

DEVELOPMENT ASSESSMENT REPORT		
Application No.	201600074	
Address	115 Salisbury Road, Stanmore	
Proposal	To carry out alterations and additions to the existing premises to convert the premises into a mixed use development containing 2 ground floor commercial tenancies with car parking and a dwelling on the upper floor.	
Date of Lodgement	1 March 2016	
Applicant	Salisbury Rd Pty Ltd	
Owner	Salisbury RN (NSW) Pty Ltd	
Number of Submissions	Original proposal – 6 plus a petition containing 55 signatures Amended proposal – 2	
Value of works	\$623,580	
Reason for determination at Planning Panel	The extent of the departure from the FSR development standard exceeds staff delegation.	
Main Issues	Floor Space Ratio	
Recommendation	Deferred Commencement Consent	



## 1. Executive Summary

This report concerns an application to carry out alterations and additions to the existing premises and to convert the premises into a mixed use development comprising 2 ground floor commercial tenancies with car parking and a dwelling on the upper floor at 115 Salisbury Road, Stanmore. The original application was notified to surrounding properties and 6 submissions were received.

During the assessment process, Council Officer's raised concern regarding the proposed FSR and height, specifically the provision of a 3rd storey and that the bulk and scale of the proposed 'mezzanine and associated void' resulted in a development that was of a type and scale which was incompatible with the surrounding streetscape.

The applicant subsequently amended the application deleting the mezzanine level from the proposal reducing the height to 2 storeys. The amended proposal seeks to increase the floor area of the dwelling on the 1<sup>st</sup> floor and a reduced 1<sup>st</sup> floor rear setback. The amended proposal was re-notified to objectors of the original application and 2 submissions were received.

The development results in a departure of 68.86m<sup>2</sup> (33%) from the FSR development standard 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 for FSR which is supported for the reasons outlined in this report. The application is considered suitable for the issue of Deferred Commencement consent.

## 2. Proposal

The proposed development is described as follows:-

#### Ground Floor

- Commercial tenancy 1 64.8sqm;
- Commercial tenancy 2 59.9sqm;
- Residential entry Cardigan Lane;
- Lobby & stair,
- 1 Commercial parking/loading space;
- 1 Residential parking space;
- Bike storage;
- Plant room; and
- Removal of paint to existing facades to expose original brickwork.

#### First Floor Residential Dwelling

- 2 bedrooms & media room
- 3 bathrooms & one WC;
- Kitchen, living & dining; and
- 2 external terraces with edge planters/landscaping & screening.

## 3. Site Description

The site is located on the eastern side of Salisbury Road, Stanmore between Cardigan Street and Kingston Road. The site consists of one lot and is generally rectangular in shape with a total area of 245.5sqm and is legally described as Lot 2 in DP 202206.

The site has a primary frontage to Salisbury Road of 13.005 metres and a secondary frontage of approximately 19.505 metres to Cardigan Lane.

The site contains a single storey brick building with a history of commercial use. The existing building is constructed to the boundaries of the site. The adjoining properties at 92 and 96 Cardigan Street contain single storey residential dwellings and with attached outbuildings. 92 Cardigan Street contains a first floor accommodated within the roof form.

The surrounding locality consists predominantly of single and two storey residential dwellings with a place of public worship opposite the site at 84 Salisbury Road and a retail premises further to the east at 102 Salisbury Road.

## 4. Background

### 4(a) Site history

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

#### Subject Site

Application	Proposal	Date
Pre-DA	To carry out alterations and additions to	21 May 2016
201500006	the existing premises to construct a first	
	floor level containing 4 studio dwellings.	

#### Surrounding properties

Application	Proposal	Decision & Date
3 Kingston Road,	Demolish the existing improvements,	Approved
Stanmore DA201400050	subdivide the land into two allotments and erect a two storey dwelling house on	28 November 2014
	each allotment with a car space at the	
	rear	

### 4(b) Application history

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

Date	Discussion / Letter/ Additional Information
5 July 2016	Council letter requesting addition information/amended plans
31 July 2016	Additional information lodged
24 August 2016	Council letter requesting further additional information
8 September	Additional information lodged
2016	-

## 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 (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No 55-Remediation of Land
- Marrickville Local Environmental Plan 2011
- Marrickville Development Control Plan 2011

The following provides further discussion of the relevant issues:

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

SEPP 55 provides planning guidelines for remediation of contaminated land while Part 2.24 of MDCP 2011 also provides controls and guidelines for remediation works.

A Preliminary Site Investigation (PSI) was lodged with the application. The PSI included an analysis of past uses on the site and did not identify any past or present potentially contaminating activities. The PSI states that the site has a low risk of contamination due to the nature of identified site activities.

However, the PSI states that the proposal is likely to require the removal or significant modification of the existing concrete slab which may pose implications regarding contaminated groundwater due to the nearby location of O'Dea Reserve (90 metres) and contaminants from past imported filling (source unknown) used to fill/level the site.

O'Dea Reserve was the subject of a remediation agreement and has since been issued with notice of satisfactory completion of voluntary remediation, therefore potential contamination at the park no longer poses a significant risk of harm to human health or the environment. However, as groundwater levels at the subject site are not known and could not be determined from the available information, it cannot be ruled out that contaminated groundwater from the park has migrated towards the subject site prior to the remediation agreement.

The PSI states that the potential for site contamination is low due to the interpreted low possibility of contaminating activities associated with former land use and that the potential for groundwater impacts on the site, due to the contaminant migration from O'Dea Reserve, is considered to be low based on the topography of the locality and the direction of groundwater flow identified in the 'Agreed Voluntary Remediation Proposal', NSW EPA (September 2015).

Notwithstanding the identified low risk of contamination, the PSI recommends that a Detailed Site Investigation (DSI) is required to be undertaken to determine whether contamination is present upon demolition of the existing concrete slab.

