 INNER WEST COUNCIL	
ADDENDUM DEVELOPMENT ASSESSMENT REPORT	
Application No.	201600419
Address	1-3 Charles Street, Petersham
Proposal	To demolish part of the premises and construct a 3 part 4 storey mixed use building comprising ground floor commercial tenancies and 17 residential apartments with basement car parking
Date of Lodgement	19 August 2016
Applicant	Tony Owen Partners
Owner	Grow Build Pty Ltd
Number of Submissions	5
Value of works	\$6,400,000
Reason for determination at Planning Panel	Clause 4.6 variation to FSR development standard exceeds officers' delegation.
Main Issues	Floor Space Ratio
Recommendation	Deferred Commencement Consent

1. Background

The Inner West Planning Panel first considered a report on the application to demolish part of the premises and construct a 3 part 4 storey mixed use building comprising ground floor commercial tenancies and 17 residential apartments with basement car parking on the above property at the April 2017 meeting of the Inner West Planning Panel on 11 April 2017.

A copy of that Assessment Report is included as Attachment A and the Recommended Conditions of Consent are included as Attachment B. A copy of the original plans submitted with the application are included as Attachment C.

The decision of the panel at the meeting is as follows;

"The development application is deferred to enable clarification of the shadowing effect on the north facing living room windows of number 9 Charles St Petersham."

The applicant submitted amended plans and shadow diagrams to demonstrate the impact of the proposal on the north facing living room windows of 9 Charles Street, Petersham.

A copy of those plans and diagrams is included as Attachment D.

2. Additional information submitted by the applicant

The original shadow diagrams submitted with the Development Application illustrate that the existing north facing living room window and sliding door at 9 Charles Street currently do not receive the prescribed 2 hours of solar access to more than 50% of the openings required by Part 2.7 of Marrickville Development Control Plan 2011.

Control C2 of Part 2.7.3 of the MDCP 2011 states:-

Direct solar access to windows of principal living areas and principal areas of open space of nearby residential accommodation must not be reduced to less than 2 hours between 9:00am and 3:00pm on 21 June.

It also prescribes the following where a proposal results in a further decrease in sunlight available:

- a. *Development potential of a site;*
- b. *The particular circumstances of the neighbouring site, for example, the proximity of residential accommodation on a neighbouring property to the boundary, the resultant proximity of windows to the boundary, and whether this makes compliance difficult;*
- c. *Any exceptional circumstances of the subject site such as heritage, built form or topography; and*
- d. *Whether the sunlight available in March and September is significantly reduced to impact the functioning of principal living areas and the principal areas of open space. To ensure compliance with this control, separate shadow diagrams for the March to September period must be submitted in accordance with the requirements of C1.*

The applicant has subsequently amended a portion of the roof plan proposing a chamfered roof along a large section of the southern boundary thereby reducing the wall height on the boundary. This portion of the roof serves a void and results in no net loss of yield for the proposal.

Amended shadow diagrams based on providing a chamfered roof to the proposed development were submitted for equinox which are included at Attachment D. Those diagrams illustrate that solar access to the north facing openings serving the living area at 9 Charles Street will be improved and not decrease at equinox.

Having regard to the above, should the panel be of a mind to support the amended proposal, condition 1 of the recommendation of the original assessment report would need to be modified to reflect the amended plans and would need to be amended accordingly;

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

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by	Date Submitted
Drw No. A005, Revision A	Demolition Plan	August 2016	Tony Owen & Partners	19 August 2016
Drw No. A090, Revision A	Basement Level 2	August 2016	Tony Owen & Partners	19 August 2016
Drw No. A091, Revision A	Basement Level 1	August 2016	Tony Owen & Partners	19 August 2016
Drw No. A100, Revision A	Ground Floor Level	August 2016	Tony Owen & Partners	19 August 2016
Drw No. A101, Revision A	Upper Ground Floor Level	August 2016	Tony Owen & Partners	19 August 2016
Drw No. A102, Revision A	Level 1 Floor Plan	August 2016	Tony Owen & Partners	19 August 2016
Drw No. A103, Revision A	Level 2 Floor Plan	August 2016	Tony Owen & Partners	19 August 2016

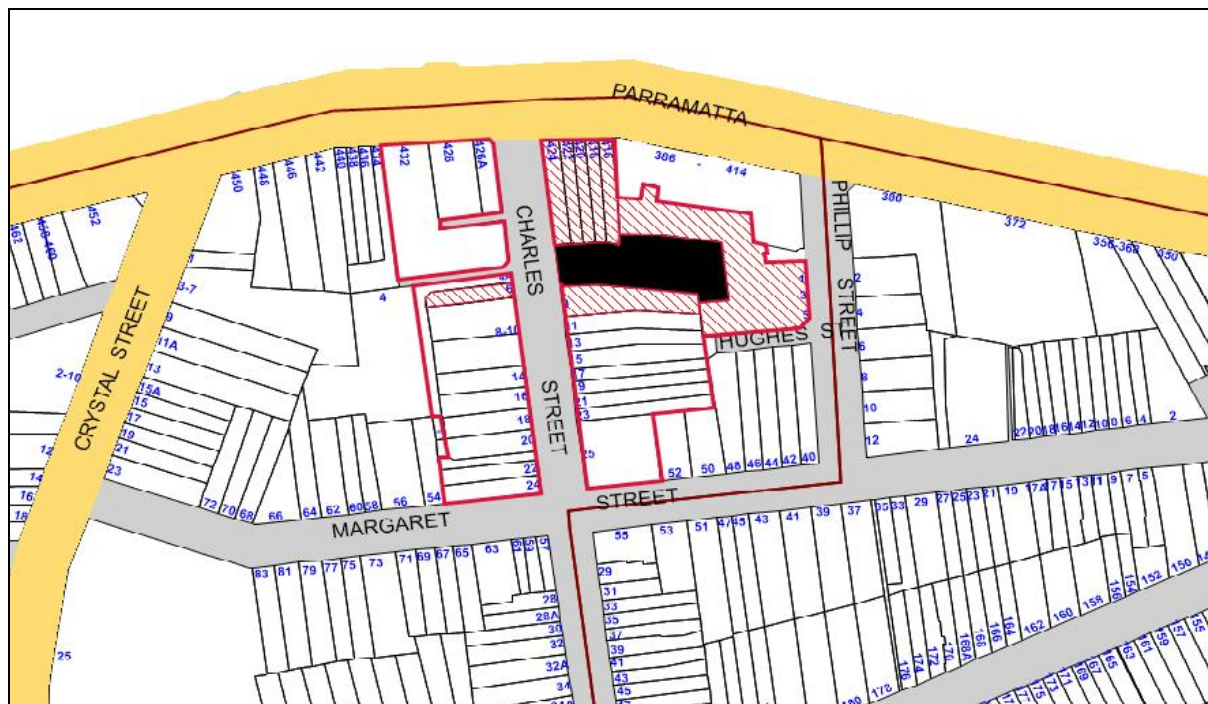
Drw No. A104, Revision C	Level 3 Floor Plan	April 2017	Tony Owen & Partners	19 April 2017
Drw No. A110, Revision C	Roof Plan	April 2017	Tony Owen & Partners	19 April 2017
Drw No. A130, Revision A	Adaptable Units	August 2016	Tony Owen & Partners	19 August 2016
Drw No. A200, Revision B	North Elevation	March 2017	Tony Owen & Partners	28 March 2017
Drw No. A201, Revision C	West Elevation	April 2017	Tony Owen & Partners	19 April 2017
Drw No. A202, Revision C	South Elevation	April 2017	Tony Owen & Partners	19 April 2017
Drw No. A203, Revision B	East Elevation	March 2017	Tony Owen & Partners	28 March 2017
Drw No. A300, Revision A	Section A	August 2016	Tony Owen & Partners	19 August 2016
Drw No. A301, Revision B	Section B	August 2016	Tony Owen & Partners	15 March 2017
Drw No. A302, Revision C	Section C	April 2017	Tony Owen & Partners	19 April 2017
Drw No. A350, Revision A	Ramp Section	August 2016	Tony Owen & Partners	15 March 2017
Drw No. A700, Revision A	External Material Finishes	August 2016	Tony Owen & Partners	15 March 2017
Reference No. SYD2016-1065- R001C	Acoustic Report	28/07/2016	Fu Siong Hie	19 August 2016
Certificate No. 745632M	BASIX	26 July 2016	BCA Energy Pty Ltd	19 August 2016
-	Access Report	09-08-2016	Howard Moutrie	19 August 2016
Report No. G178	Geotechnical Investigation Report	March 2016	Benviron Group	19 August 2016




and details submitted to Council on 19 August 2016, 15 March 2017 and 19 April 2017 with the application for development consent and as amended by the matters referred to in Part A of this Determination and the following conditions.



DEVELOPMENT ASSESSMENT REPORT

Application No.	201600419
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Recommendation	Deferred Commencement Consent



Subject Site: 	Objectors: 
Notified Area: 	

1. Executive Summary

This report concerns an application to demolish part of the premises and construct a 3 part 4 storey mixed use building comprising ground floor commercial tenancies and 17 residential apartments with basement car parking.

The application was notified in accordance with Council's Notification Policy and 5 submissions were received, of which 1 was a letter with 5 signatories and 1 submission was in support of the proposal.

The development results in a departure of 336.5m² (22.7%) from the FSR development standard as prescribed under Clause 4.4 of Marrickville Local Environmental Plan (MLEP) 2011. The application was accompanied by a written request under Clause 4.6 of MLEP 2011 in relation to the variation to FSR which is supported for the reasons outlined in this report.

During assessment of the application, the applicant amended the design of the development and submitted a further shadow analysis to address overshadowing impacts to the adjoining residential property to the south of the site at 9 Charles Street. The amended proposal was not required to be notified in accordance with Council's Notification Policy as the amendments were considered to have a reduced/lesser impact on neighbouring development than the original proposal.

The application is considered suitable for the issue of deferred commencement consent subject to the imposition of appropriate conditions.

2. Proposal

Approval is sought to demolish part of the premises and construct a 3 part 4 storey mixed use building comprising 5 ground floor commercial tenancies and 17 residential apartments with basement car parking.

The development is further summarised as follows:

Basement Level 2

- Vehicle ramp from basement level 1;
- Lift core;
- Fire stairs;
- 10 residential car parking spaces (2 accessible);
- 4 bicycle spaces; and
- 12 Storage cages.

Basement Level 2

- Vehicle ramp accessed from 'right of way';
- Lift core;
- Fire stairs;
- 4 retail/commercial car parking spaces (1 accessible);
- 5 residential car parking spaces (2 accessible);
- 1 residential visitors car parking space;
- 6 bicycle spaces;
- 2 storage cages;
- Retail/commercial waste room;
- Residential waste room and bulky goods holding area;

- Plant room; and
- Commercial tenancy 2 (39.1sqm).

Lower Ground Floor

- Pedestrian entry lobby;
- Commercial tenancy 2 (64.3sqm);
- Commercial tenancy 1 (64.3sqm)
- Retail tenancy 1 (48.5sqm);
- Retail tenancy 2 (43.8sqm); and
- Lift core & stair.

Upper Ground Floor

- Lift core, stair and lobby;
- Unit UG01 – Adaptable 2 Bed (75.3sqm); and
- Unit UG02 – Adaptable 2 Bed (75.3sqm);

First Floor

- Lift core, stair and lobby;
- Unit 101 – 1 Bed (50sqm);
- Unit 102 – 1 Bed (55.9sqm);
- Unit 103 – 2 Bed (70sqm);
- Unit 104 – 2 Bed (75sqm);
- Unit 105 – 2 Bed (75sqm);
- Unit 106 – 2 Bed (75sqm); and
- Unit 107 – 3 Bed (95.5sqm).

Second Floor

- Lift core, stair and lobby;
- Unit 201 - 1 Bed (50sqm);
- Unit 202 - 1 Bed (56.7sqm);
- Unit 203 - 2 Bed (70sqm);
- Unit 204 - 2 Bed (75sqm);
- Unit 205 - 2 Bed (75sqm);
- Unit 206 - 2 Bed (75.3sqm); and
- Unit 207 - 3 Bed (95sqm).

Third Floor

Unit 301 – 3 Bed (98sqm)

The development includes a total of 17 residential units and 4 retail/commercial tenancies.

The residential portion comprises a mix of 4 x 1 bedroom units, 10 x 2 bedroom units and 3 x 3 bedroom units.

