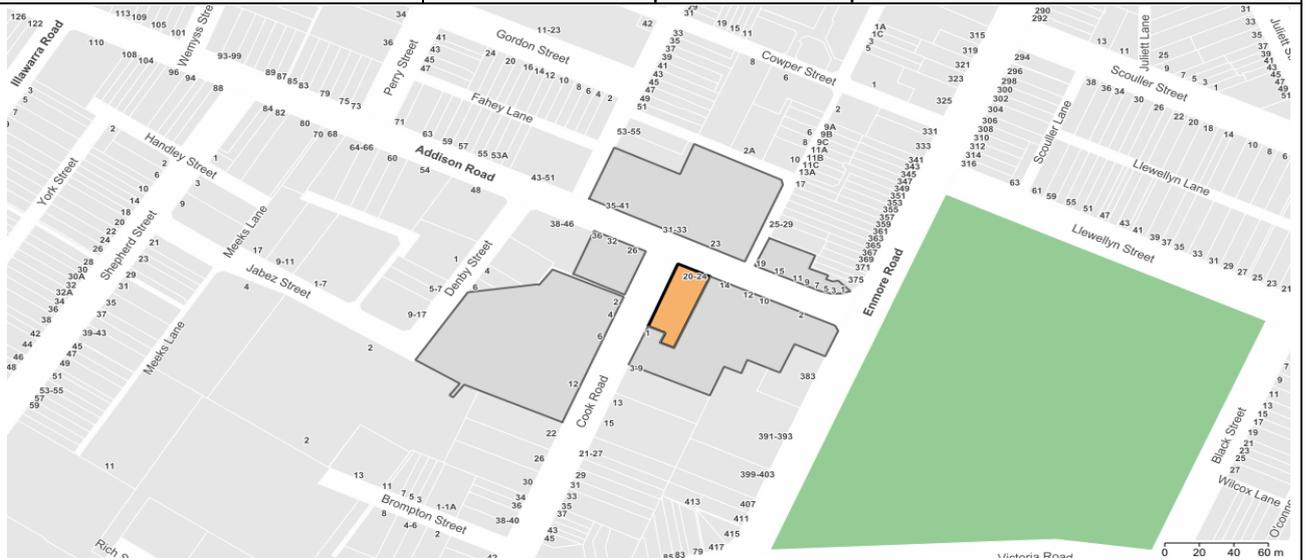




**DEVELOPMENT ASSESSMENT REPORT**

<b>Application No.</b>	DA201900391
<b>Address</b>	20-24 Addison Road, Marrickville
<b>Proposal</b>	To carry out demolition of the existing buildings and construction of a 4 storey mixed-use development comprising 21 dwellings and commercial tenancies, with basement parking.
<b>Date of Lodgement</b>	19 November 2019
<b>Applicant</b>	Architecture And Building Works
<b>Owner</b>	Mlang Property Pty Ltd & Atris Pty Ltd
<b>Number of Submissions</b>	Nil
<b>Value of works</b>	\$8,252,750
<b>Reason for determination at Planning Panel</b>	Development to which <i>State Environmental Planning Policy No 65</i> applies and is 4 storeys in height; and over 10% breach to Development Standard (Height of buildings)
<b>Main Issues</b>	Height variation
<b>Recommendation</b>	Approval with conditions
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Clause 4.6 Exception to Development Standard – Height
<b>Attachment D</b>	Clause 4.6 Exception to Development Standard – FSR



**LOCALITY MAP**

Subject Site		Objectors		↑ N
Notified Area		Supporters		

## 1. Executive Summary

This report is an assessment of the application submitted to Council to carry out demolition of the existing buildings and construction of a 4 storey mixed-use development comprising 21 dwellings and commercial tenancies, with basement parking at 20-24 Addison Road, Marrickville.

The main issues that have arisen from the application include:

- The development exceeds the maximum building height by approximately 22.1% (3.1m) under Clause 4.3 of *Marrickville Local Environmental Plan 2011* (MLEP 2011), which comprises a lift overrun and rooftop structures; and
- The development exceeds the maximum floor space ratio by approximately 1.2% (21sqm) under Clause 4.4 of *Marrickville Local Environmental Plan 2011* (MLEP 2011).

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

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

## 2. Proposal

The proposal seeks consent to carry out demolition of the existing buildings and construction of a 4 storey mixed-use development comprising 21 dwellings and commercial tenancies, with basement parking.

Details of the proposal are as follows:

- Demolition of all existing structures;
- Construction of a 4 storey, mixed-use development comprising 21 dwellings and commercial tenancies:
  - **Basement:** 19 car parking spaces (including 5 accessible spaces), 7 bicycle parking spaces, passenger lift providing access to all levels above, common stairs and apartment storage;
  - **Ground floor:** 2 commercial tenancies addressing Addison Road and Cook Road, 4 residential car parking spaces (including 1 accessible), 2 commercial parking spaces (including 1 accessible), 1 vehicle loading bay, 7 bicycle parking spaces, 1 accessible toilet, residential lobby, waste facilities, building services, lift and stairwell providing access throughout the building;
  - **Level 1:** 7 residential apartments, including 2 x 1 bedroom apartments and 5 x 2 bedroom apartments, landscaped podium communal open space, lift access, stairs, lobby and building services;

- **Level 2:** 7 residential apartments, including 3 x 1 bedroom apartments, 3 x 2 bedroom apartments and 1 x 3 bedroom apartment, lift access, stairs, lobby and building services;
  - **Level 3:** 7 residential apartments, including 3 x 1 bedroom apartments, 3 x 2 bedroom apartments and 1 x 3 bedroom apartment, lift access, stairs, lobby and building services; and
  - **Roof-top:** Communal open space, lift access and overrun, stairs and building services.
- Landscaping and public domain works, including new street tree planting.

Note: The use and fitout of the commercial floor space, including any associated signage, will be subject to future applications. A condition to this effect is included in the recommendation.

### 3. Site Description

The subject site is located on the southern side of Addison Road and is on a corner bounded also by Cook Road. The site consists of two allotments with a total area of approximately 938sqm. It is legally described as Lot 2/ DP519308 and Lot A/ DP319814 and known as 20-24 Addison Road, Marrickville.

The site has a frontage to Addison Road of 20.9m (approx.) and a secondary frontage to Cook Road of 49.3m (approx.). The site is burdened by a sewerage pipe/easement and associated pit, which runs west to east and close to its rear.

The site supports a series of 1 to 2 storey warehouse buildings with at-grade parking. The adjoining property directly south of the site supports an electrical substation. The adjoining property directly east of the site is a 2 storey light industrial building.

The immediate locality is currently transitioning from predominantly light industrial and warehouses uses to a dense, mixed-use precinct with commercial uses at street level and residential dwellings above. Sites directly to the north and further west of the subject site have been redeveloped to accommodate mixed use developments.

### 4. Background

#### 4(a) Site history

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

**Subject site:**

Application	Proposal	Decision & Date
PDA201900110	Demolition of the existing buildings and construction of 4 storey shop top housing development comprising 21 dwellings and commercial tenancies, with basement parking.	Advice issued on 29 August 2019.  The subject proposal generally adopts the advice provided.

## Surrounding properties:

Application & Address	Proposal	Decision & Date
DA201300025 23 Addison Road Marrickville	To demolish the existing improvements and erect a six storey mixed use development containing a ground floor commercial/retail tenancy and 59 car spaces with residential accommodation above consisting of 21 x 1 bedroom, 33 x 2 bedroom and 6 x 3 bedroom dwellings and widen Fotheringham Street and Stevens Lane.	Deferred Commencement approval.  The consent was activated on 18 March 2015.
DA201300345 31-33 Addison Road Marrickville	To demolish existing improvements and construct a 5 storey mixed use development containing a ground floor commercial premises with 24 residential apartments over basement parking for 24 vehicles including strata title subdivision and land dedication.	Deferred Commencement approval.  The consent was activated on 02 April 2015.

## 4(b) Application history

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

Date	Discussion / Letter / Additional Information
19 November 2019	Application lodged.
21 November to 10 December 2019	Application notified.
10 February 2020	Request for information (RFI) letter issued to the applicant requiring the following amendments/information: <ul style="list-style-type: none"> <li>a) Clarification regarding gross floor area (GFA) calculations, including the inclusion of “breezeways”;</li> <li>b) Improvements to the ground floor layout including to the commercial spaces to improve activation. In addition, refinements of the proposed lobby and relocation of the building services was requested;</li> <li>c) Provision of additional bicycle parking spaces;</li> <li>d) Revision to the acoustic report to reference the Marrickville Development Control Plan 2011 (MDCP 2011);</li> <li>e) Addressing of the acid sulfate soils provisions of the <i>Marrickville Local Environmental Plan 2011</i> (MLEP 2011);</li> <li>f) Provision of a Remedial Action Plan (RAP) to satisfy the requirements of <i>State Environmental Planning Policy No. 55—Remediation of Land</i> (SEPP 55); and</li> <li>g) Correction to a plan naming discrepancy.</li> </ul>
27 February 2020	The applicant submitted amended plans and additional information to address the above concerns raised by Council on 10 February 2020.  The above package forms the basis for the current development application and

assessment below. It generally addresses the concerns previously raised.

## 5. Assessment

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

### 5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy No. 55—Remediation of Land*;
- *State Environmental Planning Policy No. 65—Design Quality of Residential Apartment Development*; and
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

The following provides further discussion of the relevant issues:

#### 5(a)(i) *State Environmental Planning Policy No 55—Remediation of Land*

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

The site has been used in the past for activities which could have potentially contaminated the site. It is considered that the site will require remediation in accordance with *SEPP 55*.

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

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

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

A statement from a qualified Architect was submitted with the application verifying that they designed, or directed the design of, the development. The statement also provides an

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

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

Apartment Design Guide

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

The following provides further discussion of the relevant issues:

Communal and Open Space

The ADG prescribes the following requirements for communal open space (COS):

- COS has a minimum area equal to 25% (234sqm) of the site.
- Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).

**Comment:** The development complies with the above requirements, as 32.8% (308sqm) of COS is provided and the minimum direct sunlight provision is met.

Deep Soil Zones

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

Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)
Less than 650m <sup>2</sup>	-	7% (65.6sqm)
650m <sup>2</sup> - 1,500m <sup>2</sup>	3m	
Greater than 1,500m <sup>2</sup>	6m	
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	

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

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

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

**Comment:** The development complies with the above requirements, as 7% (66sqm) of deep soil is provided.

Visual Privacy/Building Separation

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

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

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

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

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

Requirement	Proposed
<ul style="list-style-type: none"> <li>6 metres (Habitable rooms and balconies)</li> <li>3 metres (Non-habitable rooms)</li> </ul>	<p><b><u>Ground level</u></b></p> <p><i>East:</i></p> <ul style="list-style-type: none"> <li>0m blank boundary wall provided along the eastern boundary.</li> <li>Deep soil provided toward the rear.</li> </ul> <p><i>North &amp; West:</i></p> <ul style="list-style-type: none"> <li>N/A – as boundary adjoins roads.</li> </ul> <p><i>South</i></p> <ul style="list-style-type: none"> <li>6.78m to rear boundary adjoining industrial buildings in an IN2 Light Industrial zone.</li> <li>Deep soil at rear adjacent to substation.</li> </ul> <p><b><u>Level 1</u></b></p> <p><i>East:</i></p> <ul style="list-style-type: none"> <li>0m blank boundary wall provided along eastern side, except for a central void, which includes a COS podium; which allows for improved levels of light and ventilation access, particularly for the south facing units; and</li> <li>Adjoining building is a 2 storey industrial building, built predominately to the boundary.</li> </ul> <p><i>North &amp; West:</i></p> <ul style="list-style-type: none"> <li>N/A – as boundary adjoins roads.</li> </ul>

	<p><i>South</i></p> <ul style="list-style-type: none"> <li>• 6.78m to rear boundary adjoining industrial buildings in an IN2 Light Industrial zone. Rooms on this side of the building are predominately bedrooms and bathrooms, except for a terrace, servicing a living area.</li> </ul> <p><b><u>Level 2</u></b></p> <p><i>East:</i></p> <ul style="list-style-type: none"> <li>• 0m blank boundary wall provided along the eastern side, except for a central void, which allows for improved light and ventilation access for the south facing units; and</li> <li>• Adjoining building is a 2 storey industrial building, built predominately to the boundary.</li> </ul> <p><i>North &amp; West:</i></p> <ul style="list-style-type: none"> <li>• N/A – as boundary adjoins roads.</li> </ul> <p><i>South</i></p> <ul style="list-style-type: none"> <li>• 6.78m to rear boundary adjoining industrial buildings in an IN2 Light Industrial zone. Rooms on this side of the building are predominately bedrooms and bathrooms, except for a terrace, servicing a living area, which is setback an additional 950mm.</li> </ul> <p><b><u>Level 3</u></b></p> <p><i>East:</i></p> <ul style="list-style-type: none"> <li>• 0m blank boundary wall provided along the eastern side, except for a central void, which allows for improved light and ventilation access for the south facing units.</li> </ul> <p><i>North &amp; West:</i></p> <ul style="list-style-type: none"> <li>• N/A – as boundary adjoins roads.</li> </ul> <p><i>South</i></p> <ul style="list-style-type: none"> <li>• 6.78m to rear boundary adjoining industrial buildings in an IN2 Light Industrial zone. Rooms on this side of the building are predominately bedrooms and bathrooms, except for a terrace, servicing a living area, which is setback an additional 950mm.</li> </ul> <p><b><u>Level 4</u></b></p> <ul style="list-style-type: none"> <li>• Includes COS and landscaping only, which is set back from the building edges.</li> </ul>
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### Pedestrian access and entries

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

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

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

- The proposed entry location relates to the street and is accessed directly from the existing pedestrian network;
- The proposed entry is clearly identifiable from the public domain; and
- Level access to the entry is provided from the street and ramping is setback and contained within the site.

### Vehicle access

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

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

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

- The proposed vehicle access is located behind the building line; and
- The proposed vehicle access is compatible with the overall façade of the building in terms of its colour and materiality.

### Bicycle and Car Parking

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

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

**Comment:** The subject site is not located within 800 metres of a railway station or light rail stop. In this case, the parking rates under the MDCP 2011 are applicable to the development. This matter is addressed under Section 5(c) below.

### Solar and Daylight Access

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

- Living rooms and private open spaces of at least 70% (15) of apartments in a building receive a minimum of 2 hours direct sunlight between 9.00am and 3.00pm at mid-winter.

- A maximum of 15% (3) of apartments in a building receive no direct sunlight between 9.00am and 3.00pm at mid-winter.

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

- The living rooms and POS areas of 70% (15) apartments receive a minimum of 2 hours direct sunlight between 9.00am and 3.00pm at mid-winter.
- A maximum of 15% (3) apartments receive no direct sunlight between 9.00am and 3.00pm at mid-winter.

Natural Ventilation

The ADG prescribes the following requirements for natural ventilation:

- At least 60% (13) of apartments are naturally cross ventilated in the first 9 storeys of the building. Apartments at 10 storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.
- Overall depth of a cross-over or cross-through apartment does not exceed 18 metres, measured glass line to glass line.

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

- At least 15 apartments are naturally cross-ventilated;
- The overall depths of cross-over or cross-through apartments do not exceed 18 metres, measured glass line to glass line.

Ceiling Heights

The ADG prescribes the following minimum ceiling heights:

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

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

- All habitable rooms have minimum floor to ceiling heights of 2.7 metres.
- All non-habitable rooms have floor to ceiling heights of at least 2.4 metres or greater.
- The ground floor commercial tenancies have minimum floor to ceiling heights of at least 3.3m.

Apartment Size

The ADG prescribes the following minimum apartment sizes:

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

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

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

Apartment Layout

The ADG prescribes the following requirements for apartment layout requirements:

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

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

Private Open Space and Balconies

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

Dwelling Type	Minimum Area	Minimum Depth
Studio apartments	4m <sup>2</sup>	-
1 Bedroom apartments	8m <sup>2</sup>	2 metres
2 Bedroom apartments	10m <sup>2</sup>	2 metres
3+ Bedroom apartments	12m <sup>2</sup>	2.4 metres

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

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

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

Common Circulation and Spaces

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

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

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

- The maximum number of apartments off a circulation core on a single level is 7.

Storage

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

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

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

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

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

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

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

The site is zoned B4 – Mixed Use under the *Marrickville Local Environment Plan 2011* (MLEP 2011). The proposed uses, being **shop top housing** and **shops** are permissible with consent in the B4 – Mixed Use zone.

