



AGENDA FOR THE INDEPENDENT HEARING AND ASSESSMENT PANEL MEETING

7 August 2017

Location:

**Council Chambers
137 Beamish Street, Campsie**

ORDER OF BUSINESS

- | | | |
|----------|--|------------|
| 1 | 9-11 Weyland Street, Punchbowl

Demolish existing structures, consolidation of both lots into one and construction of a six-storey mixed use development comprising 39 apartments, two commercial tenancies, a two level basement for parking and associated landscaping | 3 |
| 2 | 159 Priam Street, Chester Hill

Alterations and additions to approved mixed use development, including an additional level containing four apartments | 47 |
| 3 | 25 Mactier Avenue, Milperra

Demolition of the existing structures on site, and the construction of a two storey attached dual occupancy with associated car parking, landscaping, front fence and site works, with Torrens title subdivision | 75 |
| 4 | 1236-1244 Canterbury Road, Roselands

Modification application to modify the number of apartments from 62 to 66 and amend the basement and building façade treatment for a mixed use development | 105 |
| 5 | 15-19 Muir Road, Chullora

Construction of a new warehouse and distribution facility | 141 |

Independent Hearing and Assessment Panel - 7 August 2017

ITEM 1	9-11 Weyland Street, Punchbowl
	Demolish existing structures, consolidation of both lots into one and construction of a six-storey mixed use development comprising 39 apartments, two commercial tenancies, a two level basement for parking and associated landscaping
FILE	DA-632/2015 – Bankstown Ward
ZONING	B5 Business Development under Canterbury LEP 2012
DATE OF LODGEMENT	21 December 2015 (amended plans received 20 December 2016 and 26 June 2017)
APPLICANT	E Fox
OWNERS	Napoleon Perdis
AUTHOR	Planning

RECOMMENDATION

It is recommended that:

1. IHAP concur with Council entering into a Section 34 Agreement to approve Development Application DA-632/2015 subject to the conditions contained in Part C of the attachment.
2. The Clause 4.6 variation to the development standard relating to the Building Height within Clause 4.3 of Canterbury Local Environmental Plan 2012 is well founded, and in this case varying the standard to permit the proposed development be supported for the following reasons:
 - (a) A written request from the applicant has been submitted which justifies the contravention of the development standard;
 - (b) The proposal is in the public interest as it meets the objectives of the development standard and the objectives for development within the B5 Business Development zone;

- (c) The concurrence of the Secretary of the Department of Planning and Environment has been obtained;
- (d) Requiring compliance with the standard would unreasonably constrain the development and the design response;
- (e) There are sufficient environmental planning grounds to justify contravening the development standard.

BACKGROUND

This matter is reported again to Council's Independent Hearing and Assessment Panel as it is an application that was determined by IHAP and is now the subject of an Appeal in the NSW Land and Environment. The plans have been amended.

Council engaged the services of an expert planner to defend the Appeal. The main issues of discussion at the Section 34 Conference were the Clause 4.6 variation for building height, Apartment Design Guide non-compliances and whether a floor to floor height of 2.9m is achievable.

This Development Application proposes a six-storey mixed use development comprising 39 apartments (reduced from 42), two commercial tenancies and two levels of basement parking. The ground floor comprises both commercial and residential use, which is permissible in the B5 Business Development zone.

The amendments from the last scheme presented to IHAP include a reduction in the number of proposed apartments from 42 to 39, reduction in building height by 600mm, increased rear setback of the fifth and sixth storeys from 6m to 9m, reduction in size of the rooftop communal open space, changes to roof over rooftop terrace stair and lift core, accessible toilet introduced to the rooftop terrace. The Clause 4.6 variation has been amended.

Council's expert planner finds the amended proposal satisfactory and considers that the Apartment Design Guide matters and Clause 4.6 variation acceptable. Council has requested the applicant supply a structural engineer's verification that the 2.9m floor to floor height can be achieved and an updated BASIX Certificate and, subject to the provision of these documents, also finds the proposal satisfactory.

It is recommended that IHAP concur with Council entering into a Section 34 Agreement to approve Development Application DA-632/2015 subject to the conditions contained at the end of this report.

REPORT

SITE DETAILS

The subject site is legally described as Lots 334 and 335 in DP 13801. It comprises 9 and 11 Weyland Street in Punchbowl which both contain a single storey detached dwelling and outbuildings. The site is rectangular in shape and has a total area of 1,040.4m².

The site is zoned B5 Business Development under Canterbury LEP 2012. It is a relatively flat site. The immediate area is generally characterised by single and double storey detached dwellings and some commercial and industrial activities to the north, west and east.

Development approval has been issued for a six-storey mixed use development on the adjoining site 13-15 Weyland Street as well as 17-19 Weyland Street and 23 Weyland Street. The subject site backs onto a site that fronts Canterbury Road.

There is a tree located at the rear of 9 Weyland Street and a large Camphor laurel tree located at the rear of the adjoining site at 7 Weyland Street in close proximity to the proposed basement excavation. This tree has recently received Tree Preservation Order permission for removal.

An aerial photo of the site and its locale is provided below.



An aerial view of the subject site 9-11 Weyland Street outlined in yellow

PROPOSAL

The applicant is seeking approval as part of the Section 34 Conciliation Conference to demolish all existing structures at 9 and 11 Weyland Street, consolidate both lots into one, excavate the site for a two level basement car park for 54 spaces, remove one tree from the rear of the site and construct a six-storey mixed use development, across two buildings, with two commercial tenancies on the ground floor (75m² and 45m²) and 39 residential apartments (ten x studio, 16 x one bedroom and 13 x two bedrooms).

No specific use has been designated for the proposed commercial tenancies and separate applications are required if the application is approved. A detailed breakdown of the development level by level is provided as follows:

Basement lower	29 off-street car parking spaces, residential storage, plant, pedestrian lift and stairway, 14 bike spaces.
Basement upper	25 off-street car parking spaces, bin storage commercial and residential, accessible toilet, pedestrian lift and stairway.

Ground floor	Two commercial tenancies (75m ² and 45m ²), vehicle driveway, pedestrian lift and stairway, two x one bedroom apartments, two x two bedroom apartments, communal open space (69m ²).
First Floor	Two x one bedroom apartments, five x two bedroom apartments.
Second Floor	Two studio apartments, four x one bedroom apartments, two x two bedroom apartments.
Third Floor	Two studio apartments, four x one bedroom apartments, two x two bedroom apartments.
Fourth Floor	Three studio apartments, two x one bedroom apartments, one x two bedroom apartment.
Fifth Floor	Three studio apartments, two x one bedroom apartments, one x two bedroom apartment.
Roof	Roof top terrace comprising communal open space (155m ²).

BACKGROUND

Relevant background details are provided as follows:

21 December 2015

Development Application DA-632/2015 was lodged with the former Canterbury Council seeking approval for the demolition of existing buildings occupying 9-11 Weyland Street and the construction of 45 residential apartments, two levels of basement parking and a narrow commercial element fronting Weyland Street. The application was advertised and notified for a period of 28 days between 27 January and 24 February 2016 with three submissions received about loss of amenity and traffic.

16 June 2016

Council raised concerns with the applicant regarding an inadequate Clause 4.6 variation, SEPP 65, building design, traffic, stormwater and landscaping. Amended plans were received on 3 August 2016 which included a roof top terrace for communal open space. This scheme was notified between 9 August and 6 September 2016 and no submissions were received.

27 October 2016

Further amended plans were received which reduced the number of apartment from 45 to 43, converted a ground floor unit to a retail "atelier" where a retail space is connected to a residential apartment, introduced a 2m front setback to the third and fourth storeys and reduced the floor to floor height of the ground floor from 3.8m to 3m.

20 December 2016

Further amended plans were received which reduced the number of apartments from 43 to 42 and deleted the ground floor 'atelier' and replaced it with a separated residential apartment and commercial space which introduces additional commercial glazing fronting Weyland Street at ground floor level. Privacy screens were added to apartment windows that face each other within the development. This scheme was reported to the IHAP meeting of 6 February 2017.

6 February 2017

IHAP resolved to defer the matter to allow the applicant to provide additional information. In arriving at its decision IHAP offered the following commentary:

“The Panel does not agree with the recommendation that the application should be approved in its current form.

The Panel is of the opinion that the applicant should be given a further opportunity to consider amendments to the proposal to, in particular, address internal separation distances and height.

In relation to the separation issue, the Panel is of the opinion there should be increased separation distances between the two buildings to enhance the visual and acoustic privacy, and improve light and ventilation. The current non-compliance would result in unacceptable impacts to the internal amenity of the units. There is a 25% to some 40% non-compliance on some levels with the ADG requirements for separation. The Panel considers that this non-compliance has not been adequately justified and that the separation distance should be increased generally in accordance with the ADG requirements.

In relation to height, the height variation is excessive in the Panel’s opinion at approximately 16.6% above the LEP standard. The proposed roof terrace is itself some 2.85 metres above the specified 18 metre height. The primary justification for the clause 4.6 variation relies primarily on the fact that variations have been given in the other approvals along the streets.

The Panel considers that this non-compliance has not been adequately justified in terms of Clause 4.6 (3)(a) and (b) which requires the relevant standard to be unreasonable or unnecessary in the circumstances and/or requires sufficient environmental planning grounds to justify the contravention. Subsequently the height should be reduced to a more acceptable variance and consideration given to relocating the rooftop community space.

The proposal also demonstrated a number of other lesser non-compliances including:

- Lack of direct sunlight in mid-winter to the communal space at ground level
- Car parking provisions
- Lack of deep soil planting
- Size and thus functionality/viability of the front commercial area

In the case of the final point, the Panel agrees with the Council’s recommendation that the small commercial area at the front of the building should be increased and the rear unit deleted. The three metre wide commercial area, in the Panel’s opinion, is not viable and needs to be increased to provide for appropriate commercial viability for street activation.

The Panel defers further consideration of this matter, until the applicant provides amended plans and additional information, or indicates that it requires the Panel to determine the matter on the basis of the documents that have already been provided.

In summary, the Panel is of the opinion that these matters could support a refusal of the application. However, the Panel believes the applicant should be given an opportunity to address the issues raised. The Panel looks forward to receiving the amended details in a timely matter.”

15 February 2017

A Class 1 Appeal is lodged in the Land and Environment Court against the deemed refusal of the development application.

3 April 2017

The matter is referred to IHAP to advise of the Appeal and provide IHAP with an opportunity to determine the application.

IHAP refused the development application for the following reasons:

1. The Applicant’s Clause 4.6 submission to vary the maximum height of 18 metres as contained in the Canterbury local Environmental plan 2012 is not well founded and there are insufficient environmental planning grounds to justify contravening the development standard.
2. The applicant has failed to demonstrate that the residential amenity objectives of the Apartment Design Guide as referred to in SEPP 65 would be met. In particular the design of the proposed development does not provide adequate spatial separation distances between units to achieve an acceptable level of amenity for future occupants.

The following minutes accompanied the refusal of the application:

“The Panel has determined that the application does not warrant approval. The Panel notes that no additional information was forthcoming from the applicant to justify and address the concerns previously raised and no amendments have been made to address these issues.

At the public meeting the Panel gave the applicant and his representatives the opportunity to further explain why the significant variances from the minimum Apartment Design Guide should be allowed with regard to what the environmental benefits are of the proposed design.

The applicant sought to rely on existing approvals in the street. However, apart from the fact this application must be determined on its own merits, the Panel notes that the footprint of the two separate building components on the subject site exceed the footprint of the apartment buildings approved at No. 13-15 Weyland Street. The adjoining approval provides for a significantly greater separation distance between the two building components, some additional 2 metres glass line to glass line for levels ground to 3 , and levels 4 and 5 an additional 3 metres.

The Panel in its determination of the application does not have the benefit of specific DCP controls for the site. Nonetheless, the Panel’s assessment and findings are not made in a vacuum and most relevant to the Panel’s consideration are the provisions of

the 'Apartment Design Guide' (ADG), to be taken into consideration in accordance with clause 28(2)(c) of SEPP 65.

The Panel is not persuaded that the proposal will provide appropriate separation distances between the two building components to provide satisfactory amenity for future occupants. In particular, the Panel notes that the minimum requirements of the ADG are not met by the proposed development. Indeed there are significant percentage departures as identified in the table of the report of Council.

Of even greater concern to the Panel is the fact that the separation distances between the two components of the residential flat building are well below the minimum guidelines, being in the vicinity of between 25-40% below. This fundamental issue in the Panel's determination is not overcome by the design, and the objectives of visual and aural privacy, solar access to communal open space at ground level and density of dwellings are not met.

There are other significant departures of the ADG that the plans fail to meet in both a quantitative and qualitative way. For example the communal and public open space requirements of 25% for the site. This departure is partly compensated for by the fact that the applicant has proposed a rooftop open space area, however, the concrete structure is in exceedance of the 18 metre height limit. With respect to the deep soil zones no area is proposed whereas the guidelines provide for a minimum of 7%.

In relation to the height control in the Canterbury Local Environmental Plan the Panel notes that the height variation is some 16.6% (towards the rear) above the LEP standard and the proposed roof top terrace concrete cover is 2.85 metres above the specified 18 metre height. In the opinion of the Panel the applicant has failed to justify the variation and the design does not provide a better outcome. The clause 4.6 submission fails to satisfy the environmental benefits of the scheme to justify the variation.

In this circumstance the development application seeking the height exceedance some 16% above the standard, is without merit and the cl4.6 variation is not justified. The proposal fails to demonstrate that a better outcome is achieved by varying the standard.

The Panel considers that the significant departures from the minimum amenity standards in the ADG results in the residential amenity of the proposed units being below the minimum that would be achieved if designed to generally satisfy the guidelines, of particular concern is the lack of acceptable separation distances. The applicant submitted that the rationale for this design is that other developments in the street have been approved (not constructed) of similar built form. The Panel does not accept that the precedent effect is relevant to the assessment of minimum amenity standards, in particular it is noted that the approved adjacent developments satisfy height requirements and the departure from the separation distance guidelines are not as great as proposed in this application.

Apart from the other design principles in terms of context the Panel does not accept that the proposed development with the magnitude of exceedances would warrant an approval. The Panel is of the opinion that a building with a reduced footprint and

greater satisfaction of the separation distances of the two buildings, would not only sit more comfortably in the streetscape but would provide for greater residential amenity for occupants. A more appropriately designed development would also have the benefit of addressing other issues such as a lack of direct sunlight in midwinter to the communal open space at ground level, a lack of deep soil planting and the size and functionality and viability of the front commercial area which has a limited floor to ceiling height as well as limited dimensions.

While not a reason for refusal the Panel notes by way of comment that a number of BCA non-compliances may require not insignificant changes to the plans.”

30 May 2017

Without prejudice amended plans are lodged by the applicant (predominantly Rev E). The changes include:

1. Removal of atelier component from unit 001 and replacement with commercial area.
2. Floor to floor heights reduced from 3m to 2.9m and resultant reduction in building heights as follows:
 - a. lift overrun at the front reduced by 0.4m from 18.4m to 18m in height.
 - b. lift overrun at the rear reduced by 0.6m from 21.41m to 20.81m in height.
 - c. rooftop terrace roof reduced by 0.6m from 20.85m to 20.25m in height.
3. Part reduction and part increase in setbacks between proposed buildings at Level 4 and reduction in setbacks at Level 5.
4. Reduction in the spread of the roof over the rooftop communal open space.
5. Reduction in area of communal open space on roof top terrace.

14 June 2017

Section 34 Conciliation Conference takes place in accordance with standard Court procedures to consider Rev E plans. The appointed Commissioner of the Court required that amended plans be provided to Council by 21 June 2017 and that if Council had not entered into a Section 34 Agreement by 30 June 2017 that the matter would proceed to a Hearing.

26 June 2017

Amended plans received at Council (predominantly Revision F). The changes include:

1. Bollard provided outside lift well in Basement 02.
2. Car space removed and replaced with clear zone in Basement 01.
3. Lift relocated in rear block.
4. Accessible toilet added to rooftop terrace.
5. Roof over stairwell and accessible toilet raked down to minimise the bulk of the structure.
6. An amended Clause 4.6 variation received.

The following is a precis of approvals in the street:

- A six storey development was approved for the adjoining property at 13-15 Weyland Street (DA-263/2015) on 22 September 2016. This development approves 29 units in two detached buildings configured in the same manner as the subject application. In

terms of front setbacks the first two levels (including ground level) are located at a nil setback, the next two levels (third and fourth storey) at a 2 metre setback and the next two at a 4m and 5m setback.

- A six storey development was approved at 17-19 Weyland Street (DA-550/2013/A) on 23 June 2016. This development approves 29 units in two detached buildings configured in the same manner as the subject application. In terms of front setbacks the first two levels (including ground level) are located at a nil front setback, the next two levels (third and fourth storey) at a 2m setback, and the next two at a 4m to 5m setback.
- A Development Application for a six storey mixed use development at 23 Weyland Street (DA-512/2013) was approved on 23 June 2014. This development observes similar front setbacks as those described above. A Modification Application has subsequently been approved to extend the period of compliance of the deferred commencement consent.
- A Development Application for 1-3 Weyland Street (DA-295/2016) was refused on 30 September 2016 for a six storey building for many reasons including poor design response, inadequate communal open space and substandard internal residential amenity for future occupants. This matter is the subject of an Appeal in the Land and Environment Court.
- A Development Application for a six storey mixed use development at 1570-1580 Canterbury Road (DA-388/2015) which adjoins 23 Weyland Street and faces Canterbury Road, is currently being assessed by Council and has not yet been determined.

A summary of the approved heights of buildings on Weyland Street for which the maximum development standard is 18m, are provided as follows:

Address	DA number	Proposal	Height
13-15 Weyland Street	DA-263/2015	Demolition of existing dwellings and outbuildings, consolidation of both lots and construction of a six storey mixed use development consisting of 29 residential units, two commercial tenancies at ground floor, a two level basement with 44 spaces and associated landscaping.	18.21m front building 21m rear building (16.67%)
17-19 Weyland Street	DA-550/2013/A	Demolition of existing dwellings and other structures, consolidation of both lots and construction of a six storey mixed use development consisting of 29 residential units, 2 commercial units, a two level basement with 46 car spaces and associated landscaping.	18m

Address	DA number	Proposal	Height
23 Weyland Street	DA-512/2013	Demolition of existing dwellings and other structures, and construction of a new mixed use development consisting of 22 residential units, 1 commercial unit, a three level basement with 37 car spaces and associated landscaping.	18.2m but conditioned to comply with 18m height limit

ASSESSMENT

The proposed development has been assessed pursuant to section 79C(1) of the *Environmental Planning and Assessment Act, 1979*.

Environmental Planning Instruments [section 79C(1)(a)(i)]

- State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65)
- State Environmental Planning Policy 55 – Contaminated Land (SEPP 55)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Canterbury Local Environmental Plan 2012 (CLEP 2012)

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

This policy applies to residential apartment development and is required to be considered when assessing this application. Residential apartment development is defined under SEPP 65 as development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component. The development must consist of the erection of a new building, the conversion of an existing building or the substantial redevelopment or refurbishment of an existing building. The building must also be at least three or more storeys and contain at least four or more dwellings.

SEPP 65 aims to improve the design quality of residential apartment development across NSW and provides an assessment framework, the Apartment Design Guide (ADG), for assessing 'good design'. Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a design verification statement from a qualified designer (registered architect) at lodgement of the development application that addresses nine design quality principles contained in SEPP 65 and demonstrates how the objectives in Parts 3 and 4 of the Apartment Design Guide have been achieved. These principles are discussed as follows:

Principle 1 – Context and Neighbourhood Character

The locality is predominantly occupied by a mixture of single and double storey detached dwellings, with the exception of some industrial and commercial uses nearby. However, this land is zoned B5 Business Development and, as evidenced by the approvals already issued, will ultimately be a row of six-storey developments along the northern side of Weyland Street.

As mentioned in the background of this report six storey developments have been approved at 13-15 Weyland Street, 17-19 Weyland and 23 Weyland Street.

The approved development at 13-15 Weyland Street and 17-19 Weyland exhibit a similar arrangement of bulk and are configured as two separate buildings with the third and fourth storeys at a 2m front setback.

Weyland Street is under transition and the proposal is consistent with the desired future character.

Principle 2 – Built Form and Scale

The arrangement of bulk and the scale of the building are similar to other developments on the street and contributes satisfactorily to the future definition of the streetscape and character. It is noted that the proposed bulk is inconsistent with the existing low density nature typified by detached dwellings. However, the future redevelopment intentions along this side of Weyland Street in Punchbowl as well as to sites to the rear of this site along Canterbury Road will eventually be well integrated, by way of similarly scaled developments.

Principle 3 – Density

The density of the proposed development is considered to be satisfactory and a reasonable response to the desired future context and built form.

Principle 4 – Sustainability

An updated BASIX Certificate that details the resource, energy and water efficiency measures that will be incorporated into this proposal, is required. This updated Certificate has been requested but at the time of writing this report had not been received.

Principle 5 – Landscape

The proposal incorporates a rooftop communal space, which will be landscaped with vegetation to provide amenity to the occupants. All of the proposed units have access to outdoor terraces and balconies.

Principle 6 – Amenity

The proposed development has been designed to comply with the solar access requirements of the Apartment Design Guide. The proposed units will have considerable internal amenity.

Principle 7 – Safety

The applicant has considered Crime Prevention Through Environmental Design (CPTED) principles as outlined in CDCP 2012 in the design of the project. The proposal provides increased activation and passive surveillance of the surrounding streets and private open space areas on the site. Residential entry and lobby areas are to be secured and well lit.

Principle 8 – Housing Diversity and Social Interaction

The proposed design incorporates various dwelling sizes and includes adaptable units promoting diversity, affordability and access to housing choice.

Principle 9 – Aesthetics

The proposed use of pattern, texture, form and colour seeks to produce a design aesthetic that reflects the quality of residential accommodation provided. The articulation of the external façades and compliance with the relevant built form standards lessens any perception of bulk, whilst maintaining internal and external amenity. These elements contribute to the desired future character of the locality and enhance the existing surrounding streetscapes.

Apartment Design Guide

Further to the design quality principles discussed above, the proposal has been considered against the various provisions of the Apartment Design Guide in accordance with Clause 28 (2) (c) of SEPP 65.

For clarity the table indicates the change from the scheme previously presented to IHAP.

Section	Design Criteria	Proposed	Complies
Part 3 Siting the Development			
Communal and Public Open Space	Communal open space has a minimum area equal to 25% of the site = 260.1m ²	The proposed communal open space provides 155m ² (rooftop terrace) + 69m ² (ground level) = 224m ² which equals to 22% of the site area. Previous scheme (27.6%)	No – see comment [1] below
	Minimum 50% direct sunlight to the principal usable part of the communal open space for a minimum of two hours between 9 am and 3 pm on 21 June (mid-winter).	155m ² (69%) receives all day sun in mid-winter (roof top terrace). The ground level communal open space receives no direct sun in mid-winter. Previous scheme (64%)	Yes
Deep Soil Zones	Deep soil zones are to have a minimum dimension of 3m for sites between 650m ² and 1,500m ² , with a minimum of 7% site coverage.	Nil Previous scheme (nil)	No – see comment [2] below
Visual Privacy (Separation between buildings)	Habitable rooms to habitable rooms up to 4 storeys: 12m	Habitable rooms to habitable rooms Up to 4 storeys: 9.2m Previous scheme (9.2m)	No – see comment [3] below

Section	Design Criteria	Proposed	Complies
	Habitable rooms to habitable rooms at 5 th and 6 th storey: 18m	10.57m Previous scheme (9.2m at 5 th storey) (11.2m at 6 th storey)	No – see comment [3] below
	<u>Side setback</u> Up to 4 storeys: 6m 5 – 6 storeys: 9m	<u>Side</u> Nil setback Previous scheme (no change)	No – see comment [3] below
	<u>Rear setback</u> Up to 4 storeys: 6m 5 th , 6 th storey: 9m	<u>Rear</u> Up to 4 storeys: 6m 5 th , 6 th storey: 9m Previous scheme up to 4 storeys (no change) 5 th , 6 th storey: 6m	Yes Yes
Bicycle and Car Parking	The site is not located within 800m of a railway station and therefore the parking controls outlined within our CDCP 2012 apply. This is assessed under the DCP section of the report.	N/A	N/A
	<u>Car parking</u> 54 spaces comprising: Studio = 10 spaces One bed = 16 spaces Two bed = 16 spaces Visitor = 8 spaces One x car wash bay Commercial = three spaces Total 54 spaces	54 spaces	Yes
	<u>Bicycle parking</u> 7.8 residents 3.9 visitors Total = 11.7 rounded to 12	14	Yes
Part 4 Designing the Building			
Solar and Daylight Access	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of two hours direct sunlight between 9am and 3pm at mid-winter.	The living rooms and private open space areas for 29 out of the 39 apartments (74%) receive at least two hours of direct sunlight between 9am and 3pm on 21 June. Previous scheme (78%)	Yes
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	Six out of the 39 proposed apartments (15%) do not receive direct solar access between 9am and 3pm on 21 June. Previous scheme (16.6%)	Yes

Section	Design Criteria	Proposed	Complies
Natural Ventilation	At least 60% of apartments are naturally cross ventilated	39 of the proposed 39 units (100%) are naturally cross ventilated. Previous scheme (62%)	Yes
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	No apartment is greater than 18m in depth	Yes
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <ul style="list-style-type: none"> - 2.7m for habitable rooms - 2.4m for non-habitable rooms - 3.3m for ground floor commercial areas 	<ul style="list-style-type: none"> - Habitable rooms 2.7m - Ground floor commercial premise 2.7m Previous scheme: no change	 Yes No – see comment [4] below
Apartment Size and Layout	Apartments are required to have the following minimum internal areas: <ul style="list-style-type: none"> - Studio: 35m² - One bedroom: 50m² - Two bedrooms: 70m² Additional bathrooms increase the minimum internal area by 5m ² each.	All units comply	Yes
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	All habitable rooms have windows of acceptable size to facilitate acceptable solar access and natural ventilation	Yes
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	The habitable room depths do not exceed the maximum depths permitted.	Yes
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	The proposal comprises open plan layouts. Each open plan layout comprises a maximum depth of 8m from a window to the rear pantry of the kitchen.	Yes
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	The master bedrooms and secondary bedrooms of each apartment comprise an area of at least 10m ² or 9m ² respectively.	Yes
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	All bedrooms have a minimum dimension of 3m, excluding wardrobe space.	Yes

Section	Design Criteria	Proposed	Complies
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> - 3.6m for studio and one bedroom apartments - 4m for two and three bedroom apartments 	All living/dining rooms in all apartments comprise a minimum width of 4m in one direction.	Yes
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	The width of each apartment is at least 4m.	Yes
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <ul style="list-style-type: none"> - Minimum area of 4m² for studio units - Minimum area of 8m² and minimum depth of 2m for one bedroom units - Minimum area of 10m² and minimum depth of 2m for two bedroom units 	All unit balconies comply	Yes
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	A maximum of four apartments are located off a central circulation core.	Yes
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <ul style="list-style-type: none"> - 6m³ for one bedroom units - 8m³ for two bedroom units At least 50% of the required storage is to be located within the apartment.	Adequate storage provision supplied.	Yes

[1] Communal open space

The Communal open space has been reduced as a product of the increased rear setback of the northern tower at the fifth and sixth storeys.

The proposed communal open space provides 155m² (rooftop terrace) + 69m² (ground level) which totals 224m² and equates to 22% of the site area. The area fails to comply with the minimum requirement of 25% of the site area by 36.1m², which equates to a 13.8% departure.

The rooftop terrace in the previous scheme before IHAP was 182.4m². Its reduction in the current scheme by 27.4m² is a by-product of increasing the setback of the northern tower from the rear boundary. The dual tower design approach, approved recently on other sites in Weyland Street, is considered an appropriate means of achieving acceptable internal residential amenity to more apartments whilst retaining the bulk/scale relationship contemplated by the controls. Locating the communal open space on the rooftop terrace of the rear tower is considered an acceptable means of achieving the requirements under the ADG. In this case, the departure from the ADG minimum area is not considered so detrimental as to warrant refusal of the application. On the contrary it is considered that the design

approach achieves a suitable balance between achieving the development potential of the site and protecting amenity for future residents of this building and surrounding buildings.

The communal open space is appropriately located in this case and responds reasonably to the site.

[2] Deep Soil Zones

The applicant has increased the setback of the basement levels in an attempt to create deep soil but by definition nothing is gained because a minimum 3m dimension in any direction is required by the Apartment Design Guide to be calculable as deep soil zone and this is not achieved.

Despite the non-compliance of the proposal with the minimum deep soil requirements it is considered that the development is consistent with that envisaged by the controls. Mixed use development typically demands large spaces underground for parking, bin rooms, bicycle storage, private storage, lift and stair cores and plant which enhance the function of the building whilst retaining an attractive appearance to the street and surrounding properties.

[3] Visual Privacy

Part 3F of the Apartment Design Guidelines (ADG) deals with separation of buildings located on the same site as well as side and rear setbacks and is aimed at visual and acoustic privacy as well as achieving adequate light, ventilation, acoustic privacy and adequate communal open space. Part 3F also states that the adjacent context and scale of the development need to be considered.

Separation between buildings

With regard to the separation between buildings on the same site, the ADG requires 12m between habitable rooms up to four storeys, increasing to 18m for the fifth and sixth storey. The proposal seeks 9.2m for four storeys which equates to a departure of 23.3%. This has not changed from the previous scheme assessed by IHAP. Privacy screens are removed from the north facing windows as shown on drawing number 200-005 (Rev F) but are retained on the south-facing windows of the northern block. This is considered acceptable as the screens will preserve privacy but retain sunlight access to the northern windows of the southern block.

The Apartment Design Guide requires 18m separation between buildings at the fifth and sixth storey but 10.57 is proposed which departs by 7.43m or 41.2%. The 10.57m setback is an improvement on the previous setback at the fifth storey (9.2m) but is a reduction on the previous setback at the sixth storey (11.2m). The provision of privacy screens is considered to adequately protect visual privacy in this case whilst achieving a reasonable design approach for the site.

Side boundary setback

It is acceptable that there is a zero side setback (when viewed from the street) as the controls envisage a street wall and the proposal aligns with the approved adjoining development at 13-15 Weyland Street to achieve the desired street wall.

[4] Ceiling Heights

The Apartment Design Guide (Objective 4C-1) requires that the ground floor mixed use spaces comprise a floor to ceiling height of at least 3.3m. The floor to floor height of the ground floor retail is 2.9m which translates to 2.7m floor to ceiling height when deductions are made for slab thickness and services. This has not changed from the previous scheme.

This non-compliance is a consequence of achieving a six storey appearance at the streetfront to complement the desired future character whilst keeping the development within the building height limit of 18m. In essence the ground floor has been 'pinched' to fit the six storeys within 18m. It is noted that every floor above achieves the minimum 2.7m floor to ceiling height as required by the ADG.

The design response is considered an acceptable one in this case. Excavating the ground floor would not be considered a superior option and reducing the number of storeys would compromise the building's 'fit' in the streetscape. The internal residential amenity, usability and adaptability of the floor are not compromised by any appreciable amount and the non-compliance is supported.

State Environmental Planning Policy 55 – Contaminated Land (SEPP 55)

State Environmental Planning Policy 55 – Remediation of Land aims to promote the remediation of contaminated land for the purposes of reducing risk to human health or any other aspect of the environment. Clause 7 of this Policy states that we must not consent to the carrying out of development unless we have considered whether the land is contaminated. If the land is contaminated, we must ascertain whether it is suitable in its contaminated state for the proposed use or whether remediation of the land is required.

A Preliminary Site Investigation Report prepared by EI Australia (Report No. E2282 AA_Rev) dated 18 July 2016 has been submitted and makes recommendations that a Hazardous Materials Survey be conducted on the existing on-site structures to identify potentially hazardous building products that may potentially be released to the environment during demolition. The report requires further identification and assessment of any potential contamination sources during the excavation phase. A condition of consent requires compliance with this report.

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

An updated BASIX Certificate is required which makes a number of commitments to achieve an acceptable level of building sustainability for the 39 apartments. This requirement appears as a condition of consent as the Certificate had not been received at the time of writing this report, despite it being requested.

Canterbury Local Environmental Plan 2012 (CLEP 2012)

The subject site is zoned B5 Business Development under the provisions of the LEP. The site is identified as a 'key site' which makes mixed use development permissible under Clause 6.7 of CLEP 2012. Mixed use developments, which can include both commercial and residential uses on the ground, is permitted.

The following clauses of the LEP were taken into consideration in the assessment of the application:

Standard	Requirement	Proposal	Complies
Zoning	B5 – Business Development	The proposed development is located on a ‘key site’. The proposed development is defined as a ‘mixed use development’ and is permissible with consent.	Yes
Height of Buildings	18m	18m (lift overrun – front) 20.81m (lift overrun – rear) 20.06m (rooftop terrace roof) 18.41m (rooftop terrace balustrade)	Yes No – see comment [1] below

[1] Height of Buildings

The proposal exceeds the development standard for building height by 2.81m for the rear lift overrun (RL27.3), 2.06m for the rooftop terrace roof (RL26.55) and 0.41m for the rooftop terrace balustrade.

As such, the development seeks a variation to Clause 4.3 of CLEP 2012 relating to the height of buildings. The applicant has submitted a justification pursuant to Clause 4.6 of CLEP 2012 regarding the non-compliance with the development standard. Clause 4.6 of the LEP states that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The objectives for variations to the development standard are to provide flexibility in applying certain development standard to development, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Based on research into recent decisions of the Land and Environment Court, (*Four2Five Pty Ltd v Ashfield Council* and *Mount Annan 88 Pty Ltd v Camden Council*) a series of questions has been formulated for assessing whether a variation of a standard is justified in order 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 objectives.

Maximum Height of Building Standard – assessment of proposed variation to the standard

The maximum building height standard applied to the site is 18m above natural (existing) ground level.

The proposal exceeds the development standard for building height by 810mm for the rear lift overrun (RL27.3), 2.06m for the rooftop terrace roof (RL26.55) and 410mm for the rooftop terrace balustrade.

The six questions for assessing the proposed variation of the height standard are addressed as follows:

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

1. Is compliance with the standard unreasonable or unnecessary in the circumstances of the case? (Clause 4.6 (3) (a)).

In answering this question, only one of the following sub-questions must be answered that demonstrates that strict compliance with the standard is unreasonable or unnecessary, in the circumstances of the case:

- a. Is the underlying objective or purpose (of a standard) irrelevant to the development, making compliance unnecessary?

Answer:

The applicant’s submission states that the underlying purpose is relevant to the development.

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

Answer:

The applicant’s submission states that if the strict numerical compliance was required with the 18m height control then the site would *not be*

implementing urban consolidation to the fullest extent practicable on the site or provide a functional 6 storey building on the site’.

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

Answer:

The applicant’s submission states that approvals along Weyland Street indicate that six storey buildings are acceptable in the street and that each of these approvals has consented to some degree of non-compliance with the 18m height control. The applicant’s submission states that the development standard remains intact.

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

Answer:

The applicant’s submission did not address this question.

