

**JOINT REGIONAL PLANNING PANEL
SYDNEY EAST REGION**

JRPP No	2012SYE060
DA Number	201200225
Local Government Area	Marrickville
Proposed Development	To demolish the existing improvements, carry out preparatory site works and erect a mixed use development containing 7 retail tenancies, 206 residential dwellings and 163 car parking spaces, associated landscaping, drainage and related works.
Street Address	32-70 Alice Street, Newtown
Applicant/Owner	Al Maha Pty Ltd/The Registered Proprietors of SP 32809
Number of Submissions	269 submissions and two petitions containing 73 signatories.
Recommendation	Refusal
Report by	Harjeet Atwal, Senior Town Planner

Assessment Report and Recommendation

Synopsis

Application to demolish the existing improvements, carry out preparatory site works and erect a mixed use development containing 7 retail tenancies, 206 residential dwellings and 163 car parking spaces, associated landscaping, drainage and related works. The application was notified in accordance with Council's Notification Policy and 269 submissions and two petitions containing 73 signatories were received.

The development application relates to a type of development that the Minister of Planning has categorised as being of regional significance. The Sydney East Joint Regional Planning Panel is the consent authority for the purposes of determining the application.

The applicant has lodged an appeal at the Land and Environment Court in relation to the deemed refusal of the subject development application. A Section 34 Conference was held on 10 October 2012 between Council Officers and the Applicant. No agreement was reached between the parties and as such the Section 34 conference was terminated. The hearing dates for the appeal have been set for 7 February 2013 and 8 February 2013.

The proposal exceeds the maximum floor space ratio development standard as prescribed under Marrickville Local Environmental Plan 2011. A written submission under Clause 4.6 of Marrickville Local Environmental Plan 2011 in relation to the FSR departure accompanied the application, however the submission is not considered to be well founded.

The proposal also does not comply with the aims, objectives and design parameters of Marrickville Development Control Plan 2011.

The subject site is located within the Camdenville Planning Precinct (Precinct 9.14). The proposed development does not comply with the future desired character and site specific controls prescribed by the strategic context planning controls under Part 9.14 of Marrickville Development Control Plan 2011.

Insufficient information was submitted accompanying the application to carry out a proper assessment of the traffic impacts of the proposed development on the local road network, particularly with regards to the increased traffic volume on Pearl Street, due to the location of the vehicular access from Pearl Street and the cumulative traffic impact generated by the proposal in conjunction with other developments within the area such as Marrickville Metro.

It is noted that prior to the lodgement of the subject development application, the applicant received pre-development application advice for a much smaller scale development. The pre-development application advice raised a number of concerns and identified a number of departures from Council's policies. It is considered that the proposed development has not adequately addressed the matters raised in the pre-development application advice and the proposed development raises other matters and issues.

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

PART A - PARTICULARS

Location: The subject property is situated on the southern side of Alice Street, and bounded by Pearl Street, Walenore Avenue and Alice Lane, Newtown.

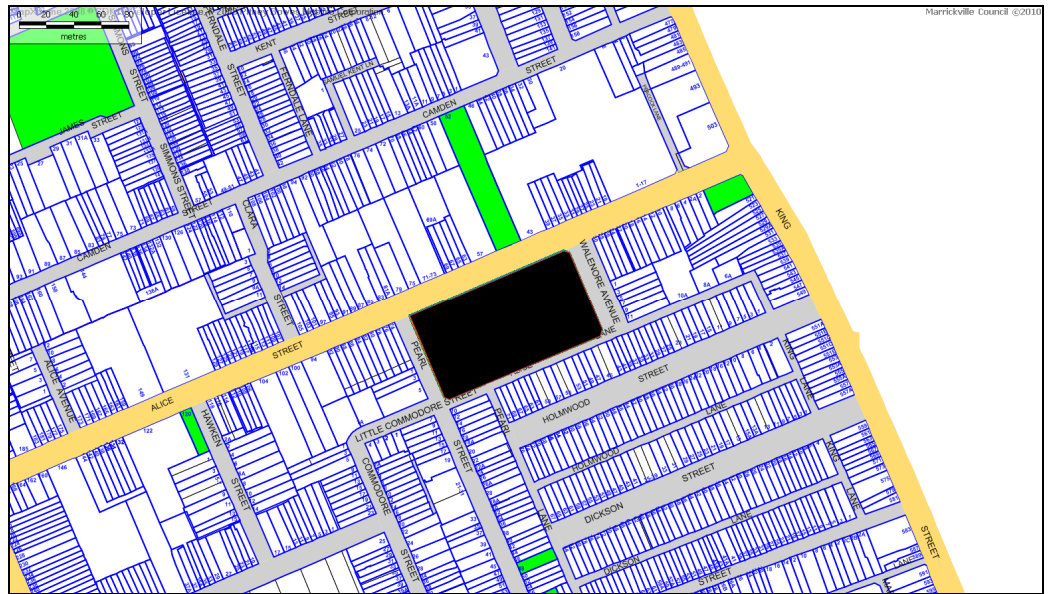


Image 1: Location Map

D/A No: 201200225

Application Date: 18 June 2012 (additional information submitted on 7 August 2012 and 6 September 2012).

Proposal: To demolish the existing improvements, carry out preparatory site works and erect a mixed use development containing 7 retail tenancies, 206 residential dwellings and 163 car parking spaces, associated landscaping, drainage and related works.

Applicant: Al Maha Pty Ltd

Estimated Cost: \$45,836,926

Zoning: B4 Mixed Use

PART B - THE SITE AND ITS CONTEXT

Improvements: Three (3) attached industrial masonry buildings and a car parking area containing approximately 90 car spaces.



Image 2: Aerial Photo of subject site



Image 3: View of Subject Site from Alice Street



Image 4: View of Subject Site from Walenore Avenue.

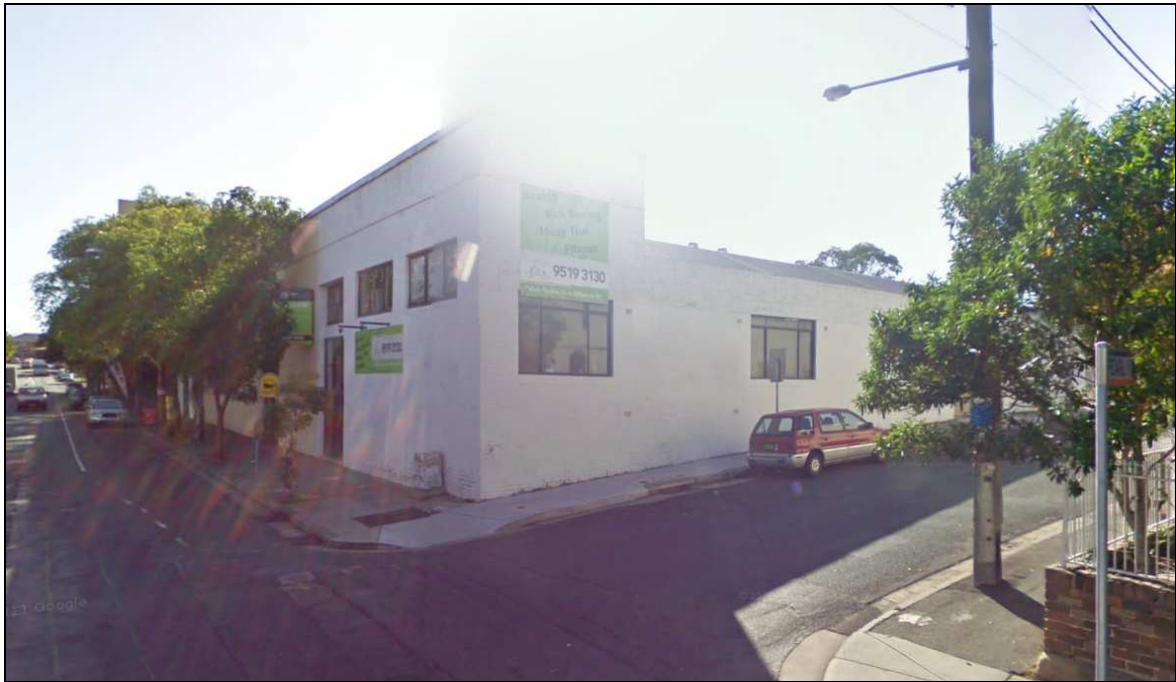


Image 5: View of Subject Site from the corner of Alice Street and Pearl Street.



Image 6: View of Subject Site from Pearl Street.



Image 7: View of Subject Site from Alice Lane.

Current Use: Industrial

Prior Determinations: Determination No. 9563, dated 18 July 1984, approved an application to rebuild the factory building on 42-62 Alice Street and use the single storey buildings on 64-64A Alice Street, 14-16 Walenore Avenue and a four storey building at 32-40 Alice Street for industrial purposes.

Various determinations issued between 1984 and 2004 by Council regarding the use of the existing tenancies occupying the subject site.

Environment: A mixture of commercial/retail and residential development

PART C - REQUIREMENTS

1. Zoning

Is the proposal permissible under zoning provisions? Yes

2. Development Standards (Mandatory Requirements):

Type	Required	Proposed
Height of Buildings (max)	20 metres	20 metres
Floor Space Ratio (max)	1.85:1	2.4:1

3. Departures from Council's Codes and Policies:

Type	Required	Proposed
Traffic/Vehicle Access	Refer to main body of report	
Landscaping	Refer to main body of report	
Dwelling Mix	Refer to main body of report	
Height/Massing	Refer to main body of report	
Building Separation	Refer to main body of report	
Trees	Refer to main body of report	
Water Sensitive Urban Design	Refer to main body of report	

4. Community Consultation:

Required: Yes (newspaper advertisement, on-site notice and resident notification)
Submissions: 269 submissions and two petitions containing 73 signatories were received.

5. Other Requirements:

ANEF 2029 Affectation: 20-25 ANEF
Marrickville Section 94/94A Contributions Plan 2004

PART D - ASSESSMENT

1. Background

The following provides a timeline summarising the history of the application commencing with a pre-lodgement in 2011:

7 April 2011

A pre-development application (PDA201100042) was submitted to Council seeking preliminary advice on potentially demolishing the existing improvements at No. 32 - 70 Alice Street and erect a part three storey, part five storey and part six storey residential flat complex over a two level basement car park containing 181 dwellings with off street car parking for 181 vehicles. The applicant with respect to that application was Richard Olsson from Olsson & Associates Architects Pty Ltd. The

plans submitted with the Pre DA indicate that the applicant's client was "Al Maha Holdings Pty Ltd". (It is noted that Al Maha Holdings Pty Ltd are the applicant with respect to the current development application).

31 May 2011

A pre-development application advisory panel meeting was held between Council Officers and the applicant regarding the proposal, during that meeting the proposal was identified to have a number of significant departures from Council's existing planning controls such as floor space ratio, height, access and mobility controls and issues were raised regarding the architectural treatment of the development.

1 July 2011

A formal letter was issued to the applicant following the meeting identifying the issues in greater detail. The proposal presented in the Pre-DA meeting is different to the development application that was subsequently lodged and is the subject of this report.

18 June 2012

The current development application was lodged seeking approval to demolish the existing improvements, carry out preparatory site works and erect a mixed use development containing 7 retail tenancies, 206 residential dwellings and 163 car parking spaces, associated landscaping, drainage and related works.

12 July 2012

The notification period for the subject application closed and approximately 269 submissions and two petitions containing 73 signatures were received.

Council briefed the JRPP on the development application. During the briefing meeting the JRPP offered Council potential meetings dates in October and November. The JRPP secretariat set the meeting down for 21 November 2012.

24 July 2012

The application was considered by the Pedestrian, Cyclist & Traffic Calming Advisory Committee.

14 August 2012

A Class 1 Appeal was lodged with the Land and Environmental Court (Land and Environmental Appeal 10823 of 2012) against the deemed refusal of the development application.

12 September 2012

Statement of Facts and Contentions, containing Contentions to be pursued as part of the Land and Environment Court Proceedings, filed with the Court.

10 October 2012

A Section 34 Conference was held between Council Officers and applicant. No agreement was reached between the parties and as such the Section 34 conference was terminated. The hearing dates for the appeal have been set for 7 February 2013 and 8 February 2013.

2. The Site and Surrounds

The subject site comprises of 1 allotment legally described as Lot 203 in Deposited Plan 772164 and 7 strata lots legally described as Lots 1-7 in Strata Plan 32809. The site is located on the southern side of Alice Street, and is bounded by Pearl Street, Walenore Avenue and Alice Lane. The subject site is rectangular in shape with a primary frontage of approximately 121.3 metres to Alice Street, a frontage of approximately 64.1 metres to Pearl Street, a frontage of 61.1 metres to Walenore Avenue and a rear frontage of 121.3 metres to Alice Lane. The site has a total site area of approximately 8,297sqm.

The existing improvements on site include three (3) attached industrial masonry buildings containing retail and warehouse space and an open car parking area containing approximately 90 car spaces. The subject site has a vehicular crossing from Pearl Street and an additional vehicular crossing from Walenore Avenue.

The subject site is located adjacent to a public reserve, known as Matt Hogan Reserve and a mixture of residential development, ranging in height between single storey and four storeys, to the north, residential development, ranging in height between single storey and four storeys, to the west, single storey and two storey residential development to the east and a mixture of single storey and two storey residential development to the south.

The site is also located 130 metres west of the King Street commercial/retail strip and within the Camdenville Planning Precinct (Precinct 9.14) under Marrickville Development Control Plan 2011.

Properties on the northern side of Alice Street have a mix of residential zones (R1 – General Residential, R2 – Low Density Residential, R3 – Medium Density Residential and R4 – High Density Residential) whilst properties on the southern side of Alice Street and properties to the south of the subject property are generally all zoned R2 – Low Density Residential.

3. The Proposal

Approval is sought to demolish the existing structure, carry out preparatory site works and erect a mixed-use development containing retail tenancies and residential apartments that varies between three and six storeys above basement car parking, along with associated landscaping, drainage and related works. The development will comprise:

- 206 residential dwellings (19 x studios, 81 x 1 bedroom units, 87 x 2 bedrooms units and 19 x 3 bedroom units);
- A basement car park containing 163 car parking spaces (58 residential spaces, 42 adaptable residential spaces, 17 visitor spaces, 11 visitor accessible spaces, 31 commercial spaces and 4 commercial accessible spaces) accessed via Pearl Street;
- Five (5) loading/unloading spaces of which four (4) loading/unloading spaces, for delivery vans, are located within the basement level off Pearl Street and one (1) loading/unloading area, for large trucks, located off Walenore Avenue.
- Seven (7) retail/commercial tenancies, amounting to a total area of 1,478.9sqm, primarily located along the Alice Street frontage (but also along either side of the “pocket park” described below); and
- A central landscaped courtyard area on the western part of the site, with an area of approximately 1,2075sqm and a “pocket park” on the eastern part of the site, with an area of approximately 1,105sqm.

