

The NEW City of **CANTERBURY BANKSTOWN**

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Agenda for the

Independent Hearing And Assessment Panel Meeting

17 October 2016 – 6.00pm

Function Room

137 Beamish Street, Campsie

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 17 October 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

7 October 2016

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REPORT SUMMARIES

1 31-31A PERRY STREET, CAMPSIE: DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A THREE STOREY PLUS ATTIC INFILL AFFORDABLE RENTAL HOUSING DEVELOPMENT WITH BASEMENT LEVEL PARKING

- This Development Application seeks consent to demolish the existing structures on site and construct a three storey plus attic infill affordable rental housing development with basement level parking.
- On 3 March 2016, the applicant filed a Class 1 appeal to the NSW Land and Environment Court in regard to the original development application (DA-617/2014) which was refused by Council, under delegated authority, on 17 September 2015.
- The matter has been to a Section 34 Conciliation Conference and amended plans were lodged with Council on five separate occasions to address the contentions raised. Rather than proceeding to a Hearing it has been our preference to accept a fifth set of Without Prejudice plans, which are the subject of this report.
- The amended plans were re-advertised in accordance with Part 7 of Canterbury Development Control Plan 2012, which attracted no submissions.
- The amended plans retain some non-compliances to our controls, with respect to building height, building separation, communal open space, site frontage, building depth, front and side setbacks and deep soil controls. Given the isolated nature of the site, compliance with majority of these controls makes full compliance difficult. The proposed variations do not result in any significant adverse environmental impacts and the development provides a high level of amenity to future occupants. For the reasons outlined within this report, the proposed variations are supported.
- It is recommended that the Court be requested to award costs to Council to cover legal and consultant fees in defending the appeal and review of the amended plans.
- As Council is not the determining authority for this matter (the Land and Environment Court is) it is recommended that the proposal be supported, subject to our recommended conditions of consent, for the Court to determine.

2 37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS

- This Section 96 application has been prepared by an external consultant (DFP) who also assessed the original development application.
- This application is seeking approval to modify a temporary place of worship to a permanent place of worship by modifying Condition 6 of the consent to remove reference to a '6 month trial period', noise attenuation and provision of a customer hotline; modifying Condition 8 by amending the times of prayer during daylight savings time at night from 7pm - 8pm to 8:30pm - 9:30pm and

permit midday prayer on Fridays to occur from 12noon - 1pm and 1pm - 2pm during daylight saving time.

- This application has been referred to the Independent Hearing and Assessment Panel due as it involves significant development and seeks permission for the permanent use of the site as a place of worship.
- The subject site is zoned R3 Medium Density Residential under Canterbury Local Environmental Plan 2012. The existing and continued use of the site is consistent with the definition of 'places of public worship' which is a permissible use within the R3 Medium Density Residential zone.
- In accordance with our notification policy, all owners and occupiers of adjoining properties were notified of the proposed development. It was first notified between 15 December 2015 and 29 February 2016. We received nine submissions. It was notified a second time between 30 May 2016 and 22 June 2016 where the concerns raised include policy/traffic, noise, etc. We received one formal submission objecting to the proposed modifications.
- The application has been assessed against the relevant environmental planning instruments and development control plan.
- DFP Planning recommended that the development application be approved, subject to conditions.
- The application is recommended for approval.
- The Independent Hearing and Assessment Panel on 19 September 2016 deferred making a recommendation on the application (see Supplementary Information).

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FILE NO: 694/31D PT5
REPORT BY: CITY DEVELOPMENT
WARD: CANTERBURY

D/A No:	DA-617/2014
Applicant:	Ms S Pan
Owner:	Mr T J Qiu and Ms S Pan
Zoning:	R4 High Density Residential under Canterbury LEP 2012
Application Date:	23 December 2014. Additional information received 8 June 2016, 21 June 2016, 5 July 2016, 4 August 2016 and 15 August 2016.

Summary:

- This Development Application seeks consent to demolish the existing structures on site and construct a three storey plus attic infill affordable rental housing development with basement level parking.
- On 3 March 2016, the applicant filed a Class 1 appeal to the NSW Land and Environment Court in regard to the original development application (DA-617/2014) which was refused by Council, under delegated authority, on 17 September 2015.
- The matter has been to a Section 34 Conciliation Conference and amended plans were lodged with Council on five separate occasions to address the contentions raised. Rather than proceeding to a Hearing it has been our preference to accept a fifth set of Without Prejudice plans, which are the subject of this report.
- The amended plans were re-advertised in accordance with Part 7 of Canterbury Development Control Plan 2012, which attracted no submissions.
- The amended plans retain some non-compliances to our controls, with respect to building height, building separation, communal open space, site frontage, building depth, front and side setbacks and deep soil controls. Given the isolated nature of the site, compliance with majority of these controls makes full compliance difficult. The proposed variations do not result in any significant adverse environmental impacts and the development provides a high level of amenity to future occupants. For the reasons outlined within this report, the proposed variations are supported.
- It is recommended that the Court be requested to award costs to Council to cover legal and consultant fees in defending the appeal and review of the amended plans.
- As Council is not the determining authority for this matter (the Land and Environment Court is) it is recommended that the proposal be supported, subject to our recommended conditions of consent, for the Court to determine.

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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

On 17 September 2015, DA-617/2014 for the demolition of existing structures and construction of a three storey plus attic infill affordable housing development with basement level parking was refused under delegated authority for the following reasons:

1. The proposed development fails to comply with the provisions of Clause 14 of the State Environmental Planning Policy (Affordable Rental Housing) 2009 with respect to landscaping, solar access and minimum dwelling size [Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979];
2. The proposed development fails to comply with the provisions Clause 16A of the State Environmental Planning Policy (Affordable Rental Housing) 2009 as the proposal is not in keeping with the character of the local area [Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979];
3. The proposed development is inconsistent with the Rules of Thumb provided under the Residential Flat Design Code with respect to building depth, building separation, communal open space, minimum apartment size and daylight access [Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979];
4. The proposed development does not meet the requirements of State Environmental Planning Policy 2004 (Building Sustainability Index: BASIX) as an updated BASIX Certificate was not provided [Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979];
5. The proposed development fails to comply with the objectives of Part 2 Residential Zones of the Canterbury Development Control Plan 2012, as the site does not ensure that good sunlight, privacy and general amenity is available to occupiers of new and existing buildings. Further, the proposal does not demonstrate that the appearance and performance of the development has been considered; rather, has built in excess of the maximum envelope permitted under this Part [Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979];
6. The proposed development fails to comply with Part 2.1.2(x) of the Canterbury Development Control Plan 2012, as the site does not comply with the minimum width requirements. The proposed three storey residential flat building requires a minimum primary frontage of 20 metres [Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979];
7. The proposed development fails to comply with Part 2.1.3 of the Canterbury Development Control Plan 2012, as the site does not comply with the maximum permissible wall height, and a roof top terrace is proposed, despite not being permissible in residential zones [Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979];

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8. The proposed development fails to comply with Part 2.1.5(iv) of the Canterbury Development Control Plan 2012, as the application does not comply with the maximum building depth of 25 metres [Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979];
9. The proposed development fails to comply with Part 2.1.7(xxxiii) of the Canterbury Development Control Plan 2012, as the application does not achieve the minimum 4 metre side setbacks from the eastern and western property boundaries [Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979];
10. The proposed development fails to comply with Part 2.2.2(i) and Part 2.2.2(iii) as the application proposes street entry alongside the western elevation which does not provide a positive interaction between the public and private domain [Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979];
11. The proposed development fails to comply with Part 6.2.6 as the application fails to demonstrate compliance with the minimum solar access provisions for proposed and existing dwellings adjoining new residential developments [Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979];
12. The proposed development fails to comply with Part 6.6 and Part 6.7 of the Canterbury Development Control Plan 2012 as there are outstanding issues relating to tree retention and the provision of deep soil [Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979];
13. For the above reasons, the site is not considered suitable for the proposed development and is considered an overdevelopment of the site [Pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979];
14. For the above reasons, the development is not considered to be in the public interest [Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979].

On 3 December 2015, RE-16/2015 was submitted to Council seeking a review of the determination of DA-617/2014 under Section 82A of the Environmental Planning and Assessment Act 1979. The application was refused by the City Development Committee on 10 March 2016 for the following reasons:

1. The proposed development is inconsistent with the Rules of Thumb provided under the Residential Design Flat Code with respect to building depth, building separation, landscape design, communal open space and storage [Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979].
2. The proposed development fails to comply with Part 2.1.2(xi) of the Canterbury Development Control Plan 2012, as the site does not comply with the minimum width requirements. The proposed four storey residential flat building requires a minimum primary frontage of 30m [Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979].
3. The proposed development fails to comply with Part 2.1.4(xii) of the Canterbury Development Control Plan 2012, as the building does not comply with the three storey maximum and maximum 10m external wall height [Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979].

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4. The proposed development fails to comply with the maximum building depth of 25 [Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979].
5. The proposed development fails to comply with Part 2.1.7(xxxiii) of the Canterbury Development Control Plan 2012, as the design does not achieve the minimum 4m side setback from the eastern and western side property boundaries [Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979].
6. The proposed development fails to comply with Part 2.1.7(xxv) of the Canterbury Development Control Plan 2012, as the design does not comprise a 2m wide deep soil area alongside boundaries [Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979].
7. The proposed development fails to comply with Part 2.3.4(vi) of the Canterbury Development Control Plan 2012, as the design does not satisfy the minimum communal open space requirement [Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979].
8. The proposed development fails to comply with Part 6.4 of the Canterbury Development Control Plan 2012, as there are outstanding issues relating to on-site detention, stormwater and vehicular access [Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979].
9. The proposed development fails to comply with Part 6.6 and Part 6.7 of the Canterbury Development Control Plan 2012, as there are outstanding issues relating to tree retention and provision of deep soil [Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979].
10. The proposed development is inconsistent with Commissioner Roseth's ruling within *CSA Architects v Randwick City Council [2004] NSW LEC 179* (planning principle for development on small or narrow sites) and therefore is an overdevelopment of the site which results in adverse environmental impacts on future residents of the site as well as existing residents of adjoining properties [Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979].
11. Approval of a residential flat building which presents as a four storey development will set an undesirable precedent within the Canterbury Local Government Area.
12. For the reasons above, the design is an overdevelopment of the site and therefore the site is not suitable for the proposed development [Pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979] and
13. For the reasons above, the development is not in the public interest [Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979].

Current Application

On 3 March 2016, a Class 1 Appeal in regard to the original DA (DA-617/2014) was received by Council. The subject application is an assessment of the revised plans received by Council as part of the Section 34 conference discussions.

Site Details

The subject sites, known as 31 and 31A Perry Street, Campsie are legally described as Lot 1 and Lot 2 in DP 567705. The sites are situated on the northern side of Perry Street, east of the intersection with Perry Lane. The site has a total area of 811.4m², with a frontage of

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15.92m to Perry Street, a width along the rear boundary of 12.30m, and a maximum depth of 60.49m. The site has a rear lane access from Elizabeth Lane. The site is currently occupied by single storey semi-detached dwellings, with a detached garage in the rear yard of 31 Perry Street and a shed in the rear yard of 31A Perry Street.

Surrounding development is characterised by a variety of different landuses. The adjoining property to the east, 27-29 Perry Street, contains a three storey residential flat building. The adjoining allotment to the west, 33 Perry Street, contains a two storey detached dual occupancy development. The sites on the southern side of Perry Street contain light industrial land uses.



Aerial view map



Subject Site



Subject site and adjoining development, view north from Perry Street

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Existing development to the west of the site on the opposite side of Perry Lane



Existing development to the south of the site, on the opposite side of Perry Street

Proposal

The applicant seeks consent for the demolition of existing structures and the construction of a three storey plus attic residential flat building with eleven apartments (one x studio, three x one bedroom, five x two bedroom and two x three bedroom apartments) and one level of basement car parking comprising ten car parking spaces. The proposal incorporates three of the eleven units to be dedicated for the purpose of affordable housing. A detailed description of the proposal is outlined below:

- Basement Level:
 - Ten x car parking spaces (including two x accessible parking spaces)
 - Storage
 - Lift access
 - Stair access
- Ground Level:
 - Four bicycle spaces
 - One studio apartment, one x one bedroom apartment and one x two bedroom apartment and associated private open space
 - Vehicle access point to basement parking from Elizabeth Lane
 - Communal open space
 - Garbage bin storage area
 - Lift access
 - Stair access
- Level 1:
 - Two x two bedroom apartments, one x one bedroom apartments and one x one bedroom plus study apartment with associated balconies
 - Storage
 - Lift access
 - Stair access
- Level 2:
 - Two x three bedroom (third bedroom located in the attic) and two x two bedroom apartments (second bedroom located in the attic) with associated balconies
 - Storage

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- Lift access
 - Stair access
- Attic:
 - Bedrooms, balconies and ensuites associated with apartments on Level 2
 - Lift access
 - Stair access

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 55 – Remediation of Land (SEPP 55)
- State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP)
- State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65)
- 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 have emerged:

- **State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)**
Clause 7 of SEPP 55 – Remediation of Land requires Council to consider whether the land is contaminated prior to granting consent to the carrying out of any development on that land. Should the land be contaminated, we must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make it suitable for the proposed use, we must be satisfied that the land will be remediated before the land is used for that purpose.

The site has historically been used for residential purposes and therefore it is unlikely that the land is contaminated. The land has not been used for the purposes identified in Table 1 of the contaminated land planning guide and as such, the subject site is expected to be suitable for the proposed residential use given this history of residential use and no further investigations are required.

- **State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP)**
The subject development application seeks consent for an in-fill affordable housing development lodged pursuant to the provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP). The ARH SEPP provides incentives for the provision of affordable rental housing, including floor space ratio

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bonuses and varied development standards. The proposal compares to the relevant provisions of the ARH SEPP as follows:

Clause 10(1) The subject site is zoned R4 High Density Residential under the Canterbury Local Environmental Plan 2012 (CLEP 2012), and residential flat buildings are permissible in the zone in accordance with Clause 10(1) of the ARH SEPP.

Clause 10(2) of the ARH SEPP requires that in-fill affordable housing developments within the Sydney Region be located within an 'accessible' area which is an area in proximity to certain transport nodes, including 800m walking distance to a train station or 400m to a bus stop. The subject site satisfies this requirement as it benefits from regular bus services (particularly routes 415, 473 and 492) within 300m. These routes provide services to the site and Campsie Railway station that meet the "accessible area" definition within the ARH SEPP.

Clause 13 of the ARHSEPP provides the permissible floor space ratio for in-fill affordable rental housing developments. CLEP 2012 allows a maximum floor space ratio of 0.9:1 for the subject site. The ARH SEPP allows for bonus FSR provisions provided the percentage of gross floor area (GFA) of the development to be used for the purposes of affordable housing is at least 20% of the total GFA. However, the bonus GFA is not a given right and should not be granted at the expense of quality design and impacts on future and adjoining residents. Notwithstanding this, the applicant proposes that 20.5% of the total GFA be for affordable housing, and as such the development meets the provisions of the ARH SEPP in this regard. The permissible FSR under Clause 13(2)(a)(ii) of the ARH SEPP is 1.1:1. The proposed FSR is 1.06:1. Accordingly, the proposed FSR complies with the maximum FSR provisions of the ARH SEPP.

Clause 14 prescribes minimum development standards which cannot be used to refuse consent. The following table is an assessment of the proposal against the ARH SEPP standards:

Control	Requirement	Proposal	Complies
Site Area	Minimum 450m ²	811.4m ²	Yes
Landscaped Area	Min 30% of the site area (243.42m ²)	281.15m ² (34.6% of the site area)	Yes
Deep Soil Zone	15% of the site area, or 121.71m ² . Deep soil zones have a minimum dimension of 3m. If practical, at least two-thirds of this is to be located at the rear of the site.	146.58m ² (18.1%) of site area is deep soil	Yes
		39.7% of deep soil located at rear. It is not practical for 2/3 of the deep soil area to be located at the rear of this site in this instance as the site narrows at the rear and the proposed vehicular access from Elizabeth Lane occupies approximately 50% of the width of the rear boundary.	Yes

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Control	Requirement	Proposal	Complies
Solar Access	Living rooms and private open space areas for a minimum of 70% of the dwellings are to receive a minimum of three hours solar access between 9am and 3pm in the mid-winter solstice.	The proposal is accompanied by a solar access study which demonstrates that the living rooms and private open space areas for 72.7% of proposed apartments (eight out of eleven apartments) receive a minimum of three hours solar access between 9am and 3pm on the winter solstice.	Yes
Car Parking	At least 0.5 spaces per one bed, at least one space per two bed and 1.5 per three bed Four x one bed = two spaces Five x two bed = five spaces Two x three bed = three spaces Total number of spaces required = Ten spaces	10 spaces provided	Yes
Minimum Dwelling Size	Minimum permissible sizes: One bed – 50m ² Two bed – 70m ² Three bed – 95m ²	Minimum proposed sizes: One bed – 54.07m ² Two bed – 70.22m ² Three bed – 95.14m ²	Yes Yes Yes

As demonstrated in the above table, the proposal complies with the relevant provisions of Clause 14 of the ARH SEPP.

Character of the Local Area

Clause 16(A) of the ARH SEPP requires that a consent authority take into consideration whether the design of the development is compatible with the local area. The current planning controls applicable to the subject site and its surrounds allow for a range of development types, including residential flat buildings. The proposed development is considered under the ARH SEPP and in this respect, responds appropriately to the intent of the Policy and satisfies the requirements of Clause 16(A).

Must be used as Affordable Housing for Ten Years

Clause 17 of the ARH SEPP states that the nominated affordable housing dwellings within the development must be used for affordable housing for a period of ten years and managed by a registered community housing provider. Relevant conditions can be imposed to ensure that the proposal satisfies this Clause.

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

An assessment of the proposed development against the Design Quality Principles provided in Part 2 of SEPP 65 is provided as follows:

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1. Context

The subject site is an isolated site and therefore seeks variations to some building envelope controls. However, the proposed three storey plus attic design of the development will be in context with the scale, form and character of the development in the locality as envisaged by the controls. The proposal does seek a variation from the building height standard stipulated within CLEP 2012, but this is sought for the roof treatment only and not for the building envelope. As such, the building form is in context with both our desired vision and existing locality.

2. Scale

The form and scale of the building is consistent with the planning controls for the locality as it presents as a three storey building. The proposed building is generally compliant with the maximum 11.5m building height standard and the permissible floor space ratio control subject to the bonus provision under the ARH SEPP.

3. Built Form

The built form is appropriate and generally in accordance with the key planning controls for the locality. Although the proposed development seeks variation to the maximum building height control stipulated within CLEP 2012 and setback controls stipulated within Canterbury Development Control Plan 2012 (CDCP 2012), the proposed built form provides landscaped area and deep soil area in excess of the requirements contained within the ARH SEPP, achieves a high level of amenity to future occupants of the site in terms of solar access and ventilation as well as maintains an appropriate level of amenity (in terms of privacy and solar access) to existing residential properties that adjoin the site to the east and west.

The proposed attic is located entirely within the roof form and is setback 8.8m (minimum) from the storey below to read as a three storey building when viewed from Perry Street. The proposed built form is consistent with the existing and future desired character of the locality.

4. Density

The building has been designed to comply with the floor space ratio controls applicable to this type of development in accordance with the ARH SEPP. The building has been designed with sufficient parking and more than adequate landscaping and deep soil areas to soften the built form appearance when viewed from the streetscape and adjoining properties.

5. Resource, Energy and Water Efficiency

A BASIX Certificate has been submitted to Council (Certificate No. 598469M_05 dated 14 August 2016) with this development application, which details the resource, energy and water efficiency measures that will be

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incorporated into this proposal. The design of the proposed development is consistent with the commitments made in the submitted BASIX Certificate.