The plans provided with the application do not indicate that the existing concrete slab is to be demolished or disturbed which would negate the need for a DSI. However, the PSI implies that the slab is to be demolished and the applicant has advised Council that the existing slab may need to be removed and reinstated in the proposed car park area.

A Deferred Commencement condition is included in the recommendation requiring a DSI in the area of the concrete slab to be removed or disturbed and associated Remedial Action Plan (RAP), should the DSI require it, 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 (if required) are undertaken prior to construction.

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

Given the conclusions drawn in the applicant's Preliminary Site Investigation, the nature of the development having minimal excavation (generally footings only) and the level of certainty around the ability to remediate the site (if necessary), 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)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 6.5 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 Required: 0.85:1	1.13:1 277.11m2	33%	No
Height of Building Required: 9.5 metres	8 metres	-	Yes

The following provides further discussion of the relevant issues:

#### (i) <u>Clause 2.3 - Land Use Table and Zone Objectives</u>

The property is zoned B1 – Neighbourhood Centre under the provisions of MLEP 2011. Shop top housing is permissible with Council's consent under the zoning provisions applying to the land and is considered acceptable having regard to the objectives of the B1 – Neighbourhood Centre zone.

(ii) <u>Clause 2.7 - Demolition</u>

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) <u>Clause 4.3 – Building Height</u>

A maximum building height of 9.5 metres applies to the site as indicated on the Height of Buildings Map that accompanies MLEP 2011. The development has a building height of 8 metres and complies with the development standard.

(iv) <u>Clause 4.4 - Floor Space Ratio</u>

A maximum floor space ratio (FSR) of 0.85:1 applies to the development under MLEP 2011.

The development has a gross floor area (GFA) of 277.11sqm which equates to a FSR of 1.13:1 on the 245sqm site and represents an exceedence the development standard by 33%.

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) <u>Clause 4.6 - Exceptions to Development Standards</u>

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. A written request in relation to the contravention to the floor space ratio 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 floor space ratio development standard to be unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:

- The proposal is consistent with the objectives of the zone;
- The proposal results in a built form of which its bulk and scale is consistent with the streetscape of Salisbury Road and the desired future character of the locality;
- The dwelling is of a modest scale and the resultant building form respectful of the warehouse building typology evident in the locality;
- Diminution of the scale of the upper storey would erode the ability of the proposal to maintain the corner as a visually significant element of the streetscape, which seeks to contribute to the variety of visually interesting corner buildings found throughout the LGA, promoting the character of this small neighbourhood centre. Thus, a better planning outcome is achieved;
- Failure to set aside the standard would in effect give rise to the inefficient use and development of land and promote a poor urban design outcome, by failing to

adequately reinforce the corner in a distinctive manner and to clearly identify the neighbourhood centre;

 Contravention of the control does not result in any deleterious environmental impact such as overshadowing or loss of privacy to adjoining properties, and it is considered that the environmental benefits of the proposal, providing development that is compatible with the streetscape and the bulk and scale of surrounding buildings, is on balance an appropriate environmental outcome, enabling justification for contravention of the development standard;

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].

Council is satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. The development is consistent with the objectives of the development standard as the proposed building density and bulk in relation to the site area is consistent with the desired future character of the area in that it presents a first floor addition below the maximum height control applicable to the land and has been designed in response to the proportions of the original built form of the period building on site resulting in a character which is not inconsistent with the surrounding built form in the wider streetscape.

Further, Council is satisfied that the development is consistent with the objectives of the B1 – Neighbourhood Centre Zone in that it enables an opportunity to provide small scale business uses that serve the needs of people in the surrounding neighbourhood, provides shop top housing of a type and scale that is compatible with the surrounding neighbourhood and provides retail/commercial spaces of a size and configuration suitable for land uses which provide an active street frontage.

Given the above, the development is considered to be in the public interest.

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

(vi) <u>Heritage Conservation (Clause 5.10)</u>

The site is located adjacent to the Cardigan Street Heritage Conservation Area (HCA) under MLEP 2011.

The proposed development will not have an adverse impact on the nearby HCA. The development proposed is 2 storeys in height with a maximum height of 8 metres. This is not inconsistent with the 2 storey dwelling houses in the surrounding locality, complies with Council's maximum building height control and is consistent with the desired future character of the area.

The first floor addition proposed is contemporary in form, is visually recessive, and the proposal also seeks to remove the existing paint/render exposing the original brickwork on the ground floor. It is considered the combination of traditional finishes on the ground floor of the original building combined with the recessive contemporary first floor results in a development which is complementary to the Salisbury Road and Cardigan Street streetscape.

As the proposed works seek to adaptively reuse the existing building, the proposed development ensures the integrity of the existing period building on the site is maintained.

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

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

The development would need to be noise attenuated in accordance with AS2021:2000. An acoustic report was submitted with the 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
Part 2.3 – Site and Context Analysis	Yes
Part 2.5 – Equity of Access and Mobility	Yes
Part 2.6 – Visual and Acoustic Privacy	Yes – refer to discussion
Part 2.7 – Solar Access and Overshadowing	Yes – refer to discussion
Part 2.9 – Community Safety	Yes – refer to discussion
Part 2.10 – Parking	No – refer to discussion
Part 2.16 – Energy Efficiency	Yes
Part 2.18 – Landscaping and Open Space	Yes – refer to discussion
Part 2.21 – Site Facilities and Waste Management	Yes – conditions imposed
Part 5 – COMMERCIAL & MIXED USE DEVELOPMENT	
Part 5.1.3 – Building Form	
• FSR	No – refer to discussion in
Height	Section 5a(i)(v)
Massing and setbacks	Yes
Building separation	Yes
Corner, landmarks and gateways	No – refer to discussion
	Yes
Part 5.1.4 – Building Detail	
Building frontages	Yes
Part 5.1.5 – Building use	
Mixed use development     Yes	
Part 5.1.6 – Vehicle access, parking, loading and services Yes	
Part 5.1.4 – Building Detail	

