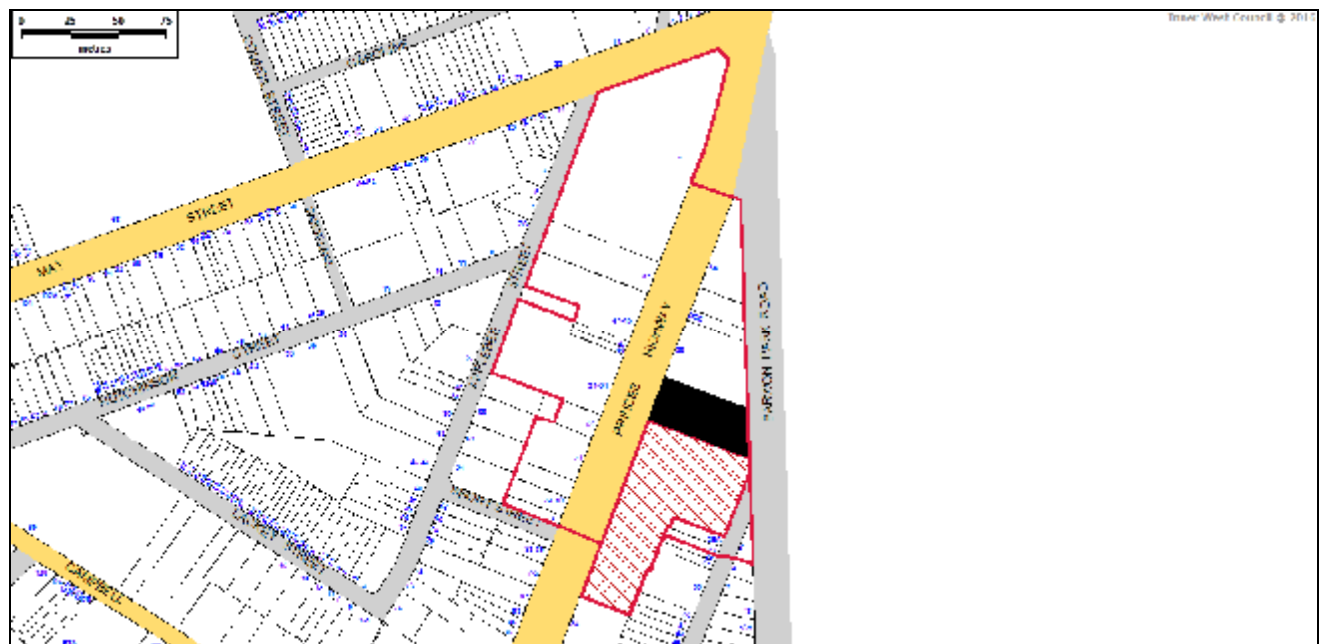



 <h1 style="margin: 0;">INNER WEST COUNCIL</h1>	
<b>DEVELOPMENT ASSESSMENT REPORT</b>	
<b>Application No.</b>	201700488
<b>Address</b>	44-46 Princes Highway, St Peters
<b>Proposal</b>	To adaptively reuse the existing warehouse building at No. 3 Barwon Park Road, demolish the remainder of the buildings on the site and construct a 6 storey mixed use building fronting Princes Highway and a 5 storey mixed use building fronting Barwon Park Road containing a total of 3 ground floor commercial tenancies, 40 dwellings and basement car parking.
<b>Date of Lodgement</b>	9 October 2017
<b>Applicant</b>	Antoniades Architects
<b>Owners</b>	Reverse Signage Pty Ltd
<b>Number of Submissions</b>	9 submissions in total
<b>Value of works</b>	\$12,248,239
<b>Reason for determination at Planning Panel</b>	Clause 4.6 variation to maximum height standard and cost of development exceeds officer delegation,
<b>Main Issues</b>	Height of building
<b>Recommendation</b>	Consent subject to conditions



<b>Subject Site:</b>		<b>Objectors:</b>	
<b>Notified Area:</b>		<i>Note: Some submissions were received from properties outside of the map area.</i>	

## 1. Executive Summary

This report concerns an application to adaptively reuse the existing warehouse building at No. 3 Barwon Park Road, demolish the remainder of the buildings on the site and construct a 6 storey mixed use building fronting Princes Highway and a 5 storey mixed use building fronting Barwon Park Road containing a total of 3 ground floor commercial tenancies, 40 dwellings and basement car parking. The application was notified in accordance with Council's Notification Policy and 8 submissions were received.

During the assessment process the proposal was amended to address a number of concerns raised by Council officers relating to permissibility, materials and finishes, parking and other matters. The amended proposal was not required to be re-notified in accordance with Council's Notification Policy.

The proposal generally complies with the aims, objectives and design parameters contained in State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development; State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55); and Marrickville Local Environmental Plan 2011 (MLEP 2011) with the exception that the proposal exceeds the maximum height of building development standard by 2.6 metres or 15.2%. A written request under Clause 4.6 of MLEP 2011 has been submitted by the applicant for the non-compliance and the request is considered to be well founded and worthy of support.

The proposal is generally consistent with Marrickville Development Control Plan 2011 (MDCP 2011). The development is considered to satisfy the desired future character requirements of the Barwon Park Planning Precinct (Precinct 26) and site-specific planning controls relating to the site as outlined in Part 9.26 of MDCP 2011.

The application was referred to Council's Architectural Excellence Panel (AEP) who are supportive of the development.

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.

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

## 2. Proposal

Approval is sought to adaptively reuse the existing warehouse building at No. 3 Barwon Park Road, demolish the remainder of the buildings on the site and construct a 6 storey mixed use building fronting Princes Highway and a 5 storey mixed use building fronting Barwon Park Road containing a total of 3 ground floor commercial tenancies, 40 dwellings and basement car parking. The works include the following:

- Full demolition of the building fronting Princes Highway (Building A) and construction of a 5 part 6 storey shop top housing building with 2 ground floor commercial tenancies and 18 residential dwellings;

- Partial demolition and restoration of the building fronting Barwon Park Road (Building B) and construction of a 4 part 5 storey shop top housing building containing 1 ground floor commercial tenancy, a ground floor storage area, 22 residential dwellings and a communal open space area.
- A single level of car parking with vehicular access from Barwon Park Road, including commercial and residential storage areas and waste storage areas; and
- Ground floor communal open space area.

### 3. Site Description

The site is known as 44-46 Princes Highway and 3 Barwon Park Road and is located on the western side of Princes Highway, between Barwon Park Road and Campbell Road, St Peters. The site contains the lots legally described as Lot 1 in Deposited Plan 181290 and Lot 1 in Deposited Plan 1111834. The combined site has a frontage of 23.51 metres to Princes Highway, a rear frontage of 25.36 metres to Barwon Park Road and has a combined area of approximately 1,187sqm.

The property at No. 44-46 contains a 2 storey warehouse building fronting Princes Highway which has suffered extensive fire damage. Vehicular access to this property is provided by a vehicular crossing to the Princes Highway and a rear access handle to Barwon Park Road. The property at No. 3 Barwon Park Road contains a 4 storey warehouse building which is substantially intact and vehicular access to this site is provided from Barwon Park Road.

The area is generally characterised by mixed use commercial/residential development to the north and south of the site, warehouse buildings to the west of the site opposite Princes Highway which are approved for redevelopment and to the east of the site is Sydney Park.

The site is adjoined by No. 38-42 Princes Highway to the north which is currently a site under construction for a mixed use commercial/residential development. The site is adjoined by No. 62-80 Princes Highway which contains a 4 storey mixed use building and No. 19-23 Crown Street which contains a 4 storey residential flat building.

### 4. Background

#### 4(a) Site history

On 10 June 2014 Council received an application to demolish the existing building fronting Princes Highway and demolish part of the building fronting Barwon Park Road to construct a 4 part 7 storey mixed use development containing 2 commercial tenancies and 47 dwellings with car parking and strata subdivide the premises. After a number of significant concerns were raised by Council this application was subsequently refused.

On 6 October 2016 Council received an application to demolish existing structures and construct 2 new mixed use buildings containing 3 commercial tenancies and 47 dwellings with two levels of parking, lot consolidation and strata subdivision. After a

number of significant concerns were raised by Council and this application was subsequently refused.

On 12 May 2017 a Pre-DA was submitted seeking advice on a proposal to adaptively reuse the existing warehouse building at No. 3 Barwon Park Road, demolish the remainder of the buildings on the site and construct a 6 storey mixed use building containing 3 ground floor commercial tenancies, 41 dwellings and 27 car spaces. Council provided Pre-DA advice that raised three main concerns, namely the permissibility of the proposal, the extent of the height non-compliance and the existence of a sixth storey.

On 9 October 2017 the subject development application was submitted to Council.

#### 4(b) Application history

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

Date	Discussion / Letter/ Additional Information
9 October 2017	Application submitted to Council.
19 December 2017	Detailed Site Investigation submitted to Council.
5 February 2018	Amended plans submitted to Council indicating relocation of the ground floor car parking, waste and storage areas to resolve permissibility concerns, additional detailed sections and elevations resolving AEP comments regarding materials and expression.
24 March 2018	Additional shadow diagrams and complete set of architectural plans submitted to Council incorporating amendments.
29 March 2018	Amended Clause 4.6 written request submitted to Council

## 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 (Infrastructure) 2007;
- State Environmental Planning Policy No. 55 – Remediation of Land;
- State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- Marrickville Local Environmental Plan 2011; and
- Marrickville Development Control Plan 2011.

The following sections provide further discussion of the relevant issues:

## 5(a)(iii) State Environmental Planning Policy (Infrastructure) 2007

Clause 101 (2) - Development with frontage to Classified Road

The site has a frontage to Princes Highway which is listed in the NSW RMS *Schedule of Classified Roads and Unclassified Regional Roads* publication (January 2014) as a Classified Road.

Vehicular access to the property is proposed from Barwon Park Road at the rear of the site and as such *“is provided by a road other than the classified road”*. As such it is considered that the development would not affect *“the safety, efficiency and on-going operation of the classified road.”*

The development is a type of development that is sensitive to traffic noise or vehicle emissions and the Noise Impact Assessment submitted with the application details the measures to be installed to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Clause 102 - Development in or adjacent to road corridors and road reservations

The site is located in or adjacent to a road corridor. The applicant submitted a Noise Impact Assessment with the application that demonstrates that the development will comply with the LAeq levels stipulated in Clause 102 of the SEPP.

## 5(a)(iv) State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. Under the provisions of the SEPP, Council must not consent to the carrying out of any development on land unless:

- “(a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.”*

Council is required to consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines as a prior use of the site was a potentially contaminating use.

A Phase 1 Preliminary Site Investigation (PSI) and Phase 2 Detailed Site Investigation (DSI) prepared by ZOIC was submitted to Council with the application. The DSI report makes the following conclusions and recommendations:

*“Based on the DSI findings, it is concluded that widespread contamination was not identified and the site is suitable for the proposed mixed use development.*

*It is recommended that additional landfill gas monitoring is conducted to confirm findings of this DSI with respect to vapour encountered in the area adjoining BH04 and to satisfy the ‘worst case’ meteorological conditions outlined in NSW EPA (2012) methodology”*

Considering the recommendations provided by the Detailed Site Investigation the development is considered to satisfy to provisions of SEPP 55 and is acceptable. Additional conditions are included in the recommendation incorporating the additional testing recommended by the DSI.

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

The development is subject to the requirements of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65). SEPP 65 prescribes 9 design quality principles to guide the design of residential apartment development and to assist in assessing such developments. The principles relate to key design issues including context and neighbourhood character, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction and aesthetics.

A statement from a qualified Architect was submitted with the application verifying that they designed, or directed the design of, the development. The statement also provides an explanation that verifies how the design quality principles are achieved within the development and demonstrates, in terms of the Apartment Design Guide (ADG), how the objectives in Parts 3 and 4 of the guide have been achieved.

The development is generally acceptable having regard to the 9 design quality principles.

#### Apartment Design Guide

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

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

#### Communal and Open Space

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

- Communal open space has a minimum area equal to 25% of the site.



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

The development provides a total area of 275sqm, being 23% of the total site area as communal open space. The common open space is considered to be of a sufficient size to promote active use by the residents of the development in addition to that provided by the private open space areas. Furthermore:

- Each apartment is provided with private open space generally compliant with the numerical requirements;
- Direct, equitable access is provided to the communal open space areas from common circulation areas, entries and lobbies; and
- The communal open space is consolidated into a well-designed, easily identified and usable area.

Sufficient solar access is provided to the communal open space in accordance with the above control.

#### Visual Privacy/Building Separation

The ADG prescribes the following minimum required separation distances from buildings within the same site:

Room Types	Minimum Separation
Habitable Rooms/Balconies to Habitable Rooms/Balconies	12 metres
Habitable Rooms to Non-Habitable Rooms	9 metres
Non-Habitable Rooms to Non-Habitable Rooms	6 metres

The development includes 2 buildings, known as Buildings A and B. The development provides a 12 metre separation between the eastern facing balconies and bedrooms of Building A and the western facing balconies and windows of Building B and as such complies with the ADG controls.

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

Room Types	Minimum Separation
Habitable Rooms	6 metres
Non-Habitable Rooms	3 metres
Rear setback where change in zoning to low density	9 metres

#### **Side Boundary setbacks**

The development is built to the northern and southern side boundaries which is consistent with the side setback of the developments to the north and south.

#### **Rear Boundary setback**

There are no neighbouring sites to the front and rear of the development.

### Solar and Daylight Access

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

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

78% of all dwellings within the development receive solar access in accordance with the above controls.

7% of the dwellings receive no solar access between 9:00am and 3:00pm in mid-winter which is acceptable.

### Natural Ventilation

The ADG prescribes the following requirements for natural ventilation:

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

65% of dwellings within the development are naturally ventilated and no cross-through apartments exceed 18 metres in accordance with the above controls.

### Ceiling Heights

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

### Apartment Size

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

### Apartment Layout

The ADG prescribes the following requirements for apartment layout requirements:

- *Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.*
- *Habitable room depths are limited to a maximum of 2.5 x the ceiling height.*
- *In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8 metres from a window.*
- *Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space).*
- *Bedrooms have a minimum dimension of 3 metres (excluding wardrobe space).*



- *Living rooms or combined living/dining rooms have a minimum width of:*  
 § 3.6 metres for studio and 1 bedroom apartments.  
 § 4 metres for 2 and 3 bedroom apartments.
- *The width of cross-over or cross-through apartments are at least 4 metres internally to avoid deep narrow apartment layouts.*

The development provides apartments that comply with the above requirements.

#### Private Open Space and Balconies

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

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

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

#### Common Circulation and Spaces

The ADG prescribes that the maximum number of apartments off a circulation core on a single level is 8. The maximum number of units accessible off a single level is 5 in accordance with ADG requirements.

#### Storage

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

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

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

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

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

- (viii) Clause 1.2 - Aims of the Plan
- (ix) Clause 2.3 - Land Use Table and Zone Objectives
- (x) Clause 2.7 - Demolition
- (xi) Clause 4.3 - Height of Buildings
- (xii) Clause 4.4 - Floor Space Ratio
- (xiii) Clause 4.6 - Exceptions to Development Standards
- (xiv) Clause 6.2 – Earthworks

(xv) Clause 6.5 - Development in areas subject to Aircraft Noise

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

Standard (maximum)	Proposal	% of non-compliance	Complies
Floor Space Ratio 2.7:1	2.7:1	N/A	Yes
Height of Building 17 metres 20 metres	19.6 metres 21.15 metres	2.6 metres or 15.2% 1.15 metres or 5.7%	No No

The following provides further discussion of the relevant issues:

(xvi) Aims of the Plan (Clause 1.2)

Clause 1.2 relates to the aims of the MLEP 2011. Aim 2(h) is to “promote a high standard of design in the private and public domain”.

The development application was referred to Council’s Architectural Excellence Panel (AEP) who provided the following comments:

*“The Panel assessed the proposal at Pre-DA stage and was supportive on the basis that the recommendations in the AEP report (TRIM 74722.17) for design refinements and the request of additional information at DA stage were met.*

1. *The recommendations that the Panel provided have all been incorporated (except the preservation of the roof trusses) and, along with evident design development, it is considered that the proposal has improved since the Pre-DA proposal.*
2. *Recommendations for refinements to internal planning have been adequately addressed, particularly the introduction of a direct line of sight from lobbies to the central courtyard.*
3. *The architectural expression to the Princes Highway Elevation has improved. The four original metal sliding fire doors are being re-used. The landscape design is developed and convincing.*
4. *The courtyard-facing retail tenancy (auxiliary) is less likely to succeed. If the inclusion is the result of planning requirements to achieve a particular proportion of retail or commercial use at Ground Level, the Panel would support a relaxation of this requirement. Alternatively, the retail space could be consolidated with retail tenancies that have an external street address.*
5. *The schedule of finishes includes a brick type specified as ‘BR-02 new grey brick’, but the elevations make no reference to this type of brick. It is **recommended** that [1] dry pressed clay brick and mortar be provided, particularly to the Princes Highway Elevation, in a colour that reflects the bricks traditionally found in older structures in the vicinity (such as the locally heritage listed Former Bedford Brickworks and the brick found in the existing industrial warehouse building that is to be adaptively reused), which are generally red, bronze, brown tones (rather than grey); and [2] detailed specification and photo sample of the face-brick be provided in the schedule of finishes (DA 7.01).*
6. *The photomontage indicates brick detailing and steel beams to the Princes Highway elevation and timber soffit to all balconies, but the schedule of finishes and elevations are vague in this regard. It is **recommended** that [1] typical*

*elevations and wall sections of balcony, window and wall junctions, and details of steel beam, timber soffit and brick patterns be provided at 1:50 or 1:20 at A3 in order to establish in greater detail the specific design intent of the facade types; [2] photo sample and full specification of brick and proposed steel beam be included in the schedule of finishes; [3] drawings at 1:50 or 1:20 at A3 of the new windows to be installed in existing openings to the heritage façade at the rear be provided clearly stating the type of windows, mullions and finishes; and [4] the schedule of finishes be amended to clearly state that timber soffit (or an appropriate non-combustible self-finished alternative) will be provided to all balconies.*

7. *It is **recommended** that a condition of consent be included requesting Antoniadis Architects to prepare the construction certificate drawings.*

The AEP's comments have been incorporated into the design of the proposed development and given this a high standard of design is achieved. Additional details and amendments requested by the AEP have been provided to Council. Council's Architectural Excellence Panel (AEP) raised no further concern over the development subject to appropriate conditions which are included in the recommendation.

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

The property is zoned B4 – Mixed Use under the provisions of Marrickville Local Environmental Plan 2011 (MLEP 2011). Ground floor commercial premises and residential accommodation in the form of shop top housing is permissible under the zoning provisions applying to the land.

The site contains a full level drop from north to south along the width of the site on Barwon Park Road and a full level drop from west to east along the length of the site.

Building A satisfies the definition of shop top housing by providing ground floor commercial tenancies with residential accommodation above. The north eastern portion of Building B satisfies the definition of shop top housing by providing a ground floor commercial tenancy with residential accommodation above.

The development seeks to retain and adaptively reuse the existing warehouse building fronting Barwon Park Road. Amended Plans were submitted to Council indicating the ground floor of that building incorporating commercial car, motorcycle and bicycle parking and a commercial store room. Subject to the commercial car parking being attached to a commercial strata lot, the ground floor commercial use would enable the residential accommodation above to be classified as shop top housing consistent with the judgement *Arco Iris Trading Pty Ltd v North Sydney Council [2015] NSWLEC 1113*. Subject to a condition requiring that car parking space to form part of a commercial strata lot Council is satisfied that the entire development is permissible in the B4 – Mixed Use zone.

The development is acceptable having regard to the objectives of the B4 – Mixed Use zone.

(xviii) 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.

(xix) Height (Clause 4.3)

A maximum building height of 20 metres applies to the property known as 44-46 Princes Highway and a maximum building height of 17 metres applied to the property known as 3 Barwon Park Road under MLEP 2011.

The portion of the development on the property known as 44-46 Princes Highway has a height of 21.15 metres which does not comply with the development standard and the portion of the development on the property known as 3 Barwon Park Road has a height of 19.2 metres which does not comply with the development standard.

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

(xx) Floor Space Ratio (Clause 4.4)

A maximum floor space ratio (FSR) of 2.7:1 applies to the land under MLEP 2011.

The development has a gross floor area (GFA) of 3,200.7sqm which equates to a FSR of 2.7:1 on the 1,187sqm site which complies with the FSR development standard.

(xxi) Exceptions to Development Standards (Clause 4.6)

As detailed earlier in this report, the development exceeds the maximum building height development standard prescribed under Clause 4.3 of MLEP 2011. A written request in relation to the contravention to the building height development standard in accordance with Clause 4.6 (Exceptions to Development Standards) of MLEP 2011 was submitted with the application.

A maximum building height of 20 metres applies to the property known as 44-46 Princes Highway under Clause 4.3 of MLEP 2011. The highest point of the building on No. 44-46 is 21.15 metres which results in a variation of 1.15 metres or 5.7%

A maximum building height of 17 metres applied to the property known as 3 Barwon Park Road under Clause 4.3 of MLEP 2011. The highest point of the building on No. 3 Barwon Park Road is 19.6 metres which results in a variation of 2.6 metres of 15.2%.

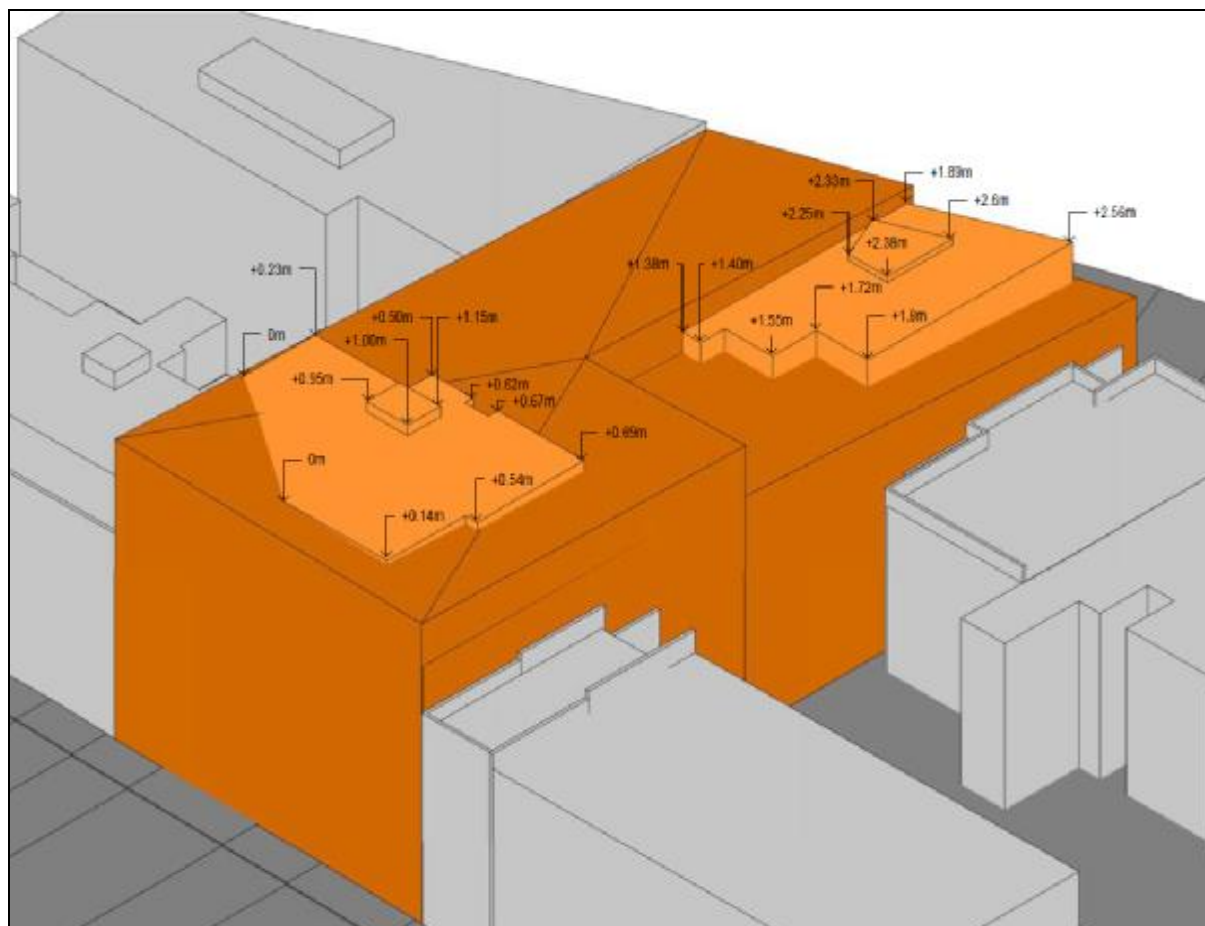


Figure 1: Non-compliance with overall height shown in light orange.

