



Image 26: City views enjoyed from 14/2-6 Schwebel Street.



Image 27: City views enjoyed from 2/8-10 Schwebel Street.



Image 28: City views enjoyed from 5/8-10 Schwebel Street.



Image 29: City views enjoyed from 7/8-10 Schwebel Street.

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

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

The applicant submitted the following view loss analysis which concluded the following:

“6.0 Conclusion

This view analysis report has undertaken an assessment of existing views from the dwellings Nos. 1, 3 and 5 Schwebel Street, and Units 7, 11 and 14 at 2-6 Schwebel Street, Marrickville and the likely impact of the proposed development.

*This assessment has been undertaken in accordance with the NSW Land and Environment Court Planning Principles, as set down in the case of *Tenacity Consulting v Warringah* [2004] NSWLEC 140.*

The view analysis has identified that the properties accessed enjoy an outlook or views in a northerly direction over the residential dwellings in Leofrene Street, the Bankstown railway line corridor and the site toward the Sydney CBD skyline on the horizon.

The photomontages demonstrate that the proposed development will result in the loss of outlook from some of the above properties, where they enjoy an outlook across part of the site. However, the montages demonstrate that the level of view loss is acceptable as iconic views of the CBD skyline on the horizon will be retained.

Whilst it is acknowledged that the proposal does not comply with the FSR control of MLEP 2001, strict compliance with the FSR control would not necessarily result in any improvement to views as the larger mass of the building has been located along the southern and eastern boundaries of the site so as to enable the building to transition down on the northern and eastern part of the site towards the Byrnes Road frontage.

In this respect, the overall impact of the development on views is considered to be minor and considered acceptable.”

The following photomontages were included in the view loss analysis:



Image 30: View montage from balcony of Unit 7/2-6 Schwebel Street, Marrickville.

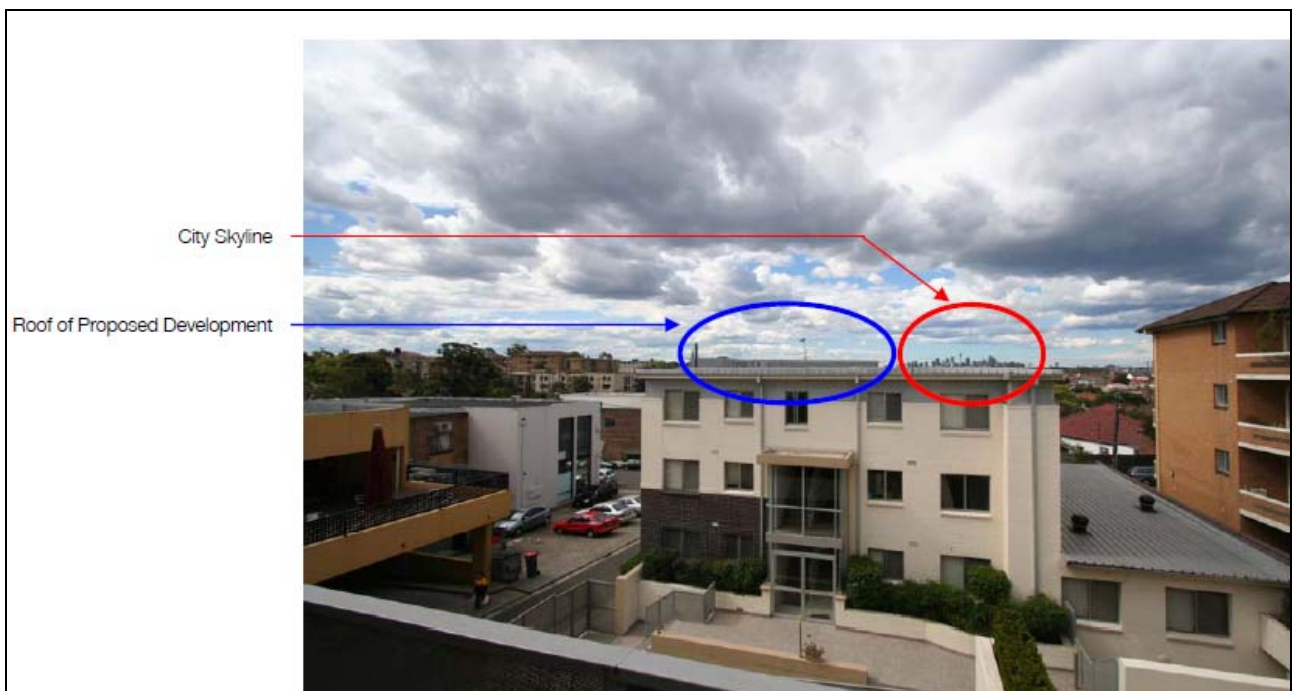


Image 31: View montage from balcony of Unit 14/2-6 Schwebel Street, Marrickville.



Image 32: View montage from balcony of Unit 2/8-10 Schwebel Street, Marrickville.



Image 33: View montage from balcony of Unit 5/8-10 Schwebel Street, Marrickville.

Based on Council officer's estimates and in accordance with the view sharing principles used by the Land and Environment Court, the views enjoyed are considered be of

valuable iconic views. The development proposes the majority of the building mass along the Illawarra Road frontage of the site with the proposed building stepping down towards the rear of the site. This is considered to be an appropriate design response and a significant improvement from the previous development proposed on the site, as it encourages view sharing for properties along Schwebel Street.

