

<b>JRPP No.</b>	<b>Item 1 (2009SYW 004)</b>
<b>DA No.</b>	<b>200900288 – 359 Illawarra Road Marrickville</b>
<b>Applicant:</b>	<b>Abadeen Marrickville</b>
<b>Report By:</b>	<b>Acting Director, Development &amp; Environmental Services - Marrickville Council</b>

## **Assessment Report and Recommendation**

### **Synopsis**

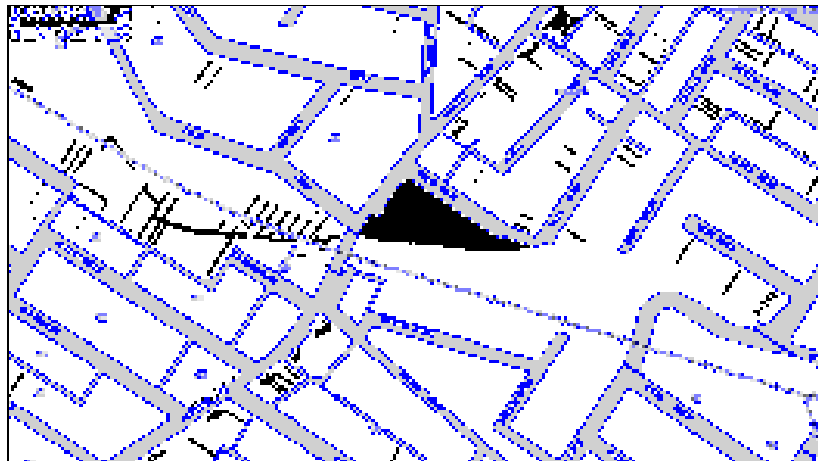
Application to demolish the existing improvements and erect a mixed use development containing 128 dwellings, 6,072m<sup>2</sup> of retail/commercial uses (including a supermarket with a gross floor area of 3,311m<sup>2</sup>) and a 612m<sup>2</sup> club (Marrickville RSL Club) with off street parking for 396 vehicles. Fifty-three (53) submissions and two petitions, containing a total of 362 signatures were received in response to Council's notification of the proposal.

The proposed development exceeds the maximum floor space ratio development standard as prescribed under Marrickville Local Environmental Plan 2001. The proposal does not comply with the provisions of Marrickville Development Control Plan No. 19 – Parking Strategy, Marrickville Development Control Plan No. 27 – Waste Management, Marrickville Development Control Plan No. 38 – Community Safety and Marrickville Development Control Plan No. 31 – Equity of Access and Mobility. The development also does not satisfy the design parameters, aims and objectives of Marrickville Development Control Plan No. 28 - Urban Design Guidelines for Business Centres. The proposal is considered to be excessive in height, bulk and scale and will not compliment the existing streetscape. It should be noted that the application was referred to Council's Local Traffic Planning and Advisory Committee who raised traffic and parking concerns and did not support the proposal. Railcorp have not granted their concurrence to the proposal in accordance with the requirements under State Environmental Planning Policy - (Infrastructure) 2007.

In view of the circumstances the application is recommended for refusal.

### **PART A - PARTICULARS**

**Location** Eastern side of Illawarra Road, between Byrnes Street and railway corridor, Marrickville.



*Image 1: Location Map*

**D/A No:** 200900288

**Application Date:** 6 August 2009

**Proposal** To demolish the existing improvements and erect a mixed use development containing 128 dwellings, 6,072m<sup>2</sup> of retail/commercial uses (including a supermarket with a gross floor area of 3,311m<sup>2</sup>) and a 612m<sup>2</sup> club (Marrickville RSL Club) with off street parking for 396 vehicles.

**Applicant:** Abadeen Marrickville

**Estimated Cost:** \$40,000,000

**Zoning:** General Business and Special Uses - Railways

### **PART B - THE SITE AND ITS CONTEXT**

**Improvements:** Four (4) storey masonry building



*Image 2: View of subject site from Illawarra Road.*



*Image 3: View of subject site from the corner of Byrnes Street and O'Hara Street.*

**Current Use:** Vacant, former Marrickville RSL Club.

**Prior Approval:** Determination No. 13603, dated 18 March 1991, approved an application to erect two (2) external exit stairways for use in association with the RSL Club.

Determination No. 14145, dated 17 January 1992, approved an application to use the S.R.A. commuter car park at Marrickville Station adjoining the Marrickville RSL Club for a market.

Determination No.15009, dated 7 July 1993, approved an application to carry out alterations and additions.

Determination No. 200600535, dated 12 January 2007, approved an application to carry out alterations to the Marrickville RSL Club to provide two (2) outdoor smoking terraces, one (1) to the west facing Illawarra Road and one (1) to the east setback into the existing building structure.

**Environment:** A mixture of commercial/retail, residential and railway development.

### **PART C - REQUIREMENTS**

**1. Zoning**

*Is use permissible in zoning?*

Yes

**2. Development Standards (Mandatory Requirements):**

<b>Type</b>	<b>Required</b>	<b>Proposed</b>
Floor space ratio (max)	2:1	2.73:1
Adaptable dwellings (min)	13	13

**3. Departures from Council's Codes and Policies:**

<b>Type</b>	<b>Required</b>	<b>Proposed</b>
Parking	(see main body of report)	
Loading/unloading	(see main body of report)	
Waste	(see main body of report)	
Massing	(see main body of report)	
Height	(see main body of report)	
Building Facade	(see main body of report)	
Privacy	(see main body of report)	
Access and Mobility	(see main body of report)	
Community Safety	(see main body of report)	
On-site facilities	(see main body of report)	

**4. Advertising/Notification:**

Required: Yes (newspaper advertisement, on-site notice and resident notification)  
Submissions: Fifty-three (53) submissions and two petitions, containing a total of 362 signatures were received in response to Council's notification of the proposal.

**5. Other Requirements:**

ANEF 2029 Affectation: 25-30 ANEF  
Marrickville Section 94 Contributions Plan 2004

**PART D - ISSUES**

**1. Background**

On 27 January 2009, a Pre-Development Application was submitted to Council seeking preliminary advice on potentially demolishing the existing improvements (former Marrickville RSL Club) and erecting a multi-storey mixed residential and commercial building containing 129 dwellings and a retail component of approximately 7,380m<sup>2</sup> with off-street car parking for 466 vehicles at 359 Illawarra Road, Marrickville. A Pre-Development Application Advisory Panel meeting was held on 5 March 2009, between Council officers and the applicant regarding the proposal. At that meeting a number of significant departures from Council's existing planning controls such as floor space ratio, parking/traffic controls, community safety and issues related to the appearance of the development were identified. A formal letter was issued to the applicant following the meeting identifying the issues in greater detail.

On 6 August 2009, the subject application was submitted to Council.

Council officers undertook an assessment of the application and identified a number of issues and significant departures from Council's existing planning controls, including floor space ratio; building mass/height; visual amenity; community safety; accessible facilities; view loss; waste and on-site facilities, drainage/flooding issues; traffic and parking related issues raised by Council's Local Traffic Planning and Advisory Committee and issues raised by Railcorp.

The applicant was advised of the above by letter dated 17 September 2009. In that letter the applicant was also advised that "*Council officers have determined that the above issues are fundamental aspects of the proposal, which cannot be dealt without extensive redesign and negotiation with Council officers and numerous statutory authorities, which will have an unacceptable impact on the timely assessment of the application. In view of the circumstances it is recommended that you withdraw the application.*"

The applicant was requested to advise Council in writing of their intentions with respect to the application within a period of seven (7) days from the date of the letter and that should no such advice be received by Council within such period it will be assumed that you do not intend to withdraw the application and a report will be prepared for consideration of the Joint Regional Planning Panel recommending refusal.

The applicant has not withdrawn the subject development application.

## **2. The Site and Surrounds**

The subject site is located on the eastern side of Illawarra Road, between Byrnes Street and railway corridor, Marrickville. The site has a legal description of Part Lot 101 in Deposited Plan 842284. The site is irregular in shape and has a primary street frontage of 74.45m to Illawarra Road and a secondary street frontage of 152.21m to Byrnes Street. The site has an area of approximately 6,075.5m<sup>2</sup>.

The site is currently occupied by a four (4) storey masonry building, which was formally known as the Marrickville RSL Club, and is currently vacant.

To the immediate north of the site, the subject property is located opposite a three storey mixed use development and single storey residential dwelling houses along Byrnes Street. The mixed use building, located on the northern corner of Illawarra Road and Byrnes Street, contains retail uses on the ground floor level, with commercial/residential uses above.

To the immediate south of the site, the subject property adjoins a railway corridor and Marrickville Train Station, which is listed as a State Heritage item and is also listed as a heritage item under Marrickville Local Environmental Plan 2001.

To the immediate west of the site, the subject property is located opposite a mixture of two storey and three storey mixed use developments and residential flat buildings. The mixed use buildings generally contain retail uses on the ground floor level, with commercial/residential uses above.

To the east of the site, the subject property is located opposite a mixture of single storey and two storey residential dwelling houses.

## **3. The Proposal**

The site has a legal description of Part Lot 101 in Deposited Plan 842284 and is commonly referred to as 359 Illawarra Road, Marrickville.

Approval is sought to demolish the existing improvements and erect a mixed use development containing 128 dwellings, 6,072m<sup>2</sup> of retail/commercial uses (including a supermarket with a gross floor area of 3,311m<sup>2</sup>) and a 612m<sup>2</sup> club (Marrickville RSL Club) with off street parking for 396 vehicles. The proposed building has a total gross floor area of 16,595m<sup>2</sup> and a height ranging from 4 to 7 storeys.

The following provides a breakdown of the various levels within the proposed development and the development proposed contained within each level.

The third basement level contains 142 residential car spaces, which include 128 car spaces for the residential dwellings, 14 visitor car spaces. 13 car spaces of the proposed 142 car spaces are to be accessible. The basement level also contains lifts and staircase access to the upper levels of the development.

The second basement level contains 135 car spaces for the retail and RSL portion of the development, including four (4) accessible car spaces. The basement level also contains lifts and staircase access to the upper levels of the development.

The first basement level contains 119 car spaces for the retail and RSL portion of the development, including four (4) accessible car spaces. The basement level also contains lifts and staircase access to the upper levels of the development.

The lower ground floor level contains a 3,311m<sup>2</sup> supermarket, five (5) loading/unloading bays, waste storage area for the residential and retail portion of the development, two (2) residential lobbies providing entry to the dwellings, vehicular ingress and egress to and from the basement car park levels and loading/unloading areas. The level also contains lifts and staircase access to the upper levels of the development.

The upper ground floor level contains 3,642m<sup>2</sup> of retail space which includes five (5) individual retail suites ranging in area from 131m<sup>2</sup> to 2,397m<sup>2</sup> and a 612m<sup>2</sup> RSL club, plant area, retail entry from the corner of Byrnes Street and Illawarra Road, service corridor and lifts and staircase access to the upper levels.

The upper ground floor mezzanine level contains six (6) residential dwellings, including one (1) adaptable dwelling, a separate residential entry from Illawarra Road, an open space area fronting Byrnes Street and lifts and staircase access to the upper levels.

Level one contains three separate blocks; Block A, Block B and Block C. Block A contains six (6) dwellings, including one (1) adaptable dwelling fronting Byrnes Street. Block B, fronting Illawarra Road contains four (4) dwellings. Block C, fronting the railway corridor, contains 19 dwellings, including two (2) adaptable dwellings. The level also contains lifts and staircase access to the upper levels of the development.

Within Level two and Level three Block A contains six (6) dwellings on each level, including one (1) adaptable dwelling fronting Byrnes Street. Block B, fronting Illawarra Road contains four (4) dwellings on each level. Block C, fronting the railway corridor, contains 21 dwellings on each level, including two (2) adaptable dwellings. The level also contains lifts and staircase access to the upper levels of the development.

Level four contains 20 dwellings within Block C, fronting the railway corridor, including one (1) adaptable dwelling. The level also contains a common terrace area and lifts and staircase access to the upper levels.

Level five contains 11 dwellings within Block C, fronting the railway corridor, including two (2) adaptable dwellings. The level also contains a common terrace area and lifts and staircase access to the upper levels.

The residential portion of the development consists of 60 x one (1) bedroom apartments and 68 x two (2) bedroom apartments.

A copy of the floor plans, elevations and sections of the proposed development submitted with the application are reproduced below:



Image 4: Proposed Third Basement Level

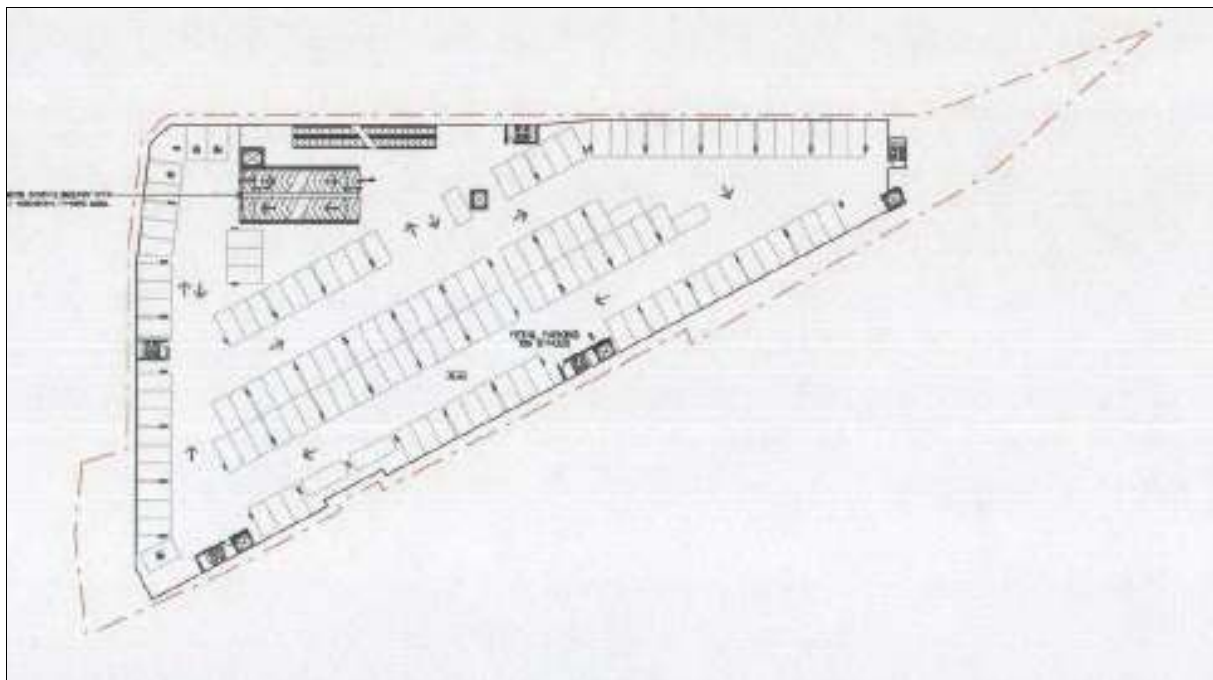
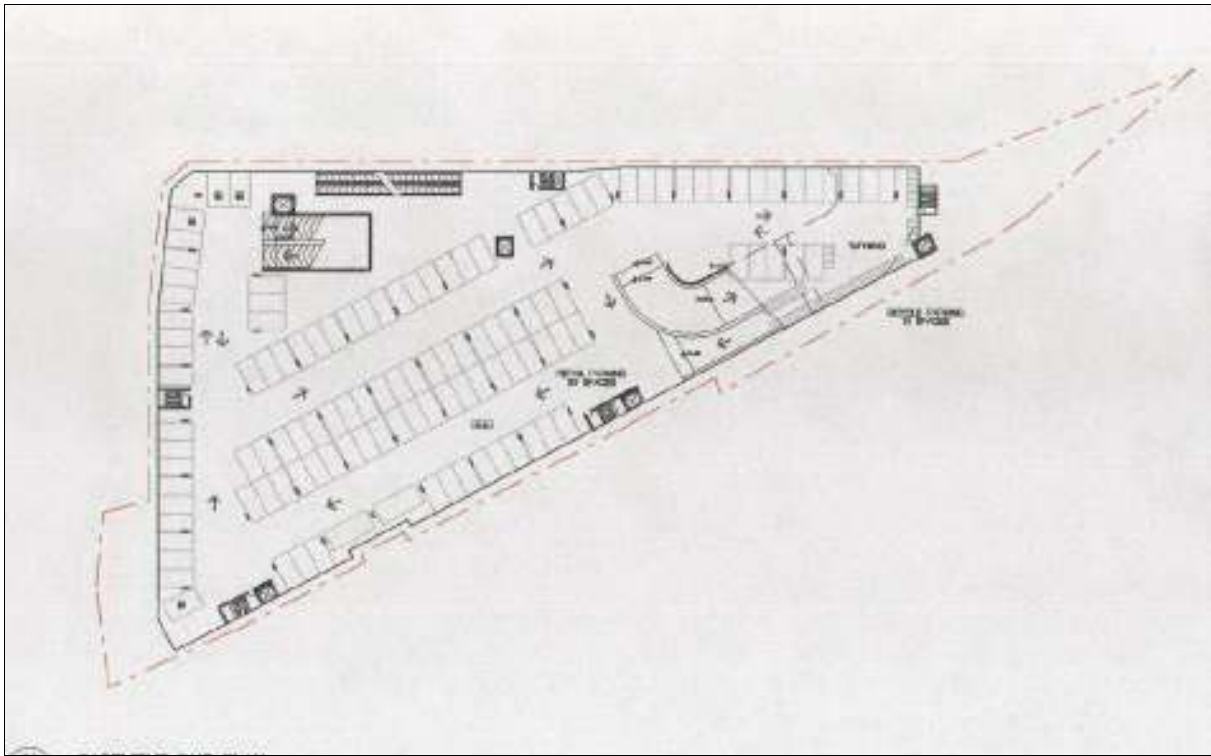
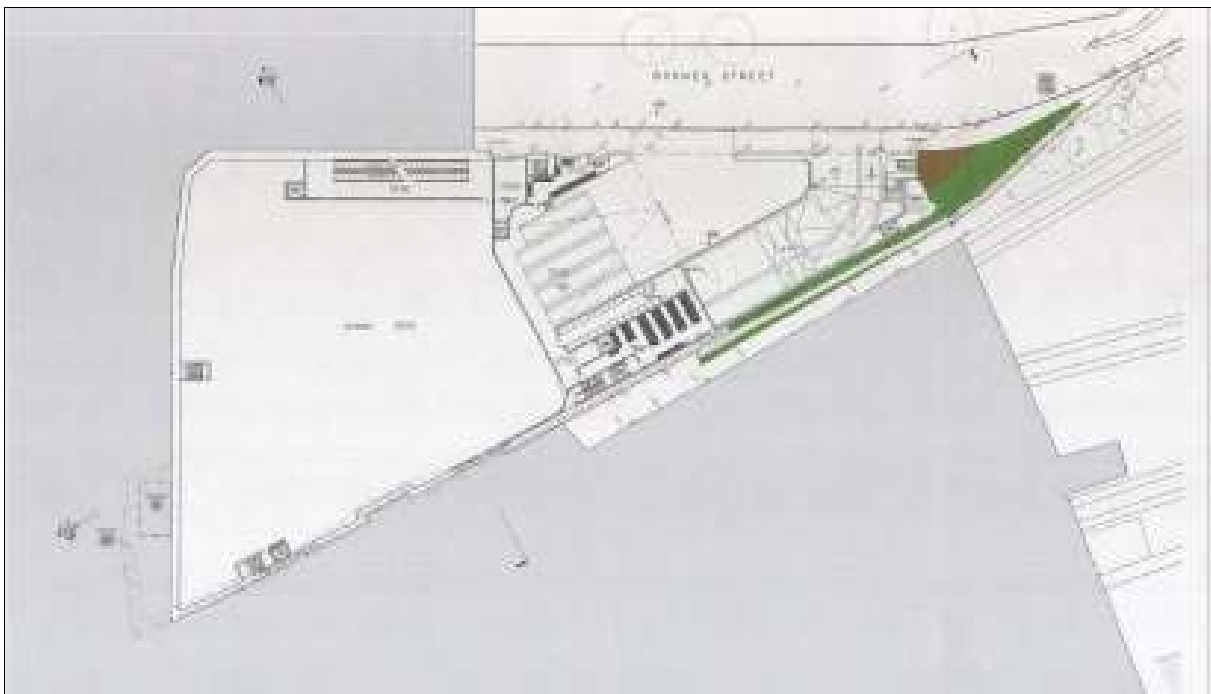


