The NEW City of CANTERBURY BANKSTOWN

Agenda for the

Independent Hearing And Assessment Panel Meeting

29 August 2016 – 6.00pm

Function Room
137 Beamish Street, Campsie

The NEW City of CANTERBURY BANKSTOWN

IHAP Chairperson and Panel Members

Notice is hereby given that a meeting of the Independent Hearing and Assessment Panel will be held in the Function Room, 137 Beamish Street, Campsie on Monday 29 August 2016 at 6.00 P.M.

Disclosure of Interest: Section 451 of the Local Government Act 1993 requires a panel member who has a pecuniary interest in any matter with which the Council is concerned and who is present at the meeting at which the matter is being considered must disclose the interest, and the nature of that interest, to the meeting as soon as practicable. The panel member is required to leave the room while the matter is being discussed and not return until it has been voted on.

Matthew Stewart
GENERAL MANAGER

19 August 2016

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REPORT SUMMARIES

1 212-218 CANTERBURY ROAD, CANTERBURY: DEMOLITION, CONSTRUCTION OF TWELVE STOREY MIXED USE DEVELOPMENT WITH BASEMENT PARKING

- The subject application seeks consent to demolish existing structures and erect a mixed use building of 12 storeys, with five ground floor commercial premises and eleven levels of 89 residential apartments, above a three level basement containing parking for 88 vehicles and 31 bicycles, storage and utilities.
- The proposed relies on the adjoining site at 220-222 Canterbury Road and 4 Close Street, Canterbury for access. An application for this site (DA-169/2015) was granted a deferred commencement consent by the former Canterbury City Development Committee on 3 December 2015.
- The site is zoned B2 – Local Centre by the Canterbury Local Environmental Plan 2012. The proposal, defined as 'shop top housing' and 'commercial premises', is permissible with consent.
- The application has been assessed with regard to applicable environmental planning instruments and the Canterbury Development Control Plan 2012, and is deemed incompatible with the planned-for character of the Canterbury town centre, the applicant's written request failing to justify proposed variations to two development standards.
- The application was publicly exhibited during May and June 2015 and adjoining land owners notified. Three submissions were received. As a result of the application being amended the application was re-exhibited in May and June 2016 and no submissions were received.
- The application is recommended for refusal.

2 UNITS 19 & 20/15-21 NINTH AVENUE, CAMPSIE: CHANGE OF USE FROM HEALTH MASSAGE CENTRE TO A BROTHEL

- A Development Application has been received to change the use of the existing health massage centre to a brothel.
- The proposal relates to a 'Sex Service Premise' which is permissible in the B2 Local Centre zone under Canterbury Local Environmental Plan 2012.
- The proposal has been assessed against relevant provisions of Canterbury Local Environmental Plan 2012 (CLEP 2012) and Canterbury Development Control Plan 2012 (CDCP 2012). The proposal, while permissible, departs from the locational requirements for brothels listed in the Development Control Plan with regard to the distance from educational establishments, lack of parking and located opposite residential zones.
- The application is to establish a new brothel and is referred to the Independent Hearing and Assessment Panel for determination.

- In accordance with Part 7 of the CDCP 2012, all owners and occupiers of adjoining properties were notified of the proposed development. During the notification period, 21 submissions were received and four petitions, containing a total of 1377 signatures objecting to the proposal in relation to impacts on suburban life in the area, location, traffic, behaviour of clientele, breaches of original consent and parking.
- It is recommended that the application be refused.

3 19 MAYFAIR CRESCENT, BEVERLY HILLS: DEMOLITION AND CONSTRUCTION OF TWO STOREY DETACHED DUAL OCCUPANCY, FRONT FENCE AND TORRENS TITLE SUBDIVISION

- An application has been received for demolition of existing structures, construction of a new two storey detached dual occupancy with front fence and Torrens title subdivision.
- This application has been referred to the Independent Hearing and Assessment Panel due to a non-compliance to the minimum building separation (5m required, 1.8m proposed 64% variation) which exceeds the delegated authority of Council staff. This is discussed in the body of this report.
- The proposal is defined as a 'dual occupancy' which is permissible with Council consent within Zone R3 Medium Density Residential under Canterbury Local Environmental Plan 2012.
- The application has been assessed against the relevant environmental planning instruments and development control plan.
- In accordance with Part 7 of the Canterbury Development Control Plan 2012, all owners and occupiers of adjoining properties were notified of the proposed development. During the notification period, no submissions were received. One late submission was received on the 28 July 2016. The issue that was raised was privacy.
- It is recommended the application be approved subject to conditions.

CANTERBURY WARD

1 212-218 CANTERBURY ROAD, CANTERBURY: DEMOLITION, CONSTRUCTION OF TWELVE STOREY MIXED USE DEVELOPMENT WITH BASEMENT PARKING

FILE NO: **150/212D PT2**

REPORT BY: **CITY DEVELOPMENT**

WARD: **CANTERBURY**

D/A No:	**DA-168/2015**
Applicant: **Owner:**	**CD Architects** **Ngoc Thang Tran, Kim Diep Nguyen, Thi Thoa Nguyen and Minh Trieu Van**
Zoning:	**Local Centre B2 – Canterbury Local Environmental Plan 2012**
Application Date:	**24 April 2015, amended plans received 11 September and 2 October 2015. Further amendments received 6 April 2016, 27 May 2016, 28 July 2016 and 8 August 2016.**

Summary:

- The subject application seeks consent to demolish existing structures and erect a mixed use building of 12 storeys, with five ground floor commercial premises and eleven levels of 89 residential apartments, above a three level basement containing parking for 88 vehicles and 31 bicycles, storage and utilities.
- The proposed relies on the adjoining site at 220-222 Canterbury Road and 4 Close Street, Canterbury for access. An application for this site (DA-169/2015) was granted a deferred commencement consent by the former Canterbury City Development Committee on 3 December 2015.
- The site is zoned B2 – Local Centre by the Canterbury Local Environmental Plan 2012. The proposal, defined as 'shop top housing' and 'commercial premises', is permissible with consent.
- The application has been assessed with regard to applicable environmental planning instruments and the Canterbury Development Control Plan 2012, and is deemed incompatible with the planned-for character of the Canterbury town centre, the applicant's written request failing to justify proposed variations to two development standards.
- The application was publicly exhibited during May and June 2015 and adjoining land owners notified. Three submissions were received. As a result of the application being amended the application was re-exhibited in May and June 2016 and no submissions were received.
- The application is recommended for refusal.

Council Delivery Program and Budget Implications:

This report has no implications for the Budget. The assessment of the application supports our Community Strategic Plan long term goal of Balanced Development.

Report:

Chronology of the Development Application's Assessment

1. 24 April 2015 – subject application lodged with DA 169/2015 for 220-222 Canterbury Road and 4 Close Street, Canterbury, the neighbouring development. The subject application first sought consent for a nine storey building.
2. 15 May to 6 June 2015 - Public exhibition and notification of application for 21 days.
3. 3 July 2015 – Sydney Trains requested additional information to enable assessment of the application.
4. 11 September 2015 – amended plans and information submitted by the applicant.
5. 2 October 2015 – further information and amended plans received.
6. 24 November 2015 – the application was considered by the Independent Hearing and Assessment Panel. The Panel recommended the application be refused for the following reasons:
   - The proposed development exceeds the maximum possible floor space ratio provisions of clause 4.4 (2) of the Canterbury Local Environmental Plan 2012 by over 100%.
   - The grounds of the objection under clause 4.6 (relating to exceptions to development standards) provided by the Applicant did not demonstrate that the FSR controls were unreasonable or unnecessary nor were there sufficient environmental planning grounds to justify contravening the development standard.
7. 26 November 2015 – concurrence of Roads and Maritime Services requested and amended plans sent to Sydney Trains for assessment.
8. 3 December 2015 - Canterbury City Council's City Development Committee resolved:
   A. The General Manager be authorised to issue the consent for DA 168/2015 subject to the conditions recommended in Part B of the Director City Planning's report and any additional conditions that arise as a result of Sydney Trains and RMS concurrence.
   B. The Committee decided not to accept the IHAP recommendation based on legal advice provided by the applicant concerning the 3 metre setback and resolved to accept the Officer's recommendation.
9. 14 December 2015 – concurrence of Roads and Maritime Services received.
10. December 2015 - In meeting with Sydney Trains, it is understood the applicant was first made aware of the site being affected by a 7m-wide statutory easement to protect electricity transmission infrastructure that powers the Sydney rail network and that the development required amendment so that no part of the building encroaches on this statutory easement.
11. 6 and 11 April 2016 – amended plans and supporting information received from the applicant for a 12 storey building set back at least 7m from Sydney Trains power lines.
12. 29 April 2016 – amended application referred to Sydney Trains.

13. 13 May 2016 – additional and revised information requested of the applicant.
14. Amended application advertised for 21 days concluding on 8 June 2016.
15. 23 May 2016 – verbal advice from RMS they did not wish to revise their concurrence as a result of amendments to the design.
16. 27 May 2016 – additional and revised information received from applicant.
17. 1 June 2016 – supplementary planning report (variation of development standards) received.
18. 7 June 2016 – independent urban design assessment received.
19. 18 July 2016 – Sydney Trains' concurrence received.
20. 26–29 July 2016 – additional plans and information requested of applicant.
21. 8 August 2016 – All requested information received.

Advice was sought from our solicitors regarding the City Development Committee's resolution on 3 December 2015,and is summarised below:

- The Committee's resolution did not determine the application,
- No part of the application has been approved,
- No notice of determination has been issued to the applicant in respect of the application, and
- Council must consider and determine the whole application, in its amended form, not only the amendments made to it since it was considered by the Committee.

Consistent with this advice, this report entails a comprehensive assessment of the proposed development as amended several times since first being lodged.

Site and Context

The site is located on Canterbury Road adjacent to Canterbury Railway Station and abuts the Bankstown Railway Line where it passes underneath Canterbury Road. Lot 1 DP 87958 and Lot 1 DP 304046 is the site's real property description and the land is more commonly known as 212–218 Canterbury Road, Canterbury. Site location and zoning, B2 Local Centre, are shown in Figures 1 and 2.

Having an irregular shape, the site has a north-eastern boundary of 37.40m, a south-eastern boundary of 39.35m, a south-western boundary of 62m, a 19.2m frontage to Canterbury Road and a site area of 1,262.4m^2 (by survey). The site falls in a southerly direction and is currently used for commercial purposes.

Figure 1 - Site outlined in yellow.

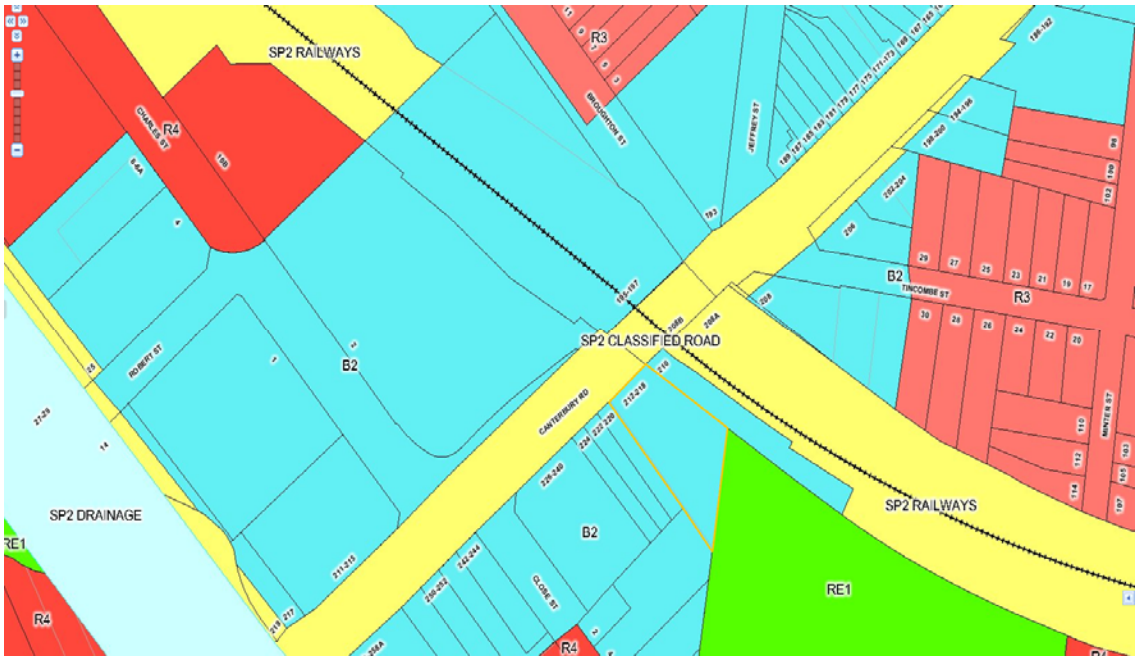


Figure 2 - Zoning Map for the site (yellow outline)

Surrounding development is a mix of commercial and residential uses, including Canterbury Station and development forming part of Canterbury Town Centre.

North of the site is the Sydney Trains Bankstown line, which carries both passenger and freight services. To the east is the site of the former Canterbury Bowling Club beyond which land use is mainly residential in nature. Land use with access to Close Street is mainly characterized by commercial activities. This street typically carries a low volume of traffic. Between the site and Close Street along Canterbury Road to the site's south is a two-storey 'shop-top' building and a four storey residential flat building with ground level car parking.

This locality, both east and west of Canterbury Road and between the railway and the Cooks River has been undergoing considerable urban transformation, enabled by Council's strategic initiatives that aim to enliven Canterbury and pursue urban consolidation in the area, having good access to local convenience retailing and bus and rail services.

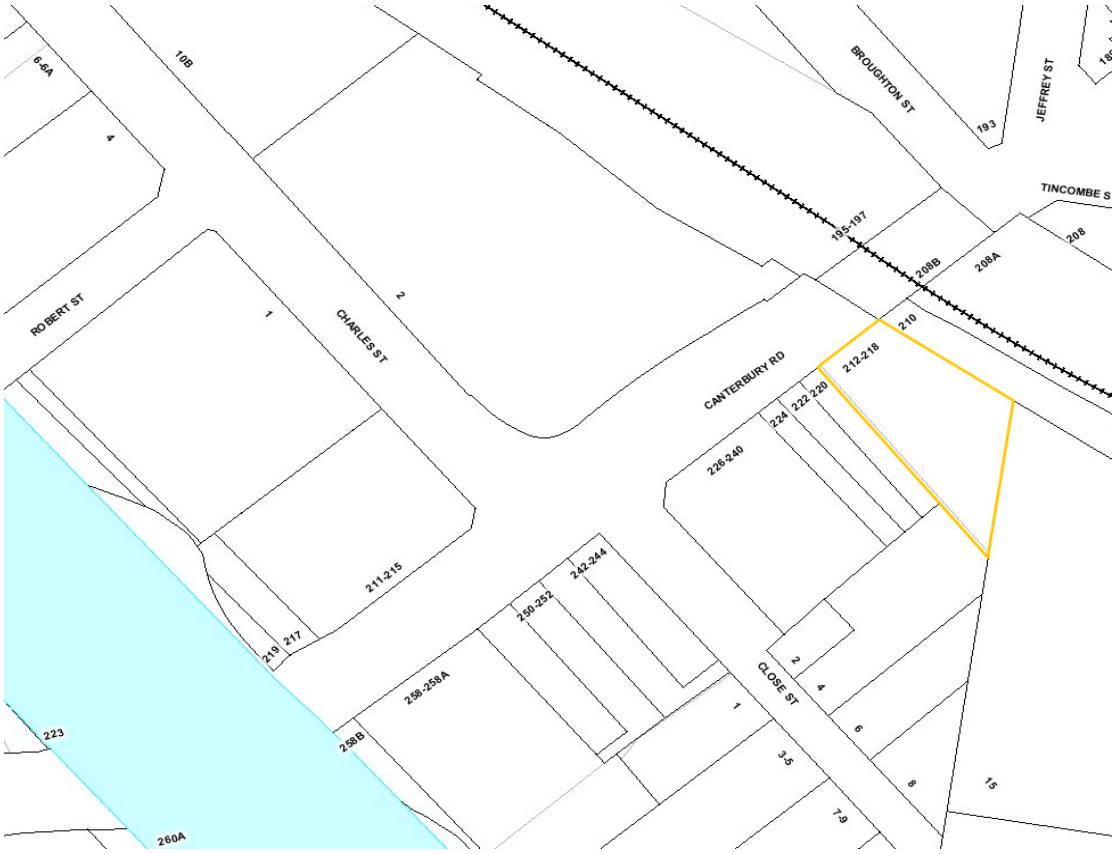


Figure 3 – Street numbering indicates the location of development sites in Canterbury

Recent consents for development in Canterbury Town Centre

Over the past four years, the following developments have been approved in the site's vicinity. These projects are pertinent as a number of them were approved with variations to maximum building height and floor space ratio standards, which the subject application seeks to vary. The street numbers of these sites is shown in Figure 3.

- **6 and 8 Close Street**, approved on 14 August 2014, DA-399/2013 proposed 30 units in a part six and part seven storey mixed use building, with ground floor commercial premises. The approved development complied with the height standard (permitted - 27m, approved - 20.12m) and floor space ratio standard (permitted - 2.75:1, approved - 2.36:1). This development is adjacent to the neighbouring development at 220-222 Canterbury Road and 4 Close Street.

- **2 Charles Street,** (formerly known as 2A Charles Street) is on Canterbury Road west of and across the road from the site. Construction of a mixed use development comprising 214 units, a supermarket and liquor store, commercial/retail premises and basement car parking is well underway. The Joint Regional Planning Panel (JRPP) first approved the project (of 202 units) on 28 May 2014 (DA-579/2013). Another application was lodged in April 2015 (DA-160/2015), which was approved by the City Development Committee on 10 September 2015, for an additional 12 units. The project was approved with a FSR of 3.27:1 (16.5% variation over maxima of 2.75:1 and 3.0:1) and a building height of 31.5m (16.6% variation), for a nine storey complex.

- **10B Charles Street** is sited immediately west of 2 Charles Street. DA-72/2015 was approved on 26 October 2015, for 88 units with basement parking. The approved FSR is 2.62:1 and the maximum permitted 2.5:1 (variation 4.8%). The LEP's maximum building height is 27m and the application was approved at a height of 29.2m (variation 8.1%). This development is the tallest of these approved projects, with a height of ten storeys, while noting one level of the building is substantially below the site's existing ground level (at the time the application was made), so the building appears to be nine storeys when viewed from Charles Street.

- **1A, 1, 2, 3 Charles Street and 12 Robert Street** is located on Charles Street's southern side. The application (DA-164/2012) for this site was originally refused by the JRPP in October 2012. It was approved the following year by the Land and Environment Court. The approved development increased the site's maximum FSR from 2.75:1, to 2.78:1 (variation 1.0%). The 27m height standard applying to the site's Charles Street frontage was complied with. The project's tallest building is eight storeys.

- **211–215 Canterbury Road**, located on the western side of Canterbury Road, on its southern corner with Charles Street. A mixed use development of nine storeys, comprising nine commercial premises and 69 residential units was first approved on 9 October 2014 (DA-420/2013). An amendment was approved on 10 September 2015, increasing the number of units to 82. This nine storey development exceeds the height standard of 27 metres by 3.2 metres (variation 11.8%) and exceeds the maximum FSR of 3:1. The approved FSR is 3.31:1 (variation of 10.3%).

- **242-258 Canterbury Road and 1 -13 Close Street**, located opposite the site along Close Street's southern side, approval was granted for a nine storey mixed use building containing commercial premises with shop top housing, 397 residential units, two basement car parking levels and central open space linking to the Cooks River (DA-503/2013). This approval involved an increase in the maximum FSR from 3.0:1 to 3.08:1 (variation 2.4%). The development complied with the 27 metre maximum building height standard.

The Proposal

The application, as amended, proposes the following development:

- Demolition of all existing buildings and works on the site.
- Construction of a part ten and part twelve storey mixed use building with frontage to Canterbury Road over a three-level basement.
- Five commercial premises are proposed on the ground floor, with a total gross floor area of 572m^2, four of these premises front a pedestrian plaza adjacent the railway boundary of the site.
- Overall, the eleven residential levels comprise:
  - nine x studio units,
  - 27 x one bedroom units, and
  - 53 x two bedroom units (including nine accessible/adaptable units), and
  - **89 Units Total**
- Levels 1 to 9 contain nine units each, comprising one x one bedroom studio, three x one bedroom units and five x two bedroom units.
- Levels 10 and 11 each have four x two bedroom units.
- Open space is proposed as follows:
  - 100m^2 Piazza,
  - 309m^2 Rail easement (the northern 'link', discussed below),
  - 375m^2 Roof top north (roof of level 11),
  - 290m^2 Roof top south (level 10),
  - **1,074m^2 Open Space Total**
- The fifth commercial premises has frontage to a central piazza, a space comprised of land in this site and the neighbouring development site (220-222 Canterbury Road and 4 Close Street, approved DA-169/2015), which provides access to residential lobbies and commercial premises.
- The basement accommodates parking for 88 vehicles, 31 bicycles, garbage rooms, storage for residents and other utilities essential to the building.
- A series of ramps provides vehicular access from the proposal's basement via the neighbouring approved development's basement, to Close Street. Approved plans for the adjacent site (220-222 Canterbury Road and 4 Close Street) allow this access via openings in the wall for each level of the basement. A condition of consent also requires a right of way to be registered on the adjoining site, to permit access from the subject site to Close Street. Vehicular access for the subject proposal is therefore reliant on the consent for development of the adjoining site.
- Two lift cores and as many stairwells provide vertical access to all levels of the building, from basement level 3 to level 11 rooftop terrace.

Amendments to the proposed development

As noted in the application's chronology, the applicant was advised by Sydney Trains that the site is affected by a 7m-wide "statutory easement" (meaning the easement does not appear on a property's title) that prevents buildings being erected too close to power lines that supply electricity to the Sydney rail network.

The statutory easement's effect was the impetus for the design changes, submitted in amended plans in April 2016. The building has been substantially reconfigured to accommodate the 7 metre power line easement, which is measured from the one of three power lines which partly overhangs the site. An additional three storeys are proposed, resulting in a part ten and part twelve storey building instead of a nine storey structure. The revised design's gross floor area is 7,701m^2, an increase of 29m^2 over that of the original design.

When first-submitted, the application proposed 84 units. Subsequent amendments increased this number to 88 and finally 89 units.

The applicant has requested variations to maximum building height and floor space ratio standards of the LEP. These requests are examined later.

The photomontage in Figure 4 shows the proposed building when viewed from the north, from near the railway station entrance.

Figure 4 – Image of the proposed building when viewed from north of the railway line, allowing comparison with the building under construction at 2 Charles Street

Photomontages in Figures 5 and 6 allow a comparison of the proposal's originally submitted and revised built forms, facing Canterbury Road.

