

COUNCIL ASSESSMENT REPORT

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| Panel Reference | 2017SCL039 |
| DA Number | DA201700310 |
| LGA | Inner West Council |
| Proposed Development | To demolish the existing improvements and construct a mixed use development consisting of a 6 storey building (Building A) with roof terrace fronting McGill Street and a 8 storey building (Building B) fronting the light rail line containing a total of 88 dwellings and 1 commercial tenancy within Building A for use as art gallery and café space with 2 basement car parking levels and associated landscape works |
| Street Address | 4-12 McGill Street, Lewisham |
| Applicant/Owner | McGill Advance Management P/L |
| Date of DA lodgement | 26 June 2017 |
| Number of Submissions | 3 |
| Recommendation | Refusal |
| Regional Development Criteria (Schedule 4A of the EP&A Act) | Capital Investment Value exceeding \$20 million |
| List of all relevant s79C(1)(a) matters | <ul style="list-style-type: none"> • State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55); • State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65); • State Environmental Planning Policy (State and Regional Development 2011) (SEPP SRD); • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX); • State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure); • Marrickville Section 94/94A Contributions Plan 2014 |
| List all documents submitted with this report for the Panel's consideration | <ul style="list-style-type: none"> • Assessment Report; • Architectural Plans & Details; • Landscape Plans; • Clause 4.6 Request. |
| Report prepared by | Asher Richardson |
| Report date | 23 November 2017 |

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Yes

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)?

Not Applicable

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

No

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

File Ref: DA201700310

Synopsis

This report concerns an application to demolish the existing improvements and construct a mixed use development consisting of a 6 storey building (Building A) with roof terrace fronting McGill Street and a 8 storey building (Building B) fronting the light rail line containing a total of 88 dwellings and 1 commercial tenancy within Building A for use as art gallery and café space with 2 basement car parking levels and associated landscape works. The application was notified in accordance with Council's Notification Policy and 3 submissions were received.

During the assessment process the proposal was amended to address a concerns raised by Council officers relating to the overall height of Building A, the presentation of the communal open space and through site link, vehicular access and other matters. The amended proposal was not required to be re-notified in accordance with Council's Notification Policy.

The development has a capital investment value (CIV) of \$33,390,704. Applications with a CIV of more than \$20 million must be referred to the Sydney Central Planning Panel (SCPP) 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 Policy No 65 - Design Quality of Residential Apartment Development; State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55); and Marrickville Local Environmental Plan 2011 (MLEP 2011) with the exception that the proposal exceeds the maximum floor space ratio (FSR) development standard by 1,065sqm or 17.4%.

A written request under Clause 4.6 of MLEP 2011 has been submitted by the applicant for the non-compliance. The written request under Clause 4.6 has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the contravention. Furthermore, the development does not demonstrate compliance with Clause 1.2(2)(h) of MLEP 2011 in that the development does not promote a high standard of design in the public domain.

The development is not consistent with the desired future character of the McGill Street Planning Precinct (Precinct 45) as demonstrated by departures from the amalgamation pattern, built form and public domain controls contained in Part 9.45 of Marrickville Development Control Plan (MDCP) 2011. The application was referred to Council's Architectural Excellence Panel who raised significant concerns with the proposal which have not been adequately addressed.

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

PART A - PARTICULARS

Location: Western side of McGill Street, between Old Canterbury Road and Hudson Street, Lewisham.

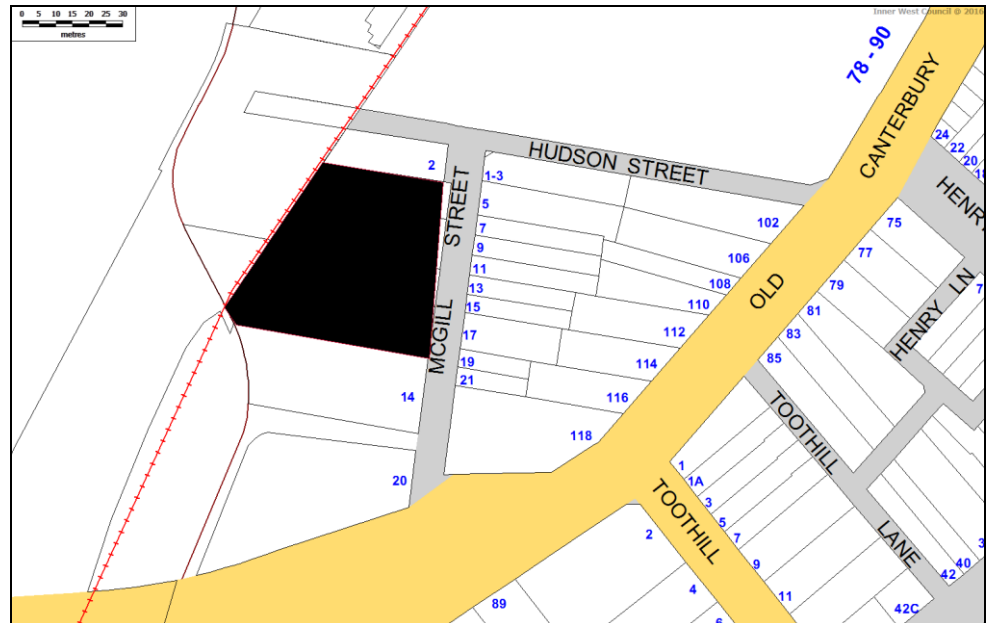


Image 1: Location Map

DA No: 201700310

Application Date: 23 June 2017. Additional information submitted on 14 November 2017.

Proposal: To demolish the existing improvements and construct a mixed use development consisting of a 6 storey building (Building A) with roof terrace fronting McGill Street and a 8 storey building (Building B) fronting the light rail line containing a total of 88 dwellings and 1 commercial tenancy within Building A for use as art gallery and café space with 2 basement car parking levels and associated landscape works

Applicant: McGill Advance Management Pty Ltd

Estimated Cost: \$33,390,704

Zoning: B4 Mixed Use

PART B - THE SITE AND ITS CONTEXT

Improvements: The site contains one and two storey warehouse buildings



Image 2: The Site (as viewed from McGill Street)



Image 3: The Site (as viewed from the Greenway / light rail line)

Current Use: Vacant

Prior Determinations: Determination No. 201500682, dated 2 August 2016, granted consent (by the Sydney East Joint Regional Planning Panel) to demolish existing

improvements and construct a mixed use development consisting of a 6 storey building (Building A) fronting McGill Street and a 5 storey building (Building B) fronting the light rail line containing a total of 80 dwellings and 1 commercial tenancy within Building B for use as art education and café space with 2 basement car parking levels and associated landscape works.

Environment: Currently transitioning to medium to high density residential development with most remnant industrial land already redeveloped or currently being redeveloped.

PART C - REQUIREMENTS

1. Zoning

Is the proposal permissible under zoning provisions? Yes

2. Development Standards (Statutory Requirements):

| Type | Required | Proposed |
|---------------------------|-----------------|-----------------|
| Height of Buildings (max) | 29 metres | 26.9 metres |
| Floor Space Ratio | 2.3:1 | 2.7:1 |

3. Departures from Development Control Plan:

| Type | Required/Proposed |
|----------------------|--------------------------------|
| Amalgamation pattern | See body of report for comment |
| Built form | See body of report for comment |
| Public Domain | See body of report for comment |

4. Community Consultation:

Required: Yes (newspaper advertisement, on-site notice and resident notification)
 Submissions: 3 submissions

5. Other Requirements:

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55);
 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65);
 State Environmental Planning Policy (State and Regional Development 2011) (SEPP SRD);
 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX);
 State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure);
 Marrickville Section 94/94A Contributions Plan 2014

PART D - ASSESSMENT

1. The Site and Surrounds

The site is located on the western side of McGill Street, between Hudson Street and Old Canterbury Road, Lewisham.

| Lot | Legal Description | Lot Area |
|-------------------|--------------------|-----------------------------|
| 4 McGill Street | Lot 2 in DP 533963 | 436.8m ² |
| 6-8 McGill Street | Lot B in DP 161098 | 712.2m ² |
| 10 McGill Street | Lot E in DP 419611 | 610.3m ² |
| 12 McGill Street | Lot F in DP 101532 | 895.5m ² |
| Total | | 2,654.8m² |

The site has a frontage to McGill Street of 52.28 metres and a depth ranging between 38.899 metres and 58.708 metres with a total site area of 2,654.8m².

Currently occupying the site are two storey industrial buildings on 6-12 McGill Street and a single storey industrial building on 4 McGill Street. There are no tree related constraints to the proposed development. The vegetation along the boundary of the property comprises listed noxious weed and exempt species.

The site is not located within a Heritage Conservation Area or listed as having any heritage significance. The character of the locality is transitioning from industrial to medium to high density residential and mixed uses. Currently under construction on the eastern side of McGill Street and to the south of the site at No. 14-18 McGill Street are medium to high density residential developments. An older industrial use remains at 2 McGill Street. The site is located approximately 45 metres to the east of Lewisham West Light Rail Station and 360 metres from Lewisham Railway Station. Hawthorne Canal is located at the rear of the site.

2. Background

On 2 August 2016, the then Sydney Region East JRPP approved DA201500682, which was an application to demolish existing improvements and construct a mixed use development consisting of a 6 storey building (Building A) fronting McGill Street and a 5 storey building (Building B) fronting the light rail line containing a total of 80 dwellings and 1 commercial tenancy within Building B for use as art education and café space with 2 basement car parking levels and associated landscape works on the subject parcel of land.

The approved development varied the floor space ratio development standard as prescribed under Clause 4.4 of MLEP 2011, as follows:

| Clause 4.4 (MLEP 2011) | Permitted | Approved as part of Determination No. 201500682 |
|-------------------------------|------------------|--------------------------------------------------------|
| Floor Space Ratio (max) | 2.3:1 | 2.43:1 |
| Gross Floor Area | 6,117sqm | 6,459sqm (352sqm departure or 5.77%). |

A copy of the ground floor plan and front/rear elevations of the approved development are reproduced below:

