

| | |
|------------------------------|---|
| JRPP No: | 2010SYE044 |
| DA No: | DA201000288 |
| PROPOSED DEVELOPMENT: | Bethesda House and Stead House redevelopment - 80 Victoria Road & 12 Leicester Street, Marrickville |
| APPLICANT: | Greg Boyce |
| REPORT BY: | Ruba Osman, Development Assessment Officer, Marrickville Council |

Assessment Report and Recommendation

Synopsis

Application to carry out alterations to Bethesda House and Stead House for their adaptive reuse for the purpose of residential flat buildings, construct two free standing residential flat buildings to the south and west of Stead House each containing 6 dwellings, construct a three storey addition to the rear of Bethesda House containing 6 dwellings, construct a third floor on top of Bethesda House, construct two separate basement car parking areas containing a combined total of 45 spaces with bike racks, garbage storage areas, storage areas and plant room, to consolidate the land and strata subdivide the development into 45 lots (Note the overall development contains a total of 45 dwellings).

Four (4) submissions and one petition, containing signatures from 19 addresses were received in response to Council's notification of the proposal.

The proposed development is only permissible if the consent authority is satisfied that the retention of the buildings that are heritage items depends on the granting of consent and the proposed development satisfies all the heritage incentives provisions contained in Clause 54(1) of Marrickville Local Environmental Plan 2001. If the proposed development fails to satisfy one or more of those provisions, the proposed development is prohibited under the zoning provisions applying to the land under Marrickville Local Environmental Plan 2001. As detailed in this report the proposed development does not satisfy a number of the heritage incentive provisions in Clause 54(1) and as such the proposed development is prohibited.

Overall, the proposal is considered to be excessive in height, bulk and scale and will not complement the existing streetscape and is considered to compromise the significance of the heritage items and their settings. The proposed development significantly exceeds the maximum floor space ratio permitted for development on the land under Marrickville Local Environmental Plan 2001. The proposed parking arrangement with the provision of two basements also is considered inadequate and has negative amenity impacts on the adjoining residence. 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 A - PARTICULARS

Location: Located on the south western corner of Leicester Street and Victoria Road, Marrickville.

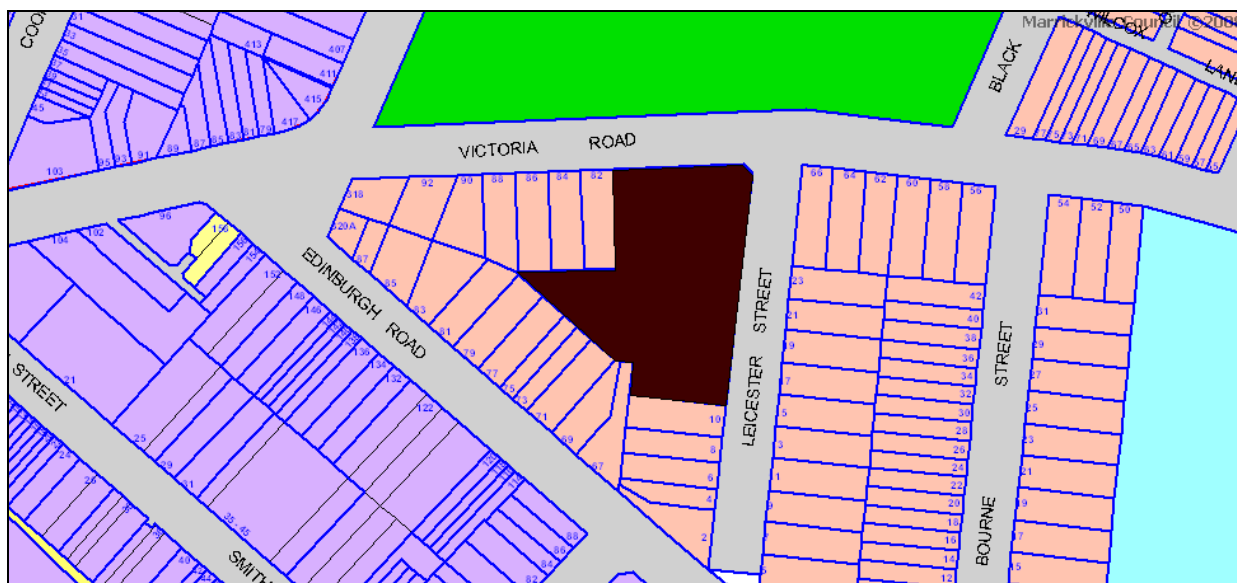


Image 1: Location Map

D/A No: 201000288

Application Date: 12 July 2010 (amended plans provided on 21 and 22 September 2010)

Proposal: Application to carry out alterations to Bethesda House and Stead House for their adaptive reuse for the purpose of residential flat buildings, construct two free standing residential flat buildings to the south and west of Stead House each containing 6 dwellings, construct a three storey addition to the rear of Bethesda House containing 6 dwellings, construct a third floor on top of Bethesda House, construct two separate basement carparking areas containing a combined total of 45 spaces with bike racks, garbage storage areas, storage areas and plantroom, to consolidate the land and strata subdivide the development into 45 lots (Note the overall development contains a total of 45 dwellings).

Estimated Cost: \$10,750,000

Applicant: Enmore Park One Pty Ltd

Zoning: Residential 'A'

PART B - THE SITE AND ITS ENVIRONMENT

Improvements: The site contains a range of structures including Bethesda House which is a two storey building with tower and contains a single storey addition to the rear, two two storey townhouses and a carport (all at 80 Victoria Road) and Stead House which is a two storey building with a basement level, a triple garage, carport and shed (at 12 Leicester Street).



Image 2: Stead House as viewed from Leicester Street (known as 12 Leicester Street)



Image 3: View of subject site taken from Leicester Street (in front of 10 Leicester Street looking north towards Victoria Road)



Image 4: Site on Leicester Street as viewed from north eastern corner of Leicester Street and Victoria Road



Image 4: Leicester Street streetscape looking south



Image 5: Bethesda House taken from the Intersection of Victoria Road and Leicester Street



Image 6: Bethesda House as viewed from Victoria Road



Image 7: Victoria Road streetscape to the west of the subject site



Image 8: Victoria Road adjacent to subject site facing Enmore Park



Image 9: Location of proposed Block D (2 storey RFB)



Image 10: Location of Proposed Block E (2 storey RFB)

Current Use:

Bethesda House is currently vacant however Stead House and the townhouses on the site are currently being used for residential accommodation.

Prior Approval:

Permit No. 6981, dated 10 June 1977, approved an application to carry out alterations to the existing 2-storey hospital building for conversion into a Nursing home for the aged containing forty-seven (47) beds.

Permit No. 7318, dated 5 July 1978, approved an application to erect a 2 storey brick/tile building containing two 1-bedbroom town house type units, as well as a detached carport/store structure for three cars for use by staff members.

Permit No.8522, dated 3 February 1982, approved an application to construct a small chapel adjacent to Leicester Street frontage for use of residents at "Bethesda" Nursing home.

Permit No. 10835, dated 8 April 1987, approved an application to carry out internal alterations to Stead House involving the upgrading of existing bathroom and toilet facilities.

Permit No. 10815, dated 7 April 1987, approved an application to carry out internal alterations to Bethesda House involving the division of the existing laundry to provide bathroom facilities.

Permit No.11689, dated 1 July 1988, approved an application to carry out alterations and additions to a nursing home to enlarge an associated office.

Permit No. 12258, dated 24 April 1989, approved an application to carry out alterations to an existing nursing home to provide laundry facilities and to construct a single storey extension to the existing staff facilities at the property known as 80 Victoria Road, Marrickville.

Determination No. 14802, dated 17 February 1993, approved an application to erect a carport for use in association with the nursing home.

Determination No.16545, dated 26 April 1996, approved an application to erect a shelter for use in association with a nursing home.

Determination No. 16757, dated 16 October 1996, approved an application to carry out noise attenuation works to one of the buildings within the grounds of Bethesda Nursing Home.

Determination No. 16919, dated 7 January 1997, approved an application to carry out noise attenuation works to Stead House.

Environment: Predominantly residential to the south, east and west of the site whilst to the north of the site is a recreation area.

PART C - REQUIREMENTS

1 Zoning

Is use permissible in zoning?

No

If no, does the premises enjoy existing use rights?

No

Is use permissible under heritage incentive clause?

Yes (subject to compliance with this clause)

2 Development Standards (Mandatory Requirements):

| Type | Required | Proposed |
|---------------------------|-----------------|-----------------|
| Floor space ratio (max) | 0.7:1 | 0.94:1 |
| Adaptable dwellings (min) | 5 | 4 |

3 Departures from Council's Codes and Policies:

| Type | Required | Proposed |
|--------------------|---------------------------|-----------------|
| Car parking | (see main body of report) | |
| Private Open Space | (see main body of report) | |
| Solar Access | (see main body of report) | |
| Height | (see main body of report) | |
| Streetscape | (see main body of report) | |

4 Community Consultation:

Required: Yes (newspaper advertisement, letter notification and on-site notice)

Submissions: Four (4) letters and one (1) petition with signatures from nineteen (19) residences

5 Other Requirements:

ANEF 2029 Affectation: 25-30 ANEF
Marrickville Section 94 Contributions Plan 2004 \$576,853.82
80 Victoria Road and 12 Leicester Street listed as Heritage Item under Schedule 5 of MLEP 2001

PART D - ASSESSMENT

1. The Site and Surrounds

The subject site is legally described as Lots 1 and 2 in DP 582556 and is more commonly referred to as 80 Victoria Road and 12 Leicester Street, Marrickville.

The property is located on the south western corner of Leicester Street and Victoria Road, Marrickville.

The property has a total combined site area of approximately 4,571sqm with a 48.8 metre frontage to Victoria Road and 87.47 metre frontage to Leicester Street.

The site contains a range of structures including Bethesda House which is a two storey building with tower and contains a single storey addition to the rear, two two storey townhouses and a carport (all at 80 Victoria Road) and Stead House which is a two storey building with a basement level, a triple garage, carport and shed (at 12 Leicester Street).

Surrounding development is generally comprised of predominantly single storey residential development to the south, east and west of the site whilst to the north of the site is a recreation area.

2. The Proposal

Approval is sought to carry out alterations to Bethesda House and Stead House for their adaptive reuse for the purpose of residential flat buildings, construct two free standing residential flat buildings to the south and west of Stead House each containing 6 dwellings, construct a three storey addition to the rear of Bethesda House containing 6 dwellings, construct a third floor on top of Bethesda House, construct two separate basement car parking areas containing a combined total of 45 spaces with bike racks, garbage storage areas, storage areas and plant room, to consolidate the land and strata subdivide the development into 45 lots. The overall development contains a total of 45 dwellings.

