

## JOINT REGIONAL PLANNING PANEL (Sydney East Region)

<b>JRPP Reference Number</b>	<b>2011SYE21</b>
<b>DA Number</b>	<b>2011000072</b>
<b>Local Government Area</b>	<b>Marrickville Council</b>
<b>Proposed Development</b>	<b>To retain the existing facade along Enmore Road, demolish the remainder of the existing improvements and erect a mixed use development containing thirty-six (36) dwellings and 210sqm of cafe/food tenancies over a basement carpark which is to contain twenty-five (25) off street parking spaces.</b>
<b>Street Address</b>	<b>21-23 Enmore Road and 1 Crescent Lane, Newtown</b>
<b>Applicant/Owner</b>	<b>Platino Properties</b>
<b>Number of Submissions</b>	<b>Twenty-five (25)</b>
<b>Recommendation</b>	<b>Refusal</b>
<b>Report by</b>	<b>Sophia Chin, Development Assessment Officer</b>

### Assessment Report and Recommendation

#### **Synopsis**

Application to retain the existing facade along Enmore Road, demolish the remainder of the existing improvements and erect a mixed use development containing thirty-six (36) dwellings and 210sqm of cafe/food tenancies over a basement carpark which is to contain twenty-five (25) off street parking spaces. The application was notified in accordance with Council's notification policy and 25 submissions were received.

The proposal does not comply with Council's planning controls. In particular, the proposed development is contrary to the Heritage Conservation controls prescribed under Clauses 47 and 48 of Marrickville Local Environmental Plan 2001, does not satisfy the building separation and apartment layout design parameters under the Residential Flat Design Code, does not provide sufficient car parking spaces, and delivery and service vehicle spaces Marrickville Development Control Plan No. 19 – Parking Strategy, does not provide sufficient disabled car parking spaces under Marrickville Development Control Plan No. 31 - Equity of Access and Mobility, is contrary to the community safety requirements under Marrickville Development Control Plan No. 38 – Community Safety, and is not in the public interest.

It is considered that the carrying out of the proposed development would adversely impact on the amenity of the surrounding neighbourhood.

It should also be noted that part of the proposed development fronts a section of Crescent Lane (being Lot 1 DP 1160729) which Council has resolved to close. The road closure application is proceeding and Council has resolved that upon the gazettal of the road closure by the Department of Lands that Council enter into a Public Tender process for the sale of the land.

Proposed Unit No.'s 101, 102 and 103 on the ground floor have direct access from the section of Crescent Lane that is in the process of being formally closed. The proposed dwellings on the first and second floors directly above Unit No.'s 101, 102 and 103 have balconies that extend to the existing alignment of Crescent Lane. Unit No's 210 and 304 each contain a bedroom window proposed to be built to the existing alignment of Crescent Lane. The proposed development also proposes a ground floor fire egress at the rear of the development which would be reliant on the use of the section of Crescent Lane that is in the process of being formally closed.

With no certainty as to who will be the successful purchaser in the Public Tender process for the sale of the subject land, when the road closure is gazetted by the Department of Lands, it is considered that the only option available at the current time is to refuse the development application.

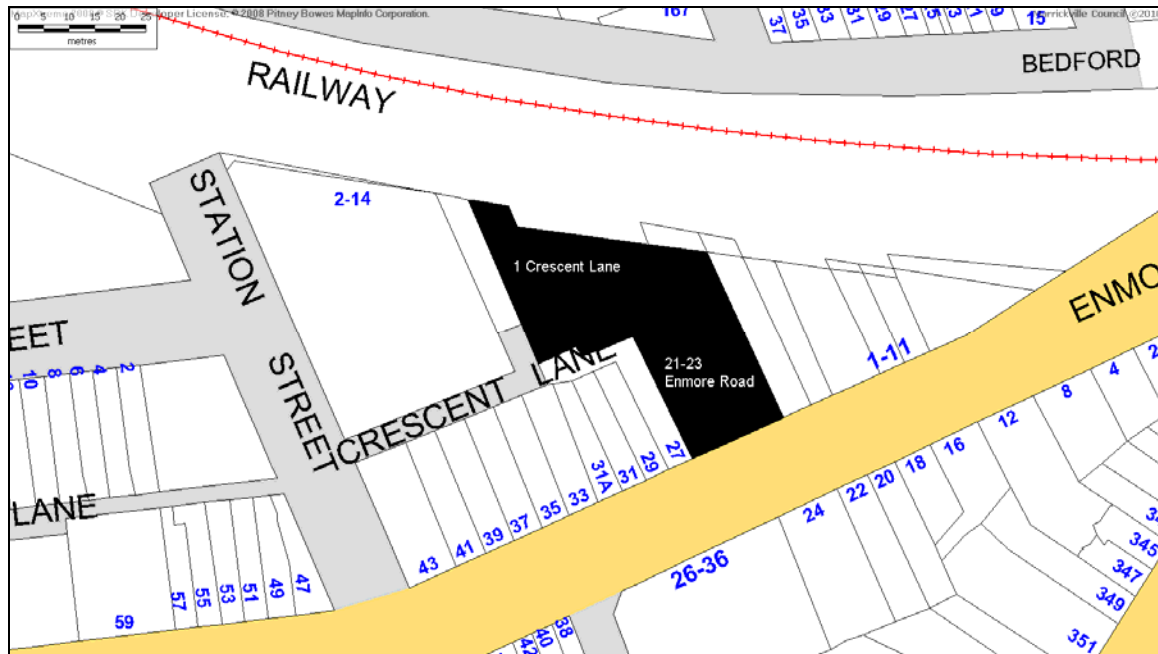
It should also be noted that the proposed development seeks approval to convert the east-west section of Crescent Lane, between Station Street and the driveway crossing of the proposed development site to a Shared Zone, in order to facilitate vehicular access for the proposed development. Council's Local Traffic Planning and Advisory Committee raised no objection in principle to the proposed Shared Zone subject to conditions. However the Roads and Traffic Authority is the responsible authority for determining whether or not to approve the proposed Shared Zone. At the time of writing this report the RTA's approval had not been obtained.

The assessment report that follows indicates that if considered in isolation some of these non compliances are relatively minor, while others are more significant. However, when considered as a whole the matters raised are 'fatal' and result in a proposal that cannot be supported for the reasons for refusal contained in Part E of this report.

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

## **PART A - PARTICULARS**

**Location:** The site is situated on the northern side of Enmore Road and the eastern side of Crescent Lane, Newtown between Station Street and Bedford Street, with a railway corridor adjoining the site to the rear.



*Image 1: Locality Map*

**D/A No:** 201100072

**Application Date:** 17 February 2011, additional information submitted on 11 May 2011 and 17 May 2011.

**Proposal:** To retain the existing facade along Enmore Road, demolish the remainder of the existing improvements and erect a mixed use development containing thirty-six (36) dwellings and 210sqm of cafe/food tenancies over a basement carpark which is to contain twenty-five (25) off street parking spaces.

**Applicant:** Platino Properties

**Estimated Cost:** \$10.5 million

**Zoning:** General Business

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

**Improvements:** Two semi-detached buildings known as the TJ Andrews site, a dwelling facing the railway corridor and several sheds and garages.



*Image 2: The Site*

**Current Use:** Funeral Parlour

**Prior Determinations:** Determination No 8382 dated 7 October 1981 approved an application to partition the existing storage/carpentry workshop into 2 rooms.

**Environment:** Residential, Commercial and Retail

### **PART C - REQUIREMENTS**

1. **Zoning**  
*Is use permissible in zoning?* Yes
2. **Development Standards (Mandatory Requirements):**

<b>Type</b>	<b>Required</b>	<b>Proposed</b>
Floor space ratio (max)	2:1	1.99:1
Adaptable dwellings (min)	4	4
3. **Departures from Council's Codes and Policies:**

<b>Type</b>	<b>Required</b>	<b>Proposed</b>
Parking	35 spaces	25 spaces
Disabled Parking	5 spaces	4 spaces
Loading Space	2 spaces	1 space
Private Open Space	(see main body of report)	

**4. Community Consultation:**

Required: Yes (newspaper advertisement, on-site notice and resident notification)  
Submissions: Twenty-five (25)

**5. Other Requirements:**

ANEF 2029 Affectation: 20 – 25 ANEF  
Marrickville Section 94 Contributions Plan 2004

**PART D - ASSESSMENT**

**1. Background**

On 22 December 2010, a Pre-Development Application was submitted to Council seeking preliminary advice to potentially retain the existing facade of the premises along Enmore Road, demolish the remainder of the existing improvements and erect a four storey mixed use development containing 36 dwellings and 210sqm of retail tenancies over a basement car park at No. 21-23 Enmore Road and No. 1A Crescent Lane, Newtown. A Pre-Development Application Advisory Panel meeting was held on 4 February 2011, between Council officers and the applicant regarding the proposal, during that meeting the proposal was identified to have a number of significant departures from Council's existing planning controls such as access/parking controls, heritage conservation, and community safety.

On 17 February 2011, the subject application was submitted to Council.

Council officers undertook an assessment of the application and identified a number of issues which were outlined in a letter to the applicant dated 28 April 2011. The letter raised the following issues:

1. *"The proposal was referred to Council's Heritage and Urban Design Advisor who provided the following comments:*

***"Issue: Removal of Victorian Terrace***

*The contentious building on the site is the ornate Victorian Terrace at the rear originally facing Crescent Street which ran along the railway line in front of the subject house. The building was in a prime position - Crescent Street linked the original Newtown Station located at the end of Station Street, to the overbridge, the street was removed with the widening of the railway line. The building was originally owned by J. Milne - plumber & sanitary contractor in the early 1900's. It looked across the railway to what is now Bedford Street but was then Horbury Terrace, map: <http://www.sydneymaps.info/images/stories/maps/map3.jpg>*

*Council's DCP No. 34 – King Street and Enmore Road Heritage and Urban Design, Section 4 - Summary Statement of Significance lists the following components as significant:*

3. *The quality and quantity of the late Victorian period building stock exemplifies the economic boom of the late Nineteenth Century. Many of the buildings are impressive reminders of the area's role as a civic retail and entertainment hub.*
5. *The consistency and relative intactness of the late Nineteenth - early Twentieth Century building stock is unique in the Sydney metropolitan Area and the State as a whole.*

Additionally the subject building indicates an earlier development pattern by its orientation visible from the train, and from the Conservation Area across the railway line, and from the King Street end of the subject Conservation Area.

### **Heritage Listings**

MLEP 2001: in Heritage Conservation Area HCA2

Draft MLEP 2011: in Heritage Conservation Area C2, adjacent to Heritage Item I170

### **Comment on Proposal**

Victorian style Terrace House

The demolition of the terrace at the rear is not supported and steps should be made to include the terrace in the proposal.

### **Recommendation**

Supported only if the Victorian Villa can be substantially retained.”

The above issues raised by Council’s Heritage and Urban Design Advisor are required be addressed via amended plans.

2. The proposal was referred to Council’s Development Engineer who provided the following comments:

### **“VEHICULAR ACCESS**

- Crescent Lane is a narrow lane being approximately 5 metres wide boundary to boundary and only 4.06 metres wide kerb to kerb which is not suitable for two-way traffic to the development.

Although Crescent Lane is only 5 metres wide the fence line along the northern side of the lane is set back approximately 1.85 metres within the adjacent property (Sydney Water’s Property) providing a 2.1 metre footpath. An opportunity exists for the developer to negotiate with the adjacent land owner to buy the strip of land containing the footpath and incorporating it into Crescent Lane by dedication as a public road or by the provision of a right of way. This will allow the lane to be widened to 4.9 metres kerb to kerb while still providing a 1.2 metre footpath. This advice was provided at pre-DA stage and it has not been incorporated in the Development Application and no information regarding discussions or approaches to Sydney Water have been provided.

- Currently as proposed due to the width and geometry of Crescent Lane, vehicular access to the development cannot be provided without encroachment upon Sydney Water’s property. Also as pedestrian access is also proposed from Crescent Lane, pedestrians accessing the site using the existing footpath do so by encroaching onto Sydney Water’s Land. This application cannot be approved while access to it proposes encroachment upon adjacent property.
- Currently parking is permitted on one side of Crescent Lane prior to the proposed entry to the development. If cars are parked in the lane then the space available for vehicles to pass is approximately 1.96 metres, which is inadequate. The deletion of these car spaces should be considered as part of the traffic assessment to provide adequate 2 way movements in

Crescent Lane. (Minimum width of a parallel car space is 2.1 metres as per AS2890.5). Please note that this will require referral to the Local Traffic Committee.

### **ACCESS & PARKING**

- The entry ramp and parking shall comply with AS2890.1:2004 and AS2890.6:2009 in particular in relation to headroom and ramp grades. It should be noted that Clause 3.3 of AS2890.1:2004 requires that the first 6 metres into the car park shall be at a maximum grade of 1 in 20. The current plans show a ramp grade on entry of 1 in 12;
- The disabled car spaces do not comply with AS2890.6:2009 in particular in relation to adjacent shared areas;
- The aisle width adjacent to the 3 visitor car spaces and the loading dock shall be increased in width by 300mm in accordance with Section 2.4.2 (d) – Single aisles of AS2890.1:2004.

### **SITE STORMWATER DRAINAGE**

- As the site is greater than 1000sqm, a Comprehensive Water Cycle Management Plan in accordance with DCP 32 - Energy Smart Water Wise detailing options and opportunities for stormwater re-use is required. Although some information was provided, it was not comprehensive as it did not explore any options or opportunities for water re-use;
  - All stormwater from the site is to be treated to ensure the removal of oil, sediment and other pollutants and to demonstrate how its proposed treatment measures will achieve the Current DECC environmental targets. No details on stormwater quality or treatment have been provided.”
3. The proposal was referred to Council’s Resource Recovery Coordinator who provided the following comments:
- “The storage area for the residential bins from my calculations will only fit 14 x 360L mobile bins with minimal space for movement to allow residents to enter and manoeuvre within the room. The size of the room needs to be increased to house the 8 garbage, 8 recycling and 1 x 240L green waste bin specified in the waste management plan.*
- The residential bin storage area is not adequate in size to house the relevant number of bins.*
- Bins will need to be presented to the end of Crescent Lane for collection, as close to Station Street each Wednesday morning and returned back to the property boundary no later than 24 hours after collection. This is the responsibility of the caretaker.”*
- The above issues raised by Council’s Resource Recovery Coordinator are required be addressed via amended plans.*
4. Clause 62 of MLEP 2001, Section A20 of Part 4 of DCP 28 – Urban Design Guidelines for Business Centres, and DCP 38 – Community Safety sets out guidelines for the design of developments to be safe and secure for occupiers

*and visitors, to provide active street frontages and building entrances, and to address the principles of CPTED (Crime Prevention Through Environmental Design). The following concerns are raised:*

- i) Pedestrian entrances from Enmore Road are discreet and provide minimal activation.*
- ii) No pedestrian access is provided from Crescent Lane.*
- iii) Access from Enmore Road to upper floor units and basement car parking require access past the front doors of ground floor units.*

*The above concerns are required to be addressed with reference to Clause 62 of MLEP 2001, Section A20 of Part 4 of DCP 28 – Urban Design Guidelines for Business Centres, and DCP 38 – Community Safety.*

- 5. *Clause 64 (2) of MLEP 2001 requires at least 10% of the total number of dwellings in a multi unit housing or residential flat development containing 10 or more dwellings to be designed in accordance with Australian Standard AS 4299 – Adaptable Housing.*

*The submitted floor plans and Access Report prepared by Accessibility Solutions (NSW) Pty Ltd, dated 14 February 2011 indicates that only two (2) units (G10/104 and G07/101) have been demonstrated as adaptable dwellings.*

*Amended plans are to be submitted nominating and illustrating four (4) adaptable dwellings to comply with the requirements under Clause 64 (2) of MLEP 2001.”*

On 10 May 2011, the applicant met with Council Officers to discuss the issues raised in letter dated 28 April 2011. On 11 May and 17 May 2011, the applicant submitted additional information in response to issues raised in letter dated 28 April 2011.

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

The site is situated on the northern side of Enmore Road and the eastern side of Crescent Lane, Newtown between Station Street and Bedford Street, with a railway corridor adjoining the site to the rear. The site has a legal description of Lot 1 in Deposited Plan 574049, Lot 1 in Deposited Plan 784871, and Lot 1 in Deposited Plan 825319. The site is irregular in shape with a primary street frontage of 19.9 metres to Enmore Road and a secondary street frontage of 34.3 metres to Crescent Lane. The site has a total area of 1,372sqm.

The site is currently occupied by two semi-detached buildings known as the TJ Andrews site, a dwelling facing the railway corridor and several sheds and garages.

To the north of the site, the subject property adjoins a railway corridor.

To the south of the site, the subject property is located opposite a two storey building used as the Sydney Buddhist Centre and a Caltex Service Station.

To the east of the site, the subject property adjoins a restaurant/takeaway shop known as “Oporto Chicken”.

To the south-west of the site, the subject property adjoins a two storey mixed use building known as “Kristallis”. To the north-west of the site, the subject property is located opposite a parcel of land known as 2-14 Station Street, Newtown which is owned by Sydney Water comprising of a Pressure Tunnel Shaft which is listed as an item of State significance under Schedule 5 of Draft Marrickville Local Environmental Plan 2011 (Item No. I170).



