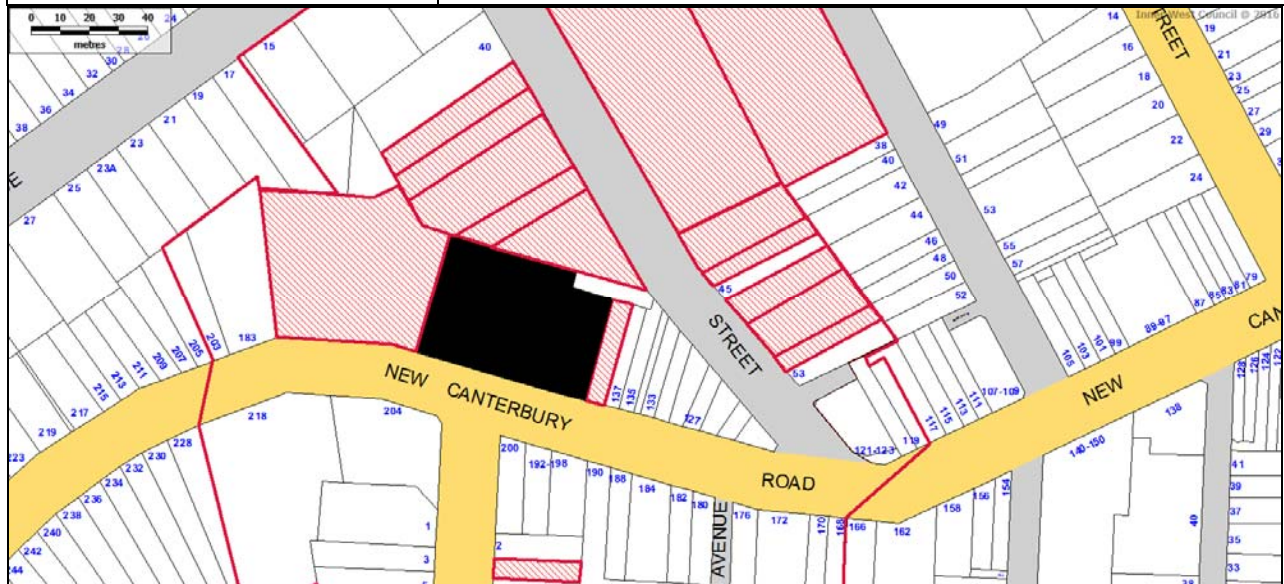




INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA201700003
Address	141-161 New Canterbury Road, Petersham
Proposal	To erect a mixed use development that includes partial retention of the existing industrial building with 2 commercial tenancies on the ground floor and 3 part 4 levels of residential units above with associated basement car parking
Date of Lodgement	4 January 2017
Applicant	Benson McCormack Pty Ltd
Owners	Peter Gabriel, Aziz Gabriel, Steve Gabriel, Kon Gabriel
Number of Submissions	38 submissions in total – 29 submissions during the original notification and 9 during the re-notification
Value of works	\$11,990,000
Reason for determination at Planning Panel	Clause 4.6 variation to maximum height standard, cost of development exceeds officer delegation, and number of submission received
Main Issues	Height of building
Recommendation	Deferred commencement consent



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

1. Executive Summary

This report concerns an application to erect a mixed use development that includes partial retention of the existing industrial building with 2 commercial tenancies on the ground floor and 4 levels of residential units above with associated basement car parking. The application was notified in accordance with Council's Notification Policy and 29 submissions were received.

During the assessment process the proposal was amended to address a number of concerns raised by Council officers relating to bulk and scale, visual privacy, loading/unloading facilities, vehicular access and other matters. The amended proposal was re-notified in accordance with Council's Notification Policy and 9 submissions were received.

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 3.9 metres or 27.8%. 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 Petersham Commercial Precinct and site-specific planning controls relating to the site as outlined in Part 9.36 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.

Notwithstanding, owner's consent has not been obtained to demolish a portion of the factory building on the Right of Way adjoining the site. Accordingly, the application is suitable for the issue of a deferred commencement consent subject to the imposition of appropriate terms and conditions.

2. Proposal

Approval is sought to erect a mixed use development that includes partial retention of the existing industrial building with 2 commercial tenancies on the ground floor and 4 levels of residential units above with associated basement car parking. The works include the following:

- Partial demolition of the existing 'Georgiou's' building and complete demolition of the 2 storey warehouse on the eastern portion of the site with the exception of a small portion of that building to the rear;
- A single level of basement parking with vehicular access from the Right of Way access to the site from Hunter Street;
- Ground floor level containing 2 commercial tenancies, residential lobby, waste storage areas and loading bay with vehicular egress to New Canterbury Road, commercial car parking and a communal area with landscaping;

- First floor level containing 4 x studio units, 8 x 1 bedroom units and 2 x 2 bedroom units;
- Second floor level containing 4 x studio units, 7 x 1 bedroom units and 4 x 2 bedroom units;
- Third floor level containing 4 x studio units, 7 x 1 bedroom units and 4 x 2 bedroom units; and
- Fourth floor level containing 2 x 3 bedroom units and a communal roof terrace containing landscaping and outdoor entertaining areas.

3. Site Description

The site is known as 141-161 New Canterbury Road and is located on the northern side of New Canterbury Road, between Toothill Street and Hunter Street, Petersham. The site is legally described as Lot 1 in Deposited Plan 718901, having a 58.49 metre frontage to New Canterbury Road, a depth of approximately 42 metres and an area of approximately 2,334sqm.

The site contains two warehouse buildings, including a 1 part 2 storey warehouse on the western side of the site with associated at grade car parking and a 2 storey warehouse on the eastern side of the site. Both warehouses have vehicular access to New Canterbury Road, as well as a Right of Way at the rear of the sites which provides access from Hunter Street.

The site is adjoined by single and 2 storey commercial buildings to the east, west and south and low density residential development to the north.

4. Background

4(a) Site history

On 14 August 2014 Council received a planning proposal (Planning Proposal No. 14/5480) that sought to amend the zoning of the subject site from IN2 Light Industrial to a business zone to permit a mixed use residential and commercial development.

At its meeting of 1 December 2015, Council resolved to adopt draft amendments to MLEP and MDCP 2011 relating to land at 141-161 New Canterbury Road, Lewisham (Georgious Chocolate Factory) and forward the draft amendments to the Department of Planning & Environment for final approval and gazettal.

The MLEP 2011 amendments were gazetted on Friday 15 January 2016. The amendments made the following changes to the planning controls applying to the land:

- Rezone the site from IN2 Light Industrial to B5 Business Development;
- Include an Additional Permitted Use in Schedule 1 of MLEP 2011 to allow a 'residential flat building' on part of the land;
- Set a maximum building height of 14 metres (to allow a 4 storey building); and
- Set a maximum floor space ratio of 1.5:1.

The MDCP 2011 amendments (contained within Part 9.36 of the DCP) which provide supplementary controls and guidelines came into force on 5 February 2016.

4(b) Application history

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

Date	Discussion / Letter/ Additional Information
13 June 2017	Amended plans submitted to Council indicating relocation of the ground floor loading bay and waste storage areas, existing vehicular egress to New Canterbury Road being retained, new visual privacy screening to northern façade, relocation of rooftop level communal open space to address acoustic privacy concerns, new traffic signalling to rear vehicular access and other minor changes.
13 June 2017	Amended plans submitted on 13 June 2017 renotified as per Council's Notification Policy.
10 August 2017	Amended Landscape Plan and Remediation Action Plan submitted to Council.
24 August 2017	Further amended plans submitted to Council indicating extended boundary wall on eastern elevation.
28 August 2017	Complete set of architectural plans submitted to Council incorporating amendments.

5. Assessment

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

5(a) Environmental Planning Instruments

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

- State Environmental Planning Policy (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)(iv) State Environmental Planning Policy (Infrastructure) 2007

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

The site has a frontage to New Canterbury Road 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 a Right of Way at the rear of the site providing access from Hunter Street and as such *"is provided by a road other than the classified road"*.

Vehicular egress from the site is also provided to New Canterbury Road. This egress utilises an existing vehicular crossing and provides egress for garbage, delivery and removalist trucks only and is not to be used for regular vehicular egress.

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)(v) 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 Geo-Environmental was submitted to Council with the application. The DSI report makes the following conclusions and recommendations:

“Based on observations made during the field investigations, the sampling and analysis program conducted at the site, the proposed land-use and with respect to relevant statutory guidelines, GEE conclude that site is currently unsuitable for the proposed land-use (i.e. mixed commercial and residential development including a basement) and further assessment and/or remediation is warranted.

Further assessment could be completed in the form of a risk assessment to determine actual human health risk thresholds rather than the conservative first tier (or screening) levels provided herein. This may or may not conclude that the concentrations of PAHs and TRH are in fact suitable. Alternatively remediation may be completed, such as removal of the contamination. Considering that fill layer is proposed to be excavated as part of the proposed development, then remediation is the most practical solution. In this regard and in accordance with Part 2.24 of Council's Development Control Plan entitled 'Generic Provisions contaminated Land' (reference 4) and SEPP 55 (reference 5), a Remedial Action Plan should be prepared detailing the proposed remedial measures. Additionally, it is the opinion of GEE that the remediation work would fall into Category 2 remediation work as defined by SEPP 55.

Considering the recommendations provided by the Phase 2 Environmental Site Assessment carried out on the site, a Remediation Action Plan is required to be prepared to remediate the site. A Remediation Action Plan was submitted to Council on 4 August 2017 indicating the preferred methodology for remediation works.

Given that a Remediation Action Plan has been prepared for the development, the development is considered to satisfy to provisions of SEPP 55 and is acceptable. Additional conditions are included in the recommendation requiring appropriate validation reporting in accordance with NSW EPA requirements.

5(a)(vi) 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 an area measuring 340sqm on the roof top level as communal open space, being 15% of the total site area. 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

Whilst the development includes a single building, there are 2 rear wings on the northern portion of the building corresponding with the 2 building cores, known as A and B. The dwellings located directly on either side of the central courtyard void have only bathrooms windows facing each other, and a 12.6 metre separation is provided. As such, the building setback is considered to be sufficient to allow for visual privacy between habitable rooms of the dwellings in wings A and B.

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 provides a western side boundary setback of between 2.79 metres to 6.61 metres. Whilst not complying with the required western side boundary setback, the development does not cause any privacy impacts on the neighbouring site to the west and achieves the objective of the control to achieve reasonable levels of external and internal visual privacy.

The development provides an eastern side boundary setback of between 4.27 metres and 6.19 metres at the rear portion of the building and nil side boundary setback at the front portion of the building. The nil setback at the front portion of the site is considered appropriate given the street context, in which no side setbacks are provided to the commercial streetscape along New Canterbury Road. Whilst not complying with the required eastern side boundary setback at the rear portion of the site, the development does not cause any privacy impacts on the neighbouring site to the east and achieves the objective of the control to achieve reasonable levels of external and internal visual privacy.

Rear Boundary setback

The development provides a rear boundary setback of between 6.16 metres and 20 metres. The ADG prescribes a 9 metre rear boundary setback where the development is adjacent to a different zone that permits low density residential development to provide for a transition in scale. The development generally complies with the rear building envelope prescribed by Part 5.1.3.3 of MDCP 2011 and is considered acceptable in regards to visual privacy and rear building massing.

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.

73.9% of all dwellings within the development receive solar access in accordance with the above controls.

15% of the dwellings receive no solar access between 9:00am and 3:00pm in mid-winter. Notwithstanding, these dwellings are oversized, have sufficiently sized balconies, are naturally ventilated and are generally considered to be dwellings with good internal amenity and as such this non-compliance 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.

67.4% of dwellings within the development are naturally ventilated in accordance with the above controls.

Ceiling Heights

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

Apartment Size

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

Apartment Layout

The ADG prescribes the following requirements for apartment layout requirements:

- Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.
- Habitable room depths are limited to a maximum of 2.5 x the ceiling height.
- In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8 metres from a window.
- Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).
- Bedrooms have a minimum dimension of 3 metres (excluding wardrobe space).
- Living rooms or combined living/dining rooms have a minimum width of:
 - 3.6 metres for studio and 1 bedroom apartments.
 - 4 metres for 2 and 3 bedroom apartments.
- The width of cross-over or cross-through apartments are at least 4 metres internally to avoid deep narrow apartment layouts.

The development provides apartments that comply with the above requirements.

Private Open Space and Balconies

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

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

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 8 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)(vii) 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)(viii) Marrickville Local Environment Plan 2011 (MLEP 2011)

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

- (i) Clause 1.2 - Aims of the Plan
- (ii) Clause 2.3 - Land Use Table and Zone Objectives
- (iii) Clause 2.7 - Demolition
- (iv) Clause 4.3 - Height of Buildings
- (v) Clause 4.4 - Floor Space Ratio
- (vi) Clause 4.6 - Exceptions to Development Standards
- (vii) Clause 5.9 - Preservation of Trees or Vegetation
- (viii) Clause 5.10 - Heritage Conservation
- (ix) Clause 6.2 – Earthworks
- (x) Clause 6.4 - Terrestrial Biodiversity
- (xi) Clause 6.5 - Development in areas subject to Aircraft Noise

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

Standard (maximum)	Proposal	% of non- compliance	Complies
Floor Space Ratio Permitted: 1.5:1	1.5:1	N/A	Yes
Height of Building Permitted: 14 metres	17.9 metres	3.9 metres or 27.8%	No

The following provides further discussion of the relevant issues:

(i) 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 proposal has advanced significantly since Pre-DA, particularly in terms of vehicle access, street front and lobby presentation, architectural resolution, built form and the preservation of the Georgiou’s Confectionery Ltd façade (as required at Planning Proposal stage). The proposal can be supported subject to two additional comments:

- a) *The ‘jelly bean’ façade makes reference to the Georgiou’s Confectionery Factory and provides a playful design alternative, which could be appropriate particularly if the commercial space on the Ground Level is rented to a childcare service provider (At Pre-DA stage the applicant stated that they were under negotiations with a childcare service provider to rent the space). The Panel notes that retail spaces are not permissible along New Canterbury Road. However, the Panel is of the impression that the ‘jelly bean’ motif is a little unresolved and needs further finesse and texture. Perhaps, a subtler or finer scaled version of the same pattern would achieve the architect’s intent in a manner that complements the original Georgiou’s Confectionery façade and the streetscape. Alternatively, the Panel could also consider the refinement of the façade proposed at Pre-DA stage submitted in a meeting in the end of October 2016.*
- b) *The Panel recommends a condition that the architect (Benson McCormack Architecture) be engaged to prepare the construction 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 detail regarding the ‘jelly bean’ façade was 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.

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

The property is zoned B5 – Business Development under the provisions of Marrickville Local Environmental Plan 2011 (MLEP 2011). Residential accommodation is prohibited under the zoning provisions applying to the land. Notwithstanding, development for the purpose of a ‘residential flat building’ is permitted with consent on the site in accordance with Clause 2.5 – Additional Permitted Uses, as discussed below.

The property is referred to in Schedule 1 of MLEP 2011 which permits additional permitted uses. The Schedule prescribes the following for land at 141–161 New Canterbury Road, Lewisham, being Lot 1, DP 718901:

- “(2) Development for the purpose of a residential flat building is permitted with development consent, as part of a mixed use development, but only if:*
- (a) no more than 55% of the total ground floor area of the building will be used for the purpose of dwellings, spaces for the loading or unloading of goods and car parking (including access to those uses), and*
 - (b) any dwelling located on the ground floor will not have frontage to New Canterbury Road.”*

The development is considered to satisfy the above criteria with no area on the ground floor being used for the purpose of anything described in (2)(a) above and no dwellings located on the ground floor level fronting New Canterbury Road.

As such, the use of the site for the purpose of a residential flat building as part of a mixed use development is acceptable. The development is acceptable having regard to the objectives of the B6 - Enterprise Corridor zone.

(iii) 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.

(iv) Height (Clause 4.3)

A maximum building height of 14 metres applies to the property under MLEP 2011. The applicant contends that the development has a maximum building height of 16.44 metres which does not comply with the height 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)”.

It is noted that the applicant has measured the maximum height of the building from the assumed natural ground level of the site. There exists a warehouse building on the majority of the site and therefore natural ground level cannot be accurately determined. The survey submitted with the application does not indicate existing finished floor level of the factory. Whilst there is some merit in measuring height from natural ground level, the definition of

height of building accompanying MLEP 2011 is described as the vertical distance between ground level (existing) and the highest point of the building.

The height of the ground floor level of the proposed development, assumed to be the same as the existing warehouse floor, and the highest point of the building, being the lift overrun, has been used in this assessment to determine the maximum building height of 17.90 metres. Whilst the applicant’s written request in accordance with Clause 4.6 of MLEP 2011 determines the overall height to be 16.44 metres, the merits of the written request are nonetheless valid to either measurement.

(v) Floor Space Ratio (Clause 4.4)

A maximum floor space ratio (FSR) of 1.5:1 applies to the land under MLEP 2011.

The development has a gross floor area (GFA) of 3,501sqm which equates to a FSR of 1.5:1 on the 2,334sqm site which complies with the FSR development standard.

(vi) 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 14 metres applies the site MLEP 2011. The development has a maximum building height of 17.9 metres which does not comply with the height development standard. The highest point of the development has a height of RL 49.40 AHD and thus results in a departure of 3.9 metres or 27.8% from the development standard.

