



AGENDA FOR THE CANTERBURY BANKSTOWN LOCAL PLANNING PANEL MEETING

3 April 2018 – 6pm

Location:

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

ORDER OF BUSINESS

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| | Demolition and reconstruction of two fire damaged dwellings within an existing multi-dwelling housing development | 5 |
| 2 | 230-234 Georges River Road, Croydon Park | |
| | Demolition of existing structures and construction of a five storey mixed use development containing four retail tenancies, 24 residential apartments, three levels of basement parking and a rooftop communal open space area | 31 |
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| | Construction of a new dwelling, front fence and in ground swimming pool | 99 |
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Canterbury Bankstown Local Planning Panel - 3 April 2018

ITEM 1	Units 13 and 14/135 Rex Road, Georges Hall
	Demolition and reconstruction of two fire damaged dwellings within an existing multi-dwelling housing development
FILE	DA-1207/2017– Bass Hill Ward
ZONING	R2 Low Density Residential
DATE OF LODGEMENT	18 December 2017
APPLICANT	CHU Underwriting Agencies Pty Ltd c/- Access Town Planning Consultants
OWNERS	The Registered Proprietors of Strata Plan 34676
ESTIMATED VALUE	\$469,000
AUTHOR	Planning

SUMMARY REPORT

This matter is reported to Council's Local Planning Panel as the application seeks to vary a development standard by more than 10%.

Development Application DA-1207/2017 proposes the demolition and reconstruction of two fire damaged dwellings (referred to in this report as Dwellings 13 and 14) within an existing multi-dwelling housing development. The dwellings are located in the south east corner of the site, and are attached to each other, and to the neighbouring dwelling, by common/party walls.

Both dwellings are proposed to contain four bedrooms with a single car garage. The living areas are located on the ground floor, with the first floor containing bedrooms and a bathroom. This internal layout generally reflects that of the dwellings as originally approved and constructed.

DA-1207/2017 has been assessed, amongst other things, against *Bankstown Local Environmental Plan (BLEP) 2015* and *Bankstown Development Control Plan (BDCP) 2015* and the application fails to comply in regards to BLEP 2015 Clause 4.3(2B)(c)(ii) height of buildings (maximum building and wall height).

As detailed in this report, the non-compliance with the maximum building and wall height for dwellings 13 and 14 is justified and is considered worthy of support.

The application was notified for a period of 21 days from 20 December 2017 to 10 January 2018. No submissions were received.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

It is recommended that:

1. The Clause 4.6 submission in relation to building and wall heights under Clause 4.3 of BLEP 2015 be supported; and
2. Development Application DA-1207/2017 be approved subject to the attached conditions.

ATTACHMENTS

- A. Section 4.15 Assessment Report
- B. Conditions of Consent

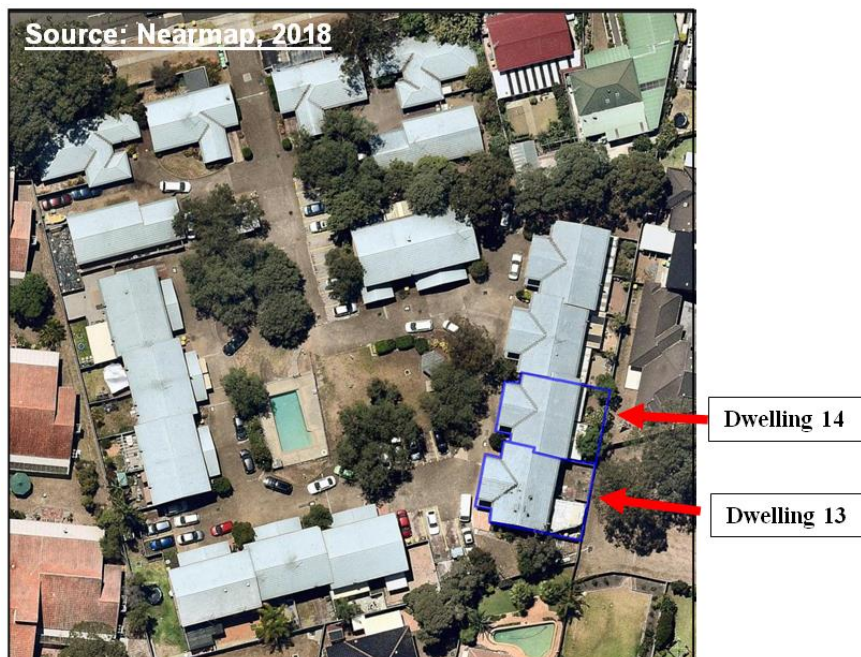
DA-1207/2017 ASSESSMENT REPORT

SITE AND LOCALITY DESCRIPTION

The application seeks consent for the demolition and reconstruction of two fire damaged dwellings within an existing multi-dwelling housing development. The existing lot is a strata subdivided lot making up 29 individual units with a primary frontage to Rex Road. The site has an area of 8675m² and is irregular in shape. Dwelling 13 occupies an area of 113m² with one external car space measuring 15m² and one internal car space measuring 16m². Dwelling 14 occupies an area of 116m² with one external car space measuring 14m² and one internal car space measuring 16m².

Public open space (Keswick Reserve) is located immediately to the east. Otherwise, the surrounding development consists predominantly of low density residential dwellings and two-storey villas of similar age and condition as those that are constructed on the subject site. Dwellings 13 and 14 were subject to fire damage which occurred in August 2017. Dwelling 15 had also suffered minor damage in the fire, primarily in the form of smoke damage, which requires minor repairs to roof and ceiling elements.

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



PROPOSED DEVELOPMENT

DA-1207/2017 proposes the following works:

- Demolition and the reconstruction of two fire damaged dwellings within an existing multi-dwelling housing development.
- The addition of a bedroom to dwelling 14.
- Rectification works to the party wall between dwelling 14 and 15.
- Associated landscaping and site works.

SECTION 4.15 ASSESSMENT

The proposed development has been assessed pursuant to section 4.15(1) of the Environmental Planning and Assessment Act, 1979. In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the proposed development.

Environmental Planning Instruments [section 4.15(1)(a)(i)]

Greater Metropolitan Regional Environmental Plan 2 – Georges River Catchment

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

State Environmental Planning Policy 55 – Remediation of Land

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

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

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

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 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
 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 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 a variation proposed to Clause 4.3 Height of buildings (building height and wall height).

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

STANDARD	PERMITTED	PROPOSED	COMPLIANCE
Height of Buildings	Max 3m - wall Max 6m - building	6.45m (wall height) 6.837m (building height)	No – see justification below
Floor space ratio (specific site)	Max. 0.50:1	No. 14: 108.6m ² – 8.8m ² increase No. 13: 108.6m ² – no increase	Yes

Clause 4.3 – Height of Buildings

Clause 4.6(2B)(c)(ii) – Height of buildings of the BLEP 2015 refers to the maximum permitted height of buildings for multi-dwelling developments in an R2 Low Density Residential Zone as having a maximum building height of 6m and a maximum wall height of 3m. It reads as follows:

4.3 Height of buildings

(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.

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

(2A) ...

- (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.**
- ...

The proposal seeks to vary Clause 4.3(2B)(c)(ii) of the *Bankstown Local Environmental Plan 2015*. The wall height for both dwellings is measured at 6.45m (3.45m variation – 53.48%) while the building height is measured at 6.837m (0.837m variation – 13.95%).

Clause 4.6 – Exceptions to development standards

(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.**

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 building and wall heights for proposed dwellings 13 and 14. 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 simply seeks to reinstate the pre-existing and lawful design of the subject dwelling units, as they both were prior to a fire event, and the rigid enforcement of the current maximum building height limitations would be patently unreasonable and restrictive.

... the subject dwellings were constructed in the 1980’s...and therefore enjoyed existing, lawful use rights.

The proposed height parameters of the two buildings are necessary to maintain visual and design continuity with the existing, attached dwelling units in the block of eight dwelling units of which the subject units form part. As seen with the original building plans of the multi-dwelling complex... the two subject dwellings form part of a block of eight attached dwellings, all displaying the same building and wall heights, and it is both reasonable and visually desirable from a planning perspective to maintain this consistency of design.

There would be clearly no environmental or amenity impact associated with the proposed design and, in fact, the enforcement of the two height limitations would result in a significant loss of visual amenity.

The requested variation would contribute towards the attainment of the objectives of the LEP in relation to building height, particularly in that the proposed design will be consistent and compatible with the design, style and character of adjoining and associated built forms.

The requested variation would be in the public interest, in that it will facilitate the reinstatement of these two dwellings, and the removal of the unsightly and unsafe fire-damaged remnant structures”.

- (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)(c)(ii) prescribes the maximum permissible wall and building heights for multi-dwelling housing developments on the subject site.

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:**
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and**
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.**

An extract of the applicant's Clause 4.6 submission has been reproduced above, as have the objectives for the maximum building and wall height control as contained in Clause 4.3 of the BLEP 2015.

In addressing the proposed variation to the maximum building and wall height, consideration must be given primarily to whether the built form is consistent with objective (a) of the control as it is unreasonable due to the circumstances of this case to ensure compliance with all development standards takes place.

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

The relevant objectives of the R2 Low Density Residential zone are to “provide for the housing needs of the community within a low density residential environment”... whilst “To allow for the development of low density housing that has regard to local amenity” and ensuring “landscape as a key characteristic in the low density residential environment”. It is considered that the proposal is consistent with the objectives of the R2 zone, in that the proposal provides a low density residential development of a built form that is consistent with what was originally approved on the site, and with other units within the same development.

The development, as proposed, complies with the BLEP 2015 in terms of floor space ratio, even with the addition of the bedroom to dwelling no. 14. It must be noted that the addition of the bedroom to dwelling 14 does not infer a non-compliance with any development standard or control associated with the BLEP 2015 or BDCP 2015, thus, having no relation to the non-compliance associated with the building and wall height control. The additional bedroom will result in a minor increase in GFA however the resultant development will provide for consistency with the GFA building footprint and building bulk to that which is provided with Dwelling 13.

As such, it is considered that there are sufficient environmental planning grounds to justify a contravention to the development standard, given the proposed development does not result in any significant changes to the original built form outcome.

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

Draft Environmental Planning Instruments [section 4.15C(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	2 storeys	Max. 1 storey for dwellings at the rear of the site.	No See justification point A.
Fill	No fill proposed	Any reconstituted ground level of an allotment is not to exceed 600mm above the natural ground level of adjoining allotments.	Yes
Levels	Replica dwellings proposed compared to original dwellings prior to burning down.	Multi dwelling housing/landscaping must be compatible with the existing slope and contours of the allotment	Yes

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
Setback to primary road frontage	Both dwelling 13 and 14 are to the rear of the site, not being in the vicinity of any road frontage.	Ground floor– Min. 5.5m. First floor – Min. 6.5m	Yes
Side setbacks	6.6m setback to rear boundary The unauthorised pergola/sunroom to the rear of Unit 13 has been removed to ensure compliance with Private Open Space, Side setbacks and Solar Access. *Please see comments below table*	Min setback to rear boundaries: <ul style="list-style-type: none"> - 5m for a building wall that contains a living area or glass sliding door - 2m for a building wall that does not contain a living area window or glass sliding door - 900mm for a garage or carport that is attached to a building wall - driveway must have a minimum setback to the side/rear boundary of 1m 	Yes
Private open space	Dwelling 13 – 46.2m ² Dwelling 14 – 44.45m ²	Min. 60m ² per dwelling	No See justification point B
Solar access (site)	Dwelling 13 – achieved between 8:00am and 11:00am to rear Living/Kitchen. Dwelling 14 – achieved between 8:00am and 12:00pm to rear Living room/Kitchen.	3 hours of sunlight between 8:00am and 4:00pm at the mid-winter solstice to at least one living area of the proposed dwellings.	Yes
Solar access (private open space – site)	Achieved to the private open space of both dwellings.	3 hours of sunlight between 9:00am and 5:00pm at the equinox to 50% of the required private open space for both dwellings.	Yes
Solar access (adjoining properties)	Dwelling 13 has minor impacts on the sunlight received into the living room for Dwelling 14 with its shadow projecting over the neighbouring park and parking spaces. With Dwelling 14 adjoining Dwelling 13, it has an extremely minor effect on the direct sunlight received into the living room of Dwelling 13. Dwelling 14's primary overshadowing is directed towards surrounding parking	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.	N/A

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
	spaces and the park to the rear and would not have any adverse impact on the neighbouring dwellings to the south that address Keswick Street.		
Solar access (solar collectors)	There are no solar panels on any of the adjoining dwellings.	Development should avoid overshadowing any existing solar hot water system, photovoltaic panel or other solar collector on the allotment and neighbouring properties.	Yes
Visual Privacy (living areas)	No windows are proposed that look directly into living or bedroom windows of neighbouring properties.	Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling the development must offset the windows; provide a minimum sill height of 1.5 metres above floor level; provide fixed obscure glazing; or use another form of screening.	Yes
Visual Privacy (private open space)	First floor bedroom windows overlook the adjoining areas of private open space.	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
Visual Privacy (private open space and balconies)	No balconies proposed.	An upper floor balcony to a multi dwelling housing may require screening where the open space overlooks more than 50% of the private open space of a lower level or neighbouring dwelling.	N/A

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
Roof top balconies	No balconies proposed.	Council does not allow roof top balconies and the like.	N/A
Roof pitch	Unit 1 – 21.5 degrees Unit 2 - 21.5 degrees	Max. roof pitch 35 degrees	Yes
Demolition	Demolition of all structures is proposed.	Demolition of all existing dwellings	Yes
Adaptable housing	Proposal is not applicable as this proposal is only based on the two specific dwellings, rather than the whole multi-dwelling development.	Multi dwelling housing with 10 or more dwellings must provide one adaptable dwelling per 10 dwellings in accordance with AS 4299 – Adaptable housing	N/A
Car parking	Single garages proposed with existing external parking space per dwelling.	Min. 2 car parking spaces per dwelling, 1 of which must be covered	Yes
Landscaping	Not applicable to this proposal.	Min. 45% of the area between the multi dwelling housing and the primary road frontage 1 x 75L tree between the multi dwelling housing and the primary road frontage	N/A
	No trees are impacted as a result of this development.	Development must retain any significant trees on the allotment	Yes

*Council had previously issued an approval for the construction of a large awning to the rear of the villa home. At some later stage, the area was enclosed without Council knowledge or approval.

The size of the awning is something that would typically not be permitted under the current version of Council's planning controls (Bankstown Development Control Plan 2015). Given the past approval of the structure, the reinstatement of what was previously approved is being supported. However, support is not being offered to the portion of the development that was undertaken in the past without approval (i.e. enclosure of the awning area).

As demonstrated in the table above, an assessment of the Development Application has revealed that the proposal fails to comply with a number of the relevant controls contained within Part B1 BDCP 2015. As mentioned previously, the proposed development is one that depicts a similar built form, and visual exterior to how it was previously built. It would also be inconsistent with the design and form to the remaining multi-dwelling houses if an alternate design was chosen. [Below are listed reasons, specific to the relative Bankstown Development Control Plan 2015 as to why the storey limit and private open space control should be varied]:

a) Storey Limit:

- a. Compliance would be unreasonable in the circumstances of this case, given that the proposed development involves only the reinstatement of two previously approved dwellings destroyed or damaged by fire, with no change to the original building heights.

- b. The proposed development will have no adverse environmental, amenity or any other impacts as, again, the development will simply reinstate the original buildings and uses as they were prior to the fire event.
 - c. The reinstatement of the two subject dwelling units to their original two-storey designs is necessary to maintain the visual continuity and design consistency with the other six attached units in the same block.
- b) Private open space:
- a. Compliance would be unreasonable in the circumstances of this case, given that the proposed development involves only the reinstatement of previously approved dwelling units destroyed by fire, with no change to the original level of open space provision.
 - b. The amount of private open space that has been provided for Dwellings 13 and 14 is consistent with the amount of private open space that is currently provided for the other dwellings in the complex.
 - c. The shortfall in private open space provision for each dwelling unit is minor and inconsequential,
 - d. the proposed development will have no adverse environmental, amenity or any other impacts as, again, the development will simply reinstate the original buildings and uses as they were prior to the fire event,
 - e. the reinstatement of the subject dwelling units as proposed will clearly be in the public interest, as this will replace two lost or damaged family homes and will eliminate the unsightly and unsafe remnants of these buildings

Planning Agreements [section 4.15(1)(a)(iia)]

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 is compliant with Council's planning controls, with the exception of the building and wall heights as contained within BLEP 2015 and the storey limit and private open space controls contained within the BDCP 2015 which have been addressed previously within this report.

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

The proposed multi-dwelling reconstruction 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 development proposes a variation to building and wall height, it is considered that the built form proposed is representative of the bulk and scale of the developments as have originally approved. The proposal is a development that can be expected in a Low Density Residential zone and is capable of accommodating the proposed development, as it stood before becoming fire affected. Accordingly, the site is considered to be suitable for the proposed development.

Submissions [section 4.15(1)(d)]

No submissions were received against the development.

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. The matters raised have been satisfactorily addressed, and it is considered that there will be no unreasonable impacts on the locality.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, and the relevant planning controls.

The proposed development complies with all applicable planning controls, with the exception of wall and building heights in accordance with the BLEP 2015 and the storey limit and private open space in accordance with the BDCP 2015. It is recommended that the variations are supported in light of the arguments presented in the report.

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-1207/2017, submitted by CHU Underwriting Agencies Pty Ltd, accompanied by Drawing No. A.000, A.050, A.051, A.300 and A.301 Revision D dated 29/01/2018, A.101, A.200 and A.201 Revision E dated 29/01/2018, A.100 Revision G dated 29/01/2018 prepared by Aspect Design Studio, and affixed with Council's approval stamp, except where otherwise altered by the specific amendments listed hereunder and/or except where amended by the conditions contained in this approval.
- 3) The building must comply with the Category 1 fire safety provisions. Note: The obligation to comply with the Category 1 fire safety provisions may require building work to be carried out even though none is proposed or required in relation to the relevant development consent.

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:

- 4) 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.
- 5) The landscape plan shall include the provision for the replacement of all boundary fencing (where required). A new 1.8m fence is to be erected along the rear boundary of the subject allotment at full cost to the developer. The colour of the fence is to complement the development and the fence is to be constructed of lapped and capped timber paling, sheet metal or other suitable material unless the type of material is stipulated in any flood study prepared for the site. The selection of materials and colours of the fence is to be determined in consultation with the adjoining property owners. Fencing forward of the building line shall be no higher than 1m unless otherwise approved by Council.
- 6) Approval in accordance with Council's Tree Preservation Order (TPO) is granted to lop or remove only the trees identified to be lopped or removed on the approved plans. Separate approval shall be obtained to prune or remove trees on adjoining properties or other trees located on the site. Failure to comply with Council's TPO may result in a fine of up to \$100,000.

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

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

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

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

- 9) A Construction Certificate shall not be issued until written proof that all bonds, fees and/or contributions as required by this consent have been paid to the applicable authority.
- 10) A long service levy payment which is 0.35% of the total cost of the work is to be paid to the Building and Construction Industry Long Service Payments Corporation.
- 11) Pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979, and the Bankstown City Council Section 94A Development Contributions Plan 2009 (Section 94A Plan) , a contribution of \$4690 shall be paid to Council.

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

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

- 12) Finished surface levels of all internal works and at the street boundary, including driveways, landscaping and drainage structures, must be as shown on the approved plans. The levels at the street boundary must be consistent with the Street Boundary Alignment Levels issued by Council.
- 13) A Work Permit shall be applied for and obtained from Council for the following engineering works in front of the site, at the applicant's expense (where required):
 - a) Drainage connection to Council's system.
 - b) Removal of all driveway surfaces, reinstatement of laybacks to kerb and gutter and reshaping of the footway, all associated with redundant VFCs.

- c) Repair of any damage to the public road including the footway occurring during development works.
- d) Reinstatement of the footway reserve and adjustment or relocation of existing public utility services to match the footway design levels as proposed on the approved Work Permit. Adjustment or relocation to any public utility services shall be carried out to the requirements of the public utility authority.

Note: As a site survey and design is required to be prepared by Council in order to determine the necessary information, payment for the Work Permit should be made at least twenty one (21) days prior to the information being required and must be approved prior to the issue of the Construction Certificate.

- 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 No. A.002 prepared by Aspect Design Studios. 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, 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

- 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 / subdivision work.

- 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.

- 29) Prior to the commencement of demolition and construction works, a dilapidation report shall be prepared for the internal driveway areas of No. 135 Rex Road, Georges Hall, and a copy is to be provided to the strata manager. The report must clearly identify the condition of existing driveway areas prior to the commencement of works. All care shall be taken during the demolition and construction process to ensure the internal driveway areas are protected, and should any change in condition occur from that recorded in the dilapidation report, the rectification of such shall be at full cost to the developer.
- 30) Prior to the commencement of demolition and construction works, a dilapidation report shall be prepared for the adjoining dwelling at No. 15/135 Rex Road, Georges Hall, and a copy is to be provided to the owner of the dwelling. The report must clearly identify the condition of the dwelling prior to the commencement of works (with the exclusion of any existing fire damage that requires rectification). All care shall be taken during the demolition and construction process to ensure the existing dwelling is protected, and should any change in condition occur from that recorded in the dilapidation report, the rectification of such shall be at full cost to the developer.
- 31) The demolition of dwellings 13 and 14 that 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

- 32) 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.

- 33) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 34) 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.
- 35) 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.
- 36) All excavations and backfilling must be executed safely and in accordance with the relevant Australian Standards.
- 37) 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.
- 38) 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.
- 39) All boundary fencing behind the building line shall be replaced (where required) by a 1.8m high lapped and capped timber or sheet metal fence, or as stipulated in a flood study prepared for the site, or as determined in consultation with the adjoining property owners at the developer's expense. Fencing forward of the building line shall be no higher than 1m unless otherwise approved by Council.
- 40) 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.
- 41) The rear patio to dwelling 13 is approved as an open structure only and shall not be enclosed by a wall, roller door or similar obstruction.
- 42) 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

- 43) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 44) 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.
- 45) Lighting must be provided to the entries of the dwellings, driveways and parking areas to promote a high level of safety and security at night and during periods of low light. Lighting provided should be hooded, shielded or directed away from neighbouring dwellings to minimise glare and associated nuisances to residents.
- 45) The premises must be readily identified from the street with the allocated house numbers. Numbering of the development without Council's written approval is not permitted.

-END-

Canterbury Bankstown Local Planning Panel - 3 April 2018

ITEM 2	230-234 Georges River Road, Croydon Park
	Demolition of existing structures and construction of a five storey mixed use development containing four retail tenancies, 24 residential apartments, three levels of basement parking and a rooftop communal open space area
FILE	DA-361/2015 – Canterbury Ward
ZONING	B2 Local Centre SP2 Infrastructure (Road Widening)
DATE OF LODGEMENT	13 August 2015
APPLICANT	Salim and Nicholas Rehayem
OWNERS	Croydon Park Carpet Factory Pty Ltd
ESTIMATED COST	\$6,737,500
CIV	\$6,125,000
SITE AREA	1,156.84sqm
AUTHOR	Planning

SUMMARY REPORT

This matter is reported to the Canterbury Bankstown Local Planning Panel (CBLPP) as the departure from the height of buildings development standard contained in Canterbury Local Environmental Plan (CLEP) 2012 is in excess of 10%.

Development application DA-361/2015 proposes the demolition of existing structures and construction of a five storey mixed use development containing four commercial tenancies, 24 residential apartments, three levels of basement parking and a rooftop communal open space area at 230-234 Georges River Road, Croydon Park.

DA-361/2015 has been assessed against *State Environmental Planning Policy (Infrastructure) 2007*, *State Environmental Planning Policy No. 55 – Remediation of Land*, *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development*, *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, *Canterbury Local Environmental Plan 2012* and *Canterbury Development Control Plan 2012* and generally complies with the relevant provisions. As detailed in this report, where non-compliances with the development controls are proposed, they have been addressed and are considered worthy of support.

The application was advertised and notified for a period of 21 days from 9 September 2015 to 30 September 2015. Seven submissions were received, comprising of four letters of objection and three letters of support (one of which was a petition of support with eleven signatures that was initiated by the owner of the subject site). The objections primarily raise concerns relating to visual privacy, solar access, building height, traffic and parking impacts, and character of the local area. The concerns have been adequately addressed and do not warrant refusal or further modifications to the proposed development. The amended plans were not re-advertised or re-notified to the adjoining property owners due to the reduction in the overall bulk and scale of the development and associated reduction in impacts.

The application is recommended for approval subject to the attached conditions of consent.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

1. The submission made pursuant to Clause 4.6 of the Canterbury Local Environmental Plan 2012 be supported; and
2. Development Application DA-361/2015 be approved subject to the attached conditions of consent.

ATTACHMENTS

- A. Section 4.15 Assessment Report
- B. Conditions of Consent

DA-361/2015 ASSESSMENT REPORT

SITE AND LOCALITY DESCRIPTION

The subject site at 230-234 Georges River Road, Croydon Park is irregular in shape and comprises three allotments (Lot 1 in DP 546750, Lot 2 in DP 546750 and Lot B in DP 110311). The site is located at the south-west corner of the intersection of Georges River Road and Clyde Street. The site has a primary frontage of 28.274m to Georges River Road, a secondary frontage of 33.985m to Clyde Street, a site depth of 38.250m and a combined site area of 1,156.84sqm (by title). The majority of the site is zoned B2 Local Centre, however the northern portion of the site adjacent to Georges River Road is zoned SP2 Infrastructure (Road Widening). The site currently comprises of two single storey commercial buildings. The site is burdened by a 2.44m wide Sydney Water sewer easement that runs through the rear portion of the site.

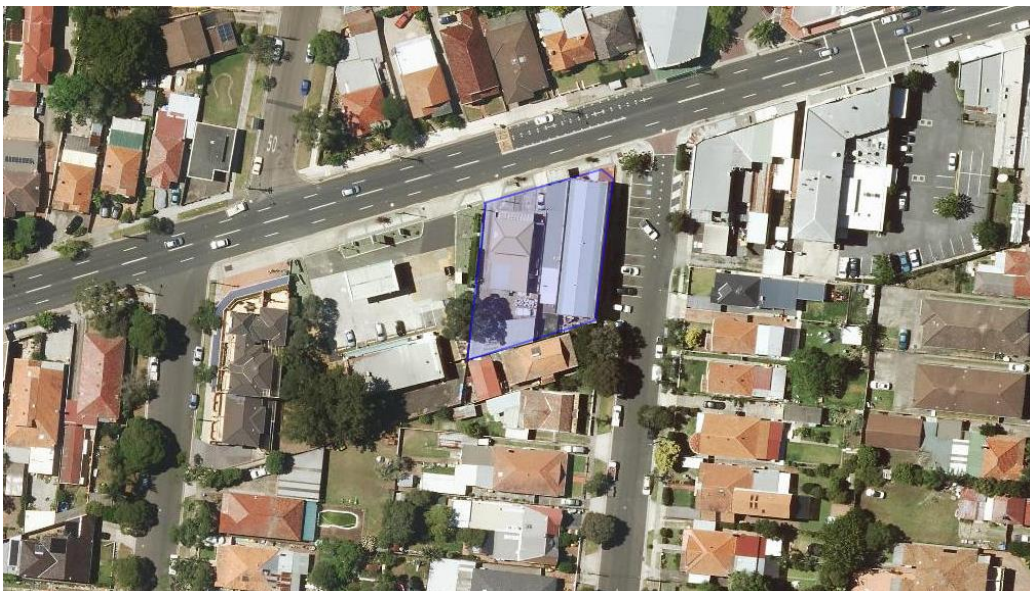
The property to the west at 236-240 Georges River Road is zoned B2 Local Centre and contains a BP service station. Council is currently assessing a Development Application (DA-578/2016) at this site for the demolition of existing structures and construction of 6 storey mixed use development with basement parking.

The properties to the east of the subject site on the eastern side of Clyde Street contain two storey commercial buildings and shop-top housing. These sites are zoned B2 Local Centre.

The properties to the south of the site on the western side of Clyde Street contain single storey attached and detached dwelling houses. These sites are zoned B2 Local Centre and R4 High Density Residential.

To the north of the site, on the northern side of Georges River Road, is land zoned R1 General Residential comprising single storey detached dwelling houses. This land is located within the Burwood Council Local Government Area.

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



PROPOSED DEVELOPMENT

The development application proposes the following works:

- Demolition of existing structures.
- Excavation and site preparation works.
- Construction of a five storey mixed use development containing four retail tenancies on the ground floor, 24 residential apartments on Levels 1-4, three levels of basement parking, and a rooftop communal open space area. The development comprises of seven x one bedroom units, 13 x two bedroom units and four x three bedroom units.
- The basement car park contains 46 car parking spaces, which comprises of 31 residential spaces, five residential visitor spaces and ten commercial spaces. Seven of these spaces (five residential spaces, one residential visitor and one commercial) are for persons with a disability. The development also incorporates one car wash bay, three motorcycle/scooter spaces, eleven bicycle racks, and one loading bay.
- Construction of a new vehicular access to the basement car park from Clyde Street.

SECTION 4.15 ASSESSMENT

The proposed development has been assessed pursuant to section 4.15 of the *Environmental Planning and Assessment Act, 1979*.

Environmental Planning Instruments [section 4.15(1)(a)(i)]

State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Infrastructure) 2007 aims to facilitate the effective delivery of infrastructure, including providing appropriate consultation with relevant public authorities about certain development during the assessment process.

The subject site is located on Georges River Road, which is a classified road for the purposes of the SEPP. In accordance with Section 138 of the Roads Act 1993, the application was referred to Roads Maritime Services (RMS) for concurrence given the application comprises the removal of two existing vehicular footway crossings along Georges River Road, and the northern portion of the site is zoned SP2 Infrastructure (Road Widening). RMS granted concurrence to the proposed development subject to conditions of consent.

In addition to the above, Clause 101 of the SEPP states that a consent authority must not grant consent to a development that has a frontage to a classified road unless it has considered the following:

- (a) *where practicable, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The application proposes to remove the two existing vehicular footway crossings along Georges River Road and provide a new vehicular footway crossing with access to the site via Clyde Street. Accordingly, vehicular access to the proposed development will be provided by a road other than the classified road.

Further to the above, it is considered that the safety, efficiency and on-going operation of the classified road will not be adversely affected by the proposed development. These matters have been addressed through the design of the development, the proposed use and the conclusions of the Traffic and Parking Impact Assessment Report (Reference No. N1514171A Version 1g, dated February 2017, prepared by Motion Traffic Engineers) and the supplementary assessment letters.

Furthermore, Clause 102 of the SEPP states that a consent authority must consider the following with respect to the impact of road noise or vibration on non-road development:

- (3) *If the development is for the purposes of a building for residential use, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:*
- (a) *in any bedroom in the building—35 dB(A) at any time between 10 pm and 7 am,*
 - (b) *anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

An Acoustic Report (Reference No. 2015-333 Rev 6, dated 19 January 2018, prepared Acoustic Noise & Vibration Solutions P/L) was submitted throughout the assessment of the development application. This report concludes that the construction of the proposed development, if carried out in accordance with the acoustic recommendations, will meet the required noise reduction levels of Clause 102 of the SEPP. Accordingly, a condition of consent has been imposed requiring the development to be constructed in accordance with the recommendations contained in the Acoustic Report.

State Environmental Planning Policy 55 – Remediation of Land

The provisions of Clause 7(1) of State Environmental Planning Policy 55 – Remediation of Land specifies that a consent authority must not consent to the carrying out of any development on land unless:

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

The subject site has long been used for light-industrial, commercial and retail purposes as part of the Croydon Park Town Centre. 230 Georges River Road (Imperial Hall) was used from 1965 for carpet production, and then for a mattress and bedding manufacturing business. 232 Georges River Rd was used for an aluminium window and door supply business, and then as a hairdresser salon. 234 Georges River Road is currently used for the purposes of a plumbing wholesaler. The adjoining site at 236 Georges River Road contains a BP service station.

A Detailed Site Investigation Report, prepared by STS GeoEnvironmental, dated August 2017 accompanied the development application. The report concludes, based on the historical uses, that there is the potential that chemical products have been stored/used at the site resulting in leaks/spills, that the land has been filled with an imported soil material from an unknown origin, that the existing buildings contain asbestos-based materials, and that there is a low risk of impact on groundwater beneath the site from the adjoining service station. Despite this, the report concludes that the soil sampling has demonstrated that the soils on site would not present an unacceptable risk to human-health for the proposed mixed commercial (retail) and high density residential use. The report also concludes that the site is likely to be suitable for the proposed use.

Council's Environmental Health Officer reviewed the Detailed Site Investigation Report and requested the submission of a Remedial Action Plan. The applicant subsequently submitted a Remedial Action Plan, prepared by STS GeoEnvironmental, dated November 2017. Council's EHO has agreed with the conclusions and recommendations of the Detailed Site Investigation Report and the requirements of the Remedial Action Plan, subject to the implementation of conditions of consent.

Based on the above, it is considered that the development has satisfactorily addressed SEPP 55 by demonstrating that the site is suitable for the proposed use, subject to minor remediation works.

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

In assessing an application that contains four or more self-contained dwellings in a building of at least three storeys in height, Council is required to consider the provisions of State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65). SEPP 65 aims to improve the design quality of residential flat buildings and provides an assessment framework, the Apartment Design Guide, for the assessment of applications under which this is considered. The proposal is consistent with the Design Quality Principles contained within this policy, which promote development that is of good design and appropriate context, scale and density with respect to the desired future character of the area.