To the west of the site, the subject property adjoins a recently subdivided portion of Crescent Lane known as Lot 1 in Deposited Plan 1160729 to be zoned Local Centre under draft MLEP 2011. This matter has been further discussed under Section 16 of this report under the heading “*Closure of Crescent Lane.*”

The site and surrounds as stated above are illustrated as follows:



*Image 3: The Site and adjoining property to the east at 1-11 Enmore Road known as “Oporto Chicken”*



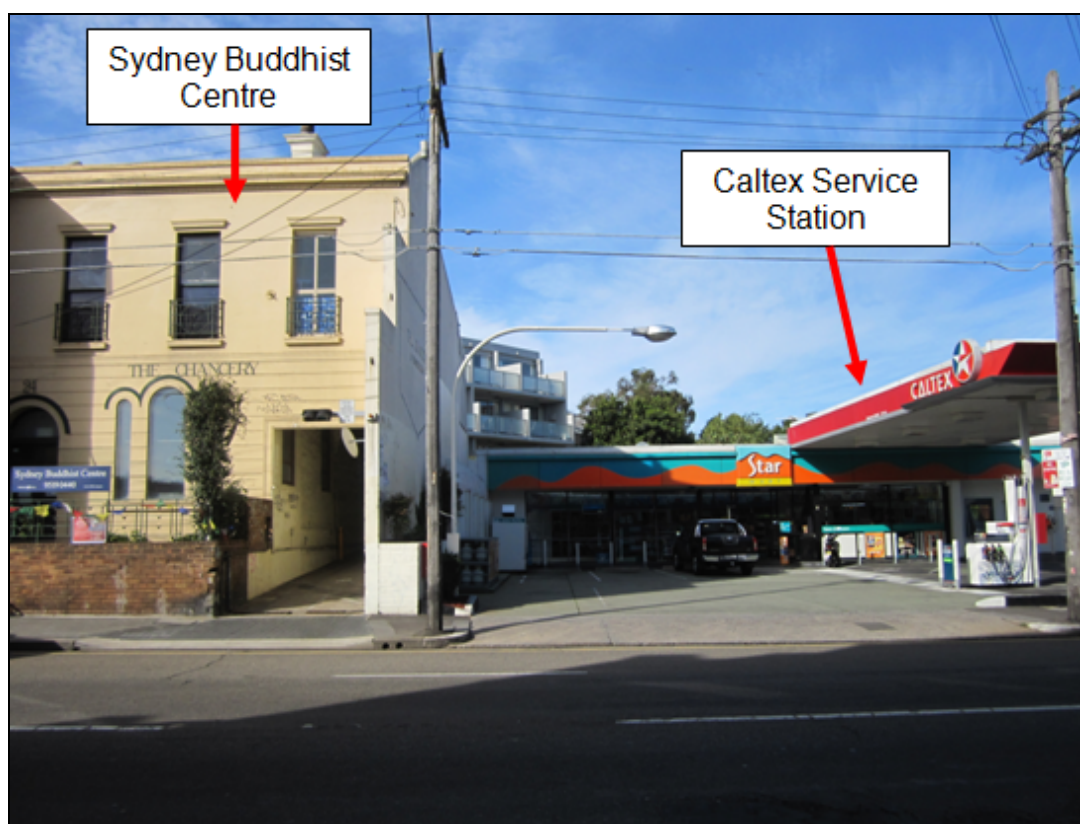
*Image 4: The Site and adjoining property to the west, at 27-31A Enmore Road known as the "Kristallis" building*



*Image 5: View the Site from Enmore Road facing West*



*Image 6: View of the Site from Enmore Road facing East*

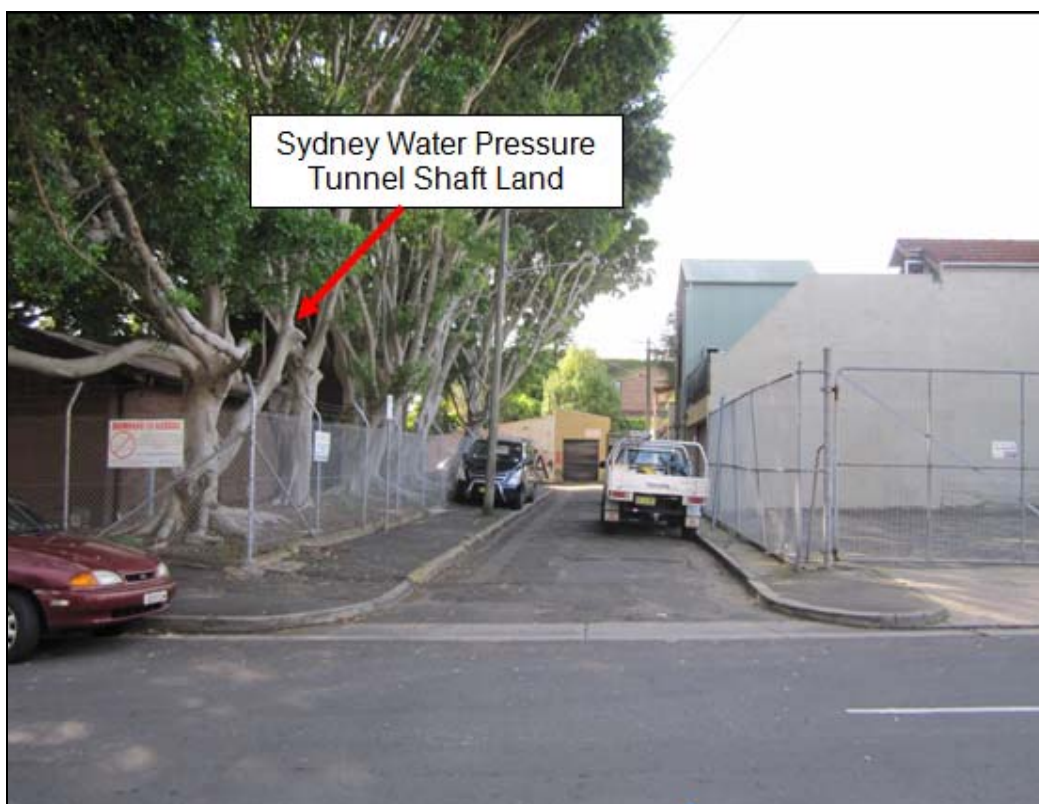


*Image 7: Opposite the Site in Enmore Road*





*Image 8: Existing Ground Floor frontage of the Site to Enmore Road*



*Image 9: View of Crescent Lane facing East from Station Street*

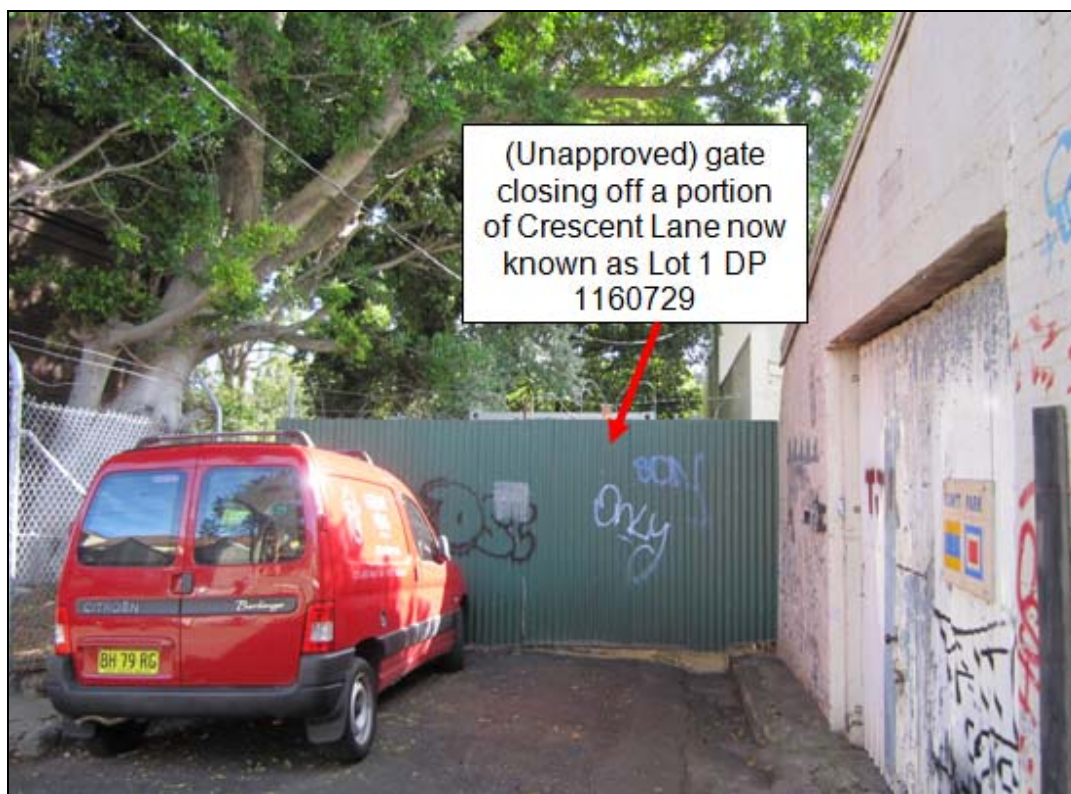


*Image 10: View of Crescent Lane facing East towards the Site*



*Image 11: Crescent Lane and frontage to 1A Crescent Lane*





*Image 12: Closed off portion of Crescent Lane known as Lot 1 DP 1160729*



*Image 13: View of Crescent Lane facing West*



*Image 14: Sydney Water site facing East from the Site*



*Image 15: 1A Crescent Lane and rear entrance to 27-31A Enmore Road known as the “Kristallis” building*





*Image 16: First floor windows of 27-31A Enmore Road known as the “Kristallis” building facing in the direction of the Site*



*Image 17: The Site viewed from Bedford Street across the Railway Corridor facing South-East*





*Image 18: The Site viewed from Bedford Street across the Railway Corridor facing South-West*

### **3. The Proposal**

The subject development application seeks approval to retain the existing facade along Enmore Road, demolish the remainder of the existing improvements and erect a mixed use development containing thirty-six (36) dwellings and 210sqm of cafe/food tenancies over a basement carpark which is to contain twenty-five (25) off street parking spaces.

The lower ground floor level of the development provides vehicular entry and egress from Crescent Lane and contains three (3) dwellings comprising of one (1) studio apartment and two (2) x 1 bedroom apartments, twenty-five (25) off street parking spaces, two (2) motorbike parking spaces, retail and residential waste storage areas, loading/unloading facilities, an ancillary storage area, and a plant room.

The ground floor level of the development contains two (2) café/food tenancies with direct pedestrian access from Enmore Road, a residential pedestrian entry from Enmore Road, and ten (10) dwellings comprising of four (4) studio apartments, three (3) x 1 bedroom apartments, and three (3) x 2 bedroom apartments.

The first floor level of the development contains twelve (12) dwellings comprising of two (2) studio apartments, six (6) x 1 bedroom apartments, and four (4) x 2 bedroom apartments.

The second floor level of the development contains eleven (11) dwellings comprising of two (2) studio apartments, seven (7) x 1 bedroom apartments, two (2) x 2 bedroom apartments, and a 15sqm common deck.

Balconies/courtyards have been provided for all dwellings with the exception of one (1) dwelling (annotated as dwelling No. 312 on the First Floor Plan) on the first floor level of the development to allow the retention of the existing heritage façade of the building.

Four (4) adaptable dwellings have been proposed as part of the development application.

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

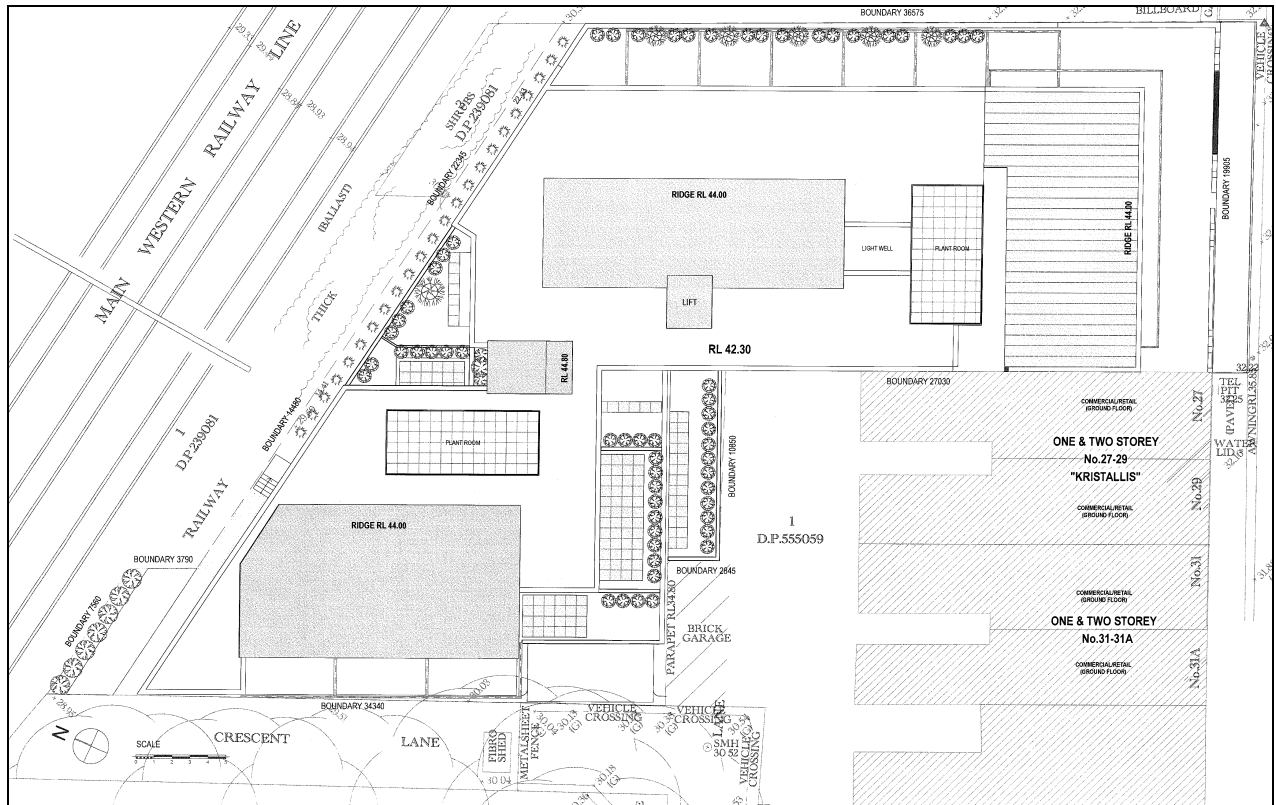
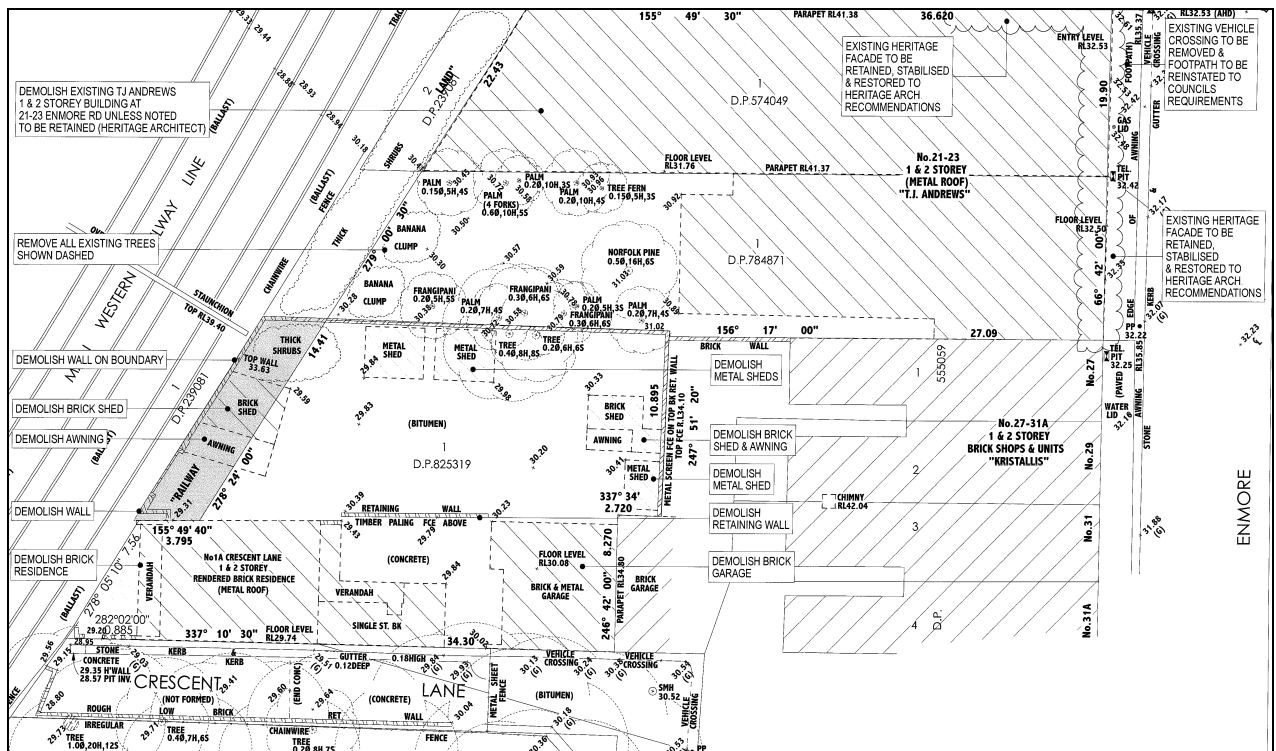
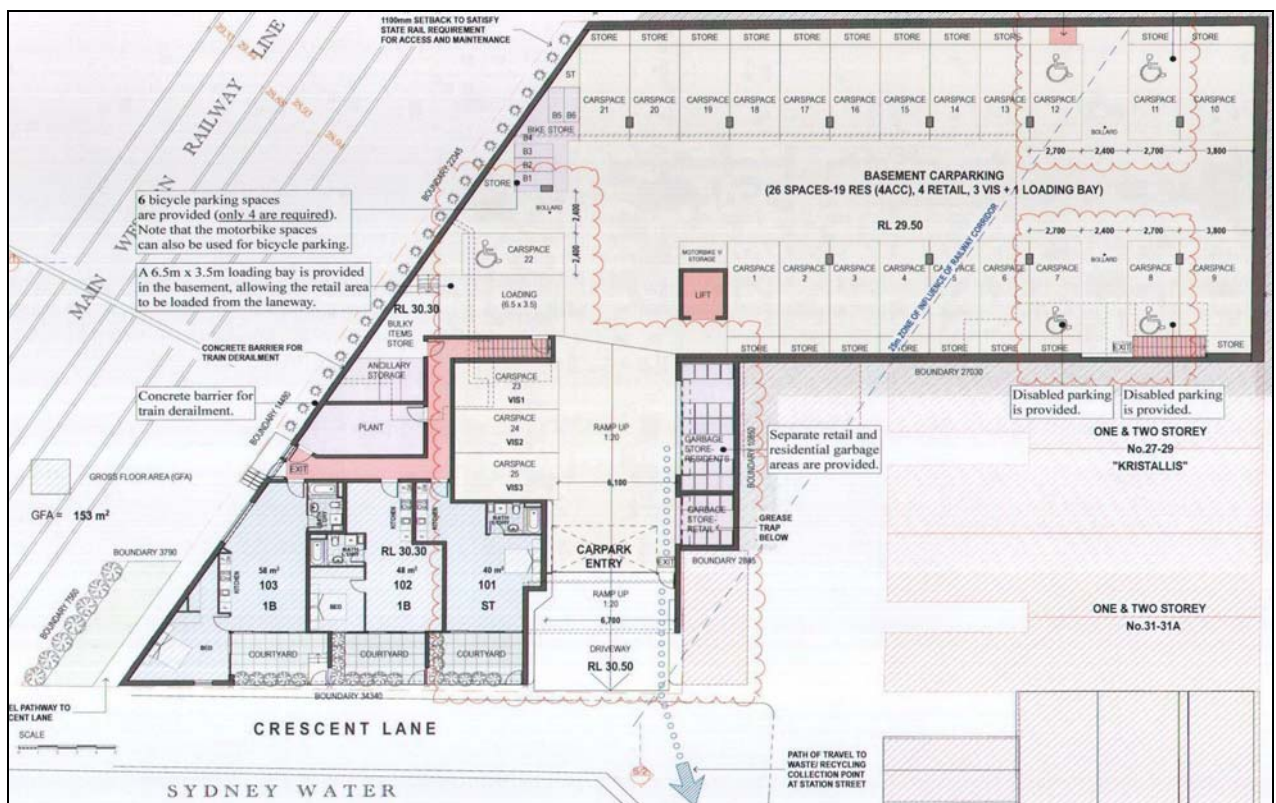