The application was assessed against the following relevant clauses of the MLEP 2011:

Control	Proposed	Compliance
Clause 1.2 Aims of Plan	The proposal is consistent with the relevant aims of the plan as follows: <ul style="list-style-type: none"> <li>The design of the proposal is considered to be of a high standard and has a satisfactory impact on the private and public domain.</li> </ul>	Yes
Clause 2.3 Zone objectives and Land Use Table  <i>B4 Mixed Use</i>	The proposal satisfies the clause as follows: <ul style="list-style-type: none"> <li>The fit-out and use of each respective <i>shop</i> will be subject to future applications; and</li> <li>The proposal is consistent with the relevant objectives of the zone, as it provides a mixture of compatible land uses and assists to support renewal of the area.</li> </ul>	Yes
Clause 2.7 Demolition requires development consent	The proposal satisfies the clause as follows: <ul style="list-style-type: none"> <li>Demolition works are proposed, which are permissible with consent; and</li> <li>Standard conditions are recommended to manage impacts which may arise during demolition.</li> </ul>	Yes, subject to conditions
Clause 4.3 Height of building (max. 14m)	The application proposes a maximum building height of 17.1m, which represents an 22.1% variation to the development standard. See Section 5(a)(iv)(i) below for further discussion.	<b>No</b> – refer to discussion below.
Clause 4.4 Floor space ratio (max. 1.75: 1 (1,641.5m <sup>2</sup> ))	The application proposes a maximum floor space ratio of 1.77:1 (1,662sqm), which represents a 1.2% variation to the development standard. See Section 5(a)(iv)(i) below for further discussion.	<b>No</b> – refer to discussion below
Clause 4.5 Calculation of floor space ratio and site area	The site area and floor space ratio for the proposal has been calculated in accordance with the clause.	Yes
Clause 4.6 Exceptions to development standards	The applicant has submitted a variation request in accordance with Clause 4.6 to vary Clause 4.3 Height of building and Clause 4.4 Floor space ratio of the MLEP 2011.	Refer to discussion under Section 5)(a)(iv)(i) below.
Clause 6.2 Earthworks	The proposal includes excavation, foundation works and basement construction.  A geotechnical report was submitted with the application outlining that the site is suitable for the proposed works and the proposal is unlikely to have a detrimental impact on environmental functions and processes, existing drainage patterns, or soil stability; subject to the proposal’s design and certification by qualified persons. Standard conditions of consent are	Yes, subject to conditions.

	recommended to ensure this occurs.  The application was also referred to Water NSW for assessment and General Terms of Approval (GTAs) to manage groundwater impacts have been provided and are included in the recommendation.	
Clause 6.5 Development in areas subject to aircraft noise	The site is located within the ANEF 25-30 contour, and as such an Acoustic Report was submitted with the application. The proposal is capable of satisfying this clause as follows: <ul style="list-style-type: none"> <li>A condition has been included in the development consent to ensure that the proposal will meet the relevant requirements of Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2015, thereby ensuring the proposal's compliance with the relevant provisions Cl. 6.5 MLEP 2011 and Part 2.6 of the MDCP 2011, respectively.</li> </ul>	Yes, subject to condition.
Clause 6.6 Airspace Operations	The proposed development will not penetrate the Limitation or Operations Services (OLS) at 51m (AHD), as the proposal has a maximum height of 24.9m (AHD).	Yes

(i) Clause 4.6 – Exceptions to Development Standards

As outlined in table above, the proposal results in a breach of the following MLEP 2011 development standards:

- Clause 4.3 - Height of buildings; and
- Clause 4.4 - Floor space ratio.

Clause 4.3 – Height of buildings

The applicant seeks a variation to the Height of building development standard under Clause 4.3 of the MLEP 2011 by a maximum of 22.1% (3.1m), which consists of a lift and stairwell providing access to the rooftop COS and landscaped area. In addition, roof top structures to provide weather protection for the space also breaches the standard.

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

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

A written request has been submitted to Council in accordance with Clause 4.6(3) of the MLEP 2011, justifying the proposed contravention of the development standard, which is reproduced as follows:

- *The assessment above and shown throughout the supporting documentation demonstrates that the resultant environmental impacts of the proposal will be satisfactory.*
- *The height breach relates to the roof level and the stair and lift access to this level. The roof will be solely used as outdoor communal open space for the residents, and will be extensively landscaped. There is no floor area within the height breach. The reason for providing the communal open space at roof level is because of the improved solar access at this level, given the orientation of the site and the potential for future development on the adjoining eastern property.*
- *The breach by the roof level will not be read from street level as the roof terrace will be setback from both street boundaries, and the lift overrun is centrally located.*
- *It is important to reiterate that the amenity of the site and its surrounds are not additionally impacted by the elements above the height control. The proposal is keeping with the building envelope controls applicable to a B4 Mixed Use Zone along the Addison Road corridor. The height variation overall has a negligible impact in terms of overshadowing or contributing to bulk and scale of the development given the limited extent of the elements exceeding the height.*

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

The objectives of subject site's B4 Mixed Use zoning contained within the MLEP 2011 are as follows:

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

It is considered the development is in the public interest because it is consistent with the relevant objectives of the B4 Mixed Use zoning, in accordance with Clause 4.6(4)(a)(ii) of the MLEP 2011 for the following reasons:

- The proposal provides for a mixture of permissible and compatible land uses.

- The proposal integrates suitable commercial and residential uses and given the subject site's mixed use context, whilst encouraging walking and cycling through the provision of an upgraded public domain and bicycle parking.
- The proposal will assist with the renewal of the Victoria Road Precinct through the provision of future employment uses, whilst displaying good design.
- The proposal provides for sufficient amount of commercial floor space on the ground floor.

The objectives of the Height of Buildings standard contained within the MLEP 2011 are as follows:

- (a) to establish the maximum height of buildings,*
- (b) to ensure building height is consistent with the desired future character of an area,*
- (c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.*

It is considered the development is in the public interest because it is consistent with the objectives of the development standard, in accordance with Clause 4.6(4)(a)(ii) of the MLEP 2011 for the following reasons:

- As demonstrated further within this report, the proposed building height is consistent with the desired future character of the zone and precinct,
- Given the site's orientation and the locations and setbacks of the proposed built-form and massing, surrounding buildings and public areas will still receive satisfactory exposure to the sky and sunlight; and
- The proposed building height provides an appropriate transition in built form and intensity of land use to the IN2 Light Industrial zone directly south of the subject site.

The contravention of the development standard does not raise any matter of significance for State and Regional Environmental Planning. The concurrence of the Planning Secretary may be assumed for matters dealt with by the IWLLPP.

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

Clause 4.4 – Floor space ratio

The applicant seeks a variation to the Clause 4.4 – Floor Space Ratio development standard of the MLEP 2011 by 1.2% or 21sqm, which has resulted from a refinement of the proposal since its lodgement due to concerns raised by Council with respect to insufficient ground floor activation and the presentation of the residential lobby.

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

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

A written request has been submitted to Council in accordance with Clause 4.6(3) of the applicable local environmental plan justifying the proposed contravention of the development standard which is reproduced below:

- *The proposal does not strictly comply with the maximum floor space ratio controls as prescribed by Clause 4.4 of the MLEP11. Having evaluated the likely effects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the MLEP11 are satisfied as the breach to the controls does not create any adverse environmental impacts.*
- *Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the MLEP11 to vary this development control is appropriate in this instance.*
- *Based on the above, it is sensible to conclude that strict compliance with the maximum floor space ratio is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.*

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

The objectives of subject site's B4 Mixed Use zoning contained within the MLEP 2011 are as follows:

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

- *To promote commercial uses by limiting housing.*
- *To enable a purpose built dwelling house to be used in certain circumstances as a dwelling house.*
- *To constrain parking and restrict car use.*

It is considered the development is in the public interest because it is consistent with the relevant objectives of the B4 Mixed Use zoning, in accordance with Clause 4.6(4)(a)(ii) of the MLEP 2011, which has been addressed under the Height of buildings variation earlier within this report.

The objectives of the LEP Floor space ratio standard contained within the MLEP 2011 are as follows:

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

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

- As demonstrated within this report, the bulk and scale is consistent with the desired future character of the area; and
- Given the site's context and orientation and the locations and setbacks of the proposed built form and massing, the proposed development will have a satisfactory environmental impact on adjoining properties and the public domain.

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

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

## 5(b) Draft Environmental Planning Instruments

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

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

#### B4 Mixed Use objectives

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

- *To support the renewal of specific areas by providing for a broad range of services and employment uses without adversely impacting on the role or viability of nearby centres.*
- *To facilitate a high standard of urban design and pedestrian amenity that creates open and lively facades, contributes to achieving a sense of place for the local community and caters for the needs of all ages and abilities.*

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

- The provision of the ground floor commercial spaces and residential apartments above, will support the renewal of the surrounds; and
- As detailed within this report, the proposal achieves a high standard of urban design.

#### Clause 4.3 Height of buildings

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

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

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

- As detailed throughout this report, the proposal has acceptable amenity impacts on the built and natural environments and is considered compatible with the desired future character of the precinct.

#### Clause 4.4 Floor space ratio

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

- (a) to appropriately regulate the density of development, built form and land use intensity based on the capacity and location of existing and planned infrastructure,*
- (b) to ensure that development is compatible with the desired future character,*
- (c) to provide an appropriate transition between development of different densities,*
- (d) to minimise adverse environmental and amenity impacts on adjoining properties, the public domain, heritage conservation areas and heritage items,*
- (e) to provide a suitable balance between landscaping, open space, and built form to increase the tree canopy and to protect the use and enjoyment of private properties and public domain.*

**Comment:** As detailed throughout this assessment report, it is considered the development will have an acceptable impact on the built and natural environments and provides an appropriate transition to surrounding sites, whilst achieving the desired future character of the B4 Mixed Use zone.

#### Clause 6.5 - Stormwater management

The following additional relevant provisions of Clause 6.5 Stormwater management:

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

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

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

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

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

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

- The building is considered shop top housing, as it includes commercial floor space on the ground which, subject to a future application, can readily be used for the purposes of a shop or food and drink premises, which will provide an active street frontage. In addition, residential accommodation in the form of apartments is provided directly above;
- The building will have an active street frontage facilitated by large commercial floor plates, which occupy nearly the full extent of the primary frontage to Addison Road and wrap around the site's corner along Cook Road. In addition, the commercial floor space is to be serviced by expansive glazing; and
- The building is compatible with the desired future character of the area and nearby shop top housing developments in terms of its bulk, form and scale, which has been addressed within this report.

#### Clause 6.19 Design Excellence

The following additional relevant provisions of Clause 6.19 Design Excellence:

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

- (x) pedestrian, cycle, vehicular and service access and circulation requirements, including the permeability of any pedestrian network,
  - (xi) impact on, and any proposed improvements to, the public domain,
  - (xii) appropriate ground level public domain interfaces,
  - (xiii) excellence and integration of landscape design.
- (5) In this clause: applicable Development Control Plan means the Inner West Comprehensive Development Control Plan for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill; Leichhardt Development Control Plan 2013; or Marrickville Development Control Plan 2011 as relevant and in force on the commencement of this Plan.

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

### 5(c) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Marrickville Development Control Plan 2011 (MDCP 2011):

Control	Proposed	Compliance
<i>Part 2 – Generic Provisions</i>		
Part 2.1 – Urban Design	<p>The proposal has been designed having regard to the 12 relevant urban design principles outlined in Part 2.1 as follows:</p> <ul style="list-style-type: none"> <li>• The proposal does not impact the definition between the public and private domain and is appropriate for the character of the locality given its form, massing, siting and detailing; and</li> <li>• The proposal enhances the existing character of the streetscape.</li> </ul>	Yes
Part 2.3 – Site and Context Analysis	The applicant submitted a site and context analysis as part of the application that satisfies the controls contained in Part 2.3 of MDCP 2011.	Yes
Part 2.5 – Equity of Access and Mobility	<p>The proposal satisfies the access and mobility controls contained in MDCP 2011 in that:</p> <p><i>Commercial</i></p> <ul style="list-style-type: none"> <li>• Appropriate access is provided for all persons through the principal entrance to the premises;</li> <li>• A Continuous Accessible Path of Travel (CAPT) to and within the subject</li> </ul>	Yes, subject to conditions.

	<p>premises from the principal entry (Addison Road) is provided, which allows a person with a disability to gain access to all areas;</p> <ul style="list-style-type: none"> <li>• Accessible parking has been provided;</li> <li>• An accessible toilet is provided; and</li> <li>• Despite the above, the requirements of MDCP 2011 are effectively superseded by the introduction of the Premises Standards. An assessment of whether or not these aspects of the proposal fully comply with the requirements of relevant Australian Standards and the Premises Standards has not been undertaken as part of this assessment. That assessment would form part of the assessment under the Premises Standards at the Construction Certificate stage of any proposal, with recommended conditions included to ensure this occurs.</li> </ul> <p><i>Residential</i></p> <ul style="list-style-type: none"> <li>• A minimum of 4 adaptable dwellings have been provided in accordance with the requirement;</li> <li>• A minimum of 6 accessible parking spaces have been provided in accordance with the requirement;</li> <li>• Appropriate access is provided for all persons through the principal entrance via the provision ramping, pathways and lift access;</li> <li>• All common areas/facilities are accessible; and</li> <li>• Conditions of consent are recommended to ensure the above items are secured.</li> </ul>	
<p>Part 2.6 – Acoustic and Visual Privacy</p>	<p><i>Residential</i></p> <p>The proposal will have a satisfactory impact on visual and acoustic levels of the surrounds in accordance with Part 2.6 as follows:</p> <ul style="list-style-type: none"> <li>• The proposal is predominately built to each of the site's respective side</li> </ul>	<p>Yes, subject to conditions.</p>

	<p>boundaries; treated by blank walls, with an open courtyard in its middle portion to facilitate improved light and cross ventilation for the apartments. Therefore, views or overlooking across side boundaries will not be facilitated;</p> <ul style="list-style-type: none"> <li>• A satisfactory separation distance of approximately 12.6m is proposed between apartments which are orientated internally, thereby ensuring sufficient internal levels of privacy;</li> <li>• The proposed balconies overlook the public domain (Addison Road and Cook Road); and</li> <li>• Properties located directly to the rear of the site on Cook Road are zoned for industrial purposes (IN2 Light Industrial) and appear to be currently being used as such. In addition, the upper levels of at the building's rear are separated from the property boundary by an existing substation and proposed deep soil on the ground floor, allowing for greater setbacks.</li> </ul> <p><i>Commercial</i></p> <ul style="list-style-type: none"> <li>• The use of the ground floor commercial floor space will be subject to separate applications; and</li> <li>• It is considered the proposal as presented will not prevent the commercial floor space from being appropriately acoustically treated as required, depending on its intended use/s.</li> </ul>	
<p>Part 2.7 – Solar Access and Overshadowing</p>	<p>The proposal will have a satisfactory impact in terms of solar access and overshadowing on the surrounds in accordance with Part 2.7 as follows:</p> <ul style="list-style-type: none"> <li>• Given the site's context, which consists of primarily industrial uses to its south and south-east, the shadow diagrams submitted with the application demonstrate that the proposal will not affect any existing residential properties;</li> </ul>	<p>Yes</p>

	<ul style="list-style-type: none"> <li>The development will not result in adverse amenity impacts as a result of overshadowing; and</li> <li>The building is sited and designed to maximise direct solar access to north-facing living areas and outdoor recreation areas.</li> </ul>	
<p>Part 2.8 – Social Impact Assessment</p>	<p>A social impact comment was submitted in accordance with the provisions of Part 2.8.</p>	<p>Yes</p>
<p>Part 2.9 – Community Safety</p>	<p>The development is reasonable having regard to community safety for the following reasons:</p> <ul style="list-style-type: none"> <li>The development has been designed to overlook the public domain and communal open spaces;</li> <li>A secured access door to the lobby is provided for the residential component of the development;</li> <li>Separate entrances have been provided for the residential and commercial parts of the development;</li> <li>Glazing is provided for the majority of the commercial tenancies ground floor street facing elevations, thereby allowing for passive surveillance of the street; and</li> <li>A condition is included in the recommendation requiring the entrance to the premises to be well lit and to comply with the relevant Australian Standard to avoid excessive light spillage.</li> </ul> <p>Having regard for the above, the development satisfies Part 2.9 of MDCP 2011.</p>	<p>Yes, subject to condition.</p>
<p>Part 2.10 – Parking</p> <p><u>Residential parking</u></p> <ul style="list-style-type: none"> <li>19 car spaces required (incl. 6 accessible);</li> <li>3 visitor car parking spaces (incl. 1</li> </ul>	<p><i>Residential</i></p> <p>The proposal complies with the residential parking requirements as follows:</p> <ul style="list-style-type: none"> <li>20 car parking spaces proposed (incl. 6 accessible);</li> <li>3 visitor car parking spaces (incl. 1 accessible space);</li> </ul>	<p>Yes, subject to condition.</p>

<p>accessible);</p> <ul style="list-style-type: none"> <li>• 13 bicycle spaces required; and</li> <li>• 1 motorcycle space (5% of car parking) required.</li> </ul> <p><u>Commercial parking</u></p> <ul style="list-style-type: none"> <li>• 2 car spaces required (incl. 1 accessible);</li> <li>• 2 bicycle spaces; and</li> <li>• 1 vehicle loading space.</li> </ul>	<ul style="list-style-type: none"> <li>• 13 bicycle parking spaces; and</li> <li>• 1 motorcycle space.</li> </ul> <p><i>Commercial</i></p> <p>The proposal complies with the commercial parking requirements as follows:</p> <ul style="list-style-type: none"> <li>• 2 car parking spaces (incl. 1 accessible);</li> <li>• 1 bicycle space; and</li> <li>• 1 vehicle loading bay.</li> </ul> <p>A condition is included in the recommendation requiring an additional bicycle parking space to be provided for the commercial component.</p>	
<p>Part 2.16 – Energy Efficiency</p>	<p><i>Commercial</i></p> <p>The proposal complies with the commercial energy efficiency requirements of Part 2.16 as follows:</p> <ul style="list-style-type: none"> <li>• The application was accompanied by a report outlining that the proposed development will comply with Part J of the Building Code of Australia (BCA), which will be ensured via recommended consent condition.</li> </ul>	<p>Yes, subject to condition.</p>
<p>Part 2.17 Water Sensitive Urban Design</p>	<p>The proposal is capable of complying with the water sensitive urban design provisions of Part 2.17 as follows:</p> <ul style="list-style-type: none"> <li>• The residential component of the development has demonstrated compliance with the requirements under the BASIX SEPP (refer to discussion above); and</li> <li>• Standard conditions are recommended to ensure the adequate treatment and disposal of stormwater in accordance with Part 2.17.</li> </ul>	<p>Yes, subject to conditions.</p>
<p>Part 2.21 – Site Facilities and Waste Management</p>	<p>The proposal satisfies the relevant provisions of Part 2.21 as follows:</p> <ul style="list-style-type: none"> <li>• The application was accompanied by a waste management plan in accordance</li> </ul>	<p>Yes, subject to condition.</p>

