



**RESPONSE TO REPORT
PREPARED BY MARRICKVILLE COUNCIL'S
SENIOR DEVELOPMENT ASSESSMENT
OFFICER (PLANNING)**

**32-72 ALICE STREET,
NEWTOWN**

**Prepared on behalf of
Al Maha Pty Ltd**

**By
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1. BACKGROUND

- 1.1 This DA is the subject of a Class 1 Appeal in the Land and Environment Court (Proceedings 10823 of 2012).
- 1.2 The appeal was lodged after the Applicant was advised that the matter could not be brought before the JRPP until five months after the DA was lodged.
- 1.3 By email dated 6 August 2012, seven weeks after the DA had been lodged, Council officers requested additional information. The additional information was provided on 16 August 2012. There has been no further request for additional information.
- 1.4 As part of the appeal proceedings, a Statement of Facts and Contentions ("SOFC") has been prepared by Marrickville Council. There are only two issues identified in the SOFC: FSR and traffic.
- 1.5 The DA was reported to Marrickville Council by Council planning officers on 9 October 2012 with a view to briefing Councillors on the issues. The issues identified in the officers' report were the same issues as in the SOFC.
- 1.6 A Section 34 conference was held on 10 October 2012, at which these two issues were discussed by the parties. Arising out of the two issues identified in the SOFC, further traffic analysis was undertaken. The Council's traffic consultant, having received the further traffic analysis, has been unable to comment on it because of a family illness. His comments are awaited.
- 1.7 The Section 34 conference was terminated without agreement.
- 1.8 The proposal was reported to Marrickville Council's Development Assessment Committee meeting on 13 November 2012. However, the proposal was not considered by the Committee as a quorum was not present. The Council officers' assessment report presented to the Council's Development Assessment Committee is the same one presented to the JRPP.
- 1.9 Given that the proposal readily complies with the height limit, and overshadowing is not unreasonable, the Applicant has sought to understand and identify what parts, if any, of the proposal the Council considers to be inappropriate. Council officers have not identified what parts of the proposed building are unreasonable, nor the amount of FSR which needs to be removed to make the proposal acceptable to Council. The concerns expressed in the assessment report about the unacceptable density of the proposal are not accompanied by any specific criticism of any part of the proposal.
- 1.10 Justification for the FSR which is proposed (2.33:1) is contained in the document in **Appendix 1**.

- 1.11 Notwithstanding that there are only two issues which are in contention in the appeal proceedings, Council officers prepared a report for Council's Development Assessment Committee meeting held on 13 November 2012, which identifies 13 reasons for refusal. These reasons are discussed overleaf.

2. COMMENTS ON RECOMMENDED REASONS FOR REFUSAL

- 2.1 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.**

Response:

- (a) Excluding basement car parking spaces allegedly over and above what Council requires, the non-compliance amounts to 0.48:1 (25.9%).
- (b) The proposal readily complies with the LEP height limit of 20 metres.
- (c) The highest proposed building is lower than the existing building on the site.
- (d) The proposal does not give rise to any significant amenity impacts on neighbouring properties, including overshadowing.
- (e) The proposal does not give rise to excessive or unacceptable traffic generation, primarily because the parking rates permitted by Council are so constrained. (The proposal contains 163 parking spaces for the 206 dwellings and 7 retail/commercial tenancies.)
- (f) There are proper planning reasons for permitting a non-compliance with the FSR control (see **Appendix 1**).
- (g) Council has not identified in what way, shape or form the FSR should be reduced, and with what objectives or intent other than to comply with the 1.85:1 limit.
- (h) There is merit in utilising the site as effectively as possible for urban consolidation.

- 2.2 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.**

Response:

- (a) The proposal was described in an internal memorandum prepared by Council's Manager Planning Services (dated 11 July 2012) as a "positive redevelopment of an underutilised industrial site with a contemporary mixed use style development, and

in accordance with the DCP objectives for the site which aim to facilitate its redevelopment”.

- (b) This is not an issue in the SOFC.
- (c) The proposal has been designed by a team led by Simon Thorne of the Integrated Design Group with review by Gabrielle Morrish of GMU Urban Design and is considered to be of high design quality.
- (d) Insofar as the officers’ report asserts that the proposal does not comply with four of the SEPP 65 principles, the following comments can be made:-

Principle 1: Context

Comment: The rhythm established in the Alice Street façade reflects that of the terrace-style developments in the area. In keeping with the site specific DCP, the scale of the scheme is reduced at Pearl Street and Alice Lane in sympathy with the scale of surrounding development. The building fronting Walenore Avenue represents a reduction in height when compared with the existing industrial building and this too is reduced at Alice Lane to reflect the scale of adjacent development.

