

File Ref: DA201500081

### **Synopsis**

This report concerns an application under Section 96(2) of the Environmental Planning and Assessment Act 1979 to modify Determination No. 201500081, dated 28 October 2015, to re-configure the internal layout of the building, construct an additional storey to Building A and Building B and an increase to the finished floor level of the eastern portion of Building B by 200mm to accommodate the approved substation.

The application was notified in accordance with Council's notification policy and 2 submissions were received. The original approved development had a capital investment value (CIV) of \$24,564,732 and was determined by the Joint Regional Planning Panel. Any Section 96(2) modification to an original application with a CIV of more than \$20 million must be referred to the Joint Regional Planning Panel (JRPP) to exercise its consent authority functions under Schedule 4A of Environmental Planning and Assessment Act 1979.

The proposal generally complies with the aims, objectives and design parameters contained in State Environmental Planning Policies (SEPPs), Marrickville Local Environmental Plan 2011 (MLEP 2011) and Marrickville Development Control Plan 2011 (MDCP 2011). The development proposes a variation to the maximum building height and an additional variation to the floor space ratio (FSR) development standards contained within MLEP 2011.

The modification proposes a total GFA of 7,081sqm which equates to an FSR of 2.3:1, a 13% increase in the FSR to a non-compliance of 31%. The modified development also proposes a maximum building height of 19.1 metres (36% non-compliance) attributable to the lift overrun of Building B, 15.75 metres to the top of the roof of Building B (a 12% increase) and 16.65 metres (23% non-compliance) attributable to the lift overrun of Building A, 15.7 metres to the top of the roof of Building A (a 12% increase). The approved building height was 14 metres, with complied with the 14 metre height limit.

Notwithstanding that Clause 4.6 of MLEP 2011 does not apply to Section 96 applications, the applicant has submitted a written justification for the variation to height and FSR which is considered to be supportable.

The application is considered to be substantially the same development under Section 96(2)(a) of the Environmental Planning and Assessment Act 1979.

The potential additional impacts to the surrounding environment have been considered as part of the assessment process. The application has been amended to address comments raised by Council Officers in relation to the extent of the upper floor. In accordance with Council's notification policy the amended proposal did not require notification. Any potential impacts from the amended development are considered to be acceptable given the context of the site and the development is considered to be a good outcome and results in a mixed use building of high architectural merit.

The application is suitable for approval subject to the imposition of appropriate conditions.

### **PART A - PARTICULARS**

**Location:** Northern side of New Canterbury Road, Dulwich Hill between Ross Street and Old Canterbury Road.



*Image 1: Location Map*

<b>D/A No:</b>	201500081.01
<b>Application Date:</b>	22 December 2015. Additional information submitted on 23 March 2016 and 15 April 2016.
<b>Proposal:</b>	To re-configure the internal layout of the building, construct an additional storey to Building A and Building B and an increase to the finished floor level of the eastern portion of Building B by 200mm to accommodate the approved substation.
<b>Estimated Cost:</b>	Not stated
<b>Applicant:</b>	Haralambis Constructions Pty Ltd
<b>Zoning:</b>	B2 Local Centre

### **PART B - THE SITE AND ITS ENVIRONMENT**

<b>Improvements:</b>	Vacant
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*Image 2: The site looking north from the opposite side of New Canterbury Road*



*Image 3: The site looking north from the New Canterbury Road frontage*

**Current Use:** Currently under construction for mixed use development approved under Determination No. 201500081.

**Prior Determinations:** Determination No. 201500081, dated 28 October 2015, approved an application to demolish the existing improvements and construct a 4 storey development consisting of a residential flat building (Building A) containing

37 dwellings and a mixed use building (Building B) containing 3 retail tenancies and 30 dwellings with 2 levels of basement car parking accommodating 108 car parking spaces.

**Environment:** Mixed use development along New Canterbury Road, with residential uses in Cobar Street and Ross Street.

### **PART C - REQUIREMENTS**

1. **Zoning**  
*Is the proposal permissible under zoning provisions?* Yes
  
2. **Development Standards (Statutory Requirements):**

<b>Type</b>	<b>Required</b>	<b>Proposed</b>
Height of Building (max)	14 metres	19.1 metres
Floor Space Ratio (max)	1.75:1	2.3:1
  
3. **Departures from Development Control Plan:**

<b>Type</b>	<b>Required</b>	<b>Proposed</b>
Car parking	Discussed in the body of the report	
  
4. **Community Consultation:**  
 Required: Yes (newspaper advertisement, on-site notice and resident notification)  
 Submissions: 2 submissions
  
5. **Other Requirements:**  
 State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (Amendment 3)  
 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004  
 State Environmental Planning Policy (State and Regional Development) 2011  
 ANEF 2033 Affectation (below 20 ANEF)  
 Marrickville Section 94/94A Contributions Plan 2014

### **PART D - ASSESSMENT**

#### **1. Background**

Approval was granted by Determination No. 201500081, dated 28 October 2015, to demolish the existing improvements and construct a 4 storey development consisting of a residential flat building (Building A) containing 37 dwellings and a mixed use building (Building B) containing 3 retail tenancies and 30 dwellings with 2 levels of basement car parking accommodating 108 car parking spaces on the above property.

The Section 96(2) application the subject of this assessment was submitted to Council on 22 December 2015. On 15 April 2016 the applicant submitted amended plans and additional information that responded to Council's concerns in relation to the extent of the upper floor. In the submitted amended plans, the applicant proposes to increase the western and eastern side setbacks of the proposed upper floor as set out below:

- An increased eastern/western side setback of between 5.6 metres to 6 metres for the proposed Level 4 of Building B;
- To increase the western side setback to 6 metres for Level 4 of Building A;



- To maintain the existing 4.7 metres to 6.7 metres side setback to the eastern boundary of Building A as it was reduced during the original DA process to alleviate overshadowing impacts; and
- Side set back areas are proposed to contain non-trafficable concrete roof areas.

The amended plans submitted on 15 April 2016, are the subject of this assessment report.

## **2. The Proposal**

Approval is now sought to modify Determination No. 201500081 in the following manner:

- Addition of one level to Building A and to Building B resulting in both buildings being 5 storeys (the additional storeys contain 10 additional dwellings);
- Reconfiguration of Basement Level 1 and Basement Level 2 including the addition of 7 cars spaces (resulting in a total of 115 car spaces);
- Inclusion of an additional retail lift within Building B;
- Amendments to the location and type of the proposed adaptable units;
- Inclusion of combined storage / service cage enclosures to balconies addressing New Canterbury Road;
- Extension to the north of private open space for ground level units in Building A;
- Adjustment to the building envelope and internal reconfiguration of the south east corner of Building A;
- Reconfiguration of Unit A3.09;
- Increase in finished floor level of the eastern portion of Building B by 200mm to accommodate a new substation.

Subject to the above changes the development amounts to a total of 77 dwellings, 115 car spaces, and a reduction in the retail floor area to 577sqm.

A copy of the amended floor plans, sections and elevations submitted to Council on 15 April 2016 are reproduced below:

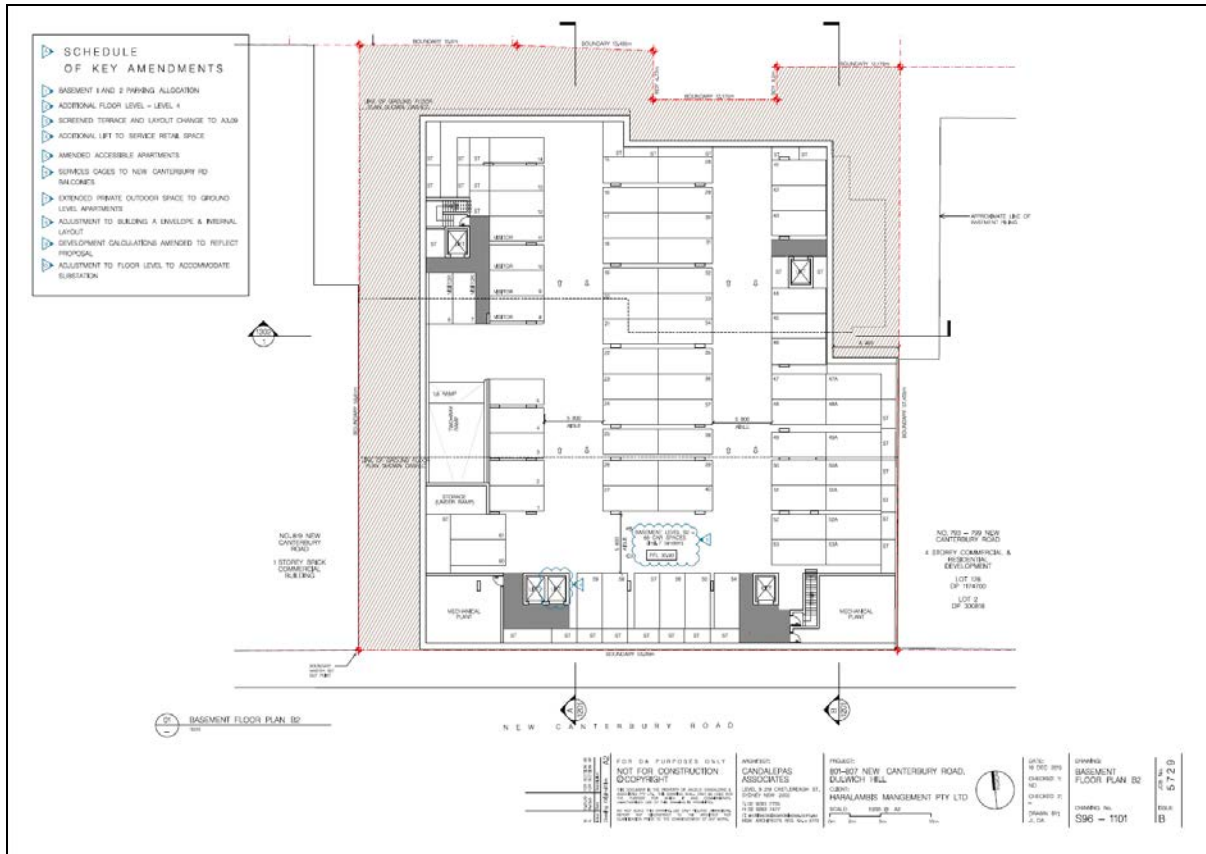


Image 4: Basement 2 Floor Plan

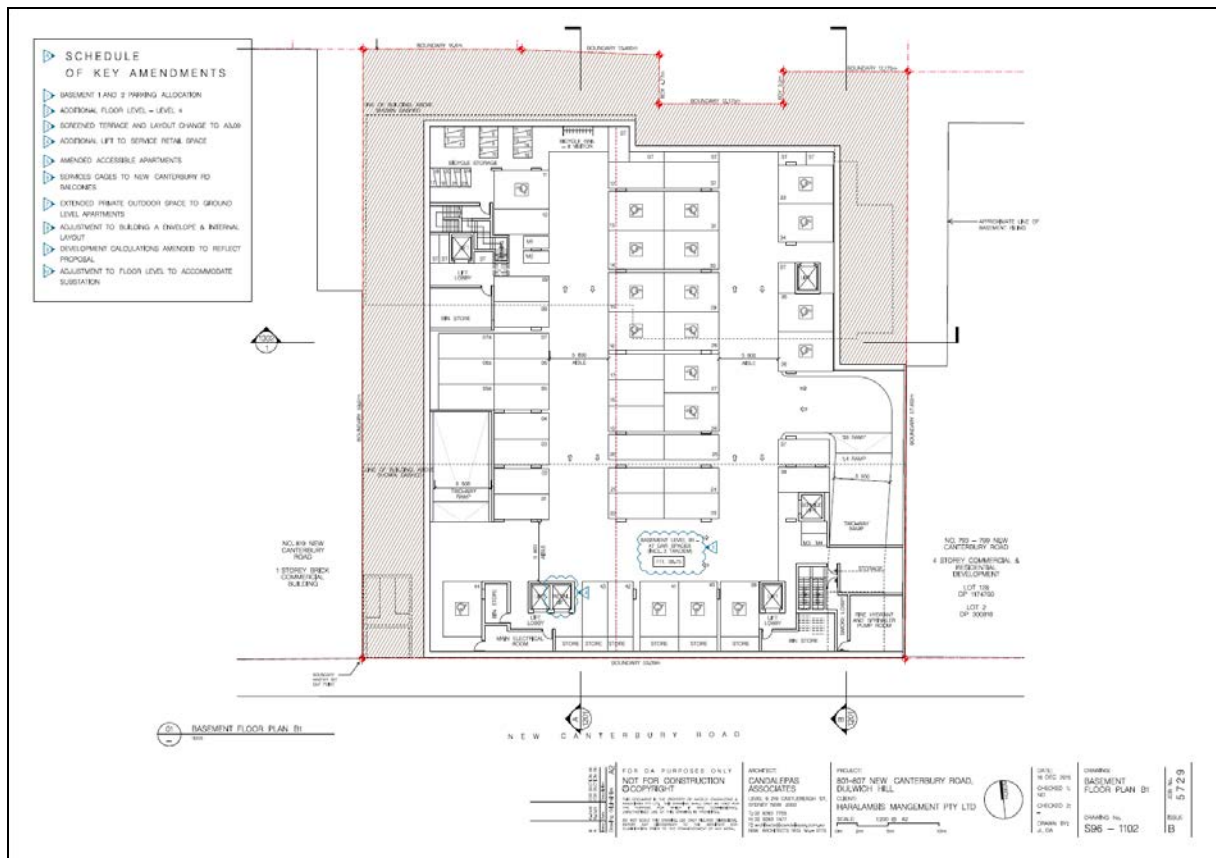
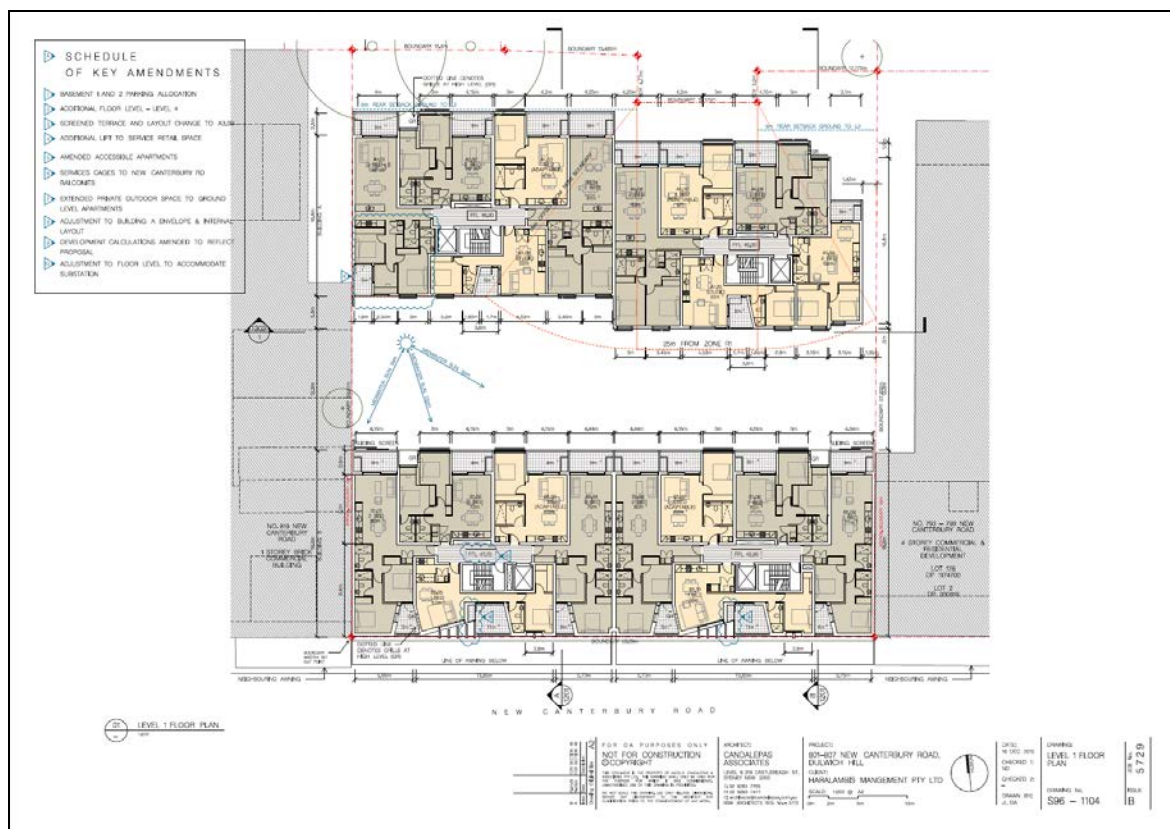