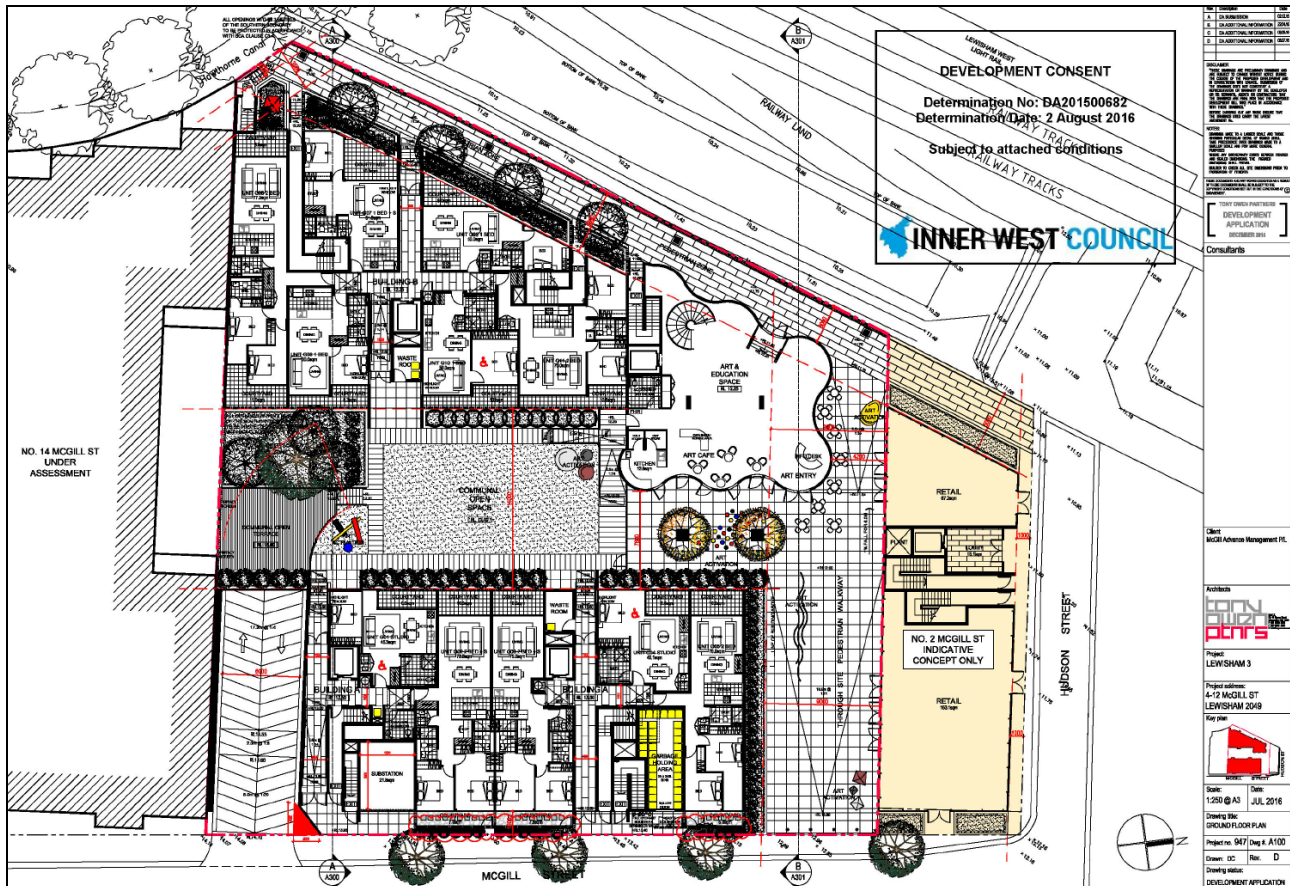


Image 4: Ground Floor Plan

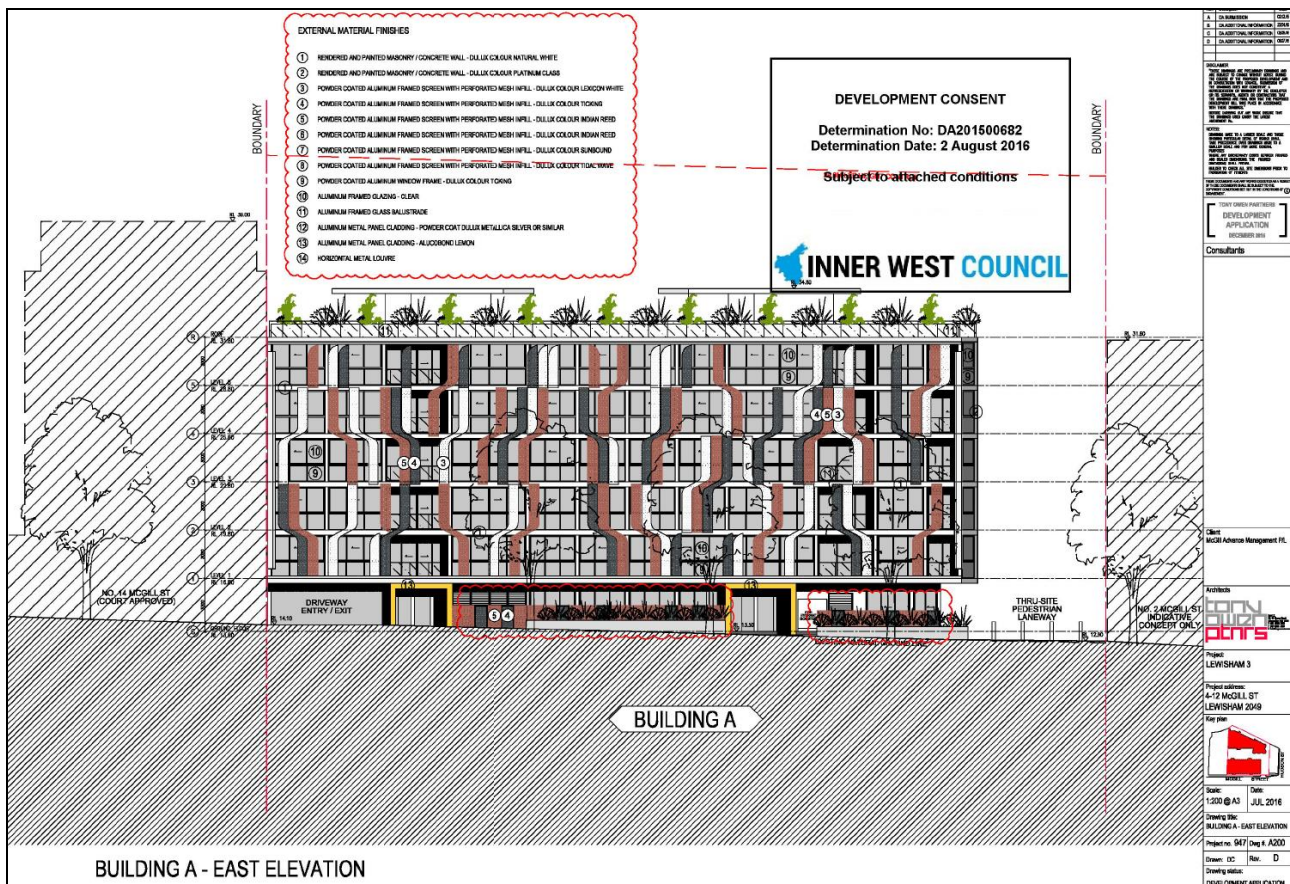


Image 5: McGill Street Elevation

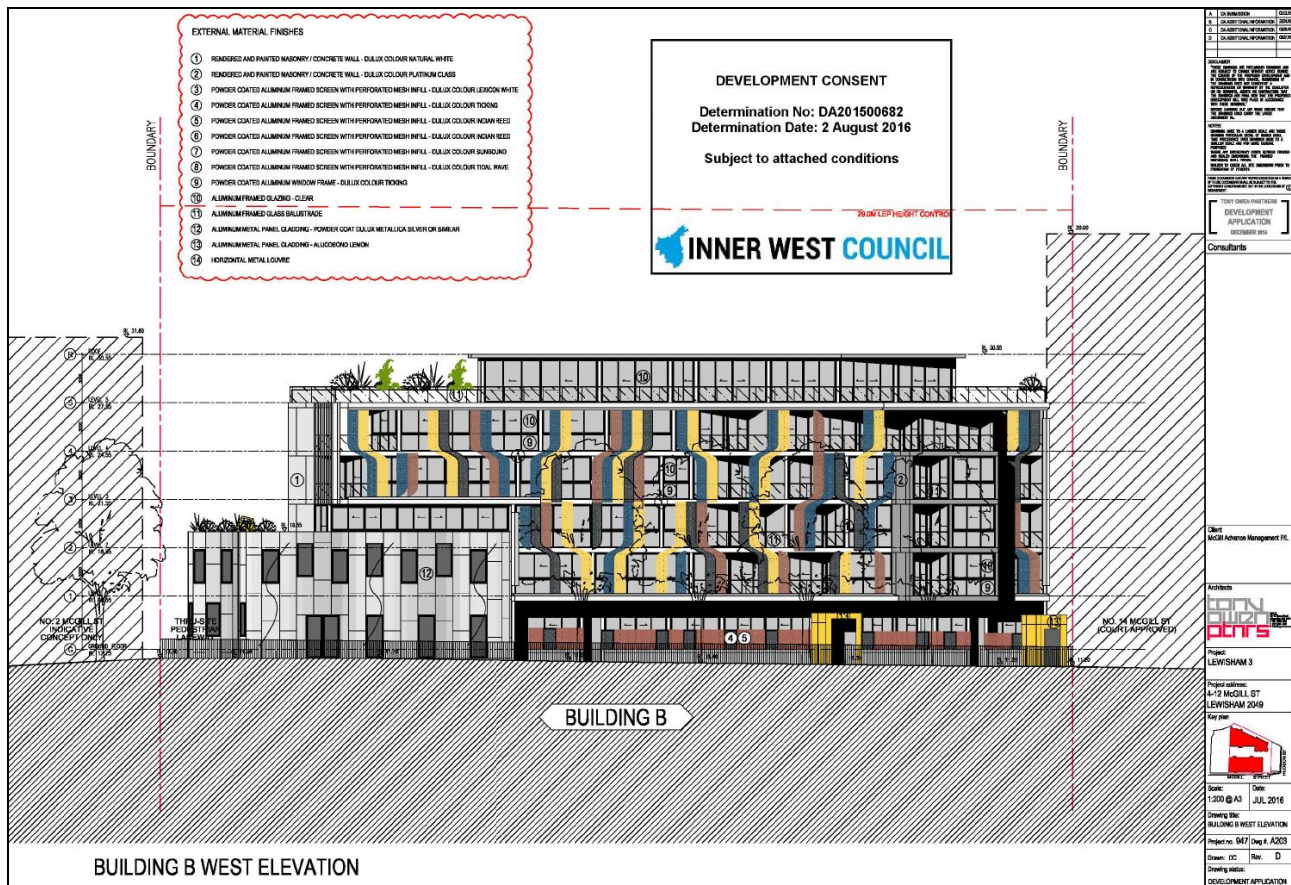


Image 6: Greenway (rear) elevation

3. The Proposal

The development application as originally submitted to Council on 26 June 2017, sought approval to demolish existing improvements and erect a mixed use development consisting of a 8 storey building (Building A) fronting McGill Street and a 8 storey building (Building B) fronting the light rail line containing a total of 92 dwellings and 1 commercial tenancy within Building A for use as art education and café space with 2 basement car parking levels and associated landscape works.

A request for additional information was submitted to the applicant to provided amended plans and additional details to address a number of concerns raised by Council regarding the excessive bulk and scale of the proposal, excessive departure from the FSR development standard, as well as a number of other major concerns. Amended Plans were submitted to Council on 14 November 2017.

Approval is now sought to demolish the existing improvements and construct a mixed use development consisting of a 6 storey building (Building A) with roof terrace fronting McGill Street and a 8 storey building (Building B) fronting the light rail line containing a total of 88 dwellings and 1 commercial tenancy within Building A for use as art gallery and café space with 2 basement car parking levels and associated landscape works. The works include the following:

- 88 residential apartments across 2 buildings;
- 1 commercial tenancy within Building A with an art gallery and ancillary café;
- 2 levels of basement containing 97 car parking spaces, residential and commercial loading bays, 5 motorcycle parking spaces, 57 bicycle spaces, residential storage, waste management areas and services, including shared vehicular access to No. 2 McGill Street;
- Rooftop communal open space areas at ground floor level and roof level of Building A; and

- A double storey public through site link from the Greenway to McGill Street along the northern boundary of the site; and