3. Site Description

The site is legally defined as Lot 1 in DP 838817 and is commonly known as 1-3 Charles Street, Petersham. The site has a 14.94 metre frontage to Charles Street, a rear boundary of 20.01 metres and an average depth of 57.29 metres and yields an approximate area of 987.4sqm. The site benefits from a 'right of way' that provides vehicle access to the

basement of the existing warehouse on site and vehicle and pedestrian egress to 416, 418, 420 422 and 424 Parramatta Road (see Image 1 below).

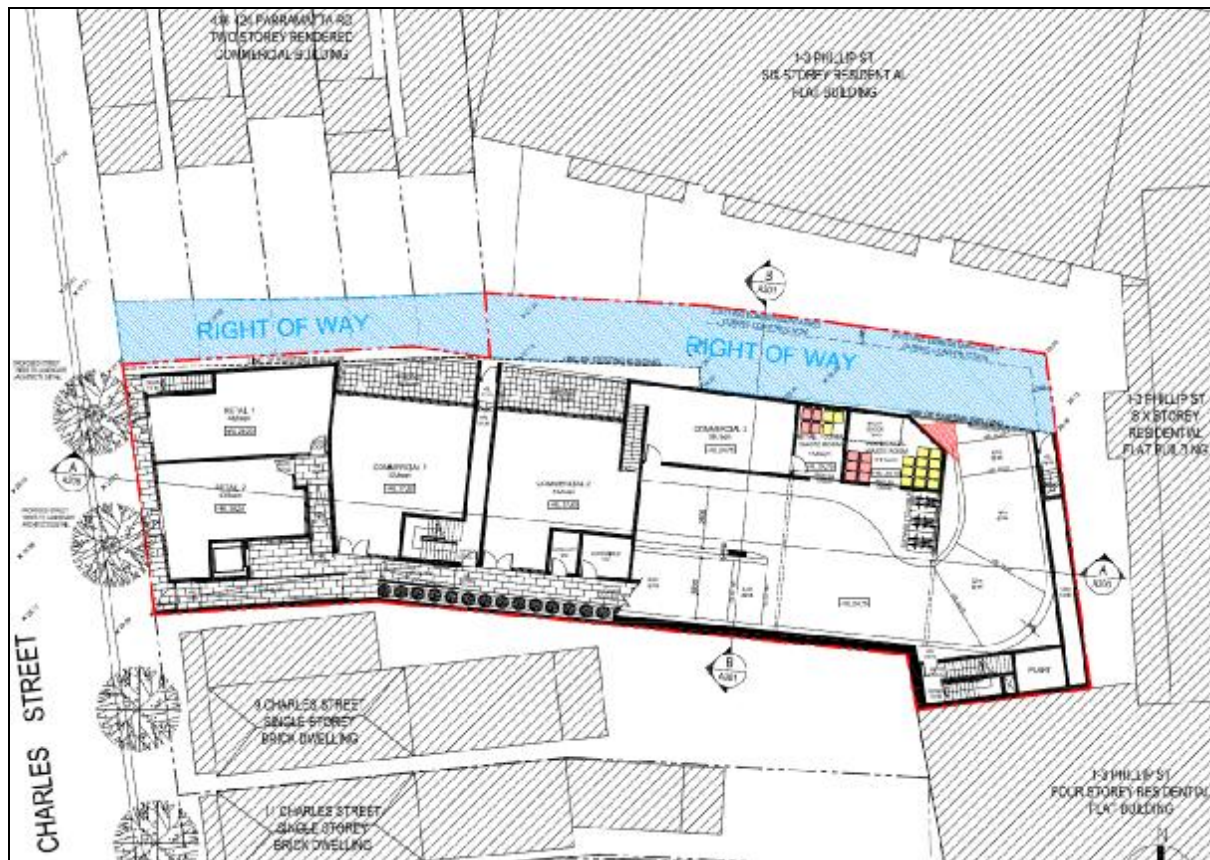


Image 1: Right of Way (Source: Proposed Ground Floor Plan)

The site currently is occupied by a two storey with mezzanine warehouse building and basement. The site does not accommodate any trees and is built to front, rear and side boundaries.

The site is zoned B2 Local Centre under Marrickville LEP 2011. The site adjoins a heritage item to the rear, specifically Heritage Item 'I209' – 'Petersham Inn Hotel' at 386 and 396 Parramatta Road and 1-5 Phillip Street Petersham. The site adjoins Heritage Conservation Area (HCA) 'C5' - 'Petersham Road Commercial Precinct HCA'.

To the north, the site adjoins 416, 418, 420 422 and 424 Parramatta Road which form part of the 'right of way' and 386 - 414 Parramatta Road. The 5 sites at 416-424 Parramatta Road contain 2 storey buildings with commercial shops on the ground floor and residential dwellings on first floor. 386 - 414 Parramatta Road contains a 6 storey shop top housing development which starts at 386 - 414 Parramatta Road and wraps around to the east to 1-5 Phillip Street. To the east, the site adjoins 1-5 Phillip Street which contains the Petersham Inn with residential dwellings contained above up to a height of 6 storeys. To the south, the site adjoins 9 Charles Street which contains a single storey residential dwelling.

Further to the north of the site is Parramatta Road which contains a mix of commercial and residential development. Further to the east and west of the site, development generally consists of low to medium density residential development and commercial development. Further to the south of the site on Charles Street, development consists predominantly of single storey residential dwellings.

4. Background

4(a) Site history

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

Subject Site

Application	Proposal	Decision & Date
Pre-DA 201500137	To demolish part of the premises and carry out alterations and additions to the existing premises for an adaptive reuse into a 3 part 4 storey mixed-use building containing ground floor commercial tenancies and 17 residential dwellings on the upper floors with basement parking.	Advice provided 12 May 2016
Determination No. 200500603	To demolish an existing mezzanine storage area, carry out internal alterations and additions to the premises to create additional office space and amenities, conversion of warehouse space to car parking and to continue the use of the premises for an administration office and warehouse for a wine distribution company	Approved 29 November 2005

Surrounding properties

Application	Proposal	Decision & Date
Determination No. 200400670 – 386 Parramatta Road, Petersham	To carry out alterations involving the fit out of part of the premises for use as a tavern with restaurant/bistro, gambling facilities and provide entertainment within the hotel and application for a Place of Public Entertainment licence.	Approved 6 October 2005
Order No. 10326 of 1997 (LEC NSW)	To demolish part of the Petersham Inn Hotel and the adjoining nine shops, convert the former State Bank into a tavern, carry out alterations to nine ground floor shops, and erect 92 dwellings, with off street parking.	Approved 12 November 1997

4(b) Application history

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

Date	Discussion / Letter/ Additional Information
2 February 2017	Request for additional information
15 February 2017	Additional information lodged (incomplete)
17 February 2017	Further request for additional information (regarding incomplete information)
7 March 2017	Additional information lodged
9 March 2017	Council request to withdraw
13 March 2017	Applicant request for meeting and discussion with Council staff
13 March 2017	Council email sent to applicant granting 48 hours to lodge amended plans and additional information
15 March 2017	Amended plans and additional information lodged which are subject of this report

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 No. 55 – Remediation of Land;
- State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (Amendment 3);
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; and
- Marrickville Local Environmental Plan 2011.

The following provides further discussion of the relevant issues:

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

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. Marrickville Development Control Plan 2011 (MDCP 2011) provides controls and guidelines for remediation works. SEPP 55 requires that remediation works must be carried out in accordance with a Remediation Action Plan (RAP) as approved by the consent authority and any guidelines enforced under the Contaminated Land Management Act 1997.

The site has been used in the past for activities which could have potentially contaminated the site. A Detailed Site Investigation was submitted with the application. The site investigation concluded the following:

- The site has been used for commercial purposes since prior to 1943 with no information of uses prior to 1936. Since the 1950s, the site was used for bottling wine and spirits, and in approximately 1972 was used for warehousing and distribution of wine and spirit products;

- The site and surrounding areas were free of statutory notices issued by the EPA under the Contaminated Land Management Act 1997 and the Protection of the Environment Operations Act 1997;
- Potential underground storage tank infrastructure was identified within the underlying soil that needs to be identified;
- Asbestos may be present in existing structures that should be managed during demolition;
- Soil samples were taken from five bore locations across the site. Six is the minimum required number of samples for the site size (943m²). Soils were assessed against 'HIL B – Residential with minimal access to soil', and 'HSL D' due to the site carpark and commercial activities on the ground floor. Soils sampled were found to be within the HIL B guidelines with the exception of a minor exceedance of carcinogenic PAH identified in a hotspot at BH1.
- Groundwater was not assessed due to existing site structures and needs to be assessed after demolition.
- The detailed site investigation concludes that the site can be made suitable for the proposed development, subject to the preparation of a remedial action plan which is required to address the hotspot contamination, underground storage tank and groundwater assessment;
- Prior to demolition of current buildings, a hazardous materials survey (HAZMAT) is required to determine whether the building at the site contains asbestos, lead paint and or any other hazardous material.

A Deferred Commencement condition is included in the recommendation requiring a Remedial Action Plan (RAP) to be submitted to Council's satisfaction. It is likely that the site can be made suitable for the proposed development provided that investigations and remediation are undertaken prior to construction.

In addition, a deferred commencement condition requiring a Hazardous Materials Survey is included in the recommendation as a precautionary measure.

Given the conclusions drawn in the applicant's Detailed Site Investigation and the level of certainty around the ability to remediate the site, the application is considered to be acceptable subject to compliance with the conditions recommended by Council's Environmental Services Section. Council is satisfied *"that the land will be remediated before the land is used"* in accordance with Clause 7(1)(v) of SEPP 55.

5(a)(ii) State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (Amendment 3)

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 as:-

- The development is a site specific response within the context of the B2 – Local Centre zone;
- Resource, energy and water efficiency has been addressed through lodgement of a BASIX certificate;
- The development provides good amenity for the dwellings;
- The development improves the safety and security of the street and is acceptable when considered against CPTED principles; and

Apartment Design Guide

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

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

Communal and Open Space

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

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

No communal open space has been provided due to the reliance on the location of existing perimeter walls. However, each residential unit is provided with adequate usable private open space accessed from a living area.

Deep Soil Zones

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

Site Area	Minimum Dimensions
650m ² - 1,500m ²	3m

The development does not provide deep soil zones. However, due to the retention of the existing footprint of the building and location of the existing basement, there is limited opportunity for deep soil planting. This is considered to be acceptable within an urbanised mixed use centre.

Visual Privacy/Building Separation

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

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

The reliance on the position of the perimeter walls of the existing building on site and the upward continuation of new levels on the perimeter renders the development non-compliant with the building separation distances required by the ADG to side and rear boundaries.

Despite the non-compliance, the development is considered to maintain an acceptable level of visual privacy for the following reasons:-

- Habitable rooms and balconies have been positioned to face the north (side) and west (front) where the greatest building separation from adjoining development is situated;
- The majority of the northern elevation is setback at a minimum distance of 4.8 metres from the northern boundary of the right of way;
- Balconies on the north elevation facing the 'right of way' are setback between 9 metres and 14 metres from habitable rooms and balconies of development opposing the site and are situated behind louvered privacy screening incorporated into the design across the north elevation. To this extent the built form by virtue of the balconies to the northern boundary are setback from the boundary;
- The south (side) and east (rear) elevation of the development is void of openings;
- The adjoining residential dwelling at 9 Charles Street is setback a minimum 1 metre from the blank wall proposed on the south elevation; and
- The mixed use development to rear of the site is setback 3 metres from the rear facing wall of the development which is void of openings.

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.

The proportion of units which comply with the minimum solar access requirements of the ADG is 12 of 17, being 70.58%, with 2 of 17 (12%) units receiving no direct sunlight in mid-winter. The proposal therefore complies with the solar access requirements prescribed by the ADG.

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.
- Overall depth of a cross-over or cross-through apartment does not exceed 18 metres, measured glass line to glass line.

The plans provided suggest that 16 of the 17 units, being 94%, will provide for natural cross ventilation. No apartments exceed 18 metres in depth. However, an assessment of the proposal by Council's Heritage and Urban Design Advisor indicates that cross ventilation, as shown on the diagrams, can only be achieved if windows are provided to bathrooms/kitchens facing the gallery and/or operable transom windows/louvres are provided above the entry doors. A condition of consent is included in the recommendation requiring the provision of amended plans before the issue of a Construction Certificate addressing the above.