The development proposal consists of:

- Internal alterations to the existing buildings known as Bethesda House and Stead House for their adaptive reuse for the purposes of residential flat buildings. Stead House also includes an addition to the rear and addition of dormers on the south western wing.
- Construction of 2 new freestanding residential flat buildings to the south of Stead House and to the west of Stead House, each containing 6 units.
- Construction of a three storey addition containing 6 units to be attached to the rear of Bethesda House.
- Construction of a third floor on top of the existing Bethesda House.
- Construction of two separate basement car parking areas with the northern basement level containing 34 parking spaces, 8 bike racks, garbage storage area and storage spaces for the units, whilst the southern basement level consists of 11 parking spaces, plant room and bin store.

| <i>Type</i> | <i>No. of units in development</i> |
|-------------|------------------------------------|
| Studio | 4 |
| 1 bedroom | 22 |
| 2 bedroom | 14 |
| 3 bedroom | 5 |

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

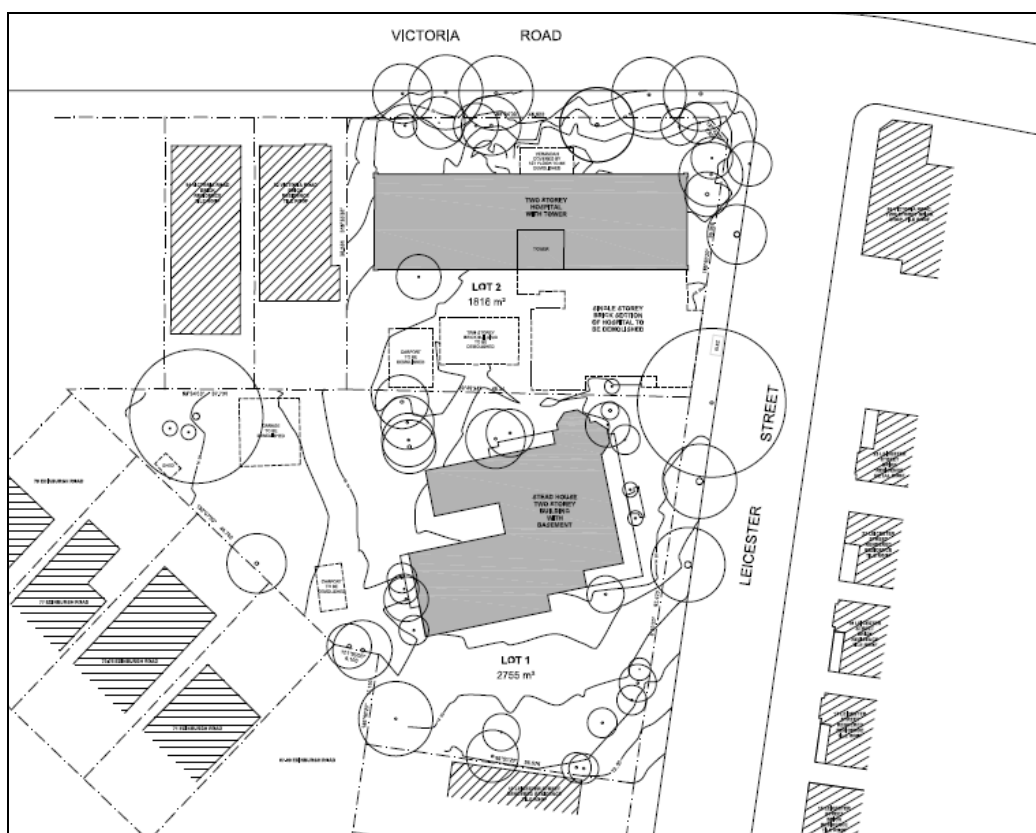


Image 11: Site plan

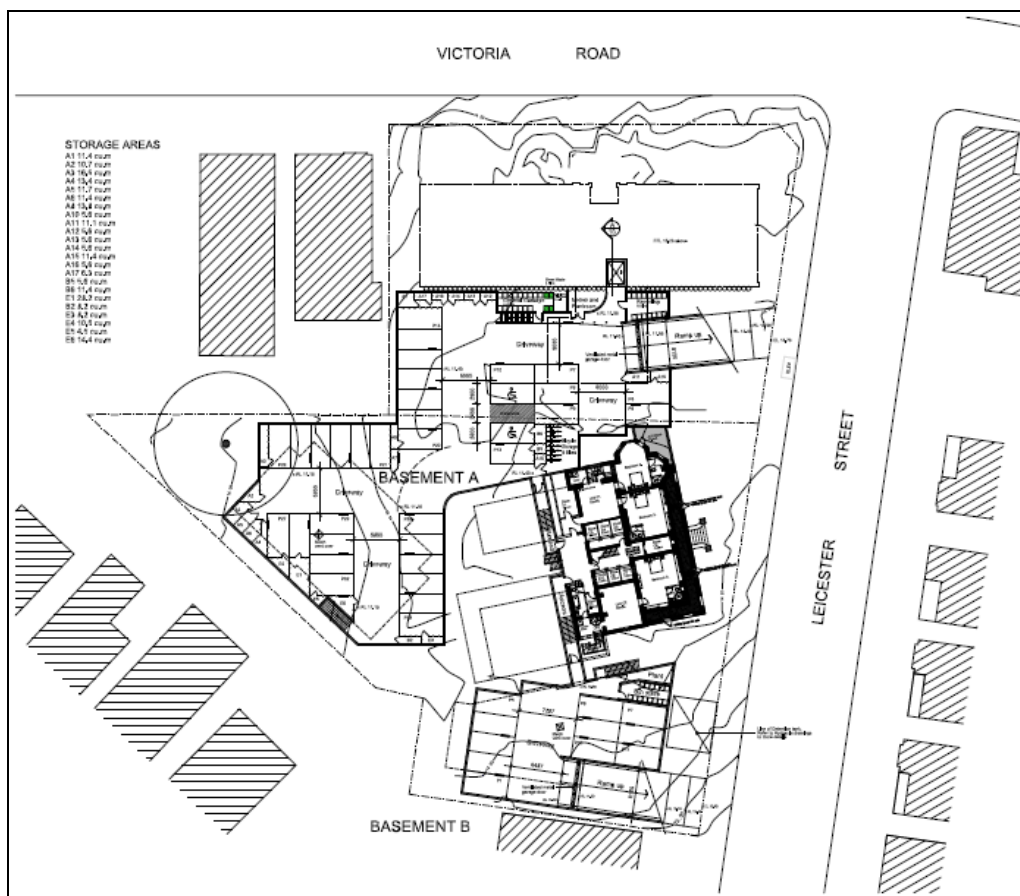


Image 12: Basement plan



Image 13: Ground floor plan



Image 14: Proposed first floor plan

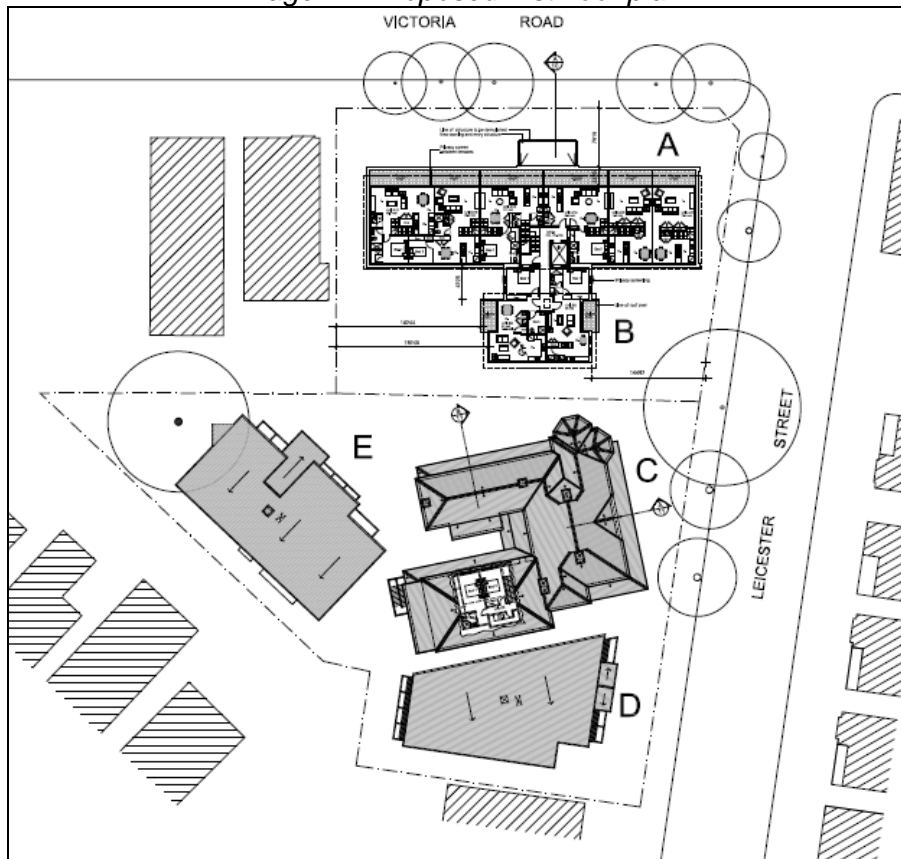


Image 15: Second floor plan

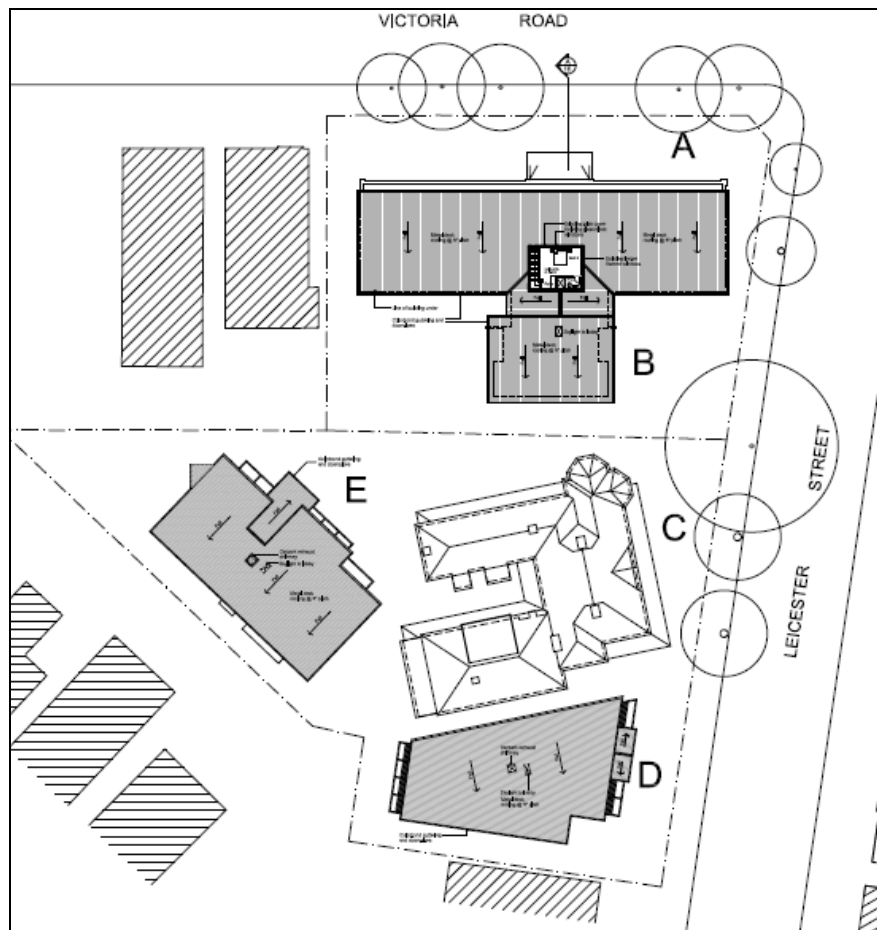


Image 16: Third floor plan

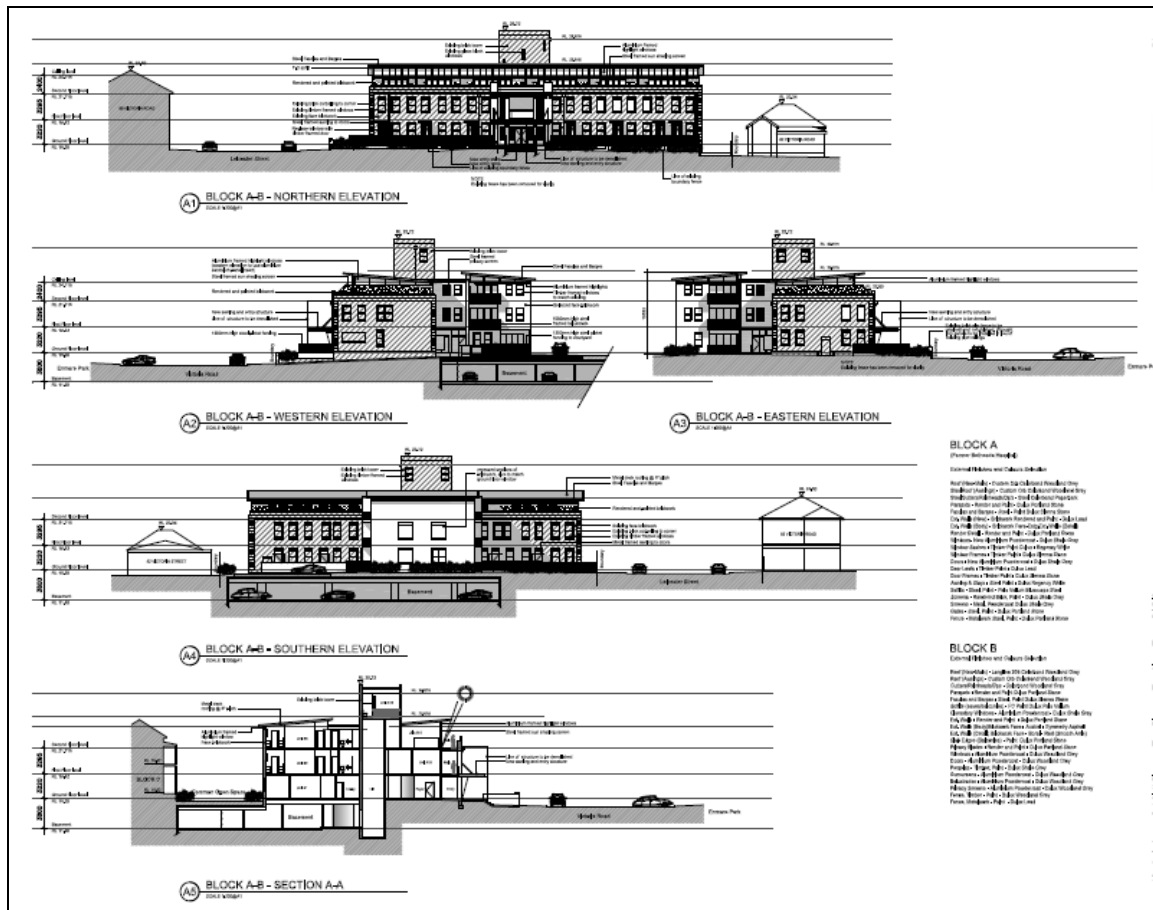


Image 17: Proposed elevations and section of Block A-B

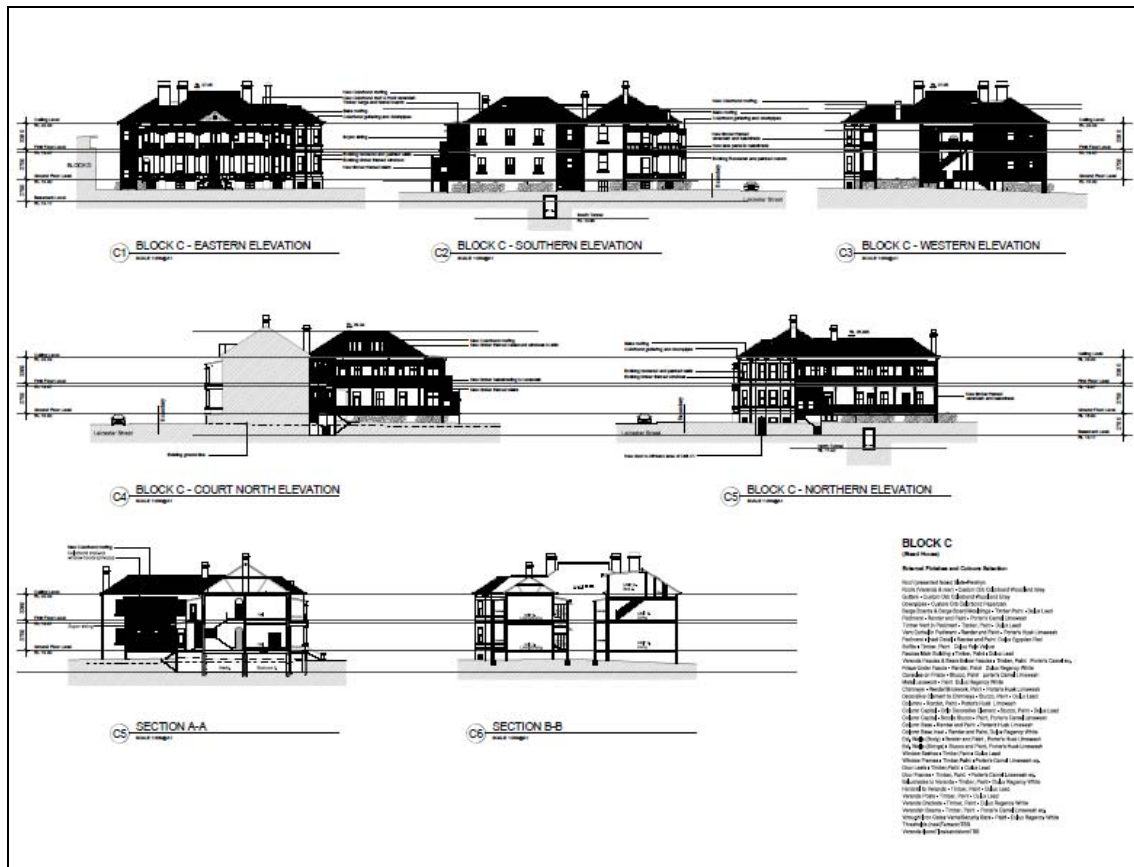


Image 18: Elevations and sections of Block C

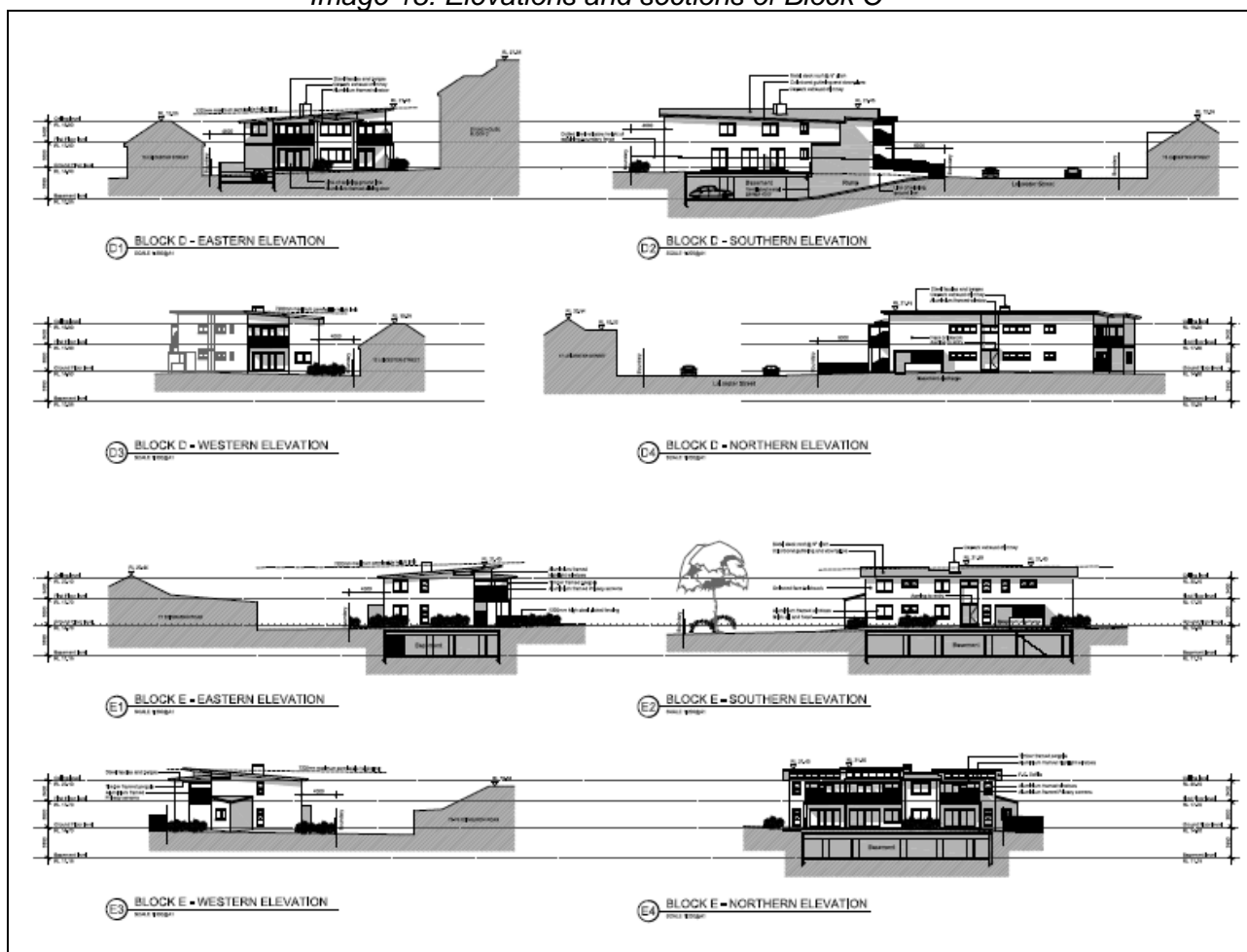


Image 19: Elevations and sections of Block D and E

3. Planning Assessment

The following planning instruments and controls apply to the development:

- (i) State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development;
- (ii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- (iii) Marrickville Local Environmental Plan 2001;
- (iv) Marrickville Development Control Plan No. 19 - Parking Strategy;
- (v) Marrickville Development Control Plan No. 27 - Waste Management;
- (vi) Marrickville Development Control Plan No. 31 - Equity of Access and Mobility;
- (vii) Marrickville Development Control Plan No. 35 - Urban Housing (Volume 2);
- (viii) Marrickville Development Control Plan No. 38 - Community Safety; and
- (ix) Marrickville Section 94 Contributions Plan 2004.

4. State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Developments (SEPP 65)

State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development (SEPP 65) prescribes ten design quality principles to guide architects designing residential flat buildings and to assist councils in assessing such developments. The ten principles relate to key design issues including the context, scale, built form and building density,

resource, energy and water efficiency, landscape design, amenity, safety/security, social impacts and aesthetics.

Residential Flat Design Code