Building frontages	Yes
Retention, alteration and addition	Yes
Active street frontage uses and shopfront design	Yes
Part 5.1.5 – Building use	
Mixed Use	Yes
Ceiling height	Yes
Vehicle access, parking, loading and unloading	Yes
Part 8 - HERITAGE	
Part 8. – Cardigan Street Heritage Conservation Area (HCA	Yes - discussed above in
8)	this report
Part 9 – STRATEGIC CONTEXT	
Part 9.3 – Stanmore North (Precinct 3)	Yes

The following provides discussion of the relevant issues:

(i) Part 2.5 – Equity of Access and Mobility

The development complies with the requirements prescribed under Part 2.5 of MDCP 2011 by proposing at grade accessible entry and an accessible toilet to both of the proposed commercial tenancies

A statement of compliance was submitted with the application which details the compliance of the development with the access provisions required by the Building Code of Australia (BCA).

Given the above, the development is acceptable pursuant to Part 2.5 of MDCP 2011.

(ii) Part 2.6 – Visual and Acoustic Privacy

Part 2.6 of MDCP 2011 contains objectives and controls for visual and acoustic privacy to ensure the layout and design of a development provides a high level of visual and acoustic privacy for surrounding properties and for future occupants of a development itself.

Part 2.6 of MDCP 2011 does not restrict balcony sizes in shop top housing developments and as such a merit assessment against the objectives of Part 2.6 has been undertaken and is provided below:

The eastern elevation of 92 Cardigan Street contains a first floor ensuite/bedroom window 1.8 metres from the common boundary shared with the subject property. The application proposes the provision of a west facing balcony on the first floor constructed to the boundary.

To address potential visual and acoustic privacy impacts associated with the use of the proposed balcony, the applicant has provided planter boxes and a privacy screen along the western edge of the balcony to reduce the potential for visual and acoustic privacy impacts associated with its use.

Due to the close proximity of the adjoining property's window, a condition is included in the recommendation requiring the height of the privacy screen be increased to a minimum 1.6 metres and that balcony is constructed with a solid material to ensure that the visual and acoustic privacy of the adjoining master bedroom's occupants is protected.

The first floor balcony on the eastern elevation of the development addresses Cardigan Lane and is proposed to contain planter boxes along its eastern edge to reduce the potential for overlooking by standing occupants across Cardigan Lane and into the rear private open space area of residential dwellings that address Kingston Road.

There are air conditioning units proposed on the south facing wall of the first floor approximately 900mm from the boundary shared with 96 Cardigan Street. The units are partly screened by the existing parapet abutting the rear boundary. The combination of the existing parapet and the outbuilding at 96 Cardigan Street abutting the rear of the site will provide a visual and acoustic buffer for users of the open space at 96 Cardigan Street.

To ensure adequate acoustic amenity is maintained for occupants, conditions are included in the recommendation requiring noise attenuation measures to be incorporated into the residence.

Subject to compliance with the above, the proposed development is considered to satisfy the provisions of Part 2.7 of MDCP 2011.

#### (iii) Part 2.7 - Solar Access and Overshadowing

#### Overshadowing

The applicant submitted shadow diagrams with the application.

The shadow diagrams illustrate that the solar access to adjoining properties will not be adversely impacted upon by the carrying out of the development

Control C2 of Part 2.7.3 of 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.

The shadow diagrams demonstrate that the 2 adjoining residential properties at 92 and 96 Cardigan Street are currently not afforded a minimum of 2 hours solar access to their principal areas of open space at the rear of those properties between 9.00am and 3.00pm in mid-winter.

The proposed development will not cast any new shadows on open space or principal living areas. The additional shadows cast by the proposed first floor addition between 9.00am and 3.00pm in mid-winter will be contained to the roofs of an outbuilding and covered patio at 92 and 96 Cardigan Street, both of which are built to the rear and eastern side boundary of the subject site.

In this regard, the development will not result in the solar access of the two adjoining properties at 92 and 96 Cardigan Street being reduced to less than 2 hours in mid-winter. A submission was received from the owner of the adjoining property to the east at 92 Cardigan Street raising concern with the potential loss of solar access to solar panels and translucent roof sheeting of their covered patio.

The shadow diagrams lodged with the application show that at 9.00am in mid-winter, approximately 30% of the roof area containing solar panels and the covered patio will be overshadowed. Analysis of the shadow diagrams indicates that the shadows cast by the development will not affect the solar panels and the covered patio by 10.00am.

Given the above, the development is considered acceptable pursuant to Part 2.7 of MDCP 2011.

#### (iv) Part 2.9 – Community Safety

The development includes the following measures to encourage community safety:

- The principal entry of both commercial tenancies address Salisbury Road;
- The east facing balcony on the first floor is oriented to overlook Cardigan Lane;
- Both first floor balconies will allow for casual surveillance of Salisbury Road from their northern edges; and
- A condition of consent is included in the recommendation to ensure the pedestrian entrance for residents on Cardigan Lane is well lit.

Subject to conditions, the development is considered to satisfy the requirement of Part 2.9 of MDCP 2011.