Clause 50(1A) of the *Environmental Planning and Assessment Regulation, 2000* requires the submission of a design verification statement from the building designer upon lodgement of a development application for a residential flat building. This document was submitted with the subject application, and was subsequently revised upon the submission of amended plans throughout the assessment of the application. The subject application is therefore considered to satisfy the submission requirements.

SEPP 65 requires the assessment of any development application for residential flat building development against the Design Quality Principles and the matters contained in the Apartment Design Guide (ADG). As such, the following consideration has been given to the requirements of the SEPP.

Principle 1: Context and Neighbourhood Character

The site is located within the B2 Local Centre zone, and the objectives of the 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.*

The immediate surrounding area is characterised by a mixture of residential and commercial development types, ranging from single dwelling development to mixed use developments and shop-top housing. The proposal is considered to be compatible with the existing and desired future character of the area, and will contribute to the quality and identity of the immediate locality.

Principle 2: Built Form and Scale

The proposed development is generally compliant with the primary building envelope controls. The scale of the development is consistent with that envisaged by the planning controls, and is of a suitable bulk and scale for the locality. The configuration and proportions of the building are appropriate for the site, and its overall design and treatment is considered to be acceptable.

Principle 3: Density

The density of the proposed development is considered to be acceptable, and an appropriate response to the desired future character and built form of the locality.

Principle 4: Sustainability

A BASIX Certificate was submitted to Council with this development application, which details the water, thermal comfort and energy efficiency targets that will be incorporated into the proposal.

The development is considered to be acceptable with respect to the applicable natural ventilation and solar access requirements. The development incorporates an appropriate mix of unit sizes consisting of one, two and three bedroom units, and will therefore provide a range of choice for future residents.

Principle 5: Landscape

The proposal incorporates a rooftop communal space area, which will include planter beds with vegetation to provide amenity to the occupants of the development. In addition, the

development incorporates a small landscaped area in the south-west corner of the site. All of the proposed units have access to private balconies.

Principle 6: Amenity

The development is considered to be acceptable with respect to natural ventilation, solar access and privacy requirements, and the development incorporates an appropriate mix of unit types. The size and room dimensions of all units exceed the minimum standards stated in the Apartment Design Guide. The development is therefore satisfactory with respect to amenity.

Principle 7: Safety

The applicant has considered Crime Prevention Through Environmental Design (CPTED) principles in the design of the development. Physical and visual barriers provide adequate separation between the public and private spheres. The residential units that address Georges River Road and Clyde Street, as well as the provision of intercom and security systems, will allow for an appropriate level of surveillance and security. The residential entrance to the building, and the entrances to the four commercial tenancies, are clearly visible on the northern and eastern façades of the development.

Principle 8: Housing Diversity and Social Interaction

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

Principle 9: Aesthetics

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

Apartment Design Guide

The Apartment Design Guide was released in 2015 and applies to the development. Clause 28 of SEPP 65 refers to the Apartment Design Guide and states:

- (2) *In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):*
- (a) *the advice (if any) obtained from the design review panel, and*
 - (b) *the design quality of the development when evaluated in accordance with the design quality principles, and*
 - (c) *the Apartment Design Guide.*

An assessment of the application against the key 'design criteria' and 'design guidance' contained in Parts 3 and 4 of the Apartment Design Guide, in particular the numerical controls, is provided in the table below.

Design Criteria/Guidance	Proposal	Compliance
Part 3 – Siting the development		
<p>3B-2 Overshadowing of neighbouring properties</p> <p>Solar access to living rooms, balconies and private open space of neighbours should be considered.</p> <p>Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures that solar access to neighbouring properties is not reduced by more than 20%.</p>	<p>The existing dwelling house to the south of the subject site at 1 Clyde Street will be overshadowed as a result of the proposed development. However, the shadow diagrams submitted with the application demonstrate that there will be less overshadowing of the eastern (front) windows of the dwelling house in the morning hours between 9am and 10am compared to the existing structures on site. Similarly, there will be less overshadowing of the western (rear) portion of the site in the afternoon hours between 1pm and 3pm compared to the existing structures on site.</p> <p>The proposed development also results in an increase in overshadowing of the residential properties at Nos. 3 and 4-8 Clyde Street throughout the day at the mid-winter solstice as a result of the proposed development, however the additional impacts are not to an extent that would be considered unreasonable in a high density locality. The dwelling houses will achieve sufficient solar access to living areas and private open space at varied hours throughout the day. It is also noted that all properties affected by overshadowing are either zoned B2 Local Centre or R4 High Density Residential, and are therefore likely to be redeveloped in the future.</p>	Yes
<p>3D-1 Communal open space</p> <p>Communal open space has a minimum area equal to 25% of the site.</p> <p>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June.</p>	<p>The rooftop courtyard comprises approximately 230sqm of communal open space, which equates to 20% of the total site, or 26% of the site area when excluding the portion of the site zoned SP2 Infrastructure (Road Widening). Clause 4.5 'Calculation of floor space ratio and site area' of CLEP 2012 excludes land on which the proposed development is prohibited for the purposes of calculating site area. Accordingly, the latter communal open space area calculation is considered to be acceptable.</p> <p>Given the location of the communal open space area on the rooftop of the building, the majority of the area will receive unrestricted direct sunlight throughout the day in mid-winter.</p>	<p>Yes</p> <p>Yes</p>
<p>3E-1 Deep soil zones</p> <p>Site Area = 650sqm-1,500sqm Min. dimension = 3m</p>	<p>24sqm of deep soil greater than 3m in dimension is provided in the south-west corner of the site, which equates to 2% of the total site or 3% of the site area when</p>	No, refer to comment [1] below.

Design Criteria/Guidance	Proposal	Compliance
Deep soil zone = 7% of site	excluding the portion of the site zoned SP2 Infrastructure (Road Widening).	
3F-1 Visual privacy (building separation) Up to 12m (4 storeys) = 6m to habitable rooms or 3m to non-habitable rooms Up to 25m (5-8 storeys) = 9m to habitable rooms or 4.5m to non-habitable rooms No separation is required between blank walls.	The proposed development is 5 storeys in height. The development incorporates a compliant minimum separation distance to the rear boundary of 6m for the 1 st -4 th storeys (ground floor and levels 1-3), and a non-compliant minimum separation distance of 6m for the 5 th storey (level 4). The development proposes nil separation to the western (side) boundary which comprises of a blank wall.	No, refer to comment [2] below.
3J-1 Bicycle and car parking For development within 800 metres of a railway station or light rail stop in the Sydney Metropolitan the minimum car parking requirement for residents and visitors is the lesser of that set out within the Guide to Traffic Generating Developments or Council parking controls. The car parking needs for a development must be provided off street.	The site is not located within 800m of a railway station or light rail stop, therefore the car parking rates within CDCP 2012 apply. An assessment of the proposed development against the parking rates within CDCP 2012 is provided below in this report. All car parking is accommodated within the basement of the proposed development.	N/A Yes
Part 4 – Designing the building		
4A-1 Sunlight to living rooms and private open spaces Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	14 of the 24 apartments (i.e. 58%) achieve a minimum of 2 hours of direct sunlight to the living room and private open space between 9am and 3pm at mid-winter. 6 of the 24 apartments (i.e. 25%) receive no direct sunlight between 9am and 3pm at mid-winter.	No, refer to comment [3] below. No, refer to comment [3] below.
4B-3 Natural cross-ventilation At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Overall depth of a cross-over or cross-through apartment does not	12 of the 24 apartments (i.e. 50%) are naturally cross-ventilated. No apartments exceed a depth of 18m (max. 14.5m).	No, refer to comment [4] below. Yes

Design Criteria/Guidance	Proposal	Compliance
exceed 18m, measured glass line to glass line.		
4C-1 Ceiling height Min. 2.7m for habitable rooms and min. 2.4m for non-habitable rooms. In mixed use areas min. 3.3m for ground and first floor to promote future flexibility of use.	<p>The proposed development comprises a 3.6m floor to floor height for the ground floor and a 3.1m floor to floor height for all residential floors. The development is therefore capable of complying with the minimum floor to ceiling heights with a 300mm slab between floors.</p> <p>The floor to ceiling height and configuration of the first floor is not designed in a manner that will allow future flexibility of use.</p>	<p>Yes</p> <p>No, refer to comment [5] below.</p>
4D-1 Apartment size and layout Studio – min. 35sqm 1 bedroom – min. 50sqm 2 bedroom – min. 70sqm 3 bedroom – min. 90sqm Additional bathrooms increase the minimum internal area by 5sqm each. Every habitable room must have a window in an external wall with a total area of not less than 10% of the floor area of the room.	<p>All apartments comply with the minimum internal area requirements, including an additional 5sqm for each additional bathroom.</p> <p>All habitable rooms have a window in an external wall that exceeds 10% of the floor area of the room.</p>	<p>Yes</p> <p>Yes</p>
4D-2 Environmental performance In open plan layouts the maximum habitable room depth is 8m from a window.	<p>6 of the 24 apartments (Units 105, 205, 303, 306, 403 and 406) exceed the maximum habitable room depth of 8m. The maximum habitable room depth is up to 8.6m.</p>	<p>No, refer to comment [6] below.</p>
4D-3 Apartment layouts Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space). Bedrooms have a minimum dimension of 3m (excluding wardrobe space). Living rooms or combined living/dining rooms have a minimum width of 3.6m for studio and 1 bedroom apartments and 4m for 2 and 3 bedrooms apartments. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	<p>All bedrooms comply with the minimum area requirements.</p> <p>All bedrooms comply with the minimum dimension requirement.</p> <p>All living rooms comply with the minimum width requirement.</p> <p>All cross-through apartments comply with the minimum width requirement.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

Design Criteria/Guidance	Proposal	Compliance
4E-1 Private open space Studio – 4sqm, no min. depth 1 bed – 8sqm, 2m depth 2 bed – 10sqm, 2m depth 3 bed – 12sqm, 2.4m depth The min. balcony depth to be countered as contributing to the balcony area is 1m.	All balconies comply with the minimum area and depth requirements, with the exception of one 3 bedroom apartment (Unit 102), which achieves a balcony area of 9sqm with the exclusion of area less than 1m in depth.	No, refer to comment [7] below.
4F-1 Common circulation spaces The maximum number of apartments off a circulation core on a single level is eight.	A maximum of 6 apartments are located off a single circulation core.	Yes
4G-1 Storage Studio – 4cbm 1 bed – 6cbm 2 bed – 8cbm 3 bed – 10cbm At least 50% of the required storage is to be located within the apartment.	Compliance with the total minimum storage area requirement has been achieved for all units, however less than 50% of the storage is accommodated in the apartment for Units 106, 206, 303, 306 and 403.	No, refer to comment [8] below.

As demonstrated above, the proposal is generally consistent with the key 'design criteria' and 'design guidance' contained in Parts 3 and 4 of the Apartment Design Guide. Further comments are provided below with respect to deep soil zones, visual privacy (building separation), sunlight to living rooms and private open spaces, natural cross-ventilation, ceiling height, habitable room depth, private open space and storage.

[1] Objective 3E-1 Deep soil zones

The development incorporates 24sqm of deep soil that is greater than 3m in dimension in the south-west corner of the site, which equates to 2% of the total site or 3% of the site area when excluding the portion of the site zoned SP2 Infrastructure (Road Widening). The development incorporates an additional 52sqm of deep soil that is less than 3m in dimension, primarily in the south-west corner and front setback of the site, which equates to 6% of the total site area.

It is considered that the minimum requirement of 7% deep soil, greater than 3m in dimension, is not feasible on the subject site due to the constraints of the SP2 Infrastructure (Road Widening) zone and the Sydney Water sewer easement, which limit the suitability of at-grade landscaping while also providing the required services and vehicular access at ground level.

The ADG acknowledges that it may not be possible to achieve this design criteria on certain sites (such as those in high density areas or developments that contain non-residential uses at ground floor level), and in those cases, acceptable stormwater management and alternative forms of planting is required. The development incorporates an on-site detention system, porous paving at ground level (where possible) and planter boxes with substantial planting on

the roof top. Accordingly, the proposal is considered to be acceptable with respect to this matter.

[2] Objective 3F-1 Visual privacy (building separation)

The development proposes a separation distance of 6m for the 5th storey (level 4) to the southern (rear) boundary, which results in a non-compliance with the minimum requirement of 9m. The subject site is zoned SP2 Infrastructure (Road Widening) for a depth of up to 9.56m along the northern (front) boundary. Furthermore, the CDCP 2012 requires an upper level setback of 5m to the front boundary for developments greater than 4 storeys. If the development were designed to achieve full compliance with the front setback and rear separation distance controls, the building envelope on the 5th storey would have a depth of approximately 13m. This would result in poor unit configuration and amenity.

The building separation requirement relates to a visual privacy objective. While the south-facing units on the southern elevation of the 5th storey contain windows and balconies, it is estimated that the eye level of the future residents of these units would be positioned approximately 16m above the existing natural ground level. Accordingly, views of the adjacent residential properties to the south (which are primarily single storey) would be minimal. Should the adjacent residential properties accommodate a residential flat building in the future, it is considered that the visual privacy impacts that result from the 5th storey would not be any greater than that of the 1st to 4th storeys below.

The development generally complies with the objectives of this design criteria, and the proposed non-compliance is considered to be acceptable in this instance.

[3] Objective 4A-1 Sunlight to living rooms and private open spaces

As stated in the table above, 14 of the 24 apartments (i.e. 58%) achieve a minimum of 2 hours of direct sunlight to the living room and private open space between 9am and 3pm at mid-winter. This results in a non-compliance with the minimum requirement of 70% (a shortfall of 3 apartments).

The development incorporates skylights to the living rooms of three of the top floor apartments that are primarily south-facing. With consideration given to skylights, 17 of the 24 apartments (i.e. 71%) achieve more than 2 hours of direct sunlight to the living room. Accordingly, the development has been designed in a manner that maximises the number north-facing apartments (where possible), and alternative design solutions have been incorporated into the development for south-facing apartments.

Similar to the above, 6 of the 24 apartments (i.e. 25%) are south-facing and therefore achieve no direct sunlight to windows between 9am and 3pm at mid-winter, which results in a non-compliance with the maximum allowance of 15%. With consideration given to the skylights of two of the south-facing top floor apartments, this is reduced to 4 apartments (i.e. 17%). The development has been designed to incorporate one 3 bedroom south-facing apartment on the first and second floors, and two south-facing apartments (one 1 bedroom and one 2 bedroom) on the third floor. Compliance with this requirement could be achieved by converting the two south-facing apartments on the third floor to one 3 bedroom apartment (as proposed for the floors below), however it is considered that this would result in a poorer outcome with respect to the dwelling mix and the orientation of different dwelling types.

The development generally complies with the objectives of this design criteria, and the proposed non-compliances are considered to be acceptable in this instance.

[4] Objective 4B-3 Natural cross-ventilation

As outlined in the table above, 12 of the 24 apartments (i.e. 50%) are naturally cross-ventilated. This results in a non-compliance with the minimum requirement for 60% (a shortfall of 3 apartments). Similar to the above non-compliance, with the inclusion of ventilated skylights to the top floor of the development, 15 apartments (i.e. 63%) are naturally cross ventilated.

Due to the site constraints, which includes a road widening reservation adjacent to the primary frontage of the site and a sewer easement in the rear setback of the site, the building envelope is rectangular in shape. As a result, the development incorporates several single aspect apartments along the northern and southern elevations that do not achieve natural cross-ventilation. While an increase in the number of natural cross-ventilated apartments could potentially be achieved through a significant re-configuration of the units, this is likely to be at the detriment of other amenity controls, such as solar access and apartment layout.

Accordingly, reliance on ventilated skylights to the top floor apartments is an acceptable response to this design criteria, and the non-compliance is considered to be worthy of support in this instance.

[5] Objective 4C-1 Ceiling height

The floor to ceiling height of the ground and first floors of a development located in a mixed use area is required to be a minimum of 3.3 metres to promote future flexibility of use. The first floor of the proposed development achieves a floor to ceiling height of 2.8 metres when deducting a standard slab thickness of 300mm. This floor accommodates residential units only, and the units have not been designed in a manner that would easily allow future flexibility of use. The development accommodates four separate tenancies on the ground floor that provide varied options for commercial and retail uses. Accordingly, it is considered that the control requiring a minimum floor to ceiling height of 2.7 metres for residential floors is appropriate to apply to the first floor of the proposed development in this instance. The proposed development is therefore deemed to be acceptable with respect to the design criteria contained in Objective 4C-1.

[6] Objective 4D-2 Habitable Room Depth

As stated in the table above, 6 of the 24 apartments exceed the maximum habitable room depth requirement of 8m, with a habitable room depth of up to 8.6m. For certain units, this is the result of the angle of the external living room wall at the furthest point, and the majority of the living area of these units is in fact less than 8 metres in depth. All non-compliant units have been designed to achieve good residential amenity, and therefore the minor habitable room depth non-compliance is considered to be acceptable.

[7] Objective 4E-1 Private open space

One 3-bedroom apartment (Unit 102) achieves a balcony area of 9sqm with the exclusion of areas less than 1m in depth. With the inclusion of areas less than 1m in depth, the balcony calculates to be 12sqm.

Despite the above non-compliance, the balcony is well-designed and functional with direct access from the living area of the unit. It is also noted that the size of the balcony is limited by the location of the sewer easement, therefore compliance with this control could not be achieved without modifications to the internal layout and configuration of the unit (which is likely to result in room dimension non-compliances).

This minor non-compliance is considered to be acceptable as the deficiency is supplemented by the provision of generous communal open space on the roof of the building. The development generally achieves the objective of this design criteria.

[8] Objective 4G-1 Storage

Compliance with the total minimum storage area requirement has been achieved for all apartments, however less than 50% of the storage is accommodated within the apartment for Units 106, 206, 303, 306 and 403 (with no internal storage proposed for Units 303 and 403). This issue has been addressed through the provision of a greater amount of storage in the basement for these particular units, however this is generally only suitable for the long term storage of bulky items as opposed to the day-to-day storage of smaller items that are frequently used by residents. Accordingly, it is recommended that a condition of consent be imposed to require these units to be designed to achieve the minimum internal apartment storage area requirements of the ADG.

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

The State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the development and aims to encourage sustainable residential development.

BASIX Certificate No. 645387M_05, dated 20 November 2017 was submitted throughout the assessment of the development application and demonstrates that the proposal achieves compliance with the BASIX water, thermal comfort and energy efficiency targets.

Canterbury Local Environmental Plan 2012

The proposed development has been assessed against the following relevant clauses of Canterbury Local Environmental Plan (CLEP) 2012:

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

Clause 4.6 – Exceptions to development standards

Clause 5.1A – Development on land intended to be acquired for public purposes

Clause 6.1 – Acid sulfate soils

Clause 6.2 – Earthworks

Clause 6.4 – Stormwater management

Clause 6.6 – Essential services

The following table provides a detailed assessment of the proposal against the above clauses.

Provision/ Standard	Requirement	Proposal	Compliance
Part 1 – Preliminary			
1.2 – Aims of Plan	Development is to satisfy the relevant aims of the Plan.	The development promotes housing and employment opportunities in the Croydon Park centre, including a variety of housing types. The development is appropriate with respect to the amenity and character of the area. Accordingly, the development is considered to satisfy the relevant aims of the Plan.	Yes
Part 2 – Permitted or prohibited development			
2.1-2.3 Zoning	B2 Local Centre and SP2 Infrastructure (Road Widening)	<p>Shop top housing is permissible in the B2 Local Centre zone.</p> <p>The SP2 Infrastructure (Road Widening) zone permits roads, as well as development that is ordinarily incidental or ancillary to development for the purposes of road widening.</p> <p>No part of the building envelope is located within the road widening reservation area. An awning over the footpath and public domain works are proposed to the reservation area, which are considered to be incidental and ancillary to development for the purposes of road widening. The RMS has provided concurrence.</p>	Yes
2.7 – Demolition requires development consent	The demolition of a building or work may be carried out only with development consent.	Approval is sought for the demolition of all existing structures on the subject site. A demolition plan was included with the architectural plans submitted to Council.	Yes

Provision/ Standard	Requirement	Proposal	Compliance
Part 4 – Principal development standards			
4.3 – Height of buildings	18m	The development has a maximum building height of 21.06m from the existing natural ground level to the top of the lift overrun.	No, refer to comment [1] below.
4.4 – Floor space ratio	No floor space ratio applies to the subject site.	N/A	N/A
4.5 – Calculation of floor space ratio and site area	The following land must be excluded from the site area: (a) land on which the proposed development is prohibited, whether under this Plan or any other law.	It is noted that for the purposes of calculating site area in the assessment of the development against the Apartment Design Guide, Council has taken 'site area' to be exclusive of the portion of the site zoned SP2 Infrastructure in accordance with this clause.	N/A
4.6 – Exceptions to development standards	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.	The applicant has provided a submission under Clause 4.6 of CLEP 2012 with respect to the contravention to the height of buildings development standard. Further assessment is provided below with respect to this matter.	Yes
Part 5 – Miscellaneous provisions			
5.1A – Development on land intended to be acquired for public purposes	Development consent must not be granted to any development in zone SP2 Infrastructure and marked "Classified road" other than roads.	The proposed development is wholly clear of the portion of the site zoned SP2 Infrastructure. The application proposes a pedestrian awning and public domain works in the SP2 Infrastructure zone, for the benefit of the public only, which are removable should the land be acquired. The RMS has granted concurrence for these works to occur.	Yes
5.9 – Preservation of trees or vegetation (<i>repealed by SEPP 2017 for DAs lodged on or after 20/12/17</i>)	A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by: (a) development consent, (b) a permit granted by the Council.	The subject site does not contain any existing trees worthy of retention. A condition of consent will be imposed requiring the retention and protection of the four existing street trees in Council's nature strip on Georges River Road and Clyde Street. The proposed development therefore satisfies this clause.	Yes, subject to condition of consent.
Part 6 – Local provisions			
6.1 – Acid sulfate soils	An acid sulfate soils management plan is required for works on Class 5 land within 500 metres of adjacent	Class 5 acid sulfate soils applies to the subject site, and the site is located within 500 metres of adjacent Class 2 and 4 land. The	Yes, subject to condition of consent.

Provision/ Standard	Requirement	Proposal	Compliance
	Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.	development proposes excavation to approximately RL 6.3 metres AHD to accommodate the basement levels. The proposed development is not likely to lower the watertable below 1 metre AHD on the adjacent land, however a precautionary condition of consent will be imposed requiring work to cease if acid sulfate soils are encountered during excavation or construction, and for further investigation and evaluation to take place prior to the re-commencement of works.	
6.2 – Earthworks	The objective of this clause is to 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.	The proposed development requires excavation to approximately 10 metres below natural ground level to accommodate three basement levels. A Geotechnical Investigation Report (prepared by SMEC Testing Services Pty Ltd, Report No. 14/1434, dated July 2014) was submitted with the application. The report contains recommendations with regard to excavation and building foundations. The report, however, was prepared in relation to the original architectural plans which proposed only two basement levels (requiring approximately 6 metres of excavation). A condition of consent will therefore be imposed requiring the Geotechnical Investigation Report to be revised prior to the issue of a Construction Certificate in accordance with the approved architectural plans. The proposed excavation is not likely to result in any unreasonable impacts.	Yes, subject to condition of consent.
6.4 – Stormwater management	Development consent must not be granted to development unless the consent authority is satisfied that the development is designed to maximise the use of water permeable surfaces,	The development incorporates deep soil zones and permeable surfaces at ground level, where possible. The development has been assessed by Council's Development Engineer who determined that the proposed	Yes

Provision/ Standard	Requirement	Proposal	Compliance
	includes on-site stormwater retention for use as an alternative supply, and avoids any significant adverse impacts of stormwater runoff on adjoining properties.	stormwater drainage system is acceptable and therefore the development is not likely to result in any adverse impacts on adjoining properties.	
6.6 – Essential services	Development consent must not be granted to development unless the consent authority is satisfied that essential services are available, including the supply of water, electricity, the disposal and management of sewage, stormwater drainage or on-site conservation, and suitable vehicular access.	The subject site contains existing development and is in the Croydon Park centre. All essential services are available to the site, and the proposed development accommodates a suitable stormwater drainage system and vehicular access.	Yes

As demonstrated above, the proposal is generally consistent with the aims, objectives and development standards of CLEP 2012. Further discussion is provided below with respect to the contravention to the height of buildings development standard contained in Clause 4.3, and the associated Clause 4.6 submission to seek flexibility in the application of this development standard.

[1] Clause 4.3 – Height of Buildings

The proposal complies with the development standards contained in CLEP 2012, with the exception of Clause 4.3 – Height of Buildings. The non-compliant building height primarily derives from the provision of lift and stairwell access to the rooftop communal open space area, in addition to a minor portion of the rooftop communal open space balustrades to the rear of the development due to the slope of the site.

Pursuant to Clause 4.6 of CLEP 2012, the applicant has made a submission seeking a variation to the provisions contained in Clause 4.3 of CLEP 2012. The Clause 4.6 submission details the extent of the variation as follows:

- The maximum HOB is 21.06m when measured by cross reference to the survey plan from RL 16.24m AHD. This is 3.06m or 17% above the maximum HOB.
- The percentage variation is a maximum of 17% for the lift overrun, a maximum of 7% for the fire escape stairwell, and a maximum of 2.7% for the communal open space balustrades.

An assessment of the development against Clause 4.6(2), (3) and (4) of CLEP 2012, including extracts from the applicant's submission, is provided below:

(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(2) prescribes a maximum building height of 18 metres for the subject site. The proposed development results in a maximum building height of 21.06 metres.

- (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***

An extract from the applicant's submission with respect to this point is provided below:

"The constraints imposed by Sydney Water are onerous and the design has achieved compliance with Sydney Water's clearance requirements for access by heavy machinery. This is the exceptional circumstances particular to this site that has affected the development ability to achieve numeric compliance with the HOB.

The design of a building that reinforces this tightly constrained corner site, further constrained by a neighbour refusing to engage and consolidated the sites, redistribution of bulk to lessen the impacts upon neighbour i.e. preserve solar access has required the relocation of COS [communal open space] to the roof to ensure that the amenity of COS for future occupants is acceptable are all supportive of the exception to the HOB.

A significantly worse environmental impact would result from requiring the lift access to the roof to be deleted eliminating BCA and DDA complying access and requiring COS at the ground level. COS at ground level would be worse in that the objectives of sharing light and views across the development's occupants would not be achieved at ground level and the views to be enjoyed are spectacular regional views across the regional basin would be lost to future occupants."

It is agreed that compliance with the development standard is unreasonable and unnecessary as the excess building height relates to the lift overrun, fire stairwell and communal open space balustrading, which are necessary to provide access to the rooftop communal open space and ensure the safety of this area for residents. The provision of communal open space on the rooftop as opposed to at ground level is a preferred outcome in this instance due to the site constraints and orientation. The communal open space is located within the centre of the rooftop, with the lift overrun towards the rear of the building, which ensures an adequate setback from the primary and secondary frontages. The building elements that are of a non-compliant height cannot be readily seen from the public domain at street level on Georges River Road and Clyde Street.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

An extract from the applicant's submission with respect to this point is provided below:

"Sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)) are found in better outcomes for and from the development, on the following basis:

- a) *The objectives of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development in particular clause 2(3)(d) "to maximize amenity, safety and security for the benefit of its occupants",*
- b) *The objectives of Part 3D of the Apartment Design Guide in particular:*
 - i. *communal open spaces can be located on the podium or roofs and should offer gathering areas to provide opportunity for social interaction amongst residents,*
 - ii. *opportunities for group and individual recreation and activities,*
 - iii. *opportunities for social interaction, and*
 - iv. *amenity and outlook for residents.*
- c) *The objectives of clause 3.2.8 of the Part 3 of Canterbury Development Control Plan 2012 (DCP) are better achieved, in particular development controls 3.2.8(ix) to (xiii) inclusive:*
 - i. *roof terraces are permitted (ix)*
 - ii. *the use and curfew can be managed by the strata by-laws and a curfew is required imposed by condition (x)*
 - iii. *the proposal is high amenity and contains ancillary structures and landscaping (xi)*
 - iv. *there are no unacceptable aural or visual privacy impacts (xii)*
 - v. *CPTED principal are achieved (xiii)"*

It is agreed that a communal open space area on the rooftop would provide greater amenity and recreational opportunities for residents than at ground level. The rooftop communal open space area is more likely to be used by residents due to the provision of non-residential uses on the ground floor and the segregation of the site towards the rear as a result of the Sydney Water sewer easement.

(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 sub-clause (3);**

The applicant's written submission adequately addresses the matters required by sub-clause (3).

- (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;**

The proposed development is in the public interest and is in keeping with the objectives of Clause 4.3 – Height of Buildings and zone B2 Local Centre of CLEP 2012. In particular, the development achieves the objectives relating to the character of the area, the streetscape and visual amenity of the area, the provision of retail and employment opportunities, and the facilitation of economic growth and development.

The proposal seeks to replace older, existing buildings with a permissible, generally compliant mixed use building. The design incorporates building elements and architectural features that aim to minimise potential overshadowing, whilst accentuating the corner context of the site. The lift overrun, fire stairwell and communal open space balustrades on the roof of the building will not result in any notable shadows beyond that cast by the overall building envelope. Furthermore, a visual analysis submitted by the applicant throughout the assessment of the application determined that these building elements will not result in any adverse or unreasonable visual impacts when viewed from the public domain.

The proposed building is in keeping with the desired future character of Croydon Park, as prescribed by CLEP 2012. The continued revitalisation and improvement of the streetscape results in a direct benefit to the local community.

(b) the concurrence of the Director-General has been obtained.

The concurrence of the Director General is assumed having regard to previous advice received from the Department of Planning and Environment in Circular PS 17-006.

As outlined above, it is considered that there is sufficient environmental planning grounds to justify a contravention to the height of buildings development standard in this instance. The provision of a rooftop communal open space area, and the required lift and stairwell access and balustrading, results in a superior outcome than what would be the case if the communal open space was provided at ground level in the south-west corner of the site. The segregation of the site due to the Sydney Water sewer easement does not allow for the provision of functional communal open space at ground level, and the orientation of the site and positioning of the building envelope to the north would result in poor solar access to this area. Accordingly, it is considered that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the development remains an appropriate built form outcome for the site, despite the contravention to the development standard.

With regard to the above, it is considered appropriate in this instance to support the submission under Clause 4.6 of CLEP 2012 to permit the proposed development.

Draft Environmental Planning Instruments [section 4.15(1)(a)(ii)]

There are no draft environmental planning instruments applicable to the proposed development, therefore the provisions of Section 4.15(1)(a)(ii) do not apply to this development.

Development Control Plans [section 4.15(1)(a)(iii)]

The development has been assessed against the following parts of the Canterbury Development Control Plan (CDCP) 2012:

- Part 3 – Business Zones;
- Part 6 – General Controls;
- Part 7 – Notification.

The following table provides a detailed assessment of the proposal against the applicable development controls in Parts 3, 6 and 7 of the CDCP 2012.

