSEPP. Non-compliances with parking requirements and the FSR development standard prescribed for the site indicates that the proposal constitutes an overdevelopment of the site. The proposal does not comply with Control C1 of Part 4.3.3.1 of MDCPO 2011.

Part 4.3.3.5: Boarding Rooms

Table 6 summarises the boarding house control requirements, with matters of particular relevance discussed further thereunder:

Table 6: Boarding House Controls

Room type and facility	Minimum Requirement	Complies?
<b>C9</b> Minimum area 1 person room	12sqm GFA*	Yes
<b>C10</b> Minimum area 2 person room	16sqm GFA*	Yes
<b>C11</b> Maximum room size	25sqm GFA*	No – see

		discussion
<b>C12</b> Calculation of room size	*The areas referred to in Controls C9 – C11 inclusive exclude kitchenettes (excluding circulation space), bathrooms and corridors.	Yes
<b>C13</b> Minimum room ceiling height	2,700mm	Yes
<b>C14</b> Occupation of share rooms – per room	Maximum of 2 adults	Yes
<b>C15</b> Fit out room only	Rooms must be able to accommodate: <ul style="list-style-type: none"> <li>• Bed/s for the potential number of occupants,</li> <li>• Enclosed and open storage for clothes, linen and personal items,</li> <li>• At least one easy chair and a desk with chair,</li> <li>• Plus safe and convenient circulation space.</li> </ul>	No – see discussion
<b>C16</b> Area of self-contained facilities	<ul style="list-style-type: none"> <li>• Maximum of 5sqm for a kitchenette;</li> <li>• A kitchenette is not to be located along the wall of a corridor; and</li> <li>• Minimum 3sqm and maximum 4sqm for ensuite bathroom.</li> </ul>	No – see discussion
<b>C17</b> Energy efficiency & internal climate	<ul style="list-style-type: none"> <li>• All habitable rooms are to have access to natural ventilation through an external window;</li> <li>• Natural light is to be available from an external window or from a light well – not from a skylight;</li> <li>• Light and air from an internal courtyard is acceptable if the courtyard is an adequate size</li> </ul>	Yes
<b>C18</b> Private open space	<ul style="list-style-type: none"> <li>• Maximum area 6sqm; and</li> <li>• Minimum dimension 2 metres</li> </ul> <p><b>NB</b> private open space is not a requirement but may be provided in a courtyard or balcony that adjoins a room</p>	Yes- for the manager only

The proposal results in the variations to Part 4.3.3.5 of MDCPO 2011 because the proposed rooms 4, 5, 6, 13 and 14 have kitchenettes located alongside a corridor. It is also unclear as to whether boarding rooms include enclosed and open storage for clothes, linen and personal items.

It is acknowledged that there are 2 existing rooms (rooms 9 and 18) which exceed the 25sqm room size criteria. As these rooms are existing, no objection is raised with regard to this non-compliance.

However concern is raised with regard to the amenity of new rooms on both the ground and first floor which propose to locate kitchen within corridors. Concern is raised regard the ground floor “accessible rooms” which compartmentalises the boarding room by locating a second entry door separating the kitchen/corridor from the room itself. Isolating the space in this manner results in an awkward layout and affords compromised amenity for the kitchen

area. Locating kitchens within corridors as proposed for rooms 4, 5, 13 and 14 is contrary to Control 16 of Part 4.3 of MDCP 2011 and compromises the amenity and functionality of this space as the corridor is a thoroughfare and not integrated into the overall design of the boarding room.

#### Part 4.3.3.6: Communal Rooms and Facilities

One communal living room with a living area of 12sqm is required under Control C19, because the boarding house contains 'five or more boarding rooms'; Control C20 requires the communal living room to accommodate at least 50% of residents at capacity (as a guide 2sqm per resident). The room is required to receive at least 3 hours of sunlight between the hours of 9.00am and 3.00pm in mid-winter (C22), and a smaller communal living room is required on each floor where there is a capacity of 5 or more residents on multiple floors (C23). Control C25 requires communal living rooms to be purpose designed and not just left over space in corridors.

As previously identified, the development accommodates 23 lodgers. The proposal includes a communal living room on the ground floor with a common kitchen. A suitable common living area would therefore have a gross floor area of at least 23sqm. The area of a kitchen includes a 1 metre strip adjacent to the kitchen for the length of the kitchen bench (C12).

The applicants contends that the communal area is 33sqm in size. However, the applicant has included the corridor on the southern side of the area and the corridor utilised to access rooms 4 and 5 as part of this area. Once removing these circulation areas the remaining area relegated to the communal area is approximately 15 sqm (excluding the kitchen area)

Control C25, Part 4.3.3.6 of MDCP 2011 requires communal rooms to be purpose-designed and not just left over space or corridors.

The communal room is located in a central passageway surrounded by kitchen, bathroom, laundry and stairway entry points and is not located in a way to provide and encourage intimacy, privacy and communal congregation.

It is noted that the pre-DA advice provided recommend that the common room be relocated toward the north-eastern portion of the building so that it is not a central passageway to other rooms in the house and to ensure adequate provision of solar access and outlook to the private open space at the rear of the site.

It is considered the proposed communal area fails to provide for adequate amenity and also has the potential to compromise the amenity of the rooms that it adjoins. It is also noted the proposal fails to provide a communal room on the first floor.

Having regard to a number of rooms within the premises falling within the category of a traditional boarding house which do not contain kitchen/bathroom amenities in rooms, it is considered important to provide a first floor communal area in the circumstances.

Having regard to the above, the proposal fails to provide an adequate communal living area.

#### 5(d) The Likely Impacts

The assessment of the Development Application demonstrates that the proposal will have an adverse impact on the boarding house occupants and the locality. The environmental impacts on the built environment and the resultant amenity impacts are considered to be unreasonable and the application is not supported.



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

The site is zoned R2 – Low Density Residential. Whilst the proposal is a permissible form of development in this zone, it is considered that the proposal will have an adverse impact on the adjoining properties and for future occupants. The site cannot support the extent of gross floor area sought, nor is the layout of the proposal able to support adequate amenity considerations. The proposal is considered to constitute an overdevelopment and ultimately, the site is unsuitable for the development.

### 5(f) Any submissions

The application was notified in accordance with Marrickville Development Control Plan 2011 for a period of 14 days and ten submissions were received.

The following issues raised in submissions are addressed in the main body of the report:

- Heritage (Character test);
- Non-compliance with relevant controls;
- Parking;
- Community Safety;
- Noise Impacts;
- Loss of Privacy;
- Security;
- Waste management;
- Accessibility;
- Tree Impacts;
- Overshadowing;
- Sub-standard accommodation;
- Impacts associated with the location of the common area; and
- Impacts associated with the location of the motorcycle parking.

The submissions raised the following concerns, which are discussed under the respective headings below:

- (i) Difficulties with accessing information about the development.

Comment:

Several discussions with respondents have taken place via telephone.

- (ii) Misleading information.

Comment:

This matter is considered to have been addressed by assessment of the development application and the ultimate recommendation for refusal.

- (iii) Alleged unregistered boarding house.

Comment:

Additional information submitted during the assessment process and a search of Council records indicates that the premises do have consent for use as a 9 room boarding house. Although it is noted that it is operating as a 12 room boarding house with historical evidence suggesting the permission for only 9 rooms.

(iv) Fire Safety.

Comment:

This matter could be addressed by the imposition of a condition of consent requiring a report to be submitted by a suitable qualified person.

(v) Inadequate Plan of Management (nuisance from smoking).

Comment:

Amenity impacts whilst they can be regulated somewhat by a rigorous Plan of Management, this doesn't restrict people from utilising areas within the site to smoke.

(vi) Accountability requirements.