Figures 5 & 6 - These two images allow comparison of the former design (above) and the now-proposed façade (below) to Canterbury Road. The 9 storey element to the right is the part of the development approved as Stage 1 by consent granted to DA-169/2015.

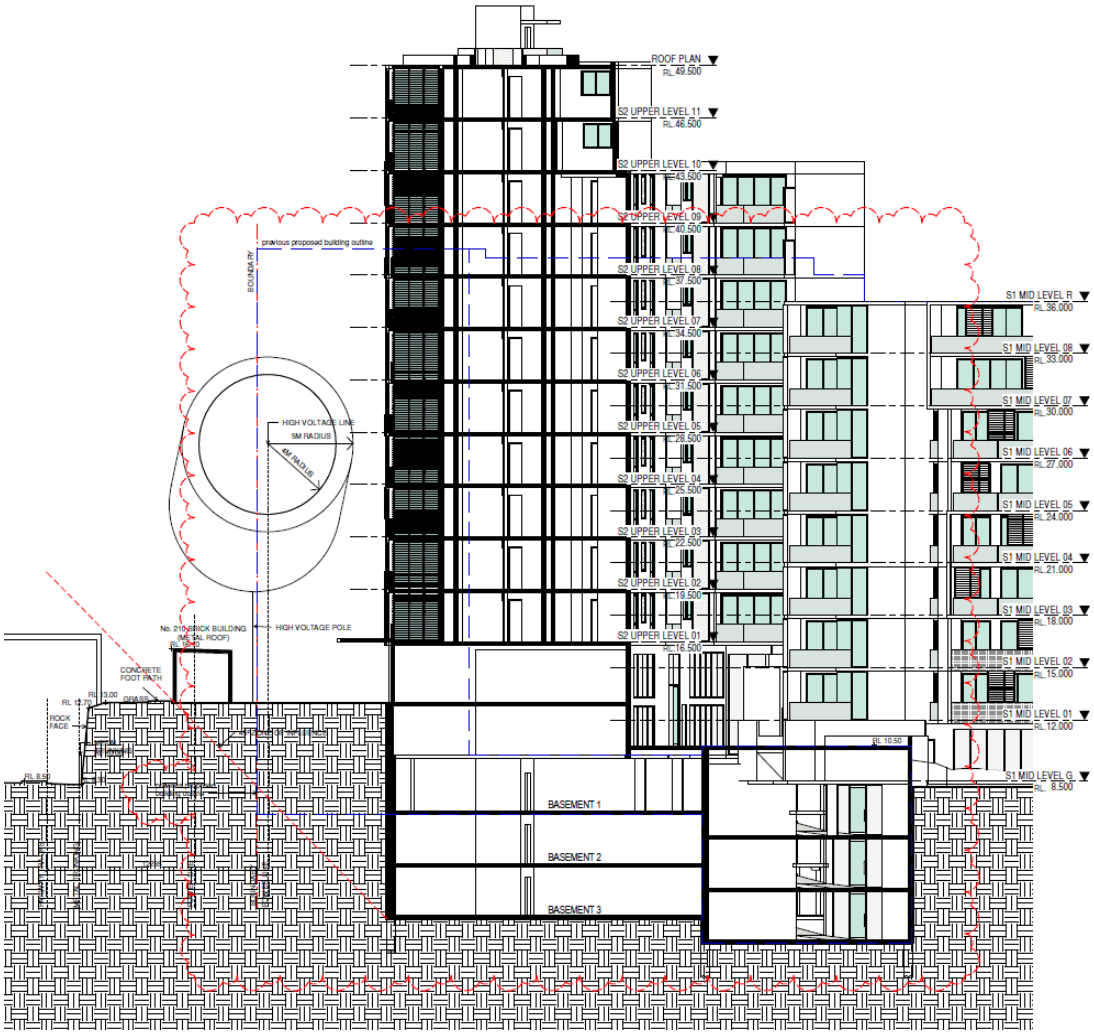


Figure 7 – the cross section shows the height of proposal (Stage 2) to the left, compared with the approved building (Stage 1) to the right. The outline of the original design is shown by the broken blue line. The Sydney Trains power line and easement are shown to the left.

Figure 7 shows the redesigned building's relationship with the railway and compares the original proposal (broken blue line) with the revised design. Pedestrian entry to the building is via a series of ramps and stairways off the Canterbury Road footpath, leading to the central "piazza".

A 'through site link' was previously designed at ground level off the central piazza to the south-eastern boundary, which had potential to provide a path into the adjoining, former bowling club site. This is no longer proposed, being replaced by the pedestrian space between the building and the railway on the site's north-eastern side, shown to the left of the building in Figure 7.

Statutory Considerations

As detailed below, the application has been assessed in accordance with section 79C of the Environmental Planning and Assessment Act, 1979, taking the following relevant matters into account:

- Relevant environmental planning instruments,
- Proposed and exhibited environmental planning instruments and other plans,
- Environmental impacts, including social and economic effects,
- Suitability of the site for proposed development,
- Public submissions, and
- The public interest.

Relevant Environmental Planning Instruments and Plans

The following environmental planning instruments and plans are taken into consideration by this assessment:

- State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)
- State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Infrastructure) 2007 (SEPP 2007)
- Canterbury Local Environmental Plan 2012 (CLEP 2012)
- Canterbury Development Control Plan 2012(CDCP 2012)
- Canterbury Town Centre and Riverfront Precinct Development Contributions Plan

- **State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)**

  SEPP 55 promotes remediation of contaminated land to reduce risk to human health or any other aspect of the environment. Clause 7 of this policy states a consent authority must not grant consent to development unless:

  – it has considered whether the land is contaminated,
  – if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
  – if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

  A preliminary site investigation has been prepared by Environmental Investigations Australia and submitted in support of the application. The investigation concluded there is a low likelihood of site contamination and recommends a Hazardous Materials Survey of existing structures and a detailed site investigation of soils and groundwater, before development could proceed.

- **State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65)**

  SEPP 65 aims to improve the design quality of residential flat buildings across NSW.

  This policy applies to the subject application as it proposes a mixed use development with residential accommodation of more than three storeys and four dwellings.

At the time this application was lodged the SEPP applied the Residential Flat Design Code (RFDC). The SEPP was amended on 17 July 2015, introducing various changes including replacement of the RFDC with the Apartment Design Guide. Due to the transitional provisions of Clause 31 of SEPP 65, this change has no effect. Consequently, the proposal is assessed using the pre-2015 amended SEPP and the RFDC.

Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires submission of a design verification statement from the building designer with the development application.

A design verification statement prepared by the project architect was submitted with the original application. An urban design assessment prepared by another architect, AE Design Partnership, was submitted in support of the amended design.

SEPP 65's Design Principles

Summarised below are the application's statements regarding the policy's design principles, prepared by the proposed building's architect and AE Design Partnership.

Context

The documents describe the accessibility of the site in relation to the urban attractors of the Canterbury town centre and its location offering a prime opportunity for a mixed use development promoting an active frontage on Canterbury Road. The project's architecture uses a "…rectangular pattern…" that "...replicates that of stacked sandstone use in traditional houses but in a much larger scale." The architect also implies the design reflects the mixed-use character of the locality.

Scale

The architect notes the proposed building is in scale with other development in the locality and that it has been "…carefully planned complying with Council's setback policy and is consistent with the LEP height controls, where required." (This statement was made in relation to the originally submitted nine storey building).

Built Form

Submitted reports have described the urban design significance of the site, as a 'gateway' site. In the proposal's description the Sydney Trains power line easement's impact on the site was described. One of the main effects was to cause the building's footprint to be reduced and addition of three levels to the nine storeys originally proposed.

The urban design report concludes the proposal's additional height makes it more visually prominent optimising the site's location, while complementing the streetscape, having acceptable environmental impacts and being consistent with the intended character of development in the town centre.

Landscape

On the southern side of the building is a central "piazza", planned to be combined with adjacent space approved under the neighbouring development. Two roof top terraces are proposed, one on the roof of the 12th storey and the other on the 11th storey. BBQ, shade and seating facilities are provided, embellished by plantings of shrubs, ground covers and small trees. These are considered by the applicant to add amenity for future residents.

Amenity, Safety and Security

The applicant's design statement described the proposal as being designed to provide high amenity, both internally and externally, with crime prevention principles accounted for in the design.

Social Dimensions and Housing Affordability

The social dimension of the design contributes public benefit compared to the design first submitted. Housing affordability is slightly improved with 89 units proposed, five more than the original proposal. Nine adaptable/accessible units are included, to improve housing diversity and cater for the needs of the local population.

Aesthetics

The applicant's design statement submitted the proposal will be a "…positive design outcome for the site…" and "…is likely to set a good architectural element for future development in the locality…".

The above matters are assessed later in the report under the CLEP 2012 and CDCP 2012 sections.

Residential Flat Design Code

In the table below, the proposal is assessed with regard to relevant provisions of the Residential Flat Design Code, as required by Clause 30 (2) (c) of SEPP 65.

Guideline	Required	Proposed	Complies
Building Depth	10m – 18m	15.6m max.	Yes
Building Separation	Up to 4 storeys - 12m 5-8 Storeys - 18m Over 8 storeys – 24m	From the level 1 to 9, building separation between non-habitable rooms is 9m and 18m between habitable rooms (within the development). On levels 10 and 11, the floor plate is reduced providing for a minimum 8m from the rear boundary. The building is proposed on the rear boundary from level 1 to 9 and setback 8m for level 10 and 11.	No - see comment [5] under CDCP assessment

Guideline	Required	Proposed	Complies
Street Setbacks	Not established by the RFDC. Setbacks for the site and set by our DCP	4m to Canterbury Road at ground level, 3.3m from level 1 to level 11.	See DCP assessment
Side and Rear Setbacks	Not established by the RFDC. Side and rear setbacks are established by our DCP	The rear setback is nil and development approved on 220-222 Canterbury Road & 4 Close Street was proposed to be setback 3m; and at 6-8 Close Street was approved at zero setback, which also share a common boundary with the former bowling club land. The side setback approved on this building to the south was zero. The northern side setback is 7m+, determined by the rail easement.	No - see comment [5] under CDCP assessment
Deep Soil Zones	Min 25% of the open space. Exceptions may be made in urban areas where site is built out with no capacity for water infiltration.	0% provided across the site, which is in an urban area and the site will be built to capacity.	Yes
Fences and Walls	Consistent with existing streetscape	No fencing is proposed.	NA
Landscape Design	Improve amenity, streetscape and energy efficiency.	Proposed open space is acceptable, improving public amenity by addition of the pedestrian place in the rail easement on the north eastern edge of the building.	Yes
Open Space	Between 20-30% of site area.	The combined area of the northern (easement) space, the roof top terraces and the piazza is 1,074m^2, or 85% of the site area.	Yes
Building Entry	Provide physical and visual connection between building and street. Provide safe entrance. Provide equitable entrance.	Pedestrian entry to the building from Canterbury Road is highly visible. The entry would be well lit, safe and accessible for all people.	Yes
Parking	Provide underground car parking.	Addressed below, per Part 6 of Canterbury DCP 2012.	Yes
	Provide bicycle parking.	Addressed below, per Part 6 of the Canterbury DCP 2012.	Yes
Pedestrian Access	Barrier free access to at least 20% of dwellings.	Barrier-free access provided to 100% of dwellings.	Yes
Vehicle Access	Max width of driveway is 6m.	5.5m driveway to Close Street via the adjoining site.	No - see DCP assessment
	Located vehicle entry away from pedestrian entry.	Vehicle and pedestrian access points are well separated.	Yes

Guideline	Required	Proposed	Complies
Apartment Layout	Single aspect max depth is 8m.	8m.	Yes
	Min apartment size: one bed: 50m^2 min two bed: 70m^2 min three bed: 90m^2 min	Min sizes: one bed: >50m^2 two bed: >70m^2 three bed: None proposed. 80% of units' floor areas exceed these guidelines.	Yes
Apartment Mix	Provide an apartment mix.	Apartment mix: 9 x studio, 27 x one bedroom, 53 x two bedroom	Yes
Building Configuration	Balconies have a minimum depth of 2m.	Minimum 2m.	Yes
	Ceiling Heights 2.7m habitable 2.4 non-habitable.	 2.7m. 2.4m.	 Yes Yes
	Storage one bed – 6m^3 two bed – 8m^3 three or more bed – 10m^3.	Storage is addressed in relation to the DCP.	No, see DCP assessment
Acoustic Privacy	Like rooms together.	Like rooms are placed together to achieve acoustic privacy.	Yes.
Daylight Access	70% of units to receive three hours between 9am to 3pm – can be two hours in dense urban areas.	71.9% (64) units receive a minimum two hours sun light in mid-winter.	Yes
	Single aspect units with southern orientation limited to 10% of total (maximum six units).	There are no single aspect units with southern orientation.	Yes
Natural Ventilation	60% of units to be naturally cross ventilated.	60.7% (54) of units are naturally cross ventilated.	Yes

- **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**
  A certificate has been submitted with the application as required by the policy.

- **State Environmental Planning Policy (Infrastructure) 2007**
  The site is located adjacent to a rail corridor and on an arterial road (Canterbury Road). Therefore, road and rail provisions of this policy apply to the proposal.

  (a) Clause 86 – Excavation in, above or adjacent to rail corridors
  Applies to development that involves the penetration of ground to a depth of at least 2m below ground level (existing) on land (among other things) within 25m (measured horizontally) of a rail corridor (Cl 86(1)(b). The concurrence of Sydney Trains is required (Cl86 (3)) and the consent authority must take into consideration:

  i. any response to the notice that is received within 21 days after the notice is given, and

ii. any guidelines issued by the Director-General for the purposes of this clause and published in the Gazette.

The proposal involves basement parking and therefore the concurrence of Sydney Trains is required. The submitted geotechnical report addressed potential impacts on the rail corridor from excavation and concluded that vibrations generated during rock excavation should not have a negative impact on the adjacent rail corridor.

As outlined in the application's chronology, the proposal's design iterations were referred to Sydney Trains. In their letter dated 18 July 2016, Sydney Trains advised of their concurrence, subject to conditions.

(b) Clause 87 – Impact of rail noise or vibration on non-rail development

This clause applies to residential development on land in or adjacent to a rail corridor, when a proposal may be adversely affected by rail noise or vibration. The consent authority must take into consideration any guidelines issued by the Director-General for the purposes of this clause and published in the Gazette (87(2)). Consent must not be granted unless appropriate measures will be taken to ensure the following LAeq levels are not exceeded:

— *in any bedroom in the building—35 dB (A) at any time between 10.00 pm and 7.00 am, and*

— *anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB (A) at any time. (Cl 87(3)).*

A report prepared by Acoustic Logic dated 15 April 2015 considered potential noise and vibration resulting from the adjoining railway on the proposal with reference to this policy and the Department of Planning's Development Near Rail Corridors and Busy Roads – Interim Guidelines 2008. This report concluded the proposal is consistent with these guidelines subject to recommendations.

(c) Clause 101 – Development with frontage to classified road

Consent must not be granted to development of land that has a frontage to a classified road unless Council is satisfied that:

(a) where practicable, vehicular access to the land is provided by a road other than the classified road, and

(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:

(i) design of the vehicular access to the land, or

(ii) the emission of smoke or dust from the development, or

(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

The proposal relies on vehicle access from Close Street via the adjacent approved development (DA-169/2015), not from Canterbury Road. The proposed method of access is discussed below, in relation to our DCP.

The traffic report submitted with the application concluded there will be no adverse impact on the road network resulting from the proposal. As a mixed use development is proposed there will be no emissions from the proposal that would adversely affect the road network. The acoustic report concluded that subject to its recommendations, the proposal will not adversely affect the road network.

(d) Clause 102 – Impact of road noise or vibration on non-road development

This clause applies to development for (among other things) a building for residential use on land in or adjacent to a freeway, a tollway or a transit-way, or any other road with an annual average daily traffic volume exceeding 40,000 vehicles (based on the traffic volume data published on the RMS website) and that the consent authority considers the development is likely to be adversely affected by road noise or vibration (Cl 102(1) (a)).

The consent authority must consider guidelines issued by the Director-General for the purposes of this clause and published in the Gazette (Cl 102(2)). If residential development is proposed, the consent authority must not grant consent unless satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

— *in any bedroom in the building—35 dB (A) at any time between 10 pm and 7 am,*

— *anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB (A) at any time (Cl 102(3)).*

The aforementioned acoustic report considered potential noise and vibration resulting from traffic on Canterbury Road, which is listed on the traffic volume maps for SEPP 2007 as a road where a noise intrusion assessment is mandatory under this clause.

This report concluded that the proposal is consistent with these guidelines subject to conditions.

(e) Clause 104 – Traffic-generating development

Before determining a development application for development the consent authority must give written notice of the application to Roads and Maritime Services and take into consideration:

(i) any submission that the RMS provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, the RMS advises that it will not be making a submission), and

(ii) the accessibility of the site concerned, including:

(A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and

(B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and

(iii) any potential traffic safety, road congestion or parking implications of the development.

The proposal involves more than 75 (89 proposed) dwellings and more than 75 car parking spaces (88 proposed). Consequently, the SEPP's Schedule 3 requires referral of the application to RMS, as vehicular access to the development is proposed from Close Street, within 90 metres of Canterbury Road. The application was considered by the Traffic Committee who endorsed the application.

The application was referred to RMS and concurrence was granted on 14 December 2015. Subsequent to the proposal's amendment in April 2016, the RMS was contacted regarding the additional unit and modified design. They advised the altered proposal did not affect their concurrence.

The proposal is compliant with relevant provisions of the SEPP.

- **Canterbury Local Environmental Plan 2012 (CLEP 2012)**

The site is zoned B2 Local Centre pursuant to Clause 2.2 of the Canterbury Local Environmental Plan 2012 (CLEP 2012). The land use table in Clause 2.3 states the following zone objectives:

– To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
– To encourage employment opportunities in accessible locations.
– To maximise public transport patronage and encourage walking and cycling.
– To facilitate and support investment, economic growth and development for active, diverse and well-designed centres.

The proposal is consistent with these objectives, noting those pertinent to the proposal are further considered in relation to proposed variations to height and density standards, following the CLEP Compliance Table.

Clause	Requirement	Proposal	Complies
2.6	**Subdivision—consent requirements** Land to which this Plan applies may be subdivided, but only with development consent.	The proposal does not involve subdivision, although consolidation into a single allotment would be required.	NA
2.7	**Demolition requires development consent** The demolition of a building or work may be carried out only with development consent.	Demolition of existing structures is proposed as part of the application. Separate consent under this clause would not be required.	Yes

Clause	Requirement	Proposal	Complies
4.3	**Height of buildings** The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map – 27 metres.	The maximum height of the development exceeds the 27m maximum building height standard. The maximum building height proposed is 41.4m (variation 53.3%).	No - see comment [1] below
4.4	**Floor space ratio** The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The site has 2 different max FSRs:- - 3:1 – majority of Lot 1 DP 877958 (1,084.2m²) - 2.75:1 – majority of Lot 1 DP 304046 (175.4m²) The maximum gross floor area permitted on the site is 3,734.95m^2.	The proposed gross floor area is 7,701m2, which equates to a floor space ratio of 6.11:1 (variation 105%).	No - see comment [1] below
5.10	**Heritage conservation** Consider potential impact on land on which a heritage item is located, or on land that is within a heritage conservation area, or on land that is within the vicinity of land referred to above.	There are no heritage items on the site, however, there are several items (Items I166, I167, I168) associated with the railway, old post office and a hotel, in the site's vicinity. These items are located on the opposite side of the railway line northeast of the site. The proposal is sufficiently distant from nearby heritage items and will not unduly affect them. The proposal is consistent with the objectives of Clause 5.10 of the LEP in that the heritage significance of the item is conserved as is the environmental heritage of Canterbury. No heritage management document is required.	Yes

Clause	Requirement	Proposal	Complies
6.1	**Acid sulfate soils (ASS)** Consent is required on Class 5 land for:- Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.	The geotechnical report prepared by STS dated March 2015 concluded subsurface conditions present on the site are inconsistent with the geomorphic and site criteria conditions for ASS. ASSs are not evident on the site and were not found in boreholes. The report further stated, based on the monitoring of groundwater levels, groundwater is present in the sandstone bedrock which is relatively impermeable. Therefore, water flow into the basement excavation is not expected to be excessive. Any dewatering of the excavation required is highly unlikely to affect ASS that may be present in the nearby area. The report concluded that an ASS management plan will not be required for the proposal.	Yes
6.2	**Earthworks** Consent is required for earthworks and must consider: (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development, (b) the effect of the development on the likely future use or redevelopment of the land, (c) the quality of the fill or the soil to be excavated, or both, (d) the effect of the development on the existing and likely amenity of adjoining properties, (e) the source of any fill material and the destination of any excavated material, (f) the likelihood of disturbing relics, (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area, (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.	The geotechnical report stated the proposal requires excavating between about 5 and 12 metres below the ground surface with the deeper excavation being at the north eastern end of the site and the shallower depth being adjacent to Close Street. The report concluded the proposal is satisfactory subject to recommendations.	Yes

Clause	Requirement	Proposal	Complies
6.4	**Stormwater management** Consent authority must be satisfied that the development: (a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and (b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and (c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.	A stormwater plan has been provided and Council's engineers raise no objection to this plan.	Yes
6.6	**Essential services** Consent must not be granted to development unless services essential for the development are available or adequate arrangements made (water, electricity, sewerage, stormwater drainage, vehicular access.	Adequate services are available for the proposed development.	Yes
6.7	**Mixed use development in business zones** This clause applies to land in B1 Neighbourhood Centre, Zone B2 Local Centre, and Zone B5 Business Development. Development consent may be granted to mixed use development on land to which this clause applies, provided the ground floor is not used for residential purposes.	This clause applies to the proposed development. The proposal is consistent with this provision as no residential accommodation is proposed on the ground floor.	Yes

The amended proposal satisfies all requirements of the LEP, except height and density standards. Non-compliance with these standards is discussed below.

[1] Clause 4.6: Proposed variations to development standards

Based on research into recent decisions of the Land & Environment Court, (Four2Five Pty Ltd v Ashfield Council & Mount Annan 88 Pty Ltd v Camden Council) a series of questions has been formulated for assessing whether variation of a standard is justified, to enable consent to be granted.

Clause 4.6 requires concurrence of the Secretary before consent is granted. The Secretary's concurrence may be assumed, as advised to all NSW Councils in Planning Circular PS08-003, issued by the Department on 9 May 2008.

Questions for assessing variation of a development standard
The questions are divided into two parts, A and B. The questions of Part A require a positive answer to all four questions for consent to be granted, as they are based on what the Court has termed "the four preconditions" to satisfy statutory requirements of clause 4.6 of the LEP.

In Part A, Questions 1 and 2 must be satisfactorily answered by the applicant's written request to vary the standard. In the answers to Questions 3 and 4, it is Council which must be satisfied that departure from the standard is in the public interest, whether or not the applicant adequately addresses these questions.