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

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

The consent authority must also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

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

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

For the purpose of this proposal, the written request provided by the applicant contends that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case for a number of ways outlined in *Wehbe*, invoking ways 1, 2 and 3

The applicant considers compliance with the maximum building height development standard to be unreasonable and unnecessary because the objectives of the standard are achieved notwithstanding non-compliance with the standard.

The objectives as set out by clause 4.3(1) of the MLEP 2011 are as follows

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

The written request provides the following comments (in summary):

- The building height is consistent with the desired future character and responds appropriately to the particular circumstances of the site, including topography and retention of significant heritage building;
- It has been demonstrated that the development ensures that adjoining residential development and public areas continue to receive satisfactory exposure to sky and sunlight. The shadow diagrams demonstrate compliance with Council's overshadowing controls;
- The development provides an appropriate transition in built form and land use intensity, noting that the development complies with the FSR development standard relating to the site, and the development provides a compliant built form along all boundaries.
- The area of non-compliance is set in behind the external alignment of the building and this assists in ensuring an appropriate streetscape presentation and minimising impacts. In addition, given the location of the non-compliance, the proposal remains compatible in height with the neighbouring buildings when viewed from the public domain.
- As a result of the siting and location of the areas of non-compliance and in minimising impacts on the street, character and neighbours, the proposal is consistent with the objectives of the standard.

- The proposal retains the façade of the building fronting onto Barwon Park Road, which is desirable from a planning, streetscape and heritage point of view. This is further discussed below.
- Fourthly, as indicated in Council's Clause 4.6 register, Council has granted approval to DAs with a building height that exceeds the development standard. The register indicates sites listed as mixed use developments within the former Marrickville LGA with the variations ranging from 1.5% to 38.5%. Common reasons for acceptance of the variation was that strict compliance with the development standard was unnecessary, the additional height did not contribute to additional adverse amenity impacts on adjacent development; and the development is compatible with the bulk/scale and overall character of the area. These are all reasons that the proposal is considered to be appropriate from a planning point of view despite the no-compliance.

The applicant contends that there are sufficient environmental planning grounds to justify contravening the development standard as:

- The proposal is permissible within the B4 Mixed Use zone and is consistent with the relevant zone objectives, as outlined in the accompanying SEE.
- The proposal satisfies the relevant 'unreasonable and unnecessary' tests established by the Court in *Wehbe v Pittwater Council* and is unlikely to result in adverse amenity impacts in terms of privacy, overshadowing or view loss.
- Sunlight access has been addressed. In respect of view loss, it is noted that the area of non-compliance is not likely to result in any view loss for the terraces to the south given the difference in heights. If there is a view loss, this is likely to be occurring as a result of the compliant portion of the building rather than the non-compliant.

The justification provided in the applicant's written request is considered well founded and worthy of support. Considering the above justification, strict compliance with the development standard is considered unreasonable and unnecessary given the circumstances of the site.

Having regard to the proposed height of the development, the proposal is considered acceptable for the following reasons:

- The additional building height will not result in any unreasonable impacts on the surrounding properties in relation to acoustic and visual privacy, solar access and overshadowing or visual bulk and scale;
- Whilst the distribution of GFA throughout the site results in the non-compliance with the height development standard, the development complies with the overall building density standard for the site (i.e. FSR); and
- The proposal will result in public benefits above those that may otherwise be realised through a strictly compliant development. Specifically the proposal will result in an improved public domain along Princes Highway and Barwon Park Road with the undergrounding of power lines, improved vehicular crossings and relationship to the footpath along Barwon Park Road, and a new awning over the footpath and improved safety for pedestrians along Princes Highway.

The justification provides due regard to the following decisions of the NSW Land and Environment Court:



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

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

#### (xxii) Earthworks (Clause 6.2)

The earthworks proposed are for the excavation of a single level basement. The quality of the existing soil to be excavated has been assessed in accordance with the provisions of State Environmental Planning Policy No. 55 - Remediation of Land and appropriate conditions are included in the recommendation to ensure the earthworks will not have a detrimental impact on the development of the subject site and neighbouring uses.

Considering the above, the earthworks proposed are reasonable having regard to Clause 6.2 of MLEP 2011.

#### (xxiii) Development in areas subject to Aircraft Noise (Clause 6.5)

The land is located within the 20 - 25 Australian Noise Exposure Forecast (2033) Contour and as such the development is likely to be affected by aircraft noise.

The development would need to be noise attenuated in accordance with AS2021:2015. An Acoustic Report was submitted with the application which details that the development could be noise attenuated from aircraft noise to meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS2021:2015. Conditions are included in the recommendation to ensure that the requirements recommended within the acoustic Report are incorporated into the development.

### 5(b) Draft Environmental Planning Instruments

There are no relevant Draft Environmental Planning Instruments.

### 5(c) Development Control Plans

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

Part	Compliance
Part 2.5 Equity of Access and Mobility	<b>No – see discussion</b>
Part 2.6 Visual and Acoustic Privacy	<b>Yes – see discussion</b>

Part 2.7 Solar Access and Overshadowing	<b>Yes – see discussion</b>
Part 2.9 Community Safety	<b>Yes – see discussion</b>
Part 2.10 Parking	<b>No – see discussion</b>
Part 2.16 Energy Efficiency	<b>Yes</b>
Part 2.18 Landscaping and Open Spaces	<b>Yes – see discussion</b>
Part 2.21 Site Facilities and Waste Management	<b>Yes – see discussion</b>
Part 2.24 Contaminated Land	<b>Yes– see discussion</b>
Part 2.25 Stormwater Management	<b>Yes</b>
Part 4.2 Multi Dwelling Housing and Residential Flat Buildings	<b>Yes – see discussion</b>
Part 5 Commercial and Mixed Use Development	<b>Yes – see discussion</b>
Part 9 Strategic Context	<b>No – see discussion</b>

The following provides discussion of the relevant issues:

**PART 2 – Generic Provisions**

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

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

<b>MDCP 2011 Requirement</b>	<b>Proposed</b>	<b>Consistency</b>
<b>Residential Component</b>		
For developments with five (5) or more dwellings, one adaptable dwelling per five or part thereof.	The proposed 40 dwellings require the provision of eight (8) adaptable dwellings.	Yes
Appropriate access for all persons through the principal entrance of a building and access to any common facilities	A level entry of sufficient width has been provided.	Yes
One (1) accessible parking space for every adaptable dwelling	4 accessible parking spaces servicing 8 adaptable dwellings	No
One (1) accessible visitor’s parking space for every four accessible parking spaces or part thereof, designed in accordance with relevant	The development provides 4 accessible parking spaces and 0 accessible visitor parking spaces are provided.	No

Australian Standards.		
<b>Commercial Component</b>		
A continuous path of travel through the main entrance	A level entrance is provided throughout.	Yes
At least one (1) accessible space in car parks of 10 or more car spaces	The car park supports 24 spaces, however only 1 of those spaces is provided for the commercial tenancy. As such, 1 accessible commercial car parking space is provided	Yes

*Table 1 - Assessment of proposal against Part 2.5*

Based on the assessment provided in Table 1 above, the proposal satisfies the relevant provisions of Part 2.5 of MDCP 2011, with the exception of accessible car parking and visitor spaces. The matter of car parking is discussed in more detail later in this report under Section 5(c)(v).

(vi) Acoustic and Visual Privacy (Part 2.6)

The development maintains adequate levels of acoustic and visual privacy for the surrounding residential properties and ensures an adequate level of acoustic and visual privacy for future occupants of the development.

The development generally provides windows and areas of private open space which face towards the front and rear of the site which is acceptable. None of the balconies or windows raise any matters for concern in regards to visual privacy to adjoining dwellings.

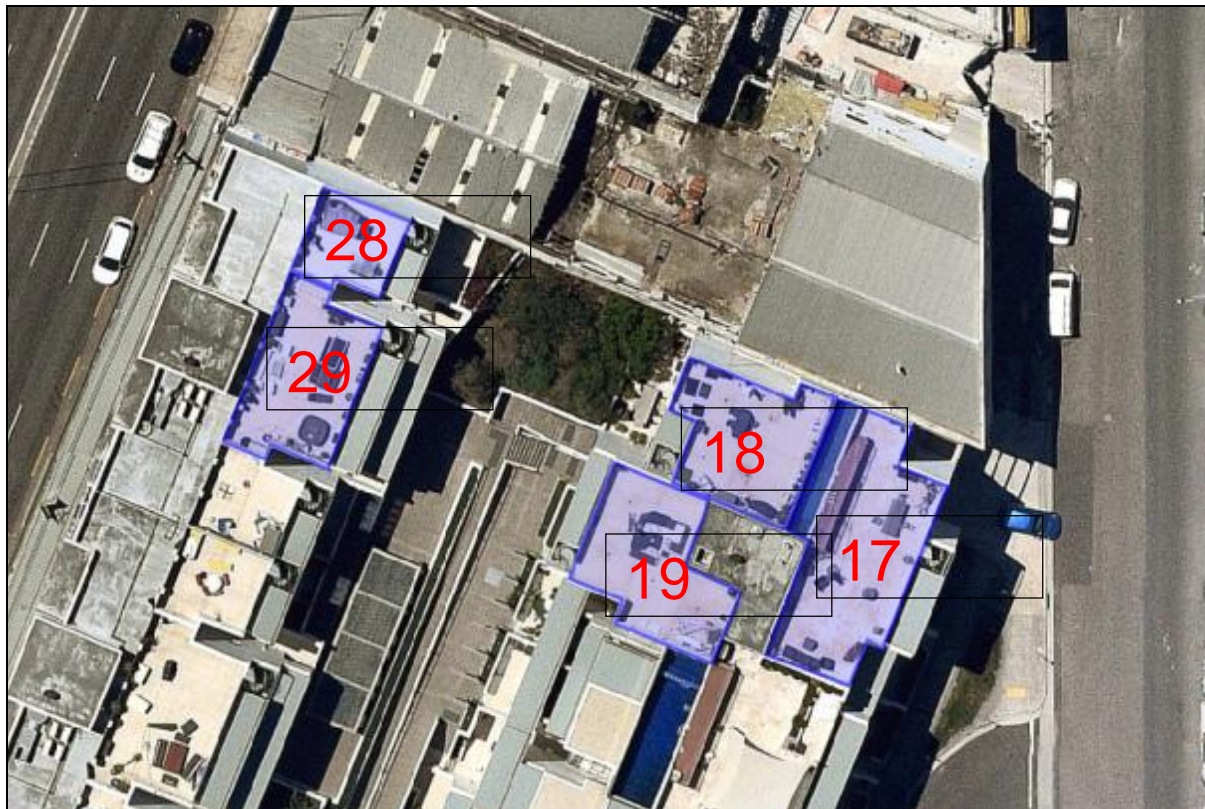
The development does include bedroom windows along the southern elevation on levels 1, 2 and 3 servicing Units 1.01, 1.02, 2.01, 2.02, 3.01 and 3.02 which face towards the development to the south at No. 19-23 Crown Street. The windows have been treated with a 'privacy hood' which restricts sideways viewing. Whilst facing towards a side boundary, the windows generally face the side elevation of No. 19-23 Crown Street and do not have direct views into windows or areas of private open space and thus no concern is raised over these windows.

The development provides a communal terrace on the third floor level to Building B. The space includes a communal barbeque area and outdoor entertaining space along the southern portion of the building close to the roof top terraces of the development to the south. The terrace has a FFL of RL 28.4 and the terraces to the south have a FFL of RL 28.7, thus sitting 400mm higher than the communal open space on the subject site. The communal open space is landscaped along the boundary with 19 x Westringia Blue Gem, having a mature height of 1.5 metres which is sufficient to provide for visual privacy screening and thus no concern is raised in relation to visual privacy.

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

(vii) Solar Access and Overshadowing (Part 2.7)**Overshadowing**

The shadow diagrams submitted with the application illustrate the extent of overshadowing as a result of the development. The development will result in increased overshadowing over the development to the south of the site at No. 60-82 Princes Highway and 19-32 Crown Street, specifically Lots 28 and 29 fronting Princes Highway and Lots 17, 18 and 19 fronting Crown Street as indicated in Figure 2 below:



*Figure 2: Impact of proposed development on the roof terraces at No. 60-82 Princes Highway*

*Impact of Building B fronting Barwon Park Road*

The development will result in increased overshadowing on the private roof terraces of dwellings 17, 18 and 19 directly to the south of Building B. These dwellings are all provided with balconies off the principal living areas, and are provided with an additional area of private open space in the form of a roof terrace. The roof terraces of 17, 18 and 19 measure a total area of 124sqm, 76sqm and 80sqm respectively and therefore have a large catchment area for solar access. As none of these terraces have living rooms directly adjoining, there is no particular area that is more valuable in regards to solar access.

The shadow diagrams indicate that levels 4 and 5 of the subject development result in increased overshadowing over these roof terraces. The shadow diagrams submitted with the application show the extent of overshadowing currently caused by the existing building, the extent of new overshadowing caused by the development

as well as overshadowing caused by the portion of the development that varies from the height development standard.

The shadow diagrams indicate that solar access to the roof terraces of units 17 and 18 will be reduced between 9:00am and 3:00pm on 21 June, notwithstanding, the roof terraces will continue to receive solar access over a minimum of 50% of the total area between 11:00am and 3:00pm, thus complying with Council's controls. The extent of overshadowing caused by that portion of the development that varies from the height development standard does not significantly contribute to the overshadowing.

#### *Impact of Building A fronting the Princes Highway*

The development will result in increased overshadowing on the private roof terraces of dwellings 28 and 29 directly to the south of Building A. These dwellings are all provided with balconies off the principal living areas, and are provided with an additional area of private open space in the form of a roof terrace. The roof terraces of 28 and 29 measure a total area of 34sqm and 75sqm respectively and therefore have a large catchment area for solar access. As none of these terraces have living rooms directly adjoining, there is no particular area that is more valuable in regards to solar access.

The shadow diagrams indicate that level 5 of the subject development will result in increased overshadowing over these roof terraces. The shadow diagrams submitted with the application show the extent of overshadowing currently caused by the existing building and the extent of new overshadowing caused by the development.

The shadow diagrams indicate that solar access to the roof terraces of units 28 and 29 will be reduced between 9:00am and 3:00pm on 21 June, notwithstanding, the roof terrace of unit 29 will continue to receive solar access over a minimum of 50% of the total area between 11:00am and 3:00pm, thus complying with Council's controls. The overshadowing caused by the development over the roof terrace of unit 28 is more significant. Notwithstanding, an assessment under Part 2.7.3 of MDCP 2011 has been carried out and the development is considered reasonable for the following reasons:

- The roof terrace of unit 28 is located on the common boundary, providing no northern setback to the subject site to achieve separation, and thus is highly susceptible to overshadowing; and
- The subject development is approximately 17.5 metres high along the southern boundary, which is 2.5 metres below the maximum allowable height. This indicates that the overshadowing of a compliant development could be substantially worse than what is proposed.

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

#### **Solar Access**

The plans and shadow diagrams submitted with the application illustrate that the development complies with Council's solar access controls in that at least 65% of dwellings provide living area windows positioned within 30 degrees east and 20

degrees west of true north and allow for direct sunlight for at least two hours over a minimum of 50% of the glazed surface between 9.00am and 3.00pm on 21 June.

(viii) Community Safety (Part 2.9)

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

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

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

A condition is included in the recommendation requiring the entrance to the premises being well lit and to comply with the relevant Australian Standard to avoid excessive light spillage.

The development satisfies Part 2.9 of MDCP 2011.

(ix) Parking (Part 2.10)

### Car, Bicycle and Motorcycle Parking Spaces

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

Component	Control	Required	Proposed	Complies ?
<b>Car Parking</b>				
Resident Car Parking	0.4 car parking spaces per studio	3 x studio units = 1.2 spaces	<b>19 spaces</b>	<b>No</b>
	0.5 car parking spaces per 1 bed unit	12 x 1 bed unit = 6 spaces		
	1 car parking space per 2 bed unit	17 x 2 bed units = 17 spaces		
Accessible Resident Car Parking	1 car parking space per 1 adaptable dwelling	8 adaptable dwellings = 8 accessible	<b>4 spaces</b>	<b>No</b>

Component	Control	Required	Proposed	Complies ?
		spaces		
Residential Visitor Parking	0.1 space per unit	32 units = 3.2 spaces	<b>0 spaces</b>	<b>No</b>
Accessible Visitor Parking	0.25 space per adaptable unit	8 adaptable units = 2 accessible visitor spaces	<b>0 spaces</b>	<b>No</b>
Commercial Car Parking	1 space per 80sqm GFA for customers and staff	220sqm GFA = 2.75 spaces	<b>1 space</b>	<b>No</b>
	<b>Total required:</b>	<b>42 spaces</b>	<b>24 spaces</b>	<b>No</b>
<b>Bicycle Parking</b>				
Resident Bicycle Parking	1 bicycle parking space per 2 units	40 units = 20 spaces		
Visitor Bicycle Parking	1 bicycle parking space per 10 units	40 units = 4 spaces		
Commercial Bicycle Parking	1 per 300sqm GFA for staff	220sqm GFA = 1 space		
	<b>Total required:</b>	<b>25 spaces</b>	<b>31 spaces</b>	<b>Yes</b>
<b>Motorcycle Parking</b>				
Motorcycle Parking	5% of the total car parking requirement	42 car parking spaces required = 2.1 spaces		
	<b>Total required:</b>	<b>2 spaces</b>	<b>3 spaces</b>	<b>Yes</b>

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

As detailed in Table 2 above, the development does not comply with the car parking requirements.

The development results in a shortfall of 18 car parking spaces.

Part 2.10.4 provides potential justifications for providing car parking at a lower rate than specified by MDCP 2011. The development is considered acceptable in regards to car parking for the following reasons:

- The development seeks to adaptively reuse the existing warehouse building to the rear of the site. The conservation of this period building makes the provision of basement car parking difficult.
- The development is 400 metres from St Peters Railway Station and is well serviced by busses to and from the city, thereby being located in an area well serviced by public transport services;
- The development is consistent with the aims of the B4 Mixed Use zone, which aims to restrain car parking and restrict car use, and provide suitable businesses in accessible locations so as to maximise public transport patronage and encourage walking and cycling;



- The development provides bicycle parking in excess of Council's requirements, including end of trip facilities for the commercial component of the development, to encourage alternative means of transport; and
- The development provides motorcycle parking in excess of Council's requirements.

A condition is included in the recommendation requiring the car parking to be allocated as follows:

- A total of 23 car parking spaces being provided for the residential component of the development.
- Of the residential car parking spaces, 4 accessible car parking spaces being provided for the adaptable residential dwellings being located on the basement level. These spaces must be marked as disabled car parking spaces; and
- 1 accessible car parking space being provided for the commercial component of the development. This space must be marked as a disabled car parking space.

### Vehicle Service and Delivery Area

Control C24 in Part 2.10.16 of MDCP 2011 specifies a vehicle service and delivery area requirement for larger developments. The development does not meet any of the triggers in Table 6 in Part 2.10.16 of MDCP 2011 and therefore no vehicle service and delivery area requirements apply to the proposal. Notwithstanding this, the proposed basement is capable of accommodating small delivery trucks during off-peak times when vehicular movements are minimal and the basement provides direct lift access to the ground floor commercial tenancies for loading/unloading, waste storage areas and residential lobby for removalist activities.

The development is considered to satisfy the requirements of Part 2.10 of MDCP 2011 and is acceptable.

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

##### *2.18.11.7 Mixed use development*

Part 2.18.11.7 of MDCP 2011 provides the following controls for mixed use development:

**"C25 Landscaped area**

*Landscape areas for mixed use developments will be determined on merit and depend on the overall streetscape and the desired future character for the area/precinct.*

**C26 Private open space**

*Each dwelling in a mixed use development must have a private open space in the form of a deck or balcony accessible from the principal living area of the dwelling with a minimum area of 8m<sup>2</sup> and a minimum width of 2 metres."*

### Landscaped area

The development has a frontage to the Princes Highway and Barwon Park Road and is required to provide a nil front boundary setback. As such, it is not appropriate to

provide pervious landscaping within the front setback of the development on ground floor level.

The development provides a landscaped area on the ground floor level. Considering the context of the site, being within a business centre, it is assessed as providing sufficient private and common open space for use by the occupants of the development and is a significant improvement on the nil landscaping currently existing on the site.

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

### **Private open space**

All apartments are provided with primary balconies that comply with or exceed the minimum area and minimum depth as per above with the exception of the studio apartments G.05, 1.01, 2.01, 3.01 and 4.01. Whilst not complying with the numerical requirement, these areas of private open space are acceptable given:

- The balconies servicing the studios are provided off the principal living areas of the dwellings and are north facing achieving good solar access;
- The balconies are generally 6sqm and as such the non-compliance with the numerical requirement accounts to 2sqm;
- All the studios are oversized internally and make up for the smaller balconies with large internal space; and
- The development complies with the requirements of the ADG which does not prescribe balconies for studio apartments.

Notwithstanding the above, all balconies comply with the minimum requirements of the ADG which prevails over MDCP 2011.

### **Communal open space**

The development provides two areas of communal open space with total measurements of 275sqm, being 23% of the total site area. The size of the common open space is considered to be of a sufficient size to promote active use by the residents of the development in addition to that provided by the private open space areas.

#### *2.18.11.12 Development within Business Centres*

The site has a frontage to the Princes Highway and Barwon Park Road. Council's Street Tree Master Plan prescribes street tree planting for these roads. Appropriate conditions are included in the recommendation requiring a total of 5 street trees to be planted across the two frontages.

#### (xi) Tree Management (Part 2.20)

There are no trees on the site covered by and protected under MDCP 2011 and there are no protected trees on adjacent sites.

A Landscape Plan was submitted with the application which includes planting for 10 small to moderate size trees. The application was referred to Council's Tree Management Officer who was generally supportive of the development subject to the imposition of appropriate conditions which have been included in the recommendation.