The proposed development will obstruct a small portion of the residential properties located along Schwebel Street, specifically ground floor residential development located along Schwebel Street. It is considered that it would be difficult to retain any view corridors for those properties and in light of this assessment the extent of view loss is considered acceptable.”

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 it is considered that the proposed modifications would not further obstruct the views experienced by the residential properties at Schwebel Street. It is noted that submissions received during the notification period of the Section 96 application raised concern with additional view loss the modified development may cause due to the proposed extension of balconies along the eastern side of Building C. In response to this matter the applicant provided the following view montages from the balcony of Unit 2/8-10 Schwebel Street, Marrickville.



Image 19: View montage from balcony of Unit 2/8-10 Schwebel Street, Marrickville of the existing approved development

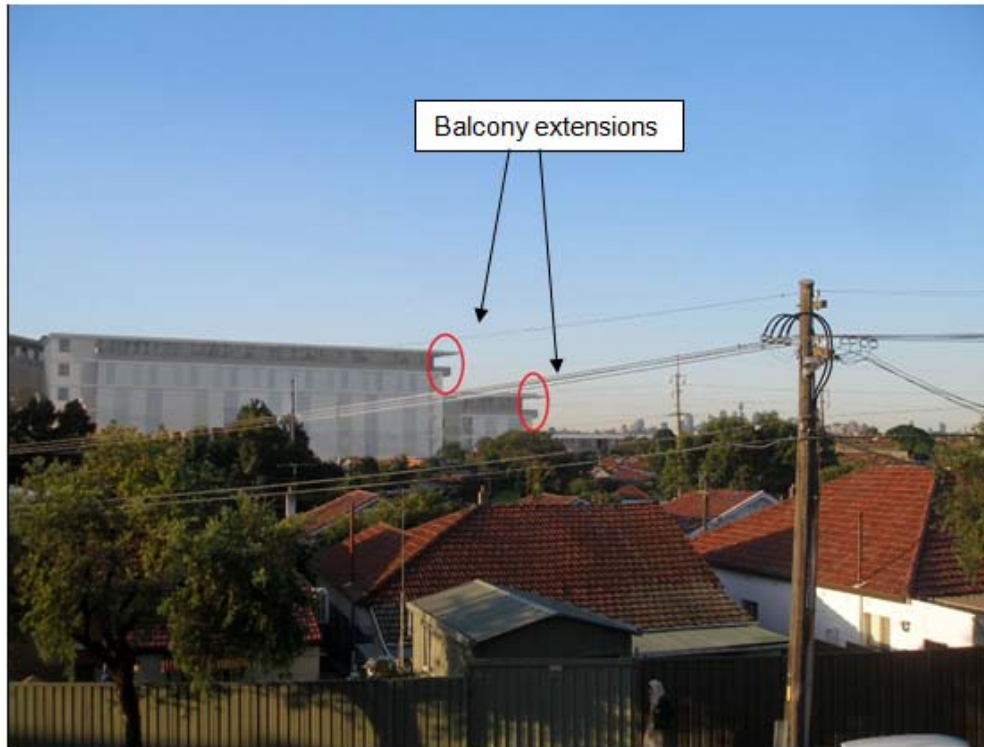


Image 20: View montage from balcony of Unit 2/8-10 Schwebel Street, Marrickville of the proposed modified development

Unit 2/8-10 Schwebel Street, Marrickville is considered to be one of the most affected properties in regards to view loss, as a result of the subject development. As detailed in the photomontages the proposed modifications would result in some minor additional view loss for the residential properties at Schwebel Street, compared to the approved development. However iconic views of the CBD skyline would be retained. In view of the circumstances the extent of view loss is considered acceptable.

(i) Referrals

Strategic Planner

The subject application was reviewed by Council's Strategic Planner who provided the following comments:

"The increase in GFA is very minor resulting in an FSR of 2.23:1 (calculated under draft MLEP 2010) which is well under the proposed the 2.6:1 maximum FSR under draft MLEP 2010 FSR Map. The additional GFA is to replace the entry at the corner of Illawarra Road and Byrnes Street with a corner retail space. This is strongly supported as it will improve retail frontage activation; improve the street corner presentation; and remove the previous unsafe alcove area in terms of "Crime Prevention Through Environmental Design" principles.

The subdivision of the retail space along Illawarra Road into 7 separate shops, each with individual entries, is also strongly supported to further increase retail frontage variety and activation.

There are no concerns with the minor changes to fenestration and balconies.

In terms of the variation to the unit mix, ideally the 3-bed dwellings would constitute at least 10% of dwellings (draft MDCP 2010 requires 15% to be 3-bed dwellings), compared to the 3% proposed (five 3-bed dwellings). However as current consent has no 3-bed dwellings; as DCP 28 has no dwelling mix controls; and as draft MDCP 2010 has no statutory consideration, the S96 is at least an improvement.”

Comment:

The comments provided by Council's Strategic Planner are considered to be relevant. The matters in regards to floor space ratio, the proposed additional retail space and modification to the balconies and building fenestration are considered acceptable for reasons discussed in the body of this report.