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

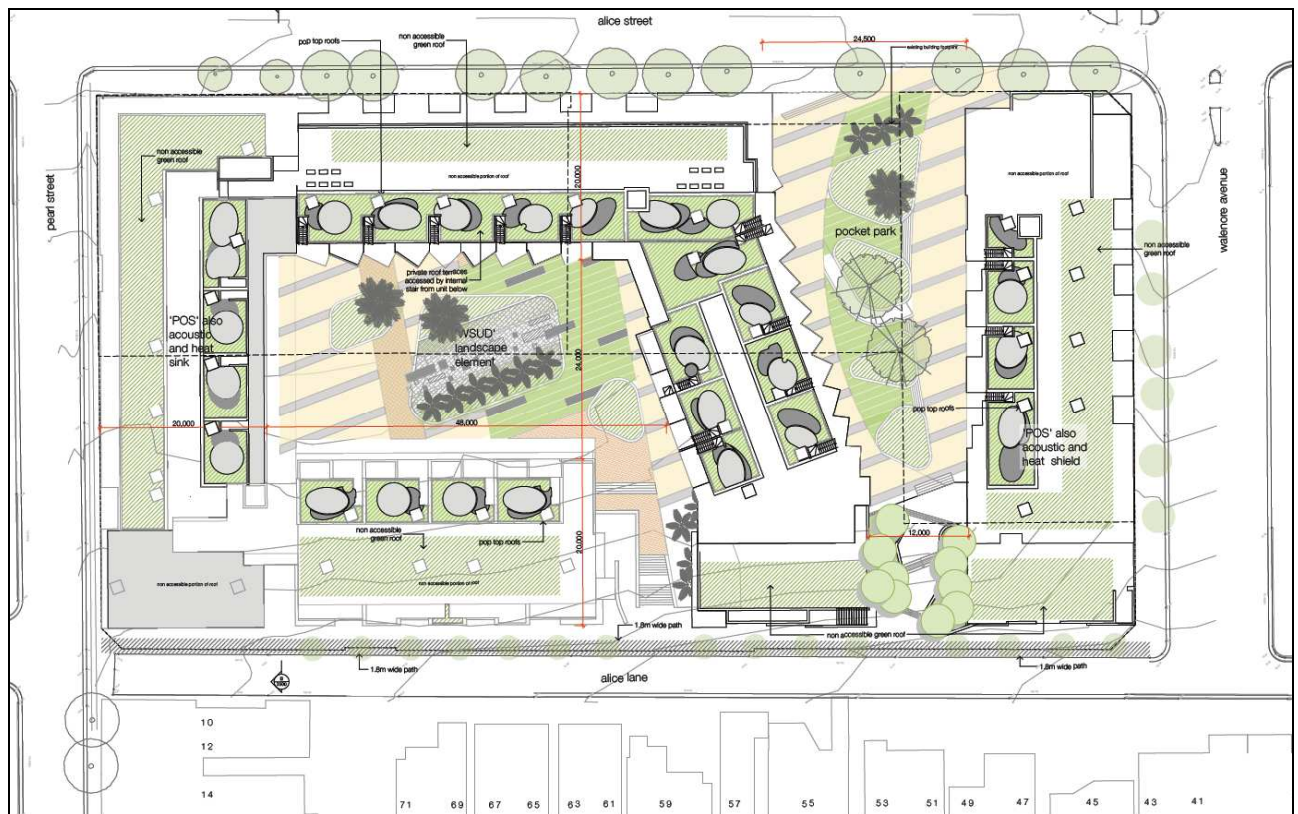


Image 8: Proposed Site Plan

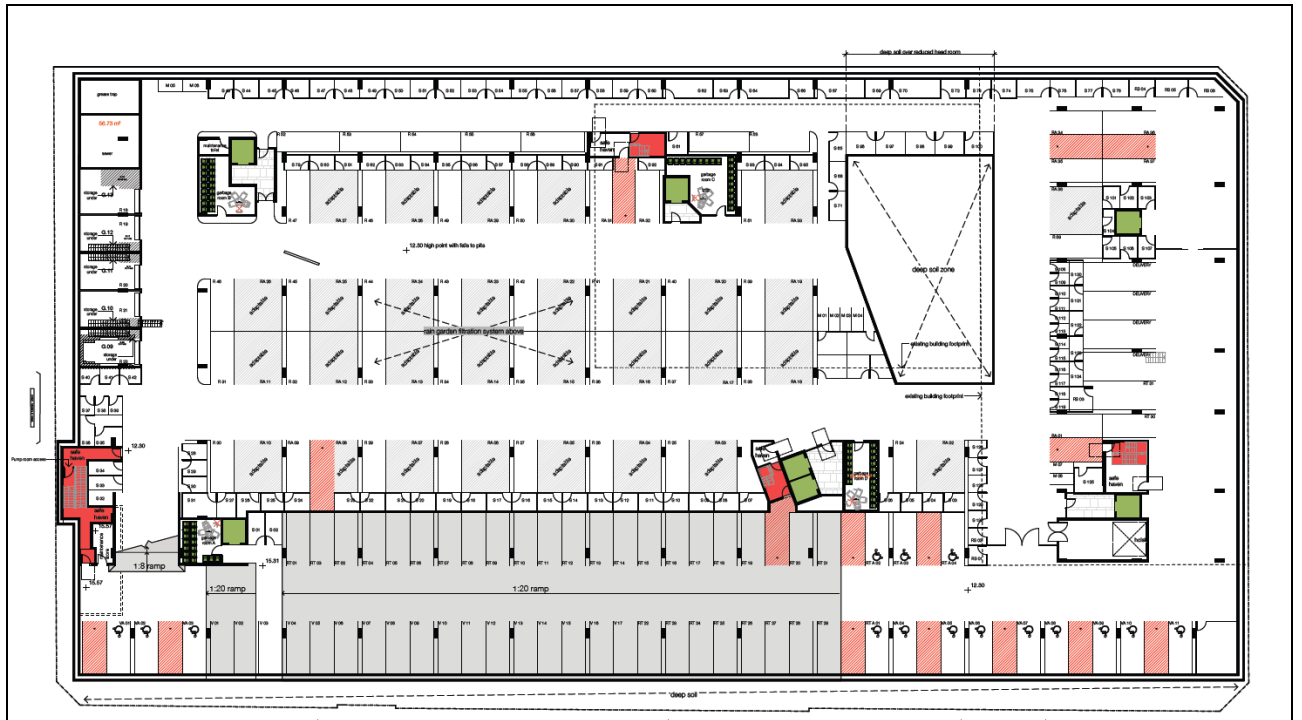


Image 9: Proposed Basement Level

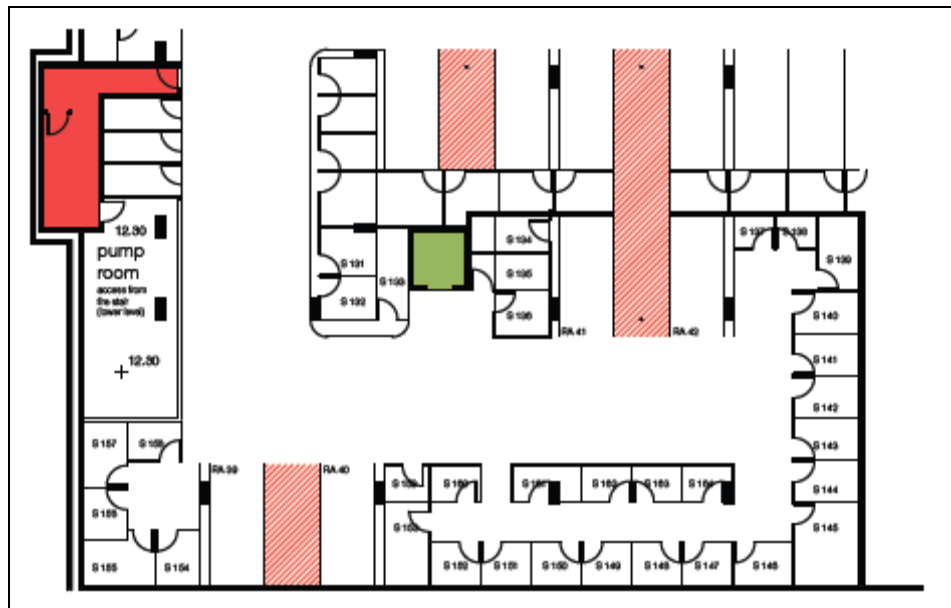


Image 10: Proposed Sub-Basement Level

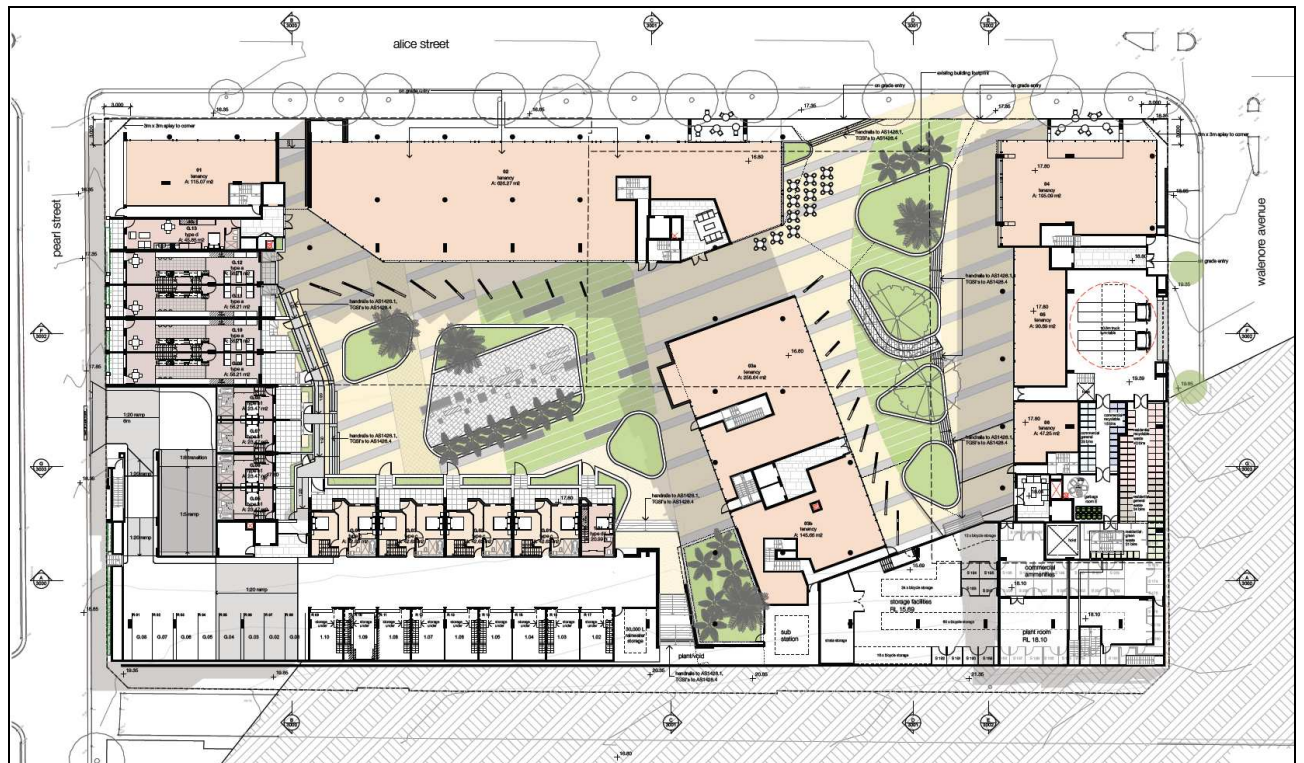


Image 11: Proposed Ground Floor Level



Image 12: Proposed First Floor Level

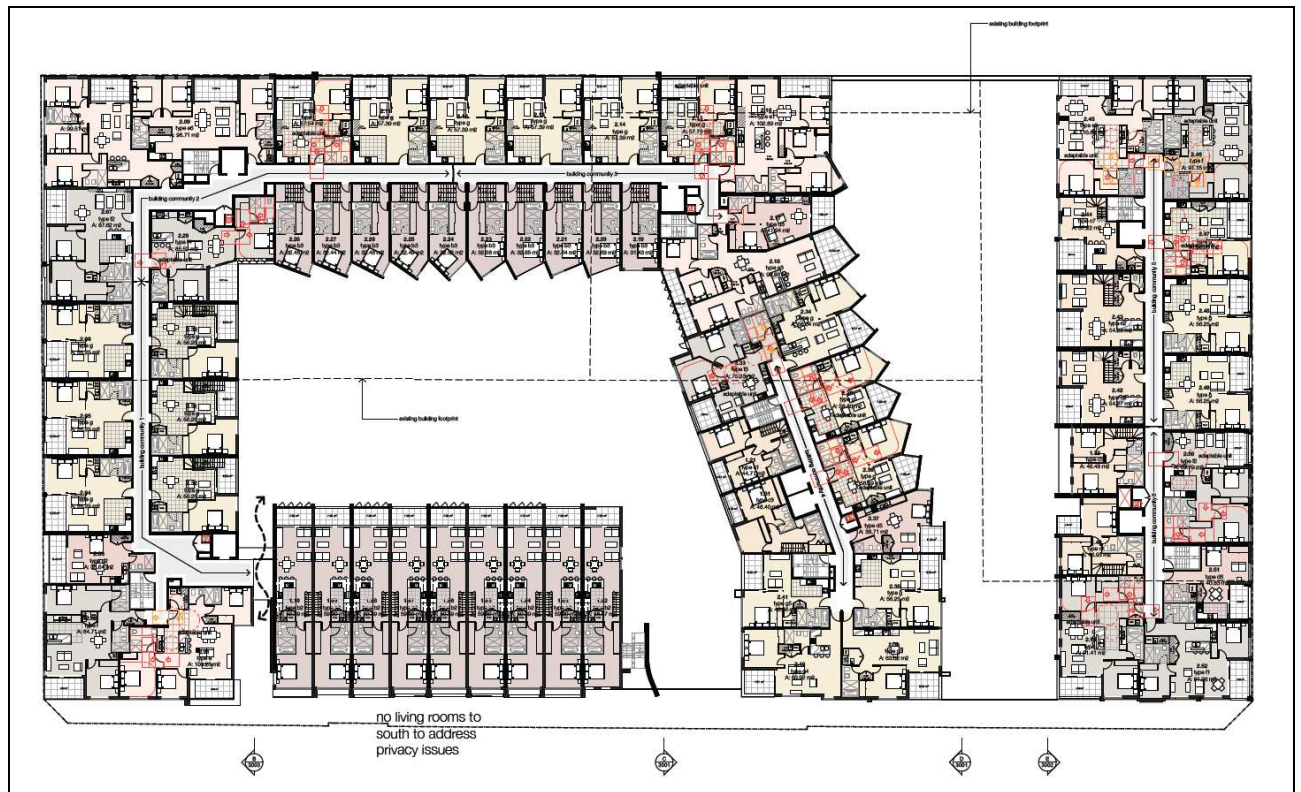


Image 13: Proposed Third Floor Level



Image 14: Proposed Fourth Floor Level



Image 15: Proposed Fifth Floor Level

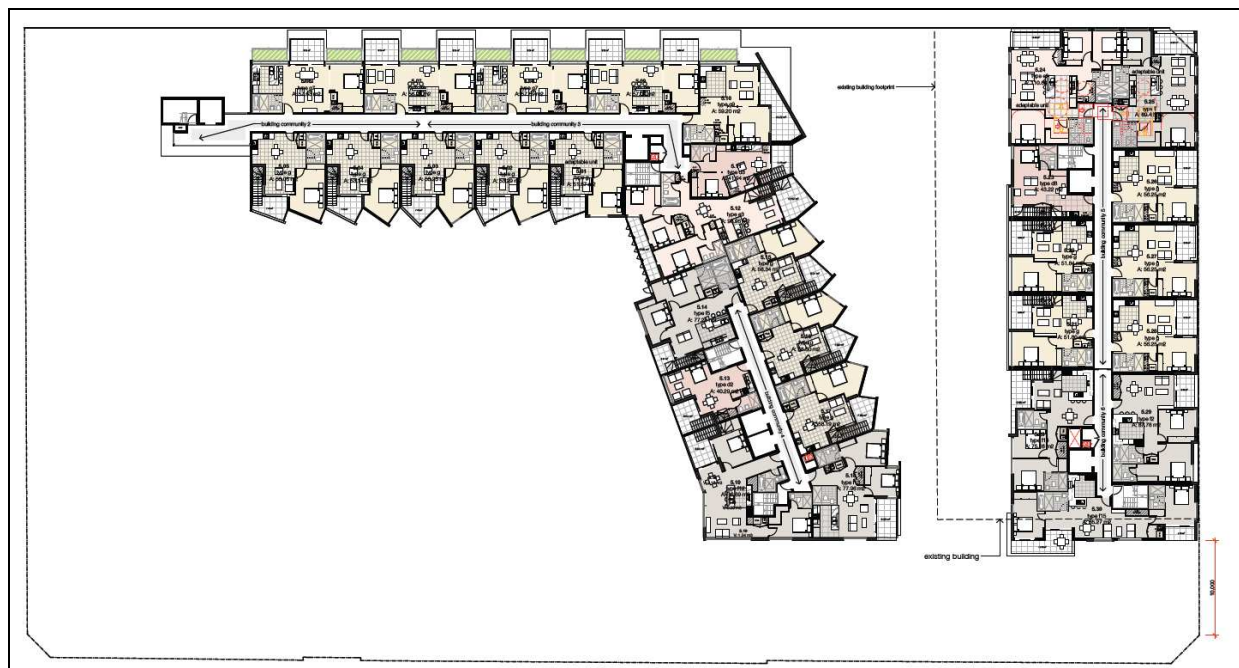


Image 16: Proposed Sixth Floor Level



Image 17: Proposed Northern Elevation (Alice Street)



Image 18: Proposed Eastern Elevation (Walenore Avenue)



Image 19: Proposed Southern Elevation (Alice Lane)

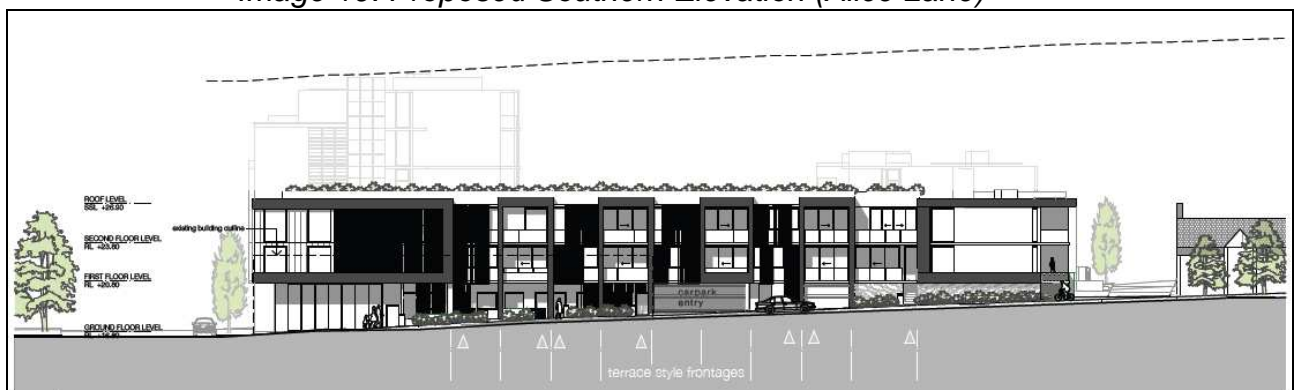


Image 20: Proposed Western Elevation (Pearl Street)

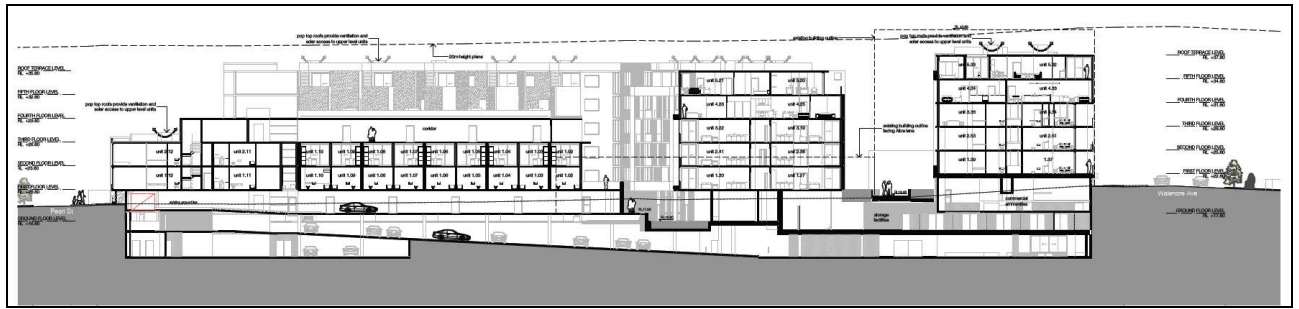


Image 21: Proposed Section A-A



Image 22: Proposed Section B-B



Image 23: Proposed Section C-C



Image 24: Proposed Section D-D

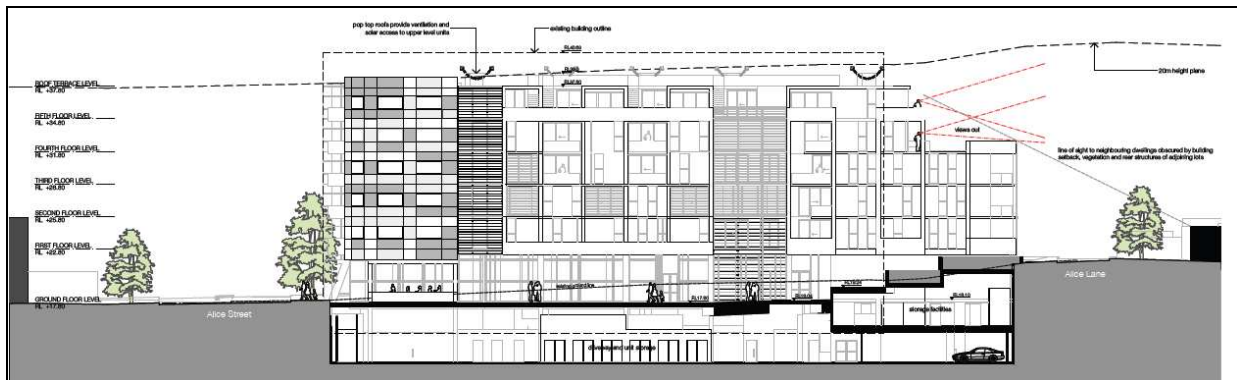


Image 25: Proposed Section E-E

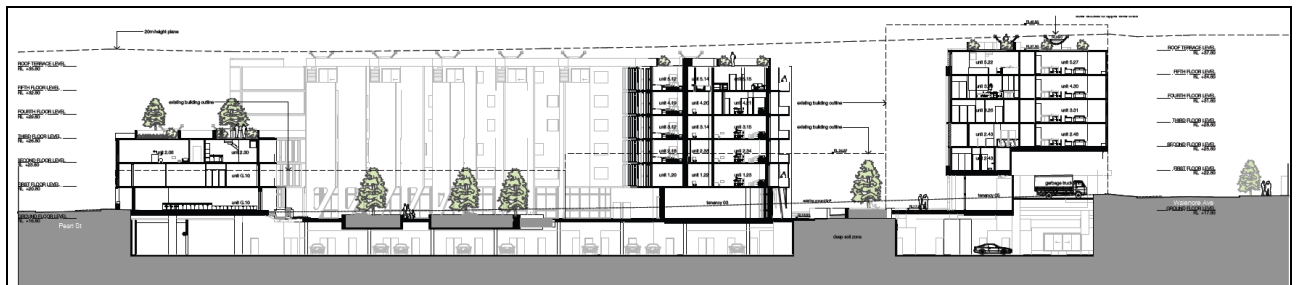


Image 26: Proposed Section F-F

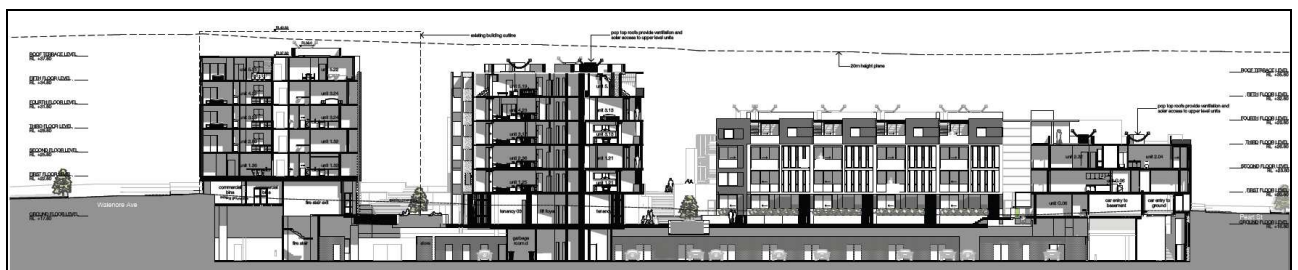


Image 27: Proposed Section G-G



Image 28: Proposed Photomontage of corner of Alice Street and Walenore Avenue



Image 29: Proposed Photomontage of Alice Street

4. State Environmental Planning Policy No. 55 - Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. Marrickville Development Control Plan 2011 (MDCP 2011) provides controls and guidelines for remediation works. Where a site is found to be contaminated, 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.

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 and currently being used for various industrial purposes which indicates that the subject site could potentially be contaminated.

Pursuant to SEPP 55, the NSW Department of Planning and Infrastructure's guidelines "Managing Land Contamination - Planning Guidelines for SEPP 55 - Remediation of Land" (SEPP 55 Guidelines) and Marrickville Development Control Plan 2011 (MDCP 2011), a *Stage 1 Environmental Site Assessment, Reference No. E25650KrprtRev1, prepared by Environmental Investigation Services, dated April 2012* was submitted with the application, which concluded the following:

"7.3 Conclusion

Based on the scope of work undertaken for this assessment EIS consider that the site can be made suitable for the proposed residential development provided that:

- 1. A Hazardous Building Materials assessment is undertaken prior to demolition of site structures and that any Hazardous Building Material is removed appropriately;*
- 2. After demolition and removal of the pavements the site is inspected by an experienced environmental consultant. This should include sampling and analysis of the soil beneath the sub-station for PCBs;*
- 3. Further soil testing is undertaken so that an appropriate waste classification can be assigned to excavated fill soil prior to off-site disposal;*
- 4. Prior to excavation an "Unexpected Finds" protocol is prepared and implemented for the excavation works. This document should include any contingencies for encountering groundwater seepage during excavation works."*