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



Image 7: McGill Street Elevation Photomontage



Image 8: Greenway Elevation Photomontage

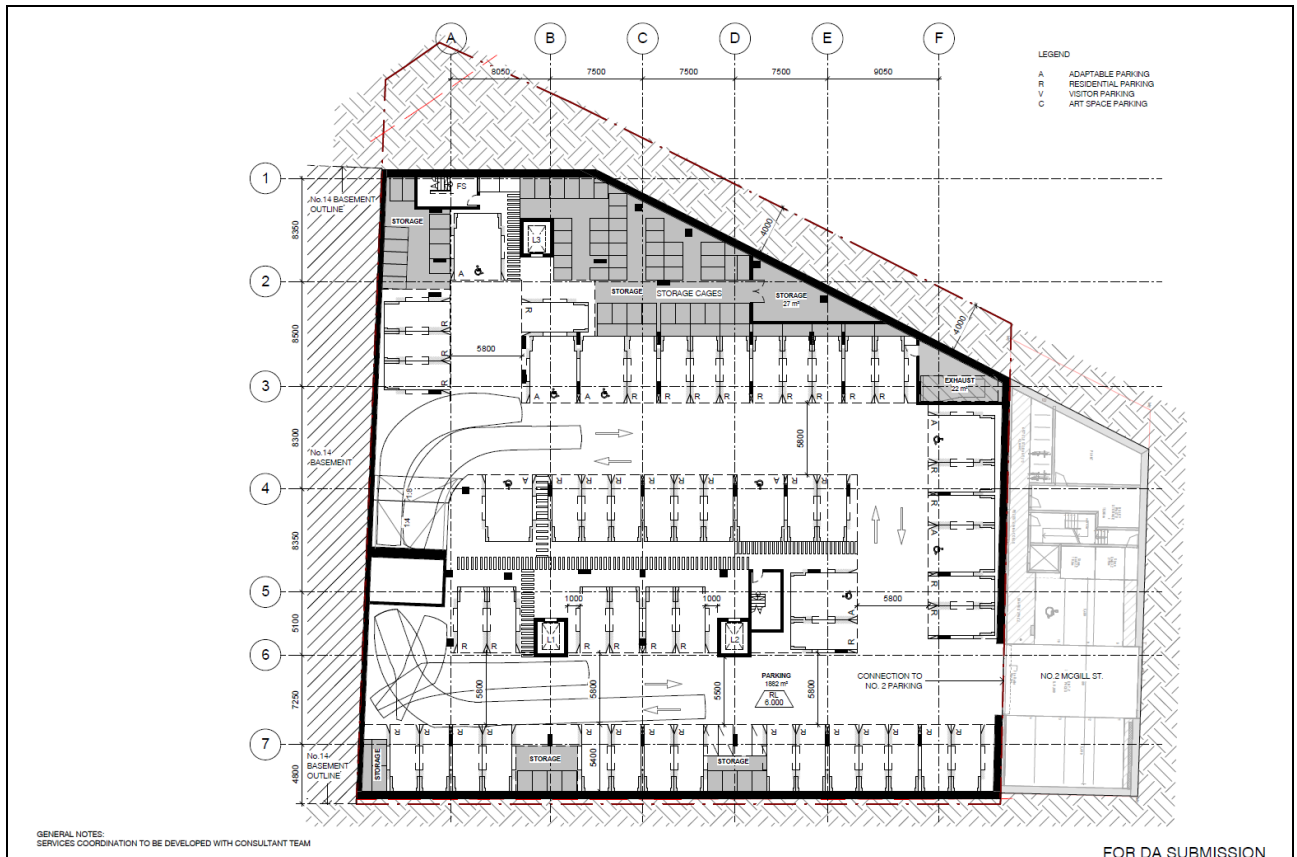


Image 9: Basement 02 Plan

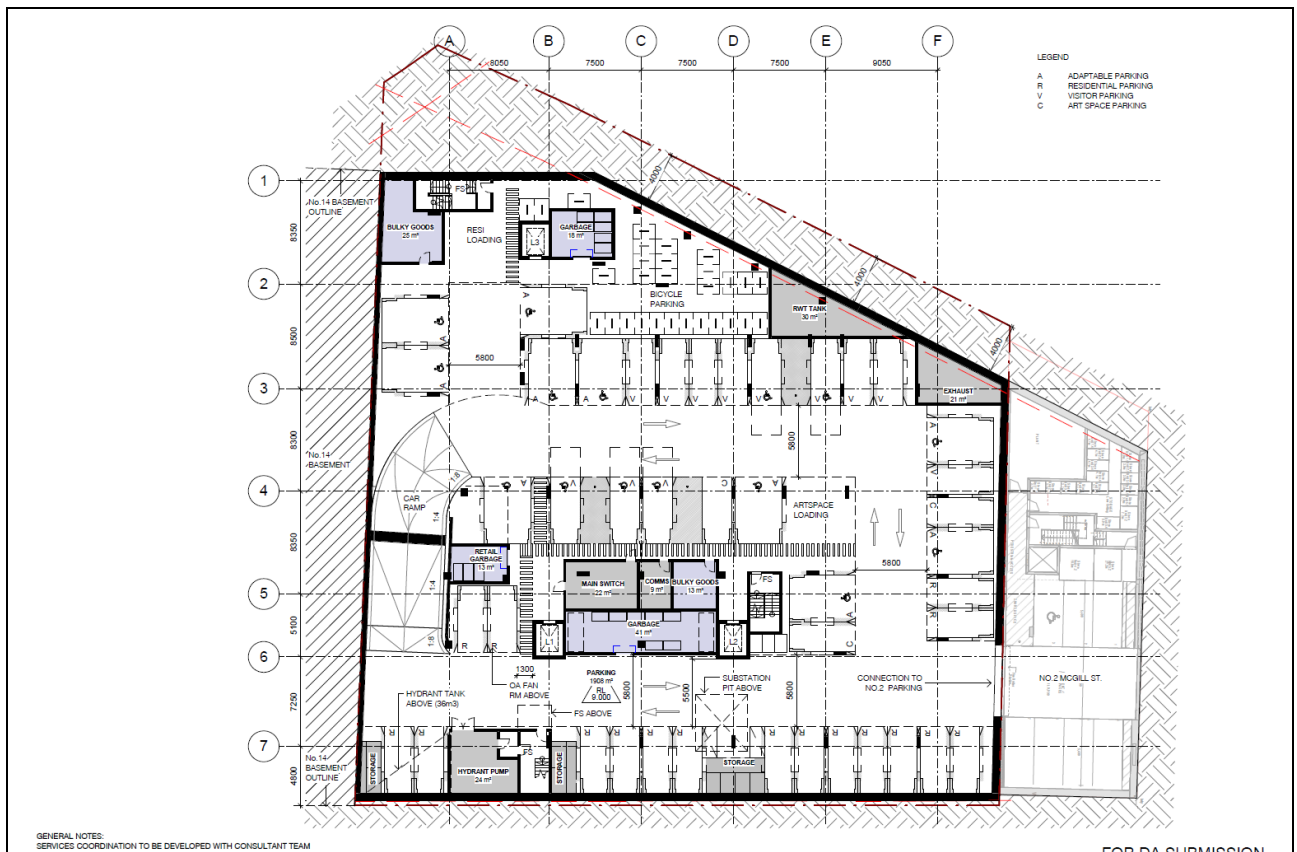


Image 10: Basement 01 Plan



Image 11: Ground Floor Plan

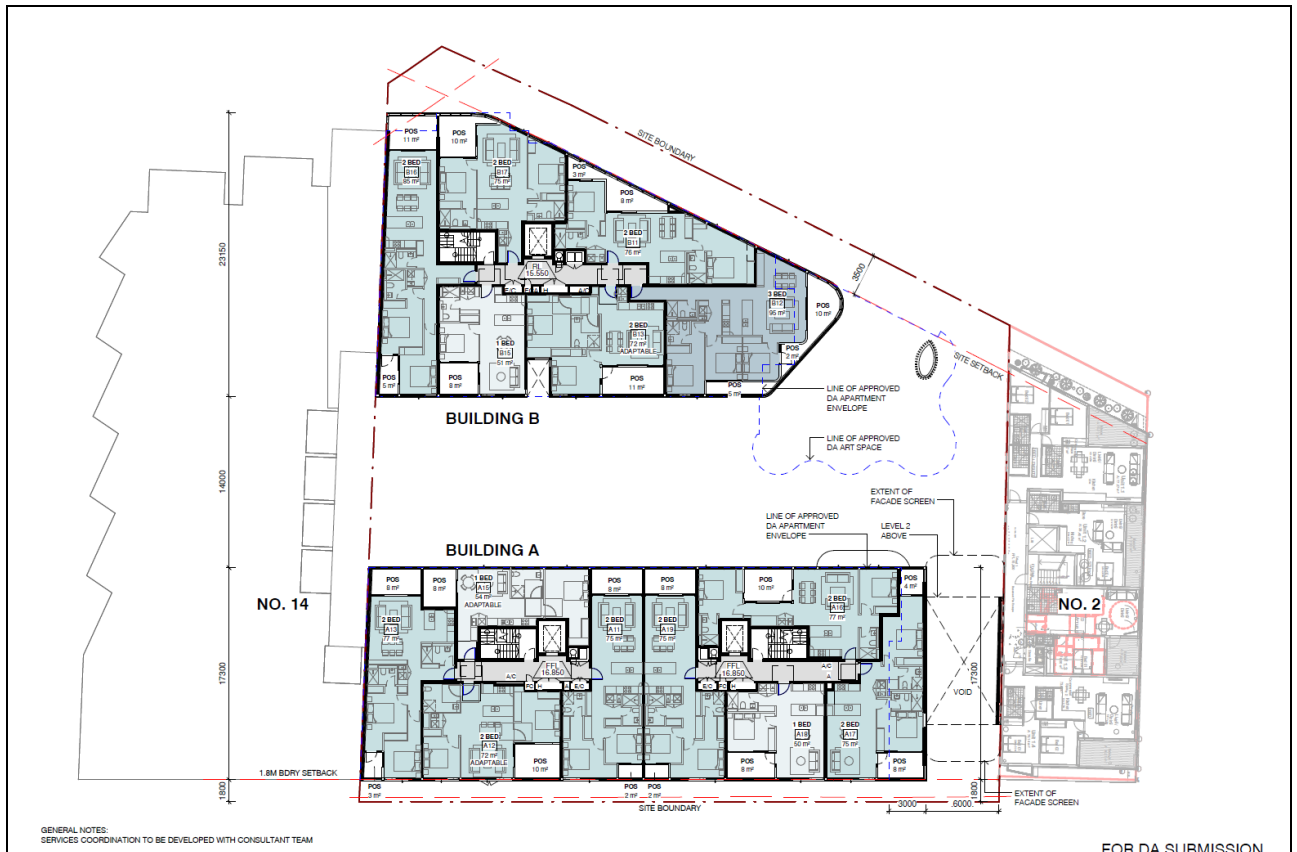


Image 12: Level 1 Plan

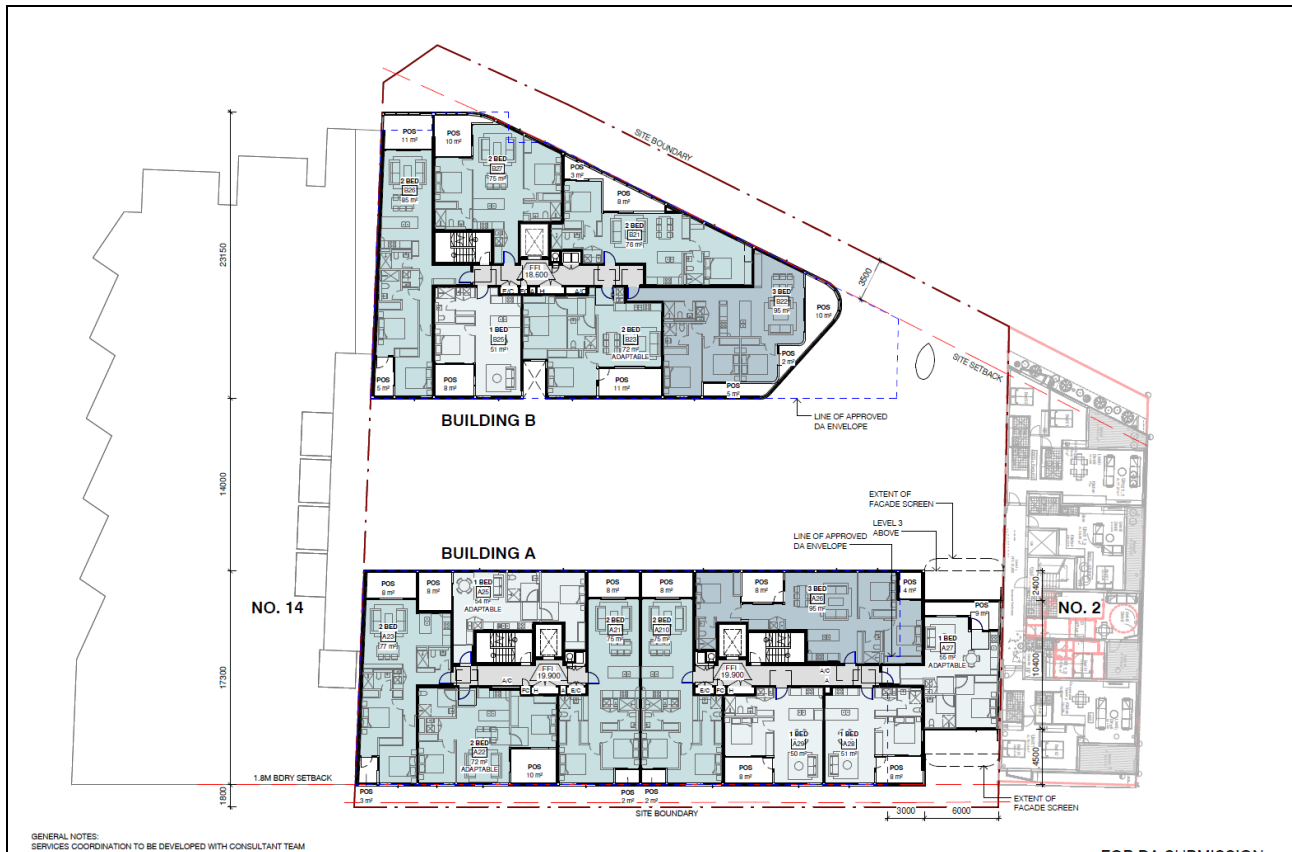


Image 13: Level 2 Plan

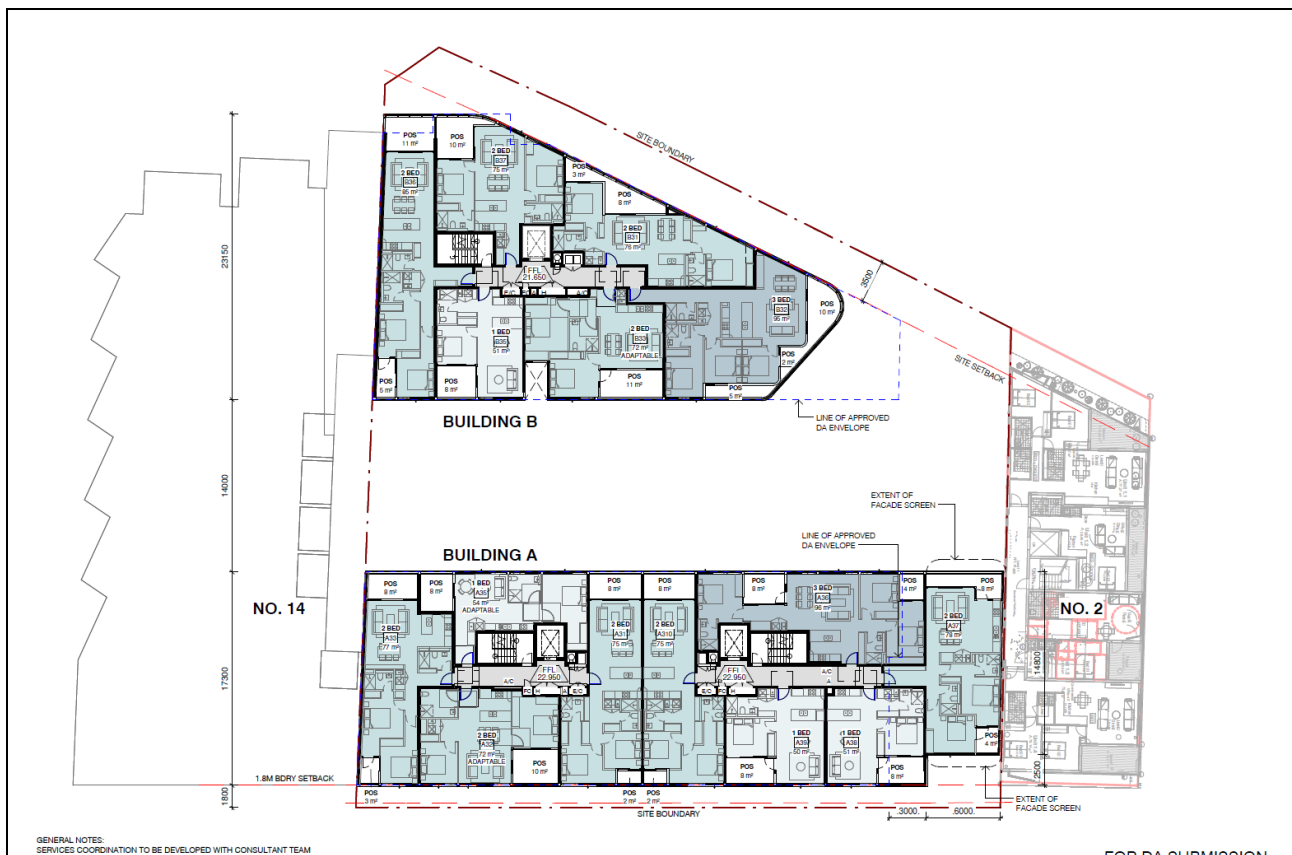


Image 14: Level 3 Plan

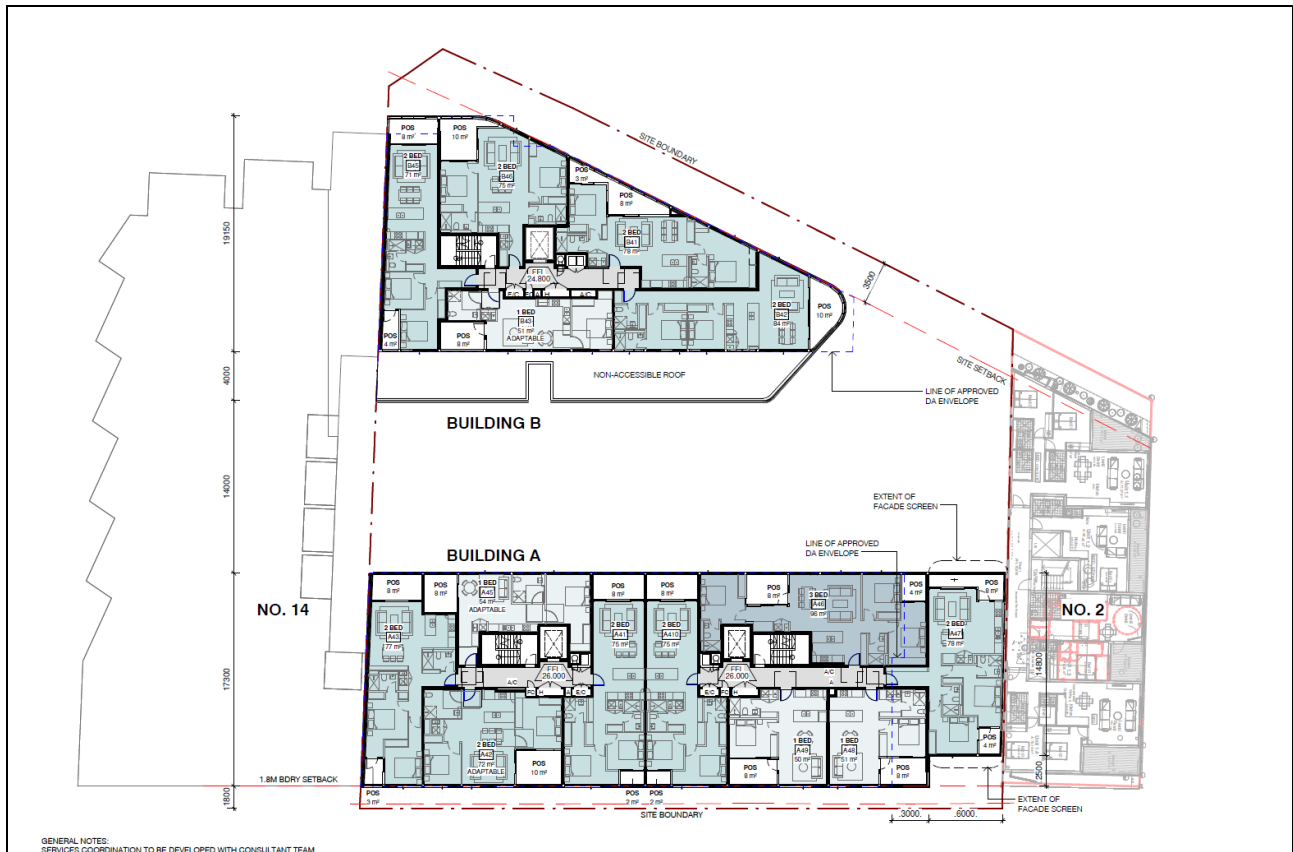


Image 15: Level 4 Plan

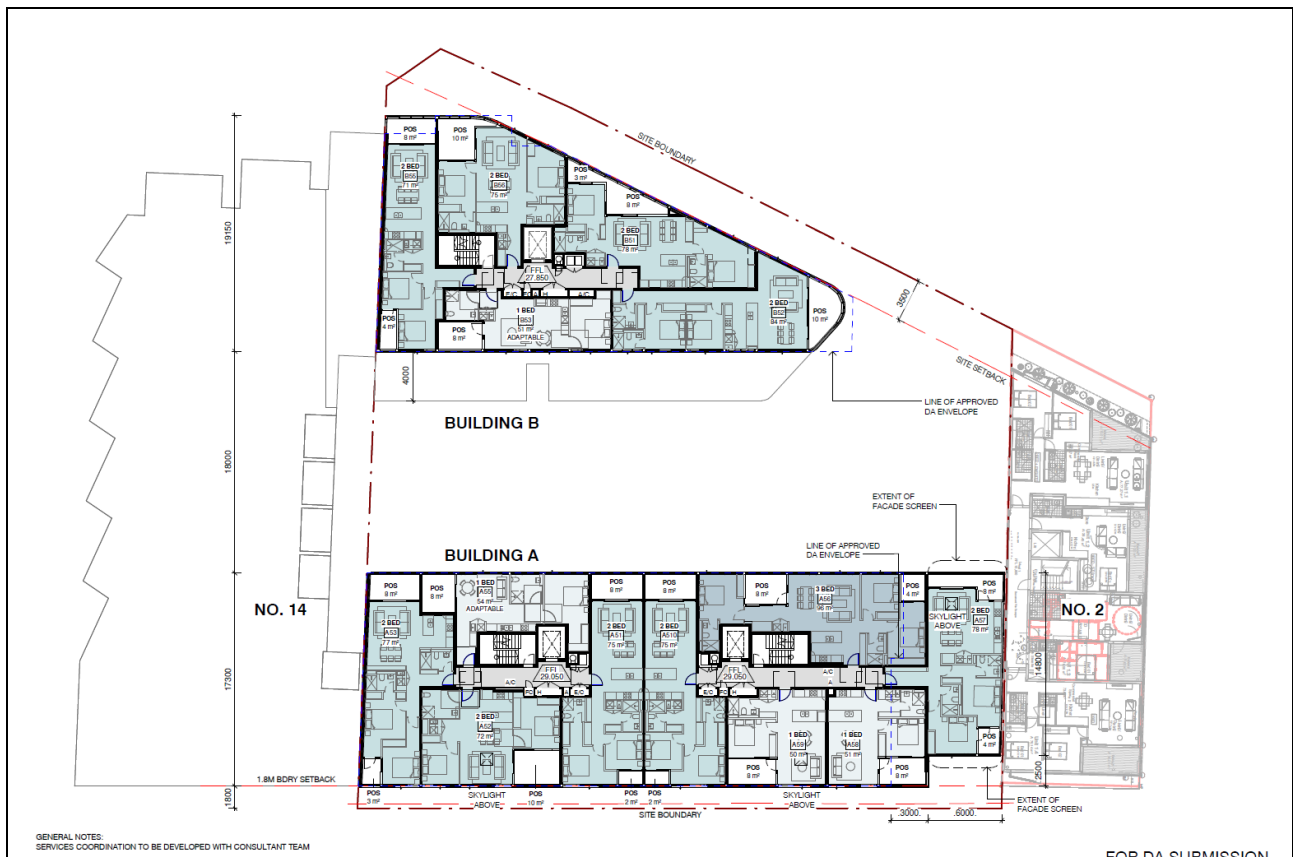


Image 16: Level 5 Plan

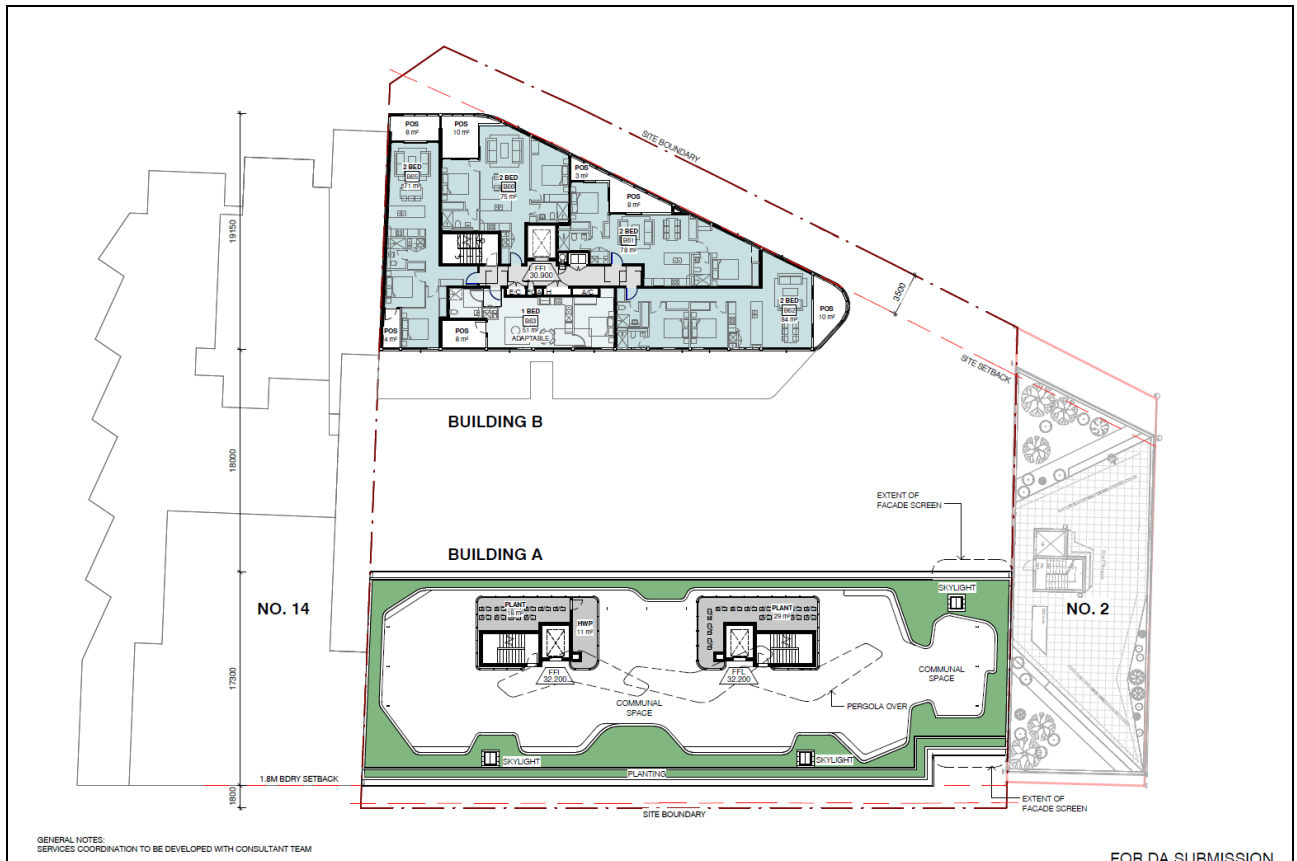


Image 17: Level 6 Plan & Roof Building A

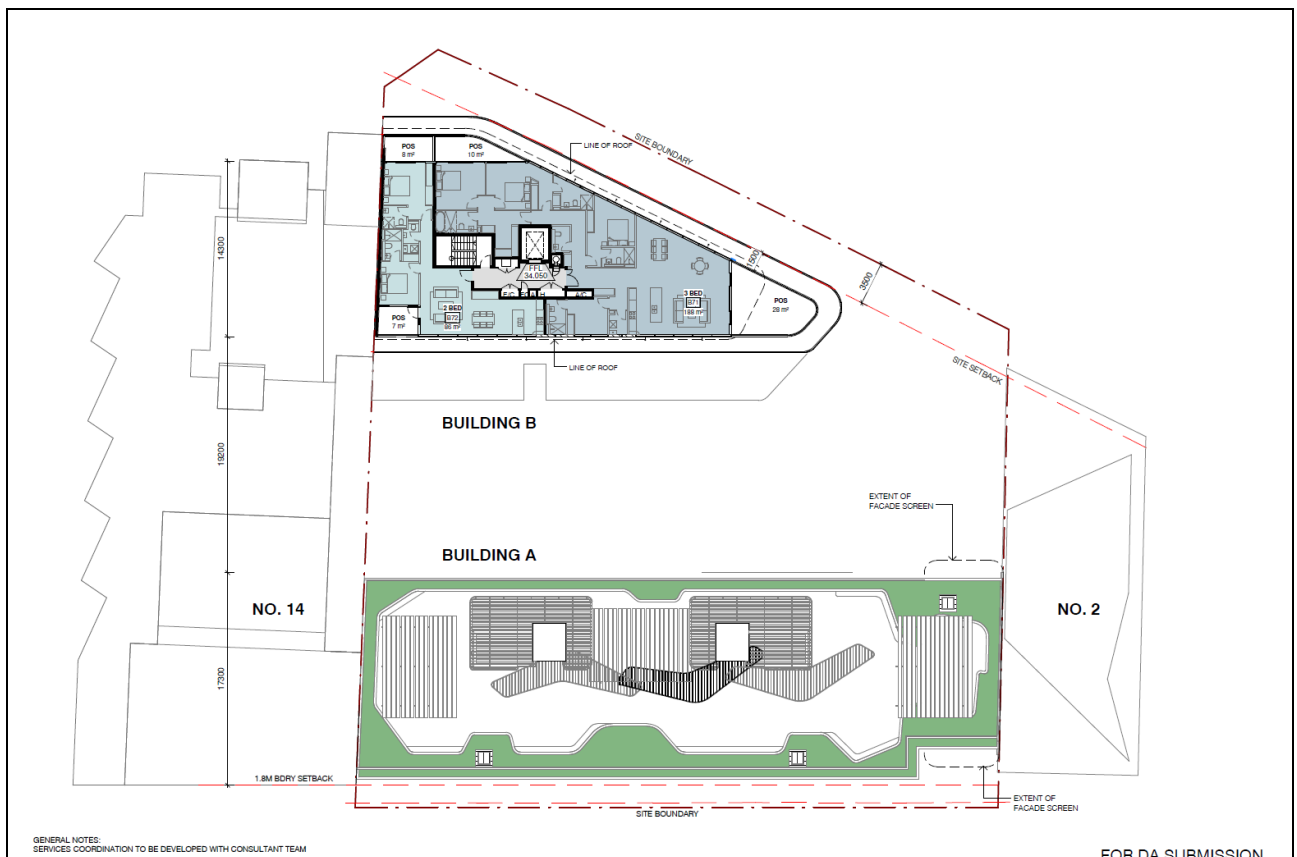


Image 18: Level 7 Plan

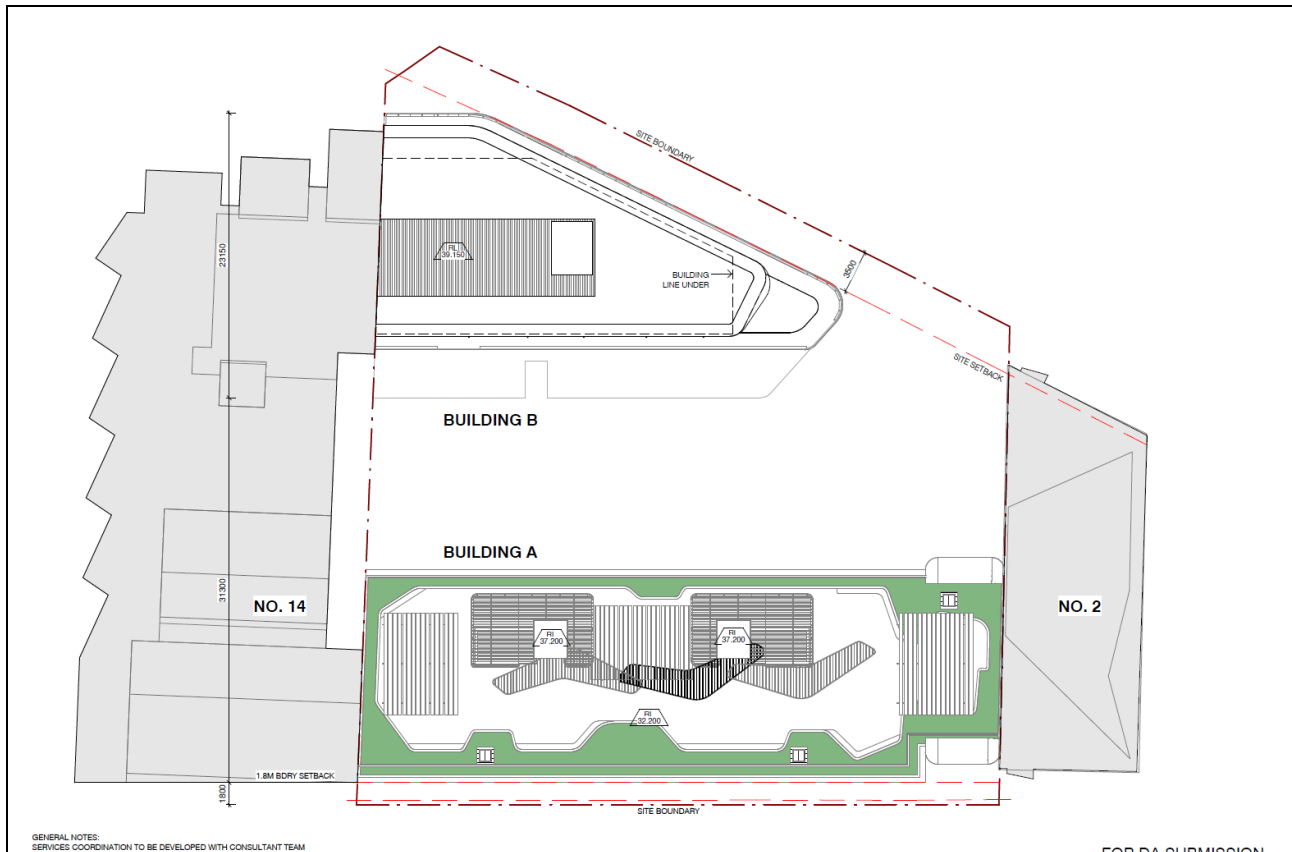


Image 19: Roof Building B

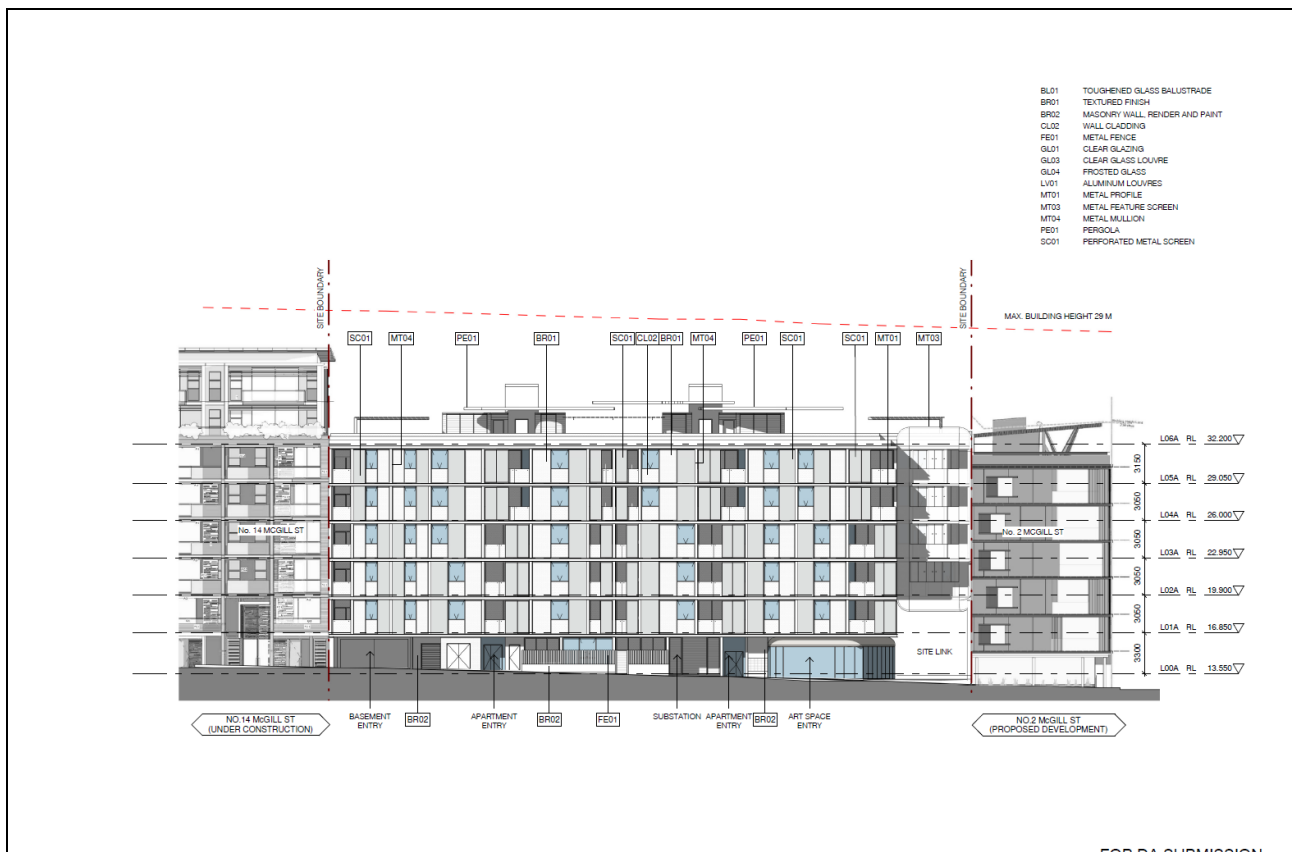


Image 20: McGill Street Elevation

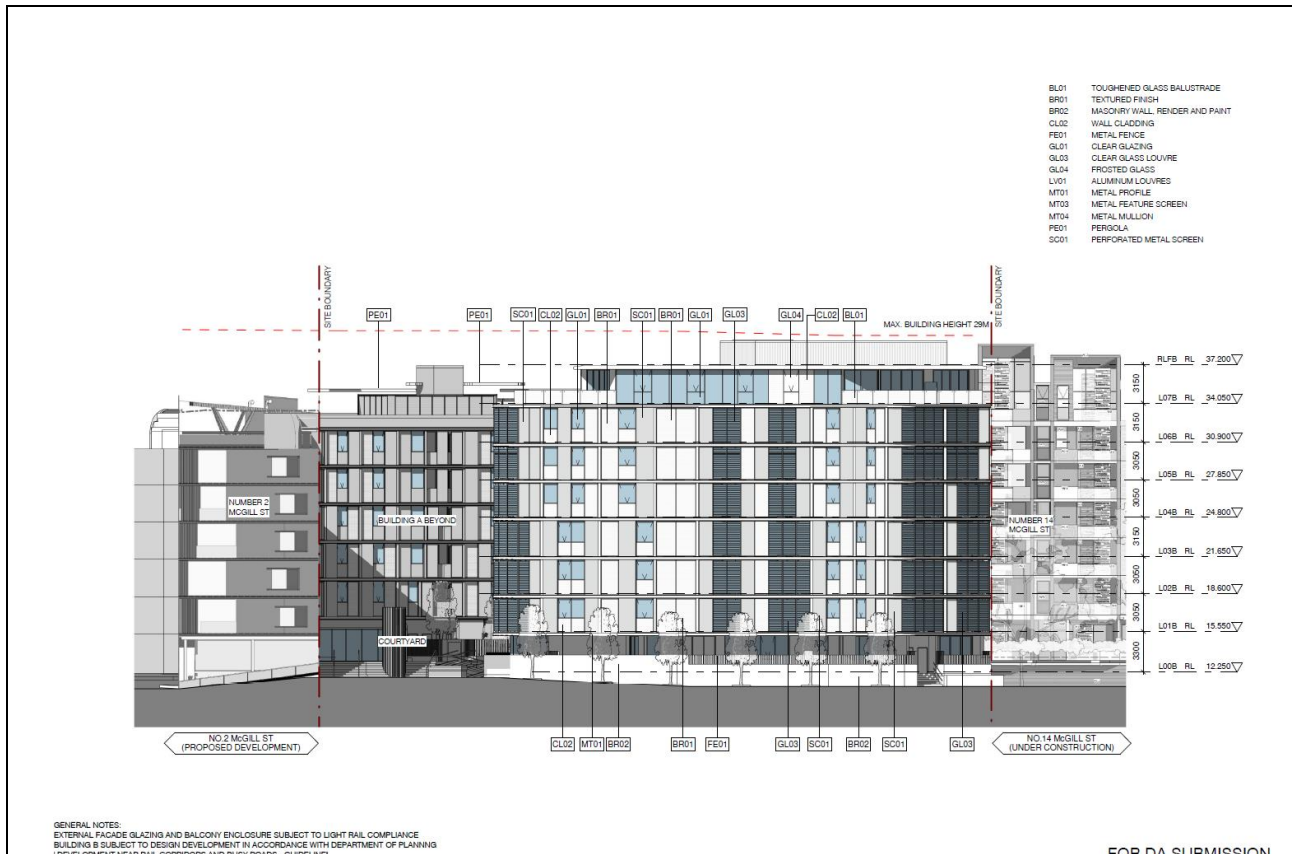


Image 21: Greenway Elevation

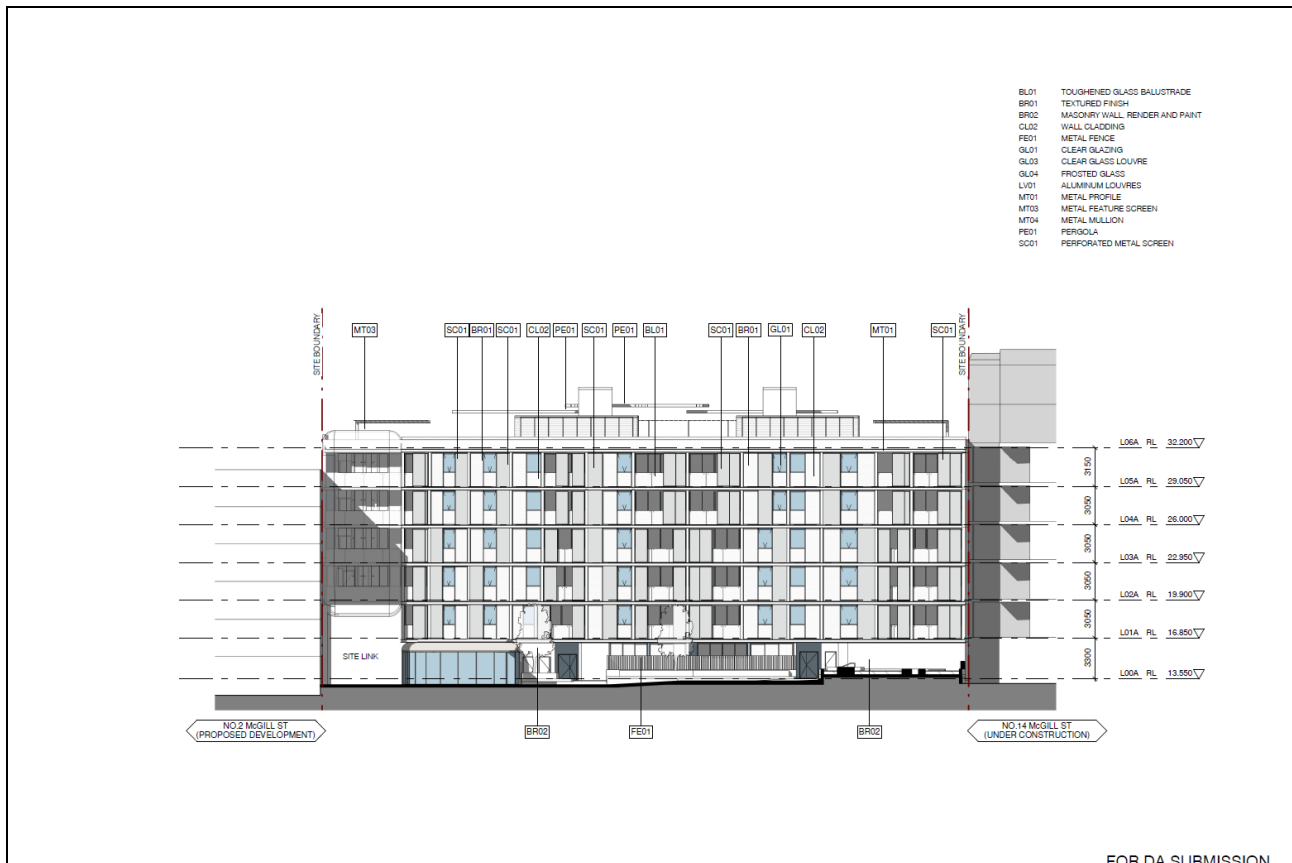
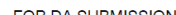


Image 22: Building A Western Elevation



FOIA b 7 - D



FOIA b 7 - D

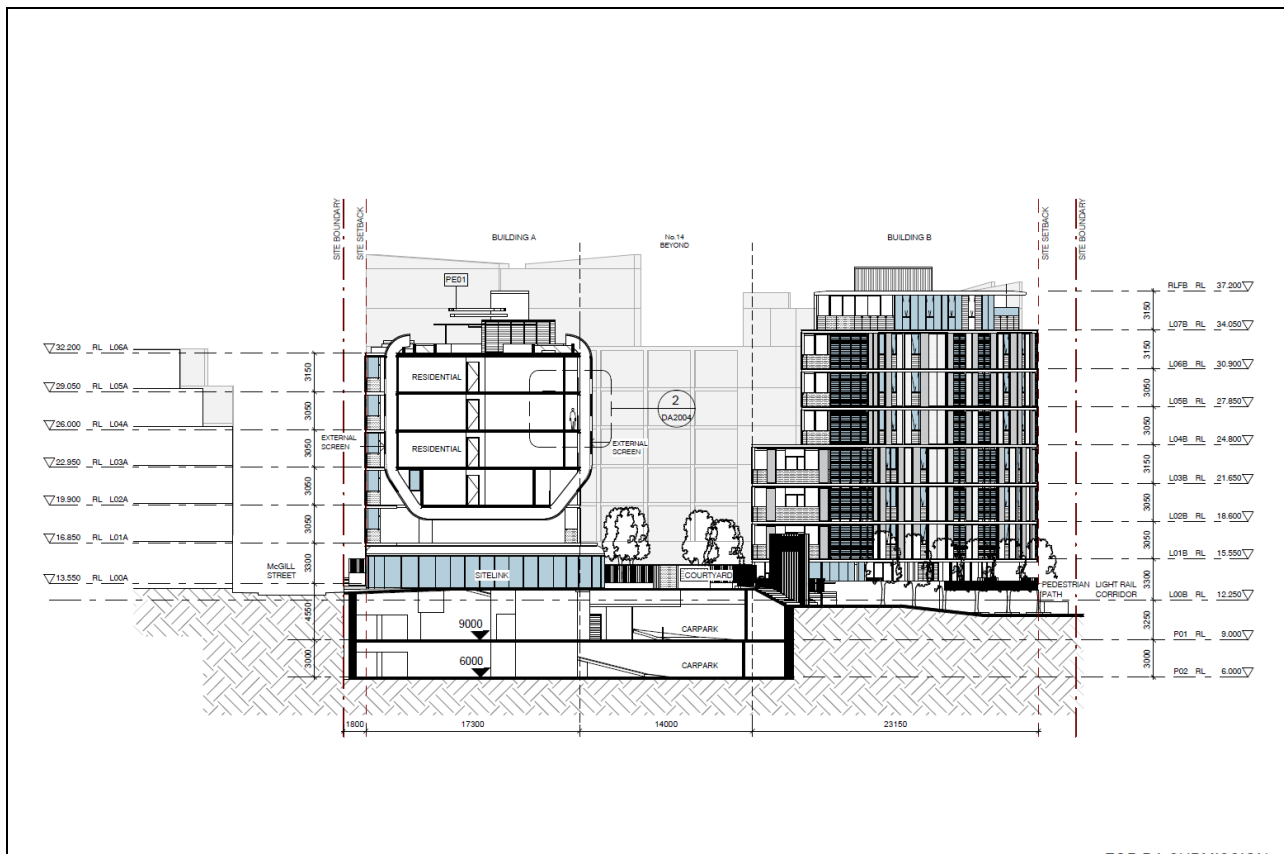


Image 25: Northern Section

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

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. Marrickville Development Control Plan 2011 (MDCP 2011) provides controls and guidelines for remediation works. SEPP 55 requires that remediation works must be carried out in accordance with a Remediation Action Plan (RAP) as approved by the consent authority and any guidelines enforced under the Contaminated Land Management Act 1997.

The site has been used in the past for activities which could have potentially contaminated the site. A Detailed Site Investigation (DSI) was submitted with the application which concluded that the site can be made suitable for the proposed use subject to a Remediation Action Plan (RAP) being prepared which addresses the recommendations of the DSI. A RAP was submitted to Council which makes the following conclusion:

“Environmental Investigations considers that the site can be made suitable for the proposed residential land use with minimal access to soils following the implementation of this RAP.”

It is evident that the site can be made suitable for the proposed residential use after the completion of the works recommended by the RAP, in accordance with Clause 7 of SEPP 55.

5. State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (Amendment No. 3)

The development is subject to the requirements of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65). SEPP 65 prescribes 9 design quality principles to guide the design of residential apartment development 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 aesthetics.

A statement from a qualified Architect was submitted with the application verifying that they designed, or directed the design of, the development. The statement also provides an explanation that verifies how the design quality principles are achieved within the development and demonstrates, in terms of the Apartment Design Guide (ADG), how the objectives in Parts 3 and 4 of the guide have been achieved.

In accordance with Clause 30 of the SEPP if the development satisfies the following design criteria, the consent authority must not refuse the application on the following matters:

- if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the ADG,
- if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the ADG,
- if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the ADG.

The development is generally acceptable having regard to the 9 design quality principles.

Apartment Design Guide

The ADG contains objectives, design criteria and design guidelines for residential apartment development. In accordance with Clause 6A of the SEPP the requirements contained within MDCP 2011 in relation to visual privacy, solar and daylight access, common circulation and spaces, apartment sizes and layout, ceiling heights, private open space and balconies, natural ventilation and storage have no effect. In this regard objectives design criteria and design guidelines set out in Parts 3 and 4 of the ADG prevail.

The development has been assessed against the relevant design criteria within Part 3 and 4 of the ADG as follows:

Communal and Open Space

The ADG prescribes the following requirements for communal and open space:

- Communal open space has a minimum area equal to 25% of the site.
- Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).