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

Answer:

The applicant’s written request primarily turns on the principles *Four2Five Ltd v Ashfield Council* and its findings that circumstances particular to the individual case are required to be demonstrated to justify the departure. The applicant’s submission relies on the emerging character of the locality and states that the non-compliance is necessary to be congruent with this emerging character.

Comment

It is agreed that the approvals granted in the street confirm an emerging character of six storey buildings and that these approvals involve departures to the development standards up to 16.67%. It is considered that the Clause 4.6 variation has merit in that it departs from the standard in order to achieve congruence with the emerging character on the street. The departure also does not create detrimental environment impacts and is for the most part appropriately located at the rear of the site.

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

Answer to Question 2:

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

- *The emerging character of the locality is best expressed by recent approvals granted and applications pending on adjoining B5 zoned land. The applicant observes that Development Application DA-354/2015 (1562-1568 Canterbury Road) accepted a variation of 12% for the lift overrun and 7% for the main roof and also imposed a condition requiring a non-trafficable roof to be converted to a 250m² rooftop communal open space.*

Comment

It is confirmed that for Development Application DA-354/2015 relating to 1562-1568 Canterbury Road a departure of 12% departure was granted for the lift overrun and 7% for the main roof and a condition was imposed (condition 5.9) requiring a non-trafficable roof to be converted to a 250m² rooftop communal open space.

It is agreed that the emerging character is six storey buildings on Weyland Street and it is agreed that the proposed communal roof top terrace, which increases the residential amenity of the development, necessitates a departure to the development standard in order to stay congruent with the future buildings in the street.

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

In this instance providing a functional 6-storey building on the site with good amenity is more important than numerical compliance with the 18m height control. The non-compliance with the 18m height control is considered to be in the public interest.

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

Answer to Question 4:

The proposed development is in the public interest as it successfully implements the objectives of its B5 zoning by providing a high quality mixed-use building that is consistent with the emerging character of its street block. The proposal also provides a comprehensive landscape scheme for the site that includes substantial rear and courtyard plantings.

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

It is considered that this proposal will demonstrate consistency with the exercise of “an appropriate degree of flexibility” in applying the development standard by addressing the requirements of subclauses 4.6(3) and (4) of the CLEP 2012. The submission successfully demonstrates that the departure to the development standard is effective in producing a better outcome and that the departure results in no significant impacts on adjoining properties or the streetscape.

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?

The applicant submits that the proposed variation of the maximum building height development standard ensures that the site is developed in an orderly fashion and notes that strictly imposing the development standard would result in a five storey building that would be an underdevelopment of the site, or a dysfunctional six storey building. It is argued that the departures are required to find a balance between numerical compliance and an optimum design that respects the emerging character on Weyland Street.

Comment

It is agreed that the building height departure is necessary to achieve an optimum design for this site and to achieve congruency with development recently approved on Weyland Street.

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. Accordingly, consent may be granted to the application, as all of Clause 4.6 preconditions for granting consent have been satisfied.

Development Control Plans [section 79C(1)(a)(iii)]

The following table provides a summary of the development application against the relevant controls contained in the Canterbury Development Control Plan 2012.

Canterbury Development Control Plan 2012 (CDCP 2012)

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

Control	Requirement	Proposed	Complies
Height	Floor to ceiling heights Ground Floor: 3.3m	Ground Floor: 2.7m	No – see comment [1] below
	Residential Floors: 2.7m	Residential floors: 2.7m	Yes
	Basement Carpark: 2.8m	Basement Carpark: 2.8m	Yes

Control	Requirement	Proposed	Complies
Depth/footprint	Maximum 18m – residential	8m – 13m	Yes
	10-24m – commercial	6.8m – 10.6m	No – see comment [2] below
Front setback	1-4 storeys nil setback on street Above 4 storeys 5m setback	Ground level 2m Second storey - zero setback 3 and 4 storeys - 2m setback 5 and 6 storeys - 5m	No – see comment [3] below
Basement parking	The basement is to protrude a maximum 1m above the existing ground level	Basement is located entirely below the existing ground level	Yes
	The access driveway is to be a maximum width of 6m	The width of the driveway crossing is 5.4m	Yes
	Secure bicycle parking is to be provided	Bicycle parking is provided	Yes
	The car park entry is to be recessed from the main building façade	The car park entry is appropriately recessed from main façade	Yes
Design Controls			
Context	Building form and design does not have to mimic traditional features, but should reflect these in a contemporary design.	It is considered that the proposed development demonstrates a contemporary design	Yes
Street address	Entries are to be located where they relate to the existing street, subdivision pattern, street tree planting and pedestrian access network.	Entries to the building are located on the street frontage	Yes
	Habitable rooms to face towards the street, private open space, communal space, internal driveway or pedestrian ways in order to promote positive social interaction and community safety.	Habitable rooms are facing Weyland Street as well as the ground level communal open space between the two buildings	Yes
Façade Design	Long spans of blank walls are to be avoided along street frontages. Address the street frontages with façade treatment with articulation of elevations on corner sites.	Long spans of blank walls along street frontages have been avoided	Yes
	Contrasting elements are to be incorporated in the façade, using a harmonious range of high quality materials.	Contrasting elements incorporated into the street frontages and a harmonious range of high quality materials used	Yes
	Building layout or structure is to be expressed in the façade, with architectural features such as columns, beams, floor slabs, balconies, wall opening and fenestration, doors,	Building layout is suitably expressed through use of a variety of architectural features, such as recessed balconies, balustrades	Yes

Control	Requirement	Proposed	Complies
	balustrades, roof forms and parapets are elements that can be revealed or concealed and organised into simple or complex patterns.	different window sizes and the roof form	
Part 6.2 Sunlight access	Minimum 2 hours of sunlight to living spaces and private open space between 9.00am and 3.00pm on 21 June	Achieved to 74% of apartments.	Yes
	Proposal is to retain to surrounding buildings a minimum 2 hours of sunlight to living spaces and private open space between 9.00am and 3.00pm on 21 June	Achieved.	Yes
Part 6.8 Waste	Waste holding area required within 15m of the site frontage.	Not provided.	No – see comment [4] below
Performance controls			
Visual Privacy	Clause 6A of SEPP 65 states that development control plans that have provisions that are inconsistent with the ADG in relation to visual privacy have no effect in the assessment of residential apartment development applications. Section 3.3.1 of the CDCP is therefore not relevant to the assessment of this application and visual privacy matters have been assessed only in relation to part 3F of the ADG.		
Open Space	Clause 6A of SEPP 65 states that development control plans that have provisions that are inconsistent with the ADG in relation to open space and balconies have no effect in the assessment of residential apartment development applications. Section 3.3.3 of CDCP is therefore not relevant to the assessment of this application and open space and balcony matters have been assessed only in relation to part 4E of the ADG.		
Internal Dwelling Space and Design (Including storage)	Clause 6A of SEPP 65 states that development control plans that have provisions that are inconsistent with the ADG in relation to apartment size and layouts have no effect in the assessment of residential apartment development applications. Section 3.3.4 of the CDCP is therefore not relevant to the assessment of this application and matters have been assessed only in relation to part 4D of the ADG.		
Housing choice	Include a mix of unit sizes, such as studio, one, two, three and three plus bedroom apartments	A satisfactory mix of units is provided	Yes

The proposed development complies with many of the design and numerical requirements of Canterbury Development Control Plan 2012 with the following matters requiring further discussion:

[1] Floor to Ceiling Height – Commercial Component

This non-compliance is a consequence of achieving a six storey appearance at the streetfront to complement the desired future character whilst keeping the development within the building height limit of 18m and keeping the ground level at grade as opposed to excavating.

The design response is considered an acceptable one. Excavating the ground floor would not be considered a superior option and reducing the number of storeys would limit the ease with which the proposal will be absorbed within the streetscape.

The internal residential amenity, useability and adaptability of the floor are not compromised by any appreciable amount and the non-compliance is supported.

[2] Depth/footprint

The depths of the commercial areas do not comply with the minimum 10m and maximum 24m. The two proposed commercial spaces comprise depths of 6.8m and 10.6m.

The non-compliant space is 3.2m short of the required 10m which equates to a non-compliance of 32%. The objective of these requirements is to ensure an appropriate level of depth is available to create viable building spaces for retail and commercial use.

The space is considered adequate for its purpose and not to detrimentally compromise the DCP objectives. The ground level space between commercial and residential uses is designed as communal open space as well as connecting footpaths. Requiring compliance with the minimum 10m depth for the second commercial space would affect the location of the stairwell throughout every level of the building. The proposal in its current form is considered a better design response.

[3] Front Setback

Our controls seek the first four storeys to be set at a nil setback to the street, with any storey above achieving a 5 metre setback. As Weyland Street is captured by the same controls that apply to Canterbury Road, a four storey street wall has been set by default for Weyland Street. In this proposal the first two storeys are located at a nil setback, and the third and fourth storeys have a 2m setback. The fifth storey is set back 5 metres and the sixth storey is set back at 3m and 5m.

This proposal is consistent with the approved development at 13-15 Weyland Street and 17-19 Weyland Street with respect to front setbacks. The proposed 2m 'step' at the third and fourth storey, whilst a variation to the control, actually modulates the building horizontally and creates visual relief and interest. Given the R3 residential zone across the road, some visual relief is considered a good design response. The front setback of the proposal is satisfactory.

It is noted that the controls allude to a 9 metre setback from the street but the objectives suggest this requirement applies only to sites along Canterbury Road. This requirement does not apply here.

[4] Waste

Our DCP requires that a waste bin holding area be located within 15m of the site frontage for the purposes of Council's waste contractors to retrieve and unload the bins during the weekly service. This area is different to the waste storage area, which is located in basement 01. This requirement appears as a condition of consent.

Canterbury Development Contributions Plan 2013 (Contributions Plan 2013)

Canterbury Development Contributions Plan 2013 applies to the site and has been included in the conditions of consent.

Planning Agreements [section 79C(1)(a)(iia)]

A planning agreement has not been entered into under section 93F.

Regulations [section 79C(1)(a)(iv)]

The application has been assessed under the EP&A Regulation 2000 and measures are identified to protect persons using the building and to facilitate their egress from the building in the event of a fire or restrict the spread of fire from the building to other buildings nearby. Where measures are not proposed, a condition of consent is imposed to bring the development into conformity with the BCA to provide an adequate level of fire safety and health and amenity for the occupants of the proposed rooftop studio apartments.

The Likely Impacts of the Development [section 79C(1)(b)]

With respect to the visual impact, the exceedance of the development standard for Building Height provide a negligible impact having regard to the bulk and scale of the overall building form and complements the approved built form of adjoining six-storey mixed used developments in the street.

In short the proposed development causes no adverse impacts.

Suitability of the Site [section 79C(1)(c)]

The site is suitable to accommodate a multi-storey mixed use development as reflected by the controls contained within Canterbury LEP 2012 and Canterbury DCP 2012 particularly as it largely meets the numerical controls and it complements a built form and envelope approved in street.

Submissions [section 79C(1)(d)]

The current scheme has not been renotified. The last scheme of this proposal to be notified was Revision A in August 2016. Since this scheme the following changes to the scheme include:

- Apartments reduced from 45 to 39
- Front setbacks increased
- Rear setbacks at fifth and sixth storey increased
- Rooftop communal open space and associated roof decreased in size
- Building reduced in height by 1.9m

At the conclusion of the first exhibition period three submissions were received. No submissions were received to the second notification period. For the purposes of thoroughness the concerns raised to the first round are discussed as follows:

Objection: Loss of amenity, in particular overshadowing, privacy, noise, loss of views and increase in traffic.

Comment: The submitted shadow diagrams indicate that the proposal will not cause a detrimental loss of sunlight to the properties across the road. In terms of privacy there is considered to be adequate spatial separation between the building and the properties across the road to afford an adequate degree of privacy. There are no significant views lost as a result of this proposal. The submission states that sunset views may be affected but, given the zoning of the land it is not reasonable to reduce this development to protect views to the sunset. In terms of noise and increase in traffic the site is zoned B5 Mixed use and some increase in noise and traffic is to be expected but any projected increase is not considered a detrimental impact on the enjoyment of the existing properties.

Objection: Traffic movements, in particular the development will cause extra traffic which will proceed to Septimus Avenue creating a 'rat run' of sorts.

Comment: The proposed development generally satisfies the density envisaged by the controls and there is no basis for amending the current proposal on traffic grounds.

Objection: Construction noise, particularly that noise from construction machinery will cause anxiety amongst residents.

Comment: There are regulations for the hours of work and use of load machinery and equipment, which can be effective in mitigating noise impacts to neighbours. This proposal is generally consistent with that envisaged by the controls and cannot be refused on the grounds of the construction process. Further, our Rangers are on hand to investigate any breaches of the regulations that deal with construction processes.

The Public Interest [section 79C(1)(e)]

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments and by the consent authority ensuring that any adverse impacts on the surrounding area and environment are avoided. The public interest is considered to have been achieved in so far as the development provides for additional housing choice within the local government area without compromising the amenity of the locality.

CONCLUSION

Having considered all the matters for consideration contained in section 79C(1) of the Environmental Planning and Assessment Act 1979, which includes the relevant provisions contained in State Environmental Planning Policy 65 – Design Quality of Residential Flat Development, the Canterbury Local Environmental Plan 2012 and the Canterbury Development Control Plan 2012 the application is recommended for approval subject to conditions of consent.

Notwithstanding some departures from Council's controls, the proposal satisfies the desired local character and positively contributes to the streetscape and the local built environment, which is under transition with many nearby properties having received consent for similar developments. The Clause 4.6 variation for the departure to building height is well-founded and is supported.

It is recommended that the development application be approved subject to conditions of consent.

FINANCIAL IMPACT

This matter has no direct financial implication.

RECOMMENDATION

It is recommended that:

1. IHAP concur with Council entering into a Section 34 Agreement to approve Development Application DA-632/2015 subject to the conditions contained in Part C of the attachment.
2. The Clause 4.6 variation to the development standard relating to the Building Height within Clause 4.3 of Canterbury Local Environmental Plan 2012 is well founded, and in this case varying the standard to permit the proposed development be supported for the following reasons:
 - (a) A written request from the applicant has been submitted which justifies the contravention of the development standard;
 - (b) The proposal is in the public interest as it meets the objectives of the development standard and the objectives for development within the B5 Business Development zone;
 - (c) The concurrence of the Secretary of the Department of Planning and Environment has been obtained;
 - (d) Requiring compliance with the standard would unreasonably constrain the development and the design response;
 - (e) There are sufficient environmental planning grounds to justify contravening the development standard.

ATTACHMENTS

- A. Conditions of Consent

CONDITIONS OF CONSENT

THAT

- A. IHAP concur with Council entering into a Section 34 Agreement to approve Development Application DA-632/2015 subject to the conditions contained in Part C.
- B. The Clause 4.6 variation to the development standard relating to the Building Height within Clause 4.3 of Canterbury Local Environmental Plan 2012 is well founded, and in this case varying the standard to permit the proposed development is acceptable for the following reasons:
- (a) A written request from the applicant has been submitted which justifies the contravention of the development standard;
 - (b) The proposal is in the public interest as it meets the objectives of the development standard and the objectives for development within the B5 Business Development zone;
 - (c) The concurrence of the Secretary of the Department of Planning and Environment has been obtained;
 - (d) Requiring compliance with the standard would unreasonably constrain the development and the design response;
 - (e) There are sufficient environmental planning grounds to justify contravening the development standard.
- C. Development Application DA-632/2015 be **APPROVED** subject to the following conditions.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

1. The following must be submitted to either Council or an Accredited Certifier prior to the issuing of a Construction Certificate:
 - 1.1. Details of:
 - Structural Engineering Plan excavation
 - Building Specifications
 - Fire Safety Schedule
 - Landscape Plan
 - Hydraulic Plan
 - Soil and Waste Management Plan
 - BASIX Certification
 - Ventilation of basement in accordance with AS 1668.2
 - Disability (Access to premises buildings) Standard 2010
 - 1.2. Payment of the Long Service Leave Levy to the Long Service Leave Corporation or to Council.
 - 1.3. Payment to Council of:

Development Contributions	\$379,410.92
Certificate Registration Fee	\$36.00
Long Service Levy	\$34,920.70
Long Service Levy Commission	\$19.80

- 1.4. If you appoint Council as your Principal Certifying Authority, the following fees are payable:
- | | |
|----------------------------|------------|
| Inspection Fee | \$6,349.00 |
| Occupation Certificate Fee | \$2,191.00 |
- Note 1: Long Service Leave is payable where the value is \$25,000 or more under Part 5 Section 36 of the Building and Construction Industry Long Service Payments Act 1986).
- Note 2: If you appoint a Principal Certifying Authority other than Council, the fees shown in this item do not apply, however other fees will apply.
- Note 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: Development Contribution payments are payable by cash, bank cheque, or EFTPOS.
- Note 5: All Council fees referred to above are subject to change. You need to refer to our website or contact our Customer Service Centre for a current schedule of fees prior to payment.

BEFORE COMMENCING THE DEVELOPMENT

2. Before the erection of any building in accordance with this Development Consent:
- 2.1. Detailed plans and specifications of the building must be endorsed with a Construction Certificate by the Council or an Accredited Certifier, and
- 2.2. You must appoint a Principal Certifying Authority (either Canterbury City Council, or an Accredited Certifier) and notify the Council of the appointment (see Attachment – Notice of Commencement copy), and
- 2.3. You must give the Council at least 2 days' notice of your intention to commence erection of the building (see Attachment – Notice of Commencement copy).

DEMOLITION

3. Demolition must be carried out in accordance with the following:
- (a) Demolition of the building is to be carried out in accordance with applicable provisions of Australian Standard AS 2601-2001: The Demolition of Structures and the Construction Safety Act Regulations.
- (b) The demolition of a structure or building involving the removal of dangerous or hazardous materials, including asbestos or materials containing asbestos must be carried out in accordance with the requirements of the Workcover Authority of New South Wales.
- (c) Demolition being carried out in accordance with the requirements of the Work Health and Safety Regulation 2011.
- (d) A hoarding or fence must be erected between the building or site of the building and the public place, if the public place or pedestrian or vehicular traffic is likely to be obstructed or rendered inconvenient because of the carrying out of the demolition work.
- (e) Demolition of buildings is only permitted during the following hours:

7.00 a.m. – 5.00 p.m. Mondays to Fridays

7.00 a.m. – 12.00 noon Saturdays

No demolition is to be carried out on Sundays or Public Holidays.

- (f) Burning of demolished building materials is prohibited.
- (g) Adequate care is to be taken during demolition to ensure that no damage is caused to adjoining properties.
- (h) Soil and water management facilities must be installed and maintained during demolition in accordance with Council's Stormwater Management Manual. If you do not provide adequate erosion and sediment control measures and/or soil or other debris from the site enters Council's street gutter or road you may receive a \$1500 on-the-spot fine.
- (i) Council's Soil and Water Management warning sign must be displayed on the most prominent point on the demolition site, visible to both the street and site workers. The sign must be displayed throughout demolition.
- (j) The capacity and effectiveness of soil and water management devices must be maintained at all times.
- (k) During the demolition or erection of a building, a sign must be provided in a prominent position stating that unauthorised entry to the premises is prohibited and contain all relevant details of the responsible person/company including a contact number outside working hours.
- (l) A sign is not required where work is being carried out inside, or where the premises are occupied during the works (both during and outside working hours).
- (m) Toilet facilities must be provided to the work site in accordance with WorkCover's NSW "CODE OF PRACTICE" for Amenities for construction work and any relevant requirements of the BCA.
- (n) Removal, cleaning and disposal of lead-based paint conforming to the current NSW Environment Protection Authority's guidelines. Demolition of materials incorporating lead being conducted in strict accordance with sections 1.5, 1.6, 1.7, 3.1 and 3.9 of Australian Standard AS2601-2001: Demolition of Structure. Note: For further advice you may wish to contact the Global Lead Advice and Support Service on 9716 0132 or 1800 626 086 (freecall), or at www.lead.org.au.
- (o) Hazardous dust not being allowed to escape from the site. The use of fine mesh dust proof screens or other measures are recommended.
- (p) Any existing accumulations of dust (eg. ceiling voids and wall cavities) must be removed by the use of an industrial vacuum fitted with a high efficiency particulate air (HEPA) filter. All dusty surfaces and dust created from work is to be suppressed by a fine water spray. Water must not be allowed to enter the street and stormwater systems. Demolition is not to be performed during adverse winds, which may cause dust to spread beyond the site boundaries.

SITE SIGNAGE

4. A sign shall be erected at all times on your building site in a prominent position stating the following:

- 4.1. The name, address and telephone number(s) of the principal certifying authority for the work, and
- 4.2. The name of the person in charge of the work site and a telephone number at which that person may be contacted during and outside working hours, and
- 4.3. That unauthorised entry to the work site is prohibited.

GENERAL

5. The development being carried out in accordance with the plans, specifications and details set out in the table below except where amended by the conditions contained in this Notice and the following specific conditions:

Drawing No.	Drawing Title	Prepared by	Received by Council on
100-001	Demolition plan	Fox Johnston Architects	20/12/16
100-002 (issue E)	Site plan	Fox Johnston Architects	27/6/17
110-B02 (issue G)	Basement 02	Fox Johnston Architects	27/6/17
110-B01 (issue G)	Basement 01	Fox Johnston Architects	27/6/17
110-000 (issue F)	Ground floor	Fox Johnston Architects	27/6/17
110-001 (issue F)	Level 01	Fox Johnston Architects	27/6/17
110-002 (issue F)	Level 02	Fox Johnston Architects	27/6/17
110-003 (issue F)	Level 03	Fox Johnston Architects	27/6/17
110-004 (issue F)	Level 04	Fox Johnston Architects	27/6/17
110-005 (issue F)	Level 05	Fox Johnston Architects	27/6/17
110-006 (issue E)	Rooftop terrace	Fox Johnston Architects	27/6/17
110-007 (issue E)	Roof	Fox Johnston Architects	27/6/17
200-001 (issue F)	Elevation – North	Fox Johnston Architects	27/6/17
200-002 (issue F)	Elevation – East	Fox Johnston Architects	27/6/17
200-003 (issue E)	Elevation – South	Fox Johnston Architects	27/6/17
200-004 (issue F)	Elevation – West	Fox Johnston Architects	27/6/17
200-005 (issue F)	Elevation – internal courtyards	Fox Johnston Architects	27/6/17
200-006 (issue E)	Section – AA	Fox Johnston Architects	27/6/17
200-007	Sections – Driveway and basement ramps	Fox Johnston Architects	27/6/17

400-001	Schedule of External Material Finishes	Fox Johnston Architects	27/6/17
H-DA-00 (Rev B)	Catchment calculations and sedimentation controls	ITM Design	20/12/16
H-DA-01 (Rev C)	Basement levels stormwater drainage	ITM Design	20/12/16
H-DA-02 (Rev B)	Ground floor stormwater drainage	ITM Design	20/12/16
000 (issue C) 001 (issue C) 101 (issue C) 102 (issue A) 103 (issue A) 104 (issue A) 501 (issue D)	Landscape Plans	Site image Landscape Architects	02/08/16
Ref: 21509291.1 (issue A)	Site survey	W. Buxton Pty Ltd	22/12/15

- 5.1. For the purposes of ensuring consistency of plans the landscape plans must be amended to complement the approved architectural plans. This set of updated plans must be provided for approval by the Accredited Certifier prior to issue of the Construction Certificate.
- 5.2. For the purposes of ensuring an adequate level of privacy in accordance with the Apartment Design Guidelines the south-facing privacy screens to windows in the northern block (as shown on Drawing number 200-005 Rev F) must be installed to manufacturer's specifications and be retained in situ for the life of the development. These screens must not be highly reflective. Full details of the screens must be shown on the Construction Certificate plans.
- 5.3. For the purposes of ensuring compliance with Part 3D of the Apartment Design Guidelines which requires that communal open spaces be easily identified for all users, a sign must be erected at the ground level communal open space clearly indicating the direction and means of accessing the roof top terrace communal open space. The wording of the sign, and its location, must be clearly shown on the Construction Certificate plans.
- 5.4. It is considered highly likely that the basement excavation will destabilise the Camphor laurel located at the rear of 7 Weyland Street and for safety reasons this tree must be removed prior to construction of this development in consultation with the owners of 7 Weyland Street, Punchbowl.

- 5.5. For the purposes of ensuring public health and safety the recommendations of the Preliminary Site Investigation Report prepared by EI Australia (Report No. E22821 AA_Rev) dated 18 July 2016 must be fully complied with.
 - 5.6. The BCA Compliance Assessment Report (Ref: BCA 15/049, dated 15 December 2015) by Paul Aramini Consulting Pty Ltd must be fully complied with and result in full compliance with the requirements of the Building Code of Australia and National Construction Code. Details of any Fire Engineered Solutions and deemed-to-satisfy provisions must be provided in full for approval with the Construction Certificate.
 - 5.7. For the purposes of ensuring compliance with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 a BASIX Certificate must be submitted to the Principal Certifying Authority confirming that the development scheme submitted for Construction Certificate approval achieves sustainability targets. This BASIX Certificate must be issued to the Principal Certifying Authority prior to the issue of the Construction Certificate.
6. Finishes and materials including the treatment of external walls, roofing, balcony balustrades, fences, windows and doors being in accordance with the approved External Finishes prepared by Fox Johnston Architects, Drawing No. DA400-001, dated July 2016 and received by Council on 13 October 2016.
- The approved design (including an element or detail of that design) or materials, finish or colours of the building must not be changed so as to affect the external appearance of the building without the approval of Council.
7. The site's boundary fencing 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.
 8. A Dilapidation Report/photographic survey prepared by an appropriately qualified engineer is to be undertaken of the adjoining properties being 13-15 Weyland and 5-7 Weyland Street detailing the physical condition of the property, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items, shall be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate. On completion of the excavation and building works and prior to occupation of the building, a certificate by an appropriately qualified engineer stating to the effect that no damage has resulted to adjoining premises is to be provided to the Principal Certifying Authority. If damage is identified which is considered to require rectification, the damage shall be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible and prior to occupation of the development. All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this consent.

9. Fifty-four (54) off street car parking spaces being provided within the two basement levels and the ground floor level of the development. The driveways and car parking areas must be designed in accordance with AS2890.1-1993 (Off-street car parking).
10. A separate consent is required for the use of the commercial tenancies.
11. 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 monetary contribution of \$379,410.92 shall be paid to Council before a Construction Certificate can be issued in relation to the development, the subject of this Consent Notice. The amount payable is based on the following components:

Contribution Element	Contribution
● Community Facilities	\$34,317.02
● Open Space and Recreation	\$335,446.67
● Plan Administration	\$9,647.23

Note: The rates applying to each contribution element are subject to indexing using the Consumer Price Index. The Contributions payable will be adjusted, at the time of payment, to reflect CPI increases which have taken place since the DA was determined.

Canterbury Development Contributions Plan 2013 may be inspected at Council's Administration Centre, 137 Beamish Street, Campsie or from Council's website www.cbcity.nsw.gov.au. A copy of the Plan may be purchased from Campsie Customer Service Centre, 137 Beamish Street, Campsie during office hours.

12. All materials must be stored wholly within the property boundaries and must not be placed on the footway or roadway.
13. 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. Remediation work shall comply with the requirement of the NSW Industrial Noise Policy and the Environment Protection Authority' Environmental Noise Manual for the control of construction site noise.
14. All building construction work must comply with the National Construction Code.
15. 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.
16. Provide a Surveyor's Certificate to the Principal Certifying Authority prior to the pouring of concrete at all levels and roof indicating the finished level to a referenced benchmark. These levels must relate to the levels indicated on the approved architectural plans and/or the hydraulic details.

17. 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

BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.

18. 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.
19. The capacity and effectiveness of erosion and sediment control devices must be maintained at all times.
20. 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.
21. 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.
22. Materials must not be deposited on Council's roadways as a result of vehicles leaving the building site.
23. 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.
24. 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.
25. The construction certificate plans must show the provision of one master TV antenna, to prevent numerous smaller antennas being installed on the roof or balconies.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

26. The site is to be treated with anti-graffiti paint 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.

LANDSCAPING

27. The landscaping must be completed according to the submitted landscape plans 000 (issue C), 001 (issue C), 101 (issue C), 102 (issue A), 103 (issue A), 104 (issue A), 501 (issue D) prepared by Site image Landscape Architects except where amended by the conditions of consent. The landscaping is to be maintained at all times to the Council's satisfaction.
28. 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).⁴¹ 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).
29. 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.
30. 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.
31. One street tree is to be provided on the nature strip adjoining the development. This tree is to be of a *Eucalyptus haemastoma* (common name Scribbly Gum) species and be provided in 75ltr size (container size). The planting of this tree is to be carried out upon the completion of construction by contractors in accordance with AUS-SPEC Specification 0257-Landscape – Roadways and Street Trees. This document is available for purchase from Council.

ACOUSTICS

32. The building is to be constructed as per the recommendations of the Acoustic Report (Ref: 5872-1.1R) for proposed mixed use development at 9-11 Weyland Street, Punchbowl, prepared by Day Design Pty Ltd, dated 17 December 2015.

WASTE MANAGEMENT

33. Unobstructed and unrestricted access to the waste bin storage areas shall be provided for servicing from 5.00am on collection days.
34. Bins must not be presented on the road for collection. Instead, they will be collected and returned to the waste bin storage rooms by Council's waste collection contractor.
35. The waste bin storage areas are to be designed and constructed in accordance with Section 6.9.4.1 and 6.9.4.2 of Canterbury Development Control Plan 2012. A bin holding area must be located at the ground level of the development within 15m of the site frontage, immediately north of the vehicular ramp, and suitably screened in accordance with Section 6.9.4 of the Canterbury Development Control Plan 2012.

ENGINEERING

36. 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 20th December 2016; drawing number H-DA-00, H-DA-01, HDA-02, prepared by ITM Design Pty Ltd.
 - b) The catchment area draining to the OSD system must not be less than 75% of the total site area. All catchment areas must have a level 50mm minimum higher than top of water level for the OSD tank.
 - c) The total site discharge to the street frontage must be limited to 150L/Ha, for the total site area including the catchment area bypassing the OSD system. The OSD volume and orifice plate may require adjustment.
 - d) The rising main from the basement pump out tank must discharge to the OSD.
 - 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.
37. 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 AUSSPEC Specification D5 "Stormwater Drainage Design", AS/NZS3500.3 and Part 6.4 of Canterbury Council's DCP 2012.
38. The street alignment levels are to be obtained by payment of the appropriate fee to Council. These levels are to be incorporated into the designs of the internal pavements, carparks, landscaping and stormwater drainage. Evidence must be provided that these levels have been adopted in the design. As a site inspection and survey by Council is required to obtain the necessary information, payment is required at least 14 days prior to the levels being required.

39. The vehicular access and parking facilities shall be in accordance with Australian Standard AS 2890.1 "Off-street Parking Part 1 - Carparking Facilities". In this regard, the submitted plans must be amended to address the following issues:
- 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 "Offstreet Parking Part 1 - Carparking Facilities".
 - c) All parking spaces adjacent to a wall or a high vertical obstruction must have 300mm clearance in accordance with AS2890.1:2004 section 2.4.2.
 - d) All three residential SMALL parking spaces must be nominated as a secondary parking space to the nominated dwelling. The nominated dwelling must have a standard primary parking space. Any additional small parking spaces shall be eliminated from the proposal.
 - e) 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.
 - f) An off street parking space must be provided on the access driveway of the site. The gradient of the access driveway must not exceed 1 in 20 (5%) for the length of the parking space, in accordance with Clause 2.4.6.1 of AS/NZS 2890.1-2004.
 - g) 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.
 - h) 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.
 - i) Minimum lines of sight for pedestrian safety must be provided in accordance Figure 3.3 of AS/NZS 2890.1:2004.
 - j) A suitably qualified engineer 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
40. All commercial parking spaces must be marked and separated from residential parking spaces. All residential parking spaces shall be secured from residential parking spaces.
41. The submitted Geotechnical Report provides 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 Weyland Street 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.
42. 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.
43. 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.
44. 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.
45. A road opening Permit shall be obtained for all works carried out in public or Council controlled lands. Contact Council's City Works Department for details.
46. A full width heavy duty vehicular crossing shall be provided at the vehicular entrance to the site, with a maximum width of 5.5 metres at the boundary line. This work to be carried out by Council or an approved contractor, at the applicant's cost. The work is to be carried out in accordance with Council's "Specification for the Construction by Private Contractors of: a) Vehicle Crossings, b) Concrete Footpath, c) Concrete Kerb & Gutter".
47. If the vehicle access is to be reconstructed the levels of the street alignment are to be obtained by payment of the appropriate fee to Council. These levels are to be incorporated into the designs of the internal pavements, carparks, landscaping and

stormwater drainage. Evidence must be provided that these levels have been adopted in the design. As a site inspection and survey by Council is required to obtain the necessary information, payment is required at least 14 days prior to the levels being required.

48. 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.
49. 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.
50. 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.
51. A Works-as-Executed plan must be submitted to Canterbury Bankstown 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 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.
52. 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.

53. 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.

PUBLIC IMPROVEMENTS

54. 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".
55. The reconstruction of the kerb and gutter along all areas of the site fronting Weyland Street 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, Concrete Kerb & Gutter".
56. The construction of concrete footpath paving and associated works along all areas of the site fronting Weyland Street 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".
57. 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.
58. All easements required for the subdivision being shown on and registered in conjunction with the subdivision plan.

SYDNEY WATER REQUIREMENTS

59. 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 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.

CRITICAL INSPECTION

60. Class 2, 3 or 4 Buildings

The following critical stage inspections **must be** carried out by the Principal Certifying Authority (either Council or the Accredited Certifier)

- 60.1. prior to covering of waterproofing in any wet areas, for a minimum of 10% of rooms with wet areas within the building, and
- 60.2. prior to covering any stormwater drainage connections, and
- 60.3. 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

- 60.4. prior to covering any stormwater drainage connections, and
 - 60.5. after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
61. 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 9707 9000 during normal office hours.

CONSOLIDATION OF LOTS

62. The site is to be consolidated into one allotment. The plan of consolidation being lodged and registered with the Land and Property Information NSW prior to the release of the Occupation Certificate.

COMPLETION OF DEVELOPMENT

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

WE ALSO ADVISE:

- 64. This application has been assessed in accordance with the National Construction Code.
- 65. 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.

66. 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
 - BASIX completion
 - Waterproofing
 - Glazing
 - Section J of the NCC
67. Any works to be carried out by Council at the applicant's cost need to be applied for in advance.
68. 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.
69. 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.
70. Compliance with the National Construction Code does not guarantee protection from prosecution under "The Disability Discrimination Act". Further information is available from the Human Rights and Equal Opportunity Commission on 1800 021 199.
71. The drawings and documentation submitted with this development application do not appear to indicate the location of air conditioning units. You are asked to note that the provision of AC units can be carried out through exempt development, however should you not be able to comply with the exempt development provisions a full development application may be required for the provision of AC units.
72. 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.
73. If you are not satisfied with this determination, you may:
- 73.1. Apply for a review of a determination under Section 82A of the Environmental Planning and Assessment Act 1979. A request for review must be made and determined within 6 months of the date of this Notice of Determination and be accompanied by the relevant fee; or
- 73.2. Appeal to the Land and Environment Court within 6 months after the date on which you receive this Notice of Determination, under Section 97 of the Environmental Planning and Assessment Act 1979.