Image 5: Basement 1 Floor Plan



*Image 6: Ground Floor Plan*



*Image 7: First Floor Plan*





Image 8: Second Floor Plan

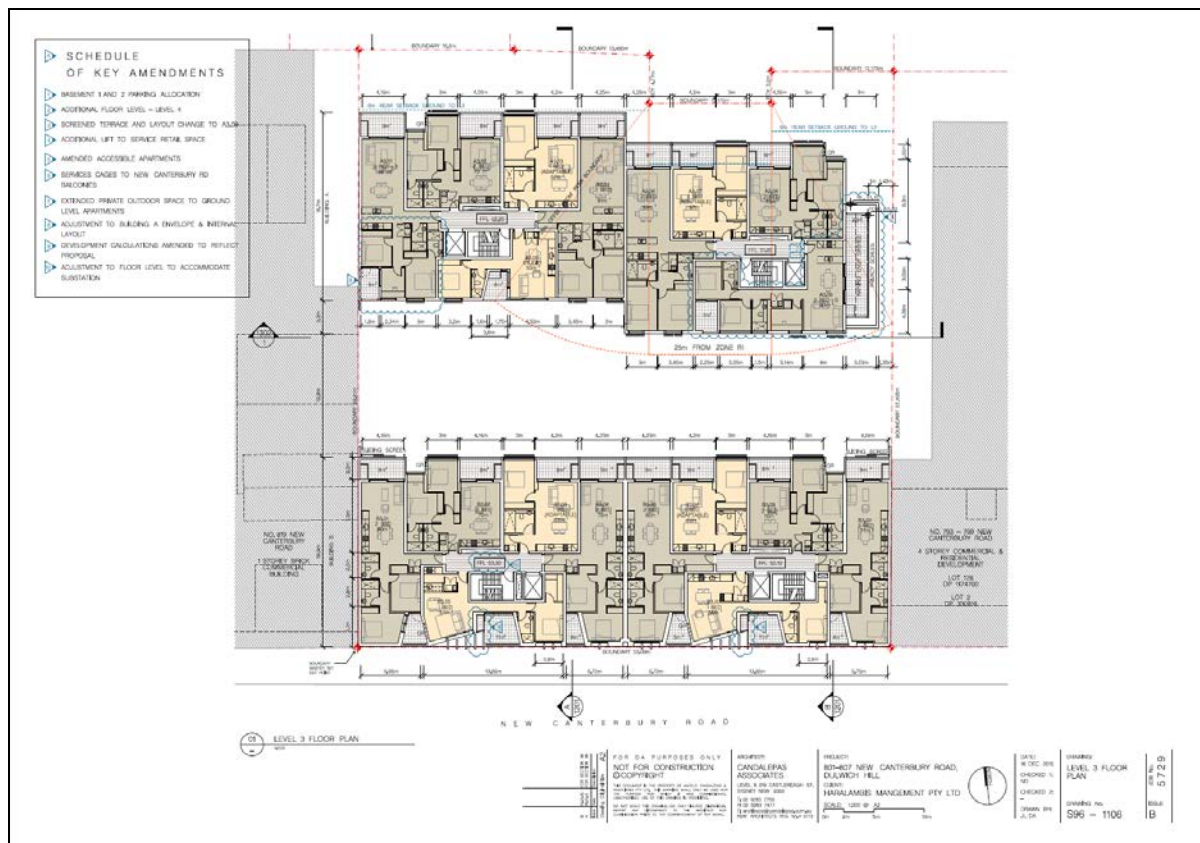


Image 9: Third Floor Plan



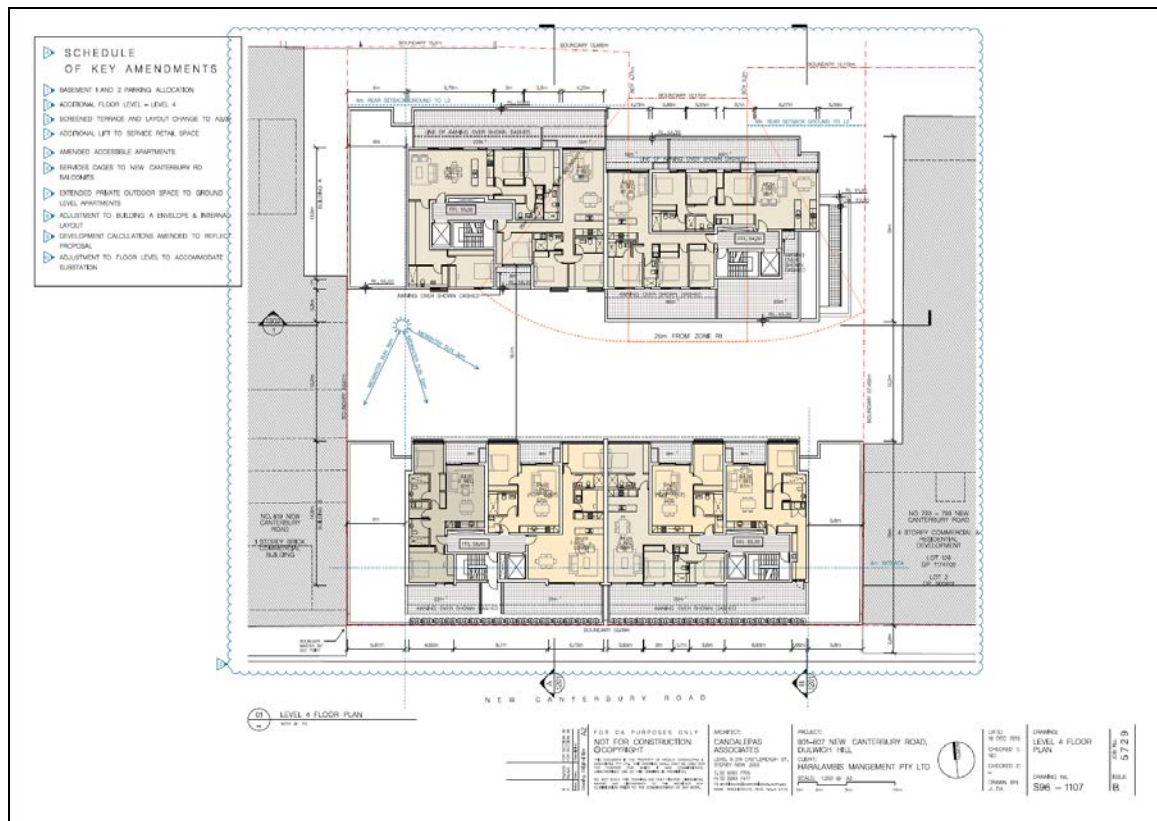


Image 10: Fourth Floor Plan

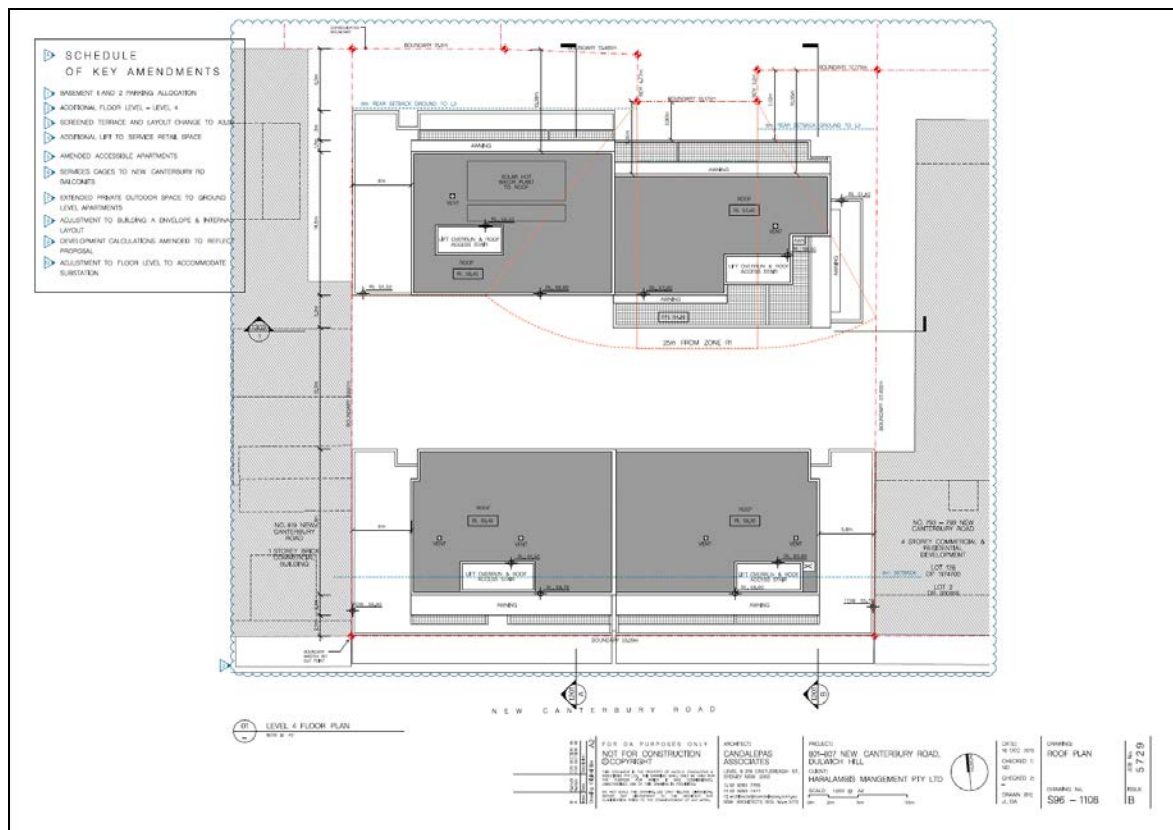


Image 11: Roof Plan

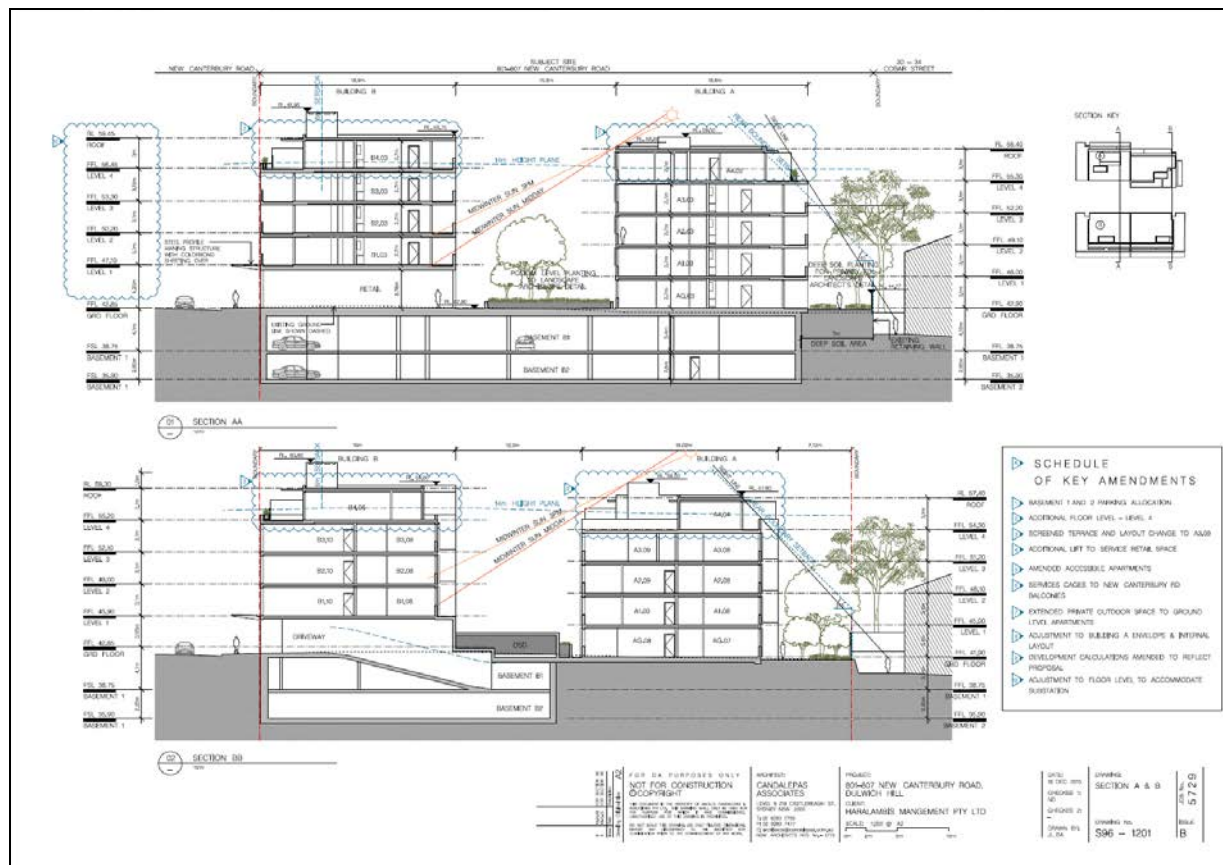


Image 12: Sections A and B Plan

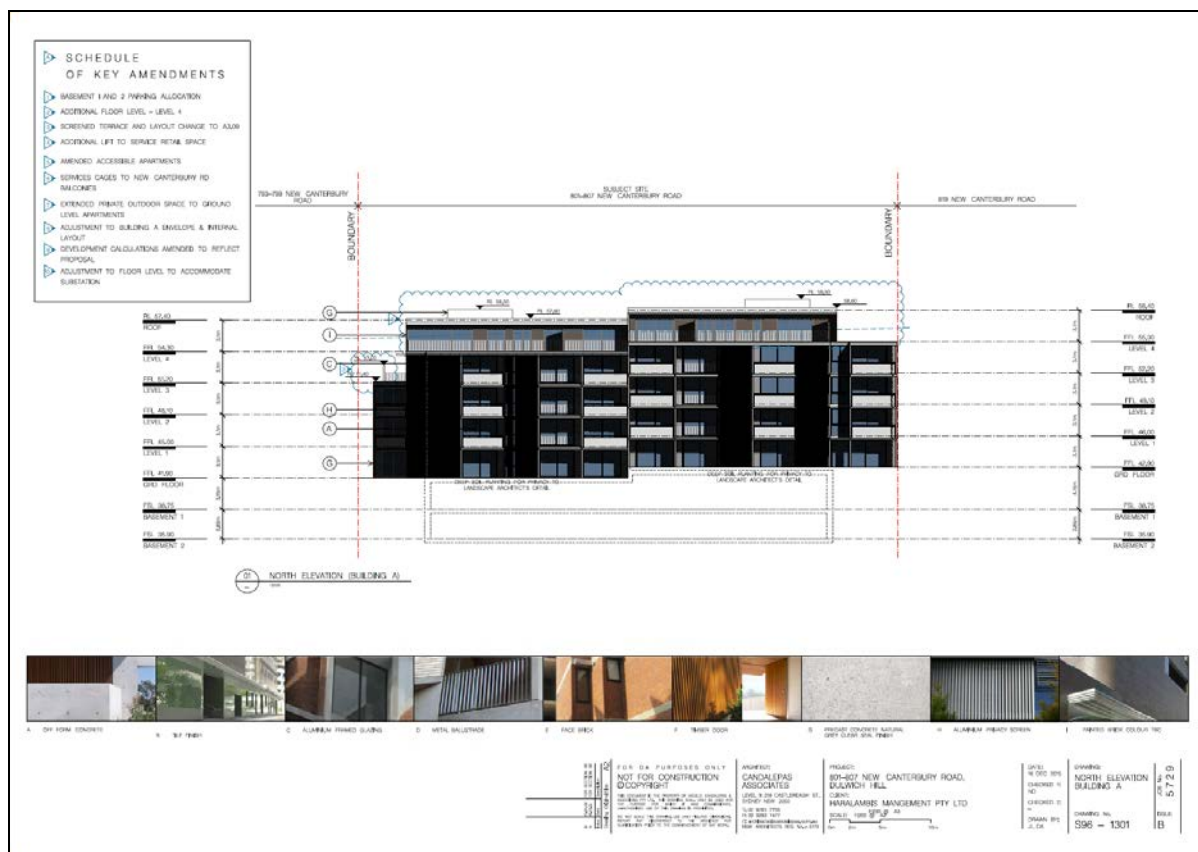


Image 13: North Elevation (Building A)