6. Landscape

The proposed development comprises 281.15m² (34.6% of the site area) as landscape area as well as 146.58m² (18.1% of site area) as deep soil. The landscape and deep soil areas will include a planting of canopy trees, screening planting and lawn areas which contribute to the residential amenity and create a green corridor within the setbacks of the development. The proposed landscape and deep soil areas exceed the minimum area requirements specified within the ARH SEPP.

7. Amenity

The proposed development has been designed to maximise solar access, despite the constraints of the site, as eight of the eleven apartments (72.7% of apartments) will receive a minimum of three hours solar access between 9am and 3pm in mid-winter. Furthermore, each apartment (100% of apartments) will be naturally cross ventilated. Each apartment's size and room dimensions exceed the minimum standards within the Residential Flat Design Code (RFDC).

The outdoor private open space areas associated with each apartment are of sufficient size to meet the recreational needs of future occupants. Lift access has been provided from the basement throughout the building, thereby providing full accessibility for all residents and visitors.

The proposed development has therefore been designed, despite its isolated nature, to achieve maximum amenity to future occupants of the building.

8. Safety and Security

The proposed design ensures there is good surveillance of the communal space and entry points to the building. Access to the site, basement car park and building will be controlled via an appropriate security and security intercom system. Restricted access and adequate lighting within the site will be imposed via condition of consent.

9. Social Dimensions and Housing Affordability

The proposed development is located in close proximity to public transport and public recreational areas. Furthermore, the design incorporates a mix in dwelling types (studio, one, two and three bedroom apartments), three apartments for affordable housing and two adaptable apartments. The diversity of housing size and types offers accommodation that is attractive to a range of potential tenants.

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10. Aesthetics

The building has been designed to respond to the built form envisaged in the locality and make a positive contribution to the Perry Street streetscape. The positive contribution is attributed to the successful approach to modulate the form of the building both vertically and horizontally through the choice of materials, colours and shapes. The design incorporates a variety of materials that create visual interest along Perry Street.

• **Residential Flat Design Code**

Further to the design quality principles discussed above, the proposal has been considered against the various provisions of the *Residential Flat Design Code* (RFDC) in accordance with Clause 30(2)(c) of SEPP 65. The proposal has been assessed under the RFDC, rather than the *Apartment Design Guide*, as the original application was submitted prior to the introduction of the revised SEPP 65 *Apartment Design Guide* on 17 July 2015. The proposed development is assessed against the 'Rules of Thumb' within the RFDC as follows:

Standard	Required	Proposed	Complies
Building Depth	Max. 10m – 18m	12m	Yes
Building Separation	<ul style="list-style-type: none"> 12m between habitable rooms/balconies 9m between habitable/balconies and non-habitable 6m between non-habitable rooms 	<ul style="list-style-type: none"> Adjoining building to west: 3m-4.468m Adjoining building to east: 6.219m-7.555m 	No – see comment [1] below
Street Setbacks	Consistent with existing <ul style="list-style-type: none"> 27-29 Perry St. approx. 7.5m 33 Perry St. approx. 7m 	Minimum 5m. The design of the front elevation and natural slope of the street ensures the setback of the proposed development is generally consistent and complementary, to the setbacks existing development adjoining the site to the east and west.	Yes
Side and Rear Setbacks	Consistent with existing streetscape patterns. Maintain light, air, sun, privacy, views and outlook.	The proposed side setbacks are consistent (and in some cases greater) than the side setbacks of adjoining development. The windows of the subject development proposed to be orientated towards the side boundaries are setback at least 3m from the side boundary or comprise some sort of privacy device to ensure appropriate levels of privacy are maintained	Yes

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Standard	Required	Proposed	Complies
		to adjoining residents. As discussed later within this report, the eastern and western elevations of the adjoining existing developments will continue to receive at least two hours of solar access between 9am-3pm on 21 June. The rear setback of the proposed development is consistent with the rear setback of the adjoining buildings to the east and west.	
Deep Soil Zones	Min. 25% of open space (70.28m ²)	25% of the total open space proposed equates to 70.28m ² . The proposed design comprises 146.58m ² deep soil.	Yes
Open Space	Communal open space between 25-30% of site area	Communal open space equates to 17% of site area (138.04m ²).	No – see comment [2] below
Building Entry	Provide physical and visual connection between building and street Provide safe entrance	Proposed building entry located along the eastern side boundary. The building entry is recessed and proposed landscaping and pathway demarcates the entry point. Numbering and a secure entry point at the Perry Street boundary will be required via condition of consent, should the application be supported, to ensure the entrance is secure and clearly visible to visitors and residents.	Yes – via condition of consent
	Provide equitable entrance	Entrance is equitable – ramp access provided	Yes
Pedestrian Access	Barrier free access to at least 20% of dwellings	Barrier free access provided to 100% of dwellings	Yes
Vehicle Access	Maximum width of driveway is 6m	6.1m driveway to Elizabeth Lane.	Yes
	Located vehicle entry away from pedestrian entry	Primary pedestrian entry on Perry Street, separate to vehicle entry off Elizabeth Lane.	Yes
Apartment Layout	Minimum apartment size: One bed – 50m ² Two bed – 70m ² Three bed – 95m ²	Minimum proposed sizes: One bedroom – 54.07m ² Two bedroom – 70.22m ² Three bedroom – 95.14m ²	Yes Yes Yes

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Standard	Required	Proposed	Complies
		No single aspect or cross through units proposed All units are corner units.	
	The back of the kitchen should not be more than 8m from a window	The back of the kitchen of each apartment is located within 8m from a window.	Yes – via condition of consent
	The width of cross-over or cross through apartments over 15m deep should be 4m or greater wide	Apartments G01, G02, 101, 102, 103 and 202 are over 15m deep but are at least 4m wide.	Yes
Apartment Mix	Provide an apartment mix	Acceptable apartment mix as follows: <ul style="list-style-type: none"> • One x studio apartment • Three x one bedroom apartment • Five x two bedroom apartment • Two x three bedroom apartment 	Yes
Building Configuration	Balconies have a minimum depth of 2m	All balconies comprise a minimum depth of 2m.	Yes
	Ceiling Heights: <ul style="list-style-type: none"> • 2.7m habitable • 2.4 non habitable • 2.4m attic with 1.5m height at the edge of the room 	<ul style="list-style-type: none"> • 2.7m habitable • 2.8m basement • 1.5m (edge) – 2.4m attic 	Yes Yes Yes
	A maximum of eight apartments are to be located off a single core.	A maximum of four apartments are located off the single core.	Yes
	Storage: One bed – 6m ³ Two bed – 8m ³ Three + bed – 10m ³	The design comprises sufficient storage space both within the apartment and within the basement. The minimum storage requirements can be enforced via condition of consent.	Yes – via condition of consent
Daylight Access	70% of units to receive three hours between 9am – 3pm. In dense urban areas min of two hours may be acceptable.	Solar access has been assessed in accordance Clause 14(e) of the ARH SEPP which prevails the provisions of the RFDC in this instance.	N/A
Natural Ventilation	60% of units to be naturally cross ventilated	All units (100%) achieve natural cross ventilation.	Yes
	25% of kitchens to have access to natural	No windows adjoin the kitchens within apartments 102 and 202	Yes – via condition of

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Standard	Required	Proposed	Complies
	ventilation	however these kitchens are located <8m from a window and are therefore appropriately ventilated. Should the application be supported, a condition of consent will be imposed to ensure the windows adjoining the kitchens associated with apartments 103, 104, 203 and 204 are high sill and operable to maintain an appropriate level of privacy whilst also providing natural ventilation to the kitchen.	consent

As demonstrated in the table above, the proposal generally complies with the rules of 'Rules of Thumb' within the RFDC with the exception of controls relating to building separation and communal open space. These matters are discussed in detail below.

[1] Building Separation

The RFDC requires a 12m separation between habitable rooms and balconies. The proposed design has, where possible, offset habitable rooms of the subject building to those on adjoining developments. However, the following non-compliances are found:

- Windows to the habitable rooms/balconies on the eastern elevation of the building are separated approximately 7m on the ground floor and approximately 6.2-7m on the upper levels to the habitable windows of the adjoining property to the east (27-29 Perry Street). Therefore, the building does not comply with the 12m building separation requirement.
- Windows to the habitable rooms/balconies on the western elevation of the building are separated approximately 3.8m on the ground floor and on the upper levels to the habitable windows of the adjoining property to the west (33 Perry Street). Therefore, the building does not comply with the 12m building separation requirement.
- Windows to the non-habitable rooms on the eastern elevation of the building are separated 7.5m on the ground floor and approximately 7.2m on the upper floors to the habitable windows of the adjoining property to the east (27-29 Perry Street). Therefore, the building does not comply with the 9m building separation requirement.
- Windows to the non-habitable rooms on the western elevation of the building are separated approximately 4.5m on the ground floor and on the upper floors to the habitable windows of the adjoining property to the west (33 Perry Street). Therefore, the building does not comply with the 9m building separation requirement.

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Given the isolated nature of the site, compliance with the building separation controls specified within the RFDC makes full compliance difficult. In accordance with the “checklist control” contained within the RFDC, developments that proposed less than the recommended distances apart must demonstrate that daylight access, urban form, visual and acoustic privacy has been satisfactorily achieved. As discussed earlier within this report, the proposed development satisfies the solar access requirements applicable to both the subject site as well as adjoining properties.

To achieve appropriate acoustic privacy, the internal apartment layouts have been designed to minimise noise transition by locating busy, noisy areas (e.g corridors etc) next to each other and by separating the more sensitive rooms (e.g bedrooms).

At ground level planting is incorporated to afford adequate privacy and increase amenity. At the levels above ground, walls without windows are used so as to minimise direct looking into apartments. Furthermore, conditions of consent can be imposed to ensure these windows comprise a sill height of 1.5m above finished floor level and that privacy screens are applied to balconies to achieve the privacy as required.

In light of the abovementioned comments, acoustic and visual privacy as well as solar access is protected to a satisfactory degree given the constraints of the site and therefore the proposed variation is supported in this instance.

[2] Communal Open Space

Part 2 of the RFDC specifies that 25-30% of the site area should be dedicated to communal open space. The proposed development comprises 138.04m² (17% of the site area) of communal open space and therefore does not comply with the rule of thumb within the RFDC. The RFDC states that *“where developments are unable to achieve the recommended communal open space, such as those dense urban areas, they must demonstrate that residential amenity is provided in the form of increased private open space and/or contribution to public space”*.

Each apartment exceeds the minimum unit area requirement specified within the RFDC. The design of the private open space of each apartment meets the minimum area requirements specified within Canterbury Development Control Plan 2012 (CDCP 2012), and in fact, all but one private open space area exceeds the minimum area requirement. As discussed earlier within this report, the internal living area and private open space areas of 72.7% of the total number of apartments proposed receive at least three hours of solar access in mid-winter. This exceeds the minimum 70% requirement specified within the ARH SEPP and the RFDC.

The proposed communal open space is located within the northern portion of the site and will therefore receive solar access through-out the day (9am-3pm) in mid-winter. This exceeds the solar access requirement outlined within CDCP 2012 which requires only 50% of the communal open space area to receive at least two hours between 9am-3pm in mid-winter.

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In addition to the above, given the proposed variation to the communal open space requirement provided within the RFDC, we have referred to the communal open space requirement stipulated within CDCP 2012 as a guide. Part 2.3.4(vi) requires residential flat buildings to provide a communal area equivalent to at least 15% of the total open space on a site that is created by the required setbacks and building separations (equating to 97.3m² in this instance). The proposed design incorporates a 138.04m² area (21.2% of open space created by setbacks) to be allocated to communal open space and therefore exceeds the minimum requirement specified within CDCP 2012.

In light of the abovementioned findings and the isolated nature of the site, the proposed variation to the minimum communal open space requirement is acceptable in this instance.

- **State Environmental Planning Policy 2004 – (Building Sustainability Index: BASIX)**
The application is accompanied by BASIX Certificate No. 598469M_05 dated 14 August 2016 which indicates a series of commitments for the DA including the provision for low water use vegetation, a 4 star gas instantaneous hot water system, insulation and cooling and heating commitments. The project scores a pass for water, energy and thermal comfort commitments. The design of the proposed development is consistent with the commitments made in the submitted BASIX Certificate. In this regard, the proposed development satisfies the requirements of the BASIX.

- **Canterbury Local Environmental Plan 2012 (CLEP 2012)**
This site is zoned R4 High Density Residential under CLEP 2012. The controls applicable to this application are:

Provision/ Standard	Requirement	Proposal	Complies
Part 2 Permitted or Prohibited Development			
2.1-2.8 Zoning	R4 High Density Residential	Demolition and Residential Flat Buildings are permitted with development consent within the R4 Zone.	Yes
Part 4 Principal Development Standards			
4.3 Height of Buildings	Maximum 11.5m	Maximum 12.2m (Ridge Height of RL 34.64)	No – see comment [1] below
4.4 Floor Space Ratio	Maximum 0.9:1	Maximum 1.06:1	No – see comment [2] below

The proposed development generally complies with the design and numerical requirements of CLEP 2012 with the exception of our building height control and floor space ratio. These matters are discussed further below:

[1] Building Height

Based on research into recent decisions of the Land & Environment Court, (Four2Five Pty Ltd v Ashfield Council and Mount Annan 88 Pty Ltd v Camden Council) a series of

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questions have 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 Building Height Standard – Assessment of Proposed Variation to the Standard

The site is mapped as being affected by a maximum 11.5m building height standard. The proposed development seeks to vary the maximum 11.5m building height standard by 6.1% (0.7m) as a maximum building height of 12.2m is proposed.

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

A. Four predictions 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 site:

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- 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 reasonable?*

Answer

The applicant's submission demonstrates how the proposed development, despite the variation, remains consistent with the objectives of the building height standard. In summary, the following key point was raised within the submission:

"The additional height will be of no significant consequence to the streetscape impact in comparison to a compliant building. As discussed above, the height exceedance is located centrally within the built form and is viewable from the street as dormer windows [and roof]. Therefore, the attic level will not be readily visible or distinct from street level. Therefore, the attic level bedrooms being located within the roof form, the dormer windows that are viewable from the public domain are not included as external wall height, which effectively removes the external walls and thus, provides a compliant external wall height that interfaces with the neighbouring residential buildings.

The dormer windows will be setback from the streetscape elevation, be minor in scale in comparison to the remainder of the building and [part of the dormer window] will result in a minor height variance.....

Strict compliance could be achieved [sic] by sinking the building further into the existing ground, however this will adversely impact on the amenity of the lower level apartments".

Comment

In response to the applicant's submission:

- The proposed attic is contained wholly within the roof form of the proposed development and the proposed dormer windows comply with the relevant standards contained in Canterbury Development Control Plan 2012. Therefore, the proposed attic does not constitute an additional storey. The proposed development presents as a three storey residential flat building when viewed from the adjoining streetscapes,

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particularly Perry Street. Therefore, the proposed development is consistent with the existing and desired future character of the locality.

- As demonstrated by the applicant within Drawing Nos. A1300, A1301, A1302, A1307 and A1308, the proposed variation will not result in any additional significant overshadowing of adjoining properties and subsequent open space.
- Despite the proposed building height variation, the proposed development complies with Council's external wall height control which further enforces that the proposed variation does not result in any significant unnecessary bulk.
- The proposed height variation is centrally located within the building form. Given the topography of the site, the proposed height variation occurs primarily along the eastern elevation of the building.
- A reduction to the proposed floor-to-ceiling heights to achieve compliance with the building height would result in a reduction in the level of amenity provided to future occupants and would be inconsistent with the floor-to-ceiling heights specified within the RFDC, and is therefore not appropriate.
- The proposed height variation provides the opportunity for additional bedrooms associated with the apartments on the lower floor which improves amenity for future occupants whilst also provides a variety of housing mix in terms of size. The proposed minor height variation does not result in the inclusion of additional apartments within the development.

In light of the abovementioned comments, the proposed development is consistent with the objectives of the building height standard and is consistent with the existing and future desired character of the locality and does not result in any significant environmental impacts. Therefore, the underlying purpose or objective of the building height standard would be defeated or thwarted if compliance was required.

- 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 did not address this question.

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- 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.

Comment

Through the response to question 1(b), the applicant has adequately demonstrated that strict compliance with the maximum building height standard is unnecessary or unreasonable in the circumstances of the case.

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 submission outlines the following environmental planning grounds to justify the contravention to the floor space ratio development standard:

- *"As a result of issues raised by Council during the S34 process in relation to solar access; a skylight has been provided in apartment 201. In addition, a larger window has also been incorporated along the western façade in apartment 201. In relation to apartment G03, the window location has been relocated. This was a result of the cantilevering and therefore, the windows have been relocated to the north west.*
- *The proposed building will not adversely impact on the existing character of the surrounding area. The proposal is of a scale, bulk, design and external appearance that are in keeping with the desired future character of the area. In this regard, modification of the building to achieve numerical compliance will not ensure that the resultant development will achieve any greater level of amenity for residents.*

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- *The proposed residential flat building has been amended and designed so that the attic level is located within the pitched roof form, with dormer windows. This has been specifically designed to reduce the overall bulk and height of the building and remain architecturally consistent with the locality.*
- *In relation to solar access to 33 Perry Street, floor plans of the adjoining property have been included in the drawing set. These floor plans show that the living areas of the dwellings cross from the eastern side to the western side and this, start receiving sunlight before noon and receive sunlight until after 3pm. The non-compliance will partially result in additional shadows being cast on the only potentially affected residential property at 33 Perry Street. The shadow diagrams, accompanying this application, have been provided in three different forms to demonstrate the potential overshadowing or lack thereof. The property to the west of the site, being 27-29 Perry Street, has been demonstrated to have no additional overshadowing, which is consistent with Council's objectives and controls.*
- *The increased setbacks provide a better environmental outcome, which help to mitigate the effects of any shadows cast by the proposal and compensates for the minor increase in overall height.*
- *The adjoining property to the east, being 33 Perry Street, has some windows along the western elevation. This property also provides staggered setbacks. The design of the proposed development responds to this by providing articulated, blank walls along the eastern and western elevations. The windows of the proposed development are located to face the front and rear setbacks, so as to prevent any privacy implications.*
- *The relocation of gross floor area to the upper level allows the objectives for higher density residential development to still be met.*
- *The proposed building achieves a high standard of internal amenity. This is achieved by providing a range of dwelling sizes and layouts with sizes that exceed the minimum requirements.*
- *The layout and configuration of the building also provides for a high level of internal amenity, in terms of solar access, aspect and cross ventilation".*

Comment

The environmental planning grounds raised by the applicant are acceptable. As raised earlier within this report, the site is isolated and is therefore constrained. As part of the Section 34 discussions, the design has been revised to provide increased setbacks (particularly to the eastern boundary) and the proposed attic complies with the definition specified within Canterbury Development Control Plan 2012. On this basis, despite the minor variation to the maximum building height

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control, the proposed design does not result in any significant adverse privacy or solar impacts for future occupants within the site as well for existing residents adjoining the site.

The proposed design achieves a high level of compliance, and in some instances exceeds the minimum requirements, in relation to the development controls for apartment size, solar access, private open space, landscaping and deep soil and natural ventilation. The design therefore provides for a high level of amenity to future occupants of the site.

Furthermore, the proposed design complements the existing and desired character of the locality as despite the minor non-compliance, the building presents as a three storey residential flat building.

The applicant therefore, has demonstrated sufficient environmental planning grounds to vary the standard and the application.