Principle 2: Scale

Comment: The scale of the development is in keeping with the height limit set out in the LEP. No floor-to-floor height is stipulated in the DCP. Therefore, it can be demonstrated that the scale of the proposal is less than that which is permissible under the DCP since a light industrial or commercial building would typically have floor-to-floor heights in the order of 4.0 metres.

The upper level has been set back on Alice Street, reducing the perceived scale of the building when viewed from the street.

Principle 4: Density

Comment: The density is consistent with the availability of infrastructure, public transport, community facilities and environmental quality.

The density resulting from the proposal can be demonstrated to be less than that which is allowable on the site if, for example, a commercial development was proposed.

Principle 5: Amenity

Comment: The proposal consists of a wide range of unit types. The room dimensions and shapes are appropriate, in some instances comparable with the scale of local terrace planning. The development provides a high degree of access to sunlight and natural ventilation. Visual privacy has been carefully considered with fenestrations around courtyards designed to minimise cross views, while maximising

length of outlook. The proposal includes quality landscaped areas in the form of central courtyards, pocket parks and room terraces.

Principle 9: Social dimensions and affordability

Comment: The proposal provides a range of unit types and sizes including a number of more compact units which may contribute to housing affordability since unit price has a correlation to unit size.

- (e) In relation to the assertion that the proposal is inconsistent with the RFDC:-

Comment: Contrary to the assertions in the assessment report, the RFDC provides no minimum apartment sizes. Instead, it provides “a comparative tool for recognising well organised, functional and high quality apartment layouts”. Furthermore, the RFDC states that apartment size should be determined “in relations to – geographic location and market demands”.

Moreover, the RFDC also references the following apartment sizes suggested by the Affordable Housing Service:-

- 1 bedroom apartment 50m²;
- 2 bedroom apartment 70m²; and
- 3 bedroom apartment 95m².

The report does not acknowledge this guidance and perversely concludes that the proposed development “may have a negative affect on housing affordability”.

2.3 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.

Response:

- (a) There are site specific DCP provisions for the site, none of which require retention of any trees on the site: the proposal exhibits a high level of compliance with the site specific DCP provisions.
- (b) This is not an issue in the SOFC.

2.4 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 townscapes.

Response:

- (a) The proposal displays a high level of consistency with the site specific DCP requirements.
- (b) This reason appears related to FSR and height in storeys (rather than height above ground, as per the LEP) dealt with in 2.1 above.
- (c) This issue is not raised in the SOFC.

2.5 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;

Response:

Council's traffic consultant has not disagreed with the location of the vehicular access.

- 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;

Response:

A detailed response to Council's traffic concerns has been prepared by the Applicant's traffic consultant and provided to Council's traffic consultant.

- 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;

Response:

The Council's traffic consultant has not disagreed with the location of the access in Pearl Street.

- 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 template also indicates that access can only be possible with the loss of "on street" parking which is unacceptable;

Response:

This matter has been addressed in the detailed response provided by the Applicant's traffic consultant.

- 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

Response:

This matter has been addressed in the detailed response provided by the Applicant's traffic consultant.

- 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.

Response:

This matter has been addressed in the detailed response provided by the Applicant's traffic consultant.

2.6 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.

Response:

- (a) In response to the detailed stormwater concept plan and MUSIC model provided with the DA, no further information has been requested by Council on this issue.
- (b) This is not an issue in the SOFC.

2.7 The proposed development does not satisfy the landscaping controls under Part 2.18 of Marrickville Development Control Plan 2011 – Landscaping and Open Spaces.

Response:

- (a) No additional information has been requested by Council to the detailed landscape plans submitted with the DA.
- (b) This is not an issue in the SOFC.

2.8 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.).

Response:

- (a) The proposal displays a high degree of consistency with the site specific provisions in the DCP.
- (b) The storeys control in the DCP must be considered in the context that non-residential uses are permissible on this site which would have higher floor-to-floor heights than are proposed, meaning that the storeys control is problematic in its intent and for that reason, greater regard should be had to the LEP height control with which the proposal wholly complies.
- (c) The building separation is almost wholly as per the DCP.
- (d) The issue of vehicular access is addressed above.