Transport Planner

The subject application was reviewed by Council's Transport Planner who provided the following comments:

- **“Residential parking provision:** Residential parking rate should comply with DCP 19 (143 spaces), not exceed DCP 19 as is proposed (174 spaces). The main reason is that the site has good access to public transport and services. The applicant's own arguments in support of a reduced commercial/visitor rate on p.23 of the Statement of Support can be used to argue against exceeding DCP 19 provision rates for the residential component. Although not applicable to this DA, it should be noted that the site is within Draft Marrickville DCP (dMDCP) 2010 Parking Area 1, within which parking rates will be most constrained.
- **Commercial/visitor parking rate:** No objection is raised to the proposed reduction in the commercial/visitor provision from 28 to 17 spaces. The site has good access to public transport and is located within the Marrickville commercial centre. Commercial floor space is reasonably low and commercial areas small - as a result the commercial catchment is expected to be local, not regional – hence there is likely to be a high incidence of access by means other than car. Concur with applicant's arguments on p.23 of Statement of Support.
- **Provision/location of bicycle parking:** Provision rate maintains compliance with DCP 19, so is acceptable (although it should be noted that under dMDCP 2010, this rate will be increased). No objection to relocation of bicycle parking spaces. Recommend installation of racks (not lockers), such that all bicycles can be locked with a U-lock through the rear wheel and frame. Use a 2 metre design length for bicycles and ensure they bicycles clear walls and don't encroach on car or pedestrian movement spaces. Recommend installation of rack designs that maximise number of bicycles parked in a given space (can provide further advice here if needed). Recommend bike parking area is sufficiently lit (not a dark space), and that RTA-standard bike parking signs be installed at these spaces. No need for applicant to provide visitor bicycle parking in the basement area – rather, Council to provide a small number of visitor bicycle parking racks on the footway construction – to be funded by development contributions.
- **Car share parking:** In accordance with consent conditions 9 & 119, applicant to provide two car share spaces in commercial/visitor parking area. These need to be marked on the s.96 plans, and it its recommended that they be the spaces located closest to the car park entrance/exit to Byrnes Street.”

Comment:

The comments provided by Council's Transport Planner are considered to be relevant. It is noted that Council's Transport Planner recommends the car parking spaces provided in excess of Council's requirements for the residential component of the development should be deleted. However, as discussed in the body of the report under the heading "Floor Space Ratio" the car parking provided in excess is considered to be acceptable. The issue of car parking is also discussed in the body of the report under the heading "Marrickville Development Control Plan No. 19 – Parking Strategy (DCP 19)".

(ii) Marrickville Section 94 Contributions Plan 2004

It is considered that the carrying out of the proposed development would result in an increased demand for public amenities and public services within the area. A contribution of \$2,034,765.03 would be required for the proposed development under Marrickville Section 94 Contributions Plan 2004. A condition requiring the above contribution to be paid should be imposed on any modified consent granted.

5. Community Consultation

The application was advertised, an onsite 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. Eight (8) submissions and one (1) petition, containing a total of 525 signatures, were received which raised the following concerns:

(i) *Lack of sufficient off-street parking and increase in traffic congestion*

Concern was raised with the lack of off-street car parking provided by the development and with the potential increase of traffic congestion in the area. The issue of parking and traffic has been canvassed in the main body of the report. It is considered that the Traffic Report supplied by the applicant accompanying the subject application has satisfactorily addressed the issue of traffic. It is noted that the subject application and the Traffic Report, accompanying the subject application, were reviewed by Council's Local Traffic Planning and Advisory Committee who raised no objection to the proposal on traffic or parking grounds.

Applicant's response:

"The proposed provision of 191 car parking spaces satisfies the overall quantum requirement of Council's DCP (188.6 spaces) 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 4 apartments) is quite high compared with the RTA recommendation (1 space per 6 to 7 apartments).*

The traffic and parking assessment undertaken by TTPA for the applicant indicates that the traffic generation of the S96 scheme will be somewhat less than that of the approved scheme and there will be no adverse traffic implications."

(ii) Noise

Concern was raised with likely noise impact and associated health risks (from cars, delivery vehicles, increased residents within area, close proximity of the development to freight lines, construction phase of development, etc) that would result from the development. The proposed mixed use development is permissible with Council's consent under the zoning provisions applying to the land. Appropriate conditions were imposed within the original determination in relation to noise emissions. Those conditions are to be maintained.

Potential noise generated by the close proximity of the development to the freight lines was addressed within the original application as follows and is considered to be relevant within the subject application:

"Potential noise generated by the close proximity of the development to the freight lines was addressed by the applicant in the Environmental Noise and Vibration Assessment, Report No. 2009408/2502A/R3/BW, dated 10 March 2010 prepared by Acoustic Logic Consultancy, which accompanied the subject application. The report concluded the following:

"The potential for additional noise impacting on the residential properties opposite the proposed development from noise reflections from the proposed development associated with train passbys has been investigated. The investigation revealed that noise will not increase at these residences by the development for the following reasons:

1. *The majority of noise impacting on existing residences will result from direct noise generated by train passby, which will not change. Any noise reflecting from the proposed development would be required to travel a greater distance than the direct noise source and hence be attenuated such that existing noise levels will not increased.*
2. *The broken nature of the proposed development façade (ie entry ways, floor slabs etc) will result in noise being diffused and further attenuated, rather than reflected as a plan reflection.*
3. *As a significant source of train noise is associated with the contact of the wheel with the train tracks any noise reflected from the proposed*

development to the neighbours opposite the tracks will be screened by the train during the passby.”

From the above findings, it is concluded that the proposed development will not result in additional noise impacting on residential properties adjacent to the proposed development from noise reflections from the proposed development associated with train passbys.