Control	Requirement	Proposed	Compliance
PART 3 – Business Zones			
3.1.2 Site amalgamation and minimum frontage	i. Except as set out below, minimum site area or amalgamation is not required. ii. Where comprehensive redevelopment is proposed in a B1 or B2 zone a minimum frontage of at least 12m, and preferably 18m, will provide for development and car parking design that is more efficient.	The subject site has a frontage of 28.274m to Georges River Road and a frontage of 33.985m to Clyde Street, therefore amalgamation is not required.	Yes
3.1.4 Avoid isolating un-developed sites	i. New development should not result in the isolation of a neighbouring property that could not accommodate redevelopment: <ul style="list-style-type: none"> • Isolation occurs where a property that adjoins a development site would be narrower or smaller than the required width and consequently would render it incapable of accommodating any form of redevelopment, • In order to avoid the isolation of any existing property, negotiations between neighbouring owners should seek to amalgamate properties to enable coordinated redevelopment, • If neighbouring landowners are unable to agree upon terms for amalgamation, development applications for the larger site shall provide evidence of reasonable offers, including 	The property to the west of the site is subject to a separate development application currently being assessed by Council (DA-578/2016). Throughout the assessment of the subject application, the applicant made several unsuccessful attempts to purchase the property to the south of the site at 1 Clyde Street. Valuation reports were submitted to Council and the offers were considered to be reasonable. It is noted that the site at 1 Clyde Street is zoned B2 Local Centre, and the site adjoins a property to the south that is zoned R4 High Density Residential. There are some forms of development, such as shop-top housing, that are permissible in both	Yes

Control	Requirement	Proposed	Compliance
	<p>at least two recent independent valuations.</p> <p>ii. If the amalgamation of adjoining properties is unable to be achieved demonstrate that the remaining property has some potential for redevelopment by means of a schematic design that demonstrates a building envelope and general room arrangement that comply with the currently applicable planning controls.</p>	the B2 and R4 zones. As such, it is considered that the proposed development does not result in the isolation of the site at 1 Clyde Street because this site can be amalgamated with other adjoining properties for development purposes.	
3.1.5 Retention of traditional facades	i. Pre-1950 shop front facades are to be maintained in the parts of the B2 Zone where building height is five storeys or less (infill development is permitted behind so that the traditional main street character of the centres is maintained).	The existing building facades are not considered to be significant. Furthermore, the existing building facades are located within the part of the site that is zoned SP2 Infrastructure (Road Widening). Accordingly, the existing facades are required to be demolished to ensure no part of the new development encroaches on the road reservation.	N/A
3.1.6 Height	<p>Building height</p> <p>i. Refer to the CLEP for maximum height of buildings in metres.</p> <p>ii. For proposed new buildings in a traditional streetscape, the building height at the street wall is to be compatible with the height of adjoining and nearby two storey buildings.</p> <p>Floor to ceiling heights</p> <p>iii. Provide a minimum 3.3m floor to ceiling height for the ground floor.</p>	<p>The proposed building height non-compliance is discussed above under the CLEP 2012 assessment.</p> <p>The building height at street level is generally compatible with the surrounding development, however it is noted that there are no traditional facades immediately adjoining the subject site.</p> <p>The proposed floor to ceiling heights have been discussed above in the ADG assessment.</p>	<p>No, refer to comments above under CLEP 2012.</p> <p>N/A</p> <p>No, refer to comments above under ADG assessment.</p>

Control	Requirement	Proposed	Compliance
	iv. Provide a minimum 2.7m floor to ceiling height for residential floors. v. Minimum car parking floor to ceiling height 2.8 m. vi. The floor to ceiling height may need to be increased to meet the requirements of the intended use, however, the maximum building height will still need to be complied with.	The minimum floor to ceiling height of the basement levels is 2.8m.	Yes
3.1.7 Depth/ footprint	Residential i. Maximum 18m depth from glass line to glass line. ii. Light source is not to include a light well when calculating the 18m depth. iii. Upper levels are setback to limit the depth of residential floors above deeper commercial or retail floors.	All apartments have a depth of less than 18m. Upper levels are partially setback to accommodate balconies.	Yes
	Commercial and retail iv. Maximum depth 24m, v. Minimum depth 10m, vi. Maximum length of any wall 50m – longer length may be considered if a deep soil, landscaped indent is provided, minimum 9m by 9m (a greater indent area may be required for facing windows and balconies).	All commercial/retail tenancies have a depth of less than 24m. Three of the four tenancies have a depth of less than 10m. No wall length is greater than 50m.	No, refer to comment [1] below. Yes
	3.1.8 Setback i. Comply with the street level setback, number of storeys at the street level, and upper level setback. <ul style="list-style-type: none"> 1-3 storeys – Build to front boundary >4 storeys – 5m setback (all storeys to be setback this distance including the fourth storey) ii. A rear setback is not required if the land adjoins a lane. iii. Do not present a flat façade along the setback line - provide articulation and variation. iv. Variations may be acceptable on the secondary street, on corner sites, to allow for outdoor display areas and outdoor dining. v. Do not provide a side setback in the B1 or B2 zones when the	All storeys are built to the boundary of the road widening at the closest point for the primary setback (Georges River Road). Similarly, all storeys are built to the boundary at the closest point for the secondary setback (Clyde Street). The setback of the 4 th and 5 th storeys (Levels 3 and 4) have been designed to achieve a strong corner element, with staggering of the building façade along Georges River Road towards the west. This will allow a continuous setback along the primary frontage, should the	No, refer to comment [2] below.

Control	Requirement	Proposed	Compliance
	desired character is for a continuous street frontage, unless (vii) – (xii) below apply.	<p>adjoining site to the west be developed in the future.</p> <p>The primary and secondary facades of the development are articulated through the use of framing, recessed areas and varied materials.</p> <p>No setback is provided to the western boundary. The western elevation comprises of a blank wall, which will allow for a continuous street frontage along Georges River Road.</p>	<p>Yes</p> <p>Yes</p>
3.1.9 Building separation	<p>Clause 6A of SEPP 65 states that development control plans that have provisions that are inconsistent with the ADG in relation to visual privacy have no effect in the assessment of residential apartment development applications.</p> <p>Clause 3.1.9 of CDCP 2012 is therefore not relevant to the assessment of this application and visual privacy matters have been assessed only in relation to Part 3F of the ADG (as detailed in the table above).</p>		
3.1.12 – 3.1.13 Car parking	<p><u>Residential</u></p> <p>1 Bedroom: 1 space per dwelling (7 spaces required)</p> <p>2 Bedroom: 1.2 spaces per dwelling (13 spaces plus 2.6 common property required)</p> <p>3 Bedroom: 2 spaces per dwelling (8 spaces required)</p> <p>Total = 28 residential spaces plus 2.6 (i.e. 3) spaces for common property</p> <p>Visitor: 0.2 spaces per dwelling (4.8 spaces)</p> <p>Total = 4.8 (i.e. 5) visitor spaces</p> <p>1 car wash bay for 10 dwellings or more</p> <p>Total = 1 car wash bay</p> <p>Bicycle: 1 residential space per 5 dwellings (4.8 spaces)</p>	<p>The application proposes the following car parking and bicycle parking arrangement:</p> <ul style="list-style-type: none"> 31 residential spaces (28 plus 3 for common property), 5 of which are accessible. 5 residential visitor spaces, 1 of which is accessible. 1 car wash bay. 6 residential bicycle spaces and 3 visitor bicycle spaces. 10 commercial car parking spaces, 1 of which is accessible. 2 commercial bicycle parking spaces. <p>The development also incorporates 3 motorcycle/scooter</p>	<p>Yes, subject to the parking allocation being conditioned accordingly.</p>

Control	Requirement	Proposed	Compliance
	<p>Bicycle: 1 visitor space per 10 dwellings (2.4 spaces)</p> <p>Total = 7.2 (i.e. 7) bicycle spaces</p> <p><u>Commercial</u></p> <p>1 space per 30sqm of total floor area (80% visitor and 20% employee)</p> <p>Total = 9.4 (i.e. 9) commercial spaces. 7 visitor spaces and 2 employee spaces.</p>	parking spaces in accordance with the ADG.	
3.2.1 Context	<p>New built form and character</p> <p>ii. Building form and design do not have to mimic traditional features, but should reflect these in a contemporary design.</p>	The design of the proposed development is contemporary through the use of a flat roof, and modern colours and finishes. The design does not mimic traditional features.	Yes
3.2.2 Street address	<p>Entries</p> <p>i. Locate entries so they relate to the existing street, subdivision pattern, street tree planting and pedestrian access network – for example ensure entries are not obscured by street trees or landscaping.</p> <p>ii. Provide an awning over the entry to contribute to the legibility of the development and the public domain.</p> <p>iii. Provide accessible entries for all potential use such as the transporting of furniture.</p> <p>iv. Provide entries to upper levels in business centres, from the street front facade to encourage activities on the ground floor and service activities to rear of the buildings.</p> <p>Habitable rooms</p> <p>v. Face habitable rooms towards the street, private open space, communal space, internal driveway or pedestrian ways in order to promote positive social interaction and community safety.</p>	<p>The proposed entry points for the residential units and the retail tenancies directly relate to the existing street, subdivision pattern, street tree planting at pedestrian access network. These entries assist in activating the street front. Awnings are provided along both the primary and secondary frontages, and accessible entries to the building are also provided.</p> <p>Where possible, habitable rooms are orientated towards the street and the rear setback and vehicular entrance to promote positive social interaction. Access to the rooftop communal open</p>	<p>Yes</p> <p>Yes, subject to a condition of consent.</p>

Control	Requirement	Proposed	Compliance
		space will be restricted to residents only.	
3.2.3 Façade design and articulation	<p>Interpretation</p> <p>i. Façade controls apply to facades that are visible from the street - that may include an upper storey that faces a side boundary, or a façade that faces an internal driveway.</p> <p>ii. The dimensions of a facade are measured between the outermost walls, and do not include any uncovered balcony or terrace which projects beyond the line of the wall.</p>	The design of the proposed building is articulated through the provision of balconies, a variety of colours and materials.	Yes
	<p>General</p> <p>iii. Avoid long spans of blank walls along street frontages and address both street frontages with façade treatment, and articulation of elevations on corner sites.</p>	No long spans of blank walls are proposed.	Yes
	iv. Incorporate contrasting elements in the façade - use a harmonious range of high quality materials, finishes and detailing	Contrasting elements are provided in the façade through the use of different setbacks, materials and decorative features.	Yes
	v. Express building layout or structure in the façade – architectural features such as columns beams, floor slabs, balconies, wall opening and fenestration, doors, balustrades, roof forms and parapets are elements that can be revealed or concealed and organised into simple or complex patterns.	The building layout is expressed through the structure of the façade.	Yes
	vi. Design facades to reflect the orientation of the site using elements such as sun shading devices, light shelves and bay windows.	The design of the façade reflects the building's northern and eastern orientation through the use of shading to balconies.	Yes
	vii. Modulate the wall alignment with a step in of at least 1m.	Modulation to the façade is greater than 1 metre at all points.	Yes

Control	Requirement	Proposed	Compliance
3.2.4 Façade details	Solid and void ratio	The balconies and voids along the primary and secondary frontages do not dominate the façade. The balconies are orientated towards the adjoining streets to improve natural surveillance and achieve solar access (where possible).	Yes
	<ul style="list-style-type: none"> i. Do not allow balconies and voids to dominate publicly visible facades (excluding glass shop fronts and colonnades in business centres). ii. Use a solid to void ratio in the vicinity of 50%, with each facade measured independently. Disharmony arises when the range of solid to void is extreme, such as fully glazed facades or those with multi-balcony 'egg crates'. iii. Voids include fenestration, balconies, porches and loggias. iv. Do not include shopfronts in the 50% solid to void ratio calculation. 		
	<p>Balconies</p> <ul style="list-style-type: none"> v. Use balconies in moderation and integrate them into the overall composition of the façade - do not use a monotonous or repetitive configuration of balconies. vi. Where possible place balconies facing an internal courtyard and do not place all balconies on an external façade. vii. Use balcony types that respond to the street context, building orientation and residential amenity. viii. Use lightweight materials and construction for balconies 	<p>The balconies are integrated within the design of the building and there is adequate variety in balcony configuration along each street front. The use of a variety of materials and colours also ensures the proposed balconies do not appear to be monotonous when viewed from the public domain.</p>	Yes
	<p>Windows</p> <ul style="list-style-type: none"> ix. Locate and proportion windows to minimise scale and bulk of new building. 	<p>Large openings are integrated along the northern elevation of the development.</p> <p>Appropriate window treatment has been proposed (e.g. louvre screening forward of balcony windows) to improve privacy, where required.</p>	Yes
3.2.5 Shopfront	<ul style="list-style-type: none"> i. Windows on the street frontage are transparent (not mirrored) to provide visibility between interior and exterior spaces, allow for surveillance of the street and provide interest for pedestrians. 	Windows associated with the ground floor retail tenancies are transparent to facilitate natural surveillance.	Yes

Control	Requirement	Proposed	Compliance
3.2.6 Corners, gateway sites and foreground treatments	ii. Emphasise important corners and gateways to centres with foreground treatments that are visually prominent against the background built form, in order to improve understanding of each centre – use stronger foreground treatments for gateway buildings.	The development incorporates a prominent corner treatment with framing on both the primary and secondary frontages.	Yes
	iii. Use corner features, wrap around balconies, vertical elements, changes in materials or colours and the like to emphasise corner buildings – vertical corner features do not exceed 1.5m above the maximum height of the building, or 2m for gateway sites. iv. Variation to the front setback requirements may be considered to emphasise a corner or gateway building.	The proposed nil setback to the road widening for the upper storeys assists in emphasising the corner feature of the development.	Yes
3.2.7 Frontage types	Cantilevered Awning vii. The façade of the building is built to the front street boundary. An awning cantilevered from the building facade just underneath the first floor overhangs the footpath by 3m. The footpath is covered so that pedestrians are able walk underneath the awning. viii. Awning height is in the range of 3.2m - 4.2m from natural ground level. ix. Place awning so that it complements the height, depth and form of the desired character or existing pattern of awnings, and provides sufficient protection from sun and rain.	The façade of the building at ground level is built to the boundary of the road widening reservation. The proposed cantilevered awning overhangs the footpath on the primary and secondary frontages by 3m. The awning height ranges from 3.2m-4.2m from the natural ground level on the primary frontage, however it is up to 5m above the natural ground level on the secondary frontage due to the slope of the site. The awning provides sufficient protection from sun and rain.	No, refer to comment [3] below.

Control	Requirement	Proposed	Compliance
3.2.8 Roof design	ii. Emphasise building articulation with the shape and alignment of the roof.	The proposed flat roof design is compatible with other commercial/ mixed use development along Georges River Road. The roof design is appropriate for the scale of the development.	Yes
	iii. Relate roof design to the size and scale of the building, the building elevations and three dimensional building form – including the design of any parapet or terminating elements, and the selection of roof materials.		
	v. Relate roof design to the desired built form and context.		
	Roof terraces	The development includes a roof terrace for communal open space.	Yes
	ix. Roof terraces are permitted with consent in all business zones except the B1 Zone.		
	x. A management strategy is required, and must be approved by Council as part of the development application, for any proposed roof terrace.	A management strategy was submitted with the application, and is considered to be acceptable subject to conditions of consent for the inclusion of further acoustic privacy and lighting details.	Yes, subject to conditions of consent.
	xi. Supplement open space on roof terraces by providing space and appropriate building systems to support the desired landscape design, incorporating shade structures and windscreens to encourage use of roof top open space.	The roof terrace is suitably landscaped and incorporates appropriate facilities.	Yes
	xii. Demonstrate that roof terrace has been designed so as to protect the privacy, solar access and amenity of adjoining buildings. Measures to minimise overlooking of adjoining properties include screening or planting between properties, and preventing rooftop users from standing at the edge of roof terraces that look into adjoining properties through planting and screens.	The roof terrace is recessed from the elevations of the building, which assists in protecting the privacy and solar access of adjoining buildings.	Yes
	xiii. Allow for views and casual surveillance of streets and public open space from roof terraces.	The roof terrace allows for views of the broader locality.	Yes

Control	Requirement	Proposed	Compliance
3.2.9 Services and utility areas	i. Integrate services and utility areas with the design of the whole development – coordinate materials with those of the building, and integrate with landscaping.	Service and utility areas, such as the pump room, fire services, booster and waste store areas are suitably integrated into the design of the building as they are located within the basement or integrated into the building envelope/façade at ground level (screened from public view).	Yes
	ii. Facilities should not be visually obtrusive and should not detract from soft-landscaped areas that are located within the required setbacks or building separations.		
	iii. Appliances that are fitted to the exterior of a building, and enclosures for service meters, should not detract from the desired architectural quality of new building, or the desired green character of streetscapes.		
	iv. Service authorities and the applicable Australian Standards outline technical requirements for the location and installation of appliances and meters. <ul style="list-style-type: none"> Locate meters in service cabinets. 		
	v. Unscreened appliances and meters should not be attached to any facade that would be visible from a street, driveway or a principal communal area within the site: <ul style="list-style-type: none"> Screen air conditioning units behind balcony balustrades, Provide screened recesses for water heaters rather than surface mounting them on exterior walls, 	Hot water systems will be located within each unit or within the common areas internal to the building and will therefore be screened from public view.	Yes
	vi. Provide communal rooftop antennas rather than multiple individual antennas.	TV antennae is not proposed at this stage. The development is capable of complying with this requirement.	Yes
	vii. Screen of treat air conditioning units, TV antennae, satellite dishes, ventilation ducts and other like structures so they are not visible on the street elevation.		
	viii. Co-ordinate and integrate building services, such as drainage pipes, with overall façade and balcony design.	Drainage pipes etc will be integrated into the building façade.	Yes
	Mailboxes ix. Design and provide discretely located mailboxes at the front of	The mailbox and intercom are located	Yes

Control	Requirement	Proposed	Compliance
	the property in accordance with Australia Post standards.	adjacent to the residential entrance to the building on Clyde Street.	
3.3.1 Visual privacy	<p>Clause 6A of SEPP 65 states that development control plans that have provisions that are inconsistent with the ADG in relation to visual privacy have no effect in the assessment of residential apartment development applications.</p> <p>Clause 3.3.1 of CDCP 2012 is therefore not relevant to the assessment of this application and visual privacy matters have been assessed only in relation to part 3F of the ADG (as detailed in the table above).</p>		
3.3.2 Acoustic privacy	i. Address all requirements in <i>'Development Near Rail Corridors and Busy Roads (Interim Guideline')</i> which has been published by the NSW Department of Planning.	Acoustic privacy has been assessed against the requirements of SEPP (Infrastructure) 2007 previously in this report.	Yes, subject to a condition of consent.
3.3.3 Open space	<p>Clause 6A of SEPP 65 states that development control plans that have provisions that are inconsistent with the ADG in relation to open space and balconies have no effect in the assessment of residential apartment development applications.</p> <p>Clause 3.3.3 of CDCP 2012 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 (as detailed in the table above).</p>		
3.3.4 Internal dwelling design (including storage)	<p>Clause 6A of SEPP 65 states that development control plans that have provisions that are inconsistent with the ADG in relation to apartment size and layouts have no effect in the assessment of residential apartment development applications.</p> <p>Clause 3.3.4 of CDCP 2012 is therefore not relevant to the assessment of this application and matters have been assessed only in relation to parts 4D and 4G of the ADG (as detailed in the table above).</p>		
3.3.5 Housing choice	i. Include a mix of unit sizes, such as studio, one, two, three and three plus bedroom apartments.	The development comprises a mix of unit sizes, including one, two and three bedroom units.	Yes
PART 6 – General Controls			
6.1.1-6.1.4 Access and Mobility	<p>The application was accompanied by a 'Statement of Compliance – Access for People with a Disability' report, Issue C, dated 1 September 2017, prepared by Accessible Building Solutions. The report concludes that through compliance with the requirements of the report, the development can achieve compliance with the access provisions of the BCA and AS 4299 Adaptable Housing. The recommendations of the report have been included as a condition of consent.</p>		Yes, subject to a condition of consent.
6.2.1 Site Layout and Building Orientation	<p>i. Design and orientate the building to maximise solar access and natural lighting, without unduly increasing the building's heat load.</p> <p>ii. Where the shape of a lot permits the design should allow the development to face the long side of the building to the north</p>	The majority of these controls have been addressed in the ADG assessment. The building has been designed to maximise solar access as the long side of the building orientates to the north. Solar access to the	Yes

Control	Requirement	Proposed	Compliance
	<p>to allow winter sun in, but also to - block sunlight out during summer with shading devices and landscaping.</p> <p>iii. Design and site the building to avoid casting shadows onto neighbouring buildings, outdoor space and solar cells on the site and on adjoining land (see solar access below).</p> <p>iv. Site the building and outdoor space to avoid shadows cast from nearby buildings.</p> <p>v. Locate communal open space to optimise solar access to apartments.</p> <p>vi. Coordinate design for natural ventilation with passive solar design techniques.</p> <p>vii. Site a building to take maximum benefit from cross-breezes and prevailing winds.</p> <p>viii. Consider providing adequate external clothes drying areas for all residents in the building.</p> <p>ix. Do not compromise the creation of active street frontage or casual surveillance of the street, communal space and parking areas, through the required orientation.</p>	<p>adjoining properties has been discussed previously in this report. The communal open space has been located on the roof of the development to optimise solar access. Natural ventilation and solar access to the units has been discussed previously in this report. The balcony of each unit is sufficient in size to accommodate an external clothes drying rack. The design of the development does not compromise activation of the street frontage or casual surveillance.</p>	
6.2.2 Internal Layout	<p>i. Configure the building to maximise solar access to rooms that are occupied during the day (such as living areas, offices, waiting rooms and lunchrooms). Locate service areas to the south and west of the building.</p> <p>iii. Limit the depth of single aspect apartments to 8m (from a window) to gain full benefit of solar and daylight access.</p> <p>iv. Provide areas for clothes to be dried through natural ventilation.</p>	<p>The building has been configured to maximise the number of apartments comprising a northerly orientation, where possible.</p> <p>Apartment depth and natural ventilation has been discussed previously in this report.</p>	Yes
6.2.3 Windows and Glazing	<p>i. Place more windows on the northern side than on other sides of the building, so that there are more windows gaining heat than there are losing heat in winter months, and sun penetration is reduced in summer.</p> <p>ii. Minimise east-facing and west-facing glazed areas to reduce low</p>	<p>The placement of windows on the northern elevation has been incorporated into the design of the development. East-facing windows have been proposed only where</p>	Yes

Control	Requirement	Proposed	Compliance
	summer sun penetration into the building, where this does not compromise the creation of active street frontage and casual surveillance.	required, and there are no west-facing windows.	
6.2.4 Shading and Glare	i. Use shading devices to allow direct sunlight to enter and heat a building in winter and prevent direct sunlight entering and heating the building in summer. ii. Use shading devices such as eaves, awnings, shutters, louvres, pergolas, balconies, colonnades and external planting; provide horizontal shading to north-facing windows and vertical shading to east or west windows.	Shading devices in the form of louvred screening to balcony balustrades and window overhangs have been incorporated in the design.	Yes
6.2.5 Insulation and Thermal Mass	i. Maximise thermal mass in floor and walls in northern rooms of the building. ii. Use insulation in the roof, ceiling, walls and floors to deflect heat and prevent the building from heating up in summer, and to contain heat and prevent the building from cooling down in winter.	This has been addressed in the BASIX Certificate.	Yes
6.2.6 Daylight and Sun Access (adjoining development)	iii. Siting and form of new developments shall protect existing neighbouring dwellings: <ul style="list-style-type: none"> At least 2 hours sunlight between 9am and 3pm on 21 June shall be retained for existing indoor living areas and at least 50% of the principal portion of existing private open space. If a neighbour currently receives less than 2 hours sunlight then siting and form of proposed buildings shall be adjusted to maintain existing sunlight. 	With respect to the dwelling house at 1 Clyde Street, the development maintains 1 hour of solar access to the front windows from 9am to 10am and 1 hour of solar access to the rear windows from 2pm to 3pm. There is minimal private open space on the site due to the existing outbuilding that accommodates the majority of the rear setback, however solar access to at least 50% of this area will be maintained from 1pm to 3pm. The development in fact reduces the extent of overshadowing impacts in the early morning and late afternoon hours as the proposed building achieves a greater	Yes

Control	Requirement	Proposed	Compliance
		setback to the rear boundary than the existing buildings. Overshadowing impacts on the other surrounding dwelling houses are generally minimal.	
6.2.6 Daylight and Sun Access	<p>Clause 6A of SEPP 65 states that development control plans that have provisions that are inconsistent with the ADG in relation to solar and daylight access, have no effect in the assessment of residential apartment development applications.</p> <p>Clause 6.2.6 of the CDCP is therefore not relevant to the assessment of this application and matters have been assessed only in relation to part 4A of the ADG (as detailed in the table above).</p>		
6.2.7 Ventilation	<p>Clause 6A of SEPP 65 states that development control plans that have provisions that are inconsistent with the ADG in relation to natural ventilation, have no effect in the assessment of residential apartment development applications.</p> <p>Clause 6.2.7 of the CDCP is therefore not relevant to the assessment of this application and matters have been assessed only in relation to part 4B of the ADG (as detailed in the table above).</p>		
6.2.8 – 6.2.11 Heating, Cooling, Water Heating, Appliances, Lighting and Water Saving Devices	<ul style="list-style-type: none"> i. Provide heating/cooling systems to target only those spaces that need heating or cooling – use zone system and isolate those areas that are difficult to heat, such as warehouse floors. ii. Consider the installation of active solar energy systems. iii. In residential and mixed use buildings: <ul style="list-style-type: none"> • Allow entries to open into lobbies or vestibules that are isolated from areas within the apartment, • Provide gas bayonets to living areas, • Provide reversible-ceiling fans for improving air movement in summer and for distributing heated air in winter, • Provide or plan for future installation of solar collectors and photovoltaic panels. 	These matters have been addressed in the BASIX Certificate.	Yes
6.3.1- 6.3.5 Crime Prevention	Site and Building Layout: Address the street, or both streets and corners.	The retail tenancies and residential units are orientated towards Georges River Road and Clyde Street.	Yes

Control	Requirement	Proposed	Compliance
	Site and Building Layout: Position habitable rooms with windows adjacent to the main communal area.	No apartments are proposed on the roof terrace and therefore no windows are orientated towards the communal open space area. However, a condition of consent will be imposed to ensure the roof terrace has restricted access to residents only and is operated in accordance with the management plan.	Yes, subject to a condition of consent
	Site and Building Layout: Avoid blind corners in pathways, stairwells, hallways and car parks.	The layout of all internal and external areas of the building have been appropriately designed to avoid blind corners, where possible.	Yes
	Access Control: Access to the individual units be clearly marked and apparent to visitors.	The entry is to be clearly numbered with the dwellings numbers that are accessible through that entry.	Yes, subject to a condition of consent
	Access Control: Install intercom, code or card locks or similar to main entries to buildings, including car parks.	Intercoms and controlled access measures (e.g roller doors) are to be installed at the residential building entry point, main entry point to the basement car park, and to the entry point to residential component of basement car park.	Yes, subject to a condition of consent
	Access Control: Concealment points be eliminated.	The layout of all internal and external areas of the building have been appropriately designed to eliminate concealment points, where possible.	Yes
	Mixed Land Uses: Located shops and business on lower floors and residences on upper floors.	The design comprises ground floor commercial/retail tenancies with residential units located above.	Yes
	Ownership: Dwellings and communal areas to provide sense of ownership.	Sense of ownership is achieved through the use of design features, building materials and site layout.	Yes

Control	Requirement	Proposed	Compliance
6.4 Development Engineering, Flooding and Stormwater	The application was reviewed by Council's Development Engineer, and is considered to be acceptable subject to conditions of consent.		Yes, subject to a conditions of consent
6.6 - 6.7 Landscaping and Tree Preservation	The application was reviewed by Council's Landscape Architect, who raised concerns regarding the lack of deep soil zones and landscaping at ground level. However, given the location of the site in the B2 Local Centre zone, and the inability to further increase deep soil zones and landscaping due to the various site constraints, the development is considered to be acceptable in this instance.		Acceptable
6.8.1 Vehicle Access and Parking	The car parking requirements have been discussed above under Clause 3.1.12 – 3.1.13 of CDCP 2012.		Yes
6.9 Waste Management	The application was reviewed by Council's Resource Recovery Officer, and is considered to be acceptable subject to conditions of consent.		Yes, subject to a conditions of consent
Part 7 - Notification	See notification discussion below.		Acceptable

As demonstrated above, the proposal is generally consistent with the objectives and controls contained in the applicable sections of CDCP 2012. Further comments are provided below with respect to the depth of the retail tenancies, the upper level setback, and the height of the awning.

[1] Clause 3.1.7 – Depth/footprint

Clause 3.1.7 (iv) and (v) require a maximum depth of 24m and a minimum depth of 10m for commercial and retail tenancies. The depth of the four retail tenancies range from approximately 6m to 13.5m, and therefore fail to comply with the minimum depth control.

The retail tenancies range from 49sqm to 121sqm in area and with a frontage ranging from 5m to 10m. The tenancies therefore cater for a variety of potential future uses and achieve good streetscape presentation along Georges River Road.

The ability to increase the depth of the tenancies is limited due to the SP2 Infrastructure (Road Widening) zone to the north, and the ground floor building services (waste area, lobby, fire isolated corridor etc) and Sydney Water sewer easement to the south.

The non-compliant depth of the tenancies is not likely to impact the potential for the tenancies to accommodate appropriate small scale retail uses in the future, and is therefore considered to be acceptable in this instance.

[2] Clause 3.1.8 – Setback

Clause 3.1.8 (i) requires an upper level setback of 5m for development that is greater than 4 storeys in height. In the case of the subject development, this control applies to the 4th and 5th storeys on the primary and secondary frontages. The development proposes nil setback to the primary and secondary frontages at the closest point, and therefore fails to comply with this control.

With respect to the primary frontage (Georges River Road), the 4th storey achieves nil setback for the corner element of the building, which increases to 2.65m and 5m at intervals towards the western boundary with the exclusion of the balconies. The 5th storey achieves nil setback for the corner element of the building, which increases to 2.5m and 5m at intervals towards the western boundary with the inclusion of the balconies. It is noted that the setbacks have been taken from the southern edge of the SP2 Infrastructure (Road Widening) zone, as opposed to the front boundary of the site, on the basis that the road reservation may be acquired in the future. With respect to the secondary frontage (Clyde Street), both the 4th and 5th storeys achieve nil setback for the majority of the eastern elevation of the building, with the exception of recessed balconies.

As mentioned previously in this report, the subject site is highly constrained as a result of the road reservation to the north and sewer easement to the south. This limits the ability for the site to accommodate a building envelope with a substantial depth. If the development were designed to achieve full compliance with the setback control and rear separation distance control, the building envelope would not achieve a depth that would allow functional floor and unit layouts.

The objectives of the setback control primarily relate to streetscape presentation. The primary frontage has been appropriately designed to achieve the intention of the control through the provision of a staggered upper level façade. The extent of the secondary frontage with nil setback on the upper levels is approximately 14.5m. This is less than half of length of the secondary frontage and would therefore have a minimal streetscape impact, particularly when considering the significance of the corner element of the building.

The development generally complies with the objectives of the setback control, and the proposed non-compliance is considered to be acceptable in this instance.

[3] Clause 3.2.7 – Frontage Types (cantilevered awning)

Clause 3.2.7 (vii) requires cantilevered awnings to be positioned within a height range of 3.2m - 4.2m from the natural ground level. The proposed awning overhangs the footpath at a height ranging from 3.2m-4.2m above the natural ground level on the primary frontage (Georges River Road) and up to 5m above the natural ground level on the secondary frontage (Clyde Street) due to the slope of the site by about approximately 1.5m from the north-east corner to the south-east corner.

While the proposed awning exceeds the maximum permissible height above the natural ground level on the secondary frontage, it is considered to be acceptable in this instance as the awning is positioned at a consistent level on both frontages and achieves continuity at the corner element of the building. If the awning were to be staggered along the secondary frontage it would conflict with the glazing that assists in defining the residential entrance to the building on Clyde Street, and it would worsen the streetscape presentation of the building by detracting from the façade.

The development generally complies with the objectives of the control, and therefore the proposed non-compliance is considered to be acceptable.

Planning Agreements [section 4.15(1)(a)(iia)]

There are no planning agreements applicable to the proposed development.

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

The proposed development is consistent with the relevant provisions of the *Environmental Planning and Assessment Regulation, 2000*.

Any Coastal Zone Management Plan [section 4.15(1)(a)(v)]

There is no coastal zone management plan that applies to the subject site.

The Likely Impacts of the Development [section 4.15(1)(b)]

The proposed development is not likely to result in any adverse environmental, social or economic impacts on the locality. As detailed in this report, where non-compliances with the relevant development controls are proposed, they have been addressed and are worthy of support. As such, it is considered that the impact of the proposed development on the locality will be acceptable.

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

The proposed development is permitted with consent on the subject site, and represents a built form that is compatible with the existing and desired future character of the locality. Environmental matters have been appropriately addressed, with the proposed tree removal, stormwater design, parking and traffic impacts, and waste management having been examined by Council officers and found to be acceptable. The site is therefore considered to be suitable for the proposed development.

It is noted that the development has been designed to overhang the Sydney Water sewer easement in the south-west corner of the site at a height of approximately 6m above the natural ground level. This clearance height will be subject to review by Sydney Water at the Construction Certificate stage, and the development will subsequently require the issue of a Building Plan Approval or Building Over Sewer application by Sydney Water. Should the clearance height not be supported by Sydney Water, the proposal will have to be amended through a Section 4.55 application to achieve the required minimum clearance height imposed by Sydney Water.

Submissions [section 4.15(1)(d)]

The application was advertised and notified for a period of 21 days from 9 September 2015 to 30 September 2015. Seven submissions were received, comprising of four letters of objection and three letters of support (one of which was a petition of support with 11 signatures that was initiated by the owner of the subject site). The objections primarily raise concerns relating to visual privacy, solar access, building height, traffic and parking impacts, and character of the local area. The concerns have been adequately addressed and do not warrant refusal or further modifications of the proposed development. It is also noted that the amended plans submitted throughout the assessment of the application did not result in any notable increase in impact on the surrounding properties or the locality, and therefore the amended plans did not warrant re-notification or re-advertising.

A summary of the primary points of objection, and a response to each point, is provided below.

Objection: A loss of privacy will occur for residents on the northern side of Georges River Road.

Comment: The site is zoned B2 Local Centre which allows for a building form, scale and height commensurate with that proposed through this development application. The provision of balconies and windows along the sites primary frontage (Georges River Road) is expected of a building of this size and scale. Overlooking from these balconies/openings will be confined to over the front yard of the objector's property. Given that the front yard has not been designed for any specific private recreational use, and that vehicle movements that occur along Georges River Road would not necessarily encourage such an arrangement in the future, it's considered that no discernible loss of privacy will occur for these residents.

Objection: A loss of privacy will occur for residents to the south of the development in Clyde Street.

Comment: The report identifies the separation distances to the adjoining southern boundary and that, in the most part, required minimum separation distances as per the Apartment Design Guide have been achieved. The only exception is the upper floor. While the separation distance has not been achieved for this floor, as argued in the report, no greater loss of residential amenity will occur than that which would occur resulting from the separation distances provided to the compliant residential floors immediately below. It should be noted that the objector that expressed concern in respect to a loss of privacy is located to the south in excess of 30 metres away from the subject site.

Objection: The development will result in a loss of solar access for the residents in Clyde Street.

Comment: As the report has detailed, all properties impacted by overshadowing are either zoned B2 Local Centre or R4 High Density Residential. While the report earlier identifies the extent of overshadowing as being within accepted practices, it should also be acknowledged that these adjoining sites are likely to be developed in the future for a higher intensified use. Having regard to the Land

and Environment Courts Planning Principles, it has been generally accepted that at higher densities, sunlight is harder to protect and the claim to retain it is not as strong.

Objection: The development fails to satisfy the maximum building height control of 18 metres.

