

Image 11: Proposed Level 5 Floor Plan

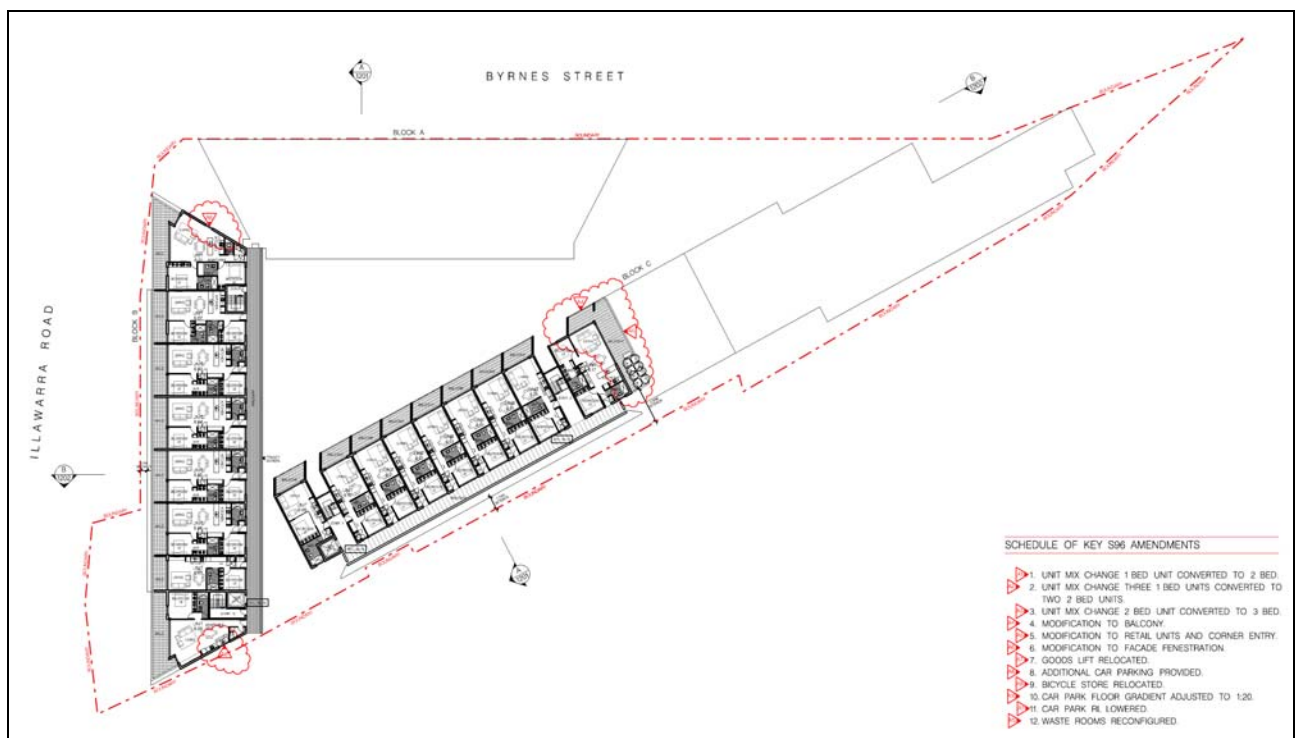


Image 12: Proposed Level 6 Floor Plan

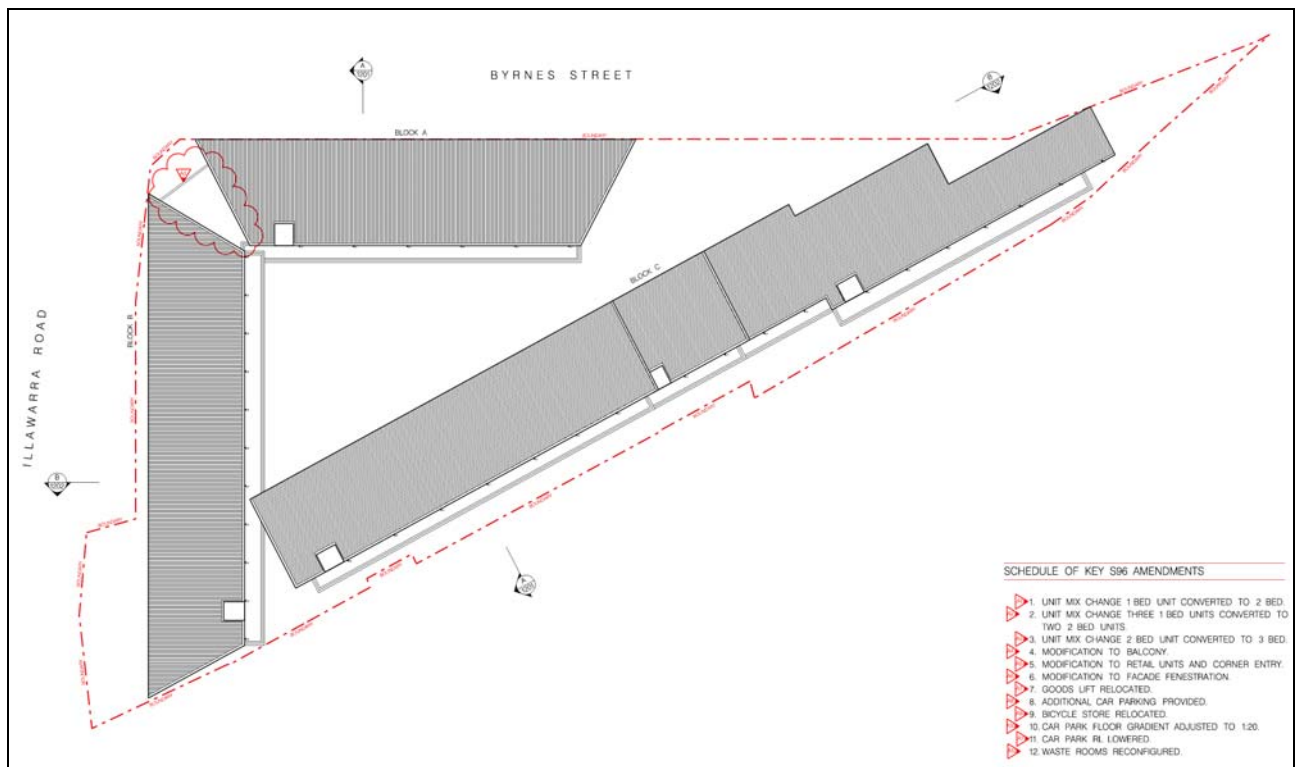


Image 13: Proposed Roof Plan

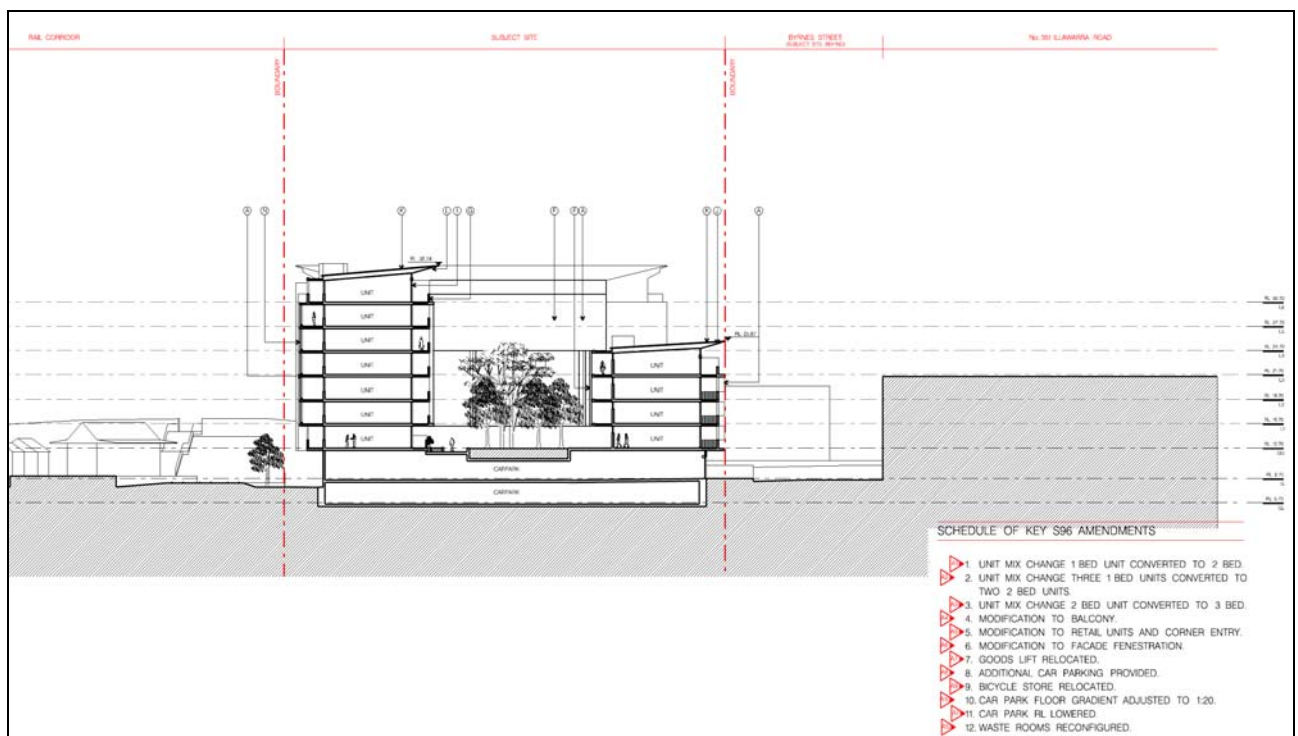


Image 14: Proposed Section A-A Plan

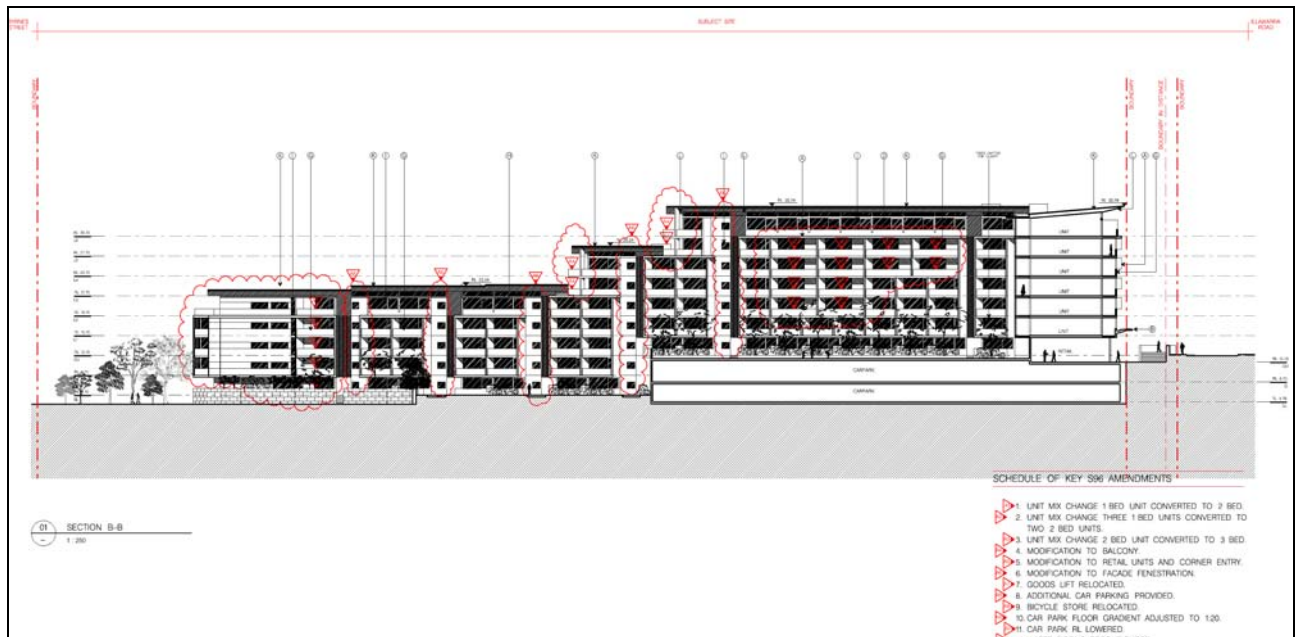


Image 15: Proposed Section B-B Plan

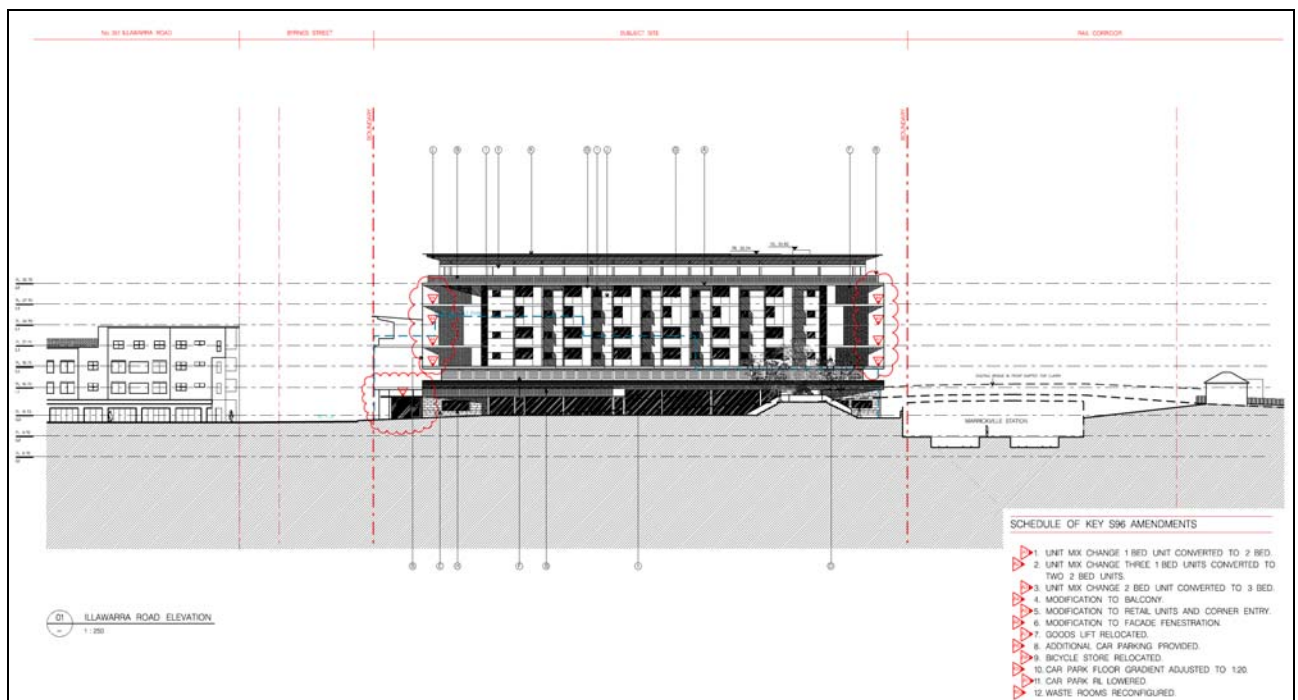


Image 16: Proposed Illawarra Road Elevation

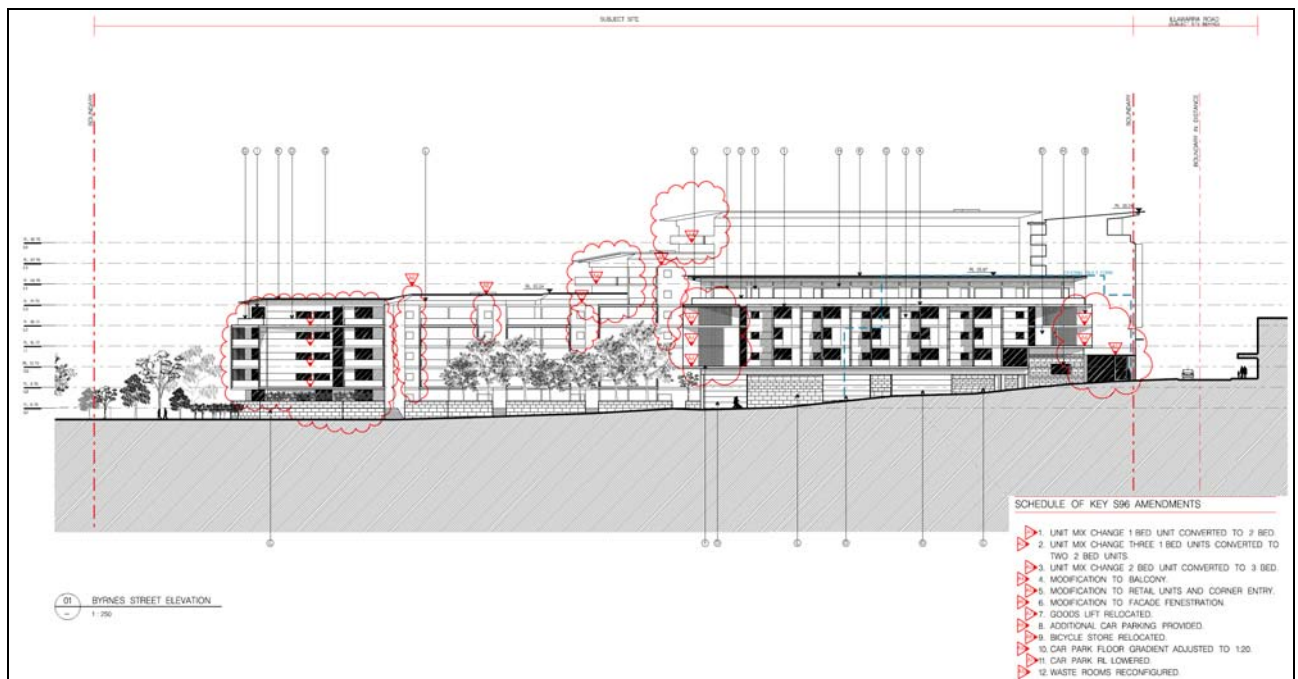


Image 17: Proposed Byrnes Street Elevation

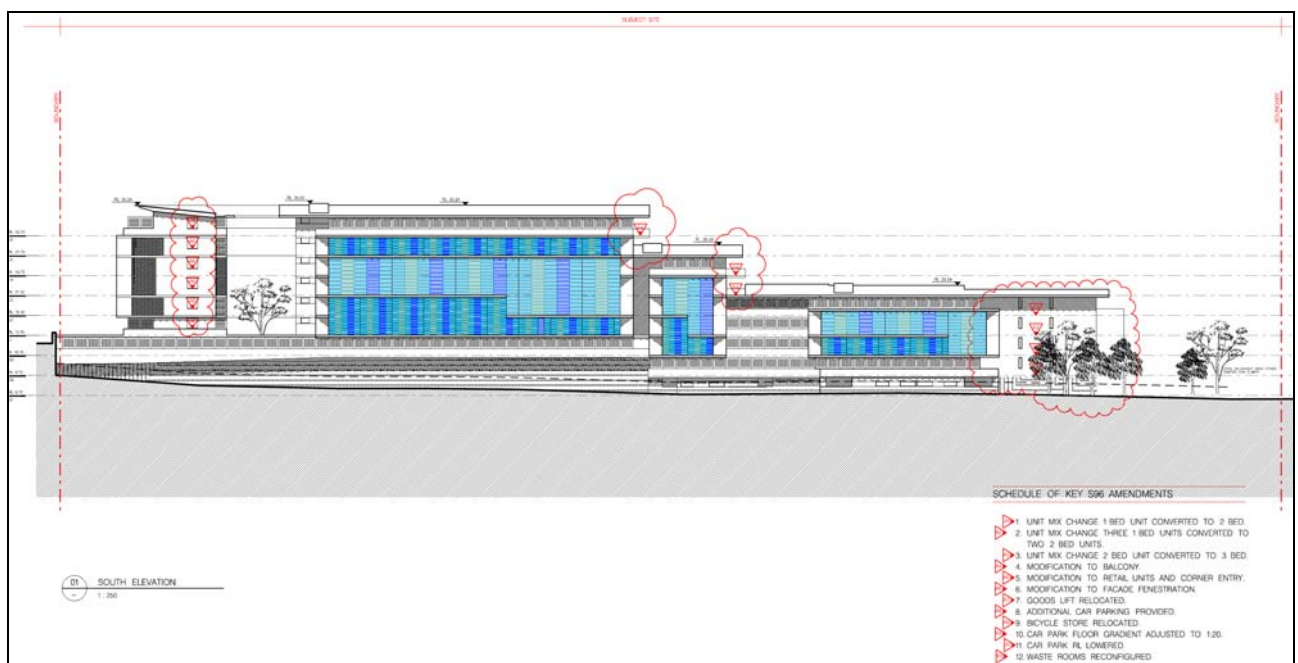


Image 18: Proposed Southern Elevation

1. Planning Instruments and Controls

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

- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55);
- 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. 29 – Contaminated Land Policy and Development Controls (DCP 29);
- 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. 38 - Community Safety (DCP 38); and
- Marrickville Section 94 Contributions Plan 2004.

2. Planning Assessment

(i) State Environmental Planning Policy (Building Sustainability Index: BASIX)

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

The amended proposal has achieved full compliance with the BASIX commitments. The proposed development has reached the score of 40% for water and a score of 32% for energy for Buildings A and B. Building C has reached a score of 40% for water and 26% for energy.

(ii) State Environmental Planning Policy - (Infrastructure) 2007

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

“85 Development immediately adjacent to rail corridors

- (1) *This clause applies to development on land that is in or immediately adjacent to a rail corridor, if the development:*
 - (a) *is likely to have an adverse effect on rail safety, or*
 - (b) *involves the placing of a metal finish on a structure and the rail corridor concerned is used by electric trains, or*