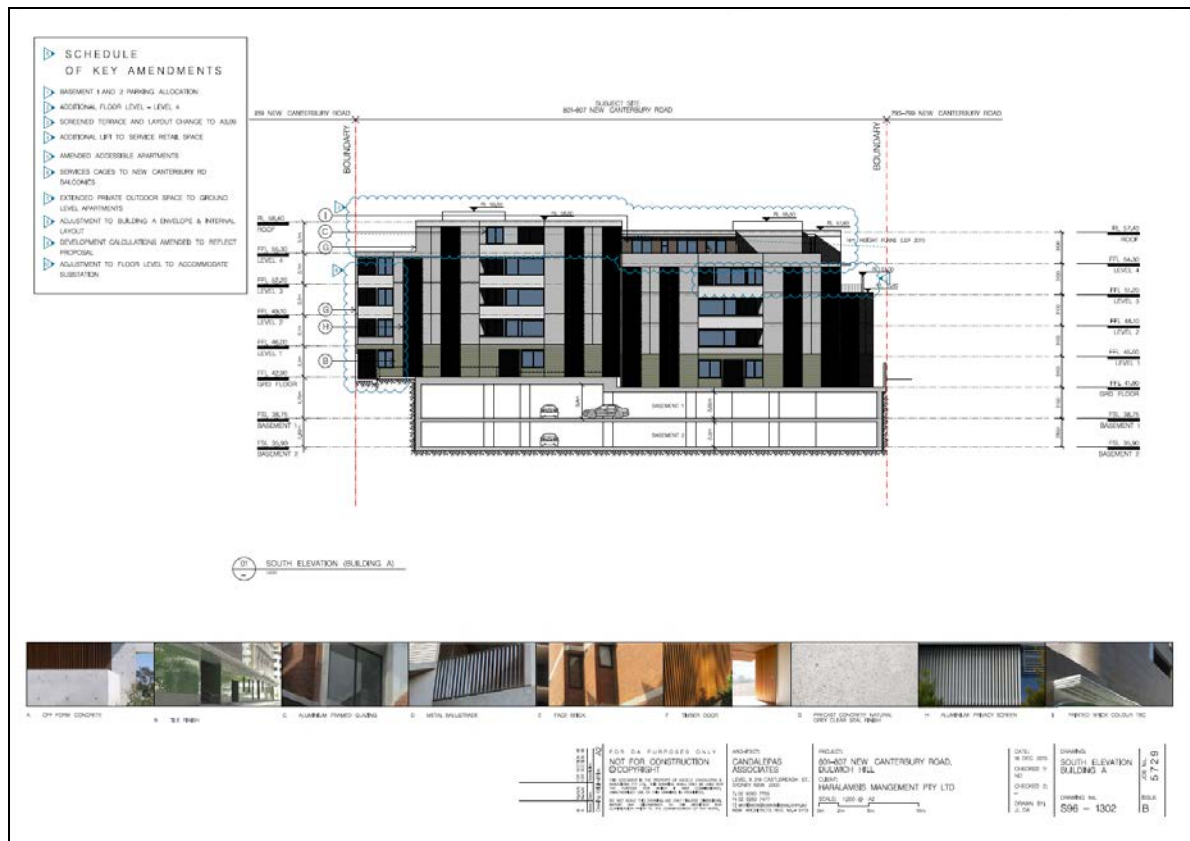


Image 14: Southern Rear Elevation (Building A)

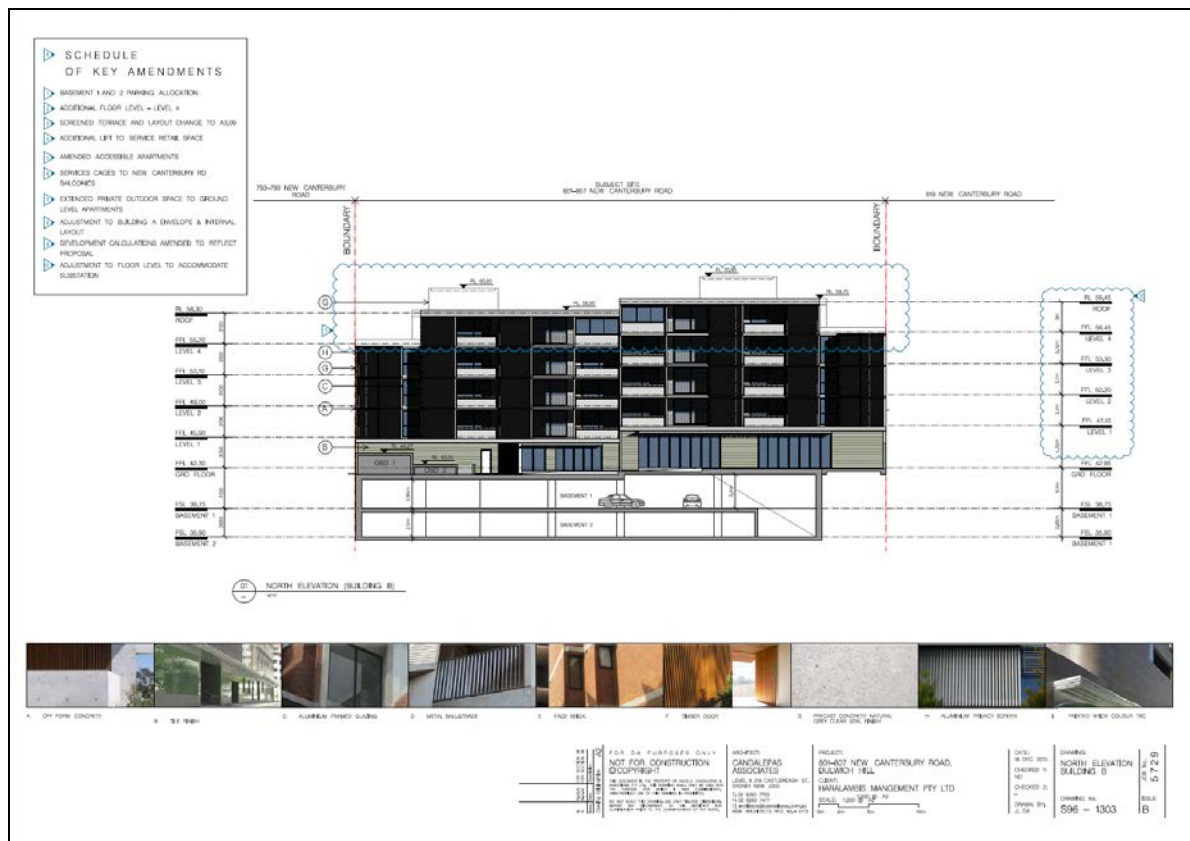


Image 15: North Elevation (Building B)



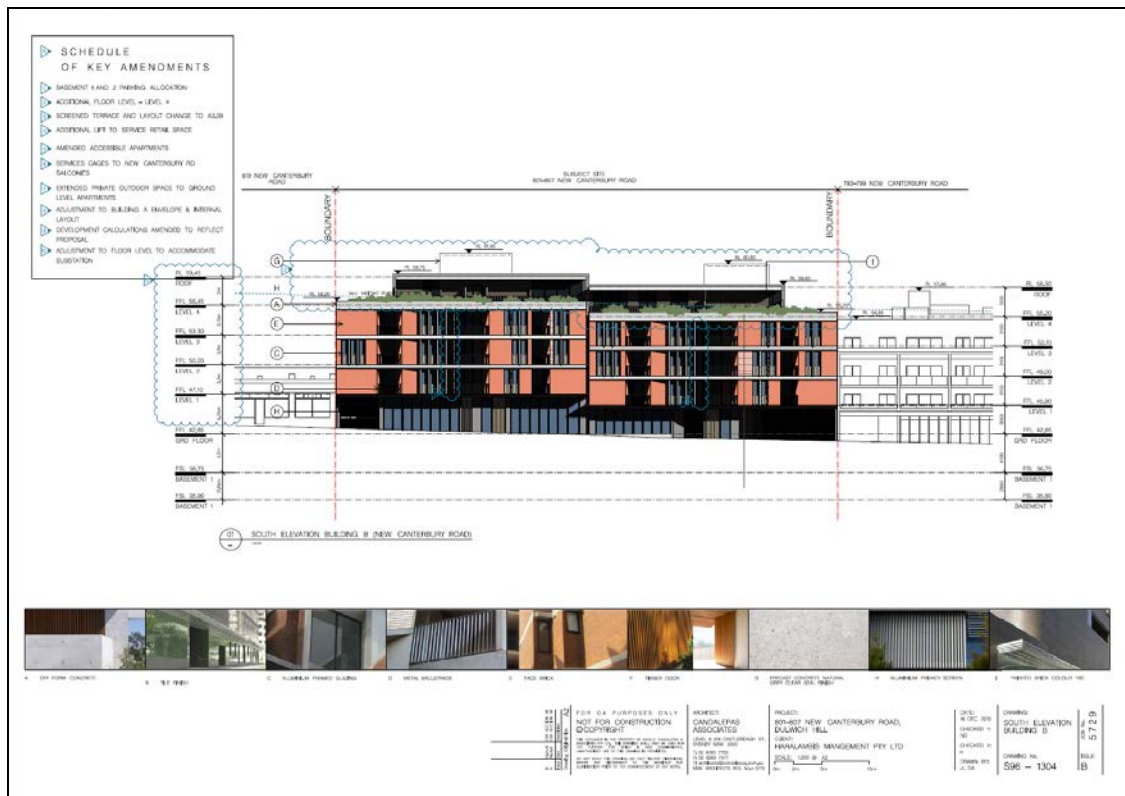


Image 16: South Elevation (Building B), New Canterbury Road Frontage

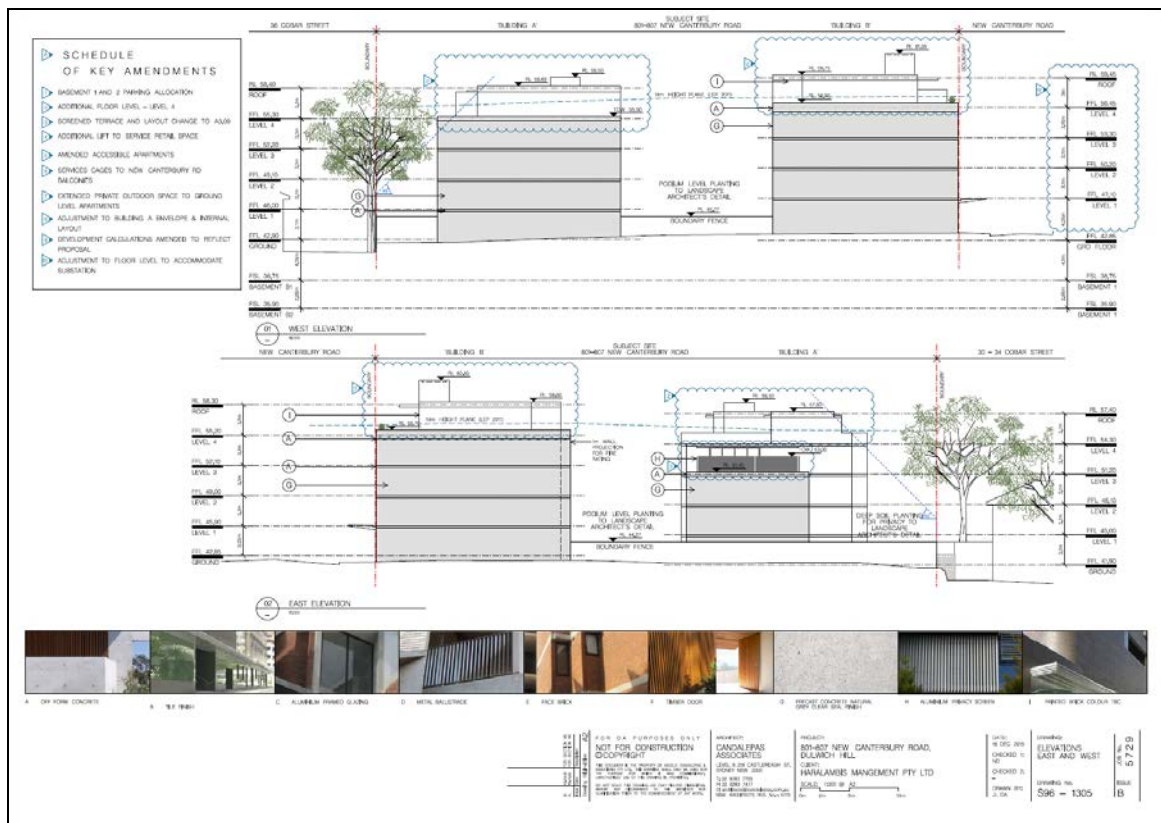


Image 17: Eastern/Western Side Elevations

### 3. Planning Assessment

#### a) Section 96(2) of the Environmental Planning and Assessment Act 1979

Under Section 96(2) of the Environmental Planning and Assessment Act 1979, Council, when considering a request to modify a Determination, must:

- (a) *Be satisfied that the development as modified is substantially the same development as the development for which consent was originally granted;*
- (b) *Consult with any relevant authority or approval body;*
- (c) *Notify the application in accordance with the regulations; and*
- (d) *Consider any submissions made;*

With regard to S96(2)(b), no authorities or bodies were required to be consulted in regards to the modified development. In accordance with S96(2)(c) and S96(2)(d), the application was notified in accordance with the regulations and MDCP 2011 and 2 submissions were received which are addressed in Section 4 of this report. Under Section 96(a), the consent authority must satisfy itself as to whether the development is substantially the same or not.

