






INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	201800105
Address	28-30 George Street, Marrickville
Proposal	To demolish existing improvements and construct a 4 storey residential flat building containing 15 units with basement car parking
Date of Lodgement	8 March 2018
Applicant	BKA Architecture
Owner	Mr Theo Krilis & Mrs Kanella Krilis
Number of Submissions	2 submissions
Value of works	\$4,781,084.00
Reason for determination at Planning Panel	The type of development exceeds officers' delegation, being a development to which <i>State Environmental Planning Policy No. 65</i> applies and 4 storeys in height.
Main Issues	Floor Space Ratio
Recommendation	Deferred commencement consent



Subject Site: 
 Notified Area: 

Objectors: 

1. Executive Summary

This report concerns an application to demolish existing improvements and construct a 4 storey residential flat building containing 15 units with basement car parking. The application was notified in accordance with Council's notification policy and two submissions were received.

During the assessment process the proposal was amended to address a number of concerns raised by Council officers relating to tree management, common open space, architectural expression, internal amenity, and setbacks. The amended proposal was not required to be notified in accordance with Council's Notification Policy.

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 (MLEP 2011) with the exception that the proposal exceeds the maximum height of buildings development standard by 9% (1.26 metres) and exceeds the floor space ratio development standard by 9.87% (102.2sqm). A written justification under Clause 4.6 of MLEP 2011 has been submitted by the applicant for the non-compliance and the justification provided is well founded and worthy of support.

The proposal is generally consistent Marrickville Development Control Plan 2011 (MDCP 2011). The potential impacts to the surrounding environment have been considered as part of the assessment process. Any potential impacts from the development are considered to be acceptable given the context and circumstances of the site.

Notwithstanding, as the site falls to the rear an easement for drainage over downstream properties will be required to be created. Satisfactory written documentation of the creation of an easement or of a legal agreement to create an easement needs to be demonstrated.

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

2. Proposal

Approval is sought to demolish existing improvements and construct a 4 storey residential flat building containing 15 units with basement car parking. The application includes the following works:

- Demolition of existing improvements on the site;
- Removal of trees;
- Construction of new basement containing a total of 18 car parking spaces, including 3 accessible car parking spaces, 2 visitor car parking spaces, 1 of which is accessible, 1 motorcycle parking space, 10 bicycle parking spaces, waste management facilities and residential storage areas; and
- Construction of a 3 storey residential flat building containing 5 x 1 bedroom dwellings, 8 x 2 bedroom dwellings and 2 x 3 bedroom dwellings, with 3 dwellings being adaptable and includes landscaping throughout the site.

3. Site Description

The site is comprised of 3 land parcels legally described as Lot 1 in DP 1027790, Lot 1 in DP 105246 and Lot 1 in DP 119562L and is collectively known as 28-30 George Street, Marrickville.

The site is situated on the northern side of George Street between Wardell Road to the west and Livingstone Road to the east, Marrickville.

The site has a combined area of 1,219sqm, a frontage to George Street of 24.23 metres and a maximum depth of 50.44 metres. The land has an overall fall of approximately 2.79 metres across the site from RL 21.95 metres AHD at the front south eastern corner to RL 19.16 metres AHD at the rear north western corner.

The site presently contains a single storey dwelling house on the land known as 28 George Street and a 1 part 2 storey dwelling house on the lot known as 30 George Street.

The site is surrounded by residential uses including No. 26 George Street to the west which includes a 3 storey residential flat building, No. 35-37 Pile Street to the north (rear) which contains a 2 storey residential flat building and No. 32-34 George Street to the east which contains a 1 part 2 storey dual occupancy development and is approved for redevelopment into a 4 storey residential flat building.

On a broader context, the site is located within an area zoned R1 General Residential in the precinct bounded by Wardell Road to the west and Livingstone Road to the east.

4. Background

4(a) Site history

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

Subject Site

Nil recent development history

Surrounding properties

Application	Proposal	Decision & Date
32-34 George Street (DA201700461)	To demolish existing structures and construct 4 storey residential flat building with basement parking and associated landscaping	Deferred commencement consent, dated 28 February 2018

4(b) Application history

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

Date	Discussion / Letter/ Additional Information
10 July 2018	Amended plans submitted indicating calculations for GFA, deep soil and common open space being corrected, and addressing concerns regarding urban design, common open space and other amendments.
21 March 2017	Amended Landscape Plan and Arborists report being submitted
27 July 2018	Final Architectural Plans and Landscape Plans/Documents submitted to Council.

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 79C of the Environmental Planning and Assessment Act 1979.

5(a) Environmental Planning Instruments

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

- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development
- State Environmental Planning Policy No 55 - Remediation
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Marrickville Local Environmental Plan 2011
- Draft State Environmental Planning Policy (Environment)
- Draft Marrickville Local Environmental Plan 2011 (Amendment 4)
- Marrickville Development Control Plan 2011

The following provides further discussion of the relevant issues:

5(a)(i) State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 concerns the protection/removal of vegetation identified under Marrickville Development Control Plan 2011 (MDCP 2011). There are a number of trees protected by MDCP 2011 which are discussed later in Section 5(c)(i)(vii) of this report under the provisions of Part 2.20 of MDCP 2011.

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 9 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 generally acceptable having regard to the 9 design quality principles.

Apartment Design Guide

The ADG contains objectives, design criteria and design guidelines for residential apartment development. In accordance with Clause 6A of the SEPP the requirements contained within MDCP 2011 in relation to visual privacy, solar and daylight access, common circulation and spaces, apartment sizes and layout, ceiling heights, private open space and balconies, natural ventilation and storage have no effect. In this regard objectives design criteria and design guidelines set out in Parts 3 and 4 of the ADG prevail.

The development has been assessed against the relevant design criteria within Part 3 and 4 of the ADG as follows:

Communal and Open Space

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

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

The development provides 304sqm of common open space on the ground floor level of the development, being 25% of the total site area. The development provides a high quality space for use by residents which receives adequate solar access. Furthermore, each dwelling in the building is provided with an oversized balcony accessible off the principal living area and as such the development is acceptable having regard to the requirements of the SEPP.

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 ²	-	7%
650m ² - 1,500m ²	3m	
Greater than 1,500m ²	6m	
Greater than 1,500m ² with significant existing tree cover	6m	

The site has a total area of 1,219sqm which would require a deep soil zone consisting of 7% of the site area. The development provides 356sqm throughout the site which exceeds the 7% requirement and is acceptable.

Visual Privacy/Building Separation

Objective 3F-1 of 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

The rear boundary setback exceeds the required 6 metre setback and is considered sufficient to enable adequate separation between the development and the accommodation to the rear.

The development provides a minimum 4 metre side boundary setback to the eastern and western sides, with the rear portion of the western side increasing to 6 metres. Whilst this does not strictly comply with the numerical side boundary setback control, the development is considered to provide adequate separation between the subject development and the residential flat building at No. 26 George Street to the west and the approved residential flat building to the east at No. 32-34 George Street and includes measures such as privacy screening and landscaping to protect the visual privacy of that dwelling and complies with

Council's controls for solar access. The development to the west and approved development to the east have setbacks of 2.7 metres and 4 metres respectively which provide additional separation across side boundaries.

The siting of the development on the site responds appropriately to Council's built form controls with regards to setbacks. Whilst not complying with the minimum side boundary setback, the development provides adequate privacy screening to ensure visual privacy for adjoining dwellings and achieves the objective of the building separation control in the ADG.

Solar and Daylight Access

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

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

13 of the 15 dwellings within the development receive solar access in accordance with the above controls, equating to 86% of the dwellings. None of the apartments receive no direct solar access.

Natural Ventilation

The ADG prescribes the following requirements for natural ventilation:

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

All dwellings within the development are naturally ventilated in accordance with the above controls.

Ceiling Heights

The development provides floor to ceiling heights in accordance with the ADG controls.

Apartment Size

All apartments within the development comply with the ADG minimum size.

Apartment Layout

The ADG prescribes the following requirements for apartment layout requirements:

- Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.
- Habitable room depths are limited to a maximum of 2.5 x the ceiling height.
- In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8 metres from a window.

- Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).
- Bedrooms have a minimum dimension of 3 metres (excluding wardrobe space).
- Living rooms or combined living/dining rooms have a minimum width of:
 - 3.6 metres for studio and 1 bedroom apartments.
 - 4 metres for 2 and 3 bedroom apartments.
- The width of cross-over or cross-through apartments are at least 4 metres internally to avoid deep narrow apartment layouts.

The development provides apartments that comply with the above requirements.

Private Open Space and Balconies

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

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

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

All apartments are provided with primary balconies that exceed the minimum area and minimum depth as per above.

Common Circulation and Spaces

The ADG prescribes that the maximum number of apartments off a circulation core on a single level is 8. The maximum number of units accessible off a single level is 4 which is acceptable.

Storage

The development provides sufficient storage within the apartments and at basement level complying with the minimum size as per the requirements of the ADG.

Ground Floor Apartments

The development provides ground floor apartments that:

- Allow for direct street access and maintain a street frontage activity;
- Allow casual surveillance from windows, doors and terraces whilst providing privacy and safety for occupants of the development through design solutions; and
- Achieve adequate solar access.

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

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

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

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

- (i) Clause 2.3 - Land Use Table and Zone Objectives
- (ii) Clause 2.7 - Demolition
- (iii) Clause 4.3 - Height
- (iv) Clause 4.4 - Floor Space Ratio
- (v) Clause 4.6 - Exceptions to Development Standards
- (vi) Clause 6.1 - Acid Sulfate Soils
- (vii) Clause 6.2 – Earthworks
- (viii) Clause 6.5 - Development in areas subject to Aircraft Noise

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

Standard (maximum)	Proposal	% of non-compliance	Complies
Floor Space Ratio Permitted: 0.85:1	0.93:1	9.87% (102.2sqm)	No
Height of Building Permitted: 14 metres	15.26 metres	9% (1.26 metres)	No

The following provides further discussion of the relevant issues:

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

The site is zoned R1 General Residential under the provisions of MLEP 2011. The development is permissible with Council's consent under the zoning provisions applying to the land. The development is acceptable having regard to the objectives of the R1 - General Residential zone.

(ii) Demolition (Clause 2.7)

Clause 2.7 of MLEP 2011 states that the demolition of a building or work may be carried out only with development consent. The application seeks consent for demolition works. Council's standard conditions relating to demolition works are included in the recommendation.

(iii) Height (Clause 4.3)

A maximum building height of 14 metres applies to the land under MLEP 2011. The development has a maximum building height of 15.23 metres which does not comply with the development standard. The development represents a departure of 1.23 metres or 9% from the development standard.

A written request, in relation to the development's non-compliance with the maximum height development standard in accordance with Clause 4.6 (Exception to Development Standards) of MLEP 2011, was submitted with the application. That request is discussed below under the heading "Exceptions to Development Standards (Clause 4.6)".

(iv) Floor Space Ratio (Clause 4.4)

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

The development has a gross floor area (GFA) of 1,138.17sqm which equates to a FSR of 0.93:1 on the 1,219sqm site which does not comply with the FSR development standard. The development represents a departure of 102.2sqm (9.87%) from the development standard.

A written request, in relation to the development's non-compliance with the floor space ratio development standard in accordance with Clause 4.6 (Exception to Development Standards) of MLEP 2011, was submitted with the application. That request is discussed below under the heading "Exceptions to Development Standards (Clause 4.6)".

(v) Exceptions to Development Standards (Clause 4.6)

As detailed earlier in this report, the development varies from the maximum height development standard prescribed by Clause 4.3 of MLEP 2011 and the maximum floor space ratio development standard prescribed under Clause 4.4 of MLEP 2011.

A written request in relation to the variation to the development standards in accordance with Clause 4.6 (Exceptions to Development Standards) of MLEP 2011 was submitted with the application.

Under Clause 4.6 development consent must not be granted for a development that contravenes a development standard unless the consent authority has considered a written request from the applicant that demonstrates that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify contravening the development standard.

The consent authority must also be satisfied that 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.

The written request submitted as part of this development application provides due regard to Land and Environment Court decision *Wehbe v Pittwater Council* [2007] NSWLEC 827. In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston stated that there are five different ways in which a variation to a development standard might be shown as unreasonable or unnecessary in the circumstances of the case. These five ways are:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

The written requests provided for the variations to the height and FSR development standards are detailed below:

Maximum Height

The applicant considers compliance with the maximum height of buildings development standard to be unreasonable and unnecessary in this instance and nominates sufficient environmental planning grounds to justify the variation. These reasons are summarised as follows:

- The non-compliant height relates to the lift overrun only and does not include any part of the built form that contains habitable or gross floor area. The height exceedance will result in an acceptable density and bulk for the development which is proposed below the maximum height for the built forms and provides a compliant building envelope with an appropriate level of amenity for future occupants of the development and adjoining sites.
- The development achieves the objectives of the development standard as follows:
 - The proposed building height in relation to the built form is consistent with the desired future character of an area with no part of the building exceeding the height of buildings development standard apart from the limited lift overrun. The lift overrun is located on the eastern side of the development and would not create any additional impacts for adjoining properties by way of additional overshadowing or visual bulk and scale.
 - The development will ensure that adjoining buildings and public areas will continue to receive satisfactory exposure to the sky and sunlight as the non-compliant building height is limited to the small lift overrun component along the eastern side of the development.
 - The building height will maintain an appropriate transition in built form and land use intensity with adjoining sites.
- The variation proposed is minor and equates to only 9% or 1.26 metres and achieves a good design outcome with an appropriate building height. The non-compliant building height is not created by any part of the built form that constitutes GFA or FSR.

The justification provided above is considered well founded and worthy of support. The built form, although representing a departure of the height development standard, is considered to be a suitable outcome for the site given its context and the nature of surrounding development.

Maximum FSR

The applicant considers compliance with the floor space ratio development standard to be unreasonable and unnecessary in this instance and has provided sufficient environmental planning grounds to justify the variation. These reasons are summarised as follows:

- The non-compliant GFA and FSR will result in an acceptable density and bulk given that the development complies with the maximum height of buildings development standard of the LEP (with the exception of the lift overrun), building envelope controls for the development type and provides an appropriate level of amenity for future occupants of the development and adjoining properties.
- The development achieves a good design outcome with an appropriate density and bulk that will result in a development that better achieves the objectives of the FSR development standard and objectives of the R1 General Residential zone than an otherwise compliant development would. The development is

accordingly considered to be consistent with the desired future character of the local area which envisages a mixed density of residential development.

- The variation proposed is minor and equates to only 9.87% or 102.2sqm of GFA which is attributed to by the increase in the sizes of the units proposed in order to provide better amenity than smaller sized units. The development proposes larger sized units than the minimum sizes required under the SEPP 65 ADG in order to afford future occupants with better levels of amenity than compliant minimum unit sizes would. Importantly, the increased GFA and FSR is not proposed in order to achieve additional yield for the development but rather, achieves a better planning outcome for the site than what a fully compliant development would.
- Whilst strict compliance with the development standard could be enforced and achieved, strict compliance would result in a poorer outcome for the site than that proposed. This would result in smaller sized units affording future occupants lower levels of amenity than that achievable with larger sized units as proposed.
- Although the proposal results in a non-compliance with the numerical component of the development standard, the development achieves the relevant objectives of the development standard as follows:
 - The development proposes a built form that is appropriate for the site having regard to the land use zone, achievable building envelope and capacity of existing utilities and infrastructure;
 - The proposed density and bulk is appropriate in relation to the site area and has been designed in order to achieve the desired future character of the local area; and
 - The development has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act, 1979* where it has been demonstrated that the development will not have adverse environmental impacts on the use or enjoyment of adjoining properties and the public domain. In particular, the development would not create any adverse amenity impacts for adjoining properties with regard to visual or acoustic privacy, overlooking and overshadowing as a consequence of the additional GFA and FSR.

The justification provided above is considered well founded and worthy of support. The built form, although representing a departure from the floor space ratio development standard, is considered to be a suitable outcome for the site given its context and the nature of surrounding development.

It is further acknowledged that a number of developments in the vicinity of the site have been approved with variations to Council's development standards contained in MLEP 2011, including the following:

- Determination No. 201700461, dated 28 February 2018, granted a deferred commencement consent to demolish existing structures and construct 4 storey residential flat building with basement parking and associated landscaping on the adjoining site to the east at No. 32-34 George Street. That development was approved with a variation to the maximum FSR development standard of 9.4% and a variation to the maximum height development standard of 5%.
- Reviewed Determination No. 201600025, dated 13 February 2017 granted consent to demolish the existing improvements including tree removal and construct a 4 storey residential flat building containing 14 dwellings with basement car parking on a site to the west at No. 20-22 George Street. That development was approved with a variation to the maximum FSR development standard of 8%.

The above developments are not dissimilar to the proposal, and as such contextually the proposal is considered appropriate.

The justification provided in the applicant's written request is considered well founded and worthy of support. Considering the above justification, strict compliance with the height and FSR development standards is considered unreasonable and unnecessary given the circumstances of the site. The justification provides due regard to the following decisions of the NSW Land and Environment Court:

- (a) *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- (b) *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- (c) *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386;
- (d) *Moskovich v Waverley Council* [2016] NSWLEC 1015; and
- (e) *Zhang and anor v Council of the City of Ryde* [2016] NSWLEC 1179.

The contravention of the development standards does not raise any matter of significance for State and Regional environmental planning, and there is no public benefit in maintaining strict compliance with the standard.

(vi) Acid Sulfate Soils (Clause 6.1)

The land is identified as land being affected by Class 5 acid sulfate soils on the MLEP 2011 Acid Sulfate Soils Map.

Clause 6.1 of MLEP 2011 states that for works in Class 5 areas, a preliminary assessment is only required where the development is within 500 metre of adjacent Class 1-4 lands and where the water table is likely to be lowered below 1 metre AHD.

The proposed development does not involve works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres AHD by which the water table is likely to be lowered below 1 metre AHD on adjacent Class 1, 2, 3 or 4 land. Given this, it is unlikely that the proposed works will involve excavation at or below the groundwater level or involve works that could lower the groundwater table. Accordingly, a preliminary soil assessment is not required given the circumstances and site RL levels.

The development is thus acceptable having regard to acid sulfate soils.

(vii) Earthworks (Clause 6.2)

A Geotechnical Desktop Study was lodged with the application that recommended a detailed geotechnical subsurface investigation prior to the final design be undertaken to determine the site specific subsurface profile and geotechnical parameters for the design of footings. The report also recommended that geotechnical footing inspections be carried out during the construction stage to check initial assumptions about foundations conditions and likely variations that may occur between borehole locations.

The application was also referred to Council's Development Engineer who provided conditions to be included in the recommendation.

(ix) Development in areas subject to Aircraft Noise (Clause 6.5)

The land is located within the 20-25 Australian Noise Exposure Forecast (2033) Contour and as such the development is likely to be affected by aircraft noise. The carrying out of development would result in an increase in the number of people affected by aircraft noise.

The development would need to be noise attenuated in accordance with AS2021:2000. An Acoustic Report was submitted with the application which details that the development could be noise attenuated from aircraft noise to meet the indoor design sound levels shown in

Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS2021:2000. The report contains recommendations to be incorporated into the development in order to mitigate acoustic impacts. Appropriate conditions are included in the recommendation to ensure the requirements recommended within the Acoustic Report are incorporated into the development.

5(b) Draft Environmental Planning Instruments

5(b)(i) State Environmental Planning Policy (Environment)

The NSW government has been working towards developing a new State Environmental Planning Policy (SEPP) for the protection and management of our natural environment. The Explanation of Intended Effect (EIE) for the Environment SEPP was on exhibition from 31 October 2017 until the 31 January 2018. The EIE outlines changes to occur, implementation details, and the intended outcome. It considers the existing SEPPs proposed to be repealed and explains why certain provisions will be transferred directly to the new SEPP, amended and transferred, or repealed due to overlaps with other areas of the NSW planning system.

This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland and Willandra Lakes World Heritage Property. Changes proposed include consolidating the seven existing SEPPs including Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. The proposed development would be consistent with the intended requirements within the Draft Environment SEPP.

