



AGENDA FOR THE CANTERBURY BANKSTOWN LOCAL PLANNING PANEL MEETING

6 August 2018 - 6.00pm

Location:

**Council Chambers
Cnr Chapel Road and the Mall,
Bankstown**

ORDER OF BUSINESS

REVESBY WARD

- 1 12 Carinya Road, Picnic Point**
Addition of laundry and two lifts to existing dwelling.....3
- 2 74 Park Road, East Hills**
Demolition of existing site structures and construction of a two storey
building comprising a ground floor childcare centre for 29 children and first
floor residence33

ROSELANDS WARD

- 3 2-4 Flora Street, Roselands**
Demolition of existing structures and construction of five storey shop top
housing development consisting of four retail suites and thirteen residential
units over three levels of basement car parking and detached two storey
dwelling unit77

Canterbury Bankstown Local Planning Panel - 6 August 2018

ITEM 1	12 Carinya Road, Picnic Point
	Addition of laundry and two lifts to existing dwelling
FILE	DA-370/2018 - Revesby Ward
ZONING	R2 Low Density Residential
DATE OF LODGEMENT	15 May 2018
EXHIBITION:	Neighbour Notified: 16 June 2018 – 29 June 2018
APPLICANT	David Edward Earl Weightman
OWNERS	David Edward Earl Weightman and Suzanne Andrea Weightman
ESTIMATED VALUE	\$150,000
AUTHOR	Planning

SUMMARY REPORT

This matter is reported to Council's Local Planning Panel as the application seeks a variation to Clause 4.3(2B)(b) in relation to wall height. The variation proposed is in excess of the Council officers delegations.

Development Application No. DA-370/2018 proposes alterations to the existing dwelling including an addition of a laundry and two lifts.

The proposed alterations and additions include the construction of a laundry on the eastern side of the dwelling with an external staircase to the side setback for direct access to a clothes drying area. The proposal also includes the installation of two lifts, one from the basement garage to the ground floor and one from the ground floor to the first and second floor of the existing dwelling.

DA-370/2018 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 regards to BLEP 2015 Clause 4.3(2B)(b) in relation to the maximum permitted wall height, and to Clauses 2.9 and 2.10 of the BDCP 2015 Part B1 in relation to wall height and side setbacks.

As detailed in this report, the non-compliances with the maximum wall height and DCP controls are considered worthy of support.

The application was notified for a period of 14 days from 2 November to 16 November 2017. One submission was received during the 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 the application be approved subject to the conditions included at Attachment 'B'.

ATTACHMENTS

- A. Section 4.15 Assessment
- B. Conditions

DA-370/2018 ASSESSMENT REPORT

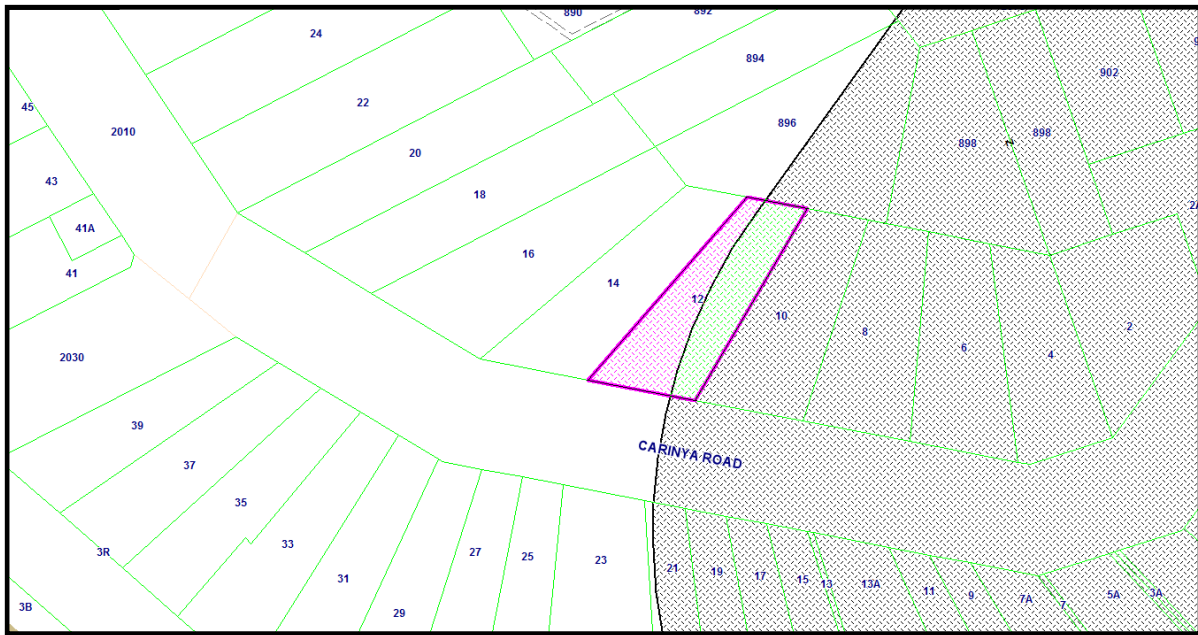
SITE & LOCALITY DESCRIPTION

The existing lot has a primary road frontage to Carinya Road of 20.115 metres. The site has an overall area of 599.7m² and is zoned R2 Low Density Residential under the Bankstown Local Environmental Plan 2015. The site is partially located within a bushfire prone zone running east to west across the site affecting approximately half of the development site. The site has a fall of approximately 15 metres from north (rear) to south (front), progressively sloping towards the river.

The site contains an existing dwelling which has three levels and a basement garage. The site is located in an area that is typically characterised by single storey and double storey dwellings, with the occasional dual occupancy development. Immediately to the east and west are residential dwellings with basement car parking.

The context of the site is illustrated in the following aerial photo and bushfire prone land map extract/exert provided below.





PROPOSED DEVELOPMENT

DA-370/2018 proposes the following works:

- Addition of a laundry;
- Construction of a lift running from the basement garage to the ground floor;
- Construction of a second lift running from the ground floor to the first and second floors;
- Associated site works.

External Concurrence

Rural Fire Service (RFS)

The application proposes works on land which is identified as bush fire prone on Canterbury Bankstown Council's bushfire prone map certified under section 10.3(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act). In order to satisfy Clause 4.14 of the EP&A Act a Bushfire Assessment Report was prepared by Bushfire Consulting Services Pty Ltd dated 13/6/18. This Bushfire Assessment Report concluded that the site had a bushfire attack level of 19. Compliance with the report recommendations will provide a BAL 19 rating which will comply with the Planning for Bushfire Protection Guidelines set by the NSW Rural Fire Service. The bushfire assessment report was reviewed by Council's Team Leader Building Certification who advised that the bushfire assessment report will satisfy Council's consideration under section 4.14 of the EP&A Act.

SECTION 4.15 ASSESSMENT

The proposed development has been assessed pursuant to section 4.15 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 4.15(1)(a)(i)]***Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment***

The site is located within land identified as being affected by *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*, 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 No. 55 – Remediation of Land

The provisions of Clause 7 of *State Environmental Planning Policy No. 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 proposed development and therefore the development application satisfies the provisions of SEPP No. 55.

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

A valid BASIX Certificate accompanied the Development Application. The Certificate details the thermal, energy and water commitments which are also detailed on the submitted plans. The proposal satisfies the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

Bankstown Local Environmental Plan 2015

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

Clause 1.2 – Aims of Plan
 Clause 1.3 – Land to which Plan applies
 Clause 1.4 – Definitions
 Clause 1.7 – Maps
 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 4.6 – Exceptions to development standards
 Clause 5.6 – Architectural roof features
 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 4.3(2B)(b) in relation to wall height.

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

STANDARD	PERMITTED	PROPOSED	COMPLIANCE
Height of Buildings	Max 7m – wall	7.8m wall height proposed	No
	Max 9m - building	No increase to the height of the existing building	Yes
Floor space ratio	Max. 0.50:1	0.43:1	Yes

The table indicates that there is a non-compliance with the maximum permitted wall height as provided in Clause 4.3(2B)(b) of the BLEP 2015. The clause and objectives of the height of buildings standard is reproduced below.

4.3 Height of Buildings

(2B) Despite subclause (2), the following restrictions apply to development on land in Zone R2 Low Density Residential:

- (a) for a secondary dwelling that is separate from the principal dwelling—the maximum building height is 6 metres and the maximum wall height is 3 metres,*

- (b) for a dwelling house or a dual occupancy—the maximum wall height is 7 metres,**
- (c) for multi dwelling housing and boarding houses:**
 - (i) the maximum building height for a dwelling facing a road is 9 metres and the maximum wall height is 7 metres, and**
 - (ii) the maximum building height for all other dwellings at the rear of the lot is 6 metres and the maximum wall height is 3 metres.**

4.3(1) *The objectives of this clause are as follows:*

- (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.*

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 permitted wall height of a dwelling. 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 development will achieve compliance with the objectives of the development standard under Clause 4.3 of the BLEP 2015. A detailed assessment against the objectives, relating to height, are provided 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,**

The roof height of the dwelling will remain higher than the proposed lift along the eastern wall.

In addition, the existing topography results in the adjacent dwelling, to the east, being higher than the existing dwelling height and proposed height of the lift well due to the slope of the land.

The minor 800mm non-compliance will not be visible from the public way due to position of the lift, the fall of the land and existing vegetation.

The lift will not overshadow any adjoining properties and does not contain any window openings, therefore maintaining privacy.

60.44% of the site will remain landscaped.

Overall the height will be compatible with the character and landform of the area and will not result in any detrimental effects.

- (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,**

The proposed development will still maintain the character of the existing dwelling, the minor 800mm non-compliance will not be visible from the public domain, as seen in the photograph above.

The subject site will still be consistent with the suburban character and the natural topography has resulted in similar building forms on surrounding sites.

- (c) to provide appropriate height transitions between development, particularly at zone boundaries;**

The existing topography has result in a stepped building form across the subject site. This is consistent with surrounding sites.

The minor 800mm non-compliance will only extend for 1.35 metres along the eastern wall. As such, there will still be appropriate setbacks to the eastern wall as well as appropriate height transitions.

As discussed above, adequate amenity will be maintained for adjoining sites.

- (d) to define focal points by way of nominating greater building heights in certain locations.**

Noted. The height for the subject site is consistent with the R2 Low Density Residential zone across adjoining sites.

For the reasons discussed above, the variation to the height control will still achieve the building height objectives.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The proposed variation to the height control is assessed with consideration to the principles established by the Land and Environment Court in Whebe V Pittwater Council [2007] NSW LEC 82. His Honour Preston CJ set out 5 ways of establishing that compliance with the standard is unreasonable or unnecessary. The 5 parameters were further tested in Four2Five Pty Ltd v Ashfield Council NSWLEC 90 where Justice Pain found that meeting the objectives of the standard was not sufficient to demonstrate that compliance was unreasonable or unnecessary.

Each of the 5 ways will be addressed in detail below:

- (a) The proposal meets the objectives of the development standard notwithstanding its non-compliance with the standard. In this instance one must determine the objectives of the standard and if not expressly stated in the LEP what are the inferred objectives?**

Yes the proposal meets the objectives of the standard as demonstrated above.

- (b) The underlying objective or purpose is not relevant to the development;**

The underlying objectives for height are still relevant.

- (c) The underlying objective or purpose would be defeated or thwarted if compliance was required with the standard;**

The underlying objective or purpose of the height control would be thwarted if compliance was required. This assessment is made on the basis of the minimal affects produced by the proposed development:

- The proposed development will comply with the density anticipated by this site, established by the Floor Space Ratio Control. The LEP permits a maximum FSR of 0.5:1. The development application provides a maximum FSR of 0.43:1.*
- The increased height does not adversely affect the adjoining properties by way of shadow, privacy and scale. The wall length non-compliance is minor, there will be no openings along the wall and the shadow cast will not affect adjoining properties.*
- The site will still maintain a low density residential scale which is balanced with 60.44% of the site remaining landscaped. This is consistent with the desired future character of the surrounding landscape.*
- The non-compliant building wall will not be visible from the public domain.*
- The installation of lifts will provide housing to meet a range of needs and allow for a family to reside in the home for years to come, as currently it is inaccessible for people with disabilities.*

The underlying objectives of providing housing needs for the community (particularly for persons with a disability), notwithstanding the permitted height control, would be thwarted if compliance was required.

(d) The development standard has been virtually abandoned or destroyed by Council's own actions.

Council has not abandoned the height controls.

However, it is noted that the existing topography is a constraint for the subject site and adjoining sites when undertaking building works.

The slope of the subject site and adjoining sites minimises any impacts from the minor 800mm non-compliance. However, it will still provide a building height transition required by the LEP, with only 1.35 metres of the eastern wall being non-compliant.

Overall, the proposed height will still achieve the desired character of the area, maintain amenity and ensure the proposed height will still have a transition in height with the adjoining eastern property.

(e) The zoning of the land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable and unnecessary.

The zoning of the land R2 Low Density Residential is appropriate.

Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to justify the variation as follows: The flexible application of the control will achieve a better outcome on this site for the following reasons:

- The proposed building layout and relationship with the adjoining sites to the east will still achieve the desired built form and provide appropriate transitions;*
- The 800mm non-compliance will not be visible from the public way and this ensures the existing dwelling maintains the low density character of the locality;*
- The site will retain a high portion of the landscaping;*
- The minor non-compliance with the eastern building wall height will not unreasonably affect adjoining properties by way of overlooking, scale and overshadowing;*
- The provision of lifts are required for medical reasons and this will enable the housing to cater for varying needs within the community;*

- *The setback and articulation of the existing dwelling ensures that there is adequate height variation given the existing topography; and*
- *The 0.43:1 FSR for the development will be significantly lower than the maximum LEP control of 0.5:1*

Based on the above, there are sufficient planning grounds to justify the variation.

The application seeks a variation to the wall height development standard under clause 4.3(2B)(b) of the BLEP 2015. In order to assess whether the development standard should be varied, the following provisions of Clause 4.6 of the BLEP 2015 are relevant.

- (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 4.3(2B)(b) prescribes the maximum permitted wall height for a dwelling on the subject site. The development standard is not excluded for consideration under this clause.

- (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 wall height control as contained in Clause 4.3(1) of the BLEP 2015.

In addressing the proposed variation to the wall height control, consideration must be given primarily to whether the built form is consistent with objective (a) and (b) of the development standard *"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,"* and *"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"*. Consideration is given to the potential built form outcomes on the site, reflective of the existing wall height and building heights on the site and the topography of the development site.

Compliance with Clause 4.3(2) of the Bankstown Local Environmental Plan 2015 is unreasonable on this site and in the scope of this application. The part of the proposal which exceeds the maximum prescribed wall height is the eastern lift with a maximum wall height of 7.8m. The height of the building, measured to the top of the flat roof to the existing natural ground level where the lift is proposed to be constructed, is 8.0 metres. As a result, the proposed lift will not increase the existing building height. The site slopes to the front by approximately 15 metres and having a new lift with a compliant wall height on a site of this topography is considered to be unreasonable based on the specific circumstances of the case.

The proposed design and departure from the wall height development standard is considered to be acceptable in this case as the design is conservative and remains consistent with the prevailing character of the built form of the surrounding area.

