

JOINT REGIONAL PLANNING PANEL
Sydney East Region

JRPP No	JRPP Reference Number
DA Number	2011SYE099
Local Government Area	Marrickville
Proposed Development	To carry out alterations and additions to the existing building on the site for its adaptive reuse for the purpose of student accommodation, comprising a total of 12 multiple occupancy rooms and 111 single occupancy rooms, to accommodate up to a total of 154 residents, and a manager's residence pursuant to the heritage conservation incentives provisions contained in Clause 54 of Marrickville Local Environmental Plan 2001.
Street Address	43-45 Australia Street, Camperdown
Applicant/Owner	Ceeroose Pty Ltd / NSW Nurses Association
Number of Submissions	Twelve (12)
Recommendation	Refusal
Report by	Ali Hammoud, Senior Development Assessment Officer

Assessment Report and Recommendation

SYNOPSIS

The subject application seeks consent to carry out alterations and additions to the existing building on the site for its adaptive reuse for the purpose of student accommodation, comprising a total of 12 multiple occupancy rooms and 111 single occupancy rooms, to accommodate up to a total of 154 residents, and a manager's residence pursuant to the heritage conservation incentives provisions contained in Clause 54 of Marrickville Local Environmental Plan 2001. The proposed development is only permissible if the consent authority is satisfied that the retention of the existing building that is a heritage item depends on the granting of consent and the proposed development satisfies all the heritage conservation incentives provisions contained in Clause 54 (1) of Marrickville Local Environmental Plan 2001. If the proposed development fails to satisfy one or more of those provisions, the proposed development is prohibited under the zoning provisions applying to the land under Marrickville Local Environmental Plan 2001. It should be noted that under Marrickville Local Environmental Plan 2001 only the Australia Street facade of the existing building is heritage listed. The remainder of the building is not a heritage item under MLEP 2001.

As detailed in this report, the proposed development fails to satisfy a number of the heritage conservation incentives provisions in Clause 54 (1) of Marrickville Local Environmental Plan 2001 and as such the proposed development is prohibited.

Notwithstanding the above, the proposal to adaptively reuse the existing building would not have any physical impacts on the height, bulk and scale of the existing building and its compatibility with the existing streetscape. The proposal is not considered to compromise the significance of the heritage item and its setting given that no noticeable additions are proposed to the building.

The proposed development has a floor space ratio of 2.6:1 which exceeds the maximum 1:1 floor space ratio permitted for the site under Clause 33 of Marrickville Local Environmental Plan 2001. The application was accompanied by an objection to the non-compliance with the development standard in accordance with the requirements of State Environmental Planning Policy No. 1 - Development Standards which is considered to be well founded and supportable.

Although a significant undersupply of car parking spaces is proposed with regard to the car parking requirements prescribed by Marrickville Development Control Plan No. 19 - Parking Strategy and State Environmental Planning Policy (Affordable Rental Housing) 2009, the proposal is considered acceptable for the reasons outlined in this report.

The application was notified in accordance with Council's notification policy and twelve (12) submissions were received.

The application is considered unsupportable given that the proposed development fails to satisfy a number of the heritage conservation incentives provisions in Clause 54 (1) of Marrickville Local Environmental Plan 2001 and is therefore prohibited.

The applicant has been consistently been advised throughout the process including the formal prelodgement meeting that the issue of permissibility under Marrickville Local Environmental Plan 2001 was fatal to the proposal. The applicant was advised that it would be prudent to lodge any development application for the proposal after the gazettal of draft Marrickville Local Environmental Plan 2011 as the Draft Plan contains heritage conservation incentives less onerous than those currently applicable under Clause 54 of MLEP 2001 and that under the draft Plan, the entire building is listed as a heritage item whereas under MLEP 2001, only the Australia Street façade is listed as a heritage item. The applicant elected to lodge the subject development before the gazettal of draft Marrickville Local Environmental Plan 2011.

The proposed development is prohibited under the Light Industrial zone provisions applying to the land under Marrickville Local Environmental Plan 2001 and the proposed development does not satisfy the heritage conservation incentives provisions in Clause 54 (1) of Marrickville Local Environmental Plan 2001. In view of the circumstances, refusal of the application is recommended.

PART A - PARTICULARS

Location: The subject property is situated on the western side of Australia Street, Camperdown and occupies the block bounded by Australia Street, Derby Place, Denison Street and Derby Street.

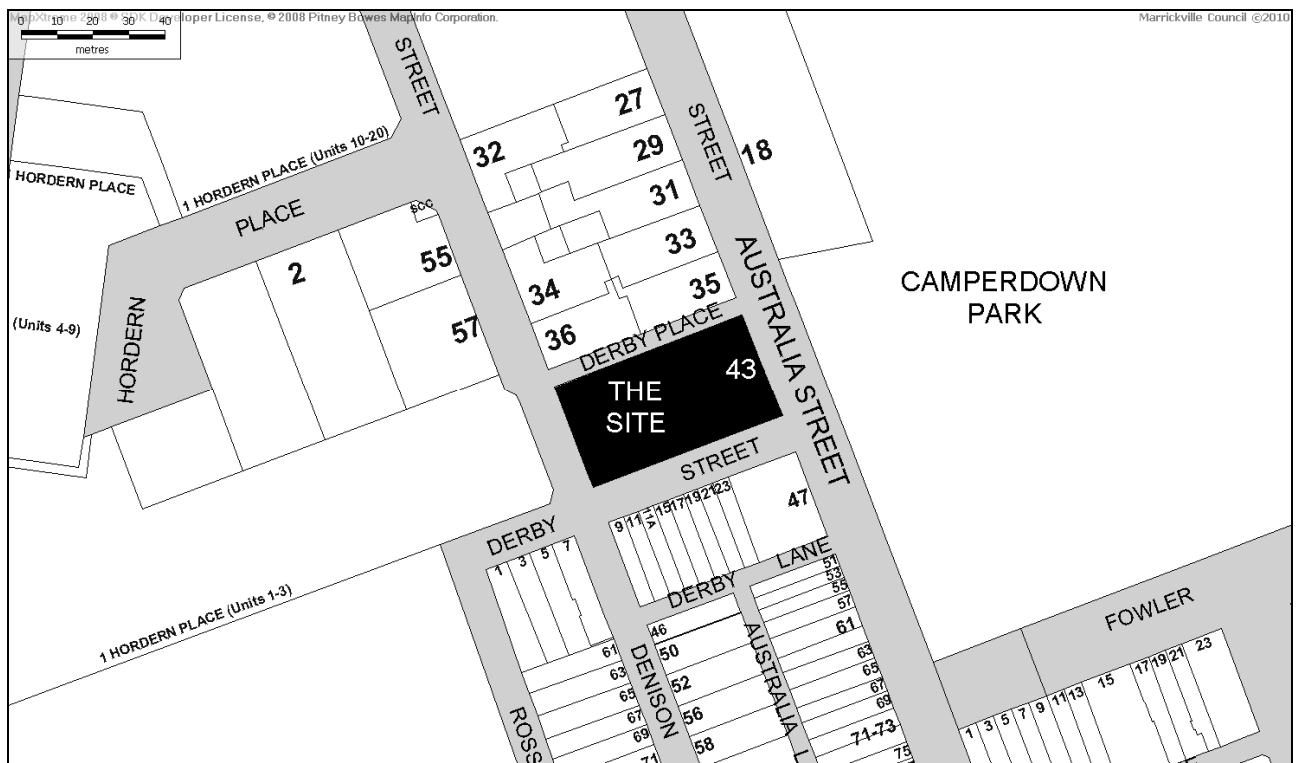


Image 1: Location Map

D/A No: 201100437

JRPP Reference No: 2011SYE099

Application Date: 9 September 2011. The following additional information was submitted:

18 October 2011:

- Phase 2 Environmental Site Assessment.

16 November 2011:

- Economic Analysis of permissible uses;
- Heritage Assessment of permissible uses;
- SEPP 65 Design Verification Statement and Assessment; and
- Amended Plans.

Proposal: To carry out alterations and additions to the existing building on the site for its adaptive reuse for the purpose of student accommodation comprising a total of 12 multiple occupancy rooms and 111 single occupancy rooms, to accommodate up to a total of 154 residents, and a manager's residence pursuant to the heritage conservation incentives provisions contained in Clause 54 of Marrickville Local Environmental Plan 2001.

Applicant: Ceerose Pty Ltd

Estimated Cost: \$11,180,757

Zoning: Light Industrial

PART B - THE SITE AND ITS CONTEXT

Improvements: A three (3) storey building currently occupies the entire site.



Image 2: The site as viewed from the corner of Australia Street and Derby Place

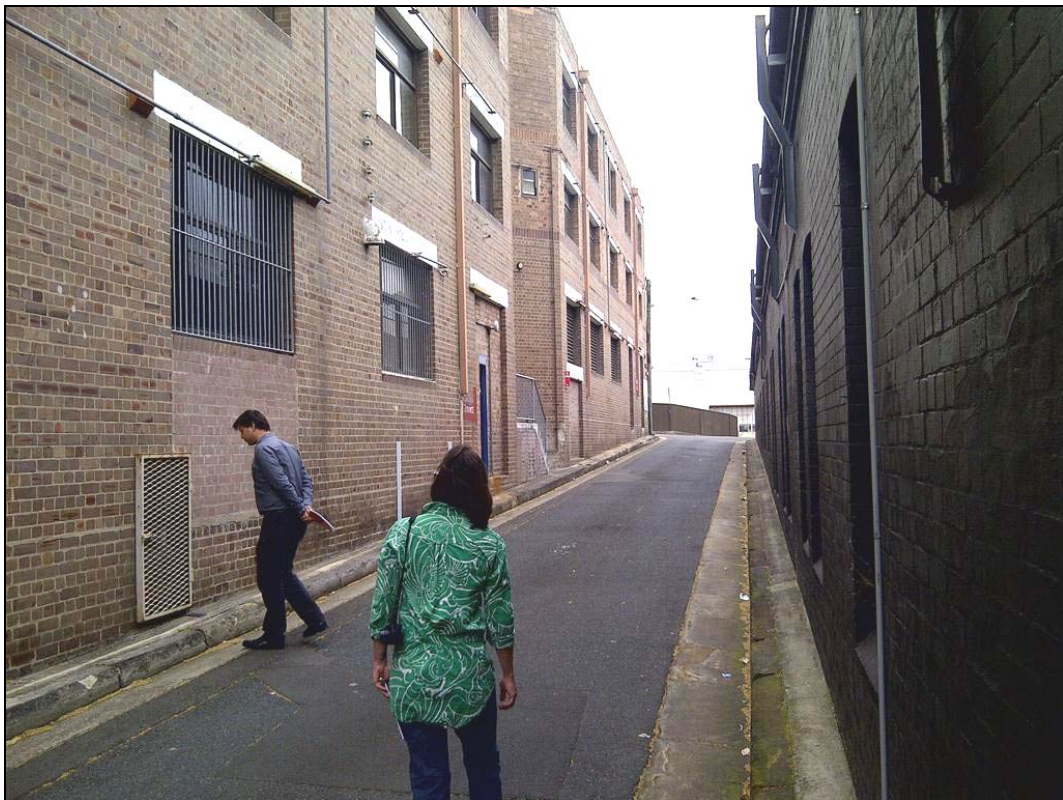


Image 3: The site as viewed along Derby Place



Image 4: The site as viewed along Denison Street



Image 5: The site as viewed from the corner of Denison Street and Derby Street

Current Use: Vacant

Prior Determinations: Determination No. 11824, dated 31 August 1988, approved an application to carry out alterations to the premises to form Association premises for the N.S.W Nurses' Association, including offices, meeting rooms and associated storage.

Determination No. 12588, dated 2 November 1989, approved an application to erect an illuminated projecting wall sign measuring 2.4 metres x 0.5 metres reading 'Royal Australian Nursing Federation, New South Wales Nurses Association'.

Determination No. 200200435, dated 16 August 2002, approved an application to demolish the existing cooling tower and install new air conditioning equipment and access stairs.

Determination No. 200500006, dated 5 April 2005, approved an application to carry out alterations to the premises to provide disabled access to Australia Street, a disabled toilet facility and disabled vertical lift and reception area.

Environment: A mix of industrial, educational and residential (under construction) to the north and west, open space to the east and residential to the south, south east and south west.

PART C - REQUIREMENTS

1. Zoning

<i>Is the development permissible in the zone?</i>	No
<i>Do the premises enjoy existing use rights?</i>	No
<i>Is development permissible under Clause 45 of MLEP 2001?</i>	No
<i>Is development permissible under Clause 54 of MLEP 2001?</i>	Only if the development satisfies all the requirements of the clause)

2. Development Standards (Mandatory Requirements):

Type	Required	Proposed
Floor space ratio (max)	1:1	2.6:1

3. Departures from Council's Codes and Policies:

Type	Required	Proposed
Car Parking	Fifteen (15) for residents	None

4. Community Consultation:

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

Submissions: Twelve (12) submissions received.

5. Other Requirements:
ANEF 2029 Affectation:

20-25 ANEF

PART D - ASSESSMENT

1. The Site and Surrounds

The subject property is legally described as Lot 1 in Deposited Plan 818033 and is known as 43-45 Australia Street, Camperdown. The subject property is situated on the western side of Australia Street, Camperdown and occupies the block bounded by Australia Street, Derby Place, Denison Street and Derby Street.

The property has frontages to Australia Street and Denison Street measuring approximately 30.4 metres and a depth and boundaries to Derby Street and Derby Place measuring 55.8 metres creating a total site area of approximately 1,695sqm. The site has a cross fall of approximately 3.3 metres from its south western corner to its north eastern corner.

A three (3) storey building currently occupies the entire site.

The surrounding area is characterised by a mixture of industrial, educational and residential uses under construction to the north and west, open space to the east and residential to the south, south east and south west.

2. The Proposal

The proposal seeks approval to adaptively reuse the existing building for the purposes of student accommodation, comprising a total of 12 multiple occupancy rooms and 111 single occupancy rooms over three (3) levels, to accommodate up to a total of 154 residents, and a manager's residence pursuant to the heritage conservation incentives provisions contained in Clause 54 of Marrickville Local Environmental Plan 2001. The development proposes the creation of an atrium to form a light well and construction of a partial basement for car, motorcycle and bicycle parking, waste storage, servicing and plant, and also includes alterations to the façade and roof.

The development consists of two (2) accommodation types including a self-contained 'studio' layout (single occupancy rooms) with those rooms ranging in area from 19.8sqm to 23.7sqm and a 3/4-bedroom apartment layout (shared multi occupant dwelling) typically measuring approximately 90sqm. Each 'studio' is proposed to be furnished with a single bed, desk, 240L refrigerator/freezer, microwave, cook-top and built-in storage of approximately 1.95 cubic metres contained in overhead compartments. Each 'apartment' comprises either 3 bedrooms where an accessible room is proposed or 4 bedrooms in other cases with bedrooms accessible via a shared living room and kitchen area.

A reception area is located in the publically accessible lobby off Australia Street which is proposed to be operated between the hours of 8.00am to 5.00pm daily.

Access to the building outside those hours is intended to be by authorised means only utilising a security card/swipe/key system. The application proposes a building manager or an authorised staff member to be available on-call 24 hours a day.

A separate accommodation space of 43.5sqm is provided for the on-site manager in the form of a one (1) bedroom self-contained dwelling located close to the reception area on the ground floor. That room is also provided with its own private courtyard area measuring 12.5sqm for the exclusive use by the on-site manager.

A number of communal open space areas and common rooms are proposed throughout the building including the main area of communal open space and a recreation room on the ground floor along with two (2) common rooms on each of the levels above. The proposed atrium provides solar access and natural ventilation throughout the building and to those areas of communal open space.

The applicant advised that the accommodation would be marketed at the expanding tertiary student accommodation market, particularly for the various tertiary institutions in the area.

The proposal utilises the envelope and materials of the existing heritage listed building and reinterprets them in an adaptive re-use. The creation of the internal atrium facilitates the adaptive reuse of the building whilst preserving its heritage significance. A half-basement is proposed to be excavated below the ground floor of the rear portion of the building to Denison Street, accessed via the Derby Place frontage. The basement provides two (2) car parking spaces, one (1) car/van/ute loading space, thirty one (31) motorbike spaces and fifty (50) bicycle spaces. The operator of the premises intends to promote the use of motorcycles and bicycles as a principal means of transport for residents.