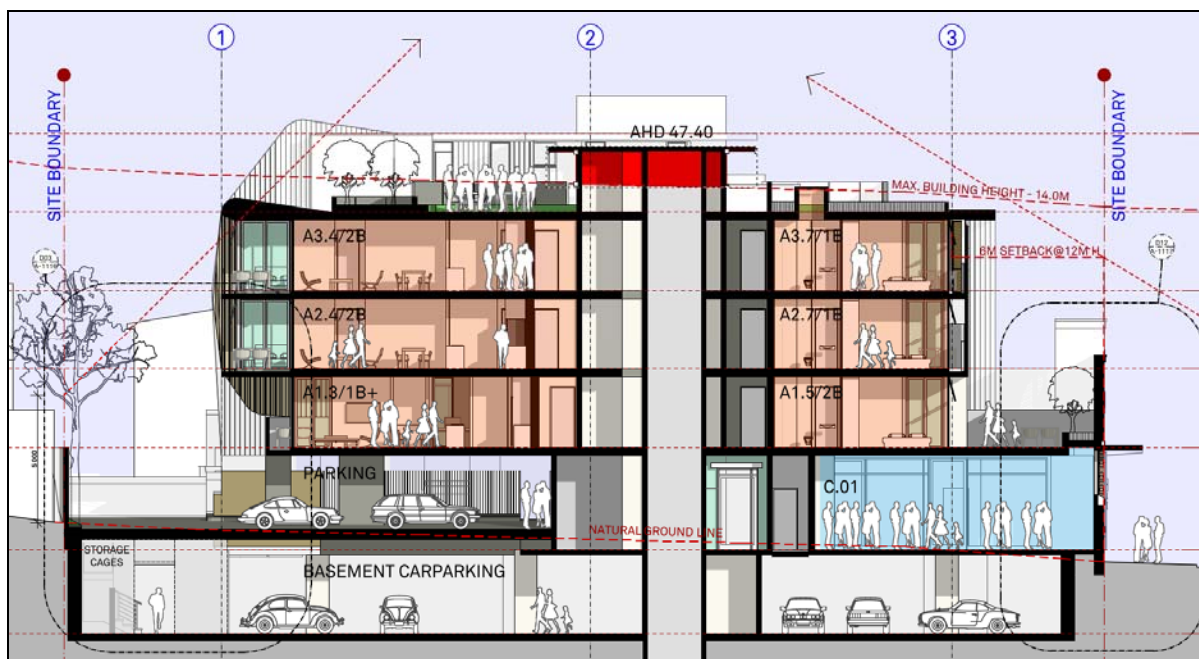


Image 1: Non-compliance with overall height at western elevation of Building ‘A’ – highlighted in red

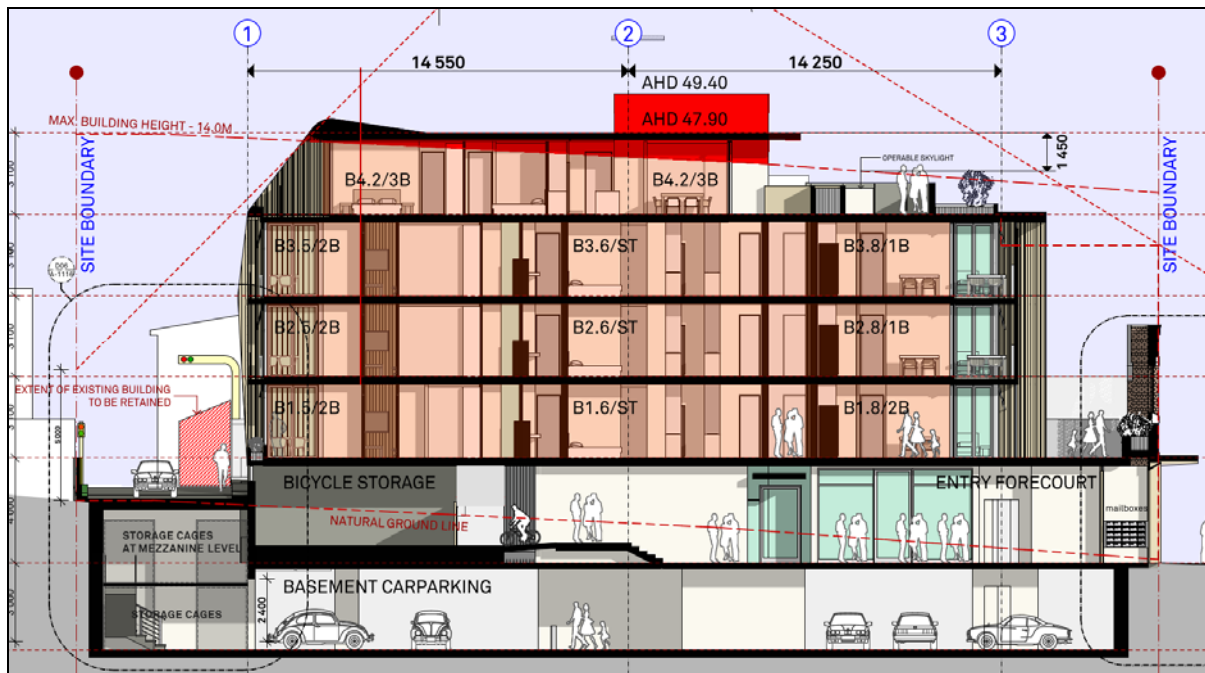


Image 2: Non-compliance with overall height at eastern elevation of Building 'B' – highlighted in red

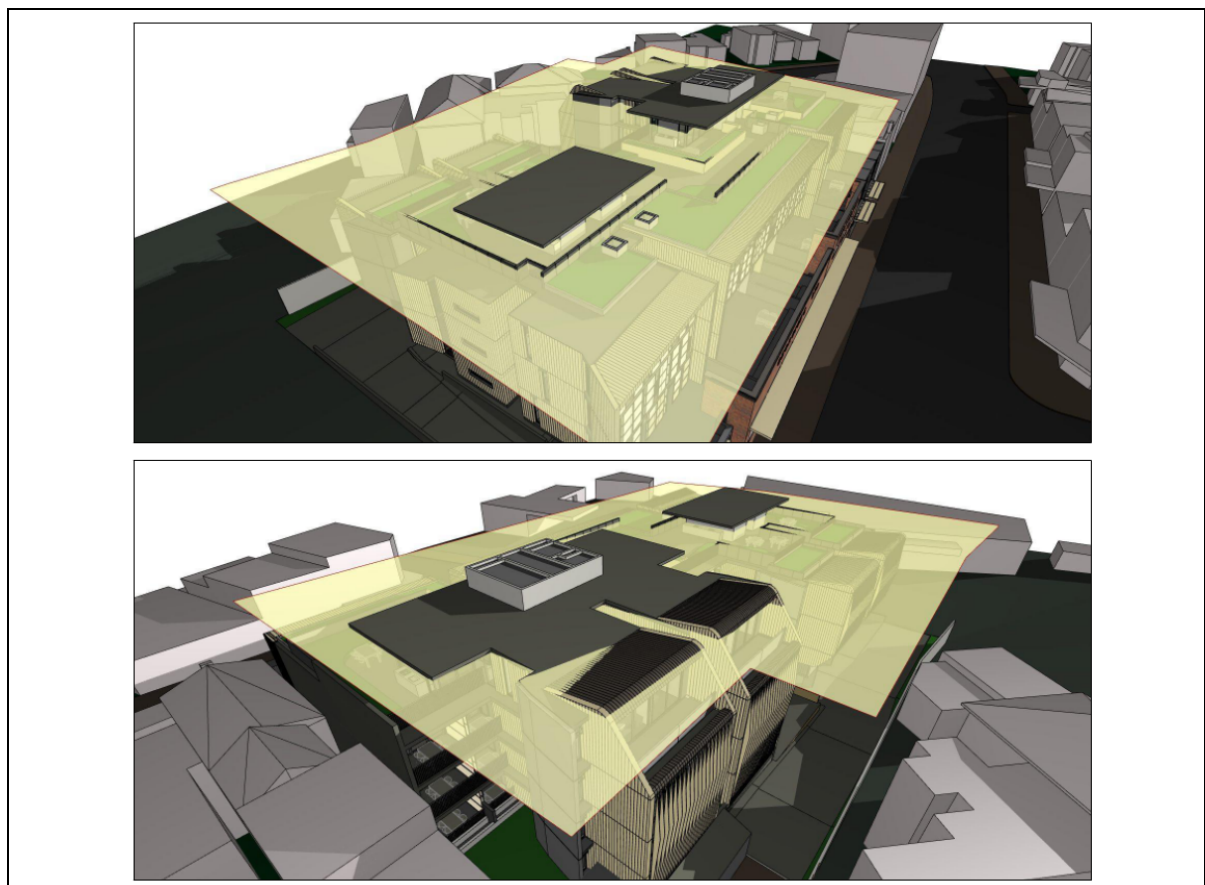


Image 3: Building height plane indicating non-compliant areas

The applicant considers compliance with the maximum building height development standard to be unreasonable and unnecessary for the following reasons:

- The extent of non-compliance arises mainly from the fall of the natural ground level on the site, dropping from a high point at the northern boundary, down toward the south building line at New Canterbury Road, and the rise from the eastern edge of the site toward the west. The bulk of the “non-compliant” height is confined to the lift overrun on the site, structures associated with the communal rooftop space and the upper ceiling/roof line of the fifth floor residential units;
- The degree of technical non-compliance with the 14m height limit is 2.44m, measured to the parapet of the lift overrun serving Building B. Deleting dwellings 4.1/3B and 4.2/3B will result in no change to the technical non-compliance because lift access to Level 4 is still required to enable equity of access to the roof terrace.
- The degree to which the ‘habitable’ envelope of dwellings 4.1/3B and 4.2/3B breach the height limit is minor with the maximum departure being only 1.25m (8.9%) measured at the SW corner of dwelling 4.2/3B. Conversely, the opposite corner of the Level 4 building envelope (i.e. NE corner to dwelling 4.1/3B) is located 0.6m below the maximum building height limit.
- The reason the NE corner of dwelling 4.1/3B complies with the maximum building height limit is due to the natural topography of this corner of the site (AHD34.63) being up to 3.96m higher than the SW corner of the site (AHD30.67). The change in topography is greater than a typical floor level and as such the stepped form of the proposed building envelope is therefore reasonable, particularly when viewed from the northern side.
- The site is an identified “landmark” site, whereby Council’s Development Control Plan seeks an innovatively designed “landmark” building - the proposed height and design reinforces that vision;
- The building retains the 1-2 storey historic façade of the Georgiou’s Chocolate Factory, which has initiated the proposed design response;
- The site is adjacent to a major thoroughfare with significant traffic noise impact, which in turn has caused the design response to move floor space to rear and away from the façade;
- The additional height does not adversely impact upon surrounding development, including Heritage Items and Heritage Conservation Areas and will not have unreasonable amenity impacts with respect to privacy impacts and overshadowing, nor cause view loss;
- The development will enhance the number of family style units with access to significant private open space, proximate to significant communal open space, with the area.

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

- The proposal is consistent with the objectives of the zone and the development standard for height contained in MLEP 2011.
- The proposal is compliant with the relevant objectives and controls contained in State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development
- The proposal will enable the development of building of a height, bulk and scale anticipated by the planning controls.
- The New Canterbury Road facade will contribute positively to the public domain and the social and cultural history and fabric of the site and the area.
- The apartments are designed to maximise amenity, ensuring access to private open space, ventilation and natural light.
- The apartments are designed to minimise the amenity impacts arising from their location - particularly with respect to road and aircraft noise.

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;
- The redistribution of GFA from the first, second and third floor levels to allow a substantial front boundary setback is a direct design response to Council's desire for the Georgiou's factory façade to be restored. Whilst the redistribution of GFA from the front setback to the roof top level results in the non-compliance with the height development standard, the development complies with the overall building density standard for the site measures as 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 Hunter Street and New Canterbury Road with the undergrounding of power lines, improved vehicular crossings and relationship to the footpath along Hunter Street, and a new awning over the footpath and improved safety for pedestrians along New Canterbury Road.

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.

(vii) Preservation of Trees or Vegetation (Clause 5.9)

Clause 5.9 of MLEP 2011 concerns the protection of trees identified under MDCP 2011.

There are no trees on the site covered by and protected under Marrickville Development Control Plan 2011. However there are 9 trees on neighbouring sites to the north and west which are protected by MDCP 2011.

The application was referred to Council's Tree Management Officer. The matter of tree management is discussed in more detail later in this report under the provisions of MDCP 2011.

(viii) Heritage Conservation (Clause 5.10)

The site is not listed as a heritage item under MLEP 2011 and is not located within a Heritage Conservation Area under MLEP 2011.

The site is located within the vicinity of a number of heritage items, namely:

- Item I56 identified as 'Huntsbury Hotel', located approximately 75 metres to the west of the site at No. 127 New Canterbury Road.
- Item I55 identified as Morton House – Edwardian house, including interiors, located approximately 100 metres to the north of the site at No. 40 Hunter Street.
- Item I61 identified as 'Petersham Baptist Church and Church Hall, including interiors, located approximately 120 metres to the north west of the site at No. 13 The Boulevarde.

The site also adjoins the Lewisham Estate Heritage Conservation Area (HCA C26) to the north of the site. HCA C26 generally includes the properties fronting The Boulevarde and properties in the vicinity of Victoria Street, as well as a small number of properties fronting Hunter Street immediately to the north of the site.

The Statement of Environmental Effects submitted with the application satisfactorily addresses the relevant heritage conservation provisions contained in Clause 5.10 of MLEP 2011. The application was referred to Council's Heritage and Urban Design Advisor.

Overall, the development would not have any significant impacts on the nearby heritage items and the adjoining heritage conservation area. The development satisfies Clause 5.10 of MLEP 2011 and provisions of Part 8 of MDCP 2011.

(ix) 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.

(x) Terrestrial Biodiversity (Clause 6.4)

The land is identified as "Biodiversity" on the MLEP 2011 Natural Resource - Biodiversity Map. The application was referred to Council's Bandicoot Officer who raised no concern over the development subject to the imposition of appropriate conditions which are included in the recommendation.

(xi) 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 AS2021:2000. An Acoustic Report was submitted with the application which details that the development could be noise attenuated from aircraft noise to meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS2021:2000. 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	Yes – see discussion
Part 2.6 Visual and Acoustic Privacy	Yes – see discussion
Part 2.7 Solar Access and Overshadowing	Yes – see discussion
Part 2.9 Community Safety	Yes – see discussion
Part 2.10 Parking	Yes – see discussion
Part 2.13 Biodiversity	Yes – see discussion
Part 2.16 Energy Efficiency	Yes
Part 2.18 Landscaping and Open Spaces	Yes – see discussion
Part 2.20 Tree Management	Yes – see discussion
Part 2.21 Site Facilities and Waste Management	Yes – see discussion
Part 2.24 Contaminated Land	Yes
Part 2.25 Stormwater Management	Yes
Part 5 Commercial and Mixed Use Development	No – see discussion
Part 9 Strategic Context	No – see discussion

The following provides discussion of the relevant issues:

PART 2 – Generic Provisions

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

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

MDCP 2011 Requirement	Proposed	Consistency
Residential Component		

For developments with five (5) or more dwellings, one adaptable dwelling per five or part thereof.	The proposed 46 dwellings require the provision of five (10) 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	10 accessible parking spaces servicing 10 adaptable dwellings	Yes
One (1) accessible visitor's parking space for every four accessible parking spaces or part thereof, designed in accordance with relevant Australian Standards.	The development provides 10 accessible parking spaces and 3 accessible visitor parking spaces are provided.	Yes
Commercial Component		
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 22 spaces, however only 1 of those spaces is required 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.

Despite the above, the requirements of MDCP 2011 are effectively superseded by the introduction of the new Premises Standards. An assessment of whether or not these aspects of the proposal fully comply with the requirements of relevant Australian Standards and the new Premises Standards has not been undertaken as part of this application. That assessment would form part of the assessment under the Premises Standards at the Construction Certificate stage of any proposal.

(ii) 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.

Visual Privacy

The development generally provides windows and areas of private open space which face New Canterbury Road to the south and the driveway along the rear of the site to the north.

- The northern elevation of the development provides dwellings with areas of private open space in the form of balconies which face towards the dwellings to the north which front Hunter Street. The balconies are associated with principal living areas and bedrooms and have bi-fold doors providing access to those rooms. Amended Plans were submitted to Council on 13 June 2017 indicating the entire northern elevation of the development is treated with integrated privacy screens along the entire width and height of every balcony which will restrict direct line of site to neighbouring dwellings, with the exception of the following units:

- Unit 1.3 is located on the first floor level and provides a small shallow balcony off the principal living area measuring 810mm deep and a larger balcony off the bedroom allowing for tables and chairs. The balcony is set back 7.8 metres from the rear boundary and has a 1.2 metre high solid concrete balustrade to restrict views in a downward direction. The balcony is recessed from the rear building line and has screening to the western and eastern sides of the balcony to a depth of 1.75 metres from the balustrade to further restrict views. Whilst there may be some views over the rear parking area of the dwelling directly to the north at No. 50 Hunter Street, these are expected to be minimal so do not pose significant overlooking impacts which would warrant privacy screening.
- Units 4.1 and 4.2 provide secondary, shallow balconies with solid balustrades on the northern elevation which are set back 7.8 metres from the rear boundary and service bedrooms only. The principal living areas and principal areas of private open space are located on the southern side of these dwellings. Whilst there is some potential that these areas will allow overlooking to the dwellings to the north, these terraces are not of a sufficient size to allow entertaining and are designed to provide for additional light and ventilation only. Given the nature of the balconies, no concern is raised in regards to visual privacy.
- The development also provides north facing windows servicing the master bedrooms of all the north facing units on the first, second and third floor levels. The window schedule submitted with the application indicate these windows are narrow slit windows with measurements 1,00mm (width) and 2,800mm (height). These windows service bedrooms which are considered low activity rooms and have blade walls on either side allowing only a narrow cone of vision. These windows are set back in excess of 10 metres from the rear boundary. Given the nature of the windows, no concern is raised in regards to visual privacy.
- All dwellings presenting to New Canterbury Road to the south generally have district views to the south and overlook the roadway. As such, no concern is raised in regards to visual privacy.