The two questions of Part B address the objectives of clause 4.6 and do not form part of the preconditions as determined by the Court. A positive assessment with regard to Part A would typically be expected to produce a positive response to clause 4.6's objectives.

Maximum Height of Building Standard – assessment of proposed variation to the standard
The maximum building height standard applied to the site is 27m above natural (existing) ground level.

A maximum building height of 41.4m is proposed, to the top most lift overrun. Level 11, the top floor, has a maximum roof height of 38.9m above existing ground level. Before modification to accommodate the railway easement, the previous design was nine storeys which largely complied with the 27m limit, except for rooftop lift overruns and amenities.

The six questions for assessing the proposed variation of the height standard are now addressed.

A. Four preconditions for approving variation of a development standard, *all must be answered in the affirmative to grant consent*:

1. Is compliance with the standard unreasonable or unnecessary in the circumstances of the case? (Clause 4.6 (3) (a)). In answering this question, only one of the following sub-questions must be answered and the answer demonstrate that strict compliance with the standard is unreasonable or unnecessary, in the circumstances of the case:
    a. Is the underlying objective or purpose (of a standard) irrelevant to the development, making compliance unnecessary?

    Answer:
    The applicant's submission did not address this question.

b. Would the underlying purpose or objective (of a standard) be defeated or thwarted if compliance was required, making compliance unreasonable?

Answer:
The applicant's submission did not address this question.

c. Has the development standard been virtually abandoned or destroyed by the Council's actions (decisions) in departing from the standard, making compliance unnecessary and unreasonable?

Answer:
The applicant's submission did not address this question.

d. Is the zoning of particular land unreasonable or inappropriate so that a development standard applying to the zone is also unreasonable or unnecessary as it applied to that land, noting that this does not permit a general enquiry into the appropriateness of the development standard for the zoning?

Answer:
The applicant's submission did not address this question.

e. Apart from matters addressed by questions 1 (a) – (d), 2, 3 and 4, are there any other circumstances of the case in which strict compliance with the standard is unreasonable or unnecessary?

Answer:
The applicant's written request to vary the development standard notes that the "implied" or statutory easement applying to the site was unknown to the property owners and the applicant. The submission claims this has required reduction of the building's floor plate or footprint to accommodate the easement. This is claimed to be a "unique" circumstance, as the easement makes a zero setback, as permitted by the DCP (cl.3.1.8 vi), impossible. But for the presence of the easement the proposed building would have been sited to the boundary, it is also claimed.

Comment:
The applicant's request to vary the standard seeks to recoup the otherwise foregone floor space by increasing the building's height. This is claimed to be an acceptable solution given the either neutral or positive impacts of the additional three levels proposed. The key impacts are environmental (acceptable overshadowing and privacy), amenity-related (improved pedestrian accessibility) and effects on townscape or character (the taller building is compatible with other buildings in the

locality and the nature of development envisaged by Canterbury's planning framework).

Whether or not the owners should have known about or discovered the effect of the easement before the application was lodged is not addressed by the submission.

Whether the proposed solution to this conundrum is acceptable, is doubtful. A site survey to inform and a site inspection as part of the preliminary design phase should have at least prompted an enquiry with Sydney Trains to determine if the power lines running over the site would have some sort of impact on the building's design.

Such an enquiry appears not to have occurred, as the original design with a zero setback to the railway boundary either ignored or overlooked the physical presence of the power lines or expected them to be relocated to allow the building to be constructed.

And finally, it is the easement, not the additional height, which offers scope for public benefit to be derived from activating the space, by proposing a pedestrian link between Canterbury Road and land to the east, over land affected by the easement.

In these circumstances the applicant's submission has not demonstrated that strict compliance with the height standard is unreasonable or unnecessary.

Due to the physical constraint first posed by one of three power lines partly traversing the site and secondly posed by the easement, building to the boundary was, in practical terms, never possible. Whether or not the applicant knew about the easement is given no weight in the circumstances, as the presence of the power line should have at least prompted an enquiry into its effect, when contemplating developing the site.

Regardless of the DCP allowing a zero setback to the railway boundary, the easement prevails over the DCP and consequently must be kept free of buildings. This is insufficient reason to increase the height of the proposed building.

Answer to Question 1:
The applicant has not demonstrated that strict compliance with the maximum height standard is unnecessary or unreasonable in the circumstances of the case. In accordance with Clause 4.6 (3) (a) of the Canterbury Local Environmental Plan 2012, consent must not be granted.

2. Are there sufficient environmental planning grounds to justify contravention of the development standard? (Clause 4.6 (3) (b))

Answer to Question 2:
The applicant's request to vary the height standard submits the following as sufficient environmental planning grounds to justify exceeding the height standard:

i) *Environmental amenity:*

- Overshadowing of adjoining land will not create adverse impacts or restrict the development capacity of adjoining land. Referring to the diagrams below, the applicant submits that the revised development's shadows (pink and purple) are satisfactory when compared with the original, largely compliant building (pink & orange) and due to all surrounding land receiving sufficient sunlight at different times of the day.
- The design takes advantage of its 'corner' location, adjacent to the railway and Canterbury Road with the unit layout minimising privacy loss and the "visual dominance" of the building.
- Additional height offers residents of upper levels good views without unduly reducing the views from adjacent development.
- The building will not be "visually dominant" when viewed from the north due to the setback from the railway.
- The building's "restricted 12.21m built form frontage to Canterbury Road" is unlikely to be "…negatively dominant in what will be a highly built up precinct."

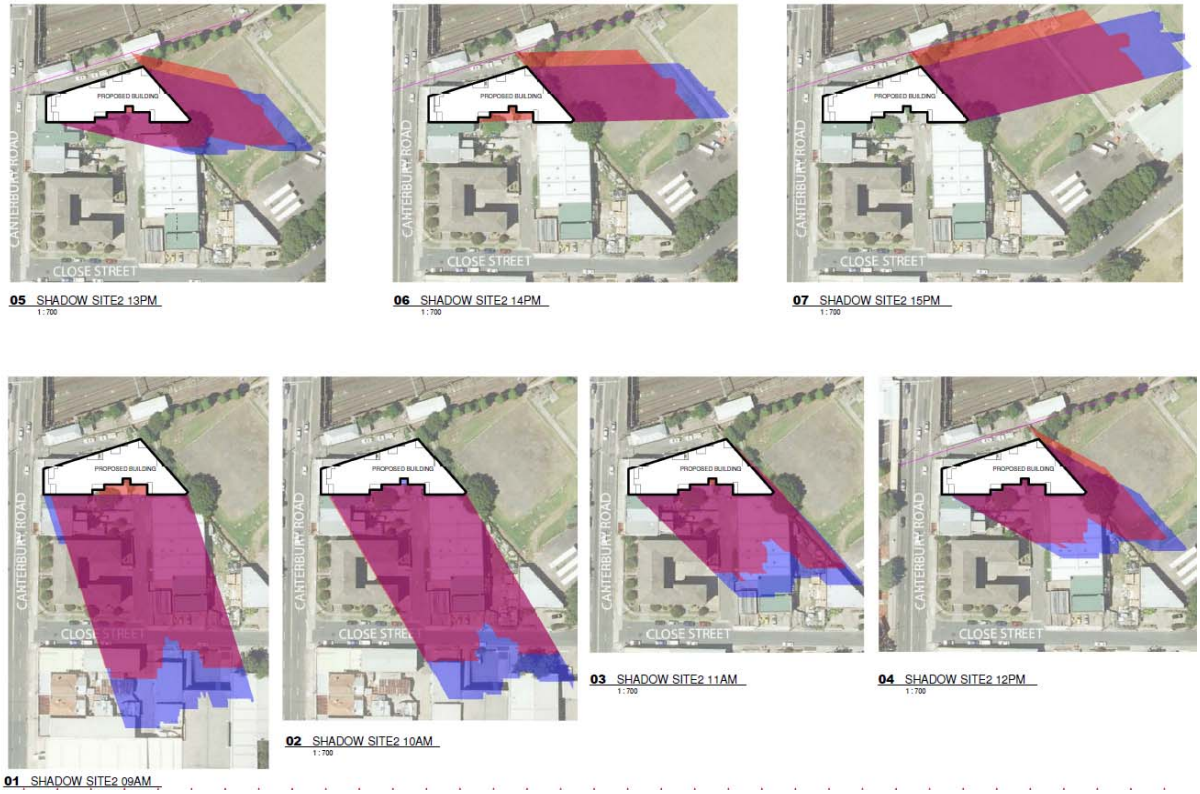


Figure 8: Shadow study of proposal at 212-218 Canterbury Road Canterbury for 21 June, from 09.00 to 15.00.

ii) Aesthetic character of the area:

- According to the applicant's request to vary the standard:
  - Council has recently approved a number of variations to height and density standards in the Canterbury town centre,

indicating "…a willingness…to assess sites on their individual merit", and

- The additional height will not detrimentally affect the town centre's desired future character.

Comment:

The following points are made about the applicant's submission:

– While additional height does add an element to the corner, this is inconsistent with the uniform building height of buildings along the railway envisaged and enabled by our Canterbury LEP and DCP.
– The photomontages above show the additional height and reduced footprint do not completely alleviate the building's bulkiness, especially when viewed from the north.
– There are additional overshadowing created by the subject development over adjoining lots.

On balance, the applicant has not demonstrated sufficient environmental planning grounds to justify variation of the maximum building height standard. In accordance with Clause 4.6 (3) (b) of the Canterbury Local Environmental Plan 2012, consent must not be granted.

3. Is the proposed development consistent with objectives of the development standard and therefore in the public interest? (Clause 4.6 (4) (a) (ii))

Answer to Question 3:

The applicant's written request to vary the standard submits that the additional height is consistent with the standard's objectives and is therefore in the public interest, as outlined below:

Objective (a): to establish and maintain the desirable attributes and character of an area

– The additional height, given the taller section of the building is positioned away from an adjacent redevelopment site (former Bowling Club land) the development is unlikely to impact the character and attributes of the area.

Objective (b): to minimise overshadowing and ensure there is a desired level of solar access and public open space

– Shadow diagrams and analysis show the proposed development has reasonable overshadowing and provides "desirable" solar access, as provided for by SEPP 65.

Objective (c): to support building design that contributes positively to the streetscape and visual amenity of an area

– The building's setback from the railway "…will have a positive impact within the precinct…the additional setback will assist in the perception of the building's bulk (compared with) that originally proposed."

– The proposal "…remains compliant with the principles and general parameters of the built form controls and expectations within the planning framework."

Objective (d): to reinforce important road frontages in specific localities.

– The additional height of the building's Canterbury Road elevation reinforces its frontage in a central location.

Comment:

Our DCP envisages a uniform height of eight storeys for buildings adjacent to the southern side of the railway, either side of Canterbury Road. This built form outcome is given a degree of statutory weight by application of the 27m maximum height control.

As established earlier by a study of recently approved developments in the town centre, buildings along the railway's southern edge have been approved at nine storeys (noting the approved building at 10B Charles Street is in effect nine storeys above ground level, as one of its approved levels is below the site's ground level at the time the application was approved).

The proposed twelve storeys is inconsistent with the outcome sought by the DCP and LEP, namely to achieve a row of buildings with relatively uniform height and skyline, adjacent to the railway's southern side. While acknowledging a number of buildings has been approved at nine storeys, the proposal exceeds the eight storeys envisaged by the DCP by four storeys.

Consequently the proposal is inconsistent with objectives of the standard.

As a result of this inconsistency, the proposed variation to the height standard is unable to be supported. Accordingly consent must not be granted, in accordance with Clause 4.6 (4) (a) (ii) of our CLEP 2012.

4. Is the proposed development consistent with objectives of the zone and therefore in the public interest? (Clause 4.6 (4) (a) (ii))

Answer to Question 4:

According to the applicant's submission, the proposed development is consistent with the B2 Local Centre zone's objectives and is therefore in the public interest:

B2 Local Centre zone objectives

– *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
– *To encourage employment opportunities in accessible locations.*
– *To maximise public transport patronage and encourage walking and cycling.*

– *To facilitate and support investment, economic growth and development for active, diverse and well-designed centres.*

Comment:
The applicant's written request addressed the zone's objectives collectively, noting the B2 zone "…seeks to integrate retail, commercial and residential uses, particularly close to town centres and transport hubs." In support of these and complementary objectives of the LEP (cl. 1.2 (a), (c) and (g), the submission states "…the proposal achieves a balanced development outcome between an acceptable built form within the B2 zone and the future amenity and character of the surrounding area…impacts to surrounding properties and the public domain are ameliorated."

Some of these comments are concurred with, as the development offers a combination of commercial and residential premises, providing for the needs of residents, workers and visitors. An appropriate type of employment-generating premises is located on the proposal's ground floor, the site being across the road from metropolitan rail and regional and local bus services.

However, the proposal's built form is unacceptable in terms of the height standard and the built form envisaged by the DCP.

B. Consistency with the objectives of clause 4.6, *although not necessary to grant consent, should support a case to vary a standard*

5. Has an appropriate degree of flexibility been applied, in the application of the development standard to a particular development?

Answer to Question 5:
The applicant's written request contends a suitable degree of flexibility is applied in the proposed variation of the building height standard:

– The development's height has positive built form effects, making a contribution to the character and function of Canterbury's town centre, and
– The building will have acceptable environmental impacts, compared with impacts of the original, substantially compliant design.

Comment:
In view of the foregoing reasons for not supporting the proposed variation, the degree of flexibility sought is inappropriate.

6. Will better outcomes be achieved, for the development itself and from the development (for the locality or area where the development is proposed), by allowing flexibility (to vary a standard) in particular circumstances?

Answer to Question 6:

The applicant submits that variation of the maximum building height development standard as proposed improves the development outcomes for both the future occupants of the building and the town centre's community. In this regard the applicant submits:

- The site's development reinvigorates an under-used site,
- Redevelopment, despite the increased height, respects surrounding land and does not increase impacts on nearby properties,
- The proposal's height does not appreciably increase the proposal's density,
- Two rooftop terraces offer improved amenity for residents,
- The apparent bulk of the building is reduced by the rail easement setback and increased height,
- Positioning of the two top levels of the building reduces its visibility from the public domain,
- The additional height (is designed to) reduce environmental impacts and improve levels of privacy, and
- Housing choice and affordability is (marginally) improved.

Comment:

A number of these points are not concurred with, in that any permissible development, whether compliant or non-compliant with the height standard, would re-invigorate the site. Likewise, any development that increases local housing supply would improve housing choice and affordability. Despite the reduced floor plate of the two top levels, addition of the three proposed additional levels is excessive.

The proposal does not represent a "better outcome" compared to a compliant development and does not satisfy this objective of clause 4.6.

Maximum Floor Space Ratio Standard – assessment of proposed variation to the standard

The site (1,262.4m^2 in area) is mapped as being affected by two floor space ratio (FSR), or density, standards. FSRs of 3:1 and 2.75:1 apply to the site, resulting in a maximum permissible gross floor area (GFA) of 3,734.95m² on the site.

The project has a GFA of 7,701m^2, an increase of 29m^2 above that originally proposed (7,672m^2). A floor space ratio of 6.11:1 is proposed.

The proposal's request to vary the density standard has been assessed using the same method used to evaluate the request to vary the maximum building height standard.

A. Four preconditions for approving variation of a development standard. *All must be answered in the affirmative to grant consent*:

1. Is compliance with the standard unreasonable or unnecessary in the circumstances of the case? (Clause 4.6 (3) (a)). In answering this question, only one of the following sub-questions must be answered and the answer demonstrate that strict compliance with the standard is unreasonable or unnecessary, in the circumstances of the case:
   a. Is the underlying objective or purpose (of a standard) irrelevant to the development, making compliance unnecessary?

Answer:
The applicant did not address this question.

b. Would the underlying purpose or objective (of a standard) be defeated or thwarted if compliance was required, making compliance unreasonable?

Answer:
As discussed below in the response to Question 3 relating to the objectives of the floor space ratio standard, the applicant submits that strict compliance with the floor space ratio prescribed by the LEP, compliance would not allow a building to optimise density on a site "…within an easy walk of the railway stations and commercial centres", as stated by objective (d).

Comment:
The applicant did not submit information to adequately support this claim. Therefore, the applicant has not demonstrated that strict compliance would thwart or defeat this objective.

c. Has the development standard been virtually abandoned or destroyed by the Council's actions (decisions) in departing from the standard, making compliance unnecessary and unreasonable?

Answer:
The applicant's submission contends that "…it seems that where a variation has been sought and justified, Council has in the least varied the standard and may be considered to have virtually abandoned it."

Comment:
This statement is not concurred with, as approved variations only apply to several of the developments approved in the locality (noted in the applicant's submission), and these decisions have not been at the expense of compromising the objectives of the standard itself. Where other applications have been approved, the degree of the approved departures has been significantly less than the variation proposed by the subject application.

d. Is the zoning of particular land unreasonable or inappropriate so that a development standard applying to the zone is also unreasonable or unnecessary as it applied to that land, noting that this does not permit a general enquiry into the appropriateness of the development standard for the zoning?

Answer:
The applicant did not address this question.

e. Apart from matters addressed by questions 1 a – d, 2, 3 and 4, are there other circumstances of the case in which strict compliance with the standard is unreasonable or unnecessary?

Answer:
The applicant did not address this question.

Answer to Question 1:
The applicant has not demonstrated that strict compliance with the maximum floor space ratio standard is unnecessary or unreasonable in the circumstances of the case. In accordance with Clause 4.6 (3) (a) of the Canterbury Local Environmental Plan 2012, consent must not be granted.

2. Are there sufficient environmental planning grounds to justify contravention of the development standard? (Clause 4.6 (3) (b))

Answer to Question 2:
In summary, the applicant's request to vary the standard submits that:

– the proposal's performance is acceptable with regard to overshadowing,
– the development provides reasonable levels of amenity for future residents with regard to privacy, ventilation, unit size and solar access,
– the foregoing elements of the development's performance satisfy or exceed the RFDC's 'rules-of-thumb',
– the proposal improves housing choice and affordability, and
– having regard to the site's context, the building is compatible with the size and proportion of other development in the area and that envisaged by the Canterbury town centre's planning framework.

Comment:
The proposal will result in additional shadow impacts.

The environmental planning grounds submitted by the applicant are insufficient to justify the proposed gross floor area. Satisfactory performance against these measures would be expected of a compliant development.

In relation to the last point, the building unacceptably exceeds the planned-for built form for the site and the character envisaged for the locality.

The applicant therefore, has not demonstrated sufficient environmental planning grounds to vary the standard and the application is therefore unable to be granted consent in accordance with Clause 4.6 (3) (b) of our CLEP 2012.

3. Is the proposed development consistent with objectives of the development standard and therefore in the public interest? (Clause 4.6 (4) (a) (ii))

Answer to Question 3:
Objectives of the LEP's floor space ratio standard are:

(a) to provide effective control over the bulk of future development,
(b) to protect the environmental amenity and desired future character of an area,
(c) to minimise adverse environmental impacts on adjoining properties and the public domain,
(d) to optimise development density within easy walk of the railway stations and commercial centres.

In relation to objective (a), the applicant contends there is a "miss-match" or no correlation between the building envelope and density controls applied to the site, meaning compliance with the FSR would result in the building's dimensions being unreasonably smaller than that achievable within the site's height and setback controls.

The submission contends that the variation sought does not affect the proposal's consistency objectives (b) and (c) The submission states that "…overall built form meets that intended within the Planning Framework" and that "…there are no environmental impacts…" resulting from "…the variation in the FSR as sought."

The applicant's written request then claims that objective (d) "…seeks to achieve exactly what is currently proposed…" and that the "…intent of this objective is to achieve the higher density within the building envelope controls provided by the other relevant controls in a manner similar to the current proposal."

Comment:
The applicant did not submit adequate information to support these claims.

Question 3 Answer: Conclusion
The applicant's submission has not provided sufficient justification to support the claim that the proposal is consistent with the standard's objectives. The departure from the floor space ratio standard sought is therefore not in the public interest.

4. Is the proposed development consistent with objectives of the zone and therefore in the public interest? (Clause 4.6 (4) (a) (ii))

Answer to Question 4:

Yes, the proposal is consistent with B2 zone objectives. B2 Local Centre Zone objectives relevant to the site are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To facilitate and support investment, economic growth and development for active, diverse and well-designed centres.*

When studying recent Court cases concerning proposals to vary development standards, a frequent finding was that a proposal's consistency with zone objectives is often of little or no assistance when evaluating a proposed variation of a development standard, for reason that any permissible development is typically consistent with zone objectives. This is certainly true of the proposal in this case.

B. Consistency with the objectives of clause 4.6, *although not necessary to grant consent, should support a case to vary a standard:*

5. Has an appropriate degree of flexibility been applied, in the application of development standards to a particular development?

Answer to Question 5:

The applicant contends that a suitable degree of flexibility is applied by the proposed departure from the density control:

- The resultant building is within the permissible building envelope, with the variation not resulting in the bulk and scale of the building increasing nor creating impacts in terms of overshadowing or loss of solar access greater than that expected under the relevant planning framework;
- A compliant proposal would reduce the number of available units in the area and would not result in the orderly and economic development of land (as promoted by the objects of the EP& A Act),
- There is a miss-match between the density (FSR) and building envelope (height and setback) controls.
- The building will "fit" within its future locational setting and with the surrounding buildings.
- The proposal satisfies relevant objectives of the FSR development standard and clause 4.6.
- A compliant development would reduce the number of dwellings, which is inconsistent with Council's (and the FSR standard's) objectives to optimise development on the site, which is highly accessible in relation to public transport and local services.
- This circumstance is arguably specific to the site, as it is closer to the railway station than any of the land ear-marked for urban renewal between the railway and the Cooks River, with the exception of 2 Charles Street.

Comment:
The applicant's conclusion with regard to an appropriate degree of flexibility is disagreed with. Rather, the degree of contravention is excessive when taking the following into account:

– The proposed building exceeds the permitted building envelope, as it breaches the height standard.
– The building's bulk exceeds that envisaged by the planning framework for the Canterbury town centre.
– The development as proposed being inconsistent with the floor space ratio standard's objectives.

6. Will better outcomes be achieved, for the development itself and from the development (for the locality or area where the development is proposed), by allowing flexibility (to vary standards) in particular circumstances?

Answer to Question 6:
The applicant's request to vary the FSR standard, notes the following benefits:

– 80% of the units have larger internal floor areas than the minimum prescribed by the RFDC, thus increasing residential amenity, and
– The proposal provides an outcome envisaged by the planning controls, to optimise residential density close to the railway, more so than a compliant development would.

Comment:
In response, it is arguable whether the percentage of units having larger floor areas and thus improving amenity for their occupants has much to do with the density proposed.

Conclusion – clause 4.6 assessment
The applicant's submissions to vary maximum building height and floor space ratio standards are not supported, as demonstrated by the foregoing examination. Consent must therefore not be granted to the application, as all of clause 4.6's preconditions for granting consent have not been satisfied.

Consequently, the application is recommended for refusal.