Comment: The extent of the departure is confined to the lift and stairwell access to the rooftop communal open space area, in addition to a minor portion of the rooftop balustrades at the rear of the development due to the slope of the site. The report earlier details the applicant's Clause 4.6 submission, in which they argue that the variation has sufficient merit. In light of the fact that the breach is confined to ancillary elements of the development, and that those elements that breach the height standard cannot be readily seen from the public domain at street level on Georges River Road and Clyde Street, Council shares the view that a variation to the building height control in this instance has merit. It is further noted that the original building height breach, upon which this objection was based, related to an additional storey to the development that has since been deleted.

Objection: The applicant has understated the existing traffic flow. The development will result in an increase in vehicle accidents occurring at the intersection of Clyde Street and Georges River Road.

Comment: Accompanying the development application was a Traffic and Parking Impact Assessment Report which was reviewed by the Roads and Maritime Services and Council's Development Engineer, and was deemed to be acceptable. Furthermore, State Environmental Planning Policy (Infrastructure) 2007 requires development that has a frontage to a classified road to, where practicable, provide vehicular access to the land by a road other than the classified road. The development proposes to improve the safety of vehicular access to the site by removing the two existing vehicular access points on Georges River Road and providing one vehicular access point on Clyde Street at the south-eastern corner of the site (i.e. the furthest distance possible from the intersection). Accordingly, the proposed vehicular access to the site, and the associated traffic flow, is considered to be an appropriate response to the context of the site.

Objection: There is currently inadequate street parking in Clyde Street. If this development was to proceed this would only increase the likelihood of motorists illegally parking across driveways and thus an increased risk to pedestrians.

Comment: As the report has indicated, the applicant has provided on-site car parking consistent with the minimum car parking requirements contained in CDCP 2012. As a result, it would be difficult to sustain an argument that the development would contribute to an increase in illegal parking given that the on-site car parking requirements have been met.

Objection: *There is currently limited available street parking serving the nearby commercial developments. Approval of this development will only make the situation worse.*

Comment: The development includes ten car parking spaces in the basement for the commercial/retail tenancies, which are to be allocated at a rate of 80% to customers and 20% to employees. In addition, the development includes 31 residential car parking spaces and five residential visitor car parking spaces. The development incorporates sufficient on-site car parking having regard to the provisions contained within CDCP 2012. As car parking catering for the demand generated by the development has been provided on site, it is not likely that the development will have any impact on existing available street parking.

Objection: *The development will be out of character with the local area.*

Comment: As this site is one the first to be re-developed in the immediate vicinity, naturally it will be of scale greater than the existing adjoining building stock. Council's LEP and DCP controls identify this site, and a number of those adjoining, as being suitable to accommodate development of a density and scale that reflects the density and scale of the subject development. During this transition period, there will be instances where the approved built form exceeds that of the adjoining developments, however the development as proposed does suitably provide for a development envisaged through the existing planning controls.

The Public Interest [section 4.15(1)(e)]

The proposed development would not contravene the public interest. The development appropriately responds to the applicable environmental planning instruments and development controls, and the proposed development would contribute to housing diversity within the Canterbury-Bankstown LGA. The matters raised in public submissions have been satisfactorily addressed.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, *State Environmental Planning Policy (Infrastructure) 2007*, *State Environmental Planning Policy 55 – Remediation of Land*, *State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development*, *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, *Canterbury Local Environmental Plan 2012*, and *Canterbury Development Control Plan 2012*.

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

CONDITIONS OF CONSENT

THAT Development Application DA-361/2015 be **APPROVED** subject to the following conditions.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

1. The following must be submitted to either Council or an Accredited Certifier prior to the issue of a Construction Certificate:
 - 1.1. Details of:
 - Structural Engineering Plan including method of shoring during excavation
 - Building Specifications
 - Fire Safety Schedule
 - Landscape Plan
 - Hydraulic Plan
 - Soil and Waste Management Plan
 - BASIX Certification
 - Ventilation of basement in accordance with AS 1668.2
 - 1.2. Payment of the Long Service Levy to the Long Service Corporation or to Council.
 - 1.3. Payment to Council of:

Development Contributions	\$330,216.45
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BEFORE COMMENCING THE DEVELOPMENT

2. Before the erection of any building in accordance with this Development Consent:
 - 2.1. Detailed plans and specifications of the building must be endorsed with a Construction Certificate by the Council or an Accredited Certifier, and
 - 2.2. You must appoint a Principal Certifying Authority (either Council, or an Accredited Certifier) and notify the Council of the appointment (see Attachment – Notice of Commencement copy), and
 - 2.3. You must give the Council at least 2 days notice of your intention to commence erection of the building (see Attachment – Notice of Commencement copy).
3. As any works within, or use of, the footway or public road for construction purposes requires separate Council approval under Section 138 of the Roads Act 1993 and/or Section 68 of the Local Government Act 1993, Council requires that prior to any Construction Certificate for this development being issued, a Works Permit and or a Roadway/Footpath Building Occupation Permit shall be obtained where one or more of the following will occur, within, on or over the public footway or public road:

A PRIVATE CERTIFIER CANNOT ISSUE THESE PERMITS

WORKS REQUIRING A 'WORKS PERMIT'

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

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

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

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

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

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

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

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

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

4. 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.

5. 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.

DEMOLITION

6. Demolition must be carried out in accordance with the following:
 - a) Demolition of the building is to be carried out in accordance with applicable provisions of Australian Standard AS 2601-2001: The Demolition of Structures and the Construction Safety Act Regulations.
 - b) The demolition of a structure or building involving the removal of dangerous or hazardous materials, including asbestos or materials containing asbestos must be carried out in accordance with the requirements of the Workcover Authority of New South Wales.
 - c) Demolition being carried out in accordance with the requirements of the Work Health and Safety Regulation 2011.
 - d) A hoarding or fence must be erected between the building or site of the building and the public place, if the public place or pedestrian or vehicular traffic is likely to be obstructed or rendered inconvenient because of the carrying out of the demolition work.
 - e) Demolition of buildings is only permitted during the following hours:
 7.00 a.m. – 5.00 p.m. Mondays to Fridays
 7.00 a.m. – 12.00 noon Saturdays
 No demolition is to be carried out on Sundays or Public Holidays.
 - f) Burning of demolished building materials is prohibited.
 - g) Adequate care is to be taken during demolition to ensure that no damage is caused to adjoining properties.
 - h) Soil and water management facilities must be installed and maintained during demolition in accordance with Council's Stormwater Management Manual. If you

do not provide adequate erosion and sediment control measures and/or soil or other debris from the site enters Council's street gutter or road you may receive a \$1500 on-the-spot fine.

- i) Council's Soil and Water Management warning sign must be displayed on the most prominent point on the demolition site, visible to both the street and site workers. The sign must be displayed throughout demolition.
- j) The capacity and effectiveness of soil and water management devices must be maintained at all times.
- k) During the demolition or erection of a building, a sign must be provided in a prominent position stating that unauthorised entry to the premises is prohibited and contain all relevant details of the responsible person/company including a contact number outside working hours.
- l) A sign is not required where work is being carried out inside, or where the premises are occupied during the works (both during and outside working hours).
- m) Toilet facilities must be provided to the work site in accordance with WorkCover's NSW "CODE OF PRACTICE" for Amenities for construction work and any relevant requirements of the BCA.
- n) Removal, cleaning and disposal of lead-based paint conforming to the current NSW Environment Protection Authority's guidelines. Demolition of materials incorporating lead being conducted in strict accordance with sections 1.5, 1.6, 1.7, 3.1 and 3.9 of Australian Standard AS2601-2001: Demolition of Structure. Note: For further advice you may wish to contact the Global Lead Advice and Support Service on 9716 0132 or 1800 626 086 (freecall), or at www.lead.org.au.
- o) Hazardous dust not being allowed to escape from the site. The use of fine mesh dust proof screens or other measures are recommended.
- p) Any existing accumulations of dust (eg. ceiling voids and wall cavities) must be removed by the use of an industrial vacuum fitted with a high efficiency particulate air (HEPA) filter. All dusty surfaces and dust created from work is to be suppressed by a fine water spray. Water must not be allowed to enter the street and stormwater systems. Demolition is not to be performed during adverse winds, which may cause dust to spread beyond the site boundaries.

SITE SIGNAGE

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

GENERAL

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

Drawing No.	Drawing Title	Prepared by	Dated
DA002 (rev. 4)	Demolition Plan	CD Architects	26/09/16
DA101 (rev. 8)	Basement 3 Floor Plan	CD Architects	21/12/17
DA102 (rev. 7)	Basement 2 Floor Plan	CD Architects	21/12/17
DA103 (rev. 8)	Basement 1 Floor Plan	CD Architects	21/12/17
DA104 (rev. 8)	Ground Floor Plan	CD Architects	21/12/17
DA105 (rev. 5)	Level 01 Floor Plan	CD Architects	25/08/17
DA106 (rev. 5)	Level 02 Floor Plan	CD Architects	25/08/17
DA107 (rev. 6)	Level 3 Floor Plan	CD Architects	19/12/17
DA108 (rev. 6)	Level 04 Floor Plan	CD Architects	19/12/17
DA110 (rev. 6)	Roof Terrace Level Floor Plan	CD Architects	19/12/17
DA111 (rev. 5)	Roof Level Floor Plan	CD Architects	25/08/17
DA200 (rev. 7)	West & East Elevations	CD Architects	19/12/17
DA201 (rev. 7)	North & South Elevations	CD Architects	19/12/17
DA300 (rev. 6)	Section AA	CD Architects	21/12/17
DA301 (rev. 6)	Section BB Building Envelope	CD Architects	21/12/17
DA500 (rev. 5)	Pre + Post Adaptable Unit Layout	CD Architects	25/08/17
DA703 (rev. 6)	Finish Schedule	CD Architects	19/12/17
D01 (rev. D)	Basement Level 3 Stormwater Drainage Plan	Australian Consulting Engineers	25/01/18
D02 (rev. D)	Basement Level 2 Stormwater Drainage Plan	Australian Consulting Engineers	25/01/18
D03 (rev. D)	Basement Level 1 Stormwater Drainage Plan	Australian Consulting Engineers	25/01/18
D04 (rev. D)	Ground Level Stormwater Drainage Plan	Australian Consulting Engineers	25/01/18
DA10 (rev. B)	Site Stormwater Drainage Details 1	Australian Consulting Engineers	07/09/17
D11 (rev. D)	Site Stormwater Drainage Details 2	Australian Consulting Engineers	25/01/18
E20 (rev. A)	Erosion and Sediment Control Plan & Details	Australian Consulting Engineers	26/06/15
1103.L.01 (issue C)	Landscape Plan – Ground Floor	Greenland Design Landscape Architects	16/01/18
1103.L.02 (issue C)	Landscape Plan – Roof Terrace	Greenland Design Landscape Architects	16/01/18

1103.L.03 (rev. C)	Landscape Details & Specification	Greenland Design Landscape Architects	16/01/18
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- 8.1 The architectural plans shall be amended to demonstrate compliance with Objective AG-1 of the Apartment Design Guide with respect to storage size volume, within the apartment, for Units 106, 206, 303, 306 and 403 (i.e. a minimum of 50% of the storage size volume applicable to the number of bedrooms for each unit). The amendments shall be undertaken in a manner that does not result in modifications to the size or configuration of the units. The Construction Certificate plans shall reflect this requirement.
- 8.2 Intercom and controlled access measures shall be installed at main entries to the building to control access, including to the basement car park. Access to the communal rooftop open space area must be restricted to residents (and their guests) only.
- 8.3 Access to the individual residential units shall be clearly marked and apparent to visitors.
- 8.4 The frontage of all retail tenancies is to comprise of transparent glass.
- 8.5 All services are to be integrated into the design of the building.
- 8.6 For the purposes of maintaining the proposal's positive contribution to the streetscape any substation or firefighting equipment must not be placed in lieu of or in front of the commercial areas at ground floor level. The applicant must seek approval from Council for any variation to this requirement.
- 8.7 A communal rooftop antenna is to be provided, rather than multiple individual antennas.
9. The Management Strategy for Rooftop Open Space report, prepared by David Doust, shall be amended to include the following requirements:
- Occupation and use of the roof terrace:
 - No music is to be played on the roof terrace area and no amplified sound is to be played on the roof terrace area.
 - The access to the roof terrace is restricted to residential occupants of the building and this access is to be controlled by key.
 - Outdoor lighting of the roof terrace:
 - Outdoor lighting must comply with AS 4282-1997: Control of the obtrusive effects of outdoor lighting. The maximum luminous intensity from each luminaire must not exceed the level 1 control relevant under table 2.2 of AS 4282. The maximum luminance and the threshold limits must be in accordance with table 2.1 of AS 4282.
 - All lighting to be installed on the roof terrace will be recessed lights or will be surface wall / balustrade mounted lights at a maximum height of 600 mm above the finished floor level of the roof terrace.

10. The development shall be in accordance with the recommendations and conclusions contained in the Statement of Compliance – Access for People with a Disability Report, Job No. 215234, Issue C, dated 1 September 2017, prepared by Accessible Building Solutions, accept where amended by the approved architectural plans.
11. The development shall be in accordance with the recommendations and conclusions contained in the Provision for Fire Safety Report, Reference No. 15146-L01c, dated 8 September 2017, prepared by Innova Services, accept where amended by the approved architectural plans. The development shall achieve full compliance with the requirements of the Building Code of Australia and National Construction Code. Details of any Fire Engineered Solutions and deemed-to-satisfy provisions must be provided in full for approval with the Construction Certificate.
12. This condition has been levied on the development in accordance with Section 7.11 of the Environmental Planning and Assessment Act 1979 and in accordance with Canterbury Development Contributions Plan 2013, after identifying the likelihood that this development will require or increase the demand on public amenities, public services and public facilities in the area.

The monetary contribution of **\$330,216.45** shall be paid to Council before a Construction Certificate can be issued in relation to the development, the subject of this Consent Notice. The amount payable is based on the following components:

Contribution Element	Contribution
Community Facilities	\$29,868.51
Open Space and Recreation	\$291,945.24
Plan Administration	\$8,402.70

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

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

13. Finishes and materials including the treatment of external walls, roofing, balcony balustrades, fences, windows and doors being in accordance with the approved Finish Schedule, prepared by CD Architects, Drawing No. DA703 (rev. 6), dated 19/12/17.

The approved design (including an element or detail of that design) or materials, finish or colours of the building must not be changed so as to affect the external appearance of the building without the approval of Council.

14. The site's boundary fencing is to be retained, or replaced (if damaged during the construction process) at the applicant's expense. Any repairs or replacement must be made before the issue of any Occupation Certificate. Any damage caused during the works period is to be made good within 24 hours of damage.

15. Forty-six (46) off-street car parking spaces, one (1) car wash bay, one (1) loading bay, eleven (11) bicycle spaces, and three (3) motorcycle/ scooter spaces shall be provided within the three basement levels and on the ground floor level of the development, in accordance with the approved plans. The driveways and car parking areas must be designed in accordance with AS2890.1-1993 (Off-street car parking). The specific allocation of car parking spaces and bicycle spaces shall be undertaken in accordance with the applicable rates contained in Part 6.8 of CDCP 2012.
16. The use of the retail tenancies on the ground floor are subject to separate development applications.
17. All materials must be stored wholly within the property boundaries and must not be placed on the footway or roadway.
18. All building operations for the erection or alteration of new buildings must be restricted to the hours of 7.00 a.m. - 5.00 p.m. Monday to Saturday, except that on Saturday no mechanical building equipment can be used after 12.00 noon. No work is allowed on Sundays or Public Holidays.
19. All building construction work must comply with the National Construction Code.
20. Provide a Surveyor's Certificate to the Principal Certifying Authority prior to walls being erected more than 300mm above adjacent ground surfaces to indicate the exact location of all external walls in relation to allotment boundaries.
21. Provide a Surveyor's Certificate to the Principal Certifying Authority prior to the pouring of concrete at all levels and roof indicating the finished level to a referenced benchmark. These levels must relate to the levels indicated on the approved architectural plans and/or the hydraulic details.
22. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the development are fulfilled.
In this condition:
 - a) relevant BASIX Certificate means:
 - i. a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 4.55 of the Act, A BASIX Certificate that is applicable to the development when this development consent is modified); or
 - ii. if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and
 BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.

SYDNEY WATER REQUIREMENTS

23. Prior to the issue of a Construction Certificate, approval shall be obtained from Sydney Water for the portion of the development that overhangs the sewer easement. Should Sydney Water not grant consent to the development approved by Council, the

development may be subject to further modifications and approval by Council through a Section 4.55 application in order to satisfy Sydney Water's requirements.

24. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Co-ordinator. For help either visit Sydney Water's web site at www.sydneywater.com.au/BuildingDeveloping/DevelopingYourLand , Water Servicing Coordinators, or telephone 13 20 92. Following application, a "Notice of Requirements" will be forwarded detailing water and sewage extensions to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development/release of the final plan of subdivision.

ROADS AND MARITIME SERVICES

25. A splay corner has previously been dedicated as Public Road by private subdivision (DP 546750), at the corner of the subject property, as shown by yellow colour on the attached Aerial – "X".

The subject property is affected by a Road Widening Order under Section 25 of the Roads Act, 1993 as published in Government Gazette 3rd October 1958, as shown by pink colour on the attached Aerial – "X" and DP 445848.

However, Road and Maritime has no objections to the proposed development on property grounds provided any new buildings or structures (other than pedestrian footpath awnings), together with any improvements integral to the future use of the site, are erected clear of the land reserved for road widening (unlimited in height or depth).

26. The redundant driveways on Georges River Road shall be removed and replaced with kerb and gutter to match existing. The design and construction of the gutter crossing, kerb and gutter on Georges River Road shall be in accordance with Roads and Maritime requirements. Details of these requirements should be obtained from Roads and Maritime Services, Manager Developer Works, Statewide Delivery, Parramatta (telephone 8849 2138).

Detailed design plans of the kerb and gutter are to be submitted to Roads and Maritime for approval prior to the issue of a Construction Certificate and commencement of any road works.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approved road design plans by Roads and Maritime.

27. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime.

The report and any enquiries should be forward to:

Project Engineer, External Works
Sydney Asset Management
Roads and Maritime Services
PO Box 973 Parramatta CBD 2124

Telephone 8849 2114
Fax 8849 2766

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

28. Council should ensure that the post development storm water discharge from the subject site into the RMS drainage system does not exceed the pre-development discharge.

Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to the commencement of any works.

Details should be forwarded to:
The Sydney Asset Management
Roads and Maritime Services
PO Box 973 Parramatta CBD 2124

A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued. With regard to the Civil Works requirement please contact the Roads and Maritime Project Engineer, External Works Ph: 8849 2114 or Fax: 8849 2766.

29. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Georges River Road.
30. A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Georges River Road during construction activities.

31. The developer shall be responsible for all public utility adjustment/relocation works, necessitated by the above work and as required by the various public utility authorities and/or their agents.
32. All works/regulatory signposting associated with the proposed development are to be at no cost to RMS.

DILAPIDATION AND EXCAVATION

33. The Geotechnical Investigation Report, prepared by SMEC Testing Services Pty Ltd, Report No. 14/1434, dated July 2014, shall be revised prior to the issue of a Construction Certificate in accordance with the extent of excavation required by the approved architectural plans. The development shall achieve full compliance with the recommendations and conclusions of the revised report.
34. A Dilapidation Report/photographic survey prepared by an appropriately qualified engineer is to be undertaken of the adjoining properties at Nos. 236-240 Georges River Road and 1 Clyde Street, Croydon Park, detailing the physical condition of the property, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items, shall be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate. On completion of the excavation and building works and prior to occupation of the building, a certificate by an appropriately qualified engineer stating to the effect that no damage has resulted to adjoining premises is to be provided to the Principal Certifying Authority. If damage is identified which is considered to require rectification, the damage shall be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible and prior to occupation of the development. All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this consent.

ACOUSTICS

35. The Acoustic Report, Reference No. 2015-333, Revision 6, dated 19 January 2018, shall be amended prior to the issue of a Construction Certificate, as follows:
 - The communal roof top is to comply with the requirements of the NSW Industrial Noise Policy and AS 2107 'Acoustics - Recommended Design Sound Levels and Reverberation Times'. Access to the communal roof top is restricted to day and evening hours only (i.e. 7am-10pm).
 - Further acoustic assessment shall be carried out for the approved development after the preparation of Mechanical Plans. Background noise levels shall be carried out and final recommendations shall be provided for all associated mechanical plant & equipment.The development shall achieve full compliance with the recommendations of the amended Acoustic Report.

CONTAMINATION AND ACID SULFATE SOILS

36. The development shall be in accordance with the recommendations and conclusions contained in the Detailed Site Investigation Report, Report No. 17/1925, dated August 2017, prepared by STS GeoEnvironmental.

37. The development shall be in accordance with the recommendations and conclusions contained in the Remedial Action Plan, Report No. 17/3223, dated November 2017, prepared by STS GeoEnvironmental.
38. If unexpected soil contaminants are encountered during excavation and/or construction works, which has the potential to alter previous conclusions made regarding potential site contamination; all work is to cease and Council notified immediately. The contaminated land situation is to then be evaluated by a suitably qualified and experienced environmental consultant and an appropriate response determined by the applicant which is agreed to by Council, prior to the re-commencement of works. Council may also request that a NSW EPA accredited site auditor is involved to assist with the assessment of the new contamination information. The applicant must also adhere to any additional conditions, which may be imposed by the accredited site auditor, if required.
39. If acid sulfate soils are encountered during excavation and/or construction works; all work is to cease and Canterbury-Bankstown Council notified immediately. The acid sulfate soil situation is to then be evaluated by an appropriately qualified and experienced environmental consultant who has proven experience in the assessment and management of acid sulfate soils. An appropriate response is to be determined by the applicant, which is agreed to by Council, prior to re-commencement of works.

ENVIRONMENTAL HEALTH

40. All activity being conducted so that it causes no interference to the existing and future amenity of the adjoining occupations and the neighbourhood in general by the emission of noise, smoke, dust, fumes, grit, vibration, smell, vapour, steam, soot, ash, waste water, waste products, oil, electrical interference or otherwise.
41. The proposed use of the premises and/or machinery equipment installed must not create noise so as to interfere with the amenity of the neighbourhood. If a noise nuisance occurs, the person in control of the premises must arrange for an acoustic investigation to be carried out (by an accredited Acoustic Engineer), obtain Council concurrence for the recommendations of the Consultant, and implement those recommendations so as to reduce the noise levels to the ambient noise level. The acoustic assessment must be completed within 30 days from the date requested by Council.
42. Site water discharged to Council's stormwater system must have a suspended solid level of less than 50 mg/L, pH 6.5 - 8.5, turbidity level of less than 50 NTU, no oil or grease and conform to relevant ANZEC guidelines for other contaminants. This may require treatment such as transfer to settling ponds, use of approved chemicals to settle out sediment or passing the contaminated water through a treatment device. Site water may also be disposed of through the services of a licensed liquid waste transporter. Council must be notified prior to the commencement of any pump out of site water and provided with a copy of the test results which confirm that the above condition has been complied with.

43. Stockpiles of topsoil, sand, aggregate, soil or other material shall not be located on any drainage line or easement, natural watercourse, footpath or roadway and shall be protected with adequate sediment controls.

DEVELOPMENT ENGINEERING

Prior to the issue of a Construction Certificate

44. A stormwater drainage design prepared by a qualified practicing Civil Engineer must be provided prior to the issue of a Construction Certificate. The submitted design must be amended to make provision for the following:
- a) The design must be generally in accordance with the plans, specifications and details prepared by Australian Consulting Engineers Pty Ltd, Drawing No. 140324 D00 A, D01-D04 D, D10 B, and D11 D, dated 25 January 2018.
 - b) Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from any rainwater tank(s) to the kerb and gutter of Clyde Street.
 - c) An overland flowpath must be provided between the front of the dwelling and Clyde Street frontage. This area must be graded so that bypass flows from the site drainage system are directed to Clyde Street.
 - d) All stormwater must pass through a silt arrestor pit prior to discharge to kerb and gutter. Silt arrestor pit is to be sized in accordance with Canterbury Councils DCP 2012. Sump depth is to be a minimum of 300mm deep.
 - e) The overflow capacity from the On Site Detention facility is inadequate and must be redesigned to achieve the following criteria:
 - i. Overflow must be designed to convey 100 year flows from the OSD facility.
 - ii. The overflow inlet must be assumed to be 80% blocked.
 - iii. The overflow conduit must be assumed to be 50% blocked.
 - f) The rising main from the basement pump out tank must discharge to the OSD.
 - g) Details of the eco paver located in the deep soil zone area must be provided. The paver material must have pervious capabilities and be trafficable by heavy vehicles.
 - h) All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.
 - i) New pipelines within the footpath area that are to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a section height of 100mm.

The design must be prepared by a qualified Civil Engineer and be provided to the Principal Certifying Authority prior to the issue of a Construction Certificate.

45. OSD is required; three (3) copies of plans and calculations must be submitted prior to the issue of Construction Certificate to the Principal Certifying Authority PCA and Canterbury-Bankstown Council, if Council is not the PCA. The plans must be prepared by a practicing Civil Engineer and include levels reduced to Australian Height Datum (AHD) and full details of the hydraulic evaluation of the entire stormwater drainage system. The details shall be prepared in accordance with Council's DCP 2012, Part 6.4.
46. All downpipes, pits and drainage pipes shall be installed to ensure that stormwater is conveyed from the site and into Council's stormwater system in accordance with AUS-

SPEC Specification D5 “Stormwater Drainage Design”, AS/NZS3500.3 and Part 6.4 of Canterbury Council’s DCP 2012.

47. Full width grated drains being provided across the vehicular entrance/exit to the site where internal areas drain towards the street, and be connected to the drainage system upstream of the silt arrestor pit and in accordance with Canterbury Councils DCP 2012.
48. Retaining walls greater than 1000 mm high or retaining more than 600 mm of cut or fill proposed to be located within one metre of a boundary are to be designed by a Structural Engineer and must have subsoil drainage connected to the site stormwater system. Design plans prepared by an appropriately qualified and practising structural engineer must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority.
All components of any retaining walls, including subsoil drainage, must be located entirely within the property boundary. The subsoil drainage lines of the retaining walls must be shown on the stormwater drainage concept plan.
49. Details of the proposed street awning, including plans and sections, must be provided to the Principal Certifying Authority. The details must include:
 - a) The street awning(s) must be setback 600mm from the kerb line.
 - b) The awnings must be entirely self-supporting; posts are not permitted.
 - c) The person or company carrying out the works will be required to carry public liability insurance to a value of ten million dollars. In this regard a Certificate of Currency must be submitted to the Principal Certifying Authority.
 - d) All stormwater is to be collected and connected to Council’s street gutter. In this regard awning downpipes for drainage are to be fully concealed within or recessed into the ground floor frontage of the building. Awning gutters are to be constructed so that they are not visible from the footpath or are integral to the awning structure.
 - e) The awning(s) must be approved by the relevant Road Authority pursuant to Section 138 of the Roads Act. Note that this Consent does not give approval to construct an awning in the road.
 - f) The applicant must indicate the extent of any service adjustments necessary, and submit with the design, proof of approval by the relevant service authorities. The applicant shall bear all responsibility and costs associated with the proposed relocation of services.
 - g) The awning(s) must be designed by a Structural Engineer for Roof Category R1 in accordance with AS/NZS 1170.1: 2002, AS/NZS 1170.0: 2002, and AS/NZS 1170.3: 2011. The design must incorporate all loads including dead loads, live loads, wind load (lateral, uplift, and downward pressure), and potential impact load.
 - h) If the awning(s) is to be built over an exit that would be utilised in an emergency it must be constructed of non-combustible material.
 - i) Lighting is required and must comply with AS/NZS 1158.3.1: 2005 and AS/NZS 1158.0: 2005. Lighting must be recessed into the awning and be integral to its structure with all wiring and conduits concealed.
 - j) A maintenance plan must be provided in respect of the awing(s) to address the following issues at a minimum:
 - i. Inspection schedule of structural members, connections, and supports covering the life of the awing(s).
 - ii. Inspection schedule of non-structural components.

- iii. Schedule of maintenance actions and maintenance frequency including cleaning, replacement of lighting based on expected operational life, replacement of protective coatings, and cleaning/maintenance of guttering and downpipes.

The plans and details of the awing(s) must be certified by a Structural Engineer and be provided prior to the issue of a Construction Certificate.

50. If any neighbouring properties or roadway are to be utilised for support, the legal rights of any adjoining properties must be respected including for temporary supports. In this regard the written permission of the affected property owners must be obtained and a copy of the owner's consent for temporary rock anchors or other material in adjacent lands must be lodged Canterbury Bankstown Council prior to the issue of a Construction Certificate.

Temporary rock anchors are rock anchors that will be de-stressed and removed during construction. All other rock anchors are permanent rock anchors for the purposes of this Consent.

Council will not permit permanent rock anchors in adjacent private lands unless they are specifically permitted in a Development Consent.

Where temporary anchors are proposed to be used in Georges River Road and Clyde Street an Application must be made to Canterbury Bankstown Council for approval under Section 138 of the Roads Act 1993, via a Road Works Permit application. The submission would need to be supported by an engineering report prepared by a suitably qualified Structural Engineer, with supporting details addressing the following issues:

- a) Demonstrate that any structures within the road reserve are of adequate depth to ensure no adverse impact on existing or potential future service utilities in the road reserve. All existing services must be shown on a plan and included on cross sectional details where appropriate.
 - b) Demonstrate how the temporary anchors will be removed and replaced by full support from structures within the subject site by completion of the works.
 - c) The report must be supported by suitable geotechnical investigations to demonstrate the efficacy of all design assumptions.
51. Where rock anchors or other temporary retaining measures are to encroach on adjoining properties, including the roadway, the Principal Certifying Authority must ensure that the permission of the relevant landowner has been obtained. In this regard a copy of the owner's consent for private property and Section 138 Approval pursuant to the Roads Act for roads must be provided to the Principal Certifying Authority prior to the issue of a Construction Certificate.
 52. The vehicular access and parking facilities shall be in accordance with Australian Standard AS 2890.1 "Off-street Parking Part 1 - Carparking Facilities". In this regard, the submitted plans must be amended to address the following issues:
 - a) The finished levels within the property must be adjusted to ensure that the levels at the boundary comply with those issued by Council for the full width of the vehicle crossing. The longitudinal profile must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004.
 - b) The driveway grades shall be in accordance with Australian Standard AS 2890.1 "Off-street Parking Part 1 - Carparking Facilities".

- c) A minimum of 2200mm Headroom must be provided throughout the access and parking facilities. Note that Headroom must be measured to the lowest projection from the ceiling, such as lighting fixtures, and to open garage doors.
- d) The car parking facilities must be appropriately line marked and signposted in accordance with the requirements of Section 4 of AS/NZS 2890.1-2004.
- e) The intersection of ramps with parking aisles and other intersection areas have been designed for use by one vehicle at a time. Appropriate traffic management measures, including redesign if needed, is required to prioritise one-way traffic movement at these intersection areas.
- f) Minimum lines of sight for pedestrian safety must be provided in accordance Figure 3.3 of AS/NZS 2890.1:2004.
- g) All gates must be inward opening within its own boundary, and must not obstruct the pedestrian pathway.
- h) A longitudinal section along the worst case outer edge of the access and parking facilities, extending to the centreline of the road carriageway must be provided, demonstrating compliance with the above requirements.
- i) The Engineer must certify that the access and parking complies with current Australian Standards including AS/NZS 2890.1-2004 Parking Facilities - Off-Street Car Parking, AS 2890.2-2002 Parking Facilities - Off-Street commercial vehicles facilities, AS/NZS 2890.6-2009 Off-street parking for people with disabilities and AS 2890.3-1993 Parking Facilities - Bicycle parking facilities.

The design must be certified by a suitably qualified Civil Engineer with NER registration with the Institution of Engineers Australia and be provided to the Principal Certifying Authority prior to the issue of a Construction Certificate.

Prior to and during construction

- 53. The applicant to arrange with the relevant public utility authority the alteration or removal of any affected services in connection with the development. Any such work being carried out at the applicant's cost.
- 54. If Groundwater is encountered, it must not be captured by the drainage system of the basement. In this regard the basement must be tanked to at least 1000 mm above measured groundwater levels.
- 55. A full width heavy duty vehicular crossing shall be provided at the vehicular entrance to the site. This work to be carried out by Council or an approved contractor, at the applicant's cost. The work is to be carried out in accordance with Council's "Specification for the Construction by Private Contractors of: a) Vehicle Crossings, b) Concrete Footpath, c) Concrete Kerb & Gutter".
- 56. Driveways, parking and service areas are to be constructed or repaired in accordance with the appropriate AUS-SPEC #1 Specifications: C242-Flexible Pavements; C245-Asphaltic Concrete; C247-Mass Concrete Subbase; C248-Plain or Reinforced Concrete Base; C254-Segmental Paving; C255-Bituminous Microsurfacing.