 - (c) *involves the use of a crane in air space above any rail corridor.*
- (2) *Before determining a development application for development to which this clause applies, the consent authority must:*
 - (a) *within 7 days after the application is made, give written notice of the application to the chief executive officer of the rail authority for the rail corridor, and*
 - (b) *take into consideration:*

- (i) any response to the notice that is received within 21 days after the notice is given, and
- (ii) any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette.

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

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

In accordance with Clauses 85 and 86 of State Environmental Planning Policy - (Infrastructure) 2007, the subject application was referred to Railcorp for concurrence. Railcorp reviewed the application and granted their concurrence in a letter, dated 11 May 2011 which reads as follows:

"I refer to Council's letter dated 20 April 2011 regarding the proposed development at the above address.

Rail Corporation New South Wales (RailCorp) has reviewed the proposal and advises that the concurrence conditions issued on the 18 August 2010 for DA201000115 are still applicable."

In light of the above comments, conditions recommended by Railcorp which were imposed in the original determination are to be retained.

(iii) Marrickville Local Environmental Plan 2001 (MLEP 2001)

Zoning (Clauses 13 and 18)

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

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

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

Floor Space Ratio (Clause 33)

A maximum floor space ratio of 2:1 applies to developments (other than boarding houses) within a General Business zone under Clause 33 of MLEP 2001.

