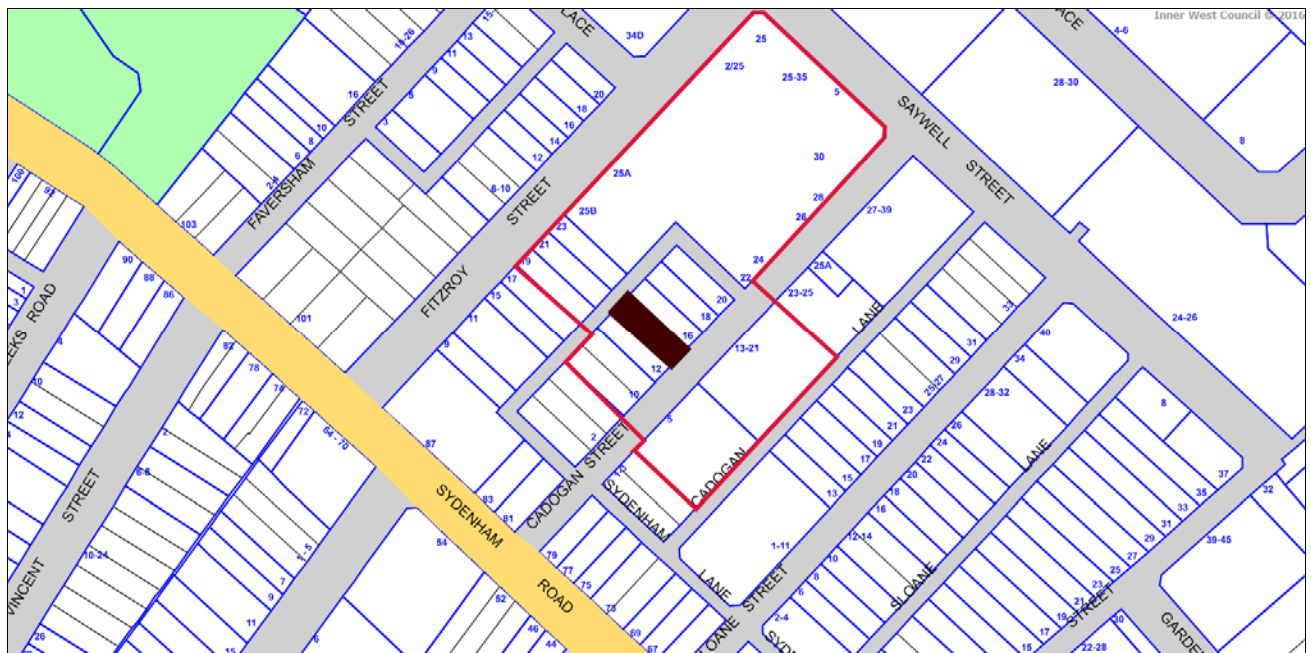







# INNER WEST COUNCIL

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	DA201700542
<b>Address</b>	14 Cadogan Street, Marrickville
<b>Proposal</b>	To carry out alterations to the building and use the premises for dance classes and for a dance hall
<b>Date of Lodgement</b>	6 November 2017
<b>Applicant</b>	M B Town Planning
<b>Owner</b>	Mr D M Carageorge
<b>Number of Submissions</b>	Nil
<b>Value of works</b>	\$21,000
<b>Reason for determination at Planning Panel</b>	The extent of the departure from the Floor Space Ratio development standard exceeds staff delegation
<b>Main Issues</b>	Clause 4.6 variation for Floor Space Ratio
<b>Recommendation</b>	Consent subject to conditions



Subject Site: 	Objectors: 
Notified Area: 	

## 1. Executive Summary

This report relates to an application to carry out alterations to the building and use the premises for dance classes and for a dance hall. The application was notified to surrounding properties and no submissions were received.

The main issues that have arisen from the assessment of the application include:

- The development proposes a FSR departure of approximately 95sqm under Clause 4.4 of Marrickville Local Environmental Plan (MLEP) 2011, being a 35% variation;
- A written submission under Clause 4.6 of MLEP 2011 in relation to FSR departure accompanied the application that is considered to be well founded and worthy of support;
- The site does not provide any off-street parking however a Traffic and Parking Assessment accompanied the application demonstrating the surrounding on street car parking can accommodate the parking demand generated by the use; and
- The application seeks to use the premises partly as a dance hall under the definition of “entertainment facility” within MLEP 2011 and the applicant has provided justification demonstrating how the proposed operation meets this definition.

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

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

## 2. Proposal

Approval is sought to carry out alterations to the building and use the premises for dance classes and for a dance hall.

The application proposes to use the premises for two separately defined uses under MLEP 2011 being an indoor recreation facility (dance classes) and an entertainment facility (dance hall), with a maximum of 100 patrons at any time.

It is proposed to operate the premises for dance classes between the hours of 5.00pm and 9.00pm Mondays to Fridays, 9.00am to 9.00pm Saturdays and 9.00am to 5.00pm Sundays and to operate the premises as a dance hall between the hours of 5.00pm and 12.00 midnight on Fridays and Saturdays only.

While the application seeks consent for two uses, the applicant intends to operate the uses in connection with each other, with the primary purpose of the dance hall to facilitate social evenings to allow the students of the dance classes to utilise and showcase their dancing skills. It is not proposed to operate the site for both uses simultaneously at times when the proposed operating hours overlap (i.e. Friday and Saturday evenings until 9.00pm). A limited service of alcohol is proposed while the premises operates as a dance hall. It is noted that a Plan of Management has been submitted with the application proposing management procedures to ensure the uses operate in connection with each other and the service of alcohol is controlled.

The application also seeks to undertake building works to facilitate the use including:

- Fit-out works to the ground floor to provide suitable bathroom facilities;
- Works to the existing external walls of the building to comply with the Building Code of Australia;
- Works to the front and rear of the building including the removal of all roller doors to be replaced with walls and new access doors; and
- To erect 1 illuminated wall sign measuring 4200mm by 900mm facing Cadogan Street reading “Ruby’s Dance Hall”.

### 3. Site Description

The site is located on the western side of Cadogan Street and has a frontage of 9.145 metres and an overall site area of 288.3sqm. The site contains a two storey industrial warehouse building which covers the majority of the site. The existing building is built to the side and rear boundaries and is setback approximately 2.4 metres from the front property boundary. The site has vehicle access from Cadogan Street and Sydenham Lane to the rear of the site. The surrounding streetscape consists of low scale industrial and warehouse buildings generally two to three storeys in height.

### 4. Background

#### 4(a) Site history

The site has no relevant development history and Council has no record of any prior development approvals following the erection of the existing building c1966.

#### 4(b) Application history

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

Date	Discussion / Letter/ Additional Information
10 May 2017	<p>A Pre-Development Application was submitted with Council and a letter was issued on 13 June 2017 raising the following matters for the applicants’ consideration:</p> <ul style="list-style-type: none"> <li>• Clarification the proposed dance hall use meets the definition of an “entertainment facility” under MLEP 2011;</li> <li>• A comprehensive Plan of Management is required;</li> <li>• Variation to the allowable FSR must be addressed by way of Clause 4.6 statement;</li> <li>• A Traffic Assessment is required given a lack of onsite parking; and</li> <li>• Acoustic privacy and noise generation must be addressed.</li> </ul> <p>The above matters have largely been addressed by this development application.</p>
6 November 2017	The subject development application lodged.
9 February 2018	Council Officers met with the applicant to discuss a number of concerns in relation to building code and fire safety upgrades required to be

	undertaken, including removal of the existing roller doors, and amended plans and an amended BCA Report were requested.
5 April 2018	Amended plans and additional information were lodged addressing the concerns raised by Council Officers on 9 February 2018 and are the subject of this assessment report.

## 5. Assessment

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

### 5(a) Environmental Planning Instruments

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

- State Environmental Planning Policy No. 64 – Advertising and Signage; and
- Marrickville Local Environmental Plan 2011.

The following provides further discussion of the relevant issues:

#### 5(a)(i) State Environmental Planning Policy No 64 – Advertising and Signage

The following is an assessment of the development under the relevant controls contained in State Environmental Planning Policy No. 64 - Advertising and Signage (SEPP 64). The aims and assessment criteria in SEPP 64 are generally covered by the signage controls contained in Part 2.12 of Marrickville Development Control Plan 2011 (MDCP 2011) - Signs and Advertising Structures and are considered as part of the assessment of the application presented in this report.

The application seeks consent for the erection of one (1) illuminated wall sign measuring 4200mm x 900mm reading “Ruby’s Dance Hall” fronting Cadogan Street.

Pursuant to the definitions contained in Clause 4 of SEPP 64, the proposed sign would constitute a *“building identification sign”*.

Clause 3 of SEPP 64 specifies aims and objectives of the policy which are required to be considered for all applications involving the erection of signage. The relevant aims and objectives of the policy include the following:

- “(a) *to ensure that signage (including advertising):*
- (i) *is compatible with the desired amenity and visual character of an area, and*
  - (ii) *provides effective communication in suitable locations, and*
  - (iii) *is of high quality design and finish, and...*”

Part 2.12 of MDCP 2011 specifies Council’s objectives and requirements for the erection and display of signage which are consistent with the aims and objectives of SEPP 64.

The proposed sign largely complies with the general controls for signage contained within Part 2.12 of MDCP 2011. The sign is located within an industrial area and is compatible with the architectural elements of the building. The proposed sign is of a modest size, given the scale of the existing building and surrounding development and is generally consistent with the character of the area.

However, Control 19 states that the total permissible area of all signs must not exceed 1sqm of signage per 3 metres of street frontage in an industrial zone. The property has a frontage

of 9.145 metres to Cadogan Street, thus allowing 3.05sqm of signage. The proposed sign measures 3.78sqm and exceeds this requirement. Notwithstanding, given the sites location within an industrial area and the nature of the surrounding streetscape the proposed sign is acceptable for the reasons discussed above and a variation to the numerical requirements of Control 19 is considered reasonable.

The proposed signage is acceptable having regard to the objectives and controls relating to signage contained within Part 2.12 of MDCP 2011.

Schedule 1 of SEPP 64 specifies assessment criteria for signage relating to character of the area, special areas, views and vistas, streetscape, setting or landscaping, site and building, illumination and safety. The proposed signage is considered satisfactory having regard to the assessment criteria contained in Schedule 1 of SEPP 64.

### 5(a)(ii) Marrickville Local Environment Plan 2011 (MLEP 2011)

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

- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.7 – Demolition
- Clause 4.3 – Height of buildings
- Clause 4.4 – Floor space ratio
- Clause 4.6 – Exceptions to development standards
- Clause 6.1 – Acid sulfate soils
- Clause 6.3 – Flood planning
- 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	Compliance
<b>Floor Space Ratio</b> 0.95:1 273.9sqm	1.28:1 369sqm	34.7%	No

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

The property is zoned IN1 General Industrial under the provisions of MLEP 2011. The proposal seeks to use the premises as both a “recreation facility (indoor)” and an “entertainment facility” which are permissible with Council's consent under the zoning provisions applying to the land.

The applicant contends that the proposed dance class use constitutes a “recreation facility (indoor)” as defined by MLEP 2011 which is as follows:

*“recreation facility (indoor) means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.”*

It is considered that the proposed use of the premises for dance classes or as a dance studio is consistent with this definition, being a building of like character to other uses specified in the definition and will be used for indoor recreation.

The applicant also contends that the proposed dance hall constitutes an “entertainment facility” as defined by MLEP 2011 which is as follows:

*“entertainment facility means a theatre, cinema, music hall, concert hall, dance hall and the like, but does not include a pub or registered club.”*

The meaning of “dance hall” is not specifically defined by MLEP 2011, and in accordance with the Oxford Dictionary, is generally defined as a large public hall in which dances may be held. Given the ambiguity of what may constitute an entertainment facility and that the service of alcohol is proposed during the dance hall operations, the applicant was requested to provide a discussion outlining how the proposed use meets this definition. The Statement of Environmental Effects and Plan of Management accompanying the application provide discussion on this matter.

The points put forward by the applicant are summarised below:

- The principal purpose of the dance hall use will be to allow and facilitate recreational dancing with the supply of alcohol limited through measures defined by the Plan of Management which includes limiting the number of drinks served per patron, limiting the number of patrons and operating the dance hall in connection with the dance classes;
- As the principal purpose of the dance hall is not the sale of alcohol the use cannot be defined as a “pub” nor a “registered club”; and
- The consent authority must consider that a dance hall use exists and is possible within the IN1 zone given the permissibility afforded by MLEP 2011.

Given the above, it is considered that the proposal meets the definition of an “entertainment facility” and can be used as a dance hall through the connection with the dance classes that take place at the premises and the proposed management procedures ensure the primary purpose of the premises is not for the consumption of alcohol.

Appropriate conditions are included in the recommendation requiring the use to operate in accordance with the Plan of Management submitted and that the entertainment facility use operate in connection with the indoor recreation facility. The suitability of the Plan of Management is discussed later in this report under the heading “Plan of Management (Part 6.1.2)”.

It is noted that the mezzanine level of the premises is to contain offices, storage and staff facilities ancillary to the dance classes and dance hall use which is also permissible with consent within the IN1 zone.