Consideration of whether the development is substantially the same requires both qualitative and quantitative comparison in accordance with the findings of Bignold J in *Moto Projects (No. 2) Pty Limited v North Sydney Council* [1999] NSWLEC 280; (1999) 106 LGERA 298, where, the process for consideration of proposed modification of development as follows:

*"55. The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.*

*56. The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."*

The test of whether the development is substantially the same requires assessment of whether the modification is 'radically transformed' as stated in *Tipalea Watson Pty Ltd v Ku-ring-gai Council* (2003) 129 LGERA 351 at paras 31 "31. *I accept ... that the development proposed in the Application is not quantitatively or qualitatively the same development as that approved in the Original Consent. The development is "radically transformed" and does retain the essence of the Original Consent. For these reasons, it is not substantially the same development and cannot be approved."*

The applicant provided Council with a quantitative and qualitative analysis in accordance with the principles contained in *Moto Projects (No. 2) Pty Limited v North Sydney Council* [1999] NSWLEC 280; (1999). The applicant contends that the proposed modifications to the approved development are considered to result in a development that is substantially the same development as the development originally approved for the following reasons:

- The number of openings addressing the front, rear and side boundaries in Building A and Building B for the ground floor to Level 3 do not change.
- The arrangement of the street façade (addressing New Canterbury Road) for Building B does not change for Ground Level to Level 3.
- The excavation is essentially the same both in depth and in proximity to the site boundaries. The finished floor levels of both basement levels is unchanged.
- The finished floor levels of ground floor to Level 3 in Building A remain unchanged. The finished floor levels of the eastern element of Building B remain unchanged (from Ground

Level to Level 3), with a minor 200mm change in finished floor levels for Level 1 to Level 3 in the western element of Building B.

- The location and number of residential lift cores remains unchanged.
- The area of deep soil is unchanged. The amount of landscaped area is unchanged.
- The increased number of units results in only a minor increase in trip generation. The three ground floor retail units remain in place. The change in the intensity of the use is therefore minimal.
- Amenity impacts associated with the addition of a new level to both buildings is also minimal. The new level is unlikely to result in adverse view loss impacts, overshadowing impacts, privacy impacts and visual massing impacts.
- Specifically the top floor units are setback from the front and rear boundaries and include screening to private open space and living rooms, such that they will not create adverse overlooking opportunities to adjacent residential properties. Side setbacks, highlight window placement and screening also inhibits 'sideways' views to the east and west.
- The development has been modelled so that the shadowing impact from the proposed top levels is commensurate with the shadowing impact of a development that complies with height, side and rear setbacks.
- The amenity impacts for both the occupants of the development and those in adjoining developments will be similar to the impacts from the approved development. The development will essentially look the same and have the same finishes and character.
- In physical terms, the building remains a mixed use development comprising two buildings above two levels of basement. The two buildings are separated by a communal landscaped area and the footprint of the two buildings is unchanged. The quantum and arrangement of landscaping around the two buildings remains the same and the driveway crossing and vehicular entry arrangements remain the same.
- The 3 retail units remain in the same place with the same presentation to the street.

Council's quantitative analysis of the amended Section 96 application is contained in Table 1:

	Original Consent	Amended Section 96 Plans (lodged 15 April 2016)	Comparison between the original consent and the revised Section 96 plans
<b>FSR</b>	2.03:1	2.3:1	+0.27:1 (13% increase)
<b>Building Height Building A</b>	14 metres	16.65 metres (15.7 metres to top of roof)	+2.65 metres (19% increase) – top of lift overrun  +1.7 metres (12% increase) – top of the roof
<b>Building Height Building B</b>	14 metres	19.1 metres (15.75 metres to top of roof)	+5.1 metres (36% increase) – top of lift overrun  +1.75 metres (12% increase) – top of the roof
<b>Total residential</b>	67	77	+10 (14.9% increase)



units			in units)
<b>Studio units</b>	6	5	-1
<b>1 bedroom units</b>	22	24	+2
<b>2 bedroom units</b>	37	41	+4
<b>3 bedroom units</b>	2	7	+5
<b>Retail floor space</b>	600m <sup>2</sup>	577 m <sup>2</sup>	-23m <sup>2</sup> (3.8% decrease)
<b>No. Retail Units</b>	3	No change	No change
<b>Basement Level 1</b>	42 Car spaces (including 3 x tandem)	47 Car spaces (including 3 x tandem)	+5
<b>Basement Level 2</b>	66 Car spaces (including 4 x tandem)	68 Car spaces (including 7 x tandem)	+2
<b>Deep soil landscaped area</b>	475.8m <sup>2</sup>	469.2m <sup>2</sup>	6.6m <sup>2</sup> (1% decrease)
<b>Total landscaped area</b>	1,080m <sup>2</sup>	1,080m <sup>2</sup>	No change

*Table 1: Quantitative Analysis of the amended Section 96 design*

As can be seen from Table 1, the amended Section 96 plans propose a 13% increase in total gross floor area (GFA) of the development, which increases the total FSR non-compliance from 16% to 31.4%. The increase in the building height to accommodate the additional floor is a 6% increase for Building A and a 8.5% increase for Building B. The percentage change in the total number of residential units 15%, being an additional 10 units where the original development already approved 67 units. In addition, the development proposes a 6% total increase in the number of car parking spaces (7 car parking spaces) from 108 car spaces to 115 car spaces within Basement Levels 1 and 2. From the quantitative analysis listed above, it is considered that the development from a numerical perspective is substantially the same as the approved development and is not radically transformed.

The qualitative analysis described above by the applicant is generally supported by Council officers. The amended Section 96 will result in a design that contains an additional 5 units, on each building, which are in addition to be approved 67 units, giving a total of 77 units. The proposed upper floor has been setback from the rear boundary (Building A) and the front boundary (Building B) as well as the side boundaries. The majority of the rest of the development remains largely unchanged. The overshadowing, privacy and visual bulk impacts on the surrounding context are not considered to be dissimilar to the approved development and the proposed landscaping and building materials remain consistent with the approved development. Consequently, the proposed modification to the development is considered to be “essentially or materially” the same as the approved development.

**b) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

An amended BASIX Certificate was submitted with the application indicating the proposal achieves full compliance with the BASIX requirements. Appropriate conditions are included in the recommendation to ensure the BASIX Certificate commitments are implemented into the development.

**c) State Environmental Planning Policy (State and Regional Development) 2011**

The original development has a capital investment value of \$24,564,732.

Clause 3 in Schedule 4A of the Environmental Planning & Assessment Act 1979 (EP&A Act 1979) provides that a Section 96(2) application determined by the relevant Joint Regional Planning Panel, pursuant to the provisions of Section 23G (4) and Clause 21 of State Environmental Planning Policy (State and Regional Development) 2011 remains a matter for the JRPP to determine as the consent authority application given that the original figure was greater than \$20 million.

**d) State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (Amendment 3)**

State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development (SEPP 65 Amendment 3) commenced on 17 July 2015 and applies to applications that have been submitted after the 19 June 2015. The original application was lodged on 3 March 2015. However, the Section 96(2) application was lodged on 22 December 2015 and as such the Apartment Design Guide (ADG) applies to the development.

SEPP 65 (Amendment 3) prescribes 9 design quality principles to guide the design residential flat buildings and to assist in assessing such developments. The principles relate to key design issues including context and neighbourhood character, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction and architectural expression. The amended proposal is considered to be consistent with the new design quality principles set out in the SEPP 65 (Amendment 3).

Apartment Design Guide

**(i) Visual Privacy / Building Separation**

Under the ADG, the following minimum building separation requirements are recommended for residential flat developments with 5 storeys:

<b>Room Types</b>	<b>Minimum Separation</b>
Habitable Rooms/Balconies to Habitable Rooms/Balconies	18 metres
Habitable Rooms/Balconies to Non-Habitable Rooms	13 metres
Non-Habitable Rooms to Non-Habitable Rooms	9 metres

Both Building A and Building B are proposed to be 5 storey buildings in height. The internal courtyard maintains a setback between Building A and Building B of approximately 12.3 metres to 15.6 metres for the existing approved 4 storey development. This separation is maintained on the proposed 5<sup>th</sup> storey. While not complying with the numerical separation requirements under the ADG, the development is considered to provide adequate separation between the buildings for privacy and solar access. The development is oriented north-south with the northern face of Building B receiving adequate solar access as required under SEPP 65. This is confirmed by the submitted solar analysis which is able to demonstrate that the apartments on the lowest level of Building B (Level 1) receive at least 2 hours of solar access during the winter solstice. The matter of solar access and privacy are discussed further below in this report.

Building separation from the existing residential flat building at 30-34 Cobar Street (located to the rear of the site) is also required to be 18 metres under the ADG. The amended design proposes a separation distance of between 9.56 metres (western end) and 12.36 metres (eastern end) between the Cobar Street residential flat buildings and the proposed development. Despite not strictly complying with the ADG separation requirements, the building separation of this development is greater than 50% (and in some places up to 66%) of the required separation. Any requirement for a greater building separation on the subject site is considered to be onerous, given the existing context and its existing separation non-compliances.

The proposed building separation is considered to provide sufficient visual and acoustic privacy with the applicant proposing full length privacy screening and deep soil planting for privacy on the rear interface of the site. Given that the existing adjoining development to the north was approved prior to the existence of SEPP 65 and that it does not comply with the current controls, the separation is considered to be acceptable in this instance. The proposed separation remains sufficient to provide acceptable visual and acoustic privacy for existing and new residents, with sufficient provision of open space and deep soil zones for stormwater management and tree planting.

The zero side separation of Building B from 793-799 New Canterbury Road is considered to be appropriate given the existing blank side wall and the urban context of the site. The upper most floor contains a side setback of 5.6 metres which provides acceptable visual and acoustic privacy for the adjoining residents.

Overall, given that the development is considered to be consistent with the objectives of the ADG building separation controls the proposal is acceptable in this regard.

(ii) Apartment size

Under the ADG, minimum apartment sizes are recommended for dwellings within a residential flat development.

The modified development contains 77 dwellings, being a mixture of studios, 1, 2 and 3 bedroom dwellings with varying sizes for each dwelling type.