Comment:

This matter could be addressed by conditions of consent making reference to a Plan of Management.

(vii) Excavation and construction impacts.

Comment:

Conditions could be imposed on any consent granted to mitigate construction impacts.

(viii) View loss.

Comment:

There are no iconic views visible from adjoining sites that the addition would obscure, and views obtained over side boundaries which relate to a district outlook are difficult to protect, the application is considered acceptable in this regard.

(ix) Failure to demonstrate affordable housing outcomes.

Comment:

There is no requirement to demonstrate affordability of housing for this proposal as this is not mandated by the AHSEPP.

(x) Boundary fence damage.

Comment:

Conditions could be imposed on any consent granted to mitigate construction impacts, however the application is not supported

## 5(g) The Public Interest

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

The proposal is contrary to the public interest because it results in a development of excessive density for the R2 – Low Density Residential area. The residential accommodation of poor amenity and unqualified impacts upon trees and bandicoots are also not in the public interest.

## 6 Referrals

### 6(a) Internal

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

- Building Surveyor
- Development Engineer
- Heritage and Urban Design Advisor
- Tree Officer
- Urban Ecology Unit

## 7. Conclusion

The proposal does not comply with the aims, objectives and design parameters contained in State Environmental Planning Policy (Affordable Rental Housing) 2009, Marrickville Local Environmental Plan 2011 Marrickville Development Control Plan 2011.

The proposal involves an extension to an existing Boarding House which does not comply with relevant standards, provides low amenity and accessibility and is not properly supported by a Clause 4.6 request.

The development will result in unreasonable impacts on the amenity of adjoining premises and the streetscape. The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

## 8. Recommendation

That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, to refuse Development Application No. DA201900016 to demolish part of the premises and carry out ground and first floor alterations and additions to a boarding house at 11-13 Hunter Street Lewisham for the following reasons;

1. The proposal exceeds the floor space ratio development standard under Clause 29 of State Environmental Planning Policy (Affordable Rental Housing) 2009 and Clause 4.4 of Marrickville Local Environmental Plan 2011. The proposed development is inconsistent with the stated objectives of the development standard. A clause 4.6 exception was not submitted with the application. Accordingly, Council has no statutory power to consent to the application.
2. The proposal does not satisfy Clause 29 (2) (e) iia) and iii) of State Environmental Planning Policy (Affordable Rental Housing) 2009, in that there is no on-site parking provided to meet the needs of lodgers/manager at the premises which will lead to an unacceptable demand for existing on-street parking spaces which are already in high demand.
3. The proposal is contrary to Clause 30A of State Environmental Planning Policy (Affordable Rental Housing) 2009, as the proposed FSR exceeds that achievable on

adjoining lots on either side of the subject site and the extent of development sought is out of character with the nature of the low density residential area.

4. The proposal to provide 17 boarding rooms plus one manager's room is contrary to Clause 30AA of draft State Environmental Planning Policy (Affordable Rental Housing) 2009 which limits the number of boarding rooms in a boarding house located in an R2 – Low Density Residential area to 12 boarding rooms.
5. The proposal is contrary to the heritage provisions of Clause 5.10 of Marrickville Local Environmental Plan 2011 and Part 8.5.1 of Marrickville Development Control Plan 2011, as it fails to reinstate the façade of the contributory building, lacks sufficient detail regarding changes to the front facade and existing built form, and the addition appears utilitarian in design at odds with the conservation area and adjoining development.
6. The proposal fails to satisfy the provisions of Clause 6.4 of MLEP 2011 and Part 2.13 of Marrickville Development Control Plan 2011 as the Biodiversity Report does not demonstrate sufficient survey effort to assess the impact on the Long-nosed Bandicoot population.
7. Insufficient and inadequate information has been provided to justify the proposal in terms of Part 4.1.6.2 [Building Setbacks] and Part 4.1.6.3 of Marrickville Development Control Plan 2011 [Site Coverage], as impacts associated with overshadowing, trees and long nosed bandicoots have not been adequately ameliorated.
8. The proposal internal configuration having regard to the communal room on the ground floor, the lack of a communal room on the first floor and the new boarding rooms results in poor amenity outcomes for residents. In this regard the proposal does not comply with Parts 4.3.3.5 and 4.3.3.6 of Marrickville Development Control Plan 2011 for Boarding Houses.
9. The proposed location of the communal open space has the potential to impact on the amenity of adjoining development and is contrary to c18(iv) of Part 2.18 of Marrickville Development Control Plan 2011 for Landscaping and Open Space.
10. Incomplete or insufficient information was submitted with the application to enable a proper assessment of the proposal to be carried out in accordance with the requirements of the Environmental Planning and Assessment Act 1979. In particular:
  - a) The architectural plans fail to provide levels indicating the extent of excavation and cut and fill associated with the proposal;
  - b) the arborist report and corresponding Landscape Plan, Stormwater Plan and Architectural Plans lack sufficient detail to ascertain the impacts the proposal would have on trees. There are level changes (excavation) and stormwater lines proposed through tree protection zones and possibly structural root zones.
  - c) The submitted shadow diagrams are inadequate to undertake a proper assessment to ascertain the likely impacts of the proposal on the PV cells located on the adjoining property at 15 Hunter Street, as the plans fail to depict the location of the PV cells.

## Attachment A- Reasons for Refusal

1. The proposal exceeds the floor space ratio development standard under Clause 29 of State Environmental Planning Policy (Affordable Rental Housing) 2009 and Clause 4.4 of Marrickville Local Environmental Plan 2011. The proposed development is inconsistent with the stated objectives of the development standard. A clause 4.6 exception was not submitted with the application. Accordingly, Council has no statutory power to consent to the application.
2. The proposal does not satisfy Clause 29 (2) (e) iia) and iii) of State Environmental Planning Policy (Affordable Rental Housing) 2009, in that there is no on-site parking provided to meet the needs of lodgers/manager at the premises which will lead to an unacceptable demand for existing on-street parking spaces which are already in high demand.
3. The proposal is contrary to Clause 30A of State Environmental Planning Policy (Affordable Rental Housing) 2009, as the proposed FSR exceeds that achievable on adjoining lots on either side of the subject site and the extent of development sought is out of character with the nature of the low density residential area.
4. The proposal to provide 17 boarding rooms plus one manager's room is contrary to Clause 30AA of draft State Environmental Planning Policy (Affordable Rental Housing) 2009 which limits the number of boarding rooms in a boarding house located in an R2 – Low Density Residential area to 12 boarding rooms.
5. The proposal is contrary to the heritage provisions of Clause 5.10 of Marrickville Local Environmental Plan 2011 and Part 8.5.1 of Marrickville Development Control Plan 2011, as it fails to reinstate the façade of the contributory building, lacks sufficient detail regarding changes to the front facade and existing built form, and the addition appears utilitarian in design at odds with the conservation area and adjoining development.
6. The proposal fails to satisfy the provisions of Clause 6.4 of MLEP 2011 and Part 2.13 of Marrickville Development Control Plan 2011 as the Biodiversity Report does not demonstrate sufficient survey effort to assess the impact on the Long-nosed Bandicoot population.
7. Insufficient and inadequate information has been provided to justify the proposal in terms of Part 4.1.6.2 [Building Setbacks] and Part 4.1.6.3 of Marrickville Development Control Plan 2011 [Site Coverage], as impacts associated with overshadowing, trees and long nosed bandicoots have not been adequately ameliorated.
8. The proposal internal configuration having regard to the communal room on the ground floor, the lack of a communal room on the first floor and the new boarding rooms results in poor amenity outcomes for residents. In this regard the proposal does not comply with Parts 4.3.3.5 and 4.3.3.6 of Marrickville Development Control Plan 2011 for Boarding Houses.
9. The proposed location of the communal open space has the potential to impact on the amenity of adjoining development and is contrary to c18(iv) of Part 2.18 of Marrickville Development Control Plan 2011 for Landscaping and Open Space.