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

Answer to Question 3

The objectives of the building height standard within CLEP 2012 are as follows:

- (a) *to establish and maintain the desirable attributes and character of an area,*
- (b) *to minimise overshadowing and ensure there is a desired level of solar access and public open space,*
- (c) *to support building design that contributes positively to the streetscape and visual amenity of an area,*
- (d) *to reinforce important road frontages in specific localities.*

As outlined within Question 1(b) above, the applicant demonstrated how the proposed development, despite the variation, remains consistent with the objectives of the building height standard. In summary, the applicant demonstrated that the variation remains consistent with the objectives of the building height standard as follows:

- *“...The additional height is located within the roof form and present as dormer windows to the public domain. This will benefit the visual outcome and physical articulation. Requiring strict compliance in terms of the parapet height will be of no distinguishable benefit to the character of the area.*
- *The existing character is typified by one and two storey residential dwelling houses, two storey industrial buildings and three storey residential flat buildings; all of which have pitched, tiled roof*

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forms. The proposal reflects this desired future character by providing a mixture of parapet roof treatments, including dormer windows. This result is a building form that presents to the public domain as a three storey interface.

- The additional height will not result in any adverse overshadowing impacts, which is demonstrated in the aforementioned diagrams.*
- The additional height will be of no significant consequence to the streetscape impact in comparison to a compliant building. As discussed above, the height exceedance is located centrally within the built form and is viewable from the street as dormer windows [and roof]. Therefore, the attic level will not be readily visible or distinct from street level. Therefore, the attic level bedrooms being located within the roof form, the dormer windows that are viewable from the public domain are not included as external wall height, which effectively removes the external walls and thus, provides a compliant external wall height that interfaces with the neighbouring residential buildings.*
- The dormer windows will be setback from the streetscape elevation, be minor in scale in comparison to the remainder of the building and [part of the dormer window] will result in a minor height variance. Regardless, the dormer windows will add visual interest and articulation to benefit the building design.*
- The additional height will be of no significant consequent to the importance of the road frontage.... The attic is located centrally within the building as well as being within the roof form, which presents to the street as dormer windows.*
- The development complies with Council's external wall height controls.*
- ... While Perry Street has not been distinguished as an important road frontage within a specific locality, the amended proposal has been designed to provide vehicular access from Elizabeth Lane, which enhances a consistent streetscape to Perry Street with the surrounding neighbours".*

The applicant's submission has provided sufficient justification to support the claims that the proposal is consistent with the objectives of the building height standard. The proposed departure from the building height standard is therefore in the public interest.

Comment

As outlined within Question 1(b) above, the applicant adequately demonstrated that the proposed development is consistent with the objectives of the maximum building height standard and is therefore in the public interest.

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

Answer to Question 4

The objectives of the R4 High Density Residential Zone are as follows:

- a) To provide for the housing needs of the community within a high density residential environment.
- b) To provide a variety of housing types within a high density residential environment.
- c) To enable other land uses that provide facilities or services to meet the day to day needs of residents.

In summary, the applicant's submission outlines that the proposed development is consistent with the objectives of the R4 Zone for the following reasons:

- *"The variation sought will not prevent providing for the housing needs of the community from being achieved in comparison to a compliant form.*
- *By providing apartments with improved internal amenity given the compliant floor-to-ceiling heights and access to an ample amount of sunlight, both which would constitute a housing need.*
- *The amended proposal includes a mixture of studio, one, two and three bedroom dwellings within the R4 zone. The variation will not impact on achieving the objective in comparison to a compliant form. Should the whole upper level require removal or reduction to achieve compliance, this would impact on the availability of the apartment types and contribution they make to variety.*
- *The proposed development will be a residential flat building which is permitted in the zone. No other land uses are proposed on the site. In addition, the development provides higher density accommodation that is both well-serviced and in close proximity to Canterbury Road, which is an enterprise corridor".*

Comment

This statement is concurred with. However, when studying recent Court cases concerning proposals to vary development standards, a frequent finding was that a proposal's consistency with the 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 in the circumstances of this case.

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- 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 as follows:

- The proposed variation to the building height standard does not result in any additional adverse impacts in terms of overshadowing or loss of solar access, visual impact or privacy impact than that expected by a compliant building form under the relevant planning framework.
- The resultant building will achieve a high level of amenity to future occupants of the site as well as existing occupants of adjoining properties.
- The attic, and subsequent height variation, is located centrally within the building footprint. The resultant building presents as a three storey residential flat building which is consistent with the existing and future desired character of the locality.

Comment

The applicant's conclusion with regard to an appropriate degree of flexibility is agreed with, particularly as the applicant has adequately demonstrated on the plans that the proposed variation will not result in any significant adverse environmental impacts within the site and on adjoining properties. When taking into account the isolated nature of the site and the subsequent restricted development opportunity, the degree of contravention to the building height standard is not excessive.

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 the particular circumstances?

Answer to Question 6

The applicant's request to vary the building height standard, notes the following benefits:

- The variation is restricted to the roof form and part of the dormer windows associated with the attic. The attic level is centrally located within the built form and will present as a three storey residential flat building which is consistent with the existing three storey residential flat buildings located within the locality, particularly along Perry Street.

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- The attic level will be appropriately integrated into the elevation and add visual interest and articulation to the design.
- The variation to the building height standard does not result in any significant adverse environmental impact in terms of solar access and privacy to existing residents in adjoining properties.
- The additional height to the attic ensures an appropriate level of amenity is provided to the ground floor apartments by not lowering the building into the ground. Furthermore, the additional height facilitates higher floor-to-ceiling height which is integral to the internal amenity of the apartments and also achieving compliance with the minimum habitable room-to-ceiling height control of 2.7m set out in the RFDC.
- The proposal will provide additional housing opportunities within the locality.

Comment

The applicant satisfactorily demonstrates that the proposed variation represents a 'better outcome' compared to a compliant development through ensuring the design exceeds the minimum requirements for solar access, floor-to-ceiling heights, natural ventilation for the subject development and therefore it will provide a high level of amenity to future occupants. Furthermore, the proposed variation assists with the development comprising a variety of housing mix in terms of size, accessibility and affordability. Lastly, the proposed variation will not result in any significant adverse environmental impacts on the amenity of adjoining properties and will be of a building form that is consistent to existing and future desired character of similar development in the locality.

Accordingly, the non-compliant proposal does represent a 'better outcome' compared to a compliant development and does satisfy the objectives of clause 4.6.

Conclusion – Clause 4.6 Assessment

The applicant's submission to vary the maximum building height standard is supported, as demonstrated by the above detailed assessment.

[2] Floor Space Ratio (FSR)

The application is lodged pursuant to the provisions of Part 2 Division 1 of the ARH SEPP. Clause 13 of the ARH SEPP provides additional gross floor area subject to the additional gross floor area being used for affordable housing.

The proposed affordable housing component of the development is 20.5%, and as such the development qualifies for a floor space bonus subject to meeting the provisions of the ARH SEPP. The permissible FSR under Clause 13(2)(a)(ii) of the ARH SEPP is 1.1:1. While the proposed FSR of 1.06:1 complies with the maximum

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permitted within Clause 13 of the ARH SEPP and subsequently our floor space ratio control.

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

The proposed development has been compared to the requirements of CDCP 2012 as follows:

Standard	Requirement	Proposal	Complies
Part 2 – Residential Neighbourhoods			
Isolation of Sites	No isolation of neighbouring properties so that it is incapable of being reasonably developed	The site is isolated: <ul style="list-style-type: none"> - 33 Perry Street contains a detached dual occupancy under strata title - 27-29 Perry Street is occupied by a residential flat building under strata title. 	Yes
Minimum frontage	Min 20m width measured across the street boundary	Perry Street: 15.92m Elizabeth Lane: 12.305m	No – see comment [1] below
Height	Basement projection – 1m max (otherwise included as a storey)	The basement projects <1m.	Yes
	Basement permissible for residential flat buildings in R4 zone	Basement proposed.	Yes
	Maximum three storey with 10m maximum external wall height	The proposed development presents as a three storey development as the attic does not comprise a storey in accordance with Part 2.1.3(ii) of CDCP 2012. A maximum 10m external wall height is proposed.	Yes
	Roof top terraces are not acceptable on any building or outbuilding in any residential zone	No rooftop terrace is proposed.	Yes
Depth/Footprint	25m max Can be increased to 35m if deep soil planting incorporated as per Clause 2.1.5(v)	Maximum 45m (separated into 2 modules with maximum depth 22m, including balconies)	No – see comment [2] below
Front setback	Minimum 6m	5m	No – see comment [3] below
Rear setback	Minimum 6m	Minimum 10.546m	Yes
Side setbacks	Minimum 4m	Eastern boundary: 2m min – 5.5m	No – See comment [4] below

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Standard	Requirement	Proposal	Complies
		Western boundary: 2m min – 4.7m	No – See comment [4] below
Deep soil	Minimum 2m wide along the side boundaries and minimum 5m along front and rear boundaries	5m wide deep soil provided along front and rear boundaries	Yes
		2m wide deep soil area provided along part of the eastern side boundary. Nil provided along western side boundary	No – see comment [5] below
Car Parking	The proposal comprises an in-fill affordable housing development and therefore the car parking generation rates specified within the ARH SEPP prevails over car parking generation rates.		N/A
Design Controls			
Street Address	Clearly identifiable street entries	Proposed building entry along eastern side boundary. The entry point is demarcated through the use of landscaping and location of mailbox however, should consent be granted, a condition of consent will be included to ensure the pedestrian entry along Perry Street is clearly identifiable through the use of a security gate and numbering.	Yes – via condition of consent
	Provide main common entry and separate private ground floor apartment entries where appropriate	Main common entry faces eastern boundary. Separate private entry to apartments G01-G02 from Perry Street have not been provided. This is consistent with the design of existing residential flat buildings along Perry Street.	Yes
	At least one habitable room window to face street	Living/dining room windows of each apartment face either Perry Street and Elizabeth Lane.	Yes
	At least one habitable room window to face internal common areas	The living rooms of apartments G03, 103, 104, 203 and 204 are orientated towards the common area on the ground floor at the north of the site.	Yes
	No obstruction to views from street to development and vice versa	No obstruction to views from the street.	Yes
Façade Design and Articulation	Avoid long flat walls	No long flat walls as all elevations are articulated.	Yes

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Standard	Requirement	Proposal	Complies
	Use of non-reflective materials, treat publically accessible areas with anti-graffiti coating	Achieved by way of condition of consent.	Yes – via condition of consent.
Roof Design	Relate roof design to building and respond to orientation of site	Roof design relates to building and appropriately responds to orientation of site.	Yes
	Mansard roofs (or similar not permitted	The proposed development comprises a simple pitched roof that does not exceed a 30 degree pitch.	Yes
Service and utility Areas	Integrated into the design of the development and not visually obtrusive Unscreened appliances not to be visible from the street, communal area or driveway on site	Service and utility areas are integrated into the design of the development.	Yes
	Provide suitable clothes drying facilities	The proposed balconies are of appropriate size to facilitate clothes drying areas.	Yes
	Discretely locate mailbox in front of property	Mailbox discretely located at the pedestrian entry point along Perry Street.	Yes
Performance Controls			
Visual Privacy	Locate and orient new developments to maximise visual privacy between buildings	Privacy mitigation measures have been incorporated into the design or will be dealt with by conditions of consent. In this regard, conditions can be attached to any consent requiring that all windows to bedrooms and internal living rooms on each level, facing side boundaries, contain translucent glazing for the bottom portion of the window, up to 1.5m from finished floor level.	Yes – via condition of consent
Open Space	One bedroom – 9m ² Two bedroom – 12m ² Three bedroom – 16m ²	One bedroom – minimum 9.38m ² Two bedroom – minimum 12m ² Three bedroom – minimum 16.3m ²	Yes Yes Yes
	Communal area – minimum 15% of open space created by setbacks and building separation (97.3m ²)	138.04m ² (21.2% of open space created by setbacks) is to be allocated to communal area.	Yes
Open space design	Private open space, communal open space, garden courtyard or	The private open space areas associated with each apartment (balconies) and the communal	Yes

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Standard	Requirement	Proposal	Complies
	terrace, and balconies to be designed as per Part 2.3.3	open space areas have been designed in accordance with Part 2.3.3.	
Internal dwelling space and design	Dimensions and design of interiors to accommodate furniture typical for purpose of room	The interior design complies with the design requirements of the RFDC. Furthermore, typical furniture layout on plans demonstrates compliance by way of minimum use of furniture.	Yes
	Living room and principal bedrooms have minimum width of 3.5m	The proposed living rooms and main bedrooms comprise a minimum width of 3.5m.	Yes
	Secondary bedrooms have minimum width of 3m throughout	All secondary bedrooms comprise a minimum width of 3m.	Yes
Storage	One bed – 6m ³ Two bed – 8m ³ Three bed – 10m ³	The design comprises sufficient storage space both within the apartment and within the basement. The minimum storage requirements can be enforced via condition of consent.	Yes – via condition of consent
Housing Choice	10% of dwellings to be provided as accessible or adaptable units to suit residents with special needs	Two apartments (18%) provided as adaptable housing and imposed as condition of consent	Yes – via condition of consent.
Part 6.2 - Climate and Energy			
Site layout and building orientation	Design and orientate the building to maximise solar access and natural lighting, without unduly increasing the buildings heat load	All apartments comprise dual orientation. Where possible, the living rooms are orientated north. Given the orientation of the site, south facing apartments also comprise a window to either the west or east to obtain adequate solar access.	Yes
	Where the shape of a lot permits, face the long side of the building to the north to allow winter sun in, and then block out during summer with shading devices and landscaping	The shape and orientation of the lot does not permit the long side of the building to face north.	N/A
	Coordinate design for natural ventilation with passive solar design techniques	All proposed units have been designed to be naturally ventilated. Eight of the eleven units will receive at least three hours of solar access between 9am-3pm on 21 June which complies with the	Yes

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Standard	Requirement	Proposal	Complies
		minimum requirements of the ARH SEPP.	
	Provide adequate external clothes drying areas for all residents in the building	Adequate external clothes drying areas can be provided within the private open space area associated with each apartment.	Yes
Daylight and sun access	At least two hours sunlight between 9.00am and 3.00pm on 21 June should be received daily: <ul style="list-style-type: none"> To indoor living areas and principal private open space for $\geq 75\%$ of the proposed dwellings For at least 50% of any communal open space 	Solar access to the proposed apartments and associated private open space has been assessed in accordance Clause 14(e) of the ARH SEPP which prevails the provisions of CDCP 2012 in this instance. In regards to communal open space, more than 50% of the area receives more than two hours solar access in mid-winter given its location within the northern portion of the site.	Yes
	Siting and form of new developments shall protect existing neighbouring dwellings: <ul style="list-style-type: none"> At least two hours sunlight between 9.00am and 3.00pm on 21 June for existing indoor living areas and at least 50% of the PPOS If a neighbour currently receives less than two hours sunlight then siting and form of proposed buildings shall be adjusted to maintain existing sunlight 	The adjoining property to the east is known as 27-29 Perry Street and the adjoining property to the west is known as 33 Perry Street. <u>27-29 Perry Street:</u> The proposed development solely impacts on the windows on the western elevation from 2:15pm in mid-winter. Therefore solar access to these windows will be retained for at least two hours in mid-winter. Likewise, the open space associated with this property is only impacted by the proposed development from 2pm in mid-winter. <u>33 Perry Street:</u> The proposed development overshadows the living room windows of this property on the eastern elevation between 9am-11am. However, windows to the same living room are also provided on the western elevation of the building, which is not impacted by the proposed development. Furthermore, more than 50% of the open space associated with this property	Yes

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Standard	Requirement	Proposal	Complies
		receives solar access between 11am-3pm. The proposed development therefore complies with the solar access requirements for adjoining properties.	
Part 6.3 - Crime Prevention			
Site and Building Layout	Address the street	The building and apartments are orientated to face Perry Street and Elizabeth Lane which facilitates natural surveillance.	Yes
	Habitable rooms with windows at front of dwellings	Habitable room windows and balconies of apartments on each level of the development are orientated to either the Perry Street and Elizabeth Lane frontages.	Yes
	Avoid blind corners in pathways, stairwells, hallways and car parks	Building layout avoids blind corners.	Yes
Access Control	Entrances are clearly recognisable, minimise number of entry point	Should the application be supported, a condition of consent will be incorporated to ensure a secure entry point is to be provided at the pedestrian entry along Perry Street. The site is to be clearly identified through numbering to demarcate the main entry point to the building. Appropriate signage identifying the location of apartments is to also be provided at ground floor.	Yes – via condition of consent
	Install intercom, code or card locks or similar to main entries to building including carpark	Can be addressed by condition of consent.	Yes – via condition of consent
Ownership	Dwellings and communal areas to provide sense of ownership	Sense of ownership achieved through use of design features, including landscaping, building materials and spatial definition.	Yes

The proposed development generally complies with the requirements of CDCP 2012 with the exception of the controls relating to minimum frontage, building depth, front and side setbacks and deep soil. These matters are discussed further below:

[1] Minimum Site Frontage

The proposed development presents as a three storey building and therefore a minimum 20m site width measured across the street boundary is required in

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accordance with Clause 2.1.2(x) of CDCP 2012. The subject site has a frontage of 15.92m which does not comply with this requirement.

The objective of this standard is to ensure sites have sufficient dimensions for adequate garden areas around dwellings, adequate vehicle access and parking. The subject site is isolated given the two adjoining sites are under Strata Title. Despite not complying with the minimum side and front setback controls as discussed below, the proposed design exceeds the minimum landscaping and deep soil requirement specified within the ARH SEPP. Furthermore, the proposed design provides a high level of amenity to future occupants of the site in terms of solar access, privacy and private open space.

On this basis, despite the non-compliance with the minimum site frontage control, the proposed development satisfies the objective of the standard and is therefore acceptable in the circumstances of the case.

[2] Maximum Building Depth

Part 2.1.5(iv) of CDCP 2012 states that a residential flat building in the R4 zone shall not exceed a depth of 25m. The proposed depth is approximately 45m, which is a variation of 80%. The objective of this control is to promote improved levels of amenity for new and existing developments, and ensure that the scale and mass of new buildings is compatible with the residential zone's desired character.

It is acknowledged that some attempt to reduce the bulk of the development has been made through the separation of the building into two modules (approx. module depth ranging between 18-22m) with the access component in between the modules and increased side setbacks.

Notwithstanding this, as demonstrated in the body of this assessment, the proposed development provides a high level of amenity to future occupants of the site through comprising apartments that meet (and in some cases exceed) the minimum area and private open space requirements, more than 70% of apartments receive at least three hours solar access in mid-winter and 100% of apartments are naturally cross ventilated. In addition, an appropriate level of privacy and solar access is maintained to the existing residential properties that adjoin the subject site.

As part of the Section 34 proceedings, the design has been revised to present as a three storey development to the adjoining streetscapes by virtue of revising the previously proposed fourth storey with an attic that complies with the "attic" definition within CDCP 2012. Subsequently, the revised design is compatible with the existing and future desired character of similar development within the locality.

In light of the abovementioned comments, the proposed design satisfies the objective of the maximum building depth control and is therefore supported in this instance.

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[3] Front Setback

Part 2.1.7(xxxii) of CDCP 2012 requires buildings to be setback 6m from the front boundary. The front balconies are setback 5m from the Perry Street frontage, resulting in a 17% variation to the 6m requirement. Given the slight angle of Perry Street, the proposed setback of the building is generally in line with the existing development on the adjoining sites to the west and east and therefore maintains a defined street edge. Furthermore, the area within the front setback is proposed to be a landscaped area with adequate space for the planting of new trees. On this basis, the proposed variation satisfies the objectives of Part 2.1.7 and is supported in this instance.

[4] Side Setbacks

Part 2.1.7(xxxiii) of CDCP 2012 specifies a minimum side setback of 4m. The proposed eastern and western elevations have a minimum setback of 2m (50% variation), which fails to comply with this provision. The proposed setbacks increase to 4m along the eastern elevation and 3.8m along the western elevation. The objectives of the control are to limit the scale and bulk of new buildings by retaining landscaping, contribute to the green landscape by retaining adequate space for new trees and to provide sufficient separation between buildings to minimise environmental impacts.