The design, as proposed, demonstrates compliance with the overall building height of 9 metres as set by the BLEP 2015. The non-compliance with the wall height is considered to be a reflection of the site specific constraints and is indicative of development on land with a significant slope. The wall height non-compliance is consistent with the existing building's wall height and is not increasing at any point, which demonstrates that the variation to the development standard is site specific and consistent with the previous developments approved on the site.

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 those structures in the immediate locality. The exceedance in wall height is a result of site specific constraints which limit the developable area of the site. To insist on strict compliance with the BLEP 2015, in regards to wall height, would unnecessarily hinder the existing dwelling being modified to meet the needs of the current elderly occupants.

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 a built outcome that is consistent with the prevailing character typical of waterfront development in the vicinity.

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.

- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.

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 in accordance with the above criteria.

Draft environmental planning instruments [section 4.15(1)(a)(ii)]

There are no applicable draft environmental planning instruments.

Development control plans [section 4.15(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	Not proposed to change under this development application.	Max. 2 storeys	Yes
Fill	None proposed.	Any reconstituted ground level on the allotment must not exceed a height of 600mm above the ground level (existing) of an adjoining property except where: (a) the dwelling house is required to be raised to achieve a suitable freeboard in accordance with Part B12 of this DCP; or (b) the fill is contained within the ground floor perimeter of the dwelling house to a height no greater than 1 metre above the ground level (existing) of the allotment.	Yes

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
Front Setback	Not proposed to change under this development application.	Ground floor– 5.5m First floor – 6.5m	Yes
Side setbacks	East 0.8 – 0.9m West 0.45m	0.90m (minimum) walls up to 7m 1.5m (minimum) walls above 7m	No, see discussion below
Private open space	Not proposed to change under this development application.	Min. 80m ² with a dimension of 5m throughout	Yes
Solar access (site)	Not proposed to change under this development application.	3 hours of sunlight between 8:00am and 4:00pm at the mid-winter solstice to at least one living area of the proposed dwelling	Yes
Solar access (private open space – site)	Not proposed to change under this development application.	3 hours of sunlight between 9:00am and 5:00pm at the equinox to 50% of the required private open space	Yes
Solar access (adjoining properties)	Achieved to front living area at No. 14 Carinya Road Not affected at No. 10 Carinya Road	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 at rear private open space of both No. 10 and No. 14 Carinya Road	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)	No solar panels are located on the neighbouring property at the time of assessment.	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 additional windows are proposed that look directly into living or bedroom windows of neighbouring dwellings.	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
Visual Privacy (private open space)	No additional windows are proposed which will look into the private open space of neighbouring dwellings.	Where development proposes a window that directly looks into the private open space of an existing dwelling, the window	Yes

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
		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.	
Visual Privacy (balconies)	Not proposed to change under this development application.	Council may allow dwelling houses to have an upper floor side or rear balcony solely where the balcony is not accessible from a living area or hallway, and the balcony design: (a) does not have an external staircase; and (b) does not exceed a width of 1.5 metres throughout; and (c) incorporates a form of screening to the satisfaction of Council such as partially recessing the balcony into the building.	N/A
Roof pitch	0-2 degrees.	Max. roof pitch 35 degrees	Yes
Car parking	Not proposed to change under this development application.	Min. 2 car parking spaces for a dwelling, one of which must be covered	Yes
Car parking design	Not proposed to change under this development application.	Where development proposes a garage with up to two car parking spaces facing the street, Council must ensure the garage architecturally integrates with the development and does not dominate the street facade.	Yes
Landscaping (Trees on site)	The proposal has been reviewed and removal of the proposed tree is exempt under the Bankstown Development Control Plan 2015 Part B11 – Tree Preservation Order	Development must retain and protect any significant trees on the allotment and adjoining allotments. To achieve this clause, the development may require a design alteration or a reduction in the size of the dwelling house.	Yes

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
Landscaping (site)	Not proposed to change under this development application.	Min. 45% of the area between the primary road frontage and the dwelling is to be landscaped 1 x 75L tree between the dwelling and the primary road frontage	N/A
Front fences	None proposed	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 allotment or facing a classified road must ensure: (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 (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. 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.	N/A

Side Setback

The application proposes a 0.8 metre side setback to the sites eastern boundary for the lift which does not comply with the minimum side setback of 0.9 metres as required by Clause 2.9 of the Bankstown Development Control Plan 2015 – Part B1. This non-compliance is considered minor as it is a point encroachment and there is minimal visual impact on the adjoining properties. Despite the setback non-compliance the lift is able to comply with the Building Code of Australia.

The application also proposes a variation to Clause 2.10 of the Bankstown Development Control Plan 2015 – Part B1 which requires that a building wall which is over 7 metres in height has a minimum setback of 1.5 metres. Strict application of this control is not deemed to be necessary in this case as the proposed lift is of minimal visual and environmental impact due to its orientation to the side and the fact that the reduced setback provides for

no additional impacts on the adjoining resident such that it could be argued that their amenity is adversely impacted. Strict application of this clause would not result in a substantially improved planning outcome.

For this reason, despite the reduced setback, it is considered that the non-compliance will not produce any discernible adverse impact on neighbouring properties hence the non-compliance is worthy of support.

Planning agreements [section 4.15(1)(a)(iii)]

There are no planning agreements that apply to this application.

The regulations [section 4.15(1)(a)(iv)]

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

The likely impacts of the development [section 4.15(1)(b)]

The likely impacts of the proposal have been managed through the design of the development which, despite the non-compliances with Council's planning controls, (previously mentioned and addressed in this report) are considered to result in a satisfactory development outcome, and unlikely to result in any adverse impacts on the adjoining properties or locality.

Suitability of the site [section 4.15(1)(c)]

The proposal 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 variation to the BLEP 2015 in relation to wall height and a number of DCP controls, it is considered that the built form proposed is representative of a compliant bulk and scale that can be expected on this site in the R2 – Low Density Residential zone as set out previously in this report. Accordingly, the site is considered to be suitable for the proposed development.

Submissions [section 4.15(1)(d)]

One submission was received during the neighbour notification period. The following concerns were raised which are addressed below:

- **The laundry external staircase is not shown on the site plan and the staircase has a setback of 0.8m from the property boundary.**

Comment

Sufficient detail of the location and size of the staircase in relation to the adjoining property was provided on the floor plans to enable a thorough assessment. In order to ensure visual privacy for the adjoining dwelling a condition requiring a 1.8 metre privacy screen on the landing of the stairs has been included in the consent.

- **The eastern lift only has a 0.8 metre setback from the property boundary.**

Comment

The non-compliant portion of the lift is a point encroachment at 0.8 metres. The extent of the non-compliance is considered minor and is justified in the circumstances of this case as detailed in this report.

- **The eastern lift is located close to bedroom windows and there are concerns relating to the noise generated by the lift.**

Comment

The proposal was referred to Councils Environmental Health Officers. The following conditions will ensure that the lift is operated without resulting in an unreasonable reduction in amenity to the adjoining residents.

- The lift shall be operated so as to avoid unreasonable noise or vibration and cause no interference to adjoining or nearby occupants. In the event of Council receiving complaints and if it is considered by Council that excessive and/or offensive noise is emanating from the premises, the person(s) in control of the premises shall arrange for an acoustic investigation to be carried out (by an accredited acoustic consultant) and submit a report to Council detailing the proposed methods for the control of excessive noise emanating from the premises. The measures shall be approved by Council prior to implementation and shall be at full cost to the applicant.
 - Any activity carried out in accordance with this approval shall not give rise to offensive odour, offensive noise or pollution of air, land or water as defined in the *Protection of the Environment Operations Act 1997* and Regulations.
 - The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, ash, dust, waste water, waste products, grit, oil or other harmful products.
- **The site analysis plan does not show the location of the adjoining dwellings and how the development will relate to them.**

Comment

The site analysis plan accurately shows the location of the adjoining dwellings. This plan was not included in the neighbour notification plan that was sent to the neighbour. The site analysis plan was made available during the notification period at Council's Customer Service Centre and on Council's e-Planning Portal.

- **There are no shadow diagrams attached.**

Comment

Council has undertaken its own solar access assessment and determined that the increase in shadow to the neighbouring property is to an extent that the development complies with Clause 2.14 of the Bankstown Development Control Plan 2015 – Part B1.

The public interest [section 4.15(1)(e)]

With regard to the relevant planning considerations, it is concluded that the proposed development would not contravene the public interest.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979 and the relevant specific environmental planning instruments, including State Environmental Planning Policy No 55—Remediation of Land, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment, Bankstown Local Environmental Plan 2015 and Bankstown Development Control Plan 2015.

The proposed development results in an appropriate built form for the site which is consistent with the longer term future desired future character illustrated in Council's Development Control Plan and Local Environmental Plan.

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-370/2018, submitted by David Weightman, accompanied by Page No. 1, 2, 3, 4, 5, 6, 7, 8 & 9, prepared by Katrina Giles, dated 8 June 2018, all revision A 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) The section of staircase marked in red on the approved plans shall be amended to include a 1.8m privacy screen. Construction Certificate plans shall be in accordance with this requirement.
- 3) The elevator shall be operated so as to avoid unreasonable noise or vibration and cause no interference to adjoining or nearby occupants for the lifetime of the development. In the event of Council receiving complaints and if it is considered by Council that excessive and/or offensive noise is emanating from the premises, the person(s) in control of the premises shall arrange for an acoustic investigation to be carried out (by an accredited acoustic consultant) and submit a report to Council detailing the proposed methods for the control of excessive noise emanating from the premises. The measures shall be approved by Council prior to implementation and shall be at full cost to the applicant.
- 4) Any activity carried out in accordance with this approval shall not give rise to offensive odour, offensive noise or pollution of air, land or water as defined in the Protection of the Environment Operations Act 1997 and Regulations.
- 5) The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, ash, dust, waste water, waste products, grit, oil or other harmful products.

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:

- 6) 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.
- 7) 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.
- 8) 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.
- 9) 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.

- 10) 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.
- 11) 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.
- 12) 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 \$750 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.

- 13) 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.
- 14) 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 sheet No. 10 prepared by Katrina Giles dated 8/6/18. 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.
- 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, evidence of lodgement of an application for 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 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.

- 18) A certificate from a professional engineer certifying the structural capacity of the existing building will be appropriate to the building's proposed new use or is capable of supporting the loads imposed by the new structure must be provided to the certifying authority prior to the issue of a construction certificate.

CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION WORKS COMMENCING

- 19) 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.
- 20) 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.
- 21) 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.
- 22) 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.
- 23) 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.
- 24) 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.

- 25) 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.
- 26) 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.
- 27) 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.

- 28) 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

- 29) 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.
- 30) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 31) 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.
- 32) 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.
- 33) All excavations and backfilling must be executed safely and in accordance with the relevant Australian Standards.
- 34) 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.
- 35) 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.
- 36) 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.

- 37) 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

- 38) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 39) 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.
- 40) A Copy of the Work Permit Compliance Certificate shall be submitted to the PCA Prior to the issue of the Occupation Certificate.

-END-

Canterbury Bankstown Local Planning Panel - 6 August 2018

ITEM 2	74 Park Road, East Hills
	Demolition of existing site structures and construction of a two storey building comprising a ground floor childcare centre for 29 children and first floor residence
FILE	DA-1167/2016 – Revesby Ward
ZONING	R2 Low Density Residential
DATE OF LODGEMENT	30 November 2016
APPLICANT	Envision Group
OWNERS	Haiha Pty Ltd
ESTIMATED VALUE	\$495,000
SITE AREA	1011.7 sqm
AUTHOR	Planning

REPORT

The item was considered by IHAP on 4 December 2017, when it was deferred for further information regarding the following matters:

- a) *The functionality and potential conflicts of the proposed car parking in the front setback area to serve a number of users: residents; carers and parents; staff parking; as well as a disabled space immediately adjacent to the children's pathway to enter the centre;*
- b) *The acoustic report does not address the impact of the proposal on the acoustic amenity of the residence above the childcare centre. It is noted that this may have a separate occupant or family as such and there has been no consideration as to the co-existence of the two activities. The acoustic study only addresses the impacts on adjoining properties;*

- c) *The location of the waste disposal receptacles immediately adjacent to no. 76 is inappropriate and should be relocated such that it does not impact on adjoining properties;*
- d) *The need to have stairs in a new childcare centre is not considered best practice and would appear to be inconsistent with childcare planning guidelines where direct access is always encouraged. The Panel notes that the need for the stairs is because of the flood level and the need for a freeboard of 500mm. The Panel notes that the applicant has suggested that a lift and/or ramp may be installed to provide the access, however for a new purpose designed and built child care centre this is not best practice;*
- e) *The presentation of the proposed development with a predominantly paved hard surface front yard for the necessary car parking is not in keeping with the streetscape of the residential area. The proposal does not provide appropriate landscaping to filter the development or provide adequate room for effective landscaping to the front and side boundaries; and*
- f) *The applicant has not demonstrated that the co-location of the residence together with a childcare facility on this site will provide an appropriate planning outcome. For example the amenity for future occupants of the dwelling, and the configuration of its open space and parking on the site*

This matter was originally reported to the Independent Hearing and Assessment Panel as six submissions have been received in response to the subject application.

Development Application DA-167/2016 seeks consent for the demolition of existing site structures and construction of a two storey building comprising of a ground floor childcare centre for 29 children and first floor residence.

The application was advertised and notified for a period of 28 days from 14 December 2016 to 10 January 2017 and 14 days from 23 October 2017 to 6 November 2017. In total six submissions were received, in which concerns were raised relating to solar access, traffic/parking, noise, and character of the local area.

The concerns raised in the submissions have been adequately addressed and do not warrant refusal or further modification of the proposed development. These matters are detailed in a later section of this report.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

It is recommended that the application be approved subject to the attached conditions.

ATTACHMENTS

- A. Assessment Report
- B. Conditions of Consent

DA-1167/2016 ASSESSMENT REPORT

SITE AND LOCALITY DESCRIPTION

Lot 21 Sec 6 DP 10225, also known as 74 Park Road East Hills, has a total allotment size of 1011.7m² and an allotment width of 20.115m at the boundary adjoining Park Road. The site is zoned R2 – Low Density Residential and is partially affected by Class 5 acid sulphate soils as prescribed by the *Bankstown Local Environmental Plan 2015*. Council's maps also note the site to be subject to medium risk flooding.

Surrounding development to the subject site is primarily single storey residential brick and fibro cottages. On 1 April 2016, Council approved an application for the '*demolition of existing structures, construction of a forty (40) place childcare centre including ten (10) on-site car spaces and a boundary adjustment between 72 Park Road and 8 Monie Ave East Hills*' on 72 Park Road (northern adjoining allotment). This development consent has not been activated and Council has no record of a Construction Certificate being issued for this development at the time of this report.

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



PROPOSED DEVELOPMENT

DA-1167/2016 proposes the following works:

- Demolition of existing structures on site.
- Construction of a two storey building comprising of:
 - A ground floor childcare centre for 29 children; and
 - Three bedroom residence on the first floor.

- Construction of ten at grade parking spaces including two residential spaces with associated carport and eight spaces for use for the childcare.

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)

State Environmental Planning Policy 55 – Remediation of Land (SEPP 55) requires the consent authority 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.

The site has a history of residential use dating back to the early part of the twentieth century. In accordance with the Managing Land Contamination Planning Guidelines, the historical uses of the site would not warrant the need for further consideration of contamination.