Ceiling Heights

The ADG prescribes the following minimum ceiling heights:

Minimum Ceiling Height	
Habitable Rooms	2.7 metres
Non-Habitable	2.4 metres

The ceiling height of each storey will be a minimum 2.7 metres throughout each apartment.

Apartment Size

The ADG prescribes the following minimum apartment sizes:

Apartment Type	Minimum Internal Area
Studio apartments	35m ²
1 Bedroom apartments	50m ²
2 Bedroom apartments	70m ²

All the proposed units comply with the minimum area as stipulated under the ADG.

Apartment Layout

The ADG prescribes the following recommendations for apartment layouts:

- 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.

Room depths, bedroom, living and combined living/dining room sizes and dimensions and window sizes for each unit of the 17 units proposed complies with the criteria prescribed above.

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

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

The ADG also prescribes that for apartments at ground level or on a podium or similar structure, a private open space area is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3 metres.

All units provide a balcony of the required size and dimension as recommended by the ADG. Units UG01 and UG02 on the upper ground floor provide a terrace area of 22.5sqm and 18.5sqm respectively.

Storage

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

Apartment Type	Minimum Internal Area
Studio apartments	4m ³
1 Bedroom apartments	6m ³
2 Bedroom apartments	8m ³

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

In addition to storage within units, storage cages have been provided on the basement level. All units are provided with an area of storage equal to or greater than the minimum area recommended by the ADG.

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

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

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

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

- Clause 2.3 – Land Use Table and Zone Objectives;
- Clause 2.7 – Demolition;
- Clause 4.3 – Building Height;
- Clause 4.4 – Floor Space Ratio;
- Clause 4.6 – Exceptions to Development Standards;
- Clause 5.10 – Heritage Conservation;
- Clause 6.2 – Earthworks; and
- Clause 6.5 – Development in Areas Subject to Aircraft Noise

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

Standard (maximum)	Proposal	% of non-compliance	Compliance
Floor Space Ratio Maximum: 1.5:1 (1,481.4m ²)	1,817.9m ²	22.7%	No
Height of Building Maximum: 14 metres	14 metres	-	Yes

The following provides further discussion of the relevant issues:

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

The site is zoned B2 – Local Centre under the provisions of MLEP 2011. The development is permissible with Council's consent under the zoning provisions applying to the land.

The development is acceptable having regard to the objectives of the B2 – Local Centre zone.

(ii) Demolition (Clause 2.7)

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

(iii) Height (Clause 4.3)

A maximum building height of 14 metres applies to the land under MLEP 2011. The development has a maximum building height of 11.5 metres which complies with the development standard.

(iv) Floor Space Ratio (Clause 4.4)

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

The development has a gross floor area (GFA) of 1,817.9sqm which equates to a FSR of 1.84:1 on the 987.4sqm site which does not comply with the development standard.

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

(v) Exceptions to Development Standards (Clause 4.6)

Clause 4.6 contains provisions that provide a degree of flexibility in applying certain development standards to particular development. Under Clause 4.6(2), Development consent may be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.

The development exceeds the maximum floor space ratio development standard prescribed under Clause 4.4 of MLEP 2011.

A written request in relation to the contravention to the FSR development standard in accordance with Clause 4.6 (Exceptions to Development Standards) of MLEP 2011 was submitted with the application. The applicant considers compliance with the development standard to be unreasonable and unnecessary and that there are sufficient environmental planning grounds for the contravention to the FSR standard as follows:

- The site is zoned B2 Local Centre, with an FSR of 1.5:1 and a height of 14 metres. Based upon this land use, FSR and height, it is reasonable to establish that the desired future built form and character for the site is a medium density built form. In that context, the proposed FSR of 1.84:1 provides a better relationship with the 14 metre height standard. Furthermore, the majority of the proposed building is well within the 14 metre height. In this circumstance, it is appropriate to vary the FSR to achieve the desired height and provide a better rationalisation between the FSR and height standards;
- The proposal provides a contextually appropriate height transition between the six storey building to the north and the low density residential development to the south;
- The proposed bulk of the proposal is considered to be consistent with adjoining existing development and the desired future character of the area;
- The shadow diagrams demonstrate that the shadow cast by the development is to the south, where the existing building already shadows these properties to a similar extent. The proposal results in a minor increase to the shadow, however, it is considered a reasonable increase given the applicable planning controls and efforts to minimise shadowing to north facing living rooms and private open space where possible;
- The proposal does not result in significant adverse environmental impacts in terms of shadow, holistic amenity, privacy, traffic, view loss or streetscape presentation;
- The proposal is consistent with the objectives of the FSR standard; and
- The proposal is consistent with the objectives for the B2 – Local Centre zone.

The justification provided in the applicant's written submission is considered to be well founded and worthy of support. It is considered that there are sufficient environmental planning grounds as to why the FSR development standard should be varied in this particular circumstance based on the outcomes of planning law precedents such as those

contained in *Wehbe v Pittwater Council [2007] NSWLEC827*, *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC90* and *Moskovich v Waverley Council [2016]*.

As demonstrated in the assessment provided in this report, the additional FSR does not result in adverse amenity impacts for residents of adjoining properties, results in improved amenity for future occupants and the architectural form proposed responds appropriately to the adjoining site context and future character of the area.

(vi) Heritage Conservation (Clause 5.10)

The site adjoins the Parramatta Road Commercial Precinct Heritage Conservation Area (HCA5) and adjoins a Heritage Item – Petersham Inn Hotel (i209).

The application was referred to Council's Urban Design and Heritage Advisor who raised no objection to the proposed development subject to minor amendments relating to ventilation for units. These issues are not based on issues of heritage.

In summary, the development would have minimal impact on the adjoining HCA and adjoining heritage item given the development sits behind both the HCA and heritage item and is not visible from the primary street frontages of sites within the adjoining HCA or the street frontage of the heritage item.

The development satisfies Clause 5.10 of MLEP 2011 and Part 8 of MDCP 2011.

(vii) Earthworks (Clause 6.2)

Clause 6.2 of MLEP 2011 requires the consent authority to have regard to certain matters where earthworks that require development consent are proposed. The development includes excavation for a basement level, which subject to conditions which have been included in the recommendation, is unlikely to have a detrimental impact on environmental functions or processes, neighbouring sites, cultural or heritage items or features of the surrounding land.

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

Clause 6.5 applies to development that is in an ANEF contour of 20 or greater, and the consent authority considers is likely to be adversely affected by aircraft noise.

The site is located within the 25-30 Australian Noise Exposure Forecast (2033) Contour.

The development is likely to be affected by aircraft noise and the carrying out of development would result in an increase in the number of people affected by aircraft noise.

The development would need to be noise attenuated in accordance with AS2021:2000. An acoustic report was submitted with the documentation regarding noise attenuation for the development. The report states that the development can 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 AS 2021:2000. Conditions are included in the recommendation to ensure that noise attenuation measures are incorporated into the development complying with Australian Standard 2021:2000.

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 Marrickville Development Control Plan 2011.

Part	Compliance/
Part 2 – GENERIC PROVISIONS	
Part 2.1 – Urban Design	Yes – refer to discussion
Part 2.3 – Site and Context Analysis	Yes
Part 2.5 – Equity of Access and Mobility	Yes – refer to discussion
Part 2.6 – Visual and Acoustic Privacy	Yes – refer to discussion
Part 2.7 – Solar Access and Overshadowing	No – refer to discussion
Part 2.9 – Community Safety	Yes – refer to discussion
Part 2.10 – Parking	Yes – (subject to conditions) refer to discussion
Part 2.17 – Water Sensitive Design	Yes – refer to discussion
Part 2.18 – Landscaping and Open Space	Yes – refer to discussion
Part 2.21 – Site Facilities and Waste Management	No – refer to discussion
Part 5 – Mixed Use Development	
Part 5.1.3.1 – FSR	No – refer to discussion
Part 5.1.3.2 – Height	Yes
Part 5.1.3.3 – Massing and Setbacks	No – refer to discussion
Part 5.1.3.4 - Building Depth	No – refer to discussion
Part 5.1.3.5 - Building Separation	No – refer to discussion
Part 5.1.4 – Building Detail	Yes
Part 5.1.4.2 – Active Street Frontage Uses and Shopfront Design	Yes
Part 5.1.5 - Building Use	Yes
Part 5.1.5.2 – Dwelling Mix	No – refer to discussion
Part 9 – STRATEGIC CONTEXT	
Part 9.3 – Parramatta Road Precinct (Precinct 9.35)	Yes – Refer to discussion

The following provides discussion of the relevant issues:

PART 2 – GENERIC PROVISIONS

(i) Urban Design (Part 2.1)

It is assessed that the development is acceptable having regard to the relevant aspects of the 12 urban design principles.

The application was also referred to Council's Urban Design and Heritage Advisor who supports the proposal subject to the imposition of conditions which are included in the recommendation of this report. It is also noted that the applicant has responded adequately to the recommendations of Council's Urban Design and Heritage Advisor at Pre –DA stage and DA stage in:

- Altering the design to ensure that the streetscape presentation is improved with increased articulation to the western elevation fronting Charles Street; and
- Relocating the residential entry lobby to provide access near to the street entry point.

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

The development requires a minimum of 4 adaptable dwellings and 4 accessible resident parking spaces. In addition, all areas of the development are required to be accessible by persons with a disability.

The development provides 4 adaptable dwellings, 4 accessible resident parking spaces and accessible entry and continuous path of travel within the development including the commercial tenancies in accordance with the requirements of MDCP 2011. An Access Report was submitted with the application and demonstrates compliance with relevant access requirements.

The matter of accessible car spaces is further discussed below in this section of the report under the heading 'Parking (Part 2.10)'.

Further assessment of the application under the Premises Standards will occur at Construction Certificate stage. Appropriate conditions are included in the recommendation to ensure compliance.

(iii) Acoustic and Visual Privacy (Part 2.6)

The development maintains a high level of acoustic and visual privacy for adjoining residential dwellings to the north, east and south and ensures a high level of acoustic and visual privacy for future occupants of the development itself. The following points are noted:

- Balconies and upper ground floor terraces facing the 'right of way' are to be constructed behind privacy treatment consisting of louvered screening which has been incorporated into the design feature across the northern elevation to protect the privacy of opposing development to the north and the privacy of future occupants of the development itself;
- Balconies and terraces facing the north on the 'right of way' are separated at a minimum distance of 9 metres from habitable rooms and balconies opposing the site to the north;
- Balconies facing the street are separated at a minimum of 14 metres from development opposing the site across Charles Street;
- The rear (east) and side (south) walls of the development are to be of solid construction, void of any glazing or door openings;
- Balcony and terrace areas are not likely to generate unreasonable levels of noise which would be out of character with what is expected of a residential use; and
- A condition of consent has been included requiring any noise from plant and equipment (i.e. – air conditioning units) to not exceed 5dBA above background noise.

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

The site is an east-west orientated site and extends along the full length of residential properties that adjoin it to the south. Due to this orientation, the development will overshadow residential dwelling houses to the south of the site at 9, 11, 13 and 15 Charles Street and their respective rear open space areas.

It is noted that the existing building on the site generates overshadowing of a similar extent to that of the proposed development; however, the additional bulk of the development will result in increased shadow.

The following analysis addresses the overall overshadowing impact of the development upon the abovementioned residential properties, and their respective living areas and principal areas of private open space on June 21.

Control C2 of Part 2.7.3 of the MDCP 2011 states:-

Direct solar access to windows of principal living areas and principal areas of open space of nearby residential accommodation must not be reduced to less than 2 hours between 9:00am and 3:00pm on 21 June.

Comment:

Plan and elevation shadow diagrams and written shadow analysis were submitted by the applicant showing existing and proposed shadows for June 21 and September 21.

The shadow diagrams indicate that on June 21:

- 9 Charles Street currently receives no direct solar access to its principal area of open space or north facing kitchen window with no change proposed;
- 11 Charles Street currently receives less than 2 hours of direct solar access to an average of 5% of its principal area of open space and will be further reduced to receive an average of 2.5% of its rear open space; and
- 13 and 15 Charles Street currently receive a minimum of 2 hours direct solar access to their respective principal area of open space and will continue to receive a minimum of 2 hours.

With respect to 11 Charles Street and the further reduction of solar access to its principal area of open space, Control C2(ii) of Part 2.7.3 of MDCP 2011 states:

If the development proposal results in a further decrease in sunlight available on 21 June, Council will consider:

- a. *The development potential of the site;*

Comment:

The development potential of the site is represented primarily by the applicable maximum 14 metre height and maximum 1.5:1 FSR development standards.