As discussed earlier within this report, planting is incorporated at ground level to afford adequate privacy and increase amenity. At the levels above ground, blank walls are used so as to minimise direct looking into apartments. Furthermore, any potential privacy impacts can be mitigated through imposing conditions of consent to ensure any habitable room windows along the side elevations comprise a sill height of 1.5m above finished floor level and that privacy screens are applied to balconies to achieve the privacy as required.

Despite the non-compliance with the side setback controls, the proposed development exceeds the minimum requirements for landscaped and deep soil areas specified within the ARH SEPP. It is also important to note that the resultant building envelope maintains an appropriate level of solar access to the existing residential properties that adjoin the site.

Given the isolated nature of the site and the associated constraints, the proposed design and treatment of the eastern and western facades, the sufficient landscape and deep soil area provided, the non-compliance with the side setback controls is acceptable on planning merit.

[5] Deep Soil Zones

Part 2.1.7(xxxv) states that a minimum 2m width of deep soil is to be provided along the site's side boundaries. The proposed design incorporates 2m wide deep soil area long part of the eastern side boundary, however nil area is provided along the western boundary (100% variation). As discussed above, the objectives of this control is to limit the bulk and scale of new buildings and provide for green space to reduce the visual and environmental impact of new development.

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The revised design results in a development that is consistent with similar existing and future development within the locality as it presents as a three storey development. The proposed bulk and scale of the development, despite the minor variation to the maximum building height standard, is acceptable as it provides a high level of amenity to future occupants of the site and maintains an appropriate level of amenity to adjoining properties. Although the western boundary does not comprise any deep soil area, it will comprise landscaped area to provide for green space.

In light of the abovementioned comments and given the proposed design is compatible with the existing and future desired character of the locality and the proposed deep soil area exceeds the minimum deep soil requirements specified in the ARH SEPP, the proposed variation is supported in this instance.

Part 6.4 – Development Engineering, Floor and Stormwater

The application has been reviewed by our Development Engineer who raised no objection to the proposed development, subject to conditions of consent.

Part 6.6 and 6.7 – Landscaping

The application has been reviewed by our Landscape Architect who raised no objection to the proposed development, subject to conditions of consent.

Part 6.9 – Waste

The application has been reviewed by our Waste Services Officer who raised no objection to the proposal, subject to conditions of consent should the application be supported.

- **Canterbury Development Contributions Plan 2013**

The Canterbury Development Contributions Plan 2013 applies to the proposed development. The proposed development attracts a development contribution of \$123,734.64 in the event of an approval being issued. This has been included as a condition of development consent.

Other Considerations

- **National Construction Code**

The development application has been reviewed by our Building Officer who has raised no objection to the proposal subject to appropriate conditions being imposed, including that full compliance with the National Construction Code be achieved.

- **Proposed Excavation Works**

The proposed development involves excavation and construction works in close proximity to property boundaries and neighbouring properties. It is recommended that a condition requiring the applicant to provide a dilapidation report for the adjoining properties to the east and west, prior to the issue of the Construction Certificate be included on any consent issued. Should any damage to adjoining

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properties result from the proposed excavation works at the subject site, the applicant will be required to rectify all damages.

- **Sediment and Erosion Control**

Standard conditions are included regarding the installation and maintenance of the sediment and erosion control measures as part of the pre and during construction phase of the development.

The development will involve excavation of part of the site to accommodate the basement carpark. Any excavated material not utilised elsewhere on the property, will require proper disposal and transport in accordance with the Waste Avoidance and Recovery Act, and the Protection of the Environment Operations Act. A condition will be imposed in this regard.

- **Likely Impacts of the Development**

Apart from those matters already addressed, there are no other likely environmental impacts to arise from the proposed development. The proposal will not result in any significant environmental, social, amenity or economic adverse impacts on the locality given the following:

- The proposed development complies with the maximum floor space ratio provision stipulated within the ARH SEPP.
- Although the building seeks a minor variation (6.1%) to the maximum building height standard stipulated within CLEP 2012, the additional height will not significantly reduce the level of solar access and privacy provided to the adjoining properties located to the east and west of the site.
- The resultant building is compatible with the character of similar development within the locality.
- Although the proposed design does not comply with the minimum communal open space requirement specified within the RFDC, the development comprises private open space areas for each apartment which meet, and in some instances exceed, the minimum area requirements specified within CDCP 2012. Furthermore, the location of the proposed communal open space within the northern portion of the site ensures it receives solar access between 9am-3pm in mid-winter in excess of the minimum two hour requirement. The minimum communal open space area requirement specified within CDCP 2012 was also referred to as a guide given the non-compliance with the RFDC requirement. The proposed communal open space exceeds the minimum area requirements specified within CDCP 2012. In light of the assessment, the proposed communal open space is adequate given the constraints of the site.
- The proposed development exceeds the minimum solar access and natural ventilation requirements specified with the ARH SEPP. Eight of the eleven apartments proposed (72.7%) will receive at least three hours solar access between 9am-3pm in mid-winter and each apartment will be naturally cross ventilated.
- The proposed development is setback minimum 2m from the side boundaries which does not comply with Part 2.1.7(xxxiii) of CDCP 2012 nor does it comply

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with the minimum 2m deep soil area along the eastern elevation specified in Part 2.1.7(xxxv) of CDCP 2012. Notwithstanding the non-compliances, the proposed development exceeds the minimum landscape and deep soil requirements specified within the ARH SEPP. The proposed development is substantially separated from the side boundaries and as demonstrated within the abovementioned assessment, will provide adequate green space and will retain an appropriate level of privacy and solar access to adjoining properties and is therefore acceptable.

- The proposed development comprises a variety of housing types including studio, one bedroom, two bedroom and three bedroom apartments of various sizes. Furthermore, the proposed development comprises two adaptable apartments as well as three apartments to be dedicated to affordable rental housing. Therefore, the development will provide for a variety of social mix within the development.

- **Suitability of Site for the Development**

The site is zoned R4 High Density Residential under CLEP 2012. The proposed residential flat building development is permissible in the subject site's current zoning and in accordance with the ARH SEPP. The proposal has been assessed under Sections 5A and 79C of the Environmental Planning and Assessment Act 1979, and as demonstrated throughout the body of this report, the proposal generally complies our controls. The proposed variations, regarding controls relating to building height, building separation, communal open space, minimum site frontage, building depth, front and side setbacks and deep soil areas have been assessed on their merit and are acceptable for the reasons outlined within the body of the report.

- **The Public Interest**

The proposed infill affordable rental residential flat building replaces an existing dwelling and therefore better utilises an existing underutilised site by providing greater housing opportunities for the locality. The building will consist of two adaptable dwellings and three affordable rental housing which will provide for additional and affordable residential accommodation opportunities.

The design provides a positive contribution to the locality in terms of design quality and amenity for future occupants without creating an adverse impact on adjoining land uses. The proposed development is therefore considered to be in the public interest.

Notification

The application was publically advertised for a period of 21 days until 20 September 2016 in accordance with the requirements of Part 7 of CDCP 2012. No submissions were received.

Conclusion

The development application has been assessed pursuant to the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979 and all relevant State Environmental Planning Policies, development control plan, codes and policies.

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The proposed variations to the maximum building height, minimum building separation, communal open space, site frontage, building depth, front and side setbacks and deep soil controls will not result in any significant adverse impact on the amenity of future occupants of the site as well as 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-617/2014 be approved subject to the following conditions of consent:

- A. Council request the NSW Land and Environment Court award it costs.
- B. Council enters into a S34 Agreement with the applicant and the Court be advised of the following conditions of consent:

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:
 - Structural Engineering Plan including method of shoring during excavation
 - Building Specifications
 - Fire Safety Schedule
 - Landscape Plan
 - Hydraulic Plan
 - Firewall Separation
 - Soil and Waste Management Plan
 - BASIX Certification
 - Ventilation of basement carpark
 - 1.2. Payment of the Long Service Leave Levy to the Long Service Leave Corporation or to Council.
 - 1.3. Payment to Council of:

Kerb and Gutter Damage Deposit	\$6,790.00
Section 94 Contributions	\$123,734.64
Certificate Registration Fee	\$36.00
Long Service Levy and Fee	\$10,201.45
 - 1.4. If you appoint Council as your Principal Certifying Authority, the following fees are payable:

Construction Certificate Application Fee	\$9,947.00
Inspection Fee	\$2,387.00
Occupation Certificate Fee	\$714.00

Note 1: Long Service Leave Levy payment; (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: If you appoint a Principal Certifying Authority other than Council, the fees shown in this item do not apply, however other fees will apply.

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Note 3: When the items in this condition are provided and have been assessed as satisfactory, your Construction Certificate will be posted to you.

Note 4: Section 94 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).

SITE SIGNAGE

3. A sign shall be erected at all times on your building site in a prominent position stating the following:
 - 3.1. The name, address and telephone number(s) of the principal certifying authority for the work, and
 - 3.2. 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
 - 3.3. That unauthorised entry to the work site is prohibited.

DEMOLITION

4. 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.

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- 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

5. The development being carried out in accordance with the following plans, specifications and details, except where amended by the conditions specified in this Notice.

Drawing No.	Drawing Name	Rev No.	Prepared By:	Dated Received by Council:
S34 - A0020	Unit Schedule	D	Ghazi Al Ali Architect	15 August 2016
S34 - A1010	Site Plan	C	Ghazi Al Ali Architect	15 August 2016
S34 - A1054	Landscape	D	Ghazi Al Ali Architect	15 August 2016
S34 - A1101	Demolition Plan	B	Ghazi Al Ali Architect	15 August 2016

31-31A PERRY STREET, CAMPSIE: DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A THREE STOREY PLUS ATTIC INFILL AFFORDABLE RENTAL HOUSING DEVELOPMENT WITH BASEMENT LEVEL PARKING (CONT.)

S34 - A1102	Streetscape Analysis	K	Ghazi Al Ali Architect	15 August 2016
S34 - A1200	Basement Level 01	I	Ghazi Al Ali Architect	15 August 2016
S34 - A1201	Ground Floor Plan	K	Ghazi Al Ali Architect	15 August 2016
S34 - A1202	Level 01	I	Ghazi Al Ali Architect	15 August 2016
S34 - A1203	Level 02	K	Ghazi Al Ali Architect	15 August 2016
S34 - A1204	Level 03	K	Ghazi Al Ali Architect	15 August 2016
S34 - A1205	Roof Plan	K	Ghazi Al Ali Architect	15 August 2016
S34 - A1400	Elevations	K	Ghazi Al Ali Architect	15 August 2016
S34 - A1401	Elevations	K	Ghazi Al Ali Architect	15 August 2016
S34 - A1500	Sections	K	Ghazi Al Ali Architect	15 August 2016
S34 - A1600	Material Schedule	K	Ghazi Al Ali Architect	15 August 2016
S33 - A1601	Material Schedule	K	Ghazi Al Ali Architect	15 August 2016
15269-DA1	Landscape Concept Plan	B	Vision Dynamics Pty Ltd	5 July 2016
17110-01	Ground Floor Plan	D	ING Consulting Engineers Pty Ltd	5 July 2016
17110-02	Basement Plans, Notes and Details	D	ING Consulting Engineers Pty Ltd	5 July 2016
17110-03	Erosion & Sediment Control Plan, Notes & Details	D	ING Consulting Engineers Pty Ltd	5 July 2016

- 5.1. A restricted access gate is to be installed at the pedestrian entry point along Perry Street. Revised plans indicating this change are to be provided to the Principal Certifying Authority prior to the issuing of a Construction Certificate.
- 5.2. Intercom, code or card locks or similar must be installed at main entries to the building to control access, including the car parks.
- 5.3. Storage area of at least 6m³ per one bedroom dwelling, 8m³ per two bedroom dwelling and 10 m³ per three bedroom dwelling is to be provided in the development. Details of these changes are to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.
- 5.4. The windows adjacent to the kitchens of apartments 103, 104, 203 and 204 are to be operable and comprise a sill height of 1.5m from finished floor level to maintain an appropriate level of privacy whilst also providing natural ventilation to the kitchen of these apartments. Details of these changes are to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.
- 5.5. The site shall be treated with anti-graffiti paint or coating to deter graffiti offenders targeting the building and its perimeter. This will preserve the building and increase a sense of maintenance and ownership of the site.
- 5.6. Windows to habitable rooms along the side elevations facing the side boundaries are to have a sill height of 1.5m above finished floor level. Details of these changes are to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.

31-31A PERRY STREET, CAMPSIE: DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A THREE STOREY PLUS ATTIC INFILL AFFORDABLE RENTAL HOUSING DEVELOPMENT WITH BASEMENT LEVEL PARKING (CONT.)

- 5.7. Solid privacy screens of minimum 1.8m in height from finished floor level are to be applied to the outer side of the proposed balconies for the balconies on the first and second storey of the development to maintain an appropriate level of privacy for future occupants. Details of these changes are to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.
- 5.8. The bathroom and ensuite window(s) being translucent glass. Details of these changes are to be provided to the Principle Certifying Authority prior to the issue of the Construction Certificate.
- 5.9. At least two apartments, being apartments G02 and G03, are to be an accessible apartment in accordance with the stamped plans.
- 5.10. Appropriate signage is to be provided within the site to identify the location of each apartment within the development.
6. 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 \$123,734.64. The amount payable is based on the following components:

Contribution Element	Contribution
Community Facilities	\$11,191.88
Open Space and Recreation	\$109,394.67
Plan Administration	\$3,148.09

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.

7. 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.
8. Ten (10) off-street car spaces being provided in the basement car park area in accordance with the approved plans.
9. The existing boundary treatment between the subject site and the adjoining properties is to be retained, or replaced (if damaged during the construction process) at the applicant's expense. Any repairs or replacement must be made before the issue of any occupation certificate. Any damage caused during the works period is to be made good within 24 hours of damage.
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.

31-31A PERRY STREET, CAMPSIE: DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A THREE STOREY PLUS ATTIC INFILL AFFORDABLE RENTAL HOUSING DEVELOPMENT WITH BASEMENT LEVEL PARKING (CONT.)

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 indicating the finished floor levels and roof to a referenced benchmark. These levels must relate to the levels indicated on the approved architectural plans and/or the hydraulic details.
15. Under clause 97A(3) 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.

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."
16. 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.
17. 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.
18. The capacity and effectiveness of erosion and sediment control devices must be maintained at all times.
19. A copy of the Soil and Water Management Plan must be kept on site at all times and made available to Council officers on request.
20. 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.
21. Materials must not be deposited on Council's roadways as a result of vehicles leaving the building site.
22. 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.
The site must be provided with a vehicle washdown area at the exit point of the site. The area must drain to an approved silt trap prior to disposal to the stormwater drainage system in accordance with the requirements of Specification S2 of Council's Stormwater Management Manual. Vehicle tyres must be clean before leaving the site.
23. A single entry/exit point must be provided to the site which will be constructed of a minimum of 40mm aggregate of blue metal or recycled concrete. The depth of the entry/exit point must be 150mm. The length will be no less than 15m and the width no less than 3m. Water from the area above the entry/exit point shall be diverted to an approved sediment filter or trap by a bund or drain located above.

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DEVELOPMENT ENGINEERING

24. 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:
- a) The design must be generally in accordance with the plans, specifications and details received by Council on 5 July 2016; drawing number 17110-01/D, 17110-02/D, 17110-03/D prepared by ING Consulting Engineers Pty Ltd.
 - b) All paved areas connecting to the OSD system must be equal to or higher than top of water level to elevate back water.
 - c) The OSD basins must include an overflow system, the overflow system must direct excess runoff away from habitable areas and the basement, to ensure no flooding to basement.
 - d) A basement pump well detail must be shown on plan. The detail must include size of the tank, Also the detail must include the appropriate size and type of dual pump system in accordance with AS/NZS 3500.3
 - e) All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.
 - f) 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.
25. 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 Development Control Plan 2012.
26. 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 prior to the issuing of a Construction Certificate. 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.
27. 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 and provided to the Principal Certifying Authority prior to the issuing of a construction certificate to address the following issues:
- a) 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.
 - b) The driveway grades shall be in accordance with Australian Standard AS 2890.1 "Off-street Parking Part 1 - Carparking Facilities".
 - c) 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.
 - d) Minimum lines of sight for pedestrian safety must be provided in accordance

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Figure 3.3 of AS/NZS 2890.1:2004.

- e) The car parking facilities must be appropriately line marked and signposted in accordance with the requirements of Section 4 of AS/NZS 2890.1-2004.
 - f) The intersection of ramps with parking aisles and other intersection areas have been designed for use by one vehicle at a time. Appropriate traffic management measures, including redesign if needed, is required to prioritise one-way traffic movement at these intersection areas.
28. Prior to the issuing of a Construction Certificate, the swept path analysis for the property access driveway shall be provided to the Principal Certifying Authority to demonstrate access to the Elizabeth lane for both directions (East West), with no encroachment in to the waiting bay. If access to the lane is to be limited in one direction east or west, appropriate signage must be placed visible within the property to guide traffic exiting the site in the appropriate direction.
29. Prior to the issuing of a Construction Certificate, a suitably qualified Civil Engineer with NER registration must certify that the access and parking complies with current Australian Standards including AS/NZS 2890.1-2004 Parking Facilities - Off-Street Car Parking, AS 2890.2-2002 Parking Facilities - Off-Street commercial vehicles facilities, AS/NZS 2890.6-2009 Off-street parking for people with disabilities and AS 2890.3-1993 Parking Facilities - Bicycle parking facilities and the relevant conditions of consent.
30. The submitted design plans provide an option that potentially utilises neighbouring properties and the roadway for support. The legal rights of any adjoining properties must be respected including for temporary supports. In this regard the written permission of the affected property owners must be obtained and a copy of the owner's consent for temporary rock anchors or other material in adjacent lands must be lodged Canterbury Bankstown Council prior to the issue of a Construction Certificate.
- Temporary rock anchors are rock anchors that will be de-stressed and removed during construction. All other rock anchors are permanent rock anchors for the purposes of this Consent. Council will not permit permanent rock anchors in adjacent private lands unless they are specifically permitted in a Development Consent. Where temporary anchors are proposed to be used in Perry Street and Elizabeth Lane an Application must be made to Canterbury Bankstown Council for approval under Section 138 of the Roads Act 1993, via a Road Works Permit application. The submission would need to be supported by an engineering report prepared by a suitably qualified Structural Engineer, with supporting details addressing the following issues:
- a) Demonstrate that any structures within the road reserve are of adequate depth to ensure no adverse impact on existing or potential future service utilities in the road reserve. All existing services must be shown on a plan and included on cross sectional details where appropriate.
 - b) Demonstrate how the temporary anchors will be removed and replaced by full support from structures within the subject site by completion of the works.
 - c) The report must be supported by suitable geotechnical investigations to demonstrate the efficacy of all design assumptions.

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31. Where rock anchors or other temporary retaining measures are to encroach on adjoining properties, including the roadway, the Principal Certifying Authority must ensure that the permission of the relevant landowner has been obtained. In this regard a copy of the owner's consent for private property and Section 138 Approval pursuant to the Roads Act for roads must be provided to the Principal Certifying Authority prior to the issue of a Construction Certificate.
32. Retaining walls greater than 1000 mm high or retaining more than 600 mm of cut or fill proposed to be located within one metre of a boundary are to be designed by a Structural Engineer and must have subsoil drainage connected to the site stormwater system. Design plans prepared by an appropriately qualified and practising structural engineer must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority. All components of any retaining walls, including subsoil drainage, must be located entirely within the property boundary. The subsoil drainage lines of the retaining walls must be shown on the stormwater drainage concept plan.
33. 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.
34. A full width Heavy duty vehicular crossing shall be provided at the vehicular entrance to the site, with a maximum width of 6.2 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".
35. 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.
36. 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.
37. If Groundwater is encountered, it must not be captured by the drainage system of the basement. In this regard the basement must be tanked to at least 1000 mm above measured groundwater levels.
38. 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.
39. Prior to the issuing of an Occupation Certificate, 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.
40. A Works-as-Executed plan must be submitted to Canterbury Bankstown City Council at the completion of the works, the plan must clearly illustrated dimensions and details of the site drainage and the OSD system. The plan shall be prepared by a registered surveyor or an engineer. A construction compliance certification must be provided prior to the issuing of the Occupation Certificate to verify, that the constructed stormwater system and associate works has been carried out in accordance with the approved plan(s), relevant codes and standards. The required

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certification must be issued by an accredited professional in accordance with the accreditation scheme of the Building Professional Board issued 1st March 2010. An appropriate instrument must be registered on the title of the property, concerning the presence and ongoing operation of the OSD system as specified in Councils DCP 2012, Part 6.4.