It is noted that the approved development has a gross floor area (GFA) of 13,917m² or a floor space ratio of 2.29:1 which exceeds the subject development standard. This section 96(2) application seeks to increase the gross floor area of the subject development to approximately 14,446.5m², which amounts to a FSR of 2.38:1. The proposed modifications would increase the floor space ratio non-compliance by a further 529.5m².

The applicant lodged an objection under State Environmental Planning Policy No. 1 in relation to the departure from the subject development standard. It should be noted that an objection under State Environmental Planning Policy No. 1 is not required to be submitted accompanying any Section 96 application addressing a development standard departure.

The applicant considers compliance with the development standard unreasonable on the following grounds:

"STATE ENVIRONMENTAL PLANNING POLICY NO. 1 DEVELOPMENT STANDARDS – OBJECTION

Address: 359 Illawarra Road, Marrickville

Proposal: Demolition of existing structures and construction of a mixed commercial/residential development with basement parking.

1.0 Introduction

This objection relates to an application under section 96(2) of the Environmental Planning and Assessment Act 1979 (EPA Act) to modify Development Consent No. 201000115.

Development Consent No. 201000115 was issued on 18 August 2010 by the Sydney East Joint Regional Planning Panel granting consent for the demolition of existing structures and the construction of a mixed commercial/residential building on the site of the former Marrickville RSL Club at 359 Illawarra Road, Marrickville.

The application seeks to modify the development consent to allow for:

- a reduction in the number of residential units from 180 to 174;
 - 3 x 1 bed units converted to 3 x 2 bed units;
 - 18 x 1 bed units converted to 12 x 2 bed units;
 - 5 x 2 bed units converted to 5 x 3 bed units;