(v) Part 2.10 - Parking

#### Car and Bicycle Parking Spaces

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

Component	Control	Required	Proposed	Complies?
		Car Parking		
Resident Car	0.5 car parking	1 x 2 bed units		
Parking	spaces per 2	= 0.5 (rounded up	1	Yes
-	bedroom unit	to 1)		
Commercial	1 space per 80sqm	124.9 sqm		
Car Parking	GFA for customers	=1.56 (rounded up	1	No
	and staff	to 2)		
	Bi	icycle Parking		
Resident	1 bicycle parking	1 dwelling		
Bicycle	space per 2	= 1		
Parking	dwellings		4	Yes
Commercial	1 bicycle parking	124.9 sqm	4	res
Bicycle	space per 300sqm	= 0.41 (rounded		
Parking – Staff	GFA	down to 0)		

Table 1: Car and Bicycle Parking Control Compliance Table

As detailed above, the development does not comply with the required commercial car parking rate and seeks dispensation of 1 parking space for one of the proposed commercial tenancies. Despite the non-compliance, the development is considered acceptable for the following reasons:

- The existing building on site does not provide parking, with the proposed shortfall of parking being less than the current arrangement on site and not considered to present additional demand for on street parking above that of past uses on site;
- To require an additional parking space would be unreasonable given that it would significantly compromise the use of the ground floor commercial tenancies;

- The proposed commercial tenancies are considered small scale uses which will serve the need of the local community and will not likely generate high demand for onsite or on street parking; and
- The site is within close proximity to regular bus routes that service the local area.

Given the above, the development is acceptable with regard to Part 2.10 of MDCP 2011.

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

#### Landscaped area

The development does not provide any landscaped area. No concerns are raised in this regard given that the site does not currently accommodate any landscaped area and the existing footprint of the building on site is not subject to modification. Further, the proposed first floor balconies include planter boxes to allow for planting and is an improvement from the existing site circumstances. As such, the proposal would not detract from the overall character of the streetscape.

#### Private and common open space

The proposed first floor dwelling is provided with 2 balconies with a combined area of 39sqm and widths in excess of 2 metres in accordance with the requirements of Part 2.18 of MDCP 2011. Both proposed balconies are accessible from the principal living area within the dwelling and are acceptable in this regard and afford a level of good amenity for future occupants.

#### Part 5.1.3.5 – Building Separation

Control C17 in Part 5.1.3.5 requires 12 metres of separation between habitable rooms or balconies of dwellings and habitable rooms or balconies of adjoining dwellings.

The development contains a west facing balcony which is 2.9 metres away from a first floor bedroom window on the adjoining property at 92 Cardigan Street. The separation therefore does not comply with the above control.

Despite the non-compliance, the development is considered to be acceptable for the following reasons:

- The development is a small scale mixed use development and does not adjoin properties which are zoned to permit mixed use development. Building separation controls contained within Part 5 of MDCP 2011 are intended for larger scale mixed use developments adjoining sites that also permit larger scale mixed use development. In this regard, the building separation controls contained within Part 5 cannot be reasonably applied to the development; and
- The development is consistent with Objective O14 of Part 5.1.3.5 in that the balcony (subject to conditions) will provide visual and acoustic privacy for the adjoining property and occupants of the dwelling itself.

Given the above, the development is considered acceptable pursuant to Part 5.1.3.5 of MDCP 2011.

### 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 B1 – Neighbourhood Centre and the LEP anticipates the type of land uses that are proposed. 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 6 submissions were received.

The amended plans were re-notified and 2 submissions were received.

The following issues raised in the 2 submissions have been discussed in this report:

- Inconsistency with the objectives of the B1 Neighbourhood Centre Zone see Section 5(a)(i);
- Height of building see Section 5(a)(iii);
- Non-compliant FSR see Section 5(a)(iv);
- Heritage impacts see Section 5(a)(vi);
- Visual and acoustic privacy see Section 5(c)(i);
- Solar Access and Overshadowing see Section 5(c)(ii);
- Car parking non-compliance see Section 5(c)(iii);
- Building Separation see Section 5(c)(v);

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

- <u>Issue</u>: The development must have regard to the nature of surrounding residential properties in accordance with the Land and Environment Court principle for development in adjoining zones established in Seaside Property Developments Pty Ltd v Wyong Shire Council [2004]
- <u>Comment:</u> The development is of a bulk and scale which is not inconsistent with the existing and future character of the area and the ground floor commercial uses are consistent with the permitted uses in the B1 Neighbourhood Centre zone. Further, the active frontages of the commercial uses address Salisbury Road and will not likely result in amenity adverse impacts to adjoining residential properties. The residential addition is subservient to the existing period building and respond appropriately to the adjoining site context.
- <u>Issue:</u> The applicant has not submitted a statement of unjustifiable hardship in accordance with Part 2.5.4.2 of MDCP 2011 and Council should ensure strict compliance with access requirements.

<u>Comment:</u> A Statement of Compliance regarding access for people with a disability was lodged with the application. The development complies with the necessary access requirements.

<u>Issue</u>: The applicant has not submitted a Social Impact Assessment.

- <u>Comment:</u> The application seeks consent for two commercial tenancies and does not include a proposal for their future use. A condition is included in the recommendation requiring that the first use of both tenancies are subject to future application by way of either a Complying Development Certificate or Development Application. Upon lodgement of future applications for the 2 commercial tenancies, a Social Impact Assessment may be required, if applicable to the future proposed uses. A mixed use development of this size is not required to provide a Social Impact Assessment under Part 2.8 of MDCP 2011.
- <u>Issue</u>: MDCP 2011 requires that for new infill developments, where the height of building standard is set at 11 metres or less, the street front portion of the building mass in the front 6 metres must have a maximum height of 9 metres and contain a maximum of 2 storeys.
- <u>Comment:</u> The development is not a new infill development and the proposal responds to the existing built form to ensure that the first floor addition is visually recessive and does not overwhelm the existing period building. Notwithstanding, the development complies with the height controls prescribed for the site.
- <u>Issue:</u> The site was rezoned to B1 Neighbourhood Centre Zone as part of MLEP 2011. Residents were not provided with appropriate notification of the rezoning and a similar rezoning proposal had been rejected previously.
- <u>Comment:</u> The proposed development is consistent with the permitted uses in the zone. Concerns regarding rezoning history are not a matter for consideration of this application.
- <u>Issue</u>: Noise from the businesses operating will travel to bedrooms on the ground floor and master bedroom on the first floor.
- <u>Comment:</u> It is noted that the existing building contains a commercial use on the ground floor. The use of the commercial tenancies are subject to a separate application and would be required to adhere to standard noise conditions to protect the amenity of neighbouring properties.
- <u>Issue:</u> Digital television reception will be interrupted.
- <u>Comment:</u> This is not a relevant planning consideration and there is no evidence to support this assertion.
- <u>Issue</u>: Adjoining walls to residential properties should be fire rated and the premises should provide firefighting provisions.
- <u>Comment:</u> A condition is included in the recommendation requiring that the premises comply with the requirements prescribed under the Building Code of Australia.