The Residential Flat Design Code (RFDC) *“sets broad parameters for good residential flat design by illustrating the use of development controls and consistent guidelines”*. The Code provides guidelines that set 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 RFDC achieves this by providing controls to ensure that developments respond to their local context, and provide a suitable site analysis and quality design.

Whilst the majority of the provisions contained in SEPP 65 and the Design Code are generally covered by Marrickville Development Control Plan No. 35 – Urban Housing (Vol. 2) and are considered as part of the assessment presented in this report, it should be noted that the proposed development fails to satisfy one of the fundamental requirements of the RFDC namely building separation, and this aspect of a development is not specifically addressed in DCP 35.

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 is 12 metres between habitable rooms and balconies, 9 metres between habitable rooms and non habitable rooms and 6 metres between non-habitable rooms.

The application of the above ‘rules of thumb’ as contained in the RFDC is somewhat indefinite as the proposed development is to consist of both two (2) storey and three (3) storey dwellings. Nonetheless, it is important that any development satisfies the intent of the subject controls, namely that the building separation and building design proposed provide for appropriate levels of residential amenity for future occupants of the development.

On this point it is apparent that the layout and design of the proposed dwellings aims to provide reasonable levels of privacy and residential amenity despite the apparent non-compliance with the building separation control as recommended under the RFDC. To this extent it is noted that highlight windows and privacy screens are to be implemented to ensure appropriate levels of privacy are maintained for residents of the development.

Despite this, the setbacks proposed between buildings are considered minimal. For instance the separation between Stead House (Block C) and Block D is only 3 metres. In addition to this, the entry/exit from the basement of Block D is setback only 1.8 metres from Stead House. By virtue of orientation of the site, the southern side of Stead House receives minimal solar access throughout the day at the winter solstice, and the impacts of this are only exacerbated by locating a new residential flat building in close proximity to it. The majority of dwellings in Block D do not receive the required three hours of solar access as prescribed under RFDC, compromising the amenity of future occupants. Furthermore, the space between those two buildings considering their close proximity to one another is left as a pedestrian pathway which is a rather uninviting space surrounded by tall buildings. The applicant has noted that *“68% of the units receive 3 hours of sunlight between 9.00am and 3.00pm at winter solstice”* for the entire development, which is less than the 70% prescribed under the RDFC. Whilst limited solar access to existing buildings may be acceptable, new buildings need to be appropriately located to ensure they have good amenity for future occupants, and the lack of solar access to the units tends to indicate that the applicant is trying to build too much on the site.