Acoustic Privacy

The development provides a large common terrace on the floor top level. The trafficable area of the roof terrace measures approximately 300sqm. The development as originally proposed included a communal barbeque area and outdoor entertaining space along the northern extent of the roof.

Due to concerns regarding visual and acoustic privacy impacts, amended plans were submitted to Council on 16 June 2017 indicating the barbeque and entertaining areas being relocated away from the northern portion of the roof. The barbeque and entertaining areas are now located near the lift core approximately 20 metres from the northern boundary and include planting along the northern section of the roof to alleviate the potential for overlooking and provide a landscaped buffer between the terrace and the neighbouring dwellings to the north of the site. The roof terrace provides additional amenity for the future occupants of the development and no concern is raised in regards to acoustic privacy.

It is noted that a submission was received by Council raising concern that the operation of the spray booth and associated exhaust may cause concerns for new occupants of the development in regards to noise, fumes and particulate matter. Determination No. 14622, dated 21 October 1992 approved the installation of a spray booth for the existing smash repair business operating on the site. The subject development includes a number of windows and areas of private open space within 10 metres of the exhaust for that spray

booth. Whilst not directly facing to towards the use to the east of the site, the windows and balconies may be affected by the operations of that use.

Whilst the emission of noise, fumes and particulate matter may be cause for concern for occupants of the new development, it is not a function of Council to resolve conflicts or to be concerned with the prospect that the owner of the adjoining land could or should be expected to make adjustments to its land use to accommodate the subject development. Notwithstanding, Council has considered the steps taken by the applicant to address the potential conflicts with the use on the adjoining site to the east and amended plans were submitted to Council on 24 August 2017 indicating the external wall along the eastern boundary being extended in depth to be 6,220mm from the nearest door to a habitable space. This measure has been included to protect the acoustic privacy of the future occupants of Units B1.2, B1.3, B2.2, B2.3, B3.2 and B3.3 which are closest to the noise source.

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

(iii) Solar Access and Overshadowing (Part 2.7)

Overshadowing

The shadow diagrams submitted with the application illustrate the extent of overshadowing as a result of the development. The development will not result in increased overshadowing of any areas of private open space or windows to principal living areas on adjoining sites to the east or west. Additional shadows cast by the development will generally fall on New Canterbury Road to the south of the site which is acceptable.

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.

(iv) Community Safety (Part 2.9)

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

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

- The principal entrance to the building is visible from New Canterbury Road and is in a prominent position being well lit and signposted;
- The development has been designed to overlook and provide passive surveillance over New Canterbury Road and the laneway to the rear of the site;
- 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.

(v) Parking (Part 2.10)

Car, Bicycle and Motorcycle Parking Spaces

The property is located in Parking Area 3 under Part 2.10 of MDCP 2011. The following table summarises the car, bicycle and motorcycle parking requirements for the development:

Component	Control	Required	Proposed	Complies?
Car Parking				
Resident Car Parking	0.4 car parking spaces per studio	12 x studio units = 4.8 spaces		
	0.5 car parking spaces per 1 bed unit	12 x 1 bed unit = 6 spaces		
	1 car parking space per 2 bed unit	10 x 2 bed units = 10 spaces		
	1.2 car parking spaces per 3 bed unit	2 x 3 bed units = 2.4 spaces		
	Total required:	23.2 spaces		
Accessible Resident Car Parking	1 car parking space per 1 adaptable dwelling	10 adaptable dwellings = 10 accessible spaces	10 spaces	Yes
Residential Visitor Parking	0.1 space per unit	36 units = 3.6 spaces	4 spaces	Yes
Accessible Visitor Parking	0.25 space per adaptable unit	10 adaptable units = 2.5 accessible visitor spaces	3 spaces	Yes
Commercial Car Parking	1 space per 80sqm GFA for customers and staff	465sqm GFA = 5.75 spaces	9 spaces	Yes
Bicycle Parking				
Resident Bicycle Parking	1 bicycle parking space per 2 units	46 units = 23 spaces		
Visitor Bicycle Parking	1 bicycle parking space per 10 units	46 units = 5 spaces		
Commercial Bicycle Parking	1 per 300sqm GFA for staff	460sqm GFA = 2 spaces		
	Total required:	30 spaces	37 spaces + store & shower	Yes
Motorcycle Parking				
Motorcycle Parking	5% of the total car parking requirement	46 car parking spaces required = 2.3 spaces		
	Total required:	2 spaces	6 spaces	Yes

Assessment of proposal against Part 2.10 of MDCP 2011

As detailed above, the development exceeds the car, bicycle and motorcycle parking requirements.

It is noted that whilst car parking in excess of Council's requirement does constitute GFA, the 3 x excess residential car parking spaces and 3 x excess commercial car parking spaces are provided at grade at the rear of the building and therefore do not constitute GFA.

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

- 10 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;
- A total of 9 car parking spaces being provided for the commercial component of the development, including 1 of those spaces being accessible. This space must be marked as a disabled car parking space;
- A total of 7 visitor car parking spaces being provided for the residential component of the development, including 3 of those spaces being accessible visitor car parking spaces and marked as such. All visitor car parking spaces must be provided and marked as visitor car parking spaces;
- 26 car parking spaces being provided for the residential component of the development; and
- The tandem residential car parking spaces located on the ground floor level must be allocated to the same dwelling.

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 development is provided with a large loading bay on the ground floor level with direct ramped access to the ground floor commercial tenancies for loading/unloading, waste storage areas and residential lobby for removalist activities.

The loading bay has been designed to be fully enclosed when in use, with a roller shutter located at the northern extent of the bay. The loading bay is located so as to provide vehicular egress on to New Canterbury Road to allow the trucks entering the site from Hunter Street to enter and exit the site in a forward motion. The loading bay has been designed so as to minimise any acoustic privacy impacts to the residential accommodation to the north of the site.

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

(vi) Biodiversity (Part 2.13)

Protection of endangered/threatened species

The land is located in the Bandicoot Protection Area as identified in the Biodiversity Map contained in Appendix 3 of Part 2.13 of MDCP 2011 being an area identified as a potential habitat for the Long-nosed Bandicoot. The property has a site area which is greater than 450sqm. The development would not result in any work that will disturb or reduce the

existing pervious area of the site by more than 25%. As such, in accordance with the requirements contained MDCP 2011, no further action is required.

Notwithstanding, the application was referred to Council's Bandicoot Officer who raised no concern over the development subject to appropriate conditions which have been included in the recommendation.

An Amended Landscape Plan was provided to Council on 10 August 2017 indicating native vegetation being included in the proposed landscaping works in accordance with the requirements of Control C2 in Part 2.13.4 of MDCP 2011.

(vii) 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 8m² and a minimum width of 2 metres.”

Landscaped area

The development has a frontage to New Canterbury 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 small pockets of landscaped area on ground and first floor levels. Considering the context of the site being within a business centre, being assessed as providing sufficient private and common open space for use by the occupants of the development and being a significant improvement to the nil landscaping currently existing on the site, the development is considered reasonable.

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 exceed the minimum area and minimum depth as per above with the exception of studio apartments A1.2, A1.4, A2.5, A3.5, B1.6, B2.3, B2.6, B3.3, and B3.6. 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; and
- All the studios are oversized internally and make up for the smaller balconies with large internal space.

Communal open space

The development only provides 2 large dwellings and is not required to provide common open space. Notwithstanding, the development provides an area measuring 340sqm on the roof top level as communal open space, being 15% 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 New Canterbury Road and as such the development is not required to provide street trees planting on the street frontage.

(viii) Tree Management (Part 2.20)

There are no trees on the site covered by and protected under Marrickville Development Control Plan 2011. However there are a total of 9 trees on the neighbouring sites which are protected by MDCP 2011, including a *Corymbia maculata* (spotted gum) and *Callistemon viminalis* (bottlebrush) on the neighbouring site to the west at No. 163-181 New Canterbury Road and 7 x Conifer sp. (conifer) on the neighbouring site to the north at No. 50 Hunter Street.

The application was referred to Council's Tree Management Officer who advised that the basement has been set back to outside the Structural Root Zones (SRZ) of the two trees in the carpark of the property to the west at No. 163-181 and now only results in minor encroachment, less than 10 percent, into the Tree Protection Zones (TPZ).

Council's Tree Management Officer raises no concern over the development subject to the imposition of appropriate conditions which have been included in the recommendation.

(ix) 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 46 units and would generate 3,312L of waste based on the calculation of 72L per dwelling. A minimum of 14 x 240L recycling, 28 x 240L general waste bins and an appropriate number of green waste bins are required to be provided for the development.

A total of 2 x residential bin storage areas are proposed on the ground floor level of the development with a capacity to accommodate the required waste facilities for recycling and general waste under Part 2.21. Amended Plans were submitted to Council on 13 June 2017 deleting the proposed interim waste holding area at the rear of the site in response to concerns raised in submissions about the noise and smell associated with these areas. The waste holding area and pick up area has been relocated towards the front of the site and will be fully enclosed when operational for acoustic privacy reasons.

The RWMP submitted with the application indicates that waste collection will occur from the internal loading bay located on the western portion of the site which is acceptable.

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 of the 2 building cores 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 12sqm must be provided for the temporary storage of discarded bulky items which are awaiting removal. A total of 5sqm or 13m³ has been provided for bulky items. Additional space is available within the loading bay for booked collection items.

2.21.2.6 Commercial Waste

The commercial tenancies have a combined area of 465sqm 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 5 x 660L waste 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.

(x) 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.

(xi) Stormwater Management (Part 2.25)

A concept drainage plan was submitted with the application and was reviewed by Council's Development Engineer. The development is considered acceptable with regard to the objectives and controls relating to stormwater management under Part 2.25 of MDCP 2011.

PART 5 – Commercial and Mixed Use Development

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

(xii) 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.

(xiii) 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 street front portion of the building mass has a maximum height of 8.2 metres and a maximum of 2 storeys which is the retained portion of the brick Georgiou’s building and new infill façade which is acceptable.

The development is proposed to be built to a zero building line to the New Canterbury Road property boundary and the side boundaries which satisfies the setback controls.

Rear Massing

The rear building envelope is predominately contained within the rear boundary plane with a minor breach within the 45 degree sloping plane as shaded red in the partly reproduced sections below:

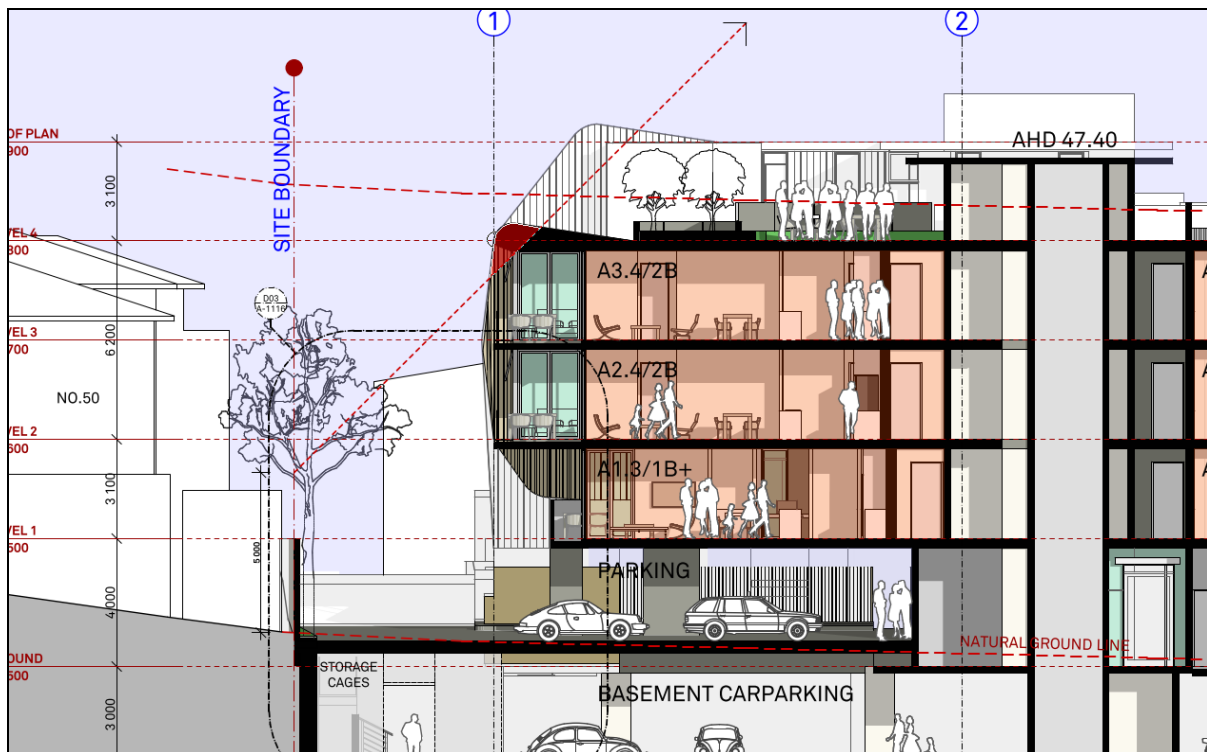


Image 4: Amended Rear Building Envelope section – Building ‘A’

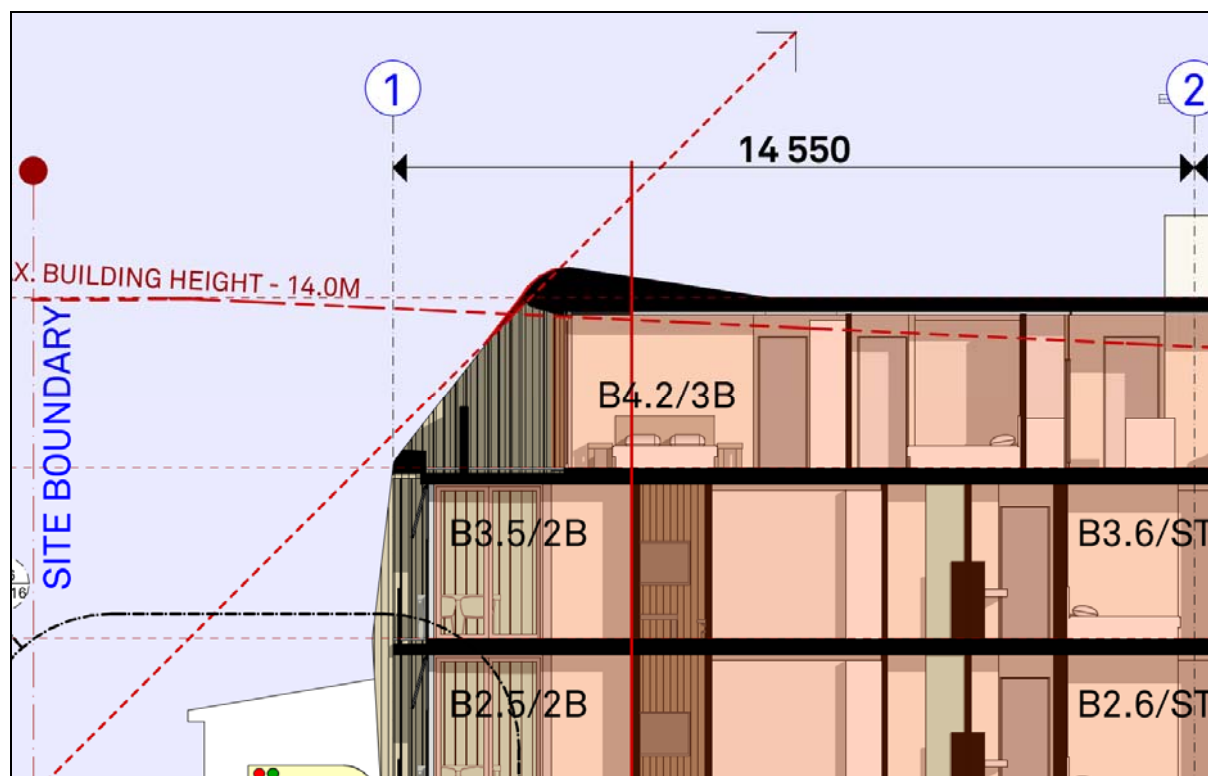


Image 5: Amended Rear Building Envelope section – Building 'B'

Amended Plans were submitted to Council on 13 June 2017 reducing the overall size of the rear architectural feature bronze cladding to reduce the extent of the non-compliance. The amended development generally complies with the rear building envelope as illustrated above. The extent of the breach includes a small portion of an architectural feature at the northern extent of the roof top level of building 'A' and the extent is negligible on building 'B'.

The breach is minor and strict compliance with the 45 degree building envelope would not have any material impact in reducing the visual bulk of the development as viewed from the properties to the north of the site.

(xiv) 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:*
 - a. *A maximum depth of 22 metres; and*
 - b. *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 has a maximum depth of approximately 26 metres on the residential floors which exceed the maximum 22 metres permitted.

Whilst not complying with the numerical requirement, the proposal generally achieves the intent of the controls by providing an internal void throughout the residential component of the development which allows adequate amenity for building occupants in terms of direct solar access and natural light and ventilation and allows the use of dual aspect building design.