<u>Issue</u>: MDCP requires that the street front portion of the building mass must be designed to maintain or emphasise the street front portion of the building mass as the continuous dominant element in the streetscape and the front portion of the building must be retained. The development does not comply with these requirements.

<u>Comment:</u> The proposal maintains the existing front portion of the building and proposes a first floor which is setback from the existing ground floor building parapet. In this regard, the proposal is considered to acceptable as it is not a traditional shop top housing development and this proposal is considered respond the existing built form in a sympathetic manner which respects the existing period building.

<u>Issue:</u> Landscaping for the corner site is insufficient

<u>Comment:</u> The current building on site provides no landscaping. The proposed first floor addition will provide planter boxes with associated landscaping. As discussed throughout this report the proposed design is considered sympathetic to the

existing building and appropriate in the context of the B1 – Neighbourhood Centre zone.

- <u>Issue:</u> As the existing building on site is constructed to common boundaries, concern is raised with regard to possible damage to adjoining properties.
- <u>Comment:</u> A condition of consent is included in the recommendation requiring that the applicant submit a dilapidation report addressing both adjoining residential properties. Further, standard conditions of consent for construction are included in the recommendation.

### 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

## 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 \$35,049.14 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 proposal generally complies with the aims, objectives and design parameters contained in Marrickville Local Environmental Plan 2011 and Marrickville Development Control Plan 2011. The development will not result in unreasonable impacts on the amenity of adjoining premises and the streetscape. The application is considered suitable for the issue of a 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 consent to Development Application No: DA201600074 for alterations and additions to the existing premises to convert the premises into a mixed use development containing 2 ground floor commercial tenancies with car parking and a dwelling on the upper floor at 115 Salisbury Road, Stanmore 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 Detailed Site Investigation is required to be undertaken for areas of the site that are accessible for investigation. Should remediation works be required, a Remediation Action Plan must accompany the Detailed Site Investigation. The investigation must consider the recommendations and limitations of the Preliminary Site Investigation, Reference No.5723, prepared by Barker Harle, dated 29 December 2015. These reports shall be submitted to the satisfaction of Council and comply with the NSW Environmental Protection Authority's *Guidelines for Consultants Reporting on Contaminated Sites 2011*.
- 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 Preliminary Site Investigation, Reference No.5723, prepared by Barker Harle, dated 29 December 2015. Any recommendations of this assessment shall be acted upon.

#### PART B – CONDITIONS OF CONSENT

Once operative this part of 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	Plan Name	Date	Prepared by	Date
and Issue No.		Issued		Submitted
DA-002, Issue F	Context Analysis	12.10.16	RG	12.10.16
DA-003, Issue F	Ground Floor Plan	12.10.16	RG	12.10.16
DA-004, Issue F	First Floor Plan	12.10.16	RG	12.10.16
DA-006, Issue F	Section AA	12.10.16	RG	12.10.16
DA-007, Issue F	Section BB	12.10.16	RG	12.10.16
DA-008, Issue F	North Elevation	12.10.16	RG	12.10.16
DA-009, Issue F	East Elevation	12.10.16	RG	12.10.16
DA-010, Issue F	South Elevation	12.10.16	RG	12.10.16
DA-011, Issue F	West Elevation	12.10.16	RG	12.10.16
DA-012, Issue F	Roof Plan	12.10.16	RG	12.10.16
DA-013, Issue F	Finishes Schedule	12.10.16	RG	12.10.16
698352S	BASIX	01.03.16	Frys Energywise	01.03.16
Reference No. 5723	Preliminary Contamination Assessment	29.12.15	Barker Harle	01.03.16

and details submitted to Council on 1 March 2016, 31 July 2016, 8 September 2016 and 12 October 2016 with the application for development consent and as amended by the matters referred to in Part A of this Determination and the following conditions.

- 2. Where any plans and/or information forming part of a construction certificate issued in relation to this consent are inconsistent with:
  - (a) the plans and/or information approved under this consent; or
  - (b) any relevant requirements of this consent,

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

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

- 3. The materials and finishes of the building constructed pursuant to this consent must be strictly in accordance with the materials and finishes identified in Drawing Nos. DA-013, Issue F dated 12 October 2016, prepared by RG. No changes may be made to these drawings except by way of an application under section 96 of the *Environmental Planning and Assessment Act 1979*.
- 4. Where the dwelling is provided with a separate individual hot water systems, this must be located within the internal area of the unit/dwelling and not on any balcony or terrace.
- 5. 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.
- 6. The ongoing use of the ground floor commercial tenancies complying with the following requirements at all times:
  - a) The areas to be used as shops must be restricted to the ground floor commercial tenancies;
  - b) The shop window display areas must be maintained at all times with no roller shutters being installed across the shopfronts;
  - c) The hours of operation are restricted to between the hours of 7.00am to 7.00pm Monday to Saturday and not at any time on Sundays or public holidays;
  - All loading and unloading in connection with the use must be carried out wholly within the property from the dedicated loading space at the rear of the site, during the approved hours of operation and in such a manner so as to not cause an inconvenience to the public;
  - e) No storage of goods or equipment external to any building on the site is permitted; and
  - f) No signs or goods must be displayed for sale or stored on the footpath in front of the premises at any time without the prior approval of Council.
- 7. The new 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.
  - <u>Reason</u>: To ensure that the proposed dwellings are used exclusively as single dwellings.