Image 19: Site Plan



*Image 20: Demolition Plan*



*Image 21: Lower Ground Floor Plan*

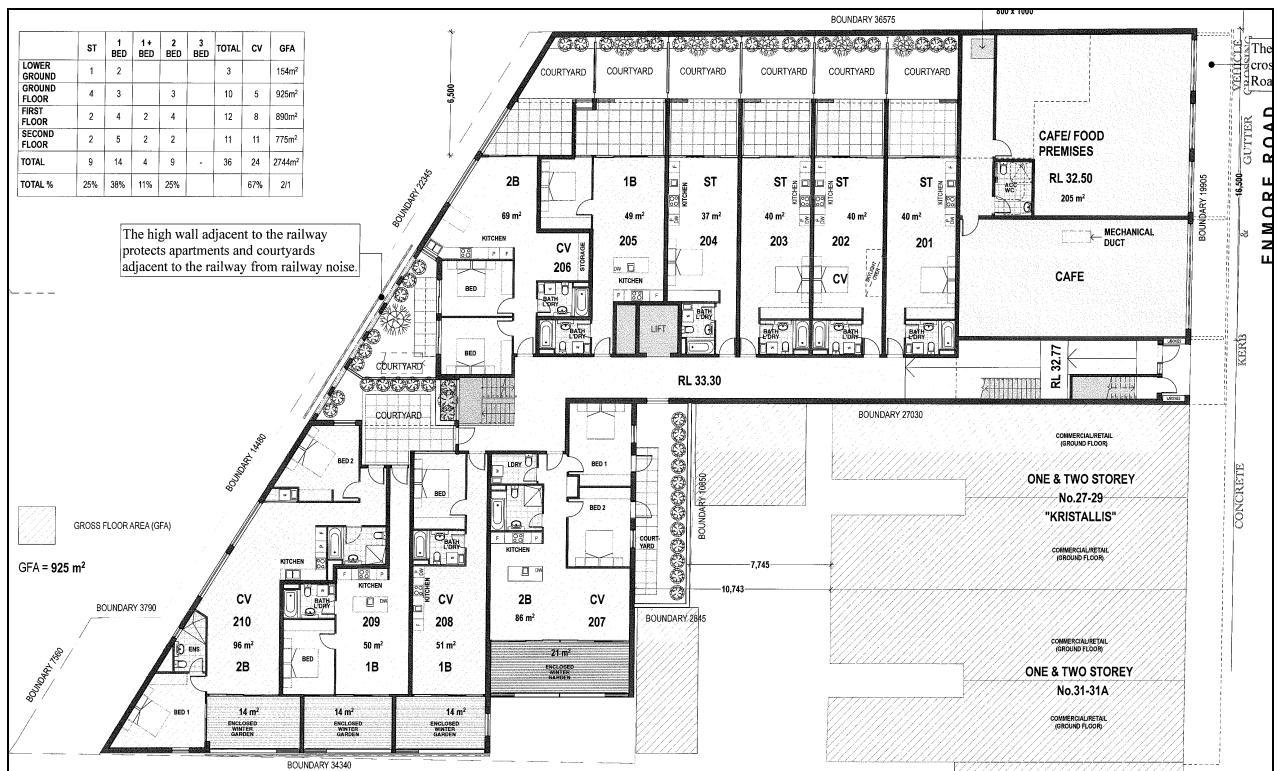


Image 22: Ground Floor Plan

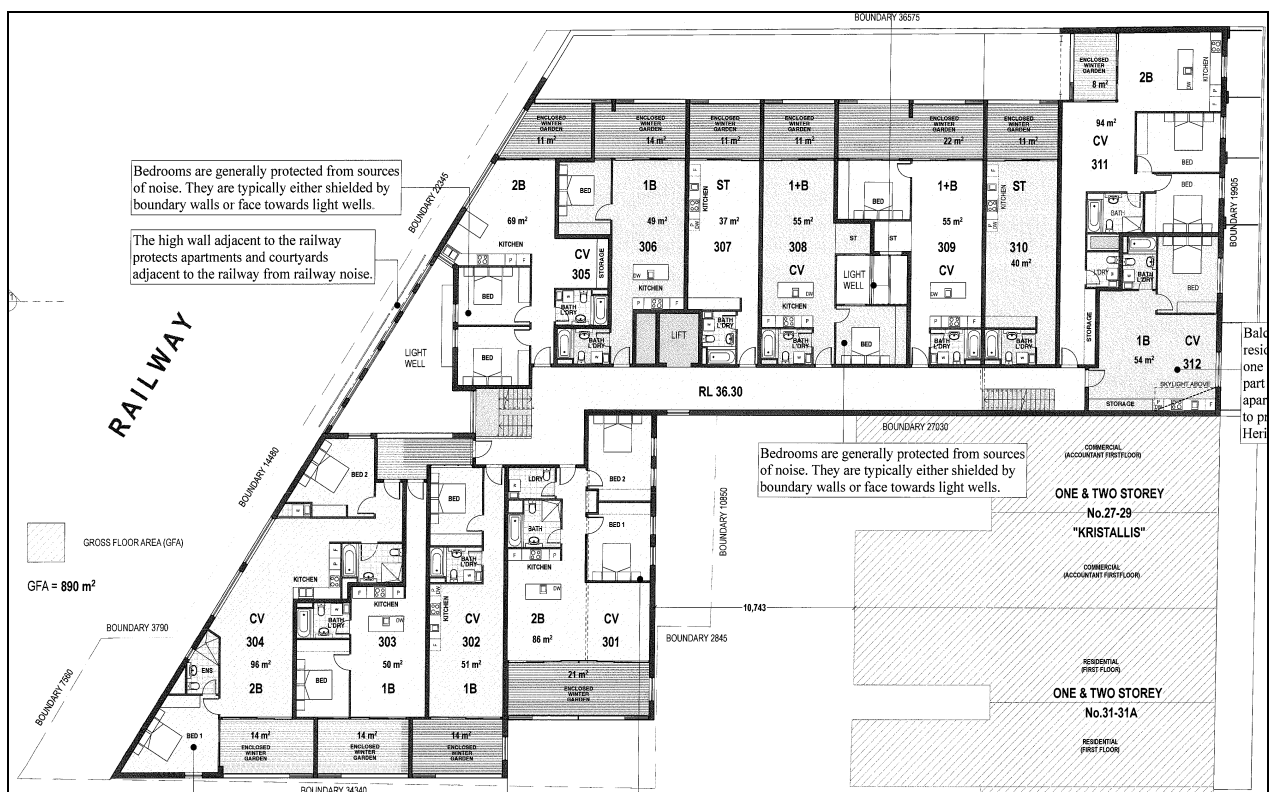
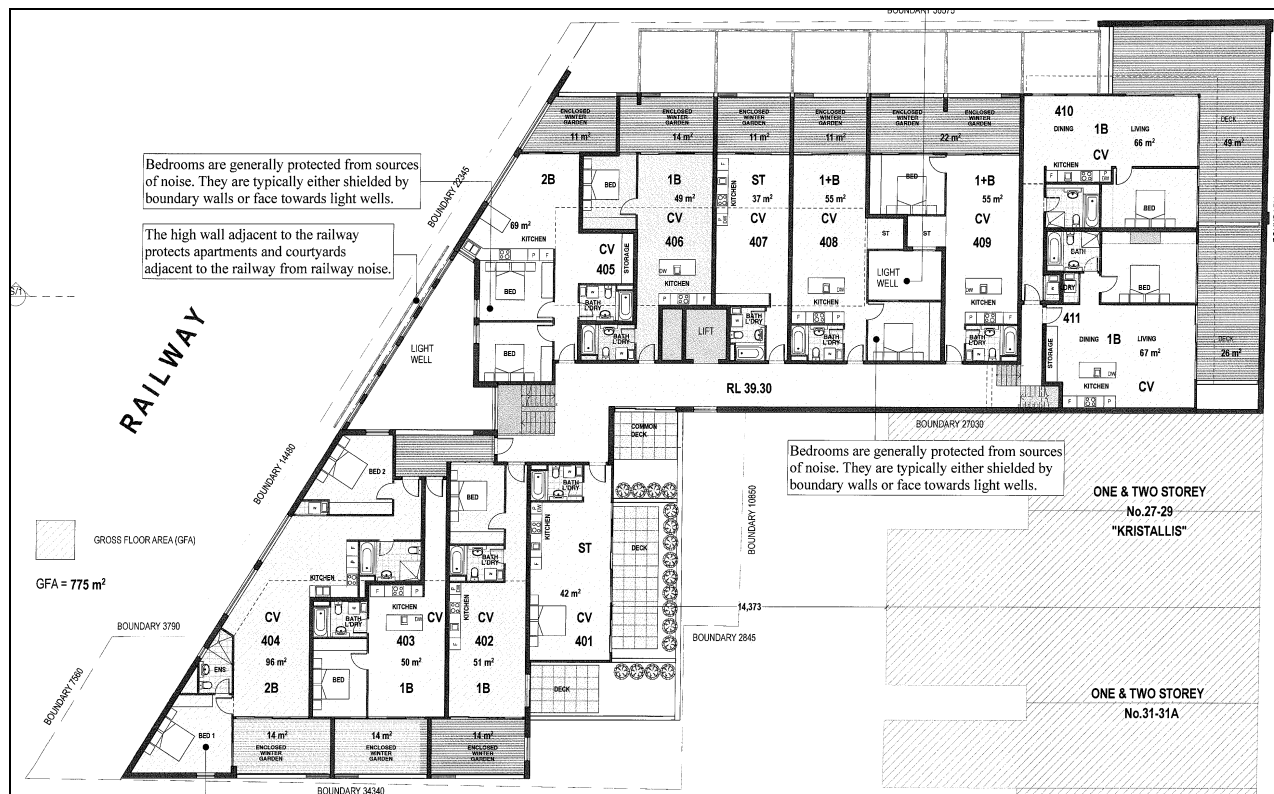
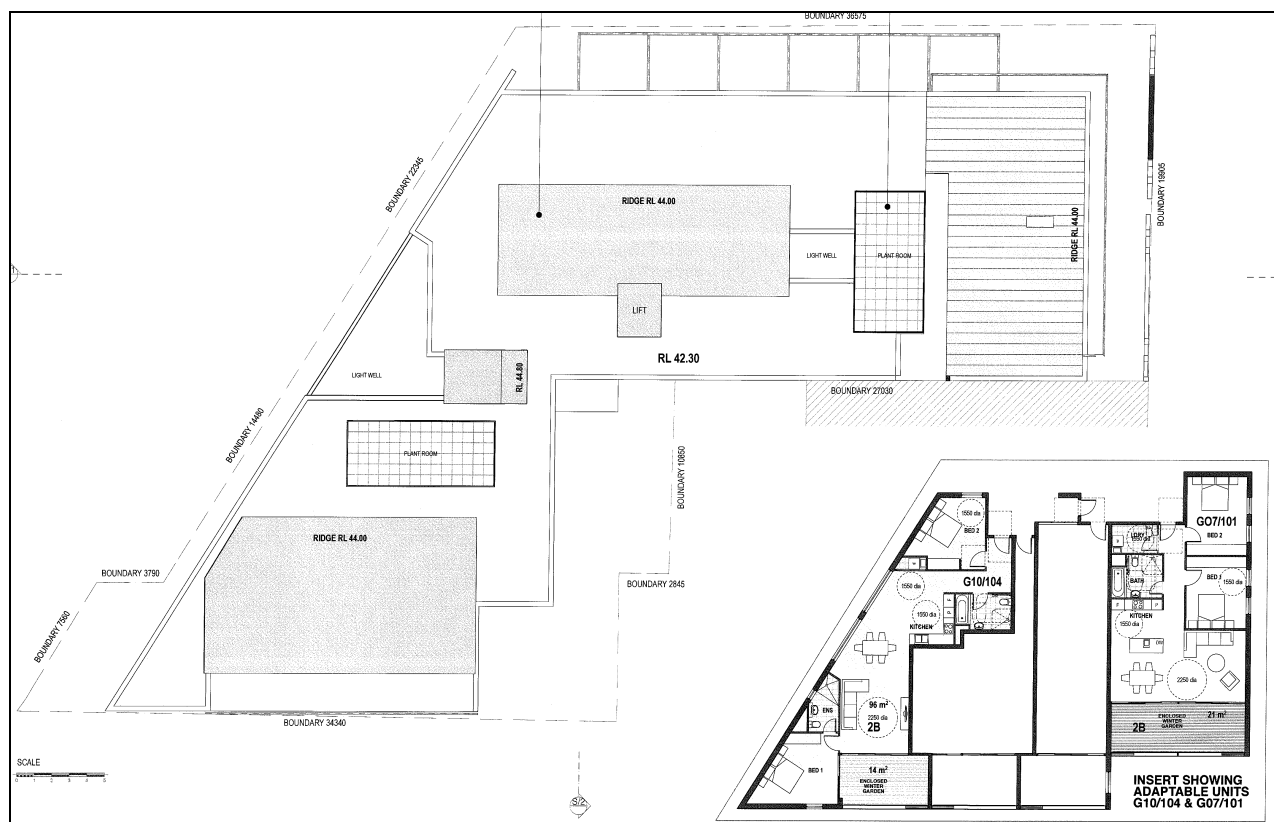


Image 23: First Floor Plan





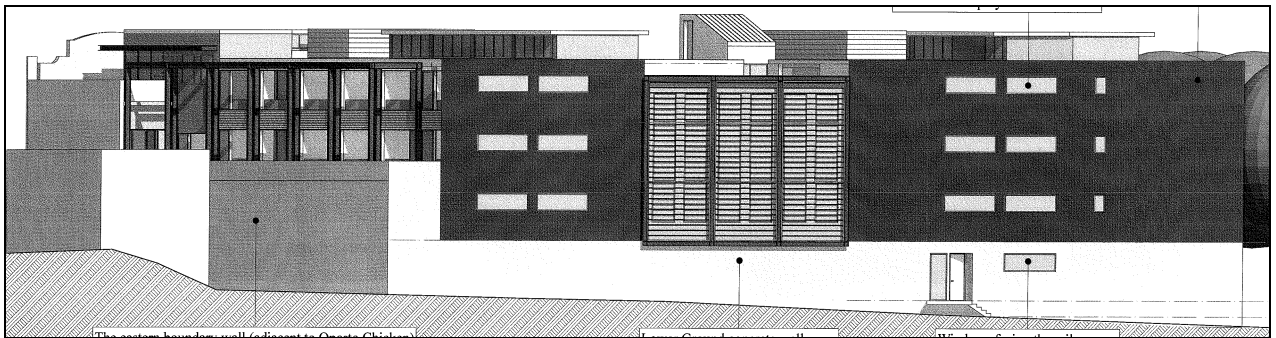
*Image 24: Second Floor Plan*



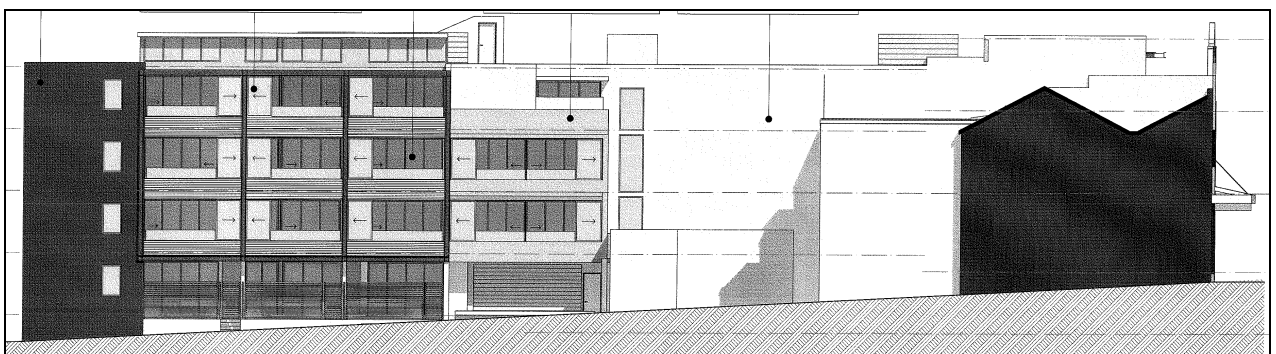
*Image 25: Roof Plan and Adaptable Units Plan*



*Image 26: Front Elevation Plan*



*Image 27: Southern Elevation Plan*



*Image 28: Western Elevation Plan*

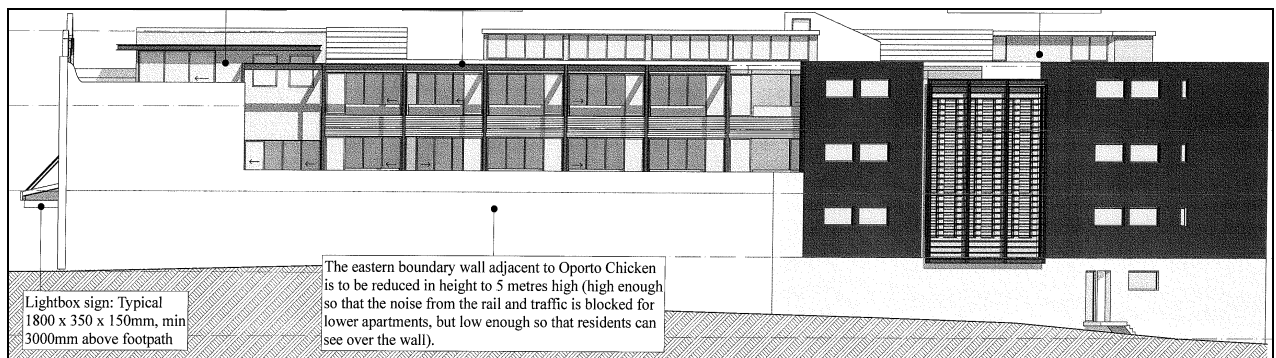


Image 29: Eastern Elevation Plan

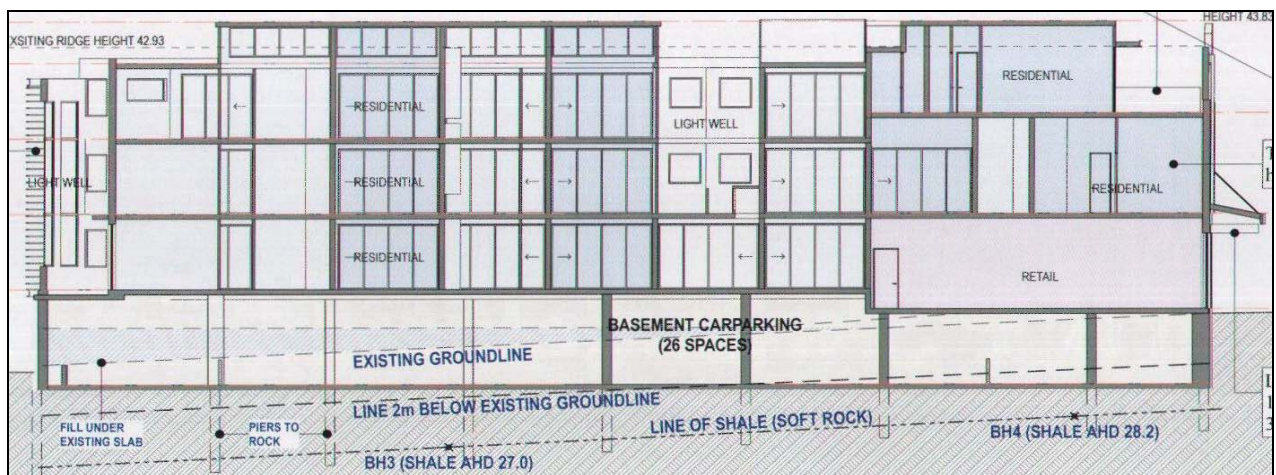


Image 30: Section 1 Plan

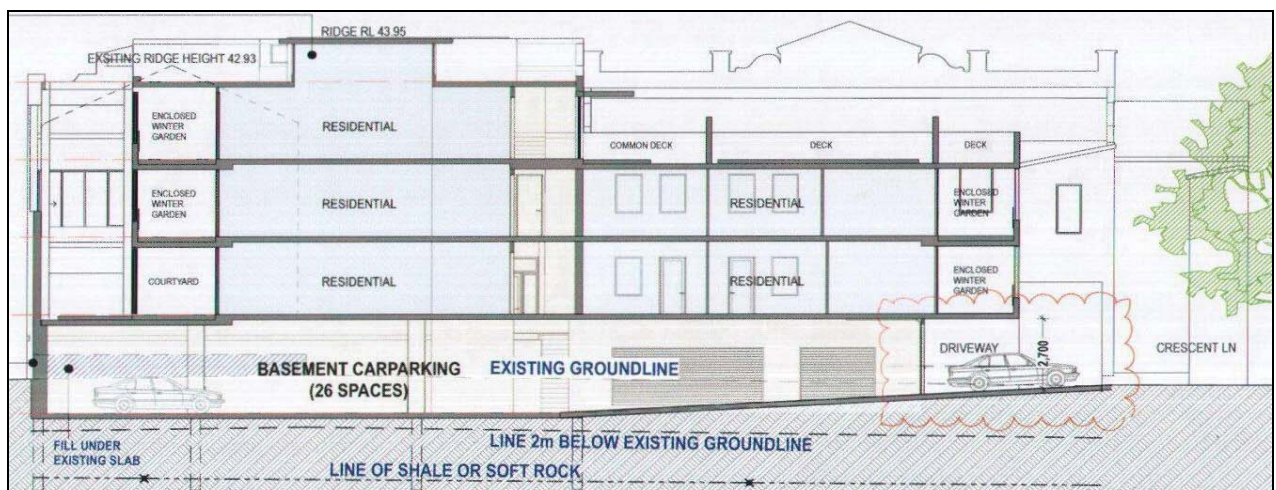


Image 31: Section 2 Plan

#### 4. Planning Instruments and Controls

The following Planning Instruments and Controls apply to the proposed development:

- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65);
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;

- State Environmental Planning Policy (Infrastructure) 2007;
- Marrickville Local Environmental Plan 2001 (MLEP 2001);
- Draft Marrickville Local Environmental Plan 2011 (Draft MLEP 2011);
- Marrickville Development Control Plan No. 19 – Parking Strategy (DCP 19);
- Marrickville Development Control Plan No. 27 – Waste Management (DCP 27);
- Marrickville Development Control Plan No. 28 – Urban Design Guidelines for Business Centres (DCP 28);
- Marrickville Development Control Plan No. 31 – Equity of Access and Mobility (DCP 31);
- Marrickville Development Control Plan No. 32 – Energy Smart Water Wise (DCP 32);
- Marrickville Development Control Plan No. 34 – King Street and Enmore Road Heritage and Urban Design;
- Marrickville Development Control Plan No. 38 – Community Safety (DCP 38);
- Marrickville Development Control Plan No. 39 – Notification Policy (DCP 39); and
- Marrickville Section 94 Contributions Plan 2004.