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

*2.21.2.1 Recycling and Waste Management Plan*

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

*2.21.2.5 Residential Waste*

The development includes 40 units and would generate 2,880L of waste based on the calculation of 72L per dwelling. A minimum of 10 x 660L recycling, 5 x 660L general waste bins and an appropriate number of green waste bins are required to be provided for the development.

A total of 19 x 660L bins are provided in the waste storage area in the basement. There is considered to be a sufficient quantity of waste bins to accommodate the required recycling and general waste under Part 2.21.

The RWMP submitted with the application indicates that waste collection will occur from the internal loading bay located on the ground floor level which is near the entrance to the basement and directly accessible from the street for Council garbage trucks to access from the street.

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

Control C25 specifies that space must be provided for communal compost facilities for residential flat buildings. A condition is included in the recommendation requiring a communal composting facility be provided.

Control C27 requires that for residential flat buildings a dedicated room or caged area of at least 12cbm must be provided for the temporary storage of discarded bulky items which are awaiting removal. A total of 12cbm has been provided for bulky items on the basement level.

*2.21.2.6 Commercial Waste*

The commercial tenancies have a combined area of 220sqm of which the proposed use is to be the subject of a separate application. A bin storage area is proposed on the ground floor level of the development with a capacity to accommodate 3 x 660L bins. Any application for the use of the ground floor tenancies will need to demonstrate that sufficient services are provided for recycling and general waste under Part 2.21 of MDCP 2011.

(xiii) Contaminated Land (Part 2.24)

The matter of contamination is discussed in Section 5(a)(ii) of the report under the provisions of State Environmental Planning Policy No. 55 – Remediation of Land.

**Part 4.2 - Multi Dwelling Housing and Residential Flat Buildings**

Part 4.2 of MDCP 2011 introduces objectives and controls for medium and high density residential development, such as residential flat buildings. Whilst the development is strictly categorised as a mixed use development and this report provides an assessment of the application under the relevant controls contained in Part 5 and 9 of MDCP 2011 respectively. Part 4.2 provides some additional considerations for residential flat buildings.

(xiv) View sharing

Control C13 provides matters for consideration for buildings setbacks:

- “C13 Notwithstanding any compliance with front, side and rear setback controls, applicants must demonstrate that proposed building setbacks:***
- i. Provide adequate separation between buildings;*
  - ii. Protect adjoining buildings from overlooking and loss of amenity;*
  - iii. Maintain solar access in accordance with Council’s requirements to adjoining premises; and*
  - iv. Are acceptable in terms of their impact on existing views (in this regard, Council encourages view sharing between surrounding residences).*

A number of submissions were received in response to Council’s notification of the proposal, including an objection to the development on the grounds of view loss. Council’s controls encourage view sharing between surrounding residences.

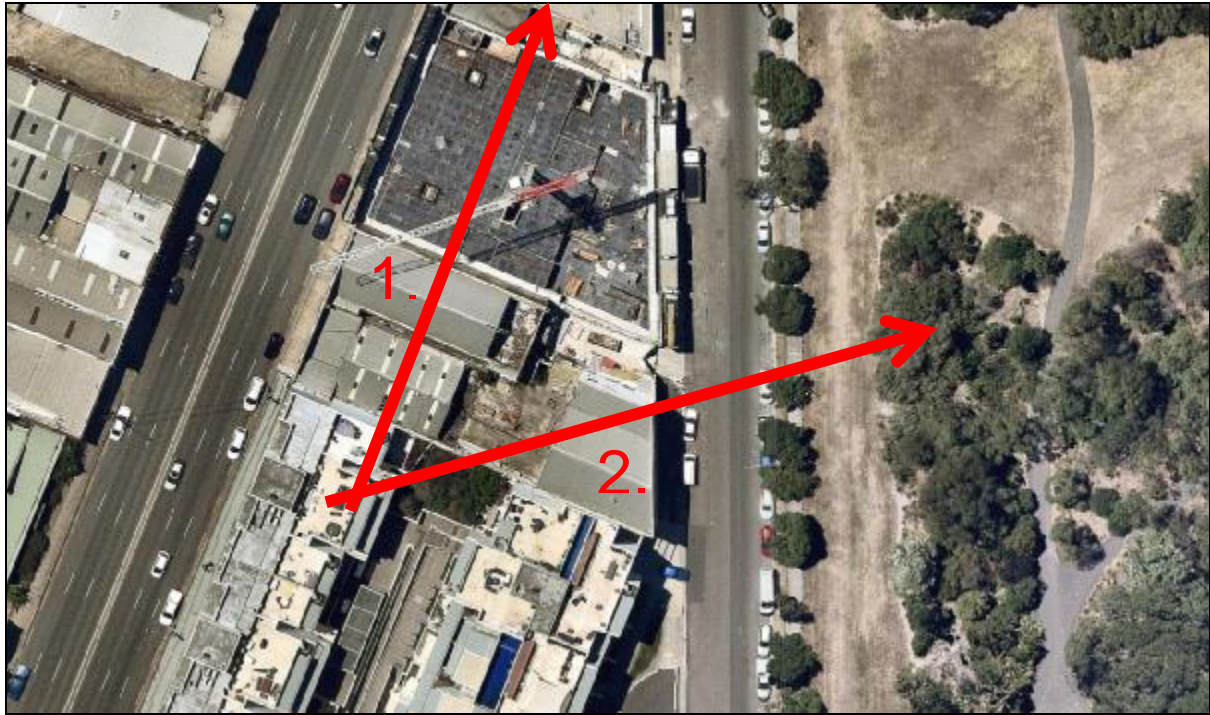
In Land and Environment Court proceedings *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*, Senior Commissioner Roseth established a view sharing principle for the assessment of view losses as a result of development. The ‘Views – general Principles’ Planning Principle developed as a result of that judgement is used hereunder to assess the impact caused by the development in regards to view sharing, specifically paragraphs 25-29 which are reproduced below:

- 25 The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable.) To decide whether or not view sharing is reasonable, I have adopted a four-step assessment.*
- 26 The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*
- 27 The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries*

*is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

- 28 *The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*
- 29 *The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

An assessment of the potential view losses has been carried out in accordance with the above principle as detailed below. The views to be affected are from the roof terrace of Unit 29 in the development at 60-82 Princes Highway (Building A of that development) directly to the south of the site. The building contains a 4 storey mixed use development. The building directly to the west is part of the same development and known as 19-23 Crown Street (Building B) and contains a 4 storey residential flat building also with private roof terraces. The views are indicated in Figure 3 which corresponds with Images 1 and 2 below:



*Figure 3: Views to be affected from the roof terrace of Unit 29*



*Image 1: View 1 to the north, taken from the roof terrace of Unit 29*





*Image 2: View 2 to the north east, taken from the roof terrace of Unit 29*

### **First Step: Type of views to be affected**

The views that would be affected by the proposed development include district views to the north west and over Sydney Park. The views are partially obstructed by the existing 4 storey warehouse building on the subject site and the Crown Street portion of the subject development. Therefore, the district views over Sydney Park are considered partial views.

It is noted that whilst Image 1 does indicate whole views of the Sydney CBD and skyline, the approved development currently under construction at 38-42 Princes Highway directly to the north of the subject site would entirely obstruct those views. For the purposes of this assessment it is considered that the views towards Sydney CBD are excluded by virtue of the approved development to a height of 5 storeys entirely blocking that view (once completed/constructed).

### **Second Step: Where the views are obtained**

The views are obtained from the roof top terrace of the development at No. 60-82 Princes Highway, being Building A of that development. The view is gained at a distance through and over the subject site generally from both standing positions from the roof terrace of Unit 29. Parts of those views are obtained towards the rear boundary over Building B, and parts of those views are obtained over the common northern side boundary with the subject site.

Views towards the east and south west across the buildings front and rear boundaries respectively remain unchanged by the development.



The planning principle stipulates that the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In this instance the view being affected is over a side boundary.

### **Third Step: Extent of the impact**

The third step is to assess the extent of the impact for the whole of the property, not just for the view that is affected. The views throughout the east facing apartments in No. 60-82 Princes Highway remain generally unchanged. Image 3 below shows the view from the balcony servicing Unit 29, which is located on the second floor of that building. It is evident that the views are almost entirely obstructed by existing buildings to the north east and east and this is likely to be the case for all vantage points for every unit located in that building, with the exception of the private roof terraces on the roof top level, of which there are twelve. Because of the close proximity of the development to the roof terraces servicing Units 28, 29 and 30, the impact will be greater.

Furthermore, all east facing units in Building A will retain their existing views. The development does not include any north facing windows or balconies. Views to the north from the private roof terraces, as discussed, are obstructed by the approved development currently under construction at 38-42 Princes Highway directly to the north of the subject site.

Given the extent of view loss when considering the development at No. 60-82 Princes Highway and 19-23 Crown Street in its entirety, the view loss is considered to be negligible.



*Image 3: View 2 to the north east, taken from the balcony of Unit 29*

#### **Fourth Step: Reasonableness of the proposal**

As detailed in the assessment provided within this report, the proposed development appropriately responds to Council's planning controls, with the exception of a height variation.

Notwithstanding the variation to the prescribed height control, it is noted that due to the topography of the land the subject site has a ground level measured at the Barwon Park Road boundary of approximately RL 16.5 and the development to the south has a natural ground level of RL15.1, approximately 1.4 metres lower. The subject site also has a prescribed building height of 17 to 20 metres generally allowing for a height of 5 to 6 storeys, with the development to the south being approved at a height of 4 storeys with roof terraces.

Given the prescribed height standard, the natural topography of the land and the approved development currently under construction at No. 38-42 Princes Highway, even a development which fully complied with the prescribed height control would still result in the same loss of views from the roof terraces of No. 62-80 Princes Highway. Whilst the portion of the development projecting above the retained warehouse building at the south east of the site does contribute marginally to the loss of views, the development is considered to be reasonable and generally consistent with a development that could be expected on the site in accordance with Council's controls.

Having regard to the development potential of the subject site provided by MLEP 2011 and MDCP 2011 and the site orientation, it is not considered that a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the existing views enjoyed by neighbours. This is largely due to the fact that the distant views currently enjoyed are obtained over the top of the subject development site from a side boundary. The development potential of the subject site would have to be significantly reduced below that available under MLEP 2011 and MDCP 2011 in order to maintain a greater level of view sharing.

Having regard to the building envelope permitted on the subject site and on sites further north of the development site along Princes Highway under MLEP 2011, it is unreasonable to expect that the existing views enjoyed from the roof terraces would remain unaffected by any future proposed development on the subject site and adjoining sites. Accordingly, it is considered that it would be difficult to retain any view corridors for the affected properties and in light of this assessment the extent of view loss is considered acceptable.

### **PART 5 – Commercial and Mixed Use Development**

Part 5 of MDCP 2011 contains controls for commercial and mixed use developments as discussed below.

#### (xv) Building Form (Part 5.1.3)

##### *Floor Space Ratio (Part 5.1.3.1) and Height (Part 5.1.3.2)*

The floor space ratio and height controls applying to the site have been discussed on Section 5(a)(v) of this report under the provisions of MLEP 2011.

#### (xvi) Massing and Setbacks (Part 5.1.3.3)

##### **Front massing for new infill development**

Control C7 prescribes that for new infill developments, where the HOB standard is set as 14 metres or greater, the street front portion of the building mass in the front 6 metres must have a maximum height (measured from the footpath level up to the highest point on the front portion of the building) of 12 metres and contain a maximum of three storeys.

The Princes Highway frontage of Building A has a maximum height of 20.3 metres and a maximum of 6 storeys. The Barwon Park Road frontage of Building B has a maximum height of 20.3 metres and a maximum of 5 storeys.

Whilst exceeding the above control in height in metres and storeys, the development is considered acceptable considering the context of the site, the streetscape and the matters discussed throughout Section 5(a)(v)(vi) relating to the maximum height development standard.

#### (xvii) Building Depth (Part 5.1.3.4)

Control C16 prescribes that for building levels on the first floor and above that are designed for residential premises:

- i. *The building envelope depth must be:*
- b. *A maximum depth of 22 metres; and*

- c. *Generally a minimum depth of 10 metres.*
- ii. *The internal plan depth must be:*
  - a. *A maximum depth of 18 metres; and*
  - b. *Generally a minimum depth 10 metres.”*

The development provides dwellings that achieve the minimum and maximum internal plan depth which provides appropriate levels of amenity for future occupants of the dwellings.

#### (xviii) Building Separation (Part 5.1.3.5)

Control C18 specifies the following in relation to building separation within a development:

- “C18 Separation dimensions within a development and between adjoining properties must be:*
- i. *Six storeys and above:*
    - a. *18 metres between habitable rooms or balconies of dwellings and habitable rooms or balconies of dwellings; and*
    - b. *13.5 metres between habitable rooms or balconies of dwellings and non-habitable rooms of dwellings or commercial uses.*
    - c. *9 metres between non-habitable rooms.”*

The development includes 2 buildings, known as Buildings A and B. The development provides a 12 metre separation between the eastern facing balconies and bedrooms of Building A and the western facing balconies and windows of Building B.

The development is built to the northern and southern side boundaries which is consistent with the side setback of the developments to the north and south. There are no neighbouring sites to the front and rear of the development.

Whilst not complying with the minimum prescribed above, the ADG prevails over Council’s controls and the development achieves compliance with the ADG.

#### (xix) Building Detail (Part 5.1.4)

##### 5.1.4.1 Building Frontages - Infill Development

The proposal has been thoughtfully designed, preserves and restores the rear warehouse building and achieves an interesting architectural expression to the new building structures. Form, articulation and materiality have been carefully considered to complement the retained façade.

The selection of materials and finishes includes the retained brick rear warehouse building, dry pressed brick, as well as aluminium panelling to the upper levels and aluminium screening to the facade. The selection of materials and finishes is considered to include elements from the surrounding context and provide a contemporary built form.

##### 5.1.4.2 Active Street Frontage Uses and Shopfront Design

The proposal is considered acceptable having regard to the Active Street Frontage Uses and Shopfront Design controls in the following ways:

- The existing rear warehouse building façade is considered to be a contributory building. The façade is being retained and restored as part of the development. This significantly restricts the ability to provide a continuous active street frontage along the Barwon Park Road elevation.
- The shopfront design of the infill component of the development has been designed at an appropriate scale and proportion to respond to the existing shopfronts found along Princes Highway;
- The proposed commercial tenancy has floor levels that relate to the footpath level;
- The ground floor commercial tenancy will provide an active use component for the building and has a viable floor area that would accommodate a variety of commercial premise with regard to the type of uses likely in the local area;
- A pedestrian awning is proposed along the entire frontage of the site;
- The entry to the residential levels above is clearly identifiable as the residential entry, sheltered, well lit, of adequate size for the movement of residential goods and provided directly from the street frontage; and
- No security shutters are proposed.

(xx) Building Use (Part 5.1.5)

5.1.5.1 *Mixed Use Development*

The development is considered acceptable having regard to the control in Part 5.1.5.1 of the DCP in the following ways:

- The proposal encourages a mixed use development that is compatible with the role and character of the commercial centre;
- The future ground floor commercial use will provide an active street frontage and predominantly accommodate commercial uses; and
- The proposed residential dwellings above the ground floor level will complement the role of the commercial centre.

5.1.5.2 *Dwelling Mix*

The residential component of the development includes the following dwelling mix:

	Required	Proposed
Dwelling Mix Studios	5% - 20%	7 (17%)
1 bedroom	10% - 40%	16 (40%)
2 bedroom	40% - 75%	17 (42%)
3+ bedroom	10% - 45%	0 (0)

The development generally complies with the dwelling mix control, with the exception of the provision of 3 bedroom dwellings. To comply the development would need a minimum of 4 x 3 bedroom dwellings. Despite being contrary to the above dwelling mix, the mix of apartment sizes in this instance is considered acceptable as the development:

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

### 5.1.5.3 Ceiling Heights

The development includes a minimum 3.6 metre floor to ceiling height for the ground floor commercial tenancy and minimum 2.7 metre floor to ceiling heights for all habitable rooms on the floors above the ground floor level which complies with the minimum requirement.

## **PART 9 - STRATEGIC CONTEXT**

The property is located in the Barwon Park (Precinct 26) planning precinct under Marrickville Development Control Plan 2011.

### (xxi) Desired future character (Part 9.26.2)

The development is considered to be consistent with the desired future character of the Barwon Park planning precinct as it achieves the following objectives:

- “1. To allow a diversity of uses including retail, commercial and residential.
2. To utilise the regional open space resource of Sydney Park through encouraging development of residential flat buildings within the precinct and the conversion of existing light industrial buildings and warehouses to residential uses where these are worthy of retention.
4. To allow and encourage a greater scale of development fronting the Princes Highway and at the northern end of Barwon Park Road, whilst ensuring new development is sympathetic to the low scale character of Crown Street.
8. To ensure that ground floor non-residential uses have active fronts facing onto major street frontages to contribute to a vibrant and safe streetscape.
9. To ensure that higher density development demonstrates good urban design and environmental sustainability and provides suitable amenity for occupants of those developments, particularly where fronting the Princes Highway and Campbell Street.
10. To ensure that the design of future development protects the residential amenity of adjoining and surrounding properties.
11. To support pedestrian and cyclist access, activity and amenity including maintaining and enhancing the public domain quality.”

### (xxii) Precinct-specific planning controls (Part 9.26.4)

#### 9.26.4.1 Building Height

Part 9.26.4.1 prescribes that the development must comply with the maximum height and floor space ratio development standards, as well as the maximum height in storeys as indicated in Figure 4 below.

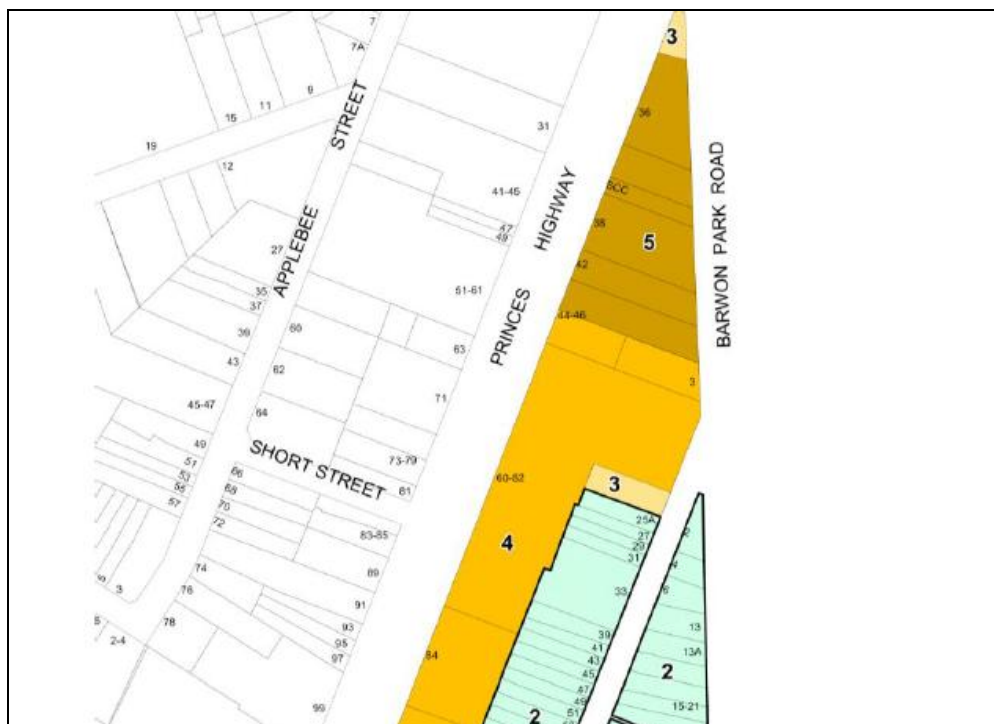


Figure 4: Height limits in the Barwon Park precinct.

Figure 4 prescribes a 4 storey building form for the southern half of the site and a 5 storey form for the northern portion of the site.

Building A provides a 5 storey form along the southern boundary stepping up to a 6 storey form to the north and Building B provides a 4 storey form along the southern boundary, stepping up to a 5 storey form on the northern portion of the site.

Whilst not strictly complying with the built form envisioned by the strategic precinct controls, the development generally complies with the height of buildings development standard prescribed by Clause 4.3 of MLEP 2011 and complies with the space ratio development standard prescribed by Clause 4.4 of MLEP 2011. The appropriateness of the height variation has been discussed in more detail in Section 5(a)(v)(vi) of this report.

#### 9.26.4.2 Public domain interface

The strategic context controls do not prescribe public domain controls for this specific site. Notwithstanding, the development complies with the controls generally for the following reasons:

- A consistent street edge is reinforced on both broad frontages;
- The proposal includes modulation to the front facades;
- The development positively contributes to the public domain and streetscape,
- An awning is provided along the Princes Highway frontage and is integrated with the building design.

#### 9.26.4.3 Building form and massing

The development provides a nil front setback to the Princes Highway frontage in accordance with the strategic context controls.



#### 9.26.4.5 Buildings of Historical Significance

Part 9.26.4.5 of MDCP 2011 prescribes controls for the retention of buildings of historical significance in the precinct. Whilst not acknowledged in this Part as being significant, the existing warehouse building at No. 3 Barwon Park Road is a period warehouse building and is worthy of retention. Council is supportive of the retention, restoration and adaptive reuse of the warehouse building.

#### 5(d) The Likely Impacts

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

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

The site is zoned B4 Mixed Use 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 residents/property owners in the vicinity of the property were notified of the development in accordance with Council's Notification Policy. A total of 9 submissions were received.

During the assessment process the proposal was amended to address a number of concerns raised by Council officers relating to permissibility, materials and finishes, parking and other matters. The amended proposal was not required to be re-notified in accordance with Council's Notification Policy.

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

- Excessive departure from height development standard - See discussions throughout 5(a)(v)(vi);
- Provision of car parking and lack of parking for visitors - See Section 5(b)(v);
- View loss – See Section 5(b)(x);
- Overshadowing to development to the south – See Section 5(b)(iii); and
- Height of building not in accordance with streetscape – See Section 5(b)(xviii).

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

Issue: Matters relating to construction traffic and noise

Comment: Concern is raised relating to a number of construction matters, including the impacts of construction traffic and noise due to Westconnex and the development currently under construction at 38-42 Princes Highway.

Conditions are included in the recommendation requiring Council approval of a Traffic Management Plan for construction vehicles; and that the person acting on this consent shall apply as required for all necessary permits including crane permits, road opening permits, hoarding permits, footpath occupation permits and/or any other approvals under Section 68 (Approvals) of the Local Government Act, 1993 or Section 138 of the Roads Act, 1993.

Conditions are also included in the recommendation restricting construction works to between standard hours to protect the amenity of the neighbourhood. The area is currently undergoing a large redevelopment on multiple sites and this is to be expected considering the rezoning of the sites to B4 Mixed Use development.

All relevant matters raised in the submissions able to be considered under the provisions of Section 4.15 of the Environmental Planning and Assessment Act have been discussed in the report.

### 5(g) The Public Interest

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

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

## 6. Referrals

### 6(a) Internal

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

- Development Engineer
- Tree Management Officer
- Waste Management
- Environmental Services – Contamination
- Architectural Excellence Panel (AEP)

### 6(b) External

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

- Sydney Airport

- Ausgrid

## 7. Section 7.11 Contributions

Section 7.11 contributions are payable for the proposal. The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$708,278.30 would be required for the development under Marrickville Section 94 Contributions Plan 2014. A condition requiring that contribution to be paid is included in the recommendation.