A condition should be imposed on any consent granted requiring the recommendations contained within *Stage 1 Environmental Site Assessment, Reference No. E25650KrprtRev1, prepared by Environmental Investigation Services, dated April 2012* are implemented.

5. State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings

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.

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

The Design Verification Statement also provided an assessment of the proposal with respect to the ten design principles contained in SEPP 65. It is considered that the proposed development does not satisfy the ten design quality principles, particularly with regards to Principle 1: Context, Principle 2: Scale, Principle 4: Density, Principle 5: Amenity and Principle 9: Social Dimensions and Housing Affordability this is discussed further below and in Section 7 and Section 9 of this report.

Residential Flat Design Code

The Residential Flat Design Code (RFDC) is a set of guidelines that provide benchmarks for better practice in the planning and design of residential flat buildings to achieve environmental sustainability, improved energy efficiency and residential amenity and higher design quality to improve the presentation of the building to the street. The Code achieves this by providing controls to ensure that developments respond to their local context, and provide a suitable site analysis and quality design. The controls contained in the Code are required to be addressed in any Development Application submitted for the proposal.

Whilst the majority of the provisions contained in the RFDC are generally covered by MDCP 2011 and are considered as part of the assessment of the application presented throughout this report, the RFDC contains the following requirements that are not specifically addressed in MDCP 2011:

(i) Apartment Layouts and Minimum Areas

Under the RFDC, the following minimum apartment sizes are recommended for dwellings within a residential flat development:

Apartment Type	Minimum Internal Area
Studio	38.5sqm
One Bedroom Cross Through	50sqm
One Bedroom Single Aspect	63.4sqm
Two Bedroom Corner	80sqm
Two Bedroom Cross Through	89sqm
Two Bedroom Cross-Over	90sqm
Three Bedroom	124sqm

Approximately 50.4% (104 dwellings) of the 206 proposed dwellings do not comply with the minimum internal area prescribed by the RDFC. 1% of studios, 74% of 1 bedroom dwellings, 23% of 2 bedroom dwellings and 100% of 3 bedroom dwellings do not comply with the minimum area requirements. It is considered that the non-compliance with the minimum internal areas for the proposed dwellings is a direct result of the development attempting to accommodate the amount of dwellings proposed within the development, which encourages poor internal layout of dwellings and encourages the inappropriate density of the proposal. The inappropriate density contributes to the excessive floor space ratio of the development and translates into unacceptable amenity impacts, particularly with regards to traffic impacts for the surrounding area.

It is noted that a number of the proposed dwellings within the development are two bedroom dwellings with single aspect. It is noted that the RDFC does not prescribe a minimum area for such dwellings. As those dwellings are considered to be more akin to two bedroom cross through dwellings the minimum internal areas for such dwellings under the RDFC has been used as a guide.

