

SJB Planning



## Statement of Support

801-807 New  
Canterbury Road,  
Dulwich Hill

August 2016

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## 1.0 Introduction

This Statement of Support is submitted to Marrickville Council in support of an application to modify Development Consent DA201500081 for a mixed use development comprising of residential apartments and retail tenancies.

The development was approved as a Deferred Commencement Development Consent on 28 October 2015. The 'Deferred Commencement' Condition was satisfied and the Development Consent became operable on 29 October 2015 in accordance with Council letter dated 29 October 2015.

A Construction Certificate (CC No J150498B) has been issued and works have commenced at the site.

The development was modified on 19 May 2016 in accordance with a S96 Application. The modifications included (amongst other changes) the addition of one level to Building A and to Building B resulting in both buildings being 5 storey.

This application has been prepared pursuant to the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979) and the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation 2000).

The proposed s96(2) Application to Modify DA201500081 involves the addition of one level to Building A and Building B, associated internal reconfiguration and seven (7) additional car spaces within the basement car park.

The proposed modification involves the following:

- Reconfiguration of apartment A4.02 including deletion of the south facing bedroom terrace and minor increase to the internal living and dining area;
- Reconfiguration of apartment A4.04 including a minor increase to the internal living and dining area;
- Reduction in the length of the common internal corridor on at the western end of Level 4 of Building B.
- Reconfiguration of apartment B4.01 (as a consequential outcome from reduction in the length of the adjacent common corridor) including relocation of laundry, minor increase of floor area by 4m<sup>2</sup> and conversion from a 2 bedroom to a 3 bedroom (dual key style) apartment;
- Inclusion of a highlight bedroom window (sill height of 2.0m) to the western wall of apartment 4.01;
- Inclusion of a highlight bedroom window (sill height of 2.0m) to the eastern wall of apartment 4.06;
- 400mm increase to the depth of the rear (north facing) awning to the western component of Building A at roof level;
- Extension of the southern awning (to the eastern wall alignment of Level 4) of the eastern component of Building A;
- Provision of stair access (for maintenance) to the roof of the western element of Building A;
- Increase in size of terrace to apartment A3.09 by repositioning the privacy screen;
- Minor change to the angle of the western wall of the southern-most bedroom in apartment type ".01" in Building B and consequential increase of 1m<sup>2</sup> in floor area to each 1 apartment;

- Reconfiguration of internal layout to apartment 4.03 and conversion from a 1 bedroom apartment to a 2 bedroom apartment;
- Amended error in Condition 1 to include reference to the approved Level 4 Floor Plan;
- Amend Condition 4 to reflect the final comprehensive materials and finishes;
- Amend Condition 8 (d) by deleting the words "*from the dedicated loading space at the rear of the site*" as no such space exists at the rear of the site;
- Amend Condition 64 to reflect the fact that individual gas meters are not required per advice from the hydraulic consultant, Origin and Jemena that a separate gas meter for each units is not required;
- Delete Condition 63 as its was placed on the Consent inadvertently and is not required;
- Amend Condition 70(e) to correct the number of accessible car spaces to 19 (not 20) to be consistent with Condition 11; 7and
- Amend Condition 120 with respect to reference to the steel poles – noting that replacement electrical poles at either end of the site will be timber (not steel) and only the one new light pole fronting the site will be a steel pole.

The proposal results in a 21m<sup>2</sup> increase in the GFA from 7,081m<sup>2</sup> to 7,102m<sup>2</sup> and a corresponding increase in the FSR from 2.306:1 to 2.313:1. The proposal results in an increase in the top building height of Building A from RL59.50 (the top of the lift overrun and stairs on the western component of Building A) to RL59.82 to the top of the lift overrun and stair access on the eastern component of Building A).

The proposal involves minor variations to the FSR development standard and the height of buildings development standard.

It is noted that the approved Voluntary Planning Agreement (VPA) does not require amendment as a result of the proposed modifications. Specifically, the wording of the approved VPA is based on the total final amount of GFA above the amount that would represent a compliant development with respect to the FSR development standard. The VPA does not nominate what the final GFA is to be.

#### 1.1.1 Application of the provisions of Clause 4.6

It is accepted in case law that the provisions of Clause 4.6 (in this case of the Marrickville Local Environmental Plan 2011) apply to Development Applications but not to applications to modify a development consent under section 96 of the *EP&A Act 1979*.

Therefore formal clause 4.6 statements requesting variations to clause 4.3 (Height of buildings) and clause 4.4 (Floor space ratio) are not required in this instance and there is no statutory requirement for the consent authority to consider an assessment under these provisions and no such statements in determining the s96 application are required.

Notwithstanding, the minor variations to the height of buildings and the FSR standards have been considered in the Statement of Support.

## 2.0 The Site and Locality

### 2.1 Site Context and Locality

The site is located at 801-807 New Canterbury Road, Dulwich Hill, within the Marrickville LGA (refer to Figure 1). The site is located on the northern side of New Canterbury Road, approximately 1km to the west from the centre of Dulwich Hill.

The site is approximately 600m from Hurlstone Park train station and is within the 800m radius of the Hurlstone Park Precinct of the recently exhibited Sydenham to Bankstown Urban Renewal Corridor. The Sydenham to Bankstown Urban Renewal Corridor draft strategies are in response to the proposed upgrade of the 'Bankstown' rail line to a 'Metro' system which will significantly increase travel times and peak services along this rail service.

The site is also located approximately 700m west of the Dulwich Grove Light Rail Station and south west of the Arlington Light Rail Station.

The site is located within close proximity to the boundaries of neighbouring Local Government Areas. To the south of the site, on the opposite side of New Canterbury Road and to the south west of Old Canterbury Road is the Canterbury LGA. To the west of Old Canterbury Road is the Ashfield LGA.