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.

(xv) 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. Up to five storeys:

- a. 12 metres between habitable rooms or balconies of dwellings and habitable rooms or balconies of dwellings; and*
- b. 9 metres between habitable rooms or balconies of dwellings and non-habitable rooms of dwellings or commercial uses.”*

Whilst the development includes a single building, there are 2 rear wings on the northern portion of the building corresponding with the 2 building cores, known as A and B. The dwellings located directly on either side of the central courtyard void have only bathrooms windows facing each other, and a 12.6 metre separation is provided. As such, the building setback is considered to be sufficient to allow for visual privacy between habitable rooms of the dwellings in wings A and B.

The development is generally built to the eastern and western side boundaries which is typical of the commercial centre and is acceptable. A sufficient western side boundary setback is provided to allow for operable windows servicing the units on the western portion of the building.

(xvi) Building Detail (Part 5.1.4)

5.1.4.1 Building Frontages - Infill Development

The proposal has been thoughtfully designed, preserves and restores the Georgiou’s façade and achieves an interesting architectural expression to the new building structures, reinforcing and complementing fine grain architectural elements found in the locality in a contemporary way. Form, articulation and materiality have been carefully considered to complete the retained façade.

The selection of materials and finishes includes the retained face brick Georgiou’s façade, off form concrete, as well as aluminium and steel panelling to the upper levels and anodised metal cladding and perforated screening to the ‘jelly bean’ infill component. 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 Georgiou’s 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 for the commercial tenancies;
- 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 New Canterbury Road;

- 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;
- The site is zoned B5 Business Development. This zoning prohibits retail premises and as such there is less of a demand for a continuous active street frontage along New Canterbury Road; and
- No security shutters are proposed.

(xvii) 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%	12 (26%)
1 bedroom	10% - 40%	22 (48%)
2 bedroom	40% - 75%	10 (22%)
3+ bedroom	10% - 45%	2 (4%)

Accordingly, the development does not comply with the dwelling mix requirements. 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 Petersham (Commercial Precinct 36) under Marrickville Development Control Plan 2011.

(xviii) Desired future character (Part 9.36.2)

The development is considered to be consistent with the desired future character of the Petersham (Commercial Precinct 36) as it achieves the following objectives:

- “2. To retain, as a minimum, the front portion of contributory buildings where they are contributory to the heritage conservation area (HCA) and streetscapes.
3. To protect the identified heritage values of the Petersham Commercial Precinct Heritage Conservation Area.
4. To allow and encourage a greater scale of development within the commercial centre, including the provision of new dwellings near local shops, services and public transport, to meet the market demand, create the opportunity for high access housing choice and support sustainable living.
5. To support excellence in contemporary design.
6. To ensure that the street building frontage of infill development complements the siting (location and orientation), scale, form (height, massing and setback), proportion (height to width and solid to void), rhythm, pattern, detail, material, colour, texture, style and general character in the design of the existing predominantly traditional two storey commercial streetscape, without being imitative.
7. To ensure that new development at the rear upper levels is a maximum of four storeys and is designed to be subservient to retained portions of contributory buildings or infill development to the street building front.
8. Where required, to ensure active commercial fronts to new buildings facing onto streets to create a vibrant and safe streetscape.
11. To ensure that the design of higher density development demonstrates good urban design and environmental sustainability and provides suitable amenity for occupants of those developments.
12. To ensure that the design of higher density development protects the residential amenity of adjoining and surrounding properties.
13. To ensure orderly development on masterplan sites in accordance with the principles of the masterplan vision, including allotment amalgamations, where required, that are not detrimental to achieving the overall masterplan structure and achieve an efficient and high quality built outcome.
14. To ensure that new development considers all potential impacts to biodiversity.
15. To facilitate efficient parking, loading and access for vehicles that minimises impact to streetscape appearance.”

(xix) Site-specific planning controls (Part 9.36.5)

9.36.5.4 141-161 New Canterbury Road, Lewisham

The site-specific planning controls for the subject site are contained within Part 9.36.5.4 of MDCP 2011 and are considered below:

C17 Any redevelopment of 141-161 New Canterbury Road, Lewisham comprising residential uses must demonstrate consistency with the provisions of State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide, as well as demonstrating consistency with the relevant provisions of Parts 2 (Generic Provisions), 4 (Residential

Development), 5 (Commercial and Mixed Use Development) , 8 (Heritage) and Part 9.36 Petersham (Commercial Precinct 36) of MDCP 2011.

An assessment of the development in accordance with the provisions of SEPP 65 and the relevant provisions of MDCP 2011 has been discussed elsewhere in this report under Sections 5(a)(v) and 5(c) respectively.

C18 *Any redevelopment of 141-161 New Canterbury Road, Lewisham, must create an active street frontage for the length of its New Canterbury Road frontage with active rear and side lane frontages where appropriate.*

The development has a frontage of 58.5 metres to New Canterbury Road. The restoration of the existing Georgiou's building facade provides approximately 33 metres of active street front with a contemporary infill facade providing an additional 14 metres active frontage along the south eastern portion of the site.

The development allows for an active street frontage along the entire length of the New Canterbury Road façade, with the exception of an 11 metre wide portion of the front façade which provides necessary fire infrastructure and a vehicular egress to New Canterbury Road. Whilst not providing an active street frontage, the loading bay and associated vehicular egress was relocated towards the front of the site to ameliorate concerns raised in regards to acoustic privacy of the neighbouring residential accommodation to the north of the site.

C19 *No dwellings, loading spaces and/or vehicular parking located on the ground floor are to have frontage to New Canterbury Road.*

No dwellings are proposed on the ground floor level of the development and all vehicular parking is located to the rear of the development and in the basement level. The loading bay is located to the south western portion of the site

C20 *Building height of new development is limited to a maximum of 14 metres and a maximum of a four storeys.*

Maximum height

The matter of non-compliance with the maximum height of buildings development standard has been discussed in more detail in Section 5(a)(v)(vi) of this report.

Maximum number of storeys

The New Canterbury Road elevation retains the existing Georgiou's building which is a 1 part 2 storey brick facade and introduces a contemporary 2 storey element on the eastern portion. The new residential component of the development has a maximum of 4 storeys to the street front with a partial fifth floor set back approximately 16 metres from the front boundary. Whilst exceeding the four storey limit, the fifth floor is visually subservient and is setback substantially front the front and rear boundaries. The appropriateness of the fifth floor element has been discussed in more detail in Section 5(a)(v)(vi) of this report.

The development includes 2 separate building elements at the rear separated by the central courtyard. The eastern element has a height of 4 storeys above ground level at the rear and the western element has a height of 4 storeys.

- C21** *Any redevelopment of 141-161 New Canterbury Road must be designed as a landmark building emphasising the prominent viewline from Wardell Road towards the site.*
- C22** *Significant elements of the existing 'Georgious' building façade (as determined by Council's Heritage & Urban Design Advisor) are to be retained and incorporated into any redevelopment. Any redevelopment must provide building massing, vertical architectural features, roofscape, parapet design, materials and colours that reinforce the three façade intervals of the existing 'Georgious' building façade.*
- C23** *Architectural form, elements, materials and colours of any new building structure must carefully integrate with the retained heritage façade with a contemporary roof form and parapet design interpreting the traditional parapet design of the buildings within the Petersham Commercial Centre in terms of varying heights and design elements.*

The proposal has been carefully designed as a memorable building. It preserves and restores the Georgiou's façade and achieves an interesting architectural expression to the new building structures, reinforcing and complementing fine grain architectural elements found in the locality in a contemporary way.

Form, articulation and materiality have been carefully considered to integrate with the retained façade, to reflect the natural slope of the New Canterbury Road, and to emphasise prominent view lines from Wardell Road towards the site (New Canterbury Road Elevation) and from New Canterbury Road looking northeast towards the West Elevation.

- C24** *Cantilevered buildings or building overhangs that protrude over laneways and/or entranceways are not permitted with the exception of minor projections above ground level to create interest to the façade.*
- C25** *The rear massing of any redevelopment must not cause significant visual bulk or amenity impacts on any neighbouring properties, particularly to the rear of the site.*

The rear massing of the development generally complies with Council's rear building envelope controls, providing a minimum 6.1 metre setback to the rear boundary and not causing significant visual bulk or amenity impact on the neighbouring residential accommodation to the north of the site beyond what could reasonably be expected and envisioned by Council's controls.

- C26** *The future rear lane is to be developed to a minimum width of 6.1 metres to allow for two-way traffic to benefit sites Nos. 135, 137, 139, 141-161 & 163-181 New Canterbury Road and capable of catering for a medium rigid vehicle to the satisfaction of Council's Design Engineer and be dedicated to Council.*

The future rear lane, to the extent that it is in ownership of the applicants of the subject application, has been development to a minimum 6.1 metres wide and dedicated as a continuous Right of Way to benefit sites Nos. 135, 137, 139, 141-161 & 163-181 New Canterbury Road. The laneway is capable of accommodating a medium rigid vehicle. Council's Development Engineer has reviewed the proposal and raises no concern over the development.

A portion of the existing warehouse on the eastern portion of the site is constructed over the existing Right of Way and is not located on land owned by the applicant. As such the application proposes to retain that portion of the warehouse building. It is considered that the building will restrict the safe passage of cars to and from the site. As such, a deferred

commencement conditions of consent is recommended requiring that lawful authority be obtained for that portion of the factory to be demolished to ensure safe passage for cars.

Conditions are also included in the recommendation requiring that the footpath be upgraded along the Hunter Street entrance to the site including relocation of the power lines below ground and relocation of the light post which currently obscures site lines into the right of way.

C27 *Any access utilising New Canterbury Road is to be a temporary arrangement only (to the satisfaction of Council's Design Engineer) provided it does not compromise future development of a two-way lane off Hunter Street to benefit sites Nos. 135, 137, 139, 141-161 & 163-181 New Canterbury Road.*

The development as originally proposed provided all vehicular egress from the rear of the site off Hunter Street. Amended Plans were submitted to Council on 13 June 2017 indicating the existing vehicular crossing to New Canterbury Road at the south western corner of the site being retained to provide egress on to New Canterbury Road for trucks in response to a number of concerns raised in submissions regarding acoustic privacy.

The egress on to New Canterbury Road is not a temporary arrangement, however it will not compromise future development of a two-way lane off Hunter Street.

C28 *Adjoining sites cannot be redeveloped until the two-way rear lane access onto Hunter Street has been achieved to ensure that any redevelopment on those sites does not utilise New Canterbury Road as an access point, other than as a temporary arrangement for 141-161 New Canterbury Road.*

C29 *Rear and side lanes and shared driveways must be designed as shared zones where pedestrians, cyclists and motorised traffic share the road space and are to be designated as such*

The rear laneway has been designed for vehicular traffic only. There is no footpath along the rear lane and considering this is the sole access for vehicles and there is no appropriate pedestrian access to the building from the rear, it is not considered appropriate to develop this lane as a shared zone.

C30 *Site facilities including waste storage facilities must be thoughtfully and sensitively integrated into the development with waste storage facilities designed to facilitate on site collection and to minimise impacts on the streetscape, building entries and amenity*

The matter of waste management is discussed in more detail earlier in this report in Section 5(c)(x) under the provisions of Part 2.21 of MDCP 2011. Amended Plans were submitted to Council on 13 June 2017 indicating the removal of the temporary waste holding area at the rear of the site and relocation of waste collection services to a separated loading bay at the western portion of the site in response to a number of concerns raised in submissions regarding acoustic privacy.

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 B5 Business Development 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 29 submissions were received.

During the assessment process the proposal was amended to address a number of concerns raised by Council officers relating to bulk and scale, visual privacy, loading/unloading facilities, vehicular access and other matters. The amended proposal was notified in accordance with Council's Notification Policy and 9 submissions were received.

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

- Excessive departure from height development standard - See discussions throughout Section 5(a)(v)(vi);
- Reduced amenity to dwellings to the north of the site in regards to visual and acoustic privacy - See Section 5(c)(ii);
- Provision of car parking and lack of parking for visitors - See Section 5(c)(v);
- The increase in visual bulk and scale from the development - See discussions throughout Section 5(c);
- Use of Hunter Street for vehicular egress - See Section 5(c)(xix);
- Issues with location of waste management (odour and noise) - See Section 5(c)(ix) and 5(c)(xix);
- Lack of landscaping - See Section 5(c)(vii);
- Heritage considerations - See Section 5(a)(v)(viii);
- Sustainability – lack of cross ventilation and solar access for dwellings – See discussion throughout Section 5(a)(v); and
- Rear building envelope non-compliance - See Section 5(c)(xiii).

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

Issue: 'Jelly bean' façade is out of character with surrounding environment

Comment: Concern has been raised that the 'jelly bean' façade is out of character with the streetscape and locality. The design makes reference to the Georgiou's Confectionery Factory and provides a playful design alternative for the infill component of the New Canterbury Road façade. Additional design documentation illustrating the construction methodology, materials, and textures of the façade was provided to Council to further refine the design. The proposal was reviewed by Council's Architectural Excellence Panel who was supportive of the proposal.

Issue: Development is of a poor quality and design and is out of character with the locality.

Comment: A number of submissions raise concern over the architectural quality of the building. The development was referred to Council's Architectural Excellence

Panel who raised no concern over the development from an urban design perspective. The materials used are of a high quality and durability and the development provides a significant quality of internal amenity for future occupants.

Issue: Vehicular access from Hunter Street is not acceptable and will result in traffic and impacts on pedestrians

Comment: Concern has been raised that the use of Hunter Street for vehicular access to the site poses risks to pedestrians including school children and will result in adverse traffic impacts.

The matter of vehicular access to the site was assessed as part of the Planning Proposal for the site. It was resolved by Council that all vehicular traffic to the site should be provided via the 6.1 metre wide Right of Way (RoW) at the rear of the site with access to Hunter Street. The RoW allows for dual carriageway along the entire length of the vehicular access, with the exception of a small portion of the road at the rear of No. 135 New Canterbury Road where it reduces to single width. The applicant has proposed 2-way vehicular traffic into the site utilising the RoW, with the exception of service vehicles (including garbage trucks, delivery vehicles, removalists, etc.) which will enter the site from Hunter Street and utilise the existing vehicular egress on to New Canterbury Road towards the south western portion of the site.

A traffic light system has been proposed, incorporating two vehicle lanterns, vehicle detector on the site and LED pavement lights to control the flow of traffic on to the site. The proposal is considered to be sufficient in the short term until a long term strategy to acquire the portion of land being the rear portion of No. 135 New Canterbury Road to allow dual carriageway.

As pointed out above, Council's Development Engineer has reviewed the proposal and raised no concern with the vehicular access / egress.

Issue: Reduced opportunity to comment on the application due to timing of lodgement.

Comment: Concern has been raised that the lodgement of the application to coincide with school holidays. It is noted that an extended notification period of 21 days was provided due to application being lodged around Christmas time. A number of residents were offered a further 14 day extension to make submissions.

Issue: Matters relating to construction traffic

Comment: Concern is raised relating to a number of construction matters, including the impacts of construction traffic, matters relating to trucks for excavation material removal, concrete pumping, and traffic controllers. 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.

Issue: Increase traffic to Hunter Street and impact on development on parking in nearby streets.

Comment: Concern is raised over increased traffic to Hunter Street. The site has current vehicular access to Hunter Street via the right of way at the rear of the site. The car parking has been designed so that all vehicles can enter and exit the site in a forward motion, thus no reversing or turning is required. The traffic light system proposed for the right of way will be set to green for entry to the site, therefore reducing queuing on Hunter Street.

There will be increased car movements in the Right of Way due to the provision of 52 car parking spaces on site. The development provides car parking in accordance with Council's controls, including 43 car parking spaces allocated to the residential component of the development and 9 car parking spaces for staff and customers of the commercial tenancies.

A condition is included in the recommendation requiring that 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 portion of Hunter Street directly opposite the vehicular entrance to the development currently has restricted parking and thus any surplus cars owned by occupants of the subject development will not be able to park in that area for long periods of time.

Issue: Matters regarding potential impact on the neighbouring business and dwelling at No. 139 New Canterbury Road.

Comment: Concern raised over access to Right of Way for smash repair business, exhaust hood for existing spray booth and windows along western elevation.

The existing smash repair business at No. 139 New Canterbury Road use a portion of the Right of Way at the rear of that site closest to the rear of the premises for some works associated with the business. Concern is raised that these operations would become unsafe if vehicular access to the subject site is approved. Detail has been provided to Council by the applicant to suggest that the use of the Right of Way at the rear of the site is entitled to both the subject site and No. 139 New Canterbury Road. Thus that area should be maintained as a thoroughfare at all times and should not be used for the ongoing operations of the business. The proposed traffic light system only relates to vehicular movements to and from the subject site and does not dictate vehicular movements over the Right of Way.

The dwelling located on the first floor of No. 137 New Canterbury Road has a window on the western elevation servicing a bedroom. The window is built with a zero lot line to the common boundary with the subject site. The plans approved as part of Determination No. 14622, dated 21 October 1992 indicates a rear facing window servicing that bedroom only opening on to an open breezeway. A site inspection carried out by the assessing officer on 22 August 2017 confirms that that rear facing window still exists however the breezeway has been enclosed with brick walls and clear polycarbonate roofing. There is an approved opening servicing that bedroom to provide light and ventilation to the room however that breezeway has since been enclosed. As such, it would be unreasonable to limit the development potential of the subject site to allow light and ventilation via an unauthorised window where these exists a primary window still available for that bedroom. Should the dwelling be reconfigured and altered back to its original configuration as illustrated in the plans accompanying Determination No. 14622, that bedroom will achieve sufficient light and ventilation.