41. Prior to the issue of an Occupation Certificate, the Principle Certifying Authority must ensure that Operation and Management Plans has been prepared and implemented for the OSD and basement pump out facilities. The Plan must set out the following at a minimum:

- a) The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners.
- b) The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.

The Plan must be prepared by a suitably qualified professional and provided to the Principle Certifying Authority prior to the issue of an Occupation Certificate.

42. The Operation and Management Plan for the OSD and basement pump out facilities, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.

43. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority must ensure retaining walls have been constructed in accordance with the design plans. If the retaining walls do not require structural design certification may be provided by the builder. If the retaining walls require structural design certification must be provided by a qualified structural engineer that the retaining walls have been built in accordance with the plans submitted with the Construction Certificate.

PUBLIC IMPROVEMENTS

44. 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".
45. The reconstruction of the kerb and gutter along all areas of the site fronting Perry street and Elizabeth Lane 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".
46. The reconstruction of concrete footpath paving and associated works along all areas of the site fronting Perry street and Elizabeth Lane is required. Work being 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".

LANDSCAPING

47. The landscaping must be completed according to the submitted landscape plan (drawn by Vision Dynamics., drawing no. 15269 DA1 revision B, submitted to council on 5 July 2016) except where amended by the conditions of consent.

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48. An amended landscape plan to coordinate with the amended Architectural Ground Floor design ((prepared by Ghazi Al Ali Architects, drawing no. S34- A1201 issue K and submitted to council on 15 August 2016) is to be submitted to Council or certifier prior to the issue of the Construction Certificate.
49. 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).
50. 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.
51. An automatic watering system is to be installed in common areas at the applicant's cost. Details including backflow prevention device, location of irrigation lines and sprinklers, and control details are to be communicated to Council or certifier prior to the issue of the Construction Certificate. The system is to be installed in accordance with the manufacturer's specification and current Sydney Water guidelines.
52. The existing property and neighbouring vegetation is to be retained or removed as follows (tree numbers as referenced in the submitted Arboricultural Assessment report prepared by Sue Wylie of the Tree Talk Arboricultural Consulting and submitted to council on 30th June 2015):

Tree Number	Botanical Name	Common Name	Action	Details/ Tree Protection Zone (TPZ)& Structural Root Zone (SRZ)
Tree 1	<i>Cinnamomum camphora</i>	Camphor Laurel	Remove	Not suitable candidate for retention
Tree 2	<i>Araucaria heterophylla</i>	Norfolk Island Pine	Remove	
Tree 3	3 x <i>Archontophoenix cunninghamiana</i>	Bangalow Palm	Remove	
Tree 4	<i>Schefflera actinophylla</i>	Umbrella Tree	Remove	Not suitable candidate for retention
Tree 5	<i>Ligustrum lcidum</i>	Large-leaf Privet	Remove	Not suitable candidate for retention
Tree A	<i>Eucalyptus punctata</i>	Grey Gum	Retain & protect on adjacent land	TPZ – 4.6m SRZ – 2.2m Protect soil within TPZ and no works within SRZ
Tree B	<i>Angophora floribunda</i>	Rough-barked Apple	Retain & protect on adjacent land	TPZ – 10m SRZ – 3.0m Protect soil within TPZ and no works within SRZ

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Tree C	Group of 3x shrubs		Retain & protect on adjacent land	TPZ – 2.4m SRZ – 1.7m Protect soil within TPZ and no works within SRZ
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53. The trees to be retained are to be retained and protected during demolition and construction in accordance with all recommendations, advise and guidelines provided in a Tree Protection Plan and Arboricultural Method Statement, to be prepared by an AQF Level 5 Registered Consulting Arborist with a minimum 5 years industry experience and submitted to Council or the certifier prior to the issue of the Construction Certificate. The Tree Protection Plan and Arboricultural Method Statement is to include but is not limited to;
- a) All recommendations, advise and guidelines provided in the Arboricultural Impact Assessment report (prepared by Sue Wylie of the Tree Talk Arboricultural Consulting and submitted to council on 30th June 2015) and Australian Standard AS 4970-2009 Protection of trees on development sites.
 - b) The engagement of an AQF Level 5 Registered Arborist as a project arborist to supervise the building works and certify compliance with all Tree protection measures. Contact details of this project arborist are to be forwarded to council and the consenting authority prior to the issue of Construction Certificate.
 - c) The project arborist is to be employed by the applicant to carry out the following:
 - Carry out the protection of the trees to be retained during demolition and construction in accordance with all recommendations, advise and guidelines provided in the Tree Management Plan.
 - Establishment of the tree protection zone and erection of fencing and signage as per the above mentioned requirements.
 - Attendance on site regularly in accordance with section 5.4.1 of AS 4970 - 2009. Particularly, during any demolition and construction within the tree protection zones.
 - Any roots greater than 25mm in diameter that is exposed within 1m of the TPZ must be cleanly cut and kept moist.
 - Any remedial works that might be required for the tree, should these conditions and the tree protection plan have not be complied with.
 - Provide a final assessment of the tree condition, details of any works conducted to the tree and provision of certification that the tree protection works have been carried out in accordance with the requirements listed above at minimum as set out in Section 5.5.2 of AS 4970-2009. This certification is to be provided to the principle certifying authority and council at practical completion. The report must also include the following items at min:
 1. Full name, business address, telephone numbers, evidence of qualifications and experience of consulting arborist;
 2. Full address of the site;
 3. Full name and details of the person/company the report is being prepared for;
 4. Details of their attendance on site;

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5. Details of any work they had to complete on site.

WASTE

54. The design is to be revised to incorporate a 4m² bulky waste storage area. Revised plans incorporating this change are to be submitted to the Principal Certifying Authority prior to the issuing of a Construction Certificate.

SYDNEY WATER REQUIREMENTS

55. 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.

SUBDIVISION

56. 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.
57. The submission of one final plan of subdivision / consolidation and five copies.
58. The satisfactory completion of all conditions of this development consent prior to the release of the final plan of subdivision.

STATE ENVIRONMENTAL PLANNING POLICY (AFFORDABLE RENTAL HOUSING) 2009

59. In accordance with Clause 17(1)(a) of State Environmental Planning Policy (Affordable Rental Housing) 2009, at least 176.28sqm or 20.5% of the total gross floor area (being apartments G02, 103 and 104) of the approved development must be used for the purpose of affordable housing for a tenure of 10 years from the date of the issue of the occupation certificate. All affordable rental housing at the site must be managed by a registered community housing provider.
60. A restriction being registered against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, prior to the issue of the occupation certificate requiring that at least 176.28sqm or 20.5% of the total gross floor area (being apartments G02, 103 and 104) of the approved development be used for the purposes of affordable housing for 10 years from the date of issue of the occupation certificate in accordance with Clause 17(1)(b) of State Environmental Planning Policy (Affordable Rental Housing) 2009.

STREET ADDRESSING

61. Future Street Addressing for the proposed development within DA-617/2014, is advised as follows: 31 Perry Street, Campsie.
62. All sub-property numbering must be unique, and numbering is advised as follows:
Ground Floor: G01, G02 and G03
Level 1: 101, 102, 103 and 104.
Level 2: 201, 202, 203 and 204.
63. Prior to the issuing of an Occupation Certificate, the applicant is advised to contact Mapping and GIS Services to confirm Street Addressing and submit a schedule of lots

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and addresses to Council.

CRITICAL INSPECTIONS

64. Class 2, 3 or 4 Buildings

- 64.1. prior to covering of waterproofing in any wet areas, for a minimum of 10% of rooms with wet areas within the building, and
- 64.2. prior to covering any stormwater drainage connections, and
- 64.3. after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Class 5, 6, 7, 8 or 9 Buildings

- 64.4. prior to covering any stormwater drainage connections, and
 - 64.5. after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
65. 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.
- To arrange an inspection by Council please phone 9789-9300 during normal office hours.

COMPLETION OF DEVELOPMENT

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

WE ALSO ADVISE:

- 67. This application has been assessed in accordance with the National Construction Code.
- 68. 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.
- 69. 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
 - Air handling systems
 - Final fire safety certificate
 - Glazing
 - Waterproofing
 - BASIX completion
- 70. Any works to be carried out by Council at the applicant's cost need to be applied for in advance.
- 71. 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.
- 72. 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.

31-31A PERRY STREET, CAMPSIE: DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A THREE STOREY PLUS ATTIC INFILL AFFORDABLE RENTAL HOUSING DEVELOPMENT WITH BASEMENT LEVEL PARKING (CONT.)

- 73. 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.
- 74. If you are not satisfied with this determination, you may:
 - 74.1. 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 within 6 months of the date of this Notice of Determination and be accompanied by the relevant fee; or
 - 74.2. 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**2 37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS****FILE NO:** 539/37D PT11 & 12**REPORT BY:** CITY DEVELOPMENT**WARD:** ROSELANDS

D/A No:	DA-486/2008/C
Applicant: Owner:	Roselands Mosque Association As above
Zoning:	R3 Medium Density Residential under Canterbury Local Environmental Plan 2012
Application Date:	13 November 2015

Summary:

- This Section 96 application has been prepared by an external consultant (DFP) who also assessed the original development application.
- This application is seeking approval to modify a temporary place of worship to a permanent place of worship by modifying Condition 6 of the consent to remove reference to a '6 month trial period', noise attenuation and provision of a customer hotline; modifying Condition 8 by amending the times of prayer during daylight savings time at night from 7pm - 8pm to 8:30pm - 9:30pm and permit midday prayer on Fridays to occur from 12noon - 1pm and 1pm - 2pm during daylight saving time.
- This application has been referred to the Independent Hearing and Assessment Panel due as it involves significant development and seeks permission for the permanent use of the site as a place of worship.
- The subject site is zoned R3 Medium Density Residential under Canterbury Local Environmental Plan 2012. The existing and continued use of the site is consistent with the definition of 'places of public worship' which is a permissible use within the R3 Medium Density Residential zone.
- In accordance with our notification policy, all owners and occupiers of adjoining properties were notified of the proposed development. It was first notified between 15 December 2015 and 29 February 2016. We received nine submissions. It was notified a second time between 30 May 2016 and 22 June 2016 where the concerns raised include policy/traffic, noise, etc. We received one formal submission objecting to the proposed modifications.

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- The application has been assessed against the relevant environmental planning instruments and development control plan.
- DFP Planning recommended that the development application be approved, subject to conditions.
- The application is recommended for approval.
- The Independent Hearing and Assessment Panel on 19 September 2016 deferred making a recommendation on the application (see Supplementary Information).

Council Delivery Program and Budget Implications:

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

Report:

Background

Pre-2014 application history

The subject premises has a history of use as a place of public worship since 1960, when Canterbury Council approved an application for the construction of a meeting room to be used privately for religious church services. Council approved a further application for additions to the meeting room building to include a single bedroom caretaker's residence, before allowing an addition to the existing church building and conversion of the rear building for use as a Sunday School. The existing rear outbuilding was attached to the church building with the provision of a new entrance and storeroom and conversion of the rear building to create a Sunday School Hall and four classrooms.

On 6 August 2008, Council received complaints that demolition works were being carried out at the subject site. Inspections carried out by staff at that time confirmed that the entire roof of the building had been demolished together with sections of the internal walls in the rear part of the building. Following this Council site inspection and the issue of a "stop work" notice, all works on the site ceased.

This resulted in the submission by the Roselands Mosque Association of a development application, namely DA-486/2008 lodged with Council on 26 August 2008. This development application sought approval for the completion of the demolition works to the existing building, the removal of internal walls and the reconstruction of the roof of the building and its continued use as a place of public worship.

This application was considered by the Independent Hearing and Assessment Panel (IHAP) at its meeting of 5 May 2009 where it was recommended for approval subject to conditions, including the following:

"8. All activities shall be carried out in accordance with the following details:

Day	Time	Activity	Maximum No. of Persons
Monday	12 noon to 1.00pm	Prayer	20
	4.00pm to 5.30pm	Prayer	15
	7.00pm to 7.30pm	Prayer	25

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Day	Time	Activity	Maximum No. of Persons
Tuesday	12 noon to 1.00pm	Prayer	20
	4.00pm to 5.30pm	Prayer	15
	7.00pm to 7.30pm	Prayer	25
	5.00pm to 7.00pm	Education	15
Wednesday	12 noon to 1.00pm	Prayer	20
	4.00pm to 5.30pm	Prayer	15
	7.00pm to 7.30pm	Prayer	25
Thursday	12 noon to 1.00pm	Prayer	20
	4.00pm to 5.30pm	Prayer	15
	7.00pm to 7.30pm	Prayer	25
	5.00pm to 7.00pm	Education	15
Friday	12 noon to 2.00pm	Prayer	40
	4.00pm to 5.30pm	Prayer	15
	7.00pm to 7.30pm	Prayer	25
Saturday	12 noon to 1.00pm	Prayer	20
	4.00pm to 5.30pm	Prayer	15
	7.00pm to 7.30pm	Prayer	25
Sunday	12 noon to 1.00pm	Prayer	15
	4.00pm to 5.30pm	Prayer	10
	7.00pm to 7.30pm	Prayer	15

In addition to the above hours, the facility may also be used for one meeting a month attended by 20 persons on a weekday between 5.00pm and 7.00pm."

The IHAP deferred making a recommendation to the City Development Committee pending the submission of additional information by the applicant including traffic and acoustic reports and a Plan of Management.

Following receipt of additional information from the applicant, the IHAP reconsidered the application on 28 September 2009 and recommended that the application be approved subject to certain amendments to the conditions including the following:

- "6. This approval being for a limited period of twelve (12) months only from the date of occupation of the building after which time any use of the premises whatsoever will require a section 96 modification or a further consent of the Council. In this regard an appropriate application shall be made to Council for consideration within 9 months of the date of the occupation of the building.
8. The approved hours of operation and the approved activities on the site are to be confined as follows:

(a)

Day	Time	Activity	Maximum No. of Persons
Wednesday	12 noon to 1.00pm	Prayer	20
	4.00pm to 5.30pm	Prayer	15
	7.00pm to 7.30pm	Prayer	25
	5.00pm to 7.00pm	Education	15

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

(a)

Day	Time	Activity	Maximum No. of Persons
Thursday	12 noon to 1.00pm	Prayer	20
	4.00pm to 5.30pm	Prayer	15
	7.00pm to 7.30pm	Prayer	25
	5.00pm to 7.00pm	Education	15
Friday	12 noon to 1.00pm	Prayer	20
	4.00pm to 5.30pm	Prayer	15
	7.00pm to 7.30pm	Prayer	25
	5.00pm to 7.00pm	Education	15

- (b) There may also be one meeting a month attended by 20 persons on a weekday between 5.00pm and 7.00pm (instead of an education session)."

The Council's planning assessment report and the recommendations of the IHAP were considered by Council's City Development Committee on 15 October 2009, when it was resolved to approve the application in accordance with the recommendations of the IHAP (including Conditions 6 and 8 above). However, Council's City Development Committee also recommended that Condition 5 be amended to read as follows:

- "5. The development being carried out in accordance with the plans, specifications and details prepared by the Terranian Building Group, marked Drawing Plan No. 01 (Existing Ground Floor and Site Plan) and 02 (Proposed Elevations and Section) as received by Council on 28 October 2008, except where modified by the following specific conditions:
- 5.1 The existing windows servicing the proposed function room in the southern elevation of the building shall be replaced with glass blockwork. Such details shall be provided with the application for the Construction Certificate.
 - 5.2 Six (6) off-street car parking spaces shall be provided on site as shown on the plan marked 'A' attached to this development consent. Details shall be provided with the application for the Construction Certificate.
 - 5.3 An amended landscape plan shall be provided with the application for the Construction Certificate which reflects the plan referred to in Condition No. 5.2 above. In this regard, details of landscape screen planting along the southern and western boundaries of the site shall be provided to minimise potential overlooking opportunities in neighbouring residential properties."

Condition No. 38 (advice) of Development Consent DA-486/2008 states the following:

- "38. Condition 6 of this consent has been imposed so that Council can review the effects of the use on the amenity of the area and compliance with the conditions of the consent. At the end of the time period, Council will assess the desirability of issuing a further limited approval and the length of time of any such approval."

On 16 August 2010, Council refused DA-456/2010 which sought to alter the operations of the approved place of worship to include prayer and education activities over seven days per week and specifically to include a pre-dawn and nightly prayer period.

On 1 December 2012, Council modified the consent (DA-486/2008/A) to amend the internal layout and external building design of the approved place of public worship.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Post 2014 Application History

A second modifying application (DA-486/2008/B) for the place of public worship was lodged on 28 July 2014 seeking approval for the modification of Condition 8 (hours of operation and capacity); deletion of Condition 6 (12 month trial period of consent) and Condition 11 (restriction on location of prayer in the building). On 14 May 2015 the City Development Committee modified the consent DA-486/2008 by deleting conditions 11, 14 and 21 and amending conditions 6, 7, 8, 22 and 38. The amendment of Condition 6 included a 6 month trial period that reads as follows:

6. (a) This approval being for a limited period of a six (6) month trial period from the date of the modified determination of DA-486/08/B. After which time any use of the premises whatsoever will require a Section 96 modification or a further consent of the Council. In this regard an appropriate application shall be made to Council for consideration within 6 months of the date of the modified determination of DA-486/08/B.
- (b) During the trial period, the noise levels generated by cars using the rear carpark, cars parking on the surrounding local streets, and prayer services and education sessions inside the building shall be monitored at the nearest residential premises so that the measured noise levels can be compared with the LAeq, 15min and LA1, 1min noise goals set in the Renzo Tonin & Associates acoustic report submitted with this Section 96(2) Application. Prior to carrying out the noise measurements, a Measurement Methodology shall be submitted to Council for approval and the measurements must be carried out in accordance with the approved Methodology;
- (c) A Complaints Hotline shall be set up by the Proponent to be active during the 6-month trial period so that comments and complaints can be received. All complaints shall be recorded (including the name and contact details of the complainant and the reason for the complaint) and the complaint shall be investigated. Every complaint received and the conclusion of the investigation of that complaint shall be reported in writing to Council within one week of the investigation; and
- (d) The use of a “call to prayer” or other outside noise-generating activity is prohibited on the premises.
- (e) A bicycle rack accommodating a minimum of 3 bicycles shall be provided at a suitable location on the site.

On 13 November 2015, (DA-486/2008/C) was lodged seeking approval to modify the approved place of worship by modifying Condition 6 to remove reference to a '6 month trial period' and modifying Condition 8 by amending the times of prayer during daylight saving time at night from 7pm-8pm to 8:30pm-9:30pm. This application is the subject of this report.

DA-486/2008/C submitted documentation in order to satisfy Condition 6(b) and (c). DFP Planning was engaged by Council February 2016 to independently assess this application on its behalf.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

This application was publicly notified between 15 December 2015 and 29 February 2016 to local residents and advertisements were placed in local newspapers. Nine submissions were received.

On 17 March 2016 Council forwarded the submissions to DFP responding to the public notification process, the Acoustic Compliance Assessment report, a summary of the complaints received, advice from our Compliance Officer and a summary of the surveillance of Friday Prayer undertaken by Council compliance officers.