Image 5: Proposed Second Basement Level

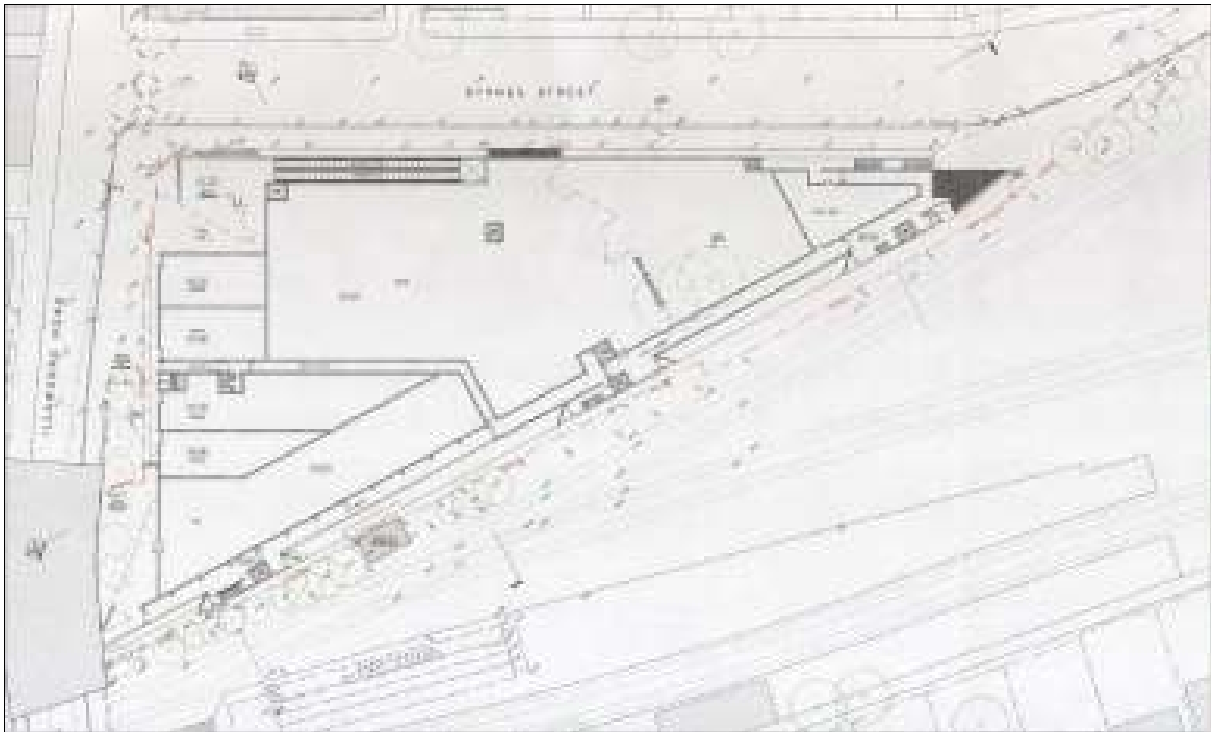


*Image 6: Proposed First Basement Level*

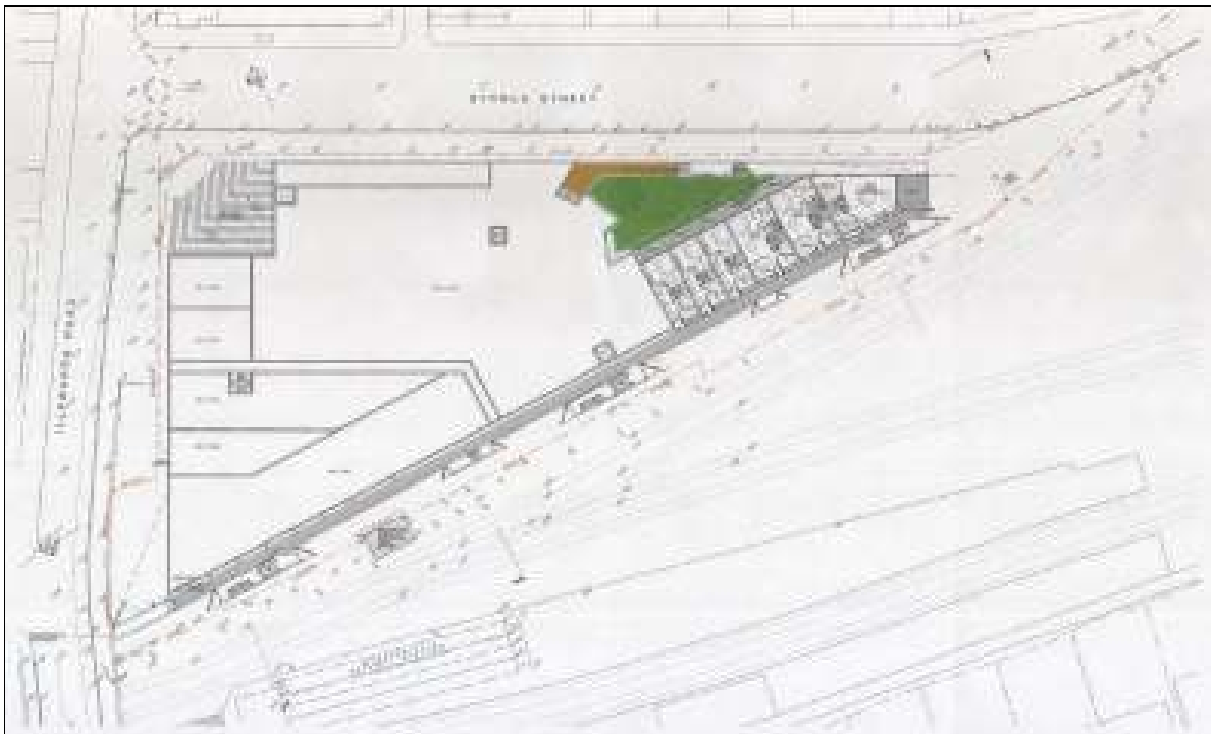


*Image 7: Proposed Lower Ground Floor Plan*





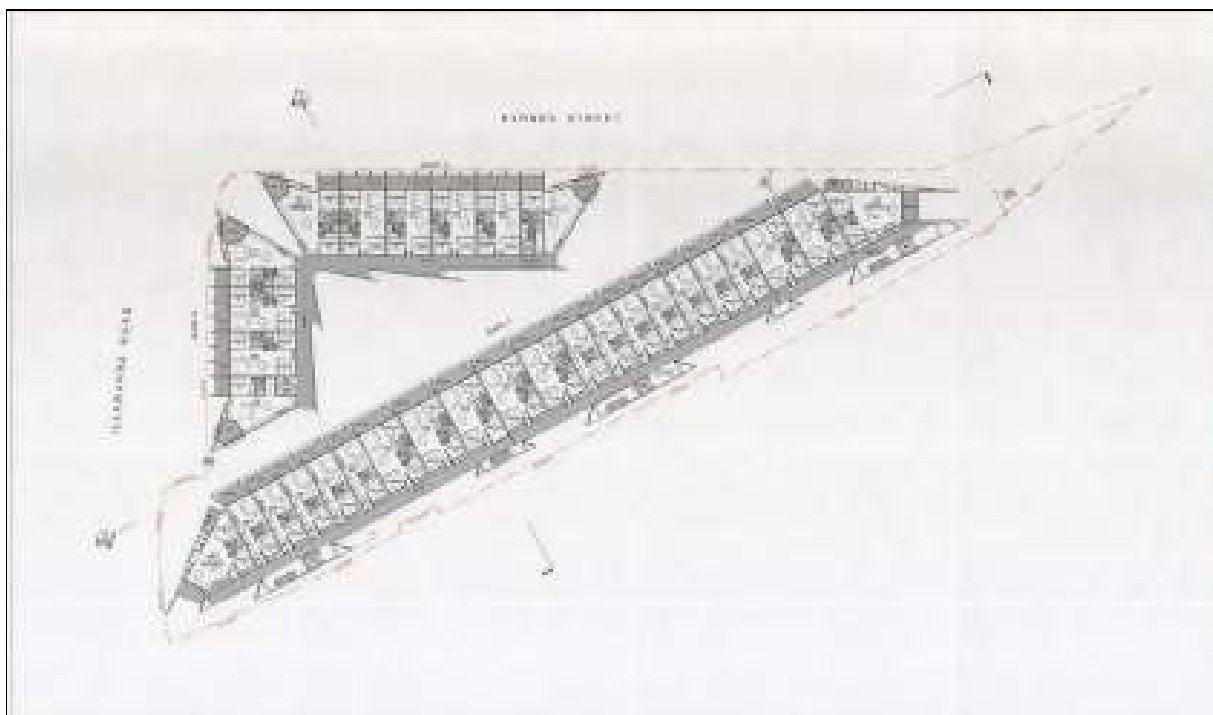
*Image 8: Proposed Upper Ground Floor Plan*



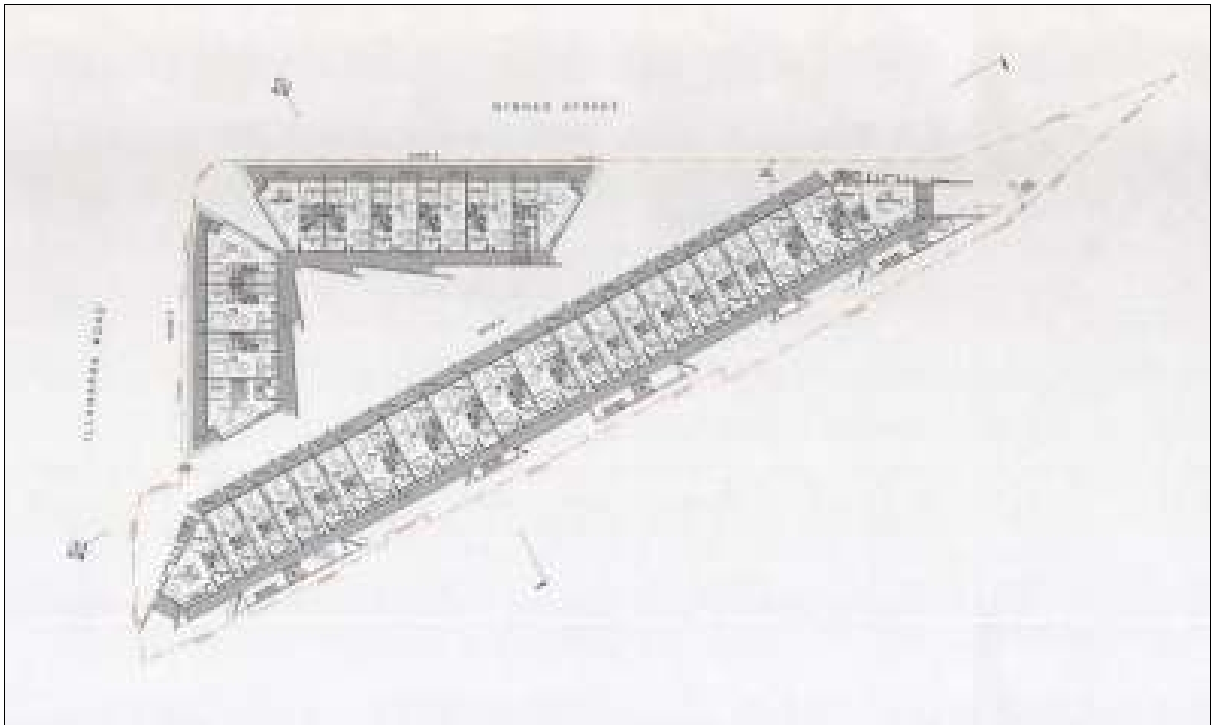
*Image 9: Proposed Upper Ground Floor Mezzanine Plan*