	<p>with the Part; and</p> <ul style="list-style-type: none"> <li>Standard conditions are recommended to ensure the appropriate management of waste during the construction of the proposal.</li> </ul>	
Part 2.24 – Contaminated Land	Refer to SEPP discussion above.	Yes
Part 2.25 – Stormwater Management	<p>The development is capable of satisfying the relevant provisions of Part 2.25 as follows:</p> <ul style="list-style-type: none"> <li>Standard conditions are recommended to ensure the appropriate management of stormwater.</li> </ul>	Yes, subject to conditions.
<i>Part 3 – Subdivision, Amalgamation and Movement Networks</i>		
<p>Part 3.2.1 – General Torrens title subdivision and amalgamation controls</p> <p><u>Multiple allotments</u></p> <p><i>Where a new development relates to land that extends over two or more existing lots, a condition of any approval will require the person acting on the consent to consolidate the allotments to create one lot under one title and be registered at the NSW Department of Lands before the issue of a Construction Certificate.</i></p>	<p>Subdivision, including strata or stratum, is not proposed as part of the application.</p> <p>However, as the proposal extends of multiple allotments, a condition of consent has been included in the recommendation requiring the consolidation of the site into one allotment prior to the issue of a Construction Certificate (CC).</p>	Yes, subject to condition.
<i>Part 5 – Commercial and Mixed Use</i>		
Part 5.1.1 – General Objectives	<p>The proposal meets the relevant objectives of Part 5.1.1 as follows:</p> <ul style="list-style-type: none"> <li>The proposed development responds to its context and is compatible with the surrounding built environment and public domain;</li> <li>The proposal achieves a high quality of urban design;</li> <li>The proposal assists in revitalising the surrounding precinct; and</li> <li>The proposal promotes an accessible and safe environment.</li> </ul>	Yes

<p>Part 5.1.3 – Type of commercial and mixed use development</p>	<p>The subject proposal is identified as ‘Infill Development’ under Part 5.1.3.4.</p>	<p>Noted</p>
<p>Part 5.1.4 – Building form</p>	<p>The development generally complies with the relevant provisions of Part 5.1.4 as follows:</p> <p><i>FSR &amp; Height</i></p> <ul style="list-style-type: none"> <li>• The proposal varies the maximum allowed floor space allotted for the site. However, it is still considered satisfactory on merit (refer to LEP discussion above); and</li> <li>• Although the development proposes a breach to the maximum height limit, the proposal has a satisfactory impact on the surrounds (refer to LEP discussion above).</li> </ul> <p><i>Front massing</i></p> <ul style="list-style-type: none"> <li>• Although the proposal does not comply with the front massing requirements, as its street front portion has a height above 12 metres and is a maximum of 4 storeys, it is still considered satisfactory. Whilst level 4 encroaches within the front 6 metres (setback approximately 3m), it is still considered subservient, as balconies and varied use of materials provide visual relief and reduces its prominence; and</li> <li>• The street front portion at ground level is built to the front boundary to reinforce the continuous building street edge, which currently exists along Addison Road.</li> </ul> <p><i>Upper level massing &amp; rooftop level massing</i></p> <ul style="list-style-type: none"> <li>• Whilst level 4 encroaches into the required 6m setback for upper levels, the proposal is still considered satisfactory, as sections and elevations submitted with the proposal demonstrate that level 4 will still appear visually subservient to the levels below, given its materiality and the siting of balconies; and</li> <li>• Although the rooftop massing (topmost 3 metres) contains dwellings, having</li> </ul>	<p><b>No</b> – partial compliance, however acceptable on merit.</p>

	<p>regard to the site's context, it has an acceptable impact in terms of visual bulk, privacy and overshadowing on the surrounding built environment.</p> <p><i>Rear massing</i></p> <ul style="list-style-type: none"> <li>Although the proposal does not comply with the rear massing requirement of being contained within a 45 degree sloping plane from a point 7.5 metres vertically above ground level, measured at the rear boundary, the proposal is still considered acceptable in this regard; given the site's context which is highly industrial. In addition, the proposal provides sufficient separation and visual relief in the form of deep soil directly at its rear; which provides a buffer to the adjoining site. This is in addition to the adjoining substation, which is unlikely to be redeveloped.</li> </ul> <p><i>Depth</i></p> <ul style="list-style-type: none"> <li>Although the proposal does not comply with the maximum depth requirements of 22 metres, the proposal provides for an internal podium COS on level 1, which allows for superior levels of occupant amenity than a compliant scheme. In addition, the proposal has an acceptable impact on both the private and public domain, given its design and context.</li> </ul> <p><i>Building separation</i></p> <ul style="list-style-type: none"> <li>The proposal provides for satisfactory building separation relative to its context. This matter is addressed in detail under Section 5(a)(ii) above.</li> </ul> <p><i>Corners, landmarks and gateways</i></p> <ul style="list-style-type: none"> <li>The proposal is satisfactorily built to and addresses both street frontages; and</li> <li>A sufficiently sized dedicated splay corner is proposed.</li> </ul>	
Part 5.1.5 – Building detail	The development generally complies with the relevant provisions of Part 5.1.5 as follows:	Yes

	<p><i>Building frontages</i></p> <ul style="list-style-type: none"> <li>• The street front portion of the building mass has been designed to ensure it is read as the continuous dominant element in the streetscape. This is resultant from softer materiality being proposed on the Addison Road elevation, including black painted render used for the upper level (level 4), whereas concrete render is used for lower levels; and</li> <li>• The building frontage composition appropriately interprets in a contemporary form the site’s industrial context and characteristics of the adjoining properties, due to its proportions, openings, materiality and colours.</li> </ul> <p><i>Active street frontage uses and shopfront design</i></p> <ul style="list-style-type: none"> <li>• The proposal provides for active street frontage, as it is built to the street edge. In addition, the proposal provides for sufficient levels of transparency and direct access from the public domain;</li> <li>• The entry to the residential accommodation on the upper floors is separate from the proposed commercial entries and is sheltered and highly visible from the public domain;</li> <li>• The shopfront satisfactorily wraps around the corner into Cook Road to provide more of an active frontage; and</li> <li>• The commercial spaces are appropriately serviced in terms of sanitary facilities, disabled access, waste facilities and parking/loading spaces.</li> </ul>	
<p>Part 5.1.6 – Building use</p> <p><u>Dwelling mix</u></p> <p><i>i. Studio 5 – 20%</i>  <i>ii. 1 bedroom 10 – 40%;</i>  <i>iii. 2 bedroom 40 – 75%; and</i>  <i>iv. 3 bedroom or bigger 10 – 45%.</i></p>	<p>The following dwelling mix is proposed:</p> <ul style="list-style-type: none"> <li>• Studio: 0 or 0%</li> <li>• 1bd: 8 or 38%</li> <li>• 2bd: 11 or 52%</li> <li>• 3bd: 2 or 9.5%</li> </ul>	<p><b>No</b>, however acceptable on merit.</p>

	<p>The proposal does not meet the requirements, however, still meets the objectives; as it provides a choice of dwelling types, including 3 bedroom apartments, which are generally undersupplied in the locality.</p>	
<p>Part 5.1.7 – Vehicle access, parking, loading and services</p>	<p>The development generally complies with the relevant provisions of Part 5.1.7 as follows:</p> <ul style="list-style-type: none"> <li>• Vehicle access is provided from the secondary frontage;</li> <li>• The proposed vehicle parking is primarily contained within a basement below ground level to allow for street activation;</li> <li>• A dedicated area for loading is provided for the commercial component of the development;</li> <li>• The proposed garage doors are sufficiently setback from the boundary;</li> <li>• Residential visitor parking is conveniently located on the ground floor; and</li> <li>• Building services are predominately located centrally or from the secondary frontage, thereby not affecting the provision of an active street frontage to Addison Road.</li> </ul>	<p>Yes</p>
<p><i>Part 9 – Strategic Context</i></p>		
<p>Part 9.47 – Victoria Road (Precinct 47)</p>	<p>The subject site is located in the Victoria Road Precinct. However, the site is not located within the indicative master plan shown in Figure 4, which includes prescriptive requirements for redevelopment. In addition, the site is not identified in the following precinct maps /figures:</p> <ul style="list-style-type: none"> <li>• Movement map;</li> <li>• Street locations map;</li> <li>• Buildings height map; and</li> <li>• Ground and upper level setbacks map, or active frontage map.</li> </ul> <p>In light of the above, it is considered the provisions in Part 5 of the MDCP 2011 outlined above prevail. In any case, it is considered the</p>	<p>Yes</p>

	<p>proposal is compatible with the relevant provisions of the desired future character of the precinct as follows:</p> <ul style="list-style-type: none"> <li>• The proposal demonstrates a good urban design outcome and satisfactory levels of environmental sustainability;</li> <li>• The proposal assists to provide housing and employment spaces within the precinct, whilst balancing its impacts on the surrounds; and</li> <li>• The proposal ensures a high level of residential amenity for future occupants.</li> </ul>	
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#### 5(d) The Likely Impacts

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

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

The site is zoned B4 – Mixed Use zone under the MLEP 2011, which is undergoing a transition from primarily industrial land uses to shop-top housing and commercial development. Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

#### 5(f) Any submissions

The application was notified in accordance with Council’s Notification Policy to surrounding properties. In response, no submissions were received.

#### 5(g) The Public Interest

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

The proposal is not contrary to the public interest.

### 6 Referrals

#### 6(a) Internal

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

- Development Engineering.
- Environmental Health.
- Urban Forests.
- Waste Management.

#### 6(b) External

The application was referred to the following external body and issues raised in those referrals have been discussed within this report.

- Water NSW. General Terms of Approval (GTAs) issued, in relation to the proposal's potential impacts on groundwater.

### 7. Section 7.11 Contributions/7.12 Levy

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$387,086.44 will be required for the development under *Marrickville Section 94/94A Contributions Plan 2014*. A condition requiring that contribution to be paid is included in the recommendation.

### 8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development* and *Marrickville Local Environmental Plan 2011*. The proposal is generally consistent *Marrickville Development Control Plan 2011*.

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

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

## 9. Recommendation

- A. The applicant has made written requests pursuant to Clause 4.6 of the *Marrickville Local Environmental Plan 2011* to vary Clauses 4.3 *Building height* and 4.4 *Floor space ratio* of the LEP. After considering these requests, and assuming the concurrence of the Secretary, the Panel is satisfied that compliance with the standards is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variations. The proposed development will be in the public interest because the exceedances are not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA201900391 to carry out demolition of the existing buildings and construction of a 4 storey mixed-use developments comprising 21 dwellings and commercial tenancies, with basement parking at 20-24 Addison Road, Marrickville subject to the conditions listed in Attachment A below.

**Attachment A – Recommended conditions of consent**

**Attachment A – Recommended conditions of consent**

**FEES**

**1. Security Deposit**

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

<b>Security Deposit:</b>	\$68,056.00
<b>Inspection Fee:</b>	\$230.65

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

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

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

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

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

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

Prior to the issue of a Construction Certificate works written evidence must be provided to the Certifying Authority that a monetary contribution of \$387,086.44 indexed in accordance with Marrickville Section 94/94A Contributions Plan 2014] (“CP”) has been paid to the Council.

The above contribution is the contribution applicable as at 21 April 2020.

<b>Public Amenities Type:</b>	<b>Contribution \$</b>
Recreation Facilities	\$337,139.67
Community Facilities	\$41,420.34
Traffic Facilities	\$392.22

*Road access dedication (*only applies Planning Precincts identified in the Contributions Plan, delete if not relevant)	\$544.28
Plan Administration	\$7,589.93
<b>TOTAL</b>	<b>\$387,086.44</b>

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

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

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

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

### 3. Long Service Levy

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

## **GENERAL CONDITIONS**

### 4. Documents related to the consent

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

Plan, Drawing No. (Dwg. No.) and Issue	Plan Name	Date Issued	Prepared by
Site Plan, Dwg. A-800, Issue E	Architectural Plans	29.10.2019	Architecture & Building Works
Basement Plan, Dwg. A-900, Issue F	Architectural Plans	18.02.2020	Architecture & Building Works
Ground Floor Plan, Dwg. A-1000, Issue F	Architectural Plans	18.02.2020	Architecture & Building Works
Level 1, Dwg. A-1100, Issue F	Architectural Plans	18.02.2020	Architecture & Building Works

Level 2, Dwg. A-1200, Issue F	Architectural Plans	18.02.2020	Architecture & Building Works
Level 3, Dwg. A-1300, Issue F	Architectural Plans	18.02.2020	Architecture & Building Works
Roof Plan, Dwg. A-1400, Issue E	Architectural Plans	29.10.2019	Architecture & Building Works
Section, Dwg. A-1500, Issue F	Architectural Plans	18.02.2020	Architecture & Building Works
Elevation, Dwg. A-1600, Issue F	Architectural Plans	18.02.2020	Architecture & Building Works
Elevation, Dwg. A-1700, Issue F	Architectural Plans	18.02.2020	Architecture & Building Works
Demolition Plan, Dwg. A-4500, Issue E	Architectural Plans	29.10.2019	Architecture & Building Works
Basement Plan, Dwg. SW200, Issue D	Stormwater Concept Plans	13.11.2019	SGC
Ground Floor Plan, Dwg. SW201, Issue D	Stormwater Concept Plans	13.11.2019	SGC
Roof Plan, Dwg. SW202, Issue D	Stormwater Concept Plans	13.11.2019	SGC
Details Sheet, Dwg. SW301, Issue D	Stormwater Concept Plans	13.11.2019	SGC
Erosion & Sediment, Dwg. SW401, Issue D	Stormwater Concept Plans	13.11.2019	SGC
Music Catchment Plan, Dwg. SW501, Issue D	Stormwater Concept Plans	13.11.2019	SGC
Ground Floor, Dwg. 101, Issue D	Landscape Plans	28.10.2019	Site Image Landscape Architects
Level 1, Dwg. 102, Issue D	Landscape Plans	28.10.2019	Site Image Landscape Architects
Roof, Dwg. 103, Issue D	Landscape Plans	28.10.2019	Site Image Landscape Architects
Landscape Details, Dwg. 501, Issue B	Landscape Plans	22.10.2019	Site Image Landscape Architects
Certificate No. 1052354M	BASIX	13 November 2019	Gat & Associates
	SEPP 65 Design Verification Statement		Jim Apostolou

As amended by the conditions of consent.

The Architectural Plans shall prevail in terms of any consistency between plans, including between the Stormwater Concept Plans and Landscape Plans referenced above.

#### **5. Noise – Consultant’s Recommendations**

The recommendations contained in the acoustic report prepared by Acouras Consultancy reference SYD2019-1089-R001C dated 13 February 2020 must be implemented.

#### **6. Contamination – Remedial Action Plan**

The site is to be remediated and validated in accordance with the recommendations set out in the Remedial Action Plan, prepared by EI Australia reference E24407.E06\_Rev0 dated 28 February 2020 the *Contaminated Land Management Act 1997* and the *State Environmental Planning Policy No 55*.

#### **7. Hazardous Materials Survey**

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

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

#### **8. Awnings with Lighting**

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

#### **9. Dry-weather Flows**

Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system. Alternatively, the basement or any below ground structure must be designed to be “tanked” preventing the ingress of seepage or groundwater.

#### **10. Car Parking**

The development must provide and maintain within the site:

- a. 16 car parking spaces must be paved and line marked;

- b. 7 car parking spaces, for persons with a disability must be provided and marked as disabled car parking spaces;
- c. 2 visitor car parking spaces must be provided and marked as visitor car parking spaces. A sign legible from the street must be permanently displayed to indicate that visitor parking is available on site;
- d. 1 off-street motorcycle parking spaces must be provided, paved, line marked and maintained at all times;
- e. 15 Bicycle storage capacity within the site; and
- f. 1 Loading bay.

#### **11. Residential Flat Buildings – Hot Water Systems**

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

#### **12. Residential Flat Buildings – Air Conditioning Systems**

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

#### **13. Residential Flat Buildings – Adaptable Dwellings**

Prior to the issue of a Construction Certificate, the Certifying Authority, must be provided with plans that demonstrate 4 units are Adaptable units.

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

#### **14. Waste Management Plan**

Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Marrickville Development Control Plan 2011.

#### **15. Erosion and Sediment Control**

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

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

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

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

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

**18. Separation of Commercial and Residential Waste and Recycling**

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

**19. Tree Protection**

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.

Prescribed trees protected by Council's Management Controls on the subject property and/or any vegetation on surrounding properties must not be damaged or removed during works unless specific approval has been provided under this consent.

Any public tree within five (5) metres of the development must be protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

No activities, storage or disposal of materials taking place beneath the canopy of any tree (including trees on neighbouring sites) protected under Council's Tree Management Controls at any time.

**20. Project Arborist**

Prior to the commencement of any demolition or construction works within close proximity to protected trees a Project Arborist must be engaged for the duration of the site preparation, demolition, construction and landscaping to supervise works. Details of the Project Arborist must be submitted to the Certifying Authority before work commences.

**21. Groundwater (GT0062-00001 – WaterNSW)**

Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application.

**22. Authorisation (GT0063-0001 – WaterNSW)**

An authorisation under the relevant water legislation, such as a Water Access Licence (WAL), shall be obtained for the take of groundwater as part of the activity. For avoidance of doubt, these terms do not represent any authorisation for the take of groundwater, nor do they constitute the grant, or the indication of an intention to grant, any required WAL.

**23. Terms (GT0069-0001 – Water NSW)**

The Applicant is bound by the above terms and any other terms and conditions of the subsequent authorisation(s) required for the extraction of groundwater and the associated works under the relevant water legislation.

**24. Separate consent/s for commercial floor space**

Approval under this consent is not granted for the use and/or fit-out including any associated signage, of the commercial floor space. In this regard, separate consents are to be obtained for the use and/or fit-out of the commercial floor space, including any associated signage.