Approximately 55% of the proposed apartments did not meet the minimum internal area required under the RFDC in the original application. Despite this, the Apartment Design Guide came into effect on 17 July 2015.

The majority of the non-compliant apartments meet the minimum size requirement but include a second or third bathroom which requires an additional 12sqm of area which has not been supplied. Despite this, 81% of the proposed apartments comply with those minimum apartment size standards which are considered to be acceptable under the ADG.

(iii) Ceiling Heights

Under the ADG, the suggested floor to floor heights for residential flat buildings are 3.3 metres for the ground and first floors containing residential habitable rooms, 2.7 metres for the remaining residential levels above.

The proposal includes a 3.65 metre floor to ceiling height for the ground floor and minimum 2.7 metre floor to ceiling heights for the levels above which complies with the minimum requirements.

**e) Marrickville Local Environmental Plan 2011**

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



The property is zoned B2 Local Centre under the provisions of MLEP 2011. The modified development is permissible with Council's consent under the zoning provisions applying to the land.

The proposed mixed use development is consistent with the identified objectives of the B2 Local Centre zone providing for a range of unit sizes and layouts to meet the needs of future community while providing a well located and planned retail space that will meet needs of residents and commuters.

(ii) Height (Clause 4.3)

A maximum building height of 14 metres applies to the land under MLEP 2011. The modified development has a maximum building height of 19.1 metres (36% non-compliance) attributable to the lift overrun of Building B, 15.75 metres to the top of the roof of Building B (a 12% increase) and 16.65 metres (23% non-compliance) attributable to the lift overrun of Building A, 15.7 metres to the top of the roof of Building A (a 12% increase). The approved building height was 14 metres, which complied with the 14 metre height limit. Council supports the application in its current form, despite these non-compliances.

(iii) Floor Space Ratio (Clause 4.4)

A maximum floor space ratio (FSR) of 1.75:1 applies to the development under MLEP 2011.

Modification proposes a total GFA of 7,081sqm which equates to an FSR of 2.3:1, a 13% increase in the FSR to a non-compliance of 31%.

The approved development proposed a total gross floor area (GFA) of 6,240sqm which equates to a FSR of 2.03:1 (16% non-compliance) on the 3,070m<sup>2</sup> site.

(iv) Exceptions to Development Standards (Clause 4.6)

Written objections to development standards are not required for Section 96 modification applications. However, similar considerations to those under Clause 4.6 inform the consideration of the appropriateness of the variations to development standards and are considered below.

*Maximum Building Height*

The applicant considers non-compliance with the maximum building height development standard to be acceptable for the following reasons:

- The additional building height above Council's controls has been positioned on the site in a manner that is unlikely to result in significant adverse impacts upon adjacent properties or the public realm by way of overshadowing, visual massing and privacy impacts.
- The top level of both proposed buildings is recessed from the front and rear boundaries and removing the non-compliance would not significantly alter the perceived scale of the proposed development when viewed from the public domain or surrounding development;
- There is minimal difference in the impacts from a compliant development including the arrangement of the 5th storey of Building A and Building B. The arrangement and orientation of openings and balconies and the positioning of proposed screening devices is such that the additional height will not generate any significant privacy impacts. Due to the setback arrangements, there is a nominal difference in visual impacts between the proposed buildings and a complying development;
- Shadow from the development does not affect the existing residential buildings (located to the rear of the site) in Cobar Street and will not significantly affect any existing or future residential development on the southern side of New Canterbury Road. Submitted shadow analysis demonstrates that a reduction in height of the remaining proportion of proposed

Building A to a compliant level is unlikely to reduce the number of living room windows in the western wall of the building at 793-799 New Canterbury Road that would be affected by shadow in a significant manner;

- The non-compliance with the standard does not contribute to adverse environmental impacts in terms of overshadowing, visual impacts or view loss. The development will result in significant public benefit through:
  - the positive urban design outcomes and revitalisation of a significant site at the western end of New Canterbury Road,
  - the increase in accessible, flexible and well-appointed retail floor space;
  - the provision of 77 residential units which achieve a high amenity, considerably above the minimum standards called for in the ADG and MDCP 2011;
  - the provision of a mixed use building of high architectural merit which achieves design excellence and will deliver a level of aesthetic interest to the western end of New Canterbury Road which is currently lacking;
- 4 projects have been given approvals for taller buildings to be constructed on the southern side of New Canterbury Road by Canterbury City Council ranging from 5-7 storeys and several mixed use developments have been approved for the northern side of New Canterbury Road.

In addition to the above justification, the applicant has listed a number of development applications within the Marrickville LGA which the applicant believes gives a more comprehensive history of the pattern of departures from the relevant FSR development standard for similar development in the vicinity and locality of the site as approved by Marrickville Council.

Council officers concur with the applicant's arguments to support the proposed height of the development. The majority of the additional height fits within the building envelope envisaged by Council's controls except for the upper level residential component. The highest parts of the buildings are relatively small objects being lift overruns. While the development will alter the character of the area, the height and scale of the buildings proposed are consistent with the changing character on the southern side of New Canterbury Road. The development has been appropriately designed to minimise amenity impacts and maximise deep soil landscaped areas.

#### *Floor Space Ratio*

The applicant considers non-compliance with the FSR development standard to be acceptable for the following reasons:

- The FSR is considered appropriate to the context and circumstances of the site, and does not result in a scale of development that is out of character with the surrounding and emerging character of the locality.
- Contextually, the proposal will provide a development of a scale, form and density that appropriately transitions from higher development to the south and the 14 metres high scale residential development to the north. On an urban design basis, the outcome will be entirely appropriate to the locality, particularly given the planning controls on the southern side of New Canterbury Road.
- The proposal does not represent an overdevelopment of the site and the height and proposed intensity is consistent with the strategic vision for the locality and its evolving urban context.
- 4 projects have been given approvals for taller buildings to be constructed on the southern side of New Canterbury Road by Canterbury City Council ranging from 5-7 storeys and several mixed use developments have been approved for the northern side of New Canterbury Road.
- The non-compliance with the standard does not contribute to adverse environmental impacts in terms of overshadowing, visual impacts or view loss.

Council officers concur with the applicant's arguments in support of the proposed FSR departure that is due to the additional building height and exceedance in car parking spaces. The exceedance with car parking is acceptable as it is located within basement levels and does not add to the bulk and scale of the building. The remaining FSR breach is acceptable as it does not result in unreasonable environmental amenity impacts and the proposed building height is considered to be appropriate in this instance for reasons discussed above.

It is considered that there are sufficient environmental planning grounds as to why the FSR and building height development standards should be varied in this particular circumstance based on the outcomes of planning principles such as contained in *Wehbe v Pittwater Council [2007] NSWLEC827*, *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC90* or *Moskovich v Waverley Council [2016]*. It is therefore assessed that compliance with the development standards should not be enforced in this case.

**f) Marrickville Development Control Plan 2011**

**PART 2 - GENERIC PROVISIONS**

**(i) Urban Design (Part 2.1)**

The modified development is considered acceptable having regard to the relevant aspects of the 12 urban design principles.

**(ii) Equity of Access and Mobility (Part 2.5)**

Part 2.5 of MDCP 2011 specifies the minimum access requirements in accordance with the relevant Australian Standards.

The modified development requires the provision of 16 adaptable dwellings in accordance with the requirements of MDCP 2011. The development has provided 16 adaptable dwellings in accordance with Part 2.5 of MDCP 2011. The proposal is considered reasonable having regard to compliance with access requirements for the residential component of the building. The matter of accessible parking is discussed in this section of the report under the heading 'Parking Part 2.10'.

**(iii) Acoustic and Visual Privacy (Part 2.6)**

Part 2.6 of MDCP 2011 contains objectives and controls relating to acoustic and visual privacy.

To ensure the development maintains acoustic and visual privacy for the surrounding residential properties and for future occupants of the development, the following measures are proposed:

- Balconies are proposed to be fitted with louvered privacy screens on the northern and southern facades and have a side setback of between 5.6-6 metres to alleviate impacts upon adjoining properties and within the development, particularly 793-799 New Canterbury Road and allows sufficient separation between the dwellings to maintain visual privacy for the occupants;
- Terraces facing New Canterbury Road and are not considered to present any visual privacy concerns given that they face the public domain;
- The original development was approved with appropriate noise conditions which are to be maintained within any development; and
- With regard to acoustic privacy, the development is captured by SEPP Infrastructure as it is located on a classified road and appropriate noise attenuation measures have been incorporated into the development; and
- The majority of the 5<sup>th</sup> storey of Building A has been setback back between 6 metres and 7.1 metres from the rear boundary shared with a residential flat building facing Cobar Street. Due to the irregular rear boundary shape, a small component is setback 3.92 metres, which is



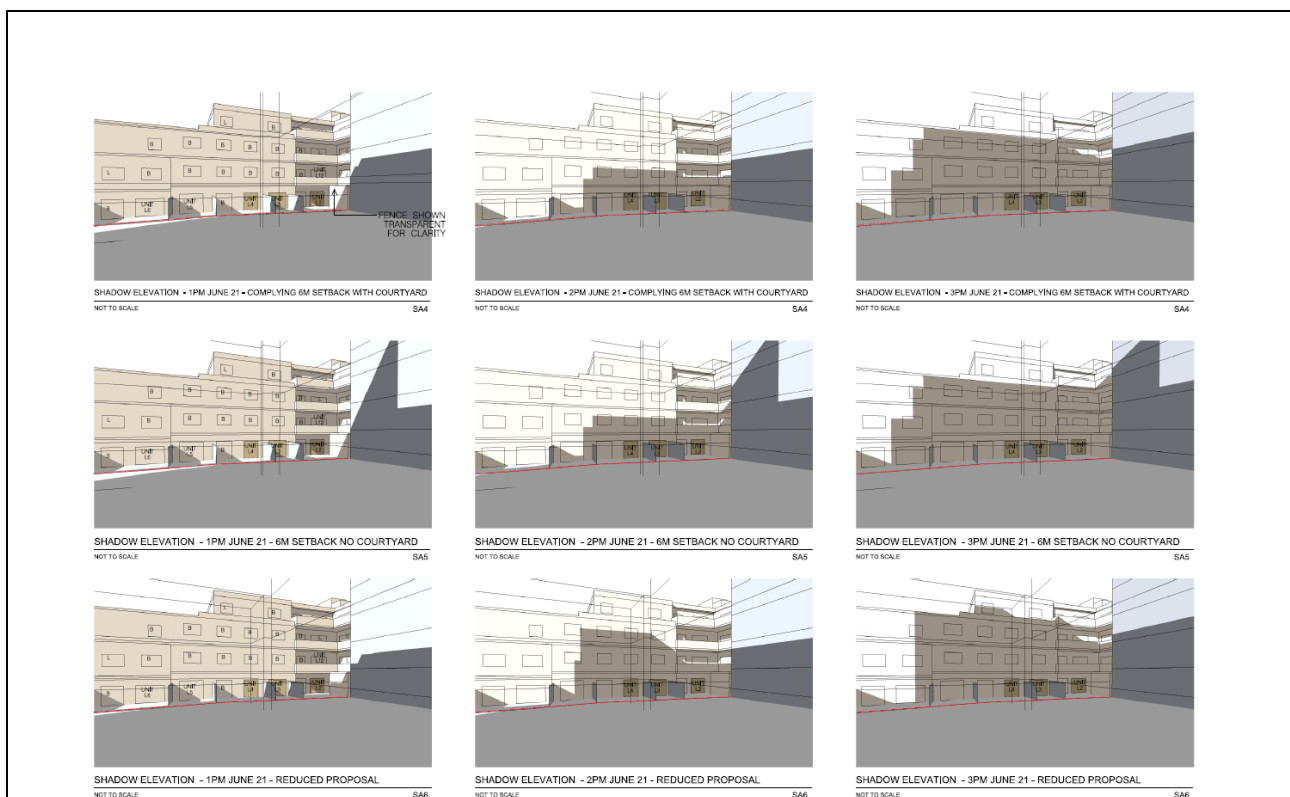
acceptable in this regard as the difference in site topography only permits views of the roof of the residential flat building facing Cobar Street.