5(b)(ii) Draft Marrickville Local Environmental Plan 2011 (Amendment 4)

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

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

5(c) Development Control Plans

5(c)(i) Marrickville Development Control Plan 2011

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

Part	Compliance
Part 2.5 Equity of Access and Mobility	Yes – see discussion
Part 2.6 Visual and Acoustic Privacy	Yes – see discussion
Part 2.7 Solar Access and Overshadowing	Yes – see discussion
Part 2.9 Community Safety	Yes – see discussion
Part 2.10 Parking	Yes – see discussion
Part 2.16 Energy Efficiency	Yes

Part 2.18 Landscaping and Open Spaces	Yes – see discussion
Part 2.20 Tree Management	Yes – see discussion
Part 2.21 Site Facilities and Waste Management	Yes – see discussion
Part 2.23 Acid Sulfate Soils	Yes
Part 2.25 Stormwater Management	Yes
Part 3 – Subdivision, Amalgamation and Movement Networks,	Yes – see discussion
Part 4.2 Multi Dwelling Housing and Residential Flat Buildings	Yes – see discussion
Part 8 Strategic Context	Yes

The following provides discussion of the relevant issues:

PART 2 – Generic Provisions

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

Part 2.5 of MDCP 2011 specifies the minimum access requirements including the following accessible facilities in accordance with the relevant Australian Standards:

MDCP Requirement	Proposed	Consistency
For developments with five (5) or more dwellings, one adaptable dwelling per five or part thereof.	15 dwellings require the provision of 3 adaptable dwellings.	Yes
Appropriate access for all persons through the principal entrance of a building and access to any common facilities	A level entry of sufficient width has been provided and lift access throughout the building and to the common open space is provided.	Yes
1 accessible parking space for every adaptable dwelling	3 accessible parking spaces servicing 3 adaptable dwellings	Yes
1 accessible visitor’s parking space for every four accessible parking spaces or part thereof, designed in accordance with relevant Australian Standards.	1 accessible visitor parking space is provided	Yes

Table 1: Assessment of proposal against Part 2.5 of MDCP 2011

Based on the assessment provided in Table 1 above, the proposal satisfies the relevant provisions of Part 2.5 of MDCP 2011.

(ii) Acoustic and Visual Privacy (Part 2.6)

Part 2.6 of MDCP 2011 contains objectives and controls relating to acoustic and visual privacy. Whilst the ADG prescribes privacy controls which effectively prevail over the controls contained in MDCP 2011, the controls contained in MDCP 2011 are still a relevant matter for consideration. To ensure the development maintains acoustic and visual privacy for the surrounding residential properties and for future occupants of the development, the following aspects are discussed:

- All areas of private open space and living room glazing along the northern and southern elevations face towards the rear and front of the site respectively in accordance with Council's controls and as such no concern is raised in relation to visual privacy from these spaces. The development provides an 8 metre rear setback from the balcony balustrade and approximately 10 metre setback from the rear glazing which is substantial.
- All windows along the eastern and western elevations that are located within 6 metres of the side boundaries are treated with fixed obscured glazing to a height of 1.6 metres above finished floor level to ensure visual privacy to adjoining dwellings is maintained.
- Those windows located a minimum of 6 metres from the side boundaries comply with the minimum setbacks prescribed by the Apartment Design Guide and thus are acceptable having regard to visual privacy. Notwithstanding, these windows generally service bedrooms, bathrooms and studies which are considered low activity rooms and therefore no concern is raised in relation to visual privacy.

The proposal is considered to comply with the visual and acoustic privacy controls under MDCP 2011. The layout and design of the development would ensure that the visual and acoustic privacy currently enjoyed by residents of adjoining residential properties is protected. The development maintains a high level of acoustic and visual privacy for the surrounding residential properties and would ensure a high level of acoustic and visual privacy for future occupants of the development itself. Windows have been appropriately placed and screened within the development to ensure the potential for adverse visual privacy impacts are mitigated.

A Noise Impact Assessment report was submitted with the application which provided recommendations for materials and finishes at the construction stage. These recommendations are designed to ensure that the noise intrusion impact from aircraft noise onto future occupants of the development are mitigated and to ensure adverse acoustic impacts onto neighbouring properties is also alleviated.

Given the above the development is reasonable having regard to the objectives and controls relating to visual and acoustic privacy as contained in MDCP 2011.

(iii) Solar Access and Overshadowing (Part 2.7)

Overshadowing

The shadow diagrams submitted with the application illustrate the extent of overshadowing as a result of the development. The development will result in increased overshadowing to the windows on the eastern elevation of the residential flat building to the west of the site at No. 26 George Street.

The shadow diagrams submitted include half-hourly shadow diagrams in plan and elevation between 9:00am and 11:00am which is the extent of the shadow caused by No. 28-30 given the orientation of the site and siting of No. 26.

The diagrams indicate that the windows are replicated for all 3 levels of No. 26, with bathroom, kitchen and bedroom windows only being serviced by those windows. An inspection of No. 26 identifies that all apartments have balconies along the western elevation of the building with a large side boundary setback in excess of 3 metres and those balconies appear to be directly accessible off principal living areas.

Therefore, the windows along the eastern elevation which are impacted on by the subject development are not protected under Part 2.7 of MDCP 2011 in that they are secondary sources of light or bedroom/bathroom windows. Direct solar access to the areas of private

open space for the dwellings in No. 26 will not be impacted on by the proposed development.

The shadow diagrams also indicate some additional overshadowing over the dwelling to the east of the subject site at No. 32 George Street. Notwithstanding any additional overshadowing, No. 32 forms part of Determination No. 201700461 which granted approval for a 4 storey residential flat building on the site. Any additional overshadowing caused by the subject development will fall on the site walls of the approved development and thus no concern is raised in relation to overshadowing.

Considering the above, the development is considered acceptable having regard to Part 2.7 of MDCP 2011.

(iv) Community Safety (Part 2.9)

Part 2.9 of MDCP 2011 contains objectives and controls relating to community safety. The Statement of Environmental Effects submitted with the application demonstrates the way in which consideration has been made of the four CPTED principles contained in Section 2.9.3.

The proposal is considered acceptable having regard to community safety in that:

- The principal entrance to the building is visible from George Street and is in a prominent position being well lit and signposted;
- The development has been designed to overlook and provide passive surveillance over George Street;
- Principal access to the car park is provided internally and security arrangements have been incorporated to ensure all vehicles in the parking area and all entrances and exits to and from the communal parking area are secure and only authorised users have access;
- No roller shutters are provided that are visible from the street; and
- The street number is conspicuously displayed at the front of the development.

The development includes a security gate at the front entrance to the complex to provide additional security for common areas within the development. A condition is included in the recommendation requiring the entrance to the complex being well lit and to comply with the relevant Australian Standard to avoid excessive light spillage.

(v) Parking (Part 2.10)

Car, Bicycle and Motorcycle Parking Spaces

The property is located in Parking Area 3 under Part 2.10 of MDCP 2011. The following table summarises the car, bicycle and motorcycle parking requirements for the development: Parking rates are rounded up or down to the nearest whole figure in accordance with Control C2 of Part 2.10.

Component	Control	Required	Proposed	Complies?
Car Parking				
Resident Car Parking	0.8 car parking spaces per 1 bedroom unit	3 x 1 bed unit – 2.4 spaces		
	1.2 car parking spaces per 2 bed unit	8 x 2 bed units = 9.6 spaces		
	1.2 car parking spaces per 3 bed unit	1 x 3 bed units = 1.2 spaces		
	Total required:	13.2 spaces		

Component	Control	Required	Proposed	Complies?
Accessible Resident Car Parking	1 car parking space per 1 adaptable dwelling	3 adaptable dwellings = 3 accessible spaces	3 spaces	Yes
Residential Visitor Parking	0.1 space per unit	12 units = 1.2 spaces	1 space	Yes
Accessible Visitor Parking	0.25 space per adaptable unit	3 adaptable units = 0.75 accessible visitor spaces	1 space	Yes
Bicycle Parking				
Resident Bicycle Parking	1 bicycle parking space per 2 units	15 units = 7.5 spaces		
Visitor Bicycle Parking	1 bicycle parking space per 10 units	15 units = 1.5 spaces		
	Total required:	9 spaces	10 spaces	Yes + 1
Motorcycle Parking				
Motorcycle Parking	5% of the total car parking requirement	18 car parking spaces required = 0.9 spaces		
	Total required:	1 space	1 space	Yes

Table 2: Assessment of proposal against Part 2.10 of MDCP 2011

As detailed above, the development complies with the car, bicycle and motorcycle parking requirement and as such the development is acceptable having regard to the provisions of Part 2.10 of MDCP 2011.

(vi) Landscaping and Open Spaces (Part 2.18)

2.18.11.6 Residential flat buildings

Part 2.18.11.5 of MDCP 2011 prescribes landscaped area, private and common open space controls for residential flat buildings.

Landscaped Area

Control C22 species the following for landscaped area:

“C22 Landscaped area

- i. The entire front setback must be of a pervious landscape with the exception of driveways and pathways.
- ii. In addition to front setback, a minimum of 45% of the total site area must be landscaped area at ground level.”

The entire front setback of the development consists of landscaped area. The development provides approximately 417sqm of landscaped area over the entire site in addition to the front setback, equating to approximately 34% which is considered acceptable given the portion of possible landscaped area on the ground level occupied by egress paths, paving and driveway.

A landscape plan and maintenance schedule was submitted with the application which is considered acceptable.

Communal open space

Whilst the development only provides 2 large dwellings, the development provides an area measuring 304sqm at the rear of the site as communal open space. This includes a large landscaped area in the rear setback of the development and a smaller paved BBQ area located along the western setback. The size of the common open space, in addition to areas of private open space, is considered to be of a sufficient size to promote active use by the residents of the development.

(vii) Tree Management (Part 2.20)

There are a number of trees on the property covered by and protected under Part 2.20 of MDCP 2011. The application seeks consent to remove a number of trees from the site, including a Council street tree to facilitate a new driveway. The trees to be removed include the following:

28 George Street

- *Cupressocyparis x leylandii* (leyland cypress)
- *Citrus limon* (lemon)
- *Prunus persica* (plum) – moderate retention value

30 George Street

- *Macadamia integrifolia* (macadamia) – moderate retention value
- *Eriobotrya japonica* (loquat)
- 4 x *Citrus* spp.
- 8 x *Cupressocyparis x leylandii* (leyland cypress)
- 2 x *Persea americana* (avocado) – one in front yard

Street Tree

- *Melaleuca bracteata* (Black tea tree)

The application was referred to Council's Tree Management Officer who reviewed the initial submission and made the following recommendations:

- *It is recommended that the applicant is requested to provide the following additional information:*
 - *An Arboricultural Impact Assessment (AIA) report prepared by an arborist with a minimum AQF level 5 qualification in arboriculture who does not prune or remove trees in the Inner West local government area. The AIA report should identify which existing trees are suitable for retention and recommend arboricultural strategies to ensure their successful retention. A tree protection plan and specification should be incorporated into the AIA report.*
 - *An amended landscape plan that provides some larger species trees and relocates trees a minimum of 1.5 metres from property boundaries, at least 2.0 metres from any buildings and an appropriate minimum distance from other trees.*
- *It is recommended that the applicant is requested to review the design to consider options for utilising an existing driveway crossover, and thereby retain the three existing mature and healthy street trees. If there is no practical option to utilise an existing driveway crossover, adequate compensatory street tree*

planting should be proposed. Two new street trees with WSUD irrigation may provide adequate compensation.

Amended plans were submitted to Council on 18 July indicating the retention of the driveway in the proposed location but making a number of design changes to incorporate the retention of Tree 2 and the planting of 2 x new street trees to compensate for the loss of a street tree for the new driveway. The amended plan was referred to Council's Tree Management Officer who provided the following subsequent comments:

"The applicant was advised that the removal of the street tree was not supported as it was not demonstrated that there was no other practical option such as having the driveway entrance on the eastern side of the site. Subsequently the applicant has been able to demonstrate to the Council assessing officer that relocating the driveway entry to the eastern side was not possible without compromising the macadamia tree on the western side due to necessary modifications to the basement.

It is considered acceptable to remove the eastern-most street tree and two plant two new street trees to compensate for its loss."

The amended plans were deemed supportable by Council's Tree Management subject to appropriate conditions which are included in the recommendation.

(viii) Site Facilities and Waste Management (Part 2.21)

2.21.2.1 *Recycling and Waste Management Plan*

A Recycling and Waste Management Plan (RWMP) in accordance with Council's requirements was submitted with the application and is considered to be adequate.

2.21.2.5 *Residential Waste*

The development includes 15 dwellings and would generate 1,080L of waste based on the calculation of 72L per dwelling. A minimum of 9 x 240L recycling, 5 x 240L general waste bins and an appropriate number of green waste bins are required to be provided for the development.

A total of 18 x 240L bins are provided in the waste storage area in the basement. There is considered to be a sufficient quantity of waste bins to accommodate the required recycling and general waste under Part 2.21. A total of 4 x 240L green waste bins are provided.

The RWMP submitted with the application indicates that waste collection will occur from the temporary bin holding area located within the front setback of the site on the ground floor level and directly accessible from the street for Council garbage trucks to access from the street. The bins will be required to be transported by a nominated resident/caretaker and a condition to this effect is included in the recommendation.

Control C15 requires that for buildings that are 4 or more storeys high must provide waste chutes or interim holding rooms on each level. The development provides a waste chute and interim waste holding room for each residential level, thus satisfying the requirements of Control C15.

Control C25 specifies that space must be provided for communal compost facilities for residential flat buildings. A communal composting area is provided at the rear of the site.

Control C27 requires that for residential flat buildings a dedicated room or caged area of at least 12cbm must be provided for the temporary storage of discarded bulky items which are

awaiting removal. An area for bulky garbage is provided within the front setback of the site which is acceptable.

2.21.7 Appendix 4 – Design of waste room/collection areas

The development proposes a temporary waste collection area in the front setback of the development. The development is acceptable having regard to the guidelines for temporary waste collection areas in that the path of travel for the bins:

- From the basement storage area to the temporary collection area on the ground floor level is less than 50 metres;
- Does not traverse gutters or uneven ground; and
- Has a maximum gradient of 1:20.

The development is considered acceptable having regard to the objectives and controls contained in part 2.21 of MDCP 2011.

PART 3 – Subdivision, Amalgamation and Movement Networks

(ix) Residential Torrens Title Subdivision and Amalgamation Controls (Part 3.2.2)

Part 3. of MDCP 2011 contains controls relating to residential subdivision and amalgamation.

The site comprises 3 land parcels legally described as Lot 1 in DP 1027790, Lot 1 in DP 105246 and Lot 1 in DP 119562L and is collectively known as 28-30 George Street, Marrickville. The application seeks to amalgamate the 3 lots into a single lot. The resultant site would accommodate the residential flat building and would have characteristics similar to a number of lots in the street which have undergone a process of redevelopment into residential flat buildings. The proposed amalgamation is acceptable having regard to the objectives and controls contained in part 3 of MDCP 2011.

PART 4.2 - Multi Dwelling Housing and Residential Flat Buildings

Part 4.2 of MDCP 2011 provides controls relating to Multi Dwelling Housing and Residential Flat Buildings provisions including building form, building detail and desired future character guidelines and controls for specific centres. An assessment of the development having regard to the relevant provisions of Part 4.2 of MDCP 2011 is provided below.

(x) General Controls (Part 4.2.3)

Part 4.2.3 of MDCP 2011 prescribes the following unit mix requirements for residential flat buildings containing 6 or more dwellings:

“C1 *New developments with six or more dwellings must provide the following mix of dwelling types:*

- | | | |
|-------------|----------------------------|-----------------------|
| <i>i.</i> | <i>Studio</i> | <i>5% - 20%;</i> |
| <i>ii.</i> | <i>1 bedroom</i> | <i>10% -40%;</i> |
| <i>iii.</i> | <i>2 bedroom</i> | <i>40% - 75%; and</i> |
| <i>iv.</i> | <i>3 bedroom or bigger</i> | <i>10% - 45%.”</i> |

The development includes 5 x 1 bed dwellings (33% of 15) and 8 x 2 bed dwellings (53% of 15) and 2 x 3 bed dwellings (13% of 15) which does not comply with the abovementioned unit mix requirements as no studio dwellings are provided. Despite being contrary to the above dwelling mix, the mix of apartment sizes in this instance is considered acceptable as the development:

- Provides a small number of dwellings in total;
- Provides a range of dwelling types and sizes to meet the needs of the community; and
- Is responding to an identified market demand.

(xi) Built Form and Character (Part 4.2.4)

4.2.4.1 *Floor Space Ratio and Site Coverage*

The floor space ratio of the development has been discussed earlier in this report under the provisions of Marrickville Local Environmental Plan 2011.

Part 4.2.4.1 MDCP 2011 specifies the following maximum site coverage controls for residential flat buildings:

Development Type	Maximum Site Coverage
Residential flat building	45% for one storey 35% for two storey 30% for three or more storeys

Council considers the site coverage of a development to be *“the proportion of the allotment occupied by the ground floor plan area of a building or buildings, including garages, carports, awnings, out buildings, etc, expressed as a percentage ratio”*.

The site coverage for this proposal, measured in accordance with the above, equates to 38% of the site area which does not comply with the above requirement. Notwithstanding, the development generally complies with Council’s setback controls, provides adequate provision for infiltration of stormwater, deep soil planting, landscaping, areas of common and private open space and does not have any unreasonable impact on the amenity of neighbouring residential accommodation and as such is acceptable.

4.2.4.3 *Building Setbacks*

Part 4.2.4.3 of MDCP 2011 prescribes front, side and rear setback controls. Setbacks are generally required to allow neighbours adequate access to sunlight, for view sharing, to preserve established tree and vegetation corridors and provide adequate separation between buildings to maintain privacy.

In accordance with Control C12 of Part 4.2.4.3 of MDCP 2011, the development is required to have a minimum 9 metre front setback and 4.5 metre side and rear setbacks. The development proposes the following setbacks:

Boundary	Setback
Front – George Street	All levels – 6 metres
Eastern (Side)	All levels – 4 metres
Western (Side)	All levels – 4-6 metres
Northern (Rear)	All levels – 7.8 metres

The following additional controls apply:

- C13** *Notwithstanding any compliance with the front, side and rear setback controls, applicants must demonstrate that proposed building setbacks:*
- Provide adequate separation between buildings;*
 - Protect adjoining buildings from overlooking and loss of amenity;*
 - Maintain solar access in accordance with Council’s requirements to adjoining premises; and*

iv. Are acceptable in terms of their impact on existing views (in this regard, Council encourages view sharing between surrounding residences).

C14 *Variations to building setbacks may be permitted where:*

- i. There is no adverse impact of any proposed boundary wall on neighbours;*
- ii. Privacy between neighbouring dwellings and their open space improves; and*
- iii. The proposed setback matches an existing setback of a neighbouring building, leading to an improved streetscape and visual relationship.*

Whilst not complying with the numerical front boundary setback control as above, it has been demonstrated that the proposed 6 metre front boundary setback is consistent with a number of existing developments along George Street and is considered appropriate.

The rear boundary setback exceeds the required 4.5 metres setback and is considered sufficient to enable adequate separation between the development and the accommodation to the rear.

As detailed above, the development provides a minimum 4 metre side boundary setback to the eastern and western sides, with the rear portion of the western side increasing to 6 metres. Whilst this does not comply with the numerical side boundary setback control, the development is considered to provide adequate separation between the subject development and the residential flat building at No. 26 George Street to the west and the approved residential flat building to the east at No. 32-34 George Street and includes measures to protect the visual privacy of that dwelling and complies with Council's controls for solar access.

Considering the above the development is acceptable having regard to building setbacks and the built form and character controls contained within Part 4.2.3 of MDCP 2011.

(xii) Parking and Access (Part 4.2.6)

The car, bicycle and motorcycle parking requirements for this proposal have been discussed earlier in this report.

The proposal includes a new basement car park with vehicular access via a new driveway crossing from George Street. The car parking is appropriate given:

- The vehicular entrance is located to have least impact on the streetscape and amenity of adjoining neighbours; and
- The vehicular access is not located nearby to an intersection.

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 R1 – General Residential. 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 advertised, an on-site notice displayed on the property and residents/property owners in the vicinity of the property were notified of the development in accordance with Council's Notification Policy. A total of two submissions were received.

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

- Non-compliance with SEPP 65 in relation to building separation and side boundary setbacks – See Section 5(a)(ii);
- Variation from maximum height development standard – See Section 5(a)(iv);
- Variation from maximum FSR development standard – See Section 5(a)(iv);
- Overshadowing impacts– See Section 5(c)(i)(iii);
- Non-compliance with MDCP 2011 in relation to landscaping requirements – See Section 5(c)(i)(vi);
- Removal of significant trees – See Section 5(c)(i)(vii);
- Non-compliance with MDCP 2011 in relation to side boundary setbacks – See Section 5(c)(i)(xi);
- Non-compliance with MDCP 2011 in relation to site coverage – See Section 5(c)(i)(xi);

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

Issue: Misleading information in Statement of Environmental Effects

Comment: Concern has been raised that a number of misleading comments have been made in the Statement of Environmental Effects (SEE) submitted with the application. Council does acknowledge that a number of the comments made in the statement are inaccurate however a comprehensive assessment of the application having consideration to the SEE, Architectural Plans and other expert reports has been carried out by Council staff and the development is considered acceptable.