2.9 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.

Response:

- (a) The criticism in the assessment report is that the proposal contains only 9.2% of the total dwellings as 3-bedroom units when the requirement is for a minimum of 10%. This should not be a determinative matter.
- (b) This is not an issue in the SOFC.

2.10 The carrying out of the proposed development would result in inappropriate density and is an overdevelopment of land.

Response:

- (a) This issue is related to FSR, which is addressed in 2.1 above and in **Appendix 1**.

2.11 The proposed development does not promote the orderly development of land in accordance with the objectives of the Environmental Planning and Assessment Act, 1979.

Response:

- (a) The proposal is an effective, efficient and appropriate response to the zoning of the site, the LEP height control, the site conditions and the site specific DCP requirements.
- (b) This is not an issue in the SOFC.

2.12 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.

Response:

- (a) The Applicant responded to the Council's request for additional information dated 6 August and 16 August. No further request for information has been made.
- (b) This is not an issue in the SOFC.

2.13 In view of the above and the public submissions received, approval of the application would not be in the public interest.

Response:

- (a) Using the site effectively and efficiently for urban consolidation purposes without giving rise to any unacceptable impacts is in the public interest.
- (b) Providing additional housing and creating employment is in the public interest.
- (c) This is not an issue in the SOFC.



APPENDICES



APPENDIX 1

Revised written justification for non-compliance with the 1.85:1 FSR limit



**JUSTIFICATION PREPARED PURSUANT TO
CLAUSE 4.6 OF MARRICKVILLE LOCAL
ENVIRONMENTAL PLAN 2011 IN RELATION TO THE
“FLOOR SPACE RATIO” DEVELOPMENT
STANDARD CONTAINED IN
CLAUSE 4.4 OF MARRICKVILLE LOCAL
ENVIRONMENTAL PLAN 2011**

**SUBMITTED IN SUPPORT OF A DEVELOPMENT
APPLICATION FOR A MIXED USE DEVELOPMENT
COMPRISING RETAIL TENANCIES, RESIDENTIAL
UNITS AND ASSOCIATED PARKING,
LANDSCAPING, DRAINAGE AND RELATED WORKS**

32-72 Alice Street, Newtown

**Prepared for
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**By
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**Job No. 11040A
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1. Introduction

This written justification has been prepared in support of a DA for a mixed use development comprising 6 retail tenancies and 206 residential units with 164 basement car parking spaces, associated landscaping and public domain works ("the proposal") at 32-72 Alice Street, Newtown ("the site").

Clause 4.4 of Marrickville LEP 2011 (MLEP) specifies a maximum Floor Space Ratio ("FSR") for the site of 1.85:1. As the site area is 8,297m², the maximum permissible Gross Floor Area ("GFA") pursuant to Clause 4.4 is 15,349.45m².

The FSR calculation is based on the following relevant definition of GFA:-

***"gross floor area"** means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:*

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*

but excludes:

- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement:*
 - (i) storage, and*
 - (ii) vehicular access, loading areas, garbage and services, and*
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and*
 - (j) voids above a floor at the level of a storey or storey above."*

The proposal, based on the above definition (and excluding any parking spaces in the basement which are arguably over and above the "requirements of the consent authority"), has a GFA of 19,366.7m² which equates to a Floor Space Ratio of 2.33:1.

Clause 4.6 of MLEP 2011 allows approval to be granted to a DA, even though the proposed development contravenes a development standard in the LEP.

This written request addresses the requirements of Clause 4.6 of MLEP 2011.

2. Objectives of Clause 4.6 of MLEP 2011

The objectives of Clause 4.6 of MLEP 2011 are:-

- “(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”*

3. Requirements for Applications

Clause 4.6 of MLEP 2011 states as follows:-

- “(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) the consent authority is satisfied that:*
 - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Director-General has been obtained.*
- (5) In deciding whether to grant concurrence, the Director-General must consider:*
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.”*

The matters raised above are addressed below in Section 4 of this written request.

4. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case and are there sufficient planning grounds to justify contravening the standard?

4.1 What is the Purpose/Object of the Standard?

The objectives of the FSR controls in MLEP 2011 are set out as follows in Clause 4.4(1) of the LEP:-

- “(a) to establish the maximum floor space ratio,*
- (b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,*
- (c) to minimise adverse environmental impacts on adjoining properties and the public domain.”*

Objective (a) is self-explanatory.