The proposal is considered to comply with the visual and acoustic privacy controls under MDCP 2011.

(iv) Solar Access and Overshadowing (Part 2.7)

*Overshadowing*

The shadow diagrams submitted with the application illustrate the extent of overshadowing on adjacent properties. The site has a north-south orientation, as such will cast a shadow on the residential dwellings at 793-799 New Canterbury Road (located to the east of the site). No residential buildings are located to the west of the site and as such are not required to be considered in this regard.



*Image 18: Previously submitted elevational shadow diagrams for 793-799 New Canterbury Road under the original application (Scenarios SA4-SA6)\*\**

**\*\*Scenario SA4 – Impact of a compliant development on the western wall of 793-799 New Canterbury Road. The compliant would be a 14 metre high building (which is compliant with building height development standard MLEP 2011) and a 6 metre side setback from the eastern boundary (consistent with setback requirements under Part 5.1.3.5 of MDCP 2011) with a central courtyard.**

**Scenario SA5 – Is the same as Scenario SA4 but without a central courtyard.**

**Scenario SA6 – The proposed development as amended, with an increased eastern side setback**



Image 19: Elevational shadow analysis for the Section 96 application (Scenarios SA1-SA3)\*\*

\*\*Scenario SA1 – Impact of the existing development

Scenario SA2 – Impact of a compliant development with a 14 metre height limit

Scenario SA3 – Impact of proposed amended Section 96 application

The overshadowing impacts from the amended Section 96 application (Scenario SA3 – Image 19) from the approved design (Scenario SA6 – see Image 18 above) indicate that:

- No shadow will be cast by the modified development on 793-799 New Canterbury Road between 9.00am to 12.00pm during mid-winter.
- Compared to a compliant development, identical overshadowing impact (being nil impact) will result at 1.00pm;
- A similar impact will occur to the windows at 2.00pm and 3.00pm;
- A similar impact at 3.00pm would occur; and
- The impact is consistent with the overshadowing impact that has already been approved.

It is noted that the majority of 793-799 New Canterbury Road has been setback approximately 4.1 metres from the western side boundary shared with the site, which does not comply with the separation controls related to SEPP 65 or Council's controls given that a 12 metre setback is required. The overshadowing impacts from the proposed development on the adjacent building are greatly increased given the marginal side setback provided compared to a development that has a compliant separation. In addition, the elements of the subject development that breach the 14 metre height control have been setback a greater distance from the side and rear boundaries being 5.6-6 metres. This arrangement has allowed solar impact from the additional bulk to be negated and is considered to be a suitable design outcome.

The proposed eastern side setback and the resulting overshadowing impact are considered to strike a reasonable balance between development of the site and its resulting impacts. Given the above, the overshadowing of the amended proposal appears to be consistent with the impacts of the built form already approved on the site and is acceptable in this regard.

#### *Solar Access*

The site design has 84% (65 out of 77) of dwellings that receive a minimum of 2 hours of solar access to the internal and external living areas between 9.00am and 3.00pm on June 21<sup>st</sup>. This is greater than the requirements that 65% of the dwellings receive solar access.

Given the above, the proposal is considered to be acceptable with regard to the solar access and overshadowing requires contained within Part 2.7 of MDCP 2011.

#### (v) Parking (Part 2.10)

##### *Car, Bicycle and Motorcycle Parking Spaces*

The property is located in Parking Area 2 under Part 2.10 of MDCP 2011. The following table summarises the car, bicycle and motorcycle parking requirements for the development:

Component	Control	Required	Proposed	Complies?
<b>Resident Car Parking</b>				
Resident Car Parking	0.4 car parking space per studio	5 studio units = 2 spaces	84 spaces (including 10 tandem spaces) and 16 accessible spaces)	No (exceeds by 20 spaces)
	0.5 car parking spaces per 1 bedroom unit	25 x 1 bed units = 12.5 spaces		
	1 car parking space per 2 bedroom unit	40 x 2 bed unit = 40 spaces		
	1.3 car parking spaces per 3 bedroom unit	7 x 3 bed unit = 9.1 spaces		
	1 car parking space per 1 adaptable dwelling	16 accessible spaces		
<b>TOTAL:</b>		64 spaces and 16 accessible, totalling 80 spaces		
<b>Visitor Parking</b>				
Visitor Car Parking	0.1 car parking space per unit	77 units = 8 spaces	6 visitor spaces including 3 accessible visitor spaces	No
	1 accessible visitor's car parking space per 4 accessible car parking spaces	4 accessible space		
<b>TOTAL</b>		8 visitor spaces and 4 accessible spaces		
<b>Commercial Parking</b>				
Commercial Car Parking	7 + 1 space per 45sqm GFA over 500sqm for customers and staff	577sqm GFA = 9 spaces	9 spaces	Yes
<b>TOTAL</b>		9 spaces		
<b>GRAND TOTAL</b>		<b>101 spaces</b>	<b>115 spaces</b>	<b>No</b>
<b>Bicycle Parking</b>				
Resident Bicycle Parking	1 bicycle parking space per 2 units	80 units = 40 spaces	24 spaces, 8 visitor	No



Component	Control	Required	Proposed	Complies?
Visitor Bicycle Parking	1 bicycle parking space per 10 units	80 units = 8 spaces	spaces	
Commercial Bicycle Parking - Staff	1 bicycle parking space per 300sqm GFA	600sqm GFA = 2 spaces		
TOTAL		50 spaces		
Motorcycle Parking				
Motorcycle Parking	5% of the total car parking requirement	49 car parking spaces required = 2 spaces	4 spaces	Yes
TOTAL		4 spaces		

*Table 1: Car, Bicycle and Motorcycle Parking Control Compliance Table*

As detailed above, the development does not comply with Council's numerical parking controls in relation to the residential parking component with the provision of 84 spaces (including 6 tandem spaces and 22 accessible spaces) for non-adaptable units when the control requires 64 spaces. 10 tandem parking spaces are proposed to be allocated between 3 and 2 bedroom apartments. The parking allocation while not strictly conforming to the numerical controls is considered to be acceptable given that the basement size remains unchanged and a number of the additional spaces are in the form of tandem spaces rather than free standing spaces.

Insufficient visitor parking has been provided with the development proposing to be deficient by 2 visitor spaces and 1 accessible visitor space. The non-compliance with the visitor parking controls is not considered to be appropriate given the exceedance in the overall provision of car parking on the site. Appropriate conditions are proposed in the recommendation to ensure compliance with Council's car parking controls for each component of the development.

Despite the non-compliance with the commercial visitor spaces, 6 car spaces for 3 commercial tenancies are considered to be sufficient for the proposed commercial space on the ground floor for customers and staff given the site's proximity to frequent public transport links.

With the proposed modifications stated above, the development is considered to meet the overall intent of the parking control.

The variation in the bicycle parking controls is considered to be reasonable given that 24 resident spaces and 8 visitor spaces will provide sufficient storage space for bicycles in the development. The development proposes 4 motorcycle parking spaces which comply with Part 2.10 of MDCP 2011.

Conditions have been included in the recommendation to confirm the number of spaces for each vehicle type.

(vi) Landscaping and Open Spaces (Part 2.18)

Part 2.18 of MDCP 2011 prescribes landscaped area, private and common open space controls.

Each of the proposed additional 10 dwellings have a private open space in the form of a deck or balcony accessible from the principal living area of the dwelling with a minimum area of 8sqm and a minimum width of 2 metres. The development satisfies the controls with Part 2.18 and is acceptable in this regard.

**PART 5 - COMMERCIAL AND MIXED USE DEVELOPMENT**

Part 5 contains controls for commercial and mixed use developments and the relevant matters are considered below.

(i) Massing and Setbacks (Part 5.1.3.3)

(a) Front Massing for Infill Development

Control C7 requires the street front portion of the building mass to have a nil setback to the street up to a height of 12 metres and contain a maximum of 3 storeys. The modified proposal retains a 13.6 metre form containing 4 storeys fronting New Canterbury Road and proposes Level 4 (5<sup>th</sup> storey) to have a setback approximately 4 metres from the New Canterbury Road frontage.

Building B maintains a nil front setback which reinforces a continuous street frontage along New Canterbury Road. In addition, the development maintains the approved building façade design and materials which contribute positively to the existing streetscape character of the locality. It is noted in the applicant's submission has identified that a significantly higher built form is permitted on the southern side of New Canterbury Road within the Canterbury City Council local government area than what is allowable under Marrickville Council's planning controls. Given the above, the non-compliance with Control C7 is supported given that despite the height and front setback variation.

Control C9 generally restricts side setbacks in the front portion of the building where zero side setbacks are the typical pattern of the streetscape. The modified development maintains a zero side setback for Building B for the first 4 levels which is supported as it is typical of the locality and the B2 Local Business zoning. A 5.6-6 metre side setback on the 5<sup>th</sup> storey is supported as it reduces environmental amenity impacts for the adjoining properties.

(b) Rear massing

The rear massing envelope is a combination of the rear boundary plane and a 45 degree sloping plane from a point 5 metres vertically above the ground level of the property being developed, measured at the rear boundary as described by Control C14 in Part 5.1.3.3.

The top floor (5<sup>th</sup> storey) presents a minor non-compliance with the rear setback control being the balcony awning on the rear facade. The applicant contends that only the leading northern edge of the bevelled roof of the top floor of Building A will be viewed from the south facing openings on the top floor (second floor) of 30-34 Cobar Street and 36 Cobar Street and this will only be the case when residents are actually standing immediately adjacent to the south facing windows.

It is noted that there are no overshadowing impacts to any properties in Cobar Street given their location to the north of the site. Overshadowing impacts to 793-799 New Canterbury Road to the east of the site have been mitigated as a result of an increased eastern side setbacks. The solar access to the residences on the lowest level of Building A remain compliance with SEPP 65 controls related to solar access.

The modified proposal is considered to meet Council's objectives for setbacks and massing given that the roof top level is not a visually dominant element and the rear massing is not considered to cause significant visual bulk or amenity impacts on neighbouring properties to the rear. In addition, the applicant proposes deep soil planting for privacy as well as privacy screens have been proposed to the northern face of Building A to reduce visual and acoustic amenity impacts from the proposal.

Given the above, the modified development's rear massing is not considered to result in significant adverse visual bulk or privacy impacts and does not result in overshadowing impacts. The upper most level is consistent with the rear massing control and is considered to meet the objectives of

the DCP for massing and setbacks and is considered reasonable having regard to adjoining site context and the scale of the overall development.

(ii) Building Depth (Part 5.1.3.4)

Part 5.1.3.4 of MDCP 2011 specifies the controls for building depth of relevance to the proposed development.