Issue: Concern raised over traffic impacts and location of driveway

Comment: The new driveway is located on the western portion of the site. The location of the driveway has been determined by considering the location of existing street trees, trees to be retained, shadow impacts and a number of other considerations and it is not practicable to relocate the driveway elsewhere. Notwithstanding, the driveway accommodates 18 car parking spaces only and is not expected to generate excessive amounts of traffic.

Excavation for the driveway has been discussed in the Geotechnical Report provided in the application and the excavation will need to be further considered as part of any Construction Certificate issued for the development.

Issue: Concern raised over loss of city views

Comment: Concern is raised in a submission regarding the loss of city views from a bathroom located within a dwelling at No. 26 George Street. Any loss of city views would be across a side boundary and has been identified as being lost from a bathroom. Furthermore the subject development is entirely reasonable in regards to compliance with Council's built form controls and is generally a built form that could reasonably be expected for development of the site. The 'Views –

general Principles' Planning Principle developed as a result of the judgement In Land and Environment Court proceedings *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* has been considered in this assessment and the proposal is considered acceptable having regard to view loss.

Issue: Concern over provision of clothes drying facilities

Comment: Concern has been raised that clothes drying will occur from occupants' balconies. A condition is included in the recommendation requiring appropriate clothes drying facilities be provided to each dwelling. Each dwelling is provided with a sufficiently sized balcony and laundry which can accommodate a clothes drying machine. A condition is included in the recommendation that no fixed clothes drying be installed on any balconies or visible from any public place.

All relevant matters raised in the submissions able to be considered under the provisions of Section 79C of the Environmental Planning and Assessment Act have been discussed in the report.

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 development is consistent with the aims and design parameters contained in State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development, Marrickville Local Environmental Plan 2011 and Marrickville Development Control Plan and other relevant Environmental Planning Instruments. As discussed throughout this report, the development will not result in any significant impacts on the amenity of adjoining premises and the streetscape and thus the development is considered to be in the public interest.

6 Referrals

6(a) Internal

The application was referred to the following internal sections/officers and issues raised in those referrals have been discussed in various sections of the report above.

- Development Engineer
- Tree Management Officer
- Waste Management
- Heritage & Urban Design Advisor

6(b) External

The application was not required to be referred to any external bodies.

7. Section 94 Contributions

Section 94 contributions are payable for the proposal. The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$234,913.56 would be required for the development under Marrickville Section 94 Contributions Plan 2014. A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development and Marrickville Local Environmental Plan 2011 (MLEP 2011) with the exception that the proposal exceeds the maximum height of buildings and floor space ratio development standards. The proposal is generally consistent Marrickville Development Control Plan 2011 (MDCP 2011). The development will not result in any significant impacts on the amenity of adjoining premises and the streetscape. The application is suitable for the issue of a deferred commencement consent subject to appropriate terms and conditions.

9. Recommendation

- A. That the Inner West Local Planning Panel (IWLPP) approve a variation to the maximum height and floor space ratio development standard prescribed by Clause 4.3 and 4.4 in the Marrickville Local Environmental Plan 2011, as it is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and objectives for development within the zone

- B. That the Panel, as the consent authority pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979, grant deferred commencement consent to Development Application No: 201800105 to demolish existing improvements and construct a 4 storey residential flat building containing 15 units with basement car parking at 28-30 George Street, Marrickville subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

PART A – DEFERRED COMMENCEMENT CONSENT

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

1. The site drainage shall be designed to drain under gravity. As the site falls to the rear an easement for drainage over downstream properties will be required to be created. Satisfactory written documentation of the creation of an easement or of a legal agreement to create an easement shall be submitted to Council.

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

PART B – CONDITIONS OF CONSENT

Once operative the consent is subject to the following conditions:

GENERAL

1. The development must be carried out in accordance with plans and details listed below:

Plan and Issue No.	Plan Name	Date Issued	Prepared by	Date Submitted
DA001 C	Site and Context Analysis Plan	6 June 2018	BKA Architecture	18 July 2018
DA100 B	Basement Floor Plan	11 July 2018	BKA Architecture	18 July 2018
DA101 F	Ground Floor Plan	11 July 2018	BKA Architecture	18 July 2018
DA102 E	Level 1 Floor Plan	6 June 2018	BKA Architecture	18 July 2018
DA103 E	Level 2 Floor Plan	6 June 2018	BKA Architecture	18 July 2018
DA104 D	Level 3 Floor Plan	21 May 2018	BKA Architecture	18 July 2018
DA105 A	Roof Plan	2 March 2018	BKA Architecture	18 July 2018
DA200 c	Elevations Sheet 1	26 July 2018	BKA Architecture	27 July 2018
DA201 D	Elevations Sheet 2	11 July 2018	BKA Architecture	18 July 2018
DA300 B	Sections	6 June 2018	BKA Architecture	18 July 2018
DA400 A	Detail Sheet 1	6 June 2018	BKA Architecture	26 July 2018
DA401 A	Detail Sheet 2	6 June 2018	BKA Architecture	26 July 2018
DA710 C	Materials and Finishes	26 July 2018	BKA Architecture	27 July 2018
LPDA 18 - 203	Landscape Plan	11 July 2018	Conzept Landscape Architects	11 July 2018

AIA R (M) 7/18	Arboricultural Impact Assessment	11 July 2018	NSW Tree Services P/L	11 July 2018
E23713.E14_R ev0	Acid Sulfate Soils Management Plan	14 February 2018	EI Australia	6 March 2018
20180180.1	Noise Impact Assessment	8 February 2018	Acoustic Logic	6 March 2018
E23713.G01	Geotechnical Report	2 March 2018	EI Australia	6 March 2018
902501M	BASIX Certificate	26 February 2018	Planning & Infrastructure	6 March 2018

and details submitted to Council on 6 March 2018 and 11 July 2018, 18 July 2018 and 27 July 2018 with the application for development consent and as amended by the matters referred to in Part A of this Determination and the following conditions.

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

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

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

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

3. The materials and finishes of the building constructed pursuant to this consent must be strictly in accordance with the materials and finishes identified in Condition 1 of this Determination. No changes may be made to these drawings except by way of an application under section 4.55 of the *Environmental Planning and Assessment Act 1979*.
4. In order to ensure the architectural and urban design excellence of the development is retained:
- i) The design architect is to have direct involvement in the design documentation, contract documentation and construction strategies of the project;
 - ii) The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
 - iii) Evidence of the design architect's commission is to be provided to the Council prior to the release of the construction certificate.
 - iv) The design architect of the project is not to be changed without prior notice and approval of the Council.

Reason: To ensure design excellence is maintained.

5. Where units or dwellings are provided with separate individual hot water systems, these must be located within the internal area of the unit/dwelling and not on any balcony or terrace.

6. The premises must be used exclusively as a residential flat building and not be adapted for use as a backpackers' accommodation, serviced apartments or a boarding house and must not be used for any industrial or commercial purpose.
7. A total of 18 off-street car parking spaces must be provided and maintained at all times in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 - Parking. The parking must be allocated as follows:
 - a) 16 spaces being allocated to the residential dwellings with 3 of those spaces being accessible car parking spaces and being allocated to adaptable dwellings;
 - b) 2 car parking spaces allocated as visitor car parking with 1 being accessible;All accessible car spaces must be provided and marked as disabled car parking spaces.
8. A sign must be permanently displayed near the point of entry to the site to indicate that visitor parking is available on site.
9. The visitor parking spaces must be accessible to visitors by the location of an intercom (or card controller system) at the car park entry and wired to all units (prior to an Occupation Certificate being issued or the use commencing, whichever is earlier). The intercom must comply with the relevant Australian Standard.
10. A minimum of 1 motorcycle parking space must be provided and maintained. The design of require motorcycle parking space must be in accordance with the relevant provision of Part 2.10 of Marrickville Development Control Plan 2011 – Parking and be for the exclusive use of residents.
11. A minimum of 9 off-street bicycle parking spaces must be provided, paved, line marked and maintained at all times in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 - Parking.
12. All parking spaces and turning area thereto being provided in accordance with the design requirements set out within Part 2.10 of Marrickville Development Control Plan 2011 - Parking, and must be used exclusively for parking and not for storage or any other purpose.
13. The resident car parking spaces for the non-adaptable dwellings must be allocated based on unit type in accordance with the rates specified in Table 1: On site car parking requirements for Parking Area 2 under Part 2.10 of Marrickville Development Control Plan 2011 – Parking.
14. A total of 15 storage cages must be maintained in accordance with the plans approved under Condition 1 of this Determination. The distribution of storage cages must ensure that all units are provided with a storage cage consistent with the unit size in accordance with the provisions of the Residential Flat Design Code.
15. A minimum of 3 adaptable dwellings must be provided in accordance with Part 2.5 of Marrickville Development Control Plan 2011 - Equity of Access and Mobility. One disabled parking space must be allocated to each adaptable dwelling.
16. The use of any plant and equipment must not give rise to:
 - a) transmission of unacceptable vibration to any place of different occupancy;
 - b) a sound pressure level at any affected premises that exceeds the background (LA90) noise level in the absence of the noise under consideration by more than 5dB(A). The source noise level shall be assessed as an LAeq,15min and

adjusted in accordance with Environment Protection Authority guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content as described in the NSW Environment Protection Authority's Environmental Noise Control Manual and Industrial Noise Policy 2000 and The Protection of the Environment Operations Act 1997 (NSW).

17. It may be necessary for the installation of a suitable electrical sub-station for the distribution of electrical power in this area to be located on the land, and that an area of land suitable for Ausgrid to provide such an installation be set aside for this purpose. Before proceeding with your development further, you are directed to contact the General Manager of Ausgrid, George Street, Sydney, with respect to the possible need for such an installation immediately or in the future.
18. 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.
19. All building work must be carried out in accordance with the provisions of the National Construction Code (Building Code of Australia).
20. Owners and occupants of the proposed building shall not be eligible to obtain parking permits under any existing or future resident parking scheme for the area. The person acting on this consent shall advise any purchaser or prospective tenant of this condition. In addition the by-laws of any future residential strata plans created for the property shall reflect this restriction.
21. All stormwater drainage being designed in accordance with the provisions of the Australian Rainfall and Runoff (A.R.R.), Australian Standard *AS3500.3-2015 'Stormwater Drainage'* and Marrickville Council Stormwater and On Site Detention Code. Pipe and channel drainage systems shall be designed to cater for the twenty (20) year Average Recurrence Interval (A.R.I.) storm in the case of low and medium residential developments, the twenty (20) year A.R.I. storm in the case of high density residential development and commercial and/or industrial developments and the fifty (50) year A.R.I. storm in the case of heavy industry. In all cases the major event surface flow paths shall be designed to cater for the one hundred (100) year A.R.I. storm.
22. Should the proposed development require the provision of an electrical substation, such associated infrastructure shall be incorporated wholly within the development site. Before proceeding with your development further, you are directed to contact Ausgrid directly with regard to the possible provision of such an installation on the property.
23. 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 shall be design to be "tanked" preventing the ingress of seepage or groundwater.
24. Trees numbered 2, 21 and 22 shall be retained and protected in accordance with these conditions and with the Australian Standard *Protection of Trees on Development Sites AS 4970—2009*.
25. All reasonable directions in writing by the project arborist in relation to tree management and tree protection shall be complied with. All directions by the project arborist shall be confirmed in writing to the project manager.

26. During construction the project arborist shall undertake periodic inspections of trees and tree protection measures, as detailed in the tree protection plan
27. No fixed or permanent clothes drying lines are to be installed on any balcony or visible from any public place.
28. The following is a waste condition:
 - a) The owners of the property appointing a designated person(s) responsible for moving waste bins from their usual storage space in the basement to the place to the collection point for the storage of domestic bins being in accordance with details to be submitted to Council's satisfaction;
 - b) Tenants (commercial and residential) shall be advised to anticipate heightened noise levels during garbage collection;
 - c) Council is to be provided with key access to the temporary waste storage area to facilitate on-site garbage collection.
 - d) Should the waste conditions not be met, Council reserves the right to reconsider servicing the site for garbage collection, in accordance with Council's Fees and Charges.
 - e) No compaction of waste is permitted within the development in accordance Part 2.21 of Marrickville Development Control Plan 2011 – Site Facilities and Waste Management.
 - f) The person acting on this consent shall advise any purchaser or prospective tenant of this condition.

BEFORE COMMENCING DEMOLITION, EXCAVATION AND/OR BUILDING WORK

29. No work must commence until:
 - a) A PCA has been appointed. Where an Accredited Certifier is the appointed, Council shall be notified within 2 days of the appointment; and
 - b) A minimum of 2 days written notice given to Council of the intention to commence work.
30. A Construction Certificate must be obtained before commencing building work. Building work means any physical activity involved in the construction of a building. This definition includes the installation of fire safety measures..
31. Sanitary facilities must be provided at or in the vicinity of the work site in accordance with the WorkCover Authority of NSW, Code of Practice 'Amenities for Construction'. Each toilet must be connected to the sewer, septic or portable chemical toilet before work commences.

Facilities must be located so that they will not cause a nuisance.
32. All demolition work must:
 - a) Be carried out in accordance with the requirements of Australian Standard AS 2601 'The demolition of structures' and the Occupational Health and Safety Act and Regulations; and
 - b) Where asbestos is to be removed it shall be done in accordance with the requirements of the WorkCover Authority of NSW and disposed of in accordance with requirements of the Department of Environment, Climate Change and Water.

33. Where any loading, unloading or construction is to occur from a public place, Council must be contacted to determine if any permits or traffic management plans are required to be obtained from Council before work commences.
 34. All services in the building being demolished must be disconnected in accordance with the requirements of the responsible authorities before work commences.
 35. A waste management plan must be prepared in accordance with Part 2.21 of Marrickville Development Control Plan 2011 – Site Facilities and Waste Management and submitted to and accepted by the PCA before work commences.
 36. The site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property, before work commences.
 37. A rigid and durable sign must be erected in a prominent position on the site, before work commences. The sign must be maintained at all times until all work has been completed. The sign is to include:
 - a) The name, address and telephone number of the PCA;
 - b) A telephone number on which Principal Contractor (if any) can be contacted outside working hours; and
 - c) A statement advising: 'Unauthorised Entry To The Work Site Is Prohibited'.
 38. A Soil and Water Management Plan must be prepared in accordance with Landcom Soils and Construction, Volume 1, Managing Urban Stormwater (Particular reference is made to Chapter 9, "Urban Construction Sites") and submitted to and accepted by the PCA. A copy of this document must be submitted to and accepted by PCA before work commences. The plan shall indicate:
 - a) Where the builder's materials and waste are to be stored;
 - b) Where the sediment fences are to be installed on the site;
 - c) What facilities are to be provided to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way; and
 - d) How access to the site will be provided.
- All devices must be constructed and maintained on site while work is carried out.
39. The person acting on this consent is responsible for arranging and meeting the cost of a dilapidation report prepared by a suitably qualified person. The report is to include colour photographs and must be submitted to the Certifying Authority's satisfaction, with a colour copy being provided to Council and the property owner of the identified property, before work commences, on the buildings on the adjoining property at 26 George Street, if the consent of the adjoining property owner can be obtained. In the event that the consent of the adjoining property owner cannot be obtained copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the PCA before work commences.
 40. Before commencing works the person acting on this consent must provide a contact number for a designated person to be available during the demolition and construction for residents to contact regarding breaches of consent or problems relating to the construction.
 41. The person acting on this consent must apply as required for all necessary permits including crane permits, road opening permits, hoarding permits, footpath occupation permits and/or any other approvals under Section 68 (Approvals) of the Local Government Act, 1993 or Section 138 of the Roads Act, 1993.

42. A detailed Traffic Management Plan to cater for construction traffic must be submitted to and approved by Council before commencement of works. Details must include proposed truck parking areas, construction zones, crane usage, truck routes etc. All construction traffic complying at all times with the approved Traffic Management Plan. The developer must ensure that all construction workers and contractors are fully aware of the approved Traffic Management Plan.
43. The person acting on this consent must provide details of the means to secure the site and to protect the public from the construction works. Where the means of securing the site involves the erection of fencing or a hoarding on Council's footpath or road reserve the person acting on this consent must submit a hoarding application and pay all relevant fees before commencement of works.
44. Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent shall obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the Local Government Act 1993 and/or Section 138 of the Roads Act 1993. Permits are required for the following activities:
- a) Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application.
 - b) A concrete pump across the roadway/footpath
 - c) Mobile crane or any standing plant
 - d) Skip bins
 - e) Scaffolding/Hoardings (fencing on public land)
 - f) Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.
 - g) Awning or street verandah over footpath
 - h) Partial or full road closure
 - i) Installation or replacement of private stormwater drain, utility service or water supply

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities.

Applications for such Permits shall be submitted and approved by Council prior to the commencement of the works associated with such activity or issue of the Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

45. The person acting on this consent shall submit to the Principal Certifying Authority a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site before the issue of a Construction Certificate.
46. The person acting on this consent shall 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. Additionally an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property, where necessary.

Separate approval is required from Council under the Roads Act 1993 to erect a hoarding or temporary fence or awning on public property. Approvals for hoardings, scaffolding on public land must be obtained and clearly displayed on site for the duration of the works.

Any hoarding, fence or awning is to be removed when the work is completed and must be maintained clear of any advertising.

47. The person acting on this consent shall submit to the Principal Certifying Authority a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site before the issue of a Construction Certificate.
48. A detailed Traffic Management Plan to cater for construction traffic shall be submitted to and approved by Council before commencement of works. Details shall include haulage routes, estimated number of vehicle movements, truck parking areas, work zones, crane usage, etc., related to demolition/construction activities.
49. Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands shall take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.
50. If new street numbers or a change to street numbers (this includes unit and shop numbers) are required, a separate application must be made to and approved by Council prior to those street numbers being displayed.
51. A project arborist with a minimum AQF level 5 qualification in arboriculture and who does not remove or prune trees in the Inner West local government area shall be engaged before work commences for the duration of site preparation, demolition, construction and landscaping.
52. The contact details of the project arborist shall be advised to council before work commences and maintained up to date for the duration of works. If a new project arborist is appointed details of the new project arborist shall be notified to council within 7 days.
53. The project arborist shall prepare a Tree Protection Plan, which shall be submitted to and approved by Council before work commences.
Note: Council requirements for a Tree Protection Plan are detailed in Marrickville Development Control Plan, Clause 2.20 Appendix 1. The assessment information contained in the Arboricultural Impact Assessment (AIA) report (NSW Tree Services Pty Ltd, 11/7/18) does not have to be repeated in the Tree Protection Plan.
54. The tree protection measures detailed in the council-approved Tree Protection Plan shall be established before work commences.
55. The project arborist shall inspect tree protection measures, including the location of tree protection fencing and signage, and certify in writing to the Principal Certifying Authority the measures comply with the council-approved Tree Protection Plan before work commences.

56. A refundable security deposit for each new street tree of \$1,600 each shall be deposited with council before the start of works. The security deposit will be refunded in full or in part no sooner than 12 months from the date of the issue of the occupation certificate. Full or partial forfeiture of the security deposit will occur if the new street tree dies or fails to establish properly. Council's Urban Forest Manager will determine the amount of any forfeiture of the security deposit based on the health and condition of the new street tree.
57. Refundable security deposits for the two existing street trees (*Melaleuca bracteata* – black tea tree) of \$5,000 each shall be deposited with council before the start of works. The security deposits will be refunded in full or in part no sooner than 12 months from the date of the issue of the occupation certificate. Full or partial forfeiture of the relevant security deposit will occur if the street tree is injured, or declines in health and / or vigour, or dies due to any development-related impact. Council's Urban Forest Manager will determine the amount of any forfeiture of a security deposit based on the health and condition of the trees and any decline thereof.

BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE

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

Please refer to the web site www.sydneywater.com.au for:

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

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

59. Prior to the issue of the Subdivision or Construction Certificate in connection with a development, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:
- (i) the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project 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.
 - (ii) the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.
60. The separate lots comprising the development must be consolidated into one lot and under one title and registered at the NSW Department of Lands before the issue of a Construction Certificate.
61. A statement from a qualified Architect, verifying that the plans and specifications achieve or improve the design quality of the development for which development

consent was granted, having regard to the design principles set out in Schedule 1 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

62. All plumbing and ductwork including stormwater downpipes must be concealed within the outer walls of the building so they are not visible. Plans and elevations detailing the method of concealment must be submitted to and approved by Council before the issue of a Construction Certificate. Any variation to this requirement requires Council approval.
63. Letterboxes and mail collection facilities must be provided and adequately protected in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
64. Adequate outdoor clothes drying areas must be provided for the development in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
65. Lighting details of the pedestrian areas, parking areas and all entrances must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
66. Plans fully reflecting the selected commitments listed in BASIX Certificate submitted with the application for development consent must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

Note: The application for the Construction Certificate must be accompanied by either the BASIX Certificate upon which development consent was granted or a revised BASIX Certificate (Refer to Clause 6A of Schedule 1 to the Regulation).