Prior to the issue of an Occupation Certificate

57. That the stormwater system be constructed in general, in accordance with the plans, specifications and details submitted with the Construction Certificate and as amended by the following conditions.
58. Certification from an accredited engineer must be provided to certify that all works has been carried out in accordance with the approved plan(s), relevant codes and standards.
59. A Works-as-Executed plan must be submitted to Canterbury Bankstown Council at the completion of the works, the plan must clearly illustrated dimensions and details of the site drainage and the OSD system. The plan shall be prepared by a registered surveyor or an engineer. A construction compliance certification must be provided prior to the issuing of the Occupation Certificate to verify, that the constructed stormwater system and associate works has been carried out in accordance with the approved plan(s), relevant codes and standards. The required certification must be issued by an accredited professional in accordance with the accreditation scheme of the Building Professional Board issued 1st March 2010. An appropriate instrument must be registered on the title of the property, concerning the presence and ongoing operation of the OSD system as specified in Councils DCP 2012.
60. Prior to the issue of an Occupation Certificate, the Principle Certifying Authority must ensure that Operation and Management Plans has been prepared and implemented for the OSD and basement pump out facilities. The Plan must set out the following at a minimum:
 - a) The proposed maintenance regime, specifying that the system is to be regularly inspected and checked by qualified practitioners.
 - b) The proposed method of management of the facility, including procedures, safety protection systems, emergency response plan in the event of mechanical failure, etc.The Plan must be prepared by a suitably qualified professional and provided to the Principle Certifying Authority prior to the issue of an Occupation Certificate.
61. The Operation and Management Plan for the OSD and basement pump out facilities, approved with the Occupation Certificate, must be implemented and kept in a suitable location on site at all times.
62. Prior to the issue of an Occupational Certificate, the Principal Certifying Authority must ensure retaining walls have been constructed in accordance with the design plans. If the retaining walls do not require structural design certification may be provided by the builder. If the retaining walls require structural design certification must be provided by a qualified structural engineer that the retaining walls have been built in accordance with the plans submitted with the Construction Certificate.
63. The Principal Certifying Authority must ensure that the awing(s) have been constructed in accordance with this Consent and the relevant standards. Prior to the issue of an Occupation Certificate certification must be provided by a Structural Engineer that the awing(s) have been constructed in accordance with the design submitted with the Construction Certificate and National Construction Code.

64. The awning maintenance plan approved with the Construction Certificate must be retained on site and implemented at all times.

PUBLIC IMPROVEMENTS

65. All redundant vehicular crossings shall be replaced with kerb and the footpath reserve made good by Council or an approved contractor, at the applicant's cost. The work is to be carried out in accordance with Council's "Specification for the Construction by Private Contractors of: a) Vehicle Crossings, b) Concrete Footpath, c) Concrete Kerb & Gutter".
66. The reconstruction of the kerb and gutter along all areas of the site fronting Georges River Road and Clyde Street is required. Work to be carried out by Council or an approved contractor, at the applicant's cost. The work is to be carried out in accordance with Council's "Specification for the Construction by Private Contractors of: a) Vehicle Crossings, b) Concrete Footpath, c) Concrete Kerb & Gutter".
67. The reconstruction of concrete footpath paving and associated works along all areas of the site fronting Georges River Road and Clyde Street is required. Work being carried out by Council or an approved contractor, at the applicant's cost. The work is to be carried out in accordance with Council's "Specification for the Construction by Private Contractors of: a) Vehicle Crossings, b) Concrete Footpath, c) Concrete Kerb & Gutter".

SUBDIVISION

68. The granting of service easements within the properties to the satisfaction of Council or private certifier. Costs associated with preparation and registration of easements to be borne by the developer.
69. All easements required for the subdivision being shown on and registered in conjunction with the subdivision plan.
70. The submission of one final plan of subdivision / consolidation and five copies.
71. The satisfactory completion of all conditions of this development consent prior to the release of the final plan of subdivision.

CONSOLIDATION OF LOTS

72. The site is to be consolidated into one allotment. The plan of consolidation being lodged and registered with NSW Land Registry Services prior to the issue of the Occupation Certificate.

WASTE MANAGEMENT

73. Unobstructed and unrestricted access to the waste bin storage areas shall be provided for servicing from 5.00am on collection days.
74. Bins must not be presented on the road for collection. Instead, they will be collected and returned to the waste bin storage rooms by Council's waste collection contractor.

75. The waste bin storage areas are to be designed and constructed in accordance with Section 6.9.4.1 and 6.9.4.2 of Canterbury Development Control Plan 2012. A bin holding area must be located at the ground level of the development within 15m of the site frontage, immediately north of the vehicular ramp, and suitably screened in accordance with Section 6.9.4 of the Canterbury Development Control Plan 2012.
76. This development, containing twenty four (24) residential dwellings, requires allocation of waste and recycling bins based on:
- 12 x 240L garbage bins (collected weekly)
 - 8 x 240L recycling bins (collected weekly)
 - 4 x 240L garden waste bins (collected fortnightly)

Bin Type	Height	Width	Depth
240 Litres	1080mm	580mm	735mm

All waste and recycling bins are collected by Council from the bin storage room as a collect and return service.

It is the responsibility of the property manager to present any provided garden waste bins to the kerbside for collection by Council the evening before the designated collection day. An area of at least 3m² needs to be provided for this purpose.

77. This development, containing four (4) retail tenancies, requires allocation of waste and recycling bins based on:
- 4 x 240L garbage bins (collected weekly)
 - 4 x 240L recycling bins (collected weekly)

Service capacity required over and above Council's standard service is to be supplied by a private contractor

All waste and recycling bins provided by Council as part of the standard waste and recycling service are collected by Council from the bin storage room as a collect and return service.

Inspection by Council is required before the Occupation Certificate will be issued.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

78. The site is to be treated with anti-graffiti paint to deter graffiti offenders targeting the building and its perimeter. This will preserve the building and increase a sense of maintenance and ownership of the site.

LANDSCAPING

79. The landscaping must be completed according to the submitted landscape plan (Drawing No. 1103.L.01 – 1103.L.03, Issue C, dated 16/01/18, prepared by Greenland

Design) except where amended by the conditions of consent. The landscaping is to be maintained at all times to the Council's satisfaction.

80. All the tree supply stocks shall comply with the guidance given in the publication *Specifying Trees: a guide to assessment of tree quality* by Ross Clark (NATSPEC, 2003).
81. All scheduled plant stock shall be pre-ordered, prior to issue of Construction Certificate or 3 months prior to the commence of landscape construction works, whichever occurs sooner, for the supply to the site on time for installation. Written confirmation of the order shall be provided to Council's Landscape Architect (Contact no: 9789 9438), prior to issue of any Construction Certificate. The order confirmation shall include name, address and contact details of supplier; and expected supply date.
82. An automatic watering system is to be installed in common areas at the applicant's cost. Details including backflow prevention device, location of irrigation lines and sprinklers, and control details are to be communicated to Council or certifier prior to the issue of the Construction Certificate. The system is to be installed in accordance with the manufacturer's specification and current Sydney Water guidelines.
83. All works to the public domain are to be in accordance with the Part 3.1.11 of the Canterbury Development Control Plan (CDCP) 2012 as a condition of this approval.

Public domain works are required to Clyde Street and Georges River Road. The applicant is to liaise with our City Works Division to obtain the relevant requirements for these spaces (including the road reserve setback) and details and specifications for works within the public domain. The applicant shall submit a Public Domain Plan with all details and design for landscape works in public domain areas to Council City Works Division for approval prior to the issue of a Construction Certificate.

84. The existing street trees x 4 growing on the nature strip adjacent to the property are to be retained and protected during demolition and construction. The following tree protection zones (TPZ) measured from the edge of the tree trunk must be observed;
 - 2 x tree in Georges River Road- TPZ of 2 metres radius,
 - 1 x tree on the corner of Clyde Street- TPZ of 2 metre radius,
 - 1 x tree in front of Clyde Street- TPZ of 3.5 metre radius.

A tree protection barrier is to be erected around the perimeter of the TPZ prior to the commencement of any site works. This barrier must be a minimum 1800mm high chain link fabric (with standard 50mm pitch) on 2400mm star pickets driven 600mm into the ground so that the fencing cannot be breached. A 600mm x 450mm prohibition sign complying with AS1319, and stating 'TREE PROTECTION ZONE – KEEP OUT' must be attached to the barrier. The barrier is to be well maintained during construction. No building material storage or construction activity shall be allowed to encroach within this TPZ.
85. An amended landscape plan to address the issues outlined below is to be submitted to Council or certifier prior to the issue of the Construction Certificate.
 - a) Amend the roof terrace communal open space to provide an additional 35 square metre area. This additional area shall be planter beds and planting including a minimum 3 shade tree plantings with appropriate sized planters to provide increased amenity.

- b) The non-trafficable roof shall be covered with decorative pebbles to provide an attractive space.
- c) All new tree planting shall be a minimum of 75 litre pot size.
- d) 'Maintenance schedule period shall be 12 months.

86. The proposed planting to all podium levels is to comply with the following as required in the CDCP 2012 Part 6.6: Landscape:

Raised planters:

- Use masonry or concrete construction;
- Provide drainage for each planter box, and coordinate drainage details with hydraulics plan; and
- Provide water proofing to each planter box.

Minimum soil depth:

- 100-300mm for turf
- 300-450mm for groundcovers;
- 500-600mm for small shrubs;
- 600-750mm for medium shrubs;
- 750-900mm for small trees with approximate soil area of 3.5m x 3.5m;
- 1000mm for medium trees with approximate soil area of 6m x 6m; and
- 1300mm depth for large trees with approximate soil area of 10m x 10m.

CRITICAL INSPECTIONS

87. Class 2, 3 or 4 Buildings

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

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

Class 5, 6, 7, 8 or 9 Buildings

- d) prior to covering any stormwater drainage connections, and
- e) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

88. Section 6.6 of the EP&A Act 1979 requires that a person having the benefit of a development consent, if not carrying out the work as an owner-builder, must notify the principal contractor for the building work of any critical stage inspections and other inspections that are to be carried out in respect of the building work, as nominated in this development consent.

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

COMPLETION OF DEVELOPMENT

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

WE ALSO ADVISE

90. This application has been assessed in accordance with the National Construction Code.
91. You should contact Sydney Water prior to carrying out any work to ascertain if infrastructure works need to be carried out as part of your development.
92. Where Council is appointed as the Principal Certifying Authority, you will be required to submit Compliance Certificates in respect of the following:
- Structural engineering work
 - Air handling systems
 - Final fire safety certificate
 - Glazing
 - Waterproofing
 - BASIX completion
93. Any works to be carried out by Council at the applicant's cost need to be applied for in advance.
94. Before you dig, call "Dial before you Dig" on 1100 (listen to the prompts) or facsimile 1300 652 077 (with your street no./name, side of street and distance from the nearest cross street) for underground utility services information for any excavation areas.
95. In granting this approval, we have considered the statutory requirements, design, materials and architectural features of the building. No variation to the approved design and external appearance of the building (including colour of materials) will be permitted without our approval.
96. Compliance with the National Construction Code does not guarantee protection from prosecution under "The Disability Discrimination Act". Further information is available from the Human Rights and Equal Opportunity Commission on 1800 021 199.
97. The drawings and documentation submitted with the development application do not appear to indicate the location of air conditioning units. You are asked to note that the provision of AC units can be carried out through exempt development, however should you not be able to comply with the exempt development provisions a full development application may be required for the provisions of AC units.
98. Our decision was made after consideration of the matters listed under Section 4.15 of the Environmental Planning and Assessment Act 1979, and matters listed in Council's various Codes and Policies.
99. If you are not satisfied with this determination, you may:
- 99.1 Apply for a review of a determination under Sections 8.2-8.5 of the Environmental Planning and Assessment Act, 1979. A request for review must be made and determined within 6 months of the date of the receipt of this Notice of Determination.; or

99.2 Appeal to the Land and Environment Court within 6 months after the date on which you receive this Notice of Determination, under Section 8.7 and Section 8.10 of the Environmental Planning and Assessment Act, 1979.

-END-

Canterbury Bankstown Local Planning Panel - 3 April 2018

ITEM 3	582 Henry Lawson Drive, East Hills
	Construction of a new dwelling, front fence and in ground swimming pool
FILE	DA-1013/2017 – Revesby Ward
ZONING	R2 Low Density Residential SP2 Infrastructure: Road Infrastructure Facility
DATE OF LODGEMENT	1 November 2017
APPLICANT	Mr Dakarmanji Mahmoud
OWNERS	Margaret Elizabeth Cove and Anthony Francis Bohan
ESTIMATED VALUE	\$581,553
AUTHOR	Planning

SUMMARY REPORT

This matter is reported to Councils 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 Council officers delegations.

Development Application DA-1013/2017 proposes the demolition of the existing structures on site, and the construction of a part three storey dwelling with an in ground swimming pool, associated car parking, landscaping, front fence and site works.

The dwelling contains four bedrooms, an office, kitchen, dining and lounge areas with a double car garage. The office and the living areas are located on the ground floor with the first floor containing four bedrooms and a north facing living area. The dwelling contains balconies to the rear on the ground and first floor. The balconies are located off a living area on the ground floor and a bedroom on the first floor. The proposal also incorporates a laundry and bathroom to the subfloor/undercroft area.

DA-1013/2017 has been assessed, amongst other things, against *Bankstown Local Environmental Plan (BLEP) 2015* and *Bankstown Development Control Plan (BDCP) 2015* and the application fails to comply in regards to BLEP 2015 Clause 4.3(2B)(b) in relation to the maximum permitted wall height, and to Part B1 Clauses 2.3, 2.10, 2.14, 2.19 and 2.31 of the BLEP 2015 in relation to the number of storeys in a building and wall height, setbacks, solar access to the adjoining property, rear facing balconies and front landscaped area.

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. No submissions were received.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

It is recommended that:

1. The Clause 4.6 submission in relation to wall height under Clause 4.3(2B)(b) of BLEP 2015 be supported; and
2. Development Application DA-1013/2017 be approved subject to the attached conditions.

ATTACHMENTS

- A. Section 4.15 Assessment Report
- B. Conditions of Consent

DA-1013/2017 ASSESSMENT REPORT

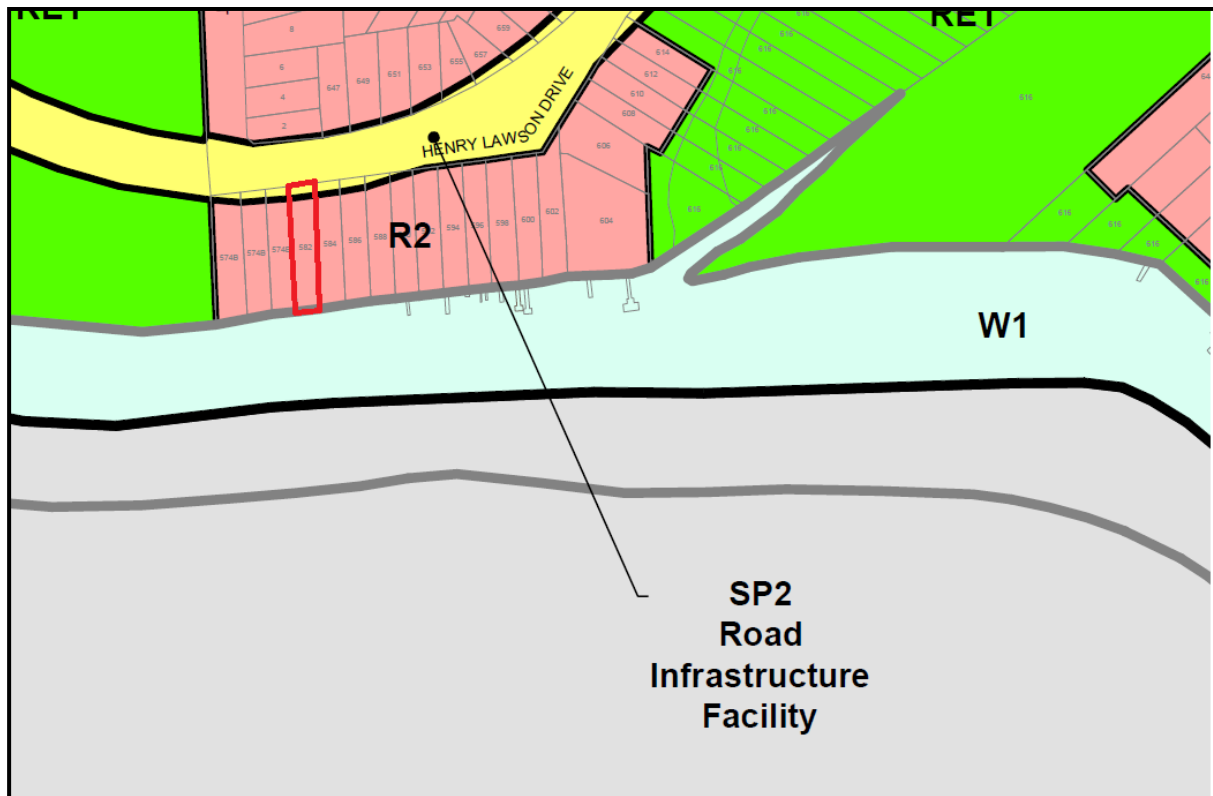
SITE AND LOCALITY DESCRIPTION

The existing lot has a primary frontage to Henry Lawson Drive of 12.19m. The site has an overall area of 737.5sqm by title, is generally rectangular in shape and contains a split zoning of SP2 Infrastructure (Road Infrastructure Facility) and R2 Low Density Residential. The SP2 zone extends into the site for 6.5 metres, leaving an overall site area, exclusive of the SP2 zoned land, of 688.26sqm. The subject site is also impacted by the controls as contained within the BLEP 2015, in particular Clause 6.5, which restricts certain forms of development within the foreshore area from extending past the point as shown within the maps of the BLEP 2015, being no closer than 30m from the rear property boundary. The site has a fall of 2.8m from north to south, progressively falling towards the river.

The site contains a single storey fibro house and shed. Immediately to the east is a single storey clad residential dwelling, whilst to the north are a mix of two-storey and single-storey dwellings. The south of the site is bound by the Georges River and to the west of the site is a reserve. The wider surrounding area consists of a range of development, being predominately low density residential dwellings, both two-storey and single-storey, of varying age and condition.

The context of the site is illustrated in the following aerial photo, zoning map and foreshore building line map extracts/exerts provided below.





PROPOSED DEVELOPMENT

DA-1013/2017 proposes the following works:

- Construction of a part three storey dwelling; with a double garage. The ground floor contains an office, kitchen, bathroom, living, family and dining area while the first floor contains four bedrooms, three bathrooms and a lounge area. A sub-floor is proposed which contains a bathroom and laundry;
- An in ground swimming pool;
- A solid brick front fence;
- Removal of trees from the front of the site; and
- Associated driveways, landscaping and site works.

External Concurrence**Roads and Maritime Services (RMS)**

The application proposes a new driveway to Henry Lawson Drive. Pursuant to Section 4.46 of the EP&A Act 1979, the proposal was referred to the Roads and Maritime Services (RMS). RMS have reviewed the development application and have raised no objection to the proposal, subject to conditions. The concurrence requires that the driveway design be amended to ensure that all vehicles enter and exit the site in a forward direction, that vehicles are wholly contained within the property before stopping, and that any building or structures integral to the future use of the site, be located clear of the land shown for future acquisition.

Further clarification was sought from RMS in regards to the proposed front fence, as the front fence is within the acquisition area. RMS have confirmed that the location of a front fence is acceptable, however should the road be acquired the fence would have to be removed. The proposed development is considered to be satisfactory, and it is recommended that conditions be imposed in accordance with the concurrence issued by RMS.

NSW Office of Water

The proposal is for the demolition of existing structures and construction of a dwelling and in-ground swimming pool. The proposed works are within 40m of a water-course, however are exempt from obtaining a controlled activity approval pursuant to the Water Management (General) Regulation 2011, Schedule 5, Part 2, Clause 27. Therefore, the proposal was not referred to NSW Office of Water.

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 2 – Georges River Catchment***

The site is located within land identified as being affected by *Greater Metropolitan Regional Environmental Plan 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 55 – Remediation of Land

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

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

The subject site has long been used for residential purposes and this will not change as part of the development application. There is no evidence to suggest that the site is contaminated, nor is it considered necessary for any further investigation to be undertaken with regard to potential site contamination. The subject site is considered suitable for the proposed development and therefore the development application satisfies the provisions of SEPP 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 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
 Clause 6.3 – Flood Planning
 Clause 6.5 – Limited development on foreshore area

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 numerical controls as set out in the BLEP 2015.

STANDARD	PERMITTED	PROPOSED	COMPLIANCE
Height of Buildings	Max 7m - wall Max 9m - building	8.8m wall height proposed 9m	No Yes
Floor space ratio	Max. 0.50:1 (excludes SP2 zoned land)	0.443:1	Yes

The table indicates that there is one non-compliance in relation to 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 standards are reproduced below.

(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.

The BLEP 2015, in Clause 4.3, sets out the following objectives in relation to height of buildings:

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 development, even with its non-compliant Wall height, results in an acceptable density and bulk given that the development provides an appropriate response to the building envelope controls and provides high levels of amenity for future occupants of the proposed development and adjoining properties.

The proposed development achieves a good design outcome with an appropriate density and bulk that will result in a development that better achieves the objectives of Wall height development standard than an otherwise compliant development as detailed below:

- *Objective (a) - the proposed Wall height of the development is 1700mm over the maximum height permitted which will not be highly visible when viewed from the street. Notably, the maximum height non-compliance applies to the rear section of the proposed dwelling house which is not visible from the street and is due to the sloping nature of the land. The design of the development is sympathetic to the streetscape and will provide an appropriate transition and character of development for the streetscape;*
- *Objective (b) - the proposed dwelling house maintains the amenity of adjoining properties. The non-compliant Wall height will not result in any adverse overshadowing impacts on the property at No. 584 Henry Lawson Drive as discussed in Section 6 of this Statement. The Wall height will not affect the privacy of the adjoining properties as no habitable room windows have the potential to overlook the adjoining properties. The proposed development is two storeys in height for most of the development and is three storeys in height only for the portion of the staircase provides access to the rear open space. The staircase which results in a three-storey wall height is located at the rear of the dwelling house which will not be visible from the street.*
- *Objective (c) - the proposed Wall height of the development is a variation (1700mm) to the rear of the building which will not be visually obtrusive when viewed from the street. Therefore, the development does not offend the objective to provide height transitions between development. The subject site is located within a flood prone area with a high and medium floor risk which requires the floor levels of any habitable floors within the development to be set to a minimum height of RL 31.96 metres, being the PMF level plus freeboard. The existing site level at the front of the site beneath the position of the*

proposed roof ridge is RL 31 metres. Having regard to the PMF + freeboard level of RL 4.7 metres, the development is disadvantaged by requiring the floor levels to be set 2720mm above the existing site levels. Given this, development on the site should be permitted to achieve a height of 9 metres including the factor in the flood affectation.

As detailed earlier, the development proposes a maximum height of 9.00 metres, careful consideration was given to lowering the pitch of the roof to accommodate for the overall height, however, overall wall height was adversely affected due to flooding requirements. Accordingly, the development does not propose an excessive building height and merely raises the building due to the flooding requirements.

The proposed development achieves a good building design with appropriate density and bulk which would be compatible with the desired future character of the area. As detailed in the Statement, the proposed development incorporates the required streetscape and architectural detailing prescribed in the DCP.

The non-compliant wall height will not result in the intensification of land uses in the area. As discussed within the Statement, the proposed wall height will not create any amenity impacts for adjoining properties including overshadowing or privacy impacts. Having regard to the above, strict compliance with the development standard is considered unreasonable and unnecessary in this particular case and therefore there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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 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 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 control *“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 sites limitations in regards to flood affectation, road widening and foreshore building area restrictions.

The building controls applicable to this site under the BLEP 2015 and BDCP 2015 provide the framework that regulates the overall built form outcome expected on site. The developable area of the site is limited by the location of the SP2 zone at the front of the site and the restrictions for development outlined within the BLEP 2015 for development within a foreshore area. To develop the site and demonstrate compliance with the necessary setbacks, the dwelling requires the observation of a minimum front setback of 12m to the ground floor, 13m to the first floor and a 30m setback to the rear boundary. This significantly reduces the developable area of the site, providing a building depth of approximately 19.2-19.9m. The fall of the site across the available building footprint is approximately 800mm with the highest existing natural ground level being at 2.4m AHD.

The site is further constrained by the level of flood affectation that impacts the site. The subject site is a waterfront property and has rear access to the Georges River. The proposal is impacted by a high risk flood affectation and requires a flood free planning level of 4.7m AHD to be provided for any habitable floor area. The flooding affectation for this site would make the development of this site and compliance with the wall height standard onerous, given the limited building envelope available. The flood implications on the site require that the building design incorporates a finished floor level approximately 2.3m to 3.2m above existing natural ground level.

The breach in wall height has occurred as a result of significant site constraints and the requirement to consider wall height in relation to existing natural ground level. Were the proposed wall height to be considered in relation to finished floor level, in this case the 1 in 100 year floor level plus 500mm freeboard, the proposal as designed provides for a wall height that is less than 7m above the flood free planning level. The design put forward is conservative in its approach and does not seek excessive additional heights, thereby resulting in a built form outcome that is considered compatible with, and characteristic of, new residential development in the area and responding to site specific limitations.

The design, as proposed, demonstrates compliance with the overall building height of 9m as set the BLEP 2015. The non-compliance with wall height is considered to be a reflection of the site specific constraints and is indicative of development on waterfront land. The flood measures proposed for this site ensure that in a flood event the dwelling (habitable floors) will be located above the flood level to ensure the safety of residents, thus creating the additional ‘wall height’ non-compliance.

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, in regards to wall height, would result in the site incapable of being developed for a two storey residence and not allow for a design that provides a usable, functional layout, given the flood implications for the site.

The design as proposed has been undertaken to best respond to the site constraints, whilst allowing for a development that provides for a reasonable built form outcome. The current design is considered to achieve both the objectives of the zone and the objectives as outlined in the Clause 4.3 in regards to wall height and the expected built form in R2 Low Density zones. The proposed development whilst proposing a technical three storey design, presents as a two storey development when viewed from the street, with the third storey presenting at the rear, resulting from site specific flooding issues. The design depicted maintains a two storey presentation to Henry Lawson Drive, assisting the development in achieving the prevailing character expected in a R2 Low density residential zone, however responds to the site specific constraints resulting from flood implications to ensure a habitable development is provided.

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	3 storeys	<p>Max. 2 storeys</p> <p>The storey limit for dwelling houses is 2 storeys.</p> <p>In addition, dwelling houses in the foreshore protection area must ensure the wall height does not exceed 7 metres and the building height does not exceed 9 metres.</p>	No, see comment [1] below
Fill	Max. 600mm of fill	<p>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:</p> <p>(a) the dwelling house is required to be raised to achieve a suitable freeboard in accordance with Part B12 of this DCP; or</p> <p>(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.</p>	Yes
Front Setback	<p>Min. 12m</p> <p>Min. 13m</p>	<p>Ground floor– Min. 12m (5.5m from SP2 zone)</p> <p>First floor – Min. 13m (6.5m from SP2 zone)</p>	Yes
Side setbacks	<p>East 0.9-1.5m</p> <p>West – 0.9-1.5m</p>	<p>0.90m (minimum) walls up to 7m</p> <p>1.5m (minimum) walls above 7m</p>	No, see comment [2] below
Private open space	264 m ²	Min. 80m ² with a dimension of 5m throughout	Yes
Solar access (site)	Achieved to a living area	3 hours of sunlight between 8:00am and	Yes

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
		4:00pm at the mid-winter solstice to at least one living area of the proposed dwelling	
Solar access (private open space – site)	Achieved to the private open space of the dwelling	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)	To restrict solar access to the eastern dwelling at No. 584 Henry Lawson Drive	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.	No, see comment [3] below
Solar access (private open space – adjoining properties)	Achieved to rear private open space area at No. 584 Henry Lawson Drive	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 panels are located on the neighbouring property.	Development should avoid overshadowing any existing solar hot water system, photovoltaic panel or other solar collector on the allotment and neighbouring properties.	Yes
Visual Privacy (living areas)	No windows are proposed that look directly into living or bedroom windows of neighbouring properties.	Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling the development must offset the windows; provide a minimum sill height of 1.5 metres above floor level; provide fixed obscure glazing; or use another form of screening.	Yes
Visual Privacy (private open space)	The windows at the south eastern portion of the proposal are located off kitchens and bathrooms.	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	Yes

STANDARD	PROPOSED	BDGP 2015 PART B1	
		REQUIRED	COMPLIANCE
		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)	The proposal incorporates a ground floor alfresco that presents as a balcony due to the elevated levels which is accessible off a dining room and a first floor balcony located off a bedroom. Both balconies exceed a dimension of 1.5m.	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.	No, see comment [4] below
Roof pitch	2 degrees	Max. roof pitch 35 degrees	Yes
Car parking	Double garage provided	Min. 2 car parking spaces for a dwelling, one of which must be covered	Yes
Car parking design	The garage as proposed is considered to be integrated into the dwelling and provides for an appropriate residential built form.	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 trees proposed has been supported subject to conditions of consent for the replacement of trees.	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)	The proposal was referred to Roads and Maritime Services (RMS) pursuant to 4.46 of the EP and A Act 1979. The proposal was reviewed and concurrence was provided requiring that the vehicles be able to leave the site in a forward direction, as a result the proposal has been amended and landscaping removed to ensure compliance can be achieved.	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	No, comment [5] below
Front fences	Maximum height of 1m proposed Maximum solid component 1m	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.	Yes

[1] Storeys

The development application proposes a three storey dwelling. The topography of the site, sloping to the river at the rear, results in a 'under-croft area' being created as the elevations are enclosed partially on the eastern and western side, with the rear elevation remaining open to allow for the movement of flood water.

When viewed from the street the proposal presents as a two storey dwelling, however presents as a three storey development when viewed from the river. The maximum height of the under croft area when viewed from the rear is approximately 3.2m above natural ground level.

The proposed under-croft cannot be used for habitable purposes and contains only a laundry and bathroom. The remaining area is proposed (and will be conditioned) to remain open to ensure the flood waters can move through the site in the event of a flood. The non-compliance has occurred due to the extent of fall on the site and the elevated floor level required to meet Council's flood risk management section of the BDCP 2015.

It is considered that the proposed development is consistent with the overall building height objectives in both the BLEP and the BDCP 2015 in that the overall design, bulk and scale of the development is consistent with the existing character of the residential area. Furthermore the three storey component is only visible from the river and park and will create no adverse impacts on the streetscape in terms of bulk and scale. The design presented to Henry Lawson Drive depicts a typical two storey residential form and is considered to be compatible with the residential streetscape.

It is considered that this non-compliance will not create any adverse impacts on the surrounding environment, rather remain consistent with surrounding developments that present to the river.

[2] Side setbacks

The development proposes a reduced side setback to both the eastern and western boundaries. The Bankstown DCP states that for the portion of a building wall that has a wall height greater than 7 metres, the minimum setback to the side boundary of the allotment is 1.5 metres. The proposed development exceeds 7 metres in wall height to the eastern and western elevation. The development generally proposes a 900mm setback to both boundaries, with a small recess to each boundary providing a 1.5m side setback to the east and west respectively. The proposal is bound to the west by a reserve and to the east by a single storey dwelling.

Consideration of Council's flood policy requires that any proposed residential development on site have an elevated finished floor level. The required finished floor level as a result of the flood affection elevates the dwelling and results in a technical non-compliant wall height variation as the wall height is measured to the natural ground below. Were the wall height measured from the required finished floor level, the proposed walls do not exceed a height of 7 metres. The insistence on an additional 600mm setback for the length of the building wall to both the eastern and western elevation is considered onerous given the limited site area available to accommodate the proposal. Further, the increased setback to the boundaries will

not result in any further non-compliance for the proposal in terms of amenity or solar access to the adjoining properties. It is considered that the proposal achieves satisfactory visual privacy and the level of solar amenity afforded to No. 584 Henry Lawson Drive, would be no different with an increase in side setback of 600mm.

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

[3] Solar access

The eastern adjoining development is a single storey dwelling. The living areas to the dwelling are located generally to the south-east with a small kitchen window located on the western elevation.

The living room windows in the south east elevation currently receive limited solar access. The kitchen window on the western elevation currently receives solar access. The window in the western elevation to the kitchen area is located in the first third of the western building wall. The window is located approximately 15 metres from the front property boundary.

The front (northern) elevation of the dwelling contains bedrooms, a laundry and an entry. Within the dwelling itself, the entry area leads into small hallway which has access to a bedroom and to the kitchen. Through the kitchen, access to the rear of the dwelling to the bathroom, bedrooms and living areas located to the north east and south east of the site is achieved. The dwelling does not have any living areas located at the front. The existing residence has been designed to take advantage of the locality and has positioned the living areas generally to the south of the dwelling to optimize the water views available.

The development of the subject site, as proposed in this application, will result in the dwelling located at 584 Henry Lawson Drive, failing to receive 3 hours solar access to a living area, contrary to the provisions of BDCP 2015. The dwelling receives solar access to the kitchen window in its western elevation for the period between approximately 1pm to 4pm at mid-winter. After the development, solar access will not be available at this time.

The location of the kitchen area in the western elevation, within the adjoining development to the west makes compliance with solar access for the adjoining allotment difficult to achieve. If any development on the subject site were to provide 3 hours direct solar access to the adjoining dwelling, it would be necessary to provide this solar access to the window in the western elevation.

The subject site is already constrained in terms of its available footprint due to the existing zoning changes and BLEP 2015 constraints in regards to the location of building/development within the foreshore area and the flooding implications for any design proposed.

The flooding affectation for this site would also make the development of this site and compliance with the control onerous, given the limited building envelope available. The flood implications on the site require that the building design incorporates a finished floor level above the 1 in 100 year flood level. This requires that any habitable floor areas propose a minimum finished floor level of 4.7m AHD, being approximately 2.3m to 3.2m above existing natural ground level. The windows on the adjoining property, as indicated on the survey plan

submitted, depict windows with sill heights ranging from 4.86 AHD to a maximum top height of 5.87m AHD on the western elevation of the existing dwelling to the east. The subject site would be limited to proposing a part-single storey dwelling, however a substantial setback in excess of 4m would still be required to the eastern boundary for even a single storey structure on the subject site to maintain satisfactory solar access to the existing dwelling.