Planning Proposal: 15 Close Street Canterbury
A key element in the locality is land adjacent the site's eastern boundary, formerly occupied by the Canterbury Bowling Club, at 15 Close Street. Owned by Council this land is the subject of a Planning Proposal to rezone the land from RE1 Public Recreation to R4 High Density Residential, complemented by height and density standards to permit up to eight storey residential buildings.

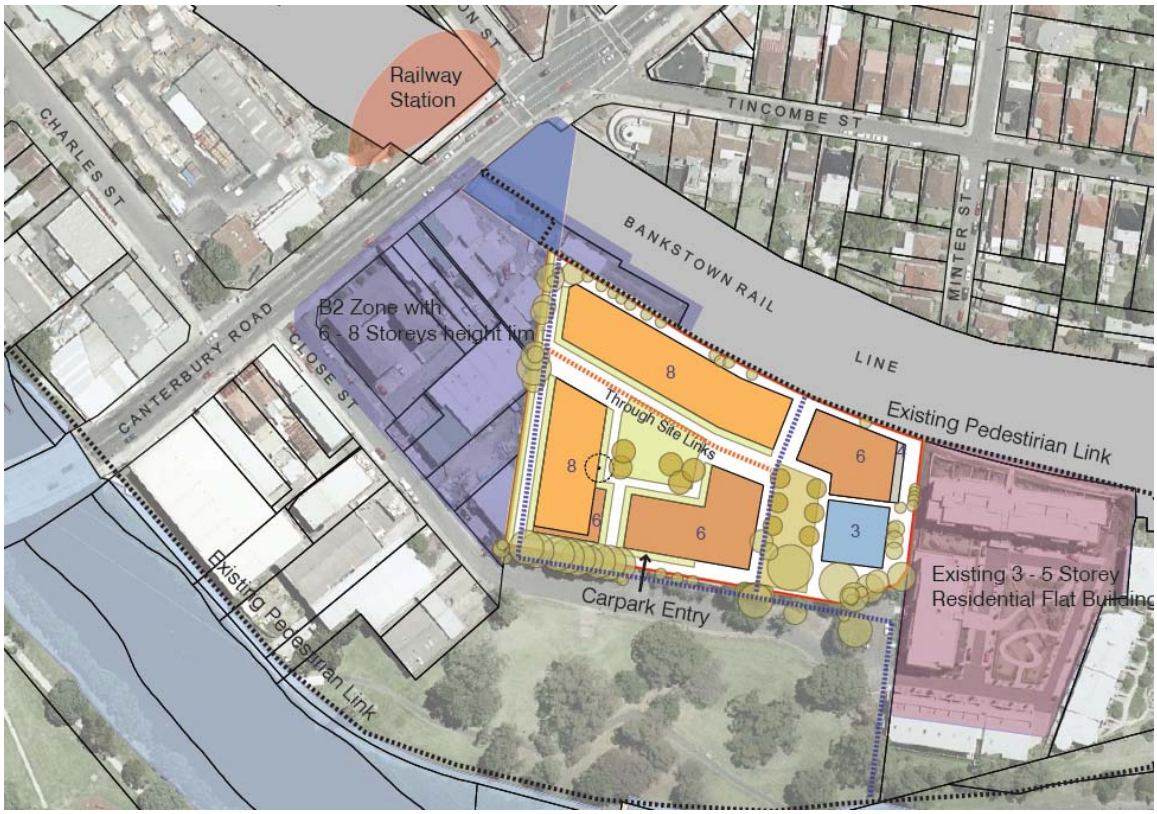


Figure 9 – Master plan for former Bowling Club site, with potential footpaths shown in broken blue and red lines. The site of the proposed development is located to the left of the master planned land and is part of the area coloured purple adjacent to the railway. (Source: "Urban Design Study 15 Close Street Canterbury", 4 June 2014)

Figure 9 shows an extract of the master plan prepared in support of the planning proposal. It shows a series of pedestrian pathways between and alongside residential building envelopes of three to eight storeys, located around a central open space. Some of these paths enable access to Close Street and open space between this street and the river, connecting to the walking/cycle path along the riverbank.

Two of these paths terminate in the bowling club site's north-western corner adjacent to the land the subject of this report. The master plan appears to have relied upon a path on adjacent railway land shown as a broken black line. In 2014 Sydney Trains formally advised Council that no access to this path (from the Bowling Club land) would be permitted.

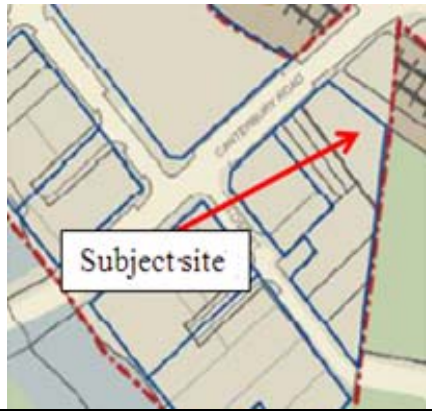
Strategically, the pedestrian link proposed in the railway easement has potential to link with land to the site's east, and integrate with the town square proposed by the Canterbury Town Centre part of the DCP (addressed later).

Council has exhibited, considered public submissions and submitted the Planning Proposal to the Minister for an amending local environmental plan to be made to give effect to the proposal. The draft LEP has not yet been finalised. However it needs to be taken into account as part of our assessment in particular given the setbacks to the proposed development. This is discussed further in the report.

- **Canterbury Development Control Plan 2012 (CDCP2012)**
  The controls of the Canterbury DCP 2012 relevant to the revised proposal include Part 3 - Business Zones and Part 3.1 - Business Centres (Appendix 3.2 - Canterbury Town Centre), which are addressed in the table below.

  Relevant controls of Part 6, including 6.1 (Access), 6.2 (Climate and Energy), 6.3 (Crime Prevention), 6.8 (Traffic) and 6.9 (Waste) are considered in the following table. The controls in Parts 6.4 (Engineering) and 6.6 (Landscaping) are addressed in the referrals section following these tables.

CDCP 2012 Part 3 Business Zones – Compliance Table

Clause	Requirement	Proposal	Complies
Site amalgamation and minimum frontage	• Min frontage – 12m – 18m (B1/B2 zone) • Min lot (Canterbury Town Centre) - 1500m² • Amalgamated sites (Figure 3.1) - see below 	The site has a minimum frontage to Canterbury Road of 19.2m and site area of 1262.4m².	Yes - see comment [1] below
Site Isolation	New development should not result in isolation of a neighbouring property that could not accommodate redevelopment.	The proposal does not isolate other land.	Yes- see comment [1] below
Retention of facades	Max height >5 storeys, comprehensive redevelopment is permitted and facades do not need to be retained.	The proposal exceeds five storeys.	NA
Height	27m – Max building height, per LEP.	Proposed height 41.4m. Exceeds 27m maximum by between 11.9m to 14.4m.	No - refer to Cl 4.6 evaluation above
	Min3.3m floor to ceiling height for ground floor.	3.3m.	Yes.
	Min 2.7m floor to ceiling height for residential floors.	2.7m.	Yes
	Min 2.8m ceiling height car parking floor.	2.8m.	Yes

Clause	Requirement	Proposal	Complies
Depth/ footprint	Residential - max 18m depth from glass line to glass line	15.6m max.	Yes
	Commercial/retail – Depth 10m -24m.	15 – 20 metres	Yes
	Max length of any wall - 50m (may be longer with 9m x 9m indent deep soil area).	There are no walls exceeding 50 metres, the longest wall proposed is 34m.	Yes
Setback (B2 along Canterbury Rd)	Number of storeys at street - 1- 3 storeys.	4m - Ground floor. 3.3m - Levels 1 and 2.	Yes
	3m Min setback from street boundary.	4m Ground floor. 3.3m Levels 1, 2 and 3.	Yes
	5m Upper level setback - 4 storeys and above.	3.3m Levels 4 - 11.	No- see comment [2] below
	Do not present a flat façade along the setback line - provide articulation and variation**.**	The building is well-articulated by using varying recesses for balconies and wall-sections, textures, fenestration, colour and materials.	Yes
	No side setback in the B1 or B2 zones when desired character is for a continuous street frontage.	But for the required 7m setback due to the Sydney Trains easement, the building complies.	Yes
Building separation	Up to 3 storeys = 6m min 4 storey = 12m min 5 to 8 storey = 18m 9 + = 24m Zero building separation can be used in appropriate contexts, such as in a main street, to maintain a street wall building type with party walls.	The revised building maintains a zero building line to the rear, eastern boundary, consistent with development approved on 6-8 Close Street, with a 3m setback for 220-222 Canterbury Road. All these sites back onto the former Bowling Club land. The upper two levels, 10 and 11, are setback a minimum 8m from this boundary.	No - see comment [5] below
Exceptions to setbacks	Minor building elements may project into minimum setback area - underground parking, awnings and balconies and bay windows.	Due to the smaller floor plate, there are no encroachments into setbacks.	Yes
Public domain	Incorporate public pedestrian through-site movement, public open space, and other public domain improvements as shown on the public domain diagrams.	As discussed above in relation to SEPP 65 and cl4.6; and below regarding the Canterbury Town Centre.	Yes

Clause	Requirement	Proposal	Complies
Car parking & Access	The number of parking and bicycle spaces is regulated by Part 6.8. Integrate basement parking, restrict to building footprint; basement podium not to protrude more than 1m above existing ground level.	Proposed parking is satisfactory.	Yes.
	New vehicle access not permitted from Canterbury Road. Limit vehicular access points, provide separate vehicle and pedestrian entries. Optimise opportunities for deep soil, active street frontages, and good streetscape design. Minimise loss of street parking. Maximum 6m width for access driveways.	Vehicular access is provided to the proposal via the adjoining approved development (DA-169/2015) on 220-222 Canterbury Road and 4 Close Street.	No, see comment [3] below.
	Integrate car parking, vehicle ramps, driveways and entries, ventilation grills and screens into the overall facade and landscape design. Locate parking entries on secondary streets, rear lanes or internal driveways where possible.	The basement is below ground and integrated into the design. The vehicle entry point is from Close Street (via adjoining development).	Yes
	Minimise impacts on adjoining residences of noise, exhaust fumes and headlight glare.	The proposal is unlikely to result in unreasonable impacts at its vehicular access/egress point in Close Street.	Yes
	Keep all loading docks, parking areas and driveways clear of goods and do not use for storage, including garbage storage.	There is adequate provision for these areas clear of the manoeuvring area in basement.	Yes
	Signposting and line marking in accordance with AS 2890.1.	Could be provided.	Yes
Basement parking	Basement parking and ramps • Secure bicycle parking easily accessible from ground level, from apartments and other uses on site. • Provide shared multi-use parking and access driveways where possible. • Separate long term (resident and employee) and short-term (shopper and visitor) parking, separate parking for residential and non-residential users (secure access to long-term parking). • Ensure safe and efficient lift access from all parking.	The proposal satisfies these requirements.	Yes

Clause	Requirement	Proposal	Complies
	Basement parking appearance: • Improve appearance - recess car park entries from main building façade alignment. • Avoid black holes in the façade. • Return facade material into the car park entry recess for the extent visible from the street, and use materials similar to the façade on any interior of the car park that is visible from the street, conceal services, pipes and ducts.	The car park entry is not part of this application.	See comment [3] below.
Context	Building form and design do not have to mimic traditional features, but should reflect these in a contemporary design.	The proposal is of contemporary design.	Yes
Street address	Entries: • Locate entries so they relate to the street. • Provide awning over entry to contribute to legibility of development and public domain. • Provide accessible entries for all potential use such as furniture. • Provide entries to upper levels in business centres, from the street front facade to encourage activities on ground floor and service activities to rear of buildings.	A series of stairways and ramps lead to the central piazza, providing access to commercial premises and two separate lobbies for access to residential levels and the basement.	Yes
	Habitable rooms • Face habitable rooms towards the street, private open space, communal space, internal driveway or pedestrian ways in order to promote positive social interaction and community safety.	Numerous balconies face the street as well as entry points overlooked by the units. The central piazza and the northern walkway are overlooked by a number of units.	Yes

Clause	Requirement	Proposal	Complies
Facade design and articulation	• Avoid long spans of blank walls along street frontages and address both street frontages with façade treatment, and articulation of elevations on corner sites. • Incorporate contrasting elements in the façade - use a harmonious range of high quality materials, finishes and detailing. • Express building layout or structure in the façade - architectural features such as columns, beams, floor slabs, balconies, wall opening and fenestration, doors, balustrades, roof forms and parapets are elements that can be revealed or concealed and organised into simple or complex patterns. • Design facades to reflect the orientation of the site using elements such as sun shading devices, light shelves and bay windows. • Modulate wall alignment with a step in of min 1m.	There are no blank walls facing the street, with a well-articulated façade along Canterbury Road, facing the railway and open space to the east. There are contrasting elements in the façade including a variety of materials, finishes and recesses in the form of balconies and windows. The façade has various building elements integrated into it including balconies and balustrades, external fixtures and differing materials providing strong articulation.	Yes
	Where there is no characteristic built form: • Modulate facades with a scale and rhythm that reflects the intended use of the building, and the desired context as expressed on the building envelope diagrams.	As above.	
Façade details	Solid and void ratio: • Balconies and voids not to dominate publicly visible facades. • Use a solid to void ratio in the vicinity of 50%, with each facade measured independently. Disharmony arises when the range of solid to void is extreme, such as fully glazed facades or those with multi-balcony 'egg crates'. • Voids include fenestration, balconies, porches and loggias. • Do not include shopfronts in the 50% solid to void ratio calculation.	Each façade is evenly treated in terms of solid surfaces, fenestration and openings. There is an asymmetrical approach which helps to break up the elevations, with unifying vertical elements, such as glass louvres and off-set window placement. On each wall, no openings, glazing, metal, or masonry elements dominate.	Yes

Clause	Requirement	Proposal	Complies
	Balconies: • Use balconies in moderation and integrate them into overall composition of façade - do not use a monotonous or repetitive configuration of balconies. • Where possible place balconies facing an internal courtyard and do not place all balconies on an external façade. • Use balcony types that respond to the street context, building orientation and residential amenity. • Use lightweight materials and construction for balconies. • Construct balcony balustrades with glass panels, open metal framing, board or sheet cladding, rather than entirely of masonry, or break up significantly blank walls of masonry with panels.	Balconies are judiciously distributed across the building's facades. There is a blend of painted, and metal surfaces, with masonry of varying textures on the facades and balcony balustrades. The balconies integrate well into the façade, while some project from the façade, adding an ordered diversity to the building's form.	Yes
	Windows: • Locate and proportion windows to minimise scale and bulk of new building. • Large windows are most-effective when located at the corners of a building, or if they are designed as projecting bay windows. • Screen major windows with blinds, louvres, screens, awnings or pergolas.	There are a variety of windows proposed along the building's facades, complemented by suitable use of louvres, fixed and operable screens.	Yes

Clause	Requirement	Proposal	Complies
Shop fronts	• Windows on street frontage are transparent (not mirrored) to provide visibility between interior and exterior spaces, allow for surveillance of street and provide interest for pedestrians. • Do not place external solid roller shutters or brick walls on shopfronts (transparent or open grille shutter (design and materials to be satisfactory to Council) behind glass shopfront if required). • Consider alternatives to shutters such as the installation of a security alarm, a well-lit shopfront, and security patrols as a deterrent to criminal activity. • Where the shop use will not require a window shop display, consider folding or sliding glass doors that incorporate expanding security doors or grilles behind the glass doors.	A single shopfront is proposed along the Canterbury Road frontage. This premise and another three commercial premises address the pedestrian 'link' on the building's north eastern side. Three of the five shops have floor to ceiling windows overlooking the central piazza.	Yes
Corners, gateway sties and foreground treatments	• Gateway and foreground treatment sites are shown on the envelope diagrams in Part 3.1. • Emphasise important corners and gateways to centres with foreground treatments that are visually prominent against the background built form, in order to improve understanding of each centre - use stronger foreground treatments for gateway buildings. • Use corner features, wrap around balconies, vertical elements, changes in materials or colours and the like to emphasise corner buildings. • Vertical corner features do not exceed 1.5m above the maximum height of the building, or 2m for gateway sites. • Variation to the front setback requirements may be considered to emphasise a corner or gateway building. • Retention of characteristic facades	The site is not a corner site. Front setback is satisfactory. Façade retention is not required.	Yes

Clause	Requirement	Proposal	Complies
	may be given precedence over emphasising corner and gateway sites.		
Frontage types	Cantilevered Awning • Façade of building is built to front street boundary. An awning cantilevered from building facade just underneath the first floor overhangs the footpath by 3m. The footpath is covered so that pedestrians are able walk underneath the awning. • Awning height is in the range of 3.2m - 4.2m from natural ground level. • Place awning so that it complements the height, depth and form of the desired character or existing pattern of awnings, and provides sufficient protection from sun and rain.	3m deep awnings are cantilevered over the pedestrian 'link' and the Canterbury Road entry stairs and ramps. The latter does not extend over the road reserve (footpath).	Yes
Roof design	• No steeply pitched roofs that accentuate bulk – use roof pitch of 10º or less. • Emphasise building articulation with roof shape and alignment. • Relate roof design to size and scale of building, elevations and three dimensional building form, including design of any parapet or terminating elements, and the selection of roof materials. • Respond to site orientation of the site. • Relate roof design to desired built form and context (articulating the roof, or breaking down its massing on large buildings, to minimise the apparent bulk). • Using special roof features (elevated roof elements, which relate to the desired character of an area, to express important corners. • Integrate service elements into roof (lift over-runs, service plant, chimneys, vent stacks, telecommunication infrastructure, gutters, downpipes and signage).	The proposal includes two roof levels, to levels 10 and 11. Each are adorned with landscaping as rooftop terraces for use of the residents. One lift shaft and stairway partly extend beyond the upper levels to provide access to the roof levels, on the south eastern side of the building. The stairwell is set back 4m from this boundary. The design has been refined to integrate this infrastructure into the overall design as much as possible.	Yes

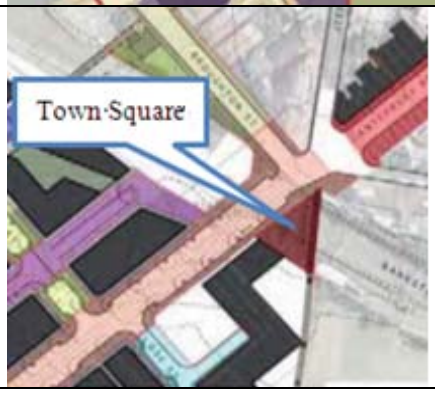
Clause	Requirement	Proposal	Complies
Services and utility areas	• Integrate services and utility areas with design of whole development. • Screen air conditioning units behind balcony balustrades, Provide screened recesses for water heaters rather than surface mounting them on exterior walls, • Locate meters in service cabinets. • Provide communal rooftop antennas. • Discretely located mailboxes at front of the property in accordance with Australia Post standards. • Locate system so it is not visible from the street or other public places.	Services are integrated into the design of the development.	Yes
Visual privacy	Locate and orient new development to maximise visual privacy between buildings on and adjacent to the site, and to minimise direct overlooking of rooms and private open space: • Provide adequate building separation, and rear and side setbacks when appropriate, • Orient windows of new living areas, and balconies or terraces, towards the street and rear of the lot, particularly on narrow sites, to use the street width and rear garden, or podium depth, to increase the separation distance, and avoid directly overlooking neighbouring residential properties.	Visual privacy is optimised within and between sites given the main orientation of windows and balconies is to either street or the public piazza in the centre of the combined development. There is adequate building separation within the site and when considering this proposal's approved neighbouring development. There is an absence of immediately adjoining buildings with which overlooking would be of concern. Visual privacy is reasonable created by unit layout, distribution of balconies, and distances between habitable rooms and between buildings.	Yes
	Use balconies to screen other balconies and any ground level private open space.	Overlooking is limited between balconies as they are judiciously distributed within the building's elevations. Screening is deployed when necessary.	Yes

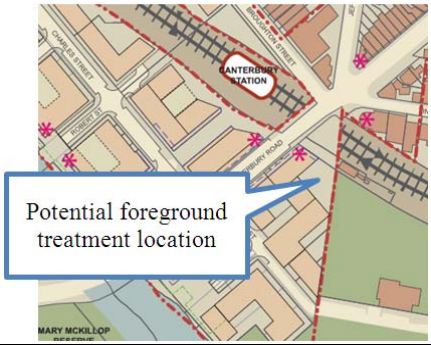
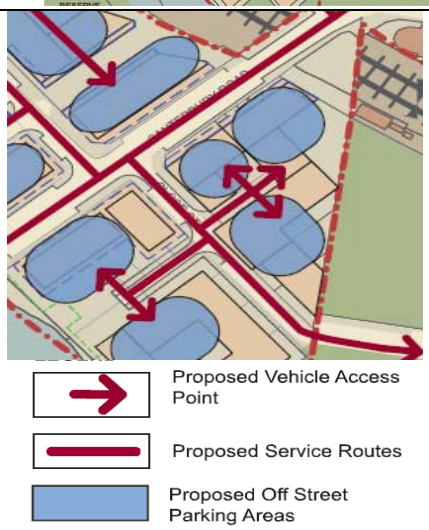
Clause	Requirement	Proposal	Complies
	Separate communal open space, common areas and access routes through the development, from the windows of rooms, particularly habitable rooms.	Communal open space for residents is located at level 10 and on level 11's roof. Two areas of public domain are included, being the central piazza and the north eastern 'link'.	Yes
	Change the level between ground floor apartments with their associated private open space, and the public domain or communal open space.	There are no ground floor units.	NA
	Use detailed site and building design elements to increase privacy without compromising access to light and air. Offset windows of apartments in new development and adjacent existing windows. Use recessed balconies and/or vertical fins between adjacent balconies, solid or semi-solid balustrades to balconies, louvre or screen panels to windows and/or balconies.	Windows of living areas and balconies are suitably oriented and screened.	Yes
Acoustic privacy	Adjoining railway or busy road • Address 'Development Near Rail Corridors and Busy Roads (Interim Guideline'), NSW Department of Planning. • Comply with 'A Guide to Working in and Around Rail Corridors' and requirements of the Rail Infrastructure Corporation and State Rail Authority 'Interim Guidelines for Applicants – Consideration of Rail Noise and Vibration in the Planning Process'.	The acoustic report submitted with the application adequately addresses these issues.	Yes