- 8. 2 off-street car parking spaces must be provided, paved, linemarked and maintained at all times in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 Parking. With 1 space allocated to the dwelling and 1 space to a commercial tenancy.
- All parking spaces and turning area thereto being provided in accordance with the design requirements set out within Part 2.10 of Marrickville Development Control Plan 2011 - Parking, and must be used exclusively for parking and not for storage or any other purpose.
- 10. 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.
- 11. The use of the premises, including any plant and equipment, must not give rise to:
  - a) transmission of unacceptable vibration to any place of different occupancy;
  - b) a sound pressure level at any affected premises that exceeds the background (LA90) noise level in the absence of the noise under consideration by more than 5dB(A). The source noise level shall be assessed as an LAeq,15min and adjusted in accordance with Environment Protection Authority guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content as described in the NSW Environment Protection Authority's Environmental Noise Control Manual and Industrial Noise Policy 2000 and The Protection of the Environment Operations Act 1997 (NSW).
- 12. 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.
- 13. All machinery must be installed in accordance with the manufacturer's specifications and must be maintained at all times if in use.
- 14. 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.
- 15. All trade waste must be stored within the site boundaries and contained in such a manner so as not to cause a nuisance.
- 16. All building work must be carried out in accordance with the provisions of the National Construction Code (Building Code of Australia).
- 17. 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.
- 18. 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.

- 19. 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.
- 20. 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).

- 21. <u>No work must commence</u> until:
  - a) A PCA has been appointed. Where an Accredited Certifier is the appointed, Council shall be notified within 2 days of the appointment; and
  - b) A minimum of 2 days written notice given to Council of the intention to commence work.
- 22. A Construction Certificate must be obtained <u>before commencing building work</u>. Building work means any physical activity involved in the construction of a building. This definition includes the installation of fire safety measures.
- 23. 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 <u>before</u> work commences.

Facilities must be located so that they will not cause a nuisance.

- 24. 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
  - b) Where asbestos is to be removed it must be done in accordance with the requirements of the WorkCover Authority of NSW and disposed of in accordance

with requirements of the Department of Environment, Climate Change and Water.

- 25. 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 <u>before work commences</u>.
- 26. All services in the building being demolished must be disconnected in accordance with the requirements of the responsible authorities <u>before work commences</u>.
- 27. 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 <u>before work commences</u>.
- 28. 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, <u>before work commences</u>.
- 29. A rigid and durable sign must be erected in a prominent position on the site, <u>before</u> <u>work commences</u>. The sign must be maintained at all times until all work has been completed. The sign is to include:
  - a) The name, address and telephone number of the PCA;
  - b) A telephone number on which Principal Contractor (if any) can be contacted outside working hours; and
  - c) A statement advising: 'Unauthorised Entry To The Work Site Is Prohibited'.
- 30. 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 <u>before</u> work commences. The plan must indicate:
  - a) Where the builder's materials and waste are to be stored;
  - b) Where the sediment fences are to be installed on the site;
  - c) What facilities are to be provided to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way; and
  - d) How access to the site will be provided.

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

31. 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 92 Cardigan Street and 96 Cardigan 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.

- 32. 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.
- 33. The person acting on this consent must apply as required for all necessary permits including crane permits, road opening permits, hoarding permits, footpath occupation permits and/or any other approvals under Section 68 (Approvals) of the Local Government Act, 1993 or Section 138 of the Roads Act, 1993.
- 34. A detailed Traffic Management Plan to cater for construction traffic must be submitted to and approved by Council <u>before commencement of works</u>. Details must include proposed truck parking areas, construction zones, crane usage, truck routes etc. All construction traffic must comply at all times with the approved Traffic Management Plan. The developer must ensure that all construction workers and contractors are fully aware of the approved Traffic Management Plan.
- 35. The person acting on this consent must provide details of the means to secure the site and to protect the public from the construction works. Where the means of securing the site involves the erection of fencing or a hoarding on Council's footpath or road reserve the person acting on this consent must submit a hoarding application and pay all relevant fees <u>before commencement of works</u>.
- 36. All street trees adjacent to the site not approved for removal must be protected at all times during demolition and construction, in accordance with Part 2.20 of Marrickville Development Control Plan 2011 Tree Management. Details of the methods of protection of such trees must be submitted to and be approved by Council <u>before commencing works</u>.
- 37. All approved tree protection measures must be installed prior to commencing any work and must be maintained for the duration of construction.
- 38. Where scaffoldings or hoardings are to be erected, street trees must be protected during construction works as follows:
  - a) Tree trunk and major limb protection must be undertaken prior to or during the installation of any hoarding or scaffoldings. The protection must be installed by a qualified Arborist (AQF 2 or 3) and must include:
    - i) An adequate clearance, minimum 250mm, must be provided between the structure and tree branches, limbs and trunk at all times;
    - Tree trunk/s and/or major branches, located within 500mm of any hoarding or scaffolding structure, must be protected by wrapped hessian or similar material to limit damage;
    - iii) Timber planks (50mm x 100mm or similar) must be placed around tree trunk/s. The timber planks must be spaced at 100mm intervals, and must be fixed against the trunk with tie wire, or strapping. The hessian and timber planks must not be fixed to the tree in any instance, or in any fashion; and
    - iv) Tree trunk and major branch protection must remain in place for the duration of construction and development works, and must be removed at the completion of the project.

- b) All hoarding support columns must be placed a minimum of 300mm from the edge of the existing tree pits. Supporting columns must not be placed on any tree roots that are exposed.
- c) Materials or goods, including site sheds, must not be stored or placed:
  - i) around or under the tree canopy; or
  - ii) within 2 metres of tree trunks or branches of any street trees.
- d) Any damage sustained to street tree/s as a result of the erection of hoardings, scaffolding, or due to the loading/unloading of vehicles adjacent the site, must be immediately reported to the Council's Tree Management Officer on ☎9335 2242, in order to determine the appropriate action for maintaining the health and structural integrity of any damaged street tree.
- 39. Upon installation of the required tree protection measures, an inspection of the site by the Principal Certifying Authority must verify that tree protection measures comply with all relevant conditions.
- 40. 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.
- 41. 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.
- 42. Where it is proposed to carry out works in public roads or Council controlled lands, a road opening permit shall be obtained from Council <u>before the carrying out of any</u> 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.
- 43. 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 <u>before commencement of works</u>.
- 44. 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 <u>before commencement of works</u>.