Having regard to the above, the development is permissible with Council's consent under the zoning provisions applying to the land and is acceptable having regard to the objectives of the IN1 – General Industrial 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)

There is no maximum building height applying to the property on the Height of Buildings Map that accompanies MLEP 2011. The proposal maintains the existing building height and building envelope. The height of the development is acceptable.

(iv) Floor Space Ratio (Clause 4.4)

A maximum floor space ratio (FSR) of 0.95:1 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 369sqm which equates to a FSR of 1.28:1 on the 288.3sqm site and does not comply with the FSR development standard.

The development exceeds the maximum floor space ratio development standard prescribed under Clause 4.4 of MLEP 2011. The application was accompanied by a written submission in relation to the contravention of the development standard in accordance with Clause 4.6 of MLEP 2011.

The applicant considers compliance with the development standard to be unreasonable and unnecessary for the reasons summarised below:

- The existing building on the site breaches the allowable FSR by approximately 77.2sqm, being a 28% variation and the proposal does not include any substantial building works and does not in result in any change to the existing bulk and scale of the building;
- The additional FSR generated by the proposal is due to the incorporation of the existing loading areas into the usable floor space within the building rather than additional floor space resulting from new construction;
- Given the proposal maintains the established bulk and scale of the building and the scope of building works proposed is limited to the construction of a bathroom and installation of a bar, it would be unreasonable to require the building to be reduced in size to comply with the allowable FSR;
- The only discernible impact of the proposed contravention to the development standard is a reduction in loading facilities at the site and the proposed use does not require large loading and unloading areas unlike a traditional industrial use;
- The underlying purpose of the development standard is to control bulk and scale and the proposal does not alter the existing bulk and scale of the building; and
- Given the above, the proposal is consistent with the objectives of Clause 4.4 of MLEP 2011 in that the established bulk and scale is maintained and the proposal does not result in environmental impacts to adjoining properties and the public domain.

The justification provided in the applicant's written submission is considered to be well founded and worthy of support. The existing building currently breaches the allowable FSR and while this proposal results in a further breach to the FSR, this is due to the incorporation of areas used previously as loading docks into the calculation of GFA in accordance with the requirements of MLEP 2011. The proposal does not result in any additional bulk and scale at the site and the technical increase in FSR will not have any discernible environmental impacts to the locality.

It is considered that there are sufficient environmental planning grounds as to why the FSR development standard should be varied in this particular circumstance based on the outcomes of planning law precedents such as those contained in *Wehbe v Pittwater Council* [2007] NSWLEC827, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC90 and



*Moskovich v Waverley Council [2016], Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386.*

It is considered that the contravention of the development standard does not raise any matter of significance for State and regional environmental planning, and that there is no public benefit in maintaining the development standard for the proposed development.

In view of the above, it is considered that the variation to the FSR development standard under MLEP 2011 is supportable.

(v) Acid Sulfate Soils (Clause 6.1)

The property is identified as land being affected by Class 5 acid sulfate soils on the MLEP 2011 Acid Sulfate Soils Map. The development is not considered to involve work at or below the ground water level and will not lower the ground water table. As such the development is acceptable having regard to acid sulfate soils.

(vi) Flood Planning (Clause 6.3)

The property is identified as land that is shown as "Flood planning area" on the Flood Planning Area Map contained within the Marrickville Development Control Plan 2011.

The application was referred to Council's Development Engineer who supports the proposal with regard to flood management subject to the submission of a Flood Emergency Response Plan in accordance with Part 2.22 of MDCP 2011 prior to the issue of a Construction Certificate. Appropriate conditions are included in Attachment A.

Given the limited scope of works proposed and that the proposed use utilises the existing building it is considered onerous to require upgrades to provide flood compatible materials in this instance and this has not been requested by Council's Development Engineer.

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

The property is located within the 30-35 Australian Noise Exposure Forecast (2033) Contour.

The existing industrial building on the site is not noise attenuated and the proposed change of use will result in an increase of people affected by aircraft noise. However, the proposal is for a dance studio and dance hall which will produce a reasonable amount of noise itself due to need for amplified music. Additionally, patrons of the uses will spend relatively short amounts of time on site, particularly given a lack of operation during week days. The proposal includes limited building work so as to comply with the Building Code of Australia with the main body of the building being largely unchanged. Given the limited building works proposed coupled with the nature of the use and relatively limited operating hours it is considered onerous to require the development to be noise attenuated for aircraft noise in the circumstances.

While the property is located in an area affected by aircraft noise, it is not necessary to require the proposal to be noise attenuated in accordance with Australian Standard AS2021:2015.

## 5(b) Draft Environmental Planning Instruments

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



The 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

The application has been assessed and the following provides a summary of the relevant provisions of MDCP 2011.

Part of MDCP 2011	Compliance
Part 2.1 – Urban Design	Yes
Part 2.3 – Site and Context Analysis	Yes
Part 2.5 – Equity of Access and Mobility	No but acceptable – see below
Part 2.6 – Acoustic and Visual Privacy	Yes – subject to conditions
Part 2.8 – Social Impact Assessment	Yes
Part 2.9 – Community Safety	Yes
Part 2.10 – Parking	No but acceptable – see below
Part 2.12 – Signage and Advertising Structures	No but acceptable – see Section 5(a)(i) of report
Part 2.16 – Energy Efficiency	Yes
Part 2.21 – Site Facilities and Waste Management	Yes
Part 2.22 – Flood Management	Yes
Part 2.23 – Acid Sulfate Soils	Yes
Part 2.24 – Contaminated Land	Yes
Part 2.25 – Stormwater Management	Yes
Part 6 – Industrial Development	Yes – subject to conditions
Part 9 – Strategic Context	Yes

The following section provides discussion of the relevant issues:

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

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

For industrial developments Part 2.5 of MDCP 2011 requires:

- Appropriate access for all persons through the principal entrance of a building and a continuous accessible path of travel (CAPT), designed in accordance with the National Construction Code (Building Code of Australia) and relevant Australian Standards; and
- General access for all persons to appropriate sanitary facilities and other common facilities including kitchens, lunch room, shower facilities and outdoor recreational facilities; and
- In a car parking area containing 10 or more car spaces, a minimum of 1 accessible car parking space being provided for every 10 car spaces or part thereof.

While the proposal can provide access via the principal entrance of the building and an accessible bathroom is located on the ground floor, the first floor of the premises containing staff facilities is not accessible and an accessible car parking space is not provided.

However, given an accessible bathroom is located on the ground floor the facilities provided are considered suitable in the circumstances. Given the limited scope of works, it would be onerous to require the first floor to be accessible. An accessible car parking space is not provided as the site does not have capacity for on-site parking which is also considered acceptable in the circumstances and is discussed later in this report under the heading "Parking (Part 2.10)". A variation to the requirements of Part 2.5 are considered acceptable and worthy of support.

Furthermore, a BCA Assessment Report accompanies the application which includes an assessment of the relevant access requirements under the BCA and determines the existing building can reasonably comply. Conditions are included in the recommendation to ensure the recommendations within the BCA Report are incorporated into the development and to ensure the development meets the applicable Access to Premises Standards. As such, the proposal is considered to be reasonable having regard to the provision of Part 2.5 of MDCP 2011.

(ii) Visual and Acoustic Privacy (Part 2.6)

Part 2.6 of MDCP 2011 contains objectives and controls relating to general acoustic privacy.

The proposed use has the potential to result in adverse acoustic impacts to the surrounding locality due to the need for amplified music. As such, the applicant has submitted a Noise Impact Assessment Report prepared by a qualified Acoustic Engineer. The report determines that the predicted noise levels emitted from the premises are acceptable with regard to the requirements of the Environmental Protection Authority (EPA) and the NSW Industrial Noise Policy.

The site is located within a primarily industrial area which is less sensitive to acoustic impacts and surrounding properties are unlikely to be adversely impacted by the predicted noise emissions from the site, particularly as there aren't many industrial premises operating in the evening within the vicinity of the site. The nearest residential accommodation is approximately 110 metres from the site.

Furthermore, conditions of consent are recommended that require the applicant to demonstrate that the development will comply with the relevant noise levels prior to the issue of an Occupation Certificate (refer to Attachment A). Additionally, in order to ensure the operation of the premises does not result in ongoing acoustic impacts, a condition is included in Attachment A imposing a 12 month trial period for the late night operating hours requested to allow Council an opportunity to review the operation in light of its performance. The issue of operating hours is discussed in more detail under the heading "hours of Operation (Part 6.2.4)" below.

Subject to the above, the proposed development is considered reasonable having regard to the objectives and controls relating to visual and acoustic privacy as contained in Part 2.6 of MDCP 2011.

(iii) Parking (Part 2.10)

The site 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:

*Table 1: Car, Bicycle and Motorcycle Parking Control Compliance Table*

Component	Control	Required	Proposed	Complies?
Car Parking				
Recreation Facility (indoor)	1 space per 50sqm GFA for customers those purposes	369sqm GFA = 7 spaces	0 spaces	No
Entertainment Facility	1 space per 40sqm GFA for those purposes	369sqm GFA = 9 spaces	0 spaces	No
Bicycle Parking				
Recreation Facility (indoor) - Staff	1 bicycle parking space per 10 staff	<10 staff = 1 spaces	0 spaces	No
Recreation Facility (indoor) - Customers	1 bicycle parking space per 50sqm GFA	369sqm GFA = 7 spaces		
Motorcycle Parking				
Motorcycle Parking	5% of the total car parking requirement	9 car parking spaces required = 0 spaces	0 spaces	NA

As demonstrated above, the development requires a maximum of 9 car parking spaces and 8 bicycle parking space on site to support the future uses. However, the proposal does not provide any on-site car parking or bicycle parking and thereby does not comply with the relevant controls.

The site currently requires 2 car parking spaces for the existing warehouse use under Part 2.10 of MDCP 2011. As such, the site currently presents a shortfall of 2 car parking spaces. The proposed change of use would result in an increase to that existing shortfall by an additional 5 car parking spaces during the operation of the premises for dance classes, and by an additional 7 car parking spaces during the operation of the premises as a dance hall. The car parking shortfall generated by the site would significantly increase as a result of the proposal.

Notwithstanding, the lack of on-site car parking is largely due to the existing building footprint which occupies a majority of the site. Therefore, the provision of on-site car parking would require the demolition of a significant portion of the building which is not feasible, particularly given this application seeks a change of use to the existing building and includes very limited building work.

The application was supported by a Traffic Impact Assessment Report which determines the streets surrounding the premises have a capacity to accommodate the additional traffic and parking generated by the use during the hours of operation proposed. The report concludes that 76 on street car parking spaces would remain available in the area surrounding the site at times of peak demand, despite the additional car parking and traffic generated by the use.

The application was referred to Council's Development Engineer who reviewed the application and the Traffic Impact Assessment Report submitted and provided the following comments:

*"I have reviewed the Traffic Impact Assessment and the IWC Development Assessment Report and I agree that there is spare capacity in the surrounding streets (in close proximity to the site) to accommodate the parking demand of the proposed dance studio. I note that the dance studio is in an industrial area and that it will operate generally outside the times that the industrial uses will be operating."*

Council's Development Engineer is supportive of the proposal a variation to the car parking requirements of the MDCP 2011 subject to the imposition of appropriate conditions which with been included in Attachment A.

Given the above, the findings of this report are considered reasonable, particularly given the proposed operating hours are limited to weeknights and weekends which are generally outside of traditional operating hours of industrial premises, resulting in on street car parking being more readily available. It is also noted that the site is within close proximity to a number of public transport routes including buses along Sydenham Road, Victoria Road and Marrickville Road and Sydenham Railway Station.

Furthermore the proposal would be required to reinstate the kerb (where the current driveway crossing is located at the front of the site) which would also assist in improving the availability of kerbside parking.

As such, a variation to the car parking requirements of Part 2.10 of MDCP 2011 is considered acceptable and worthy of support given the circumstances.

With regard to bicycle parking, the 8 spaces required by Part 2.10 could reasonably be accommodated on site within the premises or within the front setback of the site. A condition is included in the recommendation requiring the provision of bicycle parking.

### **Vehicle Service and Delivery Areas**

The proposed use does not require a dedicated service or delivery area. Given the nature of the use and that limited deliveries and goods are required, it is considered acceptable for loading and unloading to take place at the front of the premises in a manner that does not inconvenience the public.

#### **(iv) Signage and Advertising Structures (Part 2.12)**

This matter is discussed earlier in this report under Section 5(a)(i).

## **PART 6 - INDUSTRIAL DEVELOPMENT**

### **Part 6.2 – Industrial/Residential Interface**

#### **(i) Plan of Management (Part 6.2.1)**

Part 6.2.1 of MDCP contains controls relating to a Plan of Management (PoM) for industrial development.

The applicant has submitted a PoM (refer to Attachment C of this report) that outlines how the indoor recreation facility and entertainment facility will be managed and addresses that following:

- Consumption of alcohol and responsible service of alcohol;
- Ingress and egress of patrons and travel to and from the site;
- Hours of operation for both proposed uses;
- The maximum number of patrons;
- Marketing and advertising and general of management of the dance hall use in particular;
- Noise and amplified music;
- Food safety and environmental health;
- Security; and
- Evacuation procedures.

The PoM submitted is comprehensive and robust with the applicant demonstrating a high degree of accountability for the operation of the premises and a genuine intention to operate the premises as a dance studio and dance hall. The operational requirements outlined in the PoM are considered reasonable to mitigate potential anti-social behaviour, minimise any noise and amenity impacts to the surrounding locality and ensure the premises operates as an “entertainment facility”. Conditions are included in the recommendation to ensure the premises operate in accordance with the PoM at all times.