- an increase in the retail floor area by 85.5m², from 612m² to 697.5m²;
- the retail area to be provided as 7 shop spaces;
- minor addition of balconies at the eastern end of Building C;
- minor changes to fenestration;
- increase the number of car parking spaces from 168 to 191;
- reallocation of car parking spaces – 174 secured residential car spaces (1 car space per dwelling) and 17 retail/visitor spaces;
- rearrangement of the car parking layout; and
- relocation of the goods lift.

The site is zoned part General Business 3(A) and part Special Uses 5(B) – Railways.

Clause 33 of Marrickville Local Environmental Plan (MLEP 2001) imposes a maximum FSR of 2:1 on development within the General Business 3(A) zone. There is no FSR restriction on the Special Uses 5(B) – Railways zoned part of the site.

The proposed development achieves an FSR of 2.3:1 (14,028m²). Accordingly the application can only be approved subject to an objection to this development standard prepared under SEPP 1.

2.0 Principles for SEPP 1 Objections

The decision of Justice Lloyd in *Winten v North Sydney Council* identifies the principles for which a SEPP 1 objection must be made, as follows:

- is the planning control in question a development standard;
- what is the underlying object or purpose of the standard;
- is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act;

- is compliance with the development standard unreasonable or unnecessary in the circumstances of the case;
- is a development which complies with the development standard unreasonable or unnecessary; and
- is the objection is well founded.

The above principles are addressed in detail below.

3.0 Is the planning control in question a development standard?

The planning control in question is the Floor Space Ratio standard set out in Clause 33 of MLEP 2001. Clause 33 nominates a maximum floor space ratio depending upon the zoning of the land.