(ii) Ceiling Heights

The proposed development has a floor to ceiling height of 3.3 metres to 3.6 metres for the ground floor level retail tenancies and floor to ceiling heights of 2.7 metres for the residential components of the development. The proposed development complies with the minimum floor to ceiling height requirements of the RDFC.

6. State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

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

A BASIX Certificate accompanied the application indicating the proposal achieves full compliance with the BASIX requirements for water, energy and thermal comfort. The proposed development is considered satisfactory having regard to the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

Should the application be approved, it is recommended that the BASIX Certificate be referenced as part of the approved plans and documents for the proposed development in condition 1 on any consent granted for the proposal.

7. Marrickville Local Environmental Plan 2011

Marrickville Local Environmental Plan 2011 (MLEP 2011) was gazetted commencing on 12 December 2011 and is the principal Environmental Planning Instrument applying to the land. An assessment of the proposed development having regard to the relevant provisions of MLEP 2011 is provided below.

(i) Land Use Table and Zone Objectives (Clause 2.3)

The property is zoned B4 - Mixed Use under the provisions of MLEP 2011. The proposed development is permissible with Council's consent under the zoning provisions applying to the land.

The proposed development is considered acceptable having regard to the objectives of the B4 - Mixed Use zone.

(ii) Additional Permitted Uses for particular land (Clause 2.5)

The subject property is described or referred to in Schedule 1 of MLEP 2011 which permits additional permitted uses. Under the Schedule, development for the purpose of residential accommodation is permitted with consent on the subject property, but only as part of a mixed use development. The proposed development is permissible with Council's consent under Clause 2.5 of MLEP 2011.

(iii) Demolition (Clause 2.7)

Clause 2.7 of MLEP 2011 states that the demolition of a building or work may be carried out only with development consent. The application seeks consent for the demolition of existing improvements on the site.

(iv) Height (Clause 4.3)

A maximum building height of 20 metres applies to the property as indicated on the Height of Buildings Map that accompanies MLEP 2011. The proposed development has a maximum building height of 20 metres which complies with the abovementioned development standard.

Whilst the development complies with the height development standard under MLEP 2011, the Marrickville Development Control Plan 2011 prescribes additional height and massing requirements, which the proposed development does not comply with. This matter is discussed further in Section 5 of this report under the heading '*Part 9 – Strategic Context.*'

(v) Floor Space Ratio (Clause 4.4)

A maximum floor space ratio (FSR) of 1.85:1 applies to the land as indicated on the Floor Space Ratio Map that accompanies MLEP 2011.

Based on the plans and information accompanying the application, the proposal has a GFA of approximately 19,363.6sqm equating to a FSR of approximately 2.33:1, on the 8,297sqm site which exceeds the maximum FSR of 1.85:1 prescribed for the site under MLEP 2011. The proposal amounts to a departure of 4,014sqm or 26%.

It is noted that the proposed development provides car parking in excess (approximately 40 car spaces) of the car parking requirements for the residential and retail/commercial components prescribed under Part 2.10 Parking under MDCP 2011. In accordance with the gross floor area definition contained in MLEP 2011, car parking in excess of Council's requirements constitutes gross floor area and as such is required to be included within the FSR calculation of the proposal which does not appear to be included in the abovementioned calculation supplied by the applicant.

In light of the above, Council's Development Assessment Officer has calculated the proposed development to have an FSR of 2.4:1 or 19,903.6sqm, amounting to a departure of 4,554sqm or 30%.

The application was accompanied by a written submission in relation to the contravention of the subject development standard in accordance with Clause 4.6 (Exceptions to Development Standards) of MLEP 2011. The submission is discussed in this Section of the report under the heading "*Exceptions to Development Standards (Clause 4.6)*".

(vi) Exceptions to Development Standards (Clause 4.6)

Clause 4.6 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.

As detailed earlier in this report, the proposed development exceeds the maximum floor space ratio development standard prescribed under Clause 4.4 of MLEP 2011. The application was accompanied by a written submission in relation to the contravention of the subject development standard in accordance with Clause 4.6 (Exceptions to Development Standards) of MLEP 2011.

The applicant considers compliance with the development standard to be unreasonable and unnecessary for the following reasons:

"4. JUSTIFICATION

Pursuant to the provisions of Clause 4.6 of MLEP 2011, the Applicant seeks to vary the strict application of the "Floor Space Ratio" development standard of 1.85:1 in Clause 4.4 of MLEP 2011 in the circumstances of this case.

4.1 What is the Purpose/Object of the Standard?

The objectives of the FSR controls in MLEP 2011 are set out in Clause 4.4(1) of the LEP...

In relation to Objective (b):-

- the location, configuration, setbacks and separation of future buildings on the site are set out in Clause 9.14.5 of Marrickville DCP: the proposal displays a high degree of conformity with these requirements;*
- the requirements referred to above, along with the B4 Mixed Use zoning of the site, effectively outline its desired future character;*
- the proposal is highly consistent with this desired future character;*
- the “bulk” of the buildings to be erected on the site is consequential upon the building “envelopes” illustrated on the DCP diagrams and compliance with the maximum height control of 20 metres in MLEP 2011, with which the proposal complies;*
- as additional floor space can be included in the proposed development (over and above the 1.85:1 limit) without unreasonably or unacceptably adding to the bulk of the proposed building, then the objective is satisfied;*
- in the event it is argued (against the proposition for non-compliance with the 1.85:1 FSR standard) that compliance with the storey control in the DCP would result in a lesser bulk, it can reasonably be said that there is no limitation in the DCP on the floor-to-floor height of a storey, therefore there is no virtue in mere compliance/satisfaction of the storeys control in the DCP, as such compliance could potentially result in a building of greater height and bulk than a compliant building; and*
- the proposed GFA is accommodated in high-quality buildings, the size and scale of which are consistent with the desired future character for this large site.*

In relation to Objective (c):-

- adverse environmental impacts have been minimised by ensuring that the additional GFA does not contribute to unreasonable amenity impacts on neighbouring land;*
- the site is separated from surrounding land by public roads, thereby minimising such impacts; and*
- the public domain will be enhanced by the proposal, particularly through the provision of a new footpath along the northern side of Alice Lane.*

4.2 Is compliance with the Development Standard unreasonable or unnecessary in the circumstances of the case?

Strict compliance with the “Floor Space Ratio” development standard in Clause 4.4 of MLEP 2011 is considered to be unreasonable and unnecessary in the circumstances of the case for the following reasons.

- the characteristics of the site (i.e. large size, single ownership, surrounded by streets) are such that it can accommodate the additional GFA without unreasonable impacts on adjoining land;*
- the proposal meets the objectives of the FSR development standard;*

- *the proposal readily complies with the 20 metre height control in the LEP, especially in those locations most sensitive to potential adverse impacts;*
- *the proposal generally complies with the building location and building separation requirements in the Marrickville DCP; and*
- *the proposed additional floor area will not have an unreasonable impact on the perceived bulk or scale of the development, particularly given compliance with the height control in the LEP.*

4.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposal seeks consent for the development of a mixed use development within an area which is close to employment, education and retail opportunities, and which is well served by public transport. It is imperative that the site be put to as efficient a use as possible.

The proposal is broadly consistent with the objectives and requirements contained within Council's planning instruments, development guidelines and other requirements and will result in no significant adverse environmental impacts.

The proposal will deliver a well-designed, high-quality, mixed-use environment which will provide new residents with excellent amenity without unreasonably diminishing the amenity of existing residents.

The inherent characteristics of the site, including its size, topography, availability of services, surroundings proximity to facilities and services including public transport, shops, schools and other activities, make the site eminently suitable for implementing urban consolidation to the fullest extent practicable.

5. CONCLUSION

Having regard to the above, it can be concluded that the proposed non-compliance with the FSR standard does not undermine or frustrate the underlying objectives of the standard, gives rise to no significant adverse environmental impacts, and therefore strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case."

As previously mentioned, Council's Development Assessment Officer has calculated the proposed development to have an FSR of 2.4:1 or 19,903.6sqm, amounting to a departure of 4,554sqm or 30%.

The development also results in a built form which contravenes the massing/height controls as prescribed for the Camdenville Planning Precinct under Part 9.14 of the MDCP 2011.

It is acknowledged that the proposed development complies with the maximum building height of 20 metres applying to the property on the Height of Buildings Map that accompanies MLEP 2011. However, Part 9.14 of MDCP prescribes height and massing parameters in addition to MLEP in order to achieve the desired future character for the Camdenville Planning Precinct.

The building form prescribed by the strategic context planning controls for the precinct are between 5 storeys and 3 storeys along Alice Street and Walenore Avenue and generally between 3 storeys and 2 storeys along Pearl Street and Alice Lane. The development contravenes the built form controls as follows:

- 6 storeys are proposed for the building on the corner of Alice Street and Walenore Avenue;
- 6 storeys are proposed for the building along the Alice Street frontage;
- 3 storeys plus the upper portion of the basement level (above 1 metre ground level) are proposed on the corner of Walenore Avenue and Alice Lane; and
- 2 storeys plus the upper portion of the basement level (above 1 metre ground level) are proposed on the corner of Pearl Street and Alice Lane.

The excessive FSR combined with the non-conforming building mass results in an overdevelopment of the site, which does not respect the desired future character for the Camdenville Planning Precinct. The FSR departure is a direct result of the additional storeys (building mass) proposed within the development. Compliance of the proposed development with the desired future character for the Camdenville Planning Precinct is discussed further in Section 9 of this report under the heading *“Part 9 Strategic Context”*.

The FSR non-compliance results in additional site density that translates into unacceptable amenity impacts, particularly with regards to traffic impacts. That matter is discussed in Section 9 of this report under the heading *“Parking (Part 2.10)”*.

In light of the above, the justification provided above is not considered to be well founded and worthy of support. The development amounts to a significant departure from the FSR development standard and does not satisfy the FSR objectives particularly with regards to compliance with the desired future character of the area.

Subclause (5) of Clause 4.6 of MLEP 2011 requires an assessment of the following:

- whether the contravention of the development standard raises any matter of significance for State and regional environmental planning, and
- the public benefit of maintaining the development standard, and
- any other matters required to be taken into consideration by the Director General before granting concurrence.

The subject property was formerly zoned Light Industrial under Marrickville Local Environmental Plan 2001. The subject land was rezoned B4 – Mixed Use under Marrickville Local Environmental Plan 2011 and site specific controls were developed for the site including a maximum floor space ratio of 1.85:1. The proposed development exceeds that site specific development standard by approximately 30% which in gross floor area terms amounts to a exceedence of over 4,500sqm. It is considered that a planning proposal would be required for such a significant departure.

In view of the circumstances it is considered that the contravention of the development standard raises a matter of significance for State and regional

environmental planning, and that there is public benefit in maintaining the development standard for the proposed development. As such it is considered that the applicant's written request in relation to the departure from the floor space ratio development standard is not well founded or worthy of support.

(vii) Development Below Mean High Water Mark (Clause 5.7)

The subject property is not located on land that is located below mean high water mark.

(viii) Preservation of Trees or Vegetation (Clause 5.9)

Clause 5.9 of MLEP 2011 concerns the protection of trees identified under Marrickville Development Control Plan 2011. The application was referred to Council's Tree Management Officer who identified that the proposed development would affect 56 trees, consisting of trees located within the subject site and street trees, protected under MDCP 2011.

Council's Tree Management Officer advised that the *Arboricultural Impact Assessment Report prepared by Redgum Horticultural*, accompanying the subject application, is deficient in its accuracy and reliability with regard to the value of the trees assessed and the subsequent recommendations for removal and retention. Also the proposed landscape plan, submitted with the application, does not address or demonstrate that the trees proposed for removal are adequately compensated for by the proposed plantings.

In light of the above, a proper assessment of the application in accordance with Clause 5.9 of MLEP 2011 and MDCP 2011 could not be carried out.

(ix) Heritage Conservation (Clause 5.10)

The subject property is not listed as a heritage item under MLEP 2011 and is not located within a Heritage Conservation Area under MLEP 2011. However, the subject site is located adjacent a heritage item at Nos. 63-69 Alice Street (Item No. I133) and adjacent the Holmwood Estate Heritage Conservation Area. It is considered that the proposed development would not adversely affect the heritage significance of the adjacent heritage item or the adjacent heritage conservation area.

(x) Acid Sulfate Soils (Clause 6.1)

A portion of the subject property (along the corner of Pearl Street and Alice Lane, south eastern corner of site) is identified as land being affected by Class 5 acid sulfate soils on the MLEP 2011 Acid Sulfate Soils Map.

A *Stage 1 Environmental Site Assessment, Reference No. E25650KrpptRev1, prepared by Environmental Investigation Services, dated April 2012* was submitted accompanying the application which concluded the following with regards to acid sulfate soils:

“7.2 Potential for Acid Sulfate Soil Conditions

EIS consider the risk of encountering acid sulfate soil materials at the site to be very low for the following reasons:

- *The Class 5 planning map evaluation for part of the site is relevant for works which are likely to lower the water table by 1 metre. Based on the proposed development plans and subsurface conditions encountered during the EIS 2004 investigation, EIS do not consider de-watering will be required;*
- *The acid sulfate soil risk map for the Newtown area does not indicate the site is in an area of known occurrences of acid sulfate soil material; and*
- *The EIS 2004 site subsurface investigation encountered residual soil overlying relatively shallow bedrock. Acid sulfate soil conditions are usually encountered in alluvial or depositional environments.*

EIS do not consider that an acid sulfate soil management plan for the site will be necessary.”

In light of the above assessment, it is considered that the proposed development would not adversely affect the water table within the area.

(xi) Earthworks (Clause 6.2)

Clause 6.2 of MLEP 2011 requires the consent authority to consider any potential detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land where earthworks that require development consent are proposed.

A Preliminary Geotechnical Investigation, Ref:25648VCrpt Newtown, prepared by Jeffery and Katauskas Pty Ltd was submitted accompanying the application which made preliminary recommendations to address the matter of acid sulfate soils and excavation for the redevelopment of the subject site. Should the application be supported, a condition should be imposed on any consent granted requiring the earthworks associated with the development to be carried out in accordance with the recommendations contained in Preliminary Geotechnical Investigation, Ref:25648VCrpt Newtown, prepared by Jeffery and Katauskas Pty Ltd.

(xii) Flood Planning (Clause 6.3)

The subject property is not identified as land that is shown as “Flood planning area” on the MLEP 2011 Flood Planning Area Map, or land at or below the flood planning level.

(xiii) Terrestrial Biodiversity (Clause 6.4)

Clause 6.4 of MLEP 2011 requires consideration be given to conservation of biodiversity as is of relevance to the subject application and applies to land identified as “Biodiversity” on the Natural Resource - Biodiversity Map that accompanies MLEP 2011.

The subject property is not identified as “Biodiversity” on the MLEP 2011 Natural Resource - Biodiversity Map and therefore this Clause does not apply to the proposal.