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

To encourage sustainable development, all new dwellings must comply with the BASIX Scheme. The proposal consists of a mixed use development containing thirty-six (36) dwellings.

The proposed development has achieved full compliance with the BASIX commitments. The proposed development has reached the score of 40% for water and a score of 31% for energy.

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

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

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

As required by the SEPP, the applicant submitted a Design Verification Statement prepared by the architect who has directed and overseen the design of the proposal. That Statement is required to address the 10 design quality principles contained in the SEPP. The Statement of Environmental Effects accompanying the subject application addressed those principles and it is considered the proposal responds to the design parameters set for the area.

The development seeks approval to retain the existing facade along Enmore Road, demolish the remainder of the existing improvements and erect a mixed use development containing thirty-six (36) dwellings and 210sqm of cafe/food tenancies over a basement carpark which is to contain twenty-five (25) off street parking spaces.



Council does not prescribe a numerical height limit for mixed use development, however utilises development within the surrounding commercial/retail streetscape and design parameters contained within Marrickville Development Control Plan No. 28 - Urban Design Guidelines for Business Centres (DCP 28) as a guide. It is noted that the predominate height of the surrounding commercial/retail development within the Enmore Road area is generally single and two (2) storeys in height. It is noted that the existing building on the site is two (2) storeys in height. The subject development has a height ranging from approximately 8.8 metres to 13.4 metres.

The development is generally three (3) storeys in height, with a portion of the building fronting Crescent Lane and the railway corridor being four (4) storeys in height. The proposed development exceeds the height of the surrounding commercial/retail development within the surrounding portion of the Enmore Road streetscape. The front portion of the building visible from Enmore Road is incorporated within the existing building envelope of the TJ Andrews building. The top floor of the development has been set back behind the existing façade by approximately 3.2 metres and as such would generally not be visible from Enmore Road. Given this it is considered that the proposed building massing and height of the development is acceptable from Enmore Road.

The development when viewed from Crescent Lane is three (3) and four (4) storeys in height. It is considered that the majority of the building mass is proposed along the Enmore Road frontage and railway corridor portion of the site with the proposed building stepping down towards Crescent Lane. This is considered to be an effective design response to the limitations of the site. The proposed articulation of the building facades with balconies, and contrasting finishes and materials, along with the wall adjacent the railway line being noise attenuated is considered satisfactory.

This matter is discussed further in Section 12 (ii) of this report under the heading “*Building Massing and Building Height*”.

In addition, it is considered that the design of the proposed development generally promotes safety and surveillance of the surrounding public areas/road. The proposed dwellings provide adequate surveillance of Enmore Road and Crescent Lane. This matter is discussed further in Section 8 of this report under the heading “*Community Safety (Clause 62)*”.

In view of the circumstances, it is considered that the proposed development satisfactorily addresses the design principles contained in SEPP 65, particularly Principle 1 – Context and Setting; Principle 2 – Scale; Principle 3 – Built Form; Principle 4 – Density; Principle 7 – Amenity; Principle 8 – Safety and Security and Principle 10 – Aesthetics.

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

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

Whilst the majority of the provisions contained in the RFDC are generally covered by Marrickville Development Control Plan No. 28 – Urban Design Guidelines for Business Centres and are considered as part of the assessment of the application in Section 12 of this report, it should be noted that the proposed development fails to satisfy the following fundamental requirements of the RFDC which are not specifically addressed in DCP 28.

(i) Building Separation

The proposed development is three (3) part four (4) storeys in height ranging from 8.8 metres to 13.4 metres. Under the RFDC, the suggested dimensions within a development, for internal courtyards and between adjoining sites for any residential flat building up to 4 storeys or 12 metres in height should be 12 metres between habitable rooms (including bedrooms and studies) and balconies. Given the range in height from 8.8 metres to 13.4 metres it is considered that the development should be assessed with the suggested 12 metres building separation.

The development adjoins a railway corridor to the rear and to the north-west of the site, the subject property is located opposite a parcel of land known as 2-14 Station Street, Newtown which is owned by Sydney Water comprising of a Pressure Tunnel Shaft which is listed as an item of State significance under Schedule 5 of Draft Marrickville Local Environmental Plan 2011 (Item No. 1170). It is also noted that a recently subdivided portion of Crescent Lane to be zoned Local Centre under draft MLEP 2011 directly adjoins the subject property to the west. This matter has been further discussed under Section 16 of this report under the heading "*Closure of Crescent Lane.*"

The ground floor courtyards at the eastern elevation have a 6 metre separation from the adjoining "Oporto Chicken" building and a 9.4 metre separation from the first floor and second floor balconies.

The subject development consists of one building and shares the full length of the building wall of the "Kristallis" building at the western boundary. The western portion of the proposed development facing the rear of the buildings fronting Enmore Road consists of bedroom windows on the ground floor, balconies on the first floor and decks on the second floor, and has a minimum building separation of 10.743 metres from the rear of the "Kristallis" building and the rear of No. 27-31A Enmore Road. The proposed development has a 1.257 metre variation to the building separation suggestion under RFDC. It is considered that the variation is minor and the development generally complies with the building separation objectives in that the new development is scaled to support the desired area character with appropriate massing in the context of the site.

(ii) Apartment Layout

Under the RFDC, internal and external apartment sizes are suggested for a comparative tool in recognising well-organised, functional and high quality apartment layouts. The following table outlines the proposed development in comparison to the suggested apartment sizes:

Apartment Type	RDFC Minimum Internal Area	RDFC Minimum External Area	Unit Number	Proposed	Compliance
Studio	38.5sqm	6sqm	101	40sqm/14sqm	Yes
			201	40sqm/24.5sqm	Yes
			202	40sqm/24.5sqm	Yes
			203	40sqm/24.5sqm	Yes
			204	37sqm/24.5sqm	No
			307	37sqm/11sqm	No
			310	40sqm/11sqm	Yes
			401	42sqm/26sqm	Yes
			407	37sqm/11sqm	No
One	63.4sqm	10sqm	102	48sqm/14sqm	No

bedroom, single aspect			103	58sqm/14sqm	No
			205	49sqm/27sqm	No
			208	51sqm/14sqm	No
			209	50sqm/14sqm	No
			302	51sqm/14sqm	No
			303	50sqm/14sqm	No
			306	49sqm/14sqm	No
			308	55sqm/11sqm	No
			309	55sqm/22sqm	No
			312	54sq/Nil	No
			402	51sqm/34sqm	No
			403	50sqm/14sqm	No
			406	49sqm/14sqm	No
			408	55sqm/11sqm	No
			409	55sqm/22sqm	No
			410	66sqm/49sqm	Yes
			411	67sqm/26sqm	Yes
Two bedroom, corner	80sqm	11sqm	206	69sqm/41sqm	No
			207	86sqm/21sqm	Yes
			210	96sqm/14sqm	Yes
			301	86sqm/21sqm	Yes
			304	96sqm/14sqm	Yes
			305	69sqm/11sqm	No
			311	94sqm/8sqm	Yes
			404	96sqm/14sqm	Yes
			405	69sqm/11sqm	No

*Table 1: Components of the Development – Apartment Layout Requirements*

As indicated in the above table, only fourteen (14) out of the proposed thirty-six (36) apartments comply with the suggested apartment sizes under the RFDC. Whilst not technically satisfying the numerical requirements for apartment layout and sizes it is considered that the proposal satisfies the objectives under RFDC as the apartment layouts provide adequate residential amenity, are considered functional and will accommodate a variety of different household activities and occupants' needs.

## **7. State Environmental Planning Policy - (Infrastructure) 2007**

### **(i) Development immediately adjacent to rail corridors**

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

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

- (1) This clause applies to development on land that is in or immediately adjacent to a rail corridor, if the development:*
  - (a) is likely to have an adverse effect on rail safety, or*
  - (b) involves the placing of a metal finish on a structure and the rail corridor concerned is used by electric trains, or*
  - (c) involves the use of a crane in air space above any rail corridor.*

- (2) *Before determining a development application for development to which this clause applies, the consent authority must:*
  - (a) *within 7 days after the application is made, give written notice of the application to the chief executive officer of the rail authority for the rail corridor, and*
  - (b) *take into consideration:*
    - (i) *any response to the notice that is received within 21 days after the notice is given, and*
    - (ii) *any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette.*

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

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

- (5) *The consent authority may grant consent to development to which this clause applies without the concurrence of the chief executive officer of the rail authority for the rail corridor if:*
- (a) *the consent authority has given the chief executive officer notice of the development application, and*
  - (b) *21 days have passed since giving the notice and the chief executive officer has not granted or refused to grant concurrence."*

In accordance with Clauses 85 and 86 of State Environmental Planning Policy - (Infrastructure) 2007, the subject application was referred to Railcorp who provided their concurrence in letter dated 30 March 2011 subject to conditions of consent.

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

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

The applicant submitted an *Acoustic Assessment, Report No. TF205-01F02 (Revision 3), dated 11 February 2011 prepared by Renzo Tonlin & Associates (NSW) Pty Ltd* in regards to Clause 87 of the SEPP. The Acoustic Assessment concluded the following:

*"Rail noise and vibration impacts on the residential apartments within the development site. Train noise and vibration impacts on north facing apartments, and to a lesser extent, the western and eastern facing apartments.*

*Internal ground-borne noise levels exceed the nominated internal noise criteria...Therefore, vibration isolation treatment is required to the foundations of the building.*

*The vibration isolation treatment to the building footings is to extend a minimum 12 metres from the northern façade. In principle vibration isolation treatment may include isolating the building slab on concrete piers topped with building vibration isolation mounts. Non-treated sections of slabs should be isolated from treated slab areas using control joints.*

*In addition to this, care should be taken to ensure that external walls do not come into contact with deep soil within 18 metres of the closest rail line. This may be achieved by installing isolating material such as acoustic foam between the soil and the outer leaf of the external wall. Treatment should extend to along the northern wall and the eastern and western walls to a minimum distance of 12 metres south from the northern boundary of the site."*

A condition should be imposed on any consent granted requiring the development to be noise attenuated in accordance with the recommendations provided under *Acoustic Assessment, Report No. TF205-01F02 (Revision 3), dated 11 February 2011 prepared by Renzo Tonlin & Associates (NSW) Pty Ltd*.

(ii) Development with a frontage to a classified road

The subject site has a frontage to Enmore Road which is a classified road under the jurisdiction of the NSW Roads and Traffic Authority. Under Clause 101 (2) of State Environmental Planning Policy (Infrastructure) 2007 (the Infrastructure SEPP):

- "2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*
- (a) where practicable, vehicular access to the land is provided by a road other than the classified road, and*
  - (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
    - (i) the design of the vehicular access to the land, or*
    - (ii) the emission of smoke or dust from the development, or*
    - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
  - (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road."*

Pursuant to Clause 2, parts (a) and (b) above, vehicular access to the property is proposed from Crescent Lane at the rear of the site and as such *"is provided by a road other than the classified road."* It is considered that the proposed development would affect *"the safety, efficiency and on going operation of the classified road"* if vehicular access from Enmore Road was proposed. The proposed vehicular access from Crescent Lane is further discussed under Section 16 of this report under the heading *"Comments from Council's Development Engineer"*.

It is considered that the proposed development for the purpose of a mixed use development is a type of development that is sensitive to traffic noise and vehicle emissions. Consequently, the proposed development would need to include *"measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road"*. Recommendations under *Acoustic Assessment, Report No. TF205-01F02 (Revision 3), dated 11 February 2011 prepared by Renzo Tonlin & Associates (NSW) Pty Ltd* for the proposal includes noise control recommendations to be incorporated into the design and construction of the development to ameliorate the noise impacts arising from Enmore Road on the residential units. Conditions should be imposed on any consent granted requiring compliance with the requirements of the Acoustic Assessment.

(iii) Development in or adjacent to road corridors and road reservations

The subject site is located in or adjacent to a road corridor. Clause 102 of State Environmental Planning Policy (Infrastructure) 2007 relates to the impact of road noise or vibration on non-road development on land in or adjacent to a road corridor...or any other road with an annual average daily traffic volume of more than 40,000 vehicles... . Under that clause, a development for the purpose of a building for residential use, requires that appropriate measures are incorporated into such developments to ensure that certain noise levels are not exceeded. In this regard those measures are to ensure that the following LAeq levels are not exceeded:

- "(a) in any bedroom in the building—35 dB(A) at any time between 10 pm and 7 am,*
- (b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time."*

As stated above, it is considered that the proposed development for the purpose of a mixed use development is a type of development that is sensitive to traffic noise and vehicle emissions. Consequently, the proposed development would need to include “*measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road*”. Recommendations under *Acoustic Assessment, Report No. TF205-01F02 (Revision 3), dated 11 February 2011 prepared by Renzo Tonlin & Associates (NSW) Pty Ltd* for the proposal includes noise control recommendations to be incorporated into the design and construction of the development to ameliorate the noise impacts arising from Enmore Road on the residential units. As stated previously conditions should be imposed on any consent granted requiring compliance with the requirements of the Acoustic Assessment.

## **8. Marrickville Local Environmental Plan 2001 (MLEP 2001)**

### **(i) Zoning (Clause 13)**

The subject site is currently zoned General Business under the zoning provisions of MLEP 2001. The proposed development is defined as a “*shop*” and “*residential flat building*”. Development for the purpose of a “*shop*” is a permissible form of development within the zone subject to Council’s consent under the zoning provisions applying to the land. Development for the purpose of a “*residential flat building*” is permissible when attached to a permissible use on the site. Given this, the development of a “*residential flat building*” when attached to a “*shop*” is permissible with Council’s consent under the zoning provisions applying to the land.

The proposed development complies with the zone objectives for the zone under Marrickville Local Environmental Plan 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 issue concerning the subdivision of the land is discussed in more detail later in this report.

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

The subject property is located within the 20 - 25 Australian Noise Exposure Forecast (2029) Contour. The proposed dwellings would need to be noise attenuated in accordance with Australian Standard AS2021-2000 - Acoustics - Aircraft noise intrusion-Building Siting and Construction. A condition to such effect should be imposed on any consent granted. However, it should be noted that the more strenuous noise attenuation measures under State Environmental Planning Policy (Infrastructure) 2007 would apply to the proposed development.

### **(iv) Flood Prone Land (Clause 29)**

The property is not located within an area identified as flood prone land on Council’s “Approximate 100 Year (1% AEP) Flood Extent” Map.

### **(v) Floor Space Ratio (Clause 33)**

A maximum Floor Space Ratio (FSR) of 2:1 applies to developments within the General Business zone under Clause 33 of MLEP 2001. Information submitted with the application indicates the Gross Floor Area (GFA) of the proposed development is approximately

2,742.7sqm equating to a Floor Space Ratio (FSR) of 1.99:1 which complies with the maximum 2:1 FSR permitted in the zone under Clause 33 of MLEP 2001.

(vi) Heritage (Clauses 47 to 55)

The subject property is not listed as a heritage item under MLEP 2001 or a proposed heritage item under the Marrickville heritage review.

The subject property is situated within the King Street/Enmore Road Heritage Conservation Area under MLEP 2001 (Amendment No. 25). The property is also located within the vicinity of a heritage item.

The proposal was referred to Council's Heritage and Urban Design Advisor who provided the following comments:

***"Issue: Removal of Victorian Terrace***

*The contentious building on the site is the ornate Victorian Terrace at the rear originally facing Crescent Street which ran along the railway line in front of the subject house. The building was in a prime position - Crescent Street linked the original Newtown Station located at the end of Station Street, to the overbridge, the street was removed with the widening of the railway line. The building was originally owned by J. Milne - plumber & sanitary contractor in the early 1900's. It looked across the railway to what is now Bedford Street but was then Horbury Terrace, map: <http://www.sydneyarchives.info/images/stories/maps/map3.jpg>*

*Council's DCP No.34 – King Street and Enmore Road Heritage and Urban Design, Section 4 - Summary Statement of Significance lists the following components as significant:*

- 3. The quality and quantity of the late Victorian period building stock exemplifies the economic boom of the late Nineteenth Century. Many of the buildings are impressive reminders of the area's role as a civic retail and entertainment hub.*
- 5. The consistency and relative intactness of the late Nineteenth - early Twentieth Century building stock is unique in the Sydney metropolitan Area and the State as a whole.*

*Additionally the subject building indicates an earlier development pattern by its orientation visible from the train, and from the Conservation Area across the railway line, and from the King Street end of the subject Conservation Area.*

***Heritage Listings***

*MLEP 2001: in Heritage Conservation Area HCA2*

*Draft MLEP 2011: in Heritage Conservation Area C2, adjacent to Heritage Item I170*

***Comment on Proposal***

*Victorian style Terrace House*

*The demolition of the terrace at the rear is not supported and steps should be made to include the terrace in the proposal.*

***Recommendation***

*Supported only if the Victorian Villa can be substantially retained."*



The above issues were raised in Council's letter dated 28 April 2011 and was further discussed on 10 May 2011 when the applicant and the applicant's heritage consultant met with Council Officers to discuss the above issues. The applicant's heritage consultant provided the following response:

- *"The terrace is a standard representative and late example of development from the early 20<sup>th</sup> century and has no significant historic or aesthetic values.*
- *The former presentation of the site prior to the widening of the rail corridor in the earlier decades of the 20<sup>th</sup> century was not a 'prime position' as claimed but was surrounded by rock crushing activities, lime and cement manufacturing and storage and modelling works. To the west was an open dam which serviced the trains that passed directly in front of the street.*
- *The DCP does not in its entirety or in its detail contemplate the significance of this isolated property which makes no contribution to the identified significance of King Street and Enmore Road as High Victorian civic and retail strips.*
- *The location is so close to the rail corridor is one of the principle reasons that the building has virtually no potential for any adaptive re-use and no potential for residential use. The condition of the building, the vibrations of the rail traffic and the dangerous situation in regard to derailment or collapse onto the tracks are all sound reasons for the demolition of the building. The visibility of the building from the trains that pass is not a sound heritage reason for its retention.*
- *The condition of the building has been assessed by a structural engineer to be unstable. In the absence of any professional assessment by Council to refute this assessment the liability issues for the site must be taken into consideration in any determination."*

Further to the above, Railcorp provided the following letter to the applicant dated 13 May 2011 regarding the demolition of the Victorian Villa:

*"I confirm that RailCorp has responded to Council on the Development Application by granting concurrence to the development as proposed including the demolition.*

*The existing house is near to the rail corridor and does not comply with our current standards under ESC 380 including noise, vibration and electrolytic corrosion protection, nor set-backs for balconies. We have no information on the present condition of the house and long-term retention of the house could give rise to safety and maintenance issues – access to the rail corridor to carry out building maintenance is only possible during a rail possession, which are infrequent on this section of the corridor."*

The additional information submitted was referred to Council's Heritage and Urban Design Advisor who provided the following comments in response to the above:

***"Response to Additional Information provide by applicant:***

*The applicant argues that the Victorian style building originally fronting Crescent Street (now 1 Crescent Lane) makes no contribution to the significance of the Heritage Conservation Area, and therefore it has no statutory heritage value.*

*Their argument relies primarily on the fact that the subject property cannot be seen from King Street or Enmore Road and purports that the statement of significance for the conservation area is solely concerned with visible contributions only to these two 'retail' streets.*

*Secondary arguments in their submission purport:*

1. That the building is not a commercial or retail building.
2. That the building is representative of a late Victorian building only.
3. That the building's context is gone.
4. That the building is structurally unsound, a hazard, and beyond repair.
5. That the building is unusable due to its frontage/proximity to noise.