It was also raised that the operation of the spray booth and associated exhaust may cause concerns for new occupants of the development in regards to noise, fumes and particulate matter. Concern was raised that this would result in complaints lodged with Council regarding the operation of the business. The matter has been discussed in Section 5(c)(ii) of this report under the consideration of acoustic privacy.

Issue: Contamination – possible presence of asbestos on site.

Comment: Concern is raised over the potential presence of asbestos on the site. The Detailed Site Investigation carried out for the site identifies that asbestos fibres were not found in the soil tested. Notwithstanding, the Remediation Action Plan submitted with the application details the procedure if any asbestos is found on site unexpectedly. The following requirements also form part of the conditions of consent and are included in the recommendation:

- a) Where asbestos is to be removed it must be done in accordance with the requirements of the WorkCover Authority of NSW and disposed of in accordance with requirements of the Department of Environment, Climate Change and Water; and
- 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;

Issue: Potential impact on local school catchment.

Comment: Concern is raised by Petersham Public School regarding pressure on the school resources as a result of increased population and potential enrolments. The ability for a school to absorb extra students as a result of a development is not a matter for consideration under S79C of the EP&A Act.

Issue: Extinguishment of Right of Way appurtenant to the neighbouring site at No. 163-181 New Canterbury Road, Petersham.

Comment: The subject site includes a Right of Way along the western boundary of the site. A submission was received raising concern that that Right of Way has not been formally extinguished. Details were provided to Council on 7 August 2017 suggesting that an agreement to formally extinguish the Right of Way has been reached.

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

5(g) The Public Interest

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

The development is consistent with the aims, and design parameters contained in State Environmental Planning Policy No 65 - Design Quality of Residential Apartment

Development, Marrickville Local Environmental Plan 2011 and Marrickville Development Control Plan 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 – Bandicoots
- Architectural Excellence Panel (AEP)

7. Section 94 Contributions

Section 94 contributions are payable for the proposal. The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$600,757.83 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 the issue of a deferred commencement consent subject to the imposition of appropriate terms and conditions.

9. Recommendation

- A. 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.
- B. That Council, as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979, grant a deferred commencement consent to Development Application No. 201700003 to erect a mixed use development that includes partial retention of the existing industrial building with 2 commercial tenancies on the ground floor and 3 part 4 levels of residential units above with associated basement car parking at 141-161 New Canterbury Road, Petersham subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

PART A - DEFERRED COMMENCEMENT CONSENT

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

1. That portion of the existing factory as shown red in Drawing Nos. A-0103 C, A-0202 B, A-0204 B, A-0223 , A-0224, A-0225 B, and A-0227 B notated as being retained is to be demolished to ensure that appropriate access is provided to the approved development. Council is to be provided with evidence to its satisfaction that establishes that lawful authority exists for such demolition works to occur.
2. That amended plans be provided indicating that portion of the existing factory as shown red in Drawing Nos. A-0103 C, A-0202 B, A-0204 B, A-0223 B, A-0224, A-0225 B, and A-0227 B to be demolished.
3. Evidence be provided to Council that concurrence from RMS for the reconstruction of the existing vehicular crossing on New Canterbury Road has been obtained.

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

PART B - CONDITIONS OF CONSENT

Once operative the consent is subject to the following conditions:

GENERAL

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

Plan and Issue No.	Plan Name	Date Issued	Prepared by	Date Submitted
A-0101 B	Basement Level Plan	June 2017	Benson McCormack Architecture	13 June 2017
A-0201 B	Ground Floor Plan	June 2017	Benson McCormack Architecture	13 June 2017
A-0103 C	First Floor Plan	August 2017	Benson McCormack Architecture	24 August 2017
A-0104 C	Second Floor Plan	August 2017	Benson McCormack Architecture	24 August 2017
A-0105 C	Third Floor Plan	August 2017	Benson McCormack Architecture	24 August 2017
A-0106 C	Fourth Floor Plan	August 2017	Benson McCormack Architecture	24 August 2017
A-0107 C	Roof Plan	August 2017	Benson McCormack Architecture	24 August 2017
A-0201 B	Elevation - South	June 2017	Benson McCormack Architecture	13 June 2017
A-0202 B	Elevation - North	June 2017	Benson McCormack Architecture	13 June 2017
A-0203 B	Elevation - West	June 2017	Benson McCormack Architecture	13 June 2017
A-0202 C	Elevation - East	August 2017	Benson McCormack Architecture	24 August 2017
A-0221 B	Section A	June 2017	Benson McCormack Architecture	13 June 2017
A-0222 B	Section B	June 2017	Benson McCormack	13 June

			Architecture	2017
A-0223 B	Section C	June 2017	Benson McCormack Architecture	13 June 2017
A-0224 B	Section D	June 2017	Benson McCormack Architecture	13 June 2017
A-0225 B	Section E	June 2017	Benson McCormack Architecture	13 June 2017
A-0226 B	Section F	June 2017	Benson McCormack Architecture	13 June 2017
A-0227 B	Section G	June 2017	Benson McCormack Architecture	13 June 2017
A-1001 B	Door Schedule	June 2017	Benson McCormack Architecture	13 June 2017
A-1002 B	Window Schedule	June 2017	Benson McCormack Architecture	13 June 2017
A-1110 B	South Façade Massing & Material	June 2017	Benson McCormack Architecture	13 June 2017
A-1111 B	Restoration & Alteration to face brick facade	June 2017	Benson McCormack Architecture	13 June 2017
A-1112 B	West Façade Massing & Material	June 2017	Benson McCormack Architecture	13 June 2017
A-1113 B	North Façade Massing & Material	June 2017	Benson McCormack Architecture	13 June 2017
A-1114 B	Schedule of Colour & Finishes	June 2017	Benson McCormack Architecture	13 June 2017
A-1115 B	Rear Laneway Plan Details	June 2017	Benson McCormack Architecture	13 June 2017
A-1116 B	Rear Laneway Cross Sections	June 2017	Benson McCormack Architecture	13 June 2017
A-1117 B	NCR Pedestrian Way Cross Sections	June 2017	Benson McCormack Architecture	13 June 2017
A-1118 B	Jelly bean Façade	June 2017	Benson McCormack Architecture	13 June 2017
A-1119 B	Jelly bean Façade 3D View	June 2017	Benson McCormack Architecture	13 June 2017
LP01 B	Landscape Plan – Ground Floor	31 July 2017	Matthew Higginson	7 August 2017
LP02 B	Landscape Plan – Level 01	31 July 2017	Matthew Higginson	7 August 2017
LP03 B	Landscape Plan – Level 02	31 July 2017	Matthew Higginson	7 August 2017
LP04 B	Schedule & Sections & Images	31 July 2017	Matthew Higginson	7 August 2017
784406M	BASIX Certificate	21 December 2016	Planning & Infrastructure	4 January 2017
2016-187	Acoustic Report	21 September 2016	Acoustic Noise & Vibration Solutions P/L	4 January 2017
4131	Arboricultural Impact Assessment	14 December 2017	TALC	4 January 2017

G15022PE T-R01F Rev. 0.1	Geotechnical Investigation Report	23 May 2016	Geo-environmental Engineering	4 January 2017
E15022PE T-R01F Rev. 0	Preliminary Site Contamination Investigation	21 August 2015	Geo-environmental Engineering	4 January 2017
E15022PE T-R02F Rev. 0	Detailed Site Investigation	26 May 2017	Geo-environmental Engineering	4 January 2017
G15022PE T-R04F	Remedial Action Plan	3 August 2017	Geo-environmental Engineering	7 August 2017

and details submitted to Council on 4 January 2017, 9 June 2017, 13 June 2017, 7 August 2017, 24 August 2017 and 28 August 2017 with the application for development consent as amended by the matter referred to in Part A of this Determination and the following conditions.

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

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

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

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

3. In order to ensure the architectural and urban design excellence of the development is retained:
- a) The design architect is to have direct involvement in the design documentation, contract documentation and construction strategies of the project;
- b) The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
- c) Evidence of the design architect's commission is to be provided to the Council prior to the release of the construction certificate.
- d) The design architect of the project is not to be changed without prior notice and approval of the Council.
4. The materials and finishes of the building constructed pursuant to this consent must be strictly in accordance with the materials and finishes identified in Schedule of Colour & Finishes dated June 2017, prepared by Benson McCormack Architecture (Dwg. No. A-1114, Project No. 1422A, Revision B). No changes may be made to these drawings except by way of an application under section 96 of the *Environmental Planning and Assessment Act 1979*.
5. Where units or dwellings are provided with separate individual hot water systems, these must be located within the internal area of the unit/dwelling and not on any balcony or terrace. No air conditioning units are to be installed on the New Canterbury Road frontage of the development without the prior approval of Council.
6. Separate Development Consent or Complying Development Certificate must be obtained for the use of the ground floor shops/commercial suites prior to the occupation of that part of the premises.

7. Each dwelling must be used exclusively as a single dwelling and not be adapted for use as backpackers' accommodation, serviced apartments or a boarding house and not be used for any industrial or commercial purpose.
8. A minimum of 10 adaptable dwellings must be provided in accordance with Part 2.5 of Marrickville Development Control Plan 2011 - Equity of Access and Mobility.
9. A total of 52 off-street car parking space must be provided, paved and maintained at all times in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 - Parking. The car parking spaces should be allocated as follows:
 - a) 10 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;
 - b) A total of 9 car parking spaces for the commercial component of the development, including 1 of those spaces being accessible. This space must be marked as a disabled car parking space;
 - c) A total of 7 visitor car parking spaces for the residential component of the development, including 3 of those spaces being accessible visitor car parking spaces and marked as such. All visitor car parking spaces must be provided and marked as visitor car parking spaces; and
 - d) 26 car parking spaces for the residential component of the development.

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.

10. A minimum of 6 off-street motorcycle parking spaces are to 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 prior to the commencement of the use.

All motorcycle 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 being used exclusively for motorcycle parking and not for storage or any other purpose.

11. 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.
12. The use of the premises, including any plant and equipment, must not give rise to:
 - a) transmission of unacceptable vibration to any place of different occupancy;
 - b) a sound pressure level at any affected premises that exceeds the background (LA90) noise level in the absence of the noise under consideration by more than 5dB(A). The source noise level shall be assessed as an LAeq,15min and adjusted in accordance with Environment Protection Authority guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content as described in the NSW Environment Protection Authority's Environmental Noise Control Manual and Industrial Noise Policy 2000 and The Protection of the Environment Operations Act 1997 (NSW).
13. Noise and vibration from the use and operation of any plant and equipment and/or building services associated with the premises must not give rise to "offensive noise" as defined by The Protection of the Environment Operations Act 1997 (NSW). In this regard the roller door to the car parking entry is to be selected, installed and maintained to ensure their operation does not adversely impact on the amenity of the surrounding neighbourhood.

14. All prescribed trees shall be retained and protected in accordance with these conditions and with the Australian Standard *Protection of Trees on Development Sites* AS 4970—2009 unless their removal, pruning or other works is explicitly approved under the terms of this consent.
15. A project arborist with a minimum AQF level 5 qualification in arboriculture and who does not remove or prune trees in the Inner West local government area shall be engaged before work commences for the duration of site preparation, demolition, construction and landscaping.
16. All reasonable directions in writing by the project arborist in relation to tree management and tree protection shall be complied with.
17. During construction the project arborist shall undertake periodic inspections of trees and tree protection measures, as detailed in the tree protection plan.
18. The existing face-brick façade that is to be retained is to be preserved and protected during demolition and construction. Damages to the façade caused by the unauthorised installation of the Sydney Tools signage shall be repaired by patching any holes (due to screws at approximately 200mm centres) with cement mortar of a colour similar to that of the existing bricks and cement mortar joints/perpendes to match existing. Unauthorised painting to the existing / retained façade shall be pressured cleaned to return to the original facade condition. Damaged cement mortar to the front façade shall be replaced to match the existing condition. Council's Heritage and Urban Design Advisor shall inspect and approve the works to the retained façade before the issuing of an Occupation Certificate.
19. The original Georgiou's Chocolate signage that has been hidden as a result of the unauthorised installation of the Sydney Tools signage shall be preserved and protected during the removal of the Sydney Tools signage. Any damages to the Georgiou's Chocolate signage shall be repaired to return to its original condition.
20. All building work must be carried out in accordance with the provisions of the National Construction Code (Building Code of Australia).
21.
 - a) The owners of the property appointing a designated person(s) responsible for moving waste bins from their usual storage spaces to the collection point for the storage of domestic bins being in accordance with details to be submitted to Council's satisfaction;
 - b) The domestic bins only being placed in the approved collection point after 7.00pm on the day prior to collection and are to be returned to their storage location within the building within 2 hours of the bins being collected by Council. The owner's corporation being responsible to ensure compliance with this condition.
 - c) Tenants (commercial and residential) shall be advised to anticipate heightened noise levels during garbage collection;
 - d) Council is to be provided with key access to the loading bay to facilitate on-site garbage collection.
 - e) 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.
 - f) 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.
 - g) The person acting on this consent shall advise any purchaser or prospective tenant of this condition.
22. 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. The awning shall include pedestrian lighting (Category P3-AS1158) and shall be maintained and owned by the property owner(s). The owner shall maintain, modify or remove

the structure at any time if given notification by Council or the RMS to do so. All works shall be at no cost to Council.

23. 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.
24. All stormwater drainage being designed in accordance with the provisions of the Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2003 '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.
25. 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.
26. 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.
27. Site remediation works being carried out for the site in accordance with Detailed Site Investigation Report and Remediation Action Plan submitted and referenced in Condition 1 of this Determination. Once these works have been carried out a validation report is to be submitted to Council prepared in accordance with the requirements of the NSW EPA's Guidelines for Consultants Reporting on Contaminated Sites to Council's satisfaction. Should any undertaken remediation strategy result in residual contamination to remain on the site, an Environmental Management Plan, must be provided to the satisfaction of Council that outlines measures to ensure residual contamination issues are managed.

BEFORE COMMENCING DEMOLITION, EXCAVATION AND/OR BUILDING WORK

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

28. No work must commence until:
 - a) A PCA has been appointed. Where an Accredited Certifier is the appointed, Council shall be notified within 2 days of the appointment; and
 - b) A minimum of 2 days written notice given to Council of the intention to commence work.
29. 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.

30. Sanitary facilities must be provided at or in the vicinity of the work site in accordance with the WorkCover Authority of NSW, Code of Practice 'Amenities for Construction'. Each toilet must be connected to the sewer, septic or portable chemical toilet before work commences.
- Facilities must be located so that they will not cause a nuisance.
31. All demolition work must:
- Be carried out in accordance with the requirements of Australian Standard AS 2601 'The demolition of structures' and the Occupational Health and Safety Act and Regulations; and
 - Where asbestos is to be removed it must be done in accordance with the requirements of the WorkCover Authority of NSW and disposed of in accordance with requirements of the Department of Environment, Climate Change and Water.
32. Where any loading, unloading or construction is to occur from a public place, Council's Infrastructure Services Division must be contacted to determine if any permits or traffic management plans are required to be obtained from Council before work commences.
33. All services in the building being demolished must be disconnected in accordance with the requirements of the responsible authorities before work commences.
34. 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.
35. 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'.
36. 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.
37. The person acting on this consent is responsible for arranging and meeting the cost of a dilapidation report prepared by a suitably qualified person. The report is to include colour photographs and must be submitted to the Certifying Authority's satisfaction, with a colour copy being provided to Council and the property owner of the identified property, before work commences, on the buildings on the adjoining properties to the east and north (namely 48 & 50 Hunter Street and 139 New Canterbury Road), if the consent of the adjoining property owner can be obtained. In the event that the consent of the adjoining property owner cannot be obtained copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the PCA before work commences.

38. 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.
39. 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.
40. Where it is proposed to carry out works in public roads or Council controlled lands, a road opening permit shall be obtained from Council before the carrying out of any works in public roads or Council controlled lands. Restorations shall be in accordance with Marrickville Council's Restorations Code. Failure to obtain a road opening permit for any such works will incur an additional charge for unauthorised works as noted in Council's adopted fees and charges.
41. The person acting on this consent shall provide details of the means to secure the site and to protect the public from the construction works. Where the means of securing the site involves the erection of fencing or a hoarding on Council's footpath or road reserve the person acting on this consent shall submit a hoarding application and pay all relevant fees before commencement of works.
42. 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 proposed truck parking areas, construction zones, crane usage, truck routes etc. The construction traffic management plan must allow for the parking of small construction vehicles on site once the proposed basement is accessible. The developer shall be responsible to ensure that all construction workers and contractors are fully aware of the approved Traffic Management Plan. Any proposal for a Work Zone on New Canterbury Road will require Roads and Maritime Services (RMS) approval.
43. The person acting on this consent shall submit a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site before commencement of works.
44. Before commencing works, all workers on the work site are to be made aware of the potential presence of Long-nosed Bandicoots as part of the site induction (including what they look like).
45. The contact details of the project arborist shall be advised to Council before work commences and maintained up to date for the duration of works. If a new project arborist is appointed details of the new project arborist shall be notified to council within 7 days.
46. The tree protection measures detailed in the Arboricultural Assessment Report (TALC, 14/12/16) shall be established before work commences. If property perimeter fences are removed at any time, 1.8 metre high construction-style fencing shall be erected no closer than 2.0 metres from Trees 3 to 9 and along the property boundary adjacent to Trees 1 and 2.
47. The project arborist shall inspect tree protection measures, including the location of tree protection fencing and signage, and certify in writing to the Principal Certifying Authority the measures comply with these conditions and any instructions in writing by the Project Arborist before work commences.
48. The project arborist shall inspect Tree Protection Zone (TPZ) fence and certify in writing to the Principal Certifying Authority the TPZ fence complies with the Australian Standard *Protection of Trees on Development Sites* AS 4970—2009 and the requirement of these conditions before work commences.

BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE

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

49. a) This condition is imposed in accordance with Section 94 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 \$600,757.83 indexed in accordance with Marrickville Section 94/94A Contributions Plan 2014 ("CP").

The above contribution is the contribution applicable as at 21 August 2017.

***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. DC002011)

- 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 | \$75,866.51 |
| Plan Administration | \$11,779.69 |
| Recreation Facilities | \$518,775.96 |
| Traffic Facilities | \$-5,664.34 |
- 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.

50. 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>.

51. The approved plans must be submitted to a Sydney Water Quick Check agent to determine whether the development will affect any Sydney Water wastewater and water mains, stormwater drains and/or easement, and if any requirements need to be met. Plans will be appropriately stamped.
Please refer to the web site www.sydneypwater.com.au for:

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

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

52. 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.
53. 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.
54. Bicycle storage with the capacity to accommodate a minimum of 37 bicycles must be provided in accordance with the requirements set out within Part 2.10 of Marrickville Development Control Plan 2011 - Parking, in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate. The ground floor bicycle storage and shower should be made accessible to all staff of the commercial tenancies.
55. 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.
56. 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.
57. 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).

58. Noise attenuation measures must be incorporated into the development complying with Australian Standard 2021:2000, 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 2021:2000, 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".
59. 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 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; and
 - b) Doorways that are wide enough to allow a 660L bin to access the commercial waste room.
60. Vehicular access and associated vehicle standing areas must be designed in accordance with Australian Standard AS 2890.1-2004, Australian Standard AS 2890.2-2002, Australian Standard AS 2890.6-2009 so that:-
- i. Aisles and circulation roadways shall have minimum widths of 5.8m;
 - ii. The intersections between circulation roadways, aisles and ramps shall be designed to comply with Clause 2.5.2(c) of AS2890.1:2004. Details of compliance shall include vehicle swept path detailing a B85 vehicle passing a B99 vehicle; and
 - iii. The location of columns within the carpark must comply with Figure 5.1 of AS 2890.1-2004. In particular columns within shared areas of the accessible carspaces shall be avoided.

Details of compliance with the above requirements must be submitted for the approval of Council before the issue of a Construction Certificate.

61. With regard to the vehicular egress onto New Canterbury Road the person acting on this consent must;
- i. Obtain RMS concurrence for the reconstruction of the existing vehicular crossing on New Canterbury Road;
 - ii. Service vehicles only shall be permitted to egress via New Canterbury Road and only outside of traffic peak times for New Canterbury Road (Council garbage services excepted); and
 - iii. Details of a management plan and/or measures to be implemented to ensure egress to New Canterbury Road is restricted to heavy vehicles and only outside of traffic peak times for New Canterbury Road shall be submitted to Council for approval.

Details of compliance with the above requirements must be submitted for the approval of Council before the issue of a Construction Certificate.

62. The access way at the rear of the site shall be controlled by traffic signals generally in accordance with Plan No. A-0103 (issue B) providing priority to ingressing vehicles and subject to deleting the proposed pavement lighting on Hunter Street and ensuring that the traffic signals are provided fully within the property boundaries of the site (unless legal agreement has been reached with adjacent property owners). Details of the traffic signals and operation thereof including specifications shall be submitted to and approved by Council before the issue of a Construction Certificate.
63. Before the issue of a Construction Certificate the owner or builder shall sign a written undertaking that they shall be responsible for the full cost of repairs to footpath, kerb and gutter, or other Council property damaged as a result of construction of the proposed development. Council may utilise part or all of any Building Security Deposit (B.S.D.) or recover in any court of competent jurisdiction, any costs to Council for such repairs.
64. The person acting on this consent shall pay Section 138 (Roads Act) inspection fees in the amount of \$555.00 (GST inclusive) to Council before the issue of a Construction Certificate to allow for inspections by Council of the footpath, vehicular crossing and/or other public domain works required as a result of this development.
65. Payment of a Bond, in the sum of \$127,000.00 for the proper performance of the Drainage works prior to the release of the stamped approved building plans. The security may be provided in one of the following methods:-

- i) in full in the form of a cash bond supported by a legal agreement prepared by Council's Solicitors at the applicant's expense; or
 - ii) by provision of a Bank Guarantee by an Australian Bank in the following terms:
 - a) the bank must unconditionally pay the guaranteed sum to the Council if the Council so demands in writing.
 - b) the bank must pay the guaranteed sum within seven (7) days of demand without reference to the applicant or landowner or other person who provided the guarantee, and without regard to any dispute, controversy, issue or other matter relating to consent or the carrying out of development in accordance with the consent;
 - c) the bank's obligations are discharged when payment to the Council is made in accordance with this guarantee or when the Council notifies the bank in writing that the guarantee is no longer required.
66. 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:
- i. 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;
 - ii. Reconstruction and drainage of the rear access/public right-of-way using a heavy duty Trihex paver;
 - iii. Provision of suitable lighting to the rear access/public right-of-way;
 - iv. The construction of heavy duty vehicular crossings to all vehicular access locations and removal of all redundant vehicular crossings to the site;
 - v. Construction of a new kerb 150mm high along the frontage of the site. The kerb type (concrete or stone) shall be consistent with the majority of kerb type at this location; and
 - vi. Alignment levels to be provided at the boundary shall be set by the provision of a new 150mm high kerb plus a 3% crossfall in the footpath. Cross sections shall be provided at a minimum distance of every 5m and at all pedestrian and vehicular access locations.

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 prior to the issue of an Occupation Certificate.

67. The stormwater drainage and water quality measures shall be constructed generally in accordance with the Stormwater Drainage Plans DA01/8 to DA08/8 (issue A) dated December 2016 subject to the submission of the following additional information and amendments;
- i. 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;
 - ii. An updated MUSIC model to be provided to ensure the treatment measures proposed meet Council's water quality targets;
 - iii. Ground water testing to determine seepage inflow rates and any requirements relating to the treatment of ground water. Depending on the outcome of the ground water testing, recommendations as to any requirements for ground water monitoring as part of the operation of the basement sump pump system; and
 - iv. The pump/sump system shall be designed such that dry-weather flows of any seepage water including seepage from landscaped areas will not be discharged through kerb outlets. All dry-weather flows must be connected directly to a Council stormwater system. Alternatively the seepage water may be tested, treated and stored separately on site and re-used for the watering of landscaped areas and/or flushing of toilets.

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

68. Before the issue of a Construction Certificate a design of an inter-allotment drainage system for the future drainage of upstream properties (48 and 50 Hunter Street) together with hydrologic and hydraulic calculations must be submitted to and accepted by Council. Details shall include the provision of a drainage easement (minimum of 0.9m wide) through the site to New Canterbury Road.
69. 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.

SITE WORKS

70. All excavation, demolition, construction, and deliveries to the site necessary for the carrying out of the development, must be restricted to between 7.00am to 5.30pm Mondays to Saturdays, excluding Public Holidays. Notwithstanding the above no work being carried out on any Saturday that falls adjacent to a Public Holiday.
71. 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.
72. The area surrounding the building work must be reinstated to Council's satisfaction upon completion of the work.
73. 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'.
74. 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.
75. 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.

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

77. All vehicles carrying materials to, or from the site must have their loads covered with tarpaulins or similar covers.
78. 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.
79. A certificate of survey from a registered land surveyor must be submitted to the PCA upon excavation of the footings and before the pouring of the concrete to verify that the structure will not encroach on the allotment boundaries.
80. A clear unobstructed path of travel of not less than 1,000mm must be provided to all exits and paths of travel to exits.
81. No activities, storage or disposal of materials must take place beneath the canopy of any tree protected under Part 2.20 of Marrickville Development Control Plan 2011 - Tree Management at any time.

82. 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.
83. If tree roots are required to be severed for the purposes of constructing the approved works, they must be cut cleanly by hand, by an experienced Arborist/Horticulturist with a minimum qualification of Horticulture Certificate or Tree Surgery Certificate.
84. During excavation, demolition or construction work, all holes (eg created for footings etc.), machinery and construction material stockpiles are to be inspected daily prior to commencing work to ensure no Long-nosed Bandicoots are sheltering in these areas. In case one is found, no work shall proceed until the bandicoot has been safely vacated from the works area.
85. The following steps should be taken if a Bandicoot is found on site:
 1. **All work on site must stop.** There must be no attempt to harm or remove the Bandicoot. Removal of the bandicoot from the site can only be undertaken by a trained wildlife carer.
 2. Immediately contact WIRES (1300 094 737) or Sydney Wildlife (9413 4300) to arrange for a trained wildlife carer to safely remove the Bandicoot from the site.
 3. Council's Team Leader – Biodiversity (9335 2254) must also be contacted to report that a Bandicoot has been found on site.
 4. **No work shall proceed until the Bandicoot has been safely removed from the work site by a trained wildlife carer.**
86. Tree Protection Zone (TPZ) fencing shall be maintained *in situ* for the duration of works including site preparation, demolition and construction (except where these conditions permit otherwise).
87. Tree protection measures detailed in the Arboricultural Assessment Report (TALC, 14/12/16) and in Section 4 of Australian Standard *Protection of Trees on Development Sites AS 4970—2009* shall be implemented and complied with for the duration of works including site preparation, demolition, construction and landscaping (except where these conditions permit otherwise). Any reasonable directions in writing by the Project Arborist relating to tree protection shall be complied with.

Note: Australian Standards can be purchased via the Standard Australia publisher SAI Global Limited at www.saiglobal.com.
88. All works within the Tree Protection Zones (TPZ), as detailed in the Arboricultural Assessment Report (TALC, 14/12/16), shall be supervised by the Project Arborist.
89. No excavation shall be undertaken within the Structural Root Zones (SRZ) as detailed in the Arboricultural Assessment Report (TALC, 14/12/16).
90. Alignment levels for the site at all pedestrian and vehicular access locations shall be set by the levels approved on any public domain designs plans required by this approval. **Note:** This may require the internal site floor levels to be adjusted locally at the boundary to ensure that they match the approved alignment levels. Failure to comply with this condition will result in vehicular access being denied.
91. 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 Council controlled stormwater drainage system in accordance with the requirements of Marrickville Council Stormwater and On Site Detention Code.
92. The applicant shall, within 14 days of notification of the 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 and Council may recover any costs in excess of the security from the applicant.

93. All fill imported on to the site must be validated to ensure the imported fill is suitable for the proposed land use from a contamination perspective. Fill imported on to the site must also be compatible with the existing soil characteristic for site drainage purposes.

Council may require details of appropriate validation of imported fill material to be submitted with any application for future development of the site. Hence all fill imported onto the site should be validated by either one or both of the following methods during remediation works:

- a) Imported fill should be accompanied by documentation from the supplier which certifies that the material is not contaminated based upon analyses of the material for the known past history of the site where the material is obtained; and/or
 - b) Sampling and analysis of the fill material should be conducted in accordance with the EPA Sampling Design Guidelines (1995) to ensure that the material is not contaminated.
94. At the completion of demolition works and before the commencement of construction, additional investigations shall be undertaken to assess the quality of groundwater and address any remaining data gaps with respect to site contamination. Any additional findings from this assessment that alters the Remediation Action Plan submitted and referenced in Condition 1 of this Determination shall be included in an updated Remediation Action Plan for the site.
95. Any water (including water from excavations) that is to be discharged to our stormwater shall not contain a concentration of suspended sediment exceeding 50mg/L, shall have a pH of between 6.5-8.0 and shall comply with the ANZECC Guidelines for Marine and Freshwater Quality for protection of aquatic ecosystems (95% protection level for marine ecosystems). Any water that does not comply shall be discharged to sewer, with the appropriate licences to be obtained; or disposed off-site to a suitably licensed facility.
96. Site remediation works being carried out at the completion of demolition of site structures and before the commencement of construction for the site in accordance with the Remediation Action Plan submitted and referenced in Condition 1 of this Determination. Once these works are complete, a validation report is to be submitted to Council prepared in accordance with the requirements of the NSW EPA's Guidelines for Consultants Reporting on Contaminated Sites to Council's satisfaction.
97. The exportation of waste (including fill or soil) from the site must be in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the NSW EPA *Waste Classification Guidelines 2014*.
98. Any unexpected find or occurrences discovered during site works that have the potential to alter previous conclusions about site contamination must be immediately notified to the Council and the Principal Certifying Authority. If significant unexpected occurrences occur, site works shall immediately cease and a suitably qualified environmental consultant shall be engaged to assess the site and determine if remediation is required in accordance with the *Contaminated Land Management Act 1997*. Note that Council may request that a NSW EPA Accredited Site Auditor review any proposed remedial activities.

BEFORE OCCUPATION OF THE BUILDING

99. 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.

100. 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.

101. 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.

102. 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 > Plumbing, building and developing > Providers > Lists or telephone 13 20 92.

103. 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.

104. 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).

105. 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.

106. 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 2021:2000, 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.
107. Before the issue of an Occupation Certificate, the Certifying Authority must be satisfied that all landscape works, including the street tree planting, have been undertaken in accordance with the approved plan and conditions of consent.
108. The project arborist shall certify in writing to the Principal Certifying Authority (PCA) before the issue of the Occupation Certificate that the conditions of consent relating to tree protection have been complied with and that the protected trees have not been damaged or, if the recommendations have not been complied with, detail the extent and nature of the departure from the conditions. The Principal Certifying Authority shall report breaches of the conditions to Inner West Council.
109. All works required to be carried out in connection with drainage, crossings, alterations to kerb and guttering, footpaths and roads (including the access road to the rear) resulting from the development shall be completed before the issue of the Occupation Certificate. Works shall be in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications".
110. 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.
111. No encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever 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.
112. Heavy duty concrete vehicle crossings in accordance with Council's public domain design guide and AUS-SPEC#2-"Roadworks Specifications" shall be constructed at the vehicular access locations before the issue of the Occupation Certificate and at no cost to Council. The crossing shall be constructed maintaining the footpath level across the driveways giving priority to pedestrians.
113. 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.
114. Before the issue of the Occupation Certificate written verification from a suitably qualified competent person, stating that all stormwater drainage and water quality measures have

been constructed in accordance with the approved plans shall be submitted to and accepted by Council. The Certificate shall also state that no dry-weather flows of seepage or groundwater have been connected to any kerb outlets. 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.

115. 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 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.
116. With 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.
117. A common drainage easement (minimum 0.9m wide) in favour of the parcels of land to be drained shall be created over the full length of all existing and proposed inter-allotment drainage systems within the site of the proposed development, at no cost to Council. A dealing number for registration of the easement shall be obtained from the Land Property and Information Office before the issue of the Occupation Certificate.
118. A public right of way shall be created at the rear of the property 6.1m wide over the driveway access at no cost to Council. A dealing number for registration of the easement shall be obtained from the Land Property and Information Office before the issue of the Occupation Certificate.
119. 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 Inner West Council.
120. The existing overhead power cables along the New Canterbury Road frontage of the site must be relocated underground with appropriate street lighting and new steel standard poles being installed at no cost to Council and before the issue of an Occupation Certificate. In addition the existing light pole adjacent to the right of way in Hunter Street shall be relocated 1m further towards New Canterbury Road. The street lighting shall be designed in accordance with Australian Standard AS1158-Road Lighting and the Network Standards of Ausgrid and must meet lighting category required by RMS. Plans shall be submitted to and approved by Council before submission to Ausgrid for implementation.
121. The applicant shall provide security, in a manner satisfactory to Council for the proper maintenance of the public domain works (inclusive of the public right of way) in an amount of \$13,000.00 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.
122. Prior to issue of the Occupation Certificate the person acting on this consent shall obtain from Council a compliance Certificates 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.

123. Before the issue of the Occupation Certificate the person(s) acting on this consent shall use their best endeavours to acquire land from adjacent properties to allow for the provision of a 6.1m vehicular access way through to Hunter Street. Written evidence of attempts to acquire such land shall be submitted to Council before the issue of an Occupation Certificate.
124. 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 appropriate number of bins in relation to the residential component of the approved development.
125. 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 any key lock system to be installed for the egress and ingress to the loading bay.
126. The terms of the right of carriageway (under sections 88B and E of the Conveyancing Act 1919) shall be made 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.