**PRIOR TO ANY DEMOLITION****25. Hoardings**

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

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

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

**26. Construction Traffic Management Plan**

Prior to Any Demolition, the Certifying Authority, must be provided with a detailed Construction Traffic Management Plan (CTMP), prepared by an appropriately qualified Traffic Management Consultant with Transport for NSW accreditation. The Certifying Authority must approved by the CTMP prior to the commencement of any works, including demolition. The Certifying Authority must ensure that the CTMP instructs vehicles to use State and Regional and Collector Roads to the maximum extent with the use of Local Roads as final approach to the development site via the most suitable direct route.

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

- a. Description of the demolition, excavation and construction works;
- b. Site plan/s showing the site, roads, footpaths, site access points and vehicular movements;
- c. Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site);
- d. Proposed route(s) from the arterial (state) road network to the site and the proposed route from the site back to the arterial road network;
- e. Impacts of the work and vehicular movements on the road network, traffic and pedestrians and proposed methods to safely manage pedestrians and construction related vehicles in the frontage roadways;
- f. Any Traffic Control Plans (TCP's) proposed to regulate traffic and pedestrian movements for construction activities (such as concrete pours, crane installation/removal etc.);
- g. Proposed hours of construction related activities and vehicular movements to and from the site;
- h. Current/proposed approvals from other Agencies and Authorities (including Roads and Maritime Services, Police and State Transit Authority);

- i. Any activities proposed to be located or impact upon Council's road, footways or any public place;
- j. Measures to maintain public safety and convenience;
- k. Any proposed road and/or footpath closures;
- l. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
- m. Locations of work zones (where it is not possible for loading/unloading to occur on the site) in the frontage roadways accompanied by supporting documentation that such work zones have been approved by the Local Traffic Committee and Council;
- n. Location of any proposed crane and concrete pump and truck standing areas on and off the site (and relevant approvals from Council for plant on road);
- o. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
- p. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected;
- q. On-site parking area for employees, tradespersons and construction vehicles as far as possible;
- r. Proposed areas within the site to be used for the storage of excavated material, construction materials and waste and recycling containers during the construction period; and
- s. How it is proposed to ensure that soil/excavated material is not transported onto surrounding footpaths and roadways.
- t. Swept Paths for the proposed construction vehicles to demonstrate that the needed manoeuvres can be achieved without causing any nuisance.

#### **27. Dilapidation Report**

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining properties to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

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

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

#### **29. Construction Fencing**

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

**30. Authorisation (GT0064 -00001 – WaterNSW)**

An authorisation under the relevant water legislation, such as an Approval, is also required for the works involved in extracting the groundwater. For avoidance of doubt, these terms do not represent any authorisation for the construction or installation of such works.

**PRIOR TO CONSTRUCTION CERTIFICATE****31. Splays - Architectural Plans**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended architectural plans demonstrating that all structure(s) are located outside the provision of a 3mx3m splay dedications including above and below the footpath. The plan shall note the splay as land to be dedicated to Council for road widening

**32. Stormwater Drainage System – Major Developments**

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

- a. The design must be generally in accordance with the stormwater drainage concept plan on Drawing Nos. SW200, SW201, SW202, SW301, SW401 and SW501, prepared by SGC Consulting and dated 13/11/19, as amended to comply with the following;
- b. Stormwater runoff from all surface areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from any rainwater tank(s) by gravity to Council's piped drainage system;
- c. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP.
- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than for the pump-out of surface flows from the driveway to the basement;
- e. Details of the 1 in 100-year ARI overflow route in case of failure/blockage of the drainage system must be provided;
- f. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas except where a reduced step is permitted under Section 3.1.2.3 (b) of the Building Code of Australia for Class 1 buildings;
- g. A pump-out system for drainage of surface flows from the basement ramp is permitted for the basement area only and must be designed in accordance with the following criteria:
  1. Comply with all relevant Australian Standards;
  2. An overflow, flashing light and audible alarm is to be provided to warn of pump failure;
  3. A maintenance regime for the pump system must be provided, including provision for regular maintenance and servicing at least every 6 months;
  4. The proposed pump system must consist of two (2) pumps, connected in parallel, with each pump being capable of emptying the holding tank at a rate

- equal to the rate of inflow for the one-hour duration, 100-year Average Recurrence Interval (ARI) storm event. The holding tank must be capable of holding one hour's runoff from one-hour duration 20-year ARI storm event;
- h. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands;
  - i. 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;
  - j. No nuisance or concentration of flows to other properties;
  - k. A detailed WSUD maintenance plan outlining how all elements of the water quality treatment facility will be maintained and to record annual inspections/maintenance works to be undertaken.
  - l. Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system.
  - m. No impact to street tree(s).

### 33. Structural and Geotechnical Report

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

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

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

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a public domain works design, prepared by a qualified practising Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CEng)

or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the *Roads Act 1993* incorporating the following requirements:

- a. The public domain along all frontages of the site inclusive of footpath paving, kerb, street trees/landscaping must be reconstructed and upgraded in accordance with the Street Tree Master plan and the Public Domain Design Guide (Neighbourhood Palette);
- b. The street trees at the intersection and adjacent to the vehicle crossings must be located so as to comply with the clearances required by the Street Tree Master plan;
- c. The construction of heavy duty vehicular crossings to all vehicular access locations and removal of all redundant vehicular crossings to the site;
- d. New paved footpath and kerb and gutter along the frontage of the site. The kerb type (concrete or stone) must be consistent with the majority of kerb type at this location as determine by the Council Engineer;
- e. Cross sections are to be provided at the boundary at a minimum distance of every 5m and at all pedestrian and vehicular access locations. Note, the cross fall of the footpath must be set at 2.5%. These sections will set the alignment levels at the boundary; and
- f. The existing Council drainage system must be extended by an appropriately sized pipeline (minimum 375mm diameter) to the frontage of the site, where a kerb inlet pit (minimum 3m lintel) must be installed to allow for direct connection to Council's stormwater system;  
The pipeline must be designed to have the capacity to convey flows that would be collected at that section of street as generated by a 20 year Average Recurrence Interval storm event. Pipes must be Class 4 Steel Reinforced Concrete Pipe or approved equivalent and Pits must be cast-in-situ. Plans, longsections and details must be provided including location of utility services;  
Connection of the private drainage system to Council's piped drainage system must be at a stormwater drainage pit at a level 300mm above the invert of the outgoing pipe.

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

### **35. Enclosure of Fire Hydrant**

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

### **36. Sydney Water – Tap In**

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

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

### **37. Fibre-ready Facilities**

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

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

#### **38. Consolidation of Lots**

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with evidence that the separate lots comprising the development have been consolidated into one lot and under one title and registered at NSW Land Registry Services.

#### **39. Bin Storage Area - Residential**

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

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

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

#### **40. Bulky Waste Storage Area – Residential**

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

#### **41. Commercial - Additional Storage Space**

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

#### **42. Waste Transfer Route**

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

#### 43. Tree Planting in the Public Domain

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with a Public Domain/Street Tree Planting Plan prepared by a Landscape Architect, Landscape Designer or Consultant Arborist experienced in streetscape design and evidence that the works on the Road Reserve have been approved by Council under Section 138 of the *Roads Act 1993* incorporating the following requirements:

- a. Three (3) new trees shall be located within the footpath outside the subject property on Addison Road and three (3) new trees shall be located on Cook Road. The species of tree selected shall be in accordance with the Marrickville Street Tree Master Plan (MSTMP - 2014) - *Pryus ussuriensis* (Manchurian Pear) on Addison Road and *Corymbia maculata* (Spotted Gum) on Cook Road.
- b. The trees on Addison Road shall be planted approx. 8 metre spacings and the trees on Cook Road are to be planted at approx. 10 metre spacing;
- c. All planting stock size shall be minimum 200 litres;
- d. The planting stock shall comply with AS 2303—*Tree Stock for Landscape Use*. The plans must be annotated with this requirement.
- e. The new trees shall be planted by a qualified horticulturist or arborist, with a minimum qualification of Certificate 3 in Horticulture or Arboriculture. The plans must be annotated with this requirement;
- f. The tree pit dimensions and staking detail shall be in accordance with Detail 6 (on page 133) of the MSTMP2014;
- g. Adequate soil volumes must be provided for all street trees. The details and specifications must include dimensions for the tree pits and details of vault style (structural cells) structures that will provide 20-30m<sup>3</sup> for each tree depending on the species. Refer to Appendix 6.6 (Detail 5) - noting that structural soil will not be proved. Structural cells with the soil specification in accordance with the cell manufactures requirements.
- h. The awning configuration must be detailed on the plan. All construction plans shall show the awning on the street frontages to be setback around the street trees. The awning must be setback a minimum of 1500mm from the back of the kerb for a minimum distance of 1200mm either side of each tree location. Awning dimensions and setbacks to street trees are to be included on the street tree planting plan;
- i. The trees and trees pits must be inspected by the Project Arborist before and after planting. Written certification that the trees and pits are in accordance with the conditions of consent must be submitted to Council. The plans must be annotated with this requirement;
- j. A copy of a maintenance agreement with a practising Horticulturist or Arborist for a minimum period of twelved (12) months commencing on the planting date. Maintenance includes, but is not limited to, watering, weeding, removal of rubbish from tree base, pruning, fertilizing, pest and disease control and any other operations to maintain a healthy robust tree; and
- k. At the end of the twelve (12) month maintenance period, written approval must be obtained from Council before hand-over of any street tree to Council.

#### 44. Design and Construction (GT0066-00001 – WaterNSW)

The design and construction of the building must prevent any take of groundwater after the authorisation has lapsed by making any below-ground levels that may be impacted by any water table fully watertight for the anticipated life of the building. Waterproofing of below-

ground levels must be sufficiently extensive to incorporate adequate provisions for unforeseen high water table elevations to prevent potential future inundation.

#### **45. Drainage (GT0067-00001 – WaterNSW)**

Sufficient permanent drainage shall be provided beneath and around the outside of the watertight structure to ensure that natural groundwater flow is not impeded and:

- a. Any groundwater mounding at the edge of the structure shall be at a level not greater than 10% above the level to which the water table might naturally rise in the location immediately prior to the construction of the structure;
- b. Any elevated water table is more than 1.0m below the natural ground surface existent at the location immediately prior to the construction of the structure; and
- c. Where the habitable part of the structure (not being footings or foundations) is founded in bedrock or impermeable natural soil then the requirement to maintain groundwater flows beneath the structure is not applicable.

### **DURING DEMOLITION AND CONSTRUCTION**

#### **46. Contamination – New Evidence**

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

#### **47. Imported Fill Materials**

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

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

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

#### **48. Construction Hours – Class 2-9**

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

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

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

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

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

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

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

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

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

#### **49. Survey Prior to Footings**

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

#### **50. Documentation of Demolition and Construction Waste**

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

#### **51. Construction Methods and Material (GT0068-00001 – WaterNSW)**

Construction methods and material used in and for construction shall be designed to account for the likely range of salinity and pollutants which may be dissolved in groundwater, and shall not themselves cause pollution of the groundwater.

#### **52. Measurement and Monitoring (GT0070-00001 – WaterNSW)**

Measurement and monitoring arrangements to the satisfaction of WaterNSW are to be implemented. Weekly records of the volumes of all groundwater pumped and the quality of

any water discharged are to be kept and a completion report provided after dewatering has ceased. Records of groundwater levels are to be kept and a summary showing daily or weekly levels in all monitoring bores provided in the completion report.

### **53. Cessation and Surrender (GT0071-00001 – Water NSW)**

Following cessation of the dewatering operations and prior to the surrender of any associated authorisation, the applicant shall submit to WaterNSW the completion report which shall include:

- a. Detail of the volume of water taken, the precise periods and location of water taken, the details of water level monitoring in all of the relevant bores;
- b. The location and construction of groundwater extraction works that are decommissioned;
- c. A water table map depicting the aquifer's settled groundwater condition and a comparison to the baseline conditions; and
- d. A detailed interpreted hydrogeological report identifying all actual resource and third party impacts, including an assessment of altered groundwater flows and an assessment of any subsidence or excessive settlement induced in nearby buildings and property and infrastructure.

### **PRIOR TO OCCUPATION CERTIFICATE**

#### **54. Noise From Road, Rail & Aircraft – Compliance**

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

- a. *State Environmental Planning Policy (Infrastructure) 2007*;
- b. NSW Planning, Development near Rail Corridors and Busy Roads – Interim Guideline;
- c. Australian Standard 2021-2000: Acoustics - Aircraft noise intrusion - Building siting and construction;
- d. conditions of development consent; and
- e. Recommendations of SYD2019-1089-R001C dated 13 February 2020.

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

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

**56. Contamination – Validation**

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

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

**57. Road Widening/Splay**

Prior the issue of an Occupation Certificate, the Principal Certifier must be provided with evidence which establishes that a plan of subdivision has been registered with NSW Land and Registry Services which results in the following road widening:

- a. Provision of a 3m x 3m splay at the corner of Cook Road and Addison Road dedicated to Council as public road.

**58. Public Domain Works**

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

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

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

**59. No Encroachments**

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

**60. Protect Sandstone Kerb**

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

**61. Parking Signoff – Major Development**

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with certification from a qualified practising Civil Engineer who holds current Chartered Engineer qualifications with the Institution of Engineers Australia (CPEng) or current Registered Professional Engineer qualifications with Professionals Australia (RPEng) that the vehicle access and off street parking facilities have been constructed in accordance with the development consent and relevant Australian Standards and the following has been implemented within the property.

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

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

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

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

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

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

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

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

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

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

#### **65. Operation and Management Plan**

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

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

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

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

- a. Restrictions on the Use of Land related to an Site Stormwater Detention System or stormwater quality improvement devices;
- b. Positive Covenant related to stormwater quality improvement devices; and

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

#### **67. Section 73 Certificate**

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

#### **68. Project Arborist Certification**

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with certification from the project arborist the requirements of the conditions of consent related to the landscape plan and the role of the project arborist have been complied with.

### **ON-GOING**

#### **69. Noise General**

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

**70. Noise- Common Areas**

The roof top common area shall not be used between the hours of 10.00pm and 7.00am seven days a week.

**71. Operation and Management Plan**

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

**72. Vehicles Leaving the Site**

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

**73. Loading/unloading on site**

All loading and unloading are to be conducted within the site at all times. Any designated loading bay/dock area is to remain available for loading/unloading purposes at all times. No storage of goods or parking of cars is to be carried out in these areas.

**74. Bin Storage**

All bins are to be stored within the site.

**75. Documentation of Businesses Waste Services**

All businesses must have written evidence of all valid and current contracts and/ or tip dockets for the disposal and/ or processing of all waste streams generated from the site.

**ADVISORY NOTES****Mechanical Ventilation System Certification**

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

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

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

**Asbestos Removal**

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

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

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

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

#### **Electrical Substations**

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

#### **Permits**

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

- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;
- c. Mobile crane or any standing plant;
- d. Skip Bins;
- e. Scaffolding/Hoardings (fencing on public land);
- f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.;
- g. Awning or street veranda over the footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

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

#### **Rock Anchors**

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

- a. Demonstrate that any structures within the road reserve are of adequate depth to ensure no adverse impact on existing or potential future service utilities in the road

reserve. All existing services must be shown on a plan and included on cross-sectional details where appropriate.

- b. Demonstrate how the temporary anchors will be removed or immobilised and replaced by full support from structures within the subject site by completion of the works.
- c. The report must be supported by suitable geotechnical investigations to the efficacy of all design assumptions.

#### **Insurances**

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

#### **Prescribed Conditions**

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

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

At least 7 days before any demolition work commences:

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

#### **Storage of Materials on public property**

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

#### **Toilet Facilities**

The following facilities must be provided on the site:

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

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

#### **Infrastructure**

The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones

respectively to the property. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be undertaken before occupation of the site.

#### **Other Approvals may be needed**

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

#### **Failure to comply with conditions**

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

#### **Other works**

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

#### **Obtaining Relevant Certification**

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

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

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

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

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

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

**Notification of commencement of works**

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

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

**Dividing Fences Act**

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

**Permits from Council under Other Acts**

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

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

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

**Noise**

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

**Amenity Impacts General**

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

**Lead-based Paint**

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

**Dial before you dig**

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

**Street Numbering**

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

**Notice to Council to deliver Residential Bins**

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

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

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

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

**Consent of Adjoining property owners**

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

**Arborists standards**

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

**Tree Protection Works**

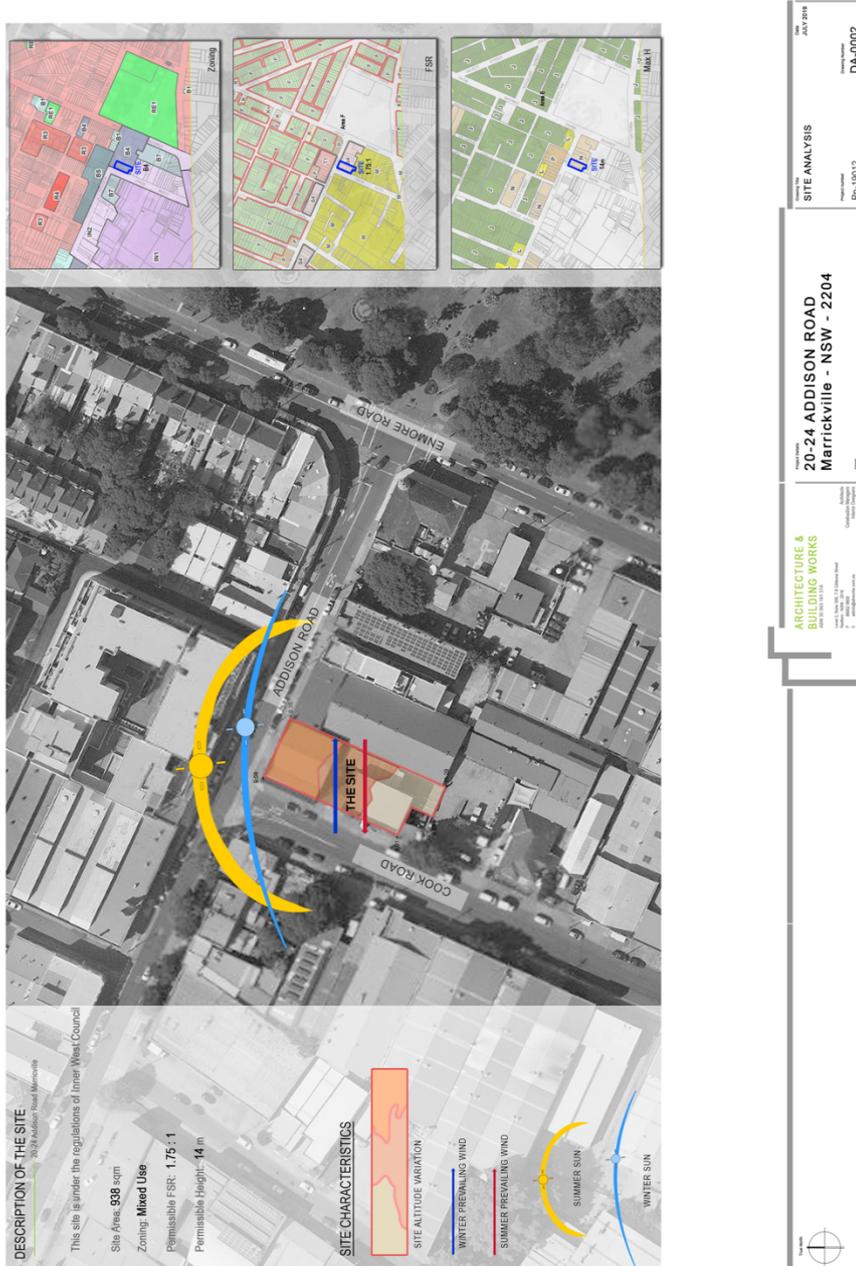
All tree protection for the site must be undertaken in accordance with Council's *Development Fact Sheet—Trees on Development Sites* and AS4970—*Protection of trees on development sites*.