*The heritage value ascribed to the site in this assessment is based on its applicability to the criteria for inclusion within this HCA.*

#### Location

*The property address is 1 Crescent Lane Newtown. The property is within Heritage Conservation Area (HCA) 2.*

#### HCA Boundaries

*The information brochure on Council's website is not the statutory document which defines the HCA (as suggested by the applicant). MLEP 2001, Schedule 5 identifies the locality of HCA 2 as: Newtown and Enmore – Land shown coloured green and marked "Heritage Conservation Area (HCA 2)" on Sheets 2-5 of the heritage conservation area map.*

#### Inclusion of properties outside King Street or Enmore Road

*Other sites without an address/frontage on King Street or Enmore Road, but included within HCA 2 include:*

- 2 Stanmore Road, Enmore*
- 5 Edgeware Road, Enmore (not visible from King Street or Enmore Road)*
- 7-13 Bedford Street, Newtown*
- 1 Bedford Street, Newtown*
- 3 Eliza Street, Newtown (not visible from King Street or Enmore Road)*
- 6 Mary Street, Newtown (not visible from King Street or Enmore Road)*
- 214-216 Australia Street, Newtown (obliquely visible from King Street)*
- 218 Australia Street, Newtown (not visible from King Street or Enmore Road)*
- 2 Camden Street, Newtown (not visible from King Street or Enmore Road)*

*In some cases the properties above are not visible from either King Street or Enmore Road. In all cases the properties are on their own land titles with their own addresses and frontages, therefore there is no reason for their inclusion, other than they were considered to contribute to HCA 2. The additional information put forward by the applicant claims that the HCA 2 boundary includes the Water Board site adjacent – this is untrue it does not.*

#### Visual Appreciation

*The property faces the railway line, so that the facade of the property is most prominent to commuters on the train, and from Bedford Street, Newtown, across the railway line. From that perspective it represents a commercial Victorian style, two storey terrace with the proprietors name on the parapet, constructed c.1902.*

*The style, the age, the commercial use, and the location of the building along the ridge are all visible clues which make it eligible for inclusion in the HCA. The fact that the street, which was once a retail street connected to the nexus of the King Street Enmore Road retail precinct, has gone, makes this remnant of it's existence more significant.*

*Whilst the train line does lie outside the boundary of the HCA it is inextricably linked to the heritage significance of the King Street Enmore Road HCA having catalysed development there in 1855 with the opening of the original railway station at Newtown*

*(the original platform located right in front of the subject site) and further encouraged development with the expansion of commuters requiring additional lines and resulting in the resumption of Crescent Street.*

*The site remains a strong visual indicator of the early presence of the railway, and its expansion. Indeed the building is widely known to train commuters due to its unique and historic presentation to the railway line, and it's close proximity to the tracks. The property is also visible from the draft Heritage Item adjacent (I170).*

#### Retail Function

*The building is one of two properties that were owned by J. Milne, J.P, Plumber and Sanitary contractor.*

*1 Crescent Lane is identified in Newtown Rate Books for the year ending February 1903 as a building, therefore putting completion c.1902.*

*19 Trafalgar Street (originally 11) is first identified in Sands Directory in 1904 to J.Milne J.P. & Plumber.*

*They have almost identical styled parapets, and bookend the location of the original Newtown Railway Station. Built approximately 10 years after the station relocated to its existing position, they appear to have formed part of a 'merchant's strip', much of which is evident in extant buildings running along Trafalgar Street today. The railway presumably gave them high exposure to 'passing trade'.*



1 Crescent Lane Enmore



19 Trafalgar Street Enmore

#### Location

*The site is not on King Street or Enmore Road however this does not preclude it from inclusion in the HCA because it is physically, materially, stylistically and historically linked to the retail strips and their evolution.*

*Council's DCP No.34 – King Street and Enmore Road Heritage and Urban Design, Section 4 - Summary Statement of Significance lists the following relevant components as significant:*

- 3. The quality and quantity of the late Victorian period building stock exemplifies the economic boom of the late Nineteenth Century. Many of the buildings are impressive reminders of the area's role as a civic, retail and entertainment hub.*

5. *The consistency and relative intactness of the late Nineteenth - early Twentieth Century building stock is unique in the Sydney metropolitan Area and the State as a whole.*

*Additionally the subject building indicates an earlier development pattern by it's orientation visible from the train, and from the Conservation Area across the railway line, and from the Bedford Street within HCA 2.*

***In response to the applicant's summary comments:***

1. *The terrace is of a style, age and heritage significance that mirrors and represents those buildings comprising the significant and contributory buildings of the Enmore Road precinct. In fact it is more intact, more significant stylistically and of higher quality than many buildings fronting Enmore Road. It has an unusual off axis front door dividing three windows rather than the usual two.*
2. *Crescent Street at the time of the development of the subject building accommodated commercial properties including a modeller and a lime merchant. At the turn of the century the manufacture of wares was often conducted on the premises so that the baker, the dressmaker, the hardware store and the chemist not only sold, but made their produce on site. Porter's Lime Paints, Quartery's Hardware, and N.a.m.e Architectural Models 2/82 all on King Street and Enmore Road today, are the same kinds of merchants referred to in the Sands Directory of 1904 for Crescent Street.*
3. *The DCP does allow, as stated above, for inclusion of this site by virtue of it's style, use, age and location.*
4. *The structural integrity of the building is not an argument for or against it's significance to the HCA.*

***Comment on Proposal***

*The complete demolition of the terrace at the rear remains unsupported. The terrace, or significant features of it (such as the façade) should be incorporated into the proposal.*

***Recommendation***

*Supported only if the significant features of the Victorian Villa can be substantially retained."*

Council's Heritage and Urban Design Advisor considers the proposed development to be an inappropriate development in its current form. To address the heritage issues identified above, the proposal would require significant design amendments, which would be outside the scope of the current application.

(vii) Protection of Trees (Clause 56)

Clause 56 of MLEP 2001 concerns the protection of trees under Council's Tree Preservation Order. The proposal was referred to Council's Tree Officer who provided the following comments:

## ***“DESCRIPTION OF TREES:***

### ***Trees protected under Council's Tree Preservation Order:***

*Note – The tree numbers referred to in this referral response are consistent with the numbering used in the Arboricultural Impact Assessment prepared by Arboreport and dated 09/02/11.*

*The following trees will not be impacted by the proposed development:*

*Tree 9 – Ficus microcarpa var hillii (Hills Weeping Fig)*

*The proposed development will involve a minor encroachment (< 10%) within the Tree Protection Zone (TPZ) of the following trees –*

*Tree 12 – Eucalyptus microcorys (Tallowood)*

*Tree 14 – Cinnamomum camphora (Camphor Laurel)*

*The proposed development will involve a major encroachment (> 10%) within the Tree Protection Zone (TPZ) of the following trees –*

*Tree 10 - Ficus microcarpa var hillii (Hills Weeping Fig)*

*Tree 11 - Ficus microcarpa var hillii (Hills Weeping Fig)*

*Tree 13 - Eucalyptus microcorys (Tallowood)*

*Trees 10, 11, 12, 13 and 14 are highly significant and located on an adjacent property and therefore will need to be protected during construction. Critical works within the TPZ of these specimens will be conditioned to be undertaken under the direct supervision of a Level 5 Arborist.*

*The following trees are located within the proposed building footprint and will require removal:*

*Tree 1 – Araucaria heterophylla (Norfolk Island Pine Tree)*

*Tree 2 - Archontophoenix cunninghamiana (Bangalow Palm)*

*Tree 3 - Archontophoenix cunninghamiana (Bangalow Palm)*

*Tree 4 – Plumeria acutifolia (Frangipani)*

*Tree 5 – Plumeria acutifolia (Frangipani)*

*Tree 6 – Plumeria acutifolia (Frangipani)*

*Tree 7 - Howea forsteriana (Kentia Palm)*

*Tree 8 - Archontophoenix cunninghamiana (Bangalow Palm)*

*Additionally there are two (2) Celtis australis (Hackberry) located within the building footprint that will require removal should the development be supported.*

*The removal of the above mentioned trees to allow for the proposed development is supported. These trees generally appear to be in good health and condition but have a relatively low retention value due to their size and location. The amenity value of these trees (apart from Tree 1) is low and due to their location any redesign of the current proposal to facilitate viable retention would be very difficult to achieve.*

*Due to the lack of deep soil associated with this development replacement tree planting is not possible.*

*A detailed landscape plan is required before the construction certificate is issued.*

## **RECOMMENDATIONS:**

*The heads of consideration section 79C of the Environmental Planning and Assessment Act have been taken into consideration in respect to designated trees and the application is recommend for approval subject to conditions of consent."*

Given the above, it is recommended that conditions of consent to address the above be imposed on any consent granted.

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

The property is not located within an area identified as being subject to acid sulfate soil risk under MLEP 2001.

### (ix) Waste Management (Clause 58)

Clause 58 of MLEP 2001 requires consideration of waste management for any proposed development. A Site Waste Management Plan in accordance with Council's requirements was submitted with the application and is considered to be adequate. The issue of waste management is addressed in more detail later in this report under the heading "Marrickville Development Control Plan No. 27 - Waste Management".

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

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

The submitted Statement of Environmental Effects makes the following comments regarding the energy, water and stormwater efficiency of the development:

*"The proposed development achieves a good level of internal amenity in terms of solar access and natural cross-ventilation with 26 of the apartments (72%) receiving a minimum of 2 hours sunlight in mid-winter to the living areas or adjacent balconies/courtyards, and 24 of the apartments (67%) being naturally cross-ventilated.*

*The proposed development also achieves a compliant energy rating, and water/energy efficient fixtures and appliances will be installed throughout the completed building."*

Overall, the proposed development is considered to have been designed in an energy, water and stormwater efficient manner and is considered satisfactory having regard to Clause 59 of MLEP 2001. The proposed energy, water and stormwater efficiency measures incorporated into the proposal are further discussed later in this report under the heading "Marrickville Development Control Plan No. 32 - Energy Smart Water Wise".

### (xi) Landscaping and Biodiversity (Clause 60)

Clause 60 of MLEP 2001 requires consideration be given to conservation of biodiversity as is of relevance to the subject application. The 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.

(xii) Community Safety (Clause 62)

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

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

Council's letter dated 28 April 2011 raised the following concerns:

- “(i) Pedestrian entrances from Enmore Road are discreet and provide minimal activation.*
- (ii) No pedestrian access is provided from Crescent Lane.*
- (iii) Access from Enmore Road to upper floor units and basement car parking require access past the front doors of ground floor units which raises concerns for resident safety for the occupants of the development.”*

In response to the above, the applicant submitted the following information in additional information dated 11 May 2011:

*“As noted in the Statement of Environmental Effects accompanying the development application, the proposed development has been designed in accordance with Marrickville DCP 38 – Community Safety. In particular, internal and external safety and security is optimised through casual surveillance of the public domain, the main apartment lobby will be well lit, and key access will be required to and from the car parking area.*

*Notwithstanding the above, it is noted that Council has raised 3 concerns which are addressed below:*

<b><u>Concern</u></b>	<b><u>Response</u></b>
<i>1. Pedestrian entrances from Enmore Road are discreet and provide minimal activation.</i>	<i>The Enmore Road façade is characterised at ground level by a combination of glass shopfronts and a glass pedestrian entry door. The glass entry door is in a clearly visible location. The glass entry door and glass shopfronts are designed to maximise casual surveillance and enable users to see into the building prior to entry (DCP 38 Good Design Principle 7.2-G2).</i>
<i>2. No pedestrian access is provided from Crescent Lane.</i>	<i>Marrickville DCP 38 – Community Safety (Clause 7.1; Control C2) indicates that pedestrian entrances to premises must not be provided from rear lanes. It is noted that Crescent Lane is a rear lane and that pedestrian access to all units is provided by the front entry door on Enmore Road.</i>
<i>3. Access from Enmore Road to upper floor units and basement car parking require access past the front doors of ground floor units.</i>	<i>It is acknowledged that access to some units will necessitate occupants to walk past other units front doors. It is noted however, that the building is a secure complex with access to communal areas</i>

	<i>limited to those appropriate keys. It is further noted that the corridors will be well lit, have directional signage and not contain blind corners.</i>
--	--

The applicant's response is considered to have merit and the proposed development is considered reasonable having regard to community safety.

(xiii) Accessibility (Clause 64)

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

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

The proposed development would therefore require a minimum of four (4) adaptable dwellings. Four (4) dwellings (G10, 104, G07 and 101) have been demonstrated as adaptable dwellings.

This issue is discussed in more detail below under heading '*Marrickville Development Control Plan No. 31 – Equity of Access and Mobility*'.

## **9. Draft Marrickville Local Environmental Plan 2011**

Draft Marrickville Local Environmental Plan 2011 was placed on public exhibition on 4 November 2010 and accordingly is a matter for consideration in the assessment of the subject development application under Section 79C of the Environmental Planning and Assessment Act 1979.

The following assessment considers the proposed development having regard to the zoning provisions and controls contained in draft MLEP 2011 that are of relevance in the assessment of subject development application:

Zoning:	B2 Local Centre
Is development permitted under zoning?	Yes
Floor Space Ratio (max):	
Permitted:	1.5:1
Proposed:	1.8:1 (approximately)
Height of Building (max):	
Permitted:	14 metres
Proposed:	13.4 metres
Land Reservation Acquisition:	No
Heritage:	
Draft Heritage Item:	No
Draft Heritage Conservation Area:	Yes
In vicinity of draft item or area:	Yes
Flood Planning:	Not affected



Acid Sulfate Soils:	Not affected
Key Sites:	No
Foreshore Building Line:	No
Natural Resource – Biodiversity:	
Habitat Corridor	No
Bandicoot Protection Area	No

As indicated above, the proposed development generally satisfies the zoning provisions and relevant controls as contained in draft MLEP 2011 with the exception of the height control.

## 10. Marrickville Development Control Plan No. 19 – Parking Strategy (DCP 19)

Marrickville Development Control Plan No. 19 - Parking Strategy (DCP 19) prescribes parking requirements for proposed developments. In order to determine the number of parking spaces required for this proposal, the proposed development needs to be appropriately defined. It is considered that the development is defined as a Residential Flat Building and Retail Shop which require the following parking spaces:

Residential Flat Building:

- One (1) space per dwelling (other than small dwellings); plus
- One (1) visitor space per four (4) dwellings; plus
- 0.5 spaces per 'small' dwelling\* (no visitor car parking); plus
- One (1) bicycle space per ten (10) dwellings.

\*Small dwelling means a dwelling, the floor space of which is less than 55 square metres.

Retail Shop:

- One (1) space per 45sqm for retail shops up to 500sqm GFA; plus
- One (1) bicycle space per 300sqm GFA.

The following table summarises the proposed components and areas of the proposed development along with the required parking spaces generated by the requirements of DCP 19:

Component	Gross Floor Area / No. of Rooms	Car Parking Spaces Required	Bicycle Spaces Required
Residential Flat Building	16 dwellings	16 spaces + 4 visitor spaces	4 spaces
	20 'Small' dwellings	10 spaces	
Restaurant/Café	210sqm	5 spaces	1 space
<b>Total Spaces Required:</b>		<b>35 spaces</b>	<b>5 spaces</b>

*Table 2: Components of the Development - DCP 19 Car and Bicycle Parking Requirements*

As the above table illustrates, the proposed development would require the provision of thirty five (35) off-street car parking spaces plus five (5) bicycle parking spaces. An assessment of the car parking and bicycle parking space requirements is provided below.

### (i) Parking

Amended plans indicate the provision of twenty-five (25) parking spaces on the basement level of the building resulting in a shortfall of ten (10) parking spaces, which is a departure from Council's parking requirements under DCP 19. The information submitted with the

original plans indicates that the car parking spaces comprises of 4 commercial/retail spaces, 16 resident's spaces, and 3 visitor spaces. However, amended plans have been submitted reducing the number of car spaces from twenty-six (26) to twenty-five (25) to provide the required dimensions for the disabled car parking spaces. The breakdown of allocated spaces for the restaurant/café and residential components of the development have not been provided with the amended plans.

The submitted Traffic and Transport Assessment, prepared by Varga Traffic Planning Pty Ltd makes the following conclusion regarding the proposed parking:

*"The proposed "shortfall" when assessed under Council's Parking Code is considered to be acceptable in this instance because:*

- *The site has excellent access to a broad range of public transport services, being ideally located within 150 metres walking distance of Newtown Railway Station, as well as numerous bus stops in Enmore Road and King Street.*
- *The site is also located within close proximity to shops and services located along both sides of Enmore Road and King Street.*
- *The 6 bicycle spaces proposed are in excess of that required by Council's Parking Code.*
- *There are 4 motorcycle spaces proposed, although Council's Parking Code doesn't require any.*
- *The existing crossover in Enmore Road and the 16 metres of "Funeral Directors Only" parking along the Enmore Road site frontage will become redundant, and would enable 3 on-street parking spaces to be reinstalled in Enmore Road."*

In addition to the above, under the draft DCP 2011 the development would require a total of seventeen (17) car spaces comprising of ten (10) residential car spaces, four (4) visitor car spaces and three (3) commercial car spaces. Given this, under the draft DCP 2011 the proposal would provide an additional eight (8) car parking spaces on top of the future car parking rates.

Given the above, the proposed development is considered acceptable having regard to car parking.

## (ii) Delivery and Service Areas

Section B2 of DCP 19 sets out the delivery and service area requirements for developments. The following table summarises the proposed components and areas of the proposed development along with the delivery and service area requirements of DCP 19:

Land Use	Gross Floor Area / No. of Rooms	Delivery / Service Space Required	Space/s Proposed
Residential Flat Building	36 rooms	1 service vehicle space per 50 flats (1 space)	1 delivery / service space for the entire building
Restaurant/Café	210sqm	1 truck space per 400sqm GFA (1 space)	
<b>Total Spaces Required:</b>		<b>1 truck and 1 service vehicle spaces</b>	<b>1 space</b>

*Table 3: Components of the Development - Delivery and Service Area Requirements*

As the above table illustrates, the proposed development would require the provision of one (1) service vehicle space for the residential flat building component and one (1) truck space for the restaurant/café component. Section B.2.3.1 of DCP 19 prescribes that the minimum standard for a service area for the loading and unloading of goods to measure 7.5 metres x 3 metres. Section B.2.3.1 of DCP 19 prescribes the minimum dimensions for a maximum sized rigid truck to measure 11 metres x 2.5 metres.

The proposed development includes one (1) loading dock measuring 6.5 metres x 3.5 metres for the use of the entire building which is incorporated within the basement car parking. The proposed development does not provide a loading dock and truck space complying under the required dimensions under Section B.2.3.1 of DCP 19. However, given access constraints from Crescent Lane a truck access to the basement is problematic. Service vehicle access could only be provided by a ute/van. The size of the proposed loading bay is of sufficient size to accommodate such vehicles.

(iii) Bicycle Parking

The application proposes six (6) bicycle parking spaces located within the basement area in the building which complies with the minimum requirement of five (5) spaces prescribed by DCP 19.

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

Marrickville Development Control Plan No. 27 - Waste Management (DCP 27) prescribes the waste management requirements for developments. The proposed mixed use development would require separate waste/recycling storage facilities for the various aspects of the proposal including a separate waste/recycling storage area/room for the residential and retail components of the building.

The proposed development includes two (2) waste/recycling storage rooms situated in the basement level.

The proposal was referred to Council's Resource Recovery Coordinator who provided the following comments:

*"The storage area for the residential bins from my calculations will only fit 14 x 360L mobile bins with minimal space for movement to allow residents to enter and manoeuvre within the room. The size of the room needs to be increased to house the 8 garbage, 8 recycling and 1 x 240L green waste bin specified in the waste management plan.*

*The residential bin storage area is not adequate in size to house the relevant number of bins.*

*Bins will need to be presented to the end of Crescent Lane for collection, as close to Station Street each Wednesday morning and returned back to the property boundary no later than 24 hours after collection. This is the responsibility of the caretaker."*

The above issues were raised in Council's letter dated 28 April 2011. The applicant submitted amended plans on 11 May 2011 satisfying the above requirements.

## **12. Marrickville Development Control Plan No. 28 - Urban Design Guidelines for Business Centres and Marrickville Development Control Plan No. 34 - King Street and Enmore Road Heritage and Urban Design**

The following is an assessment of the proposed development under the relevant provisions contained in Marrickville Development Control Plan No. 28 - Urban Design Guidelines for Business Centres (DCP 28) and Marrickville Development Control Plan No. 34 - King Street and Enmore Road Heritage and Urban Design (DCP 34).