### 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.

- 45. <u>Section 94 Contribution</u>
  - a) This condition is imposed in accordance with Section 94 of the Environmental Planning and Assessment Act 1979.

b) Before the <u>issue of a Construction Certificate or issue of a Subdivision</u> <u>Certificate, whichever occurs first</u>, the Council must be paid a monetary contribution of \$35,049.14 indexed in accordance with Marrickville Section 94/94A Contributions Plan 2014 ("CP").

The above contribution is the contribution applicable as at 12 October 2016.

\***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. DC001625)

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	\$5,932.83
Plan Administration	\$687.24
Recreation Facilities	\$31,034.21
Traffic Facilities	\$-2,605.13

- d) A copy of the CP can be inspected at Council's offices at 2-14 Fisher Street, Petersham or online at <u>http://www.marrickville.nsw.gov.au</u>.
- 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.
- 46. Evidence of payment of the building and construction industry Long Service Leave Scheme, must be submitted to the Certifying Authority's satisfaction <u>before the issue of a Construction Certificate</u>. (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.

47. 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 <u>www.sydneywater.com.au</u> 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 <u>before</u> the issue of a Construction Certificate.

- 48. 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 <u>before the issue of a Construction Certificate</u>. Any variation to this requirement requires Council approval.
- 49. Bicycle storage with the capacity to accommodate a minimum of 2 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 <u>before the issue of a Construction Certificate</u>.
- 50. Letterboxes and mail collection facilities must be provided and adequately protected in accordance with details to be submitted to the Certifying Authority's satisfaction <u>before</u> the issue of a Construction Certificate.
- 51. Lighting details of the pedestrian areas, parking areas and all entrances must be submitted to the Certifying Authority's satisfaction <u>before the issue of a Construction</u> <u>Certificate</u>.
- 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 <u>before the issue of a Construction Certificate</u>.

#### 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. 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.
- 54. Amended plans being submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate demonstrating the balustrade on the first floor side facing balcony on the western elevation adjoining 92 Cardigan Street be amended so that the privacy screen/balustrade shall be a minimum of 1.6 metres in height (from the finished floor level), and shall not be constructed of operable louvres, i.e. must be solid or obscurely glazed.
- 55. Details of an anti graffiti treatment to the north and east elevation(s) of the development must be submitted to and approved by the Certifying Authority <u>before the issue of a Construction Certificate</u>.

- 56. <u>Before the issue of a Construction Certificate</u> 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).
- 57. <u>Before the issue of a Construction Certificate</u> an amended plan must be submitted to the Certifying Authority's satisfaction indicating the existing building being upgraded to comply with the provisions of the National Construction Code (Building Code of Australia) in relation to:
  - a) smoke detection systems;
  - b) balustrades;
  - c) the protection of all openings within three metres of a fire source feature;
  - d) fire rating between sole occupancy units;
  - e) sound transmission ratings between sole occupancy units;
  - f) emergency lighting in the building;
  - g) fire hose reels in the building;
  - h) exit signs in the building;
  - i) portable extinguishers in the building;
  - j) fire doors in the building;
  - k) solid core doors in the building;
  - I) smoke exhaust systems in the building;
  - m) mechanical ventilation;
  - n) air movement;
  - o) the insulation qualities of the building fabric; and
  - p) the energy efficiency of the any air conditioning and ventilation system and artificial lighting and power.
- 58. <u>Before the issue of a Construction Certificate</u> 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.
- 59. The person acting on this consent shall provide to Council a bond in the amount of \$9,784.80 and pay the related Section 138 (Roads Act) inspection fee of \$206.00 (GST inclusive) <u>before the issue of a Construction Certificate</u> to ensure the proper completion of the footpath and/or vehicular crossing works required as a result of this development.

#### SITE WORKS

- 60. 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.
- 61. During any construction works and activities, no injury must be caused to the amenity of the neighbourhood by the emission of noise, smoke, smell, vibration, gases, vapours, odours, dust, particular matter, or other impurities which are a nuisance or injurious or dangerous or prejudicial to health, the exposure to view of any unsightly matter or otherwise.
- 62. The area surrounding the building work must be reinstated to Council's satisfaction upon completion of the work.

- 63. The placing of any materials on Council's footpath or roadway is prohibited, without the consent of Council. The placement of waste storage containers in a public place requires Council approval and must comply with Council's Policy 'Placement of Waste Storage Containers in a Public Place'.
- 64. All demolition work must be carried out in accordance with the following:
  - a) compliance with the requirements of Australian Standard AS 2601 'The demolition of structures' with specific reference to health and safety of the public, health and safety of the site personnel, protection of adjoining buildings and protection of the immediate environment;
  - 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;
  - 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;
  - 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 subcontractors associated with the demolition are fully aware of these requirements.
- 65. The works are required to be inspected at critical stages of construction, by the PCA or if the PCA agrees, by another certifying authority. The last inspection can only be carried out by the PCA. The critical stages of construction are:
  - a) At the commencement of the building work;
  - b) For Class 2, 3 and 4 buildings, prior to covering waterproofing in any wet areas (a minimum of 10% of wet areas within a building);
  - c) Prior to covering any stormwater drainage connections, and after the building work has been completed and prior to any occupation certificate being issued in relation to the building; and
  - d) After the building work has been completed and prior to any Occupation Certificate being issued in relation to the building.

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

- 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 <u>before works continue on site</u>, 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 <u>before work commences</u>.