(ii) Hours of Operation (Part 6.2.4)

Part 6.2.4 of MDCP 2011 contains controls relating to the hours of operation of industrial development. The proposed hours of operation are as follows:

*Recreation Facility (indoor) – Dance Classes*

Mondays – Fridays: 5.00pm to 9.00pm  
 Saturdays: 9.00am to 9.00pm  
 Sundays: 9.00am to 5.00pm

*Entertainment Facility – Dance Hall*

Fridays and Saturdays: 5.00pm to 12.00am  
 Sundays to Thursdays: No Operation

The table below indicates the operating hours of surrounding premises in immediate proximity to the development:

*Table 2: Surrounding Hours of Operation*

Address	Determination No.	Date of Approval	Approved Use	Trading hours
2 Cadogan Street	7287	7 June 1978	Textile Manufacturing	7.00am to 4.00pm Mondays to Fridays. No operation Saturdays, Sundays or Public Holidays
12 Cadogan Street	17045	18 April 1997	Material cutting (manufacturing)	8.00am to 6.00pm Mondays to Fridays. No operation Saturdays, Sundays or Public Holidays
16 Cadogan Street	200000779	12 January 2001	Printing, Binding, Colour Printing and Mail House Distribution	8.00am to 6.00pm Mondays to Friday and 8.00am to 4.00pm Saturdays. No operation on Sundays and Public Holidays

Address	Determination No.	Date of Approval	Approved Use	Trading hours
18 Cadogan Street	200400511	16 November 2006	Manufacturing of Backpacks	8.00am to 6.00pm Mondays to Saturdays. No operation on Sundays or Public Holidays.
20 Cadogan Street	10213	26 February 1986	Clothing Manufacturing	7.00am to 4.30pm Mondays to Friday and 7.00am to 12.00pm Saturdays. No operation on Sundays and Public Holidays
1-3 Cadogan Street	8014	18 August 1980	Acrylic Sheet Manufacturing	7.00am to 5.00pm Mondays to Friday and 7.00am to 12.00pm Saturdays. No operation on Sundays and Public Holidays
5 Cadogan Street	200100473	20 August 2001	Factory	6:00am to 4:00pm Mondays to Fridays and 8.00am to 12.00pm Saturdays. No operation on Sundays and Public Holidays.
23-25 Cadogan Street	201700463	22 January 2018	Brewery	10.00am to 10:00pm Mondays to Sundays including Public Holidays. For a period of not more than 12 months from the issue of the determination, the use being permitted to operate between the hours of 10:00am to 12:00am midnight Fridays and Saturdays only.

It is evident from the table above that the hours of operation proposed are generally inconsistent with the operating hours of other industrial businesses in the immediate vicinity of the site. This is primarily due to the industrial nature of surrounding uses.

However, while the hours of operation proposed are not consistent with the surrounding traditional industrial uses, the hours proposed for the dance studio and dance hall are considered preferable in the circumstances to avoid conflict with these surrounding uses that generally operate during weekdays. Furthermore, given the site is not within close proximity to residential uses, the extended operating hours are unlikely to result in adverse amenity impacts and are generally acceptable subject to the imposition of appropriate conditions to manage potential noise impacts as discussed above under the heading “Visual and Acoustic Privacy (Part 2.6)”.

Furthermore, there are examples within the locality of trading hours more consistent with the hours proposed by this application. The brewery at 23-25 Cadogan Street was recently granted consent for extended trading until 12.00 midnight on Fridays and Saturdays on a trial basis.

Given the other non-traditional industrial uses within the vicinity of the site with extended trading hours; that the proposal is not within close proximity to residential uses; and conditions to manage noise will be imposed on any consent granted, the proposed hours of operation are considered acceptable subject to the imposition of a 12 month trial period. A trial period should be imposed on Fridays and Saturdays between 10.00pm and 12.00 midnight to ensure the operating hours are consistent with other approved late night trading within the locality and to allow Council to monitor the ongoing operation of the premises in light of its performance. Appropriate conditions are included in Attachment A.

It is noted that the subject application was referred to NSW Police and no response was received.

#### 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 IN1 – General Industrial under MLEP 2011. 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 resident/property owners in the vicinity of the property were notified in accordance with Council's Notification Policy. No submissions were received.

#### 5(g) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed. The proposal is not contrary to the public interest.

### 6 Referrals

#### 6(a) Internal

The application was referred to the following internal specialists:

- Council's Environmental Health Officer;
- Council's Development Engineer; and
- Council's Building Surveyor.

All internal Council Officers are generally supportive of the application subject to the imposition of appropriate conditions which are included in Attachment A.

#### 6(b) External

The application was referred to the Marrickville Local Area Command of NSW Police however no response was received.



## **7. Section 7.11/7.12 Contributions**

No Section 7.11 or Section 7.12 Contributions are applicable to this development.

## **8. Conclusion**

Despite the non-compliances to the development standards relating to FSR, the proposal generally complies with the aims, objectives and design parameters contained in the relevant State Environmental Planning Policies (SEPPs), Marrickville Local Environmental Plan 2011 (MLEP 2011) and Marrickville Development Control Plan 2011 (MDCP 2011).

The development will not result in any significant impacts on the amenity of adjoining premises and the streetscape.

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

## **9. Recommendation**

- A. THAT the variation to Clause 4.4 – Floor Space Ratio of the Marrickville Local Environmental Plan 2011 be supported under the provisions of Clause 4.6 – Exceptions to Development Standards.
- B. THAT the Panel, as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application No. 201700542 to carry out alterations to the building and use the premises for dance classes and for a dance hall subject to the conditions listed in Attachment A below.

## Attachment A – Recommended conditions of consent

### GENERAL

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

<b>Plan, Revision and Issue No.</b>	<b>Plan Name</b>	<b>Date Issued</b>	<b>Prepared by</b>	<b>Date Submitted</b>
DA01 to DA02 (inclusive) Rev B	Architectural Plans	03.04.2018	Archispectrum	05.04.2018
DA03 to DA05 (inclusive) Rev C	Architectural Plans	05.04.2018	Archispectrum	05.04.2018
Rev 2	BCA Assessment Report	05.04.2018	Concise Certification	05.04.2018
22568	Proposed Indoor Recreation Facility – Noise Assessment	April 2017	Noise and Sound Services	06.11.2017
Issue A	Operational Plan of Management	02.11.2017	MB Town Planning	06.11.2017

and details submitted to Council on 6 November 2017 and 5 April 2018 with the application for development consent and as amended by the following conditions.

2. The operation of the premises complying at all times with the approved Plan of Management. The Plan of Management as approved is not to be amended without the prior written approval of Inner West Council. If there is any inconsistency between the Plan of Management and the conditions of this consent, the conditions of consent shall prevail to the extent of that inconsistency. A copy of the Plan of Management must be kept on the premises and made available for inspection immediately upon request by Council Officers, Police Officers and/or OLGR Authority Officers
3. 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.

4. The entire premises must be used as a single occupancy for the use approved in this development consent with the first floor area being used exclusively in association with the approved use and not being sublet or used for any other purpose.
5. Not more than 100 patrons being on the premises at any time without the prior approval of Council.
6. No injury must be caused to the amenity of the neighbourhood by the emission of noise, smoke, smell, vibration, gases, vapours, odours, dust, particular matter, or other

impurities which are a nuisance or injurious or dangerous or prejudicial to health, the exposure to view of any unsightly matter or otherwise.

7. The use of the premises must not give rise to:
  - a) transmission of unacceptable vibration to any place of different occupancy;
  - b) the proposed and operation of the premises shall not give rise to an “offensive noise” as defined in the Protection of the Environment Operations Act 1997 and Regulations;
  - c) 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).
8. The operation of the premises complying at all times with the recommendations identified in the Noise Assessment prepared Noise and Sound Services dated April 2017.
9. A separate application must be submitted to, and approved by, Council prior to the erection of any advertisements or advertising structures other than the signage approved in this consent.
10. No storage of goods or equipment external to any building on the site being permitted.
11. All loading and unloading in connection with the use must be carried out in a manner so as to not cause an inconvenience to the public.
12. The hours of operation of the premises for use as a *recreation facility (indoor)* (dance classes) must be restricted to between the hours of 5.00pm to 9.00pm Mondays to Fridays, 9.00am to 9.00pm Saturdays and 9.00am to 5.00pm Sundays.
13.
  - a) The hours of operation of the premises for use as an *entertainment facility* (dance hall) must be restricted to between the hours of 5.00pm to 10.00pm Fridays and Saturdays only.
  - b) For a period of not more than 12 months from the issue of an Occupation Certificate for the works approved in this consent, the hours of operation must be restricted to between the hours of 5.00pm to 12:00 midnight Fridays and Saturdays only.
  - c) A continuation of the extended hours will require Council's approval under the Environmental Planning and Assessment Act by way of a fresh application.
14. The use of the premises as a dance hall must at all times be operated in conjunction/association with the use of the premises as a dance school with a single operator being responsible for both operations.
15. 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.
16. All building work must be carried out in accordance with the provisions of the National Construction Code (Building Code of Australia).

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

For the purpose of interpreting this consent, a Principal Certifying Authority (PCA) means a principal certifying authority appointed under Section 109E(1) of the Environmental Planning and Assessment Act 1979. Pursuant to Section 109E(3) of the Act, the PCA is principally responsible for ensuring that the works are carried out in accordance with the approved plans, conditions of consent and the provisions of the National Construction Code (Building Code of Australia).

17. No work must commence until:

- a) A PCA has been appointed. Where an Accredited Certifier is the appointed, Council must be notified within 2 days of the appointment; and
- b) A minimum of 2 days written notice given to Council of the intention to commence work.

18. 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.

19. 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.

20. All demolition work must:

- a) Be carried out in accordance with the requirements of Australian Standard AS 2601 'The demolition of structures' and the Occupational Health and Safety Act and Regulations; and
- b) Where asbestos is to be removed it must be done in accordance with the requirements of the WorkCover Authority of NSW and disposed of in accordance with requirements of the Department of Environment, Climate Change and Water.

21. Where any loading, unloading or construction is to occur from a public place, Council's Infrastructure Services Division must be contacted to determine if any permits or traffic management plans are required to be obtained from Council before work commences.

22. 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 must be submitted to and accepted by the PCA before work commences.

23. 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.

24. A rigid and durable sign must be erected in a prominent position on the site, before work commences. The sign must be maintained at all times until all work has been completed. The sign must include:

- a) The name, address and telephone number of the PCA;
- b) A telephone number on which Principal Contractor (if any) can be contacted outside working hours; and
- c) A statement advising: 'Unauthorised Entry To The Work Site Is Prohibited'.

25. 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.

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

**For the purpose of interpreting this consent the Certifying Authority (Council or an Accredited Certifier) is that person appointed to issue the Construction Certificate.**

26. Before the issue of a Construction Certificate an amended plan shall be submitted to the Certifying Authority's satisfaction addressing the applicable requirements The Disability (Access to Premises – buildings) Standards 2010 (the Premises Standards).
27. Before the issue of a Construction Certificate an amended plan shall be submitted to the Certifying Authority's satisfaction indicating the recommendations within the BCA Assessment Report (Rev 2) dated 5 April 2018 by Concise Certification being incorporated into the development.
28. 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	Min \$2,100.00
Inspection fee	\$225.00

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

The inspection fee is required for 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.

29. As identified in the Marrickville Valley Flood Study the site is subject to flooding during a 1 in 100 year storm event to a height of RL 2.36m AHD and to a height of RL 4.63m AHD during a PMF flood. A Flood Emergency Response Plan for the site in accordance with Part 2.22 of Marrickville Development Control Plan 2011 – Flood Management must be submitted to Council's satisfaction before the issue of a Construction Certificate.