ADVISORY NOTES

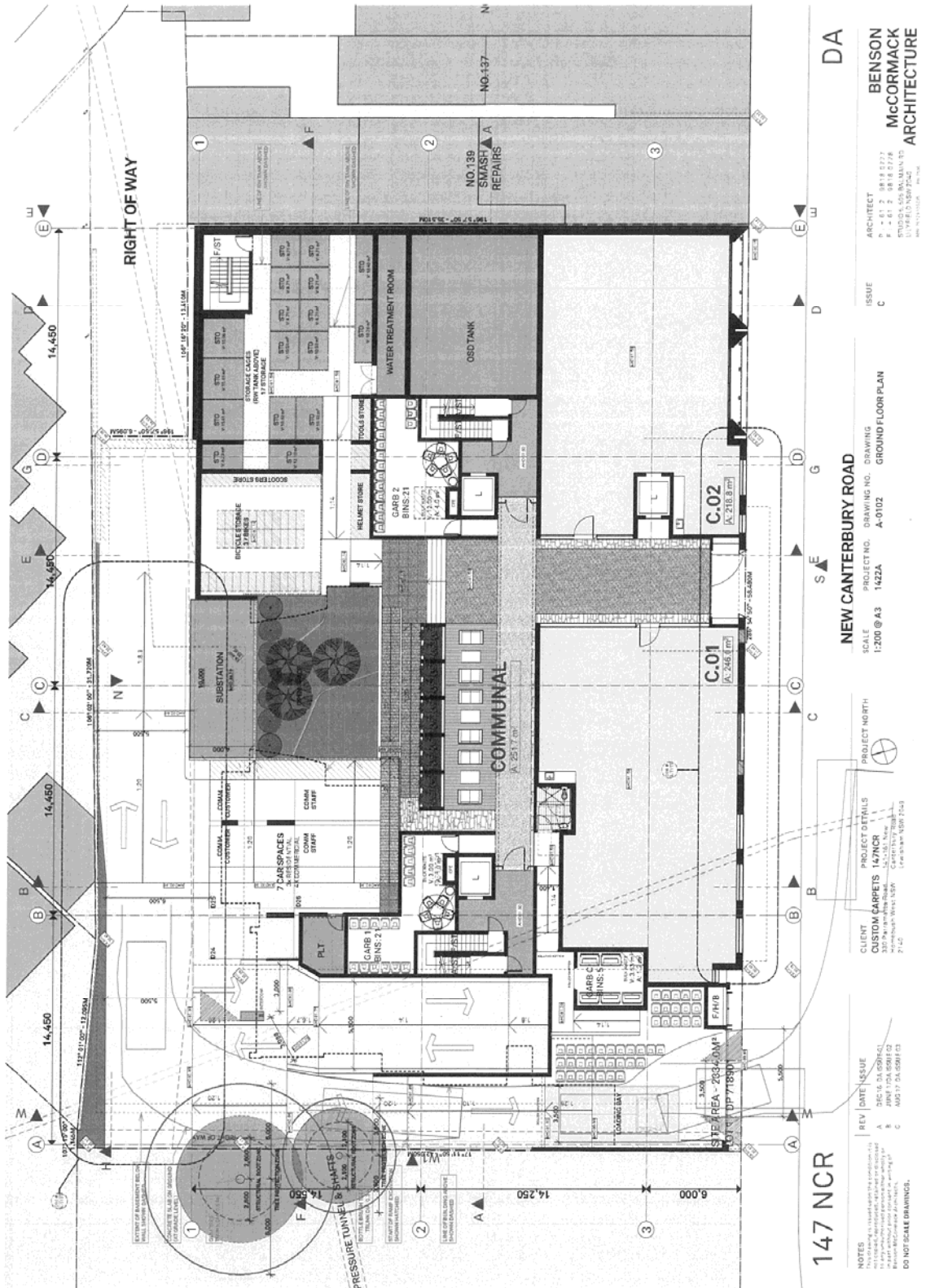
- The Disability Discrimination Act 1992 (Commonwealth) and the Anti-Discrimination Act 1977 (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.
- A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out.
- The approved plans must be submitted to the Customer Centre of any office of Sydney Water before the commencement of any work to ensure that the proposed work meets the requirements of Sydney Water. Failure to submit these plans before commencing work may result in the demolition of the structure if found not to comply with the requirements of Sydney Water.
- 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.
- Any natural light or ventilation gained by windows within 900mm of the boundary will not be taken into consideration in the event that the adjoining property owner makes application to Council to carry out building works on their property. The window has been consented to on the basis that alternative sources of light and ventilation are available to the room.
- Buildings built or painted before the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe. Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving the removal of lead based paints. Precautions should therefore be taken if painted surfaces are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned before occupation of the room or building.
- Contact "Dial Before You Dig" before commencing any building activity on the site.
- Useful Contacts

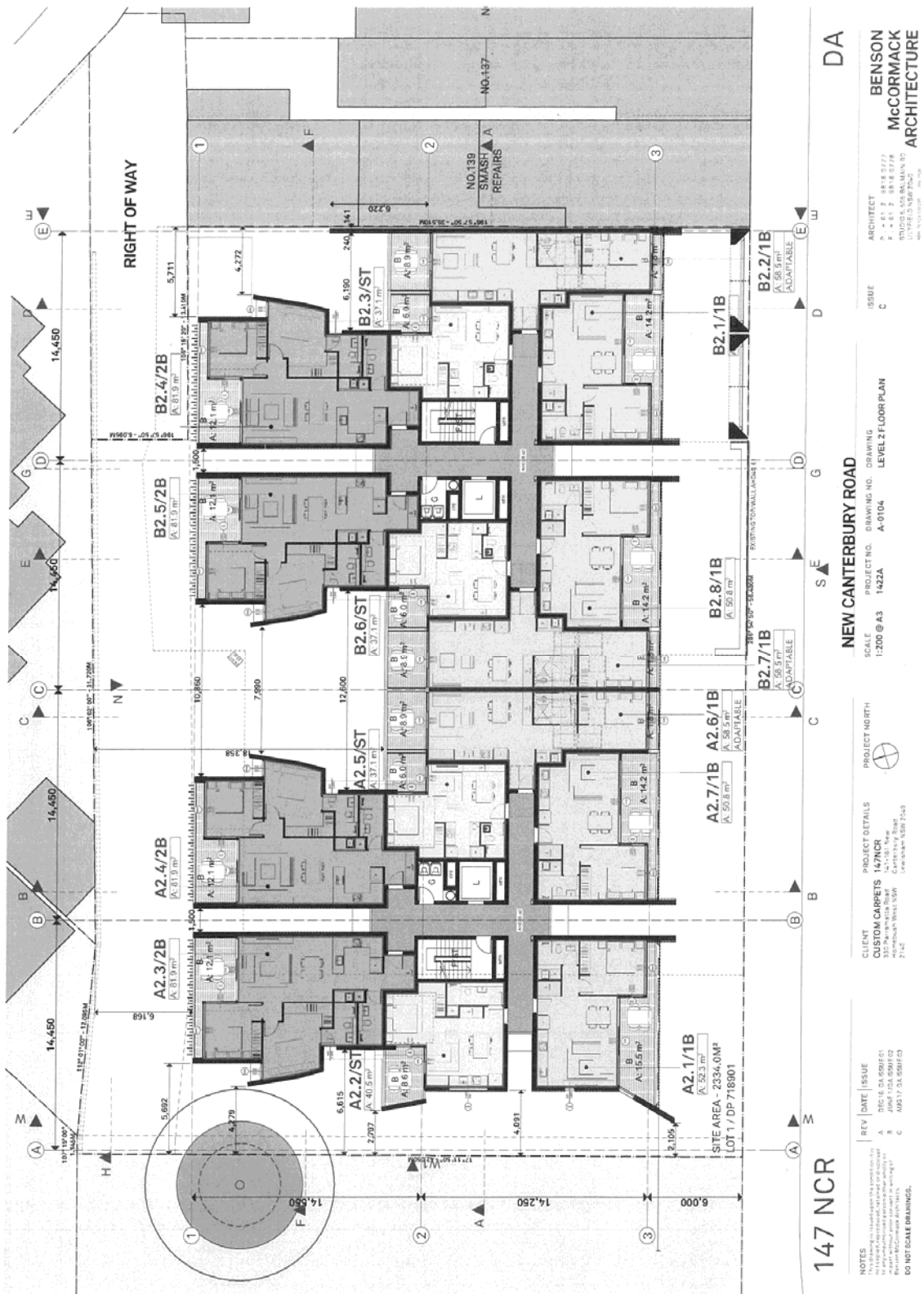
BASIX Information	☎ 1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	☎ 13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Before You Dig	☎ 1100 www.dialbeforeyoudig.com.au
Landcom	☎ 9841 8660 To purchase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

	www.foodnotify.nsw.gov.au
NSW Government	www.nsw.gov.au/fibro www.diysafe.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	☎ 131 555 www.environment.nsw.gov.au
Sydney Water	☎ 13 20 92 www.sydneywater.com.au
Waste Service - SITA Environmental Solutions	☎ 1300 651 116 www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)	www.waterrating.gov.au
WorkCover Authority of NSW	☎ 13 10 50 www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.

- B. **THAT** those persons who lodged submissions in respect to the proposal be advised of the Council's determination of the application.
- C. **THAT** the Department of Planning and Environment be advised, as part of the quarterly review of the monitoring of Clause 4.6 of Marrickville Local Environmental Plan 2011 - Exceptions to Development Standards, that Council has agreed to the variation of the following development standard:

<u>Premises:</u>	141-161 New Canterbury Road, Lewisham
<u>Applicant:</u>	Benson McCormack Pty Ltd
<u>Proposal:</u>	To erect a mixed use development that includes partial retention of the existing industrial building with 2 commercial tenancies on the ground floor and 4 levels of residential units above with associated basement car parking
<u>Determination:</u>	Deferred commencement consent
<u>DA No:</u>	201700003
<u>Lot and DP:</u>	Lot 1, Deposited Plan 718901
<u>Category of Development:</u>	9: Mixed
<u>Environmental Planning Instrument:</u>	Marrickville Local Environmental Plan 2011
<u>Zoning of Land:</u>	B5 Business Development
<u>Development Standard(s) varied:</u>	Height of Buildings
<u>Justification of variation:</u>	No adverse environmental impact, complies with FSR development standard.
<u>Extent of variation:</u>	27.8%
<u>Concurring Authority:</u>	Council under assumed concurrence of the Secretary Department of Planning and Environment
<u>Date of Determination:</u>	





147 NCR
NEW CANTERBURY ROAD
DA

CLIENT
 CUSTOM CARPETS 147NCR
 147 NCR, NEW CANTERBURY ROAD
 NEWCASTLE NSW 1500
 7142

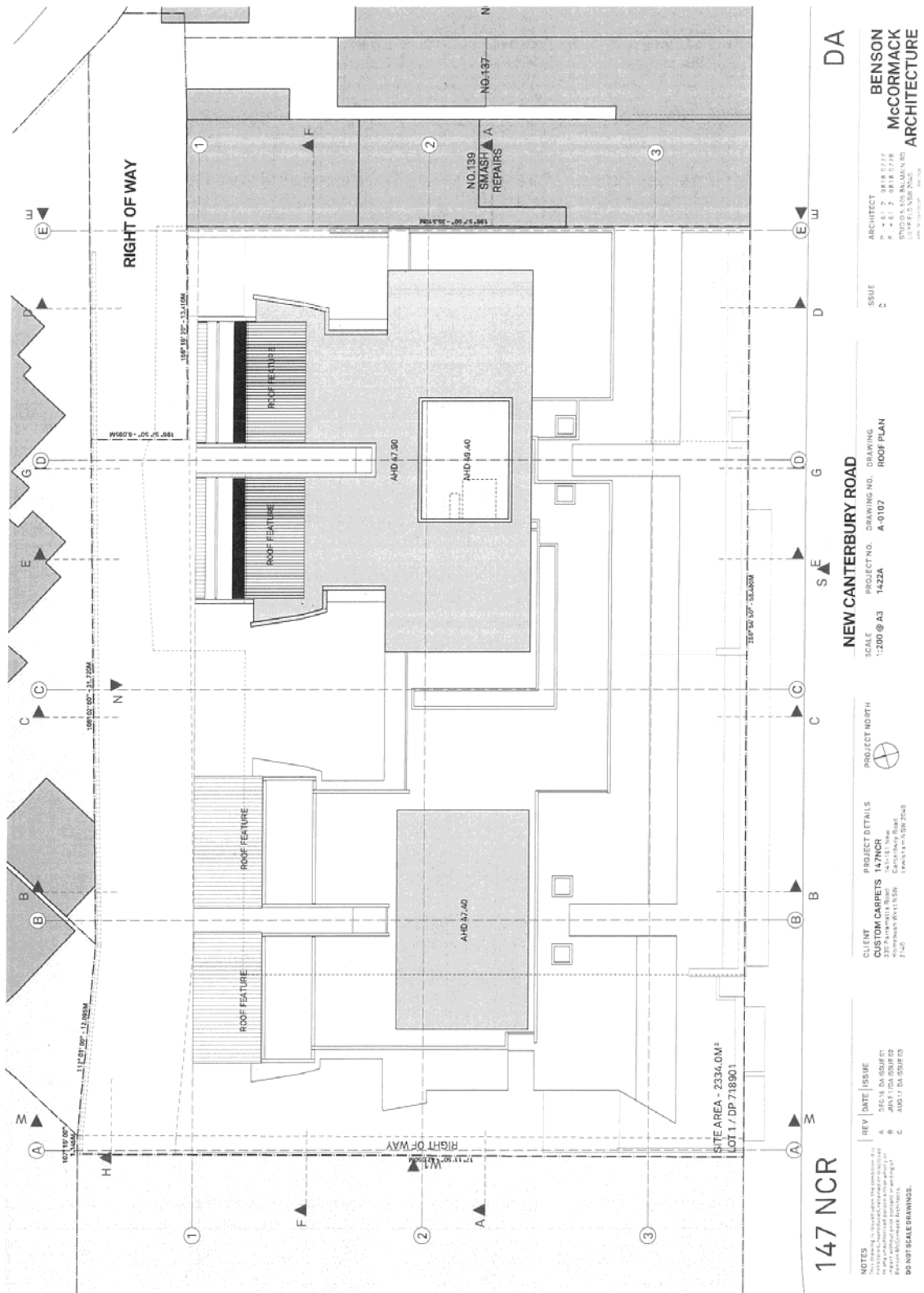
PROJECT DETAILS
 PROJECT NO. 147NCR
 DRAWING NO. A-0104
 LEVEL 2 FLOOR PLAN

SCALE
 1:200 @ A3

ARCHITECT
 BENSON
 McCORMACK
 ARCHITECTURE
 ARCHITECT
 P. + 61 2 8816 2777
 F. + 61 2 8816 2778
 STUDIO 5, 50 BALMAIN RD
 BALMAIN NSW 1500
 WWW.BENSONMCCORMACK.COM.AU

ISSUE
 C

NOTES
 1. THIS DRAWING IS THE PROPERTY OF BENSON McCORMACK ARCHITECTURE. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED IN THIS DRAWING. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, WITHOUT THE WRITTEN PERMISSION OF BENSON McCORMACK ARCHITECTURE.
 2. THIS DRAWING IS NOT TO BE USED FOR ANY OTHER PROJECT OR SITE WITHOUT THE WRITTEN PERMISSION OF BENSON McCORMACK ARCHITECTURE.
 3. THIS DRAWING IS NOT TO BE USED FOR ANY OTHER PROJECT OR SITE WITHOUT THE WRITTEN PERMISSION OF BENSON McCORMACK ARCHITECTURE.
 DO NOT SCALE DRAWINGS.



ARCHITECT
 BENSON
 McCORMACK
 ARCHITECTURE
 P. + 61 7 8818 2777
 F. + 61 7 8818 2778
 STUDIO: 500 BALMAIN RD
 BALMAIN NSW 1513 AUSTRALIA
 WWW.BENSONMCCORMACK.COM.AU

ISSUE
 C

PROJECT NO. 1422A
 DRAWING NO. A-0107
 DRAWING TITLE: ROOF PLAN

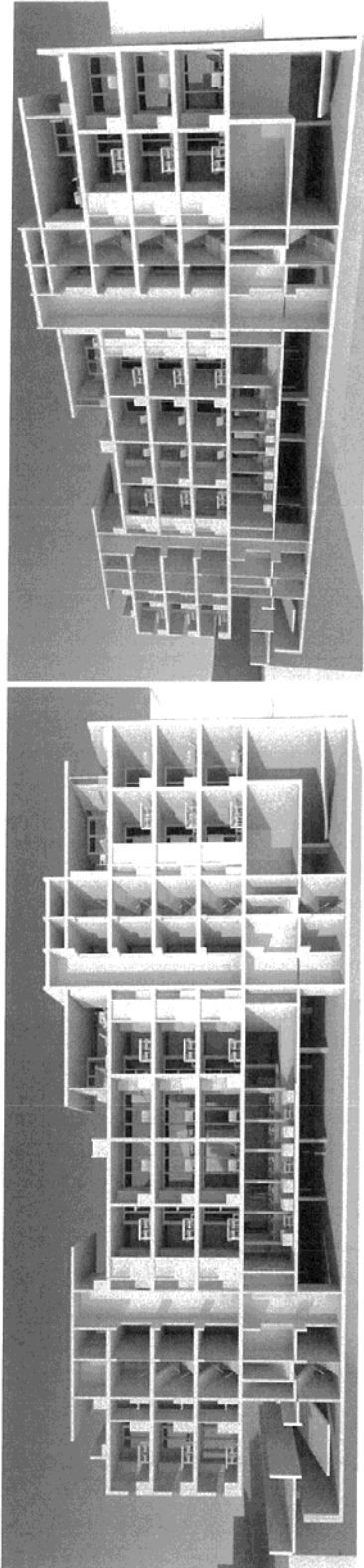
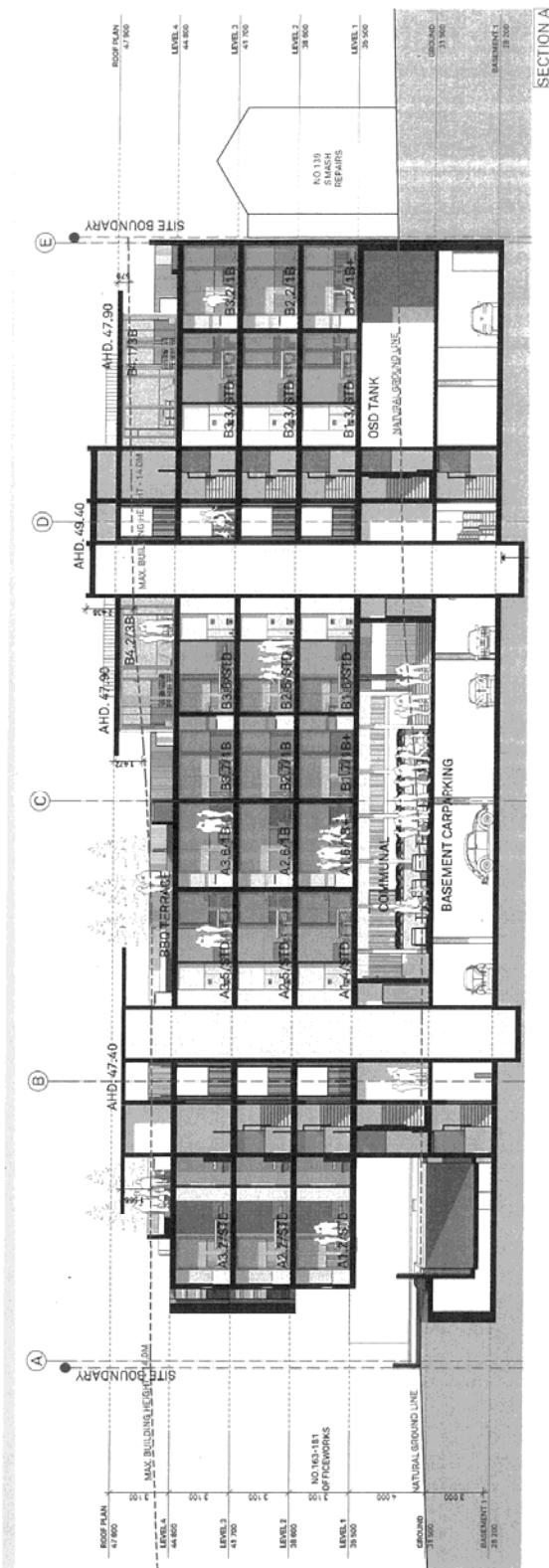
PROJECT NORTH