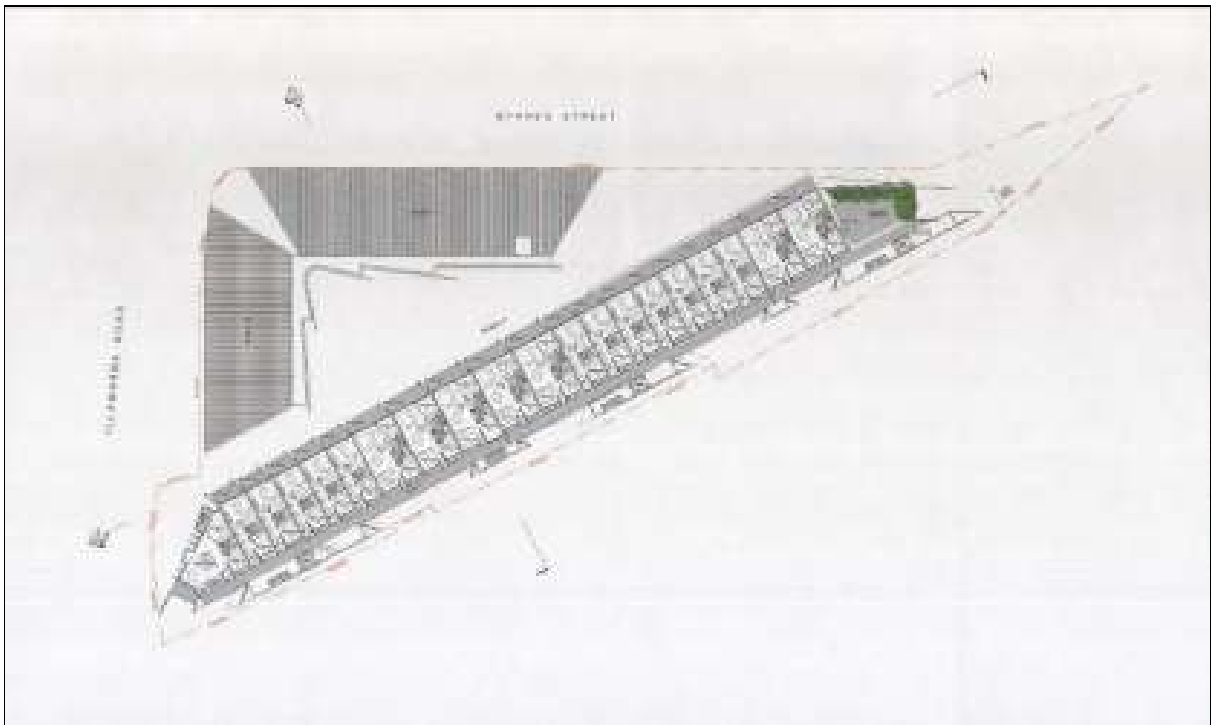
*Image 10: Proposed Level 1 Plan*



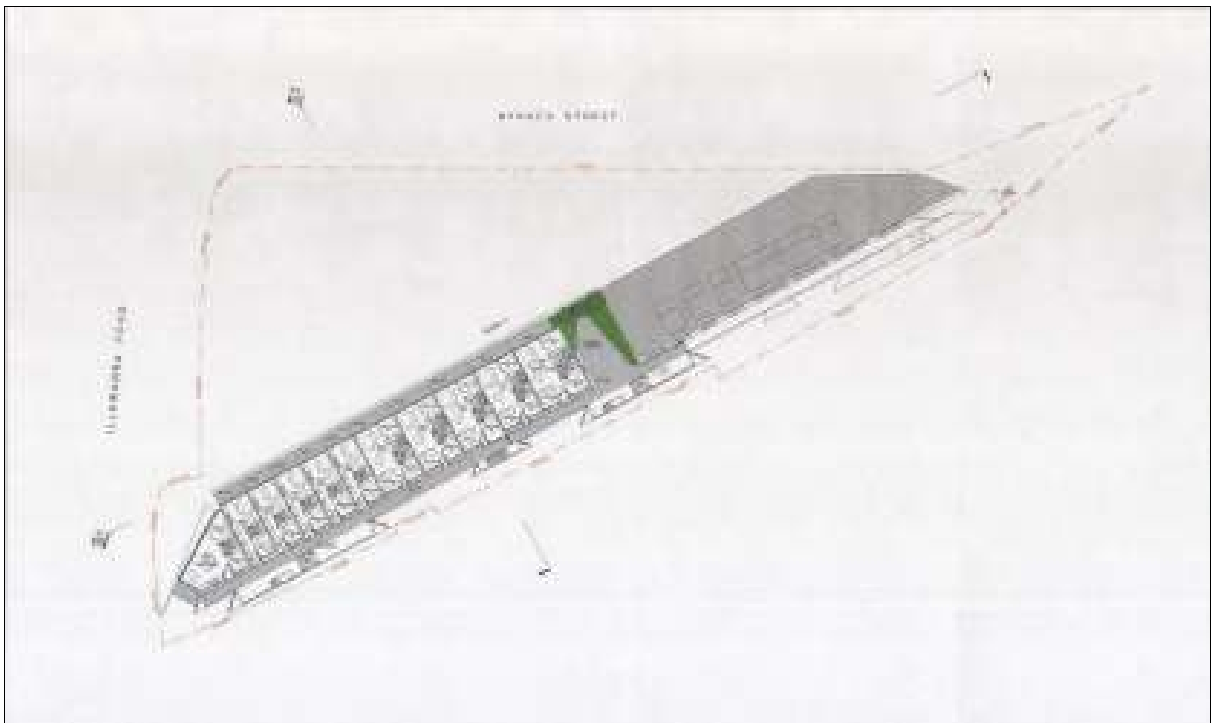
*Image 11: Proposed Level 2 Plan*



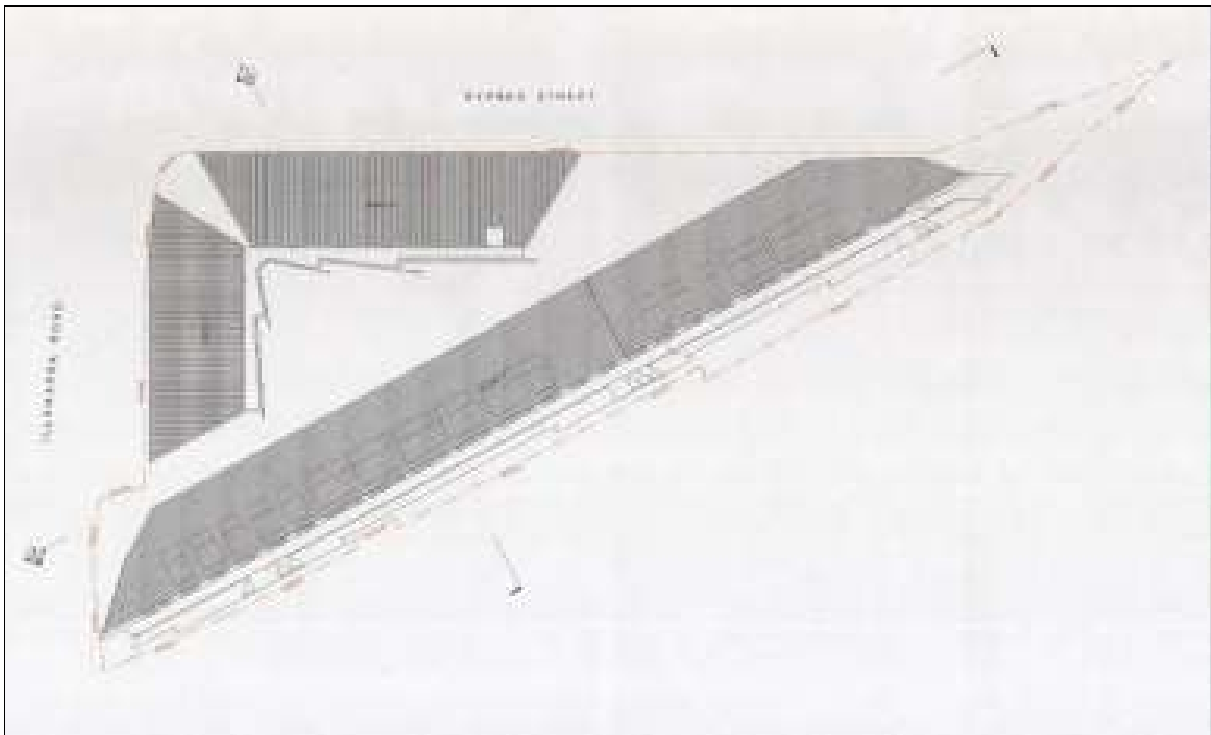
*Image 12: Proposed Level 3 Plan*



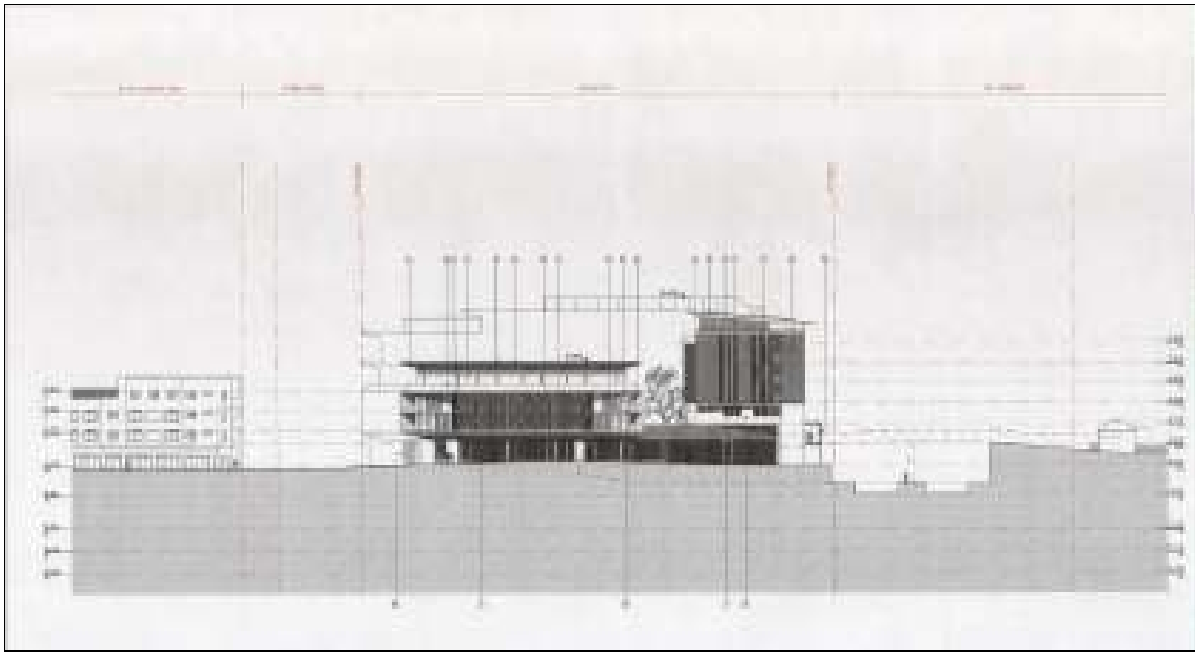
*Image 13: Proposed Level 4 Plan*



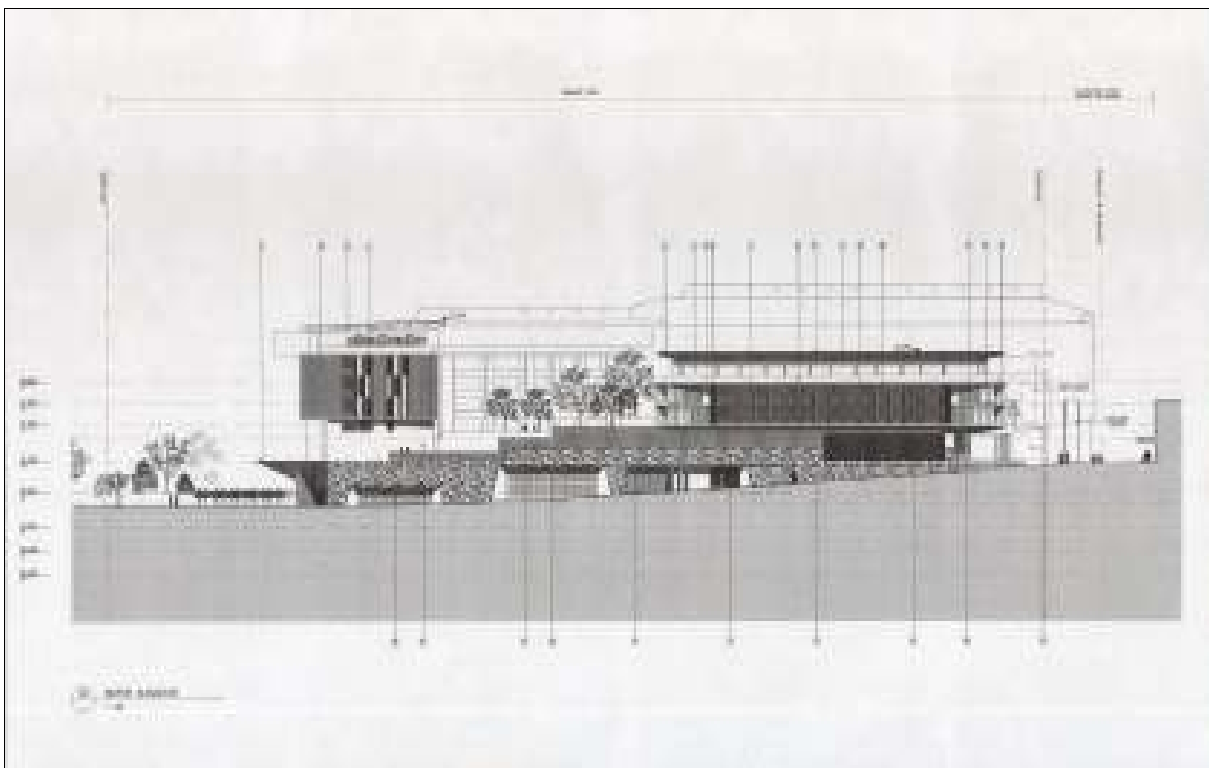
*Image 14: Proposed Level 5 Plan*



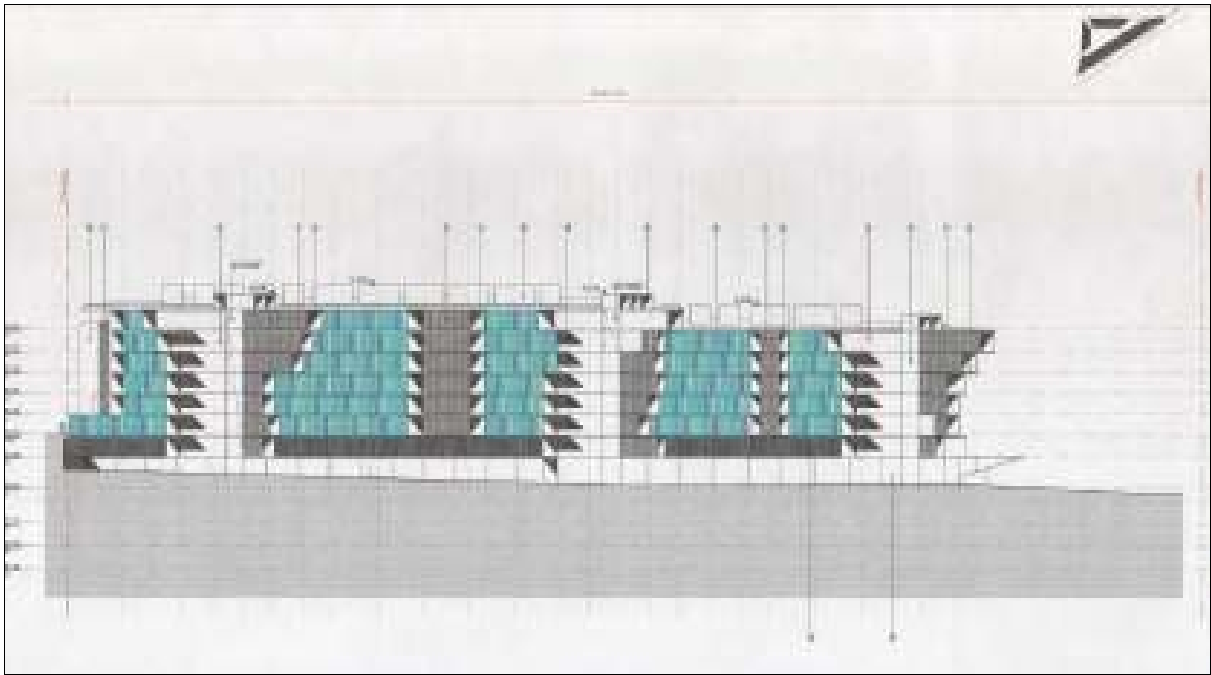
*Image 15: Proposed Roof Plan*



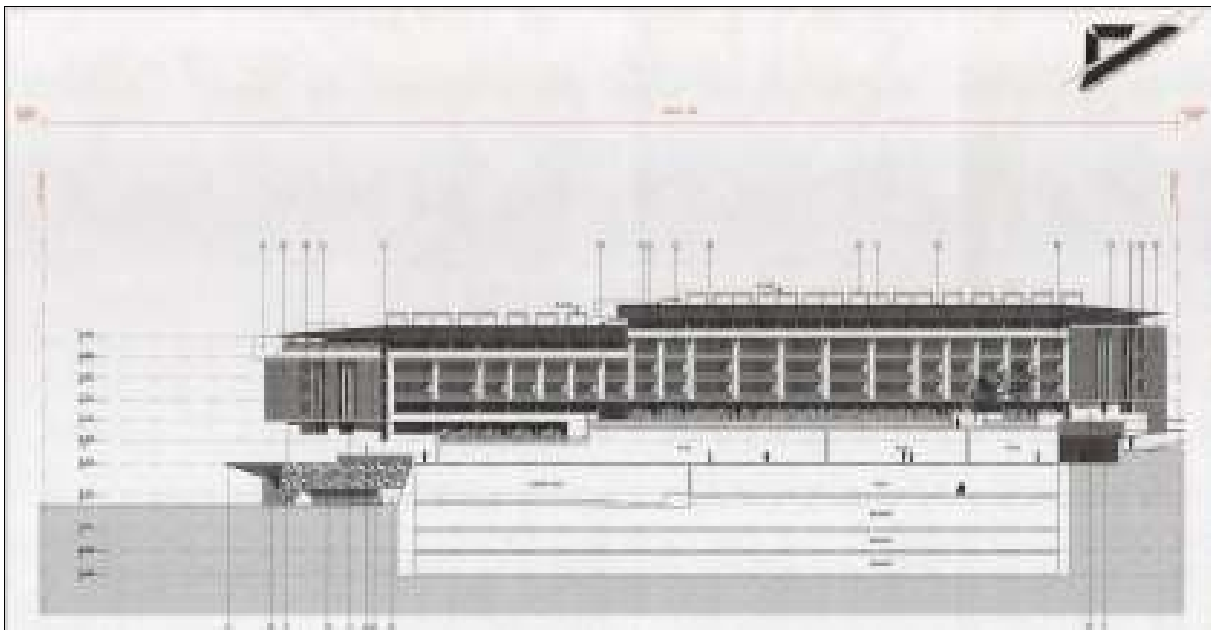
*Image 16: Proposed Western Elevation Illawarra Road (Front Elevation)*