-END-

Independent Hearing and Assessment Panel - 7 August 2017

ITEM 2	159 Priam Street, Chester Hill
	Alterations and additions to approved mixed use development, including an additional level containing four apartments
FILE	DA-940/2016 – Bass Hill Ward
ZONING	B2 Local Centre
DATE OF LODGEMENT	29 September 2016
APPLICANT	Tracey Minett
OWNERS	The Registered Proprietors Of Strata Plan 38310
ESTIMATED VALUE	\$450,000
SITE AREA	1456.0m²
AUTHOR	Planning

RECOMMENDATION

It is recommended that:

1. The submission made pursuant to Clause 4.6 of Bankstown Local Environmental Plan 2015 be supported;
2. Development Application DA-940/2016 be approved subject to the attached conditions.

SUMMARY REPORT

In accordance with the Canterbury Bankstown Independent Hearing and Assessment Panel Charter, the Director Planning has required that this matter is reported to Council's Independent Hearing and Assessment Panel (IHAP) for determination.

Development Application DA-940/2016 proposes alterations and additions to approved mixed use development, including an additional level containing four apartments.

The Development Application has been assessed in accordance with the requirements of Section 79C of the EP&A Act 1979 including amongst other things, an assessment against State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65), SEPP 55 – Remediation of Land (SEPP 55), SEPP (Building Sustainability Index: BASIX) 2004, Greater Metropolitan Regional Environmental Plan 2 – Georges River Catchment, Bankstown Local Environmental Plan 2015 (BLEP 2015) and Bankstown Development Control Plan 2015 (BDCP 2015). The proposal generally complies with the relevant legislation except for the following variations:

- Clause 4.3 – Height of Buildings of BLEP 2015;
- Clause 2.2(b) – Primary Road Frontage Setbacks of BDCP 2015;
- Objective 4G-1 Storage in the Apartment Design Guide (ADG), as per SEPP 65.

Pursuant to Clause 4.6 of the BLEP 2015, the applicant has made a submission seeking a variation to the provisions contained in Clause 4.3(2) of the BLEP 2015. The applicant's 4.6 request submits that compliance with the development standard is unreasonable and unnecessary in the circumstances of this case and there is sufficient environmental planning grounds to justify contravening the development standard. In this regard, the non-compliance is limited to a minor breach (maximum 600mm) at the south-eastern corner of the building and the lift overrun, with the departure largely the result of the fall of the land from the north eastern to south eastern corner of the site (approximately 3 metres) and the retention of the existing built form on the lower levels which in effect contributes to the difficulty in complying with the maximum building height standard. It is agreed that there are sufficient environmental planning grounds to support the departure.

Clause 2.2(b) of Part A1 of the BDCP 2015 requires a 5 metre setback for the third storey and above to the primary road frontage (defined as the shortest of the applicable road frontages). In this case, the proposed residential storey adopts a 3.10 metre setback to the primary road frontage (Priam Lane to the north of the allotment) and therefore results in a non-compliance with this requirement. In considering the reduced separation of the additional storey, the additional buffer provided by the laneway to the residential allotments to the north improves the 'actual' separation to more than 6.0 metres and will not result in any adverse privacy impacts and is considered appropriate in this instance.

Objective 3D-1 of the ADG requires that a communal open space area be provided that is equivalent to a minimum of 25% of the site area. The development approved under DA-1159/2009 provides a communal open space area equivalent to 18.4% of the site area. The existing non-compliance would not be impacted by the proposal. Despite this non-compliance, each apartment is provided with the required private open space and remains suitable for approval.

Objective 4G-1 of the ADG requires that two bedroom apartments require a storage volume of 8m³ and that 50% is to be provided within the unit. In this instance, the application allocates a volume of 9.1m³ to 15.2m³ in the form of basement storage cages for the proposed units. It is also noted that the units remain approximately 10m² larger in area typical of a two bedroom apartment providing the opportunity for additional internal storage. Despite this non-compliance, each apartment is provided with an appropriate allocation of storage, albeit it is proposed in the basement.

In accordance with the BDCP 2015 the application was advertised for a period of 21 days from 12 October to 1 November 2016. Submissions were received from twelve different households, nine being signed pro-forma documents, that raise concerns relating to the visual privacy, loss of property values and changes in the residential character of the neighbourhood.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

It is recommended that:

1. The submission made pursuant to Clause 4.6 of Bankstown Local Environmental Plan 2015 be supported;
2. Development Application DA-940/2016 be approved subject to the attached conditions.

ATTACHMENTS

- A. Section 79C Assessment Report
- B. Conditions of Consent

DA-940/2016 ASSESSMENT REPORT

SITE AND LOCALITY DESCRIPTION

The subject site is located at 159 Priam Street in Chester Hill and is zoned B2 – Local Centre under the Bankstown Local Environmental Plan (BLEP) 2015. The site is situated within the Chester Hill Village Centre and is located opposite the Chester Square shopping centre, approximately 280m north-west of the Chester Hill Railway Station.

The site is a rectangular shaped parcel of land with an area of 1448.9m² and bound by Priam Street to the west (41.1m), a service lane known as Priam Lane to the north (29.12m) and east (39.155m) and a Council owned public car park to the south. The site currently contains a two storey brick commercial building with lower ground car parking.

The immediate interface with the locality is defined by a mixture of developments including single and two storey retail and commercial developments to the south and west, and a mix of single and two storey detached dwelling houses to the north and east. The context of the site is illustrated in the following aerial photo.



PROPOSED DEVELOPMENT

The development application DA-940/2016 seeks consent for alterations and additions to a mixed-use development approved previously under DA-1159/2009 which provided consent for the following:

Alterations and additions to an existing building for the purpose of a mixed commercial and residential development with associated car parking. The

proposal consists of the demolition of a first floor bowling alley over existing retail shops and the construction of 20 apartments over four (4) levels resulting in a five (5) storey development.

The subject application seeks to modify the arrangement of the basement, ground floor parking and commercial areas as approved by DA-1159/2009 and for the construction of an additional floor containing four x two bedroom units.

The development proposal is summarised as follows:

- Modification to the lower ground floor plan to include 38 car spaces and 21 storage cages.
- Reduction in commercial floor area of 65.49m² and modification to ground floor parking area to include a total ten car spaces and three storage cages.
- Construction of 6th floor residential level to include four x two bedroom residential units ranging in size from 80.27m² to 84.04.m².

The proposed development is to present as a six storey mixed use development, consisting of 24 residential apartments and the retention of the ground floor commercial shops, car parking area and basement (except where modified above).

SECTION 79C ASSESSMENT

The proposed development has been assessed pursuant to section 79C of the *Environmental Planning and Assessment Act, 1979*.

Environmental planning instruments [section 79C(1)(a)(i)]

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

Clause 7 of SEPP 55 requires Council to consider whether the development site is contaminated and, if it is, whether it is suitable for the proposed development either in its contaminated state or following remediation works.

In accordance with the Managing Land Contamination Planning Guidelines, the use of the site and the proposal of the subject application that seeks additional development of a similar nature with the retention of the existing structures and no substantial soil disturbance, it would not warrant the need for further consideration of contamination and testing.

As such, in light of the fact that there is no evidence of contamination in the historical use of the site, it is therefore considered that the consent authority can be satisfied that the development site is suitable for the proposed development, in accordance with Clause 7 of SEPP 55.

Greater Metropolitan Regional Environmental Plan 2—Georges River Catchment

It is considered that the proposed development will not significantly impact upon the environment of the Georges River, either in a local or regional context, and that the development is not inconsistent with the general and specific aims, planning principles, planning considerations and policies and recommended strategies.

State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65), and the Apartment Design Guide (ADG)

SEPP 65 applies to residential flat buildings having four or more units and three or more storeys. Accordingly an assessment against the Design Quality Principles in the SEPP and the accompanying Apartment Design Guide (ADG) has been carried out.

The proposed development, which provides for the addition of four new units within the development, is considered to remain consistent with the objectives and design quality principles contained in the SEPP. Compliance with the key 'design criteria' contained in the Apartment Design Guide is illustrated in the table below.

'DESIGN CRITERIA'	PROPOSED	COMPLIES?
<p>3D-1 Communal open space</p> <p>25% of the site area is to be communal open space (362.2m²), and 50% of the COS must receive at least 2 hours direct sunlight between 9am-3pm on 21 June.</p>	<p>266.72m² (18.4%) of the site area is provided as communal open space. At least 50% of the COS is able to achieve at least 2 hours direct sunlight between 9am-3pm on 21 June.</p>	<p>The subject DA does not propose any further non-compliance to that approved through DA-1159/2009.</p> <p>See comment [1] below</p>
<p>3F-1 Visual Privacy (Building separation)</p> <p>9m setback for 5-8 storeys (4.5m to non-habitable rooms).</p>	<p><u>Setbacks (Side)</u></p> <p>Additional storey – 9m.</p>	<p>Additional storey - Yes</p>
<p>3J-1 Car Parking</p> <p>Minimum car parking requirement must be provided on site.</p> <p>For development on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area, the minimum car parking requirement for residents and visitors are set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by Council – whichever is lesser.</p>	<p>BDCP 2015 Part B5</p> <p>29 residential car spaces are required under Part B5 of BDCP 2015.</p> <p>Four visitor car spaces are required under Part B5 of BDCP 2015.</p> <p>19 commercial car spaces are required under Part B5 of BDCP 2015.</p> <p>Total – 52 Spaces</p>	<p>Yes - 48 spaces provided.</p> <p>A condition recommending a compliant allocation of residential, commercial and visitor spaces has been included in the development consent attached to this report. Conditions requiring boom gates and swipe</p>

'DESIGN CRITERIA'	PROPOSED	COMPLIES?
	<p>RMS - Roads and Transport Authority Guide to Traffic Generating Developments.</p> <ul style="list-style-type: none"> - 22 residential car spaces - Four visitor car spaces car spaces - 19 commercial car spaces <p>Total - 45 spaces</p> <p><u>Pursuant to Roads and Maritime Services (The ADG applies the lesser requirement).</u></p>	card access for the residents have also been included.
<p>4A-1 Solar access</p> <p>70% of units should receive 2hrs solar access between 9am – 3pm midwinter.</p>	All units receive 2 hours direct solar access between 9am – 3pm midwinter.	Yes
<p>4A-3 Solar access</p> <p>A maximum 15% of apartments receive no direct sunlight between 9am and 3pm mid-winter.</p>	All proposed apartments receive direct sunlight.	Yes
<p>4B-3 Natural cross-ventilation</p> <p>60% of units to be naturally cross-ventilated.</p> <p>Overall depth cross-over or cross-through apartment does not exceed 18m, when measured glass line to glass line</p>	All four of the proposed apartments are naturally cross-ventilated.	Yes Yes
<p>4C-1 Ceiling heights</p> <p>Min. 2.7m for habitable rooms. If variation is sought then satisfactory daylight access must be demonstrated.</p>	Floor-to-ceiling heights are 2.7m.	Yes
<p>4D-1 Unit size</p> <p>1 bed – min. 50m² 2 bed – min. 70m² 3 bed – min. 90m² Add 5m² for each additional bathroom/WC</p>	2-bed, 1 bath – min 70m ²	Yes

'DESIGN CRITERIA'	PROPOSED	COMPLIES?
Every habitable room must have a window in an external wall	All habitable rooms have a window in an external wall.	Yes
4D-2 Unit Performance maximised <ul style="list-style-type: none"> In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window 	The four proposed units consist of a room depth less than 8m.	Yes
4D-3 Apartment layouts <ul style="list-style-type: none"> Master Beds: 10m² min Other beds: 9m² min Bedrooms min dimension of 3m 	Compliance is achieved for all rooms within the development. 13.0 to 14.55m ² 11.05 to 11.50m ² 3.240 to 4.773m	Yes
4E-1 Private Open Space 1 bed: Min 8m ² , 2m depth 2 bed: Min. 10m ² , 2m depth 3 bed: Min 12m ² , 2.4m depth to primary balconies. Ground level units: Min 15m ² , 3m depth	All units meet required minimum areas and dimensions. Area - 15.0 to 23.5m ² Depth - 2 to 3.7m	Yes
4F-1 Internal circulation 1. Max. 8 units accessed from a single corridor	A maximum of four units are accessed from a single corridor.	Yes
4G-1 Storage 1 beds: 6m ³ , 2 beds: 8m ³ , 3 beds: 10m ³ (At least half to be provided within the unit)	The proposed units provide 100% of the storage area in basement cages.	No – Comment [2] below

The following comments are provided in respect to the departures as identified in the table above:

[1] Design Criteria – 3D-1 – Communal Open Space

Objective 3D-1 of the ADG requires that a communal open space area be provided that is equivalent to a minimum of 25% of the site area. The development approved under DA-1159/2009 provides a communal open space area equivalent to 18.4% of the site area. The existing non-compliance would not be impacted by the proposal. Despite this non-compliance, each apartment is provided with the required private open space and remains suitable for approval.

[2] Design Criteria 4G-1 - Storage

Objective 4G-1 of the ADG requires that two bedroom apartments require a storage volume of 8m³ and that 50% is to be provided within the unit. In this instance, the application allocates a volume of 9.1m³ to 15.2m³ in the form of basement storage cages for the proposed units. It is also noted that the units remain approximately 10m² larger in area typical of a two bedroom apartment providing the opportunity for additional internal storage. Despite this non-compliance, each apartment is provided with an appropriate allocation of storage, albeit it is proposed in the basement.

Bankstown Local Environmental Plan 2015 (BLEP 2015)

The development site is zoned B2 – Local Centre under the Bankstown Local Environmental Plan (BLEP) 2015, with mixed use developments permissible with development consent. The primary development standards that apply to the site include a maximum building height of 20 metres and floor space ratio (FSR) of 2.5:1.

The following clauses of Bankstown Local Environmental Plan (BLEP) 2015 are relevant to the proposed development and were taken into consideration:

- Clause 1.2 – Aims of Plan
- Clause 2.1 – Land use zones
- Clause 2.2 – Zoning of land to which Plan applies
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.7 – Demolition requires development consent
- Clause 4.3 – Height of buildings
- Clause 4.4 – Floor space ratio
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 6.2 – Earthworks

An assessment of the development application has revealed that the proposal complies with the matters raised in each of the above clauses of Bankstown Local Environmental Plan 2015, with the exception of the variation proposed to Clause 4.3(2)- Height of buildings.

In this regard, the development proposal presents a minor variation to the 20m height control. The below table is provided to demonstrate the proposal's compliance with the numerical controls as set out in the BLEP 2015.

STANDARD	PROPOSED	BLEP 2015 COMPLIANCE
Clause 4.3(2) – requires the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.	The proposed development exceeds the wall height with a maximum height of 20.6 metres.	No – maximum wall height is not to exceed 20.0 metres.
Clause 4.4 FSR	2.245:1	Yes – maximum floor space ratio of 2.5:1

Variation Request

The BLEP 2015 states that the height of a building on any land is not to exceed the maximum height shown for the land, pursuant to Clause 4.3(2), which is reproduced below.

4.3 Height of buildings

- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The proposed development exceeds the maximum permitted building height with the breach being confined to the south-east corner of the building. The extent of the breach is confined to a maximum of 600mm.

The departure is largely the result of the fall of the land to the south eastern corner of the site and the sought retention of the existing basement, ground floor parking area and commercial floor space.

Clause 4.6 – Exceptions to development standards

Pursuant to Clause 4.6 of the BLEP 2015, the applicant has made a submission seeking a variation to the provisions contained in Clause 4.3(2) of the BLEP 2015. The applicant's 4.6 request submits that compliance with the development standard is unreasonable and unnecessary in the circumstances of this case and there is sufficient environmental planning grounds to justify contravening the development standard in this instance for the following reasons:

- *The development proposal has been designed to present a 6 storey form to Priam Street, with the additional height confined to the south-east corner of the building. The majority of the building meet the height control with the portion of the upper level exceeding the height being 7.45% of the upper level, and 8.78% including the centrally located lift overrun.*
- *The development proposal is largely within the 20m height control with the minor variation to the roof form (south-east) resulting from the site topography.*
- *The building height is compatible with the scale of development in the vicinity and the desired future character of the area. The development proposal is consistent with the Bankstown DCP desired future character of Chester Hill presenting as a 6 storey form to Priam Street.*
- *The contravention to the height limit is setback from the primary frontage and is largely a function of site slope. The variation will not be discernable with the building presenting as 6 storeys.*
- *The upper level units maximise residential amenity with the regard to natural light and ventilation and ensure an acceptable development yield is achieved on the site contributing to the revitalization of the Chester Hill.*

In order to address the requirements of clause 4.3(2), each of the objectives of Clause 4.3 need to be considered and are listed below:

- (a) to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,
- (b) to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential,
- (c) to provide appropriate height transitions between development, particularly at zone boundaries,
- (d) to define focal points by way of nominating greater building heights in certain locations.

Objective (a) – seeks to ensure the height of the development is compatible with the character, amenity and landform of the area in which the development will be located. In this case, the non-compliance is limited to a minor breach (600mm) at the south-eastern corner of the building and the lift overrun. The remaining mixed use development complies with the 20m building height standard and does not result in an adverse or incompatible residential development outcome within the B2 Local Centre Zone.

Objective (b) is not relevant in this instance.

Objective (c) – seeks to provide appropriate height transitions between development. In this case the intent of providing a six storey built form within the Chester Hill Village Centre is complemented by Council's Bankstown Development Control Plan 2015 (BDCP 2015), allowing a storey limit of six storeys for allotments consisting of a 20m maximum building height. In this case the built form remains consistent with this requirement and accommodates an appropriate relationship with the existing neighbouring properties.

Objective (d) – aims to define focal points by way of nominating greater building heights in certain locations. As outlined earlier, the subject application seeks to modify the arrangement of the basement, ground floor parking and commercial areas as approved by DA-1159/2009 and for the construction of an additional floor containing four x two bedroom units. In this case, the non-compliance is limited to a minor breach (600mm) at the south-eastern corner of the building and the lift overrun, with the departure largely the result of the fall of the land from the north eastern to south eastern corner of the site (approximately 3 metres) and the retention of the existing built form on the lower levels which in effect contributes to the difficulty in complying with the maximum building height standard. The voluntary retention of such structures is acknowledged as a valid site limitation, one that would be unreasonable to require demolition, with the intent of achieving a compliant building height.

Accordingly, it is considered that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the development remains an appropriate built form outcome for the site, despite the contravention to the maximum building height standard. It is also agreed that there are sufficient environmental planning grounds to support the departure.

Draft environmental planning instruments [section 79C(1)(a)(ii)]

There are no draft environmental planning instruments that are applicable in this instance.

Development control plans [section 79C(1)(a)(iii)]

The following table provides a summary of the development application against the controls contained in Part A1 and Part B5 of Bankstown Development Control Plan 2015.

STANDARD	BDCP 2015 PART A1	
	Provided	COMPLIANCE
Chester Hill Village Centre		
2.1 Development within the Chester Hill Village Centre and Sefton Small Village Centre must comply with the storey limit that corresponds with the maximum building height shown for the site on the Height of Building Map: 20 metres = 6 storeys.	Yes – 6 storeys provided.	Yes
Setbacks to the primary road frontage of allotments		
2.2 The minimum setbacks to the primary road frontage of an allotment within Zone B2 Local Centre are: (a) zero setback for the basement level, the first storey (i.e. the ground floor) and second storey; and (b) 5 metres for the third storey and above.	Additional storey – 3.1m provided to Priam Lane (North).	No, see comment [1] below
Setbacks to the secondary road frontage and the side boundary of allotments		
2.3 The minimum setback to the secondary road frontage and the side boundary of an allotment within Zone B2 Local Centre is zero setback for all storeys. Where development is adjacent to residential zoned land, Council may increase the minimum setback to the secondary road frontage and side boundary	The setbacks to the secondary road frontages for the additional storey includes: Priam Lane (East) – 7.9m side boundary (South) – 5.8m Priam Street (West) – 4.5m	Yes
Setbacks to the rear boundary of allotments		
2.4 The minimum setbacks to the rear boundary of an allotment within Zone B2 Local Centre are:	Not Applicable – In this case the allotment consists of three (3) road frontages and a side boundary (south).	Not Applicable

STANDARD	BDCP 2015 PART A1	
	Provided	COMPLIANCE
<p>(a) zero setback for the first storey (i.e. the ground floor) and second storey where the site adjoins a rear lane; or</p> <p>(b) 3 metres for the first storey (i.e. the ground floor) and second storey where the site does not adjoin a rear lane; and</p> <p>(c) 3 metres for the third storey and above.</p>		
<p>2.5 Despite clause 2.4, dwellings on allotments identified in Figure 3 must comply with:</p> <p>(a) the minimum setbacks shown in Figure 3; or</p> <p>(b) incorporate appropriate measures to ensure that the following LAeq levels are not exceeded:</p> <p>i. in any bedroom in the building—35 dB(A) at any time between 10.00 pm and 7.00 am; and</p> <p>ii. anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.</p>	Not Applicable – the allotment is not identified in Figure 3.	Not Applicable
<p>Building design (car parking)</p> <p>2.6 Where an allotment adjoins a rear lane, Council may allow above ground car parking at the rear of the allotment provided that</p> <p>(a) the car park occupies only the rear of the first storey (i.e. the ground floor) and second storey; and</p> <p>(b) the car park must be setback a minimum 18 metres from the front building line to allow the gross floor area at the front of the building to be used for commercial, retail, or residential purposes; and</p> <p>(c) the building design must promote natural surveillance on the lane.</p>	<p>The existing basement adjoins a rear lane (Priam Lane) and accommodates above car parking in a basement and above ground car parking area to the rear. The above ground component is located approximately 20 metres from the commercial floor space provided on Priam Street.</p> <p>The subject application only seeks to modify the internal arrangement of the basement and ground floor parking.</p>	Not Applicable – Retention of the existing structure.

STANDARD	BDCP 2015 PART A1	
	Provided	COMPLIANCE
<p>Building design (signage)</p> <p>2.7 Business and building identification signs must integrate with the architectural features of the building to which they are attached as follows:</p> <p>(a) Under awning signs, awning fascia signs, top hamper signs, projecting wall signs, wall signs and painted window signs are permissible at or below the awning level. Where there is no awning to the building, signs are solely permitted below the window sill of the second storey windows.</p> <p>(b) Painted window signs and individual laser cut lettering applied to the façade are permissible above the awning level. Painted window signs must not obscure more than 25% of the window area.</p> <p>(c) Signs that are painted or attached to a building must not screen windows</p> <p>(d) and other significant architectural features of the building</p>	<p>No signage has been proposed with this application.</p>	<p>Not Applicable</p>
<p>Active street frontages</p> <p>3.1 The design of street frontages must ensure:</p> <p>(a) the ground floor is at the same general level as the footpath and accessible directly from the street; and</p> <p>(b) the ground floor provides a positive street address in the form of entries, lobbies and clear glazing that contribute to street activity and promote passive surveillance. The ground floor façade must minimise large expanses of blank walls. This clause applies to locations where it is essential to retain the ground floor as commercial and retail floor space as shown in Figure 4.</p>	<p>The existing commercial street frontage on Priam Street meets the intent of the control.</p> <p>The subject application seeks to retain the existing commercial areas as approved by DA-1159/2009.</p>	<p>Not Applicable – Retention of the existing structure.</p>
<p>Vehicle footpath crossings</p> <p>3.2 Development must optimise the opportunities for active street frontages and streetscape design by:</p> <p>(a) making vehicle access points as narrow as possible;</p> <p>(b) limiting the number of vehicle accessways to a minimum; and</p>	<p>As discussed, the existing commercial street frontage on Priam Street meets the intent of the control.</p>	<p>Existing, remains suitable.</p>

STANDARD	BDCP 2015 PART A1	
	Provided	COMPLIANCE
(c) avoiding the location of car park entries, driveways and loading docks at the corners of street intersections. For sites with two or more frontages, car park entries, driveways and loading docks must locate on lanes and minor streets rather than primary street frontages or streets with high pedestrian activity.	The access points to the basement and ground floor parking are limited Priam Lane (North) and Priam Lane (East).	

The following comments are provided in respect to the departures as identified in the table above:

[1] Setback to primary road front frontage

Clause 2.2(b) of Part A1 of the BDCP 2015 requires a 5 metre setback for the third storey and above to the primary road frontage (defined as the shortest of the applicable road frontages). In this case, the proposed residential storey adopts a 3.10 metre setback to the primary road frontage (Priam Lane to the north of the allotment) and therefore results in a non-compliance with this requirement. In considering the reduced separation of the additional storey, the additional buffer provided by the laneway to the residential allotments to the north improves the 'actual' separation to more than 6.0 metres and will not result in any adverse privacy impacts and is considered appropriate in this instance.

Planning agreements [section 79C(1)(a)(iia)]

There are no planning agreements applicable to this development application.

The regulations [section 79C(1)(a)(iv)]

The proposed development is not considered to be inconsistent with the relevant provisions of the Environmental Planning and Assessment Regulation 2000.

The likely impacts of the development [section 79C(1)(b)]

The proposed development is not considered likely to result in any significant detrimental environmental, social or economic impacts on the locality. As detailed in this report, where a non-compliance is proposed, it has been suitably addressed and is considered worthy of support. As such, it is considered that the impact of the proposed development on the locality will be acceptable.

Suitability of the site [section 79C(1)(c)]

The site is considered suitable for the proposed development.

Submissions [section 79C(1)(d)]

In accordance with the BDCP 2015 the application was advertised for a period of 21 days from 12 October to 1 November 2016.

Submissions were received from twelve different households, nine being of a signed pro-forma document, that raise concerns relating to the visual privacy, loss of property values and changes in the residential character of the neighbourhood.

The concerns raised in the submissions have been summarised as follows:

Visual Privacy

Objection: As the balconies and windows of the new apartment are facing towards our houses, and the apartment height is higher than our house, new residents will be able to see our yard, even inside of our house, so that our privacy is not guaranteed.

Comment: In review of the additional residential floor, the retention of visual amenity for internal occupants and for the residents of the adjoining properties remains consistent to that previously approved under DA-1159/2009. The application of further recessed balconies and the increase in the separation distances to habitable rooms facing the east of Priam Lane, the majority of the setback in excess of 11.0 metres, provides for a reduced floor-plate in comparison to the residential levels below and preserves an appropriate degree of visual privacy.

The proposed development also remains consistent with the intended nature of the B2 Local Centre and the changing nature of the transitioning residential properties in the R4 High Density Residential zone that remain in the immediate vicinity of the development.

Property Values

Objection: The market value of our property will go down if the new apartment is built, as the plot ratio of this area changed.

Comment: There is no evidence to suggest that the inclusion of the additional residential floor to the previously approved development under DA-1159/2009 will negatively impact on property values.

Development Type And Nature

Objection: If the new apartment is built, there will be more population around this area, and the apartment is very close to our property, we think it is too close for us to have a quiet and comfortable living environment. Also as the apartment will take a certain period to construct therefore it means we have to live in an environment full of dust and noise for this period.

Comment: The location, size and proposed building separation development has been reviewed in consideration of Bankstown Local Environmental Plan 2015, applicable State Environmental Planning Policies and the Bankstown Development Control Plan 2015. In this instance, the proposal suitably meets the above controls and remains consistent with the objectives intended for Chester Hill Village Centre.

The hours for site operations and noise-restrictions for construction are regulated under the Environment Protection Authority (EPA) and such requirements are included in the Development Consent for the hours of operation for all construction work as follows:

The hours of site works shall be limited to between 7.00am and 6.00pm on weekdays and 7.00am and 1.00pm on Saturdays. No work shall be carried out on Sundays and public holidays, and weekends (Saturdays and Sundays) adjacent to public holidays.

In the event that site operations are conducted in a manner inconsistent with the requirements above or traffic management issues occur within the roadway, this can be reported to Council's Rangers for attention.

The public interest [section 79C(1)(e)]

Having regard to the relevant planning considerations, the proposed development is in the public interest. It responds appropriately to the standards contained in the Bankstown Local Environmental Plan 2015. Matters raised in public submissions have been satisfactorily addressed, and the proposed development would contribute to housing diversity within the Canterbury-Bankstown LGA.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979 requiring amongst other things, an assessment against the provisions contained within the State Environmental Planning Policy 55 (Remediation of Land), Deemed State Environmental Planning Policy (SEPP) 2 Georges River Catchment, State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65), and the Apartment Design Guide (ADG), Bankstown Local Environmental Plan 2015, and Bankstown Development Control Plan 2015.

The proposed development represents an appropriate built form for the site. Relevant planning controls have been appropriately responded to and no significant or unresolved matters have been raised in public submissions. Approval of this application is considered to be consistent with the site's B2 Local Centre zoning and would not result in unacceptable or unreasonable impacts on the surrounding locality.

CONDITIONS OF CONSENT

- 1) The proposal shall comply with the conditions of Development Consent. A Construction Certificate shall not be issued until the plans and specifications meet the required technical standards and the conditions of this Development Consent are satisfied.
- 2) Development shall take place in accordance with Development Application No. DA-940/2016, submitted by Tracy Minett, accompanied by Drawing Nos as follows:

Plan Number	Issue Number	Date
1 of 13 , 2 of 13	Issue A	15/9/2016
3 of 13, 4 of 13, 5 of 13, 6 of 13	Issue A	24/8/2016
7 of 13	Issue E	08/03/2017
8 of 13	Issue C	17/03/2017
9 of 13 to 11 of 13	Issue B	24/3/2017
12 of 13	Issue B	7/3/2017
13 of 13	Issue E	08/03/2017

prepared by AFD Design & Drafting Pty Ltd and affixed with Council's approval stamp, except where otherwise altered by the specific amendments listed hereunder and/or except where amended by the conditions contained in this approval.

- 3) The proposed signage is to be generally consistent with the stamped concept plan and is not to exceed the requirements of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 and the Bankstown Development Control Plan 2014, specifically Clause 9.2.
- 4) Compliance must be achieved with all remaining conditions of Development Consent No. DA-1159/2009, except where amended by the conditions contained in this approval DA-940/2016.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

Prior to the release of a Construction Certificate the following conditions MUST be satisfied and nominated fees/contributions/bonds paid:

- 5) The Certifying Authority must ensure that any certified plans forming part of the Construction Certificate are not inconsistent with this Development Consent and accompanying plans.
- 6) A detailed landscape plan prepared by a qualified landscape architect or designer is to be approved prior to the issue of a Construction Certificate. The landscape plan is to be prepared in accordance with the relevant DCP and is to show all features, built structures including retaining walls, irrigation, mulch and natural features such as significant gardens, landscaping, trees, natural drainage lines and rock outcrops that

occur within 3 metres of the site boundary. The landscape plan shall consider any stormwater, hydraulic or overland flow design issues where relevant.

- 7) A soil erosion and sediment control plan must be prepared by a suitably qualified professional, in accordance with the Bankstown Demolition and Construction Guidelines and Council's Development Engineering Standards, and submitted to the certifying authority for approval prior to the issue of a construction certificate.
- 8) The Council Approved building plans, including demolition plans, must be submitted to Sydney Water for assessment. This will determine if the proposed structure(s) would affect any Sydney Water infrastructure or if there are additional requirements. Building plan approvals can be submitted online via Sydney Water Tap in™.

Please refer to www.sydneywater.com.au/tapin

For Sydney Water's Guidelines for building over or next to assets, visit www.sydneywater.com.au 'Plumbing, building & developing' then 'Building Plan Approvals' or call 13000 TAPIN.

Prior to release of a construction certificate Sydney Water must issue either a Building Plan Assessment letter which states that your application is approved, or the appropriate plans must be stamped by a Water Servicing Coordinator.

- 9) A Construction Certificate shall not be issued until written proof that all bonds, fees and/or contributions as required by this consent have been paid to the applicable authority.
- 10) A long service levy payment which is 0.35% of the total cost of the work is to be paid to the Building and Construction Industry Long Service Payments Corporation.
- 11) Pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979, and the Bankstown City Council Section 94A Development Contributions Plan 2009 (Section 94A Plan), a contribution of \$4,500 shall be paid to Council.

The amount to be paid is to be adjusted at the time of actual payment, in accordance with the provisions of the Section 94A plan. The contribution is to be paid before the issue of the construction certificate.

Note: The Section 94A Contributions Plans may be inspected at Council's Customer Service Centre, located at Upper Ground Floor, Civic Tower, 66-72 Rickard Road, Bankstown, between the hours of 8.30am-5.00pm Monday to Friday.

- 12) Finished surface levels of all internal works and at the street boundary, including driveways, landscaping and drainage structures, must be as shown on the approved plans. The levels at the street boundary must be consistent with the Street Boundary Alignment Levels issued by Council.

- 13) Stormwater drainage from the development shall be designed so as to comply with Council's Development Engineering Standards and the requirements of the BASIX Certificate. A final detailed stormwater drainage design shall be prepared by a qualified Professional Civil Engineer in accordance with the above requirements and shall generally be in accordance with the concept stormwater plan No. D1 and D2 prepared by LMW Design Group P/L, dated 20.09.2016. The final plan must be certified by the design engineer that it complies with Council's Development Engineering Standards, the BASIX Certificate and the relevant Australian Standards.
- 14) The development is to be carried out in accordance with the commitments of an updated BASIX Certificate. The BASIX commitments are to be reflected in the Construction Certificate plans and specifications. Any proposed changes to the BASIX commitments after the Construction Certificate has been issued will require an updated BASIX Certificate and a new Construction Certificate.
- 15) A certificate from a professional engineer certifying the structural capacity of the existing building will be appropriate to the building's proposed new use and that it is capable of supporting the loads imposed by the new structure. This must be provided to the certifying authority prior to the issue of a construction certificate.
- 16) The Construction Certificate plans shall include details of the garbage receptacle area. The garbage receptacle area shall not be visible from the street. The garbage receptacle area shall be located within the building or screened from the street by dense landscaping.
- 17) As any works within, or use of, the footway or public road for construction purposes requires separate Council approval under Section 138 of the Roads Act 1993 and/or Section 68 of the Local Government Act 1993, Council requires that prior to any Construction Certificate for this development being issued, a Works Permit and or a Roadway/Footpath Building Occupation Permit shall be obtained where one or more of the following will occur, within, on or over the public footway or public road:

A PRIVATE CERTIFIER CANNOT ISSUE THESE PERMITS

WORKS REQUIRING A 'WORKS PERMIT'

- a) Dig up, disturb, or clear the surface of a public footway or public road,
- b) Remove or interfere with a structure or tree (or any other vegetation) on a public footway or public road,
- c) Connect a road (whether public or private) to a classified road,
- d) Undertake footway, paving, vehicular crossing (driveway), landscaping or stormwater drainage works within a public footway or public road,
- e) Install utilities in, under or over a public road,
- f) Pump water into a public footway or public road from any land adjoining the public road,
- g) Erect a structure or carry out a work in, on or over a public road
- h) Require a work zone on the public road for the unloading and or loading of vehicles
- i) Pump concrete from within a public road,

- j) Stand a mobile crane within a public road
- k) Store waste and recycling containers, skips, bins and/or building materials on any part of the public road.
- l) The work is greater than \$25,000.
- m) Demolition is proposed.
- n) A Swimming pool is proposed.