67. Reticulated gas infrastructure, with a separate meter for each dwelling must be provided to each dwelling in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
68. Noise attenuation measures must be incorporated into the development complying with Australian Standard 2021-2015 in relation to interior design sound levels, in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate together with certification by a suitably qualified acoustical engineer that the proposed noise attenuation measures satisfy the requirements of Australian Standard 2021-2015.
69.
 - a) This condition is imposed in accordance with Section 7.11 of the Environmental Planning and Assessment Act 1979.
 - b) Before the issue of a Construction Certificate, the Council must be paid a monetary contribution of \$234,913.56 indexed in accordance with Marrickville Section 94/94A Contributions Plan 2014 ("CP").

The above contribution is the contribution applicable as at 17 July 2018.

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

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

(CONTRIBUTION PAYMENT REFERENCE NO. DC002353)

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

Community Facilities	\$24,818.68
Plan Administration	\$4,606.18
Recreation Facilities	\$202,882.37
Traffic Facilities	\$2,606.33

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

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

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

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

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

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

Security Deposit	\$34,500
Inspection fee	\$230.65

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

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

Should any of Council’s property and/or the physical environment sustain damage during the course of the demolition or construction works, or if the works put Council’s

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

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

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

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

72. The stormwater drainage plans 000 (Rev B), 101 (Rev B), 102 (Rev B), 103 (Rev B), 104 (Rev B), 105 (Rev B), 106 (Rev B) and 107 (Rev B) by ACE Consulting Engineers P/L shall be amended and/or additional information provided as follows;
- i. Detailed calculations for sizing of the OSD system to be provided for assessment (this shall include the DRAINS files). Please note that for sites greater than 1000sqm the allowable discharge must be limited to the equivalent fully pervious discharges for the site area;
 - ii. Details of the 1 in 100 year overflow route in case of failure\blockage of the drainage system shall be provided,
 - iii. A minimum 150mm step up must be provided between all external finished surfaces (including courtyards) 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. The architectural plans shall also be amended to comply with this requirement;
 - iv. Details of the proposed inter-allotment drainage system and its connection to the Pile Street drainage system;
 - v. Submission of the MUSIC model file (including .sqz file) used in the WSUD plans shall be provided for assessment to ensure the treatment measures proposed achieve Council's water quality targets; and
 - vi. Construction details for the proposed new kerb inlet pit and Council stormwater pipe to be installed in Pile Street. Details shall include a long section of the pipe detailing all utility services, bedding and road restoration detail.

The above additional information shall be submitted to and approved by Council's Development Engineer before the issue of a Construction Certificate.

73. The vehicular egress from the site shall be designed in accordance with Clause 3.2.4(b) of Australian Standard AS/NZS 2890.1-2004 so as to provide clear sight lines to pedestrians. Details of compliance with the above requirements shall be submitted to and approved by Council's Development Engineer before the issue of a Construction Certificate.
74. The landscape plan shall be amended to the satisfaction of Council's Tree Management Officer before the issue of a construction certificate to provide the following minimum setbacks from the new trees.
- 1.5 metres from any boundary

- 2.0 metres from any building
- 3.0 metres from any other tree

SITE WORKS

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

- a) 7:00 am to 6.00 pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b) 8:00 am to 1:00 pm on Saturdays with no demolition works occurring during this time; and
- c) at no time on Sundays or public holidays.

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

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

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

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

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

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

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

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

76. The area surrounding the building work must be reinstated to Council's satisfaction upon completion of the work.

77. The placing of any materials on Council's footpath or roadway is prohibited, without the consent of Council. The placement of waste storage containers in a public place requires Council approval and must comply with Council's Policy – 'Placement of Waste Storage Containers in a Public Place'.

78. All demolition work must be carried out in accordance with the following:

- a) compliance with the requirements of Australian Standard AS 2601 'The demolition of structures' with specific reference to health and safety of the public,

- health and safety of the site personnel, protection of adjoining buildings and protection of the immediate environment;
- b) all works involving the demolition, removal, transport and disposal of asbestos cement must be carried out in accordance with the 'Worksafe Code of Practice for Removal of Asbestos' and the requirements of the WorkCover Authority of NSW and the Department of Environment, Climate Change and Water;
 - c) all building materials arising from the demolition must be disposed of in an approved manner in accordance with Part 2.21 of Marrickville Development Control Plan 2011 – Site Facilities and Waste Management and any applicable requirements of the Department of Environment, Climate Change and Water;
 - d) sanitary drainage, stormwater drainage, water, electricity and telecommunications must be disconnected in accordance with the requirements of the responsible authorities;
 - e) the generation of dust and noise on the site must be controlled;
 - f) the site must be secured to prohibit unauthorised entry;
 - g) suitable provision must be made to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way;
 - h) all trucks and vehicles associated with the demolition, including those delivering to or removing material from the site, must only have access to the site during work hours nominated by Council and all loads must be covered;
 - i) all vehicles taking materials from the site must be loaded wholly within the property unless otherwise permitted by Council;
 - j) no waste collection skips, spoil, excavation or demolition material from the site must be deposited on the public road, footpath, public place or Council owned property without the approval of Council; and
 - k) the person acting on this consent must ensure that all contractors and sub-contractors associated with the demolition are fully aware of these requirements.
79. The works are required to be inspected at critical stages of construction, by the PCA or if the PCA agrees, by another Certifying Authority. The last inspection can only be carried out by the PCA. The critical stages of construction are:
- a) At the commencement of the building work;
 - b) For Class 2, 3 and 4 buildings, prior to covering waterproofing in any wet areas (a minimum of 10% of wet areas within a building);
 - c) Prior to covering any stormwater drainage connections, and after the building work has been completed and prior to any occupation certificate being issued in relation to the building; and
 - d) After the building work has been completed and prior to any occupation certificate being issued in relation to the building.

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

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

Where a dilapidation report has not been prepared on any building adjacent to the excavation, the person acting on this consent is responsible for arranging and meeting the cost of a dilapidation report prepared by a suitably qualified person. The report must be submitted to and accepted by the PCA before works continue on site, if the consent of the adjoining property owner can be obtained.

Copies of all letter/s that have been sent via registered mail to the adjoining property owner and copies of any responses received must be forwarded to the PCA before work commences.

81. All vehicles carrying materials to, or from the site, must have their loads covered with tarpaulins or similar covers.
82. Satisfactory methods and/or devices must be employed on the site to prevent the tracking of mud/dirt onto the surrounding streets from vehicles leaving the site.
83. Alignment levels for the site at all pedestrian and vehicular access locations shall match the existing back of footpath levels at the boundary. Note: This may require the internal site levels to be adjusted locally at the boundary to ensure that they match the above alignment levels. Failure to comply with this condition will result in vehicular access being denied.
84. To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, shall be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Marrickville Council Stormwater and On Site Detention Code. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled.
85. Tree protection measures detailed in the council-approved tree protection plan and in Section 4 of Australian Standard *Protection of Trees on Development Sites AS 4970—2009* shall be implemented and complied with for the duration of works including site preparation, demolition, construction and landscaping (except where these conditions permit otherwise). Any reasonable directions in writing by the Project Arborist relating to tree protection shall be complied with.
86. Trees to be removed shall be removed by a practicing arborist who has a minimum qualification of Certificate 3 in Arboriculture, in compliance with the Safe Work Australia *Guide to Managing Risks of Tree Trimming and Removal Work*, July 2016.
87. Trees to be pruned shall be pruned by a practicing arborist who has a minimum qualification of Certificate 3 in arboriculture, in accordance with
 - a) a pruning specification prepared by the project arborist, which has been submitted to and approved by council, and
 - b) the Australian Standard *Pruning of Amenity Trees AS 4373—2007*.
88. Landscaping of the site must be carried out prior to occupation or use of the premises in accordance with the amended landscape plan, and must be maintained at all times to Council's satisfaction. Specified tree protection measures shall be complied with for all landscaping works, except where these conditions permit otherwise.
89. Following completion of construction and prior to the issue of the Occupation Certificate, 14 new trees shall be planted, including two street trees.

Note: The tree schedule on the landscape plan lists six *Waterhousea floribunda* but the landscape plan has only five.

90. The new trees shall be planted in accordance with the following criteria:
- a) The new trees shall be located in accordance with the amended landscape plan, ensuring that each new tree shall be located a minimum of 1.5 metre from any property boundary, a minimum of 2.0 metres from any building and a minimum of 3.0 metres from any other tree.
 - b) The species of trees and planting stock size shall be as detailed in the landscape plan (Conzept Landscape Architects, 11/7/18).
 - c) The planting stock shall comply with the Australian Standard *Tree Stock for Landscape Use AS 2303-2015*.
 - d) The new trees shall be planted in accordance with the tree planting detail included in the Marrickville Street Tree Master Plan 2014. Note that planting holes for trees shall not be excavated deeper than the root ball and that new trees shall not be staked.
 - e) The new trees shall be planted by a qualified horticulturist or arborist, with a minimum qualification of Certificate 3.
 - f) Each replacement tree shall be maintained in a healthy and vigorous condition until it attains a height of 5 metres, from which time it is protected by MDCP 2011.
 - g) If any tree dies or needs to be removed before that time it shall be replaced with a similar tree in accordance with these conditions at the expense of the applicant.

BEFORE OCCUPATION OF THE BUILDING

91. You must obtain an Occupation Certificate from your PCA before you occupy or use the building. The PCA must notify the Council of the determination of the Occupation Certificate and forward the following documents to Council within 2 days of the date of the Certificate being determined:
- a) A copy of the determination;
 - b) Copies of any documents that were lodged with the Occupation Certificate application;
 - c) A copy of Occupation Certificate, if it was issued;
 - d) A copy of the record of all critical stage inspections and any other inspection required by the PCA;
 - e) A copy of any missed inspections; and
 - f) A copy of any compliance certificate and any other documentary evidence relied upon in issuing the Occupation Certificate.
92. Occupation of the building must not be permitted until such time as:
- a) All preconditions to the issue of an Occupation Certificate specified in this development consent have been met;
 - b) The building owner obtains a Final Fire Safety Certificate certifying that the fire safety measures have been installed in the building and perform to the performance standards listed in the Fire Safety Schedule; and
 - c) An Occupation Certificate has been issued.
93. A Section 73 Compliance Certificate from Sydney Water must be submitted to Council before occupation of the premises.
94. Upon completion of the development, a statement from a qualified Architect, verifying that the development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design principles set out in Schedule 1 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development must

be submitted to the Certifying Authority's satisfaction before the issue of an Occupation Certificate.

95. a) Upon completion of the required noise attenuation measures referred to in the "Before the Issue of a Construction Certificate" Section of this Determination and prior to the occupation of the dwellings a report must be prepared and submitted to the Certifying Authority's satisfaction by an accredited Acoustics Consultant, certifying that the final construction meets AS2021- 2015 as set down in the subject condition of this consent. Such report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development; and

b) Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a further certificate being prepared and submitted to Council in accordance with the requirements as set down in Part a) of this condition.
96. The Certifying Authority must be satisfied that each of the commitments listed in BASIX Certificate referred to in this Determination have been fulfilled before the issue of an Occupation Certificate (whether an interim or final Occupation Certificate).
97. The Certifying Authority must apply to the Director-General for a BASIX Completion Receipt within 2 days of the issue of a final Occupation Certificate. Completion Receipts can be applied for at www.basix.nsw.gov.au.
98. Before the issue of an Occupation Certificate, a street number and identifier of separate occupancies (if applicable) must be clearly displayed in a readily visible location (numbers having a height of not less than 75mm). If any new street numbers or change to street numbers (this includes unit and shop numbers) are required they must have the prior approval of Council before being displayed.
99. All works required to be carried out in connection with drainage, crossings, alterations to kerb and guttering, footpaths and roads resulting from the development shall be completed before the issue of an Occupation Certificate. Works shall be in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications".
100. Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever shall not be permitted. Any encroachments on to Council road or footpath resulting from the building works will be required to be removed before the issue of the Occupation Certificate.
101. You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development shall be at no cost to Council and undertaken before the issue of an Occupation Certificate.
102. Heavy duty concrete vehicle crossings, in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications" must be constructed at the vehicular access locations before the issue of the Occupation Certificate and at no cost to Council.
103. All redundant vehicular crossings to the site shall be removed and replaced by kerb and gutter and footpath paving in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications" before the issue

of the Occupation Certificate and at no cost to Council. Where the kerb in the vicinity of the redundant crossing is predominately stone (as determined by Council's Engineer) the replacement kerb shall also be in stone.

104. The existing stone kerb adjacent to the site is of local heritage value and is to be preserved at no cost to Council. Any damage to the stone kerb will require the replacement of the damaged individual stone units before the issue of the Occupation Certificate. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled. Non-compliance with this condition will result in loss of your security deposit.
105. The existing concrete footpath across the frontage of the site shall be reconstructed in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications", at no cost to Council and before the issue of an Occupation Certificate.
106. A common drainage easement 1.0m wide in favour of the parcels of land to be drained shall be created over the full length of all existing and proposed inter-allotment drainage systems within the site of the proposed development, at no cost to Council. A dealing number for registration of the easement shall be obtained from the Land and Property Information Office before the issue of an Occupation Certificate.
107. Before the issue of the Occupation Certificate written verification from a suitably qualified competent person, stating that all stormwater drainage, re-use and quality measures have been constructed in accordance with the approved plans shall be submitted to and accepted by Council. In addition, full works-as-executed plans, prepared and signed by a registered surveyor, shall be submitted to Council. These plans must include levels for all drainage structures, buildings (including floor levels), finished ground levels and pavement surface levels.
108. With the regard to the Stormwater Treatment Facilities a Positive Covenant shall be placed on the Title in favour of Council before issue of the Occupation Certificate. The Positive Covenant shall include the following:
 - a) The proprietor of the property shall be responsible for maintaining the stormwater treatment facility in accordance with the approved plans;
 - b) The Proprietor shall have the stormwater quality treatment facilities inspected annually (minimum) by a competent person and must provide the WSUD maintenance plan approved under this Consent to competent person to record the annual inspections.
 - c) The Council shall have the right to enter upon the land referred to above, at all reasonable times to inspect, construct, install, clean, repair and maintain in good working order all elements of the stormwater quality treatment facilities to ensure that the water quality targets provided in the design of the system are achieved; and recover the costs of any such works from the proprietor.
109. With the regard to the On Site Detention System (OSD), a Positive Covenant in accordance with supplement 7 of Marrickville Council Stormwater and On Site Detention Code shall be placed on the Title in favour of Council before the issue of the Occupation Certificate.
110. All instruments under Section 88B of the Conveyancing Act used to create positive covenants, easements or right-of-ways shall include the condition that such easements or right-of-ways may not be varied, modified or released without the prior approval of Marrickville Council.

111. Before the issue of the Occupation Certificate the person acting on this consent shall obtain from Council a compliance Certificate(s) stating that all Road, Footpath and Public Domain Works on Council property required to be undertaken as a result of this development have been completed satisfactorily and in accordance with Council approved plans and specifications.
112. The project arborist shall certify in writing to the Principal Certifying Authority (PCA) before the issue of the Occupation Certificate that the conditions of consent relating to tree removal, tree pruning, tree protection and tree planting have been complied with and that the protected trees have not been damaged or, if the recommendations have not been complied with, detail the extent and nature of the departure from the conditions. The Principal Certifying Authority shall report breaches of the conditions to Inner West Council.
113. No encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever is permitted. Any encroachments on to Council road or footpath resulting from the building works will be required to be removed before occupation of the site.
114. 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 at no cost to Council and undertaken before occupation of the site.

ADVISORY NOTES

- The Disability Discrimination Act 1992 (Commonwealth) and the Anti-Discrimination Act 1977 (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.
- A complete assessment of the application under the provisions of the Building Code of Australia has not been carried out.
- The approved plans must be submitted to the Customer Centre of any office of Sydney Water before the commencement of any work to ensure that the proposed work meets the requirements of Sydney Water. Failure to submit these plans before commencing work may result in the demolition of the structure if found not to comply with the requirements of Sydney Water.
- Contact "Dial Before You Dig" before commencing any building activity on the site.
- The vehicular crossing and/or footpath works are required to be constructed by your own contractor. You or your contractor must complete an application for 'Construction of Vehicle Crossing and Public Domain Works' form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, before commencement of works.
- Useful Contacts:

BASIX Information

☎ 1300 650 908 weekdays 2:00pm - 5:00pm
www.basix.nsw.gov.au

Department of Fair Trading

☎ 13 32 20

	www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Before You Dig	☎ 1100 www.dialbeforeyoudig.com.au
Landcom	☎ 9841 8660 To purchase copies of Volume One of “Soils and Construction”
Long Service Payments Corporation	☎ 131441 www.lspc.nsw.gov.au
NSW Food Authority	☎ 1300 552 406 www.foodnotify.nsw.gov.au
NSW Government	www.nsw.gov.au/fibro www.diySAFE.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	☎ 131 555 www.environment.nsw.gov.au
Sydney Water	☎ 13 20 92 www.sydneywater.com.au
Waste Service - SITA Environmental Solutions	☎ 1300 651 116 www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)	www.waterrating.gov.au
WorkCover Authority of NSW	☎ 13 10 50 www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.

B. THAT those persons who lodged submissions in respect to the proposal be advised of the Council's determination of the application.