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



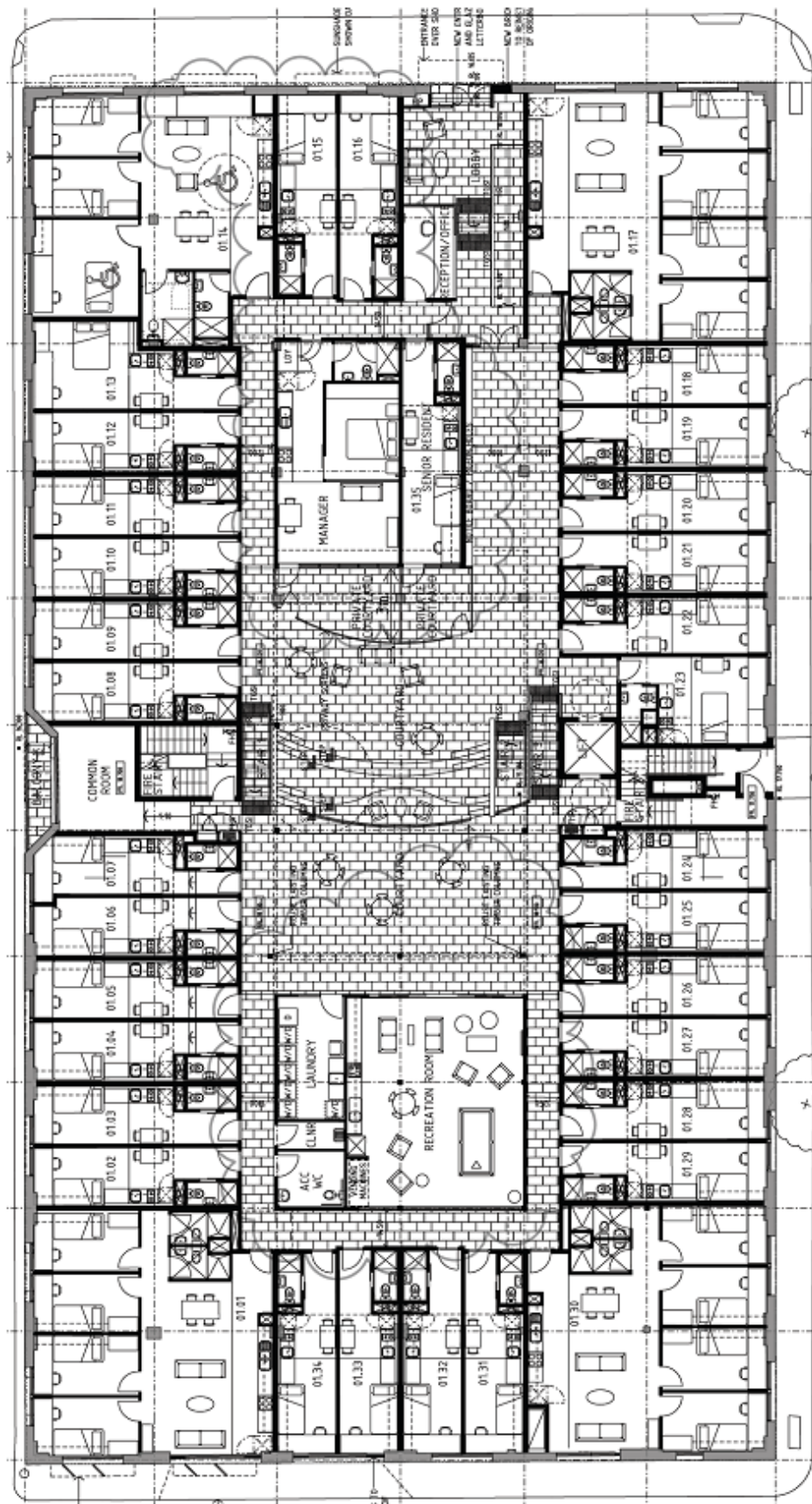


Image 7: Ground Floor Plan

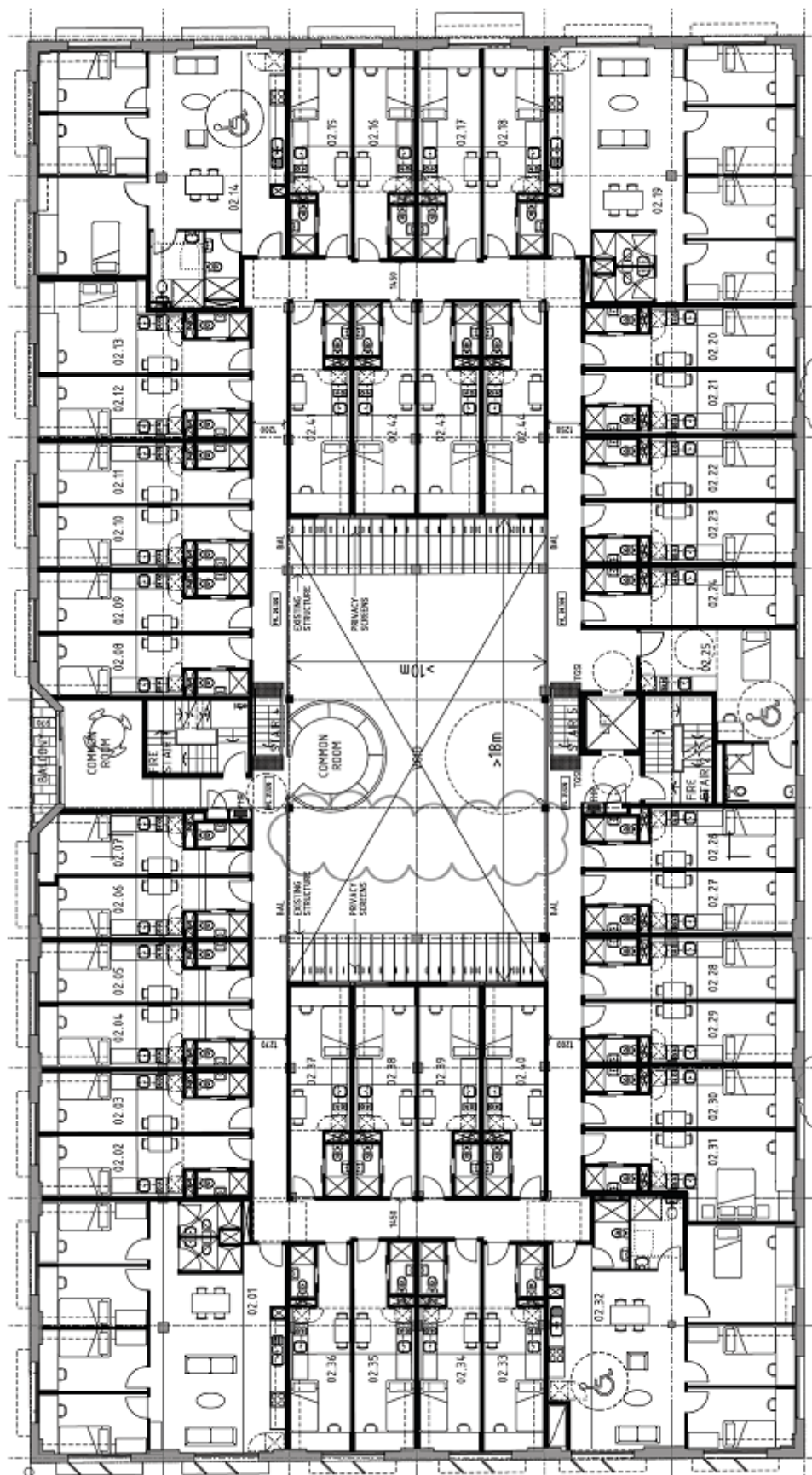


Image 8: First Floor Plan

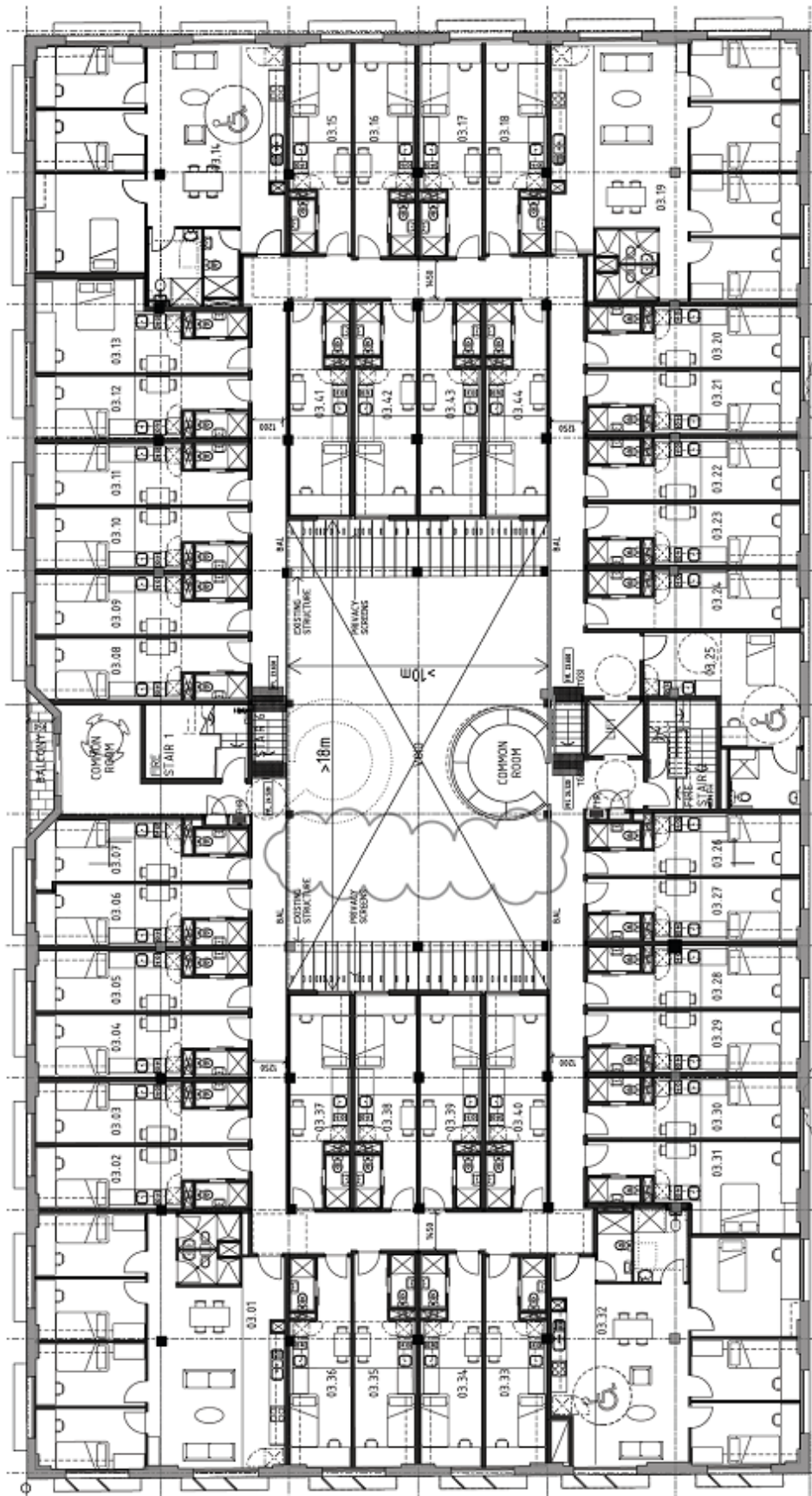


Image 9: Second Floor Plan

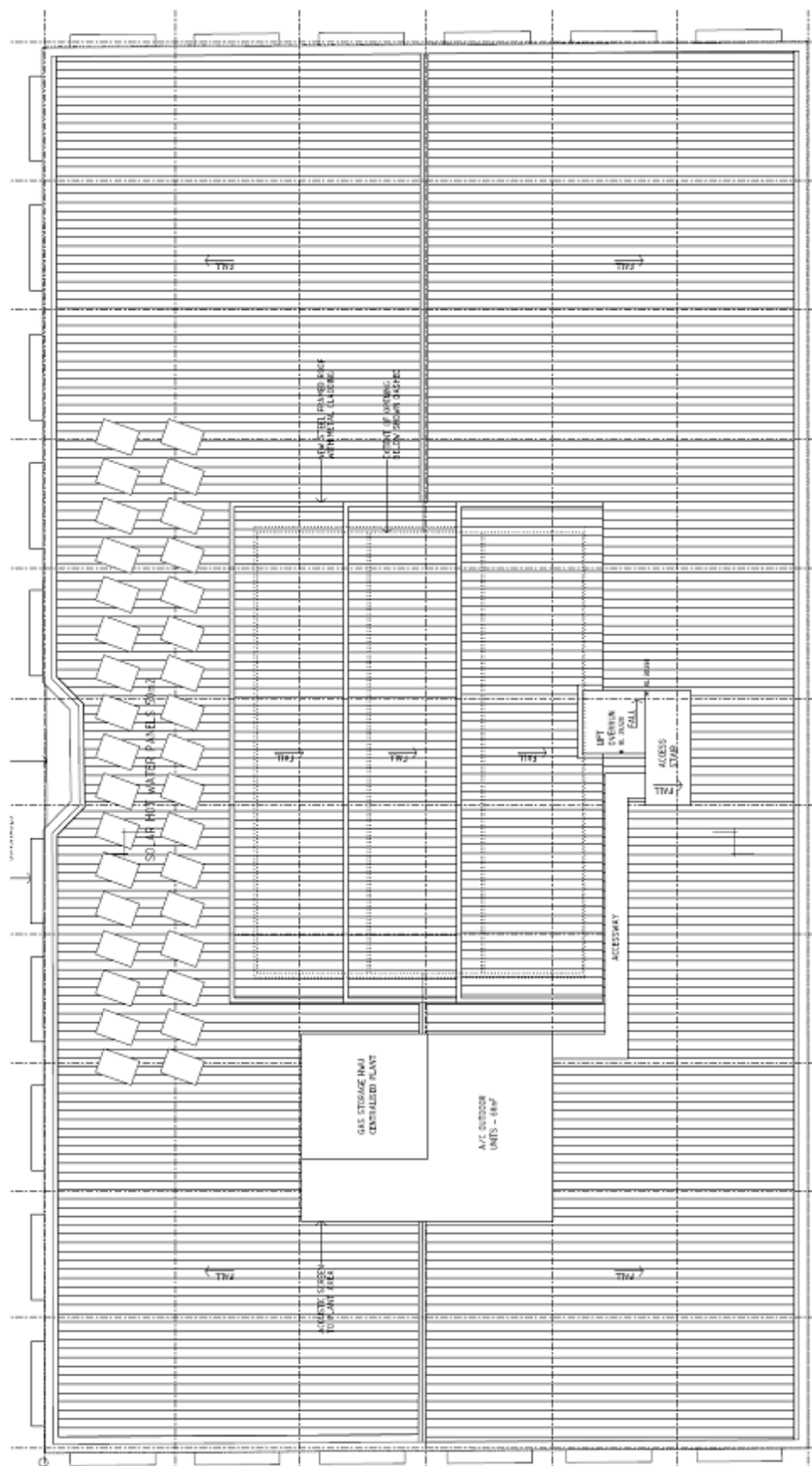


Image 10: Roof Plan

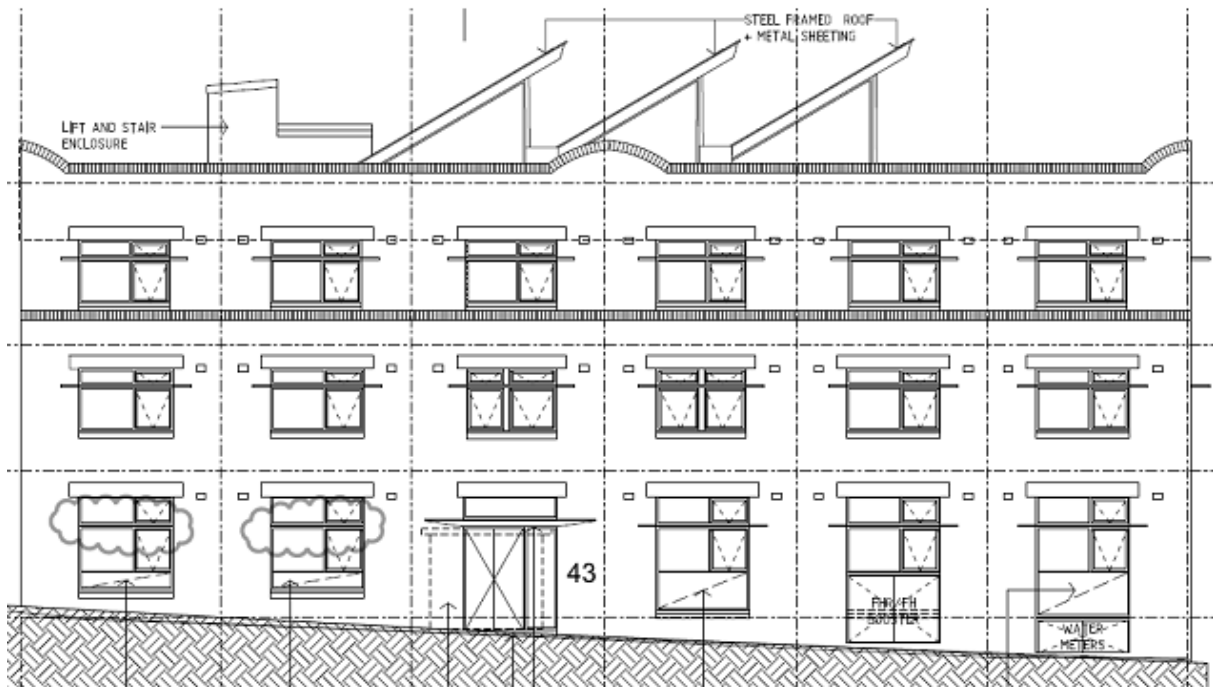


Image 11: Australia Street Elevation



Image 12: Denison Street Elevation

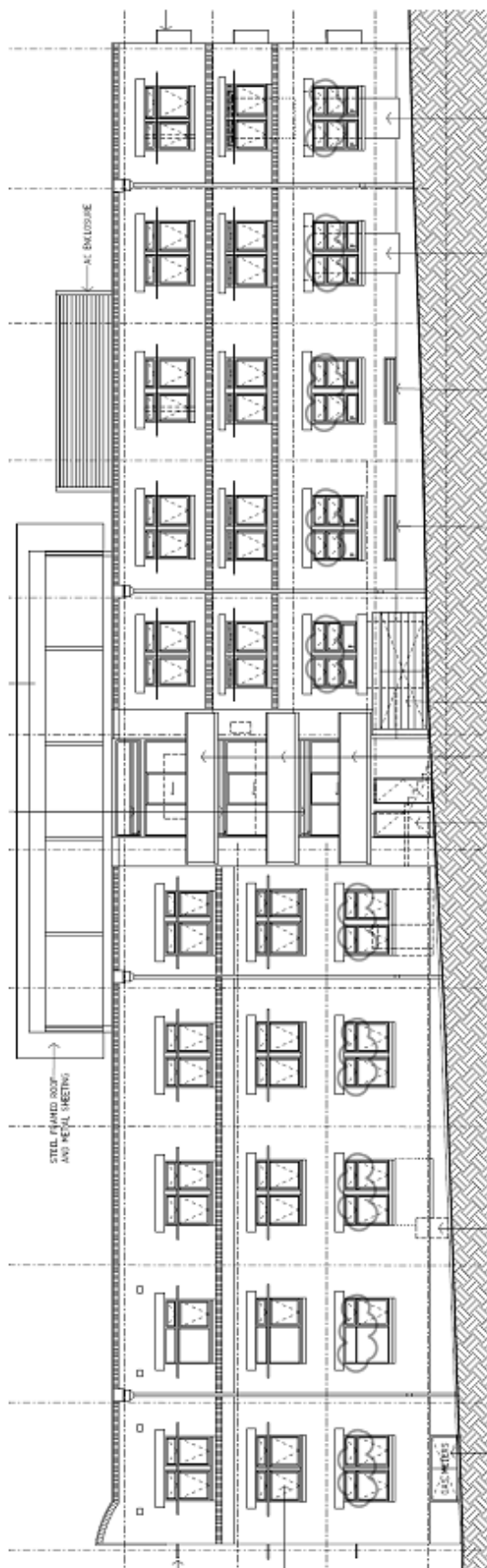


Image 13: Derby Place Elevation

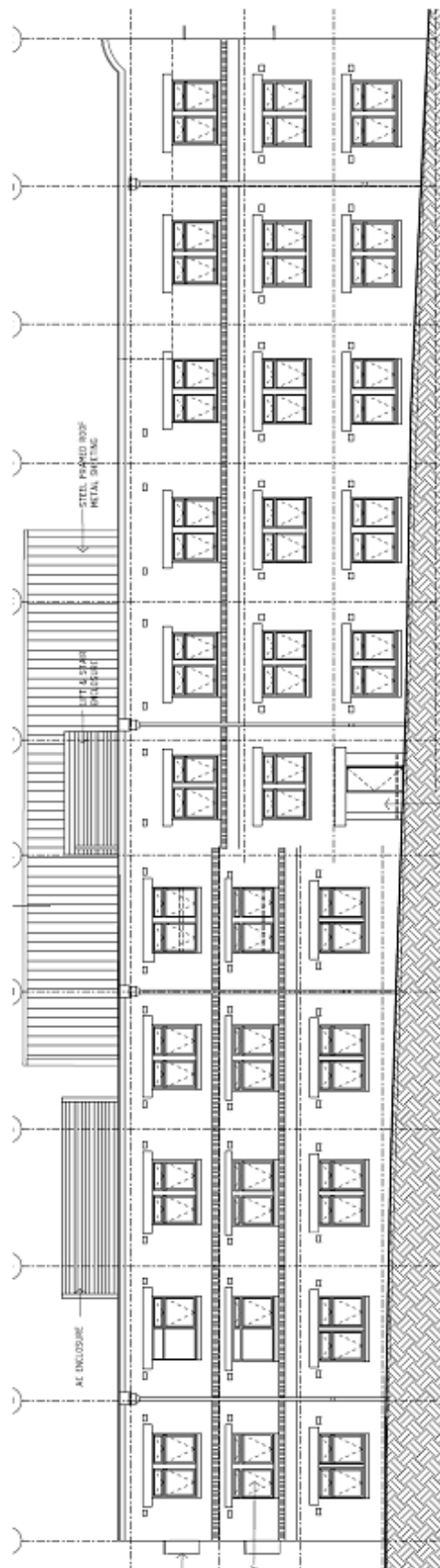


Image 14: Derby Street Elevation



Image 15: External Photomontage of Australia Street Elevation



Image 16: Internal Photomontage of Internal Courtyard

3. Planning Instruments

The following planning instruments apply to the development:

- (i) State Environmental Planning Policy No. 1 - Development Standards;
- (ii) State Environmental Planning Policy No. 55 - Remediation of Land;
- (iii) State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development;
- (iv) State Environmental Planning Policy (Major Development) 2005;
- (v) State Environmental Planning Policy (Affordable Rental Housing) 2009*;
- (vi) Marrickville Local Environmental Plan 2001;
- (vii) Draft Marrickville Local Environmental Plan 2011;
- (viii) Marrickville Development Control Plan No. 19 - Parking Strategy;
- (ix) Marrickville Development Control Plan No. 27 - Waste Management;
- (x) Marrickville Development Control Plan No. 29 - Contaminated Land Policy and Development Controls;
- (xi) Marrickville Development Control Plan No. 31 - Equity of Access and Mobility;
- (xii) Marrickville Development Control Plan No. 32 - Energy Smart Water Wise;
- (xiii) Marrickville Development Control Plan No. 35 - Urban Housing (Volume 2); and
- (xiv) Marrickville Development Control Plan No. 38 - Community Safety.

* The provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 do not technically apply to this proposal however have been used to guide the assessment of the application in the absence of Council's own controls for this development type.

4. State Environmental Planning Policy No. 1 - Development Standards

A maximum floor space ratio (FSR) of 1:1 applies to developments on Light Industrial zoned land under Clause 33 of Marrickville Local Environmental Plan 2001 (MLEP 2001). Although a specific FSR control is prescribed for boarding houses under Clause 33, boarding house development are a prohibited use under the Light Industrial zoning provisions applying to the land and so the reduced boarding house FSR would not reasonably apply to the proposal. Information submitted with the application indicates that the proposed development has a gross floor area (GFA) of approximately 4,237.5sqm and the subject property has a total site area of approximately 1,695sqm and the proposed development therefore has a FSR of 2.5:1 which exceeds the maximum FSR of 1:1 prescribed for the site under Clause 33 of MLEP 2001. Council's assessing officer has calculated the GFA of the proposal to be 4,410sqm which equates to a FSR of 2.60:1.

As the FSR control is a development standard under an Environmental Planning Instrument, an objection to the non-compliance with the development standard was submitted with the application in accordance with the requirements of State Environmental Planning Policy No. 1 - Development Standards (SEPP 1). The applicant's SEPP 1 objection to the FSR development standard is discussed later in this report under the heading "Floor Space Ratio (Clause 33)".

5. State Environmental Planning Policy No. 55 - Remediation of Land and Marrickville Development Control Plan No. 29 - Contaminated Land Policy and Development Controls

The history of land use for the site has been considered as an indicator for potential contamination of the site. According to Council records, the site is known to have been used in the past for industrial uses which indicates that the subject site could potentially be contaminated.

Pursuant to State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55), the NSW Department of Planning and Infrastructure's guidelines "Managing Land Contamination - Planning Guidelines for SEPP 55 - Remediation of Land" and Marrickville Development Control Plan No. 29 - Contaminated Land Policy and Development Controls (DCP 29), a Preliminary Site Investigation Report is required to be provided with the application to ascertain whether the site is contaminated.

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. Marrickville Development Control Plan No. 29 - Contaminated Land Policy and Development Controls (DCP 29), provides controls and guidelines for remediation works. SEPP 55 requires that remediation works must be carried out in accordance with a Remediation Action Plan (RAP) as approved by the consent authority and any guidelines enforced under the Contaminated Land Management Act 1997.

Under the provisions of SEPP 55 and DCP 29, Council must not consent to the carrying out of any development on land unless:

- "(a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose."*

An Environmental Site Assessment, prepared by Environmental Investigations, was submitted for the proposal which concludes and recommended the following having regard to the potential contamination of the site:

"Based on the findings of this Environmental Site Assessment, it was concluded that:

- The site was historically occupied predominantly by a multistorey storey flat, metal roofed structure overlaying the entire site area of predominantly light industrial/commercial uses since the 1930s at least;*
- The site was free of statutory notices issued by the OEHL [Office of Environment and Heritage] under the Contaminated Land Management Act 1997 and the Protection of the Environment Operations Act 1997;*

- *There was no evidence to suggest that a UST [Underground Storage Tank], AST [Aboveground Storage Tank], or similar, had been present on the property;*
- *Soil sampling and analysis were conducted at six test bore locations (BH1-BH6) down to a maximum depth of 1.45 metres BGL [Below Ground Level], across the site covering the Areas of Environmental Concerns (AECs);*
- *The sub-surface layers comprised of fill materials consisting of light grey/brown to grey/red medium to soft silty clay with minor coarse gravel, brick and crushed concrete fragments, ranging in thickness between 0.2 metres and 0.9 metres BGL; overlying natural mottled brown/orange silty clay, red and grey moderate plasticity, slightly moist;*
- *Groundwater was not encountered at any test bore location drilled to maximum depths of 1.45 metres BGL;*
- *Low concentrations of heavy metals were found in all tested samples; however, these results were found to be within the adopted SILs [Soil Investigation Levels] and PPILs [Phytotoxicity-based Investigation Levels];*
- *Low concentrations of TPHs [Total Petroleum Hydrocarbons] heavy fractions were identified in three of the six tested samples; however these results were found to be well within the adopted criteria. BTEX [Benzene, Toluene, Ethyl benzene, Xylene] compounds were not in any of the tested samples, with all laboratory quantitation limits being within the adopted criteria;*
- *Trace concentrations of PAHs [Polycyclic Aromatic Hydrocarbons] compounds were identified in some of the tested samples; however, these results were found to be within the adopted (2006 Second Edition) Column 4 - NEHF-D Health Based Investigation Levels;*
- *No detectable concentrations of any of the screened OCPs [Organochlorine Pesticides], PCBs [Polychlorinated Biphenyls] or OPPs were identified in the tested composite samples, with all laboratory quantitation limits being within the corresponding SILs after adjustment for potential dilution due to sample compositing;*
- *Asbestos not detected in any of the tested samples;*
- *Review of the Botany Bay Acid Sulfate Soil Risk Map (1:25,000 scale; Murphy, 1997), in conjunction with the Guidelines for the Use of Acid Sulfate Soil Risk Maps (Naylor et al., 1998), indicated that the site lies within an area of “no known occurrences of acid sulfate soil materials”, therefore Acid Sulfate Soils are unlikely to occur on site during the current proposed development. Based on the findings of the subsequent field investigation, the site fail to demonstrated field indicators for actual and potential ASSs listed in the ASSMAC (1998) manual (Ref. Table 2.3, Section 2, ASSs Assessment Guidelines).*

In view of the above findings, and with reference to the DECCW Guidelines, it is considered that the site suitable for the proposed land use.

If site soils are to be excavated and disposed from the site, then these soils should be classified in accordance with the DECCW (2009) Waste Classification Guidelines. Any soils to be imported onto the site for the purpose of back-filling excavated areas will also require validation testing in accordance

with the relevant NSW EPA/DECCW regulatory guidelines to confirm soil suitability for the proposed land use.

It should be noted that a prior arrangement with the destination site and/or relevant authorities should be obtained prior to the disposal of any material."

It is evident from the above that the site is not contaminated and the site is suitable for the proposed use. As excavation for the half basement level is proposed, conditions to the effect of the above comments should be imposed on any consent granted.

6. State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development

(i) State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development

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

Pursuant to the definitions contained in SEPP 65, a residential flat building is defined as follows:

"residential flat building means a building that comprises or includes:

- (a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and***
- (b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops),***

but does not include a Class 1a building or a Class 1b building under the Building Code of Australia."

The proposed building consists of three (3) storeys and contains a total of 12 multiple occupancy rooms and 111 single occupancy rooms, to accommodate up to a total of 154 residents, and a manager's residence. Accordingly, SEPP 65 applies to the proposed development and consequently consideration of the ten design principles contained in SEPP 65 and the Residential Flat Design Code is required.

As required by the SEPP, a Design Verification Statement was submitted with the application indicating that a registered Architect, Allen Jack and Cottier, directed the design of the proposed development and that the proposal generally satisfies the design quality principles set out in Part 2 of SEPP 65.

A separate Design Statement, prepared by Daniel McNamara Planning Solutions, was submitted with the application and provides an assessment of the proposal with respect to the ten design principles contained in SEPP 65 and is generally considered acceptable having regard to those principles.

(ii) Residential Flat Design Code

The Residential Flat Design Code (RFDC) “sets broad parameters for good residential flat design by illustrating the use of development controls and consistent guidelines”. The Code provides guidelines that set benchmarks for better practice in the planning and design of residential flat buildings to achieve environmental sustainability, improved energy efficiency and residential amenity and higher design quality to improve the presentation of the building to the street. The RFDC achieves this by providing controls to ensure that developments respond to their local context, and provide a suitable site analysis and quality design.

Whilst the majority of the provisions contained in the RFDC are generally covered by Council's various Development Control Plans and are considered as part of the assessment of the application presented throughout this report, the RFDC contains some provisions which are not specifically addressed in Council's various Development Control Plans. Each of those provisions is discussed under the respective headings below:

Building Depth

The RFDC suggests that the depth of a residential flat building should be limited to between 10 metres to 18 metres and that a proposal for a building greater than 18 metres in width would need to demonstrate how satisfactory daylight and natural ventilation can be achieved.

The SEPP 65 Design Statement accompanying the application provides the following comments in relation to the building depth:

“The building depth is determined by the footprint of the existing building. The creation of a central atrium space facilitates cross flow ventilation for the majority of units and bedrooms within the development.”

Given that the application proposes to adaptively reuse the existing building, it is considered onerous to require strict compliance with the abovementioned building depth control.

Notwithstanding the above some concerns were raised with the original proposal having regard to the natural ventilation and privacy for the proposed rooms situated in the central atrium area of the building as highlighted in the reproduced plans below:

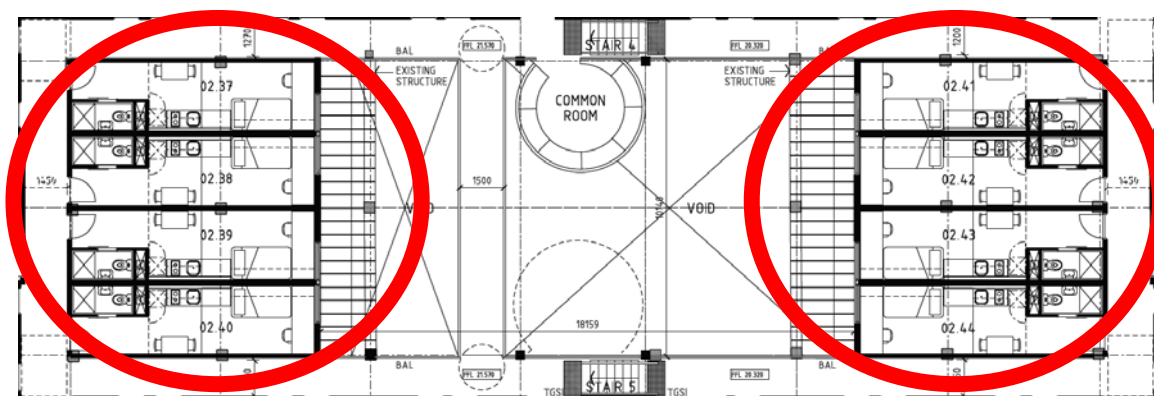


Image 17: Level 2 Plan as originally submitted

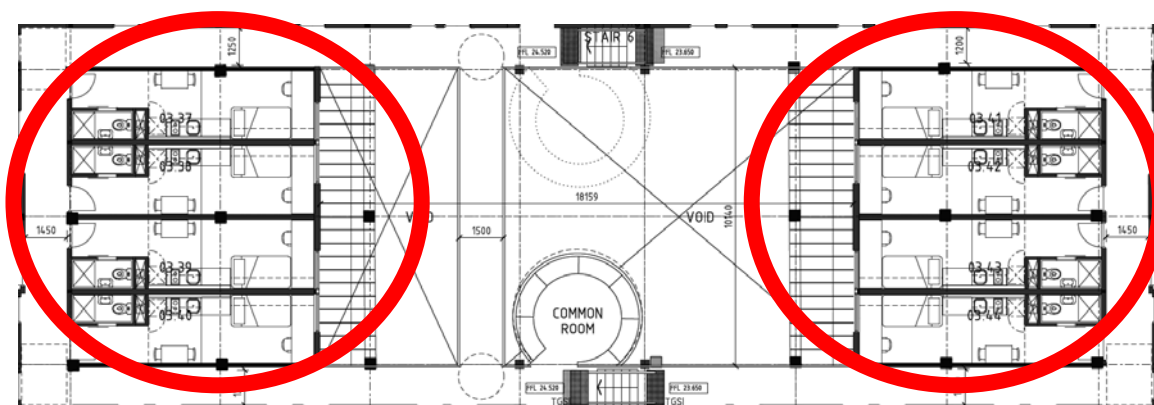


Image 18: Level 3 Plan as originally submitted

On face value, the rooms could appear to receive limited natural ventilation given that they are positioned to face the internal atrium space as opposed to having windows orientated to the external walls of the building. However, an assessment of the cross ventilation aspect of the proposal accompanied the application which adequately details that the building would generally be able to achieve suitable levels of natural ventilation, including to the rooms indicated above (refer to Image 19 reproduced later in this report).

In relation to the privacy concerns raised, the following amendments were made to the proposal to address the concerns:

- The elevated footbridges traversing the atrium were deleted from levels 2 and 3 to improve privacy for occupants of the rooms with windows facing the atrium. This amendment has created a window-to-window separation of 18.5 metres for rooms across the atrium space which exceeds the 12 metre minimum 'building separation' requirement of the RFDC. This separation is further increased by the depth of desks that are proposed to be positioned in front of the windows; and
- 1.5 metre balustrades are provided to the common walkways along with privacy screening being provided to the windows of all rooms with windows facing the atrium which would facilitate appropriate visual privacy.

Having regard to the above, the amendments made to the proposal are considered to facilitate the provision of suitable levels of amenity for future occupants of the rooms.

Building Separation

The RFDC suggests that for buildings up to 4 storeys and/or 12 metres in height, a building separation of 12 metres between habitable rooms should be observed. The proposed rooms are suitably separated to achieve compliance with the above requirement. The internal layout and positioning of rooms provides for at least 12 metre separation between the rooms from north to south and east to west.

Apartment Layout (Minimum Sizes)

The RFDC suggests that the minimum size of a studio sized one bedroom dwelling should be 38.5sqm. However, the proposal has been designed as a boarding house by layout and is not designed as a traditional residential flat building. Accordingly, this provision is not considered to be relevant to the proposal. The room sizes are discussed later in this report under the heading “State Environmental Planning Policy (Affordable Rental Housing) 2009”.

Apartment Layout (Depth)

The RFDC suggests that the maximum depth of an apartment should not exceed 8 metres from a window. A number of the single occupancy rooms have a depth of up to 8.2 metres from the glass line of the window which would not comply with the above requirement. However, the non-compliance is considered to be acceptable given that it is minimal and equates to only 200mm.

Overall, the proposed development is considered acceptable having regard to the provisions and requirements of SEPP 65 and the RFDC.

7. State Environmental Planning Policy (Major Development) 2005

A Detailed Cost Plan, prepared by Heymann-Cohen Pty Limited, accompanied the Development Application which estimated the cost of the proposed development at \$11,180,757. As the Capital Investment Value of the proposed development is greater than \$10 million, the proposed development constitutes a Regional Development and is subject to the provisions contained in Part 3 of State Environmental Planning Policy (Major Development) 2005 (the Major Development SEPP). Therefore, the consent authority for the purpose of determining the subject application is the Sydney East Region Joint Regional Planning Panel.

The Detailed Cost Plan included estimates of the works required to carry out the proposed development according to the definition of *capital investment value* as defined in the Environmental Planning and Assessment Regulation, 2000 as follows:

“capital investment value of a development or project includes all costs necessary to establish and operate the project, including the design and construction of buildings, structures, associated infrastructure and fixed or mobile plant and equipment, other than the following costs:

- (a) *amounts payable, or the cost of land dedicated or any other benefit provided, under a condition imposed under Division 6 or 6A of Part 4 of the Act or a planning agreement under that Division,*
- (b) *costs relating to any part of the development or project that is the subject of a separate development consent or project approval,*
- (c) *land costs (including any costs of marketing and selling land),*
- (d) *GST (within the meaning of A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth)."*

The author of the Detailed Cost Plan, Heymann-Cohen Pty Limited, is a company founded by Josh Heymann and Richard Cohen who are both qualified Quantity Surveyors registered with the Australian Institute of Quantity Surveyors. There is therefore no concern raised with the quoted estimated capital investment value of the proposed development.