10. Incomplete or insufficient information was submitted with the application to enable a proper assessment of the proposal to be carried out in accordance with the requirements of the Environmental Planning and Assessment Act 1979. In particular:

- a) The architectural plans fail to provide levels indicating the extent of excavation and cut and fill associated with the proposal;
- b) the arborist report and corresponding Landscape Plan, Stormwater Plan and Architectural Plans lack sufficient detail to ascertain the impacts the proposal would have on trees. There are level changes (excavation) and stormwater lines proposed through tree protection zones and possibly structural root zones.
- c) The submitted shadow diagrams are inadequate to undertake a proper assessment to ascertain the likely impacts of the proposal on the PV cells located on the adjoining property at 15 Hunter Street, as the plans fail to depict the location of the PV cells.

## Attachment B- Conditions should the panel wish to approve the application

### 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. An amended Arboricultural Impact Assessment report prepared by an AQF Level 5 Arborist must be submitted to, and approved by, Council. The report must include an assessment of the works on the following trees as shown on the amended Landscape Plans and Stormwater Plans relating to Deferred Commencement Consent Condition 2.

*Lagerstroemia indica* (Crepe Myrtle) – located at the rear of an adjacent site to the south (property fronting The Boulevarde) and abutting the rear southern side boundary on the subject site.

*Schinus areira* (Peppercorn) - located on the adjacent site to the rear.

*Michelia champaca* (Golden Champaca) - located close to the common boundary on an adjacent site to the north.

*Elaeocarpus reticulatus* (Blueberry Ash) - located close to the common boundary on an adjacent site to the north.

*Plumaria acutifolia* (Frangipani) – located on an adjacent site near the common front southern side boundary.

*Melaleuca quinquenervia* (Broadleaved Paperbark), *Tristaniopsis laurina* (Watergum) – street trees.

2. Amended Landscape Plans and Stormwater Plan indicating the SRZ and TPZ (SRZ/TPZ in accordance with AS 4970 'Protection of trees on development sites') of all trees located on the site and on the adjacent sites within 3 metres of common boundaries, including the following trees, must be submitted for approval by Council:

*Lagerstroemia indica* (Crepe Myrtle) – located at the rear of an adjacent site to the south (property fronting The Boulevarde) and abutting the rear southern side boundary on the subject site.

*Schinus areira* (Peppercorn) - located on the adjacent site to the rear. This is Tree 2 in the AIA report.

*Michelia champaca* (Golden Champaca) - located close to the common boundary on an adjacent site to the north.

*Elaeocarpus reticulatus* (Blueberry Ash) - located close to the common boundary on an adjacent site to the north.

*Plumaria acutifolia* (Frangipani) – located on an adjacent site near the common front southern side boundary.

*Melaleuca quinquenervia* (Broadleaved Paperbark) and *Tristaniopsis laurina* (Watergum) – street trees.

The plans must demonstrate that there is no excavation within the Structural Root Zone of any tree and that the works including (but not limited to) retaining walls, fill, terracing, paths, ramps, pits, stormwater lines and level changes will not have a major impact in accordance with Section 3.3.3 of AS 4970. The amended plans must show the existing and proposed levels within the TPZ of each tree and the plans must be assessed in the amended Arboricultural Impact Assessment report (refer Deferred Commencement Condition 1).

The Landscape Plan shall show a setback of 1500mm between any tree to be planted and a boundary or structure.

Trees shall not be planted under the canopy of any existing tree.

The Landscape Plan shall show all retaining walls.

3. A Pruning Specification prepared by an AQF 5 Arborist must be submitted for approval by Council should any tree require pruning.

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**

1. 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
A2 Sheet.1/B	Site Plan	18/03/19	Arch - Build	26/03/19
A2 Sheet.2/B	Sedimen Control Plan	18/03/19	Arch - Build	26/03/19
A2 Sheet.3/B	Site Analysis	18/03/19	Arch - Build	26/03/19
A2 Sheet.4/B	Ground & First Floor Plans	18/03/19	Arch - Build	26/03/19
A2 Sheet.5/B	Elevations	18/03/19	Arch - Build	26/03/19
A2 Sheet.6/B	Roof Plan & Sections	18/03/19	Arch - Build	26/03/19
Attachment 1 – (6 pages)	Plan of Management			26/03/19
U18045/A	General Notes (Stormwater)	17/10/18	Uber Engineering	15/10/18
U18045/A – SW01	Ground Floor & Roof Stormwater Management Plan	17/10/18	Uber Engineering	15/10/18
U18045/A – SW02	Sections and Details	17/10/18	Uber Engineering	15/10/18



LP 02/A - 1	Landscape Plan	25/10/18	Tree House Landscape Designs	15/10/18
LP 02/A - 2	Landscape Plan - Specs	25/10/18	Tree House Landscape Designs	15/10/18
	Colour Scheme	14/12/19	Arch - Build	15/10/18
	Targeted Long-nosed Bandicoot investigation	21/11/18	Lesryk Environmental Pty Ltd	15/10/18

and details submitted to Council on 15 October 2018 and 26 March 2019 with the application for development consent and as amended by the following conditions.

2. 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.
3. Where rooms are provided with separate individual hot water systems, these must be located within the internal area of the unit/dwelling and not on any balcony or terrace.
4. The use of the premises as a boarding house must comply at all times with the following:
  - a) The use must comply at all times with the Plan of Management referred to in condition 1 above and as amended by the conditions in this Determination;
  - b) A copy of the Plan of Management and House Rules must be annexed to each and every tenancy/occupation agreement for a room;
  - c) A copy of the approved Plan of Management and House Rules must be clearly displayed within every common room in the building at all times;
  - d) The Plan of Management must not be amended without the prior consent of Council;
  - e) All tenancy/occupation agreements for rooms within the premises must be for a minimum period of three (3) months;
  - f) The premises must be used exclusively as a boarding house containing a maximum total of 17 lodger's rooms, 1 Manager room with not more than 23 adult lodgers residing in the premises at any one time;
  - g) Not more than 1 lodger must occupy each single boarding room, and not more than 2 lodgers must occupy each double boarding room;
  - h) The premises must not be adapted for use as backpacker's accommodation, serviced apartments or a residential flat building;
  - i) All common rooms/areas and recreation rooms/areas must be maintained at all times for the use of the lodgers; and
  - j) Each self-contained room and shared kitchen must be fitted out with washing up facilities, a cooktop, oven, fridge and storage space with such utilities being maintained in working order at all times.
5. A minimum of 2 accessible rooms must be provided in accordance with Part 2.5 of Marrickville Development Control Plan 2011 - Equity of Access and Mobility.

6. It may be necessary for the installation of a suitable electrical sub-station for the distribution of electrical power in this area to be located on the land, and that an area of land suitable for Ausgrid to provide such an installation be set aside for this purpose. Before proceeding with your development further, you are directed to contact the General Manager of Ausgrid, George Street, Sydney, with respect to the possible need for such an installation immediately or in the future.
7. 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.
8. All building work must be carried out in accordance with the provisions of the National Construction Code (Building Code of Australia).
9. Owners and occupants of the proposed building shall not be eligible to obtain parking permits under any existing or future resident parking scheme for the area. The by-laws of any future residential strata plans created for the property shall reflect this restriction.
10. Approval is given for the following works to be undertaken to trees on the site:

Tree/location	Approved works
<i>Prunus armeniaca</i> (Apricot) – rear	Removal

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved.

11. The canopy trees required by this consent are to be maintained in a healthy and vigorous condition until they attain a height of 5 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 1 month.