Similarly, the separation between Stead House and Block E is approximately 5.8 metres to the building and 3.8 metres to the basement entry/exit. This is not ideal, and another consideration of this application is the impact such setbacks have on the setting/curtilage of the heritage item. It is considered that the inadequate separation undermines the setting of the heritage item. The impact of the proposed development on the setting of the heritage item is discussed in detail under Heading 6.

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

5. State Environmental Planning Policy - Building Sustainability Index (BASIX) 2004

All residential development is required to comply with the Building Sustainability Index (BASIX) which is a web based planning tool designed to assess the water and energy efficiency of new residential developments.

The applicant submitted a BASIX Certificate for the proposed development that indicates that the proposed new dwellings would comply with the minimum water, thermal comfort and energy efficient targets of BASIX.

6. Marrickville Local Environmental Plan 2001 (MLEP 2001)

(i) Zoning (Clause 10)

The subject property is zoned Residential 'A' under Marrickville Local Environmental Plan 2001 (MLEP 2001). The proposed development would comprise a number of buildings each of which would constitute a 'residential flat building' under the definitions contained within MLEP 2001. Residential flat buildings are a prohibited use under the zoning provisions applying to the land.

Notwithstanding the above, in accordance with Clause 54 of MLEP 2001, if the consent authority is satisfied that the retention of the heritage item depends on the granting of the consent, then the granting of consent for the use for any purpose is permissible even though the use would otherwise be prohibited by MLEP 2001.

(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 proposed consolidation of the two lots and strata subdivision of the development into 45 lots therefore requires development consent.

(iii) Aircraft Noise (Clause 28)

The subject property is located within the 25-30 Australian Noise Exposure Forecast (2029) Contour. The proposed dwellings 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 could be imposed on any consent granted.

(iv) Floor Space Ratio (Clause 33)

A maximum floor space ratio of 0.7:1 applies to developments (other than dwelling houses and dual occupancies) within a Residential 'A' zone under Clause 33 of MLEP 2001. The

proposed development has a floor space ratio of approximately 0.94:1 which does not comply with the subject development standard. (Whether or not the subject clause is a development standard that applies to the proposed development is open to interpretation. This issue is discussed in more detail under the heading Clause 54(1)(h) in Section 6(v) of this report).

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:

"The proposed variation to the development standard has been considered in light of the abovementioned objectives and potential environmental impacts and strict compliance is considered to be unreasonable and unnecessary for the following reasons:

1. *The proposed development application is for the adaptive reuse of 2 existing heritage*

buildings being Bethesda House and Stead House that are both located on the subject site. Construction Management Plans for both of these buildings are attached at Appendix S and T of the Statement of Environmental Effects submitted with the development application. The two Conservation Management Plans indicated that it is necessary to spend in excess of \$2,000,000 to undertake works to conserve these two buildings. As such it is necessary to provide additional residential units on the site to assist in paying for these conservation works. This equates to approximately an additional \$44,000 per unit for conservation works. This does not include the cost of adapting the buildings to residential units. The additional residential units have been achieved by constructing two new stand alone residential flat buildings being Building D to the south of Stead House and Building E to the west of Stead House containing a total of 12 units. 6 additional units (Building B) are provided at the rear of Bethesda House. Whilst the third storey addition on the top of the Bethesda House (Building A) is required so as to reduce the number of balconies required on the second storey of the northern elevation of the building. Therefore the additional floor space provides an additional 18 units. If 27 units were provided on the site the conservation works would add an additional \$74,000 per unit. This additional cost could result in the development being financially unviable.

2. *The proposed additional floor space when viewed from Victoria Road is limited to the third floor addition to the Bethesda House. The third storey is recessed from the northern boundary and is constructed from light weight materials. It is provided with a flat roof so as to reduce the bulk of this new work and to ensure that the new work is not visually read as being part of the original fabric of the building. This technique is supported by Greg Patch of Archnex Designs Pty Ltd who has prepared the Statement of Heritage Impact which is attached at Appendix D of the SEE. The third floor enables cross over units to be provided ensuring that it is not necessary to provide balconies that extend from the existing wall on the second storey of the building thereby retaining the front façade of the building.*

The new residential flat building to the south (Building D) of Stead House is two storeys in height only and is provided with a flat roof of similar design as the new roof on Bethesda House. This new building being 2 storeys in height acts as a transition from the single storey dwelling adjoining the site at No. 8 Leicester Street and Stead House which has an effective 3 storey height when compared to modern buildings. The proposed new residential flat building being Building E

which is located to the west of the Stead House will not be visible from either Leicester Street or Victoria Road and as such does not have any contribution to the streetscape. It is therefore considered that the proposed floor area does not have a negative impact on the streetscape of Leicester Street or Victoria Road furthermore the proposed demolition works of structures that are not heritage significant on the boundary of Leicester Street will result in more landscaped area presenting to Leicester Street which reinstates some of the original curtilage to Stead House.

3. *The Statement of Environmental Effects submitted with this application has provided a*

detailed analysis of solar access to adjoining properties. The proposed development

provides adequate solar access to all adjoining sites private open space with one exception. The only area where solar access to adjoining properties is compromised is to the north facing side windows of the adjoining dwelling to the south at 8 Leicester Street.

The development proposal does not provide 3 hours of solar access to the north facing

windows however, every effort has been made to maximum solar access to this dwelling. In this regard the residential flat building proposed to the south of Stead House has a 4 metre side setback and has been limited to 2 storeys in height. If a 2 storey dwelling house was located on this part of the site it would be permitted to be setback 1.5 metres from the side boundary and as such would provide more overshadowing than the proposed 2 storey residential flat building with a flat roof that is setback 4.5 metres from the side boundary. There are no living rooms on the first floor of Building D that adjoins 8 Leicester Street or in Building E that adjoins the rear of the properties that face Edinburgh Street as all living areas either address public streets or internally into the site. First floor units in Building E are orientated north east away from the rear of the adjoining property in Victoria Road however to ensure that there is no sideways overlooking from the balconies privacy screen are proposed. It is therefore considered that there are no privacy impacts from the additional floor space provided on the site.

4. *The Assessment of the proposal against the design criteria of DCP 35 indicates that the development complies with the side and rear setback areas and as such the floor space area does not result in unsatisfactory setbacks.*

5. *The new buildings being Building D and E are only 2 storeys in height and as such comply with the 7.2 metres height for development within the Residential 2(a) zone. The new floor space in the attic of Stead House is above the height limit for the 2(a) zone however, as this is located in the roof and the dormer windows do not project towards the street.*

The additional height does not increase shadows generated by the building. The additional floor on the third storey of Bethesda House does not extend above the tallest part of the building being the central tower. The new third floor is setback from the street and is constructed of light materials with a flat roof so as to reduce its visual impact on the street. Therefore this additional height is still lower than the maximum height of the existing heritage listed building and furthermore, given that this building is unlike any other buildings in the residential areas adjacent to Enmore Park this additional height will not create an adverse precedent or result in a significant change in the streetscape.

6. *The additional floor space has still allowed the site coverage to be less than 40%.*

It is considered that the proposed development is consistent with the Objects of the Act for the following reasons:

- *The development will result in the conservation of two heritage building items (Stead House and Bethesda House) that are prominent in the Victoria Road and Leicester Street streetscapes that will be undertaken as part of a private development.*
- *The adaptive reuse of these heritage buildings for medium density residential purposes will ensure their longevity into the future as general maintenance and upkeep will be undertaken by the body corporate in accordance with the detailed management plans prepared by Archnex Designs which are attached at Appendix S and T of the Statement of Environmental Effects.*
- *The additional floor space which results in the exceedance of the maximum floor space ratio for the Residential 2(a) zone is required to ensure that there is enough development yield on the site to make it financially viable to undertake the conservation works which exceed \$2,000,000.*
- *By adaptively reusing the two heritage listed buildings the materials and resources that exists in these two buildings will be retained and enhanced thus conserving natural resources.*
- *By preserving the two heritage listed buildings the cultural and social significance of these buildings will also be retained.*
- *The adaptive reuse of these existing heritage listed buildings and the new buildings proposed on the site is considered to be an orderly and economic use and development on the land that will affectively provide a viable ongoing use of the two heritage buildings and restore a residential use to the land that has been previously been used for non residential purposes.”*

The floor space proposed is considered inappropriate for the site and is well beyond the required FSR as stipulated by the Residential ‘A’ zoning. Furthermore, taking into consideration that the properties to the east and west of the site are residential in nature and are of a modest scale (i.e., predominantly single storey dwelling houses), the intensity of the proposal which extends across the entire site is considered an overdevelopment and contrary to the intent of the floor space controls.

As noted above, the applicant has indicated that the additional floor space is required to cover the costs of works proposed to conserve the heritage items. Overall it is difficult to ascertain what is considered ‘conservation’ works and ‘maintenance’ works. Much of the works proposed for instance to Bethesda House are maintenance based with repair works such as repairing cracks and painting, and it is considered that substantial capital expenditure is not required to conserve its significance as the existing condition of the building is quite reasonable as it was only constructed in the 1950s. Furthermore, in conserving the heritage items, one must have regard to the works proposed and whether the proposed additions would compromise the significance of the heritage items. As discussed in detail below (Heading 6(iv)), the proposed additions to the existing building and new buildings on the site and their proximity to existing heritage items is considered unsympathetic and compromises the heritage significance of the items and their setting.

The prominence of the third floor addition to Bethesda House results in a building which is visually dominant and out of character for the locality. This additional level is not setback

sufficiently from the outer edges of the existing building and becomes a dominant element when viewed from the surrounding streets. Whilst it is noted that the additional floor is setback from the front façade, it is not setback from the side facades of the existing building. Given the lack of such a setback, the upper level will be clearly visible when viewed from the public domain and this is not considered to be an appropriate response to the streetscape.

The addition of Block D only 3 metres away from Stead House compromises the setting of the heritage item and the level of solar access achieved to the adjoining dwelling house at 10 Leicester Street. Furthermore, Block D receives minimal solar access resulting in a development which has poor amenity for future occupants. It is noted that in accordance with the requirements of DCP 35, the height of adjoining buildings, solar access to adjoining dwellings and street context determine the ultimate height achievable. The height of Block D would adversely impact on solar access to the adjoining dwelling house at 10 Leicester Street.

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 exceedance 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 and on the site particularly through the inclusion of two new residential flat buildings on the site, a three storey addition to the rear of Bethesda House and the addition of two driveways on Leicester Street. This ultimately compromises the heritage significance of the items on the site (this aspect of the proposal has been discussed in detail below under Heading 6(v)).

(v) Heritage (Clauses 47 to 55)

The subject property contains two (2) heritage items listed under Schedule 5 of Marrickville Local Environmental Plan 2001 (MLEP 2001), namely:

- Stead House at 12 Leicester Street; and
- Bethesda House at 80 Victoria Road.

The subject property is also located within the vicinity of two (2) heritage items, namely:

- Enmore Park (Enmore Park and entry gates and Port Jackson Fig Trees); and
- Bourne Street, Juliett Street and Enmore Road between Murray and Bourne Streets (Brick paving).

The site is also located within the Enmore Heritage Conservation Area under Marrickville draft Local Environmental Plan No. 111.

In accordance with Clause 48 of MLEP 2001, which relates to the protection of heritage items, heritage conservation areas and relics, when determining a development application required by this clause, the consent authority must take into consideration the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item.

Particular consideration is given to the heritage significance of the item as part of the environmental heritage of the Marrickville local government area, the impact that the proposed development will have on the heritage significance of the item and its setting,

including any landscape or horticultural features as well as the measures proposed to conserve the heritage significance of the item and its setting.

The application was referred to Council's Heritage and Urban Design Advisor who raised the following concerns regarding the proposed development in relation to the above LEP heritage considerations:

"The proposal involves the adaptive reuse of Stead House and Bethesda Hospital as residential flat buildings, and the construction of two additional buildings on the amalgamated site with underground car-parking.

General Site Planning:

The site has been filled with buildings. There is no design consideration in their placement or shape, other than maximisation of building mass on the site. Site planning is therefore not sympathetic to the significant items. Additions of built form to Stead House, other than restoration cannot be supported as they are not proven to be necessary to the conservation of the item, in fact they are intrusive. The number of apartments on the site exceeds a comfortable amount by a total of 11 (2 in Block E, 2 in Block D, 3 in Block B, and 4 in Block C). The use of the semi submerged basement area as habitable rooms is not considered appropriate due to the scale of work involved, and the poor quality of the resulting spaces having limited light air and outlook, with the exception of the Media rooms, and Unit C1, bedroom 2.