Assessment of Works Permits (a to e) includes the preparation of footway design levels, vehicular crossing plans, dilapidation reports and issue of a Road Opening Permit.

All proposed works within the public road and footway shall be constructed under the supervision and to the satisfaction of Council. The applicant/developer shall arrange for necessary inspections by Council whilst the work is in progress.

For commercial or multi-unit residential developments within the designated CBD or an urban village area, footway design and construction and street tree supply, installation and tree hole detailing shall be as per the Council master plan for that area. Full width footways are to be supplied and installed at full cost to the developer to specification as supplied by Council. Layout plan of pavement to be submitted to Council for approval prior to the issue of the Works Permit.

All Council fees applicable, minimum restoration charges and inspection fees shall be paid prior to the assessment of the Work Permit in accordance with Council's adopted fees and charges. Note: Additional fees after approval will be charged where the Work Permit requires occupation of the Road or Footpath ie Hoardings, Work Zones etc.

In determining a Works Permit, Council can impose conditions and require inspections by Council Officers.

Forms can be obtained from Council's Customer Service counter located on the ground floor of Council's administration building at 66 - 72 Rickard Road, Bankstown or Council's website www.bankstown.nsw.gov.au

Part of any approval will require the person or company carrying out the work to carry public liability insurance to a minimum value of ten million dollars. Proof of the policy is to be provided to Council prior to commencing any work approved by the Work Permit including the Road Opening Permit and must remain valid for the duration of the works.

The commencement of any works on public land, including the footway or public road, may incur an on the spot fine of not less than \$1100 per day that work continues without a Works Permit and/or a Roadway/Footpath Building Occupation Permit.

All conditions attached to the permit shall be strictly complied with prior to occupation of the development. Works non-conforming to Council's specification (includes quality of workmanship to Council's satisfaction) shall be rectified by the Council at the applicant's expense.

CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION

- 18) The building work in accordance with the development consent must not be commenced until:
- a) a construction certificate for the building work has been issued by the council or an accredited certifier, and
 - b) the person having benefit of the development consent has:
 - i. appointed a principal certifying authority for the building work, and
 - ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - c) the person having the benefit of the development consent, if not carrying out the building work as an owner-builder, has:
 - i. appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - ii. notified the principal certifying authority of any such appointment, and
 - iii. unless the person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - d) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the building work.
- 19) Existing trees within the vicinity of the construction works or paths of travel for construction vehicles accessing the development that are to be retained shall be protected with temporary fencing of a style non injurious to tree roots, placed 2m from the trunk base of the existing tree to prevent damage during construction, and retained in accordance with Council's Tree Preservation Order. There is to be no stockpiling of materials within the 2m fenced zone.
- 20) Suitable erosion and sediment control measures shall be erected in accordance with the plans accompanying the Construction Certificate prior to the commencement of construction works and shall be maintained at all times.
- 21) Council warning sign for Soil and Water Management must be displayed on the most prominent point of the site, visible to both the street and site works. The sign must be displayed throughout the construction period.

- 22) Prior to the commencement of work, the applicant must provide a temporary on-site toilet if access to existing toilets on site is not adequate.
- 23) Prior to the commencement of work, a fence must be erected around the area of the works, except where an existing 1.8m high boundary fence is in good condition and is capable of securing the area. Any new fencing shall be temporary (such as cyclone wire) and at least 1.8m high. All fencing is to be maintained for the duration of construction to ensure that the work area is secured.

Where the work is located within 3.6m of a public place then a Type A or Type B hoarding must be constructed appropriate to the works proposed. An application for a Work Permit for such hoarding must be submitted to Council for approval prior to the commencement of work.

- 24) A sign shall be displayed on the site indicating the name of the person responsible for the site and a telephone number of which that person can be contacted during and outside normal working hours or when the site is unattended.
- 25) In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of the Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- 26) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
- a) in the case of work for which a principal certifying is required to be appointed:
 - i. the name and licence number of the principal contractor, and
 - ii. the name of the insurer by which the work is insured under Part 6 of the Act,
 - b) in the case of work to be done by an owner-builder:
 - i. the name of the owner-builder, and
 - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

- 27) A sign must be erected in a prominent position on any site on which building work or demolition work is being carried out:
- a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work or demolition work is being carried out, but must be removed when the work has been completed.

CONDITIONS TO BE SATISFIED DURING CONSTRUCTION

- 28) The hours of site works shall be limited to between 7.00am and 6.00pm on weekdays and 7.00am and 1.00pm on Saturdays. No work shall be carried out on Sundays and public holidays, and weekends (Saturdays and Sundays) adjacent to public holidays.
- 29) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 30) All Civil and Hydraulic engineering works on site must be carried out in accordance with Council's Development Engineering Standards. All Civil and Hydraulic engineering works associated with Council's assets and infrastructure must be carried out in accordance with Council's Work Permit requirements and to Council's satisfaction.
- 31) All excavations and backfilling must be executed safely and in accordance with the relevant Australian Standards.
- 32) If soil conditions require it, retaining walls or other approved methods of preventing movement of the soil must be provided, and adequate provisions must be made for drainage. Separate approval may be required for retaining walls should they be required.
- 33) If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- a) protect and support the adjoining premises from possible damage from the excavation, and
 - b) where necessary, underpin the adjoining premises to prevent any such damage.

- 34) The stormwater drainage system shall be constructed in accordance with Council's Development Engineering Standards and the engineering plans and details approved by the Principal Certifying Authority (PCA). Should the developer encounter any existing, live, underground stormwater drainage pipes, which carry flow from upstream properties, the developer must maintain the stormwater flow and re-route the stormwater pipes around the subject building or structures at the developer's expense.
- 35) Access to the site across the adjoining Council Reserve/Property is not permitted. There shall be no stock piling of materials, storage of equipment or work carried out on the adjoining Council Reserve/Property.
- 36) Prior to the commencement of work, the builder shall prepare a photographic record of the road reserve which clearly shows its condition prior to works occurring on site. For the entirety of demolition or construction works, there shall be no stockpiling of building spoil, materials, or storage of equipment on the public road, including the footway and the road reserve shall be maintained in a safe condition at all times. No work shall be carried out on the public road, including the footway, unless a Work Permit authorised by Council has been obtained.

CONDITIONS TO BE SATISFIED PRIOR TO OCCUPATION

- 37) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 38) A final Occupation Certificate shall not be issued until all conditions relating to demolition, construction and site works of this development consent are satisfied and Council has issued a Work Permit Compliance Certificate.
- 39) Forty eight (48) off street car spaces are to be provided with the allocation as follows:
- Twenty five (25) residential spaces
 - Four (4) residential visitor spaces
 - Nineteen (19) business / commercial spaces

The car parking spaces are to be provided in accordance with AS 2890.1. All car parking spaces shall be allocated and marked according to these requirements.

- 40) The provision of two (2) boom gates are to be provided to separate the access to residential and commercial spaces available within the basement and lower ground floor. The access to the residential car spaces is to be limited by the issue of swipe card for internal occupants of the residential units.
- 41) Landscaping is to be installed in accordance with the approved landscape plan. All works and methods nominated and materials and plants specified on the approved landscape plan are to be completed prior to the issue of an occupation certificate. The landscaping shall be maintained for the life of the development.

- 42) A suitably qualified Professional Civil Engineer shall certify that the driveways, parking bays, and service areas have been constructed in accordance with the approved plans and specifications. Such Certification shall be submitted prior to the issue of the Occupation Certificate or occupation of the site.
- 43) Lighting must be provided to the entries of the dwellings, driveways and parking areas to promote a high level of safety and security at night and during periods of low light. Lighting provided should be hooded, shielded or directed away from neighbouring dwellings to minimise glare and associated nuisances to residents.
- 44) The premises must be readily identified from the street with the allocated house numbers. Numbering of the development without Council's written approval is not permitted. An official "house numbering" letter will be sent to the applicant indicating the proposed house numbers of the new development. Note: The house numbers of the development are subject to change depending of the type on subdivision that may occur at a later stage.
- 45) Prior to the issue of any Occupation Certificate a design verification from a qualified designer shall be submitted to the Principal Certifying Authority. The design verification is a statement in which the qualified designer verifies that the development has been constructed as shown in the plans and specifications in respect of which the Construction Certificate was issued, having regard to the design quality principles set out in Schedule 1 of SEPP No. 65.
- 46) A Copy of the Work Permit Compliance Certificate shall be submitted to the PCA Prior to the issue of the Occupation Certificate.
- 47) A registered surveyor shall prepare a Work As Executed Plan, and a suitably qualified Hydraulic Engineer shall provide certification of the stormwater system.

The Work As Executed information shall be shown in red on a copy of the approved stormwater plan and shall include all information specified in Council's Development Engineering Standards. The Work As Executed plan shall be submitted to the Hydraulic Engineer prior to certification of the on-site stormwater system.

If applicable, the engineer's certification of the on-site stormwater system should be carried out similar to Council's standard form "On-Site Stormwater Detention System - Certificate of Compliance", contained in Council's Development Engineering Standards.

A copy of the Work As Executed Plan and Hydraulic Engineer's Certification shall be submitted to Council for information prior to issue of the final occupation certificate.

-END-

Independent Hearing and Assessment Panel - 7 August 2017

ITEM 3	25 Mactier Avenue, Milperra
	Demolition of the existing structures on site, and the construction of a two storey attached dual occupancy with associated car parking, landscaping, front fence and site works, with Torrens title subdivision
FILE	DA-83/2017 – Revesby Ward
ZONING	R2 Low Density Residential
DATE OF LODGEMENT	13 February 2017
APPLICANT	Ultra Design & Engineering (Aust) Pty Ltd
OWNERS	Lydia Mabel Patricia Proskurin
ESTIMATED VALUE	\$690,000
AUTHOR	Planning

RECOMMENDATION

It is recommended that:

1. The Clause 4.6 submission in relation to Floor space ratio, post subdivision under Clause 4.4 of BLEP 2015 be supported;
2. Development Application DA-83/2017 be approved subject to the attached conditions.

SUMMARY REPORT

This matter is reported to the Independent Hearing and Assessment Panel as the application has received five objections from separate households.

Development Application DA-83/2017 proposes the demolition of the existing structures on site, and the construction of a two storey attached dual occupancy with associated car parking, landscaping, front fence and site works, with Torrens title subdivision.

Both units contain four bedrooms and a study with a double car garage. The study and the living areas are located on the ground floor with the first floor containing the four bedrooms. Both units contain a balcony to the front (both on the primary and secondary frontage), located off bedrooms.

DA-83/2017 has been assessed, amongst other things, against Bankstown Local Environmental Plan (BLEP) 2015 and Bankstown Development Control Plan (BDCP) 2015 and the application fails to comply in regard to BLEP 2015 Clause 4.4 Floor space ratio, post subdivision.

As detailed in this report, the non-compliance with the maximum FSR for lot 1 post subdivision, has been addressed and is considered worthy of support.

The application was notified for a period of 14 days from 15 February to 28 February 2017 and re-notified with amended plans from 30 June 2017 to 13 July 2017. Five submissions were received within the first notification period and an additional four were received from the same households within the second notification period. The submissions raised concerns relating to the character of the neighbourhood, traffic impacts, overlooking, overshadowing and bulk and scale. The concerns raised in the submissions have been adequately addressed and do not warrant refusal or further modification of the proposed development.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

It is recommended that:

1. The Clause 4.6 submission in relation to Floor space ratio, post subdivision under Clause 4.4 of BLEP 2015 be supported;
2. Development Application DA-83/2017 be approved subject to the attached conditions.

ATTACHMENTS

- A. Section 79C Assessment Report
- B. Conditions of Consent

DA-83/2017 ASSESSMENT REPORT

SITE AND LOCALITY DESCRIPTION

The application seeks consent for the demolition of the existing structures on site, and the construction of a two storey attached dual occupancy with associated car parking, landscaping, front fence and associated site works, with Torrens title subdivision. The existing lot is a corner lot with a primary frontage to Mactier Avenue of 14.81 metres and a secondary frontage also to Mactier Avenue of 38.13 metres. The site has an area of 733.8m² and is generally rectangular in shape. The site has a width of 18.2 metres when measured at the front building line. The site contains a single storey brick house with associated parking.

Immediately to the west is a two storey residential dwelling, whilst to the north is a mix of two-storey and single-storey dwellings of varying age and condition. To the south exists a single storey brick dwelling. Otherwise, the surrounding development consists predominately of low density residential dwellings, both two-storey and single-storey, of varying age and condition.

The context of the site is illustrated in the aerial photo below.



PROPOSED DEVELOPMENT

DA-83/2017 proposes the following works:

- Demolition of existing structures;
- Construction of an attached two storey dual occupancy - each dwelling provides a double car garage, and contains four bedrooms and two bathrooms to the first floor and a ground floor area that contains a study, kitchen, laundry, bathroom, living and dining rooms;

- A front fence to both the primary and secondary frontage is proposed at a height of 1.8metres, with a solid brick component making up 0.9m of the height, with brick piers and the remaining height being open timber panels;
- Associated driveways, landscaping and site works; and
- Torrens title subdivision.

SECTION 79C ASSESSMENT

The proposed development has been assessed pursuant to section 79C(1) of the Environmental Planning and Assessment Act, 1979. In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the proposed development.

Environmental planning instruments [section 79C(1)(a)(i)]

Greater Metropolitan Regional Environmental Plan 2 – Georges River Catchment

The site is located within land identified as being affected by Greater Metropolitan Regional Environmental Plan 2 – Georges River Catchment (GMREP), being a deemed SEPP under Clause 120 of Schedule 6 of the EP&A Act, 1979. The GMREP contains a series of general and specific planning principles which are to be taken into consideration in the determination of development applications. An assessment of the proposal indicates that the development is generally consistent with the aims and objectives of the plan, as well as the planning principles as set out in Clause 8 of the GMREP.

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

The provisions of Clause 7 of State Environmental Planning Policy 55 – Remediation of Land specifies that a consent authority must not consent to the carrying out of any development on land unless:

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

The subject site has long been used for residential purposes and this will not change as part of the development application. There is no evidence to suggest that the site is contaminated, nor is it considered necessary for any further investigation to be undertaken with regard to potential site contamination. The subject site is considered suitable for the development application and therefore satisfies the provisions of SEPP 55.

Bankstown Local Environmental Plan 2015 (BLEP 2015)

The following clauses of the Bankstown Local Environmental Plan 2015 were taken into consideration:

Clause 1.2 – Aims of Plan
 Clause 2.1 – Land use zones
 Clause 2.2 – Zoning of land to which Plan applies
 Clause 2.3 – Zone objectives and Land Use Table
 Clause 2.7 – Demolition requires development consent
 Clause 4.1A – Minimum lot sizes and special provisions for dual occupancies
 Clause 4.3 – Height of buildings
 Clause 4.4 – Floor space ratio
 Clause 4.5 – Calculation of floor space ratio and site area
 Clause 4.6 – Exceptions to development standards
 Clause 5.6 – Architectural roof features
 Clause 5.9 – Preservation of trees or vegetation
 Clause 6.1 – Acid sulfate soils
 Clause 6.2 – Earthworks

An assessment of the development application has revealed that the proposal complies with the matters raised in each of the above clauses of Bankstown Local Environmental Plan 2015, with the exception of the variation proposed to Clause 4.4 Floor space ratio (FSR), post subdivision.

The table below is provided to demonstrate the proposals compliance with the numerical controls as set out in the BLEP 2015.

STANDARD	PERMITTED	PROPOSED	COMPLIANCE
Minimum lot size for dual occupancies	Min. 500m ² lot area	733.8m ²	Yes
Minimum lot width	Min. 15m width at front building line	18.2m	Yes
Minimum lot size post subdivision	Min 250m ² lot area post subdivision	358.51 m ² & 375.29m ²	Yes
Height of Buildings	Max 7m - wall Max 9m - building	6.9m 8.34m	Yes
Floor space ratio (prior to subdivision)	Max. 0.50:1	0.490:1	Yes
Floor space ratio (post subdivision)	Max. 0.50:1	Unit 1 – 0.522:1 Unit 2 – 0.459:1	No

The table indicates that there is one non-compliance with respect to BLEP 2015 in relation to the FSR. Clause 4.4(2) of the BLEP 2015, as shown below, refers to the FSR Map which identifies a maximum FSR of 0.5:1 for the subject site.

The BLEP 2015 sets a maximum FSR under Clause 4.4 which states:

4.4 Floor space ratio

(1) The objectives of this clause are as follows:

- (a) to establish the bulk and maximum density of development consistent with the capacity and character of the locality of a development site,

- (b) to ensure the bulk of non-residential development in or adjoining a residential zone is compatible with the prevailing suburban character and amenity of the residential zone,
- (c) to encourage lot consolidations in commercial centres to facilitate higher quality built form and urban design outcomes.

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

...

Clause 4.6 – Exceptions to development standards

The applicant has provided a written request under the provisions of Clause 4.6 of BLEP 2015 – Exceptions to development standards, to vary the maximum FSR for proposed lot 1 post subdivision. The aims of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better development outcomes. Extracts from the applicant's submission are provided below:

"...the proposed floor space ratio variation between the New Two Lots of the site will not result in any demonstrable detrimental impact to any adjoining land uses e.g. residential or open space, so the impact of the variation appears negligible..."

...For those reasons, it is submitted that the variation proposed to the individual lot floor space ratio control is consistent with the zone objectives and therefore in the public interest. Maintaining and enforcing the development standard in this case would unreasonably prevent the orderly and economic development of the underutilised site and would unnecessarily encumber the various community benefits this development brings such as:

- *a new development which is compatible with the desired future character of the Mactier Street locality;*
- *a new development offering high quality design and improvements to the Mactire [sic] Street streetscape; · a development that highly considered the environmental planning constraints of the site; · the provision of construction jobs; · ongoing housing opportunities through buying and renting opportunities to meet the day to day needs of residents, and*
- *contributing to satisfying the housing crises [sic].*

... It is necessary to anticipate the purpose behind Council's imposition of such a planning control. In our opinion, the purpose behind a development standard of this nature is to ensure that at the front building line setback, amenity, bulk and scale of development is compatible with the existing and likely future character of a locality, and to ensure that a development's intensity does not adversely impact upon streetscape appearance and amenity levels of adjoining properties, particularly privacy and overshadowing impacts.

It is noted that due to the nature of the site constraints of the land and site layout as a corner position therefore the proposed development is consistent with the bulk and scale of approved developments surrounding the site, with no detrimental environmental or streetscape impacts perceived, with the majority of the structure forming part of this assessment located in line with the adjoining dwellings..."

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.***

Clause 4.4(2) prescribes the maximum permissible floor space ratio for development on the subject site.

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:***

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and***
(b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

An extract of the applicant's Clause 4.6 submission has been reproduced above, as have the objectives for the floor space ratio control as contained in Clause 4.4 of the BLEP 2015.

In addressing the proposed variation to the maximum floor space ratio control, consideration must be given primarily to whether the built form is consistent with objective (a) of the control to establish development that conforms to the desired '*capacity and character of the locality*'.

The building controls applicable to this site under the BLEP 2015 and BDCP 2015 provide the framework that regulates the overall built form outcome expected on site. The LEP controls the site by the application of minimum lot size and frontage requirements as well as height restrictions and floor space ratio controls. The DCP goes further and identifies minimum setbacks, private open space, parking, visual privacy and solar access which all factor into controlling the overall built form and achievement of the character expected in a locality.

The relevant objectives of the R2 Low Density Residential zone are to "provide for the housing needs of the community within a low density residential environment"... whilst "To allow for the development of low density housing that has regard to local amenity" and ensuring "landscape as a key characteristic in the low density residential environment". It is considered that the proposal is consistent with the objectives of the R2 zone, in that the proposal provides a low density residential development of a built form that is consistent with what is allowed for both a dwelling house and a dual occupancy development, should the subdivision not have been proposed. The uneven distribution of floor space is a result of the requirement

to facilitate additional setback considerations on a corner allotment, whilst still allowing for a design that provides a usable, functional layout to each dwelling.

The development as proposed complies with the BLEP 2015 in terms of floor space ratio prior to subdivision. The non-compliance post subdivision can be considered for support as the uneven distribution of floor space ratio across the two proposed allotments is not likely to be evident when viewed from the street.

As such, it is considered that there are sufficient environmental planning grounds to justify a contravention to the development standard, given the proposed development results in an inconsequential FSR variation only post subdivision and does not result in any changes to the expected built form outcome likely to occur on the site.

Accordingly, it is considered that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the development remains an appropriate built form outcome for the site, despite the contravention of the development standard, post subdivision.

Given the minor nature of the non-compliance, the development's consistency with all other requirements under BLEP 2015 and BDCP 2015 and on the basis of the applicant's submission, it is considered that compliance with the standard is unnecessary in this instance and that there are sufficient environmental planning grounds to support a variation.

Draft environmental planning instruments [section 79C(1)(a)(ii)]

There are no applicable draft environmental planning instruments.

Development control plans [section 79C(1)(a)(iii)]

The following table provides a summary of the development application against the primary numerical controls contained within Part B1 of BDCP 2015.

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
Storey Limit	2 storeys	Max. 2 storeys	Yes
Fill	Max. 600mm of fill	Any reconstituted ground level of an allotment is not to exceed 600mm above the natural ground level of adjoining allotments.	Yes
Front Setback	Min. 5.5m	Ground floor – Min. 5.5m.	Yes
	Min. 6.5m	First floor – Min. 6.5m	
Secondary Setback	Min. 5m	Ground floor and first floor – Min. 3m	Yes
Side setbacks	Unit 1- 1.68m to ground floor	0.90m (minimum)	Yes
	First floor varies from 1.68m to 4.78m		

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
	Unit 2 - 0.90m ground floor and first floor		
Private open space	Dwelling 1 – 80m ² Dwelling 2 – 81m ²	Min. 80m ² per dwelling	Yes
Solar access (site)	Dwelling 1 – achieved between 11:00am and 2:00pm to front Living/Dining. Dwelling 2 – achieved between 8:00am and 1:00pm to front Living room.	3 hours of sunlight between 8:00am and 4:00pm at the mid-winter solstice to at least one living area of both proposed dwellings.	Yes
Solar access (private open space – site)	Achieved to the private open space of both dwellings.	3 hours of sunlight between 9:00am and 5:00pm at the equinox to 50% of the required private open space for both dwellings.	Yes
Solar access (adjoining properties)	Achieved to a western facing living area No. 23 Mactier Avenue between 1:00pm and 4:00pm.	3 hours of sunlight between 8:00am and 4:00pm at the mid-winter solstice to at least one living area of a dwelling on an adjoining allotment.	Yes
Solar access (private open space – adjoining properties)	Achieved to rear private open space area at No. 23 Mactier Avenue.	3 hours of sunlight between 9:00am and 5:00pm at the equinox to 50% of the required private open space for a dwelling that adjoins the development.	Yes
Solar access (solar collectors)	The existing solar panels at No. 23 Mactier Avenue will be impacted from 8am to approximately 9.30 am and in the afternoon from approximately 3.30pm (mid winter). It is considered that the development given the location of the panels sufficiently avoids the panels.	Development should avoid overshadowing any existing solar hot water system, photovoltaic panel or other solar collector on the allotment and neighbouring properties.	Yes
Visual Privacy (living areas)	No windows are proposed that look directly into living or bedroom windows of neighbouring properties.	Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling the development must offset the windows; provide a minimum sill height of 1.5 metres above floor level; provide fixed obscure glazing; or use another form of screening.	Yes

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
Visual Privacy (private open space)	<p>The first floor windows to both dwellings facing west and south are to bedrooms, hallways and bathrooms and are considered to comply with the control.</p> <p>The kitchen window to unit 1 has been conditioned to be fixed and frosted to ensure visual privacy impacts are mitigated as a result of the location and height of the window proposed.</p> <p>A condition of consent is to be imposed requesting the first floor bedroom windows are amended to have a window sill height of 1.5 metres in response to an objection from a resident.</p> <p>The applicant has agreed to have the conditions of consent imposed to satisfy the above visual privacy concerns.</p>	Where development proposes a window that directly looks into the private open space of an existing dwelling, the window does not require screening where the window is to a bedroom, bathroom, toilet, laundry or storage room; the window has a minimum sill height of 1.5 metres above floor level; the window has obscure glazing to a minimum height of 1.5 metres above floor level; or the window is designed to prevent overlooking of more than 50% of the private open space of a lower-level or adjoining dwelling.	Yes
Roof pitch	Unit 1 - 3 degrees Unit 2 - 20 degrees	Max. roof pitch 35 degrees	Yes
Car parking	Double garages provided for both dwellings.	Min. 2 car parking spaces per dwelling, 1 of which must be covered	Yes
Landscaping	55% A condition of consent will be imposed in accordance with this requirement.	Min. 45% of the area between the primary road frontage and the dual occupancy is to be landscaped 1 x 75L tree between the dual occupancy and the primary road frontage	Yes
Front fences	Maximum height of 1.8m proposed Maximum solid component 0.9m with remaining height to 1.8m to be open louvers.	The maximum fence height for a front fence is 1.8 metres. The external appearance of a front fence along the front boundary of an	Yes

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
		<p>allotment or facing a classified road must ensure:</p> <p>(a) the section of the front fence that comprises solid construction (not including solid piers) must not exceed a fence height of 1 metre above natural ground level; and</p> <p>(b) the remaining height of the front fence must comprise open style construction such as spaced timber pickets or wrought iron that enhance and unify the building design.</p> <p>Despite this clause, the solid construction of a fence behind the front building line of dwelling houses and dual occupancies on corner allotments may achieve a fence height up to 1.8 metres.</p>	

As demonstrated in the table above, an assessment of the Development Application has revealed that the proposal complies with all relevant controls contained within BDCP 2015.

Planning agreements [section 79C(1)(a)(iia)]

There are no planning agreements that apply to this application.

The regulations [section 79C(1)(a)(iv)]

The proposal does not raise any issues with respect to the Regulations.

The likely impacts of the development [section 79C(1)(b)]

The likely impacts of the proposal have been managed through the design of the development which is compliant with Council's planning controls, with the exception of the floor space ratio (post subdivision) as contained within BLEP 2015 which has been addressed previously within this report.

Suitability of the site [section 79C(1)(c)]

The proposed dual occupancy is a permissible form of development on the subject site, and represents a built form that is compatible with the existing and desired future character of the locality. Whilst the site proposes a minor variation to FSR post subdivision, it is considered that the built form proposed is representative of a compliant bulk and scale that can be expected in a Low Density Residential zone and that the site is capable of accommodating the proposed development, as set out previously in this report. Accordingly, the site is considered to be suitable for the proposed development.

Submissions [section 79C(1)(d)]

The application was notified for a period of 14 days from 15 February to 28 February 2017 and re-notified with amended plans from 30 June 2017 to 13 July 2017. Five submissions were received within the first notification period and an additional four were received from the same households within the second notification period. The submissions raised concerns relating to the character of the neighbourhood, traffic impacts, overlooking, overshadowing and bulk and scale. The concerns raised in the submission have been addressed below.

Objection: A concern is raised over the proposed bulk and scale of the dual occupancy, and that it is not considered to be consistent with the surrounding character.

Comment: The proposal has been assessed and it generally complies with the requirements of the BLEP 2015 and BDCP 2015 in terms of bulk and scale expected within an Low Density Residential zone. The development as proposed is consistent with the likely future development that can be achieved on the surrounding sites in terms of bulk and scale.

Objection: A concern is raised that the proposed duplexes have been brought forward to the eastern boundary and it is not consistent with the existing setback on the street.

Comment: The development proposed complies with the minimum setbacks as outlined in the BDCP 2015, in that the proposal achieves a minimum 5.5m setback to the ground floor building wall and a minimum setback of 6.5m to the first floor building wall. As such it is considered that the proposed setback is satisfactory.

Objection: Concerns are raised in regards to visual privacy for the adjoining residents to their back yards and pool areas, resulting from the first floor windows.

Comment: The windows located along the southern elevation on the first floor to unit 1 are to a bedroom and a hallway and along the first floor of unit 2 the windows shown are to a bedroom and bathroom. These windows comply with Councils controls for visual privacy. However, the issue was raised with the applicant who has advised they will accept a condition of consent requesting the bedroom windows have a minimum sill height of 1.5m above the finished floor level to unit 1 and 2 to alleviate any concerns for the adjoining residents.

Objection: Concerns over the front fences, as typically Milperra doesn't have front fences and the occupants as a result might find it difficult to enjoy the friendly neighbourhood.

Comment: The front fences proposed are consistent with the controls within the BDCP 2015 for front fences as demonstrated in this report.

Objection: A concern is raised over the accuracy of the shadow diagrams submitted. It is considered that the property to the south will be significantly impacted by the development.

Comment: The proposal has been assessed in accordance with the BDCP 2015, which requires a minimum three hours solar access be maintained to a living area on the adjoining dwelling during the winter solstice and three hours to 50% of the private open space during the equinox. The proposal as amended achieves compliance with this control in that the living area to the west of 23 Mactier Avenue maintains solar access from 1pm to 4pm mid-winter and three hours to at least 50% of the private open space at the equinox.

Objection: A concern is raised that the proposal will result in a loss of privacy to the adjoining property to the south.

Comment: The proposal has been assessed and it is considered that the proposal complies with the visual privacy controls as contained in the BDCP 2015. This is further enhanced by the imposition of conditions to the first floor bedroom windows to have a minimum sill height of 1.5m from finished floor level and the installation of an additional 300mm lattice screen on the southern boundary in response to the objectors concerns.

Objection: A concern is raised that the structure is not suitable for the site.

Comment: It is considered, based on the assessment outlined elsewhere in this report, that the structure and the development type is suitable for the site.

Objection: A concern was raised that the verandah on the western elevation to the first floor of unit 1 is not necessary as it is only 1 metre wide and will look straight into adjoining properties.

Comment: The first floor balcony to the western elevation on unit 1 was removed, prior to the re-notification of the application.

Objection: A concern is raised over the setback to the southern boundary, as it is only 1m. It would make more sense to move both units forward and change the existing streetscape to ensure privacy to all involved. A further concern was highlighted in regard to the bulk and scale of the proposal and the length of the building wall located on the southern boundary with a setback of only 1 metre, resulting in a built form that is visually dominating.

Comment: The proposal has been assessed and complies generally with all applicable controls. The BDCP 2015 does not specify a minimum rear setback, rather controls built form by the imposition of controls in regard to solar access, private open space, visual privacy and the like. The proposal has been assessed and the built form proposed complies with all the relevant controls in the BDCP 2015 for dual occupancy development. As a result, the proposal development is considered worthy of support.

Objection: *A concern is raised in regards to the front fence for both units as it is stated that it will comprise of be brick and timber panels. We would like a stipulation so that will be completed as it says on the plans.*

Comment: The proposal was reviewed by Council's Engineers who have required that the solid style fence proposed along the western boundary be removed as the fence must allow for the passage of stormwater to drain from the upstream land across the common boundary. As a result the plans have been updated and the fencing proposed along the western boundary is to allow for the movement of water. The revised plans have shown the changes in the fence material from solid construction. A condition of consent has been recommended to satisfy the fencing requirements.

Objection: *A concern is raised over the loss of sight lines due to the width of the proposed building*

Comment: The proposed building provides for a minimum 5.5m setback from the primary frontage and a 5m setback to the secondary frontage. Both setbacks comply with the BDCP 2015 and it is considered that sufficient sight lines are available.

Objection: *A concern is raised over the additional parking and traffic concerns in small narrow streets.*

A concern is raised over the addition of a driveway access for unit 2 onto Mactier Avenue. Now more cars will park closer to the corner due to the additional people in the street and the loss of parking due to the new driveway. This will obscure our vision of oncoming traffic and kids on bicycles when reversing out of driveways

Comment: It is advised that no numerical requirements governing road carriageway widths for dual occupancy developments exist. The proposal cannot change existing road layouts and it is considered that the width of Mactier Avenue is sufficient to accommodate the required egress and access movements to and from the site without compromising the efficiency and safety of the street.

Concerns were also raised regarding the impact of additional cars associated with the development. In accordance with Part B1 and B5 of the BDCP 2015, dual occupancy developments of this nature are required to provide two car parking spaces per dwelling. The proposal provides a double garage to each dwelling, complying with the requirements of the BDCP 2015.

Objection: Loss of privacy resulting from north facing balconies

Comment: The balconies located to the north of the site are orientated towards Mactier Avenue and located off bedrooms. It is not considered that looking into the front setback of the properties on the opposite side of the street results in any significant loss in visual privacy.

Objection: A concern has been raised in respect to the floor space ratio of lot 1 and non-compliance with the maximum FSR control of the Bankstown Local Environmental Plan 2015

Comment: The development has been assessed and, subject to the submission of a Clause 4.6 variation request in accordance with the BLEP 2015 as outlined above, it is considered that the proposal is worthy of support.

Objection: A concern is raised over the changes to the front fence on the western elevation as shown on the revised plans. Concerns are raised over the impacts due to the parking of a truck on the adjoining driveway to the west and disruption of sight lines as a result of the fence proposed. The street is not wide enough to have a truck parked on the street, as there are many cars passing by all day and night. Only option will be to park truck out the front of the proposed development.

We ask that Council be responsible for any accidents or even deaths that occur due to our driveway being closed in and not having any clear view to pedestrians and vehicles

A colorbond (or similar) fence will not be acceptable. The fence line height and length will not be acceptable.

Comment: The proposal was reviewed by Council's Engineers who have required that the solid style fence proposed along the western boundary be removed as the fence must allow for the passage of stormwater to drain from the upstream land across the common boundary. As a result the plans have been updated and the fencing proposed along the western boundary is to allow for the movement of water.

A condition has been placed on the consent which requires that the fence height be lowered from 1.8m solid fence forward of the building on both the western and southern boundary to a height of 1m. This will ensure that adequate sight lines are maintained.

In regard to the parking of a truck on the adjoining site, it is advised that the area and surrounding streets are designed for generally residential traffic and it is not considered that the manoeuvring/parking of a commercial vehicle on a permanent daily basis should be accommodated on a typical residential street.

The public interest [section 79C(1)(e)]

With regard to the relevant planning considerations, it is concluded that the proposed development would not contravene the public interest. The matters raised in the public submissions have been satisfactorily addressed, and it is considered that there will be no unreasonable impacts on the locality.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 79C(i) of the Environmental Planning and Assessment Act 1979, and the relevant planning controls.

The proposed development complies with all applicable planning controls, with the exception of floor space ratio in accordance with the BLEP 2015. It is recommended that the variation is supported given the minor nature of the non-compliance resulting post subdivision.

Whilst the application has attracted a number of submissions against the proposal, it is not considered that the matters raised in the submissions warrant refusal of the application. Therefore, approval of the development application is recommended.

CONDITIONS OF CONSENT

- 1) The proposal shall comply with the conditions of Development Consent. A Construction Certificate shall not be issued until the plans and specifications meet the required technical standards and the conditions of this Development Consent are satisfied.
- 2) Development shall take place in accordance with Development Application No.DA-83/2017, submitted by Sam Sakr, accompanied by Drawing No. Sheet 1 of 2 and sheet 2 of 2 Issue A dated 14-06-2017, prepared by Ultra Design and Engineering, and affixed with Council's approval stamp, except where otherwise altered by the specific amendments listed hereunder and/or except where amended by the conditions contained in this approval.