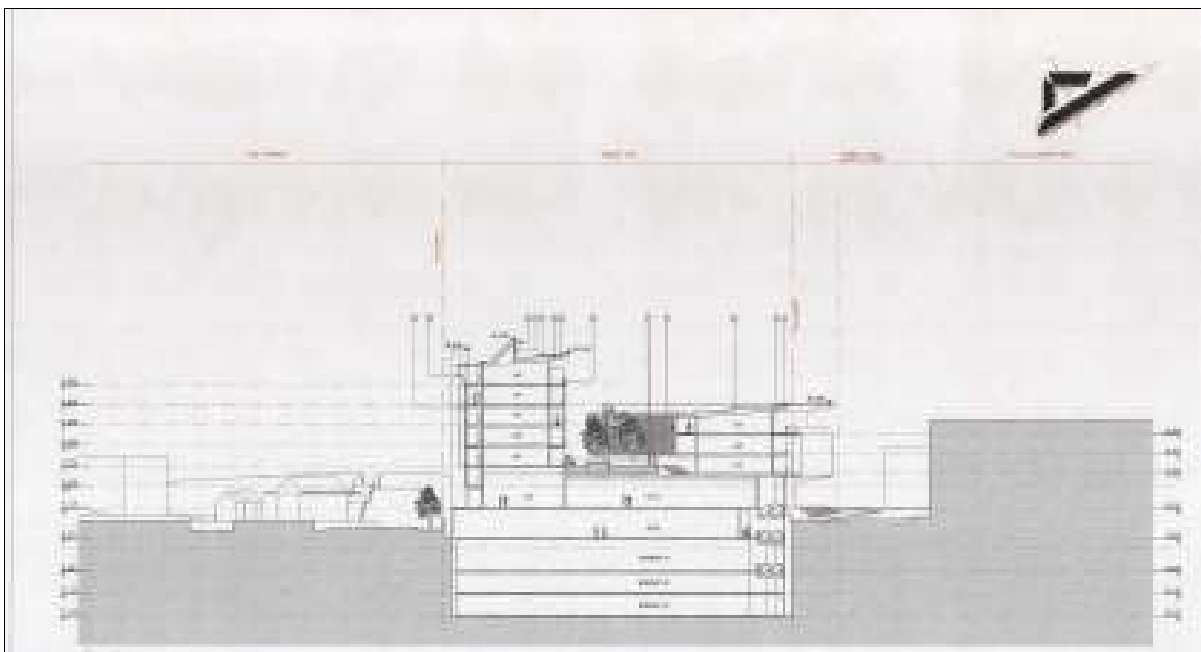
*Image 17: Proposed Northern Elevation (Side Elevation along Byrnes Street)*



*Image 18: Proposed Southern Elevation (Side Elevation along railway corridor)*



*Image 19: Proposed Section*



*Image 20: Proposed Section*

#### **4. Planning Assessment**

The following planning instruments and controls apply to the development:

- (i) State Environmental Planning Policy (SEPP) No. 1;
- (ii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- (iii) State Environmental Planning Policy No. 55 - Remediation of Land;
- (iv) State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development;
- (v) State Environmental Planning Policy (Infrastructure) 2007;
- (vi) Marrickville Local Environmental Plan 2001;
- (vii) Marrickville Development Control Plan No. 19 – Parking Strategy;
- (viii) Marrickville Development Control Plan No. 27 – Waste Management;
- (ix) Marrickville Development Control Plan No. 28– Urban Design Guidelines for Business Centres;
- (x) Marrickville Development Control Plan No. 29 – Contaminated Land Policy and Development Controls;
- (xi) Marrickville Development Control Plan No. 31 - Equity of Access and Mobility;
- (xii) Marrickville Development Control Plan No. 32 – Energy Smart Water Wise;
- (xiii) Marrickville Development Control Plan No. 38 – Community Safety; and
- (xiv) Marrickville Section 94 Contributions Plan 2004.

## **5. State Environmental Planning Policy (Building Sustainability Index: BASIX)**

To encourage sustainable development, all new dwellings must comply with the BASIX Scheme. The proposal consists of three separate residential buildings (Blocks A, B and C). Two BASIX Certificates were submitted accompanying the subject application, one for Blocks A and B and one for Block C.

The proposed development has achieved full compliance with the BASIX commitments. The proposed development has reached the score of 40% for water and a score of 31% for energy for Blocks A and B. Block C has reached a score of 40% for water and 22% for energy. Despite, the compliance of the development with BASIX, the development application plans are not acceptable as the plans do not list the BASIX commitments as required by the BASIX Certificate.

## **6. State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55)**

SEPP 55 contains planning controls for the remediation of contaminated land. The policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. The subject property is located within an area identified as being subject to acid sulfate soil risk. The principles in SEPP 55 guidelines controls and procedure for remediation of contaminated lands are generally covered by Clause 57 of MLEP 2001 and Marrickville Development Control Plan No. 29 - Contaminated Lands Policy and are considered as part of the assessment of the application presented in Section 10 of this report.

## **7. State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development (SEPP 65)**

SEPP 65 was released as a part of the Design Quality Program in October 2000 and was gazetted on 17 July 2002. The proposed development is required to be assessed under SEPP 65 because it is a residential flat building of three storeys or higher containing 4 or more dwellings. This SEPP highlights ten design quality principles to guide architects designing residential flats and to assist councils in assessing those developments. The principles relate to key design issues such as:

- The context for design – the locality and streetscape
- Scale, form and density of the building
- Measures to achieve resource, energy and water efficiency
- Landscape design to create useful outdoor spaces for residents
- Safety and security, including ensuring public areas are safe, visible and well lit at night.

As required by the SEPP, the applicant submitted a Design Verification Statement prepared by the architect who has directed and overseen the design of the proposal. This Statement is required to address the 10 design quality principles contained in the SEPP and whilst the submitted Statement does address those principles, the proposed development is considered inappropriate, particularly having regard to the height, bulk and scale of the development and the relationship of the proposal with the existing built forms within the Illawarra Road/Byrnes Street streetscape.

The development seeks approval to demolish the existing improvements and erect a mixed use development containing 128 dwellings, 6,072m<sup>2</sup> of retail/commercial uses (including a supermarket with a gross floor area of 3,311m<sup>2</sup>) and a 612m<sup>2</sup> club (Marrickville RSL Club) with off street parking for 396 vehicles.

The proposal is considered to be an inappropriate form of redevelopment for the site as it would overwhelm and detract from the existing Illawarra Road/Byrnes Street streetscape. The proposed development ranges in height from 4 storeys to 7 storeys. Given the predominant 3 to 4 storey height of the surrounding commercial/retail development; the height of the proposal is considered excessive particularly along the railway line, where the proposed development has a height of approximately 29m. The proposed development distributes the majority of its building mass to the



south of the site (within Block C), which results in a dominating structure fronting the railway corridor. It should be noted that the proposed development exceeds the maximum floor space ratio development standard as prescribed under Marrickville Local Environmental Plan 2001 by over 37%. The distribution of the proposed building mass and excessive height and FSR of the proposal results in an inappropriate bulk and scale which is contrary to the predominant built form found within the Illawarra Road/Byrnes Street precinct.

In addition, it is considered that the design of the proposed development does not promote safety and discourages surveillance of the surrounding public areas/road. The proposed dwellings have poor surveillance of Illawarra Road and Byrnes Street. The development has an inactive ground floor façade along Byrnes Street and the overall design of the proposal discourages resident safety. The issue of safety and surveillance is discussed further under the heading '*Community Safety (Clause 62)*'.

In view of the circumstances, it is considered that the proposed development does not satisfactorily address the design principles contained in SEPP 65, particularly Principle 1 – Context and Setting; Principle 2 – Scale; Principle 3 – Built Form; Principle 4 – Density; Principle 7 – Amenity; Principle 8 – Safety and Security and Principle 10 – Aesthetics.

### ***Residential Flat Design Code***

The Residential Flat Design Code (RFDC) is a set of guidelines that provide benchmarks for better practice in the planning and design of residential flat buildings to achieve environmental sustainability, improved energy efficiency and residential amenity and higher design quality to improve the presentation of the building to the street. The Code achieves this by providing controls to ensure a development responds to its local context, provides a suitable site analysis and quality design.

Whilst the majority of the provisions contained in the RFDC are generally covered by Marrickville Development Control Plan No. 28 – Urban Design Guidelines for Business Centres and are considered as part of the assessment of the application presented in Section 13 of this report, it should be noted that the proposed development fails to satisfy one fundamental requirement of the RFDC regarding building separation, an aspect of a development not specifically addressed in DCP 28.

Under the RFDC, the suggested dimensions within a development, for internal courtyards and between adjoining sites for any residential flat building up to 4 storeys or 12 metres in height should be 12 metres between habitable rooms (including bedrooms and studies) and for any residential flat building 5 to 8 storeys or up to 25 metres in height there should be a separation of 18 metres between habitable rooms (including bedrooms and studies)/balconies.

The subject development generally consists of three separate buildings (Blocks A, B and C). The dwelling entries and kitchens located on the southern façade of Block A have a minimum separation of 9m from the residential balconies/terraces along the northern façade of Block C. The residential balconies along the southern façade of Block B have a minimum separation of 6.8m from the residential balconies/terraces along the northern façade of Block C. The residential balconies on the northern façade of Block B have a minimum separation of 6m from the residential balconies of Block A. The lack of building separation generates significant visual and acoustic privacy impacts for residents/occupants of the proposed development. It is noted that within the written submission accompanying the development application, the applicant indicates that the residential balconies and terraces will be fixed with operable privacy screens; however no details were provided in regards to the privacy screens on the plans submitted with the development application.

Given the above, it is considered that the proposed development does not satisfy the design parameters outlined in the RFDC.

## 8. State Environmental Planning Policy - (Infrastructure) 2007

Clause 45 of State Environmental Planning Policy - (Infrastructure) 2007 states as follows:

### ***“45 Determination of development applications—other development***

- (1) This clause applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following:*
  - (a) the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,*
  - (b) development carried out:*
    - (i) within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
    - (ii) immediately adjacent to an electricity substation, or*
    - (iii) within 5m of an exposed overhead electricity power line,*
  - (c) installation of a swimming pool any part of which is:*
    - (i) within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or*
    - (ii) within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,*
  - (d) development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.*
- (2) Before determining a development application (or an application for modification of a consent) for development to which this clause applies, the consent authority must:*
  - (a) give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and*
  - (b) take into consideration any response to the notice that is received within 21 days after the notice is given.”*

The subject property is located in close proximity to a number of electricity distribution poles and electricity power lines. In accordance with Clause 45 of the SEPP, the application was referred to Energy Australia. No response has been received from Energy Australia in relation to the notice. The 21 day period referred to in the subject clause that electricity supply authority has to respond has expired.

The subject site is also located immediately adjacent to a rail corridor. Under Clause 85 and 86 of State Environmental Planning Policy - (Infrastructure) 2007 the consent authority must not grant consent to development on land that is adjacent a railway corridor unless it is satisfied the following criteria is met:

### ***“85 Development immediately adjacent to rail corridors***

- (1) This clause applies to development on land that is in or immediately adjacent to a rail corridor, if the development:*
  - (a) is likely to have an adverse effect on rail safety, or*

- (b) *involves the placing of a metal finish on a structure and the rail corridor concerned is used by electric trains, or*
  - (c) *involves the use of a crane in air space above any rail corridor.*
- (2) *Before determining a development application for development to which this clause applies, the consent authority must:*
- (a) *within 7 days after the application is made, give written notice of the application to the chief executive officer of the rail authority for the rail corridor, and*
  - (b) *take into consideration:*
    - (i) *any response to the notice that is received within 21 days after the notice is given, and*
    - (ii) *any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette.*

## **86 Excavation in, above or adjacent to rail corridors**

- (1) *This clause applies to development (other than development to which clause 88 applies) that involves the penetration of ground to a depth of at least 2m below ground level (existing) on land:*
- (a) *within or above a rail corridor, or*
  - (b) *within 25m (measured horizontally) of a rail corridor. or*
  - (c) *within 25m (measured horizontally) of the ground directly above an underground rail corridor.*
- (2) *Before determining a development application for development to which this clause applies, the consent authority must:*
- (a) *within 7 days after the application is made, give written notice of the application to the chief executive officer of the rail authority for the rail corridor, and*
  - (b) *take into consideration:*
    - (i) *any response to the notice that is received within 21 days after the notice is given, and*
    - (ii) *any guidelines issued by the Director-General for the purposes of this clause and published in the Gazette.*
- (3) *Subject to subclause (4), the consent authority must not grant consent to development to which this clause applies without the concurrence of the chief executive officer of the rail authority for the rail corridor to which the development application relates, unless that rail authority is ARTC.*
- (4) *In deciding whether to provide concurrence, the chief executive officer must take into account:*
- (a) *the potential effects of the development (whether alone or cumulatively with other development or proposed development) on:*
    - (i) *the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and*
    - (ii) *the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and*

- (b) *what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects.*
- (5) *The consent authority may grant consent to development to which this clause applies without the concurrence of the chief executive officer of the rail authority for the rail corridor if:*
  - (a) *the consent authority has given the chief executive officer notice of the development application, and*
  - (b) *21 days have passed since giving the notice and the chief executive officer has not granted or refused to grant concurrence."*

In accordance with Clauses 85 and 86 of State Environmental Planning Policy - (Infrastructure) 2007, the subject application was referred to Railcorp for concurrence. Railcorp reviewed the application and the following additional information was requested via correspondence, dated 24 August 2009:

- "1. Geotechnical and Structural report that meets the requirements of the attached brief.*
- 2. Excavation, Demolition and Construction methodology with details pertaining to structural support during demolition, excavation and construction.*
- 3. Track monitoring requirements during demolition, excavation and construction phases.*
- 4. Cross sectional drawings showing ground surface, rail tracks, sub soil profile, proposed basement excavation and structural design of sub ground support adjacent to the Rail Corridor.*
- 5. Rail safety plan including instrumentation and monitoring regime to be submitted for review."*

The applicant was advised of the additional information requested by Railcorp. The applicant has not submitted the above requested information and consequently Railcorp have not granted their concurrence to the proposal in accordance with the requirements under State Environmental Planning Policy - (Infrastructure) 2007.