(xiv) Development in areas subject to Aircraft Noise (Clause 6.5)

Clause 6.5 applies to development that (in part) is in an ANEF contour of 20 or greater, and the consent authority considers is likely to be adversely affected by aircraft noise.

The subject property is located within the 20-25 Australian Noise Exposure Forecast (2029) Contour.

It is considered that the proposed development is likely to be affected by aircraft noise. It is considered that the carrying out of proposed development would result in an increase in the number of people affected by aircraft noise.

The proposed development would need to be noise attenuated in accordance with AS2021:2000. An Acoustic Report accompanied the application which details that the proposed development could be noise attenuated from aircraft noise to meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS2021:2000. Should the application be supported, it is recommended that the report be referenced as part of the approved plans and documents listed in condition 1 of any consent granted for the proposal.

(xv) Airspace Operations (Clause 6.6)

The proposed development would not penetrate the Limitation or Operations Surface.

(xvi) Foreshore Building Line (Clause 6.7)

The proposed development is not located on land that is located in the foreshore area as identified on the MLEP 2011 Foreshore Building Line Map.

8. Draft Marrickville Local Environmental Plan 2011 (Amendment 1)

Draft Marrickville Local Environmental Plan 2011 (Amendment 1) (the Draft LEP Amendment) was placed on public exhibition commencing 25 September 2012 and accordingly is a matter for consideration in the assessment of the subject development application under Section 79C(1)(a)(ii) of the Environmental Planning and Assessment Act 1979.

The amended provisions contained in the Draft LEP Amendment are not relevant to the assessment of subject development application.

9. Marrickville Development Control Plan 2011

Marrickville Development Control Plan 2011 (MDCP 2011) provides detailed guidelines necessary to implement Marrickville Local Environmental Plan 2011 and provides guidance for the design and assessment of new development. The DCP provides controls relating to General Provisions including access and mobility, acoustic and visual privacy, solar access and overshadowing, community safety, parking and access and also provides controls relating to Development including built form and character, streetscape, general appearance and materials, parking and access and site facilities.

An assessment of the proposed development having regard to the relevant provisions of MDCP 2011 is provided below.

PART 2 - GENERIC PROVISIONS

(i) Urban Design (Part 2.1)

Part 2.1 of MDCP 2011 contains controls relating to urban design. The Statement of Environmental Effects accompanying the application addressed the relevant aspects of the 12 urban design principles prescribed by MDCP 2011. The proposed development generally achieves compliance with the urban design principles, with the exception of Principle 4: Appropriate Density and Principle 9: Sense of Place and Character in Streetscapes and Townscapes.

As previously mentioned, a maximum floor space ratio (FSR) of 1.85:1 applies to the land as indicated on the Floor Space Ratio Map that accompanies MLEP 2011. The FSR ie density prescribed for the site is much higher than that prescribed for the properties surrounding the site. The properties surrounding the subject site have a relatively lower density (FSR) prescribed under MLEP 2011. The proposed development has a FSR of 2.4:1 or 19,903.6sqm, amounting to a departure of 4,554sqm or 30%. This is a significant departure from the prescribed FSR development standard and results in an inappropriate density for the subject site and surrounding low-density residential areas. This matter has been discussed in Section 7 of this report under the heading "*Exceptions to Development Standards (Clause 4.6)*".

The subject site is also located within the Camdenville Planning Precinct (Precinct 9.14). The proposed development does not comply with the future desired character and site specific controls prescribed by the strategic context planning controls under Part 9.14 of MDCP 2011. This matter is discussed in this section of the report under the heading *Part 9 Strategic Context*".

The subject property is a stand alone property. Site specific controls were developed for the property as part of Marrickville Local Environmental Plan 2011 including a maximum floor space ratio for development on the land of 1.85:1. The floor space ratio prescribed for the site is significantly higher than the maximum floor space ratio of 0.85:1 permitted for residential flat buildings on land in the immediate area where such developments are permitted under the zoning provisions applying to the land.

The maximum floor space ratio set for the subject property of 1.85:1 was considered to be an appropriate density for the site. The proposed development has a floor space ratio well in excess of what was considered to be an appropriate density for the site as reflected in the floor space ratio development standard applying to the land under MLEP 2011.

In light of the above, it is considered that the proposed development does not achieve compliance with Principle 4: Appropriate Density and Principle 9: Sense of Place and Character in Streetscapes and Townscapes in accordance with Part 2.1 of MDCP 2011.

(ii) Site and Context Analysis (Part 2.3)

A site and context analysis was submitted with the development application and is considered acceptable.

(iii) Equity of Access and Mobility (Part 2.5)

Part 2.5 of MDCP 2011 specifies the minimum access requirements including the following accessible facilities in accordance with the relevant Australian Standards:

Residential Component:

- In developments containing five or more dwellings, a minimum of one adaptable dwelling, designed in accordance with relevant Australian Standards must be provided for every five dwellings or part thereof; and
- Appropriate access for all persons through the principal entrance of a building and access to any common facilities;
- One accessible parking space for every adaptable dwelling; and
- One accessible visitor's parking space for every four accessible parking spaces or part thereof, designed in accordance with relevant Australian Standards.

Commercial Component:

- Appropriate access for all persons through the principal entrance of a building and a continuous accessible path of travel (CAPT), designed in accordance with the Building Code of Australia and relevant Australian Standards; and
- General access for all persons to appropriate sanitary facilities and other common facilities including kitchens, lunch room, shower facilities and outdoor recreational facilities; and
- In a car parking area containing 10 or more car spaces, a minimum of one (1) accessible car parking space being provided for every 10 car spaces or part thereof.

In accordance with the above requirements and based on the plans and information accompanying the Development Application, the proposed development would require a minimum of 42 adaptable dwellings, 42 accessible resident parking spaces, 11 accessible visitor parking spaces and 4 accessible commercial parking spaces. In addition, all areas of the proposed development would need to be accessible by persons with a disability and the retail tenancies require accessible sanitary facilities.

An Access Review Report, Issue No. Final (2), prepared by Funktion, dated 8 June 2012 was submitted with the documentation submitted with the development application that demonstrates that the proposal satisfies the access and mobility controls contained in MDCP 2011 in that:

- Appropriate access is provided for all persons through the principal entrance of each proposed building.
- A Continuous Accessible Path of Travel (CAPT) to and within the subject premises is provided which allows a person with a disability to gain access to all areas of the development;
- The provision of various lifts to allow access to the upper levels and basement level of the development; and
- The provision of 42 adaptable dwellings, 42 accessible resident parking spaces, 11 accessible visitor parking spaces and 3 accessible commercial parking spaces.

Whilst the Access Review Report details the provision of 3 accessible commercial parking spaces, the development plans detail 4 accessible commercial parking spaces, which is consistent with the requirements under MDCP 2011. Given the above the proposed development is considered generally acceptable having regard to the access controls contained in MDCP 2011. However, no provision has been made for accessible sanitary facilities for the retail tenancies. A condition should be imposed on any consent granted requiring the provision of appropriate sanitary facilities for the retail tenancies.

Despite the above, the requirements of MDCP 2011 are effectively superseded by the introduction of the Premises Standards. An assessment of whether or not those aspects of the proposal fully comply with the requirements of relevant Australian Standards and the Premises Standards has not been undertaken as part of this application. That assessment would form part of the assessment under the Premises Standards at the Construction Certificate stage of any proposal.

(iv) Visual and Acoustic Privacy (Part 2.6)

Part 2.6 of MDCP 2011 contains the objectives and controls relating to acoustic and visual privacy including controls relating to aircraft noise, general acoustic privacy, visual privacy, air conditioning, and impacts of rail and road noise or vibration.

The layout and design of the proposed development would ensure that the visual and acoustic privacy currently enjoyed by residents of adjoining residential properties are protected. To ensure the development maintains acoustic and visual privacy for the surrounding residential properties and for future occupants of the proposed development, the following measures are proposed:

- The subject site is a 'stand-alone site' and is directly surrounded by public streets, which provides reasonable separation between the subject property and surrounding residential blocks.
- Concern was raised within the submissions received by Council during the notification period with regards to the proposed development adversely affecting

the visual privacy of the surrounding residential properties, particularly from the balconies, roof top terraces and living areas orientated to the street frontages of the site. To alleviate those issues the roof top terraces are oriented to overlook internally within the subject site. Also the proposed dwellings fronting Alice Lane have a minimum setback of 1.8 metres from the property boundary along Alice Lane. Any additional concerns can be dealt with the imposition of a condition should the application be approved, requiring the provision of privacy screens on the balconies and living area windows along the street frontages.

- The development provides building separation and the provision of privacy screens to restrict overlooking of the dwellings within the development.
- An *Acoustic Impact Assessment, Report No. 20C-12-0032-TRP-466604-2, prepared by VIPAC, dated 12 June 2012* was submitted with the application which made recommendations for mechanical and plant equipment to reduce any potential acoustic impact that may arise from the proposed development. Should the application be supported, a condition should be imposed on any consent granted requiring the development to be constructed in accordance with the recommendations of the Acoustic Impact Assessment Report.
- The matter of acoustic privacy in regards to aircraft noise has been discussed in Section 7 of this report under the heading "*Development in areas subject to Aircraft Noise (Clause 6.5)*".

(v) Solar Access and Overshadowing (Part 2.7)

Overshadowing

Part 2.7 of MDCP 2011 prescribes overshadowing controls for new development.

The shadow diagrams and sun study movies accompanying the application illustrate the extent of overshadowing on adjacent residential properties cast by the proposal and existing fencing. The shadow diagrams and sun study movies indicate that the development would affect No. 74 Alice Street and No. 76 Alice Street, located to the east of the subject site and also affect properties to the rear of the site, particularly No. 10 Pearl Street, No. 12 Pearl Street and Nos. 37-71 Holmwood Street (northern side of Holmwood Street, with a rear frontage to Alice Lane). Those residential properties are generally occupied by single storey and two storey dwelling houses.

The shadow diagrams and sun study movies accompanying the subject application demonstrate that the extent of shadowing cast on the surrounding residential properties as a result of the proposal and existing boundary fencing as follows:

Adjacent Property	Proposed Overshadowing
No. 74 Alice Street	Rear yard and side façade overshadowed at 9.00am, by 10.00am no shadow would be cast by the proposal. It should be noted that the dwelling house at No. 76 Alice Street currently shadows No. 74 Alice Street from 9.00am.

No. 76 Alice Street	Rear yard and side façade overshadowed between 9.00am to 10.00am, by 10.15am no shadow would be cast by the proposal. Due to the location of living area windows along the side façade, those windows will have the opportunity to receive solar access between 10.15am to approximately 12.30pm
No. 33 Holmwood Street	The proposed development would not overshadow No. 33 Holmwood Street.
No. 35 Holmwood Street	The proposed development would not overshadow No. 35 Holmwood Street.
No. 37 Holmwood Street	Rear yard would be overshadowed between 1.30pm to 3.00pm and rear façade would be shadowed between 2.45pm to 3.00pm. Between 9.00am and 1.30pm no shadow would be cast on the rear yard and rear facade.
No. 39 Holmwood Street	Rear yard would be overshadowed between 9.00am to 9.30am and between 2.00pm to 3.00pm; rear façade would be shadowed between 2.45pm and 3.00pm. Between 9.30am and 2.00pm no shadow would be cast on the rear yard and between 9.00am to 2.45pm no shadow would be cast on the rear façade by the proposal.
No. 41 Holmwood Street	Rear yard and rear façade would be overshadowed between 2.15pm to 3.00pm. Between 9.00am and 2.15pm no shadow would be cast by on the rear yard and rear façade.
No. 43 Holmwood Street	Rear yard would be overshadowed between 1.45pm to 3.00pm; rear façade would be shadowed between 1.30pm to 3.00pm. Between 9.00am and 1.30pm no shadow would be cast on the rear yard and rear façade.
No. 45 Holmwood Street	Rear yard would be overshadowed between 1.45pm to 3.00pm; rear façade would be shadowed between 9.00am to 9.45am and between 1.45pm to 3.00pm. Between 9.00am and 1.45pm no shadow would be cast on the rear yard and between 9.45am and 1.45pm no shadow would be cast on the rear façade.
No. 47 Holmwood Street	Rear yard would be overshadowed between 9.00am to 10.45am and between 11.45am to 2.00pm; rear façade would be shadowed between 1.15pm to

	2.00pm. Between 10.45am and 11.45pm and between 2.00pm to 3.00pm no shadow would be cast on the rear yard and between 9.00am and 1.15pm no shadow would be cast on the rear façade.
No. 49 Holmwood Street	Rear yard would be overshadowed between 9.00am to 9.15am and between 12.00pm to 1.15pm; rear façade would be shadowed between 2.45pm to 3.00pm. Between 9.15am to 12.00 noon and between 1.15pm to 3.00pm no shadow would be cast on the rear yard and between 9.00am and 2.45pm no shadow would be cast on the rear façade.
No. 51 Holmwood Street	Rear yard would be overshadowed between 9.00am to 9.30am, between 11.30am to 12.00 noon and between 2.30pm to 3.00pm; rear façade would be shadowed between 2.45pm to 3.00pm. Between 9.30am to 11.30am and between 12.00 noon to 2.00pm no shadow would be cast on the rear yard and between 9.00am and 2.45pm no shadow would be cast on the rear façade.
No. 53 Holmwood Street	Rear yard would be overshadowed between 2.00pm to 3.00pm; rear façade would be shadowed between 2.15pm to 3.00pm. Between 9.00am to 2.00pm no shadow would be cast on the rear yard and between 9.00am and 2.15pm no shadow would be cast on the rear façade.
No. 55 Holmwood Street	Rear yard would be overshadowed between 1.00pm to 3.00pm; rear façade would be shadowed between 1.15pm to 3.00pm. Between 9.00am to 1.00pm no shadow would be cast on the rear yard and between 9.00am and 1.15pm no shadow would be cast on the rear façade.
No. 57 Holmwood Street	Rear yard would be overshadowed between 9.00am to 10.15am and between 1.00pm to 2.00pm; rear façade would be shadowed between 1.00pm to 2.30pm. Between 10.15am to 1.00pm and between 2.00pm to 3.00pm no shadow would be cast on the rear yard and between 9.00am and 1.00pm no shadow would be cast on the rear façade.
No. 59 Holmwood Street	Rear yard would be overshadowed between 9.00am to 12.00 noon and completely shadowed at 3.00pm, rear