Clause	Requirement	Proposal	Complies
	Lower levels facing the road or rail to: • Locate windows facing the noise source and ensure that total unprotected window area is minimal (and following Building Code) so as to limit amount of airborne noise entering the built fabric. • Ensure the detailing of the window types addressing the corridors are designed and constructed to attenuate excessive noise - (double and triple glazing and insulated to manufacturers standards). • Balcony parapet walls constructed of solid masonry or materials of similar sound attenuating qualities. • When designing public spaces fronting busy roads and rail corridor at ground level, consider the use of elements such as moving water and screens to achieve sound attenuation.	These matters have been addressed in the submitted acoustic report.	Yes
Open space	Balconies and private courtyards: • Min area – 10% of each dwelling's floor area (2+ bed units). • Primary balcony - 8m² (1 bed); 12m² (2+ beds). • Min depth of 2m for primary balcony.	All units have balconies which are at least 10% of each 2 bedroom unit's floor area. 31 of 53 x 2 bedroom units have 10m^2 balconies. Balconies are at least 2m deep. Balconies to all 1 bedroom and studio apartments comply.	No- see comment [4] below

Clause	Requirement	Proposal	Complies
	Private open space (POS) design: • Shop top housing open space may include a balcony or garden terrace on a podium level. • Provide privacy to POS - locate or screen to prevent direct overlooking. • Locate adjacent to main living areas (living/ dining/family room or kitchen) with direct access. • Min 2.5m by 2.5m (1 area) suitable for outdoor dining with dining table and 2-4 chairs, one additional area for outdoor clothes drying, concealed by shutters, screens, fences or tall opaque balustrades. • Design open space to accommodate variety of activities. • For dwellings with a single open space, irregular "L" or "U" shapes preferred to separate uses. • Design principal POS as 'outdoor room' - privacy-screens, sun-shading, pergolas or shrubs and trees, midwinter sunlight, privacy, next to principal indoor living areas.	Each unit has a balcony for POS, ranging from 6m² (studios) and 8m² - 12m² (1 and 2 bedroom units). All balconies adjoin living areas and have acceptable privacy. Where required, angled blades and louvres are included for climate and privacy control. All balconies have a minimum depth of 2m, meaning they do not provide 2.5m x 2.5m for tables and chairs.	No, - see comment [4] below
	Balcony design: • Provide additional amenity and choice with secondary balcony (Juliet balcony) or operable wall with balustrades, adjacent to bedrooms. • Balcony to take advantage of local climate and context. • Design balustrades to allow views and casual surveillance of street and visual privacy.	The balconies have been designed with generally solid balustrades and surveillance of the street is provided. Local views and solar access are available from and to the balconies.	Yes

Clause	Requirement	Proposal	Complies
	Communal open space (COS): • Podiums or terraces, deep-soil setback or separation between buildings. • Min 6m dimension for COS. • Consolidate COS into recognisable areas. • Sunny locations, adjacent to/visible from main building lobby. • Windows to overlook COS and approaches to main building lobby. • Screen walls max 1.2m high. • Min 10% of site area as COS on sites >500m². • Child play areas and indoor areas/gyms are encouraged.	The two ground level public domain areas are able to be used by residents and have a combined area of 409m^2. The two roof terraces have a combined area of 665m^2.	Yes
Internal dwelling design	Room dimensions • Accommodate range of furniture typical for room. • Min width – 3.5m for living area, main bedroom. • Min width – 3m for secondary bedroom	All minimum room dimensions are complied with, noting 80% of units exceed RFDC 'rules-of-thumb' for minimum unit sizes.	Yes
	Storage Required No min. storage area specified for eight studio units. 29 @ 6m³ (1 bed units) 53 @ 8m³ (2 bed).	Basement storage for 89 units is available, as follows: 24 storages @ 4m³ 20 storages @ 6m^3 45 storages @ 8m³.	No - could be conditioned to comply
Housing choice	• Mix of unit sizes - studio, 1, 2, 3 and 3+ beds. • 10% of units (>30 units/building) - accessible or adaptable apartments. • Promote housing choice with private gardens/terraces directly accessible from main living spaces, maximising accessible and visitable apartments on ground floor, change /partial change in use (home office accessible from street).	89 units proposed are:- • 9 x studio units (10.1%) • 27 x one bed units (30.3%) • 53 x two bed units (59.6%) • 9 adaptable units (10.1%)	Yes

Clause	Requirement	Proposal	Complies
Appendix 3.2 Canterbury Town Centre			
Aims	• Redevelop the Riverfront district into an attractive vital and vibrant mixed-use environment via a rich network of publicly accessible spaces and places. • Create attractive waterfront along Cooks River through pedestrian and cycle ways, landscaped open spaces, opportunities for outdoor activities. • Reinstate the role of the Traditional Centre on Canterbury Road.	The proposal is consistent with the DCP's aims.	Yes
Structure plan (Figure 3.2.1)		Should the Civic or Town Square north east of the site eventuate there would be scope to integrate with the pedestrian 'link' proposed adjacent to the railway. Despite being in the DCP, the square is unfunded by the town centre's current contributions plan.	Yes
Specific heights in storeys (Figure 3.2.2)		The proposal comprises 10 & 12 storeys.	No - refer to Cl4.6 evaluation above
Canterbury Town Centre public domain structure plan (Figure 3.2.3)		See comment above and detailed discussion in the SEPP 65 section of this report.	Yes

Clause	Requirement	Proposal	Complies
Canterbury Town Centre corner treatment sites (Figure 3.2.4)		The design responds to the site's cross-slope at the Canterbury Road frontage with a series of ramps and stairways that lead to the residential lobbies and retail premises off a central piazza.	Yes
Parking and vehicle access (Figure 3.2.5)		The proposal involves vehicle access from Close Street (via the adjoining site). Off-street car parking is provided in the basement, but not as part of the subject site.	No - see comment [3] below

CDCP 2012 Part 6 – Compliance Table

Clause	Requirement	Proposal	Complies
Part 6.1: Access and Mobility			
Assessment Table	• A compliance report in relation to the Disability (Access to Premises-Buildings) Standards. • Access in accordance with the NCC and AS 1428.1 and 1428.2 – (AS 1428.2 advisory only). For lifts – disability access as per AS 1735.12 as required by the NCC. Appropriate access for all persons through the principal entrance of a building to be provided. • A continuous accessible path of travel to all required facilities. • In a car parking area containing ten or more spaces, one space to be provided for each 50 parking spaces or part thereof for employees.	Access is provided via a combination of ramps and stairways at ground level, to lifts which access upper levels and the basement. Four of five commercial premises are directly accessible from the pedestrian 'link' on the building's north easetern façade. The other is accessible from the central piazza.	Yes
Part 6.2 – Climate, and energy and resource efficiency			

Clause	Requirement	Proposal	Complies
Site layout and building orientation	Design and orientate the building to maximise solar access and natural lighting, without unduly increasing the building's heat load.	The revised proposal is generally orientated to the north such that the majority of living areas and balconies have a northerly aspect.	Yes
Daylight and sun access (New buildings in business zones)	At least 70% of the proposed apartments' living area windows and private open space (balconies) receive at least two hours sunlight between 9.00 am and 3.00 pm on 21 June.	64 units (71.9%) will receive at least two hours sunlight between 9am and 3pm in mid-winter.	Yes
	At least 50% of any communal open space receives two hours of sunlight between 9.00 am and 3.00 pm on 21 June.	The two roof terraces will receive adequate sunlight. The northern 'link' will enjoy good solar access in in mid-winter.	Yes
Ventilation (Residential and mixed-use)	Provide natural cross ventilation to at least 60% dwellings, and natural ventilation to 25% of kitchens in a multiple unit development.	60.6% (54 of 89) of units are naturally cross ventilated. All kitchens are ventilated by windows or by facing a balcony.	Yes
	Use entranceway as ventilation pathway to units.	As required.	Yes
	Limit residential building depth to 18m glass line to glass line to support natural ventilation - rear of any habitable room should not be >8m from window.	Maximum depth is 15.6m on all residential levels.	Yes
Part 6.3 Crime Prevention			
Residential Development	Allow natural observation from the street to the dwelling, from the dwelling to the street, and between dwellings.	Informal surveillance of public areas and activation of the public domain are acceptable.	Yes
	Provide an appropriate level of security for individual dwellings and communal areas.	There is adequate security with separate residential access provided from two lobbies.	Yes
	Design dwellings and communal areas to provide a sense of ownership.	Rooftop terraces provide a sense of ownership and the building's architecture would engender a sense of identity for occupants.	Yes

Clause	Requirement	Proposal	Complies
Commercial, Retail, Industrial & Community Facilities	Locate public services in areas of high activity. Allow for natural surveillance and suitable streetscape appearance. Provide entries that are clearly visible from the street. Maximise the access and visibility of facilities. Use building materials that reduce opportunity for intruder access.	As discussed, the proposal activates frontages to the public domain within and next to the development, with potential to offer connectivity with development to the east and integration with a public plaza adjacent the site's northern boundary, should either eventuate.	Yes
Car Parks	Provide adequate lighting. Use materials that enhance natural surveillance within the car park. Allow natural observation. Ensure clear sight lines throughout the parking area. Design car parks to allow for natural surveillance. Provide security to monitor access to area. Ensure ease of access and safety within the car park. Clearly distinguish between private and public space. Ensure that parking areas are clearly identified by signage to prevent unintended access and to assist persons trying to find their car.	There are minimal entrapment opportunities in the basement and there are generally clear lines of sight throughout the basement.	Yes
Part 6.8 – Vehicle Access and Parking			
Minimum parking and servicing requirements	Shop top housing in B2 zones – Large Centres: • Studio: 0.25 spaces/dwelling (9 x 0.25 = 2.25 spaces). • one bedroom: 0.8 spaces/dwelling (29 x 23.2 spaces). • two bedroom: 1 space/dwelling (41 x 1 = 41 spaces). • three bedroom +: 1 space/dwelling (N/A) • Adaptable – space/unit (10 x 1 = 10 spaces). • Visitor Parking: Not required (N/A).	Required - 77.45 spaces. Provided – 78 spaces (including 10 adaptable spaces). 3 spaces are non-compliant with minimum dimensions.	Yes
	Commercial in B2 zone • Commercial/office - 1 space/60m² or shops (9.4 spaces = 10 spaces required). • Minimum 1 courier parking space.	10 commercial spaces are provided (including 1 adaptable space).	Yes

Clause	Requirement	Proposal	Complies
	• Car wash (10+ units) – 1 car wash bay	A car wash bay could be provided in the basement.	Yes
	Bicycle spaces • Residential - 1 space/5 dwellings - 17.6 spaces. • Residential Visitor – 1 space / 10 dwellings – 8.8. • Commercial – 1 space/200m² (staff) and 1 space/750m² over 1000m² (visitors) – 4.4 spaces for staff required. • Total required = 30.8 bicycle spaces.	31 bicycle spaces are provided.	Yes
Part 6.9 – Waste Management			
Demolition and construction phase	Submit a statement in relation to the waste that will be generated in the demolition and construction phase.	A Waste Management Plan was provided with the original application.	Yes
Waste management plan	Submit a detailed Waste Management Plan for the on-going use of the development once completed.	A Waste Management Plan was provided with the original application.	Yes
Residential flat buildings, residential in mixed use development	• Rubbish bin allocation – 1x 240 litre bin/2 units + 1 bin for any 1 unit over. • Recycling bin allocation - 1 x 240 litre bin/3 units + 1 bin for any one/two units over. • Garden bin allocation – 1 x 240 litre bin/5 units + 1 for any 1-4 units over (on request).	10 x 1,100l bins are provided for waste and 7 for recycling. These provide comparable capacity of the required number of 240l bins. An area of $4m^3$ is provided for bulky waste. No garden recycling bins are required for this development.	Yes
Non-residential development	• Rubbish – 1 x 240 litre rubbish bin/property. • Recycling - 1 x 240 litre recycling bin/property. • Garden vegetation - 1 x 240 litre bin following assessment in the individual case. • Waste and recycling storage area to meet anticipated waste generation rates. • Provision for separation, storage and collection of recyclables. • In business centres wherever possible the access to garbage collection should be from a rear laneway or side street.	5 x 240l bins are provided for waste, 4 for recycling and an area greater than $4m^3$ for bulky items are provided in the basement. Close Street will be used for garbage collection. Provision for the 5 commercial premises is adequate.	Yes

As demonstrated in the above table, the proposal complies with the requirements of CDCP 2012 with the exception of the following:

[1] Site dimensions and area, and isolation

The subject site has a compliant frontage of 19.2m with a non-compliant area of 1,264m^2. The applicant contends that when combined with the neighbouring development which is joined by way of access, the overall proposal satisfies minimum area requirements, thus achieving the intent of the DCP to encourage amassing of sites to optimise the design framework of the LEP and the DCP. However there are issues with this arrangement and the proposal therefore fails to meet the minimum area requirements of the DCP.

The adjoining site to the west is 224 Canterbury Road which has a 5.66m frontage to Canterbury Road. Agreement could not be reached with the owner to acquire this site and appropriate documentation was submitted. However, the site could be developed along with the site at 226-240 Canterbury Road to meet the required frontage. This matter was considered as part of the assessment of the neighbouring DA-169/2015.

[2] Setback - upper level setback

The building's ground level is set back 4.0m from the boundary to Canterbury Road. Remaining levels are set back 3.3m. Above the fourth level the DCP requires buildings to be setback another 5.0m, a total of 8m. However the building maintains the 3.3m setback to Canterbury Road from level 4 to level 11. The variation is 4.7 metres (58%).

The façade to Canterbury Road is rhythmically articulated with strong vertical and horizontal lines, given depth by cantilevered or recessed balconies and tall, narrow windows.

Overall the revised design is consistent with the setback objectives:

– The 3.3 metre setback and access treatment off the Canterbury Road footpath strongly define the street's edge.
– The building's setback to Canterbury Road is consistent with that approved for the adjoining development and reflects that of the approved development at 2 Charles Street, approved with a three metre setback.
– Solid masonry and building articulation would likely aid in reducing road noise.

Taking the above points into account the setback is considered acceptable.

[3] Vehicular Access

The site relies on the consent granted to DA-169/2015 for the development of the site at 220-222 Canterbury Road and 4 Close Street. Conditions of this consent allow for an opening to be provided between the basement of the subject development and the adjoining development; and require registration of a Right of Carriageway to enable vehicular access from the subject land over the adjoining site to Close Street.

Due to the application's reliance on consent to develop the adjacent site, this may leave the subject land without independent, practical and a legal form of vehicular access. Should development of the adjoining site not proceed, the only remaining means of access is via Canterbury Road.

In the event this application is refused as recommended, another application would rely on negotiating access through neighbouring land or access directly to and from Canterbury Road. The latter option would not be supported on grounds of pedestrian and traffic safety.

The subject application does not include No.4 Close Street, being the land over which the abovementioned consent requires a Right of Way to give access to the subject site. As a consequence, the proposed means of access to the proposal is not part of this development application and consent should not be granted without independent, practical and legal means of vehicular access being provided to and from the subject site to a public road.

[4] Open Space - private open space, balcony sizes and depth

Firstly, 31 of 53 x two bedroom units proposed have balconies of $10m^2$ rather than $12m^2$. All one x bedroom apartment balconies satisfy the $8m^2$ minimum.

Secondly, all balconies have a maximum depth of 2.0m, meaning that there is not an area 2.5m x 2.5m available for a table and chairs.

Having regard to relevant DCP's objectives for open space these variations are acceptable for these reasons:

- Balconies and communal rooftop terraces are available to all residents. With all residents having access to quality rooftop spaces these common areas compensate for the smaller private balconies.
- Despite the balconies not allowing larger outdoor dining arrangements, more space-efficient table and seating arrangements could be installed on or affixed to side walls, within balconies.
- Another mitigating factor is that all the balconies are an effective outdoor section of the unit's living areas, accessible by wide openings from lounge or dining rooms.
- The 2m depth is consistent with current guidelines (Apartment Design Guide, p92, notes a small table and four chairs can be placed on a 2 metre wide balcony).

[5] Building Separation and draft LEP

Having regard to the draft LEP to rezone the adjoining bowling club site from RE1 to R4, the proposed nil eastern boundary setback has the potential to undermine the development potential of the bowling club site and is not an appropriate response to the interface between the B2 and R4 zone.

Rezoning of the bowling club would allow for residential apartment development and as such building separation must be considered. Council has identified a 9 metre setback to the common boundary with the subject site under the draft masterplan.

It would therefore be appropriate that any development of the site provide for a minimum 9 metre setback to the sites eastern boundary so as to provide suitable building separation consistent with the provisions contained within the Residential Flat Design Code.

- **Canterbury Town Centre and Riverfront Precinct Development Contributions Plan**
  Significant upgrades of existing infrastructure are necessary to sustain the scale of urban renewal envisaged for the Canterbury Town Centre. Accordingly, the main purpose of this Plan is to enable reasonable contributions to be obtained from development for the provision of new and augmented local infrastructure that will both benefit and be required for the proposed development.

  Residential flat developments are identified as increasing demand for local infrastructure and are therefore subject to a contribution. The Plan requires a contribution of $149.59 per square metre of gross floor area (GFA). The quantum of the contribution at this rate would be $1,151,992.59.

Other Considerations

- **Likely Environmental Impacts**
  Apart from the proposal's environmental performance already discussed, other environmental matters specific to the development are addressed below.

  Sediment and Erosion Control
  Conditions could require installation and maintenance of sediment and erosion controls during demolition and construction phases of development were approval recommended.

  Excavation
  The development includes basement levels which will require excavation. Conditions can be recommended to address dilapidation reporting and the carrying out of excavation work, to ensure safety and minimise the risk of damage to adjacent properties and infrastructure, including the railway and Canterbury Road.

- **Suitability Of The Site**
  As discussed in relation to satisfaction of B2 Local Centre zone objectives a development compliant with LEP and DCP requirements would have been suitable on the site. The proposal is not suited to the site as its height and density are excessive with regard to our CLEP 2012s height and floor space ratio standards and the built form and townscape envisaged by our CDCP 2012.

Further, the proposal relies on vehicular access over (adjoining) land that does not form part of the subject application. The proposal relies on a consent which likewise does not apply to the subject site, to gain access to a public road. Therefore the site is unsuitable, as independent, physical and legal means of vehicular access is not available to the development as proposed.

- **The Public Interest**
  As demonstrated by this report, the proposal is not in the public interest, as it fails the preconditions for approval stipulated by clause 4.6 of our CLEP 2012.

Referrals

- **Development Engineer**
  Conditions could ensure compliance with relevant standards and requirements.

- **Landscape Architect**
  Our Landscape Architect has reviewed the landscape plans for the proposal and raised no objections.

- **Disability Access**
  An accessibility report was not submitted with the application.

Notification

The proposed development and its sister development (DA 169/2015) were publicly exhibited and submissions invited in May and June 2015. Adjoining land owners were notified. Three submissions were received.

The amended development application was publicly re-exhibited, adjoining land owners re-notified and written submissions invited per the requirements of the DCP for a period of 21 days until 8 June 2016. No submissions were received.

Issues raised by the three submissions received during the first exhibition period are now addressed.

- **Overshadowing to 224 and 226 Canterbury Road**

  Comment
  This property receives direct sunlight for two hours on the winter solstice. From 1.00pm, the proposal casts no shadow on the building at this address.

  However, this property would likely be shadowed in the afternoon by the building at 2 Charles Street. The approved neighbouring development would have a more substantive impact than the proposal under consideration in this report. Given the orientation of these blocks, the local street pattern and the building envelopes established for the locality's redevelopment, this extent of overshadowing would have been anticipated.

Mid-winter being the worst case scenario, adequate solar access is achieved for the remainder of the year.

- **Noise generated by occupants of new building**

  Comment
  Any noise generated is not expected to be above that of a high density mixed use area for which the site and locality are zoned. The acoustic report submitted with the application recommended measures to ensure adequate acoustic controls are adopted in the building's construction.

- **Extra traffic generated**

  Comment
  The site and the surrounding area have been zoned for high density mixed use and residential development. The impact on and capacity of the area to accommodate permissible development has been taken into account in the studies that informed the Canterbury planning framework's preparation.

  Our Traffic Engineer has assessed the application and found its traffic impacts and proposed management measures to be satisfactory. Neither did the RMS object to the proposal on traffic grounds.

- **Excavation and construction noise**

  Comment
  Some inconvenience will unavoidably occur during construction. This is typically controlled by regulating hours of work, ensuring erosion and sedimentation controls, controlling works in the road reserve, excavation and demolition; and use of any crane, hoist, plant or scaffolding.

- **Damage caused to surrounding buildings and access way by significant excavation and construction**

  Comment
  A dilapidation report is typically required prior to construction commencing and at completion of the project. The developer would be obliged to protect adjoining buildings from collapse and damage.

- **Blocking access to adjoining property**

  Comment
  A condition could ensure access to all surrounding properties is maintained at all times.

- **This development will contribute to the overdevelopment that is currently taking place in Canterbury, which residents are becoming very concerned about, such as the proposal to rezone and reclassify the Canterbury Bowling Club, depriving the community the space for socialising and community activities**

  Comment
  The Canterbury town centre is an area undergoing transition. Taller mixed use buildings have been planned, to optimise the number of people with access to the amenities of the town centre and the Cooks River.

- **Resulting in 226 Canterbury Road being overpowered by large unit blocks from every aspect of the building, with very little privacy at all**

  Comment
  Impacts on privacy are unavoidable given the increase in density on the site and in the area. Where there is a sensitive interface, reasonable privacy levels are created with judicious location of habitable and non-habitable rooms in units, balconies and window placement and deployment of privacy screens and louvres.

- **Shadow diagrams inaccurate**

  Comment
  Shadow diagrams have been updated for the amended design and these were part of the second exhibition, giving people the opportunity to comment again on the impacts of the proposal. No comments were received.

Conclusion
The amended development application has been assessed with regard to relevant provisions of section 79C of the Environmental Planning and Assessment Act, 1979 and all pertinent environmental planning instruments and plans.

The Canterbury Local Environmental Plan 2012 permits the proposal with consent. As demonstrated by this report, the development is consistent with a number of provisions that apply to the site.

However, the applicant's written request to depart from our maximum floor space ratio and maximum building height standards has not satisfied the preconditions of clause 4.6 of our CLEP 2012, to enable consent to be granted.

Neither does the application satisfy certain provisions of our DCP, where those provisions are related to the principal height and density standards of the LEP.

Accordingly, refusal of the development application is recommended.