At the centre of the site is a large open space area measuring approximately 447.6sqm and a roof top terrace measuring 713.2sqm on Building A, thus equating to a total communal open space of 1160.8sqm or 43.6% of the total site area. Due to the height of the buildings the central space will largely be in shadow in winter. However, 100% of the roof top communal open space above Building A will receive uninterrupted solar access during summer and winter. As a result, the total communal open space achieves at least 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).

Deep Soil Zones

The ADG prescribes the following minimum requirements for deep soil zones:

| Site Area | Minimum Dimensions | Deep Soil Zone (% of site area) |
|-----------------------------|--------------------|------------------------------------|
| Less than 650m ² | - | |

| | | |
|-----------------------------------------------------------------------|----|----|
| 650m ² - 1,500m ² | 3m | 7% |
| Greater than 1,500m ² | 6m | |
| Greater than 1,500m ² with significant existing tree cover | 6m | |

The site has an area of 2,659.9sqm and thus requires 7% of the site area to be provided as deep soil area. The deep soil area is proposed to be 208.8sqm and will be located along the western portion of the site near the greenway and equates to 7.8% of the total site area which is acceptable.

Given the above, the development is considered to be acceptable with regard to the provision of deep soil zones.

Visual Privacy/Building Separation

The ADG prescribes the following minimum required separation distances from buildings to the side and rear boundaries:

| Building Height | Habitable rooms and balconies | Non-habitable rooms |
|-------------------------------|-------------------------------|---------------------|
| Up to 12 metres (4 storeys) | 6 metres | 3 metres |
| Up to 25 metres (5-8 storeys) | 9 metres | 4.5 metres |
| Over 25 metres (9+ storeys) | 12 metres | 6 metres |

The ADG prescribes the following minimum required separation distances from buildings within the same site:

Up to four storeys/12 metres

| Room Types | Minimum Separation |
|--------------------------------------------------------|--------------------|
| Habitable Rooms/Balconies to Habitable Rooms/Balconies | 12 metres |
| Habitable Rooms/Balconies to Non-Habitable Rooms | 9 metres |
| Non-Habitable Rooms to Non-Habitable Rooms | 6 metres |

Five to eight storeys/up to 25 metres

| Room Types | Minimum Separation |
|--------------------------------------------------------|--------------------|
| 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 |

Building A is 6 storeys in height and Building B is 8 storeys in height. The development provides 14 metres separation between the two buildings for the lower 4 storeys of Building B, and increases to 18 metres for the upper 4 storeys. These internal setbacks comply with the numerical separation requirements under the ADG and the development is considered to provide adequate separation between the buildings for privacy and the minimum levels of solar access. The development is oriented east-west with 71.6% of the total units receiving adequate solar access as required under SEPP 65. The matter of solar access and privacy are discussed further in Section 10 of this report.

Building separation from the residential flat building under construction to the south of the site at No. 14 McGill Street as well as the site to the north at No. 2 McGill Street is required to be 9 metres under the ADG. The design proposes a nil southern boundary setback with No. 14, a 15 metre northern boundary setback to Building B and a nil northern side boundary setback to Building A.

Despite not complying with the ADG separation requirements, the overall building separation of this development is one that was envisaged in the master planning of the McGill Street precinct under Part 9.45 of MDCP 2011 as the entire site was required to be amalgamated into a single lot (which included Nos. 2 & 14 McGill Street). Any requirement for a greater building separation on the subject site is considered to be onerous given the existing context and building forms encouraged under Part 9.45 of MDCP 2011.

The proposed building separation is considered to provide sufficient visual and acoustic privacy for occupants of the development and neighbouring dwellings, with sufficient provision of open space and deep soil zones for stormwater management and tree planting.

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

Solar and Daylight Access

The ADG prescribes the following requirements for solar and daylight access:

- Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9.00am and 3.00pm at mid-winter.
- A maximum of 15% of apartments in a building receive no direct sunlight between 9.00am and 3.00pm at mid-winter.

The development provides 63 units (71.6%) which receive a minimum of 2 hours direct sunlight between 9.00am and 3.00pm in mid-winter which is greater than the ADG minimum rate of 70% of apartments in the building and is considered satisfactory affording good amenity for future occupants.