**BEFORE COMMENCING DEMOLITION, EXCAVATION AND/OR BUILDING WORK**

12. 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 must be given to Council of the intention to commence work.
13. 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.
14. 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.

15. 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.
16. 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.
17. All services in the building being demolished must be disconnected in accordance with the requirements of the responsible authorities before work commences.
18. Before commencing works the person acting on this consent must provide a contact number for a designated person to be available during the demolition and construction for residents to contact regarding breaches of consent or problems relating to the construction.
19. 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.
20. A rigid and durable sign must be erected in a prominent position on the site, before work commences. The sign must be maintained at all times until all work has been completed. The sign is to include:
  - 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'.
21. 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.
22. Before commencing works the person acting on this consent must provide a contact number for a designated person to be available during the demolition and construction for residents to contact regarding breaches of consent or problems relating to the construction.
23. The person acting on this consent must provide details of the means to secure the site and to protect the public from the construction works. Where the means of securing the site involves the erection of fencing or a hoarding on Council's footpath or road reserve the person acting on this consent must submit a hoarding application and pay all relevant fees before commencement of works.

24. 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

25. 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.
26. A Project Arborist shall be engaged **before work commences** for the duration of the site preparation, demolition, construction and landscaping.
- Project Arborist - for the purpose of these conditions a Project Arborist is a suitably qualified professional who shall have as a minimum, Level 5 (Diploma) certification in Arboriculture under the Australian Qualification Framework (AQF) and who does not remove or prune trees in the Inner West local government area.
27. The contact details of the Project Arborist shall be advised to Council **before work commences** and maintained up to date for the duration of the works. If a new Project Arborist is appointed details of the new Project Arborist shall be notified to Council within 7 days.
28. Tree protection shall be provided for the two street trees in front of the site. The tree protection measures shall be in accordance with the Australian Standard *Protection of trees on development sites* AS 4970-2009. Details of the tree protection measures shall be submitted to and **approved by Council before work commences**.
30. A detailed site-specific Tree Protection Plan (TPP) is to be prepared by an AQF Level 5 Arboricultural Consultant and submitted for **approval by the Inner West Council's Urban Forest Team prior to issue of the Construction Certificate**. The TPP is to be prepared in accordance with the principles and specifications identified in *AS4970 - 2009 Protection of trees on development Sites* and is to include, but not be limited to the following:
- A site plan showing locations of proposed tree protection fencing, trunk and ground protection within the identified Tree Protection Zones (TPZ) of trees identified for retention;

- Unacceptable activities within fenced tree protection zones;
- Crown pruning specifications (if required);
- Tree protection monitoring and compliance reporting schedule and key hold points;
- Tree root protection specifications for excavation or soil fill within the identified TPZs.

The tree protection measures contained in the TPP shall be shown clearly on the Construction Certificate drawings, including the Construction Management Plan.

The PCA must ensure the construction plans and specifications submitted fully satisfy the tree protection requirements identified in the TPP.

A Project Arborist who holds AQF Level 5 in Horticulture (Arboriculture) or above is to be appointed to monitor tree protection during the construction in accordance with the requirements identified in the TPP.

All tree protection measures as detailed in the approved Tree Protection Plan must be installed and certified in writing as fit for purpose by the Project Arborist, or by a consulting arborist with a minimum AQF Level 5 arboriculture qualification.

Compliance Certificate is to be issued by the Project Arborist certifying that all tree protection measures as detailed in the Tree Protection Plan have been complied with prior to issue of the Occupation Certificate.

#### **BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE**

31. The approved plans must be submitted to a Sydney Water Quick Check agent to determine whether the development will affect any Sydney Water wastewater and water mains, stormwater drains and/or easement, and if any requirements need to be met. Plans will be appropriately stamped.

Please refer to the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- Quick Check agents details - see Plumbing, building and developing then Quick Check agents and
- Guidelines for Building Over/Adjacent to Sydney Water Assets – see Plumbing, building and developing then Plan submissions or telephone 13 20 92.

The stamped plans must be submitted to Certifying Authority satisfaction before the issue of a Construction Certificate.

32. Bicycle storage with the capacity to accommodate a minimum of 10 bicycles must be provided in accordance with the requirements set out within Part 2.10 of Marrickville Development Control Plan 2011 - Parking, in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
33. Letterboxes and mail collection facilities must be provided and adequately protected in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
34. 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.

Reason: To reduce noise levels within the development from aircraft.

- 35. 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 \$66,451.86 indexed in accordance with Marrickville Section 94/94A Contributions Plan 2014 ("CP").

The above contribution is the contribution applicable as at 03 June 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. DC002612)**

- 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\$7,313.82Plan Administration\$1,302.96Recreation Facilities\$57,835.08
- 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.

- 36. 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. [www.lspc.nsw.gov.au](http://www.lspc.nsw.gov.au)

- 37. 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	\$3,974.47
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.

38. Plans, details and calculations of an on-site detention system in accordance with Marrickville Council Stormwater and On Site Detention Code must be submitted to and approved by Council before the issue of a Construction Certificate. The design of the OSD system must comply with the following:-
- a) The on-site detention system must be designed for all storm events from the 1 in 5 year to the 1 in 100 year storm event, with discharge to a Council controlled storm water system limited to pre-development conditions with the maximum allowable discharge to Council's street gutter limited to 25 litres/second (20 year ARI);
  - b) Storage for the 1 year storm event must be provided fully below ground;
  - c) Cross section details of the OSD system including levels and dimensions.
  - d) Details of the Height v Storage and Height v Discharge relationships must be submitted;
  - e) Details of external catchments currently draining to the site must be included on the plans. Existing natural overland flows from external catchments may not be blocked or diverted, but must be captured and catered for within the proposed site drainage system. Where necessary an inter-allotment drainage system must be incorporated into the design; and
  - f) Details of the 1 in 100 year overflow route in case of failure/blockage of the drainage system must be provided.
39. The stormwater management plan U18045-SW01(Rev A) by Uber Engineering shall be amended and/or additional information provided as follows;
- i. Detailed calculations for sizing of the OSD system to be provided for assessment (this shall include the model files);
  - ii. The cross sections of the OSD system showing levels, dimensions and volume calculations;
  - iii. Details of external catchments currently draining to the site shall be included on the plans; Existing natural overland flows from external catchments may not be blocked or diverted, but must be captured and catered for within the proposed site drainage system. Where necessary an inter-allotment drainage system shall be incorporated into the design;

- iv. Details of the 1 in 100 year overflow route in case of failure\blockage of the drainage system shall be provided, This shall include any existing overland flow routes from upstream;
  - v. Connection of the rainwater tank to toilets, laundry and external taps for irrigation;
  - vi. The BASIX Certificate shall be amended to reflect the above water re-use measures; The above additional information shall be submitted to and approved by Council before the issue of a Construction Certificate.
40. 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.
41. Before the issue of a Construction Certificate amended architectural drawings shall be submitted (to the satisfaction of Council's Heritage Specialist) indicating the following:
- a) The colour of the roof sheeting to the new addition shall be amended to colour 'Colorbond Windspray' or similar, and any new roof tiles identified in the Schedule of materials.
42. Paving works within the Tree Protection Zone (TPZ in accordance with AS 4970 'Protection of trees on development sites') of all trees within 3 metres of the site will be of a type and construction to ensure that existing water infiltration and gaseous exchange to the tree(s) root system is maintained.
- Note:** A plan detailing the paving shall be submitted to the Principal Certifying Authority to address the above requirements prior to the issue of a Construction Certificate.
43. 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.
- 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.

#### **SITE WORKS**

44. 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.