RECOMMENDATION:

THAT Development Application DA-168/2015, be **REFUSED** in accordance with Section 80 (1) of the Environmental Planning and Assessment Act, 1979, for the following reasons:

1. The applicant has not demonstrated that strict compliance with the maximum building height standard of Clause 4.3 (2) of the Canterbury Local Environmental Plan 2012 is unnecessary or unreasonable in the circumstances of the case. In accordance with Clause 4.6 (3) (a) of the Canterbury Local Environmental Plan 2012, consent must not be granted.
2. The applicant has not demonstrated sufficient environmental planning grounds to justify variation of the maximum building height standard of Clause 4.3 (2) of the Canterbury Local Environmental Plan 2012. In accordance with Clause 4.6 (3) (b) of the Canterbury Local Environmental Plan 2012, consent must not be granted.
3. The proposed additional height is inconsistent with Clause 4.3 (1), (a) and (c) of the Canterbury Local Environmental Plan 2012. Consent must not be granted, in accordance with Clause 4.6 (4) (a) (ii) of our CLEP 2012.
4. The applicant has not demonstrated that strict compliance with the maximum floor space ratio standard of Clause 4.4 (2) of the Canterbury Local Environmental Plan 2012 is unnecessary or unreasonable in the circumstances of the case. In accordance with Clause 4.6 (3) (a) of the Canterbury Local Environmental Plan 2012, consent must not be granted.
5. The applicant has not demonstrated sufficient environmental planning grounds to vary the floor space ratio standard of Clause 4.4 (2) of the Canterbury Local Environmental Plan 2012. In accordance with Clause 4.6 (3) (b), consent must not be granted.
6. The proposed additional gross floor area is inconsistent with Clause 4.4 (1) (d) of the Canterbury Local Environmental Plan 2012. Consent must not be granted, in accordance with Clause 4.6 (4) (a) (ii) of our CLEP 2012.
7. The application does not comply with the following provisions of the Canterbury Development Control Plan 2012:
   a) Clause 3.1.6 Height, and
   b) Appendix 3.2 – Canterbury Town Centre, Figure 3.2.2 – Specific Heights in Storeys.
8. The proposed development relies on vehicular access over land which does not form part of this application. The proposal fails to provide an independent, practical and legal means of vehicular access from the site to a public road.
9. The proposal fails to meet the minimum area requirements under Canterbury Development Control Plan 2012 of 1500sqm to achieve the stated density, floor space ratio and building heights under Clause 2.1.2 (iv).
10. The proposal fails to provide suitable building separation along the eastern boundary with the proposed development of the site at 15 Close Street Canterbury

WE ALSO ADVISE

11. Our decision was made after consideration of the matters listed under Section 79C of the Environmental Planning and Assessment Act 1979, and matters listed in Council's various Codes and Policies.

12. If you are not satisfied with this determination, you may:
    a) Apply for a review of a determination under Section 82A of the Environmental Planning and Assessment Act 1979. A request for review must be made and determined within 6 months of the date of this Notice of Determination and be accompanied by the relevant fee; or
    b) Appeal to the Land and Environment Court within 6 months after the date on which you receive this Notice of Determination, under Section 97 of the Environmental Planning and Assessment Act 1979.

2 UNITS 19 & 20/15-21 NINTH AVENUE, CAMPSIE: CHANGE OF USE FROM HEALTH MASSAGE CENTRE TO A BROTHEL

FILE NO: **639/15D U19 PT2**

REPORT BY: **CITY DEVELOPMENT**

WARD: **CANTERBURY**

D/A No:	**DA-67/2016**
Applicant: **Owner:**	**Mr Joseph Caruana** **Mr Tsz King Chu**
Zoning:	**B2 Local Centre**
Application Date:	**23 February 2016, Amended plans received 14 July 2016**

Summary:

- A Development Application has been received to change the use of the existing health massage centre to a brothel.
- The proposal relates to a 'Sex Service Premise' which is permissible in the B2 Local Centre zone under Canterbury Local Environmental Plan 2012.
- The proposal has been assessed against relevant provisions of Canterbury Local Environmental Plan 2012 (CLEP 2012) and Canterbury Development Control Plan 2012 (CDCP 2012). The proposal, while permissible, departs from the locational requirements for brothels listed in the Development Control Plan with regard to the distance from educational establishments, lack of parking and located opposite residential zones.
- The application is to establish a new brothel and is referred to the Independent Hearing and Assessment Panel for determination.
- In accordance with Part 7 of the CDCP 2012, all owners and occupiers of adjoining properties were notified of the proposed development. During the notification period, 21 submissions were received and four petitions, containing a total of 1377 signatures objecting to the proposal in relation to impacts on suburban life in the area, location, traffic, behaviour of clientele, breaches of original consent and parking.
- It is recommended that the application be refused.

Council Delivery Program and Budget Implications:

This report has no implications for the Budget. The assessment of the application supports our Community Strategic Plan long term goal of Balanced Development.

Report:

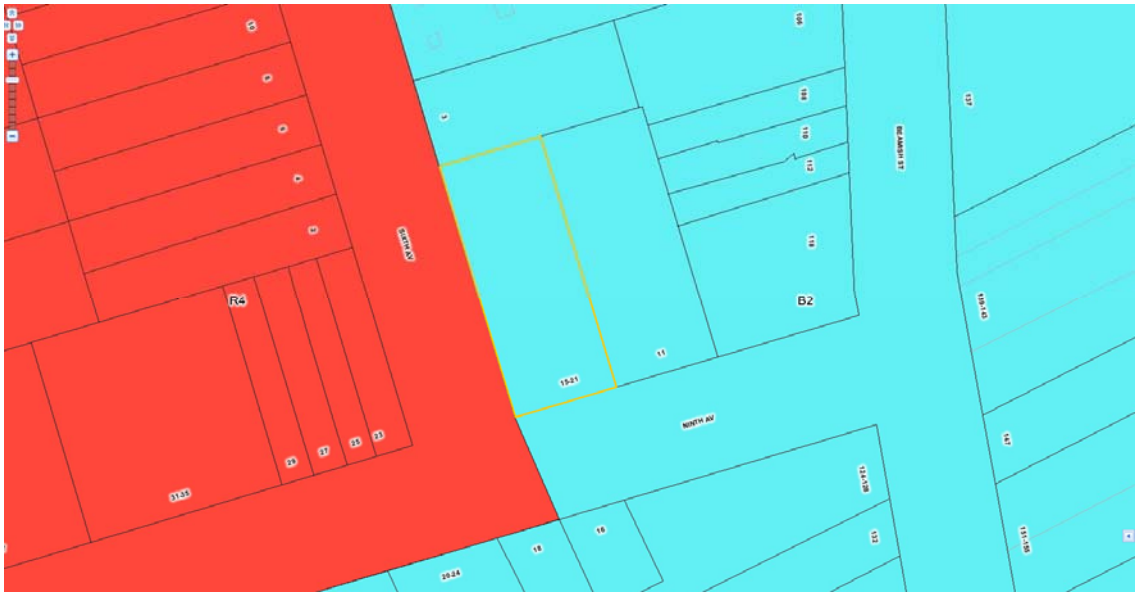
Background

The subject site accommodates a Chinese massage centre, within units 19 and 20, which was approved under DA-341/2007. The premise has a long history of non-compliance, and various operators over the years have been served Orders and undergone Court action based on its unauthorised use as a brothel. Despite this, the premises continued to operate as a sex service premises without approval from Council. This Development Application is a result of the current Land and Environment Court proceedings whereby it was agreed by all parties, that an application would be submitted to attempt to regularise the unauthorised use. *(NSWLEC No. 2016/00155224 (Formerly 15/41010) - Canterbury Bankstown Council v Caruana - Ninth Avenue Brothel))*

Site Details

The existing shop top housing development is located on the northern side of Ninth Avenue, Campsie at the corner of Sixth Avenue and is legally described as Lot 19 SP 49367 and Lot 20 SP 49367. The property has a primary frontage of 20.115 metres to Ninth Avenue and a secondary frontage of 50.290 metres to Sixth Avenue. The site is 1011.58m^2 on which sits a three storey mixed use development, approved under BA-1216/1993, as a commercial retail building with ground floor retail and commercial tenancies and two residential levels above. There is a basement car park that services all of the units above, both commercial and residential and is accessed via Sixth Avenue. The site falls slightly from front to rear by approximately 1.75 metres running north which gives access to the basement as well as a pedestrian ramp which provides access to the commercial tenancies and upper level residential units. The site is zoned B2 Local Centre to the North, South and East, with R4 High Density Residential to the West.

Aerial view of site



Zoning of site

Street view of site on Ninth Avenue

Street view of site on Sixth Avenue

Existing and Surrounding Uses

The mixed use development comprises of a variety of commercial businesses. The subject unit accommodates a Chinese massage, approved under DA-341/2007. A Chinese health medicine centre, a physiotherapy rehabilitation centre, two real estate agencies, a migration and education agent, solicitor and a conveyancing practice make up the other commercial tenancies with the rest of the building being residential units.

There is another mixed use development, further east along Ninth Avenue and a real estate agency on the corner of Ninth Avenue and Beamish Street. To the north and south, there are a mixture of residential flat buildings and commercial units. To the west, there is a mixture of one and two storey dwellings located in the R4 Residential zone opposite the subject site.

Proposal

The proposal is to change the use of units 19 and 20 from a health massage centre to a brothel. This will include provision of two client service rooms, three massage rooms, three sex workers, a receptionist/cleaner and a manager. It is proposed that the premises will operate seven days per week between the hours of 10am and 12 midnight. The proposal does not propose any new signage but will continue to use the signage advertising massage services. The proposal does not involve any physical works.

Statutory Considerations

When determining this application, the relevant matters listed in Section 79C of the Environmental Planning and Assessment Act 1979 must be considered. In this regard, the following environmental planning instruments, development control plans, codes and policies are relevant:

- Canterbury Local Environmental Plan 2012 (CLEP 2012)
- Canterbury Development Control Plan 2012 (CDCP 2012)

Assessment

The development application has been assessed under Sections 5A and 79C of the EP&A Act and the following key issues emerge:

- **Canterbury Local Environmental Plan 2012 (CLEP 2012)**

  The subject site is zoned B2 Local Centre under Canterbury Local Environmental Plan 2012 where the proposed sex services premises is a permissible use within the zone with development consent. The proposal also meets the objectives of the zone.

Standard	Requirement	Proposal	Complies
Zoning	B2 Local Centre	Sex Services Premises	Yes
Building Height	21 metres	Existing building	Yes
FSR	N/A	N/A	Yes

  The proposed development is consistent with the relevant zoning provisions of Canterbury Local Environmental Plan 2012.

  It is also relevant that a planning proposal which will insert the Standard Instrument LEP provision for Sex Service Premises into LEP 2012 has been prepared and placed on public exhibition. Since exhibition, Council has resolved to proceed to finalise the LEP amendment and it is expected that gazettal will take place before the end of the year.

  While any exhibited planning proposal is required to be taken into account in the assessment of development applications, the provision in the proposed LEP amendment that relate to specific locational criteria are not relevant to this particular application.

  Council is required however, to also consider the impact of the proposed development and its hours of operation on any place likely to be regularly frequented by children.

  In this context, it is considered that this is insufficient reason alone to refuse the application.

  The existing provisions in Council's DCP however remain relevant and are addressed in the following section.

- **Canterbury Development Control Plan 2012 (CDCP 2012)**

  An assessment of the proposal against the numerical requirements in Part 5 of Canterbury Development Control Plan 2012 Specific Development Types, as they relate to brothels is detailed below.

Standard	Requirement	Proposal	Complies
Restricted Premises and Sex Service Premises			
Location			
Brothel not located adjoining or in walking distance of another brothel.	100 metres	There are no approved brothels located within 100m walking distance of the proposed development. The closest approved sex service premises are located at 303 Beamish Street, Campsie and 269 Canterbury Road, Canterbury. These are located a distance of 750m and 1.7 kms respectively	Yes
Brothel not located adjoining or in walking distance of residentially zoned land	100 metres	The site adjoins R4 High Density Residential zoned land. This is located west of the site. The site is a mixed use development, which incorporates residential development.	No – See comment [1] below
Brothel not located adjoining or in walking distance of Place of Worship, School, Community Facility, Children's Centre, Hospital, Rail Station, Bus stop, Taxi Stand or other place regularly frequented by Children.	200 metres	<u>Place of Worship</u> - St Johns Anglican Church - 600 metres - Kingdom Hall of Jehovah's Witnesses - 300 metres	 Yes Yes
		<u>Schools</u> - School, James An College- 55 metres - Harcourt Public School – 800 metres - Campsie Public School – 750 metres	 No – see comment [2] below Yes Yes
		<u>Community Facility</u> Orion Function Centre - 174 metres	No –see comment [2] below
		<u>Children's Centre</u> - Early Childhood, Canterbury Council, 137 Beamish St, Campsie - 144 metres, - Canterbury Family Day Care, 12 Campsie St, Campsie - 190 metres	 No – see comment [2] below
		<u>Hospitals</u> Canterbury Hospital - 1.5 kilometres	 Yes
		<u>Rail Station</u> Campsie Train Station – 300 metres	 es
		<u>Bus stop</u> Beamish St Before Ninth Ave, Stop ID: 219445 - 173 metres	No – see comment [2] below
		<u>Taxi Stand</u> 37 North Parade - 280 metres	 Yes
		<u>Other place regularly frequented by Children</u> Shanshan Dancing Studio, 22/94 Beamish St, Campsie – 210 metres	 Yes
Brothel not located in vicinity to	Not in vicinity Licenced	<u>Licenced Premise</u> Wineman Bottle Shop – 130 metres	 Yes

Standard	**Requirement**	**Proposal**	**Complies**
Licenced Premises, Hotel, Club or Restaurant	Premises, Hotel, Club or Restaurant	<u>Hotel</u> - Oasis on Beamish Hotel – 240 metres - Campsie Hotel – 800 metres	 Yes Yes
		<u>Club</u> Camspie RSL – 600 metres	 Yes
		<u>Restaurant</u> - The Kopi Shop Malaysian Hawker Food, 108 Beamish Street, Campsie – 170 metres - Pho 98 Vietnamese Restaurant, Shop 2/94 Beamish Street, Campsie – 210 metres - Haedam Maeul Korean Organic Products, 2/96 Beamish Street, Campsie – 220 metres - Cinta Rasa Malaysia Restaurant, 140 Beamish Street, Campsie – 180 metres - Campsie Charcoal Chickens, 146 Beamish Street, Campsie – 220 metres - Tan Thai, 148 Beamish Street, Campsie – 230 metres	 Yes Yes Yes Yes Yes Yes
Locate the brothel above ground level, with discreet access from the ground level	Brothel above ground level discreetly accessed from the ground level	The Brothel is located on level one on the northern end of the building. It is positioned in Units 19 and 20 and above street/ground level.	Yes
. If at ground level do not locate in a shopfront or at the street front of premises.	. If ground level do not locate in a shopfront or at the street front of premises.	The shopfront is located above ground level on the street side and is recessed 4.4 metres back from the building line on this elevation.	Yes
Provide a discreet, single access to the brothel. Do not use a communal or shared access that provides access to another use.	Discreet single access to the brothel which is not a shared access to another use	The brothel proposes to use the same point of access as the approved Chinese massage premises and other uses in the complex. This access being a communal/shared pedestrian access ramp which is accessed from Sixth Avenue.	No – see comment [3] below
Do not provide patron access from a laneway	No laneway Access	The brothel proposes to use a communal/shared pedestrian access ramp which is accessed from Sixth Avenue	Yes

Standard	Requirement	Proposal	Complies
Size Limitations			
Brothel premises must not contain more than six separate rooms for the purpose of prostitution and associated activities, office and reception room. Rooms having an area exceeding 18m2 will be considered as two rooms.	Not more than six sex service rooms, office, reception.	The brothel premise contains two sex service rooms, (Room 1 – 9.24m^2) (Room 2 – 8.74m^2), An office/reception has also been provided, as well as three massage rooms.	Yes
Car Parking			
Major commercial zone: provide 1 car parking space per two people working at the brothel at any time	one space/two workers	Staff on site include: one Manager one Receptionist/Cleaner three Sex/Massage workers A total of five staff will work at the brothel. 2.5 spaces are required five spaces have been provided	Yes
Identify where patrons are likely to park and provide this information to Council with the development application - potenti al patron parking in residential streets must be avoided.	Information provided detailing patron parking options. No on-street parking.	The applicant has provided that there are many public parking spaces available within close proximity to the site. (It is assumed public on street parking will be used in the immediate vicinity as this is the closest available parking to the site). The property also benefits from easy close access to the public transport network of both bus and rail. This is the existing provision for the massage centre.	No – See comment [4] below
Signage			
Only one sign per premises, with a maximum size of 0.5m^2, located on the wall at the entrance to the premises.	one sign measuring 0.5m^2	Four signs exist, all measuring in excess of 0.5m^2. These are located on the corner of Ninth and Sixth Avenues. Another is located on Sixth Avenue outside the premises	No – See comment [5] below
Limit wording to the trade name of the business and the address of the premises, do not refer to the nature of the business or advertise specific services.	Prohibit advertising of the specific service, and limiting signage to Trade name of business.	Existing signage is proposed to be retained, which describes the use as Chinese massage.	Yes

Standard	Requirement	Proposal	Complies
Do not illuminate signage or place signage in windows.	Non illuminated signage or in windows	No illuminated signage is proposed as part of the application	Yes
Restrictions on operation			
The operation of a brothel must not cause a disturbance in the neighbourhood, including to any other brothels that may be operating in the neighbourhood.	Prohibit disturbance in the community	The Statement of Environmental Effects and Plan of Management submitted with the development application details safeguards and practices to legislate against disturbances that may have an impact on the amenity of the neighbourhood.	Yes

As highlighted in the above table, the proposed development fails to comply with certain numerical requirements of CDCP 2012 which are discussed as follows;

[1] Brothel not to be located within 100 metres adjoining or in walking distance of residentially zoned land

The site is located on the corner of Ninth and Sixth Avenues, Campsie. It is located on the edge on the Campsie Town Centre business zone and adjoins R4 residentially zoned land on the west being on the opposite side of Sixth Avenue. While it has been established in relevant case law, *(Martyn v Hornsby Shire Council [2004] NSWLEC 614)* that distance to residentially zoned land cannot be considered as the only means by which a brothel use is deemed unsatisfactory in it is location, it is more a point of visibility. The proposed brothel directly faces and is clearly visible from residential properties in Sixth Avenue and from the residential private open space on the western adjoining property at 23 Ninth Avenue, Campsie.

[2] Brothel not to be located within 200 metres adjoining or in walking distance of Place of Worship, School, Community Facility, Children's Centre, Hospital, Rail Station, Bus stop, Taxi Stand or other place regularly frequented by Children

The site is located and accessed from Sixth Avenue, Campsie. From this location it is within 200m metres of an educational establishment, the James An College, 55 metres walking distance from the proposed brothel. The proposed brothel is also within 174 metres of the Orion Function Centre on Beamish Street, 144 metres from the Early Childhood Children's Centre located at 137 Beamish Street, 190 metres from Canterbury Family Day Care on Camspie Street and 173 metres from the nearest bus stop. While it is unlikely that these locations/facilities will be regularly frequented by school children during the same hours that the brothel proposes to operate, it requires consideration whether or not the distance to or from the proposed use is a significant factor.

The James An College operates from 10 am to 7pm weekdays, and is directly opposite the access to the mixed use development, which includes the proposed brothel. There is an element of exposure given that the pedestrian access point to the site is visible from an area where children congregate outside the educational establishment particularly when waiting to be collected by parents after tuition.

While the proposal in its documentation does not clearly or directly demonstrate how the proposal in its operation will minimise its exposure to the nearby educational establishment in terms of hours of operation and access to and from the proposed brothel, it does state that it considers the brothel's location to be discreet, given the recessed nature of the residential tenancy above and commercial unit directly to the south.

The door to the premises is recessed. However, the shared access point to the premises is clearly visible from the educational establishment where children will congregate. This is a point of concern about the location particularly as the opening hours will coincide.

In assessing whether or not the proposal will create or cause undesired land use conflicts in terms of the operation or the hours of use in relation to the Orion Function Centre on Beamish Street, the Early Childhood Children's Centre on Beamish Street, Canterbury Family Day Care on Campsie Street and the nearest bus stop, it is important to consider the visibility element and the accessibility to such facilities. None of these facilities are in a location that can directly view the proposal nor be directly accessed, given the street layout in the area.

[3] Provide a discreet, single access to the brothel. Do not use a communal or shared access that provides access to another use

The access to the proposed brothel, which is currently approved as a Chinese massage establishment, utilises a pedestrian ramp that provides communal access to the other areas of the building, namely the other businesses as well as the residential units within the complex. This is therefore deemed to be neither discreet nor a single sole access to the proposed brothel.

[4] Identify where patrons are likely to park and provide this information to Council with the development application - potential patron parking in residential streets must be avoided

The applicant has not indicated where patrons of the premises are likely to park a vehicle. The Plan of Management and Statement of Environmental Effects notes that there are five parking spaces included as part of the development, however does not indicate if these are accessible to patrons. It does however state that there are many public parking spaces available within close proximity to the site. It further states that the property also benefits from easy close access to the public transport network of both bus and rail.

It is considered that on street parking will be used by brothel patrons in the immediate vicinity as this is the closest available parking to the site and therefore detrimentally affects the amenity of the local area in terms of reducing on-street parking and introducing active streetscapes in residential areas late at night.

[5] Only one sign per premises, with a maximum size of 0.5m2, located on the wall at the entrance to the premises

There are four signs advertising the existing Chinese massage business. These are located on the corner of Ninth and Sixth Avenues and on Sixth Avenue directly outside the premises. All four signs are in excess of 0.5m^2 as per CDCP 2012. The Statement of Environmental Effects states that this signage will remain in its current form unchanged.

Part 6.3 Crime Prevention Through Environmental Design (CPTED)

The development has been assessed against the provisions of this part of the Canterbury Development Control Plan 2012. The DCP aims to provide practical solutions to minimise crime opportunities by encouraging development which satisfies principles such as natural surveillance, access control and ownership. The application has been assessed against the requirements and compares to CDCP 2012 as follows:

Standards	Requirements	Proposal	Complies
Natural Surveillance	Avoid blind corners. Provide natural surveillance for public/ communal areas. Clearly visible entries. Entrances, exits, service areas and car parking should be well lit.	Natural surveillance provided for public areas. The entrance to the premises on Sixth Avenue is visible. However, recessed from front façade.	Yes
Access Control	Prevent unintended access. Use security hardware.	Use of CCTV at site	Yes
Ownership	Create a 'cared for' image. Use materials which reduce opportunity for vandalism. Express a sense of ownership and reduce illegitimate use/ entry.	No changes to materials on façade of development.	Yes

It is noted however that the proposed brothel has been reviewed by our Community Safety Officer and a representative from Campsie Local Area Command who raised concerns in relation to the proposal from a crime prevention perspective. These include provision of showering facilities in each room to protect the safety and cleanliness of workers and clients, a waiting room to avoid concealment opportunities, provision of personal safety devices such as panic buttons quickly accessible for workers in emergency, relocated reception area to optimise surveillance and improve sightlines and use of transparent materials, in the relocated office allowing the foyer to be monitored.

Part 6.8 Vehicle Access and Parking

Part 6.8 of Canterbury Development Control Plan 2012 requires that sex service premises provide a parking ratio of one space for every two staff. There will be a maximum of five persons working in the premises at any time, this would equal 2.5 car spaces. The application provides for five car parking spaces which exceeds these requirements and therefore complies with the provisions of Part 6.8 of Canterbury Development Control Plan 2012. The application however, does not demonstrate that this provision of off street parking is available for brothel patrons.

Part 6.9 Waste Management

A Waste Management Plan and a Plan of Management were submitted as part of the Development Application. These were reviewed by our project officer for resource management of programs, who advises the submitted documents adequately address waste management during the operation of the brothel.