- 67. All vehicles carrying materials to, or from the site must have their loads covered with tarpaulins or similar covers.
- 68. Satisfactory methods and/or devices must be employed on the site to prevent the tracking of mud/dirt onto the surrounding streets from vehicles leaving the site.
- 69. 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.
- 70. A clear unobstructed path of travel of not less than 1,000mm must be provided to all exits and paths of travel to exits.
- 71. Fixtures for bathroom and kitchen taps, showerheads, dishwashers, toilet cisterns and urinals must have a minimum 3 Star WELS rating for the commercial tenancies.
  - NOTE: Information on the star rating scheme, and all 'star' rated products are available to view at the Water Efficiency Labelling and Standards (WELS) website: <u>www.waterrating.gov.au</u>.
- 72. New or replacement toilets must have a minimum 3 Star WELS rating and being 6/3 litre dual flush or more efficient for the commercial tenancies.
  - NOTE: Information on the star rating scheme, and all 'star' rated products are available to view at the Water Efficiency Labelling and Standards (WELS) website: <u>www.waterrating.gov.au</u>.
- 73. Alignment levels for the site at all pedestrian and vehicular access locations shall match the existing back of footpath levels at the boundary. For vehicular access off rear laneways the level at the boundary shall match the invert level of the adjacent gutter plus 150mm at both sides of the vehicle entry. **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.
- 74. 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.

75. The site stormwater drainage shall be constructed generally in accordance with Stormwater Drainage Plans D00 to D03 (RevA) dated 20/1/16 submitted by Umbrella Civil Consulting Engineers.

#### BEFORE OCCUPATION OF THE BUILDING

- 76. 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.
- 77. Occupation of the building must not be permitted until such time as:
  - a) All preconditions to the issue of an Occupation Certificate specified in this development consent have been met;
  - b) The building owner obtains a Final Fire Safety Certificate certifying that the fire safety measures have been installed in the building and perform to the performance standards listed in the Fire Safety Schedule; and
  - c) An Occupation Certificate has been issued.
- 78. The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:
  - a) Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and
  - b) Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).

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

- 79. The Section 73 Certificate must be submitted to the Principal Certifying Authority before the issue of an Occupation Certificate.
  - a) A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Make early application for the certificate, as there may be water and sewer pipes to be built and this can take

some time. This can also impact on other services and building, driveway or landscape design.

- Application must be made through an authorised Water Servicing Coordinator. For help either visit <u>www.sydneywater.com.au</u> > Plumbing, building and developing > Providers > Lists or telephone 13 20 92.
- 80. The Certifying Authority must be satisfied that each of the commitments listed in BASIX Certificate referred to in this Determination have been fulfilled <u>before the issue</u> of an Occupation Certificate (whether an interim or final Occupation Certificate).
- 81. 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 <u>www.basix.nsw.gov.au</u>.
- 82. 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.
- 83. <u>Before the issue of an Occupation Certificate</u>, 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.
- 84. 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 <u>before the issue of the Occupation Certificate</u>. Works shall be in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications".
- 85. 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 <u>before the issue of an Occupation Certificate</u>.
- 86. 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.
- 87. 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 <u>before the issue of the Occupation</u> <u>Certificate</u>.

- 88. 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 <u>before the issue of the Occupation Certificate</u> and at no cost to Council.
- 89. 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" <u>before the issue</u> <u>of the Occupation Certificate</u> 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.
- 90. The footpaths adjacent to the site in Salisbury Road and Cardigan Lane shall be reconstructed in accordance with the Draft Public Domain Design Guide and Council's standard plans and specification. The works shall be undertaken at no cost to Council and before the issue of the Occupation Certificate.
- 91. Before occupation of the site written verification from a suitably qualified professional civil engineer, stating that all stormwater drainage and related work has been and constructed in accordance with the approved plans being 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.
- 92. <u>Prior to issue of the Occupation Certificate</u> 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

- A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out.
- The approved plans must be submitted to the Customer Centre of any office of Sydney Water before the commencement of any work to ensure that the proposed work meets the requirements of Sydney Water. Failure to submit these plans before commencing work may result in the demolition of the structure if found not to comply with the requirements of Sydney Water.
- The vehicular crossing and/or footpath works are required to be constructed by your own contractor. You or your contractor must complete an application for 'Construction of a Vehicular Crossing & Civil Works' form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, before commencement of works.
- 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, <u>before commencement of works</u>.

Reason: To ensure the civil works are constructed to Council's specifications.

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

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

<u>Premises</u> : <u>Applicant</u> : <u>Proposal</u> :	115 Salisbury Road, Stanmore Salisbury Rd Pty Ltd To carry out alterations and additions to the existing premises to convert the premises into a mixed use development containing 2 ground floor commercial tenancies with car parking and a dwelling on the upper floor
Determination:	Deferred Commencement Consent
<u>DA No</u> :	201600074
Lot and DP:	Lot 2 DP 202206
Category of Development:	9
Environmental Planning Instrument:	Marrickville Local Environmental Plan 2011
Zoning of Land:	B1 - Neighbourhood Centre
Development Standard(s) varied:	Clause 4.4 – Floor space ratio
Justification of variation:	The proposal is appropriate given the site context and surrounding streetscape. The development results in no unreasonable impacts for adjoining properties and/or the streetscape and forms part of an adaptive reuse.
Extent of variation:	68.86m² - 33%
Concurring Authority:	Inner West Planning Panel under assumed concurrence of the Secretary Department of Planning and Environment.
Date of Determination:	

# Attachment B – Plans of proposed development

6 SITE DOD LOCATION PLAN LOOR PLAN VORTH ELEVATION EAST ELEVATION SOUTH ELEVATION MEST ELEVATION AFT ELEVATION SFA DLANS SHADOW DIAGRAMS

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MIXED USE - SALISBURY ROAD

DRAWING CONTENTS:

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