**Useful Contacts**

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm <a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a>
Department of Fair Trading	13 32 20 <a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a> Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 <a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441 <a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Food Authority	1300 552 406

		<a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>
NSW Government		<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a>
		<a href="http://www.diySAFE.nsw.gov.au">www.diySAFE.nsw.gov.au</a>
		Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555	<a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>
Sydney Water	13 20 92	<a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>
Waste Service - SITA Environmental Solutions	1300 651 116	<a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>
Water Efficiency Labelling and Standards (WELS)		<a href="http://www.waterrating.gov.au">www.waterrating.gov.au</a>
WorkCover Authority of NSW	13 10 50	<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 B – Plans of proposed development





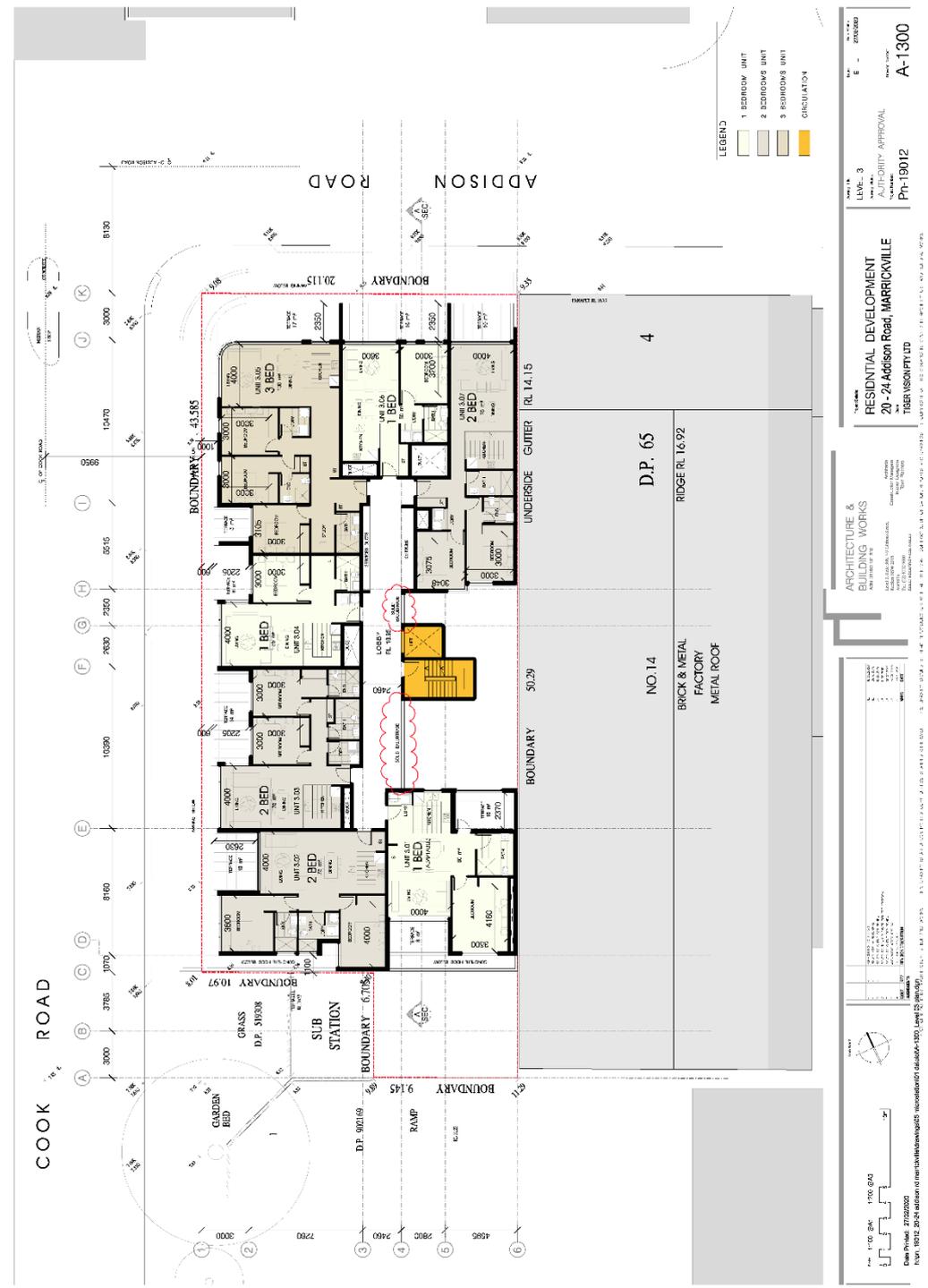
















**SCHEDULE OF COLOURS & FINISHES:**

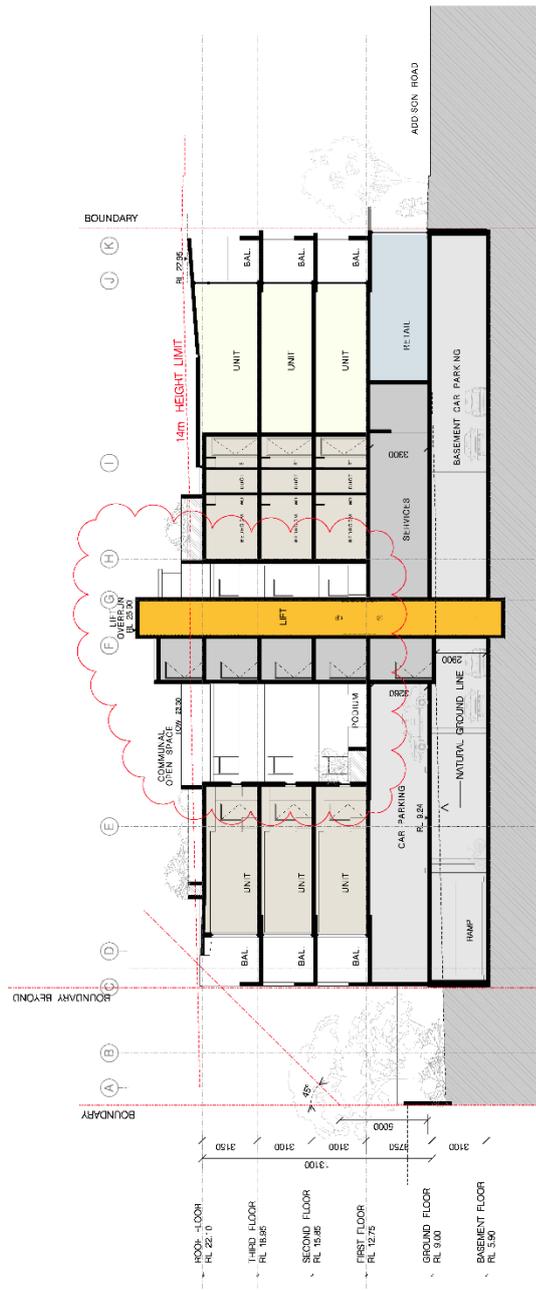
BR1	BRICK & PAINT WHITE COLOUR
BR2	BRICK & PAINT SOLID MARRICKVILLE GREY
BR	BRICK & PAINT SOLID MARRICKVILLE GREY
PWA	POWDER COATED ALUMINIUM WINDOW FRAME
PWD	POWDER COATED ALUMINIUM DOOR FRAME
GL	GLASS GLASS SLABING
BR1	BRICK WALL 1
BR2	BRICK WALL 2
GL	OPENTIME GLASS GLAZING
AF1	ALUMINIUM FRAME POWDERCOAT FINISH BLACK COLOUR

**ARCHITECTURE & BUILDING WORKS**  
 10/110-112/114-116/118/120/122/124/126/128/130/132/134/136/138/140/142/144/146/148/150/152/154/156/158/160/162/164/166/168/170/172/174/176/178/180/182/184/186/188/190/192/194/196/198/200/202/204/206/208/210/212/214/216/218/220/222/224/226/228/230/232/234/236/238/240/242/244/246/248/250/252/254/256/258/260/262/264/266/268/270/272/274/276/278/280/282/284/286/288/290/292/294/296/298/300/302/304/306/308/310/312/314/316/318/320/322/324/326/328/330/332/334/336/338/340/342/344/346/348/350/352/354/356/358/360/362/364/366/368/370/372/374/376/378/380/382/384/386/388/390/392/394/396/398/400/402/404/406/408/410/412/414/416/418/420/422/424/426/428/430/432/434/436/438/440/442/444/446/448/450/452/454/456/458/460/462/464/466/468/470/472/474/476/478/480/482/484/486/488/490/492/494/496/498/500/502/504/506/508/510/512/514/516/518/520/522/524/526/528/530/532/534/536/538/540/542/544/546/548/550/552/554/556/558/560/562/564/566/568/570/572/574/576/578/580/582/584/586/588/590/592/594/596/598/600/602/604/606/608/610/612/614/616/618/620/622/624/626/628/630/632/634/636/638/640/642/644/646/648/650/652/654/656/658/660/662/664/666/668/670/672/674/676/678/680/682/684/686/688/690/692/694/696/698/700/702/704/706/708/710/712/714/716/718/720/722/724/726/728/730/732/734/736/738/740/742/744/746/748/750/752/754/756/758/760/762/764/766/768/770/772/774/776/778/780/782/784/786/788/790/792/794/796/798/800/802/804/806/808/810/812/814/816/818/820/822/824/826/828/830/832/834/836/838/840/842/844/846/848/850/852/854/856/858/860/862/864/866/868/870/872/874/876/878/880/882/884/886/888/890/892/894/896/898/900/902/904/906/908/910/912/914/916/918/920/922/924/926/928/930/932/934/936/938/940/942/944/946/948/950/952/954/956/958/960/962/964/966/968/970/972/974/976/978/980/982/984/986/988/990/992/994/996/998/1000

**RESIDENTIAL DEVELOPMENT**  
 20-24 Addison Road, MARRICKVILLE  
 PH-19012

**ELEVATION**  
 DATE: 07/20/2020  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]

**PH-19012**



SECTION  
 AUTHORITY APPROVAL  
 PH-19012  
 A-1500

ARCHITECTURE &  
 BUILDING WORKS  
 20 - 24 Addison Road, MARRICKVILLE  
 TIGERISSA PTY LTD

Scale: 1:100 @ A3, 1:200 @ A2, 1:500 @ A1, 1:1000 @ A0

DATE PLOTTED: 27/03/2020

NOTE: 1971Z 2012Z Edition of the LEP (as amended) is the applicable LEP.









2 SUN EYE VIEW - JUNE 10AM  
SCALE INT



4 SUN EYE VIEW - JUNE 12PM  
SCALE INT



1 SUN EYE VIEW - JUNE 9AM  
SCALE INT



3 SUN EYE VIEW - JUNE 11AM  
SCALE INT

**ARCHITECTURE & BUILDING WORKS**  
 10/40-10/42 COOK RD, MARRICKVILLE NSW 2204  
 TEL: 02 9550 2000  
 WWW.ABWNSW.COM.AU

**RESIDENTIAL DEVELOPMENT**  
 20 - 24 Addison Road, MARRICKVILLE  
 THEBERUSAN PTY LTD

**SUN-EYE VIEWS 01**  
 Project Name: RESIDENTIAL DEVELOPMENT  
 Project Address: 20 - 24 Addison Road, MARRICKVILLE  
 Project Number: PH-19012  
 Date: 12/11/2019

**DATE PLOTTED: 12/11/2019**  
 FILE: I:\19012\_2024 addison rd marrickville\dwg\05 recommendations\01 sun-eye-view\02.dwg

**REVISIONS**

NO.	DATE	DESCRIPTION
1	12/11/2019	ISSUED FOR PERMIT
2	12/11/2019	ISSUED FOR PERMIT
3	12/11/2019	ISSUED FOR PERMIT
4	12/11/2019	ISSUED FOR PERMIT
5	12/11/2019	ISSUED FOR PERMIT
6	12/11/2019	ISSUED FOR PERMIT
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49	12/11/2019	ISSUED FOR PERMIT
50	12/11/2019	ISSUED FOR PERMIT













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D Architect/Designer  
 JH JH 20 10 2024  
 E Engineer  
 JH JH 20 10 2024  
 S Surveyor  
 JH JH 20 10 2024  
 A Approval Authority  
 JH JH 20 10 2024  
 Other Check: 10/24

**LEGEND**

- Boundary
- Existing Tree (To be retained)
- Existing Tree (To be removed)
- Proposed Tree (To be retained)
- Proposed Tree (To be removed)
- Proposed Shrubs and Groundcover (To be retained)
- Proposed Shrubs and Groundcover (To be removed)
- Turf
- Synthetic Turf
- Landscape Wall
- Unit Paver
- Timber Decking

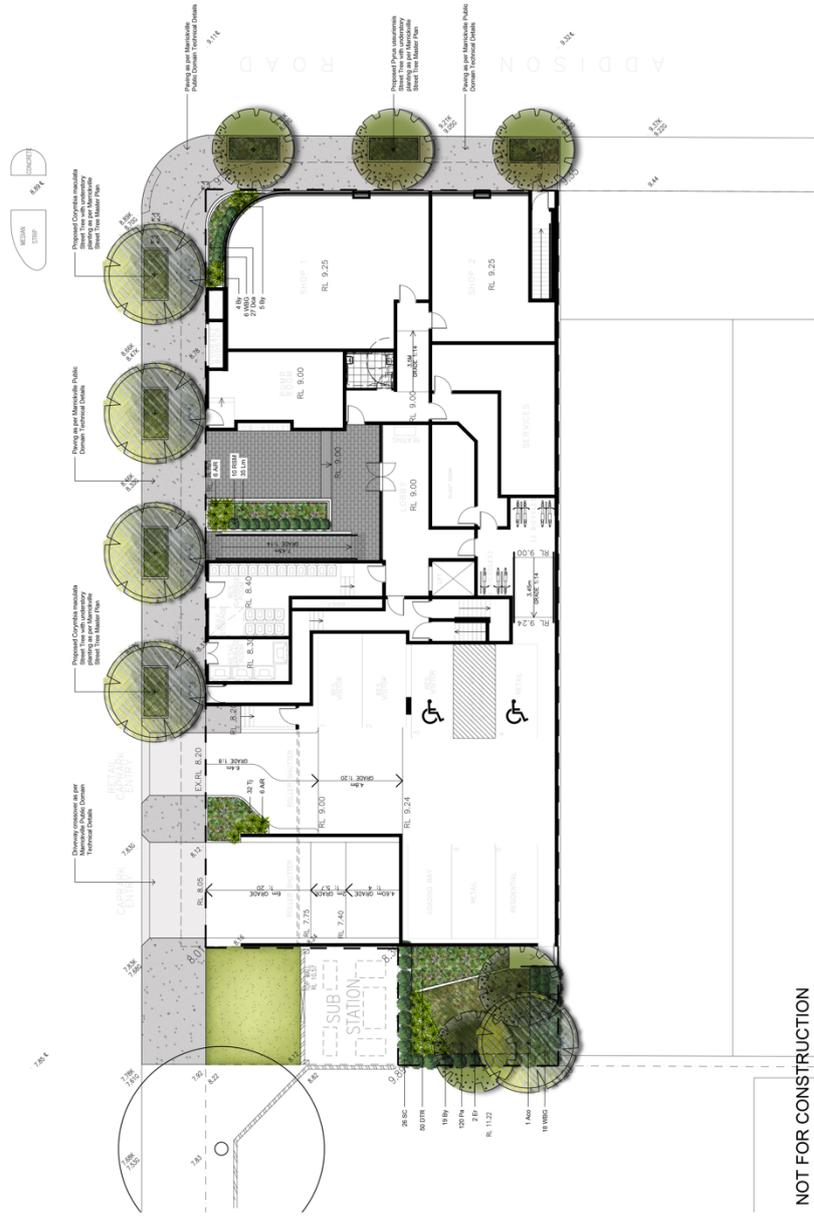


Client: Tiger Vision Pty Ltd  
 Project: 20-24 Addison Rd, Murrumbidgee

**SITE IMAGE**

Address: 20-24 Addison Rd  
 Murrumbidgee, NSW 2572  
 Ref: 20-24 Addison Rd  
 Date: 20/10/2024  
 Scale: 1:1000