On 24 March 2016, following assessment of the material provided on 17 March 2016, an additional information letter was sent to the applicant regarding the non-compliance with the conditions of consent, in particular the maximum capacity for Friday Prayer, and further clarification and information regarding potential acoustic impacts.

On 15 April 2016 the applicant provided a response to the additional information letter dated 24 March 2016.

On 30 May 2016, Council re-notified the application from 31 May – 22 July 2016 as a consequence of a typographical error identified for the duration of Friday Prayer stipulated in Condition 8 of DA-486/2008/B. This second public notification period generated one formal submission objecting to the proposal.

Site Analysis

The site is located on the south-western corner of Ludgate and Ridgewell Streets at Roselands. The site is Lot 31 DP 730851 at 37 Ludgate Street, Roselands. The subject site is relatively flat with a slight fall towards the Ludgate Street frontage of the allotment and has a frontage of 19.9 metres to Ludgate Street, 45.7 metres to Ridgewell Street and a total site area of 921.3m²

The site contains a single storey place of public worship (mosque) with a six space car parking area in stacked configuration accessed from Ridgewell Street.

The immediate locality forms part of an established low density residential environment predominately consisting of single and two storey dwelling houses of varying age and styles. There are also some examples of a medium density residential development, such as dual occupancy, town house and villa developments in the locality.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)



Aerial view of site



View of Roselands Mosque from corner of Ludgate Street and Ridgewell Street

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)



Sign at front entrance to Roselands Mosque



Ludgate Street midday on Thursday 3 March 2016 (prayer)

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)



Ludgate Street Reserve with Roselands Mosque in background

Proposal

An application to modify DA-486/2008 by removing Conditions 6 (a) from the previously modified consent (DA-486/2008/B) to allow the now temporary place of public worship to operate permanently and to modify Condition 8 to alter the operating/prayer hours of the place of public worship by additional hours, has been received by Council.

Condition 6 currently reads as follows:

6. (a) This approval being for a limited period of a six (6) month trial period from the date of the modified determination of DA-486/08/B. After which time any use of the premises whatsoever will require a Section 96 modification or a further consent of the Council. In this regard an appropriate application shall be made to Council for consideration within 6 months of the date of the modified determination of DA-486/2008/B.
- (b) During the trial period, the noise levels generated by cars using the rear carpark, cars parking on the surrounding local streets, and prayer services and education sessions inside the building shall be monitored at the nearest residential premises so that the measured noise levels can be compared with the LAeq, 15min and LA1, 1min noise goals set in the Renzo Tonin & Associates acoustic report submitted with this Section 96(2) Application. Prior to carrying out the noise measurements, a Measurement Methodology shall be submitted to Council for approval and the measurements must be carried out in accordance with the approved Methodology;
- (c) A Complaints Hotline shall be set up by the Proponent to be active during the 6-month trial period so that comments and complaints can be received. All complaints shall be recorded (including the name and contact details of the complainant and the reason for the complaint) and the complaint shall be investigated. Every complaint received and the conclusion of the investigation

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

- of that complaint shall be reported in writing to Council within one week of the investigation; and
- (d) The use of a “call to prayer” or other outside noise-generating activity is prohibited on the premises.
 - (e) A bicycle rack accommodating a minimum of 3 bicycles shall be provided at a suitable location on the site.

The applicant seeks approval to modify the above condition to delete subsection (a), (b) and (c). This would enable the use of the existing building and site as a place of public worship in permanently.

Condition 8 (DA-486/2008/B) relates to the hours of operation and capacity, and reads as follows:

8. The approved hours of operation and the approved activities on the site are to be confined as follows:

(a)

Day	Time	Activity	Maximum No. of Persons
Sunday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Monday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Tuesday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Wednesday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Thursday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Friday	12 noon to 12.30pm	Prayer	60
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Saturday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40

Daylight saving times are as follows:

The approved hours of operation and the approved activities on the site are to be confined as follows:

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

(a)

Day	Time	Activity	Maximum No. of Persons
Sunday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
Monday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
Tuesday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
Wednesday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
Thursday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
Friday	1.00pm to 1.30pm	Prayer	60
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
Saturday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40

Proposed modification to Condition 8

The subject application proposes to modify the above condition as follows:

8. The approved hours of operation and the approved activities on the site are to be confined as follows:

Day	Time	Activity	Maximum No. of Persons
Sunday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Monday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Tuesday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Day	Time	Activity	Maximum No. of Persons
Wednesday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Thursday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Friday	12 noon to 1.00pm	Prayer	60
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Saturday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40

Daylight saving times are as follows:

The approved hours of operation and the approved activities on the site are to be confined as follows:

Day	Time	Activity	Maximum No. of Persons
Sunday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.30pm to 9.30pm	Prayer & Education	40
Monday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.30pm to 9.30pm	Prayer & Education	40
Tuesday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.30pm to 9.30pm	Prayer & Education	40
Wednesday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.30pm to 9.30pm	Prayer & Education	40
Thursday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.30pm to 9.30pm	Prayer & Education	40
Friday	1.00pm to 2.00pm	Prayer	60
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.30pm to 9.30pm	Prayer & Education	40

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Day	Time	Activity	Maximum No. of Persons
Saturday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.30pm to 9.30pm	Prayer & Education	40

It is noted that prayer times align with Australian Eastern Standard Time (AEST). Therefore as an example the noon prayer each day commences at 1.00pm during daylight saving time.

Statutory Controls

When determining this Section 96(1A) 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 and development control plan are relevant:

- Section 96(1A) of the Environmental Planning and Assessment Act
- Canterbury Local Environmental Plan 2012 (CLEP 2012)
- Canterbury Development Control Plan 2012 (CDCP 2012)

Assessment

This application has been assessed under Sections 96(1A) and 79C of the Environmental Planning and Assessment Act 1979 and the following key issues emerge:

- **Section 96(1A) of the Environmental Planning and Assessment Act**
Section 96(1A) of the Environmental Planning and Assessment Act 1979 allows Council to modify development consent if:
 - (a) it is satisfied that the proposed modification is of minimal environmental impact

Comment

The modifications proposed are considered of minor environmental impact. This is on account of the following:

- The modification to Condition 6 to delete reference to the 6 month trial period was a modification necessary to ensure the development consent remains lawful following the 6 month trial period and required by Condition 6(a). Indeed this proposed modification was intended as per Condition 38 of DA-486/2008/B that reads:
 “Condition 6 of this development consent (as modified) has been imposed so that Council can review the effects of the use on the amenity of the area and compliance with the conditions of this consent. At the end of the time period upon lodgement of an application, Council will assess the desirability of issuing a permanent development consent on the site. Failure to comply with the necessary requirements of the 6 month trial period and all of the conditions of development consent could result in Condition 6 not being

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- complied with to the satisfaction of Council and the development consent lapsing.”
- II. The proposed change in duration from 30 minutes to one hour for Friday Prayer (noon) is the result of a typographical error on the development consent of DA-486/2008/B. Friday Prayer is the principal congregational prayer session of the week and attracts the most worshippers. A one hour session for Friday Prayer is typical for this prayer and in isolation is not considered to have a significant environmental impact. While the additional 30min prayer times does not represent an increased level of noise and traffic to the area, as this is restricted to noon on a Friday the impact on local residents (who would mostly be at work or school) is not considered to be unreasonable.
- III. The proposed change to the evening prayer/education session during daylight saving time from 7pm-8pm to 8:30pm-9:30pm does not extend the duration of this evening session, but rather moves it to a later time. As discussed further in this report, the 9.30pm finishing time is close to the 10pm start of the sleep disturbance period. Accordingly, appropriate conditions of consent are recommended that grants approval to a 9pm finish and a trial period to 9:30pm (with Council surveillance) during daylight saving which aims to ensure the proposal is of minimal environmental impact.

Accordingly, given that lodgement of this application at the end of the 6 month trial was required by the development consent, consideration of the application under Section 96(1A) is considered reasonable.

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

Comment

The proposed modifications are considered to be substantially the same development as the development for which the consent was originally granted.

The NSW Land and Environment Court has made several judgments that provide guidance to determining whether a proposed modification is substantially the same as the consent originally granted. In *Sydney City Council v Ilenace Pty Ltd* [1984] the Court Judgment found that a proposal can only be regarded as a modification if it involves “alteration without radical transformation”. In *Vacik Pty Ltd v Penrith City Council* [1992] the Court judgment found that “substantially the same” meant essentially of “having the same essence”. Furthermore, in *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] the Court judgment found that when undertaking the “substantially the same” test a comparison is required to be made between the consent as originally granted and the proposed modification and a consideration of the quantitative and qualitative elements of the proposal must be made with an appreciation of the elements proper context.

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The modifications sought represent substantially the same development as that originally granted Development Consent DA-486/2008 (as modified) for the following reasons:

- I. The proposal does not alter the use of the site as a place of public worship, nor does it alter the type of place of public worship (i.e. a mosque) that has been operating on the site since February 2014;
- II. The proposal does not alter the external building envelope of the place of public worship, the existing car parking area and the vehicular and pedestrian access arrangements at the subject site;
- III. The proposed modifications sought are not anticipated to give rise to a significant adverse impact upon traffic and on-street car parking in the locality subject to proposed conditions of the modified development consent;
- IV. The proposed modifications sought are not anticipated to give rise to a substantial increase in noise in the locality, subject to proposed conditions of the modified development consent that limits the term of the consent and condition regarding limiting the use of the rear car park; and
- V. The cumulative amenity impacts of the proposed modifications on residents and other stakeholders in the locality is considered to be satisfactory given the outcome of the acoustic assessment and the minor modifications sought.

Accordingly, the proposed modifications are considered not to be a radical transformation to what was originally approved. The already modified consent has the same essence of elements as what was originally granted consent by Council.

Furthermore, consideration of the quantitative and qualitative elements of the proposal has been made with an appreciation of the elements proper context and is considered to satisfy the “substantially the same” test of Section 96(1A)(b) of the EP&A Act. As such, the modifications sought as part of this application are considered to be consistent with the provisions of Section 96(1A)(b) of the Act. The development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.

- (c) it has notified the application in accordance with:
- (i) the regulations, if the regulations so require, or
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent

Comment

The Section 96(1A) Application has been notified in accordance with Part 7 – Notification of Applications of Canterbury DCP 2012.

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

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Comment

On 15 December 2015 the application was publicly notified to surrounding and nearby properties for a period of 76 days to 29 February 2016. Advertisements were also placed in local newspapers.

Council received nine submissions objecting to the proposed modifications (including three from the one submitter), and the resubmission of an earlier submission that was originally submitted for DA-486/2008/B.

On 30 May 2016, we re-notified the application until 22 June 2016 as a consequence of a typographical error identified for the duration of the proposed of Friday Prayer times. Advertisements were also placed in local newspapers. Council received one formal submission objecting to the proposed modification.

The matters raised in the submissions and petitions have been considered and addressed within this report.

Section 96(3) of the Environmental Planning and Assessment Act 1979 provides that the following is applicable to the subject Section 96(1A) Application:

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.

Comment

These matters are addressed below in this report.

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

The subject site is zoned R3 Medium Density Residential under CLEP 2012. The proposed use is defined as a 'place of public worship' which is permissible in the R3 zone.

An objective of the R3 is to enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposed modification to certain conditions of the development consent is not considered to change the consistency of the current use of the site as a place of public worship with the objectives of the R3 zone. Namely, enabling a non-residential use (a place of public worship) that meets the day to day religious needs of Muslim residents in the local community.

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

The Development Control Plans (DCPs) in force at the time of the determination of DA-486/2008 were superseded on 1 January 2013. The current application has been

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assessed in accordance with the current applicable controls for the site, outlined in CDCP 2012 as follows:

Part 5.8 – Non-residential Development in Residential Zones

The objective is as follows:

To reduce unreasonable amenity impacts on surrounding residents caused by non-residential uses.

The controls are as follows:

- i. Non-residential development in a residential zone will be assessed for its impact on residential amenity.
- ii. Non-residential development in a residential zone will only be acceptable where adverse impacts on the amenity of residences in the immediate area (for example through traffic generation, parking demand, noise or any other form of pollution that is incompatible with residential uses) are avoided or minimised.
- ii. Council may impose conditions of consent to minimise any impact on residential amenity including limiting the scale of the development, restricting hours of operation or the like.

The potential for adverse amenity impacts of the place of public worship upon the surrounding residential neighbourhood as a consequence of the modifications to the conditions of the development consent sought by the applicant is key to the assessment of the subject application.

Indeed, the two key matters for consideration of the proposed modifications to the conditions of the development consent for the mosque at the site on the residential amenity of the locality are as follows:

1. Are the proposed modifications as sought in this application likely to give rise to any significant adverse acoustic impacts upon the residential amenity of the surrounding area?
2. Are the proposed modifications as sought in this application likely to give rise to any significant adverse traffic and on-street parking impacts on the local street network?

The assessment of these key issues are detailed within Section 79C (1)(b) of this report. It has been found that, provided the applicant complies with the terms of the modified conditions of the development consent and Council appropriately take enforcement action should the operators breach any of the conditions of the development consent, then potential impacts upon the amenity of the locality are mitigated and, accordingly are satisfactory. This is based on the modification of the 9:30pm finish during daylight saving time to a 6 month trial period. The proposed modification to the duration of Friday Prayer from 30 minutes to one hour is typical for Friday Prayer and is correcting a typographical error contained within the development consent of DA-486/2008/B. This modification is not expected to give

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rise to increased amenity impacts from unreasonable noise or parking availability upon the surrounding locality.

Part 6.8 – Vehicular Access and Car Parking

The aims of this Part are to ensure that development provides for adequate off-street car parking and access arrangements. The DCP provides specific parking rates for a range of development types and provides that for places of public worship, car parking will be considered following an assessment of similar developments.

Car parking issues with the place of public worship (mosque) attracted significant attention during the assessment of the original development application and subsequent monitoring applications. CDCP 2012 adopts the same car parking generation control for places of public worship as the now superseded DCP 20 in force at the time of the assessment of the original development application. CDCP 2012 states that as a 'guide', one space shall be provided per five people (accommodation capacity) for the first 100 people. Based on the 'guide' car parking requirement, and having regard to the maximum number of people approved to use the place of public worship for Friday Prayer during the trial period (60) the mosque generates the need for twelve off-street car parking spaces and three bicycle spaces. The maximum number of people approved to be attending the place of public worship is not proposed to be changed as part of this application. However, it is noted that surveillance undertaken by our compliance officers between June 2015 and November 2015 of Friday Prayer has revealed that the 60 person maximum is regularly and significantly exceeded, thereby resulting in weekly adverse impacts upon on-street parking and local traffic conditions prior to, during and following the Friday Prayer session.

Six car parking spaces in a stacked configuration are provided at the rear of the site and accessed off Ridgewell Street. No changes are proposed to the approved off-street car parking area located at the rear of the site.

A Traffic and Parking Assessment report has not been submitted by the applicant to support the subject application. This is because no increase in maximum capacity or the number of weekly prayer sessions is proposed by this subject application.

It is noted that the previous application (DA-486/2008/B) that proposed seven day operation and an increased Friday Prayer capacity (amongst other modifications) submitted a Traffic and Parking Assessment Report prepared by Bitzios Consulting that was subsequently peer reviewed by our Traffic and Transportation team who advised that there is no objection to the proposal on traffic and parking grounds.

There has been no indication that the six month trial period or seven day operation of the mosque have given rise to significant adverse on-street parking and traffic impacts upon the local street network outside of Friday prayer. However, there is evidence to suggest that the regular non-compliance with the 60 persons maximum capacity for Friday Prayer, and in particular its magnitude (up to 157 persons

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observed by Council on 10 July 2015), does result in adverse on-street parking and local traffic impacts for the midday period each Friday.

Parking and traffic considerations for the proposed permanent place of worship will be further discussed in a later section of this report.

Part 6.3 – Crime Prevention Through Environmental Design (CPTED)

The proposal does not involve any changes to the design, maximum capacity, number of weekly prayer sessions or physical appearance of the building.

Other Considerations

- **The Likely Impacts of the Development**

The potential adverse impacts of the proposed modifications on the surrounding residential locality are discussed as follows:

Modification of Condition 8 – Approved Hours:

Traffic Generation and Parking

Friday Prayer is the principal congregational prayer session of the week and attracts the most worshippers. A one hour prayer session for Friday Prayer (rather than 30 minutes for the other prayer sessions) is typical for this prayer and the proposed one hour duration in itself is not considered to give rise to significant adverse traffic and on-street parking impacts for the local street network. Rather the number of people attending the mosque for Friday Prayer that is consistently and significantly above the maximum capacity of 60 people is considered the factor generating adverse impacts upon the local street network in terms of parking and traffic.

The proposed change to the evening prayer/education session during daylight saving time from 7pm-8pm to 8:30pm-9:30pm does not extend the duration of this evening session or the maximum capacity, but rather moves the session to a later time. As such, on-street parking situation surrounding the mosque is not expected to significantly change from the existing situation. Indeed during daylight saving time, weekday on-street parking surrounding the mosque could be modestly improved in the early evening (ie 6:15pm to 8:15pm) given the greater time period between the late afternoon prayer session and the evening prayer/education session. The early evening during the week is the period where on-street parking demand is typically the greatest on account of residents returning home from work/school and other daily activities.

It is noted that a small number of illegal parking complaints from local residents have been received by Council and subsequently investigated. However, there has been minimal evidence provided to Council or residents of on-going and significant adverse on-street parking and traffic impacts upon the local street network, outside of the Friday prayer session.

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Accordingly, the proposed modifications to Condition 8 is not considered to give rise to significant adverse traffic and on-street parking impacts upon the local street network, and therefore the modification is supported on traffic and parking grounds.

Acoustic/Noise

Given the time of the prayer (noon Friday) adverse acoustic impacts upon the surrounding locality as a consequence of a one hour Friday Prayer instead of a 30 minute Friday Prayer is considered minimal. Indeed, acoustic impacts that have been identified by the Wilkinson Murray acoustic peer review report dated 14 March 2016 relate to the rear car park operation, rather than noise emanating from within the mosque. Accordingly, a 30 minute or a one hour Friday Prayer session generates the same noise from the rear car park.

The proposed change to the evening prayer/education session during daylight saving time from 7pm-8pm to 8:30pm-9:30pm does not extend the duration of this evening session, but rather moves it to a later time. The 9.30pm finishing time extends the operation of Roselands Mosque including worshipers leaving the premises and the locality near to the sleep disturbance period commencing at 10:00pm.

This proposed change in operating hours has not been addressed in the Acoustic Compliance Assessment report prepared by Renzo Tonin & Associates dated 3 September 2015. As such, on 24 March 2016 additional information correspondence was sent to the applicant requesting that further information be provided by the applicant's acoustic consultant assessing the potential for sleep disturbance as a consequence of the proposed operation of the premises until 9:30pm during the daylight saving time period.

Furthermore, the letter requested clarification whether the daily night-time (or Isha) prayer will be practiced at the premises during the months of December and January. This was requested as the night-time prayer/Isha prayer commences near astronomical twilight which in the months of December and January occurs predominately after 9:30pm. Accordingly, should Roselands Mosque conduct the daily night-time prayer during the months of December and January then worshipers and management possibly could be leaving the premises and locality near to and after 10:00pm. This would potentially give rise to adverse impacts upon the acoustic amenity of the locality, particularly through the operation of the rear car park and worshipers leaving by car from the surrounding local streets after 10:00pm and during the sleep disturbance period.