Other Considerations

- **Land and Environment Court Planning Principles**

  The Land and Environment Court adopted a Planning Principle that provides criteria for locating brothels. The criteria assesses the suitability of the location by considering whether the chosen location is likely to offend the community and/or have adverse physical impacts upon the community, whether the brothel is visible from educational institutions, places frequented by children and places of worship, proximity of proposed brothel to other brothels, whether access to the brothel is discrete and whether it is likely to discourage persons from loitering in front of the premises. The criteria further noted that when considering the location of brothels, they *"should not adjoin areas that are zoned residential, or be clearly visible from them. Visibility is sometimes a function of distance, but not always"* and "*Brothels should not adjoin, or be clearly visible from schools, educational institutions for young people or places where children and adolescents regularly gather. This does not mean, however, that brothels should be excluded from every street on which children may walk". (Martyn v Hornsby Shire Council [2004] NSWLEC 614).*

  This Planning Principle has been considered as part of the assessment of this development application assessment and it has been deemed inconsistent with the Planning Principle for the reason that the proposed brothel is clearly visible from the residentially zoned land along Sixth Avenue, and that the shared access point is visible from the educational establishment in Ninth Avenue as discussed above.

- **The suitability of the site for the development**

  The proposed development does not comply with the locational, car parking and signage requirements contained within Canterbury Development Control Plan 2012. It is considered that these will result detrimentally in terms of amenity impacts on the local and wider community. The failure of the proposal to satisfy the requirements of Canterbury Development Control Plan 2012 demonstrates that the site is not suitable for a brothel.

- **The public interest**
  The public interest was taken into consideration whilst assessing this development application. In considering the widespread opposition to the proposed brothel in the local area together with its shortcomings and inconsistencies in complying with Canterbury Development Control Plan 2012, the development will not fulfil its statutory obligations to the wider community. Accordingly, the approval of the application would not be in the wider public interest.

Notification

The development application was advertised in the local newspaper and notified to adjoining and nearby owners for a period of 21 days in accordance with Part 7 Notification of Development Applications under Canterbury Development Control Plan 2012. A total of 21 submissions and four petitions containing a total of 1377 signatures objecting to the proposal were received. The submissions raised issues of concern, which are discussed below:

- **Impacts on suburban life**
  Concern has been raised that the existence of the brothel largely impacts on the day to day way of life and average expectation of a normal way of life within the suburbs.

  Comment:
  The specifics of how the proposed brothel will reduce the quality of the day to day life has not been expanded on in any detail. However there have been complaints in the past reported to Council, regarding it operation. It is noted that the brothel is a permissible land use in this zone and many, though not all, objectors chose to live in a commercially zoned area. The subject commercial zone and adjoining high density residential zone cannot reasonably be described as “suburban”.

- **Location**
  Concern has been raised that the subject site is located within close proximity to residential dwellings, various community facitilies, licensed premises, schools, coaching colleges, child care centres as well as other areas that are frequently visited by school children and the community.

  Comment
  There are a number of varying uses surrounding the subject site and in accordance with the planning principles and prior judgments of the Land and Environment Court the location of brothels may be acceptable if it can be demonstrated that all locational requirements can be met. The application however as presented to Council fails on a number of significant points, which are considered to impact unreasonably on the amenity of the area.

- **Traffic and Parking**
  Concern has been raised that the proposed use will increase traffic in the immediate vicinity and vehicles are and will continue to be parked illegally while attending the subject site.

Comment

The proposal has been assessed against the off-street parking requirements in Canterbury Development Control plan 2012 and fails to comply with the controls in terms of nominating where potential patrons will park.

- **Behaviour of Clientele**

  Concern has been raised that this use encourages antisocial behaviour and clients/patrons of the premises will behave inappropriately in public. Concern was raised in terms of loitering in the area and approach residents and child exposure to adult services as well as disturbances to nearby residents.

  Comment

  This matter has been taken into account as part of the assessment and the locational aspects of the premises in close proximity to residences and places frequented by children is of concern.

- **Breaches of Conditions of Consent**

  Concern has been raised that the massage centre as approved under DA-341/2007 has operated in breach of the conditions of consent which state that the premises shall not be used as brothel. It is acknowledged that the premise is in fact being used as a brothel, which includes numbers of sex workers on site and breached hours of operation.

  Comment

  The breaching of prior conditions of consent cannot be a determining factor in the assessment of this Development Application. However the matter is the subject of Land and Environment Court proceedings for the unauthorised use, which is pending on the outcome of this application.

Conclusion

The development application has been assessed pursuant to the provisions of Section 79C of the Environmental Planning and Assessment Act 1979 and development control plans. The proposed brothel fails to comply with a number of the numerical controls contained within our development control plan, primarily the locational requirements. There are also inconsistencies in terms of access, both visually and physically, nor has the application adequately demonstrated how patrons will park at the proposed premises.

It is considered that the application fails to provide a reasonable level of separation from places regularly frequented by children given the close proximity of the James An College and the visual access children may be exposed given the college is directly opposite the access point the site.

In light of the above, the site is not considered suitable for the development, nor is the development in the public interest and for these reasons, Council is not able to support the proposed use.

RECOMMENDATION:

THAT the Development Application DA-67/2016 to change the use from a health massage centre to a brothel be **REFUSED** for the following reasons:

1. The brothel is unacceptable because it adjoins residentially zoned land opposite the site, which is contrary to Clause 5.4.1(ii) of Canterbury Development Control Plan 2012 (CDCP 2012).
2. The brothel application is unacceptable because it does not provide a reasonable level of separation between sex service premises and places regularly frequented by children. The James An College is directly opposite the access point of the site which is used to obtain entry to the proposed brothel. The application does not adequately address visual access to children who may congregate outside the college waiting to be collected by parents. This is contrary to Clause 5.4.1(iii) of Canterbury Development Control Plan 2012 (CDCP 2012).
3. The brothel is unacceptable because it shares a communal access way that provides access to other site uses which is contrary to Clause 5.4.1(vi) of Canterbury Development Control Plan 2012 (CDCP 2012).
4. The brothel application is unacceptable because it has not adequately demonstrated that the proposed development can cater for the expected and actual demand for car parking; or definitive indication of where this may occur. This is contrary to Clause 5.4.3(iii) of Canterbury Development Control Plan 2012 (CDCP 2012).
5. The brothel is unacceptable because it intends to utilise (4) four existing signs, all of which are greater in size than $0.5m^2$. This is contrary to Clause 5.4.6(i) of Canterbury Development Control Plan 2012 (CDCP 2012).
6. The brothel is unacceptable because it does not adequately address specific aspects of crime prevention within the premises such as concealment opportunities, provision of safety devices and internal layouts in terms of surveillance and monitoring. This is contrary to Part 6.3 of Canterbury Development Control Plan 2012 (CDCP 2012).
7. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, due to the likely impacts on the amenity of the surrounding residential neighbourhood. The adverse impacts would occur due to the unacceptable visibility to and from the brothel to residentially zoned land opposite, the likely conflicts due to inadequate levels of separation of access to the proposed brothel and other uses, inadequate provision of patron parking allocation, leading to vehicles parking in local streets and obstructing vehicular access for residents.
8. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, as the site is not suitable for the development.
9. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, as the proposed development is not in the public interest.

WE ALSO ADVISE:

10. Our decision was made after consideration of the matters listed under Section 79C of the Environmental Planning and Assessment Act 1979, and matters listed in Council's

various Codes and Policies.

11. If you are not satisfied with this determination, you may:
    11.1. Apply for a review of a determination under Section 82A of the Environmental Planning and Assessment Act 1979. A request for review must be made and determined within 6 months of the date of the receipt of this Notice of Determination.; or
    11.2. Appeal to the Land and Environment Court within 6 months after the date on which you receive this Notice of Determination, under Section 97 or Section 97AA of the Environmental Planning and Assessment Act 1979.

ROSELANDS WARD

3 19 MAYFAIR CRESCENT, BEVERLY HILLS: DEMOLITION AND CONSTRUCTION OF TWO STOREY DETACHED DUAL OCCUPANCY, FRONT FENCE AND TORRENS TITLE SUBDIVISION

FILE NO: **579/19D**

REPORT BY: **CITY DEVELOPMENT**

WARD: **ROSELANDS**

D/A No:	**DA-180/2016**
Applicant: **Owner:**	**M Cubed Design** **Mr Gordon Deeb**
Zoning:	**R3 Medium Density Residential**
Application Date:	**22 April 2016**

Summary:

- An application has been received for demolition of existing structures, construction of a new two storey detached dual occupancy with front fence and Torrens title subdivision.
- This application has been referred to the Independent Hearing and Assessment Panel due to a non-compliance to the minimum building separation (5m required, 1.8m proposed 64% variation) which exceeds the delegated authority of Council staff. This is discussed in the body of this report.
- The proposal is defined as a 'dual occupancy' which is permissible with Council consent within Zone R3 Medium Density Residential under Canterbury Local Environmental Plan 2012.
- The application has been assessed against the relevant environmental planning instruments and development control plan.
- In accordance with Part 7 of the Canterbury Development Control Plan 2012, all owners and occupiers of adjoining properties were notified of the proposed development. During the notification period, no submissions were received. One late submission was received on the 28 July 2016. The issue that was raised was privacy.
- It is recommended the application be approved subject to conditions.

Council Delivery Program and Budget Implications:

This report has no implications for the Budget. The assessment of the application supports our Community Strategic Plan long term goal of Balanced Development.

Report:

Site Details

The subject site known as 19 Mayfair Crescent, Beverly Hills is located on the northern side of Mayfair Crescent. The site is an irregular shaped allotment, with a primary frontage of 9.145m and total site area of 873m^2. Existing on site is a single story brick cottage and a single storey secondary dwelling. The surrounding development consists of a mixture of low density residential developments interspersed with dual occupancy developments.

Aerial view of site

Street view of site and neighbouring property to the east

Street view of site and neighbouring property to the west

Proposal

Development Application DA-180/2016 seeks consent for the demolition of existing structures and construction of a detached dual occupancy development including associated Torrens title subdivision. Both dwellings will have a main frontage and vehicular access from Mayfair Crescent.

Dwelling one presents a floor plan with a single garage, lounge, laundry, bathroom, combined kitchen/dining/living and alfresco. Ground floor stairs provide access to proposed first floor level which accommodates a master bedroom (inclusive of an ensite and walk-in robe), three bedrooms (one with an ensuite), bathroom and a rumpus room.

Dwelling two presents a floor plan with a single garage, guest room, bathroom, a combined kitchen/dining/living, laundry and alfresco. Ground floor stairs provide access to proposed first floor level which accommodates a master bedroom (inclusive of an ensite and walk-in robe), three bedrooms and bathroom.

Statutory Considerations

When determining this application, the relevant matters listed in Section 79C of the Environmental Planning and Assessment Act 1979 must be considered. In this regard, the following environmental planning instruments, development control plans, codes and policies are relevant:

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Canterbury Local Environmental Plan 2012 (CLEP 2012)
- Canterbury Development Control Plan 2012 (CDCP 2012)
- Canterbury Development Contributions Plan 2013

Assessment

The development application has been assessed under Sections 5A and 79C of the Environmental Planning and Assessment Act 1979 and the following key issues emerge.

- **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**
  A BASIX Certificate (Certificate No.716081S and No. 716084S) accompanies this application. The certificate lists a number of commitments which have been shown on the DA plans and the proposal meets the energy targets of the SEPP.

- **Canterbury Local Environmental Plan 2012 (CLEP 2012)**
  The proposed development has been compared to the requirements of CLEP 2012 as follows:

  The subject site is zoned R3 Medium Density Residential under the provisions of the LEP. The proposed development is defined as a "dual occupancy", which is a permissible land use in this zone.

Part 4 – Principal Development Standards

Standard	Requirement	Proposal	Complies
Clause 4.1A - Minimum lot size for a dual occupancy	600m^2	873 m^2	Yes
Clause 4.1B - Minimum lot size for dual occupancy	300m^2	Dwelling 1 – 446.50m^2 Dwelling 2 – 426.50m^2	Yes
Clause 4.3 - Height of Building	8.5m	7.8m.	Yes
Clause 4.4 - Floor Space Ratio	0.5:1	Dwelling 1 – 0.46:1 Dwelling 2 – 0.40:1	Yes

As demonstrated in the above table, the proposed development meets the requirements of CLEP 2012.

- **Canterbury Development Control Plan 2012 (CDCP 2012)**
  The current application compares to the Canterbury Development Control Plan 2012 as follows:

Standards	Requirements	Proposal	Complies
Site and Envelope Controls			
Access to detached dwelling lots	All lots have frontage to a public road	Both dwellings have access to Mayfair Crescent.	Yes
Site requirements	Minimum 15m before subdivision	9.14m.	No – see comment [1] below
	Minimum 7.5m at the street for each dwelling	7.5m.	Yes
Maximum heights	Maximum 2 storeys	2 storeys proposed.	Yes
	Max 7m wall height	6.5m.	Yes
	Max 8.5m ridge height	7.8m.	Yes
	Maximum finished floor level is 1m above ground level	The maximum height is 500m above the existing ground level.	Yes

Standards	**Requirements**	**Proposal**	**Complies**
Depth / footprint	Maximum of 25m	Dwelling 1 – 21.2m. Dwelling 2 – 12.5m.	Yes
Setback	Minimum setback of 6m from rear boundary	Dwelling 1 – 7.8m. Dwelling 2 – 8.6m.	Yes
	Minimum setback is 1.2m from the side boundary	East – 1.3m. West –1.2m.	Yes
	Minimum 5m deep soil zone along front and rear boundary	A minimum 5m area is provided in both the front and rear.	Yes
Building separation	Minimum 5m distance between external walls for any buildings on the site	Minimum distance is 1.8m.	No – see comment [2] below
Car parking	Two spaces per dwelling, three or more bedroom dwelling	Two spaces have been provided for the proposed dwelling, by way of a single car garage and driveway forward of the garage whilst the new hardstand area for the existing dwelling will be able to accommodate another space.	Yes
	Not occupy more than 50% of width of each dwelling	Dwelling 1 – 40%. Dwelling 2 – 50%.	Yes
Design Controls			
Context	Features of existing buildings that influence streetscape and local character are either maintained or reflected in adjacent and nearby new buildings	The development is of a modern style which is consistent throughout the Local Government Area.	Yes
Street Address	Facilitate positive interaction between the private and public domain. Promote casual surveillance.	Main entrance to each dual occupancy unit faces the street and is clearly identifiable. A balcony on the first floor front elevation of each dwelling promotes casual surveillance.	Yes
Façade Design & Articulation	Effective modulation and variation of building design. All elements of the façade and roof are integrated into the architectural form and detail of the building, and present an appealing streetscape appearance. Do not use identical	The design of the proposed development uses modulation with a non-symmetrical built form for each unit, presenting a satisfactory streetscape appearance. The design has used different styles of windows treatments, number of windows, column treatments providing vertical and horizontal interest to the development.	Yes

Standards	Requirements	Proposal	Complies
	facades for each dwelling – use variations in terms of plan dimensions and shape, plus height and wall alignment.		
Performance Controls			
Visual Privacy	Minimise direct overlooking of rooms and private open space	The proposed development is designed so that it does not compromise visual privacy enjoyed by future occupants and neighbouring residents. However the proposal will be conditioned to ensure that the privacy of the surrounding neighbours is maintained. **Dwelling 1 First Floor Windows** Most of the first floor windows are associated with bedrooms and bathrooms only. Window 4 and 9 (along the western elevation), are windows to the void and stairwell which are not considered to be highly trafficable room. The windows are proposed to be obscure. This is considered to be acceptable. Window 11 (along the eastern elevation), is a window to a rumpus room has proposed a sill height starting at 1200mm. This is considered to be acceptable in ensuring the privacy of the neighbouring proposed dwelling. **Dwelling 2 First Floor Windows** Most of the first floor windows are associated with bedrooms and bathrooms only. Window 13 (along the western elevation), is a window to a stairwell which is not considered to be a highly trafficable room. The windows are proposed to be obscure. This is considered to be acceptable **First Floor Front Balconies** Both of the first floor front balconies are proposed to be facing the street which promotes casual surveillance. **First Floor Rear Balconies** Both of the first floor rear balconies present numerous overlooking opportunities. As such it will be conditioned to be deleted ensuring that overlooking is minimised.	Yes

Standards	Requirements	Proposal	Complies
Open Space	Minimum area of 50m^2 provided for each dwelling	Dwelling 1 – 141m^2 including alfresco Dwelling 2 – 130m^2 including alfresco.	Yes
	Provide one area at least 2.5m by 2.5m that is suitable for outdoor dining	Dwelling 1 – 3m X 4.3m Dwelling 2 – 2.6 X 4 m	Yes
	Minimum dimension of 5m in any direction for private open space	The area immediately adjacent to the living areas for both dwellings is 5m	Yes
Internal Dwelling Space and Design	Living area and principal bedrooms are to have a minimum width of 3.5m	> 3.5m for Living area and principal bedrooms	Yes
	Secondary bedrooms are to have a minimum width of 3m	> 3.5m for Secondary bedrooms	Yes
	Minimum storage area of 10m^3 for each dwelling	Storage area has not been provided, however this can be conditioned so that 10m^3 is provided under the stairwell and/or located in the garage	No

As demonstrated in the above table, the proposed development complies with the requirements of CDCP 2012, with the exception of the matters discussed below:

[1] Site Requirements

The subject site has a site frontage of 9.14 metres. Part 2.1.2(v) of our DCP states that for irregular shaped lots, such as this one, the site width is measured at the required front setback. In this instance the property has a width of 18m which exceeds the requirement of 15m. The proposal therefore meets the requirements of the DCP control for widths on irregular sites and as such is able to accommodate this type of development.

[2] Building Separation

The application seeks a variation to the building separation provisions under Part 2.1.9(vi) of CDCP 2012 which requires a minimum 5m separation between buildings on site measured from the outer faces of the exterior wall of each building.

The proposal provides building separations of 1.8m, 2.1m and 2.4m along the ground floor and a 2.4m separation along the first floor which is deficient by 3.2m (64%), 2.9m (58%) and 2.6m (46%) respectively.

The 1.8m, separation between proposed garages can be supported, given that these rooms are considered to be non-habitable and the irregular shape of the lot allows for reasonable access to the garage.

The 2.1m separation between the two living rooms cannot be supported. There are impacts on the privacy of the future occupants. A 2.4m separation between both dwellings will be conditioned. The subject site is able to support this, and there are no physical site restrictions for why the separation cannot be achieved.

The 2.4m separation along the ground and first floor can be supported. The objective of the control is to ensure reasonable sunlight and privacy is available to residents and to ensure building separations are proportional to the heights of buildings.

It is considered that the proposed development does not adversely impact on solar access or privacy. Both dwelling will receive adequate sunlight. The off-set positioning of windows and the type of windows proposed along the building separation, in conjunction with the 1.8m boundary fence ensures that there is no overlooking to and from each building. The proposed building separation is not considered to be a significant issue from a visual amenity and building form perspective as the proposed development presents well from the street.

Furthermore, upon subdivision of this property once the dual occupancy has been completed, it will observe the minimum 900mm setback from the garage and a 1.2m side setback as per Part 2.1.7 of the DCP for the remainder of the building envelope. Therefore, a variation to the building separation control is able to be supported in this instance.

Part 6.2 Climate, and energy and resource efficiency

Part 6.2.6 of CDCP 2012 requires that at least two hours of sunlight be received daily to indoor living space and 50% of the principal private open space between 9.00am and 3.00pm on 21 June (mid- winter) for the proposed dwellings and adjoining properties.

The development application is accompanied by shadow diagrams, which demonstrate that more than 50% of proposed private open space of the proposed dwellings will receive more than two hours solar access between 9am and 3pm midwinter.

Our DCP requires that dwellings receive a minimum of two hours solar access, in mid-winter, to their indoor living room. Given the site's orientation, north – south, solar access will be able to be enjoyed into proposed living spaces by occupants between 9.00am and 3.00pm during mid-winter.

The development must ensure that adjoining properties receive adequate solar access as outlined in part 6.2.6 (iii). The plans that were submitted indicate that more than 50% of the POS on the western adjoining property will receive solar access from 9am to Midday mid-winter. The adjoining living room windows will receive solar access from 9am to midday mid-winter and 50% of the private open space of the eastern adjoining properties will receive solar access from midday to 3 pm.

The proposal therefore complies with our solar access requirements.

Part 6.3 Crime Prevention Through Environmental Design (CPTED)
The development has been assessed against the CPTED provisions of the DCP. As the development is a dwelling, the CPTED element of ownership is assumed due to the use of the building. The CPTED elements of natural surveillance and access points require special consideration and are summarised below-

Requirements	Proposal	Complies
Location of front door –visible to the street/ other properties	Doors are visible to the street and other properties	Yes
Habitable rooms with windows to front street or adjacent to public areas	The front balcony will provide casual surveillance of the street	Yes
Visibility to street/ public areas - not obstructed by new/existing landscaping or fencing.	Visibility of dwelling will be not be obstructed by landscaping	Yes

Part 6.4 Development Engineering Flood and Stormwater
The stormwater plan has been assessed by our Development Engineer and no objection was raised subject to conditions being attached to any consent granted.

Part 6.6 Landscaping
The landscaping plans were submitted with the application have been assessed by our landscape architect no objection was raised subject to conditions being attached to any consent granted.

Part 6.8 Vehicle Access and Parking
Part 6.8 of CDCP 2012 requires that, for a dual occupancy development where each dwelling has three or more bedrooms, two car parking spaces be provided per dwelling. Each provides a single car garage and also the provision of a second car parking space behind the front property line.

Part 6.9 Waste Management
A Waste Management Plan has been provided, dealing the construction and operational phases of the proposed development.

- **Canterbury Development Contributions Plan 2013**
  The provisions contained in our Contributions Plan apply to developments involving the construction of additional residential development that creates further demand to improve or upgrade existing facilities, amenities or services. The proposed development attracts a contribution of $19 065.24 by creating an additional three or more bedroom dwelling in the area.

Notification

The development application was notified to all adjoining owners and occupiers in accordance with Part 7 of CDCP 2012 from 15 June to 29 June 2016. One late submission was received with the following concern:

- **Privacy rear balcony:**

  Comment

  Given the unusual nature of this site, the location of the surrounding neighbours and the location of the proposed dwelling being situated towards the rear of the site it is considered that both of the first floor rear balconies will present numerous overlooking opportunities, As such it will be conditioned to be deleted to ensure that overlooking is minimised.

Conclusion

The application is for the demolition of existing structures and the construction of a detached dual occupancy, with Torrens title subdivision. The site is zoned R3 – Medium Density Residential pursuant to CLEP 2012 and the proposed use is permissible in the zone.