The development plans shall be amended as follows:

- a) Privacy screening is to be provided on the southern boundary fence behind the front building line to Mactier Avenue. Such privacy screening may be in the form of a 300mm high self-supporting lattice/louvered structure immediately atop the 1.8m boundary fencing, or other suitable methods that achieve the objective of this condition. Such screening is to be determined in consultation with the adjoining property owner, nominated on plans submitted with the construction certificate, and installed prior to the issue of the occupation certificate. All costs associated with compliance with this condition are to be borne by the applicant/ developer.
- b) The bedroom windows on the first floor on the southern elevation to Unit 1 and 2 are to be amended to have a minimum 1.5m sill height when measured from the finished floor level, as shown marked in red on the approved plans. All Construction Certificate documents must be consistent with this requirement.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

Prior to the release of a Construction Certificate the following conditions MUST be satisfied and nominated fees/contributions/bonds paid:

- 3) The Certifying Authority must ensure that any certified plans forming part of the Construction Certificate are not inconsistent with this Development Consent and accompanying plans.
- 4) A detailed landscape plan prepared by a qualified landscape architect or designer is to be approved prior to the issue of a Construction Certificate. The landscape plan is to:
 - a) be prepared in accordance with the relevant DCP;

- b) show all features, built structures including retaining walls, irrigation, mulch and natural features such as significant gardens, landscaping, trees, natural drainage lines and rock outcrops that occur within 3 metres of the site boundary;
 - c) consider any stormwater, hydraulic or overland flow design issues where relevant;
 - d) include the provision for the replacement of all boundary fencing;
 - e) include the provision at least one 75 litre tree between the dual occupancy and the primary road frontage and the secondary road frontage;
 - f) include a minimum of 45% of the area between the dual occupancy and the primary road frontage to be landscaped by way of trees and shrubs;
 - g) give preference to native vegetation endemic to the City of Canterbury Bankstown; and
 - h) demonstrate compliance with the relevant BASIX certificate.
- 5) The landscape plan shall include the provision for the replacement of all boundary fencing. A new 1.8m fence is to be erected along all side and rear boundaries of the subject allotment at full cost to the developer. The colour of the fence is to complement the development and the fence is to be constructed of lapped and capped timber paling, sheet metal or other suitable material unless the type of material is stipulated in any flood study prepared for the site. The selection of materials and colours of the fence is to be determined in consultation with the adjoining property owners. Fencing forward of the building line on both the western and southern boundary shall be no higher than 1m unless otherwise approved by Council. The developer shall construct the fences along the western boundary to allow for the passage of overland flow of stormwater under the fence.
- 6) Approval in accordance with Council's Tree Preservation Order (TPO) is granted to lop or remove only the trees identified to be lopped or removed on the approved plans. Separate approval shall be obtained to prune or remove trees on adjoining properties or other trees located on the site. Failure to comply with Council's TPO may result in a fine of up to \$100,000.
- 7) A soil erosion and sediment control plan must be prepared by a suitably qualified professional, in accordance with the Bankstown Demolition and Construction Guidelines and Council's Development Engineering Standards, and submitted to the certifying authority for approval prior to the issue of a construction certificate.
- 8) The Council Approved building plans, including demolition plans, must be submitted to Sydney Water for assessment. This will determine if the proposed structure(s) would affect any Sydney Water infrastructure or if there are additional requirements. Building plan approvals can be submitted online via Sydney Water Tap in™.

Please refer to www.sydneywater.com.au/tapin

For Sydney Water's Guidelines for building over or next to assets, visit www.sydneywater.com.au 'Plumbing, building & developing' then 'Building Plan Approvals' or call 13000 TAPIN.

Prior to release of a construction certificate Sydney Water must issue either a Building Plan Assessment letter which states that your application is approved, or the appropriate plans must be stamped by a Water Servicing Coordinator.

- 9) A Construction Certificate shall not be issued until written proof that all bonds, fees and/or contributions as required by this consent have been paid to the applicable authority.
- 10) A long service levy payment which is 0.35% of the total cost of the work is to be paid to the Building and Construction Industry Long Service Payments Corporation.
- 11) Pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979, and the Bankstown City Council Section 94A Development Contributions Plan 2009 (Section 94A Plan), a contribution of \$6900 shall be paid to Council.

The amount to be paid is to be adjusted at the time of actual payment, in accordance with the provisions of the Section 94A plan. The contribution is to be paid before the issue of the construction certificate.

Note: The Section 94A Contributions Plans may be inspected at Council's Customer Service Centre, located at Upper Ground Floor, Civic Tower, 66-72 Rickard Road, Bankstown, between the hours of 8.30am-5.00pm Monday to Friday.

- 12) Finished surface levels of all internal works and at the street boundary, including driveways, landscaping and drainage structures, must be as shown on the approved plans. The levels at the street boundary must be consistent with the Street Boundary Alignment Levels issued by Council.
- 13) Stormwater drainage from the development shall be designed so as to comply with Council's Development Engineering Standards and the requirements of the BASIX Certificate. A final detailed stormwater drainage design shall be prepared by a qualified Professional Civil Engineer in accordance with the above requirements and shall generally be in accordance with the concept stormwater plan No. ARC089, dated 8 December 2016, by Ultra Design and Engineering. The final plan shall be certified by the design engineer that it complies with Council's Development Engineering Standards, the BASIX Certificate and the relevant Australian Standards.
- 14) The developer shall apply for a Work Permit and obtain approval from Council, for the following engineering works in front of the site, at the applicant's expense:
 - a) Two medium duty VFC's of maximum width of 5.5 metres at the property boundary.
 - b) Drainage connection to Council's system.
 - c) Removal of all driveway surfaces, reinstatement of laybacks to kerb and gutter and reshaping of the footway, all associated with redundant VFCs.
 - d) Repair of any damage to the public road including the footway occurring during development works.

- e) Reinstatement of the footway reserve and adjustment or relocation of existing public utility services to match the footway design levels as proposed on the approved Work Permit. Adjustment or relocation to any public utility services shall be carried out to the requirements of the public utility authority.

Note: Council is required to prepare a site survey and design in order to determine the necessary information. The developer should make application and payment for the Work Permit at least twenty one (21) days prior to the information being required and prior to the issue of the Construction Certificate. The Work Permit must be approved prior to any works commencing within the Council Road Reserve or on Council's assets.

- 15) Where Council approved cut or fill exceeds 200mm and stable batter of 1 vertical to 3 horizontal maximum grade cannot be achieved, then a masonry or other proprietary material retaining wall, intended and suitable for that purpose, shall be constructed within the development site. Note, filling of the site needs specific approval from Council.

The retaining wall shall be located so that it will not impede or obstruct the natural flow of stormwater. Retaining walls exceeding 600mm in height shall be designed by a qualified professional Civil/Structural Engineer. Plans and details prepared and signed by the Engineer are to be submitted to the Principal Certifying Authority (PCA) prior to the issue of the Construction Certificate.

All works associated with the construction of the wall, including backfilling and drainage, is to be located wholly within the allotment boundaries.

- 16) The development is to be carried out in accordance with the commitments shown on the BASIX Certificate. The BASIX commitments approved with this Development Application are to be reflected in the Construction Certificate plans and specifications. Any proposed changes to the BASIX commitments after the Construction Certificate has been issued will require an updated BASIX Certificate and a new Construction Certificate.
- 17) As any works within, or use of, the footway or public road for construction purposes requires separate Council approval under Section 138 of the Roads Act 1993 and/or Section 68 of the Local Government Act 1993, Council requires that prior to any Construction Certificate for this development being issued, a Works Permit and or a Roadway/Footpath Building Occupation Permit shall be obtained where one or more of the following will occur, within, on or over the public footway or public road:

A PRIVATE CERTIFIER CANNOT ISSUE THESE PERMITS

WORKS REQUIRING A 'WORKS PERMIT'

- a) Dig up, disturb, or clear the surface of a public footway or public road,
- b) Remove or interfere with a structure or tree (or any other vegetation) on a public footway or public road,

- c) Connect a road (whether public or private) to a classified road,
- d) Undertake footway, paving, vehicular crossing (driveway), landscaping or stormwater drainage works within a public footway or public road,
- e) Install utilities in, under or over a public road,
- f) Pump water into a public footway or public road from any land adjoining the public road,
- g) Erect a structure or carry out a work in, on or over a public road
- h) Require a work zone on the public road for the unloading and or loading of vehicles
- i) Pump concrete from within a public road,
- j) Stand a mobile crane within a public road
- k) Store waste and recycling containers, skips, bins and/or building materials on any part of the public road.
- l) The work is greater than \$25,000.
- m) Demolition is proposed.
- n) Subdivision is proposed.
- o) A Swimming pool is proposed.

Assessment of Works Permits (a to e) includes the preparation of footway design levels, vehicular crossing plans, dilapidation reports and issue of a Road Opening Permit.

All proposed works within the public road and footway shall be constructed under the supervision and to the satisfaction of Council. The applicant/developer shall arrange for necessary inspections by Council whilst the work is in progress.

For commercial or multi-unit residential developments within the designated CBD or an urban village area, footway design and construction and street tree supply, installation and tree hole detailing shall be as per the Council master plan for that area. Full width footways are to be supplied and installed at full cost to the developer to specification as supplied by Council. Layout plan of pavement to be submitted to Council for approval prior to the issue of the Works Permit.

All Council fees applicable, minimum restoration charges and inspection fees shall be paid prior to the assessment of the Work Permit in accordance with Council's adopted fees and charges. Note: Additional fees after approval will be charged where the Work Permit requires occupation of the Road or Footpath i.e. Hoardings, Work Zones etc.

In determining a Works Permit, Council can impose conditions and require inspections by Council Officers.

Forms can be obtained from Council's Customer Service counter located on the ground floor of Council's administration building at 66 - 72 Rickard Road, Bankstown or Council's website www.cbcity.nsw.gov.au

Part of any approval will require the person or company carrying out the work to carry public liability insurance to a minimum value of ten million dollars. Proof of the policy is to be provided to Council prior to commencing any work approved by the Work

Permit including the Road Opening Permit and must remain valid for the duration of the works.

The commencement of any works on public land, including the footway or public road, may incur an on the spot fine of not less than \$1100 per day that work continues without a Works Permit and/or a Roadway/Footpath Building Occupation Permit.

All conditions attached to the permit shall be strictly complied with prior to occupation of the development. Works non-conforming to Council's specification (includes quality of workmanship to Council's satisfaction) shall be rectified by the Council at the applicant's expense.

- 18) The sum of the impervious areas associated with the car parking area, driveway and paths must not exceed 55% of the area between the dwellings and the primary frontage.

CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION

- 19) The demolition of all structures currently existing on the property must be undertaken, subject to strict compliance with the following: -
- a) The developer is to notify adjoining residents seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side, immediately at the rear of, and directly opposite the demolition site.
 - b) Written notice is to be given to Canterbury-Bankstown Council for inspection prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours and contact telephone number and licence number of the demolisher. The following building inspections shall be undertaken by Canterbury-Bankstown Council:
 - i. A *precommencement* inspection shall be carried out by Council when all the site works required as part of this consent are installed on the site and prior to demolition commencing.
 - ii. A *final* inspection shall be carried out by Council when the demolition works have been completed to ensure that the site is left in a satisfactory manner, in accordance with the conditions of this consent.

NOTE: Payment of an inspection fee at Council's current rate will be required prior to each inspection. Council requires 24 hours notice to carry out inspections. Arrangements for inspections can be made by phoning **9707 9410**, **9707 9412** or **9707 9635**.

- c) Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher's name, license number, contact phone number and site address.
- d) Prior to demolition, the applicant must erect a 2.4m high temporary fence or hoarding between the work site and any public place. Access to the site shall be restricted to Authorised Persons Only and the site shall be secured against unauthorised entry when the building work is not in progress or the site is otherwise unoccupied. Where demolition is to occur within 3m of a public place a Work Permit application for the construction of a Class A or Class B hoarding shall be submitted to Council for approval.
- e) The demolition plans must be submitted to the appropriate Sydney Water Office to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements. If the development complies with Sydney Water's requirements, the demolition plans will be stamped indicating that no further requirements are necessary.
- f) Demolition is to be carried out in accordance with the appropriate provisions of Australian Standard AS2601-2001.
- g) The hours of demolition work shall be limited to between 7.00am and 6.00pm on weekdays, 7.00am and 1.00pm on Saturdays and no work shall be carried out on Sundays and public holidays, and weekends (Saturdays and Sundays) adjacent to public holidays.
- h) Where materials containing asbestos cement are to be removed, demolition is to be carried out by licensed contractors who have current Workcover Accreditation in asbestos removal.
- i) Hazardous or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the NSW EPA 'Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes 2004'.
- j) Demolition procedures shall maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.
- k) During demolition, the public footway and public road shall be clear at all times and shall not be obstructed by any demolished material or vehicles. The public road and footway shall be swept (NOT hosed) clean of any material, including clay, soil and sand. (NOTE: If required, Council will clean the public road/footway at the applicant's expense). On the spot fines may be levied by Council against the demolisher and or owner for failure to comply with this condition.
- l) All vehicles leaving the site with demolition materials shall have their loads covered and vehicles shall not track soil and other material onto the public

roads and footways and the footway shall be suitably protected against damage when plant and vehicles access the site. All loading of vehicles with demolished materials shall occur on site.

- m) The burning of any demolished material on site is not permitted and offenders will be prosecuted.
 - n) Care shall be taken during demolition to ensure that existing services on the site (ie. sewer, electricity, gas, phone) are not damaged. Any damage caused to existing services shall be repaired by the relevant authority at the applicant's expense.
 - o) Suitable erosion and sediment control measures shall be erected prior to the commencement of demolition works and shall be maintained at all times.
 - p) Prior to the demolition of any building constructed before 1970, a Work Plan shall be prepared and submitted to Council in accordance with Australian Standard AS2601-2001 by a person with suitable expertise and experience. The Work Plan shall outline the identification of any hazardous materials, including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.
- 20) The building / subdivision work in accordance with the development consent must not be commenced until:
- a) a construction certificate for the building / subdivision work has been issued by the council or an accredited certifier, and
 - b) the person having benefit of the development consent has:
 - i. appointed a principal certifying authority for the building / subdivision work, and
 - ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - c) the person having the benefit of the development consent, if not carrying out the building work as an owner-builder, has:
 - i. appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - ii. notified the principal certifying authority of any such appointment, and

- iii. unless the person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - d) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the building / subdivision work.
- 21) Existing trees within the vicinity of the construction works or paths of travel for construction vehicles accessing the development that are to be retained shall be protected with temporary fencing of a style non injurious to tree roots, placed 2m from the trunk base of the existing tree to prevent damage during construction, and retained in accordance with Council's Tree Preservation Order. There is to be no stockpiling of materials within the 2m fenced zone.
- 22) Suitable erosion and sediment control measures shall be erected in accordance with the plans accompanying the Construction Certificate prior to the commencement of construction works and shall be maintained at all times.
- 23) Council warning sign for Soil and Water Management must be displayed on the most prominent point of the site, visible to both the street and site works. The sign must be displayed throughout the construction period.
- 24) Prior to the commencement of work, the applicant must provide a temporary on-site toilet if access to existing toilets on site is not adequate.
- 25) A section 73 compliance certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Make early application for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Building and Developing > Developing your Land > Water Servicing Coordinator or telephone 13 20 92.

- 26) Prior to the commencement of work, a fence must be erected around the area of the works, except where an existing 1.8m high boundary fence is in good condition and is capable of securing the area. Any new fencing shall be temporary (such as cyclone wire) and at least 1.8m high. All fencing is to be maintained for the duration of construction to ensure that the work area is secured.

Where the work is located within 3.6m of a public place then a Type A or Type B hoarding must be constructed appropriate to the works proposed. An application for a Work Permit for such hoarding must be submitted to Council for approval prior to the commencement of work.

- 27) A sign shall be displayed on the site indicating the name of the person responsible for the site and a telephone number of which that person can be contacted during and outside normal working hours or when the site is unattended.
- 28) In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of the Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- 29) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
- a) in the case of work for which a principal certifying is required to be appointed:
 - i. the name and licence number of the principal contractor, and
 - ii. the name of the insurer by which the work is insured under Part 6 of the Act,
 - b) in the case of work to be done by an owner-builder:
 - i. the name of the owner-builder, and
 - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

- 30) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

CONDITIONS TO BE SATISFIED DURING CONSTRUCTION

- 31) The hours of site works shall be limited to between 7.00am and 6.00pm on weekdays and 7.00am and 1.00pm on Saturdays. No work shall be carried out on Sundays and public holidays, and weekends (Saturdays and Sundays) adjacent to public holidays.
- 32) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 33) Prior to the ground floor slab being poured, an identification report by a Registered Surveyor must be submitted to the principal certifying authority verifying that the proposed buildings finished ground floor level and siting to the property boundaries conforms to the approved plans.
- 34) All Civil and Hydraulic engineering works on site must be carried out in accordance with Council's Development Engineering Standards. All Civil and Hydraulic engineering works associated with Council's assets and infrastructure must be carried out in accordance with Council's Work Permit requirements and to Council's satisfaction.
- 35) All excavations and backfilling must be executed safely and in accordance with the relevant Australian Standards.
- 36) If soil conditions require it, retaining walls or other approved methods of preventing movement of the soil must be provided, and adequate provisions must be made for drainage. Separate approval may be required for retaining walls should they be required.
- 37) If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - a) protect and support the adjoining premises from possible damage from the excavation, and
 - b) where necessary, underpin the adjoining premises to prevent any such damage.
- 38) All boundary fencing behind the building line shall be replaced by a 1.8m high lapped and capped timber or sheet metal fence, or as stipulated in a flood study prepared for the site, or as determined in consultation with the adjoining property owners at the developer's expense. Fencing forward of the building line shall be no higher than 1m unless otherwise approved by Council. Fencing forward of the building line on both the western and southern boundary shall be no higher than 1m unless otherwise approved by Council. The developer shall construct the fences along the western boundary to allow for the passage of overland flow of stormwater under the fence.

- 39) The stormwater drainage system shall be constructed in accordance with Council's Development Engineering Standards and the engineering plans and details approved by the Principal Certifying Authority (PCA). Should the developer encounter any existing, live, underground stormwater drainage pipes, which carry flow from upstream properties, the developer must maintain the stormwater flow and re-route the stormwater pipes around the subject building or structures at the developer's expense.
- 40) Prior to the commencement of work, the builder shall prepare a photographic record of the road reserve which clearly shows its condition prior to works occurring on site. For the entirety of demolition, subdivision or construction works, there shall be no stockpiling of building spoil, materials, or storage of equipment on the public road, including the footway and the road reserve shall be maintained in a safe condition at all times. No work shall be carried out on the public road, including the footway, unless a Work Permit authorised by Council has been obtained.

CONDITIONS TO BE SATISFIED PRIOR TO OCCUPATION

- 41) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 42) A final Occupation Certificate shall not be issued until all conditions relating to demolition, construction and site works of this development consent are satisfied and Council has issued a Work Permit Compliance Certificate.
- 43) Landscaping is to be installed in accordance with the approved landscape plan. All works and methods nominated and materials and plants specified on the approved landscape plan are to be completed prior to the issue of an occupation certificate. The landscaping shall be maintained for the life of the development.
- 44) Lighting must be provided to the entries of the dwellings, driveways and parking areas to promote a high level of safety and security at night and during periods of low light. Lighting provided should be hooded, shielded or directed away from neighbouring dwellings to minimise glare and associated nuisances to residents.
- 45) The premises must be readily identified from the street with the allocated house numbers. Numbering of the development without Council's written approval is not permitted. An official "house numbering" letter will be sent to the applicant indicating the proposed house numbers of the new development. Note: The house numbers of the development are subject to change depending of the type on subdivision that may occur at a later stage.
- 46) The Section 73 compliance certificate under the Sydney Water Act 1994 must be submitted to the principal certifying authority before occupation of the development / release of the plan of subdivision.

- 47) A Copy of the Work Permit Compliance Certificate shall be submitted to the PCA Prior to the issue of the Occupation Certificate.
- 48) A registered surveyor shall prepare a Work As Executed Plan, and a suitably qualified Hydraulic Engineer shall provide certification of the constructed on-site stormwater drainage system.

The Work As Executed information shall be shown in red on a copy of the approved stormwater plan and shall include all information specified in Council's Development Engineering Standards. The Work As Executed plan shall be submitted to the Hydraulic Engineer prior to certification of the on-site stormwater drainage system.

A copy of the Work As Executed Plan and Hydraulic Engineer's Certification shall be submitted to Council for information prior to issue of the final occupation certificate.

CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF A SUBDIVISION CERTIFICATE

- 49) Prior to the issue of the Subdivision Certificate, the following items are to be complied with:
- (a) The developer shall create the following easements, where necessary over the relevant lots, on the plan of subdivision under provisions of the Conveyancing Act. A statement shall be placed on the Section 88B Instrument that nominates Canterbury-Bankstown Council as the authority empowered to release, vary or modify the easements created.
- i. Easements to drain water (for inter-allotment drainage).
 - ii. Easement for services (for utilities).
 - iii. Right of carriageway (for internal driveway, vehicle manoeuvring).
 - iv. Easement for overhang (for eaves and gutters).
 - v. A Restriction shall be registered stating that the "development of Lot 28 DP 239714 must not exceed the maximum floor space ratio of 0.5:1 based on the site area of Lot 28 DP 239714. Proposed lot 2 must not exceed a floor space ratio of 0.45:1 and proposed lot 1 must not exceed a floor space ratio of 0.52:1".
- (b) The following information shall be submitted to Council or accredited certifier (where applicable) with an application for a Subdivision Certificate:
- i. Original plan of subdivision prepared and signed by a qualified surveyor, plus five (5) copies;
 - ii. Copy of the relevant development consent, including all Section 96 Modifications if applicable,
 - iii. Evidence that all conditions of consent relevant to the release of the subdivision certificate have been complied with,

- iv. A certificate of compliance (Section 73 Certificate) from Sydney Water if required,
- v. Certification by a registered surveyor that all services such as stormwater, drainage, water, gas, electricity and telephone are contained separately within each lot or within easements created to accommodate such services
- vi. A certificate from a Registered Surveyor which demonstrates that the height and location of all floor slabs and external walls complies with the approved plans. In this regard, the certificate from the Registered Survey is required to identify the finished floor level of the floor slabs and external walls and the offsets to property boundaries.
- vii. A Work As Executed Plan prepared by a registered surveyor, together with certification from a qualified professional civil engineer of the constructed on-site drainage and/ or stormwater detention system, shall be obtained prior to release of the linen plans.

The Work As Executed plans shall be shown on a copy of the approved stormwater drainage plan and shall contain all information specified in Council's Development Engineering Standards.

The Work As Executed information shall be shown in red on a copy of the approved plans. The information shall be submitted to the Engineer prior to certification.

The engineer's certification shall be carried out on Council's standard form "On-Site Stormwater Detention System – Certificate of Compliance", contained in Council's Development Engineering Standards.

A copy of the work as executed information together with the certification shall be submitted to Council for information prior to issue of the linen plan.

- viii. Copy of the Work Permit Compliance Certificate, where required.
 - ix. A copy of the Final Occupation Certificate.
- (c) An application and appropriate fees for the issue of a Subdivision Certificate shall be submitted to Council upon submission of the information referred to in part (b) of this condition.

The subdivision certificate shall not be issued until the requirements of this condition have been complied with.

-END-

Independent Hearing and Assessment Panel - 7 August 2017

ITEM 4	1236-1244 Canterbury Road, Roselands
	Modification application to modify the number of apartments from 62 to 66 and amend the basement and building façade treatment for a mixed use development
FILE	DA-338/2014/A – Roselands Ward
ZONING	B2 Local Centre under Canterbury Local Environmental Plan
DATE OF LODGEMENT	3 November 2016. Additional information received 6 February 2017, 24 March 2017, 7 April 2017, 7 June 2017 and 15 June 2017
APPLICANT	Bechara Investments Pty Ltd
OWNERS	Bechara Investments Pty Ltd
ESTIMATED VALUE	N/A
SITE AREA	2,183.2m²
AUTHOR	Planning

RECOMMENDATION

It is recommended that Development Application DA-338/2014 be modified subject to the attached conditions.

SUMMARY REPORT

In accordance with the Canterbury Bankstown Independent Hearing and Assessment Panel Charter, this matter is reported to Council's Independent Hearing and Assessment Panel (IHAP) for determination given the number of submissions received.

Development Application DA-338/2014/A proposes to modify the number of approved apartments from 62 to 66 and amend the basement and building façade treatment for the mixed use development.

The Development Application has been assessed in accordance with the requirements of Section 79C of the EP&A Act 1979 including an assessment against State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65), State Environmental Planning Instrument (Infrastructure) 2007 (ISEPP), State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Canterbury Local Environmental Plan 2012 (CLEP 2012), Canterbury Development Control Plan 2012 (CDCP 2012) and Canterbury Development Contribution Plan 2013. The proposal generally complies with the relevant legislation except for the following variations:

- Clause 4.3 – Height of Building of CLEP 2012.
- Part 3.1.8(viii) – Building Height Plane of CDCP 2012.

An application to modify development consent does not require the applicant to make a written request to vary the height standard under Clause 4.6 of CLEP 2012, as this provision only applies to the granting of consent, not approval to modify consent. On this basis, the impact of the increased height has been considered, as required, by Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979. The original application approved a 600mm variation to the maximum 18m building height control. The modification seeks an additional 1.73m above the maximum 18m building height control which equates to an additional 1.13m above the approved building height.

The breach in height is primarily a result of the ‘deferred commencement’ conditions imposed on the original consent which required additional headroom heights within the basement which subsequently increased the height of each floor above, and the overall approved building height. The difference in overall bulk of the building is not highly discernable and the variation is primarily isolated to the lift overruns, which are centrally located within the building footprint and the northern elevation of the building (along Canterbury Road). This increase has been achieved without an increase to the total floor area (noting that no floor space ratio applies to the site) or variations to the approved building footprint.

The shadow diagrams submitted demonstrate that the additional shadow cast on adjoining properties by the proposed modification is minimal and complies with the solar access provisions specified within CDCP 2012. On this basis, it is recommended that the variation to the building height development standard is permitted in this instance.

Part 3.1.8(viii) of CDCP 2012 requires development within a business zone, establish a 45 degree height plane, 6m from any rear residential boundary. The original application approved point encroachments to the building height plane. As a result of the increase in building height, sought by the subject modification application, the approved point encroachments are increased. The increased point encroachments result from the raising of each floor to satisfy the deferred commencement conditions. Despite the point encroachments to the building height plane, the rear setbacks remain as approved and the rear elevation (southern elevation) still retains the progressive setbacks of the upper levels to minimise appearance of bulk. In light of the assessment, it is recommended that a variation to this requirement is granted.

RECOMMENDATION

It is recommended that Development Application DA-338/2014 be modified subject to the attached conditions.

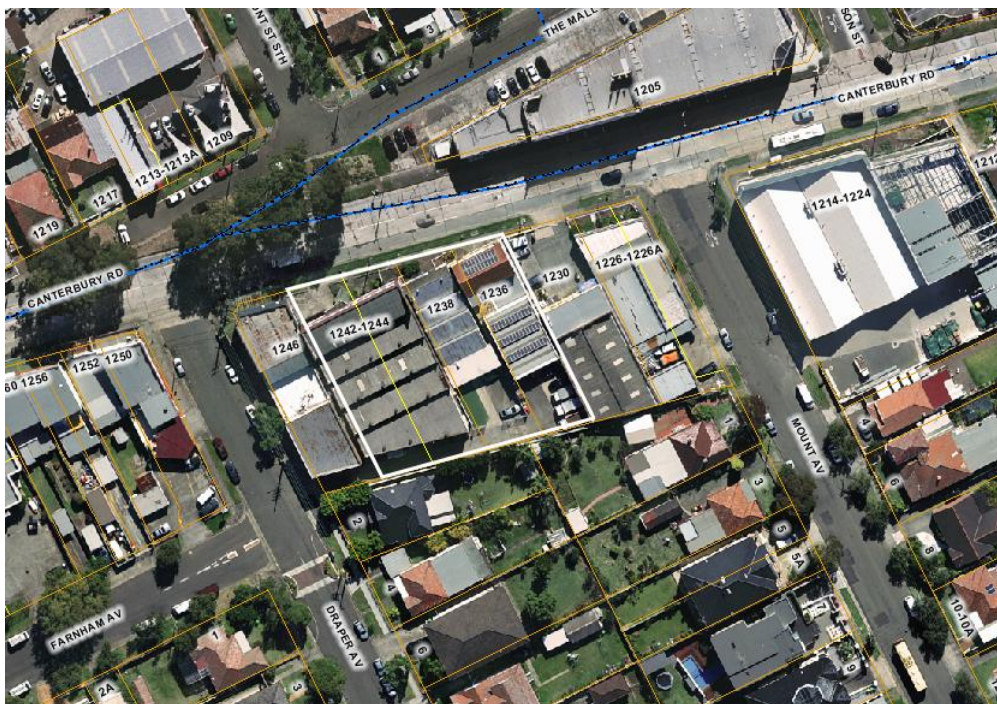
ATTACHMENTS

- A. Section 79C Assessment Report
- B. Conditions of Consent

DA-338/2014/A ASSESSMENT REPORT

SITE AND LOCALITY DESCRIPTION

The site is located on the southern side of Canterbury Road, between Mount Avenue and Draper Avenue, in Roselands. The site comprises four allotments, is regular in shape, with a primary frontage to Canterbury Road of 48.76m and an overall site area of 2183.2m².



Aerial photograph of site

The mixed use housing development approved on the site within DA-338/2014 is currently under construction. Adjoining the site to the north, east and west are commercial premises. To the south of the site is low to medium density residential development. The streetscape of Canterbury Road is characterised by a mix of low to high density residential and commercial development.

BACKGROUND

The former Canterbury City Council, at its meeting on 12 March 2015 resolved to approve the subject Development Application for demolition, construction of a mixed use development containing residential apartments, medical centre and commercial tenancies with basement parking subject to deferred commencement conditions. The development comprised a total building height of 18.6m. A total of 62 residential apartments including ten x one bedroom, 51 x two bedroom and one x three bedroom apartments were approved, with a ground floor medical centre and three separate commercial tenancies (use subject to future development applications). A total of 104 vehicles including two x car wash bays and a loading dock were approved within the two levels of basement car parking.

The deferred commencement conditions included the following:

- A. This consent is not to operate until the Applicant satisfies to Council, within 12 months of the date of this consent that:
1. The basement levels have been amended to provide a minimum 3m setback to Canterbury Road.
 - 1.1 The basement levels must contain off-street car parking spaces for one hundred and four (104) vehicles. This shall comprise:
 - 73 residential spaces
 - 12 residential visitor spaces
 - 2 car wash bays
 - 6 spaces for use by the medical centre
 - 10 commercial spaces
 - 1 loading bay
 - 1.2 The design of the vehicular access and off street parking facilities must be amended to address the relevant provisions of Australian Standards AS/NZS 2890.1-2004 Parking Facilities - Off-Street Car Parking and AS/NZS 2890.6: 2009 Parking Facilities – Off-Street Parking for People with Disabilities. The following specific issues must be addressed in the amended design:
 - a) All two way intersections of circulation driveways, including ramps, with parking aisles must allow the passing of two vehicles. Note that the submitted plans do not comply with this requirement and must be amended. Compliance must be demonstrated for each such intersection with swept path turning templates in accordance with Clause 2.5.2(c) of AS/NZS 2809.1: 2004.
 - b) Section 2.3.2 of AS/NZS 2890.1: 2004 only permits angled parking at 90, 30, 45, or 60 degrees to the parking aisle. The majority of parking modules in the parking facility do not comply with this requirement and must be amended.
 - c) Obstructions such as columns and walls are not permitted within the design envelope of Figure 5.2 of AS/NZS 2890.1: 2004. In this regard parking space 100 on the upper basement does not comply with the Standard and must be amended.
 - d) Headroom of 2200 mm must be provided throughout the access and parking facilities except above disabled parking spaces where a head room of 2500 mm must be provided.
- The design must be certified by a suitably qualified Civil Engineer with NPER registration with the Institution of Engineers Australia.
- B. The following conditions of consent will be included in the development consent issued by Council after the applicant provides information sufficient to satisfy Council in relation to the conditions of the deferred commencement consent

The deferred commencement conditions were satisfied and the consent became operable on 14 August 2015.

The development conditions relevant to this modification application are conditions 1.3, 6, 7 and 8 which state the following:

- 1.3 Payment to Council of:
- | | |
|--------------------------------|--------------|
| Kerb and Gutter Damage Deposit | \$12,924.00 |
| Section 94 Contributions | \$791,264.62 |
| Certificate Registration Fee | \$36.00 |
| Long Service Levy | \$67,550.006 |
6. The development being carried out in accordance with the plans, specifications and details prepared for 1236-1244 Canterbury Road, Roselands, by N. Lycenko (Architect Reg No. 3010), dated July 2014, as received by Council on 17 October 2014 and the materials finish schedule, prepared by N. Lycenko, submitted to Council on 5 August 2014, except where amended by the following specific conditions and the conditions contained in this Notice:
- 6.1. A minimum of 218m² of communal open space must be provided for the development.
 - 6.2. Cantilevered awnings must be between 3.2 and 4.2 metres in height from natural ground level, and must not overhang the footpath by 3 metres.
 - 6.3. Balconies must have minimum dimensions of 8m² for one bedroom dwellings and 12m² for two and three bedroom dwellings.
 - 6.4. Communal rooftop antenna to be provided and connected to all units so that it is fully operational prior to the issue of an Occupation Certificate.
 - 6.5. All balconies with an outlook to the south towards the properties at 2 Draper Street and 1 Mount Avenue, Roselands are to be provided with privacy screening made to cover total height of 1800mm using a combination of fixed and moveable panels and covering a minimum of two thirds of the length of the balconies. The screens shall be louvred and constructed from translucent glass, aluminium or timber.
 - 6.6. A separate waste bin storage area for the commercial premises and medical centre must be provided. This waste bin storage area must be able to accommodate a minimum of 4x 240L rubbish bins and 4x 240L recycling bins.
 - 6.7. In order to increase the privacy of residents, lattice screening of 600mm in height must be provided on top of the existing northern boundary fencing of 2 Draper Avenue.
 - 6.8. In order to improve the amenity of future occupants, the windows of Units 15, 16, 17, 18, 27, 29, 30 and 32 must not be high sill windows.
 - 6.9. Provide a screen wall and access doors at the garbage pick-up area at the ground level.
 - 6.10. Modulate and architecturally detail (including selected external materials and finishes) to ensure a good presentation of the blank wall areas of the eastern and western façades where they are exposed to view from the public domain.
 - 6.11. Modulate the awning and the roof line to reduce the unbroken horizontal lines.

Details of these changes must be submitted to either Council or an Accredited Certifier prior to the issuing of a Construction Certificate.