Natural Ventilation

The ADG prescribes the following requirements for natural ventilation:

- At least 60% of apartments are naturally cross ventilated in the first 9 storeys of the building.
- Overall depth of a cross-over or cross-through apartment does not exceed 18 metres, measured glass line to glass line.

The development proposes 55 units (62.5%) which are naturally cross ventilated which comply with the ADG minimum standards for natural ventilation.

The ADG prescribes a maximum internal building depth of 18 metres. Habitable room depths are limited to a maximum of 2.5 x the ceiling height. In open plan layout (where the living, dining and kitchen are combined) the maximum habitable room depth is 8 metres from a window. The minimum width of cross-over or cross-through apartments is 4 metres.

No unit within the development has a greater depth than 18 metres with the exception of Unit B06 on the ground floor level. B06 has a depth of 20 metres and whilst this exceeds the maximum depth of 18 metres, the apartment is an oversized 2 bedroom dwelling with an area of 85sqm. A decrease in the depth of the apartment would not improve the internal amenity, only reducing the overall size. All apartments have a minimum width of at least 4 metres.

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 3.3 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.

Apartment Size

The ADG prescribes the following minimum apartment sizes:

| Apartment Type | Minimum Internal Area |
|----------------------|-----------------------|
| Studio apartments | 35m ² |
| 1 Bedroom apartments | 50m ² |
| 2 Bedroom apartments | 70m ² |
| 3 Bedroom apartments | 90m ² |

Note: The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.

An assessment of the apartment sizes within the proposed development indicates that all apartments proposed comply with the minimum sizes prescribed by the ADG, with the exception of unit A03. Unit A03 is a 2 bedroom with extra bathroom with an area 73sqm. Although the unit is 2sqm short of the ADG requirements, the unit is provided with 24sqm of total private open space which provides satisfactory amenity overall. The majority of units are larger than the prescribed minimum internal area ensuring adequate amenity is maintained for future occupants.

Given the above, no issue is raised regarding the size of the apartments within the development.

Apartment Layout

The ADG prescribes the following requirements for apartment layout requirements:

- Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.
- Habitable room depths are limited to a maximum of 2.5 x the ceiling height.
- In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8 metres from a window.
- Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).
- Bedrooms have a minimum dimension of 3 metres (excluding wardrobe space).
- Living rooms or combined living/dining rooms have a minimum width of:
 - 3.6 metres for studio and 1 bedroom apartments.
 - 4 metres for 2 and 3 bedroom apartments.
- The width of cross-over or cross-through apartments are at least 4 metres internally to avoid deep narrow apartment layouts.

All units comply with the minimum layout requirements of the ADG. All units have open plan layouts and the master bedrooms and other bedrooms are of an appropriate and compliant size. The application is therefore considered satisfactory having regard to apartment layouts.

Private Open Space and Balconies

The ADG prescribes the following sizes for primary balconies of apartments:

| Dwelling Type | Minimum Area | Minimum Depth |
|---------------|--------------|---------------|
|---------------|--------------|---------------|

| | | |
|-----------------------|------------------|------------|
| Studio apartments | 4m ² | - |
| 1 Bedroom apartments | 8m ² | 2 metres |
| 2 Bedroom apartments | 10m ² | 2 metres |
| 3+ Bedroom apartments | 12m ² | 2.4 metres |

Each primary balcony complies with the minimum ADG requirements with some dwellings encompassing a smaller secondary balcony. Whilst not all dwellings are provided with private open space that achieves the minimum depth dimensions, given the curvilinear form of the building this is acceptable. The open space arrangements are acceptable given that the proposal complies with the ADG requirements above.

Common Circulation and Spaces

The ADG prescribes the following requirements for common circulation and spaces:

- The maximum number of apartments off a circulation core on a single level is 8.
- For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.

The maximum number of apartments proposed off a circulation core on a single level is 6 which is acceptable in this regard.