The proposal complies with the maximum building envelope depth of 22 metres and internal plan depth of 18 metres. The development at its maximum width for a cross through apartment measures approximately 17 metres. The proposed have balconies which measure greater than the 8sqm and minimum 2 metres prescribed under Part 2.18 and the layout and design of proposed dwellings is such that they would provide for good levels of amenity. Therefore the development is considered reasonable in this regard.

(i) Building Use (Part 5.1.5)

(a) Mixed use development (Part 5.1.5.1)

The proposal provides suitable opportunities for ground floor commercial uses at the site frontage with the provision of 3 commercial tenancies. The design of the ground floor tenancies are sufficiently flexible to accommodate a variety of potential future uses to achieve the desired future character of the area.

(b) Dwelling mix (Part 5.1.5.2)

Part 5.1.5.2 of MDCP 2011 prescribes the following dwelling mix requirements for mixed use developments containing 6 or more dwellings:

Unit Type	Required	Proposed	Complies
Studio	5 - 20%	6% (5 apartments)	Yes
1 bedroom	10 - 40%	32% (25 apartments)	Yes
2 bedroom	40 - 75%	51% (40 apartments)	Yes
3 bedroom	10 - 45%	10% (7 apartments)	Yes

The development provides for a range of unit layouts and types that contribute to housing range and mix consistent with the intent of the control.

## **PART 9 – STRATEGIC CONTEXT**

The land is located in the New Canterbury Road West Planning Precinct (Precinct 9.17) under MDCP 2011. That planning precinct is not one of the 13 precincts that have been completed as part of Stage 1 of MDCP 2011.

**g) Marrickville Section 94/94A Contributions Plan 2014**

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$1,310,200.90 would be required for the development under Marrickville Section 94/94A Contributions Plan 2014. The above contribution is the contribution applicable as at 27 April 2016.

However, the application includes a Voluntary Planning Agreement (VPA) which the applicant has entered into with Council for the development. The VPA seeks to provide a public benefit in addition to Section 94 Contributions being imposed by Council.



## **h) Other Matters**

### Condition 57

The applicant has proposed to modify Condition 57 which relates to the screening of plumbing and ductwork to allow it to be appropriately screened from view from the street rather than the current condition that states: "All plumbing and ductwork including stormwater downpipes must be concealed within the outer walls of the building so they are not visible". It is not considered to be appropriate to modify this condition as Council has no details of the proposed screening have been submitted and screening may lead to a poor visual outcome. Retention of the condition in its current form is recommended.

Condition 57 has been repeated within the original determination under Condition 76. As such Condition 76 is recommended to be deleted.

### Condition 101 and Condition 5

The applicant has requested to delete condition 101 or condition 5 as they are repetitious. The conditions relate to site remediation works and contain slightly different wording. Council proposes to modify wording of condition 5 to remove the following sentence, although Condition 5 should be retained:

*"Once these works have been carried out a validation report is to be submitted to Council prepared in accordance with the requirements of the NSW EPA's Guidelines for Consultants Reporting on Contaminated Sites to Council's satisfaction."*

### Condition 115

The applicant proposes to amend Condition 115 to allow any encroachments Council road or footpath resulting from the building works if placed on the approved plans. Modification of this condition is not considered to be appropriate given that Council has not granted any consent for use of its land.

### Abuse of Process

The applicant has submitted legal advice in response to the relevance of *Nikolaidis v Pittwater Council* NSWLEC 227 (abuse of process) to the modification application. The legal advice prepared by Henry Davis York states that:

*"9. It is clear from Nikolaidis that in using a different legislative process (modification application) to seek approval for the 5th level, to the original process (development application), there cannot be an abuse of process".*

The legal advice is accepted as the case confirmed that applications under different sections of the Act are not an "abuse of process". It is noted that the concept is limited to Court proceedings, not applications to consent authorities.

## **4. Community Consultation**

The application was advertised, an on-site notice displayed on the property and residents/property owners in the vicinity of the property were notified of the development in accordance with Council's policy. 2 submissions were received raising the following concerns which have already been discussed throughout the main body of this report:

- (i) Overdevelopment of the site;

- (ii) Overshadowing;

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

- (i) Additional shadow impacts on 793-799 New Canterbury Road

Comment:

The potential impacts to the surrounding environment have been considered as part of the assessment process. It is noted that the proposed Section 96 Application does not create any additional overshadowing to 793-799 New Canterbury Road other than what has been previously approved by the JRPP.

- (ii) Approving applications for large developments to exceed the height standards will set an unwanted precedent within the Marrickville Local Government Area

Comment:

The proposed development represents a building which is commensurate with this emerging character and which is considered more desirable than the prevailing existing character. It is also noted that the proposed density is generally consistent with the approved and constructed development to the east of the site and approved developments on the southern side of New Canterbury Road. The development is considered to be a good outcome and results in a mixed use building of high architectural merit. Given this, the additional height of buildings and FSR departures which accompanied the application are considered to be well founded and worthy of support.

- (iii) Proposed firewall not identified on plans and there are alternative solutions to achieve BCA compliance.

In the amended plans submitted on 15 April 2016, the blade walls have been removed from the northern ends of each of the south-west and north-west elevations. The only remaining blade wall is to the south end of the north west elevation, which does not cast any additional shadow as it is to the south and within the shadow profile.

## **5. Conclusion**

The amended application seeks to re-configure the internal layout of the building, construct an additional storey to Building A and Building B and an increase to the finished floor level of the eastern portion of Building B by 200mm to accommodate the approved substation.

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 application is considered suitable for approval subject to the imposition of appropriate conditions.

The amended proposal generally complies with the aims, objectives and design parameters contained in Marrickville Local Environmental Plan 2011 and Marrickville Development Control Plan 2011. The development will not result in any significant impacts on the amenity of adjoining premises and the streetscape. The application is suitable for approval subject to the imposition of appropriate conditions.

**PART E - RECOMMENDATION**

- A. THAT** the application under Section 96 of the Environmental Planning and Assessment Act 1979 to modify Determination No. 201500081, dated 28 October 2015, be **APPROVED** and a modified Determination be issued with the Determination being modified in the following manner:
- (i) That the description of the development being amended to read: *To demolish the existing improvements and construct a 5 storey development consisting of a residential flat building (Building A) containing 41 dwellings and a mixed use building (Building B) containing 3 retail tenancies and 36 dwellings with 2 levels of basement car parking accommodating 115 car parking spaces.*
  - (ii) That condition **1, 4, 5, 10, 11, 12, 56 and 105** being amended to read:
1. The development must be carried out in accordance with plans and details listed below:

<b>Plan, Revision and Issue No.</b>	<b>Plan Name</b>	<b>Date Issued</b>	<b>Prepared by</b>	<b>Date Submitted</b>
Job No. 5729, Dwg No. DA-1101, Issue B	Basement Floor Plan B2	13 April 2016	Candalepas Associates	15 April 2016
Job No. 5729, Dwg No. DA-1102, Issue B	Basement Floor Plan B1	13 April 2016	Candalepas Associates	15 April 2016
Job No. 5729, Dwg No. DA-1103, Issue B	Ground Floor Plan	13 April 2016	Candalepas Associates	15 April 2016
Job No. 5729, Dwg No. DA-1104, Issue B	Level 1 Floor Plan	13 April 2016	Candalepas Associates	15 April 2016
Job No. 5729, Dwg No. DA-1105, Issue B	Level 2 Floor Plan	13 April 2016	Candalepas Associates	15 April 2016
Job No. 5729, Dwg No. DA-1106, Issue B	Level 3 Floor Plan	13 April 2016	Candalepas Associates	15 April 2016
Job No. 5729, Dwg No. DA-1108, Issue B	Roof Plan	13 April 2016	Candalepas Associates	15 April 2016
Job No. 5729, Dwg No. DA-1201, Issue B	Section A & B	13 April 2016	Candalepas Associates	15 April 2016
Job No. 5729, Dwg No. DA-1301, Issue B	North Elevation Building A	13 April 2016	Candalepas Associates	15 April 2016
Job No. 5729, Dwg No. DA-1302, Issue B	South Elevation Building A	13 April 2016	Candalepas Associates	15 April 2016
Job No. 5729, Dwg No. DA-1303, Issue B	North Elevation Building B	13 April 2016	Candalepas Associates	15 April 2016



Job No. 5729, Dwg No. DA-1304, Issue B	South Elevation Building B	13 April 2016	Candalepas Associates	15 April 2016
Job No. 5729, Dwg No. DA-1305, Issue B	Elevations East & West	13 April 2016	Candalepas Associates	15 April 2016
Job No. 5729, Dwg No. DA-1401, Issue B	Adaptable Unit Plans	13 April 2016	Candalepas Associates	15 April 2016
S96	Access Review (Part 3 Site Ingress and egress, Part 4 Residential Paths of Travel, Part 5 Accommodation and Part 6 Common Areas)	11 December 2015	Morris-Goding Accessibility Consulting	17 December 2015
Version V110811/A, Certificate Number 16450057	NatHERS Thermal Performance – Multi Dwelling Certificate	18 December 2015	Dean Gorman	5 January 2016
608372M_03	BASIX Certificate	14 December 2016	NSW Department of Planning and Environment	5 January 2016

and details submitted to Council on 5 January 2016 and 15 April 2016 with the application for development consent and as amended by the matters referred to in Part A of this Determination and the following conditions.

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

- The materials and finishes of the building constructed pursuant to this consent must be strictly in accordance with the materials and finishes identified in Job No. 5729, Dwg Nos. DA-1301-DA1305, Issue B dated 15 April 2016, prepared by Candalepas Associates. No changes may be made to these drawings except by way of an application under section 96 of the Environmental Planning and Assessment Act 1979.

**Reason:** To ensure the final built development has an appearance that accords with the approved materials and finishes.

- Site remediation works being carried out for the site in accordance with Detailed Site Investigation Report and Remediation Action Plan submitted in accordance with Part A of this determination.

**Reason:** To ensure that the site is suitable for the intended use.

- A minimum of 16 adaptable dwellings must be provided in accordance with Part 2.5 of Marrickville Development Control Plan 2011 - Equity of Access and Mobility.

**Reason:** To make reasonable provision in the development to provide residential accommodation suitable for people with a disability.

- 115 off-street car parking spaces must be provided and maintained at all times in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 - Parking. The parking must be allocated as follows:

- a) A minimum of 82 spaces being allocated to the residential dwellings, with 1 car space being allocated per dwelling with the exception of the tandem spaces which must be allocated to 2 or 3 bedroom apartments;
- b) 16 accessible car parking spaces, 1 accessible car space per adaptable dwelling;
- c) 8 visitor car parking spaces, 3 of which is designed as an accessible space; and
- d) 9 car parking spaces allocated to the ground floor retail/commercial tenancies.

All accessible car spaces must be provided and marked as disabled car parking spaces.

Reason: To ensure practical off-street car parking is available for the use of the premises.

12. 24 off-street bicycle parking spaces must be provided, paved, linemarked and maintained at all times in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 - Parking.

Reason: To ensure practical off-street car parking is available for the use of the premises.

56. A statement from a qualified Architect, verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design principles set out in Schedule 1 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

Reason: To comply with the requirements under State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.

105. A statement from a qualified Architect, verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design principles set out in Schedule 1 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development must be submitted to the Certifying Authority's satisfaction before the issue of an Occupation Certificate.

Reason: To comply with the requirements under State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.

(iii) That conditions **76** be deleted.

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