As such, in light of the fact that there is no evidence of contamination in the historical use of the site and there is no evidence of fill onsite, it is 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 (GMREP 2)

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.

Bankstown Local Environmental Plan (BLEP) 2015

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 1.9A – Suspension of covenants, agreements and instruments

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 4.1B – Minimum lot sizes and special provisions for certain dwellings

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 – Exception to development standards
 Clause 6.1 – Acid sulfate soils
 Clause 6.2 – Earthworks
 Clause 6.3 – Flood Planning
 Clause 6.8 – Special provisions applying to centre-based child care facilities

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

STANDARD	PROPOSED	BLEP 2015 COMPLIANCE
Clause 4.1B Minimum lot sizes and special provisions for certain dwellings	20.115 m lot width at the front building line	Complies – Requirement for a minimum 20m lot width at front building line.
Clause 4.3 Height	8.7m proposed	Complies – 9m height limit.
Clause 4.4 FSR	0.37:1	Complies – 0.4 :1 maximum under sub clause 2A.
Clause 6.8 Special provision applying to centre-based child care facilities.	12.42m wide carriageway	Complies – Can not be located on classified road, cul-de-sac or a road with a carriageway width between kerbs of less than 10 meters.

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

The *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*, was gazetted on 1 September 2017. This policy does not apply to the subject application by virtue of the saving provisions set out in Schedule 5.

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

The application has been assessed against the relevant provisions contained within the *Bankstown Development Control Plan 2015*, including the 'Introduction and list of amendments', Part B1 – Residential Development, Part B5 – Parking and Part B6 – Child Care Centres.

The following table provides a summary of the development application against the controls contained in Part B1 and Part B6 of *Bankstown Development Control Plan 2015*.

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
PART B1 – Residential Development			
Storey Limit	2 storeys (residential component on top floor).	Max. 2 storeys	Yes
Fill	Max. 800mm fill to be contained within the ground floor perimeter.	Any reconstituted ground level of an allotment is not to exceed 600mm above the natural ground level of adjoining allotments. Max. 1m under building footprint.	Yes
Front Setback	17.14m setback to building wall of residence.	First floor – Min. 6.5m	Yes
Side setbacks	3m to South, 1.537m to North	0.90m (minimum)	Yes
Private open space	87.5 sqm provided.	Min. 80m ² per dwelling	Yes
Solar access (site)	3 hours from 12pm onwards via north western window of living room.	3 hours of sunlight between 8:00am and 4:00pm at the mid-winter solstice to at least one living area.	Yes
Solar access (private open space – site)	Achieved to the nominated private open space.	3 hours of sunlight between 9:00am and 5:00pm at the equinox to 50% of the required private open space.	Yes
Solar access (adjoining properties)	Achieved to a north western facing living area of No. 76 Park Road from 11am onwards.	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 of No. 76 Park Road from 10am	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. 76 Park Road will be impacted slightly from 8:30am to approximately 10:30am. It is considered that the development sufficiently avoids the panels. This is due to the location of the panels and the proposed setbacks of the upper floor	Development should avoid overshadowing any existing solar hot water system, photovoltaic panel or other solar collector on the allotment and neighbouring properties.	Yes

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
PART B1 – Residential Development			
	component of the subject development.		
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
Visual Privacy (private open space)	The first floor windows to both dwellings face east (street) and west (rear) thus complies with this control.	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	23 degrees.	Max. roof pitch 35 degrees	Yes
Car parking	Two spaces are provided behind the front building line. Both spaces are covered by an integrated carport.	Min. 2 car parking spaces per dwelling, 1 of which must be covered	Yes
Part B6 – Childcare Centres			
Traffic management (environmental capacity)	The application was referred to Council’s traffic officers and it was determined the streets within the vicinity of the site would not exceed their environmental capacity as a result of this application.	Development for the purpose of a childcare centre must not result in a street within the vicinity of the site to exceed the environmental capacity maximum	Yes
Traffic management (level of service)	The application was referred to Council’s traffic officers. The level of service provided to the street intersection will	Development for the purpose of a childcare centre must not result in a street intersection in the vicinity of the site to have a level of service below B.	Yes

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
PART B1 – Residential Development			
	not be below service level B.		
Traffic impact study	A traffic impact study was submitted addressing the existing and proposed conditions.	A traffic impact study must be submitted addressing existing and proposed conditions.	Yes
Capacity	29 children	Max. 29 children	Yes
Frontage	20.115m	Min. 20m width at front building line	Yes
Storeys	2 storeys	Max. 2 storeys	Yes
Primary Frontage Setback	14.8m	Min. 5.50m	Yes
Secondary frontage setback	N/A	Min. 3m	N/A
Side setback	1.5m South, 1.55m North	Min. 1.50m	Yes
Outdoor areas	Outdoor area is to the rear of the site. No adjoining residential living or bedrooms. No concerns regarding traffic hazards or other sources of noise or pollution to this area.	Outdoor areas are to be located to avoid: <ul style="list-style-type: none">• A living area or bedroom of an adjoining dwelling.• A road and driveway that may have noise or a possible pollution impact on children.• Any other potential noise or pollution source.• Any potential traffic hazard locations where an out-of-control vehicle may injure children	Yes
Deep soil zones	2m landscaped buffer along primary provided.	2m wide deep soil zone along the primary and secondary frontage	Yes
Deep soil zones	1.50m buffer provided along the perimeter of the play area.	1.50m wide deep soil zone around the perimeter of the outdoor play area	Yes
Access	A condition of consent is to be imposed for compliance	Child care centres must be easily accessible and comply with the BCA and AS 1428 Parts 1 to 4 – Design for Access and Mobility	Yes
Car parking	10 provided.	7 spaces (1 per staff member) and 2 for use of residence	Yes
Solar access	> 3 hours of sunlight to north western facing windows of games room (No. 76 Park Road).	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	> 3 hours of sunlight to rear private open space area of No. 76 Park Road.	3 hours of sunlight between 9:00am and 5:00pm at the equinox to 50% of the required private	Yes

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
PART B1 – Residential Development			
	North facing	open space for a dwelling that adjoins the development.	
Building design	Presents as a dwelling house	The external building design of a purpose-built centre must give the appearance of a dwelling house	Yes
Front fences	1.2m maximum height with solid pillars only and open style for remaining. Plan on Drawing No. DA11.	Component of front fence of solid construction must not exceed 1 metre with the remainder to be open style construction with a maximum height of 1.80 metres	Yes
Acoustic privacy	An acoustic report prepared by a qualified acoustic consultant was submitted with the application.	An acoustic report prepared by a qualified acoustic consultant must be submitted with the application.	Yes
Noise Attenuation fences	2m high fence along side and rear boundary in accordance with Appendix A of submitted Acoustic Report.	Max. height 2m	Yes
House of operation	7:00am to 6:00pm Monday to Friday	Limited to 7:00am to 6:00pm Monday to Friday	Yes
Outdoor play areas	Children within the outdoor play areas can be supervised from within the centre.	Allow supervision from within the centre.	Yes
Outdoor play areas	Located on predominately flat ground.	Located on predominately flat ground, include shaded areas and have a surface treatment in accordance with best practice guidelines.	Yes
Safety and security	The front door and multiple windows to face street.	The front door and at least one window to face the street.	Yes
Safety and security	Building separates the two spaces. The play area is located to the rear.	Outdoor play areas must be separated from a car park with a safety fence and gates.	Yes
Food Premises	A condition of consent to be imposed.	Kitchen to comply with the relevant regulations.	Yes
Site Facilities	Complies. Condition of consent to be imposed to ensure clothes drying complies.	Facilities shall not be visible from street for public space.	Yes

Children (Education and Care Services) Supplementary Provisions Regulation 2004 and Education and Care Services National Regulations

The table below demonstrates the proposals compliance or otherwise with the *Children (Education and Care Services) Supplementary Provisions Regulations 2004*

Requirements	Children (Education and Care Services) Supplementary Provisions Regulation 2004 and Education and Care Services National Regulations	Provided	Compliance
Space requirements for 29 children: Indoor play space	3.25m ² unencumbered indoor play space per child	3.51m ² per child	Yes
Outdoor play space	Total area: 101.9m ² 7m ² unencumbered outdoor play space per child Total area required: 210m ²	7.24m ² per child	Yes
Facilities:	Separate administration area and staff respite area	Provided within the centre	Yes
	Laundry	Provided within the centre	Yes
	Food preparation facilities	Provided within the centre	Yes
	Toilet & washing facilities	Provided within the centre	Yes
	Storage facilities	Provided within the centre	Yes
	Craft preparation (not next to kitchen or nappy changing area)	Provided within the centre	Yes

The above table confirms the development satisfies the *Children (Education and Care Services) Supplementary Provisions Regulation 2004* and *Education and Care Services National Regulations* subject to the number of children to be cared for not exceeding 29.

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

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, compliance is achieved with the relevant development standards. As such, it is considered that the impact of the proposed development on the locality will be acceptable and any cumulative impact of this development remains within the intended zone objectives and existing environmental capacity.

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

The proposal is a permitted use on the subject site as it zoned R2 Low Density Residential. It is considered the site is of a sufficient area and width to comply with the relevant development standards and regulations, as noted in this report. Having regard to the planning considerations, the subject site is considered suitable for the proposed development.

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

The application was originally advertised and notified for a period of 28 days from 14 December 2016 to 10 January 2017. Amended plans were re-notified for a period of 14 days from 23 October 2017 to 6 November 2017.

Six submissions were received, which raised concerns relating to solar access, traffic/parking, noise, and character of the local area. The concerns raised in the submissions have been adequately addressed and do not warrant refusal or further modification of the proposed development, as demonstrated below.

Objection: Solar access – ‘it will create shadow and block natural light from the sun to enter my house’, ‘overcast shadow into my childcare centre’, ‘shadow will impact my electrical solar panels’.

Comment: The proposal has been assessed against Council’s Development Control Plan in regard to solar access. The orientation of the site results in any overshadowing being contained to the street and 76 Park Road. Over three hours remains to the living area of 76 Park Road from noon onwards. There is a minor level of overshadowing to the solar panels located on the northern aspect of the roof on 76 Park Road. Overshadowing of this is considered inevitable given it’s placement on the northern side of the roof on a single storey dwelling. A 3m upper storey setback is provided on the southern boundary of the development site along with the existing setback of 7.8m from the solar panels to the boundary of 74 and 76 Park Road. This is a total setback of 10.8m. The proposal is considered to satisfy Council’s requirements in regard to avoiding overshadowing of existing solar infrastructure.

Objection: Traffic / parking – ‘congestion when parents come to drop their children’, ‘Park Road is already known for bad parking due to the railway station’, ‘there is no parking in the street due to train commuters parking out the street’

Comment: Council requires the submission of a Traffic Impact Study that is consistent with the RMS Guide to Traffic Generating Development. This is to determine the existing and proposed conditions of the surrounding traffic network. This report has been submitted with the application and subsequently reviewed by Council’s traffic engineers. Subject to conditions of consent (included in the conditions of endorsement attached), it is considered the proposal will not adversely impact the surrounding and immediate road network. This includes ensuring the level of service and environmental capacity remains. The proposal complies with Council’s onsite parking requirements and subject to conditions will comply with the RMS Guideline for Traffic Generating Development.

Where the development of 72 Park Road was to proceed to construction and operation, it would do so independently of this development. Sufficient parking is provided on the subject site in accordance with the relevant guidelines. It is not considered the simultaneous operation of the premises would result in an unsatisfactory level of service or result in the existing road network exceeding its environmental capacity.

Objection: Noise – ‘two childcares located side by side will change the environment we live in’, ‘expect council to pay attention to the fact that there is a childcare centre at 72 Park Road’, ‘Operational necessities to meet environmental and acoustic requirements will pose a risk to the physically and mentally to the children’.

Comment: Council’s Development Control Plan requires the submission of an acoustic report demonstrating the existing noise levels and the likely noise levels to emanate from the proposed child care centre. The development must ensure the noise of children playing does not exceed 10Db(A) above the existing background noise level. The submitted acoustic report addresses Clause 5.2, Part B6 – Child Care Centres, Bankstown Development Control Plan 2015 and has been reviewed by Council’s environmental health officer. Given there is no established childcare centre on 72 Park Road at this time, assessment can only be made in regard to the application before Council. It is considered the subject proposal will comply and conditions of consent will be imposed to ensure future compliance.

Objection: Character – ‘a yellow building with 1.2m high colour pencils lining the footpath does not fit in with the character of the neighbourhood’, ‘I object to the approval of a school, childcare centre operating in this residential hub, as all of these homes in this area are residential’.

Comment: The land use being a ‘centre-based childcare’ is a permitted land use in the R2 – Low Density residential zone. The proposal remains consistent with the objectives of the R2 land use zone. It is not considered the proposal will impact the ability for the locality to provide for the housing needs of the community within the low density residential setting. This proposal is a non-residential use which complements the day to day needs of residents while ensuring there is no adverse impact on the living environment or amenity of the area. Council’s Development Controls enforce the acceptable level of impact. The design of the facility is consistent with the residential character of the area in regard to bulk, scale and design.

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

The proposed development would not contravene the public interest or the interest of any parties or bodies representing the public. Matters raised in public submissions have been satisfactorily addressed.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 79C of the *Environmental Planning and Assessment Act 1979*, *State Environmental Planning Policy 55 (Remediation of Land)*, *Greater Metropolitan Regional Environmental Plan 2 – Georges River Catchment*, *Bankstown Local Environmental Plan 2015*, and *Bankstown Development Control Plan 2015* as well as the *Children (Education and Care Services) Supplementary Provisions Regulation 2004* and *Education and Care Services National Regulations*.

Independent Hearing and Assessment Panel Minutes

The proposed development represents an appropriate built form for the site. Relevant planning controls have been appropriately responded to and no unresolved matters have been raised in public submissions. Approval of this application is considered to be consistent with the R2 Low Density zoning for the locality and would not result in an unacceptable or unreasonable impacts on the surrounding locality.

The Council’s Independent Hearing and Assessment Panel considered the application on 4 December 2017, and the minutes from that meeting are provided below.

Site Visit

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

Public Addresses

<i>Mr Eric Sheather and Mrs Mychele Sheather (objectors)</i>	<ul style="list-style-type: none"> • <i>Live adjacent to the subject property.</i> • <i>Do not believe the officer’s report addresses all the points in their original submission, such as concern regarding work health and safety.</i>
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	<ul style="list-style-type: none"> • Concerned regarding overshadowing, noting proposed development will impact their solar panels. • Raised concern regarding noise, noting an Acoustic report was submitted that referred to the incorrect lot. Disputes levels of 10db higher than the existing is acceptable, is of the view noise resulting from the proposed development will result in amenity impacts for their family. • As there will be two adjacent child care centres, is concerned noise complaints will not be able to be attributed to a single childcare centre. • Traffic/Parking: Disputes the findings of the traffic report, noting the report was completed in October 2016, queried if the information is reliable as it could have taken place in the first two weeks of holidays and was conducted in the afternoon i.e not situational. Disputes the accuracy of figures referred to in the report of 17 vehicles in morning and again in the evening and estimate of one car every 3-4 minutes. Raised concern parents will temporarily park across neighbouring driveways and regarding safety of children during drop off/pickup. Notes 2 x 10 minute parking zones have been conditioned, impacting street parking. • Is of the view the proposed development will result in a reduction in value of their home. • Raised concern regarding the location of the proposed developments garbage bins adjacent to their boundary. • Do not believe the proposed development is in line with the objectives of R2 zoning; is of the view it will be detrimental to existing residents.
Ms Victoria Metry (objector)	<ul style="list-style-type: none"> • Queries how two childcare centres can be located adjacent to each other. Raised concern regarding competition between two childcare centres on the same street, noting other Council's have restrictions on proximity of Childcare Centres. • Is concerned about noise and traffic resulting from the proposed development. Is of the view the width of the subject site is not suitable for parking functionality, noting her Childcare Centre to be located adjacent to the subject site has car parking on site. Advised the request to increase the capacity from 40 children to 51 children for her childcare centre was refused based on traffic concerns.
Ms Nansy Metry (objector)	<ul style="list-style-type: none"> • Raised concern regarding noise impacts on her property.
Mr Eli Gescheit (representing the applicant) and Mr	<ul style="list-style-type: none"> • Advised the proposed development complies with DCP, FSR, height, landscape, set back and car parking requirements and a rigorous Plan of Management has been prepared.