45. The area surrounding the building work must be reinstated to Council's satisfaction upon completion of the work.
46. 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'.
47. 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 have access to the site during work hours nominated by Council and all loads must be covered;
  - i) all vehicles taking materials from the site must be loaded wholly within the property unless otherwise permitted by Council;
  - j) no waste collection skips, spoil, excavation or demolition material from the site must be deposited on the public road, footpath, public place or Council owned property without the approval of Council; and

- k) the person acting on this consent must ensure that all contractors and sub-contractors associated with the demolition are fully aware of these requirements.
48. The works are required to be inspected at critical stages of construction, by the PCA or if the PCA agrees, by another Certifying Authority. The last inspection can only be carried out by the PCA. The critical stages of construction are:
- a) At the commencement of the building work;
  - b) For Class 2, 3 and 4 buildings, prior to covering waterproofing in any wet areas (a minimum of 10% of wet areas within a building);
  - c) Prior to covering any stormwater drainage connections, and after the building work has been completed and prior to any occupation certificate being issued in relation to the building; and
  - d) After the building work has been completed and prior to any occupation certificate being issued in relation to the building.

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

49. If the development involves an excavation that extends below the level of the base of the footings of a building on the adjoining allotments, including a public place such as a footway and roadway, the person acting on the consent, at their own expense must:
- a) protect and support the adjoining premises from possible damage from the excavation, and
  - b) where necessary, underpin the adjoining premises to prevent any such damage. Where the proposed underpinning works are not "exempt development", all required consents must be obtained prior to the required works commencing; and
  - c) at least 7 days' notice must be given to the owners of the adjoining land of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

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.

50. All vehicles carrying materials to, or from the site must have their loads covered with tarpaulins or similar covers.
51. Satisfactory methods and/or devices must be employed on the site to prevent the tracking of mud/dirt onto the surrounding streets from vehicles leaving the site.
52. 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.
53. 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.

54. 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.
55. If tree roots (must be approved by the Project Arborist prior to pruning) 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 shall be undertaken by a minimum Level 3 (AQF 3) qualified Arborist.

This condition does not relate to street trees where root pruning must be approved by Council prior to being undertaken.

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

56. The trees to be retained shall be inspected, monitored and treated by Project Arborist during the works in accordance with the approved Tree Protection Plan (TPP).

Recommendations to ensure the tree/s long term survival must be carried out immediately upon receipt of the report.

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

57. No storage or disposal of materials taking place beneath the canopy of any tree protected under Council's Tree Management Controls at any time.
58. No trees on public property (footpaths, roads, reserves etc.) are to be removed or damaged during works unless specifically approved in this consent or marked on the approved plans for removal.

Installation of stormwater lines must be undertaken ensuring that woody tree roots from the street trees (1 x *Melaleuca quinquenervia* – Broadleafed Paperbark and 1 x *Tristaniopsis laurina* - Watergum) are not damaged or pruned unless approved, prior to any such work being undertaken, by Council.

#### **BEFORE OCCUPATION OF THE BUILDING**

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

60. Occupation of the building must not be permitted until such time as:
- All preconditions to the issue of an Occupation Certificate specified in this development consent have been met;
  - The building owner obtains a Final Fire Safety Certificate certifying that the fire safety measures have been installed in the building and perform to the performance standards listed in the Fire Safety Schedule; and
  - An Occupation Certificate has been issued.
61. The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:
- Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and
  - Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).
- Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Certificate for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Certificate must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.
62. The Section 73 Certificate must be submitted to the Principal Certifying Authority before the issue of an Occupation Certificate.
- A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Make early application for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.
  - Application must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Plumbing, building and developing > Providers > Lists or telephone 13 20 92.
63. The landscaping of the site must be carried out before the issue of an Occupation Certificate (whether an interim or final Occupation Certificate) in accordance with the approved details and must be maintained at all times to Council's satisfaction.
64. a) Upon completion of the required noise attenuation measures referred to in the "Before the Issue of a Construction Certificate" Section of this Determination, and before the issue of an Occupation Certificate (whether an interim or final Occupation Certificate), a report must be prepared and submitted to the Certifying Authority's satisfaction by an accredited Acoustics Consultant certifying that the final construction meets 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 must be prepared and submitted to Council in accordance with the requirements as set down in Part a) of this condition.
65. 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).
66. 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](http://www.basix.nsw.gov.au).

67. 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.
68. 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".
69. Before the issue of the Occupation Certificate written verification from a suitably qualified competent person, stating that all stormwater *drainage and re-use measures* have been constructed in accordance with the approved plans shall be submitted to and accepted by Council. In addition, full works-as-executed plans, prepared and signed by a registered surveyor, shall be submitted to Council. These plans must include levels for all drainage structures, buildings (including floor levels), finished ground levels and pavement surface levels.
70. With the regard to the On Site Detention System (OSD), a Positive Covenant in accordance with supplement 7 of Marrickville Council Stormwater and On Site Detention Code shall be placed on the Title in favour of Council before the issue of the Occupation Certificate.
71. All instruments under Section 88B of the Conveyancing Act used to create positive covenants, easements or right-of-ways shall include the condition that such easements or right-of-ways may not be varied, modified or released without the prior approval of Marrickville Council.
72. 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.
73. 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.
74. Any 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.
75. 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.
76. A Compliance Certificate is to be issued by the Project Arborist certifying that all tree protection measures as detailed in the approved Tree Protection Plan have been complied with prior to issue of the Occupation Certificate.

**ADVISORY NOTES**

- The Disability Discrimination Act 1992 (Commonwealth) and the Anti-Discrimination Act 1977 (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.
- A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out.
- The approved plans must be submitted to the Customer Centre of any office of Sydney Water before the commencement of any work to ensure that the proposed work meets the requirements of Sydney Water. Failure to submit these plans before commencing work may result in the demolition of the structure if found not to comply with the requirements of Sydney Water.
- Buildings built or painted before the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe. Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving the removal of lead based paints. Precautions should therefore be taken if painted surfaces are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned before occupation of the room or building.
- Contact "Dial Before You Dig" before commencing any building activity on the site.
- Useful Contacts

BASIX Information                      ☐☐ 1300 650 908 weekdays 2:00pm- 5:00pm  
[www.basix.nsw.gov.au](http://www.basix.nsw.gov.au)

Department of Fair Trading            ☐☐ 13 32 20  
[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)  
Enquiries relating to Owner Builder Permits and  
Home Warranty Insurance.