8. State Environmental Planning Policy (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (the Affordable Rental Housing SEPP) provides guidance for design and assessment of boarding house developments. The SEPP, which commenced operation on 31 July 2009, provides controls relating to various matters including height, floor space ratio, landscaped area, solar access and private open space requirements. The controls relating to boarding houses are contained within Division 3 of the Affordable Rental Housing SEPP. The main design parameters are addressed below:

(i) Land to which Division applies (Clause 26)

Clause 26 of the Affordable Rental Housing SEPP prescribes what land Division 3 (containing the Boarding House provisions of the SEPP) applies to and includes the following land use zones or their equivalent:

- "(a) Zone R1 General Residential,*
- (b) Zone R2 Low Density Residential,*
- (c) Zone R3 Medium Density Residential,*
- (d) Zone R4 High Density Residential,*
- (e) Zone B1 Neighbourhood Centre,*
- (f) Zone B2 Local Centre,*
- (g) Zone B4 Mixed Use."*

The land is currently zoned Light Industrial under the zoning provisions of Marrickville Local Environmental Plan 2001 (MLEP 2001) which is equivalent to the IN2 Light Industrial zone. Therefore, Division 3 of the Affordable Rental Housing SEPP does not apply to the subject land. Whilst the provisions in Division 3 of the SEPP do not technically apply to the subject land, it is considered appropriate to use the provisions to guide the assessment of the application in the absence of Council's own controls for this development type.

(ii) Standards that cannot be used to refuse development consent (Clause 29)

Clause 29 of the Affordable Rental Housing SEPP prescribes that a consent authority must not refuse consent to a development application for a boarding house development if the development satisfies the following numerical controls:

Control	Standard	Proposed	Complies?
Density	(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or (b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land. 1:1 (max)	2.6:1 4,410sqm GFA/ 1,695sqm site	No See comments below
Building Height	If the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land.	No height control	Yes See comments below
Landscaped Area	Landscape treatment of the front setback area is to be compatible with the streetscape in which the building is located.	The front setback is not proposed to be landscaped which is consistent with other adjoining sites along Australia Street.	Yes
Solar Access	Where the development provides for one or more communal	Three (3) of the proposed six (6) communal living rooms would receive the minimum 3 hours solar	Yes

Control	Standard	Proposed	Complies?
	living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9.00am and 3.00pm in mid-winter.	access between 9.00am and 3.00pm at the winter solstice on 21 June.	
Private Open Space	<p>(i) one area of at least 20 square metres with a minimum dimension of 3 metres is provided for the use of the lodgers;</p> <p>(ii) if accommodation is provided on site for a boarding house manager - one area of at least 8 square metres with a minimum dimension of 2.5 metres is provided adjacent to that accommodation.</p>	<p>(i) A communal open space area measuring 380.5sqm with minimum dimensions of 3 metres is proposed on the ground floor of building to service the outdoor recreation needs of students.</p> <p>(ii) A private open space area measuring 12.5sqm with a minimum dimension of 2.5 metres is provided adjacent to the on-site manager's room.</p>	<p>Yes</p> <p>Yes</p>
Parking	(i) In the case of development in an accessible area - at least 0.2 parking spaces for each boarding room.	(ii) The site is within an accessible area and includes a total of one hundred and fifty four (154) boarding rooms within the proposed boarding house which generates a demand for thirty one (31) car parking spaces to be provided. The proposal includes the provision of two (2) car parking spaces as part of the application.	No See comments below

Control	Standard	Proposed	Complies?
	<p>(ii) In the case of development not in an accessible area - at least 0.4 parking spaces for each boarding room.</p> <p>(iii) In the case of any development - not more than 1 parking space for each person employed in connection with the development and who is resident on site.</p>	<p>(ii) The site is within an accessible area.</p> <p>(iii) The proposal includes the provision of one (1) parking space for the on-site manager.</p>	<p>Not applicable</p> <p>Yes</p>
Accommodation size	<p>If each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 square metres in the case of a boarding room intended to be used by a single lodger; or</p> <p>(ii) 16 square metres in any other case.</p>	See discussion below.	<p>Yes</p> <p>See comments below</p>

Table 1: Affordable Rental Housing SEPP Compliance Table

Density - Floor Space Ratio

The Affordable Rental Housing SEPP prescribes the following controls in relation to density and floor space ratio (FSR):

“A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:

- (a) *the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or*
- (b) *if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land...*

The subject land is zoned Light Industrial under Marrickville Local Environmental Plan 2001. Under Clause 33 (1) of MLEP 2001, the maximum permitted FSR for developments within a Light Industrial zone is 1:1. Boarding houses are specifically prohibited within the Light Industrial zone.

It should be noted that Clause 33 (3) of MLEP 2001 states *"Despite subclause (1), the maximum floor space ratio of a boarding house is 0.7:1."*

With regard to point (a) above, the Light Industrial zone permits residential accommodation in the form of dwelling houses and multi unit housing where that residential accommodation is used in conjunction with a use that is permissible in the zone which would permit a FSR of 1:1 for the development. However, as no forms of residential accommodation are permitted on the land in their own right, using the provisions of the Affordable Rental Housing SEPP as a guide, a maximum FSR of 1:1 would apply for the development pursuant to point (b) above.

Information submitted with the application indicated that the proposed development has a GFA of approximately 4,237.5sqm and the subject property has a site area of approximately 1,695sqm and the proposed development therefore proposes a FSR of 2.5:1 which exceeds the maximum FSR of 1:1 prescribed for the site under Clause 33 of MLEP 2001. Council's assessing officer has calculated the GFA of the proposal as 4,410sqm which equates to a FSR of approximately 2.60:1.

As the FSR control is a development standard under an Environmental Planning Instrument, an objection to the non-compliance with the development standard was submitted with the application in accordance with the requirements of SEPP 1. The applicant's SEPP 1 objection to the FSR development standard is discussed later in this report under the heading "Floor Space Ratio (Clause 33)".

Building Height

The Affordable Rental Housing SEPP prescribes the following controls in relation to building height:

"A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:

- (a) *building height*

if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land."

Marrickville Local Environmental Plan 2001, which is the principal environmental planning instrument that applies to the site, does not contain any maximum building

height controls in relation to the development on land zoned Light Industrial. The proposed development seeks to adaptively reuse the existing building on the site and does not propose any additions that would increase the height of the building itself, particularly the façades and parapets. However, additional roof elements are proposed in the form of roof vents as illustrated in images 11 and 12 reproduced earlier in this report. Those roof elements are centrally located on the roof of the building and are not considered to create any impacts on adjoining properties. The angle of the roof blades ensures that they would not unduly overshadow any adjoining properties, particularly 9-23 Derby Street and 47 Australia Street whilst providing solar access and natural ventilation to the development itself.

Overall, the building height is considered acceptable.

Parking

The Affordable Rental Housing SEPP prescribes that Council must not refuse consent to development to which this Division applies on the grounds of parking if:

- “(i) in the case of development in an accessible area - at least 0.2 parking spaces are provided for each boarding room, and*
- (ii) in the case of development not in an accessible area - at least 0.4 parking spaces are provided for each boarding room, and*
- (iii) in the case of any development - not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site.”*

The site is within an accessible area and includes a total of one hundred and fifty four (154) rooms which generates a demand for thirty one (31) car parking spaces to be provided. The subject proposal includes the provision of two (2) car parking spaces as part of the subject application. Once (1) of those parking spaces is proposed to be dedicated for the on-site manager which would satisfy the requirements of control (iii) above.

This matter is discussed in detail later in this report under the heading “Marrickville Development Control Plan No. 19 - Parking Strategy”.

Accommodation Size

As indicated in the compliance table earlier, the Affordable Rental Housing SEPP prescribes that a consent authority must not refuse consent to a development:

- “if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:*
- (i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or*
- (ii) 16 square metres in any other case.”*

All rooms within the proposed development comply with the minimum gross floor area (GFA) requirement prescribed under the provisions of the Affordable Rental Housing SEPP.

(iii) Standards for Boarding Houses (Clause 30)

Clause 30 of the Affordable Rental Housing SEPP prescribes that a consent authority must not consent to a development to which this Division applies unless it is satisfied of each of the following:

- (a) *if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided.*

The proposal includes one hundred and fifty four (154) rooms and consequently requires the provision of at least one communal living room. The proposal includes a communal courtyard and recreation room on the ground floor along with two (2) communal rooms on the levels above which measure 12.5sqm and 13sqm respectively. Although the proposal provides communal rooms on each level, the size of the rooms on the first and second floor are considered to be of inadequate size to cater for the needs of the proposed fifty four (54) occupants on each level.

Should the application be supported, a condition should be imposed on any consent granted requiring rooms 2.04, 2.05, 2.06 and 2.07 on the first floor and rooms 3.04, 3.05, 3.06 and 3.07 second floor to be deleted and the area of the rooms be amalgamated into larger communal rooms.

- (b) *no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres.*

Four (4) multiple occupancy rooms are proposed to be provided on each level which each consisting of either three (3) rooms where an accessible room is provided or four (4) rooms where an accessible room is not provided. Those multi occupancy rooms are greater than 25sqm in area and so those rooms would not comply with the maximum GFA standard of 25sqm. Notwithstanding this, the rooms are considered appropriate as they would provide for acceptable levels of amenity for future occupants, and offer a variety of accommodation types.

- (c) *no boarding room will be occupied by more than 2 adult lodgers.*

All single occupancy rooms are proposed to be occupied by a single student and the multiple occupancy rooms are proposed to be occupied by either three (3) or four (4) students depending on the room configurations.

The Statement of Environmental Effects and Plan of Management accompanying the application indicate that no room is intended to be occupied by more than one (1) adult lodger. Accordingly should the proposal be supported, a condition should be imposed on any consent granted for the proposal restricting the maximum number of people permitted to reside on the premises to one hundred and forty six (146)* with only one (1) adult permitted to occupy each room. (* The above maximum number of residents referred to

above is based on the reduced number of rooms resulting from the deletion of rooms 2.04, 2.05, 2.06 and 2.07 on the first floor and rooms 3.04, 3.05, 3.06 and 3.07 on the second floor as previously discussed).

- (d) *adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger.*

Every single occupancy room in the proposal is provided with private bathroom and kitchen facilities. The multiple occupancy rooms are provided with shared facilities between the three (3) or four (4) occupants, depending on the room configuration. The proposal is considered acceptable with regard to the provision of adequate bathroom and kitchen facilities.

- (e) *if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager.*

The proposed development, as submitted, would have a capacity to accommodate up to one hundred and fifty four (154) people and as such an on-site manager would be required.

The application includes a dedicated on-site manager's residence, private courtyard and parking space and so complies with the above requirement. The Statement of Environmental Effects accompanying the application indicates that the manager would be available on-call 24 hours a day.

- (g) *if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use.*

The land is currently zoned Light Industrial and as such this provision is not applicable to this application.

- (h) *at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms*

The proposed development, as submitted, includes one hundred and fifty four (154) rooms and would therefore require thirty one (31) bicycle and thirty one (31) motorcycle parking spaces. The subject application proposes to provide thirty one (31) off-street motorcycle parking spaces and fifty (50) bicycle storage racks which complies with the above requirements.

- (iv) Character of Local Area (Clause 30A)

Under the provisions of Clause 30A of the Affordable Rental Housing SEPP, applications for new boarding houses must satisfy a local character test which seeks to ensure developments proposed under the Affordable Rental Housing SEPP are consistent with the design of the area.

As discussed throughout this report, the application proposes to adaptively reuse the existing building and so is considered to be compatible with the character of the local area.

9. Marrickville Local Environmental Plan 2001

Marrickville Local Environmental Plan 2001 (MLEP 2001) is the principal planning instrument which currently applies to the site. The following is an assessment of the proposed development against the applicable provisions from MLEP 2001.

(i) Zoning (Clause 16)

The property is zoned Light Industrial under the current zoning provisions of MLEP 2001. Development for the purpose of student accommodation is not specifically defined within the dictionary of MLEP 2001. The proposed development is considered to be most akin to a “boarding house” by definition which is a view shared by the applicant. Development for the purpose of a boarding house is prohibited under the current zoning provisions applying to the land.

Notwithstanding the above and in accordance with Clause 54 of MLEP 2001, the consent authority may grant consent for the use for any purpose even though the use would otherwise be prohibited by MLEP 2001 if the consent authority is satisfied that the retention of the heritage item depends on the granting of such consent. This is discussed in Section (v) below.

(ii) Aircraft Noise (Clause 28)

The subject property is located within the 20-25 Australian Noise Exposure Forecast (2029) Contour. The proposed residential accommodation would need to be noise attenuated in accordance with Australian Standard AS2021-2000 - Acoustics - Aircraft noise intrusion-Building Siting and Construction. If the application is supported and consent is granted for the proposal, a condition to such effect should be imposed on any such consent.

(iii) Flood Prone Land (Clause 29)

The property is located within an area identified as flood prone land on Council's “Approximate 100 Year (1% AEP) Flood Extent” Map. The application was referred to Council's Development Engineer who provided the following comments in relation to the proposal:

“The site is subject to flooding. The 1 in 100 year flood level for this location of Australia Street is RL 15.3 metres AHD with floor levels to habitable areas of the building required to be at RL 15.8 metres AHD providing 500mm of freeboard.”

The plans accompanying the application detail the lowest RL level of the ground floor as being set at RL 16.17 metres AHD which is above the determined 1 in 100 year flood level.

(iv) Floor Space Ratio (Clause 33)

A maximum FSR of 1:1 applies to developments on Light Industrial zoned land under Clause 33 of MLEP 2001. Although a specific FSR control is prescribed for boarding houses under Clause 33, boarding house development are a prohibited use under the Light Industrial zoning provisions applying to the land and so the reduced boarding house FSR would not reasonably apply to the proposal. Information submitted with the application indicated that the proposed development has a GFA of approximately 4,237.5sqm and the subject property has a total site area of approximately 1,695sqm and the proposed development therefore proposes a FSR of 2.5:1 which exceeds the maximum FSR of 1:1 prescribed for the site under Clause 33 of MLEP 2001. Council's assessing officer has calculated the GFA of the proposal to be 4,410sqm which equates to a FSR of approximately 2.60:1.

As the FSR control is a development standard under an Environmental Planning Instrument, an objection to the non-compliance with the development standard was submitted with the application in accordance with the requirements of State Environmental Planning Policy No. 1 - Development Standards (SEPP 1). The applicant's SEPP 1 objection to the FSR development standard states, in part, that compliance with the development standard is unreasonable and unnecessary on the following grounds:

"In December 2009, Council considered application DA200900321 for an application submitted under similar circumstances to this case, for the adaptive reuse of an existing warehouse building as a boarding house with a proposed floor space ratio of 3.29:1. The variation to the development standard was supported on the basis that the proposal was an appropriate adaptive reuse of the building.

The complexities of the light industry zoning are addressed elsewhere in this Statement. Whilst it is not contended that the zoning of this parcel is unreasonable or inappropriate, it is nonetheless acknowledged that the configuration of the site and the limitations imposed through having to work within a heritage curtilage render the reuse of the site as a legitimate light industry unlikely.

It is further argued that, pursuant to the second 'test' of Mehbe, the underlying objective of the standard is not relevant to this particular development. The intention of the standard in minimising the intensity of boarding houses does not take into consideration the adaptive reuse of a heritage building, the 'island' nature of the site, and the unique nature student accommodation in this locality given its proximate location to the university campus."

It should be noted that the application referred to in the applicant's submission (DA200900321), whilst it involved an adaptive re-use of the existing warehouse building the subject application was not "*submitted under similar circumstances to this case*" as contended by the applicant. That development application related to carry out alterations to the premises at 187-191 Parramatta Road, Camperdown to convert the premises into a four (4) storey boarding house with lower level common lounge area, car parking and showroom. That property is not heritage listed and is

currently zoned General Business under MLEP 2001, a zone equivalent to Zone B2 - Local Centre and as such the provisions of the Affordable Rental Housing SEPP applied to that development. The maximum floor space ratio control for boarding houses of 0.7:1 under MLEP 2001 was not applicable in the assessment of the subject application as the proposal was subject to the maximum floor space ratio control for boarding houses (being 2.5:1) as contained in State Environmental Planning Policy (Affordable Rental Housing) 2009.

Consideration of a SEPP 1 objection also requires assessment of how the proposal, notwithstanding the non-compliance with the development standard, will achieve the objectives of the subject development standard.

Clause 33 of MLEP 2001 does not contain any specific objectives relating to the FSR development standard. Typically, the objectives for a FSR development standard would broadly be based on managing the environmental impacts of the built form of a development on its surroundings. However in this instance, the FSR development standard in MLEP 2001 is specifically related to the development type, being a boarding house, which would suggest that the intended objective of the development standard is to manage the impacts of the use by restricting the intensity of the development.

The applicant's SEPP 1 objection elaborates on the lack of objectives for the FSR development standard as follows:

"It is contended that this tacit objective was formulated with a specificity that would render it inapplicable to this proposal. Developments within the 'boarding house' characterisation may be associated with socio-economic connotations that the Council would wish to control by limiting density. The proposal is for a specific type of accommodation marketed directly at the tertiary student market, which will not present the socio-economic conditions that may be associated with other boarding house developments. The additional specifics of the development, including the adaptive reuse of a building located on an island site, which is not within a residential zone, are considered sufficient to determine that the underlying purpose of the standard is not applicable in this instance."

The applicant's rationale above is considered to have merit. It is acknowledged that the approach of providing a reduced development standard for boarding house developments or a particular use in general is outdated with particular regard to boarding houses. This is supported by the implementation of new Local Environmental Plans based on the standard instrument template which do not, or at least in Marrickville Council's draft instrument, specify a reduced or separate FSR development standard for specific uses such as boarding houses. Given the progressive move to new generation boarding houses currently being developed in the Local Government Area and state wide on a broader scale, it is agreed that the 0.7:1 development standard should not be applicable to this proposal.

Notwithstanding the above, an assessment of the GFA and FSR is still required to determine whether it is appropriate in the circumstances. As noted throughout this report, the application does not propose any additions to the existing building that

would be noticeable from the building's surrounds. The proposed development maintains the building's existing non-compliant FSR and redistributes the GFA throughout the building to create the proposed internal layout.