The proposed variations to the building separation controls will not result in any significant adverse impact on the amenity of future occupants of the site or existing residents on adjoining properties. The design of the proposed development is compatible with the future and desired local character of the area and represents a quality development that will positively contribute to the streetscape and indeed the local built environment. As such, it is recommended that the development application be approved subject to conditions.

RECOMMENDATION:

THAT the Development Application DA-180/2016 be **APPROVED** subject to the following conditions:

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

1. The following must be submitted to either Council or an Accredited Certifier prior to the issuing of a Construction Certificate:
   - 1.1. Details of:
     - Protection from termites
     - Structural Engineering Plan
     - Landscape Plan
     - Hydraulic Plan
     - Building Specifications
     - Firewall Separation
     - Soil and Waste Management Plan
     - Smoke Alarms
     - BASIX Certification
   - 1.2. Evidence of an Owner Builder Permit (Class 1 & 10 buildings only); or
   - 1.3. Evidence of a Home Building (Private) Insurance Certificate.

1.4. Payment of the Long Service Leave Levy to the Long Service Leave Corporation or to Council.

1.5. Payment to Council of:

Kerb and Gutter Damage Deposit	$2 778.00
Certificate Registration Fee	$36.00
Long Service Leave Levy Fee	$2 523.30
Long Service Levy Commission	$19.80
Development Contributions	$19 065.24

1.6. If you appoint Council as your Principal Certifying Authority, the following fees are payable:

Construction Certificate Application Fee	$3 383.00
Inspection Fee	$1 255.00
Occupation Certificate Fee	258.00

Note 1: Long Service Leave is payable where the value is $25,000 or more under Part 5 Section 36 of the Building and Construction Industry Long Service Payments Act 1986.

Note 2: When the items in this condition are provided and have been assessed as satisfactory, your Construction Certificate will be posted to you.

Note 3: If you appoint a Principal Certifying Authority other than Council, the fees shown in this item do not apply, however other fees will apply.

Note 4: Development contribution payments are payable by cash, bank cheque, or EFTPOS.

Note 5: All Council fees referred to above are subject to change. You need to refer to our website or contact our Customer Service Centre for a current schedule of fees prior to payment

BEFORE COMMENCING THE DEVELOPMENT

2. Before the erection of any building in accordance with this Development Consent;

2.1. detailed plans and specifications of the building must be endorsed with a Construction Certificate by the Council or an Accredited Certifier, and

2.2. you must appoint a Principal Certifying Authority (either Canterbury City Council, or an Accredited Certifier) and notify the Council of the appointment (see Attachment – Notice of Commencement copy), and

2.3. you must give the Council at least 2 days notice of your intention to commence erection of the building (see Attachment – Notice of Commencement copy).

2.4. In the case of work which includes residential development, you must inform us in writing before the commencement of work of the following:

2.4.1. The name and contractor or licence number of the licensee who has contracted to do or intends to do the work; or

2.4.2. The name and permit number of the owner-builder who intends to do the work.

INSURANCE

3. If it is intended to engage a builder or licensed contractor to do the work where it is valued over $20,000 and is not a multi storey building then this person must take out home building insurance with a private insurer. The builder or person doing the work must also satisfy Council that they have taken out an insurance policy by producing

evidence of the insurance certificate or other documentation. Further information on insurance requirements is available from the Department of Fair Trading (NSW Consumer Protection Agency) on 1800 802 055.

SITE SIGNAGE

4. A sign shall be erected at all times on your building site in a prominent position stating the following:
   - 4.1. The name, address and telephone number(s) of the principal certifying authority for the work, and
   - 4.2. The name of the person in charge of the work site and a telephone number at which that person may be contacted during and outside working hours, and
   - 4.3. That unauthorised entry to the work site is prohibited.

DEMOLITION

5. Demolition must be carried out in accordance with the following:
   - (a) Demolition of the building is to be carried out in accordance with applicable provisions of Australian Standard AS 2601-2001: The Demolition of Structures and the Construction Safety Act Regulations.
   - (b) The demolition of a structure or building involving the removal of dangerous or hazardous materials, including asbestos or materials containing asbestos must be carried out in accordance with the requirements of the Workcover Authority of New South Wales.
   - (c) Demolition being carried out in accordance with the requirements of the Work Health and Safety Regulation 2011.
   - (d) A hoarding or fence must be erected between the building or site of the building and the public place, if the public place or pedestrian or vehicular traffic is likely to be obstructed or rendered inconvenient because of the carrying out of the demolition work.
   - (e) Demolition of buildings is only permitted during the following hours:
     7.00 a.m. – 5.00 p.m. Mondays to Fridays
     7.00 a.m. – 12.00 noon Saturdays
     No demolition is to be carried out on Sundays or Public Holidays.
   - (f) Burning of demolished building materials is prohibited.
   - (g) Adequate care is to be taken during demolition to ensure that no damage is caused to adjoining properties.
   - (h) Soil and water management facilities must be installed and maintained during demolition in accordance with Council's Stormwater Management Manual. If you do not provide adequate erosion and sediment control measures and/or soil or other debris from the site enters Council's street gutter or road you may receive a $1500 on-the-spot fine.
   - (i) Council's Soil and Water Management warning sign must be displayed on the most prominent point on the demolition site, visible to both the street and site workers. The sign must be displayed throughout demolition.
   - (j) The capacity and effectiveness of soil and water management devices must be maintained at all times.
   - (k) During the demolition or erection of a building, a sign must be provided in a prominent position stating that unauthorised entry to the premises is prohibited and contain all relevant details of the responsible person/company

including a contact number outside working hours.

(l) A sign is not required where work is being carried out inside, or where the premises are occupied during the works (both during and outside working hours).

(m) Toilet facilities must be provided to the work site in accordance with WorkCover's NSW "CODE OF PRACTICE" for Amenities for construction work and any relevant requirements of the BCA.

(n) Removal, cleaning and disposal of lead-based paint conforming to the current NSW Environment Protection Authority's guidelines. Demolition of materials incorporating lead being conducted in strict accordance with sections 1.5, 1.6, 1.7, 3.1 and 3.9 of Australian Standard AS2601-2001: Demolition of Structure. Note: For further advice you may wish to contact the Global Lead Advice and Support Service on 9716 0132 or 1800 626 086 (freecall), or at www.lead.org.au.

(o) Hazardous dust not being allowed to escape from the site. The use of fine mesh dust proof screens or other measures are recommended.

(p) Any existing accumulations of dust (eg. ceiling voids and wall cavities) must be removed by the use of an industrial vacuum fitted with a high efficiency particulate air (HEPA) filter. All dusty surfaces and dust created from work is to be suppressed by a fine water spray. Water must not be allowed to enter the street and stormwater systems. Demolition is not to be performed during adverse winds, which may cause dust to spread beyond the site boundaries.

GENERAL

6. The development being carried out in accordance with:

Plan	**Prepared By**	**Date**	**Date received Council**
Site Plan Drawing 2	M Cubed Designs	30 March 2016	22 April 2016
Ground Floor Plan Drawing 3	M Cubed Designs	30 March 2016	22 April 2016
First Floor Plan Drawing 4	M Cubed Designs	30 March 2016	22 April 2016
Roof Plan Drawing 5	M Cubed Designs	30 March 2016	22 April 2016
South Elevation and West Elevation Drawing 6	M Cubed Designs	30 March 2016	22 April 2016
North Elevation and East Elevation Drawing 7	M Cubed Designs	30 March 2016	22 April 2016
West Elevation and East Elevation Drawing 8	M Cubed Designs	30 March 2016	22 April 2016
Typical A-A section Drawing 9	M Cubed Designs	30 March 2016	22 April 2016
Construction management detail plan Soil and water management plan Erosion and sediment control plan Site works plan	M Cubed Designs	30 March 2016	22 April 2016

Drawing 10			
Demolition Plan Drawing 11	M Cubed Designs	30 March 2016	22 April 2016
Proposed Torrance Tittle subdivision plan Drawing 12	M Cubed Designs	30 March 2016	22 April 2016
Proposed Torrance Tittle subdivision plan Drawing 12	M Cubed Designs	30 March 2016	22 April 2016

6.1. Provide 10m^3 of storage within the garage and or under the stairs to comply with Part 2.3.5 (v) of the Canterbury Development Control Plan 2013. The Construction Certificate plans must demonstrate, to the satisfaction of the Principle Certifying Authority a suitable storage area in both dwellings.

6.2. To ensure that the development does not compromise privacy enjoyed by future occupants and neighbouring residents the rear first floor balconies shall be deleted. Construction Certificate plans must demonstrate, to the satisfaction of the Principle Certifying Authority that the rear first floor balconies have been removed.

6.3. To ensure that the development does not compromise privacy enjoyed by future occupants and neighbouring residents the ground floor side setback will be increased to 1200mm at the rear of Dwelling 2 (adjoining the laundry, dining and family room) This will result in a separation of 2400mm between the two detached dual occupancy. Construction Certificate plans must demonstrate, to the satisfaction of the Principle Certifying Authority, a distance of 1200mm from the boundary and a 2400mm from the neighbouring dual occupancy (except the garage walls which are allowed at 900mm from boundary or 1800mm between buildings).

7. This condition has been levied on the development in accordance with Section 94 of the Environmental Planning and Assessment Act 1979 and in accordance with Canterbury Development Contributions Plan 2013, after identifying the likelihood that this development will require or increase the demand on public amenities, public services and public facilities in the area.

The amount of the contribution (as at the date of this consent) has been assessed as $19 065.24. The amount payable is based on the following components:

Contribution Element 2013	Contribution
Community Facilities	$1 724.50
Open Space and Recreation	$16 855.69
Plan Administration	$ 485.05

Note: The contributions payable will be adjusted, at the time of payment, to reflect Consumer Price Index increases which have taken place since the development application was determined.

The contribution is to be paid to Council in full prior to the release of the Construction Certificate, (or for a development not involving building work, the contribution is to be paid to Council in full before the commencement of the activity on the site) in accordance with the requirements of the Contributions Plan. The Canterbury Development Contributions Plan 2013 may be inspected at Council's Administration Centre, 137 Beamish Street, Campsie or from Council's website www.canterbury.nsw.gov.au. A copy of the Plan may be purchased from Council's

Administration Centre, 137 Beamish Street, Campsie during office hours.

8. Finishes and materials must in accordance with the Details of Schedules of colours and material boards prepared by M Cubed Designs received by Council on 22 April 2016. The building must not be changed so as to affect the external appearance of the building without the approval of Council.
9. Renewal or provision of fencing, attributable to the proposed development being the responsibility of the developer.
10. All materials must be stored wholly within the property boundaries and must not be placed on the footway or roadway.
11. All building operations for the erection or alteration of new buildings must be restricted to the hours of 7.00 a.m. - 5.00 p.m. Monday to Saturday, except that on Saturday no mechanical building equipment can be used after 12.00 noon. No work is allowed on Sundays or Public Holidays.
12. All building construction work must comply with the National Construction Code.
13. Provide a Surveyor's Certificate to the Principal Certifying Authority prior to walls being erected more than 300mm above adjacent ground surfaces to indicate the exact location of all external walls in relation to allotment boundaries.
14. Provide a Surveyor's Certificate to the Principal Certifying Authority at all floor levels and roof indicating the finished level to a referenced benchmark. These levels must relate to the levels indicated on the approved architectural plans and/or the hydraulic details.
15. Council's warning sign for Soil and Water Management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign must be displayed throughout construction.
16. The capacity and effectiveness of erosion and sediment control devices must be maintained at all times.
17. Concrete pumping contractors must not allow the discharge of waste concrete to the stormwater system. Waste concrete must be collected and disposed of on-site.
18. Materials must not be deposited on Council's roadways as a result of vehicles leaving the building site.
19. Drains, gutters, roadways and accessways must be maintained free of soil, clay and sediment. Where required, gutters and roadways must be swept regularly to maintain them free from sediment. Do not hose down.
20. Stormwater from roof areas must be linked via a temporary downpipe to a council approved stormwater disposal system immediately after completion of the roof area.
21. Materials must not be deposited on Council's roadways as a result of vehicles leaving the building site.
22. The proposed structure being erected so as to stand wholly within the boundaries of the allotment.
23. All disturbed areas must be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
24. An application being made to Council for the construction of a vehicular crossing either by Council or an approved contractor complying with City Works Division standards and at the owner's cost.
25. Toilet facilities shall be provided to the work site in accordance with WorkCover's NSW "CODE OF PRACTICE" for Amenities for construction work and any relevant

requirements of the BCA.

26. The implementation of adequate care during building construction to ensure that no damage is caused to any adjoining properties.
27. Payment of an additional garbage levy for each new dwelling upon completion of work.
28. Under clause 97A(2) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the development are fulfilled.
29. In this condition:
    a) relevant BASIX Certificate means:
        i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 96 of the Act, A BASIX Certificate that is applicable to the development when this development consent is modified); or
        ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and
    b) BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000."

ENGINEERING

Stormwater - Prior To Construction Certificate

30. A stormwater drainage design prepared by a qualified practicing Civil Engineer must be provided prior to the issue of a Construction Certificate. The submitted design must be amended to make provision for the following:
    30.1. The design must be generally in accordance with the plans, specifications and details received by Council on 22 April 2016; drawing number DG852 Sheet 1, prepared by KD Stormwater Pty Ltd.
    30.2. Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from any rainwater tank(s) to the kerb and gutter of Mayfair Crescent.
    30.3. All box gutters to be designed for 100 year ARI as per AS/NZS 3500.3:2003. Detail and size of box gutters to be clearly shown on plan
    30.4. All paved property side walkways stormwater runoff must be directed away from neighbouring lands.
    30.5. All stormwater must pass through a silt arrestor pit prior to discharge to kerb and gutter. Silt arrestor pit is to be sized in accordance with Canterbury Councils DCP 2012. Sump depth is to be a minimum of 300mm deep.
    30.6. If total impervious areas exceed 70% of the lot area on-site detention designed in accordance with Part 6.4 of Canterbury Councils DCP must be provided.
    30.7. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.
    30.8. New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum

wall thickness of 4.0mm and a section height of 100mm.

31. All downpipes, pits and drainage pipes shall be installed to ensure that stormwater is conveyed from the site and into Council's stormwater system in accordance with AUS-SPEC Specification D5 "Stormwater Drainage Design", AS/NZS3500.3 and Part 6.4 of Canterbury Council's DCP 2012.
32. Full width grated drains being provided across the vehicular entrance/exit to the site where internal areas drain towards the street, and be connected to the drainage system upstream of the silt arrestor pit and in accordance with Canterbury Councils DCP 2012.
33. The street alignment levels are to be obtained by payment of the appropriate fee to Council. These levels are to be incorporated into the designs of the internal pavements, carparks, landscaping and stormwater drainage. Evidence must be provided that these levels have been adopted in the design. As a site inspection and survey by Council is required to obtain the necessary information, payment is required at least 14 days prior to the levels being required.

Stormwater - Prior and during construction

34. The applicant to arrange with the relevant public utility authority the alteration or removal of any affected services in connection with the development. Any such work being carried out at the applicant's cost.

Stormwater - Prior to Occupation Certificate

35. That the stormwater system be constructed in general, in accordance with the plans, specifications and details submitted with the Construction Certificate and as amended by the following conditions.
36. Certification from an accredited engineer must be provided to certify that all works has been carried out in accordance with the approved plan(s), relevant codes and standards. The accredited engineer must specifically certify achievement of total impervious areas being less than 70% of the lot area.

Parking - Prior To Construction Certificate

37. The vehicular access and parking facilities shall be in accordance with Australian Standard AS 2890.1"Off-street Parking Part 1 - Carparking Facilities". In this regard, the submitted plans must be amended to address the following issues:
    37.1. The finished levels within the property must be adjusted to ensure that the levels at the boundary comply with those issued by Council for the full width of the vehicle crossing. The longitudinal profile must comply with the Ground Clearance requirements of *AS/NZS 2890.1-2004*.
    37.2. The driveway grades shall be in accordance with Australian Standard AS 2890.1"Off-street Parking Part 1 - Carparking Facilities".
    37.3. A minimum of 2200mm Headroom must be provided throughout the access and parking facilities. Note that Headroom must be measured to the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors.
    37.4. An off street parking space must be provided on the access driveway of the site. The gradient of the access driveway must not exceed 1 in 20 (5%) for the length of the parking space, in accordance with Clause 2.4.6.1 of *AS/NZS 2890.1-2004*.

Parking - Prior and during construction

38. A Work Permit shall be obtained for all works carried out in public or Council controlled lands. Contact Council's City Works Department for details.
39. A full width light duty vehicular crossing shall be provided at the vehicular entrance to the site, with a maximum width of 5.5 metres at the boundary line. This work to be carried out by Council or an approved contractor, at the applicant's cost. The work is to be carried out in accordance with Council's "Specification for the Construction by Private Contractors of: a) Vehicle Crossings, b) Concrete Footpath, c) Concrete Kerb & Gutter".
40. If the vehicle access is to be reconstructed the levels of the street alignment are to be obtained by payment of the appropriate fee to Council. These levels are to be incorporated into the designs of the internal pavements, carparks, landscaping and stormwater drainage. Evidence must be provided that these levels have been adopted in the design. As a site inspection and survey by Council is required to obtain the necessary information, payment is required at least 14 days prior to the levels being required.
41. Driveways, parking and service areas are to be constructed or repaired in accordance with the appropriate AUS-SPEC #1 Specifications: C242-Flexible Pavements; C245-Asphaltic Concrete; C247-Mass Concrete Subbase; C248-Plain or Reinforced Concrete Base; C254-Segmental Paving; C255-Bituminous Microsurfacing.

Public Improvements

42. All redundant vehicular crossings shall be replaced with kerb and the footpath reserve made good by Council or an approved contractor, at the applicant's cost. The work is to be carried out in accordance with Council's "Specification for the Construction by Private Contractors of: a) Vehicle Crossings, b) Concrete Footpath, c) Concrete Kerb & Gutter".
43. The reconstruction of the kerb and gutter along all areas of the site fronting Mayfair Crescent is required. Work to be carried out by Council or an approved contractor, at the applicant's cost. The work is to be carried out in accordance with Council's "Specification for the Construction by Private Contractors of: a) Vehicle Crossings, b) Concrete Footpath, c) Concrete Kerb & Gutter".

Subdivision

44. The granting of service easements within the properties to the satisfaction of Council or private certifier. Costs associated with preparation and registration of easements to be borne by the developer.
45. All easements required for the subdivision being shown on and registered in conjunction with the subdivision plan.
46. The submission of one final plan of subdivision / consolidation and five copies.
47. The satisfactory completion of all conditions of this development consent prior to the release of the final plan of subdivision.
48. The proposed Lot, being the dwelling on the right hand side when viewing the property from the street, is to be known as number 19A.
49. The proposed Lot, being the dwelling on the left hand side when viewing the property from the street, is to be known as number 19B.

LANSCAPING

50. The landscaping must be completed according to the submitted landscape plan (drawn by M Cubed Design, drawing no. 160401 LA-001 and LA-002 issue A,

submitted to council on the 22nd of April 2016) except where amended by the conditions of consent.

51. All the tree supply stocks shall comply with the guidance given in the publication Specifying Trees: a guide to assessment of tree quality by Ross Clark (NATSPEC, 2003).
52. All scheduled plant stock shall be pre-ordered, prior to issue of Construction Certificate or 3 months prior to the commence of landscape construction works, whichever occurs sooner, for the supply to the site on time for installation. Written confirmation of the order shall be provided to Council's Landscape Architect (Contact no: 9789 9438), prior to issue of any Construction Certificate. The order confirmation shall include name, address and contact details of supplier; and expected supply date.

SYDNEY WATER REQUIREMENTS

53. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Co-ordinator. For help either visit Sydney Water's web site at www.sydneywater.com.au/BuildingDeveloping/DevelopingYourLand , Water Servicing Coordinators, or telephone 13 20 92. Following application, a "Notice of Requirements" will be forwarded detailing water and sewage extensions to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.
    The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development/release of the final plan of subdivision.
54. The approved plans shall be submitted to the appropriate Sydney Water Quick Check agent to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately stamped. For Quick Check agent details either visit Sydney Water's web site at www.sydneywater.com.au/BuildingDeveloping/QuickCheck , or telephone 13 20 92.
    The consent authority or a private accredited certifier must ensure that a Quick Check agent has appropriately stamped the plans before the issue of any Construction Certificate.

CRITICAL INSPECTIONS

Class 1 and 10 Buildings

55. The following critical stage inspections must be carried out by the Principal Certifying Authority (either Council or the Accredited Certifier):
    - 55.1. after excavation for, and prior to the placement of any footings, and
    - 55.2. prior to paving any in-situ reinforced concrete building element, and
    - 55.3. prior to covering of the framework for any floor, wall, roof or other building element, and
    - 55.4. prior to covering waterproofing in any wet areas, and
    - 55.5. prior to covering any stormwater drainage connections, and
    - 55.6. after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
56. Section 81(A) of the EP&A Act 1979 requires that a person having the benefit of a development consent, if not carrying out the work as an owner-builder, must notify the principal contractor for the building work of any critical stage inspections and

other inspections that are to be carried out in respect of the building work, as nominated in this development consent.

57. To arrange an inspection by Council please phone 9789-9300 during normal office hours.

COMPLETION OF DEVELOPMENT

58. Obtain an Occupation Certificate/Interim Occupation Certificate from the Principal Certifying Authority before partial/entire occupation of the development.

WE ALSO ADVISE:

59. This application has been assessed in accordance with the National Construction Code.
60. You should contact Sydney Water prior to carrying out any work to ascertain if infrastructure works need to be carried out as part of your development.
61. Where Council is appointed as the Principal Certifying Authority, you will be required to submit Compliance Certificates in respect of the following:
    - Structural engineering work
    - Waterproofing
    - Glazing
    - Protection from termites
    - Smoke alarms
    - BASIX completion
62. Any works to be carried out by Council at the applicant's cost need to be applied for in advance.
63. Before you dig, call "Dial before you Dig" on 1100 (listen to the prompts) or facsimile 1300 652 077 (with your street no./name, side of street and distance from the nearest cross street) for underground utility services information for any excavation areas.
64. In granting this approval, we have considered the statutory requirements, design, materials and architectural features of the building. No variation to the approved design and external appearance of the building (including colour of materials) will be permitted without our approval.
65. Compliance with the National Construction Code does not guarantee protection from prosecution under "The Disability Discrimination Act". Further information is available from the Human Rights and Equal Opportunity Commission on 1800 021 199.
66. Our decision was made after consideration of the matters listed under Section 79C of the Environmental Planning and Assessment Act 1979, and matters listed in Council's various Codes and Policies. If you are not satisfied with this determination, you may:
    66.1. Apply for a review of a determination under Section 82A of the Environmental Planning and Assessment Act 1979. A request for review must be made and determined within 6 months of the date of this Notice of Determination and be accompanied by the relevant fee; or
    66.2. Appeal to the Land and Environment Court within 6 months after the date on which you receive this Notice of Determination, under Section 97 of the Environmental Planning and Assessment Act 1979.