In this instance, the portion of the development which further reduces solar access to 11 Charles Street is proposed at a height of 11.55 metres. As discussed above, the FSR of the development is subject to a request vary Council's maximum FSR controls under Clause 4.6 of MLEP 2011 and has been discussed above in Section 5(a)(iv) of this report. It is considered that the height of the development has more potential in this instance to impact on the shadowing of adjoining development. As the height of the development which causes the solar access reduction to 11 Charles Street is significantly lower than the allowable 14 metre height applicable to the site, the development is considered acceptable with respect to the further 2.5% loss of solar access.

- b. *The particular circumstances of the neighbouring site(s), for example, the proximity of any residential accommodation to the boundary, the resultant proximity of windows to the boundary, and whether this makes compliance difficult;*

Comment:

The principal area of open space of 11 Charles Street is located a minimum 7.7 metres from the boundary of the site. It is considered that compliance is made difficult In light of the proximity of the site to 11 Charles Street and the orientation of the site.

- c. *Any exceptional circumstances of the subject site such as heritage, built form or topography; and*

Comment:

There are no apparent exceptional circumstances applicable to the site.

- d. *Whether the sunlight available in March to September is significantly reduced, such that it impacts upon the functioning of principal living areas and the principal areas of open space. To ensure compliance with this control, separate shadow diagrams for the March/September period must be submitted.*

Comment:

Separate shadow diagrams for 21 September were provided and show that there will be a minimal reduction of direct solar access to the principal area of open space of 11 Charles Street between 9:00am and 11:00am over an average of 14.5% of its surface area. This is considered minimal given there is no impact after 11:00am where the principal area of open space remains almost entirely in sun after this time.

9 Charles Street

A submission was received from the property owner of 9 Charles Street which included an objection to the proposed shadow impact to the principal area of open space and an east facing kitchen window at the property.

Given that the shadow diagrams submitted with the application show that both the private open space and east facing window do not currently receive any direct solar access on June 21, upon Council's request the applicant submitted plan and elevation diagrams for 21 September to allow for a merit assessment of the shadow impacts to 9 Charles Street on September 21 to be undertaken.

Principal area of open space

The shadow diagrams illustrate that the principal area of open space for 9 Charles Street currently receives 2 hours of direct solar access over an average of 30.57% of rear yard between 9:00am and 3:00pm on September 21 and this would be reduced to an average of 27.14%; representing a loss of 3.43%.

East Facing Kitchen Window

The elevational shadow diagrams illustrate that the east facing kitchen window currently receives direct sun to an average of approximately 65% of its glazed area between 9:00am and 12:00pm after which time it is in self shadow.

The original development resulted in a reduction of direct sun to an average of approximately 35% of its glazed area between 9:00am and 12:00pm.

Council raised concern with the applicant with respect to the loss of direct sunlight to the rear open space and east facing kitchen window of 9 Charles Street on September 21 given that 9 Charles Street does not currently receive any direct solar access on June 21.

In response to Council's concern, the applicant amended the proposal by deleting a portion of roof over void space on the upper level and providing a chamfered roof to this section of the building and submitted additional elevational shadow diagrams. The elevational shadow diagrams show that the amended design will have no additional impact to the east facing

kitchen window. The modification of the roof will likely increase the available direct solar access to the rear open space of 9 Charles Street to similar to its current level.

The development does result in a reasonable level of additional shadow to the rear open space of 11 Charles Street on June 21, however for the reasons discussed above in response to Control C2(ii) in Part 2.7.3 of MDCP 2011, the reduction is considered acceptable in this instance. Further, the applicant has amended the development to ensure that direct solar access currently provided to the rear open space and east facing kitchen window of 9 Charles Street on September 21 is protected.

(v) Community Safety (Part 2.9)

Part 2.9 of MDCP 2011 contains objectives relating to community safety. The proposal provides clear visible entrances to the building from Charles Street, secure parking, habitable rooms overlooking Charles Street and the ‘right of way’ and design features which would allow for casual surveillance of the street. Appropriate conditions are included in the recommendation regarding lighting and anti-graffiti treatment to the development.

(vi) Parking (Part 2.10)

Car, Bicycle and Motorcycle Parking Spaces

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

Component	Control	Required	Proposed	Complies?
Car Parking				
Resident Car Parking	0.5 car parking spaces per 1 bedroom unit (non adaptable)	4 x 1 bed units = 2 spaces	11 Non accessible spaces 4 accessible spaces	No shortfall in 1 non-accessible space Yes (accessible spaces)
	1 car parking spaces per 2 bedroom unit (non adaptable)	6 x 2 bed unit = 6 spaces		
	1.2 car parking spaces per 3 bedroom unit (non adaptable)	3 x 3 bed unit = 4 spaces		
	1 car parking space per 1 adaptable dwelling	4 x adaptable dwellings = 4 accessible spaces		
Commercial/ Retail Parking	1 car parking space per 80sqm GFA	260sqm = 3 spaces	3 spaces (non-accessible)	Yes
	1 accessible space per 10 spaces	4 spaces = 0 accessible	1 accessible	No

Component	Control	Required	Proposed	Complies?
		spaces required	space	
	TOTAL:	19 spaces	19 Spaces	Yes*
Visitor Car Parking	0.1 car parking space per unit (non adaptable)	13 units = 1 space	1 standard visitor space	Yes
	1 accessible visitor's car parking space per 4 accessible car parking spaces	1 accessible space	1 Accessible visitor space	Yes
	TOTAL:	2 Spaces	2 Spaces	
Bicycle Parking				
Resident Bicycle Parking	1 bicycle parking space per 2 units	17 units = 9 spaces	8 spaces	No
Visitor Bicycle Parking	1 bicycle parking space per 10 units	17 units = 2 spaces		
Motorcycle Parking				
Motorcycle Parking	5% of the total car parking requirement	21 car parking spaces required = 1 space	1 space	Yes

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

As detailed above, whilst the total number of car parking spaces required is provided, the allocation of spaces is not in accordance with the car parking requirements prescribed. This is illustrated in Table 1 where there is a shortfall of 1 residential (non-accessible) parking space and the provision of 1 additional accessible commercial car parking space (which is not required).

It is considered appropriate in this instance that the accessible commercial car parking space be reallocated to a residential parking space to address the non-compliance. A condition is included in the recommendation requiring the retail/commercial accessible parking space to be re-allocated to resident parking.

In addition, the proposed provision of bicycle parking spaces is deficient by 3 spaces. A condition is included in the recommendation requiring that 3 additional bicycle spaces be provided in basement levels.

Subject to the conditions discussed above, the development is acceptable pursuant to Part 2.10 of MDCP 2011.

(vii) Water Sensitive Urban Design (Part 2.17)

Part 2.17 of MDCP 2011 contains objectives and controls relating to Water Sensitive Urban Design (WSUD) including requirements for shop top developments.

In relation to water conservation requirements the residential components of such developments are required to demonstrate compliance with State Environmental Planning Policy – Building Sustainability Index (BASIX).

Conditions have been included in the recommendation requiring the provision of energy efficient fixtures in accordance with Council requirements.

(viii) Landscaping and Open Spaces (Part 2.18)

Landscaped Area

In accordance with Part 2.18 of MDCP 2011, landscaped/open space areas for mixed use developments is determined on merit and depends on the overall streetscape and the desired future character of the area/precinct.

The site currently has 100% site coverage and accommodates no deep soil zone and minimal planting on the roof top. The development retains the existing site coverage and provides some planting by way of a green wall running up the internal face of the southern boundary wall adjacent to the vertical void space.

Given the development does not allow for new open landscaping or deep soil areas, the minimal planting proposed is considered an acceptable response in this instance.

A landscape plan and maintenance schedule was not submitted with the application with respect to the internal green wall. A condition is included in the recommendation requiring the submission of a landscape plan and maintenance schedule and a plan showing full details of the green wall design.

Private Open Space

The development provides balconies for each dwelling in accordance with SEPP 65 requirements, which prevail over the requirements prescribed by MDCP 2011 and this matter has been discussed in greater detail under Part 5a(ii) of this report.

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

2.21.2.1 Recycling and Waste Management

A Recycling and Waste Management Plan (RWMP) was submitted with the application and is considered to be adequate. In accordance with Part 2.21 of MDCP 2011, development with 4 or more storeys requires a garbage chute or waste storage room for waste disposal on each floor. The development does not provide a chute or waste storage room on each floor.

This is acceptable in this case as the top floor (4th storey) contains 1 residential unit and to require a garbage chute on each floor would require either the relocation of the garbage holding area towards the front of the site adjoining the lift core, or the relocation of entry lobbies to the north side of the site and reconfiguration of units on all levels. Both scenarios would significantly alter the design leading to a poor streetscape and amenity outcome for the development.

2.21.2.5 Residential Waste

Separate residential waste facilities have been provided on the ground floor level. The garbage room has an area of 21.1sqm which is considered a sufficient size to accommodate the required 17 x 240 litre bins for waste and recycling.

A bulky goods area of 15sqm is provided adjoining the residential waste area in accordance with Council's requirements.

A condition of consent is included in the recommendation requiring adequate bin management for collection periods so as to minimise the impact of bins left out on the street on collection days.

2.21.2.6 Commercial Waste

Separate commercial waste facilities have been provided on the ground floor level. The garbage room has an area of 11.6sqm which is considered a sufficient size to accommodate the required 7 x 240 litre bins for waste and recycling.

2.21.3.1 Clothes drying facilities

Under the provisions of Part 2.21.2 of MDCP 2011, external clothes drying areas are required at a rate of 3.75m² per dwelling, with a minimum 6 metres of clothes line for each dwelling.

The balconies proposed for each dwelling are considered to be capable of accommodating suitable clothes drying areas for future occupants.

PART 5 - COMMERCIAL AND MIXED USE DEVELOPMENT

Part 5 of MDCP 2011 contains controls for commercial and mixed use developments. The following assessment has been provided in areas of the development which are not consistent with the design parameters set out in Part 5 of MDCP 2011.

(i) FSR (Part 5.1.3.1)

Control C1 in Part 5.1.3.1 requires that the FSR for a development must be consistent with the FSR standards prescribed within MLEP 2011.

FSR has been discussed in Section 5(a)(iv) above in this report.

(ii) Massing and Setbacks (Part 5.1.3.3)

Rear massing

The development includes protrusions outside of the required rear building envelope which is attributed to unit 207 on Level 2 and 301 on Level 3 and is shown in image 2 below.

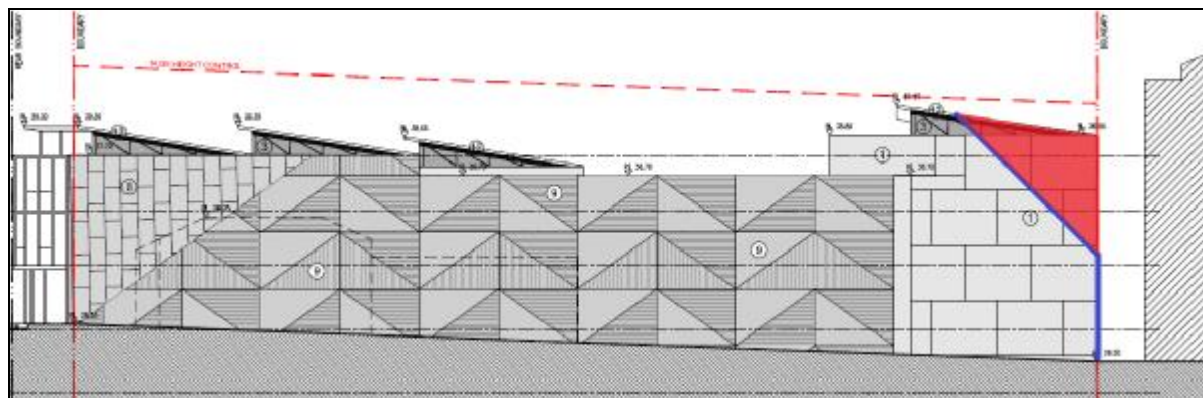


Image 2: Building Envelope (Protrusion Marked in Red).

Notwithstanding the above, control C13 in MDCP 2011 states that building envelopes may exceed the building envelope control where the rear massing that penetrates above the envelope will not cause significant visual bulk or amenity impacts to neighbouring properties at the rear.

In this case, window openings of the adjoining development to the rear that face the area of protrusion service common corridors for entry to residential units. In addition, the top most floor of the adjoining residential flat building to the rear contains a rear balcony, however, the roof of the proposed development will sit lower than the floor level of the neighbouring balcony and an outlook over the roof of the proposed development will be maintained.