## 8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development and Marrickville Local Environmental Plan 2011 (MLEP 2011) with the exception that the proposal exceeds the maximum height of building development standards. The proposal is generally consistent Marrickville Development Control Plan 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 conditions.

## 9. Recommendation

- C. That the variation to Clause 4.3 Height of Buildings of Marrickville Local Environmental Plan 2011 be supported under the provisions of Clause 4.6 exceptions to development standards.
- D. That Council, as the consent authority pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application No. 201700488 to adaptively reuse the existing warehouse building at No. 3 Barwon Park Road, demolish the remainder of the buildings on the site and construct a 6 storey mixed use building fronting Princes Highway and a 5 storey mixed use building fronting Barwon Park Road containing a total of 3 ground floor commercial tenancies, 40 dwellings and basement car parking at 44-46 Princes Highway, St Peters 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:

Plan No. and Revision No.	Plan/ Certificate Type	Date issued	Prepared by	Date Submitted
DA2.01 3	Demolition – Basement	8 October 2017	Antoniades Architects	24 March 2018
DA2.02 2	Demolition – Ground Floor	6 October 2017	Antoniades Architects	24 March 2018
DA2.03 2	Demolition – Level 01	6 October 2017	Antoniades Architects	24 March 2018
DA2.04 2	Demolition – Level 02	8 October 2017	Antoniades Architects	24 March 2018
DA2.05 2	Demolition – Level 03	6 October 2017	Antoniades Architects	24 March 2018
DA 3.01 14	Basement	7 February 2018	Antoniades Architects	24 March 2018
DA 3.01B 4	Lower Ground Floor	7 February 2018	Antoniades Architects	24 March 2018
DA 3.01C 2	Basement/Lower Ground Floor	5 February 2018	Antoniades Architects	24 March 2018
DA 3.02 15	Ground Floor	7 February 2018	Antoniades Architects	24 March 2018
DA 3.03 7	Level 01	6 October 2017	Antoniades Architects	24 March 2018
DA 3.04 7	Level 02	6 October 2017	Antoniades Architects	24 March 2018
DA 3.05 7	Level 03	6 October 2017	Antoniades Architects	24 March 2018
DA 3.06 7	Level 04	6 October 2017	Antoniades Architects	24 March 2018
DA 3.07 7	Level 05	6 October 2017	Antoniades Architects	24 March 2018
DA 3.08 5	Roof	8 October 2017	Antoniades Architects	24 March 2018
DA 4.01 4	Section A	6 October 2017	Antoniades Architects	24 March 2018
DA 4.02 3	Section B	6 October 2017	Antoniades Architects	24 March 2018
DA 4.03 1	Detail Section	2 February 2018	Antoniades Architects	24 March 2018
DA 5.01 8	Elevations – W & E	2 February 2018	Antoniades Architects	24 March 2018
DA 5.02 5	Elevations – Internal A & B	2 February 2018	Antoniades Architects	24 March 2018

DA 5.03 1	Detail Elevation	2 February 2018	Antoniades Architects	24 March 2018
DA 5.04 1	Façade Detail Elevation	31 January 2018	Antoniades Architects	24 March 2018
DA 5.05 1	North Elevation	23 March 2018	Antoniades Architects	24 March 2018
DA 5.06 1	South Elevation	23 March 2018	Antoniades Architects	24 March 2018
DA 5.07 1	Detail Window Elevation	23 March 2018	Antoniades Architects	24 March 2018
DA 7.01 3	Sample Board	31 January 2018	Antoniades Architects	24 March 2018
LDA-00 A	Landscape Cover Sheet	13 September 2017	Geoscapes	9 October 2017
LDA-01 A	Ground Floor Landscape Plan & Section AA	13 September 2017	Geoscapes	9 October 2017
LDA-02 A	Section BB & Elevation 1	13 September 2017	Geoscapes	9 October 2017
LDA-03 A	Level 3 Landscape Plan	13 September 2017	Geoscapes	9 October 2017
LDA-04 A	Plant Schedule & Palette	13 September 2017	Geoscapes	9 October 2017
885906M	BASIX Certificate	5 October 2017	Planning & Environment	9 October 2017
29862SMrev 1	Geotechnical Assessment	26 September 2017	JK Geotechnics	9 October 2017
17171	Detailed Site Investigation	18 December 2017	ZOIC	23 June 2017
E26720KHrpt rev2	Preliminary Site Investigation	22 September 2017	EIS	9 October 2017
-	Heritage Impact Statement	September 2017	John Cultram Heritage & Design	9 October 2017
20171354.1/0927A/R1/TT	Acoustic Report	27 September 2017	Acoustic Logic	9 October 2017

And details submitted to Council with the application for development consent and as amended by the following conditions.

Reason: To confirm the details of the application submitted by the applicant.

2. The following is a condition imposed by Ausgrid:

a) **Method of Electricity Connection**

The method of connection will be in line with Ausgrid's Electrical Standard (ES)1 – 'Premise Connection Requirements.

b) **Supply of Electricity**

It is recommended for the nominated electrical consultant/contractor to provide a preliminary enquiry to Ausgrid to obtain advice for the connection of the proposed development to the adjacent electricity network infrastructure. An assessment will be carried out based on the enquiry which may include whether or not:

- The existing network can support the expected electrical load of the development
- A substation may be required on-site, either a pad mount kiosk or chamber style and;
- site conditions or other issues that may impact on the method of supply.

Please direct the developer to Ausgrid's website, [www.ausgrid.com.au](http://www.ausgrid.com.au) about how to connect to Ausgrid's network.

c) **Conduit Installation**

The need for additional electricity conduits in the footway adjacent to the development will be assessed and documented in Ausgrid's Design Information, used to prepare the connection project design.

d) **Proximity to Existing Network Assets**

**Overhead Powerlines**

There are existing overhead electricity network assets in the Princes Hwy. Safework NSW Document – Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.

The "as constructed" minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid's website, [www.ausgrid.com.au](http://www.ausgrid.com.au). Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost.

It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected be entering and leaving the site.

**Underground Cables**

There are existing underground electricity network assets in the Princes Hwy and Barwon Park Rd including transmission cables in Barwon Park Rd.

Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed.

Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area.

Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.

Safework Australia – Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables.

**Substation**

There are existing electricity substation assets at 23 Crown St.

The substation ventilation openings, including substation duct openings and louvered panels, must be separated from building air intake and exhaust openings, natural ventilation openings and boundaries of adjacent allotments, by separation distances which meet the requirements of all relevant authorities, building regulations, BCA and Australian Standards including AS 1688.2: The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings.

In addition to above, Ausgrid requires the substation ventilation openings, including duct openings and louvered panels, to be separated from building ventilation system air intake and exhaust openings, including those on buildings on adjacent allotments, by not less than 6 metres.

Exterior parts of buildings within 3 metres in any direction from substation ventilation openings, including duct openings and louvered panels, must have a fire rating level (FRL) of not less than 180/180/180 where the substation contains oil-filled equipment.

The development must comply with both the Reference Levels and the precautionary requirements of the

Draft Radiation Protection Standard for Exposure Limits to Electric and Magnetic Fields 0 Hz – 3 kHz (ARPANSA, 2006).

For further details on fire segregation requirements refer to Ausgrid's Network Standard 141.

Existing Ausgrid easements, leases and/or right of ways must be maintained at all times to ensure 24 hour access. No temporary or permanent alterations to this property tenure can occur without written approval from Ausgrid.

For further details refer to Ausgrid's Network Standard 143.

Reason: To confirm the terms of Ausgrid's approval.

3. The existing industrial warehouse building facing Barwon Park Road is to be retained and restored in accordance with the approved plans. The structural support for the new additions to the building to be retained is to be constructed in accordance with the structural engineering drawings to be prepared by and site instructions from M+G Consulting Engineers to ensure that the industrial warehouse is retained. If damages to any fabric to be retained of the warehouse occur during construction, works shall stop immediately and Council shall be contacted to inspect the site.

Reason: To confirm the terms of Council's approval.

4. Antoniadis Architects shall be engaged to prepare the drawings for any Construction Certificate.

Reason: To confirm the terms of Council's approval.

5. The development is approved to a maximum height of 38.7 metres above Australian Height Datum (AHD). Should the height be exceeded a new application must be submitted in accordance with the Civil Aviation (Building Control) Regulations 1988.

Reason: To ensure compliance with the approval granted under the Civil Aviation (Building Control) Regulations 1988.

3. Should the height of any temporary structure and/or equipment be greater than 15.24 AEGH metres, a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.

Reason: To ensure compliance with the approval granted under the Civil Aviation (Building Control) Regulations 1988.

4. Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Airports (Protection of Airspace) Regulations; Sydney Airport Corporation Limited advises that approval to operate construction equipment (i.e. Cranes) should be obtained prior to any commitment to construct.



Reason: To ensure compliance with the approval granted under the Civil Aviation (Building Control) Regulations 1988.

5. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Reason: To ensure the work is carried out to an acceptable standard and in accordance with the Building Code of Australia.

6. 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.

Reason: To ensure the development is carried out in accordance with this Determination.

7. The materials and finishes of the building constructed pursuant to this consent must be strictly in accordance with the materials and finishes documentation as referenced in Condition 1 of this Determination. No changes may be made to these drawings except by way of an application under section 4.55 of the *Environmental Planning and Assessment Act 1979*. The simplification or diminution of the quality of the architectural resolution, architectural expression and external finishes is not permitted.

Reason: To ensure the final built development has an appearance that accords with the approved materials and finishes.

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

Reason: To ensure the aesthetics of the building and architecture are maintained.

9. A minimum of 8 adaptable dwellings must be provided in accordance with Part 2.5 of Marrickville Development Control Plan 2011 - Equity of Access and Mobility.

Reason: To make reasonable provision in the development to provide residential accommodation suitable for people with a disability.

10. A total of 24 off-street car parking spaces must be provided and maintained at all times in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 - Parking. The parking must be allocated as follows:

- a) 19 spaces being allocated to the residential dwellings;
- b) 4 accessible car parking spaces being allocated to adaptable dwellings;
- c) 1 accessible car parking space allocated to a retail/commercial tenancy;

All accessible car spaces must be provided and marked as disabled car parking spaces.

Reason: To ensure practical off-street car parking is available for the use of the premises.

11. A minimum of 3 motorcycle parking spaces must be provided and maintained for each of the approved Buildings. The design of require motorcycle parking spaces must be in accordance with the relevant provision of Part 2.10 of Marrickville Development Control Plan 2011 – Parking and be for the exclusive use of residents.  
Reason: To confirm the number of motorcycle parking spaces and the terms of Council's approval.
12. 31 off-street bicycle parking spaces must be provided, paved, line marked and maintained at all times in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 - Parking.  
Reason: To ensure practical off-street car parking is available for the use of the premises.
13. All parking spaces and turning area thereto being provided in accordance with the design requirements set out within Part 2.10 of Marrickville Development Control Plan 2011 - Parking, and must be used exclusively for parking and not for storage or any other purpose.  
Reason: To ensure adequate maneuverability to all car parking spaces and that the spaces are used exclusively for parking.
14. The resident car parking spaces for the non-adaptable dwellings must be allocated based on unit type in accordance with the rates specified in Table 1: On site car parking requirements for Parking Area 2 under Part 2.10 of Marrickville Development Control Plan 2011 – Parking.  
Reason: To ensure the equitable distribution of the required car parking spaces.
15. A total of 26 storage cages must be maintained in accordance with the plans approved under Part B Condition 1. The distribution of storage cages must ensure that all units are provided with a storage cage consistent with the unit size in accordance with the provisions of the Residential Flat Design Code.  
Reason: To ensure the allocation of suitable storage to each unit.
16. The use of the premises shall not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the Protection of the Environment Operations Act 1997 and Regulations. The use of the premises and the operation of plant and equipment shall not give rise to the transmission of a vibration nuisance or damage other premises.  
Reason: To prevent loss of amenity to the area.
17. The ongoing use of the ground floor commercial tenancies complying with the following requirements at all times:
  - a) The shop window display areas must be maintained at all times with no roller shutters being installed across the shop fronts;
  - b) The hours of operation are restricted to between the hours of 7.00am to 5:00pm daily.
  - d) All loading and unloading in connection with the use must be carried out wholly within the property, during the approved hours of operation and in such a manner so as to not cause an inconvenience to the public;
  - e) No storage of goods or equipment external to any building on the site is permitted; and
  - f) No signs or goods must be displayed for sale or stored on the footpath in front of the premises at any time without the prior approval of Council.  
Reason: To ensure that the commercial use is confined to the ground floor shop areas, to preserve the streetscape and character of the area and to ensure

that the operation of the premises does not interfere with the amenity of the locality.

18. Separate Development Consent or Complying Development Certificate must be obtained prior to the erection of any advertisements or advertising structures. The shop windows must not be painted with advertisements and no flashing lights are to be installed on the premises.

Reason: To confirm the terms of Council's approval.

19. The following is a waste condition:

- a) The owners of the property appointing a designated person(s) responsible for moving waste bins from their usual storage space in the basement to the place to the collection point for the storage of domestic bins being in accordance with details to be submitted to Council's satisfaction;
- b) Tenants (commercial and residential) shall be advised to anticipate heightened noise levels during garbage collection;
- c) Council is to be provided with key access or similar to the ground floor fronting Barwon Park Road to facilitate on-site garbage collection from the temporary waste holding area.
- d) Should the waste conditions not be met, Council reserves the right to reconsider servicing the site for garbage collection, in accordance with Council's Fees and Charges.
- e) No compaction of waste is permitted within the development in accordance Part 2.21 of Marrickville Development Control Plan 2011 – Site Facilities and Waste Management.
- f) The person acting on this consent shall advise any purchaser or prospective tenant of this condition.
- g) To ensure minimal impacts on surrounding properties commercial waste and recyclable material generated by the premises must not be collected between the hours 9pm and 8am

Reason: To ensure the appropriate collection and disposal of waste generated on the site and to ensure that the use does not interfere with the amenity of the surrounding neighbourhood and does not affect the commercial operation of the building.

20. 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.

Reason: To ensure that the development is adequately serviced.

21. The proposed awning shall be of cantilever type and be set back at least 600mm from the kerb line. The proposed awning shall be designed so as to be easily removed if required in future (concrete awnings will not be permitted). The awning shall include pedestrian lighting (Category P3 - AS1156) and shall be maintained by the property owner(s). The owner shall maintain, modify or remove the structure at any time if given notification by Council or RMS to do so. All works shall be at no cost to Council or the RMS.

22. Owners and occupants of the proposed building shall not be eligible to obtain parking permits under any existing or future resident parking scheme for the area. The person acting on this consent shall advise any purchaser or prospective tenant of this condition. In addition the by-laws of any future residential strata plans created for the property shall reflect this restriction.

23. All stormwater drainage being designed in accordance with the provisions of the Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3600.3-2003 'Stormwater Drainage' and Marrickville Council Stormwater and On Site Detention Code. Pipe and channel drainage systems shall be designed to cater for the twenty (20) year Average Recurrence Interval (A.R.I.) storm in the case of low and medium residential developments, the twenty (20) year A.R.I. storm in the case of high density residential development and commercial and/or industrial developments and the fifty (50) year A.R.I. storm in the case of heavy industry. In all cases the major event surface flow paths shall be designed to cater for the one hundred (100) year A.R.I. storm.
24. Should the proposed development require the provision of an electrical substation, such associated infrastructure shall be incorporated wholly within the development site. Before proceeding with your development further, you are directed to contact Ausgrid directly with regard to the possible provision of such an installation on the property.
25. Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system. Alternatively the basement or any below ground structure shall be design to be "tanked" preventing the ingress of seepage or groundwater.

#### **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 Building Code of Australia.

26. An Asbestos Survey prepared by a suitably qualified Occupational Hygienist shall be prepared for the premises. The Survey is to incorporate appropriate Asbestos removal and disposal methods in accordance with the requirements of WorkCover NSW, NSW Environmental Planning and Assessment Amendment (Asbestos) Regulation 2009 and NSW Environment Protection Authority, Safe Removal of Asbestos 2nd Edition [NOHSC: 2002 (2005)] and conditions of this consent.

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

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to any works on site commencing or the issue of the Construction Certificate (whichever occurs first).  
Reason: To ensure the site is suitable for the proposed use.

27. No work must commence until:
  - a) A PCA has been appointed. Where Council is appointed ensure all payments and paper work are completed (contact Council for further information). Where an Accredited Certifier is the appointed, Council must be notified within 2 days of the appointment; and
  - b) A minimum of 2 days written notice must be given to Council of the intention to commence work.

Reason: To comply with the provisions of the Environmental Planning and Assessment Act.

28. 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.  
Reason: To comply with the provisions of the Environmental Planning and Assessment Act.
29. Sanitary facilities are to 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 are to be located so that they will not cause a nuisance.  
Reason: To ensure that sufficient and appropriate sanitary facilities are provided on the site.
30. 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.  
Reason: To secure the area of the site works maintaining public safety.
31. A rigid and durable sign must be erected in a prominent position on the site, before work commences. The sign must be maintained at all times until all work has been completed. The sign is to include:
- The name, address and telephone number of the PCA;
  - A telephone number on which Principal Contractor (if any) can be contacted outside working hours; and
  - A statement advising: 'Unauthorised Entry To The Work Site Is Prohibited'.
- Reason: To maintain the safety of the public and to ensure compliance with the Environmental Planning and Assessment Regulations.
32. A Soil and Water Management Plan must be prepared in accordance with Landcom Soils and Construction, Volume 1, Managing Urban Stormwater (Particular reference is made to Chapter 9, 'Urban Construction Sites') and submitted to and accepted by the PCA. A copy of this document must be submitted to and accepted by PCA before work commences. The plan must indicate:
- Where the builder's materials and waste are to be stored;
  - Where the sediment fences are to be installed on the site;
  - What facilities are to be provided to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way; and
  - How access to the site will be provided.
- All devices must be constructed and maintained on site while work is carried out.  
Reason: To prevent soil erosion and sedimentation of the stormwater network.
33. The person acting on this consent is responsible for arranging and meeting the cost of dilapidation reports prepared by a suitably qualified person. The reports are to include colour photographs and must be submitted to the Certifying Authority's satisfaction, with a colour copy being provided to Council and the respective property owner(s) of the identified properties, before work commences, on the buildings on the adjoining properties at Nos. 38-42 Princes Highway, 80-82 Princes Highway and 19-23 Crown Street if the consent of the adjoining property owner(s) can be obtained. In the event that the consent of the adjoining property owner(s) cannot be obtained copies of the

letter/s that have been sent via registered mail and any responses received must be forwarded to the PCA before work commences.

Reason: To catalogue the condition of the adjoining properties for future reference in the event that any damage is caused during work on site.

34. Before commencing works the person acting on this consent must provide a contact number for a designated person to be available during the demolition and construction for residents to contact regarding breaches of consent or problems relating to the construction.
35. 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.

36. The person acting on this consent shall submit to the Principal Certifying Authority a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site before the issue of a Construction Certificate.
37. The person acting on this consent shall ensure the site is secured with temporary fencing prior to any works commencing.

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

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

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

- 38. A detailed Traffic Management Plan to cater for construction traffic shall be submitted to and approved by Council before commencement of works. Details shall include haulage routes, estimated number of vehicle movements, truck parking areas, work zones, crane usage, etc., related to demolition/construction activities.
- 39. Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands shall take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

**BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE**

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

- 40. a) This condition is imposed in accordance with Section 7.11 of the Environmental Planning and Assessment Act 1979.
- b) Before the issue of a Construction Certificate, the Council must be paid a monetary contribution of \$708,278.30 indexed in accordance with Marrickville Section 94/94A Contributions Plan 2014 ("CP").

The above contribution is the contribution applicable as at 24 March 2018.

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

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

**(CONTRIBUTION PAYMENT REFERENCE NO. DC002224)**

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

Community Facilities	\$73,137.66
Plan Administration	\$13,887.62
Recreation Facilities	\$606,092.88
Traffic Facilities	\$15,160.14
- d) A copy of the CP can be inspected at Council's offices at 2-14 Fisher Street, Petersham or online at <http://www.marrickville.nsw.gov.au>.
- e) The contribution must be paid either in **cash, by unendorsed bank cheque (from an Australian Bank only), via EFTPOS (Debit only) or credit card**.

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



**Reason:** To ensure provision is made for the increase in demand for public amenities and services required as a consequence of the development being carried out.

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

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

For more information on how to calculate the amount payable and where payments can be made contact the Long Services Payments Corporation.

<http://www.lspc.nsw.gov.au>.

**Reason:** To ensure that the required levy is paid in accordance with the Building and Construction Industry Long Service Payments Act.

42. A statement from a qualified Architect, verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design principles set out in Schedule 1 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

**Reason:** To comply with the requirements under State Environmental Planning Policy No. 85 – Design Quality of Residential Apartment Development.

43. All plumbing and ductwork including stormwater downpipes must be concealed within the outer walls of the building so they are not visible. Plans and elevations detailing the method of concealment must be submitted to and approved by Council before the issue of a Construction Certificate. Any variation to this requirement requires Council approval.

**Reason:** To ensure the aesthetics of the building and architecture are maintained.

44. Before the issue of a Construction Certificate, amended plans shall be submitted to Council's Coordinator Waste Services Operations satisfaction that indicates:

- a) All waste and recycling storage or interim rooms must be in accordance with Figure 1 of Part 2.21 of MDCP 2011 and incorporate an appropriate tap with hose fitting, drain to Sydney Water approved drainage connection, signage showing appropriate content for general, recycling and green waste bins, smooth concrete floor graded to drain, roller door that is durable; self-closing; able to be opened from inside; wide enough for easy passage of bins;
- b) Doorways that are wide enough to allow a 660L/1100L bin to access all waste rooms in the building and appropriate recycling collection points on each residential level.
- c) Designated areas or separate garbage rooms constructed in accordance with Council's Policy for Waste Minimisation in Part 2.21 of Marrickville Development Control Plan 2011 - Site Facilities and Waste Management, to facilitate the separation of commercial waste and recycling from residential waste and recycling.
- d) Space for communal composting on site located within the ground floor communal open space area.

**Reason:** To ensure compliance with Part 2.21 of Marrickville Development Control Plan 2011 – Site Facilities and Waste Management of MDCP 2011.

45. Letterboxes and mail collection facilities must be provided and adequately protected in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

**Reason:** To ensure adequate mail collection facilities are provided.

46. Lighting details of the pedestrian areas, parking areas and all entrances must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

**Reason:** To ensure appropriate lighting is provided to create a safe living environment.

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

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

**Reason:** To ensure that the BASIX commitments are incorporated into the development.

48. Noise attenuation measures must be incorporated into the development complying with Australian Standard 2021:2015, State Environmental Planning Policy (Infrastructure) 2007 and with the Department of Planning and Infrastructure's Development Assessment Guideline titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines" in relation to interior design sound levels and in accordance with details being submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate together with certification by a suitably qualified acoustical engineer that the proposed noise attenuation measures satisfy the requirements of Australian Standard 2021:2015, State Environmental Planning Policy (Infrastructure) 2007 and with the Department of Planning and Infrastructure's Development Assessment Guideline titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines".

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

49. Before the issue of a Construction Certificate an amended plan must be submitted to the Certifying Authority's satisfaction addressing the requirements of The Disability (Access to Premises – buildings) Standards 2010 (the Premises Standards).