Most of the relevant controls contained in DCP 28 are reproduced and more relevantly applicable in DCP 34. DCP 28 notes that *“for development on King Street and Enmore Road, applicants should refer to Council’s DCP No. 34 King Street and Enmore Road, Heritage & Urban Design”*.

The subject site is located within Precinct Four - Enmore Road as identified in DCP 34 with one of the significant attributes of the area identified as *“The precinct comprises predominantly late nineteenth - early twentieth century buildings of two storeys in height, plus parapet.”*

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

The issue of floor space ratio has been discussed previously.

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

The development seeks approval to retain the existing facade along Enmore Road, demolish the remainder of the existing improvements and erect a mixed use development containing thirty-six (36) dwellings and 210sqm of cafe/food tenancies over a basement carpark which is to contain twenty-five (25) off street parking spaces.

In determining an appropriate height for the proposal, the prevalent heights of adjacent and neighbouring contributory buildings’ parapets are taken into consideration. The proposed development is three (3) part four (4) storeys in height ranging from 8.8 metres to 13.4 metres which is greater than the height of neighbouring and adjoining buildings that are generally single and two (2) storeys in height. It is noted that the existing building on the site is two (2) storeys in height.

The development is generally three (3) storeys in height, with a portion of the building fronting Crescent Lane and the railway corridor being four (4) storeys in height. The top floor of the development has been set back behind the existing façade by approximately 3.2 metres and as such would generally not be visible from Enmore Road. However the eastern elevation would be visible because of the low height of improvements on the adjoining property to the east at 1-11 Enmore Road (Oporto Chicken) (refer to Image 5).

The proposed development exceeds the height of the surrounding commercial/retail development within the surrounding portion of the Enmore Road streetscape. The front portion of the building visible from Enmore Road is incorporated within the existing building envelope of the TJ Andrews building.

The development is considered to be generally consistent with aims and objectives of DCP 28. The proposal also appropriately articulates the building facades with balconies and contrasting finishes/materials along the Crescent Lane elevation, eastern elevation with a steel structural frame retaining the ‘memory’ of the building envelope of the existing warehouse building, southern façade facing the railway corridor and the glazed ground floor façade along Enmore Road.

The distribution of the building mass, combined with the appropriate use of light weight materials such as aluminium framed windows complimented with heavy weight materials such as dry pressed brick, cement rendered masonry and steel framing utilised for part of the building facades presents a visually interesting development. Whilst it is acknowledged that the overall architectural response of the development is generally not in keeping with the surrounding area, the development is considered to be a positive contemporary architectural form for the area.

The proposed building mass and height is considered acceptable for the site's context.

(iii) Front Setbacks

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

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

The development is to maintain the existing nil front setback due to the proposed retention of the existing building façade and is consistent with the predominant building alignments of other mixed use developments along Enmore Road.

The proposed development is considered acceptable having regard to the setback requirements of DCP 28 and DCP 34.

(iv) Building Façade

The proposed building façade responds positively to the controls and objectives contained in Section 7.5 of DCP 34 through the retention of the existing building façade.

The glazed ground floor frontage of the commercial/retail area along Enmore Road would encourage an active façade and provide adequate surveillance of the area. The Enmore Road frontage also, provides a residential entry along the south western corner of the site. The development activates this area with the provision of a staircase to the basement level directly accessible from the public footpath.

The front façade at Enmore Road is retained as part of the proposal with the front nine (9) metres of the existing eastern boundary wall adjacent to the Oporto Chicken site to be retained with the retaining portion of the wall to be reduced to a height of 5 metres.

The development when viewed from Crescent Lane comprises of balconies and decks with rendered masonry and aluminium framed windows. It is also considered that the Crescent Lane frontage would provide surveillance with three (3) units facing and providing access from Crescent Lane.

The southern elevation façade adjoining the rail corridor comprises of dry pressed brick, aluminium framed windows and a lower ground concrete wall acting as a barrier for train derailment.

The proposed development appropriately articulates the building facades with balconies and contrasting finishes/materials along the eastern elevation and southern elevation adjoining the railway corridor and the glazed ground floor façade along Enmore Road.

The front building façade responds positively to the controls and objectives contained in Section 7.5 of DCP 34 through the division of the building with the use of vertical and proportionate windows.

The proposed building façade and treatment of the development is generally consistent with the objectives and requirements of DCP 28.

(v) Roofs and Parapets

As the front façade along Enmore Road is to be retained as part of the proposal, the roof form when viewed from Enmore Road is consistent with the roof forms prevalent in Enmore Road. The remaining portion of the building consists of flat roof forms which is consistent with other mixed use developments in the area.

The proposed roof form is consistent with the roof and parapet controls contained in DCP 34.

(vi) Awnings, verandahs and balconies

DCP 34 describes the Enmore Road precinct as lacking visual cohesion “*due to a number of “gaps” in the street and a variety of modern infill buildings. ... As a result, awnings are noticeably absent from the eastern end of the precinct. Awnings are present and generally continuous throughout the western part of the streetscape*”. The proposal development includes the reinstatement of an existing awning to span along the Enmore Road frontage of the building.

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

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

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

The development incorporates a number of balconies and decks to service the residential units within the development. The scale, colours and materials of the proposed balconies and decks are considered compatible with the existing streetscape whilst providing a contemporary design. The balconies incorporated within the building form are considered to be acceptable.

(vii) Retail Frontage

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

*“O1 To ensure that a diversity of active street frontages is provided which are compatible with the scale, character and architectural treatment of the building as a whole.*

*O2 To preserve the surviving examples of original whole shop frontages and elements.*

*O3 To encourage a variety of relationships and openings between the shop and the street.*

*O4 To ensure that shops are accessible for everyone.*

- O5 *To encourage new or replacement shop fronts to be compatible with the architectural style or period of the building to which they belong and the overall character of the business centre.*
- O6 *To preserve the visual amenity of business centres outside normal trading hours without restricting security.”*

The development proposes 210sqm of retail space, which is separated into two commercial cafe/food tenancies located on the ground floor level of the development. The cafe/food tenancies are directly accessible from Enmore Road, and would encourage an active streetscape through the large glazed shop front windows along Enmore Road. The glazed frontages would contribute to further activation of the street frontage of the overall building and promote casual surveillance from within the building to the public domain.

The proposed retail frontages of the development are generally consistent with the objectives and requirements of DCP 28 and DCP 34.

(viii) Disabled access and adaptable design

The issue of accessibility is discussed below in Section 13 under the heading ‘Marrickville Development Control Plan No. 31 – Equity of Access and Mobility’.

(ix) Vehicular Access and Car Parking

The issue of vehicular access and car parking is discussed in Section 10 under heading ‘Marrickville Development Control Plan No. 19 – Parking Strategy’.

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

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

- “C1 *At least 65% of new dwellings within a development should provide living area windows positioned within 30 degrees east and 20 degrees west of true north to allow for direct sunlight for at least 2 hours between 9.00am and 3.00pm on 21 June.*
- C2 *Direct sunlight to the windows of principal living areas and the principal area of open space, of adjacent dwellings must not be reduced:*
  - 1. *to less than 2 hours between 9.00am and 3.00pm on 21 June; and*
  - 2. *where less than 2 hours of sunlight is currently available in June, the sunlight available in March/Sept will be considered in the assessment of the proposal. That sunlight available between 9.00am and 3.00pm on the 21 March/September is not to be reduced.*
- C3 *The maximum depth of a habitable room from a window providing light and air to that room shall be 10 metres including any overhanging part of the building, balconies, terraces etc.*
- C4 *On west facing facades subject to direct sunlight, external shading or other energy saving measures should be integrated into the design of the new building.*
- C5 *Each new dwellings within a development must:*
  - *comply with a minimum 3.5 star NatHERS energy rating of internal comfort for each new dwelling.*

C7 *Building design ensures that dwellings within a development enjoy natural rather than mechanical ventilation by:*

- *Siting and layout design that captures breezes;*
- *Use of narrow floor plans;*
- *The arrangement of windows, doorway and other openings that allow the free internal movement of air; and*
- *Avoiding double loaded corridor configurations.”*

More than 65% of the proposed dwellings have passive solar design, as the majority of the living areas of the dwellings are located within the solar path. The north facing first floor windows of the “Kristallis” building and No. 27-31A Enmore Road will be provided a minimum 2 hours direct sunlight between 12.00 noon and 3.00pm on 21 June.

The applicant has advised that energy efficient fitting and fixtures will be installed. BASIX Certificates were submitted with the development application indicating that the proposed development meets the required scores. This is discussed further above in Section 5 of this report under the heading “*State Environmental Planning Policy (Building Sustainability Index: BASIX)*”.

(xi) Materials and Finishes

The proposed development is generally acceptable in terms of the proposed materials and finishes.

Given the height relationship between the proposed building and the adjoining Oporto Chicken site to the east, the side walls of the proposed building would be highly visible from Enmore Road as illustrated in the side elevation plan illustrated in *Image 29: Eastern Elevation Plan* earlier in this report.

The proposed materials and finishes include the use of a single painted colour finish for the side wall of the building to be consistent with the existing front façade. The building comprises of ‘Natural White’ and ‘Calf Skin’ colour finish cement rendered masonry, dry pressed brick work, and ‘Monument’ colour steel structural framing.

The use of the proposed colours and materials break up the massing of the building and relate to the architecture of the building. It is considered that the proposed development is sympathetic to characteristic materials, finishes and colours in the existing streetscape.

(xii) Stormwater Management

Stormwater Drainage Plans were submitted with the application and referred to Council’s Development Engineer who made the following comments regarding stormwater drainage:

**“SITE STORMWATER DRAINAGE**

- *As the site is greater than 1000sqm, a Comprehensive Water Cycle Management Plan in accordance with DCP 32-Energy Smart Water Wise detailing options and opportunities for stormwater re-use is required. Although some information was provided, it was not comprehensive as it did not explore any options or opportunities for water re-use;*
- *All stormwater from the site is to be treated to ensure the removal of oil, sediment and other pollutants and to demonstrate how its proposed treatment measures*



*will achieve the Current DECC environmental targets. No details on stormwater quality or treatment have been provided."*

The above issues were raised in Council's letter dated 28 April 2011 and was further discussed on 10 May 2011 when the applicant met with Council Officers to discuss the above issues. The applicant's provided the following response:

**"Item 1 – Water re-use**

*The Comprehensive Water Cycle Management Plan provided with the DA documentation describes the water saving strategy for the project, which meets the mandatory Department of Planning water saving targets as per the BASIX assessment.*

*In meeting this target, the options of stormwater re-use was considered together with the other strategies mentioned.*

*Rainwater re-use was considered, however was found not suitable for this project for the following reasons:*

- Landscape areas are minimal, therefore water demand is minimal for this irrigation usage.*
- Collected rainwater quality was not considered to be high enough for use in Laundries.*
- The only remaining use would be for flushing toilets. To provide such a system would require duplicated pipework and change-over valves to each of the 36 units.*

*Due to the complexity of this latter option, with the attendant maintenance issues of strainers, filters, pumps, and changeover valves, the option was not considered viable for the relatively small amount of water saved. Providing water saving devices was considered more appropriate, and a more effective allocation of material resources.*

**Item 2 – Stormwater Treatment**

*The site is roofed except for the entry driveway and some ground, first and second floor balconies.*

*The roof is not accessible except for servicing. Air conditioning plant condensate will be directed to sewer. No treatment is considered necessary for the roof water.*

*Run-off from the open driveway, balconies, lightwells, internal car park and subsoil is estimated at 15L's for a 1:100 year 6 min storm. Run-off will be collected and treated via a BCP 10001 general purpose precast pit/silt arrestor (or unit of similar capacity) prior to discharge to Council's system. The BCP unit will remove sediments and trap any oils."*

The additional information was referred to Council's Development Engineer who provided the following comments:

**"STORMWATER AND WATER RE-USE**

*An amended site stormwater plan (16786H01 issue B) and letter from Wallis & Spratt Pty Ltd dated 5 May 2011 has been submitted which provides satisfactory detail for the on-site detention and treatment of stormwater.*

*As the site is greater than 1000sqm DCP 32-Energy Smart Water Wise requires options and opportunities for stormwater re-use to be explored. The letter from Wallis & Spratt Pty Ltd considers the option of water re-use and found that the re-use for toilet flushing was possible but was not viable due to the complexity of providing duplicate pipes to 36 units and the maintenance issues involved for a relatively small amount of water saved. I checked the water re-use option for toilet flushing using the excel spreadsheet programme "raintankBETA2.xls" and it shows that a water tank size of 23500L would provide 72% of the demand for toilet flushing saving approximately 377kL/yr which is a substantial saving and therefore stormwater re-use for toilet flushing shall be required for this development."*

Given the above, it is considered that conditions should be imposed on any consent granted requiring the stormwater and water reuse measures to be incorporated into the development.

(xiii) Visual and Acoustic Privacy

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

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

The applicant made the following submission in regards to visual and acoustic privacy:

*"The external windows and doors are oriented towards the street frontages."*

*The site benefits from an absence of residential neighbours, and the separation distance to the rear of the adjoining buildings fronting Enmore Road maintain the privacy of those properties."*

*The shared walls will be constructed in accordance with the noise transmission and installation requirements of the Building Code of Australia (BCA)."*

The proposed development is generally considered reasonable having regard to visual and acoustic privacy. The western portion of the proposed development facing the rear of the buildings fronting Enmore Road consists of bedroom windows on the ground floor, balconies on the first floor and decks on the second floor, and has a minimum building separation of 10.743 metres from the rear of the "Kristallis" building and the rear of No. 27-31A Enmore Road. It is considered the proposed development has incorporated suitable measures to avoid any adverse visual and acoustic privacy impacts within the development. This is discussed further in Section 6 of this report under the heading "State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development (SEPP 65)".

It is also considered that the proposed development would not adversely impact on the privacy of surrounding residential development.

(xiv) Open Space and Landscaping

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

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

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

- C3 *Private open space is located to take advantage of:*
- *outlook and any natural features of the site; and*
  - *to reduce adverse impacts on neighbouring dwellings such as privacy and overshadowing.*
- C4 *Orientate open space areas wherever possible to the north for maximum solar access.*
- C5 *Private open space for each dwelling is to be provided in the form of a balcony, or terrace with:*
- *convenient access from the main living area of the dwelling;*
  - *a minimum area of 8sqm; and*
  - *a minimum width of 2 metres.”*

The size of private open space provided for the proposed dwellings complies with the above-mentioned requirements with the exception of Unit No. 312 on the first floor to allow the retention of the front façade. The private open space areas have convenient access from the living areas of the respective dwellings and as such are capable as serving as an extension of the dwelling for relaxation, dining, entertainment and recreation.

The proposed private open space areas provide adequate levels of privacy and solar access. The issue of privacy and overshadowing has been discussed in this Section under the headings ‘*Internal Layout – Solar Access, Ventilation, Energy and Water Efficiency*’, and ‘*Visual and Acoustic Privacy*’.

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

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

#### **(i) Access and Mobility**

Marrickville Development Control Plan No. 31 - Equity of Access and Mobility (DCP 31) requires access and facilities to be provided for persons with a disability to all components of the proposed development. An Access Statement prepared by Accessibility Solutions (NSW) Pty Ltd was submitted with the application which makes the following conclusion:

*“It is evident from an appraisal of the above plans that the existing DA plans could be documented at construction certificate stage to facilitate appropriate access for people with disabilities to all areas, consistent with AS1428.1, AS1428.4.1, AS1735.12, AS2890.1, AS4299 to readily comply with Parts D3, E3.6, F2.4 of the BCA and thereby satisfy Council’s DCP 31 and DDA Premises Standards and concerns regarding “accessibility” and consistency with the objectives of the Disability Discrimination Act.”*

As stated above and illustrated on the plans, all levels of the proposed premises would be accessible by persons with a disability. The proposed lifts would ensure that equitable access to the residential dwellings is available at all times for persons with a disability.

The below table summarises the requirements for disabled car parking spaces:

<b>Shop-Top Residential Developments</b>			
<b>No. of dwellings</b>	<b>Adaptable Rooms</b>	<b>General Access Requirements</b>	<b>Parking Requirements</b>
10 or more dwellings	Minimum of one adaptable dwelling, designed in accordance with AS4299, shall be provided for every 10 dwellings or part thereof	<p>Access in accordance with AS1428.2 (including access to any laundry, kitchen, sanitary and common facilities).</p> <p>Appropriate access for all persons through the principal entrance of a building shall be provided.</p>	<p>One parking space, designed in accordance with AS2890 Part 1, shall be provided for every adaptable dwelling.</p> <p>One visitor space design in accordance with AS2890.1 Part 1, shall be provided for every 100 spaces, or part thereof, in developments containing adaptable dwellings.</p>

*Table 4: Disabled Parking Requirements for Residential Dwellings*

<b>Commercial Developments (including commercial premises, shops and refreshment rooms)</b>	
<b>General Access Requirements</b>	<b>Parking Requirements</b>
<p>Access in accordance with the BCA, AS1428.2 and AS1735. Appropriate access for all persons through the principal entrance of a building shall be provided.</p> <p>A general access for all persons to appropriate sanitary facilities.</p>	<p>In a car parking area containing 10 or more spaces, one space, designed in accordance with AS2890 Part 1 shall be provided for:</p> <ul style="list-style-type: none"> <li>• each 100 spaces or part thereof for employees; and</li> <li>• each 33 car parking spaces or part thereof for the public from 10 to 500.</li> </ul>

*Table 5: Disabled Parking Requirements for Proposed Retail Premises*

As the above table illustrates, the proposed development would require the provision of five (5) disabled spaces for the residential flat building component and one (1) disabled space for the retail component.

The submitted plans indicate that a total of five (5) disabled car parking spaces are provided, therefore the proposed development results in a shortfall of one (1) disabled car parking space. The issue of the number of car parking spaces provided for the development has been discussed in Section 10 of this report under the heading "Marrickville Development Control Plan No. 19 – Parking Strategy. As detailed in that section, the level of parking for the proposed development is considered acceptable.

## (ii) Adaptable Rooms

Marrickville Development Control Plan No. 31 - Equity of Access and Mobility (DCP 31) requires access and facilities to be provided for persons with a disability. Under DCP 31, in developments containing 10 or more dwellings, a minimum of one adaptable dwelling, designed in accordance with AS4299, is required to be provided for every 10 dwellings or part thereof, and shops are to have access in accordance with the BCA, AS1428.2 and

AS1735. As the development proposes thirty six (36) dwellings, a total of four (4) adaptable dwellings are required to be provided.

Four (4) dwellings (G10, 104, G07 and 101) have been demonstrated as adaptable dwellings complying with the adaptable room requirements of DCP 31.

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

Marrickville Development Control Plan No. 32 - Energy Smart Water Wise (DCP 32) requires consideration to be given to the use of passive and active design and water efficiency principles in the development. Subject to the imposition of the conditions relating to stormwater reuse as recommended by Council's Development Engineer, the proposed development is considered to have been designed in an energy, water and stormwater efficient manner and is considered satisfactory having regard to the requirements of DCP 32.