### **SITE WORKS**

30. All excavation, demolition, construction, and deliveries to the site necessary for the carrying out of the development, must be restricted to between 7.00am to 5.30pm Mondays to Saturdays, excluding Public Holidays. Notwithstanding the above no work must be carried out on any Saturday that falls adjacent to a Public Holiday.
31. The area surrounding the building work must be reinstated to Council's satisfaction upon completion of the work.
32. 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'.
33. All demolition work must be carried out in accordance with the following:
- a) compliance with the requirements of Australian Standard AS 2601 'The demolition of structures' with specific reference to health and safety of the public, health and safety of the site personnel, protection of adjoining buildings and protection of the immediate environment;
  - b) all works involving the demolition, removal, transport and disposal of asbestos cement must be carried out in accordance with the 'Worksafe Code of Practice

- for Removal of Asbestos' and the requirements of the WorkCover Authority of NSW and the Department of Environment, Climate Change and Water;
- c) all building materials arising from the demolition must be disposed of in an approved manner in accordance with Part 2.21 of Marrickville Development Control Plan 2011 – Site Facilities and Waste Management and any applicable requirements of the Department of Environment, Climate Change and Water;
  - d) sanitary drainage, stormwater drainage, water, electricity and telecommunications must be disconnected in accordance with the requirements of the responsible authorities;
  - e) the generation of dust and noise on the site must be controlled;
  - f) the site must be secured to prohibit unauthorised entry;
  - g) suitable provision must be made to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way;
  - h) all trucks and vehicles associated with the demolition, including those delivering to or removing material from the site, must only having access to the site during work hours nominated by Council and all loads must be covered;
  - i) all vehicles taking materials from the site must be loaded wholly within the property unless otherwise permitted by Council;
  - j) no waste collection skips, spoil, excavation or demolition material from the site must be deposited on the public road, footpath, public place or Council owned property without the approval of Council; and
  - k) the person acting on this consent must ensure that all contractors and sub-contractors associated with the demolition are fully aware of these requirements.
34. The works must be inspected at critical stages of construction, by the PCA or if the PCA agrees, by another certifying authority. The last inspection can only be carried out by the PCA. The critical stages of construction are:
- a) At the commencement of the building work;
  - b) For Class 2, 3 and 4 buildings, prior to covering waterproofing in any wet areas (a minimum of 10% of wet areas within a building);
  - c) Prior to covering any stormwater drainage connections, and after the building work has been completed and prior to any occupation certificate being issued in relation to the building; and
  - d) After the building work has been completed and prior to any Occupation Certificate being issued in relation to the building.
- You are advised to liaise with your PCA to establish if any additional inspections are required.
35. All vehicles carrying materials to, or from the site must have their loads covered with tarpaulins or similar covers.  
Reason: To ensure dust and other particles are not blown from vehicles associated with the use.
36. A clear unobstructed path of travel of not less than 1,000mm must be provided to all exits and paths of travel to exits.
37. Fixtures for bathroom and kitchen taps, showerheads, dishwashers, toilet cisterns and urinals must have a minimum 3 Star WELS rating.  
**NOTE: Information on the star rating scheme, and all 'star' rated products are available to view at the Water Efficiency Labelling and Standards (WELS).**
38. New or replacement toilets must have a minimum 3 Star WELS rating and being 6/3 litre dual flush or more efficient.



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

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

39. 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.

40. Occupation of the building must not be permitted until such time as:

- a) All preconditions to the issue of an Occupation Certificate specified in this development consent have been met;
- b) The building owner obtains a Final Fire Safety Certificate certifying that the fire safety measures have been installed in the building and perform to the performance standards listed in the Fire Safety Schedule; and
- c) An Occupation Certificate has been issued.

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

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

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

41. A report prepared by a suitably qualified and experienced acoustic consultant shall be submitted to Council prior to an Occupation Certificate being issued for the development which demonstrates and certifies that noise and vibration emissions from the development comply with the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority's Industrial Noise Policy and Noise Control Manual and conditions of Council's approval, including any recommendations of the acoustic report referenced in the conditions of the approval.

Details demonstrating compliance with the requirements of this condition is to be submitted to the satisfaction of the Principal Certifying Authority before the issue of any Occupation Certificate.

42. 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".
43. 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.
44. 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.

### **ADVISORY NOTES**

- The Disability Discrimination Act 1992 (Commonwealth) and the Anti-Discrimination Act 1977 (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.
- A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out.
- The 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](http://www.basix.nsw.gov.au)

Department of Fair Trading

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

Dial Before You Dig

☎ 1100  
[www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au)

Landcom

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

Long Service Payments Corporation	☎ 131441 <a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Food Authority	☎ 1300 552 406 <a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>
NSW Government	<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diysafe.nsw.gov.au">www.diysafe.nsw.gov.au</a> Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	☎ 131 555 <a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a>
Sydney Water	☎ 13 20 92 <a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a>
Waste Service - SITA Environmental Solutions	☎ 1300 651 116 <a href="http://www.wasteservice.nsw.gov.au">www.wasteservice.nsw.gov.au</a>
Water Efficiency Labelling and Standards (WELS)	<a href="http://www.waterrating.gov.au">www.waterrating.gov.au</a>
WorkCover Authority of NSW	☎ 13 10 50 <a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a> Enquiries relating to work safety and asbestos removal and disposal.

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

<u>Premises:</u>	14 Cadogan Street, Marrickville
<u>Applicant:</u>	M B Town Planning
<u>Proposal:</u>	To carry out alterations to the building and use the premises for dance classes and for a dance hall
<u>Determination:</u>	Consent subject to conditions
<u>DA No:</u>	201700542
<u>Lot and DP:</u>	Lot 106 DP761
<u>Category of Development:</u>	14 – Other
<u>Environmental Planning Instrument:</u>	Marrickville Local Environmental Plan 2011
<u>Zoning of Land:</u>	IN1 – General Industrial
<u>Development Standard(s) varied:</u>	Clause 4.4 – Floor Space Ratio
<u>Justification of variation:</u>	The existing building breaches the development standard and the additional breach resulting from the proposal is due to the incorporation of loading docks into the GFA and the bulk and scale of the building remains unchanged.
<u>Extent of variation:</u>	34.7%
<u>Concurring Authority:</u>	Council under assumed concurrence of the Secretary of the Department of Planning and Environment
<u>Date of Determination:</u>	









ARCHITECTURAL DRAWINGS IN THIS DOCUMENT ARE THE PROPERTY OF ARCHITECTS AND ARE SUBJECT TO THE FOLLOWING CONDITIONS:  
1. THESE DRAWINGS ARE TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED.  
2. ANY REPRODUCTION OF THESE DRAWINGS IN WHOLE OR PART OR USED FOR ANY OTHER PURPOSE WITHOUT WRITTEN CONSENT OF THE ARCHITECTS IS PROHIBITED.  
3. DO NOT SCALE DIMENSIONS. ALL DIMENSIONS SHALL BE TAKEN FROM THE DRAWINGS.  
4. ANY DISCREPANCIES BETWEEN THE DRAWINGS AND THE PROJECT DESCRIPTION SHALL BE REFERRED TO THE ARCHITECTS FOR CLARIFICATION.  
5. THE ARCHITECTS ACCEPT NO LIABILITY FOR ANY DAMAGE OR LOSS OF ANY KIND, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, BUSINESS, OR REVENUE, OR ANY OTHER SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE USE OF THESE DRAWINGS.



SCALE	DATE	REVISION
A	13.10.2017	DA Issue to Council
B	03.04.2018	revised DA Issue to Council
C	05.04.2018	revised DA Issue to Council

PROJECT  
Change of use for dance studio  
14 Cadogan Street, Marrickville  
CLIENT  
Rudy's Dance Hall  
14 Cadogan Street, Marrickville

SHEET TITLE  
Proposed First Floor Plan

SCALE: 1:100 @ A3  
DRAWN: MARTIN  
SHEET SIZE: DWG NO: DA04 C  
REVISION:

PROPOSED FIRST FLOOR PLAN  
SCALE: 1:100



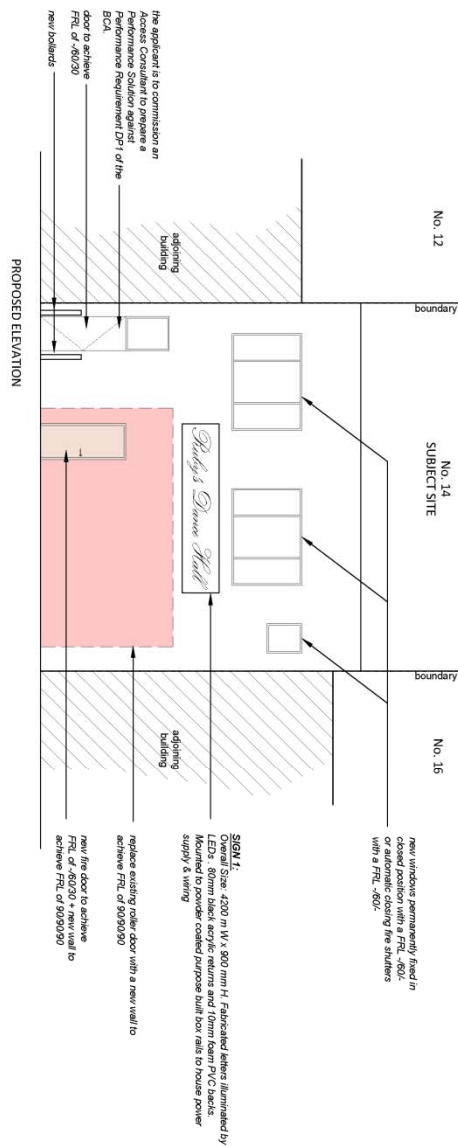
- LEGEND
- existing wall to remain
  - new 13mm plasterboard wall
  - GL glazed wall
  - D200 denotes width of doorleaf
  - FHR fire hose reel
  - E08 electrical distribution board
  - illuminated exit sign to comply with AS2283.1



DESIGNS CONTAINED IN THESE DRAWINGS AND SPECIFICATIONS ARE THE PROPERTY OF ARCHITECTURAL AND ARE SUBJECT TO REPRODUCTION IN WHOLE OR PART, OR USED IN ANY OTHER WAY WITHOUT WRITTEN CONSENT. ALL DIMENSIONS AND LOCATIONS OF ANY WORKS OR COMPONENTS OF ANY WORKS, IN CASE OF DISCREPANCIES, SHALL BE VERIFIED BEFORE COMMENCING ANY WORK.

ISSUE	DATE	DESCRIPTION
A	13.10.2017	DA Issue to Council
B	03.04.2018	revised DA Issue to Council
C	05.04.2018	revised DA Issue to Council

PROJECT	SHEET TITLE
Change of use for dance studio	External Elevation
14 Cadogan Street, Manchester	
Ruby's Dance Hall	
14 Cadogan Street, Manchester	
CLIENT	SCALE 1:100 @ A3
	DRAWN MARTIN
	SHEET NAME
	PROJECT NAME
	PROJECT NO
	PROJECT CODE



## Attachment C – Plan of Management (PoM)



14 Cadogan Street  
MARRICKVILLE NSW

Proposed use for dance classes and as a dance hall and associated business  
identification signage

### Operational Plan of Management

Prepared for Ms Sharon Hanley  
Issue A – J16274  
2 November 2017

MB Town Planning Pty Ltd ACN 1 61 704 927 as Trustee for Durney Benson Family Trust trading as MB Town Planning  
Suite 10, 895 Pacific Highway, PYMBLE NSW 2073 | PO Box 415, GORDON NSW 2072  
[www.mbtownplanning.com](http://www.mbtownplanning.com) | [mb@mbtownplanning.com](mailto:mb@mbtownplanning.com) | (02) 9144-7968

## Operational Plan of Management – 14 Cadogan Street, Marrickville

**1. Introduction**

This is an operational plan of management to accompany a development application for a proposed use for dance classes and as a dance hall and associated works at 14 Cadogan Street, Marrickville.

This operational plan of management accompanies a development application for that proposed use. The proposed development is described in plans by Archispectrum dated 13 October 2017 and in the submitted statement of environmental effects by MB Town Planning. The following documents also accompany the application:

- Noise assessment by Noise and Sound Consulting;
- Traffic impact assessment by The Transport Planning Partnership;
- Social impact comment by MB Town Planning;
- Crime prevention through environmental design and security report by MB Town Planning; and
- *Building Code of Australia* capability assessment by Concise Certification.

The site is within an industrial area and the building has nil setback masonry walls and has a frontage to Cadogan Street and a rear boundary to Sydenham Lane, both of which carry low traffic volumes. An extract from the submitted architectural details showing the proposed use at ground floor level is shown in Figure 1.

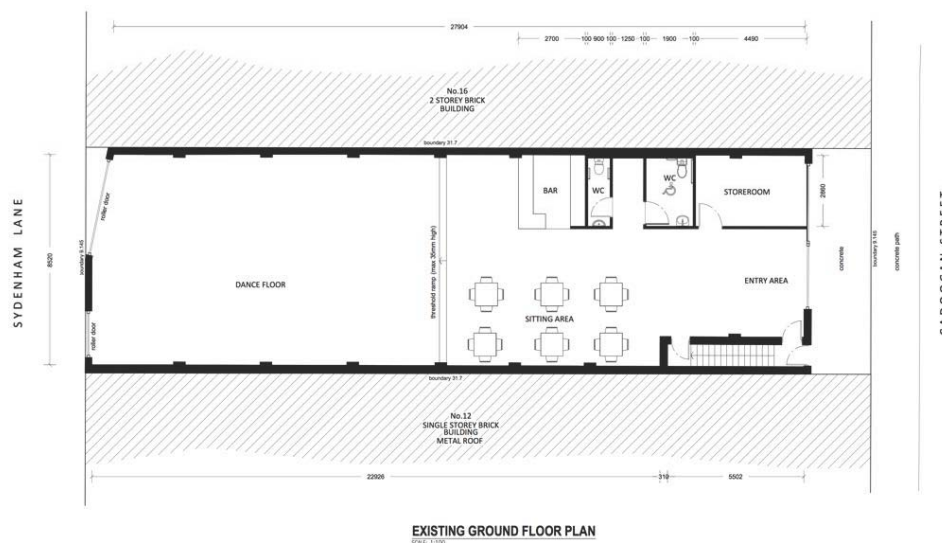


Figure 1: Layout of proposed dance lessons/dance hall use

## Operational Plan of Management – 14 Cadogan Street, Marrickville

The proposed use includes:

- Entry area off Cadogan Street;
- Storeroom;
- WC and WC suitable for people with a disability;
- Small bar/food service point;
- Seating around six small tables with four seats each; and
- Dance floor to the rear of 120 square metres in area.