**Reason:** To ensure that the premises are accessible to all persons.

50. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. **Application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's website at [www.sydneywater.com.au](http://www.sydneywater.com.au) then the "e-developer" icon or telephone 13 20 92.**

Following application a "Notice of Requirements" will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

Sydney Water written advice that you have obtained the Notice of Requirements must be submitted to Council's satisfaction before the issue of a Construction Certificate.

Reason: To comply with the requirements of that Act.

51. All plant and associated equipment must be located within the approved building envelope and is not be located on the roof. Details on the location of all plant and equipment must be consistent with the approved plans and submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

Reason: To confirm the terms of Council's approval.

52. Waste water arising from the use must be directed to the sewers of the Sydney Water under a Trade Waste License Agreement. The pre-treatment of wastewater may be a requirement of Sydney Water prior to discharge to the sewer. Details of the requirements of the Trade Waste Agreement must be obtained prior to the issue of a Construction Certificate. Plans detailing how compliance will be achieved must be prepared and submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate.

Reason: To confirm the terms of Council's approval.

53. Before the issue of a Construction Certificate an amended Landscape Plan must be submitted to the consent authority's satisfaction indicating the provision of five (5) advanced street trees in accordance with the following criteria.

- a) Three (3) new trees shall be located within the footpath outside the subject property on Princes Highway. The species of tree selected shall be *Lophostemon confertus*.
- b) Two (2) new trees shall be located within the footpath outside the subject property on Barwon Park Road. The species of tree selected shall be *Angophora floribunda*.
- c) All planting stock size shall be minimum 150 litres.
- d) The planting stock shall comply with Australian Standard Tree stock for landscape use AS 2303—2015.
- e) The new tree shall be planted by a qualified horticulturist or arborist, with a minimum qualification of Certificate 3.
- f) The tree pit dimensions and staking detail shall be in accordance with Detail 6 on page 133 of the Marrickville Street Tree Master Plan 2014 (available online).
- g) The new street trees shall be maintained in a healthy and vigorous condition during an establishment period of 12 months.
- h) If any tree dies or is removed during the establishment period it shall be replaced with the same species tree in accordance with these conditions at the expense of the applicant.
- i) Upon completion of planting the applicant shall arrange an inspection by Council's Public Tree Coordinator (call 8595 2432) to approve the installation. If trees are unsatisfactory and not in accordance with conditions they will be rejected and replaced at the expense of the applicant.
- j) A Street Tree Planting/Landscape Plan outlining tree planting details must be submitted to the Council's Urban Forest Manager's satisfaction before the issue of a Construction Certificate. These must include dimensions for tree pits and details of a vauli style structural soil with a minimum of 20-30m<sup>3</sup> available soil volume for each tree. It needs to be demonstrated that adequate soil volume can be provided for all trees. Refer to Appendix 8.6 (Detail 5) of the Marrickville Street Tree Master Plan 2014.

Reason: To confirm the terms of Council's approval.

54. 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 (FOOI)	\$38,700
Inspection fee (FOOTI)	\$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.

55. The stormwater drainage plans by IGS Integrated Group Services shall be amended and additional information provided as follows:
  - i. Details of the 1 in 100 year overflow route in case of failure/blockage of the drainage system shall be provided at all levels;
  - ii. Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system. Alternatively the basement shall be fully "tanked" so as not to allow the ingress of seepage or groundwater.
  - iii. Provision of construction details for a reinforced concrete pipe connecting the site stormwater to Council's stormwater drainage system in Barwon Park Road or in Crown Street. Details shall include a long section, utility service details, pit details, minimum cover provided, bedding and backfilling details. The pipe size and class shall be in accordance with current Concrete Pipe Association guidelines.
  - iv. A WSUD Strategy Report and a MUSIC model (including .sqz file) shall be provided to ensure the treatment measures proposed meet Council's water quality targets (for sites with a GFA greater than 2000sqm).
  - v. A detailed WSUD maintenance plan outlining how all elements of the water quality treatment facility will be maintained and to record annual inspections/maintenance works to be undertaken; and

The above additional information and amendments to the plans to suit the above requirements shall be submitted to and approved by Council before the issue of a Construction Certificate.

56. In order to provide satisfactory vehicular and pedestrian access, drainage, landscaping and aesthetic improvements to the public domain adjacent to the site, the following works shall be undertaken at no cost to Council:
- a) The public domain along all frontages of the site inclusive of footpath paving, kerb, street trees, landscaping, street furniture, etc. shall be reconstructed and upgraded in accordance with the Street Tree Masterplan and the Marrickville Public Domain Design Guide; Council's standard plans and specification in place for Princes Highway at the time the works are undertaken;
  - b) The construction of heavy duty vehicular crossings to all vehicular access locations and removal of all redundant vehicular crossings to the site;
  - c) New kerb and gutter along the frontages of the site. The kerb type (concrete or stone) shall be consistent with the majority of kerb type at this location. Council may be able to assist with the supply of stone if required. Please contact Council's Infrastructure Services Division on 9335 2000; and
  - d) Cross sections are to be provided at the boundary at a minimum distance of every 5m and at all pedestrian and vehicular access locations. Note, the cross fall of the footpath shall be set at 2.5%. These sections will set the alignment levels at the boundary.

Full detailed construction plans and specifications shall be submitted to Council for approval under Section 138 of the Roads Act 1993 before the issue of a Construction Certificate with all works completed before to the issue of an Occupation Certificate.

57. The vehicular crossing and driveway ramp to the site shall be designed to satisfy the ground clearance template (Figure C1) from Australian Standard AS/NZS 2890.1-2004 Parking Facilities: Off-street car parking. A long section, along both sides of the proposed vehicular crossing and ramp, drawn at a 1:20 natural scale, shall be submitted to and approved by Council before the issue of a Construction Certificate. The long section shall begin from the centreline of the adjacent road to 3 metres past the bottom of the ramp.
58. The vehicular access and associated vehicle standing areas shall be designed in accordance with Australian Standard AS/NZS 2890.1-2004 Parking Facilities: Off-street car parking, and AS/NZS 2890.6-2009 Parking facilities: Off-street parking for people with disabilities so that
- a) The width of the driveway access shall be increased to 3.6m in width with a minimum of 2.2m provided at the entry/egress. The required widening of the vehicle driveway and roller door should minimise impacts on the appearance of the original brick and concrete lintel and the proportions and rhythm of the heritage facade.
  - b) The vehicular access ramp shall be controlled by traffic signals providing priority to ingressing vehicles. Details of the traffic signals and operation thereof shall be submitted to and approved by Council; and
  - a) A speed hump, convex mirrors and a stop line (all within the property boundary) shall be provided at the entry/egress and the adjacent doorway shall be constructed as an open type entry so as to improve sightlines to pedestrians.

Details of compliance with the above requirements shall be submitted to and approved by Council before the issue of a Construction Certificate.

**SITE WORKS**

59. Any new information revealed during development works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.

Reason: To ensure the site is suitable for the proposed use.

60. Unless otherwise approved by Council, excavation, demolition, construction or subdivision work shall only be permitted during the following hours:
- 7:00 am to 6:00 pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
  - 8:00 am to 1:00 pm on Saturdays with no demolition works occurring during this time; and
  - at no time on Sundays or public holidays.

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

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

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

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

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

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

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

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

Reason: To minimise the effect of the development during the construction period on the amenity of the surrounding neighbourhood.

61. During any construction works and activities, 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.

Reason: To ensure the construction of the development does not affect the amenity of the neighbourhood.

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

Reason: To ensure that the area surrounding the building work is satisfactorily reinstated.

63. 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'.

Reason: To ensure the public ways are not obstructed and the placement of waste storage containers in a public place are not dangerous to the public.

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

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

Reason: To ensure that the demolition work is carried out safely and impacts on the surrounding area are minimised.

65. The works are required to be inspected at critical stages of construction, by the PCA or if the PCA agrees, by another certifying authority. The last inspection can only be carried out by the PCA. The critical stages of construction are:

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



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

Reason: To ensure the building work is carried out in accordance with the Environmental Planning and Assessment Regulations and the National Construction Code (Building Code of Australia).

66. If it is necessary to excavate below the level of the base of the footings of a building on the adjoining allotments, including a public place such as footways and roadways, the person acting on this consent must ensure:
- a) At least 7 days' notice is given to the owners of the adjoining land of the intention to excavate below the base of the footings. The notice is to include complete details of the work; and
  - b) That any building is preserved and protected from damage.

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

Reason: To ensure that adjoining buildings are preserved, supported and the condition of the buildings on the adjoining property catalogued for future reference in the event that any damage is caused during work on site.

67. 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.
68. Satisfactory methods and/or devices must be employed on the site to prevent the tracking of mud/dirt onto the surrounding streets from vehicles leaving the site.  
Reason: To prevent soil particles from being tracked and deposited onto the streets surrounding the site.
69. A clear unobstructed path of travel of not less than 1,000mm must be provided to all exits and paths of travel to exits.  
Reason: To provide safe egress in case of fire or other emergency.
70. All builders' refuse, spoil and/or material unsuitable for use in landscape areas must be removed from the site on completion of the building works.  
Reason: To protect the environment.
71. Landscaping of the site must be carried out prior to occupation or use of the premises in accordance with the approved plan, and must be maintained at all times to Council's satisfaction.  
Reason: To ensure adequate landscaping is maintained.
72. The applicant shall, within fourteen (14) days of notification by Council, execute any and all maintenance works required by Council. In the event that the applicant fails to undertake such work, Council may undertake the required maintenance works, utilising part or all of the maintenance security bond and Council may recover any costs in excess of the security from the applicant.

73. To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, shall be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Marrickville Council Stormwater and On Site Detention Code. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled.

#### BEFORE OCCUPATION OF THE BUILDING

74. Any soil proposed to be disposed off site must be classified, removed and disposed of in accordance with the EPA Environmental Guidelines; Assessment, Classification and Management of Liquid and Non-Liquid Wastes 1999 and the Protection of the Environmental Operations Act 1997.

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 Occupation Certificate.

Reason: To ensure the site is suitable for the proposed use.

75. Following completion of construction and prior to the issue of the Occupation Certificate, 10 new trees shall be planted. The new trees shall be planted in accordance with the following criteria:
- The new trees shall be located in accordance with the landscape plan (Geoscapes, 15/9/17).
  - The species of trees shall be as detailed in the landscape plan (Geoscapes, 15/9/17).
  - The planting stock sizes shall be at least that listed in the landscape plan (Geoscapes, 15/9/17).
  - The planting stock shall comply with the Australian Standard *Tree Stock for Landscape Use AS 2303-2015*.
  - Adequate soil volumes shall be provided to ensure proper establishment and ongoing good health, vigour and growth.
  - The new trees shall be planted by a qualified horticulturist or arborist, with a minimum qualification of Certificate 3.
  - Each replacement tree shall be maintained in a healthy and vigorous condition until it attains a height of 5 metres, from which time it is protected by MDCP 2011.
  - If any tree dies or needs to be removed before that time it shall be replaced with a similar tree in accordance with these conditions at the expense of the applicant.

Reason: To ensure that the new trees provide adequate and appropriate compensation, are planted in a suitable location and maintained properly.

76. The project landscape architect shall certify in writing to the Principal Certifying Authority (PCA) before the issue of the Occupation Certificate that the conditions of consent relating to tree planting have been complied with or, if the recommendations have not been complied with, detail the extent and nature of the departure from the conditions. The Principal Certifying Authority shall report breaches of the conditions to Inner West Council.

Reason: To ensure that conditions that aim to ensure the sustainability of Inner West urban forest are complied with.

77. 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.

Reason: To comply with the provisions of the Environmental Planning and Assessment Regulations.

78. 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.

Reason: To comply with the provisions of the Environmental Planning and Assessment Act.

79. 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 shall be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

Reason: To ensure compliance with the relevant provisions of the Environmental Planning and Assessment Regulations and Building Legislation Amendment (Quality of Construction) Act.

80. The separate lots comprising the development must be consolidated into one lot and under one title and registered at the NSW Department of Lands before the issue of a Occupation Certificate.

Reason: To prevent future dealing in separately titled land, the subject of one consolidated site development.

81. The Section 73 Certificate must be submitted to the Principal Certifying Authority before the issue of an Occupation Certificate.

- a) A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Make early application for the certificate.

as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

- b) Application must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Plumbing, building and developing > Providers > Lists or telephone 13 20 92.

Reason: To ensure compliance with Sydney Water requirements.

82. The landscaping of the site must be carried out prior to occupation or use of the premises in accordance with the approved details and must be maintained at all times to Council's satisfaction.

Reason: To ensure adequate landscaping is maintained.

83. Upon completion of the development, a statement from a qualified Architect, verifying that the development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design principles set out in Schedule 1 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development must be submitted to the Certifying Authority's satisfaction before the issue of an Occupation Certificate.

Reason: To comply with the requirements under State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.

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

Reason: To ensure that all of the BASIX commitments have been fulfilled and to comply with the requirements under Section 154B of the Environmental Planning and Assessment Regulations 2000.

85. The Certifying Authority must apply to the Director-General for a BASIX Completion Receipt within 2 days of the issue of a final Occupation Certificate. Completion Receipts can be applied for at [www.basix.nsw.gov.au](http://www.basix.nsw.gov.au).

Reason: To ensure compliance with the requirements under Section 154C of the Environmental Planning and Assessment Regulations 2000.

86. a) Upon completion of the required noise attenuation measures referred to in the "Before the Issue of a Construction Certificate" Section of this Determination and before the issue of an Occupation Certificate (whether an interim or final Occupation Certificate), a report must be prepared and submitted to the Certifying Authority's satisfaction by an accredited Acoustics Consultant, certifying that the final construction meets Australian Standard 2021:2015, State Environmental Planning Policy (Infrastructure) 2007 and with the Department of Planning and Infrastructure's Development Assessment Guideline titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines" as set down in the subject condition of this consent. Such report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development; and

- b) Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a further certificate must be prepared and submitted to Council in accordance with the requirements as set down in Part a) of this condition.

Reason: To reduce noise levels within the dwellings from aircraft and rail noise and to ensure that the noise attenuation measures incorporated into the dwellings satisfactorily comply with the relevant sections of Australian Standard

2021:2015, State Environmental Planning Policy (Infrastructure) 2007 and with the Department of Planning and Infrastructure's Development Assessment Guideline titled 'Development Near Rail Corridors and Busy Roads - Interim Guidelines'.

87. Before the issue of an Occupation Certificate, a street number and identifier of separate occupancies (if applicable) must be clearly displayed in a readily visible location (numbers having a height of not less than 75mm). If any new street numbers or change to street numbers (this includes unit and shop numbers) are required they must have the prior approval of council before being displayed.  
Reason: To ensure that the building is easily identifiable.
88. Before the issue of an Occupation Certificate (interim or final) the person acting on this consent must contact Council's Coordinator, Resource Recovery to arrange the following number of bins in relation to the residential component of the approved development:
- 5 x 660L bins for general waste streams;
  - 9 x 660L for recycling waste streams; and
  - Up to 5 x 660L green waste bins.
- Reason: To confirm the operation and servicing of the site meets Council's requirements prior to occupation or use of the building.
89. Before the issue of an Occupation Certificate (interim or final) the person acting on this consent must contact Council's Coordinator, Resource Recovery and confirm the key lock system to be installed on the residential interim waste storage areas accessible from McGill Street.  
Reason: To confirm the operation and servicing of the site meets Council's requirements prior to occupation or use of the building.
90. The terms of the right of carriageway (under sections 88B and E of the Conveyancing Act 1919) shall be made upon the site in the following manner:
- a) Full and free right for the Authority Benefited, its employees, contractors and every person authorised by it, to, at all times:
    - i. Go, pass, repass and stand upon the Lot Burdened for the purpose of the removal of recyclable products, general waste and green waste products with or without vehicles; and
    - ii. Enter upon the Lot Burdened and remain there for a reasonable time for the purpose of the removal of recyclable products, general waste and green waste products.
  - b) The owner of the Lot Burdened cannot make any claim against the Authority Benefited, its employees, contractors and every persons authorised by it, for any repair, damage, loss or nuisance caused to the Lot Burdened as a result of the Authority Benefited, its employees, contractors or every persons authorised by it, exercising their right as set out in Clause 1.
  - c) The owner of the Lot Burdened indemnifies the Authority Benefited, its employees, contractors and persons authorised by it, against any future claim for repair, damage, loss or nuisance as a result of the Authority Benefited removing recyclable products, general waste and green waste products from the Lot burdened, except to the extent that such damage or loss is a result of the negligence of the Authority Benefited, its employees, contractors or persons authorised by it.
  - d) Where a building has secured access, the Authority Benefited, it's employees, contractors and persons authorised by it, must be supplied an unlocking device to enable access to bins containing recyclable products, general waste and green waste products, to be emptied at the time of collection.

Reason: To allow appropriate access to the interim waste storage areas on site. .

91. 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'.
92. Heavy duty concrete vehicle crossings, in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-'Roadworks Specifications' must be constructed at the vehicular access locations before the issue of the Occupation Certificate and at no cost to Council.
93. 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.
94. Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever shall not be permitted. Any encroachments on to Council road or footpath resulting from the building works will be required to be removed before the issue of the Occupation Certificate.
95. 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.
96. Before the issue of the Occupation Certificate written verification from a suitably qualified competent person, stating that all stormwater drainage, re-use and quality measures have been constructed in accordance with the approved plans shall be submitted to and accepted by Council. In addition, full works-as-executed plans, prepared and signed by a registered surveyor, shall be submitted to Council. These plans must include levels for all drainage structures, buildings (including floor levels), finished ground levels and pavement surface levels.
97. With the regard to the Stormwater Treatment Facilities a Positive Covenant shall be placed on the Title in favour of Council before issue of the Occupation Certificate. The Positive Covenant shall include the following:
  - a) The proprietor of the property shall be responsible for maintaining the stormwater treatment facility in accordance with the approved plans;
  - b) The Proprietor shall have the stormwater quality treatment facilities inspected annually (minimum) by a competent person and must provide the WSUD maintenance plan approved under this Consent to competent person to record the annual inspections.
  - c) The Council shall have the right to enter upon the land referred to above, at all reasonable times to inspect, construct, install, clean, repair and maintain in good working order all elements of the stormwater quality treatment facilities to ensure that the water quality targets provided in the design of the system are achieved; and recover the costs of any such works from the proprietor.

98. With the regard to the On Site Detention System (OSD), a Positive Covenant in accordance with supplement 7 of Marrickville Council Stormwater and On Site Detention Code shall be placed on the Title in favour of Council before the issue of the Occupation Certificate.
99. All instruments under Section 88B of the Conveyancing Act used to create positive covenants, easements or right-of-ways shall include the condition that such easements or right-of-ways may not be varied, modified or released without the prior approval of Marrickville Council.
100. All works required to be undertaken on public roads shall be designed and constructed in accordance with Council's standard plans and specifications. The works shall be supervised and certified by a qualified civil engineer who is listed under the Institution of Engineers, Australia "National Professional Engineers Register" (NPER) and shall state that the works have been constructed in accordance with the approved plans and specifications before the issue of the Occupation Certificate.
- Video inspection (CCTV) shall be carried out of completed stormwater drainage works that are to revert to Council and a copy provided to Council to support the certification of those works.
- In addition, full works-as-executed plans in PDF or CAD format (dwg or dxf files), prepared and signed by a registered surveyor, shall be submitted to Council upon completion of the works.
101. The applicant shall provide security, in a manner satisfactory to Council for the proper maintenance of the public domain works in an amount of \$4,000 for a period of twelve (12) months from the date of completion of the public domain works as surety for the proper maintenance of these works.
102. Prior to issue of the Occupation Certificate the person acting on this consent shall obtain from Council a compliance Certificate(s) stating that all Road, Footpath and Public Domain Works on Council property required to be undertaken as a result of this development have been completed satisfactorily and in accordance with Council approved plans and specifications.

#### ADVISORY NOTES

- The Disability Discrimination Act 1992 (Commonwealth) and the Anti-Discrimination Act 1977 (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.
- A complete assessment of the application under the provisions of the Building Code of Australia has not been carried out.
- The approved plans must be submitted to the Customer Centre of any office of Sydney Water before the commencement of any work to ensure that the proposed work meets the requirements of Sydney Water. Failure to submit these plans before commencing work may result in the demolition of the structure if found not to comply with the requirements of Sydney Water.
- 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 a Vehicular Crossing & Civil Works' form, lodge a bond for the works, pay the appropriate



fees and provide evidence of adequate public liability insurance, before commencement of works.

- Contact "Dial Before You Dig" before commencing any building activity on the site.
- The enclosed Fact Sheet on Long-nosed Bandicoots should be read before commencing any works on site, including site preparation works.