In relation to Objective (b), “building density and bulk in relation to site area” is an indirect reference to the mechanism by which FSR is calculated (i.e. the amount of GFA on the site divided by the site area), and determines the amount (but not the type) of development on a given site: an FSR of 1:1 for example self-evidently permits a higher “building density” measured in GFA than an FSR of 0.5:1. It does not necessarily, however, result in increased bulk. (Take a cathedral, for example: it would have a relatively low FSR but substantial bulk, much larger than a building for, say, office or retail purposes with a much higher FSR.) Alternatively, and more relevantly, a light industrial building, or a commercial office building, with an FSR of 1.85:1, would have a greater bulk than a residential flat building with the same FSR because the former two uses require substantially greater floor-to-floor heights, thereby resulting in a large building.

In relation to Objective (c), potential adverse environmental impacts include overshadowing, overlooking and traffic generation. Whilst it is generally the case that a building with an FSR of say 0.5:1 would be likely to generate less potential environmental impacts than a building with an FSR of say 1:1, the actual impacts depend on matters such as actual building height, detailed design, and the nature of the use.

4.2 Consistency with the objectives of the standard

No discussion is required of Objective (a).

In relation to Objective (b):-

- requirements for 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 and the mix of uses permissible therein, establish its desired future character which is quite different to, but nevertheless compatible with, the character of surrounding land: the proposal is highly consistent with this desired future character;
- in this regard, it is relevant to take into account that the zoning of the site, B4 Mixed Use, permits commercial premises, light industries, registered clubs and various other non-residential uses which would all have typical floor-to-floor heights significantly greater than would be the case for a residential flat building, meaning that the storey control in the DCP does not equate to a given or precise height outcome.
- the existing four-storey building on the site is a good case in point – it is higher with four storeys than the proposed buildings are with six storeys;
- a new ‘commercial premises’ or light industrial building would typically have floor-to-floor heights of between 3.6 – 4.0 metres, so a five-storey ‘commercial premises’ or light industrial building would be likely to have a height of 18.0 – 20.0 metres;
- the “bulk” of the new buildings to be erected on the site is largely consequential upon the building “envelopes” illustrated on the DCP diagrams, compliance with the maximum height control of 20 metres in MLEP 2011 (with which the proposal complies), and the detailed design of the new buildings, particularly the facades which in the subject case are articulated so as to avoid the perception of unacceptable or unreasonable building bulk;
- 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 on the site (as anticipated by the DCP), 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 (with relatively lower floor-to-floor heights), the size and scale of which are consistent with the desired future character for this large site.

In relation to Objective (c):-

- potential adverse environmental impacts (such as overshadowing and overlooking) have been minimised notwithstanding the additional GFA and the proposed development 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, widened footpath along the northern side of Alice Lane; and
- the likely additional traffic generation associated with the non-compliant FSR will have no significant impact on the efficiency of operation of the local road system.

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

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, as detailed above in Section 4.2;
- the proposal readily complies with the 20-metre height control in the LEP, especially in those locations most sensitive to potential adverse impacts, such as along Alice Lane;
- the proposal generally complies with the building location and building separation requirements in the Marrickville DCP; and
- the proposed additional GFA will not have an unreasonable impact on the perceived bulk or scale of the development, particularly given ready compliance with the height control in the LEP.

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

The proposal seeks consent for 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, consistent with the objectives and requirements of SEPP 32.

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, predominantly residential scheme 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.

There is an absence of environmental harm associated with the non-compliance with the development standard.

5. Has this written request adequately addressed the matters required to be demonstrated by sub-clause 4.6(3)?

Yes.

6. Is the development in the public interest because it is consistent with the objectives of the FSR standard and the objectives for development within the zone in which the development is proposed to be carried out?

Yes.

The development is consistent with the objectives of the FSR standard for the reasons set out in Section 4.2 above.

The development is consistent with the objectives for development within the B4 Mixed Use zone, in that it is for a mixed-use development, provides a constrained parking supply, and is well-located in relation to facilities and services.

7. Conclusion

Having regard to the above, it can be concluded that compliance with the FSR standard is unreasonable and unnecessary in the circumstances of the case, that there are sufficient environmental planning grounds to justify the non-compliance and that the proposal is in the public interest because it is consistent with the objectives both of the FSR standard and of the B4 Mixed Use zone.