Storage

The ADG prescribes the following storage requirements in addition to storage in kitchen, bathrooms and bedrooms:

| Apartment Type | Minimum Internal Area |
|-----------------------|-----------------------|
| Studio apartments | 4m ³ |
| 1 Bedroom apartments | 6m ³ |
| 2 Bedroom apartments | 8m ³ |
| 3+ Bedroom apartments | 10m ³ |

Note: At least 50% of the required storage is to be located within the apartment.

All apartments have been provided with sufficient storage excluding kitchens and bedrooms which complies with the prescribed ADG requirements.

6. State Environmental Planning Policy (Infrastructure) 2007

Clause 85-87

State Environmental Planning Policy (Infrastructure) 2007 (the Infrastructure SEPP) provides guidelines for development immediately adjacent to rail corridors including excavation in, above or adjacent to rail corridors. Clause 87 of the Infrastructure SEPP relates to the impact of rail noise or vibration on non-rail development, and for a development for the purpose of a building for residential use, requires appropriate measures are incorporated into such developments to ensure that certain noise levels are not exceeded. In this regard those measures are to ensure that the following LAeq levels are not exceeded:

- “(a) in any bedroom in the building - 35 dB(A) at any time between 10.00pm and 7.00am,
(b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway) - 40 dB(A) at any time.”

An acoustic report accompanied the application and assessed the potential acoustic impacts of rail noise on the proposed development. The report contains recommendations to be incorporated into the proposed development in order to mitigate acoustic impacts. The report should be referenced in any consent granted.

The application was referred to Sydney Trains for concurrence in accordance with Clause 86 of the Infrastructure SEPP. Sydney Trains granted concurrence to the development subject to conditions on 21 November 2017. Those conditions should be imposed on any consent granted.

Traffic-generating development (Clause 104)

In accordance with Clause 104 SEPP (Infrastructure), 'residential flat buildings' with 75 or more dwellings with access to classified road are classified as traffic generating development. Accordingly, the application was referred to RMS for consideration.

On 4 August 2017, RMS advised that it raised no objection to the proposal in relation to Clause 104 of the Infrastructure SEPP.

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

A 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.

8. Marrickville Local Environmental Plan 2011

(i) Aims of the Plan (Clause 1.2)

Clause 1.2 relates to the aims of the MLEP 2011. Aim 2(h) is to "promote a high standard of design in the private and public domain".

The development application was referred to Council's Architectural Excellence Panel (AEP) who provided the following comments:

"Between 2015 and 2016, the Panel provided comments and recommendations for a Pre-DA and DA for the subject site for a 6-storey residential building fronting onto McGill Street and a 5 part 6-storey residential building, including a 2 storey art gallery, fronting onto the Greenway. The development application (DA201500682) was approved by JRPP in 2016.

A new architect has been engaged by the developer. In February 2017, the Panel had the opportunity to discuss a new Pre-DA proposal (PDA201600137) with PTW Architects, JBA Planners and McGill Advance Pty Ltd (the developer). AEP's Pre-DA advice can be found in TRIM 25250.17.

The Panel reviewed the DA proposal against the recommendations provided at Pre-DA stage and against the proposal approved in 2016.

Several recommendations by the Panel have not been adequately addressed. Overall, the proposal has the ability of achieving a superior architectural outcome than the one approved by JRPP in 2016, but achieves an inferior urban design outcome.

1. Infill connection between Building A (facing McGill Street) and a future building at 2 McGill Street ('residential bridge')

The Panel reiterates that the infill connection between Building A (facing McGill Street) and a future building at 2 McGill Street, with 4 levels of residential apartments above the east-west

pedestrian through-site link, is not supported. The link structure creates a sense of enclosure and privatisation of the pedestrian link and a loss of a sense of 'sky'. It provides poor interface with and inhibits the development potential of the property at 2 McGill Street. The wall that supports the infill connection will result in a poor interface and activation to the east-west through site link. Further, the screen mesh 'wrap' (MT03) described in the 3Ds and schedule of finishes would make the internal amenity and outlook of the apartments extremely unpleasant with no apparent solar access, access to breezes or outlook other than through the screen. The infill does not create a space superior to the open sky above the site link and does not respond appropriately to the site's context. The approved DA achieved a better urban design outcome in this regard. If the GFA of the infill connection (approximately 289sqm) were to be deducted from the total, this would result in an FSR of approximately 2.77:1 (GFA 7,378/2,659.9sqm of site area). Lastly, the width of the east-west through-site link at Ground Level has been marginally increased from 6m (Pre-DA proposal) on its front portion, but has been significantly reduced from 9m, as previously approved by Council. This suggests the art space is ambitiously large.

2. Building A – Levels 6 and 7

The form and finishes of the proposed roof protrusions around the cores at Levels 6 and 7 are blunt and unrefined. Although they are splayed and set back to minimise overshadowing and visibility from McGill Street, they do not improve the character of the development and the increased bulk will be visible from nearby apartments and surrounding public domain areas. The roof protrusions do not create an urban form superior to the one approved by JRPP in 2016, and thus exceedance in FSR is not justifiable from an urban design perspective. The roof protrusions are at odds with the predominant 5 part 6-storey buildings along McGill Street that have already been approved by Council, and therefore, it does not respond appropriately to the site's context. The roof protrusions are significantly higher than the maximum MDCP 2011 height limit (2 to 4 storeys). Lastly, it is unclear whether the roof protrusions will create greater overshadowing impact onto future residential units on the opposite side of McGill Street that have been approved or are under construction.

3. Building B – Levels 6 and 7

It is noted that JRPP approved a 5 part 6-storey building facing the Greenway (Building B) and now the applicant seeks approval for an 8-storey building. The Panel is not convinced that the extra levels will result in an urban form superior to the one approved by JRPP in 2016. If Level 6 was to be removed and Level 7 became Level 6, the resultant reduction in GFA would be approximately 359sqm. If this was further deducted from the abovementioned 2.77:1 (GFA 7,378sqm) due to the removal of the 'residential bridge', this would result in a GFA of approximately 7,019sqm and an FSR of approximately 2.64:1.

4. Exceedance in FSR

Despite being within the maximum MLEP 2011 height limit (29 metres), it is noted that the proposed FSR (2.88:1) and height (8 storeys) breaches the maximum MLEP 2011 FSR limit (2.3:1) and is significantly higher than the maximum MDCP 2011 height limit (2 to 4 storeys). The Panel reiterates that it does not view favourably the intent to maximise the development potential of the land by taking advantage of a discrepancy between height and FSR controls in MLEP 2011. It is noted that JRPP's approved FSR (2.42:1) and building mass achieved a good urban design outcome for the subject site (DA201500682). If Level 7 of Building B was to be removed, the resultant reduction in GFA would be approximately 359sqm. If this was further deducted from the abovementioned 2.77:1 (7,378sqm) relating to the removal of the 'residential bridge', this would result in a GFA of approximately 7,019sqm and an FSR of approximately 2.64:1. Removal of the roof protrusions in Building A could see the FSR also reduced. Please note these calculations are approximate to illustrate how the FSR could be reduced to achieve a better urban design outcome. In summary, the Panel is not convinced that the proposed increase in FSR from 2.42:1 to 2.88:1 is justifiable, even with a slightly

larger open space facing the Greenway, better sitting of the art space and potentially better architectural expression.

5. Public, private and semi-private open spaces

The separation between public (east-west through-site link, McGill Street and north-south pedestrian path), semi-private (communal open space at Ground Level) and private domains (balconies to the apartments at Ground Level) are well-defined. However,

- (1) Semi-private Open Space: The width of the semi-private communal open space at Ground Level has been reduced from 14m to 11.5m wide, with the balanced area included within the private realm;
- (2) Semi-private Open Space: The proposed landscape design for the semi-private communal open space is too complex, piecemeal, not fully resolved and creates a space primarily for pedestrian circulation, rather than a usable space for leisure and relaxation. The previous proposal approved by JRPP achieved a better communal open space. There is an odd level change at the fence that separates the resident space from the communal space at Ground Level. On the 3D, there is a stair/steps indicated directly in front of the art space to the west that do not occur on the plan. Additionally, the art space is at RL13.225, the exit from the adjacent fire stair is RL13.525, a platform lift is provided to connect this to RL12.200 – all utilitarian and poorly resolved solutions;
- (3) Public Open Space: The publicly accessible open space facing the GreenWay is larger than the one approved by JRPP in 2016. This is the result of the relocation of the art space to front McGill Street and the relocation of building mass/floor space/residential uses in Building B from lower levels to upper levels. Whilst the Panel is supportive of the relocation of the art space to front onto McGill Street, the wider open space facing the GreenWay has been primarily designed as a pedestrian link, fully paved and with ramps and steps;
- (4) East-west through-site link: The levels and ramping to the east-west through-site link could be better resolved. The 1:14 access ramp adjacent to the property at 2 McGill Street will require disability hand railing, tactiles, etc., which, along with its form, will make it a very utilitarian transition between levels. This suggests that the link should be greater than 6m wide to better accommodate wheelchair ramp, whilst creating a high-quality through-site link, as discussed above. The relationship between the through-site link (levels, access ramps, pedestrian access, finishes, landscaping, activation, etc.) and the property at 2 McGill Street is piecemeal and not well-considered.
- (5) Interfaces: The interface between the private, public and semi-public open spaces is unclear but appears to be poorly resolved, providing high fences, walls, retaining walls and odd level changes addressing public and semi-private domains.

All of the matters listed above are not supported.

6. Car parking Levels

Whilst no levels are shown or known for the proposed car parking for 2 McGill Street, the drawings indicate the upper carpark level has been reduced by 300mm and the lower level by 200mm. Allowance for a connection has been shown in the same location as proposed at Pre-DA, which may or may not work for the planning of 2 McGill Street.

7. Schedule of Finishes and Architectural Expression

Whilst the proposal has the ability of achieving a better architectural outcome than the previous proposal approved by JRPP in 2016, the schedule of finishes is vague and incomplete. The Panel, therefore, is limited in its ability to provide meaningful comments

about the merits of the architectural expression. Detailed description of materials, such as BR01, BR02, CL01, CL02, LV01, MT01 and SC01 has not been provided. The quality of the building and its architectural expression will depend on the proposed finishes being confirmed and committed to at the time of development application.

8. Cross-ventilation and Sustainability Measures

The Panel is of the view that cross-ventilation to the apartments is below the minimum 60% required in the Apartment Design Guide and MDCP 2011. Additionally, it does not appear that sustainability measures such as water tanks, adequate amount of deep soil planting, energy-efficient appliances, affordable housing provision, etc. have been proposed."

A request for additional information was sent to the applicant on 16 October 2017 raising the above concerns. A subsequent meeting was held with the applicant on 26 October 2017 where the issues were further discussed.

Amended Plans were submitted to Council on 14 November 2017. The amended plans address some of the concerns raised by the AEP in regards to the roof projections above Building A which were subsequently removed; treatment of the ground floor common open space and interface with the through site link; and cross ventilation diagrams were provided. Notwithstanding, the remainder of the matters raised by the AEP were not addressed.

The matter of the excessive GFA exceedance; number of storeys to Building B; the 'bridge' structure between Building A and No. 2 McGill Street; and detail of through site link are significant concerns and the amended proposal is not supported by the AEP.

Having regard to the above comments from Council's Architectural Excellence Panel, it is considered that the development does not demonstrate compliance with Clause 1.2(2)(h) of MLEP 2011 in that the proposal does not promote a high standard of design in the private and public domain.

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

The property is zoned B4 - Mixed Use (4 McGill Street) and R4 - High Density Residential (8-12 McGill Street) under the provisions of Marrickville Local Environmental Plan 2011 (MLEP 2011). Shop top housing is permissible with Council's consent in the R4 and B4 zoning provisions applying to the land, while residential flat buildings are permissible in the R4 zone.

The proposal accommodates a ground floor commercial use in Building A which straddles the B4 and R4 zoning on 4 McGill Street and 8-12 McGill Street respectively. The ground floor commercial use is permissible and located above the use are permissible "shop top housing", with the balance of units permissible by virtue of a "residential flat building" in the R4 zone.

(iii) Demolition (Clause 2.7)

Clause 2.7 of MLEP 2011 states that the demolition of a building or work may be carried out only with development consent. The application seeks consent for demolition works. Council's standard conditions relating to demolition works are included in the recommendation.

(iv) Height (Clause 4.3)

A maximum building height of 29 metres applies to the property under MLEP 2011. The development has a maximum building height of 26.9 metres which complies with the height development standard.

(v) Floor Space Ratio (Clause 4.4)

A maximum floor space ratio (FSR) of 2.3:1 applies to the land under MLEP 2011.

The development has a gross floor area (GFA) of 7,138.1sqm which equates to a FSR of 2.7:1 on the 2,654.8sqm site which does not comply with the FSR development standard. The development represents a departure of 1,065.23sqm or 17.4%.

A written request, in relation to the development's non-compliance with the FSR development standard in accordance with Clause 4.6 (Exception to Development Standards) of MLEP 2011, was submitted with the application. That request is discussed below under the heading "Exceptions to Development Standards (Clause 4.6)".

(vi) Exceptions to Development Standards (Clause 4.6)

As detailed above, the development exceeds the maximum floor space ratio development standard prescribed under Clause 4.4 of MLEP 2011.

The development has a gross floor area (GFA) of 7,138.1sqm which equates to a FSR of 2.7:1 on the 2,654.8sqm site which does not comply with the FSR development standard.

The development represents a departure of 1,065.23sqm or 17.4%.

A written request in relation to the contravention to the floor space ratio development standard in accordance with Clause 4.6 (Exceptions to Development Standards) of MLEP 2011 was submitted with the application.

Under Clause 4.6 development consent must not be granted for a development that contravenes a development standard unless the consent authority has considered a written request from the applicant that demonstrates that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify contravening the development standard.

The consent authority must also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The written request submitted as part of this development application provides due regard to Land and Environment Court decision *Wehbe v Pittwater Council* [2007] NSWLEC 827. In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston stated that there are five different ways in which a variation to a development standard might be shown as unreasonable or unnecessary in the circumstances of the case. These five ways are:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be

unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

For the purpose of this proposal, the written request provided by the applicant contends that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the objectives of the development standard are achieved notwithstanding non-compliance with the standard. As such, way 1 of the *Wehbe* 5 part test is invoked.

The objectives as set out by clause 4.4(1) of the MLEP 2011 are as follows

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

The written request provides the following comments (in summary):

- Considering the sites context and location it is considered that the maximum FSR is inadequate in providing for development that meets the land use zone objectives and the permissible height limit on site. This has been reflected in the level of flexibility applied to the FSR development standard on all sites throughout the precinct.
- The proposed development is considered to meet the desired future character of the area as:
 - It provides for a diversity of land uses, through the provision of residential apartments, an art space to be used as a gallery, education and performance space as well as a café;
 - Areas of additional bulk and scale have been proposed in locations identified for building mass and potentially additional floor space, whilst ensuring this density has minimal adverse amenity impacts on surrounding sites;
 - The proposed density can be comfortably accommodated within the height limit which is the predominant development control that has been used to inform the emerging character of adjoin sites and the McGill Street precinct;
 - The proposed bulk and FSR are below the precinct wide average and are therefore considered to provide for an acceptable level of density;
 - The predominant six storey streetscape that has emerged in adjacent sites has been included in Building A facing McGill Street;
 - The design of a built form of high quality that will complement adjoining properties whilst being distinct in its own right;
 - It provides for an optimal pedestrian link and public domain that forms an extension of the art space on site and will be a valuable addition to the cultural landscape of the precinct. The building form atop this space serves to shelter it and is architecturally distinguished from the remainder of the built form so that the thoroughfare is readily identifiable in the streetscape.
 - Therefore, despite the variation to the numerical FSR standard, the proposed development will deliver a building bulk and density that can be accommodated on site in a manner that is consistent with the emerging character of the McGill Street precinct.
- The proposal ensures an overall development outcome for the site that is of a high quality and which accords with the majority of LEP and DCP controls as well as the precinct masterplan. Throughout the design there was a focus on building an appropriate mixed-use development that takes into account the sites constraints and potential impacts on adjoining properties and public domain. The design of the proposed development ensures that there are no unacceptable impacts on neighbouring development, particularly regarding overshadowing, overlooking and privacy.