A portion of the additional GFA is contributed to by the bicycle and motorcycle parking spaces included in the proposed basement level which are not specifically excluded from the calculation of the GFA of a development according to the definition of gross floor area in MLEP 2001.

Under the proposed zoning provisions that would apply to the land under draft Marrickville Local Environmental Plan 2011 (draft MLEP 2011), the site is proposed to be zoned IN2 Light Industrial with a proposed FSR control of 0.95:1 and no maximum building height control specified. Subject to compliance with other development controls that would apply, this could permit the construction a large industrial building of similar scale to that currently on the site. Therefore if the adaptive reuse of the existing building is not supported, it is likely that a building of similar scale could be proposed for the site which would result in no or little change to the existing built form. The proposal is considered to be an appropriate response to the adaptive reuse of the building.

The building's existing height, built form and scale are considered appropriate in the streetscape context and retention of the existing building is considered appropriate in the circumstances.

The applicant's SEPP 1 objection is considered to have merit and be well founded for the reasons provided above and for the reasons provided in the further assessment of the proposal contained within the subsequent sections of this report. Referring to the aims of SEPP 1, it is considered appropriate to apply flexibility in the application of the FSR development standard applicable for this particular development as prescribed by Clause 33 of MLEP 2001.

Clause 8 of SEPP 1 requires Council to assess the following:

- whether non-compliance with the development standard raises any matter of significance for State and regional planning, and
- the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

It is considered that the non compliance with the subject development standard does not raise any matter of significance for State and regional planning, and that there is no public benefit in maintaining the subject planning control adopted by the environmental planning instrument for the proposed development.

(v) Heritage (Clauses 47 to 55)

The Australia Street façade of the existing building is currently listed as a heritage item under MLEP 2001. The remainder of the building is not a heritage item under MLEP 2001.

The premises are located within the vicinity of heritage items including the row of industrial properties along Australia Street to the north of the site and Camperdown Park which is situated opposite the site.

The subject property is also located in the Camperdown Heritage Conservation Area under draft Marrickville Local Environmental Plan No. 111.

Clause 48 - Protection of Heritage Items, Heritage Conservation Areas and Relics

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

Particular consideration is given to the heritage significance of the item as part of the environmental heritage of the Marrickville local government area, the impact that the proposed development will have on the heritage significance of the item and its setting, including any landscape or horticultural features as well as the measures proposed to conserve the heritage significance of the item and its setting.

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

Description:

The subject property contains a 3 storey brick (partially painted) warehouse building, built in two stages between 1923 - 1926. It is fairly plain with some curved detail at parapet level, some brick banding, terra cotta vents, concrete lintels above regular square windows, internal timber columns and beams with floor boards. Windows are powder coated aluminium. Some damage is evident in the form of cracking to the façade and water penetration issues, and a fairly high degree of impact on the original fabric including the replacement of all original windows and doors, stairs, and loss of some columns. The site is believed to be associated with the Fowler Factory and therefore is considered to have potential archaeological significance.

Heritage Listings:

*MLEP 2001: within Amendment 1 Area ResA6
Draft MLEP 2011 Heritage Item I3*

Proposal:

The proposed works include:

- Demolition of recent internal finishes, fittings and fixtures.*
- Demolition of floors for atrium and raising floor level above basement.*
- Retention of large areas of original/early structure including posts, beams and brick walls.*
- Construction and fit out for use as student accommodation with basement parking for one car and 94 bikes/motorbikes.*

Comments:

The proposal over all is supported however the following issues require consideration:

- The units with an entirely internal aspect receive natural ventilation only from the atrium, have no outlook and are prone to constant noise from communal areas. This may present an inadequate level of amenity for inhabitants.*
- The car space provided is said to be for the building manager who lives and works onsite. Parking for a second service vehicle or van does not appear to be provided, and is perhaps more necessary.*
- The laundry at basement level does not provide a natural air drying area. This means that dryers would be going constantly and students would need to attend to them (and the washing machines), or have some system of booking/queuing for their use (which is likely to be difficult in the basement). I recommend a laundry is provided at each level (5 machines per level for approximately 36 occupants) with natural drying facilities. This would be significantly more practical and better environmentally.*

Additionally the following recommendations (contained in section 5.0 Conclusion and Recommendation of the Statement of Heritage Impact by Paul Rappoport Pty Ltd) should be adopted: An Archaeological Assessment, an Archival Record, and an Interpretation Strategy are to be provided as deferred consent conditions. All documents to be undertaken in accordance with the guidelines set out by the NSW Office of Environment and Heritage.

Recommendation:

Supported provided above recommendations/alterations are considered."

Given the above comments, the proposed development is considered to have acceptable impacts on the item, adjoining items and draft Heritage Conservation Area. If the application is supported and consent is granted for the proposal, the recommendations and conditions provided by Council's Heritage and Urban Design Advisor should be imposed on any such consent.

Clause 54 - Conservation Incentives

The property is zoned Light Industrial under the current zoning provisions of MLEP 2001. Development for the purpose of student accommodation is not specifically defined within the dictionary of MLEP 2001. The proposed development is considered to be most akin to a "boarding house" by definition, which is a view shared by the applicant. Development for the purpose of a boarding house is prohibited under the zoning provisions applying to the land under MLEP 2001`.

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

Clause 54 of MLEP 2001 contains conservation incentives relating to Items of Environmental Heritage which reads as follows:

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

The subject property is not specifically listed as a heritage item within Schedule 5 of MLEP 2001 however is shown by distinctive colouring, lettered and edged heavy black on the heritage item map that accompanies MLEP 2001. Schedule 1 of MLEP 2001 defines a heritage item as follows:

“heritage item means a building, work, relic, tree or place, a component of a building, work, relic, tree or place and its curtilage or a group of buildings, works, relics or trees which is described in Part 1 of Schedule 5 and shown by distinctive colouring, lettered and edged heavy black on the heritage item map.”

The heritage item map of MLEP 2001 shows the subject property as being part of Item 2.29 which in Schedule 5 of MLEP 2001 is described as “Industrial façade” covering the properties at 1-11 Australia Street, 13-33 Australia Street and 35-41 Australia Street, Camperdown. As noted, the subject property is not listed as being part of the item. Nonetheless, the subject property is captured within the heritage item map that accompanies MLEP 2001 and it is noted that the subject property is a proposed heritage item identified in Schedule 5 of draft Marrickville Local Environmental Plan 2011 as Item I3 - 43 Australia Street, Camperdown - Part of Australia Street Industrial Group.

Given the way in which the listing is constructed and the current provisions of MLEP 2001, the current heritage significance of the subject property only relates to the Australia Street façade of the building. Given this, the applicant is required to demonstrate, pursuant to Clause 54 (1), that the retention of the Australia Street façade depends on the granting of consent for the proposal.

In determining this, the consent authority must be satisfied that the proposed development satisfies **all** of the matters for consideration under Clause 54. To this extent, concern is raised that the proposed development does not satisfy the relatively onerous requirements prescribed under Clause 54 of MLEP 2001. Non-compliance with any one of the prescribed criteria under Clause 54 results in the proposal being a prohibited form of development. Each of those clauses is discussed in detail under their respective headings below:

(a) *Clause 54 (1) (a) The condition of the heritage item is such that the use of the item for any purpose which is permissible in the zone would be impractical or undesirable.*

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

It is understood that the previous occupants of the subject property, the NSW Nurses' Association, vacated the premises in early 2010 following their purchase of a larger premises in order to meet the growing accommodation needs of the business. The building is not known to have been vacated for reasons that the building itself, or the Australia Street façade, were no longer suitable for continued occupation and use.

Under Clause 16 of MLEP 2001, the following uses are permissible with Council's consent on land zoned Light Industrial:

- *Advertising Structure;*
- *Backpackers' Hostel;*
- *Brothel;*
- *Bulk Store;*
- *Bus Depot;*

- *Bus Station;*
- *Car Parking;*
- *Child Care Centre;*
- *Club;*
- *Commercial Premises (Bank Only);*
- *Community Facility;*
- *Educational Establishment;*
- *Hazardous Industry;*
- *High Technology Industry;*
- *Hotel;*
- *Light Industry;*
- *Motel;*
- *Motor Showroom;*
- *Offensive Industry;*
- *Place of Assembly;*
- *Place of Public Worship;*
- *Public Building;*
- *Recreation Facility;*
- *Refreshment Room;*
- *Retail Plant Nursery;*
- *Service Station;*
- *Shops (Chemist, Take-Away Food Bar, Fruit Shop or Newsagent Only);*
- *Tourist Facilities;*
- *Transport Terminal; or*
- *Warehouse.*

As the heritage item under MLEP 2001 only relates to the Australia Street façade of the premises, the use of heritage item for all the above listed permissible uses would be impractical other than the use of the façade to display an “*advertising structure*”.

A statement, prepared by Urbis Valuations, was submitted for the proposal. The statement provides information on suitability of the building for some uses permissible in an Industrial Light zone under the provisions of MLEP 2001. However, the statement is not considered to provide enough detail and only briefly addresses the practicality, desirability and economic viability of the uses. In addition as stated previously only the Australia Street facade of the existing building is heritage listed with the remainder of the building not being a heritage item under MLEP 2001.

The statement concentrates on the use of the premises as an “*educational establishment*” however it is noted that the broad definition of an “*educational establishment*” under MLEP 2001 includes museums and galleries which have not specifically been addressed.

Furthermore, the assessment of alternative permissible uses does not discuss the option of using the existing building for a number of permissible uses and rather concentrates on a single use of the building which is considered to increase the impracticality and undesirability of the uses given the size of the building.

A costs/benefit analysis was not provided for any of the remaining permissible uses to illustrate the impracticality of utilising the heritage item for any of the permissible uses.

A Conservation Management Plan (CMP), Heritage Impact Statement (HIS) and Assessment of Heritage Impact for Permissible Uses, prepared by Rappaport Heritage Consultants, accompanied the application. Those documents summarise the condition of the heritage item, being the Australia Street façade, in limited detail and provide limited to no detail regarding the amount of work that would be required to conserve the heritage item in order for Council to be satisfied that *“the condition of the heritage item is such that the use of the item for any purpose which is permissible in the zone would be impractical or undesirable”* as required by this clause. In particular, the CMP summarises the building’s façades and internal condition as follows:

“Façades

Generally, the façades are in good condition and there is no evidence of mortar loss in the brickwork. The paintwork on the painted east facing façade on Australia Street is in good condition. However the paint on the Australia Street façade has obliterated the painted signage for ‘lotus Bedding’ which adorned this elevation from the c. 1930s until c. 1970s. Thus there seems to be little association of the warehouse with the name ‘Lotus House’, referred to in relevant Marrickville Council heritage inventory sheets for the site.

Certain reinforced concrete lintels are chipped and there has been noticeable material dilapidation of some concrete lintels which are in need of structural remediation. The paintwork on the reinforced lintels to all façades, and the windowsills to the southern Derby Street façade, is showing signs of failure and it is suspected that the flakiness is a result of the presence of Kalsomine in the original or early layers of paint. This will need to be scraped back to the substrate and prepared for repainting in a matching colour.

Internal Condition

The internal timber post and beam structure, the suspended timber flooring system and the steel column and beam structure is of high significance. The suspended timber floors in the offices are in all likelihood original. It is sensible to assume that generally these have been preserved although due to the floor covering (carpet and vinyl) such an assertion cannot be made with certainty. In the mid to late 20th century the timber post and beam structure has been encased in plasterboard. An inspection of the timber posts, beams and the suspended timber flooring system was not carried out as part of the CMP so that the condition of these timber elements has not been ascertained. The encasing of the timber post and beam structure appears, from the few available observation points, to have generally protected the elements of the structure. The condition of the timberwork which is exposed and thus able to be inspected is good. The steel column and beam structure as well as the brick columns are in good condition, as are the exposed concrete floors of the garage area.

Some of the posts and beams have been removed from a small portion of the south-east level corner of the building where transfer beams have been added.

The internal structure of the building was not inspected as part of the CMP. However, under scheduled maintenance works, regular inspections of the internal structure would need to be carried out in order to monitor the presence of any white ant activity or dry rot."

As is clearly stated in the reproduced part of the CMP above, the internal structure of the building was not physically inspected and a number of assumptions have been made which are described as assertions that *"cannot be made with certainty"*. Therefore as is evident from the above statements, even if it was contended that the entire building was a heritage item, the consent authority could not be satisfied that the condition of the building is such that the use of the building for any purpose which is permissible in the zone would be impractical or undesirable.

In addition to the above, a statement prepared by Tim Green Commercial Real Estate was submitted which details the issues faced while trying to market the sale of the subject property. The statement details that the property was offered through tender throughout the later half of 2009 during which most, if not all interest in the property, was from prospective purchasers intending to spot rezone the site for a residential development. That statement goes on to list the permissible uses and provides very basic comments in relation to their appeal to the market.

From inspection of the site, the condition of the existing building is considered to be acceptable. The applicant has failed to demonstrate that the condition of the heritage item, being the Australia Street façade, is such that the use of the building for any purpose which is permissible in the Light Industrial zone would be impractical or undesirable.

(b) Clause 54 (1) (b) The heritage item requires a substantial amount of capital expenditure (other than maintenance work) in order to conserve its heritage significance.

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

The applicant has provided no details regarding the amount of capital expenditure that would be required in order to conserve the heritage significance of the heritage item, being the Australia Street façade. In addition no information was submitted with the application in relation to the amount of capital expenditure that would be required in order to conserve the heritage significance of the building.

Overall and given the lack of evidence produced to support this part of the clause, it is considered that the retention of the Australia Street façade would not require a substantial amount of capital expenditure to conserve its heritage significance. This is further emphasised in the conservation policies listed in the CMP accompanying the application which do not indicate that substantial works would be required to conserve the Australia Street façade.

- (c) *Clause 54 (1) (c) The proposed use is in accordance with a conservation management plan which has been endorsed by the Council.*

Clause 54 (1) (c) requires the proposed use to be in accordance with a Conservation Management Plan endorsed by the Council. As mentioned earlier, a Conservation Management Plan (CMP), Heritage Impact Statement (HIS) and Assessment of Heritage Impact of Permissible Uses, prepared by Rappaport Heritage Consultants, accompanied the application. Those documents summarise the condition of the heritage item, being the Australia Street façade, in limited detail and provide limited to no detail regarding the amount of work that would be required to conserve the heritage item.

A Conservation Management Plan should seek to protect the heritage item and its significance and guide the design of future development. However an analysis of the subject CMP tends to indicate that it was developed in response to the proposed development, and this provides inadequate protection for the heritage item as previously discussed. Therefore, it is considered that the proposed development fails to satisfy Clause 54 (1) (c) of MLEP 2001 as the Conservation Management Plan does not sufficiently protect the heritage item on the site.

- (d) *Clause 54 (1) (d) The cost of the conservation work identified in the conservation management plan is such that there is no reasonable possibility that any of the uses which are permissible in the zone would be economically viable for the current or any future owner.*

Similar to Clause 54 (1) (a) and (b) Clause 54 (1) (d) requires the applicant to demonstrate to the consent authority's satisfaction that the cost of the conservation work identified in the Conservation Management Plan is such that there is no reasonable possibility that any of the uses which are permissible in the zone would be economically viable for the current or any future owner.

As previously mentioned, the heritage listing of the subject property only relates to the Australia Street façade of the building. Costing for the conservation work identified in the Conservation Management Plan was not provided for this application and so the application fails to demonstrate that any of the permissible uses would be economically unviable in accordance with the requirements of this clause.

- (e) *Clause 54 (1) (e) The granting of consent to the proposed use would ensure that all necessary conservation work identified in the conservation management plan is carried out.*

Clause 54 (1) (e) requires consideration as to whether the granting of consent to the proposed use would ensure that all necessary conservation work identified in the CMP is carried out. Whilst the proposed development may ensure that the conservation work for the building is carried out, the carrying out of such works is not dependent on the granting of consent for this proposal.

As has been mentioned throughout this report, the heritage listing of the subject property only relates to the Australia Street façade of the building. Consequently, the carrying out of any development whether permissible within the zone or permitted by virtue of Clause 54 of MLEP 2001 would ensure that the conservation works are carried out in accordance with the CMP.

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

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

The application was referred to Council's Heritage and Urban Design Advisor who considers the proposal to be supportable subject to some amendments and imposition of suitable conditions on any consent granted for the proposal in line with the recommendations contained in the CMP accompanying the application.

The proposal is considered to have minimal impact on the heritage significance of the item and its setting. Conversely, the proposal is considered to provide an opportunity for the existing building to be upgraded and for some original features of the building to be restored including the stripping of the painted Australia Street façade. However, this can be said for any proposal to carry out works to the existing building including any of the permissible uses within the Light Industrial zone.

(g) Clause 54 (1) (g) The proposed use would not adversely affect the amenity of the surrounding area.

The proposal is considered to have acceptable amenity impacts on adjoining properties in relation to solar access, overshadowing and visual and acoustic privacy. Each of these matters and the general amenity impacts of the proposal are discussed in detail later in this report under the heading "Marrickville Development Control Plan No. 35 - Urban Housing (Volume 2)".

It is considered that the proposed development would not adversely affect the amenity of the surrounding area and therefore the proposal is considered acceptable having regard to Clause 54 (1) (g) of MLEP 2001.

(h) Clause 54 (1) (h) In all other respects the proposed use complies with the provisions of this plan.

The wording of the above clause creates a number of interpretation issues. A literal interpretation of the clause could be taken to mean that a proposed use would need to otherwise comply with all other provisions under Marrickville Local Environmental Plan 2001 for that form of development, whether or not they are relevant. However, the intent of the clause is taken to be intended that the proposed use is required to comply with the **relevantly applicable** provisions of the plan.

In terms of the relevantly applicable development standards under MLEP 2001, the only relevant development standard would be the floor space ratio control prescribed under Clause 33.

As mentioned throughout various sections of this report, a maximum FSR of 1:1 applies to developments on Light Industrial land under Clause 33 of MLEP 2001. Although a specific FSR control is prescribed for boarding houses under Clause 33, boarding house development are a prohibited use under the Light Industrial zoning provisions applying to the land and so the reduced boarding house FSR would not reasonably apply to the proposal. Information submitted with the application indicates that the proposed development has a GFA of approximately 4,237.5sqm and the subject property has a total site area of approximately 1,695sqm and the proposed development therefore proposes a FSR of 2.5:1 which exceeds the maximum FSR of 1:1 prescribed for the site under Clause 33 of MLEP 2001. Council's Assessing Officer has calculated the GFA of the proposal as 4,410sqm which equates to a FSR of 2.60:1 which exceeds the subject control.