C. THAT the Department of Planning and Environment be advised, as part of the quarterly review of the monitoring of Clause 4.6 of Marrickville Local Environmental Plan 2011 – Exceptions to Development Standards, that Council has agreed to the variation of the following /development standards:

<u>Premises:</u>	28 George Street MARRICKVILLE
<u>Applicant:</u>	BKA Architecture
<u>Proposal:</u>	to demolish existing improvements and construct a 4 storey residential flat building containing 15 units with basement car parking
<u>Determination:</u>	Deferred Commencement Consent
<u>DA No:</u>	201800105

Lot and DP: Lot 1 DP 1027790, Lot 1 DP 105246, Lot 1 DP 119562L

Category of Development: Residential Flat Building

Environmental Planning Instrument: Marrickville Local Environmental Plan 2011

Zoning of Land: General Residential

Development Standard(s) varied: Maximum Building Height, Maximum Floor Space Ratio

Justification of variation: Strict compliance is unreasonable and unnecessary considering the circumstances of the site, extent is minor and not visible from public domain, no adverse amenity impacts, the proposal is consistent with neighbouring developments

Extent of variation: Height 9%, FSR 9.87%

Concurring Authority: Council under assumed concurrence of the Secretary Department of Planning and Environment

Date of Determination:

Attachment B – Plans of proposed development

DEVELOPMENT APPLICATION
Demolition of existing buildings and New Residential Building at 28-30 George Street, Marrickville

BKA COMMENTS SUMMARY NOTES	
DA000	COVER SHEET
DA001	SITE AND CONTEXT ANALYSIS PLAN
DA002	PROPOSED FRONT SETBACK PLAN
DA100	BASEMENT FLOOR PLAN
DA101	GROUND FLOOR PLAN
DA102	LEVEL 01 FLOOR PLAN
DA103	LEVEL 02 FLOOR PLAN
DA104	LEVEL 03 FLOOR PLAN
DA105	ROOF PLAN
DA120	AREA CALCULATIONS SHEET
DA200	ELEVATIONS SHEET 01
DA201	ELEVATIONS SHEET 02
DA300	SECTIONS
DA400	DETAIL SHEET 01
DA401	DETAIL SHEET 02
DA700	MATERIAL AND FINISHES BOARD
DA720	SHADOW DIAGRAMS SHEET 01
DA721	SHADOW DIAGRAMS SHEET 02
DA722	SHADOW DIAGRAMS SHEET 03
DA723	SHADOW DIAGRAMS SHEET 04
DA724	SHADOW DIAGRAMS SHEET 05
DA725	SHADOW DIAGRAMS SHEET 06
DA726	SHADOW DIAGRAMS SHEET 07
DA727	SHADOW DIAGRAMS SHEET 08
DA728	SHADOW DIAGRAMS SHEET 09
DA729	SHADOW DIAGRAMS SHEET 10
DA730	SHADOW DIAGRAMS SHEET 11
DA731	SHADOW DIAGRAMS SHEET 12
DA732	SHADOW DIAGRAMS SHEET 13
DA733	SHADOW DIAGRAMS SHEET 14
DA734	SHADOW DIAGRAMS SHEET 15
DA735	SHADOW DIAGRAMS SHEET 16
DA736	SHADOW DIAGRAMS SHEET 17
DA737	SHADOW DIAGRAMS SHEET 18
DA738	SHADOW DIAGRAMS SHEET 19
DA739	SHADOW DIAGRAMS SHEET 20
DA740	SHADOW DIAGRAMS SHEET 21
DA741	SHADOW DIAGRAMS SHEET 22



Planner
 Sule 102, Level 1, 20 Railway Street, Liverpool NSW
 T: 0911 7820

Acoustic
 Sule 102, Level 1, 20 Railway Street, Liverpool NSW
 T: 0911 7820

Access
 1201 Upper Washington Drive,
 Berrigan NSW 2728
 T: 06 41 41 6363

BKA
 Dick Gardner
 Transport and Traffic Planning Associates
 1001 George Street,
 Chesham NSW 2166
 T: 9411 5680

Phonemontage
 BKA Architecture
 1001 George Street, Rousebury 2018
 T: 9518 8220

05
 Construction Consultants - Natalie Yu
 1001 George Street, Parramatta NSW 2150
 T: 95 8533 5233

Bank
 50/55 Ashby St,
 Marrickville NSW 2206
 T: 0421 350 8745

Asst Substrate & Groutech
 55 Miller Street
 Pyrmont NSW 2009
 T: 9518 8220

Traffic and Parking
 Transport and Traffic Planning Associates
 1001 George Street,
 Chesham NSW 2166
 T: 9411 5680

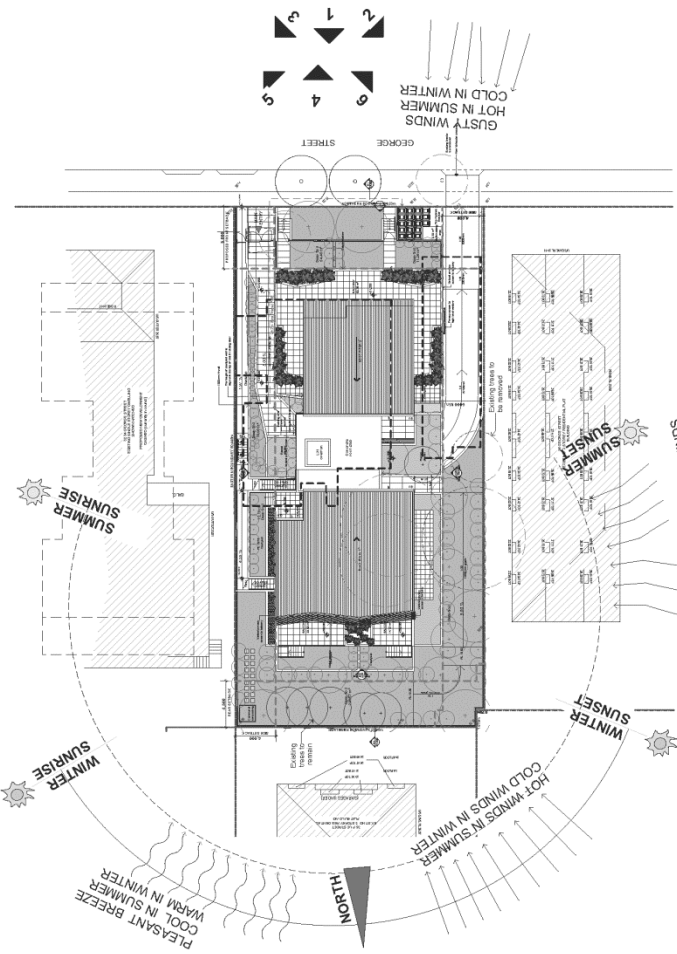
CONSULTANTS

PHOTOMONTAGE

PROJECT #	DA000
DATE	18/08/2024
SCALE	AS SHOWN
DATE	18/08/2024
PROJECT #	DA000
DATE	18/08/2024
SCALE	AS SHOWN
DATE	18/08/2024
PROJECT #	DA000
DATE	18/08/2024
SCALE	AS SHOWN
DATE	18/08/2024

BKA architecture
 1001 George Street, Rousebury 2018
 T: 9518 8220

DA Submission



01 Site Plan 1:200

LEGEND

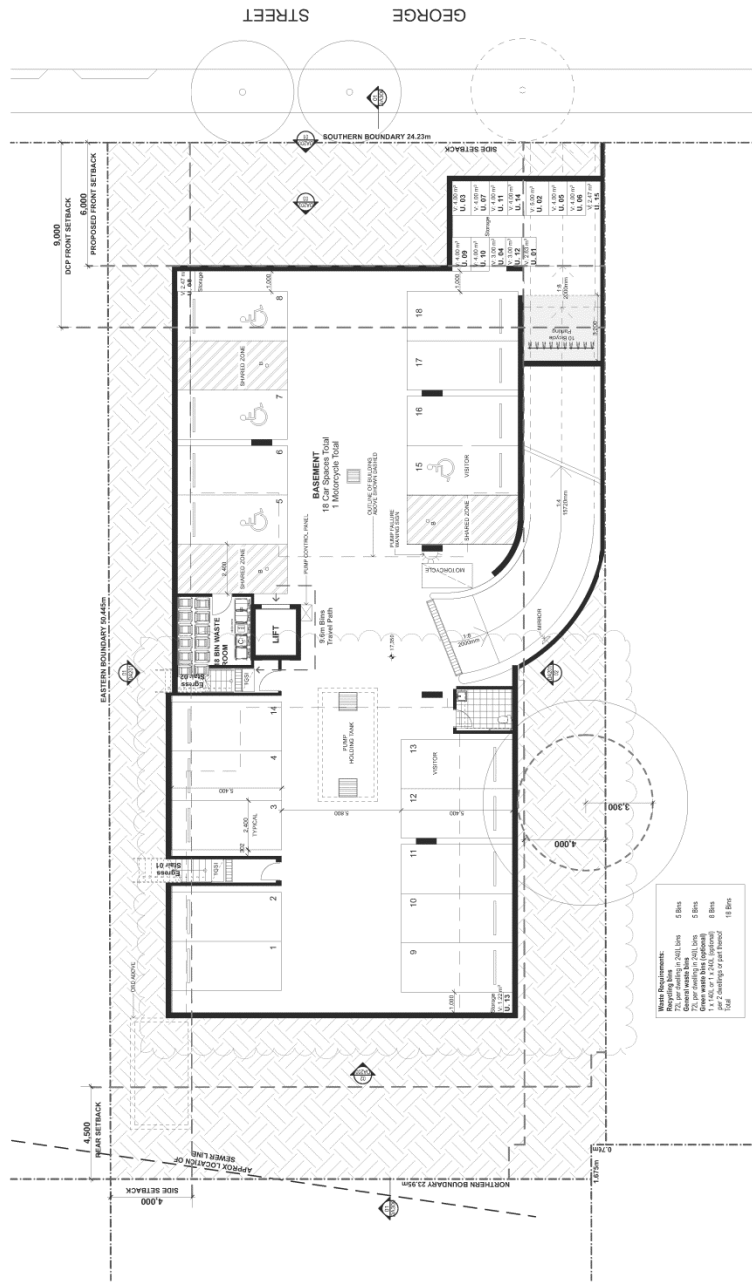
- ▲ IMAGE LOCAT ON ORIENTATION
- EXISTING TREES TO BE REMOVED
- - - - - OUTLINE OF EXISTING BUILDING TO BE DEMOLISHED

<p>DA Submission</p>		<p>BKA architecture 1/100 W. BALMAIN RD. BALMAIN NSW 2040 PH: 02 9550 1234 WWW.BKAARCHITECTURE.COM.AU</p>		<p>DA001</p>	
<p>PROJECT: New Residential Building</p>	<p>CLIENT: BALMAIN RAY</p>	<p>DATE: 20/08/2018</p>	<p>SCALE: 1:200</p>	<p>NO. OF SHEETS: 1</p>	<p>TOTAL SHEETS: 1</p>
<p><small>THIS DOCUMENT IS THE PROPERTY OF BKA ARCHITECTURE. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED. IT IS NOT TO BE REPRODUCED, COPIED, OR DISTRIBUTED IN ANY FORM OR BY ANY MEANS, WITHOUT THE WRITTEN PERMISSION OF BKA ARCHITECTURE. ANY UNAUTHORIZED USE OF THIS DOCUMENT IS STRICTLY PROHIBITED.</small></p>					



Setback plan 1:300

<p>DA Submission</p> <p><small>All documents are submitted as PDF files. All documents are subject to verification by Council. Council is not responsible for the accuracy of the information provided. Council is not responsible for the accuracy of the information provided. Council is not responsible for the accuracy of the information provided.</small></p>		<p>PROJECT # 1408</p> <p>SCALE 1:300</p> <p>TITLE DA002</p> <p>DATE 27/05/19</p> <p>ADDRESS 28-30 George Street, Manawatu NSW 2204</p> <p>PROJECT TYPE Residential Building</p> <p>PROPOSED Proposed Foot Setback Plan</p>
<p>DA Submission</p> <p><small>All documents are submitted as PDF files. All documents are subject to verification by Council. Council is not responsible for the accuracy of the information provided. Council is not responsible for the accuracy of the information provided. Council is not responsible for the accuracy of the information provided.</small></p>		<p>PROJECT # 1408</p> <p>SCALE 1:300</p> <p>TITLE DA002</p> <p>DATE 27/05/19</p> <p>ADDRESS 28-30 George Street, Manawatu NSW 2204</p> <p>PROJECT TYPE Residential Building</p> <p>PROPOSED Proposed Foot Setback Plan</p>
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Water Requirements:

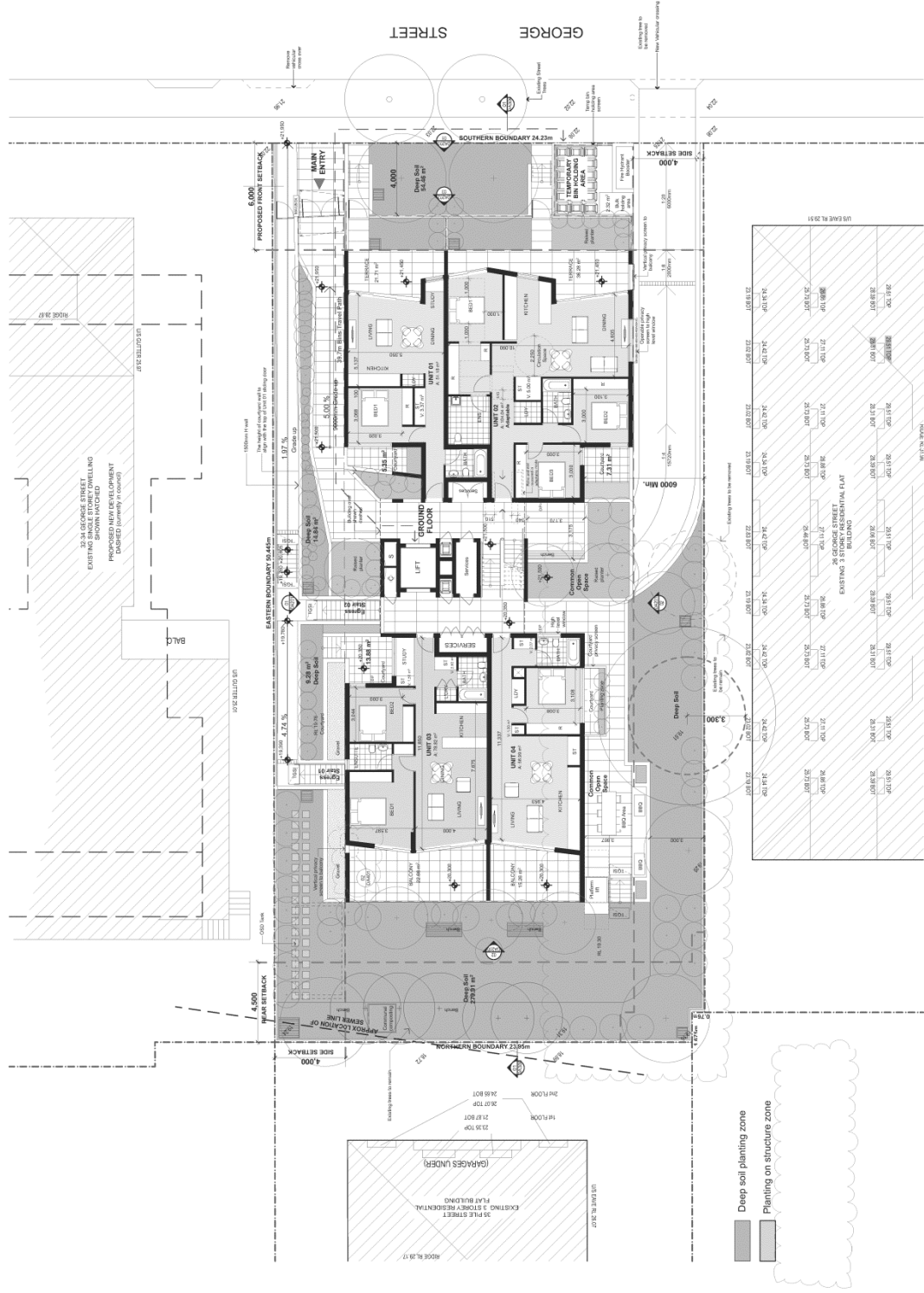
720 per unit for 10-1000 litres	5 Bins
720 per unit for 10-1000 litres	5 Bins
1 x 400L or 1 x 200L (dependent)	8 Bins
1 x 400L or 1 x 200L (dependent)	8 Bins
Total	18 Bins

DA Submission

BKA architecture
 BENTLEY | BELFRASLE | BIRROBAY
 230-242 George Street, Maroubra NSW 2034
 Sydney Development
 Telephone: 02 9550 3333
 Fax: 02 9550 3334
 Email: info@bka.com.au
 Website: www.bka.com.au

PROJECT: New Residential Building
CLIENT: UNCALD
DATE: 19/03/2018
ADDRESS: 230-242 George Street, Maroubra NSW 2034
SCALE: 1:100
DATE: 19/03/2018
PROJECT NO.: DA100

APPROVALS:
 APPROVED BY: [Signature]
 DATE: 19/03/2018
 APPROVED BY: [Signature]
 DATE: 19/03/2018

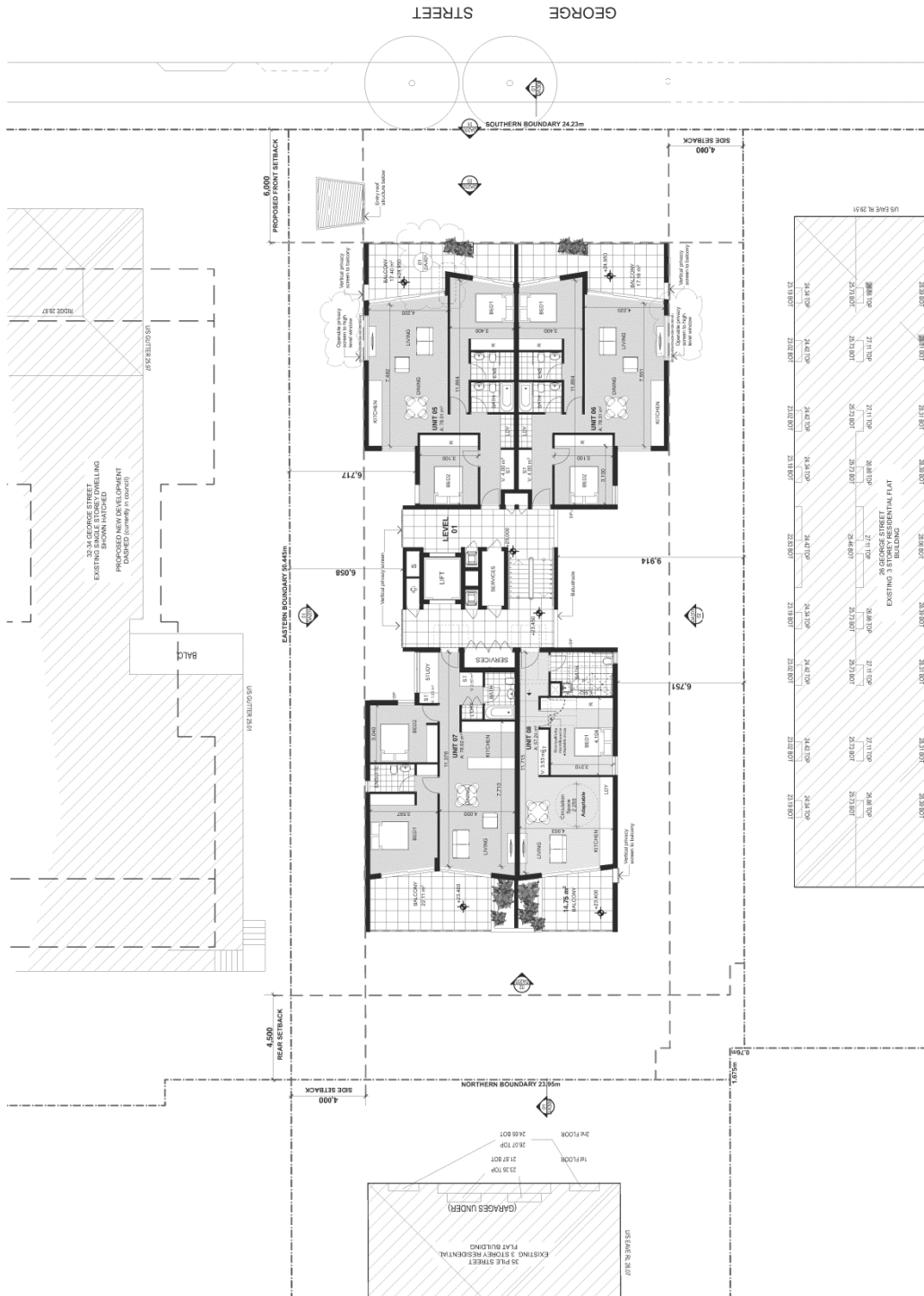


DA Submission

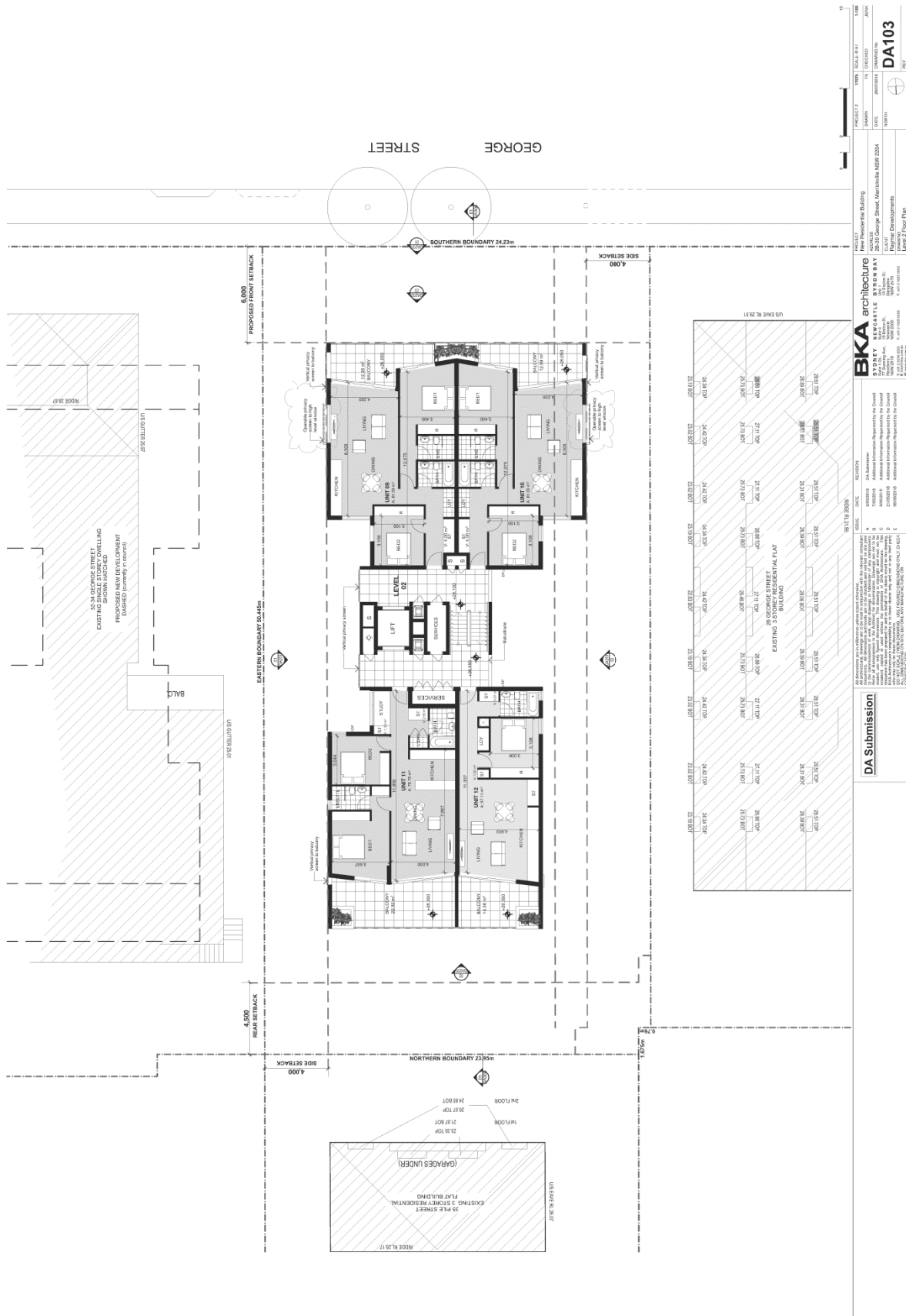
BKA architecture
 5/186 ELWATTLE BOULEVARD
 ELWATTLE, WESTERN AUSTRALIA 6101
 TEL: (08) 9489 1192
 WWW: www.bka.com.au