	<p>facade would be overshadowed between 9.00am to 9.45am and between 2.45pm to 3.00pm. Between 12.00 noon to 2.45pm no shadow would be cast on the rear yard and between 9.45am to 2.45pm no shadow would be cast on the rear façade.</p>
No. 61 Holmwood Street	<p>Rear yard would be overshadowed between 9.00am to 9.30am and between 1.00pm to 3.00pm, rear facade would be overshadowed between 2.15pm to 3.00pm, between 9.45am to 12.45pm no shadow would be cast by the proposal on the rear yard and between 9.00am to 2.00pm no shadow would be cast on the rear façade.</p>
No. 63 Holmwood Street	<p>Rear yard would be overshadowed between 1.15pm to 3.00pm; rear facade would be overshadowed between 2.15pm to 3.00pm. Between 9.00am to 1.15pm no shadow would be cast on the rear yard and between 9.00am to 2.15pm no shadow would be cast on the rear façade.</p>
No. 65 Holmwood Street	<p>Rear yard would be overshadowed between 9.00am to 9.30am and between 1.15pm to 3.00pm; rear facade would be overshadowed between 2.30pm to 3.00pm. Between 9.30am to 1.15pm no shadow would be cast on the rear yard and between 9.00am to 2.30pm no shadow would be cast on the rear façade.</p>
No. 67 Holmwood Street	<p>Rear yard would be overshadowed at 9.00am to 9.15am and between 1.00pm to 3.00pm; rear facade would be overshadowed between 2.15pm to 3.00pm. Between 9.15am to 12.45pm no shadow would be cast on the rear yard and between 9.00am to 2.15pm no shadow would be cast on the rear façade.</p>
No. 69 Holmwood Street	<p>Rear yard would be overshadowed between 9.00am to 9.15am and between 1.15pm to 3.00pm; rear facade would be overshadowed between 2.30pm to 3.00pm. Between 9.15am to 1.00pm no shadow would be cast on the rear yard and between 9.00am to 2.30pm no shadow would be cast on the rear façade.</p>
No. 71 Holmwood Street	<p>Rear yard would be overshadowed between 9.00am to 9.15am and between 1.15pm to 3.00pm; rear facade would be</p>

	overshadowed between 2.15pm to 3.00pm. Between 9.15am to 1.00pm no shadow would be cast on the rear yard and between 9.00am to 2.00pm no shadow would be cast on the rear façade.
No. 10 Pearl Street	Rear yard would be overshadowed between 9.00am to 9.15am and between 12.15pm to 3.00pm; rear facade would be overshadowed between 1.45pm to 3.00pm. Between 9.15am to 12.15pm no shadow would be cast by the proposal on the rear yard and between 9.00am to 1.45pm no shadow would be cast on the rear façade.
No. 12 Pearl Street	Rear yard overshadowed between 1.45pm to 3.00pm, between 9.00am and 1.30pm no shadow would be cast.

The solar analysis provided by the applicant demonstrates that the surrounding residential properties have the ability to receive two hours of solar access, between 9.00am to 3.00pm during mid-winter in accordance with Council's overshadowing controls.

Notwithstanding this, the solar analysis provided by the applicant is a 'worst case scenario', and assumes that no significant planting exists within the surrounding properties and all properties have a fence height of 1.8 metres along Alice Lane. It should be noted that majority of properties fronting Holmwood Street have significant planting within the rear yards and rear boundary fencing which generally has a height of 2.1 metres, those elements all contribute to the overshadowing of the surrounding properties.

Whilst the proposed development does not satisfy the FSR and height/massing parameters prescribed by Council's planning controls for the subject site, which partially contributes to the additional overshadowing of the surrounding properties, it is considered any redevelopment of land in accordance with the building form prescribed for the subject site by Part 9.14 of MDCP 2011 envisages a development which would have some additional overshadowing of the surrounding properties.

Solar Access

Part 2.7 of MDCP 2011 prescribes solar access controls for mixed use buildings. The plans and shadow diagrams accompanying the application illustrate that the proposed development provides 71.8% of dwellings (148 dwellings) with living area windows positioned within 30 degrees east and 20 degrees west of true north which achieves compliance with the 65% requirements prescribed by MDCP 2011. However, the development does not provide direct sunlight for at least two hours over a minimum of 50% to all of the glazed surfaces of the 148 dwellings This is considered acceptable, as the proposed development provides private open space in the form of balconies directly accessed from living areas and as such the provision of

balconies restrict solar access to 50% of glazed surfaces of living area windows. Balconies are essential for the provision of open space for the dwellings.

(vi) Social Impact Assessment (Part 2.8)

Part 2.8 of MDCP 2011 contains objectives and controls relating to social impact. The application including the Social Impact Statement accompanying the subject application was reviewed by Council's Social Planner who provided the following comments:

"While the proposal will provide residential accommodation in an area where it is desired, and allow more households to take advantage of the benefits of living close to Newtown, it may have a negative affect on housing affordability and population diversity. Without legislative backing it is difficult to achieve intervention through the development assessment process to influence affordability, unless the applicant volunteers to address the issue. It is possible, however, to influence the desirability of the proposed accommodation for a wide range of households, for example by providing facilities and spaces for their activities, and providing for their safety and wellbeing. Amendments are suggested in terms of the western open space, and inclusion of internal gathering space for residents. Conditions are recommended for an on-site manager to facilitate social cohesion within the development, and measures for maintenance to achieve a well-kept appearance for the development.

There will be impact, whether real or perceived, on nearby residents, particularly those in the adjacent low scale housing, through changes in activity on and around the site. However, the applicant has not addressed this issue sufficiently in the SIS and it is not known whether the impacts will cause existing residents to change their lives (for example leave the area). It is possible, however, to influence the outcome so that impacts are addressed to some extent. Requiring compliance with an appropriate level and design of development may contribute to this. Conditions are recommended for an on-site manager to facilitate social cohesion with the neighbourhood, particularly in terms of dispute resolution.

In principle no objection is raised to the proposal given the existing characteristics of the site and the applicable development controls. However, amendments to the design are recommended as follows:

- *The proposed western outdoor space be designed as a space, or series of spaces, that will accommodate the activities of residents of the building (including children, teenagers, older people and those with cultural and linguistic diversity) and to encourage social interaction between residents of the development:*
- *The western outdoor space be secured by controlled access for use by residents of the development, and not available as a public park or thoroughfare,*
- *Provision of a meeting room for use of residents - an internal space with access to the western outdoor area is considered most appropriate, and recommended."*

Should the application be approved these matters would need to be the subject of further negotiation.

(vii) Community Safety (Part 2.9)

Part 2.9 of MDCP 2011 contains objectives relating to community safety. The proposed development is considered reasonable having regard to community safety for the following reasons:

- The principal entrance to the commercial/retail tenancies are visible from the street;
- The shopfronts has been designed to overlook the street and the courtyard areas;
- No solid roller shutters are proposed on the shopfronts;
- 6 secure residential entry lobbies are proposed, which are clearly distinguished within the development and controlled by a swipe card access;
- Dwellings orientate living area windows and balconies servicing living areas overlooking the surrounding streets and communal open space area; and
- Provision is made for appropriate lighting throughout the subject development.

A Plan of Management was submitted accompanying the subject application addressing matters relating to lighting, signage, basement and car/bicycle parking, landscaping, facilities location and public areas. Should the application be supported the Plan of Management should form part of the conditions of consent. To further ensure safety and security conditions should be imposed on any consent granted requiring the submission of a lighting plan and details of security arrangements for occupants and visitors of the development to be submitted.

(viii) Parking (Part 2.10)

In accordance with Part 2.10 of MDCP 2011, the subject property is located in Parking Area 1. As such the following car, bicycle and motor cycle parking requirements apply to the proposed development:

Residential Component:

- 1 car parking space per 5 studios/1 bedroom units for residents;
- 1 car parking space per 2, 2 bedroom/3 bedroom units for residents;
- 1 car parking space per 10 units for visitors if >6 dwellings;
- 1 bicycle parking space per 2 units for residents plus 1 bicycle parking space per 10 units for visitors; and
- Motor cycle parking provided at the rate of 5% of the total car parking requirement.

Commercial Component:

- 15 car parking spaces plus 1 space per 35sqm of gross floor area over 1,000sqm;

- 1 bicycle parking space per 300sqm of gross floor area for staff and 1 bicycle parking space per 500sqm of gross floor area for customers; and
- Motor cycle parking provided at the rate of 5% of the total car parking requirement.

The residential component of the proposed development would require the provision of 73 resident car parking spaces and 21 visitor spaces, totalling 94 car spaces. In addition a total of 103 bicycle parking spaces and 5 motorcycle parking spaces would be required to be provided for residents and 21 bicycle parking spaces would be required to be provided for visitors.

Based on a total commercial area of approximately 1,478sqm, the commercial component of the proposed development would require the provision of 29 commercial car parking spaces 5 bicycle parking spaces for staff, 3 bicycle parking spaces for customers and 2 motorcycle parking spaces would be required.

The overall development would therefore require the provision of a total of 123 car parking spaces, 132 bicycle parking spaces and 7 motorcycle parking spaces.

The development provides 163 car parking spaces in a basement car parking levels (100 residential spaces, 28 visitor spaces, 35 commercial spaces) accessed via Pearl Street. It is acknowledged that the written documentation accompanying the application suggests the development proposed 164 car spaces, however, the development plans accompanying the subject application indicates 163 car spaces.

The development also provides 105 bicycle spaces for residents and 21 bicycle spaces for residential visitors and a ground floor bicycle storage area for the commercial component of the development which has the capability to accommodate 114 bicycle spaces. 8 motorcycle spaces have been provided on the basement car parking level.

The proposed development complies with the numerical car parking, bicycle and motorcycle controls prescribed by MDCP 2011. It is noted that the proposed development provides 40 car spaces in excess of the car parking requirements prescribed by Council. The excess car spaces are included in the floor space ratio calculation of the development, as discussed in Section 7 of this report under the heading "*Floor Space Ratio (Clause 4.4)*".

Vehicle Service and Delivery Area

Part 2.10 of MDCP requires one vehicle service space to be provided for 50 flats (above first 50) or home units up to 200 plus one space per 100 thereafter. Also one truck space per 4,000sqm of GFA is required to be provided for any commercial component of a development.

The development proposes four (4) delivery spaces within the basement car parking level (access from Pearl Street) for the residential component of the development. Those spaces have dimensions of 7.5 metres x 3 metres, which are able to accommodate a small rigid truck.

The development also proposes a one loading/unloading area for the commercial component off the development off Walenore Avenue.

The development complies with the numerical controls of Part 2.10 of MDCP with regard to vehicle service and delivery areas.

Traffic and Vehicular Access

As previously mentioned, subject property is located within the Camdenville Planning Precinct (Precinct 9.14) under Part 9 of MDCP 2011. The strategic context planning controls require the subject site to have one vehicular access from Walenore Avenue. The proposed development provides vehicular access for the commercial and residential component of the development from Pearl Street and an additional vehicular access for loading/unloading vehicles from Walenore Avenue.

It is noted that the an *Assessment of Traffic and Parking Implications, Reference No. 12031, prepared by Transport and Traffic Planning Associates, dated June 2012* was submitted accompanying the application addressing the matter vehicular access and potential traffic implications on the existing traffic conditions and road network of the area as a result of the development.

The application, including the Assessment of Traffic and Parking Implications, prepared by Transport and Traffic Planning Associates was reviewed by the Pedestrian, Cyclist and Traffic Calming Advisory Committee (Traffic Committee) who provided the following comments:

- *“The location of the vehicle entry to the proposed development is to be from Walenore Avenue in accordance with the Site Specific planning controls for the 32-60 Alice Street, Newtown Masterplan Area (MA14.1) contained in Part 9 – Strategic Context Control for the Camdenville Planning Precinct (Precinct 9.14) in Marrickville Development Control Plan 2011 (as detailed in Figure 14.1b);*
- *The applicant is to review the vehicular access options with an intention to utilise Walenore Avenue rather than Pearl Street and submit revised plans for consideration by Council’s Pedestrian, Cyclist and Traffic Calming Advisory Committee;*
- *The applicant’s traffic consultant is to provide a detailed assessment of the impacts of the proposed development on the performance and safety at the intersections of Alice Street and Pearl Street, Alice Street and Walenore Avenue, as well as the intersection of Alice Street and King Street. The applicant is to also consider any measures required at these intersections to improve intersection efficiency and increase intersection safety for both motorists and pedestrians. The results of this assessment are to be presented to Council’s Traffic Committee for consideration.”*

The application was also reviewed by Council's Development Engineer who provided the following comments with regards to traffic and vehicular access:

“I agree with the recommendations of the Pedestrian, Cyclists & Traffic Calming Advisory Committee as previously referred to you and I make the additional comments regarding access from Pearl Street.

- *Pearl Street is a narrow two-way street with a carriage-way width of 8.3 metres with parking permitted on both sides of the street. Allowing 2.1 metres for a parked vehicle on both sides of the street will result in only 4.1 metres being available for two-way traffic. This is unacceptable as the main entry to a large development when a more suitable and wider street is available i.e. Walenore Avenue;*
- *The existing vehicle turning templates SP1 to SP5 provided in the Traffic Study by Transport and Traffic Planning Associates do not provide the required 300mm clearance on both sides of the vehicle as required Section 2.5.2 (c);*
- *The above templates also indicate that access can only be possible with the loss of “on street” parking which is unacceptable;*
- *The Pearl Street access arrangement has two conflicting vehicle ramps side by side which will cause confusion and possible vehicle conflict at the entry to the site. This is a poor access arrangement and should be redesigned to relocate one of the vehicle entries; and*
- *The access design shall ensure that sufficient queue length is provided at the vehicle entry in accordance with clause 3.4 of AS2890.1-2004.”*

In light of the above comments, it is considered that insufficient information was submitted accompanying the application to carry out a proper assessment of the traffic impacts of the proposed development on the local road network. As such it is considered that the proposed development would have adverse impacts with regards to traffic and vehicular access on the surrounding area.

(ix) Energy Efficiency (Part 2.16)

Part 2.16 of MDCP 2011 contains objectives and controls with regards to relating to energy efficiency for new retail premises involving a gross floor area of greater than 1,000sqm. Should the application be supported appropriate conditions should be imposed on any consent granted requiring the retail tenancies to be designed in accordance with the provisions of Part 2.16 of MDCP 2011.

(x) Water Sensitive Urban Design (Part 2.17)

Part 2.17 of MDCP 2011 contains objectives and controls relating to Water Sensitive Urban Design (WSUD) including requirements for shop top developments.

In relation to water conservation requirements the residential components of such developments are required to demonstrate compliance with State Environmental Planning Policy – Building Sustainability Index (BASIX). This matter has been addressed in Section 6 of this report under the heading “*State Environmental Planning Policy – Building Sustainability Index*”.

The subject application including drainage plans and MUSIC Model was reviewed by Council’s Development Engineer who provided the following comments:

- *“The BASIX Certificate and the accompanying documentation states at a 30,000 Litre rainwater tank has been provided to irrigate the landscaped*

- areas however, the rainwater tanks have not been shown on the stormwater drainage plans submitted by Demlakian Engineering;
- The Music Model does not correspond with the configuration of the bioretention system shown on the stormwater drainage plans submitted by Demlakian Engineering. The Music Model indicates that all stormwater from the roof and paved areas will be directed towards the bioretention system while the stormwater drainage plans by Demlakian Engineering show that most of the stormwater will bypass the bioretention system; and
 - Not all parameters used in the Music Model correspond to the default parameters required by Marrickville Council's WSUD Reference Guideline. Council's guideline requires the modelling period to be based on Sydney rainfall data from 1/1/90 to 31/12/99 however, the model uses Sydney rainfall data for the year 1959 only. Also the orthophosphate content of the filter media used for the bioretention system should be 80mg/kg and not 50g/kg as provided in the Music Model."