Willana Associates on behalf of the applicant responded to these requests via correspondence dated 11 April 2015 as follows:

"Council's letter requests clarification regarding the proposed prayer time for the daily night-time/ Isha prayer, particularly in the months of December and January. Willana have been informed by the client that prayer will be held in accordance with the requested hours of operation and therefore will be completed by 9:30pm at the very latest. It is therefore considered

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unreasonable to request additional information from an acoustic consultant regarding impacts after 10:00pm given the premises would be operating outside of the conditions of consent. It is unreasonable to consider it would take half an hour to get from the place of public worship to a vehicle to leave. In line with the Plan of Management, prayers are either totally silent or held in a quiet fashion and patrons are directed to leave the premises in a quiet orderly fashion."

Given the history of the mosque breaching its conditions of consent, in particular the approved maximum capacity during Friday Prayer, but also less regularly the operating hours for the evening prayer/education session, a 9:30pm finishing time, is considered too close to the start of the sleep disturbance period to reasonably allow for all persons to have left the locality to warrant unrestricted approval at this time.

Furthermore, the response by Willana Associates has not sufficiently answered the question regarding Isha prayer during the months of December and January. The applicant has provided little rationale for the proposed change in time for the education/prayer session during daylight saving time, apart from a "clerical oversight" detailed in the Statement of Environmental Effects. Therefore without the benefit of the requested clarification regarding this prayer, we are left to reasonably conclude that the proposed change in session time is related to the desire for the mosque to operate in accordance with the Isha prayer time during the entire or partial daylight saving time period. Which in the months of December and January commences at 9:30pm or later.

Accordingly, it is recommended that approval is granted to changing the evening prayer/education session during daylight saving time from 7:00pm - 8:00pm to 8:00pm - 9:00pm to allow sufficient time for all persons to leave the mosque and locality prior to 10pm. However, it is further recommended to provide a trial period for the requested 8:30pm to 9:30pm evening prayer/education session during the 2016/17 daylight saving time period commencing on 2 October 2016 and finishing on 1 April 2017. During this time period compliance with 9:30pm finish time is recommended to be monitored by Council to record whether compliance is achieved. Monitoring is recommended to take the form of recording any resident complaints and regular observational monitoring of the premises by Council compliance officers, particularly during the months of December and January.

At the end of the 2016/17 daylight saving time period the applicant can choose to lodge a further application (ie another application to modify the consent) to make the 8:30pm to 9:30pm prayer/education session permanent for the daylight saving time period.

Deletion of parts (a), (b) and (c) of Condition 6:

This condition (as modified) limited the approval to a trial period of 6 months from determination of DA-486/2008/B on 14 May 2015. The amendment of Condition 6 included a six month trial period that reads as follows:

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- 6 (a) This approval being for a limited period of a six month trial period from the date of the modified determination of DA-486/2008/B. After which time any use of the premises whatsoever will require the prior written consent of the Council via a new DA or modified consent). In this regard an appropriate application shall be made to Council for consideration within six months of the date of the modified determination of DA-486/08/B.
- (b) During the trial period, the noise levels generated by cars using the rear carpark, cars parking on the surrounding local streets and prayer services and education sessions inside the building shall be monitored at the nearest residential premises so that the measured noise levels can be compared with the LAeq, 15min and LA1, 1min noise goals set in the Renzo Tonin & Associates acoustic report submitted with this application. Prior to carrying out the noise measurements, a Measurement Methodology shall be submitted to Council for approval and the measurements must be carried out in accordance with the approved Methodology;
- (c) A Complaints Hotline shall be set up by the Proponent to be active during the six month trial period so that comments and complaints can be received. All complaints shall be recorded (including the name and contact details of the complainant and the reason for the complaint) and the complaint shall be investigated. Every complaint received and the conclusion of the investigation of that complaint shall be reported in writing to Council within one week of the investigation; and
- (d) The use of a “call to prayer” or other outside noise-generating activity is prohibited on the premises.
- (e) A bicycle rack accommodating a minimum of 3 bicycles shall be provided at a suitable location on the site.

The applicant seeks modification of Condition 6 to delete parts (a), (b) and (c) that relate to the trial period and tasks required to be undertaken during the trial period, whilst retaining parts (d) and (e), and relabelling them parts (a) and (b).

In terms of part (a) of Condition 6, the subject application was lodged on 13 November 2015, which is within the six month time period of determination of DA-486/2008/B on 14 May 2015 as stipulated, and can be removed.

In terms of part (b), the application was supported by an acoustic report submitted by Renzo Tonin & Associates dated 3 September 2015. This acoustic report was peer reviewed by Wilkinson Murray on Council’s behalf. The Wilkinson Murray report dated 14 March 2016 made the following findings:

- The compliance measurements were carried out correctly and in accordance with the Conditions of Consent;
- Prayer and education activity were found to be inaudible at nearby residential receiver locations;
- Noise levels from the rear carpark, as measured at 33 Ridgewell Street, were found to exceed the 40dBA noise goal set in the original Renzo Tonin & Associates acoustic report;

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- No call to prayer was observed.

The Wilkinson Murray report then concluded the following:

“The small change in hours proposed would be of minor significance in regard to noise impact. Any noise impact associated with the rear carpark would remain unchanged, other than a small change in the time during which any impact would occur. This would mean that the potential for disturbance, identified in the acoustic compliance report, would remain. Since, as reported, no complaints have been received, it is recommended that this application be approved. However, there would be merit in adding an additional Condition in regard to the rear carpark:

Should complaints of noise be received from the occupants or owners of nearby properties, the applicant shall offer to provide air-conditioning and ventilation to all rooms of the affected building with windows facing north-east. If the offer is accepted, the applicant shall install the air-conditioning and ventilation at a time and in a way convenient to the occupants at his expense.”

The inclusion of the above suggested condition on the modified development consent is not supported for the following reasons:

- Reliant on a noise complaint being made from the adjoining property (over an indefinite time period) for the condition to become activated and without determining the merit of the noise complaint;
- Uncertainty as to whether the complainant would accept such an offer, and the reasonableness of the offer; and
- The type of air conditioning system offered could result in conflict between the parties and the offer ultimately being rejected by the complainant due to unsatisfactory quality or type of system offered, yet the applicant still satisfying the condition.

Notwithstanding this, the intention of the suggested condition that aims to mitigate the potential acoustic impact upon 33 Ridgewell Street is supported.

However, the erection of an acoustic barrier along the property boundary was suggested by the Renzo Tonin & Associates report dated 7 November 2014 (submitted in support of DA-486/2008/B) but would have needed to be 4m-4.5m in height to protect the first floor windows of the adjoining property. This solution is not supported as a 4m-4.5m high acoustic wall would be inconsistent with the low scale residential character of the locality.

As an alternative, it is recommended that the rear car park is limited in its usage in order to mitigate the cumulative acoustic impacts of the mosque. Limiting the usage of the rear car park to Friday, Saturday and Sunday and the evening prayer/education sessions seven days a week. These times correspond with the highest demand for on-street car parking (weekends and evening periods) and the highest mosque

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attendance day of Friday. This results the rear carpark not being used Monday to Thursday (inclusive), except for the evening prayer/education session.

This would allow an appropriate weekly reprieve in noise generation from the seven day operation of the mosque's rear car park. The times recommended that restrict the use of the rear car park deliberately coincide with the lowest on-street parking demand from local residents and the worshippers of the mosque, thereby minimising adverse impacts upon the surrounding local street network.

In terms of part (c), the Statement of Environmental Effects prepared by Willana Associates provides the following statement:

"As required under condition 6(c), a Complaints Hotlines was set up with each of the complaints recorded and investigated. No complaints were received. The Complaints Hotline will continue to operate as a method of recourse for the surrounding residents. In this way all matters of concern will be recorded and addressed.

It is noted that a complaint was received by Council in relation to a breach in the hours of operation relating to the evening daylight saving prayer session. Once made aware of the complaint, the premises ceased to operate outside of the consent. This application seeks to rectify the daylight saving variations to the hours as previously detailed.

The proposed amendment to the provisions of Condition 6 will not result in any additional likely impacts to that of the approved use."

The above statement confirms that a Complaints Hotline was set up by the proponent during the six month trial period satisfying the condition, however no complaints from the public were received. It is noted that numerous complaints from local residents were received directly by Council during the six month trial period that typically related to the mosque not complying with its maximum capacity during Friday Prayer and operating later than the approved hours of operation. Also, resident complaints in regard to illegal street parking were received by Council.

Given that no complaints were received by the Complaints Hotline yet numerous complaints were received directly to Council suggests that either local residents were not aware of the Complaints Hotline or believed complaints directly to Council were the most appropriate course of action. Accordingly, it is considered that this component of Condition 6 be deleted as it has shown to be of little or no purpose.

Intention of Condition 6

The intention of Condition 6 is described in Condition 38 of DA-486/2008/B that reads:

38. Condition 6 of this development consent (as modified) has been imposed so that Council can review the effects of the use on the amenity of the area and compliance with the conditions of this consent. At the end of the time period

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upon lodgement of an application, Council will assess the desirability of issuing a permanent development consent on the site. Failure to comply with the necessary requirements of the 6 month trial period and all of the conditions of development consent could result in Condition 6 not being complied with to the satisfaction of Council and the development consent lapsing.”

Council’s compliance officers conducted surveillance of the operation of the mosque for Friday Prayer, which is the weekly prayer session that overwhelmingly generated the most complaints from local residents during the six month trial period, and is the primary focus of most of the objections received by local residents responding to the public notification period for the subject application.

The table below details the observations of surveillance that was undertaken by Council between June 2015 and November 2015:

Council Surveillance of Friday Prayer (60 person maximum capacity)			
Date	Time	Attendance	Other notes
12 June 2015	11:45am-1pm	135 people	-
19 June 2015	11:46am-12:40pm	133 people	Illegal parking observed
26 June 2015	11:50pm-12:30pm	114 people	-
3 July 2015	11:46am-12:40pm	150 people	-
10 July 2015	11:36am-12:40pm	157 people	Double parking and traffic congestion observed
31 July 2015	11:40am-12:40pm	66 people	-
7 August 2015	11:40am-12:42pm	105 people	Illegal parking and traffic congestion observed
21 August 2015	11:45am-12:35pm	114 people	Illegal parking and traffic congestion observed
28 August 2015	11:50am-12:35pm	91 people	Illegal parking and traffic congestion observed
4 September 2015	11:50am-12:30pm	127 people	-
18 September 2015	11:42am-12:35pm	103 people	-
30 October 2015	1pm-1:30pm	105 people	-
13 November 2015	12:56pm-1:30pm	123 people	Illegal parking and traffic congestion observed

Third party surveillance on two occasions as detailed in the table below:

Date	Time	Attendance	Other notes
3 March 2016 (Thursday)	12:55pm-1:30pm	9	Maximum capacity for Thursday midday prayer is 15 people
4 March 2016 (Friday)	12:45pm-1:45pm	115 people	Illegal parking observed

There has clearly been significant and ongoing breaching of the maximum capacity of 60 persons for Friday Prayer. Indeed, the average attendance for Friday Prayer over the 13 weeks of Council surveillance was 117 people.

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The local residents submissions received in respect to public notification of the subject application convey various aspects of the place of public worship's operations that has not complied with conditions of development consent and given rise to adverse amenity impacts upon local residents. These include (but are not limited to) operating past 7.30pm and breaching the stipulated maximum capacity. Furthermore, photographs have been provided by local residents of at least one occasion where worshipers (seven men) have been praying externally to the building during Friday Prayer, presumably due to capacity issues within the building. This is a breach of Condition 23 of DA-486/2008 (as modified).

The outcome of the surveillance undertaken for Friday Prayer was raised with the applicant in correspondence dated 24 March 2016 and a response was requested as to why the mosque had not been operating in accordance with Condition 8 of DA-486/2008/B and the measures to be put in place to ensure compliance. Willana Associates on behalf of the client responded as follows in respect of compliance with maximum capacity:

"Council's letter details non-compliance with the maximum capacity of 60 persons approved for Friday Prayer. The client has acknowledged the challenge of managing the attendance of worshippers for this particular prayer session. In preparing the original Development Application and subsequent Section 96 Applications, the proposed patron capacity for each prayer session was based on an estimate of the demand in the area for the place of public worship's services. These estimates formed Council's maximum capacity in the conditions of consent.

The additional demand not considered within previous applications can be attributed to:

- *New residents that have moved to the area that regularly attend the premises;*
- *A greater number of patrons that already lived in the area than previously thought;*
- *Workers within the area, particularly casual employees on nearby building sites.*

While this does not permit a greater number of patrons to attend than approved, it is acknowledged that it is largely outside the control of the place of public worship management to determine how many wish to attend. Nevertheless, we are informed by the client that the following management strategies are being implemented to ensure that capacity for Friday Prayer can be complied with and to discourage additional attendees arriving:

- *Capacity is counted by management of the place of public worship. Worshippers arriving after capacity has been reached are informed that the maximum capacity has been reached and will be turned away.*
- *Casual employees in the area are aware of the capacity issue and are anecdotally not returning.*
- *Informing attendees of other places of public worship in the area.*

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- *In line with the current Plan of Management, a local volunteer is stationed outside to ensure nearby vehicles are parked legally. They now also inform patrons when capacity is reached.*

It is noted that the existing Plan of Management did not adopt direct management procedures to address the issue of patrons attending above the maximum capacity. This demonstrates that the current demand was not originally identified as a key management issue. The abovementioned strategies have all been discussed and implemented following the trial period and highlight the management of the place of public worship's intention to comply with the conditions of consent. The client has informed us that the adopted measures are having the desired effect."

It is not accepted that the number of patrons attending Friday Prayer is largely outside the control of the management of the mosque. Particularly when on average almost double the maximum permitted by Condition 8 are attending. The large numbers of people attending Friday Prayer at the site is giving rise to adverse traffic and on-street parking impacts on the surrounding local street network. Indeed, it was observed on 4 March 2016 at 1:30pm that there were no on-street parking spaces within 100m to 150m of the mosque.

The remainder of the prayer and prayer/education services have largely been complied with the times and the maximum capacities as stipulated in Condition 8. This has been confirmed by third party observations of the Thursday midday prayer session, Wednesday evening prayer/education session and the fewer number of resident complaints and objections regarding the mosque operations outside of Friday Prayer. Council's compliance officers have confirmed that there was a period when the mosque operated outside of its approved hours for the evening/education prayer session. This occurred at the transition to daylight saving time and once informed of the breach the issue was rectified by the management of the mosque.

Accordingly, the deletion of Condition 6 as sought by the applicant is not considered appropriate or warranted at this time.

It is however considered reasonable that the management of the mosque be permitted to implement the strategies put forth to discourage additional attendees arriving for Friday Prayer. Therefore it is considered appropriate to modify Condition 6 to provide a further trial period for Friday Prayer only. Condition 6 therefore is recommended to be modified accordingly and include a requirement for management of the mosque to detail the strategies found to be most effective in controlling Friday Prayer attendance beyond the maximum approved capacity and record the number of weekly attendees for Friday Prayer during the trial period. This documentation could then be provided to Council at the end of the trial period as part of an application requesting Friday Prayer be unencumbered by a trial period.

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Social Impacts

The positive social impacts for local Muslim residents to have a local community based mosque that services their religious needs is acknowledged and supported. There appears to be however a divide between the experience of some local residents to the operation of the mosque as expressed in the submissions received.

On review of the submissions objecting to the proposal that many of the negative experiences of local residents regarding Roselands Mosque relate to it not complying with the terms of its development consent. Full compliance with the conditions of development consent, particularly in matters of capacity and hours of operation is expected to reduce negative amenity and social impacts upon local residents.

Should the conditions of development consent continue to be breached, then this would be a compliance issue for Council and enforcement action is recommended.

- **The Suitability of the Site for the Development**

On the basis of the assessment contained within this report, it is considered that the modifications sought in the subject application would not make the place of public worship unsuitable for the site. However, this is based upon all conditions of the modified development consent being complied with.

- **The Public Interest**

On the basis of the assessment contained within this report, it is considered that the modifications sought in the subject application would be in the public interest provided all conditions of the modified development consent being fully complied with by the applicant.

Notification

On 15 December 2015 the application was publicly notified to surrounding and nearby properties for a period of 76 days to 29 February 2016. Advertisements were also placed in local newspapers.

Council received ten submissions objecting to the proposed modifications (inc. three from the one submitter), and the resubmission of an earlier submission that was originally submitted for DA-486/2008/B.

On 30 May 2016, we re-notified the application until 22 June 2016 as a consequence of a typographical error identified for the duration of the proposed of Friday Prayer times. Advertisements were also placed in local newspapers. Council received one formal submission objecting to the proposed modification.

The matters raised in the submissions of objection regarding the initial public notification and their consideration are as follows:

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Matters Raised	Consideration
<p>Council compulsorily acquire the site at market value for public open space, thereby expanding the adjoining park and making it more attractive to use for the local community; and Council assist the proponent to identify and secure a more suitable site for the mosque in a commercial area.</p>	<ul style="list-style-type: none"> • Council has no intention to acquire the site for public open space or any other purpose. • As such, compulsory acquisition of the site and other assistance to the proponent to find an alternative site is not appropriate.
<p>Failure of the mosque to comply with all conditions of consent. Council not responding to resident complaints.</p>	<ul style="list-style-type: none"> • The Roselands Mosque has failed to comply with Condition 8 of the development consent relating to hours of operation and maximum capacity. This is an enforcement issue for Council. The principal and on-going observed breaching of Condition 8 by the mosque is related to Friday Prayer and the maximum approved capacity being breached by an average of nearly double the approved maximum of 60 people. • Accordingly, it is not desirable to delete Condition 6 relating to the trial period in its entirety, but narrow the scope for the trial period to relate to Friday Prayer only with the applicant providing to Council a record of weekly attendee numbers at the close of the trial period. It is recommended Council also undertake surveillance to confirm the number of attendees. • In regard to the operation of the mosque outside of Friday Prayer, Council has advised that during the transition to daylight saving time in October 2015 the mosque began operating beyond its approved closing time of 8pm. At least one resident complaint received by Council indicated that the mosque was operating beyond 9pm. The management of the mosque were contacted by Council and the matter was rectified, with the management of the mosque citing an oversight as to the closure time during daylight saving time believing it to be 9pm. • A total of 25 resident complaints were received by Council during the 6 month trial period. These related to the breaching of Condition 8 and illegal street parking. Council responded to each resident complaint and undertook surveillance of the mosque. Apart from issues related to Friday Prayer and the breach in closing time during October 2015, there were a low number of sporadic resident complaints received by Council concerning illegal street parking and mosque operation. • Accordingly it is considered that the remainder of the mosque operating hours (apart from Friday Prayer and closing time during daylight saving time) be unencumbered by a trial period.