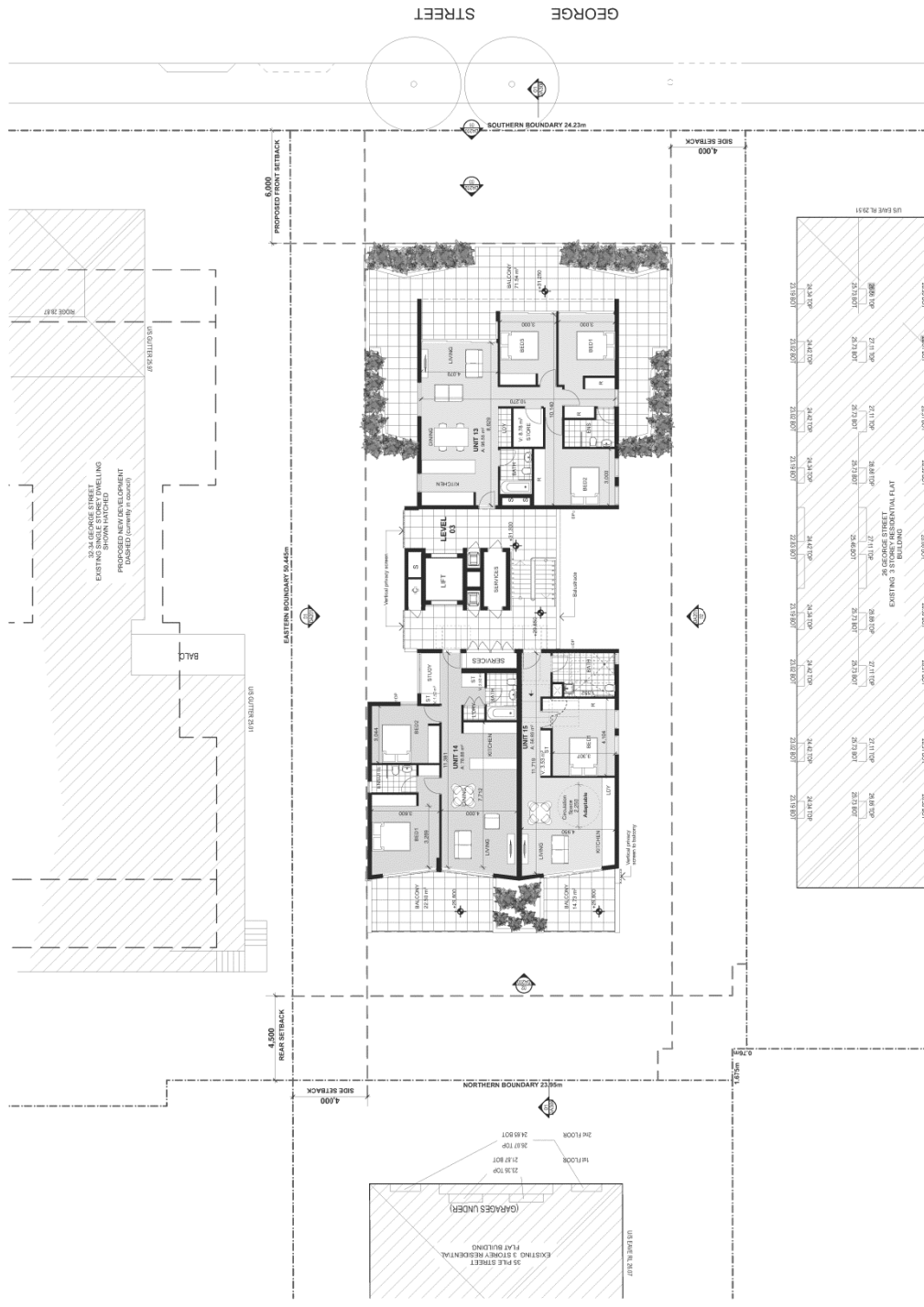
Client: New Residential Building
Address: 35-37 George Street, Manly NSW 2204
City: Manly
State: NSW
Project No: DA101

Scale: 1:500
Date: 11/01/2024
Author: BKA architecture
Check: BKA architecture
Appr: BKA architecture



<p>DA Submission</p>	<p>PROJECT NAME: New Residential Building PROJECT NUMBER: 24/24/1004 PROJECT LOCATION: 24/24/1004 PROJECT DATE: 2024/01/24 PROJECT SCALE: 1:500 PROJECT DRAWN BY: [Name] PROJECT CHECKED BY: [Name] PROJECT DATE: [Date]</p>
<p>BKA architecture</p> <p>12/12/12/12/12 12/12/12/12/12 12/12/12/12/12 12/12/12/12/12 12/12/12/12/12 12/12/12/12/12 12/12/12/12/12 12/12/12/12/12 12/12/12/12/12 12/12/12/12/12</p>	<p>ALL INFORMATION ON THIS PLAN IS TO BE USED FOR THE SPECIFIC PROJECT ONLY. IT IS NOT TO BE REPRODUCED OR COPIED IN ANY FORM OR BY ANY MEANS WITHOUT THE WRITTEN PERMISSION OF BKA architecture.</p> <p>Address: [Address] Phone: [Phone] Email: [Email]</p> <p>Address: [Address] Phone: [Phone] Email: [Email]</p> <p>Address: [Address] Phone: [Phone] Email: [Email]</p>





DA Submission

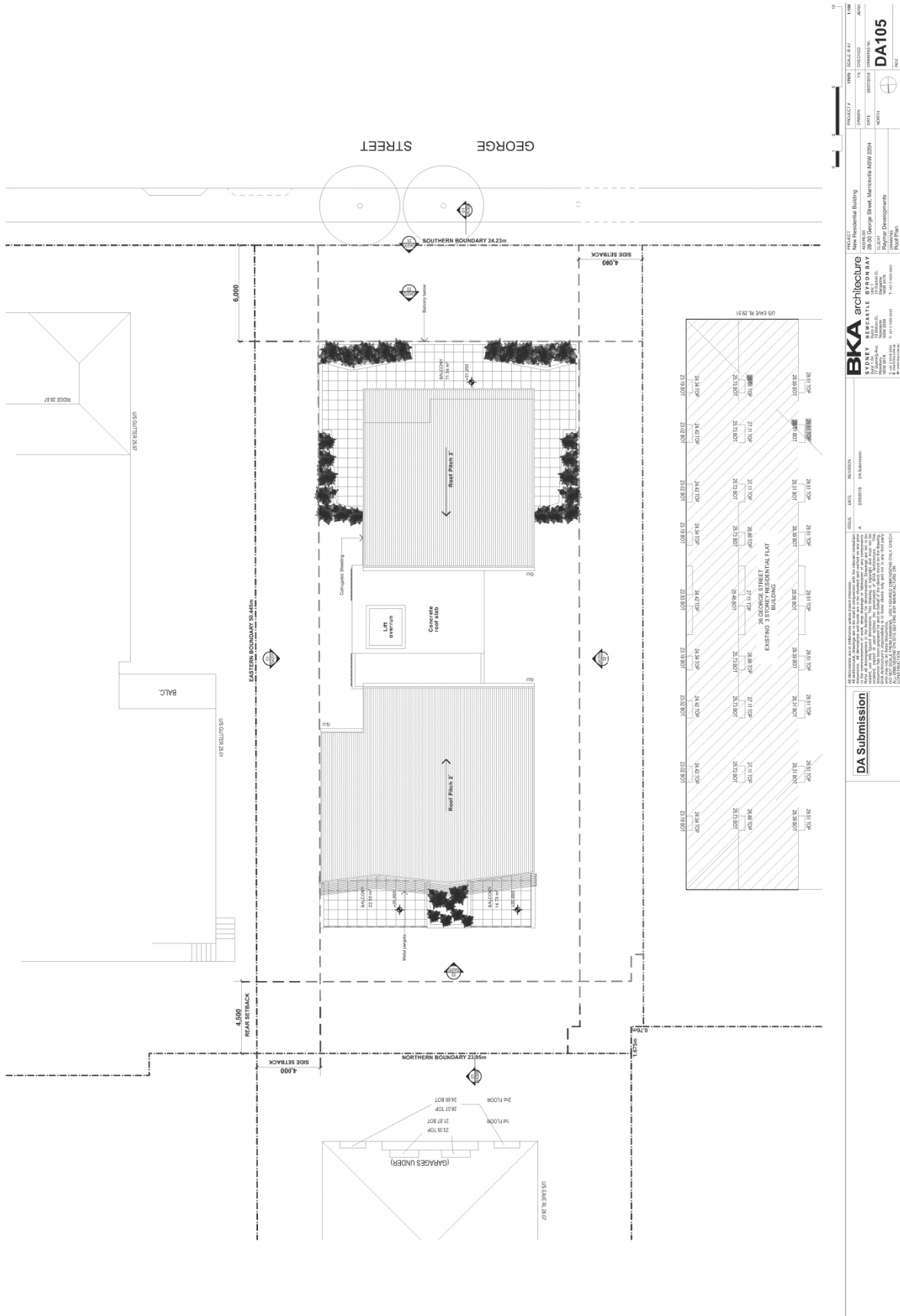
BKA architecture
 BRYAN B. KATZ
 21 HUNTER STREET, SYDNEY NSW 2000
 TEL: (02) 9550 1234
 FAX: (02) 9550 1235
 WWW: www.bka.com.au

Project: New Residential Building
Site: 20-22 George Street, Manlyville NSW 2204
DA No: DA104

Scale: 1:1000
Date: 10/10/2023

Author: BKA
Checker: BKA
Approver: BKA

Notes:
 1. All dimensions are in millimetres unless otherwise stated.
 2. All dimensions are to the face of the wall unless otherwise stated.
 3. All dimensions are to the centre of the wall unless otherwise stated.
 4. All dimensions are to the centre of the wall unless otherwise stated.
 5. All dimensions are to the centre of the wall unless otherwise stated.
 6. All dimensions are to the centre of the wall unless otherwise stated.
 7. All dimensions are to the centre of the wall unless otherwise stated.
 8. All dimensions are to the centre of the wall unless otherwise stated.
 9. All dimensions are to the centre of the wall unless otherwise stated.
 10. All dimensions are to the centre of the wall unless otherwise stated.



Area Calculations Summary

Permissible FAR: 0.6 (± 0.25 below) 0.85
1:200.10

Site Area (Covered)

	1 Bed	2 Bed	3 Bed	4 Bed	5 Bed	Total
1st Floor	208.27	2	3	0	0	
2nd Floor	208.03	1	3	0	0	
3rd Floor	135.27	0	0	0	0	
4th Floor	135.27	0	0	0	0	
Total	687.84	3	6	0	0	9

37% 0.53% 1.2% 0.7% 0.0%

Permissible FAR

0.6 (± 0.25 below) 0.85
1:200.10

Site Area (Covered)

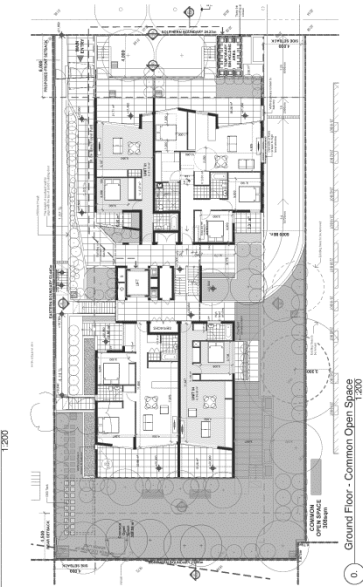
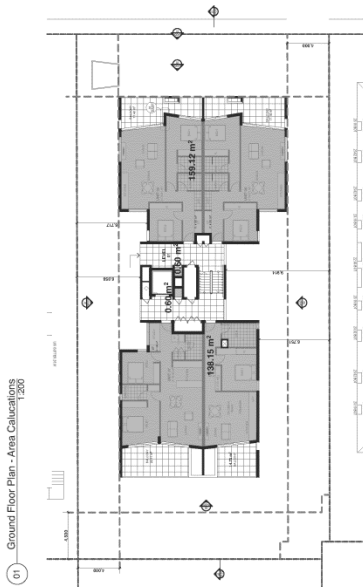
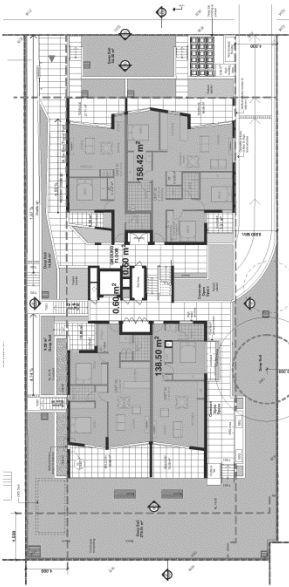
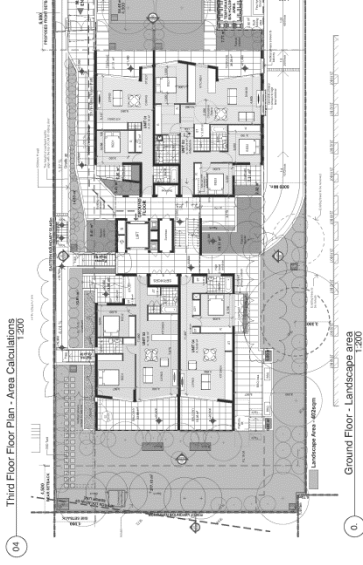
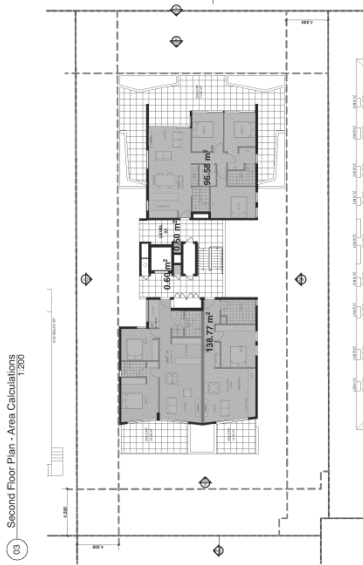
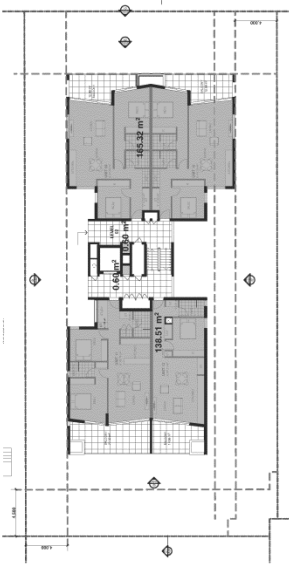
	1 Bed	2 Bed	3 Bed	4 Bed	5 Bed	Total
1st Floor	208.27	2	3	0	0	
2nd Floor	208.03	1	3	0	0	
3rd Floor	135.27	0	0	0	0	
4th Floor	135.27	0	0	0	0	
Total	687.84	3	6	0	0	9

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Permissible FAR: 0.6 (± 0.25 below) 0.85
1:200.10

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3rd Floor	135.27	0	0	0	0	
4th Floor	135.27	0	0	0	0	
Total	687.84	3	6	0	0	9



Common Open Space Area Calculation

Room	Area (m²)	Permissible FAR	Maximum Area (m²)
1	11	0.6	6.6
2	11	0.6	6.6
3	11	0.6	6.6
4	11	0.6	6.6
5	11	0.6	6.6
6	11	0.6	6.6
7	11	0.6	6.6
8	11	0.6	6.6
9	11	0.6	6.6
10	11	0.6	6.6
11	11	0.6	6.6
12	11	0.6	6.6
13	11	0.6	6.6
14	11	0.6	6.6
15	11	0.6	6.6
16	11	0.6	6.6
17	11	0.6	6.6
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23	11	0.6	6.6
24	11	0.6	6.6
25	11	0.6	6.6
26	11	0.6	6.6
27	11	0.6	6.6
28	11	0.6	6.6
29	11	0.6	6.6
30	11	0.6	6.6
31	11	0.6	6.6
32	11	0.6	6.6
33	11	0.6	6.6
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36	11	0.6	6.6
37	11	0.6	6.6
38	11	0.6	6.6
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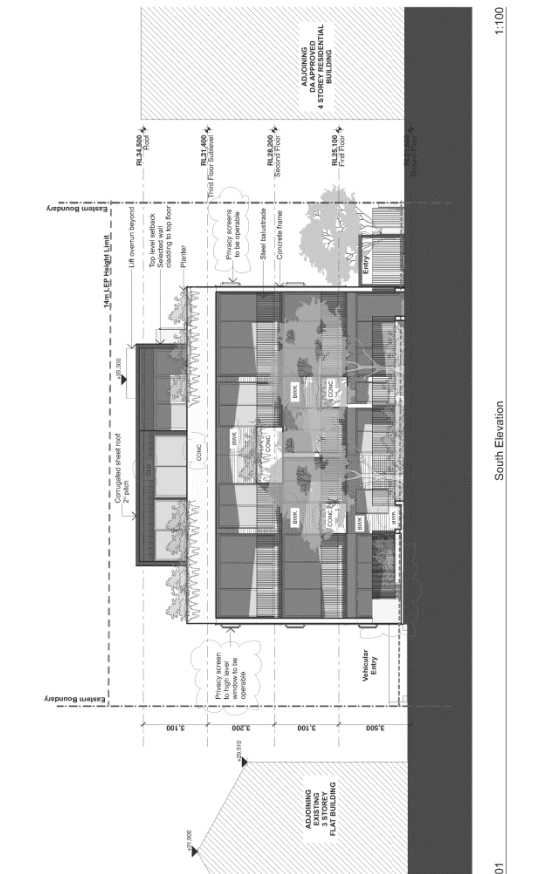
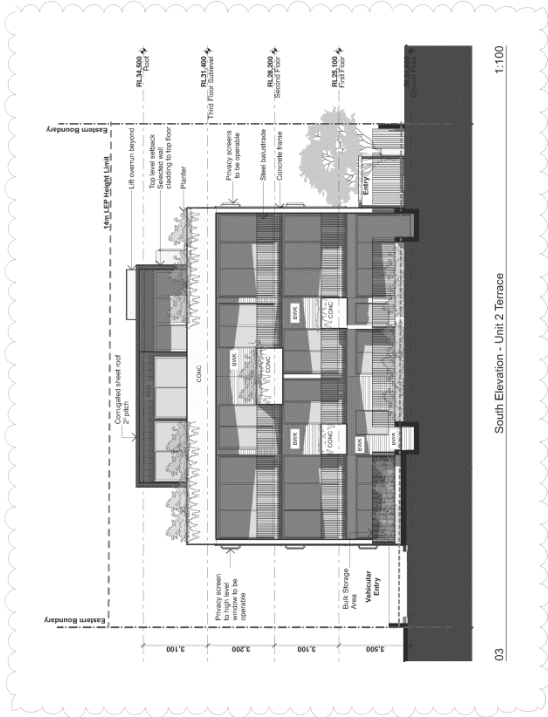
DA Submission

Project: 17/2001/0178 - New Residential Building
 50/30 George Street, Manly NSW 2204
 Applicant: BKA architecture
 Date: 14/07/2017