Clause 87 of the SEPP relates to the impact of rail noise or vibration on non-rail development, in this case, the development is required to demonstrate compliance with the following measures:

- "(a) in any bedroom in the building—35 dB(A) at any time between 10.00pm and 7.00am,*
- (b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time."*

The applicant submitted an *Environmental Noise and Vibration Assessment, Report No. 2009408/1405A/R3/BW, dated 31 July 2009 prepared by Acoustic Logic Consultancy* in regards to Clause 87 of the SEPP. The Environmental Noise and Vibration Assessment concluded the following:

### ***"CONCLUSION***

*This report provides the results of Environmental Noise Study for the proposed 359 Illawarra Road, Marrickville, development site development. Noise at the site has been measured and acoustic goals have been set in accordance with the requirements of the relevant statutory/regulatory authorities including local council and the DECC.*

*Determination of noise assessment criteria based on the DECC's Industrial Noise Policy been determined based on both unmanned and manned noise monitoring conducted at the proposed development.*

*The assessment included the investigation and testing of the environmental noise and vibration to establish compliance criteria for:*

- *Traffic noise assessment*
- *Carpark loading dock noise assessment*
- *Railway noise and vibration assessment*
- *Aircraft noise assessment*
- *Building services assessment*

*Provided the recommendations in this report are complied with noise emission from site affecting Neighbouring residents levels will comply with the relevant DECCs criteria (section 5) and Australian Standards."*

A condition could be imposed on any consent granted requiring the development to be noise attenuated in accordance with the recommendations under *Environmental Noise and Vibration Assessment, Report No. 2009408/1405A/R3/BW, dated 31 July 2009 prepared by Acoustic Logic Consultancy.*

## **9. Draft Marrickville Comprehensive LEP 2010**

Council is in the process of preparing a new comprehensive environmental planning instrument for the local government area in accordance with the Department of Planning's Standard Instrument. The preparation of the draft Marrickville Local Environmental Plan 2010 (draft MLEP 2010) has been formally under way since May 2007 when Council resolved to prepare a draft Plan and notified the Department of Planning. Since that time considerable work has been undertaken to inform the preparation of the draft Plan, in particular the Marrickville Urban Strategy 2007 which set the direction for the new LEP, along with major studies and reviews on employment lands, village centres, heritage and industrial precincts.

One of those studies was the draft Marrickville Village Centres Urban Design Study (Centres Study). The Centres Study will feed into the draft Local Environmental Plan (LEP) and Development Control Plan (DCP) currently being prepared for public exhibition.

The Centres Study includes the former Marrickville RSL site as a site specific study area. A maximum floor space ratio of 2.6:1 (based on the definition of gross floor area under the Standard Instrument) and a maximum height of 26 metres is proposed for development on the subject property under the controls in draft MLEP 2010.

The LEP/DCP project timeframe involves a number of stages. A report on the project was last considered by Council on 1 September 2009. Council recently lodged pre Section 64 documentation with the Department of Planning and have requested a formal Section 64 meeting with the Department before a formal Section 65 Certificate request can be made. Under the timelines provided by the Department a Section 65 Certificate is anticipated to be issued for draft Marrickville Local Environmental Plan 2010 by March 2010.

In light of the above timelines, uncertainty and status of the comprehensive LEP it is considered that reliance on the draft LEP is pre-emptive. In view of the circumstances it is considered that it would be inappropriate to give any weight to possible future controls at least until the draft LEP has a Section 65 Certificate and is placed on public exhibition.

## 10. Marrickville Local Environmental Plan 2001 (MLEP 2001)

### (i) Zoning (Clauses 13 and 18)

Marrickville Local Environmental Plan 2001 (MLEP 2001), gazetted on 18 May 2001, is the principal planning instrument which applies to the site. The majority of the subject site is zoned General Business. Residential flat buildings, 'that are not attached to a permissible use' are prohibited under the General Business zoning provisions applying to the land. As the proposed dwellings would be attached to a permissible use, the proposed development would be permissible with Council's consent on that part of the site zoned General Business.

The proposed development complies with the zone objectives under Marrickville Local Environmental Plan 2001.

A small portion of the site along the southern side boundary is zoned Special Uses – Railways. The proposed development on that part of the site zoned Special Uses – Railways is permissible with Council's consent.

### (ii) Subdivision (Clause 26)

Clause 26 of MLEP 2001 states that a person must not subdivide land to which the Plan applies without development consent. The subject application does not seek consent to subdivide the proposed development.

### (iii) Aircraft Noise (Clause 28)

The subject property is located within the 25-30 Australian Noise Exposure Forecast (2029) Contour. The proposed dwellings would need to be noise attenuated in accordance with Australian Standard AS2021-2000 - Acoustics - Aircraft noise intrusion-Building Siting and Construction. A condition to such effect should be imposed on any consent granted. However, it should be noted that the more strenuous noise attenuation measures under State Environmental Planning Policy (Infrastructure) 2007 would apply to the proposed development.

### (iv) Flood Prone Land

Part of the subject property has been identified as flood prone land on the Flood Planning Area Map in the preliminary draft Marrickville Local Environmental Plan 2010. The application was reviewed by Council's Drainage Engineer who provided the following comments:

*"I have the following concerns regarding the flood study provided with the development application:*

- The flood study produced is too simplistic to interpret the behaviour of overland flows at this location. The flooding at the low point of Byrnes Street and O'Hara Street is a result of two separate overland flows combining adjacent to the site. It is also complicated by having its outlet restricted by a culvert under the railway tracks. The Drains model used does not model overland flows well. The behaviour of the overland flows would be best modelled by a 2D drainage model such as TUFLOW.*
- The flood study should demonstrate that the flood frequency and flood extent is not exacerbated by the development by providing both pre and post development data. This shall be checked for a variety of storms from the 1 in 1 year to the 1 in 100 year storm.*
- A minimum of 500mm freeboard is required for the basement car park. Only 300mm has been provided. This is not a sufficient safety factor to allow for error in the model and/or wave action. It should also be noted that due to the location of the driveway in*

*Byrnes Street ponding to a height of 1m at the driveway entrance will occur during a 1 in 100 year storm.*

- *As the stormwater channel is to be relocated/reconstructed approval of the channel owners Sydney Water and RailCorp will be required.*
- *A long section of the proposed channel realignment detailing the top water profile including any hydraulic jumps and/or back water effects shall also be provided with the study."*

Council's Development Control Engineer could not carry out a proper assessment of the application due to the lack of information provided by the applicant.

(v) Floor Space Ratio (Clause 33)

A maximum floor space ratio of 2:1 applies to developments (other than boarding houses) within a General Business zone under Clause 33 of MLEP 2001. Clause 33 of MLEP 2001 does not specify a maximum floor space ratio for developments within a Special Uses – Railways zone. In this regard it is considered that the floor space ratio development standard applying to the General Business zone should be used as a guide.

The proposed development has a gross floor area (GFA) of approximately 16,594m<sup>2</sup> which results in a floor space ratio of approximately 2.73:1 which exceeds the subject development standard.

The applicant lodged an objection under State Environmental Planning Policy No. 1 in relation to the departure from the subject development standard. The applicant considers compliance with the development standard unreasonable on the following grounds:

***"4.1.5.3.1 SEPP 1 OBJECTION TO FSR DEVELOPMENT STANDARD***

*The aim of SEPP 1 is to provide flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5(a) (i) and (ii) of the Act.*

*Section 5 (a) (i) and (ii) state that the objectives of the Act are:*

*"(a) to encourage:*

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment, and*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land."*

**Comment:**

*Marrickville Council is undertaking a comprehensive review of its planning controls. The review will result in the preparation of a new Local Environmental Plan and consolidated Development Control Plan for the Marrickville local government area.*

*As part of this review, Council has exhibited an Urban Design Study of Marrickville Village Centres; one of which is the Marrickville Station Precinct which provides a site-specific for the subject site (Figure 15).*



The urban form proposed in the study area is shown in Figure 16



The Floor Space Ratio nominated for the subject site is 2.6:1, utilising the new definition of Floor space Area in accordance with the Department of Planning LEP template. This would equate to an FSR of 2.73:1 under the definition of Floor space in the current Marrickville LEP 2001.

It is consequently apparent that the desired future character if the subject site is one which facilitates urban consolidation in a form that achieves a maximum FSR of 2.73:1 (2.6:1) under proposed definition of floor space).

Therefore in terms of achieving the objectives of the Environmental Planning and Assessment Act by encouraging:

- “(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment, and
- (ii) the promotion and co-ordination of the orderly and economic use and development of land.”



.....it is considered that compliance with the current FSR development standard of 2.0:1 is both unreasonable and unnecessary in the circumstances in that it is Council's explicit desire to achieve an FSR of 2.6:1 (2.73:1 under current LEP) on the subject site in order to facilitate urban consolidation of sites near transport nodes and minimise the reliance on private transport.

Moreover, it is considered that requiring strict compliance with the current development standard would be inconsistent with the proper management and use of resources and inconsistent with the promotion of the orderly and economic use of land. This is because compliance with the current controls, in the light of Council's desire for higher residential density, would result in under developed land which is strategically located adjacent to a transport node and would consequently result in the inappropriate management and inappropriate economic use of the land.

In further support of this SEPP 1 application, it is noted that Council has, in recent times, exercised its discretion to approve similar SEPP 1 variations of FSR controls in order to facilitate urban outcomes which reflect its desired future character of the local government area and promote the orderly and economic use an development of land. Examples of similar SEPP 1 variations are:

- a. *Former Coles Site: 2001 Premiers Award and Marrickville Commendation Medal (Stanisic)*
  - 184-204 Marrickville Road, Marrickville
  - Site Area 2,376sqm
  - FSR 2.59:1
- b. *Former Council Carpark Site (Shortlisted for AIA Architecture Award) (Stanisic and Canadalepas working separately)*
  - 176 Marrickville Road, Marrickville
  - Site Area 1,301sqm
  - FSR 2.23:1
- c. *Former Fossey Building (Canadalepas)*
  - 244-250 Marrickville Road, Marrickville
  - Site Area 942.9sqm
  - FSR 2.21:1
- d. *Lamia (Architecture Award in the Aaron Bolot Award Category AIA Architecture Awards) (Candalepas)*
  - 276-278 Marrickville Road, Marrickville
  - Site Area 589sqm
  - FSR 2.49:1"

As indicated above, the proposed development has a gross floor area of 16,595m<sup>2</sup>, resulting in a floor space ratio (FSR) of approximately 2.73:1. In terms of gross floor area, this amounts to a departure of 4,444m<sup>2</sup>. This is a significant departure from the maximum permitted 2:1 FSR development standard prescribed under Clause 33 of MLEP 2001. The justifications made in the SEPP 1 objection do not warrant support of such a significant FSR departure. The SEPP 1 objection refers to the draft Marrickville Village Centre Urban Design Study (Centre Study) as justification for the non-complying FSR. It should be noted the Centre Study has not been adopted by Council as policy and therefore cannot be relied upon as justification for the departure.

The site specific examples provided by the applicant also do not warrant support of the proposal. The site examples have site areas between 589m<sup>2</sup> to 2,376m<sup>2</sup>, and FSR departures between 11% and 29%. The subject site has a site area of 6075.5m<sup>2</sup>, over two and a half times the site area of the largest example provided and the subject development has an FSR departure of approximately 37%. As stated previously, expressed in terms of gross floor area, the proposed development exceeds the maximum permissible FSR by 4,444m<sup>2</sup>. In relation to the other examples given, expressed in terms of gross floor area, the maximum exceedence over the permissible FSR of any of those developments is 1,401m<sup>2</sup>.

The proposed variation is significant in numerical terms particularly expressed as gross floor area in excess of the maximum permitted FSR. The purpose or objective of the floor space ratio standard is not specifically expressed in MLEP 2001. It is considered that the purpose of a floor space ratio control is to establish standards for the maximum development density and intensity of land use and to control building bulk and scale. It is considered that the proposed development's exceedence of the floor space ratio development standard applying to the subject property results in a development that does not appropriately respond to the built form and character of the surrounding locality and an intensity of development that would adversely impact on the amenity of the surrounding neighbourhood particularly through the inclusion of 6,072m<sup>2</sup> of retail space.

In view of the circumstances, the SEPP 1 objection is not considered to be well founded or worthy of support.

(vi) Heritage (Clauses 47 to 55)

The existing building is not listed as a heritage item nor is it located within a heritage conservation area. The building however adjoins Marrickville Railway Station, which is listed on the Marrickville Local Environmental Plan 2001 and the State Heritage Register. The register describes the Marrickville Railway Station as one of four similar structures built at Marrickville, Canterbury and Campsie and Belmore which represent the peak of island platform design. They are all substantial and well detailed buildings, indicating the importance placed by the railway administration to the development of Sydney suburbs with well established and grand, but modern, station buildings in the latest style. All are important in understanding the development of the railway system.

Marrickville Railway Station is also listed on the Marrickville Heritage Inventory. The Inventory makes reference to the existing Station Master's Cottage as an attractive station building constructed of dark brick with contrasting red brick and rendered detailing to the window and door openings. Each of these openings has a segmental head in red brick with rendered trim and keystone. The awning has a shallow timber valance. The iron arch over the main entry to the station and the secondary waiting rooms and awnings all add to the character of the site. The openings of the buildings have been filled in and security features, signage, street furniture, and fencing have been added to the property. Otherwise, there are minor modifications to the station.

The station contains historic and social significance at a local level and is described as a relatively intact representation of a railway station in the area. This attractive 1890's station building took the name of Marrickville from the station now called Sydenham. It represents the development of the centre of Marrickville along the nearby Marrickville Road from the 1880's. This was the first western railway line constructed primarily for passenger traffic.

The application including *Statement of Heritage Impact, dated July 2009, prepared by Noel Bell Ridley Smith & Partners* (accompanying the application) was reviewed by Council's Heritage Consultant who provided the following comments:

***"Documentation***

*The application includes a well written Statement of Heritage Impact by Robert Staas of Noel Bell Ridley Smith, Architects.*

## **Comment**

*The SOHI covers the relevant issues. There will be no impact on the station; only on its setting and views from it. The new building will be worthwhile improvement on the existing one. There will be some change in the view from the station, whose setting has changed very considerably and will continue to do so. The impact is acceptable.*

## **Recommendations**

*There is no objection to the proposal from a heritage viewpoint."*

### (vii) Protection of Trees (Clause 56)

Clause 56 of MLEP 2001 concerns the protection of trees under Council's Tree Preservation Order. The proposal seeks the removal of a number of trees along Illawarra Road, from within the subject site and from the adjoining Council owned land. The application was reviewed by Council's Tree Management Officer who provided the following comments:

*"Council is required to assess the impacts of your proposed development upon any "Designated Tree" (as defined in Marrickville Council's Tree Preservation Order) within and/or adjacent your property. To enable Council to assess your proposal you are required to engage a suitably qualified professional Arborist to prepare a Tree Assessment Report."*

An arborist's report was not submitted with the application and consequently Council's Tree Management Officer has been unable to complete the assessment of the application in relation to the trees.

### (viii) Acid Sulfate Soils (Clause 57)

The subject site is located within an area identified as being subject to acid sulfate soil risk. Clause 57 of MLEP 2001 requires that before consent is granted, Council must consider a preliminary soil assessment which ascertains the presence or absence of acid sulfate soils if the proposal involves works at or below the ground water level or it could lower the ground water table. The proposed development requires the excavation of a proposed basement area containing three (3) levels.

The applicant submitted a *Stage 1 Environmental Site Assessment, Reference: E22940K-RPT Final, dated July 2009 prepared by Environmental Investigation Services*. The Environmental Site Assessment concluded the following:

*"Based on the scope of work undertaken for this Phase 1 site assessment EIS consider that the site can be made suitable for the proposed development provided that the following steps are undertaken:*

- Additional investigation (contamination and acid sulfate soils) in currently inaccessible areas of the site is undertaken after demolition of the buildings;*
- Additional sampling and analysis of the groundwater is undertaken. If traces of toluene are present some groundwater treatment may be required during dewatering; and*
- Survey the existing buildings for hazardous building materials prior to demolition.*

*Apart from the hazardous building material survey all additional works could be undertaken post demolition when the entire site is accessible.*

*Normal good engineering site management practice including control of run-off and dust suppression is recommended during earthworks and construction."*

A condition could be imposed on any consent granted requiring additional investigation be undertaken and the disposal of any potential acid sulfate soils in accordance with the measures outlined in *Stage 1 Environmental Site Assessment, Reference: E22940K-RPT Final, dated July 2009 prepared by Environmental Investigation Services* submitted with the application.