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

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

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

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

The applicant's Statement of Environmental Effects asserts that the floor space ratio development standard in Clause 33 of MLEP 2001 is a development standard that applies to the proposed development and accordingly has submitted a SEPP 1 objection in support of the proposal's non-compliance with the development standard. In other words, the applicant has interpreted Clause 54 (1) (h) to mean that a proposal would otherwise comply with the plan so long as a relevant development standard (in this case, the FSR provision in Clause 33) is supported by an objection under State Environmental Planning Policy No. 1 (SEPP 1) that the consent authority is satisfied is well founded.

The applicant's SEPP 1 objection to the floor space ratio development standard has been discussed in detail earlier in this report and for the reasons detailed in that section, the applicant's SEPP 1 objection is considered to be well founded and supportable.

It could therefore be argued that although the proposed development fails to satisfy the maximum floor space ratio development standard prescribed under Clause 33 of MLEP 2001, considering the SEPP 1 objection being well founded and worthy of

support would inherently result in the proposal satisfying the provisions of Clause 54 (1) (h) of MLEP 2001.

Overall, the proposed development fails to satisfy the provisions of Clause 54 (1) (a), (b), (c), (d) and (e) and is therefore considered to be prohibited. On this basis the application cannot be supported and accordingly, refusal of the application is recommended.

(vi) Protection of Trees (Clause 56)

Clause 56 of MLEP 2001 concerns the protection of trees under Council's Tree Preservation Order. There are no trees on the property covered by under Council's Tree Preservation Order however there are existing street trees in Derby Street which may be impacted by the carrying out of the proposed development. Accordingly, the application was referred to Council's Tree Management Officer who provided the following comments:

"There is a Corymbia maculata (Spotted Gum) located in the footpath verge in Derby Street. The plans indicate two street trees in Derby Street however it appears that a tree has recently been removed. The verge in Derby Street is narrow (approximately 1.2 metres). There is a lack of sunlight that has that has caused the existing tree to grow phototropically and it is leaning away from the wall of the building over the roadway. A replacement tree will not be conditioned for Derby Street.

There is an opportunity for street tree planting along the Australia Street frontage. It is recommended that 4 - 5 Ceratopetalum gummiferum (NSW Christmas Tree) trees be planted. This will reinforce the planting to be undertaken shortly at a site further to the north in Australia Street and planting recently undertaken on the far side of the adjacent park.

Recommendations:

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

If the application is supported and consent is granted for the proposal, the conditions recommended by Council's Tree Management Officer should be imposed on any such consent.

(vii) Acid Sulfate Soils (Clause 57)

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

(viii) Waste Management (Clause 58)

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

allow for the storage of garbage bins. A Site Waste Management Plan in accordance with Council's requirements was submitted with the application and is considered to be adequate. This matter is discussed in more detail later in this report under the heading "Marrickville Development Control Plan No. 27 - Waste Management".

(ix) 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. This matter is discussed in more detail later in this report under the heading "Marrickville Development Control Plan No. 32 - Energy Smart Water Wise".

(x) Landscaping and Biodiversity (Clause 60)

Clause 60 of MLEP 2001 requires consideration be given to conservation of biodiversity as is of relevance to the subject application. The subject site does not contain any significant native vegetation and presents very limited opportunity for new landscaping to be provided. As discussed earlier, Council's Tree Management Officer has recommended conditions be imposed on any consent granted requiring new street tree planting to be undertaken on the Australia Street frontage of the property. If the application is supported and consent is granted for the proposal, those conditions should be imposed on any such consent.

The subject site is not located within an area identified as a potential habitat or protection area for the Long-nosed Bandicoot (*Perameles nasuta*) population in inner western Sydney listed as an endangered population under the NSW Threatened Species Conservation Act 1995.

(xi) 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 existing windows along all street elevations are proposed to be retained as part of the proposal which would provide for suitable levels of activation to all building frontages.

If the application is supported and consent is granted for the proposal, a condition should be imposed on any such consent requiring the provision of suitable lighting the pedestrian site access, parking areas and building entrances.

The main pedestrian entry to the premises is proposed to be provided off Australia Street with a reconfigured entry that will be located centrally on the street elevation.

The proposed entry is considered to be clearly visible and legible from the street and would be easy to locate given that the street address of the property is to Australia Street.

The community safety aspects of the proposal are further discussed later in this report under the heading “Marrickville Development Control Plan No. 38 - Community Safety”.

10. 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:	IN2 Light Industrial
<i>Is development permitted under zoning?</i>	No
<i>Do the premises enjoy existing use rights?</i>	No
<i>Is development permissible under Clause 5.10?</i>	Only if the development satisfies all the requirements of the subject clause
Floor Space Ratio (max):	
Permitted:	0.95:1
Proposed:	2.38:1
Height of Building (max):	
Permitted:	Not specified
Proposed:	16 metres
Land Reservation Acquisition:	No
Heritage:	
Draft Heritage Item:	Yes
	Item I3 - Part of Australia Street Industrial Group
Draft Heritage Conservation Area:	No
In vicinity of draft item or area:	Yes
Flood Planning:	Affected
Acid Sulfate Soils:	Not affected
Key Sites:	No
Foreshore Building Line:	No

Natural Resource - Biodiversity:	
Habitat Corridor:	No
Bandicoot Protection Area:	No

Under draft MLEP 2011 the entire building is a proposed heritage item (Item I3) rather than only the Australia Street façade as is currently the case under Marrickville Local Environmental Plan 2001. Clause 5.10 of Draft MLEP 2011 contains less onerous conservation incentives provisions than those contained within Clause 54 of MLEP 2001.

Clause 5.10 of Draft MLEP 2011 reads as follows:

“(10) Conservation incentives

The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.”*

To be permissible the proposal would need to satisfy all the requirements of the subject clause.

As indicated above, the proposed development generally satisfies the remainder of the relevant controls as contained in draft MLEP 2011 with the exception of the proposed FSR of the development which exceeds the proposed maximum of 0.95:1.

It should also be noted, by virtue of Clause 1.9 Draft MLEP 2011, that upon the gazettal of Draft MLEP 2011 State Environmental Planning Policy No. 1 – Development Standards would not longer apply to land within the Marrickville Local Government area.

Clause 4.6 of Draft MLEP 2011 contains provisions that provide a degree of flexibility in applying certain development standards to particular development. Under Clause 4.6 (2) Development consent may be granted for development even though the

development would contravene a development standard imposed by this or any other environmental planning instrument.

Under Clause 4.6 (3):

“Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.”*

The departure from the floor space ratio development standard would need to be accompanied by a written request in accordance with the requirements under Clause 4.6 (3). Clause 4.6 (4) (b) requires the Director- General’s concurrence for the contravention of the development standard.

(i) Savings Provision relating to Development Applications (Clause 1.8A)

Clause 1.8A of the latest version of Draft MLEP 2011 contains savings provisions for applications lodged before the gazettal of the LEP. That Clause reads as follows:

“If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.

Note. However, under Division 4B of Part 3 of the Act, a development application may be made for consent to carry out development that may only be carried out if the environmental planning instrument applying to the relevant development is appropriately amended or if a new instrument, including an appropriate principal environmental planning instrument, is made, and the consent authority may consider the application. The Division requires public notice of the development application and the draft environmental planning instrument allowing the development at the same time, or as closely together as is practicable.”

Council anticipates the gazettal of draft MLEP 2011 to occur close to the time that a determination will be made on the subject application. Under the savings provisions referred to above even if Draft MLEP 2011 is gazetted before the determination of the application the subject development application must be determined as if the Plan has not commenced.

For the reasons outlined in this report the proposed development is prohibited under the Light Industrial zoning provisions applying to the land under MLEP 2001 and the proposal fails to satisfy the requirements of Clause 54 in MLEP 2001. Consequently the proposed development is prohibited.

(ii) Heritage Conservation (Clause 5.10)

Draft MLEP 2011 contains a similar but less onerous heritage conservation incentives clause to that in MLEP 2001. The Statement of Environmental Effects accompanying the application provides the following comments in relation to the heritage conservation incentives clause of draft MLEP 2011:

“At the time of writing, the Draft Marrickville Local Environmental Plan 2011 is awaiting gazettal with the Minister for Planning and Infrastructure. Gazettal of the LEP is considered both certain and imminent. Incoming provisions of the draft instrument in relation to heritage conservation incentives, whilst reflecting the existing provisions permitting uses that would otherwise be prohibitions, allows considerably more latitude in the assessment of applications submitted pursuant to the heritage incentive clause as prescribed.

Clause 5.10 (10) of the draft LEP is a compulsory provision of the Standard Instrument: Principle Local Environmental Plan, meaning it constitutes a formal direction from the State Government regarding the adaptive reuse of heritage items. The certitude and imminence of this clause being applied to the subject site is considered sufficient to warrant assessment of the application under these provisions, ‘facilitating’ heritage conservation, as opposed to the more stringent measures contained within the current controls.

Pursuant to Clause 5.10 (10) of the draft LEP, Council may grant consent to the use of a heritage item that would otherwise be prohibited within the zone within which it is sited, provided that the consent authority is satisfied of the following:

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

*The application is submitted in accompaniment with the Conservation Management Plan appended at **Attachment IV**, which demonstrates that requirements (a) - (d) (above) are satisfied. This is confirmed through the Statement of Heritage Impact appended at **Attachment V**. Compliance with requirement ‘e’ is demonstrated at various sections of this Statement.*

On this basis, the proposal is considered to satisfy the requirements of Clause 5.10 (10) of the draft LEP, which reflects a state-wide direction on the adaptive reuse of heritage buildings. Given the social and economic benefits derived from the proposed use (identified elsewhere in this Statement), the proposal is

considered an appropriate adaptive reuse of a building pursuant to Clause 5.10 (10) of the draft LEP and is worthy of the support of the consent authority.”

Section 79C of the Environmental Planning and Assessment Act requires consideration of the provisions of any draft Environmental Planning Instrument, in this case draft MLEP 2011. As reproduced earlier, the savings provisions of draft MLEP 2011 require that any development application lodged before the commencement of the draft LEP must be determined as if this Plan had not commenced. Although there is some merit in the applicant's submission, it is considered that the provisions of the draft LEP cannot legally be given any weight to justify supporting the application given that the development is otherwise prohibited under the current applicable provisions of MLEP 2001.

Notwithstanding the above, the application is considered to be more capable of satisfying the provisions contained in Clause 5.10 of draft MLEP 2011. Each of the matters for consideration under that Clause are reproduced and discussed below:

- (a) *the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent.*

The proposed development is considered to facilitate the work required to conserve the heritage listed building.

- (b) *the proposed development is in accordance with a heritage management document that has been approved by the consent authority.*

A Conservation Management Plan (CMP), Heritage Impact Statement (HIS) and Assessment of Heritage Impact for Permissible Uses, prepared by Rappaport Heritage Consultants, accompanied the application. Those documents summarise the condition of the heritage item, being the Australia Street façade, in limited detail and provide limited to no detail regarding the amount of work that would be required to conserve the heritage item. Nonetheless, additional information could be provided to try and satisfy the requirements of this clause.

As the documents contain insufficient information, the application would not be able to be supported.

- (c) *the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out.*

This clause is self explanatory. If the application was to be supported and consent granted for the proposal, a condition could be imposed on any such consent requiring the conservation work identified in an approved Conservation Management Plan to be carried out.

- (d) *the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance.*

The application was referred to Council's Heritage and Urban Design Advisor who considered the proposal to be supportable subject to some amendments and imposition of suitable conditions on any consent granted for the proposal in line with the recommendations contained in the CMP accompanying the application.

The proposal is considered to have minimal impact on the heritage significance of the item and its setting. Conversely, the proposal is considered to provide an opportunity for the existing building to be upgraded and for some original features of the building to be restored including the stripping of the painted Australia Street façade. However, this can be said for any proposal to carry out works to the existing building including any of the permissible uses within the Light Industrial zone.

- (e) *the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

As discussed earlier under the heritage incentives provisions of MLEP 2001, the proposal is considered to have acceptable amenity impacts on adjoining properties in relation to solar access, overshadowing and visual and acoustic privacy. Each of these matters and the general amenity impacts of the proposal are discussed in detail later in this report under the heading "Marrickville Development Control Plan No. 35 - Urban Housing (Volume 2)".

11. Marrickville Development Control Plan No. 19 - Parking Strategy

Marrickville Development Control Plan No. 19 - Parking Strategy (DCP 19) does not prescribe a specific car parking requirement for applications involving student accommodation. Similarly, the NSW Roads and Traffic Authority's Guide to Traffic Generating Developments do not contain any car parking requirements for student accommodation.

The proposed development is considered to be most akin to a boarding house by category which under DCP 19 requires car parking to be provided at a rate of one (1) space for every ten (10) beds plus one (1) space for every resident caretaker.

The proposed development includes one hundred and fifty four (154) rooms and an on-site manager. Based on these numbers, the proposal would require fifteen (15) car parking spaces for occupants and one (1) space for the on-site manager under DCP 19.

The plans accompanying the application indicate that the basement level would contain two (2) car parking spaces along with one (1) car/van/ute loading space. One (1) of the car parking spaces is intended to be dedicated for the on-site manager which would comply with the on-site manager car parking requirement of DCP 19. However, the proposal would not comply with the car parking requirement for the number of rooms proposed.

The original application as submitted only included a single car parking space which was proposed to be dedicated to the on-site manager. The applicant was requested

to amend the proposal to provide an additional two (2) car parking spaces that could be provided for a possible future car share vehicle and a service vehicle. The service vehicle parking space has been proposed however the application does not indicate who the remaining space would be allocated to (i.e. whether it would be allocated to residents or as a car share space as requested by Council). Given that the provision of a car share space would depend on an agreement being made with a car share provider, the provision of such space would be difficult to impose on the applicant without certainty that an agreement would be made. Therefore if the application is supported and consent is granted for the proposal, a condition should be imposed to the effect that the car share space be provided if an agreement can be made with a car share provider otherwise the space should be dedicated as an additional loading space.

The application was referred to Council's Traffic Engineer who provided the following comments in relation to the proposal:

"The proposal comprises of 158 rooms for student accommodation with no on-site provision for student residents' car parking. However, the development will provide 94 bicycle parking bays [reduced to 50 spaces by amended plans received 16 November 2011], 7 motorbike parking spaces [increased to 31 spaces by amended plans received 16 November 2011] and one parking space dedicated to the building manager [additional two (2) spaces provided in amended plans submitted 16 November 2011].

A Traffic Impact Statement (TIS) (Traffix, Ref 11 249, dated 7 September 2011) was submitted in support of the development application. THE TIS mainly addresses the issue pertaining to the parking provision for the site. The parking requirements for the proposed development have been assessed based on a land use type defined as a 'boarding house'.

A review of the TIS was undertaken and comments are provided below:

- It is noted that the recently developed Consolidated Development Control Plan 2010 differentiates parking requirements according to the DCP Parking Area Map. As per Council's Draft DCP Parking Area Map, the site is located in an area designated as Parking Area 3 where car parking is considered to be least constrained. Section 2.10 of the Draft Consolidated DCP prescribes different car parking provision rates for the sub-sections of the LGA. Table 1 (DCP Section 2.10.5) notes that on-site car parking requirements for a boarding house located in Parking Area 3 would be 33 parking spaces. The TIS acknowledges this requirement but notes that the development will have little impact and is still supportable with no provision for student car parking.*
- Council's car parking provision rates are aimed to improve the management of parking and promote sustainable transport across the LGA. The car parking provision rate schedule nominates a maximum number of car parking spaces to be provided for the proposed land use. Hence, in applying the rates, the development can nominate car parking provisions that are lower than specified in Council's DCP parking provision guidelines. However, in doing so, the development must comply with the*

objectives of the transport and land use integration policy of Council and a justification for providing lower rates should be given. The TIS cites that having no on-site parking is justifiable on the basis of the following factors:

- Availability of public transport;*
- Provision of 94 bicycle parking bays intended to encourage alternative modes of transport;*
- Proximity to the University Campus;*
- DCP control being 'generic' and generally area wide;*
- Students will be actively encouraged to utilise public transport and will be provided with all relevant information.*

Council's car parking strategy identifies the need to constrain car ownership/use and promote sustainable transport whenever feasible and Council appreciates the issues highlighted in the TIS. However, the above factors are deemed sufficient only to justify reduced car parking provisions and not to totally discount the provision of on-site parking.

- Although parking surveys have been undertaken to highlight the availability of parking capacity, it must be noted that the survey was only undertaken during a Thursday evening and is not considered enough to represent the likely parking demand. Noting the surrounding land use types, a weekend parking survey may be necessary to establish a more comprehensive profile of parking demand and availability for the purpose of servicing parking requirements of the site.*
- The key issues that would potentially influence the demand for car parking in the vicinity of the site are identified as follows:*
 - The site is adjacent to Camperdown Park. The Park may occasionally be used as a venue for special events requiring public parking. The on-street parking surrounding the park is expected to cater to such occasions. Hence, the demand and capacity for parking may vary.*
 - Parking restrictions cannot be imposed along the adjacent streets in proximity to the park.*
 - The site is in proximity to the University of Sydney and St John's College. As parking restrictions cannot be imposed, it can be expected that spill over parking demand from the University would utilise the adjacent areas.*
 - The proximity of public transport services would encourage public transport usage and enable reduction in private car use. It is noted that in areas where public transport service are highly accessible, a reduction of around 50% in private car usage can be expected. Hence, the demand for car parking would be reduced.*
 - Parking capacity in the area is already constrained. As noted in the photographs, most (if not all) of the parking spaces on the roads adjacent to the site are occupied. Although the survey results from observations taken on a Thursday night may have showed there is excess capacity, it still does not confirm that on-site parking is absolutely not required.*

Hence, on the basis of the underlying principles of integrated transport and the objectives of Council's Draft DCP and parking strategy, the proposal can be merited on the arguments for reduced parking provisions but should still be required to provide a minimum number of on-site car parking spaces in order to comply with the requirements stipulated in Council's DCP.

The development proposal must include the following:

- Provision of at least fifty percent (50%) of the required parking spaces as specified in Council's DCP in addition to the prescribed bicycle and motorcycle parking requirements. This would equate to around 16 parking spaces for student residents and 1 for the caretaker.*
- Undertake a weekend parking survey.*
- Preparation of a Transport Access Plan to promote use of alternative modes of transport."*

Whilst there are some valid arguments in Council's Traffic Engineer's comments, the comments focus on the provisions contained in Council's draft Consolidated Development Control Plan 2010 which is not a matter for consideration in this application. Nonetheless and as detailed earlier, the proposal would require the provision of fifteen (15) car parking spaces for occupants and one (1) space for the on-site manager under DCP 19.