In light of the above, the area of proposed development which exceeds the building envelope will not result in visual bulk or overshadowing impact to habitable living areas of the adjoining residential flat building to the rear and is acceptable in this regard.

Roof-top level massing

The development includes dwellings within the top 3 metres of the maximum height control and is therefore contrary to control C15 within Part 5.1.3.3 of MDCP 2011. However, this height restriction conflicts with the maximum 14 metre height control applicable to the site, which the development complies with. In addition, the area within the top 3 metres is attributed to 1 residential unit which is situated to the rear of the site and will not be visible from the street.

In light of the above, the development is considered acceptable pursuant to part 5.1.3.3 of MDCP 2011.

(iii) Building Depth (Part 5.1.3.4)

Control C16 requires that residential development above a first floor has a maximum envelope depth of 22 metres.

The development does not comply with the above control due to the narrow site width and the length (depth) of the development continuing from front to rear. The intent of the envelope depth control is to maintain amenity to adjoining properties. In this instance, the depth does not result in unreasonable amenity impacts to adjoining development to the south east given that additional overshadowing impacts have been minimised through amendments to the design.

In view of the above, the development is considered acceptable pursuant to Part 5.1.3.4 of MDCP 2011.

(iv) Building Separation (Part 5.1.3.5)

Building separation controls contained within Part 5.1.3.5 are effectively superseded by Parts 3 and 4 of the ADG which has been discussed in Part 5a(ii) of this report.

(v) Dwelling Mix (Part 5.1.5.2)

Part 5.1.5.2 of MDCP 2011 prescribes the following dwelling mix requirements for mixed use developments containing 6 or more dwellings:

“C54 *New developments with six or more dwellings must provide the following mix of dwelling types:*

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

The residential component of the development includes nil x studio apartments (0%), 4 x 1 bedroom units (23.53%), 10 x 2 bedroom units (58.82%) and 3x 3 bedroom units (17.65%).

The development does not provide studio dwellings and therefore does not comply with the unit mix requirements above.

Having regard to the local area and the availability of different dwelling mixes, the development is considered to provide a suitable dwelling mix to meet the demand for the local demographics. The variation to the dwelling mix control is considered minimal and justified in this instance.

PART 9 – STRATEGIC CONTEXT

The property is located in Parramatta Road Precinct (Precinct 35) under MDCP 2011, however the site is not within a Masterplan area and is not subject to scenario based controls for building envelope, height or FSR.

Part 9.35.2 of MDCP 2011 contains desired future character objectives. The development is acceptable with the stated desired future character objectives in that it retains a nil setback front setback and provides strong definition to the street, provides an active commercial frontage and provides good urban design and suitable amenity for occupants.

5(d) The Likely Impacts

The assessment of the development application demonstrates that, subject to the recommended conditions, the proposal will have minimal impact on the locality.

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

The site is zoned B2 – Local Centre. 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 policy. A total of 5 submissions were received of which 1 was a letter with 4 signatories and 1 was in support.

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

- (i) Height;
- (ii) FSR;
- (iii) Zone Objectives;
- (iv) Compliance with Part 5 of MDCP 2011;
- (v) Overshadowing;
- (vi) Privacy;
- (vii) Traffic;
- (viii) Parking;

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

- (i) *The use of the 'right of way' should not be allowed for vehicular access into the basement as currently it is only used for vehicle owners residing at 416, 418, 420, 422 and 424 Parramatta Road. The existing entrance off Charles Street should be used as an alternative.*

Comment:

The site currently benefits from 2 vehicle access points, one from Charles Street and one from the 'right of way'. Maintaining the use of the Charles Street vehicular access point would compromise the provision of an active commercial frontage to the street as required by Council's controls. The continued and increased reliance across the 'right of way' for vehicles to access the proposed basement entrance point is considered result in a better planning outcome.

- (ii) *Details on the plans show temporary construction activities required and a sediment control fence during construction that will mean that during construction vehicle access to 416, 418, 420, 422 and 424 Parramatta Road will not be possible.*

Comment:

Conditions of consent are included in the recommendation which address access during construction.

- (iii) *The Statement of Environmental Effects (SEE) submitted with the application contains a number of errors in the description of the site, extent of the building retained, demolished or re-used and reference to Council DCP controls.*

Comment:

Council notes the discrepancies in the SEE; however, the assessment of the proposal and its impacts has not been impacted by the discrepancies and further information has been provided upon Council's request to enable full and proper assessment against relevant controls and policies. Additional information was submitted during the assessment process which identifies a reasonable portion of the existing walls are to be retained.

- (iv) *The development should include a quota of affordable housing units.*

Comment:

There is no requirement in under Council's planning controls to support this request.

- (v) *Excavation may damage adjoining properties.*

Comment:

A condition of consent is included in the recommendation requiring the person acting on the consent to prepare a dilapidation report for adjoining properties.

- (vi) *There was no DA notice on site to notify passers-by of the development.*

Comment:

Council records indicate that a notice was provided on site. The notice is provided in addition to notification letters sent to nearby and adjoining property owners and occupiers, and an advertisement in the local newspaper. All submissions received have been considered during assessment of the development and the development has been assessed against all applicable planning controls.

5(g) The Public Interest

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

The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

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

- Development Engineer
- Environmental Services (Contamination)
- Urban Design and Heritage
- Resource Management

7. Section 94 Contributions

Section 94 contributions are payable for the proposal. The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$234,831.90 would be required for the development under Marrickville Section 94/94A Contributions Plan 2014. A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

The application seeks consent to demolish part of the premises and construct a 3 part 4 storey mixed use building comprising ground floor commercial tenancies and 17 residential apartments with basement car parking.

The heads of consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, as are of relevance to the application, have been taken into consideration in the assessment of this application. The proposal results in departures with overshadowing, waste management, massing and setbacks, building depth, building separation and unit mix controls contained in MDCP 2011 and the FSR development standard in MLEP 2011. Notwithstanding this, the extent of the proposed non-compliances is not considered to result in adverse impacts on the amenity of the adjoining development or the future character of the Parramatta Road Planning Precinct.

The application is considered suitable for the issue of deferred commencement consent subject to the imposition of appropriate terms and conditions.

9. Recommendation

That Council, as the consent authority pursuant to s80 of the Environmental Planning and Assessment Act 1979, grant deferred commencement consent to Development Application No: DA201600419 to demolish part of the premises and construct a 3 part 4 storey mixed use building comprising ground floor commercial tenancies and 17 residential apartments with basement car parking at 1-3 Charles Street, 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. A remedial action plan (RAP) shall be prepared to address outstanding contamination issues including the decommission of possible UPSS infrastructure and hotspot contamination identified in the Detailed Site Investigation, prepared by Benviron Group, Job number E970, Document Number 1, dated 15 September 2016. The RAP shall be submitted to the satisfaction of Council. Council may require that a NSW EPA Accredited Site Auditor review any proposed activities outlined in the remedial action plan.
2. A hazardous materials survey (HAZMAT) shall be conducted and submitted to the satisfaction of Council. This should address potential sources of contamination of existing site structures as per the recommendations in the Detailed Site Investigation, prepared by Benviron Group, Job number E970, Document Number 1, dated 15 September 2016. Any recommendations of this assessment shall be acted upon prior to this consent becoming active.
3. A report must be provided from an appropriately qualified structural engineer which investigates the structural adequacy of the existing walls which are to be retained as part of the subject development. The report should also investigate the likely impact that the demolition of the majority of the building will have on the structural stability of the walls to be retained. The report must also detail any engineering methods that are required during construction to ensure the retention of these walls and protect public safety.

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, Revision and Issue No.	Plan Name	Date Issued	Prepared by	Date Submitted
Drw No. A005, Revision A	Demolition Plan	August 2016	Tony Owen & Partners	19 August 2016
Drw No. A090, Revision A	Basement Level 2	August 2016	Tony Owen & Partners	19 August 2016
Drw No. A091, Revision A	Basement Level 1	August 2016	Tony Owen & Partners	19 August 2016
Drw No. A100, Revision A	Ground Floor Level	August 2016	Tony Owen & Partners	19 August 2016
Drw No. A101, Revision A	Upper Ground Floor Level	August 2016	Tony Owen & Partners	19 August 2016
Drw No. A102, Revision A	Level 1 Floor Plan	August 2016	Tony Owen & Partners	19 August 2016
Drw No. A103, Revision A	Level 2 Floor Plan	August 2016	Tony Owen & Partners	19 August 2016
Drw No. A104, Revision B	Level 3 Floor Plan	August 2016	Tony Owen & Partners	15 March 2017
Drw No. A110, Revision B	Roof Plan	August 2016	Tony Owen & Partners	15 March 2017

Drw No. A130, Revision A	Adaptable Units	August 2016	Tony Owen & Partners	19 August 2016
Drw No. A200, Revision B	North Elevation	March 2017	Tony Owen & Partners	28 March 2017
Drw No. A201, Revision A	West Elevation	August 2016	Tony Owen & Partners	19 August 2016
Drw No. A202, Revision B	South Elevation	March 2017	Tony Owen & Partners	28 March 2017
Drw No. A203, Revision B	East Elevation	March 2017	Tony Owen & Partners	28 March 2017
Drw No. A300, Revision A	Section A	August 2016	Tony Owen & Partners	19 August 2016
Drw No. A301, Revision B	Section B	August 2016	Tony Owen & Partners	15 March 2017
Drw No. A350, Revision A	Ramp Section	August 2016	Tony Owen & Partners	15 March 2017
Drw No. A700, Revision A	External Material Finishes	August 2016	Tony Owen & Partners	15 March 2017
Reference No. SYD2016-1065-R001C	Acoustic Report	28/07/2016	Fu Siong Hie	19 August 2016
Certificate No. 745632M	BASIX	26 July 2016	BCA Energy Pty Ltd	19 August 2016
-	Access Report	09-08-2016	Howard Moutrie	19 August 2016
Report No. G178	Geotechnical Investigation Report	March 2016	Benviron Group	19 August 2016

and details submitted to Council on 19 August 2016 and 15 March 2017 with the application for development consent and as amended by the matters referred to in Part A of this Determination and the following conditions.

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

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

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

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

3. In order to ensure the architectural and urban design excellence of the development is retained:
- i) The design architect is to have direct involvement in the design documentation, contract documentation and construction strategies of the project;
 - ii) The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
 - iii) Evidence of the design architect's commission is to be provided to the Council prior to the release of the construction certificate.
 - iv) The design architect of the project is not to be changed without prior notice and approval of the Council.

4. Where units or dwellings are provided with separate individual hot water systems, these must be located within the internal area of the unit/dwelling and not on any balcony or terrace.
Reason: To ensure the aesthetics of the building and architecture are maintained.
5. The domestic waste bins are to be presented to Charles Street for collection, but not until after 7.00pm on the day prior to collection and are to be returned to their storage location within the building within two (2) hours of the bins being collected by Council. The owner's corporation being responsible to ensure compliance with this condition.
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 4 adaptable dwellings must be provided in accordance with Part 2.5 of Marrickville Development Control Plan 2011 - Equity of Access and Mobility.
9. The development shall provide a minimum of 21 off-street car parking spaces that are linemarked 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 must be allocated as follows:
 - a) A minimum of 12 car parking spaces being allocated to the residential dwellings;
 - b) A minimum of 1 residential visitor space;
 - c) 5 adaptable car parking spaces, one per adaptable dwelling and one for residential visitors; and
 - d) 3 car parking spaces being allocated to the ground floor retail/commercial tenancies.All accessible car spaces must be appropriately marked as disabled car parking spaces.
10. 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.
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 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. Separate Development Consent or Complying Development Certificate must be obtained prior to the erection of any advertisements or advertising structures. The shop windows must not be painted with advertisements and no flashing lights are to be installed on the premises.
15. All machinery must be installed in accordance with the manufacturer's specifications and must be maintained at all times if in use.
16. The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones respectively to the property.
17. All trade waste must be stored within the site boundaries and contained in such a manner so as not to cause a nuisance.
18. All building work must be carried out in accordance with the provisions of the National Construction Code (Building Code of Australia).
19. Any water (including water from excavations) that is to be discharged to our stormwater 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.
20. Owners and occupants of the proposed building shall not be eligible to obtain parking permits under any existing or future resident parking scheme for the area. The person acting on this consent shall advise any purchaser or prospective tenant of this condition. In addition the by-laws of any future residential strata plans created for the property shall reflect this restriction.
21. All stormwater drainage being designed in accordance with the provisions of the Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2003 '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.
22. Should the proposed development require the provision of an electrical substation, such associated infrastructure shall be incorporated wholly within the development site. Before proceeding with your development further, you are directed to contact Ausgrid directly with regard to the possible provision of such an installation on the property.
23. Dry-weather flows of any seepage water including seepage from landscaped areas will not be permitted through kerb outlets and must be connected directly to a Council stormwater system. Alternatively the water may be stored separately on site and reused for the watering of landscaped areas.