Applicant’s Response:

“Hours of work for demolition, excavation and construction are satisfactorily addressed by conditions 101 and 102 of the original consent...”

Residents in Schwebel Street, Leofrene Street and Blamaire Lane are variously exposed to rail noise. The proposed modifications do not substantially alter the built form of the development and therefore will not alter the noise affection...

The proposed modifications will not alter the potential noise impacts of the development which are adequately addressed by the relevant conditions of the original consent...

The proposed modifications will have no significant adverse health impacts.”

(iii) Site Contamination

Concern was raised with the potential site contamination of the subject property and the proposed additional geological studies of the subject site. The subject site was previously occupied by the former Marrickville RSL Club, a use which would be unlikely to generate site contamination. However, the site is located within an area identified as being subject to acid sulfate soil risk. The issue of acid sulfate soil was appropriately addressed within the original application.

Applicant’s Response:

“The site is deemed suitable for residential use subject to the relevant conditions of the original consent. The proposed modifications will not alter this”.

(iv) Lack of public consultation with the public by the applicant

Concern was raised with the lack of public consultation by the applicant. It is noted that there is no legal requirement requiring the applicant to consult with the public in regards to the proposed development. However, it is noted that the subject application was advertised very widely, an on site notice was displayed and 897 residents/property owners in the vicinity of the subject property were notified of the proposed development, by mail, in accordance with Council’s Notification Policy.

Applicant’s Response:

“It is understood that Council has notified the application in accordance with its Policy.”

(v) Infrastructure

Concern was raised with the intensification/overuse of the existing infrastructure within the area such as public transport including the inadequacy of trains on the Bankstown line, water, waste, drainage and the local road system. As part of the development assessment process the development application was referred to various external and internal bodies

including Railcorp, Council's Development Control Engineer and Council's Local Traffic Planning and Advisory Committee to assess the potential impact the proposal will have on the surrounding infrastructure. Those issues and the comments received from the various external and internal bodies have been discussed in the main body of the report.

Applicant's Response:

"The site has high accessibility to rail services. Increase use of rail services by Marrickville residents is a desirable strategic planning outcome..."

The site has high accessibility to rail and bus services and the proposed modifications will maintain the propensity of the approved development to support public transport. Increased use of public transport by Marrickville residents is a desirable strategic planning outcome...

The proposed modifications do not alter the demands of the development on sewerage and stormwater infrastructure. The relevant conditions of the original consent ensure that the development is adequately serviced."

(vi) Views

Concern was raised with the potential view loss which may occur as a consequence of the carrying out of the proposed development. The issue of view loss has been discussed within the main body of the report.

Applicant's Response:

"The proposed changes do not later the approved height and south facing profile of Block C."

(vii) Height, floor space ratio, bulk and scale

Concern was raised with the height, floor space ratio, bulk and scale of the proposal. It is noted that the proposed modifications would not alter the height of the approved building. However, as discussed previously the proposed modifications would increase the floor space ratio of the approved development. The issues of height, floor space ratio and bulk and scale have been canvassed in the main body of the report.

Applicant's response:

"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 proposed FSR exceeds the FSR control of 2:1 under MLEP 2001. Accordingly the application includes a SEPP 1 objection. In accordance with definition of GFA under the draft MLEP 2010, the proposed modified development has a GFA of 13,164.5m² and a FSR of 2.17:1 which compiles with the proposed FSR control of 2.6:1 of the draft MLEP 2010.

Furthermore, 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...

The proposed modifications do not alter the overall height of the approved development."

(viii) Deep soil zone

Concern was raised with the non-compliance of the development with the deep soil zone requirements of the Residential Flat Building Design Code. The non-compliance was considered in the original application and the proposed modifications would not reduce the approved deep soil zone areas.

Applicant's response:

"The approved deep soil zones are not altered by the proposed modifications."

(ix) Building Separation

Concern was raised with the non-compliance of the development with the building separation requirements of the Residential Flat Building Design Code. The non-compliance was considered in the original application and the proposed modifications would not alter the approved building location/ building separation.

Applicant's Response:

"The proposed modifications do not alter the arrangement of the approved buildings on the site."

(x) Undesirable precedent

Concern was raised that the proposed development would set an undesirable precedent in the area and is unsuitable for the subject site. It is noted that all development proposals relating to individual sites must be assessed on their merits.

The proposed development is a form of development permissible under the zoning provisions applying to the land. The intensity of development and density of the proposed development are considered acceptable for reasons canvassed within the main body of this report.

Applicant's Response:

"The proposal is for the modification of an existing development consent granted following appropriate assessment under the relevant planning framework and therefore no undesirable precedent will result."

(xi) Landscaping and Open Space

Concern was raised that the site provided minimal landscaping and open space. The issues of landscaping and open space were considered in the assessment of the original application. The proposed modifications would maintain the existing approved landscaped/open space areas.

Applicant's response:

"Open space and landscaping is substantially the same as the approved development and is consistent with DCP 28 and the design principles of SEPP 65."

(xii) *Commercial/Retail Suite use*

Concern was raised with the lack of information accompanying the subject application in regards to the proposed commercial/retail uses.

The subject application proposes approximately 697.5m² of retail floor space along the Illawarra Road frontage. No details were provided in relation to the proposed use of the individual commercial/retail suites accompanying the application. A separate development application would be required to be submitted in the prescribed manner for Council's consideration for the usage of the commercial/retail component of the proposed development.