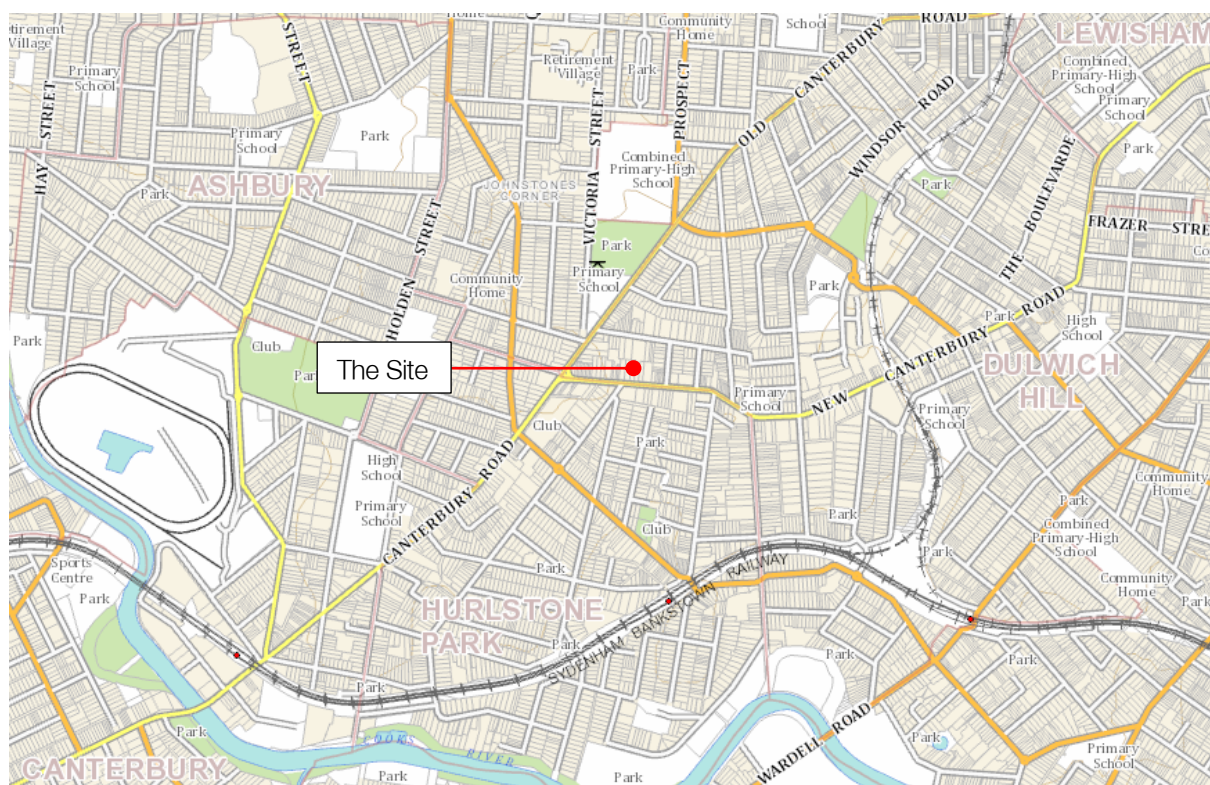


Figure 1: Location plan (Source: SIX Maps)



## 2.2 Site Description

The site is known as 801-807 New Canterbury Road, Dulwich Hill and is legally described as Lot 6 in DP 4040, Lot B in DP 937092, Lot 1 in DP 104521 and Lot 4 in DP 1125682 (refer to Figure 2). It is bounded by No. 30-34 and No. 36 Cobar Street to the north, No. 793-799 New Canterbury Road to the east, New Canterbury Road to the south and No. 819 New Canterbury Road to the west.

The site is square in shape, with the exception of a minor recess along the northern boundary, and has an area of 3,070m<sup>2</sup>. The site has a frontage of approximately 53m to New Canterbury Road.

Construction of the approved mixed use development has commenced at the site, such that previous structures have been demolished, excavation has occurred and construction of the basement levels is nearing completion.

The topography of the site is generally flat such that the ground surface (prior to construction) sloped gently downwards to the east and surface levels vary between about RL 44m and RL 42.5m.



Figure 2: Aerial view of site (as of 2 July 2016) and locality (Source: Nearmaps)

## 2.3 Description of the Surrounding Development and Land Uses

The land uses and development adjoining and surrounding the site are described below.

### North:

Immediately north of the site are No. 30 – 34 and No. 36 Cobar Street. Both these sites contain brick Residential Flat Buildings that are three (3) storeys in height with pitched roofs (refer to Figure 3 and 4) representing a four storey scale. Development along Cobar Street in this locality can be categorised as medium density as it predominantly contains residential flat buildings.

The area further north of the site is primarily characterised by low to medium density residential development. Single storey freestanding federation style cottages are the predominant dwelling type, with residential flat buildings interspersed throughout the area.





Figure 3: Residential Flat Building located at No 30 – 34 Cobar Street



Figure 4: Residential Flat Buildings located at No. 36 Cobar Street

### East:

To the east, the site adjoins No. 793-799 New Canterbury Street. This site contains a recently completed contemporary four (4) storey mixed use development with private roof terraces at level 5. The roof terraces are accessed via individual enclosed stairway from units below and include shade structures – resulting in an effective five storey scale in part.



The roof terrace structures are understood to be 16m above the existing ground level. Commercial tenancies are located at ground floor level with residential units at level 1, 2 and 3. Level 3 has been setback by approximately 4m from New Canterbury Road (refer to Figure 5).

Further east, along New Canterbury Road is a mix of older style commercial premises and shop-top housing, ranging in height from two (2) to four (4) storeys.



Figure 5: Contemporary mixed use development at No. 793 – 799 New Canterbury Road

### West:

To the west, the site is bound by No. 819 New Canterbury Road. This premises is an older style large single storey scale commercial building which covers a significant proportion of its site (refer to Figure 6).

Further west along New Canterbury Road are a range of older style commercial premises of varying architectural form. These structures range in height from one (1) storey to three (3) storeys. In addition to these premises, a single storey cottage is located at No. 843 New Canterbury Road.

Overall this section of New Canterbury Road displays a range of older style commercial premises of various heights and architectural styles. There is no apparent consistency within the streetscape and many buildings are in a poor state of repair and do not display any particular architectural merit.