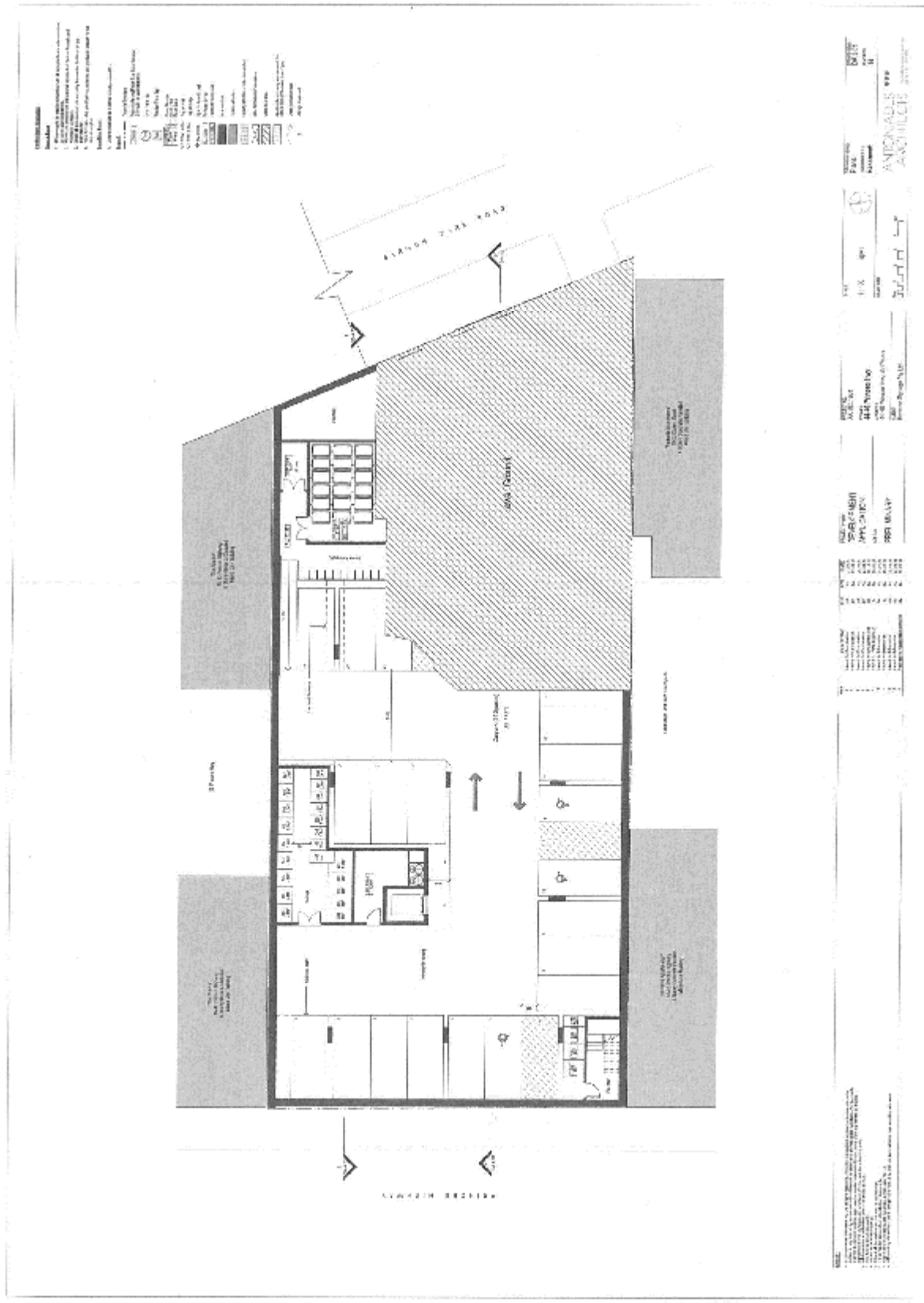
- Useful Contacts

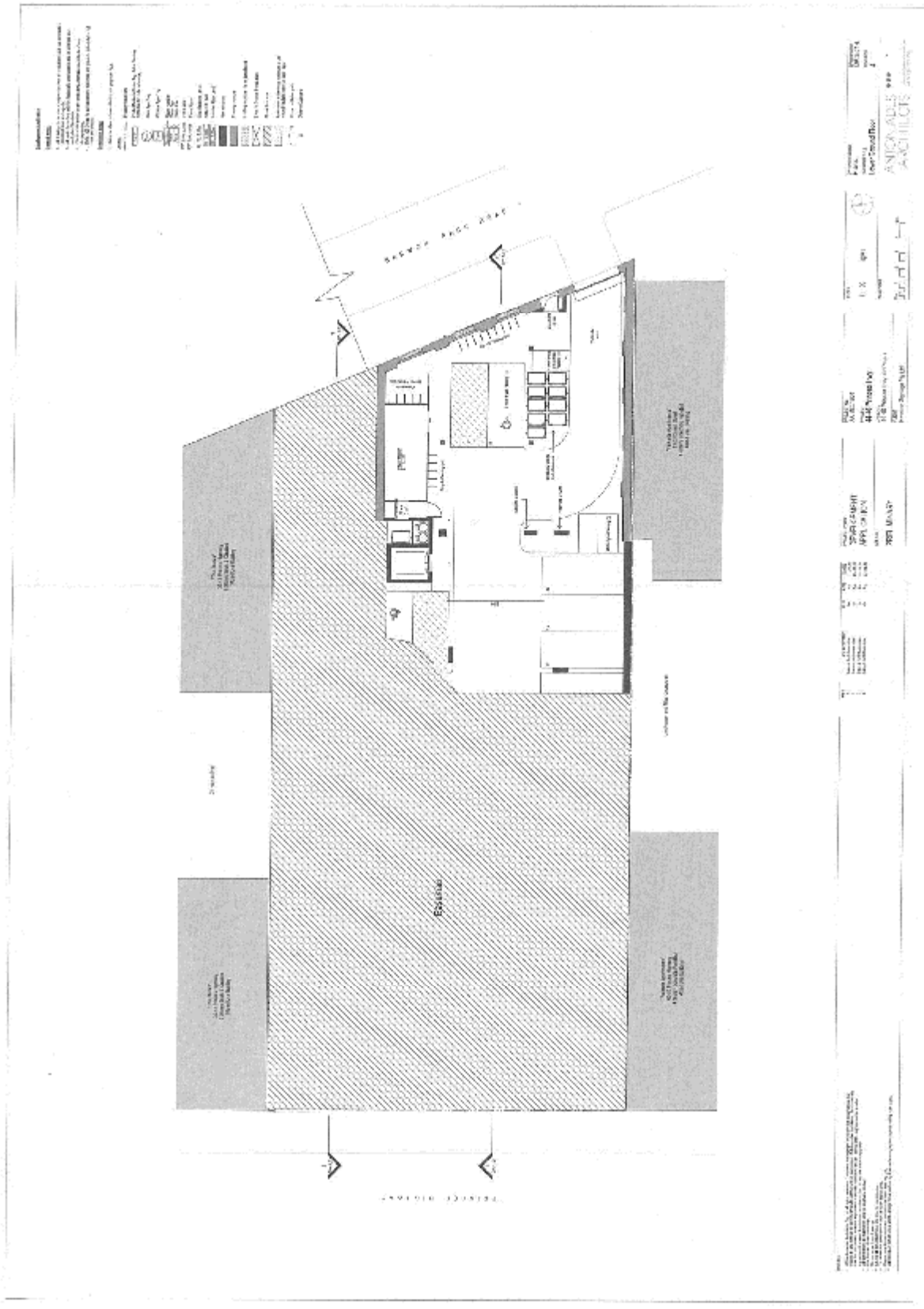
BASIX Information	☎ 1300 650 908 weekdays 2:00pm - 5:00pm <a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a>
Department of Fair Trading	☎ 13 32 20 <a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a> Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Before You Dig	☎ 1100 <a href="http://www.dialbeforeyoudig.com.au">www.dialbeforeyoudig.com.au</a>
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>
Inner West Council	☎ 9335 2222 <a href="http://www.marrickville.nsw.gov.au">www.marrickville.nsw.gov.au</a> Copies of all Council documents and application forms can be found on the web site.
NSW Food Authority	☎ 1300 552 406 <a href="http://www.foodnoffy.nsw.gov.au">www.foodnoffy.nsw.gov.au</a>
NSW Government	<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a> <a href="http://www.diyasafe.nsw.gov.au">www.diyasafe.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 those persons who lodged submissions in respect to the proposal be advised of the Council's determination of the application.
- C. THAT the Department of Planning and Environment be advised, as part of the quarterly review of the monitoring of Clause 4.6 of Marrickville Local Environmental Plan 2011 – Exceptions to Development Standards, that Council has agreed to the variation of the following development standard:

<u>Premises:</u>	44-46 Princes Highway, St Peters
<u>Applicant:</u>	Antoniades Architects
<u>Proposal:</u>	To adaptively reuse the existing warehouse building at No. 3 Barwon Park Road, demolish the remainder of the buildings on the site and construct a 6 storey mixed use building fronting Princes Highway and a 5 storey mixed use building fronting Barwon Park Road containing a total of 3 ground floor commercial tenancies, 40 dwellings and basement car parking.
<u>Determination:</u>	Consent subject to conditions
<u>DA No:</u>	201700488
<u>Lot and DP:</u>	Lot 1 in DP 181290 and Lot 1 in DP 1111834
<u>Category of Development:</u>	9. Mixed
<u>Environmental Planning Instrument:</u>	Marrickville Local Environmental Plan 2011
<u>Zoning of Land:</u>	B4 Mixed Use
<u>Development Standard(s) varied:</u>	Clause 4.3 – Height of Building
<u>Justification of variation:</u>	Complies with objectives of zone and the standard, no unreasonable impact caused by variation, appropriate in context, compliance with FSR development standard
<u>Extent of variation:</u>	15.2%
<u>Concurring Authority:</u>	Council under assumed concurrence of the Secretary Department of Planning and Environment
<u>Date of Determination:</u>	