Applicant's Response:

"Condition 3 of the original consent requires future retail uses to obtain development consent. The proposed modifications will not alter this."

(xiii) *Population Density*

Concern was raised with the increase in population density in the area and the occupant type who will be living in the proposed development. The proposed development is a form of development permissible under the zoning provisions applying to the land. The intensity of development and density of the proposed development are considered acceptable for the reasons canvassed in the body of the report.

Applicant's Response:

"Tenants and owners are currently represented within the broader community. Likewise, the proposed modified development is expected to be occupied by both tenants and owner occupiers. The proposed modifications reduce the number of new households from 180 to 174. The attitudes of future occupants of the development toward the environment or local community is not a planning matter."

(xiv) *Aircraft Noise*

Concern was raised with the aircraft noise. Appropriate conditions were imposed within the original determination in relation to noise attenuation of the approved development. Those conditions are to be maintained.

Applicant's response:

"The proposed modifications do not alter the suitability of the approved development with respect to aircraft noise exposure."

Attenuation of aircraft noise is satisfactorily addressed by condition 74 of the original consent."

(xv) *Privacy*

Concern was raised with potential privacy impacts on surrounding residential properties. It is considered that the proposed modifications would not adversely impact on the privacy of surrounding residential development.

Applicant's Response:

"The considerations of privacy, shadowing and residential amenity were satisfactorily addressed in the original application and are not altered by the proposed modifications."

(xvi) *Overshadowing*

Concern was raised with the overshadowing cast by the proposal. The proposed modifications would not alter the height of the approved development, and as such no additional shadowing would be cast by the proposed modifications.

Applicant's Response:

"The considerations of privacy, shadowing and residential amenity were satisfactorily addressed in the original application and are not altered by the proposed modifications."

(xvii) *Waste*

Concern was raised with the amount of waste generated by the proposed development, waste collection methods and illegal waste dumping within the area as a result of the development. The issue of waste collection has been discussed within the main body of the report. There is no evidence to suggest that the carrying out of the proposed development would result in the illegal dumping of waste within the area.

Applicant's Response:

"The proposed modifications are supported by a revised Waste Management Plan in accordance with Council's DCP. In addition, conditions 69 and 70 of the original consent satisfactorily address waste storage and are to remain."

(xviii) *Structural Adequacy of Railway Bridge*

Concern was raised that the proposal may undermine structural adequacy of railway bridge on Illawarra Road, which currently appears to be damaged. 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.

Applicant's response:

"The proposed modifications do not alter the response of the approved development to the proximity of the railway. Any consent is subject to the concurrence of RailCorp."

(xix) *Light Spillage*

Concern was raised with additional light spillage from the proposed development. The proposed development is a form of development permissible under the zoning provisions applying to the land. This matter was addressed in the assessment of the original application. It is considered that the proposed modifications will not result in additional lighting impacts than the approved development.

Applicant's response:

"The proposed modifications will not substantially alter the lighting characteristics of the approved development which are considered acceptable."

(xx) Affordable Housing and Unit Mix

Concern was raised with the lack of affordable housing within the development and the unit mix. It should be noted that Council currently has no specific controls requiring residential developments to incorporate affordable housing within such developments or controls in relation to unit mix.

Applicant's Response:

"The proposed changes to the mix of unit types results in a reduction of the total number of units from 180 to 174..."

The proposal is not a social housing development but does provide a range of unit sizes and types in response to a range of household needs."

(xxi) Excessive Bulk and Scale and Overdevelopment of Land

Concern was raised that the proposal is an overdevelopment of the site and has inappropriate bulk and scale. This issue has been canvassed within the main body of this report.

Applicant's response:

"The proposed modifications do not substantially alter the intensity of the approved development. The number of residential apartments is reduced from 180 to 174. The residential floor area remains the same. Retail floor space is increased by only 85.5m²..."

The original consent is subject to substantial contributions under section 94 of the EP & A Act. The proposed modifications will not alter this."

(xxii) Dilapidation Report

The owners of No. 345-347 Illawarra Road requested that the applicant be required to carry out a dilapidation report of 345-347 Illawarra Road. The subject site is located approximately 20 metres from the property known as 345-347 Illawarra Road which is located on the north eastern corner of Illawarra Road and Byrnes Street. It is considered that the subject site is located a considerable distance from 345-347 Illawarra Road and the carrying out of the proposed development would be unlikely to adversely impact on the premises at 345-347 Illawarra Road. Appropriate conditions were imposed in the original determination to avoid any damage to adjoining properties during the construction phase of the development.

Applicant's response:

"The property is separated from the site by Byrnes Street and is therefore unlikely to be affected by demolition, excavation and construction works. Conditions 105 and 107 of the current consent are sufficient to ensure that work is carried out safely, adjoining properties are protected and impacts on the surrounding area are minimised."

(xxiii) False Advertising

Concern was raised that the applicant has not abided by relevant planning legislation and falsely advertising the development with three bedroom apartments prior to the subject application's approval. This is not matter of consideration within the subject development application under section 79C and Section 96 of the Environmental planning and Assessment Act.

Applicant's Response:

"This is not a matter for consideration in the assessment of the development."

(xxiv) *Urban Strategy.*

Concern was raised that the proposed development was inconsistent with Council's Urban Strategy. It is considered that the proposed development is consistent with the principles of Marrickville's Urban Strategy as it would encourage increased density along transport nodes. As detailed in Section 4(iv) of this report the proposed development complies with the zoning provisions and controls contained within Draft Marrickville Local Environmental Plan 2011 with the exception of the height control. However the proposed modification would not result in any increase in the height of the approved development.