BKA architecture
 50/30 George Street, Manly NSW 2204
 Sydney NSW 2204
 Australia
 Phone: +61 2 9550 1000
 Email: info@bka.com.au

DA120

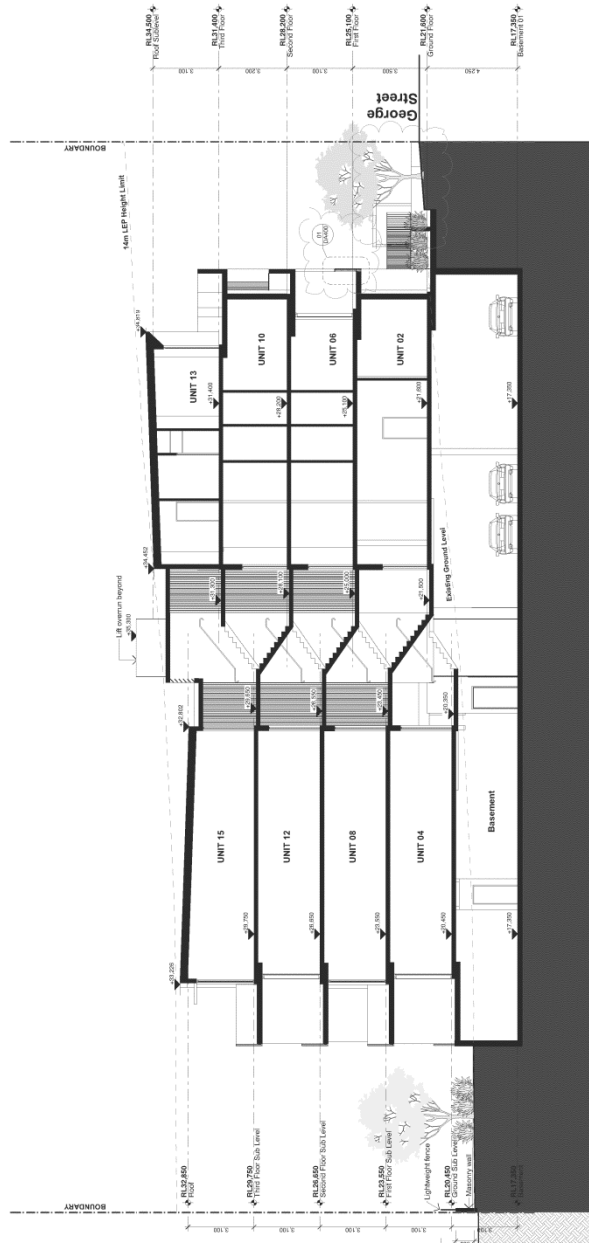
Area Calculations Sheet



DA Submission All documents are to be reviewed by the Council. The Council is not responsible for the accuracy of the information provided. The Council is not responsible for the accuracy of the information provided. The Council is not responsible for the accuracy of the information provided.		BKA architecture BKA architecture 2/10 BAYVIEW STREET SYDNEY NSW 2042 T: (02) 9550 1111 F: (02) 9550 1112 E: info@bka.com.au www.bka.com.au	
TABLE DATE REVISION A 28/08/2018 DA Submission B 28/08/2018 DA Submission C 28/08/2018 Address comments responded to by Council	PROJECT 200 Residential Building 20-30 George Street, Manlyville NSW 2204 20-30 George Street 20-30 George Street 20-30 George Street 20-30 George Street 20-30 George Street	DRAWN DATE SHEET PROJECT SCALE DATE SHEET PROJECT SCALE DATE SHEET	1:100 DA200 01

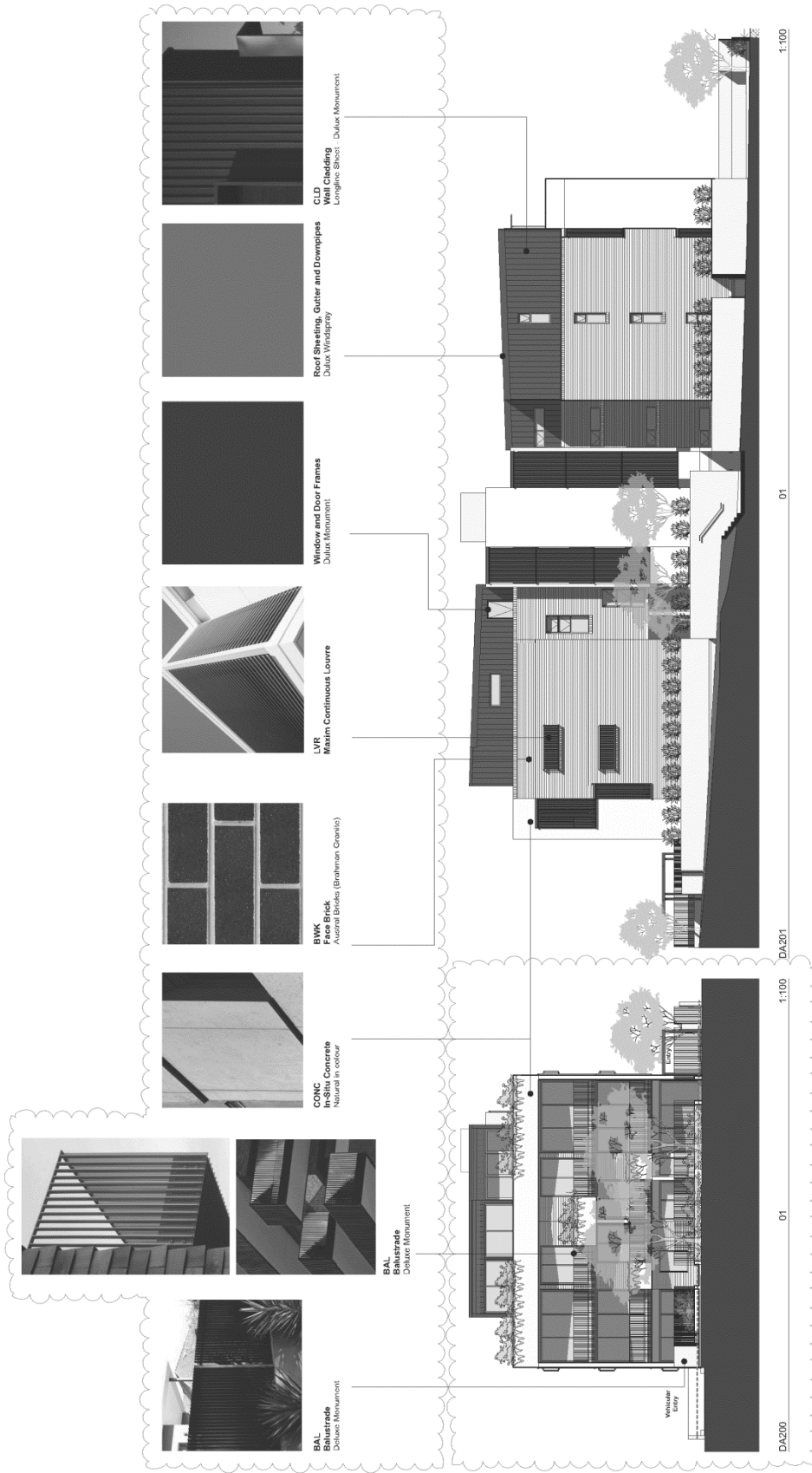


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Address: 20/20 George Street, Northcote NSW 2060		Project Name: NEW RESIDENTIAL BUILDING		Date: 14/03/2024	
DA Number: DA201		Project Number: 20/20		Scale: 1:100	
Author: [Name]		Designer: [Name]		Checker: [Name]	
Date: [Date]		Project Status: [Status]		Drawing No: [Number]	
Revision: [Revision]		Project Location: [Location]		Project Reference: [Reference]	
Project Description: [Description]		Project Objectives: [Objectives]		Project Constraints: [Constraints]	
Project Risks: [Risks]		Project Benefits: [Benefits]		Project Deliverables: [Deliverables]	
Project Stakeholders: [Stakeholders]		Project Communication: [Communication]		Project Monitoring: [Monitoring]	
Project Evaluation: [Evaluation]		Project Reporting: [Reporting]		Project Closure: [Closure]	

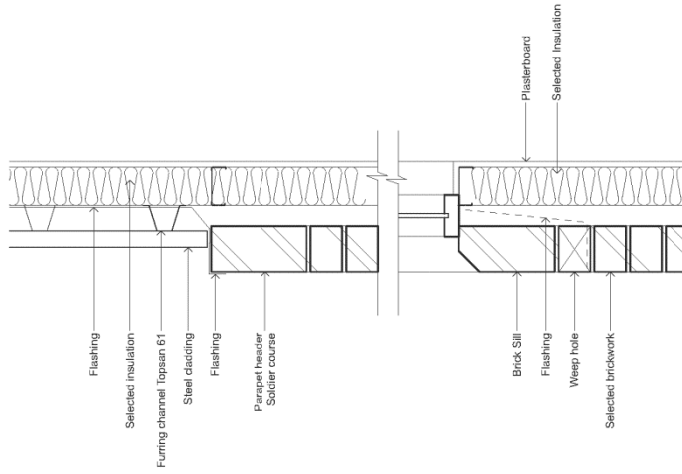


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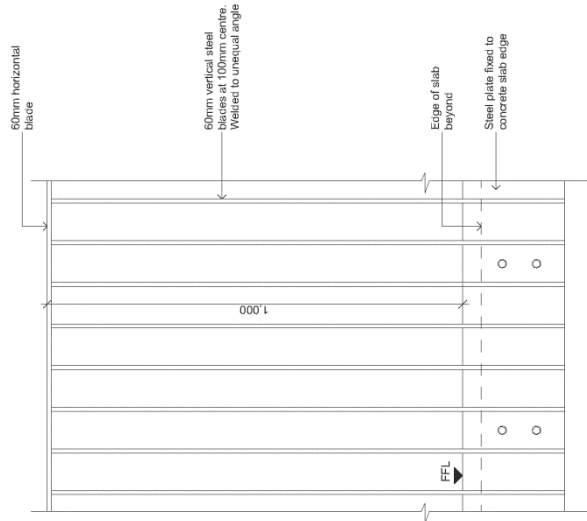
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	<p>ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE. IT IS THE PROPERTY OF BKA ARCHITECTURE AND IS NOT TO BE REPRODUCED, COPIED, OR DISSEMINATED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF BKA ARCHITECTURE. ANY UNAUTHORIZED USE OR REPRODUCTION OF THIS INFORMATION IS STRICTLY PROHIBITED. BKA ARCHITECTURE ACCEPTS NO LIABILITY FOR ANY ERRORS OR OMISSIONS IN THIS DOCUMENT. THE INFORMATION CONTAINED HEREIN IS FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT CONSTITUTE A CONTRACT. BKA ARCHITECTURE IS A REGISTERED ARCHITECTURAL FIRM IN NEW SOUTH WALES.</p>		



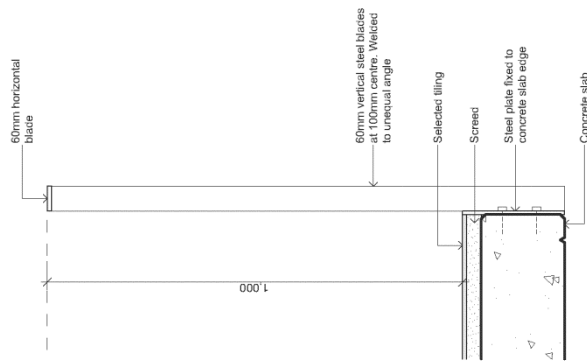
DA Submission		DA Submission	
<p>All dimensions are in millimetres unless stated otherwise. The applicant is responsible for ensuring that the design complies with the relevant provisions of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2007. The applicant is responsible for ensuring that the design complies with the relevant provisions of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2007. The applicant is responsible for ensuring that the design complies with the relevant provisions of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2007.</p>		<p>PROJECT: New Macquarie Building ADDRESS: 120-124 George Street, Macquarie NSW 2104 CLIENT: Macquarie Infrastructure and Real Estate Limited ARCHITECT: BKA architecture DATE: 20/08/2018 SCALE: 1:100 DRAWN TO: CHECKED: [initials] SHEET: 24/00711 PROJECT NO: DA710 REV: 1</p>	



03 Window Sill/Parapet Header Detail
1:10

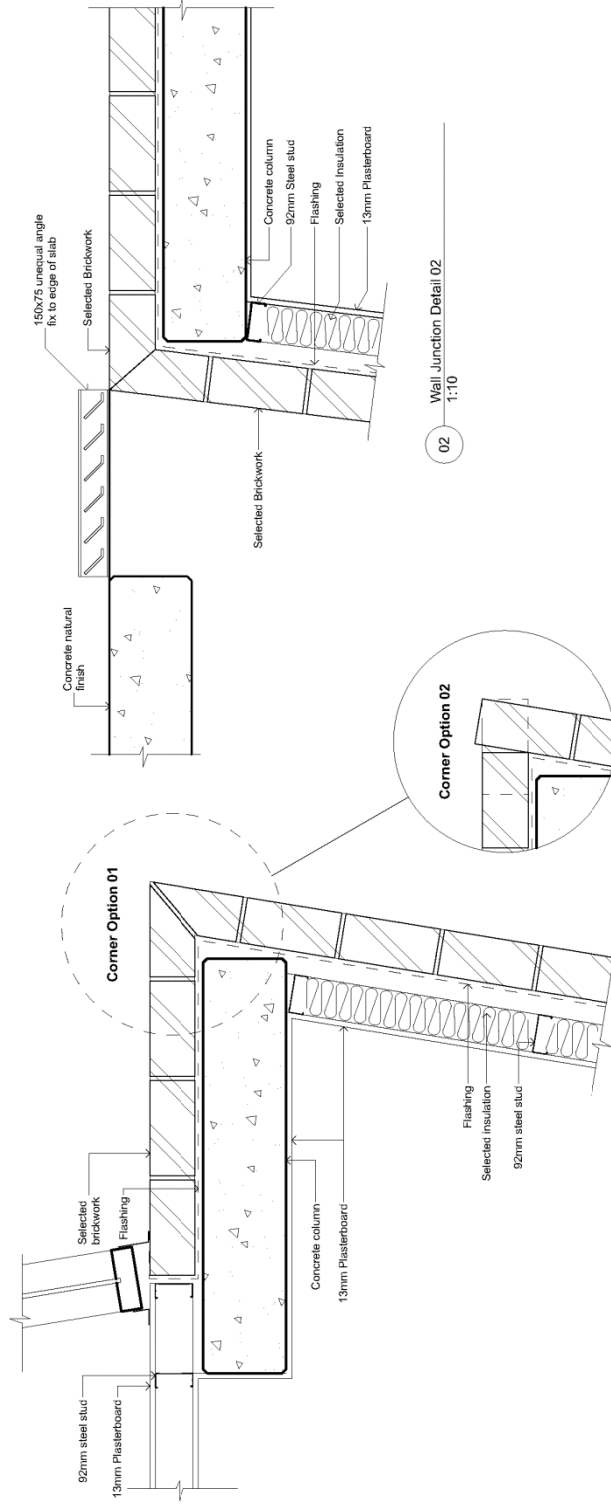


02 Balcony Balustrade Elevation
1:10



01 Balcony Balustrade Detail Section
1:10

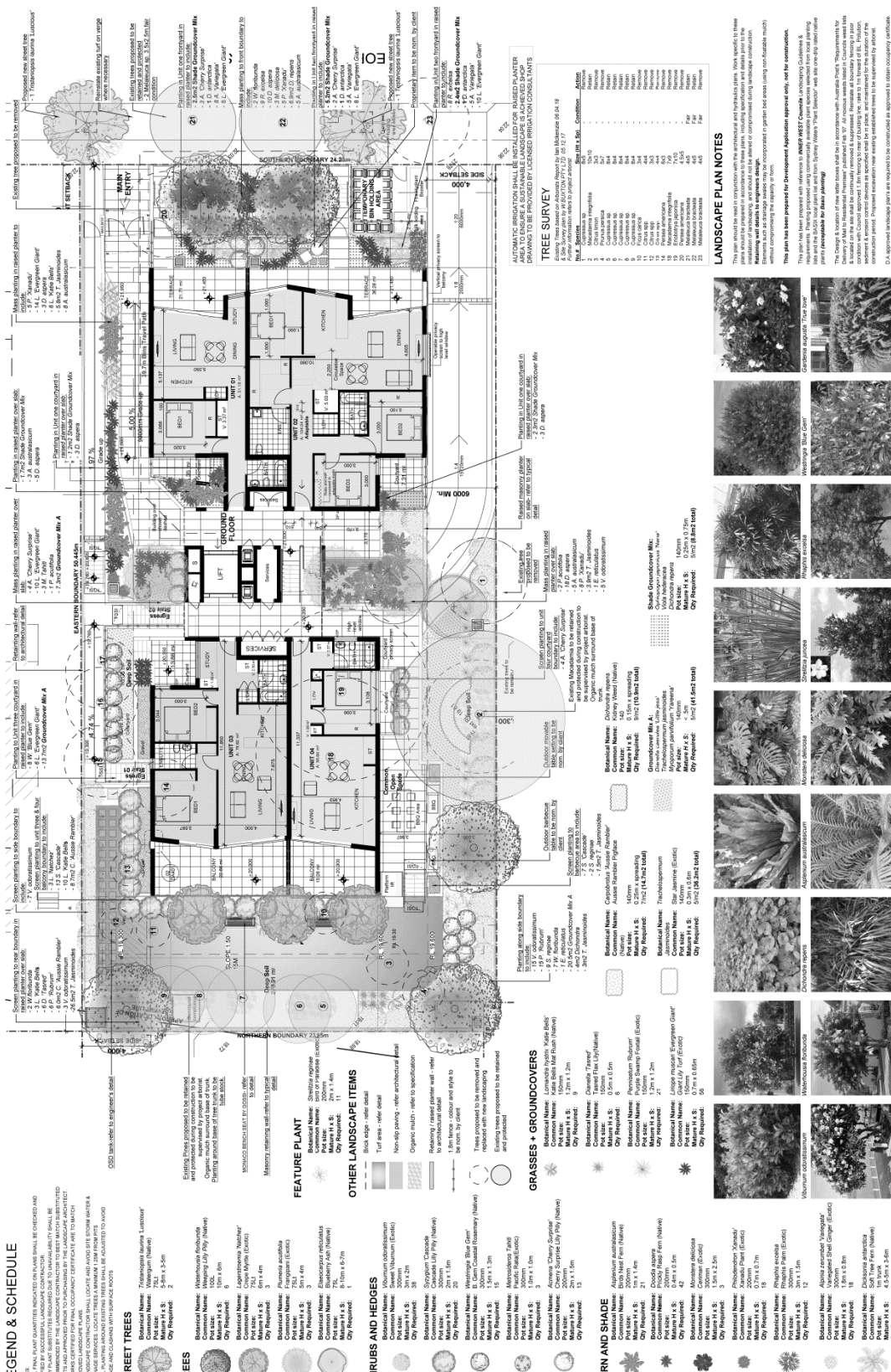
<p>BKA architecture</p> <p>NORTH</p>	<p>DATE: 06/06/2018</p> <p>REVISION: DA Submission - Additional Information</p>	<p>PROJECT: 17075</p>
	<p>PROJECT: New Residential Building</p> <p>ADDRESS: 28-30 George Street, Marrickville NSW 2204</p> <p>CLIENT: Ray & Patrick Touma</p> <p>DWG: Detail Sheet 01</p>	<p>PROJECT#</p> <p>DWG#</p> <p>DATE: 26/02/18</p> <p>SCALE @ A3: 1:10</p> <p>DRAWN: []</p> <p>CHECK: []</p> <p>REVISION:</p>



01 Wall Junction Detail 01
1:10

02 Wall Junction Detail 02
1:10

BKA architecture		ISSUE A	DATE 06/06/2018	REVISION	DA Submission - Additional Information	PROJECT # 17075
		PROJECT	New Residential Building			DATE 28/07/2018
		ADDRESS	28-30 George Street, Marrickville NSW 2204			DWG # DA401
		CLIENT	Ray & Patrick Youma			SCALE @ A3 1:10
		DWG	Detail Sheet 02			REVISION
NORTH						



LEGEND & SCHEDULE

- 1. ALL PLANT QUANTITIES INDICATED ON PLANS SHALL BE CHECKED AND VERIFIED BY THE CONTRACTOR.
 - 2. ANY PLANT QUANTITIES NOT INDICATED ON PLANS SHALL BE VERIFIED BY THE CONTRACTOR.
 - 3. WORKS IDENTIFIED WITH A 'C' SHALL BE COMPLETED BY THE CONTRACTOR.
 - 4. LANDSCAPE CONTRACTOR SHALL LOCATE AND MARK OUT ALL PLANTING AND LOCATIONS OF PLANTING.
 - 5. ALL PLANTING AND LOCATIONS SHALL BE ADJUSTED TO AVOID DAMAGE AND COLLISION WITH SURFACE ROADS.
- STREET TREES**
- Botanical Name: *Tetradlea laevis* (Lantana)
 - Common Name: Lantana
 - Plant Size: 2.0m x 2.0m
 - Qty Required: 2
- TREES**
- Botanical Name: *Melaleuca alternifolia* (Eucalyptus)
 - Common Name: Eucalyptus
 - Plant Size: 10m x 10m
 - Qty Required: 1
- SHRUBS AND HEDGES**
- Botanical Name: *Leucophaea 'Naxos'*
 - Common Name: Leucophaea 'Naxos'
 - Plant Size: 1.5m x 1.5m
 - Qty Required: 1
- GRASSES & GROUNDCOVERS**
- Botanical Name: *Poa annua*
 - Common Name: Annual Ryegrass
 - Plant Size: 1.5m x 1.5m
 - Qty Required: 1
- FERN AND SHADE**
- Botanical Name: *Adiantum species*
 - Common Name: Fern
 - Plant Size: 1.5m x 1.5m
 - Qty Required: 1

LANDSCAPE PLAN NOTES

The plan has been prepared for development applications only, not for construction.