A number of the commercial premises appear closed (vacant) and there is relatively little commercial and pedestrian activity along the retail strip.



Figure 6: Commercial premises at No. 819 New Canterbury Road.

#### South:

To the south of the site on the opposite side of New Canterbury Road are St Stephano's Church, child care centres, single storey freestanding cottages, commercial premises and shop-top housing (refer to Figure 7).



Figure 7: Development to the south of the site



The area further south of the site is characterised by free standing single storey cottages, interspersed with residential flat buildings.

It is noted that the area to the south of the site is located within the Canterbury Local Government Area.

Approximately 100m to the south-east of the site at No.610 – 624 (refer to Figure 9), approval was issued by Canterbury Council under DA 533/2012 for the construction of a part five (5) and part six (6) storey mixed use development with a permissible maximum height of 18m. It is understood that the FSR is approximately 3:1 – noting that there is no actual applicable FSR control for that site (or the New Canterbury Road strip) under the Canterbury Council development controls. The construction of that building is now nearing completion.

Additionally, there are three other developments within the B2 zone within the Canterbury LGA currently being developed within a few hundred metres of the site including development at the following locations:

- (1) 578 – 580 New Canterbury Road (5 / 6 storeys)
- (2) 630 – 634 New Canterbury Road (5 / 6 storeys) (refer to Figure 8)
- (3) 570 – 574 New Canterbury Road (7 storeys) (refer to Figure 10)

These developments are under construction, with several nearing completions. The buildings represent the desired and intended height, bulk, scale and future character of development along the New Canterbury Road to the south of the site.



Figure 8: 5 storey building under construction at 630 – 634 New Canterbury Road



Figure 9: Part 5 and Part 6 storey building under construction at No.610 – 624 New Canterbury Road.

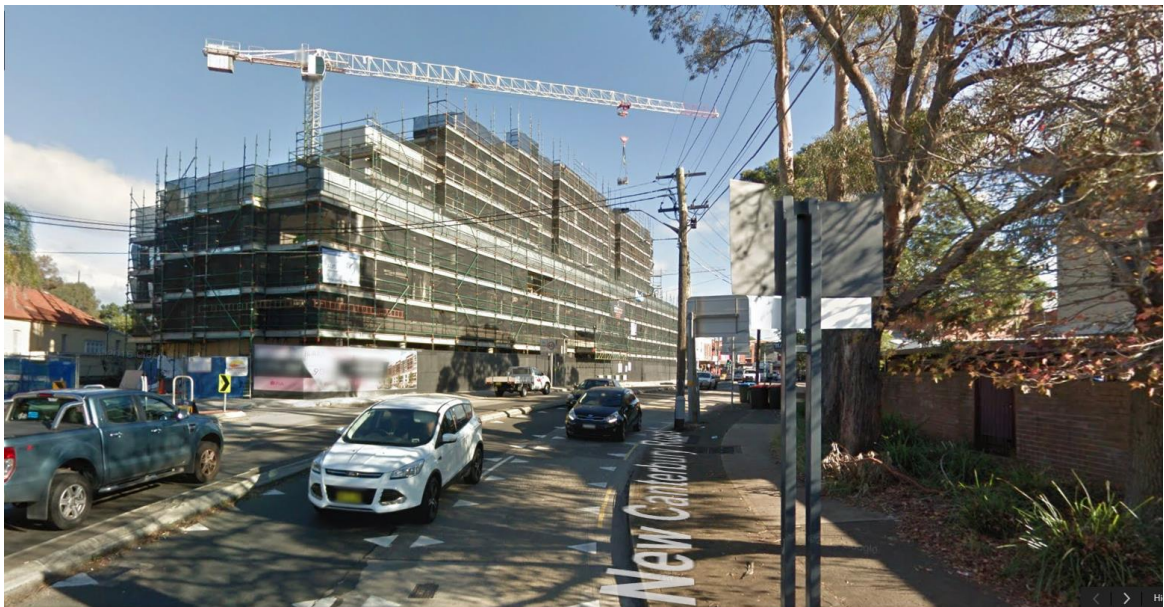


Figure 10: 7 storey building under construction at 570 – 574 New Canterbury Road (Source: Google Maps)



## 3.0 The Proposed Modifications

### 3.1 Applicable Development Consent

This application seeks to modify Development Consent DA201500081.

The description of the approved development (as modified by DA201500081.1) is as follows:

- Demolition of existing improvements and construction of 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

This application seeks to modify the development consent as set out in Section 3.2.

### 3.2 Proposed Modifications

It is noted that a large number of the proposed level 4 modifications have resulted from a more considered and detailed assessment of the amenity and useability of the level 4 units. This is generally as a consequence of the 6 metre side setbacks that were adopted at the time of the first (previous) s96 Application. The impact and effect upon the level 4 units of the setbacks was not fully considered and resolved at the time.

The Section 96 Modification proposes the following:

- Reconfiguration of apartment A4.02 including deletion of the south facing bedroom terrace and minor increase to the internal living and dining area;
- Reconfiguration of apartment A4.04 including a minor increase to the internal living and dining area;
- Reduction in the length of the common internal corridor on at the western end of Level 4 of Building B.
- Reconfiguration of apartment B4.01 (as a consequential outcome from reduction in the length of the adjacent common corridor) including relocation of laundry, minor increase of floor area by 4m<sup>2</sup> and conversion from a 2 bedroom to a 3 bedroom apartment;
- Inclusion of a highlight bedroom window (sill height of 2.0m) to the western wall of apartment 4.01;
- Inclusion of a highlight bedroom window (sill height of 2.0m) to the eastern wall of apartment 4.06;
- 400mm increase to the depth of the rear (north facing) awning to the western component of Building A at roof level;
- Extension of the southern awning (to the eastern wall alignment of Level 4) of the eastern component of Building A;
- Provision of stair access (for maintenance) to the roof of the western element of Building A;
- Minor increase in size of terrace to apartment A3.09 by repositioning the privacy screen;
- Minor change to the angle of the western wall of the southern-most bedroom in apartment type “.01” in Building B and consequential increase of 1m<sup>2</sup> in floor area to each 1 apartment;
- Reconfiguration of internal layout to apartment 4.03 and conversion from a 1 bedroom apartment to a 2 bedroom apartment;
- Amend error in Condition 1 to include reference to the approved Level 4 Floor Plan to refer to either the existing approved level 4 (i.e. Candalepas Drawing No. s96-1107 Issue B) or the revised s96 plan if approved (i.e. Candalepas Drawing No. s96-1107 Issue D);
- Amend Condition 4 to reflect the final comprehensive materials and finishes;
- Amend Condition 8 (d) by deleting the words “*from the dedicated loading space at the rear of the site*” as no such space exists at the rear of the site;