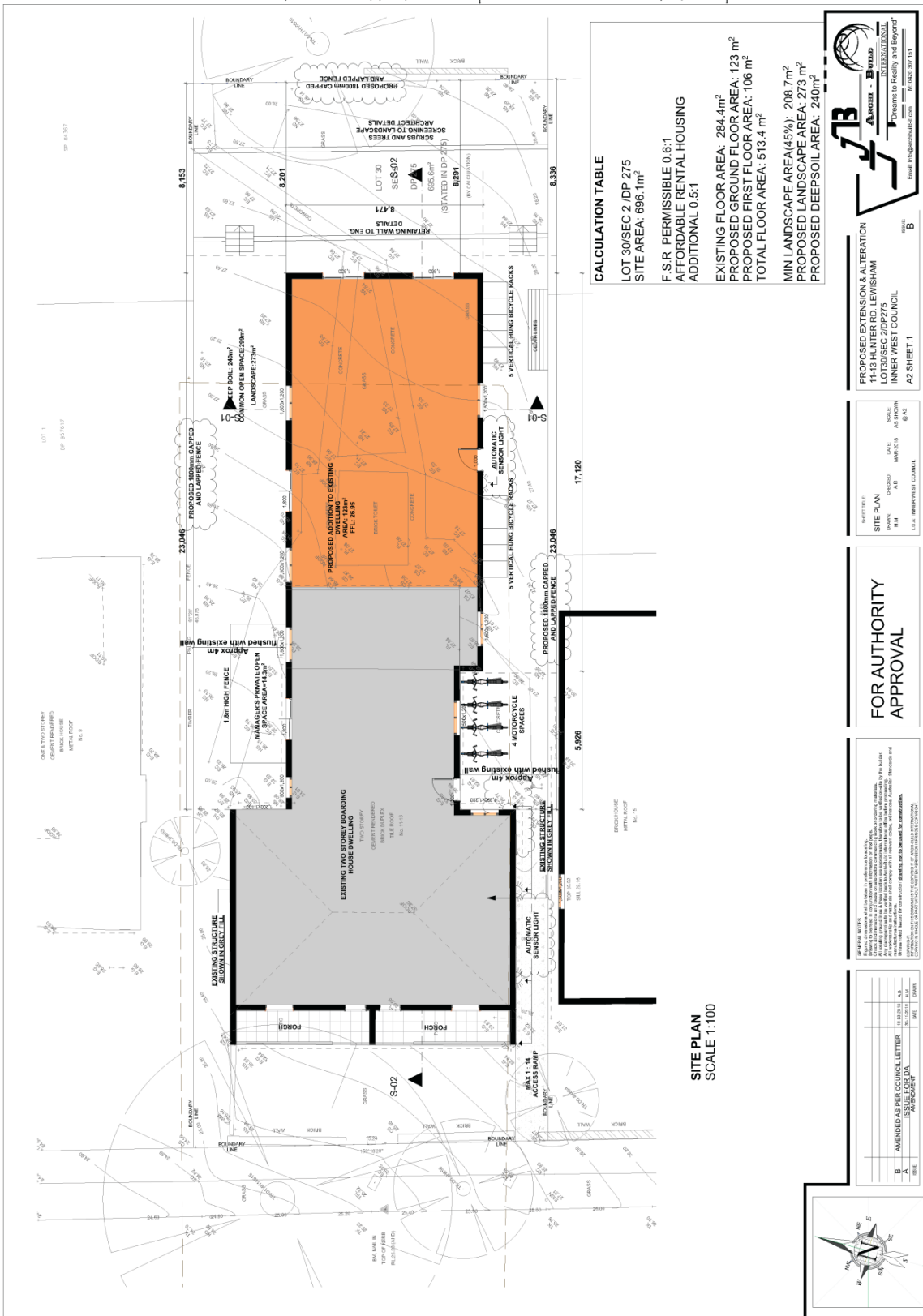
Dial Before You Dig                    ☐☐ 1100  
[www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au)

Landcom                                    ☐☐ 9841 8660  
To purchase copies of Volume One of "Soils  
and Construction"

Long Service Payments Corporation	<input type="checkbox"/> 131441 <a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Government	<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diySAFE.nsw.gov.au">www.diySAFE.nsw.gov.au</a> Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	<input type="checkbox"/> 131 555 <a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>
Sydney Water	<input type="checkbox"/> 13 20 92 <a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>
Waste Service - SITA Environmental Solutions	<input type="checkbox"/> 1300 651 116 <a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>
Water Efficiency Labelling and Standards (WELS)	<a href="http://www.waterrating.gov.au">www.waterrating.gov.au</a>
WorkCover Authority of NSW	<input type="checkbox"/> 13 10 50 <a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a> Enquiries relating to work safety and asbestos removal and disposal.

Attachment C – Plans of Proposed Development

The Owner / Builder Must Read Plans In Conjunction With ABSA And Basis Report



**CALCULATION TABLE**

LOT 30/SEC 2 DP 275	SITE AREA: 696.1m <sup>2</sup>
F.S.R PERMISSIBLE 0.6:1	ADDITIONAL 0.5:1
EXISTING FLOOR AREA: 284.4m <sup>2</sup>	PROPOSED GROUND FLOOR AREA: 123 m <sup>2</sup>
PROPOSED FIRST FLOOR AREA: 106 m <sup>2</sup>	TOTAL FLOOR AREA: 513.4 m <sup>2</sup>
MIN LANDSCAPE AREA(45%): 208.7m <sup>2</sup>	PROPOSED LANDSCAPE AREA: 273 m <sup>2</sup>
PROPOSED DEEPSOIL AREA: 240m <sup>2</sup>	

SITE PLAN SCALE 1:100

**FOR AUTHORITY APPROVAL**

**AMENDAS PER COUNCIL LETTER 18/2018 AS SUBMITTED**

DATE: 18/03/18

SCALE: 1:100

DATE: 18/03/18

SCALE: 1:100

DATE: 18/03/18

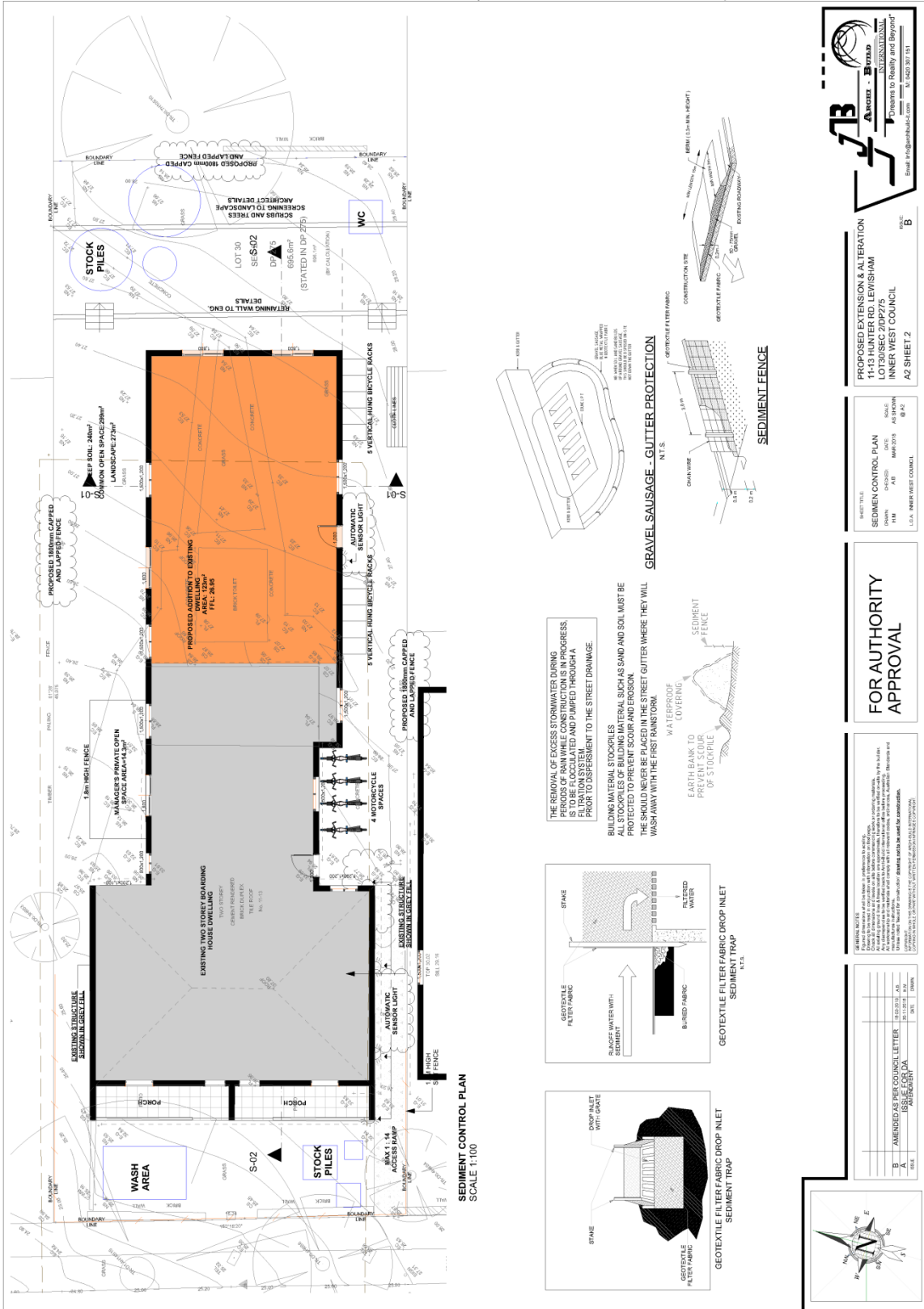
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**PROPOSED EXTENSION & ALTERATION**  
**11-13 HUNTER RD, LEWISHAM**  
**LOT 30/SEC 2/DP275**  
**INNER WEST COUNCIL**  
**A2 SHEET 1**