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).

24. No work must commence until:
- A PCA has been appointed. Where an Accredited Certifier is the appointed, Council shall be notified within 2 days of the appointment; and
 - A minimum of 2 days written notice given to Council of the intention to commence work.
25. 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.
26. 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.
27. 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.
28. 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.
29. All services in the building being demolished must be disconnected in accordance with the requirements of the responsible authorities before work commences.
30. A waste management plan must be prepared in accordance with Part 2.21 of Marrickville Development Control Plan 2011 – Site Facilities and Waste Management and submitted to and accepted by the PCA before work commences.
31. 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.
32. 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'.
33. 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;

- c) What facilities are to be provided to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way; and
- d) How access to the site will be provided.

All devices must be constructed and maintained on site while work is carried out.

- 34. The person acting on this consent is responsible for arranging and meeting the cost of dilapidation reports prepared by a suitably qualified person. The reports are to include colour photographs and must be submitted to the Certifying Authority's satisfaction, with a colour copy being provided to Council and the respective property owner(s) of the identified properties, before work commences, on the buildings on the adjoining properties at 9 Charles Street and 1-5 Phillip Street, if the consent of the adjoining property owner(s) can be obtained. In the event that the consent of the adjoining property owner(s) cannot be obtained copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the PCA before work commences.
- 35. 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.
- 36. If new street numbers or a change to street numbers (this includes unit and shop numbers) are required, a separate application must be made to and approved by council prior to those street numbers being displayed.
- 37. 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.
- 38. 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.
- 39. 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.
- 40. 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.
- 41. 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.

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.

Section 94 Contribution

42. 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 \$234,831.90 indexed in accordance with Marrickville Section 94/94A Contributions Plan 2014 ("CP").

The above contribution is the contribution applicable as at 20 March 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. DC001835)

- 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	\$33,377.42
Plan Administration	\$4,604.53
Recreation Facilities	\$204,172.76
Traffic Facilities	\$-7,322.80

- 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.

43. 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>.

45. The approved plans must be submitted to a Sydney Water Quick Check agent to determine whether the development will affect any Sydney Water wastewater and water mains, stormwater drains and/or easement, and if any requirements need to be met. Plans will be appropriately stamped.
Please refer to the web site www.sydneywater.com.au for:
- Quick Check agents details - see Plumbing, building and developing then Quick Check agents and
 - Guidelines for Building Over/Adjacent to Sydney Water Assets – see Plumbing, building and developing then Plan submissions
- or telephone 13 20 92.
- The stamped plans must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
46. 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.
47. A landscape maintenance schedule for the internal green wall must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.
48. Bicycle storage with the capacity to accommodate a minimum of 11 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.
49. 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.
50. Adequate outdoor clothes drying areas/facilities must be provided for the development in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate. Where such areas/facilities are provided on street facing balconies, the areas/facilities must be appropriately screened from view from the street.
51. 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.
52. 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).
53. Before the issue of a Construction Certificate an amended plan must be submitted to the Certifying Authority's satisfaction addressing the requirements of The Disability (Access to Premises – buildings) Standards 2010 (the Premises Standards).
54. Reticulated gas infrastructure, with a separate meter for each dwelling must be provided to each dwelling in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

56. Noise attenuation measures being incorporated into the development complying with Australian Standard 2021-2000 in relation to interior design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction), in accordance with details must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate together with certification by a suitably qualified acoustical engineer that the proposed noise attenuation measures satisfy the requirements of Australian Standard 2021-2000.
57. Details of an anti-graffiti treatment to the ground floor of the north elevation of the development must be submitted to and approved by Council before the issue of a Construction Certificate.
58. Amended plans being submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate demonstrating:
 - a) windows to be provided to the bathrooms/kitchens facing the gallery; and/or
 - b) operable transom windows/louvres provided above the residential entry doors.
59. The person acting on this consent shall provide to Council a bond in the amount of \$9,292.40 and pay the related Section 138 (Roads Act) inspection fee of \$206.00 (GST inclusive) before the issue of a Construction Certificate to ensure the proper completion of the footpath and/or vehicular crossing works required as a result of this development.
60. 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.
61. The stormwater drainage plans SW01 (Rev A), SW02 (Rev A), SW03 (Rev A), SW04 (Rev A), SW05 (Rev A) and SW06 (Rev A) by SGC P/L shall be amended and/or additional information provided before the issue of a Construction Certificate as follows:
 - a) Detailed calculations for sizing of the OSD system to be provided for assessment (this shall include the all DRAINS files)
 - b) Detailed calculations establishing that there is sufficient capacity within the downstream drainage system to which the site is discharging;
 - c) Assessment of the effect of the 1 in 100 year storm event on the stormwater system and the development, including depth of ponding at the low point of the right-of-way (if any) and details of any inundation of the basement carpark;
 - d) A copy of the MUSIC File (.sqz file) used in the WSUD Strategy Report being submitted for review; and
 - e) 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.
62. All plumbing and ductwork including stormwater downpipes must be concealed within the outer walls of the building so they are not visible. Plans and elevations detailing the method of concealment must be submitted to and approved by Council before the issue of a Construction Certificate. Any variation to this requirement requires Council approval.
63. 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 Marrickville Public Domain Design Guide;

- ii. The construction of heavy duty vehicular crossings to all vehicular access locations and removal of all redundant vehicular crossings to the site;
- iii. New kerb and gutter along the frontage of the site. The kerb type (concrete or stone) shall be consistent with the majority of kerb type at this location. Council may be able to assist with the supply of stone if required. Please contact Council's Infrastructure Services Division on 9335 2000; and
- iv. Alignment levels to be provided at the boundary at a minimum distance of every 5m and at all pedestrian and vehicular access locations. Note, the cross fall of the footpath shall be set at 2.5%.

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.

SITE WORKS

64. 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.

All trucks and vehicles associated with the construction, including those delivering to or removing material from the site, must only have access to the site during the hours referred to in this condition. No waste collection skips, spoil, excavation or demolition material from the site or building materials associated with the construction of the development must be deposited on the public road, footpath, public place or Council owned property without Council's approval, having first been obtained. The developer is responsible to ensure that all contractors associated with the development are fully aware of these requirements.

65. 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.
66. The area surrounding the building work must be reinstated to Council's satisfaction upon completion of the work.
67. 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'.
68. 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.
69. 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.

70. 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.

71. All vehicles carrying materials to, or from the site must have their loads covered with tarpaulins or similar covers.
72. 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.
73. 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.

74. A clear unobstructed path of travel of not less than 1,000mm must be provided to all exits and paths of travel to exits.
75. At the completion of site demolition works, and before excavations, a groundwater assessment shall be conducted to address the identified data gap in the detailed site investigation. Any proposed amendments to the remedial action plan shall be reported to Council.
76. At the completion of site demolition works and additional investigations, and before excavations, site remediation works shall be completed as per the approved remedial action plan.
77. Within 30 days of completion of any remedial works undertaken, the person acting on this consent shall submit to Council a Validation Report demonstrating that the site has been remediated and is suitable for the proposed development with no ongoing contamination issues. All reports are to be prepared in accordance with the NSW Environment Protection Authority's *Guidelines for Consultants Reporting on Contaminated Sites 2011*.
78. Any soil excavated soil to be removed from the site shall be classified and disposed in accordance with the NSW Environmental Protection Authority's *Waste Classification Guidelines 2014*.
79. If during site works there are significant unexpected occurrences, site works shall immediately cease. A suitably qualified environmental consultant shall be engaged to assess the site and determine if remediation is required in accordance with the NSW Environmental Protection Authority's *Guidelines for Consultants Reporting on Contaminated Sites 2011*. Any unexpected occurrences and management plans to address these occurrences shall be reported to and approved by Council. Note that Council may request that a NSW EPA Accredited Site Auditor review any proposed alterations to the remedial action plan.
80. Alignment levels for the site at all pedestrian and vehicular access locations shall match the existing back of footpath levels at the boundary. **Note:** This may require the internal site levels to be adjusted locally at the boundary to ensure that they match the issued alignment levels. Failure to comply with this condition will result in vehicular access being denied.
81. 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.

BEFORE OCCUPATION OF THE BUILDING

82. 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.

83. Occupation of the building must not be permitted until such time as:
- All preconditions to the issue of an Occupation Certificate specified in this development consent have been met;
 - 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
 - An Occupation Certificate has been issued.
84. The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:
- 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
 - 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.
85. The Section 73 Certificate must be submitted to the Principal Certifying Authority before the issue of an Occupation Certificate.
- 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.
 - 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.
86. The landscaping of the site must be carried out prior to occupation or use of the premises in accordance with the approved details and must be maintained at all times to Council's satisfaction.
87. 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 an Occupation Certificate.
88. 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).
89. 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.
90. a) Upon completion of the required noise attenuation measures referred to in the "Before the Issue of a Construction Certificate" Section of this Determination, and prior to the occupation of the development a report must be prepared and submitted to the Certifying Authority's satisfaction by an accredited Acoustics Consultant certifying that the final construction meets AS2021-2000 as set down in the subject condition of this consent. Such report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development; and

- b) Where it is found that internal noise levels are greater than the required dB(A) rating due to faulty workmanship or the like, necessary corrective measures must be carried out and a further certificate being prepared and submitted to Council in accordance with the requirements as set down in Part a) of this condition.
91. Before the issue of an Occupation Certificate, a street number and identifier of separate occupancies (if applicable) must be clearly displayed in a readily visible location (numbers having a height of not less than 75mm). If any new street numbers or change to street numbers (this includes unit and shop numbers) are required they must have the prior approval of council before being displayed.
92. All works required to be carried out in connection with drainage, crossings, alterations to kerb and guttering, footpaths and roads resulting from the development shall be completed before the issue of the Occupation Certificate. Works shall be in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications".
93. 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.
94. 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.
95. The existing stone kerb adjacent to the site is of local heritage value and is to be preserved at no cost to Council. Any damage to the stone kerb will require the replacement of the damaged individual stone units before the issue of the Occupation Certificate.
96. Heavy duty concrete vehicle crossings, in accordance with Council's Standard crossing and footpath specifications 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.
97. 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.
98. The footpaths adjacent to the site in shall be reconstructed in accordance with the Marrickville Public Domain Design Guide and Council's standard plans and specification. In addition the proposed street trees (to be placed in the footpath) shall be in accordance with the details provided in Marrickville Council's Street Tree Master Plan. The above works shall be undertaken at no cost to Council and before the issue of the Occupation Certificate.
99. Before the issue of the Occupation Certificate the right-of-way must be restored for its full length to the satisfaction of Council Restored.

101. Before the issue of the Occupation Certificate written verification from a suitably qualified competent person, stating that all stormwater drainage, re-use and quality measures have been constructed in accordance with the approved plans and the WSUD Strategy Report submitted by submitted by SGC P/L shall be submitted to and accepted by Council. In addition, full works-as-executed plans, prepared and signed by a registered surveyor, shall be submitted to Council. These plans must include levels for all drainage structures, buildings (including floor levels), finished ground levels and pavement surface levels.
102. 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 as outlined in the WSUD Strategy Report submitted by SGC P/L dated 8/8/16;
 - b) The Proprietor shall have the stormwater quality treatment facilities inspected annually by a competent person and must provide the approved WSUD maintenance plan to a 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.
103. With the regard to the On Site Detention System (OSD), a Positive Covenant in accordance with supplement 7 of Marrickville Council Stormwater and On Site Detention Code shall be placed on the Title in favour of Council before the issue of the Occupation Certificate.
104. All instruments under Section 88B of the Conveyancy Act used to create positive covenants, easements or right-of-ways shall include the condition that such easements or right-of-ways may not be varied, modified or released without the prior approval of Marrickville Council.
105. Prior to issue of the Occupation Certificate the person acting on this consent shall obtain from Council a compliance Certificate(s) stating that all Road, Footpath and Civil Works on Council property required to be undertaken as a result of this development have been completed satisfactorily and in accordance with Council approved plans and specifications.