CLIENT
 CUSTOM CARPETS 147NCR
 147 CANTERBURY ROAD
 BALMAIN NSW 1513
 7 AU

REV	DATE	ISSUE
A	28.01.18	DA 09/08/17
B	JUNE 18	DA 09/08/17
C	JUNE 17	DA 09/08/17

NOTES
 1. THIS DRAWING IS THE PROPERTY OF BENSON McCORMACK ARCHITECTURE AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN.
 2. ANY REVISIONS TO THIS DRAWING MUST BE APPROVED BY BENSON McCORMACK ARCHITECTURE.
 3. THIS DRAWING IS NOT TO BE USED FOR ANY OTHER PROJECT OR SITE WITHOUT THE WRITTEN CONSENT OF BENSON McCORMACK ARCHITECTURE.
 DO NOT SCALE DRAWINGS.

147 NCR
 NEW CANTERBURY ROAD
 DA



147 NCR

DA

NOTES

REV	DATE	ISSUE
A	25/06/20	DA 05M1/01
B	10/07/20	DA 05M1/02

DO NOT SCALE DRAWINGS.

CLIENT
CUSTOM CARRETS
 147 NCR
 147 NCR
 147 NCR

PROJECT DETAILS
147 NCR
 147 NCR
 147 NCR

SCALE
 1:200 @ A3

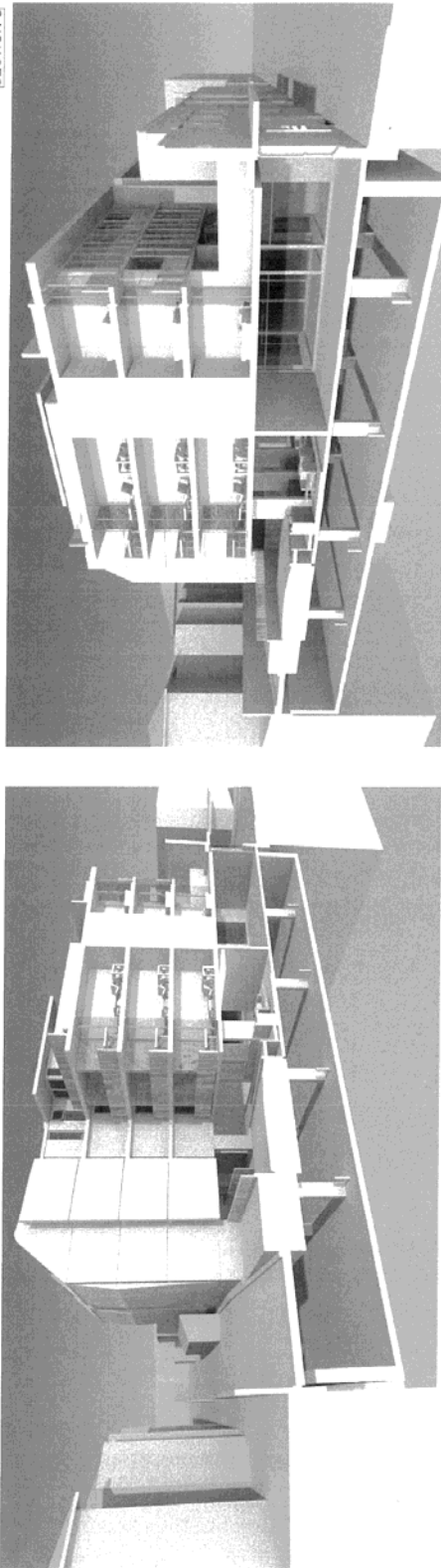
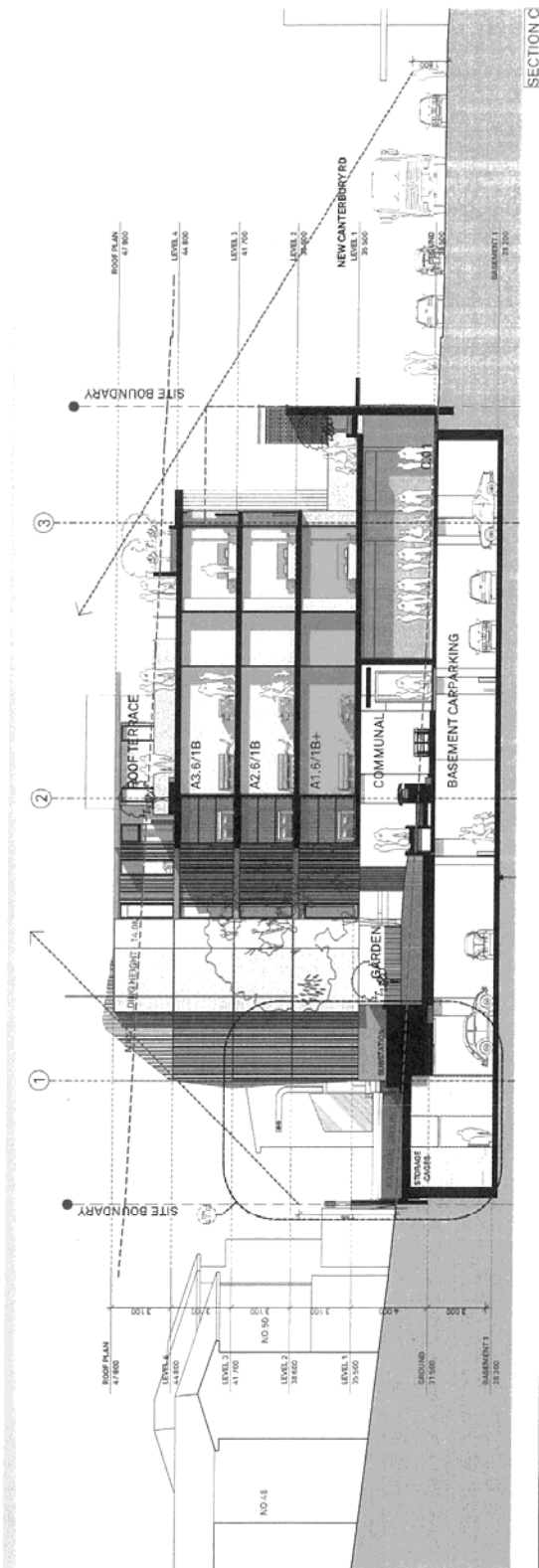
PROJECT NO.
 1422A

DRAWING NO.
 A-0211

DRAWING
 SECTION A

ISSUE
 B

ARCHITECT
**BENSON
 McCORMACK
 ARCHITECTURE**



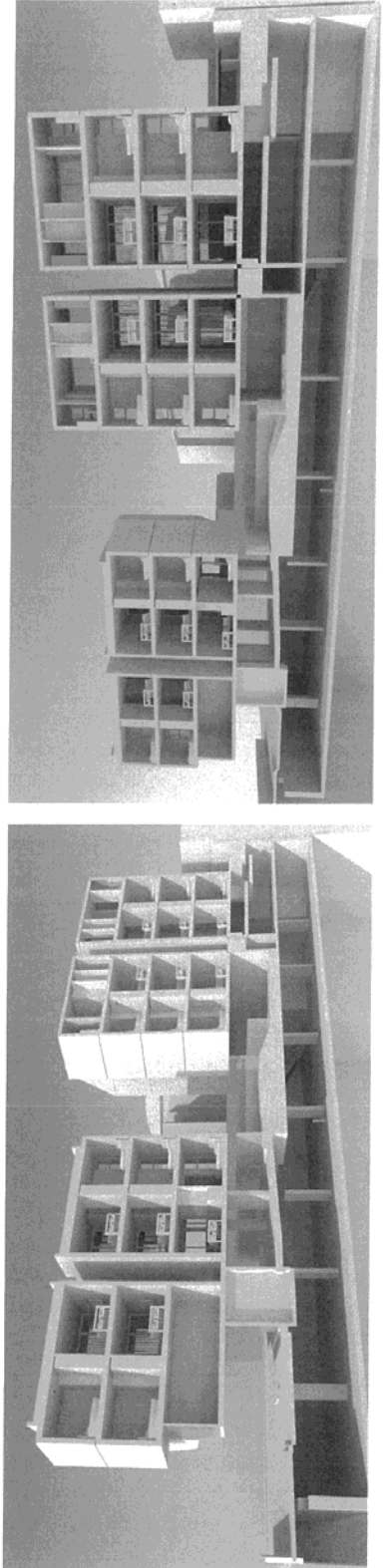
147 NCR

DA

NOTES
 1. THIS DRAWING IS THE PROPERTY OF BENSON MCCORMACK ARCHITECTURE AND SHOULD NOT BE REPRODUCED OR COPIED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF BENSON MCCORMACK ARCHITECTURE.
 2. THIS DRAWING IS A PRELIMINARY DESIGN AND IS SUBJECT TO CHANGE WITHOUT NOTICE.
 3. ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE SPECIFIED.
 4. DO NOT SCALE DRAWINGS.

REV	DATE	ISSUE
A	28.06.2017	SEC 147 DA 03/16/17
B	01.07.2017	ISSUE 01 DA 05/16/17

CLIENT: CUSTOM CARPETS 147 NCR
 PROJECT DETAILS: PROJECT NORTH
 SCALE: 1:200 @ A3
 PROJECT NO.: 1422A
 DRAWING NO.: A-0223
 DRAWING SECTION C
 ISSUE: B
 ARCHITECT: BENSON MCCORMACK ARCHITECTURE
 147 NCR DA 05/16/17



147 NCR

DA

ARCHITECT
 BENSON
 McCORMACK
 ARCHITECTURE

PROJECT NO. 1422A
 DRAWING NO. A-0226
 SECTION F

SCALE 1:200 @ A3

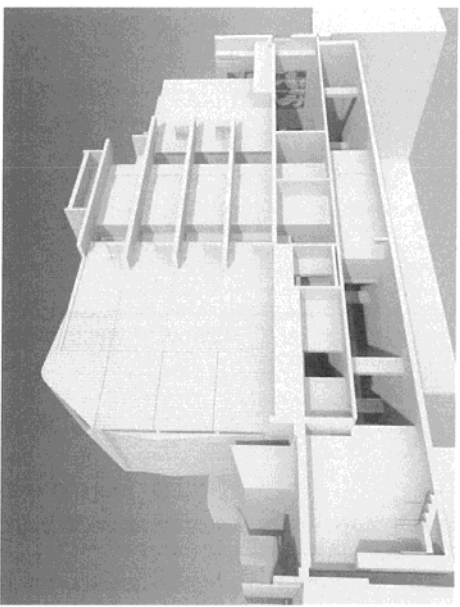
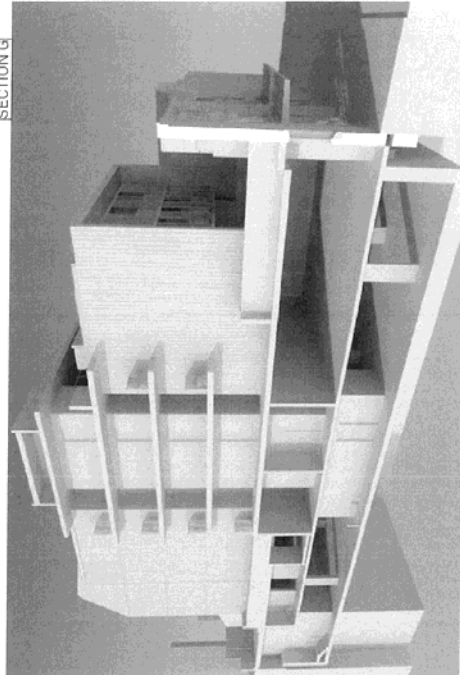
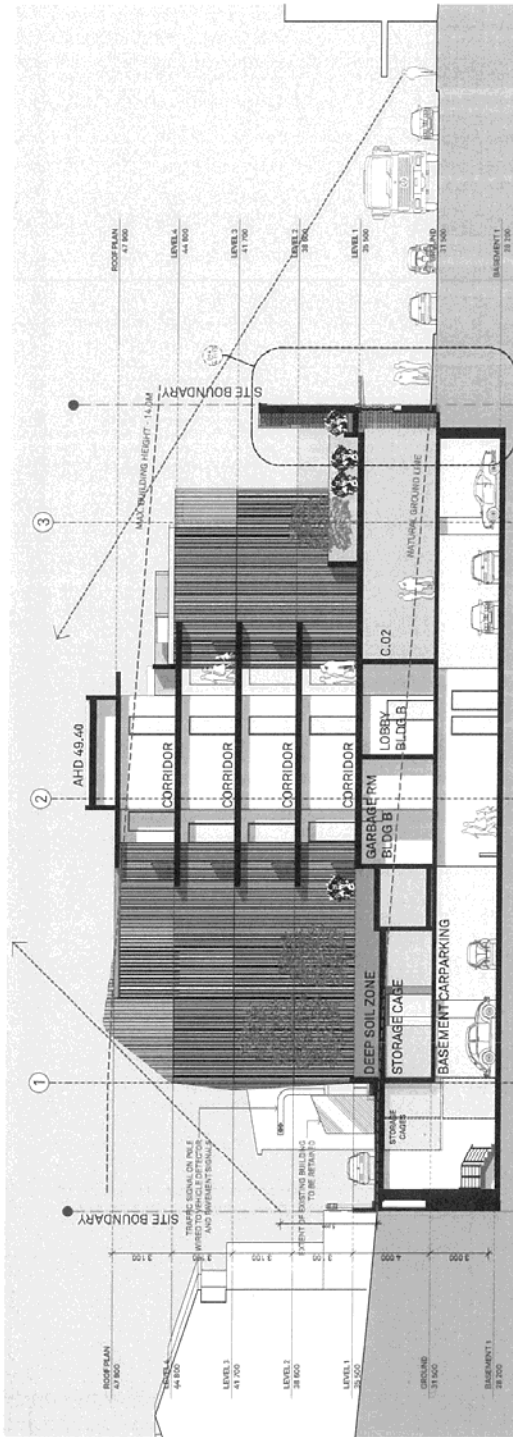
CLIENT
 CUSTOM CARPETS
 147NCR
 7/10

PROJECT DETAILS
 147NCR
 14/10/18

DATE ISSUE
 A 25/01/18
 B 05/02/18
 C 08/03/18

ISSUE C

NOTES
 DO NOT SCALE DRAWINGS.



DA

147 NCR

REV	DATE	ISSUE
A	01C W DA 05/01/21	
B	JAN 15/24 ISSUE 02	

NOTES
 1. THIS DRAWING IS A PRELIMINARY DESIGN AND SHOULD NOT BE USED FOR CONSTRUCTION WITHOUT THE ARCHITECT'S WRITTEN PERMISSION.
 2. ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE SPECIFIED.
 3. REFER TO THE ARCHITECT'S SPECIFICATIONS FOR MATERIALS AND FINISHES.
 4. THIS DRAWING IS NOT TO SCALE.
 5. DO NOT SCALE DRAWINGS.

CLIENT	PROJECT DETAILS
CUSTOM CARPETS 147NCR	147NCR
Architect: 147 NCR	147 NCR
14/2	147 NCR

SCALE	PROJECT NO.	DRAWING NO.	DRAWING
1:200 @ A3	1422A	A-0227	SECTION G

ARCHITECT	ISSUE
BENSON McCORMACK ARCHITECTURE	B

ARCHITECT
 P - 611 2 9888 0177
 F - 611 2 9888 0178
 STUDIO: 508 BALMAIN RD
 BALMAIN NSW 2040
 WWW.BENSONMCCORMACK.COM.AU