There is a mezzanine towards the front, which is to be used for ancillary staff amenities, office and storage.

This operational plan of management (OPM) is intended to be able to be referred to in a condition of consent so that the development will be required to be completely in accordance with this OPM.

This OPM has been prepared having regard to Part 5 of *Marrickville Development Control Plan 2011* (MDCP2011), and in particular the provisions within Control 71.

Part 2 of this OPM explains what the proposed land use entails and sets out basic parameters for the proposed use. Part 2 also sets out the objectives of this OPM. Those objectives are based upon the social impact comment prepared by MB Town Planning, to accompany the development application.

Part 3 of this OPM sets out how the service of alcohol will be managed so as to ensure that it does not become the primary purpose of the use and so that it does not give rise to negative social impacts.

Part 4 of this OPM sets out how the transport-related aspects of the use will be managed to ensure that the social benefits of the use are maximised and so that negative impacts are minimised. Part 4 makes reference to the traffic impact assessment prepared by the Transport Planning Partnership, to accompany the development application.

Part 5 of this OPM sets out how the acoustic impacts of the use will be managed to prevent unacceptable acoustic impacts to surrounding properties. Part 5 makes reference to the noise impact assessment to accompany the development application, prepared by Noise and Sound Services.

Part 6 of this OPM sets out how health impacts will be managed and how the use will be conducted in accordance with low waste event management practices.

Part 7 of this OPM sets out security measures that will be implemented and also sets out the behavioural expectations for participants and how those will be communicated and enforced.

Part 8 of this OPM sets out fire safety and emergency evacuation procedures.

Part 9 of this OPM provides a complete list of operational requirements for the use.

## 2. Explanation of land use and basic operational parameters

The proposal is for two land uses that will be carried out at different times on the one premises. The two land uses are defined by *Marrickville Local Environmental Plan 2011* (MLEP2011) as a “recreation facility (indoor)” and as an “entertainment facility”.

A “recreation facility (indoor)” is defined as:

*...a building or place used predominantly for indoor recreation, whether or not for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice skating rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.*

An “entertainment facility” is defined as:

*...means a theatre, cinema, music hall, concert hall, dance hall and the like, but does not include a pub or registered club.*

The component of the proposed use that is proposed to be a “recreation facility (indoor)” is to be the use of the premises for dance lessons. The lessons will be in formal styles generally suited to couples dancing, such as ballroom, swing and tango styles of dancing. People will not have to have a partner to attend lessons. There will be the playing of recorded music and the instructor will demonstrate to students how to carry out dance sequences and the students will learn those dance sequences.

The “entertainment facility” component of the proposed use is specifically the “dance hall” subset referred to in the definition. “Dance hall” is not defined in the town planning legislation. It is defined in the Macquarie English Dictionary as:

*a large public hall in which dances may be held.*

The meaning of “public” in that definition is not in the sense of being publicly owned – it is in the sense that members of the public may attend.

The “entertainment facility” component of the use is not to be a “pub”, which is defined in MLEP2011 as:

*...licensed premises under the Liquor Act 2007 the principal purpose of which is the retail sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises.*

The component of the proposed use that will be an “entertainment facility” is the holding of dance events – being social events at which people dance. It is proposed that there will be the sale of pre-packaged or pre-prepared snack foods such as sandwiches that have been prepared off-site and provided by a commercial provider; other party type foods such as mini-quiches and the like; packets of savoury snacks; sweet items like small cakes or biscuits; and cheese and crackers. There will also be drinks, including alcoholic drinks.

## Operational Plan of Management – 14 Cadogan Street, Marrickville

The use will be managed in such a way that the service of alcohol does not become the primary purpose of the use and so that the use is part of the same operation as the dance lessons use, meaning that the dance hall dances will be occasions for people who receive dance lessons can put their formal dancing skills into practice. The dance hall dances will be occasions for formal styles of dancing and will not involve unstructured individual dancing.

The proposed hours for the dance lessons and dance hall events are:

- Mondays to Thursdays 5pm to 9pm for dance classes
- Saturdays and Sundays 9am to 5pm for dance classes
- Fridays and Saturdays 5pm to 9pm for dance classes (if venue not being used for Dance hall events)
- Dance hall events 5pm to midnight on selected Fridays and Saturdays

There will be only recorded music at the dance lessons and as part of the dance hall use. There will be no live musical performances.

The maximum number of people that may be present on the premises at any one time is 100.

There will be one principal dance instructor and there will be assistant dance instructors, particularly to assist in the event that the principal is sick or away. There will normally be only one dance instructor on the premises at any one time.

There will be one employed person serving food and drinks during dance events.

Students and guests of students from the dance lessons will assist in dance hall events, performing tasks including:

- Helping to set up, such as putting up any decorations;
- Setting up a folding table to serve as an entry desk;
- Putting out folding chairs around the perimeter of the dance floor;
- Playing recorded music; and
- Performing as an announcer.

There will be no car parking provided on the premises. There may be storage of bicycles within the storeroom, which may also be used to serve as a cloakroom for participants. Loading and unloading of goods associated with the use will be carried out using vehicles that will park on the street.

The objectives of this OPM derive from the social impact comment prepared by MB Town Planning and are:

- To ensure that the activities are carried out safely, having regard to building fire, emergency evacuation and building safety considerations;
- To ensure that the proposed use does not operate as a “pub” or nightclub or similar where the principal purpose is the service of alcohol. The dance hall use

## Operational Plan of Management – 14 Cadogan Street, Marrickville

is to instead serve as a place where the principal purpose is the enjoyment of structured, formal dancing as an adjunct to the dance lessons use;

- To ensure that the positive social impacts of the proposal are realised in providing people, particularly residents of nearby residential areas, with a facility that meets social needs and that provides physical fitness recreational opportunities during the day and on dance hall nights;
- To ensure that alcohol consumption is regulated so that the negative social impacts of alcohol consumption are minimised to an acceptable level;
- To ensure that the use does not generate unacceptable acoustic impacts to other properties;
- To minimise the potential for negative impacts to people in the locality from the behavior of participants;
- To ensure that the use of walking to and from public transport nodes or from residential areas is maximised;
- To maximise the safety of participants walking to and from public transport nodes or residential areas to and from the premises;
- To minimise the extent to which participants take up available parking spaces;
- To ensure that loading and unloading activities from the premises are carried out appropriately;
- To ensure that the activity is carried out safely, having regard to occupational health and safety standards;
- To ensure that healthy food and non-alcoholic drinks are available to patrons;
- To ensure that there is the appropriate handling of food so as to minimise the potential for health impacts from the inappropriate handling of food;
- To ensure that people are able to participate in the use without discrimination based upon their ethnicity, age, gender, sexuality or any disability they may have; and
- To ensure that Marrickville is provided with a great venue that caters to people wanting a more structured social activity than many other “going out” options.



**3. How will alcohol be served and how will it be ensured that the premises do not operate as a pub?**

The use will operate as a dance hall on some Friday and Saturday nights. It will be up to the operator, which Friday and Saturday nights will be for dance hall use. On those occasions the dance hall use will be from 5pm to midnight. On Friday and Saturday nights that there is no dance hall use, there may be lessons between 5pm and 9pm, similar to weeknights.

The dance hall events are intended to be an adjunct to the dance lessons. The dance hall events are not to be for people to simply walk in off the street and attend. The following ticketing and entry arrangements will be implemented on dance hall nights:

- There will be no general advertising of dance hall events. Any advertisement for the facility is to relate to the dance lessons. Those advertisements for dance lessons may explain that the premises also hold dance events for students of the dance lessons and their guests. The website for the facility is to be similarly limited.
- All dance hall events are to be limited to registered students of the dance lessons and their guests. People participating in dance lessons are to be registered, through a process that records the person's name, telephone number and address. Those details are to be kept in a secure system in accordance with applicable privacy legislation. When a dance hall event is held, a desk is to be set up in the entry area (which may be a portable desk). As people enter, they are to be asked to pay the entry fee. They are also to be required to provide their name as a student or, if a guest of a student, they are to provide the student's name and their own name. The student is also to sign next to the guest's names.
- All students are to be advised that they are to let the operator know in advance of the night of the event if they intend to invite more than two guests. The operator is to then monitor guest numbers in the lead up to the dance hall event to ensure that at least 30 percent of participants at the dance hall event are students. If necessary, the operator is to advise students wishing to invite more than two guests that they may not do so. If a student presents to the registration desk on a dance hall night with more than two guests and that student has not received prior acceptance or that arrangement, the operator is to deny entry to those guests if it will cause there to be less than 30 percent students at the premises. [Note: Whilst that arrangement appears complicated – in practice it is anticipated that there will be relatively few guests, because most people will be dancing as a couple and guests will have difficulty participating without the required skills. Guest attendance will be more about the guests being able to watch the dancing and getting a feel for the scene before deciding to take up lessons].
- There is to be an entry charge of at least \$12, including GST, payable at the registration desk. The amount of that entry charge is to be revised every two

## Operational Plan of Management – 14 Cadogan Street, Marrickville

years from the date of approval of the development. The same index as is used by Council to index Section 94 contributions is to be used to apply increases to the entry fee of \$12 – however, the fee only has to be increased in \$2 amounts. For example, if the index leads to a price increase to \$12.48, there does not have to be an increase. If the index then leads to an increase to \$13.90, there still does not have to be an increase. However, if the index then leads to an increase to \$14.10, then the entry fee has to be increased to \$14. If the operator wishes to charge more they may do so. Indexed increases to the fee are only based on the original \$12 amount.

- Students and guests are to be advised, upon entry, that alcoholic drinks must be pre-purchased at the time of entry. Each student and guest is to receive a maximum of three coupons or tokens for alcoholic drinks. At the time of purchase, the person at the entry desk is to note how many drinks have been pre-purchased in the registration book next to that student or guest's name. If the student or guest wishes to obtain a refund for pre-purchased drinks, that refund must be provided without unreasonable delay. If the student or guest requests more coupons/tokens than three, that request is to be denied.
- The person serving at the bar is not to sell alcoholic drinks but is to exchange them for coupons/tokens.
- There is to be available at the bar iced water for no charge. Iced, diluted juice or cordial is also to be provided for free. (The intent behind making the juice or cordial highly diluted is to ensure that a relatively low sugar, thirst-quenching option is freely available).
- A self-service tea bag and instant coffee facility is to be provided on a moveable table (that is sufficiently sturdy) so that participants may serve themselves teabag tea or instant coffee.
- The following non-alcoholic drinks are to be made available chilled at the bar at the recommended retail price:
  - At least three soft drink options;
  - A sparkling mineral water option;
  - At least two fruit juice options;
  - At least one iced tea option;
  - At least one non-alcoholic beer option;
  - At least two low sugar cold drink options aside from water.
- Alcoholic drink options are to be limited to the following:
  - A sparkling wine option, with each serving no greater than 150ml;
  - A white wine option and a red wine option, with each serving no greater than 150ml;

## Operational Plan of Management – 14 Cadogan Street, Marrickville

- Three beer options not exceeding 4.8 percent alcohol, with each serving not to exceed 425ml;
- One light beer option not exceeding 2.7 percent alcohol, with each serving not to exceed 425ml – furthermore, if other alcoholic drinks are available, then light beer must be available;
- Two full strength (not high strength) “ready-to-drink” options – serving not to exceed 330ml;
- Two fortified wine/port options not exceeding 17.5 percent alcohol – serving size not to exceed 80ml.

No other alcoholic drinks are to be served.

- Alcoholic drinks are not to be served at any time that the premises does not hold the appropriate type of liquor license with the relevant liquor licensing authority. (At the time of writing, the relevant license is an “on-premises license”. Furthermore, if the conditions on that license are less onerous than this OPM, this OPM takes precedence to the extent to which it is more onerous.
- The person serving drinks at the bar and the operator of the business are both to have undertaken ‘responsible service of alcohol’ training.
- Prior to each dance hall occasion, the operator of the business is to select a student volunteer or volunteers to assist at the entry desk. Those students do not have to pay the entry fee and they may also have the entry fee waived for up to two guests. Those students may not consume alcohol whilst they are performing their duties. Those students must be subject to the same limits on alcohol drinks as other participants. Prior to the dance hall occasion, the student volunteers are to have the entry registration procedures explained to them and the student volunteers are to demonstrate that they are capable of performing those tasks.
- If a Council employee requests to see the registration book at any time, the registration book is to be provided to that Council employee, on the condition that they will ensure that the data is managed in compliance with relevant privacy laws.
- Prior to each dance hall occasion, the operator of the business is ask that all students monitor for unruly or inappropriate behavior by other students or guests. Furthermore, students are to be requested to render assistance if requested by the operator of the business or their delegate, in restraining/ejecting any person that may become violent or that may be refusing to leave. Students are to be advised that they should only intervene if they feel that they are able to do so. [It is noted that the assistance that students will be asked to provide will be in similar circumstances to assistance that they would provide in any other public setting in which a person was behaving in a threatening way to other people].

## Operational Plan of Management – 14 Cadogan Street, Marrickville

- The dance hall use may not be operated by any person other than the person that is operating the dance lessons use or their delegate. The dance hall use may not operate under any separate business to the business that operates to dance lessons use. The dance hall use may only operate if dance lessons have been provided on at least two days within the preceding week.
- The dance hall use is not to be used for informal, unstructured dancing. The dance hall is to be for dancing in styles that are specifically taught at the dance school. That could potentially involve some styles that are not couples dancing. However, the style of dancing has to be a specific, known style of dancing.