Heritage Documentation:

The historic research and documentation is very thorough. The CMP is a very helpful tool to direct effective work at the site. However some of the policies of the CMP have not been carried through to the proposal.

Design Quality:

Building and site planning are focused on maximisation of saleable floor area, and not the internal or external quality of the existing or new buildings. The site should be a collection of well designed spaces and structures.....

Streetscape:

The streetscape is improved by the removal of the solid fence and tall planting to the south of Stead House, and the existing buildings between Stead and Bethesda. The heritage item is bookended by a car park entry on one side and a very close two storey building on the other side.

Setting:

The elevations of Block D are deceptive. They do not convey Block D's very close proximity to Stead House. The gap between the two buildings is insufficient at only 3 metres for a distance of 17 metres, and only 1.8 metres separation where the basement stairs discharge. The separation is not respectful of the heritage item.

The setting of Stead House is also reduced by new additions to the rear (half of units C5 & C10, and bathrooms for units C3 & C8), and the size and proximity of Block C."

Negative impacts-Stead House:

- Proposed internal planning, density of units, allocation of uses to rooms, and placement of services is not considered appropriate or compliant with the CMP. Changes are being driven by maximisation of unit numbers.*
- There is only limited/nil access to the front verandah from Units C6 & C1, via french windows.*

- *Enclosure of the north facing proposed verandah detracts from the reconstructed verandah.*
- *The internal planning of units is poor. Living room sizes and bedroom sizes are often incompatible. This will lead to requests for internal changes at a later date, and increase removal of fabric. Unit sizes are required to be more generous in keeping with the scale of the rooms. Poor internal planning will prompt owners to make changes at a later date. Reason: Does not comply with Policy K5.1, K3.2 & K3.3 of the CMP.*
- *Enclosure of south west wing balcony, addition of ground and first floor level bathrooms within internal courtyard, and removal of rear chimneys.*

Basement Level:

- *Appears very enclosed and structural work is extensive. I cannot support bedrooms at this level (except for C1, Bed 2). I also cannot see the financial benefit as this would be one of the most expensive components of the project yet it does not add to the number of units.*
- *Stairs up to garden level are not drawn correctly (a solid wall is drawn across the bottom of them).*
- *Stairs down to this level from units C1 & C2 are placed in valuable floor areas adjacent to external windows. This is not a wise use of the floorplate.*

Ground Level:

The addition of the boxed in area inside the “U” for Unit C3 is not acceptable. I believe Unit C1 and C3 should be amalgamated into a large 3 or 4 bedroom unit. The verandah is acceptable. The addition of the enclosed sections (on the rear of the Southwest wing & the north side verandah are also considered to detract from the building’s significance. Additions are not considered necessary to the conservation of this building.

Setting:

The setting is very restricted by the proximity of other buildings, and the landscape plan is merely a conglomeration of leftover spaces with pathways through the middle. Hedging around both Leicester Street driveways will obscure safe viewing of the footpath. Pathways are only 1 metre wide – this is insufficient for adequate passing space for the high volume of residents.”

The subject property is zoned Residential ‘A’ under Marrickville Local Environmental Plan 2001 (MLEP 2001). The proposed development would comprise a number of buildings each of which would constitute a residential flat building under the definitions contained within MLEP 2001. Residential flat buildings are a prohibited use under the zoning provisions applying to the land.

Notwithstanding the above, in accordance with Clause 54 of MLEP 2001, if the consent authority is satisfied that the retention of the heritage item depends on the granting of the consent, then the granting of consent for the use for any purpose is permissible even though the use would otherwise be prohibited by MLEP 2001. Compliance with the provisions of Clause of 54 of MLEP 2001 is discussed in detail below.

Clause 54 of the Marrickville Local Environmental Plan contains conservation incentives relating to Items of Environmental Heritage. That clause reads as follows:

Clause 54 of MLEP 2001 states:

- “(1) Consent may be granted for the use for any purpose of a building that is a heritage item, or of the land on which any such item is erected, even though the use would otherwise be prohibited by this plan, if the consent authority is satisfied that the retention of the building that is a heritage item depends on the granting of consent and:*
- (a) the condition of the heritage item is such that the use of the item for any purpose which is permissible in the zone would be impractical or undesirable, and*
 - (b) the heritage item requires a substantial amount of capital expenditure (other than maintenance work) in order to conserve its heritage significance, and*
 - (c) the proposed use is in accordance with a conservation management plan which has been endorsed by the Council, and*
 - (d) the cost of the conservation work identified in the conservation management plan is such that there is no reasonable possibility that any of the uses which are permissible in the zone would be economically viable for the current or any future owner, and*
 - (e) the granting of consent to the proposed use would ensure that all necessary conservation work identified in the conservation management plan is carried out, and*
 - (f) the proposed use, if approved, would not affect the heritage significance of the heritage item or its setting, and*
 - (g) the proposed use would not adversely affect the amenity of the surrounding area, and*
 - (h) in all other respects the proposed use complies with the provisions of this plan.*
- (2) When considering an application for consent to erect a building on land on which a heritage item is to be retained and conserved, the consent authority may exclude the floor space of the building from its calculation of parking spaces for the proposed development if it is satisfied that:*
- (a) any proposed car parking area would not adversely affect the heritage significance of the item, and*
 - (b) any proposed car parking area would not adversely affect the amenity of the area and its streetscape qualities, and*
 - (c) the conservation of the item in accordance with subclause (1) depends on the making of the exclusion.”*

As the proposed development relates to two (2) heritage items, the consent authority must be satisfied that the proposed development of each item satisfies **all** of the above-described matters of consideration. To this extent, concern is raised that the proposed developments do not satisfy the relatively onerous requirements prescribed under Clause 54 of MLEP 2001. Non-compliance with any one of the prescribed criteria under Clause 54 results in the proposal being a prohibited form of development. Each of those clauses is dealt with in turn below.

Clause 54(1)(a)

- (a) the condition of the heritage item is such that the use of the item for any purpose which is permissible in the zone would be impractical or undesirable..*

Clause 54(1)(a) requires the applicant to demonstrate to the consent authority's satisfaction that the use of the item for any purpose which is permissible under the zone is impractical or undesirable. As such, the consent authority requires evidence that the condition of the existing heritage items is such that the use of the item for any purpose which is permissible in the zone would be impractical or undesirable.

Under Clause 10 of MLEP 2001 uses which are permissible on land zoned Residential 'A' are as follows:

bed and breakfast accommodation, boarding houses containing not more than ten residents, child care centres, community facilities, dual occupancies, dwelling houses, educational establishments, hospitals, places of public worship, public buildings and recreation areas.

The applicant has attempted to address the subject clause however, has only addressed the permissibility and practicality of only some of the permissible uses albeit in some cases quite briefly. The applicant provided a statement from a child care centre operator and a boarding house provider indicating that the costs of works to restore the heritage items render the buildings impractical for those particular permissible uses. The boarding house provider did not provide a costs/benefit analysis to illustrate the impracticality of utilising the heritage items as boarding houses. The Statement of Environmental Effects indicates that Stead House would require substantive structural changes to make it appropriate for a place of worship which may compromise the heritage significance of the item. However, information to demonstrate the impracticality of Bethesda House being converted into a place of worship was not provided.

The applicant goes on further to indicate that that it would be impractical to convert Stead House to an educational establishment "*due to poor internal access, BCA fire upgrade requirements and it would be difficult to balance the requirement for onsite parking with open space playground requirements*"

The applicant did not provide any evidence to demonstrate that it would be impractical or undesirable to use Bethesda House as an educational establishment. It is noted that the broad definition of "educational establishment" under MLEP 2001 includes museums and galleries which would negate the open space requirement identified above.

The applicant has also indicated that the site's former owner, the Salvation Army, have indicated that as a non-profit organisation, having regard to the upgrades required to the building (i.e fire upgrades) and additions required to the building to be able to provide additional facilities, the site had become unviable for use as a nursing home facility. This in essence, does not illustrate that a privately run hospital may not be viable and this aspect of impracticality or desirability has not been demonstrated pursuant to the requirement of the clause.

It is noted above that all of the justification relating to the impracticality of utilising Stead House and Bethesda House relates to both allotments and buildings being used in conjunction with one another.

There is no requirement to consolidate the lots as proposed. The site currently contains 2 lots whereby Bethesda House is located at 80 Victoria Road and Stead House is located on a separate allotment at 12 Leicester Street. There are no planning controls preventing the heritage items from being developed/used independently of each other. This in turn opens up other opportunities for development on the land. For instance the applicant has proposed a two storey residential flat building known as Block D on the south eastern corner of 12 Leicester Street. The applicant hasn't investigated and provided evidence of the practicality of subdividing the south eastern portion of the site from the rest of the property and constructing a dwelling house or dual occupancy development on that portion which has an area of approximately 450sqm. Such a lot would be consistent with the predominant subdivision pattern found in Leicester Street and would reinforce the predominant pattern of single dwellings within the street which would be of a compatible scale with surrounding

development. This would enable Stead House and its curtilage to remain relatively intact without compromising its heritage significance by proposing a residential flat building only 3 metres from the building (as proposed as part of this development application).

The practical uses of the subject heritage items have not been fully investigated. For instance, the zoning provisions applying to the land permit Stead House to be utilised as a bed and breakfast or even as a dwelling house. Those options have not been investigated. Having regard to the size and internal layout of Bethesda House, the range of permissible uses expands significantly and the building could be used as a child care centre, community facility, educational establishment, hospital, place of public worship or a public building. The practicality of such uses has not been adequately investigated as required under Clause 54(1)(a).

Stead House and Bethesda House could be utilised for different uses, independently of each other. This aspect of permissibility has not been investigated by the applicant.

It is noted that any use of the subject buildings would require the provision of upgrade/maintenance works. The condition of the subject buildings are reasonable, however, it is considered the applicant has not demonstrated that the condition of the items are such that the use of the buildings for any purpose which is permissible in the Residential 'A' zone would be impractical or undesirable.

Clause 54(1)(b)

- (b) the heritage item requires a substantial amount of capital expenditure (other than maintenance work) in order to conserve its heritage significance*

Clause 54(1)(b) requires the applicant to demonstrate to the consent authority's satisfaction that the heritage item requires a substantial amount of capital expenditure in order to conserve its heritage significance.

The applicant has indicated that conservation works for Bethesda House would cost approximately \$620,000 whilst Stead House would require approximately \$1.4 million in conservation works.

Overall it is difficult to ascertain what is considered 'conservation' works and 'maintenance' works. Much of the works proposed for instance to Bethesda House are maintenance based with repair works such as repairing cracks and painting, and it is considered that substantial capital expenditure is not required to conserve its significance as the existing condition of the building is quite reasonable as it was only constructed in the 1950s.

Clause 54(1)(c)

- (c) the proposed use is in accordance with a conservation management plan which has been endorsed by the Council*

Clause 54(1)(c) requires the proposed use to be in accordance with a conservation management plan endorsed by the Council. Council's Heritage and Urban Design Advisor has reviewed the Conservation Management Plan (CMP) and considers the proposed development does not fully comply with the intent of the CMP as the proposal compromises the heritage significance of the listed items via unsympathetic alterations and additions as well as the addition of new buildings within the curtilage of the heritage items. An extract of the comments provided by Council's Heritage and Urban Design Advisor are reproduced below:

- "Landscape and site planning:
Landscaping is a series of "through" spaces, leftover after maximization of the built footprint, rather than areas which relate to or contribute to the use and setting of the Heritage Items (or communal space for future occupants). No private garden areas are associated with the 10 units proposed in Stead House, however many units in new buildings have private outdoor garden areas.

Non compliant with:
Conservation Management Plan (27/06/10), by Archnex Designs

Policy K4.2: "Any new structures **required** on the site; their design and siting must be considered in order to **maintain** the visual setting of the house".

Policy K12.3: "Advice should be sought from a consultant specialising in heritage gardens and landscapes to guide the conservation of significant garden elements, and the restoration and interpretation of the earlier cultivation of the site.