**DEVELOPMENT APPLICATION**  
 Landscape Plan - Ground Floor  
 Drawing Name: SS19-4238  
 Date: 11/08/24  
 Drawing Number: 101 D



NOT FOR CONSTRUCTION

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DATE: 18/03/2019  
 DRAWN BY: J. SMITH  
 CHECKED BY: J. SMITH  
 SCALE: 1:100

LEGEND

- Boundary
- Existing Tree (To be retained)
- Existing Tree (To be removed)
- Proposed Tree (To be retained)
- Proposed Tree (To be removed)
- Proposed Shrubs and Groundcover (To be retained)
- Proposed Shrubs and Groundcover (To be removed)
- Turf
- Synthetic Turf
- Landscape Wall
- Unit Paver
- Timber Decking



Client: Tiger Vision Pty Ltd

Project: 20-24 Addison Rd, Marnickville



DEVELOPMENT APPLICATION

Site: 150 @ A1  
 SS19-4238

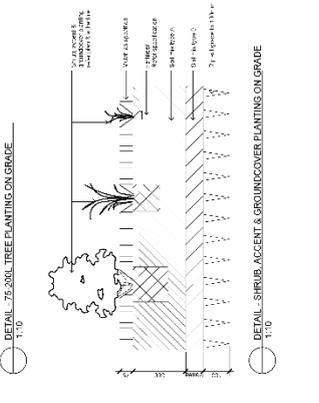
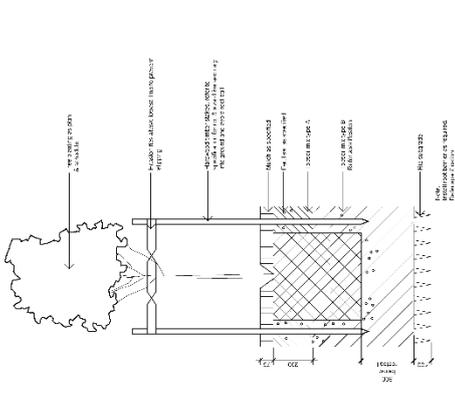
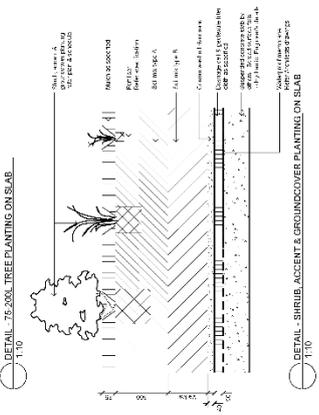
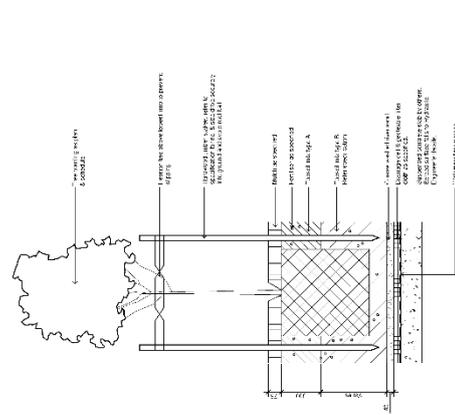
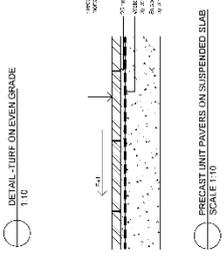
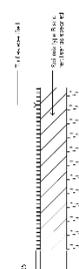
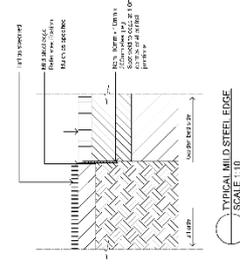
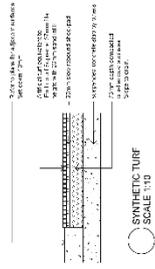
Scale: 1:50 @ A1  
 Drawing Number: 102 D



NOT FOR CONSTRUCTION



7. APPROVED CONTRACTOR TO BE RESPONSIBLE FOR ALL WORKS TO BE COMPLETED IN ACCORDANCE WITH THE APPROVED CONTRACT DOCUMENTS AND THE APPROVED DEVELOPMENT APPLICATION. THE APPROVED CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS AND PERMITS FROM THE RELEVANT AUTHORITIES. THE APPROVED CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS AND PERMITS FROM THE RELEVANT AUTHORITIES. THE APPROVED CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS AND PERMITS FROM THE RELEVANT AUTHORITIES.



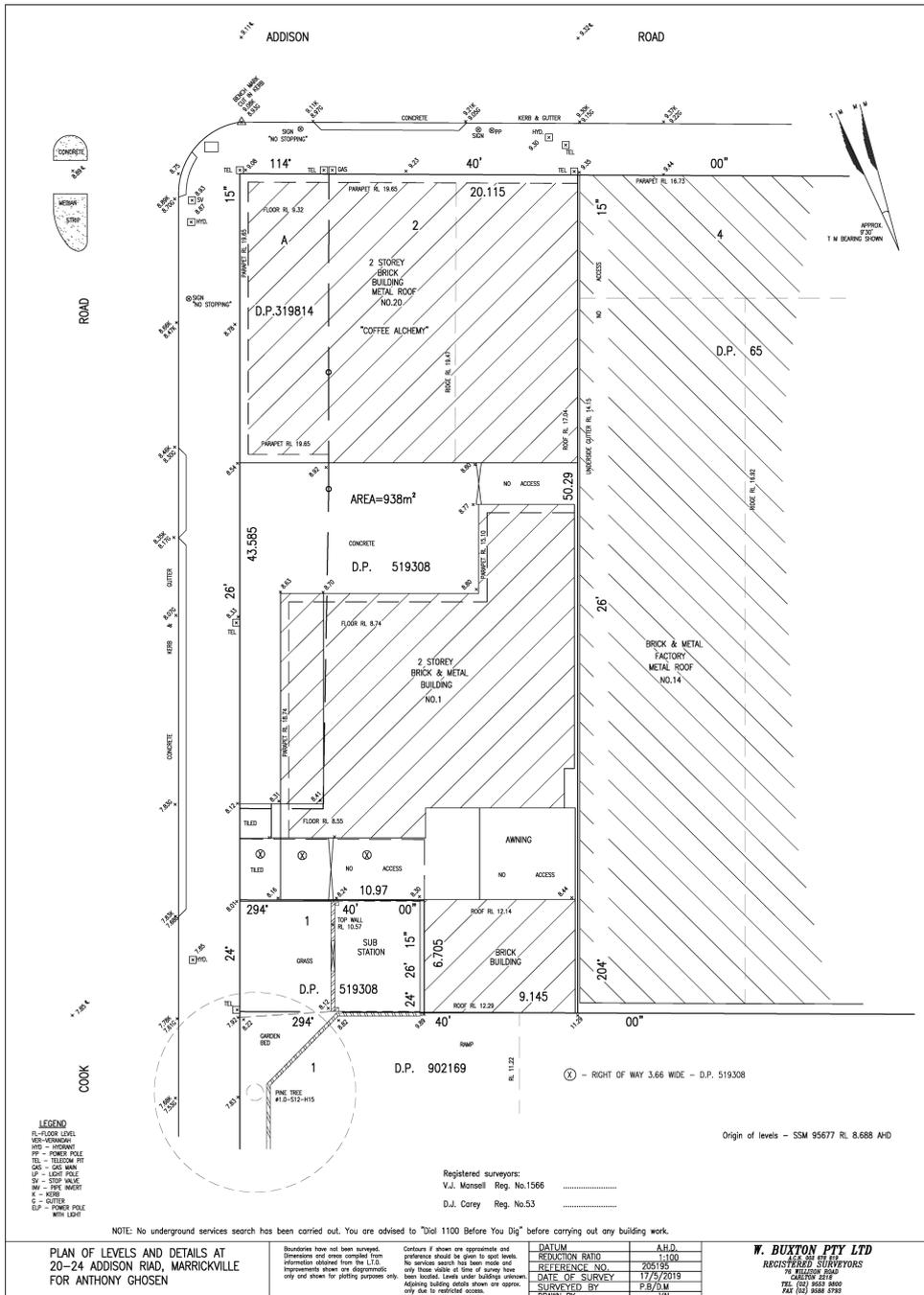
Tiger Vision Pty Ltd  
20-24 Addison Rd,  
Marrickville



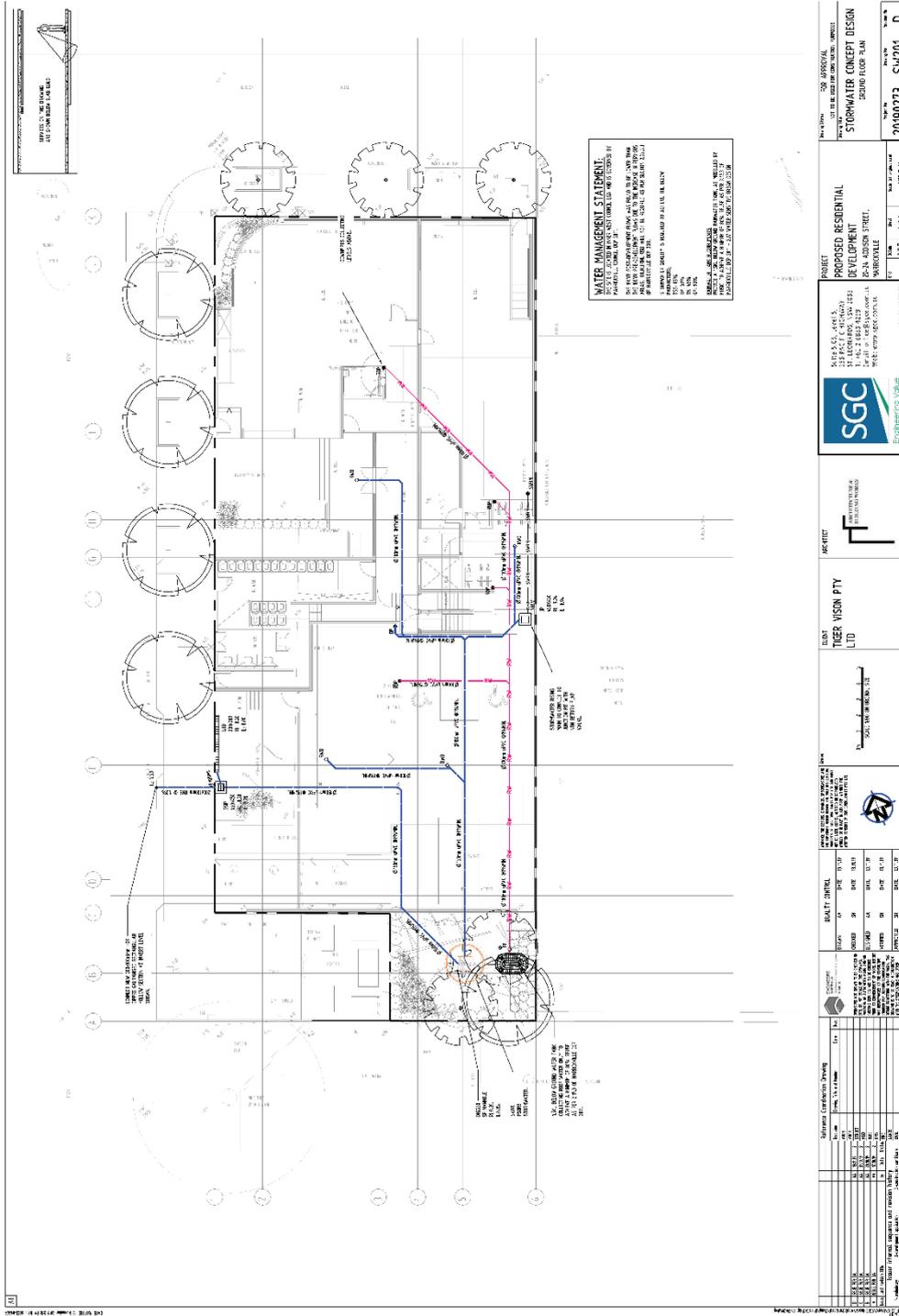
DEVELOPMENT APPLICATION  
Landscape Details

NOT FOR CONSTRUCTION









		<b>PROJECT</b> PROPOSED RESIDENTIAL DEVELOPMENT 12-14 JINDON STREET, MARSDENVALE		2019/0273 SW/21 D	
31-33 S. G. Road, Suite 101 11 ACTON ROAD, SYDNEY NSW 1570 PH: 02 9550 8888 WWW.SGCENGINEERING.COM.AU		12-14 JINDON STREET, MARSDENVALE NSW 1575		2019/0273 SW/21 D	
CLIENT TIGER VISION PTY LTD		ARCHITECT [Logo]		DATE 12/08/2019	
LOCAL COUNCIL WINDERMERE LOCAL COUNCIL		TITLE STORMWATER CONCEPT DESIGN		SCALE 1:100	
PROJECT NO. 2019/0273 SW/21 D		SHEET NO. 01 OF 01		DATE 12/08/2019	
PROJECT NO. 2019/0273 SW/21 D		SHEET NO. 01 OF 01		DATE 12/08/2019	









## Attachment C- Clause 4.6 Exception to Development Standards – Height of building

### CLAUSE 4.6 VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS OF THE MARRICKVILLE LOCAL ENVIRONMENTAL PLAN 2011

#### 1. INTRODUCTION

---

This submission seeks a variation to Clause 4.3 of the Marrickville Local Environmental Plan 2011 (MLEP11), which relates to the height of buildings.

This submission has been prepared in relation to a development application for the demolition of all existing structures and the construction of a four (4) storey mixed use development comprising ground floor commercial tenancies and 21 apartments with basement parking at 20-24 Addison Road, Marrickville.

As detailed in this written request for a variation to the height of buildings control being a development standard under MLEP11, the proposed development meets the requirements prescribed under Clause 4.6 of MLEP11.

#### 2. SITE BACKGROUND

---

The subject site is commonly known as 20-24 Addison Road, Marrickville. In legal terms, 20-22 Addison Road is referred to as Lot 2 in Deposited Plan 519308 and 24 Addison Road is referred to as Lot A in Deposited Plan 319814.

The site itself is located on the southern side of Addison Road, on the corner of Cook Road. The site is located just west of the Addison Road and Enmore Road intersection.

The site is irregular in shape. The frontage to Addison Road (northern boundary) is 20.115 metres and the frontage to Cook Road (western boundary) is 43.585 metres. The rear boundary is dog-legged, partially wrapping around adjoining substation to the rear. This results in the length of the eastern side boundary to be 50.29 metres. The total site area is 938m<sup>2</sup>.

The site is occupied by industrial buildings. At the front of the site, addressing the Addison Road and Cook Road corner, is a two-storey brick building. Part of the ground level is currently used as the Coffee Alchemy café. Although this building has two levels, it presents as more of a three-storey scale. Behind this building are two separate buildings; a single storey garage structure along the eastern boundary, and a two-storey industrial building along the Cook Road frontage, currently used by Eagle Express.

The site is accessed by a wide driveway crossing along the Cook Road frontage which offers onsite parking.

As detailed, the site immediately adjoins a substation at the rear and this lot (Lot 1 DP 519308) results in the subject site being irregular in shape along the southern boundary.

Refer to Figure 1 below for a site location map.



Figure 1 Site Location Map (Source: SIX Maps 2019)

Development in the area is mixed, noting that there are a number of different land zonings within immediate proximity to the subject site. Land along Addison Road to the east is zoned B4 Mixed Use, being the same zoning as the subject site, and the uses include a carpet tile business, backpacker accommodation, and The Vic of the Park pub which is on the corner of Addison Road and Enmore Road. Land to the west along Addison Road is zoned B7 Business Park and includes two-storey terrace dwellings.

Land opposite the site on the northern side of Addison Road is zoned B5 Business Development and includes recently constructed mixed-use developments. Located at 23 Addison Road is a six-storey mixed use development containing basement car parking, ground floor commercial/retail premises, and 60 residential apartments (DA2013/025). Immediately adjoining this building at 31-33 Addison Road is another five-storey mixed use development containing basement car parking, ground floor commercial premises, and 24 residential apartments (DA2013/345).

Land along Cook Road is zoned IN1 and IN2 and is predominantly used for industrial purposes. Although the predominant pattern along Addison Road is two-storeys, it is evident that sections of the area are experiencing a transition from the older stock buildings to contemporary development, which reflect the current zoning and planning controls.

Refer to Figure 2 below for a zoning map.

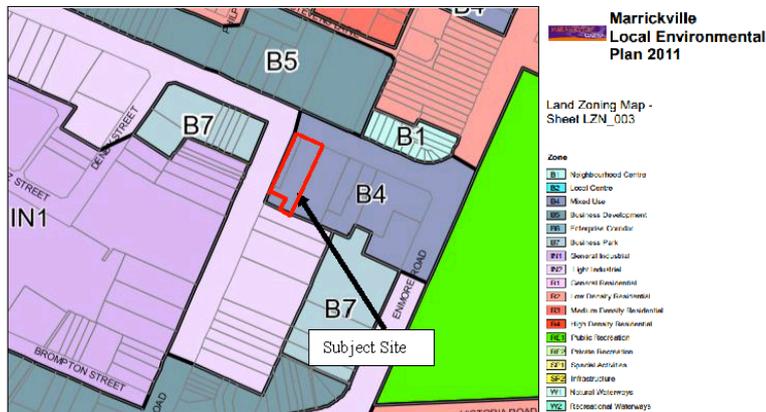


Figure 2 Land Zoning Map (Source: NSW Legislation Website)

The site is not listed as an item of heritage, nor is it located in a conservation area. The site is not identified on Council's maps as being flood affected.