A approved landscape plan is required to be constructed as approved to ensure compliance with the relevant legislation.

PROPOSED RESIDENTIAL APARTMENT DEVELOPMENT
28-30 GEORGE STREET
MARRICKVILLE

DEVELOPMENT APPLICATION
DATE: 10/08/2018
SCALE: 1:100 @ A1
DRAWN BY: KZ
CHECKED BY: R.F.

LANDSCAPE PLAN
DATE: 10/08/2018
SCALE: 1:100 @ A1
DRAWN BY: KZ
CHECKED BY: R.F.

REVISIONS

NO.	DATE	DESCRIPTION
A	10/08/18	Final Development Application
B	20/08/18	Revised landscape plan
C	20/08/18	Revised landscape plan
D	21/08/18	Revised landscape plan
E	21/08/18	Revised landscape plan
F	21/08/18	Revised landscape plan
G	11/09/18	Revised landscape plan

LANDSCAPE PLAN NOTES

The plan has been prepared for development applications only, not for construction.

A approved landscape plan is required to be constructed as approved to ensure compliance with the relevant legislation.

REVISIONS

NO.	DATE	DESCRIPTION
A	10/08/18	Final Development Application
B	20/08/18	Revised landscape plan
C	20/08/18	Revised landscape plan
D	21/08/18	Revised landscape plan
E	21/08/18	Revised landscape plan
F	21/08/18	Revised landscape plan
G	11/09/18	Revised landscape plan

Attachment C – Clause 4.6 Exceptions to Development Standards

PLANZONE

Appendix 1

Clause 4.6 for Contravention of Height Development Standard
Planzone
28 February 2018

PLANZONE

1. **What is the name of the environmental planning instrument that applies to the land?**
Marrickville Local Environmental Plan 2011
2. **What is the zoning of the land?**
R1 General Residential
3. **What are the objectives of the zone?**
 - To provide for the housing needs of the community.
 - To provide for a variety of housing types and densities.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
 - To provide for retail premises in existing buildings designed and constructed for commercial purposes.
 - To provide for office premises in existing buildings designed and constructed for commercial purposes or as part of the conversion of existing industrial or warehouse buildings.
4. **What is the development standard being varied?**
Height of Buildings
5. **Under what clause is the development standard listed in the environmental planning instrument?**
Clause 4.3
6. **What are the objectives of the development standard?**
 - (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.
7. **What is the numeric value of the development standard in the environmental planning instrument?**
14 metres
8. **What is proposed numeric value of the development standard in your development application?**
15.26 metres
9. **What is the percentage variation (between your proposal and the environmental planning instrument)?**
9% (1.26 metres)

LEGEND:
 ✓ COMPLIES
 × DOES NOT COMPLY
 S SATISFACTORY

STATEMENT OF ENVIRONMENTAL EFFECTS
 RESIDENTIAL FLAT BUILDING
 28-30 GEORGE STREET, MARRICKVILLE

A1

PLANZONE

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The non-compliant height relates to the lift overrun only and does not include any part of the built form that contains habitable or gross floor area. The height exceedance will result in an acceptable density and bulk for the development which is proposed below the maximum height for the built forms and provides a compliant building envelope with an appropriate level of amenity for future occupants of the development and adjoining sites.

The development achieves the objectives of the development standard as follows:

- ▶ The proposed building height in relation to the built form is consistent with the desired future character of an area with no part of the building exceeding the height of buildings development standard apart from the limited lift overrun. The lift overrun is located on the eastern side of the development and would not create any additional impacts for adjoining properties by way of additional overshadowing or visual bulk and scale.
- ▶ The development will ensure that adjoining buildings and public areas will continue to receive satisfactory exposure to the sky and sunlight as the non-compliant building height is limited to the small lift overrun component along the eastern side of the development.
- ▶ The building height will maintain an appropriate transition in built form and land use intensity with adjoining sites.

The variation proposed is minor and equates to only 9% or 1.26 metres and achieves a good design outcome with an appropriate building height. The non-compliant building height is not created by any part of the built form that constitutes GFA or FSR.

Given the above, strict compliance with the development standard is unreasonable and unnecessary in this particular case and there are sufficient environmental planning grounds to justify contravening the development standard.

11. How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act?

The development, even with its non-compliance with the numerical component of the development standard, will achieve the objectives of the Act by enabling the orderly and economic use and development of the land; promoting good design and amenity of the built environment; and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants. Accordingly, strict compliance with the development standard has been determined to be unreasonable and unnecessary in the circumstances as discussed above.

12. Is the development standard a performance based control?

No, the development standard is a numerical control.

13. Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why?

Yes. The reasons have been canvassed under heading 10 above. In addition, strict compliance with the development standard would be onerous and would not achieve a better outcome for the site than the development as proposed.

LEGEND:
 ✓ COMPLIES
 × DOES NOT COMPLY
 S SATISFACTORY

STATEMENT OF ENVIRONMENTAL EFFECTS
 RESIDENTIAL FLAT BUILDING
 28-30 GEORGE STREET, MARRICKVILLE

A1

PLANZONE

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

Yes. Considering that the development achieves the objectives of the development standard and achieves a satisfactory level of compliance with the other applicable State and Council Planning Policies, the proposal is meritorious and the contravention of the development standard is justified. The contravention of the development standard allows for a better planning outcome to be realised for the site and development than what would be achieved if strict compliance was to be enforced.

The table below provides an assessment of the provisions of Clause 4.6 of the LEP:

CL	Provision	Response
4.6(1)	<i>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.</i>	The development achieves the objectives by allowing an appropriate degree of flexibility in the application of the development standard to the development which will achieve a better outcome for and from the development by allowing the flexibility in the particular circumstances.
4.6(2)	<i>Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.</i>	Clause 4.3 is not excluded from operation of the Clause.
4.6(3)	<i>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.</i>	<p>The subject variation has been prepared for consideration by Inner West Council and demonstrates that compliance with the development standard is unreasonable or unnecessary in these circumstances as there are sufficient environmental planning grounds to justify contravening the development standard.</p> <p>Enforcing strict compliance with the development standard would not provide any public benefit or result in a better design outcome for the site and rather, would result in a sunken built form that would achieve poorer amenity for future occupants than the development proposed. The underlying object and purpose of the standard would therefore be defeated if strict compliance was to be enforced and therefore compliance is unreasonable.</p> <p>The proposed variation will not affect the objectives of Clause 4.3 of the LEP.</p>
4.6(4)	<i>Development consent must not be granted for development that contravenes a development standard unless: (a) the consent authority is satisfied that:</i>	The subject variation request adequately addresses the matters required to be demonstrated by subclause 3 and demonstrates that the proposed development will be in the public interest

LEGEND:
 ✓ COMPLIES
 × DOES NOT COMPLY
 S SATISFACTORY

STATEMENT OF ENVIRONMENTAL EFFECTS
 RESIDENTIAL FLAT BUILDING
 28-30 GEORGE STREET, MARRICKVILLE



PLANZONE

CL	Provision	Response
	<p>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p> <p>(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</p> <p>(b) the concurrence of the Secretary has been obtained.</p>	<p>given that it achieves the objectives of the particular standard and the objectives for development within the R1 General Residential zone.</p> <p>Council has the assumed concurrence of the Secretary and is therefore able to grant consent.</p>
4.6(5)	<p>In deciding whether to grant concurrence, the Secretary must consider:</p> <p>(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</p> <p>(b) the public benefit of maintaining the development standard, and</p> <p>(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.</p>	<p>Council has the assumed concurrence of the Secretary and is therefore able to grant consent.</p> <p>Contravention of the development standard does not raise any matter of significance for State or regional environmental planning and as demonstrated within the subject request, as there is no public benefit obtained from maintaining the development standard in these particular circumstances.</p>
4.6(6)	<p>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: [...]</p>	<p>The application does not seek consent for subdivision of land in any of the nominated zones.</p>
4.6(7)	<p>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).</p>	<p>This is an administrative matter for Council.</p>
4.6(8)	<p>This clause does not allow development consent to be granted for development that would contravene any of the following:</p> <p>(a) a development standard for complying development,</p> <p>(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,</p> <p>(c) clause 5.4.</p>	<p>The development:</p> <p>(a) does not seek consent for a complying development application;</p> <p>(b) does not affect any of the commitments set out in the BASIX Certificates accompanying the development;</p> <p>(c) Clause 5.4 does not apply to the subject application.</p>

LEGEND:
 ✓ COMPLIES
 × DOES NOT COMPLY
 S SATISFACTORY

STATEMENT OF ENVIRONMENTAL EFFECTS
 RESIDENTIAL FLAT BUILDING
 28-30 GEORGE STREET, MARRICKVILLE





CLAUSE 4.6 WRITTEN REQUEST JUSTIFYING THE
CONTRAVENTION OF DEVELOPMENT STANDARD

FOR A DEVELOPMENT APPLICATION FOR

RESIDENTIAL FLAT BUILDING

AT

28-30 GEORGE STREET, MARRICKVILLE
LOT 1 IN DP 1027790, LOT 1 IN DP 105246 & LOT 1 IN DP 119562

PREPARED BY

PLANZONE

PLANZONE

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QA Record:
Doc ID: CL4.6-20180101
Version: v1 for DA
Prepared By: SS
Approved By: AH
Issue Date: 29 May 2018

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PLANZONE

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PLANZONE

1. Introduction

This Clause 4.6 Written Request Justifying the Contravention of Development Standard has been prepared to accompany the Development Application (DA) to the Marrickville City Council that seeks consent for demolition of existing structures, consolidation of the existing 3 lots and construction of a 4-storey residential flat building containing 15 units above a basement level at 28-30 George Street, Marrickville.

Pursuant to Clause 4.4 Floor Space Ratio of the *Marrickville Local Environmental Plan 2013* (the LEP), a maximum floor space ratio of 0.85:1 is prescribed for the subject site for the purpose of a residential flat building.

The development proposes the construction of a 4-storey residential flat building containing 15 units above a basement level with a proposed FSR of 0.93:1.

Accordingly, the development does not satisfy the floor space ratio requirement as prescribed under Clause 4.4 of the MLEP 2013.

Pursuant to Clause 4.6 of the LEP, justification for the contravention of the development standard is provided in Section 2 below.

2. Planning Consideration

- 1. What is the name of the environmental planning instrument that applies to the land?**
Marrickville Local Environmental Plan 2013
- 2. What is the zoning of the land?**
Error! Reference source not found.
- 3. What are the objectives of the zone?**
 - *To provide for the housing needs of the community.*
 - *To provide for a variety of housing types and densities.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
 - *To provide for retail premises in existing buildings designed and constructed for commercial purposes.*
 - *To provide for office premises in existing buildings designed and constructed for commercial purposes or as part of the conversion of existing industrial or warehouse buildings.*
- 4. What is the development standard being varied?**
Floor Space Ratio
- 5. Under what clause is the development standard listed in the environmental planning instrument?**
Clause 4.4

PLANZONE

- 6. **What are the objectives of the development standard?**
 - (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.

- 7. **What is the numeric value of the development standard in the environmental planning instrument?**

0.85:1 (1,036.15m² GFA on 1,219m² Site)

- 8. **What is proposed numeric value of the development standard in your development application?**

0.93:1 (1,138.17m² GFA)

- 9. **What is the percentage variation (between your proposal and the environmental planning instrument)?**

9.87% (102.2m² GFA)

10. **How is strict compliance with the development standard unreasonable or unnecessary in this particular case?**

The non-compliant GFA and FSR will result in an acceptable density and bulk given that the development complies with the maximum height of buildings development standard of the LEP (with the exception of the lift overrun), building envelope controls for the development type and provides an appropriate level of amenity for future occupants of the development and adjoining properties.

The development achieves a good design outcome with an appropriate density and bulk that will result in a development that better achieves the objectives of the FSR development standard and objectives of the R1 General Residential zone than an otherwise compliant development would. The development is accordingly considered to be consistent with the desired future character of the local area which envisages a mixed density of residential development.

The variation proposed is minor and equates to only 9.87% or 102.2m² of GFA which is attributed to by the increase in the sizes of the units proposed in order to provide better amenity than smaller sized units. The development proposes larger sized units than the minimum sizes required under the SEPP 65 ADG in order to afford future occupants with better levels of amenity than compliant minimum unit sizes would. Importantly, the increased GFA and FSR is not proposed in order to achieve additional yield for the development but rather, achieves a better planning outcome for the site than what a fully compliant development would. This is emphasised in the table below which details the additional GFA proposed for each unit and the total additional GFA proposed for the overall development being 74m².

Unit No.	Beds & Baths	Min Area Req'd	Area Proposed	+/-
1	1 bed, 1 bath	50	51.18	1.18
2	3 bed, 2 bath	95	104.04	9.4
3	2 bed, 2 bath	75	78.82	3.82
4	1 bed, 1 bath	50	56.99	6.99

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5	2 bed, 2 bath	75	78.01	3.01
6	2 bed, 2 bath	75	78.31	3.31
7	2 bed, 2 bath	75	78.92	3.92
8	1 bed, 1 bath	50	57.24	7.24
9	2 bed, 2 bath	75	81.09	6.09
10	2 bed, 2 bath	75	81.05	6.05
11	2 bed, 2 bath	75	78.76	3.76
12	1 bed, 1 bath	50	57.11	7.11
13	3 bed, 2 bath	95	96.55	1.55
14	2 bed, 2 bath	75	78.88	3.88
15	1 bed, 1 bath	50	56.69	6.69
Total			+74	

Whilst strict compliance with the development standard could be enforced and achieved, strict compliance would result in a poorer outcome for the site than that proposed. This would result in smaller sized units affording future occupants lower levels of amenity than that achievable with larger sized units as proposed. Furthermore, it is worth noting that while the additional total GFA of 74m² is equivalent to a 2 bedroom and 1-bathroom unit, there is no potential for an additional unit to be added to the built form via future modifications given the separated built forms created by the open central foyers. Any modification to add an additional unit or use the extra GFA to achieve additional yield is restricted by virtue of the 2 built forms being separated by the open central foyer area which dictates a limited floor plate that can only achieve a maximum of 2 units per half of each level.

Although the proposal results in a non-compliance with the numerical component of the development standard, the development achieves the relevant objectives of the development standard as follows:

- ▶ The development proposes a built form that is appropriate for the site having regard to the land use zone, achievable building envelope and capacity of existing utilities and infrastructure;
- ▶ The proposed density and bulk is appropriate in relation to the site area and has been designed in order to achieve the desired future character of the local area; and
- ▶ The development has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act, 1979* where it has been determined that the development will not have any adverse environmental impacts on the use or enjoyment of adjoining properties and the public domain. In particular, the development would not create any adverse amenity impacts for adjoining properties with regard to visual or acoustic privacy, overlooking and overshadowing as a consequence of the additional GFA and FSR.

The development is massed to 2 built forms with a central break in the form in order to ensure that the development will maintain an appropriate visual relationship, and visual bulk and scale when viewed from adjoining properties to the east and west. The development will provide an appropriate correlation between the size of the site and the extent of development proposed without appearing overbearing or dominating in respect to the development potential of the site.

Having regard to the above, strict compliance with the development standard is unreasonable and unnecessary in this particular case in the interest of achieving a better design outcome for the site and there are sufficient environmental planning grounds to justify contravening the development standard.

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11. How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act?

The development, even with its non-compliance with the numerical component of the development standard, will achieve the objectives of the Act by enabling the orderly and economic use and development of the land; promoting good design and amenity of the built environment; and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants. The development achieves the objectives in a manner that surpasses what a compliant development would if strict compliance with the numerical component of the development standard was enforced. Accordingly, strict compliance with the development standard has been determined to be unreasonable and unnecessary in the circumstances as discussed above.

12. Is the development standard a performance based control?

No, the development standard is a numerical control.

13. Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why?

Yes. The reasons have been canvassed under heading 10 above. In addition, strict compliance with the development standard would be onerous and would not achieve a better outcome for the site than the development as proposed.

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

Yes. Considering that the development achieves the objectives of the development standard and achieves a satisfactory level of compliance with the other applicable State and Council Planning Policies, the proposal is meritorious and the contravention of the development standard is justified. The contravention of the development standard allows for a better planning outcome to be realised for the site and development than what would be achieved if strict compliance was to be enforced.

Table 1: Planning considerations

CL	Provision	Response
4.6(1)	<i>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.</i>	The development achieves the objectives by allowing an appropriate degree of flexibility in the application of the development standard to the development which will achieve a better outcome for and from the development by allowing the flexibility in the particular circumstances.
4.6(2)	<i>Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.</i>	Clause 4.4 is not excluded from operation of the Clause.

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CL	Provision	Response
4.6(3)	<p><i>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:</i></p> <p><i>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</i></p> <p><i>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</i></p>	<p>The subject variation has been prepared for consideration by Inner West Council and demonstrates that compliance with the development standard is unreasonable or unnecessary in these circumstances as there are sufficient environmental planning grounds to justify contravening the development standard.</p> <p>Enforcing strict compliance with the development standard would not provide any public benefit or result in a better design outcome for the site and rather, would result in smaller sized units that would achieve poorer amenity for future occupants than the development proposed. The underlying object and purpose of the standard would therefore be defeated if strict compliance was to be enforced and therefore compliance is unreasonable.</p> <p>The proposed variation will not affect the objectives of Clause 4.4 of the LEP.</p>
4.6(4)	<p><i>Development consent must not be granted for development that contravenes a development standard unless:</i></p> <p><i>(a) the consent authority is satisfied that:</i></p> <p><i>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</i></p> <p><i>(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</i></p> <p><i>(b) the concurrence of the Secretary has been obtained.</i></p>	<p>The subject variation request adequately addresses the matters required to be demonstrated by subclause 3 and demonstrates that the proposed development will be in the public interest given that it achieves the objectives of the particular standard and the objectives for development within the R1 General Residential zone.</p> <p>Council has the assumed concurrence of the Secretary and is therefore able to grant consent.</p>
4.6(5)	<p><i>In deciding whether to grant concurrence, the Secretary must consider:</i></p> <p><i>(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</i></p> <p><i>(b) the public benefit of maintaining the development standard, and</i></p> <p><i>(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.</i></p>	<p>Council has the assumed concurrence of the Secretary and is therefore able to grant consent.</p> <p>Contravention of the development standard does not raise any matter of significance for State or regional environmental planning and as demonstrated within the subject request, as there is no public benefit obtained from maintaining the development standard in these particular circumstances.</p>

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CL	Provision	Response
4.6(6)	<i>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: [...]</i>	The application does not seek consent for subdivision of land in any of the nominated zones.
4.6(7)	<i>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).</i>	This is an administrative matter for Council.
4.6(8)	<i>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.</i>	The development: (a) does not seek consent for a complying development application; (b) does not affect any of the commitments set out in the BASIX Certificates accompanying the development; (c) Clause 5.4 does not apply to the subject application.

Table 2: Summary of Clause 4.6 Matters for consideration

3. Conclusion

Having regard to the assessment of the proposal and Clause 4.6 Variation to Development Standard, it is considered that the proposed development achieves the objectives of the development standard and zone; strict compliance with the numerical component of the development standard is unnecessary and unreasonable in these circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

For the reasons outlined within this request, the subject variation is worthy of Council's support.