- Design: Building forms are driven by maximisation of yield and profit, not aesthetic or heritage values. This lowers the quality of the setting and therefore impacts on the significance of the Heritage Items.

Non compliant with:
Conservation Management Plan, 12 Leicester Street Marrickville - Stead House (27/06/10), by Archnex Designs

Policy K4.2, Guidelines: "Any additional floor space **required** to the extend buildings should be provided in sympathetically designed two storey structures at the rear and sides of the building, **maintaining** appropriate sight lines and setting".

MDCP 35, 2D: Heritage, C1:"Retain and refurbish any items of environmental heritage, and design adjacent new development so as not to diminish the significance of the item."

- Insufficient curtilage around Heritage Items, particularly Stead House (3 metre side setback for a length of 17 metres): by reducing the footprints of introduced buildings, and improving site planning, the setting of items could be significantly improved.

Non compliant with:
Marrickville Development Control Plan No. 35, 2D: Heritage O1 "To conserve those items of environmental heritage identified in the Marrickville LEP 2001, including the maintenance of an appropriate visual setting."

- Reduction in significance: Unnecessary additions to the items detract from their significance.

Non compliant with:

Conservation Management Plan, 12 Leicester Street Marrickville - Stead House (27/06/10), by Archnex Designs

Policy K3.2: "Future changes to fabric, form and associated structural elements should respect its visual significance and architectural integrity of the place and respond accordingly"

Policy K3.3: "Conservation of the place should be undertaken in the context of compatible uses for the building, uses that respect and utilise the current scale, form and internal configuration of the building with minimal external changes to the structure or external envelope"

- Degradation of the quality of internal spaces due to: the poor allocation of new uses to certain rooms; contorted planning; and excessive subdivision of space (due to the proposed yield of 10 units) requiring the permanent and destructive intrusion of a high degree of services such as plumbing, staircases, wet areas, air-conditioning units, excavation, and reduced ability to comprehend the original scale, arrangement and character.

Non compliant with:

Conservation Management Plan, 12 Leicester Street Marrickville - Stead House (27/06/10), by Archnex Designs

*Policy K5.1: "During preparation of schemes for future uses for the building, care should be taken to **respect the composition and character of the existing interior spaces**, external openings, stylistic features and general character and form of the building."*

*Policy K5.1 Guidelines: "It is permissible to remove the partition walls in rooms to facilitate adaptive re-use of the building – maintaining the ceiling layout and retention of nibs – but there should be **no other non-reversible subdivision** or amalgamation of the original spatial configuration."*

*Policy K5.2 "New uses that are selected for any particular internal space should adopt the principle of 'loose fit' and **reversibility** whereby the functional and spatial requirements of each use are tailored to suit the available space, by contrast to an approach that **permanently alters** the building to suit the requirements of the new use."*

Policy K5.2 Guidelines "New uses which require excessive servicing or other special features, may not be appropriate if the design of the service equipment impacts on the

character and significance of the fabric and spaces of the house.”

- *2 double carriageway entries to basement car parking, bookend the streetscape presentation of the building. This is commensurate with an enormous shopping centre and undermines the integrity of the building’s setting.*

Non compliant with:

Conservation Management Plan, 12 Leicester Street Marrickville - Stead House (27/06/10), by Archnex Designs

Policy K9.1: “The location and presentation of new services and utilities within the building should generally remain subservient and respectful to the character and presentation of the existing building.”

Policy K5.2 Guidelines “New uses which require excessive servicing or other special features, may not be appropriate if the design of the service equipment impacts on the character and significance of the fabric and spaces of the house.”

- *The CMP for Stead House cannot be endorsed by Council because many of the policies do not sufficiently protect the item.”*

A Conservation Management Plan should seek to protect the heritage items and their significance and guide the design of future development. However an analysis of the subject CMP tends to indicate that it was developed in response to the proposed development, and this provides inadequate protection for the heritage items as discussed previously through the addition of unsympathetic additions and new buildings within the curtilage of the existing heritage items. Therefore the proposed development fails to satisfy Clause 54(1)(c) of MLEP 2001 as the Conservation Management Plan does not sufficiently protect the heritage items on the site.

Clause 54(1)(d)

- (d) *the cost of the conservation work identified in the conservation management plan is such that there is no reasonable possibility that any of the uses which are permissible in the zone would be economically viable for the current or any future owner...*

Similarly, Clause 54(1)(d) requires the applicant to demonstrate to the consent authority’s satisfaction that the cost of the conservation work identified in the conservation management plan is such that there is no reasonable possibility that any of the uses which are permissible in the zone would be economically viable for the current or any future owner. As identified above in accordance with the requirements of Clause 54(1)(a), the costs of conservation are not prohibitive of the future development of the site for uses which are permissible in the zone as all permissible uses/development options for the site have not been investigated.

Furthermore the costs provided do not indicate that the Bethesda House at 80 Victoria Road requires a substantial amount of capital expenditure in order to conserve its heritage significance and concern is raised as to the likelihood that any development for this particular

building which was constructed in the 1950s and is in reasonable condition would satisfy this clause.

Clause 54(1)(e)

- (e) the granting of consent to the proposed use would ensure that all necessary conservation work identified in the conservation management plan is carried out...*

Clause 54(1)(e) notes that the granting of consent to the proposed use would ensure that all necessary conservation work identified in the CMP is carried out. It is noted that whilst the proposed development may ensure that the conservation work is carried out, it is considered that the proposal is an overdevelopment of the site and impacts on the heritage item and its setting and the proposal for a permissible use on the site may be more appropriate.

The works proposed as part of the development application compromises the significance of the subject heritage items and as such, the proposed development is inappropriate for the subject site. Furthermore, as noted above by Council's Heritage and Urban Design Advisor, it is considered the proposed works such as the erection of new buildings on the site as well as additions to the heritage items results in a development which compromises the heritage significance of the items.

Clause 54(1)(f)

- (f) the proposed use, if approved, would not affect the heritage significance of the heritage item or its setting*

Clause 54(1)(f) requires the proposed use, if approved, would not affect the heritage significance of the heritage item or its setting.

To this extent, concern is raised with proposed additions to Bethesda House. Bethesda House is currently a two (2) storey building and as part of the subject development it is proposed to add a third and to a lesser extent a fourth storey to the existing building. Furthermore, a three (3) storey extension is proposed at the rear of the existing building. Concern is raised with the size of this additional floor plate and the impact it will have on the general appearance of this heritage significant building and the streetscape generally. It is considered that if this additional level is to be supported as part of any development scheme on the site, it must be setback sufficiently from the outer edges of the existing building to ensure it is a recessive element that is somewhat screened by the parapet of the existing building when viewed from the surrounding streets. While it is noted that the additional floor is setback from the front façade, it is not setback from the side facades of existing building. Given the lack of such a setback, the upper level will be clearly visible when viewed from the public domain and this is not considered to be an appropriate response to the streetscape. The existing building is of a height, bulk and scale which exceeds that of its neighbours and given the limited development potential afforded by zoning provisions that apply to the subject site and the properties which surround the site, this is unlikely to change in the foreseeable future. As such, the proposed additional floor should be setback a sufficient distance from the outer edges of the existing building to reduce its visibility from both Victoria Road and Leicester Street thereby reducing the perceived bulk and scale of the overall development.

Further concerns are raised having regard to the removal of first floor windows on the Victoria Road frontage to accommodate internal balconies. The removal of some of these windows compromises the integrity of the heritage item and its presentation to Victoria Road.

The proposed additions the Bethesda House, Stead House and the additional two residential flat buildings proposed for the site are considered to compromise the significance of the heritage items and their setting. The new additions to existing buildings and the proposed new residential flat buildings result in minimal separation between buildings on the site which are contrary to the provisions contained in the Residential Flat Design Code. Landscaped area/paths are merely narrow areas in between buildings.

Particular concern is raised having regard to the separation between Stead House and the proposed new residential flat buildings identified as Blocks D and E. Stead House is separated from Block E by 5 metres whilst Block D is separated from Stead House by only 3 metres to the new building and only 1.8 metres from the basement stairs associated with the new building.

Stead House has a sense of grandeur about it and the proposal to have residential flat buildings less than 3 metres away from the heritage item would severely diminish its curtilage and compromise its setting.

It is noted that the proposed additions and additional buildings on the site would be contrary to the intent of the Conservation Management Plan which is to conserve the heritage items and their setting.

The proposed development scheme is likely to affect the heritage significance of the item and its setting and fails to satisfy the requirements prescribed under Clause 54(1)(f) of MLEP 2001.

Clause 54(1)(g)

(g) the proposed use would not adversely affect the amenity of the surrounding area

It is considered the proposed development scheme would adversely affect the amenity of the surrounding area. The applicant proposes the provision of two driveways off Leicester Street. Particular concern is raised with regard to the driveway located closest to 10 Leicester Street. The proposed driveway entry to the basement from this point would impact on the amenity of 10 Leicester Street. Furthermore, Marrickville Development Control Plan No. 35 - Urban Housing (Volume 2) prescribes that a minimum of 2 hours of solar access be maintained to principal living areas and principal area of open space. The shadow diagrams presented with the application tend to illustrate that solar access to the north facing windows along 10 Leicester Street have been compromised. Rooms to which these windows relate have not been identified. The provision of room use and elevational shadow diagrams including the provision of March/September shadows need to be provided to ascertain solar impacts to 10 Leicester Street.

For the reasons outlined it is considered that the proposed development would adversely affect the amenity of the surrounding area and thereby fails to satisfy Clause 54(1)(g) of MLEP 2001.

Clause 54(1)(h)

(h) in all other respects the proposed use complies with the provisions of this plan

The wording of the above clause creates a number of interpretation issues. A literal interpretation of the clause would mean that a proposed use would need to otherwise comply with all other relevant provisions under Marrickville Local Environmental Plan 2001 for that form of development.

In terms of development standards the following provisions of MLEP 2001 would be relevant to the proposed development:

- (i) Clause 33 – Floor space ratios; and
- (ii) Clause 64(2) – Adaptable dwellings.

Floor space ratio

A maximum floor space ratio of 0.7:1 applies to developments (other than dwelling houses and dual occupancies) within the Residential 'A' zone under Clause 33 of MLEP 2001. The proposed development has a floor space ratio of approximately 0.94:1 which exceeds the subject control.

A literal interpretation of Clause 54(1)(h) would mean that as the proposed use does not comply with the floor space ratio control under Clause 33 of MLEP 2001 the proposed development was therefore prohibited regardless of whether it satisfied all the other matters for consideration under Clause 54(1) of MLEP 2001.

It is uncertain as to whether or not "*the provisions of this plan*" referred to in Clause 54(h) can be considered in a similar manner to development standards or whether a non compliance with one or more particular provision results in a proposed use not satisfying the requirements of Clause 54(h) and consequently resulting in a proposed development being prohibited.

In relation to the floor space ratio control, the following question could be posed:

"Would a well founded SEPP 1 objection to the subject floor space ratio development standard control result in there being compliance with the requirement in Clause 54(1)(h)?"

The applicant contends that the floor space ratio standard in Clause 33 of MLEP 2001 is a development standard that applies to the proposed development. In other words the applicant has interpreted Clause 54(1)(h) to mean that a proposed use will "otherwise comply" with the plan so long as a relevant development standard (in this case, the FSR provision in Clause 33) is supported by an objection under State Environmental Planning Policy No. 1 (SEPP 1) that the consent authority is satisfied is well founded.

The applicant's SEPP 1 objection to the floor space ratio control was discussed in detail in Section 6 (iv) of this report and for the reasons detailed in that section the applicant's objection was not considered to be well founded or worthy of support.

Adaptable dwellings

Clause 64 (2) requires at least 10% of the total number of dwellings in a residential flat building containing 10 or more dwellings to be designed in accordance with Australian Standard AS 4299 – Adaptable Housing. A minimum of five (5) adaptable dwellings would be required for the proposed development.

Four (4) adaptable dwellings are proposed as part of the development application which does not comply with the subject development standard. No SEPP 1 objection in relation to the non compliance with the subject development standard was submitted with the development application.