In light of the above deficiencies identified by Council's Development Engineer, a proper assessment could not be carried out of the proposed development under Part 2.17 of MDCP 2011.

(xi) Landscaping and Open Spaces (Part 2.18)

Part 2.18.11.7 of MDCP 2011 prescribes landscaped area, private and common open space controls for mixed use developments.

The subject development provides open space with a total minimum area of 8sqm for each dwelling in the form of balcony, courtyards and in some cases roof top terraces. The proposal makes provision of two common open space areas (denoted as a 'central courtyard' and a 'pocket park') with a total area of 2,380sqm, which satisfies the required 829.7sqm (10% of site area) prescribed by Part 2.18.11.7 of MDCP 2011.

Notwithstanding the above, Part 2.18.7 of MDCP 2011 requires landscaping over basement car parking to not to exceed 30% of the required total landscape area component. The proposed development has a basement level which spans the entire site and as such all landscaped areas are located over the basement level of the subject development.

It is noted that Part 9.14 of MDCP 2011 prescribes site specific landscaping controls, which are discussed in this section of the report under the heading *Part 9 Strategic Context*".

(xii) Tree Management (Part 2.20)

This matter has been discussed earlier in this report.

(xiii) Recycling and Waste Management (Part 2.21)

A Recycling and Waste Management Plan (RWMP) in accordance with Council's requirements was submitted with the application and is considered to be adequate.

Residential Component:

In accordance with Part 2.21, a minimum of 42 x 360 litre recycling, 42 x 360 litre general waste bins along with a minimum of 103 x 240 litre green waste bins are required to be provided for the residential component of the proposed development. In addition, a garbage chute is required to be provided for any part of the building which is 4 storeys in height.

For the residential component the development proposes garbage chute areas within each floor of the residential portion of the development. The chutes are to be connected to 5 waste storage compactor areas, of which 1 waste storage compactor area is proposed to be located on the ground floor level and 4 waste storage compactor areas are proposed to be located on the basement level. Bins will be moved by the caretaker to the central waste storage area, located on the ground floor level towards Walenore Avenue, which has the capacity to hold 42 x 360 litre recycling (uncompacted), 22 x 360 litre general waste bins (compacted) along with a minimum of 21 x 360 litre green waste bins (uncompacted). Should the application be approved a condition should be imposed on any consent granted requiring the provision of green bins in accordance with Part 2.21 of MDCP 2011.

The provision of waste storage facilities for the residential component is generally acceptable.

Commercial/Industrial Development

Details of adequate site facilities with regard to the provision of waste storage areas and collection points are required to be submitted with any development application lodged. In accordance with Part 2.21.8, a minimum of 27 x 360 litre recycling and 17 x 360 litre general waste bins are required.

The proposed development includes a commercial waste storage area located on the ground floor level towards Walenore Avenue, which has the capacity to hold 14 x 360 litre recycling (uncompacted), 21 x 360 litre general waste bins (uncompacted), which is contrary to the requirements of Part 2.21 of MDCP 2011. Waste is to be collected from the proposed on-site loading/unloading area provided from Walenore Avenue.

Should the application be supported a condition should be imposed requiring waste bins for the commercial component to be provided in accordance with Part 2.21.8 of MDCP 2011.

(xiv) Acid Sulfate Soils (Part 2.23)

The matter of acid sulfate soils is discussed in Section 7 of this report under the heading "*Acid Sulfate Soils (Clause 6.1)*".

(xvii) Contaminated Land (Part 2.24)

The matter of contamination is discussed in Section 4 of this report under the heading "*State Environmental Planning Policy No. 55 – Remediation of Land*".

PART 5 - COMMERCIAL AND MIXED USE DEVELOPMENT

Part 5.1.3.3 contains massing and setback controls for commercial and mixed use developments. However the strategic context controls contained in Part 9.14 of the DCP provide more site specific massing and setback controls.

General Commercial and Mixed Use Development Controls

(i) Infill development (Part 5.1.2.4)

Under Part 5.1.2.4 infill development is *“where the site is vacant or there is major demolition of the existing building and a substantially new building is erected that fronts onto the main street.”*

The application seeks approval to demolish the existing structure and erect a three part six storey mixed-use development above basement car parking. The proposed development is considered to constitute an infill development. The proposed development is of a contemporary form which is well articulated. The staggered form of the proposal and the provision of balconies and large window openings incorporated within the façades contribute to the building articulation. Notwithstanding this, the proposed development exceeds the prescribed FSR and building mass controls for the site, which results in an overdevelopment of land that does not respect the desired future character for the Camdenville Planning Precinct. This is discussed in this section of the report under the heading *“Part 9 Strategic Context”*.

(ii) Building form (Part 5.1.3)

(i) Floor space ratio (Part 5.1.3.1)

The matter of FSR has been discussed in Section 7 of this report under the heading *“Floor Space Ratio (Clause 4.4)”*.

(ii) Height (Part 5.1.3.2)

The matter of height has been discussed in Section 7 under the heading *“Height (Clause 4.3)”*.

(iii) Massing and Setbacks (Part 5.1.3.3)

Part 5.1.3.3 contains massing and setback controls for commercial and mixed use developments. However the strategic context controls contained in Part 9.14 of the DCP provide site specific massing and setback controls for the subject site. Massing and setbacks are discussed in this section of the report under the heading *“Part 9 Strategic Context”*.

(iv) Building Depth (Part 5.1.3.4)

Part 5.1.3.4 of MDCP 2011 specifies controls for building depth. However the strategic context controls contained in Part 9.14 of the DCP provide site specific building depth controls for the subject site. Building depth is discussed in this section of the report under the heading “*Part 9 Strategic Context*”.

(v) Building Separation (Part 5.1.3.5)

Part 5.1.3.5 of MDCP 2011 specifies controls for building separation. However the strategic context controls contained in Part 9.14 of the DCP provide site specific building separation controls for the subject site. Building separation is discussed in this section of the report under the heading “*Part 9 Strategic Context*”.

(vi) Corners, Landmarks and Gateways (Part 5.1.3.6)

Part 5.1.3.6 of MDCP 2011 specifies the following controls for corners, landmarks and gateways of relevance to the proposed development.

The proposed development seeks to construct the development to address all the street frontages of the site and generally with a zero front setback, with the exception of Alice Lane which is to have a setback of 1.8 metres. The design of the proposed development generally encourages the landmark nature of the site. The proposed development is of a contemporary form which is well articulated. The staggered form of the proposal and the provision of balconies and large window openings incorporated within the façades contribute to the building articulation. Notwithstanding this, the proposed development exceeds the prescribed FSR and building mass controls for the site, which results in an overdevelopment of land that does not respect the desired future character for the Camdenville Planning Precinct. This is discussed in this section of the report under the heading “*Part 9 Strategic Context*”.

The application was reviewed by Council Development Engineer who provided the following comments regarding splays:

“No portion of the building shall encroach the property boundaries. The plans indicate that the proposed building will encroach the existing splay at the corner of Walenore Avenue and Alice Street (encroach above) and the proposed 3 metres x 3 metres splay at the corner of Pearl and Alice Streets (encroach above and below).”

Splays are generally required to be provided by all new developments for the provision of road widening and to improve sight distances. In light of the comments provided by Council Development Engineer, the development is considered to be unacceptable as suitable provision has not been made for splays.

(iii) Building Detail (Part 5.1.4)

(a) Building Frontages (Part 5.1.4.1)

Part 5.1.4.1 of MDCP 2011 includes objectives and controls relating to building frontages.

The application seeks approval to demolish the existing structure and erect a three part six storey mixed-use development above basement car parking. The proposed building frontages are of a contemporary form which is well articulated and presents an aesthetically pleasing facade. Notwithstanding this, the proposed development exceeds the prescribed FSR and building mass controls for the site, which results in an overdevelopment of land that does not respect the desired future character for the Camdenville Planning Precinct. This is discussed in this section of the report under the heading "*Part 9 Strategic Context*".

(b) Active street frontage uses and shopfront design (Part 5.1.4.2)

Part 5.1.4.2 of MDCP 2011 specifies controls for active street frontage uses and shopfront design. The development encourages an active street frontage with the provision of the following:

- The principal entrance to the retail tenancies are visible from the street;
- The shopfronts has been designed to overlook the street and the courtyard areas;
- No solid roller shutters are proposed on the shopfronts; and
- Dwellings orientate living area windows and balconies servicing living areas overlooking the street and communal open space area.

Part 9.14 of the DCP provide site specific active street frontage controls for the subject site. This matter has been discussed in this section of the report under the heading "*Part 9 Strategic Context*".

(iv) Building Use (Part 5.1.5)

(a) Dwelling mix (Part 5.1.5.2)

Part 5.1.5.2 of MDCP 2011 prescribes the following dwelling mix requirements for residential flat buildings containing 6 or more dwellings:

"C52 New developments with six or more dwellings must provide the following mix of dwelling types:

- | | | |
|------|---------------------|----------------|
| i. | Studio | 5% - 20% |
| ii. | 1 bedroom | 10% - 40% |
| iii. | 2 bedroom | 40% - 75%; and |
| iv. | 3 bedroom or bigger | 10% - 45%." |

The residential component of the proposed development includes 19 x studio dwellings (9.2% of 206), 81 x 1 bedroom dwellings (39.3% of 206), 87 x 2 bedroom dwellings (42.2% of 206) and 19 x 3 bedroom dwellings (9.2% of 206). The proposed

development does not comply with the abovementioned dwelling mix requirements. The development proposes insufficient amount of 3 bedroom dwellings in accordance with Part 5.1.5.2 of MDCP 2011.

(v) Site facilities

Clothes Drying Facilities

Under the provisions of MDCP 2011, external clothes drying areas shall be provided at a rate of 3.75sqm per dwelling and contain a minimum 6 metres of clothes line for each dwelling.

Details regarding the provision of outdoor clothes drying facilities were not submitted with the development application. Given the omission of the above details, a condition should be imposed on any consent granted for the proposal requiring the submission of details indicating the provision of clothes drying facilities for all dwellings to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

Mail Boxes

Details regarding the location of mail boxes for the proposed development were not submitted with the application.

Given the omission of the above details, a condition should be imposed on any consent granted for the proposal requiring the submission of details indicating the location of mail box facilities for all dwellings to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

PART 8 - HERITAGE

The matter of heritage has been discussed in Section 7 of this report under the heading "*Heritage Conservation (Clause 5.10)*".

PART 9 - STRATEGIC CONTEXT

Part 9 of MDCP 2011 divides the Marrickville Local Government Area (LGA) into 47 planning precincts. Each planning precinct has its own distinct character and provides an important contextual basis for establishing appropriate types of development in association with other controls within the DCP. Each precinct has an existing and desired future character to guide development within the area. Planning controls and objectives have been applied to precinct-specific areas and site-specific areas (through masterplans) to assist in achieving the desired future character. Thirteen (13) precincts have been completed as part of Stage 1 of MDCP 2011.

The subject property is located in the Camdenville Planning Precinct (Precinct 9.14) under Marrickville Local Environmental Plan 2011. MDCP 2011 prescribes the following building form for the Camdenville Planning Precinct (Precinct 9.14):



Figure 14.1a

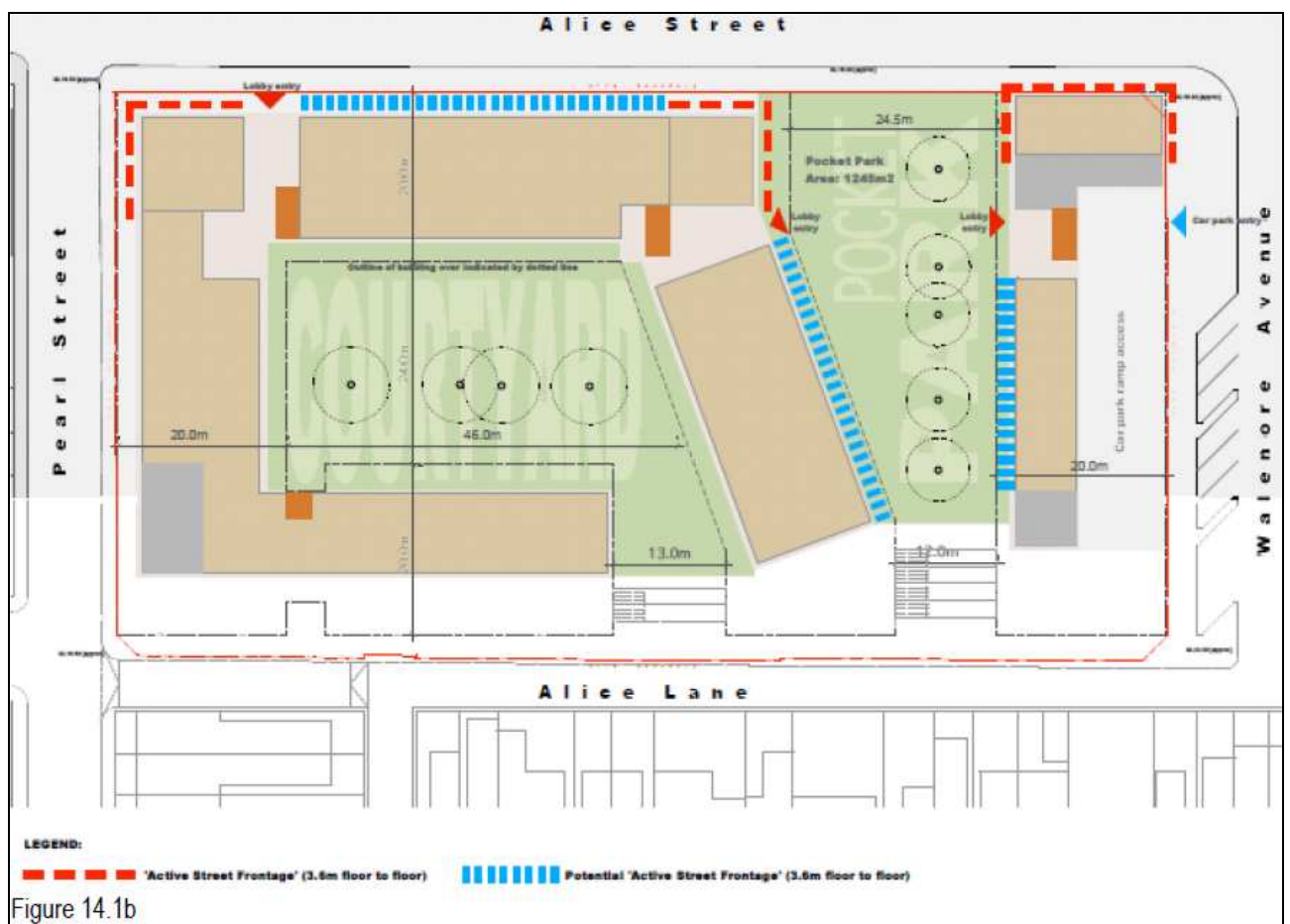


Figure 14.1b

Building Height:

It is acknowledged that the proposed development complies with the maximum building height of 20 metres applying to the property on the Height of Buildings Map that accompanies MLEP 2011. However, Part 9.14 of MDCP prescribes height and massing parameters in addition to MLEP in order to achieve the desired future character for the Camdenville Planning Precinct. As demonstrated above, the building form prescribed by the strategic context planning controls for the precinct are between five storeys and three storeys along Alice Street and Walenore Avenue and generally between three storeys and two storeys along Pearl Street and Alice Lane. The proposed development contravenes the built form controls as follows:

- 6 storeys are proposed for the building on the corner of Alice Street and Walenore Avenue;
- 6 storeys are proposed for the building along the Alice Street frontage;
- 3 storeys plus the upper portion of the basement level (above 1 metre ground level) are proposed on the corner of Walenore Avenue and Alice Lane; and
- 2 storeys plus the upper portion of the basement level (above 1 metre ground level) are proposed on the corner of Pearl Street and Alice Lane.