<p><i>Joseph Toth (Architect representing the applicant)</i></p>	<p><i>Notes zone allows mixed use childcare centre/residential.</i></p> <ul style="list-style-type: none"> • <i>Responded to issues raised by the previous speakers as follows:</i> <ul style="list-style-type: none"> - <i>Work health and safety: Advised this is regular practice throughout all childcare centres.</i> - <i>Shadow impacts on western neighbour: Shadow diagrams demonstrate compliance. Required setback is 1.5 metres, the proposed development provides 3 metres to reduce solar impact.</i> - <i>Acoustic: Plan of Management has been submitted, the applicant will be adopting the recommendations made in the Acoustic Report, including guidelines relating to the number of children and provision of acoustic walls.</i> - <i>Traffic: Advised the location of the driveway is in the middle of the frontage. Notes Council requires 9 parking spots, proposal provides 10 spaces.</i> • <i>The applicant's representative confirmed no objection is raised to the design conditions imposed by Council.</i> • <i>Advised addition of two on street 10 minute car parking spaces on Park Road was suggested by Council, not at the request of the applicant.</i> • <i>Responded to questions raised by the Panel in relation to frequency of meetings with the community liaison officer, garbage bin collection/location and mitigation strategies for impact eg. odour, landscaping to soften the front setback area, traffic - minimising impacts of drop off and pick up, acoustic wall, residence occupancy, compliance with new SEPP and guidelines, functionality of parking and drop and go area, clarification of room capacity annotation on drawing D02 and functionality of turning circle.</i> • <i>Advised the Panel the reason a residential component is included is because the site does not have a 25m frontage to allow a 40 place child care centre, prepared to provide alternative access (apart from stairs) to access rear playing area.</i> • <i>Raised no objection to:</i> <ul style="list-style-type: none"> - <i>consider relocation of the garbage bin location;</i> - <i>condition proposed by the Panel regarding requiring acoustic monitoring post operation.</i> • <i>The applicant's representative was of the view a condition that the residence was only to be used in association with the childcare centre was onerous.</i>
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Panel Assessment

The Panel has inspected the subject site, and considered the Council officer's report and recommendation. The Panel however has concluded that this matter should be deferred to allow a number of fundamental concerns to be addressed, these include:

- a) *The functionality and potential conflicts of the proposed car parking in the front setback area to serve a number of users: residents; carers and parents; staff parking; as well as a disabled space immediately adjacent to the children's pathway to enter the centre;*
- b) *The acoustic report does not address the impact of the proposal on the acoustic amenity of the residence above the childcare centre. It is noted that this may have a separate occupant or family as such and there has been no consideration as to the co-existence of the two activities. The acoustic study only addresses the impacts on adjoining properties;*
- c) *The location of the waste disposal receptacles immediately adjacent to no. 76 is inappropriate and should be relocated such that it does not impact on adjoining properties;*
- d) *The need to have stairs in a new childcare centre is not considered best practice and would appear to be inconsistent with childcare planning guidelines where direct access is always encouraged. The Panel notes that the need for the stairs is because of the flood level and the need for a freeboard of 500mm. The Panel notes that the applicant has suggested that a lift and/or ramp may be installed to provide the access, however for a new purpose designed and built child care centre this is not best practice;*
- e) *The presentation of the proposed development with a predominantly paved hard surface front yard for the necessary car parking is not in keeping with the streetscape of the residential area. The proposal does not provide appropriate landscaping to filter the development or provide adequate room for effective landscaping to the front and side boundaries; and*
- f) *The applicant has not demonstrated that the co-location of the residence together with a childcare facility on this site will provide an appropriate planning outcome. For example the amenity for future occupants of the dwelling, and the configuration of its open space and parking on the site.*

As such the Panel defers this matter to allow the applicant the opportunity to address the above concerns and provide additional information and amended plans to the Council within the next three months.

IHAP Determination

*THAT Development Application DA-1167/2016 be **DEFERRED** to allow the applicant the opportunity to address the above concerns raised by the Panel.*

Vote: 4 – 0 in favour

Supplementary Information

The item was presented before IHAP on 4 December 2017 and the matter was deferred pending further information regarding the matters noted above. An initial address of the Panel's issues was submitted by the applicant on 14 March 2018. A review of this information raised concern that the Panel's request had not been adequately addressed. The applicant was offered a second opportunity to put forward amended information and this was provided to Council on 17 May 2018. The applicant's response on 14 March 2018 and 17 May 2018 has been provided to the Panel under separate cover.

In regard to the matters for deferral raised by the Panel, the following comments are made:

- a) *The functionality and potential conflicts of the proposed car parking in the front setback area to serve a number of users: residents; carers and parents; staff parking; as well as a disabled space immediately adjacent to the children's pathway to enter the centre;*

Comment: The applicant has proposed minor amendments to address this matter. The front setback of the southern section of the front façade has been increased by 200mm to 17.8m and the pathway connection between the northern and southern footpath has been removed. This has enabled a reconfiguration of the spaces proposed including a width of 2.7m for the childcare spaces, 2.6m for the resident parking spaces and a 2.4m wide accessible car space with associated shared zone. A supplementary report has been provided by the applicant's traffic engineer noting the proposed spaces comply with the relevant Australian Standard (AS2890.1-2004 and AS2890.6:2009).

Council raises concern with the lack of distinction with the shared area of the accessible space that is identified within the swept path and the front entry walkway to the childcare centre. A condition of consent has been included to ensure a 1m wide section of the shared area has the same material treatment as the carpark area. This is to provide a clear distinction between these spaces. The applicant highlights additional measures in regards to the Panel's concerns such as wheel stops, car park signage allocating spaces and bollards in the shared area.

Where the Panel has remaining concerns, a condition of consent could be imposed to only accommodate staff and resident parking on site. This would alleviate issues regarding parent behaviour, short term vehicle parking and associated manoeuvring on site.

The Panel also raised concern with the ability of a vehicle to manoeuvre out of the carpark when all spaces are occupied. The applicant has provided swept path diagrams demonstrating this scenario is overcome with a seven point turn (page 11, 'Car Parking

Certification', dated May 2018, revision 1.1). The Panel may consider imposing a condition requiring one space adjacent to Park Road be allocated as a turning bay and not for the use of parking as the proposal currently includes a surplus of one space beyond that required by Council's Development Control Plan 2015 (Part B5 – Parking).

- b) *The acoustic report does not address the impact of the proposal on the acoustic amenity of the residence above the childcare centre. It is noted that this may have a separate occupant or family as such and there has been no consideration as to the co-existence of the two activities. The acoustic study only addresses the impacts on adjoining properties;*

Comment: The applicant has provided an amended acoustic report investigating this matter ('Noise Emission Assessment', prepared by Acoustic Dynamics, dated 28 February 2018). Section 4.2.1 of this report outlines how the upper floor residence would comply with AS 2107 as the proposed *'floor/ceiling construction is a solid concrete system and is likely to achieve a minimum RW 50'*. Council's conditions of consent have been amended to ensure the recommendations of the revised acoustic report are adopted in the Construction Certificate plans and a subsequent condition requiring certification of these measures being incorporated into the construction of the premises prior to occupation.

- c) *The location of the waste disposal receptacles immediately adjacent to no. 76 is inappropriate and should be relocated such that it does not impact on adjoining properties;*

Comment: The applicant has amended the location of the bin storage to be in a shed at the rear of the property. Subsequently the applicant has replaced the stairs on the southern boundary of the site with a ramp to facilitate the carting of waste bins. Council raises concern with the distance of the carting route being 48 metres to Park Road but acknowledges the arrangement is highly dependent on the successful management of the premises.

- d) *The need to have stairs in a new childcare centre is not considered best practice and would appear to be inconsistent with childcare planning guidelines where direct access is always encouraged. The Panel notes that the need for the stairs is because of the flood level and the need for a freeboard of 500mm. The Panel notes that the applicant has suggested that a lift and/or ramp may be installed to provide the access, however for a new purpose designed and built child care centre this is not best practice;*

Comment: Council's original draft conditions required the floor level of the childcare centre to be reduced to RL 12.6. This is 900mm above

natural ground level on the southern side of the building (lowest section). In response to the Panel's concern, the applicant has amended the rear staircase width. The following is an extract from the applicant's response:

“Response: The design of the centre has carefully considered the site constraints, primarily related to the flood affectation. The amended design now incorporates wider stairs from the rear deck leading down to the outdoor play area to improve access for children and staff.

Accompanying this letter is an Access Report prepared by Code Performance, dated 7 March 2018. In this report it responds to this concern raised by the IHAP, as follows:

“In respect to Item D on the IHAP letter (Ref: DA-1167/2016) dated 08/12/17, we wish to comment (from an accessibility perspective) on the suitability of the platform lift for providing access to the external play area by confirming this to be an appropriate design / access outcome as is prescriptively allowed by the BCA and the Premises Standards Access Code. We also wish to highlight stairs in childcare Centres is not prohibited by the BCA and/or Access Code.”

While the DA was submitted prior to the adoption of the State Environmental Planning Policy (Educational Establishments and Child Care Facilities), it is important to recognise the proposal can achieve the Matters for Consideration under the Child Care Planning Guideline, namely;

“3.3 Building orientation, envelope and design

Buildings for child care services must be designed so that they are safe and secure for children, staff and other users. Child care facilities need to allow equitable access by all members of the community, including those with disabilities. They should also provide suitable play areas for children with disabilities.”

Accordingly, the proposed platform lift is compliant and is consistent with the Child Care Planning Guideline.

We understand Council's concern in relation to level access to the outdoor play area, however we would like to draw Council's attention to the adjoining DA at 72 Park Road where Council approved a 40 place child care centre on 1 April 2016 (DA-509/2015). It is important to recognise this approval because this site is also affected by flooding and was not

designed with level access. As per the Figures 2 and 3 below, the neighbouring DA incorporated an elevated transition area, a disabled ramp and stairs leading down to the outdoor play area. These areas are shown as highlighted in yellow below.”

- e) *The presentation of the proposed development with a predominantly paved hard surface front yard for the necessary car parking is not in keeping with the streetscape of the residential area. The proposal does not provide appropriate landscaping to filter the development or provide adequate room for effective landscaping to the front and side boundaries; and*

Comment: The front setback of the development remains predominantly unchanged. Below is an extract from the applicant’s response to the Panel’s concerns.

“Response: The proposed car parking area within the front setback of the building is naturally designed to comply with the car parking requirements for the centre and residence. Appropriate landscaping has been provided as per the Landscape Plan prepared by Tessa Rose, dated 17 November 2016. The layout of the front is not dissimilar to the adjoining approved DA at 72 Park Road as shown in Figure 4 below. However, at 74 Park Road separate pedestrian pathways are provided on both sides of the car park to ensure a safe environment (Refer to Figure 1 above). In relation to the adjoining DA, it is noted that in Council’s Report Requesting Variation of a Development Control, dated 19 February 2016, Council made the following comment to support the proposal;

“The proposal has been designed in a matter that is in keeping with the residential character of the immediate locality...”

Therefore, the facade of the centre at 74 Park Road is also considered to be similar to that of a residential building, which maintains the residential character of the area.

To alleviate any concerns over landscaping, the applicant is willing to plant appropriate street trees on Council’s nature strip at their expense. Subsequently, we are of the opinion that the proposal can provide a suitable balance between landscaping and car parking.”

- f) *The applicant has not demonstrated that the co-location of the residence together with a childcare facility on this site will provide an appropriate planning outcome. For example the amenity for future occupants of the dwelling, and the configuration of its open space and parking on the site.*

Comment: The applicant has provided justification in regards to this matter. An extract of the applicant's comments are below:

“Response: The intention of the co-location of the child care centre with the above residence was to ensure the centre does not negatively impact upon the amenity of the area. From our perspective, a 40 place centre would not have been an appropriate planning outcome for the site, due to the non-compliance with the site width requirement under the DCP (Part B6, 3.2), and given the adjoining approved centre at 72 Park Road was approved with 40 children.

Both uses can appropriately be provided on the site with minimal conflict. This is demonstrated in the separate car spaces, entries and private open space. As discussed above, the Acoustic Report found the projected acoustic levels between the two uses were below the maximum allowed. This report also supported the provision of a 2m high acoustically treated fence between the outdoor play area and private open space.

The original application incorporated a large 83sqm balcony on the first floor for the residence facing the rear. This has since been deleted as per the recommendations of Council and a reduced sized balcony of 26sqm is now proposed fronting Park Road. This balcony remains larger than a typical balcony to provide adequate amenity for the future residents. Such a measure will ensure there will be no potential privacy impacts to both the children playing in the outdoor area as well as for the future residents living upstairs.

The combination of a child care centre and a residence is not a new type of development to Council given at 72 Northam Road, Bankstown (DA-1273/2014), Council approved a 26 place child care centre with a residence above on 9/9/2015.”

The application before the Panel remains compliant with the relevant legislation. The applicant has provided amendments or justification addressing each matter raised by the Panel as a concern for deferment. It is recommended the application be approved, subject to conditions included at Attachment 'B'.

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-1167/2016, submitted by Envision Group, accompanied by Drawing No. DA02,DA03,DA05,DA06,DA07(revision L, dated 17.06.18) and DA11 (revision H, dated 25.07.17), prepared by Envision Group 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) Seven (7) on-site car parking spaces are required for staff. The development plans are to label the allocation of parking in accordance with this requirement. All construction certificate plans shall be consistent with the requirement.
 - b) The Finished Floor Level of the childcare centre shall be amended to RL 12.6 as marked on the approved development plans. All plans submitted with any application for a construction certificate shall be consistent with this requirement.
 - c) The Finished Floor Level of the residential foyer shall be amended to be RL.12.3 as marked in red on the approved development plans. All plans submitted with any application for a construction certificate shall be consistent with this requirement.
 - d) The external stairs located along the northern boundary shall be deleted and alternative stairs shall be provided within the front setback. All construction certificate plans shall be consistent with this requirement.
 - e) 1.2 metres of the entry footpath adjacent to the accessible car space shall have the same treatment as the carpark area.
- 3) The development shall comply with the recommendations stated in the DA Noise Emission Assessment of the Proposed Childcare Centre report by Acoustic Dynamics, dated 28 February 2018. All construction certificate plans shall be in accordance with these recommendations.
 - 4) The Plan of Management submitted in support of this application, prepared by Childcare by Design Pty Ltd, Pandacare Childcare Centre, 74 Park Road, East Hills forms part of the development consent.