Conclusion

The proposed development fails to satisfy the maximum floor space ratio (FSR) prescribed under Clause 33 of MLEP 2001 and the number of adaptable dwellings required for the

development under Clause 64(2) of MLEP 2001 and as such the proposal does not comply with the provisions of Clause 54(1)(h) of MLEP 2001.

(vi) Protection of Trees (Clause 56)

Clause 56 of MLEP 2001 concerns the protection of trees under Council's Tree Preservation Order.

There are a number of trees on the property covered by Council's Tree Preservation Order. The application was referred to Council's Tree Management Officer who provided the following comments:

"The plans as submitted are not supported due to the likely impact to Tree 16 - a Eucalyptus robusta (Swamp Mahogany). This tree is located on the Victoria Road frontage and is the most prominent tree on the site. The tree is 14 metres in height, has a canopy spread of 8 metres and a DBH of 400mm. The Tree Protection Zone (TPZ) has been calculated at 4.8 metres. This specimen has been assessed as having a Long Life Expectancy and has been given a High significance rating.

The removal of Tree 16 is not supported nor is any work that is likely to have a detrimental impact on this tree.

The Landscape Plan indicates the retention of Tree 15 - a Eucalyptus robusta (Swamp Mahogany) despite the assessment of poor condition and a declining crown with a high percentage of epicormic growth throughout. Consideration should be given to the removal of this tree if the result will be greater setbacks and reduced impacts on Tree 16.

The current proposal is not supported in relation to –

The proposed location of the ramp within the Structural Root Zone (SRZ) of Tree 16. Work within the (SRZ) of this tree is not likely to be supported. Insufficient information has been provided in relation to the proposed ramp. A long section is required showing existing ground levels and proposed ramp levels. Non invasive root mapping would be required to indicate suitable locations for the ramp piers. It is considered unlikely that an AQF Level 5 Arborist will be able to support a ramp in this location.

There is insufficient information to make an assessment in relation to –

The impacts of the proposed works (terracing, walls, stairs etc) within the Tree Protection Zone (TPZ) of Tree 16. Existing and proposed levels within the TPZ have not been provided. The applicant is required to engage an AQF Level 5 Arborist to provide information in relation to setbacks and suitable design to limit impacts in relation to Tree 16. Reduction in terrace sizes and design solutions such as partially canter leveraging the terraces may result in an acceptable design.

Other works are supported with conditions required to be included in any determination."

As noted above, whilst Council's Tree management Officer has agreed to the removal of a number of trees from the subject site, inadequate information has been submitted with the application to ensure Tree 16 located at the front of the site is protected.

(vii) Waste Management (Clause 58)

Clause 58 of MLEP 2001 requires consideration of waste management for any proposed development. There is considered to be sufficient area within the site to allow for the storage

of garbage bins. A Site Waste Management Plan in accordance with Council's requirements was submitted with the application and is considered to be adequate.

(viii) Energy, Water and 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. The proposed development is considered to have been designed in an energy efficient manner. A condition should be imposed on any consent granted requiring the provision of energy efficient fixtures in accordance with Council's requirements.

(ix) 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 subject site does not contain any significant native vegetation however 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.

(x) 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 need 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 areas, parking areas and building entrances, and*
- (c) *the visibility and legibility of building entrances from streets, public areas or internal driveways.*

The layout and design of the buildings provided in the subject development scheme appear to provide appropriate levels of community safety with casual surveillance provided over both street frontages and the internal paths to be provided on the site.

(xi) Accessibility (Clause 64)

Clause 64 of MLEP 2001 requires consideration to be given to accessibility before granting development consent. This issue is discussed in more detail later in the report.

Clause 64 (2) requires at least 10% of the total number of dwellings in a residential flat building containing 10 or more dwellings to be designed in accordance with Australian Standard AS 4299 – Adaptable Housing. A minimum of five (5) adaptable dwellings would be required for the proposed development.

Four (4) adaptable dwellings are proposed as part of the development application which does not comply with the subject development standard.

7. Marrickville Development Control Plan No. 35 - Urban Housing (Volume 2) (DCP 35)

The following is an assessment of the proposed development under the relevant controls contained in Marrickville Development Control Plan No. 35 – Urban Housing (Volume 2) (DCP 35):

(i) Solar Access, Ventilation, Energy and Water Efficiency

DCP 35 requires that:

“At least 65% of new dwellings on site shall provide living area windows positioned within 30 degrees east and 20 degrees north to allow for direct sunlight for at least 2 hours between 9.00am and 3.00pm on 21 June.”

29 of the 45 proposed dwellings, which represents approximately 64% of the dwellings have living room windows positioned within 30 degrees east and 20 degrees north and as such does not comply with the above requirement.

DCP 35 also requires that:

“Direct solar access to windows of principal living areas and the principal area of open space of adjacent dwellings, must not be reduced:

- (a) *to less than 2 hours between 9.00am and 3.00pm on 21 June; and*
- (b) *where less than 2 hours of sunlight is currently available in March/Sept will be considered in the assessment of the proposal. The sunlight available between 9.00am and 3.00pm on the 21 March/September, is not to be reduced.”*

The proposed development does not comply with Council's solar access controls. The shadow diagrams presented with the application illustrate that solar access to the north facing windows along 10 Leicester Street have been compromised. Rooms to which those windows relate have not been identified. The provision of room use and elevational shadow diagrams including the provision of March/September shadows need to be provided to ascertain solar impacts to 10 Leicester Street. Diagrams provided indicate 10 Leicester Street will not receive a minimum of 2 hours of solar access severely compromising the amenity of this property.

(ii) Stormwater, Detention and Sediment Control, Flooding and Site Contamination

The application was referred to Council's Development Control Engineer who has recommended appropriate conditions being imposed on any consent granted addressing the above issues of relevance to the proposal.

(iii) Floor Space Ratio and Site Coverage

DCP 35 prescribes a maximum floor space ratio and maximum site coverage control for the subject development. A table of compliance with the relevant controls is provided below:

| DCP 35 (Volume 2) | Required | Proposed | Complies |
|-------------------|----------|------------------|----------|
| Floor Space Ratio | 0.7:1 | 0.94:1 (approx.) | No |
| Site Coverage | 40% | 40% | Yes |

As pointed out above, the development fails to satisfy the maximum FSR permitted under DCP 35 (this issue has been discussed under Heading 6(iv) above).

(iv) Building Height and Setbacks

DCP 35 prescribes a maximum height of 7.2 metres for multi-unit housing developments in the Residential 'A' zone. DCP 35 does not prescribe a maximum height for residential flat buildings in the Residential 'A' zone as such a form of development is not envisaged under the zoning provisions applying to the land.

However, in considering the merits of any development scheme proposed for the site it is considered that the maximum height of 7.2 metres should be used as a guide as that control guides development on the lots adjoining and surrounding the site.

Bethesda House is currently a two (2) storey building and as part of the subject development it is proposed to add a third and to a lesser extent a fourth storey to the existing building. Furthermore, a three (3) storey extension is proposed at the rear of the existing building. Concern is raised with the size of this additional floor plate and the impact it will have on the general appearance of this heritage significant building and the streetscape generally. It is considered that the proposed additional level is not setback sufficiently from the outer edges of the existing building and would become a dominant element when viewed from the surrounding streets. Whilst it is noted that the additional floor is setback from the front façade, it is not setback from the side facades of existing building. Given the lack of such setback, it is considered that the upper level would be clearly visible when viewed from the public domain. This is not considered to be an appropriate response to the streetscape (reaching a height of 10.1 metres).

Whilst it is noted that the existing building is of a height, bulk and scale which exceeds that of its neighbours, given the limited development potential afforded by zoning provisions that apply to the subject site and the properties which surround the site, this is unlikely to change in the foreseeable future. The lack of a sufficient setback from the outer edges for the second floor of the existing building increases the proposal's visibility from both Victoria Road and Leicester Street and increases the perceived bulk and scale of the overall development. As such the increased height of Bethesda House is considered unsatisfactory.

DCP 35 outlines minimum front, side and rear boundary setbacks for residential flat developments. A table detailing compliance with these standards is outlined below:

| DCP 35 (Vol.2) | Minimum Required | Provided | Compliance |
|-----------------------|-------------------------|--------------------------|-------------------|
| <i>Front Setback</i> | 6.0 metres | 6 metres and/or existing | Yes |
| <i>Side Setback</i> | 4.0 metres | 4 metres | Yes |
| <i>Rear Setback</i> | 4.0 metres | 4 metres | Yes |

As indicated above, the proposed development will generally satisfy the setback controls contained in DCP 35.

(v) Streetscape, General Appearance and Materials

DCP 35 outlines the following objectives in relation to streetscape, general appearance & materials:

- "O1 To encourage development which reflects contemporary values through a design approach, materials and construction technique, which provides an appropriate response to the historical context of the street and the wider locality.*
- O2 To ensure new development achieves a cohesive relationship with existing development without distorting and obscuring the architectural and cultural significance of the locality.*
- O3 To ensure a high standard of building design that is sympathetic and complementary to the existing built form and streetscape.*
- O4 To ensure that the proposed external appearance of the new development, including materials and colour scheme, is compatible with the dominant palette."*

As pointed out under Heading 7(iv) above, concern is raised with the impact that the additional third floor proposed for Bethesda House would have on the general appearance of the building and the streetscapes of Victoria Road and Leicester Street.

Council's Heritage and Urban Design Advisor has noted the following with regard to colours and finishes and the appearance of new additions and alterations:

"Proposed colour schemes are based on historic research however they are not clearly presented. The swatches are not clearly linked to the drawings. All buildings seem to have the same colour scheme which is problematic for me as there appears to be a lack of articulation between the different eras on the site. Colours to be clarified..."

Bethesda House..... The rear link should also be in contrasting materials to clearly differentiate the two buildings. Likewise the design of Block B should be more contemporary. Double hung windows are not necessary, as are the 'pretend' removed and bricked up windows on the south facing wall..... Block B does not provide sufficient contrast.....to Bethesda Hospital.

Removal of windows at First Floor Level facing Victoria Rd is not appropriate. First Floor level will be the most visible due to ground floor hedging at the front of the building.....

The streetscape is improved by the removal of the solid fence and tall planting to the south of Stead House, and the existing buildings between Stead and Bethesda. Very little landscaping is proposed to the front of Stead House, it is mostly lawn and an interpretation of the earlier driveway. Minimal plantings are included in front of the verandah because of the requirement for light and ventilation to subterranean spaces. The heritage item is bookended by a car park entry on one side and a very close two storey building on the other side."

As such, the proposed development is considered to be unsatisfactory having regard to streetscape and general appearance considerations.

(vi) Parking and Access

A table detailing compliance with the car parking requirements contained in DCP No.19 – Parking Strategy is outlined below:

| DCP 35 (Volume 2) | Required | Proposed | Complies |
|--------------------------|-----------------|-----------------|------------------------|
| Resident Parking | 49 | 45 | Yes |
| Visitor Parking | 11 | 0 on-site | No, see comments below |
| Total | 60 | 45 | No |

As illustrated above, the proposed development does not comply with the car parking requirements specified under DCP 19.

The proposed car parking is provided by way of two separate basements accessed from Leicester Street and at-grade parking is available for four (4) vehicles and this is accessed from Victoria Road.

The site currently contains only one vehicular crossing which is located on Victoria Road. There is currently no vehicular access to the property from Leicester Street.

It is also noted that two (2) of the parking spaces provided in the basement are accessible and two (2) of the at-grade spaces are accessible.

The proposal includes the provision of two basement car parks, both to be accessed from Leicester Street.

The basement car parks contain a combined total of 45 car spaces.

It is considered that the provision of a driveway serving as entry into the basement car park in such close proximity to 10 Leicester Street would create adverse amenity impacts for the residents of that property. The basement entry is setback 1 metre from the southern property boundary. No consideration has been given to the provision of one basement for the entire site so as to enable the provision of only one driveway off Leicester Street. It is considered the proposal does not satisfy Clause 54(2)(b) as a result of the potential amenity impacts the proposed basements would create.

The applicant has not provided any on-site visitor parking and is reliant on the provision of on-street parking adjacent to the site facing Enmore Park to compensate for the shortfall. Parking availability in this area is limited particularly when the aquatic centre which is currently under construction becomes operational.