The existing site constraints, accompanied by the design of the proposal to the east, result in a building footprint which would make development of the subject lot impractical and not allow for a reasonable residential outcome to be achieved on the site and still preserve solar access to the existing dwelling at 584 Henry Lawson Drive.

The inability to provide a compliant level of solar access to the eastern adjoining dwelling is considered to be a function of the age of the dwelling, its layout design and the amenity desired by the residents to take advantage of the views afforded to the site and generally orientating living areas towards the south, rather than a reflection of poor design of this proposal. Unlike the neighbouring development, the subject proposal provides a ground floor living area to the western elevation that provides an adequate level of solar access for the occupants of the proposed development. The subject site is bound to the west by a reserve and solar access will be maintained in this design (reliant on the western elevation) as a result of the adjoining site. It is further considered that any future likely development of the 584 Henry Lawson Drive would be subject to compliance with the current controls and result in a design that utilises the northern orientation of the site to achieve solar access.

In terms of the reasonableness to permit a variation to solar access provisions in this case, the New South Wales Land and Environment Court's Planning Principle on solar access is addressed below:

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

The adjoining development can be said to be highly vulnerable to overshadowing by most compliant single storey forms of development on the subject site, mainly due to that development's age and design where it has failed to take advantage of its northern orientation in the location of living rooms.

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

The amount of solar access lost is substantial. The existing development has solar access to living rooms for the period between approximately 1pm until 4pm at mid-winter. After the development no direct sunlight will be provided to these areas.

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by*

a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.

It is unlikely that any two storey development, and possibly single storey development, could provide a reasonable outcome for the adjoining site, due to the design of the existing dwelling at 584 Henry Lawson Drive. In order to allow a two storey form of development whilst still maintaining solar access to one living area room window along the western elevation of the adjoining dwelling, the development would have to be setback approximately 16 metres from the front property boundary with a side setback of greater than 4m to the eastern boundary due to the height of the floor levels required resulting from the flood affectation. This would produce a development which has little consistency with other development in terms of setbacks and general appearance in the streetscape.

Alternatively a single storey proposal could be considered on the site, however given the levels of the existing windows as shown on the survey plan having a sill height ranging from 4.86m AHD to 5.29m AHD and a top height maximum of 5.87m AHD on the western elevation, the design would still require an increased front and side setback as the minimum finished floor level required is 4.7m AHD. However, owing to the requirements for front and rear setbacks and garaging, the maximum floor space that could be achieved would be significantly reduced and result in a design with poor functionality, which can be considered to be a poor development outcome on the site.

- *For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself.*

Not applicable in this instance.

- *For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight.*

Not applicable in this instance.

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration.*

Not applicable in this instance.

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.*

It is further considered that any future likely development of the 584 Henry Lawson Drive would be subject to compliance with the current controls and result in a design that utilises the northern orientation of the site to achieve solar access.

On the basis of the above, it is considered that it is unreasonable to restrict this development from proceeding on the subject site due to the design of a neighbouring development, as there is an inability for the subject site to be developed in an alternative manner and still maintain compliance given the existing site specific constraints.

[4] Visual privacy balconies

The proposal incorporates an alfresco area to the ground floor, however this alfresco is treated as a balcony due to the level of elevation required resulting from both the slope of the site and the flood free planning levels required. The alfresco is located off the dining area and has a depth of 2.8m thus failing the BDCP in regards to location and depth. The first floor balcony proposed is located off the main bedroom and proposes a depth of 1.8m, failing the BDCP in regards to depth for a rear facing balcony.

The balconies located at the rear of the site will overlook the Georges River. Overlooking to the nearest residential property to the east is reduced given the recessed balcony design proposed to the eastern side. The balconies are open to the western boundary, however the site is bounded to the west by a reserve.

It is considered that a reduction in privacy for the adjoining residents as a result of the proposed alfresco and balcony given the failures with the BDCP is unlikely due to the balconies' design and location. The building wall sits forward of the balcony width on the eastern side, creating a recess for the balconies within the building and limiting views out to the eastern property.

It is considered reasonable that the enjoyment of views to the Georges River should be maximised within the proposed development. It is considered that the variation proposed to both the maximum width and location of the balcony off a living area, are reasonable in this instance.

The surrounding locality provides for a scenic outlook not typical of a built-up residential environment. This landscape setting is unique to the wider local government area making the proposed variation worth of support.

[5] Landscaping

The variation to Clause 2.31 (a) and (c) for reduced landscaping within the front setback is required as RMS have requested that the driveway be designed to allow cars to leave the site in a forward direction due to the location on Henry Lawson Drive. In order to ensure that vehicles leave the site in a forward direction, the proposal has been required to provide a substantial hard-stand area between the front boundary and the proposed dwelling for access and manoeuvrability. This is to allow motorists sufficient space to manoeuvre their vehicles the site and to exit the property in a forward direction.

It is considered that the proposed non-compliance in this instance can be supported given the RMS requirements. The non-compliance will allow for vehicles to leave the site in a forward direction increasing safety to motorists, residents and pedestrians.

Planning Agreements [section 4.15(1)(a)(iia)]

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 is generally compliant with Council's planning controls, with the exception of the wall height as contained within BLEP 2015 and noncompliance with the requirements of the BDCP 2015, which have been addressed previously within this report.

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 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 a Low Density Residential zone and that the site is capable of accommodating the proposed development, as set out previously in this report. Accordingly, the site is considered to be suitable for the proposed development.

Submissions [section 4.15(1)(d)]

No submissions have been received.

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(i) of the Environmental Planning and Assessment Act 2018, and the relevant planning controls.

The proposed development complies with all applicable planning controls, with the exception of wall height in accordance with the BLEP 2015 and BDCP variations. It is recommended that the variations be supported given the nature of the non-compliances. Therefore, approval of the development application is recommended.

CONDITIONS OF CONSENT

- 1) The proposal shall comply with the conditions of Development Consent. A Construction Certificate shall not be issued until the plans and specifications meet the required technical standards and the conditions of this Development Consent are satisfied.
- 2) Development shall take place in accordance with Development Application No. DA-1013/2017, submitted by Mr Dakarmanji Mahmoud, accompanied by Drawing No. 02 – 09 (inclusive) and The Schedule of Finishes, prepared by Visualised Concepts, dated 01 March 2018 and affixed with Council's approval stamp, except where otherwise altered by the specific amendments listed hereunder and/or except where amended by the conditions contained in this approval.
- 3) The Preliminary Acid Sulphate Soil Assessment submitted in support of this development application prepared by Geotechnique Pty Ltd, titled '*Proposed dwelling development/inground swimming pool/boat shed, Lot 4 Section 1 in DP9510, 582 Henry Lawson Drive, East Hills, Preliminary Acid Sulphate Soil Assessment*', dated 5 September 2017 and the recommendations of the report form part of the development consent.
- 4) Any new building or structures, together with any improvements integral to the future use of the site, are to be erected clear of the land required for road (unlimited in height or depth). The front fence can be located within this area, however should the road be acquired, the fence will be removed.
- 5) All vehicles are to enter and leave the site in a forward direction and all vehicles are to be wholly contained on site before being required to stop.
- 6) The developer shall construct all structures in flood compatible building materials to a level of 500mm above the estimated 1 in 100 year flood level in the Georges River (being 4.7 metres AHD).
- 7) Any flood sensitive devices or materials must be stored above the 1 in 100 flood level.

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) The developer shall provide a Structural Engineer's Report to certify the design of the structures can withstand the forces of floodwater, debris and buoyancy up to and including 500mm above the estimated 100 year flood level (being 4.7 metres AHD), in the Georges River, prior to the issue of a Construction Certificate.

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

The Landscape Plan, prepared by Visualised Concepts, Project No 1715, Dwg No 11, dated 30/10/2017 shall be modified in accordance with the following conditions:

- i. 1 x tree known to attain a minimum height of 10 metres at maturity in the front setback.
- ii. 2 x trees known to attain a minimum height of 15 metres at maturity in the rear yard.
- iii. Tree species used shall be locally occurring indigenous tree species – refer to Section 14 and Appendix C – Locally Occurring Indigenous Tree Species, in the *Bankstown City Council Tree Management Manual*
- iv. Replacement trees are to be a minimum container size of 75 litres. They shall comply with *NATSPEC Specifying Trees: a guide to assessment of tree quality* (2003) or *Australian Standard AS 2303 – 2015 Tree stock for landscape use*.
- v. The trees are to be planted no closer than 3.5 metres from the wall of any approved dwelling on the property.
- vi. All new plantings shall be located so future growth will not be in conflict with electricity wires. Consideration should be given to the location of new electricity poles and wires so that sufficient space is provided.
- vii. The replacement trees are to be planted prior to the issue of an occupation certificate.
- viii. The tree/s shall be maintained for the life of the development.

The amended Landscape Plan shall be submitted to the principal certifying authority for final approval prior to the issue of the Construction Certificate.

- 11) The landscape plan shall include the provision for the replacement of all boundary fencing where required. A 1.8m fence is to be erected along all side boundaries of the subject allotment at full cost to the developer. The colour of the fence is to complement the development and the fence is to be certified by a suitably qualified engineer, the proposed fencing is adequately constructed so as to withstand the forces of floodwaters, or collapse in a controlled manner to prevent the undesirable impediment of flood waters. The flood affectation on the site requires that any side fences proposed must be a maximum height of 1.8m and allow for the free flow of water onsite. The provision of solid brick fencing within a high risk area cannot be supported. The selection of materials and colours of the fence is to be determined in consultation with the adjoining property owners. Fencing forward of the building line shall be no higher than 1m unless otherwise approved by Council.
- 12) 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.

Trees to be removed: On-site - Approval is granted for the removal of the following trees:

- a) Any tree/s growing within the building footprint of the approved structures;
- b) Any tree/s where the base of the trunk of the tree is located within 3 metres of the external wall of an approved dwelling on the same property;
- c) Any declared noxious plant. The applicant, builder and all contractors are to ensure that all noxious plants are properly identified, controlled and/or removed on this site without injury or death of any protected plants;
- d) Any tree species listed under clause 2.4 of Bankstown Development Control Plan 2015 Part B11 – Tree Management Order;
- e) Any of the following tree/s:

Tree Species	Location
Eucalyptus sp (Gum)	Front setback

All tree removal works must comply with the *Amenity Tree Industry – Code of Practice, 1998* (Workcover, NSW) and *Guide to Managing Risks of Tree Trimming and Removal Work* (Safe Work Australia 2016).

All other vegetation not specifically identified above, and protected by Councils Tree Management Order, is to be retained and protected from construction damage and pruning. The Tree Management Order protects trees over 5m in height.

- 13) 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.
- 14) 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.

- 15) 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.

- 16) 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.
- 17) 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 \$5,875.50 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.

- 18) 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.
- 19) The design and construction of any new gutter crossing on Henry Lawson Drive shall be in accordance with Roads and Maritime requirements. Details of these requirements should be obtained from Roads and Maritime Services, Manager Developer Works, Statewide Delivery, Parramatta (telephone 9598 7798).

Detailed design plans of the proposed gutter crossing are to be submitted to Roads and Maritime for approval prior to the issue of a Construction Certificate and commencement of any road works.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approved road design plans by roads and Maritime.

- 20) The developer shall apply for a Work Permit and obtain approval from Council, for the following engineering works in front of the site, within the future Council Road Reserve, at the applicant's expense:
- a) A Light Duty VFC of maximum width of 5.5 metres at the property boundary. ***The developer must apply to the RMS for approval of the Crossover at the future kerb alignment.*** All construction of the works at the Kerb alignment must be to the RMS satisfaction.
 - b) Removal of all driveway surfaces, reinstatement of laybacks to kerb and gutter and reshaping of the footway, all associated with redundant VFCs.
 - c) Repair of any damage to the public road including the footway occurring during development works.
 - d) Reinstatement of the footway reserve and adjustment or relocation of existing public utility services to match the footway design levels as proposed on the approved Work Permit. Adjustment or relocation to any public utility services shall be carried out to the requirements of the public utility authority.

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

- 21) The developer shall engage a suitably qualified Engineer to prepare a final stormwater drainage system plan to be generally in accordance with the concept plan Stormwater Plan, Revision B, dated 15 December 2017 by MM Stormwater Consultants, the requirements of the BASIX Certificate and in accordance with the requirements contained in Council's Development Engineering Standards. The Engineer must amend the stormwater discharge to be towards an existing piped discharge or, if one doesn't exist, to an Infiltration Transpiration Bed within the subject allotment. The Engineer shall certify that the design and plans comply with Council's Development Engineering Standards and the relevant Australian Standards.
- 22) 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.

- 23) 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.
- 24) 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.
- 25) 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) Undertake footway, paving, vehicular crossing (driveway), landscaping or stormwater drainage works within a public footway or public road,
- d) Install utilities in, under or over a public road,
- e) Pump water into a public footway or public road from any land adjoining the public road,
- f) Erect a structure or carry out a work in, on or over a public road
- g) Require a work zone on the public road for the unloading and or loading of vehicles
- h) Pump concrete from within a public road,
- i) Stand a mobile crane within a public road
- j) Store waste and recycling containers, skips, bins and/or building materials on any part of the public road.
- k) The work is greater than \$25,000.
- l) 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.

- 26) The pump out drainage system for the access ramp and basement car parking area 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.
- 27) Separate approval is required prior to the demolition of the existing structures located on the property. Any demolition activity is to comply with the requirements of Bankstown demolition & construction guidelines – March 2015.

CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION WORKS COMMENCING

- 28) 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 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
 - b) 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
 - c) 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.
- 29) 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.
- 30) Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to the commencement of any works.

Details should be forwarded to:

The Sydney Asset Management
Roads and Maritime Services
PO Box 973 Parramatta CBD 2124

A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued. With regard to the Civil Works requirement please contact the Roads and Maritime Project Engineer, External Works Ph: 8849 2114 or Fax: 8849 2766

- 31) 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.
- 32) 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.
- 33) 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.
- 34) 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.

- 35) 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.
- 36) 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.
- 37) 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.

- 38) 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

- 39) Any new information which comes to light during works which has the potential to alter previous conclusions about acid sulphate soils, shall be notified to Council immediately.
- 40) 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.
- 41) 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.
- 42) 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.
- 43) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 44) 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.

- 45) 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.
- 46) All excavations and backfilling must be executed safely and in accordance with the relevant Australian Standards.
- 47) 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.
- 48) 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.
- 49) All boundary fencing behind the building line shall be replaced by a 1.8m high fence in accordance with condition 11 at the developer's expense. Fencing forward of the building line shall be no higher than 1m unless otherwise approved by Council.
- 50) The swimming pool is to be enclosed by a child resistant barrier comprising fences and gates designed, constructed, installed and maintained in accordance with Australian Standard 1926-2012 - Swimming Pool Safety Part 1: Safety barriers for swimming pools.

A notice containing the words "Young Children Should be Supervised When Using this Swimming Pool" and "Pool Gates Must Be Kept Closed At All Times" and "Keep Articles, Objects and Structures At Least 900 Millimetres Clear Of The Pool Fence At All Times" together with a simple flow sequence containing details of resuscitation techniques must be displayed in a prominent position in the immediate vicinity of the pool.

Overflow and discharge pipes from the pool and filtration unit must be connected to the sewer.

- 51) The proposed use of the pool / spa filter equipment must not give rise to offensive noise as defined in the Protection of the Environment Operations Act 1997 and Protection of the Environment Operations (Noise Control) Regulation 2000. All noise emitting equipment must be housed in an insulated enclosure or appropriately positioned so as to cause no nuisance to neighbours.
- 52) 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.

- 53) 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

- 54) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 55) 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.
- 56) The swimming pool / spa shall not be used until Council or the PCA has issued a final Compliance Certificate.
- 57) 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.
- 58) Any lighting of the premises shall be installed in accordance with 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. 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.
- 59) The premises must be readily identified from the street with the allocated house numbers.
- 60) A Copy of the Work Permit Compliance Certificate shall be submitted to the PCA Prior to the issue of the Occupation Certificate.
- 61) The developer must register a Restriction on the Use of Land, over the title of the subject lot, which states the following terms.

The registered proprietor of the land must not change any of the ground levels, or construct any walls, within the site boundaries, unless approved, in writing, by Canterbury Bankstown City Council.

The registered proprietor of the land must not enclose the undercroft area, below the lowest habitable floor area, so as to impede the free passage of flood waters.

The developer must register the restriction prior to the issue of any Occupation Certificate for the development.

-END-

Canterbury Bankstown Local Planning Panel - 3 April 2018

ITEM 4	Suite 2, 10-14 Padstow Parade, Padstow
	Fitout of tenancy for future retail/commercial use
FILE	DA-1016/2017– Revesby Ward
ZONING	R4 High Density Residential SP2 Infrastructure: Road Infrastructure Facility
DATE OF LODGEMENT	2 November 2017
APPLICANT	Canterbury Bankstown Council
OWNERS	Transport for NSW / Canterbury Bankstown Council
ESTIMATED VALUE	\$32,000
SITE AREA	162.1m²
AUTHOR	Planning

SUMMARY REPORT

The Director of Planning has requested that this matter be reported to Council's Local Planning Panel for determination as Canterbury Bankstown Council is the applicant for the development and part owner of the land.

Development Application DA-1016/2017 proposes the fitout of a tenancy for a future retail/commercial use. The proposed works relate solely to the fitout of the ceiling and provision of air conditioning within the tenancy.

The Development Application has been assessed in accordance with the requirements of Section 4.15(1) of the EP&A Act 1979 including an assessment against Greater Metropolitan Regional Environmental Plan 2 – Georges River Catchment, Bankstown Local Environmental Plan (BLEP) 2015 and Bankstown Development Control Plan (BDCP) 2015. The proposal generally complies with the relevant legislation and benefits from 'existing use rights' for use as a retail (a form of commercial) tenancy.

Development Application DA-1124/2013 was approved at Council's Ordinary Meeting of 15 April 2014 allowing for 'partial construction and use of the ground and first floor of a multi-storey carpark, including amenity facilities and a retail tenancy' at 10-14 Padstow Parade, Padstow. BLEP 2001 was in force at the time of the assessment of that application, with the subject sites zoned '2(b) – Residential B' and 'Special Uses: Parking Purposes'. In accordance with BLEP 2001, the proposed retail tenancy (which was defined as a 'shop'), was not permissible in the zones. However, approval for the retail tenancy was approved pursuant to 'Clause 12 – Additional discretion to grant consent' of the BLEP 2001.

Development Application DA-1078/2016 was approved for the 'internal fitout of ground floor tenancy for use as a recruitment office'. The proposed use related to a portion of the previously approved retail tenancy (approximately half of the floor area). As the subject site had been rezoned to 'R4 High Density Residential' and 'SP2 Infrastructure: Road Infrastructure Facility' under the BLEP 2015, an 'office premises' was prohibited. As such, consideration was given to the existing use rights provisions contained in the Environmental Planning and Assessment Act, 1979 and Environmental Planning and Assessment Regulation, 2000. This application was also supported by Council's Planning Officer noting:

Consent for the use of the premises as a retail tenancy (defined as a 'shop') was approved by Council in accordance with Clause 12 of the BLEP 2001. Use of the premises as a retail tenancy (or any other form of commercial use) is now prohibited in the R4 and SP2 zones under the BLEP 2015. While the premises was vacant, it was noted that the stratum subdivision of the car park development (DA-1127/2015) was approved by Council on 1 March 2016 and therefore approval for the subject use had been sought well within a 1 year period of the premises being capable of occupation. Further, the car park development was a Crown development under Part 5 of the EP&A Act, and therefore no Construction Certificate or Occupation Certificate was required to be issued with respect to the development in order to formally identify the commencement of 'occupation'.

The current Development Application DA-1016/2017 now seeks approval for the fitout of Unit 2 (the 'other' half of the approved retail tenancy). On 14 December 2017, Council sought legal advice to confirm that existing use rights continued to benefit the site and was advised that the abandonment of the now prohibited use for the purpose of retail did not arise, given the active and genuine endeavour by the proponent to lease the premises.

The subject application was neighbour notified for a period of 14 days between 6 November 2017 and 20 November 2017. No objections were received.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

It is recommended that Development Application DA-1016/2017 be approved subject to the attached conditions.

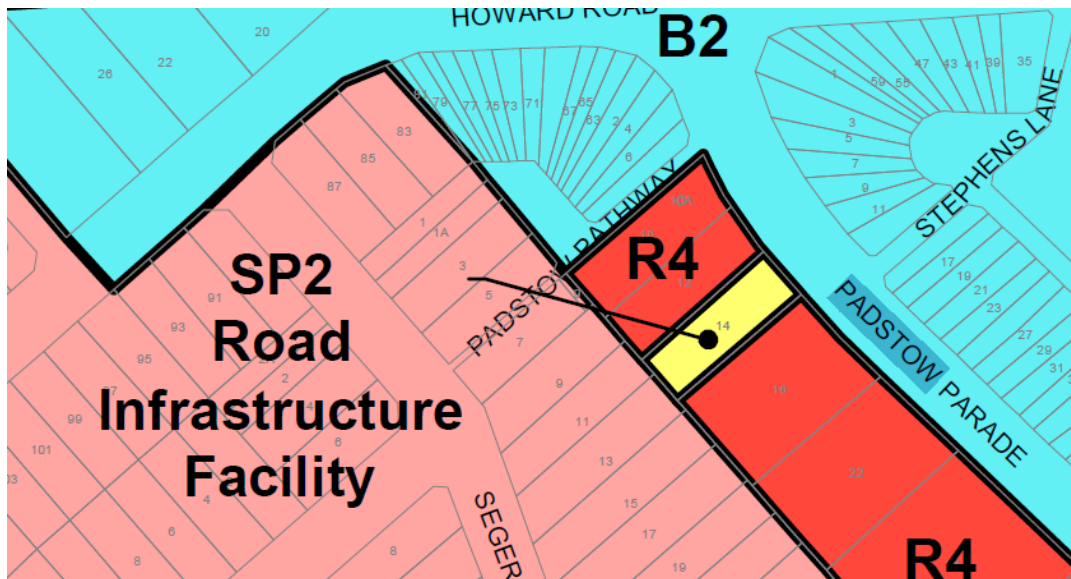
ATTACHMENTS

- A. Section 4.15 Assessment Report
- B. Conditions of Consent

DA-1016/2017 ASSESSMENT REPORT

SITE AND LOCALITY DESCRIPTION

The subject site is known as Suite 2, 10-14 Padstow Parade, Padstow and is located within the R4 High Density Zone and SP2 Infrastructure: Road Infrastructure Facility Zone. The subject tenancy straddles both these zones and is located on the ground floor of a commuter car park with a frontage to Padstow Parade. It has an area of 162.10m².



The site is located on the south-western side of Padstow Parade and is immediately adjacent to Suite 1, 10-14 Padstow Parade (also located on the ground floor of the commuter carpark). Suite 1 is currently occupied by National Workforce as an office space. Further to the south of the site are dwelling houses whilst to the immediate north-west of the site are a series of shops. To the north of Padstow Parade is the Padstow Train Station.



PROPOSED DEVELOPMENT

Development Application DA-1016/2017 proposes internal fitout works to an existing approved retail/commercial tenancy. The works are limited to a ceiling and an air conditioning fitout only. Any future tenant will need to apply to Council for the use of the premises so that Council may regulate the operation of the tenancy.

SECTION 4.15 ASSESSMENT

The proposed development has been assessed pursuant to Section 4.15(1) of the Environmental Planning and Assessment Act, 1979. In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the proposed development.

Environmental Planning Instruments [section 4.15(1)(a)(i)]***Greater Metropolitan Regional Environmental Plan 2 – Georges River Catchment***

The site is located within land identified as being affected by Greater Metropolitan Regional Environmental Plan 2 – Georges River Catchment. The GMREP 2 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 2.

State Environmental Planning Policy 55 – Remediation of Land

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

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

The proposed development is for internal fitout works to an existing tenancy only. There is no evidence to suggest that the site is contaminated, nor is it considered necessary for any further investigation to be undertaken with regard to potential site contamination. The subject site is considered suitable for the development application and therefore satisfies the provisions of SEPP 55.

Bankstown Local Environmental Plan 2015

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

- Aims of Plan
- Maps
- 1.9A Suspension of covenants, agreements and instruments
- 2.1 Land use zones
- 2.2 Zoning of land to which Plan applies
- 2.3 Zone objectives and Land Use Table
- Zone R4 High Density Zone and SP2 Infrastructure: Road Infrastructure Facility

Of relevance to the assessment of this application under BLEP 2015, is that the tenancy is zoned R4 High Density Residential and SP2 Infrastructure: Road Infrastructure Facility, which does not permit commercial and retail land uses (apart from neighbourhood shops). In that regard, the application is reliant on the fact that the site benefits from existing use rights for the application to be supported. This is demonstrated through the history of the site as discussed below:

Development Application DA-1124/2013 was approved at Council's Ordinary Meeting of 15 April 2014 allowing for 'partial construction and use of the ground and first floor of a multi-storey carpark, including amenity facilities and a retail tenancy' at 10-14 Padstow Parade, Padstow. BLEP 2001 was in force at the time of the assessment of that application, with the subject sites zoned '2(b) – Residential B' and 'Special Uses: Parking Purposes'. In accordance with BLEP 2001, the proposed retail tenancy (which was defined as a 'shop'), was not permissible in the zones. However, approval for the retail tenancy was approved pursuant to 'Clause 12 – Additional discretion to grant consent' of the BLEP 2001.

Development Application DA-1078/2016 was approved for the 'internal fitout of ground floor tenancy for use as a recruitment office'. The proposed use related to a portion of the previously approved retail tenancy (approximately half of the floor area). As the subject site had been rezoned to 'R4 High Density Residential' and 'SP2 Infrastructure: Road Infrastructure Facility' under the BLEP 2015, an 'office premises' was prohibited. As such, consideration was given to the existing use rights provisions contained in the Environmental Planning and Assessment Act, 1979 and Environmental Planning and Assessment Regulation, 2000. This application was also supported by Council's Planning Officer noting:

Consent for the use of the premises as a retail tenancy (defined as a 'shop') was approved by Council in accordance with Clause 12 of the BLEP 2001. Use of the premises as a retail tenancy (or any other form of commercial use) is now prohibited in the R4 and SP2 zones under the BLEP 2015. While the premises was vacant, it was noted that the stratum subdivision of the car park development (DA-1127/2015) was approved by Council on 1 March 2016 and therefore approval for the subject use had been sought well within a 1 year period of the premises being capable of occupation. Further, the car park development was a Crown development under Part 5 of the EP&A Act, and therefore no Construction Certificate or Occupation Certificate was required to be issued with respect to the development in order to formally identify the commencement of 'occupation'.

The current Development Application DA-1016/2017 now seeks approval for the fitout of Unit 2 (the 'other' half of the approved retail tenancy). On 14 December 2017, Council sought legal advice to confirm that existing use rights continued to benefit the site and the following was advised:

- *In 2014, Development Consent was issued for the construction works that are now on site which included a retail space at Ground Level*
- *That consent was activated consistent with law and constructed within a time causing activation*
- *The zone has now changed prohibiting retail on the land*
- *The abandonment of the now prohibited use for the purpose of retail does not arise, given the active and genuine endeavour by the proponent for leasing purposes in engaging a real estate agent and providing the advertising boards on site and other advertising material in that respect.*
- *... the DA that the Council would be submitting to itself should be concerned for the retail fitout of the consent granted for the purpose of retail.*

The applicant has provided correspondence dated 9 September 2015, authorising signage to lease the premises to be erected on 11 September 2015. Attached to that correspondence is imagery of that signage which was then erected on the site. A timeline of events has also been provided detailing the leasing history of the site.

Based on the legal advice and the evidence submitted by the applicant, it is considered that the proponent has demonstrated an active and genuine endeavour to lease the premises for commercial/retail purposes. As such, it is considered that the consent may be granted for the tenancy to be fitted out for retail purposes, as was approved under DA-1124/2013.

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)]

An assessment of the development application against the primary numerical controls contained within Section 16 of Part B1 of BDCP 2015 was undertaken and it was noted that the controls are largely not relevant to this development application. It is considered that the proposed fitout works, being entirely internal to the subject tenancy, maintains consistency with the desired character of the R4 High Density Residential Zone having no impact on the existing prevailing suburban character and amenity of the residential environments, particularly given the nature of the base building that was originally approved and has now been constructed.

Planning Agreements [section 4.15(1)(a)(iiia)]

There are no planning agreements applicable to the proposed development.

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

The proposed development is not inconsistent with the relevant provisions of the Environmental Planning and Assessment Regulation, 2000. An assessment of the application against the provisions contained in 'Part 5 Existing Uses' has been undertaken as shown in the following table:

STANDARD	COMPLIANCE
<p>41) Certain development allowed (cf clause 39 of EP&A Regulation 1994)</p> <p>(1) An existing use may, subject to this Division:</p> <p>(a) be enlarged, expanded or intensified, or</p> <p>(b) be altered or extended, or</p> <p>(c) be rebuilt, or</p> <p>(d) be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act, or</p> <p>(e) if it is a commercial use—be changed to another commercial use (including a commercial use that would otherwise be prohibited under the Act), or</p> <p>(f) if it is a light industrial use—be changed to another light industrial use or a commercial use (including a light industrial use or commercial use that would otherwise be prohibited under the Act).</p>	<p>NA</p> <p>NA</p> <p>NA</p> <p>Noted – the existing approved retail tenancy shall be fitout for a retail/commercial tenancy</p> <p>Yes – the existing approved retail tenancy shall be fitout for a retail/commercial tenancy</p> <p>NA</p>
<p>(2) However, an existing use must not be changed under subclause (1) (e) or (f) unless that change:</p> <p>(a) involves only alterations or additions that are minor in nature, and</p> <p>(b) does not involve an increase of more than 10% in the floor space of the premises associated with the existing use, and</p> <p>(c) does not involve the rebuilding of the premises associated with the existing use, and</p> <p>(d) does not involve a significant intensification of that existing use.</p> <p>(e) (Repealed)</p>	<p>NA</p> <p>NA</p> <p>Noted</p> <p>Yes</p>
<p>(3) In this clause:</p> <p>commercial use means the use of a building, work or land for the purpose of office premises, business premises or retail premises (as those terms are defined in the Standard Instrument).</p> <p>light industrial use means the use of a building, work or land for the purpose of light industry (within the meaning of the standard instrument set out in the Standard Instrument (Local Environmental Plans) Order 2006).</p>	<p>Noted</p>
<p>45 Development consent required for changes of existing uses (cf clause 43 of EP&A Regulation 1994)</p> <p>Development consent is required:</p> <p>(a) for any change of an existing use to another use, and</p> <p>(b) in the case of a building, work or land that is used for different existing uses, for any change in the proportions in which the various parts of the building, work or land are used for those purposes.</p>	<p>NA – not proposed</p> <p>NA – not proposed</p>

The Likely Impacts of the Development [section 4.15(1)(b)]

The likely impacts of the proposal have been managed through the fitout works being solely located within the tenancy and the tenancy was originally approved for retail purposes. The proposed fitout is considered to be compatible with the intended outcomes of the original approval.

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

The proposed fitout works will not alter the existing built form. It is therefore considered that the proposed works are compatible with the existing and desired future character of the locality, as set out in this report.

Submissions [section 4.15(1)(d)]

The application was neighbour notified for a period of 14 days between 6 November 2017 and 20 November 2017. No objections were received.

The Public Interest [section 4.15(1)(e)]

Approval of the proposed development is not considered to contravene the public interest.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 4.15b(1) of the Environmental Planning and Assessment Act 1979, and the relevant planning controls. The fitout would allow for the future occupation of the premises facilitating the orderly and economic use of the site.

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-1016/2017, submitted by Canterbury Bankstown Council, accompanied by Drawing No. 5, 16 & 20 of 45, Revision 1, prepared by A W Edwards Pty Limited, dated 22 May 2015 and affixed with Council's approval stamp, except where otherwise altered by the specific amendments listed hereunder and/or except where amended by the conditions contained in this approval.
- 3) No approval is given or implied for the use of the site by a future tenant. A separate application shall be submitted to Council prior to a tenant occupying the subject tenancy.
- 4) A separate application shall be submitted to Council prior to the erection of any additional signage unless the proposed signage is "exempt development" in accordance with Bankstown DCP 2005 – Part D1.

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

- 4) 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.
- 5) 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.
- 6) 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.
- 7) 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.
- 8) The existing building must be brought into conformity with the Building Code of Australia (BCA), to protect persons using the building, and to facilitate their egress from the building in the event of fire, or to restrict the spread of fire from the building to other buildings nearby. Details indicating compliance with the Performance Requirements of the BCA must be provided to the certifying authority prior to the issue of a construction certificate.

CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION / SUBDIVISION WORKS COMMENCING

- 9) 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.
- 10) 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.
- 11) 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.
- 12) 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

- 13) 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.
- 14) The building work must be carried out in accordance with the requirements of the Building Code of Australia.

CONDITIONS TO BE SATISFIED PRIOR TO OCCUPATION

- 15) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 16) 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.

-END-

Canterbury Bankstown Local Planning Panel - 3 April 2018

ITEM 5	37 Ludgate Street, Roselands
	Amending application for permanent use of the site as a Place of Public Worship as well an increase to Friday prayer for 120 worshippers
FILE	DA-299/2017 – Roselands Ward
ZONING	R3 Medium Density
DATE OF LODGEMENT	3 August 2017
APPLICANT	Roselands Mosque Association
OWNERS	Roselands Mosque Association
ESTIMATED VALUE	Nil
SITE AREA	921.3m²
AUTHOR	Planning

SUMMARY REPORT

This matter is reported to the Local Planning Panel for determination based on the number of submissions received, being more than ten. The application therefore cannot be determined by Council Officers under their delegation of authority in accordance with the Minister for Planning's Direction of 23 February 2018 and the Canterbury-Bankstown Council IHAP (now Local Planning Panel) Charter.