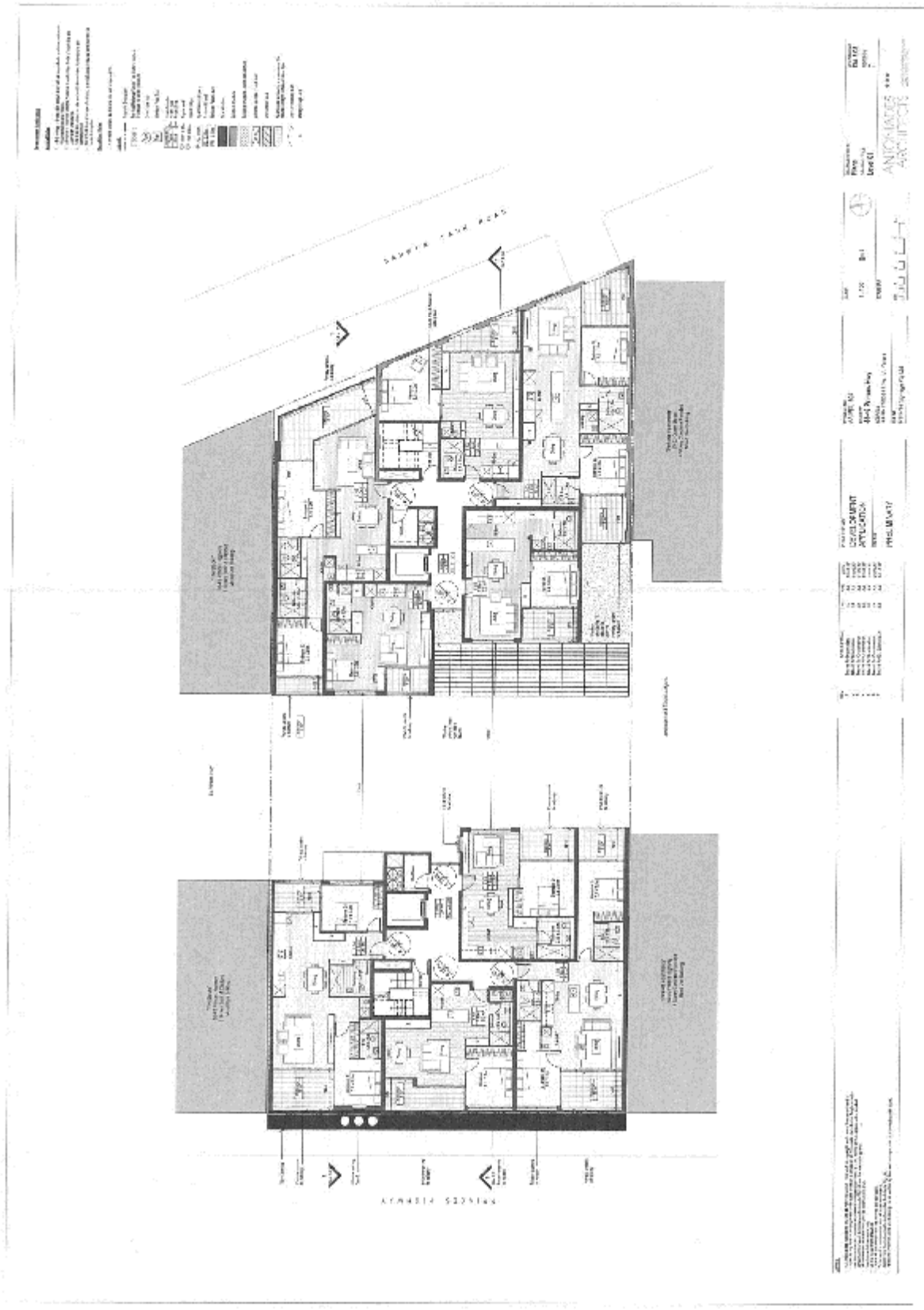
Attachment B1 – Architectural Plans







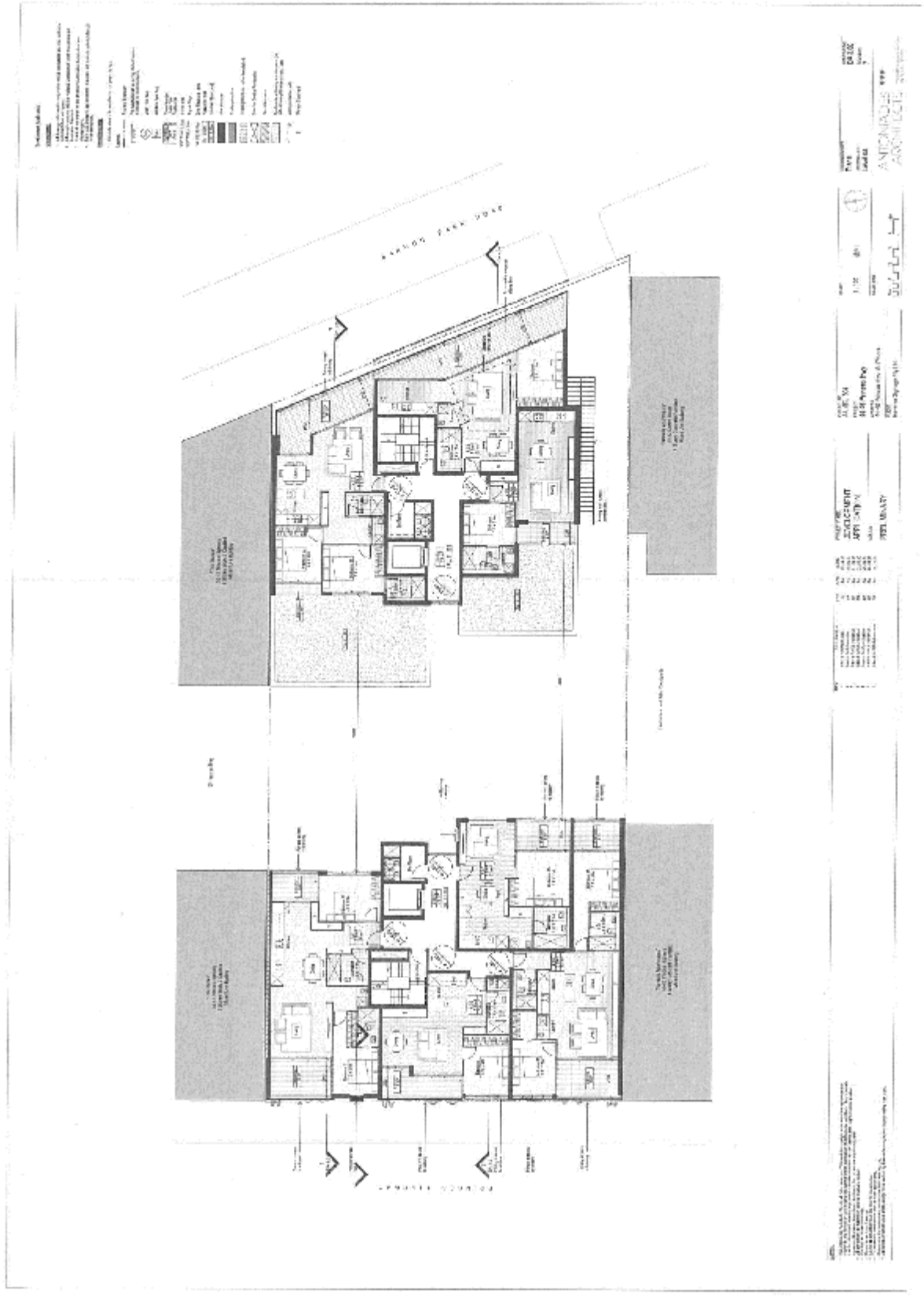




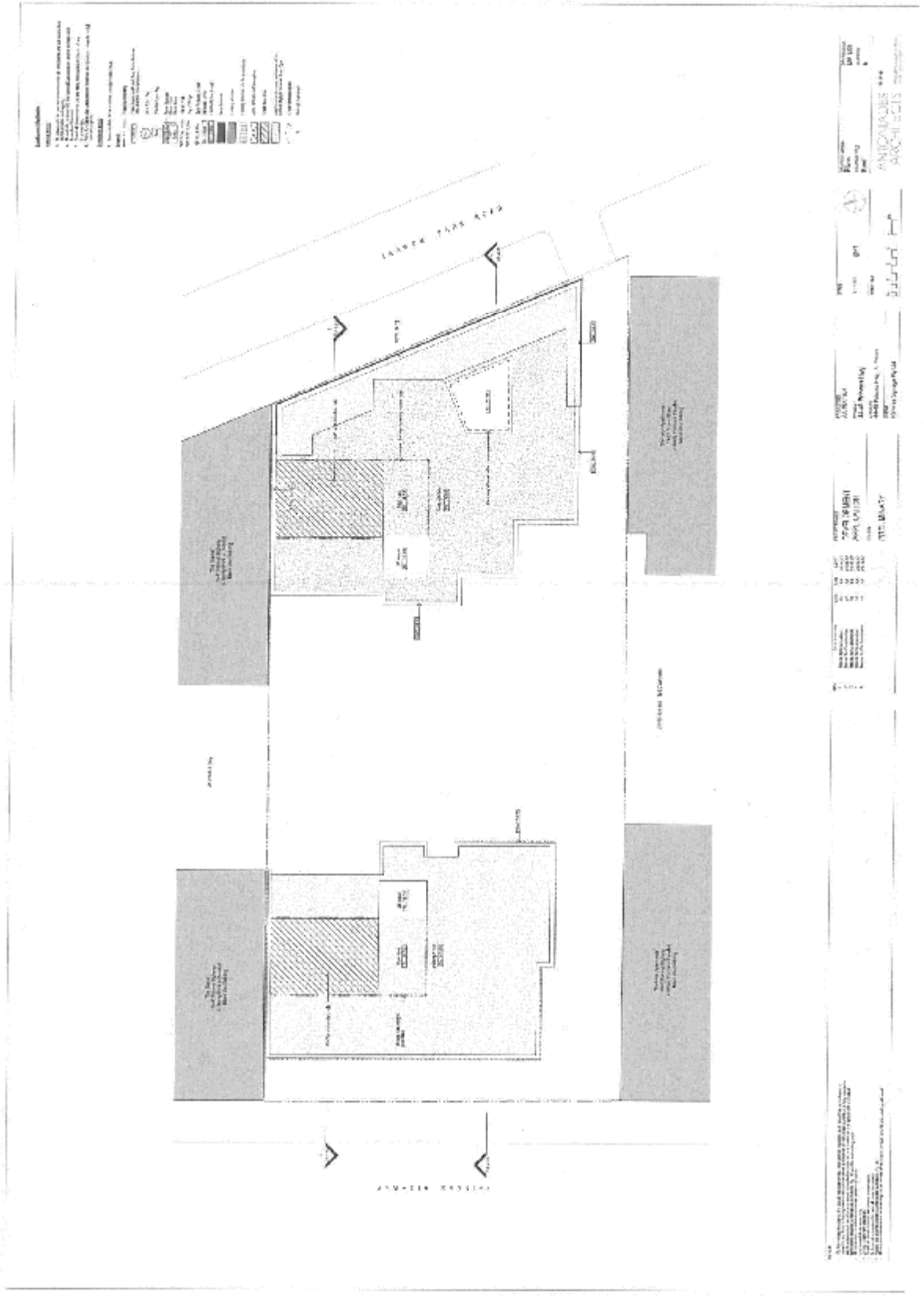




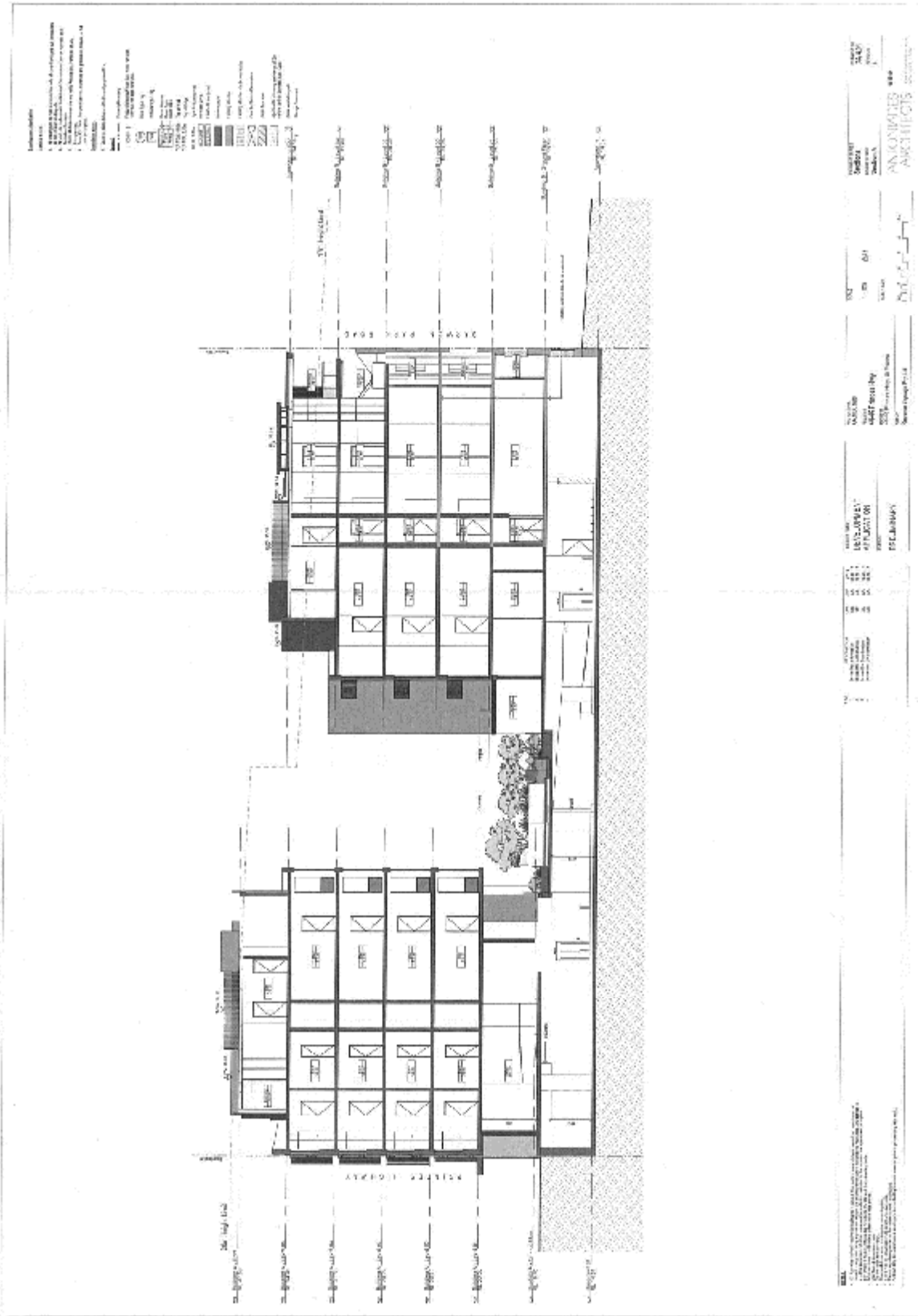


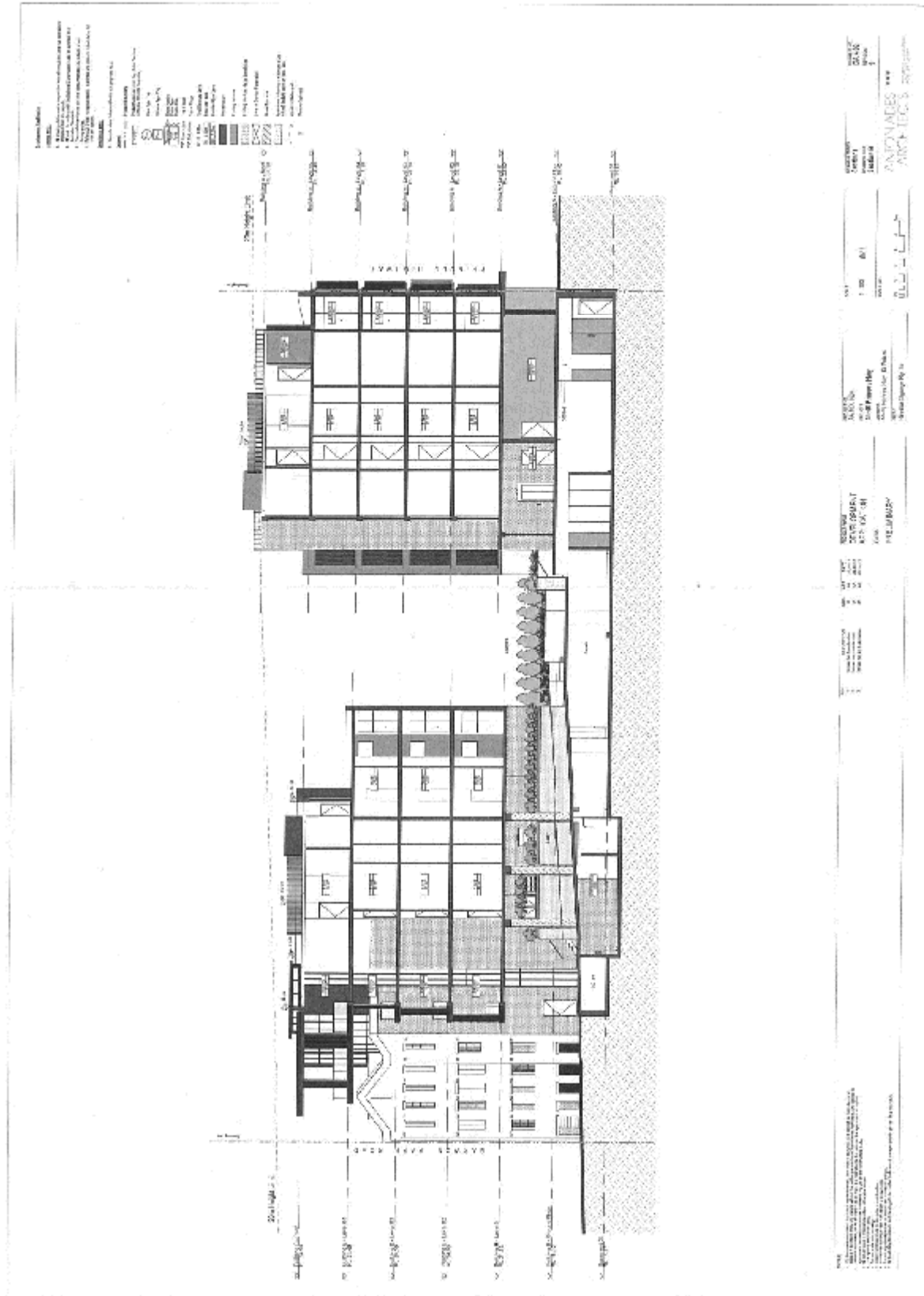






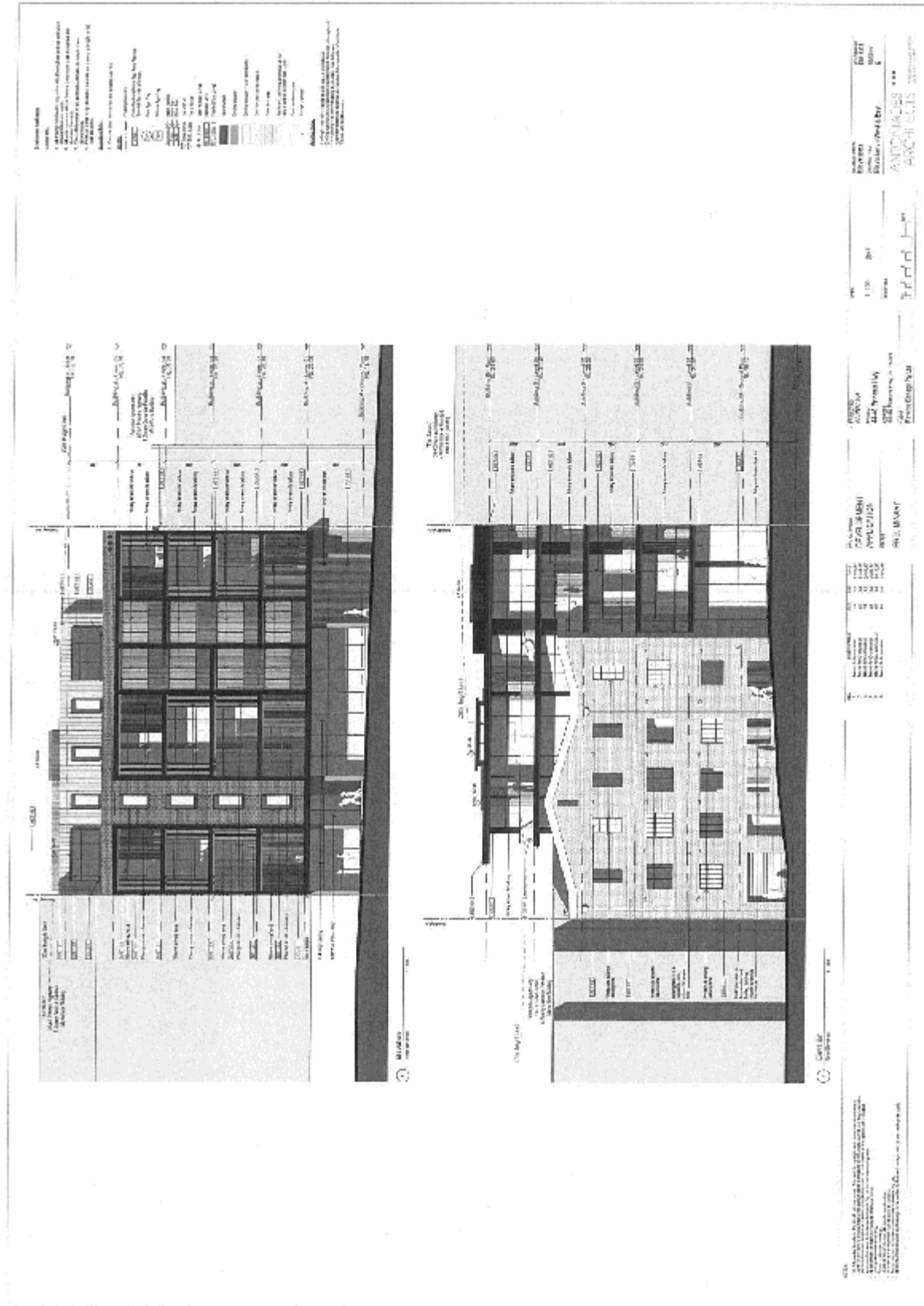




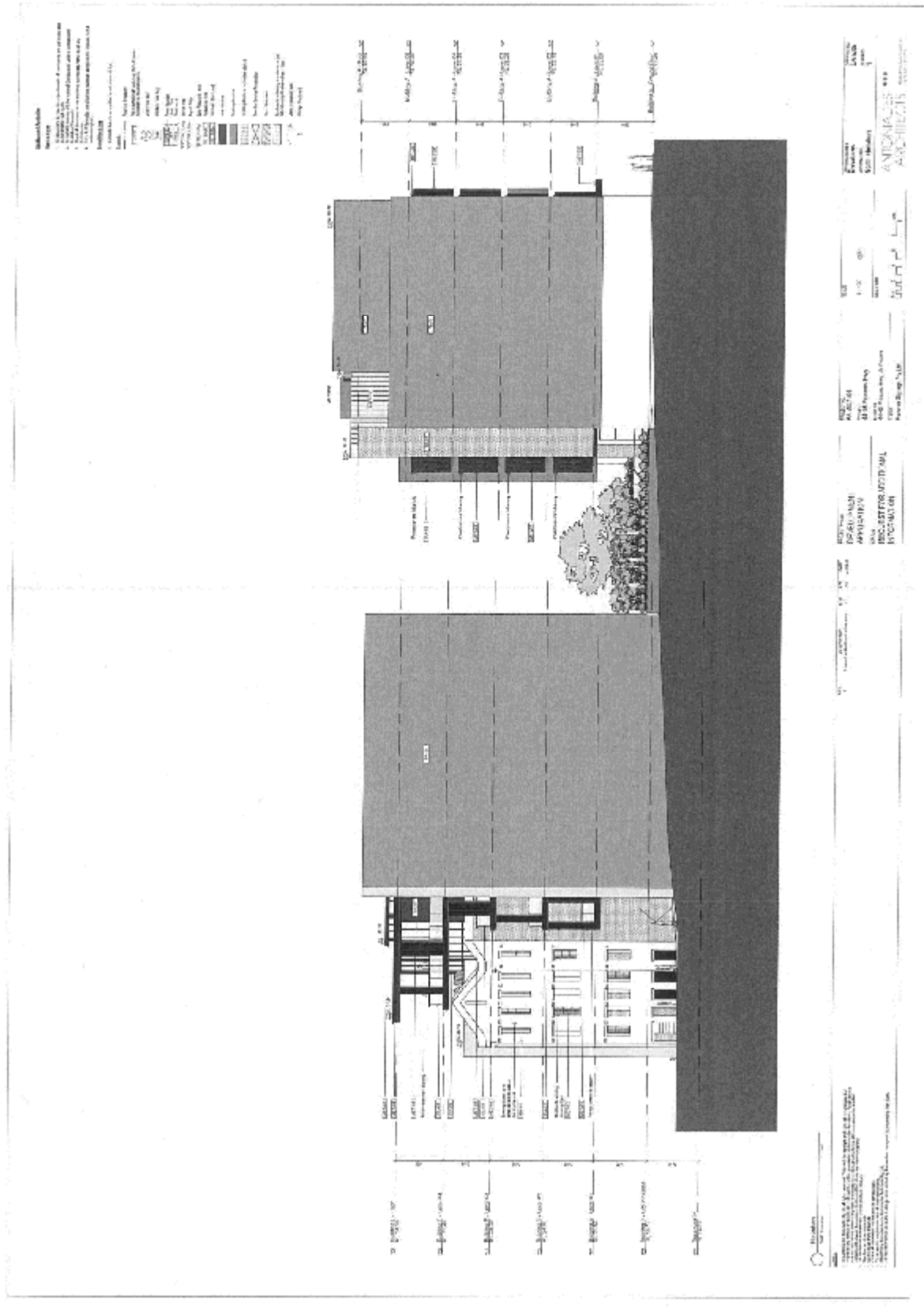


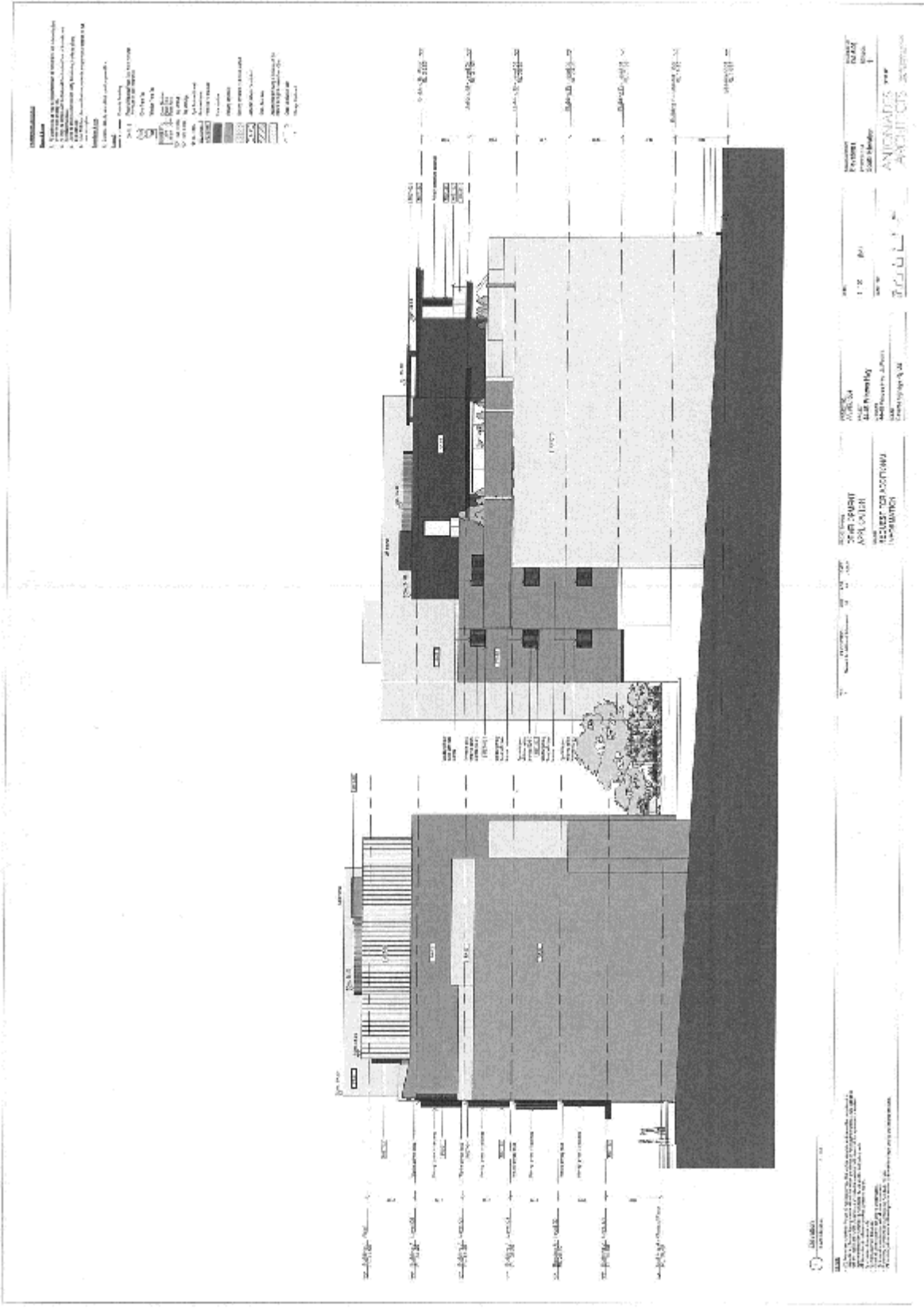


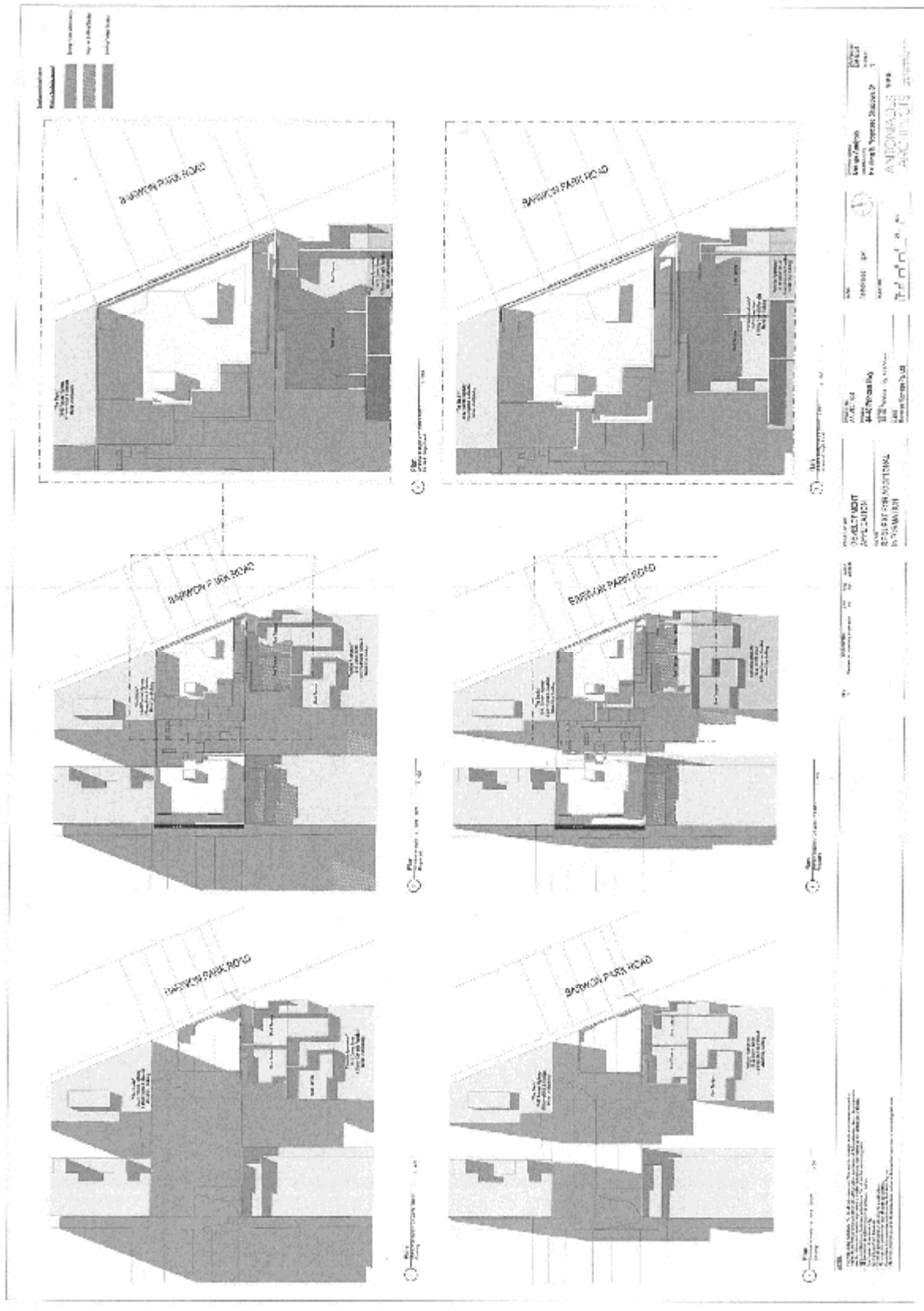














Legend:

- 1. Wall and Ceiling
- 2. Floor Slab
- 3. Roof Slab
- 4. Floor Slab
- 5. Roof Slab

Section 1: Barron Park Road

Section 2: Barron Park Road

Section 3: Barron Park Road

Section 4: Barron Park Road

Section 5: Barron Park Road

Section 6: Barron Park Road

Technical Specifications:

Roof Structure: 1.0m x 1.0m x 1.0m

Roof Deck: 1.0m x 1.0m x 1.0m

Roof Insulation: 1.0m x 1.0m x 1.0m

Roof Membrane: 1.0m x 1.0m x 1.0m

Roof Finish: 1.0m x 1.0m x 1.0m

Roof Drainage: 1.0m x 1.0m x 1.0m

Roof Ventilation: 1.0m x 1.0m x 1.0m

Roof Access: 1.0m x 1.0m x 1.0m

Roof Eave: 1.0m x 1.0m x 1.0m

Roof Gutter: 1.0m x 1.0m x 1.0m

Roof Downpipe: 1.0m x 1.0m x 1.0m

Roof Flashing: 1.0m x 1.0m x 1.0m

Roof Sealant: 1.0m x 1.0m x 1.0m

Roof Fasteners: 1.0m x 1.0m x 1.0m

Roof Anchors: 1.0m x 1.0m x 1.0m

Roof Brackets: 1.0m x 1.0m x 1.0m

Roof Supports: 1.0m x 1.0m x 1.0m

Roof Hangers: 1.0m x 1.0m x 1.0m

Roof Trusses: 1.0m x 1.0m x 1.0m

Roof Rafters: 1.0m x 1.0m x 1.0m

Roof Joists: 1.0m x 1.0m x 1.0m

Roof Beams: 1.0m x 1.0m x 1.0m

Roof Columns: 1.0m x 1.0m x 1.0m

Roof Walls: 1.0m x 1.0m x 1.0m

Roof Windows: 1.0m x 1.0m x 1.0m

Roof Doors: 1.0m x 1.0m x 1.0m

Roof Stairs: 1.0m x 1.0m x 1.0m

Roof Ladders: 1.0m x 1.0m x 1.0m

Roof Platforms: 1.0m x 1.0m x 1.0m

Roof Balconies: 1.0m x 1.0m x 1.0m

Roof Terraces: 1.0m x 1.0m x 1.0m

Roof Gardens: 1.0m x 1.0m x 1.0m

Roof Pools: 1.0m x 1.0m x 1.0m

Roof Spas: 1.0m x 1.0m x 1.0m

Roof Saunas: 1.0m x 1.0m x 1.0m

Roof Steam Rooms: 1.0m x 1.0m x 1.0m

Roof Jacuzzis: 1.0m x 1.0m x 1.0m

**Legend:**

- Proposed Building Footprint
- Proposed Driveway
- Proposed Fencing
- Proposed Landscaping

**View 1 (Top):** Shows the building footprint and driveway layout. Labels include 'Barwick Park Road' and 'Proposed Building Footprint'.

**View 2 (Middle):** Shows the building footprint and driveway layout from a different perspective. Labels include 'Barwick Park Road' and 'Proposed Building Footprint'.

**View 3 (Bottom):** Shows the building footprint and driveway layout from a third perspective. Labels include 'Barwick Park Road' and 'Proposed Building Footprint'.

**Scale:** 1:500

**North Arrow:** Located in the top right view.

**Project Information:**

Project Name: [REDACTED]  
 Project Address: [REDACTED]  
 Project Number: [REDACTED]  
 Project Date: [REDACTED]

**Client:** [REDACTED]

**Architect:** [REDACTED]

**Professional Seal:** [REDACTED]

**Notes:**

1. This plan is a site plan showing the proposed building footprint, driveway, and landscaping.

2. The proposed building footprint is shown in grey.

3. The proposed driveway is shown in white.

4. The proposed fencing is shown in black.

5. The proposed landscaping is shown in green.

6. The proposed building footprint is shown in grey.

7. The proposed driveway is shown in white.

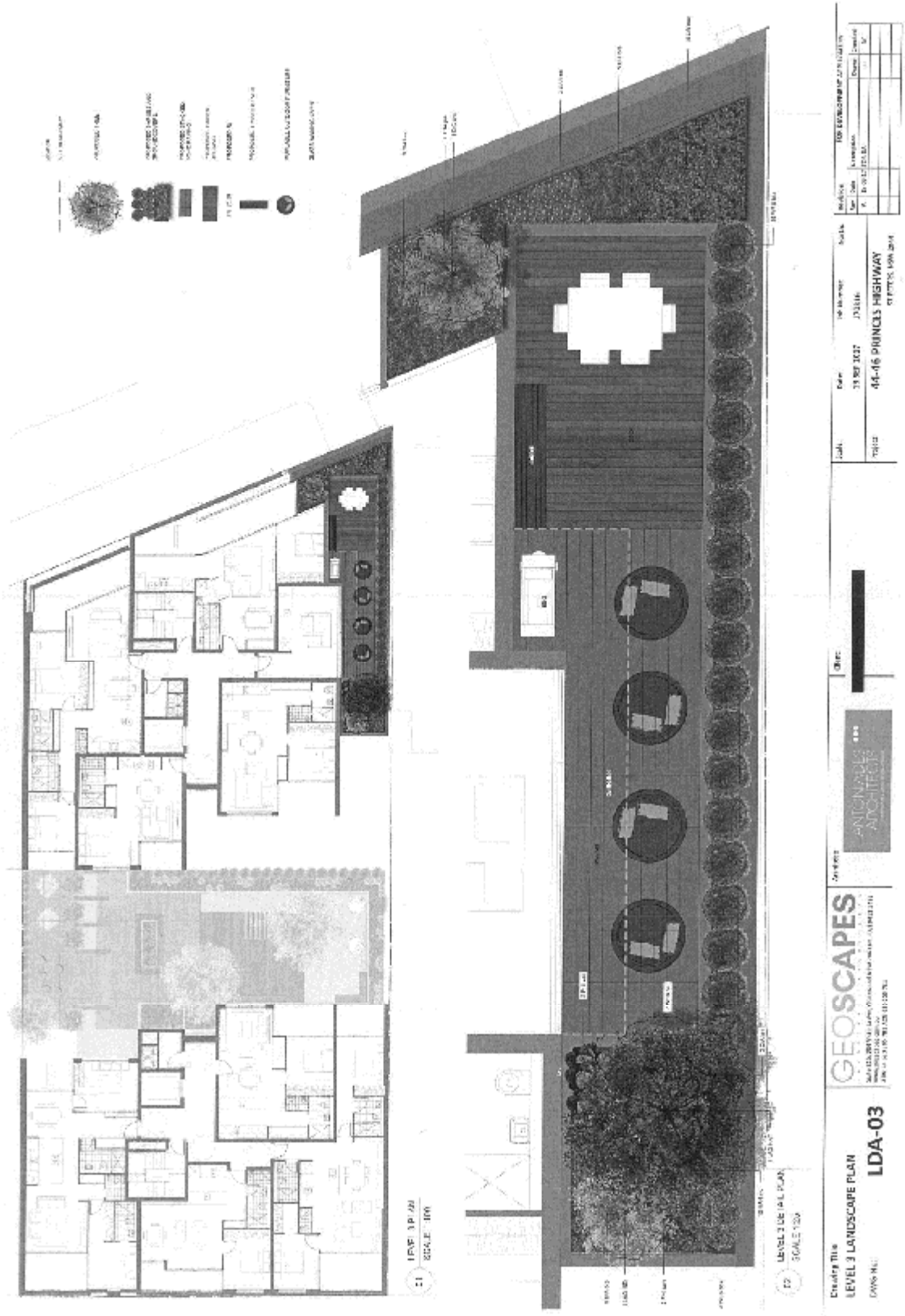
8. The proposed fencing is shown in black.