7. This condition has been levied on the development in accordance with Section 94 of the Environmental Planning and Assessment Act 1979 and in accordance with Canterbury Development Contributions Plan 2013, after identifying the likelihood that this development will require or increase the demand on public amenities, public services and public facilities in the area. The amount of the contribution (as at the date of this consent) has been assessed as \$791,264.62. The amount payable is based on the following components:

Contribution Element	Contribution
Community Facilities	\$71,571.57
Open Space and Recreation	\$699,550.39
Plan Administration	\$20,142.66

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

The contribution is to be paid to Council in full prior to the release of the Construction Certificate, (or for a development not involving building work, the contribution is to be paid to Council in full before the commencement of the activity on the site) in accordance with the requirements of the Contributions Plan.

8. One hundred and four (104) off-street car spaces must be provided. This shall comprise:
- 73 residential spaces
 - 12 residential visitor spaces
 - 2 car wash bays
 - 6 spaces for use by the medical centre
 - 10 commercial spaces
 - 1 loading bay

Nine (9) residential car parking spaces, one (1) medical centre car parking space and one (1) commercial car parking spaces are to be for people with mobility impairment, in accordance with AS 2890.1. The car spaces must be allocated and marked according to this requirement.

The carpark layout must respect the above allocation. Details and plans of the car parking arrangement must be submitted to either Council or an Accredited Certifier prior to the issuing of a Construction Certificate.

During the assessment of the subject application, a number of requests were made to the applicant for additional information, including clarification of the overall building height. As the building is currently under construction, it was requested that works cease until the subject application was determined. However construction of the development continued and accordingly, numerous surveys were required to ensure that the proposed works were consistent with both the architectural plans submitted and the building as constructed.

On 7 June 2017 and 15 June 2017, the final surveys were received from the Applicant to confirm that the as-built heights and setbacks are consistent with the measurements shown on the proposed architectural plans.

PROPOSED DEVELOPMENT

Council has received an application under Section 96 (2) of the Environmental Planning and Assessment Act, 1979 to modify the subject development consent to primarily convert four x two bedroom apartments into eight x one bedroom apartments, resulting in an increase of the total number of apartments proposed from 62 to 66 apartments. The basement parking configuration is also proposed to be modified to accommodate the change in number of apartments. Minor other modifications to the approved façade of the building are also proposed. The proposed modifications are detailed below:

Basement levels

- Relocation one lift, stair access and some plant areas;
- Increase in parking spaces from 104 to 107 spaces.
- Relocation of disabled parking spaces.
- Adjustments to bicycle parking.
- Adjustments to storage area locations.

Ground Floor (First Floor)

- Convert two x two bedroom apartments (two storey) into two x one bedroom apartments.
- Relocation of one lift.
- Modifications to apartments 1 and 34 to relocate bathrooms as well as apartment 36 to relocate the kitchen.
- Modification to apartment 1 to square off the balcony. This does not result in a reduced setback to the rear boundary.
- Minor adjustment to residential entrance to communal open space area and plant area associated with commercial use.

Level 1 (Second Floor)

- Convert two x two bedroom apartments (two storey) into two x one bedroom apartments.
- Relocation of one lift.
- Internal modifications to approved apartment 18 to redesign the laundry.
- Straighten the external bedroom wall of approved apartments 9 and 13.
- Modification to the kitchen layout of each apartment.
- Modification to approved apartments 16, 17 and 15. This does not result in a reduced setback to the rear boundary.

Level 2 (Third Floor)

- Convert two x two bedroom apartments (two storey) into two x one bedroom apartments.
- Relocation of one lift.
- Internal modifications to approved apartment 32 to redesign the laundry.
- Straighten the external bedroom wall of approved apartments 21 and 25.
- Modification to the kitchen layout of each apartment.
- Relocation of ensuite to approved apartment 30.

- Relocation of window to internal living area of approved apartment 32.
- Internal alterations to approved apartments 27 and 29. This does not result in a reduced setback to the rear boundary.

Level 3 (Fourth Floor)

- Convert two x two bedroom apartments (two storey) into two x one bedroom apartments.
- Relocation of one lift.
- Internal modifications to approved apartment 44 to redesign the laundry.
- Straighten the external bedroom wall of approved apartments 35 and 39.
- Modification to the kitchen layout of each apartment.
- Relocation of ensuite to approved apartment 43.
- Modification to design of approved apartments 42, 43 and 41. This does not result in a reduced setback to the rear boundary.

Level 4 (Fifth Floor)

- Relocation of one lift.
- Reconfiguration of approved apartments 52, 53, 54 and 62.
- Replace the splayed external wall fronting Canterbury Road (approved apartments 45-50) to provide walls with straight and stepped alignment.
- Replace the splayed external wall rear facing wall (approved apartments 51-54) to provide walls with a straight and stepped alignment. This does not result in a reduced setback to the rear boundary.
- Replace the angled windows of approved apartments 52 and provide walls with a straight and stepped alignment.
- Internal alterations to approved apartments 51, 53 and 54. This does not result in a reduced setback to the rear boundary.
- Modification to the kitchen layout of each apartment.

Level 5 (Sixth Floor)

- Relocation of one lift.
- Reconfiguration of approved apartments 56, 59, 60, 61 and 62.
- Replace the splayed external wall fronting Canterbury Road (approved apartments 55-58) to provide walls with straight and stepped alignment.
- Replace the splayed external wall rear facing wall (approved apartments 59-62) to provide walls with a straight and stepped alignment.
- Replace the angled windows of approved apartments 60 and provide walls with a straight and stepped alignment.
- Modification to the kitchen layout of each apartment.

Building Elevations

Some elevations of the building have been revised to reflect the abovementioned changes.

The external finishes are proposed to be revised.

Building Height

The deferred commencement conditions required alterations to the layout and finished floor levels of the basement and ground floor levels. This condition has primarily resulted in an increase in height to the floors above and overall building height. On this basis, the applicant seeks consent for an additional maximum 1.13m building height to the approved development, resulting in a maximum building height of 19.730m.

Conditions 1.3, 6, 6.8, 7 and 8 of the original consent require rewording to capture the abovementioned modifications. Should the application be supported, additional conditions will need to be inserted after condition 6.11 to reflect the revised design as discussed within the body of this report.

SECTION 79C ASSESSMENT

Section 96 of the Environmental Planning and Assessment Act, 1979 allows Council to modify development consent if:

- a) ***it is satisfied that the development to which the consent as modified relates is substantially the same development,***

Comment

The development is substantially the same as that approved. The scale and characteristics of the proposed mixed use development remain largely unchanged when compared to the original consent.

The original application approved a 600mm variation to the maximum 18m building height standard pursuant to Canterbury Local Environmental Plan 2012. The proposed modification comprises a maximum building height of 19.730m which results in a total 1.73m variation to the maximum 18m building height. The variation to the building height is primarily a result of the deferred commencement condition imposed on the original consent. The deferred commencement conditions required alterations to the layout and finished floor levels of the basement and ground floor levels. This condition has resulted in an increase to the floors above, and subsequent overall building height.

The resultant overshadowing cast by the additional building height is minimal. The northern elevation of the residential property directly adjoining the site to the south is already in shadow by the approved development and therefore no further impact in the windows along this elevation will be impacted by the proposed modification. More than 50% of the private open spaces adjoining the site to the south will continue to receive a least two hours solar access in mid-winter, which complies with the minimum solar access provisions outlined within CDCP 2012.

The use of the building as proposed remains the same despite the conversion of four x two bedroom maisonette style apartments into eight x one bedroom apartments, resulting in an increase of the total number of apartments proposed from 62 to 66 apartments and readjustment of the associated car parking. This increase has been achieved without an increase in floor area (noting no floor space ratio applies to the site) or variations to the

approved building footprint. The change to the building height is not a result of the internal changes, it is a result of the deferred commencement conditions of the original application.

Part 3.1.8(viii) of Canterbury Development Control Plan 2012 requires development within a business zone, establish a 45 degree height plane, 6m from any residential boundary. The southern boundary of the site adjoins residential zoned land (refer to Figure 1 below) and therefore this provision applies.

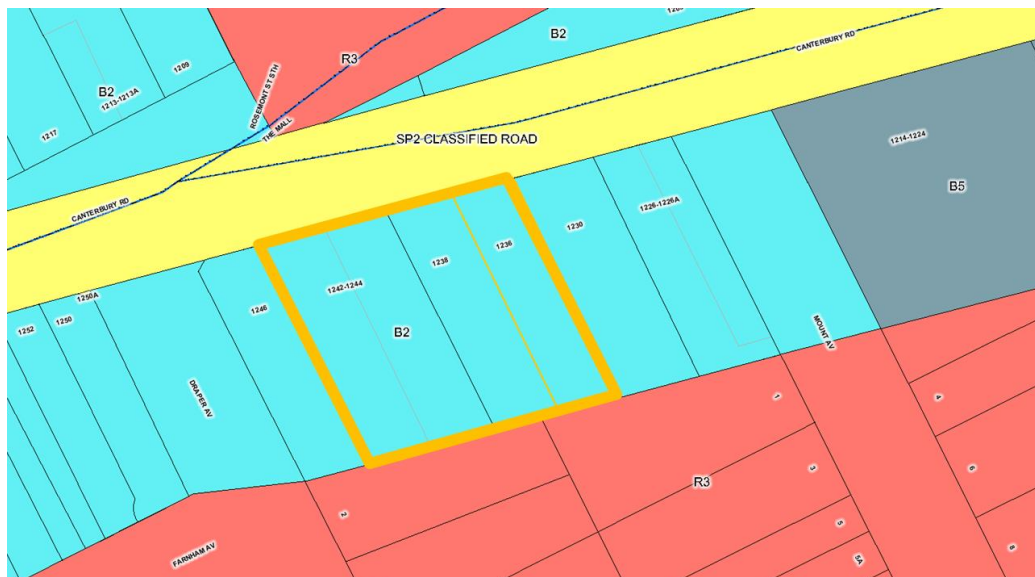


Figure 1: The site's location and its relationship with the residential zone to the south

It is acknowledged that the original application approved point encroachments to the building height plane. As a result of the increase in building height, sought by the subject modification application, the approved point encroachments are increased slightly (refer to Figure 2).

The objectives for the building height plane setback outlined within Section 3.1.8 of CDCP 2012 are:

- O1. Establish the desired spatial proportions of the street and define the street edge.
- O2. The traditional street building wall is maintained where this is the existing or desired future character.
- O3. Minimise building size and bulk by setting back upper storeys.
- O4. Minimise amenity impacts on adjoining properties.
- O5. Increased setbacks along Canterbury Road provide for possible future implementation of street parking and assist in reducing traffic noise impacts.

The approved setback and rear floorplate will not be altered. The increased point encroachments solely result from the proposed raising of each floor required to satisfy the deferred commencement conditions (refer to Figure 2). The main building line has been brought closer to the rear boundary in some instances (i.e proposed apartments 9, 16, 23, 42 and 49), however the setback of the balconies associated with these apartments remain as approved. Therefore, the setback of the development from the rear boundary remains as approved.

Despite the point encroachments to the building height plane, the rear (southern) elevation still retains the progressive setbacks of the upper levels to minimise appearance of bulk. The southern elevation is also under the maximum 18m building height limit. Given no change to the approved setbacks is proposed, the variation to the building height plane will not result in any additional privacy impacts to that previously approved and as outlined above, the additional height will not result in any significant adverse overshadowing impacts. The setbacks to Canterbury Road are generally maintained as approved.

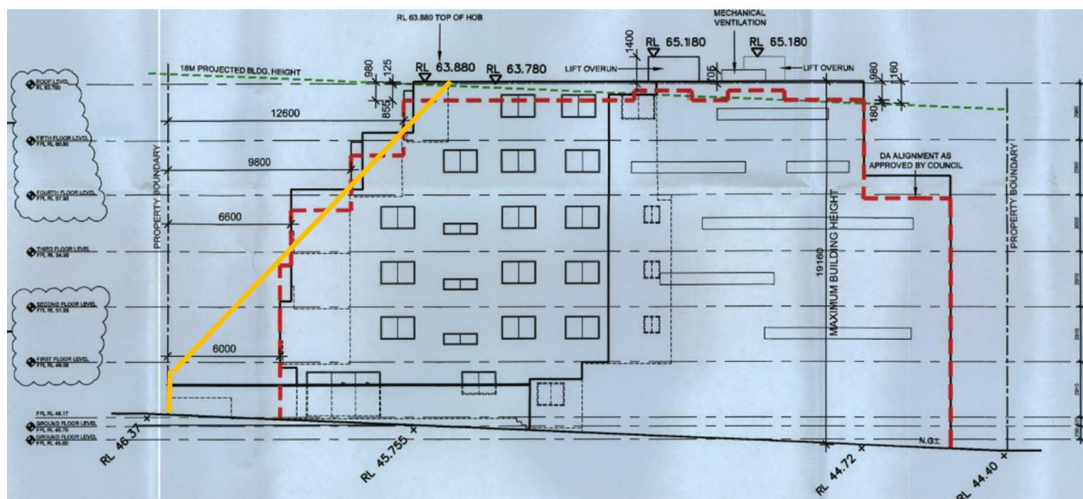


Figure 2: The red hatched line resembles the approved building envelope. The yellow line outlines the building height plane.

The revised layout of apartments results in an additional four apartments being proposed. The basement car park comprises sufficient parking that meets the parking requirements specified within CDCP 2012.

In light of the above, the modification satisfies the bulk and scale objectives contained within CDCP 2012 and the modification application is substantially the same development as that approved within the original application.

- b) *it has consulted with the relevant Minister, public authority or approval body in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval (as it relates to Integrated Development),***

Comment

The application did not require any consultation with a Minister, public authority or other approval body.

- c) *it has notified the Section 96 application and***

Comment

The modification application was publically exhibited in accordance with Part 7 of Canterbury Development Control Plan 2012 (CDCP 2012) until 20 December 2016. One petition and 36 submissions (from 25 households) were received. The submissions were proforma letters.

d) ***has considered any submissions concerning the proposed modification,***

Comment

One petition and 36 submissions were received during the public exhibition of the modification application. The issues raised in the submissions and the relevant responses are summarised below:

- **Residents were never notified of the rezoning of the land to B2 Local Centre.**

Comment

The comprehensive LEP (LEP 2012) was publicly exhibited from 29 March 2012 to 11 May 2012. No individual notification was undertaken for adjoining landowners.

The advertising strategy that was followed for the exhibition can be summarised as follows:

- Land owners where the zone changed or where there was an appreciable change to key development controls (for example maximum building height).
- All land owners in proposed Heritage Conservation area (Ashbury).
- Land owners of properties identified for acquisition (such as open space, car parking).
- Advertisements in the local press.
- Display in the former Canterbury Council Customer Service Centre.
- Posted on Council's web site.

The abovementioned strategy was in accordance with the legal requirements under the EP&A Act 1979. The reasoning behind this was largely that given the LEP was primarily a "translation" from the "old" to the "new", it was only necessary to advise in writing where an individual land owner's circumstances were to appreciably change.

- **The building is out of character and an over development.**

Comment

The development is substantially the same as that approved. The scale and characteristics of the proposed mixed use development remain largely unchanged when compared to the original consent. The additional building height (additional maximum 1.13m) to that approved, will not result in any substantial adverse amenity impacts.

- **The additional apartments will result in adverse traffic impacts.**

Comment

The site comprises sufficient parking to cater for the additional apartments. Furthermore, the application was referred to NSW Roads and Maritime Services

as well as Council's Team Leader – Traffic and Transportation who raised no objection to the modification.

- **The south facing balconies will result in adverse privacy impacts**

Comment

The balconies were approved as per original DA. No alteration to approved setbacks is proposed. Condition 6.5 requires privacy screens to be placed along these elevations. This condition will be retained as part of the modification application.

- **The Level 2 balconies along the southern elevation have not been constructed in accordance with the approved plans.**

Comment

It is acknowledged that the development has been constructed with some amendments to the approved design (i.e finished floor levels of majority of the levels and overall building height), of which this modification application seeks consent for. Subsequently, a building application will be required to be submitted for such works. The main building line has been brought closer to the rear boundary in some instances (i.e proposed apartments 9, 16, 23, 42 and 49), however the setback of the balconies associated with these apartments remains as approved. Therefore, the setback of the development from the rear boundary remains as approved.

- **The driveway for the development was to be 2 ways as previously advertised, but it is only 1 way.**

Comment

The driveway is a dual carriageway, as previously approved.

- **Construction complaints such as works occurring outside the specified hours, sufficient scaffolding and traffic management.**

Comment

Condition 11 of the original consent restricted hours of construction for the site to between 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.

Works occurring outside of these approved hours, and any other breaches to the development consent are usually a matter for the Principal Certifying Authority (PCA). However, in this instance, these issues have been raised with Council's Building Compliance Officer and are under investigation.

- **The massing of the building to the south results in adverse amenity impacts.**

Comment

The proposed modification does not result in any encroachment to the approved rear setbacks. Furthermore, the requirement for appropriate screen along the south facing balconies will not be removed as part of the modification application. On this basis, the same level of privacy will be retained as previously approved. In terms of overshadowing, the slight increase in building height will not result in any substantial adverse overshadowing impacts to the residential properties located to the south as majority of the height variation is along the northern portion of the development. The northern elevation of the residential property directly adjoining the site to the south is already in shadow by the approved development and therefore no further impact in the windows along this elevation will be impacted by the proposed modification. More than 50% of the private open spaces adjoining the site to the south will continue to receive a least two hours solar access in mid-winter which complies with the minimum solar access requirements specified within Canterbury Development Control Plan 2012. On this basis, the proposed modification is considered acceptable.

- **The design comprises a lack of open space and landscaping which will not provide a suitable level of amenity for future occupants.**

Comment

The proposed modification does not alter the existing landscaped area approved as part of the original application. The private open space area for each dwelling meets the minimum requirements specified within the Apartment Design Guide.

Other Considerations

In determining an application for modification of the development consent, Council must also take into consideration relevant matters referred to in Section 79C (1). The following is a discussion of matters under Section 79C as being relevant to the current Section 96 application.

Environmental planning instruments [section 79C(1)(a)(i)]

State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65), and the Apartment Design Guide (ADG)

As stipulated within Clause 31(3) of SEPP 65, any modification application made after 19 June 2015, will be subject to the amendments to SEPP 65 and the Apartment Design Guide.

The application is accompanied by a revised Design Verification Statement prepared by Pens Design Studio confirming that the development, as proposed to be modified, achieves the design quality principles contained in Schedule 1 of SEPP 65. The modified apartments comply with the minimum requirements apartment size, natural ventilation, solar access and private

open space area requirements. The proposed modification is consistent with the provisions of SEPP 65 and the residential Apartment Design Guide (ADG).

The proposed modification is compared to the relevant provisions of the ADG in the table below:

Section	Design Criteria	Proposed	Complies	
Part 3 Siting the Development				
3D Communal and Public Open Space	Communal open space has a minimum area equal to 25% of the site.	The modification does not alter the existing approved communal open space areas.	N/A	
	Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).	The communal open space is centrally location within the site, to the south. The existing approved building overshadows the communal open space. The proposed modification does not alter the existing level of solar access provided to the communal open space area.	N/A	
3E Deep Soil Zones	Deep soil zones are to meet the following minimum dimensions:		The modification does not alter the existing approved deep soil area. N/A	
	Site Area	Minimum Dimensions		Deep Soil Zone (% of site area)
	Less than 650m ²	-		7%
	650m ² - 1,500m ²	3m		
	Greater than 1,500m ²	6m		
Greater than 1,500m ² with significant existing tree cover	6m			

Section	Design Criteria	Proposed	Complies												
3F Visual Privacy	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building Height</th> <th>Habitable Rooms & Balconies</th> <th>Non-habitable Rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p>Additional 3m required when site adjoins another site of which the zoning permits lower density residential.</p>	Building Height	Habitable Rooms & Balconies	Non-habitable Rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>The main building line along the southern elevation has been brought closer to the rear boundary in some instances (i.e proposed apartments 9, 16, 23, 42 and 49), however the setback of the balconies associated with these apartments remain as approved. Therefore, the setback of the development from the rear boundary remains as approved. This has been confirmed within the survey plan submitted.</p> <p>The distances between habitable rooms within the site, remain as per previously approved. However given the removal of the angled windows on Levels 4 and 5 (approved apartments 52 and 60), the amended design does not achieve the minimum building separation between habitable windows within the site on these levels. A condition of consent will be imposed to ensure the kitchen windows along the western elevation of proposed apartments 61 and 65 are high sill to ensure an appropriate level of visual privacy is maintained.</p>	Yes – via condition of consent
	Building Height	Habitable Rooms & Balconies	Non-habitable Rooms												
Up to 12m (4 storeys)	6m	3m													
Up to 25m (5-8 storeys)	9m	4.5m													
Over 25m (9+ storeys)	12m	6m													
3J Bicycle and Car Parking	<p>For development within 800 metres of a railway station the minimum car parking requirement for residents and visitors is the lesser of that set out within the Guide to Traffic Generating Developments or Council requirements as set out in the table below.</p> <p>The site is not located within 800m of a railway station and therefore the parking controls outlined within our CDCP 2012.</p> <p>The car parking needs for a development must be provided off street.</p>	<p>Refer to car parking provisions within CDCP 2012.</p> <p>Car parking spaces are provided in the basement car parking area.</p>	<p>N/A</p> <p>Yes</p>												

Section	Design Criteria	Proposed	Complies	
Part 4 Designing the Building				
4A Solar and Daylight Access	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.	The modified design only comprises internal alterations to the south facing apartments. Alterations to the north facing apartments comprise revising two x two bedroom apartments (two storey) into two x one bedroom apartments. On this basis, and given the orientation of these apartments, no revision to the compliance assessed under the original application is proposed.	N/A	
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	As above.	N/A	
4B Natural Ventilation	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.	47 apartments (71.2% of apartments) will be naturally cross-ventilated.	Yes	
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Apartments included within the calculation comprise a depth of less than 18m.	Yes	
4C Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	All floor to ceiling heights remain as per approved.	As approved.	
	Minimum Ceiling Height for Apartment and Mixed Use Buildings			
	Habitable rooms			2.7m
	Non-habitable			2.4m
	For 2 storey apartments			2.7m main living area floor 2.4 for second floor, where its area does not exceed 50% of the apartment area
Attic Spaces	1.8m at edge of room with a 30 degree minimum ceiling slope			
These minimums do not preclude higher ceilings if desired.				

Section	Design Criteria	Proposed	Complies										
4D Apartment Size and Layout	<p>Apartment are required to have the following minimum internal areas:</p> <table border="1"> <thead> <tr> <th>Apartment Type</th> <th>Minimum Internal Area</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35m²</td> </tr> <tr> <td>1 bedroom</td> <td>50m²</td> </tr> <tr> <td>2 bedroom</td> <td>70m²</td> </tr> <tr> <td>3 bedroom</td> <td>90m²</td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p>	Apartment Type	Minimum Internal Area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Each modified apartment complies with the minimum internal area required.	Yes
	Apartment Type	Minimum Internal Area											
	Studio	35m ²											
	1 bedroom	50m ²											
	2 bedroom	70m ²											
	3 bedroom	90m ²											
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	All habitable rooms have windows of acceptable size to facilitate acceptable solar access and natural ventilation.	Yes										
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	The habitable room depths do not exceed the maximum depths permitted.	Yes										
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	The open plan layout of each modified apartment is setback no more than 8m from a window.	Yes										
Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	All master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	Yes											
Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	All bedrooms have a minimum dimension of 3m (excluding wardrobe space).	Yes											
<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments 	The living rooms of the amended apartments (specifically apartments 2, 35, 9, 42, 16, 49, 23, 56 and 61) comply with the minimum width requirements.	Yes											
The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	The width of the modified apartments are at least 4m.	Yes											

Section	Design Criteria	Proposed	Complies															
4E Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling type</th> <th>Minimum Area</th> <th>Minimum Depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m²</td> <td>2.4m</td> </tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Dwelling type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Each balcony of the modified apartments complies with the minimum area and depth requirement.	Yes
Dwelling type	Minimum Area	Minimum Depth																
Studio apartments	4m ²	-																
1 bedroom apartments	8m ²	2m																
2 bedroom apartments	10m ²	2m																
3+ bedroom apartments	12m ²	2.4m																
4F Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	A maximum of seven apartments are located off a single circulation core.	Yes															
4G Storage	<p>a) In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table border="1"> <thead> <tr> <th>Dwelling type</th> <th>Storage size volume</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m³</td> </tr> <tr> <td>1 bedroom apartments</td> <td>6m³</td> </tr> <tr> <td>2 bedroom apartments</td> <td>8m³</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>10m³</td> </tr> </tbody> </table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling type	Storage size volume	Studio apartments	4m ³	1 bedroom apartments	6m ³	2 bedroom apartments	8m ³	3+ bedroom apartments	10m ³	All modified apartments comply with the minimum requirements. A condition of consent can be imposed to ensure at least 50% of the required storage is to be located within the apartment.	Yes – via condition of consent					
Dwelling type	Storage size volume																	
Studio apartments	4m ³																	
1 bedroom apartments	6m ³																	
2 bedroom apartments	8m ³																	
3+ bedroom apartments	10m ³																	

State Environmental Planning Policy (Infrastructure) 2007

An assessment of the application in accordance with Clause 102 of the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) was undertaken as part of the original development application. The recommendations of the acoustic report submitted as part of the original application were conditioned (condition 42). No modification to Condition 42 is proposed and the requirements therefore still comply.

This modification application was also referred to RMS for comment. The RMS raised no objection to the proposed modification.

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

A revised BASIX Certificate No. 552427M_02 dated 13 February 2017 was submitted as part of the modification application. The development continues to achieve a pass for water,

thermal comfort and energy scores and therefore complies with the requirements of State Environmental Planning Policy – (Building Sustainability Index: BASIX) 2004.

Canterbury Local Environmental Plan 2012 (CLEP 2012)

This site is zoned B2 Local Centre under CLEP 2012. The controls applicable to this application are:

Standard	Requirement	Proposal	Complies
Zoning	B2 Local Centre	The development was approved as a mixed use development, which was permissible at the time in accordance with Clause 6.7 of CLEP 2012. The proposed modification does not alter the approved use of the premise.	Yes
FSR	N/A	N/A	N/A
Building Height	18m	19.73m (RL of lift overrun now 65.18).	No – refer to comment [1] below

The proposal complies with the standards found in CLEP 2012 with the exception of maximum 18m building height.

[1] Building Height

An application to modify development consent does not require the applicant to make a written request to vary the height standard under Clause 4.6 of the CLEP 2012, as this provision only applies to the granting of consent, not approval to modify consent. It is therefore unnecessary to consider matters listed by Clause 4.6. However, the impact of the increased height must be considered, as required by S79C(1)(b) of the Environmental Planning & Assessment Act 1979.

The overall impacts of increasing building height are satisfactory as discussed below.

The original application approved a 600mm variation to the maximum 18m building height control. The proposed further variation (additional 1.73m above maximum 18m or additional 1.13m above approved building height) is primarily a result of the 'deferred commencement' requirements which required changes to the finished floor levels of the basement and ground floor. In order to meet the deferred commencement conditions, the head room on the ground floor finished level was raised, resulting in a variation to the levels located above and therefore the overall building height. The overall building height of 19.73m seeks a 9.6% variation from the maximum 18m building height control.

As indicated within the elevation plans below, the difference in overall bulk of the building is not highly discernible. The proposed variation is primarily isolated to the lift overruns, which are centrally located within the building footprint and therefore will not be readily visible from the street. It is acknowledged that some of the building encroaches the 18m building height plane, however this portion is primarily isolated to the northern elevation (Canterbury

Road) and part of the eastern elevation (refer to Figure 3 below). The building does not encroach the building height plane along the southern elevation, which is adjoined by residential properties.



Figure 3: Eastern elevation indicating the building height breach is predominantly isolated to the northern portion of the development and the lift overrun. The green line indicates the 18m building height limit. The red line indicates the originally approved development.

There is not considered to be high discernible impact on building bulk and architecture's contribution to the public domain. Shadow diagrams submitted with the application demonstrate the additional shading of adjoining land is minimal and acceptable. The impact to habitable windows of properties to the south is not dissimilar to that created by the original design. More than 50% of the private open space of the dwellings to the south of the site will receive solar access between 9am-11am in mid-winter which is consistent with the solar access provisions within Part 6.2.6 of CDCP 2012.

The variation of Council's height standard stems from the original design not properly considering the impact of the deferred commencement condition requiring amendments to the layout and finished floor levels of the basement and ground floor levels. This design oversight and the consequent modification to address it, does not result in an unacceptable built form and is consistent with the objectives of the height standard, which seeks to establish and maintain the desirable attributes and character of an area, minimise overshadowing and ensure there is a desired level of solar access and public open space, support building height that contributes positively to the streetscape and visual amenity of an area and to reinforce impact road frontages in specific localities.

The proposed additional height has acceptable environmental impacts and its approval would be consistent with decisions made for other development in similar circumstances. The modifications sought to the consent that further vary our maximum building height standard are therefore deemed to be acceptable in this instance.

Draft environmental planning instruments [section 79C(1)(a)(ii)]

There are no applicable draft environmental planning instruments.

Development control plans [section 79C(1)(a)(iii)]**Canterbury Development Control Plan 2012**

The modification application has been compared to the relevant requirements of CDCP 2012 as follows:

Standard	Requirement	Proposed	Complies
Building Height	Floor to ceiling height in commercial min. 3.3m	The proposed floor to ceiling heights comply with the provisions of the ADG, which overrides our DCP ceiling height controls.	Yes
	Floor to ceiling height in residential min. 2.7m		
	Floor to ceiling height in car parking min. 2.8m		
Building Depth	Commercial component 10-24 metres	No alteration to the approved commercial tenancy depth is proposed.	N/A
	In general, an apartment building depth of 10-18 metre is appropriate	All modified apartments have a depth of <18m	Yes
Building Setbacks	1-4 storeys, min 3m from street	A minimum setback for level 1-3 of 2.65m was approved as part of the original DA. The proposed modification does not seek approval for any additional variation.	N/A
	> 4 storeys – 8m from street	The setback at Levels 4 and 5 do not further encroach the approved setback.	N/A
	Establish 45 degree height plane from projected 6m from residential zone boundary and two storey height limit applies	As a result of the revised finished floor levels required by the deferred commencement condition, the modified design results in a slight additional encroachment to the building height plane. It is noted that the setbacks to the rear boundary remain as approved.	No – refer to comment [1] below
Building Separation	<p>Clause 6A of SEPP 65 states that development control plans that have provisions that are inconsistent with the ADG in relation to visual privacy have no effect in the assessment of residential apartment development applications.</p> <p>Clause 3.1.9 of the CDCP is therefore not relevant to the assessment of this application and visual privacy matters have been assessed only in relation to part 3F of the ADG (as detailed in the table above).</p>		

Standard	Requirement	Proposed	Complies
Car and Bicycle Parking (Rate for other town centres in B2 zone)	<u>Residential</u> 1 space per 1 bedroom dwelling (17 spaces) 1.2 spaces per 2 bedroom dwelling (57.6 spaces) (9.6 spaces to remain as common property) 2 spaces per three bedroom dwelling (2 spaces) 1 visitor car parking space is to be provided per 5 dwellings (13.2 spaces) 1 car wash bay Total: 89.8 spaces (including car wash bay)	91 spaces (including 1 car wash bay) broken down as follows: - 67 x residential car parking spaces. - 10 x common spaces. - 13 x visitor spaces. - 1 x car wash bay.	Yes
	<u>Bicycle Parking Residential</u> 1 space per 5 dwellings (residents) – 13.2 spaces required 1 space per 10 dwellings (visitor) – 6.6 spaces required Total: 20 spaces	24 bicycle spaces retained within basement	Yes
	<u>Medical Centre</u> 2 spaces per health consulting room (6 required) 1 bicycle space per 2 employees	6 vehicle spaces 24 bicycle spaces retained within basement	Yes
	<u>Commercial</u> 1 space per 40m ² (8.5 vehicle spaces required) 1 courier space 1 bicycle space per 200m ² or part thereof for staff (2 spaces required)	9 spaces provided 1 loading dock space provided 24 spaces provided within basement	Yes
Design Controls	Clearly identifiable entries, Provide main common entry.	No Change	N/A
	Habitable room window to face communal areas	Habitable windows facing perimeter of the development	Yes
	No obstruction to views from street to development and vice versa	Natural surveillance provided for surrounding streets	Yes
Cantilevered Awning	Height of between 3.2m and 4.2m from natural ground/footpath	No Change	N/A
	Width of 3m		
Articulation	Buildings should generally have a base and upper elements	Building has base and upper levels	Yes
	The design of the façade, including the quality and durability of its materials, should be emphasised.	The façade is emphasised through strong vertical elements with particular emphasis on depth. Materials of a high quality and are durable.	Yes

Standard	Requirement	Proposed	Complies
	The 'façade' should have a strong sense of verticality, emphasised on the ground floor by modulation at intervals of 6-8 metres with some variation. Modulation above the ground floor may take the form of party walls, small bays, as well as variations in materials and colours.	Vertical emphasis is provided with appropriate modulation through the use of varying materials and external finishes	Yes
	No blank walls are to face the public realm	No blank walls face Canterbury Road	Yes
	Balconies should be used in moderation and be integrated into the overall composition of the façade.	Balconies are integrated into the overall design of the façade. There is adequate variety in the balconies configuration between the lower and upper levels of the development.	Yes
	The majority of windows shall be vertically rectangular	Majority of windows are to be vertically rectangular	Yes
Roof Design	Relate roof design to the desired built form and or context	No change.	N/A
	Design roofs to respond to the orientation of the site, for example, by using eaves and skillion roofs to respond to solar access.		
Service and Utility Areas	Integrated into the design of development and are not visually obtrusive	Service and utility areas integrated into the design adequately	Yes
	Unscreened appliances not to be visible from the street, communal area of driveway on the site. Air con units behind balustrades, screened recesses for water heaters, meters in service cabinets.	Appliances not visible from public areas	Yes
Performance Controls			
Visual Privacy	Locate and orientate new developments to maximise visual privacy between buildings	Condition 6.7 of the original consent requires a lattice screening of 600mm to be provided on the existing northern boundary of 2 Draper Ave to maintain an appropriate level of privacy. This condition will be revised to reflect the revised apartment numbers.	Yes – via condition of consent

Standard	Requirement	Proposed	Complies
Balconies	<p>Clause 6A of SEPP 65 states that development control plans that have provisions that are inconsistent with the ADG in relation to open space and balconies have no effect in the assessment of residential apartment development applications.</p> <p>Clauses 3.3.3 of the CDCP are therefore not relevant to the assessment of this application and open space and balcony matters have been assessed only in relation to part 4E of the ADG (as detailed in the table above).</p>		
Storage	<p>Storage:</p> <p>6m³ per one bedroom dwelling</p> <p>8m³ per two bedroom dwelling</p> <p>10m³ per three bedroom dwelling</p>	The proposed storage areas comply with the provisions of the ADG, which overrides our DCP controls in this instance.	Yes – via condition of consent.
Internal Dwelling Space and Design	<p>Clause 6A of SEPP 65 states that development control plans that have provisions that are inconsistent with the ADG in relation to apartment size and layouts have no effect in the assessment of residential apartment development applications.</p> <p>Clause 3.3.4 of the CDCP is therefore not relevant to the assessment of this application and matters have been assessed only in relation to part 4D of the ADG (as detailed in the table above).</p>		
Housing Choice	A variety of dwelling types to accommodate diverse households and meet diverse housing needs.	The proposal comprises a variety of one, two and three bedroom apartments. The proposed modification comprises a better mix of one and two bedroom apartments.	Yes
	Provide at least 10% of dwellings in any new multiple unit development as accessible or adaptable to suit residents with special needs.	7 of the proposed 66 apartments (10.6% of total apartments) will continue to be accessible/adaptable.	Yes
Crime Prevention			
Site and Building Layout	Address the street	The building and dwellings are orientated towards Canterbury Road	Yes
	Habitable rooms with windows at front of dwellings	Habitable rooms with windows at front of dwellings. Some dwellings have incorporated high sill windows to increase privacy for future residents.	Yes
	Avoid blind corners in pathways, stairwells, hallways and car parks.	The building layout avoids blind corners	Yes
Access Control	Access to the individual units be clearly marked and apparent to visitors	The entry is to be clearly numbered with the dwellings accessible through that entry	Yes
	Install intercom, code or card locks or similar to main entries to buildings, including car parks.	Intercoms and controlled access measures to be installed at building entry point, including basement car park.	Yes
	That concealment points be eliminated	The proposal eliminates concealment points by controlling access to the site	Yes

Standard	Requirement	Proposed	Complies
Ownership	Dwellings and communal areas to provide sense of ownership	Sense of ownership achieved through the use of design features, building materials and site layout.	Yes
Insulation and thermal mass	Use insulation in the roof, ceiling, walls and floors to deflect heat and prevent the building from heating up in summer, and to contain heat and prevent the building from cooling down in winter, as follows: <ul style="list-style-type: none"> - Roof: minimum 2.0 R-value - Wall: minimum 1.0 R-value - Floor: minimum 1.0 R-value 	This has been addressed in the BASIX Certificate	Yes
Daylight and sun access	<p>Clause 6A of SEPP 65 states that development control plans that have provisions that are inconsistent with the ADG in relation to solar and daylight access, have no effect in the assessment of residential apartment development applications.</p> <p>Clause 6.2.6 of the CDCP is therefore not relevant to the assessment of this application and matters have been assessed only in relation to part 4A of the ADG (as detailed in the table above).</p>		
	Existing residential dwellings adjoining the site: At least 2 hours sunlight between 9am and 3pm on 21 June shall be retained for existing indoor living areas and at least 50% of the principal portion of existing private open space. If a neighbour currently receives less than 2 hours sunlight then siting and form of proposed buildings shall be adjusted to maintain existing sunlight	The impact to habitable windows of properties to the south is not dissimilar to that created by the original design. More than 50% of the private open space of the dwellings to the south of the site will receive solar access between 9am-11am in mid-winter.	Yes
Ventilation	<p>Clause 6A of SEPP 65 states that development control plans that have provisions that are inconsistent with the ADG in relation to natural ventilation, have no effect in the assessment of residential apartment development applications.</p> <p>Clause 6.2.7 of the CDCP is therefore not relevant to the assessment of this application and matters have been assessed only in relation to part 4B of the ADG (as detailed in the table above).</p>		
6.3.1- 6.3.5 Crime Prevention	Site and Building Layout: Address the street, or both streets and corners	The building and dwellings are orientated towards Canterbury Road	Yes
	Site and Building Layout: Position habitable rooms with windows adjacent to the main communal area.	No Change	N/A

Standard	Requirement	Proposed	Complies
	Site and Building Layout: Avoid blind corners in pathways, stairwells, hallways and car parks.	The building layout avoids blind corners.	Yes
	Access Control: Access to the individual units be clearly marked and apparent to visitors.	No Change	N/A
	Access Control: Install intercom, code or card locks or similar to main entries to buildings, including are parks.	Intercoms and controlled access measures (e.g roller doors) to be installed at the residential building entry point, main entry point to basement car park and entry point to residential component of basement car park. This required is enforced by way of condition as part of original DA.	Yes
	Access Control: Concealment points be eliminated.	The proposal eliminates concealment points by controlling access to the site.	Yes
	Mixed Land Uses: Located shops and business on lower floors and residences on upper floors.	The design comprises ground floor commercial/retail premises with residences located above.	Yes
	Ownership: Dwellings and communal areas to provide sense of ownership.	Sense of ownership is achieved through the use of design features, building materials and site layout.	Yes

[1] Building Height Plane

As discussed earlier within this report, the original application approved point encroachments to the building height plane. As a result of the increase in building height, sought by the subject modification application, the approved point encroachments are increased slightly. For the reasons outlined above, the proposed variation is supported in this instance.