- Delete Condition 63 as its was placed on the Consent inadvertently and is not required;
- Amend Condition 64 to reflect the fact that individual gas meters are not required per advice from the hydraulic consultant, Origin and Jemena that a separate gas meter is not required;
- Amend Condition 70(e) to correct the number of accessible car spaces to 19 (not 20) to be consistent with Condition 11; and
- Amend Condition 120 with respect to reference to the steel poles – noting that replacement electrical poles at either end of the site will be timber (not steel) and only the one new light pole fronting the site will be a steel pole.

The proposed modifications are demonstrated in detail on the architectural drawings and the application is supported with the following Attachments:

Attachment A: Design Verification Statement + ADG and RFDC Comparative Compliance Table.

### 3.2.1 Modification of Conditions

The proposal will require the amendment of several conditions of consent. The conditions requiring modification have been identified below with suggested replacements where appropriate in red. The conditions to be modified relate to “Part B, Conditions of Consent” of the development consent.

#### Condition 1

Modify condition 1 by replacing it with the following:

“(1) The development must be carried out in accordance with plans and details listed below:

<i>Plan, Revision and Issue No.</i>	<i>Plan Name</i>	<i>Date Issued</i>	<i>Prepared By</i>	<i>Date Submitted</i>
<i>Job No. 5729 S96 – 1101 Issue D</i>	<i>Basement Floor Plan B2</i>	<i>2 August 2016</i>	<i>Candalepas Associates</i>	
<i>Job No. 5729 S96-1102 Issue D</i>	<i>Basement Floor Plan B2</i>	<i>2 August 2016</i>	<i>Candalepas Associates</i>	
<i>Job No. 5729 S96-1103 Issue D</i>	<i>Ground Floor Plan</i>	<i>2 August 2016</i>	<i>Candalepas Associates</i>	
<i>Job No. 5729 S96-1104 Issue D</i>	<i>Level 1 Floor Plan</i>	<i>2 August 2016</i>	<i>Candalepas Associates</i>	
<i>Job No. 5729 S96-1105 Issue D</i>	<i>Level 2 Floor Plan</i>	<i>2 August 2016</i>	<i>Candalepas Associates</i>	
<i>Job No. 5729 S96-1106 Issue D</i>	<i>Level 3 Floor Plan</i>	<i>2 August 2016</i>	<i>Candalepas Associates</i>	
<i>Job No. 5729 S96-1107 Issue D</i>	<i>Level 4 Floor Plan</i>	<i>2 August 2016</i>	<i>Candalepas Associates</i>	
<i>Job No. 5729 S96-1107 Issue D</i>	<i>Roof Plan</i>	<i>2 August 2016</i>	<i>Candalepas Associates</i>	

Job No. 5729 S96-1201 <i>Issue D</i>	Section A & B	<i>2 August 2016</i>	Candalepas Associates	
Job No. 5729 S96-1301 <i>Issue D</i>	North Elevation (Building A)	<i>2 August 2016</i>	Candalepas Associates	
Job No. 5729 S96-1302 <i>Issue D</i>	South Elevation (Building A)	<i>2 August 2016</i>	Candalepas Associates	
Job No. 5729 S96-1303 <i>Issue D</i>	North Elevation (Building B)	<i>2 August 2016</i>	Candalepas Associates	
Job No. 5729 S96-1304 <i>Issue D</i>	South Elevation (Building B)	<i>2 August 2016</i>	Candalepas Associates	
Job No. 5729 S96-1305 <i>Issue D</i>	East & West Elevations	<i>2 August 2016</i>	Candalepas Associates	
Job No. 5729 S96-1401 <i>Issue D</i>	Adaptable Unit Plans	<i>2 August 2016</i>	Candalepas Associates	
S96	Access Review (Part 3 Site Ingress and Egress, Part 4 Residential Paths of Travel, Part 5 Accommodation and Part 6 Common Areas)	9 December 2015	Morris-Goding Accessibility Consulting	
608372M_04	BASIX Certificate	14 December 2016	NSW Department of Planning and Environment	5 January 2016
Version V110811/A, Certificate Number 16450057	NatHERS Thermal Performance – Multi Dwelling Certificate	18 December 2015	Dean Gorman	5 January 2016

and details submitted to Council on 5 January 2016, 15 April 2016 and *2 August 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. “

#### Condition 4

Modify condition 4 as follows:

- “4. 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. s96-1301 – S96-1305, Issue D dated 2 August 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. “*

#### **Condition 8(d)**

Modify Condition 8 (d) by deleting the words “*from the dedicated loading space at the rear of the site*” as no such space exists at the rear of the site on the approved plans.

#### **Condition 63**

Delete Condition 63.

#### **Condition 64**

Modify Condition 64 as follows:

“64. *Reticulated gas infrastructure must be provided to each dwelling in accordance with details to be submitted to the Certifying Authority’s satisfaction before the issue of a Construction Certificate.*”

*Reason: To provide the potential to reduce greenhouse emissions.”*

#### **Condition 70 e)**

Modify condition 70 e) to reflect the modified car parking arrangements.