Applicant's Response:

"The proposed modifications will result in a development with a high degree of residential amenity consistent with the future character of the suburb reflected in the draft MLEP 2010."

(xxv) *Non-compliance with Draft Marrickville Local Environmental Plan 2011*

Concern was raised that that the development results in a non-compliance with the Draft Marrickville Local Environmental Plan. This matter has been canvassed within the main body of this report.

Applicant's Response:

"The development complies with the FSR control under the draft MLEP 2010."

The proposed modifications do not alter the approved building height. The development does not strictly comply with the maximum 26 metre building height control under the draft MLEP 2010."

(xxvi) *Streetscape Appearance*

Concern was raised with the streetscape/aesthetic appearance of the development within the streetscape. The development generally maintains the existing streetscape/aesthetic appearance of the approved development.

Applicant's response:

"The proposal is substantially the same as the approved development and provides an appropriate urban design response to the streetscape."

(xxvii) *Flooding*

Concern was raised that the subject site is flood affected. This matter was considered within the assessment of the original application and appropriate conditions were imposed in the original determination.

Applicant's Response:

"The proposed modifications do not alter the suitability of the approved development with respect to flooding."

(xxviii) Accessibility

Concern was raised with regards to the provision of accessible entry/facilities for the commercial/retail spaces. This matter has been canvassed within the main body of this report.

Applicant's Response:

"The approved development was supported by an accessibility assessment prepared by Accessibility Solutions Pty Ltd and is deemed to satisfy the location accessibility requirements of Council's DCP 31. It is considered that the proposed development will not detract from this."

(xxix) Parking Scheme

The submitters requested that a condition be imposed on any modified consent granted requiring any future residents of the subject development not be eligible for any existing or future resident parking scheme for the area. The approved development had such a condition imposed as a condition of consent.

6. Section 96 of the Environmental Planning and Assessment Act

Under Section 96 of the Environmental Planning and Assessment Act, 1979, Council, when considering a request to modify a Determination, must:

- (a) be satisfied that the development as modified is substantially the same development as the development for which consent was originally granted;
- (b) consult with any relevant authority or approval body;
- (c) notify the application in accordance with the regulations;
- (d) consider any submissions made; and
- (e) take into consideration the matters referred to in Section 79C as are of relevance to the development the subject of the application.

The development being modified is substantially the same development as the development for which consent was originally granted. 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. The application was notified in accordance with the regulations and Council's policy. The submissions received have been considered above.

7. 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 modification application. The application is considered suitable for approval.

PART E - RECOMMENDATION

- A. THAT** the application under Section 96 of the Environmental Planning and Assessment Act 1979 to modify Determination No. 201000115, dated 19 August 2010 be **APPROVED** and a modified Determination be issued with the Determination being modified in the following manner:

- (i) That the description of the development being amended to read:

“to demolish the existing improvements and erect a mixed use development containing approximately 697.5sqm of retail floor space along the Illawarra Road frontage, 17 studio units, 52 one bedroom dwellings, 100 two bedroom dwellings, 5 three bedroom dwellings and two basement levels accommodating 187 vehicles, 39 bicycle spaces, ancillary storage and garbage storage rooms”

- (ii) That Conditions 1, 6, 75 and 85 in Part B – Conditions of Consent of the Determination be amended to read:

1. The development being carried out substantially in accordance with plans and details listed below:

Drawing No. and Issue	Plan/ Certificate Type	Date Issued	Prepared by	Date Submitted
DA – 1101, Issue C	Lower Ground Floor Plan	24 June 2010	Candalepas Associates	29 June 2010
DA – 1102, Issue C	Ground Floor Plan	24 June 2010	Candalepas Associates	29 June 2010
DA – 1103 Issue C	Upper Ground Floor Plan	24 June 2010	Candalepas Associates	29 June 2010
DA – 1104, Issue C	Level 1 Floor Plan	24 June 2010	Candalepas Associates	29 June 2010
DA – 1105, Issue C	Level 2 Floor Plan	24 June 2010	Candalepas Associates	29 June 2010
DA – 1106, Issue C	Level 3 Floor Plan	24 June 2010	Candalepas Associates	29 June 2010
DA – 1107, Issue C	Level 4 Floor Plan	24 June 2010	Candalepas Associates	29 June 2010
DA – 1108, Issue C	Level 5 Floor Plan	24 June 2010	Candalepas Associates	29 June 2010
DA – 1109, Issue C	Level 6 Floor Plan	24 June 2010	Candalepas Associates	29 June 2010
DA – 1110, Issue C	Roof Plan	24 June 2010	Candalepas Associates	29 June 2010
DA – 1201, Issue C	Section AA	24 June 2010	Candalepas Associates	29 June 2010
DA – 1202, Issue C	Section BB	24 June 2010	Candalepas Associates	29 June 2010
DA – 1301, Issue C	Illawarra Road Elevation	24 June 2010	Candalepas Associates	29 June 2010
DA – 1302, Issue C	Byrnes Street Elevation	24 June 2010	Candalepas Associates	29 June 2010
DA – 1303, Issue C	South Elevation	24 June 2010	Candalepas Associates	29 June 2010
DA – 1503, Issue C	Waste Management Plan	24 June 2010	Candalepas Associates	29 June 2010
101 Issue C	Landscape Plan Levels G1 & G3	17 March 2010	Site Image Landscape Architects	19 March 2010