(ix) Waste Management (Clause 58)

Clause 58 of MLEP 2001 requires consideration of waste management for any proposed development. The proposed development includes the provision of waste storage areas on the lower ground floor level of the premises. This aspect of the proposed development is discussed further under the heading '*Marrickville Development Control Plan No. 27 - Waste Management*' in Section 12 of this report.

(x) Energy, Water & Stormwater Efficiency (Clause 59)

Clause 59 of MLEP 2001 requires consideration to be given to the energy, water and stormwater efficiency of any proposed development.

As discussed previously BASIX Certificates were submitted with the application.

(xi) Landscaping and Biodiversity (Clause 60)

Clause 60 of MLEP 2001 requires consideration be given to conservation of biodiversity as is of relevance to the subject application. The proposal represents an opportunity for landscaping with native plants. A condition should be imposed on any consent granted requiring the provision of native vegetation and landscaping in accordance with Council's requirements.

(xii) Community Safety (Clause 62)

Clause 62 of MLEP 2001 requires consideration to be given to community safety before granting development consent. To this extent the following matters are to be considered:

- (a) *the provision of active street frontages where appropriate,*
- (b) *the provision of lighting for pedestrian site access between public and shared area, parking areas and building entrances,*
- (c) *the visibility and legibility of building entrances from streets, public areas or internal driveways.*

It is considered that the development does not promote an active street frontage and discourages surveillance of the public area/road. The ground floor facade along Byrnes Street, with the various roller doors and the stone wall design feature, provides an inactive street frontage. In addition, the proposed dwellings have poor surveillance of Illawarra Road and Byrnes Street, as the dwelling design does not incorporate living areas directly overlooking the public road/areas.

The proposed common open space within Level 1 appears to be directly accessible by the general public, which raises concerns for resident/occupant safety of the development, as living areas of Blocks A, B and C are directly accessible and visible from the common open space areas. Safety and security issues also arise from the location of the RSL Club entry and residential lobby 3. Those entry points are proposed in secluded areas of the development which are not directly visible from the street or surrounding public areas. The long extended residential walkways to the front of each dwelling within Blocks A, B and C also raise safety and security concerns, as each individual dwelling has been designed to incorporate kitchen and/or bedroom windows directly visible from the long extended residential walkways.

In view of the circumstances the proposed development is considered to be contrary to the community safety provisions contained in MLEP 2001 and Marrickville Development Control Plan No. 38 – Community Safety.

(xiii) Accessibility (Clause 64)

Clause 64 of MLEP 2001 requires consideration to be given to accessibility before granting development consent. The issue of accessibility is discussed below under heading '*Marrickville Development Control Plan No. 31 – Equity of Access and Mobility*'.

Clause 64 (2) requires at least 10% of the total number of dwellings in a multi unit housing or residential flat development containing 10 or more dwellings to be designed in accordance with Australian Standard AS 4299 – Adaptable Housing.

The proposed development would therefore require a minimum of 13 adaptable dwellings. The proposal complies with the numeric requirement but issues are raised in relating to some of the proposed adaptable dwellings. This issue is discussed in more detail below under heading '*Marrickville Development Control Plan No. 31 – Equity of Access and Mobility*'.

**11. Marrickville Development Control Plan No. 19 – Parking Strategy (DCP 19)**

The car parking requirements under DCP 19 for the subject development are as follows:

Shops/Retail

Over 1000m<sup>2</sup> gross floor area(GFA) 30 car spaces plus 1 car space per 20m<sup>2</sup> over 1000m<sup>2</sup>.

1 bicycle space per 300m<sup>2</sup> of GFA for employees and 1 bicycle space per 500m<sup>2</sup> of GFA (over 100m<sup>2</sup>) for patrons.

Licensed and Non Licensed Clubs

1 car space per 6m<sup>2</sup> bar, lounge and dining floor areas plus 1 car space per 6 seats in auditorium plus 1 car space per 3 employees

4 bicycle spaces per 100m<sup>2</sup> lounge, bar & beer garden for employees and patrons.

Dwellings

0.5 car spaces for small dwellings (less than 55m<sup>2</sup>)

1 car space per large dwelling plus one visitor car space per 4 dwellings.

1 visitor bicycle space per 10 dwellings.

The applicant provided the following table of compliance in accordance with DCP 19:

#### 4.1.6.2 CARPARKING REQUIREMENTS

Use	DCP Car Parking Requirement	Development Car Parking Provision	Compliance
Residential Flat Building (128 Units)	128 Car parking spaces (1 space/unit) 32 visitor spaces (1 space /4 units) <b>TOTAL 160</b>  13 bicycle spaces (1 space/10 units)	128 Car parking spaces 14 visitor spaces <b>TOTAL 142</b>  21 bicycle spaces	Complies  Does not Comply. <b>18 fewer</b> visitor carparking spaces (see comment's below)  Complies
Retail 6,072 sqm	(30 car spaces + 1 space/20 sqm over 1,000 sqm) <b>TOTAL 284</b>  21 Bicycle Space for employees (1/300 sqm for Employees)	<b>204</b>  <b>30</b>	<b>80 fewer</b> carparking than DCP requirement  Complies
	13 Bicycle spaces for patron (1/500sqm over 1,000sqm)	<b>24</b>	Complies
RSL Club 612 sqm	1 car space/6sqm Bar/Lounge /Dining (approx 400sqm) <b>67 cars</b>  Plus 1/3 employees (approx 20 employees) <b>7 cars</b> <b>TOTAL: 74</b>  <b>Bicycles:</b> 1/100 sqm (approx 400 sqm) <b>14 Bicycle spaces</b>	<b>50</b>  <b>20</b>	Does not comply. <b>24 fewer</b> cars than DCP requirement (see comment below)  Complies
<b>TOTAL CARPARKING</b>	<b>DCP: 518</b>	<b>PROPOSED: 396</b>	<b>122 fewer cars</b> than DCP 19 provision

As indicated within the table above, the proposed development requires the provision of 518 off-street car spaces and 63 bicycle spaces under the provisions of DCP 19. The proposed development provides a total of 396 off-street car spaces and 65 bicycle spaces. The car parking is proposed to be provided within three basement levels, with ingress and egress from Byrnes Street. The proposed development has a departure of 122 car spaces from the numerical car parking requirements of DCP 19.

The proponent has allocated the majority of the shortfall in car parking to the retail component. This is unacceptable. In the case where a supportable development was lodged it may be appropriate to consider a shortfall in the context of the residential dwellings being close to Marrickville Station, but not in the way proposed by this development application. There may also be opportunities to provide a car share within the building (or other innovative transport options) to justify such a shortfall.

An assessment of the proposed bicycle spaces could not be carried out as bicycle spaces were not designated on the plans submitted with the development application.

DCP 19 also prescribes delivery and service area requirements, which are as follows:

##### Supermarkets, shops and restaurants

One (1) truck space per 400m<sup>2</sup> gross floor area up to 2,000m<sup>2</sup> gross floor area plus one truck space per 1,000m<sup>2</sup> thereafter.

##### Club

One (1) space per 1,000m<sup>2</sup> of public area set aside for bar, tavern, lounge and restaurant (50% of spaces adequate for trucks)

Residential flat buildings

One (1) service vehicle space per 50 dwellings plus one (1) space per 100 dwellings thereafter.

In accordance with DCP 19, the proposed development is required to provide a total of 11 loading/unloading bays. The proposed development provides five (5) loading/unloading bays with ingress and egress via Byrnes Street.

The applicant provided a Transport Report, Reference No. 7237, dated August 2009, prepared by Colston Budd Hunt and Kafes Pty Ltd, accompanying the subject application. The transport report concluded the following:

***“Summary***

*3.43 In summary, the main points relating to the transport implications of the proposed development are as follows:*

- i) the proposed development is consistent with government policy and would increase residential, employment and retail densities close to existing public transport services;*
- ii) the proposed parking and service vehicle provision is considered appropriate;*
- iii) access and internal layout will be provided in accordance with AS2890.1:2004 and AS 2890.2 2002; and*
- iv) the road network will be able to cater for the additional traffic from the proposed development.”*

The application, including the Transport Report, were reviewed by Council's Local Traffic Planning and Advisory Committee at their meeting held on 15 September 2009. The Committee provided the following comments:

*“The Development Application for the proposed mixed use development at 359 Illawarra Road, Marrickville is not supported in its present form due to the following reasons:-*

- a. The applicant has not adequately considered the traffic generation impacts of the proposed development. In estimating the additional traffic volumes generated by the proposed development, the applicant's traffic submission assumes traffic generation rates which are considered too low for the size and nature of development proposed. Accordingly, the submission substantially under estimates the impacts of traffic on the surrounding road network.*
- b. Unacceptable increases in traffic volume on Byrnes Street during peak periods and its impacts on adjoining residential properties in the street;*
- c. Increased parking demand in the area and adverse impacts on existing on-street parking spaces in Byrnes Street and surrounding streets, given that the off-street parking provision is short by 122 car parking spaces in accordance with Council's DCP 19 - Parking Strategy;*
- d. The size of vehicles proposed to service the proposed development would have difficulty manoeuvring safely through the existing road system in the vicinity of the site, particularly the intersection of Illawarra Road and Byrnes Street;*
- e. The proposed removal of the existing concrete pedestrian refuge island at the pedestrian crossing in Byrnes Street at its junction with Illawarra Road, to allow large rigid vehicles and semi trailers servicing the development to turn*

*from Illawarra Road into Byrnes Street would create increased traffic and pedestrian hazard. The removal of the pedestrian facility is not supported particularly considering its location in a major pedestrian thoroughfare close to a railway station; and*

- f. The turning movements of heavy vehicles and semi trailers from Illawarra Road into Byrnes Street would impact by holding up traffic on Illawarra Road, when trucks are queuing to turn into Byrnes Street, while waiting for pedestrians to cross Byrnes Street at the crossing. This queuing could also have an impact on the two traffic signals on Illawarra Road at both Petersham Road and Marrickville Railway Station.”*

All of these issues remain outstanding and cannot be addressed by conditions.

## **12. Marrickville Development Control Plan No. 27 – Waste Management (DCP 27)**

The development provides three (3) separate bin storage areas, one retail/RSL waste storage area containing 26 x 1100L bins and two residential waste storage areas containing 30 x 240L bins for Block A and B and 98 x 240L bins for Block C, on the lower ground floor level.

Based on the proposed 128 dwellings, Part 3 of DCP 27 requires the development to provide 64 x 240 litres bins each for general waste and recycled waste and up to 128 x 240 litre bins for green waste, a total of 256 bins. The development proposes a total of 128 x 240L bins, for general waste and recycled waste, no green waste bins are provided. In accordance with Part 4 of DCP 27, the proposed retail area/RSL would generate a total of 13,682L of general waste and 13,682L of recycled waste. The development proposes to provide a waste storage area which would accommodate 28,600L of waste for general and recycled waste.

The proposal complies with the retail/RSL waste requirements, however does not comply with the residential waste requirements. The waste management plan accompanying the subject application also details Council's garbage trucks to collect residential waste from the designated loading/unloading bays within the subject property. This is unacceptable, as Council waste collection do not enter private property. It should be noted that manoeuvrability of delivery/waste collection trucks entering and leaving the premises has been raised as a concern by Council's Local Traffic Planning and Advisory Committee. This is discussed further under the heading '*Marrickville Development Control Plan No. 19 – Parking Strategy (DCP 19)*'.

## **13. Marrickville Development Control Plan No. 28 – Urban Design Guidelines for Business Centres (DCP 28)**

### **(i) Floor Space Ratio**

The issue of floor space ratio has been previously discussed.

### **(ii) Building Massing and Building Height**

DCP 28 outlines the following objectives in relation to building massing:

- “O1 To preserve the prevailing pattern of buildings, built to the front boundary and massed to their full height at the street frontage & stepping down at the rear.*
- O2 To reinforce the local topography of Marrickville's business centres as ridge roads, visible at their highest points to adjacent uses and neighbourhoods.”*

DCP 28 outlines the following controls in relation to building height:



- "C1 Height of buildings at the street boundary is determined by the prevailing wall height adjacent and any neighbouring contributory buildings.*
- C2 Vertical (upper floor) additions to buildings may be permitted:*
- If they are not visible from the 'shopping street' and the streets running off them.....*
  - Where they help to improve the building's contribution to the setting.....*
  - Where buildings display a uniform height at the street alignment, new development shall maintain a complimentary height relationship with adjoining development.*
- C3 The height of corner buildings may be higher than the height limit determined by neighbouring buildings, to a maximum distance of 5 metres from both sides of the street corner, in order to reinforce the street corner.*
- C4 At the street frontage, only minor features such as parapets can project above the building height limit, and only to a maximum of 50% of the parapet width.*
- C5 Buildings are to step down at the rear, to a maximum external wall height of 7.5 metres, to be compatible with the scale of the adjacent residential areas and in keeping with the built form pattern of retail streets.*
- C6 Building height on rear lanes etc is limited to a maximum of 7.5 metres to the top of the wall."*

The proposed development varies in height between four (4) to seven (7) storeys. Along Byrnes Street and the corner of Byrnes Street and Illawarra Road the proposed development contains four (4) storeys with a height ranging from 15.2m to 19.8m. At the rear of the property adjacent to the railway line the proposed development has a height of seven (7) storeys with a maximum height of 29m. Given the predominant three (3) to four (4) storey height of the surrounding commercial/retail development, the height of the proposal is considered excessive particularly along the railway line. As previously mentioned, the proposal generally consists of three separate buildings (Blocks A, B and C). The buildings along Byrnes Street and Illawarra Road (Blocks A and B) portray a contemporary well articulated form which also improves the aesthetic quality of the area. However, the building along the railway line (Block C) is extremely dominating. Block C spans across the entire length of the site and the majority of the building mass has been distributed within this Block. This combined with the non-complying floor space ratio and the excessive height of Block C results in an intrusive building along the railway line. It is considered that Block C portrays an 'institutional' style development rather than a residential development, which does not positively contribute to the visual catchment.

DCP 28 also prescribes that *"Buildings are to step down at the rear, to a maximum external wall height of 7.5 metres"*. Block C, spanning the entire length of the site, does marginally 'step down' towards the rear, from a height of 29m to 22m. Despite the step down of the development, the proposal is inconsistent with the 7.5m requirement of DCP 28. It is noted that under DCP 28 corner sites are permitted to have a height limit greater than the neighbouring buildings by up to 5m. In this instance, the proposal has a height greater than the 5m allowance and it is considered that the height of the proposed would overwhelm the surrounding streetscape and detract from the existing corner buildings within the area. In view of the circumstances, the height of the proposed development is considered unacceptable.

The proposed building mass and height is inconsistent with the objectives and requirements of DCP 28.

(iii) Front Setbacks

DCP 28 outlines the following controls in relation to front setbacks:

*'C1 New development shall be built to the predominant setback, generally to front alignment.'*

The proposed development is generally constructed on a zero lot line to the front boundary in line with the predominant building alignment of mixed use development along Illawarra Road and Byrnes Street.

(iv) Corners

DCP 28 outlines the following controls in relation to new corner buildings:

- "C3 New development shall not appear over-scaled in comparison to other corner buildings in the business centre.*
- C4 The design of corner buildings shall add variety and interest to the street.*
- C5 Each frontage of a corner building shall present as a main street frontage.*
- C6 May provide a contemporary interpretation of historical corner buildings, subject to satisfying criteria regarding building façade proportions.*
- C7 Corner buildings may strengthen the townscape character by increased height.*
- C8 Architectural features shall be introduced at street corners to increase the visual significance of the building and or provide a stronger vertical emphasis.*
- C9 New corner buildings can accentuate the prominence of their location by devices such as chamfers, increased height, and details to highlight the junction of wall planes.*
- C10 Buildings on corners are permitted some variation in height and setback for corner features along the building frontage on both streets to a maximum of 5 metres from the corner, subject to a satisfactory resolution of the form in terms of scale, proportion, materials and finishes.*
- C11 New corner buildings shall not incorporate significant cutbacks or cutaway corners.*
- C12 Corner properties will be required to dedicate splay corners to the public for road widening purposes and to improve sight distance at intersections for both vehicles and pedestrians. Splays will generally be as follows:*
  - 3m x 3m at street & street corner*
  - 2m x 2m at street & lane corner*
  - 2m x 2m at lane and lane corner."*

As described above, the proposed building mass and height is inconsistent with the objectives and requirements of DCP 28. The four (4) to seven (7) storey height combined with non-complying floor space ratio contributes to the excessive bulk and scale of the development which detracts from the surrounding streetscape.