“e) *A minimum of 19 car parking spaces (16 accessible residential car spaces and 3 accessible visitor car spaces) must be provided for people with a disability that are directly accessible to the entrance to the building. The car parking must be designed to comply with AS 1428.1 - 2009 ‘Design for access and mobility - General requirements for access - buildings’ and AS 2890.1 1 ‘Off-street car parking’.*”

#### **Condition 120**

Modify condition 120 as follows:

“120. *The existing overhead power cables along New Canterbury Road frontage of the site must be relocated underground with appropriate street lighting and a new steel light pole being installed to replace the existing light pole fronting the site at no cost to Council and before the issue of an Occupation Certificate. The street lighting shall be designed in accordance with Australian Standard AS1158-Road Lighting and the Network Standards of Ausgrid and must meet lighting category required by RMS. Plans shall be submitted to and approved by Council before submission to Ausgrid for implementation.*

*Reason: To ensure appropriate lighting is provided to create a safe environment and to protect the amenity of the surrounding neighbourhood from the emission of light.”*



## 4.0 Section 96 Assessment

### 4.1 Section 96(2) of the *EP&A Act 1979* – Other Modifications

Section 96(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979) states:

*“A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

*(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

*(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

*(c) it has notified the application in accordance with:*

*(i) the regulations, if the regulations so require, or*

*(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

*(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.”*

In relation to subclause (a), the proposed modifications are considered to result in a development that is substantially the same as the development originally approved for the following reasons:

- The categorisation of the development remains unchanged and the development will continue to be for demolition of all existing structures and the construction of a residential flat building and a mixed use building above basement level car parking;
- The number of buildings remains unchanged;
- The proposed mixed use of the land, for residential and commercial premises, remains unchanged;
- The location of carparking, being within a basement, remains unchanged;
- Location of the driveway and car park entry remains unchanged;
- The location of the two buildings on the site is unchanged from the approved location;
- The landscaped area provided remains the same; and
- The proposed changes will result in a development that continues to comply with SEPP (BASIX) and is consistent with the design quality principles of SEPP 65.

It is acknowledged that the proposed changes will result in a development with a minor increase in FSR compared to that which was approved, however the changes are relatively minor and do not result in additional apartments.

In essence the application seeks minor reconfiguration some internal layouts to Building A and Building B and on balance the nature of the proposed modifications are not such that the development would be described as not being substantially the same as the original application. These minor design changes result in better layouts and amenity for the level 4 units. The changes are generally a consequence of the 6m setbacks adopted for level 4 at the time of the previous s96 Application approval, such that the full design implications were not fully and properly considered at that time.

Accordingly, the proposed modifications are considered to satisfy section 96(2)(a) of the *EP&A Act 1979* as they result in a development that is substantially the same as the development originally approved by Council.

In relation to subclauses (c) and (d), clause 119(3) of the *Environmental Planning and Assessment Regulation 2000 (EP&A Reg 2000)* requires that the application be notified or advertised in accordance with the relevant development control plan. The consent authority is required to consider any submissions made in accordance with that notification.

It is demonstrated above and illustrated in the architectural drawings as modified, that the proposed modified development is substantially the same as the approved development and subject to the procedures provided by subclauses (c) and (d) and may be considered by the consent authority under section 96(2) of the *EP&A Act 1979*.

#### **4.2 Section 96(3)**

In accordance with Section 96(3) of the *Environmental Planning and Assessment Act 1979*, when determining an application to modify a consent, Council “*must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application*”.

Assessment of the proposed modifications with regard to relevant matters referred to in Section 79C(1) is outlined in Section 5.

## 5.0 Section 79C Assessment

The assessment of the development as modified is outlined below and addresses matters listed under section 79C of the EP&A Act 1979.

### 5.1 Environmental Planning Instruments

#### 5.1.1 State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)

The development as originally proposed in the DA had a Capital Investment Value (CIV) of \$24,564,732 and in accordance with the provisions of the Part 4 of SRD SEPP and Schedule 4A of the *EP&A Act 1979*, was deemed to be Regional Development and was determined by the Sydney East Joint Regional Planning Panel.

The application to modify the development consent is made in accordance with section 96(2) of the *EP&A Act 1979* and the specified consent authority functions for the application, including the determination of the application, are exercised by the Sydney East Joint Regional Planning Panel in accordance with clause 21 of the SRD SEPP. Additional costs arising from the proposed s96 Application are estimated at \$50,000.

#### 5.1.2 State Environmental Planning Policy No 55 – Remediation of Contaminated Land

An assessment of land use suitability of the site was undertaken as part of the original development assessment which was supported by a Detailed Site Investigation, prepared by Douglas Partners.

Council's Environmental Services Section were generally satisfied that the site could be made suitable for residential use. To ensure as much, Council recommended deferred commencement conditions which required that a Remediation Action Plan (RAP) (consistent with the recommendations of Douglas Partners report) be developed and submitted to Council prior to the Development Consent becoming operable.

The applicant has since submitted the RAP to Council. Council has accepted the RAP and made the Development Consent operable on 29 October 2015.

The proposed modifications do not alter the categorisation of development or the proposed uses, and the development as modified remains consistent with SEPP 55.

#### 5.1.3 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

Following the lodgement of the development application SEPP 65 was amended and the Residential Flat Design Code (RFDC) has been replaced by the Apartment Design Guide (ADG). The amended SEPP 65 and ADG apply to this application. The development is therefore subject to assessment under SEPP 65 which establishes nine (9) design quality principles to be applied in the design and assessment of residential apartment development.

An amended Design Verification Statement has been prepared by Candalepas Associates addressing the nine (9) design quality principles contained in the SEPP (refer to Attachment 1).

The Verification Statement is supported by a comparative assessment of the approved DA and the proposed section 96 scheme against the relevant key design criteria contained in the ADG, which is included at

Attachment 1. This assessment does not address all the design criteria of the ADG, only those relating to the proposed modifications and items that were previously considered by Council in the assessment of the former RFDC.

Relevant provisions of the Marrickville DCP 2011 are also identified where appropriate.

Overall, the proposed modifications provide a comparable level of compliance with RFDC and ADG Design Criteria from the approved DA as summarised below.

### ***Solar and daylight access***

The proposed modification to the apartments will ensure that 64 of the apartments have living areas orientated to the north and 83% of the apartments will receive a minimum of 2 hours sunlight to living rooms and private open spaces between 9am and 3pm in mid-winter.