The MLEP 2001 zones the subject site General Business 3A and Clause 33 of MLEP 2001 identifies that buildings are not to exceed a FSR of 2:1 within a General Business 3A zone.

The existing development consent (DA 201000115) for the site approved a development with a GFA of 13,917m² and a FSR of 2.29:1. This modification seeks an increase to the retail floor space by 85.5m².

The proposed modified development will result in a gross floor area of 14,028m² on a site area of 6,075.5m² achieving a FSR of 2.3:1.

The proposal will exceed the 2:1 floor space ratio development standard.

The control is a numerical development standard and therefore is capable of being varied under the provisions of State Environmental Planning Policy No. 1 – Development Standards.

2.0 What is the underlying purpose of the standard?

Clause 33 of the MLEP 2001 does not include specific objectives for the FSR standards. Notwithstanding this, the underlying purpose of the standard is to control the density and therefore bulk and scale of development in order to control the amenity, streetscape, setting, and character of the area.

The density, bulk and scale of the proposed modified development is substantially the same as the approved development which is appropriate to its strategic location adjoining a railway station and with ready access to shops and community services. Further, the proposed modifications maintain a development which is in keeping with the character of the area, which displays a high standard of urban design and which has minimal impact on the amenity of surrounding properties in terms of privacy, solar access and retention of views.

In addition, the objectives of the General Business 3A zone are also relevant when considering the merit of the application. The objectives are:

- "(a) to identify areas suitable for business and commercial activities, and
- (b) to permit a variety of ancillary and complementary land uses, and
- (c) to facilitate residential/ development in conjunction with other permissible uses in the zone."

The suitability of the proposed redevelopment against the objectives of the General Business 3A zone is demonstrated below:

- (a) *to identify areas suitable for business and commercial activities, and*

The proposed development includes 697.5m² of commercial floor space along the Illawarra Road frontage of the site, consistent with the other commercial land uses along Illawarra Road.

- (b) *to permit a variety of ancillary and complementary land uses, and*

The proposal includes 174 residential units as part of the mixed commercial/residential development. The residential use is complementary to the commercial use on the site and surrounding commercial properties, and the surrounding residential land uses.

- (c) *to facilitate residential development in conjunction with other permissible uses in the zone."*

The proposal includes 174 residential units in conjunction with the commercial units along Illawarra Road. The proposal is therefore a mixed commercial/residential development and is permissible in the zone.

In this respect, the proposal is considered to meet with the intent of the three objectives of the General Business 3A zoning of the site.

5.0 Is compliance with the development standard consistent with the aims of the Policy, and in particular, does the development standard tend to hinder the attainment of the objects specified in s.5(a)(i) and (ii) of the EPA Act?

Yes. The aims and objectives of State Environmental Planning Policy No.1 – Development Standards are as follows:

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

The objects set down in Section 5(a)(i) and (ii) are as follows:

"to encourage:

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

Compliance with the standard would not hinder the attainment of the objects of S.5(a)(i) and (ii) of the Act, which are to encourage development that promotes the social and economic welfare of the community and a better environment, and to promote and co-ordinate orderly and economic use and development of land.

Strict compliance with the development standard would not result in discernable benefits to the residential amenity of adjoining sites. Further, the proposal satisfies the

zone and development standard objectives. Strict compliance with the standard is not required in order to achieve compliance with the objectives.

The development as proposed is consistent with the provisions of orderly and economic development.

6.0 Is compliance with the standard unreasonable or unnecessary in the circumstances of the case?

Yes. In the circumstances of the case, the provision of a strict numerical compliance would be unnecessary and unreasonable on the basis of that:

- the approved development has a GFA of 13,917m² and a FSR of 2.29:1. The proposed modification seeks an increase to the GFA by only 85.5m² which results in a FSR of 2.3:1. The increase in floor area occurs at street level and within the envelope of the approved development. It is a very minor increase in the density of the development which will not substantially alter the bulk and form of the development; nor will it result in any adverse impacts;
- the density of the proposed development is considered appropriate given the strategic location of the site and the density and scale of surrounding development;
- the height and scale of the proposal is considered appropriate for this land mark site, which benefits from excellent public transport access and is isolated i.e. it enjoys no common boundaries with residential or commercial developments, with its dual street frontages and southern boundary to the railway line;
- the size of the site 6075.5m² represents a significant land holding in this inner suburbs location and represents a prime opportunity for urban renewal and increased density aimed at maximising the use of the immediately adjacent to public transport services;
- a development of this scale and density will provide a significant boost to the economic and social vitality of the business centre through the increased density and number of residential units and provision of new commercial units;
- the density of the development is comparable, if not significantly less than a number of other recent developments within the Marrickville business centre, including:
 - former Coles Site at 184– 204 Marrickville Road, Marrickville which has a site area of 2,376m² and a FSR of 2.59:1;
 - former Council Car park Site at 176 Marrickville Road, Marrickville, which has a site area 1,301m² and a FSR 2.23:1;
 - former Fossey Building at 244–250 Marrickville Road, Marrickville, which has a site area of 942.9m² and a FSR 2.21:1; and
 - Lamia at 276–278 Marrickville Road Marrickville, which has a site area 589m² and a FSR 2.49:1.
- the height and scale is not considered detrimental to the character of the surrounding area. Whilst the scale exceeds surrounding development, which comprises a number of three (3) storey developments and isolated four (4) storey development, the urban form maximises the larger buildings along the southern boundary and Illawarra Road frontage, minimising impacts on the surrounding areas and allowing a transition in scale to the residential properties along Byrnes Street;
- the proposal will not impact on the amenity of the surrounding residential or commercial properties in terms of overshadowing or privacy; and
- the proposal generally complies with the requirements of SEPP 65 and the Residential Flat Design Code;

- *the proposal generally complies with the requirements of the Council's various DCP controls;*
- *the proposal complies with the Council's current future desired character for the site envisaged by the controls identified in the Preliminary Draft Marrickville LEP 2010;*
- *the proposed modifications maintain the general arrangement of the approved buildings on the site – their form, bulk, scale, height and density remains substantially the same; and*
- *the additional retail space which is reflected in the proposed FSR will have no adverse effects on traffic and parking as assessed in the accompanying Statement of Environmental Effects and Traffic and Parking Report.*

Given the circumstances of the case, the provision of a strict numerical compliance would be unnecessary and unreasonable on the basis of that the proposed development is able to achieve compliance with the objectives of the floor space control and the zone objectives without necessarily complying with the numerical standard.