The excessive building mass (storeys) contributes to the non-conforming FSR of the proposed development. The proposed development has a FSR of 2.4:1 or 19,903.6sqm, amounting to a departure of 4,554sqm or 30%. This is a significant departure from the prescribed FSR development standard and results in an inappropriate density for the subject site, particularly as properties surrounding the subject site have a relatively lower density (FSR) prescribed under MLEP 2011. The proposed development is considered to be an overdevelopment of the site.

Boundary Setbacks:

The proposed development conforms to the boundary setbacks prescribed in Figure 14.1a and Figure 14.1b.

Sustainable Envelopes and Occupant Amenity:

The Precinct controls also prescribe building siting, orientation, depth and separation controls. The proposed development achieves compliance with majority of the building siting, orientation, depth and separation controls with the exception of the following:

- A building separation of 24.5 metres is required between the two blocks along Alice Street, the development proposes a separation of 23 metres;
- A building separation of 13 metres is required between two blocks fronting the pocket park and Alice Lane, the development proposes a separation of 12 metres;
- A building separation of 13 metres is required between two blocks fronting the central courtyard and Alice Lane, the development proposes a separation of 12 metres; and

- A building separation of 24 metres is required between the blocks on the northern and southern side of the central courtyard; the development proposes a separation between 23 metres and 24.6 metres.

The non-compliance with the building separation controls further contributes to the overdevelopment of land and as such does not meet the future desired character controls of the planning precinct.

Domain Interface and Structure:

The development provides active frontages and pedestrian links in accordance with Figure 14.1b.

The strategic context planning controls require the subject site to have one vehicular access from Walenore Avenue. The proposed development provides vehicular access for the commercial and residential component of the development from Pearl Street and an additional vehicular access for loading/unloading vehicles from Walenore Avenue. This is considered unacceptable for reasons discussed in this section of the report under the heading "*Parking (Part 2.10)*".

In accordance with Figure 14.1b, lobby entries are required to be directly located to the west and east of the Pocket Park. The proposed development locates a lobby entry off Walenore Avenue and a lobby entry along the southern façade of the block to the west of the Pocket Park.

Landscape and Public Open Spaces:

The development provides landscaping within the public open space area. The development achieves compliance with the 25% deep soil zone requirement.

Given the above departures with the design parameters prescribed by the strategic context planning controls under Part 9.14 of MDCP 2011, the proposed development compromises the desired future character of the area.

10. Marrickville Section 94/94A Contributions Plan 2004

It is considered that the carrying out of the proposed development would result in an increased demand for public amenities and public services within the area. A contribution would be required for the proposed redevelopment under Marrickville Section 94/94A Contributions Plan 2004. Should the application be supported a condition requiring the above contribution to be paid should be imposed on any consent granted.

11. Community Consultation

The application was advertised, an on-site notice displayed on the property and residents/property owners in the vicinity of the subject property were notified of the proposed development in accordance with Council's policy. 269 individual submissions and two petitions containing 73 signatories raising the following

concerns which have already been discussed throughout the main body of this report:

- (i) The development will adversely affect the privacy of the surrounding residential properties;
- (ii) The development will excessively overshadow the surrounding residential properties and reduce the ability of the surrounding properties to utilise solar panels;
- (iii) The development will produce excessive noise pollution and pollution associated with garbage and traffic;
- (iv) The development will generate greater traffic which in turn will increase traffic congestion within the area;
- (v) The existing road network in the area cannot sustain the additional traffic the development will generate;
- (vi) The development provides insufficient on-site parking which will reduce the limited on street parking within the area;
- (vii) No parking is provided for the commercial component of the development for staff and customers;
- (viii) The additional traffic generated by the development and the location of the vehicular access from Pearl Street will reduce road and pedestrian safety;
- (ix) The *Assessment of Traffic and Parking Implications, Reference No. 12031, prepared by Transport and Traffic Planning Associates, dated June 2012* accompanying the application does not consider the following:
 - Cars parked along Pearl Street in the turning circles within the traffic diagrams of the report.
 - The cumulative impact of the additional traffic generated by Marrickville Metro and other properties currently under construction within the area.
 - The report does not differentiate between weekday and weekend traffic;
- (x) The proposal is an overdevelopment of land and will reduce the quality of life within the area;
- (xi) The development exceeds the floor space ratio development standard prescribed by the LEP;
- (xii) The height of the proposed development is excessive compared to the surrounding residential development within the area;
- (xiii) The development exceeds the height requirements prescribed by Council's policies;
- (xiv) The development will damage the heritage significance of the area;
- (xv) The development is incompatible with the character of the surrounding streetscape;
- (xvi) The proposed development will encourage anti-social behaviour such as graffiti and reduce safety/security within the area;
- (xvii) The application does not detail the type of retail/commercial uses which will occupy the
- (xviii) proposed commercial tenancies;
- (xix) The *Social Impact Statement, Job No. 11040B prepared by BBC Consulting Planners, dated June 2012* accompanying the application details insufficient amount of stakeholders who were consulted with regards to the development;
- (xx) The development will remove a significant amount of trees and biodiversity within the area;

- (xxi) The existing sewerage, stormwater and road infrastructure can not sustain the additional population the development will attract to the area;
- (xxii) The development does not encourage environmental sustainability as the development includes mechanical ventilation and dryers;
- (xxiii) The notification period of 14 days is insufficient time to provide a response;
- (xxiv) The development combined with the redevelopment of the Marrickville Metro will have a cumulative impact;
- (xxv) The development will increase the social impacts within the area;
- (xxvi) The development is inconsistent with the requirements of the DCP;
- (xxvii) The development has limited provision of planting along the boundaries of the site;
- (xxviii) The development provides insufficient deep soil planting;
- (xxix) The development does not satisfy the B4 Mixed Use zoning objectives for the site under LEP; and
- (xxx) The development is contrary to the design principles prescribed by SEPP 65.

In addition to the above, the submissions raised the following concerns which are discussed under the respective headings below:

- (i) The development will increase the population density within the area.

Comment:

A maximum floor space ratio (FSR) of 1.85:1 applies to the land as indicated on the Floor Space Ratio Map that accompanies MLEP 2011. Council's Development Assessment Officer has calculated the proposed development to have an FSR of 2.4:1 or 19,903.6sqm, amounting to a departure of 4,554sqm or 30%.

The non-complaint FSR will result in an intensification population density more than that envisaged for the subject site under the planning controls applying to the land. As such the proposed FSR departure is considered unacceptable and not worthy of support for reasons discussed in Section 7 of this report under the heading "*Exceptions to Development Standards (Clause 4.6)*".

- (ii) The development will produce excessive light pollution and airborne pollution and pollution associated with traffic.

Comment:

The mixed retail/residential nature of the proposed development is considered to be consistent with the surrounding area and it is considered that the proposed development will not produce any additional light pollution and airborne pollution and pollution associated with garbage and traffic within the area.

- (iii) The public space within the development is not treated as public space if it can only be accessed with a security pass.

Comment:

The Crime Risk Assessment, prepared BBC Planners has recommended that the central courtyard area be closed to the general public. This is considered to be impractical, as the commercial tenancies front the central courtyard. Should the application be supported, a condition should be imposed requiring the central courtyard to be accessible by the general public.

- (iv) The construction phase of the development will adversely affect the surrounding properties.

Comment:

Appropriate conditions should be imposed on any consent granted to alleviate impacts on the surrounding properties during the construction phase of the development.

- (v) The development is a fire source hazard; and
The proposed excavated basement level within the development will cause structural damage.

Comment:

Appropriate conditions should be imposed on any consent granted regarding fire protection and structural integrity of surrounding properties.

- (vi) The development will restrict summer breezes.

Comment:

It is considered that the proposed development will not restrict summer breezes.

- (vii) The following additional concerns were also raised in the submissions which are not a matter of consideration under Section 79C of the Environmental Planning and Assessment Act.

- The development will further contribute to the vacant commercial/retail tenancies within the area;
- The proposed development will reduce property values within the area;
- No timeline has been provided for the demolition and construction phase of the development;
- The re-development of the site will result in the loss of the existing businesses operating within the properties;
- The development will destroy the 'sense of community' and the unique surrounding of Newtown;
- The development is contrary to the 'entertainment precinct' of Newtown; and
- The site should be redeveloped as a public park.

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.

12. Conclusion

The application seeks consent to demolish the existing improvements, carry out preparatory site works and erect a mixed use development containing 7 retail tenancies, 206 residential dwellings and 163 car parking spaces, associated landscaping, drainage and related works. 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 proposal exceeds the maximum floor space ratio development standard as prescribed under Marrickville Local Environmental Plan 2011. A submission under Clause 4.6 of Marrickville Local Environmental Plan 2011 in relation to the FSR departure accompanied the application, however the submission is not considered to be well founded. The proposal does not comply with the aims, objectives and design parameters of Marrickville Development Control Plan 2011.

The subject site is located within the Camdenville Planning Precinct (Precinct 9.14). The proposed development does not comply with the future desired character and site specific controls prescribed by the strategic context planning controls under Part 9.14 of Marrickville Development Control Plan (MDCP) 2011.

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

PART E - RECOMMENDATION

- A. THAT** the development application to demolish the existing improvements, carry out preparatory site works and erect a mixed use development containing 7 retail tenancies, 206 residential dwellings and 163 car parking spaces, associated landscaping, drainage and related works be **REFUSED** for the following reasons:
1. The proposed development has a floor space ratio of approximately 2.4:1, which is well in excess of the maximum floor space ratio permitted for the subject site of 1.85:1 under Marrickville Local Environmental Plan 2011, with the departure from the subject development standard equating to over 4,500sqm of gross floor area.
 2. The proposed development does not satisfactorily address the ten design principles prescribed by State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings, particularly with Principle 1: Context, Principle 2: Scale, Principle 4: Density, Principle 5: Amenity and Principle 9: Social Dimensions and Housing Affordability.

3. The proposed development would have a significant impact on the existing on-site trees and street trees located adjacent the subject site which protected under Clause 5.9 of Marrickville Local Environmental Plan 2011 and Part 2.20 of Marrickville Development Control Plan 2011 – Tree Management.
4. The proposed development does not satisfactorily address the urban design principles contained in Part 2.1 of Marrickville Development Control Plan 2011, particularly with Principle 4: Appropriate density and Principle 9: Sense of place and character in streetscapes and townscape.
5. The proposed development is considered unsatisfactory on traffic and vehicular access related grounds for the following reasons:
 - The location of the vehicular access from Pearl Street to the proposed development is contrary to the site specific planning controls for the Camdenville Planning Precinct (Precinct 14) under Part 9 of Marrickville Development Control Plan 2011. Vehicular access is required to be solely from Walenore Avenue;
 - The proposed development will have adverse impacts on the performance and safety of the intersections of Alice Street and Pearl Street, Alice Street and Walenore Avenue, as well as the intersection of Alice Street and King Street. No measures have been included within the application to improve intersection efficiency and increase intersection safety for both motorists and pedestrians;
 - Pearl Street is a narrow two-way Street with a carriage-way width of 8.3 metres with parking permitted on both sides of the street. Allowing 2.1 metres for a parked vehicle on both sides of the street will result in only 4.1 metres being available for two-way traffic. This is unacceptable as the main entry to a large development when a more suitable and wider street is available i.e. Walenore Avenue;
 - The existing vehicle turning templates SP1 to SP5 provided in the Traffic Report by Transport and Traffic Planning Associates do not provide the required 300mm clearance on both sides of the vehicle as required Section 2.5.2 (c). This templates also indicates that access can only be possible with the loss of “on street” parking which is unacceptable;
 - The Pearl Street access arrangement has two conflicting vehicle ramps side by side which will cause confusion and possible vehicle conflict and the entry to the site. This is a poor access arrangement and should be redesigned to relocate one of the vehicle entries; and
 - The access design shall ensure that sufficient queue length is provided at the vehicle entry in accordance with clause 3.4 of AS2890.1-2004.
6. The proposed development does not satisfy the water sensitive urban design parameters under Part 2.17 of Marrickville Development Control Plan 2011 – Water Sensitive Urban Design.
7. The proposed development does not satisfy the landscaping controls under Part 2.18 of Marrickville Development Control Plan 2011 – Landscaping and Open Spaces.

8. The proposed development does not comply with the site specific planning controls for the Camdenville Planning Precinct (Precinct 14) under Part 9 of Marrickville Development Control Plan 2011 in particular:
 - The building height controls expressed in number of storeys (Control C2);
 - The sustainable envelopes and occupant amenity controls, with regards to building separation (Control C4); and
 - The domain interface and structure control, with regard to vehicular entries (Control C12 ii.).
 9. The proposed development is contrary to the aims, objectives and design parameters under Part 5 of Marrickville Development Control Plan 2011 – Commercial and Mixed Use Development, particularly in relation to the provision of splays and dwelling mix.
 10. The carrying out of the proposed development would result in inappropriate density and is an overdevelopment of land.
 11. The proposed development does not promote the orderly development of land in accordance with the objectives of the Environmental Planning and Assessment Act, 1979.
 12. Insufficient or incomplete information, in particular an arborist's report, social impact statement, traffic report and MUSIC model was submitted with the application to enable a proper assessment of the proposal to be carried out in accordance with the requirements of the Environmental Planning and Assessment Act.
 13. In view of the above and the public submissions received, approval of the application would not be in the public interest.
- B. THAT** those persons and the head petitioner who lodged submissions in respect to the proposal be advised of the Council's determination of the application.