- 5) The premises is restricted to a maximum number of 29 children at any one time. The age of these children shall not exceed the following:
 - 8 children from birth to 24 months of age;
 - 10 children over 24 months and less than 36 months of age;
 - 11 children aged 36 months of age up to 5 years.
- 6) The maximum number of staff permitted on the site at any given time shall not exceed seven (7).
- 7) Two (2) on-street timed "P10 minute" car parking spaces are to be provided forward of the site on Park Road on either side of the driveway at the full cost to the developer. The spaces are to be approved by Council's Traffic Committee and all signage shall be at the developers cost and shall be erected prior the issue of any Occupation Certificate. All signage is to be maintained by the operator in perpetuity.

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:

- 8) 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.
- 9) 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 Clause 6.4 & 6.5, Part B6 – Child Care Centres, *Bankstown Development Control Plan 2015* 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.
- 10) All plans submitted with any application for a Construction Certificate shall include all recommendations of the acoustic report endorsed by a condition in this consent.
- 11) 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.
- 12) 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.

- 13) 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.

- 14) 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.
- 15) 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.
- 16) 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 \$4,950.00 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.

- 17) 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.
- 18) 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) A Heavy Duty VFC of maximum width of 6.0 metres at the property boundary.
 - b) Drainage connection to Council's Kerb and gutter system in Park Road.

- c) Removal of all driveway surfaces, reinstatement of laybacks to kerb and gutter and reshaping of the footway, all associated with redundant VFC's.
- d) Reconstruct a standard wing on the driveway of 76 Park Road upon demolition of the existing driveway.
- e) Repair of any damage to the public road including the footway occurring during development works.
- f) 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.

- 19) 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.
- 20) 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.

- 21) The pump out drainage system shall be provided in accordance with Council's Development Engineering Standards. Engineering details and specifications shall be submitted to the Principal Certifying Authority (PCA) for approval prior to the issue of any Construction Certificate.
- 22) Engineering details and manufacturers specifications for the pumps, switching system and sump pit shall be submitted to the Principal Certifying Authority (PCA) for approval prior to issue of any Construction Certificate.
- 23) For this development, Council requires that the stormwater runoff from within the development site shall be collected and controlled by means of an on-site stormwater retention system for Roof Water disposal, in accordance with Council's Development Engineering Standards. The developer shall engage a suitably qualified Engineer to prepare a final stormwater drainage and on site drainage and retention system plan to be generally in accordance with the concept plan 061016 Revision E, dated August 2017, by Stormwater Engineers, and in accordance with the requirements contained in Council's Development Engineering Standards.

The plans must be amended to reflect the lower building floor levels Of RL 12.6 and lowered associated car parking finished levels. Also, the Engineer shall amend the design to ensure that the ground level north of the proposed building is lowered to allow for stormwater to flow from the adjoining property at No. 72 Park Road, onto

the northern side passage of the development lot. The Engineer shall also ensure that no filling is to be placed between the car parking area and the northern boundary, and the building and the northern boundary.

The Engineer shall amend the plans to include a pump out drainage system to dispose of the surface drainage from the northern side passage and the rear yard of the development.

The plans shall be amended to be generally in accordance with the plans marked in blue by Council.

The Engineer shall certify that the design and plans comply with Council's Development Engineering Standards and the relevant Australian Standards.

- 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) 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.

- 26) The applicant shall apply to the Bankstown Traffic Committee for the installation of a works zone at the site's frontage to Park Road, eight (8) weeks in advance of when construction is scheduled to begin including payment of the relevant fees & charges. This is subject to recommendation by the Traffic Committee and must be approved and paid for prior to issue of any Construction Certificate.

CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION WORKS COMMENCING

- 27) 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.
- 28) 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.
- 29) 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.
- 30) 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.
- 31) 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.

- 32) 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.

- 33) 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.

- 34) 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.
- 35) 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.
- 36) 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.

- 37) 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.

- 38) 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.

CONDITIONS TO BE SATISFIED DURING CONSTRUCTION

- 39) 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.
- 40) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 41) 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.
- 42) 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.

- 43) All excavations and backfilling must be executed safely and in accordance with the relevant Australian Standards.
- 44) 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.
- 45) 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.
- 46) 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.
- 47) 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.
- 48) The food premises must be designed, constructed and operated in accordance with the requirements of:
 - a) The NSW Food Act 2003 and Food Regulation 2015
 - b) FSANZ Food Standards Codes 3.2.2 and 3.2.3
 - c) Australian Standard AS 4674-2004 (Construction and Fitout of Food Premises)
 - d) The Building Code of Australia
 - e) The Protection of the Environment Operations Act 1997
 - f) Australian Standard AS 1668 Part 1 and Part 2 (The use of ventilation and air-conditioning in Buildings)

g) Sydney Water Corporation (Trade Waste Section)

- 49) Hand wash basins: A hand wash basin (to be located within five metres of all food handling areas) is to be provided. This must have hot and cold water supplied through a single outlet and fitted with an approved mixing device to be installed in all food preparation areas for the purpose of washing hands.
- 50) Equipment sink: A dishwasher/glasswasher and single bowl sink (where all the food contact equipment will fit in the dishwasher/glasswasher) or a double bowl sink is required.
- 51) Walls: All walls (including partition walls) within the kitchen, food preparation and storage areas must be of solid construction (e.g. bricks, cement or other approved material). These walls must be finished with glazed tiles; stainless steel or other approved material adhered directly to the wall to the full height of the wall.
- 52) Floors: The floors within the kitchen, food preparation, storage, display and customer areas must be constructed of a suitable material which is non-slip, durable, resistant to corrosion, non-toxic, non-absorbent, impervious to moisture and of a light colour.

If the floor in the food preparation and storage areas is constructed of tiles, the joints between the tiles must be of a material that is non-absorbent and impervious to moisture e.g. Epoxy grout.

The intersection of walls with floors and plinths in the kitchen, food preparation, storage and display areas must be coved to a minimum radius of 25 mm.

The floors must be graded and drained to floor waste/s connected to the sewer. The floor waste/s to consist of a removable basket within a fixed basket arrestor and is/are to comply with the requirements of Sydney Water

- 53) Plinths: All plinths must be constructed of a material which is of solid construction e.g. concrete and impervious to moisture. The plinths must be:
- a) At least 75 mm high;
 - b) Finished level to a smooth even surface;
 - c) Recessed under fittings to provide a toe space of not more than 50 mm
 - d) Rounded at all exposed edges; and
 - e) Coved at the intersection of the floor and wall to a minimum radius of 25 mm. All sides must be tiled or a continuation of other approved floor material.
- 54) Ceiling: The ceiling must be constructed of a material that is rigid, smooth faced and impervious to moisture. The ceiling over the food preparation, storage and display areas must be painted with a washable paint of a light colour. The surface finish must

be free of open joints, cracks, crevices or openings (DROP PANEL CEILING NOT PERMITTED). The intersection of walls and ceiling must be tight jointed, sealed and dust-proof.

- 55) Windows: Window openings in the kitchen and food preparation areas must be designed and constructed with the sill at least 300mm above the top of any bench, table or equipment. The sill must be splayed outwards at an angle of 45°.

All openable windows must be provided with tight fitting insect screens capable of being removed for cleaning.

Architraves, skirting boards and picture rails must be removed.

- 56) Any warm-water system installed in the premises, must be installed, operated and maintained in accordance with the prescribed requirements in the Public Health Act 2010 and Public Health Regulation 2012. A warm-water system is defined as a system being designed to heat and deliver water at a temperature of less than 60°C and includes thermostatic mixing valves. The warm water system must be registered with Council.
- 57) To ensure that adequate provision is made for ventilation of the building, mechanical and /or natural ventilation shall be provided. These systems shall be designed, constructed and operated in accordance with the provisions of Australian Standard 1668 Part 1 and Australian Standard 1668 Part 2.
- 58) All service pipes and electrical and data conduits must be either:
- a) Concealed in floors, walls, ceilings or concrete plinths, OR
 - b) Fixed with brackets so as to provide at least 25 mm clearance between the wall and the pipe/conduit; AND 100 mm between the floor and the pipe/conduit. Pipes installed are not to run underneath fittings.
- 59) All openings in the walls, floors and ceilings through which service pipes and electrical conduits pass must be designed and constructed so as to prevent the access of vermin and protect the structural integrity of such floor, wall and ceiling as the case may be.
- 60) Cavities, false bottoms and similar hollow spaces capable of providing access and harbourage for vermin are NOT PERMITTED to be formed in the construction of the food premises including but not limited to food preparation, food display or storage areas, or in the installation of fixtures, fittings and equipment.
- 61) The hot water service unit must be positioned a minimum of 75 mm clear of the adjacent wall surfaces and mounted a minimum of 150 mm above the floor level on a stand of non-corrosive metal construction (e.g. Stainless steel).
- 62) Refrigeration and frozen food cabinets/units must be supported on wheels, castors or stainless steel legs. If legs are used there must be a clear space of 150 mm between

the floor surface and underside of such appliances/units. Refrigeration and frozen food cabinets/units up to 6 metres in length must be kept a minimum of 200 mm clear of the wall and 400 mm clear where the appliance exceeds 6 metres in length.

- 63) Cooking appliances must be installed in the following positions:
- a) At least 150 mm clear of the wall where such appliances do not exceed 1200 mm in a continuous run;
 - b) At least 300 mm clear of walls where such appliances are between 1200 mm and 2400 mm in a continuous run.
 - c) At least 450 mm clear of walls where such appliances exceed 2400 mm in a continuous run.
 - d) Equipment shall be moveable for cleaning, built into walls with the enclosure completely vermin proofed, butted against walls or other equipment and the joints sealed.

Note: Where cooking appliances are fitted with wheels or castors and provided with flexible connections they may be located hard against the walls and butted against each other.

- 64) The internal and external surfaces, including exposed edges, to all benches, counters and shelving in the food preparation, storage, display and serving areas must be finished with a rigid, smooth faced and non-absorbent material (e.g. laminate, stainless steel or other approved material) that is capable of being easily cleaned.
- 65) All shelving must be located at least 25mm off the wall or alternatively, the intersection of the shelf and the wall must be completely sealed.
- 66) All shelving being provided for the storage of food, equipment and containers is to have the lowest shelf at least 150 mm above the floor level.
- 67) A temperature gauge must be provided to each refrigerator and freezer, and any hot and cold food storage/display units. The temperature gauge must be accurate to one (1) Celsius degree and be readily accessible.
- 68) All fluorescent light fittings in food preparation or food storage areas must be fitted with a smooth faced diffuser. The light fittings must be either:
- a) Recessed so that the diffuser is flush with the ceiling; or
 - b) Designed to ensure that no horizontal surfaces exist which would allow dust and grease to accumulate.
- 69) A freestanding hand wash basin must be provided in a convenient position within the toilet/air-lock/kitchen/serving areas. The hand wash basin must be provided with hot

and cold water supplied through a single outlet and fitted with an approved hands free mixing device.

- 70) Suitable liquid soap/detergent and single use towel dispenser or other effective hand drying facilities must be fixed to the wall adjacent to the hand wash basin(s).
- 71) A double bowl sink or two compartment tub with hot and cold water supplied through a single spout must be provided in the kitchen/food preparation area. Double bowl sink or tubs must be supplied with water of at least 45 ° C in one bowl for washing purposes; and 80 ° C in the other bowl for rinsing purposes, together with a thermometer accurate to 1 C°.
- 72) A cleaner's sink with a supply of hot and cold water must be provided within or in close proximity to the food preparation area for the purposes of general cleaning.
- 73) Hot and cold food display and/or holding appliances must be designed and capable of holding:
 - a) Cold Perishable Foods below 5°C; and
 - b) Hot Perishable Foods above 60°C;

when the appliances are OPERATING UNDER FULL LOAD. Details and specifications of these appliances must be furnished to Council prior to release of the Construction Certificate in support of the above.

- 74) Adequate provisions must be made for the storage of all staff personal effects, cleaning chemicals and equipment e.g. cupboards, lockers etc.
- 75) Any clothes drying areas for the child care centre must not be visible to the street.

CONDITIONS TO BE SATISFIED PRIOR TO OCCUPATION

- 76) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 77) Trading must not commence until a final inspection has been carried out by Councils Environmental Health Officer and ALL conditions of this consent have been complied with.
- 78) Trading must not commence until an inspection of the premises has been carried out by the Principal Certifying Authority to ensure that the premises including the construction and installation of all equipment, fixtures, fittings and finish therein comply with ALL conditions of consent.
- 79) The food business is to appoint a Food Safety Supervisor (FSS). The Food Safety Supervisor will need to successfully complete a training course at a registered training organisation. You will find a list of approved training organisations together with

guidelines on requirements on the NSW Food Authority website -

www.foodauthority.nsw.gov.au.

- 80) The food premises must be registered with Council by completing the Application for Registration form prior to trading.
- 81) Certification must be provided to the Principal Certifying Authority, prior to occupation, that the fitout of the food premises has been completed in accordance with plans complying with food safety standards prescribed under the Food Act 2003, and the requirements of Australian Standard AS 4674 - 2004. It is incumbent on the PCA to determine the competency of the person providing this certification, based on that person's qualifications, experience and currency of practice.
- 82) 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.
- 83) 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.
- 84) 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
- 85) 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
- 86) 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
- 87) A Copy of the Work Permit Compliance Certificate shall be submitted to the PCA Prior to the issue of the Occupation Certificate.
- 88) 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 detention 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 detention system.

The engineer's certification of the on-site stormwater detention 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.

- 89) The developer shall register, on the title of the subject property, a Restriction on the Use of Land and Positive Covenant, in accordance with the standard terms for "Registration of OSD on title", as outlined in Council's Development Engineering Standards and in accordance with the appropriate provisions of the Conveyancing Act. The developer must amend the terms to replace On-Site Detention with the term On-Site Retention in each covenant. Where subdivision is not proposed, the surveyor shall show the location of the "On-Site Stormwater Retention System" on an A4 size site plan attached to the Section 88E Instrument to be registered, on the title of the subject property, prior to the issue of the Final Occupation Certificate. The developer shall submit evidence of the final registration of the Restriction and Positive Covenant on the title of the property, to Council.
- 90) Ten (10) off street car parking spaces shall be provided/maintained. Such spaces are to be labelled in accordance with a condition in this consent, sealed, line marked and maintained.
- 91) Prior to the issue of a Final Occupation Certificate, A report prepared by an accredited Acoustic Consultant shall be submitted to Council certifying that the development complies with the requirements of the State Environmental Planning Policy (Infrastructure) 2007, conditions of development consent and recommendations of Noise Emission Assessment of the Proposed Childcare Centre report by Acoustic Dynamics, dated 28 February 2018. The report shall include post construction validation test results taking into consideration the approved childcare located at 72 Park Road, East Hills.

CONDITIONS TO REGARDING THE USE OF THE PREMISE

- 92) The hours of operation of the use shall be limited to between 7:00am to 6:00pm on weekdays.
- 93) *Ten (10) off street car parking spaces shall be provided/maintained. The use of these spaces shall be in accordance with the below listed breakdown:*
- *Seven (7) staff spaces;*
 - *Two (2) residents spaces; and*

- *One (1) multi-use space.*

Such spaces are to be labelled in accordance with the above allocation, sealed, line marked and maintained for the life of the development.