It is considered that the provision of car parking spaces for the proposal could conversely create significant traffic and parking implications for the surrounding area. To elaborate on this, the provision of any car parking on the site for use by future occupants is likely to create a perception amongst those occupants who own motor vehicles that car parking would be readily available for their use on the site. Notwithstanding the fact that the accommodation can be marketed as having restricted parking available on and around the site, the provision of even a fraction of the car parking required for such a proposal would be difficult to manage. This is due to the fact that the perception that car parking will be available on the site or surrounding streets is likely to result in a high number of occupants who own a motor vehicle wanting to reside at the premises and be provided with a parking space. This could therefore increase the traffic and parking congestion in the area.

However, the provision of no parking spaces on the site allows the accommodation to be marketed as a "car free development", as described by the applicant, and as an area with significantly limited on-street parking available. This would immediately remove the perception that car parking will be available on the site or on surrounding streets and is therefore anticipated to result in a lower number of occupants who own a motor vehicle considering taking up residence at the premises. It is acknowledged that this would not completely eliminate the possibility of occupants who own a motor vehicle choosing to reside at the premises. However, this is likely to significantly reduce the number of occupants who own a motor vehicle considering accommodation at the premises.

In addition to the above, the site is situated within an accessible area (as defined in State Environmental Planning Policy (Affordable Rental Housing) 2009) and as such is accessible by alternate modes of transportation. These alternate modes include frequent bus services which travel in east to west directions along Parramatta Road

and Salisbury Road. The site is located within a 25 minute combined walk and bus ride journey to Central Railway Station from Parramatta Road or an approximate 20 minute walk to Newtown Railway Station.

The applicant advises that the accommodation would be marketed at the expanding tertiary student accommodation market, particularly for the various tertiary institutions in the area. Although it should be taken on face value, a letter from the University of Sydney was sent to the applicant commending them on the initiative to provide student accommodation and indicating that there is a current undersupply of approximately 5,000 to 6,000 beds for student accommodation needs to cater for students at the University of Sydney alone.

Part B.7.3 of DCP 19 specifies the following provisions relating to parking credits:

“The Council will apply parking credits where there is a change of use to an existing building, or an existing building is being altered.

Except in exceptional circumstances, credits will not be applied where a site is being significantly or fully redeveloped.

Credits will be based on the parking requirements detailed in this plan. Development consents which detail parking credits will be taken into consideration in the assessment of Development Applications, and determined by Council on the basis that the objectives of this plan are not compromised.”

Determination No. 11824, dated 31 August 1988, approved an application to carry out alterations to the premises for use by the N.S.W Nurses' Association, including offices, meeting rooms and associated storage. Condition 5 of the consent permitted the use of the premises by not more than forty seven (47) employees at any one time. A total of fifty two (52) car parking spaces were required to be provided for that approved use. Twenty four (24) car parking spaces were provided for the approved development and Council waived the requirement for the remaining twenty eight (28) car parking spaces required under the Car Parking Code applicable at that time.

The proposed development requires the provision of fifteen (15) car parking spaces and therefore there is a potential to apply a credit to the required parking spaces that are not provided given that the proposed use is less intense than the last approved use. The application proposes alterations to the existing building and essentially seeks to change the use of the existing building.

In order to determine whether the application of parking credits is appropriate, consideration of the objectives of DCP 19 is required. The aims and objectives of DCP 19 are listed below along with a brief discussion on how the proposal complies with those aims and objectives:

1. *To improve the integration between land use and existing transport networks.*

The aim/objective is considered to be a more generalised aim/objective of the Council itself which can be achieved by providing pedestrian footpaths, bus lanes on roads, bike routes and through site links in new developments. The

proposal would not change the sites existing integration between the land use and existing transport networks. As detailed earlier, the site is situated within an accessible area and as such is accessible by alternate modes of transportation.

2. *To facilitate the safe entry and exit of vehicles and pedestrians.*

The application proposes to provide vehicular access to the basement level from Derby Lane which is the most practical location given the level of the basement would be up to 500 mm lower than the laneway itself which would eliminate the need for long ramps and transitions to be provided that would create poor sightlines.

3. *To ensure the effective design of parking areas.*

The design of the parking area is considered acceptable. The design and layout allow for the safe manoeuvring of motor vehicles, motorcycles, bicycles and pedestrians throughout the basement level and Derby Place entry/exit. The aisle widths are considered to be of appropriate size to allow for the safe passage of vehicles and pedestrians throughout the parking area.

4. *To provide convenient and safe parking for residents, workers and visitors and ensure the safety of pedestrians in the design of car parking areas.*

As stated in point 2 above, the proposed basement level eliminates the need for long ramps and transitions to be provided that would create poor sightlines and so the design of the proposed car parking area is considered to provide convenient and safe parking for residents, workers and visitors and ensure the safety of pedestrians.

5. *To encourage the use of bicycle as an alternate form of transport for work and non-work trips and enable the implementation and development of strategies contained in the Marrickville Bicycle Plan.*

The proposal includes a total of thirty one (31) motorcycle and fifty (50) bicycle parking spaces which would encourage the use of alternate forms of transport. Also, the accommodation is intended to be marketed as tertiary student accommodation and the site is located within close proximity to various tertiary institutions which provide limited and/or paid timed on-site parking which would further encourage the use of alternate forms of transport to the students main destination.

6. *To ensure the provision of adequate delivery and service areas and the orderly and effective operation of delivery and service areas within developments.*

The proposal includes one (1) car/van/ute loading space in the basement level and an additional space could be provided in the event that an agreement cannot be reached with a car share operator to provide a car share vehicle on site. The loading space is considered to be of adequate size to cater for the needs of future occupants given that the rooms are proposed to be furnished

and the location is considered to allow for the orderly and effective operation of delivery and service area.

7. *To promote recognition and acceptance within the community of the equal rights of persons with disabilities to access buildings and areas required to be accessible.*

The proposal includes the provision of one (1) accessible parking space in the basement level along with all areas of the building being accessible by persons with disabilities. Seven (7) adaptable rooms are also proposed to be provided which complies with Council's adaptable rooms requirements under the provisions of Marrickville Development Control Plan No. 31 - Equity of Access and Mobility.

8. *To ensure that an appropriate level of public parking facilities are provided for use by shoppers and workers within the Marrickville Business Centres.*

This aim/objective is not relevant to this proposal as the site is not located within a business centre.

9. *To maintain the visual and environmental quality of the built environment.*

The limited size of the basement level and limited provision of car parking would ensure the visual and environmental quality of the built environment is maintained. Limiting the basement level footprint ensures that the visual impacts of the proposal are minimised and the provision of no car parking for occupants would discourage the use of motor vehicles and encourage the use of alternate forms of transport to maintain the quality of the environment.

10. *To ensure that car parking provision meets business and community demand.*

This aim/objective is not relevant to this proposal as it does not relate to a business or community development.

Given the above, it is considered that the previously waived twenty eight (28) car parking spaces can be credited to the site which would result in the proposed development not requiring any parking spaces to be provided. The proposal is therefore considered acceptable having regard to parking and traffic impacts.

12. Marrickville Development Control Plan No. 27 - Waste Management

The plans accompanying the application indicate that garbage and recycling bins would be stored in a bin storage room situated within the basement level of the building on the Derby Place elevation of the building. The location of the bin storage room is considered to be acceptable and has been located in consultation with Council's Waste Services Section.

Marrickville Development Control Plan No. 27 - Waste Management (DCP 27) does not prescribe a specific waste/recycling generation rate for student accommodation.

The proposed development is considered to be most akin to a boarding house. DCP 27 prescribes the following waste/recycling generation rates for boarding houses:

- 60 litres per occupant per week for waste generation; and
- 20 litres per occupant per week for recyclable material generation

Based on those waste generation rates, the proposed on hundred and fifty four (154) occupant development would generate 9,240 litres of general waste and 3,080 litres of recyclable waste per week resulting in the proposed development requiring thirty nine (39) x 240 litre red lid general waste bins and thirteen (13) x 240 litre yellow lid recycling bin. The proposed bin storage room should therefore be able to accommodate a total of fifty two (52) bins.

The size of the proposed bin storage room measures 13.5 metres wide by 4.5 metres wide which equates to an area of approximately 61sqm. Based on the dimensions of a 240 litre waste storage bin being 735mm x 580mm (0.43sqm), the proposed bin storage room would be capable of accommodating the required fifty two (52) bins with adequate circulation space throughout.

Given the size and intensity of the proposed development, it is considered appropriate that a garbage chute system be incorporated into the proposal to service three residential floors. Although a chute system has not been indicated on the plans accompanying the application, this requirement could be imposed as a requirement by way of a condition on any consent granted for the proposal. Given that the application is recommended for refusal on other grounds, this matter was not pursued any further.

13. Marrickville Development Control Plan No. 31 - Equity of Access and Mobility

Marrickville Development Control Plan No. 31 - Equity of Access and Mobility (DCP 31) requires access and facilities to be provided for persons with a disability. The following access and mobility requirements are prescribed in DCP 31 for places of shared accommodation which have a total floor area exceeding 300sqm:

- Submission of a statement of consistency with the Disability Discrimination Act with any application;
- Six (6) adaptable rooms designed in accordance with AS4299 (for developments accommodating more than 99 persons); and
- Access to and throughout the development in accordance with AS1428.2 including access to any laundry, kitchen, sanitary and common facilities.

The proposed development includes seven (7) adaptable rooms in accordance with the above requirements. In addition, the communal living rooms and laundry are also accessible by persons with a disability and an accessible parking space has been proposed within the basement level of the building.

Overall, the proposed development is considered acceptable having regard to DCP 31.

14. Marrickville Development Control Plan No. 32 - Energy Smart Water Wise

Marrickville Development Control Plan No. 32 - Energy Smart Water Wise (DCP 32) requires developments to be designed in an energy and water efficient manner.

The following comments are provided in the Statement of Environmental Effects accompanying the application having regard to energy and water efficiency:

“Building sustainability is primarily demonstrated through compliance with Section J of the Building Code of Australia Report, found at Attachment X...

The main environmental benefits associated with the development lie in the adaptive reuse of an existing building that is otherwise considered to be unable to be utilised to full extent. Whilst the scope of assessment for greenhouse gas emissions is generally difficult to define, the Australian Greenhouse Office notes that the reuse of building materials usually involves a saving of approximately 95 per cent of embodied energy that would otherwise be wasted (Commonwealth Department of Environment and Heritage, 2004).

The proposal does not constitute a BASIX Affected Development and therefore the requirements of State Environmental Planning Policy (BASIX) 2004 are not applicable to this site. The proposal employs a number of passive and active sustainability measures, aiming to achieve highest sustainable design within the constraints of working within an existing heritage listed building.

Working within the curtilage of an existing heritage listed building presents a number of constraints to the sustainable redevelopment of the site. The orientation and depth of the building are prohibitive to a full-floor refit for residential purposes. The proposal counters this problem through the creation of an atrium space, permitting internal light and ventilation whilst maintaining the heritage integrity of the site.

Cross ventilation

The creation of a large internal void promotes the ability to cross-ventilate the site. Louvered vents in the building façade allow air to be inducted into the site at a low elevation and then be drawn up through the void space to be vented at roof level, providing appropriate ventilation for units with windows to the internal court. Figure 19 (below) demonstrates the cross-ventilation effectiveness of the proposal.

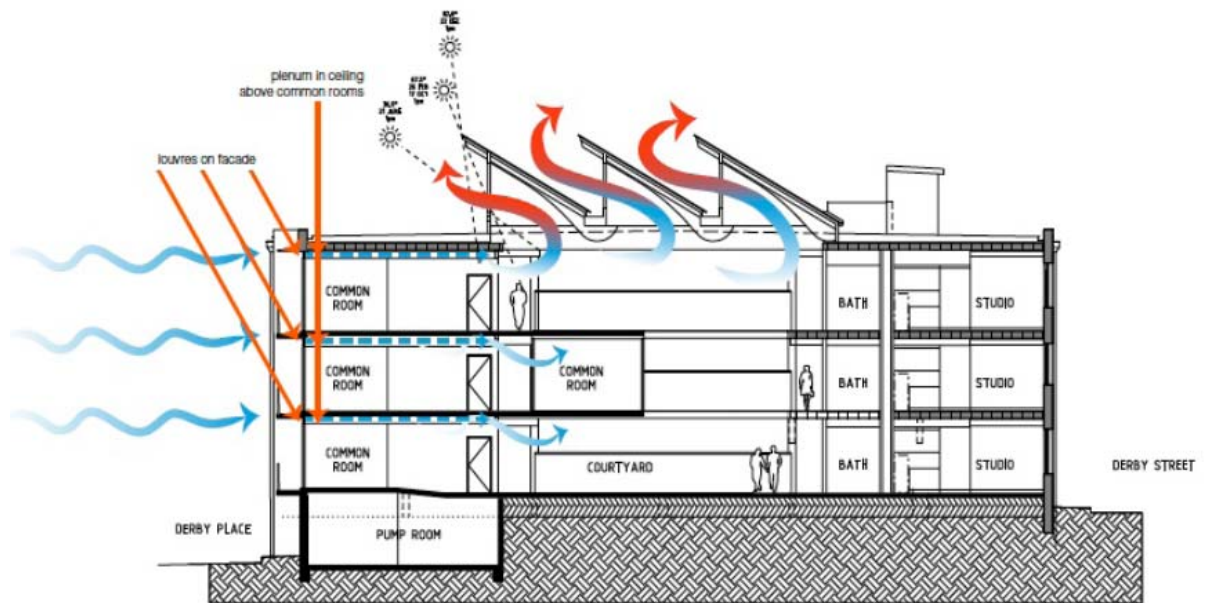


Image 19: Cross ventilation effectiveness

Solar Access

The proposal is contained within the curtilage of an existing heritage building that is constructed to boundary. The existing configuration of the building does not permit effective direct solar access to all single occupancy units, however - given that these are primarily bedroom spaces, there is no specific requirement for solar access to these units. The majority of common areas are sited on the northern face of the building and/or receive direct daylight through the atrium roof space. The ground floor common open space is made possible through the creation of a void space through the centre of the building. It is not possible to provide direct sunlight to this space without compromising the heritage integrity of the building. External areas of public open space act as compensatory measures in this regard.

Section J of the Building Code of Australia

Section J of the Building Code of Australia is the regulatory mechanism determining the building sustainability measures associated with this development. This matter is addressed in the Building Code of Australia Report at Attachment X of this Statement. Compliance with Section J of the BA will require a number of commitments with regards to materials and fittings, which will contribute further to the ongoing sustainability of the development.

Management

The requirement for all residents to adhere to a set of house rules and community standards provides the scope for environmental education beyond that which would normally be available in private residence.

Transport

The proposal is a 'car free' development, in recognition of the proximity both to public transport on Parramatta Road, and to a single likely destination. By encouraging residents to choose walking as a preferred commuting mode, the proposal will produce significantly fewer transport related emissions than an alternative use of the site. Likewise, the location of residents proximate to their likely week-day destination will also reduce emissions that may otherwise have been associated with their commute, should they have resided outside the walking catchment of the university."

Overall, the proposal is considered to have been designed in an energy and water efficient manner. If the proposal is supported and consent is granted, conditions should be imposed on any such consent covering the following matters:

- All new or replacement toilets are to be dual flush;
- All new or replacement hot water systems are to have a minimum 3.5 star greenhouse rating;
- Any air-conditioning units are to be energy efficient SEDA rated where natural ventilation is not possible. Minimum 4 star rating for cooling only, and minimum 4 star on one cycle and 3 star on the other cycle for reverse cycle models; and
- Submission of a Comprehensive Water Cycle Assessment with details regarding the potential for water recycling and reuse on site.

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

Marrickville Development Control Plan No. 35 - Urban Housing (Volume 2) (DCP 35) was adopted concurrently with MLEP 2001. DCP 35 provides guidance for the design and assessment of new development. Although not strictly applicable to this proposal, the proposed development is most akin to a residential flat building in form and it is therefore considered appropriate to apply the controls relating to residential flat buildings from DCP 35 to this proposal. The following is a summary of the applicable provisions from DCP 35:

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

Solar Access

The solar access requirements for boarding house developments are more relevantly covered by the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 and have been discussed earlier in this report.

Overshadowing

In relation to overshadowing, DCP 35 requires that:

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

- a) to less than 2 hours between 9.00am and 3.00pm on 21 June; and*
- b) where less than 2 hours of sunlight is currently available in June, it should not be further reduced..."*

Detailed shadow diagrams for 9.00am, 12.00 noon and 3.00pm at the winter solstice on 21 June accompanied the application illustrating the existing and proposed overshadowing impacts of the building onto adjoining properties.

The diagrams illustrate that the additional overshadowing from the proposed additions to the building would be cast onto the roof of the building itself and that the proposal would not cast any additional overshadowing onto adjoining properties.

Energy and Water Efficiency

The energy and water efficiency of the proposal has been discussed in detail earlier in this report under the heading “Marrickville Development Control Plan No. 32 - Energy Smart Water Wise”.

Ventilation and Internal Amenity

DCP 35 requires that *“All habitable rooms shall be provided with an openable window or openable skylight, that satisfies the requirements of the BCA”*.

The proposed development provides openable windows to all rooms in the development and so complies with this requirement.

(ii) On-Site Detention (OSD) of Stormwater

The application was referred to Council’s Development Engineer for comment who advised that on-site detention of stormwater is not required for this proposal.

(iii) Flooding and the Cooks River Flood Plain

The property is located within an area identified as flood prone land on Council’s “Approximate 100 Year (1% AEP) Flood Extent” Map. The application was referred to Council’s Development Engineer who provided the following comments in relation to the proposal:

“The site is subject to flooding. The 1 in 100 year flood level for this location of Australia Street is RL 15.3 metres AHD with floor levels to habitable areas of the building required to be at RL 15.8 metres AHD providing 500mm of freeboard.”

The plans accompanying the application detail the lowest RL level of the ground floor as being set at RL 16.17 metres AHD which is above the determined 1 in 100 year flood level.

(iv) Site Contamination

This matter has been discussed in detail earlier in this report under the heading “State Environmental Planning Policy No. 55 - Remediation of Land and Marrickville Development Control Plan No. 29 - Contaminated Land Policy and Development Controls”.