The applicant considers that there are sufficient environmental planning grounds to justify contravening the development standard as:

- The development is the result of a thorough site analysis that sought to determine the extent of built form that can be accommodated on site whilst minimising impacts on the surrounding area.
- The proposed FSR variation will result in a bulk and scale that is consistent with the emerging character of the area, with the building designed to provide a transition in height and bulk down from 14 McGill Street.
- Full compliance with the development standard would provide a similar level of amenity to surrounding sites whilst failing to meet the objectives of the zone in providing for the housing needs of the community within a high density residential environment.
- The McGill Street Precinct Masterplan contains no requirement for a through site link, and the built form could otherwise be built for the length of the McGill Street frontage. The provision of a through site link opening up into high quality public domain and commercial premises is considered to be an improved outcome.
- The proposal will not result in any significant adverse impacts in terms of visual impact, overshadowing, acoustic or visual privacy or any other built form-related impacts, whereas a compliant built form would potentially limit the ability of the site to meet the desired future character through the provision of a smaller commercial space and a less engaging built form.
- The proposed design does not result in any non-compliance with other development standards.
- The proposed FSR variation does not result in a built form that exceeds or even meets the permissible height limit on site.
- The proposal provides a through site link which is a public benefit not required by any planning instrument.
- The residential bridge has been determined, by a public art consultant, to be a distinctive architectural feature that will serve as a landmark to the entry of a public facility and the precinct. Compliance with the floor space ratio control would result in the removal of this unique structure that will enhance the experience of those using the area.
- The development will allow for significant public domain improvements through the development of an art space that creates an opportunity to bring significant, interesting and international works of art to the neighbourhood, enhancing the experience of those passing or visiting the site. The incorporation of art installations into the public domain will encourage the use of the site and be a valuable addition to the cultural landscape of the Inner West.
- The development's traffic and parking impacts are acceptable and in line with Council's expectations under the DCP.
- The proposed development is consistent with the objectives of the FSR control as highlighted above.

Having regard to the objectives of the development standard, and the first way a development standard may be varied in the *Wehbe* 5 part test, it is considered that the proposal does not achieve the objectives of the development standard and therefore compliance with the development standard is not unreasonable or unnecessary given the circumstances of the case.

The justification that the development presents an FSR departure that is below the 'precinct average' is not supported. The McGill Street precinct contains a number of different FSR standards and height standards to control building bulk and develop the precinct in accordance with the desired future character of the area.

Part 9.45.9 of MDCP 2011 outlines the preferred amalgamation pattern for the precinct and separates the precinct into 5 sites. It is noted that the two sites which have been amalgamated in accordance with the controls contained in Part 9.45.9 of MDCP 2011, being Site 1 and Site 3 as

indicated in Figure 1 below provide developments that comply with the maximum FSR / GFA development standards applying to their respective sites (note: Site 1, being 78-90 Old Canterbury Road was subject to a Part 3A Approval and the development approved on that site was well within the allowable GFA contained in that approval).

These developments also present built forms that are generally consistent with the number of storeys envisioned by Part 9.45.10 of MDCP 2011. It is evident that the FSR and height development standards for the precinct have been developed with a view to being consistent with the preferred built form as expressed by amalgamation pattern and number of storeys.



Figure 1: Site Amalgamation Diagram contained in part 9.45.9 of MDCP 2011

It is noted that whilst a number of the sites located in Site 4 (as indicated above) depart from the FSR development standard, those approved developments also present built forms that are generally consistent with the number of storeys envisioned by Part 9.45.10 of MDCP 2011.

The applicant seeks to justify the additional GFA provided on this site on the basis that the development complies with the maximum height of buildings development standard which permits a maximum height of 29 metres on the site. The development has a maximum height of 26.9 metres and thus complies with the development standard. It is considered that the maximum height of 29 metres is dependent on the individual lots identified as Site 2 in Figure 2 being amalgamated. One of the key features of the number of storeys control for this site is to provide taller and denser development situated adjacent to the new park on Hudson Street to the north of the site and the light rail station and Greenway to the west of the site. Taller and denser development is also envisioned at No. 14-18 McGill Street, which is located along the southern portion of the site to the south of the internal park area. This is reflected in Figure 2 which prescribes 8 storeys at the southern end, 6 storeys at the northern end closer to the park and light rail entrance, and lower 2 to 4 storey buildings in the centre of the site to achieve a good urban design outcome.

The development at No. 14-18 McGill Street was approved by the Land & Environment Court with a significant FSR departure; however the built form was generally consistent with the desired future character of the area as expressed as an 8 storey building illustrated in Figure 2 below. The proposed 6 and 8 storey form presented in this proposal represents a significant departure from the built form envisioned for the precinct in the master plan contained in Part 9.45 of MDCP 2011. Furthermore, the contention that compliance with the height development standard provides sufficient justification for the varying of the FSR development standard is not supported.

There is some discussion throughout the applicant's written submission that suggests that, whilst not explicitly mentioned in the submission, the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard. It is noted that whilst there have been a number of approvals in the precinct that depart from the FSR development standard, those developments were considered to achieve the objectives of the standard notwithstanding those departures. Therefore, it is considered the development standard cannot be varied by invoking way 4 in the *Wehbe* 5 part test. Similarly, it appears mutually agreeable that ways 2, 3 and 5 cannot be invoked.



Figure 2: Height of Buildings Diagram contained in part 9.45.10 of MDCP 2011

Having regard to objective (c) of the standard, it is considered that a development that complied with the development standard could present a better urban design outcome than the proposed development. For example, removal of the 'bridge' structure to present an open through site link and removal of additional storeys at the Greenway frontage of the site would result in a better public domain outcome.

Whilst it is acknowledged that Part 9.45 of MDCP 2011 does not prescribe a pedestrian through site link on the site from McGill Street through to the Greenway, the applicant considers this to be an integral part of the overall scheme. It also formed an integral part of the approved scheme on the site. Whilst Council is supportive of the through site link, it is considered that an open air through site link, with no residential accommodation above would present a far superior outcome. Council's Architectural Excellence Panel was involved in discussions with the applicant at pre-application stage and strongly discouraged the enclosure of the sky above the link.

The enclosure of the sky above the through site link with residential accommodation also necessitates the inclusion of a 10.5 metre long structural wall along the northern boundary of the site which effectively restricts any opportunity to provide an active frontage along the northern side of the through site link with the future redevelopment of 2 McGill Street. Removal of the bridge structure above the link would allow activation along both sides of the link and an improved public domain. It is therefore considered that the proposed scheme would have an adverse impact on the adjoining property to the north and the public domain by restricting activation of the link and restricting access to the commercial tenancy at No. 2 McGill Street. It is therefore considered that the development does not achieve objective (c) of the standard.

Given the proposed development effectively isolates No. 2 McGill Street and fails to comply with the amalgamation pattern described in Part 9.45 of MDCP 2011, it is considered that the development should be designed in a manner that facilitates the future redevelopment of this adjoining site. Whilst the applicant proposes to provide vehicular access to this adjoining site via the basement car park, the development fails to provide an adequate above ground response to this isolated site. Provision of an open through site link with provision made for the ground floor commercial tenancy and residential development on the floors above at No. 2 McGill Street to actively present to the public thoroughfare would provide a much improved urban design outcome for the site.

For the reasons outlined above, the proposal is considered to be inconsistent with the desired future character of the precinct and does not achieve a better urban design outcome for the site. Therefore it is considered that contravention of the development standard is not in the public interest and there are insufficient environmental planning grounds to justify the contravention.

(vii) Earthworks (Clause 6.2)

Clause 6.2 of MLEP 2011 requires the consent authority to have regard to certain matters where earthworks that require development consent are proposed. The applicant has submitted a Preliminary Geotechnical Investigation Report which addresses excavation.

The development includes excavation for 2 basement levels, which subject to conditions included in the recommendation, is unlikely to have a detrimental impact on environmental functions or processes, neighbouring sites, cultural or heritage items or features of the surrounding land.

(viii) Flood Planning (Clause 6.3)

The site is identified as land that is shown as “Flood planning area” on the MLEP 2011 Flood Planning Area Map. The application was referred to Council’s Development Engineer who provided the following comments:

“The site is subject to flooding during a 1 in 100 year storm event (as determined by the Hawthorne Canal Flood Study). The applicant has submitted a Flood Impact Assessment prepared by SGC Consultants Pty Ltd (dated 14 April 2016). The Flood Assessment recommends minimum floor levels and protection to the underground carpark be set at a height of RL 12.25m AHD providing 500mm freeboard. The plans reflect the recommendations of Flood Impact Assessment and therefore the proposal is acceptable in terms of flood protection.”

The proposal is considered satisfactory having regard to the provisions of Clause 6.3 of MLEP 2011.

(ix) Terrestrial Biodiversity (Clause 6.4)

The land is identified as “Biodiversity” on the MLEP 2011 Natural Resource - Biodiversity Map.

The site is located in the Bandicoot Protection Area and Wildlife Corridor as identified in the Biodiversity Map contained in Appendix 3 of Part 2.13 of MDCP 2011.

Pursuant to the requirements under Section 5A of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000, an Assessment of Significance and seven part test was submitted for the proposal which concludes that the proposed development is unlikely to result in any significant impacts on threatened species, populations or ecological communities, or their habitats.

The McGill Street precinct envisages development with site coverage generally consistent with that being proposed under this application.

The application was reviewed by Council's Biodiversity Coordinator who provided conditions to be imposed on any consent granted regarding the species of groundcover to be planted on site. Given the above, the current application is acceptable having regard to the relevant objectives and provisions of Part 2.13 of MDCP 2011 and a condition should be imposed on any consent granted that requires construction to be carried out in accordance with the recommendations prescribed by the Ecologist report to ensure terrestrial biodiversity is protected.

9. Marrickville Development Control Plan 2011

PART 2 - GENERIC PROVISIONS

(i) Urban Design (Part 2.1)

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

(ii) Site and Context Analysis (Part 2.3)

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

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

Residential Component

The development would require a minimum of 18 adaptable dwellings, 18 accessible resident parking spaces and 5 accessible visitor parking spaces. In addition, all areas of the development are required to be accessible by persons with a disability. The proposal complies with the requirements contained in Part 2.5 of MDCP 2011.

Commercial Component

A Statement of Consistency was submitted with the documentation submitted with the development application that demonstrates that the proposal satisfies the access and mobility controls contained in MDCP 2011 in that:

- Appropriate access is provided for all persons through the principal entrance to the premises;
- A Continuous Accessible Path of Travel (CAPT) to and within the subject premises is provided which allows a person with a disability to gain access to all areas within the shop; and
- An accessible toilet is provided.

Given the above the proposed development is considered reasonable having regard to the access controls contained in MDCP 2011.

The matter of accessible car parking is discussed under the provisions of MDCP 2011.

(iv) 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 aspects are discussed:

- No windows are located on the side boundaries;

- The balconies along the front facade face the public domain (McGill Street and greenway), allow sufficient separation between the existing dwellings and the proposed building to maintain visual privacy for the occupants and surrounding properties;
- Balconies are proposed to be fitted with louvered screens on the northern and southern facades to alleviate impacts upon adjoining properties and within the development and allows sufficient separation between the dwellings to maintain visual privacy for the occupants;
- The proposal will result in a building separation which is generally consistent with the ADG;
- Privacy screens have been located on the southern façade of Building A and B to alleviate any visual or acoustic interface impacts from the adjoining property at 14-18 McGill Street; and
- With regard to acoustic privacy, the development is located adjacent to the railway line. Appropriate noise attenuation measures have been incorporated into the development.

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

(v) Solar Access and Overshadowing (Part 2.7)

Overshadowing

The greatest overshadowing impacts from the proposed development will be on the residential property to the south at No. 14-18 McGill Street which is currently under construction. Land and Environment Court proceedings No. 10878 of 2015 dated 8 April 2016 approved an application for the demolition of the existing single storey factory and erection of an 8 storey building with subterranean carpark basements for a residential development at No. 14-18 McGill Street. The determination was made by the Land and Environment Court under Section 34(3)(a) and (b) of the Land and Environment Court Act 1979.

During the assessment of that application, the shadow analysis concluded that 47 of the 66 dwellings (71%) in the development at No 14-18 McGill Street would receive the minimum required direct solar access or more between 9.00am to 3.00pm at winter solstice on 21 June which complied with the solar access requirements contained in the ADG. This solar assessment was based a compliant scheme being erected on the subject site (i.e. a 2 part 4 storey building as per the masterplan contained in Part 9.45 of MDCP 2011).

It is noted that the building envelope currently proposed in this application is greater than what was envisaged which results in additional overshadowing impacts on No. 14-18 McGill Street. The development will have some impact on the amount of solar access that a number of apartments receive during mid-winter at No. 14-18 McGill Street. Most of the affected apartments are located within the central part of the northern façade which directly overlook the subject site, and their balconies are partially obscured by the sun's eye by the depth of Building A. The shadow diagrams indicate that while there is an impact, these apartments still receive a minimum 2 hours of solar access to their balcony and living rooms in accordance with the requirements of the Apartment Design Guide.

The proposed development seeks to vary the number of storeys contained in Part 9.45 of MDCP 2011 and varies from the maximum FSR prescribed under MLEP 2011. Despite this, it is noted that the footprint of the proposed Buildings A and B are aligned to what was envisaged by the planning controls in Part 9.45 of MDCP 2011. Analysis reveals that the additional bulk and scale creates similar overshadowing impacts on the adjoining site to the south than what was envisaged under the development standards contained in MLEP 2011 and the masterplan controls contained in Part 9.45 of MDCP 2011.

Solar Access

The plans and shadow diagrams submitted with the application illustrate that the development complies with Council's solar access controls as 71.8% of the dwellings receive the minimum required 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.

(vi) Social Impact Assessment (Part 2.8)

Table 1 in Part 2.8 of MDCP 2011 details what level of social impact assessment various development types require.

The applicant has submitted a Social Impact Assessment (SIA) demonstrating that the development achieves desirable outcomes with respect to additional accommodation, safety and security, health/wellbeing and values and expression.

(vii) Community Safety (Part 2.9)

Part 2.9 of MDCP 2011 contains the following objectives relating to community safety.

The development is considered reasonable having regard to community safety for the following reasons:

- The principal entrance to the residential and commercial component of the development is obvious and secure;
- The proposal adequately activates the street frontages;
- The natural topography of the site and built forms allow for territorial reinforcement and space management; and
- The dwellings are designed to overlook the street.

A condition should be imposed on any consent granted requiring lighting details of the pedestrian areas, parking areas and all entrances. The development therefore satisfies Part 2.9 of MDCP 2011.

(viii) Parking (Part 2.10)

Car, Bicycle and Motorcycle Parking Spaces

The site 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? |
|---------------------------------|----------------------------------------------|----------------------------------------|------------------|------------|
| Car Parking | | | | |
| Resident Car Parking | 0.4 car parking space per studio | 1 x studio units = 0.4 spaces | | |
| | 0.5 car parking spaces per 1 bedroom unit | 15 x 1 bed unit = 7.5 spaces | | |
| | 1 car parking spaces per 2 bedroom unit | 45 x 2 bed units = 45 spaces | | |
| | 1.2 car parking spaces per 3 bedroom unit | 9 x 3 bed units = 2.4 spaces | | |
| | Total required: | 63.7 spaces | 64 spaces | Yes |
| Accessible Resident Car Parking | 1 car parking space per 1 adaptable dwelling | 18 adaptable dwellings = 18 accessible | 18 spaces | Yes |

| Component | Control | Required | Proposed | Complies? |
|-----------------------------|-----------------------------------------------|----------------------------------------------------|------------------|----------------|
| | | spaces | | |
| Residential Visitor Parking | 0.1 space per unit | 70 units = 7 spaces | 7 spaces | Yes |
| Accessible Visitor Parking | 0.25 space per adaptable unit | 10 adaptable units = 4.5 accessible visitor spaces | 5 spaces | Yes |
| Commercial Car Parking | 1 space per 80sqm GFA for customers and staff | 181sqm GFA = 2 spaces | 3 spaces | Yes + 1 |
| Bicycle Parking | | | | |
| Resident Bicycle Parking | 1 bicycle parking space per 2 units | 88 units = 44 spaces | | |
| Visitor Bicycle Parking | 1 bicycle parking space per 10 units | 88 units = 8.8 spaces | | |
| Commercial Bicycle Parking | 1 per 300sqm GFA for staff | 181sqm GFA = 1 space | | |
| | Total required: | 53.8 spaces | 57 spaces | Yes + 3 |
| Motorcycle Parking | | | | |
| Motorcycle Parking | 5% of the total car parking requirement | 96 car parking spaces required = 4.8 spaces | | |
| | Total required: | 5 spaces | 5 spaces | Yes |

Assessment of proposal against Part 2.10 of MDCP 2011

As detailed above, the development complies with Council's parking controls.

Vehicle Service and Delivery Area

Residential

1 vehicle service space is required to be provided for developments of 50 apartments or higher.