- 94) The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations.

In this regard, the operation of the premises and plant and equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background LA90, 15min noise level, measured in the absence of the noise source/s under consideration by 5dB(A). The source noise level shall be assessed as an LAeq, 15min and adjusted in accordance with the NSW Environment Protection Authority's Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance).

- 95) Music or singing shall only be undertaken inside the building with the windows and doors closed.
- 96) The use of the premises shall not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of plant and equipment shall not give rise to the transmission of a vibration nuisance or damage other premises
- 97) Landscaping on the site shall be maintained under best horticultural practise at all times and remain in place for the life of the development.
- 98) Eighty (80) sqm of Private Open Space as marked on the approved plans shall be maintained for the exclusive use for the residence for the life of the development.
- 99) Any lighting of the premises shall be installed in accordance with Australian Standard AS 4282 – Control of the Obtrusive Effects of Outdoor Lighting so as to avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads. Flashing, moving or intermittent lights or signs are prohibited. The intensity, colour or hours of illumination of the lights shall be varied at Council's discretion if Council considers there to be adverse effects on the amenity of the area.

-END-

Canterbury Bankstown Local Planning Panel - 6 August 2018

ITEM 3	2-4 Flora Street, Roselands
	Demolition of existing structures and construction of five storey shop top housing development consisting of four retail suites and thirteen residential units over three levels of basement car parking and detached two storey dwelling unit
FILE	DA-643/2015 – Roselands Ward
ZONING	R3 Medium Density Residential and B2 Local Centre under Canterbury LEP 2012
DATE OF LODGEMENT	23 December 2015
	Amended/additional information received 6 June 2016, 31 August 2016, 9 September 2016, 9 May 2017, 29 August 2017, 6 December 2017, 13 December 2017 and 4 April 2018.
APPLICANT	CMT Architects Australia P/L
OWNERS	Jim Zoras
ESTIMATED VALUE	\$5,251,555
AUTHOR	Planning

REPORT

This matter is reported to the Local Planning Panel due to the development proposing a departure from the development standards of Canterbury LEP 2012 pertaining to height (69%) and FSR (282%) and the development is identified as 'sensitive development' as SEPP 65 – Design Quality of Residential Apartment Development applies and the development is more than four storeys in height.

Development Application No. 643/2015, as amended by the Applicant in April 2018, proposes the demolition of existing structures and construction of a five storey shop top housing development consisting of four retail/business suites and thirteen residential units above three levels of basement car parking and a detached dwelling unit.

The application was advertised/notified for a period of 21 days on two separate occasions. No submissions were received during these periods.

The proposed shop top development housing is located across two zonings, being the B2 Local Centre zone and the R3 Medium Density zone.

The application has been assessed against State Environmental Planning Policy (SEPP) 65, Canterbury Local Environmental Plan 2012 and Canterbury Development Control Plan 2012, amongst other relevant planning instruments.

An assessment of the application demonstrates that the proposal is a prohibited development as a result of the ground floor detached dwelling unit and location of the communal open space on ground floor, thereby no longer meeting the definition of 'shop top housing'.

The application also seeks an encroachment of the B2 Local Centre zone into the R3 Medium Density Residential zone by 5m, pursuant to Clause 5.3 of the CLEP 2012. However as a result of the location of the communal open space to service the shop top housing development and the detached dwelling unit, the proposal encroaches further beyond the 5m permitted by Clause 5.3.

A revised Clause 4.6 objection for the breach to the 8.5m building height development standard on the R3 Medium Density site has not been submitted. The submitted Clause 4.6 variation request for the 282% FSR variation is not supported for the reasons detailed in this report.

The applicant has been provided with a number of opportunities to address the issues associated with this application as indicated by Council staff.

For the above reasons, there is no legal authority to grant consent to the proposed development.

POLICY IMPACT

This matter has no direct policy impacts.

FINANCIAL IMPACT

The matter has no direct financial implications.

RECOMMENDATION

It is recommended that the application be refused, for the reasons as detailed in Attachment B.

ATTACHMENTS

- A. Section 4.15 Assessment Report
- B. Reasons for Refusal

DA-643/2015 ASSESSMENT REPORT

SITE ANALYSIS

The subject site is legally described as Lot 86 in Deposited Plan 4720 and Lot 3 in Deposited Plan 317259. It is comprised of 2 and 4 Flora Street, Roselands, and includes a single storey dwelling and metal carport. The site has a total frontage to Flora Street of 25.785m, a frontage to Alicia Lane of 30.48m and a total site area of 874.2m².

The site is zoned B2 Local Centre (2 Flora Street) and R3 Medium Density Residential (4 Flora Street) under Canterbury Local Environmental Plan 2012. The height control for 2 Flora Street is 18m and 4 Flora Street is 8.5m. The maximum FSR control for both sites is 0.5:1.

The property is relatively flat. The immediate area is generally characterised by two storey commercial buildings fronting Canterbury Road, a two storey residential flat building opposite the site but predominantly single storey dwellings along Flora Street.

On 14 May 2014, a development was approved at 878, 880-882 and 884 Canterbury Road, Roselands (DA-419/2014) immediately to the east of the site for demolition, remediation works and construction of mixed use development containing commercial tenancy, residential apartments and basement parking. This six-storey development is nearing completion.

On 12 January 2018 an Appeal was upheld by the Land and Environment Court of NSW for a six storey mixed use development at 892, 898-902 and 906 Canterbury Road, Roselands (Appeal No. 2016/313502), which is located to the north of the site, and separated from the site by an un-named lane.



Figure 1: An aerial photograph of the site, approximate boundaries circled in yellow.

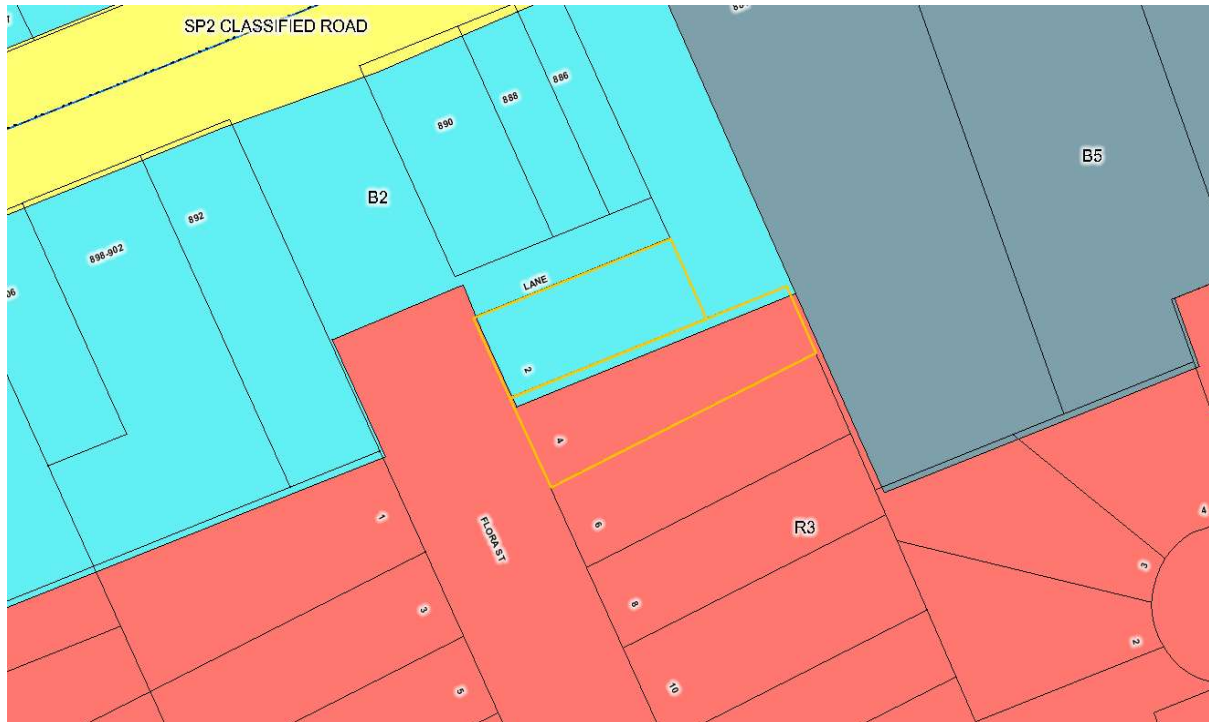


Figure 2: B2 Local Centre and R3 Medium Density Residential zoning of the subject sites 2-4 Flora Street, both sites highlighted in yellow.



Figure 3: Architect's impression of the proposed development, as amended.

BACKGROUND/HISTORY

On 23 December 2015, Development Application DA-643/2015 was submitted for a seven storey shop top housing development at 2-4 Flora Street, Roselands. The proposal comprised 16 residential units, five commercial suites at ground level and two levels of basement carparking. The height of the proposal was approximately 21.15m and was accompanied by a Clause 4.6 variation seeking variation to the 18m height control on 2 Flora Street and 8.5m control on 4 Flora Street. A Clause 4.6 variation was also submitted for the FSR at 1.74:1, which exceeded the maximum FSR of 0.5:1.

Throughout the course of the assessment from 2015, various requests for additional information and amended plans were required by Council and provided by the Applicant.

On 4 April 2018, a final set of amended plans were received, which added a ground level dwelling unit to the south side of the five storey development, fronting Flora Street. The development as amended seeks approval for a five storey shop top housing development and a detached ground floor dwelling unit to the south.

PROPOSED DEVELOPMENT

The applicant is seeking approval to demolish all existing structures at 2-4 Flora Street, Roselands, excavate the site for a three level basement car park for 18 spaces and construct a five storey shop top housing development alongside a two-storey ground level residential unit (containing 3 bedrooms), with four retail tenancies on the ground floor (176m²).

In total, including the ground floor detached dwelling unit, there are fourteen residential apartments (2 x studio, 4 x 1 bedroom, 5 x 2 bedroom and 3 x 3 bedroom).

No specific use has been designated for the proposed retail 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 1 (lowest)	7 off-street car parking spaces including two spaces for detached dwelling, commercial storage, bicycle spaces, residential waste, 3 x pedestrian stairways (two to ground level and one to detached dwelling), pedestrian lift.
Basement 2 (mid-level)	5 off-street car parking spaces, residential storage, 2 x pedestrian stairway to ground level, pedestrian lift.
Basement 3 (upper level)	6 off-street car parking spaces, pedestrian lift and stairway.
Ground floor	4 x retail tenancies (40m ² , 42m ² , 44m ² , 50m ²), 1 x 2-storey 3-bedroom detached dwelling unit, vehicle driveway, pedestrian lift and stairway, communal open space. *It is noted that the ground floor retail tenancies contain full bathrooms, kitchenettes and terraces.

First Floor	3 apartments comprising 1 x studio and 2 x 3 bedroom apartments with north facing terraces, pedestrian lift and stairway, south-facing access terrace.
Second Floor	4 x 1 bedroom and 1 x studio apartment with north-facing terraces and south-facing access terrace, pedestrian lift and stairway.
Third Floor	5 x 2-bedroom maisonette apartments with north-facing terraces and south-facing access terrace, pedestrian lift and stairway.
Fourth Floor	Bedrooms associated with maisonette apartments on Third Floor level, south-facing terraces.
Roof level	Private rooftop terraces access by roof hatch from 5 x 2-bedroom maisonette apartments located at third and fourth levels.

STATUTORY CONSIDERATIONS

In determining this application, the relevant matters listed in Section 4.15 of the Environmental Planning and Assessment Act 1979 have been considered. In this instance, the following environmental planning instruments, development control plans (DCPs), codes and policies are relevant:

- (a) State Environmental Planning Policy 55 – Contaminated Land
- (b) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (c) State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP65)
- (d) Canterbury Local Environmental Plan 2012
- (e) Canterbury Development Control Plan 2012 (Amendment 2)
- (f) Canterbury Development Contributions Plan 2013

SECTION 4.15 ASSESSMENT

The development application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act, 1979 and the following key issues emerge:

Section 4.15 (1)(a)(i) The provisions of any environmental planning instrument

State Environmental Planning Policy 55 – Contaminated Land

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 Council must not consent to the carrying out of development unless Council has considered whether the land is contaminated. If the land is contaminated, Council must ascertain whether it is suitable in its contaminated state for the proposed use or whether remediation of the land is required.

The site has been used for residential purposes and a carpark. However the site is also in close proximity to Canterbury Road, which are used or were previously used for industrial purposes. The provision of a Contamination Report is therefore required to be provided to Council in order to determine if the land is suitable for the proposed use or can be made suitable through remediation.

No contamination report was received during the development application process and Council has no preliminary findings to consider. The request to defer consideration of contamination as a condition of consent is unable to be accommodated, as Council must be reasonably satisfied that the site is suitable for the proposed use. Accordingly, the provisions of SEPP 55 have not been met.

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

Certificates are required to make a number of energy/resource commitments relating to water, energy and thermal comfort. An amended BASIX Certificate does not accompany the amended plans so Council cannot be certain as to the energy commitments made.

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

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. However, it is noted that an amended design verification statement reflecting the current proposal has not been provided.

Notwithstanding, the SEPP 65 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 along Flora Street. A six storey mixed use development is nearing completion at the rear of the site at 880 Canterbury Road. An Appeal against the deemed refusal of Development Application 122/2015 for a mixed use development at 892-906 Canterbury Road, Roselands was upheld on 12 January 2018.

Good design contributes to its context and responding to the context involves identifying the desirable elements of an area's existing and future character. The Apartment Design Guide states that well designed buildings enhance the qualities and identity of the area including adjacent sites, streetscape and neighbourhood.

The applicant seeks to use Clause 5.3 Canterbury Local Environmental Plan 2012 to straddle zones in an endeavour to achieve a more logical and appropriate development of the site. The detached two-storey dwelling at ground floor level changes the definition and character of the shop top housing development such that this type of development is not permissible on the site and is not consistent with the desired future character of the area. Also, in terms of the built form transition, the proposed detached dwelling unit diminishes rather than improves the transition between the five storey part and the single storey dwellings in the street. In any event, the five storey proposal is not consistent with a medium density residential environment, which it must to achieve the zone objectives of the R3 part of the site and thus achieve the objectives of Clause 5.3 CLEP 2012.

The proposal is considered inconsistent with the desirable elements of the area's future character, which include a medium density environment and sufficient spatial separation between buildings.

Principle 2 – Built Form and Scale

The ADG states that good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. 4 Flora Street is zoned R3 Medium Density Residential with a maximum building height control of 8.5m and maximum FSR control of 0.5:1. The proposed development has a height of 17.5m (2 Flora Street) and 14.4m (on 4 Flora Street) and a floor space ratio of 1.41:1. These parameters exceed the maximum development controls for height by 5.9m (69% departure on 4 Flora Street) and FSR of 1.41:1 (282% departure from 0.5:1 for both sites).

The applicant relies on Clause 5.3 Canterbury Local Environmental Plan 2012 to straddle the zone boundary by 5m. The objectives of the clause are to provide flexibility to enable a more logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone. The development must not be inconsistent with the objectives for development in both zones. For the R3 Medium Density Residential Zone development must provide for the housing needs of the community within a *medium* density residential environment.