9. The proposed landscaping is shown in green.









NO.	DATE	DESCRIPTION	BY	CHECKED
1	15/03/2018	ISSUED FOR PERMIT	...	...
2	16/03/2018	...	...	...

Date: 16/03/2018  
 Drawn: J. J. J.  
 Title: 44-16 PRINCES HIGHWAY  
 Project: 44-16 PRINCES HIGHWAY



**GEO SCAPES**  
 LANDSCAPE ARCHITECTS  
 100/102 STANTON STREET, SYDNEY NSW 2010  
 PH: 02 9550 1234

Project Title:  
**LEVEL 2 LANDSCAPE PLAN**  
 LDA-03



Attachment C – Clause 4.6 written request

gsa planning

**MARRICKVILLE LEP 2011  
CLAUSE 4.6 APPLICATION  
TO VARY A  
DEVELOPMENT  
STANDARD:  
Height of Buildings**

Proposed adaptive reuse, partial demolition and mixed use redevelopment at

**Nos. 44-46 Princes Highway and  
3 Barwon Park Road, St. Peters**

Prepared for:  
Reverse Signage Pty Ltd  
Cl- Antonia's Architects Pty Ltd  
Suite 1, Level 2  
24 Bay Street  
Double Bay, NSW 2028

Prepared by:  
**GSA PLANNING**  
Urban Design, Environmental & Traffic Planners  
(A.B.N 18 003 567 933)

JCB NO. 17078  
September 2017

© GSA PLANNING 2017

Prepared by GSA Planning

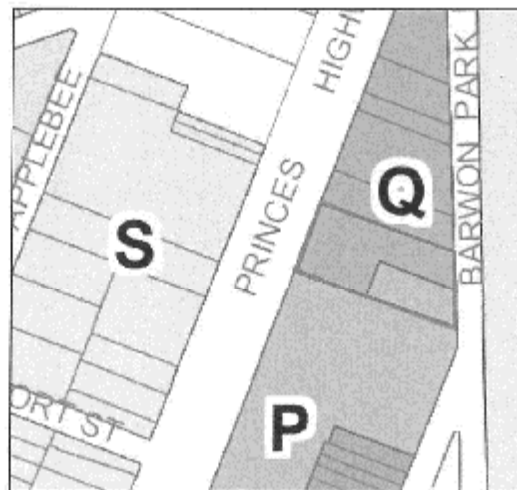
**WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014  
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS**

**APPLICANT'S NAME:** Reverse Signage Pty Ltd, C/- Antoniadis Architects Pty Ltd.  
**SITE ADDRESS:** Nos. 44-46 Princes Highway and No. 3 Barwon Park Road, St. Peters.  
**PROPOSAL:** Adaptive reuse, demolition and mixed use redevelopment.

1. (i) **Name of the applicable planning instrument which specifies the development standard:**  
 Marrickville Local Environmental Plan (WLEP) 2011
- (ii) **The land is zoned:**  
 B4 Mixed Use
- (iii) **The number of the relevant Clause therein:**  
 Clause 4.3 – Height of Buildings

**2. Specify the nature of Development Standard sought to be varied and details of variation:**

The development standard to which this request for variation relates is Clause 4.3 of the LEP – Height of Buildings. This Clause operates in conjunction with the Height of Buildings Map, which prescribes a height limit of both 17m (Area P) and 20m (Area Q) for the subject site, as the site's two lots are located within different height areas (see Figure 1).



**Figure 1: Height of Buildings Map**  Subject Site  
 Source: Marrickville LEP 2011

Prepared by CSA Planning

The proposal involves the complete demolition of Nos. 44-46 Princes Highway, and the construction of a new six storey mixed use building in its place. The new building is known as Building A. Building A falls wholly within the 20m height limit area and largely complies with the height control; with only small sections of the upper parapets exceeding the height limit.

No. 3 Barwon Park Road, to the rear of the subject site, is presently occupied by a vacant and dilapidated four storey warehouse. This existing warehouse will be adaptively reused as part of the proposal. The adaptive reuse is accompanied by a new extension, which adds an additional storey to create a five storey structure. This is known as Building B, and it represents a complementary mix of old and new architecture. Building B falls between the two height zones, resulting in a limited area that does not comply with the LEP height limit (see architectural plans separately submitted).

**3. Consistency with Objectives of Clause 4.6**

Clause 4.6 of the LEP recognises that in exceptional circumstances, standards such as height of Buildings may be unnecessary or unreasonable and provides a means by which a variation to the standard can be achieved. The objectives of Clause 4.6 and our planning response are stated, inter alia:

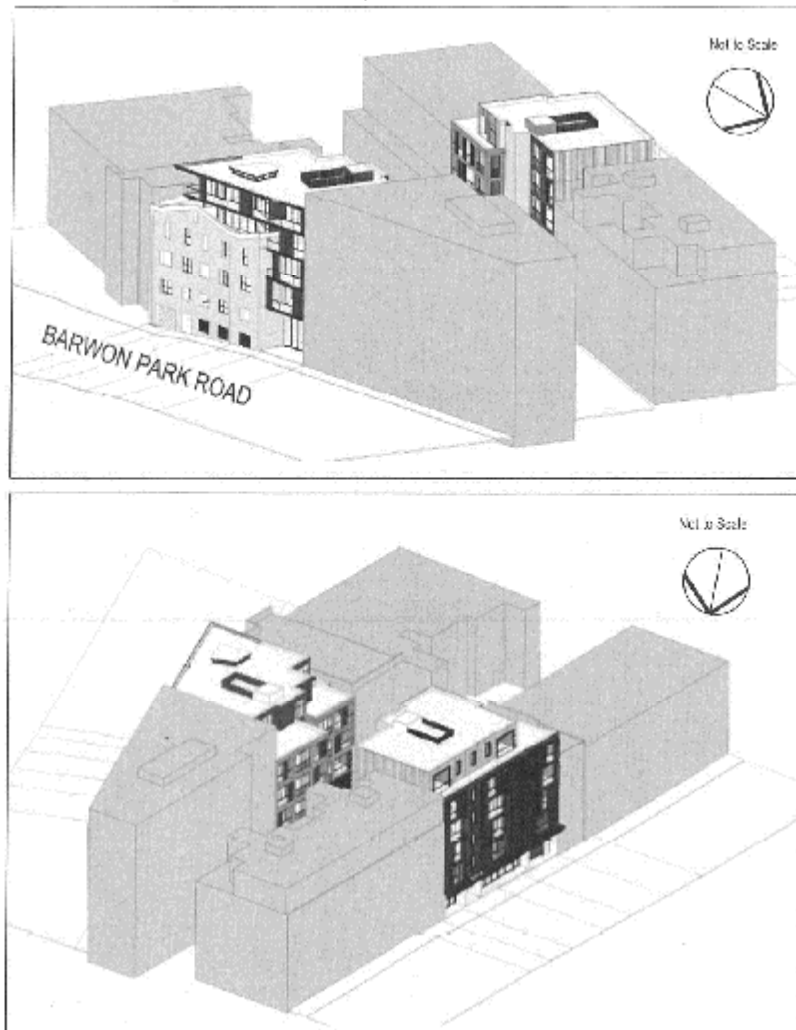
- Objective (e) *to provide an appropriate degree of flexibility in applying certain development standards to particular development*
- Objective (f) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances*

It is necessary for Council to provide flexibility in the application of development standards in this particular case. In our opinion, the proposed height variation is minor and appropriate when considering the wider context of the locality.

For Building A, the height variation occurs at limited points of the sixth floor level. This level has been set back from the street 3m in line with DCP controls, meaning it does not have a dominating presence on the streetscape. This design approach is consistent with the similar mixed use buildings to the south of Nos. 44-46 Princes Highway. For Building B, the height variation is limited to a southern portion of the fifth floor, and this variation only occurs because of the differing height requirement of the lots as depicted in Figure 1.

Contextually, the proposed height of both Buildings A and B provide an appropriate medium in scale when compared to the existing residential apartments/mixed use developments to the south, and the five-to- six storey consented development known as "The Stacks" (Ref: DA201500495) which is under construction to the north and also subject to a S98 application to further increase its height (see Figure 2 on the following page).

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**Figure 2: 3D Site Context**

Source: Anovades Architects, September 2017

If flexibility to the Height of Buildings development standard is not provided in this case, it would prevent a significant upgrade to the existing built form. The adaptive reuse of No. 3 Barwon Park Road has already been supported by Council's Architectural Excellence Panel in pre-DA discussions, and the proposed additions seek to revitalise what is presently a derelict and unattractive site. It does this through the re-activation of the site's frontages with commercial uses and the provision of a contemporary design with appropriate massing that responds to the context of the streetscapes.



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Council should therefore support this variation to the Height of Buildings development standard as it will achieve a better outcome for the development, as described. The proposal is consistent with the objectives of Clause 4.6.

#### 4. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request is required when seeking to vary a development standard, along with justification of the contravention. The clause is stated, *inter alia*:

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

The following sections will outline why, in our opinion, the development standard is unreasonable and unnecessary and will set out the planning justification for the variation.

#### 5. Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

There are a number of compelling planning reasons to suggest that the compliance with the development standard is unreasonable and unnecessary in the circumstances of this particular case.

Firstly, the area of non-compliance is set in behind the external alignment of the building and this assists in ensuring an appropriate streetscape presentation and minimising impacts. In addition, given the location of the non-compliance, the proposal remains compatible in height with the neighbouring buildings when viewed from the public domain. This is discussed further below.

Secondly, as a result of the siting and location of the areas of non-compliance and in minimising impacts on the street, character and neighbours, the proposal is consistent with the objectives of the standard. This is discussed further below.

Thirdly, the proposal retains the façade of the building fronting onto Barwon Park Road, which is desirable from a planning, streetscape and heritage point of view. This is further discussed below.

Fourthly, as indicated in Council's Clause 4.6 register, Council has granted approval to DAs with a building height that exceeds the development standard. The register indicates sites listed as mixed use developments within the former Marrickville LGA with the variations ranging from 1.6% to 38.5%. Common reasons for acceptance of the variation was that strict compliance with the development standard was unnecessary; the additional height did not contribute to additional adverse amenity impacts on adjacent development; and the development is compatible with the built/scale and overall character of the area. These are all reasons that the proposal is considered to be appropriate from a planning point of view despite the non-compliance.

Clause 4.6(3)(a) requires the applicant to provide justification that strict compliance with the Height of Buildings standard is unnecessary and unreasonable in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) NSWLEC 827, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary.

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The Court's recent decision in *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 90 has altered the way the five tests are applied, requiring justification beyond compliance with the objectives of the development standard and the zone. That is, more than one of those five steps is now arguably required to be addressed.

It is our opinion that the proposal satisfies a number of the five tests established in *Wehbe v Pittwater Council*. For that reason, the development standard is unreasonable and unnecessary in this instance. The relevant tests will be considered on the following page.

**Test 1 – The objectives of the standard are achieved notwithstanding non-compliance with the standard.**

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

**Response:** The subject site is in the Barwon Park precinct. The desired future character of this precinct is one that allows diverse land uses, including retail, commercial and residential. It also seeks to allow and encourage a greater scale of development fronting the Princes Highway and at the northern end of Barwon Park Road, as well as ensuring that ground floor non-residential uses have active fronts facing onto major street frontages to contribute to a vibrant and safe streetscape. The design of future development should protect the residential amenity of adjoining and surrounding properties.

The proposal goes far in meeting the desired future character of the Barwon Park precinct. It represents a greater scale of development fronting the Princes Highway and at the northern end of Barwon Park Road. It also provides residential apartments of various types at the upper floor levels, and tenancies for commercial/retail uses at the ground floor level.

The proposal therefore contains a diverse range of uses and re-activates the street frontages of Princes Highway and Barwon Park Road. The design of the proposal has given careful regard to the DCP and SEPP No. 65, concerning the design quality of residential flat development. Residential amenity is enhanced and protected.

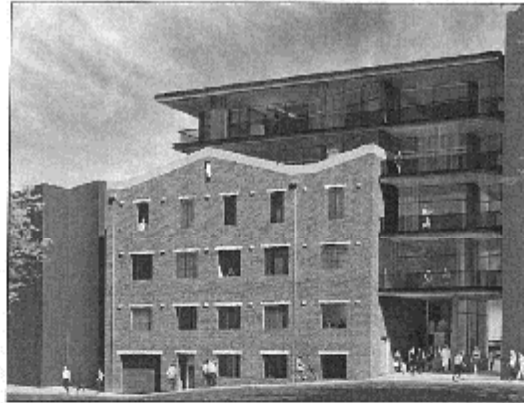
Figure 2 on page 4 provides the site in context with the wider streetscape, and Figures 3 and 4 show photomontages of the proposal at both the Princes Highway and Barwon Park Road frontages in relation to adjoining development.



**Figure 3: Render of Building A fronting Princes Highway**

Source: Antonovski Architects, October 2017

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**Figure 4:** Render of Building B fronting Barwon Park Road.  
 Source: Antevades Architects, October 2017

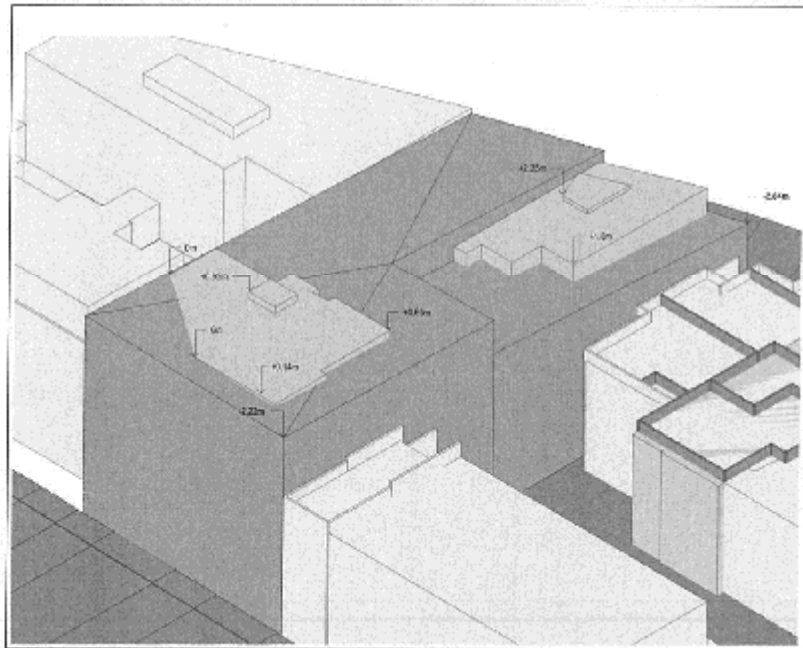
Accordingly, the proposal is compatible with the desired future character of the area and is consistent with Objective (b).

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

**Response:** As detailed in the accompanying SEE, Shadow Diagrams and Architect's Design Statement, the proposal has been designed to maximise exposure sky and sunlight in what is a particularly constrained site.

A further shadow analysis has been prepared by the architect which demonstrates the impact of the area of non-compliance on the sunlight access of the roof terraces of the neighbouring building to the south. The additional area of non-compliance is demonstrated three dimensionally in Figure 5 on the following page.

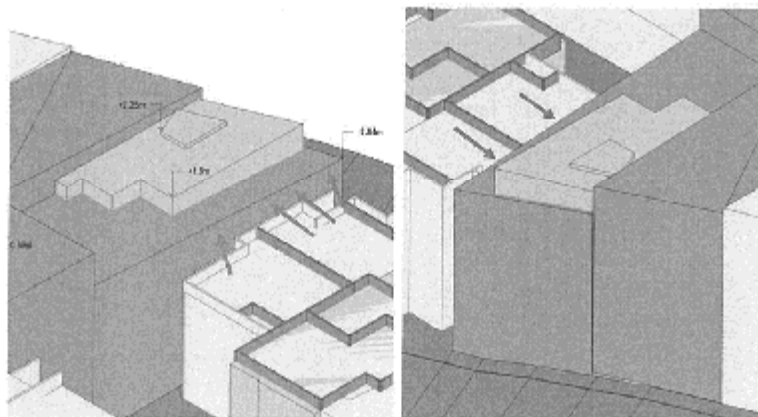
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**Figure 5: Area of Non-Compliance with Height Standard**

While the area of non-compliance will result in some additional shadow over a portion of the roof terrace given the orientation of the site, it is noted that the roof terrace will receive uninterrupted sunlight to more than 50% of its surface area beyond 10am. This is considered to be a sufficient level of sunlight access. The proposal is therefore consistent with Objective (c).

If there is a view loss, this is likely to be occurring as a result of the compliant portion of the building rather than the non-compliant. This change in level is demonstrated in Figure 6 below.



**Figure 6: Views/outlook from terraces obstructed from Compliant Building Form**

For these reasons, it is considered that the Height of Buildings non-compliance is unlikely to have adverse impacts and the proposal remains in the public interest.

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

**Response:** As depicted in Figures 2, 3 and 4 of this report, despite minor areas of non-compliance, the proposal's height seeks to provide an appropriate transition in built form in the context of the surrounding buildings.

Surrounding buildings are four and five storeys in height, and while Building A is six storeys, the sixth storey has been set back approximately 3m from the street frontage, so as to not dominate the Princes Highway Streetscape and provide a smooth transition in built form. Building B, which is five storeys, presents as an appropriate stepped change between the higher five storey development to the north and the four storey development to the south.

Additionally, the mixed land use of retail/commercial and residential is consistent with the immediate locality. The proposal is therefore consistent with Objective (d).

**Test 2 - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.**

The purpose of the standard is still considered relevant to the proposal, as it is to facilitate buildings that are of a height that is compatible with the desired future character of the area. The proposal provides mixed use buildings of contemporary design, which are also respectful to the adaptive reuse element to the proposal. This seeks to greatly enhance the streetscapes. Importantly, the proposed non-compliance is minor in scale and is unlikely to result in any adverse impacts.

The extent of Building A's non-compliance is limited to sections of the parapet, which in turn is already set back approximately 3m from the street, thus, a compliant scheme would be virtually identical when viewed from the street. Building B's non-compliance is also minor, limited to a portion of the southern section.

The non-compliant section includes residential apartments that look out either onto the central open space, which has been designed with a compliant building separation distance, or out to Sydney Park, causing no impact to visual privacy or local amenity.

Accordingly, strict compliance with the maximum Height of Buildings control, given the context of the locality and how the proposal seeks to meet the desired future character of the area, is unnecessary.

**Test 3 - The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.**

It is our opinion that the relevant objectives would be defeated if strict compliance with the maximum Height of Buildings was enforced. The proposal is complementary to the built form and character of its surroundings, as described.

A reduction of height to the proposal, would in fact create a more irregular change in levels, particularly at the Barwon Park Road frontage. As demonstrated in Figure 2, the buildings as proposed have appropriate massing that positively respond to the context of the streetscapes.

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Strict compliance with the control will result in a proposal that meets the desired future character of the area and transition in built form to a lesser degree than the proposal as submitted. Accordingly, in our opinion, the proposed building height is an appropriate and necessary response to the context of the locality and compliance with the development standard is unnecessary.

**6. There are sufficient environmental planning grounds to justify contravening the development standard?**

The proposal is permissible within the B4 Mixed Use zone and is consistent with the relevant zone objectives, as outlined in the accompanying SEE.

The proposal also satisfies the relevant 'unreasonable and unnecessary' tests established by the Court in *Wehbe v Pittwater Council*. In addition, it is our opinion that the proposal is unlikely to result in adverse amenity impacts in terms of privacy, overshadowing or view loss.

Sunlight access has been addressed in Section 5 f this Submission. In respect of view loss, it is noted that the area of non-compliance is not likely to result in any view loss for the terraces to the south given the difference in heights. If there is a view loss, this is likely to be occurring as a result of the compliant portion of the building rather than the non-compliant.

For these reasons, it is considered that the Height of Buildings non-compliance is unlikely to have adverse impacts and the proposal remains in the public interest.

Accordingly, in our opinion, the proposed non-compliance will result in a consistency with existing planning objectives for the locality. There are sufficient environmental planning grounds to justify contravening the development standard in the particular circumstances of the case.

It is considered that a variation of the development standard is justified given that compliance is unreasonable and unnecessary in the circumstances of the case and the non-compliance will not result in any unreasonable impacts upon adjoining properties, heritage and the public domain.

**7. Clause 4.6 (4) Requirements**

Clause 4.6(4) guides the consent authority's consideration of this clause 4.6 variation request. It provides that:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3); and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

The applicant submits that the consent authority can and should be satisfied that each of these requirements of clause 4.6(4) has been addressed.

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It is our opinion that the proposal is in the public interest. In accordance with Test 1 in *Wehbe v Pittwater Council* and Clause 4.6(4)(a)(ii) an assessment of the proposal against both the objectives of the standard and the zone has been undertaken and in our opinion, the proposal is consistent.

It is our opinion that the proposal is consistent with the zone objectives and should be supported. For these reasons it is our opinion that the variation is appropriate and should be supported.

#### 8. Clause 4.6(5) Requirements

The Council or the Secretary, as the concurrence authority, is required to consider the following:

- (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.*

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The height non-compliance is considered to provide a public benefit as it will facilitate sympathetic medium density development which will contribute to meeting the demand for housing in the area.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the emerging character of the area and is, in our opinion, in the public interest.