**7B**  
**ALBERT - BIRD**  
**INTERNATIONAL**  
 Architects to reality and beyond!  
 Email: info@7bird.com.au Tel: 0422 807 111

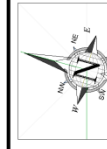
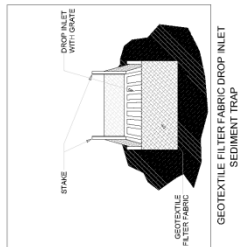
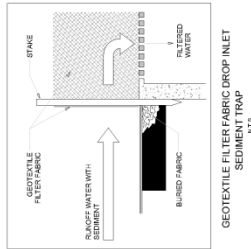


The Owner / Builder Must Read Plans In Conjunction With ABSA And Basix Report



THE REMOVAL OF EXCESS STORMWATER DURING PERIODS OF RAIN WHILE CONSTRUCTION IS IN PROGRESS, IS TO BE FLOCCULATED AND PUMPED THROUGH A FILTER FABRIC TO PREVENT SCOUR AND EROSION PRIOR TO DISPERSMENT TO THE STREET DRAINAGE.

BUILDING MATERIAL STOCKPILES MUST BE PROTECTED TO PREVENT SCOUR AND EROSION. THE SHOULD NEVER BE PLACED IN THE STREET GUTTER WHERE THEY WILL WASH AWAY WITH THE FIRST RAINSTORM.



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BUILDING MATERIAL STOCKPILES MUST BE PROTECTED TO PREVENT SCOUR AND EROSION. THE SHOULD NEVER BE PLACED IN THE STREET GUTTER WHERE THEY WILL WASH AWAY WITH THE FIRST RAINSTORM.

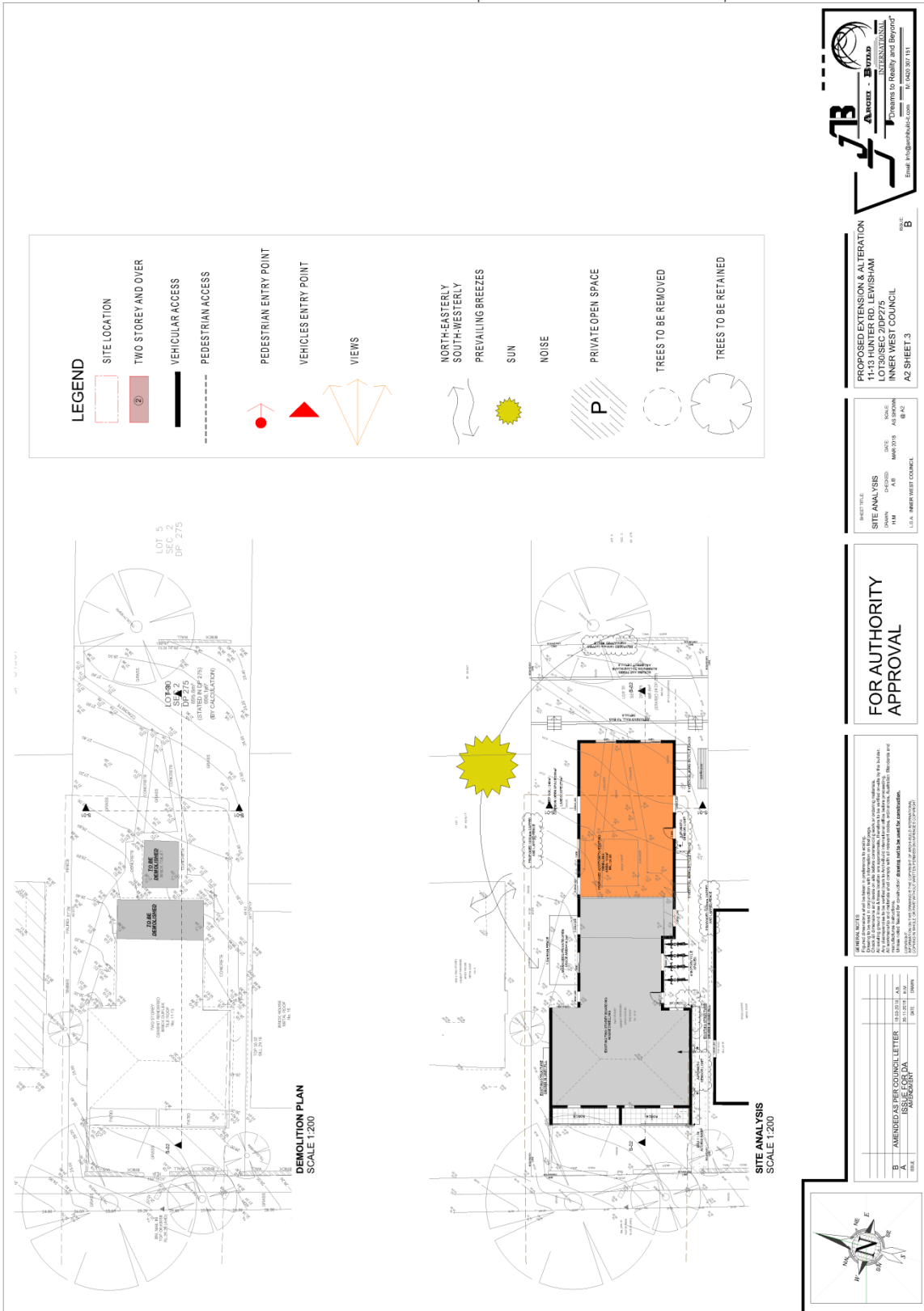
NO.	REVISION	DATE	BY	CHKD.

FOR AUTHORITY APPROVAL

SEDIMENT CONTROL PLAN  
PROJECT: SEDIMENT CONTROL PLAN  
DRAWN: [Name] DATE: [Date]  
SCALE: AS SHOWN  
U.S.A. INNER WEST COUNCIL

PROPOSED EXTENSION & ALTERATION  
11-13 HUNTER RD, LEWISHAM  
LOT 130/SEC 2/DP275  
INNER WEST COUNCIL  
B  
A2 SHEET 2

The Owner / Builder Must Read Plans In Conjunction With ABSA And Basix Report



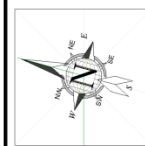
PROPOSED EXTENSION & ALTERATION  
 11-13 HUNTER RD, LEWISHAM  
 LOT 5/SEC 2/DPP2/5  
 INNER WEST COUNCIL  
 AZ SHEET 3

SHEET TITLE: SITE ANALYSIS  
 DRAWN: ABE  
 CHECKED: ABE  
 DATE: MAR 2019  
 SCALE: AS SHOWN  
 PROJECT: 11-13 HUNTER RD, LEWISHAM  
 U.S.A. INNER WEST COUNCIL

FOR AUTHORITY APPROVAL

THE DESIGN NOTED ON THESE PLANS IS SUBJECT TO THE BASIX REPORT. THE BASIX REPORT IS A TECHNICAL REPORT WHICH PROVIDES TECHNICAL INFORMATION TO SUPPORT THE BASIX REPORT. THE BASIX REPORT IS A TECHNICAL REPORT WHICH PROVIDES TECHNICAL INFORMATION TO SUPPORT THE BASIX REPORT. THE BASIX REPORT IS A TECHNICAL REPORT WHICH PROVIDES TECHNICAL INFORMATION TO SUPPORT THE BASIX REPORT.