(v) Floor Space Ratio and Site Coverage

The FSR of the proposed development has been discussed earlier in this report under the headings “State Environmental Planning Policy (Affordable Rental Housing) 2009” and “Marrickville Local Environmental Plan 2001”.

DCP 35 does not prescribe a maximum site coverage control for applications involving the residential conversion of former industrial/warehouse buildings and states that *“There are no specified requirements for warehouse/industrial conversions, given that in most cases this form of development entails working within an existing building envelope”*.

The existing building is built to a zero lot line to all boundaries which results in a site cover of 100%. The application does not seek to increase or decrease the existing site coverage as part of the proposed works.

(vi) Building Height

No maximum building height is specified under DCP 35 for applications involving the residential conversion of former industrial/warehouse buildings. The DCP states in relation to building height, *“in most instances the conversion of such buildings, involves working with an existing building envelope. Where additional height is desired, the main determining factors will be the street context and whether the architectural style/character of the building can accommodate an increase in height”*.

The proposed development seeks consent to carry out alterations to the existing building to convert the building into student accommodation. All of the works, with the exception of roof additions, are situated within the existing building envelope. The proposal would not alter the height of the existing building other than the additional roof vents which are situated above the existing roof and are considered to have an acceptable impact on the locality.

(vii) Building Setbacks

The setback requirements of DCP 35 are not relevant to this application given that the proposal seeks consent to reuse the existing built form.

(viii) Streetscape, General Appearance and Materials

Façade and Streetscape Design

The proposal seeks to retain all façades of the existing building. The proposed works include repair and maintenance of the façades including stripping of the painted Australia Street façade to expose the brickwork. An external photomontage of the proposal has been provided earlier in this report as image 15 which illustrates that the proposal would have an acceptable façade and appearance.

Bulk and Scale Relationship

As discussed throughout this report, the proposal seeks consent to retain the existing building and adaptively reuse the building for student accommodation. The proposal would not alter the buildings existing bulk and scale and is therefore considered appropriate.

Materials, Finishes, Textures and Colours

As discussed above, the proposal seeks to retain all façades of the existing building. The proposed works include repair and maintenance of the façades including stripping of the painted Australia Street façade to expose the brickwork to match the remaining façades. An external photomontage of the proposal has been provided earlier in this report as image 15 which illustrates that the proposed materials, finishes and colours would be acceptable.

The existing building consists of aluminium windows which were replacement windows to those originally installed when the building was constructed. The application proposes to replace all the windows of the building in order to provide window details for appropriate separation between the proposed rooms within the development. All new windows are proposed to be contained within the existing façade penetrations.

(ix) Site Facilities and Waste Management

Council's requirements in relation to the provision of site facilities and waste management include requirements for clothes drying facilities, garbage collection and recycling facilities, mail boxes and the like. Each of those aspects is discussed under their respective headings below.

Clothes Drying Facilities and Laundries

The plans accompanying the application indicate a communal laundry being provided on the ground floor of the proposal containing six (6) washers and seven (7) dryers to cater for the needs of future occupants. Although DCP 35 specifically states that "*communal laundries shall not be permitted*", the provisions of DCP 35 are more relevantly applicable to development for the purpose of a residential flat building or multi unit housing rather than shared accommodation such as that proposed in this application.

Council's planning instruments do not contain any controls relating to the provision clothes washing facilities. With the absence of such controls, the City of Sydney's Tourist and Visitor Accommodation Development Control Plan 2006 has been used to provide a guide on an acceptable number of washing machines and dryers that should be provided for this proposal. The DCP specifies that one (1) clothes washing machine and clothes dryer must be provided for every 50 residents or part thereof in bed and breakfast or backpacker accommodation proposals.

The provision of six (6) washing machines and seven (7) dryers in this proposal would result in each washing machine being shared between twenty six (26) occupants and each dryer being shared between twenty two (22) occupants which are considered acceptable given the above.

Garbage and Recycling Storage Facilities

This matter has been discussed earlier in this report under the heading “Marrickville Development Control Plan No. 27 - Waste Management”.

Numbering of Buildings

Details regarding building numbering were provided on plans accompanying the application. If the proposal is supported and consent is granted for the proposal, a condition should be imposed on any such consent requiring a street number to be placed on the site in a readily visible location prior to the issue of a final Occupation Certificate for the development.

Mail Boxes

Details regarding the provision and location of mail boxes were submitted with the application and are considered appropriate. A single external mailbox is proposed to be provided on the Australia Street frontage close to the building entrance. Individual mailboxes for each room are proposed to be provided internally in close proximity to the lobby and reception area. Mail distribution from the external mailbox to the individual mailboxes is proposed to be undertaken by the on-site manager.

(x) Visual and Acoustic Privacy

The proposal contains a significant amount of windows on the southern elevation servicing some of the proposed rooms which could provide some opportunity for overlooking into adjoining properties. The photographs reproduced below provide an idea of the potential overlooking and visual privacy impacts the proposal could have on the adjoining properties to the south of the site:



Image 20: View from first floor across Derby Street to 47 Australia Street

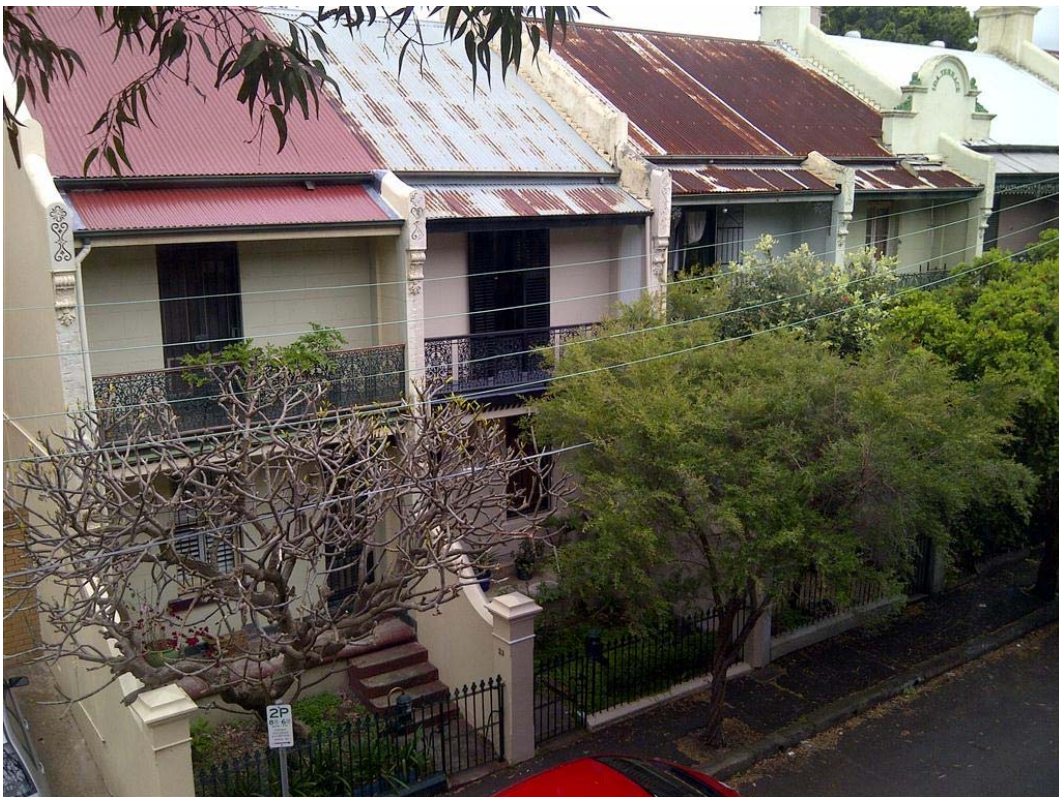


Image 21: View from first floor across Derby Street to 17-23 Derby Street



Image 22: View from first floor across Derby Street to 9-15 Derby Street



Image 23: View from second floor across Derby Street to 15-19 Derby Street



Image 24: View from second floor across Derby Street to 9-11A Derby Street



Image 25: View from rooftop across Derby Street to 47 Australia Street and 17-23 Derby Street



Image 26: View from rooftop across Derby Street to 11A and 15 Derby Street



Image 27: View from rooftop across Derby Street to 1-11 Derby Street

As the above images illustrate, the opportunities for overlooking are quite limited with the road separating the subject building from adjoining properties. The visual privacy impacts of the proposal are considered to be acceptable having regard to the above and the existing site constraints.

As mentioned earlier in this report, the proposed development will require noise attenuation from aircraft noise which will provide suitable levels of acoustic amenity between rooms in the development and from within the site to adjoining properties. No external open space areas are proposed that would provide acoustic amenity impacts on adjoining residential properties.

(xi) Safety and Security

This matter has previously been addressed under the Community Safety considerations of Marrickville Local Environmental Plan 2001 and also discussed in further detail later in this report under the heading “Marrickville Development Control Plan No. 38 - Community Safety”.

(xii) Landscape and Open Space

Given that the proposal seeks consent to reuse the existing building, there is limited opportunity for landscaping to be provided for this proposal.

The open space component of the proposal has been discussed earlier in this report under the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009.

(xiii) Heritage Conservation

Part 2D of DCP 35 contains a number of objectives and control relating to development involving heritage items and development in heritage conservation areas. The following summarises the proposal's compliance with the requirements outlined in this part of the DCP:

- The proposal seeks to retain and refurbish the heritage item as encouraged by control C1;
- The application was accompanied by a Conservation Management Plan (CMP), Heritage Impact Statement (HIS) and Assessment of Heritage Impact for Permissible Uses, prepared by Rappaport Heritage Consultants, who are considered to be experienced practitioners who have heritage conservation experience and are aware of the issues involved in dealing with such a site as encouraged by control C2;
- As discussed in other sections of this report, the proposed alterations and additions would not adversely impact on the street frontage, nor involve the removal of significant elements or original external features to the property as encouraged by control C4;
- The proposed changes respect the form, proportion, scale, details and materials of the original building as encouraged by control C5;

- The proposed alterations and additions would not be visible or potentially visible from any point in the street or adjoining streets, and the height would not be seen above the main ridge line of the building as encouraged by control C7;
- The required aircraft noise attenuation works can be conditioned so as to not detract from the streetscape values of the building by removing or covering significant building fabric or details as encouraged by control C10;
- The proposal includes removal of the paint finish on the Australia Street façade to re-expose the face brick as encouraged by control C15; and
- The proportioning of the proposed new windows respects the form and scale of the existing windows on the building as encouraged by control C16.

Overall, the proposal is considered to be acceptable on heritage grounds.

16. Marrickville Development Control Plan No. 38 - Community Safety

Marrickville Development Control Plan No. 38 - Community Safety (DCP 38) requires consideration of community safety for any Development Application. The provisions of DCP 38 are broadly based on the four Crime Prevention Through Environmental Design (CPTED) principles.

The Statement of Environmental Effects accompanying the application provides a detailed assessment of the proposal having regard to the applicable provisions of DCP 38. In addition, the statement provides the following comments in relation to the proposal's compliance with the four CPTED principles:

"The design of the proposal has been developed in consultation with the Newtown Local Area Command (NSW Police Force) and has given consideration to the principles of crime prevention through environmental design (CPTED) as prescribed by the Department of Planning guidelines 'Crime Prevention and the Assessment of Development Applications' (2001). The principles are applied in the proposed development as follows.

Surveillance: Clear sightlines are maintained between the public domain and the entry points of the building. Australia Street is well illuminated with street lighting, particularly at the pedestrian crossing at the entrance to the site. The existing nearby residential uses and the residential intensification occurring to the north of the site provides for neighbourhood surveillance, improving safe travel paths for residents to key destinations. A sophisticated level of electronic video surveillance will be employed at entries to the site.

Access Control: Residents will be issued with a unique electronic access card that can be deactivated in case of loss or theft. The lobby area of the development will be publically accessible during business hours (8am-5pm) per the provisions of the Operational Plan of Management and accessed by electronic card outside these times. All areas beyond the lobby area will be access controlled at all times, as will all individual rooms.

Territorial Reinforcement: The island site is unambiguous in its territorial boundaries. All public access is via a single lobby, and the delineation between this semi-public space and the residents/guests-only area beyond is clearly

defined through access control measures. The common basement is access controlled and electronically monitored, to further reinforce its private nature.

Space Management: The publicly accessible areas of the site will be controlled and monitored by CCTV. Some of the most common criminal activities include malicious damage to property, assault, theft, break and enter to dwellings and commercial premises, and theft from a motor vehicle. These forms of incidents would be sensitive to the introduction of security hardware and personnel within the complex. CCTV will be of a quality high enough to enable intruder identification. A 24-48 hour rapid response graffiti removal policy will be implemented to maintain the appearance of the property.”

The proposal is considered to be generally consistent with the community safety controls prescribed by DCP 38 and CPTED principles in the following ways:

- The building will provide casual surveillance of the adjoining public areas including all four streets which surround the site;
- The existing building has been constructed on a zero lot line to all street boundaries thereby eliminating any entrapment alcoves and providing clear territorial reinforcement and appropriate space management;
- The design and location of the building entrances ensures direct, obvious and secure entries are provided promoting territorial reinforcement and space management;
- The design and location of the communal areas are clearly defined, encourage natural surveillance by the occupants and users and encourage a sense of ownership;
- Unintended access would be minimised by the provision of security measures providing secure entries to the building; and
- Building identification is proposed to consist of building numbering and emphasis of the building entry from Australia Street.

Given the above, the proposed development is considered acceptable having regard to the relevant community safety provisions prescribed by DCP 38.

17. Community Consultation

The application was advertised, an on-site notice was erected and residents/property owners in the vicinity of the subject property were notified of the proposed development in accordance with Council's Policy. Twelve (12) submissions were received raising the following concerns which have been addressed in the assessment provided throughout this report:

(i) Parking and Traffic:

- The proposal includes no car parking for residents and visitors;
- Approval of the application with no car parking would reduce the availability of on-street parking;
- A reduction of on-street parking would result in the public not being able to use Camperdown Park;
- The surrounding streets would become congested with cars;

- Future occupants of the proposed development should not be entitled to parking permits for the resident parking scheme in the area;
- The Denison Street and Derby Street intersection along with Derby Place are dangerous and intensification of use of the site would exacerbate the dangerous nature of the intersection and narrow street;
- The Traffic Impact Statement does not adequately provide survey details of the existing traffic and parking situation;
- The proposed projecting sun shades would require trucks to drive closer to the adjoining child care centre on Derby Place;
- Public transport is not as readily available on Parramatta Road as stated in the Traffic Report;
- The promotion of walking to and from the site is compromised as there is a lack of services within walking distance of the site;
- The proposed development cannot guarantee that the resident's destination would have suitable bicycle parking/storage facilities to promote the use of bicycles;
- The Traffic Impact Statement relies on the assumption that all residents would be students of Sydney University with no assurance that this would be the case;
- The Traffic Impact Statement does not survey an entire day and does not address the availability of parking before 4:00pm; and
- One (1) accessible car parking space has not been provided for each adaptable room proposed.

(ii) Management and Compliance:

- Suggestions made that the caretaker/on-site manager should be contactable at all times by surrounding residents if problems arise with residents;
- Council would not be adequately resourced to ensure compliance in the operation and management of the premises; and
- State Environmental Planning Policy (Affordable Rental Housing) 2009 states that not more than two (2) adult lodgers should be permitted to live in each room in a boarding house; Concerns raised that this requirement would not be complied with and up to 1,580 residents could be living at the premises.

(iii) Density/Intensification:

- The density of the development is excessive;
- The proposed development is an overdevelopment of the site;
- The current student accommodation crisis in Australia will lead to the building being overcrowded with residents; and
- The surrounding infrastructure network would not be able to cope with the intensification of use of the site.

(iv) Amenity and Privacy:

- Visitors coming to and from the property would impact on the amenity of surrounding residents, particularly during late hours of the night and over weekends;
- A maximum of two (2) adult lodgers should be permitted to live in each room in line with the requirements of the boarding house requirements of State Environmental Planning Policy (Affordable Rental Housing) 2009;
- Future residents would increase noise in the area;
- A noise control plan should be submitted;
- Some existing windows of the building would provide overlooking opportunities directly into windows of adjoining properties; and
- The proposed development would increase levels of dangerous litter in the area.

(v) Built Form and Character:

- Approval of the application would set a precedent for similar proposals in the area;
- The proposed development is not compatible with the character of existing residential development in the area; and
- The building exceeds Council's floor space ratio (FSR) development standard of 0.7:1 for boarding houses with a proposed FSR of 2.5:1.

(vi) Safety and Security/Community Safety:

- The building is isolated on its own block with no residents adjoining the site which would result in neighbouring residents being unable to identify when there are issues on the site;
- Future residents would increase violence and crime rates in the area as both victims and perpetrators of violence and crime; and
- The proposed increased pedestrian traffic would inhibit the ability of the adjoining child care centre to identify residents and maintain the safety of children.

(vii) Heritage:

- Concerns raised that the proposal does not adequately address the heritage conservation incentives requirements under Clause 54 of Marrickville Local Environmental Plan 2001.

(viii) Stormwater:

- On-site detention is required and has not been proposed.

(ix) Laundry:

- A communal laundry is proposed which is inconsistent with the requirements of Marrickville Development Control Plan No. 35 - Urban Housing (Volume 2) which specifically prohibits communal laundries from being provided.

All relevant matters raised in the submissions able to be considered under the provisions of Section 79C of the Environmental Planning and Assessment Act have been discussed in the report. There is no evidence to support assertions about behaviour of future occupants of the building.

18. Conclusion

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

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

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

PART E - RECOMMENDATION

A. THAT the development application to carry out alterations and additions to the existing heritage listed building on the site for its adaptive reuse for the purpose of student accommodation comprising a comprising a total of 12 multiple occupancy rooms and 111 single occupancy rooms, to accommodate up to a total of 154 residents, and a manager's residence pursuant to the heritage conservation incentives provisions contained in Clause 54 of Marrickville Local Environmental Plan 2001 be **REFUSED** for the following reasons:

1. The proposed development does not satisfy the heritage incentive provisions in Clause 54 (1) of Marrickville Local Environmental Plan 2001 and as such the proposed development is prohibited.
2. The proposed use of the premises would constitute a "boarding house" under the definitions contained in Marrickville Local Environmental Plan 2001 which is a prohibited use under the Light Industrial zoning applying to the land.
3. In view of the above, approval of the application would not be in the public interest.

- B. THAT** those persons who lodged submissions in respect to the proposal be advised of the Joint Regional Planning Panel's determination of the application.