The proposed development does not provide a satisfactory response to the medium density environment because:

- The five storey building is not consistent with a medium density zone;
- The height and floor space of that part of the larger development that is located on 4 Flora Street exceeds the maximum controls for building height and FSR;
- The proposal breaches the maximum floor space ratio of 05:1;
- The proposal breaches the building height plane of the CDCP 2012 to effectively transition to lower density zones and minimise visual bulk; and
- The primary development and the detached dwelling provided to the southern side of the development do not comply with the visual privacy requirements stipulated by the ADG and tend to congest the site rather than provide a transition.

The resultant built form is considered to reflect a high density environment and does not appropriately respond to the zone objectives applicable to both sites.

Principle 3 – Density

The quantum of development as well as its distribution of bulk are excessive and are indicative of excessive density. The proposal does not meet the housing needs of the community within a medium density residential environment because the massing of the building is excessive and fails the objectives for height and floor space ratio and diminishes the amenity of the adjoining residential premises.

Principle 4 – Sustainability

An amended BASIX Certificate has not been submitted to Council with this development application, which should detail the resource, energy and water efficiency measures that will be incorporated into this proposal.

Principle 5 – Landscape

The communal open space does not 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) in accordance with the ADG.

Further, the location of the communal open space, serving the residential component of a shop top housing development, is not permitted at ground floor level (since shop top housing mandates only retail uses are permitted at ground floor level).

Further, the expansion of the shop top housing communal open space into the R3 Medium Density Residential zone at 4 Flora Street is beyond the 5m zoning allowance granted by Clause 5.3.

It is noted that the rooftop terraces provided to the development are appurtenant to private units (accessible via a roof hatch) and do not constitute communal open space. It is also noted that the access to the roof top terraces being through a roof hatch with no shelter, offers limited amenity and will not encourage the use of the area.

Principle 6 – Amenity

The proposed development fails to comply with the solar access requirements of the Apartment Design Guide in that the ADG aims to ensure that adequate amenity be afforded to neighbouring properties as well as the subject property. The proposal results in less than 2 hours of sunlight being received to the living room window (north-facing) of the adjoining premises at 6 Flora Street, which fails to meet the requirements of Section 6.2.6(iii) of CDCP 2012.

The amenity afforded to the apartments fails to meet the Apartment Design Guide. In particular, the proposed rooftop private open space areas for the upper level maisonette apartments, are only accessible via a roof hatch.

Further, ventilation to the development is considered inadequate. Compliance with the minimum ventilation requirements is sought through open communal corridors. This results in bedroom windows located on the communal walkways and access to the units via external walkways; which is likely to have a negative impact on the amenity of future residents with limited protection from the elements and the transmission of sound across the levels of the building.

Principle 7 – Safety

The proposed development generally satisfies the safety principles, with the exception of providing clearly defined public and private communal areas. A positive relationship with a clearly defined communal open space has not been established and fails to incorporate clear site lines and surveillance. The private open space areas, located on the roof and accessible by a hatch, also do not satisfy this principle.

Principle 8 – Housing Diversity and Social Interaction

The proposed development does not indicate any adaptable units. The communal open space, located in the rear corner of the site, does not generally promote social interaction and is indicated as 'turf' with no facilities for residents.

Principle 9 – Aesthetics

The proposed use of pattern, texture, form and colour make genuine attempts to produce a design aesthetic to reflect the quality of residential accommodation provided on Canterbury Road but the massing of the development does not present an appropriate built form transition between the B2 Local Centre and R3 Medium Density Residential zoning.

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.

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 = 218.55m ²	The proposed communal open space is not permissible at ground floor level.	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)	See comment 1 further below.	No – see comment [1] below
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 = 61.2m ²	115.5m ²	Yes
Visual Privacy (Separation between buildings)	Habitable rooms to habitable rooms Up to 4 storeys: 6m 5 th storey: 9m	Habitable rooms to habitable rooms Up to 4 storeys: 9.6m 5 th storey: 9.6m	Yes Yes
	<u>Side and rear setback</u> Up to 4 storeys: 6m 5 th storey: 9m	<u>Rear</u> Up to 4 storeys: 2.4m-3.5m 5 th storey: 2.4m-3.5m	No No
	Lower density above +3m = 9m up to 4 storeys	<u>Side - B2 zone + 5m zone encroachment</u> Up to 4 storeys: 6.5m- 8m	No – see comment [2] below
	Up to 4 storeys: 6m	<u>Side – R3 zone</u> 1m	No.
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

Section	Design Criteria	Proposed	Complies
	<u>Car parking</u> Studio = 1 One bed = 4 spaces Two bed = 5 spaces Three bed = 2 spaces Visitor = 2 spaces Commercial = 4 spaces Total 18 spaces	18 spaces	Yes
	<u>Bicycle parking</u> 2.6 residents 1.3 visitors 1 Retail Total = 4.9 rounded to 5	7	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 13 out of the 14 apartments (93%) receive at least two hours of direct sunlight between 9am and 3pm on 21 June.	Yes
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	One out of the 14 proposed apartments (7%) do not receive direct solar access between 9am and 3pm on 21 June.	Yes
Natural Ventilation	At least 60% of apartments are naturally cross ventilated	<p>Only 54% of the proposed units are naturally cross ventilated.</p> <p>It is noted that the applicant relies on ventilation from the open corridor. It is raised elsewhere in this report that the open corridors represent a poor outcome for occupants.</p> <p>This results in some apartments providing bedrooms windows on the walkway, which is a poor acoustic and privacy outcome for occupants of that bedroom. As a result, it is unlikely that the bedroom window located on a common walkway will be utilised for ventilation, particularly at night. Accordingly, it is considered that the proposal</p>	No

Section	Design Criteria	Proposed	Complies
		fails to meet the ventilation requirements of the ADG.	
	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: - 2.7m for habitable rooms (3.1m floor to floor)	- Habitable rooms 3m floor to floor	No – see comment [3] below
	- 2.4m for non-habitable rooms	- >2.4m non-habitable rooms	Yes
	- 3.3m for ground floor commercial areas	- Ground floor commercial premise 3.3m (up to 4m) floor to floor	No – see comment [3] below
Apartment Size and Layout	Apartments are required to have the following minimum internal areas: - Studio 35m ² - One bedroom: 50m ² - Two bedrooms: 70m ² - Three bedrooms: 90m ² Additional bathrooms increase the minimum internal area by 5m ² each.	Detached dwelling unit described as 'Townhouse 01' fails to comply as it comprises 3-bedrooms but achieves 80m ² as opposed to 90m ² .	No.
	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 apartments comply.	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 habitable room depths do not exceed the maximum depths permitted.	Yes
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	The master bedrooms of units 2.01 and 2.05 do not achieve 10m ² as required.	No
	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 - Minimum area of 12m² and minimum depth of 2.4m for two bedroom units - Ground floor units (where permissible) 15m² minimum depth of 3m 	Ground floor detached dwelling comprises two on-ground private open spaces that have a depth of less than 3m; however, in any case, this ground floor dwelling is not permissible for a shop top housing development.	No
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	A maximum of five 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 - 10m³ for three bedroom units At least 50% of the required storage is to be located within the apartment.	Provision is made for storage in both the units and the basement but less than 50% of the required storage is located within the apartment.	No

The proposed development fails to comply with the following ADG criteria and require discussion:

[1] Communal open space

In accordance with the communal open space requirements of the Apartment design Guide 25% of the site is to be dedicated for the purposes of communal open space and must receive 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 in mid-winter.

The proposal has failed to demonstrate that the 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) as required by the ADG, is achieved.

It is also noted that, in any event, the ground level communal open space is for the use of residents of the shop top housing development, but any residential use needs to be located above ground level (above the highest part of the retail use) to be permissible in the zone.

[2] Visual Privacy

The ADG requires a visual privacy separation of 6m between habitable windows or 9m to a lower density. The development located on the B2 zone (including its 5m zone encroachment) requires an additional 3m separation distance from adjoining site at 6 Flora Street, in order to provide an appropriate transition in scale between the higher and lower density zonings. The ADG requires gallery access circulation (open corridors) to be treated as habitable space for the purposes of measuring privacy separation between neighbouring sites.

The proposal seeks a separation distance between 6.5m – 8m, instead of the minimum 9m. The proposed breaches unreasonably increases the bulk of the proposed development, particularly when viewed from the adjoining R3 Medium Density Residential zone and surrounding dwellings. Further, an appropriate built form transition has not been achieved from the B2 zone to the R3 zone, particularly with a view that the proposal does not present to Canterbury Road; a submission that is relied upon by the applicant throughout the Statement of Environmental Effects to justify other breaches to the development standard for FSR. The applicant has not put forward sufficient planning justification for the variations, with the April 2018 Statement of Environmental Effects, stating 'N/A' for visual privacy.

Further, the proposed side and rear separation distances directly influences shadow impacts on 6 Flora Street. An increased separation distance would likely increase solar access to this dwelling.

[3] Floor to ceiling heights

The proposed development relies upon a floor to floor height of 3m for the residential storeys. Figure 4C.5 of the ADG demonstrates that a floor to floor height of 3.1m is required in order to accommodate the 2.7m floor to ceiling height. A 3.1m floor to floor height allows sufficient clearance for service bulkheads, slab thickness, acoustic treatments, ceilings, lighting, flooring and the like; which are to be clear of the 2.7m floor to ceiling height. On this basis, the development thereby fails to satisfy this requirement and diminishes the amenity afforded to future occupants.

Similarly, the retail tenancies are required to have floor to ceiling height of 3.3m, however the proposed floor to floor height is 3.3m, failing to achieve this requirement. As per Figure 4C.1 of the ADG, greater ceiling heights for retail and commercial floors promote a flexibility of uses and viability of the tenancies. Combined with the proposed insufficient retail

tenancy depth discussed elsewhere in this report, future use of these tenancies is compromised.

It is noted that to correct the floor to floor heights proposed, the proposal would likely breach the maximum building height.

Canterbury Local Environmental Plan 2012

[1] Zoning and Permissibility

The subject site is zoned B2 Local Centre and R3 Medium Density Residential under the provisions of Canterbury LEP 2012.

The application, as described by the Applicant in the April 2018 amendment seeks approval for: 'a multi-storey development consisting of thirteen residential units, four business/retail suites and a townhouse'. However, elsewhere in the April 2018 Statement of Environmental Effects, the proposal is described as 'shop top housing'.

'Residential Accommodation' is a nominated prohibited group term in the B2 Local Centre zone, whilst 'shop top housing' is a named residential permissible use. Earlier iterations of the proposal described the development as 'shop top housing'.

In the R3 Medium Density zone, residential flat buildings and shop top housing are prohibited.

The amended proposal is prohibited in both zonings for the following reasons:

- The proposal includes ground floor residential uses which are not above retail, including a detached dwelling unit and communal open space to service the apartments. The proposal therefore fails to meet the definition of 'shop top housing' as per *Hrsto v Canterbury City Council* (No. 2) [2014] NSWLEC 121;
- The location of the communal open space and detached dwelling unit is beyond the 5m zone encroachment relied upon pursuant to Clause 5.3;
- Residential flat buildings are prohibited in the B2 and R3 zones; and
- The detached dwelling unit cannot be characterised as a 'townhouse' (or multi-dwelling) as the '3 or more dwellings' are relied on from the shop top housing. The detached dwelling therefore forms part of the shop top housing development.

Accordingly, the proposed development fails to meet the definition of 'shop top housing' and is prohibited in both the B2 Local Centre zone and R3 Medium Density Residential zone.

For completeness, an assessment of the relevant Canterbury Local Environmental Plan 2012 standards is shown below.

Standard	Requirement	Proposal	Complies
Zoning	B2 Local Centre (2 Flora St) and R3 Medium Density Residential (4 Flora St)	Multi dwellings including at ground level and retail/business use at ground level	No – see comment [1] above
Building height	18m (2 Flora St)	17.5m	Yes
	8.5m (4 Flora St)	14.4m	No – see comment [2] below
Floor Space Ratio and Clause 4.6 variation	0.5:1	1.41:1	No – see comment [3] below
Clause Development near zone boundaries	Not more than 5m if objectives of both zones are satisfied	As a result of the proposed detached dwelling, the proposal exceeds 5m.	No
		The objectives of both zones are not satisfied	No – see comment [4] below
Earthworks	Ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	A geotechnical report has not been provided.	No

[2] Building height

The applicant argues in Section 3.3.2 of the submitted Statement of Environmental Effects that the proposal meets the development standard for building height. On this basis, a clause 4.6 for building height has not been re-submitted.

The proposed development does not comply, as the proposed height above existing ground level on 4 Flora Street (the R3 zoned site), is 14.4m. The building height therefore exceeds the development standard of 8.5m by 5.9m or 69%.

In April 2017 a Clause 4.6 variation was submitted for building height but the applicant has since altered their position to argue compliance with building height. On that basis, the applicant provides no grounds within the amended Statement of Environmental Effects (dated April 2018) as to the how the proposal now numerically complies.

It is noted that whilst the applicant seeks to rely on Clause 5.3 of the CLEP 2012, which contemplates a 5m encroachment into a zone where development would not otherwise be permissible. However Clause 5.3 does not provide an exemption to the other relevant development standards mandated for the R3 Medium Density zone.

It is for this reason that the departures need to be argued under Clause 4.6 of CLEP 2012. In the absence of a Clause 4.6 variation Council cannot lawfully approve the application.

[3] Floor Space Ratio

The applicant has submitted a Clause 4.6 variation for the proposed FSR of 1.41:1, a variation of 282%. An assessment against Clause 4.6 is provided below:

1. *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
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.*

Assessment comment: The development standard to be varied is Clause 4.4, floor space ratio, which is not expressly excluded from the operation of Clause 4.6.

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 (emphasis added).*

In respect of Clause 4.6 (3)(a), the applicant's Clause 4.6 does not specifically address 'unreasonable or unnecessary'. The applicant's justification that the FSR is unreasonable or unnecessary is best extracted from the argument in the Clause 4.6 that the 'variation allows for a better planning outcome' as shown below:

7.2 The variation allows for a better planning outcome

The proposed exceedance of the Floor Space control results in an five storey building form with an FSR of approximately 1.41:1, which is consistent with development along Canterbury Road development corridor and appropriate given the maximum height and zoning of the subject site.

In seeking to demonstrate a better outcome for the site, the following matters are also considered:

7.2.1 Would a complying development result in an unreasonable outcome in the circumstances of the case?

A complying building would be an unreasonable outcome in terms of overall delivery of floor space. It would result in significantly less dwellings along a key development corridor near transport and by inconsistent with the objective of the zone and the height control of 18m. Refer to 7.2.3 below.

7.2.2 Would the underlying objectives of the zone or the development standard be defeated or thwarted if compliance was required?

Yes. The underlying objectives of the B2 – Local Centre zone entail the facilitation, investment and delivery of retail, business and community uses that are in accessible locations whilst the R3 - Medium Density zone addresses the provision of medium density residential housing for a community and locality earmarked for growth and development. A compliant submission would undermine the objectives of both zones.

7.2.3 Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?

No. Given the nature that envelope controls, and not floor space ratio, is the development control used to govern development, in particularly the B2 – Local Centre zone throughout Canterbury Road, departing from compliance would see the development standard be met in a more logical manner whilst being in line with what is existent throughout the zoning in the municipality.