### ***Natural Ventilation***

With the proposed modifications the overall percentage of cross ventilation to the apartments is 74% and the proposal complies with the RFDC and the Design Criteria of the ADG.

### ***Apartment Size and Layout***

The apartments satisfy the objective of the "Apartment Layout" guidelines in Part 3 of the RFDC and also the objective 4D-1 for 'Apartment size and layout' in Part 4 of the ADG.

74 of the proposed 77 units comply with the "Rule of Thumb" relating to unit size while 80% of the units satisfy the Design Criteria (1) under Objective 4D-1. This scenario is the same as the approved DA.

Where the units do not achieve the actual numerical criteria, the units nonetheless satisfy the 'design guidance' and provide excellent amenity by reducing circulation space, have living spaces orientated to the north, satisfy solar access and natural ventilation requirements and or provide private open space in excess of minimum requirements.

In summary it is considered that the proposed layout provides a high degree of functionality and amenity and is consistent with the intent of the ADG as a guide, rather than a prescriptive solution based document.

### ***Private Open Space***

The proposal includes some minor modifications to several balconies, however the outcome is generally the same or are similar as the approved plans, with only slight adjustments to balconies which are primarily in response to internal reconfiguration.

### ***Visual Privacy (Building Separation) (3F)***

The footprints for both Building A and Building B remain unchanged and the setback and separation distances for the ground floor to Level 4 of the two buildings with adjacent properties (including the buildings at 30-34 Cobar Street and 793-799 New Canterbury Road) remains unchanged from the arrangements in the approved development.

The proposal includes the addition of a highlight window in the western wall of Level 4 Building B and the eastern wall of Level 4 Building B. The two new windows serve bedrooms and have sill heights of 2m above the finished floor.



The sill heights are above eye level and will not allow downward views to adjacent buildings. The windows will only permit outlook to the sky, but will provide greater amenity to the respect apartments through increased daylight and natural ventilation.

Additionally, the proposal includes the realignment of the eastern privacy screen on the eastern balcony of apartment A3.09. The screen is proposed to be aligned 1m closer to the eastern boundary.

This modification will not result in a reduction to the visual privacy of apartments to the east (at 799 New Canterbury Road as the screen will remain the same height and construction and will prevent sideways and downward views.

The proposal satisfies the Objectives at 3F-1 and 3F-2 of the ADG.

#### **5.1.4 SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX Certificate was issued with the approved development ensuring that the development will meet the required water and energy targets and the aims of the SEPP.

It is considered that a revised BASIX Certificate is not required as the proposed modifications are minimal and essentially internal design changes and the development will continue to meet the required water and energy targets and accordingly the proposal satisfies the aims of the SEPP.

#### **5.1.5 Marrickville Local Environmental Plan 2011**

It is noted that not all of the clauses of MELP 2011 that were relevant to the original DA are directly relevant to the proposed modifications and for that reason only those clauses directly relevant to the proposed s96 application are addressed in this Statement of Support.

#### ***Permissibility and Zone Objectives (Clause 2.3)***

The site is zoned B2 Local Centre under the provisions of MMLEP 2011.

Shop top housing is permissible with Council's consent under the zoning provisions applying to the land. Building B within the development constitutes shop top housing development and is permissible with Council's consent under the zoning provisions applying to the land.

Building A is classified as a residential flat building which is prohibited in the zone. However, the site adjoins the R1 General Residential Zone to the north of the site, within which residential flat buildings are permissible. Clause 5.3 (Development near zone boundaries) of MLEP 2011 allows flexibility in the zoning provisions applying to the land and the proposed use of Building A is permissible with consent in accordance with the provisions of clause 5.3.

It is noted that within the assessment of the original DA Council stated support for the proposal and its permissibility.

The proposed modifications do not alter the building footprints or the use of the two buildings (Building A and Building B) and the development remains permissible with consent.

Additionally, the proposed mixed use development remains 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.

### Height (Clause 4.3)

Clause 4.3 of MLEP 2011 establishes a maximum height control for the site of 14m. Building A has a building height of 15.5m (to the top of the roof parapet) and 16.4m (to the top of the lift overrun). Building B has a building height of 16.4m (to the top of the roof parapet) and 18.7m (to the top of the lift overrun).

Both structures are five (5) storeys in scale.

The only change to the height of the development relates to the provision of a roof access stair to the eastern side of Building A.

It is noted that the approved DA indicates a lift overrun and roof access stair for the eastern side of Building A, with a nominated top RL of 58.50.

During the detailed construction drawing phase it has become evident that the roof access stair is required to be higher than that shown on the approved plans and will instead have a top RL of 59.82.

In accordance with case law relating to applications under section 96 of the *EP&A Act 1979* to modify a development consent, a formal request under clause 4.6 (of MLEP 2011) seeking an exception to the height standard is not required.

Notwithstanding a justification for the proposed variation to the height standard has been provided below within an assessment of the proposal against the relevant objectives of the development standard.

The proposal is consistent with the objectives of the height standard outlined in subclause 4.3(1), despite the minor variation, as detailed in the Table 1 below.