The site is located in proximity to local shops, services, community facilities and public transportation. The Marrickville Metro Shopping Centre is within 500m walking distance to the east, being the most substantive shopping area in the vicinity. Enmore Park, a substantial open space area, is approximately 130m to the east of the site. Bus stops are located along Addison Road in either direction, allowing easy access to frequent public transportation leading to Newtown, the University of Sydney, CBD, Lewisham and Canterbury. The site is considered to be easily accessible.

3. **CLAUSE 4.6**

This submission is made under clause 4.6 of the MLEP11 – Exceptions to development standards. Clause 4.6 states the following:

**“4.6 Exceptions to development standards**

- (1) The objectives of this clause are as follows:
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for a development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

4

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - (b) the concurrence of the Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- Note.**  
When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
  - (c) clause 5.4,

5

*(ca) clause 6.17 or 6.18."*

The use of Clause 4.6 to enable an exception to this development control is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been satisfied in terms of the merits of the proposed development and the content in this Clause 4.6 variation request report.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

*4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.*

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

*(a) the consent authority is satisfied that:*

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

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

The Environmental Planning Instrument to which these variations relate to is the MLEP11.

The development standard to which this variation relates to is Clause 4.3 – Height of Buildings, which reads as follows:

*"(1) The objectives of this clause are as follows:*

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

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

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

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

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

As demonstrated in Figure 3 below, the subject site is prescribed to a maximum building height of 14m.

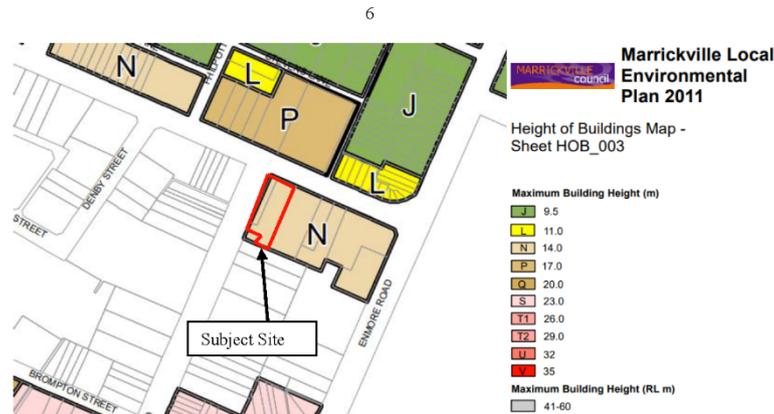


Figure 3 Height of Buildings Map (Source: NSW Legislation Website)

The proposed maximum building height is 17.1 metres. An exceedance of the standard by 3.1 metres is proposed, being a variation of 22%.

A written justification is therefore required for the proposed variation to the maximum building height development standard, in accordance with Clause 4.6 of the MLEP11.

**4. EXTENT OF NON-COMPLIANCE**

As noted above, Clause 4.3 of the MLEP11 states the subject site has a maximum building height of 14 metres.

As demonstrated on the architectural plans the maximum height, as measured in metres, is 17.1 metres. This proposal seeks a variation of 3.1 metres or 22%.

The height breach relates to the roof level and the stair and lift access to this level. The roof will be solely used as outdoor communal open space for the residents, and will be extensively landscaped. There is no floor area within the height breach. The reason for providing the communal open space at roof level is because of the improved solar access at this level, given the orientation of the site and the potential for future development on the adjoining eastern property.

The breach by the roof level will not be read from street level as the roof terrace will be setback from both street boundaries, and the lift overrun is centrally located.

Reference should be made to the building height plane and section plan prepared by Architecture & Building Works below which demonstrate the elements above and the degree of variation.

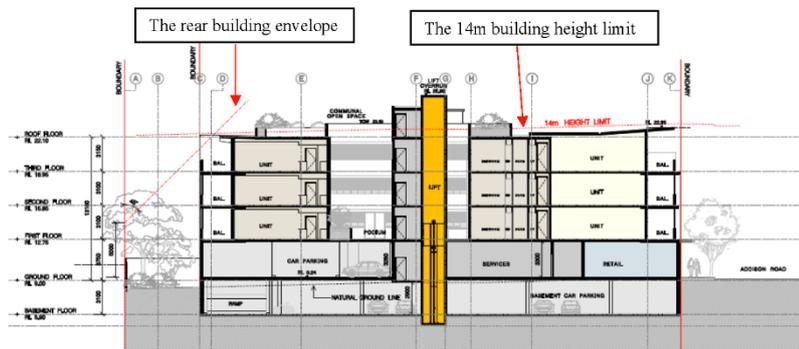


Figure 4 Section, Plan No. A-1500

While a variation is sought, it is considered that the built form proposed is suitable for the site. As the architectural plans including the section in Figure 4 show, all gross floor area is located below the maximum height building line. The proposed development does not seek a building envelope beyond the planning controls. The variation is strictly limited to the centralised roof structures consisting of the communal open space at the roof terrace, and the lift and stair access. This is demonstrated in the roof plan provided below, which shows the extent of the setbacks provided to the roof structures from the property boundaries.

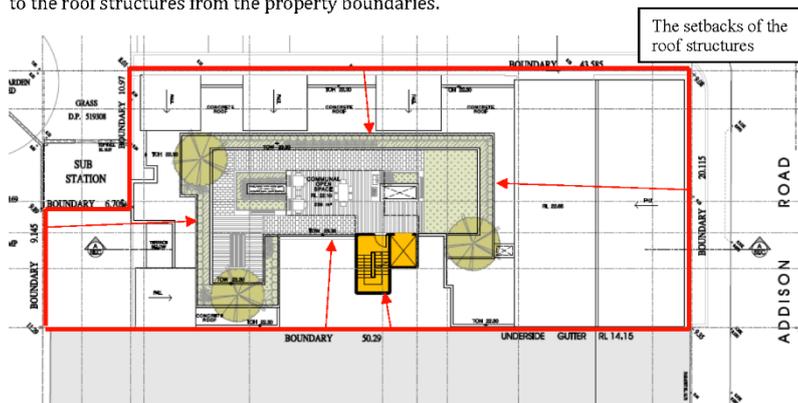


Figure 5 Roof Plan, Plan No. A-1400

The height breach is not a result of the development having an excessive the gross floor area, as the development complies with the maximum floor space ratio (FSR) allowed on the site.

It is our submission that the breach to the building height control will not impact on the amenity of the development or adjoining properties, nor will the variation compromise the architecture of the building or the bulk and scale of the development, nor create a negative precedent in the streetscape given the new built form already approved and constructed in the immediate area.

A degree of flexibility is considered reasonable in this instance.

**5. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?**

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827* are considered.

In the matter of Four2Five, the Commissioner stated within the judgement the following, in reference to a variation:

*“...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1.”*

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston GJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below:

<b>First</b>	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.  The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable. (applicable)</i>
<b>Second</b>	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary. (not applicable)</i>
<b>Third</b>	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. (not applicable)</i>
<b>Fourth</b>	<i>A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable. (not applicable)</i>
<b>Fifth</b>	<i>A fifth way is to establish that “the zoning of particular land” was “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land” and that “compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)</i>

In respect of the building height standard, the first method is invoked.

The objectives supporting the maximum building height control identified in Clause 4.3 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.3.

- "(1) The objectives of this clause are as follows:*
- (a) to establish the maximum height of buildings,*
  - (b) to ensure building height is consistent with the desired future character of an area,*
  - (c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*
  - (d) to nominate heights that will provide an appropriate transition in built form and land use intensity."*

With respect to objective (a), the subject site is afforded a maximum building height limit of 14 metres under the MLEP11. The proposal is generally compliant with this control with minor exceptions detailed in the section above.

Regarding objective (b), the maximum permissible height is one component that provides applicants detail as to the desired future character of the area. All controls governing a building envelope further assist in this regard.

The proposal is compliant with the floor space ratio, noting that all gross floor area is located below the 14m height limit. The immediate area along Addison Road and Cook Road consists of a variety of zones, including B4 Mixed Use (incorporating the site), B5 Business Development, B7 Business Park, B1 Neighbourhood Centre, IN1 General Industrial and IN2 Light Industrial. These zones range in height from having no height control, up to a maximum of 17m and a floor space ratio limit between 0.95:1 to 2:1.

The subject site is located directly opposite the B5 zoned land which has the most development potential of a 17m height limit and a FSR of 2:1. The subject site acts as a transition between the B5 Business Development zone opposite, and the adjoining IN2 Light Industrial zone to the south of the site. The proposed built form on the subject site respects the interface with the adjoining southern properties through the provision of a rear 6.785m setback. Within this setback, and behind the substation, will be deep soil planting.

The roof level terrace will be centralised within the overall building footprint and provided with large setbacks to all boundaries. The perimeter of the roof terrace will be extensively landscaped to screen any activity at this level.

Accordingly, given the general compliance with the planning controls governing built form, it is submitted that the proposal, including its height, is consistent with the desired future character of the B4 Mixed Use Zone along Addison Road.

The subject site is located on the southern side of Addison Road. In terms of public areas, the public domain and commercial/industrial properties on Addison Road and Cook Road will maintain sky views, though the extent will be lessened by the increase in density.

The public domain will retain solar access with the only losses due to a new awning to be constructed over the public domain for weather protection, aligning with the existing awnings on

some adjoining properties within the commercial corridor, and as required by the DCP controls for mixed use/commercial development on sites. The variation to the height does not negatively impact the available sky views.

The shadow diagrams indicate that the uplift in density on the site will result in an increase in overshadowing to the industrial properties along Cook Road and to any future mixed-use development along Addison Road. The Marrickville DCP acknowledges the impact on commercial properties is based on merit. The context of the application is of a redeveloping commercial corridor with a 14m height control. Retention of solar access is difficult when you consider the upzoning of the area which allows for greater floor space and height. The degree of impact is reflective of a density increase from two storey industrial/commercial development to four and five storey mixed use development as envisioned by the applicable planning controls.

The proposal satisfies objective (c).

Finally, on objective (d), notwithstanding the elements exceeding the maximum height of buildings control, the transition in bulk and scale of the development to adjoining land use zones has been accounted for in the prescribing of height controls to the site and its surrounds. As previously discussed, the Addison Road corridor provides for a height of between 11m and 17m, with many existing buildings being only two storeys.

This transition in scale of development is maintained irrespective of the proposed height variation due to the limited extent of the variation and the centralisation of the roof terrace away from property boundaries.

The proposed built form is consistent with many planning controls governing built form and is consistent with the desired future character of street block the site resides on. The site in its context provides an appropriate transition between height controls and the proposed variation does not unreasonably impact areas of lower built form and land use density.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard.

#### **6. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS?**

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The assessment above and shown throughout the supporting documentation demonstrates that the resultant environmental impacts of the proposal will be satisfactory.

The subject site has a maximum building height of 14 metres. The maximum height proposed is 17.1 metres. This proposal seeks a variation of 3.1 metres or 22%.

The height breach relates to the roof level and the stair and lift access to this level. The roof will be solely used as outdoor communal open space for the residents, and will be extensively landscaped. There is no floor area within the height breach. The reason for providing the communal open space at roof level is because of the improved solar access at this level, given the orientation of the site and the potential for future development on the adjoining eastern property.

The breach by the roof level will not be read from street level as the roof terrace will be setback from both street boundaries, and the lift overrun is centrally located.

It is important to reiterate that the amenity of the site and its surrounds are not additionally impacted by the elements above the height control. The proposal is keeping with the building envelope controls applicable to a B4 Mixed Use Zone along the Addison Road corridor. The height

variation overall has a negligible impact in terms of overshadowing or contributing to bulk and scale of the development given the limited extent of the elements exceeding the height.

The proposal has been designed to address the site constraints, the existing and desired future streetscape and character of the area and the relevant objectives of both the height of buildings standards and the zone. The proposal will not result in any unreasonable amenity or environmental impacts as a result of the variation.

The breach in height is a reasonable variation to accommodate a development of a size, scale and bulk that is consistent with the other planning controls, noting that the development is below the maximum floor space ratio. The lift overrun and fire stairs exist at this height to access the roof terrace. It is submitted that the variation presents no environmental impacts.

In this case, strict compliance with the development standard for height of buildings development standard of the MLEP11 is unnecessary and unreasonable.

#### **7. IS THE VARIATION IN THE PUBLIC INTEREST?**

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Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 4.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.3.

The building contextually has regard to its surrounding properties and provides sufficient open space and landscaping for the amenity of future residents. Deep soil planting is provided at ground level. At the Level 1 podium, a communal outdoor area will be provided with landscaping and seating, while at roof level a larger outdoor communal open space with landscaping, BBQ area and seating will be provided for the residents. This space will receive excellent solar access and privacy.

Furthermore, it is important to also consider the objectives of the B4 Mixed Use Zone in relation to the development, which are as follows:

##### ***Zone B4 Mixed Use***

##### ***Objectives of zone***

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

In response to the above the following is provided:

- The proposed mixed-use development comprises two retail tenancies and 21 residential units, creating a range of uses that will serve the needs of people who live in, work in and visit the local area.
- The subject site is located within an established area that is in close proximity to bus services along Addison Road and Enmore Road to the east. The suburb of Newtown and the Newtown railway station is located to the north-east of the site, within walking distance. The proposed employment generating retail tenancies and residential apartments will be situated in an accessible area.
- The proposal will renew retail opportunities to exist on the site.
- The proposed residential component will not compromise the provision of retail space on the site.
- The development does not affect any residential dwelling on the site being used as a dwelling house, as the site currently contains commercial buildings.
- The proposal provides for only the required car parking on site within the basement and ground floor levels.

The minor variation to the height control does not impinge on the ability of the development to meet the above objectives.

In view of the above, it is submitted that the proposed development is consistent with the objectives of the zone.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard, noting the development will be in the public interest.

#### **8. PUBLIC BENEFIT OF MAINTAINING THE STANDARD**

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It is considered that there is no benefit to the public or the community in maintaining the development standard. The proposed development will allow for the creation of a high-quality mixed-use development comprising two retail tenancies and 21 residential units, which as stated above meets the desired objectives of the zone and standard.

The built form, bulk and scale is considered suitable for the site and is within the desired future character of the area.

The development is generally consistent with the planning controls as detailed within the accompanying Statement of Environmental Effects and aligns with the objectives of the standard.

The structures within the height breach are minimal and the size and scale of the structures above the height control do not create notable amenity impacts and therefore do not create an undesirable result for the site or precedent for the area.

It is not considered that the variation sought raises any matter of significance for State or regional environmental planning.

The departure from the height of buildings control within the MLEP11 allows for the orderly and economic use of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

**9. IS THE VARIATION WELL FOUNDED?**

It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the MLEP11 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standards;
- The development meets the objectives of the standard to be varied (height of buildings) and objectives of the B4 Mixed Use zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State of Regional Significance; and
- The development submitted aligns with the existing and future character envisioned for the locality.

Based on the above, the variation is considered to be well founded.

**10. GENERAL**

Clause 4.6 also states that:

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

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

**Note.**

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

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
  - (a) a development standard for complying development,*
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
  - (c) clause 5.4,*

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*(ca) clause 6.17 or 6.18"*

This variation does not relate to the subdivision of land. The variation sought is thus not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A BASIX certificate has been submitted with the application.

Clauses 5.4, 6.17 and 6.18 of the MLEP11 do not apply to the proposal.

#### **11. CONCLUSION**

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The proposal does not strictly comply with the maximum building height control as prescribed by Clause 4.3 of the MLEP11. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the MLEP11 are satisfied as the breach to the controls does not create any adverse environmental impacts.

As reiterated throughout the SEE and this Clause 4.6 variation statement, all gross floor area is located below the maximum height building line. The proposed development does not seek a building envelope beyond the planning controls. The variation is strictly limited to the centralised roof structures consisting of the communal open space at the roof terrace, and the lift and stair access.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the MLEP11 to vary this development controls appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the maximum building height control is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

GAT & Associates  
Plan 3719

## Attachment D- Clause 4.6 Exception to Development Standards – Floor space ratio



27 February 2020

The General Manager  
Inner West Council  
PO BOX 14  
PETERSHAM NSW 2040

Attention: Matthew Di Maggio, Senior Planner

Dear Matthew,

**RE: DA201900391  
20-24 ADDISON ROAD, MARRICKVILLE  
REQUEST FOR ADDITIONAL INFORMATION – CLAUSE 4.6 VARIATION  
STATEMENT (CLAUSE 4.4 – FLOOR SPACE RATIO)**

This letter is submitted to address points 1 & 2 of the letter received from Inner West Council dated 10 February 2020, which raised concerns relating to the gross floor area calculations and the ground floor layout/activation.

Following on from amendments to the proposed mixed use development by Architecture & Building Works, the ground floor layout has been amended, resulting in a change to the proposed gross floor area (GFA) and floor space ratio (FSR).

The gross floor area now proposed is 1,662m<sup>2</sup>. Based on a site area of 938m<sup>2</sup>, this results in an FSR of 1.77:1. The permissible FSR is 1.75:1. The variation is equal to 21m<sup>2</sup>, or 1.2%.

This submission addresses the proposed variation to Clause 4.4 of the Marrickville Local Environmental Plan 2011 (MLEP11), which relates to the floor space ratio development standard.

This submission should be read in conjunction with the amended architectural plans prepared by Architecture & Building Works.

### **1. Introduction**

This statement has been prepared in relation to the redevelopment of Nos. 20-24 Addison Road for a four-storey mixed use building comprising ground floor commercial tenancies and 21 apartments with basement parking.

The proposed development meets the requirements as prescribed under Clause 4.6 of the MLEP11, as detailed in this written request for a variation to the maximum floor space ratio control.