(v) Building Façade

DCP 28 outlines the following objectives in relation to building façade:

- "O1 To reinforce the prevailing pattern, characterised by simple, rectilinear building forms, full height at street frontage, and variation in roof parapet, chimney roof eaves, details and other features.*
- O2 To encourage new development characterised by predominantly vertical proportion of bays, openings and windows.*

- O3 *To ensure that openings and windows are sympathetic with the overall proportion of the building and its division into bays.*
- O4 *To maintain and promote the vertical emphasis of the narrow 2-3 storey built forms that balance the horizontal nature of the shopping street corridor."*

As previously mentioned, the proposed buildings along Byrnes Street and Illawarra Road (Blocks A and B) portray a contemporary well articulated form which also improves the streetscape quality of the area. However, the building along the railway line (Block C) is extremely dominating as it spans across the entire length of the site and the majority of the building mass has been distributed within this Block.

The ground floor façade of the development along Illawarra Road provides an active street frontage with the glazed frontage. However, concern is raised with the poor interface between the Illawarra Road footpath and the RSL and adjoining retail tenancy entries along Illawarra Road. The ground floor facade along Byrnes Street also provides an inactive street frontage with the ground level façade containing various roller doors and a stone wall design feature. In addition, the proposed dwellings have poor surveillance of Illawarra Road and Byrnes Street, as the dwelling design does not incorporate living areas directly overlooking the public road/areas.

(vi) Construction of verandahs and balconies on new infill developments

DCP 28 outlines the following relevant controls with respect to the construction of verandahs and balconies on new infill developments:

*"C16 Where a verandah, or balcony structure is proposed as part of a new redevelopment / infill proposal, it should complement the streetscape rather than try and be an exact copy of traditional forms, materials and embellishments.*

*C17 New verandah, or balcony structures should be of a contemporary design that is also compatible with the existing streetscape and in particular with its scale, colours and choice of materials."*

The development incorporates a number of protruding balconies/terraces and common terraces to service the residential units within the development. The balconies incorporated within the building form are considered to be appropriate.

(vii) Retail Frontage

DCP 28 outlines the following relevant controls with respect to retail frontages:

- O1 *To ensure that a diversity of active street frontages is provided which are compatible with the scale, character and architectural treatment of the building as a whole.*
- O2 *To preserve the surviving examples of original whole shop frontages and elements.*
- O3 *To encourage a variety of relationships and openings between the shop and the street.*
- O4 *To ensure that shops are accessible for everyone.*
- O5 *To encourage new or replacement shop fronts to be compatible with the architectural style or period of the building to which they belong and the overall character of the business centre.*
- O6 *To preserve the visual amenity of business centres outside normal trading hours without restricting security."*

The development proposes 6,072m<sup>2</sup> of retail space, which consists of a supermarket on the lower ground floor plan and five (5) individual retail suites on the upper ground floor level. The retail suites on the upper ground floor level are directly accessible from Illawarra Road, and encourage an active streetscape through the large shop front windows. However, along the ground floor

facade fronting Byrnes Street, which accommodates the supermarket is concealed behind by a stone wall feature which discourages an active street frontage.

(viii) Disabled access and adaptable design

The issue of accessibility is discussed below under the heading 'Marrickville Development Control Plan No. 31 – Equity of Access and Mobility'.

(ix) Vehicular Access and Car Parking

The issue of vehicular access and car parking is discussed below under heading 'Marrickville Development Control Plan No. 19 – Parking Strategy'.

(x) Internal Layout – Solar Access, Ventilation, Energy and Water Efficiency

DCP 28 outlines the following relevant controls in relation to solar access and ventilation:

- "C1 At least 65% of new dwellings within a development should provide living area windows positioned within 30 degrees east and 20 degrees west of true north to allow for direct sunlight for at least 2 hours between 9.00am and 3.00pm on 21 June.*
- C2 Direct sunlight to the windows of principal living areas and the principal area of open space, of adjacent dwellings must not be reduced:*
- 1. to less than 2 hours between 9.00am and 3.00pm on 21 June; and*
  - 2. where less than 2 hours of sunlight is currently available in June, the sunlight available in March/Sept will be considered in the assessment of the proposal. That sunlight available between 9.00am and 3.00pm on the 21<sup>st</sup> March/September is not to be reduced.*
- C3 The maximum depth of a habitable room from a window providing light and air to that room shall be 10 metres including any overhanging part of the building, balconies, terraces etc.*
- C4 On west facing facades subject to direct sunlight, external shading or other energy saving measures should be integrated into the design of the new building.*
- C5 Each new dwellings within a development must:*
- comply with a minimum 3.5 star NatHERS energy rating of internal comfort for each new dwelling.*
- C7 Building design ensures that dwellings within a development enjoy natural rather than mechanical ventilation by:*
- Siting and layout design that captures breezes;*
  - Use of narrow floor plans;*
  - The arrangement of windows, doorway and other openings that allow the free internal movement of air; and*
  - Avoiding double loaded corridor configurations."*

More than 65% of the proposed dwellings have passive solar design, as the majority of the living areas of the dwellings within Blocks A, B and C are located with the solar path.

The applicant advised that energy efficient fitting and fixtures will be installed. BASIX Certificates were submitted with the development application indicating that the proposed development meets the required scores.

The applicant submitted shadow diagrams with the development application illustrating that the development would not create any significant overshadowing for surrounding properties within the area, as the shadowing cast by the proposal falls on the railway corridor from 9.00am to 3.00pm during mid-winter.

(xi) Visual and Acoustic Privacy

DCP 28 outlines the following objective in relation to visual and acoustic privacy:

*"O1 New development is to ensure adequate visual and acoustic privacy levels for neighbours and residents."*

The proposed development does not provide satisfactory visual and acoustic privacy within the development, as discussed under the heading, 'State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development (SEPP 65).'

The lack of building separation within the subject development would generate significant visual and acoustic privacy impacts for residents/occupants of the proposed development, particularly from the proposed balconies and terraces within the development. Also, the long extended residential walkways to the front of each dwelling within Blocks A, B and C raise visual and acoustic privacy concerns, as each individual dwelling has been designed to incorporate kitchen and/or bedroom windows directly visible from the long extended residential walkways, which would be frequently used by residents and visitors.

It is noted that within the written submission accompanying the development application, the applicant indicates that the residential balconies and terraces will be fixed with operable privacy screens, however no details were provided or shown on the plans in regards to the privacy screens accompanying the development application.

(xii) Open Space and Landscaping

DCP 28 outlines the following controls in relation to the provision of open space:

*"C1 Open space areas are of a size and slope to suit the projected requirements of the dwelling's occupants."*

*C2 Part of the open space is capable as serving as an extension of the dwelling for relaxation, dining, entertainment, recreation and is accessible from the main living area of the dwelling."*

*C3 Private open space is located to take advantage of:*

- *outlook and any natural features of the site; and*
- *to reduce adverse impacts on neighbouring dwellings such as privacy and overshadowing."*

*C4 Orientate open space areas wherever possible to the north for maximum solar access."*

*C5 Private open space for each dwelling is to be provided in the form of a balcony, or terrace with:*

- *convenient access from the main living area of the dwelling;*
- *a minimum area of 8sqm; and*
- *a minimum width of 2m."*

The size of private open space provided for the proposed dwellings complies with the above-mentioned requirements. The private open space (balconies/terraces) provided are all in excess of

8sqm, with depths in excess of 2 metres. The areas of private open space have convenient access to the living areas of the respective dwellings and as such are capable as serving as an extension of the respective dwellings for relaxation, dining, entertainment and recreation. The development also proposes common terraces within Block C and a common open spaced area between Blocks A, B and C to further encourage relaxation, dining, entertainment and recreation. The issue of privacy and overshadowing has been discussed under the heading 'Internal Layout – Solar Access, Ventilation, Energy and Water Efficiency; and 'Visual and Acoustic Privacy'.

The proposed development is considered to satisfy the open space and landscaping controls contained in DCP 28.

#### **14. Marrickville Development Control Plan No. 29 – Contaminated Land Policy and Development Controls (DCP 29)**

The subject site is located within an area identified as being subject to acid sulfate soil risk. This matter has been discussed under the heading "*Acid Sulfate Soils (Clause 57)*" in Section 10 of this report.

#### **15. Marrickville Development Control Plan No. 31 – Equity of Access and Mobility (DCP 31)**

DCP 31 requires appropriate access to be provided throughout a mixed use development, in accordance with the Building Code of Australia and AS1428.2. Mixed use developments containing 10 or more dwellings are required to provide a minimum of one (1) adaptable dwelling for every 10 dwellings or part thereof, designed in accordance with AS4299 and one (1) parking space, designed in accordance with AS2890 Part 1, for every adaptable dwelling. DCP 31 also prescribes one (1) commercial/retail car space, designed in accordance with AS2890 Part 1, to be provided for each 33 car parking spaces or part thereof for the public from 10 to 500.

The proposal provides accessible entries and continuous paths of travel throughout the mixed use development, however no accessible sanitary facilities have been provided for the retail suites. Based on the 128 dwellings proposed, 13 adaptable dwellings and 13 adaptable car spaces are required to be provided. The subject application complies with the numerical requirements of DCP 31, however the adaptable dwellings do not comply with the minimum circulation spaces prescribed by the relevant Australian Standard, particularly the bathrooms. It is noted that the applicant submitted an *Access Report, dated 24 July 2009, prepared by Mark Relf*, which indicated the bathroom facilities do comply with the relevant standards, however this is not reflected in the plans submitted with the development application.

Based on the proposed 254 off-street retail/RSL car parking spaces the retail/RSL component of the development is required to provide eight (8) accessible car spaces. The subject application provides the required eight (8) car spaces within the basement car parking area.

As detailed above the proposed application does not achieve full compliance with the provisions of DCP 31 in relation to access and facilities for persons with a disability.

#### **16. Marrickville Development Control Plan No. 32 – Energy Smart Water Wise (DCP 32)**

Clause 59 of MLEP 2001 and Marrickville Development Control Plan No. 32 - Energy Smart Water Wise requires consideration to be given to the energy, water and stormwater efficiency of any proposed development. The applicant submitted an Ecologically Sustainable Design Assessment, Report No. 10-7863-R2, Revision 0, dated 22 July 2009, prepared by Heggies Pty Ltd, with the development application. The Ecologically Sustainable Design Assessment report made the following recommendations:

## *"11. SUMMARY AND RECOMMENDATIONS*

*The proposed mixed use development at Illawarra Road in Marrickville has been assessed against Marrickville Council DCP 32 and other relevant ESD. The proposed residential component will incorporate passive and active energy saving measures such as operable windows to enhance natural ventilation where appropriate. A thermal comfort assessment of the proposed residential development has been carried out using AccuRate/NatHERS software and BASIX tools to provide a quantitative estimate of the development's ESD performance.*

*Overall, positive Ecologically Sustainable Design (ESD) and energy efficiency features are currently in place in a number of design areas, incorporating the following:*

- High levels of cross-ventilation, natural light and solar access exposure;*
- Incorporation of thermal mass;*
- Light efficiency measures in the car parks using motion sensors;*
- Individual gas instantaneous hot water systems of 5 star greenhouse rating for all residential units;*
- Daylight sensors in hallways; and*
- Open space and landscaping.*

*The following recommendations have been made to improve upon the existing key sustainability elements of the proposed development:*

- Building fabric as per Heggies Thermal Comfort Report 10-7863-R1, dated 17 July 2009.*
- Appropriate glazing selection to cut excess solar heat gains;*
- Line the inside of the roof with a minimum R3.0 insulation;*
- 3 star water and energy efficient dishwashers;*
- A minimum 3 star energy efficient clothes dryers*
- A minimum 4 star energy efficient air-conditioning systems, refrigerators, and washing machines provided;*
- Water efficient bathroom and kitchen fittings;*
- Cyclist parking facilities for the apartments building; and*
- A rainwater/stormwater catchment tank for landscaping.*

*Recommendations regarding mechanical ventilation system, domestic hot water, other appliances and operational waste etc. have also been made within the body of the report.*

*These features will help to achieve significant reductions in the energy and water required by the development both in building and operation, as well as ensuring that the residential units are more pleasant spaces to reside.*

*With the recommendations contained within this report we find that the proposed residential development is able to achieve the relevant BASIX certificate ratings:*

- Water efficiency of 40% ( target of 40%) and*
- Energy Efficiency of 31% for Block A and B (target of 30%), and 22% for Block C (target 20%)*

*All commercial components including retail areas will comply with the BCA 2009 Section J Energy Efficiency, A full BCA Section J compliance report will be completed during the design development stage of the project. It is recommended that ESD initiatives continue to be adopted during the detailed design stage of the project."*

It is noted that two BASIX Certificates were also submitted by the applicant, achieving full compliance with the BASIX commitments under State Environmental Planning Policy (Building Sustainability Index: BASIX). This is discussed further under the heading '*State Environmental Planning Policy (Building Sustainability Index: BASIX)*'.

A condition could be imposed on any consent granted requiring the development to comply with the recommendations of Ecologically Sustainable Design Assessment, Report No. 10-7863-R2, Revision 0, sated 22 July 2209, prepared by Heggies Pty Ltd.

#### **17. Marrickville Development Control Plan No. 38 - Community Safety (DCP 38)**

The issue of community safety is discussed in section 10 above under the heading '*Community Safety (Clause 62)*'.

#### **18. View Corridors/View Sharing**

Currently views of the city central business district and Centrepont Tower are available from some of the surrounding residential properties to the south of the site, particularly from the residential properties located along Schwebel Street. No analysis of the potential view loss was submitted with the application. However, based on Council officer's estimates it is considered that the majority of the views would be lost as a consequence of the carrying out of the proposed development.

The principles of view sharing used by the Land and Environment Court are:

- "1. Assessment of the value of the view lost. Water views are valued more highly than land views. Iconic views are valued more highly than land views. Whole views are valued more highly than partial views.*
- 2. Protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. The protection of a view when seated is also more difficult to protect than a view obtained from a standing position. An expectation that a side view across an adjoining property must be protected is generally unrealistic and given limited weight.*
- 3. The impact on views from living areas (particularly kitchen areas) is more significant than from bedrooms or service areas.*
- 4. A development that complies with all planning controls must be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. Where a complying proposal compromises a view corridor which is considered significant under the above tests, would a more skilful design which provides the applicant with the same development potential and amenity and reduces the impact on the views of neighbours."*

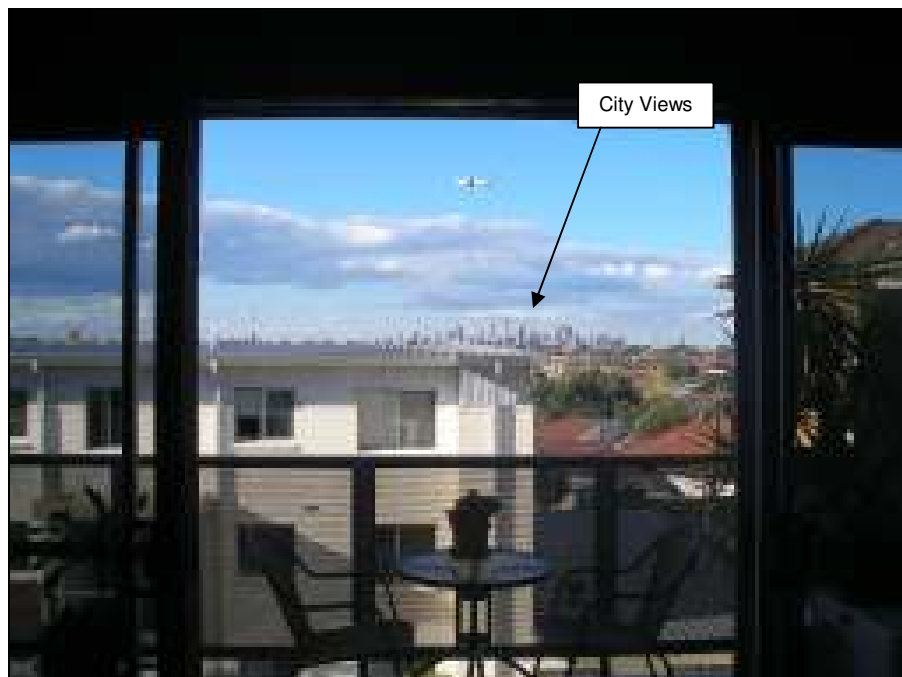


The image below demonstrates the direction of the city views experienced by the residential properties along Schwebel Street:



*Image 21: Direction of the city views experienced by the residential properties along Schwebel Street.*

The images below demonstrate the views from various residential properties along Schwebel Street:



*Image 22: City views enjoyed from 14/2-6 Schwebel Street.*



*Image 23: City views enjoyed from 7/8-10 Schwebel Street.*

It is considered that the views available from the residential properties along Schwebel Street are iconic views and the majority of the views would be lost as a consequence of the carrying out of the proposed development. However, a proper assessment of the potential view loss could not be carried out as no analysis of the potential view loss was submitted with the application.