Determination No. 6981, dated 10 June 1977, which approved an application to carry out alterations to the existing 2 storey hospital building for conversion into a nursing home for the aged containing 47 beds was required as part of this consent to pay a contribution towards for the deficiency of 19 parking spaces on-site, which in turn funded the creation of parking adjacent to the site abutting Enmore Park. A credit of 19 car spaces would be afforded to the site.

The application was referred to Council's Development Engineer who raised concern with the proposed parking arrangement as follows:

"Please find below comments on the amended plans for the development application at 80 Victoria Road, Marrickville.

- 1. The vehicular crossing to the main car park has been amended so that it is 1.5 metres clear of the Energy Australia electricity substation. Evidence is required that Energy Australia approves of this new vehicular access arrangement to ensure that sufficient clearance has been provided.*
- 2. The above clearance of 1.5 metres has been achieved by skewing the vehicular crossing at an angle to the road alignment. This is a poor solution as best practice is for vehicular crossings to be perpendicular to the road alignment as this provides the maximum sight distance in both directions. Therefore the vehicular crossing and ramp to the main car park shall be amended so as to be as close to perpendicular to Leicester Street as practicably possible.*
- 3. The vehicle ramps to the underground car parks and the car park layouts have now been amended to comply with AS2890.1:2004 and AS2890.6:2009 in relation ramp grades, headroom, car spaces, sizes and the location of columns.*
- 4. The site proposes 2 additional vehicular crossings to 2 separate underground car parks. In total the site will have 3 separate combined entry/exit vehicular crossings as the existing vehicular crossing in Victoria Road will remain and be used as access parking spaces in the centre of the site. The additional 2 vehicle crossings will result in the loss of approximately 8 on street parking spaces which*

is unacceptable. The plans shall be amended so that that there is only one vehicle access provided off Leicester Street. The design of the underground car parks shall also be amended to suit a single vehicular access.”

As noted above, the provision of two basements to be accessed from Leicester Street results in the loss of potentially eight (8) on-street parking spaces. In addition to this, the proximity of the basement entry to 10 Leicester Street is problematic as it has the potential to create adverse amenity impacts for the residents of this dwelling house as the basement is located only 1 metre from the property boundary.

Subsequently the proposed parking arrangement is considered unsatisfactory.

(vii) Site Facilities and Waste Management

In relation to the provision of site facilities and waste management the following comments are made:

- A garbage storage area is proposed in both basements;
- Letterboxes are proposed adjacent to Building A and C;
- The applicant submitted a Waste Management Plan with the development application; and
- Outdoor clothes drying facilities have not been detailed however ground floor units have the capacity for drying areas and the applicant has indicated that will mechanically dry their clothes.

(viii) Visual and Acoustic Privacy

DCP 35 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.”

Privacy

The layout and design of the proposed development appears to maintain appropriate levels of privacy for residents of the development and neighbours alike. To this extent it is noted that the majority of balconies and windows which service principal living rooms are orientated to face the street and/or the areas of communal open space provided on the site. Furthermore, appropriate privacy measures, such as highlight windows and privacy screens, are to be provided to restrict lines of sight where potential privacy issues arise.

Amenity

As noted previously, the proposal has the potential to create adverse amenity impacts for 10 Leicester Street with regard to the provision of a basement car park entry only 1 metre from the subject property and the reduction in solar access.

Concern is also raised with respect to the amenity of units within the development having particular regard to the use of rooms within the basement of Stead House. The applicant has proposed the provision of bedrooms and media rooms within the basement space. With the exception of Bedroom 2 in Unit C1 and the Media Room in Unit C2, all other rooms have limited outlook from the basement and the rooms are considered to afford little amenity for future occupants. Proposed landscaping further limits reasonable light and ventilation to those rooms.

In addition to the above, the balcony provided for the ground level dwelling located on the southern side of Bethesda House, identified as Unit B1 in Block B, would overhang the driveway and as such would have poor levels of amenity.

(ix) Safety and Security

The issue of safety and security has been previously addressed.

(x) Landscaping and Open Space

DCP 35 outlines the following objectives in relation to landscaping and open space:

- “O1 To encourage site landscaping that complements the character of the individual building and the character of the area.*
- O2 To blend new development into the streetscape and neighbourhood.*
- O3 To retain and enhance existing significant trees and established planting found on site.*
- O4 To provide dwellings with useable private open space.*
- O5 To minimise the extent of hard paved areas and facilitate rainwater infiltration.*
- O6 To improve the appearance, amenity and energy efficiency of housing through integrated landscape design.*
- O7 To preserve and enhance native wildlife populations and habitat through appropriate planting of indigenous vegetation.”*

DCP 35 prescribes private open space and landscaping controls illustrated in the table below:

| DCP 35 (Vol.2) | Required | Proposed | Compliance |
|--------------------------------|---------------------------------------|--|--|
| <i>Landscape Area</i> | 45% of site area | 49% | Yes |
| <i>Private Open Space</i> | Min. area 8sqm Min. depth 2 metres | Yes for all dwellings except Unit 10- Bethesda House 7sqm Depth 2 metres | No, area for Unit 10 does not comply, otherwise complies for all other dwellings |
| <i>Landscaping over podium</i> | 30% | 30% | Yes |

As illustrated above, the proposed development generally complies with Council’s minimum requirements in relation to the provision of private open space and landscaped area with the exception of Unit 10 in Bethesda House which has a shortfall in 1sqm in area. Despite the shortfall, the balcony is considered reasonable in size and has the capacity to be used as an extension of the living area.

Each dwelling is required to be provided with a useable balcony directly accessible from the primary internal living areas of the proposed dwellings. This is generally considered to be the case for the majority of dwellings however concern is raised for 2 units in Stead House which have limited access to the verandah area from the living area. Unit C1 and Unit C6 in Stead House front Leicester Street and contain two balconies. Both units contain a smaller north

facing balcony (<8sqm) which is to be accessed from the kitchen as well as a larger balcony (>10sqm) on the eastern side which cannot be physically accessed from the living area which it adjoins as there are only windows fronting this area. It appears that there is no way to access this area and utilise this space other than climbing through the window. This is considered inadequate particularly having regard to this area being the larger space which has the capacity to serve as an extension of the dwelling.

Furthermore, concern is also raised with the level of amenity that will be afforded to some of the balconies, in particular such as the balcony provided for the ground level dwelling located on the southern side of Bethesda House identified as Unit B1 in Block B. The balcony proposed for that dwelling overhangs the driveway and as such would have poor levels of amenity.

(xi) Heritage Conservation

As noted previously the subject property contains two (2) heritage items listed under Schedule 5 of Marrickville Local Environmental Plan 2001 (MLEP 2001),

This issue has been canvassed in detail under Heading 6(iv) of this report.

(xii) Accessible and Adaptable Housing

DCP 35 requires developments containing ten (10) or more dwellings to provide a minimum of one (1) adaptable dwelling, designed in accordance with “AS-4299” for every ten dwellings or part thereof. A minimum of five adaptable dwellings would be required for the proposed development.

The subject development application proposes the provision of four adaptable dwellings and therefore does not comply with the abovementioned provision. Furthermore, the applicant has also provided accessible car parking spaces in the basement for two (2) resident parking spaces and two (2) accessible at-grade parking spaces. An additional accessible car parking space would be required to be provided for the fifth adaptable dwelling required.

In view of the above, the proposed development does not satisfy Council’s requirements relating to adaptable and accessible housing.

8. 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 \$576,853.82 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.

9. Community Consultation

The application was advertised, an on-site notice displayed on the property and residents/property owners in the vicinity of the subject property were notified of the proposed development in accordance with Council policy. Three (3) letters and one petition containing signatures from nineteen (19) addresses were received objecting to the proposed development. One (1) letter was received in support of the proposed development.

The submissions objecting to the proposal raised the following concerns:

- The provision of two basement car parks to be accessed off Leicester Street compromises the safety and amenity of Leicester Street residents and increases traffic congestion within the street.
- The provision of two 6 metre wide driveways for the proposed basements removes the provision of 6 on-street parking spaces in Leicester Street.
- Unacceptable for proposal to utilise 19 car parking spaces facing Enmore Park for visitor parking as the increased use of the nearby aquatic centre will place greater demand on the availability of on-street parking and the proposal exacerbates this pressure.

The above issues have been canvassed in the main body of the report. Other issues raised in the submissions included:

- *Current rubbish disposal in front of Stead House*

Comment: Current rubbish disposal in front of Stead House is not a relevant consideration of the subject development application. The proposed development has included the provision of adequate waste storage areas.

- *A reduction in solar access to 75 Edinburgh Road*

Comment: The premises at 75 Edinburgh Road would still receive more than 2 hours of solar access to its principal area of open space as required under DCP 35.

- *Consideration to be given to include a new boundary fence to the rear of 75 Edinburgh Road*

Comment: The applicant has not provided details in relation to boundary fencing to be provided for the proposed development and any consideration of boundary fencing may be issued as a condition of consent before the issue of a Construction Certificate. Despite this, there are no controls or policies in place to require the applicant to provide a new fence to the subject property, other than those under the Dividing Fences Act.

10. 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 in the assessment of the application.

The proposed development is only permissible if the consent authority is satisfied that the retention of the buildings that are heritage items depends on the granting of consent and the proposed development satisfies all the heritage incentives provisions contained in Clause 54(1) of Marrickville Local Environmental Plan 2001. If the proposed development fails to satisfy one or more of those provisions, the proposed development is prohibited under the zoning provisions applying to the land under Marrickville Local Environmental Plan 2001. As detailed earlier in this report the proposed development does not satisfy a number of the heritage incentive provisions in Clause 54(1) and as such the proposed development is prohibited.

Overall, the proposal is considered to be excessive in height, bulk and scale and will not complement the existing streetscape and is considered to compromise the significance of the

heritage items and their settings. The proposed development significantly exceeds the maximum floor space ratio permitted for development on the land under Marrickville Local Environmental Plan 2001. The proposed parking arrangement with the provision of two basements also is considered inadequate and has negative amenity impacts on the adjoining residence. 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 carry out alterations to Bethesda House and Stead House for their adaptive reuse for the purpose of residential flat buildings, construct two free standing residential flat buildings to the south and west of Stead House each containing 6 dwellings, construct a three storey addition to the rear of Bethesda House containing 6 dwellings, construct a third floor on top of Bethesda House, construct two separate basement car parking areas containing a combined total of 45 spaces with bike racks, garbage storage areas, storage areas and plant room, to consolidate the land and strata subdivide the development into 45 lots be **REFUSED** for the following reasons:
1. The proposed development does not satisfy a number of the heritage incentive provisions in Clause 54(1) of Marrickville Local Environmental Plan 2001 and as such the proposed development is prohibited.
 2. The proposed use of the premises would constitute a “residential flat building” under the definitions contained in Marrickville Local Environmental Plan 2001 which is a prohibited use under the Residential A zoning applying to the land.
 3. The proposed development would compromise the heritage significance and the setting of the heritage items which is contrary to the provisions of Clause 48 - protection of heritage items, heritage conservation areas and relics of Marrickville Local Environmental Plan 2001.
 4. 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 the existing heritage items on the site and the intensity of development would adversely impact on the amenity of the surrounding neighbourhood.
 5. The proposed development does not comply with the provisions of Clause 64 (2) of MLEP 2001 which requires at least 10% of the total number of dwellings in a residential flat building containing 10 or more dwellings to be designed in accordance with Australian Standard AS 4299 – Adaptable Housing.
 6. 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.
 7. The proposed development is considered to be excessive in height, bulk and scale and an overdevelopment of the site.
 8. The proposed development would potentially result in adverse amenity impacts for adjoining and surrounding dwelling houses.

9. The provision of two basement car parks to be accessed from Leicester Street will result in a considerable loss of on-street parking and increased traffic congestion.
 10. Insufficient information was submitted with the application to enable a proper assessment of the proposal in accordance with the requirements of Section 79C of the Environmental Planning and Assessment Act, in particular to assess the shadowing impacts on the amenity of the dwelling house on the adjoining property at 10 Leicester Street.
 11. In view of the above, approval of the application would not be in the public interest.
- B. THAT** those persons who lodged submissions in respect to the proposal be advised of the Joint Regional Planning Panel's determination of the application.
-