NO.	REVISION	DATE	BY	CHKD
1	AMENDED AS PER COUNCIL LETTER	23/03/2019	A.B.E.	D.W.A.N.
2	ISSUED FOR DA	24/03/2019	A.B.E.	D.W.A.N.



The Owner / Builder Must Read Plans In Conjunction With ABSA And Basix Report



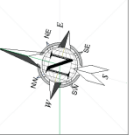
**PROPOSED EXTENSION & ALTERATION**  
 11-13 HUNTER RD, LEWISHAM  
 LOT 13/SEC 2/DP275  
 INNER WEST COUNCIL

**GROUND & FIRST FLOOR PLANS**  
 SHEET TITLE: GROUND & FIRST FLOOR PLANS  
 DRAWN: [Name] DATE: [Date] SCALE: [Scale]  
 CHECKED: [Name] DATE: [Date] SCALE: [Scale]

**FOR AUTHORITY APPROVAL**

**AMENDED AS PER COUNCIL LETTER**  
 DATE: [Date] DRAWN: [Name]

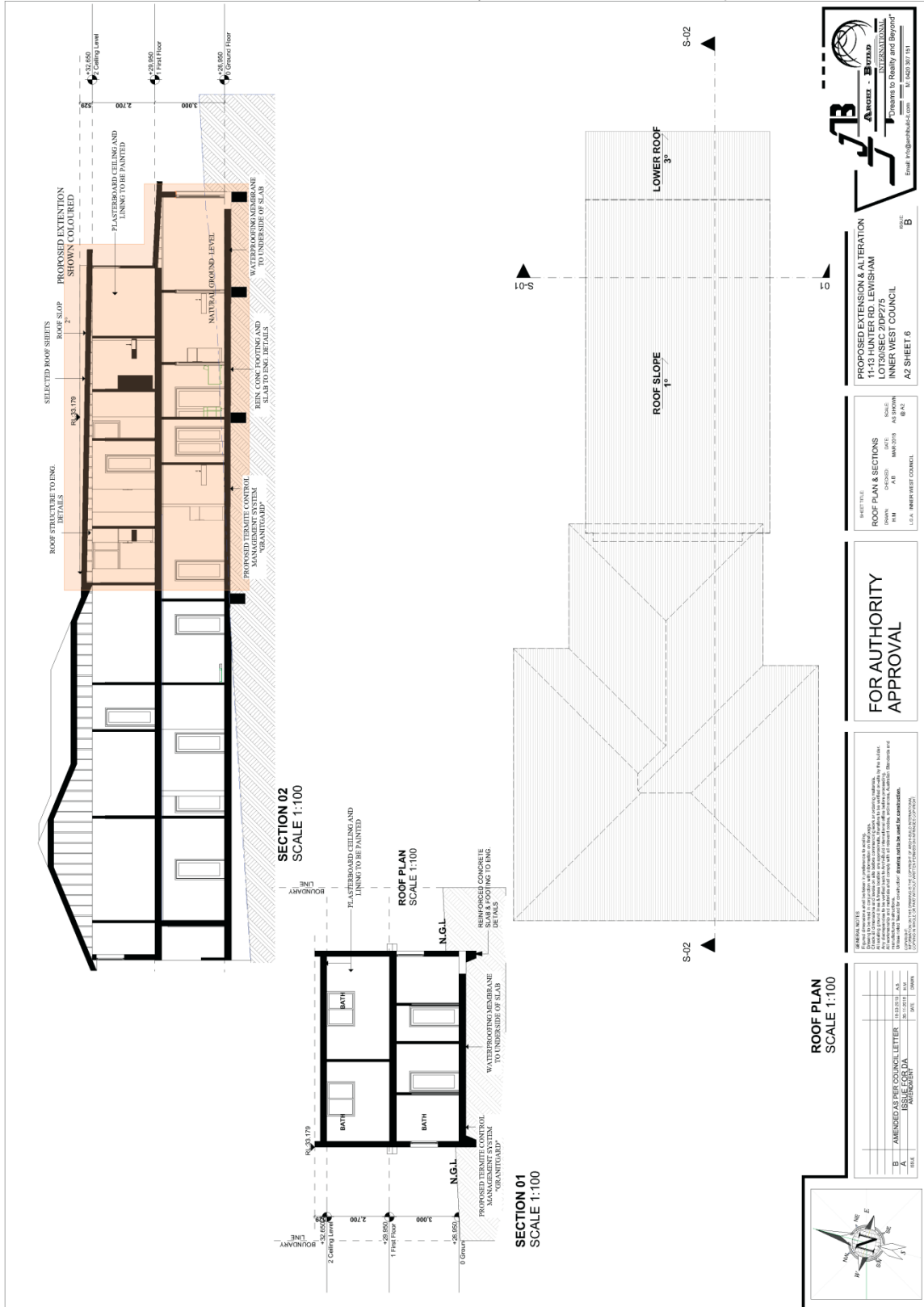
**U.S.A. INNER WEST COUNCIL**



The Owner / Builder Must Read Plans In Conjunction With ABSA And Basix Report



The Owner / Builder Must Read Plans In Conjunction With ABSA And Basix Report



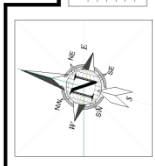
PROPOSED EXTENSION & ALTERATION  
11-13 HUNTER RD, LEWISHAM  
LOT 30/SEC 2/DP275  
INNER WEST COUNCIL  
A2 SHEET 6

SHEET TITLE: ROOF PLAN & SECTIONS  
DRAWN: AFB DATE: MAR 2019  
SCALE: AS SHOWN  
U.S.A. INNER WEST COUNCIL

FOR AUTHORITY APPROVAL

THE DRAWING NOTES are to be read in conjunction with the ABSA and Basix Reports. The drawings are to be used in conjunction with the ABSA and Basix Reports. The drawings are to be used in conjunction with the ABSA and Basix Reports. The drawings are to be used in conjunction with the ABSA and Basix Reports.

NO.	REVISION	DATE	BY	CHKD
1	ISSUED FOR APPROVAL	23/03/2019	AFB	DMW



## Attachment C – Statement of Heritage Significance

### *8.2.28.1 Statement of heritage significance*

The Lewisham Estate Heritage Conservation Area was developed from a series of subdivisions from the early 1880s to 1898, beginning with the Lewisham Estate subdivision prior to 1882.

The HCA is of aesthetic significance because it contains a range of housing typologies (late 19th to early 20th century) including finely crafted Victorian Italianate, Rustic Gothic, Filigree and Regency houses, terraces and villas and later Federation examples, including Federation cottages, terraces and Queen Anne houses in Hunter Street and Toothill Street. Several good examples of houses and residential flat buildings from the Inter-War period can also be found.

The Lewisham Estate HCA is socially significant for demonstrating physical evidence of the late 19th century community through the prominent location of community facilities at the northern end of the area close to New Canterbury Road including the Baptist church (The Boulevarde) and memorial scout hall (The Boulevarde - South end) and 20th century Depression relief work programs (the stone wall to Old Canterbury Road).

The HCA is representative of the range of building types and forms available to the community in the late 19th to early 20th centuries, including the detached villa, mansion and cottage, semi-detached and terrace house.