## **19. Operating Hours**

The subject application proposes the following hours of operation for the retail tenancies and RSL club use:

### **Retail tenancies**

Mondays to Saturdays	7.00am to 11.00pm
Sundays and Public Holidays	8.00am to 10.00pm

### **Loading Docks**

Mondays to Saturdays	6.00am to 10.00pm
Sundays and Public Holidays	7.00am to 9.00pm

### **Club**

Mondays and Tuesdays	10.00am to 11.30pm
Wednesdays and Thursdays	10.00am to 12.00 midnight
Fridays and Saturdays	10.00am to 1.00am
Sundays	10.00am to 11.30pm

The proposed operating hours are generally considered acceptable for the RSL given that the former RSL club had approved operating hours between 10.00am to 12.00 midnight Mondays to Thursdays, Sundays and Public Holidays and 10.00am to 3.00am the following day Fridays to Saturdays. However, in the absence of details of the proposed retail tenancies, the proposed trading hours for the retail suites and loading docks are inappropriate. Retail trading hours and retail loading hours would be considered under separate development applications, which would

be required to be lodged and determined by Council prior to the initial occupation of each retail tenancy.

## **20. Additional deficiencies within application**

The subject application has the following deficiencies within the application:

- The development does not detail sanitary facilities for the retail portion of the development;
- The development does not detail laundry facilities for the residences;
- The development does not detail bicycle storage areas; and
- It is unclear from the development plans if the bridge wall along Illawarra Road is to be reconstructed or if in fact it is on the subject land. The photomontage, submitted with the development application, implies a different wall to the existing, which is a continuation of the railway overpass wall.

Given the above deficiencies a proper assessment of the development application could not be carried out.

## **21. Marrickville Section 94 Contributions Plan 2004**

It is considered that the carrying out of the proposed development would result in an increased demand for public amenities and public services within the area. A contribution of \$1,613,295.54 would be required for the proposed redevelopment under Marrickville Section 94 Contributions Plan 2004. A condition requiring the above contribution to be paid should be imposed on any consent granted.

## **22. Advertising/Notification**

The application was advertised, an on site notice was erected and residents/property owners in the vicinity of the subject property were notified of the proposed development in accordance with Council's Policy. Fifty-three (53) submissions and two (2) petitions, containing a total of 362 signatures, were received which raised the following concerns:

### *(i) Lack of sufficient off-street parking*

Thirty-nine (39) objectors raised concern with the lack of off-street car parking provided by the development. This issue has been canvassed in the main body of the report.

### *(ii) Increase in traffic congestion*

Twenty-nine (29) objectors raised concern with the potential increase of traffic congestion in the area and the underestimation of traffic generation in the subject development application. This issue has been canvassed in the main body of the report. As advised previously the Local Traffic Planning and Advisory Committee also considered that the Traffic Report submitted with the application "*substantially under estimates the impacts of traffic on the surrounding road network.*"

### *(iii) Noise*

Twenty-seven (27) objectors raised concern with the likely noise impact (from cars, delivery vehicles, increased residents within area, close proximity of the development to freight lines and etc) that would result from the development. The proposed mixed use development is permissible with Council's consent under the zoning provisions applying to the land. Appropriate conditions could be imposed on any consent granted in relation to noise emissions. The residential component of the development would also need to be noise attenuated to comply with the relevant standards.

*(iv) Heritage*

Nineteen (19) objectors raised concern with the impact the proposal will have on the heritage significance of the area, including the adjoining heritage item known as Marrickville Train Station. This issue has been canvassed in the main body of the report.

*(v) Site Contamination*

Seven (7) objectors raised concern with the potential site contamination of the subject property. The subject site was previously occupied by the former Marrickville RSL Club, a use which would be unlikely to generate site contamination. However, the site is located within an area identified as being subject to acid sulfate soil risk. This issue has been canvassed in the main body of the report.

*(vi) Notification of the subject development application*

Eighteen (18) objectors raised concern with the lack of public consultation and the lack of residents formally notified of the proposed development with a letter drop. The application was advertised very widely, an on site notice was erected and 870 residents/property owners in the vicinity of the subject property were notified of the proposed development, with a letter drop, in accordance with Council's Policy.

*(vii) Infrastructure*

Thirty-one (31) objectors raised concern with the intensification/overuse of the existing infrastructure within the area such as public transport including the inadequacy of trains on the Bankstown line, water, waste, drainage and the local road system. As part of the development assessment process the development application was referred to various external and internal bodies including Railcorp, Energy Australia, Council's Development Control Engineer and Council's Local Traffic Planning and Advisory Committee to assess the potential impact the proposal will have on the surrounding infrastructure. These issues and the comments received from the various external and internal bodies have been discussed in the main body of the report.

*(viii) Views*

Twenty-two (22) objectors raised concern with the potential view loss which may occur as a consequence of the carrying out of the proposed development. The issue of view loss has been discussed within the main body of the report.

*(ix) Property devaluation*

Five (5) objectors raised the concern with the potential depreciation of property value of the surrounding area as a result of the development. There is no evidence to suggest that the proposed development will have a negative effect on property values in the surrounding locality and this is not a valid consideration under Section 79C of the Environmental Planning and Assessment Act 1979.

*(x) Height*

Twenty-two (22) objectors raised concern with the height of the proposal. The proposed development varies in height between four (4) to seven (7) storeys, given the predominant three (3) to four (4) storey height of the surrounding commercial/retail development, the height of the proposed development is out of keeping with the height of existing buildings in the surrounding locality. This issue has been canvassed in the main body of the report.

*(xi) Streetscape Appearance*

Twenty-seven (27) objectors raised concern with the streetscape/aesthetic appearance of the development within the streetscape. This issue has been canvassed in the main body of the report.

*(xii) Urban Strategy.*

Seven (7) objectors raised concern that the development is inconsistent with Council's Urban Strategy. It is noted that, the SEPP 1 objection accompanying the subject application, refers to the draft Marrickville Village Centre Urban Design Study (Centre Study) as justification for the non-complying FSR. It should be noted the Centre Study has not been adopted by Council as policy and therefore cannot be used as a guide or justification for the departure. This issue has been discussed within the body of the report.

*(xiii) Aircraft Noise*

Four (4) objectors raised concern with the aircraft noise. This issue has been canvassed within the main body of the report.

*(xiv) Pedestrian Safety*

Twenty-eight (28) objectors raised concern in regards to pedestrian safety as a result of increased traffic movement in the area. This concern is also a concern raised by Council's Local Traffic Planning and Advisory Committee's comments, which has been discussed within the main body of the report.

*(xv) Population Density*

Five (5) objectors raised concern with the increase in population density in the area resulting from the carrying out of the proposed development. Whilst the proposed development is a form of development permissible under the zoning provisions applying to the land, the intensity of development and density of the proposed development are well in excess of the development standards applying to the land under the provisions of Marrickville Local Environmental Plan 2001.

*(xvi) Retail and RSL trading hours*

Three (3) objectors raised concern with the extensive retail and RSL trading hours. This issue has been discussed within the main body of the report.

*(xvii) Loading/unloading facilities*

Eleven (11) objectors raised concern with the loading/unloading facilities and delivery times. These issues have been canvassed within the main body of the report.

*(xviii) Privacy*

Nine (9) objectors raised concern with potential privacy impacts on surrounding residential properties. It is considered that the proposed development would not adversely impact on the privacy of surrounding residential development, as the site is located a minimum 20m from the surrounding residential properties.

*(xix) Overshadowing*

Four (4) objectors raised concern with the overshadowing cast by the proposal. This issue has been discussed within the main body of the report, noting that the proposed shadow impacts are acceptable and comply with the Council's relevant controls.

*(xx) Waste*

Twelve (12) objectors raised concern with the amount of waste that would be generated by the proposed development and waste collection potentially occurring from Byrnes Street. The subject building provides on-site waste storage areas and the development proposes all waste collection to occur within the subject site from the loading docks. The issue of waste collection has been discussed within the main body of the report.

*(xxi) Safety and security*

Twelve (12) objectors raised concern with the perceived loss of public safety and security within the area as a direct consequence of the proposed development. There is no evidence to suggest that the proposed development will have a negative effect on the public safety and security of the area.

*(xxii) Non-compliance with Council's policies*

Seven (7) objectors raised concern with the non-compliance of the development with Council's policies. The development varies from a number of Council's policies and requirements. Those departures have been discussed within the main body of the report.

*(xxiii) Retail*

Eight (8) objectors raised concern that the retail component of the proposed development would have a negative impact on other commercial/retail businesses in the area due to the large retail space proposed. There is no evidence to suggest that the retail component of the proposed development would have a negative effect on the surrounding retail area and this is not a valid consideration under Section 79C of the Environmental Planning and Assessment Act 1979.

*(xxiv) Undesirable precedent*

One (1) objector raised concern that the proposed development would set an undesirable precedent in the area. Given the various non-compliances of the proposed development with Council's current planning policies, controls and requirements, it is considered that, if approved, the proposed development would set an undesirable precedent within the area.

*(xxv) Excessive Floor Space Ratio*

Twenty (20) objectors raised concern that the proposed development departs from the Council's floor space ratio development standard and is an overdevelopment of the site. This issue has been canvassed within the main body of the report.

*(xxvi) Poor Planning*

One (1) objector raised concern that the proposed development contributes to the poor planning of the area. As previously mentioned, issues of traffic/parking, community safety, view loss, overuse of existing infrastructure and degradation of the existing streetscape arise as a direct consequence of the proposed development. These issues have been canvassed within the main body of the report.

*(xxvii) Social Impact*

Three (3) objectors raised concern that the proposal results in inappropriate social impact. There is no evidence to suggest that the proposed development would have a negative social impact within the surrounding area.

*(xxviii) Residential Units*

One (1) objector raised concern that the proposal has excessive amount of residential units. It is noted that there is no specific control to limit the amount of residential units within a mixed use development. However, it is acknowledged that the proposed development departs from Council's floor space ratio development standard. This issue has been discussed within the main body of the report.

*(xxix) Landscaping*

Two (2) objectors raised concern that the site provided minimal landscaping. The subject development complies with the landscaping requirements of DCP 28. This issue has been discussed within the main body of the report.

*(xxx) Awning*

Four (4) objectors raised concern that there is no awning proposed along the Illawarra Road façade of the development. The proposal incorporates residential balconies on the upper floors of the development which cantilever over the ground floor retail entries as an awning. Also, the development proposes a large awning over the retail entry along the corner of Illawarra Road and Byrnes Street.

*(xxxi) Electrical Substation*

One (1) objector raised concern that the existing electrical substation located to the rear of the site will not be able to sustain the proposed development due to the large nature of the proposal. Any development on the land would need to comply with the requirements of the respective public utility providers.

*(xxxii) Electrical Power Lines*

One (1) objector raised concern that the large nature of the delivery trucks servicing the proposed retail spaces would potentially damage power lines and cables in the area. Issues in relation to the size of vehicles associated with servicing the proposed development have been discussed within the main body of the report.

## **23. Conclusion**

The heads of consideration under Section 79C of the Environmental Planning and Assessment Act of relevance to the application have been taken into consideration and the application. The proposed development significantly exceeds the maximum floor space ratio permitted for development on the land under Marrickville Local Environmental Plan 2001. The proposed development does not satisfy the design parameters, aims and objectives of Marrickville Development Control Plan No. 28 – Urban Design Guidelines for Business Centres. The proposal is considered to be excessive in height, bulk and scale and will not complement the existing streetscape. The proposed parking layout/arrangement also is considered inadequate. All of these issues reflect the fact that the proposal is an overdevelopment of the site which results in a poor design outcome. In view of the circumstances the application is recommended for refusal.

## **PART E - RECOMMENDATION**

- A. THAT** the development application to demolish the existing improvements and erect a mixed use development containing 128 dwellings, 6072sqm of retail/commercial uses, and a club (Marrickville RSL Club) (612sqm) with off street car parking for 396 vehicles be **REFUSED** for the following reasons:

1. The proposed development has a floor space ratio of approximately 2.73:1 which is well in excess of the maximum floor space ratio of 2:1 permitted under Clause 33 of Marrickville Local Environmental Plan 2001. In terms of gross floor area the proposed development exceeds the floor space ratio development standard by approximately 4,444sqm.
2. The objection under State Environmental Planning Policy No. 1 to the floor space ratio (FSR) development standard submitted with the development application is not considered to be well founded or worthy of support objection particularly considering that the primary justification for the non-complying FSR is based on a document (draft Marrickville Village Centre Urban Design Study) which has not been adopted by Council as policy.
3. The proposed development's significant departure from the floor space ratio development standard applying to the subject property results in a development that does not appropriately respond to the built form and character of the surrounding locality and an intensity of development that would adversely impact on the amenity of the surrounding neighbourhood.
4. The proposed development does not satisfactorily address the design principles contained in State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development, particularly Principle 1 – Context and Setting; Principle 2 – Scale; Principle 3 – Built Form; Principle 4 – Density; Principle 7 – Amenity; Principle 8 – Safety and Security and Principle 10 – Aesthetics.
5. The proposed development does not comply with the minimum Building Separation distances contained in the Residential Flat Design Code under State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development.
6. Railcorp have not granted their concurrence to the proposed development in accordance with requirements under State Environmental Planning Policy (Infrastructure) 2007.
7. The proposed development is considered unsatisfactory on traffic and parking related grounds for the following reasons:
  - a) The traffic report submitted with the application substantially under estimates the additional traffic volumes likely to be generated by the proposed development and consequently does not adequately address the traffic generation impacts of the proposed development;
  - b) Unacceptable increases in traffic volume on Byrnes Street during peak periods and its impacts on adjoining residential properties in the street;
  - c) Increased parking demand in the area and adverse impacts on existing on-street parking spaces in Byrnes Street and surrounding streets, given that the off-street parking provision is short by 122 car parking spaces in accordance with Marrickville Development Control Plan No. 19 - Parking Strategy;
  - d) The size of vehicles proposed to service the proposed development would have difficulty manoeuvring safely through the existing road system in the vicinity of the site, particularly the intersection of Illawarra Road and Byrnes Street;
  - e) The proposed removal of the existing concrete pedestrian refuge island at the pedestrian crossing in Byrnes Street at its junction with Illawarra Road, to allow large rigid vehicles and semi trailers servicing the development to turn from Illawarra Road into Byrnes Street would create increased traffic and pedestrian hazard. The removal of the pedestrian facility is not supported particularly considering its location in a major pedestrian thoroughfare close to a railway station; and
  - f) The turning movements of heavy vehicles and semi trailers from Illawarra Road into Byrnes Street would impact by holding up traffic on Illawarra Road, when trucks are queuing to turn into Byrnes Street, while waiting for pedestrians to cross Byrnes Street



at the crossing. This queuing could also have an impact on the two traffic signals on Illawarra Road at both Petersham Road and Marrickville Railway Station.

8. The proposal does not satisfy the aims and objectives of Marrickville Development Control Plan No. 28 – Urban Design Guidelines for Business Centres in regard to Height, Massing, Corner Sites, Building Facade, Retail Frontages, Visual and Acoustic Privacy.
  9. The proposed development is considered to be excessive in height, bulk and scale and an overdevelopment of the site.
  10. The development is contrary to the community safety provisions under Clause 62 of Marrickville Local Environmental Plan 2001 and Part 6 of Marrickville Development Control Plan No. 38 – Community Safety.
  11. The proposed on-site waste storage facilities are contrary to Marrickville Development Control Plan No. 27 – Waste Management.
  12. The proposed development does not comply with the provisions of Marrickville Development Control Plan No. 31 – Equity of Access and Mobility in terms of facilities for persons with a disability.
  13. The carrying out of the proposed development would result in significant view loss for adjoining properties in the vicinity of Schwebel Street.
  14. The development plans accompanying the development application do not indicate the BASIX commitments as specified in BASIX Certificate Nos. 260276M and 2601150M.
  15. Insufficient information, in particular an arborist's report, flood study and details of various on-site facilities, was submitted with the application to enable a proper assessment of the proposal to be carried out in accordance with the requirements of the Environmental Planning and Assessment Act.
  16. In view of the above, and the public submissions received approval of the application would not be in the public interest.
- B. THAT** those persons and the head petitioners who lodged a submission in respect to the proposal be advised of the Joint Regional Planning Panel's determination of the application.
- C. THAT** the Roads and Traffic Authority be forwarded a copy of the Joint Regional Planning Panel's determination of the application.