The applicant has also filed an appeal for a deemed refusal of this DA with the Land and Environment Court.

The subject development application seeks to amend DA-486/2008 (as amended under Modification C) to remove the trial period and give permanent consent for 120 worshippers at Friday prayer. The application also seeks an amendment to the evening prayer sessions from 7pm-8pm to 7.30pm-8.30pm during daylight savings hours.

During the notification period, 118 submissions were received which raised concerns relating to:

- Traffic and Parking
- Noise
- Impact on Reserve
- Impact on Residential Amenity
- Plan of Management
- Temporary Consent
- Litter
- Previous actions of Council and the Applicant
- Objections have been ongoing for the past 9 years
- Safety

The key contentions for the subject Development Application revolve around the ability of the site to accommodate 120 worshippers at Friday Prayer and the merit of approving permanent use of the site as a Place of Public Worship.

The proposal is accompanied by a Noise Impact Assessment Report and a Parking and Traffic Report which conclude that the increase to 120 worshippers at Friday midday prayer can be satisfactorily accommodated; subject to compliance with the submitted Plan of Management and Conditions of Consent. An assessment of the documentation submitted by the applicant and Council Officers indicates that the amenity impacts to the surrounding locality can be reasonably managed and/or mitigated via a suite of measures proposed through a Plan of Management for the site.

Taking into account the planning merits of the application against the on-going compliance issues with the maximum worship numbers permitted on site, on balance, it is considered that the application be approved subject to a further 12 month trial period and appropriate conditions of consent being applied.

POLICY IMPACT

This matter has no direct policy impacts.

FINANCIAL IMPACT

The matter has no direct financial implication.

RECOMMENDATION

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

ATTACHMENTS

- A. Section 4.15 Assessment Report
- B. Conditions of Consent

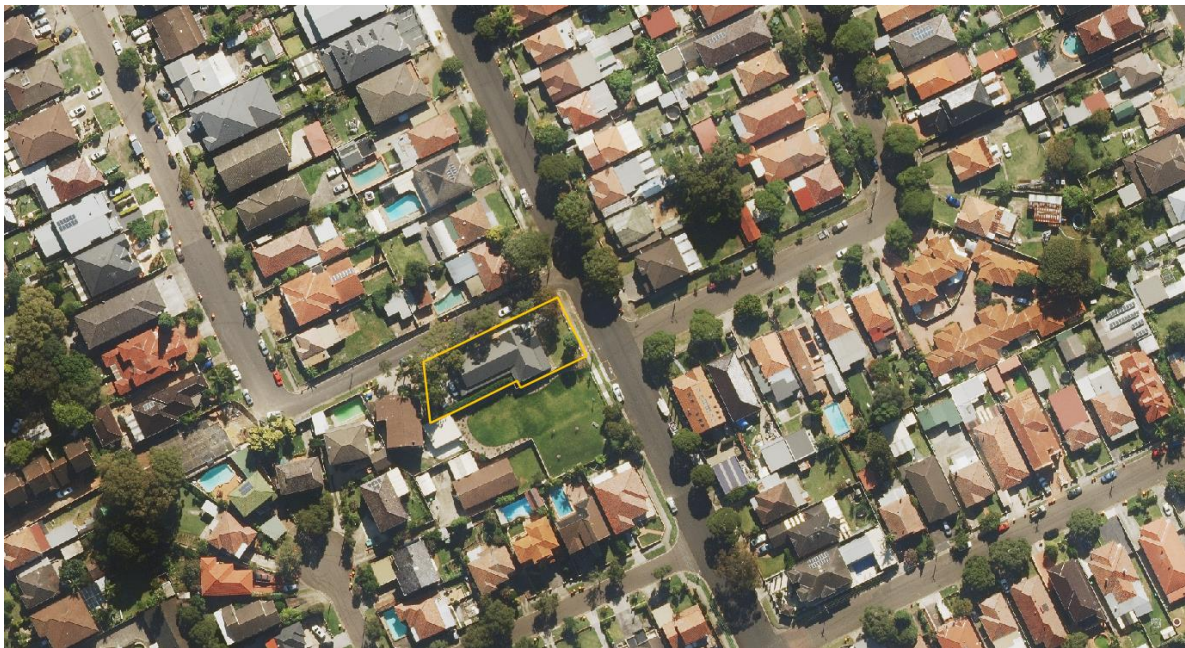
DA-299/2017 ASSESSMENT REPORT

SITE AND LOCALITY DESCRIPTION

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

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

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



Aerial view of subject site



Subject Site



Internal view of subject building

BACKGROUND

Original Use – Religious Church Services

The subject site has a history of use as a place of public worship since 1960, when the former Canterbury Council approved an application for the construction of a meeting room to be used privately for religious church services.

Further applications for additions to the meeting room building to include a single bedroom caretaker's residence and additions to the existing church building and conversion of the rear building for use as a Sunday School followed.

A rear outbuilding was attached to the church building and included a new entrance and storeroom as well as conversion of the rear building to create a Sunday School Hall and four classrooms.

Unauthorised Works

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

Lodgement of DA-486/2008 – Use as a Place of Public Worship

This resulted in lodgement of a development application with Council on 26 August 2008 on behalf of the Anthony Mundine and Hazem El Masri Association, DA-486/2008. DA-486/2008 sought approval for the completion of the demolition works to the existing building, the removal of internal walls and the reconstruction of the roof of the building and its continued use as a place of public worship.

This application was considered by the former Canterbury Council's Independent Hearing and Assessment Panel (IHAP) at its meeting of 5 May 2009 where the IHAP deferred making a recommendation to the City Development Committee pending the submission of additional information by the applicant including traffic and acoustic reports and a Plan of Management.

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

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

(a)

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

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

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

"5. The development being carried out in accordance with the plans, specifications and details prepared by the Terranian Building Group, marked Drawing Plan No. 01 (Existing Ground Floor and Site Plan) and 02 (Proposed Elevations and Section) as received by Council on 28 October 2008, except where modified by the following specific conditions:

- 5.1 The existing windows servicing the proposed function room in the southern elevation of the building shall be replaced with glass blockwork. Such details shall be provided with the application for the Construction Certificate.
- 5.2 Six (6) off-street car parking spaces shall be provided on site as shown on the plan marked 'A' attached to this development consent. Details shall be provided with the application for the Construction Certificate.
- 5.3 An amended landscape plan shall be provided with the application for the Construction Certificate which reflects the plan referred to in Condition No. 5.2 above. In this regard, details of landscape screen planting along the southern and western boundaries of the site shall be provided to minimise potential overlooking opportunities in neighbouring residential properties."

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

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

DA-456/2010 – Increase sought for operation

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

DA-486/2008/A – Amend the internal layout

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

DA-486/2008/B – Extension of trial period

A second modifying application (DA-486/2008/B) for the place of public worship was lodged on 28 July 2014, primarily seeking approval for:

- Modification of Condition 8 (hours of operation and capacity);
- Deletion of Condition 6 (12 month trial period of consent) and;
- Modification of Condition 11 (restriction on location of prayer in the building to exclude sections such as ‘existing function room’, ‘secondary entry’, ‘existing secondary hall’ and rear classroom areas’ and enable full use of all floor area for prayer).

On 14 May 2015 the City Development Committee modified the consent DA-486/2008 by deleting conditions 11, 14 and 21 and amending conditions 6, 7, 8, 22 and 38 which are detailed as follows:

- Modification of Condition 6 relating to hours of operation, reproduced further below;
- Modification of Condition 7 relating to the duration of the trial period;
- Modification of Condition 8 relating to increasing the days of operation from three days to seven days a week as well as the additional pre-dawn prayer;
- Deletion of Condition 11 which enabled the full use of all floor areas within the existing building for prayer and other related purposes as a place of public worship;
- Deletion of Condition 14 requiring a single door between the ‘existing main hall’ and ‘existing gallery/foyer’;
- Deletion of Condition 21 regarding acoustic reports;
- Modification of 22 regarding use of outdoor lighting;
- Modification of Condition 38 relating to the trial period;
- The amendment of Condition 6 included a 6 month trial period that reads as follows:
 6. (a) This approval being for a limited period of a six (6) month trial period from the date of the modified determination of DA-486/08/B. After which time any use of the premises whatsoever will require a Section 96 modification or a further consent of the Council. In this regard an appropriate application shall be made to Council for consideration within 6 months of the date of the modified determination of DA-486/2008/B.
 - (b) During the trial period, the noise levels generated by cars using the rear carpark, cars parking on the surrounding local streets, and prayer services and education sessions inside the building shall be monitored at the nearest

residential premises so that the measured noise levels can be compared with the LAeq, 15min and LA1, 1min noise goals set in the Renzo Tonin & Associates acoustic report submitted with this Section 96(2) Application. Prior to carrying out the noise measurements, a Measurement Methodology shall be submitted to Council for approval and the measurements must be carried out in accordance with the approved Methodology;

- (c) A Complaints Hotline shall be set up by the Proponent to be active during the 6-month trial period so that comments and complaints can be received. All complaints shall be recorded (including the name and contact details of the complainant and the reason for the complaint) and the complaint shall be investigated. Every complaint received and the conclusion of the investigation of that complaint shall be reported in writing to Council within one week of the investigation; and
- (d) The use of a “call to prayer” or other outside noise-generating activity is prohibited on the premises.
- (e) A bicycle rack accommodating a minimum of 3 bicycles shall be provided at a suitable location on the site.

It is noted the former Canterbury CDC did not support the IHAP’s recommendation to continue operation on Wednesday, Thursdays and Fridays only; as well as moderate attendance at the 6.30pm-7.30pm to 30 people instead of the proposed 40. Recommendations around the amendments to Condition 9 relating to the Plan of Management were also not supported by the former Canterbury CDC.

Early morning prayer was not supported in this modification application by either the IHAP or the former Canterbury CDC.

DA-486/2008/C – Extension of trial period

On 13 November 2015, (DA-486/2008/C) was lodged seeking approval to modify the approved place of worship by modifying Condition 6 to remove reference to a '6 month trial period' and modifying Condition 8 by amending the times of prayer during daylight saving time at night from 7pm-8pm to 8:30pm-9:30pm. The application also sought to modify a typographical error identified for the duration of Friday Prayer stipulated in Condition 8 of DA-486/2008/B.

On 16 October 2016, the former Canterbury-Bankstown IHAP (as the determinative authority) approved DA-486/2008/C. The amendments sought removal of the trial period and worship from 8.30pm-9.30pm, which were not supported by the Panel.

As part of the determination, the IHAP raised concern regarding the ability of the Proponent to successfully manage the expanding popularity of the premises and stipulated that the following issues would need to be addressed as part of any future application:

- The number of worshippers can be controlled without overflow impacts (i.e – praying in the park or outside the mosque);
- No or very low impacts from the use over regarding acoustic and traffic impacts by expert consultants;
- Submission of a ground floor plan;
- Updated Plan of Management;
- Details from the complaints register.

The IHAP considered that submission of the above information would be determinative to consideration of a permanent use on the site.

COMPLAINTS AND ACTION

The most recent Section 96 Modification Application was approved on 16 October 2016. The following complaints and actions has been undertaken by Council after this date:

- Our records indicate that four complaints were received by Council from October – December 2017 relating to operation beyond the hours of operation on Sunday evenings, patrons exceeding 100, illegal parking and traffic controllers directing traffic at the premises.
- On 9 December 2016, Council wrote to the Roselands Mosque Association regarding the hours of operation and submission of the overdue updated Plan of Management.
- On 31 January 2017, the Burwood Local Court upheld Council's issue of a Penalty Notice relating to the carrying out of development not in accordance with development consent as issued on 22 January 2016. Additional penalties were also ordered by the Court.

PROPOSED DEVELOPMENT

The applicant is seeking development consent to delete Conditions 6, 7 and 9 and amend Condition 8 of DA-486/2008 as amended, which read as follows –

- **Condition 6 (proposed to be deleted)**
 - 6.(a) This approval is limited to a period of 12 months from 21 October 2016, after which time any use of the premises whatsoever will require a Section 96 modification or a further development consent of the Council. In this regard an appropriate application is to be made to Council for consideration within three months of 21 October 2017, supported by appropriate information. If an application is submitted with appropriate documentation within this time (and requests for further information are addressed in the time limits imposed by the Council) the use may continue in accordance with this consent until the application is finally determined by the Council or the NSW Land and Environment Court on appeal (but in relation to the appeal, only if the appeal is lodged within 14 days of the Council's determination).
 - (b) During the "trial" period:
 - i) The noise levels generated by cars using the rear carpark, cars parking on the surrounding local streets, and prayer services and education sessions inside the building shall be monitored at the nearest residential premises so that the measured noise levels can be compared with the LAeq, 15min and LA1, 1min noise goals set in the Renzo Tonin & Associates acoustic report dated 17 November 2014. Prior to carrying out the noise measurements, a Measurement Methodology shall be submitted to Council for approval and the measurements must be carried out in accordance with the approved Methodology;

- ii) A Complaints Hotline shall be maintained by the Proponent to be active during the twelve month “trial” period so that comments and complaints can be received. All complaints shall be recorded (including the name and contact details of the complainant and the reason for the complaint) and the complaint shall be investigated. Every complaint received and the conclusion of the investigation of that complaint shall be recorded (and made available to Council on request);
 - iii) The management of the mosque is to keep a record of the strategies used to control Friday Prayer attendance beyond the maximum approved capacity and record the number of weekly attendees for Friday Prayer during the “trial” period;
 - iv) The rear car park shall be limited in its weekly use to Friday, Saturday and Sunday only and also the evening prayer and education sessions seven days a week. Outside these times the rear car park is not to be used;
 - v) The use of a “call to prayer” or other outside noise-generating activity is prohibited on the premises;
 - vi) A bicycle rack accommodating a minimum of three bicycles shall be provided at a suitable location on the site;
 - vii) The use is to be operated in accordance with the updated plan of management referred to in 6(c) below.
- (c) The plan of management (submitted in accordance with condition 9) is to be updated and submitted to the Council by 30 November 2016. The updated plan of management is to include proposed methods of controlling worshiper numbers, impacts generally and to include all relevant matters in modified conditions 6 and 8 and any other use conditions in this consent.

- **Condition 7 (proposed to be deleted)**

- 7. If an application is submitted in accordance with Condition 6 above supported with appropriate documentation (and requests for further information are addressed in the time limits imposed by the Council) the use may continue in accordance with this consent until the application is finally determined by the Council or the NSW Land and Environment Court on appeal (but in relation to the appeal, only if the appeal is lodged within 14 days of the Council’s determination).

- **Condition 9 (proposed to be deleted)**

- 9. Prior to the issue of the construction certificate the draft plan of management being amended as follows:
 - (i) Paragraphs be numbered.
 - (ii) The name of the contact person being included in the plan of management.
 - (iii) Provision for the House Full sign to be placed outside the door whenever the maximum number of persons allowed at any particular time is reached and the nomination of a particular person to stand at the front of the premises on these occasions to direct persons to go to an alternative mosque.

- (iv) Amendments to “Liaison” section of the plan of management with liaison with the Council to be every two months and removal of the three year operation provision as the consent is limited to one year.
- (v) Inclusion of the approved activities and hours of operation.
- (vi) Provision in the plan for a letter box drop to residents within 100m of the premises in the week prior to the commencement of the operation of the premises. This letterbox drop is to indicate the date on which the use will be commencing, details of the appropriate person to whom any complaints can be made including the provision of a mobile phone number for that person.
- (vii) Details of the actions that will be taken to inform and educate the congregation of the requirements of the management plan and the terms of the consent including advice that there can be no activities outside the specific activities approved by the consent.

9A. In addition to complying with the terms of this consent the use must comply with the final management plan approved with the construction certificate.

• **Condition 8 (proposed to be amended as shown in red and strike-out)**

8. The approved hours of operation and the approved activities **during the twelve month “trial” period on the site** are to be confined as follows:

(a) **Non Daylight Savings Times**

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

Day	Time	Activity	Maximum No. of Persons
Friday	12 noon to 1.00pm	Prayer	60 120
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Saturday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40

(b) Daylight Saving Times

Day	Time	Activity	Maximum No. of Persons
Sunday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
	7.30pm to 8.30pm		
Monday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
	7.30pm to 8.30pm		
Tuesday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
	7.30pm to 8.30pm		
Wednesday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
	7.30pm to 8.30pm		
Thursday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
	7.30pm to 8.30pm		
Friday	1.00pm to 2.00pm	Prayer	60 120
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm	Prayer & Education	40
	7.30pm to 8.30pm		

Day	Time	Activity	Maximum No. of Persons
Saturday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.00pm to 8.00pm 7.30pm to 8.30pm	Prayer & Education	40

STATUTORY CONSIDERATIONS

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

- State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)
- Canterbury Local Environmental Plan 2012 (CLEP 2012)
- Canterbury Development Control Plan 2012 (CDCP 2012)

SECTION 4.15 ASSESSMENT

The proposed development has been assessed pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979.

Environmental planning instruments [Section 4.15(1)(a)(i)]

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

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

The previous and existing land uses on the site are not identified as development that may give rise to contamination. Given that the site has been used for the purposes of religious worship dating back to 1960 and a similar use will continue on the site, the site is considered to be consistent with State Environmental Planning Policy 55 – Remediation of Land.

Canterbury Local Environmental Plan 2012

The subject site is zoned R3 Medium Density Residential under CLEP 2012 where the proposed use is defined as a ‘place of public worship’ and permissible with the consent in the zone.

The relevant objective of the R3 Medium Density zone is to enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal, for continued use as a place of public worship is consistent with the objective and will continue to provide a facility to meet the needs of residents through a local place of worship.

Proposed Environmental Planning Instruments [Section 4.15(1)(a)(iii)]

There are no proposed environmental planning instruments that impact on the proposed development.

Development Control Plans [Section 4.15(1)(a)(iii)]

The current application has been assessed in accordance with the current applicable controls for the site, outlined in CDCP 2012 Amendment Number 3 as follows:

Part F8 – Non-residential Development in Residential Zones

Objective O1 seeks -

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

The controls are as follows:

- C1. *Non-residential development in a residential zone will be assessed for its impact on residential amenity.*
- C2. *Non-residential development in a residential zone will only be acceptable where adverse impacts on the amenity of residences in the immediate area (for example through traffic generation, parking demand, noise or any other form of pollution that is incompatible with residential uses) are avoided or minimised.*
- C3. *Council may impose conditions of consent to minimise any impact on residential amenity including limiting the scale of the development, restricting hours of operation or the like.*
- C4. *Building design needs to be compatible with surrounding area.*

There is a long standing history of tension with the surrounding residential properties over the past nine years, as detailed in the 118 submissions received as part of this application and other submissions received during the life of the parent application, DA-486/2008.

Primarily, the ongoing issues experienced by the surrounding residents relate to the use and management of the Place of Public Worship and the Proponent's ability to manage the acoustic and traffic impacts generated. These key issues were highlighted at the 16 October 2016 IHAP meeting and were required to be addressed in any future application for continued operation of the premises.

Council recognises that tension between surrounding residents and the Proponent have been heightened by the nine year history of non-compliance with the development consent including significant and on-going breaches to the maximum number of worshippers and breaches to the hours of operation (amongst other issues). This is acknowledged as a relevant consideration affecting the amenity of adjoining residents.

The two key usage issues of acoustic and traffic impacts are discussed in detail further below in this report. In short, the acoustic report undertaken by Renzo Tonin and Associates was

undertaken utilising a methodology that was acceptable to Council's Acting Team Leader of Environmental Health and Compliance.

The proposal was accompanied by a Traffic Report authored by Colston Budd Rogers & Kafes Pty Ltd which assessed the traffic and parking effects for up to 120 worshippers during Friday prayer.

The recommendations and methodology of the submitted traffic report are supported by Council's Team Leader of Traffic.

In this respect, the acoustic and traffic/parking impacts of the proposed Friday prayer session were found to be acceptable with a view of the residential nature of the local area.

However, the ongoing non-compliance with conditions of consent, particularly the maximum number of worshippers at Friday prayer, has resulted in long term impacts on the residential amenity of adjoining sites. A review of Council's records indicates that the use has rarely complied with the maximum number of worshippers for this session, be it 40 or 60 as amended throughout the applications.

The IHAP considered the Proponent's ability to regulate the use as a key consideration for any future application. As detailed further below, the Proponent's incorporation of management strategies has reduced the number of worshippers at Friday prayer; albeit within the range sought by the subject application and not as approved. Notwithstanding, it is considered that the Proponent has demonstrated a willingness to regulate the use.

The subject application also seeks approval for a more genuine maximum number of worshippers attending Friday prayer and is accompanied by traffic and acoustic reports authored by suitably qualified consultants; who submit that the use of the site by 120 patrons will not result in unacceptable impacts on residential amenity. As requested by Council, an indicative prayer mat layout has been provided which indicates an approximate maximum capacity of 155 worshippers, giving some certainty regarding the maximum physical capacity on site.

The proposal for up to 120 worshippers, as has been demonstrated by the accompanying acoustic and traffic reports, ensures reasonable levels of amenity are maintained during this Friday midday period subject to conditions of consent. However, given the extensive history of non-compliance with the conditions of consent, and for reasons set out further below, an additional trial period is recommended and permanent usage is not supported.

Additionally, the subject application seeks to amend the daylight savings 7pm-8pm prayer sessions to 7.30pm-8.30pm prayer session; which is consistent with the approved non-daylight savings prayer session of 6.30pm-7.30pm. There is no increase in worshippers and is not within the sensitive acoustic hours which commence at 10pm. The amendment to these prayer sessions throughout the week during daylight savings hours is supported and of similar impact to the non daylight saving 6.30pm-7.30pm approved session.

Part B – Vehicular Access and Car Parking

The aims of Part B seek to ensure that development provides for adequate off-street car parking and access arrangements dependant on building type and to minimise overflow parking and other traffic impacts in residential streets and neighbours.

The CDCP 2012 provides that the car parking requirements for Places of Public Worship will be determined based on a Traffic and Parking Assessment Report. Notwithstanding, the subject site is unable to provide additional car parking than otherwise currently accommodated by the six stacked car spaces.

The proposal therefore relies on on-street car parking to service the proposed increase of worshippers. The Colston Budd Rogers Traffic and Parking Report submitted by the applicant has assessed the impacts of the proposal based on a comparative survey of a non-peak day (Tuesday) and peak prayer day (Friday).

The report states that approximately '...141 on street spaces are located within 200m of the site'. During the lower demand period, approximately 100 vacant spaces were sighted by the traffic consultant, indicating that approximately 40 spaces were occupied. During the peak Friday Prayer period (between 12 and 2), 109 spaces were occupied.

The peak Friday Prayer session noted that attendance on that day was 114 worshippers. Based on a comparison of a low attendance session and peak session, the Parking Report found that on-street parking demand for 120 worshippers would be for 74 spaces (a rate of 1.63 patrons). The Traffic Report provided that approximately 27 vacant spaces would exist within the 200m during peak patronage of 120 people at Friday midday prayer.

It is noted that previous applications relied on submissions from the Proponent that the facility is to be primarily used by walking residents. It has been consistently demonstrated over the past nine years that this assertion is not the case and that the Premises, particularly for the Friday Prayer session, is frequented by worshippers who are reliant on private vehicle transportation. The assessment from the Parking Report did not discount the parking rate to include those walking to the premises and is solely based on parking demand generated from 114 patrons.

Ultimately, the surveys undertaken by the Parking Report demonstrate that the surrounding streets have capacity to absorb the parking requirements of the proposed 120 worshippers. As detailed in the surveillance conducted by Council (found further below in this report), illegal parking was not observed over the seven week surveillance period.

It is also considered that the non-compliances observed as part of the Parking Report also facilitate a more accurate assessment of the impacts of the proposed 120 worshippers likely to use the premises during Friday prayer. The summary of the Parking Report found that the likely parking impacts created by 120 worshippers within a 200m radius would be satisfactory. This Parking Report was reviewed by Council's Traffic Section who are also satisfied with the methodology undertaken and subsequent recommendations.

Accordingly, the proposed increase in numbers to 120 worshippers would not give rise to adverse traffic and parking for the local street network and would more accurately reflect the actual number of worshippers and cars to the site and surrounding locality. The traffic impacts are discussed further below in this report.

Part B7 – Crime Prevention Through Environmental Design (CPTED)

The proposal does not involve any changes to the design, number of weekly prayer sessions or physical appearance of the building. The proposed increase in patron numbers for Friday prayer continues to meet the casual and passive surveillance built form controls contained in Part B7 of the CDCP 2012.

Other Considerations

- **Independent Hearing and Assessment Panel 17 October 2016 requirements**
The former Canterbury Bankstown IHAP requested the following information be provided as part of any future Section 96 (now Section 4.55) Modification Application / Development Application:
 - Traffic report
 - Noise impact assessment
 - Ground floor plan
 - Details of worshipper management strategies
 - Updated Plan of Management
 - Details from the complaints register

Ground Floor Plan

The Applicant has resubmitted the 486/2008/A approved ground floor plan as part of the application. A Building Certificate for works undertaken for this approval was issued by Council on 3 July 2012.

A Final Occupation Certificate was issued by Pyramid Building Services on 17 July 2013. An inspection of the premises reveals that the ground floor plan is generally consistent with the approved plan of DA-486/2008/A and its modifying conditions.

The application has also been accompanied by an indicative prayer mat layout, which indicates an approximate maximum capacity of 155 patrons in the areas that could be used for prayer. Please note that only mats that wholly fit into the space have been counted.

The other concerns of the IHAP are discussed below under 'likely impacts of the development'.

- **The Likely Impacts of the Development**

The potential impacts of the proposed application on the surrounding residential locality are discussed below; including how the Proponent has sought to overcome the issues raised by the former IHAP.

Traffic Generation and Parking

The most recent modification application, DA-486/2008/C, was found by the IHAP to be lacking in information and failed to provide a detailed traffic study.

As discussed above, a Traffic and Parking Report was undertaken by Colston Budd Rogers & Kafes Pty Ltd (Parking Report) and accompanied this application. The Parking Report undertook an assessment of the traffic and parking effects of the increased worshippers sought by the subject application; to 120 people at Friday midday prayer. The Parking impacts on the local street network were found to be acceptable for 120 worshippers at Friday Prayer as discussed under the CDCP 2012 section 'Part B – Vehicular Access and Car Parking'.

The Parking Report also undertook a traffic assessment of the proposal during the Friday prayer period sought. The Parking Report surveyed traffic conditions at the intersections of Ludgate Street with Ridgewell Street and Belemba Avenue between 11.30am – 3pm.

The Parking Report found that during the Friday peak period, the additional traffic generation on Ludgate Street for up to a 170 vehicles per hour (sum of both directions) is acceptable for local streets.

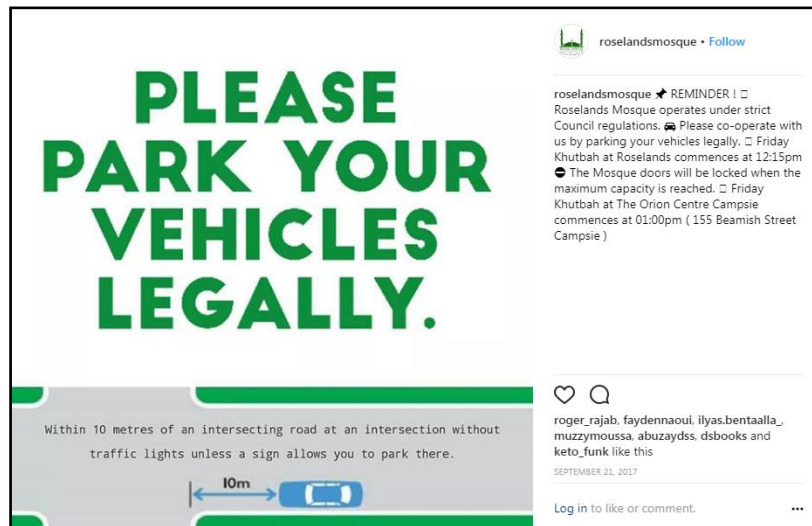
As raised earlier, the Place of Public Worship's breach to the maximum permitted patronage of 60 to 114 on the peak survey day has resulted in a more accurate traffic assessment of anticipated impacts should approval for 120 worshippers be given.

Whilst concerns were raised in some of the submissions about the methodology utilised in the Parking Report around the RMS guideline, Council's Traffic Section raise no concerns with the methodology or interpretation of the data. Council's Team Leader of Traffic assessed the Parking Report and provided the following comments –

*'...I have reviewed the traffic report provided to allow the permanent use of the site for Friday prayers with a maximum attendance of 120. As far as I can see the proposal for the prayer hall is effectively operating to the maximum of 120 attendees and the results of the parking and traffic surveys show an acceptable level of parking and traffic generation for the site.
I have no objections to the proposed permanent use of the site as a place of worship for the maximum attendance of 120 persons.'*

A review of Council's records and confirmation with Council's Coordinator Regulatory Compliance and Environmental Health Section shows that a small number of complaints were received regarding illegal parking during the current trial period, including some after-hours enquiries. The Proponent has subsequently engaged a traffic warden to monitor traffic control during the trial period; who has been observed by Council during surveillance.

The Proponent has also demonstrated a willingness to urge worshippers to comply with the parking requirements, as shown on one of their social media pages –



On the basis of the Parking Report and assessment by Council's Traffic Section, in conjunction with the parking strategies and awareness material distributed by the Proponent, the impacts on the local streets from 120 worshippers are acceptable. However for the reasons set out below under 'Condition 6(b)(iii)'; permanent approval of the Friday Prayer is not supported at this point.

Further, to the above main discussion, the proposed change to the evening prayer/education session during daylight savings from 7pm-8pm to 7:30pm-8:30pm is not an extension of duration for this session and does not seek to increase the maximum capacity at that time. The proposal seeks to realign the 6.30pm -7.30pm non-daylight savings session with daylight savings. Accordingly, the on-street parking and traffic implications on the surrounding streets are unlikely to change and can be supported.

Acoustic/Noise

The most recent modification application, DA-486/2008/C, was found by the IHAP (October 2016) to be lacking sufficient acoustic information. The 2 September 2015 IHAP report detailed that the previous information '...provided does not address the noise levels generated by cars using the surrounding local streets but focussed solely on the closest residential receiver'.

Condition 6(b)(i) relevantly required that during the trial period, the noise levels generated by cars using the rear carpark, cars parking on the surrounding local streets, and prayer services and education sessions inside the building shall be monitored at the nearest residential premises so that the measured noise levels can be compared with the LAeq, 15min and LA1, 1min noise goals set in the Renzo Tonin & Associates acoustic report dated 17 November 2014.

The condition also required that prior to carrying out the noise measurements, a Measurement Methodology shall be submitted to Council for approval and the measurements must be carried out in accordance with the approved Methodology. The Proponent engaged Renzo Tonin & Associates to undertake the Noise Compliance Assessment Report. Renzo Tonin submitted a measurement methodology to Council on 8 June 2017, which was supported by Council's Acting Team Leader Environmental Health and Compliance.

The Noise Report states it was carried out as per the approved methodology and tested two of the three components. The first component relating to noise generated by the rear carpark was not undertaken as the early morning prayer session relying on that area was not approved.

The Noise Report therefore details testing of the noise levels generated by cars utilising the local streets and noise generated by the prayer services and education sessions inside the Place of Public Worship.

The report details that noise measurement testing occurred primarily on Ludgate Street, Belemba Avenue and Ridgewell Street between 12.45-2.45pm (and out of peak midday testing on Friday between 1.15pm - 2.45pm) and 7.45pm-9.45pm on three weekdays and a Sunday to set a base reading.

Against the base acoustic readings measured from these measurements, the Noise Report utilised the assumptions from the Parking Report for vehicles generated by 60 and 120 worshippers during Friday Prayer. The measurements considered vehicles movements and noise from closing doors and engine starts. The Noise Report found that these measurements were reasonable in a residential environment.

The Noise Report also conducted noise measurement of the prayer room on two Friday's and found that:

'...whilst noise from the prayer room was audible, it was not measureable above the ambient noise level...

...It is our opinion that noise from education sessions (which are attended by a lesser number of patrons) will be no greater than from use of the prayer room...'

It was noted that a window was left ajar on one of the reading days and the Noise Report recommends strict adherence by the Premises to ensuring all windows are closed and locked during use.

The Noise Report and Plan of Management were reviewed by Council's Environment Health Section, who raised no objection to the Noise Report and found is satisfied the requirements of Condition 6(b)(i). No objection was raised to the proposed increased to 120 worshippers for Friday Prayer subject to conditions of consent.

Notwithstanding the above, as stated throughout this report and for reasons set out below under 'Condition 6(b)(iii)'; permanent approval of the Friday Prayer is not supported at this point.

In addition to the primary noise assessment, the proposed change to the evening prayer/education session during daylight saving time from 7pm-8pm to 7:30pm-8:30pm does not extend the duration of this evening session, but rather moves it to a later time. The 8.30pm finishing time extends the operation of Roselands Mosque (including worshipers leaving the premises and the locality) before the sleep disturbance period commencing at 10:00pm and is therefore acceptable.