7.0 Is a development which complies with the development standard unreasonable or unnecessary?

Development consent 201000115 approved a development on the site which exceeds the FSR standard. The merit of this development is conferred upon the proposed modified development, which for the reasons set out in the accompanying SEE, is substantially the same development. In this circumstance it is therefore unnecessary to restrict development on the site to a development which complies with the FSR standard.

8.0 Is the objection well founded?

Yes. It is concluded that the objection is well founded as compliance with the standard is both unnecessary and unreasonable and would hinder the attainment of the objects of the Act.

9.0 Summary

Development standards are a means of implementing objectives for an area.

The underlying purpose of the standard is to control the density and therefore bulk and scale of development in order to control the amenity, streetscape, setting, and character of the area.

Having regard to the General Business 3A objectives, the proposal will provide for seven retail shop spaces which will be supported by the residential development on the remainder of the site.

Having regard to the density, bulk and scale and impacts on amenity, streetscape, setting and character of the area, despite the numerical non-compliance with the FSR standard the redevelopment provides a built form that is considered appropriate for the urban context, strategic location of the site and desired future character envisaged by the draft Marrickville LEP 2010.

The proposal will have minimal amenity impacts upon adjoining properties and the locality.

A development strictly complying with the numerical standard would not significantly improve the amenity to surrounding land uses. In the context of the locality it would be unreasonable for strict compliance to be enforced, as the general form, and scale of the proposed development is compatible with adjoining building envelopes.

It is concluded that the objection is well founded as compliance with the standard is both unnecessary and unreasonable.”

It is acknowledged that the applicant calculates the FSR of the proposed modification to be 2.3:1 or a GFA of 14,028sqm due to the increase in the proposed retail floor space. However based on the definitions of gross floor area and floor space ratio contained in Schedule 1 of MLEP 2001, Council's Development Assessment Officer has calculated the FSR of the proposed modification to be 2.38:1 and the gross floor area of the proposed modification to be 14,446.5m². Such calculation includes the additional retail space, excess residential car spaces provided for the residential dwellings and other minor floor area.

It should be noted that the proposed modifications were reviewed by Council's Development Engineer who advised that four (4) of the proposed car spaces for the residential dwellings do not comply with AS2890.1-2004. Council's Development Engineer has recommended that those spaces be deleted. The deletion of those four (4) car spaces would result in a reduction in GFA of 54m² to approximately 14,401.5m² and would result in the development having a FSR of approximately 2.37:1. Consequently the proposed modifications, as amended would increase the floor space ratio non-compliance by a further departure of 484.5m².

The justifications made by the applicant are considered to have merit. The purpose or objective of the floor space ratio standard is not specifically expressed in MLEP 2001. It is considered that the purpose of a floor space ratio control is to establish standards for the maximum development density and intensity of land use and to control building bulk and scale.

The proposed modifications would not alter the overall height, bulk and scale of the approved development. With the exception of small retail infill on the corner of Illawarra Road and Byrnes Street, the additional floor gross floor area is to be accommodated within the existing approved building envelope of the development. The majority of the FSR non-compliance is a direct result of the additional provision of car parking spaces provided for the residential component of the development in excess of Council's prescribed car parking requirements, which amounts to a GFA of 373.5sqm. This additional floor area is to be accommodated within the existing lower ground floor car parking area and ground floor car parking area which would not contribute to the bulk and scale of the approved development. The remaining additional floor area, amounting to 111sqm is to be accommodated on the upper floor levels at the corner of Illawarra Road and Byrnes Street as retail space and throughout the development within the approved building envelope. It is considered that this additional floor area also will not contribute significantly to the bulk and scale of the approved development.

It is also considered that the additional floor space ratio will not result in any significant amenity impacts in regards to overshadowing, privacy and view loss as the height and building envelope of the approved development is to be maintained. The issue of view loss is discussed in this Section 4 (x) of the report under the heading 'View Corridors/View Sharing'.

In light of the above, the justifications made by the applicant are considered to be well founded and worthy of support.

Waste Management (Clause 58)

Clause 58 of MLEP 2001 requires consideration of waste management for any proposed development. The proposed development includes the provision of waste storage areas on the ground floor level of the premises. This aspect of the proposed development is discussed further in Section 4(vi) of this report under the heading '*Marrickville Development Control Plan No. 27 - Waste Management*'.

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.

A BASIX Certificate was submitted with the application. This matter has been discussed in Section 4(i) of this report under the heading '*State Environmental Planning Policy (Building Sustainability Index: BASIX)*'.

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.*

The proposed modifications seek to maintain the community safety features of the approved development in accordance with the provisions contained in MLEP 2001 and Marrickville Development Control Plan No. 38 – Community Safety (DCP 38).

The proposed additional retail space on the upper ground floor level at the corner of Illawarra Road and Byrnes Street is considered to be consistent with the requirements of MLEP 2001 and DCP 38, as the design of the additional retail space with a glazed frontage would encourage an active façade and provides adequate surveillance of the area.

Accessibility (Clause 64)

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 original application was approved with 18 adaptable dwellings. A minimum of 18 adaptable dwellings are required for the development now proposed. The subject application seeks to maintain 18 adaptable dwellings. Access and mobility is discussed further in Section 4 (viii) of this report under the heading '*Marrickville Development Control Plan No. 31 – Equity of Access and Mobility*'.

(iv) 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:	2.6:1
Proposed:	2.23:1 (this includes additional retail space, excess residential car spaces provided for the residential dwellings and other minor floor area)
Height of Building (max):	
Permitted:	26 metres
Proposed:	maximum 28 metres (as per existing approved development)
Land Reservation Acquisition:	No
Heritage:	
Draft Heritage Item:	No
Draft Heritage Conservation Area:	No
In vicinity of draft item or area:	Yes
Flood Planning:	Affected
Acid Sulfate Soils:	Affected Class 5
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. The proposed modification would not result in any increase in the height of the approved development.

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

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

Shops/Retail

500sqm-700sqm	gross floor area (GFA)	11 car spaces plus 1 car space per 30m ² over 500sqm.
1 bicycle space per 300m ² of GFA for employees		

Dwellings

0.5 car spaces for small dwellings (less than 55m²).

1 car space per large dwelling plus one visitor car space per 4 dwellings.
1 visitor bicycle space per 10 dwellings.

In accordance with the above requirements the development requires and provides the following amount of car parking/bicycle spaces:

Use	Required	Proposed	Compliance
Residential: 62 units <55sqm 112 units >55sqm	31 car spaces 112 car spaces Nil bicycle spaces	174 residential car spaces. 17 shared residential visitor and commercial/retail spaces. 39 bicycle spaces for commercial/retail and residential use	Compliance achieved with residential car spaces, however 29 space shortfall with the shared residential visitor and commercial/retail spaces. Compliance achieved with bicycle spaces.
Residential Visitors	28 car spaces 17.4 bicycle spaces		
Commercial/Retail (697.5sqm)	17.6 car spaces 2.3 bicycle spaces		
Total	189 car spaces 20 bicycle spaces	191 car spaces 39 bicycle spaces	29 space shortfall with the shared residential visitor and commercial/retail spaces.