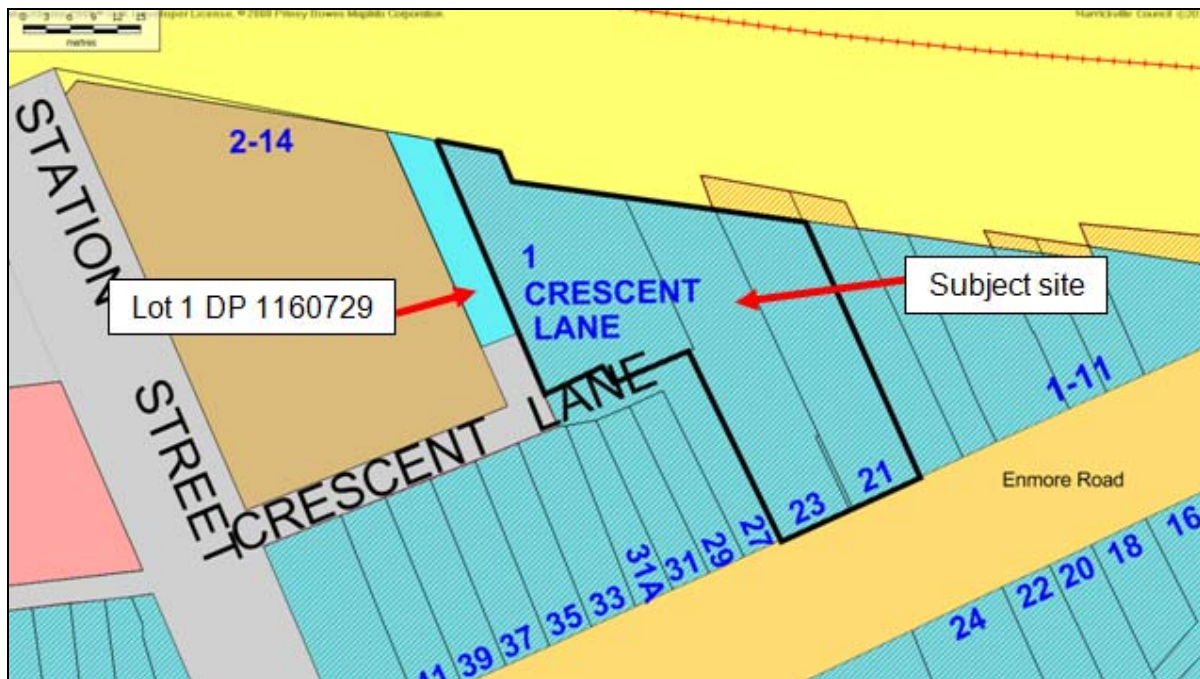
**15. Marrickville Development Control Plan No. 38 - Community Safety (DCP 38)**

Marrickville Development Control Plan No. 38 - Community Safety (DCP 38) requires consideration to be given to a number of community safety matters, as of relevance to the proposed development. The community safety matters contained in DCP 38 are more broadly related to the Crime Prevention Through Environmental Design (CPTED) principals and include surveillance, access control, territorial reinforcement and space management/maintenance.

The issue of community safety has been previously discussed in Section 8 (xii) under the heading '*Community Safety (Clause 62)*'.

**16. Closure of Crescent Lane**

At the Technical Services Committee meeting of 12 February 2008, Council resolved to close part of Crescent Lane, Newtown and upon closure enter into a Public Tender process for the sale of the land. At the Land Use, Assets and Corporate Committee meeting on 13 July 2010, Council resolved that the Common Seal of Council be attached to the road closure application and related documentation as deemed necessary by the General Manager in order for the application to be processed by the Department of Lands. The portion of Crescent Lane approved for closure is known as Lot 1 in Deposited Plan 1160729 is currently subject to gazettal and is illustrated as follows:



*Image 32: Lot 1 DP 1160729 zoned B2 Local Centre under draft MLEP 2011*

Council's Manager Property Services has advised that the road closure application is proceeding in order for the application to be processed by the Department of Lands, and advised that upon the gazettal of the road closure by the Department of Lands that Council would enter into a Public Tender process for the sale of the land.

It should also be noted that part of the proposed development fronts a section of Crescent Lane (being Lot 1 DP 1160729) which Council has resolved to close.

Proposed Unit No.'s 101, 102 and 103 on the ground floor have direct access from the section of Crescent Lane that is in the process of being formally closed. The proposed dwellings on the first and second floors directly above Unit No.'s 101, 102 and 103 have balconies that extend to the existing alignment of Crescent Lane. Unit No's 210 and 304 each contain a bedroom window proposed to be built to the existing alignment of Crescent Lane. The proposed development also proposes a ground floor fire egress at the rear of the development which would be reliant on the use of the section of Crescent Lane that is in the process of being formally closed.

With no certainty as to who will be the successful purchaser in the Public Tender process for the sale of the subject land, when the road closure is gazetted by the Department of Lands, and given the development scheme relies on that land for egress and general amenity, it is considered that the only option available at the current time is to refuse the development application.

Council's Development Engineer has reviewed the proposal and has commented on the closure of Crescent Lane which is further discussed in the following Section.

## **17. Comments from Council's Development Engineer**

The application was referred to Council's Development Engineer who provided the following comments:

### **"VEHICULAR ACCESS"**

- *Crescent Lane is a narrow lane being approximately 5 metres wide boundary to boundary and only 4.06 metres wide kerb to kerb which is not suitable for two-way traffic to the development.*

*Although Crescent Lane is only 5 metres wide the fence line along the northern side of the lane is set back approximately 1.85 metres within the adjacent property (Sydney Water's Property) providing a 2.1 metre footpath. An opportunity exists for the developer to negotiate with the adjacent land owner to buy the strip of land containing the footpath and incorporating it into Crescent Lane by dedication as a public road or by the provision of a right of way. This will allow the lane to be widened to 4.9 metres kerb to kerb while still providing a 1.2 metre footpath. This advice was provided at pre-DA stage and it has not been incorporated in the Development Application and no information regarding discussions or approaches to Sydney Water have been provided.*

- *Currently as proposed due to the width and geometry of Crescent Lane, vehicular access to the development cannot be provided without encroachment upon Sydney Water's property. Also as pedestrian access is also proposed from Crescent Lane, pedestrians accessing the site using the existing footpath do so by encroaching onto Sydney Water's Land. This application cannot be approved while access to it proposes encroachment upon adjacent property.*
- *Currently parking is permitted on one side of Crescent Lane prior to the proposed entry to the development. If cars are parked in the lane then the space available for vehicles to pass is approximately 1.96 metres, which is inadequate. The deletion of these car spaces should be considered as part of the traffic assessment to provide adequate 2 way movements in Crescent Lane. (Minimum width of a parallel car space is 2.1 metres as per AS2890.5). Please note that this will require referral to the Local Traffic Committee.*

### **ACCESS & PARKING**

- *The entry ramp and parking shall comply with AS2890.1:2004 and AS2890.6:2009 in particular in relation to headroom and ramp grades. It should be noted that Clause 3.3 of AS2890.1:2004 requires that the first 6 metres into the carpark shall be at a maximum grade of 1 in 20. The current plans show a ramp grade on entry of 1 in 12;*
- *The disabled car spaces do not comply with AS2890.6:2009 in particular in relation to adjacent shared areas;*
- *The aisle width adjacent to the 3 visitor car spaces and the loading dock shall be increased in width by 300mm in accordance with Section 2.4.2 (d) – Single aisles of AS2890.1:2004.*

The above issues were raised in Council's letter dated 28 April 2011 and was further discussed on 10 May 2011 when the applicant met with Council Officers to discuss the

above issues. The applicant provided the following response to Council's issues raised in letter dated 28 April 2011:

*"We have contacted Gary Inberg, the head of Sydney Water's Property Management Group and put the submission requesting the transfer of the relevant land to Marrickville Council. Gary Inberg has referred the matter to Marcus McClintock who is managing the request on behalf of Sydney Water.*

*He has made internal requests relating to:*

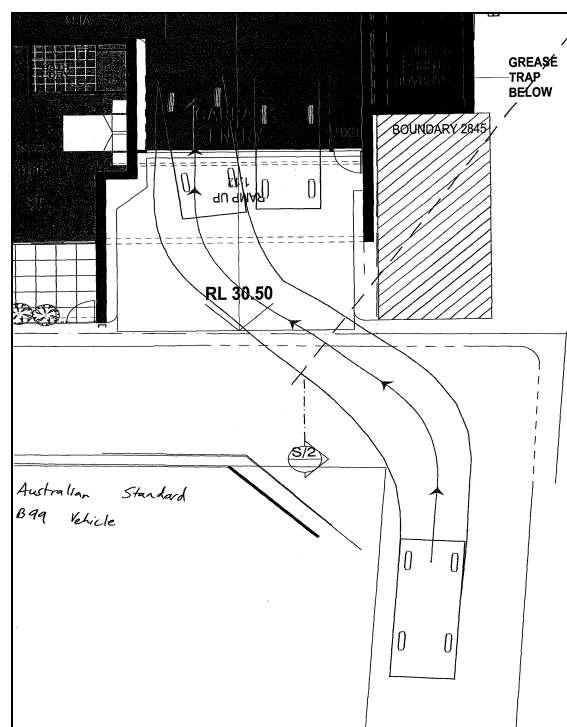
- Sydney Water's operational requirement from their Operations Group
- Sydney Water's future requirement from their Planning Group

*Following the result of those enquiries, if the land is not required, they will*

- Organise a site meeting
- Undertake a Section 60 review due to the Heritage Listing of the site.

*Nevertheless, we expect an approval from Sydney Water to take a long time, and it is unreasonable to defer the determination of this Development Application for such a matter.*

*Vehicular access to the development can be provided for an Australian Standard B99 Vehicle without encroachment upon Sydney Water's property as shown in the attached diagram.*



*There is no pedestrian access to the development proposed from Crescent Lane. Pedestrians accessing the development will be able to do so from Enmore Road. It is noted that the house at No. 1A Crescent Lane can currently only be accessed via Crescent Lane and this access will not be required on completion of the proposed development.*

*Council notes that as a result of the proposed acquisition a 1.2 metre wide footpath would be provided beside the Sydney Water land.*

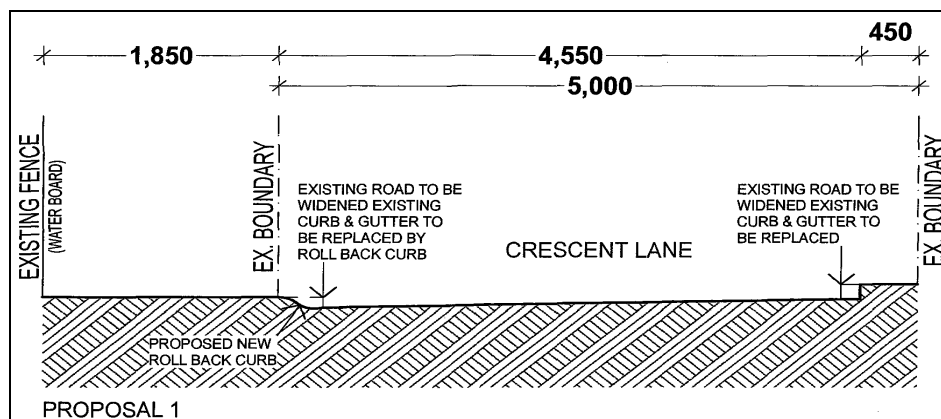


*In this regard we note that there is no possible nexus between the development and the provision of such a footpath. While it may be a good idea to formalise the arrangements that are in place, this is not the responsibility of the Applicant.*

*The width of Crescent Lane as existing is 4050mm between the kerbs. We understand the laneway and the existing situation has been in existence for approximately 110 years, and has been providing vehicular access to the properties backing onto Crescent Lane.*

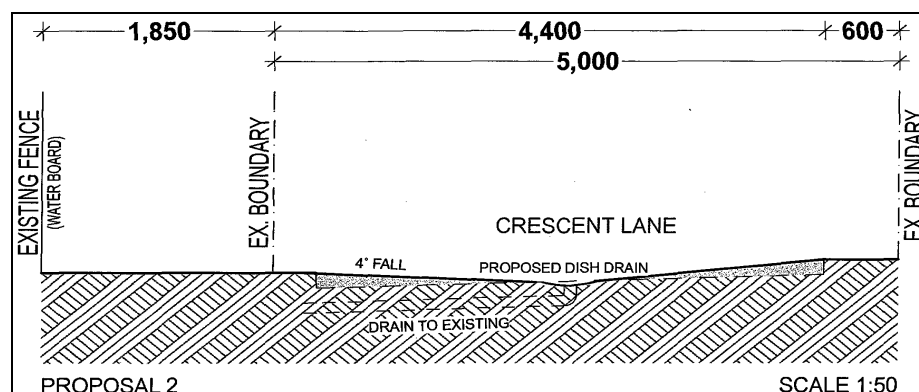
*Nevertheless, it is agreed that the width of the existing laneway is less than current Australian Standards and that the proposal will intensify the use.*

*By adopting Proposal 1 in the attached diagram, (a possibility suggested by Council's engineer) the space available for vehicles to pass can be widened from 1.96 metres to 2.45 metres – a significant difference. Thus the width of the trafficable portion of the lane can be widened by 500mm to 4.55 metres.*



*This will allow a 2.1 metre wide space for parallel parking a car adjacent to the Eastern side of the Lane (as per Australian Standards) and a space 2.45 metres wide for vehicles to pass by. It is noted that 2.45 metres is the width of a regular car parking space as per Australian Standards and is in practice, adequate to allow a car to pass another parked car. In other words, if a car can be parked in a car space, a car can drive through a gap of similar width.*

*Proposal 2 in the attached diagram (as recommended by our traffic consultant, Robert Varga) shows the road raised along the edges in to eliminate the kerbs and would provide a trafficable laneway width of 5.0 metres.*



*With respect to this proposal, Council's engineer raised the concern that vehicles could park too close to the fences. In this regard we note that over 50% of the laneway is presently occupied by crossings. An alternative would be to provide a roll top kerb or crossing along the whole of the Eastern side of the lane.*

*Either Proposal 1 or 2 represents a great improvement on the existing situation by increasing the width of the roadway within the existing road reserve and either proposal will allow adequate access. These improved traffic arrangements would also benefit the 10 properties (not including the applicant's property) that presently have access from Crescent Lane.*

*The applicant has not requested, nor does the application require the deletion of these car spaces. Those spaces are a matter for Council and should not affect the determination of the subject application.*

*In conclusion,*

- It is anticipated that the proposed development will generate a maximum of 15.5 vehicle movements per hour. The existing traffic generation (mostly from Enmore Road is 10.9 vehicle movements per hour.*
- The proposed intensification of use is not so great as to preclude new, more intense development continuing the access from Enmore Road.*
- The Applicant and Council agreed at the Pre-DA meeting that access via Crescent Lane was preferable to access from Enmore Road.*
- The existing arrangements have been in place for a very long time.*
- The proposed modifications to the laneway will result in a great improvement and are adequate to allow access.*
- The proposed modifications to the laneway will result in an improvement to the other properties with vehicular access to the lane.*
- Access to the development does not rely on vehicles or pedestrians entering the development by trespassing over the Sydney Water lands.*
- On a without prejudice basis we are prepared to enter into a Voluntary Planning Agreement with Council in respect to the acquisition of additional land for Crescent Lane and the reconstruction of that lane."*

Further to the above, the applicant submitted the following information in letter dated 17 May 2011 as follows:

*"Further to our letter dated 11 May 2011 we submit a new diagram for the Proposed Re-Construction of Crescent Lane.*

*We note that Council's letter dated 28 April 2011, raised concerns with respect to the width of Crescent Lane.*

*It points out that:*

- the width of the carriage way is 4.050 metres wide and*
- the road reserve is 5.00 metres wide and*

*We note that the eastern side of the laneway presently has several vehicular crossings that service the rear of neighbouring properties on Enmore Road.*

*After further consultation with our traffic consultant, we believe that the best way to overcome the problems is to reconstruct the laneway in accordance with the diagram attached.*

*The diagram shows the exiting kerb and gutter on the eastern side of Crescent Lane replaced by a continuous vehicle crossing.*

*This will result in a neat appearance to the rear of the properties that face Enmore Road. The slight step at the base of the crossing will give 'tactile' indication of the appropriate location for parking of vehicles to the driver of the vehicle being parked.*

*We note that this approach has been undertaken in other council areas. For example, North Sydney Council has recently constructed continuous crossings in the Cammeray shopping area, at the rear of a strip of shop houses similar to those on Enmore Road. A photo of this approach is attached to this letter. There do not appear to be any problems associated with people running into fence caused by the lack of kerb.*

*The diagram also shows a rollover kerb adjacent to the boundary of the Sydney Water land, with the kerb totally on the Council land.*

*With the laneway reconstructed according to the above proposal there will be 4.55 metres of carriageway available*

*Council's letter refers to the deletion of car spaces parked along the lane, as quoted below.*

*We note that as a result of the proposed arrangements the 1.96 metres available for vehicles to pass will be increased to in excess of 2.45 metres when passing a parked car. As we stated our previous letter, the deletion of these spaces is a matter for Council and should not affect the determination the subject application.*

*However, we respectfully suggest that by providing the continuous crossing as proposed, it is possible to retain the car spaces.*

*The reconstruction of the laneway as proposed will allow Council the option to reorganise parking along the lane.*

*Presently it is difficult for vehicles travelling north along the lane to turn around. It would assist if vehicles were able to execute a three point turn by using the 7 metre wide entry to the proposed development.*

*In order to facilitate this we are prepared to grant Council the benefit of an easement. This easement would be approximately 7 metres wide x 4.5 metres. This section of the entry could be finished with a bituminous surface so as to create the impression of a public roadway.*

***In conclusion,***

*The applicant is willing to accept as a condition of consent a requirement that it reconstruct the whole of Crescent Lane at no cost to Council."*

The proposal was re-referred to Council's Development Engineer who provided the following comments:

**"CRESCENT LANE ROAD CLOSURE**

*A portion of Crescent Lane has been approved for closure and prepared for sale by Council's Property Section. This portion of Crescent Lane has been subdivided into a*

separate lot i.e. Lot 1 DP1160729 (refer to the attached deposited plan). All that remains to formalise the closure is Gazettal by the Land and Property Management Authority. Council's Manager, Properties has advised that the property will be offered for sale at auction.

As a result of the part closure of Crescent Lane the current proposal is unsatisfactory in its current form and the plans will need to be amended to remove all proposed vehicular and pedestrian access to the closed portion of Crescent Lane including access to the 3 ground floor units adjacent to the closed lane and the proposed egress from the fire escape that leads to the closed portion of Crescent Lane.

### **CRESCENT LANE & SHAREWAY PROPOSAL**

Crescent Lane is a narrow lane being approximately 5.03 metre wide boundary to boundary and only 4.12 metre wide kerb to kerb with parking permitted on one side. If cars are parked in the lane then the space available for vehicles to pass is approximately 2.02 metre, which is inadequate and therefore not suitable for two-way traffic movements.

Although Crescent Lane is only 5.03 metres wide the fence line along the northern side of the lane is set back approximately 1.85 metres within the adjacent property (Sydney Water land) providing a 2.1 metre footpath. This arrangement has been in place for many years however there is no guarantee that the fence will not be relocated to the property boundary in the future and therefore the development must be able to operate in terms of vehicle and pedestrian access without encroaching upon the adjacent Sydney Water land.

To try and overcome the above issues the applicant has proposed the installation of "shareway" in Crescent Lane to improve two-way vehicle access to the site whilst still allowing for suitable pedestrian access to the lane. The "shareway" proposal as outlined in a submission by John Coady Consulting Pty Ltd includes the following elements:

- i Deletion of the existing parking spaces along the southern kerb line;
- ii Installation of a threshold treatment at the intersection of Crescent Lane and Station Street to designate the beginning of the "shareway" and to reduce vehicle speeds;
- iii Reconstruction of the "shareway" in concrete block paving including installation of a roll kerb along the northern kerb line of the shareway (alternate B) to allow vehicles an additional 300mm in which to pass.

As the post development peak traffic demand is less than 20 vtp/h and given the low speed that vehicles will be travelling, the proposed "shareway" is satisfactory subject to amendment of the shareway proposal to exclude that portion which encroaches onto the closed section of Crescent Lane and subject to approval by Council's Traffic Committee.

### **ACCESS AND PARKING**

Amended Plans DA05 and DA12 issue have been submitted detailing the basement carparking. The amended plans are now satisfactory and comply with AS2890.1:2004 and AS2890.6:2009. Suitable templates using the B85 and B99 Vehicle have submitted with the submission by John Coady Consulting Pty Ltd which shows that vehicles are able to enter and leave the site satisfactorily without encroaching on Sydney Water's property.