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Matters Raised	Consideration
Operations dragging out longer than the Council imposed trial period.	<ul style="list-style-type: none"> Condition 7 in DA-486/2008/B (as modified) allows for the continued operation of the mosque until determination of a modifying application following the six month trial period provided the application was received within the six month trial period. The application was received by Council on 13 November 2015, within the six month trial period.
Residents were not provided with an independent Complaints Hotline. The Complaints Hotline set up by the proponent was not communicated to the residents, nor should it have been a condition given the inherent bias.	<ul style="list-style-type: none"> The applicant has stated that a Complaints Hotline was set up during the six month trial period thereby satisfying the condition. No complaints from the public were received. It is noted that numerous complaints from local residents were received directly by Council during the six month trial period that typically related to the mosque not complying with its maximum capacity during Friday Prayer, illegal parking and operating later than the approved hours of operation. Given that no complaints were received by the Complaints Hotline but numerous complaints were received directly by Council confirms that either local residents were not made aware of the Complaints Hotline (as claimed by residents) or alternatively residents believed complaints directly to Council were the most appropriate course of action. In any event this component of Condition 6 should be deleted as it has shown to be of little or no purpose and inherently prone to a conflict of interest.
Doors of the mosque being left open and people are now worshipping outside due to excessive numbers attending.	<ul style="list-style-type: none"> The doors of the mosque being left open is a breach of Condition 17 of DA-486/2008/B (as modified). This alleged breach is a matter of enforcement for Council's compliance team. In any event, acoustic monitoring of the mosque (Renzo Tonin & Associates report dated 3 September 2015) required as part of the Condition 6 has revealed that noise emission from internal prayer and education sessions was inaudible at the measuring location. We did not observe any doors or windows being left open during prayer sessions. The issue of the worshippers praying outside the mosque is related to the issue of excessive attendance at Friday Prayer that is addressed within this report. It is noted that people praying outside the mosque has been documented by a photograph taken by a resident on one occasion (seven men praying in the front yard of the mosque). Surveillance of Friday Prayer did not note this event occurring whilst in attendance.
Noise levels are in breach of conditions.	<ul style="list-style-type: none"> There are no conditions of consent that relate to noise levels associated with the operation of the mosque. Only Condition 18 relates to mechanical ventilation noise levels, which there is no evidence of the applicant breaching. It is presumed that the objection relates to noise generated by the rear car park, on-street parking and internal noise associated with the operating of the mosque. In this regard, the Renzo Tonin & Associates report dated 3

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Matters Raised	Consideration
	<p>September 2015 found that the noise of the rear car park exceeded the noise goal by 7 dB at the location near the boundary. Accordingly, a condition as recommended in the acoustic report has been recommended to restrict access to the rear car park from Monday to Thursday (excluding the evening session) in order to reduce the cumulative acoustic impact upon 33 Ridgewell Street.</p> <ul style="list-style-type: none"> • In terms of on-street parking noise, there is no noise criteria for street car parking between 7am and 10pm. Furthermore, the acoustic monitoring of the mosque (Renzo Tonin & Associates report dated 3 September 2015) required as part of the Condition 6 has revealed that noise emission from internal prayer and education sessions was inaudible at the measuring location. • As such, provided the recommended condition is implemented and complied with, acoustic impacts generated from the mosque are considered acceptable.
<p>People arrive prior to and staying after the session times, which will be exacerbated by the proposed changes to Condition 8.</p>	<ul style="list-style-type: none"> • People arriving to the mosque prior to and leaving after the designated session times is anticipated provided it is within a reasonable time period (ie 5-10 minutes on either side of session time). Beyond this, is a matter of enforcement by Council's compliance officers. • The proposed 9:30pm finishing time during daylight saving time is subject to a trial period in order to monitor whether compliance is achieved and if there is any adverse impact upon the surrounding neighbourhood and the sleep disturbance period starting at 10pm.
<p>On-street car parking demand is high during peak operation times of the mosque. The mosque is one of the most trip intensive generating activities that could be in this location.</p>	<ul style="list-style-type: none"> • On-street car parking supply at peak times and traffic has been addressed as part of the DA/486/08/B. The current application does not propose to increase the maximum capacity of any prayer session times or increase the number of weekly prayer session times. As such, no change is anticipated as part of the current application. • It was found after assessment from our traffic section in DA-486/2008/B that there was sufficient on-street parking available during the weekday evening peak period. • It is noted that Friday Prayer is the primary traffic generating and on-street parking demand session of the week. This is largely as a consequence of the significant breach in the approved maximum capacity of 60 persons attending each week. Compliance with the maximum capacity of 60 persons is considered to significantly reduce the adverse impacts upon the local street network during the Friday midday period. As such, a trial period is recommended for Friday Prayer to allow for the mosque's management to implement strategies to discourage over-attendance for Friday Prayer.

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Matters Raised	Consideration
Patrons are not locals who walk to the mosque as claimed by the applicant.	<ul style="list-style-type: none"> Our observations of Friday Prayer is that a majority of worshippers drive to the mosque. With approximately 15%-20% of worshippers appearing to arrive at the mosque by foot. Whilst this is contrary to information provided by the applicant as part of the previous application, it is considered that compliance with the maximum capacity of 60 persons for Friday Prayer will mitigate adverse impacts upon the surrounding streets.
The social amenity of the area has been adversely impacted and residents feel unsafe as a consequence of the mosque operation.	<ul style="list-style-type: none"> No evidence of anti-social or criminal activity as a consequence of the operation of the mosque has been demonstrated.
<p>The location of the mosque hinders the ability of local residents to use the adjoining reserve. CPTED principles have not been considered.</p> <p>The owner of 39 Ludgate Street was driven out of the area by the location of the mosque, and the property converted into the expanded reserve.</p>	<ul style="list-style-type: none"> The adjacent reserve has been recently expanded by more than double its previous size. As such, it is considered more usable and attractive for the local community. The perception that the position of the mosque adjacent to the reserve makes the reserve less attractive to use by the local community is not supported. Public reserves and parks are commonly located next to places of public worship without land use interface conflict. There is no evidence to the contrary in this instance. CPTED principles were considered as part of the previous application. No changes in the current application are considered to change the crime prevention profile of the mosque.
With the trial period ending and the breaches noted, the development consent should be revoked.	The trial period is considered warranted to be extended for Friday Prayer and the proposed evening session during daylight saving time. The remainder of the operating hours of the mosque are considered to be reasonable and recommended to be unencumbered by a trial period due the reasons contained within this assessment.
The proposed change to Condition 8 for the later evening session is actually seeking an additional 2 hours of operating time daily, which will adversely impact the amenity of areas and result in sleep disturbance.	<ul style="list-style-type: none"> The proposed change in the daily evening session time during daylight saving time is from 7pm-8pm to 8:30pm to 9:30pm. This is proposed by the applicant as a shift in session time rather than an expansion in session time. Should the mosque be operating outside of its session times this would be a matter of enforcement for Council's compliance officers. As detailed within this report, approval is given to an 8pm-9pm evening session time during daylight saving time, with the 8:30pm-9:30pm evening session time requested by the applicant subject to a trial period to ensure compliance and that the sleep disturbance period is not impacted.
Illegal parking across driveways	<ul style="list-style-type: none"> This is a parking enforcement issue for Council's rangers. It is noted that, illegal parking has typically occurred as a consequence the significant over-attendance at Friday Prayer (almost double on average than the maximum 60 persons approved). Given the large numbers of people attending the mosque for Friday Prayer and limited on-street parking spaces being available within approximately 100m-150m of the mosque, some late arrivals illegally park (ie too close to intersections,

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

Matters Raised	Consideration
	<p>partially across driveways, etc) near to the mosque.</p> <ul style="list-style-type: none"> • this is a consequence of the maximum capacity for Friday Prayer being exceeded. Accordingly, a trial period is extended for Friday Prayer to allow the management strategies put forth by the applicant to be implemented to discourage over-attendance.
Traffic issues associated with the mosque blocking seniors access to services and the safety of children.	The traffic issues with Friday Prayer are contained to the midday Friday period when children are typically at school.
Other nearby mosques in the area can accommodate the worshippers.	This is not a relevant matter for consideration in this application.
The site is not suitable for the place of public worship	The modifications sought will not make the place of public worship unsuitable for the site. However, this is based upon all proposed modified conditions of the development consent being complied with.
Adverse effect on land values	Given that a valuation has not been provided, it is undetermined whether the proposed modification to the development consent for the mosque would affect land values in the surrounding area. In any event, compliance with the terms of the development consent and appropriate Council enforcement should any condition be breached are anticipated to minimise amenity impacts on the surrounding locality.
The mosque has been able to breach its conditions of consent without consequence from Council.	Council has undertaken surveillance of the mosque and been in contact with the management of the mosque at certain times when there have been breaches in operating times and maximum capacity.
Proposed modification not consistent with objectives of R3 Medium Density Residential zone	The proposed modification to the conditions of the development consent are not considered to change the consistency of the current use of the site as a place of public worship with the objectives of the R3 zone. Namely, enabling a non-residential use (a place of public worship) that meets the day to day Muslim religious needs of residents in the local community.
Non-compliance with Part 5.8 of CDCP 2012.	Part 5.8 of CDCP 2012 has been assessed in this report. It has been found that on account of the findings of the peer review of the acoustic consultant reports provided by the applicant, the proposed modifications are generally compliant with the provisions of Part 5.8 of CDCP 2012, provided the recommended conditions of the acoustic report are complied with.

On 30 May 2016 the application was publicly re-notified until 22 June 2016. This was due to a typographical error for the approved hours of operation for Friday Prayer (midday) on the DA-486/2008/B Notice of Modification. Council received one formal submission of objection and two email enquiries regarding the process following amalgamation of the City of Canterbury and Bankstown City Council to form the new City of Canterbury Bankstown Council. Council has appropriately responded to the two enquiries regarding application process. As such, below is the consideration the additional matters raised in the formal submission of objection regarding the public re-notification:

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Matters Raised	Consideration
Object to any increase to the hours of operation, no matter what time of day, no matter what time of year. (Note: Other matters raised in the submission have been considered as part of the initial public notification.)	The re-notification of the application was as a consequence of a typographical error for the approved hours of operation for Friday Prayer (midday) on the DA-486/2008/B Notice of Modification. Friday Prayer is the principal congregational prayer session of the week and attracts the most worshippers. A one hour prayer session for Friday Prayer (rather than 30 min for the other prayer sessions) is typical for this prayer and in itself is not considered to give rise to adverse impacts on the local area.

Conclusion

The proposed modification is substantially the same development that was originally considered and approved by Council. The proposed modification is considered acceptable having regard to the provision of Sections 79C and 96 of the Environmental Planning and Assessment Act, 1979.

The recommended amendments have the following affect and are summarised below:

1. Allows the Mosque to operate in accordance with its conditions of consent without a trial period on Mondays, Tuesdays, Wednesdays, Thursdays, Saturdays and Sundays.
2. The Mosque shall operate on a trial basis on Fridays to ensure the Mosque operates in accordance with its conditions of consent prior to a permanent consent being considered.
3. The midday Friday prayer may operate for a one hour period.
4. The evening prayer in daylight savings shall operate from 8:00pm – 9:00pm permanently notwithstanding the Friday trial period.
5. A 6 month trial period for evening prayer in daylight savings shall operate from 8:30pm – 9:30pm
6. Ongoing monitoring of the Mosque by Council and reporting by the Mosque during the trial periods.

Approval of this application is recommended subject to the proposed modified conditions of the development consent set out below.

Independent Hearing and Assessment Panel Minutes

The Independent Hearing and Assessment Panel considered the application on 19 September 2016, and the minutes from that meeting are provided below.

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Site Visit

An inspection of the site was undertaken by the Panel and staff members prior to the public hearing.

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Panel Assessment

The Applicant gave late notice to the Council that there would be no representative on behalf of the Applicant at the time of determination of the application and they requested an adjournment of this matter. With such late notice the Panel decided to proceed with hearing from neighbours to see whether there is support for the Applicant's application. As it transpired, there was opposition to the application and that raised the possibility of the Applicant's rights being adversely affected.

There is a principle of natural justice that a person has a right to be heard before a decision is made and in those circumstances the Panel adjourned this item to the next meeting of IHAP.

Public Addresses

<p><i>Ms Maria Di Francesco (objector)</i></p>	<ul style="list-style-type: none"> • <i>Her property is 70m from the subject site.</i> • <i>Advised this matter has been ongoing for eight years.</i> • <i>Has concerns regarding excessive attendance at the Mosque. Notes the applicant and his representative in their address to IHAP in October 2010 advised that worshippers will not drive to the prayer hall and Friday sessions will attract 40 people on Fridays.</i> <ul style="list-style-type: none"> - <i>She advised regular non-compliance has occurred every Friday for eight years. Questions surveillance, noting worshipers have been photographed praying in the front yard of the Mosque.</i> - <i>Has concerns regarding traffic generation and illegal parking, is of the view patrons are not locals walking to the Mosque.</i> • <i>Notes previous use as a Christian prayer hall was in operation three days a week.</i> • <i>Stated Council previously advised an impact statement would be required to allow more patrons, however this has never eventuated.</i> • <i>Answered questions from the Panel in regard to her view on increase in operating hours to 9:30pm during daylight savings, time period patrons congregate after session times and the operation of the complaints hotline.</i>
<p><i>Mr Kien Mac (objector)</i></p>	<ul style="list-style-type: none"> • <i>Notes the image in the officers report depicts Ludgate Street on a Thursday, not Friday which is the peak time and the image of the signage at the front of the Mosque is out of date.</i> • <i>Notes this matter has been ongoing for eight years. Does not support any amendments to increase in hours of use.</i> • <i>Notes acknowledgement the majority of patrons drive to the Mosque, believes actions taken to curb illegal parking and U turns by worshipers at the Belemba Avenue</i>

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	<p><i>intersection have not been addressed.</i></p> <ul style="list-style-type: none"> • <i>Notes acknowledgment the Mosque is in constant breach of quantity of patrons and parking. Does not believe the Management Plan will result in a reduction of patrons</i> • <i>Notes the original site was used for a few hours over three days per week, incremental changes have resulted in seven days of operation per week.</i> • <i>Is of the view a DCP for Places of Worship would help to provide clarity.</i> • <i>Residents are seeking a fair balance.</i> • <i>Answered questions from the Panel in relation to traffic markers located on Ridgewell Street and if anyone resided on the subject site.</i>
Mr Mark Birkinshaw (objector)	<ul style="list-style-type: none"> • <i>Speaking on behalf of the Ludgate Street Residents Action Group to restore the basic neighbourhood amenity.</i> • <i>Notes the Prayer Hall has been renamed to Roselands Mosque.</i> • <i>Advised during events and long celebrations such as Ramadan, the Mosque operates like a Friday surge event every day of the week, without any limits.</i> • <i>In relation to traffic, does not agree with volume capacity ratio rather than local area generation of movements, noting the street is not an arterial road. Believes the actual ratio of parking is 1:1, being one car space per patron.</i> • <i>Is of the view this application is a significant ratcheting increase on what was approved. Does not believe the site is suitable or in the public interest to remain.</i> • <i>Does not support the amendment of daylight savings hours from 7-8pm to 8.30-9.30pm, believes it is too late for a residential community and notes 7-8pm should become 8-9pm for daylight savings hours, not an end time of 9.30pm.</i> • <i>Is of the view increasing Friday prayer from 30min to an hour will exacerbate current issues of traffic, parking and other negative behaviours and believes two separate overlapping sessions will take place during the Friday midday prayer.</i> • <i>Does not believe removing cars from the rear carpark will be beneficial, as it is hardly used in comparison to street parking.</i> • <i>Believes more monitoring is not warranted and requests CCTV is provided by the applicant and worshipers sign in to identify if they reside locally.</i> • <i>Believes Council has not been successful in enforcement actions and the applicant has breached all conditions:</i>

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	<p><i>noise, parking, traffic capacity and notes prayer takes place in the external front yard.</i></p> <ul style="list-style-type: none"> • <i>Requests neighbours' concerns and applicant's breaches of planning law are immediately dealt with by ceasing the development consent.</i>
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IHAP Decision

*THAT Development Application DA-486/2008/C be **DEFERRED** to allow further representations to be made by the applicant in this matter at a future meeting.*

Vote: 5 – 0 in favour

Supplementary Information

Comment

It should also be noted that the recommendation on the IHAP paper dated 19 September 2016 for Wednesday, Thursday and Friday for the hours of operation and daylight saving times incorrectly shows a morning prayer of 6.00-6:30am and 5:30-6.00am respectively. The Morning Prayer hours have been removed from the recommended hours of operation.

RECOMMENDATION:

THAT Development Consent DA-486/2008 be further **MODIFIED** as follows:

A. Modify Conditions under 6 as follows:

- 6.1.1 A limited trial period for an 8:30pm to 9:30pm evening prayer and education session seven days a week during daylight saving time is approved until the end of daylight saving time on 1 April 2017. After which time any continuation of the above hours for the following daylight saving time period (commencing on 1 October 2017) will require a section 96 modification or further consent of the Council. In this regard an appropriate application shall be made to Council for consideration prior to 1 April 2017. **Note: During this time period compliance with 9:30pm finish time is to be monitored by Council to record whether compliance is achieved. Monitoring is recommended to take the form of regular observational monitoring of the premises by Council compliance officers during the trial period, particularly during the months of December and January. A register of resident complaints is also to be prepared during the trial period**
- 6.1.2 At the end of the 2016/17 daylight saving period the applicant can choose to lodge a further application to make the 8:30pm to 9:30pm prayer/education session permanent for the daylight saving period.
- 6.2.1 The approval for the Friday Prayer session (midday Friday) is for a limited time period until the end of daylight saving time on 1 April 2017. After which time any use of the premises for Friday Prayer will require a Section 96 modification or a further consent of the Council. In this regard an appropriate application shall be made to Council for consideration prior to 1 April 2017.

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- 6.2.2 During the trial period, the management of the mosque is to detail the strategies found to be most effective in controlling Friday Prayer attendance beyond the maximum approved capacity and record the number of weekly attendees for Friday Prayer during the trial period. This documentation can then be provided to Council at the end of the trial period as part of an application requesting Friday Prayer be unencumbered by a trial period.
- 6.3 The rear car park shall be limited in its weekly use to Friday, Saturday and Sunday only and also the evening prayer and education sessions seven days a week. Outside these times the rear car park is not to be used.
- 6.4 The use of a “call to prayer” or other outside noise-generating activity is prohibited on the premises.
- 6.5 A bicycle rack accommodating a minimum of three bicycles shall be provided at a suitable location on the site.
- B. Modify Condition 8 as follows:
8. The approved hours of operation and the approved activities on the site are to be confined as follows:

Day	Time	Activity	Maximum No. of Persons
Sunday	12 noon to 12.30pm	Prayer	15
		Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer & Education	40
	6.30pm to 7.30pm		
Monday	12 noon to 12.30pm	Prayer	15
		Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer & Education	40
	6.30pm to 7.30pm		
Tuesday	12 noon to 12.30pm	Prayer	15
		Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer & Education	40
	6.30pm to 7.30pm		
Wednesday	12 noon to 12.30pm	Prayer	15
		Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer & Education	40
	6.30pm to 7.30pm		
Thursday	12 noon to 12.30pm	Prayer	15
		Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer & Education	40
	6.30pm to 7.30pm		

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Friday	12 noon to 1.00pm	Prayer	60
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Saturday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40

Daylight saving times are as follows:

The approved hours of operation and the approved activities on the site are to be confined as follows:

Day	Time	Activity	Maximum No. of Persons
Sunday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.00pm to 9.00pm	Prayer & Education	40
Monday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.00pm to 9.00pm	Prayer & Education	40
Tuesday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.00pm to 9.00pm	Prayer & Education	40
Wednesday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.00pm to 9.00pm	Prayer & Education	40
Thursday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.00pm to 9.00pm	Prayer & Education	40
Friday	1.00pm to 2.00pm	Prayer	60
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.00pm to 9.00pm	Prayer & Education	40
Saturday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	8.00pm to 9.00pm	Prayer & Education	40

C. Modify Condition 38 as follows:

38. Condition 6 of this development consent (as modified) has been imposed so that Council can review the effects of the use on the amenity of the area and

37 LUDGATE STREET, ROSELANDS: MODIFICATION TO TEMPORARY PLACE OF PUBLIC WORSHIP TO MAKE IT PERMANENT AND EXTEND OPERATING HOURS (CONT.)

compliance with the conditions of this consent. At the end of the time period upon lodgement of an application, Council will assess the desirability of issuing an unencumbered development consent on the site. Failure to comply with the necessary requirements of the trial period and all of the conditions of development consent could result in Condition 6 not being complied with to the satisfaction of Council and the aspects of the development consent subject to the trial period lapsing.

WE ALSO ADVISE:

- 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:
 - Apply for a review of an Application to Modify a Development Consent which may be sought under Section 96AB of the Environmental Planning and Assessment Act 1979 but only within 28 days of the modification determination; or
 - Appeal to the Land and Environment Court within 6 months after the date on which you receive this Notice of Determination, under Section 97AA of the Environmental Planning and Assessment Act 1979.