Canterbury Development Contributions Plan 2013

Given the proposed development modifies the number of apartments approved on the site, additional contributions will be payable. The modification results in a modified configuration of apartments (17 x one bedroom apartments, 48 x two bedroom apartments and 1 x three bedroom apartments). It is acknowledged that the Section 94 payment required for the original DA has been paid. A revised sum has been calculated based on the revised apartment configuration (refer to table below). The revised sum equates to an additional payment of \$21,958.05 to be made. Conditions 1.3 and 7 will be revised to reflect the amended contributions payable.

Contribution Fees Calculations	7 x 1 bedroom	Credit 3 x 2 bedroom		
Community Facilities	\$5,719.51	\$3,733.83		\$1,985.68
Open Space and Recreation	\$55,911.49	\$36,494.25		\$19,417.24
Plan Administration	\$1,606.27	\$1,051.14		\$555.13
	\$63,237.27	\$41,279.22	Additional fee	\$21,958.05

Internal Referrals

The application was referred to Council's Landscape Architect, Building Surveyor, Development Engineer, Waste Contracts Coordinator and Team Leader – Traffic and Transportation. Council's Landscape Architect, Building Surveyor, Development Engineer, and Team Leader – Traffic and Transportation raised no objection to the modification application. Council's Waste Contracts Coordinator requested the following conditions be imposed:

- The waste bin storage areas are to be designed and constructed in accordance with clause 6.9.4.1 and 6.9.4.2 of the CDCP.
- The access doors to the waste bin storage rooms must be at least 1.2m in width.
- Unobstructed and unrestricted access must be provided to the waste bin presentation area located at the southern corner of the property on collection days from 5.00am. The bins must not be presented on the road.
- The owner of the development must indemnify Council's waste collection contractor against damage that may result from their trucks entry onto the property to collect waste bins. Council's standard indemnity form shall be completed and returned to Council prior to the site being occupied.

These conditions will be inserted after Condition 6.11 within the modified consent.

Planning agreements [section 79C(1)(a)(iia)]

There are no planning agreements applicable to the proposed development.

The regulations [section 79C(1)(a)(iv)]

The proposed development is not inconsistent with the relevant provisions of the Environmental Planning and Assessment Regulation, 2000.

The likely impacts of the development [section 79C(1)(b)]

It was noted during the assessment that majority of the works had been completed. On this basis, the applicant was requested to provide a survey of the proposed works to assist with Council's detailed and thorough assessment of the proposal and any likely impacts resulting from the amendments as well as ensure the plans reflected what has been built on the site.

The likely impacts of the proposed development have been considered in the body of the report above. The proposal will not result in any significant environmental, social, amenity or economic adverse impacts on the locality.

Suitability of the site [section 79C(1)(c)]

The modified proposal being substantially the same as that approved, the site remains suitable for the development.

Submissions made in accordance with the Environmental Planning and Assessment Act 1979 or the regulations [section 79C (1)(d)]

The application was publically notified in accordance with Part 7 of CDCP 2012. A discussion of the matters raised within the submissions received has been undertaken earlier within this report.

The public interest [section 79C(1)(e)]

Based on the foregoing assessment and subject to recommended condition the modified proposal is in the public interest.

CONCLUSION

The proposed modification is substantially the same development that was originally considered and approved by the former Canterbury City 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. Having regard to the proposed increase in height, it does not result in any significant bulk nor any significant adverse environmental impacts on adjoining development. Approval of the application under Section 96 is recommended.

CONDITIONS OF CONSENT

That Development Consent DA-338/2014 be **MODIFIED** by amending conditions 1.3, 6, 6.8, 7 and 8 as well as inserting seven additional conditions after 6.11 as follows:

1.3 Payment to Council of:

Kerb and Gutter Damage Deposit	\$12,924.00
Section 94 Contributions	\$21,958.05
Certificate Registration Fee	\$36.00
Long Service Levy	\$67,550.00

6. The development being carried out in accordance with the plans, specifications and details outlined within the table below except where amended by the following specific conditions and the conditions contained in this Notice:

Drawing Name	Drawing Number and Revision	Prepared by	Dated
Basement Level – 1&2 Plan	Drawing No. 15001 Sec 96 01, Rev C	CAD Plans Design Solutions	30 January 2017
Ground Floor Plan, Level 1 Floor Plan	Drawing No. 15001 Sec 96 02, Rev E	CAD Plans Design Solutions	14 June 2017
Level 2 Floor Plan, Level 3 Floor Plan	Drawing No. 15001 Sec 96 03, Rev E	CAD Plans Design Solutions	14 June 2017
Level 4 Floor Plan, Level 5 Floor Plan	Drawing No. 15001 Sec 96 04, Rev E	CAD Plans Design Solutions	14 June 2017
North, South and East Elevation	Drawing No. 15001 Sec 96 05, Rev E	CAD Plans Design Solutions	14 June 2017
West Elevation, Section AA	Drawing No. 15001 Sec 96 06, Rev E	CAD Plans Design Solutions	14 June 2017
Roof Plan, Section BB	Drawing No. 15001 Sec 96 11, Rev B	CAD Plans Design Solutions	14 June 2017
Finishes Schedule	-	CAD Plans Design Solutions	27 October 2016
BASIX Certificate	552427M_02	-	13 February 2017

- 6.1. A minimum of 218m² of communal open space must be provided for the development.
- 6.2. Cantilevered awnings must be between 3.2 and 4.2 metres in height from natural ground level, and must not overhang the footpath by 3 metres.
- 6.3. Balconies must have minimum dimensions of 8m² for one bedroom dwellings and 12m² for two and three bedroom dwellings.
- 6.4. Communal rooftop antenna to be provided and connected to all units so that it is fully operational prior to the issue of an Occupation Certificate.
- 6.5. All balconies with an outlook to the south towards the properties at 2 Draper Street and 1 Mount Avenue, Roselands are to be provided with privacy screening made to cover total height of 1800mm using a combination of fixed and moveable panels and covering a minimum of two thirds of the length of the balconies. The screens shall be louvred and constructed from translucent glass, aluminium or timber.

- 6.6. A separate waste bin storage area for the commercial premises and medical centre must be provided. This waste bin storage area must be able to accommodate a minimum of 4x 240L rubbish bins and 4x 240L recycling bins.
 - 6.7. In order to increase the privacy of residents, lattice screening of 600mm in height must be provided on top of the existing northern boundary fencing of 2 Draper Avenue.
 - 6.8. In order to improve the amenity of future occupants, the windows of Units 43, 41, 10, 8, 50, 48, 17 and 15 must not be high sill windows.
 - 6.9. Provide a screen wall and access doors at the garbage pick-up area at the ground level.
 - 6.10. Modulate and architecturally detail (including selected external materials and finishes) to ensure a good presentation of the blank wall areas of the eastern and western façades where they are exposed to view from the public domain.
 - 6.11. Modulate the awning and the roof line to reduce the unbroken horizontal lines. Details of these changes must be submitted to either Council or an Accredited Certifier prior to the issuing of a Construction Certificate.
 - 6.12. Storage area of at least 6m³ per one bedroom dwelling, 8m³ per two bedroom dwelling and 10m³ per three bedroom dwelling must be provided in the development. At least 50% of the minimum storage requirement is to be located within the dwelling it relates to. Details of these changes are to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.
 - 6.13. The kitchen windows along the western elevation of proposed apartments 61 and 65 must comprise a sill height of at least 1.5m above finished floor level to ensure an appropriate level of visual privacy is maintained. Details of these changes are to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.
 - 6.14. A building certificate must be submitted to Council for any unauthorised works within 60 days of the date of this consent.
 - 6.15. The waste bin storage areas are to be designed and constructed in accordance with clause 6.9.4.1 and 6.9.4.2 of the CDCP.
 - 6.16. The access doors to the waste bin storage rooms must be at least 1.2m in width.
 - 6.17. Unobstructed and unrestricted access must be provided to the waste bin presentation area located at the southern corner of the property on collection days from 5.00am. The bins must not be presented on the road.
 - 6.18. The owner of the development must indemnify Council's waste collection contractor against damage that may result from their trucks entry onto the property to collect waste bins. Council's standard indemnity form shall be completed and returned to Council prior to the site being occupied.
7. This condition has been levied on the development in accordance with Section 94 of the Environmental Planning and Assessment Act 1979 and in accordance with Canterbury Development Contributions Plan 2013, after identifying the likelihood that this development will require or increase the demand on public amenities, public services and public facilities in the area.
- The amount of the contribution (as at the date of this consent) has been assessed as \$21,958.05. The amount payable is based on the following components:

Contribution Element	Contribution
Community Facilities	\$1,985.68
Open Space and Recreation	\$19,417.24
Plan Administration	\$555.13

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

The contribution is to be paid to Council in full prior to the release of the Construction Certificate, (or for a development not involving building work, the contribution is to be paid to Council in full before the commencement of the activity on the site) in accordance with the requirements of the Contributions Plan.

8. One hundred and seven (107) off-street car spaces must be provided. This shall comprise:

- 77 residential spaces
- 13 residential visitor spaces
- 1 car wash bay
- 6 spaces for use by the medical centre
- 9 commercial spaces
- 1 loading bay

Seven (7) residential car parking spaces, one (1) medical centre car parking space and one (1) commercial car parking spaces are to be for people with mobility impairment, in accordance with AS 2890.1. The car spaces must be allocated and marked according to this requirement.

The carpark layout must respect the above allocation. Details and plans of the car parking arrangement must be submitted to either Council or an Accredited Certifier prior to the issuing of a Construction Certificate.

WE ALSO ADVISE:

1. 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.
2. If you are not satisfied with this determination, you may:
 - 2.1. 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 6 months of the modification determination; or
 - 2.2. 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.

-END-

Independent Hearing and Assessment Panel - 7 August 2017

ITEM 5	15-19 Muir Road, Chullora
	Construction of a new warehouse and distribution facility
FILE	DA-7/2017 – Bankstown
ZONING	IN1 General Industrial
DATE OF LODGEMENT	9 January 2017
APPLICANT	Frasers Property Australia
OWNERS	Australian C & I Land Holding Pty Ltd and Australian Property Holding Pty Ltd
ESTIMATED VALUE	\$19,299,905
SITE AREA	60,305m²
AUTHOR	City Development

RECOMMENDATION

It is recommended that Development Application DA-7/2017 be approved, subject to the attached conditions.

SUMMARY REPORT

This matter is reported to Council's Independent Hearing Assessment Panel for determination due to the estimated value of the proposal exceeding \$10 million.

Development Application DA-7/2017 proposes the construction of a warehouse and distribution facility. It is relevant to note that a separate DA, known as DA-1270/2016, relates to civil works, will prepare the necessary civil and ground work to accommodate the proposed warehouse and carpark area. Council has determined this application.

It is also relevant to note that, in response to concerns raised by Council during the course of the assessment of the subject development application, the applicant modified their plans by way of lowering the site levels and floor levels of the building and relocating/redesigning the truck wash bay, truck workshop and the pallet storage area.

The application has been assessed against the provisions contained within Section 79C(1) of the Environmental Planning and Assessment Act 1979 requiring, among other things, an assessment against the following:

- *State Environmental Planning Policy 55 – Remediation of Land (SEPP 55);*
- *State Environmental Planning Policy 64 – Advertising Signage (SEPP 64);*
- *State Environmental Planning Policy (Infrastructure) 2007 (SEPP 2007);*
- *Bankstown Local Environmental Plan 2015 (BLEP 2015);*
- *Bankstown Development Control Plan 2015 (BDCP 2015)*

The application satisfies the aims, objectives and controls contained within each of the above planning instruments while the development is appropriate having regard to the BDCP 2015.

The application was advertised and notified for a period of 30 days, from 25 January 2017 to 23 February 2017. No submissions were received during the notification period. The application was subsequently modified and following the submission of amended plans and details, it was re-notified for a further period of 14 days, from 19 May 2017 to 1 June 2017. No submissions were received during the re-notification period.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

It is recommended that Development Application DA-7/2017 be approved, subject to the attached conditions.

ATTACHMENTS

- A. Section 79C Assessment Report
- B. Conditions of Consent

DA-7/2017 SECTION 79C ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

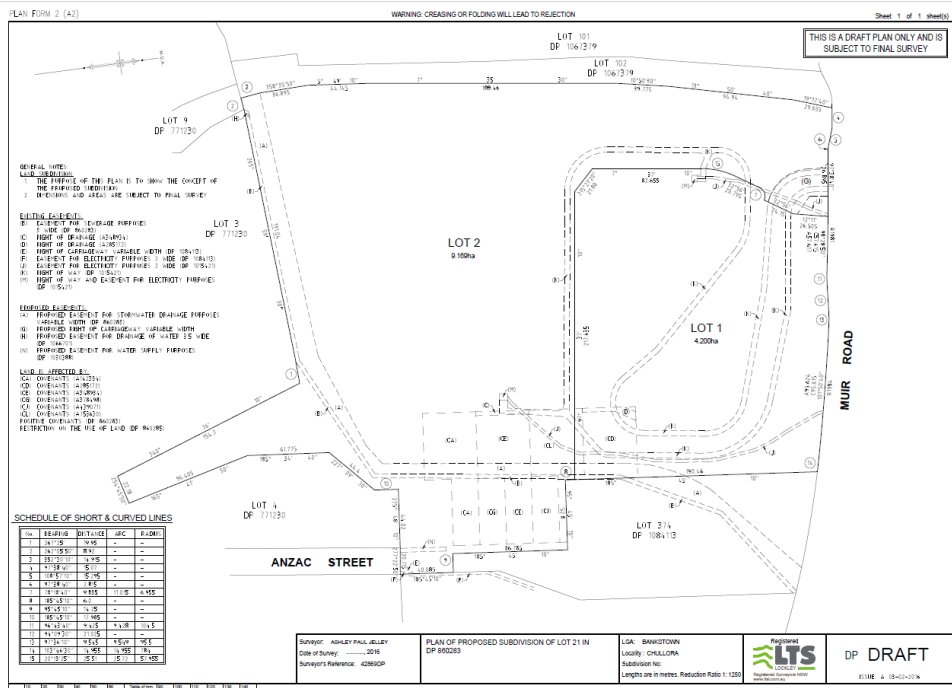
The Site

The subject site is part of the previous waste management facility site in Chullora known as 15-19 Muir Road, which comprised two lots with a combined site area of 151,226m² and frontages of 334.9m to Muir Road and 20.115m to Anzac Street.

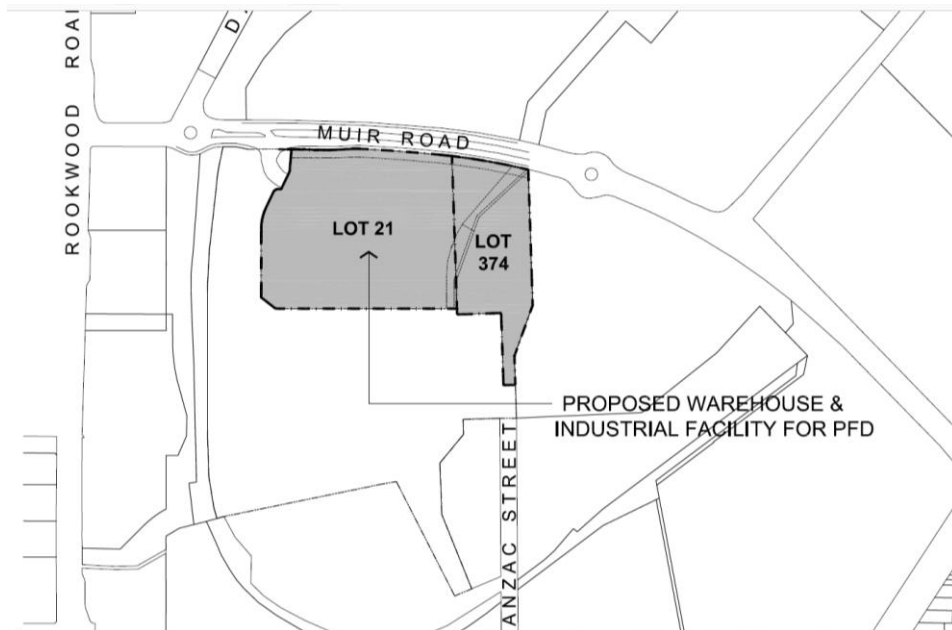


15-19 Muir Road, Chullora

Whilst the above description relates to the entirety of the land described as 15-19 Muir Road, it is noted that this DA relates only to the north-eastern portion of the site comprising proposed Lot 1 in the subdivision of Lot 21 DP 860283 (19 Muir Road) approved by Council under DA-105/2015 (yet to be registered) and Lot 374 DP 1084113 (15 Muir Road) as depicted in the following diagrams:



Plan of Subdivision of Lot 21 DP 860283 (approved under DA-105/2015)



Locality Map

The site is located on the southern side of Muir Road between Dasea Street and Worth Street. Muir Road connects with Hume Highway, approximately 700 metres to the east and Rookwood Road approximately 240 metres to the west of the site. To the east are industrial developments including Tip Top Bakery; to the south and west is land currently used by Suez for waste management activities; and to the north on the opposite side on Muir Road is the Volkswagen site. The nearest residential zoned land is some 400m away on the western side of Rookwood Road south of the Greyhound Club.



The Locality and Landuse

The site slopes from the northwest to the southeast with levels varying from approximately 43m AHD in the northwest corner to approximately 37m AHD in the southeast corner of the site. The site is traversed by a Sydney Water stormwater culvert (partly open and partly in-ground).

Vegetation within the site is characterised by planted or disturbed vegetation. The area adjacent the Muir Road frontage contains planted vegetation including *Acacia*, *Callistemon*, *Casuarina*, *Eucalypt* and *Melaleuca sp.* The vegetation within the area proposed for the carpark as well as along the stormwater canal contains native vegetation which includes *Casuarina* and *Acacia sp.* with a large number of weed species.

The site is currently vacant with all existing buildings, previously used for various waste management activities, having been removed as part of the subdivision approval.

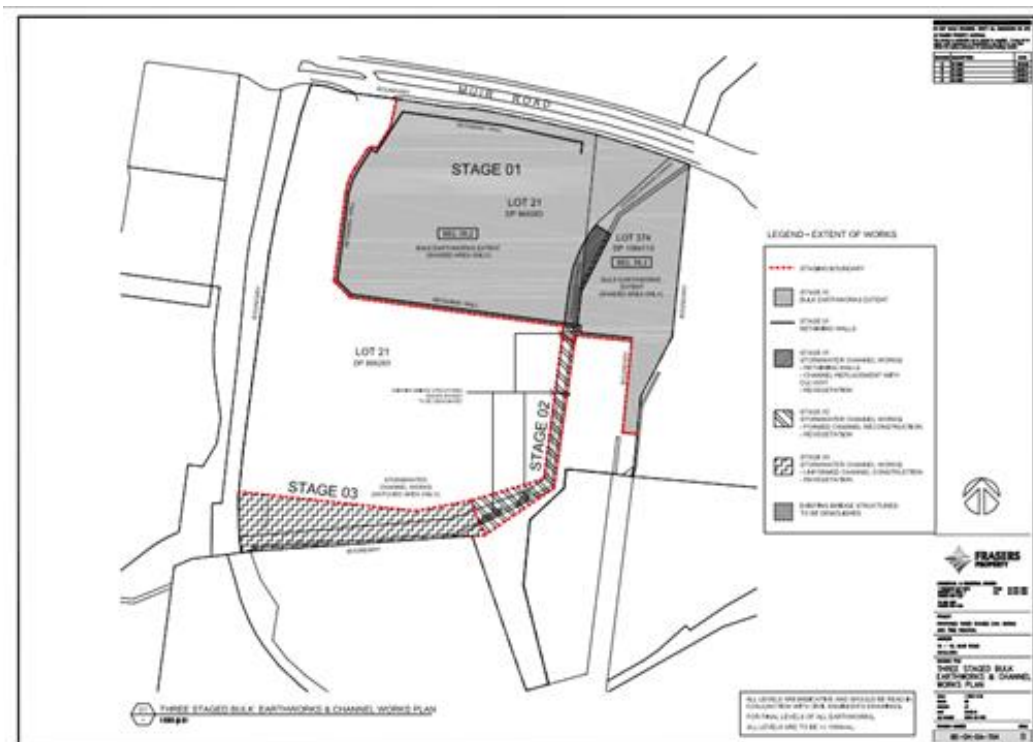
BACKGROUND

Of relevance to this development is the fact that Council has determined a separate Development Application (referenced as DA-1270/2016) for bulk earthworks, retaining wall construction and tree clearing on the proposed development site and stormwater channel works throughout 15-19 Muir Road. This application is intended to provide a suitable platform for the warehouse development proposed under the subject DA.

There have been extensive negotiations between the applicant, Sydney Water and Council regarding the proposed work on the stormwater channel with the intent that the channel will be handed over to Sydney Water for ongoing maintenance as intended in the original deed of agreement between Sydney Water and the land owner.

The original design has been modified several times including a significant reduction in the amount of fill to be introduced for the proposed building platform (reduced from RL40.25 to

RL38.6) and adjacent to the stormwater channel to allay concerns raised by Sydney Water. The channel work is to be carried out in three stages as depicted in the diagram below.



Stage 1

Stormwater channel works including retaining walls, channel replacement with culvert and revegetation.

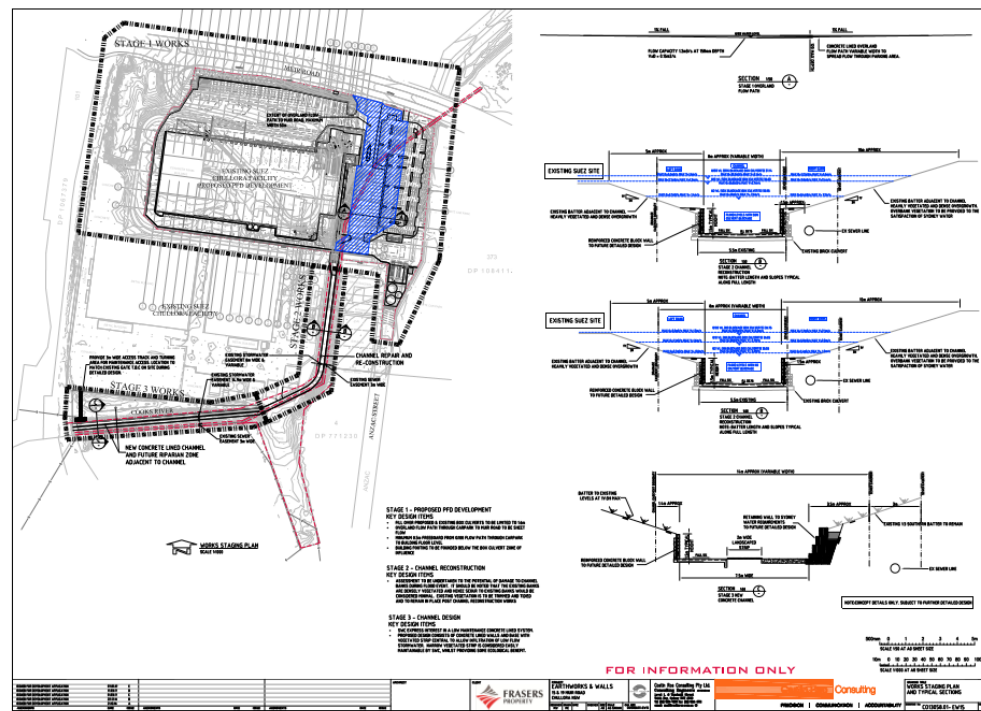
Stage 2

Stormwater channel works including formed channel reconstruction and revegetation.

Stage 3

Stormwater channel works including unformed channel construction and revegetation.

A final design (provided below) has been accepted by Sydney Water and a letter that Sydney Water will accept the handover of the asset when the work is completed has been provided to Council.



Work Proposed under DA-1270/2016

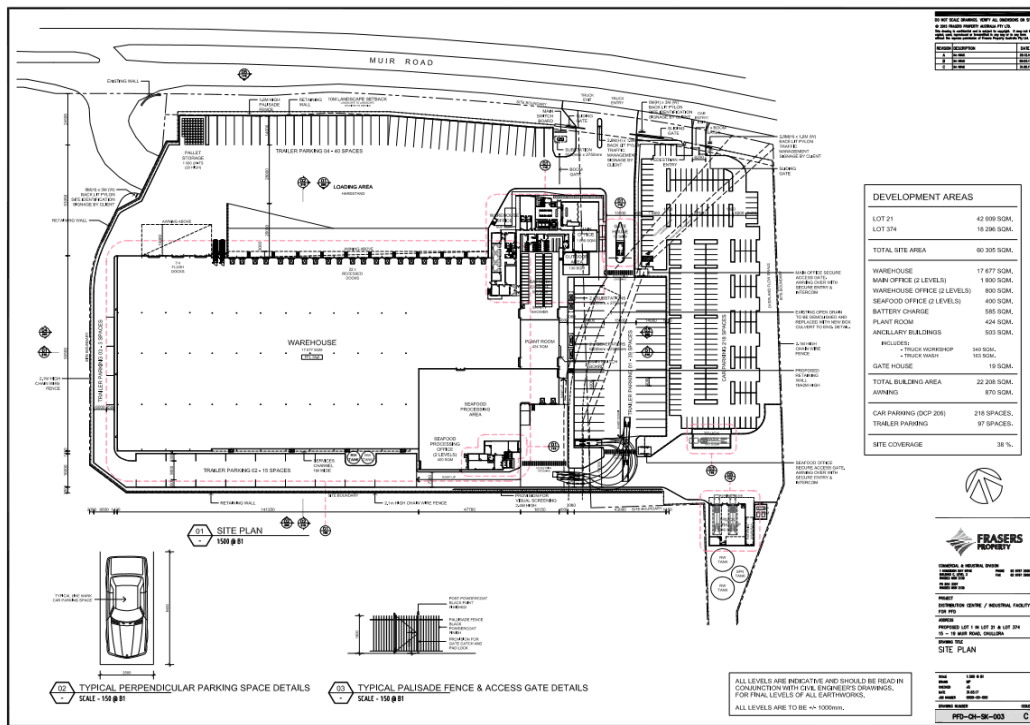
It will be a requirement of the proposed warehouse DA that Stage 1 and Stage 2 work proposed under DA-1270/2016 is completed prior to the occupation of the warehouse. Stage 3 work is outside the area of the warehouse DA, and if not completed by the time the warehouse is completed, Sydney Water intends to bond the remaining work to complete Stage 3.

PROPOSED DEVELOPMENT

The proposal seeks development consent for the construction of a warehouse, specifically entailing the following:

- Warehouse: 17,677 m²
- Main office (2 levels): 1,800 m²
- Warehouse office: 800 m²
- Seafood office: (2 levels): 400 m²
- Battery charge: 585 m²
- Plant room: 424 m²
- Truck workshop: 340 m²
- Gatehouse: 19 m²
- Total 218 car spaces and 97 trailer parking

The overall layout of the development and 3D images are provided below:



Site Plan



Aerial Perspective of the Development



Office Building

The subject DA is proposed for the base building only, with the fitout and use of the facility being proposed under a separate application (DA-37/2017) which is currently being assessed by Council. It is noted that the warehouse is intended to be used by PFD for warehousing and distribution of food items on a 24/7 basis.

ASSESSMENT UNDER SECTION 79C(1) - Matters for Consideration

The proposed development has been assessed pursuant to section 79C(1) of the *Environmental Planning and Assessment Act, 1979*. In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the proposed development.

Environmental planning instruments [section 79C(1)(a)(i)]

State Environmental Planning Policy (infrastructure) 2007 (SEPP 2007)

The proposal is a traffic generating development, as specified under schedule 3 of this SEPP due to the number of on-site parking spaces provided being for more than 200 motor vehicles. In accordance with the provisions of the SEPP the application was referred to the Roads and Maritime Services (RMS) for consideration and comment. RMS has raised no objection to the proposal and has provided that the following matters be considered by Council:

- *The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) are to be in accordance with AS 2890.1-2004 and AS 2890.2 — 2002 for heavy vehicle usage*

These matters have been assessed and, where appropriate, conditions have been incorporated.

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

Under the provisions of clause 7 of SEPP 55, a consent authority must not consent to the carrying out of any development on land unless:

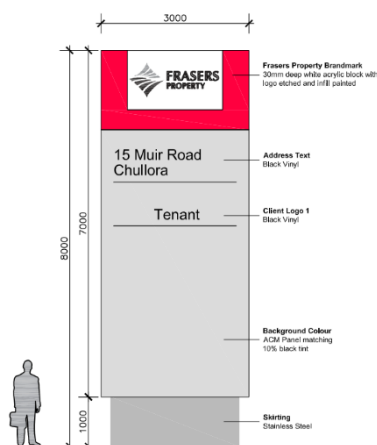
- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the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

The site has been remediated as part of the subdivision proposal and a Site Audit Statement has been issued by Enviroview Pty Ltd stating that the site is suitable for commercial/industrial use.

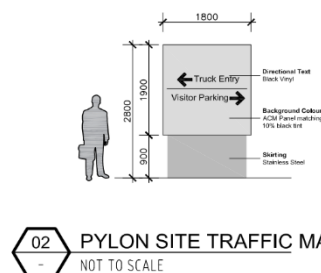
State Environmental Planning Policy 64 – Advertising Signage (SEPP 64)

The proposal includes the erection of pylon and wall signs as follows:

- two site identification pylon signs with dimensions 8m(H) x 3m(W);
- two traffic management directional pylon signs 2.8m(H) x 1.8m(W);
- one corporate wall sign 4m(h) x 6.5m(W) and
- two corporate wall signs 2.5m(H) x 4m(W)



01 PYLON SITE IDENTIFICATION SIGNAGE DETAIL
NOT TO SCALE



02 PYLON SITE TRAFFIC MANAGEMENT SIGNAGE DETAIL
NOT TO SCALE

The proposed signage is for the purpose of building and business identification and considered to achieve the objectives of SEPP 64 as it relates directly to the use of the site for warehousing facilities and reinforces the industrial character of the site in accordance with the prevailing industrial character of the area. The signage has been assessed under the assessment criteria in the SEPP and considered acceptable.

Bankstown Local Environmental Plan 2015 (BLEP 2015)

The following clauses of the Bankstown Local Environmental Plan (BLEP) 2015 are relevant to the proposed development and were taken into consideration:

- Clause 1.2 – Aims of Plan
- Clause 2.1 – Land use zones
- Clause 2.2 – Zoning of land to which Plan applies
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 4.4 – Floor space ratio
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 5.9 – Preservation of trees or vegetation
- Clause 6.3 - Flood Liable Land

An assessment of the Development Application revealed that the proposal complies with the matters raised in each of the above clauses of Bankstown Local Environmental Plan 2015.

In particular, the floor space ratio (FSR) stipulated for the site in Clause 4.4 of BLEP 2015 is 1:1 and the development proposes an FSR of 0.37:1.