501 Issue B	Landscape Details	17 March 2010	Site Image Landscape Architects	19 March 2010
502 Issue A	Landscape Outline Specification	17 March 2010	Site Image Landscape Architects	19 March 2010
H5500 Revision A	Hydraulic Services: Cover Sheet, Notes & Legend	12 March 2010	J & M Group Pty Ltd	19 March 2010
H5501 Revision A	Hydraulic Services: Lower Ground Stormwater Concept Design	12 March 2010	J & M Group Pty Ltd	19 March 2010
H5502 Revision A	Hydraulic Services: Ground Stormwater Concept Design	12 March 2010	J & M Group Pty Ltd	19 March 2010
H5503 Revision A	Hydraulic Services: Upper Ground Stormwater Concept Design	12 March 2010	J & M Group Pty Ltd	19 March 2010
H5504 Revision A	Hydraulic Services: Level 1 Stormwater Concept Design	12 March 2010	J & M Group Pty Ltd	19 March 2010
H5505 Revision A	Hydraulic Services: Level 2 Stormwater Concept Design	12 March 2010	J & M Group Pty Ltd	19 March 2010
H5506 Revision A	Hydraulic Services: Level 3 Stormwater Concept Design	12 March 2010	J & M Group Pty Ltd	19 March 2010
H5507 Revision A	Hydraulic Services: Level 4 Stormwater Concept Design	12 March 2010	J & M Group Pty Ltd	19 March 2010
H5508 Revision A	Hydraulic	12 March	J & M Group Pty	19 March

	Services: Level 5 Stormwater Concept Design	2010	Ltd	2010
H5509 Revision A	Hydraulic Services: Level 6 Stormwater Concept Design	12 March 2010	J & M Group Pty Ltd	19 March 2010
H5510 Revision A	Hydraulic Services: Roof Level Stormwater Concept Design	12 March 2010	J & M Group Pty Ltd	19 March 2010
H5511 Revision A	Hydraulic Services: Detail Sheet	12 March 2010	J & M Group Pty Ltd	19 March 2010
-	Schedule of finishes	-	Candalepas Associates	19 March 2010
299424M_03	Basix Certificate: Block A & B	16 March 2010	The Department of Planning	19 March 2010
299432M_03	Basix Certificate: Block C	16 March 2010	The Department of Planning	19 March 2010
Report No. 2009408/2502A/R3/BW	Environmental Noise and Vibration Assessment	10 March 2010	Acoustic Logic Consultancy	19 March 2010
	Waste Management Statement	June 2010	Momentum Project Group	19 March 2010
Report No. 10-8601- R1, Revision 0	Ecologically Sustainable Design Assessment	10 March 2010	Heggies Pty Ltd	19 March 2010
Report No. 10-8601- R3, Revision 0	BCA Section J Energy Efficiency Assessment	10 March 2010	Heggies Pty Ltd	19 March 2010

10 and details submitted to the Council on 19 March 2010, 1 June 2010, 9 June 2010, June 2010, 17 June 2010 and 29 June 2010 with the application for development consent and as amended by the plans and details listed below:

Drawing No. and Issue	Plan/ Certificate Type	Date Issued	Prepared by	Date Submitted
S96 – 1101, Issue A	Lower Ground Floor Plan	7 April 2011	Candalepas Associates	18 April 2011
S96 – 1102,	Ground Floor	10 June	Candalepas	16 June

Issue B	Plan	2011	Associates	2011
S96 – 1103 Issue A	Upper Ground Floor Plan	7 April 2011	Candalepas Associates	18 April 2011
S96 – 1104, Issue A	Level 1 Floor Plan	7 April 2011	Candalepas Associates	18 April 2011
S96 – 1105, Issue A	Level 2 Floor Plan	7 April 2011	Candalepas Associates	18 April 2011
S96 – 1106, Issue A	Level 3 Floor Plan	7 April 2011	Candalepas Associates	18 April 2011
S96 – 1107, Issue A	Level 4 Floor Plan	7 April 2011	Candalepas Associates	18 April 2011
S96 – 1108, Issue A	Level 5 Floor Plan	7 April 2011	Candalepas Associates	18 April 2011
S96 – 1109, Issue A	Level 6 Floor Plan	7 April 2011	Candalepas Associates	18 April 2011
S96 – 1110, Issue A	Roof Plan	7 April 2011	Candalepas Associates	18 April 2011
S96 – 1201, Issue A	Section AA	7 April 2011	Candalepas Associates	18 April 2011
S96 – 1202, Issue A	Section BB	7 April 2011	Candalepas Associates	18 April 2011
S96 – 1301, Issue A	Illawarra Road Elevation	7 April 2011	Candalepas Associates	18 April 2011
S96 – 1302, Issue A	Byrnes Street Elevation	7 April 2011	Candalepas Associates	18 April 2011
S96 – 1303, Issue A	South Elevation	7 April 2011	Candalepas Associates	18 April 2011
S96 – 1503, Issue A	Waste Management Plan	7 April 2011	Candalepas Associates	18 April 2011
299424M_04	Basix Certificate: Block A & B	18 March 2011	The Department of Planning	18 April 2011
299432M_04	Basix Certificate: Block C	18 March 2011	The Department of Planning	18 April 2011

and details submitted to the Council on 18 April 2011, 7 June 2011 and 16 June 2011 with the application under Section 96 of the Environmental Planning and Assessment Act and the following conditions.