With those conditions complied with, the use will not operate as a pub because the service of alcohol will be only an ancillary aspect of the use. Under those operating conditions, people will not be inclined to go to the premises only for the purpose of drinking alcohol because, even if they have invited by a guest, they will only be able to have three drinks during the whole night. The design of the use is such that people will have an enjoyable night out at the premises by dancing or at least watching the dancing.

#### **4. Transport related aspects**

The submitted traffic impact assessment by The Transport Planning Partnership demonstrates that there will be spare capacity for off-street parking in the locality to cater for the parking needs associated with the proposed use. In that regard it is noted that the subject site does not contain on-street parking. However, the proposed use will be carried out at times that industrial uses in the locality tend not to be operating. That may not always be the case – however, there is enough of a trend in that direction for there to be good availability of on-street parking at the relevant times).

In order to minimise the reliance upon on-street car-parking, the following measures are to be taken to encourage use of alternatives to the motorcar for people to go to and from the proposed use:

- The website for the proposed business, and large format prints provided on a noticeboard within the entry area of the use, are to contain images similar to those shown in Figure 2 and Figure 3 (but prepared by a graphic designer so as to be clearer) showing the walking routes to and from the premises to and from bus stops on Victoria Road and to and from Sydenham Station. Note: It is confirmed that the routes shown are safe walking routes.
- The website for the proposed business is to explain that the site is only a 450 metre walking distance from bus stops on Victoria Road and that the site is only a 650 metre walking distance from Sydenham Station.
- The website for the proposed business is to provide current details of what bus routes use the bus stops on Victoria Road and of what line Sydenham Station is on (ie T2 Airport Line, T3 Bankstown Line, T4 Eastern Suburbs and Illawarra Line).
- The website for the proposed business and a prominently located notice within the entry area are to provide details of all bus and train times from the Victoria

## Operational Plan of Management – 14 Cadogan Street, Marrickville

Road bus stops and from Sydenham Station from 11:00pm onwards on Friday and Saturday nights (including early Saturday and Sunday mornings) until 1:00am. [Note: At the time of writing there are reasonably frequent services at those times].

- The announcer at the dance hall is to make an announcement at no less than 30 minute intervals stating that if people are walking to public transport they should wait near the entry area to arrange for people to walk in groups to and from public transport. A student volunteer is to make themselves known at those times (and is to be identified by the announcer) as the person to speak to so as to arrange groups to walk to public transport. That person is then to use their best endeavours to find people either walking to Sydenham Station or to Victoria Road so that those people may walk in groups.
- Loading and unloading of goods to and from the premises is to be from light vehicles such as 2-axle rigid trucks, vans and utes or cars. Loading is not to be from trucks larger than 2-axle rigid trucks. Loading and unloading vehicles are to use available on-street spaces along Cadogan Street.



Figure 2: Diagram to be used as the basis of a graphic to be put on the website for the business and to be displayed prominently in the entry area

## Operational Plan of Management – 14 Cadogan Street, Marrickville



Figure 3: Diagram to be used as the basis of a graphic to be put on the website for the business and to be displayed prominently in the entry area

**5. Managing acoustic impacts**

The submitted noise assessment by Noise and Sound Services identifies that the nearest noise sensitive residential properties are located a distance of 111 metres from the subject site. The internal noise level within the premises would be 75dBA. Those noise emissions would be less than 20dBA at the nearest residential properties, which means that the noise emissions would be undetectable.

In order to ensure that the internal noise within the premises is within acceptable limits, the following measures are proposed:

- Only recorded music will be played;
- The styles of music that will be played will be formal dance music, swing and tango style music and associated styles and will not include “dance party” musical styles. Music with an insistent, repetitive low beat will not be played; and
- Participants will be requested to respect neighbouring property occupants by keeping noise to a minimum as they are walking out of the premises.

Should there be any proposal to include live performances at a future time, a further development application will be made to include additional noise attenuation.

**6. Managing health and environmental impacts**

The proposed use includes the heating-up of and service of pre-packaged or pre-prepared foods, such as pre-prepared sandwiches, mini-quiches, party-pies, sausage rolls, spring rolls, muffins or patty cakes, brownies, biscuits and suchlike.

Food will be served in accordance with applicable food safety standards. An antibacterial hand wipe dispenser will be installed near to the bar area so that participants in the event can clean their hands before eating finger food.

Clearly marked recycling and general waste bins will be provided near to the bar area and will be emptied into larger bins within the storage room as required.

All food will be served either onto paper plates made of recycled material rather than made with virgin materials, and all cutlery will be of biodegradable materials rather than plastic. Drinks will generally be served in recyclable bottles. However, wine and port etc will be served in glassware and will be washed and reused. The tea and coffee area will be provided with ceramic cups and saucers and with metal teaspoons and there will be a clearly identifiable tub for return cutlery provided.

There will be no smoking allowed within or in front of the premises. Students who wish to smoke will be advised to bring with them containers for cigarette butts to be discarded and will be asked to walk to a suitable area away from the premises to smoke but away from the adjoining gym because it is also used after normal business hours. A supply of cigarette butt storage devices will be kept for sale at the bar at the recommended retail price and a notice indicating that those are for sale will be displayed.

**7. Managing safety and security**

The proposed alcohol management measures will ensure that instances of violent or disruptive behavior associated with excess alcohol consumption will be minimised. It is therefore deemed unnecessary for security personnel to be engaged to maintain an on-site presence. The following measures will be implemented:

- A system whereby students are given a sense of responsibility for the conduct of the dance hall events will be implemented.
- When students enroll in the dance lessons, they will be advised that a part of the dance lessons activity is that dance hall events are sometimes held and that those events provide students with the opportunity to put their dance skills into practice. Students will be advised that, in order to make those events cost-effective, students may volunteer to perform specific roles in return for free entry for them and two of their guests. Students will also be advised that all students have a duty to monitor their own behaviour and that of their guests.
- Specific volunteer roles will include selecting and playing recorded music; being an announcer; staffing the front entry point; and acting as a security monitor.
- Whilst all students will be asked to monitor the behaviour of participants in dance hall events, security monitor volunteers will be specifically tasked to closely monitor anyone that is behaving in a disruptive way and to liaise with the bar employee regarding the consumption of alcohol.
- If the security monitor detects unacceptable behaviour, the security monitor is to assess whether immediate intervention is required. If immediate intervention is not required the security monitor is to report to the operator of the premises. The security monitor and the operator of the premises will then go to the person carrying out the unacceptable behaviour and will state that they are required to leave.
- If the security monitor assesses that immediate intervention is required, the security monitor is to go to the person engaging in the behaviour and is to state to the person that they must cease the behaviour and leave the premises. If the person does not comply, the security monitor is to respond as they are best able and is to seek the assistance of other participants. The operator is to be informed as soon as possible and the operator is to contact the on-call security organisation.
- An on-call, locally based security service provider is to be informed prior to all dance hall events. If there is any incident whereby a participant is refusing to comply, that security service provider is to be contacted and requested to assist. If the incident involves criminal behaviour, the police are to be contacted and are to be requested to assist.
- As part of the dance lessons, participants are to be taught about what are acceptable forms of contact with people with whom they do not have an



Operational Plan of Management – 14 Cadogan Street, Marrickville

established relationship. If there is any incident of inappropriate behaviour, whether in the context of the dancing activity or otherwise, the dance instructor is to speak to both people involved and is to make an assessment of whether the matter should be reported to the Police. If a person complains that they have been sexually harassed or assaulted, the dance instructor is to contact the Police for assistance and is to then render assistance to the person that has made the complaint.

**8. Building and fire safety matters**

A preliminary *Building Code of Australia* assessment accompanies the development application. All required fire safety measures identified in that assessment are to be installed and implemented.

An emergency evacuation plan is to be prepared prior to the occupation of the proposed use and is to be to the satisfaction of the Principal Certifying Authority.

In the event that there are any warnings about flood risks from any flooding events affecting the locality, the dance hall event is to be cancelled and a notice to that effect is to be placed on the website.

The operator of the premises is to ensure that they are completely familiar with the building's fire safety systems. Furthermore, all student volunteers and the bar person are to be shown the building's fire safety systems and are to have explained to them how those systems are to be used in the event of a fire.

**9. Complete list of all measures to be taken**

- Hours of operation for the dance lessons use are to be:
  - Mondays to Thursdays 5pm to 9pm
  - Saturdays and Sundays 9am to 5pm
  - Fridays and Saturdays (when no dance hall use is carried out) 5pm to 9pm
- Hours of operation for the dance hall use is to be:
  - Fridays and Saturdays: 5pm to 12am
  - Sundays to Thursdays inclusive: No use
- The maximum number of people that may be present on the premises at any one time is 100.
- The dance hall use is to not to be a "pub" – the principal purpose of that use is not to be the sale of alcohol for consumption on the premises.
- The dance hall use is to be carried out as part of the same business and by the same operator as carries out the dance lessons use.
- The dance hall use may only be carried out if there have been dance lessons on at least two days in the preceding week.

## Operational Plan of Management – 14 Cadogan Street, Marrickville

- There is to be at least one formal dance instructor on the premises at any one time. In that regard, the dance instructor is to ensure that there is a back up person who is a dance instructor to be present at the dance hall venue in case the principal dance instructor is sick or unable to be present. If no dance instructor can be present, then the dance hall event must be cancelled for that occasion.
- During dance hall events, a person is to be employed at the bar. That person is to be responsible for the sale of food and drinks, including alcohol.
- During dance hall events, there is to be pre-packaged savoury food and other pre-packaged snacks, including sandwiches and the like. Those items are to be available for sale at the bar. No food preparation other than associated with heating and serving pre-packaged food is to take place within the dance hall area.
- There will be a washing up sink with running hot and cold water in the bar area.
- There are to be no live musical performances. Music is to be recorded music only and is to be limited to styles of music associated with the dance styles taught in the dance lessons. Recorded music with a repetitive low beat is not to be played (for example techno or “dance party” music).
- The dance styles carried out on the dance floor are to be formal dance styles taught in the dance lessons. Unstructured, individual dancing is not to be carried out.
- The dance hall events are not to be advertised in any separate advertisement to the advertising for the dance lessons. Any such advertisement is to have the dance lessons as its principal focus and dance hall use is only to be mentioned as being available to students of the dance lessons and their guests.
- Any person that participates in the dance lessons is to be required to register their name and address with the operator of the use. The operator of the use is to ensure that that data is handled in accordance with applicable privacy laws.
- Entry to any dance hall use is only to be allowed for registered students and up to two of their guests or more guests may be allowed by prior arrangement.
- On each dance hall use occasion a table and chairs are to be set up in the entry area to be used as an entry desk. People seeking entry are to be required to first go to that desk and pay an entry fee, and are to have it confirmed that they are a student, or that they are a guest of a student. The name of the registered student is to be written in a register, as are the names of their guests. There may be no more than two guests per student except by prior arrangement. A notice is to be placed on the entry desk informing participants that their details may be supplied to Council if Council requests it.
- The person/s staffing the entry desk may be a student volunteer/s.
- Each person gaining entry to the dance hall (except for student volunteers and staff) is to be required to pay an entry fee of \$12 (including GST), plus any adjustments for inflation in \$2 increments commencing on the date upon which the development

## Operational Plan of Management – 14 Cadogan Street, Marrickville

application is approved. The indexing of adjustments in inflation is to be the same as Council uses to index Section 94 contribution amounts. The incremental application of adjustments for inflation in \$2 increments means, for example, that if inflation increases the amount to \$13.60 the entry fee does not have to increase. However, if it increases the amount to \$14.00 or \$14.50, for example, then the entry fee has to be \$14. The amount may be higher than the relevant amount if the operator wishes it to be.

- Prior to each dance hall use, students are to advise the operator if they are intending to bring more than two guests. The operator is only to allow those additional guests if they are satisfied that at least 30 percent of total participants will be students.
- The operator of the premises is to supply the register of participants at the dance hall events to the Council at the request of Council, subject to any privacy laws.
- If a participant arrives at the entry area with more than two guests and they have not made a prior arrangement, they are not to be permitted to gain entry.
- Students and guests are to be advised that they may be served with no more than three alcoholic drinks during the dance hall occasion.
- Students and guests are to be advised at the entry desk that tokens for alcoholic drinks may be purchased at the entry desk and that alcoholic drinks may not be purchased directly at the bar. The staff person at the entry desk is to be responsible for the sale of the tokens and is to indicate, in the register, how many tokens have been sold to each student or guest. In that way the staff person at the entry desk is to ensure that no more than three tokens are sold to each student or guest.
- If a student or guest wishes to obtain a refund on their token, that refund is to be provided by the staff at the entry desk with no unreasonable delay.
- A tea and coffee-making table is to be set up in an appropriate location and self-service tea and coffee is to be available to participants free of charge.
- Iced water is to be made available at the bar free of charge. Additionally, diluted, iced juice and/or diluted iced cordial is to be available at the bar free of charge.
- The person at the bar may only serve alcoholic drinks in exchange for tokens that have been purchased at the entry desk.
- The following chilled non-alcoholic drinks are to be made available at the bar at a minimum:
  - At least three soft drink options;
  - A sparkling mineral water option;
  - At least two fruit juice options;
  - At least one iced tea option;
  - At least one non-alcoholic beer option;

## Operational Plan of Management – 14 Cadogan Street, Marrickville

- At least two low sugar cold drink options aside from water.
- Alcoholic drink options available at the bar are to be limited to the following:
  - A sparkling wine option, with each serving no greater than 150ml;
  - A white wine option and a red wine option, with each serving no greater than 150ml;
  - Three beer options not exceeding 4.8 percent alcohol, with each serving not to exceed 425ml;
  - One light beer option not exceeding 2.7 percent alcohol, with each serving not to exceed 425ml – furthermore if other alcoholic drinks are available, then light beer must be available;
  - Two full strength (not high strength) “ready to drink” options – serving not to exceed 330ml;
  - Two fortified wine or port options not exceeding 17.5 percent alcohol – serving size not to exceed 80ml.