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Clause 4.6 states the following:

***“4.6 Exceptions to development standards***

- (1) The objectives of this clause are as follows:
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.**
- (2) Development consent may, subject to this clause, be granted for a development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.**
- (4) Development consent must not be granted for development that contravenes a development standard unless:
  - (a) the consent authority is satisfied that:
    - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**
  - (b) the concurrence of the Director-General has been obtained.**
- (5) In deciding whether to grant concurrence, the Director-General must consider:
  - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) the public benefit of maintaining the development standard, and*
  - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.**
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
  - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.**

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

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
  - (a) a development standard for complying development,*
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
  - (c) clause 5.4*
  - (ca) clause 6.17 or 6.18".*

Clause 4.6 – Exceptions to development standards, establishes the framework for varying development standards applying under a LEP. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- 4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.*

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

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

The Environmental Planning Instrument to which these variations relate to is the Marrickville Local Environmental Plan 2011.

The development standard to which this variation relates to is Clause 4.4 – Floor Space Ratio, which reads as follows:

- (1) The objectives of this clause are as follows:*
  - (a) to establish the maximum floor space ratio,*
  - (b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,*

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

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

(2A) Despite subclause (2), development for the purposes of attached dwellings, bed and breakfast accommodation, dwelling houses and semi-detached dwellings on land labelled "F" on the Floor Space Ratio Map is not to exceed the relevant floor space ratio determined in accordance with the Table to this subclause.

Site area	Maximum floor space ratio
≤ 150 square metres	1.1:1
> 150 ≤ 200 square metres	1:1
> 200 ≤ 250 square metres	0.9:1
> 250 ≤ 300 square metres	0.8:1
> 300 ≤ 350 square metres	0.7:1
> 350 ≤ 400 square metres	0.6:1
> 400 square metres	0.5:1

(2B) Despite subclause (2), development for the purposes of residential flat buildings on land identified with a thick red line and labelled "F" on the Floor Space Ratio Map may exceed the maximum floor space ratio shown for the land on the Floor Space Ratio Map by no more than 0.25:1.

Council's maps identify a maximum floor space ratio on the site of 1.75:1.

Refer to Figure 1 below.

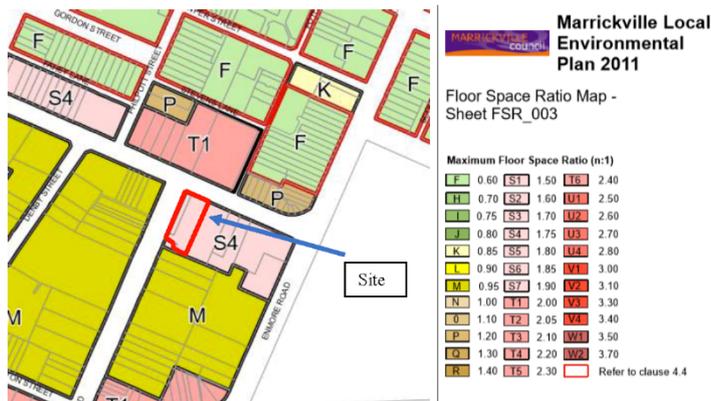


Figure 1: Floor Space Ratio Map

The gross floor area now proposed is 1,662m<sup>2</sup>. Based on a site area of 938m<sup>2</sup>, this results in an FSR of 1.77:1. The permissible FSR is 1.75:1. The variation is equal to 21m<sup>2</sup>, or 1.2%.

A written justification is therefore required for the proposed variation to the maximum floor space ratio development standard, in accordance with Clause 4.6 of the MLEP11.

## **2. Site Background**

The subject site is commonly known as 20-24 Addison Road, Marrickville. Legally, 20-22 Addison Road is referred to as Lot 2 in Deposited Plan 519308 and 24 Addison Road is referred to as Lot A in Deposited Plan 319814.

The site is located on the southern side of Addison Road, on the corner of Cook Road. The site is located just west of the Addison Road and Enmore Road intersection.

The site is irregular in its shape. The frontage to Addison Road (northern boundary) is 20.115 metres and the frontage to Cook Road (western boundary) is 43.585 metres. The rear boundary is dog-legged, partially wrapping around the adjoining substation to the rear. This results in the length of the eastern side boundary to be 50.29 metres. The total site area is 938m<sup>2</sup>.

The site currently contains industrial buildings. A two storey brick building addresses Addison Road, although the scale of this building is more three storeys. Another two storey building presents to Cook Road. Driveway crossings are located along the Cook Road frontage.

The site immediately adjoins a substation at the rear and this lot (Lot 1 in DP 519308) results in the subject site being irregular in shape along the southern boundary.

Development in the area is mixed, noting that there are a number of different land zonings with the immediate area. Land along Addison Road to the east is zoned B4 Mixed Use, while land to the west along Addison Road is zoned B7 Business Park and includes two storey terraces.

Land opposite the site on the northern side of Addison Road is zoned B5 Business Development and includes recently constructed mixed-use developments. Located at 23 Addison Road is a six-storey mixed use development comprising ground floor commercial/retail premises and 60 residential apartments. Located at 31-33 Addison Road is a five-storey mixed use development comprising ground floor commercial premises and 24 residential apartments.

Land along Cook Road is predominantly used for industrial purposes and zoned IN1 and IN2.

A site location map is provided in Figure 2.



Figure 2 Site Location Map (Source: SIX Maps 2019)

### 3. Extent of Non-Compliance

As noted above, Clause 4.4 of the MLEP 2011 states that the subject land has been determined to have a maximum floor space ratio of 1.75:1.

As the site area is 938m<sup>2</sup>, a maximum floor space permitted under Council's controls would be 1,641.5m<sup>2</sup>.

The application as amended proposes a gross floor area of 1,662m<sup>2</sup> which results in a floor space ratio of 1.77:1. A variation of 21m<sup>2</sup> or 1.2% is proposed.

The original submission sought a gross floor area of 1,636m<sup>2</sup> or an FSR of 1.74:1. This scheme included a large open entry leading into the enclosed residential foyer, which was excluded from the GFA calculation. There were also breezeways on the first, second and third floor levels which were excluded, but were fully enclosed. Council has questioned these areas in their letter dated 10 February 2020.

These areas have now been reassessed and the entry to the residential foyer has been significantly reduced in size and depth. The entry to the enclosed foyer has been brought forward towards the Cook Road frontage, to improve security and safety of users.

In addition, the presentation of Shop 1 to the Cook Road frontage has also been revised, to present more a shop front to this street. This has resulted in changes to the hydrant booster and pump/electrical room locations, which in turn has increased the size of the commercial units.

The GFA has subsequently increased as a result of these changes. Although the increase results in the permissible FSR being exceeded, it is considered that the design changes results

in a better development, without altering the overall height, bulk or scale that was proposed in the original submission.

The enclosed breezeways on the residential levels have also been amended so that they are open, with 1.4 metre high balustrading.

**4. Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?**

The proposed variation from the development standard is assessed against the accepted “5 Part Test” for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827*.

In the matter of Four2Five, the Commissioner stated within the judgement the following, in reference to a variation:

*“...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1.”*

It is therefore our submission that the Wehbe test is of relevance in the consideration of a standard to determine whether or not it is unreasonable or unnecessary in the circumstances of the case and it is evident in the Four2Five matter, the above test is relevant.

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Chief Justice Preston expressed the view that there are five (5) different ways in which an objection may be well founded, and that approval of the objection may be consistent with the aims of the policy. This attributes to determining whether compliance with the standard is unreasonable or unnecessary in the circumstances of the case as set out below:

<b>First</b>	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.  The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable. (applicable)</i>
<b>Second</b>	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary. (not applicable)</i>
<b>Third</b>	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. (not applicable)</i>
<b>Fourth</b>	<i>A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable. (not applicable)</i>
<b>Fifth</b>	<i>A fifth way is to establish that “the zoning of particular land” was “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land” and that “compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)</i>

In respect of the floor space ratio standard, the first method is invoked.

The objectives supporting the floor space ratio control identified in Clause 4.4 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.4.

*“(1) The objectives of this clause are as follows:*

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

Objective

- (a) to establish the maximum floor space ratio,*

Comment

The proposal has endeavoured to ensure that all of the habitable floor area associated with the development is within the maximum building height control, ensuring that the proposed bulk of the building will be consistent with the desired future character of the area.

The additional floor area now proposed, resulting in the breach to FSR, is attributed to the increase residential foyer at ground level, and the increase in Shop 1 due to the expanded shop front presentation to Cook Road, which has also affected the size of Shop 2. The overall height, bulk and scale as originally proposed in the development application has not been increased; rather the GRA calculation has been revised to include floor area which was already proposed.

Objective

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

Comment

Notwithstanding the additional gross floor area sought on the site, the proposal provides for a balance of built form and open space through the commercial floor area provided at ground level, the residential accommodation provided at the first, second and third floor levels, and the communal landscaped open space provided at roof level.

The mixed use development will revitalise the existing site and will contribute to relieving the pressure of urban sprawl and housing affordability in an accessible established area. The proposal will result in the increase in residential accommodation within an area that has good proximity to local services and public transportation.

The proposed development is consistent with the prescribed planning controls in terms of size and scale, and is compatible with new mixed use development in the immediate area. The proposal represents an appropriate density for its site.

It is noted that the site containing the mixed use development directly opposite the site at No. 23 Addison Road has a permissible floor space ratio of 2:1. Using Council's tracking system, the approved FSR for this site is 2.36:2, which is a variation of approximately 843m<sup>2</sup> or 17.9%. This is a substantial variation. However, when viewed from Addison Road, the scale of the development appears appropriate for the site, and is consistent with the adjoining development approved at No. 31-33 Addison Road, which complies with the FSR requirement. Refer to Figures 3 and 4 below.



*Figure 3 Mixed use development directly opposite the site at 23 Addison Road, where the FSR breached the maximum allowed by 17.9%.*



*Figure 4 Mixed use development directly opposite the site at 31-33 Addison Road, where the FSR complied with Council's requirements.*

The additional gross floor area proposed for the subject site is contained within the ground floor level and is not a visible attribute of the development. The proposed built form remains of a high-quality design that responds to the existing and desired future character of the streetscape. The proposed street wall height and presentation to the street corner is consistent with new development on the northern side of Addison Road.

The perspective provided below in Figure 5 demonstrates the development will be consistent with the bulk, scale and form of adjacent development along Addison Road, noting that the sites on the northern side of the road have a higher permissible floor space ratio.



Figure 5 Perspective of the proposed development.

The public and private domains are clearly delineated through various building elements including but not limited to solid walls, street numbering, change in materials, glazing and openings. The development will notably improve upon the existing interface and provide an active street frontage to both Addison and Cook Roads.

Objective

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

Comment

In terms of building separation, the general character of the development along Addison Road is for nil setbacks, reinforced by the recent developments opposite the site along Addison Road. Accordingly, the proposed development is almost entirely constructed with a nil setback to the eastern and southern shared boundaries.

As shown on the architectural plans the elements that have a nil setback are proposed as blank walls to ensure there are no privacy concerns to adjoining properties. The majority of balconies/terraces to the residential units will be orientated to the street frontages. Where they are orientated to the southern boundary, they will be setback. The balconies facing into

the site (to Units 1.01, 2.01 and 3.01) will have a return on the eastern side to improve privacy to any future redevelopment of the adjoining site at 14 Addison Road.

In terms of solar access, the site and its context must first be acknowledged. The site is located on a corner with a north facing front setback and a west facing secondary street setback interface. The development is therefore inherently guided to face either north or west. Therefore, the biggest impact in terms of solar access will be to the adjoining southern properties; however, the site immediately adjoining to the south is the substation, and adjoining land along Cook Road is zoned IN1 and IN2. The building has been designed in a 'U-shape' to address both street frontages and the rear boundary. A separation to the adjoining eastern boundary is provided by way of an open atrium or void, which allows for future separation to any development that may occur on the adjoining B4 Zone site.

The proposed street trees will soften the public domain to create a more active and pedestrian friendly space along the street frontages.

#### **5. Are there Sufficient Environmental Planning Grounds?**

The assessment above demonstrates that the resultant environmental impacts of the proposal will be satisfactory.

As the site area is 938m<sup>2</sup>, a maximum floor space permitted under Council's controls would be 1,641.5m<sup>2</sup>.

The application as amended proposes a gross floor area of 1,662m<sup>2</sup> which results in a floor space ratio of 1.77:1. A variation of 21m<sup>2</sup> or 1.2% is proposed.

It is important to reiterate that the amenity of the site and its surrounds is in no way negatively impacted through the proposal. The proposed development is in keeping with the land use table provided by the B4 Mixed Use Zone controls and has made regard to the context of the site.

As stated, the original submission sought a gross floor area of 1,636m<sup>2</sup> or an FSR of 1.74:1, which complied with the standard. This scheme included a large open entry leading into the enclosed residential foyer, which was excluded from the GFA calculation. There were also breezeways on the first, second and third floor levels which were excluded, but were fully enclosed. Council has questioned these areas in their letter dated 10 February 2020.

These areas have now been reassessed and the entry to the residential foyer has been significantly reduced in size and depth. The entry to the enclosed foyer has been brought forward towards the Cook Road frontage.

In addition, the presentation of Shop 1 to the Cook Road frontage has also been revised, to present more shop front to this street. This has resulted in changes to the hydrant booster and pump/electrical room locations. The size of Shops 1 and 2 have therefore increased in floor area.

The GFA has subsequently increased as a result of these changes. However, the overall perceived bulk and scale of the development will not be increased from the original proposal, as this floor area was already accommodated within the ground floor footprint of the building.

It is important to reiterate that the amenity of the site and its surrounds are not additionally impacted by the additional gross floor area. The proposal is keeping with the building envelope controls applicable to a B4 Mixed Use Zone along the Addison Road corridor. A minor height variation is also proposed, caused by a breach by the roof level and the accompanying stair and lift access, which will not be read from street level as the roof terrace will be setback from both street boundaries, and the lift overrun is centrally located. There is no floor area within the height breach. The reason for providing the communal open space at roof level is because of the improved solar access at this level, given the orientation of the site and the potential for future development on the adjoining eastern property

The breach sought to the height limit, which formed part of a separate submission with the Development Application, has a negligible impact in terms of overshadowing or contributing to bulk and scale of the development given the limited extent of the elements exceeding the height.

The proposal has been designed to address the site constraints, the existing and desired future streetscape and character of the area and the relevant objectives of both the floor space ratio standards and the zone. The proposal will not result in any unreasonable amenity or environmental impacts as a result of the variation.

The breach in floor space ratio is a reasonable variation to accommodate a development of a size, scale and bulk that is consistent with the other planning controls. It is submitted that the variation presents no environmental impacts.

In this case, strict compliance with the development standard for floor space ratio of buildings development standard of the MLEP11 is unnecessary and unreasonable.

#### **6. Is the Variation in the Public Interest?**

Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 4.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.4.

The proposed application is considered to be consistent with the desired future controls and when assessed against Council's provisions maintains compliance with general design and amenity outcomes, solar access, privacy and landscaping provisions.

The building contextually has regard to its surrounding properties and provides excellent amenity to residents that is further enhanced through the additional area of communal open space proposed at roof level.

Furthermore, it is important to also consider the objectives of the B4 Mixed Use zone in relation to the development, which are as follows:

**Zone B4 Mixed Use****Objectives of zone**

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

In response to the above, the following is provided:

- The proposed mixed-use development comprises two retail tenancies and 21 residential units, creating a range of uses that will serve the needs of people who live in, work in and visit the local area.
- The subject site is located within an established area that is in close proximity to bus services along Addison Road and Enmore Road to the east. The suburb of Newtown and the Newtown railway station is located to the north-east of the site, within walking distance. The proposed employment generating retail tenancies and residential apartments will be situated in an accessible area.
- The proposal will renew retail opportunities to exist on the site.
- The proposed residential component will not compromise the provision of retail space on the site.
- The development does not affect any residential dwelling on the site being used as a dwelling house, as the site currently contains commercial buildings.
- The proposal provides for only the required car parking on site within the basement and ground floor levels.

The proposal has been designed to address the site constraints, the existing and desired future streetscape and character of the area. The proposal will not result in any unreasonable amenity or environmental impacts as a result of the variation.

The breach in FSR is a reasonable variation to accommodate a development of a size, scale and bulk that is consistent with the other planning controls.

In this case, strict compliance with the development standard for floor space ratio of the MLEP11 is unnecessary and unreasonable. It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard, noting the development will be in the public interest.

**7. Public Benefit of Maintaining the Standard**

It is considered that the public benefit will not be undermined by varying the standard. The proposal provides for a high-quality mixed use commercial and residential building in keeping with the mixed use zoning. The proposed development will allow for the creation of a high-quality mixed-use development comprising two retail tenancies and 21 residential units, which as stated meets the desired objectives of the zone and standard.

The built form, bulk and scale is considered suitable for the site and is within the desired future character of the area.

The development is generally consistent with the current planning controls as detailed within the accompanying Statement of Environmental Effects and aligns with the objectives of the standard.

It is not considered that the variation sought raises any matter of significance for State or Regional environmental planning.

The departure from the floor space ratio control within the MLEP11 allows for the orderly and economic development of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

It is not considered that the variation sought raises any matter of significance for State or regional environmental planning.

#### **8. Is the Variation Well Founded?**

It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the MLEP11 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standards;
- The development meets the objectives of the standard to be varied (floor space ratio) and objectives of the B4 Mixed Use zoning of the land;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance; and
- The development submitted aligns with the existing and future character envisioned for the locality.

Based on the above, the variation is considered to be well founded.

#### **9. General**

Clause 4.6 also states that:

- “(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note.** *When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production*

*Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.*

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) a development standard for complying development,*
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
  - (c) clause 5.4,*
  - (ca) clauses 6.17 or 6.18."*

This variation does not relate to the subdivision of land. The variation sought is thus not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A revised BASIX certificate is not required as there are no changes to the residential units.

Clauses 5.4, 6.17 and 6.18 of the MLEP11 do not apply to the proposal.

#### **10. Conclusion**

The proposal does not strictly comply with the maximum floor space ratio controls as prescribed by Clause 4.4 of the MLEP11. Having evaluated the likely effects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the MLEP11 are satisfied as the breach to the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the MLEP11 to vary this development control is appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the maximum floor space ratio is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

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