The approved car parking access is proposed to be maintained from Byrnes Street with the proposed car parking spaces being distributed across two basement levels as follows:

The proposed lower ground floor level accommodates 104 residential parking spaces of which 14 spaces are to be accessible spaces. The proposed ground floor level accommodates 87 car spaces broken down as follows: 70 residential car spaces, 17 commercial and residential visitor car spaces, of which six (6) car spaces are accessible, 39 bicycle spaces two (2) shared hire car spaces and three (3) short stay loading/unloading spaces.

It is noted that the original application was approved with a car parking non-compliance of 13 shared residential visitor and commercial/retail spaces. The proposed car parking non-compliance has increased for the shared residential visitor and commercial/retail spaces by 16 car spaces. The applicant provided the following justification in regards to the shortfall:

*"A traffic and parking assessment report in relation to the proposed modified development has been prepared by TTPA (refer to Attachment 4).
The TTPA report concludes:*

"Assessment of the potential traffic and parking implications of the s96 scheme has concluded that there will not be any unsatisfactory circumstances and that all design requirements will be complied with."

The following salient points should be noted in relation to the traffic and parking implications of the proposal:

- The application of the DCP to the modified development results in the following minimum parking requirements shown below:*

62 apartments (<55m ²)	31 spaces (0.5 spaces per apartment)
112 apartments (>55m ²)	112 spaces (1 space per apartment)
Residential visitors	28 spaces (1 space per 4 apartments)
Retail (697.5m ²)	17.6 spaces (11 spaces plus 1 space per 30m ² over 500m ²)
Total	188.6 spaces

- *the proposed provision of 191 car parking spaces satisfies the overall quantum requirement of Council's DCP and exceeds the overall quantum of 168 spaces required under the existing consent;*
- *the proposed provision of 174 secured residential car spaces (1 space per dwelling) exceeds the DCP minimum requirement for residential parking and will act to ensure that the existing level of on-street parking is maintained;*
- *under the DCP, the modified development requires 28 car spaces for residential visitors and 17.6 car spaces for retail, however, the existing consent allows 28 car spaces to be shared between residential visitor and retail parking;*
- *the proposed modified development reduces the provision of shared residential visitor/retail parking spaces from 28 spaces under the existing consent to 17 spaces. This reduction is justified on the following grounds:*
 - *the site has ready access to high frequency public transport (rail and bus), shopping and community facilities;*
 - *the provision of 174 secured spaces for residents will ensure that the existing level of on-street parking is maintained;*
 - *the proposed division of the retail floor space into small shops means that the space is suited to local level retailing, and therefore less likely to attract customers who would drive;*
 - *the shops are likely to service the pedestrian traffic generated by public transport patrons;*
 - *the existing period parking restrictions ensure turnover and availability of car spaces;*
 - *bicycle storage facilities are provided;*
 - *there is a high level of pedestrian amenity, protection and shelter; and*
 - *it is also noted that the rate for residential visitor parking under the DCP (1 space per apartments) is quite high compared with the RTA recommendation (1 space per 6 to 7 apartments).*
- *the rearrangement of the car park layout is similar to that approved and adheres to the relevant design standards.*

The proposal is therefore considered satisfactory with respect to DCP"

The justifications provided by the applicant are considered to have merit. The shortfall is considered to be acceptable as the non-compliance amounts to a departure of 15%. Also, the site is well serviced by public transport with Marrickville Railway Station adjoining the subject site and public buses along Illawarra Road. Also, the development seeks to provide two (2) car sharing spaces on the ground floor level. The Section 96 application was referred to Council's Local Traffic Planning and Advisory Committee who raised no objection to the proposed modifications.

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

1. *"Insufficient detail has been provided on the available clear headroom room provided within the carpark in particular above the disabled car spaces and along the ramp leading to the lower level carpark;*

2. *The ramp grade leading to the lower level carpark exceeds the maximum grade of 25 % allowed by AS2890.1-2004; and*
3. *The four (4) car spaces highlighted on the attached plans S96-1101 and S96-1102 (Rev A) do not comply with AS2890.1-2004."*

Council Development Engineer's comments are considered to be relevant. The deletion of four (4) car spaces for the residential dwellings would reduce the amount of available residential car spaces to 170, which would still comply with the numerical requirements of DCP 19. Council Development Engineer's has recommended that condition 85 in Part B – Conditions of Consent of the Determination be modified to reflect the concerns raised.

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

Supermarkets, shops and restaurants

One (1) truck space per 400m² gross floor area up to 2,000m² gross floor area plus one truck space per 1,000m² thereafter.

Residential flat buildings

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

In accordance with DCP 19, the original application was approved with one (1) loading/unloading bay which can accommodate a medium ridged truck with separate ingress and egress via Byrnes Street. Also three (3) short stay loading/unloading spaces are proposed to be provided within the ground floor parking area of the development. The approved development complied with the numerical loading/unloading requirements of DCP 19. The proposed modifications would maintain the approved loading/unloading facilities.

However, the subject application seeks to relocate the goods lift servicing the commercial/retail suites from the north western side of the ground floor car parking area (in close proximity to the approved loading/unloading dock) to the south western side of the ground floor car parking area. A designated pathway/walkway is proposed to be provided within the proposed car parking area between the loading dock and goods lift to encourage pedestrian safety. A condition should be imposed on any modified consent granted requiring a formal designated pedestrian pathway/walkway be clearly marked and maintained at all times between the loading dock and the goods lift.

(vi) Marrickville Development Control Plan No. 27 – Waste Management (DCP 27)

The original application was approved with three (3) separate bin storage areas, one retail waste storage area containing 29 x 240L bins and two residential waste storage areas containing 74 x 240L bins and 143 x 240L bins, on the ground floor level.

The modified application seeks to maintain the three (3) separate bin storage areas with minor modifications to the bin storage area layout, with one retail waste storage area containing 29 x 240L bins and two residential waste storage areas, containing 102 x 240L bins and 106 x 240L bins respectively, on the ground floor level.

Based on the modified proposal of 174 dwellings, Part 3 of DCP 27 requires the development to provide 87 x 240 litres bins each for general waste and recycled waste and up to 174 x 240 litre bins for green waste. The development proposes a total of 208 x 240L bins; 174 x 240L bins, for general waste and recycled waste and 34 x 240L for green waste.

In accordance with Part 4 of DCP 27, the proposed retail area would generate a total of 348.5L of general waste and 348.5L of recycled waste. The development proposes to

provide a waste storage area which would accommodate 6,960L of waste for general and recycled waste.