Draft environmental planning instruments [section 79C(1)(a)(ii)]

There are no draft environmental planning instruments that are applicable in this instance.

Development control plans [section 79C(1)(a)(iii)]

The development has been assessed against the following provisions of Bankstown Development Control Plan 2015 (Bankstown DCP 2015):

- Part B3 - Industrial Precincts
- Part B4 - Sustainable Development
- Part B5 - Parking
- Part B11 - Tree Preservation Order
- Part B12 – Floor Risk Management
- Development Engineering Standards

Bankstown DCP 2015, Part B3 - Industrial Precincts

The following table and discussion provides a summary of the development application against the controls contained in Parts B3 - Industrial Precincts and Part B5- Parking of Bankstown Development Control Plan 2015.

STANDARDS Part B3 & B5	REQUIRED	PROPOSED	COMPLIANCE
Site coverage	Maximum 70%	Approx. 38%	Yes
Setbacks	10 metres to primary frontage	Minimum 10m setback to Muir Road frontage	Yes
Building Design	Development must articulate the facades to achieve a unique and	Contemporary design with articulated elements, to office facades facing Muir Road.	Yes

STANDARDS Part B3 & B5	REQUIRED	PROPOSED	COMPLIANCE
	contemporary architectural appearance Quality facade materials such as brick, glass and steel	The office component facing Muir Road will be clad in aluminium composite panels and powder coated aluminium framed glazing.	
Open Space	Minimum landscaped width of 10m to primary frontage (width may vary if high quality landscaping provided). Provide planting: <ul style="list-style-type: none"> • 1 street tree per 5 metre of primary frontage • 1 canopy tree per 30m² of the landscape area • Outdoor car park to include 1 tree per 5 parking spaces. 	A 10m wide landscaped strip has been provided along the Muir Road frontage. A satisfactory number of trees will be provided throughout the landscaped area and to shade the car parking areas.	Yes
Safety and Security	Front entry to face the street. Office/showroom located at the front of the building, upper floor windows to overlook the street. Street number to be visible. Lighting to be provided to external entry areas, driveway and car park. Lighting to car park in accordance with AS 1158.1, 1680, and 2890.1.	The office component of the development will have extensive glazed areas overlooking the frontage to the street. Appropriate site identification and security measures are expected to be provided. Any consent conditioned regarding the provision of appropriate lighting to the site and car park areas.	Yes
Ancillary development	Max 1.8m high front fence.	1.8m open palisade fencing to Muir Road.	Yes
Parking (Part B5)	Minimum 206 spaces	218 parking spaces plus 97 trailer parking provided	Yes
Chullora Technology Park	Plan of management where areas of vegetation significance affected	The area of vegetation significance identified in the	Yes

STANDARDS Part B3 & B5	REQUIRED	PROPOSED	COMPLIANCE
	Provide upgraded storm water system to retard flows and collect gross pollutant detrimental to Cooks River	DCP will not be impacted by the development. Proposed stormwater system will include pollution traps, no expected impacts for Cooks River.	

Bankstown DCP 2015, Part B4 - Sustainable Development

The following table and discussion provides a summary of the development application against the controls contained in Part B4 - Sustainable Development of Bankstown Development Control Plan 2015.

STANDARDS Part B4	REQUIRED	PROPOSED	COMPLIANCE
Water Conservation	Water efficient fixtures must be installed and site water management plan must be prepared	Appropriate water efficient fixtures are proposed to be installed. A rainwater retention system is to be provided as part of the site water management plan.	Yes
Energy Conservation	Energy performance report must be prepared, or building to achieve 4 stars or better, greenhouse rating scheme	An energy performance report has been submitted with the proposal as required by the BDCP.	Yes

Bankstown DCP 2005, Part B11 - Tree Preservation Order

The majority of trees and vegetation on the portion of the site forming the specific subject of this DA have been approved for removal under the earthworks DA-1270/2016. As such no further tree removal is required to facilitate the proposed warehouse construction. A number of trees fronting Muir Road are proposed to be retained and will be protected throughout the development. These are replanted trees and are not identified as significant vegetation. Planting of canopy trees is to be incorporated within the landscaping of the frontage of the site and replacement street trees are to be provided along the Muir Road frontage.

Bankstown DCP 2015, Part B12 – Flood Risk Management

The site is affected by storm water flooding from the Rookwood Road Catchment. The stormwater channel, which is part of the upper reaches of the Cooks River, runs through the Chullora site. A Civil Report prepared by Costin Roe Consulting was provided with the application, which gives consideration to the potential for the development to impact on flood conveyance and flood storage areas.

The report has been reviewed by Council's independent stormwater consultant. Subject to compliance with the conditions contained in the earthworks DA-1270/2016, the proposed

development has been assessed to have negligible impact on stormwater drainage and overland flow.

Bankstown Development Engineering Standards

The proposal has been assessed against the relevant provisions of Council's Development Engineering Standards (DES). The developer has provided appropriate concept drainage plans. These concept drainage plans provide for satisfactory stormwater drainage measures including:

- Connection of stormwater flows from the development to the existing Sydney Water channel.
- Provision of pollutant control devices and traps to ensure that stormwater infrastructure draining internal driveways and parking areas meets Sydney Water and DES water quality discharge requirements.

Provision of a footpath along Muir Road frontage

Clause 8.9 and 8.9.1 of the DES provides that Council may require a developer to upgrade infrastructure within the road reserve to be carried out at the developer's expense where these improvements do not exist, are in need of replacement due to damage or are sub-standard for its intended purpose. This includes the provision of concrete footpath paving 1.2m wide along the site frontage. While there are currently no footpaths along the southern side of Muir Road, it is considered reasonable to require that it be provided along the frontage of the site to assist pedestrian access from the site entry to the bus stop on Muir Road.

The provision of Planning Agreements - section 79C(1)(a)(iia)

There are no planning agreements relevant to this development application. The development will be subject to the provisions of Bankstown Section 94A Contribution Plan, which requires a levy of 1% of the cost of carrying out of the development, being \$192,999.05.

The provisions of the Regulations - section 79C(1)(a)(iv)

There are no matters prescribed in the regulations that are relevant to this development application. As the development does not involve any existing buildings, clauses 93 and 94 of the regulation do not apply.

A BCA Compliance report was submitted with the application. This concludes that the building could comply with deemed to satisfy provisions of the BCA with the option of a performance based (fire engineered) solution.

The likely impacts of the development - section 79C(1)(b)

As discussed in this report, the proposed development is acceptable with regard to its likely environmental, social and economic impacts on the locality. The following aspects of the development required further assessment:

Traffic, Access and Parking

Traffic

The applicant's traffic consultants has assessed the traffic generation of the development in relation to the proposed use and traffic activities. Traffic generated by the development will in the main involve staff vehicle movements and truck movements.

The report concluded that *"...The Proposal is estimated to generate an additional 117 and 126 vehicles per hour during the respective morning and evening peak periods. An assessment of key intersections between the Site access and the arterial road network indicates that all intersections would operate within acceptable Levels of Service (LoS D or better)"*.

Access

The site fronts Muir Road which is a collector road serving Chullora Technology Park and connecting the arterial State roads, Hume Highway to the east and Rookwood Road to west of the site. Muir Road consists of four lanes, comprising traffic and parking lanes in each direction, separated by a wide median.

There is an approved B Double route along Muir Road, Hume Highway, and Rookwood Road. There are traffic signals at the Rookwood Road/Muir Road and Hume Highway/Muir Road intersections and at the Muir Road/ Worth Street intersection to the east of the site.

Vehicle access arrangements will comprise:

- A new truck entry/exit driveway located on Muir Road which includes a central median island which prohibits right turn movement from the site.
- A new 10m driveway to access the car park and trailer parking area configured for left-in, left-out movements only.

Parking

The development proposes to provide 218 parking spaces for cars and 97 spaces for trailers. This number of parking spaces has been considered against the provisions of Bankstown Development Control Plan 2015 Part B5 'Parking' and the number of spaces to be provided will be satisfactory for the development.

Council's Traffic Unit has reviewed the proposal having regard to traffic, access and parking and has recommended support subject to conditions relating to VFC design, traffic management signs on Muir Road and the provision for parking with people with a disability of one space for every 100 spaces or part thereof. These matters have been addressed through conditions.

Noise and Vibration

Whilst the proposed development is for the construction of the warehouse and does not include its use, an acoustic assessment prepared by Acoustic Logic accompanied the application. The report concluded that *"... Noise impacts from the general operation of the facility will not have any detrimental impact on surrounding receiver, including residential, commercial and industrial based on the noise prediction provided in this document"*.

Further assessment of the acoustic impact from the operation of the facility on a 24/7 basis will be considered in the assessment of the use sought under DA-37/2017, currently being assessed by Council.

The suitability of the site for the development - section 79C(1)(c)

The site is located within Chullora Technology Park which was developed by Landcom as an industrial estate in the 1990s, from surplus former railway land. The application will provide for a development that will be permissible in the industrial zone applying to the land and which is consistent with relevant statutory controls. A development of this nature and scale would be reasonably expected within this area. It will be consistent with the existing nature and scale of larger developments and activities in the vicinity. The development will therefore be suitable to the site.

Submissions made in accordance with the Act or the regulations - section 79C(1)(d)

The application was advertised and notified for a period of 30 days, from 25 January 2017 to 23 February 2017. No submissions were received during the notification period, except those from external referral bodies. The application was subsequently modified and following the submission of amended plans and details, it was re-notified for a further period of 14 days, from 19 May 2017 to 1 June 2017.

No public submissions were received.

However submissions were received from the Roads and Maritime Service (RMS), Department of Primary Industries (DPI), Sydney Water and Sydney Trains in relation to referrals of the application.

The responses from RMS and Sydney Water have been discussed earlier in this report.

Department of Primary Industries (DPI)

The application was referred to the DPI due to the proposed work being within 40m of the open canal traversing the site. The DPI advised that "...DPI Water has reviewed documents for the development application no. 7/2017 and considers that, for the purposes of the Water Management Act 2000 (WM Act), a controlled activity approval is not required and no further assessment by this agency is necessary."

Sydney Trains

Sydney Trains has reviewed the proposal under Clause 85 of State Environmental Planning Policy (Infrastructure) 2007 and has advised that the following issues be addressed in the conditions for this proposed development:

- demolition, excavation and construction impacts
- drainage
- fencing

The conditions provided by Sydney Trains have been incorporated in the conditions of consent.

The public interest - section 79C(1)(e)

The proposed development would not contravene the public interest. The proposed development responds appropriately to the controls contained in the *Bankstown Local Environmental Plan 2015* and *Bankstown Development Control Plan 2015*. Matters raised in the responses to the referrals have been satisfactorily addressed, and there would be no unreasonable impacts on the locality.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 79C of the *Environmental Planning and Assessment Act 1979*, and in particular, *State Environmental Planning Policy 55*, *State Environmental Planning Policy 64*, *State Environmental Planning Policy (Infrastructure) 2007*, *Bankstown Local Environmental Plan 2015* and *Bankstown Development Control Plan 2015*.

The proposed development represents an appropriate built form for the site. Relevant planning controls have been appropriately responded to and no significant or unresolved matters have been raised in public submissions.

On these grounds it is considered that the site is suitable for the development and that it will be in the public interest. Consequently it is recommended that the Panel supports the application and that the development application be determined by way of an approval, subject to the attached conditions of consent.

CONDITIONS OF CONSENT

- 1) The proposal shall comply with the conditions of Development Consent. A Construction Certificate shall not be issued until the plans and specifications meet the required technical standards and the conditions of this Development Consent are satisfied.
- 2) Development shall take place in accordance with Development Application No. DA-7/2017, submitted by Frasers Property Australia, accompanied by Drawing Nos.: PFD-CH-SK-003, and PFD-CH-DA-004, -005, -100, -110, -111, -113, -115, -116, -200, -210, -500, -600 & -610, all Issue C, prepared by Frasers Property, dated 31 May 2017 and affixed with Council's approval stamp, except where otherwise altered by the specific amendments listed hereunder and/or except where amended by the conditions contained in this approval.
- 3) The development shall also be undertaken generally in accordance with the terms, conclusions and recommendations of the following documents:
 - i. Overland Flow Report, prepared by Costin Roe Consulting, Revision D, dated 7 July 2017.
 - ii. Civil Engineering Report, prepared by Costin Roe Consulting, Revision D, dated 7 July 2017.
 - iii. Traffic Impact Assessment Ref: 0265r01v2, prepared by Ason Group, dated 22 December 2016.
 - iv. Energy Performance Report, prepared by Frasers Property.
 - v. Flora and Fauna Assessment, prepared by Cumberland Ecology, dated December 2016.
- 4) No approval is granted or implied for the use of the building. Separate Development Consent for the use of the industrial floor space is required prior to occupation.
- 5) A separate application shall be submitted to Council prior to the erection of any additional signage unless the proposed signage is "exempt development" in accordance with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

- 6) A Construction Certificate for the works proposed under this DA shall not be issued until a Construction Certificate has been issued for DA-1270/2016.
- 7) The Certifying Authority must ensure that any certified plans forming part of the Construction Certificate are not inconsistent with this Development Consent and accompanying plans.

- 8) A detailed landscape plan prepared by a qualified landscape architect is to be approved by Council prior to the issue of a Construction Certificate. The landscape plan is to be prepared in accordance with the relevant DCP and is to show all features, built structures including retaining walls, irrigation, mulch and natural features such as significant gardens, landscaping, trees, natural drainage lines and rock outcrops that occur within 3 metres of the site boundary. The landscape plan shall consider any stormwater, hydraulic or overland flow design issues where relevant.

In this regard, the concept landscape plan Drawing Nos. 1-LA-00 to LA-10, Revision B, dated 17 March 2017, prepared by COCO Design plans are to include the amendments outlined below:

- The car park design is to be amended to include a tree planting layout that provides shaded areas to the majority of the car parking spaces during summer. Tree species are to be either *Eucalyptus maculata* (Spotted Gum), *Angophora costata* (Smooth Barked Apple) or *Lophostemon confertus* (Brush Box).
- 9) 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).
- 10) All scheduled plant stock shall be pre-ordered prior to issue of Construction Certificate or 3 months prior to the commencement 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 prior to issue of any Construction Certificate. The order confirmation shall include name, address and contact details of supplier and expected supply date.
- 11) Planting numbers and species shown on the approved plans are to be assessed and approved by council approval prior to the issue of the Construction Certificate. Any plants found to be excess shall be donated to council for planting within the local area to maintain habitat, biodiversity and amenity.
- 12) Seed harvesting from the site is to be carried out by an approved regeneration nursery prior to the vegetation clearing. A detailed harvesting strategy report is to be submitted to Council for approval prior to the issue of the Construction Certificate.

This report must include the following details:

- The full name, business address, telephone number, evidence of technical qualification(s)
- Address of the site
- Full name of whom the report is being prepared for
- The methods and techniques used to evaluate the site and tree
- A suitable scaled plan, showing the location of the harvesting areas in relation to the site and boundaries
- A review of the optimum harvesting times, species and numbers
- List of recommendations and the reasons for their adoption

- 13) All the recommendations contained in the Vegetation Management Plan (VMP), prepared by Cumberland Ecology, dated 27 March 2017 shall be implemented. The works on the VMP, including the creek line restoration, shall be completed to the satisfaction of Council's Senior Environmental Planner and Landscape Architect.
- 14) Approval in accordance with Council's Tree Preservation Order (TPO) is granted to lop or remove only the trees identified to be lopped or removed on the approved plans. Separate approval shall be obtained to prune or remove trees on adjoining properties or other trees located on the site. Failure to comply with Council's TPO may result in a fine of up to \$100,000.
- 15) A soil erosion and sediment control plan must be prepared by a suitably qualified professional, in accordance with the Bankstown Demolition and Construction Guidelines and Council's Development Engineering Standards, and submitted to the certifying authority for approval prior to the issue of a construction certificate.
- 16) The Council Approved building plans, including demolition plans, must be submitted to Sydney Water for assessment. This will determine if the proposed structure(s) would affect any Sydney Water infrastructure or if there are additional requirements. Building plan approvals can be submitted online via Sydney Water Tap in™.

Please refer to www.sydneywater.com.au/tapin

For Sydney Water's Guidelines for building over or next to assets, visit www.sydneywater.com.au 'Plumbing, building & developing' then 'Building Plan Approvals' or call 13000 TAPIN.

Prior to release of a construction certificate Sydney Water must issue either a Building Plan Assessment letter which states that your application is approved, or the appropriate plans must be stamped by a Water Servicing Coordinator.

- 17) A Construction Certificate shall not be issued until written proof that all bonds, fees and/or contributions as required by this consent have been paid to the applicable authority.
- 18) A long service levy payment which is 0.35% of the total cost of the work is to be paid to the Building and Construction Industry Long Service Payments Corporation.
- 19) Pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979, and the Bankstown City Council Section 94A Development Contributions Plan 2009 (Section 94A Plan) , a contribution of \$192,999.05 shall be paid to Council.

The amount to be paid is to be adjusted at the time of actual payment, in accordance with the provisions of the Section 94A plan. The contribution is to be paid before the issue of the construction certificate.

Note: The Section 94A Contributions Plans may be inspected at Council's Customer Service Centre, located at Upper Ground Floor, Civic Tower, 66-72 Rickard Road, Bankstown, between the hours of 8.30am-5.00pm Monday to Friday.

- 20) Finished surface levels of all internal works and at the street boundary, including driveways, landscaping and drainage structures, must be as shown on the approved plans. The levels at the street boundary must be consistent with the Street Boundary Alignment Levels issued by Council.
- 21) The developer shall apply for a Work Permit and obtain approval from Council, for the following engineering works in front of the site, at the applicant's expense:
- a) Two Extra Heavy Duty VFC's with their width and location to be determined in consultation with Council's Traffic Engineer.
 - b) 1.2 metre wide concrete footway paving along the sites entire frontage to Muir Road.
 - c) Repair of any damage to the public road including the footway occurring during development works.
 - d) Reinstatement of the footway reserve and adjustment or relocation of existing public utility services to match the footway design levels as proposed on the approved Work Permit. Adjustment or relocation to any public utility services shall be carried out to the requirements of the public utility authority.

Note: Council is required to prepare a site survey and design in order to determine the necessary information. The developer should make application and payment for the Work Permit at least twenty one (21) days prior to the information being required and prior to the issue of the Construction Certificate. The Work Permit must be approved prior to any works commencing within the Council Road Reserve or on Council's assets.

- 22) Stormwater drainage from the development shall be designed so as to comply with Council's Development Engineering Standards and with particular regard to the stormwater quality reduction targets set by The Botany Bay & Catchment Water Quality Improvement Plan.

<http://www.botanybay.nsw.gov.au/files/sharedassets/public/documents/our-environment/botany-bay-water-quality-improvement-plan-2011.pdf>.

A final detailed stormwater drainage design shall be prepared by a qualified Professional Civil Engineer in accordance with the above requirements and shall generally be in accordance with the concept stormwater plan No. CO13058.01 Revision C, dated 7 July 2017, prepared by Costin Roe Consulting.

The final design must be amended to include acceptable WSUD measures, which may include grassed swales, raingardens, water collecting tree pits and medians, bio-retention basins or a combination of these measures, where feasible and practical, to capture, treat and if possible reuse, stormwater runoff from the car parking and vehicles manoeuvring surfaces.

The final plan must also be amended to include final details of stormwater harvesting and GPT's in accordance with the Stormwater Management Plan by Costin Roe CO13058.01 version 7.

The final plan shall be certified by the design engineer that it complies with Council's Development Engineering Standards, the above requirements and the relevant Australian Standards.

The developer must apply to Sydney Water for concurrence, relating to the construction of Box Culverts and reconstruction of the stormwater drainage channel within the site, in accordance with the agreement as spelled out in their letter to Frasers Property Australia, dated 7 July 2017. The developer must apply for the concurrence under the Sydney Water Section 73 application process prior to the issue of the construction certificate for the works proposed, subject of this Development Consent.

- 23) Where Council approved cut or fill exceeds 200mm and stable batter of 1 vertical to 3 horizontal maximum grade cannot be achieved, then a masonry or other proprietary material retaining wall, intended and suitable for that purpose, shall be constructed within the development site. Note, filling of the site needs specific approval from Council.

The retaining wall shall be located so that it will not impede or obstruct the natural flow of stormwater. Retaining walls exceeding 600mm in height shall be designed by a qualified professional Civil/Structural Engineer. Plans and details prepared and signed by the Engineer are to be submitted to the Principal Certifying Authority (PCA) prior to the issue of the Construction Certificate.

All works associated with the construction of the wall, including backfilling and drainage, is to be located wholly within the allotment boundaries.

- 24) An all weather pavement shall be designed to withstand the anticipated wheel loads for all areas subjected to vehicular movements. Internal pavements specification prepared and certified by all qualified professional Civil Engineer to comply with the relevant Australian Standards, shall be submitted to the Principal Certifying Authority (PCA) for approval prior to the issue of a construction certificate.
- 25) The Construction Certificate plans shall include details of the garbage receptacle area. The garbage receptacle area shall not be visible from the street. The garbage receptacle area shall be located within the building or screened from the street by dense landscaping.
- 26) Prior to the issue of any Construction Certificate for this development, the applicant must obtain approval from Council for a Site, Pedestrian and Traffic Management Plan. This Plan must address the measures that will be implemented for the protection of adjoining properties, pedestrian safety and traffic management and other requirements as specified below.

A PRIVATE CERTIFIER CANNOT APPROVE YOUR SITE, PEDESTRIAN & TRAFFIC MANAGEMENT PLAN

This plan shall include details of the following:

- a) Proposed ingress and egress points for vehicles to and from the construction site;
- b) Proposed protection of pedestrians, adjacent to the construction site;
- c) Proposed hoardings, scaffolding and/or fencing to secure the construction site;
- d) Proposed pedestrian management whilst vehicles are entering/exiting the construction site;
- e) Proposed measures to be implemented for the protection of all public roads and footway areas surrounding the construction site from building activities, crossings by heavy equipment, plant and materials delivery and static load from cranes, concrete pumps and the like;
- f) Proposed method of loading and unloading excavation machines, building material, construction materials and waste containers during the construction period;
- g) Proposed traffic control measures such as advanced warning signs, barricades, warning lights, after hours contact numbers etc. are required to be displayed and shall be in accordance with Council's and the NSW Roads and Maritime Services requirements and AS1742.3.
- h) Proposed method of support of any excavation, adjacent to adjoining buildings or the public road. The proposed method of support is to be certified by a Civil Engineer with National Professional Engineering Registration (NPER) in the construction of civil works.
- i) Proposed measures to be implemented in order to ensure that no soil/excavated material is transported on wheels or tracks of vehicles or plant and deposited on the public road.
- j) Proposed measures for protection of the environment including procedures to control environmental impacts of work e.g. sediment control, proper removal, disposal or recycling of waste materials, protection of vegetation and control/prevention of pollution i.e. water, air noise, land pollution.

The approved Site, Pedestrian and Traffic Management Plan is to be implemented prior to the commencement of any works on the construction site. The applicant will be required to pay for inspections by Council Officers in accordance with Council's adopted fees and charges.

In addition a RMS Approval / Road Occupancy Licence will be required for works on Regional or State Roads or within 100m of a traffic facility including roundabouts and traffic signals. Refer to Council's Development Engineering Standards for a list of Regional and State Roads.

- 27) As any works within, or use of, the footway or public road for construction purposes requires separate Council approval under Section 138 of the Roads Act 1993 and/or Section 68 of the Local Government Act 1993, Council requires the developer to obtain a Works Permit and or a Roadway/Footpath Building Occupation Permit prior to issue

of any Construction Certificate for this development being issued where one or more of the following will occur, within, on or over the public footway or public road:

A PRIVATE CERTIFIER CANNOT ISSUE THESE PERMITS

WORKS REQUIRING A 'WORKS PERMIT'

- a) Dig up, disturb, or clear the surface of a public footway or public road,
- b) Remove or interfere with a structure or tree (or any other vegetation) on a public footway or public road,
- c) Connect a road (whether public or private) to a classified road,
- d) Undertake footway, paving, vehicular crossing (driveway), landscaping or stormwater drainage works within a public footway or public road,
- e) Install utilities in, under or over a public road,
- f) Pump water into a public footway or public road from any land adjoining the public road,
- g) Erect a structure or carry out a work in, on or over a public road,
- h) Require a work zone on the public road for the unloading and or loading of vehicles,
- i) Pump concrete from within a public road,
- j) Stand a mobile crane within a public road,
- k) Store waste and recycling containers, skips, bins and/or building materials on any part of the public road.
- l) The work is greater than \$25,000,
- m) Demolition is proposed.

The developer shall construct all proposed works within the public road and footway under the supervision and to the satisfaction of Council. The developer shall arrange for necessary inspections by Council whilst the work is in progress.

The developer shall ensure the person or company carrying out the work will carry public liability insurance to a minimum value of twenty million dollars. The developer shall provide proof of the policy, to Council, prior to commencing any work approved by the Work Permit including the Road Opening Permit. The policy must remain valid for the duration of the works.

- 28) A Trade Waste Agreement shall be obtained from Sydney Water prior to the discharge of trade wastewater to the sewer system. Wastewater treatment equipment is to be bunded and where systems are placed outside, they are to be roofed to ensure that no rainwater can enter the bund. All wastewater treatment devices shall be regularly maintained in order to remain effective. All solid and liquid wastes collected from the device must be disposed of in accordance with the Protection of the Environment Operations Act 1997.
- 29) The route for transportation to and from the development site of bulk and excavation materials shall generally be by the shortest possible route to the nearest "regional road", with every effort to avoid school zones on public roads. The applicant shall nominate the route for approval by Council prior to commencement of any work on the site. An Agreement to Council's satisfaction, signed by the applicant/owner

- specifying the approved route and acknowledging responsibility to pay Council for damages to public property adjacent to the site shall be lodged with Council prior to release of any Construction Certificate. All damage must be rectified upon completion of work.
- 30) Prior to the issue of a Construction Certificate a Risk Assessment/Management Plan detailing any potential rail corridor risks for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on the rail corridor. The Principal Certifying Authority shall not issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
 - 31) Given the development site's location next to the rail corridor, drainage from the development must be adequately disposed of/managed and not allowed to be discharged into the corridor unless prior approval has been obtained from Sydney Trains.
 - 32) The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) are to be in accordance with AS 2890.1-2004 and AS 2890.2 — 2002 for heavy vehicle usage.
 - 33) The locations of the proposed three (3) Accessible Parking spaces and adjacent Shared Areas must be shown on the plan in parking spaces closest to the "Staff Entry" of the Main Office, ensuring that this is wheelchair accessible. Shared Areas must include compliant ramps if the front of the spaces are kerbed.
 - 34) The driveway width for the separated single entry and exit driveways to be used by trucks shall be designed to accommodate the swept path of a 26m B-double with 600mm clearance on both sides at the property boundary with 30⁰ splay on entry and exit with the central median to be extended to the site property boundary to the satisfaction of Council's Traffic Engineer.
 - 35) The driveway width for the staff car park (passenger cars) shall be 6-9 metres wide at the boundary to comply with AS 2890.1:2004.
 - 36) All proposed exit driveways for both trucks and cars shall have sight distance to approaching traffic in Muir Road assessed using Fig 3.2 of AS 2890.1-2004. The applicant shall apply to Bankstown Traffic Committee for parking restrictions to ensure adequate sight distance with the cost of signage borne by the applicant.
 - 37) All areas where oil petroleum and the like may be deposited shall be sealed and drained to an oil arrestor of sufficient size to separate these deposits from collected water prior to discharge.
 - 38) The walls surrounding the truck wash bay must have no gaps or holes to permit the exit of waste water from the premises. All screens, fences and the like must extend from the concrete ground to such a height that is sufficient to contain any water spray.

- 39) All cleaning chemicals/liquid must be stored in a covered and bunded area. A bund wall shall be constructed around all work and liquid storage areas to prevent any spillage entering into the stormwater system.

CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION

- 40) The building / subdivision work in accordance with the development consent must not be commenced until:
- a) a construction certificate for the building / subdivision work has been issued by the council or an accredited certifier, and
 - b) the person having benefit of the development consent has:
 - i. appointed a principal certifying authority for the building / subdivision work, and
 - ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - c) the person having the benefit of the development consent, if not carrying out the building work as an owner-builder, has:
 - i. appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - ii. notified the principal certifying authority of any such appointment, and
 - iii. unless the person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - d) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the building / subdivision work.
- 41) Existing trees within the vicinity of the construction works or paths of travel for construction vehicles accessing the development that are to be retained shall be protected with temporary fencing of a style non injurious to tree roots, placed 2m from the trunk base of the existing tree to prevent damage during construction, and retained in accordance with Council's Tree Preservation Order. There is to be no stockpiling of materials within the 2m fenced zone.
- 42) Suitable erosion and sediment control measures shall be erected in accordance with the plans accompanying the Construction Certificate prior to the commencement of construction works and shall be maintained at all times.

- 43) Council warning sign for Soil and Water Management must be displayed on the most prominent point of the site, visible to both the street and site works. The sign must be displayed throughout the construction period.
- 44) Prior to the commencement of work, the applicant must provide a temporary on-site toilet if access to existing toilets on site is not adequate.
- 45) A section 73 compliance certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Make early application for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Building and Developing > Developing your Land > Water Servicing Coordinator or telephone 13 20 92.

- 46) Prior to the commencement of work, a fence must be erected around the area of the works, except where an existing 1.8m high boundary fence is in good condition and is capable of securing the area. Any new fencing shall be temporary (such as cyclone wire) and at least 1.8m high. All fencing is to be maintained for the duration of construction to ensure that the work area is secured.

Where the work is located within 3.6m of a public place then a Type A or Type B hoarding must be constructed appropriate to the works proposed. An application for a Work Permit for such hoarding must be submitted to Council for approval prior to the commencement of work.

- 47) A sign shall be displayed on the site indicating the name of the person responsible for the site and a telephone number of which that person can be contacted during and outside normal working hours or when the site is unattended.
- 48) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- 49) Prior to the commencement of works appropriate fencing is to be in place along the rail corridor to prevent unauthorised access to the rail corridor during construction.

Details of the type of fencing and the method of erection are to be to the satisfaction of Sydney Trains prior to the fencing work being undertaken.

CONDITIONS TO BE SATISFIED DURING CONSTRUCTION

- 50) The hours of site works shall be limited to between 7.00am and 6.00pm on weekdays and 7.00am and 1.00pm on Saturdays. No work shall be carried out on Sundays and public holidays, and weekends (Saturdays and Sundays) adjacent to public holidays.
- 51) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 52) Prior to the ground floor slab being poured, an identification report by a Registered Surveyor must be submitted to the principal certifying authority verifying that the proposed buildings finished ground floor level and siting to the property boundaries conforms to the approved plans.
- 53) All Civil and Hydraulic engineering works on site must be carried out in accordance with Council's Development Engineering Standards. All Civil and Hydraulic engineering works associated with Council's assets and infrastructure must be carried out in accordance with Council's Work Permit requirements and to Council's satisfaction.
- 54) The construction and fixing of the signage is to be carried out in accordance with details prepared by a suitably qualified practising structural engineer, in accordance with the structural provisions of the Building Code of Australia.
- 55) All excavations and backfilling must be executed safely and in accordance with the relevant Australian Standards.
- 56) If soil conditions require it, retaining walls or other approved methods of preventing movement of the soil must be provided, and adequate provisions must be made for drainage. Separate approval may be required for retaining walls should they be required.
- 57) If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - a) protect and support the adjoining premises from possible damage from the excavation, and
 - b) where necessary, underpin the adjoining premises to prevent any such damage.
- 58) The stormwater drainage system shall be constructed in accordance with Council's Development Engineering Standards and the engineering plans and details approved by the Principal Certifying Authority (PCA). Should the developer encounter any existing, live, underground stormwater drainage pipes, which carry flow from upstream properties, the developer must maintain the stormwater flow and re-route the stormwater pipes around the subject building or structures at the developer's expense.

The developer must construct the Box Culverts and channel reconstruction works to Sydney Water's satisfaction and provide Council with a Sydney Water Section 73 Certificate prior to the issue of any Occupation Certificate for the works, subject of this Development Consent. The developer may negotiate with Sydney Water to set the terms of the issue of the Final Section 73 Certificate with regard to works bonded and works completed prior to the issue of the Occupation Certificate.

The Developer must create and register an Easement to Drain Water in favour of Sydney Water, and to Sydney Water's satisfaction prior to the issue of any Occupation Certificate for the works, subject of this Development Consent

- 59) Prior to the commencement of work, the builder shall prepare a photographic record of the road reserve which clearly shows its condition prior to works occurring on site. For the entirety of demolition, subdivision or construction works, there shall be no stockpiling of building spoil, materials, or storage of equipment on the public road, including the footway and the road reserve shall be maintained in a safe condition at all times. No work shall be carried out on the public road, including the footway, unless a Work Permit authorised by Council has been obtained.

CONDITIONS TO BE SATISFIED PRIOR TO OCCUPATION

- 60) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 61) A final Occupation Certificate shall not be issued until all conditions relating to demolition, construction and site works of this development consent are satisfied and Council has issued a Work Permit Compliance Certificate.
- 62) A minimum of two hundred and six (206) off-street car spaces shall be provided in accordance with the submitted plans.
- Three (3) of the above car parking spaces are to be provided for people with mobility impairment in accordance with AS 2890.1. All car parking spaces shall be allocated and marked according to these requirements.
- 63) The longest vehicle permitted to access the site shall be 26 metres.
- 64) Landscaping is to be installed in accordance with the approved landscape plan. All works and methods nominated and materials and plants specified on the approved landscape plan are to be completed prior to the issue of an occupation certificate. The landscaping shall be maintained for the life of the development.
- 65) A completion report for the landscaping and creek restoration works shall be provided to Council's Senior Environmental Planner for approval prior to the occupation of the development. A monitoring regime shall be established and reported to Council for validation at 6 months, 2 years and 5 years from the completion of the works.

- 66) A suitably qualified Professional Civil Engineer shall certify that the driveways, parking bays, and service areas have been constructed in accordance with the approved plans and specifications. Such Certification shall be submitted prior to the issue of the Occupation Certificate or occupation of the site.
- 67) A registered surveyor shall prepare a Work As Executed Plan, and a suitably qualified Hydraulic Engineer shall provide certification of the constructed on-site stormwater drainage system.

The Work As Executed information shall be shown in red on a copy of the approved stormwater plan and shall include all information specified in Council's Development Engineering Standards. The Work As Executed plan shall be submitted to the Hydraulic Engineer prior to certification of the on-site stormwater drainage system.

A copy of the Work As Executed Plan and Hydraulic Engineer's Certification should be submitted to Council for information prior to issue of the Final Occupation Certificate.

- 68) The development shall have appropriate fencing fit for the future usage of the development site to prevent unauthorised access to the rail corridor by future occupants of the development. Prior to the issuing of an Occupation Certificate the Applicant shall liaise with Sydney Trains regarding the adequacy of any existing fencing along the rail corridor boundary. Details of the type of new fencing to be installed and the method of erection are to be to the satisfaction of Sydney Trains prior to the fencing work being undertaken.
- 69) The Section 73 compliance certificate under the Sydney Water Act 1994 must be submitted to the principal certifying authority before occupation of the development.

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