*However, the shareway proposal submitted by John Coady Consulting Pty Ltd also includes the creation of a right of way over a portion of the driveway to the subject site. The proposed right-of-way over the first 6 metre of the driveway off Crescent Lane serving the basement carpark is intended to allow three-point turns by vehicles which need to turn around in Crescent Lane. This manoeuvre is not possible without encroachment into the closed portion of Crescent Lane and therefore is unsatisfactory. This will result in vehicles that enter the lane mistakenly or that cannot gain access to the basement carpark having to reverse out of the lane which is unsatisfactory."*

In reference to the above, a report on the proposed Crescent Lane "shareway" was considered at Council's Local Traffic Planning and Advisory Committee at their meeting held on 21 June 2011. The report included the following comments:

*"The east-west section of Crescent Lane has a width of 5 metres, including a carriageway width of approximately 4 metres. At present, 'No Parking' restrictions are in place along the northern side of the laneway, while unrestricted parking is permitted on the southern side.*

*The applicant advised that "Land on the western side of the north-south section of Crescent Lane is owned by the Water Board. The Water Board boundary fence has been set back approximately 1.85 metres from the property boundary to provide a footpath along the western side of this section of Crescent Lane. However, while this arrangement has been in place for many years, there is no guarantee that the Water Board, or a subsequent owner of that property, will not relocate the boundary fence to the property boundary".*

#### *Traffic volume data*

*The Traffic and Parking Assessment report prepared by Varga Traffic Planning Pty Ltd as part of the development application reveals that:*

*The existing two-way traffic flows in Crescent Lane are in the order of 2 to 3 vph during peak periods. The weekday peak period traffic generation potential of the proposed development is 15.5 vph.*

*Accordingly, the projected post-development traffic demand on Crescent Lane during weekday peak periods is less than 20 vph.*

*Guidelines for Traffic Facilities or RTA's "Green Book" Section 7.3.4.1 of RTA's Guidelines for Traffic Facilities on Shared Zones states that "Ideally, the existing vehicle volumes on the street should be less than 300 vehicles per day. If volumes are higher, then associated local area traffic management should ensure that through traffic is diverted from the street."*

*The Guidelines specifies that "a shared traffic zone should create a feeling of visual enclosure from the rest of the street".*

*Australian Standards AS 1742.13 Section 2.7.2 of AS 1742.13 -1991 states: "In the design of a shared zone the most important single requirement is to alter the environment to make it obviously different from other streets.*

*This can be achieved by the use of different coloured and textured paving, by the use of full wide flush paving between property lines and by judicious and aesthetic*

placement of planters and other landscaping. The signs SHARED ZONE (R4-4) and END SHARED ZONE (R4-5) are required to establish a shared zone.

*The entry point to a shared zone will normally comprise a ramp of the type used to form a flat top hump, except that it is desirably much steeper in this application, i.e. in the range 1:2 to 1:4."*

*The Australian Standards specifically requires the environment of the street to be altered including the provision of an entry threshold before 'Shared Zone' signs can be installed.*

*RTA's Technical Direction RTA's TD 2000/6 states that "all Shared Zones in NSW must display a speed limit of 10 km/h.*

*A Shared Zone is a network of roads in an area in which pedestrians and motor vehicles share the road space. Drivers must not exceed 10 km/h and must give way to pedestrians at all times".*

#### *Proposed Shared Zone*

*The applicant's proposal is to convert the east-west section of Crescent Lane, between Station Street and the driveway crossing of the proposed development site to a Shared Zone, in order to facilitate vehicular access for the proposed development while retaining the potential for Crescent Lane to also accommodate safe pedestrian movement in the event that the boundary fence on the Water Board land is relocated to the property boundary.*

*A preliminary sketch plan of the proposal has been prepared by Revay and Unn Architects and is attached to this report. The proposal incorporates the following:*

- *The share zone will occupy the full width of the Crescent Lane road reserve;*
- *The shared zone will be subject to a signposted speed limit of 10 km/h;*
- *On-street parking will be prohibited on both sides of the laneway;*
- *A raised threshold treatment will be installed at the western end of Crescent Lane at its junction with Station Street, in order to highlight the shared zone and reduce traffic speed to the signposted limit;*
- *The laneway will be reconstructed in concrete block paving. Roll-back kerbing will be introduced on the northern side, while the existing kerb will be retained on the southern side; and*
- *The laneway will be well illuminated by street lighting."*

The report recommended that:

1. *Council raise no objection to the proposed Shared Zone in the east-west section of Crescent Lane, Newtown, subject to the following:*
  - a) *Detailed design plans for the proposed 'Shared Zone' and associated traffic devices and treatments be prepared by the applicant and submitted to Council for consideration;*
  - b) *Adjoining properties being consulted by the applicant on the proposed 'Shared Zone' and all feedback being referred to Council for consideration; and*
  - c) *All costs associated with the establishment of the proposed 'Shared Zone, be borne by the applicant.*



2. The proposal for a 'Shared Zone' in the east-west section of Crescent Lane, Newtown be REFERRED to the Roads and Traffic Authority for consideration and approval."

A copy of the preliminary sketch plan of the proposal, prepared by Revay and Unn Architects, referred to in the report to the Local Traffic Planning and Advisory Committee is reproduced below:

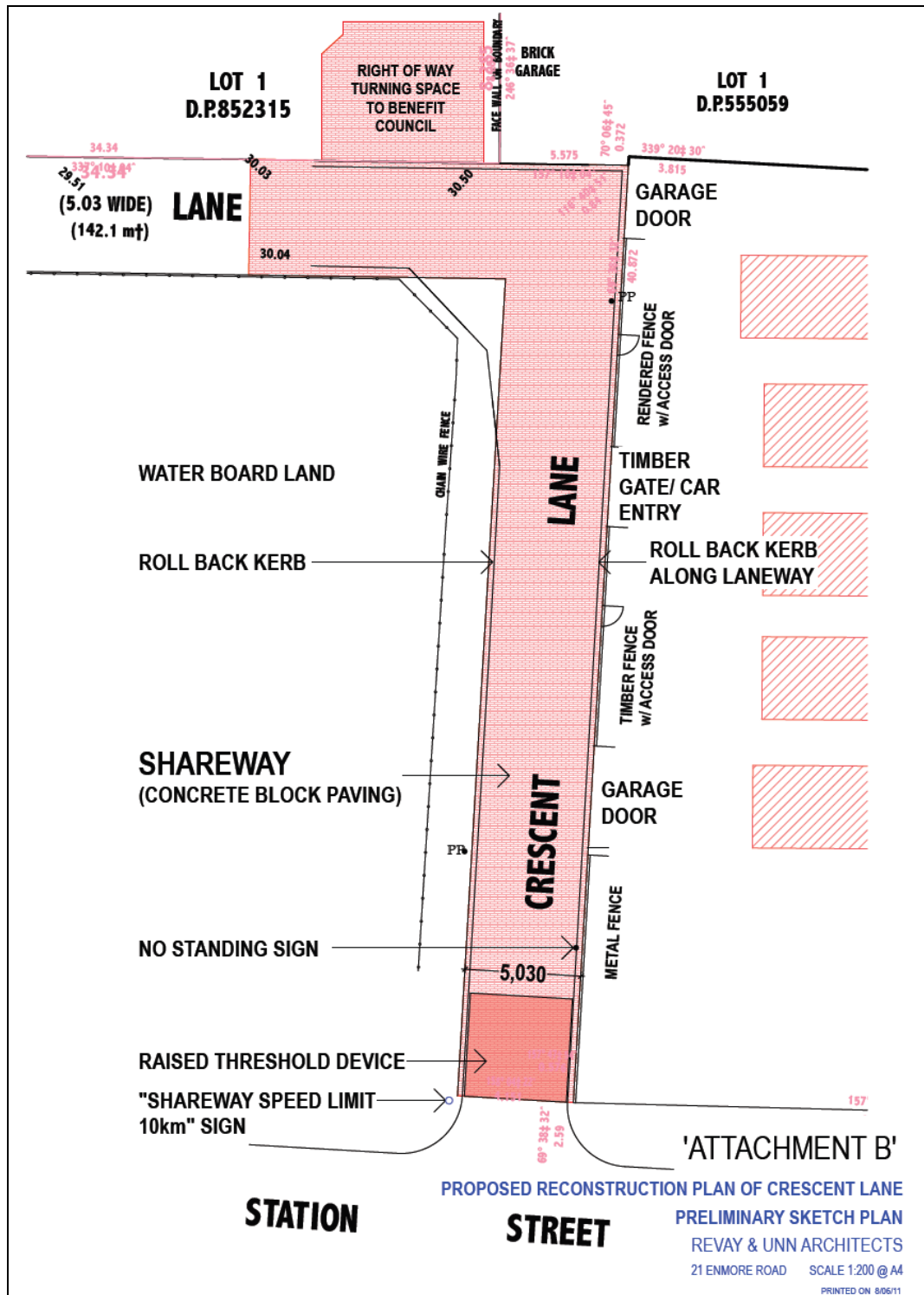


Image 33: Proposed Shareway

As stated above, the proposed development seeks approval to convert the east-west section of Crescent Lane, between Station Street and the driveway crossing of the proposed development site to a Shared Zone, in order to facilitate vehicular access for the proposed development. Council's Local Traffic Planning and Advisory Committee raised no objection in principle to the proposed Shared Zone subject to conditions. However the Roads and Traffic Authority is the responsible authority for determining whether or not to approve the proposed Shared Zone. At the time of writing this report the RTA's approval had not been obtained.

Further to the above, information provided from the applicant states that *"There is no pedestrian access to the development proposed from Crescent Lane. Pedestrians accessing the development will be able to do so from Enmore Road. It is noted that the house at No. 1A Crescent Lane can currently only be accessed via Crescent Lane and this access will not be required on completion of the proposed development."* The plans submitted indicate that three (3) ground floor units have courtyard access proposed from Crescent Lane. The subject dwellings also have internal access from Enmore Road. The plans submitted also indicate that the egress from the fire escape is accessed from Crescent Lane, therefore pedestrian access required to be provided from Crescent Lane. As pedestrian access is proposed from Crescent Lane, pedestrians accessing the site using the existing footpath would do so by encroaching onto Sydney Water's Land, being listed as a State Heritage Item and would also encroach upon Lot 1 DP 1160729 currently owned by Marrickville Council and to be offered for sale at a public auction. Council's Development Engineer has advised that the *"the current proposal is unsatisfactory in its current form and the plans will need to be amended to remove all proposed vehicular and pedestrian access to the closed portion of Crescent Lane including access to the 3 ground floor units adjacent to the closed lane and the proposed egress from the fire escape that leads to the closed portion of Crescent Lane."*

In light of the above issues, it is recommended that the application be refused.

## **18. 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 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.

## **19. Community Consultation**

The application was advertised, an on-site notice was erected and residents/property owners in the vicinity of the subject property were notified of the proposed development in accordance with Council's Policy. Twenty-five (25) submissions were received which raised the following concerns:

### **(i) Traffic and Access**

- Concerns raised that the use of Crescent Lane for vehicular access to the site will create a 'bottleneck' at the Station Street intersection with Enmore Road. Station Street carries the merging of traffic from Wilford Lane, Wilford Street and Gladstone Street. Station Street is also used for morning deliveries to Enmore Road businesses.
- The development should use Enmore Road for vehicular access.
- Crescent Lane is a 4 metre narrow single laneway providing access to a number of properties and there are currently legal parking spaces in Crescent Lane. There is currently space for a turning circle provided by Crescent Lane allowing properties to access the right of carriageway and associated car spaces. This would be impacted by the location of the proposed driveway.

- The entry/exit for the development in Crescent Lane will not be safe and will reduce the amenity of the area.
- The construction phase of the development will potentially impact traffic conditions as builders and tradesmen could block access to the properties with access to Crescent Lane and this has already occurred during the surveying and pre DA phase.
- Concerns raised that during construction phase truck access would not be possible in Crescent Lane and would need to be via Enmore Road.

Comment:

The matters regarding traffic and access have been addressed within Section 16 of this report under the heading “*Comments from Council’s Development Engineer*”.

(ii) *Parking*

- Concerns raised that there will be increased on street parking as there will be 36 residences and 2 retail units with only 25 car spaces.
- Concerns raised that there is existing parking stress in the area and the development will make things worse.
- Concerns raised that the average future owner or tenant will most probably own one car, a bicycle, motor bike or similar and therefore the council needs to reconsider the parking requirements.
- Concerns raised that the last parking study commissioned by Marrickville Council found that area of Newtown to be at parking capacity, with the situation being worse since recent apartment developments in the area.
- Concerns raised over increased on street parking requirements from apartment residents and visitors who cannot park on Enmore Road due to clearway restrictions.
- Concerns raised that the development will reduce the amount of on street parking for customers and staff of local businesses.

Comment:

The matter regarding parking has been addressed within Section 10 of this report under the heading “*Marrickville Development Control Plan No. 19 – Parking Strategy (DCP 19)*”.

(iii) *Heritage Conservation*

- Concerns raised that the Victorian terrace house at 1 Crescent Lane should be retained as it is of heritage significance and value and should be incorporated into the development.
- Concerns raised over the current status of the heritage listing of 1A Crescent Lane.
- Concerns raised that the development is unsympathetic to the heritage streetscape and surrounding buildings.
- The proposed development does not respect the heritage TJ Andrews building as an iconic building as well as the surrounding shop/terraces.
- The proposed shop fitout is unsympathetic to the heritage value of King Street and Enmore Road and character of the area.

Comment:

This matter regarding Heritage Conservation has been addressed within Section 8 (vi) of this report under the heading “*Heritage (Clauses 47 to 55)*”.

(iv) *Communal Open Space*

- Concern raised that the communal open space requirements have not been considered for the users of the proposed development.

Comment:

A 15sqm common deck on the second floor is proposed. The matter regarding Open Space and Landscaping has been addressed within Section 12 (xiv) of this report under the heading “*Open Space and Landscaping*”.

(v) *Floor Space Ratio*

- Concerns raised that the proposed building exceeds the 2:1 FSR control.

Comment:

This matter regarding Floor Space Ratio has been addressed within Section 8 (v) of this report under the heading “*Floor Space Ratio (Clause 33)*.”

(vi) *Overshadowing and Solar Access*

- Concerns raised that the shadow diagrams are not clear and more detail of all the neighbouring buildings and windows facing the subject property are to be provided.
- Concerns raised that the development does not comply with the solar access requirements.

Comment:

This matter regarding Overshadowing and Solar Access has been addressed within Section 12 (x) of this report under the heading “*Internal Layout – Solar Access, Ventilation, Energy and Water Efficiency*.”

(vii) *Height of Building*

- Concerns raised that when viewed from Enmore Road, the proposed top floor will be too dominant and visible.
- Concerns raised that the proposed Roof RL is shown as 43.95, however the existing parapet height along Enmore Road is shown as RL43.83 and the roof should be lowered below any existing parapets.

Comment:

This matter regarding the height of the building has been addressed within Section 12 (ii) of this report under the heading “*Building Massing and Building Height*”.

(viii) *Streetscape*

- Concerns raised that there is no relationship between the existing street facade proportions and the proposed new facades.

Comment:

The proposed development is to retain the existing front façade. This matter regarding Streetscape has been addressed within Section 12 (iv) of this report under the heading “*Building Façade*”.

(ix) *Privacy*

- Concerns raised that the proposal will impact upon the privacy of adjoining properties, in particular, the proposed courtyards are well over the required maximum 10sqm courtyard size.

Comment:

This matter regarding Privacy has been addressed within Section 12 (xiii) of this report under the heading “*Visual and Acoustic Privacy*”.

(x) *Acoustic Impacts*

- Concerns raised that noise levels associated with a large development in close proximity to existing residential dwellings would impact upon the residences. In particular, a top floor terrace is proposed to face the existing rear courtyard, bedroom and kitchen at No. 31 Enmore Road.

Comment:

The site is located on a classified road and adjoins a railway corridor. It is considered that the noise generated from the top floor terrace will not adversely increase the noise impacts to adjoining dwellings given the existing acoustic conditions of the site. This matter regarding acoustic impacts has been addressed within Section 7 of this report under the heading “*State Environmental Planning Policy - (Infrastructure) 2007.*”

(xi) *Waste*

- Concerns raised that the waste disposal bins will clog up the footpath and would block pedestrian access on Crescent Lane on designated garbage days.
- Concerns raised that there are current issues with waste disposal bins on the footpath from the nearby Silo development in Station Street and unit developments behind the Buddhist centre on Enmore Road.

Comment:

The matter regarding Waste Management has been addressed within Section 11 of this report under the heading “*Marrickville Development Control Plan No. 27 – Waste Management (DCP 27)*”. The matter regarding current issues with waste disposal bins has been referred to Council’s Monitoring Services Section for further investigation.

(xii) *Overdevelopment*

- Concerns raised that the development should be reduced in size given its aesthetic impact on the area and surrounding heritage value on the street.
- Concerns raised that 36 units is excessive given the density of the area.
- The Newtown and Marrickville area has enough apartments.

Comment:

The subject site is currently zoned General Business and is a permissible form of development under the zoning provisions of Marrickville Local Environmental Plan 2001. It is also noted that the development complies with the maximum 2:1 FSR permitted in the zone under Clause 33 of MLEP 2001. As discussed throughout this report it is considered that the bulk and scale of the proposed development is supportable, however, the proposed development is contrary to the Heritage conservation controls, therefore the application is recommended for refusal.

(xiii) *Views*

- Concerns raised that the development obstructs existing views of trees, the railway and historic buildings from the rear of the properties at Enmore Road.

Comment:

As discussed throughout this report it is considered that the proposed development is not supportable, therefore the application is recommended for refusal.

(ix) *Trees*

- Concerns raised that a number of trees are to be removed and will be detrimental as green space is scarce in the area.

Comment:

This matter regarding the protection of trees has been addressed within Section 8 (vii) of this report under the heading "*Protection of Trees (Clause 56)*".

(xvi) *Decrease in property values*

- Concerns raised that property values will decrease.

Comment:

There is no evidence to support this assertion.

(xvii) *Size of Units*

- Concern raised that units under 55sqm are too small for quality living.

Comment:

This matter regarding the size of units has been addressed within Section 6 (ii) of this report under the heading "*Apartment Layout*".

(xviii) *Notification Plan*

- Concerns raised that the notification plan is inaccurate, in particular to the location of buildings at No. 33, 35, 37, 39 and 41 Enmore Road.



Comment:

The notification plan is based on the submitted Survey Plan prepared by Norton Survey Partners, dated 6 January 2011 which has been undertaken for the site and adjoining properties. It is however noted that the notification plan is not required to be in scale which may lead to the plan appearing inaccurate.

## **20. Conclusion**

The heads of consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, as are of relevance to the application, have been taken into consideration in the assessment of this application. The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

### **PART E - RECOMMENDATION**

- A. THAT** the development application to retain the existing facade along Enmore Road, demolish the remainder of the existing improvements and erect a mixed use development containing 36 dwellings and 2 retail tenancies over a basement car park containing 25 off street parking spaces be **REFUSED** for the following reasons:
1. The proposed development fronts a section of Crescent Lane (being Lot 1 DP 1160729) which Council has resolved to close and that upon the gazettal of the road closure by the Department of Lands that Council enter into a Public Tender process for the sale of the land. Components of the proposed development are reliant on the use of the section of the section of Crescent Lane that is in the process of being formally closed for access, egress and light and ventilation. With no certainty as to who will be the successful purchaser in the Public Tender process for the sale of the subject land, when the road closure is gazetted by the Department of Lands, approval of the application at the current time could not be supported.
  2. The proposed development seeks approval to convert the east-west section of Crescent Lane, between Station Street and the driveway crossing of the proposed development site to a Shared Zone, in order to facilitate vehicular access for the proposed development. The Roads and Traffic Authority, as the responsible authority, have not given their approval, at this stage, for the proposed Shared Zone.
  3. The proposed development is contrary to the Heritage conservation controls prescribed under Clauses 47 and 48 of Marrickville Local Environmental Plan 2001. In particular:
    - (a) Significant features of the Victorian Villa located at 1A Crescent Lane has not been substantially retained and incorporated into the development; and
    - (b) The development does not conserve the heritage significance of the King Street/Enmore Road Heritage Conservation Area.
  4. The carrying out of the proposed development would adversely impact on the amenity of adjoining properties.
  5. 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 Sydney East Joint Regional Planning Panel's determination of the application.

- C. THAT** Council's Monitoring Services Section be advised of the determination of the application and be requested to investigate current issues with waste disposal bins on the footpath from the nearby Silo development in Station Street and unit developments behind the Buddhist Centre on Enmore Road.

**Development Assessment Officer:** Sophia Chin

**Date:** 24 June 2011