No additional alcoholic drinks to the above may be served on the premises.

- Alcoholic drinks are not to be served at any time that the premises does not hold the appropriate type of liquor license with the relevant liquor licensing authority. (Currently, this is an “on-premises license”). This OPM takes precedence over any such license to the extent that any such license has operating conditions that are less onerous than this OPM.
- Both the operator of the premises and the bar person are to have recognised training in the responsible service of alcohol.
- All students registered at the dance lessons are to be advised that the dance hall events are held on the basis of student participation in the appropriate management of those events. Students are to be advised that all students are to be responsible for ensuring that the events are well conducted, including that assistance is provided in the event that any participant is behaving in an unruly or inappropriate manner.
- The operator of the premises may engage student volunteers to assist at the entry desk, as security monitors, announcers and in playing recorded music. Those student volunteers may be offered free entry for themselves and up to two guests per student volunteer. The operator of the premises is to ensure that they explain the duties to the volunteers and that they render assistance to the student volunteers as required.
- The operator of the premises is to ensure that the dance lessons and dance hall use are conducted in accordance with applicable occupation health and safety regulations and in accordance with any relevant norms and protocols associated with formal dancing.

## Operational Plan of Management – 14 Cadogan Street, Marrickville

- The website for the business conducting the use is to state that participants are encouraged to take public transport and walk to the premises. The website is to include graphics demonstrating the walking routes to and from the premises to and from bus stops on Victoria Road and to and from Sydenham Station. The website is also to indicate what the relevant bus routes and train lines are.
- The walking routes to and from public transport nodes are to be prominently displayed in the entry area of the premises on dance hall occasions. Details of bus and train departures from the nearby bus stops on Victoria Road and from Sydenham Station are to be prominently displayed, covering the times from 11pm until 1am.
- The announcer during dance hall occasions is to advise at half hourly intervals or more from 10pm onwards that people going home and walking to the bus stops or train station should wait in the entry area and that a student volunteer will try to ensure that there are other people also walking to the public transport nodes so that people may walk in groups. Student volunteers (such as the security monitor) are to assist with that process and are to use their best endeavours to ensure that people may walk to public transport as part of a group.
- Students cycling to the premises are to be permitted to keep their bicycles in the storage area.
- Loading and unloading of goods to and from the premises is to be from trucks no larger than a 2-axle rigid truck. Loading and unloading of goods to and from the premises is to be from on-street parking spaces.
- A no-smoking rule is to be enforced within the premises and within the immediate vicinity of the premises. Students are to be advised (on the web site) that if they wish to smoke they must do so away from the premises, and that containers to store discarded cigarette butts may be purchased at the recommended retail price at the bar and that students must not discard cigarette butts into the environment.
- All food reheating and service is to be in accordance with applicable food safety regulations. There is to be no cooking of food for sale from the premises. All food served is to be pre-prepared food, but may involve re-heating.
- Clearly marked general waste and recycling bins are to be provided.
- A dispenser with antiseptic hand wipes is to be provided near to the bar so that participants in the dance hall activities can clean their hands before consuming food.
- Drinks are to be generally served in recyclable bottles. Wine and port etc may be served in glassware that is to be properly washed for reuse.
- All food that is served on plates is to be on plates made of recycled materials that are biodegradable or on reusable plates. Cutlery is to be biodegradable and is not to be of plastic – or may be reusable.

## Operational Plan of Management – 14 Cadogan Street, Marrickville

- Participants are to be requested to keep noise to a minimum when leaving the premises. That is to be communicated by the announcer or by staff assisting with the formation of groups to walk to public transport.
- All works identified as being required in the submitted *Building Code of Australia* report are to be implemented and the premises are to fully conform to *Building Code of Australia* requirements prior to occupation.
- An emergency evacuation plan is to be prepared to the satisfaction of the Principal Certifying Authority prior to the occupation of the development, and is to be implemented.
- The operator of the premises, the bar person and all student volunteers are to be familiarised with the building's fire safety systems and how to use them in the event of an emergency.
- In the event that there are any flood warnings relevant to the area, any dance hall event is to be cancelled and notice given on the website.
- Security monitors and the operator of the premises are to monitor for people behaving in a disruptive or inappropriate way and are to liaise with the bar person regarding the consumption of alcohol on the premises.
- If the security monitor detects unacceptable behaviour, they are to assess the situation and determine whether immediate intervention is required or whether the operator of the premises should be notified. The person engaging in the behaviour is to be advised that their behaviour must cease and that they must leave the premises.
- If a person engaging in unacceptable behaviour refuses to cease their behaviour or to leave, the security monitor and/or operator are to intervene as best as they are able and are to seek assistance from other participants if necessary.
- An on-call, locally based security company is to be contacted prior to each dance hall occasion and it is to be confirmed that they will be available to render assistance if required. If their assistance is then required, that security company is to be contacted and requested to render that assistance.
- If a participant is engaging in criminal behaviour, the Police Force is to be contacted and is to be requested to provide assistance.
- As part of the dance lessons, participants are to be taught about what are acceptable forms of contact with people with whom they do not have an established relationship. If there is any incident of inappropriate behaviour, whether in the context of the dancing activity or otherwise, the dance instructor is to speak to both (or all) people involved and is to make an assessment of whether the matter should be reported to the Police. If a person complains that they have been sexually assaulted, the dance instructor is to contact the Police for assistance and is to then render assistance to the person that has made the complaint.

## Operational Plan of Management – 14 Cadogan Street, Marrickville

- Following every dance hall event, the operator is to collect rubbish on Cadogan Street within thirty metres of the premises and is to appropriately dispose of that rubbish.
- A mop and bucket and appropriate cleaning agents that are not toxic to the environment are to be kept in the storeroom. Furthermore, a tap within the WC area is designed to allow a bucket to be filled so that any messes may be appropriately cleaned-up. A floor waste is provided within the WC area. Wastewater from the bucket may be emptied into that floor waste and the floor around that floor waste is then to be cleaned using clean water and disinfectant.



Matthew Benson  
Principal - MB Town Planning

## Attachment D – Clause 4.6 Exception to Development Standard



14 Cadogan Street  
MARRICKVILLE NSW

Proposed use for dance classes and as a dance hall and associated works

**Submission providing justification under clause 4.6(3) of Marrickville Local Environmental Plan 2011 for exception to clause 4.4(2) of that instrument**

Prepared for Ms Sharon Hanley  
Issue A – J16274  
2 November 2017

MB Town Planning Pty Ltd ACN 161 704 927 as Trustee for the Dumey Benson Family Trust trading as MB Town Planning  
Suite 10, 895 Pacific Highway, PYMBLE NSW 2073 | PO Box 415, GORDON NSW 2072  
www.mbtownplanning.com | mb@mbtownplanning.com | (02) 9144-7968



**A. Introduction**

1. This written request provides justification for contravention of clause 4.4(2) of *Marrickville Local Environmental Plan 2011* (MLEP2011) in response to clause 4.6(3) of that instrument in relation to a development application for the proposed use for dance classes and as a dance hall and associated works.
2. The proposed development is described in plans by ArchiSpectrum, dated 13 October 2017, including site plan, ground floor plan, mezzanine level plan, and front elevation including signage.
3. Part B of this written request describes the site and its locality and the proposed development. It also describes the proposed non-compliance.
4. Part C of this written request sets out the relevant town planning controls. Part C also sets out the relevant provisions of clause 4.6 that may allow the development to be approved notwithstanding the proposed non-compliance with clause 4.3(2), and summarises relevant Land and Environment Court case law and how that affects consideration of clause 4.6.
5. Part D of this written request addresses clause 4.6(3)(a).
6. Part E of this written request addresses clause 4.6(3)(b).
7. Part F of this written request addresses clause 4.6(4) and (5).
8. Part G of this written request provides concluding comments.

**B. The site and its locality, the proposed development and the proposed non-compliance**

9. The site is 14 Cadogan Street, Marrickville and has the real property description of Lot 106, DP761. It is on the northwest side of Cadogan Street and is on the southeast side of Sydenham Lane. Both of those roads are locally classified. The site is around a 600 metre walking distance from Sydenham Station.
10. The site is of regular configuration, with an area of 288.3 square metres and a width of 9.1 metres. There is minimal change of level within the site.
11. Existing on the site is a light-industrial type building with nil side setback walls, being set back 2.4 metres from Cadogan Street and generally set back nil from Sydenham Lane (Figures 1 and 2). The building presents a two-storey scale to Cadogan Street and a single warehouse-scale storey to the rear laneway. The upper storey presenting to Cadogan Street is a mezzanine level that is above an area a little over half of the ground floor level at the front.
12. There are two roller doors facing Cadogan Street, as well as a doorway to a stair up to the mezzanine level.
13. The site is within a building characterised by warehouse-style buildings used mostly for a range of light industrial and warehousing purposes.

MB Town Planning - Clause 4.6 written request – 14 Cadogan Street, Marrickville



Figure 1: Existing building on the subject site as viewed from Cadogan Street



Figure 2: Existing building on the subject site as viewed from Sydenham Lane

Copyright MB Town Planning, 2013 | [www.mbtownplanning.com](http://www.mbtownplanning.com) | [mb@mbtownplanning.com](mailto:mb@mbtownplanning.com) | (02) 9144-7968

14. The proposal is to use the main ground floor level, at certain times of the day for dance classes and, at certain other times, for a dance hall
15. The proposed use will involve dance classes being conducted between 5pm and 9pm Mondays to Thursdays and between 9am and 5pm on Saturdays and Sundays. Between 5pm and midnight on Fridays and Saturdays (although not necessarily on every Friday and Saturday) there will be events at which there is an entry fee charged at the door and at which patrons, not restricted to students of the classes, will be able to dance. At those times, drinks will be for sale (including alcoholic drinks) along with pre-packaged or pre-prepared snacks. On Fridays and Saturdays when there is no dance hall use, the premises may be used for dance lessons between 5pm and 9pm.
16. The mezzanine level will be used for ancillary office use; staff amenities and storage purposes (eg. Drinks, snacks, dancing costumes and props).
17. The principal environmental planning instrument relevant to the subject site is *Marrickville Local Environmental Plan 2011* (MLEP201). The subject site is zoned IN1 General Industrial under that instrument. Clause 4.4 of MLEP2011 provides, by reference to the *Floor Space Ratio Map*, that the maximum permissible floor space ratio is 0.95:1. As the site area is 288.3 square metres, the permitted gross floor area is 273.9 square metres.
18. For the purposes of calculating the gross floor area of development, amongst other things, "any space used for the loading and unloading of goods" is excluded.
19. The established use of the premises is as a factory/warehouse. The current use includes a loading area for small trucks adjacent to the roller door at the front of the building, comprising 18 square metres.
20. The gross floor area of the existing development on the site, excluding the area for loading and unloading, is 351 square metres. As the site area is 288.3 square metres, the floor space ratio is 1.217:1. The existing development on the subject site therefore exceeds the maximum permissible floor space ratio on the site by 77.2 square metres, being by 0.268:1.
21. The proposed development ceases the use of the loading area for that purpose. That area will instead be used for storage and will an entry passage for people attending the facility. The area is therefore converted to gross floor area is to be added to the gross floor area, resulting in a gross floor area of 369 square metres, resulting in a floor space ratio of 1.280:1.
22. The proposed gross floor area in excess of the maximum permissible floor space ratio is 95.1 square metres, which is 35 percent of a compliant amount.

**C. The town planning controls and summary of clause 4.6**

23. The principal environmental planning instrument that is relevant to the site is *Marrickville Local Environmental Plan 2011* (MLEP2011). The site is zoned IN1 General Industrial under that instrument.
24. The proposed use is characterised as a recreation facility (indoor) and as an entertainment facility for the purposes of the land use definitions within MLEP2011. Those uses are permissible with the consent of Council.
25. Clause 4.4 of MLEP2011 establishes a maximum floor space ratio control described elsewhere in this written request.
26. The site is not affected by the MLEP2011 heritage provisions.
27. Clause 4.6(1) of MLEP2011 provides as follows:
- The objectives of this clause are:*
- (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 applying flexibility in particular circumstances.*
28. Clause 4.6(2) of MLEP2011 provides as follows:
- 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.*
29. Clause 4.6(2) may therefore potentially allow the proposed development to be approved notwithstanding that the proposed development does not comply with the development standard contained in clause 4.3(2).
30. Clause 4.6(3) provides as follows:
- 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.*
31. The present written request is provided to allow council to grant consent. Matters (a) and (b) are addressed elsewhere in this written request.
32. Clause 4.6(4) provides as follows:

*Development consent must not be granted for development that contravenes a development standard unless:*

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

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

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

*(b) the concurrence of the Secretary has been obtained.*

33. The present written request sets out why it is considered that council may find that the matters required to be addressed by subclause (3) are adequately addressed. It is also set out, elsewhere in this written request, how it is considered that the proposed development is in the public interest because it is consistent with the objectives of the development standard and with the objectives of the IN1 General Industrial zone. Council would forward the matter to the Secretary for concurrence.