The proposal complies with the retail waste requirements, general waste and recycled residential waste requirements. The number of bins proposed for green waste is considered acceptable for the amount of soft landscaping proposed within the development as the proposed bins will adequately sustain the likely amount of green waste produced.

The application was reviewed by Council's Waste Management Officer who provided the following comments:

"Regarding the waste management of the site – a recommendation that the waste bins go to 360L bins per 5 units to reduce the number of bins at street front each collection day.

Additionally consideration is given to the safe and easy movement of the garbage bins to the street front including size of storage rooms, pathways to street frontage that are not shared by cars and a slope of driveway that facilitates the moving of full heavy 360L bins."

The comments provided by Council's Waste Management Officer are considered to be relevant. Based on the above recommendations from Council's Waste Management Officer, the residential component of the subject development would require 69.6 x 360L bins each for general waste and recycled waste, amounting to 25,056L. It is considered that the proposed residential waste storage areas can readily accommodate the required 360L bins for the residential dwellings as the proposed bins storage areas are designed to accommodate 41,760L.

Also, the original application was approved with a designated pedestrian pathway from the bin storage areas to the street frontage. This pedestrian pathway is proposed to be maintained and is considered to be sufficient in providing access between the street frontage and waste storage areas for the 360L bins.

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

The proposed modifications have been assessed in accordance with the aims, objectives and design parameters of DCP 28. As previously mentioned, the proposed modifications would not alter the overall height, bulk and scale of the approved development. The proposed modifications are to be accommodated generally within the building envelope of the approved development. As such, the modifications will not result in any significant amenity impacts in regards to overshadowing, privacy and view loss as the height and building envelope of the approved development is generally maintained. The issue of view loss is discussed further below under the heading 'View Corridors/View Sharing'.

The proposed modifications would maintain the general streetscape presentation of the approved development with the exception of some minor changes to the building fenestration, the provision of additional retail space along the corner of Illawarra Road and Byrnes Street, minor changes to the internal bathroom layout of the dwellings within the development and the extension of balconies along the eastern end of Building C.

The proposed changes to the fenestration are considered to be minor and complement the existing approved streetscape presentation of the development. The provision of additional retail space along the corner of Illawarra Road and Byrnes Street also is considered to complement the streetscape presentation of the approved development, as the design of the

additional retail space with a glazed frontage would encourage an active façade and provide adequate surveillance of the area.

The minor changes to the internal bathroom layout of certain dwellings within the development are also considered to be acceptable and would maintain the amenity of the dwellings as approved within the original development. The extension of balconies along the eastern end of Building C is considered to improve the amenity of the dwellings that they service, as they are provided with additional open space above the requirement of 8sqm prescribed by DCP 28.

In light of the above, the proposed modifications are considered to comply with the aims, objectives and design parameters of DCP 28.

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

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

The original application was approved with the provision of accessible entries, continuous paths of travel throughout the mixed use development, accessible sanitary facilities for the commercial/retail suites, 18 adaptable dwellings and a minimum total of 19 accessible car spaces. The proposed modifications would maintain the existing approved accessible facilities, with the exception of and would provide an accessible entry and facilities for the additional retail space proposed to be located on the corner of Illawarra Road and Byrnes Street.

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

The issue of community safety has been discussed in Section 4 (iii) of this report under the heading 'Community Safety (Clause 62)'.

(x) View Corridors/View Sharing

Within the original assessment of the approved development the following view loss analysis was made:

“Currently views of the city central business district and Centrepont Tower are available from some of the surrounding residential properties to the south of the site, particularly from the residential properties located along Schwebel Street. The image below demonstrates the direction of the city views enjoyed by the residential properties along Schwebel Street:

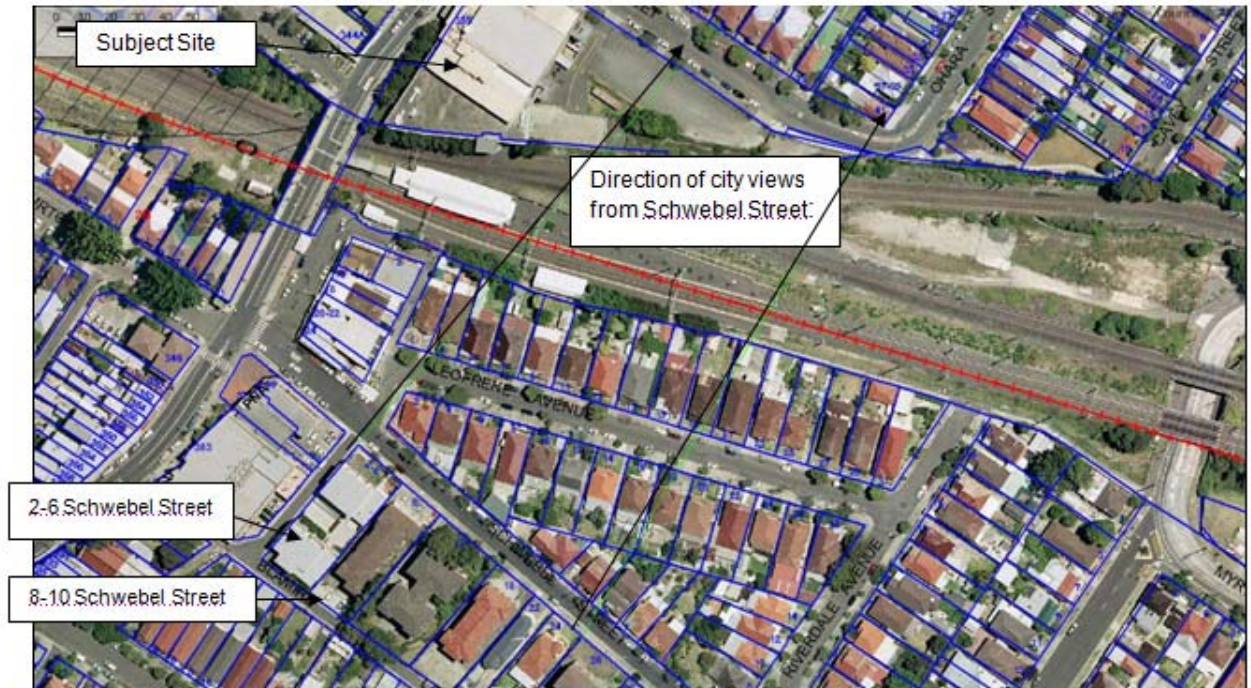


Image 24: Direction of the city views experienced by the residential properties along Schwebel Street.

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



Image 25: City views enjoyed from 2/2-6 Schwebel Street.