ADVISORY NOTES

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

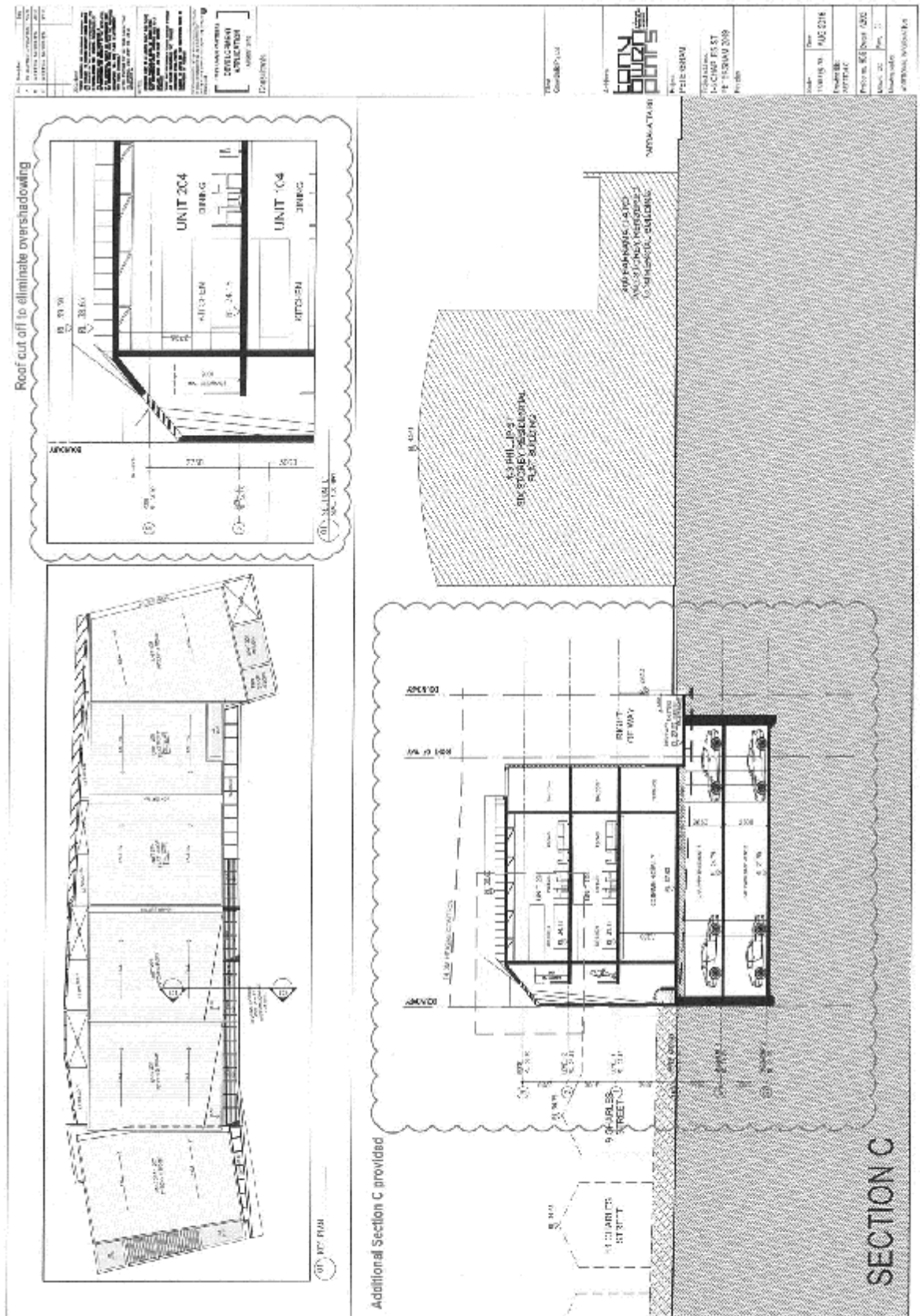
- The approved plans must be submitted to the Customer Centre of any office of Sydney Water before the commencement of any work to ensure that the proposed work meets the requirements of Sydney Water. Failure to submit these plans before commencing work may result in the demolition of the structure if found not to comply with the requirements of Sydney Water.
- 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

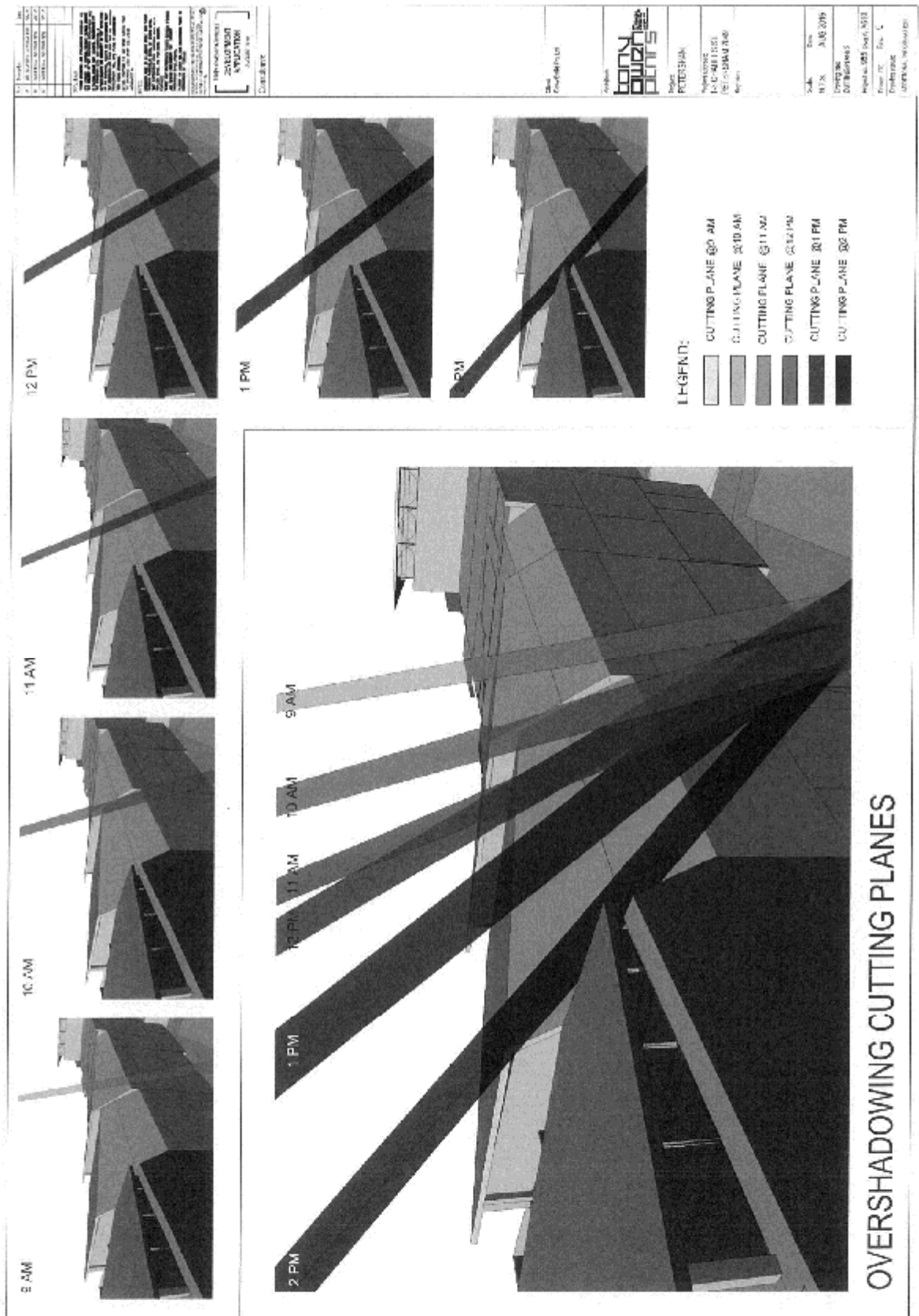
BASIX Information	☎ 1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	☎ 13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Before You Dig	☎ 1100 www.dialbeforeyoudig.com.au
Landcom	☎ 9841 8660 To purchase 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.diyasafe.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.sydneystwater.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

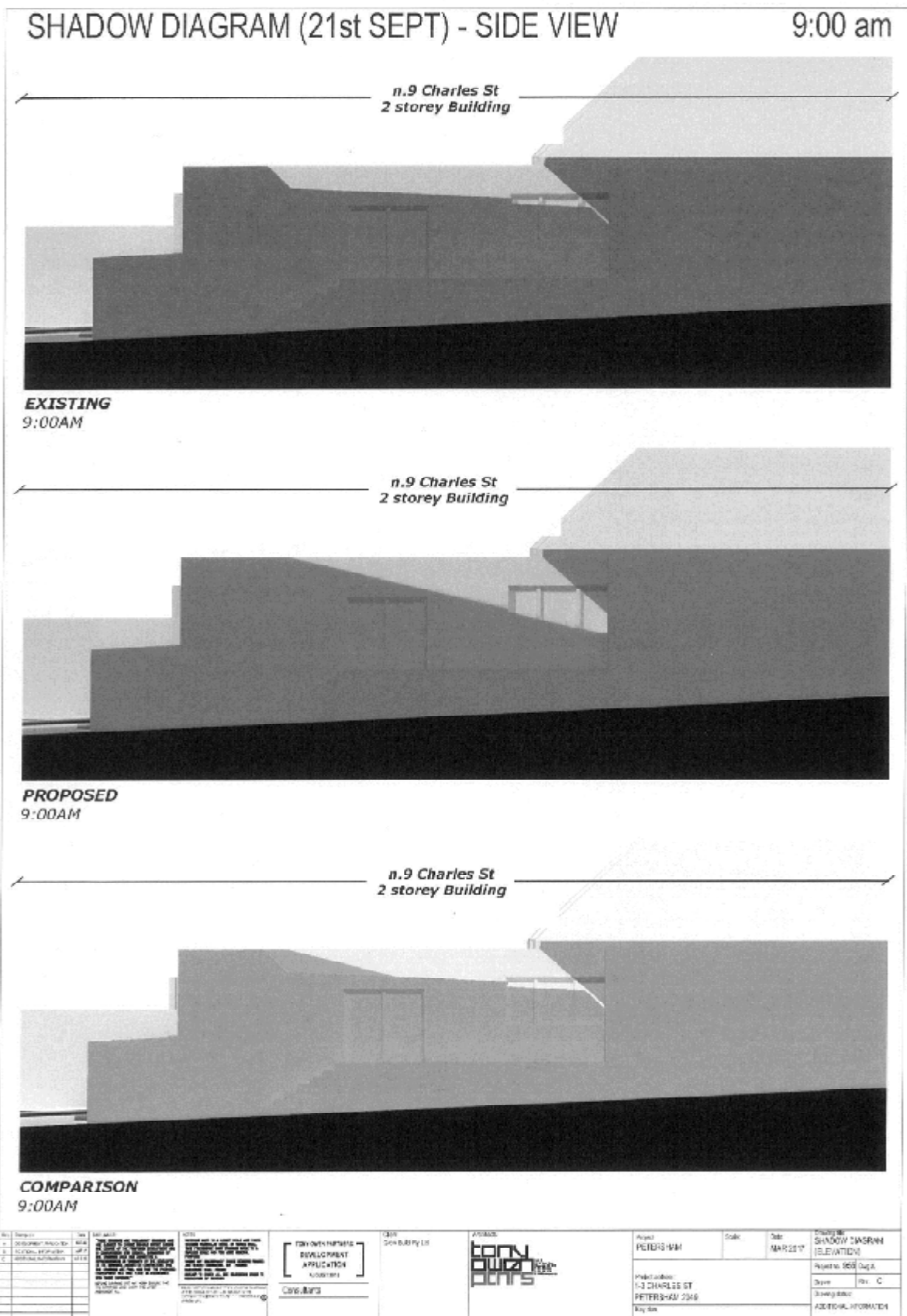
WorkCover Authority of NSW ☎ 13 10 50
www.workcover.nsw.gov.au
 Enquiries relating to work safety and asbestos removal and disposal.