34. Clause 4.6(5) provides as follows:

*In deciding whether to grant concurrence, the Secretary must consider:*

*(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

*(b) the public benefit of maintaining the development standard, and*

*(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

35. The proposed development would not give rise to State or regional matters given its domestic scale. The present written request sets out how there are particular matters justifying the proposed departure from the development standard in the present circumstances, and why there is therefore no public benefit to maintaining the development standard in this instance. There are understood to be no relevant matters under item (c).

36. Clause 4.6(6) relates to certain zones aside from the IN1 General Industrial zone and has no bearing.

37. Clause 4.6(7) relates to record keeping by council of clause 4.6 matters and does not affect the present consideration.

38. Clause 4.6(8) excludes certain development standards from being able to be the subject of a clause 4.6 submission. Clause 4.3(2) is not one of those excluded matters.

39. There are no further clause 4.6 matters.

40. Cases heard in the NSW Land and Environment Court may affect the interpretation of clause 4.6.
41. In the case *Wehbe v Pittwater Council [2007]* (the Wehbe case) CJ Preston established principles concerning the process for assessing a proposal to which an objection to a development standard had been made under *State Environmental Planning Policy No 1 – Development Standards* (SEPP1). SEPP1 is no longer applicable – it has been replaced by clause 4.6 in standard instrument environmental planning instruments. However, principles established in that case continue to have relevance.
42. The Wehbe case establishes three matters of which the consent authority is to be satisfied in relation to a SEPP1 objection: 1. That the objection is well founded; 2. That consent is consistent with the aims of the policy; and 3. Any matters of State or regional significance and the public benefit of maintaining the planning controls.
43. In relation to item 1, the objection that has to be well founded must be an objection that compliance with the standard is “unreasonable or unnecessary in the circumstances of the case”.
44. In relation to establishing that compliance is “unreasonable or unnecessary in the circumstances of the case”, the Wehbe case sets out five ways in which that may be established. Those ways are neither mutually exclusive nor exhaustive. Only one would need to be satisfied. The ways are:
- First way: That the objectives of the standard are satisfied notwithstanding the proposed non-compliance.
  - Second way: That the underlying purpose of the development standard is not relevant to the proposed development.
  - Third way: That the underlying purpose would be thwarted if compliance were required.
  - Fourth way: That the standard has been virtually abandoned by the actions of the consent authority in relation to other consents.
  - Fifth way: That the zoning of the land is unreasonable or inappropriate.
45. Those five ways continue to be relevant to consideration of clause 4.6(3)(a) of MLEP2011. That is the relevance of the Wehbe case to the present matter. Consideration of that matter is set out elsewhere in this report. It is reiterated though that those five ways are not the only ways in which it may be demonstrated that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. Furthermore, as set out below, it is established in case law that Way 1 cannot be exclusively relied upon.
46. In the case *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* (the Four2Five case) Pearson C made a ruling concerning the operation of clause

- 4.6. That case was appealed in the Land and Environment Court and then in the Supreme Court, but those appeals were dismissed.
47. In the *Four2Five* case Pearson C found the development that was the subject of the appeal achieved the relevant objectives of the development standard that was the subject of a clause 4.6 written request. However, the written request used the same argument to claim that compliance would be unreasonable or unnecessary in the circumstances of the case. Pearson C did not accept that that would be sufficient. Based upon that case, it is therefore necessary to identify additional reasons to satisfy clause 4.6(3)(a) and (b) to only that the development achieves the relevant zone objectives or the objectives of the development standard.
48. The principles arising from the *Four2Five* case may be summarised as:
- The justification must demonstrate (amongst other things) that circumstances exist particular to circumstances of this proposed development on the subject site;
  - The justification must demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case by reference to other ways or matters that set out in clause 4.6(4)(a)(ii), meaning other than that the proposal achieves the objectives of the development standard and the objectives of the zone.
49. In the case *Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386* (the *Micaul Holdings* case), Morris S considered an application that included a clause 4.6 submission seeking to justify significant departures. Morris S upheld the appeal against Randwick Council's refusal of that development application. An appeal was made against that judgment, but that appeal was not upheld.
50. Although the *Micaul Holdings* case does not include specific principles for the interpretation of clause 4.6, that case does facilitate a less rigid interpretation of clause 4.6 than the *Four2Five* case. There is a reduced emphasis on the need to identify highly site-specific grounds for variation compared to the *Four2Five* case.
51. The *Micaul Holdings* case and the subsequent appeal means that, in relation to the items in clause 4.6(3), the consent authority must be satisfied that the applicant's written request has adequately addressed clause 4.6(3), but this does not mean that the consent authority must be satisfied directly as to each of those matters.
52. In the case *Moskovich v Waverley Council [2016] NSWLEC 1015* (the *Moskovich* case) Tuor C considered an application subject to a clause 4.6 application. The application involved a numerically large variation to the floor space ratio development standard.
53. In the *Moskovich* case it was found that there is a difference between consideration of the objectives of the development standard for the

purposes of “the first way” under the Wehbe case and consideration of those objectives under clause 4.6(4)(a)(ii). However, if “the first way” is not satisfied, there are other ways established under the Wehbe case, and there are yet further ways that 4.6(3)(a) could be established.

54. In the Moskovich case it was also found that it may not be necessary for a clause 4.6 written request to address clause 4.6(a) and (b) under those headings but that the arguments within the written request may be considered as a whole in relation to whether it adequately addresses the relevant matters.

55. In the case *Zhang and anor v Council of the City of Ryde [2016] NSWLEC 1179* Brown C considered an application subject to clause 4.6 written requests. Brown C sets out the following as the assessment framework for clause 4.6:

*Clause 4.6 of LEP 2012 imposes three preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(i)). The third precondition requires the Court to be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). This precondition also requires the Court to be satisfied that the written request demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).*

56. In considering whether the development in question was consistent with the objectives of the development standard in question or with the zone objectives, Brown C adopted the approach that it had to be demonstrated that the development was not antipathetic to those objectives, but that it does not necessarily have to be demonstrated that the development achieved those objectives or even that it is even ancillary to or compatible with those objectives.

57. Brown C's finding suggests that there is a need for the applicant to more directly demonstrate that the compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

58. From those cases, the following framework is used:



- Consideration is firstly given to 4.6(3)(a) and the Wehbe ways are considered. Additional matters relating to why compliance is unreasonable or unnecessary in the circumstances of the case are also considered if there are any such matters;
- In considering 4.6(3)(a), it is taken to be the case that for Wehbe way 1 to be satisfied, there is an expectation that the relevant objectives are positively satisfied, rather than merely being not antipathetic to the objectives. In some cases objectives may not be of particular relevance to the proposed development or may be poorly written such that they do not contain clear assessment criteria. In those cases, the test of achieving those zone objectives should not have to be satisfied. It is not necessarily the case that the development must be demonstrated to achieve a better outcome than a development that complies with the development standard;
- Consideration is next given to 4.6(3)(b). It is taken to be the case that the environmental planning grounds should go beyond only achieving the zone objectives and the objectives of the development standard.
- This written request also addresses clause 4.6(4) even though it is not strictly necessary for that to be included in this written request.

**D. Consideration of clause 4.6(3)(a)**

59. In relation to the first Wehbe way, it is considered that the proposal satisfies the objectives of the development standard notwithstanding the proposed non-compliance.

60. The objectives of the development standard are set out in clause 4.3(1) and are:

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

61. Objective (a) does not provide any substantive assessment criteria.

Objective (b) is satisfied because the proposal does not affect the already established bulk and scale and because the proposal does not involve a scope of work that would justify an expectation for the building to be reduced in size. In relation to objective (c), the only discernible impact of the contravention in the development standard is that there will be no loading facility provided on-site. However, the amount of materials loaded is small and there is sufficient parking in the locality to accommodate the amount of loading required, as documented in the traffic and parking report accompanying the development application.

62. The proposal is therefore acceptable having regard to the zone objectives.

63. In relation to the second Wehbe way, it is considered that the underlying purpose of the development standard is not relevant to the proposed development, because the development standard essentially seeks to control the bulk and scale of developments and the proposed development does not affect the bulk and scale of the proposed development.
64. In seeking to control the bulk and scale of developments, the development standard is calculated having regard to the exclusion of parking to meet the requirements of the consent authority and loading facilities, including access to those loading facilities. The exclusion of those elements then becomes factored into consideration of what the impact of a development complying with the development standard is likely to be. That is relevant at the time of the original development. However, when that development is completed and, some years later it is being contemplated whether to allow the conversion of parking spaces or loading facilities to gross floor area, the only relevant matter is whether there is enough parking or whether there are enough loading facilities – excepting that there may also be some consideration as to the intensity of the development in question (such as in terms of the demand for services, acoustic impacts and so on). In this case the area in question is small and the use of that area as an entry area to the facility will not have any discernible impact upon the overall intensity of use.
65. In relation to the third Wehbe way, it is not suggested that in this instance the development standard would be thwarted by a compliant proposal.
66. In relation to the fourth Wehbe way, it is likely that there are many instances in the locality where careful attention has not been given to the impact of converting loading dock areas within warehouses and industrial premises. However, that has not been firmly established for present purposes.
67. In relation to the fifth Wehbe way, there is no suggestion that the zoning of the site is inappropriate.
68. Having regard to the foregoing, compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

**E. Consideration of clause 4.6(3)(b)**

69. Environmental planning ground to justify contravening the development standard include that the proposal will facilitate a use that is compatible with the intent behind the Inner West Council planning proposal known as the Draft Sydenham Station Creative Hub. Furthermore, the proposal is consistent with the intent behind that planning proposal but does not require the planning proposal to be implemented. As such, the proposed development is not only compatible with the zoning of the subject site but is also consistent with the strategic direction that Council is currently investigating.
70. The proposal is compatible with the intent behind the Draft Sydenham Station Creative Hub proposal because the proposal involves a night time

arts and entertainment-related use. However, the proposal is less intensive than the kinds of uses that may become permissible under the Draft Sydenham Station Creative Hub proposal, because the proposal does not involve live musical performance and the premises will not be a pub use. The proposed use will be carefully managed through the submitted operational plan of management measures.

71. The proposed use of the existing loading dock as a storeroom and an entry area to the premises will facilitate the proposed use. Without the proposed change of use, the use of that area as a loading dock will interfere with the movement of students of the classes into and out of the premises.
72. Those circumstances create sufficient environmental planning grounds to justify contravening the development standard.

**F. Consideration of clause 4.6(4) and (5)**

73. In relation to clause 4.6(4)(a)(i), it is considered that the consent authority may be satisfied that this written submission adequately addresses clauses 4.6(3)(a) and (b) for the reasons set out in Parts D and E of this written request.
74. In relation to clause 4.6(4)(a)(ii), it is considered that the consent authority may be satisfied that the proposal is in the public interest because the proposed development is consistent with the objectives of the development standard, as discussed in part D of this written request.
75. It is considered that the consent authority may be satisfied that the proposal is in the public interest because the proposed development is consistent with the objectives of the IN1 General Industrial zone.
76. The objectives of the IN1 General Industrial zone are:
- *To provide a wide range of industrial and warehouse land uses.*
  - *To encourage employment opportunities.*
  - *To minimise any adverse effect of industry on other land uses.*
  - *To support and protect industrial land for industrial uses.*
  - *To protect industrial land in proximity to Sydney Airport and Port Botany.*
  - *To enable a purpose built dwelling house to be used in certain circumstances as a dwelling house*
77. The proposal is not antipathetic to the attainment of the first objective because the proposal will not interfere with the provision of industrial and warehouse uses.
78. The proposal is compatible with the attainment of the second objective because the proposal facilitates the employment of the dance school instructor and will also facilitate economic activity within the Sydenham Station Creative Hub associated with people coming to the facility.

79. The third objective is not of particular relevance to the proposal.
80. The proposed development is not antipathetic to the attainment of the fourth objective because the proposal retains the form of the existing building so that, in the event that the current use were to cease, the use for warehousing and industrial uses could be readily reinstated.
81. In relation to the fifth objective, the same circumstance as for the fourth zone objective is applicable.
82. In relation to the sixth and final objective, the circumstances referred to are not applicable.
83. Having regard to the foregoing, the proposal satisfies the relevant zone objectives.
84. In relation to clause 4.6(4)(b), the consent authority may seek the consent of the Secretary.
85. In relation to clause 4.6(5), the proposal does not raise any issues of State or regional significance given that the proposed development is of a domestic scale and does not involve any such matters. The proposal is not contrary to the public benefit of maintaining the development standard because the subject site has unique characteristics and approval of the proposal notwithstanding the proposed non-compliance will not establish any broad precedent.

**G. Conclusion**

86. Having regard to the foregoing, the proposed development should be permitted to be carried out notwithstanding the proposed non-compliance with clause 4.4(2) of MLEP2011.



Matthew Benson  
Principal - MB Town Planning  
29 September 2017

NOTES