Objective	Comment
To establish the maximum height of buildings	The control will continue to prescribe maximum building heights and the proposal will not alter that. Council will be able to continue to consider variations based on merit and in accordance with the provisions of Clause 4.6.
To ensure building height is consistent with the desired future character of an area	<p>The B2 Local Centre zone at the western end of New Canterbury Road (both sides) is undergoing change and revitalisation.</p> <p>Notwithstanding that the southern portion of New Canterbury Road is within the City of Canterbury LGA, the development activity and built form and land use outcomes along that section of the road will have a significant and demonstrable influence on shaping the urban character and visual catchment of the locality overall and in particular this western precinct of New Canterbury Road.</p> <p>Council and the JRPP have approved the 5 storey scale development at the site. The proposed modification will not alter the scale or visual massing of the development.</p> <p>Specifically, the proposed increase of height relates to the roof access stair for Building A only.</p>

Objective	Comment
	<p>The roof access stair will not be clearly visible from most adjacent sites and will not be visible from the public domain.</p> <p>The proposed overall form and character of the approved development will be unaffected by the proposed increase in height to the Building A roof access stair.</p> <p>The scale of the development as modified will remain consistent with the scale of the approved development and the desired future character of the locality.</p>
<p>To ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight</p>	<p>The development is of a design where the variation in height will not compromise the ability for adjacent buildings and public areas to receive satisfactory exposure to sky and sunlight.</p> <p>The roof access stair is setback from the front, side and rear boundaries and will not affect the sky exposure levels or access to daylight for adjacent properties to the south, north, east or west, or the public realm in any discernible manner.</p> <p>The mixed use building at the adjacent site to the east (793-799 New Canterbury Road) includes side setbacks which do not comply with the relevant RFDC and DCP guidelines and controls. Nonetheless, openings in the western elevation of that building will not be affected significantly by the proposed roof access stair in respect of exposure to sunlight</p> <p>It cannot be said that the proposed roof access stair to Building A will impact any building or public area in a way that the building or public area will not continue to receive satisfactory exposure to the sky and sunlight.</p>
<p>To nominate heights that will provide an appropriate transition in built form and land use intensity.</p>	<p>It has been assessed by Council (and confirmed by the JRPP in approving the development) that a five storey building is an appropriate response to the five and six storey scale (18m height) form of development that is permitted (and is now emerging) on the southern side of New Canterbury Road and the 4 storey scale of development permitted to the north.</p> <p>The 5 storey scale is considered to be an appropriate transition between the built forms of the locality.</p> <p>The proposed roof access stair will not alter the overall appearance of the approved building in a</p>

Objective	Comment
	discernible manner and will not alter the 5 storey scale of the building.
	The roof access stair will not result in adverse visual massing and bulk and scale impacts above the impacts of the approved development.
	The approved building height was considered to be appropriate for the site as it successfully mediates between the neighbouring height controls.
	The proposed modification will not alter that outcome.

Table 1: Clause 4.3 Height of Buildings Objectives Assessment Table

### ***Floor Space Ratio (Clause 4.4)***

Clause 4.4 establishes a maximum Floor Space Ratio (FSR) of 1.75:1 for the site. The proposal provides a FSR of 2.31:1 exceeding the approved FSR of 2.30:1 and the development standard.

As detailed above under the heading (Height (Clause 4.3)), a formal request under clause 4.6 (of MLEP 2011) seeking an exception to the development standard is not strictly required. Nonetheless the justification for the proposed variation to the FSR standard is set out below.

The proposal is consistent with the objectives of the FSR standard outlined in subclause 4.3(1), despite the minor variation, as detailed in the Table 2 below.

Objective	Comment
To establish the maximum floor space ratio	The control will continue to prescribe maximum floor space ratios and the proposal will not alter that. Council will be able to continue to consider applications and variations based on merit and in accordance with the provisions of Clause 4.6.
To control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,	<p>The intensity and bulk and scale of the development are consistent with the scale of the approved development at the site as well as approved development within the vicinity of the site, which have been completed or are under construction.</p> <p>The proposed density, although numerically greater than the development standard, is nonetheless consistent with Council's strategic vision and desired future character for the West Dulwich Hill locality in that it will assist in delivering a vibrant and rejuvenated mixed use precinct with new retail and commercial opportunities and increased residential dwellings with good amenity and access to public transport.</p> <p>The additional GFA proposed in the modification</p>



Objective	Comment
	<p>equates to a total of 21m<sup>2</sup> only and is contained within the approved footprint and building envelope.</p> <p>The additional GFA has been achieved through the refinement of the approved floor plates and does not result in any additional discernible building mass or increase in the scale of the approved buildings which have been determined to be suitable for this location.</p>
To minimise adverse environmental impacts on adjoining properties and the public domain.	<p>This SoS demonstrates that the proposal is unlikely to result in significant adverse impacts by way of overshadowing, visual and acoustic privacy, view loss and visual massing to adjoining properties and the public domain.</p> <p>The building is of a design such that the floor space which represents the variation to the FSR control is positioned on the site in a manner that is unlikely to significantly adversely compromise the amenity of surrounding properties.</p> <p>The amended DA does not alter the approved setbacks or building separation distances.</p> <p>The additional GFA will not result in additional bulk or scale impacts and the external appearance of the development will, for all intents and purposes, be the same when compared to the approved development.</p>

Table 2: Clause 4.4 FSR Objectives Assessment Table

## 5.2 Provisions of a Development Control Plan

### 5.2.1 Marrickville Development Control Plan 2011

The Marrickville Development Control Plan 2011 (MDCP 2011) contains more detailed guidelines and controls for development, which supplement the development standards and provisions contained in the MLEP 2011.

Not all of the DCP controls that were applicable to the original DA are applicable to the proposed modifications and an assessment of the proposed modifications against only those controls that are relevant is provided below.

#### ***Urban Design (Part 2.1)***

It is noted that Council considered the approved development to be consistent with the relevant aspects of the 12 urban design principles in Part 2.1. The proposed modifications continue to be acceptable with those design principles.

### ***Site and Context Analysis (Part 2.3)***

A site and context analysis has been submitted with the application as required.

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

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

An Access Review Report has been prepared with respect to the approved DA.

The Report was been prepared by Morris-Goding Accessibility Consulting and considered the development against the relevant Australian Standards (i.e. AS1428 series), the Building Code of Australia (BCA), and ultimately the Commonwealth Disability Discrimination Act (DDA).

The proposed modification does not alter the number of units and only involves minor changes to some apartment layouts.

The proposal continues to include 16 adaptable units (as approved) and complies with the MDCP 2011 requirement that 20% of units be adaptable.

Given the above, the development as modified is reasonable having regard to the access controls contained in MDCP 2011.

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

Refer to discussion relating to Visual Privacy under Section 5.1.3 of this Statement.

### ***Solar Access and Overshadowing (Part 2.7)***

#### ***Overshadowing***

The shadow diagrams submitted with the s96 application illustrates the extent of overshadowing on adjacent properties.