Reason: To confirm the details of the application as submitted by the applicant.

6. 187 off-street car parking spaces and 39 bicycle spaces being provided and maintained at all times in accordance with the standards contained within Marrickville Development Control Plan No. 19 - Parking Strategy prior to the commencement of the use. 170 car spaces being designated to the residential dwellings and 17 shared car spaces being designated to the residential visitor and commercial/retail uses.

Reason: To confirm the details of the application as submitted by the applicant and the terms of Council's approval.

75. A total monetary contribution of \$2,034,765.03 has been assessed as the contribution for the development under Section 94 of the Environmental Planning and Assessment Act 1979 and Marrickville Section 94 Contributions Plan 2004 (a

copy of which may be inspected at the offices of the Council). The contribution is towards:

- a) \$991,091.06 Section 94 Contributions Plan 2004 for Marrickville Area - Open Space, Park Infrastructure and Sports Facilities;
- b) Council wide projects:
 - (i) \$141,584.44 Cooks River;
 - (ii) \$141,584.44 Tempe Reserve/Tempe Lands;
 - (iii) \$70,792.22 Civic Centre; and
 - (iv) \$70,792.22 Street Tree Master Plan.
- c) \$342,249.80 Public Libraries and Community Recreation Facilities;
- d) \$228,981.03 Section 94 Contributions Plan 2004 for Marrickville Area - Traffic Management; and
- e) \$47,689.81 Plan Administration.

The monetary contributions above are the Council's adopted contributions under the current Fees and Charges Schedule. Under Marrickville Contributions Plan 2004, contributions will be adjusted at the time of payment in line with any change in the Consumer Price Index: All Groups Index Number for Sydney provided by the Australian Bureau of Statistics. The adjusted contribution payable will be the rate in the Council's adopted Fees and Charges Schedule for the financial year in which the contribution is paid.

The contribution (as adjusted) must be paid to the Council **in cash or by unendorsed bank cheque (from an Australian Bank only) or EFTPOS (Debit only) before the issue of a Construction Certificate**. Under Marrickville Section 94 Contributions Plan 2004 payment of Section 94 contributions **CANNOT** be made by Personal Cheque, Company Cheque or Credit Card.

NB: The above Contributions apply to end of Financial Year 2010/2011 after which the Contributions will be indexed.

Reason: To ensure provision is made for the increased demand for public amenities and services required as a consequence of the development being carried out.

85. The layout of the proposed car parking and loading dock areas associated with the subject development including driveways, grades, turn paths, sight distance requirements, aisle widths and parking bay dimensions shall be designed in accordance with AS2890.1-2004, AS2890.2-2002 and AS2890.6-2009 so that:
- a) Ramps grades shall be designed in accordance with Clause 2.5.3 of AS2890.1-2004. Grade changes on the ramp shall be checked using the method at Appendix C of the Standard. In addition a critical headroom check as per figure 5.3 of the Standard shall be undertaken along the ramp;
 - b) In accordance with Clause 3.3 of AS2890.1-2004 the access driveways shall have a maximum grade at the property boundary not exceeding 1 in 20 within 6 metres of the property boundary;
 - c) Details of any queuing areas or control points within the carpark such as boom gates or roller doors shall be detailed and designed so as to comply with Clauses 3.4 and 3.3 of AS2890.1-2004;
 - d) Circulation within the carpark shall be checked using the appropriate turning circle templates nominated by Clause 2.5.2 (c) of AS2890.1-2004;
 - e) Entry and exit to the loading dock as well as manoeuvrability within the loading dock area shall be designed using the swept path template (with

appropriate clearances) for a Medium Rigid Vehicle in accordance with AS2890.2-2002;

- f) The design of the driveway exits from the carpark and loading dock shall comply with the sight distance requirements of AS2890.1-2004;
- g) The design of car spaces for people with disabilities shall comply with the requirements of AS2890.6-2009 (Parking Facilities, Part 6: Off-street car parking for people with disabilities). This shall include installation of bollards as per Fig 2.2 and Fig 2.3 of the Standard and confirmation that the clear headroom available along the path of travel and within the car spaces comply with Clause 2.4 of the Standard; and
- h) The four (4) car spaces highlighted on the attached plans S96-1101 and S96-1102 (Rev A) shall be deleted as they do not comply with AS2890.1-2004.

Full details of compliance with the above requirements including dimensioned plans and the use of turning templates being submitted to Council before the issue of a Construction Certificate.

Reason: To ensure that vehicular access and car parking are designed in accordance with AS2890.1-2004, AS2890.2-2002 and AS2890.6-2009.

- (iii) That the following additional condition be included in Part B – Conditions of Consent of the Determination:

8A. A designated pedestrian pathway/walkway being provided with a minimum width of 1 metre within the ground floor car parking areas between the designated loading/unloading facilities and the good lift. The designated pedestrian pathway/walkway being clearly marked and maintained at all times.

Reason: To ensure pedestrian safety.

- B. THAT** those persons who lodged submissions in respect to the proposal be advised of the Joint Regional Planning Panel's determination of the application.
- C. THAT** RailCorp be advised of the Joint Regional Planning Panel's determination of the application.
- D. THAT** the Roads and Traffic Authority be advised of the Joint Regional Planning Panel's determination of the application.