A residential service space has been provided in accordance with Part 2.10.14 of MDCP 2011 and the space is located nearby the Building B core entry on the upper basement level.

Commercial

This application proposes the provision of a commercial loading bay in accordance with Part 2.10.16 of MDCP 2011 and the space is located nearby the Building B northern core entry on the upper basement level.

(ix) Energy Efficiency (Part 2.16)

Part 2.16 of MDCP 2011 contains the objectives and controls relating to energy efficiency.

As stated earlier in this report, a BASIX Certificate was submitted for the development that indicates that the proposed new dwellings would comply with the minimum water, thermal comfort and energy efficient targets of the BASIX scheme.

(x) Water Sensitive Urban Design (Part 2.17)

Part 2.17 of MDCP 2011 contains objectives and controls relating to Water Sensitive Urban Design (WSUD).

In relation to water conservation requirements the residential components of such developments are required to demonstrate compliance with State Environmental Planning Policy – Building Sustainability Index (BASIX) which has been addressed earlier in this report.

The application was referred to Council's Development Engineer who raised no objection to the proposal subject to the imposition of appropriate conditions.

(xi) Site Facilities and Waste Management (Part 2.21)

2.21.2.1 Recycling and Waste Management Plan

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

2.21.2.5 Residential Waste

Control C4 of Part 2.21.2.5 of MDCP 2011 prescribes 72 litres per dwelling in 240L bins, rounded up to the nearest whole bin. The development includes 88 units and as such a minimum of 27 x 240L general waste bins, 53 x 240L recycling (collected fortnightly), and an appropriate number of green waste bins are required to be provided for the development. A total of 2 x residential bin storage areas are proposed on the upper basement level and a bin store room is located on the ground floor level with direct, level access to McGill Street for collection. The bin storage rooms have the capacity to accommodate the required waste facilities for recycling and general waste under Part 2.21.

Control C15 requires that for buildings that are 4 or more storeys high must provide waste chutes or interim holding rooms on each level. The development provides a waste chute and interim waste holding room for the building core of Building B and each of the 2 building cores for Building A on each residential level, thus satisfying the requirements of Control C15.

Control C25 specifies that space must be provided for communal compost facilities for residential flat buildings. Compost facilities are provided on the ground floor level common open space which is acceptable.

Control C27 requires that for residential flat buildings a dedicated room or caged area of at least 12 cubic metres must be provided for the temporary storage of discarded bulky items which are awaiting removal. Two bulky goods stores have been provided in the basement level with a total area of 38sqm which is considered acceptable.

2.21.2.6 Commercial Waste

The ground floor commercial tenancy has an area of 181sqm and is indicated to be used as a small café and art space. A bin storage area is proposed on the upper basement level with a capacity to accommodate 3 x 66L bins and a space on the ground floor level of the development with a capacity to accommodate 3 x 660L waste bins. It is considered that sufficient services are provided for recycling and general waste under Part 2.21 of MDCP 2011

(x) Stormwater Management (Part 2.25)

A concept drainage plan was submitted with the application. The application was referred to Council's Development Engineer who advised that the proposal is considered acceptable with regard to the objectives and controls relating to stormwater management under Part 2.25 of MDCP 2011.

PART 4 - RESIDENTIAL DEVELOPMENT

(i) Multi Dwelling Housing and Residential Flat Buildings (Part 4.2)

General Controls

Part 4.2.3 of MDCP 2011 prescribes dwelling mix requirements for mixed use developments containing 6 or more dwellings. The development provides the following mix of dwellings across the 88 units proposed:

| Dwelling Type | Proposed | Required | Complies |
|----------------------|----------------------|-----------------|-----------------|
| Studio | 1 dwelling (1.1%) | 5-20% | No |
| 1 bedroom | 26 dwellings (29.5%) | 10-40% | Yes |
| 2 bedroom | 52 dwellings (59.1%) | 40-75% | Yes |
| 3 bedroom+ | 9 dwellings (10.2%) | 10-45% | Yes |

As indicated above, the development generally complies with the abovementioned unit mix requirements, with the exception of an insufficient proportion of studio dwellings. The development does not strictly comply with the dwelling mix prescribed under Part 4.2.3 of MDCP 2011.

Having regard to the local area, the development is considered to provide a suitable dwelling mix to meet the demand for the local demographic. The non-compliance is considered minor and represents an undersupply of 4 x studio dwellings. Having regard to the mixture of dwellings proposed, the non-compliance is considered relatively minor and acceptable given that the proposed development generally achieves the objectives of the control.

PART 9 - STRATEGIC CONTEXT

The land is located in the McGill Street Planning Precinct (Precinct 45) under Part 9.45 of MDCP 2011.

Part 9.45 of MDCP 2011 prescribes site specific Masterplan Area (MA 45.3) controls to achieve the desired future character for the McGill Street Planning Precinct. The following discussion relates specifically to the departures from the site specific Masterplan Area controls:

(i) Desired Future Character (Part 9.45.3)

Part 9.45.3 prescribes the desired future character of the McGill Street Precinct. As discussed elsewhere in this report, the excessive floor space ratio and building density proposed, as well as the proposed 'bridge' structure above the through site link is not consistent with the broad desired future character controls of the precinct. The development does not demonstrate compliance with the desired future character of the precinct and is not considered to be a better urban design outcome for the site. The proposed development has a detrimental impact on the interface and activation to No. 2 McGill Street and the public realm.

The 'bridge' structure over the proposed through-site link creates a sense of enclosure and privatisation of the pedestrian link and a loss of a sense of 'sky'. It provides a poor interface with and inhibits the development potential of the property at 2 McGill Street. The wall that supports the infill connection will result in a poor interface and activation to the east-west through site link. The infill does not create a space superior to the open sky above the site link and does not respond appropriately to the site's context.

The development is not consistent with the desired future character of the McGill Street Precinct and is unsupportable. Considering the circumstances, refusal of the application is recommended.

(ii) Future Land Use (Part 9.45.8)

Part 9.45.7 encourages residential uses for 6-12 McGill Street with ground floor live/work flexibility and mixed uses for 4 McGill Street with commercial below residential above as shown in the future land use diagram below:



Figure 3: Future Land Use Diagram

The Masterplan encourages live work areas along the Greenway to provide a pleasant outlook or along McGill Street to assist with its activation. Whilst the development does not propose any live work spaces on the ground floor, the development does propose ground floor commercial activities at 4 McGill Street with residential above, which is in keeping with the intent of the masterplan future land use controls in Part 9.45.7. The proposed commercial tenancy within Building B with a café and gallery space adequately activates the greenway which is consistent with the intent of the controls of Part 9.45.7, and as such, the variation from providing live/work spaces is acceptable in this instance.

(iii) Site Amalgamation (Part 9.45.8)

Control C9 in Part 9.45.8 of MDCP 2011 prescribes the following site amalgamation pattern as shown in the plan diagram below:



Figure 4: Site Amalgamation Diagram

The development does not comply with the amalgamation pattern indicated in Figure 45.5 from Part 9.45.8 reproduced above. The site is required to be amalgamated with Nos. 2 and 14-18 McGill Street to form 'Site 2' with a total area of 4,288sqm. This application proposes to depart from the required amalgamation pattern by developing the site in isolation.

A planning principle has been established by the NSW Land and Environment Court to deal with amalgamation of development sites. The general questions that need to be answered when dealing with amalgamation of sites or when a site is to be isolated through redevelopment are:

- 1) Firstly, is amalgamation of the sites feasible?
- 2) Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?

The planning principles to be applied in determining the answer to the first question are set out by Brown C in *Melissa Grech v Auburn Council* [2004] NSWLEC 40. In that case, Commissioner Brown established the planning principle as follows:

"Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application."

Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the

properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.

Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation, whether any offers are deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s 79C of the Environmental Planning and Assessment Act 1979.”

In a subsequent decision in *Cornerstone Property Group Pty Ltd v Warringah Council* [2004] NSWLEC 189, the principles of *Brown C* were extended to deal with the second question and stated that:

“The key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as non-compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity.

To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.

The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments.”

Evidence was submitted with the application approved as part of Determination No. 201500682 dated 2 August 2016 that indicates 3 attempts being made by the applicant to purchase or amalgamate the property through letters of offer with the adjoining property at No. 2 McGill Street in order to develop the sites concurrently. The offers were based on an independent valuation that was obtained by the applicant and provided a valuation value for the land ‘as is’ and as part of an amalgamated site. No response was received from the adjoining owners in writing. The letters of offer are considered to generally satisfy the site isolation court principle in *Melissa Grech v Auburn Council* [2004] NSWLEC 40.

However, given that the application seeks to vary the amalgamation pattern, Council needs to be satisfied that both sites are able to achieve a development of appropriate urban form and with an acceptable level of amenity as described in *Cornerstone Property Group Pty Ltd v Warringah Council* [2004] NSWLEC 189.

Whilst it is evident that attempts have been made to integrate the development with the adjoining site and the planning principle criteria have been addressed in this regard, Council still considers there to be components of the development which could be mutually beneficial to both the subject site and No. 2 McGill Street. These include:

- The provision of a common substation;
- Sharing vehicular access from McGill Street via a right of way through the basement of the subject site to No. 2;
- Sharing the semi-public open space area as envisaged in the masterplanned area;

- Providing a through-site link which enables activation from the commercial tenancies along both the northern and southern elevations of the link including pedestrian access to those tenancies; and
- Allowing an easement for light and air over the northern boundary of the subject site to allow windows and open-air corridors along the southern elevation of any future development on No. 2 McGill Street, as well as fire egress.

There are a number of key aspects of the subject proposal which restrict the above relationships between the subject site and No. 2 McGill Street to the north.

The enclosure of the through site link on levels 2-6 of Building A restricts pedestrian access and visual activation to the commercial tenancy at the eastern side of No. 2 McGill Street by the inclusion of a 10.5 metre long solid wall; and provision of the through site link with a height of RL 13.2 AHD effectively makes the link grade separated by 950mm from the commercial tenancies which will likely have a finished floor level of RL 12.5 AHD.

Furthermore, the indicative plans for No. 2 McGill Street submitted with the proposal provide insufficient information to enable Council to be satisfied that No. 2 McGill Street is able to achieve a development of appropriate urban form.

For the above reasons, it is considered that the proposal results in an inferior public domain outcome and it has not been demonstrated that orderly and economic development of No. 2 McGill Street can be achieved with the subject proposal.

The development is not consistent with the amalgamation controls contained within Part 9.45.8 of MDCP 2011 and considering the circumstances, refusal of the application is recommended.

(iv) Built Form (Part 9.45.10)

9.45.10.1 Floor Space Ratio

Control C14 prescribes the maximum FSR to be consistent with the FSR standards described within the MLEP 2011. As discussed under the provisions of Clause 4.4 of MLEP 2011, the proposal exceeds the maximum floor space ratio development standard by 1,065sqm or 17.4%. Therefore the development does not comply with the provisions of Control C14 of Part 9.45.10.1 of MDCP 2011.

9.45.10.2 Height

Controls C15-17 prescribes a maximum height in storeys for the amalgamated Site 2, indicating an 8 storey form to No. 14-18, a 2 storeys form to No. 6-12 fronting McGill Street and 2 storeys fronting the Greenway, and a 6 storey form to Nos. 2 & 4 as indicated below:



Figure 5: Height of buildings diagram

The development proposes a 6 storey form to McGill Street (Building A) and an 8 storey form to the Greenway (Building B). The development represents a substantial departure from the number of storeys prescribed by Part 9.45.10 of MDCP 2011 and also represents a substantial departure from the maximum FSR development standard prescribed by Clause 4.4 of MDLEP 2011.

Whilst Clause 4.3 of MLEP 2011 prescribes a maximum height of 29 metres for the site, it is the intention of the masterplan that the sites 2, 4, 6-12 and 14-18 McGill Street be amalgamated. The figure above indicates that the bulk of the density of the development is intended to be located on the north eastern and south eastern corner of the block, where heights of 6 storeys and 8 storeys respectively are prescribed. The court approval at No. 14-18 McGill Street allows for an 8 storey development in accordance with the masterplan.

The built form section of the McGill Street masterplan sets guidelines for the height controls. Key features of the height controls are that opportunities for taller and denser development must be predominately located adjacent to the new park or green way for greater amenity and views.

Whilst it is acknowledged that recent approvals in McGill Street generally have heights ranging from 5-6 storeys, with the exception of the court approved development at No. 14-18 McGill Street, these are generally in accordance with the number of storeys prescribed by Part 9.45.10 of MDCP 2011 with an additional storey. Given the approved scale of McGill Street is generally 6 storeys, Council raises no concern over the 6 storey form proposed on the subject site for Building A.

Whilst it is also accepted that the rear portion of the site can accommodate a building that is higher than the 2 storeys identified in the masterplan (noting that the approved development has a maximum height of 6 storeys at this location), given the substantial FSR departure, there appears to be little / no justification for the 8 storeys proposed for Building B. This represents a considerable departure from the desired future character of the area and such a height increase was not supported by Council's AEP.

9.45.10.3 Public domain interface

Part 9.45.4 prescribes that the redevelopment of the precinct must conform to the control diagram in Figure 45.7. Figure 45.7 is reproduced below:



Figure 6: Buildings and Public Domain

The control diagram prescribes an 80% build to frontage at the western boundary to encourage building modulation. The development provides a build-to frontage of 70% at the western elevation which complies with this requirement.

The control diagram also prescribes an 80% build-to frontage along the McGill Street elevation and incorporating, where possible, street level active uses. The building design must avoid the occurrence of long sections of blank walls at the ground level. The development provides 43 metres of ground floor with nil front boundary setback, and provides a 9 metres northern setback where the through site link is accessible from McGill Street, resulting in a build-to frontage of 80%. Notwithstanding, the enclosure of the through site link along the northern side, a result of the enclosure of the upper levels of the link, results in a long 10.5 metre section of blank wall along the northern boundary. This restricts activation of the link and results in a poor urban design outcome.

The development does not demonstrate a good outcome having regard to the outcomes specified by Part 9.45.10.3 and given the circumstances, refusal of the application is recommended.

9.45.10.4 Private open space and building depth

Part 9.45.10.4 of MDCP 2011 prescribes controls relating to building depth and communal open space. The development generally complies with these controls and is acceptable in this regard.

10. Marrickville Section 94/94A Contributions Plan 2014

The carrying out of the proposed development would result in an increased demand for public amenities and public services within the area. A contribution of would be required for the development under Marrickville Section 94/94A Contributions Plan 2014.

11. 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. 3 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) Lack of car parking; and
- (iii) Solar Access and Overshadowing.

All relevant matters raised in the submissions able to be considered under the provisions of Section 79C of the Environmental Planning and Assessment Act have been discussed in the report.

12. Conclusion

The application seeks consent to demolish existing improvements and construct a mixed use development consisting of a 6 storey building (Building A) with roof terrace fronting McGill Street and a 8 storey building (Building B) fronting the light rail line containing a total of 88 dwellings and 1 commercial tenancy within Building A for use as art gallery and café space with 2 basement car parking levels and associated landscape works. The heads of consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, as are of relevance to the application, have been taken into consideration in the assessment of the application. The development exceeds the maximum floor space ratio development standard as prescribed by Clause 4.4 of MLEP 2011 by 1,065sqm or 17.4%. Furthermore, the development is not consistent with the desired future character of the McGill Street Planning Precinct (Precinct 45) as demonstrated by departures from the amalgamation pattern, built form and public domain controls contained in Part 9.45 of MDCP 2011. The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

PART E - RECOMMENDATION

- A. THAT** the development application to demolish existing improvements and construct a mixed use development consisting of a 6 storey building (Building A) with roof terrace fronting McGill Street and a 8 storey building (Building B) fronting the light rail line containing a total of 88 dwellings and 1 commercial tenancy within Building A for use as art gallery and café with 2 basement car parking levels and associated landscape works be **REFUSED** for the following reasons:
1. The development does not demonstrate compliance with Clause 1.2(2)(h) of Marrickville Local Environmental Plan 2011 in that the proposal does not promote a high standard of design in the private and public domain.
 2. The development results in a 17.4% departure from the maximum floor space ratio (FSR) development standard applying to the site under Marrickville Local Environmental Plan 2011. The written request under Clause 4.6 has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the contravention.
 3. The development is not consistent with the desired future character of the McGill Street precinct as demonstrated by departures from the amalgamation pattern and built form controls contained in Part 9.45 of Marrickville Development Control Plan 2011.
 4. In view of the above, approval of the application would not be in the public interest.
- B. THAT** those persons who lodged submissions in respect to the proposal be advised of the Council's determination of the application.
- C. THAT** Sydney Trains be advised of the Determination of the application.
- D. THAT** RMS be advised of the Determination of the application.