The shadow analysis of the modified development (represented by Scenario SA3 on S96-1451) indicates that the impacts associated with the proposed development upon the residential units at 793-799 New Canterbury Road are generally consistent with the impacts that would result from the approved development

The amended proposal will not result in the primary living rooms of adjacent residential flat buildings receiving less than the ADG required amount of direct sunlight. The amended proposal will not result in any change to the amount of solar access to the adjacent roof top terrace and primary living rooms at 793-799 New Canterbury Road compared to the approved development.

Given the above the proposal is considered acceptable in to overshadowing considerations and the requirements of the DCP.

#### ***Solar Access***

The site design ensures that 83% (64/77) of apartments in the development, as modified, will receive a minimum 2 hours of direct sunlight to the internal and external living areas between 9.00am and 3.00pm on June 21st. This is greater than the minimum requirements of 70%.

Overall the proposal maximises the number of dwellings with living areas and balconies in the solar path due to the north-south orientation of the site.

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.

### ***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.

Condition 11 of the development consent requires 115 off-street car parking spaces to be provided and maintained at all times.

The Condition requires the parking to be allocated as follows:

- 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;
- 16 accessible car parking spaces, 1 accessible car space per adaptable dwelling;
- 8 visitor car parking spaces, 3 of which is designed as an accessible space; and
- 9 car parking spaces allocated to the ground floor retail/commercial tenancies.

The modification application does not seek any change to the arrangements required under Condition 11 of the development consent.

### ***Water Sensitive Urban Design (Part 2.17)***

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

In relation to water conservation requirements the Development Consent includes conditions which ensure that the WSUD elements of the proposal are suitably constructed to Council's design specifications and these conditions will remain in place and are unaffected by the proposed modifications.

### ***Landscaping and Open Spaces (Part 2.18)***

No changes are proposed to the landscaped area and the quantum and layout of the approved landscaped area at ground level remains the same as approved in the original DA.

The proposed modifications however include minor changes to some of the private open space areas of some apartments.

Notwithstanding the minor changes, all apartments continue to have private open space in the form of balconies that are equal to or greater in size than the minimum requirements of the ADG, the RFDC and the DCP.

### **Massing and Setbacks (Part 5.1.3.3)**

#### **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 proposed modification seeks minor changes to the rear (north) facing awning. The changes are minimal and will not result in additional visual massing or overshadowing shadow impacts.

The proposal as modified 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.

Given the above, the proposed modifications are considered to accord with the relevant rear massing controls and objectives of the DCP

### **Building Detail (Part 5.1.4)**

#### **Building Frontages**

The proposal includes one relatively minor change to the front elevation being the 'straightening out' of a small wall for apartment type ".01" on Levels 1, 2, 3 and 4 of Building B.

The modification will be almost indiscernible compared to the approved street façade.

The proposal as modified complies will continue to accord with the Building Frontages controls and objectives such that the street front portion of the building mass will read as a continuous dominant element in the streetscape, with the proposed upper level above the street frontage being setback and visually subservient.

### **Dwelling Mix (Part 5.1.5.2)**

Part 5.1.5.2 of MDCP 2011 seeks to ensure that new residential development provides a suitable mix of dwelling types to meet the different accommodation needs of society. Table 4 illustrates the required dwelling mix under MDCP 2011 and the dwelling mix proposed under the modification application:

Type of dwelling	Required dwelling mix under MDCP 2011	Proposed dwelling mix
Studio	5% -20%	5 x studio dwellings (6.5%)
1 bedroom	10% - 40%	23 x 1 bedroom dwellings (30%)
2 bedroom	40% - 75%	40 x 2 bedroom dwellings (52%)
3 bedroom	10% - 45%	9 x 3 bedroom dwellings (11.5%)

Table 3: Proposed dwelling mix

The proposal complies with the control and will contribute to the mix and range of housing in the locality.

### **5.3 Any planning (or draft planning) agreement under Section 94F of the Act**

The approved development includes a VPA and the Development Consent includes conditions which require the VPA to be carried out per the relevant particulars of the VPA.

It is noted that the approved VPA included a calculation based on \$500 per square metre of additional GFA (above the 1.75:1 FSR). The proposed modification does not require the approved VPA to be modified.

#### **5.4 Other Impacts**

The proposed modifications are unlikely to give rise to any additional adverse social, economic or environmental impacts that have not been considered in this Statement or as part of Council's assessment of the original DA.

#### **5.5 Suitability of the Site**

The site has been determined by Council to be suitable for the mixed use (residential and commercial) development. The proposed development involves a modification of the consent to allow for minor reconfiguration of floor layouts, primarily for the purpose of rationalising the design and improving the buildability of the development.

The proposed modifications will result in a development that is consistent with the approved five storey development and there are no reasons why the site is not suitable for the modified development.

#### **5.6 Public Interest**

The development of land in an orderly and economic way is in the public interest. The amendments will not result in significant adverse impacts upon surrounding property.

The development as modified will remain consistent with the design principles, objectives and guidelines of SEPP 65, the RFDC and the ADG.

The development is in the public interest.

## 6.0 Conclusion

The application seeks to make modifications to the Development Consent DA201500081 including changes to internal layouts, the addition of two bedroom windows and a roof access stair for approved Building A.

The development as proposed to be modified is considered to have minimal environmental impacts and is substantially the same development for which consent was granted. The proposal satisfies Section 96(2) of the *EP&A Act 1979*.

The proposed modifications include a minor increase in the FSR and also a minor increase in the building height for part of Building A and the proposal involves variations to the FSR and height of buildings development standards.

Notwithstanding the proposed variations to the development standards, 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 as modified will not result in significant adverse impacts on existing surrounding development or the public domain and will not inhibit the development potential of adjacent properties.

Based on the assessment undertaken, Council's approval of the Modification Application is sought and the modifications to the consent listed in section 3.2.1 of this Statement be made.



## Attachments



## Attachment 1: Design Verification Statement + ADG and RFDC Comparative Compliance Table

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