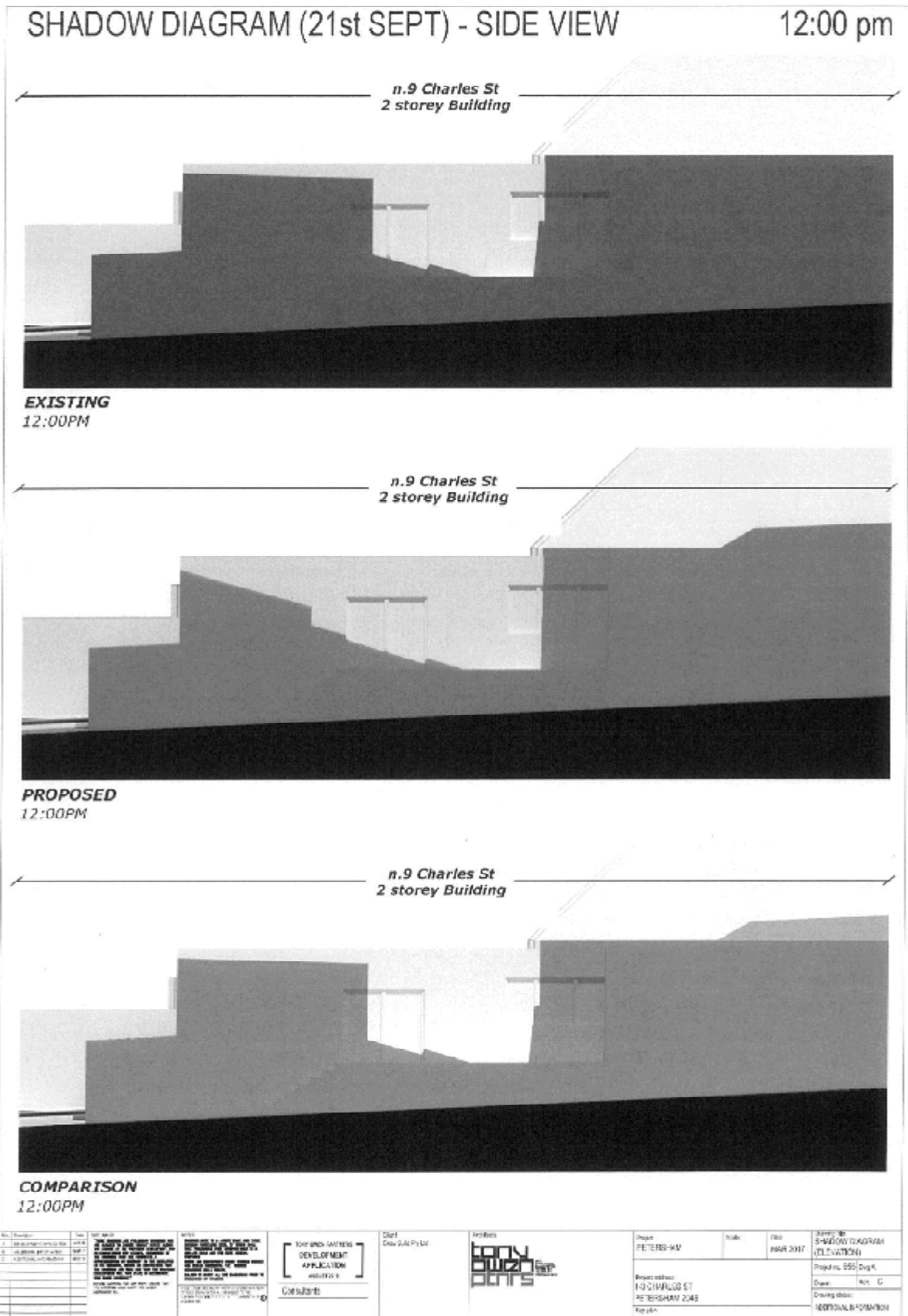
- B. **THAT** those persons who lodged submissions in respect to the proposal be advised of the Council's determination of the application.
- C. **THAT** those persons and the head petitioner who lodged submissions in respect to the proposal be advised of the Council's determination of the application.
- D. **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:

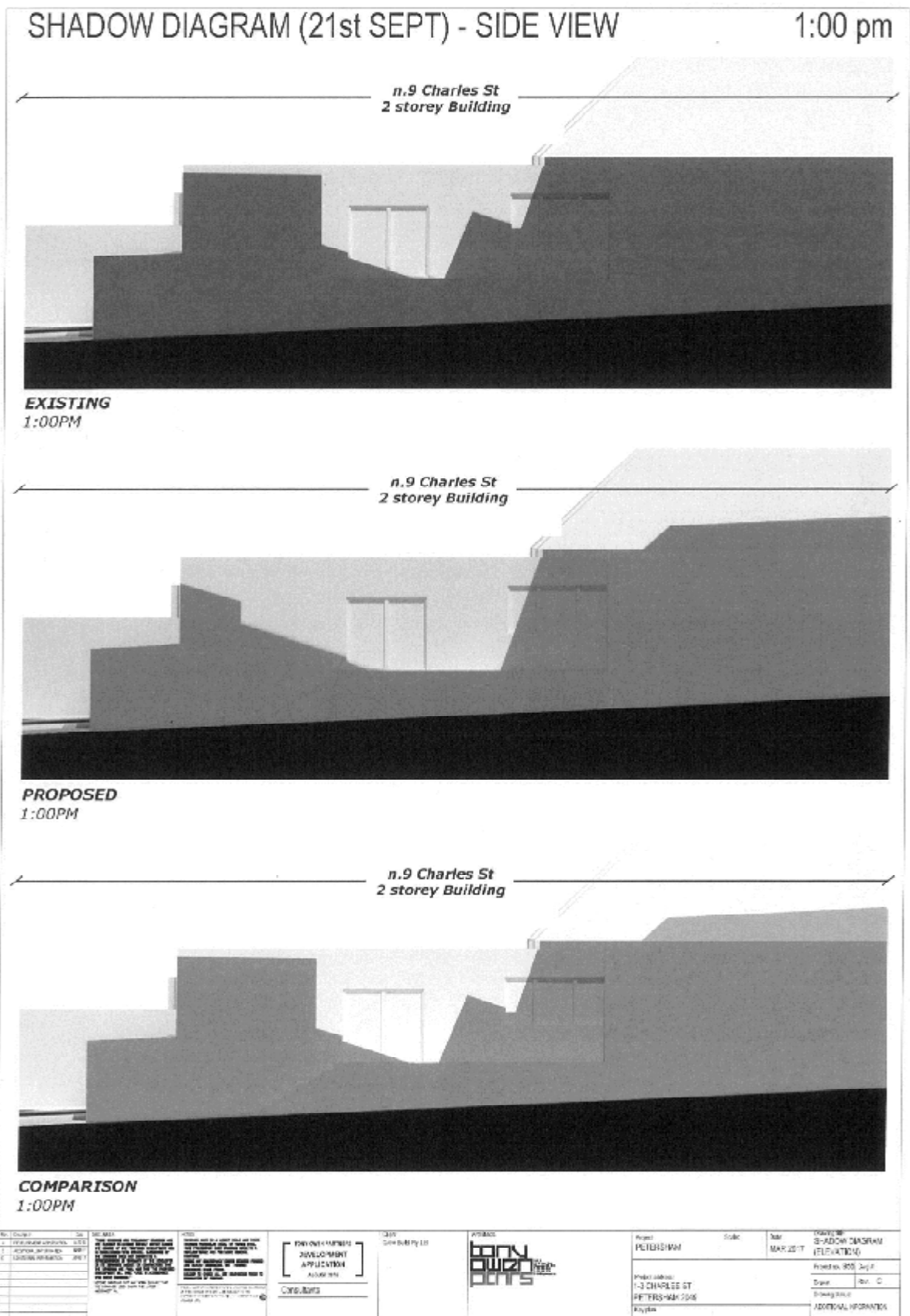
<u>Premises:</u>	1-3 Charles Street PETERSHAM
<u>Applicant:</u>	Tony Owen Partners
<u>Proposal:</u>	To demolish part of the premises and construct a 3 part 4 storey mixed use building comprising ground floor commercial tenancies and 17 residential apartments with basement car parking
<u>Determination:</u>	Deferred Commencement
<u>DA No:</u>	201600419
<u>Lot and DP:</u>	Lot 1 in DP 838817
<u>Category of Development:</u>	9
<u>Environmental Planning Instrument:</u>	Marrickville Local Environmental Plan 2011
<u>Zoning of Land:</u>	B2 - Local Centre
<u>Development Standard(s) varied:</u>	FSR
<u>Justification of variation:</u>	The proposal satisfies provides high residential amenity; results in no unreasonable amenity impacts to adjoining properties; is consistent with the objectives of the development standards and respective zone; and is appropriate in the context of the surrounding area.
<u>Extent of variation:</u>	22.7%
<u>Concurring Authority:</u>	Council under assumed concurrence of the Secretary Department of Planning and Environment
<u>Date of Determination:</u>	

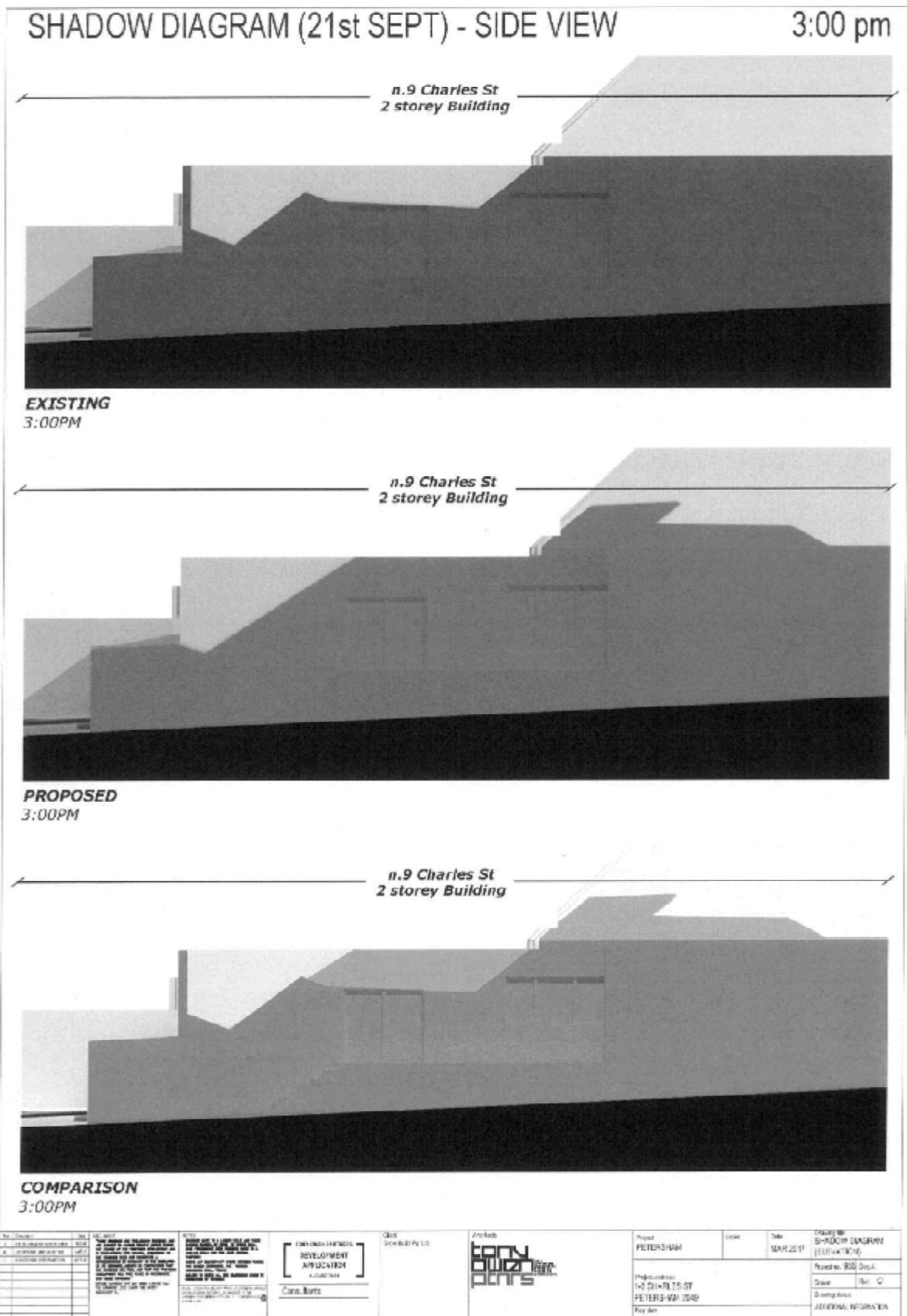












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