7.2.4 Is the zoning of the land unreasonable or inappropriate?

The zoning of the land is appropriate and the proposed seeks to attain an FSR that is reflective of that fact.

In respect of Clause 4.6 (3)(b), the Clause 4.6 written request argues:

7.3 There are sufficient environmental grounds to permit the variation?

The proposed variation does not compromise any significant natural feature or result in any significant new loss of amenity within the Canterbury Road context. As previously indicated, the departure from the FSR controls would reflect the zoning and height controls given to the subject site.

The shadow diagrams show proposed shadows and these demonstrate the level of impact that exists, in addition to the consideration of development that has been proposed to the immediate east of the subject site. This will assist in the assessment of appropriateness and the attainment of appropriate transitional building forms.

Assessment comment to the applicant's Clause 4.6 written objection for Clause 4.6 (3):

The Applicant argues that a compliant scheme would be an unreasonable outcome on the basis that it would result in significantly less dwellings along a key development corridor near transport and be inconsistent with the objective of the zone and the height control of 18m. Throughout the written objection, the applicant states that 'overwhelmingly', B2 zoned properties comprise an FSR of more than 2:1 when left to envelope controls and states that the proposal establishes a floor space that is consistent with approvals granted along Canterbury Road, and that the scale of the development should be consistent with the scale of Canterbury Road.

On this basis, the applicant primarily relies on the provision of housing targets, Canterbury Road scale and an error in the FSR applicable to the site.

The reasons put forward are not supported and do not justify contravening the development standard. The attribution of meeting dwelling targets is not specific to the circumstances of the case or a relevant planning consideration.

The justification put forward regarding the FSR on the B2 zoned site is a mistake in the CLEP 2012 is not accepted. A history of the zoning of the site shows that 2 Flora Street was zoned for 'special uses' and facilitated car parking to service surrounding development. Segregated from Canterbury Road by a lane, it is not accepted that 2 Flora Street, with its limited site dimensions of 12.19m x 30.48m and close proximity to R3 residential was intended to reach the scale of Canterbury Road.

With respect to sufficient environmental planning grounds the applicant argues that the proposal does not result in any significant loss of amenity within the Canterbury Road context and that the FSR reflects the zoning and height controls. The applicant also argues that the development is an appropriate transition from the developments to the east to the residential area in Flora Street.

The approach is not supported. The application is not readily visible in the Canterbury Road context, but instead with respect to its relationship with the residential properties on Flora Street. Further, the four to five storey massing of the proposal fails to comply with height of this building on No. 4 Flora, which exceeds the development standard by 69%. This

demonstrates the proposal fails to transition appropriately to the residential form along Flora Street.

With a view of the above, the justification put forward by the Clause 4.6 written request is insufficient to justify the proposed breach to the FSR development standard.

4. *Development consent must not be granted for development that contravenes a development standard unless:*

a. ***the consent authority** is satisfied that:*

i. *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Assessment comment:

As detailed above, the written request has not adequately addressed the matters required in subclause 3 above.

ii. *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

Assessment comment:

The objectives for floor space ratio are:

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

The proposal is considered to be inconsistent with the objectives for FSR. In particular, the development fails to provide effective control over the bulk of development, environmental amenity and the desired future character of the area through:

- Breaches to visual privacy separation requirements,
- Breach to the CDCP 2012 building height plane,
- Inability to locate the communal open space on a permissible part of the site, and
- Failure to transition the bulk of the built form with regard to the R3 zoning.

Further, the floor space ratio exceeds the maximum development standard and the resultant impact is detrimental overshadowing to the dwelling house at 6 Flora Street, inconsistent with objective (c).

The proposal is therefore inconsistent with the development standard.

The objectives for the R3 Medium Density Zone seek:

- *To provide for the housing needs of the community within a medium density residential environment.*

- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The objectives for the B2 Local Centre zone seek:

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

With respect to the objectives of the R3 Medium Density Residential zone, as a result of its inadequately transitioned built form and building height breach, the proposal is inconsistent with the desired medium density environment as set by the suite of planning controls applicable to the R3 zoned site.

Regarding the objectives of the B2 Local Centre zone, the proposed variation to the FSR standard is generally consistent with these objectives. However, concern is raised that the long term use of the retail tenancies are not viable given their depth/size and inadequate floor to ceiling heights to enable adaptability to alternative uses. This may be a result of the increased FSR sought to increase the density and in this regard, is inconsistent with the objectives to provide retail uses that service the needs of the community.

With a view of the above issues, the proposed breach to the maximum FSR is inconsistent the objectives for both applicable zones and the development standard. In this respect, variation of the development standard would therefore not be in the public interest.

5. *In deciding whether to grant concurrence, the Secretary must consider:*
 - a. *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - b. *the public benefit of maintaining the development standard, and*
 - c. *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

As the proposed variation exceeds 10%, the concurrence of the Secretary to grant the proposed variation has been delegated to the Local Planning Panel to be satisfied.

Assessment conclusion

A detailed assessment of the Clause 4.6 written request finds that the objection is not well founded. It has not been established successfully that the departures achieve a superior planning outcome or that there are sufficient environmental planning grounds to support the departure. Further, the proposal fails to meet the objectives of the development standard and both zones.

[4] Clause 5.3 Development near zone boundaries

As a result of the location of the communal open space and detached dwelling unit which is considered to be part of the shop top housing development, the proposed encroachment far exceeds the 5m allowable distance. Clause 5.3 is not a development standard that can be varied.

Therefore, there is no authority to grant development consent to the proposal. For completeness, the following assessment is provided against the remainder of Clause 5.3.

Clause 5.3(4) of CLEP 2012 requires that Council be satisfied that, inter alia, the development is not inconsistent with the objectives for development in both zones.

The objectives of the R3 Medium Density Residential zone requires that housing needs of the community be provided within a medium density residential environment.

The proposal straddles the B2 and R3 boundary with a five storey building that significantly breaches the height standard (69% departure) and fails to meet the FSR standard. This provides compelling evidence that the proposal does not constitute an appropriate transition between the B2 zoned site and the residential properties along Flora Street. The scale, proximity and quantum of development is not consistent with a medium density residential zone and the objectives of the R3 zone are not achieved. As a result the objectives of Clause 5.3 fail.

Canterbury Development Control Plan 2012

The proposed development is assessed against the requirements of CDCP 2012, with key non-compliances highlighted below:

Requirements	Numerical requirements	Proposal	Complies
Height	Floor to ceiling heights Ground Floor: 3.3m Residential floor to ceiling: 2.7m Basement Carpark floor to ceiling height: 2.8m	Floor to floor 3.3m <2.7m Floor to floor: Floor to floor 3.1m.	No – as discussed under the ADG assessment. No – as discussed under the ADG assessment Yes.
Depth/footprint	Maximum 18m – residential 10-24m – commercial	11m 9m	Yes No – see comment [1]
Building height plane side setback	Establish a 45° height plane projected at 1.5m from the residential boundary. Provide a 1.5m side setback to the residential zone boundary.	The residential boundary has been taken from 6 Flora Street, instead of 4 Flora Street.	No – see comment [2]

Requirements	Numerical requirements	Proposal	Complies
	Two storey limit on the boundary.		
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.		

[1] Depth/footprint

A depth of between 10-24m is required for the commercial space but 9m is proposed. The refusal of the application does not hinge on this matter alone however the long term viability of this undersized retail unit will be limited particularly given its orientation and lack of activation.

[2] 45 Degree Height Plane (side)

Part 3.1.8, Business Centres, requires development that adjoins a residential zone to provide a side setback in the form of a building height plane. The application has incorrectly taken the residential boundary as the adjoining site, 6 Flora Street, instead of 4 Flora Street.

With a view of the Clause 5.3 zone encroachment sought, the 45 degree plane (including two storey height limit and 1.5m side setback), should be taken from the new 'encroached' boundary (5m into 4 Flora Street). Correctly applying that approach, critical built form non-compliances around building height and building separation would likely have been achieved. Further, the intensity of the development would be reduced, likely reflecting a two storey component on the R3 portion of the site. This would further reduce the bulk of the development on Flora Street and better transitioning the development through the two zonings.

Accordingly, the proposed breach to the height plane is not supported.

Section 4.15 (1) (b) – The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality

Section 4.15(1)(b) requires Council to consider the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality. The proposal does not achieve the zone objectives or a good transition between the zones does not satisfy the desired future character of the area.

Section 4.15 (1) (c) The suitability of the site

The site is not suitable for the development in that the proposed development is not permissible in the zone and it does not achieve the zone objectives or a positive built form transition between the zones and does not satisfy the desired future character of the area.

Section 4.15 (1) (d) – Any submissions made in accordance with this Act or the Regulations

In accordance with Part A3 of the Canterbury Development Control Plan 2012 the proposed development was notified to adjoining and nearby properties and was placed on public exhibition for a period of 21 days on two separate occasions (19/01/16 to 10/02/16 and 14/06/17 to 05/07/17). No submissions were received.

Section 4.15(1)(e) - The public interest

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 not considered to have been achieved for the following reasons:

- The development is not permissible in either zone;
- The proposal does not achieve an appropriate built form transition between the zones;
- The development would result in unreasonable impacts on adjoining owners;
- The proposal would result in an overdevelopment of the site; and
- The proposal will not deliver high quality internal amenity.

CONCLUSION

The application has been assessed against State Environmental Planning Policy (SEPP) 65, Canterbury Local Environmental Plan (LEP) 2012 and Canterbury Development Control Plan (DCP) 2012. The application has been found to be prohibited in the applicable zonings and non-compliant with the principles of SEPP 65. Further the proposed breach to floor space ratio cannot be supported under Clause 4.6 of the CLEP 2012, a relevant Clause 4.6 objection has not been provided for the breach to the building height on the R3 Medium Density zoned site and the proposal has not satisfied the provisions of Clause 5.3 development near zone boundaries. The application is therefore recommended for refusal.

RECOMMENDATION

That the Development Application be **REFUSED** for the following reasons:

1. The proposal is not a permissible development in that residential uses including the proposed dwelling and communal open space are not located above the ground floor retail premises or business premises and is not capable of being characterised as 'shop top housing' and therefore prohibited in the zone.
2. The floor space ratio of the proposal is excessive and the Clause 4.6 written request does not provide sufficient justification for the departure of the proposal to the maximum FSR control. It has not been adequately demonstrated that the proposed departure meets the objectives of the zone or the development standard.
3. The proposal exceeds the maximum building height development standard and a Clause 4.6 variation has not been submitted to accompany the departure.
4. The proposal fails to comply with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that it does not meet the requirements of Clause 5.3 of Canterbury Local Environmental Plan 2012 and extends beyond the potential relevant distance between two zones. The proposal also does not satisfy the objectives for both zones and has not demonstrated that the development is a compatible land use.
5. The proposal fails to comply with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that it fails to meet the requirements of State Environmental Planning Policy 55 – Remediation of Land because no report was submitted that enables Council to properly consider whether the land is contaminated and suitable for its proposed use.
6. The proposal fails to comply with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that it fails to meet the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 in that no updated BASIX report was submitted to accompany the amended plans.
7. The proposal fails to comply with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that it fails to meet the requirements of State Environmental Planning Policy 65—Design Quality of Residential Apartment Development in that Principle 1 – Context and Neighbourhood Character is not achieved because the five storey part located on No. 4 Flora Street breaches building height and floor space ratio controls and does not meet housing needs of the community within a site zoned for a medium density environment.
8. The proposal fails to comply with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that it fails to meet the requirements of State Environmental Planning Policy 65—Design Quality of Residential Apartment

Development in that Principle 2 – Built Form and Scale is not achieved because the five storey part located on No. 4 Flora Street breaches building height and floor space ratio controls and does not meet housing needs of the community within a site zoned for a medium density environment and the ground floor multi dwelling does not comply with setback requirements of the Apartment Design Guide.

9. The proposal fails to comply with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that it fails to meet the requirements of State Environmental Planning Policy 65—Design Quality of Residential Apartment Development in that Principle 5 – Landscape, Principle 7 – Safety and Principle 8 are not satisfied because it has not been demonstrated that the communal open space is permissible at ground floor level for shop top housing development and, in any event, does not 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) as required by the Apartment Design Guide. Further, the location and lack of facilities for the communal open space and inadequate access to the rooftop private open space fails to meet the objectives of these principles.
10. The proposal fails to comply with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that it fails to meet the requirements of State Environmental Planning Policy 65—Design Quality of Residential Apartment Development in that Principle 6 – Amenity is not achieved because the proposed development impacts detrimentally on the adjoining dwelling house at 6 Flora Street with respect to overshadowing.
11. The proposal fails to comply with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that it fails to meet the requirements of State Environmental Planning Policy 65—Design Quality of Residential Apartment Development in that Principle 9 – Aesthetics is not achieved because the proposed development does not provide a satisfactory transition between the business and residential zone.
12. The proposal fails to comply with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that it fails to meet the requirements of State Environmental Planning Policy 65—Design Quality of Residential Apartment Development in that a minimum of 60% ventilation to apartments has not been achieved as required by the Apartment Design Guide.
13. The proposal fails to comply with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that it fails to meet the requirements of State Environmental Planning Policy 65—Design Quality of Residential Apartment Development in that the development has not provided adequate visual privacy separation as required by the Apartment Design Guide.
14. The proposal fails to comply with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that it fails to meet the requirements of State Environmental Planning Policy 65—Design Quality of Residential Apartment

Development in that it has not been adequately demonstrated that the floor to ceiling heights will achieve minimum 2.7m in accordance with the Apartment Design Guide.

15. The proposal fails to comply with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that it fails to meet the requirements of State Environmental Planning Policy 65—Design Quality of Residential Apartment Development in that the bedroom sizes do not comply with the minimum sizes required by the Apartment Design Guide.
16. The proposal fails to comply with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that it fails to meet the requirements of State Environmental Planning Policy 65—Design Quality of Residential Apartment Development in that the provision of private storage does not comply with the Apartment Design Guide.
17. The proposed development, pursuant to the provisions of Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000, the amended proposal has not been accompanied by a design verification statement from an appropriately qualified building designer.
18. The proposal fails to comply with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that it does not meet the requirements of Clause 6.2 Earthworks of Canterbury Local Environmental Plan 2012 through omitting a Geotechnical report.
19. The proposal fails to comply with Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that it fails to meet the 45 degree building height plane as required by the Canterbury Development Control Plan 2012.
20. The proposal fails to comply with Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that it fails to meet the minimum commercial tenancy depth as required by the Canterbury Development Control Plan 2012.
21. The proposal does not satisfy Section 4.15(1)(b) of the Environmental Planning & Assessment Act 1979 as the proposal has an unsatisfactory impact on both the natural and built environments, and social and economic impacts in the locality. The proposal does not achieve the zone objectives or a satisfactory transition between the zones does not satisfy the desired future character of the area.
22. The proposal does not satisfy Section 4.15(1)(c) of the Environmental Planning & Assessment Act 1979 as the proposal is not suitable for the site in that the proposed development is not permissible in the zone and it does not achieve the zone objectives or a reasonable transition between the zones and does not satisfy the desired future character of the area.

23. The proposal does not satisfy Section 4.15(1)(d) of the Environmental Planning & Assessment Act 1979 in that the proposal is not in the public interest.