Proposed Deletion of Condition 6

The subject application seeks to delete this condition and obtain consent for permanent use of the site as Place of Public Worship. In summary, removal of this condition is not supported. The Condition reads as follows:

- 6.(a) *This approval is limited to a period of 12 months from 21 October 2016, after which time any use of the premises whatsoever will require a Section 96 modification or a further development consent of the Council. In this regard an appropriate application is to be made to Council for consideration within three months of 21 October 2017, supported by appropriate information. If an application is submitted with appropriate documentation within this time (and requests for further information are addressed in the time limits imposed by the Council) the use may continue in accordance with this consent until the application is finally determined by the Council or the NSW Land and Environment Court on appeal (but in relation to the appeal, only if the appeal is lodged within 14 days of the Council's determination).*
- (b) *During the "trial" period:*
- i) *The noise levels generated by cars using the rear carpark, cars parking on the surrounding local streets, and prayer services and education sessions inside the building shall be monitored at the nearest residential premises so that the measured noise levels can be compared with the LAeq, 15min and LA1, 1min noise goals set in the Renzo Tonin & Associates acoustic report dated 17 November 2014. Prior to carrying out the noise measurements, a Measurement Methodology shall be submitted to Council for approval and the measurements must be carried out in accordance with the approved Methodology;*
 - ii) *A Complaints Hotline shall be maintained by the Proponent to be active during the twelve month "trial" period so that comments and complaints can be received. All complaints shall be recorded (including the name and contact details of the complainant and the reason for the complaint) and the complaint shall be investigated. Every complaint received and the conclusion of the investigation of that complaint shall be recorded (and made available to Council on request);*
 - iii) *The management of the mosque is to keep a record of the strategies used to control Friday Prayer attendance beyond the maximum approved capacity and record the number of weekly attendees for Friday Prayer during the "trial" period;*
 - iv) *The rear car park shall be limited in its weekly use to Friday, Saturday and Sunday only and also the evening prayer and education sessions seven days a week. Outside these times the rear car park is not to be used;*
 - v) *The use of a "call to prayer" or other outside noise-generating activity is prohibited on the premises;*
 - vi) *A bicycle rack accommodating a minimum of three bicycles shall be provided at a suitable location on the site;*
 - vii) *The use is to be operated in accordance with the updated plan of management referred to in 6(c) below.*

- (c) *The plan of management (submitted in accordance with condition 9) is to be updated and submitted to the Council by 30 November 2016. The updated plan of management is to include proposed methods of controlling worshiper numbers, impacts generally and to include all relevant matters in modified conditions 6 and 8 and any other use conditions in this consent.*

In response to Condition 6(a), effectively stipulates the requirements for the Proponent to demonstrate to Council and the community that the Place of Public Worship can be effectively managed to remove Condition (a). For the reasons set out directly below, a further trial period is recommended. It is noted that the subject application was received in the required time frame.

In response to Condition 6(b)(i), the submitted Noise Impact Report has satisfied these requirements.

In response to Condition 6(b)(ii), upon request from Council, the Applicant's planners Willana Associates provided the following response:

The contact details for any concerns regarding the operation of the Place of Public Worship are provided on a large sign located on the external frontage of the building, as well as an email address for written correspondence. These are clearly visible from the Ludgate Street frontage. A 24-hour answering machine is in place to record any complaints made by phone.

To date, no complaints have been directly received via these avenues and therefore, no complaints register is attached. The complaints register template can be found within the submitted Plan of Management, which is the same format as that currently used by the Mosque.

Correspondence regarding a recent GIPA request made to Council also shows that no complaints have been made directly to Council since March 2017. The last complaint made to Council based on the records provided to us by Council was in December 2016.

A review of Council's records and Council's Coordinator Regulatory Compliance and Environmental Health Section confirm this statement. As noted throughout the other assessment reports for DA-486/2008, there may be reluctance to utilise the 24 hour hotline or approach the premises to obtain the contact details. As a further trial period is recommended for reasons set out below, the provision of a 24 hour hotline is recommended to be retained. In addition, it is recommended that contact details be provided online on the Roselands Mosque's social media sites for complaints by email and phone. It is noted that large signage has been installed on site; however residents may be reluctant to walk up to the site to obtain information to make a complaint.

In response to Condition 6(b)(iii), Willana Associates has provided the following response to Council's request for additional information about the management strategies undertaken by the Proponent –

- Counting attendance and communicating when maximum is reached. The number of attendees is counted upon entry to the premises and once capacity

is reached, attendees are informed by the committee official that the premises have reached full capacity and area offered a pamphlet or guidance to other worship places;

- Displaying signage when the premises is full;
- Recording attendance. Attendees averaged at 87 people for Friday sessions;
- Discussions at the end of sessions regarding other places of public worship and maximum attendance. At the end of Friday prayer session, attendees are constantly reminded that this place is under Council restriction and attendees numbers are limited. Attendees are also reminded not to congregate outside the mosque and adhere to traffic rules;
- Signage posted regarding attendance etiquette;
- SMS and digital notification. Social media has been most effective – Roselands Facebook page provides attendees of updated information and communication;
- A Friday prayer session was introduced in Campsie to ease the numbers at Roselands. This strategy occurred from February to August 2017 however this strategy did not result in lower attendance at Roselands due to locals who wish to pray locally and not travel;
- Provision of two sets of personnel in action at the Friday Lunch session including a paid person who attends to traffic control and ensuring people park legally;
- The most effective strategies have been incorporated into the submitted Plan of Management.

The submitted Plan of Management details similar strategies including the 'house full' signage, patrol by two observers (one for counting attendees and one for managing traffic) and complaints handling procedures in writing and by phone. The Plan of Management is generally acceptable, with some amendments recommended as follows:

- Online information to make complaints by phone and email;
- Due to the doubling of numbers, it is considered reasonable that an additional parking patrol warden be employed by the premises. The third parking warden will be responsible for walking the surrounding streets, checking illegal parking and making announcements prior to the commencement of prayer for those parked illegally to move their cars (as identified by their number plate).

As shown above, the Proponent has detailed that the Friday prayer has averaged an attendance of 87 people. Council's surveillance reveals the following number of attendees from the most recent surveillance period on a Friday as well as the surveillance period submitted as part of DA-486/2008/C for comparative purposes:

Council Surveillance of Friday Prayer (60 person maximum capacity)			
Date	Time	Attendance	Other notes
19 May 2017	12.05pm-1.00pm	75 as advised by Proponent	Traffic controller observed
26 May 2017	11.55am-12.55pm	100	Traffic controller observed
2 June 2017	11.45am-12.45pm	85	Traffic controller observed

9 June 2017	11.40am-12.45pm	95	Traffic controller observed however advised that 60 persons were onsite.
25 August 2017	12.05pm-12.30pm	39	Traffic controller observed Note: commenced count after 12 prayer commenced.
1 September 2017	11.45am – 12.42pm	143*	No illegal parking or traffic congestion observed.
8 September 2017	11.45am-12.37pm	82	-

* 1 September 2017 was the first date of Eid al-Adha 2017. This event occurs on two occasions per year and does not always fall on a Friday.

The below table is reproduced from DA-486/2008/C and details the observations of surveillance that was undertaken by Council between June 2015 and November 2015:

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

The Proponent's failure to regulate the use has created tension between the use and residents. This is evident from the numerous submissions received over the past nine years which request for the consent to be 'revoked' on this basis alone.

Based on the above surveillance, it is evident that the Proponent has still not confined the existing use of the premises to the approved 60 worshipper maximum for Friday prayer.

However, the surveillance does show a reduction in the average number of worshippers in 2017 down to 96 (excluding the 39 attendee count), a reduction from the previous average worshippers of 117. The surveillance carried out in 2017 did not observe any illegal parking or traffic issues.

On this basis, it is considered that the traffic management strategies commenced by the Proponent are reducing worship numbers and avoiding traffic congestion. Whilst it is recognised that the Proponent is decreasing the numbers of worshippers, ultimately it cannot be ignored that the proposal is still in breach of the 60 worshipper maximum.

It is likely that the long term non-compliance with the conditions of consent is a key contributor to the opposition and tension within the local community. A nine year history of non-compliance with the key conditions of consent has not assisted this use in successfully integrating into the community. In this respect, the frustration experienced by local residents is acknowledged.

However, with a view of the submitted documentation, the Noise Impact Assessment and Traffic and Parking Assessment Reports both demonstrate that the amenity of residents will not be unreasonably impacted during Friday midday prayer for 120 worshippers which more genuinely reflects the quantum of worshippers using the facility.

In the absence of planning impacts, one of the remaining considerations is the Proponent's ability to successfully manage the use. The Proponent has not yet fully demonstrated that the use can be managed in accordance with the conditions of consent. It is therefore recognised that whilst 120 worshippers is consistent with the actual usage; permanency cannot be supported at this stage.

It is therefore recommended that the trial period continue, albeit for 120 worshippers at Friday prayer.

In order to effectively manage the requested increase in worshipper numbers, it is considered appropriate to require additional parking wardens. From the Applicant's documentation submitted with the current application, this is the key management strategy that is working to decrease the number of worshippers utilising the Friday prayer session.

Accordingly, a condition requiring an increase from two wardens to three wardens has been recommended, commencing 45 minutes prior to and ending of the prayer period. It is recommended that one warden count, manage and cease entry when capacity has been reached. One warden must patrol the Ludgate Street frontage and one warden must patrol the immediate streets for illegal parking.

The traffic wardens must record the number plates of any vehicles illegal parked, and prior to the commencement of prayers during the lecture period, announce number plates and require the owner to park elsewhere.

It is also considered that a report must be provided to Council each month detailing the number of worshippers per week, number of illegal parking incidents or any other parking or traffic issues.

These strategies have been recommended as conditions of consent.

In response of the deletion of Condition 6. (b)(iv)-(vii), it is considered more suitable that these conditions be retained as operational conditions. These sections are reproduced below:

- iv) *The rear car park shall be limited in its weekly use to Friday, Saturday and Sunday only and also the evening prayer and education sessions seven days a week. Outside these times the rear car park is not to be used;*
- v) *The use of a "call to prayer" or other outside noise-generating activity is prohibited on the premises;*
- vi) *A bicycle rack accommodating a minimum of three bicycles shall be provided at a suitable location on the site;*
- vii) *The use is to be operated in accordance with the updated plan of management referred to in 6(c) below.*

Deletion of Condition 7

The proposal seeks to delete Condition 7 which reads as follows:

- 7. *If an application is submitted in accordance with Condition 6 above supported with appropriate documentation (and requests for further information are addressed in the time limits imposed by the Council) the use may continue in accordance with this consent until the application is finally determined by the Council or the NSW Land and Environment Court on appeal (but in relation to the appeal, only if the appeal is lodged within 14 days of the Council's determination).*

Given the above assessment to retain the trial period, deletion of this condition is not supported.

Proposed deletion of Condition 9

Condition 9 reads as follows:

- 9. *Prior to the issue of the construction certificate the draft plan of management being amended as follows:*
 - (i) *Paragraphs be numbered.*
 - (ii) *The name of the contact person being included in the plan of management.*
 - (iii) *Provision for the House Full sign to be placed outside the door whenever the maximum number of persons allowed at any particular time is reached and the nomination of a particular person to stand at the front*

- of the premises on these occasions to direct persons to go to an alternative mosque.*
- (iv) Amendments to “Liaison” section of the plan of management with liaison with the Council to be every two months and removal of the three year operation provision as the consent is limited to one year.*
 - (v) Inclusion of the approved activities and hours of operation.*
 - (vi) Provision in the plan for a letter box drop to residents within 100m of the premises in the week prior to the commencement of the operation of the premises. This letterbox drop is to indicate the date on which the use will be commencing, details of the appropriate person to whom any complaints can be made including the provision of a mobile phone number for that person.*
 - (vii) Details of the actions that will be taken to inform and educate the congregation of the requirements of the management plan and the terms of the consent including advice that there can be no activities outside the specific activities approved by the consent.*

9A. *In addition to complying with the terms of this consent the use must comply with the final management plan approved with the construction certificate.*

The Construction Certificate portion of this Condition is no longer relevant to the development and many of the recommended management strategies have been incorporated into the submitted Plan of Management. Deletion of this Condition is therefore supported.

Amendment to Condition 8

In conjunction with the increase in worshippers, the subject proposal seeks to modify Condition 8, which tables the number of patrons for each period as well as details the twelve month trial period. For the reasons set out above, the amended daylight savings hours to 7.30pm -8.30pm and increase in Friday midday to 120 worshippers is supported on a trial basis only. Support for the increase in worshipper numbers is contingent on retention of the trial period and this aspect to remove the trial wording is not supported.

Social Impacts

Upon request, a social impacts assessment was undertaken by Willana Associates. The report has reviewed the most recent Census Data (ABS Census of Population and Housing 2011-2016) and undertaken an analysis of socio-demographic trends in the area relevant to the subject proposal. The report identifies that 18.7% of residents in the Roselands Study Area (that is the suburb of Roselands as per State Suburbs) identify as followers of Islam. Conversely, the State Wide percentage is 3.6%. It is therefore anticipated that demand in the area for Place of Public Worship related to the Islamic faith would increase based on the demographic makeup of the area.

(a) The Suitability of the Site for the Development [Section 4.15(1)(c)]

The site is considered to be suitable for the proposed development, in that the proposal is for a Place of Worship which is permissible in the zone, subject to

conditions. The proposed development does not result in changes to the building and as such the existing building remains appropriate for the site.

As has been demonstrated above, the use of the site has a history, and previous high volume, of complaints. These complaints however have been reduced due to the implementation of an appropriate Plan of Management and patron management strategies.

The submitted information, including Prayer Mat Layout, Acoustic Survey and Transport and Parking Assessment, have shown that the proposed increase in number of worshippers can be accommodated within the site in an organised and functional manner which will not detrimentally impact on the adjoining and neighbouring residences.

On balance, the ongoing matters regarding the history of the site are not considered to outweigh the planning merits of the subject application as demonstrated.

However, whilst it is accepted that the number of worshippers can be contained on site, the proponent is required to demonstrate that the increased number of worshippers can be suitably controlled to avoid a detrimental impact on residential amenity. As the Proponent has been unable to demonstrate compliance with the existing conditions of previous consent, it is not appropriate to provide a permanent consent to the Friday prayer service.

(e) Any Submissions made in Accordance with this Act or the Regulation [Section 4.15(1)(d)]

The application was advertised between 22 August 2017 and 19 September 2017. A total of 118 submissions were received, 110 of which are in the form of pro-forma letters and one that is from the Ludgate Street Residents Action Group. The issues raised in those submissions have been summarised as follows:

Traffic and Parking

- **There are traffic and parking impacts on the local street network.**
- **The Traffic Report contains errors, is not accurate and does not collect sufficient sample data.**
- **There are also too many T intersections in this area which are unsafe with increased traffic movements and parked vehicles affecting visibility.**
- **Cars parking too close to driveway crossings in narrow streets does not allow adequate access in/out of driveways if there are cars parked on opposite side of narrow street.**
- **There are impacts on streets that are not mentioned in the Traffic Report including Westella Avenue.**
- **Residents will not be able to park in front of their own houses which impacts on parents with children and elderly, particularly with increased driveway crossings for duplexes in the street taking away street parking.**
- **The current DA will continue to thoroughly disadvantage the neighbourhood and intensify traffic, parking, social inclusion and amenity impacts.**
- **Will the number of marshals be doubled in line with the number of attendees doubling?**

Comment:

Council's Team Leader - Traffic has recommended approval of the development application subject to the imposition of relevant conditions. As part of this application, Council's Traffic Engineer has reviewed the application and related Traffic and Parking Report and is satisfied with the accuracy of the data and the sample data contained within. The local road network is considered to be capable of accommodating the traffic and parking generated by the use.

A development consent cannot enforce compliance with the road rules and all parked vehicles are required to obey applicable road rules. All vehicles illegally parked on Council owned streets can be issued with penalty infringement notices.

In addition, the on-street car parking generated by the proposed development is transient in nature and is not expected to have an unreasonable impact on residents in the street particularly considering all dwellings are required to provide off-street car parking for their private use.

Conditions will be placed on the consent which limit the number of attendees at the Place of Public Worship, requires additional parking marshals to be active at peak times, and provides a temporary time limit consent.

Noise

- **Noise impacts from people arriving by car, car doors opening and closing, loitering discussions taking place pre and post prayer/education events.**
- **The windows are left open during prayer sessions despite Acoustic Report stating that windows will be closed.**
- **The Acoustic Report is inaccurate.**
- **The reading equipment was located at quieter locations.**
- **The current DA will continue to thoroughly disadvantage the neighbourhood and intensify traffic, parking, social inclusion and amenity impacts.**

Comment:

The Council's Environmental Health Officer (EHO) was consulted as a result of this application. The EHO raised no objection to the proposal subject to the imposition of appropriate conditions which have been recommended as part of the consent.

The Noise Impacts Assessment was considered by the EHO, who was content that the acoustic Report was satisfactory and that the recommendations, if enacted, would avoid detrimental disturbance to neighbouring property owners and residents. The report notes that on one occasion during the investigations that one of the prayer room windows was ajar and recommends that the Plan of Management reinforces the need for all windows to be closed and locked when it is in use, and that one person should be made responsible for this.

Council's Environmental Health Officers have reviewed the report and the locations from which readings were taken and are satisfied with the accuracy of the information.

Impact on Reserve

- **Loss of access to enjoy reserve due to social isolation of area and perceived trepidation due to proximity to Mosque.**
- **If a permanent consent is issued there will be spillage onto the front lawn and into the reserve.**

Comment:

The building is capable of accommodating all 120 patrons for which this application seeks consent within the building. A condition of consent will be imposed requiring that all activities, meetings and the like are to take place wholly within the building and any persons using the surrounds of the building being moved on immediately. The Reserve is separated from the mosque by a fence with no direct access. No permission has been granted for use of the reserve, which lies in Council's ownership and remains open to public access at all times.

Impact on Residential Amenity

- **Loitering of persons in the vicinity pre and post Mosque activities impact on amenity of neighbours.**
- **The current DA will continue to thoroughly disadvantage the neighbourhood and intensify traffic, parking, social inclusion and amenity impacts.**
- **Council and IHAP have limited idea as to the negative impacts on residents as they witness impacts on pre-planned visits.**

Comment:

Council staff have visited the site on a number of occasions, both announced and unannounced visits, throughout the week and also during the Friday prayer times to inspect the impacts on the surrounding street network in terms of car parking and to undertake surveillance relating to the number of people attending. Pre-planned visitations take place only when Council staff require access within the property. The impacts of the proposal have been considered in relation to this application.

A condition of consent has been recommended requiring patrons be moved to within the building or to their vehicles so as to stop any prolonged congregation of people in the surrounds of the building.

Plan of Management

- **The fact that a Place of Management was required makes the development unsuitable for once quiet peaceful neighbourhood.**
- **The Plan of Management is not enforceable particularly during Fridays and religious events such as Ramadan and is not accurate as the Site Manager does not ensure worshipper numbers do not exceed the maximum permitted as seen in Traffic Report.**
- **The Plan of Management should have been distributed to everyone within 200m radius of the site.**

- **Council monitoring conditions effectively place the Proponent as self-regulating for customer complaints which is ineffective. Contacting the applicant for complaints is intimidating and there is no opportunity for confidentiality.**

Comment:

As defined in Canterbury Local Environmental Plan 2012, a place of worship is permissible in the zone. The Plan of Management is enforceable as it will make up part of the conditions of consent, and any changes being made to the document must be approved by Council. The Plan of Management can also be viewed at Council upon request.

The contact person to be nominated by the Mosque for taking and processing complaints was aimed at ensuring issues are resolved directly between the affected parties and the place of worship without delay. Residents are still able to lodge complaints directly with Council.

Temporary Consent

- **Residents request no further temporary trial, no extension of times of operations. The Mosque should move to a commercial area and/or Council acquires the site to expand the adjoining reserve. The site is not suitable for place of worship although permissible in the zone, but this is not a right.**

Comment:

Council is required to undertake an assessment based on the information submitted and the merits of the application provided to it. In this instance, the proposal is for a Place of Worship which is permissible in the zone and has continuously operated as a place of worship since 2008. For the reasons set out in the report, it is considered that the location of the mosque is acceptable. However at the higher number of patrons and given the previous history of the site, a temporary approach is the most appropriate outcome.

Hours of Operation of Site

- **The daylight saving evening prayer time being changed from 7.30pm to 8.30pm indicates that it is an 8.30pm and onwards finish time.**

Comment:

The end time to prayer sessions will be reinforced by condition of consent to ensure the prayer session ends by that time.

Litter

- **Littering in the streets as a result of people parking and walking to the Mosque**

Comment:

The subject use is not likely to cause littering in the surrounding streets as there are no items that are taken to/from the premises that will cause littering.

Previous actions of Council and the Applicant

- **Complaints have been made to Council by neighbours and they have not been followed up by Council**

Comment:

Council has considered the comments and objections raised in relation to this development application. Other complaints, which are not the subject of this Development Application have been forwarded to the relevant departments. Council has undertaken investigations into the use of the premises as outlined in this report.

- **The applicant has not kept patron numbers down since the establishment of the facility, why would the applicant stop at 120 patrons in the current DA? This is despite the applicant stating that the Friday prayers will only attract families and the elderly that live in a walking distance to the centre.**

Comment:

The applicants have failed to restrain the numbers of worshippers attending the Place of Public Worship in the past, which has shown to be via private car transport. The maximum number of worshippers has been shown by the Applicant to be approximately 155; however empirical evidence from Council's most recent surveillance shows that the numbers of worshippers has generally reduced below 120 with the exception of the first Eid prayer in 2017.

Considering the history of the application a further trial period is recommended. In this case however, it is considered that the number of attendees is not likely to exceed the maximum number of 120 based on Council's surveillance records of number of persons attending Friday prayers. Given the traffic and acoustic report submitted as part of this application support the proposed increase in numbers, with conditions of consent relating to the installation signage and ongoing traffic and attendance management the facility is more likely to function within the parameters of the consent.

Objections have been ongoing for the past 9 years and following impacts have been raised:

- **Proponent lied in sale tender bid by stating that the site would be used as a childcare centre,**
- **Exposed residents asbestos during construction works,**
- **Lack of compliance with Workcover standards,**
- **Established and operated without consent,**

- **Started as prayer hall to become full scale mosque,**
- **Lead to loss of local residents,**
- **Council approved incremental increase in scale and operational hours despite breach of conditions.**

Comment:

Comments relating to the initial establishment of the Mosque are noted.

Council has been monitoring the use of the site by way of ongoing surveillance work which has been reported in the body of this report, and has found that the number of people accessing the site on a Friday exceeded 60 persons on a number of occasions. In this instance, the incremental increase has been supported by Traffic and Acoustic Reports written from suitable qualified professionals and Council specialist officers.

Safety

- **Social impacts, loss of amenity and perceived street safety.**
- **Nearby residents are uncomfortable with the presence of a Mosque with high visitation including being disturbed by and feeling fear about an excessive number of male strangers.**

Comment:

There is no record of anti-social behaviour relating directly to the Place of Public Worship attendees in surrounding areas. Anti-social behaviour by worshippers would be a policing matter and cannot be constrained through planning conditions or controls. A development consent cannot limit the gender of patrons accessing the facility.

(e) The Public Interest [section 4.15(1)(e)]

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments and by the consent authority ensuring that any adverse impacts on the surrounding area and environment are satisfactorily managed and mitigated as much as possible. This requires adherence to the recommendations contained within the traffic and acoustic reports and conditions of development consent. The subject application is in the public interest subject to compliance with all requirements of this development consent and DA-486/2008 as modified.

CONCLUSION

The development application has been assessed pursuant to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979 and all relevant development control plans, codes and policies. Considering the history of the application a further trial period is recommended. In this case, it is considered that the number of attendees is not likely to exceed the maximum number of 120 based on Council's surveillance records of number of persons attending Friday prayers. A figure of 120 patrons is also considered a more genuine reflection of the capacity of the venue and number of patrons attending the site for Friday prayer. It is appropriate that the amendment and conditions applied reflect the capacity of

the venue to address and manage likely impacts. The Plan of Management prepared by the proponent must be strictly adhered to during the trial period otherwise Council will be unlikely to support ongoing operations at this site as proposed. Given the traffic and acoustic report submitted as part of this application support the proposed increase in numbers, with conditions of consent relating to the installation signage and ongoing traffic and attendance management the facility is more likely to function within the parameters of the consent.

It is not envisaged that the proposal will cause detrimental impacts to adjoining development subject to the above conditions, however in the interests of a precautionary approach, a time limited (temporary) consent is recommended.

CONDITIONS OF CONSENT

THAT Development Application DA-299/2017 be **APPROVED** subject to the following conditions.

GENERAL

1. This consent must be read and complied with in conjunction with DA-486/2008 as modified. In the event of a conditions being contradictory, the conditions placed on this consent take precedence.
2. The development being carried out in accordance with the plans, specifications and details prepared by Hakim Hamzah Consultants and accompanying Sample Board, marked Job No. LL9601, Issue C, Sheets 02, 04, 05 and 06 as received by Council on 11 August 2011, and Issue D, Sheet 03, and the Mat Layout Floor Plan received by Council 12 March 2018 except where modified by the conditions of this consent.
3. This approval is limited to a period of 12 months from the date of this consent, after which time any use of the premises whatsoever will require a Section 4.55 modification or a further development consent of the Council. In this regard an appropriate application is to be made to Council for consideration within three months of 3 April 2018, supported by appropriate information. If an application is submitted with appropriate documentation within this time (and requests for further information are addressed in the time limits imposed by the Council) the use may continue in accordance with this consent until the application is finally determined by the Council or the NSW Land and Environment Court on appeal (but in relation to the appeal, only if the appeal is lodged within 14 days of the Council's determination).
4. During the "trial" period:
 - a) The noise levels generated by cars using the rear carpark, cars parking on the surrounding local streets, and prayer services and education sessions inside the building shall be monitored at the nearest residential premises so that the measured noise levels can be compared with the LAeq, 15min and LA1, 1min noise goals set in the Renzo Tonin & Associates acoustic report dated 17 November 2014. Prior to carrying out the noise measurements, a Measurement Methodology shall be submitted to Council for approval and the measurements must be carried out in accordance with the approved Methodology;
 - b) A Complaints Hotline shall be maintained by the Proponent to be active during the twelve month "trial" period so that comments and complaints can be received. All complaints shall be recorded (including the name and contact details of the complainant and the reason for the complaint) and the complaint shall be investigated within 7 days. Every complaint received and the conclusion of the investigation of that complaint shall be recorded and submitted to Council within 7 days of action being taken. Contact details must be provided online on the Roselands Mosque's social media sites for complaints by email and phone. The Plan of Management must be amended to comply with this condition.

- c) The management of the mosque is to keep a record of the strategies used to control Friday Prayer attendance beyond the maximum approved capacity and record the number of weekly attendees for Friday Prayer during the “trial” period.
 - d) The trial period must successfully demonstrate compliance with all Conditions of this Consent.
5. If an application is submitted in accordance with Condition 4 above is supported with appropriate documentation (and requests for further information are addressed in the time limits imposed by the Council) and this application is not determined by Council within the twelve month period referred to in Condition 4 then the use may continue in accordance with this consent until the application is finally determined by the Council or the Land and Environment Court on appeal (but in relation to the appeal, only if the appeal is lodged within 14 days of the Council’s determination).
6. The approved hours of operation and the approved activities **during the twelve month “trial” period on the site** are to be confined as follows:

(a) **Non Daylight Savings Times**

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

Day	Time	Activity	Maximum No. of Persons
Wednesday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Thursday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Friday	12 noon to 1.00pm	Prayer	120
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40
Saturday	12 noon to 12.30pm	Prayer	15
	3.00pm to 3.30pm	Prayer	15
	5.00pm to 5.30pm	Prayer	15
	6.30pm to 7.30pm	Prayer & Education	40

(b) **Daylight Saving Times**

Day	Time	Activity	Maximum No. of Persons
Sunday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.30pm to 8.30pm	Prayer & Education	40
Monday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.30pm to 8.30pm	Prayer & Education	40
Tuesday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.30pm to 8.30pm	Prayer & Education	40
Wednesday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.30pm to 8.30pm	Prayer & Education	40
Thursday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.30pm to 8.30pm	Prayer & Education	40

Day	Time	Activity	Maximum No. of Persons
Friday	1.00pm to 2.00pm	Prayer	120
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.30pm to 8.30pm	Prayer & Education	40
Saturday	1.00pm to 1.30pm	Prayer	15
	4.00pm to 4.30pm	Prayer	15
	5.30pm to 6.00pm	Prayer	15
	7.30pm to 8.30pm	Prayer & Education	40

7. The rear car park shall be limited in its weekly use to Friday, Saturday and Sunday only and also the evening prayer and education sessions seven days a week. Outside these times the rear car park is not to be used.
8. The use of a “call to prayer” or other outside noise-generating activity is prohibited on the premises.
9. A bicycle rack accommodating a minimum of three bicycles shall be provided at a suitable location on the site.
10. The use is to be operated in accordance with the updated plan of management referred to in Condition 11 below.
11. The proposed use must strictly comply with the Plan of Management prepared by Willana Associates dated July 2017 at all times except where they conflict with conditions of consent. The recommendations stated in the Plan of Management form part of the development consent.
12. The Plan of Management must be amended to include patrol of the facility by three Roads and Maritime Services (RMS) accredited parking control wardens during Friday midday Prayer.
13. At least three RMS accredited parking control wardens must be present during Friday midday Prayer. One warden must be located at the front of the premises to monitor and count worshipper numbers and cease permitting entry once at capacity. One warden must patrol the Ludgate Street frontage and one warden must patrol the immediate streets for illegal parking.
14. The traffic wardens must record the number plates of any vehicles illegal parked, and

- prior to the commencement of prayers during the lecture period, announce number plates parked illegally and require the owner to park elsewhere.
15. The Plan of Management must be amended to provide a minimum of three traffic wardens at least 45 minutes prior to and 45 minutes after the scheduled Friday midday Prayer to ensure worshippers do not illegally park in surrounding streets, can be approached by local residents and facilitate safe traffic management in the area.
 16. Each traffic warden must be provided with brightly covered identification clothing.
 17. A report must be provided to Council each month detailing the management strategies undertaken by the Roselands Mosque (or any Proponent operating under this consent or DA-486/2008) and submit attendance records for each Friday midday session.
 18. The Plan of Management must be uploaded and available for public view on the website and social media pages of the subject Mosque.
 19. The facility shall not be used under any circumstances for major events or festivals which are outside those days and times, or involve greater numbers of attendees nominated in Condition 6 above.
 20. The recommendations in the Noise Compliance Assessment Report prepared by Renzo Tonin & Associates dated 25 July 2017 reference No: TJ613-01F03 Noise Compliance Assessment Report (r1) shall be incorporated in the development.
 21. Within thirty (30) days of this consent, a report prepared by an accredited Acoustic Consultant shall be submitted to Council certifying that the development complies with the requirements of the NSW Environment Protection Authority's Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance), Protection of the Environment Operations Act 1997 and Regulations, conditions of development consent and the recommendations of the report prepared by Renzo Tonin & Associates dated 25 July 2017 reference No: TJ613-01F03 Noise Compliance Assessment Report (r1).
 22. The proposed use of the premises and/or machinery equipment installed must not create noise so as to interfere with the amenity of the neighbourhood.
If a noise nuisance occurs, the person in control of the premises must arrange for an acoustic investigation to be carried out at their own cost (by an accredited Acoustic Engineer) and submit a report to Council specifying recommendations and proposed methods for the control of noise emanating from the premises. The measures shall be approved by Council prior to implementation and shall be at full cost to the applicant.
 23. All activity being conducted so that it causes no interference to the existing and future amenity of adjoining occupations and the neighbourhood in general.
 24. No loud speakers or amplification devices being used on the premises.
 25. The external doors and windows of the building must be closed and locked during the conduct of prayer sessions and tutorials. Adequate artificial ventilation must be provided during these activities.

26. Mechanical ventilation or other approved ventilation systems being installed in accordance with the minimum standards of the Building Code of Australia. The operation of machinery or mechanical ventilation systems must not give rise to a sound pressure level at any affected premises that exceeds the background (LA90) noise level in the absence of the noise under consideration by more than 5dB(A).
27. The Management of the facility being responsible at all times for the orderly dispersal of persons from the premises.
28. Signs being appropriately located within the premises advising the congregation of the proximity of nearby residences and seeking quiet and orderly entry and departure from the premises. The Management must ensure that supervisors give appropriate directions to, and take reasonable steps to, control noisy behaviour of persons entering and leaving.
29. Any security lighting or outdoor lighting shall not impact adjoining properties as a consequence of light spill. Outdoor lighting shall not be used between 9pm and 7am.
30. The use being conducted entirely within the building including no prayer, education or meeting activities being conducted outside the building.

WE ALSO ADVISE

1. This application has been assessed in accordance with the National Construction Code.
2. Any works to be carried out by Council at the applicant's cost need to be applied for in advance.
3. Compliance with the National Construction Code does not guarantee protection from prosecution under "The Disability Discrimination Act". Further information is available from the Human Rights and Equal Opportunity Commission on 1800 021 199.
4. Our decision was made after consideration of the matters listed under Section 4.45 of the Environmental Planning and Assessment Act 1979, and matters listed in Council's various Codes and Policies.
5. If you are not satisfied with this determination, you may:
 - 5.1. Apply for a review of a determination under Sections 8.2-8.5 of the Environmental Planning and Assessment Act 1979. A request for review must be made and determined within 6 months of the date of this Notice of Determination and be accompanied by the relevant fee; or
 - 5.2. Appeal to the Land and Environment Court within 6 months after the date on which you receive this Notice of Determination, under Sections 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979.

-END-